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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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When: September 15 at 9:30 a.m.
Where: Jimmy Carter Presidential Library, One Copenhill Avenue, Atlanta, GA
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WASHINGTON, DC

(two briefings)

When: September 17 at 9:00 am and 1:30 pm
Where: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 406

Nursery Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Nursery Crop Insurance regulations effective for the 1994 crop year only, by allowing a six month delay in the payment of premiums. The intended effect of this rule is to provide temporary relief to farmer who suffered damages as a result of Hurricane Andrew. The premium billing date will be extended for up to six months from September 30, 1993 to March 31, 1994 for, Collier, Dade, Lee, and Palm Beach Counties, Florida; and Acadia, Avoyelles, Evangeline, Iberia, Iberville, Lafayette, Point Coupee, Rapides, St. Landry, St. Martin, Vermilion, and West Baton Rouge Parishes, Louisiana.

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the regulations affected by this rule under those procedures. The sunset review date established for these regulations is October 1, 1993.

Kathleen Connelly, Acting Manager, FCIC, has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, state, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Kathleen Connelly also certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons. The action will not have a significant economic effect on a substantial number of small entities, or the producers served by this voluntary crop insurance program because this action liberalizes the terms of the nursery crop insurance contract. Further, this action does not impose an additional burden on the reinsured company or sales and service contractor because FCIC will administratively extend the date when necessary to be consistent with the final date the insured is required to submit premium payment. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10 450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This amendment does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, the Paperwork Reduction Act.

The Office of General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this interim rule will not have an increased substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule are not retroactive and will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J must be exhausted before judicial action may be brought for actions taken under proceedings for the imposition of civil penalties or under the Program Fraud Civil Remedies sections of these regulations.

Background

On Friday, November 30, 1992, FCIC published an interim rule at 57 FR 54682 which allowed a six month extension in the payment of premiums applicable to nursery crop insurance holders in identified counties in Louisiana and Florida adversely affected by Hurricane Andrew. Although those insureds were afforded temporary financial relief through this deferment, FCIC has determined that it is necessary to extend further financial relief to the insureds.

The devastation of Hurricane Andrew in certain counties in Florida and Louisiana is still adversely affecting the financial situation of nursery crop insurance policy holders in those areas. Requiring those policyholders to pay timely premium on the nursery policies will only exacerbate their economic difficulties. Therefore, FCIC intends to help relieve their financial burden by changing the date by which nursery premiums are due. The insurance premium for nursery crop insurance in certain counties will be changed from September 30, 1993 to March 31, 1994, for the 1994 crop year only.

Because this amendment serves to relieve a restriction, FCIC determines that notice and public procedure is unnecessary, impracticable, and contrary to the public interest. This rule is effective upon publication.

FCIC is soliciting written public comment on this interim rule for 60 days following its publication. Written comments should be addressed to Mari L. Dunleavy, Federal Crop Insurance Corporation, USDA, Washington, DC,

20250. This rule will be scheduled for review so that any amendment made necessary by such public comment may be published as quickly as possible.

Written comments received pursuant to this rule will be made available for public inspection and copying in suite 500, 2101 L Street NW., Washington, DC during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 406

Crop Insurance, Nursery, Premium deferred.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Nursery Crop Insurance Regulations (7 CFR 406) effective for the 1994 crop year only, by amending the provisions for coverage. This rule amends the regulations set forth herein in the following instances:

1. The authority citation for 7 CFR part 406 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 406.7 is amended in the contract, by revising subsections 5.a. and b. to read as follows:

§ 406.7 The application and policy.

* * * * *

5. Annual Premium.

a. The annual premium is due and payable on or before September 30 preceding each crop year and will be earned in full when the policy becomes effective.

For the 1993 and 1994 crop year only, the date for payment of the premium will be deferred until March 31, 1994, for Broward, Collier, Dade, Lee, and Palm Beach Counties, Florida; and Acadia, Avoyelles, Evangeline, Iberia, Iberville, Lafayette, Point Coupee, Rapides, St. Landry, St. Martin, Vermilion, and West Baton Rouge Parishes, Louisiana.

b. Except for the 1993 and 1994 crop years, coverage will not begin if the premium due under this policy is not paid when due and payable. For the 1993 and 1994 crop year only insurance will attach on October 1, preceding the crop year.

* * * * *

Done in Washington, DC, on August 10, 1993.

Kathleen Connelly,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 93–21124 Filed 8–31–93; 8:45 am]

BILLING CODE 3410–08–M

Farmers Home Administration

7 CFR Part 1962

RIN 0575–AB61

Servicing and Liquidation of Chattel Security

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is revising its regulations to clearly identify the type of security that can be routinely sold and proceeds used to pay for essential family living and farm operating expenses. The term "security" presently used in FmHA regulations has been occasionally misinterpreted to mean basic security. This revision is needed to clarify the term "security" and make FmHA regulations internally consistent in identifying the distinction between normal income security and basic security. The regulation is also revised to clarify that any changes in the disposition of both normal income security and basic security requires an update of the information, which is to be supplied by the borrower, on the Farm and Home Plan and Form FmHA 1962–1. The intended effects of these changes is to provide clarification of the term "security", and to ensure uniform implementation of the Agency's policy in the disposal and the release of chattel security.

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Charles W. Thompson, Senior Loan Officer, Farmer Programs Loan Servicing and Property Management Division, Farmers Home Administration, USDA, room 5441–S, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone, 202–690–0431.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in Departmental Regulation 1512 which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves an interpretation of statute and FmHA's regulations. This administrative action is an interpretation of § 335(f) of the CONACT which clarifies the regulations so that the uses of proceeds, from the sale of both normal income security and basic security, will not be misinterpreted and will be handled consistently for every borrower. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rule making since it is interpretive, making publication for comment unnecessary.

Subpart A of Part 1962 of this chapter provides guidance on servicing loans that are secured by chattels. Under existing regulations, there are two types of chattel security: normal income security, and basic security. The definitions may be found in § 1962.4 of CFR part 1962 of subpart A. The changes made by this final rule explain the distinction between the use of sale proceeds from normal income security and the use of sale proceeds from basic security. The revision to § 1962.17(b)(1) indicates that proceeds from the sale of basic security can be used to purchase replacements, reduce the debt associated with the security, or in some cases, be used for other purposes, provided there are equal replacements that will maintain the security at acceptable levels. The proceeds from the sale of normal income security, by contrast, may be used to pay periodic debt payments, family living expenses, or farm operating expenses. These revisions also clarify that the release procedure in paragraph (b)(5) applies to both releases of proceeds from the sale of normal income security for essential family living and farm operation expenses, and to the disposition of basic security under paragraph (b)(2). Paragraph (b)(5) provides that the borrower can use basic security and its sale proceeds only as provided on Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security", and in accordance with paragraph (b)(1). Entries on this form will be revised, after being approved by FmHA, regarding any planned use, not previously agreed upon. Section 1806 of the Food, Agriculture, Conservation, and Trade (FACT) Act of 1990 amended Section 331(h)(2) of the Consolidated Farm and Rural Development Act, to require the Secretary to document, in the borrowers file, the consent to any transfer of security property. Paragraph (b)(5) already implements this revision in the statute; therefore, no revision to this paragraph in the regulation is required. The intent of the regulation has not been changed by these revisions. The past and present policy of the Agency remains the same.

Classification

Intergovernmental Consultation

For the reasons set forth in the final rule related to Notice 7 CFR part 3015, Subpart V (48 FR 29115, June 24, 1983)

and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," (December 23, 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The Soil and Water Loan Program is subject to the provisions of Executvie Order 12372 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this final action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Executive Order 12778

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900 Subpart B must be exhausted prior to filing suit.

List of Subjects in 7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural Areas.

Therefore, chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1962—PERSONAL PROPERTY

1. The authority citation for part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S C. 301; 7 CFR 2 23; 7 CFR 2.70.

Subpart A—Servicing and liquidation of Chattel Security

2. Section 1962.16(a) is amended in the seventh sentence by removing the following words preceding the period: "the form should be completed to show this and should be signed."

3. Section 1962.17 is amended by revising the introductory text of paragraph (a)(1), the last sentence of paragraph (a)(2), paragraphs (a)(3), (b)(1), (b)(2)(i), the first two sentences of paragraph (b)(2)(iii), and paragraph (b)(2)(vii) to read as follows:

§ 1962.17 Disposal of chattel security, use of proceeds and release of lien.

(a) *General.* (1) The borrower must account for all security and will be instructed of this requirement by the County Supervisor when a loan is made and as often afterward as necessary. When the borrower sells security, the property and proceeds remain subject to the lien until the lien is released by the County Supervisor. Purchasers of security who inquire should be informed that the property is subject to FmHA's lien and checks should be made payable jointly to the borrower and FmHA. When the borrower fails to account for security, the County Supervisor will take the actions required in § 1962.18 of this subpart. Releases of sales proceeds will be terminated when the borrower's accounts are accelerated (when Exhibit D, E, or E–1 to subpart A of part 1955 of this chapter is sent to the borrower). Termination of such releases will not occur prior to acceleration.

(2) * * * Immediately upon determining that the borrower does not have a current Form FmHA 1962–1 in the file, the County Supervisor will immediately contact the borrower to develop one.

(3) If the borrower requests a change(s) to Form FmHA 1962–1, and the County Supervisor can approve the change(s), the borrower and the County Supervisor will initial and date each change in accordance with item (6) in the Forms Manual Insert (FMI) for Form FmHA 1962–1. The form will be marked "Revised" and the borrower will be notified in writing confirming that the change(s) has been approved.

(b) * * *

(1) County Supervisors are authorized to approve or disapprove dispositions of FmHA chattel security in accordance with this subpart. The County Supervisor, with the assistance of the borrower, will complete Form FmHA 1962–1 in accordance with the FMI (available in any FmHA office) to show how, when, and to whom the borrower will sell, exchange, or consume security and use sale proceeds (include milk sale proceeds). Government payments, crop insurance and insurance proceeds derived from the loss of security will also be accounted for on Form FmHA 1962–1. This includes, for example, sale proceeds on hand and crops in storage. Only the proceeds from the sale of normal income security can be used to pay essential family and farm operation expenses. Proceeds from the sale of basic security will not be used for essential family living and farm operating expenses. In addition to payment of prior liens, basic security can only be released for the purposes listed in paragraphs (b)(2)(iv) through (b)(2)(vii). When proceeds from the disposition of normal income security are to be used to pay essential family living or farm operating expenses, County Supervisors must approve the disposition. Any disposition of basic or normal income security must be recorded on Form FmHA 1962–1. However, the borrower is responsible for providing the County Supervisor with the necessary information to update the Farm and Home Plan and Form FmHA 1962–1.

(2) * * *

(i) The Form FmHA 1962–1 must provide for releases of normal income security so that the borrower can pay essential family living and farm operating expenses. However, proceeds from the sale of basic security will not be used to pay essential family living or farm operating expenses.

* * * * *

(iii) All of the items in paragraph (b)(2)(ii) of this section may not always be considered essential for every family and farming operation. County Supervisors must consider the individual borrower's operation, what is typical for that type of operation in the area administered by the County Supervisor, and what would be an efficient method of production considering the borrower's resources. * * *

* * * * *

(vii) Property can be exchanged, with prior FmHA approval and in accordance with paragraph (b)(5) of this section, for property which is better suited to the borrower's needs if FmHA will acquire a lien on the new property, at least equal in value to the lien held on the property exchanged.

* * * * *

4. Section 1962.17(b)(2)(ii), under the last item of expenses entitled "Essential farm machinery," is amended by changing the word "breaks" to "is."

Dated: July 26, 1993.

Bob Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 93–21126 Filed 8–31–93; 8.45 am]

BILLING CODE 3410–07–M

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Regulation K]

International Banking Operations; Technical Corrections

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical corrections.

SUMMARY: As part of the regulations implementing the Foreign Bank Supervision Enhancement Act of 1991, the definition of "foreign banking organization" in Regulation K was moved. However, three cross-references to this definition were inadvertently not changed. This rule corrects these cross-references.

EFFECTIVE DATE: August 31, 1993.

FOR FURTHER INFORMATION CONTACT: N. Peter Knoll, Attorney (202/452-5237), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th & C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: As part of the regulations implementing the Foreign Bank Supervision Enhancement Act of 1991, the definition of "foreign banking organization" in Regulation K (12 CFR part 211) was moved from § 211.23(a)(2) to § 211.21(n). See 57 FR 12992, 12998 (Apr. 15, 1992) (interim rule placing definition at § 211.22(n)); 58 FR 6348, 6359 (Jan. 28, 1993) (final rule placing definition at § 211.21(n)).

However, the cross-references in §§ 211.31(b)(4), 211.41(b), and 211.42(a) to the definition of "foreign banking organization" were inadvertently not changed from 211.23(a)(2) to 211.21(n). This rule corrects these cross-references.

List of Subjects in 12 CFR Part 211

Exports, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

For the reasons outlined above, the Board of Governors amends 12 CFR part 211 as set forth below:

PART 211—INTERNATIONAL BANKING OPERATIONS

1. The authority citation for 12 CFR part 211 continues to read as follows:

Authority: Federal Reserve Act (12 U.S.C. 221 *et seq.*); Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); the International Banking Act of 1978 (Pub. L. 95-369; 92 Stat. 607; 12 U.S.C. 3101 *et seq.*); the Bank Export Services Act (Title II, Pub. L. 97-290, 96 Stat. 1235); the International Lending Supervision Act (Title IX, Pub. L. 98-181, 97 Stat. 1153, 12 U.S.C. 3901 *et seq.*); the Export Trading Company Act Amendments of 1988 (Title III, Pub. L. 100-418, 102 Stat. 1384 (1988)).

2. Section 211.31(b)(4) is amended by removing "211.23(a)(2)" and adding in its place "211.21(n)".

3. Section 211.41(b) is amended by removing "211.23(a)(2)" and adding in its place "211.21(n)".

4. Section 211.42(a) is amended by removing "211.23(a)(2)" and adding in its place "211.21(n)".

By order of the Board of Governors of the Federal Reserve System, August 26, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-21225 Filed 8-31-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-200-AD; Amendment 39-8679; AD 93-17-08]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that requires incorporation of certain structural modifications. This amendment is prompted by an evaluation by the Model 737 Structures Working Group, comprised of aircraft operators, manufacturers, and the FAA. This Working Group evaluated Boeing service bulletins that must be included as part of the "Aging Airplane Structural Modification Program." The actions specified by this AD are intended to prevent degradation in the structural capabilities of the affected airplanes. This action also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspections.

DATES: Effective October 1, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 1, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Rodriguez, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2779; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes was published in the **Federal Register** on March 3, 1993 (58 FR 12195). That action proposed to require incorporation of certain structural modifications.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter requests that the AD number pertaining to the corrosion prevention and control program for Model 737 series airplanes be clarified. The commenter notes that the AD was referenced incorrectly in the Discussion section of the proposal. The FAA acknowledges that a typographical error was made in the AD number as it appeared in the Discussion section of the proposal. The correct AD number for the corrosion prevention and control program for Model 737 series airplanes is AD 90-25-01. The FAA notes that the amendment number and **Federal Register** citation for that AD were stated correctly in the proposal.

One commenter requests that the number of affected airplanes specified in the economic impact information be revised. The commenter notes that there are more than 29 airplanes of U.S. registry that would be affected by the proposal. This commenter, however, did not provide any additional information as to a more accurate number. The FAA does not concur that a revision to the economic impact information is necessary. The FAA acknowledges that over the lifetime of the AD itself, more than 29 airplanes eventually may be

affected by the rule. However, as presented in the preamble to the proposal (and below), the economic impact information specifies only an estimate of the number of U.S.-registered airplanes that will be affected by this AD action within the initial threshold of 4 years. As such, 29 airplanes continues to represent the best estimation that the FAA can make, given the data available at this time.

Two commenters request that the proposed compliance times be clarified. One commenter suggests that the threshold, when expressed as a calendar date in any service bulletin that is referenced in the Boeing Document, may be subject to misinterpretation since the proposal requires modification by that calendar date, in lieu of the proposed threshold of 4 years required by proposed paragraph (a). This commenter presents an example in which a service bulletin specified a threshold of 75,000 flight cycles or 20 years of airframe age, which would be equivalent to two different calendar dates. Another commenter notes that the incorporation threshold expressed in the Discussion section of the proposal, which states that the mandatory structural modification program is to be accomplished upon reaching the "applicable economic design goal or 4 years after the effective date of the AD," contradicts the incorporation threshold (January 31, 1996) specified in Boeing Alert Service Bulletin 737–32A–1224, which is referenced in the Boeing Document (cited in the proposal as the appropriate source of service information). The FAA concurs, in part. The FAA acknowledges that the incorporation threshold described in the Discussion section of the proposal differs from the incorporation threshold specified in Boeing Alert Service Bulletin 737–32A–1224. However, paragraph (a) of the final rule clearly states that when the incorporation threshold is expressed as a specific calendar date (not expressed in terms of flight cycles or age of airframe that must be computed to obtain a calendar date), the modifications must be accomplished by the calendar date specified in the service bulletin. Further, since the Discussion section is not restated in the final rule, no change to the final rule is warranted.

Several commenters recommend that proposed paragraph (a) be revised to include the modifications specified in section 3 of the Boeing Document because section 3 amends the Boeing Document significantly. One commenter notes that approximately 90 percent of the service bulletins referenced in section 3 of the Boeing Document have been revised since issuance of the Boeing Document. The FAA does not concur. Section 3 of the Boeing Document is the subject of AD 90–06–02, Amendment 39–6489 (55 FR 8372, March 7, 1990). Subsequent revisions to section 3 of the Boeing Document have been approved as acceptable alternative methods of compliance to AD 90–06–02.

One commenter requests that the final rule be revised to include all subsequent FAA-approved revisions of the Boeing Document referenced in the proposal as appropriate sources of service information. The commenter asserts that this would eliminate "unnecessary paperwork" by circumventing the alternative methods of compliance provision in proposed paragraph (b). The FAA does not concur. To use the phrase, "or later FAA-approved revisions," in an AD when referring to the service document, violates Office of the Federal Register (OFR) regulations regarding approval of materials "incorporated by reference" in rules. In general terms, these OFR regulations require that either the service document contents be published as part of the actual AD language; or that the service document be submitted for approval by the OFR as "referenced" material, in which case it may be only referred to in the text of an AD. The AD may only refer to the service document that was submitted and approved by the OFR for "incorporation by reference." In order for operators to use later revisions of the referenced document (released after the publication of the AD), either the AD must be revised to reference the specific later revisions, or operators must request the approval of them as an alternative method of compliance with this AD [under the provisions of paragraph (b)].

One commenter requests that the proposal be revised to include policies that have been made since issuance of AD 90–06–02 (which makes mandatory the modifications specified in section 3 of the Boeing Document). This commenter, however, did not refer to any specific "policies." The FAA does not concur that revision of the rule is necessary. Part 39 of the Federal Aviation Regulations, Airworthiness Directives, is for purposes of issuing rules to correct unsafe conditions that may exist or develop in aircraft, not for purposes of publishing FAA policy decisions. Regardless of this, however, the FAA assures the commenter that any policy decisions made by FAA that were pertinent to AD 90–06–02 are also valid for and applicable to this rulemaking action.

One commenter requests that, to clarify the requirements of the proposal, the following statement be added to the final rule: "The modifications shall be done in accordance with Boeing Document D6–38505, 'Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 737–100/–200/–200C,' Revision F, dated April 23, 1992." The FAA concurs and paragraph (d) has been added to the final rule to specify this; however, this paragraph is merely a restatement of the requirement to use the service information referenced in paragraph (a) of the final rule. Its addition to the rule simply fulfills the requirements of the Office of the Federal Register to incorporate the referenced Boeing Document as part of this rulemaking action.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,200 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 29 airplanes of U.S. registry will be affected by this AD within the initial threshold of 4 years. The cost to modify each airplane is estimated to be $57,887. This cost includes the price of modification kits, which is $27,252 per airplane, and the estimated number of work hours to accomplish the modifications, which is 557 work hours at $55 per work hour. It does not include downtime, planning, set up, familiarization, or tool acquisition costs. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,678,723 over the 4 year time period. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–17–08 Boeing: Amendment 39–8679. Docket 92–NM–200–AD.

Applicability: Model 737–100, 737–200, 737–200C airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent structural failure, accomplish the following:

(a) Except as provided below, prior to reaching the incorporation thresholds listed in Boeing Document No. D6–38505, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 737–100/–200/–200C," Revision F, dated April 23, 1992, or within the next 4 years after the effective date of this AD, whichever occurs later, accomplish the structural modifications listed in appendices A.3 and B.3 of the Boeing Document. Service bulletins whose threshold is specified in the Boeing Document by a calendar date must be modified by that date in lieu of the 4 years specified in this paragraph.

Note 1: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for the inspection requirements.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modifications shall be done in accordance with Boeing Document No. D6–38505, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 737–100/–200/–200C," Revision F, dated April 23, 1992, which includes the following list of effective pages:

Page No.	Revision shown on page	Date shown on page
List of active pages: page c.	F	(This page is not dated).

(**Note:** The issue date of Revision F is indicated only on page c of the List of Active Pages; no other page of the document is dated.)

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 1, 1993.

Issued in Renton, Washington, on August 25, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21223 Filed 8–31–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 93–050]

Safety, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between April 1, 1993 and June 30, 1993, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones, which were of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard district regulations that were established and terminated between April 1, 1993 and June 30, 1993, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The complete text of these temporary regulations may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Sheri deGrom, Executive Secretary, Marine Safety Council at (202) 267–6233 between the hours of 8 a.m. and 3:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to assure the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation.

Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing

undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register**. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. These safety zones, special local regulations and security zones have been exempted from review under E.O. 12291 (because of their emergency nature, or limited scope and temporary effectiveness).

The following regulations were placed in effect temporarily during the period April 1, 1993 and June 30, 1993, unless otherwise indicated.

Docket No.	Location	Type	Effective date
Baltimore 93–006	Annapolis, MD	Security Zone	4/1/93
Baltimore 93–008	Baltimore, MD	Safety Zone	5/9/93
Baltimore 93–011	Annapolis, MD	Safety Zone	5/22/93
Baltimore 93–012	Cambridge, MD	Safety Zone	6/6/93
Baltimore 93–013	Baltimore, MD	Safety Zone	6/5/93
Charleston 93–043	Cooper River, SC	Safety Zone	6/14/93
Charleston 93–053	Charleston, SC	Safety Zone	6/13/93
Corpus Christi 93–003	Corpus Christi, TX	Safety Zone	2/5/93
Duluth 93–026	Lake Superior, MI	Safety Zone	6/12/93
Jacksonville 93–029	Fernandina Beach, FL	Safety Zone	4/30/93
Jacksonville 93–030	Jacksonville, FL	Safety Zone	4/23/93
Jacksonville 93–033	Jacksonville, FL	Safety Zone	5/14/93
Jacksonville 93–034	St. Augustine, FL	Safety Zone	5/22/93
Jacksonville 93–061	Jacksonville, FL	Safety Zone	6/26/93
Louisville 93–004	Ohio River	Safety Zone	4/28/93
Louisville 93–006	Ohio River	Safety Zone	6/13/93
Louisville 93–009	Licking River	Safety Zone	6/11/93
Louisville 93–010	Ohio River	Safety Zone	6/21/93
Memphis 93–002	Lower Mississippi	Security Zone	5/12/93
Miami 93–036	Port of Miami	Safety Zone	5/6/93
Paducah 93–004	Tennessee River	Safety Zone	5/11/93
Paducah 93–007	Cumberland River	Safety Zone	6/16/93
Paducah 93–008	Tennessee River	Safety Zone	6/26/93
Pittsburgh 93–003	Monongahela River	Safety Zone	6/22/93
Port Arthur 93–001	Port Arthur, TX	Safety Zone	2/20/93
Port Arthur 93–003	Port of Beaumont	Security Zone	6/3/93
San Francisco 93–002	San Francisco Bay	Security Zone	4/16/93
San Francisco 93–003	San Francisco Bay	Safety Zone	5/15/93
Savannah 93–042	Savannah River	Safety Zone	5/22/93
Southeast Alaska 93–002	Portland Island, AK	Safety Zone	6/26/93
St. Louis 93–008	Upper Mississippi	Safety Zone	4/2/93
St. Louis 93–009	Illinois River	Safety Zone	4/15/93
St. Louis 93–010	Upper Mississippi	Safety Zone	4/11/93
St. Louis 93–011	Illinois River	Safety Zone	4/20/93
St. Louis 93–012	Upper Mississippi	Safety Zone	4/26/93
St. Louis 93–014	Illinois River	Safety Zone	5/11/93
St. Louis 93–015	Missouri River	Safety Zone	5/11/93
St. Louis 93–018	Upper Mississippi	Safety Zone	5/17/93
St. Louis 93–021	Missouri River	Safety Zone	5/12/93
St. Louis 93–022	Upper Mississippi	Safety Zone	5/20/93
St. Louis 93–023	Upper Mississippi	Safety Zone	5/28/93
St. Louis 93–024	Upper Mississippi	Safety Zone	6/7/93
Toledo 93–002	Lake Erie	Safety Zone	6/14/93
Wilmington 93–001	Northeast Cape Fear	Safety Zone	6/16/93
01–93–004	North Kingstown, RI	Safety Zone	5/29/93
01–93–006	New York Harbor, NY	Safety Zone	5/26/93
01–93–014	North Hempstead, NY	Safety Zone	5/28/93
01–93–017	New York Harbor	Safety Zone	5/26/93
01–93–021	Lower Hudson River	Safety Zone	6/27/93
01–93–024	NY and NJ	Safety Zone	4/6/93
01–93–026	Bristol Harbor, RI	Safety Zone	7/5/93
01–93–028	Newark Bay, NJ	Safety Zone	4/10/93
01–93–032	Lower East River, NY	Safety Zone	5/30/93
01–93–042	Staten Island, NY	Safety Zone	5/2/93
01–93–043	Providence River, RI	Safety Zone	5/30/93
01–93–044	Lower East River, NY	Security Zone	5/12/93
01–93–045	Hudson River	Safety Zone	5/30/93
01–93–048	Upper New York Bay	Safety Zone	6/8/93
01–93–049	Upper New York Bay	Safety Zone	6/27/93
01–93–059	East Hampton, NY	Safety Zone	5/29/93
01–93–060	Albany, NY	Safety Zone	6/12/93
01–93–064	Albany, NY	Safety Zone	6/11/93
01–93–073	NY and NJ	Safety Zone	6/10/93
01–93–082	NY and NJ	Safety Zone	6/25/93

Docket No.	Location	Type	Effective date
01-93-083	Upper New York Bay	Security Zone	6/26/93
02-93-004	Kaskaskia River	Special Local	5/1/93
02-93-005	Tennessee River	Special Local	5/1/93
02-93-006	Tennessee River	Special Local	6/5/93
02-93-008	Illinois River	Special Local	5/14/93
02-93-011	Upper Mississippi	Special Local	6/12/93
02-93-012	Upper Mississippi	Special Local	6/12/93
02-93-014	Ohio River	Special Local	6/5/93
07-93-022	Ft. Lauderdale, FL	Special Local	5/15/93
08-93-010	Galveston, TX	Safety Zone	5/9/93
08-93-012	Corpus Christi, TX	Safety Zone	5/9/93
09-93-023	Cleveland, OH	Safety Zone	6/1/93
11-93-003	San Diego Bay	Safety Zone	4/4/93
13-93-004	Columbia River	Safety Zone	4/1/93
13-93-006	Puget Sound, WA	Safety Zone	4/7/93
13-93-007	Puget Sound, WA	Safety Zone	4/6/93
13-93-008	Tacoma, WA	Safety Zone	4/2/93
13-93-009	Columbia River	Safety Zone	4/8/93

Dated: August 27, 1993.

Sheri de Grom,

Executive Secretary, Marine Safety Council.

[FR Doc. 93-21302 Filed 8-31-93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD-92-015b]

RIN 2115-AE30

Temporary Deviations for Drawbridge Operation Requirements

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its drawbridge operation regulations to allow for temporary deviations for up to 90 days. Under current regulations, a Coast Guard District Commander may authorize a temporary deviation from drawbridge operation requirements for a maximum of 60 days. The additional 30 days will better accommodate seasonal testing and public response surveys, and will provide additional time for a test regulation to be in effect before comments are due on the proposed change and its effectiveness.

DATES: This rule becomes effective on October 1, 1993.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection and copying at the office of the Executive Secretary, Marine Safety Council, U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001, room 3406, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477 for more information.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Schneider, Project Manager (G-NBR-1), at (202) 267-0377.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Ms. Diane Schneider, Project Manager, and Ms. Helen Boutrous, Project Counsel, Office of Chief Counsel.

Regulatory History

On January 4, 1993, the Coast Guard published a notice of proposed rulemaking entitled "Temporary Deviations for Drawbridge Operation Requirements" in the **Federal Register** (58 FR 47). The Coast Guard received no letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

Part 117 of title 33 of the Code of Federal Regulations contains both general and specific requirements for drawbridge operations. In order to evaluate suggested changes to the drawbridge operation requirements, § 117.43 allows a Coast Guard District Commander to authorize temporary deviations from the regulations contained in part 117, for up to 60 days. The authorized temporary deviation is meant to allow for regulations testing as a prelude to permanent regulation changes governing drawbridge operations and schedules. An issue was raised regarding the need to revise § 117.43 because the maximum 60-day period does not provide adequate time to test a proposed regulation change over various lengths of seasonal periods in order to capture significant circumstances associated with seasonal waterborne traffic patterns. The 60-day limitation also does not allow enough time for adequate public survey responses or commentary on proposed changes.

Discussion of Amendments

This final rule will allow temporary deviations from drawbridge operation regulations to be authorized by a Coast Guard District Commander for up to 90 days, instead of the current 60 days. This will make the testing of proposed changes more effective and will increase the likelihood of more useful feedback from the affected public.

Discussion of Comments and Changes

There were no comments to this notice of proposed rulemaking. The Coast Guard has made no changes to the proposal in this final rule.

Regulatory Evaluation

This final rule is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rulemaking to be so minimal that a full Regulatory Evaluation is unnecessary. This rulemaking merely extends the allowable time for temporary changes in drawbridge operation requirements for regulatory purposes. There will be no cost to the general public. In fact, the ultimate purpose is to balance the needs of navigation and railroad and land transportation in the most effective and efficient manner possible, in order to minimize to the greatest extent practicable inconvenience and transportation and navigation costs which may be associated with delays caused by scheduling or other operating requirements in need of adjustment.

Small Entities

This rulemaking is intended to provide greater flexibility in the regulation which allows for testing

proposed changes in drawbridge operations or scheduling. It imposes no special expense on small businesses. Therefore, because it expects the economic impact of this final rule to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no additional collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Under federal law, the primary jurisdiction to regulate drawbridges across the navigable waters of the United States is vested in the Secretary of Transportation and delegated to the Coast Guard. Therefore, the Coast Guard intends this final rule to preempt State action addressing this subject matter.

Environment

The Coast Guard considered the environmental impact of this rulemaking and concluded that under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation because it is a Bridge Administration Program action involving the promulgation of operating requirements or procedures for drawbridges. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.43 is revised to read as follows:

§ 117.43 Changes in draw operation requirements for regulatory purposes.

In order to evaluate suggested changes to the drawbridge operation requirements, the District Commander may authorize temporary deviations from the regulations in this part for periods not to exceed 90 days. Notice of these deviations is disseminated in the Local Notices to Mariners and published in the **Federal Register**.

Dated: August 27, 1993.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93–21300 Filed 8–31–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR 161

[CGD 92–052]

RIN 2115–AE36

Vessel Traffic Service New York Area

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: The Coast Guard is expanding the boundaries of Vessel Traffic Service New York (VTSNY). This expansion provides the Vessel Traffic Center (VTC) with a more complete vessel traffic image for the entrances to New York Harbor via Ambrose Channel, Raritan Bay, and Long Island Sound. The expansion also furnishes additional information on weather conditions and potential hazards to navigation. As a result, the VTSNY area expansion will assist in safer and more efficient vessel transits in the congested New York Harbor channels and reduce the potential for groundings, rammings, and collisions

EFFECTIVE DATE: October 18, 1993.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Irene Hoffman, Project Manager, Vessel Traffic Services Division. The telephone number is 202–267–6277.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Irene Hoffman, Project Manager, Vessel Traffic Services Division and Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Regulatory History

On August 27, 1990, the Coast Guard published in the **Federal Register** (55 FR 34908), a final rule which established mandatory vessel participation in VTSNY. This final rule became effective on February 15, 1991. The rule stated that any further proposal expanding VTSNY areas would be published in a separate notice of proposed rulemaking. The Coast Guard believes that the VTSNY area should be expanded and is doing so in this rule.

On May 25, 1993, the Coast Guard published a notice of proposed rulemaking to expand the VTSNY area entitled, "Vessel Traffic Service New York Area" in the **Federal Register** (58 FR 30098). The Coast Guard received two letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

The Ports and Waterways Safety Act (33 U.S.C. 1221 *et seq.*), as amended by Port and Tanker Safety Act of 1978 and the Oil Pollution Act of 1990, provides authority for the Secretary of the Department of Transportation to construct, operate, maintain, improve or expand vessel traffic services. The Secretary has redelegated this authority to the Commandant, U.S. Coast Guard.

VTSNY was established in New York Harbor, Kill Van Kull, Newark Bay, and Upper New York Bay in response to heightened public concern for vessel traffic safety. Existing regulations require compliance with reporting and participation procedures for certain vessels entering into and operating within this area. The VTS has a surveillance system and radiotelephone network for collecting and providing information within this prescribed area.

This expansion of VTSNY will furnish additional advance information on weather conditions, traffic congestion, and potential hazards to navigation. This information will then be relayed to vessels operating in the expanded area, permitting them to respond to conditions as necessary.

Discussion of Comments and Changes

The Coast Guard received two letters encouraging the expansion of VTSNY and the effort to provide a more complete vessel traffic image for the entrances to New York Harbor. One comment letter, received after the close of the comment period, suggested that the VTSNY expansion effort be extended up the Hudson River at least

to the George Washington Bridge area. The level of traffic does not warrant radar surveillance of this area. However, the Hudson River area has VHF communications capabilities and VTSNY presently monitors vessel movements in portions of the area suggested by the commentor. VTSNY regulations require vessels intending to enter the VTS area report to the VTC 15 minutes prior to entering the VTS area.

At present, the VTSNY area (33 CFR 161.580) is bounded by the Verrazano-Narrows Bridge to the south, the Brooklyn Bridge and Holland Tunnel to the east and north, Kill Van Kull to the Arthur Kill (AK) Railroad Bridge, and Newark Bay to the Lehigh Valley Draw Bridge.

As discussed in the notice of proposed rulemaking, the Coast Guard is expanding VTSNY's required participation boundary in three phases. In addition this interim final rule for Phase I, the Coast Guard intends to issue one more interim final rule for Phase II. A final rule, would then encompass Phase III and the total VTS expansion area. Phase II and Phase III boundaries are described in the proposed rule.

This interim final rule amends 33 CFR 161.580 and implements Phase I by expanding the VTSNY's required participation area from the existing boundary at the Verrazano-Narrows Bridge south to the entrance buoys at Ambrose, Sandy Hook and Swash Channels in Lower New York Bay, and west into Raritan Bay terminating at a line from Great Kills Light on Staten Island to Point Comfort in New Jersey.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979).

The Coast Guard has determined that the economic impact of this interim final rule to be so minimal that a full Regulatory Evaluation is unnecessary. Most vessels that are affected by this rule are already required to participate in VTSNY. The expansion of the VTS area only requires these vessels to communicate with the VTC earlier than presently required. In some cases, vessels are already voluntarily participating in the expanded areas. This interim final rule does not impose a measurable impact on these vessels.

Small Entities

As discussed in the preamble, the expansion of the VTS area only requires certain vessels to communicate with the VTC earlier than presently required. This requirement will have little impact on vessels that are affected by this rule. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this interim final rule under the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. VTS operating procedures are a matter for which regulations should be developed on the national level, to avoid unreasonably burdensome variances and confusion in applicability and operating requirements. These regulations provide uniform VTSNY operating requirements in an expanded VTSNY area and preempt States from adopting similar requirements.

Environment

The Coast Guard considered the environmental impact of this interim final rule and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule, which is primarily administrative, requires the Master, Pilot or person directing the movement of a vessel to participate in an expanded VTSNY area. No significant effect on the environment is expected. While the Coast Guard also recognizes that this rulemaking may have a positive effect on the environment by minimizing the risk of environmental harm resulting from collisions and groundings of vessels in the VTSNY area, the impact is not significant enough to warrant further documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 161

Harbors, Reporting and recordkeeping requirements, Navigation (water), Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 161 as follows:

PART 161—VESSEL TRAFFIC MANAGEMENT

1. The authority citation for part 161 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. Section 161.580 is revised to read as follows:

§ 161.580 VTSNY area.

The VTS New York area consists of the waters of the Lower New York Bay bounded to the east by a line drawn from Norton Point to Breezy Point, then south to the entrance buoys at Ambrose, Sandy Hook and Swash Channels, and to the west by a line drawn in the Raritan Bay from Great Kills Light on Staten Island to Point Comfort in New Jersey. In addition, VTSNY encompasses the Upper New York Bay waters to the west, including the Kill Van Kull south to the AK Railroad Bridge and Newark Bay north to the Lehigh Valley Draw Bridge, and in the Hudson River, north to a line drawn east-west from the Holland Tunnel ventilator shaft at latitude 40°43.7'N; longitude, 74°01.6'W, and east to the Brooklyn Bridge.

Dated: August 27, 1993.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93-21304 Filed 8-31-93; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Wilmington, NC Regulation 93-004]

Safety Zone Regulations; Eagle Island Fireworks Display, Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Cape Fear River in the vicinity of the Battleship USS North Carolina Memorial in the waterfront area of downtown Wilmington, North Carolina. The safety zone is needed to protect people, vessels, and property from safety hazards associated with the launching of fireworks from Eagle Island. Entry into this zone is prohibited unless authorized by the Captain of the Port, Wilmington, North Carolina, or his designated representative.

EFFECTIVE DATE: This regulation is effective from 8 p.m. to 9:30 p.m. on October 2, 1993, unless sooner terminated by the Captain of the Port, Wilmington, North Carolina, or his designated representative. If inclement

weather causes the event to be postponed, this regulation will be effective from 8 p.m. to 9:30 p.m. on October 3, 1993, unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LCDR R.W. Muth, USCG, c/o U.S. Coast Guard Captain of the Port, suite 500, 272 N. Front Street, Wilmington, North Carolina 28401–3907, Phone: (919) 343–4881.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public's interest since immediate action is necessary to prevent possible damage to people, vessels, and property in the area.

Drafting Information

The drafters of this regulation are LTJG G.A. Howard, project officer for the Captain of the Port, Wilmington, North Carolina, and LT J.B. Gately, project attorney, Fifth Coast Guard District Legal Staff.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Discussion of Regulation

The City of Wilmington has requested that the Coast Guard provide a safety zone for the event. There will be a fireworks display over the Cape Fear River from 8:30 p.m. to 9 p.m. on October 2, 1993. The launching of commercial fireworks constitutes a potential hazard to the people, vessels, and property in the vicinity. This safety zone is needed to protect the public from the hazards associated with this event. It will consist of an area of water 200 yards wide and 667 yards long.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirement, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.T062 is added, to read as follows:

§ T165.062 Safety zone: Eagle Island Fireworks Display, Cape Fear River, Vicinity of the Battleship USS North Carolina, Wilmington, North Carolina.

(a) *Location:* The following area is a safety zone:

(1) The waters of the Cape Fear River circumscribed by a line drawn from the following navigational points:

Latitude	Longitude
34°14.2′ N	77°57.17′ W, to
34°14.2′ N	77°57.1′ W, to
34°13.9′ N	77°57.0′ W, thence to
34°13.9′ N	77°57.1′ W.

(2) The safety zone boundary can be described as follows: Starting at the stern of the Battleship USS North Carolina, across the Cape Fear River to the north end of the Coast Guard moorings, down along the east bank of the Cape Fear River to the bow of the tug Captain John Taxis Memorial (Chandler's Wharf), back across the Cape Fear River to Eagle Island, and then up along the west bank of the Cape Fear River to the stern of the Battleship USS North Carolina.

(b) *Effective Date.* This regulation is effective from 8 p.m. to 9:30 p.m. on October 2, 1993, unless sooner terminated by the Captain of the Port, Wilmington, North Carolina.

(c) *Local regulations.* Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(1) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(2) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of the section,, but may not block a navigable channel.

(d) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Wilmington, North Carolina to act on his behalf. The following officers have or will be designated by the Captain of the Port: the Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone, and the Duty Officer at the Marine Safety Office, Wilmington, North Carolina.

(1) The Captain of the Port and the Duty Officer at the Marine Safety Office, Wilmington, North Carolina, can be contacted at telephone number (919) 343–4895.

(2) The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF–FM channels 16 and 81.

Dated: August 16, 1993.

C.F. Eisenbeis,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, NC.

[FR Doc. 93–21301 Filed 8–31–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

RIN 2115–AA97

[COTP St. Louis Regulation 93–030]

Safety Zone Regulations; Upper Mississippi River Basin

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending the duration of safety zones previously established on the Upper Mississippi River, the Missouri River, the Illinois River, Kasbaskia River, and the Meramec River. These regulations are needed to continue to control vessel traffic in the regulated areas to prevent further wake damage to levees and property along the rivers which have been subjected to flood conditions since June 1993. The regulations will restrict general navigation in the regulated areas for the safety of vessel traffic and the protection of life and property along the river.

EFFECTIVE DATE: This regulation is effective on August 16, 1993 and will terminate on September 15, 1993.

FOR FURTHER INFORMATION CONTACT: LT Tim Deal, Operations Officer, Captain of

the Port, St. Louis, Missouri at (314) 539–3823.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are LT Tim Deal, Project Officer, Marine Safety Office, St. Louis, Missouri and LCDR A.O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the continuation of flood conditions and more rainfall in the Upper Mississippi drainage area have acted to maintain unanticipated flood conditions on the Mississippi River leaving insufficient time to publish a notice of proposed rulemaking. The Coast Guard it to be in the public's best interest to issue a regulation without waiting for a comment period since the flood conditions are presenting immediate hazards.

Background and Purpose

The Upper Mississippi River and its tributaries have suffered from high water conditions since April 1993 and flood conditions since June 1993. Although the flood levels crested in early August 1993, the waters have been slow to recede and are expected to rise again in local areas because of continuing rainfall. This has contributed to unusually wet conditions along the river with the resultant softening of the earth levees which protect the adjacent lowlands. As a result of the extended flood conditions, some levees in the area have failed, and flood waters have inundated thousands of acres for flood plain. The Army Corps of Engineers has reported that wake damage from river traffic may cause additional levees to erode, presenting a danger to ongoing flood relief efforts and to life and property along the river.

The flood conditions continue to present a hazard to navigation in that the area's rivers are contained by weak levees, are filled with debris which has created shoal waters in certain areas, have covered once visible obstructions to navigation, contain river currents which are not following normal patterns, and have insufficient clearance for vessels to pass under certain bridges. Taken as a whole, these conditions present hazards which greatly hinder the safe navigation of recreational and commercial traffic.

Given expected rainfall patterns, the rivers are not expected to recede to levels deemed safe for the resumption of unrestricted navigation until on or after September 15, 1993.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal when compared to the overriding nature of the damage which the flood conditions on the western rivers has caused and is expected to produce. To avoid any unnecessary adverse economic impact on businesses which use the river for commercial purposes, Captain of the Port, St. Louis, Missouri will monitor river conditions and will authorize entry into the safety zones for specific areas as river conditions allow.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an environmental impact statement is not necessary because the regulation is categorically excluded from further environmental documentation. The regulation serves to avoid further damage to the environment beyond that which will result from naturally occuring flood conditions. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subject in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary section 165.T0263 is added, to read as follows:

§ 165.T0263 Safety zone: Upper Mississippi River Basin.

(a) *Location.* The following areas are established as safety zones:

(1) Upper Mississippi River between miles 0.0 and 853.0,

(2) Missouri River between miles 0.0 and 185,

(3) Illinois River between miles 0.0 and 80.0,

(4) Meramec River between miles 0.0 and 21.0, and

(5) Kaskaskia River between miles 0.0 and 30.0

(b) *Effective dates.* This regulation becomes effective on August 16, 1993 and will terminate on September 15, 1993.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit entry into the described zones without authority of the Captain of the Port apply.

(d) The Captain of the Port, St. Louis, Missouri will notify the maritime community of river conditions affecting the areas covers by these safety zones by Marine Safety Information Radio Broadcast (Broadcast Notice to Mariners) on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: August 13, 1993.

Scott P. Cooper,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.

[FR Doc. 93–21303 Filed 8–31–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9F3802/R2011; FRL–4640–1]

RIN No. 2070–AB78

Pesticide Tolerances for Beta-(4-Chlorophenoxy)-Alpha-(1,1-Dimethylethyl)-1H-1,2,4-Triazole-1-Ethanol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the fungicide, *beta*-(4-chlorophenoxy)-

alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol (hereafter referred to as triadimenol) and its butanediol metabolite, 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-l-yl)-1,3-butanediol, calculated as parent, in or on the raw agricultural commodities (RACs) cottonseed and cotton forage. This rule to establish maximum permissible levels of combined residues of the pesticide and certain of its metabolites in or on the commodities was requested by Gustafson, Inc.

EFFECTIVE DATE: This regulation becomes effective September 1, 1993.

ADDRESSES: Written objections and/or a request for a hearing, identified by the document control number, [PP 9F3802/R2011], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-305-5540).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of January 9, 1990 (55 FR 779), which announced that Gustafson, Inc., P.O. Box 660065, Dallas, TX 75266-0065, had submitted pesticide petition (PP) 9F3802 to EPA proposing the establishment of tolerances for the fungicide *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol, and its butanediol metabolite, 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-l-yl)-1,3-butanediol, calculated as parent, in or on cottonseed at 0.02 part per million (ppm) and cotton forage at 0.02 ppm.

There were no comments received in response to the notice of filing.

The data submitted in support of the petitions and other relevant materials have been evaluated. The toxicological data considered in support of the tolerances include the following:

1. A 2-year feeding/carcinogenicity study with rats using dietary concentrations of 0, 125, 500, and 2,000 ppm, equivalent to 0, 6.25, 25.0, and 100 milligrams/kilogram (mg/kg) body weight (bwt)/day in males and females. Clinical chemistry findings suggest that the target organ for toxicity may be the liver. The levels of serum glutamic oxaloacetate transaminase (SGOT) and serum glutamic pyruvic transaminase (SGPT) were consistently higher at 2,000 ppm in males and females when compared to untreated controls, and some increase in these two parameters was also observed at 500 ppm. Although there was an accompanying small increase in liver weight at 2,000 ppm in females, there were no accompanying increases in histopathologic changes of the liver in either sex. There were only marginal effects seen on other clinical chemistry parameters, and no effect of the test compound was seen on clinically observed signs of toxicity, food consumption, hematology, or urinalysis parameters. The systemic no-observed-effect level (NOEL) is 125 ppm (6.25 mg/kg/day for males and females) based on the increase in liver enzymes (SGOT and SGPT). The systemic lowest-effect level (LEL) was 500 ppm (25 mg/kg/day for males and females). The chemical was not carcinogenic to rats under the testing conditions.

2. A 2-year chronic feeding/carcinogenicity study in mice using dietary concentrations of 0, 125, 500, and 2,000 ppm (equivalent to doses of 0, 18, 72, and 285 mg/kg/day for males and females). The results of blood chemistry, organ weights, and gross and histological examinations indicate that the liver is the target organ. There were time- and dose-related increases in serum alkaline phosphatase (SAP), SGOT, and SGPT activities in both male and female animals receiving 500 and 2,000 ppm of the test material.

In addition, increased incidence of enlarged livers, hyperplastic nodules, and increased liver weights in both male and female animals receiving 2,000 ppm of test material was detected at necropsy. Female animals receiving 2,000 ppm doses exhibited a significant increase in the incidence of liver adenomas only, a compound-related oncogenic effect which is discussed further below. In males, there were no differences in the incidence of these lesions in treated and control males, and the incidences of liver adenomas were similar to those observed in historical controls.

Based on blood chemistry findings, the systemic NOEL and the LEL are 125 and 500 ppm, respectively (equivalent to 18 and 72 mg/kg/day for males and females).

3. A 2-year male and female dog feeding study using doses of 0, 150, 600, and 2,400 ppm (equivalent to 0, 3.75, 15, and 60 mg/kg bwt/day for males and females). The NOEL is 150 ppm based on changes in enzyme levels (equivalent to 3.75 mg/kg bwt/day for males and females). The LEL is 600 ppm. Although there were significant decreases in mean body weights in males receiving 150 and 2,400 ppm and in females receiving 600 and 2,400 ppm, the biological significance of these changes could not be assessed. There were noted increases in alkaline phosphatase *N*-demethylase and cytochrome P-450 in males receiving 2,400 ppm, and significant increases in *N*-demethylase in females receiving 600 and 2,400 ppm, and in cytochrome P-450 in females receiving 2,400 ppm when compared to controls.

4. A 6-month dog-feeding study using doses of 0, 10, 30, and 100 ppm (equivalent to 0, 0.25, 0.75, and 2.5 mg/kg bwt/day for males and females). The NOEL was 2.5 mg/kg, the highest dose level tested (HDT).

5. A 3-month rat-feeding study using doses of 0, 150, 600, and 2,400 ppm (equivalent to 0, 7.5, 30, and 120 mg/kg bwt/day for males and females) demonstrated a decrease in body weight, in hematocrit values, and in eosinophil count and medium cell hemoglobin and demonstrated an increase in the high-dose group and a dose-related increase in liver weight. The NOEL is 7.5 mg/kg, and the LEL is 30 mg/kg.

6. A second 90-day rat-feeding study using doses of 0, 120, 600, and 3,000 ppm demonstrated piloerection lasting 1 month (month 1), decreases in body weight gain and feed efficiency lasting 1 week (week 1), alterations in serum lipids, increases in liver weight (absolute and relative) and in incidences of liver hypertrophy and fatty changes in the high-dose group, and an increase in the incidence of prostrate atrophy of slight severity in high-dose males. The NOEL was 600 ppm, equivalent to 39.6 mg/kg/day for males and 46.4 mg/kg/day for females, and the lowest-observed-effect level (LOEL) was the HDT, 3,000 ppm, equivalent to 208.5 mg/kg/day for males and 221.1 mg/kg/day for females.

7. A 3-month dog feeding study using doses of 0, 150, 600, and 2,400 ppm (equivalent to 0, 3.75, 15, and 60 mg/kg bwt/day for males and females). Weight gain in all male groups and in the highest dose female group was significantly less than the control. Alkaline phosphatase in males and females showed a dose-related negative trend. There were no gross pathological changes. Effects at 15 mg/kg included an increase in serum cholesterol level in males. Although the NOEL appeared to be less than 3.75 mg/kg, based on reduced body weight and decreased alkaline phosphatase in males, the Agency has concluded that effects below 15 mg/kg in the 2-year dog study were not biologically significant, and the longer-term study supersedes the 90-day dog study. Therefore, the NOEL remains at 3.75 mg/kg.

8. A rat developmental study using dose levels of 0, 30, 60, and 120 mg/kg/

day was determined to be core supplementary because the NOEL for developmental toxicity (supernumerary ribs) was not definitively established. The NOEL and LOEL for maternal toxicity for this study are 30 and 60 mg/kg/day, respectively, based on decreases in maternal body weight, body weight gain, and food consumption at 60 and 120 mg/kg/day. Increased embryolethality (embryotoxicity) was only observed at the highest dose level tested (120 mg/kg/day).

9. A repeat rat developmental study with a maternal NOEL of 5 mg/kg/day and a LOEL of 15 mg/kg/day due to decreased body weight gains, and with a developmental NOEL of 25 mg/kg/day and a LOEL of 60 mg/kg/day due to increased incidence of extra ribs.

10. A supplementary rabbit developmental study with a NOEL for maternal toxicity of 8 mg/kg and a maternal LEL of 40 mg/kg based on decreased body weight gains and food consumption. The developmental NOEL and LEL were 40 and 200 mg/kg, respectively.

11. A repeat rabbit developmental study with a maternal NOEL of 25 mg/kg/day and a LOEL of 125 mg/kg/day due to decreases in body weight gains and food consumption, and with a developmental NOEL of 125 mg/kg/day (HDT).

12. A reverse mutation assay (Ames), a dominant-lethal test in mice, DNA damage/repair, unscheduled DNA synthesis, *in vitro* and *in vivo* (rat) cytogenic assays, and a forward mutation in mice, all of which were negative for mutagenic effects.

13. A rat multi-generation reproduction study using doses of 0, 20, 100, and 500 ppm (equivalent to 0, 1, 5, and 25 mg/kg bwt/day for males and females) indicated that the NOEL and LOEL for both parental and pup toxicity are 100 and 500 ppm, respectively, based on significant body weight and organ weight changes. The NOEL for reproductive toxicity is 500 ppm, the highest dose level tested.

The Agency has concluded that the available data provide limited evidence of the carcinogenicity of triadimenol in mice and has classified the pesticide as a Category C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with Agency guidelines, published in the **Federal Register** in 1986 (51 FR 33992). This evaluation was confirmed by the Agency's Scientific Advisory Panel on December 15, 1987 Based on a review of the Health Effects Division Peer Review Committee for Carcinogenicity of the Office of Pesticide Programs, the Agency has determined that a quantitative risk assessment is not appropriate for the following reasons:

1. The tumors observed were benign and observed in one sex (females) and were present only at the highest dose tested.

2. The chemical was not carcinogenic when administered in the diet to rats at dose levels ranging from 125 to 2,000 ppm.

3. The chemical was negative in the genotoxic assay battery. Based on this evidence, EPA concludes that triadimenol poses a negligible cancer risk to humans. The standard risk assessment approach of using the Reference Dose (RfD) based on systemic toxicity was applied to triadimenol. The provisional acceptable daily intake (PADI) based on the 2-year dog feeding studies (NOEL of 3.75 mg/kg bwt/day), and using a hundredfold uncertainty factor, is calculated to be 0.038 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) from previously established tolerances and the tolerance established here is 0.000448 mg/kg/day and utilizes 1.2 percent of the PADI for the U.S. population. For nonnursing infants and children, the TMRC will represent 2.8 and 2.6 percent of the PADI, respectively.

The nature of the residue is adequately understood. The residues of concern consist of the parent compound, *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol and its butanediol metabolite, 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4,-triazol-l-yl)-1,3-butanediol, calculated as parent. Based on a processing study, residues of triadimenol will not concentrate in processed cottonseed commodities, and a food or feed additive regulation is not required for triadimenol. Adequate analytical methods are available for enforcement purposes. Methods are available in the "Pesticide Analytical Manual," Vol. II (PAM II) for enforcement of the tolerances on livestock commodities. The method for plants has been submitted to the Food and Drug Administration for publication in PAM II. Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 246, CM #2. 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-4432.

The pesticide is considered useful for the purposes for which the tolerances are sought. Based on the information and data considered, the Agency concludes that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fees provided by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, and the requestor's contentions on each such issue, and a summary of the evidence relied upon by the objection (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements

Dated: August 18, 1993.

Dougias D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.450 is amended in the paragraph (a) table by adding and alphabetically inserting the following raw agricultural commodities, to read as follows:

§ 180.450 Beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol; tolerances for residues.

(a) * * *

Commodity	Parts Per Million
* * * * *	
Cotton, forage	0.02
Cottonseed	0.02
* * * * *	

* * * * *

[FR Doc. 93-21248 Filed 8-31-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 300

[FRL-4703-1]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of a site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the U.S. Department of Agriculture Pesticide Lab, located in Yakima, Washington from the National Priorities List (NPL). The NPL is Appendix B of the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. EPA and the State of Washington have determined that no further cleanup under CERCLA is appropriate. Moreover, EPA and the State of Washington have determined that remedial actions conducted under the Resource Conservation and Recovery Act (RCRA) at the site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT:

Sean Sheldrake, Site Manager, U.S. Environmental Protection Agency, Region 10, 1200 6th Avenue, HW-113, Seattle, WA 98101, (206) 553-1220.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Pesticide Lab, Yakima, Washington.

A Notice of Intent to Delete for this site was published July 13, 1993 (58 FR 37693). The closing date for comments on the Notice of Intent to Delete was August 13, 1993. EPA received no comments.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.66(d)(8) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous waste.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: U.S.C. 9601-9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the site for "Pesticide Lab, Yakima, Washington" and by revising the total number sites from 1,078 to read, 1,077.

Dated: August 23, 1993.

Gerald A. Emison,

Acting Regional Administrator, U.S. EPA Region 10.

[FR Doc. 93-21253 Filed 8-31-93; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 180 and 185

[OPP-300260A; FRL-4077-9]

RIN 2070-AB78

Toxaphene; Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the tolerances, interim tolerances, and food additive regulations listed in 40 CFR 180.138, 180.319, and 185.5750, respectively, of the insecticide toxaphene (chlorinated camphene containing 67 to 69 percent chlorine) in or on various raw agricultural commodities, milk, and crude soybean oil. EPA initiated this action because all registered uses of toxaphene on food commodities have been canceled, and all existing stocks provisions expired on March 1, 1990.

EFFECTIVE DATE: This regulation becomes effective September 1, 1993.

ADDRESSES: Written objections, identified by the document control number [OPP-300260A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Tina Levine, Registration Division (H-7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of November 12, 1992 (57 FR 53676), which proposed to revoke the tolerances, interim tolerances, and food additive regulations for residues of toxaphene in or on various raw agricultural commodities, milk, and crude soybean oil established under sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a and 348) listed in 40 CFR 180.138, 180.319, and 185.5750.

No public comments or requests for referral to an advisory committee were received in response to the notice of proposed rulemaking.

Therefore, based on the information considered by the EPA and discussed in detail in the November 12, 1992 proposal and in this final rule, the Agency is hereby revoking the tolerances listed in 40 CFR 180.138, 180.319, and 185.5750 for residues of toxaphene in or on alfalfa hay, apples,

apricots, bananas, barley, beans, blackberries, boysenberries, broccoli, brussels sprouts, cabbage, carrots, cauliflower, celery, citrus fruits, collards; corn, cottonseed, cranberries, cucumbers, dewberries, eggplants; fat of meat from cattle, goats, hogs, horses, and sheep; hazelnuts, hickory nuts, horseradish, kale, kohlrabi, lettuce, loganberries, nectarines, oakra, oats, onions, parsnips, peaches, peanuts, pears, peas, pecans, peppers, pimentos, pineapples, quinces, radishes or radish tops, raspberries, rice, rye, rutabagas, sorghum grain, soybeans, crude soybean oil, spinach, strawberries, sunflower seeds, tomatoes, walnuts, wheat, youngberries; and milk.

Since all use of toxaphene was prohibited after March 1, 1990, EPA believes there has been adequate time for legally treated agricultural commodities to have gone through the channels of trade. Although toxaphene is a persistent chemical, monitoring data from the Food and Drug Administration indicate that no action levels are needed.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of factual issue(s) on which the hearing is requested, the requestor's contentions on each issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. (40 CFR 178.32).

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

Executive Order 12291

As explained in the proposal published November 12, 1992, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the removal of these tolerances will not cause adverse economic impact on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will have no economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the November 12, 1992 proposal.

List of Subjects in 40 CFR Parts 180 and 185

Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 18, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.138 [Removed]

b. By removing § 180.138 *Toxaphene; tolerances for residues.*

§ 180.319 [Amended]

c. In § 180.319 *Interim tolerances* by removing the entry "Toxaphene (chlorinate camphene 67-69% chlorine)" from the table therein.

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 185.5750 [Removed]

b. By removing § 185.5750 *Toxaphene.*

[FR Doc. 93-20972 Filed 8-31-93; 8:45 am]
BILLING CODE 6560-50-F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-49

[FPMR Amendment H-188]

Utilization, Donation, and Disposal of Foreign Gifts and Decorations

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation redefines "minimal value" for foreign gifts based on the increase in the Department of Labor Consumer Price Index report of September 30, 1992. Public Law 95-105 requires that the term "minimal value" associated with the receipt and retention of foreign gifts by employees be redefined at 3-year intervals to reflect changes in the consumer price index for the immediately preceding 3-year period. This final rule redefines "minimal value".

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT:

Lester D. Gray, Jr., Director, Property Management Division (703-305-7240).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 101-49

Decorations, medals, and awards; Government property; Government property management.

For the reasons set out in the preamble, 41 CFR part 101-49 is amended as follows:

PART 101–49—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

1. The authority citation for part 101–49 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 515, 91 Stat. 862 (5 U.S.C. 7342).

2. Section 101–49.001–5 is amended by revising the introductory text to read as follows:

§ 101–49.001–5 Minimal value.

Minimal value means a retail value in the United States at the time of acceptance of $225 or less, except that:

* * * * *

Dated: July 13, 1993.

Roger W. Johnson,

Administrator of General Services.

[FR Doc. 93–21174 Filed 8–31–93; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Refugee Resettlement Office

45 CFR Part 400

Refugee Resettlement Program: Refugee Cash Assistance and Refugee Medical Assistance

AGENCY: Office of Refugee Resettlement, Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: This rule amends current rules to continue the duration of the special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) for a refugee's first 8 months in Federal FY 1994. If a regulation is not issued, funds for RCA and RMA are expected to be insufficient under current policy to provide support during the latter months of FY 1994, seriously jeopardizing the health and safety of refugees who are not eligible for AFDC, Medicaid, or SSI.

EFFECTIVE DATE: October 1, 1993.

ADDRESSES: Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Toyo A. Biddle, (202) 401–9253.

SUPPLEMENTARY INFORMATION:

Background

Current regulations at 45 CFR 400.203(b) and 400.204(b) provide for Federal refugee funding, subject to the availability of funds (45 CFR 400.202), to be provided to States for the special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) "during the 12-month period (except during Federal FY 1993, 8 month period) beginning with the first month the refugee entered the United States."

Description of the Proposed Regulation

The Department expects that funds will not be sufficient in FY 1994 to provide RCA and RMA for more than the 8-month level currently in effect for FY 1993. The Department anticipates that appropriations for the refugee program for FY 1994 will not be at a level which enables coverage of more than 8 months of RCA and RMA and, therefore, will not be sufficient to sustain a 12-month RCA/RMA eligibility period to which the program would revert in FY 1994 in the absence of additional regulatory action. When the FY 1994 appropriation for the refugee program is enacted, if the appropriation level is either insufficient to maintain 8 months of RCA/RMA coverage throughout the fiscal year or allows more than 8 months of coverage, ORR will notify States of the new RCA/RMA eligibility period.

The Department considers it of the utmost importance to provide refugee support at a level that does not exceed available funds. Failure to do so would result in an insufficient level of support during the latter months of FY 1994, seriously jeopardizing the health and welfare of an estimated 30,000 needy refugees who are not eligible for AFDC, Medicaid, or SSI.

This rule will address this issue by continuing in FY 1994 the current 8-month period of RCA/RMA eligibility, thereby reducing costs and helping to assure the availability of refugee cash and medical support throughout the entire year.

Consistent with the preceding actions, 45 CFR 400.2, 400.60(b), 400.100(b), 400.203(b), 400.204(b), and 400.209(b) are being amended to continue the duration of RCA and RMA for a refugee's first 8 months in the U.S. during FY 1994.

Justification for Dispensing With Notice of Proposed Rulemaking

A period for public comment is not being provided because it would be impracticable, unnecessary, and not in the public interest for the following reasons:

Under the current statute and regulations, the duration of benefits is a function of the level of appropriations. Congressional funding limitations effectively establish the eligibility period, rendering notice of proposed rulemaking and comment procedures unnecessary.

Because there is a continuing flow of refugees into the United States and because continuing costs for RCA and RMA are being incurred by the States, any delays in maintaining the 8-month period of time-eligibility would result in the need for ever-greater reductions in the RCA and RMA programs in order to avoid the abrupt and complete termination of such assistance to both current and newly arriving refugees.

Accordingly, the agency finds good cause for issuance of an immediately effective final rule.

Regulatory Procedures

Regulatory Impact Analysis

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Department has determined that these rules are not major rules within the Executive Order because they will not have an annual effect on the economy of $100 million or more; nor will they result in a major increase in costs or prices for consumers, any industries, any governmental agencies, or any geographic region; and, they will not have an adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these rules is on State governments and individuals. Therefore, we certify that these rules will not have a significant impact on a substantial number of small entities because they affect benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This rule does not contain collection-of-information requirements.

Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act, 8 U.S.C. 1522(a)(9), authorizes the Secretary of HHS to issue

regulations needed to carry out the program.

[Catalogue of Federal Domestic Programs: 93.566, Refugee and Entrant Assistance—State-Administered Programs]

List of Subjects in 45 CFR Part 400

Grant programs—Social programs, Health care, Public assistance programs, Refugees, Reporting and recordkeeping requirements.

Dated: August 13, 1993.

Laurence J. Love,

Acting Assistant Secretary for Children and Families.

Approved: August 23, 1993.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, 45 CFR part 400 is amended as follows:

PART 400—REFUGEE RESETTLEMENT PROGRAM

1. The authority citation for part 400 continues to read as follows:

Authority: Section 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

§ 400.2 [Amended]

2. Section 400.2 is amended in the definitions of "Refugee cash assistance" and "Refugee medical assistance" by removing the words "(except during Federal FY 1993, less than an 8-month period)" and by adding in their place "(except during Federal FY 1994, less than an 8-month period)".

§§ 400.60(b) and 400.100(b) [Amended]

3. Sections 400.60(b) and 400.100(b) are amended by removing the words "(except during Federal FY 1993, 8-month period)" and adding in their place "(except during Federal FY 1994, 8-month period)".

§§ 400.203(b) and 400.204(b) [Amended]

4. Sections 400.203(b) and 400.204(b) are amended by removing the words "(except during Federal FY 1993, 8-month period)" and adding in their place "(except during Federal FY 1994, 8-month period)".

§ 400.209(b) [Amended]

5. Section 400.209(b) is amended by removing the words "(except during Federal FY 1993, 8 months)" and adding in their place "(except during Federal FY 1994, 8 months)."

[FR Doc. 93–21349 Filed 8–31–93; 8:45 am]

BILLING CODE 4184–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–90; RM–8198]

Radio Broadcasting Services; Toledo, Oregon

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of AGPAL Broadcasting Co., substitutes Channel 264C2 for Channel 264A at Toledo, Oregon, and modifies the license of Station KZUS to specify operation on the higher class channel. See 58 FR 21137, April 19, 1993. Channel 264C2 can be allotted to Toledo in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.9 kilometers (4.9 miles) northwest, at coordinates North Latitude 44–39–01 and West Longitude 124–01–42, to avoid a short-spacing to Station KICE, Channel 264C1, Bend, Oregon. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–90, adopted August 9, 1993, and released August 26, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

47 CFR Part 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 264A and adding Channel 264C2 at Toledo.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–21161 Filed 8–31–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, amends the Table of FM Allotments to specify the correct classes of channels allotted to various communities. These amendments are necessary to reflect changes that have been authorized in response to applications filed by licensees and permittees operating on these channels. This action constitutes an editorial change in the Table of FM Allotments. Therefore, a public notice and comment proceeding is unnecessary. See 5 U.S.C. 553(b) (A) and (B). With this action, this proceeding is terminated.

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Ruger, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, adopted August 6, 1993, and released August 26, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

47 CFR Part 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alaska, is amended by removing Channel 266C2 and adding Channel 266A at Kodiak.

3. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 226C and adding

Channel 226C1 at Batesville, by removing Channel 274C2 and adding Channel 274C3 at North Crossett, by removing Channel 285C2 and adding Channel 285A at Springdale, and by removing Channel 274C2 and adding Channel 274C3 at Van Buren.

4. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 296B1 and adding Channel 296A at Seaside, and by removing Channel 285B1 and adding Channel 285A at Tipton.

5. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 300C and adding Channel 300C1 at Fort Collins.

6. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 300C and adding Channel 300C1 at Panama City, and by removing Channel 284C and adding Channel 284C1 at Tampa.

7. Section 73.202(b), the Table of FM Allotments under Garapan, is amended by removing Channel 258C and adding Channel 258C1 at Saipan.

8. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 286C2 and adding Channel 286C3 at Blackshear.

9. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by removing Channel 284C and adding Channel 284C2 at Lanai City.

10. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 231C and adding Channel 231C2 at Downs, and by removing Channel 294C1 and adding Channel 294A at Norton.

11. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 252C1 and adding Channel 252C2 at West Monroe.

12. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 290C and adding Channel 290C1 at Charlevoix.

13. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 290C2 and adding Channel 290C3 at Red Wing.

14. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 267C and adding Channel 267C1 at Meridian.

15. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 300C1 and adding Channel 300C2 at West Point.

16. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by removing Channel 237C and adding Channel 237C1 at Elko.

17. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 266C2 and adding Channel 266C3 at White Rock.

18. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by removing Channel 266C1 and adding Channel 266C2 at Valley City and by removing Channel 262C and adding Channel 262C1 at Wishek.

19. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 300C2 and adding Channel 300A at Altus.

20. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 234C3 and adding Channel 234A at Rouge River.

21. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 225C and adding Channel 225C1 at Wichita Falls, by removing Channel 277C and adding Channel 277C1 at Wichita Falls, and by removing Channel 249C2 and adding Channel 249C3 at Winfield.

22. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 296C2 and adding Channel 296C3 at Deer Park, and by removing Channel 270C2 and adding Channel 270C3 at Medical Lake.

23. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 222C3 and adding Channel 222A at Clintonville, by removing Channel 222C3 and adding Channel 222A at Hayward, and by removing Channel 240C1 and adding Channel 240C3 at Minocqua.

Federal Communications Commission

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–21165 Filed 8–31–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

Defense Federal Acquisition Regulation Supplement; Incremental Funding of Fixed-Price Contracts

AGENCY: Department of Defense (DOD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule that revises the Defense Federal Acquisition Regulation Supplement to establish a formal DoD policy on funding fixed-price contracts, to prescribe limitations on the use of incrementally funded fixed-price contracts, and to provide a standard clause for use in incrementally funded fixed-price contracts.

DATES: *Effective Date:* August 23, 1993.

Comment Date: Comments on the interim rule should be submitted in writing at the address shown below on or before October 1, 1993, to be considered in the formulation of the final rule. Please cite DAR Case 90–037 in all correspondence.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Mr. Eric Mens, OUSD(A)DP, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax Number (703) 697–9845.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Mens, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Incrementally funded fixed-price contracts have been used in limited situations throughout DoD for a number of years. This technique has permitted DoD to award fixed-price contracts and to initiate work in specific circumstances where full funding was not available (e.g. contracts funded with research and development appropriations, etc.), precluding the need to use a cost-type contract when the nature of the requirement was more suitable for a fixed-price contract. To support the use of this technique, a number of nonstandard clauses had been developed for use in the Services and agencies. In recognition of the need for a standard clause for such contracts, the Defense Acquisition Regulations Council developed language and a clause for inclusion in the Defense Federal Acquisition Regulation Supplement (DFARS) that, while maintaining the preference for full funding of fixed-price contracts, would permit the use of incremental funding in clearly defined and limited situations.

The interim rule amends DFARS 232 and 252 to establish specific situations where incremental funding of fixed-price contracts would be appropriate. Under this rule, the use of incrementally funded fixed-price contracts is limited to situations where the contract is funded with research and development (R&D) funds; where Congress has incrementally appropriated program funds; or where the head of the contracting activity has approved the use of incremental funding for either base services or hazardous/toxic waste remediation contracts. A new clause at 252.232–7007, Limitation of Government's Obligation, identifies procedures for incrementally funding the contract and requires the contractor

to provide the Government with written notice when the work will reach the point at which the amount payable by the Government, including any termination costs, approximates 85 percent of the funds currently allotted to the contract.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, applies but the interim rule is not expected to have a significant economic impact on a substantial number of small entities. An Initial Regulatory Flexibility Analysis (IRFA) has been performed and a copy has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. The IRFA states that while a substantial number of small businesses which are awarded fixed-price contracts for R&D, base services, and hazardous/toxic waste remediation may be impacted (estimated at 39 percent), the DoD expects that the economic impact on such entities will not be significant. This is because the rule places little cost risk on the contractor. While the interim rule establishes a clear preference for fully funding fixed-price contracts, it also creates a standard clause to be used in clearly defined and limited circumstances to permit DoD to award, and the contractor to begin work under, a contract prior to the availability of full funding. The interim rule requires that the contract be fully funded as soon as the full amount of funds are made available. Under the rule, there is no requirement for the contractor to perform beyond the available funds allotted to the contract and the rule provides specific protections to the contractor until full funding is provided. The economic impact on small entities is also expected to be minimal with regard to the reporting requirement of the clause because the type of accounting data which is needed to make a determination concerning the timing of the required notice is data which is generally already available under contract cost/funds reporting procedures as well as part of the normal conduct of business (e.g. data on labor and material costs, accounts receivable and payable, cash flow, profit/loss projections, estimates at completion, etc.). A copy of the IRFA may be obtained from Mr. Eric Mens, telephone number (703) 697–7266 or telefax number (703) 697–9845. Comments from small entities concerning the affected DFARS subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 610 (DAR Case 90–037) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies because the interim rule imposes a new reporting requirement which requires the approval of OMB under 44 U.S.C. 3501 *et seq.* DoD has submitted a request for expedited OMB approval of this new information collection requirement.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Urgent and compelling reasons exist to promulgate this rule before affording the public an opportunity to comment. The lack of a standard clause for use in incrementally funded fixed-price contracts may seriously impair the ability of DoD components to support mission requirements by precluding the award of fixed-price contracts in circumstances where full funding is not available. Therefore, it is essential that guidance be issued as expeditiously as possible.

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 232 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 233 and 252 is revised to read as follows:

Authority: 41 U.S.C. 421 and FAR subpart 1.3.

PART 232—CONTRACT FINANCING

2. A new subpart 232.7 is added to read as follows:

Subpart 232.7—Contract Funding

Sec.
232.702 Policy.
232.703 Contract funding requirements.
232.703–1 General.
232.704 Limitation of cost or funds.
232.704–70 Incrementally funded fixed-price contracts.
232.705 Contract clauses.
232.705–70 Clause for limitation of Government's obligation.

Subpart 232.7—Contract Funding

232.702 Policy.

Fixed-price contracts shall be fully funded except as permitted by 232.703–1.

232.703 Contract funding requirements.

232.703–1 General.

(1) A fixed-price contract may be incrementally funded only if—

(i) The contract is funded with research and development appropriations;

(ii) Congress has otherwise incrementally appropriated program funds; or

(iii) The head of the contracting activity approves the use of incremental funding for either base services contracts or hazardous/toxic waste remediation contracts.

(2) Incrementally funded fixed-price contracts shall be fully funded as soon as practicable after full funding is available.

232.704 Limitation of cost or funds.

232.704–70 Incrementally funded fixed-price contracts.

(a) Upon receipt of the contractor's notice under paragraph (c) of the clause at 252.232–7007, Limitation of Government's Obligation, the contracting officer shall promptly provide written notice to the contractor that the Government is—

(1) Allotting additional funds for continued performance and increasing the Government's limitation of obligation in a specified amount;

(2) Terminating the contract; or

(3) Considering whether to allot additional funds; and

(i) The contractor is entitled by the contract terms to stop work when the Government's limitation of obligation is reached; and

(ii) Any costs expended beyond the Government's limitation of obligation are at the contractor's risk.

(b) Upon learning that the contract will receive no further funds, the contracting officer shall promptly give the contractor written notice of the Government's decision and terminate for the convenience of the Government.

(c) The contracting officer shall ensure that, in accordance with paragraph (b) of the clause at 252.232–7007, Limitation of Government's Obligation, sufficient funds are allotted to the contract to cover the total amount payable to the contractor in the event of termination for the convenience of the Government.

232.705 Contract clauses.

232.705–70 Clause for limitation of Government's obligation.

Use the clause at 252.232–7007, Limitation of Government's Obligation, in solicitations and resultant incrementally funded fixed-price

contracts. The contracting officer may revise the contractor's notification period, in paragraph (c) of the clause, from "ninety" to "thirty" or "sixty" days, as appropriate.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.232–7007 is added to read as follows:

252.232–7007 Limitation of Government's obligation.

As prescribed in 232.705–70, use the following clause:

Limitation of Government's obligation (Aug. 1993)

(a) Contract line item(s) _____* through _____* are incrementally funded. For these item(s), the sum of $_____* of the total price is presently available for payment and allotted to this contract. An allotment schedule is set forth in paragraph (i) of this clause.

(b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor will not be obligated to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled "Termination for Convenience of the Government." As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those items(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (i) of this clause, the Contractor will notify the Contracting Officer in writing at least ninety days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (i) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (i) of this clause, or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraph (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled "Default." The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) or (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

(i) The parties contemplate that the Government will allot funds to this contract in accordance with the following schedule:

On execution of contract.....$
(month) (day), 199x.....$
(month) (day), 199y.....$
(month) (day), 199z.....$

(End of clause)

Alternate I (Aug. 1993). If only one line item will be incrementally funded, substitute the following paragraph (a) for paragraph (a) of the basic clause.

(a) Contract line item _____is incrementally funded. The sum of $_____* is presently available for payment and allotted to this contract. An allotment schedule is contained in paragraph (i) of this clause.

*To be inserted after negotiation.

[FR Doc. 93–21266 Filed 8–31–93; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 930402–3134; I.D. 082493A]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS announces that the recreational salmon fishery in the exclusive economic zone (EEZ) from the U.S.-Canada border to Cape Alava, Washington, was closed at midnight, August 22, 1993, to ensure that the coho salmon quota for this subarea is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined that the recreational fishery quota of 19,700 coho salmon for the subarea has been reached. This action is necessary to conform to the preseason announcement of the 1993 management measures and is intended to ensure conservation of coho salmon.

DATES: Effective at 2400 hours local time, August 22, 1993. Comments will be accepted through September 15, 1993.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way N.E., BIN C15700-Bldg. 1, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1) state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery,

or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its amended emergency interim rule (58 FR 31664, June 4, 1993), NMFS announced that the 1993 recreational fishery for all salmon species in the subarea from the U.S.-Canada border to Cape Alava, Washington, would open July 12 and continue through the earliest of September 30 or the attainment of either a subarea quota of 19,700 coho salmon or an overall quota of 25,000 chinook salmon north of Cape Falcon, Oregon.

Based on the best available information on August 19, 1993, the recreational fishery catch in the subarea from the U.S.-Canada border to Cape Alava was projected to reach the 19,700 coho salmon quota by midnight, August 22, 1993. Therefore, the recreational fishery in this subarea was closed to recreational fishing for all salmon species effective 2400 hours local time, August 22, 1993.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Washington Department of Fisheries regarding this closure. The State of Washington will manage the recreational fishery in state waters adjacent to this area of the EEZ in accordance with this Federal action. The recreational salmon fishery in Washington State Statistical Area 4B continues as regularly scheduled under State regulations. In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 2400 hours local time, August 22, 1993, by telephone hotline number (206) 526–6667 or (800) 662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 Khz. Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.21 and 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 27, 1993.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–21309 Filed 8–31–93; 8:45 am]

BILLING CODE 3510–22–M

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50 CFR Part 663

[Docket No. 921253–2353; ID. 082593B]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces the end of the large-scale Pacific whiting (whiting) fishery off Washington, Oregon, and California, and the reimposition of the 10,000-pound trip limit coastwide. This action is authorized under Amendment 4 to the Pacific Coast Groundfish Fishery Management Plan (FMP). It is intended to keep landings close to the harvest guideline while allowing small quantities of whiting to be landed by fresh fish and bait fisheries, and from bycatch in non-whiting fisheries.

EFFECTIVE DATES: Effective from 0001 hours (local time) September 4, 1993, until modified, superseded, or rescinded. Comments will be accepted through September 16, 1993.

ADDRESSES: Submit comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN–C15700, Seattle, Washington 98115–0070; or Dr. Gary Matlock, Acting Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd.; suite 4200, Long Beach, California 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140; or Rodney McInnis at 310–980–4040.

SUPPLEMENTARY INFORMATION: Amendment 4 to the FMP (56 FR 736, January 8, 1991) authorizes the designation of certain management measures as "routine." Implementation and further adjustment of those measures may occur after consideration at a Pacific Fishery Management Council (Council) meeting. Trip landing and frequency limits for whiting caught outside the regular season were designated routine at 50 CFR 663.23(c)(1)(i)(I) (58 FR 11984, March 2, 1993). A trip limit is defined at 50 CFR 663.2 as the total allowable amount of a groundfish species or species complex by weight, or by percentage of weight of fish on board, that may be taken and retained, possessed, or landed from a single fishing trip. The regular whiting season is the period during which the large-scale target fishery is conducted, and generally occurs between March/April and October/November.

At the September 1992 Council meeting, the Council recommended implementation of a 10,000-pound trip limit for whiting before and after the regular season in 1993. The 10,000-pound trip limit at the end of the regular season is necessary to keep landings close to the whiting harvest guideline while providing for small landings outside the regular season by the fresh fish and bait fisheries and from the bycatch of whiting in other fisheries.

The pre-season 10,000-pound trip limit became effective on February 25, 1993, concurrent with the routine designation. The regular season started on April 15, 1993. The whiting fishery was then closed to further at-sea processing on May 5, 1993, when its 100,000 metric-ton (mt) limit was projected to be reached (58 FR 27480). Shoreside processing continued to operate through the summer months. The best available data on August 20, 1993, indicate that approximately 131,500 mt of whiting had been harvested through August 10, 1993, with shoreside landings averaging 430 mt per day. At that rate, the 142,000-mt harvest guideline for whiting is projected to be reached on September 3, 1993. Therefore, NMFS is reimposing the 10,000-pound trip limit for whiting coastwide on September 4, 1993.

Note: The pre-season and post-season trip limits for whiting are not the same as the trip limits for whiting at 50 CFR 663.23(b)(3)(iii) which is intended to minimize bycatch of Pacific salmon under Amendment 7 to the FMP (58 FR 21261, April 20, 1993). The bycatch trip limit to protect salmon, which also is 10,000-pounds in 1993, only applies shoreward of the 100-fathom contour in the Eureka subarea (from 43°00′00″ N. latitude to 43°30′00″ N. latitude) and remains in effect year-round.

Secretarial Action

For the reasons given above, the Secretary of Commerce (Secretary) concurs with the Council's recommendation and announces the following action:

(1) Effective 0001 hours (local time) September 4, 1993, the trip limit for Pacific whiting is 10,000 pounds per vessel coastwide.

(2) All Pacific whiting caught and possessed between zero and 200 nautical miles offshore, or landed in Washington, Oregon, or California are presumed to have been taken and retained from the

fishery management area (three-200 nautical miles offshore Washington, Oregon, and California) unless otherwise demonstrated by the person in possession of those fish.

Classification

The determination to reimpose the 10,000-pound trip limit coastwide for the whiting fishery is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until September 15, 1993.

This action is taken under the authority of 50 CFR 663.23(b)(3) and (c)(1), and section III.B.2. of the appendix to 50 CFR part 663.

This action is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, and Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 26, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–21264 Filed 8–31–93; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 672

[Docket No. 921107–3068; I.D. 082693A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for groundfish, other than demersal shelf rockfish (DSR), by operators of vessels using hook-and-line gear in the Gulf of Alaska (GOA). This action is necessary because the total 1993 prohibited species catch (PSC) allowance of Pacific halibut to hook-and-line gear for fisheries other than DSR in the GOA has been caught.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), August 31, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, Alaska Region, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The 1993 final specifications for the GOA (58 FR 16787, March 31, 1993) established the 1993 Pacific halibut PSC allowance for hook-and-line gear for groundfish fisheries, other than DSR, at 740 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(f)(1)(ii), that operators of vessels engaged in directed fishing for groundfish, other than DSR, with hook-and-line gear in the GOA have caught the 1993 allowance of prohibited species catch of Pacific halibut. Therefore, NMFS is prohibiting directed fishing for groundfish, other than DSR, by operators of vessels using hook-and-line gear in the GOA from 12 noon, A.l.t., August 31, 1993, through 12 noon, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under § 672.20 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C 1801 et seq.

Dated: August 26, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–21265 Filed 8–31–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209–AA00

Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule.

SUMMARY: The Office of Government Ethics proposes to amend subpart I of 5 CFR part 2634, an interim rule on executive branch financial disclosure which was published on April 7, 1992. The proposed amendment exempts certain assets and income from disclosure on confidential financial disclosure reports. Specifically, it would eliminate the interim rule's requirement that confidential filers disclose the existence of and income from cash accounts in depository institutions, money market mutual funds and accounts, and U.S. Government obligations and securities.

DATES: Public comments on this proposed rule are welcome and must be received on or before October 1, 1993.

ADDRESSES: Comments on this proposed rule should be sent to the Office of Government Ethics, suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: G. Sid Smith. Any comments on the reporting requirements in this proposed rule should also be filed with the Office of Management and Budget (OMB) as indicated in the preamble below in the "Paperwork Reduction Act" discussion.

FOR FURTHER INFORMATION CONTACT: G. Sid Smith, Office of Government Ethics, telephone (202) 523–5757, FAX (202) 523–6325.

SUPPLEMENTARY INFORMATION: This proposed rule amends an interim rule which revised both the public and confidential financial disclosure systems for executive branch employees, pursuant to title I of the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended by the Ethics Reform Act of 1989, Pub. L. 101–194), and pursuant to Executive Order 12674 of April 12, 1989 (as modified). That interim rule was published on April 7, 1992 (57 FR 11800–11830) and corrected on May 22 and December 31, 1992 at 57 FR 21854–21855 and 57 FR 62605, respectively.

Executive branch employees who serve in positions which require them to file confidential financial disclosure reports under the interim rule must disclose the existence of and income from cash accounts (including both demand and time deposits) in depository institutions, such as banks, savings and loan associations, credit unions, and similar depository financial institutions; money market mutual funds and accounts; U.S. Government obligations, including Treasury bonds, bills, notes, and savings bonds; and Government securities issued by U.S. Government agencies. However, for most confidential filers, the disclosure of this information has not been considered by agencies to be critical in assessing the possibility of conflicts of interest. Furthermore, some concerns have been expressed about privacy, and disclosure of such information creates extra work for both filers and agency reviewing officials and could detract from the effectiveness and limited purpose of the confidential disclosure program. These concerns have been communicated to OGE by numerous confidential filers, as well as by several agency reviewing officials.

Accordingly, this proposed amendment to § 2634.907 of subpart I of 5 CFR would exempt all confidential filers from the requirement to disclose these specific assets and the income therefrom. If an agency finds such disclosures to be necessary because of its mission or other special circumstances, it may seek approval from OGE, pursuant to § 2634.901(b) of subpart I of 5 CFR, for a supplemental reporting requirement to include disclosure of any or all of these elements.

Executive Order 12291

As Director of the Office of Government Ethics, I have determined that this amendment does not constitute a major rule as defined under section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this amendment to the interim rule will not have a significant economic impact on a substantial number of small entities because it will affect only Federal executive branch agencies and employees.

Paperwork Reduction Act

The proposed amendment would affect (lessen) part of the information collection requirement as set forth in 5 CFR 2634.907 (a)(1) and (a)(2), concerning reporting of certain specified interests in property and income, as to filers of the Executive Branch Personnel Confidential Financial Disclosure Report (SF 450, OMB number 3209–0006). Thus, it is subject to the approval of the Office of Management and Budget under the Paperwork Reduction Act (5 U.S.C. chapter 35). Any comments on the reporting requirements should therefore be directed to the Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503, Attention: Mr. Lackey (with a copy to OGE, see the **ADDRESSES** block above).

List of Subjects in 5 CFR Part 2634

Administrative practice and procedure, Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: June 8, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to amend part 2634 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2634—[AMENDED]

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart I—Confidential Financial Disclosure Reports

2. Section 2634.907 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 2634.907 Report contents.

(a) * * *

(1) *Interests in property.* All the interests in property specified by § 2634.301, except:

(i) Accounts (including both demand and time deposits) in depository institutions, including banks, savings and loan associations, credit unions, and similar depository financial institutions;

(ii) Money market mutual funds and accounts;

(iii) U.S. Government obligations, including Treasury bonds, bills, notes, and savings bonds; and

(iv) Government securities issued by U.S. Government agencies;

(2) *Income.* All the income items specified by § 2634.302, except from:

(i) Accounts in depository institutions, including banks, savings and loan associations, credit unions, and similar depository financial institutions;

(ii) Money market mutual funds and accounts;

(iii) U.S. Government obligations, including Treasury bonds, bills, notes, and savings bonds; and

(iv) Government securities issued by U.S. Government agencies;

* * * * *

[FR Doc. 93–21298 Filed 8–31–93; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1755

RIN 0572-AA57

Specification for Filled Fiber Optic Cables

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend its regulations on Telecommunications Standards and Specifications for Materials, Equipment and Construction by rescinding REA Bulletin 345–90, REA Specification for Totally Filled Fiber Optic Cable, PE–90, and codifying the revised specification. The revised specification: Allows the use of dispersion-shifted single mode fibers; allows use of 62.5/125 micrometer multimode fibers; includes a section on self-supporting aerial fiber optic cable; and establishes end product requirements associated with the options stated above. This revised specification updates the end product performance requirements of filled fiber optic cables brought about through technological advancements made during the last seven years.

DATES: Comments must be received by REA or postmarked no later than October 1, 1993.

ADDRESSES: Comments should be mailed to Director, Telecommunications Standards Division, Rural Electrification Administration, room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. REA requests an original and three copies of all comments (7 CFR part 1700). Comments received may be available for public inspection between 8:00 a.m. and 4:00 p.m. (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Garnett G. Adams, Chief, Outside Plant Branch, Telecommunications Standards Division, Rural Electrification Administration, room 2844, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 720–0667.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this proposed rule will not:

(1) Preempt any State or local laws, regulations, or policies;

(2) Have any retroactive effect; and

(3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

The Administrator of REA has determined that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. *et seq.*). This proposed rule involves standards and specifications, which may increase the direct short-term costs to the REA borrower. However, the long-term direct economic costs are reduced through greater durability and lower maintenance cost over time.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of that Act, information collection and recordkeeping requirements contained in this proposed rule have been approved by OMB under control number 0572–0077 which expires on January 31, 1994. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, New Executive Office Building (NEOB), Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator of REA has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.851, Rural Telephone Loans and Loan Guarantees, and No. 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees, and RTB loans, to governmental and nongovernmental entities from coverage under this Order.

Background

REA issues publications titled "Bulletin" which serve to guide borrowers regarding already codified policy, procedures, and requirements needed to manage loans, loan guarantee programs, and the security instruments

which provide for and secure REA financing. REA issues standards and specifications for the construction of telephone facilities financed with REA loan funds. REA proposes to rescind Bulletin 345–90, REA Specification for Totally Filled Fiber Optic Cable, PE–90, and to codify this specification at 7 CFR 1755.900, REA Specification for Filled Fiber Optic Cables.

Filled fiber optic cable is used in outside plant by REA telephone borrowers as a physical transport medium for voice and data. The current REA Specification PE–90 limits the type of single mode fiber to dispersion-unshifted. The limitation was established because REA borrowers' lightwave systems operate at the 1310 nanometer wavelength for which the dispersion-unshifted fiber is optimally designed. The dispersion-unshifted single mode fiber can also be used in lightwave systems operating at the 1550 nanometer wavelength window but with a degradation in signal transmission. To provide REA borrowers with a quality fiber optic cable to be used in lightwave systems operating at 1550 nanometers without signal degradation, the revised specification will include single mode dispersion-shifted fiber as an option to single mode dispersion-unshifted fiber.

The current REA Specification PE–90 limits multimode fiber to 50/125 micrometers because at the time the specification was written, it was the only diameter multimode fiber in existence. Since that time the fiber optic industry has developed several multimode fiber designs of which the 62.5/125 micrometer design has become the de facto standard. Now that 62.5/125 micrometer multimode fiber is an accepted industry standard, the revised specification will include the 62.5/125 multimode fiber as an option to the 50/125 multimode fiber.

The current REA Specification PE–90 does not include a self-supporting aerial fiber optic cable because when the specification was written, no such cable design existed. Since issuance of the current specification, fiber optic cable manufacturers have developed such cable designs. These designs have been installed in operating telephone systems and are providing satisfactory field performance. The installation cost of self-supporting aerial fiber optic cable is less than the installation cost of lashed aerial fiber optic cable. To provide REA borrowers with a less costly aerial fiber optic cable installation, the revised specification will include a section on self-supporting aerial fiber optic cable.

The current specification includes only end product requirements associated with filled fiber optic cable utilizing only dispersion-unshifted single mode fibers and 50/125 micrometers multimode fibers and lashed aerial fiber optic cables. Since the revised specification will allow dispersion-shifted single mode fibers, 62.5/125 micrometers multimode fibers, and self-supporting aerial fiber optic cables, end product requirements have been included to assure quality products for these applications.

This action establishes REA requirements for a wider range of filled fiber optic cables without affecting current designs or manufacturing techniques. This widened selection of cables will afford REA telephone borrowers the opportunity to increase subscriber services in an economical and efficient manner through enhanced cable designs brought about by technological advancements made during the past six years.

List of Subjects in 7 CFR Part 1755

Loan Programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set out in the preamble, REA proposes to amend chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

§ 1755.97 [Amended]

2. Section 1755.97 is amended by removing the entry REA Bulletin 345–90 from the table.

3. Section 1755.900 is added to read as follows:

§ 1755.900 REA specification for filled fiber optic cables.

(a) *Scope.* (1) This section covers the requirement for filled fiber optic cables intended for aerial installation either by attachment to a support strand or by an integrated self-supporting arrangement, for underground application by placement in a duct, or for buried installations either by trenching or by direct plowing.

(i) The optical waveguides are glass fibers encased in protective buffer coatings.

(ii) Fillers and strength members complete the cable core.

(iii) The buffer coatings containing the fibers and the interstices between the buffer coatings are filled with a suitable material to exclude water.

(iv) The cable structure is completed by an extruded overall plastic jacket.

(v) Buried installation requires an armor under the outer jacket.

(vi) In the case of self-supporting cable, the outer jacket may be extruded over the support messenger and cable core.

(2) The cable is fully color coded so that each fiber is distinguishable from every other fiber. A basic color scheme of twenty-four colors allows individual fiber identification. Colored tubes, binders, threads, stripings, or markings provide fiber group identification.

(3) Cable manufactured to this section must demonstrate compliance with the qualification testing requirements to ensure satisfactory end-use performance characteristics for the intended applications.

(4) Optical cable designs not specifically addressed by this section may be allowed if accepted by REA. Justification for acceptance of a modified design must be provided to substantiate product utility and long term stability and endurance.

(5) All cables sold to REA borrowers for projects involving REA loan funds under this section must be accepted by REA Technical Standards Committee "A" (Telephone). For cables manufactured to the specification of this section, all design changes to an accepted design must be submitted for acceptance. REA will be the sole authority on what constitutes a design change.

(6) The American National Standard Institute/Electronic Industries Association (ANSI/EIA) 359-A-84, EIA Standard Colors for Color Identification and Coding, referenced in this section is incorporated by reference by REA. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ANSI/EIA 359-A-84 are available for inspection during normal business hours at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from EIA, 2001 Pennsylvania Avenue, NW., suite 900, Washington, DC 20006, telephone number (202) 457–4966.

[**Note:** The incorporation by reference and availability of inspection copies are pending approval by the Office of the Federal Register.]

(7) American Society for Testing and Materials Specifications (ASTM) A 640–91, Specification for Zinc-Coated Steel Strand for Messenger Support of Figure 8 Cable; ASTM B 736–92a, Specification for Aluminum, Aluminum Alloy, and Aluminum-Clad Steel Cable Shielding

Stock; ASTM D 1238–90b, Test Method for Flow Rates of Thermoplastics by Extrusion Plastometer; ASTM D 1248–84(1989), Specification for Polyethylene Plastic Molding and Extrusion Materials, ASTM D 1535–89, Method for Specifying Color by the Munsell System; ASTM D 3349–86, Test Method for Absorption Coefficient of Carbon Black Pigmented Ethylene Plastic Film; ASTM D 4565–90a, Methods of Testing Physical and Environmental Performance Properties of Insulations and Jackets for Telecommunications Wire and Cable; ASTM D 4566–90, Methods of Testing Electrical Performance Properties of Insulation and Jacket for Telecommunications Wire and Cable; ASTM D 4568–86, Evaluating Compatibility Between Cable Filling and Flooding Compounds and Polyolefin Cable Materials; and ASTM E 29–90, Recommended Practice for Indicating Which Places of Figures Are to Be Considered Significant in Specified Limiting Values, referenced in this section are incorporated by reference by REA. These incorporations by references were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASTM standards are available for inspection during normal business hours at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103–1187, telephone number (215) 299–5585.

[Note: The incorporation by reference and availability of inspection copies are pending approval by the Office of the Federal Register.]

(8) Electronic Industries Association Standards (EIA) RS-455–20, Measurement of Change in Optical Transmittance; EIA 455–30A, Frequency Domain Measurement of Multimode Optical Fiber Information Transmission Capacity; EIA RS-455–37, Fiber Optic Cable Bend Test Low and High Temperature; EIA 455–41, Compressive Loading Resistance of Fiber Optic Cables; EIA 455–45A, Microscopic Method for Measuring Fiber Geometry of Optical Waveguide Fibers; EIA RS-455–51, Pulse Distortion Measurement of Multimode Glass Optical Fiber Information Transmission Capacity; EIA 455–56A, Test Method for Evaluating Fungus Resistance of Optical Waveguide Fibers and Cables; EIA 455–81A, Compound Flow (Drip) Test for Filled Fiber Optic Cable; EIA 455–82A, Fluid Penetration Test for Fluid-Blocked Fiber Optic Cable; EIA 455–85, Fiber Optic Cable Twist Test; EIA 455–104, Fiber Optic Cable Cyclic Flexing Test; EIA 455–164, Single Mode Fiber, Measurement of Mode Field Diameter by Far-Field Scanning; EIA 455–165, Single Mode Fiber, Measurement of Mode Field Diameter by Near Field Scanning; EIA 455–167, Mode Field Diameter Measurement—Variable Aperture Method in the Far Field; EIA 455–168, Chromatic Dispersion Measurement of Multimode Graded-Index and Single Mode Optical Fibers by Spectral Group Delay Measurement in the Time Domain; EIA 455–169, Chromatic Dispersion Measurement of Optical Fibers by the Phase-Shift Method; EIA 455–174, Mode Field Diameter of Single Mode Optical Fiber by Knife-Edge Scanning in the Far Field; and EIA 455–176, Measurement Method for Optical Fiber Geometry by Automated Grey-Scale Analysis, referenced in this section are incorporated by reference by REA. These incorporations by references were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of EIA standards are available for inspection during normal business hours at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from EIA, 2001 Pennsylvania Avenue, NW., suite 900, Washington, DC 20006, telephone number (202) 457–4966.

[Note: The incorporation by reference and availability of inspection copies are pending approval by the Office of the Federal Register.]

(9) Electronic Industries Association/Telecommunications Industries Association Standards (EIA/TIA) 455–25A, Repeated Impact Testing of Fiber Optic Cables and Cable Assemblies; EIA/TIA 455–31B, Fiber Tensile Proof Test Method; EIA/TIA 455–46A, Spectral Attenuation Measurement for Long-Length, Graded-Index Optical Fibers; EIA/TIA 455–48B, Measurement of Optical Fiber Cladding Diameter Using Laser-Based Instruments; EIA/TIA 455–53A, Attenuation by Substitution Measurement for Multimode Graded-Index Optical Fibers or Fiber Assemblies Used in Long Length Communications Systems; EIA/TIA 455–55B, End-View Methods for Measuring Coating and Buffer Geometry of Optical Fibers; EIA/TIA 455–58A, Core Diameter Measurement of Graded-Index Optical Fibers; EIA/TIA 455–59, Measurement of Fiber Point Defects Using an OTDR; EIA/TIA 455–61, Measurement of Fiber or Cable Attenuation Using an OTDR; EIA/TIA 455–78A, Spectral-Attenuation Cutback Measurement for Single Mode Optical Fibers; EIA/TIA 455–170, Cable Cutoff Wavelength of Single Mode Fiber by Transmitted Power; EIA/TIA 455–173, Coating Geometry Measurement for Optical Fiber Side-View Method; EIA/TIA 455–175, Chromatic Dispersion Measurement of Optical Fibers by the Differential Phase Shift Method; EIA/TIA 455–177, Numerical Aperture Measurement of Graded-Index Optical Fibers; and EIA/TIA 455–178, Measurement of Strip Force Required for Mechanically Removing Coatings from Optical Fibers, referenced in this section are incorporated by reference by REA. These incorporations by references were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of EIA/TIA standards are available for inspection during normal business hours at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from EIA, 2001 Pennsylvania NW., suite 900, Washington, DC 20006, telephone number (202) 457–4966.

[Note: The incorporation by reference and availability of inspection copies are pending approval by the Office of the Federal Register.]

(10) REA intends that the optical fibers contained in the cables manufactured in accordance with this section have characteristics that will allow signals, having a range of wavelengths, to be carried simultaneously.

(b) *Optical fibers.* (1) The solid glass optical fibers must consist of a cylindrical core and cladding covered by a ultraviolet acrylate coating.

(2) The optical fiber types must be one of the following:

(i) Dispersion-unshifted single mode fiber EIA Class IVa;

(ii) Dispersion-shifted single mode fiber EIA Class IVb;

(iii) 50/125 micrometer multimode fiber EIA Class Ia; or

(iv) 62.5/125 micrometer multimode fiber EIA Class Ia.

(3) The dispersion-unshifted single mode fiber core must have either a matched or depressed clad step refractive index profile with a mode-field diameter of 9.0 ± 1.0 micrometers when measured at 1300 nanometers and 10.5 +1.0 micrometers/ − 1.5 micrometers when measured at 1550 nanometers in accordance with any one of the following test methods:

(i) EIA-455–164;

(ii) EIA-455–165;

(iii) EIA-455–167; or

(iv) EIA-455–174.

(4) The dispersion-shifted single mode fiber core must have either a

segmented core design or depressed clad step refractive index profile with a mode-field diameter of 7.5 ± 1.3 micrometers when measured at 1550 nanometers in accordance with any one of the test procedures specified in paragraph (b)(3) of this section.

(5) The core clad off-set of the dispersion-unshifted and dispersion-shifted single mode fibers must not be greater than 1.0 micrometer when measured in accordance with either EIA-455–45A or EIA-455–176.

(6) The multimode fiber cores must have graded (parabolic) refractive index profiles with core diameters of 50.0 ± 3.0 micrometers or 62.5 ± 3.0 micrometers when measured in accordance with either EIA/TIA-455–58A, or EIA-455–176.

(7) The core noncircularity of multimode fibers must not exceed 6 percent when measured in accordance with either EIA-455–45A or EIA-455–176.

(8) The outside diameter of the glass fiber for both single mode and multimode fibers must be 125 ± 2.0 micrometers when measured in accordance with any one of the following test methods:

(i) EIA-455–45A;
(ii) EIA-455–176; or
(iii) EIA/TIA-455–48B, Methods A or B.

(9) The outside diameter of the glass fiber must be nominally concentric with the fiber core as is consistent with the best commercial practice.

(10) The individual fibers must be proof tested at a minimum tensile stress of 0.35 gigapascal for approximately one second when measured in accordance with EIA/TIA-455–31B.

(11) Factory splices of fibers are allowed provided that prior acceptance from REA is obtained for the splice technique, that all splices are documented and reported to the customer, and that the spliced fiber meets all requirements of this section.

(12) The optical fiber must be coated with a suitable material to preserve the intrinsic strength of the glass having an outside diameter of 250 ± 15 micrometers when measured in accordance with either EIA/TIA-455–55B or EIA/TIA 455–173.

(13) The maximum force required to remove 25 millimeters of protective fiber coating must not exceed 13 newtons when measured in accordance with EIA/TIA-455–178.

(14) All optical fibers in any single length of cable must be of the same type.

(c) *Buffer/coating.* (1) The optical fibers contained in a tube buffer (loose tube), an inner jacket (unit core), a channel or otherwise loosely packaged must have a clearance between the fibers and the inside of the container sufficient to allow for thermal expansions without constraining the fibers. The protective container must be manufactured from a material having a coefficient of friction sufficiently low to allow the fibers free movement.

(2) Optical fibers covered in near contact with an extrusion (tight tube) must have an intermediate soft buffer to allow for thermal expansions and minor pressures.

(3) All protective coverings in any single length of cable must be continuous and be of the same material except at splice locations.

(4) The protective coverings must be free from holes, splits, blisters, and other imperfections and must be as smooth and concentric as is consistent with the best commercial practice.

(5) Repairs to the fiber coatings are not allowed except at splice locations.

(6) Both loose tube and tight tube coverings of each color and other fiber package types removed from the finished cable must meet the following shrinkback and cold bend performance requirements. The fibers may be left in the tubes.

(i) *Shrinkback.* Testing must be conducted in accordance with ASTM D 4565–90a, paragraph 14.1, using a talc bed at a temperature of 95°C. Shrinkback must not exceed 5 percent of the original 150 millimeter length of the specimen. The total shrinkage of the specimen must be measured.

(ii) *Cold bend.* Testing must be conducted on at least one tube from each color in the cable. Stabilize the specimen to −20 ± 1°C for a minimum of four hours. While holding the specimen and mandrel at the test temperature, wrap the tube in a tight helix ten times around a mandrel with a diameter not greater than five times the tube diameter. The tube must show no evidence of cracking when observed with normal or corrected-to-normal vision.

Note: Channel cores and similar slotted single component core designs need not be tested for cold bend.

(d) *Fiber and buffer tube identification.* (1) The colors designated for identification of loose buffer tubes, tight tube buffer fibers and individual fibers in multifiber tubes, slots or bundles are shown in the following table:

Buffer Tube and Fiber No.	Color
1	Blue
2	Orange
3	Green
4	Brown
5	Slate
6	White
7	Red
8	Black
9	Yellow
10	Violet
11	Rose
12	Aqua
13	Blue/Black Tracer
14	Orange/Black Tracer
15	Green/Black Tracer
16	Brown/Black Tracer
17	Slate/Black Tracer
18	White/Black Tracer
19	Red/Black Tracer
20	Black/Yellow Tracer
21	Yellow/Black Tracer
22	Violet/Black Tracer
23	Rose/Black Tracer
24	Aqua/Black Tracer

(2) *Standards of color.* Except for the aqua and rose colors, the colors of fibers and tubes supplied in accordance with this section are specified in terms of the Munsell Color System (ASTM D 1535–89) and must comply with the "Table of Wire and Cable Limit Chips" as defined in ANSI/EIA-359-A-1984. (A visual color standard meeting these requirements and entitled "Munsell Color Charts for Color Coding," may be obtained from the Munsell Color Company, Inc., 2441 North Calvert Street, Baltimore, Maryland, 21218. Any of the several editions of the color standard published since 1942 may be used.)

(i) The aqua and rose color limits using the Munsell Color System must be as follows:

MUNSELL NOTATION

Symbol	Aqua Color	Rose Color
Centroid	10B 8/6	10RP 8/6
H+	2.5PB 8/6	2.5R 8/6
H−	—	7.5RP 8/6
V−	10B 7/6	10RP 7/6
Other	10B 8/4	10RP 8/4

(ii) Other coloring schemes used for providing identification of buffer tubes and optical fibers which deviate from the requirements of paragraph (d)(1) of this section will not be accepted by REA.

(e) *Strength members.* (1) Strength members must be an integral part of the cable construction, but are not considered part of the support messenger for self-supporting optical cable.

(2) The combined strength of all the strength members must be sufficient to

support the stress of installation and to protect the cable in service.

(3) Strength members may be incorporated into the core as a central support member or filler, as fillers between the fiber packages, as an annular serving over the core, as an annular serving over the intermediate jacket, embedded in the outer jacket or as a combination of any of these methods.

(4) The central support member or filler must contain no more than one splice per kilometer of cable. Individual fillers placed between the fiber packages and placed as annular servings over the core must contain no more than one splice per kilometer of cable. Cable sections having central member or filler splices must meet the same physical requirements as unspliced cable sections.

(5) Strength member materials and splicing techniques must be accepted by REA prior to their use.

(6) In each length of completed cable having a metallic central member, the dielectric strength between the armor and the metallic center member must withstand at least 15 kilovolts direct current for 3 seconds.

(f) *Forming the cable core.* (1) Protected fibers must be assembled with the optional central support member, fillers and strength members in such a way as to form a cylindrical group.

(2) The standard cylindrical group or core designs shall consist of 4, 6, 8, 10, 12, 16, 18, 20, or 24 fibers. Cylindrical groups or core designs larger than the sizes shown above must meet all the requirements of this section.

(3) When threads or tapes are used as core binders, they must be colored white and must be a nonhygroscopic and nonwicking dielectric material.

(4) When threads or tapes are used as unit binders to define optical fiber units in loose tube, tight tube, slotted, or bundled core designs, they must be colored in accordance with the table listed below and must be a nonhygroscopic and nonwicking dielectric material. The colors of the binders must be in accordance with paragraphs (d)(2) introductory text and (d)(2)(i) of this section.

Unit No.	Binder Color
1	Blue
2	Orange
3	Green
4	Brown
5	Slate
6	White
7	Red
8	Black
9	Yellow
10	Violet
11	Rose
12	Aqua
13	Blue-Black
14	Orange-Black
15	Green-Black
16	Brown-Black
17	Slate-Black
18	White-Black
19	Red-Black
20	Black-Black-Yellow
21	Yellow-Yellow-Black
22	Violet-Black
23	Rose-Black
24	Aqua-Black

(g) *Filling compound.* (1) To prevent the ingress of water into the core, a filling compound must be applied into the interior of the loose fiber tubes, into the interstices of the core, to the core wrap, over the core wrap and between the core wrap and inner jacket when required.

(2) The materials must be homogeneous and uniformly mixed; free from dirt, metallic particles and other foreign matter; easily removed; nontoxic and present no dermal hazards.

(3) The individual cable manufacturer must satisfy REA that the filling compound selected for use is suitable for its intended application. The filling compound must be compatible with the cable components when tested in accordance with ASTM D 4568–86 at a temperature of 80°C.

(h) *Core wrap.* (1) A layer of nonhygroscopic and nonwicking dielectric material may be applied over the core.

(2) The core wrap can be used to provide a heat barrier to prevent deformation or adhesion between the fiber tubes or can be used to contain the core.

(3) Sufficient filling compound must be applied to the core wrap so that voids or air spaces existing between the core and the inner side of the core wrap are minimized.

(i) *Inner jacket.* (1) Inner jackets may be applied directly over the core or over the strength members.

(i) For armored cable an inner jacket is optional but recommended. The inner jacket may absorb stresses in the cable core that may be introduced by armor application or by armored cable installation.

(ii) For unarmored cable an inner jacket is optional.

(2) The inner jacket material and test requirements must be as for the outer jacket material per paragraphs (m)(3) introductory text through (m)(3)(v) of this section, except that either black or natural polyethylene may be used. In the case of natural polyethylene, the requirements for absorption coefficient and the inclusion of furnace black are waived.

(3) The jacket material when conditioned according to the requirements of EIA-455–56A must exhibit no decrease in tensile strength or elongation from the original values of unconditioned material.

(j) *Flooding compound.* (1) Sufficient flooding compound must be applied between the inner jacket and armor and between the armor and outer jacket so that voids and air spaces in these areas are minimized. The use of floodant between the armor and outer jacket is not required when uniform bonding, per paragraph (k)(10) of this section, is achieved between the plastic-clad armor and the outer jacket.

(2) The flooding compound must be compatible with the jacket when tested in accordance with ASTM D 4568–86 at a temperature of 80°C. The floodant must exhibit adhesive properties sufficient to prevent jacket slip when tested in accordance with the requirements of appendix A, paragraph (III)(3) of this section.

(3) The individual cable manufacturer must satisfy REA that the flooding compound selected for use is acceptable for the application.

(4) In lieu of a flooding compound, a water blocking tape may be applied between the inner jacket and armor and between the armor and outer jacket to prevent water migration. The use of the water blocking tape between the armor and outer jacket is not required when uniform bonding, per paragraph (k)(10) of this section, is achieved between the plastic-clad armor and the outer jacket.

(k) *Armor.* (1) A steel armor, plastic coated on both sides, is required for direct buried cable manufactured under the provisions of this section. An armor is optional for duct and aerial cable as required by the purchaser. The plastic coated steel armor must be applied longitudinally directly over the core wrap or the intermediate jacket and have a minimum overlap of 3.0 millimeters.

(2) The uncoated steel tape must be electrolytic chrome coated steel (ECCS) with a thickness of 0.155 ± 0.015 millimeters.

(3) The reduction in thickness of the armoring material due to the corrugating or to the application process must be kept to a minimum and must not exceed 10 percent at any spot.

(4) The armor of each length of cable must be electrically continuous with no more than one joint or splice allowed per kilometer of cable. This requirement does not apply to a joint or splice made

in the raw material by the raw material manufacturer.

(5) The breaking strength of any section of an armor tape, containing a factory splice joint, must not be less than 80 percent of the breaking strength of an adjacent section of the armor of equal length without a joint.

(6) Overlap portions of the armor tape must be bonded in cables with no floodant over the armor. If the tape is corrugated, the corrugations must be in register.

(7) The armor tape must be so applied as to enable the cable to pass the bend test as specified in paragraph (q)(1) of this section.

(8) The protective coating on the steel armor must meet the Bonding-to-Metal, Heat Sealability, Lap-Shear and Moisture Resistance requirements of Type I, Class 2 coated metals in accordance with ASTM B 736–92a.

(9) The ability of the plastic-clad metal to resist the flooding compound must be determined as required by ASTM D 4568–86 using a one meter length of coated steel which must be aged for 7 days at 68 ± 1°C. There must be no delamination of the coating from the steel at the conclusion of the test.

(10) When the jacket is bonded to the plastic coated armor, the bond between the plastic coated armor and the outer jacket must not be less than 525 newtons per meter over at least 90 percent of the cable circumference when tested in accordance with ASTM D 4565–90a.

(l) *Optional support messenger (aerial cable).* (1) When a self-supporting aerial cable containing an integrated support messenger is supplied, the support messenger must comply with the requirements specified in paragraphs (l)(2) introductory text through (l)(6) of this section.

(2) The fully flooded, stranded support messenger must be 6.35 millimeters diameter, 7 wire, extra high strength grade, Class A galvanized steel strand conforming to ASTM A 640–91 with the following exceptions and additional provisions:

(i) The maximum lay of the individual wires of the strand must be 140 millimeters;

(ii) Any section of a completed strand containing a joint must have minimum tensile strength and elongation of 29,500 newtons and 3.5 percent, respectively, when tested in accordance with the procedures specified ASTM A 640–91; and

(iii) The individual wires from a completed strand which contain joints must not fracture when tested according to the "Ductility of Steel" procedures specified in ASTM A 640–91 except that the mandrel diameter must be equal to 5 times the nominal diameter of the individual wires.

(3) The support strand must be completely covered with a corrosion protective floodant. The floodant must be homogeneous and uniformly mixed.

(4) The floodant must be nontoxic and present no dermal hazard.

(5) The floodant must be free from dirt, metallic particles, and other foreign matter that may interfere with the performance of the cable.

(6) The floodant must be compatible with the polyethylene outer jacket and must be acceptable to REA.

(7) Other methods of providing self-supporting cable specifically not addressed in this section may be allowed if accepted by REA. Justification for acceptance of a modified design must be provided to substantiate product utility and long term stability and endurance.

(m) *Outer jacket.* (1) The outer jacket must provide the cable with a tough, flexible, protective covering which can withstand exposure to sunlight, to atmosphere temperatures and to stresses reasonably expected in normal installation and service.

(2) The jacket must be free from holes, splits, blisters, or other imperfections and must be as smooth and concentric as is consistent with the best commercial practice.

(3) The raw material used for the outer jacket must be one of the five types listed in paragraphs (m)(3)(i) through (m)(3)(vii) of this section. The raw material must contain an antioxidant to provide long term stabilization and the materials must contain a 2.60 ± 0.25 percent concentration of furnace black to provide ultraviolet shielding. Both the antioxidant and furnace black must be compounded into the material by the raw material supplier.

(i) Low density, high molecular weight polyethylene (LDHMW) must conform to the requirements of ASTM D 1248–84(1989), Type I, Class C, Category 4 or 5, Grade J3.

(ii) Low density, high molecular weight ethylene copolymer (LDHMW) must conform to the requirements of ASTM D 1248–84(1989), Type I, Class C, Category 4 or 5, Grade J3.

(iii) Linear low density, high molecular weight polyethylene (LLDHMW) must conform to the requirements of ASTM D 1248–84(1989), Type I, Class C, Category 4 or 5, Grade J3.

(iv) High density polyethylene (HD) must conform to the requirements of ASTM D 1248–84(1989), Type III, Class C, Category 4 or 5, Grade J4.

(v) Medium density polyethylene (MD) must conform to the requirements of ASTM D 1248–84(1989), Type II, Class C, Category 4 or 5, Grade J4.

(vi) Particle size of the carbon selected for use must not average greater than 20 nanometers.

(vii) Absorption coefficient must be a minimum of 400 in accordance with the procedures of ASTM D 3349–86.

(4) The outer jacketing material removed from or tested on the cable must be capable of meeting the following performance requirements:

Property	LLDHMW, Ethylene Copolymer	LDHMW Polyethylene	HD or MD Polyethylene
Melt Flow Rate Percent increase from raw material, Maximum		50	50
<0.41 (Initial Melt Index)	100	—	—
0.41–2.00 (Initial Melt Index)	50	—	—
Tensile Strength Minimum, Megapascals	12	12	16.5
Ultimate Elongation Minimum, Percent	400	400	300
Environmental Stress Cracking Maximum, Failures	0/10	2/10	2/10
Shrinkback Maximum, Percent	5	5	5
Impact Maximum, Failures	2/10	2/10	2/10

(5) *Testing procedures.* The procedures for testing jacket specimens for compliance with paragraph (m)(4) of this section must be as follows:

(i) *Melt flow rate.* The melt flow rate must be determined by ASTM D 1238–90b, Condition E. Jacketing material

must be free from flooding and filling compound.

(ii) *Tensile strength and ultimate elongation.* Test in accordance with ASTM D 4565–90a, using a jaw separation speed of 500 millimeters per minute for low density material and 50 millimeters per minute for high and medium density materials.

(iii) *Environmental stress cracking.* Test in accordance with ASTM D 4565–90a.

(iv) *Shrinkback.* Test in accordance with the procedures specified in ASTM D 4565–90a using a temperature of 100 ± 1°C for low density material and a test temperature of 115 ± 1°C for high and medium density materials.

(v) *Impact.* The test must be performed in accordance with ASTM D 4565–90a using an impact force of 4 newton-meters at a temperature of −20 ± 2°C. A cracked or split jacket constitutes failure.

(6) *Jacket thickness.* The nominal outer jacket thickness must be 1.3 millimeters. The test method used must either be the End Sample Method (paragraph (m)(6)(i) of this section) or the Continuous Uniformity Thickness Gauge Method (paragraph (m)(6)(ii) of this section).

(i) *End sample method.* The jacket must be capable of meeting the following requirements:

Minimum Average Thickness.	90 percent (%) of nominal thickness
Minimum Spot Thickness.	70% of nominal thickness

(ii) *Continuous uniformity thickness gauge.* (A) The jacket must be capable of meeting the following requirements:

Minimum Average Thickness.	75% of nominal thickness
Minimum Thickness.	70% of nominal thickness
Maximum Eccentricity.	40%

$$\text{Eccentricity} = \frac{\text{Max. Thickness} - \text{Min. Thickness}}{\text{Average Thickness}} \times 100 \text{ Percent}$$

(B) The maximum and minimum thickness values shall be based on the average of each axial section.

(7) For jackets having embedded strength members, the jacket thickness must meet the requirements of paragraph (m)(6) of this section except that the jacket thickness over the strength members must not be less than 0.50 millimeters.

(8) The minimum jacket thickness at any point over the support messenger for self-supporting aerial cable utilizing such an element must be 1.1 millimeters.

(9) The web dimension for self-supporting aerial cable utilizing such a feature must be as follows:

Height: 2.29 ± 0.750 millimeters

Width: 1.52 +0.51 millimeters/ − 0.25 millimeters

(n) *Sheath slitting cord (optional).* (1) A sheath slitting cord is optional.

(2) When a sheath slitting cord is used it must be nonhygroscopic and nonwicking, continuous throughout a length of cable and of sufficient strength to open the sheath without breaking the cord.

(o) *Identification marker and length marker.* (1) Each length of cable must be permanently labeled either OPTICAL CABLE or OC on the outer jacket and identified as to manufacturer and year of manufacture.

(2) Mark the number of fibers on the jacket.

(3) The markings must be printed on the jacket at regular intervals of not more than 2 meters.

(4) An alternative method of marking may be used if acceptable to REA.

(5) The completed cable must have sequentially numbered length markers IN METERS OR FEET at regular intervals of not more than 2 meters along the outside of the jacket.

(6) Continuous sequential numbering must be employed in a single length of cable.

(7) The numbers must be dimensioned and spaced to produce good legibility and must be approximately 3 millimeters in height. An occasional illegible marking is permissible if there is a legible marking located not more than 2 meters from it.

(8) The method of marking must be by means of suitable surface markings producing a clear, distinguishable, contrasting marking acceptable to REA. Where direct or transverse printing is employed, the characters should be indented to produce greater durability of marking. Any other method of length marking must be acceptable to REA as producing a marker suitable for the field. Size, shape and spacing of numbers, durability, and overall legibility of the marker will be considered in acceptance of the method.

(9) Agreement between the actual length of the cable and the length marking on the cable jacket must be within the limits of +1 percent, −0 percent.

(10) The color of the initial marking must be white or silver. If the initial marking fails to meet the requirements of the preceding paragraphs, it will be permissible to either remove the defective marking and re-mark with the white or silver color or leave the defective marking on the cable and re-mark with yellow. No further re-marking is permitted. Any re-marking must be on a different portion of the cable circumference than any existing marking when possible and have a numbering sequence differing from any other existing marking by at least 3,000.

(11) Any reel of cable that contains more than one set of sequential markings must be labeled to indicate the color and sequence of marking to be used. The labeling must be applied to the reel and also to the cable.

(p) *Optical performance.* (1) The optical performance of the single mode fibers must be in accordance with the requirements specified in paragraphs (p)(1)(i) through (p)(1)(viii) of this section.

(i) The attenuation values of the single mode fibers within the cable must not exceed 0.5 decibel per kilometer (dB/km) for dispersion-unshifted single mode fiber at 1310 and 1550 nanometers and must not exceed 0.5 dB/km for dispersion-shifted single mode fiber at 1550 nanometers. The test method used for measuring the attenuation must be in accordance with either:

(A) EIA/TIA-455–78A;

(B) EIA/TIA-455–59; or

(C) EIA/TIA 455–61.

(ii) The attenuation values for wavelengths between 1285 and 1330 nanometers and between 1525 and 1575 nanometers for dispersion-unshifted fibers must not exceed the attenuation at 1310 and 1550 nanometers by more than 0.1 dB/km. The attenuation values for wavelengths between 1525 and 1575 nanometers for dispersion-shifted fibers must not exceed the attenuation at 1550 nanometers by more than 0.1 dB/km. The test method used for measuring the attenuation must be in accordance with any one of the methods specified in paragraph (p)(1)(i) of this section.

(iii) Attenuation discontinuities in the fiber's length must not exceed 0.1 decibel (dB) for dispersion-unshifted fiber at 1310 ± 20 and 1550 ± 20 nanometers and must not exceed 0.1 dB for dispersion-shifted fiber at 1550 ± 20 nanometers when measured in accordance with EIA/TIA-455–59.

(iv) Measurement of the attenuation must be conducted at the wavelength specified for application and must be expressed in decibels per kilometer.

(v) Because the accuracy of attenuation measurements for single mode fibers becomes questionable when measured on short cable lengths, attenuation measurements are to be made utilizing characterization cable lengths. If the ship length of cable is less

than one kilometer, the attenuation values measured on longer lengths of cable (characterization length of cable) before cutting to the ship lengths of cable may be applied to the ship lengths.

(vi) For dispersion-unshifted fiber the zero dispersion wavelength must be between 1300 and 1322 nanometers, and the maximum value of the dispersion slope at the zero-dispersion wavelength must not be greater than 0.092 picosecond per newton-meter squared times kilometer (ps/(nm²•km) when measured in accordance with either:

(A) EIA-455–168;
(B) EIA-455–169; or
(C) EIA/TIA-455–175.

(vii) For dispersion-shifted fiber, the dispersion over the wavelength range between 1525 and 1575 nanometers must not exceed 2.7 picosecond per newton-meter times kilometer (ps/(nm•km)) and must have a maximum dispersion slope of 0.085 ps/(nm²•km) at the zero dispersion wavelength when measured in accordance with any one of the test procedures specified in paragraph (p)(1)(vi) of this section.

(viii) The cut off wavelength of the dispersion-unshifted and the dispersion-shifted fibers in a cable must be less than 1250 nanometers when measured in accordance with EIA/TIA-455–170.

(2) The optical performance of the multimode fibers must be in accordance with the requirements specified in paragraphs (p)(2)(i) through (p)(2)(vi) of this section.

(i) The attenuation values of the 50/125 and 62.5/125 micrometer multimode fibers within the cable must not exceed 1.5 dB/km at 1300 nanometers when measured in accordance with either:

(A) EIA/TIA-455–46A;
(B) EIA/TIA-455–53A; or
(C) EIA/TIA-455–61.

(ii) Attenuation discontinuities in the fiber's length must not exceed 0.2 dB for both multimode fiber types at 1300 ± 20 nanometers when measured in accordance with EIA/TIA-455–59.

(iii) Measurement of the attenuation must be conducted at the wavelength specified for application and must be expressed in decibels per kilometer.

(iv) Because the accuracy of attenuation measurements for multimode fibers becomes questionable when measured on short cable lengths, attenuation measurements are to be made utilizing characterization cable lengths. If the ship length of cable is less than one kilometer, the attenuation values measured on longer lengths of cable (characterization length of cable) before cutting to the ship lengths of cable may be applied to the ship lengths.

(v) The bandwidth of the multimode fibers at the −3 dB optical power of the optical fibers within the cable must be within the limits prescribed in the purchase order.

(vi) The test methods used to measure bandwidth must be in accordance with either EIA-455–30A or EIA RS-455–51.

(3) Numerical aperture (NA) for each multimode optical fiber in the cable must be 0.20 ± 0.015 for the 50/125 micrometer design and 0.275 ± 0.015 for the 62.5/125 micrometer design when measured in accordance with EIA/TIA 455–177.

(q) *Mechanical requirements*—(1) *Cable bend test.* (i) All cables manufactured in accordance with the requirements of this section must be capable of meeting the following bend test without exhibiting an increase in fiber attenuation greater than 0.10 dB for single mode fibers and 0.30 dB for multimode fibers.

(ii) Measure the attenuation of dispersion-unshifted single mode fibers at 1310 ± 20 and 1550 ± 20 nanometers, dispersion-shifted single mode fibers at 1550 ± 20 nanometers and multimode fibers at 1300 ± 20 nanometers.

(iii) After measuring the attenuation of the optical fibers, test the cable sample in accordance with EIA RS-455–37, Test Condition C, Turns Test Level 3. The following detailed test conditions shall apply:

(A) Section 4.2—Mandrel diameter must be 15 times the cable diameter.

(B) Section 4.5—Measure the attenuation increase of the wound sample at the test temperature and specified wavelengths in accordance with EIA RS-455–20.

(C) For armored cable, the armor overlap must be on the outside of the bend.

(D) For self-supporting cable, the jacketed support messenger and connection web must be removed prior to testing.

(iv) The cable may be allowed to warm to room temperature before visual inspection. The bent area of the cable must show neither visible evidence of fracture of the jacket nor delamination of the bond at the overlap and to the outer jacket in nonflooded cable. After removal of the jacket, there must be no visible evidence of fracture of the armor, when present, and of the components in the core.

(2) *Cable impact test.* (i) All cables manufactured in accordance with the requirements of this section must be capable of meeting the following impact test without exhibiting an increase in fiber attenuation greater than 0.10 dB for single mode fibers and 0.30 dB for multimode fibers, and without cracking or splitting of the cable jacket.

(ii) Measure the attenuation of the optical fibers in accordance with paragraph (q)(1)(ii) of this section.

(iii) After measuring the attenuation of the optical fibers, test the cable in accordance with EIA/TIA-455–25A.

(3) *Cable compression test.* (i) All cables manufactured in accordance with the requirements of this section must be capable of meeting the following compressive strength test without exhibiting an increase in fiber attenuation greater than 0.10 dB for single mode fibers and 0.3 dB for multimode and without cracking or splitting of the cable jacket when subjected to a minimum compressive load of 440 newtons per centimeter for armored cable and 220 newtons per centimeter for nonarmored cable.

(ii) Measure the attenuation of the optical fibers in accordance with paragraph (q)(1)(ii) of this section.

(iii) After measuring the attenuation of the optical fibers, test the cable in accordance with EIA-455–41 using a rate of 5 millimeters per minute and maintaining the load for 15 minutes.

(4) *Cable twist test.* (i) All cables manufactured in accordance with the requirements of this section must be capable of meeting the following twist test without exhibiting an increase in fiber attenuation greater than 0.10 dB for single mode fibers and 0.30 dB for multimode fibers, and without cracking or splitting of the cable jacket.

(ii) Measure the attenuation of the optical fibers in accordance with paragraph (q)(1)(ii) of this section.

(iii) After measuring the attenuation of the optical fibers, test the cable in accordance with EIA-455–85, using a maximum cable twisting length of 4 meters.

(5) *Cable flex test.* (i) All cables manufactured in accordance with the requirements of this section must be capable of meeting the following flex test without exhibiting an increase in fiber attenuation greater than 0.10 dB for single mode fibers and 0.30 dB for multimode fibers.

(ii) Measure the attenuation of the optical fibers in accordance with paragraph (q)(1)(ii) of this section.

(iii) After measuring the attenuation of the optical fibers, test the cable in accordance with EIA-455–104, Test Conditions I and II, flexed for 25 cycles using a sheave diameter not less than 20 times the cable diameter (Test condition letter B).

(iv) After completion of the test, the bent area of the cable must show neither visible evidence of fracture of the jacket nor delamination of the bond at the overlap and to the outer jacket in nonflooded cable. After removal of the jacket, there must be no visible evidence of fracture of the armor, when present, and of the components in the core.

(6) *Water penetration test.* (i) A one meter length of completed fiber optic cable must be preconditioned for 24 hours at 23 ± 5°C and then tested in accordance with EIA-455–82A using a one meter water head over the sample or placed under the equivalent continuous pressure for one hour.

(ii) After the one hour period, there must be no water leakage through the sheath interfaces, under the core wrap, between the cable core interstices, or through the fiber buffers.

(iii) If water leakage is detected in the first sample, one additional 3 meter sample from EACH END of the same reel must be tested in accordance with paragraph (q)(6)(i) of this section. If either sample exhibits water leakage, the entire reel of cable is to be rejected. If the samples exhibit no leakage, the entire reel of cable is considered acceptable.

(7) *Compound flow test.* (i) Three 300 millimeter long test samples must be preconditioned for 24 hours at 23 ± 5°C and then tested in accordance with EIA-455–81A using a test temperature of 80 ± 1°C.

(ii) The amount of filling or flooding compounds that flowed or dripped from any of the suspended cable specimens must be less than or equal to 0.5 grams of material. The measurement of an amount greater than 0.5 grams for any of the suspended cable specimens constitutes failure.

(r) *Preconnectorized cable (optional).* (1) At the option of the manufacturer and upon request by the purchaser, the cable may be factory terminated with connectors acceptable to REA.

(2) All connectors must be accepted by REA prior to their use.

(s) *Acceptance testing and extent of testing.* (1) The tests described in appendix A of 7 CFR 1755.900 are intended for acceptance of cable designs and major modifications of accepted designs. REA decides what constitutes a major modification. These tests are intended to show the inherent capability of the manufacturer to produce cable products that have satisfactory performance characteristics, long life and long-term optical stability but are not intended as field tests.

(2) For initial acceptance, the manufacturer must submit:

(i) An original signature certification that the product fully complies with each section of the specification;

(ii) Qualification Test Data, per appendix A;

(iii) A set of instructions for handling the cable;

(iv) OSHA Material Safety Data Sheets for all components;

(v) To periodic plant inspections;

(vi) A certification that the product does or does not comply with the domestic origin manufacturing provisions of the "Buy American" requirements of the Rural Electrification Act of 1938 (7 U.S.C. 901 *et seq.*);

(vii) Written user testimonials concerning field performance of the product; and

(viii) Other nonproprietary data deemed necessary by the Chief, Outside Plant Branch (Telephone).

(3) For requalification acceptance, the manufacturer must submit an original signature certification that the product fully complies with each section of the specification, excluding the Qualification Section, and a certification that the product does or does not comply with the domestic origin manufacturing provisions of the "Buy American" requirements of the Rural Electrification Act of 1938 (7 U.S.C. 901 *et seq.*), for acceptance by September 30 every three years. The required data and certification must have been gathered within 90 days of the submission.

(4) Initial and requalification acceptance requests should be addressed to:

Chairman, Technical Standards Committee "A" (Telephone), Telecommunications Standards Division, Rural Electrification Administration, Washington, DC 20250–1500.

(5) *Tests on 100 percent of completed cable.* (i) The armor for each length of cable must be tested for continuity using the procedures of ASTM D 4566–90.

(ii) Attenuation for each optical fiber in the cable must be measured.

(iii) Optical discontinuities must be isolated and their location and amplitude recorded.

(6) *Capability tests.* Tests on a quality assurance basis must be made as frequently as is required for each manufacturer to determine and maintain compliance with:

(i) Numerical aperture and bandwidth of multimode fibers;

(ii) Cut off wavelength of single mode fibers;

(iii) Dispersion of single mode fibers;

(iv) Shrinkback and cold bend testing of loose tube and tight tube buffers;

(v) Adhesion properties of the protective fiber coating;

(vi) Dielectric strength between the armor and the metallic central member;

(vii) Performance requirements for the inner and outer jacketing materials;

(viii) Performance requirements for the filling and flooding compounds;

(ix) Bonding properties of the coated armoring material;

(x) Sequential marking and lettering;

(xi) Cable bend and cable impact tests;

(xii) Water penetration and compound flow tests;

(xiii) Cable twist, cable flex, and cable compression tests; and

(xiv) Performance requirements of support messenger.

(t) *Records of optical and physical tests.* (1) Each manufacturer must maintain suitable summary records for a period of at least 3 years of all optical and physical tests required on completed cable by this section as set forth in paragraphs (s)(5) and (s)(6) of this section. The test data for a particular reel must be in a form that it may be readily available to REA upon request. The optical data must be furnished to the purchaser on a suitable and easily readable form.

(2) Measurements and computed values must be rounded off to the number of places or figures specified for the requirement according to ASTM E 29–90.

(u) *Manufacturing irregularities.* (1) Repairs to the armor, when present, are not permitted in cable supplied to end users under this section.

(2) Minor defects in the inner and outer jacket (defects having a dimension of 3 millimeter or less in any direction) may be repaired by means of heat fusing in accordance with good commercial practices utilizing sheath grade compounds.

(3) Buffer tube repair is permitted only in conjunction with fiber splicing.

(v) *Packaging and preparation for shipment.* (1) The cable must be shipped on reels. The diameter of the drum must be large enough to prevent damage to the cable from reeling and unreeling. The reels must be substantial and so constructed as to prevent damage during shipment and handling.

(2) A circumferential thermal wrap or other means of protection complying with the requirements of appendix B of this section must be secured between the outer edges of the reel flange to protect the cable against damage during storage and shipment.

(3) Cable manufactured to the requirements of this section must be sealed at the ends to prevent entrance of moisture. The method of sealing must be accepted by REA prior to its use.

(4) The end-of-pull (outer end) of the cable must be securely fastened to prevent the cable from coming loose during transit. The start-of-pull (inner

end) of the cable must project through a slot in the flange of the reel, around an inner riser, or into a recess on the reel flange near the drum and fastened in such a way to prevent the cable from becoming loose during installation.

(5) Spikes, staples or other fastening devices must be used in a manner which will not result in penetration of the cable.

(6) The arbor hole must admit a spindle 63.5 millimeters in diameter without binding. Steel arbor hole liners may be used but must be accepted by REA prior to their use.

(7) Each reel must be plainly marked to indicate the direction in which it should be rolled to prevent loosening of the cable on the reel.

(8) Each reel must be stenciled or lettered with the name of the manufacturer.

(9) The following information must be either stenciled on the reel or on a tag firmly attached to the reel:

OPTICAL CABLE
Number of Fibers
Armored or Nonarmored
Year of Manufacture
Name of Cable Manufacturer
Length of Cable
Reel Number
REA 7 CFR 1755.900

Example:

OPTICAL CABLE
4 fiber
Armored
1988
XYZ Company
1050 meters
Reel Number 3
REA 7 CFR 1755.900

(10) When preconnecterized cable is shipped, the splicing modules must be protected to prevent damage during shipment and handling. The protection method must be accepted by REA prior to its use.

(The information and recordkeeping requirements of this section have been approved by the Office of Management and Budget (OMB) under the control number 0572–0077.)

Appendix A to 7 CFR 1755.900—Qualification Tests Methods

(I) The test procedures described in this appendix are for qualification of initial cable designs and major modifications of accepted designs. Included in (V) of this appendix are suggested formats that may be used in submitting test results to REA.

(II) *Sample selection and preparation.* (1) All testing must be performed on lengths removed sequentially from any of the same cables listed below. The cables must not have been exposed to temperatures in excess of 38°C since their initial cool downs after sheathing. The lengths specified are minimum lengths and if desirable from a laboratory testing standpoint longer lengths may be used:

(a) 12 single mode fiber jacketed cable consisting of six single mode dispersion-unshifted fibers and six single mode dispersion-shifted fibers.

(b) 12 multimode fiber jacketed cable consisting of six 50/125 micrometer multimode fibers and six 62.5/125 micrometer multimode fibers.

(c) 24 fiber jacketed combination cable consisting of six single mode dispersion-unshifted fibers; six single mode dispersion-shifted fibers; six 50/125 micrometer multimode fibers; and six 62.5/125 micrometer multimode fibers.

(2) Length A shall be a minimum of 500 meters long. Coil the sample with a diameter of 15 to 20 times its sheath diameter. Three lengths are required if only requesting acceptance for either single mode fiber cable (a), multimode fiber cable (b), or using the combination fiber cable (c). Six lengths, 3 lengths of single mode fiber cable (a), and 3 lengths of multimode fiber cable (b), are required if requesting acceptance for both single mode and multimode fiber cables.

(3) Length B shall be one meter long. Four lengths of either single mode fiber cable (a), multimode fiber cable (b) or the combination fiber cable (c) are required.

(4) Length C shall be 600 millimeters long. Four lengths of either single mode fiber cable (a), multimode fiber cable (b) or the combination fiber cable (c) are required.

(5) *Data reference temperature.* Unless otherwise specified, all measurement shall be made at 23 ± 5°C.

(III) *Environmental tests*—(1) *Heat Aging Test*—(a) *Test Samples.* Place one or two samples of length A and one sample each of lengths B and C in an oven or environmental chamber. The ends of sample A must exit from the chamber or oven for optical tests. Securely seal the oven exit holes.

(b) *Sequence of tests.* After conditioning the samples are to be subjected to the following tests:

(i) Water Penetration Test outlined in (III)(2) of this appendix; and

(ii) Jacket Slip Strength Test outlined in (III)(3) of this appendix. (For Flooded Designs Only)

(c) *Initial measurements.* (i) For sample(s) A measure the attenuation for the single mode dispersion-unshifted fibers at 1310 and 1550 nanometers, for single mode dispersion-shifted fibers at 1550 nanometers and/or for multimode fibers at 1300 nanometers at a temperature of 23 ± 5°C. Also measure the bandwidth of the multimode fibers. Calculate the attenuation data on a per kilometer basis. Calculate the bandwidth data on a megahertz-kilometer (MHz-km) basis.

(ii) Record on suggested formats in (V) of this appendix or on other easily readable formats.

(d) *Heat conditioning.* (i) Immediately after completing the initial measurements, condition the sample(s) for 14 days at a temperature of 65 ± 2°C.

(ii) At the end of this period note any exudation of cable filler. Measure the parameters given in (III)(1)(c) of this appendix. Record on suggested formats in (V) of this appendix or on other easily readable formats.

(e) *Overall optical deviation.* (i) Calculate the change in all parameters between the final parameters after conditioning with initial parameters in (III)(1)(c) of this appendix.

(ii) The stability of the optical parameters after completion of this test must be within the following prescribed limits:

(A) *Attenuation.* The attenuation of each multimode fiber must not change by more than 0.3 db/km and the attenuation of each single mode fiber must not change by more than 0.1 dB/km.

(B) *Bandwidth.* The bandwidth of each multimode fiber must not change by more than 15 percent from their original values.

(2) *Water penetration testing.* (a) A watertight closure must be placed over the jacket of length B from (III)(1)(a) of this appendix. The closure must not be placed over the jacket so tightly that the flow of water through pre-existing voids or air spaces is restricted. The other end of the sample must remain open.

(b) Test per Option A or Option B. (i) *Option A.* Weigh the sample and closure prior to testing. Fill the closure with water and place under a continuous pressure of 10 ± 0.7 kilopascals for one hour. Collect the water leakage from the end of the test sample during the test and weigh to the nearest 0.1 gram. Immediately after the one hour test, seal the ends of the cable with a thin layer of grease and remove all visible water from the closure, being careful not to remove water that penetrated into the core during the test. Reweigh the sample and determine the weight of water that penetrated into the core.

(ii) *Option B.* Fill the closure with a 0.2 gram sodium fluorscein per liter water solution and apply a continuous pressure of 10 ± 0.7 kilopascals for one hour. Catch and weigh any water that leaks from the end of the cable during the one hour period. If no water leaks from the sample, carefully remove the water from the closure. Then carefully remove the outer jacket, armor, if present, inner jacket, if present, and core wrap one at a time, examining with an ultraviolet light source for water penetration. After removal of the core wrap, carefully dissect the core and examine for water penetration within the core. Where water penetration is observed, measure the penetration distance.

(3) *Jacket slip strength test* (For Flooded Design Only)—(a) *Sample Selection.* Test sample C from (III)(1)(a) of this appendix.

(b) *Sample preparation.* Prepare test sample in accordance with the procedures specified in ASTM D 4565–90a.

(c) *Sample conditioning and testing.* Remove the sample from the tensile tester prior to testing and condition for one hour at 50 ± 2°C. Test immediately in accordance with the procedures specified in ASTM D 4565–90a. A minimum jacket slip strength of 67 newtons is required. Record the load attained on the suggested formats in (V) of this appendix or on other easily readable formats.

(4) *Temperature and humidity exposure.* (a) Repeat steps (III)(1)(a) through (III)(1)(c)(ii) of this appendix for separate set of samples A, B, and C which have not been subjected to prior environmental conditioning.

(b) Immediately after completing the measurements, expose the test sample to 100

temperature cyclings. Relative humidity within the chamber shall be maintained at 90 ± 2 percent. One cycle consists of beginning at a stabilized chamber and test sample temperature of 52 ± 2°C, increasing the temperature to 57 ± 2°C, allowing the chamber and test samples to stabilize at this level, then dropping the temperature back to 52 ± 2°C.

(c) Repeat steps (III)(1)(d)(ii) through (III)(3)(c) of this appendix.

(5) *Temperature cycling.* (a) Repeat steps (III)(1)(a) through (III)(1)(c)(ii) of this appendix for separate set of samples A, B, and C which have not been subjected to prior environmental conditioning.

(b) Immediately after completing the measurements, subject the test sample to 10 cycles of temperature between −40°C and +60°C. The test sample must be held at each temperature extreme for a minimum of 1.5 hours during each cycle of temperature. The air within the temperature cycling chamber must be circulated throughout the duration of the cycling.

(c) Repeat steps (III)(1)(d)(ii) through (III)(3)(c) of this appendix.

(IV) *Control sample*—(a) *Test samples.* A separate set of lengths B and C must have been maintained at 23 ± 5°C for at least 48 hours before the testing.

(b) Repeat steps (III)(2) through (III)(3)(c) of this appendix for these samples.

(V) The following suggested formats may be used in submitting the test results to REA:

HEAT AGING TEST—SINGLE MODE CABLE

Fiber No.	Attenuation—1310 nm dB/km			Attenuation—1550 nm dB/km		
	Initial	Final	Change	Initial	Final	Change
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						

HEAT AGING TEST—MULTIMODE CABLE

Fiber No.	Attenuation—1300 nm dB/km			Bandwidth MHz-km		
	Initial	Final	Change	Initial	Final	Change(%)
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						

HEAT AGING TEST—COMBINATION CABLE

Fiber No.	Attenuation—1310 nm			Attenuation—1550 nm			Bandwidth		
	dB/km			dB/km			MHz-km		
	Initial	Final	Change	Initial	Final	Change	Initial	Final	Change(%)
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									
24									

TEMPERATURE/HUMIDITY TEST—SINGLE MODE CABLE

Fiber No.	Attenuation—1310 nm			Attenuation—1550 nm		
	dB/km			dB/km		
	Initial	Final	Change	Initial	Final	Change
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						

TEMPERATURE/HUMIDITY TEST—MULTIMODE CABLE

Fiber No.	Attenuation—1300 nm			Bandwidth		
	dB/km			MHz-km		
	Initial	Final	Change	Initial	Final	Change(%)
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						

TEMPERATURE/HUMIDITY TEST—COMBINATION CABLE

Fiber No.	Attenuation—1310 nm			Attenuation—1550 nm			Bandwidth		
	dB/km			dB/km			MHz-km		
	Initial	Final	Change	Initial	Final	Change	Initial	Final	Change(%)
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									
24									

TEMPERATURE CYCLING TEST—SINGLE MODE CABLE

Fiber No.	Attenuation—1310 nm			Attenuation—1550 nm		
	dB/km			dB/km		
	Initial	Final	Change	Initial	Final	Change
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						

TEMPERATURE CYCLING TEST—MULTIMODE CABLE

Fiber No.	Attenuation—1300 nm			Bandwidth		
	dB/km			MHz-km		
	Initial	Final	Change	Initial	Final	Change(%)
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						

TEMPERATURE CYCLING TEST COMBINATION CABLE

Fiber No.	Attenuation—1310 nm dB/km			Attenuation—1550 nm dB/km			Bandwidth MHz-km		
	Initial	Final	Change	Initial	Final	Change	Initial	Final	Change(%)
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
23									
24									

WATER PENETRATION TEST

	Option A		Option B	
	End Leakage grams	Weight Gain grams	End Leakage grams	Penetration millimeters
Control				
Heat Age				
Humidity Exposure				
Temperature Cycling				

JACKET SLIP STRENGTH @ 50°C

	Load in Newtons
Control	
Heat Age	
Humidity Exposure	
Temperature Cycling	

FILLER EXUDATION (GRAMS)

Heat Age	
Humidity Exposure	
Temperature Cycle	

Appendix B to 7 CFR 1755.900—Thermal Reel Wrap Qualification

(I) The test procedures described in this appendix are only for qualification of initial and subsequent changes in thermal reel wraps.

(II) *Sample Selection.* All testing must be performed on two 450 millimeter lengths of cable removed sequentially from the same fiber jacketed cable. This cable must not have been exposed to temperatures in excess of 38°C since its initial cool down after sheathing.

(III) *Test Procedure.* (1) Place the two samples on an insulating material such as wood.

(2) Tape thermocouples to the jackets of each sample to measure the jacket temperature.

(3) Cover one sample with the thermal reel wrap.

(4) Expose the samples to a radiant heat source capable of heating the uncovered jacket sample to a minimum of 71°C. A GE 600 watt photoflood lamp or an equivalent lamp having the light spectrum approximately that of the sun shall be used.

(5) The height of the lamp above the jacket shall be 380 millimeters or an equivalent height that produces the 71°C jacket temperature on the unwrapped sample shall be used.

(6) After the samples have stabilized at the temperature, the jacket temperatures of the samples shall be recorded after one hour of exposure to the heat source.

(7) Compute the temperature difference between jackets.

(8) For the thermal reel wrap to be acceptable to REA, the temperature difference between the jacket with the thermal reel wrap and the jacket without the reel wrap shall be greater than or equal to 17°C.

Dated: August 7, 1993.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc 93–19995 Filed 8–31–93; 8:45 am]

BILLING CODE 3410–15–F

7 CFR Part 1755

Specification for Outside Plant Housings and Serving Area Interface Systems

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend its regulations on Telecommunications Standards and Specifications for Materials, Equipment and Construction, by codifying the REA Specification for Outside Plant Housings and Serving Area Interface Systems. The new specifcation informs manufacturers and users of outside plant housings and serving area interface systems of the engineering and technical requirements that are considered necessary for satisfactory performance in outside plant environments.

DATES: Comments concerning this proposed rule must be received by REA or postmarked no later than October 1, 1993.

ADDRESSES: Comments should be mailed to the Director,

Telecommunications Standards Division, Rural Electrification Administration, room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. REA requests an original and three copies of all comments (7 CFR part 1700). All comments received will be made available for public inspection at room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500 between 8 a.m. and 4 p.m. (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Garnett G. Adams, Chief, Outside Plant Branch, Telecommunications Standards Division, Rural Electrification Administration, room 2844, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 720–0667.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

Regulatory Flexibility Act Certification

The Administrator of REA has determined that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. *et seq.*). This proposed rule involves standards and specifications, which may increase the direct short-term costs to the REA borrower. However, the long-term direct economic costs are reduced through greater durability and lower maintenance cost over time.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of that Act, information collection and recordkeeping requirements contained in this proposed rule have been approved by OMB under control number 0572–0077 which expires on January 31, 1994. Comments concerning these requirements should be directed to the office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator of REA, has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.851, Rural Telephone Loans and Loan Guarantees, and No. 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation that requires intergovernmental consultation with state and local officials. A Notice of Final rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees, and RTB bank loans, to governmental and nongovernmental entities from coverage under this Order.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this proposed rule will not:

(1) Preempt any State or local laws, regulations, or policies;

(2) Have any retroactive effect; and

(3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Background

REA issues publications titled "Bulletin" which serve to guide borrowers regarding already codified policy, procedures, and requirements needed to manage loans, loan guarantee programs, and the security instruments which provide for and secure REA financing. REA issues standards and specifications for the construction of telephone facilities financed with REA loan funds. REA has rescinded REA Bulletin 345–26, REA Specification for Buried Plant Housings, PE-35, dated July 23, 1976, and REA Bulletin 345–77, REA Specification for Serving Area Interface Housings, PE-79, dated January 24, 1978. REA proposes to incorporate and update the information previously contained in those bulletins in 7 CFR 1755.910, REA Specification for Outside Plant Housings and Serving Area Interface Systems.

The specification contains mechanical, electrical, and environmental requirements, desired design features, and test methods for evaluation of outside plant housings and serving area interface systems.

The test procedures described in the specification are required to demonstrate the functional reliability of outside plant housings and serving area interface systems. The test procedures satisfy the requirements of housings as well as the requirements of terminals that may be installed within housings.

Outside plant housings are fabricated of either metallic or nonmetallic materials in different sizes and configurations to suit a variety of applications. The purpose of a housing is to protect its contents from environmental elements, rodents, insects, or vandalism and unauthorized access. Outside plant housings accommodate cable splices, bonding and grounding connections, cable terminals, cross-connect facilities, load coils, and optical and electronic equipment.

Serving area interface systems serve as the connecting terminal between feeder cable and distribution cables.

A significant requirement of the 7 CFR 1755.910 involves the changing of the bonding and grounding system of outside plant housings from a 14 gauge system to a 6 gauge system. The change to the 6 gauge bonding and grounding system in the housings will help to assure that REA housings will be manufactured in compliance with recognized industry safety standards that are considered critical to the protection of outside plant telephone equipment, craft personnel, and the public.

List of Subjects in 7 CFR Part 1755

Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For reasons set out in the preamble, REA proposes to amend chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. Section 1755.910 is added as follows:

§ 1755.910. REA specification for outside plant housings and serving area interface systems.

(a) *Scope.* (1) The purpose of this specification is to inform manufacturers and users of outside plant housings and serving area interface (SAI) systems of the engineering and technical requirements that are considered necessary for satisfactory performance in outside plant environments. Included are the mechanical, electrical, and environmental requirements, desired design features, and test methods for evaluation of the product.

(2) The housing and terminal requirements reflect the best engineering judgment available at the present time and may be subject to change due to advances in technology, economic conditions, or other factors.

(3) The test procedures described in this section are required by REA to demonstrate the functional reliability of the product. However, other standard or unique test procedures may serve the same function. In such cases, REA shall evaluate the test procedures and results on an individual basis.

(4) The test procedures specified herein satisfy the requirements of housings as well as the requirements of terminals that may be installed within housings. Some of the requirements are interrelated to several tests designed to determine the performance aspects of terminals and are directly affected by testing required for housings. Therefore, the manufacturer should carefully review all the test requirements in order to develop a testing schedule that is comprehensive, efficient in terms of the number of test specimens required and can be accomplished in an orderly and logical sequence.

(5) The specified tests may require special facilities to comply with Federal, State, or local regulatory requirements. Some test procedures are potentially hazardous to personnel because of the high voltages and mechanical forces involved. Safety precautions are necessary to prevent injury.

(6) Underwriters Laboratories, Inc. (UL) 94, Tests for Flammability of Plastic Materials for Parts in Devices and Appliances, dated June 18, 1991, referenced in this section is incorporated by reference by REA. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the UL standard is available for inspection during normal business hours at REA, room 2845, U.S. Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from UL Inc., 333 Pfingsten Road, Northbrook, Illinois 60062–2096, telephone number (708) 272–8800. [Note: The incorporation by reference and availability of inspection copies are pending approval by the Office of the Federal Register.]

(7) The American Society for Testing and Materials Specifications (ASTM) A 109–91, Standard Specification for Steel, Strip, Carbon, Cold-Rolled; ASTM A 153–82(1987), Standard Specification for Zinc Coating (Hot-Dip) on Iron and Steel Hardware; ASTM A 366/A 366M–91, Standard Specification for Steel, Sheet, Carbon, Cold-Rolled, Commercial Quality; ASTM A 525–91b, Standard Specification for General Requirements for Steel Sheet, Zinc-Coated (Galvanized) by the Hot-Dip Process; ASTM A 526/A 526M-90, Standard Specification for Steel Sheet, Zinc-Coated (Galvanized) by the Hot-Dip Process, Commercial Quality; ASTM A 569/A 569M-91a, Standard Specification for Steel, Carbon (0.15 Maximum Percent), Hot-Rolled Sheet and Strip Commercial Quality; ASTM A 621/A 621M-92, Standard Specification for Steel, Sheet and Strip, Carbon, Hot-Rolled, Drawing Quality; ASTM B 117–90, Standard Test Method of Salt Spray (Fog) Testing; ASTM B 539–90, Standard Test Methods for Measuring Contact Resistance of Electrical Connections (Static Contacts); ASTM B 633–85, Standard Specification for Electrodeposited Coatings of Zinc on Iron and Steel; ASTM D 523–89, Standard Test Method for Specular Gloss; ASTM D 610–85(1989), Standard Test Method for Evaluating Degree of Rusting on Painted Steel Surfaces; ASTM D 822–89, Standard Practice for Conducting Tests on Paint and Related Coatings and Materials using Filtered Open-Flame Carbon-Arc Light and Water Exposure Apparatus; ASTM D 1535–89, Standard Test Method for Specifying Color by the Munsell System; ASTM D 1654–92, Standard Test Method for Evaluation of Painted or Coated Specimens Subjected to Corrosive Environments; ASTM D 1693–70(1988), Standard Test Method for Environmental Stress-Cracking of Ethylene Plastics; ASTM D 2197–86(1991), Standard Test Method for Adhesion of Organic Coatings by Scrape Adhesion; ASTM D 2247–92, Standard Practice for Testing Water Resistance of Coatings in 100% Relative Humidity; ASTM D 2565–92, Standard Practice for Operating Xenon Arc-Type Light-Exposure Apparatus With and Without Water for Exposure of Plastics; ASTM D 2794–92, Standard Test Method for Resistance of Organic Coatings to the Effects of Rapid Deformation (Impact); ASTM D 3928–89, Standard Test Method for Evaluation of Gloss or Sheen Uniformity; ASTM D 4568–86, Standard Test Methods for Evaluating Compatibility Between Cable Filling and Flooding Compounds and Polyolefin Cable Materials; ASTM G 21–90, Standard Practice for Determining Resistance of Synthetic Polymeric Materials to Fungi; and ASTM G 23–90, Standard Practice for Operating Light-Exposure Apparatus (Carbon-Arc Type) With and Without Water for Exposure of Nonmetallic Materials, referenced in this section are incorporated by reference by reference by REA. These incorporations by references were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 7 CFR part 51. Copies of the ASTM standards are available for inspection during normal business hours at REA, room 2845, U.S Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103–1187, telephone number (215) 299–5585. [Note: The incorporation by reference and availability of inspection copies are pending approval by the Office of the Federal Register.]

(b) *General information.* (1) Outside plant housings are fabricated of either metallic or nonmetallic materials in different sizes and configurations to suit a variety of applications. The purpose of a housing is to protect its contents from environmental elements, rodents, insects, or vandalism and unauthorized access. Housings are designed with internal brackets for accommodating splicing, bonding and grounding connections, cable terminals, cross-connect facilities, load coils, and optical and electronic equipment.

(2) Pedestals are housings primarily intended to house, organize, and protect cable terminations incorporating terminal blocks, splice connectors and modules, ground lugs and load coils. Activities typically performed in a pedestal are cable splicing, shield bonding and grounding, inductive loading, and connection of subscriber drops.

(3) Serving area interface (SAI) cabinets are housings intended to perform some of the same functions as pedestals but are primarily intended to serve as the connecting terminal

between feeder cable and distribution cables.

(4) Outside plant housings shall be manufactured in accordance with National Electrical Code (NEC) requirements, Underwriters' Laboratories (UL) requirements, Department of Labor, Occupational Safety and Health Administration Standards (OSHA), and all other applicable Federal, State, and local requirements including, but not limited to, statutes, rules, regulations, orders, or ordinances otherwise imposed by law.

(c) *General documentation requirements*—(1) *Installation and maintenance instructions.* (i) Each product shall have available a set of instructions designed to provide sufficient information for the successful installation of the housing, cables, auxiliary equipment, and the associated splice preparation. The instructions shall be of sufficient size to be easily read and shall be printed using waterproof ink. Pedestal instruction sheets shall include a list of miscellaneous replacement parts that may be purchased locally. SAI systems shall be supplied with complete instructions for installation and use.

(ii) When requested by REA, or an REA borrower, the manufacturer shall prepare a training package for the purpose of training technicians in the use and installation of the product and its auxiliary equipment.

(iii) The manufacturer shall provide ordering information for repair parts. Repair parts shall be obtainable through a local distributor or shall be easily obtainable. Information describing equivalent parts and their sources should be provided for those parts that may also be obtained from other sources.

(2) *Quality assurance.* The manufacturer shall demonstrate the existence of an ongoing quality assurance program that includes controls, procedures, and standards used for vendor certification, source inspection, incoming inspection, manufacture in process testing, calibration and maintenance of tools and test equipment, final product inspection and testing, periodic qualification testing and control of nonconforming materials and products. The manufacturer shall maintain quality assurance records for five years.

(3) *REA acceptance applications.* (i) The tests described in this specification are required for acceptance of product designs and major modifications of accepted designs. All modifications shall be considered major unless otherwise declared by REA. The tests are intended to show the inherent capability of the manufacturer to produce products which have an expected service life of 30 years.

(ii) For initial acceptance the manufacturer shall:

(A) Submit an original signature certification that the product complies with each section of the specification;

(B) Provide qualification test data;

(C) Provide OSHA Material Safety Data Sheets for the product;

(D) Provide a detailed explanation concerning the intended use and capacity of the product;

(E) Provide a complete set of instructions, recommendations for equipment organization and splicing;

(F) Agree to periodic plant inspections;

(G) Provide a certification that the product does or does not comply with the domestic-origin manufacturing provisions of the "Buy American" requirements of the Rural Electrification Act of 1938 (7 U.S.C. 901 *et seq.*);

(H) Provide user testimonials concerning field performance of the product;

(I) Provide product samples if requested by REA; and

(J) Provide any other data required by the Chief, Outside Plant Branch (Telephone).

(iii) Each requirement of this section must be addressed in submissions for acceptance. The designation N/A may be entered when the requirements do not apply.

(iv) Acceptance requests should be addressed to:

Chairman, Technical Standards Committee "A" (Telephone), Telecommunications Standards Division, Rural Electrification Administration, Washington, DC 20250–1500.

(d) *Functional design criteria for housings*—(1) *General requirements.* (i) The functional requirements for housings concern materials, finishes, environmental factors, and design features that are applicable to most above ground housings used in the outside plant.

(ii) Housings shall be of sufficient size to permit easily managed installation, operational, testing, and maintenance operations. The general shape of outside plant housings is usually comparable to that of a rectangular column or cylinder, with the shape of any particular housing being left to the manufacturer's discretion. Each design is subject to acceptance by REA.

(2) *Housing types and capacities.* (i) Housings used in outside plant are either the smaller housings generally known as pedestals or larger housings known as equipment or splice cabinets. Both categories may have designs intended for stake mounting, pole mounting, or pad mounting.

(ii) The classifications of pedestals are the general purpose channel Type (H) and the dome Type (M). The Type H pedestal has either front only access or back and front access while the Type M pedestal has top only access. Pedestals are further designated as follows:

Stake Mounted	Type	Pole Mounted	Pole Mounted (Extra High)
BD3	H	BD3A	-
BD4	H	BD4A	-
BD5	H	BD5A	-
BD7	H	BD7A	-
BD14	M	BD14A	BD14AG
BD15	M	BD15A	BD15AG
BD16	M	BD16A	BD16AG

(iii) The minimum volume associated with the pedestal designations shall be as shown in the following table:

Pedestal Housing Designation(1)	Minimum Volume	
	Cubic Centimeters	(Cubic Inches)
	cm^3	($in.^3$)
BD3, BD3A(2)	9,000	(550)
BD4, BD4A(2)	15,000	(900)
BD5, BD5A(2)	35,000	(2,100)
BD7(2)	72,000	(4,400)
BD14, BD14A, BD14AG(3).	9,000	(550)
BD15, BD15A, BD15AG(3).	27,000	(1,600)
BD16, BD16A, BD16AG(3).	38,000	(2,300)

Note (1): Housings designed for unique purposes will be evaluated on a case-by-case basis.

Note (2): For Type H pedestals, the minimum volume is that space as measured 5 centimeters (cm) (2 inches (in.)) below the top of the housing to a point 40 cm (16 in.) above the bottom of the lower cover plate.

Note (3): The minimum volume of the Type M pedestals shall be the space within the dome measured from the lower edge of the dome to a point 5 cm (2 in.) from the top.

(iv) Equipment cabinets intended for use as serving area interface housings shall be assigned size designations according to their maximum pair termination capacities. The capacity will vary depending on the type of terminating equipment used. Serving area interface cabinets shall be suffix designated with an "A" for pole mounting, "X" for pad mounting, and "S" for stake mounting.

(v) Large pair count splice cabinets are classified according to their splice capacity. Approximately 48 cm^3 (3.0 $in.^3$) of splice area per pair straight spliced shall be permitted.

(vi) The minimum volume associated with large pair count splice cabinets shall be as shown in the following table:

Splice Cabinet Designation(1)	Minimum Volume (cm.³) (in.³)	Maximum Splice Capacity (Pairs)
BD6000	295,000 (18,000).	6,000
BD8000	393,000 (24,000).	8,000
BD10000	491,000 (30,000).	10,000

Note (1): Additional sizes of splice cabinets shall be considered by REA on a case-by-case basis.

(3) *Design and fabrication requirements for housings.* (i) Type H pedestal housings may consist of an enclosed channel incorporating an integrally mounted stake that serves as a backplate, or they may be designed for universal mounting on stakes or poles. The body of the housing shall have two major components; an upper cover and a base cover. The upper cover shall have a top, front and back plate with the front cover removable to permit entry and provide increased work space. The base cover shall consist of a front plate and back plate. The base cover back plate may be an extension of the upper back plate cover.

(ii) Type M pedestal housings shall consist of a one piece upper sleeve designed to fit over the base cover trapping air to prohibit water from entering the splice area when installed in locations prone to temporary flooding. Pedestals designed to be mounted extra high on poles for locations susceptible to deep snow shall have a bottom close-off option available to prohibit the ingress of birds, rodents and insects.

(iii) The external housing components on all outside plant housings shall provide reasonable protection against accidental removal or vandalism. Housings shall be equipped with a cover plate retaining bolt and cup washer that may be opened only with an industry accepted socket type can wrench. Housings may be equipped with provisions to allow the purchaser to install a padlock.

(iv) Installed housings shall resist the disassembling force of frost heaving applied to the bottom of ground line cover plates. The base cover must remain stationary to stabilize the contents of the housing cavity.

(v) In an effort to provide protection against dust penetration, blowing snow, rain, and ultraviolet light degradation of internal components, all mechanical gaps shall be restricted. The use of seals, overlaps, gaskets, and dovetailing is required to assure satisfactory protection of housed equipment.

(vi) Knockouts, cutouts, or notches designed to accommodate aerial service drops shall not be permitted. A design option for housings intended to accommodate service drops shall include a separate channel or equivalent in the base cover to allow future additions of service drops without the removal of gravel or the moisture barrier in the base of the housing. Service wire channels must be designed to prevent the entry of birds, reptiles, rodents and insects.

(vii) Minimal venting of housings may be necessary to relieve internal pressure and condensation.

(viii) There shall be no aluminum housing components that will become buried in the soil when the housing is properly installed.

(ix) Housing components may be assembled using rivets, welds, glue, bolts and nuts, or other techniques suitable for the materials involved.

(x) Housings and their components that require field assembly must be capable of being assembled with tools normally available to outside plant technicians.

(xi) Hinged doors on SAI housings and large pair count splice housings shall be equipped with a device that restrains the doors in the open position.

(xii) Outside plant housings shall be free of sharp edges, burrs, etc., that could present a safety hazard to personnel involved in installation and use of the product or to the general public. Surfaces inside housings must not allow pinching of conductors during installation of cover plates or the opening and closing of doors.

(xiii) A ground line mark shall be provided, approximately 15 cm (6 in.) below the top edge of the housing base cover plate on housings intended for ground level mounting. Base cover plates shall have be a minimum height of 31 cm (12 in.).

(xiv) Any housing, which weighs in excess of 91 kilograms (kg) (200 pounds (lb)), including its contents, shall be equipped with lifting brackets for attaching hoisting cables or chains.

(xv) Housing stakes shall be a minimum of 107 cm (42 in.) in length. If fabricated from steel, they shall have a minimum thickness of No. 13 gauge as measured according to American Society for Testing and Materials (ASTM) A 525–91b. Stakes shall be formed into a "U" channel with a minimum depth of 2 cm (0.75 in.). The stake shall be a single part of suitable design strength for driving 91 cm (36 in.) into the soil with hand tools without damage such as bending or warping. The stake shall have adequate mounting holes having a minimum separation of 15 cm (6 in.) for mounting the housing baseplate. The stake material must resist corrosion and deterioration when exposed to soil and atmospheric conditions.

(xvi) The housing design must permit a logical progression of installation steps that would normally be encountered in typical field installations.

(xvii) Provisions for attaching housings to stakes, poles, walls, other housings, or pads shall be provided for each design intended for those purposes. Locations of holes for mounting attachments may be provided by knockouts on above ground components. Mounting hole locations for below ground components may be predrilled.

(xviii) Pole mounting hardware shall provide at least 1.3 cm (0.5 in.) clearance from the pole to the housing. Pole mounting brackets shall accommodate the wide range of pole sizes used in the telephone industry.

(xix) Pad mounted housings shall have hardware available for anchoring the housing base to the pad. A template may be provided to assist in the location of mounting attachment details for pad preparation.

(xx) Housings equipped with stub cables shall have strain relief devices to permit shipping and handling of the housing without damage to the housing or stub cables. Only REA accepted cable shall be used for stub cables. The cable manufacturer's recommendations concerning minimum bend radius shall be observed. The minimum bend radius for most copper cables is 10 times the cable diameter.

(xxi) Cable supports shall be provided near the top of the ground line cover and other appropriate locations within the housing to provide cable stability consistent with the intended use and capacity of the housing. Cable supports shall be capable of holding a minimum load of 23 kg (50 lb).

(xxii) An adequate supply of nonmetallic retainer clips or tie wraps capable of supporting a minimum load of 23 kg (50 lb) shall be provided with the housing. Adequate spaces for installation of the clips or tie wraps must be provided on the housing backplate and cable supports.

(xxiii) Housing chambers designed for splicing operations shall be equipped with insulated supporting straps or rods suitable for supporting splice bundles. The insulation on the straps or rods shall extend for the entire length of the device and shall have a dielectric strength of 15 kilovolts (kv) direct

current (dc) minimum. Housings having an "H" frame design where both front and rear covers may be removed may incorporate insulated tie bars to be used as cable supports.

(xxiv) Housings designed to contain equipment in addition to splices shall be equipped with a device for physically separating the splice area from the service area of the housing.

(xxv) A dielectric shield rated at 15 kv dc shall be provided to enclose the cable splice area. The shield shall extend from the lower cable supports to within 2.5 cm (1 in.) of the top of the housing. The shield shall be equipped with Velcro or equivalent fastening devices designed to hold the shield in both the open or closed positions. The fastening devices shall extend along the entire vertical edge of the dielectric shield.

(xxvi) Mounting arrangements for a variety of terminal blocks and other equipment shall be provided by means of good housekeeping panels or other devices that may enhance the service aspect of the housing.

(xxvii) Housings designed for serving area interface cabinets may be shipped with terminal blocks installed and stub cables attached. If this option is exercised, the stub cables and terminal blocks must be REA accepted. In all cases, SAI cabinets must be equipped with appropriate mounting devices for installing the peripheral equipment required for a serving area interface.

(xxviii) Serving area interface cabinets shall be designed to provide physical separation between the splicing area and the area provided for running cross-connect jumpers.

(xxix) Serving area interface cabinets and large splice housings must have an external feature for attaching a padlock to prevent unauthorized entry.

(xxx) Each housing shall have a tinned or zinc electroplated copper alloy or equivalent connector plate or bar to be used for terminating ground and cable shield bond connections. The device shall be equipped with captive studs and nuts with captive lock washers designed for attaching 6 American Wire Gauge (AWG) copper bonding harness wire or braid and a 6 AWG copper ground wire. Connector plates shall be equipped with enough studs and nuts to provide individual connections equivalent to the maximum number of cable sheaths recommended for the housing. Housings shall incorporate design features that enable the field installation of at least one additional connector plate for service conditions that require numerous connections. A bonding and grounding system capable of providing support and strain relief for service wires shall be provided for housings intended for use as distribution points. The bonding system shall be designed to provide sheath continuity as cable and service wires are installed, and prior to any other operation being performed. The bonding arrangement shall provide electrical continuity between all bonds and the ground connector plate. The bonding and grounding arrangement shall permit the lifting of individual cable ground connections for testing and cable locating activities without jeopardizing the grounding potential of other cables that may enter the housing. The bonding and grounding system shall be capable of conducting ~~a current~~ of 1000 amperes for at least 20 seconds.

(4) *Warning sign.* (i) A buried cable warning sign shall be securely attached to the outside of each housing. The lettering information on the sign shall be permanent.

(ii) For pedestals, the sign shall be centered horizontally on the front cover and the top of the sign shall be not more than 10 cm (4 in.) from the top of the housing.

(iii) For serving area interface cabinets, the sign shall be centered horizontally and vertically on the door. If there are two doors, the sign shall be mounted on the left door.

(iv) Deviations from warning sign location requirements are permitted only for housing design constraints. Alternate sign locations will be considered by REA.

(v) The REA standard sign design is shown in Figure 1.

FIGURE 1

WARNING SIGN

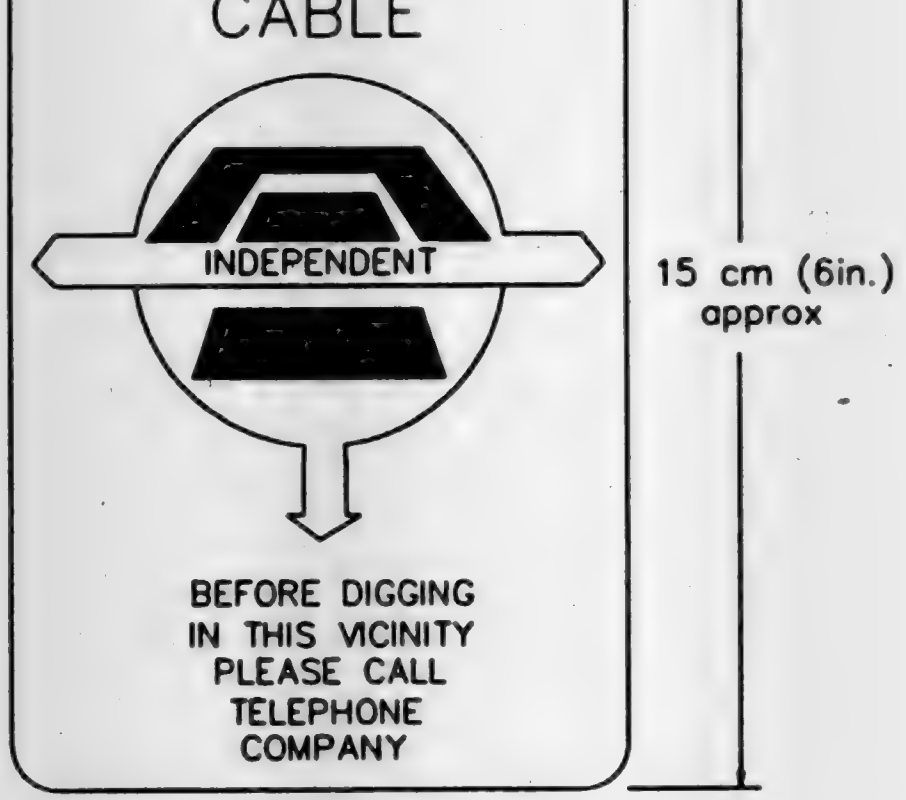

(5) *Housing materials.* (i) Materials used in housings shall present no environmental or safety hazard as defined by industry standards or Federal, State, or local laws and regulations.

(ii) All materials are required to have fire resistance ratings consistent with recognized industry standards. External materials must be flame resistant.

(iii) All materials used in the manufacture of housings or component parts must achieve the required strength properties, resist deterioration when exposed to outdoor conditions, and be acceptable to REA for the specific application. New materials or materials not familiar to the REA staff shall be supported by test and performance data which demonstrates their suitability for the intended use.

(iv) Nonmetallic housing materials shall have a fungus growth rating no greater than one according to ASTM G 21–90.

(v) Metallic components shall be either corrosion resistant or protected against corrosion and must not produce galvanic corrosion in wet or humid conditions on other metals that may be present in the housing environment.

(vi) Mill galvanized steel used in the manufacture of housings shall comply with the appropriate requirements of one of the following standards:

(A) ASTM A 109–91;
(B) ASTM A 366/A 366M–91;
(C) ASTM A 525–91b; or
(D) ASTM A 526/A 526M-90.

(vii) Hot rolled steel shall comply with the appropriate requirements of one of the following standards:

(A) ASTM A 569/A 569M-91a; or
(B) ASTM A 621/A 621M-91.

(viii) Cold rolled steel shall comply with the appropriate requirements of one of the following standards:

(A) ASTM A 109–91; or
(B) ASTM A 366/A 366M-91.

(ix) Steel parts used for internal housing brackets shall be hexavalent chromate coated or zinc plated in accordance with ASTM B 633–85.

(x) Hardware items used for assembling or fastening housing components shall be 300 series or passivated 400 series stainless steel or hot dip galvanized in accordance with ASTM A 153–82 (1987). Other materials will be considered by REA on an individual basis.

(xi) Aluminum components shall be fabricated from alloy types 5052 or 6061 or other types that have been recognized as having acceptable corrosion resistance and formability and weldability features.

(xii) Nonmetallic parts must be resistant to solvents and stress cracking and shall be compatible with metals and other materials such as conductor insulations and filling compounds used in the manufacture of cable. Plastic materials must be noncorrosive to metals and resist deterioration when exposed to industrial chemical pollutants, ultra-violet rays, road salts, cleaning agents, insecticides, fertilizers, or other detrimental elements normally encountered in the outdoor environment.

(xiii) Housing door seals and gaskets may be manufactured from rubber or synthetic rubber-like elastomer materials. Seals and gaskets shall exhibit a high degree of weatherability with an effective life of at least 30 years in the outdoor environment. The material shall be tear resistant and have a low compression set.

(6) *Housing finish requirements.* (i) All interior and exterior surfaces of housings shall be free from blisters, wrinkles, cracks, scratches, dents, heat marks, and other defects.

(ii) There shall be inherent design provisions to prevent objectionable deterioration of the housing such as rusting, exposure of fiber or delamination. Secondary protection, such as galvanizing over steel per ASTM A 526/A 526M-90 or anodizing over aluminum, shall be provided to ensure reliability over the projected 30 year design life of the housing.

(iii) Painted metal housings shall have a minimum gloss of 60 (60° specular) in accordance with ASTM D 523–89.

(iv) All painted surfaces shall have a uniform color and texture in accordance with ASTM D 3928–89. Nonmetallic housings shall meet recognized industry standards concerning optical appearance for gloss and haze as applicable for the material.

(v) The colors of housings that REA will consider for acceptance shall be as follows:

COLOR	STANDARD
Gray-Green	Munsell 6.5GY 6.03/1.6
Green	Munsell 8.8 G2.65/5.3
Orange	Federal Standard 595A Color Number 12246
	Munsell 0.15YR 5.26/13.15
Chocolate	Munsell 5.27YR 2.40/2.60 Color Number 835

(7) *Installation requirements.* (i) The design of the housing must provide for a logical and normal installation sequence, i.e., excavation, installation of a foundation or base and anchoring devices, addition of hardware, installation and bonding of cables, splicing, addition of service, and final closing.

(ii) No special tools or equipment other than that usually carried by outside plant technicians and construction crews must be required for installation of the housing. Security devices are the exception to this requirement.

(iii) Installation hardware shall maintain housings in an erect and stable position when subjected to normal storm loads. Pad mounted designs must accommodate precast or cast-in-place reinforced concrete or other suitable prefabricated material. Brackets, inserts for fastening, conduit openings, or other items necessary for a pad mounted installation must be provided. The manufacturer shall provide detailed drawings or a template for locating inserts, conduit openings, or slots for cast-in-place pad construction.

(e) *Performance criteria and test procedures for housings*—(1) *General information.* (i) The housing manufacturer shall perform adequate inspections and tests to demonstrate that housings and housing components comply with REA requirements.

(ii) Testing shall be performed at a room temperature of 24 ± 3°C (75 ± 5°F). Temperatures for testing performed at other than room temperature shall be determined as near the center of the product under test as practical.

(2) *Description of test housing.* (i) Each distinctly designed and configured family of housings intended to perform a particular function shall be tested.

(ii) The typical test sample shall consist of the exterior housing components such as covers, backplates, good housekeeping panels, cap assembly, anchor posts, decals, etc. Interior components must include the bonding and grounding hardware for cables and service wires and the dielectric shield. The housing may include terminal blocks or cross-connect modules, cable splices, or the typical outside plant equipment the housing is designed to contain and protect.

(3) *Environmental requirement for housings*—(i) *Thermal shock.* The test housing shall be placed in a test chamber and exposed to the temperature cycle of Figure 2 for five complete cycles. The step function nature of the temperature changes may be achieved by insertion and removal of the test housing from the chamber. The soak time at each temperature shall be four hours. The housing shall be removed from the test chamber at the conclusion of the five-cycle period. After the test housing temperature has stabilized to room temperature, the housing must be inspected for deterioration of materials and satisfactory operation of mechanical functions.

FIGURE 2
THERMAL SHOCK TEMPERATURE CYCLE

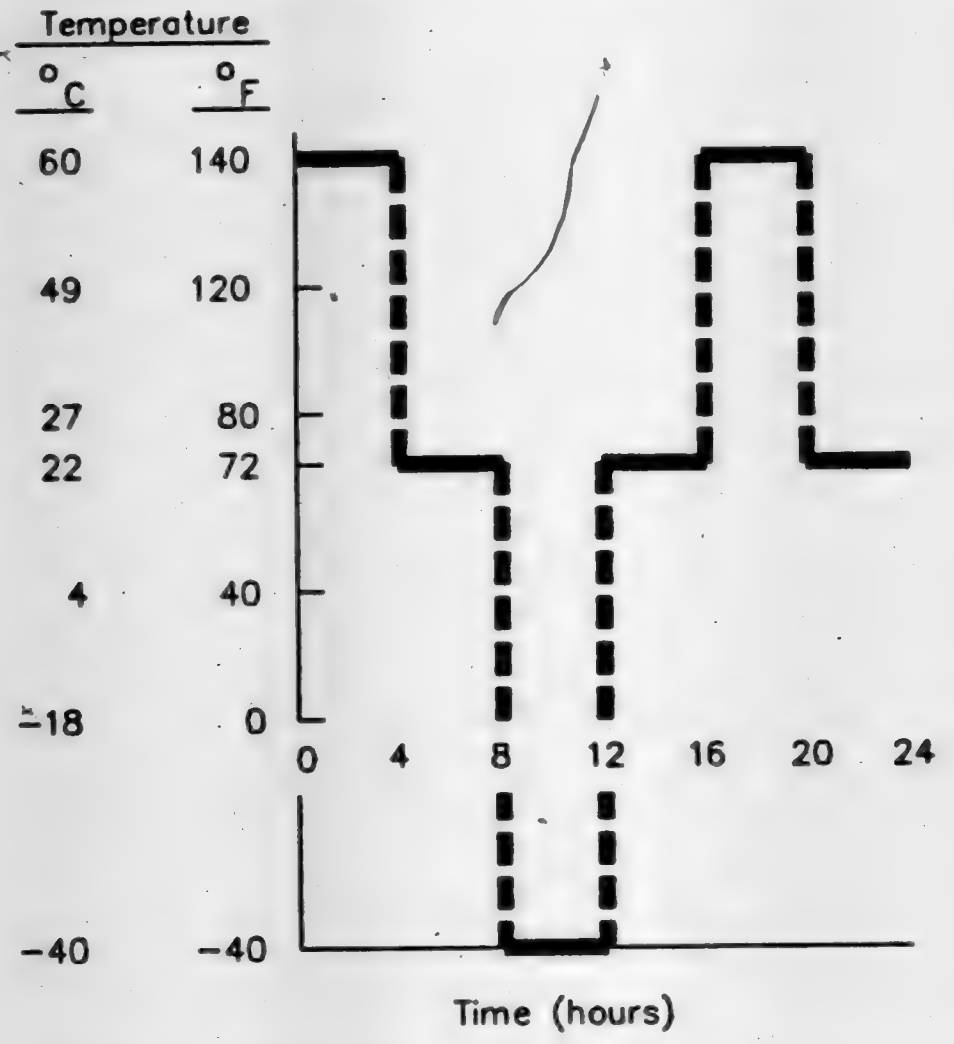

(ii) *Thermal shock and humidity.* The test housing shall be placed in an environmental test chamber at 95 ± 3 percent (%) relative humidity (RH) and temperature cycled per Figure 3 for a period of 30 days. At the end of the test there shall be no rust or corrosion of any closure components. Minor corrosion due to surface scratches, nicks, etc. is permitted. If the closure is made of a nonmetallic material, there shall be no signs of degradation.

FIGURE 3

ENVIRONMENTAL TEST CHAMBER
TEMPERATURE CYCLE

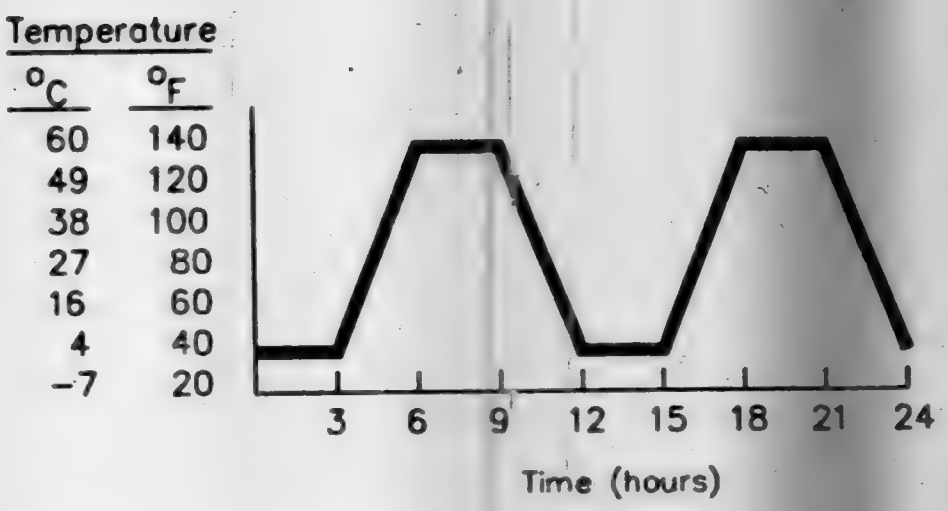

Note: Relative Humidity = 95% ± 3%

(iii) *Humidity and condensation.* Test panels shall be placed in an environmental chamber and subjected to 1,008 hours (42 cycles) of exposure per ASTM D 2247–92. One cycle consists of 24 hours of 100% humidity (with condensation on the panels) at a cabinet temperature of 38 ± 1°C (100 ± 2°F) and an ambient temperature of 25 ± 1°C (77 ± 2°F) without heat input. Upon completion of cycling, the test panels shall be subjected to an 11 newton-meter (N-m) (100 pound-inches (lb-in.)) impact test using the Gardner-Impact Tester or equivalent. Test panels shall show no substrate or coating cracking or loss of coating adhesion on either side.

(iv) *Weatherability.* Three test panels shall be tested for weatherability in accordance with the appropriate procedures of either ASTM D 822–89 or ASTM G 23–90. Total exposure time shall be a minimum of 800 hours. Failure is defined as fading, cracking, blistering, or delamination on any of the three test panels.

(v) *Low temperature durability.* Low temperature durability shall be proven by exposing the three test panels from paragraph (e)(3)(iv) of this section to at least 25 continuous cycles of the following test sequence:

(A) To insure complete saturation of the three test panels, soak them for 96 hours in a container of distilled water 22 ± 2°C (71.6 ± 4°F);

(B) Lower the temperature of the water and the immersed test panels to −28 ± 2°C (−18.4 ± 4°F) and stabilize for 24 hours;

(C) Thaw the water with the samples to 22 ± 2°C (71.6 ± 4°F) and stabilize for 24 hours;

(D) Repeat the procedure 24 times. Any cracking, crazing, deforming, or delaminating on any of the three test panels shall be considered a failure; and

(E) Remove the samples from the water and impact test the three panels by delivering a force of 11.3 N-m (100 lb-in.) using a Gardner-Impact Tester to each specimen at 71, 22, and −28 ± 2°C (159.8, 71.6, and −18.4 ± 4°F), after stabilizing them at these temperatures for at least two hours. Visual inspection shall reveal no deformation or perforations on any of the test panels.

(vi) *Corrosion resistance.* Corrosivity shall be tested in accordance with the requirements of ASTM B 117–90. Both scribed and unscribed panels shall be evaluated following the procedures of ASTM D 1654–92. Scribed panels shall have a rating of at least six, following 500 hours of exposure to salt fog, and the unscribed panels shall have a rating no lower than 10, after 1,000 hours exposure. Visual rust inspection shall confirm no more than 0.03% rusting (rust grade 9) of the surface area of the test sample when evaluated in accordance with ASTM D 610–85(1989). The unscribed samples shall be impacted with an 11.3 N-m (100 lb-in.) force, using a Gardner-Impact Tester or equivalent. Visual inspection of the impacted samples shall reveal no loss of adhesion between the base material and the coating or cracking at the finish on the test panels.

(vii) *Fungi resistance.* Fungi resistance of nonmetallic housing materials shall be tested according to the procedures of ASTM G 21–90. Any rating greater than one shall be considered a failure.

(viii) *Stress crack resistance.* The stress cracking characteristics of nonmetallic housing components shall be tested in accordance with ASTM D 1693–70(1988). The tests shall be performed at 49 ± 2°C (120 ± 4°F) for 14 days and exposed to the following materials:

(A) Industry recognized filling compounds;

(B) Isopar M;

(C) Industry recognized solvents;

(D) Industry recognized encapsulants; and

(E) Commonly used insect, pest, and weed control products and agricultural fertilizers.

(ix) *Chemical resistance.* (A) Chemical resistance shall be determined by

immersing representative nonmetallic material samples in each of the following solutions for 72 hours at 22 ± 2°C (71.6 ± 4°F):

(*1*) 3% sulfuric acid;

(*2*) 100 parts per million (ppm) trichloroethane in water;

(*3*) 0.2 N sodium hydroxide; and

(*4*) Unleaded high octane gasoline.

(B) There shall be no swelling, deformation, or softening of the material samples or any discoloration of the solution.

(x) *Ultraviolet resistance.* Test panels of metallic and nonmetallic outer housing materials shall be subjected to 700 hours exposure per ASTM D 2565–92 using the type BH apparatus. The panels shall not exhibit fading, blistering, checking, or delamination.

(xi) *Weathertightness.* The housing shall be mounted in its typical field installation position and sprayed with water. The temperature of the water shall be adjusted to be equal to or warmer than the temperature of the cabinet interior to avoid the possibility of condensation. A water spray head shall be used to direct water at the housing so that the water stream will strike the assembly at a downward angle of 45 degrees. The flow of the water shall be 3.8 liters per minute (one gallon per minute), with 276 kilopascals (40 pounds per square inch) head of pressure. The spray head shall be held 1.8 meters (m) (6 feet (ft)) from the test cabinet. The spray head shall be adjusted so that water impinges uniformly over the housing surface. The duration of the test shall be five minutes. All vertical cabinet surfaces shall be tested by this procedure. The exterior of the cabinet shall be thoroughly dried with towels (no heat drying) prior to examination of the housing interior. The interior of the housing shall be checked for presence of water. Wetting of over-lapping surfaces is permitted. There shall be no presence of water inside the housing.

(xii) *Wind Resistance.* (A)(*1*) Stub pole or wall mounted serving area interface and large pair count splice housings shall be subjected to a load (F) as shown in Figure 4 and the following table to simulate the turning moment equivalent to a uniform wind load of 161 kilometers per hour (km/h) (100 miles per hour (mi/h)) perpendicular to the largest surface area.

Maximum Area of Largest Surface	Load	
Square Centimeters (Square Inches)	kg	(lb)
cm^2 ($in.^2$)		
5,200 (800) or less	18	(40)
5,201 to 9,100 (801 to 1,400)	32	(70)
9,101 to 13,000 (1,401 to 2,000)	45	(100)
13,001 to 16,200 (2,001 to 2,500)	57	(125)

(*2*) The housing shall remain in its original mounting position throughout the test and exhibit no mechanical deformation.

Note: The procedures for housings with larger surface area will be evaluated by REA on a case-by-case basis.

FIGURE 4

TURNING MOMENT – POLE MOUNTED HOUSINGS

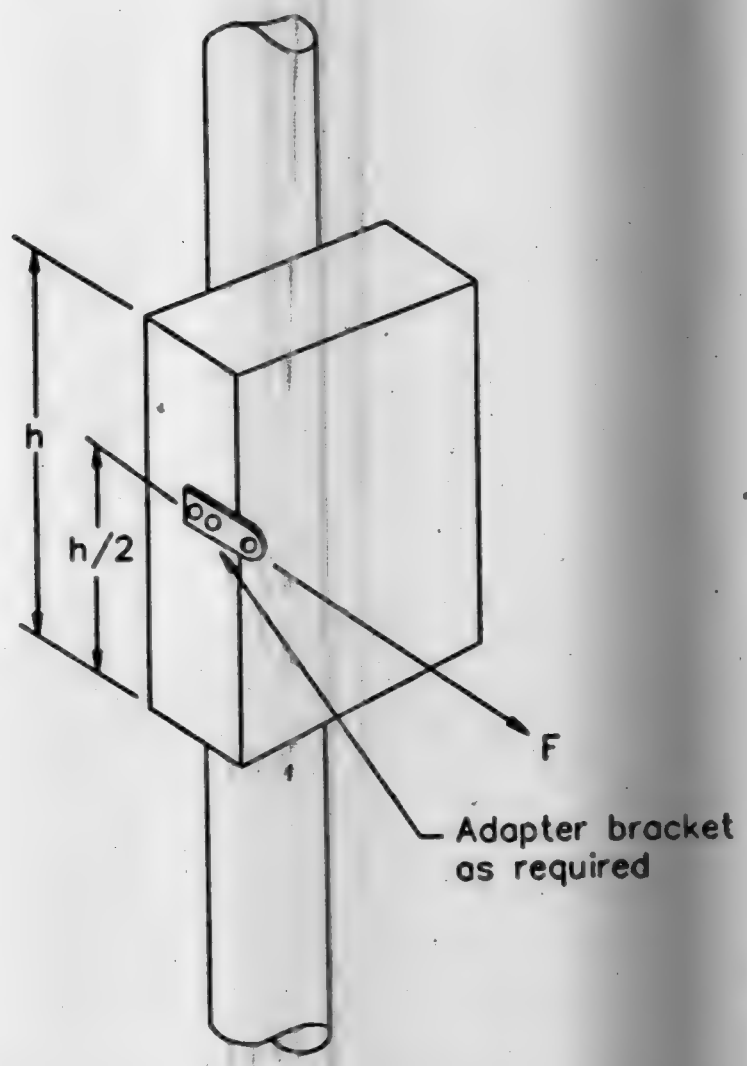

(B)(*1*) Pad or ground mounted SAI or splice housings shall be subjected to a load (F) as shown in Figure 5 and the following table to simulate the overturning moment equivalent to a uniform wind load of 161 km/h (100 mi/h) perpendicular to the largest surface area.

Height	Maximum Area of Largest Surface	Load	
cm (in.)	cm^2 ($in.^2$)	kg	(lb)
122 (48) or less	11,000 (1,700) or less	91	(200)
	11,001–13,000 (1,701–2,000)	104	(230)
	13,001–14,900 (2,001–2,300)	118	(260)
123–152 (49–60)	11,700 (1,800) or less	91	(200)
	11,701–14,300 (1,801–2,200)	109	(240)
	14,301–16,200 (2,201–2,500)	127	(280)
	16,201–18,800 (2,501–2,900)	145	(320)
	18,801–20,800 (2,901–3,200)	163	(360)
	20,801–23,400 (3,201–3,600)	181	(400)
153–183 (61–72)	14,300 (2,200) or less	109	(240)
	14,301–16,900 (2,201–2,600)	127	(280)
	16,901–19,500 (2,601–3,000)	150	(330)
	19,501–22,700 (3,001–3,500)	172	(380)
	22,701–25,300 (3,501–3,900)	190	(420)
	25,301–27,900 (3,901–4,300)	213	(470)

(2) The housing shall remain in its original mounting position throughout the test and exhibit no mechanical deformation.

Note: The procedures for housings with larger surface areas will be evaluated by REA on a case-by-case basis.

FIGURE 5

OVERTURNING MOMENT, PAD MOUNTED HOUSINGS

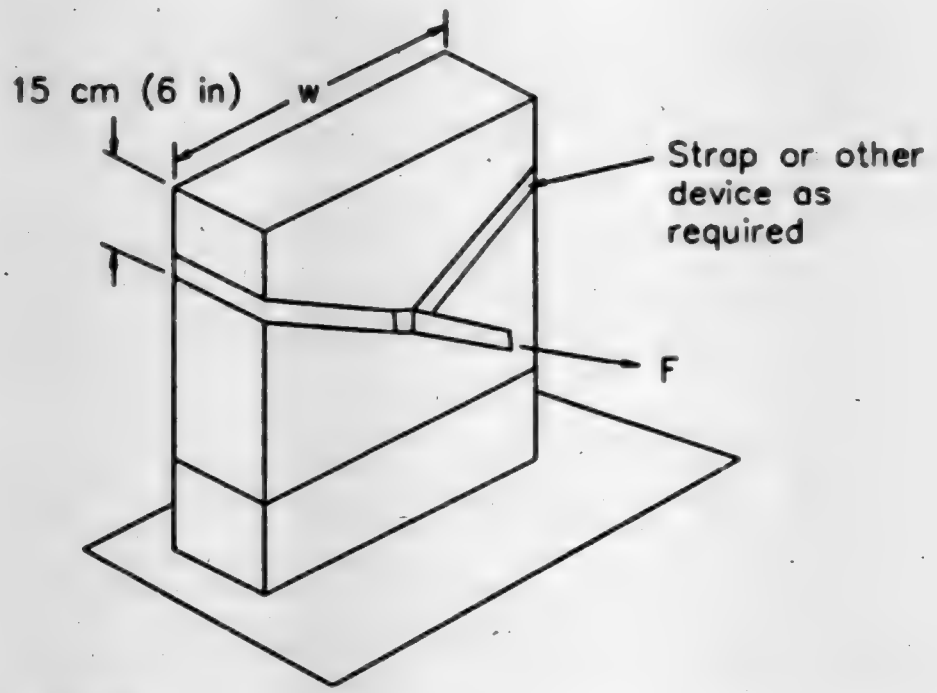

Notes:

1. The load "F" shall be applied perpendicular to the cabinet width where the width is greater than the depth.
2. If a foundation is used, the load "F" shall be applied toward the edge nearest to the cabinet.

(xiii) *Fire resistance.* (A) The test housing shall be installed in a manner typical of field installation. U.S. No. 1 wheat straw shall be placed on the ground around the housing base in an one meter (3 ft) radius at an approximate depth of 10 cm (4 in.). The straw shall be ignited and permitted to burn fully. After the housing has cooled, its contents shall be inspected for evidence of ignition, melting, burning, or structural damage. Damage sufficient to impair service constitutes failure.

(B) Polymeric materials shall be tested in accordance with the Underwriters Laboratories Publication (UL) 94, dated June 18, 1991. Materials used in housing components shall have a rating of 94V-0 or 94V-1 and shall not sustain combustion when an open flame source is removed.

(4) *Mechanical requirements for housings*—(i) *Impact resistance.* The test housing shall be subjected to the following impacts according to its minimum volume or minimum width and depth as shown in the following table:

Minimum Volume	Minimum Width or Depth	Impact Force
cm^3 ($in.^3$)	cm (in.)	N-m (lb-ft)
Less than 35,000 (2,100)	Less than 13 (5).	68 (50)
35,000 (2,100) or Greater	13 (5) or Greater.	136 (100)

(A) The impact force shall be delivered to the front, back, and top surfaces. Circular housings shall be impacted on side surfaces 180° apart and on the top. The device used to deliver the force shall be spherical and approximately 25 to 31 cm (10 to 12 in.) in diameter. A typical test procedure may include the use of a hard rubber bowling ball, weighing 6 to 7 kg (13 to 16 lb), enclosed in a mesh bag, attached to a rope with a metal ring. The load shall be dropped vertically on the top surface and applied to the sides with a pendulum motion using the appropriate height and extension arm to achieve the required impact force. The housing must be impacted at the approximate mid-point of the surface area.

(B) Housings shall be conditioned for a minimum of eight hours at −40°C (−40°F) in an environmental chamber prior to testing. If the chamber is insufficient in size to conduct tests within the chamber, the housing may be removed and shall be tested within 10 minutes after removal.

(C) After impact testing, the housing shall not exhibit fractured or ruptured surfaces sufficient to allow the ingress of moisture or dust. The housing shall not exhibit mechanical damage that would impair the functioning of hinges, latches, locks, etc.

(ii) *Load deflection.* Free standing buried plant housings shall be tested for load deflection in accordance with Figure 6. The assembled housing shall be rigidly held in place by a mechanical means to simulate a normal field installation. A length of wire or cable, or other suitable material, shall be placed around the top section of the housing and deadended. The wire or cable shall be initially tensioned to 23 kg (50 lb). A measurement shall then be taken of the deflection of the housing at the top as shown in Figure 6. The deflection shall be recorded at incremental loads of 23 kg (50 lb) until destruction of the housing occurs. The average load for the three directions shall not be less than 136 kg (300 lb) and the minimum load in any direction shall be 113 kg (250 lb). Failure is defined as housing component fracture or crazing of the housing's surface finish.

FIGURE 6

MEASURING LOAD DEFLECTION

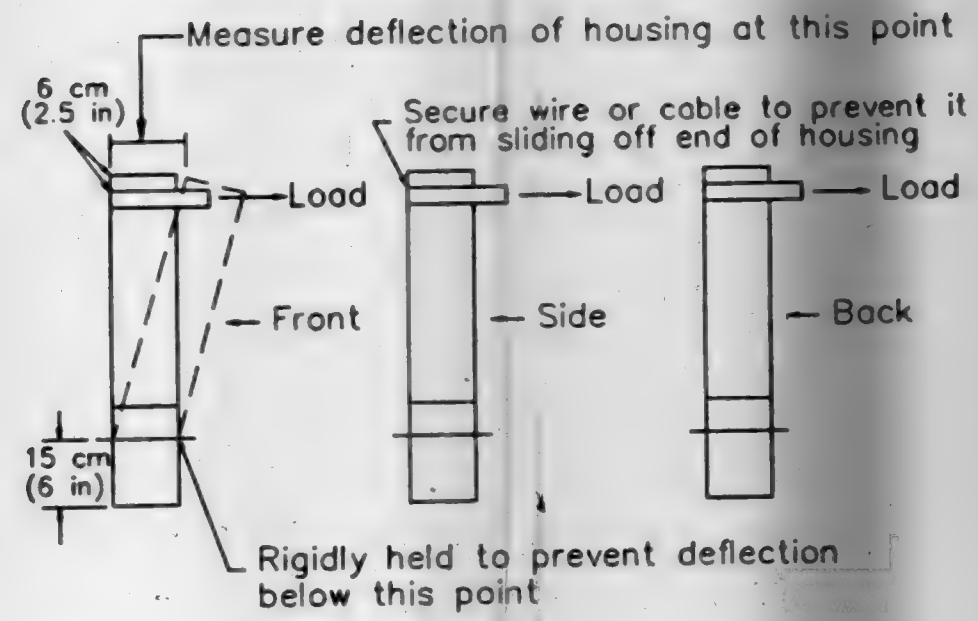

Notes:

1. One pedestal-mounted housing of each BD classification shall be tested to failure in each of the directions shown above.
2. A total of three pedestal-mounted housings of each BD classification shall be subjected to the required loads in each direction.
3. The average load for the three directions shall not be less than 136 kilograms (300 pounds). The minimum load shall be 113 kilograms (250 pounds).
4. Pole mounted housings shall be subjected to the same loading criteria.

(iii) *Vibration requirements.* The test housing and its contents shall be subjected to acceleration at a sine wave frequency sweep rate as shown in Figure 7 for a housing packaged for shipment and Figure 8 for an unpackaged housing. The frequency sweep may be performed continually or sequentially. The test shall be conducted once along each of three mutually perpendicular axes of the housing. There shall be no mechanical or electrical degradation of the housing or its contents. Noticeable damage to the housing constitutes failure.

FIGURE 7

VIBRATION TEST FOR PACKAGED HOUSINGS

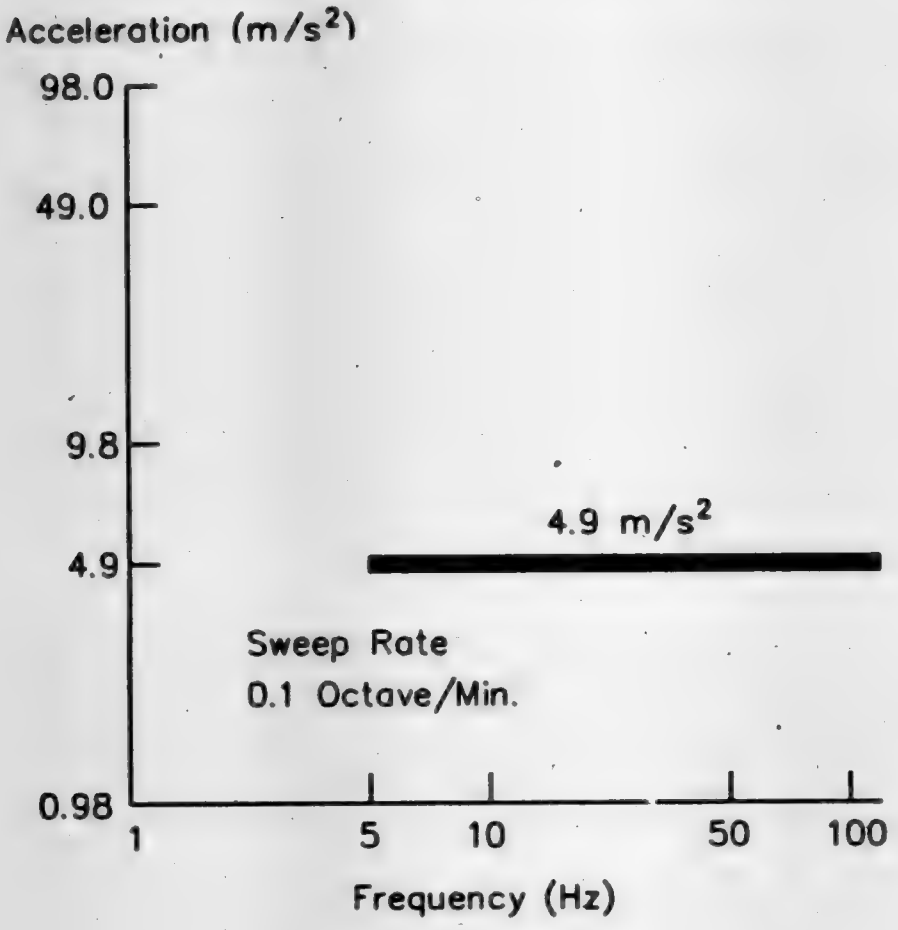

FIGURE 8

VIBRATION TEST FOR UNPACKAGED HOUSINGS

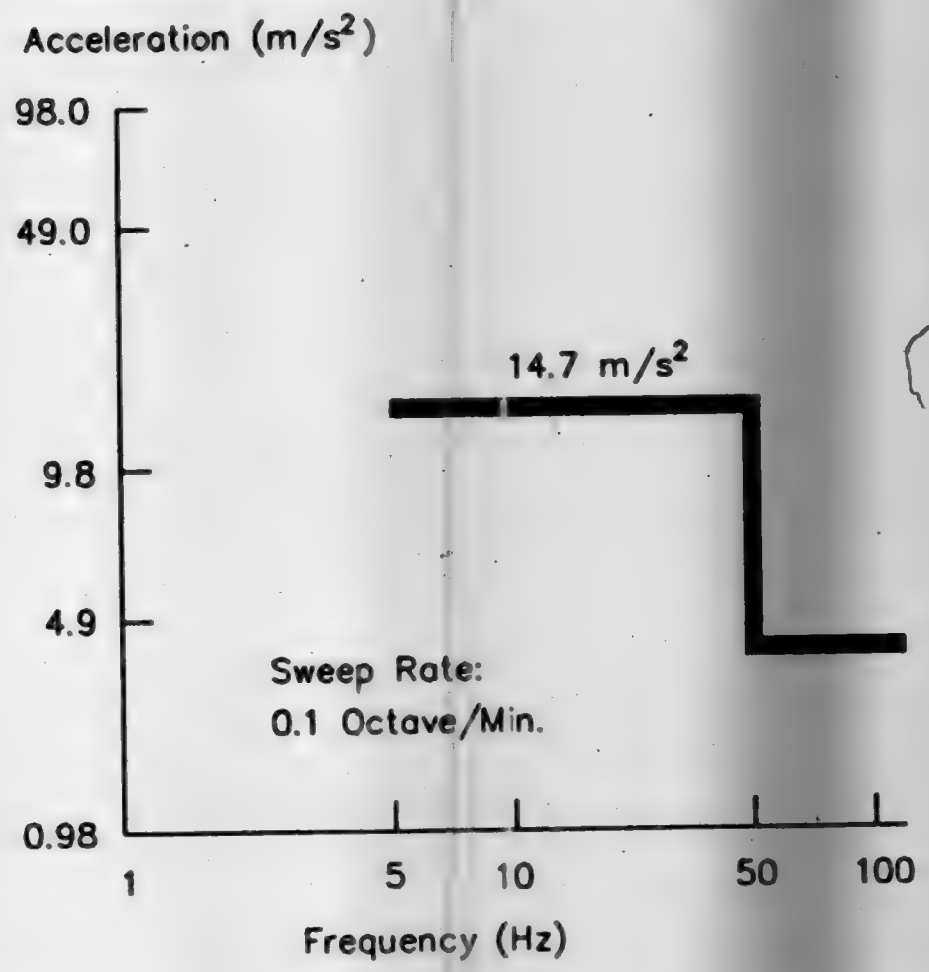

(iv) *Drop test requirements.* Housings shall be subjected to appropriate drop tests according to their weight. The drop tests shall be performed on housings and their contents as normally packaged as well as on unpackaged housings. The tests shall be conducted on a smooth level concrete floor or similar unyielding surface. For corner drops, the packaged housing and its contents shall be oriented at impact such that a straight line drawn through the struck corner and package geometric center is approximately perpendicular to the impact surface.

(A) Packaged housings and their contents weighing 91 kg (200 lb) or less shall be capable of enduring a single drop on each face or corner without damage from a height specified as follows:

Packaged Housing Including Contents Weight	Drop Height
kg (lb)	cm (in.)
0 to 9 (0 to 20)	76 (30)
10 to 23 (21 to 50)	61 (24)
24 to 45 (51 to 100)	53 (21)
46 to 91 (101 to 200)	46 (18)

(B) Packaged housings and their contents weighing more than 91 kg (200 lb) shall be capable of enduring a single drop on each of two diagonally opposite corners of the package without significant damage from a height specified as follows:

Packaged Housing Including Contents Weight	Drop Height
kg (lb)	cm (in.)
92 to 453 (201 to 1000)	30 (12)
Over to 453 (1000)	15 (6)

(*1*) The packaged housing and contents shall be placed on its normal shipping base with one corner supported 15 cm (6 in.) above the floor and the other corner of the same end supported 30 cm (12 in.) above the floor as shown in Figure 9. The unsupported end of the package shall be raised so that the lowest corner reaches the height listed above and then allowed to fall freely.

(*2*) The procedure of paragraph (e)(4)(iv)(B)(*1*) of this section shall be repeated for the diagonally opposite corner.

(*3*) The packaged housing and contents shall be capable of enduring a single drop on each edge of the base of its normal shipping position from the required height without damage and shall remain operational without function impairment. The packaged housing and contents shall be placed on its base with one edge supported on a sill 15 cm (6 in.) high and the unsupported edge raised to the required height as shown in Figure 10 and allowed to fall freely.

(4) The procedure of paragraph (e)(4)(iv)(B)(3) of this section shall be repeated for all edges of the base.

(C) Unpackaged housings and their contents weighing 23 kg (50 lb) or less shall be capable of enduring a single drop on each face and adjacent corners without significant damage from a height specified as follows:

Packaged Housing Including Contents Weight	Drop Height
kg (lb)	cm (in.)
0 to 9 (0 to 20)	10 (4)
10 to 23 (21 to 50)	8 (3)

(D) Unpackaged housings and their contents weighing more than 23 kg (50 lb) shall be capable of enduring a single drop without significant damage when lifted by its normal hoisting supports as shown in Figure 11 and with its lowest point at a height specified as follows:

Packaged Housing Including Contents Weight	Drop Height
kg (lb)	cm (in.)
23 to 45 (51 to 100)	5 (2)

FIGURE 9

CORNER DROP TESTS FOR PACKAGED HOUSINGS WEIGHING MORE THAN 91 KILOGRAMS (200 POUNDS)

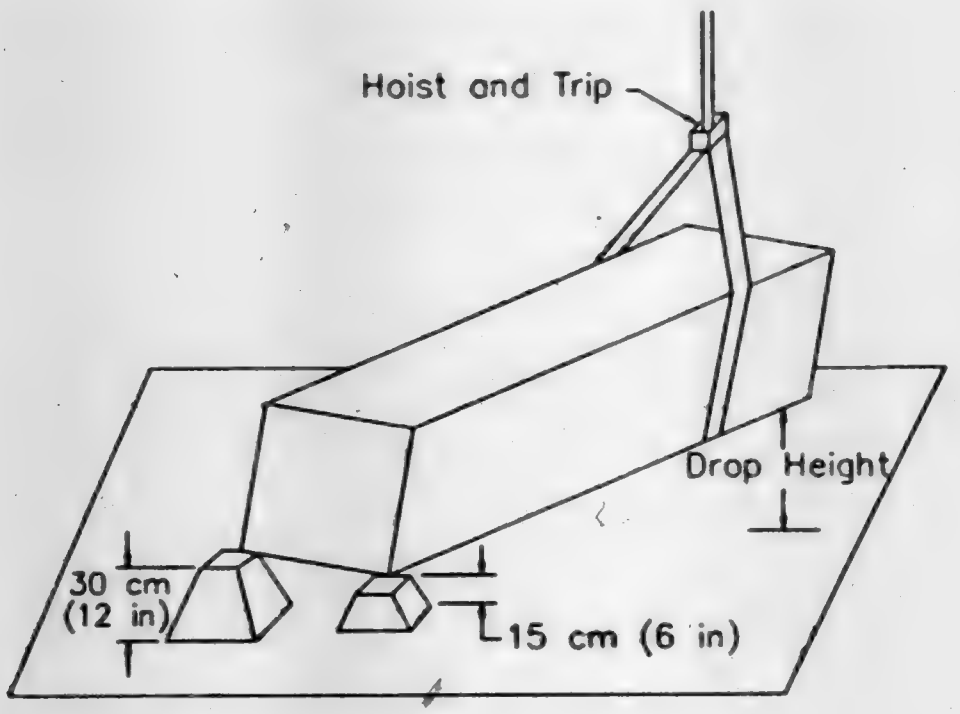

FIGURE 10

EDGE DROP TEST FOR PACKAGED HOUSINIGS
WEIGHING MORE THAN 91 KILOGRAMS (200 POUNDS)

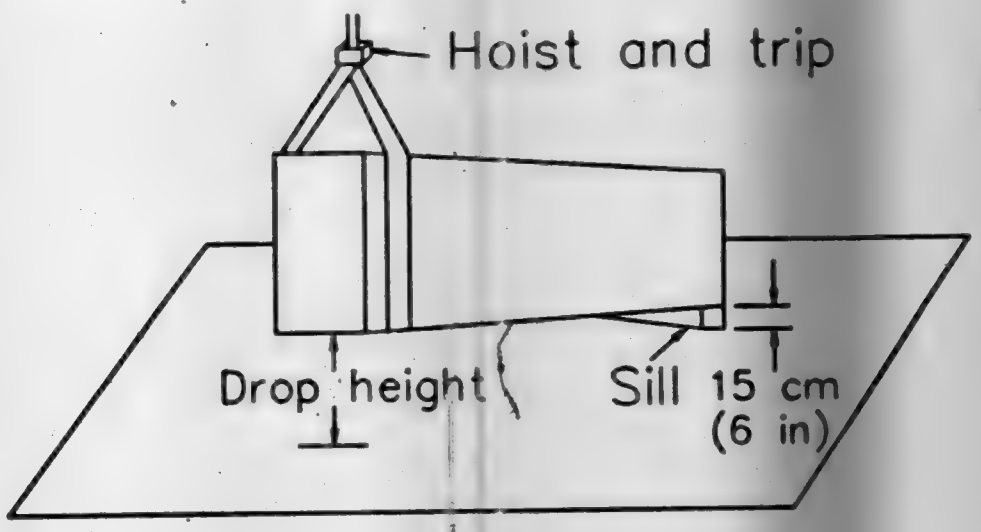

FIGURE 11

DROP TEST FOR UNPACKAGED HOUSINGS
WEIGHING MORE THAN 23 KILOGRAMS (50 POUNDS)

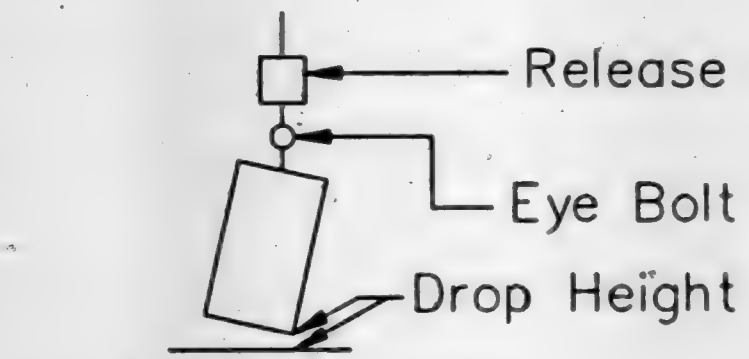

Hoisting Drop Test

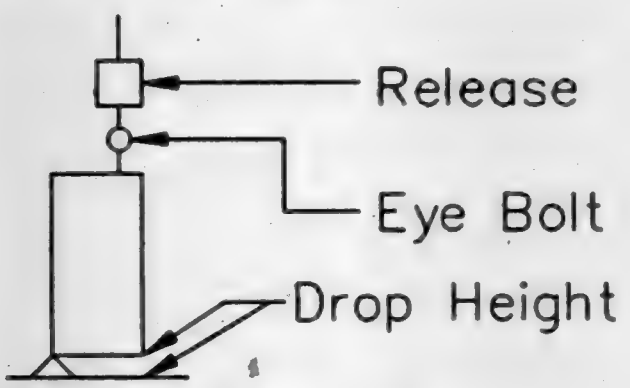

Edge and Corner Drop Test

(v) *Firearms resistance.* All housings shall be tested for resistance to penetration by direct impact from a 12 gauge shotgun equipped with a modified choke and the use of a 3–3/4 dram equivalent powder charge and 35 grams #6 lead shot fired from a distance of 15 m (50 ft). The 12 gauge shotgun shall be fired from a normal standing position at the front side of the housing. Penetration through the housing wall by the lead shot shall constitute failure.

(vi) *Lifting hardware requirements.* The lifting hardware on housings and their contents that weigh more than 91 kg (200 lb) shall be tested. The housing shall be fastened to a restraining device such as a concrete slab and subjected to loading through the lifting attachments to simulate the lifting load. For the first test a lifting line equipped with a dynamometer shall be attached to the housing lifting hardware and a load applied equal to three times the weight of a fully equipped housing. Deformation or damage to the housing or lifting hardware constitutes failure. A second test shall be conducted with the same arrangements as for the first except that a load shall be applied equal to six times the weight of a fully equipped housing. There shall be no catastrophic failure of the lifting hardware or housing.

(vii) *Stub cable strain relief tests.* Housings equipped with cable stubs and cable shipping retainer shall be tested by lifting a test housing, with the maximum length and weight of cable orderable, in a manner causing the full weight of the cable to be supported by the cabinet. Examination of the cable sheath after lifting shall reveal no tearing, rupturing, or other damage. The cable conductors and shield shall be tested for shorts and opens. Electrical defects to the stub cable or damage to the housing constitutes failure.

(viii) *Door restrainer evaluation.* (A) The housing shall be positioned with the door held in the open position by the door restraining device. A load, determined in accordance with the following table, shall be applied to the center of the door, perpendicular to the door and in each of the opening and closing directions.

Maximum Area of Door Surface	Load
cm^2 ($in.^2$)	kg (lb)
5,200 (800) or less	72 (160)
5,201 to 9,100 (801 to 1,400)	127 (280)
9,101 to 13,000 (1,401 to 2,000)	181 (400)

(B) There shall be no functional failure of the restraining device nor mechanical damage to the housing.

Note: Test procedures for housings with larger doors will be evaluated by REA on a case-by-case basis.

(ix) *Security evaluation.* The security locking device shall be capable of

withstanding a maximum torque of 2.8 N-m (25 lb-in.) without incurring physical damage to the closure, thereby resulting in a condition where the closure cannot be either accessed or locked.

(5) *Electrical requirements for housings.* Each bonding stud and nut location shall be evaluated by attaching one lead from a dc or alternating current (ac) power source to a bonding stud with the nut torqued as specified by its manufacturer and the other power source lead connected to the closure grounding conductor connector. The current path thus established must be capable of sustaining a current of 1000 amperes root-mean-square for at least 20 seconds without fusing or causing any damage to the closure or its contents.

(6) *Finish requirements*—(i) *Impact resistance.* The finish on painted metal surfaces shall not exhibit radial cracking on the impact surface (intrusion) when indented at 18 N-m (160 lb-in.) with a 1.6 cm (0.6 in.) diameter spherical indentor. This test shall be performed in accordance with ASTM D 2794–92 with the exception that the test panel shall be of the same material, thickness, and finish as the pedestal housing being evaluated.

(ii) *Finish adhesion.* Painted finishes shall be tested for adhesion of finish in accordance with ASTM D 2197–86(1991), Method A. There shall be no gouging in the top coat when tested with an 8 kg (17.7 lb) load. Gouging is defined as removal or separation of paint particles or breaking of the finish by the scraping loop to the extent of exposing base metal.

(iii) *Color evaluation.* The color of the housing finish should be compared against the Munsell system of color notation, as described in ASTM D 1535–89 to determine color consistency with that desired.

(iv) *Gloss evaluation.* The finish on painted housings shall be tested on two approximately 20 cm × 20 cm (8 in. × 8 in.) samples for each color used in accordance with the procedures of ASTM D 523–89. The finish shall have a minimum gloss of 60 (60° Specular).

(v) *Secondary finish evaluation.* Evidence of secondary protection shall be required for REA acceptance. Typical secondary protection is galvanizing per ASTM A 526/A 526M-90 for steel surfaces.

(f) *Functional design criteria for binding post terminal blocks used in serving area interface cabinets*—(1) *General description.* A conventional binding post terminal consists of a metallic element or post, one end of which is configured for the permanent connection of 22, 24, or 26 AWG solid copper conductors and the opposite end is configured for recurring connections and disconnections of solid copper cross-connect wire using a threaded screw or stud and nut combination for gripping the wire. The terminal is usually housed in a serving area interface cabinet. However, the terminal may receive limited use in smaller pedestal-type housings and pole mounted cabinets in the outside plant environment.

(2) *Design and fabrication requirements.* (i) Terminal blocks used in outside plant housings are expected to perform satisfactorily for a nominal design life of 30 years.

(ii) All individual terminals or terminal fields must be enclosed and the terminal enclosure must be totally filled with an encapsulating grease or gel which prevents connection degradation caused by moisture and corrosion. The encapsulant must provide complete encapsulation of terminal metallic connections and surfaces and totally fill all voids and cavities within individual terminal enclosures or terminal field enclosures to prevent ingress of moisture. The encapsulant must not restrict access to the terminal or restrict craft personnel from making connections. The encapsulant must be compatible with the standard materials used in cross-connect hardware and wiring.

(iii) Binding post terminals shall not be susceptible to damage under normal use of standard tools used by outside plant technicians such as screwdrivers and test set clips. In addition, use of other tools such as scissors, diagonal cutters and long nose pliers for tightening and loosening screws shall not result in damage to the terminal.

(iv) Terminals shall be designed so that a typical technician using customary tools shall be able to terminate cross-connect wire on a pair of terminals, or to remove it, without causing an electrical short between any two terminals or any other adjacent terminals.

(v) The terminal count sequence shall be indicated using numerals of at least 0.25 cm (0.10 in.) in height.

(vi) A means shall be provided to distinguish feeder terminals from distribution terminals.

(vii) A means shall be provided to identify tip terminals and ring terminals in a terminal field. The identification convention shall indicate tip on the left with ring on the right for horizontal spacing and tip on the top with ring on the bottom for vertical spacing.

(viii) The preferred height of the highest terminal in the connector field in a ground mounted serving area interface unit shall be 168 cm (66 in.) or less as measured from the top surface of the mounting pad. The bottom or lowest terminals in the connector field shall be at least 46 cm (18 in.) from the top surface of the pad.

(ix) Pole mounted aerial units shall be 84 cm (33 in.) or less in width. The maximum allowable height of the highest terminals in a pole mounted aerial unit is 168 cm (66 in.) as measured from the top surface of the standard balcony seat used with the interface. For computation purposes, 15 cm (6 in.) shall be allowed for the distance between the bottom of the interface and the top of the balcony seat.

(3) *Auxiliary features.* (i) Serving area interface cabinets with terminal designs which do not permit direct attachment of common test instrument clips to terminal pairs without the occurrence of shorts shall be equipped with single pair auxiliary test contacts. The auxiliary test contacts shall attach to a terminal pair and provide a set of secondary terminals which will accept typical test instrument clips without the occurrence of shorts. Wire used to connect the auxiliary test contacts to the secondary terminals shall be 20 gauge minimum stranded conductor copper wire with a minimum dielectric strength between conductors of 15 kv. The test connector shall be functional on all terminal pairs.

(ii) A 25 or 50 pair test connector shall be available which can be used to make reliable electrical contact to terminals associated with discrete 25 pair binder groups. The multi-pair test connector shall be provided with a minimum of 1.8 m (6 ft) of suitable cabling terminated to a connector, for interfacing with test sets common to the industry. The multi-pair test connector shall be functional on all terminal groups.

(iii) A special service marker shall be available which must attach to a binding post terminal to identify special circuits and insulate exposed metal parts from accidental shorts from tools and wires. A supply of 25 special service markers shall be provided with each serving area interface cabinet. The color of special service markers shall be red.

(iv) (A) A supply of twisted pair cross-connect wire shall be supplied with housings that are equipped with cross-connect terminals or that have provisions for mounting cross-connect terminals. The minimum length of cross-connect wire supplied is dependent on the serving area interface cabinet terminal capacity as follows:

Cabinet Termination Capacity (Pairs)	Wire Length
1 to 600	60 m (200 ft)
601 to 1200	120 m (400 ft)
over 1200	180 m (600 ft)

(B) The cabinet shall be equipped to store the length of wire in a manner designed for convenient dispensing. The cross-connect wire supply shall be easily replaceable.

(g) *Performance criteria and test procedures for binding post terminal blocks used in serving area interface cabinets*—(1) *General.* Many of the tests described in this section require that the terminal block be installed in an appropriate housing in its typical field configuration.

(2) *Environmental requirements*—(i) *Insulation resistance/high humidity and salt fog exposure.* A test specimen shall consist of a standard ground or pole mounted housing equipped with a full complement of binding post terminals equipped with 25 special service markers. The minimum number of terminals to be tested shall be 100 pair (100 tips and 100 associated rings). The test terminals shall be selected to form a terminal array of approximate square dimensions. A 1 cm (3/8 in.) length of cross-connect wire shall be installed on each test terminal. All tips shall be joined together and all rings shall be joined together with a 48 volt dc potential applied as shown in Figure 12 during the high humidity/salt fog and simulated rain exposures. The 48 volt dc may be temporarily removed from the test samples during the measurement process and the ring terminal being measured shall be isolated from the remaining ring terminals. The terminal insulation resistance shall be measured at a potential of 100 volts dc using suitable instrumentation with a minimum measurement range of 10^4 to 10^{12} ohms.

FIGURE 12

BINDING POST ARRANGEMENT FOR INSULATION RESISTANCE TESTING

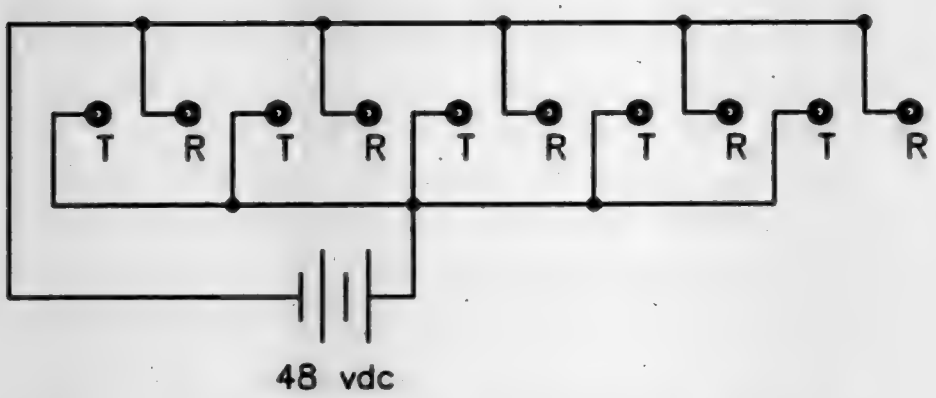

Note: 5 pair specimen arrangement shown is typical for entire (100 pair specimen minimum) test population.

(A) *High humidity.* The test housing shall be placed in an environmental test chamber at 95 ± 3% RH and the temperature cycled as shown in Figure 3 for a period of 30 days. The cabinet doors shall remain in the fully open position. The insulation resistance between the ring terminal of each sample and all the common tip terminals shall be measured each 24 hours when the temperature is between 38 and 57°C (100 and 135°F) and increasing. The minimum insulation resistance when measured in accordance with paragraph (g)(2)(i) of this section shall not be less than 1×10^6 ohms.

(B) *Salt fog.* A test housing with its doors closed shall be placed in a salt fog 35°C (95°F) test chamber and exposed to a salt fog spray per ASTM B 117–90 for a period of 30 days. The insulation resistance should be measured every 24 hours as indicated in paragraph (g)(2)(i) of the section and shall not be less than 1×10^6 ohms. The special service markers shall exhibit no sign of fading, corrosion, swelling, warping, running color, or other signs of deterioration.

(ii) *Insulation resistance/simulated rain exposure.* (A) A test housing as described in paragraph (g)(2)(i) of the section shall be tested for water infiltration. The test shall be conducted using the method described in paragraph (e)(3)(xi) of this section. The cabinet doors shall remain closed for the duration of the test. The insulation resistance between the ring terminals and the common tip terminals shall be measured during and immediately following the spray application as indicated in paragraph (g)(2)(i) of this section and shall not be less than 1×10^6 ohms.

(B) With the cabinet doors open, a spray of tap water at a rate of 3.8 liters per minute (1 gallon per minute) at 276 kilopascals (40 pounds per square inch) shall be directed on the terminal array for a period of 1 minute saturating all of the terminals. Following the spray application the doors shall be closed. The cabinet shall be maintained in a temperature environment of 26 to 28°C (78 to 82°F) at 95 ± 3% RH for 6 hours. The insulation resistance shall then be

measured as specified in paragraph (g)(2)(i) of this section. The minimum insulation resistance shall not be less than 1×10^6 ohms.

(iii) *Contact resistance.* A minimum of 100 terminals equipped with cross-connect wire that has been installed in a manner typical of that used in the industry shall be temperature cycled.

(A) The test shall consist of eight-hour temperature cycles with one-hour dwells at extreme temperatures of −40°C to +60°C (−40°F to +140°F), and temperature changes at an average rate of 16°C (60°F) per hour between the extremes. The relative humidity shall be maintained at 95 ± 3%. The eight-hour test shall be conducted for 512 cycles. Millivolt drop measurements shall be made initially and after 2, 8, 16, 32, 64, 256, and 512 cycles with the samples at room temperature. The resistance measurement technique must conform to ASTM B 539–90. The measurement method must have an accuracy of at least ± 30 microohms for resistances less than 50 milliohms. The change in contact resistance shall not exceed 2 milliohms.

(B) A minimum of 100 terminals equipped with cross-connect wire installed in a manner typical of the industry shall be maintained at 118°C (245°F) during the test period, except during disturbance measurement periods where each wire connection to the terminals shall have a 0.23 kg (0.5 lb) force momentarily applied in a manner to stress the connection. Initial millivolt measurements shall be made without disturbing the joints in accordance with paragraph (g)(2)(iii)(A) of this section with the samples at room temperature. After initial measurement each sample shall be disturbed followed by a millivolt drop measurement after 1, 2, 4, 8, 16, and 33 days. The change in contact resistance shall be less than 2 milliohms when compared to the initial measurement.

(iv) *Fire resistance.* A fully equipped cabinet including a full complement of cross-connect jumpers shall be installed in the standard field arrangement and tested for fire resistance in accordance with paragraphs (e)(3)(xiii) through (e)(3)(xiii)(B) of this section. After cooling, the cabinet, terminals, and associated wiring shall be inspected for signs of ignition, melting, burning, or structural damage of sufficient consequences such that the results are service affecting.

(v) *Encapsulant material compatibility.* The terminal connection encapsulant compound must be compatible with the standard materials used in cross-connect hardware and wiring when aged in accordance with ASTM D 4568–86 at a temperature of 80 ± 1°C (176 ± 2°F). The conductor insulation shall retain a minimum of 85% of its unaged tensile strength and elongation values. The cross-connect hardware shall exhibit no visible material degradation.

(vi) *Encapsulant flow test.* Terminal connection encapsulant must remain stable at 80 ± 1°C (176 ± 2°F) when tested in an environmental chamber. Test specimens shall be suspended in a preheated oven over a glass dish or other drip-catching medium for a period of 24 hours. At the end of the test period, the glass dish shall be examined for evidence of flowing or dripping of encapsulant from the cross-connect terminal. More than 0.5 gram of encapsulant in the dish at the end of the test constitutes failure.

(3) *Mechanical requirements*—(i) *Vibration.* A test housing equipped with a full complement of cross-connect terminals and jumper wiring shall be subjected to vibration testing in accordance with paragraph (e)(4)(iii) of this section.

(ii) *Torsional capacity of binding posts.* The test specimens shall consist of the complete binding post terminal consisting of the screw or nut, washers if required, and threaded post or stud respectively.

(A) Test specimens shall include the terminals along the matrix edge at mid-span locations as well as centrally located terminals. Tests shall be conducted using a torque indicating screwdriver, or wrench, with an accuracy of ± 0.17 N-m (± 1.5 lb-in.) or better. The torque indicating device shall be used to tighten a screw or nut until failure of the screw or nut is achieved. Tests shall be conducted while the test specimens is stabilized at temperatures of −40°C, 20°C, and 71°C (−40°F, +68°F, and at +160°F.) Record the torques at terminal failure. At least 10 test specimens shall be tested at each temperature. The failure torque shall not be less than 2.8 N-m (25.0 lb-in.) for each temperature.

(B) The post or stud of the binding post terminal shall not fail before the screw or nut when increasing torque. The faceplate or receptacle restraining the post or stud shall not fail before the screw or nut when increasing torque.

(iii) *Lateral loading capacity of binding posts.* A minimum of three sets of 25 terminals shall be tested with the test specimens stabilized at temperatures of −40°C, 20°C and 71°C (−40°F, +68°F, and 100°F). The test arrangement shall include the terminals along the matrix edge at mid-span locations as well as centrally located terminals. A force measuring device, such as a dynamometer, shall be attached to the end of a binding post terminal and a 16 kg (35 lb) force applied orthogonally to the terminal axis in 4 perpendicular directions as shown in Figure 13. Permanent deformation in excess of 0.08 cm (0.03 in.) or any structural damage in either the terminal or faceplate constitutes a failure.

FIGURE 13
LATERAL LOADING OF BINDING POST TERMINALS

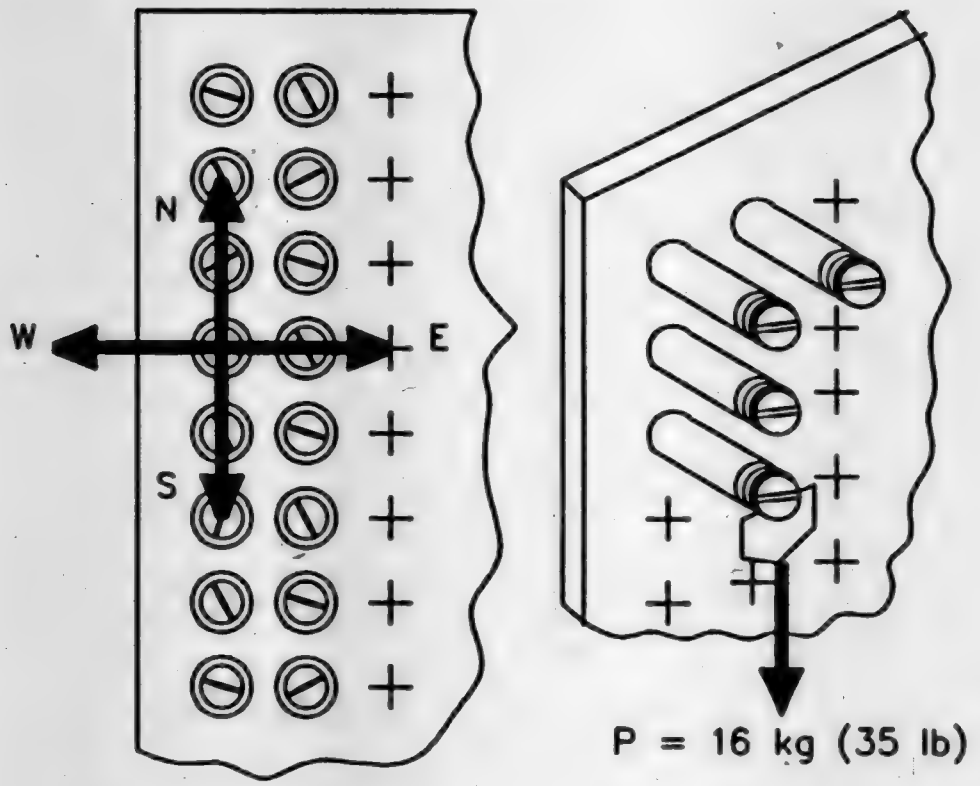

Note: Apply load P in N, E, S, and W directions

(iv) *Axial pullout resistance.* A minimum of three sets of 25 terminals shall be tested with the test specimens stabilized at temperatures of −40°C, 20°C, and 71°C (−40°F, +68°F, and 100°F). The test arrangement shall include the terminals along the matrix edge at mid-span locations as well as centrally located terminals. A force measuring device, such as a dynamometer, shall be attached to a terminal and a force of 16 kg (35 lb) applied on axis as shown in Figure 14. There shall be no permanent deformation in excess of 0.08 cm (0.03 in.), any structural damage, or terminal pull-out in either the terminal or the faceplate.

FIGURE 14

AXIAL PULLOUT OF BINDING POST TERMINALS

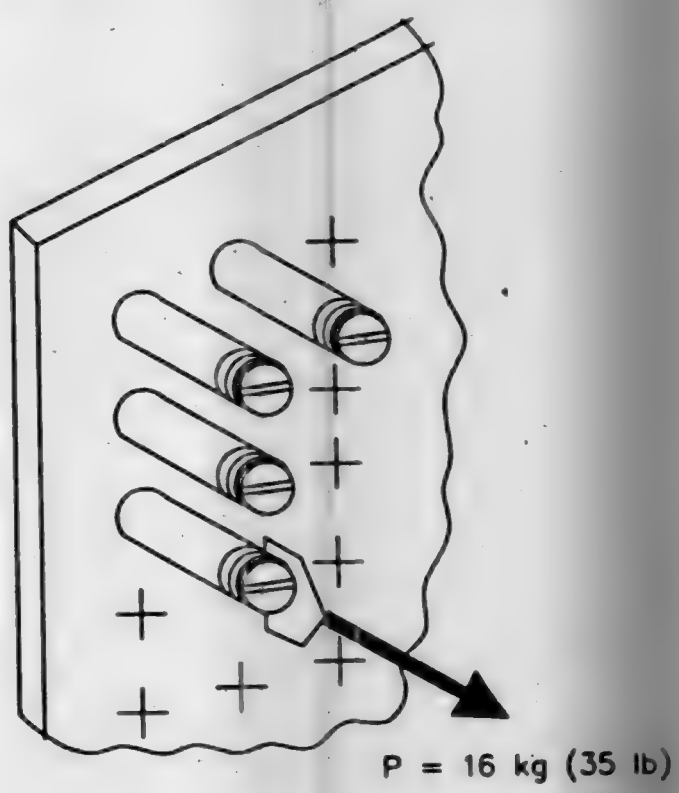

(v) *Test connector reliability.* (A) A single pair connector shall be capable of making a minimum of 100 successive connections to binding post terminals without the occurrence of an open circuit. The test shall include terminals along the matrix edge, center, top, and bottom.

(B) A multi-pair test connector shall be attached to the binding post terminal field and tests for opens between the binding post terminals and the test connector shall be conducted. All circuits must prove good. The test shall be repeated along the terminal matrix edges, center, top, and bottom.

(vi) *Service cycle reliability.* A torque indicating device or wrench with an accuracy of ± 0.17 N-m (± 1.5 lb-in.) or better shall be used to tighten the terminal screw or nut as appropriate to 1.7 N-m (15.0 lb-in.). The terminal nut or screw is then loosened and retightened to 1.7 N-m (15 lb-in.). After 50 repeated connections and disconnections, the terminal shall be placed in an environmental chamber at 95% RH where the temperature shall be cycled as indicated in Figure 3 for a duration of 72 hours. The terminal shall then be momentarily removed from the chamber and the test procedure repeated. After a total of 250 loosening and retightening cycles have accumulated, the terminal must be capable of withstanding a torque of 1.7 N-m (15 lb-in.).

(4) *Dielectric strength.* All housing components in the vicinity of unsheathed field cable conductors, unsheathed housing stub cable or harness conductors, terminals, or cross-connect wire paths shall have a minimum dielectric strength of 500 volts ac to the cabinet grounding and bonding bracket. Dielectric strength is tested by connecting one lead from a 500 volt ac at 0.5 ampere source to the cabinet ground connector and the other lead is passed along the surfaces of all cabinet components in the vicinity of unsheathed cable or harness conductors, cross-connect wire paths, and in the splice area where unsheathed field cable conductors may be located. Sparkover constitutes failure.

(5) *Operational requirements*—(i) *Durability.* In order to verify the durability requirements while minimizing the number of test housings required to complete the test program, the binding posts selected for tests shall be separately identified and then checked to establish compliance after the various tests have been conducted.

(A) Twenty-five jumper connections shall be made on each of two binding post connectors chosen at random from a representative sample in an assembled interface unit. After exposure to this test, these and adjacent connectors shall be inspected for damage such as cracks or chips in metal or plastic parts. Failure consists of structural damage, open circuits through the connector, or inability to pass the torsional, lateral loading, or axial pullout tests described in paragraphs (g)(3)(ii) through (g)(3)(iv) of this section.

(B) Select six binding posts at random in a representative interface. On each connector, attach any test cord included with the unit and then remove the test cord as follows. On binding post sample 1, remove the cord normally ten times. On binding post sample 2, remove the cord ten times by jerking the test leads straight out. In these and the remaining tests, do this without releasing any manual attachment mechanisms. On sample 3, remove ten times by jerking downward at 45° from horizontal; sample 4, upward at 45° ten times; sample 5, left 45° ten times; sample 6, right 45° ten times. Check for opens and damage in the test cord, clips, and connectors. Failure consists of structural damage, open circuits through the connector, or inability of the terminal blocks to pass the torsional, lateral loading, axial pullout, test connector reliability, or dielectric strength tests described in paragraphs (g)(3)(ii) through (g)(3)(v)(B), and paragraph (g)(4) of this section.

(C) Use craft tools such as scissors, diagonal cutters, and long nose pliers to loosen and tighten screws where the binding post design does not prohibit the possibility. Failure consists of severe structural damage.

(h) *Functional design criteria for insulation displacement type cross-connect modules used in serving area interface cabinets*—(1) *General description.* Cross-connect modules normally consist of multiple metallic contact elements that are retained by nonmetallic fixtures. The contact elements are spliced with permanent wire leads compatible for splicing to 22, 24, or 26 gauge cable on one side and configured for the acceptance of recurring connections and disconnections of plastic insulated cross-connect wire on the other side. Cross-connect modules are usually housed in a serving area interface cabinet. However, modules may receive limited usage in smaller pedestal-type housings and cabinets in the outside plant environment.

(2) *Design and fabrication requirements.* (i) All individual terminals or terminal fields must be enclosed and the terminal enclosures must be totally filled with an encapsulating grease or gel which prevents connection degradation caused by moisture and corrosion. The encapsulant must provide complete encapsulation of terminal metallic connections and surfaces and totally fill all voids and cavities within individual terminal enclosures or terminal field enclosures to prevent ingress of moisture. The encapsulant must not restrict access to the terminal or restrict craft personnel from making connections. The encapsulant must be compatible with the standard materials used in cross-connect hardware and wiring.

(ii) The cross-connect module manufacturer shall make available any nonstandard tools and test apparatus which are required for splicing, placing of jumpers, and the performance of maintenance operations.

(iii) The module shall be designed so that a typical outside plant technician using tools shall be able to terminate cross-connect wire on terminals, or to remove them without causing electrical shorts between any other terminals.

(iv) The pair count sequence terminated on a module shall be easily visible and shall have numerals of at least 0.25 cm (0.10 in.) in height.

(v) Feeder terminations shall be easily distinguished from distribution terminations.

(vi) Tip and ring terminations shall be easily visible and shall be identifiable as described in paragraph (f)(2)(vi) of this section.

(vii) The preferred locations for cross-connect modules to be mounted inside a housing is the same as those for terminals and are described in paragraphs (f)(2)(vii) and (f)(2)(viii) of this section.

(3) *Auxiliary features.* (i) Housings equipped with cross-connect modules shall be equipped with auxiliary test contacts as described in paragraphs (f)(3)(i) and (f)(3)(ii) of this section.

(ii) Special service markers shall be available for cross-connect modules as described in paragraph (f)(3)(iii) of this section.

(iii) Housings equipped with, or designed for, cross-connect modules shall contain a supply of cross-connect wire as described in paragraph (f)(3)(iv) of this section.

(i) *Performance criteria and test procedures for insulation displacement type cross-connect modules*—(1) *General.* Many of the tests described in this section require that the cross-connect module be installed in an appropriate housing in its typical field configuration for testing. Resistance measurements should be made with an electrical device which measures changes in resistance for each test parameter measured. The tests specified provide and indication of the stability of the electrical connections under the test conditions encountered.

(2) *Environmental requirements.* (i) A fully equipped arrangement of cross-connect modules having approximately 25 special service markers shall successfully complete environmental testing in accordance with paragraphs (e)(3) introductory text through (e)(3)(xiii)(B) of this section.

(ii) *Insulation resistance/high humidity and salt fog exposure.* Insulation resistance measurements shall not be less than 1×10^6 ohms when cross-connect modules are tested by a procedure similar to that described in paragraphs (g)(2)(i) introductory text through (g)(2)(i)(B) of this section.

(iii) *Insulation resistance/simulated rain exposure.* Insulation resistance measurements shall not be less than 1×10^6 ohms when cross-connect modules are tested by a procedure similar to that described in paragraphs (g)(2)(ii) introductory text through (g)(2)(ii)(B) of this section.

(iv) *Contact resistance.* The change in contact resistance shall not exceed 2 milliohms when cross-connect modules are tested by a procedure similar to that described in paragraphs (g)(2)(iii) introductory text through (g)(2)(iii)(B) of this section.

(v) *Fire resistance.* A housing fully equipped with cross-connect modules and jumper wiring shall be tested for fire resistance by a procedure similar to that described in paragraph (g)(2)(iv) of this section.

(vi) *Encapsulant material compatibility.* Cross-connect wire insulation and cross-connect hardware shall exhibit no visible material degradation when tested by the procedure described in paragraph (g)(2)(v) of this section.

(vii) *Encapsulant flow test.* The cross-connect contact encapsulant shall drip no more than 0.5 gram when tested by the procedure described in paragraph (g)(2)(vi) of this section.

(3) *Mechanical requirements*—(i) *Vibration.* A housing fully equipped with cross-connect modules shall be vibration tested in accordance with paragraph (g)(3)(i) of this section.

(ii) *Test connector reliability.* The test connectors supplied with housings intended for cross-connect modules shall successfully complete 100 successive connections as described in paragraphs (g)(3)(v) introductory text through (g)(3)(v)(B) of this section.

(iii) *Service cycle reliability.* A combination of multiple insertions of jumper wires, vibration, and temperature cycling shall be performed on cross-connect modules. The multiple insertions on approximately 100 connections shall be accomplished by 300 operations consisting of insertion, removal and reinsertion of new jumper wire. Contact resistance shall be measured and the final insertion of jumper wire shall not be removed from the connectors but must be subjected to vibration testing in accordance with paragraph (g)(3)(i) of this section and temperature cycled as indicated in Figure 3 for a duration of 72 hours. After vibration and temperature cycling, the average change in contact resistance shall be no greater than 2 milliohms.

(iv) *Jumper wire pull-out resistance.* Test modules that have received no prior conditioning shall be equipped with 100 38 cm (15 in.) jumper connections of the gauges recommended for use with the module using the insertion tool recommended by the cross-connect module manufacturer. With the test samples suitably supported, wires from each sample shall be pulled, one at a time, by a tensile machine at a cross-head speed of 6 centimeters per minute (cm/min) (2.4 inches per minute (in./min)). Wires shall be pulled both perpendicular and parallel to the plane of the cross-connect field and shall withstand a load of at least 1.1 kg (2.5 lb) before pulling out.

(v) *Cable conductor pull-out resistance.* Test modules that have received no prior conditioning shall be equipped with 100 26, 24, and 22 AWG 38 cm (15 in.) cable conductors using the insertion tool recommended by the cross-connect module manufacturer. With the test samples suitably supported, conductors from each sample shall be pulled, one at a time, by a tensile machine at a cross-head speed of 6 cm/min (2.4 in./min). Wires shall be pulled both perpendicular and parallel to the plane of the face of the splice module and shall withstand a load of at least 1.1 kg (2.5 lb) before pulling out.

(4) *Electrical requirements*—(i) *Dielectric strength.* A housing fully equipped with cross-connect modules shall be tested for dielectric strength in accordance with paragraph (g)(4) of this section.

(ii) The dielectric strength of a contact within the cross-connect module to contacts on either side shall be tested. The module shall be tested in a dry environment with an ac power source capable of supplying 8 kv at a rate of increase of 500 volts per second, a circuit breaker to open at breakdown, and a voltmeter to record the breakdown potential. Cross-connect modules shall be prepared in accordance with industry accepted splicing techniques with leads trimmed to approximately 38 cm (15 in.). The dielectric strength of each contact to the contacts on either side shall have an average dielectric strength of approximately 5.0 kv.

(5) *Operational requirements*—(i) *Durability.* In order to verify the durability requirements while minimizing the number of test housings required to complete the test program, the contacts selected for tests shall be separately identified and then checked to establish compliance after the various tests have been conducted.

(ii) Twenty-five jumper connections shall be made on each of two contacts chosen at random from a representative sample in an assembled interface unit. After this test, these and surrounding contacts shall be inspected for damage such as cracks or chips in metal or plastic parts. Failure consists of structural damage, open circuits through the connector, or inability to pass the jumper wire pullout tests described in paragraph (i)(3)(iv) of this section.

(iii) Select six contacts at random in a representative interface. On each of these contacts attach any test cord included with the unit as specified under normal use of that cord and then remove the test cord as follows. On sample 1, remove the cord normally ten times. On sample 2, remove the clip ten times by jerking the test leads straight out. In these and the remaining tests, do this without releasing any manual attachment mechanisms. On sample 3, remove ten times by jerking downward at 45° from horizontal; sample 4, upward 45° ten times; sample 5, left 45° ten times; sample 6, right 45° ten times. Check for opens and damage in the test cord, clips, and cross-connect modules. Failure consists of structural damage, open circuits through the connector, or inability of module to pass the test connector reliability, jumper wire pullout, and dielectric strength tests described in paragraphs (i)(3)(ii), (i)(3)(iv), and (i)(4)(ii) of this section.

(j) *Packaging and identification requirements*—(1) *Product identification.* (i) Each housing, terminal block, or cross-connect module shall be permanently marked with the manufacturer's name or trade mark.

(ii) The date of manufacture, model number, serial number and REA assigned designations shall be placed on a decal inside housings. The product identification nomenclature must correspond with the nomenclature used in the manufacturer's quality assurance program.

(2) *Packaging requirements.* (i) Buried plant housings shall be packaged securely in an environmentally safe container to prevent either deterioration or physical damage to the unit during shipment, handling and storage.

(ii) The product with all the necessary parts shall be shipped in one container unless significant advantages to the user can be obtained otherwise. Packaging of parts in the carton shall be such that the parts become available in the order in which they are needed. The package should be clearly marked as to which end to open. Packages shall be clearly labeled, and correspond to the names given in the instructions.

(iii) Products packed in shipping containers shall be cushioned, blocked, braced, and anchored to prevent movement and damage.

(iv) All products shall be secured to pallets with non-metallic strapping. The strapping and the manner employed shall be of sufficient quantity, width, and thickness to preclude failure during transit and handling.

(v) The use of shrink or stretch film to secure the load to the pallet is permitted. However, such film must be applied over the required strapping.

(vi) Containers that are too large or heavy to be palletized, such as crates, shall be shipped in their own containers. When practical, these containers shall be provided with skids to facilitate fork-lift handling.

(vii) When packaged, the outer cartons shall meet the requirements of the Uniform Freight Classification and the National Motor Freight Classification.

(3) *Container marking requirements.* (i) The package shall be readily identifiable as to the manufacturer, model number, date of manufacture, and serial number.

(ii) The REA assigned housing designation shall be stamped or marked on the outside of the package container with letter and number sizes large enough for easy identification.

(iii) Each package shall be marked with its approximate gross weight.

(iv) All containers carrying delicate or fragile items shall be marked to clearly identify this condition.

(v) All marking shall be clear, legible, and as large as space permits.

Dated: August 7, 1993.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc 93–21208 Filed 8–31–93; 8:45 am]

BILLING CODE 3410–15–F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–01–AD]

Airworthiness Directives: Beech Aircraft Corporations 33, 34, 35, 36, 45, 55, 56TC, 58, 58P, 58TC, 60, and 95 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a notice of proposed rulemaking (NPRM) that would have applied to certain Beech Aircraft Corporations (Beech) 33, 34, 35, 36, 45, 55, 56TC, 58, 58P, 58TC, 60, and 95 series airplanes. The proposed action would have required inspecting the flap motor drive shaft to ensure that the flap flex cable shaft is properly connected, and correcting if improperly connected. Since issuance of the NPRM and after further review of all available information, the Federal Aviation Administration (FAA) has determined that the proposed rule does not constitute an unsafe condition under current FAA regulations. Flight tests during the certification process of the affected airplanes showed that these airplanes are controllable with an unsymmetrical flap condition. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4122; Facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Beech 33, 34, 35, 36, 45, 55, 56TC, 58, 58P, 60, and 95 series airplanes was published in the **Federal Register** on March 2, 1993 (58 FR 11996). The action proposed to require inspecting the flap motor drive shaft for proper connection of the flap flex cable shaft, and correcting if necessary. The proposed actions would be accomplished in accordance with the instructions in Beech SB No. 2460, dated December 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The commenter states that there is no technical justification for the proposed AD because the affected airplanes have demonstrated in-flight controllability with one flap fully extended and the other flap retracted. After further investigation of all information available, the FAA concurs that the proposed rule does not constitute an unsafe condition under current FAA regulations. Flight tests during the original certification process for the affected airplanes showed that these airplanes can, as quoted from 14 CFR ch. 1, paragraph 23.701, Flap interconnection:

(2) maintain synchronization so that the occurrence of an unsafe condition has been shown to be extremely improbable;

Accordingly, the proposed rule is withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12291, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket No. 93–CE–01–AD, published in the **Federal Register** on March 2, 1993 (58 FR 11996), is withdrawn.

Issued in Kansas City, Missouri, on August 26, 1993.

William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21219 Filed 8–31–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–113–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require replacement of the existing attachment bolts on the horizontal stabilizer with new, improved bolts having a longer fatigue life. This proposal is prompted by a report that certain attachment bolts on the horizontal stabilizer were not properly treated on the surface during production, resulting in reduced fatigue life. The actions specified by the proposed AD are intended to prevent corrosion and subsequent fatigue-related cracking of the attachment bolts on the horizontal stabilizer, which could lead to loss of stabilizer control.

DATES: Comments must be received by October 27, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–113–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–113–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–113–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that a pre-delivery check of one airplane revealed that certain bolts that attach the link assemblies on the dual actuator to the bracket of the horizontal stabilizer were not properly treated on the surface during production. The improperly treated bolts have a reduced fatigue life of 13,500 total landings. This condition,

if not corrected, could lead to corrosion and subsequent fatigue-related cracking of the attachment bolts on the horizontal stabilizer, which could result in loss of stabilizer control. (A fleet evaluation by the manufacturer has shown no in-service problems to date, however.)

Fokker has issued Service Bulletin SBF100–27–037, dated April 3, 1992, that describes procedures for replacement of the existing bolts that attach the link assemblies on the dual actuator to the drive bracket of the horizontal stabilizer with new, improved bolts; and instructions for performing a functional test. The new, improved bolts have a lengthened fatigue life. The manufacturer has installed the new, improved bolts on airplanes having serial numbers 11315 and subsequent prior to delivery. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA 92–051, dated April 8, 1992, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the existing bolts that attach the link assemblies on the dual actuator to the drive bracket on the horizontal stabilizer with improved bolts having a longer fatigue life, and performance of a functional test. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 20 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 11 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $1,100 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $34,100, or $1,705 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 93–NM–113–AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11244 through 11300 inclusive, 11303, 11306, 11308, 11310, and 11312 through 11314 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion and subsequent fatigue-related cracking of the attachment bolts on the horizontal stabilizer, which could lead to loss of stabilizer control, accomplish the following:

(a) Prior to the accumulation of 13,500 total landings or within 12 months after the effective date of this AD, whichever occurs later, replace the two existing bolts, part number D03000–017, that attach the link assemblies on the dual actuator to the drive bracket of the horizontal stabilizer, with new, improved bolts, part number DO3000–021; and perform a functional test; in accordance with Fokker Service Bulletin SBF100–27–037, dated April 3, 1992.

(b) As of the effective date of this AD, no person shall install an attachment bolt, part number D03000–017, on the horizontal stabilizer on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 26, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21221 Filed 8–31–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–104–AD]

Airworthiness Directives; Israel Aircraft Industries Ltd. Model 1121 and 1123 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Israel Aircraft Industries Ltd. Model 1121 and 1123 series airplanes. This proposal would require an inspection to detect damage of the wing lower center skin, lower aft skin, and rear spar under the main landing gear (MLG) wheel fairings; measurement and repair of damaged parts; and rework of the MLG wheel fairing ribs. This proposal is prompted by reports of chafing of the stiffening ribs of the MLG

wheel fairings into the lower wing skins and aft spar. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the wings.

DATES: Comments must be received by October 27, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–104–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Astra Jet Corporation. Technical Publications, 77 McCullough Drive, suite 11, New Castle, Delaware 19720. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Timothy J. Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–104–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–104–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, recently notified the FAA that an unsafe condition may exist on certain Model 1121 and 1123 series airplanes. The CAAI advises that recent reports have been received indicating that the stiffening ribs of the main landing gear (MLG) wheel fairings on two Model 1121 series airplanes were chafing into the lower wing skins and aft spar. Subsequent investigation revealed that the ribs of the fairings do not provide adequate stiffness. This condition, if not corrected, could result in reduced structural integrity of the wings.

The MLG wheel fairing ribs installed on the Model 1121 series airplanes are similar in design to those of the Model 1123 series airplanes. Therefore, the Model 1123 may be subject to the same unsafe condition revealed in the Model 1121.

Israel Aircraft Industries Ltd. has issued Service Bulletins SB 1121–57–018 (for Model 1121 series airplanes) and 1123–57–035 (for Model 1123 series airplanes), both dated November 25, 1992, that describe procedures for a one-time visual inspection to detect damage of the wing lower center skin, lower aft skin, and rear spar under the left- and right-hand MLG wheel fairings; measurement and repair of damaged parts; and rework of the MLG wheel fairing ribs. The CAAI classified these service bulletins as mandatory and issued Israeli Airworthiness Directive 92–03, Revision 1, dated November 23, 1992, in order to assure the continued airworthiness of these airplanes in Israel.

This airplane model is manufactured in Israel and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time visual inspection to detect damage of the wing lower center skin, lower aft skin, and rear spar, under the left- and right-hand MLG wheel fairings; measurement and repair of damaged parts, prior to further flight; and rework of the MLG wheel fairing ribs. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 45 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost of required parts is expected to be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $49,500, or $1,100 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Israel Aircraft Industries (IAI) Ltd.: Docket 93–NM–104–AD.

Applicability: Model 1121 series airplanes, serial numbers 071 through 106 inclusive, and 108 through 150 inclusive; and Model 1123 series airplanes, serial number 107; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wings, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, remove the left- and right-hand main landing gear (MLG) wheel fairings, and perform a visual inspection to detect damage of the wing lower center skin, lower aft skin, and rear spar under the fairings, in accordance with Israel Aircraft Industries Ltd. Service Bulletin SB 1121–57–018 (for Model 1121 series airplanes), dated November 25, 1992; or Israel Aircraft Industries Ltd. Service Bulletin SB 1123–57–035 (for Model 1123 series airplanes), dated November 25, 1992; as applicable.

(1) If no damage is detected, prior to further flight, rework the MLG wheel fairing ribs and reinstall the left- and right-hand MLG wheel fairings, in accordance with the applicable service bulletin.

(2) If any damage is detected, prior to further flight, measure the depth of the damage; repair any damage found, rework the MLG wheel fairing ribs, and reinstall the left- and right-hand MLG wheel fairings, in accordance with the applicable service bulletin.

(b) If any crack is detected during the repair required by paragraph by paragraph (a)(2) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 26, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21222 Filed 8–31–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–107–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require replacement of the existing ground/flight microswitches located in the main landing gear with improved microswitches, and installation of an anti-skid system ON/OFF switch in the flight compartment. This proposal is prompted by an incident involving loss of braking, which was caused by mechanical ground/flight microswitches that froze while in the flight position. The actions specified by the proposed AD are intended to prevent loss of braking below 40 miles per hour, when the anti-skid system is activated.

DATES: Comments must be received by October 27, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–107–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Timothy Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–107–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–107–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that there has been a recent report of a loss of braking incident on an in-service airplane, which was caused by two mechanical ground/flight microswitches

that froze while in the flight position. During landing, the crew could not apply braking action below 40 miles per hour (MPH). When the anti-skid system ON/OFF switch was turned off, the anti-skid system touchdown protection was deactivated, and the airplane was finally brought to a full stop. This condition, if not corrected, could result in loss of braking below 40 MPH, when the anti-skid system is activated.

Fokker has issued Service Bulletin SBF100–32–060, dated October 20, 1992, that describes procedures for replacement of the existing left- and right-hand ground/flight microswitches with new, improved microswitches at the main landing gear (MLG) downlock, temperature sensor, and anti-skid harness positions. These improved microswitches have better moisture protection, and are less likely to freeze while in the flight position. The service bulletin also describes procedures for installation of an anti-skid system ON/OFF switch in the flight compartment, for certain airplanes. This switch will enable the crew to select anti-skid OFF, in the event that the brakes do not work below 40 MPH. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive 92–122, dated October 23, 1992, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the existing left- and right-hand ground/flight microswitches with new, improved microswitches at the MLG downlock, temperature sensor, and anti-skid harness positions. The proposed NPRM would also require installation of an anti-skid system ON/OFF switch in the flight compartment, for certain airplanes. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 14 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 113 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $1,800 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $112,210, or $8,015 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 93–NM–107–AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11265 inclusive, 11268 through 11283 inclusive, 11286, 11289, 11291, 11293, 11295, 11297, 11300, and 11303; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent loss of braking below 40 miles per hour, when the anti-skid system is activated, accomplish the following:

(a) For all airplanes: Within 3 months after the effective date of this AD, replace the existing Dowty Electronics left- and right-hand ground/flight microswitches, part number 620602801, issue 1, with new, improved microswitches, part number 620602801, issue 2, at the main landing gear (MLG) downlock, temperature sensor, and anti-skid harness positions, in accordance with Fokker Service Bulletin SBF100–32–060, dated October 20, 1992.

(b) For airplanes having serial numbers 11244 through 11265 inclusive, 11268 through 11275 inclusive, 11277, and 11279: Within 12 months after the effective date of this AD, install an anti-skid system ON/OFF switch in the flight compartment in accordance with Fokker Service Bulletin SBF100–32–060, dated October 20, 1992.

(c) As of the effective date of this AD, no person shall install a Dowty Electronics left- and/or right-hand ground/flight microswitch, part number 620602801, issue 1, on any airplane.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 26, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21220 Filed 8–31–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 5

[Notice No. 780; Re: T.D. AFT–348, T.D. ATF–333, T.D. ATF–319, T.D. ATF–311, T.D. ATF–306; Notice Nos. 716, 583, 410, 403; 91F009P]

RIN 1512–AA10

Alteration of Class and Type; Vodka

AGENCY: Bureau of Alcohol, Tobacco and Firearms (AFT), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend regulations authorizing the use of a trace amount (defined as up to 300 milligrams per liter or 300 ppm) of citric acid in the production of vodka, without changing its designation as vodka. Because citric acid is not an essential component of vodka, ATF is proposing to amend the regulations on additions of substances to distilled spirits, rather than the regulations on the standard of identity of vodka. Under this proposal, vodka made with a greater concentration of citric acid would be designated "flavored vodka" or labeled with a fanciful name.

DATES: Comments must be received on or before October 18, 1993.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221, ATTN: Notice No. 780. Comments not exceeding three pages may be submitted by facsimile transmission to (202) 927–8602.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On December 4, 1990, ATF issued T.D. ATF–306, (55 FR 49994) which amended 27 CFR 5.23(a)(3) to authorize the use of up to 2 grams per liter (2000 parts per million (ppm)) of sugar, and a trace amount (defined as 150 milligrams per liter or 150 ppm) of citric acid in the production of vodka. ATF believed at that time that the 150 ppm threshold was sufficient to neutralize residual alkalinity derived from the charcoal treatment of some vodkas, or from the use of certain glass in manufacturing bottles. In addition, ATF's laboratory conducted tests which determined that 150 ppm was approximately the threshold at which the presence of citric acid could be detected. As a result, T.D. ATF–306 concluded that vodka treated with no more than 150 ppm of citric acid would still fall within the standard of identity for vodka. The standard of identity is defined in 27 CFR 5.22(a)(1) as "neutral spirits so distilled or so treated after distillation with charcoal or other materials, as to be without distinctive character, aroma, taste or color." T.D. ATF–306 was effective January 3, 1991, with a formula and label cancellation date of March 4, 1991, for products not made within the limitations of the Treasury decision.

Petition

On March 4, 1991, ATF issued T.D. ATF–311 (56 FR 8922) which deferred the compliance date with respect to the citric acid limitation set forth in 27 CFR 5.23(a)(3)(ii) by T.D. ATF–306 to December 4, 1991. The compliance date set forth in T.D. ATF–306 regarding maximum levels for the use of sugar in vodka remains unchanged. T.D. ATF–311 was issued in response to a petition from Heublein, Inc. (Heublein), for reconsideration of T.D. ATF–306. Heublein's petition was based on a representation that new scientific information and data not previously available had come to their attention concerning maximum levels for the use of citric acid in vodka.

Notice No. 716

On April 29, 1991, ATF issued Notice No. 716 (56 FR 19623) to gather additional information with respect to the 150 ppm limitation set forth in T.D. ATF–306. Notice No. 716 was issued in conjunction with Heublein's request for reconsideration which was granted in T.D. ATF–311. Notice No. 716 proposed to retain the reasoning and conclusion of T.D. ATF–306 as set forth above. The purpose of the Notice was to solicit comments from the public and industry concerning the appropriateness of sensory threshold citric acid levels higher and lower than the proposed maximum level of 150 ppm.

Comments on Notice No. 716

In response to Notice No. 716, ATF received nine comments. All of the comments were opposed to setting a maximum limitation as low as 150 ppm for the addition of citric acid to vodka. These comments were provided by: David Sherman Corp. (no limit should be established); Brown-Forman Corp. (500 ppm limit proposed, no substantiating data submitted); Joseph E. Seagram & Sons, Inc. (150 ppm is too low, no other level or substantiating data submitted); McCormick Distilling Co. (supports Heublein data, no other level or substantiating data submitted); Jim Beam Brands Co. (level could be set as high was 630 ppm, no substantiating data submitted); Distilled Spirits Council of the United States (opposes 150 ppm, no other level or substantiating data submitted); Glenmore Distillers Co. (500 ppm level proposed, no substantiating data submitted); and National Association of Beverage Importers, Inc. (supports Heublein data, no other level or substantiating data submitted).

Heublein's Test

The only commenter submitting sensory (taste and small) test data from independent contractors was Heublein. On July 29, 1991, Heublein submitted results of testing conducted by nine companies on their behalf. The purpose of these tests was to determine whether a statistically significant difference could be detected between two levels of citric acid in vodka. These tests were not designed to determine the minimum level at which a majority of people could detect the presence of citric acid in vodka. For example, if a panel was asked to determine whether there was a difference between 1000 ppm and 1110 ppm of citric acid, the statistical analysis of the results of such testing would only show whether the panelist can reliably distinguish between the two samples but would not generate any information concerning the threshold level at which citric acid could be detected by a statistical minority of people. Heublein's study concluded that a change in the level of citric acid in vodka from 150 ppm to 480 ppm would not be detected by a majority of people but that a change from 150 ppm to 528 ppm would be detected by a majority of people.

Independent Testing

During the comment period, ATF secured on outside testing firm, Odor Science and Engineering (OS&E), to conduct independent testing on sensory threshold levels for citric acid addition to vodka. The outside testing firm was secured in order to provide data for comparison to the results secured by ATF and industry members.

OS&E was requested to conduct a test which would produce results with respect to the taste threshold of citric acid in vodka. The initial tests were conducted on April 25 and 29, 1991. Various concentrations of ethanol solution and citric acid were presented to a taste panel comprised of ten

experienced sensory panelists familiarized with the taste of the ethanol solutions. The initial ethanol solutions were supplied to OS&E by ATF and consisted of 40 percent ethanol in water (80 proof). The flasks were stoppered to prevent any opportunity of interference because of odor perception. The initial levels of citric acid in the various ethanol solutions were: 50 ppm, 100 ppm, 150 ppm, 200 ppm, and 1000 ppm.

The presentations consisted of two flasks containing only ethanol solution and one flask containing ethanol solution mixed with one of the levels of citric acid described above. One panelist at a time entered the sensory laboratory and tested each of the three flasks. Each of the panelists tasted each of the three flasks and indicated to the panel moderator which of the three samples was different, thus requiring the panelist to guess if he or she expressed uncertainty. This procedure is known as the forced-choice ascending method and was repeated for each of the citric acid concentrations described above. The forced-choice ascending method is stacked against guessing which sample contains the citric acid because two out of three choices do not contain citric acid.

As results of the initial trials were inconclusive, repeat trials were conducted with eleven panelists using citric acid concentrations of 100 ppm, 250 ppm, and 500 ppm. However, as with the initial tests, the ethanol solution had a pronounced anesthetic effect which precluded accurate determinations of taste thresholds. As a result, the ethanol solution was diluted to 20 percent ethanol in water (40 proof) and three concentrations of citric acid in the diluted solution were evaluated: 25 ppm, 50 ppm, and 500 ppm. The anesthetic effect discussed above was presumably eliminated because all of the panelists detected taste differences at lower concentrations of citric acid.

An additional test was run on May 28, 1991, using twelve panelists in order to develop more representative data using a 20 percent ethanol in water (40 proof) solution. The concentrations of citric acid in the diluted solution were 25 ppm, 50 ppm, 100 ppm, 200 ppm, and 400 ppm. The threshold of citric acid in vodka could then be determined using the forced-choice ascending concentration method. OS&E concluded that a majority of people could detect the presence of citric acid in vodka at a level of approximately 180 ppm.

However, such test results collected by OS&E were not calculated in accordance with the methodology prescribed by the American Society for Testing and Materials (ASTM). ASTM Procedure E–679 is entitled "Standard Practice for Determination of Odor and Taste Thresholds By a Forced-Choice Ascending Concentration Series Method of Limits." This method requires use of a geometric progression of concentrations, ie., each concentration of citric acid is a factor or multiple of the previous concentration. In this test, the factor was two. In order to calculate the mean of such a progression, one must take the geometric mean. This is calculated by taking the nth root of the product of the numbers. This differs from the familiar arithmetic mean which is found by dividing the sum of the numbers by n. In both cases, n is the number of values under consideration.

Disparity in Test Results

Heublein was provided with the opportunity to comment on the data secured on behalf of ATF by OS&E. Heublein acknowledged the discrepancies in the OS&E report in their comments to ATF when they stated that "we were unable to reproduce some * * * values in the report." Nevertheless, Heublein used the incorrect OS&E calculations and submitted to ATF that the level at which the majority of people could detect citric acid in vodka is 734 ppm.

A significant disparity existed between the methodologies of the studies done by ATF and Heublein, and the conclusions reached by Heublein and OS&E with respect to the study conducted by OS&E. Based on these disparities, ATF concluded that more time would be needed to properly evaluate the sensory tests and results derived from Heublein and the outside firm hired by ATF. The compliance date of December 4, 1991, with respect to citric acid, set forth in T.D. ATF–311 was subsequently deferred to September 3, 1992, by T.D. ATF–319 (56 FR 63398, December 3, 1991) in order to allow for time to resolve the disparity in the test results. As ATF had not yet completed its review of all data submitted relative to the citric acid limitation as of September 3, 1992, ATF issued T.D. ATF–333 (57 FR 40323, September 3, 1992), which deferred the compliance date with respect to the citric acid limitation set forth in 27 CFR 5.23(a)(3)(ii) until September 3, 1993.

ATF Analysis of Independent Test Data

The ATF laboratory used the data generated by OS&E and recalculated the results according to the approved ASTM method. The detection threshold of citric acid in vodka was determined using the best-estimate criterion, or the group geometric mean of all the panelists' thresholds. Each panelist's threshold is the geometric mean of the last missed concentration (the last concentration of citric acid not detected) and the next higher concentration. This kind of analysis is considered most reliable when most of the panelists have at least two hits in a row at the high concentration end. For those panelists who have a miss at the highest concentration, it is assumed that they would have had a hit at the next higher concentration had there been one more sample in the series (800 ppm citric acid for this test). For those panelists who have no misses, it is assumed that, had the testing begun one sample lower in the series (12.5 ppm citric acid for this test), they would have missed it.

For normally distributed data, half of the population lies on each side of the center of the data curve. Using the OS&E data, the ATF laboratory determined that two-thirds of the population lies within the range of citric acid concentrations between 202 ppm and 700 ppm and one-sixth lies outside this region in each tail of the distribution. As a normal distribution did not exist, the geometric mean would not yield as accurate a measure of where most people would detect the presence of citric acid in vodka as the median, or the middle point of the distribution ordered from lowest point to highest point. The ATF laboratory also utilized the OS&E data to determine that the actual range of concentrations of citric acid that would include two-thirds of the population results in a geometric mean of 376 ppm and a range of 202 ppm to 700 ppm at 40 percent alcohol or 80 proof. The results of the OS&E testing also show that a majority of the panelists would be able to detect citric acid at the median level of 282 ppm in 80 proof vodka. The median level of 282 ppm is significantly lower than either the group geometric mean of 376 ppm or the 734 ppm level determined by Heublein.

The citric acid level of 734 ppm proposed by Heublein would be the concentration at which greater than two-thirds of the population would detect the presence of citric acid in vodka. In addition, the tests performed by the Heublein independent laboratories were designed to determine whether there is a detectable difference between two solutions of different concentrations of citric acid in vodka, not whether citric acid is present. Accordingly, ATF does not believe that the Heublein independent lab tests are germane to the issue of setting a level of citric acid that will not be in conflict with the current standard of identity for vodka which defines the product as being without

distinctive character, aroma, taste, or color. Indeed, ATF believes that the use of a level of citric acid which greater than two-thirds of the population could detect is inconsistent with the above-stated standard of identity for vodka. ATF believes instead that it is in the interest of preserving the standard of identity for vodka that any statistical treatment be applied in the opposite direction, i.e., where most of the population would not detect the presence of citric acid.

Proposed Regulatory Change

After analyzing all of the data, ATF believes that the highest permitted level of citric acid in vodka should be the median level of 282 ppm found by applying the ASTM method to the OS&E test data. However, ATF is proposing to set a level of 300 ppm citric acid in vodka in order to facilitate regulatory administration and consumer understanding.

ATF Therefore proposes to amend 27 CFR 5.23(a)(3)(ii) authorizing the use of a trace amount (defined as up to 300 milligrams per liter or 300 ppm) of citric acid in the production of vodka, without changing its designation as vodka. Because citric acid is not an essential component of vodka, ATF is proposing to amend 27 CFR 5.23 which regulates additions of substances to distilled spirits, rather than 27 CFR 5.22(a)(1) which is the standard of identity of vodka. Under this proposal, vodka made with a greater concentration of citric acid would be designated "flavored vodka" or labeled with a fanciful name under 27 CFR part 5.

On August 27, 1993, ATF issued T.D. ATF–348 (58 FR 45251) deferring the compliance date set forth in T.D. ATF–333 until August 28, 1995 with respect to the citric acid limitation set forth in 27 CFR 5.23(a)(3)(ii) by T.D. ATF–306. The two year compliance date deferral is necessary in order to allow ATF to analyze the comments received during the comment period and to allow for additional unforeseen contingencies.

Public Participation-Written Comments

ATF requests comments from all interested parties. ATF is particularly interested in comments concerning the sensory threshold citric acid levels of vodka (the level at which vodka would be without distinctive character, aroma, taste, or color to a majority of people.) In that regard, ATF is interested in comments concerning citric acid levels higher or lower than the proposed maximum level of 300 ppm. Also, ATF is interested in comments concerning the methodology and results of the studies conducted by Heublein and OS&E, as well as ATF's interpretation of the same.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927–8602, provided the comments: (1) Are legible; (2) are 8½" × 11" size, (3) contain a written signature, and (4) are three pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Any persons who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Regulatory Flexibility Act

It is hereby certified that this document will not have a significant economic impact on a substantial number of small entities. Any benefit derived by a small proprietor from the new options provided in this rule will be the result of the proprietor's own promotional efforts and consumer acceptance of the specific product. No new reporting, recordkeeping or other administrative requirements are imposed by this rule. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Disclosure

Copies of this notice, the independent study commissioned by ATF, the report of the ATF laboratory interpreting the study, and any written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, room 6480, 650 Massachusetts Avenue, Washington, DC 20226.

Drafting Information

The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

Authority and Issuance

27 CFR Part 5—Labeling and Advertising of Distilled Spirits, is amended as follows:

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Paragraph 1. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

Par. 2. Section 5.23(a)(3)(ii) is revised to read as follows:

§ 5.23 Alteration of class and type.

(a) *Additions.* * * *

* * * * *

(3) * * * (ii) any material whatsoever in the case of neutral spirits or straight whiskey, except that vodka may be treated with sugar in an amount not to exceed 2 grams per liter, and with citric acid in an amount not to exceed 300 milligrams per liter; or

* * * * *

Signed: July 30, 1993.
Stephen E. Higgins,
Director.

Approved: August 17, 1993.
Ronald K. Noble,
Assistant Secretary (Enforcement).
[FR Doc. 93–21246 Filed 8–31–93; 8:45 am]
BILLING CODE 4810–31–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD 93–016]

RIN 2115–AE48

Ambrose Channel Navigation Restrictions

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to delete the Ambrose Channel, Lower New York Bay inland waterways navigation regulation (33 CFR 162.25). The regulation has become outdated and no longer serves a useful safety purpose. In addition, the navigation restrictions have proven to be an administrative burden for the mariner and the Coast Guard.

DATES: Comments must be received on or before October 18, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CDG 93–016), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Irene Hoffman, Project Manager, Vessel Traffic Services Division. The telephone number is 202–267–6277.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 93–016) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period, and may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Irene Hoffman, Project Manager, Vessel Traffic Services Division and Mr. Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Background and Purpose

The Ambrose Channel navigation restriction was originally established by an order issued by the United States Army Corps of Engineers on March 28, 1924. As published on September 29, 1977 (42 FR 51758), the Coast Guard assumed responsibility for this navigational restriction.

At present, this navigation regulation restricts the use of Ambrose Channel to certain vessels. The class of vessels that are prohibited from transiting the channel are those vessels not under sufficient power and control, sailing vessels, and other vessels engaged in towing. However, sailing vessels and other vessels engaged in towing may obtain permission to navigate the channel from Vessel Traffic Service New York (VTSNY).

These navigation restrictions have become outdated due to numerous channel improvements. The Ambrose Channel was widened to 2000 feet, dredged to over 45 feet in depth, and is well marked. It is the main channel and the only practical access to or egress from the Port of New York. It is heavily traveled, but not congested. By removing the navigation restriction for certain vessels in Ambrose Channel, the level of vessel safety would not be diminished. In addition, requiring sailing and towing vessels to obtain prior approval and a transit permit from VTSNY for entry and exit has proven to be an administrative burden to the mariner and the Coast Guard.

Discussion of Proposed Amendments

The Coast Guard is proposing to remove the Ambrose Channel, Lower New York Bay navigation restrictions (33 CFR 162.25). This proposal would lift navigation restrictions prohibiting certain vessels from navigating within the channel, as well as removing requirements for sailing and towing vessels to acquire prior transit approval from VTSNY. The Coast Guard believes that eliminating these restrictions should not have an adverse impact on navigation safety.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under "Department of Transportation Regulatory Policies and Procedures" (44 FR 11034; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation is unnecessary. The removal of the Ambrose Channel navigation regulations will have no foreseeable economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). It will remove the requirement for certain vessels to obtain Coast Guard approval to transit the Ambrose Channel.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in

Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Enviroment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 (c) and (1) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. The deletion of the Ambrose Channel Regulation will not affect the environment or vessel safety. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 162

Navigation (water), Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 162 as follows:

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

1. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46. § 162.25 [Removed]

2. Section 162.25 is removed.

Dated: August 27, 1993.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93–21305 Filed 8–31–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[FRL–4700–2]

Water Pollution Control; Application by South Dakota To Administer the National Pollutant Discharge Elimination System (NPDES) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of application, public comment period, and public hearings.

SUMMARY: The State of South Dakota has submitted an application to EPA to administer and enforce the NPDES program for regulating discharges of pollutants into waters within the State. According to the State's proposal, the NPDES program would be administered by the South Dakota Department of Environment and Natural Resources (SDDENR).

The application from South Dakota is complete and is available for inspection and copying. Public comments are requested, and public hearings will be held.

DATES: Comments must be received on or before October 8, 1993. Public hearings have been scheduled for September 27, 1993, from 3 p.m. to 5 p.m. (CDT) and from 7 p.m. to 9 p.m. (CDT) at the Matthew Training Center, Joe Foss Building; 523 East Capitol; Pierre, South Dakota 57501.

ADDRESSES: Janet LaCombe, NPDES Branch, (8WM–C); U.S.E.P.A., Region VIII; Denver Place, 999 18th Street, suite 500; Denver, CO 80202–2466.

FOR FURTHER INFORMATION CONTACT: Janet LaCombe at (303) 293–1593.

SUPPLEMENTARY INFORMATION: Section 402 of the Clean Water Act (CWA), 33 U.S.C. Section 1342, created the NPDES program, allowing EPA to issue permits for the discharge of pollutants into waters of the United States under conditions required by the CWA. Section 402(b) of the CWA provides that a state may submit an application to EPA for administering its own program for issuing NPDES permits within its jurisdiction. EPA is required to approve each such submitted state program unless EPA determines that the program does not meet the requirements of sections 304(i) and 402(b) of the CWA or the EPA regulations implementing those sections.

South Dakota's application for NPDES program approval contains a letter from the Governor requesting NPDES program approval, a Program Description, an Attorney General's Statement, copies of pertinent State statutes and regulations, and a Memorandum of Agreement (MOA) to be executed by the Regional Administrator, Region VIII, EPA, and the Secretary of the SDDENR.

Under 40 CFR 403.10(f)(1)(i) and 403.3(j), an approved state program must have the authority to require industrial users to comply with pretreatment standards for specific industrial subcategories, as established by EPA regulations in 40 CFR, chapter I, subchapter N, "Effluent Guidelines and Standards". When South Dakota submitted its proposed program to EPA, Subchapter N had not been incorporated into the State program. However, incorporation was approved at the July 28, 1993, public hearing of South Dakota Water Management Board and is expected to become effective on September 5, 1993, prior to EPA's approval or disapproval of the State submittal. Incorporation of categorical pretreatment standards must be fully effective before EPA can approve the program.

On the following three items, EPA specifically requests public comment:

(1) *Unsigned Complaints from the General Public.*

South Dakota Codified Law (SDCL) Section 34A–2–111 prohibits the SDDENR from performing inspections or taking other actions pursuant to SDCL Sections 34A–2–40, 34A–2–44, and 34A–2–45, such as sampling effluents, entering premises of dischargers, or otherwise ensuring compliance with Chapter 34A–2, as a result of, or based on, a complaint or the provision of information from the general public, unless the person making the complaint or providing the information signs a complaint. Signed complaints are to be kept confidential.

Section 402(b)(2)(B) of the CWA requires an authorized state program to have authority to inspect, monitor, enter, and require reports to at least the same extent as required by section 308 of the CWA. Section 402(b)(7) of the CWA requires an authorized state program to have adequate authority to abate violations of permits or the permit program through penalties and other means of enforcement. 40 CFR 123.26(b)(3) and (4) require an authorized state program to maintain a program for investigating information regarding violations of applicable program and permit requirements, to maintain procedures for receiving and ensuring proper consideration of information submitted by the public about violations of applicable program and permit requirements, to encourage public efforts in reporting violations, and to make available information on reporting procedures.

The MOA (page 7) currently provides, in part:

> The SDDENR will investigate and respond to all citizen complaints where a signed complaint form has been received and will investigate all complaints received from other government agencies. At the time an unsigned complaint is received, SDDENR will determine whether appropriate department authorities exist under any state environmental statute to handle the unsigned complaint. If not, the citizen shall be referred to Emergency and Disaster Services; Game, Fish & Parks or another appropriate State agency.

EPA has asked South Dakota for an additional explanation of how the State would handle unsigned citizen complaints. To confirm EPA's understanding of how the proposed State program would operate, EPA has requested that South Dakota add the

following sentence to the MOA: "The appropriate State agencies shall receive anonymous complaints and either investigate under their authorities or sign and refer the complaint to SDDENR."

It is EPA's interpretation that the appropriate State agency investigates or becomes the complainant. In the latter case, EPA believes that enforcement authority will be ensured by having the SDDENR follow through with the investigation and response. EPA has also informed South Dakota that, at a minimum, all agencies other than the SDDENR that are referred to in the MOA should become signatories to the MOA. Alternatively, the Governor could sign the MOA, or the State could develop an appropriate internal agreement among its agencies.

In addition, for South Dakota, EPA will maintain an "800" number to receive information from persons who do not wish either to sign a complaint or to contact another State agency as outlined above.

EPA requests public comment regarding the effectiveness of this approach; the effect, if any, on public efforts to report violations; and the effect, if any, on compliance and enforcement activities in the South Dakota NPDES program.

(2) *Certain Penalty Authorities for Unpermitted Facilities.*

40 CFR section 123.27(a)(3)(i) provides that an approved state program is to have the authority to recover civil penalties for the violation of "any NPDES filing requirement" and "any duty to allow or carry out inspection, entry or monitoring activities," as well as for the violation of any NPDES permit condition or any regulation or order issued by the state program director. The Attorney General's Statement (pages 20–22) addresses this issue as follows:

> The State does not have direct statutory authority to collect civil penalties, or criminally enforce, a failure to comply with SDCL 34A–2–44 (record-keeping), 34A–2–45 and –46 (inspection authorities), due to a lack of citation to SDCL 34A–2–75 (penalty provision) in these sections. However, because the Department [of Environment and Natural Resources] can prosecute (both civilly and criminally) violations of permit conditions and because it can set permit conditions for recording, reporting, monitoring, entry, and inspection under 34A–2–40, it therefore can enforce these statutes. The Department can, with regard to unpermitted facilities, obtain both the records and entry for inspections pursuant to search warrants issued on the basis of the criminal provisions of SDCL 34A–2–75 and the violation of SDCL 34A–2–36 (operating without the required permit). Civil penalties for failure to comply with SDCL 34A–2–44, –45, and –46 by an unpermitted facility are available only through violation of an order issued by the Department pursuant to SDCL 34A–2–53. The process for issuing an order under SDCL 34A–2–53 for violations by unpermitted facilities can be issued in a timely fashion; if necessary, within the same day. In addition, an administrative search warrant under the DENR's inspection authority of SDCL 34A–2–45 and –46, could be obtained to immediately permit access to a facility.
>
> Penalties for the underlying violations, such as operating without a permit, accrue during the time period of appeal of the Secretary's order and are payable at the conclusion of the appeal process. Penalties for violations of the Secretary's order are suspended until the Board makes its finding on the appeal of the Secretary's order. SDCL 34A–2–53, –54, –55, –56, –60, –64. Further appeal does not suspend the order or the penalties.

EPA requests public comment regarding the effectiveness of this approach in implementing the State's information collecting authorities.

(3) *Citizen Intervention in Enforcement Actions. 40 CFR 123.27(d) provides:*

Any State administering a program shall provide for public participation in the State enforcement process by providing either:

> (1) Authority which allows intervention as of right in any civil or administrative action * * * by any citizen having an interest which is or may be adversely affected; or
>
> (2) Assurance that the State agency or enforcement authority will (i) Investigate and provide written responses to all citizen complaints * * * (ii) Not oppose intervention by any citizen when permissive intervention may be authorized * * *; and (iii) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

The South Dakota Attorney General's Statement (pages 28–30) indicates that citizens have the right to intervene in administrative enforcement actions pursuant to SDCL section 34A–10–2. It states that any citizen who is denied intervenor status in an administrative proceeding may file a circuit court action pursuant to SDCL section 34A–10–5 to have the court order the citizen to be named as a party to the administrative proceedings. As to judicial actions, SDCL 15–6–2(a) provides for citizen intervention unless the interest of the citizen is adequately represented by existing parties.

The MOA (page 3) states that the SDDENR will allow intervention as of right in civil proceedings to at least the same extent required by 40 CFR section 123.27(d)(1) and shall not oppose citizen intervention in administrative proceedings as provided by 34A–10–2.

EPA requests comment regarding the effectiveness of the State's proposed approach in ensuring the opportunity for public participation in enforcement actions.

Indian Reservations. If EPA were to authorize South Dakota to administer the NPDES program as submitted, the authorization would not extend to discharges within "Indian Country" as defined in 18 U.S.C. section 1151. EPA would retain authority to issue NPDES permits for all dischargers on the following "existing or former" Indian reservation lands located in South Dakota:

1. Cheyenne River Indian Reservation
2. Crow Creek Indian Reservation
3. Flandreau Indian Reservation
4. Lower Brule Indian Reservation
5. Pine Ridge Indian Reservation
6. Rosebud Indian Reservation
7. Sisseton Indian Reservation
8. Standing Rock Indian Reservation
9. Yankton Indian Reservation.

A list of existing facilities that would remain under EPA management can be obtained free of charge from EPA, Region VIII, Water Management Division at the address provided above.

In withholding authorization for these areas, EPA is not determining that the State either has adequate jurisdiction or lacks such jurisdiction. Should South Dakota later choose to submit further analysis with regard to its general jurisdiction over "Indian Country" or with regard to its jurisdiction over specific parts of "existing or former" reservations, it may do so without prejudice.

Before EPA would be able to authorize South Dakota to administer the NPDES program for any portion of "Indian Country," the State would have to provide an appropriate analysis of the State's jurisdiction to regulate discharges in these areas, as required by 40 CFR § 123.23(b). In order for a state to satisfy the requirements of § 123.23(b), it must demonstrate to the EPA's satisfaction that it has authority either pursuant to explicit Congressional authorization or under the principles of Federal Indian law to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks authorization. EPA has reason to believe that disagreement exists with regard to the State's jurisdiction over the Indian reservation areas designated above, and EPA is not satisfied at this time that the State has made an appropriate analysis with regard to these areas.

EPA's future evaluation of whether to authorize the South Dakota program to include Indian reservation lands will be

governed by EPA's judgment as to whether the State has demonstrated adequate authority to justify such approval, based upon its understanding of the relevant principles of Federal Indian law and sound administrative practice. The State may wish to consider EPA's discussion of the related issue of tribal jurisdiction found in the preamble to the Indian Water Quality Standards Regulation (see 56 FR 64876, December 12, 1991).

Availability of State Submittal

South Dakota's submittal may be reviewed by the public from 8 a.m. to 4 p.m. (CDT), Monday through Friday, excluding holidays, at the SDDENR, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501, or at the EPA Regional Office in Denver at the address appearing earlier in this notice.

Copies of the submittal may be obtained at a cost of ten dollars ($10.00) by check payable to the South Dakota Department of Natural Resources. Requests for copies should be addressed to Kent Woodmansey, South Dakota Department of Environment and Natural Resources at the address provided above or at telephone number (605) 773–3351.

Public Hearing Procedures

The public hearings have been scheduled for the date, times, and location indicated above. The Hearing Panel will include representatives of EPA Region VIII and the SDDENR. The following policies and procedures will be observed: The Presiding Officer shall conduct the hearings in a manner that permits open and full discussion of any issue involved. Any person may submit written statements or documents for the record. The Presiding Officer may, at his or her discretion, exclude oral testimony if such testimony is overly repetitious of previous testimony or is not relevant to the decision to approve, disapprove, or require revision of the submitted State program. The Presiding Officer may limit oral testimony to five minutes total per person. Members of the Hearing Panel may ask questions of witnesses and respond to questions and statements of witnesses.

The transcript taken at the hearings, together with copies of all submitted statements and documents, shall become a part of the record submitted to EPA. The hearing record shall be left open until October 8, 1993, as described below, to permit any person to submit any additional written statement or to present views or evidence tending to rebut testimony presented at the public hearing.

Hearing statements may be oral or written. Written copies of oral statements are encouraged for accuracy of the record and for the use of the Hearing Panel and other interested persons. Statements should summarize any extensive written material.

All comments or objections presented at either public hearing or received in writing by EPA Region VIII by October 8, 1993, will be considered by EPA before it takes final action on South Dakota's request for NPDES program approval.

All written comments and questions regarding the hearings or the NPDES program should be addressed to Janet LaCombe at the above address.

The public is also encouraged to bring the foregoing to the attention of persons whom may be interested in this matter.

EPA's Decision

After the close of the public comment period, EPA will decide whether to approve or disapprove South Dakota's NPDES program. The decision will be based on the requirements of sections 402 and 304(i) of the CWA and EPA regulations promulgated thereunder.

If the South Dakota NPDES program is approved, EPA will so notify the State. Notice will be published in the **Federal Register** and, as of the date of program approval, EPA will suspend issuance of NPDES permits in South Dakota (except, as discussed above, for those dischargers in "Indian Country"). The State's program will operate in lieu of the EPA-administered program. However, EPA will retain the right, among other things, to object to NPDES permits proposed to be issued by South Dakota and to take enforcement actions for violations.

If EPA disapproves South Dakota's NPDES program, EPA will notify the State of the reasons for disapproval and of any revisions or modifications to the State program that are necessary to obtain approval.

Review Under Regulatory Flexibility Act and Executive Order 12291

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of entities. The proposed approval of the South Dakota NPDES program does not alter the regulatory control over any industrial category. No new substantive requirements are established by this action. Therefore, because this notice does not have a significant impact on a substantial number of small entities, a Regulatory Flexibility Analysis is not needed.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Dated: August 23, 1993.

Jack W. McGraw,

Acting Regional Administrator, Environmental Protection Agency, Region VIII.

[FR Doc. 93–20969 Filed 8–31–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[PP 0E3906/P568; FRL–4641–6]

RIN No. 2070–AC18

Pesticide Tolerance for Dimethoate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the insecticide dimethoate in or on the raw agricultural commodity Brussels sprouts. The proposed regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 0E3906/P568], must be received on or before October 1, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section

(H7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 0E3906 to EPA on behalf of the Agricultural Experiment Station of California. This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)) propose the establishment of a tolerance for residues of the pesticide dimethoate (*O,O*-dimethyl *S*-(*N*-methylcarbamoylmethyl) phosphorodithioate) including its oxygen analog (*O,O*-dimethyl *S*-(*N*-methylcarbamoylmethyl) phosphorothioate) in or on the raw agricultural commodity Brussels sprouts at 5.0 parts per million (ppm). The petitioner proposed that this use of dimethoate be limited to California based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A 3-month feeding study in rats fed diets containing 0, 2, 8, 32, 50, and 400 ppm with a no-observed-effect-level (NOEL) for plasma, red blood cell and brain cholinesterase inhibition of 32 ppm (equivalent to 1.6 milligrams (mg)/kilogram (kg) kg/day) and a systemic NOEL of 50 ppm (equivalent to 2.5 mg/kg/day) based on depressed growth and food consumption, and increased kidney and liver weights ratios at the 400-ppm dose level.

2. A 3-month feeding study in dogs fed diets containing 0, 2, 10, 50, 1,500, and 3,000 ppm with a NOEL for red blood cell cholinesterase inhibition of 2 ppm (equivalent to 0.05 mg/kg/day) and a NOEL for systemic effects of 50 ppm (equivalent to 1.25 mg/kg/day) based on tremors and decreased food consumption in females at the 1,500-ppm dose level.

3. A 1-year feeding study in dogs fed diets containing 0, 5, 20, or 125 ppm with a NOEL of less than 5 ppm (equivalent to less than 0.18 mg/kg/day) based on decreased brain and red blood cell cholinesterase in males and decreased liver weight in females at the 5-ppm dose level.

4. A three-generation reproduction study in mice fed diets containing 0, 5, 15, or 50 ppm (equivalent to 0, 0.25, 0.75, or 2.5 mg/kg/day) with no reproductive or systemic effects observed under the conditions of the study.

5. A developmental toxicity study in rats given gavage doses of 0, 3, 6, or 18 mg/kg/day with no developmental toxicity observed under the conditions of the study. The NOEL for maternal toxicity was established at 6 mg/kg/day; rats fed 18 mg/kg/day (lowest-effect level) displayed hypersensitivity, tremors, and unsteady gait.

6. A 2-year chronic feeding/carcinogenicity study in rats fed diets containing 0, 5, 25, or 100 ppm (equivalent to 0, 0.25, 1.25 or 5.0 mg/kg/day) with a systemic NOEL of 25 ppm based on increased female mortality, decreased male body weight gain, anemia in males, and increased leukocytes in male and female rats at the 100-ppm dose level. The NOEL for cholinesterase inhibition was established at 5 ppm based on cholinesterase inhibition at the 25-ppm dose level. In male rats, there were dose-related trends for (a) spleen hemangiosarcomas (malignant tumors associated with connective tissue and blood and lymph vessels); (b) combined spleen hemangioma (benign tumors) and hemangiosarcoma; and (c) combined spleen hemangioma and hemangiosarcoma, and skin hemangiosarcoma. Furthermore, there were significant pair-wise comparisons between control and the high-dose (100 ppm) for spleen (hemangioma/hemangiosarcoma) and in the combined tumors of spleen and skin hemangioma/hemangiosarcoma and lymph angioma/angiosarcoma (benign and malignant tumors made up of lymph vessels). There was also a significant difference by pair-wise comparison between the control and low dose (5 ppm) for (a) lymph angiosarcoma, (b) combined lymph angioma and angiosarcoma, and (c) combined spleen and skin hemangioma/hemangiosarcoma and lymph angioma/angiosarcoma. There were no significant tumor increases in female rats.

7. A 78-week carcinogenicity study in B6C3F1 mice fed diets containing 0, 25, 100, or 200 ppm (equivalent to 0, 3.75, 15, or 30 mg/kg/day). In male mice there were significant dose-related increased trends for (a) combined lung adenoma and/or adenocarcinoma, (b) for lymphoma, and (c) for the combined group of lymphoma, reticularsarcoma, and leukemia. In female mice there were significant dose-related trends for (a) liver carcinoma and for (b) combined liver adenoma and/or carcinoma.

8. Dimethoate is regarded as a mutagenic compound based on the results of studies designed to determine gene mutation and structural chromosome aberrations. Dimethoate is a bacterial mutagen and shows equivocal results for gene mutations in mammalian cells. It produces clastogenic effects in several studies in vitro and in vivo, and there are suggestive results for dominant- lethal effects. The National Toxicology Program has concluded that dimethoate is a mutagenic compound based on its testing for gene mutation and chromosomal aberrations. A third category of studies to determine other genotoxic effects is a data gap for dimethoate.

Dimethoate has been classified as a possible human carcinogen (category C) by the Office of Pesticide Programs' Health Effects Division's Carcinogenicity Peer Review Committee. The Peer Review Committee supports this classification based on the appearance of equivocal hemolymphoreticular tumors in male mice, the compound-related (no dose response) weak effect of combined spleen (hemangioma and hemangiosarcoma), skin (hemangiosarcoma), and lymph (angioma and angiosarcoma) tumors in male rats, and positive mutagenic activity associated with dimethoate.

The Peer Review Committee concluded that the lung tumors seen in male mice were not biologically significant tumors related to compound administration since there were no statistically significant differences based on pair-wise comparisons with controls and each dose level. The incidence of lung tumors in the control groups was variable, and there was a high background level of these tumors. The increase in lymphoma observed in male mice in the high-dose group was of borderline statistical significance by pair-wise comparison with controls. The incidence of lymphoma in mice is also common and variable. The Committee agreed that the increased incidence for the combined hemolymphoreticular tumors in male mice is compound related, but could only classify this incidence as equivocal. The incidence of hemolyphoporeticular tumors in male mice was relatively low and consistent with historical control, only occurred in

one sex (males), and was evident only in the high-dose group.

The Committee concluded that in female mice there were no significant pair-wise comparisons, there was only the trend with combined tumors, and the combined incidence was similar to historical controls. In addition, there also was no evidence of precursor lesions to carcinogenicity. Regarding the carcinogenicity study in rats, the Committee concluded that although there were significant pair-wise comparisons at the low and high doses for all tumors combined, these tumors did not indicate much more than a weak effect.

EPA has concluded that dimethoate poses no greater than a negligible cancer risk to humans; therefore, the Agency has chosen to use reference dose calculations to estimate dietary risk from dimethoate residues. The reference dose (RfD) for dimethoate is established at 0.0002 mg/kg body weight/day. The RfD is based on a NOEL of 0.05 mg/kg bwt/day for brain cholinesterase inhibition from a 2-year feeding study in rats and an uncertainty factor of 300. A 300-fold uncertainty factor was used since an acceptable feeding study in dogs was not available when the RfD was established. The Agency plans to reevaluate the reference dose for dimethoate to determine whether an uncertainty factor of 100 is appropriate based on the results of the chronic feeding study in dogs discussed above.

The anticipated residue contribution (ARC) for the general population from published uses and the proposed use on Brussels sprouts utilizes 52 percent of the RfD. The ARC for the subgroup most highly exposed, nonnursing infants, utilizes 89 percent of the RfD based on published uses. The proposed use on Brussels sprouts would utilize an additional 14 percent of the RfD, raising the ARC to 103 percent of the RfD for nonnursing infants.

Although estimated dietary exposure to residues of dimethoate slightly exceeds the RfD for nonnursing infants, EPA does not believe that residues of dimethoate in the diet resulting from these uses poses a significant risk to nonnursing infants. The dietary exposure assessment assumes that 100 percent of the Brussels sprouts consumed in the U.S. will be treated with dimethoate. This assumption clearly overestimates dietary exposure since the proposed use will be limited to California production only. In addition, the toxicology data base appears to support a 100-fold uncertainty factor for calculating the dimethoate RfD, which would increase the RfD to a level well above estimated dietary exposure for all population subgroups.

The nature of the residue in plants is adequately understood and an adequate analytical method, gas-liquid chromatography with a thermionic detector, is available for enforcement purposes. An analytical method for enforcing this tolerance has been published in the Pesticide Analytical Manual (PAM), Vol. II. No secondary residues in meat, milk, poultry, or eggs are expected since Brussels sprouts are not considered a livestock feed commodity. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency the tolerance established by amending 40 CFR 180.204 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 0E3906/P568]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 16, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.204, by amending paragraph (b) in the table therein by adding and alphabetically inserting the commodity Brussels sprouts, to read as follows:

§ 180.204 Dimethoate, including its oxygen analog; tolerances for residues.

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for total residues of the insecticide dimethoate including its oxygen analog in or on the following raw agricultural commodities:

Commodity	Parts per million
Brussels sprouts	5.0
* * * * *	

[FR Doc. 93-21082 Filed 8-31-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 0E2391/P555; FRL-4188-5]

RIN No. 2070-AB78

Pesticide Tolerance for Phorate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish an import tolerance for combined residues of the insecticide phorate (*O,O*-diethyl *S*(ethylthio)methyl] phosphorodithioate) and its cholinesterase-inhibiting metabolite in or on the raw agricultural commodity (RAC) coffee beans. This proposal to establish a maximum permissible level for residues of the insecticide was requested by the American Cyanamid Co.

DATES: Comments, identified by the document control number [PP-0E2391/P555], must be received on or before October 1, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert A. Forrest, Product Manager (PM) 14, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6600.

SUPPLEMENTARY INFORMATION: The American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540, has submitted pesticide petition (PP) 0E2391 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose the establishment of a tolerance for the combined residues of the insecticide phorate and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity coffee beans at 0.02 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 1-year dog feeding study with a no-observed-effect level (NOEL) of 0.05 milligram/kilogram/day (mg/kg/day) based on the inhibition of brain cholinesterase activity.

2. A 2-year rat feeding/carcinogenicity study with inhibition of plasma cholinesterase activity observed at 1 ppm (lowest dose tested, no carcinogenic effects were observed at levels up to and including 6 ppm (highest dose tested).

3. An 18-month mouse carcinogenicity study with a systemic NOEL of 3 ppm based on a decrease in weight gain. No carcinogenic effects were observed at levels up to and including 6 ppm (highest dose tested).

4. A 3-month rat feeding study with an NOEL of 0.66 ppm based on inhibition of cholinesterase activity. Doses tested were 0, 0.22, 0.66, 2.0, 6.0, 12.0, and 18.0.

5. A 13-week mouse feeding study with depressed cholinesterase levels observed at both the 3-ppm and the 6-ppm level. Levels tested were 0, 1, 3, and 6 ppm. The effects observed in this study support the conclusion that the dosages in the above-noted 18-month mouse study were adequate.

6. A three-generation mouse reproductivity study with a NOEL of 1.5 ppm for reproductive effects.

7. A rat developmental toxicity study with a lowest-effect level (LEL) of 0.5 mg/kg (highest dose tested).

8. A rabbit developmental toxicity study with a NOEL of 1.2 mg/kg/day.

9. An acute delayed neurotoxicity study in hens which was negative for neurotoxic effects under the conditions of the study (dose tested was 14.2 mg/kg).

10. Several mutagenicity studies which were negative. These include gene mutation tests with and without metabolic activation; structural chromosome aberration tests (dominant lethal test in mice and chromosome aberrations in vivo in mammalian bone marrow cells); mitotic recombination with and without metabolic activation; preferential toxicity assays in DNA repair-proficient and repair-deficient strains of *E. coli* and *Bacillus subtilis*; and unscheduled DNA synthesis in human fibroblasts.

11. A rat metabolism study in which 85 percent of the dose (0.44 mg/kg) was excreted in 24 hours. All of the phorate-labeled metabolites recovered in the urine and tissues were composed of a nonphosphorylated series of metabolites. (Phosphorylated metabolites were found in feces only). The more potent oxidative phosphorylated products represent a minor proportion of the phorate metabolites measured.

12. A 90-day rat feeding study using phorate sulfoxide, an oxidative phosphorylated metabolite of phorate as the test substance with an NOEL of 0.32 ppm based on inhibition of plasma and red blood cell (RBC) cholinesterase activity.

The reference dose (RfD), based on the brain cholinesterase inhibition NOEL as defined in a 1-year dog feeding study (0.05 mg/kg/day) and using an uncertainty factor of 100, is calculated to be 0.0005 mg/kg of body weight per day. The Anticipated Residue Contribution (ARC) for existing tolerances for the overall U.S. population is 0.000492 mg/kg/day, which represents 98 percent of the RfD. The current action will contribute a Theoretical Maximum Residue Contribution (TMRC) of less than 0.000001 mg/kg/day for the overall U.S. population or 0.2 percent of the RfD.

This tolerance and current established tolerances would utilize a total of 99 percent of the RfD for the overall U.S. population. The most highly exposed subgroups, nonnursing infants less than 1-year-old and children 1 to 6 years old, are not affected by this tolerance.

The nature of the residues is adequately understood for the use of phorate on coffee beans imported from Central America and South America. The nature of the residues in plants is adequately defined, and there are no animal feed items associated with this use. Therefore, it is expected that no secondary residues in meat, milk, poultry, and eggs will result from the use of the pesticide on coffee beans.

An adequate analytical method, gas chromatograph with a flame ionization detector, is available in the Pesticide Analytical Manual, Vol. II., for enforcement purposes.

Based on the information considered by the Agency, the tolerance established by amending 40 CFR 180.206 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 0E2391/P555]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: August 18, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.206 the commodity coffee beans is added to the list of commodities therein and the list is revised into a tabular format; as revised, the section reads as follows:

§ 180.206 Phorate; tolerances for residues.

Tolerances are established for combined residues of the insecticide phorate (*O,O*-diethyl *S*[(ethylthio)methyl] phosphordithioate) and its cholinesterase-inhibiting metabolites in or on raw agricultural commodities as follows:

Commodity	Parts per million
Alfalfa, fresh	0.5
Alfalfa, hay	1.0
Barley, grain	0.1
Barley, straw	0.1
Beans	0.1
Bean, vines	0.5
Cattle, fat	0.05
Cattle, mbyp	0.05
Cattle, meat	0.05
Coffee beans[1]	0.02
Corn, forage	0.5
Corn, grain	0.1
Corn, sweet (K + CWHR)	0.1
Cottonseed	0.05
Goats, fat	0.05
Goats, mbyp	0.05
Goats, meat	0.05
Hogs, meat	0.05
Hogs, mbyp	0.05
Hops	0.5
Horses, fat	0.05
Horses, mbyp	0.05
Horses, meat	0.05
Lettuce	0.1
Milk (negligible residue)	0.02
Peanuts	0.1
Peanut, hay	0.3
Peanut, vines	0.3
Potatoes	0.5
Poultry, fat	0.05
Poultry, mbyp	0.05
Poultry, meat	0.05
Rice	0.1
Sheep, fat	0.05
Sheep, mbyp	0.05
Sheep, meat	0.05
Sorghum, grain	0.1
Sorghum, fodder	0.1
Soybeans	0.1
Straw, Bermuda grass	0.5
Sugar beet, roots	0.3
Sugar beet, tops	3.0
Sugarcane	0.1
Tomatoes	0.1
Wheat, grain	0.05
Wheat, green fodder	1.5
Wheat, straw	0.05

[1]There are no U.S. registrations as of September 1, 1993 for coffee beans.

[FR Doc. 93-21249 Filed 8-31-93; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

Occupancy and Camping Stay Limits

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed occupancy and camping stay limit would apply to designated campgrounds, and to undeveloped Bureau of Land Management administered public lands (that are not closed to camping) within the Ukiah District, California. Persons may camp on these public lands for a period of not more than 14 days during any calendar year, in each of the District's three Resource Areas—Redding, Clear Lake and Arcata. The 14 day limit may be reached either through a number of separate visits, or through 14 days of continuous occupation. After the 14th day of occupation, campers will not be permitted to camp within that Resource Area for the remainder of the calendar year. Under special circumstances and upon request, the authorized officer may give written permission for extension of the 14 day limit.

Camping is defined as the use of tents or shelters of natural or synthetic material, preparing a sleeping bag or bedding material for use, or mooring of a vessel, or parking a vehicle or trailer for the apparent purpose of occupancy. Occupancy is defined as the taking, maintaining or holding possession of a camp or residence on public land, either by personal presence or by leaving property on the site. Vehicles or property left unattended to hold sites may be subject to impoundment.

Unless elsewhere authorized, any vehicle, trailer, camper, or vessel left unattended on public lands for more than 10 days, or at a developed recreation site for more than 72 hours, will be considered abandoned and may be impounded by the Authorized Officer through the use of local towing and impounding services. This property will subsequently be subject to State and/or county laws or ordinances affecting the disposal, sale or destruction of such property.

DATES: All comments and information shall be submitted in writing by October 1, 1993.

ADDRESSES: All comments concerning this proposed rulemaking should be addressed to David Howell, District Manager, Bureau of Land Management, Ukiah District Office, 555 Leslie Street, Ukiah, California 95482.

FOR FURTHER INFORMATION CONTACT:

Robert Wick, Recreation Planner, Ukiah District Office, (707) 462-3873.

SUPPLEMENTARY INFORMATION: This occupancy and camping stay limit is proposed to be established to provide consistency and uniformity for the camping public on Bureau of Land Management administered lands throughout the Ukiah District, California, and to prevent user conflicts by providing equal opportunities to camp in given areas. Establishment of this length of stay limit is also to assist the Bureau in reducing the incidence of unauthorized occupancy of public lands in the name of recreational camping. These supplementary rules do not supersede camping and occupancy rules developed for special areas or emergency situations.

Authority for this stay is contained in CFR title 43, chapter II, part 8360, subparts 8364.1 and 8365.1-2(a). Violations of the supplementary rules under authority of 43 CFR 8365.1-2 are subject to a fine not to exceed $100,000

and/or imprisonment not to exceed 12 months.

Eric W. Natti,

Acting District Manager.

[FR Doc. 93–21178 Filed 8–31–93; 8:45 am]

BILLING CODE 4333–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–237, RM–8312]

Radio Broadcasting Services; Jeffersonville, New York

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Michael S. Celenza seeking the allotment of Channel 271A to Jeffersonville, New York, as the community's second local commercial FM service. Channel 271A can be allotted to Jeffersonville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 41–46–51 and West Longitude 74–56–03. Canadian concurrence is required since Jeffersonville is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before October 18, 1993, and reply comments on or before November 17, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James K. Edmondson, Esq., Gardner, Carton & Douglas, 1301 K Street, NW., Suite 900, East Tower, Washington, DC 20005 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–237, adopted August 9, 1993, and released August 26, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–21163 Filed 8–31–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–236, RM–8306]

Radio Broadcasting Services; Tulelake, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Wynne Broadcasting Company, Inc., permittee of Station KFLS–FM, Channel 243C2, Tulelake, California, seeking the substitution of Channel 243C for Channel 243C2 and modification of its permit accordingly to specify operation on the higher powered channel. Coordinates for this proposal are 42–05–50 and 121–37–59.

Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 243C at Tulelake, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before October 18, 1993, and reply comments on or before November 17, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Wynne Broadcasting Company, Inc., Attn: Robert Wynne, President, 1338 Oregon Ave., P.O. Box 1450, Klamath Falls, OR 97601.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–236, adopted August 9, 1993, and released August 26, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–21164 Filed 8–31–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–234, RM–8289]

Television Broadcasting Services; Boca Raton and Lake Worth, Florida

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed jointly by Palmetto Broadcasters Associated for Communities, Inc., permittee of noncommercial television Station WPPB–TV, Channel *63, Boca Raton, Florida, Fouce Amusement Enterprises,

Inc., and Hispanic Broadcasting, Inc., permittee of unbuilt television Station WHBI–TV, Channel 67, Lake Worth, Florida. The petition requests the exchange of their channels of operation, pursuant to § 1.420(h) of the Commission's Rules, and an exchange of their communities of license, pursuant to § 1.420(i) of the Commission's Rules. If granted, this proposal would result in the operation of Station WPPB–TV on Channel *67 at Lake Worth and Station WHBI–TV on Channel 63 at Boca Raton. See Supplemental Information, infra.

DATES: Comments must be filed on or before October 18, 1993, and reply comments on or before November 17, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsels, as follows: Kevin C. Boyle and Elizabeth C. Brown, Latham and Watkins, 1001 Pennsylvania Avenue, NW., Suite 1300, Washington, DC, 20004 (counsel for Palmetto Broadcasters Associated for Communities, Inc.); N. Frank Wiggins, Venable Baetjer Howard and Civiletti, 1201 New York Avenue, NW., Suite 1000, Washington, DC, 20005 (counsel for Fouce Amusement Enterprises, Inc.); and Hispanic Broadcasting, Inc., 2203 NE. 203rd Terrace, North Miami Beach, Florida, 33180 (permittee of Station WHBI–TV, Channel 67, Lake Worth, Florida).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–234, adopted August 6, 1993, and released August 26, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Channel *67 can be allotted to Lake Worth at coordinates 26–22–14 and 80–10–21, with a site restriction of 29.5 kilometers (18.3 miles) south. Channel 63 can be allotted to Boca Raton at coordinates 25–58–15 and 80–12–32, with a site restriction of 43.7 kilometers (27.1 miles) south. In accordance with §§ 1.420(h) and 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel *67 at Lake Worth or Channel 63 at Boca Raton or require the petitioners to demonstrate the availability of additional equivalent class channels for use by such parties.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–21166 Filed 8–31–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285, 630, and 678

[I.D. 082793A]

Atlantic Shark, Tuna and Swordfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public scoping meetings on Atlantic shark, bluefin tuna and swordfish issues; request for comments.

SUMMARY: NMFS will hold thirteen public scoping meetings to receive comments from fishery participants and other members of the public regarding: Measures to limit derby-style fishing and other issues in the Atlantic Shark fishery; revision of measures to limit Atlantic bluefin tuna bycatch in the area south of 36°00′ N. latitude, in an effort to increase fishing efficiency, and other issues; and, the need and alternatives for effort limitation in the Atlantic swordfish fishery, and other issues. To accommodate people unable to attend a scoping meeting or wishing to provide additional comments, NMFS is also soliciting written comments on these and other issues of concern in these fisheries. In addition, NMFS requests input, by mail or by fax, to develop an issues/options statement before the scoping meetings.

DATES: See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of the scoping meetings. Written comments on the issues above must be received on or before November 1, 1993.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for the addresses of the scoping meeting locations. Written comments should be sent to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. Clearly mark the outside of the envelope "Atlantic Shark Comments," "Atlantic Bluefin Tuna Comments," or "Atlantic Swordfish Comments." Please do not combine comments on these three topics in the same letter. Input for the issues/options statement may also be provided to the same address, or by sending a fax to Richard B. Stone at 301–588–4967.

FOR FURTHER INFORMATION CONTACT: (1) Rod Dalton at 813–893–3161 for swordfish; (2) Michael Justen at 813–893–3161 for sharks; and (3) Richard B. Stone, telephone 301–713–2347, fax 301–588–4967, for Atlantic bluefin tuna or general information.

SUPPLEMENTARY INFORMATION: The Atlantic, Caribbean and Gulf of Mexico shark fisheries are managed under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 *et seq.*). Fishing by U.S. vessels is governed by regulations implementing the fishery management plan (FMP) at 50 CFR part 678. Regulations promulgated under the authority of the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. The Atlantic swordfish fishery is managed under the authority of the Magnuson Act (16 U.S.C. 1801 *et seq.*) and the ATCA (16 U.S.C. 971 *et seq.*), with regulations found at 50 CFR part 630.

Atlantic Sharks

Final regulations implemented the FMP for Sharks of the Atlantic Ocean and became effective on April 26, 1993. The FMP divided the 39 shark species in the management unit into three groups for management and resource assessment purposes. The FMP concluded that the large coastal species group is overfished while the pelagic and small coastal species groups are

fully exploited. In order to reduce fishing mortality, and as part of the rebuilding program, the FMP provided quotas for the commercial fishery for the large coastal and pelagic species groups.

NMFS wishes to obtain public comment on short-term as well as long-term measures to deal with the problems associated with open access of the shark fishery (see discussion below). Short-term measures are those that NMFS could implement for the shark fishery by the start of the new fishing year, such as trip limits, seasonal closures, and combinations of the two. Longer-term measures, which NMFS could implement within two-to-four years, include a moratorium on the issuance of vessel permits and changes in the types of permits, license limitations, and individual quotas. Other issues may also be addressed at the scoping meetings.

The number of permitted vessels in the shark fishery has substantially exceeded the number of vessels that have actually participated in the fishery, and exceeded 1,400 in 1993. Only about 40 vessels could catch the entire quota of 2,436 metric tons dressed weight (mt dw). Although many permitted vessels are not actively fishing, they represent substantial potential for further overcapitalization of the fishery and realization of the problems associated with open access.

Swordfish

Since July 1991, the Atlantic swordfish fishery has been subject to quotas limiting the total allowable catch (TAC). This TAC is divided into several portions, including directed longline and drift gillnet fisheries and bycatch quotas. The fishery currently operates under open access conditions.

In recent years, the number of permitted vessels has substantially exceeded the number of vessels that have actually participated in the fishery, and has increased dramatically in 1993. A control date was published in the **Federal Register** on August 30, 1991 (56 FR 42982). Although many of these permitted vessels are not actively fishing, they represent substantial potential for further overcapitalization of the fishery and realization of the problems associated with open access. Recent developments in other fisheries have raised concern that participation in the swordfish fishery may increase. Other issues of concern in the swordfish fishery may also be addressed at these scoping meetings.

Open Access and Effort Limitation in the Atlantic Shark and Swordfish Fisheries

Since the Atlantic swordfish and shark fisheries currently operate under open access, any vessel owner may obtain a permit and enter the fishery. Open access often contributes to such problems as: Intense competition for limited global quotas; shorter fishing seasons; regional allocation and gear conflicts; displacement from fishing grounds due to crowding; highgrading; increased bycatch and discarding; market gluts, lower quality, and lower prices; inability to plan for and/or fill long-term orders; and general economic inefficiency due to overcapitalization in the harvesting and processing sectors.

There is support within NMFS and the Atlantic shark and swordfish industries for consideration and evaluation of alternatives to the current open access system. Many participants in these industries support and have recommended some form of restriction on issuance of permits to new participants in the fishery, e.g., a moratorium on new entrys. NMFS, through its strategic plan goals and objectives, has expressed support for converting appropriate fisheries from open access to some form of controlled access. The scoping meetings are an initial step in evaluating alternatives to the current open access system. At this time, there is no commitment to take any action beyond consideration and evaluation of options.

There are many issues involved in moving toward any form of controlled access to a fishery. Through the scoping meetings and submission of written comments, NMFS is seeking the views of industry participants and the public regarding such issues as: The need for some form of effort limitation or controlled access; possible alternative approaches for achieving effort limitation or controlled access; and, the range of potential economic, social, biological, and environmental effects that might result from alternative approaches, including the no action alternative. Other more specific issues include, but are not limited to: Eligibility criteria; duration of any limitation; transferability of permits; limits on vessel upgrading (i.e., increasing effective fishing power); ownership limits; and establishment of appeal mechanisms.

Atlantic Bluefin Tuna

The incidental Atlantic bluefin tuna fishery in the area south of 36°00′ N. latitude is restricted to a bycatch fishery, as stated in § 285.31(a)(30). Bycatch limits in this area are limited to one Atlantic bluefin tuna per vessel per fishing trip, provided that at least 2,500 pounds (1,134 kg) of species other than Atlantic bluefin tuna are caught and offloaded from the same trip and are recorded on the dealer weighout form as sold.

In recommending that no directed bluefin tuna fishery be allowed in the Gulf of Mexico, the International Commission for the Conservation of Atlantic Tunas (ICCAT) has expressed its highest concern for the protection of spawning aggregations. NMFS believes that several of the measures that have been suggested to reduce fishing mortality in the area south of 36°00′ N. latitude merit consideration (e.g., seasonal/area closures, breakaway gear, leader strength, use of circle hooks). However, before implementation, NMFS would like more definitive data on these potential measures to reduce incidental mortality on the spawning stock.

In the interim, NMFS is pursuing the possibility of proposing, for implementation in January 1994, modification of the bycatch limitations based on data from recent years, and possibly a requirement for a minimum number of days between a vessel's landings of an Atlantic bluefin tuna, for the area south of 36°00′ N. latitude. Public comment received by NMFS indicates that this form of bycatch restrictions will allow the fleet in this area to operate in the directed fisheries in a more efficient manner, without increasing total incidental catch of bluefin tuna. Among other sources of data and/or information on the bycatch issue, NMFS would consider logbook data in terms of defining the minimum number of days between landings. Other issues of concern in the Atlantic bluefin tuna fishery may also be addressed at the scoping meetings.

Scoping Meetings

Each of the scoping meetings (unless otherwise noted) will include a shark component from 3 to 5 p.m., a bluefin tuna component from 6 to 7 p.m., and a swordfish component from 7 to 10 p.m. These scheduled times may be adjusted among the three fishery topics depending upon expressed interests of the audience. Such adjustments are at the discretion of the Meeting Officer. Note that the meetings in Madeira Beach, FL will be held over a two-day period at the specified times, and that the meetings in Manteo, NC, have a different schedule. The meeting schedule is as follows:

September 13, 1993, Portland, ME

State of Maine Room, City Hall, 389 Congress St., Portland, ME 04101.

September 13, 1993, Galveston, TX

San Luis Hotel and Conference Center, 5222 Seawall Blvd., Galveston, TX 77551.

September 13, 1993, Daytona Beach, FL

Daytona Beach Community College, Theater Center, 1200 International Speedway Blvd. (US 92), Daytona Beach, FL 32114.

September 14, 1993, New Bedford, MA

Seaport Inn, 110 Middle St., Fairhaven, MA 02719.

September 14, 1993, New Orleans, LA

World Trade Center Bldg., suite 1830, Crescent City Room, #2 Canal St., New Orleans, LA 70130.

September 14, 1993, Lakeworth, FL

Allied Health Lecture Hall, room 101, Palm Beach Community College, 4200 Congress Ave., Lake Worth, FL 33461–4796.

September 15, 1993, Montauk, NY

Montauk Fire House, 12 Flamingo Ave., Montauk, NY 11954.

September 15, 1993, Panama City, FL

NMFS Panama City Lab, 3500 Delwood Beach Rd., Panama City, FL 32407.

September 15, 1993, Charleston, SC

SC Wildlife and Marine Resources Dept (MRRI), 217 Fort Johnson Rd., Charleston, SC 29422.

September 16, 1993, Barnegat Light, NJ

Barnegat Light Fire House, 10th and Boulevard, Barn Light, NJ 08006.

September 16, 1993, Madeira Beach, FL (Tuna and Swordfish only)

Madeira Beach City Hall, 300 Municipal Dr., Madeira Beach, FL 33708.
Tuna: 6:30 to 7:30 p.m.
Swordfish: 7:30 to 10 p.m.

September 16, 1993, Manteo, NC

NC Aquarium, Airport Rd., Manteo, NC 27954.
Swordfish: 3 to 5 p.m.
Tuna: 6–7 p.m.
Sharks: 7–10 p.m.

September 17, 1993, Madeira Beach, FL (Sharks only)

Madeira Beach City Hall, 300 Municipal Dr., Madeira Beach, FL 33708.
Time: 6:30 to 10 p.m.

Dated: August 27, 1993.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–21299 Filed 8–27–93; 3:19 pm]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 58, No. 168
Wednesday, September 1, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 27, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;
(2) Title of the information collection;
(3) Form number(s), if applicable;
(4) How often the information is requested;
(5) Who will be required or asked to report;
(6) An estimate of the number of responses;
(7) An estimate of the total number of hours needed to provide the information;
(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- *Packers and Stockyard Administration*

Economic Research and Analysis of Concentration in the Red Meat Packing Industry.
On occasion.
Businesses or other for-profit; 458 responses; 10,344 hours.
Warren P. Preston (202) 720–7455.

- *National Agricultural Statistics Service*

Pesticide Data/Water Quality Program.
On occasion.
Farms; Businesses or other for-profit; 18,690 responses; 11,361 hours.
Larry Gambrell (202) 720–5778.

- *Food and Nutrition Service*

Report of School Program Operations.
FNS–10
Monthly; Annually.
State or local governments; 2,976 responses; 110,112 hours.
Alan Rich (703) 305–2113.

New Collection

- *Forest Service*

Southland Urban Proximate Wilderness Use Study.
One time survey.
Individuals or households; 3000 responses; 692 hours.
Patricia L. Winter (909) 276–6877.

Larry K. Roberson,
Deputy Department Clearance Officer.

[FR Doc. 93–21276 Filed 8–31–93; 8:45 am]
BILLING CODE 3410–01–M

Federal Grain Inspection Service

Request for Applications From Persons Interested in Designation to Provide Official Services in the Geographic Area Presently Assigned to the State of Alabama (AL)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designation of the Alabama Department of Agriculture and Industries (Alabama) will end February 28, 1994, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic area to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before October 1, 1993.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Alabama, main office located in Montgomery, Alabama, to provide official grain inspection services under the Act on March 1, 1991.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act. The designation of Alabama ends on February 28, 1994.

The geographic area presently assigned to Alabama, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is the entire State of Alabama, except those export port locations within the State.

Interested persons, including Alabama, are hereby given the opportunity to apply for designation to provide official inspection and Class X or Class Y weighing services in the geographic area specified above under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning March 1, 1994, and ending February 28, 1997. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in

determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: August 26, 1993.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 93–21206 Filed 8–31–93; 8:45 am]

BILLING CODE 3410–EN–F

Request for Comments on the Applicants for Designation in the Geographic Areas Currently Assigned to the Decatur (IL) and McCrea (IA) Agencies, and the State of South Carolina (SC)

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS requests interested persons to submit comments on the applicants for designation to provide official services in the geographic areas currently assigned to Decatur Grain Inspection, Inc. (Decatur), John R. McCrea Agency, Inc. (McCrea), and the South Carolina Department of Agriculture (South Carolina).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by October 1, 1993.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O;USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 30, 1993, **Federal Register** (58 FR 34983), FGIS asked persons interested in providing official services in the geographic areas assigned to Decatur, McCrea, and South Carolina to submit an application for designation. Applications were due by July 30, 1993. Decatur, McCrea, and South Carolina, the only applicants, each applied for the areas currently assigned to them. FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: August 26, 1993.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 93–21207 Filed 8–31–93; 8:45 am]

BILLING CODE 3410–EN–F

Designation of the Mid-Iowa (IA) Agency and the State of Oregon

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: FGIS announces the designation of Mid-Iowa Grain Inspection, Inc. (Mid-Iowa), and the Oregon Department of Agriculture (Oregon).

EFFECTIVE DATE: October 1, 1993.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 31, 1993, **Federal Register** (58 FR 16810), FGIS announced that the designations of Mid-Iowa and Oregon end on September 30, 1993, and asked persons interested in providing official services within the specified geographic areas to submit an application for designation. Applications were due by April 30, 1993.

Mid-Iowa and Oregon, the only applicants, each applied for the entire area currently assigned to them.

FGIS named and requested comments on the applicants for designation in the June 3, 1993, **Federal Register** (58 FR 31491). Comments were due by July 1, 1993. FGIS received one comment by the deadline. This comment was from a grain firm currently served by Oregon, and supported their redesignation.

FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to section 7(f)(1)(B), determined that: Mid-Iowa and Oregon are able to provide official services in the geographic areas for which they applied. Effective October 1, 1993, and ending September 30, 1996, Mid-Iowa and Oregon are designated to provide official inspection services under the United States Grain Standards Act, as amended (Act) in the geographic areas specified in the March **Federal Register**. Interested persons may obtain official services by contacting Mid-Iowa at 319–363–0239 and Oregon at 503–276–0939.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: August 26, 1993.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 93–21205 Filed 8–31–93; 8:45 am]

BILLING CODE 3410–EN–F

Forest Service

Southern Region; Exemption From Appeal of the Decision for Suppression of Southern Pine Beetle Infestation on the Glenwood Ranger District of the Jefferson National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice; exemption of decision from administrative appeal.

SUMMARY: Pursuant to 36 CFR 217.4(a)(11), the Regional Forester for the Southern Region has determined that good cause exists and notice is hereby given to exempt from administrative appeal the decision to suppress infestations of the southern pine beetle (SPB) on the Glenwood Ranger District of the Jefferson National Forest by the cut and remove method. The SPB populations have increased dramatically, resulting in damage to southern yellow and white pines on approximately 60 acres in 19 areas. The primary purpose of removing trees in these areas is to slow the spread of SPB, reduce public safety risks, and rapidly

salvage infested merchantable trees prior to excessive loss of value due to stain and decay. Approximately 500 MBF (thousand board feet) would result from this cut and remove operation. The treatment would involve the removal of all infested yellow pines and white pines (*Pinus strobus*) in the stands. The species of yellow pine include Virginia pine (*P. virginiana*), shortleaf pine (*P. echinata*), and pitch pine (*P. rigida*). Additionally, an area of unattacked pines (approximately 100 to 200 feet) around the infested trees will be removed. Removal of this "buffer strip" ensures the removal of freshly attacked pines that were overlooked or became infested after the spot was marked. The treatments will equate to group selections or small patch cuts in the areas dominated by pine. These patch cut areas will still contain a hardwood species component and are not expected to be totally cleared. Compartment/stands that fall into this category include: 3003/05, 3008/10&14, 3007/16, 3013/16, 3013/19, 3018/3, 3018/4, 3018/6, 3018/7, 3018/11, 3023/02, 3023/4&10&12, 3025/29, 3021/17, 3027/1, 3027/13&14. The largest patch cut area will be approximately six acres. Some areas contain a mix of hardwoods and pines. Treatments in these areas will resemble partial cuts. Compartment/stands that fall into this category include: 3008/01, 3010/29, 3010/32–3007/10. The largest partially cut area will be approximately 10 acres.

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Questions about this exemption should be directed to Jean P. Kruglewicz, Appeals and Litigation Group Leader, Southern Region, Forest Service-USDA, 1720 Peachtree Road, NW., Atlanta, GA 30367, (404) 347–4867.

SUPPLEMENTARY INFORMATION: The purpose of the SPB suppression treatments is threefold: (1) To slow the spread of this insect pest in the immediate area of the infestations; (2) reduce public safety risks where infested areas are adjacent to roads; and (3) to capture any value left in the dead and dying trees. Southern yellow pines are the preferred host of the SPB, but with rapidly building populations the SPB moves into nearby white pines (*Pinus strobus*). While white pines are generally less susceptible to SPB attacks, they are at risk when mixed with, or in close proximity to, infested yellow pines. Yellow pine is not a large species component on the Glenwood Ranger District; it exists most extensively on poor dry sites on mountain ridges which are typically unsuitable for timber production. These yellow pine stands, however, provide breeding grounds for the SPB, which then infest white pine trees in the adjacent valleys that are suitable for timber production. It is the white pine which we are the most concerned about protecting.

It is imperative that infested trees be removed as soon as possible to slow the spread of SPB. The adult beetles emerge in early spring, fly to new trees, bore into the new host trees and create galleries in the trees cambium, which eventually girdles and kills the tree. Blue stain fungi are also introduced by the beetles and accelerate tree death by blocking the vascular system of the tree. Beetle broods complete their development in about a month during the summer months and resulting in 5 to 7 generations per year. The warm summer temperatures also promote the rapid loss of timber value due to stain and decay.

This cut and removg treatment would involve the removal of all yellow pines and infested white pines in the stands. All eighteen (18) areas proposed for treatment are located on lands identified as suitable for timber production (Management Area 7), per the approved Jefferson National Forest Land and Resource Management Plan (as amended).

Two areas proposed for suppression are located within or contain riparian areas. The purpose for suppression in these areas would be strictly limited to protection of the riparian dependent resource of visual quality and reduction of public safety hazards. Appropriate mitigations as outlined in the Forest Land and Resource Management Plan (Forest Plan) regarding riparian areas will be followed. This proposal regarding riparian areas is consistent with Forest Plan direction found on pages IV–102–103, IV–79, Appendix I, and IV–96.

Only areas with easy access have been proposed for treatment which should enable these areas to be logged economically. Rehabilitation practices will be disclosed in the environmental documents and may include practices such as, site preparation, slash disposal, and reforestation, depending on stand conditions and resource objectives. The District Ranger is the responsible official. The environmental analysis is currently being done. The decision will likely be documented in either a Decision Memo (per the Forest Service Environmental Policy and Procedures Handbook, Section 31.2) or Decision Notice. The analysis will include methods of harvest, mitigation measures, and any post salvage rehabilitation practices.

Time is of the essence for this project. It is imperative that all identified SPB infested areas be treated and the trees removed as soon as possible to slow the spread of SPB to adjacent pine trees and stands of pine trees, and expedite the salvage of merchantable timber.

Dated: August 26, 1993.

Ralph F. Mumme,

Acting Regional Forester.

[FR Doc. 93–21215 Filed 8–31–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption From Appeal; Anderson Mill Personal Use Charge Firewood, Targhee National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that the Anderson Mill Personal Use Charge Firewood Area, Ashton Ranger District, Targhee National Forest, is exempt from appeal in accordance with 36 CFR 217.4(a)(11).

DATES: Effective on September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Skip Hurt, Zone FMO, Ashton Ranger District, Targhee National Forest, P.O. Box 858, Ashton, Idaho 83420, Telephone: 208–652–7442.

SUPPLEMENTARY INFORMATION: In compliance with the Forest LMP, personal use firewood will be provided and fuels will be reduced to limit the fire hazard and spread potential of wildfire. The project will harvest dead lodgepole pine and a limited amount of Douglas-fir firewood in the vicinity of Anderson Mill Canyon located approximately 6 miles north of Ashton, ID. Firewood harvesting will take place in designated timber stands within the assessment area. The assessment area is composed of 5,031 acres; within this area, harvest units comprise about 363 acres. Unit sizes vary from about 40 acres to 2 acres. The following roads are located within this area and they provide access to the lodgepole pine timber stands designated for firewood harvest.

	Miles
Forest Road 164 Anderson Mill Canyon Road	6.5
Forest Road 512 East-West Road	3.1
Forest Road 516 Anderson Mill Spur 2 Road	1.9
Forest Road 522 Anderson Mill Spur 1 Road	1.2
Forest Road 729 Anderson Mill Spur 5 Road	0.8

	Miles
Forest Road 730 Anderson Mill Spur 6 Road	1.3
Total	14.8

There will be no road construction in this project.

The assessment area lies within the Caldera Management Area (MA 10) and these sections: T. 10N., R. 43E., Sec. 14, 15, 21, 22, 23, 26, 27, 28, 33, 34, and 35. The area lies to the north and east of road junction FR 164/561, and is west of the Upper Mesa Falls on the Henrys Fork of the Snake River. See attached map.

The decision for the Anderson Mill Personal Use Firewood Project may be implemented after publication of this notice in the **Federal Register** and after the decision has been signed by the responsible official. If the project were delayed by an appeal (delays of up to 150 days are possible), the firewood would not be available for harvest before winter snows block access to the project area. This would result in a loss of volume and value of the firewood due to deterioration. Additionally, the volume of firewood currently available for harvest is not sufficient to meet public demand for the rest of this season. Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt the Anderson Mill Personal Use Charge Firewood Project, Ashton Ranger District, Targhee National Forest, from appeal. The decision memo discloses the effects of the proposed actions on the environment and addresses issues resulting from the proposal.

Dated: August 25, 1993.

Gray Reynolds,

Regional Forester, Intermountain Region, USDA Forest Service.

[FR Doc. 93–21216 Filed 8–31–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption From Appeal, Sheep Falls Personal Use Charge Firewood, Targhee National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that the Sheep Falls Personal Use Charge Firewood Area, Ashton Ranger District, Targhee National Forest, is exempt from appeal in accordance with 35 CFR 217.4(a)(11).

DATES: Effective on September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Skip Hurt, Zone FMO, Ashton Ranger District, Targhee National Forest, P.O. Box 858, Ashton, Idaho 83420, Telephone: 208–652–7442.

SUPPLEMENTARY INFORMATION: In compliance with the Forest LMP, personal use firewood will be provided and fuels will be reduced to limit the fire hazard and spread potential of wildfire. The project will harvest dead lodgepole pine firewood in the vicinity of Sheep Falls and Lookout Butte located approximately 9 miles north of Ashton, ID. Firewood harvesting will take place in designated timber stands within the assessment area. The assessment area is composed of 3,498 acres; within this area, harvest units comprise about 457 acres. Unit sizes vary from about 200 acres to 20 acres. The following roads are located within this area and provide access to the lodgepole pine timber stands designated for firewood harvest.

	Miles
Forest Road 701 West Hatchery Ford Road	1.0
Forest Road 163 Sheep Falls Road	3.6
Forest Road 735 Sheep Falls Spur 1 Road	0.8
Forest Road 760 Sheep Falls Trail Head Road	0.3
Total	44.8

There will be no road construction in this project.

The assessment area lies within the Caldera Management Area (MA 10) and these sections: T. 11N., R. 42 & 43E., Sections 1, 6, 7, 8, 12, 13, 17 and 18, Boise Meridian. The area lies to the east of Highway 20 and west of Sheep Falls on the Henry's Fork of the Snake River.

The decision for the Sheep Falls Personal Use Firewood Project may be implemented after publication of this notice in the **Federal Register** and after the decision document has been signed by the responsible official. If the project were delayed by an appeal (delays of up to 150 days are possible), the firewood would not be available for harvest before winter snows block access to the project area. This would result in a loss of volume and value of the firewood due to deterioration. Additionally, the volume of firewood currently available for harvest is not sufficient to meet public demand for the rest of this section. Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt the Sheep Falls Personal Use Charge Firewood Project, Ashton Ranger District, Targhee National Forest, from appeal. The decision memo discloses the effects of the proposed action on the environment and addresses issues resulting from the proposal.

Dated: August 25, 1993.

Gary F. Reynolds,

Regional Forester, Intermountain Region, USDA-Forest Service.

[FR Doc. 93–21217 Filed 8–31–93; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Cedar Run Watershed, Fauquier County, Virginia

AGENCY: Soil Conservation Service, U.S.D.A.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an Environmental Impact Statement is not being prepared for the Cedar Run Watershed—Multiple Purpose Structure Site 6 in Fauquier County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. George C. Norris, State Conservationist, USDA, Soil Conservation Service, Culpeper Building, suite 209, 1606 Santa Rosa Road, Richmond, Virginia 23229–5014, telephone (804) 287–1691.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. George C. Norris, State Conservationist, has determined that the preparation and review of an Environmental Impact Statement are not needed for this project.

The project purposes are flood control and municipal and industrial water supply. The planned works of improvement include the installation of a combination roller compacted concrete and earth fill multiple purpose flood control and water supply structure approximately 1,000 feet upstream of the Auburn Bridge at Route 602 in Fauquier County, Virginia.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single-copy requests at the above address. Basic data developed during the Environmental Assessment are on file and may be reviewed by contacting

Mr. George C. Norris, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901, Watershed and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

George C. Norris,

State Conservationist.

[FR Doc. 93–21175 Filed 8–31–93; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Data Users Evaluation Survey.

Form Number(s): Various.

Agency Approval Number: 0607–0760.

Type of Request: Extension of a currently approved collection.

Burden: 3,500 hours.

Number of Respondents: 7,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Census Bureau is requesting an extension of the generic clearance to conduct customer surveys in order to continue to promote their optimal use and to encourage focused and effective improvements to the quality of Census Bureau products and services. OMB approved our initial request for generic clearance on November 16, 1992. The clearance is administered jointly by the Bureau Forms Clearance Officer and a member of the Work Force Development and Quality Management Office (QMO). Offices desiring a clearance submit a request to the Forms Clearance Officer who reviews the request jointly with the QMO member. The Forms Clearance Officer forwards approved requests to the Office of the Under Secretary, Economic and Statistics Administration, for final approval. We provide OMB with a copy of questionnaires and materials in advance of any data collection activity.

Affected Public: Individuals or households, state or local governments, farms, businesses or other for–profit organizations, Federal agencies or employees, non–profit institutions, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 25, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–21229 Filed 8–31–93; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1994 National Census Test I (Coverage Test).

Form Number(s): DF–1A, DF–1B, DF–1C, DF–17.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 6,734 hours.

Number of Respondents: 86,300.

Avg Hours Per Response: 12 minutes.

Needs and Uses: The Census Bureau plans to conduct the Coverage Test as another in a series of National Census Tests. The National Census Tests are part of a program of research and development to assist in formulating policy and design options for the Year 2000 Decennial Census of Population and Housing. The Coverage Test seeks to examine how the Census Bureau could improve application of the current set of residence rules for the next decennial census. The proposed test is designed to determine the best means for imroving the respondent's ability to understand and correctly complete the household roster information requested. The survey will measure the extend to which various questionnaire designs, such as differing placements and approaches to the coverage and roster questions, affect within–household coverage. The survey will also measure relationships between questionnaire design and mail response to respondent–administered forms.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 26, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–21230 Filed 8–31–93; 8:45 am]

BILLING CODE 3510–07–F

Bureau of Export Administration

[Docket No. 920363–3220]

Foreign Availability Determination for "Digital Computers" Controlled by ECCN 4A03A Having a "Composite Theoretical Performance" Not Exceeding 67 Million Theoretical Operations Per Second

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of positive determination.

SUMMARY: On August 3, 1993, the Acting Assistant Secretary for Export Administration made a determination that foreign availability to controlled destinations exists, within the meaning of section 5(f) of the Export Administration Act (EAA) and 15 CFR part 791 of the Export Administration Regulations (EAR), for "digital computers" controlled by ECCN 4A03A having a "composite theoretical performance" ("CTP") not exceeding 67 million theoretical operations per second (Mtops).

The Bureau of Export Administration (BXA) will publish appropriate changes in the validated export license requirements for these computers in future issues of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Steven C. Goldman, Director, Office of Foreign Availability, Bureau of Export Administration, Department of Commerce, Telephone: (202) 482–0074

SUPPLEMENTARY INFORMATION:

Background

Section 5(f)(3) of the EAA (50 U.S.C. 2401 *et seq.*) and 15 CFR part 791 of the EAR set forth the procedures and criteria for determining the foreign availability of items controlled for national security reasons. The Secretary of Commerce, or the Secretary's designee, is authorized to determine whether foreign availability exists.

With limited exceptions, the Department of Commerce may not maintain national security controls on exports of an item to countries when the Department determines that items of comparable quality are available in fact to such countries from foreign sources in quantities sufficient to render the controls ineffective in achieving their purpose.

On March 26, 1993, the Office of Foreign Availability (OFA) initiated a foreign availability assessment of "digital computers" controlled by ECCN 4A03A and having a "composite theoretical performance" ("CTP") exceeding 12.5 million theoretical operations per second (Mtops). The assessment was initiated in response to a claim filed with OFA pursuant to part 791 of the EAR. The Department published a notice of the initiation of the assessment in the **Federal Register** on April 21, 1993 (58 FR 21440).

On August 3, 1993, the Acting Assistant Secretary, having considered the assessment and other relevant information provided by OFA, determined that foreign availability exists to controlled destinations within the meaning of section 5(f) of the EAA and part 791 of the EAR for "digital computers" controlled by ECCN 4A03A having a "composite theoretical performance" ("CTP") not exceeding 67 million theoretical operations per second (Mtops). The Department provided all interested agencies an opportunity to review and comment on the assessment and determination.

The Bureau of Export Administration (BXA) intends to publish a rule in the **Federal Register** in the near future that will remove national security-based validated export license requirements for exports to most non-controlled destinations (i.e., Country Groups T and V, except the People's Republic of China) of "digital computers" controlled by ECCN 4A03A consistent with this foreign availability determination. Effective with the publication of that rule, these computers will be eligible for export to most Country Group T and V destinations under General License GFW.

Following multilateral review of a U.S. proposal by the Coordinating Committee for Multilateral Export Controls (COCOM), the Department will take appropriate action, consistent with the provisions of section 5(f)(3) of the EAA and § 791.7 of the EAR, to remove national security-based validated license requirements for exports to controlled destinations.

Dated: August 26, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93–21204 Filed 8–27–93; 12:04 pm]

BILLING CODE 3510–DT–M

Economic Development Administration

Senior Executive Service Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economic Development Administration Senior Executive Service (SES) Performance Appraisal System:

Edward G. Jeep
John E. Corrigan
Charles E. Oxley
Craig M. Smith
Gerald R. Lucas—O/S, OCR

H. James Reese,

Executive Secretary, Economic Development Administration, Performance Review Board.

[FR Doc. 93–21171 Filed 8–31–93; 8:45 am]

BILLING CODE 3510–BS–M

Economics and Statistics Administration

Senior Executive Service Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economics and Statistics Administration Senior Executive Service (SES) Performance Appraisal System:

Harry A. Scarr
O. Bryant Benton
William P. Butz
Charles A. Waite
Robert D. Tortora
Charles D. Jones
Carol S. Carson
John S. Landefeld
John E. Cremeans
Frederick T. Knickerbocker
Johnathan C. Menes
Henry P. Misisco
Katherine K. Wallman

H. James Reese,

Executive Secretary, Economics and Statistics Administration, Performance Review Board.

[FR Doc. 93–21172 Filed 8–31–93; 8:45 am]

BILLING CODE 3510–BS–M

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 87–4A001.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the American Film Marketing Association ("AFMA") on April 10, 1987. Notice of issuance of the Certificate was published in the **Federal Register** on April 17, 1987 (52 FR 12578).

FOR FURTHER INFORMATION CONTACT: Jude Kearney, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1991) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 87–00001, was issued to the American Film Marketing Association ("AFMA") on April 10, 1987 (52 FR 12578, April 17, 1987) and previously amended on March 25, 1988 (53 FR 10267, March 30, 1988), August 29, 1989 (54 FR 36848, September 5, 1989), and November 5, 1991 (56 FR 57515, November 12, 1991).

AFMA's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a "Member" within the meaning of § 325.2(1) of the Regulations

(15 CFR 325.2(1)): Cinevest Entertainment, New York, NY; Gel Distribution, Los Angeles, CA; Grand AM Ltd., Van Nuys, CA; I.R.S. Media International, Universal City, CA; Miramax International, Los Angeles, CA; Melrose Entertainment, Inc., Beverly Hills, CA; Moonstone Entertainment, Beverly Hills, CA; Motion Picture Corporation of America, Santa Monica, CA; Republic Pictures International, Los Angeles, CA; Spelling Films International, Los Angeles, CA; Starway International Corporation, Los Angeles, CA; Trimark Pictures, Santa Monica, CA; and Turner Pictures Worldwide, Los Angeles, CA.

2. Delete each of the following companies as a "Member" of the Certificate: Filmstar, Inc.; Filmtrust Motion Picture Licensing; Films Around the World, Inc.; GPD, Inc.; Intercontinental Releasing Corp.; International Film Exchange; MGM/UA Entertainment Company; Nelson Entertainment, Inc.; Orion Pictures Int'l.; SC Entertainment International; Silverstein Int'l. Corp.; Skouras Pictures, Inc.; Sovereign Pictures, Inc.; Sugar Entertainment Inc.; Sunny Film Corporation SDN BHD; Titan International Licensing, N.V.; Tom Parker Motion Pictures; Transcontinental Pic. Ind.; and Weintraub Entertainment Group.

3. Change the listing of the company name of the following current "Members" as follows: change AIP Studios to West Side Studios; Alice Entertainment, Inc. to Alice Entertainment, Inc./Kidpix Entertainment, Inc.; American First Run to American First Run Studios/Zantar; Beyond International Groups to Beyond Films, Ltd.; Broadstar International to Broadstar Entertainment Corporation; Carolco Pictures to Carolco Service, Inc.; Cinetelfilms, Inc. to Cinetel Films, Inc.; Concorde/Motion Picture Corporation to Concord—New Horizons Corporation; Cori Films International to Cori International: Film & Television; Curb/Esquire Films to Curb Organization; Dino De Laurentiis Communications Inc. to Dino De Laurentiis Communications; Double Helix Films, Inc. to Double Helix Films; Hemdale Film Corp. to Hemdale Communications, Inc.; Image Organization to Image Organization, Inc.; Imperial Entertainment to Imperial Entertainment B.V.; ITC Entertainment, Inc. to ITC Entertainment Group; Kings Road International to Kings Road Entertainment, Inc.; Kodiak Films, Inc. to Big Bear Licensing Corporation; Lone Star Pictures to Lone Star Pictures International, Inc.; Peregrine Film Dist., Inc. to Lway Productions; M.C.E.G. Virgin Vision Ltd. to MCEG Sterling Entertainment; Manley Productions to Manley Productions, Inc.; Miracle Films, Inc. to Film World Entertainments/Miracle Films; Morgan Creek International to Morgan Creek International, Inc.; The Movie Group to The Movie Group, Inc.; Noble Productions to Noble Productions, Inc./Noble Film; Norkat Co. Ltd. to The Norkat Company Limited; Odyssey/Cinecom Int'l to Odyssey Distributors, Ltd.; Omega Entertainment to Omega Entertainment, Ltd.; Pentamerica Communications, Inc. to Penta International, Ltd.; Promark Entertainment to Promark Entertainment Group; Reel Movies International to Reel Movies International, Inc.; Saban International to Saban Pictures International; Trans Atlantic Distribution, L.P. to Trans Atlantic Entertainment/I.R.S.; and Viacom Pictures, Inc. to Viacom Pictures/Showtime Networks.

Corrections

In addition to the changes in the original **Federal Register** Notice to this amendment (58 FR 31942, June 7, 1993), the following AFMA members were deleted: Media Home Entertainment; Scotti Brothers Pictures; Telefilm Canada; and Universal City Studios, Inc.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: August 26, 1993.

Jude Kearney,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 93–21234 Filed 8–31–93; 8:45 am]

BILLING CODE 3510-DR-M

National Telecommunications and Information Administration

Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the National Telecommunications and Information Administration Senior Executive Service (SES) Performance Appraisal System:

Michele C. Farquhar
William F. Maher, Jr.
Richard D. Parlow
Charles M. Rush
Neal B. Seitz
Stephen C. Browning

H. James Reese,

Executive Secretary, National Telecommunications and Information Administration Performance Review Board.

[FR Doc. 93–21173 Filed 8–31–93; 8:45 am]

BILLING CODE 3510-BS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in China

August 26, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 27, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 226, 239, 314, 331, 351 and 635 are being increased by application of swing, reducing the limit for Category 607 to account for the increases.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 62304, published on December 30, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 26, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 23, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on August 27, 1993, you are directed to amend further the directive dated December 23, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Levels not in a group:	
226	9,950,203 square meters.
239	2,710,912 kilograms.
314	46,197,886 square meters.
331	4,817,790 dozen pairs.
351	482,343 dozen.
607	589,758 kilograms.
635	596,621 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-21233 Filed 8-31-93; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER93-737-000, et al.]

The Montana Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 25, 1993.

Take notice that the following filings have been made with the Commission:

1. The Montana Power Company

[Docket No. ER93-737-000]

Take notice that on July 30, 1993, The Montana Power Company (Company) tendered for filing a reconciliation of certain cost-of-service information previously submitted in conjunction with its application for a wholesale rate increase in this proceeding with cost data contained in its 1992 FERC Form No. 1, and a Statement BM—Construction Program Statement in support of its proposal to collect rates based on inclusion of construction work in progress in its rate base.

Comment date: September 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Pennsylvania Power & Light Company

[Docket No. ER93-878-000]

Take notice that on August 18, 1993, Pennsylvania Power & Light Company (PP&L), tendered for filing a Third Supplement, dated as of August 12, 1993, (Third Supplemental Agreement), to the Capacity Credit Sales Agreement, dated May 28, 1991, between PP&L and Atlantic City Electric Company, which is on file with the Commission as PP&L's Rate Schedule FERC No. 106. The Third Supplemental Agreement provides for a revised Installed Capacity Rate under the Agreement to reflect a revision in the rate for contract capacity under the Pennsylvania-New Jersey-Maryland Interconnection Agreement which was accepted for filing by the Commission on May 11, 1993, in Docket No. ER93-508-000.

PP&L requests waiver of the notice requirements of section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1993.

PP&L states that a copy of its filing was served on Atlantic City Electric Company, the Pennsylvania Public Utility Commission, and the New Jersey Board of Regulatory Commissioners.

Comment date: September 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Electric Power Company

[Docket No. ER93-869-000]

Take notice that on August 16, 1993, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing revisions to Exhibit B of the Power Sales Agreement and Conjunctive Transmission Service Agreement between itself and The Wisconsin Public Power Inc. SYSTEM (WPPI). The revision acknowledges a change in WPPI's City of Hartford Delivery Point (Hartford) voltage from 26.4 kV to 138 kV. As a result of the voltage change, Wisconsin Electric's revenues for Conjunctive Firm Power Service will decrease about $53,700 annually at WPPI's current Contract Year Demand Nomination of 145 MW.

Wisconsin Electric respectfully requests an effective date of October 1, 1993. Wisconsin Electric is authorized to state that WPPI joins in the requested effective date.

Copies of the filing have been served on WPPI and the Public Service Commission of Wisconsin.

Comment date: September 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. The Montana Power Company

[Docket No. ER93-882-000]

Take notice that on August 20, 1993, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a Supplement to Rate Schedule FERC No. 175, the General Transfer Agreement Between The Montana Power Company and the Bonneville Power Administration (Bonneville). This Supplement is comprised of a Contribution in Aid of Construction Agreement between Montana and Bonneville. Montana requests that the Commission (a) accept the Supplement for filing, to be effective on August 23, 1993; and (b) grant a waiver of notice pursuant to 18 CFR 35.11, so as to allow the filing of the Agreement less than 60 days prior to the date on which service under the Agreement is to commence.

A copy of the filing was served upon Bonneville Power Administration.

Comment date: September 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Midwest Power Systems Inc.

[Docket No. ER93-881-000]

Take notice that on August 20, 1993, Midwest Power Systems Inc. (MPSI) tendered for filing an amendment to Transmission Service Agreement whereby Iowa Public Service Company (IPS), n/k/a Midwest Power Systems

Inc. (MPSI), provides Cedar Falls Utilities (CFU) with transmission service for CFU's share of power and energy from Council Bluffs Energy Center Unit No. 3.

On January 18, 1980, FERC accepted for filing (Docket No. ER80–92) and designated Rate Schedule FERC No. 63 for the Transmission Service Agreement (Agreement) between Cedar Falls Utilities (CFU) and Iowa Public Service Company (IPS), n/k/a Midwest Power Systems Inc. (MPSI). That filing was redesignated from IPS FERC No. 63 to MPSI Rate Schedule FERC No. 38 in Docket No. ER92–784–000 on October 23, 1992.

Pursuant to the Agreement, originally dated October 2, 1979 and amended on July 15, 1980, MPSI provides transmission service to CFU for its share of power and energy from Council Bluffs Energy Center Unit. No. 3. Article 2–4 of the Agreement requires CFU to reimburse MPSI for the cost of operation and maintenance and a transmission facilities charge, all as specified in the Agreement as filed with the Commission.

Subsequent to the approval of the initial rate for 1979 (Supplement No. 2 to Rate Schedule No. 63), IPS filed two amendments to update the fixed charge rate for transmission service. On November 18, 1980, FERC accepted for filing Amendment No. 1 (Docket No. ER80–728) and designated Supplement No. 8 to Rate Schedule No. 63, the updated fixed charge rate for 1980. On February 10, 1982, FERC accepted for filing Amendment No. 2 (Docket No. ER82–194–000) and designated Supplement No. 11 to Rate Schedule No. 63, the updated fixed charge rate for 1981.

Subsequent to the approval by FERC of the 1981 fixed charge rate, no further updated filings were made with the Commission. Instead, IPS simply billed CFU the annual charges for each year as calculated pursuant to the Agreement. Because all charges were calculated pursuant to the Agreement, IPS (and later MPSI) believed no filing was necessary to implement the terms of the Agreements.

However, on July 30, 1993, the Commission issued its "Final Order" in Docket No. PL93–2–002, "Prior Notice and Filing Requirements," clarifying that rate changes must be filed even when the change is prescribed by a contract on file with the Commission. The Final Order also established an amnesty period during which such filings can be brought up to date.

Pursuant to § 35.11 of the Commission's regulations, MPSI is requesting a waiver of the Commission's rules so that the annual fixed charges may be accepted without notice for the years 1982 through 1992. MPSI is requesting this waiver as an uncontested filing of a rate change that was prescribed by a contract on file with the Commission. Thus, this filing qualifies for a waiver under Central Hudson Gas & Electric Corporation, et al., 60 FERC, paragraph 61, 106, reh'g denied, 61 FERC, paragraph 61, 089 (1992), as modified by the Final Order, pp. 21–25.

MPSI states that copies of this filing were served on Cedar Falls Utilities and the Iowa Utilities Board.

Comment date: September 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. The Cincinnati Gas & Electric Company

[Docket No. ER93–879–000]

Take notice that on August 19, 1993, The Cincinnati Gas & Electric Company (CG&E), tendered for filing an Interconnection Agreement with the Wabash Valley Power Association, Inc.

The Interconnection Agreement proposes interchange service schedules for emergency service, interchange power, short-term power and limited term power. The Agreement is proposed to be made effective sixty days after filing. Copies of the Agreement were served upon The Public Utilities Commission of Ohio and Wabash Valley Power Association.

Comment date: September 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21201 Filed 8–31–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–639–000, et, al.]

Arkla Energy Resources Co. et al.; Natural Gas Certificate Filings

August 24, 1993.

Take notice that the following filings have been made with the Commission:

1. Arkla Energy Resources Company

[Docket No. CP93–639–000]

Take notice that on August 12, 1993, Arkla Energy Resources Company (AER), 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71151 filed in Docket No. CP93–639–000 a request pursuant to §§ 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to operate certain facilities in Arkansas, under its blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER specifically proposes to operate three existing taps for delivery of gas for resale to consumers other than the right-of-way grantors for whom the taps were originally installed, all for the delivery of gas to Arkansas Louisiana Gas Company for resale to domestic and commercial consumers in Arkansas. AER further states that no new facilities will be constructed for two of the taps; an above-ground regulator and meter will be installed to reactivate one tap at a cost of $250 and, that the gas will be delivered from its general system supply, which it states is adequate to provide the service.

Comment date: October 8, 1993, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP93–675–000]

Take notice that on August 18, 1993, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP93–675–000 a request pursuant to §§ 157.205(b) and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205(b) and 157.212) and Columbia's authorization in Docket No. CP83–76–000, 22 FERC ¶ 62,029 (1983), to establish a new point of delivery to an existing wholesale customer, all as more set forth in the request on file with the Commission and open to public inspection.

Columbia requests authorization to establish a new point of delivery for sales and transportation service under section 7 of the Natural Gas Act, at an

existing interconnection originally installed pursuant to section 311(a) of the Natural Gas Policy Act, as follows:

Wholesale customer	Residential commercial and industrial	Estimated peak day quantity (Dth)	Estimated annual quantity (Dth)
Mountaineer Gas Company (MGC)	1	2,000	715,400

The quantities to be provided through the new delivery point are within Columbia's currently authorized level of service and will be within existing peak day and annual entitlement nominations of MGC. The sales and transportation to be delivered through the proposed point will be under Columbia's currently effective service agreement with MGC under Rate Schedules CDS, FTS, WS and FSS.

Comment date: October 8, 1993, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21198 Filed 8–31–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–676–000]

ANR Pipeline Co.; Application

August 26, 1993.

Take notice that on August 19, 1993, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, MI 48243, filed in Docket No. CP93–676–000 an application pursuant to section 7(b) of the Commission's Regulations under the Natural Gas Act for permission and approval to abandon an exchange service provided to Trunkline Gas Company (Trunkline), all as more fully set forth in the appliciaton which is on file with the Commission and open to public inspection.

ANR states that American Louisiana Pipe Line Company (merged into Michigan Wisconsin Pipe Line Company, now ANR) was granted authority in Docket No. CP65–382 (33 FPC 1298 (1965)) to exchange up to 100,000 Mcf of natural gas per day in the event of an emergency, at interconnections between ANR and Trunkline in Elkhart County, Indiana and Tate County, Mississippi, pursuant to an exchange agreement between ANR and Trunkline, dated May 19, 1965 (Agreement) which is designated as Rate Schedule X-5 of ANR's FERC Gas Tariff, Original Volume No. 2.

ANR states that by letter dated July 22, 1993, Trunkline has informed ANR of its desire to terminate the Agreement. ANR states that on August 9, 1993, Trunkline filed in Docket No. CP93–629–000 for authorization to abandon its corresponding Rate Schedule X–5. Accordingly, ANR also requests to abandon the emergency exchange service. ANR states that no facilities are requested to be abandoned herein and that it intends to utilize the facilities to perform transportation pursuant to the provisions of part 284 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 16, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21193 Filed 8–31–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–171–000]

Cities of Chanute, et al. v. Williams Natural Gas Co.; Complaint

August 26, 1993.

Take notice that on August 20, 1993, Cities of Chanute, Auburn, Garnett, Humboldt, Iola, Neodesha, Osage City, Hamilton, Lebo, Mclouth, Sharon, Argonia, Howard, Kansas, The City of Cleveland, Oklahoma, and The Kansas Municipal Gas Agency (Cities) submits an emergency complaint against Williams Natural Gas Company (WNG). The Cities request that the Commission issue an immediate emergency order barring WNG from entering binding long-term contracts for no-notice firm transportation service under Rate Schedules TSS and STS which preclude WNG from entering similar contracts with the small municipal distribution systems located in Kansas and Oklahoma.

Cities states that immediate action is required to prevent irreparable damage to the Cities, who, otherwise, will be deprived of any access to the firm transportation service offered in those schedules for a period of up to 20 years.

Cities submit that the conduct of WNG is (1) contrary to the express terms of its gas tariff filed August 9, 1993, as ordered by the Commission on August 2, 1993 in Docket No. RS92–12–000, and constitutes undue discrimination in violation of Section 4 of the Natural Gas Act, 15 U.S.C. 717c; (2) denies the Cities the choice of services contemplated; and (3) forces the Cities to take inferior transportation service for twenty (20) years at transportation rates up to 30% higher than the requested services.

Cities requests that the Commission issue an immediate Emergency Order barring WNG from entering binding long-term contracts for no-notice transportation service under Rate Schedules STS and TSS which preclude the WNG from entering similar contracts with the Cities pending a final order by the Commission on the terms of the compliance filing and this complaint. The Cities also request that the Commission direct WNG to comply with its tariff and the Commission's order of August 2, 1993 by providing the Cities with equal pro rata service under Rate Schedules STS or TSS, with all other applicant Shippers, and to provide such other relief as is appropriate.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before September 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before September 3, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21196 Filed 8–31–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT93–50–000]

Tennessee Gas Pipeline Co.; Report of Refunds

August 26, 1993.

Take notice that on June 30, 1993, Tennessee Gas Pipeline Company (Tennessee) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report made in accordance with the Commission's order issued February 29, 1988 and April 27, 1988, in Docket No. IN86–6. The refunds reflect the final flow-through of the refunds received from Ozark Gas Transmission System (Ozark) through a $0.005/Mcf credit to invoices during the period May 1992 through June 1992, pursuant to a Stipulation and Consent agreement approved by the Commission on August 3, 1987 in Docket No. IN86–6.

Tennessee states that on June 30, 1993, Tennessee refunded $18,911.43, including interest, to its jurisdictional sales customers on the basis of their respective actual volumes of gas purchased during the period March 1, 1982 through August 3, 1987.

Tennessee states that copies of the filing have been mailed to all its jurisdictional sales customers and affected state regulatory commisions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before September 2, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21194 Filed 8–31–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–677–000]

Transcontinental Gas Pipe Line Corp.; Application

August 24, 1993.

Take notice that on August 19, 1993, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP93–677–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon firm transportation service provided to ANR Pipeline Company (ANR), to be effective September 15, 1993, which was authorized in Docket No. CP79–291–000, all as more fully set forth in the application on file with the Commission and open to public inspection.

TGPL proposes to abandon 7,000 Mcf per day of firm transportation service provided to ANR under TGPL's Rate Schedule X–216. TGPL states that in accordance to the terms of the service agreement, ANR advised TGPL, by letter dated September 15, 1992, that it no longer needs the firm transportation service. TGPL therefore, seeks authorization to abandon Rate Schedule X–216, and requests that the abandonment become effective on September 15, 1993.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 14, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for TGPL to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–21200 Filed 8–31–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93-626-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

August 26, 1993.

Take notice that on August 6, 1993, United Gas Pipe Line Company (United) [1], Post Office Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP93-626-000 a request, as supplemented on August 23, 1993, pursuant to §§ 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.216) for authorization replace measurement equipment to accommodate increased sales to South Coast Gas Company (South Coast), under the blanket certificate issued in Docket No. CP82-430, pursuant to sections 7(b) and 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to replace an existing 60B meter with a 5000 meter and computer which would increase the capacity at its Ashland city gate station located in Terrebonne Parish, Louisiana, and would be used to accommodate South Coast's increased service area. It is indicated that the new meter would provide an increase in capacity for an average volume of less than 10 million Btu per day. United states that the total volumes to be delivered to South Coast after the replacement would not exceed the total volumes authorized prior to the replacement. It is also stated that the volumes delivered to South Coast would remain within South Coast's existing certificated entitlements. United indicates that the old meter was authorized in Docket No. G-1447. United estimates a removal cost of the old facility of $62.00 and a cost of the new meter of $5,288, which would be reimbursed by South Coast.

United states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other customers; and that its tariff does not prohibit the proposed reassignment of volumes.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21192 Filed 8-31-93; 8:45 am]

BILLING CODE 6717-01-M

[1] United has advised that as of August 24, 1993, the name of United has been changed to Koch Gateway Pipeline Company.

[Docket No. RS92-26-006]

United Gas Pipe Line Co.; Petition for Waiver

August 26, 1993.

Take notice that on August 24, 1993, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed a Notice of Petition for Waiver of certain part 284 reporting requirements.

Specifically, United requests a waiver of:

18 CFR 284.106 (a), (b), (c), (d) and (g), 18 CFR 284.222 and 18 CFR 284.223 (d), (e) and (f), to the extent necessary to implement non-permanent capacity release transactions on United's system without the necessity of filing initial reports, subsequent reports, annual reports, notifications of termination and storage reports reflecting such capacity release transactions; and,

18 CFR 284.106(a)(3)(iv), to the extent necessary to allow United to add or delete receipt and delivery points without the necessity of filing subsequent reports under 18 CFR 284.106(b).

United requests an effective date of October 1, 1993, for this waiver.

Any person desiring to be heard or to make any protest with reference to said petition should on or before September 2, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21197 Filed 8-31-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-61-000]

U-T Offshore System; Informal Settlement Conference

August 26, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on September 2, 1993 at 2 p.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CDR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Irene E. Szopo at (202) 208-1602, or Anja M. Clark (202) 208-2034.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21195 Filed 8-31-93; 8:45 am]

BILLING CODE 6717-01-M

Advisory Committee on Environmental Restoration and Waste Management.

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting:

NAME: Environmental Restoration and Waste Management Advisory Committee (EMAC).

DATES AND TIMES: Wednesday, September 22, 1993, 8 a.m. to 5:45 p.m; Wednesday, September 22, 1993, 7:30 p.m. to 10:30 p.m.; Thursday, September 23, 1993, 8:30 a.m. to 4:30 p.m.; Thursday, September 23, 1993, 7:30 p.m. to 10:30 p.m.

PLACE: The Shiloh Inn, 780 Lindsay Blvd., Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Executive Secretary, EMAC, EM-1, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4400.

SUPPLEMENTARY INFORMATION: Purpose of the Committee. The purpose of the Committee is to provide the Assistant Secretary, Environmental Restoration and Waste Management (EM) with advice and recommendations on both the substance and the process of the EM Programmatic Environmental Impact Statement (PEIS) and other EM projects from the perspectives of affected groups and State and local Governments. The Committee will help to improve the Environmental Restoration and Waste Management Program by assisting in the process of securing consensus recommendations, and providing the department's numerous publics with opportunities to make their views known on the Environmental Restoration and Waste Management Program.

Tentative Agenda

Wednesday, September 22, 1993

8 a.m.—Chairman Glenn Paulson Opens the Meeting
Remarks by Mr. Thomas P. Grumbly, Assistant Secretary of Energy for Environmental Restoration and Waste Management
Experts' Discussion of Waste Management and Storage Issues from a National Perspective
12:15 p.m.—Lunch
1:45 p.m.—Regional Perspectives on Idaho Waste Management Issues (Panel Discussion)
Committee Business
5:45 p.m.—Meeting Adjourns
7:30 p.m.—Public Comment Session
10:30 p.m.—Meeting Adjourns

Thursday, September 23, 1993

8:30 a.m.—Chairman Paulson Reconvenes Public Meeting
Committee Business
Status of Budget Development
Status of Compliance Agreements
12 p.m.—Lunch
1:30 p.m.—Environmental Restoration Effectiveness—Cost versus Benefits from an Idaho National Engineering Laboratory perspective. (Panel Discussion)
Committee Business
4:30 p.m.—Meeting Adjourns for Dinner
7:30 p.m.—Special Presentation on Risk Assessment Methodologies
Public Question and Answer Period
10:30 p.m.—Meeting Ends

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James T. Melillo at the address or telephone number listed above. Individuals wishing to orally address the committee during the public comment session should call (800) 862–8860 and leave a message. Individuals may also register on September 22, 1993, at the meeting. Every effort will be made to hear all those wishing to speak to the committee, on a first come, first serve basis. Those who call in and reserve time will be given the opportunity to speak first. The Committee Chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes

A transcript and minutes of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on August 26, 1993.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 93–21282 Filed 8–31–93; 8:45 am]

BILLING CODE 6450–01–M

Hydrogen Technical Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 stat. 770, as amended), notice is hereby given of the following advisory committee meeting:

NAME: Hydrogen Technical Advisory Panel.

Date and Time: Tuesday, September 28, 1993, 12:30 p.m.–5:30 p.m.; Wednesday, September, 29, 1993, 9 a.m.–3:30 p.m.

Place: Sheraton Premiere at Tysons Corner, 8661 Leesburg Pike, Vienna, VA 22182, Telephone: (703) 448–1234.

FOR FURTHER INFORMATION CONTACT: Dr. Russell Eaton, Designated Federal Official, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1506.

SUPPLEMENTARY INFORMATION: Purpose of the Committee: The Hydrogen Technical Advisory Panel (HTAP) will advise the Secretary of Energy, who has the overall management responsibility for carrying out the programs under the Matsunaga Hydrogen Research, Development, and Demonstration Program Act of 1990, Public Law 101–566. The Panel will review and make any necessary recommendations to the Secretary on the following items: (1) The implementation and conduct of programs required by the Act, (2) the economic, technological, and environmental consequences of the deployment of hydrogen production and use systems, and (3) the contents of the comprehensive 5-year program required by the Act.

Tentative Agenda

Tuesday, September 28, 1993

12:30 p.m.—Introductions, All
12:45 p.m.—Opening Remarks, J. Birk
1 p.m.—DOE Report, R. Eaton
1:30 p.m.—DOE Implementation Plan, N. Rossmeissl
2 p.m.—Discussion of Plan, All
3 p.m.—Break
3:15 p.m.—Closure on Vision Statement, Panel Vote
3:30 p.m.—Aircraft Development Program, A. Bain
4 p.m.—Discussion of Proposed Program, All
4:45 p.m.—Public Comments (5-minute rule), Public
5:35 p.m.—Adjournment
5:45 p.m.—Reception, Panel/Guests

Wednesday, September 29, 1993

9 a.m.—Recent Pathway Studies, J. Badin
9:30 a.m.—Discussion of Pathway Studies, All
10 a.m.—DOD Programs, TBD
10:30 a.m.—Discussion DOD Program, All
11 a.m.—Break
11:30 a.m.—Transportation Development Program, F. Lynch
12 noon—Discussion of Transportation Program, All
12:45 p.m.—Lunch
1:45 p.m.—Basic Research and Analytical Studies Program, H. Linden
2:15 p.m.—Discussion of Above, All
3 p.m.—Round Table, All
3:25 p.m.—Action Items/Next Meeting, J. Birk
3:30 p.m.—Adjournment

Public Participation

The meeting is open to the public. The Chairman of the HTAP is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral presentation (five minutes or less) pertaining to agenda items should contact the

Designated Federal Official at the address or telephone number listed above. Requests must be received before 5 p.m. (E.D.T.) Wednesday, September 22, 1993, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal Official at the address shown above before 5 p.m. (E.D.T.) Wednesday, September 22, 1993, to assure that it is considered by Panel members during the meeting.

Minutes

A transcript of this meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Issued at Washington, DC, on August 26, 1993.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93-21283 Filed 8-31-93; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed During the Week of July 16 through July 23, 1993

During the week of July 16 through July 23, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: August 26, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 16 through July 23, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Jul. 20,1993	Gil-Mc Oil Corporation et al. (See Attached List) Washington, DC.	LEF-0054 thru LEF-0112	Implementation of special refund procedures. If Granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V.
Jul. 20, 1993 ...	L. K. Seymour, Idaho Falls, ID	LFA-0310	Appeal of an information request denial. If Granted: L. K. Seymour would receive access to personnel records relating to engineering management positions in the New Production Reactors Office.

LEF-0054 Gil-MC Oil Corp.
LEF-0055 Leclair Operating Co.
LEF-0056 SRG Corporation
LEF-0057 Intercoastal Oil Co.
LEF-0058 Crude Oil Purchasing, Inc.
LEF-0059 Jaguar Petroleum, Inc.
LEF-0060 N.C. Ginther Company
LEF-0061 Bell Fuels, Inc.
LEF-0062 Este Oil Company
LEF-0063 G & G Oil Company
LEF-0064 General Petroleum
LEF-0065 Reco Petroleum, Inc.
LEF-0066 SOS Monarch Oil Corp.
LEF-0067 Capitol 66 Oil Company
LEF-0068 Cumberland Farms Dairy, Inc.
LEF-0069 Kickapoo Oil
LEF-0070 Lampton-Love, Inc.
LEF-0071 Skinney's Inc.
LEF-0072 Vermont Morgan Corporation
LEF-0073 Gulf States Oil and Refining
LEF-0074 Beacon Bay Enterprises, Inc.
LEF-0075 Bob's Broadway
LEF-0076 Clearview Gulf
LEF-0077 E-Z Service, Inc.
LEF-0078 Ed's Exxon
LEF-0079 Milbrae Shell
LEF-0080 Bob Hutchinson, Inc.
LEF-0081 Buchanan Shell, Inc.
LEF-0082 Jim Campbell Shell
LEF-0083 Miles Union Service
LEF-0084 Ron's Shell
LEF-0085 Elwood Chevron Service
LEF-0086 A-1 Exxon
LEF-0087 Half Moon Bay Exxon
LEF-0088 Redhill Mobil and Towing
LEF-0089 Pete Alijian Chevron
LEF-0090 Shaw & 99 Chevron
LEF-0091 Sunset Blvd. Car Wash
LEF-0092 Aptos Shell
LEF-0093 Alameda Chevron
LEF-0094 Ben's Exxon Service
LEF-0095 Berryessa Chevron
LEF-0096 Bill Wren's Shell
LEF-0097 Cutting Shell Service
LEF-0098 Ed Gularte Chevron
LEF-0099 Joe Berube Services
LEF-0100 McDowell Exxon
LEF-0101 Petaluma Standard Service
LEF-0102 Regalia's Chevron Service
LEF-0103 Starr Union Service
LEF-0104 Tenth Street Chevron
LEF-0105 Tom's Coffee Tree Chevron
LEF-0106 Wallace Arco Service
LEF-0107 Walt's Shell Service
LEF-0108 Weber's Chevron Service
LEF-0109 C. J. King Chevron
LEF-0110 Hughes Burlingame Shell
LEF-0111 Sandusky's Union Service
LEF-0112 Skycrest Shell

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/Name of refund applicant	Case No.
7/16/93 thru 7/23/93	Atlantic Richfield applications received	RF304-14235 thru RF304-14252
7/16/93 thru 7/23/93	Texaco oil refund applications received	RF321-19801 thru RF321-19812

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/Name of refund applicant	Case No.
7/19/93	Waterloo Service Company	RF340–188
7/19/93	Eagle Rock Bus Co	RF272–94790
7/19/93	Hansen Bros. Enterprises, Inc	RF272–94791
7/19/93	Van Mol Farms	RF346–56
7/20/93	Olton Grain Coop	RF272–94792
7/20/93	Farmers Coop Assoc	RF272–94793
7/22/93	Ottawa Lake Co-op Elevator	RF272–94794

[FR Doc. 93–21286 Filed 8–31–93; 8:45 am]
BILLING CODE 6450–01–P

Issuance of Proposed Decision and Order During the Week of July 26 Through July 30, 1993

During the week of July 26 through July 30, 1993, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: August 26, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

Texport Oil Company, Houston, Texas, LEE–0047, Reporting Requirements

Texport Oil Company (Texport) filed an Application for Exception from the provision of filing Form EIA–782B, the "Reseller's/Retailers' Monthly Petroleum Product Sales Report." The exception request, if granted, would permit Texport to be exempted from filing Form EIA–782B. On July 27, 1993, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 93–21291 Filed 8–31–93; 8:45 am]
BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

[Case No. F–059]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From The Ducane Company Inc.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to The Ducane Company Inc. (Ducane) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's DHC, ULB, and UH series of oil furnaces.

Today's notice also publishes a "Petition for Waiver" from Ducane. Ducane's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Ducane seeks to test using a blower delay time of 30 seconds for its UHC, ULB, and UH series of oil furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than October 1, 1993.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F–059, Mail Stop CE–90, room 6B–025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3012.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On July 8, 1993, Ducane filed an Application for Interim Waiver regarding blower time delay. Ducane's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Ducane requests the allowance to test using a 30-second blower time delay when testing its UHC, ULB, and UH series of oil furnaces. Ducane states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 0.7 to 0.9 percent (depending on model). Since current DOE test procedures do not address this variable blower time delay, Ducane asks that the Interim Waiver be granted.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; Ducane Company, 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Ducane an Interim Waiver for its UHC, ULB, and UH series of oil furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Ducane was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, August 25, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

August 25, 1993.

Mr. Charles W. Adams,

Vice President, Research and Development, Ducane Heating Division, The Ducane Company, Inc., Blackville, South Carolina 29817–1199.

Dear Mr. Adams: This is in response to your July 8, 1993, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for The Ducane Company Inc. (Ducane) UHC, ULB, and UH series of oil furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; Ducane Company, 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

Ducane's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Ducane will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Ducane's Application for an Interim Waiver from the DOE test procedure for its UHC, ULB, and UH series of oil furnaces regarding blower time delay is granted.

Ducane shall be permitted to test its UHC, ULB, and UH series of oil furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, appendix N, with the modification set forth below:

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t –) unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t –) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ± 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

July 8, 1993

Assistant Secretary,

Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Avenue Washington, DC 20858.

Gentlemen: Please consider this Petition for Waiver and Application for Interim Waiver pursuant to title 10 CFR 430.27.

Waiver is requested from the test procedures covering oil furnaces found at appendix N to subpart B of 10 CFR part 430. The current Heat-Up Test procedures requires at 1.5 minute time delay between burner and blower startup. The Ducane Company is requesting to use 30 seconds instead of 1.5 minutes for Series "UHC, ULB, and UH" Oil Furnaces.

These models will employ an electronic blower time control that starts the blower in approximately 30 seconds. Our testing indicates an increase of approximately .7 to .9% (depending on model) in AFUE using the 30 second time delay.

The Ducane Company seeks an interim waiver because it is likely that our waiver will be granted. Similar waivers have been granted to other manufacturers in the past.

A copy of this Petition for Waiver and Application for Interim Waiver will be sent to other manufacturers of similar type products.

Respectfully Yours,

The Ducane Company, Inc.

Charles W. Adams,

V.P. Research and Development, Ducane Heating Division.

[FR Doc. 93– 21284 Filed 8–31–93; 8:45 am]

BILLING CODE 6450–01–P

[Case No. F–058]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From Lennox Industries Inc.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Lennox Industries Inc. (Lennox) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's G23 and G26 series of furnaces.

Today's notice also publishes a "Petition for Waiver" from Lennox. Lennox's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Lennox seeks to test using a blower delay time of 45 seconds for its G23 and G26 series of furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than October 1, 1993.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F–058, Mail Stop EE–90, Room 6B–025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3012.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct) Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic

model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On June 16, 1993, Lennox filed an Application for Interim Waiver regarding blower time delay. Lennox's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Lennox requests the allowance to test using a 45-second blower time delay when testing its G23 and G26 series of furnaces. Lennox states that the 45-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 0.7 percent. Since current DOE test procedures do not address this variable blower time delay, Lennox asks that the Interim Waiver be granted.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; Ducane Company, 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Lennox an Interim Waiver for its G23 and G26 series of furnaces. Pursuant to paragraph (e) of Section 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Lennox was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, August 25, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

August 25, 1993.

Mr. David W. Treadwell,

Vice President, Research and Development, Lennox Industries Inc., P.O. Box 110877, Carrollton, TX 75011–0877.

Dear Mr. Treadwell: This is in response to your June 16, 1993, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for the Lennox Industries Inc. (Lennox) G23 and G26 series of furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; Ducane Company, 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

Lennox's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Lennox will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Lennox's Application for an Interim Waiver from the DOE test procedure for its G23 and G26 series of furnaces regarding blower time delay is granted.

Lennox shall be permitted to test its G23 and G26 series of furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, appendix N, with the modification set forth below:

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid

described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t–) unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t–) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

June 16, 1993.

Assistant Secretary,

Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Dear Sir: This is a Petition for Waiver and Application for Interim Waiver submitted pursuant to Title 10 CFR 430.27. Waiver is requested from the uniform test method for measuring energy consumption of furnaces. In the interest of saving energy, Lennox Industries Inc. intends to use a fixed 45 second timing control on our G23 and G26 series of furnaces to gain additional energy savings that are achieved with the use of shorter blower on times. Waiver is requested from the 1.5 minute time delay requirement between the burner ignition and indoor blower activation in the heat-up portion of the test as outlined in appendix N to subpart B of part 430. We have found that under the current method of test the flue gas temperature as measured in the stack reaches a value which is higher than that which will be seen in actual operation resulting in inaccurate comparative data. Our test data indicates that an energy savings of approximately 0.7% on the AFUE is achievable with this reduction in blower delay.

Previous waivers for this type of timed blower delay control have been granted to a number of manufacturers of this type of equipment. Lennox is confident that this waiver will be granted and therefore requests an interim waiver be granted until a final ruling is made.

Manufacturers that market similar equipment are being sent a copy of this petition. If any other information is required, please contact me.

Sincerely,

David W. Treadwell,

Vice President, Research and Development.

[FR Doc. 93–21285 Filed 8–31–93; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Cases Filed During the Week of July 30 Through August 6, 1993

During the Week of July 30 through August 6, 1993, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: August 26, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 30 through August 6, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 2, 1993 ...	Colorado River Commission of Nevada, Washington, DC.	LFA–0311	Appeal of an information request denial. *If granted:* The June 15, 1993 Freedom of Information Request issued by the Western Area Power Administration (WAPA) would be rescinded, and Colorado River Commission of Nevada would receive access to WAPA's plans to build a new Basic Substation near the Hoover Dam.
Aug. 2, 1993 ...	Farmer Union Elevator, Hardin, KY	RR272–109	Request for modification/rescission in the crude oil refund proceeding. *If granted:* The June 8, 1993 Decision and Order (Case No. RF272–81889) issued to Farmer Union Elevator would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
Aug. 2, 1993 ...	Texaco/Arthur Kelly's Texaco #2, Memphis, TN.	RR321–133	Request for modification/rescission in the Texaco refund proceeding. *If granted:* The June 29, 1993 Decision and Order (Case No. RF321–12718) issued to Arthur Kelly's Texaco #2 would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of July 30 through August 6, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 2, 1993 ...	Texaco/Pat Vincent's Texaco, Jackson, MI	RR321–132	Request for modification/rescission in the Texaco refund proceeding. *If granted:* The January 11, 1993 Dismissal Letter (Case No. RF321–10846) issued to Pat Vincent's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Aug. 6 1993 ..	Government Accountability Project, Washington, DC.	LFA–0312	Appeal of an Information Request Denial. *If granted:* The July 7, 1993 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and Government Accountability Project would receive access to information about certain activities of Martin Marietta Energy Systems and Oak Ridge Associated Universities at Oak Ridge National Laboratory.

Date received	Name of refund proceeding/name of refund application	Case No.
7/30/93	Johnston Construction Co. Inc.	RF272–212
8/3/93	Honduras Caual Gas Station.	RF346–57
7/30/93 thru 8/6/93.	Atlantic Richfield Applications received.	RF304–14282 thru RF304–14338
7/30/93 thru 8/6/93.	Texaco Refund applications received.	RF321–19823 thru RF321–19832
7/30/93 thru 8/6/93.	Crude oil refund applications received.	RF272–94808 thru RF272–94829

[FR Doc. 93–21287 Filed 8–31–93; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders

Office of Hearings and Appeals During the Week of May 31 Through June 4, 1993

During the week of May 31 through June 4, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Chicago Power Group, 6/3/93, LFA–0292

The Chicago Power Group filed an Appeal from a denial by the Bonneville Power Administration of the Department of Energy (DOE/BPA) of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that DOE/BPA properly applied Exemption 4 to the requested information. Accordingly, the Appeal was denied.

James L. Schwab, 6/4/93, LFA–0296

James L. Schwab filed an Appeal from a determination issued to him by the Albuquerque Field Office (AFO) of the Department of Energy (DOE) that denied a Request for Information which Mr. Schwab had submitted under the Freedom of Information Act. Mr. Schwab requested records regarding a background check that the Office of Personnel Management had conducted pursuant to his employment application with the U.S. Marshall's Office. In its determination letter, the AFO stated that no such records existed. In considering the Appeal, the DOE found that an adequate search had been conducted in response to Mr. Schwab's request and the Appeal was denied.

Milton L. Loeb, 6/1/93, LFA–0289

Milton L. Loeb filed an Appeal from determinations issued by the Department of Energy Field Office, Albuquerque (DOE/AL), in response to requests for information submitted under the Freedom of Information Act (FOIA). Loeb requested an executable copy of the Project Authorization and Tracking System (PATS) software, developed under a contract between the DOE and contractor Dames and Moore, and the user's manual and programmer's reference manual for the software. In its determination, DOE/AL found that these items were not agency records subject to the FOIA, and would in any case be exempt from mandatory disclosure under 5 U.S.C. 552(b)(4) (Exemption 4). Loeb also requested Task Order 91–4 under the contract between the DOE and Dames and Moore. DOE/AL provided documents in response to the request for Task Order 91–4, but Loeb contended in his Appeal that DOE/AL had not provided all responsive documents. In considering the Appeal, the DOE found that: (1) DOE/AL fully responded to Loeb's request for Task Order 91–4; (2) the executable version of the PATS software is not an agency record as that term is used in the FOIA; (3) the PATS user's manual and programmer's reference manual are agency records and therefore subject to mandatory disclosure under the Act; (4) withholding of the manuals pursuant to Exemption 4 requires a more adequate justification regarding the harm likely to result from the disclosure than was provided by DOE/AL. Accordingly, the matter was remanded to DOE/AL with instructions to issue a new determination either releasing the manuals or providing a more detailed justification for their withholding. In all other respects, the Appeal was denied.

Power City Electric, Inc., 6/4/93, LFA–0285

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Power City Electric, Inc., (Power City). The Motion asked the DOE to reconsider a dismissal letter it had issued to Power City on March 24, 1993. The DOE had dismissed Power City's Appeal under the Freedom of Information Act (FOIA) because Power City had filed its Appeal beyond the statutory deadline for filing an appeal and had sought to require the DOE to answer a question under the FOIA statute. The DOE found the Motion to be without merit and, accordingly, the Motion for Reconsideration was denied.

Remedial Order

Dalco Petroleum Corporation; Economic Regulatory Administration, 6/2/93, HRO–0074, LRZ–0020

The Economic Regulatory Administration (ERA) filed a Motion to Dismiss the Proposed Remedial Order (PRO) issued to Dalco Petroleum Company (Dalco), W. Darryl Zang, and Louis Porter on April 30, 1982. After the issuance of the PRO but before Statements of Objections were filed, Dalco, Zang, and Porter filed for bankruptcy. On January 13, 1993, a similar Motion was granted as to Dalco and Zang. This Motion was filed because the ERA had reached a settlement with Porter which had been approved by the bankruptcy court. The ERA stated that the approval of the settlements by the bankruptcy court renders unnecessary any further review of the PRO as it related to any liability of this party. The DOE agreed. Therefore, the Motion to Dismiss was granted. The PRO was dismissed since there were no remaining parties.

Implementation of Special Refund Procedures

Eason Oil Company; ITT Corp., 6/1/93, LEF–0040

The DOE issued a Decision and Order implementing procedures for the distribution of $7,000,000, plus accrued interest, in alleged overcharges obtained from Eason Drilling Company, formerly Eason Oil Company, (Eason) and ITT Corporation. These funds were remitted by Eason and ITT to the DOE to settle possible pricing violations with respect to Eason's sales of refined petroleum products during the period November 1, 1973 through December 31, 1979. The DOE determined that the funds will be distributed in accordance with the DOE's subpart V refund procedures. Applications for Refund will be accepted from customers who purchased controlled refined petroleum products from Eason during the period covered by the settlement. The specific information to be included in the Applications for Refunds, which must be submitted by August 1, 1994, is included in the Decision.

Supplemental Order

Energy Refunds, Inc., 6/4/93, LFX–0010

The Department of Energy issued an Order disqualifying Energy Refunds, Inc. (ERI) and its officers and employees from representing clients before the Office of Hearings and Appeals (OHA). ERI had filed a refund application in the Texaco refund proceeding on behalf of "Perry North Main Texaco." Previously, ERI had filed applications in the two Gulf refund proceedings on behalf of the same outlet and claiming the same purchase gallons under the name "Perry North Main Gulf." The applicant also altered certain documents submitted in the Texaco proceeding to make it appear that he was a Texaco dealer. When asked to explain, the applicant stated that while his station was Gulf-branded, he obtained some of his product from Texaco and that the purchase volume schedules he submitted in both the Texaco and Gulf proceedings included product obtained from both suppliers.

The DOE noted that representatives of clients before OHA have an obligation to exercise reasonable care to prevent the submission of incorrect information. While the DOE found that ERI did not know that the applicant had altered documents, it would have known if it had examined the documents before submitting them to OHA. Furthermore, the DOE noted that since ERI had filed the Gulf applications, it should have known that the Texaco application claimed the same purchase volumes. The DOE noted that this was not an isolated case. In many other instances, ERI submitted incorrect information, filed duplicate applications, or filed applications on behalf of persons who it should have known were ineligible for refunds. The DOE concluded that it could have no confidence in ERI's ability to represent clients in an honest and competent manner, and found that the firm should be barred from representing clients before OHA.

Refund Applications

Apex Oil Co.; Clark Oil & Refining Corp.; U.S. Oil Co., Inc., 6/3/93, RF342–22

The DOE issued a Decision and Order granting, in part, an Application for Refund filed in the Apex/Clark special refund proceeding on behalf of U.S. Oil Co., Inc. (USOC), a spot purchaser of Clark petroleum products during the refund period. USOC demonstrated that it purchased product from Clark on the spot market during the years 1979 and 1980 as a result of the DOE's November 2, 1979, determination in *U.S. Oil Company, Inc.*, 4 DOE ¶ 81,187 (1979) in which the DOE granted USOC's request for exception relief. The DOE determined that USOC's spot purchases were necessary for the firm to fulfill its own responsibilities under the federal petroleum allocation regulations. In addition, USOC demonstrated that competitive conditions prevented it from passing through any alleged overcharges incurred as a result of these spot purchases. Consequently, the DOE granted USOC a refund of $7,633 (comprised of $5,700 principal and $1,933 interest) for its 1979 and 1980 Clark purchases. USOC failed, however, to similarly rebut the spot purchaser presumption of non-injury with regard to its pre-1979 purchases of Clark product. That portion of USOC's application was consequently denied.

Texaco Inc./Armona Texaco, 6/4/93, RF321–18663

The DOE issued a Decision and Order denying an Application for Refund filed on behalf of Armona Texaco by William Lamb in the Texaco Inc. special refund proceeding. The DOE found that because Armona Texaco did not purchase from Texaco, but sold Texaco product on consignment for an independent distributor of Texaco products, Armona Texaco was in no way injured by any Texaco overcharges and consequently was not entitled to a refund in the Texaco proceeding.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Martin Marietta Aluminum, Inc	RF304–13717	06/03/93
Beverly M. Doyle *et al*	RF272–92002	06/03/93
City of Dayton, Ohio	RF272–69628	06/03/93
City of Newport, Kentucky *et al*	RF272–88064	06/03/93
Ellsworth Community School District *et al*	RF272–87005	06/02/93
Empire Gas Corporation/AAA Butane	RF335–65	06/03/93
Enron Corp./Gartman's Butane Co., Inc	RF340–86	06/03/93
Georgetown University *et al*	RF272–91904	06/03/93
Gulf Oil Corporation/Forest Hill Gulf *et al*	RF300–13373	06/02/93
Gulf Oil Corporation/General Oil, Inc. *et al*	RF300–16563	06/04/93
Gulf Oil Corporation/Maplewood Packing Company	RF300–18816	06/02/93
Gulf Oil Corporation/McMaken Oil Company	RF300–18791	06/03/93

Hellenic Lines Limited	RF272–77857	06/02/93
Miami Unified Area School District #40 *et al*	RF272–80249	06/01/93
Murphy Oil Corp./Webb's Service Station *et al*	RF309–1062	06/01/93
O.D. Anderson, Inc	RC272–196	06/03/93
Onalaska School District *et al*	RF272–80930	06/04/93
Shell Oil Company/Briggs Transportation Co. *et al*	RF315–10106	06/03/93
Shell Oil Company/Emerson Electric Company	RF315–2921	06/04/93
Shell Oil Company/Tazewell Oil Co., Inc, Chilton-Chase, Inc	RF315–7346	06/04/93
	RF315–7347	06/04/93
Texaco Inc./Amoco Corp. *et al*	RF321–7048	06/04/93
Texaco Inc./Mission Texaco *et al*	RF321–2298	06/02/93
Texaco Inc./Shelby Motel	RF321–7564	06/04/93
Texaco Inc./West Dade Texaco Service, Gonzalo Santana	RF321–19344	06/01/93
	RF321–19743	06/01/93
William Deam *et al*	RF272–81811	06/04/93

Dismissals

The following submissions were dismissed:

Name	Case No.
Aransas Pass I.S.D	RF272–87413
Arkansaw School District	RF272–81256
Ashby School District	RF272–87416
Athens School District	RF272–87417
Atherton Comm. School District.	RF272–87418
B&D Butane Company	RF304–13517
Bartonville School District	RF272–79044
Belcher Oil Company	RF300–17258
Belleville School District	RF272–87300
Bramblett Gulf	RF300–15914
Brawley Union High	RF272–79176
Caulder Oil Company	RF300–14261
City of Checotah	RF272–83553
Davies Gulf	RF300–13241
East Amwell Township School District.	RF272–87179
Escondido Union High	RF272–87195
Florida Rock and Tank Lines, Inc.	RF300–15129
Florida Rock Industries	RF300–15128
Gilbert Unified District 41	RF272–79026
Greenwood Lake U.F. School	RF272–87381
Hillsboro-Deering Coop Schools.	RF272–87350
Holiday Gulf	RF300–17463
Holiday Gulf in Hickory	RF300–17302
Homes of Merit, Inc	RF300–14056
Hot Springs School District	RF272–87355
Hubert Hallford Gulf	RF300–14463
Iola-Scandinavia School District.	RF272–87403
J.D. Hinkle & Sons, Inc	RF300–14374
Jackson Public Schools	RF272–87405
James R. Phillis	RF304–13837
Jefferson Elementary	RF272–81257
Johnson-Brock Public Schools	RF272–87390
Kaukauna Area School District	RF272–87396
Loetscher's Garage	RF300–15571
Martinez Unified	RF272–79025
Metropolitan Distributors	RF300–14300
Pacific Construction Co	RF321–16603
Paoli Community School Corp.	RF272–79158
Paul Martin's Arco	RF304–13899
Pixley Oil Company	RF309–657
Regional School District 10	RF272–87490
Riverview Int. Unit S.D	RF272–87494
Ronan Elementary #30	RF272–87495
Ronan High School #30	RF272–87496
S&W Texaco	RF321–16724
Sellman's Gulf	RF300–14426
Seneca Twp High School Dist. 160.	RF272–79164
Sid's Auto Service	RF300–12773
Sodus Central School	RF272–87445
South Orange-Maplewood School District.	RF272–87465
South Pasadena Unified S.D	RF272–87466
Springfield Township School District.	RF272–87471
Town of Stoneham	RF272–83482
Vandy's Texaco Service	RF321–16908
Wallington School District	RF272–87328
Warsaw R–IX Schools	RF272–87331
Weeping Water Public Schools.	RF272–87337
West Warwick School District	RF272–87344
Wilmette School District 39	RF272–87316

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: August 26, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–21290 Filed 8–31–93; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of May 24 Through May 28, 1993

During the week of May 24 through May 28, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Cal Brekke, 5/24/93, LFA–0284

Cal Brekke filed an Appeal from denials by the Office of Scientific and Technical Information (DOE/OSTI) and the Chicago Field Office (DOE/Chicago) of a Request for Information which he had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that both DOE/OSTI and DOE/Chicago conducted thorough searches for the requested records and followed procedures which were reasonably calculated to uncover all material responsive to the Appellant's request. Accordingly, the Appeal was denied.

Hanford Education Action League, 5/24/93, LFA–0290

The Hanford Education Action League (HEAL) filed an Appeal from a determination issued to it by the Richland Field Office of the DOE in response to a request for information submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the Richland Field Office properly withheld, under Exemption 5 of the FOIA as predecisional, a portion of a chart showing a projection of waste at the Hanford Nuclear Reservation prepared in conjunction with the Multi-Function Waste Remediation Facility under construction at the Hanford facility. Accordingly, the Appeal was denied.

Seehuus Associates, 5/28/93, LFA–0283

Seehuus Associates filed an Appeal from a partial denial by the Oak Ridge Field Office of a Freedom of Information Request. The firm sought records concerning a lease entered into by Martin Marietta Energy Systems, a DOE contractor. Seehuus argued that the search conducted by the Field Office was inadequate and that three documents withheld by the Field Office pursuant to Exemption 4 should have been released. The firm also complained that excessive fees were charged for processing its FOIA request. The DOE found that one document, a real estate appraisal, should be released because its submitter did not object. The DOE found that the other two documents were properly withheld pursuant to Exemption 4. The DOE found that one of these documents was exempt from disclosure under the National Parks test, and the other document, which was voluntarily provided to the DOE, was exempt under the Critical Mass test. The DOE found that the Field Office had conducted a thorough search of records located at the Field Office. However, the DOE found that a search should also have been conducted at DOE's Office of the Inspector General.

The DOE also found that the fee charged Seehuus for processing its FOIA request was excessive. The Field Office charged Seehuus for the personnel time used to photocopy the documents and to prepare them for photocopying, in addition to the five cents per page that DOE regulations specify for copying paper documents. The DOE found that the five cents per page charge was intended to include labor costs associated with copying documents. Accordingly, the Appeal was granted in part.

William Albert Hewgley, 5/28/93, LFA–0291

William Albert Hewgley filed an Appeal from a determination issued by the Office of the Inspector General (OIG) in response to a request from Mr. Hewgley submitted under the Freedom of Information Act (FOIA) and the Privacy Act. In that determination, the OIG stated that documents responsive to Mr. Hewgley's Privacy Act request were contained in a system of records that is exempt from disclosure pursuant to exemptions (j)(2) and (k)(2) of the Privacy Act. Because the OIG conducted a search for information pursuant to the FOIA, the DOE determined that consequently the OIG knows whether any non-exempt material responsive to the Privacy Act request exists. Therefore, Mr. Hewgley's Appeal was denied.

Refund Applications

Shell Oil Company/Commercial Lovelace Motor Freight, Inc.; Lee Way Motor Freight, Inc., 5/25/93, RF315–10100, RF315–10101

The DOE issued a Decision and Order concerning two Applications for Refund filed on behalf of Commercial Lovelace Motor Freight, Inc. (Commercial Lovelace), and Lee Way Motor Freight, Inc. (Lee Way Motor Freight) in the Shell Oil Company special refund proceeding. Both applicants were motor carriers that purchased Shell refined petroleum products during the Shell refund period. In 1985, Lee Way Motor Freight merged into Commercial Lovelace. Subsequently, Commercial Lovelace changed its name to Lee Way Holding Company. Lee Way Holding Company is currently a Chapter 11 Debtor under the jurisdiction of the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division. The Trustee for the Estate in Bankruptcy authorized LK, Inc., a private filing service, to file the Applications under consideration. Because Lee Way Holding Company acquired the stock of Commercial Lovelace and Lee Way Motor Freight, it is thus eligible to receive the refunds resulting from the two companies' purchases during the refund period. Accordingly, Commercial Lovelace Motor Freight, now known as Lee Way Holding Company was granted a principal refund of $1,191, and Lee Way Motor Freight, now known as Lee Way Holding Company, was granted a principal refund of $113.

Standard Oil Co. (Indiana)/Indiana, 5/26/93, RM251–262

The DOE issued a Decision and Order granting a request by the State of Indiana to modify its second stage refund plan so that the remainder of its Amoco II monies, $123,750, will be used to fund the 1993 Fuel Saver Van Program, which will provide restitution to injured consumers of motor gasoline.

Texaco Inc./Fritzen-Halcyon Lijn, Inc., 5/26/93, RF321–16873

The DOE issued a Decision and Order denying an Application for refund filed on behalf of Fritzen-Halcyon Lijn, Inc. (Fritzen) in the Texaco Inc. Subpart V special refund proceeding. In considering Fritzen's Application, the DOE found that its purchase volume claim was based on purchases that appeared to have been the "first sale into U.S. Commerce," and therefore not subject to federal price controls under 10 CFR 212.53(b). Furthermore, a large portion of Fritzen's claimed purchases were made after those products had been decontrolled. Fritzen was provided the opportunity to rebut these findings but failed to do so. Consequently, the DOE concluded that no Texaco overcharges could be attributed to any of Fritzen's purchases. Accordingly, Fritzen's Application for Refund was denied.

Texaco Inc./Styles Texaco, 5/26/93, RF321–17996

The DOE issued a Decision and Order concerning an Application for Refund filed by Styles Texaco (Styles) in the Texaco Inc. Subpart V special refund proceeding. This applicant indirectly purchased Texaco products from Fountain Oil Co. (Fountain), a Texaco jobber. On November 27, 1992, the DOE issued a Decision and Order in the Texaco proceeding which determined that Fountain had been injured in its purchases of Texaco products. *Texaco Inc./Fountain Oil Co.*, Case No RF321–16899 (November 27, 1992). Based on a detailed showing of Fountain's costs and prices during the refund period, the DOE concluded that Fountain had absorbed the full amount of any overcharges it had incurred in its purchases from Texaco rather than passing on the increased costs

associated with those overcharges to its own customers. Therefore, as a customer of Fountan, Styles would not have been charged a higher price as a result of the alleged Texaco overcharges and was not injured by Texaco's pricing. Accordingly, Styles's Application for Refund was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Central Fuel Services, Inc.	RF304–13809	05/25/93
C.A. Murphy Oil Company	RF304–13810	
Atlantic Richfield Company/Cole's ARCO *et al*	RF304–13504	05/28/93
Atlantic Richfield Company/K&B Service Station	RF304–13909	05/28/93
Atlantic Richfield Company/Lyon Oil Company	RF304–7762	05/28/93
Atlantic Richfield Company/Rehill's ARCO Service #2	RF304–13950	05/28/93
George Cecrle *et al*	RF272–92100	05/27/93
Gulf Oil Corporation/Bottled Gas Distributing Co.	RF300–17767	05/27/93
Gulf Oil Corporation/Moline Gulf Distributor	RF300–18939	05/27/93
Gulf Oil Corporation/Wagram Self Service	RF300–15034	05/28/93
Mini-Mart Gulf	RF300–15035	
Cooper's Gas Mart	RF300–15036	
Cooper Oil Co., Inc.	RF300–15037	
Omaha World Herald Company	RC272–198	05/24/93
Shell Oil Company/Billy Folk Shell Station *et al*	RF315–2134	05/25/93
Shell Oil Company/Interstate Brands Corp.	RF315–6167	05/26/93
Texaco Inc./Gerald W. Sisson Texaco *et al*	RF321–6979	05/24/93
Texaco Inc./Gray's Texaco Service *et al*	RF321–4055	05/25/93
Texaco Inc./Krulis Service *et al*	RF321–11038	05/27/93
Texaco Inc./Lee's Texaco Service *et al*	RF321–4966	05/28/93
Texaco Inc./McDaniel Texaco *et al*	RF321–16921	05/27/93
Texaco Inc./Newport Electric Corporation	RF321–19708	05/25/93
Texaco Inc./Osco Incorporated *et al*	RF321–5115	05/27/93
Texaco Inc./Yeagy's Texaco	RR321–88	05/28/93
Ysleta Texaco	RR321–95	
Village of Cedarville, *et al*	RF272–83868	05/24/93
Westmoreland Central School *et al*	RF272–92262	05/28/93
William Walcott *et al*	RF272–92602	05/27/93

Dismissals

The following submissions were dismissed:

Name	Case No.
Blue & White Lines, Inc.	RF300–15173
Borough of Conshohocken	RF272–83325
Borough of Townada	RF272–83550
Calaveras Cement Company	RD272–25984
City of Bennettsville	RF272–83537
City of Gallipolis	RF272–83478
City of Webster Groves	RF272–83501
City of West Haven	RF272–83346
Conotton Valley Union Local School.	RF272–87147
Coopers Creek Chemical Corporation.	RF272–93951
Crawfordsville Community School.	RF272–87154
Frankfort Schuyler Central School.	RF272–87215
Gallia County, Ohio	RF272–86094
George R. Brown Jr.	RF300–14527
Haworth School District	RF272–87062
Helena Elementary #1	RF272–87066
Helena High School #1	RF272–87067
Indian Valley Local School District.	RF272–87122
L.J. Taylor Distributor	RF300–15332
Lynwood Unified	RF272–87076
Morris Plains Borough School. District.	RF272–87105
Mt. Angel School District 101	RF272–87040
Mt. Pleasant Central School	RF272–87108
Nelsonville-York City School District.	RF272–87115
New Home Independent School District.	RF272–87121
Newport City Elementary School District.	RF272–87127
Nishna Valley Community School.	RF272–87129
North Wood R IV School District.	RF272–87134
Orcas Island School District	RF272–87145
Otto Henn, Inc.	RF300–17129
Parker Oil Inc.	RF300–15101
Roy Liddell	RF300–17295
Seneca Valley School District	RF272–87054
Sherrill Oil Company	RF321–17964
Standard Construction Company, Inc.	RF300–17310
State of Indiana	RQ251–586
Town of Reading	RF272–83360
Uber's Gulf	RF300–17292
Village of Ridgefield Park	RF272–83533
Zion School District #6	RF272–81445

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in "Energy Management: Federal Energy Guidelines," a commercially published loose leaf reporter system.

Dated: August 26, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–21289 Filed 8–31–93; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders During the Week of May 10 Through May 14, 1993

Office of Hearings and Appeals

During the week of May 10 through May 14, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

David DeKok, 5/11/93, LFA–0282

David DeKok, (DeKok) filed an Appeal from a partial denial by the Department of Energy's (DOE) Idaho Field Office (Idaho) of a Request for a Fee Waiver filed by DeKok under the Freedom of Information Act. In considering the Appeal, the DOE found that Idaho had incorrectly determined that DeKok's commercial interest in obtaining the requested information outweighed the public's interest in its disclosure, since the DOE had previously found DeKok to be acting as a representative of the news media. In its Decision, the DOE also provided Idaho with further guidance concerning the proper application of the DOE's fee waiver regulations to DeKok's request. As a result of its determination, the DOE remanded the matter to Idaho with instructions to process the request in accordance with the guidance provided in the Decision.

John Lohrenz, 5/11/93, LFA–0280

John Lohrenz filed an Appeal from a denial by the Pittsburgh Energy Technology Center of the Department of Energy (DOE/PETC) of a Request for Information which he had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that DOE/PETC conducted a thorough search for the requested records and followed procedures which were reasonably calculated to uncover all material responsive to the Appellant's request. Accordingly, the Appeal was denied.

Phillips, Nizer, Benjamin, Krim & Ballon, 5/13/93, LFA–0286

Phillips, Nizer, Benjamin, Krim & Ballon filed an Appeal from a determination issued to it on March 19, 1993 by the Director of the Office of Management and Information Systems, Economic Regulatory Administration of the Department of Energy (DOE). In that determination, the Director stated that the DOE did not find any documents responsive to the appellant's information request under the Freedom of Information Act. In considering the Appeal, the DOE confirmed that the Director followed procedures which were reasonably calculated to uncover responsive documents. Accordingly, the DOE denied the appellant's request.

Request for Exception

Cunningham, 5/12/93, LEE–0038

Cunningham filed an Application for Exception from the requirement that it file Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." The exception request, if granted, would permit Cunningham to be exempted from filing Form EIA–782B. The Department of Energy issued a Decision and Order which determined that the exception request be denied since the firm had not shown that it is experiencing a serious hardship, gross inequity, or unfair distribution of burdens.

Refund Applications

Diamond Transportation System, 5/12/93, RC272–194

The DOE issued a Supplemental Order concerning an Application for Refund submitted in the subpart V crude oil refund proceeding by Diamond Transportation System. In an earlier Supplemental Order (Case No. RC272–180), the DOE ordered the Applicant to remit $111, the amount of its subpart V crude oil refund, because the Applicant had received a refund from the Surface Transporters escrow in the Stripper Well refund proceedings. After the Supplemental Order was issued, the DOE was notified that the sole owner and operator of Diamond Transportation is deceased. The DOE modified its earlier Decision and will not require Diamond Transportation to remit its $111 subpart V crude oil refund.

Nabisco Brands, Inc., 5/10/93, RR272–103

Nabisco Brands, Inc. filed a Motion for Reconsideration concerning a March 12, 1993 decision that rescinded a $263,122 crude oil refund previously granted to the firm. See *Nabisco Brands, Inc.*, 23 DOE ¶85,056 (1993) (the Rescission Order). In the Rescission Order, the DOE held that Nabisco's 1986 filing of a Surface Transporter (ST) Waiver pursuant to the Stripper Well Settlement Agreement constituted the waiver of the right to a crude oil refund. In considering Nabisco's request for reconsideration of the Rescission Order, the DOE cited its own and court precedent holding that: (i) The filing of the ST Waiver constituted a waiver of all claims of all affiliates to a crude oil refund and (ii) the Office of Hearings and Appeals is not required to investigate whether the party executing the ST Waiver had the authority to do so. Accordingly, Nabisco's Motion for Reconsideration was denied.

Texaco Inc./Big Three Truck Plaza, 5/14/93, RR321–126

The Department of Energy (DOE) issued a Decision and Order in which it reconsidered an earlier Decision granting a refund of $4,205 to Big Three Truck Plaza (Big Three). In the earlier Decision, the DOE concluded that Big Three's refund should be calculated using a reduced volumetric figure because Big Three purchased its Texaco products on an indirect basis and Big Three's supplier purchased only 10 percent of its refined petroleum products from Texaco. However, in the present Decision, the DOE concluded that Big Three's supplier maintained separate inventories for accounting purposes, and that Big Three's refund should be recalculated using the full volumetric amount. Big Three was therefore granted an additional refund of $16,906.

Texaco Inc./Junior's Texaco, 5/10/93, RF321–2072

The DOE issued a Decision and Order granting in part an Application for Refund filed by Melba McCarty based on purchases made by Junior's Texaco, a retail service station operated by Will McCarty, to whom she was married for a portion of the refund period. Mr. McCarty died intestate in 1986 survived by his second wife and his eight children, including the five children of his marriage to Melba McCarty. The DOE held that Melba McCarty was not eligible for a refund equal to the outlet's entire allocable share based on Mr. McCarty's transferring his property to her prior to his death or on her payment of his funeral expenses. However, the DOE determined that Melba McCarty was entitled to one-half of the outlet's refund for the period in which she was married to Mr. McCarty because the couple formed an economic unit and Melba McCarty was equally injured by Texaco's alleged overcharges during that period. The DOE found that Mr. McCarty would have been entitled to the remainder of the outlet's refund. Since, under Florida law, Mr. McCarty's

children were entitled to one-half of his estate, the DOE determined that Melba McCarty was entitled to a refund on behalf of her five children, who had authorized her to combine their claims with hers. The total refund approved in this Decision was $1,006 ($742 principal and $264 interest.)

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Faith Oil Company	RF304–11950	05/14/93
Atlantic Richfield Company/Landess ARCO	RF304–13753	05/10/93
B&S ARCO Center	RF304–13760	
Montgomery Ward and Co., Inc	RF304–13833	
Brustuen Farm *et al*	RF272–92325	05/12/93
Ellington School District	RF272–80218	05/14/93
G. Crawford Delivery and Storage	RA272–34	05/10/93
George E. Adeeb *et al*	RF272–90305	05/10/93
Gulf Oil Corporation/Acadiana Gulf Oil Co., Inc	RF300–21738	05/14/93
Gulf Oil Corporation/C.M. Spiegel Oil Company	RF300–13044	05/12/93
Gulf Oil Corporation/C.H. Martin and Son *et al*	RF300–13602	05/12/93
Gulf Oil Corporation/Convenience Corner, Inc. *et al*	RF300–17941	05/14/93
Gulf Oil Corporation/J.H. Herring	RF300–17231	05/14/93
Gulf Oil Corporation/Lee Way Motor Freight, Inc	RF300–12895	05/14/93
Gulf Oil Corporation/Tampa Electric Company *et al*	RF300–18166	05/10/93
Gulf Oil Corporation/Town and Country Gulf	RF300–13493	05/12/93
C.R. Lee and Sons	RF300–13494	[1]
Hastings Public Schools *et al*	RF272–87060	05/12/93
Marine Fueling Service, Inc	RF272–59180	05/13/93
Marine Fueling Service, Inc	RD272–59180	
Memphis Light, Gas and Water Division	RF272–69215	05/12/93
Mike Langdon *et al*	RF272–92200	05/12/93
Shell Oil Company/Dixie Oil Co., Inc	RF315–8779	05/13/93 [1]
Wall Shell Service, Inc	RF315–9131	
Air India International	RF315–9646	
Texaco Inc./Darlington Texaco *et al*	RF321–15801	05/13/93
Texaco Inc./Falmouth Texaco *et al*	RF321–10337	05/13/93
Texaco Inc./Gateway Texaco *et al*	RF321–16220	05/12/93
Texaco Inc./Gene and Leo's Texaco *et al*	RF321–9926	05/13/93
Texaco Inc./Hardwick Texaco *et al*	RF321–1957	05/12/93
Texaco Inc./John's Texaco	RF321–19719	05/12/93
Texaco Inc./Paul Brady's Five Point Texaco	RF321–19721	05/12/93
Texaco Inc./Robert Middleton *et al*	RF321–4335	05/12/93
Texaco Inc./Station's Texaco Service *et al*	RF321–16645	05/13/93
Town of Marblehead	RC272–197	05/14/93
Upson County School District *et al*	RF272–79214	05/13/93

Dismissals

The following submissions were dismissed:

Name and Case No.

Alford Reed's Texaco #2; RF321–12374
Circle G Petroleum; RF321–18216
F. Douglas Johnson; RF304–1466
Gilman Paper Company; RF272–74544
Goshen Texaco; RF321–12675
Hall-Owens; RF300–16285
Kinbro Petroleum, Inc.; RF300–16899
Leonard's Texaco #1; RF321–7192
Leonard's Texaco #2; RF321–7193
Nautical Yacht Basin of Florida, Inc.; RF300–16444
Ray's Villa Plaza Auto Center; RF321–14594
Sioux Valley School District 5–5; RF272–80672
Spencer Texaco; RF321–12810
Tesoro Petroleum Corporation; RF339–2
Verdurmen Oil Company; RF304–13855
Verdurmen Oil Company; RF304–13856
Wadsworth Texaco; RF321–12807
Wayne Chambers Texaco; RF321–12668

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 pm, except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: August 26, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–21288 Filed 8–31–93; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $5,048,242.96, plus accrued interest, in alleged crude oil overcharges obtained by the DOE under the terms of a consent order or a settlement agreement between Kaiser International Corporation, Case No. KEF–0125, Century Resources Development, Inc., Case No. KEF–0126, or Entex Petroleum, Inc., Case No. KEF–0127. The OHA has determined that the funds obtained from these three firms, plus accrued interest, will be distributed in accordance with the DOE's Statement of Modified Restitutionary Policy in Crude Oil Overcharges.

DATES: Applications must be postmarked by June 30, 1994.

ADDRESSES: Applications for Refund must be filed in duplicate, addressed to "Subpart V Crude Oil Overcharge Refunds", and sent to: Office of Hearings and Appeals, Department of

Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8018.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute to eligible claimants $5,048,242.96, plus accrued interest, obtained by the DOE under the terms of a consent order or a settlement agreement entered into with Kaiser International Corporation, Century Resources Development, Inc., or Entex Petroleum, Inc. The funds were paid by the three firms towards the settlement of alleged violations of the DOE price and allocation regulations involving the sale of crude oil during the period of price controls.

The OHA will distribute these funds in accordance with the DOE's Statement of Modified Restitutionary Policy in Crude oil Overcharges, 51 FR 27,899 (Aug. 4, 1986) (MSRP). Under the MSRP, crude oil overcharge monies are divided between the Federal Government, the States, and the injured purchasers of covered refined petroleum products. Refunds to the States will be distributed in proportion to each State's consumption of petroleum products during the price control period. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased, and the degree to which they can demonstrate injury.

Applications for Refund must be postmarked by June 30, 1994. Any claimant which has already filed a Subpart V crude oil refund application should not file another application, as the prior application will be deemed to be filed in these crude oil refund proceedings. Instructions for the completion of crude oil refund applications are set forth in the Decision that immediately follows this notice. Refund claims should be sent to the address listed at the beginning of this notice.

Unless labeled as "confidential," all submissions may be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: August 26, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

August 26, 1993.

Names of Firms: Kaiser International Corporation, Century Resources Development, Inc., and Entex Petroleum, Inc.

Date of Filings: January 31, 1989.

Case Numbers: KEF–0125, KEF–0126, KEF–0127.

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) to distribute the funds which three firms, Kaiser International Corporation, Century Resources Development, Inc., and Entex Petroleum, Inc., remitted to the DOE pursuant to a consent order or a settlement agreement entered into between each of the firms and the DOE. In satisfaction of their responsibilities under these instruments, the three firms have tendered to the DOE an aggregate of $5,048,242.96, to which $2,182,400.20 in interest has accrued as of July 31, 1993. In accordance with the procedure found in 10 CFR 205.281 of the subpart V regulations, 10 CFR part 205, subpart V, the ERA requests in its petitions that OHA establish special procedures to make refunds in order to remedy the effects of the alleged regulatory violations which were resolved by the particular consent order or settlement agreement. We have considered the ERA's petitions that we implement a subpart V proceeding with respect to the consent order funds for each of the three firms. 10 CFR 205.282. We have determined that such a proceeding is appropriate in each case. *Id.* This Decision and Order sets forth OHA's plan to distribute these funds.

I. Background

A. Jurisdiction and Authority

The subpart V regulations set forth general guidelines which may be used by OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding, a consent order, or a settlement agreement. The DOE policy is to use the subpart V process to distribute such funds where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the Mandatory Petroleum Price and Allocation Regulations or where the DOE cannot ascertain the amount of the refund each person should receive. *DeMenno-Kerdoon,* 23 DOE ¶ 85,046 at 88,112 (1993). For a more detailed discussion of subpart V and the authority of OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. No. 99–509, 100 Stat. 1874, 1881 (1986) (codified at 15 U.S.C. §§ 4501–07 (PODRA)); *Office of Enforcement,* 9 DOE ¶ 82,508 at 85,046–54 (1981); *Office of Enforcement,* 8 DOE ¶ 82,597 at 85,393–99 (1981).

B. General Crude Oil Refund Policy

On July 28, 1986, the DOE issued the *Statement of Modified Restitutionary Policy in Crude Oil Cases,* 51 FR 27,899 (Aug. 4, 1989) (MSRP). The MSRP, which was issued as a result of the court-approved *Final Settlement Agreement* in *In re: Department of Energy Stripper Well Exemption Litig.,* M.D.L. No. 378 (D. Kan. 1986), *reprinted in,* 6 Fed. Energy Guidelines (CCH) ¶ 90,509 (1986) (M.D.L. No. 378 Final Settlement Agreement), provides that crude oil overcharge funds will be divided among the Federal Government, the States, and the injured purchasers of covered petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved to satisfy valid claims by injured covered petroleum products purchasers. The remaining eighty percent, and any monies remaining after all valid claims are paid, are to be disbursed in equal amounts to the Federal Government and the States.

Shortly after the issuance of the MSRP, OHA issued an Order that announced its intention to apply the MSRP in all subpart V proceedings involving funds collected as a result of actual or alleged crude oil violations. *Order Implementing Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges,* 51 FR 29,689, 29,691 (Aug. 20, 1986) (MSRP Implementing Order). This Order also provided a thirty day period for interested parties to file comments or objections to the proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings and on the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

After receiving numerous comments, OHA issued a Notice on April 6, 1987 which analyzed the comments and set forth generalized procedures to assist claimants that file refund applications for crude oil monies under the subpart V regulations. *Implementation of Special Refund Procedures,* 52 FR 11,737 (Apr. 10, 1987) (Crude Oil Procedures Notice). Generally, under the Crude Oil Procedures Notice, all claimants will be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. OHA also specified that end-users of petroleum products whose businesses were unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges and need not submit any additional proof of injury beyond documentation of their purchase volumes. *See, e.g., City of Columbus,* 16 DOE ¶ 85,550 at 89,099 (1987). Additionally, OHA stated that crude oil refunds will be calculated on the basis of a per gallon (or "volumetric") refund amount, which is obtained by dividing the crude oil refund pool by the total consumption of petroleum products in the United States during the crude oil price control period.

OHA has applied these procedures in numerous cases since the Crude Oil Procedures Notice was issued. *See e.g.,*

DeMenno-Kerdoon, 23 DOE at 88,113–14; *Richome Oil & Gas Co.*, 23 DOE ¶85,035 at 88,085 (1993); *Texas Int'l Co.*, 22 DOE ¶85,230 at 88,614 (1992); *Energy Corp. of America, Inc.*, 22 DOE ¶85,019 at 88,052 (1992); *Corum Energy*, 21 DOE ¶85,358 at 89,066 (1991); *Apex Oil Co.*, 21 DOE ¶85,341 at 89,018 (1991); *Petrol Products, Inc.*, 20 DOE ¶85,436 at 89,010 (1990); *Bi-Petro, Inc.*, 20 DOE ¶85,071 at 88,141 (1990); *Goldsberry, Hood*, 18 DOE ¶85,902 at 89,476–77 (1989); *New York Petroleum, Inc.*, 18 DOE ¶85,435 at 88,703–04 (1988) (*New York Petroleum*); Shell Oil Co., 17 DOE ¶85,204 at 88,405–06 (1988); *Ernest A. Allerkamp*, 17 DOE ¶85,079 at 88,175–76 (1988) (*Allerkamp*). Further, the procedures have been approved by the Federal Courts. Thus, a challenge from a group of States claiming a violation of the M.D.L. No. 378 Final Settlement Agreement based on OHA use of injury presumptions and improper refund calculations was denied *in toto* by the Federal District Court for the District of Kansas. The court found that the M.D.L. No. 378 Final Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In re Department of Energy Stripper Well Exemption Litig.*, 671 F. Supp. 1318 (D. Kan. 1987), aff'd in part, 857 F.2d 1481 (Temp. Em. Ct. App. 1988). In addition, the court held that, as specified in the Crude Oil Procedures Notice, OHA could base calculate refund calculations on a portion of the M.D.L. No. 378 overcharges. *Id.* at 1323–24. Therefore, the use of these procedures are entirely proper in Subpart V crude oil cases.

C. Individual Firms/Funds Considered in This Decision and Order

1. Kaiser

On May 3, 1983, the ERA issued a Proposed Remedial Order (PRO) to Kaiser Aluminum International Corporation (Kaiser Aluminum), a reseller of crude oil as that term was defined in 10 CFR 212.31, and which was therefore subject to the provisions governing resales of crude oil set forth in 10 CFR part 212, subpart L. In particular, the PRO charged Kaiser Aluminum with charging prices for crude oil in excess of its actual costs without providing any service or function traditionally and historically associated with the resale of crude oil. Kaiser Aluminum's actions were alleged to have violated 10 CFR 212.186 (the "layering" regulation), 10 CFR 210.62(c) (the "normal business practices" rule), and 10 CFR 205.202 (the "anti-circumvention" rule) for the period May 1978 through December 1980. The PRO alternately alleged that Kaiser Aluminum sold crude oil at prices which exceeded its Permissible Average Markup. In adjudicating the PRO, OHA found that Kaiser Aluminum's transactions violated the "layering" regulation resulting in unlawful overcharges of $2,399,552.61. Accordingly, the DOE issued a Remedial Order against Kaiser Aluminum and its successor in interest Kaiser International Corporation. *Kaiser Aluminum Int'l Corp.*, 15 DOE ¶83,007 (1986). OHA also determined that any money collected should be distributed under the subpart V procedure and the MSRP. *Id.* at 86,090–91.

After OHA issued the Remedial Order, Kaiser Aluminum docketed an appeal of this Remedial Order with the Federal Energy Regulatory Commission (FERC). FERC Case No. RO87–5–000. FERC urged settlement in this and a number of other "layering" cases then-pending before the Commission. *See Traco Petroleum Co.*, 41 FERC ¶61,286 at 61,761 (1987). Thereafter, the parties settled the Remedial Order, and all other DOE claims arising out of the Mandatory Petroleum Price Regulations during the period August 17, 1973 through January 27, 1981, in a consent order for the sum of $1.95 million. That amount has been paid and is being held in an interest-bearing account pending a determination regarding the proper distribution of the principal amount, and the $651,325.73 in interest which has accrued as of July 31, 1993.

2. Century Resources

Century Resources Development, Inc. (Century Resources) is a reseller of crude oil as was defined in 10 CFR 212.31 and was subject to the price regulations found in 10 CFR part 212 subparts F and L. After conducting an audit, the ERA found reason to believe that Century Resources may have violated those regulations. ERA, Century Resources, and its parent Energy Resources Development, Inc. (Energy Resources), agreed to settle, without admission of liability, these alleged violations and any other violations of the Mandatory Petroleum Price Regulations that the DOE may have been able to assert for activities during the period October 1977 through January 27, 1981. Accordingly, in a consent order with the DOE, Century Resources and Energy Resources agreed to pay in installments $1.5 million plus interest. The amount paid by the firms totaled $1,663,582.31. These funds have been transmitted by the firm and are being held in an interest-bearing account pending a determination regarding the proper distribution of the principal amount, and the $911,834.98 in interest which has accrued as of July 31, 1993.

3. Entex Petroleum

Entex Petroleum, Inc. (Entex) is a producer of crude oil as that term was defined in 10 CFR 212.31, and was therefore subject to the provisions of 10 CFR, part 212, subpart D which governed first sales of crude oil. On July 14, 1978, the ERA issued a PRO to Entex alleging that Entex miscertified and impermissibly sold at upper-tier prices crude oil produced from certain properties during the period September 1973 through February 1977. After considering the firm's Statement of Objections and remanding certain portions of the case to the ERA, OHA issued the PRO as a final Remedial Order. *Entex Petroleum, Inc.*, 5 DOE ¶ 83,012 (1980). The remedial portions of that order directed Entex to recalculate the Base Production Control Levels for certain properties. *Id.* at 86,108–09. It also required Entex to sell crude oil from four properties at no cost to two identified customers until $324,484.01 in overcharges, plus interest, had been satisfied. *Id.* at 86,109. In addition, the firm was to perform a self-audit and calculate allowable profits on sales from the overcharging properties and make restitution by refund, plus interest, to other customers. If it could not do this, the firm was to submit a check to the DOE for the appropriate amount. *Id.*

Entex performed none of the actions required to comply with the OHA order. The ERA, therefore, submitted a Motion for Modification relying on the decontrol of crude oil as a significantly changed circumstance warranting modification of the remedial provision. OHA agreed with the ERA and ordered that restitution be made through the subpart V mechanism, clarified the rate of interest on the outstanding overcharges, and once again ordered the self-audit performed. *Economic Regulatory Admin./Entex Petroleum, Inc.*, 11 DOE ¶ 83,023 (1984). The remanded portions of the original PRO were then issued by the ERA as a new PRO and considered by OHA. After considering the firm's Statement of Objections, OHA found that Entex had miscertified and impermissibly sold crude oil produced from two properties as stripper well production. Accordingly, the DOE issued a Supplemental Remedial Order instructing the firm to remit $21,582.31 plus interest for distribution under the subpart V procedures, in addition to its restitutionary obligations under the prior Remedial Order as modified. *Entex Petroleum, Inc.*, 12 DOE ¶ 83,003 (1984), *modified*, 12 DOE ¶ 82,507 (1984).

Entex next joined litigation brought by Sun Company, Inc. challenging the DOE practice of asserting liability against "vicarious" third-party well operators for overcharges attributable to working or royalty interests. *See Sun Co.* v. *United States*, 594 F. Supp. 652 (D. Del. 1984) (wherein the litigation is described in some detail). The DOE counterclaimed for enforcement of the Remedial Orders. Eventually, Entex and the DOE agreed to settle this matter. The DOE agreed to drop its counterclaim. In return, Entex agreed to drop its intervention in the Sun Company litigation and pay an amount to settle the adjudicated liability in the Remedial Orders and potential liability as a result of the self-audit performed as ordered in the Remedial Orders, plus interest on both amounts. The amount paid by the firm totaled $1,434,660.65. This money has been deposited in an interest- bearing account pending a proper distribution of the principal amount and the $619,239.49 in interest accrued as of July 31, 1993.

II. The Proposed Decision and Order and Comments Received Thereon

A. The Proposed Decision and Order

In response to the three Petitions for the Implementation of Special Refund Procedures filed by the ERA, OHA issued a Proposed Decision and Order (PD&O) which established tentative procedures to distribute the amounts obtained from the three firms, plus accrued interest, for the alleged crude oil violations. OHA tentatively concluded that, in accordance with long-standing, court-approved precedents, the funds in these cases should be distributed in accordance with the MSRP, the MSRP Implementing Order, and the Crude Oil Procedures Notice. In particular, OHA proposed, pursuant to the MSRP, to initially reserve twenty percent of the funds for direct restitution to applicants

who claim that they were injured by the alleged crude oil violations. The remaining eighty percent of the funds would be distributed to the Federal Government for and the States for indirect restitution. In particular, forty percent of the funds would be apportioned for the Federal Government, and forty percent would be allocated for the States. The PD&O further proposed that after all valid claims were paid, any remaining funds in the claims reserve also would be divided equally between the Federal Government and the States.

In the PD&O, OHA proposed to require applicants for refunds to document their purchase volumes of covered petroleum products during the period of price controls and to prove that they were injured by crude oil overcharges. The PD&O stated that end-users of petroleum products whose businesses were unrelated to the petroleum industry could use a presumption that they absorbed the crude oil overcharges. Therefore, it was proposed that such claimants need not submit any further proof of injury to receive a refund. OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the Crude Oil Procedures Notice. Comments were solicited regarding the tentative distribution process set forth in the PD&O. As discussed below, one set of comments was received.

B. Analysis of the Kalodner Comments

Philip P. Kalodner filed the only comments received in these proceedings on behalf of a group of utilities, transporters, and manufacturers. The comments urged us to abandon the forty-forty-twenty percentage allocation between the Federal Government, the States, and the crude oil applicants. Instead, the comments insist that 100 percent of the funds in these proceedings be reserved for direct payment to crude oil applicants. Only in this way, the comments claim, can "full parity" in refund amounts be achieved.

Mr. Kalodner has filed virtually identical comments in numerous crude oil refund implementation proceedings. *See, e.g., Permian Corp.*, 23 DOE ¶ 85,034 at 88,073–74 (1993); *Salomon, Inc.*, 22 DOE ¶ 85,006 at 88,019 (1992); *Stanco Petroleum, Inc.*, 21 DOE ¶ 85,373 at 89,101–02; *Diamond Shamrock R&M, Inc.*, 21 DOE ¶ 85,352 at 89,051–52 (1991); *Seneca Oil Co.*, 21 DOE ¶ 85,327 at 88,970 (1991) (*Seneca Oil*); *Quintana Energy Corp.*, 21 DOE ¶ 85,032 at 88,114 (1991); *Tesoro Petroleum Corp.*, 20 DOE ¶ 85,665 at 89,524 (1990); *Northeast Petroleum Industries, Inc.*, 20 DOE ¶ 85,405 at 88,935 (1990); *Texaco, Inc.*, 19 DOE ¶ 85,200 at 88,371–72 (1989); *Goldsberry, Hood*, 18 DOE at 89,476; *Getty Oil Co.*, 18 DOE ¶ 85,808 at 89,302 (1989); *Wickett Refining Co.*, 18 DOE ¶ 85,659 at 89,079–80 (1989); *Amorient Petroleum Co.*, 18 DOE ¶ 85,595 at 88,976–77 (1989) (*Amorient*); *Lone Star Oil & Chemical Co.*, 18 DOE ¶ 85,559 at 88,912–13 (1989); *New York Petroleum*, 18 DOE at 88,701. We, therefore, need not repeat the extensive analysis of the Kalodner comments found in those cases. As these decisions indicate, we have carefully considered this line of argument and have consistently rejected it because the DOE has never assured crude oil claimants a precise level of restitution, *Amorient*, 18 DOE at 88,976, and because Mr. Kalodner has never produced any evidence that the twenty percent reserve will be inadequate to pay crude oil claimants. *Id.* at 88,977; *Seneca Oil*, 21 DOE at 88,970.

Further, the division ratio of crude oil money has been twice reviewed and twice accepted by the Federal Courts. First, the division ratio has been accepted by the District Court in Kansas which approved the M.D.L. No. 378 Final Settlement Agreement (which, as previously noted, was the genesis of the MSRP and the distribution percentages between the governments and the Subpart V applicants). *See In re Department of Energy Stripper Well Exemption Litig.*, 653 F. Supp. 108, 114, 116, 118 (D. Kan. 1986), *aff'd in part*, 855 F.2d 865 (Temp. Em. Ct. App. 1988). That court held the M.D.L. No. 378 Final Settlement Agreement and its apportionment of the crude oil funds to be "fair, reasonable and adequate to all concerned parties." Id. at 116. Second, after "an independent investigation," of a different, though related, settlement agreement, the Federal District Court in Delaware also found the forty-forty-twenty division ratio to be "reasonable, equitable and fair." *Getty Oil Co.* v. *Department of Energy*, 3 Fed. Energy Guidelines (CCH) ¶ 26,611 at 26,960, 26,964 (D. Del. 1988). Thus, as in all the cases cited above, we agree with the Federal Courts and we reject Mr. Kalodner's argument that the twenty percent reserve is inadequate to provide fair restitution to crude oil Subpart V claimants.

III. Refund Procedures

A. Refund Claims

We will adopt the DOE's standard crude oil refund procedures to distribute the monies in all three consent order accounts considered in this Decision and Order. Thus, as we noted in the PD&O, we have chosen to initially reserve twenty percent of each of these funds, plus accrued interest, for direct refunds to claimants. This will insure that sufficient funds will be available for injured parties. Accordingly, we will direct the DOE Office of the Controller to transfer a total of $1,009,648.60 plus accrued interest from the three subaccounts for the firms considered in this Decision and Order to the subaccount for crude oil claimants. This reserve figure may be reduced later if circumstances so warrant.

OHA will evaluate crude oil refund claims in a manner similar to that used in subpart V proceedings to evaluate claims based on actual and alleged refined product overcharges. See, *e.g., Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 at 88,869 (1986). Under these procedures in crude oil cases, as in non-crude oil cases, claimants will be required to (1) document their purchase volumes of covered petroleum products,[1] and (2) prove that they were injured as a result of the alleged violations.

In proving injury, we will adopt a presumption that the crude oil overcharges were absorbed, rather than passed on, by applicants (1) who were end-users or ultimate consumers of petroleum products, (2) whose activities were unrelated to the petroleum industry, and (3) who were not subject to the Mandatory Petroleum Price and Allocation Regulations. Applicants who meet these three criteria, therefore, are presumed to have been injured by any actual or alleged crude oil overcharges. Thus, in order to receive a refund, end-user or ultimate consumer claimants who meet the standard for this presumption need not submit any evidence of injury beyond the volume of petroleum products purchased during the period of price controls, although confirming documentation may be required in some cases. *See, e.g., Shell Oil Co.*, 17 DOE at 88,406; *A. Torricone, Inc.*, 15 DOE ¶ 85,495 at 88,893–96 (1987). The end-user presumption of injury, however, can be rebutted by evidence which establishes that the specific end-user or ultimate consumer in question was not injured by the crude oil overcharges. *See, e.g., Berry Holding Co.*, 16 DOE ¶ 85,405 at 88,797 (1987). If an interested party submits evidence that is sufficient to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury. *See, e.g., New York Petroleum*, 18 DOE at 88,701–03. Petroleum retailer, reseller, and refiner applicants, however, must submit detailed evidence of injury, and they may not rely upon the injury presumptions utilized in some refined petroleum product refund cases. *Id.* These applicants may, however, use econometric evidence of the type found in *Office of Hearings and Appeals, U.S. Dep't of Energy, Report to the United District Court for the District of Kansas, In re Department of Energy Stripper Well Exemption Litig.*, M.D.L. No. 378 (June 1985), *reprinted in*, 6 Fed. Energy Guidelines (CCH) ¶ 90,507 (1985). *See also* PODRA § 3003(b)(2), 100 Stat. at 1883 (codified at 15 U.S.C. § 4502(b)(2)). Further, if any claimant has executed and submitted a valid waiver pursuant to one of the escrows established by the M.D.L. No. 378 Final Settlement Agreement, it has waived its rights to file an application for Subpart V crude oil monies. *See Mid-American Dairymen* v. *Harrington*, 878 F.2d 1448, 1455–57 (Temp. Em. Ct. App. 1989); *In re Department of Energy Stripper Well Exemption Litig.*, 707 F. Supp. 1267, 1268–69 (D. Kan. 1987); *Boise Cascade Corp.*, 18 DOE ¶ 85,970 at 89,591–92 (1989).

As has been stated in prior Decisions, a crude oil refund claimant will be required to submit only one application for its share of

[1] Generally, a covered petroleum product is any petroleum product that was covered by the Emergency Petroleum Allocation Act of 1973, P.L. No. 93–159, 87 Stat. 627 (1973) (codified as amended at 15 U.S.C. §§ 751–760h) (EPAA), regulations promulgated pursuant to that Act, or any petroleum product which was purchased from a crude oil refinery or which, although purchased from a reseller, came from a refinery and was not substantially transformed by the reseller. *See Notice of General Interest Concerning DOE's Crude Oil Overcharge Refund Program*, 57 FR 30,731, 30,731 (July 10, 1992); Great Lakes Carbon Corp., 22 DOE ¶ 85,248 at 88,682 (1993). *See also* Anchor Continental, Inc., 22 DOE ¶ 85,003 at 88,007 (1992) (a covered product is one that was covered by the EPAA or one that was "primarily refined from crude oil at a crude oil refinery.").

all available crude oil overcharge funds. *See, e.g., Allerkamp*, 17 DOE at 88,176; *A. Tarricone, Inc.*, 15 DOE at 88,898. A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings to date as those proceedings are finalized. The DOE has established June 30, 1994 as the current deadline for filing an Application for Refund from the crude oil funds. *See* Final Filing Deadline In Special Refund Proceeding Involving Crude Oil Overcharge Refunds, 58 Fed. Reg. 26,318, 26,319 (May 3, 1993); *Anchor Gasoline Corp.*, 22 DOE ¶ 85,071 at 88,215 (1992). It is the policy of the DOE to pay all crude oil refund claims at the rate of $0.0008 per gallon. However, while we anticipate that applicants who filed their claims before June 30, 1988 will receive a supplemental refund payment, we will decide in the future whether claimants who filed later applications should receive additional funds. *Id.; Seneca Oil*, 21 DOE at 88,972. Notice of any additional amounts available in the future will be published in the **Federal Register**.

B. Crude Oil Application Requirements

To apply for a crude oil refund, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is a corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check.[2] If the Applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;

(2) If the applicant's firm is owned by another company, or owns other companies, a list of those companies' names, addresses and descriptions of their relationship to the applicant's firm;

(3) A brief description of the claimant's business and the manner in which it used the petroleum products listed on its application;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973 through January 27, 1981, an annual schedule displaying the number of gallons of each petroleum product purchased during this refund period, and the total number of gallons of all petroleum products claimed on the refund application;

(5) An explanation as to how the applicant obtained the above-mentioned purchase volumes, and, if estimates were used, a description of its method of estimation;

(6) A statement that neither the claimant, its parent firm, affiliates, subsidiaries, successors, nor assigns has waived any right it may have to receive a crude oil refund (*e.g.*, by having executed and submitted a valid waiver accompanying a claim to any of the escrow accounts established pursuant to the M.D.L. No. 378 Final Settlement Agreement);

(7) A statement that the applicant has not filed any other refund application in the Crude Oil Subpart V Special Refund Proceeding;

(8) If the applicant is not an end-user, was covered by the DOE price regulations, or is or was related to the petroleum industry, a showing that the applicant was injured by the alleged crude oil overcharges;

(9) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along;

(10) The statement listed below signed by the individual applicant or a responsible official of the company, partnership, or other entity filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled "Application for Crude Oil Refund." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be sent to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

The filing deadline is June 30, 1994. Even though an applicant is not required to use any specific form for its crude oil refund application, a suggested form has been prepared by OHA and may be obtained by sending a written request to the address listed above.

C. Payments to the Federal Government and the States

Under the terms of the M.D.L. No. 378 Final Settlement Agreement, the MSRP, and as we noted in the PD&O, the remaining eighty percent of the alleged crude oil overcharge amounts subject to this Decision and Order, plus accrued interest, will be disbursed in equal portions to the Federal Government and the States for indirect restitution. Refunds to the States will be in proportion to the consumption of petroleum products in each State during the period of price controls. The portion or ratio of the funds which each State will receive is contained in "Calculation of Ratios For Distribution to States and Territories—M.D.L. 378," Settlement Exhibit H, M.D.L. No. 378 Final Settlement Agreement at 163, *reprinted in*, 6 Fed. Energy Guidelines (CCH) at 90,687 Accordingly, we will direct the DOE Office of the Controller to transfer a total of $2,019,297.18 from the subaccounts for the three firms considered in this Decision and Order to the subaccount for disbursement to the Federal Government and the same amount from the same subaccounts to the subaccount for disbursement to the States. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the States under the M.D.L. No. 378 Final Settlement Agreement.

It Is Therefore Ordered That:

(1) Applications for Refund from the alleged crude oil overcharge funds remitted to the Department of Energy by Kaiser International Corporation may now be filed.

(2) Applications for Refund from the alleged crude oil overcharge funds remitted to the Department of Energy by Century Resources Development, Inc. may now be filed.

(3) Applications for Refund from the alleged crude oil overcharge funds remitted to the Department of Energy by Entex Petroleum, Inc. may now be filed.

(4) All crude oil refund applications submitted pursuant to Paragraphs (1) through (3) of this Decision and Order must be postmarked no later than June 30, 1994.

(5) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy shall take all steps necessary to transfer a total of $5,048,242.96 plus accrued interest from the subaccounts denominated "Kaiser International Corp." (Consent Order No. 6C0X00280Z in the amount of $1,950,000.00 plus accrued interest), "Century Resources Development" (Consent Order No. 6C0X00287Z in the amount of $1,663,582.31 plus accrued interest), and "Entex Petroleum Incorporation" (Consent Order No. 660C00404Z in the amount of 1,434,660.65 plus accrued interest) pursuant to Paragraphs (6), (7) and (8) of this Decision and Order.

(6) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall transfer a total of $2,019,297.18 plus accrued

[2] Under the Privacy Act of 1974, Pub. L. No. 93-579, § 7, 88 Stat. 1896, 1909 (1974) (codified at 5 U.S.C. 552a note), the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the PODRA and the Subpart V regulations. The information may be shared with other Federal agencies for statistical, auditing, or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

interest from the subaccounts denominated "Kaiser International Corp." (Consent Order No. 6C0X00280Z in the amount of $780,000.00 plus accrued interest), "Century Resources Development" (Consent Order No. 6C0X00287Z in the amount of $665,432.92 plus accrued interest), and "Entex Petroleum Incorporation" (Consent Order No. 660C00404Z in the amount of $573,864.26 plus accrued interest) into the subaccount denominated "Crude Tracking-Federal," Account No. 999DOE002W.

(7) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall transfer a total of $2,019,297.18 plus accrued interest from the subaccounts denominated "Kaiser International Corp." (Consent Order No. 6C0X00280Z in the amount of $780,000.00 plus accrued interest), "Century Resources Development" (Consent Order No. 6C0X00287Z in the amount of $665,432.92 plus accrued interest), and "Entex Petroleum Incorporation" (Consent Order No. 660C00404Z in the amount of $573,864.26 plus accrued interest) into the subaccount denominated "Crude Tracking-States," Account No. 999DOE003W.

(8) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall transfer a total of $1,009,648.60 plus accrued interest from the subaccounts denominated "Kaiser International Corp." (Consent Order No. 6C0X00280Z in the amount of $390,000.00 plus accrued interest), "Century Resources Development" (Consent Order No. 6C0X00287Z in the amount of $332,716.47 plus accrued interest), and "Entex Petroleum Incorporation" (Consent Order No. 660C00404Z in the amount of $286,932.13 plus accrued interest) into the subaccount denominated "Crude Tracking-Claimants 4," Account No. 999DOE010Z.

Dated: August 26, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–21293 Filed 8–31–93; 8:45 am]

BILLING CODE 6450–01–P

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $31,199.66 plus accrued interest, of crude oil overcharge funds obtained by the DOE from Lunday-Thagard Oil Company, Special Refund Proceeding No. LEF–0050 and William T. Tootle, president of Lotus Petroleum, Inc., Special Refund Proceeding No. LEF–0051. The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges. 51 FR 27899 (August 4, 1986).

DATES AND ADDRESSES: Applications for Refund from the crude oil fund must be filed in duplicate and must be postmarked no later than June 30, 1994. All applications should be clearly labelled "Application for Crude Oil Refund" and should be addressed to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Parties that have previously submitted a refund application in a crude oil refund proceeding need not file another application; their initial application will be deemed to be filed in all crude oil proceedings finalized to date.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2860.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision concerns the distribution of funds received by the DOE pursuant to the settlement of various allegations regarding crude oil overcharges and non-compliance with the Federal Petroleum Price and Allocation Regulations raised against Lunday-Thagard Oil Company (Lunday-Thagard) and William T. Tootle (Tootle), president of Lotus Petroleum, Inc. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the settlement funds obtained from these parties by the DOE was issued on February 17, 1993. 58 FR 11052 (February 23, 1993).

The Decision establishes procedures and standards which the DOE will use to distribute $31,199.66 remitted by Lunday-Thagard and Tootle. The funds shall be distributed in accord with the Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, which states that crude oil overcharge monies will be divided among the states, the federal government, and eligible purchasers of refined petroleum products. See 51 FR 27899 (August 4, 1986). Under the Modified Policy, refunds to the states will be in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products that they purchased and the extent to which they can demonstrate injury.

Applications for Refund will now be accepted provided they are filed in duplicate and postmarked no later than June 30, 1994.

Parties that have previously submitted a refund application in the Subpart V crude oil proceeding need not file another application; their initial submission will be deemed to be filed in all crude oil refund proceedings finalized to date.

Dated: August 26, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Names of Firms: Lunday-Thagard Oil Company, Lotus Petroleum, Inc. and William T. Tootle.

Date of Filing: September 17, 1992.

Case Numbers: LEF–0050, LEF–0051.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price and allocation regulations.

In this Decision and Order, we consider two Petitions for Implementation of Special Refund Procedures filed by the ERA on September 17, 1992, for funds obtained due to alleged crude oil pricing violations. The funds at issue in the Petitions were obtained from Thagard Oil Company d/b/a Lunday-Thagard Oil Company (Lunday-Thagard) and William T. Tootle (Tootle), president of Lotus Petroleum, Inc. (Lotus).

I. Background

On August 17, 1982, the DOE filed a general unsecured claim with the United States Bankruptcy Court for the Central District of California in the Chapter 11 reorganization of Lunday-Thagard. An amended proof of claim was filed on September 2, 1982 by the DOE. During the period of crude oil price controls, Lunday-Thagard was a small and independent refiner. The DOE audited the company's compliance during this period with the Mandatory Petroleum Pricing and Allocation Regulations (the regulations) and issued a Proposed Remedial Order (PRO) to the firm requiring refunds for alleged violations of the Entitlements Program. This PRO arose from the firm's alleged improper reporting of its crude oil runs to stills for purposes of the DOE's Entitlements Program in violation of the regulations codified at 10 CFR part 211. Under the regulations, entitlements violations had the same effect as crude oil overcharges. Thereafter, the firm filed a

petition for relief with the above-mentioned Bankruptcy Court. The Bankruptcy Court approved the DOE's amended proof of claim. The Bankruptcy Estate has remitted a total of $28,156.66 in settlement of the DOE's claim against Lunday-Thagard. The Lunday-Thagard Petition requests that the OHA implement a special refund proceeding to distribute these funds, plus accrued interest.

The Lotus Petition requests that OHA implement special refund procedures for monies remitted by Tootle in relation to a Final Remedial Order issued by the OHA on April 23, 1986. Lotus Petroleum, Inc., 14 DOE ¶ 83,020 (1986). Under that Remedial Order, Lotus, Tootle and Lynn O. Castle (Castle) were found to have violated provisions of the Federal petroleum price regulations with respect to the resale of crude oil during the period April 1, 1980 through December 31, 1980 (the audit period).[1] However, on July 24, 1989, Tootle entered into a Consent Order (the Order) with DOE to resolve all of his personal liability in this matter. Consent Order No. 6A0X00330. Under this agreement the DOE compromised its enforcement claim against Tootle on an ability-to-pay basis, and accepted a total amount of $3,043 from Tootle in settlement of its claims against him. In the Lotus Petition, the ERA states that this payment was made solely by Tootle and in no way compromises the DOE's claims against Lotus or Castle.

Lunday-Thagard and Tootle have remitted a total of $31,199.66 to the DOE. These funds are available for distribution through Subpart V and currently are being held in interest-bearing escrow accounts maintained at the Department of Treasury pending a determination regarding their proper distribution.

II. Jurisdiction and Authority

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement (the Stripper Well Agreement) in *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D.Kan. 1986), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

Shortly after the issuance of the MSRP, the OHA issued an Order that announced its intention to apply the Modified Policy in all subpart V proceedings involving alleged crude oil violations. Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). In that Order, the OHA solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings. On April 6, 1987, the OHA issued a Notice analyzing the numerous comments and setting forth generalized procedures to assist claimants that file refund applications for crude oil monies under the Subpart V regulations. 52 FR 11737 (April 10, 1987) (the April Notice).

The OHA has applied these procedures in numerous cases since the April Notice, e.g., New York Petroleum, Inc., 18 DOE ¶ 85,435 (1988) (NYP); Shell Oil Co., 17 DOE ¶ 85,204 (1988); Ernest A. Allerkamp, 17 DOE ¶ 85,079 (1988), and the procedures have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals. Various states filed a Motion with the Kansas District Court, claiming that the OHA violated the Stripper Well Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, Judge Frank G. Theis issued an Opinion and Order denying the States' Motion in its entirety. In re: The Department of Energy Stripper Well Exemption Litigation, 671 F. Supp. 1318 (D. Kan. 1987), aff'd, 857 F. 2d 1481 (Temp. Emer. Ct. App. 1988). The court concluded that the Stripper Well Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." Id. at 1323. The court also ruled that, as specified in the April Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. Id. at 1323–24.

III. The Proposed Decision and Order

On February 17, 1993, the OHA issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the alleged crude oil violation monies obtained from Lunday-Thagard and Tootle. 58 FR 11052 (February 23, 1993). The OHA tentatively concluded that the funds should be distributed in accordance with the MSRP and the April Notice. Pursuant to the MSRP, the OHA proposed to reserve initially twenty percent of the crude oil violation funds for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining eighty percent of the funds would be distributed to the states and federal government for indirect restitution. After all valid claims have been paid, any remaining funds in the claim reserve would also be divided between the states and federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the PDO, the OHA proposed to require applicants for refund to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged crude oil overcharges. The PDO stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry are presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April Notice. The PDO provided a period of 30 days from the date of publication in the **Federal Register** in which comments could be filed regarding the tentative distribution process. More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the Lunday-Thagard and Tootle settlement funds. Consequently, the procedures will be adopted as proposed.

IV. The Refund Procedures

A. Refund Claims

The OHA has concluded that the $31,199.66, plus interest that has accrued on that amount, should be distributed in accordance with the crude oil refund procedures discussed above. We have decided to reserve the full twenty percent of the alleged crude oil violation amount, or $6,239.94, plus interest, for direct refunds to claimants, in order to insure that sufficient funds will be available for refunds to injured parties.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. E.g., Mountain Fuel Supply Co., 14 DOE ¶ 85,475 (1986) (Mountain Fuel). As in non-crude oil cases, applicants will be required to document their purchase volumes of covered products and prove that they were injured as a result of the alleged violations. We presume that an applicant incurred a crude oil overcharge in the purchase of a petroleum product during the period August 19, 1973 through January 27, 1981, if either that product was defined as a "covered product" in regulations promulgated pursuant to the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. 751–760, or (a) was purchased from a crude oil refinery or (b) originated in a crude oil refinery and was purchased from a reseller who did not substantially change its form. See Great Lakes Carbon Corp., 22 DOE ¶ 85,248 at 88,662 (1993) (citing 57 FR 30731, 30732 (July 10, 1992)). Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. E.g., A. Tarricone, Inc., 15 DOE ¶ 85,495 at 88,893–96 (1987) (A. Tarricone). However, the end-user presumption of injury can be rebutted by evidence which establishes that the

[1] Lotus was incorporated in the State of Texas on April 17, 1980. Tootle and Castle were its only shareholders. On May 3, 1984, the ERA issued a PRO alleging that during the audit period, Lotus engaged in the resale of crude oil through the process known as "layering" (Case No. 6A0X00330). The PRO alleged that Lotus charged prices for crude oil in excess of the actual cost of the crude oil without providing any service or function traditionally and historically associated with the resale of crude oil. After considering the objections filed by the PRO recipients, this Office issued the PRO as a Final Remedial Order on April 23, 1986. The Remedial Order found Lotus, Tootle and Castle jointly liable for $11,833,152 in overcharges plus interest.

specific end-user in question was not injured by the crude oil overcharges. E.g. Berry Holding Co., 16 DOE ¶ 85,405 at 88,797 (1987). If an interested party submits evidence that is sufficient to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury. E.g., NYP, 18 DOE at 88,701–03.

Reseller and retailer claimants must submit detailed evidence of injury and may not rely on the presumption of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, reprinted in 6 Fed. Energy Guidelines ¶ 90,507. Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under Subpart V. *Mid-America Dairyman Inc.*, v. *Herrington*, 878 F. 2d 1448 (Temp. Emer. Ct. App. 1989); *accord*, *Boise Cascade Corp.*, 18 DOE ¶ 85,970 (1989).

Refunds to eligible claimants that purchased refined petroleum products will be calculated on the basis of a volumetric amount obtained by dividing the crude oil refund monies involved in this determination ($31,199.66) by the total U.S. consumption of petroleum products during the price control period. See Mountain Fuel.

As has been stated in prior Decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. See e.g., A. Tarricone. A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings finalized to date. The final deadline for filing an Application for Refund is June 30, 1994. See Anchor Gasoline Corp., 22 DOE ¶ 85,071 (1992); see also 58 FR 26318 (May 3, 1993). It is the policy of the DOE to pay all crude oil refund claims filed before June 30, 1994, at the rate of $0.0008 per gallon. We anticipate that applicants who filed their claims by June 30, 1988, will received a supplemental refund payment; however, we will decide in the future whether claimants that filed later application should receive additional refunds. Applicants may be required to submit additional information to support their refund claims for future amounts. Notice of any such additional amounts will be published in the **Federal Register**.

B. Crude Oil Application Requirements

To apply for a crude oil refund, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is a corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check.[2] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;

(2) If the applicant's firm is owned by another company, or owns other companies, a list of those companies' names, address, and descriptions of their relationship to the applicant's firm;

(3) A brief description of the claimant's business and the manner in which it used the petroleum products listed on its application;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973 through January 27, 1981, an annual schedule displaying the number of gallons of each petroleum product purchased during this refund period, and the total number of gallons of all petroleum products claimed on the refund application;

(5) An explanation as to how the applicant obtained the above mentioned purchase volume figures, and, if estimates were used, a description of its method of estimation;

(6) A statement that neither the claimant, its parent firm, affiliates, subsidiaries, successors, nor assigns has waived any right it may have to receive a crude oil refund (e.g., by having executed and submitted a valid waiver accompanying a claim to any of the escrow accounts established pursuant to the Stripper Well Settlement Agreement);

(7) A statement that the applicant has not filed any other refund application in the subpart V crude oil refund proceeding;

(8) If the applicant is not an end-user, was covered by the DOE price regulations, or is related to the petroleum industry, a showing that the applicant was injured by the alleged crude oil overcharges;

(9) If the applicant is a regulated utility or a cooperative, a certification that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along;

(10) The statement listed below signed by the individual applicant or a responsible official of the company filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled "Application for Crude Oil Refund." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, two copies of the application with the confidential information deleted, and an explanation of why that information is confidential. All refund applications should be sent to: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

The filing deadline is June 30, 1994. Even though an applicant is not required to use any specific form for its crude oil refund application, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

C. Payments to the Federal Government and the States

Under the terms of the MSRP, the remaining eighty percent of the alleged crude oil violation amounts subject to this Decision, or $24,959.72, plus interest, should be disbursed in equal shares to the states and federal government, for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to segregate the $24,959.72, plus interest, available for disbursement to the states and federal government and transfer one-half of that amount, or $12,479.86, plus interest, into an interest-bearing subaccount for the states, and one-half, or $12,479.86, plus interest, to an interest bearing subaccount for the federal government. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It Is Therefore Ordered That:

(1) Applications for Refund from the alleged crude oil overcharge funds remitted to the Department of Energy by Lunday-Thagard Oil Company pursuant to the DOE's amended proof of claim may now be filed.

(2) Applications for Refund from the alleged crude oil overcharge funds remitted to the Department of Energy by William T. Tootle pursuant to the consent order executed on July 24, 1989, may now be filed.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall

[2] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 CFR part 205, subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

take all steps necessary to transfer $28,156.66 (plus interest) from the Lunday-Thagard Oil Company subaccount (Account Number N00S98094Z) and $3,043 (plus interest) from the Lotus Petroleum, Inc. subaccount (Account Number 6A0X00330Z), pursuant to Paragraphs (4), (5), and (6) of this Decision.

(4) The Director of Special Accounts and Payroll shall transfer $12,479.86 (plus interest) of the funds obtained pursuant to paragraph (3) above, into subaccount denominated "Crude Tracking-States." Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer $12,479.86 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $6,239.94 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-Claimants 4," Number 999DOE010Z.

(7) All Applications submitted pursuant to paragraphs (1) and (2) above must be filed in duplicate and postmarked no later than June 30, 1994.

Dated: August 26, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–21292 Filed 8–31–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4702–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: National Pollutant Discharge Elimination System (NPDES)/ Pretreatment/State Sludge Management Program Regulatory Revisions (EPA ICR No. 0002.07; OMB Control No. 2040–0009).

Abstract: This ICR is an extension of an existing information collection as part of the National Pollutant Discharge Elimination System (NPDES) Pretreatment Program and combines the information collection activities previously cleared under the Final Rule To Implement the Domestic Sewage Study (DSS) ICR (OMB Control No. 2040–0150). The NPDES Pretreatment Program and DSS requirements are established under the Clean Water Act, as amended, and have been promulgated at 40 CFR part 403. The Clean Water Act requires EPA to develop national pretreatment standards to control discharges from Industrial Users (IUs) into sewage systems, or Publicly Owned Treatment Works (POTWs). The information gathered by these requirements is used by the EPA, or the delegated State or Local authority, to monitor and enforce compliance with the regulations, as well as to authorize program administration at the State or local (POTW) level.

Following approval of this ICR, POTWs, States and IUs must continue to perform information collection activities, in accordance with the requirements of 40 CFR part 403. The information collected from IUs includes the mass, frequency, and content of their discharges, their schedule for installing pretreatment equipment, violations affecting human health, and actual or anticipated discharges of wastes considered hazardous under the Resource Conservation and Recovery Act (RCRA). States and POTWs applying for approval of a pretreatment program must submit data concerning their legal, procedural, and administrative basis for establishing such a program. POTWs, State approval authorities, and IUs are required to maintain records related to compliance for a period of three years.

Burden Statement: Public reporting burden for this collection of information is estimated to average 8 hours per response including time for reviewing instructions, gathering and compiling the data needed, and completing and reviewing the information. Public recordkeeping is estimated to average 13.4 hours per recordkeeper including time to process, store and maintain records.

Respondents: POTWs, IUs, States submitting requests for program approval.

Estimated No. of Respondents: 19,859 reporters; 12,679 recordkeepers.

Estimated Number of Responses per Respondent: 13.

Frequency of Collection: Variable, as needed.

Estimated Total Annual Burden on Respondents: 2,323,442 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street. NW Washington, DC 20503.

Dated: August 26, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–21256 Filed 8–31–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4702–7]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determination—Onondaga County Resource Recovery Facility

AGENCY: Environmental Protection Agency.

ACTION: Notice of final action.

SUMMARY: The purpose of this notice is to announce that on April 15, 1992, the New York State Department of Environmental Conservation issued a final PSD permit to the Onondaga Resource Recovery Facility located in Onondaga County, New York. This determination was appealed to the EPA. EPA's Administrator denied this appeal on December 1, 1992.

This facility is a 990 ton per day municipal solid waste incineration facility. Emission controls include fabric filters, dry scrubbers and selective non-catalytic reduction. The final permit meets all applicable requirements of the PSD regulations.

FOR FURTHER INFORMATION CONTACT: Maria N. Stanco of the Permitting and Toxics Support Section, Air Compliance Branch, Division of Air and Waste Management, U.S. Environmental Protection Agency Region II Office, 26 Federal Plaza, room 505, New York, New York 10278, (212) 264–4726. Anyone who wishes to review this determination and related materials should contact the following office:

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany, New York 12233–0001.

If available pursuant to the Consolidated Permit Regulations (40 CFR part 124), judicial review of this

determination under section 307(b)(1) of the Clean Air Act (the Act) may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which this determination is published in the **Federal Register**. Under section 307(b)(2) of the Act, this determination shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

William J. Muszynski,

Acting Regional Administrator

[FR Doc. 93–21250 Filed 8–31–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4725–1]

Clean Water Act; New Jersey's Request To Assume the Section 404 Program

AGENCY: Environmental Protection Agency.

ACTION: Extension of public comment period and review period.

SUMMARY: The Federal Clean Water Act (CWA) established the Section 404 Permit Program, under which the U.S. Army Corps of Engineers may issue permits for the discharge of dredged or fill material into "waters of the United States" as identified in the CWA. Section 404(g)(1) of the CWA allows any State to apply to the United States Environmental Protection Agency (EPA) to administer its own individual and general permit program for the discharge of dredged or fill material into state regulated waters within its jurisdiction. The State of New Jersey has submitted a full and complete Request for State Program Approval and proposes to operate the State permit program for regulated activities into waters within the jurisdiction of the State in accordance with the CWA. (The announcement describing the State's complete application package was published in Volume 58, No. 130, of the **Federal Register**, July 9, 1993, beginning at page 36958.) The State of New Jersey has requested to EPA Region 2 that there be an extension of both the public comment period and EPA's overall 120-day review period to allow for more public input and additional review time for EPA before it makes its decision on the State's application. EPA agrees with this request for an extension of the above timeframes.

DATES: The original Public comment period for the proposed transfer closed on August 27, 1993. EPA would have approved or disapproved the program transfer by October 13, 1993. EPA will extend the public comment period for the proposed transfer by 30 days, to September 27, 1993. Further, the 120-day review period will be extended by 60 days. Therefore, EPA will make a decision to approve or disapprove the program transfer on or before December 13, 1993.

ADDRESSES: Any interested persons may comment upon New Jersey's application by writing to Mr. Mario Del Vicario, Chief, Marine and Wetlands Protection Branch, USEPA Region 2, 26 Federal Plaza, New York, NY 10278.

FOR FURTHER INFORMATION CONTACT: Mr. Del Vicario, at the above address or at 212–264–5170.

Dated: August 27, 1993.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 93–21395 Filed 8–31–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4703–4]

New Source Review Reform Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: On July 7, 1993, the EPA gave notice of the establishment of the New Source Review (NSR) Reform Subcommittee (Subcommittee) (58 FR 36407) under the auspices of the Clean Air Act Advisory Committee (55 FR 46993) which was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app I). The Subcommittee's purpose is to provide independent advice and counsel to the EPA on policy and technical issues associated with reforming the NSR rules.

OPEN MEETING DATE: Notice is hereby given that the Subcommittee will hold an open meeting on September 27–28, 1993, from 8 a.m. to 5 p.m., at the Sheraton University Center, 2800 Middleton Avenue, Durham, North Carolina 27705, telephone (919) 383–8575, telefax (919) 383–8495. Due to the size of the meeting room, seating is limited to approximately 100 individuals and will be made available on a first come, first serve basis.

The Subcommittee will address NSR applicability-related issues at this meeting. In addition, the NSR Reform Subcommittee will review draft options and recommendations developed by subgroups on specific areas regarding Class I area impacts and best available control technology.

INSPECTION OF COMMITTEE DOCUMENTS: Documents relating to the above noted topics will be publicly available at the meeting. Thereafter, these documents, together with the transcript and summary of the Subcommittee's meeting, will be available for public inspection in EPA Air Docket No. A–90–37. The docket is available for public inspection and copying between 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m., weekdays, at EPA's Air Docket (LE–131), room M–1500, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

The transcript and summary will also be available to the public through EPA's Office of Air Quality Planning and Standards' (OAQPS) Technology Transfer Network (TTN) electronic bulletin board. For assistance in accessing the OAQPS TTN, contact the systems operator at (919) 541–5384 in Research Triangle Park, North Carolina during normal business hours.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Subcommittee or its activities, please contact Mr. David Solomon, Designated Federal Official to the Subcommittee, at (919) 541–5375, telefax (919) 541–5509, or by mail at U.S. EPA, OAQPS, Air Quality Management Division (MD–15), Research Triangle Park, North Carolina 27711.

Dated: August 17, 1993.

James Weigold,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 93–21254 Filed 8–31–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4703–2]

Technology Innovation and Economics Committee of the National Advisory Council for Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

DATE AND TIME: Thursday, September 23, 1993, from 9 a.m. to 4 p.m.

LOCATION: National Governors' Association Hall of the States, room 333, 444 North Capitol Street, Washington, DC.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a one-day meeting of the Technology Innovation and Economics (TIE) Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues, and the

TIE Committee identifies actions that EPA can take to speed the development, commercialization, and use of technologies that will result in environmental improvement and economic growth.

Four topics will be discussed during the meeting:

1. Actions that EPA has taken to implement past recommendations from the TIE Committee.
2. Current technology-related activities that are underway in EPA.
3. Technology activities that are underway in other parts of the Federal Government and EPA's role in these activities.
4. Issues and topics that the TIE Committee may consider over the next year.

Members of the public are encouraged to submit written comments suggesting projects for the Committee. Written comments can be submitted by mail. Any written comments received before Friday, September 17, 1993, will be distributed to Committee members for consideration. Scheduling constraints preclude oral comments from the public during the meeting.

ADDRESSES: Written comments should be sent to: Mark Joyce (A101F6), Office of Cooperative Environmental Management, U.S. EPA, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Director, Environmental Information, Economics, and Technology Staff, Direct line (202) 260–6889, Secretary's line (202) 260–6892.

Dated: August 25, 1993.

Abby J. Pirnie,

Director, Office of Cooperative Environmental Management.

[FR Doc. 93–21252 Filed 8–31–93; 8:45 am]

BILLING CODE 6560–JD–M

[OPP–50769; FRL–4635–8]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

241–EUP–123. Extension. American Cyanamid Company, Agricultural Research Division, P.O. Box 400, Princeton, NJ 08543-0400. This experimental use permit allows the use of 280 pounds of the plant growth modifier 1-(3-chlorophthalimido)-cyclohexanecarboxamide on hybrid roses and ornamental crops to evaluate stem production. The program is authorized only in the States of Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. The experimental permit is authorized from June 17, 1993 to May 31, 1995. (Cynthia Giles-Parker, PM 22, Rm. 229, CM #2, (703–305–5540))

7969–EUP–30. Issuance. BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709–3528. This experimental use permit allows the use of 750 pounds of the herbicide 3,7-dichloro-8-quinolinecarboxylic acid on 2,000 acres of rice to evaluate the control of certain grasses and broadleaf weeds. The program is authorized only in the States of Arkansas, Louisiana, Mississippi, and Texas. The experimental use permit is effective from April 28, 1993 to August 31, 1993. A permanent tolerance for residues of the active ingredient in or on rice has been established (40 CFR 180.463). (Robert Taylor, PM 25, Rm. 241, CM #2, (703–305–6800))

62719–EUP–1. Renewal. DowElanco, 9002 Purdue Rd., P.O. Box 681428, Indianapolis, IN 46268. This experimental use permit allows the use of 39,360 pounds of the herbicide triclopyr on 1,640 aquatic acres of drainage canals and ditches, irrigation canals and ditches, lakes, ponds, marshes, reservoirs, rivers, streams, wetlands, and the banks and shores of these sites to evaluate selective control of woody plants and certain annual or perennial weeds. The program is authorized only in the States of Alabama, California, Florida, Idaho, Indiana, Kentucky, Louisiana, Michigan, Minnesota, North Carolina, Ohio, South Carolina, Tennessee, Texas, Vermont, Washington, and Wisconsin. The experimental use permit is effective from May 28, 1993 to May 29, 1995. Temporary tolerances for residues of the active ingredient in or on fish and shellfish have been established. (Robert Taylor, PM 25, Rm. 241, CM #2, (703–305–6800))

62719–EUP–8. Renewal. DowElanco, 9002 Purdue Rd., P.O. Box 681428, Indianapolis, IN 46268. This experimental use permit allows the use of 750 pounds of the herbicide triclopyr on 2,000 acres of rice to evaluate selective postemergence broadleaf weed control. The program is authorized only in the States of Arkansas, Louisiana, Mississippi, and Texas. The experimental use permit is effective from June 23, 1993 to June 23, 1994. A temporary tolerance for residues of the active ingredient in or on rice has been established. (Robert Taylor, PM 25, Rm. 241, CM #2, (703–305–6800))

352–EUP–153. Issuance. E.I. duPont de Nemours & Company, Inc., Agricultural Products, Walkers Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880–0038. This experimental use permit allows the use of 43.57 pounds of the herbicide N-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide on 1,400 acres of corn to evaluate the control of certain weeds. The program is authorized only in the States of California, Colorado, Illinois, Kentucky, Louisiana, Minnesota, Nebraska, North Carolina, and Pennsylvania. The experimental use permit is effective from April 7, 1993 to April 7, 1995. Temporary tolerances for residues of the active ingredient in or on corn (fodder, forage, and grain) have been established. (Robert Taylor, PM 25, Rm. 241, CM #2, (703–305–6800))

352–EUP–156. Issuance. E.I. duPont de Nemours & Company, Inc., Agricultural Products, Walkers Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880–0038. This experimental use permit allows the use of 1,112.5 ounces of the herbicide N-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide on 2,225 acres of potatoes to evaluate the control of certain weeds. The program is authorized only in the States of California, Colorado, Connecticut, Delaware, Florida, Idaho, Maine, Maryland, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Virginia, Washington, and Wisconsin. The experimental use permit is effective from April 7, 1993 to April 7, 1995. A temporary tolerance for residues of the active ingredient in or on potatoes has been established. (Robert

Taylor, PM 25, Rm. 241, CM #2, (703–305–6800))

352–EUP–157. Issuance. E.I. duPont de Nemours & Company, Inc., Agricultural Products, Walkers Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880–0038. This experimental use permit allows the use of 1,112.5 ounces of the herbicides N-[(4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide and 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4H)-one on 2,225 acres of potatoes to evaluate the control of certain weeds. The program is authorized only in the States of California, Colorado, Connecticut, Delaware, Florida, Idaho, Maine, Maryland, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Virginia, Washington, and Wisconsin. The experimental use permit is effective from April 7, 1993 to April 7, 1995. Temporary tolerances for residues of the active ingredients in or on potatoes has been established. (Robert Taylor, PM 25, Rm. 241, CM #2, (703–305–6800))

8340–EUP–13. Extension. Hoechst Celanese Corporation, Route 202–205, P.O. Box 2500, Somerville, NJ 08876–1258. This experimental use permit allows the use of 348 pounds of the herbicides (±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate, 2-ethylhexyl-2,4-dichlorophenoxyacetate, and isooctyl 2-methyl-4-chlorophenoxyacetate on 3,720 acres of spring barley to evaluate control of annual monocotyledonous weeds. The program is authorized only in the States of Minnesota, Montana, North Dakota, and South Dakota. The experimental use permit is effective from April 10, 1993 to April 10, 1994. This permit is issued with the limitation that residues in the treated crops do not exceed established tolerances prior to entering into commercial channels of trade. If established tolerances are exceeded, the crops must be destroyed or used for research purposes only. (Joanne I. Miller, PM 23, Rm. 237, CM #2, (703–305–7830))

524–EUP–74. Issuance. Monsanto Agricultural Company, 800 North Lindbergh Blvd., St. Louis, MO 63167. This experimental use permit allows the use of 318.5 pounds (256 pounds on corn and 62.5 pounds on turf) of the herbicide methyl 5-[[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl]-3-chloro-1-methyl-1-H-pyrazole-4-carboxylate on 4,500 acres of corn (fodder, forage, and grain) and turf to evaluate the control of certain broadleaf weeds. The program is authorized in the States of Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Virginia, and Wisconsin. The experimental use permit is effective from March 29, 1993 to March 29, 1994. Temporary tolerances for residues of the active ingredient in or on field corn (grain, fodder, and forage) have been established. (Joanne I. Miller, PM 23, Rm. 237, CM #2, (703–305–7830))

524–EUP–76. Issuance. Monsanto Agricultural Company, 800 North Lindbergh Blvd., St. Louis, MO 63167. This experimental use permit allows the use of 376 pounds of the herbicide methyl 5-[[(4,6-dimethoxy-2-pyrimidinyl) amino] carbonylaminosulfonyl]-3-chloro-1-methyl-1-H-pyrazole-4-carboxylate on 4,000 acres of field corn (grain, fodder, and forage) to evaluate the control of certain broadleaf weeds. The program is authorized in the States of Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Nebraska, North Dakota, New York, Ohio, Pennsylvania, South Dakota, Virginia, and Wisconsin. The experimental use permit is effective from March 29, 1993 to March 29, 1994. Temporary tolerances for residues of the active ingredient in or on field corn (grain, fodder, and forage) have been established. (Joanne I. Miller, PM 23, Rm. 237, CM #2, (703–305–7830))

3432–EUP–1. Issuance. N. Jonas and Company, Inc., 4520 Adams Circle, Bensalem, PA 19020. This experimental use permit allows the use of 5 pounds of the germicide silver oxide II on a maximum of 15 swimming pools to evaluate the control of bacteria. The program is authorized only in the State of Pennsylvania. The experimental use permit is effective from April 9, 1993 to April 9, 1994. (Ruth Douglas, PM 32, Rm. 278, CM #2, (703–305–7964))

264–EUP–93. Issuance. Rhone-Poulenc, P.O. Box 12014, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709. This experimental use permit allows the use of 2,030 pounds of the herbicides octanoic acid ester of bromoxynil and heptanoic acid ester of bromoxynil on 1,215 acres of transgenic bromotol cotton to evaluate the control of certain broadleaf weeds. The program is authorized only in the States of Alabama, Arizona, Arkansas, Georgia, Louisiana, Missouri, Mississippi, North Carolina, South Carolina, Tennessee, and Texas. The experimental use permit is effective from June 4, 1993 to June 4, 1994. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 241, CM #2, (703–305–6800))

55947–EUP–14. Extension. Sandoz Agro, Inc., 1300 East Toughy Avenue, Des Plaines, IL 60018. This experimental use permit allows the use of 1,000 pounds of the fungicide alpha-(4-chlorophenyl)-alpha-(1-cyclopropylethyl)-1H-1,2,4-triazole-1-ethanol on 950 acres of golf course turf to evaluate the control of certain fungal diseases of turfgrass. The program is authorized only in the States of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Missouri, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, and Virginia and the District of Columbia. The experimental use permit is effective from February 25, 1993 to March 1, 1994. (Susan Lewis, PM 21, Rm. 227, CM #2, (703–305–5663))

400–EUP–68. Renewal. Uniroyal Chemical Company, Inc., 74 Amity Rd., Bethany, CT 06524–3402. This experimental use permit allows the use of 240 pounds of the herbicide potassium salt of 1,2-dihydro-3,6-pyridazinedione on 160 acres of rice to evaluate the suppression of seed production. The program is authorized only in the State of Louisiana. The experimental use permit is effective from May 10, 1993 to August 31, 1994. (Cynthia Giles-Parker, PM 22, Rm. 229, CM #2, (703–305–5540))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

Dated: August 19, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–21247 Filed 8–31–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00362; FRL–4639–4]

Silver and Biobor; Pesticide Reregistration Eligibility Documents; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of reregistration eligibility documents; opening of public comment period.

SUMMARY: This Notice announces the availability of the Reregistration Eligibility Documents (REDs) for the active ingredients Silver and Biobor, and the start of a 60–day public comment period. The REDs for Silver and Biobor are the Agency's formal regulatory assessment of the health and environmental data base of the subject chemicals, and present the Agency's determination regarding which pesticidal uses of Silver and Biobor are eligible for reregistration.

DATES: Written comments on the REDs must be submitted by November 1, 1993.

ADDRESSES: Three copies of comments identified with the docket number "OPP–00362" should be submitted to: By mail: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

To request a copy of the above RED(s), or the RED Fact Sheets, contact the Public Response and Program Resources Branch, in Rm. 1132 at the address given above or call (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED for Silver should be directed to the Chemical Review Manager, Kathleen Depukat, at (703) 308–8587 and technical questions on the RED for Biobor should be directed to the Chemical Review Manager, Thomas Luminello, at (703) 308–8075.

SUPPLEMENTARY INFORMATION: The Agency has issued Reregistration Eligibility Documents for the pesticidal active ingredients: Silver and Biobor. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data bases to support the reregistration of the chemicals Silver and Biobor are substantially complete. EPA has determined that all products registered as of June 23, 1993 containing Silver and Biobor as active ingredients are eligible for reregistration.

All registrants of products containing Silver and Biobor have been sent the appropriate RED and must respond to the labeling requirements and the product specific data requirements (if applicable) within 8 months of receipt. These products will not be reregistered until adequate product specific data have been submitted and all necessary product label changes are implemented.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing the REDs as final documents with a 60–day comment period. Although the 60–day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the REDs. All comments will be carefully considered by the Agency and if any of those comments impact on the REDs, EPA will issue an amendment to the appropriate RED and publish a **Federal Register** Notice announcing its availability.

Dated: August 23; 1993.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 93–21085 Filed 8–31–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1960]

Petition for Reconsideration of Action in Rulemaking Proceeding

August 27, 1993.

Petition for reconsideration has been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in room 239, 1919 M Street, NW., room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed by September 16, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Rules To Permit FM Channel and Class Modification by Application (MM Docket No. 92–159)

Number of Petitions Filed: 2

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–21167 Filed 8–31–93; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1961]

Petition for Reconsideration and Clarification of Action in Rulemaking Proceeding

August 27, 1993.

Petition for reconsideration and or clarification has been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor ITS; Inc. (202) 857–3800. Opposition to this petition must be filed September 16, 1993. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of section 26 of the Cable Television Consumer Protection and Competition Act of 1992; Inquiry into Sports Programming Migration (PP Docket No. 93–21).

Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Action Secretary.

[FR Doc. 93–21168 Filed 8–31–93; 8:45 am]

BILLING CODE 6712–01–M

[Report No. I–6831]

FCC To Accept Applications for Service to Cuba

July 27, 1993.

The FCC has received a letter dated July 22, 1993, from the Department of State detailing general policy guidelines for implementation of the

telecommunications provisions of the Cuban Democracy Act (CDA). A copy of this letter is attached. Consistent with the letter, the FCC will act on applications for circuits between the United States and Cuba that comply with the Executive Branch criteria and meet the Commission's own legal and other requirements. Therefore, in addition to the Commission's existing application requirements for international service, applicants must comply with the criteria on page 2, must include the narrative description of their proposed agreements and the sworn statement listed on page 3 of the letter, and must submit copies of such documents to the Departments of Treasury and State. The Department of State in consultation with the Treasury and Commerce Departments will review U.S./Cuba telecommunications policy in twelve to eighteen months to insure that the CDA's mandates as well as overall foreign policy goals are being met.

For further information concerning this matter, please contact Adam Kupetsky or Linda Trochim at (202) 632–3214.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

July 22, 1993.

Dear Chairman Quello: The purpose of this letter is to inform you of the Executive branch's general policy guidelines for implementation of the telecommunications provisions of the Cuban Democracy Act. These guidelines provide guidance to the Commission in considering proposals for telecommunications between the United States and Cuba. Also set forth is an action plan for the Departments of State, Treasury and Commerce, and the FCC.

Section 1705(e)(1) of the Cuban Democracy Act (CDA), states that "telecommunication services between the United States and Cuba shall be permitted." It further provides that "* * * telecommunications facilities are authorized in such quantity and of such quality as may be necessary to provide efficient and adequate telecommunications services between the United States and Cuba." The CDA also allows for full or partial payment of amounts due to Cuba as a result of the provision of such service.

Other provisions of the CDA are intended to tighten the economic embargo on Castro, and in section 1710(a) the Secretary of the Treasury is charged with ensuring that activities permitted under the CDA, such as telecommunications, are carried out for the purposes of the CDA and not for "the accumulation by the Cuban government of excessive amounts of United States currency or the accumulation of excessive profits by any person or entity."

The Executive branch has developed a policy which provides for open competition among all telecommunications carriers which comply with Federal Communications Commission regulations and are licensed as appropriate by Treasury's Office of Foreign Assets Control and Commerce's Bureau of Export Administration. The policy implements the applicable provisions of the CDA by authorizing the provision of service to Cuba as described below.

The Commission should use the following policy guidelines in approving proposals for telecommunications between the United States and Cuba:

(a) Proposals must have the potential to be operational within a year;

(b) Proposals must be limited to equipment and services necessary to deliver a signal to an international telecommunications gateway in Cuba;

(c) Settlements more favorable to Cuba than the current 50/50 split of the $1.20 per minute accounting rate shall not be permitted. In addition, Cuba shall cover half the costs of construction, maintenance and/or lease of transmission facilities, consistent with standard FCC practice;

(d) Proposals utilizing modes of communications already in place between the U.S. and Cuba (e.g., satellite, the undersea cable) will be approved. Proposals involving new modes of communications (e.g., fiber optic cable) will be reviewed by the appropriate agencies on a case-by-case basis;

(e) All circuits to Cuba must be specifically authorized. Carriers shall report the number of circuits activated by facility on June 30 and December 31 of each year, and on the one-year anniversary of the notification by FCC in the **Federal Register**;

(f) Treasury will license each U.S. company or U.S. subsidiary to remit to Cuba the full share of Cuba's earnings from the service approved by FCC; State will explore with Treasury and Commerce the possibility of licensing payment-in-kind (e.g., earth stations, satellite equipment, etc.) on a case-by-case basis;

(g) There will be no access to Cuba's blocked account of AT&T's past remittance;

(h) All applications approved by FCC must also be licensed as appropriate by Treasury or Commerce in consultation with State.

All previous licenses granted in the 1988 Memorandum Opinion and in subsequent FCC opinions may remain in force.

In order to implement the policy guidelines the Departments of State, Treasury, and Commerce and FCC will carry out the following plan of action:

Treasury (OFAC) will license travel and payment: OFAC will publish a **Federal Register** notice stating that it is prepared to provide licenses to U.S. companies to travel to Cuba to discuss possible contractual arrangements with EMTELCUBA. Follow-up visits will also be allowed. OFAC will also publish a notice informing carriers that Treasury (OFAC) must license all payment terms to Cuba and will only license transactions in Cuba necessary to deliver a signal to an international telecommunications gateway in Cuba.

Commerce will license export of U.S.-origin commodities: Commerce's Bureau of Export Administration will publish a **Federal Register** notice stating that it is updating its regulations to permit the export of telecommunications commodities to Cuba in connection with approved telecommunications projects to the extent that such exports are necessary to deliver a signal to an international telecommunications gateway in Cuba.

FCC will license circuits: The FCC will concurrently announce that it is prepared to grant the necessary licenses for all circuits requested that comply with the criteria, i.e., all applications which meet the Commission's legal requirements, which can be activated and effectively put into operation within twelve months of the date of publication of the initial OFAC notice, which involve existing modes of communications, and which are limited to equipment and services necessary to deliver a signal to an international telecommunications gateway in Cuba. FCC will consult with the appropriate agencies regarding proposals involving new modes of communication. FCC will announce the procedures by which U.S. carriers may apply for the circuits. The application procedure will require all applicants to provide a narrative description of their proposed agreement as well as a sworn statement that the foreign correspondent (EMTELCUBA) agrees to activate the proposed circuits on the Cuban end. Copies of such documents must also be submitted to the Departments of Treasury and State.

State in consultation with Treasury and Commerce will review: The FCC will also announce that U.S./Cuba telecommunications policy will be reviewed by the State Department in consultation with the Treasury and Commerce Departments, in twelve to eighteen months to ensure that the CDA's mandates as well as overall foreign policy goals are being met. At the time of this review, State, Treasury, and Commerce will be able to determine whether additional circuits should be authorized to keep the service "efficient and adequate;" and could assess whether to allow improvements in domestic infrastructure to improve U.S. access to the Cuban market.

The Department of State appreciates the close cooperation of the Commission throughout the years in implementing our telecommunications policy towards Cuba.

Sincerely Yours,

Richard C. Beaird,

Acting U.S. Coordinator and Director.

[FR Doc. 93–21169 Filed 8–31–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1000–DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 26, 1993.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–21269 Filed 8–31–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–997–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA–997–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Illinois dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Massac, Pope, and Pulaski Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–21268 Filed 8–31–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–995–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri (FEMA–995–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

St. Clair County for Individual Assistance and Public Assistance.

Caldwell, Cass, Cooper, and Monroe Counties for Public Assistance. (Already designated for Individual Assistance.)

Crawford, Wayne, Stoddard, and St. Francois Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–21270 Filed 8–31–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–994–DR]

Wisconsin; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA–994–DR), dated July 2, 1993, and related determinations.

EFFECTIVE DATE: August 25, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 25, 1993.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–21267 Filed 8–31–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Daniel Marcus Boyd, III, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 93-20070) published at page 44185 of the issue for Thursday, August 19, 1993.

The deadline for comments regarding each of the applications listed under this heading is revised to read as September 8, 1993.

Board of Governors of the Federal Reserve System, August 26, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-21224 Filed 8-31-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval for the continued use of an information collection titled: "Jobs Participation Rate Quarterly Report (Form ACF–103)." This request for clearance is made by the Office of Family Assistance of the Administration for Families and Children (ACY).

ADDRESSES: Copies of the Information Collection request may be obtained from Steve R. Smith, Office of Information Systems Management, ACY, by calling (202) 401–6964.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: JOBS Participation Rate Quarterly Report (Form ACF–103).

OMB No.: 0970–0098.

Description: The Job Opportunities and Basic Skills Training (JOBS) program was established under Title II of the Family Support Act for the purpose of amending Title IV of the Social Security Act to encourage and assist needy children and parents under

the new program to obtain the education, training and employment needed to avoid long-term welfare dependents, and to make other necessary improvements to assure that the new program will be more effective in achieving its objectives.

Section 201 (c)(2) of Title II of the Statute requires the Administration for Children and Families (ACF) to reduce the Federal Financial Participation (FFP) rate to 50% if a specified percent of those individuals required to participate do not participate. Consequently, ACF must collect information necessary to determine that each State has met the participation rate requirements specified in the Statute. If the State fails to provide the requested information, FFP rates may be established and paid that are incorrect.

Annual number of respondents	51
Annual frequency	4
Average burden hours per response	12
Total burden hours	2,448

Dated: August 16, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–21176 Filed 8–31–93; 8:45 am]

BILLING CODE 4184–01–M

Notice of Correction

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice of correction.

SUMMARY: This Notice will correct two errors listed on the Table of Federal percentages calculated for the States of Ohio and Michigan for determining the amount of Federal matching in State welfare and medical expenditures for Fiscal Year 1994.

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Eugene Moyer, (202) 690–7861.

SUPPLEMENTARY INFORMATION: On December 7, 1992, the Office of the Secretary published a Notice in the **Federal Register** announcing the Federal Percentages and Federal Medical Assistance Percentages (FMAP) for use in determining the amount of Federal matching in State welfare and medical expenditures for October 1, 1993 through September 30, 1994. The percentages are applicable to programs under Aid to Families with Dependent Children, Foster Care and Adoption Assistance, Job Opportunities and Basic Skills Training, Medicaid, and Aid to Needy Aged, Blind, or Disabled Persons of the Social Security Act. The Notice provided a Table that listed matching percentages for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. The Federal percentages listed for the States of Michigan and Ohio are incorrect. The Federal percentage for Michigan is listed as 50%, the correct Federal percentage is 51.52%. The Federal percentage for Ohio is listed as 65%, the correct Federal percentage is 56.48%. The Federal Medical Assistance Percentages (FMAP) listed for both States are correct. The Department of Health and Human Services regrets these errors.

Dated: August 28, 1993.

Ann Rosewater,

Deputy Assistant Secretary for Policy and External Affairs.

[FR Doc. 93–21170 Filed 8–31–93; 8:45 am]

BILLING CODE 4184–01–M

Agency for Toxic Substances and Disease Registry

[ATSDR–71]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of ten new draft toxicological profiles and one technical report on unregulated hazardous substances prepared for Department of Defense by ATSDR for review and comment.

DATES: To ensure consideration, comments on these draft toxicological profiles must be received on or before November 29, 1993. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for copies of the draft toxicological profiles or comments regarding the draft toxicological profiles should be sent to the attention of Ms. Susie Tucker, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Requests for the draft toxicological profiles must be in writing. Please specify the profiled hazardous substance(s) you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR–71. Send one copy of all comments and three copies of all supporting documents to the Division of Toxicology at the above address by the end of the comment period. All written comments and draft profiles will be available for public inspection at the ATSDR, Building 4, Executive Park Drive, Atlanta, Georgia (not a mailing address), from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential business information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Susie Tucker at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–6300.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 99–499) amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund). Section 211 of SARA also amended title 10 of the U.S. Code, creating the Defense Environmental Restoration Program. Section 2704(a) of title 10 of the U.S. Code directs the Secretary of Defense to notify the Secretary of Health and Human Services of not less than 25 of the most commonly found unregulated hazardous substances at defense facilities. Each profile and technical report includes an examination, summary and interpretation of available toxicological information and epidemiologic evaluations. This information and data are used to ascertain the levels of significant human exposure for the substance and the associated health effects. The profiles and technical reports include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), plans a program of research designed to determine these health effects.

Although key studies for each of the substances were considered during the profile development process, this

Federal Register notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles are expected to be available to the public on or about August 23, 1993.

Document and hazardous substance	CAS No.
1. Automotive gasoline	8006–61–9.
2. Diethyl phthalate	84–66–2.
3. Fuel oils..	
Fuel oil No. 1 (kerosene)	8008–20–6.
Fuel oil No. 1–D (diesel fuel No. 1).	No CAS #.
Fuel oil No. 2 (gas oil)	68476–30–2.
Fuel oil No. 2–D (diesel fuel No. 2).	68476–34–6.
Fuel oil No. 4 (residual fuel)	68476–31–3.
Fuel oil UNSP	No CAS #.
4. Jet fuels JP–4	50815–00–4.
Jet fuels JP–7	No CAS #.
5. Otto fuel II and its components.	106602–80–6.
Propylene glycol dinitrate	6423–43–4.
2–Nitrodiphenylamine	119–75–5.
Dibutyl sebacate	109–43–3.
6. RDX	121–82–4.
7. Stoddard solvent	8052–41–3.
8. Tetryl	479–45–8.
9. 1,3-Dinitrobenzene	99–65–0.
1,3,5-Trinitrobenzene	99–35–4.
10. 2,4,6-Trinitrotoluene technical report.	118–96–7.
11. Ethylene glycol	107–21–1.
Propylene glycol	57–55–6.

All profiles issued as "Drafts for Public Comment" represent the agency's best efforts to provide important toxicological information on priority hazardous substances. We are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our clients.

Dated: August 26, 1993.

Walter R. Dowdle,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 93–21218 Filed 8–31–93; 8:45 am]

BILLING CODE 4160–70–P

Food and Drug Administration

[Docket No. 93M–0281]

Wesley-Jessen Corp., Premarket Approval of Wesley-Jessen® HS-16 Cleaning Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Wesley-Jessen Corp., Chicago, IL, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Wesley-Jessen® HS–16 Cleaning Solution. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of July 9, 1993, of the approval of the application.

DATES: Petitions for administrative review by October 1, 1993.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Saviola, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2080.

SUPPLEMENTARY INFORMATION: On March 19, 1991, Wesley-Jessen Corp., Chicago,IL 60610–3496, submitted to CDRH an application for premarket approval of the Wesley-Jessen® HS–16 Cleaning Solution. The device is indicated for use to clean soft (hydrophilic) contact lenses before rinsing and disinfection. In accordance with the provisions of section 515(c)(2) of the act as amended by the Safe Medical Devices Act of 1990, this PMA was not referred to the Opthalmic Devices Panel, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On July 9, 1993, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 1, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: August 24, 1993.

Joseph A. Levitt,

Deputy Director for Regulations Policy. Center for Devices and Radiological Health.

[FR Doc. 93-21187 Filed 8-31-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93M–0186]

Wisconsin Pharmacal Co., Inc.; Premarket Approval of Reality™ Female Condom

AGENCY: Food and Drug Administration. HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Wisconsin Pharmacal Co., Inc., Jackson. WI, for premarket approval, under

section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Reality™ Female Condom. After reviewing the recommendation of the Obstetrics-Gynecology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 7, 1993, of the approval of the application.

DATES: Petitions for administrative review by October 1, 1993.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1180.

SUPPLEMENTARY INFORMATION: On October 29, 1991, Wisconsin Pharmacal Co., Inc., Jackson, WI 53037, submitted to CDRH an application for premarket approval of the Reality™ Female Condom. The device is an intravaginal barrier device and is indicated for use to help prevent pregnancy and sexually transmitted diseases (STD's), including the human immunodeficiency virus (HIV) infection, during vaginal intercourse.

On January 31 and December 10, 1992, the Obstetrics-Gynecology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On May 7, 1993, CDRH approved the application by a letter to the applicant from the Deputy Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 1, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and, Radiological Health (21 CFR 5.53).

Dated: August 24, 1993.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 93–21186 Filed 8–31–93; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements (ICR) Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health And Human Services, has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* New; *Title of Information Collection:* Prenatal Services and assistance screening questionnaire; *Form No.:* HCFA-R–158; *Use:* This survey is in support of a demonstration designed to improve access to prenatal care and drug treatment for Medicaid-Eligible Pregnant Substance Abusers. The survey will collect information on demographics, family status, health status, and substance abuse; *Frequency:* One-time only data collection; *Respondents:* Individuals or households; *Estimated Number of Responses:* 4,100; *Average Hours Per Response:* 0.333; *Total Estimated Burden Hours:* 1,365.

2. *Type of Request:* Extension; *Title of Information Collection:* Home Health Agency Treatment Forms; *Form Nos.:* HCFA–485 through 488; *Use:* These forms are an instrument used by the fiscal intermediaries to assure that reimbursement is made to home health agencies only for services that are covered under Medicare Part A or Part B. The medical information contained in these forms describes the patient and level of medical need and/or services provided; *Frequency:* On-Occasion; *Respondents:* Businesses or other for profit, nonprofit institutions, small businesses or organizations; *Estimated Number of Responses:* 6,115,288; *Average Hours Per Response:* 0.477 (reporting) 0.476 (recordkeeping); *Total Estimated Burden Hours:* 2,916,992 (reporting) 2,910,877, (recordkeeping) for a total of 5,834,872.

3. *Type of Request:* Reinstatement; *Title of Information Collection:* ICR in Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded (ICFs/MR); *Form No.:* HCFA-R–120; *Use:* State agency surveyors need this information to assess quality of services provided in ICFs/MR; *Frequency:* Annually; *Respondents:* Businesses or other for profit; *Estimated Number of Responses:* 6,600; *Average Hours Per Response:* 1.036; *Total Estimated Burden Hours:* 6,837.6.

4. *Type of Request:* Reinstatement; *Title of Information Collection:* State Medicaid Eligibility Quality Control Sample Selection Lists; *Form No.:* HCFA–319; *Use:* At the beginning of each review month, State agencies are required to select a representative sample of cases from the eligibility files. The sample selection lists contain identifying information on Medicaid beneficiaries such as: review number, beneficiary name, street, city, and State address, the name of the county in which beneficiary resides, etc. HCFA reviews the sample to determine

whether States are sampling a sufficient number of cases to meet minimum requirements. Without these lists the integrity of the sampling would be suspect since HCFA would have no data on the adequacy of the State sample draw or review completion status; *Frequency:* Monthly; *Respondents;* State agencies; *Estimated Number of Responses;* 660 Annually; *Average Hours Per Response;* 8; *Total Estimated Burden Hours:* 5,280.

5. *Type of Request:* Reinstatement; *Title of Information Collection:* Prepaid Health Plan Cost Report; *Form No.:* HCFA–276; *Use:* These cost report forms are needed to establish the reasonable cost of delivering covered services furnished to Medicare enrollees in accordance with section 1876 of the Social Security Act; *Frequency:* Quarterly and Annually; *Respondents:* Businesses or other for profit; *Estimated Number of Responses:* 357; *Average Hours Per Response:* 29.2; *Total Estimated Burden Hours:* 10,424.4.

6. *Type of Request:* Reinstatement; *Title of Information Collection:* Hospital Survey Report Form; *Form No.:* HCFA–1537; *Use:* This form is used by the State agency to record information and data in order to determine provider compliance with individual conditions of participation. It is primarily a coding worksheet designed to facilitate data reduction and retrieval into the On-line Survey Certification and Reporting System (OSCAR) at the HCFA Regional Offices; *Frequency:* Annually; *Respondents:* State and local governments; *Estimated Number of Responses:* 1,539; *Average Hours Per Response:* 3.0; *Total Estimated Burden Hours:* 4,617.

7. *Type of Request:* Reinstatement; *Title of Information Collection:* Procedures for determining whether providers, practitioners, or other suppliers of services are liable for certain uncovered services *Form No.:* HCFA–R–77; *Use:* Regulation requires Peer Review Organizations (PRO) to provide written notification of noncovered services to beneficiaries and/or providers, practitioners, and suppliers. The regulation states that noncovered services will only be paid if the provider and/or beneficiary did not know and could not have reasonably expected to know that a service is not covered; *Frequency:* On Occasion; *Respondents:* Businesses/other for profit and small businesses/organizations; *Estimated Number of Responses:* 87,615; *Average Hours Per Response:* 0.083; *Total Estimated Burden Hours:* 7,272.

8. *Type of Request:* Extension; *Title of Information Collection:* Medicare Credit Balance Reporting Requirements; *Form No.:* HCFA–838; *Use:* Is needed to ensure that millions of dollars in improper program payments are collected. Health care providers will be required to submit a quarterly credit balance report that identifies the amount of improper payments they received that are due to Medicare; *Frequency:* Quarterly; *Respondents:* Businesses or other for profit, nonprofit institutions; *Estimated Number of Responses:* 119,600; *Average Hours Per Response:* 6; *Total Estimated Burden Hours:* 717,600.

9. *Type of Request:* New; *Title of Information Collection:* Medicare Provider Cost Report Questionnaire; *Form No.:* HCFA–339; *Use:* Completed by all providers to ensure proper Medicare reimbursement to providers and to minimize subsequent contact between the provider and its intermediary. The form is used to gather information necessary to support financial and statistical entries in the cost report; *Frequency:* Annually; *Respondents:* Businesses or other for profit, small businesses or organizations; *Estimated Number of Responses:* 22,006; *Average Hours Per Response:* 20; *Total Estimated Burden Hours:* 440,120.

10. *Type of Request:* Extension; *Title of Information Collection:* Medicare Current Beneficiary Survey Rounds 7–10; *Form No.:* HCFA–P–15A; *Use:* Medicare Current Beneficiary Survey Questionnaire Rounds 7–10 collect cost and utilization data for community and industrial population. Information collection includes: inpatient hospitalization, emergency room, outpatient clinics, provider use, prescribed medication and other medical equipment, cost, charges. Source of payment will be collected for each use; *Frequency:* Quarterly; *Respondents:* Individuals or households, businesses or other for profit, nonprofit institutions, small business or organizations; *Estimated Number of Responses:* 40,000; *Average Hours Per Response:* 1; *Total Estimated Burden Hours:* 40,000.

11. *Type of Request:* Reinstatement; *Title of Information Collection:* Sterilization Regulation/Consent Form; *Form No.:* HCFA–R–94; *Use:* All Medicaid eligible individuals seeking sterilization are required to provide informed consent, utilizing federally required consent forms; *Frequency:* Each time a Medicaid sterilization is sought; *Respondents:* Individuals or households, State or local governments, Federal agencies or employees; *Estimated Number of Responses:* 174,802; *Average Hours Per Response:* 1.25; *Total Estimated Burden Hours:* 218,503.

12. *Type of Request:* Reinstatement; *Title of Information Collection:* PRO Reconsideration and Appeals Information Requirements; *Form No.:* HCFA–R–72; *Use:* These regulations contain procedures for the PROs to use in reconsideration of initial determinations. The information requirements contained in these regulations are on PROs to provide information to parties requesting a reconsideration review. The parties will use the information as guidelines for appeal rights in instances where issues are still in dispute; *Frequency:* On Occasion; *Respondents:* Businesses or other for-profit, small business or organizations; *Estimated Number of Responses:* 58,734; *Average Hours Per Response:* 0.2376; *Total Estimated Burden Hours:* 13,955.

13. *Type of Request:* Reinstatement; *Title of Information Collection:* Information Collection Reqtirements in HSQ–110, Acquisition, Protection and Disclosure of PRO Information—42 CFR sections 476.104, 476.105, 476.116, and 476.134; *Form No.:* HCFA–R–70; *Use:* The Peer Review Improvement Act of 1982 authorizes PROs to acquire information necessary to fulfill their duties and functions and places limits on disclosure of the information. These requirements are on the PRO to provide notices to the affected parties when disclosing information about them. These requirements serve to protect the rights of the affected parties; *Frequency:* On Occasion; *Respondents:* Businesses or other for-profit; *Estimated Number of Responses:* 53; *Average Hours Per Response:* 576.92; *Total Estimated Burden Hours:* 30,576.76.

14. *Type of Request:* Reinstatement; *Title of Information Collection:* Medicare/Medicaid Organ Procurement Organization's (OPO) Request for Certification; *Form No.:* HCFA–576; *Use:* This form is a facility identification and screening measurement used to initiate the certification or recertification process and to determine if the provider is operating in compliance with the Conditions for Coverage for OPOs; *Frequency:* Annually; *Respondents:* State or local governments, small businesses or organizations; *Estimated Number of Responses:* 80; *Average Hours Per Response:* 2; *Total Estimated Burden Hours:* 160.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections

should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, room 3001, Washington, DC 20503.

Dated: August 24, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 93–21244 Filed 8–31–93; 8:45 am]

BILLING CODE 4120–03–P

[OIS–022–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—Second Quarter 1993

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations and other **Federal Register** notices, and statements of policy that were published during April, May and June of 1993 that relate to the Medicare and Medicaid programs. Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe.

There are no revisions to the Medicare Coverage Issues Manual this quarter.

FOR FURTHER INFORMATION CONTACT:

Margaret Cotton, (410) 966–5260 (For Medicare Instruction Information);
Sam DellaVecchia, (410) 966–5395 (For Medicare Coverage Information);
Dusty Kowalewski, (410) 965–3377 (For Medicaid Instruction Information);
Jacqueline Kidd, (410) 966–4682 (For All Other Information).

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs, which pay for health care and related services for 36 million Medicare beneficiaries and 33 million Medicaid recipients. Administration of these programs involves: (1) Providing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public; and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries, and carriers who process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under authority granted the Secretary under sections 1102, 1871, and 1902 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** at least every 3 months a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during this timeframe. Since the publication of our quarterly listing on June 12, 1992 (57 FR 24797), we decided to add Medicaid issuances to our quarterly listings. Accordingly, we are listing in this notice, Medicaid issuances and Medicaid substantive and interpretive regulations published from April 1 through June 30, 1993.

II. Medicare Coverage Issues

We receive numerous inquiries from the general public about whether specific items or services are covered under Medicare. Providers, carriers, and intermediaries have copies of the Medicare Coverage Issues Manual, which identifies those medical items, services, technologies, or treatment procedures that can be paid for under Medicare. On August 21, 1989, we published a notice in the **Federal Register** (54 FR 34555) that contained all the Medicare coverage decisions issued in that manual.

In that notice, we indicated that revisions to the Coverage Issues Manual will be published at least quarterly in the **Federal Register**. We also sometimes issue proposed or final national coverage decision changes in separate **Federal Register** notices. Readers should find this an easy way to identify both issuance changes to all our manuals and the text of changes to the Coverage Issues Manual.

Revisions to the Coverage Issues Manual are not published on a regular basis but on an as needed basis. We publish revisions as a result of technological changes, medical practice changes, responses to inquiries we receive seeking clarifications, or the resolution of coverage issues under Medicare.

III. How To Use the Addenda

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or coverage decisions published during this timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) and the notice published March 31, 1993 (58 FR 16837), and those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication.

In order to aid the reader, we have replaced the tables and reorganized and divided this current listing into four addenda.

Addendum I identifies updates that changed the Coverage Issues Manual. We published notices in the **Federal Register** that included the text of changes to the Coverage Issues Manual. These updates, when added to material from the manual published on August 21, 1989, constitute a complete manual as of March 31, 1993. Parties interested in obtaining a copy of the manual and revisions should follow the instructions in section IV of this notice.

Addendum II identifies previous **Federal Register** documents where interested individuals can get a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.

Addendum III of this notice lists, for each of our manuals or Program Memoranda, a HCFA transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the date published, the **Federal Register** citation, the title of the regulation, and the parts

of the Code of Federal Regulations (CFR) which have changed.

IV. How To Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Order, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 783–3238, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the same address indicated above for manual issuances. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

C. Rulings

Rulings are published on an infrequent basis by HCFA. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We also sometimes publish Rulings in the **Federal Register**.

D. HCFA's Compact Disk–Read Only Memory (CD–ROM)

Beginning July 1, 1993, HCFA's laws, regulations, and manuals are available on CD–ROM, which may be purchased from the GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is contained on the CD–ROM:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions.
- HCFA program memoranda.

The titles are current as of the September 1, 1992, update of the Compilation of the Social Security Laws, and the regulations are those in effect as of October 1, 1992.

The CD–ROM does not contain Appendices M (Interpretative Guidelines for Hospices) and R (Resident Assessment for Long Term Care Facilities) of the State Operations Manual. Copies of these appendices may be seen at a Federal Depository Library (FDL).

Any cost report forms incorporated in the manuals are included on the CD–ROM as LOTUS files. LOTUS software is required to view the reports once the files have been copied to a personal computer disk.

V. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local FDL. Under the FDL Program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of nearly every Federal government publication, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library.

Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Carriers Manual, Part 3—Claims Process (HCFA-Pub. 14–3) transmittal entitled "Rules for Calculating Medicare Secondary Payer Amounts, Effect on Primary Payments on Deductibles and Coinsurance, and Limitations on Right to Change Beneficiary" use the Superintendent of Documents No. HE 22.8/7, and the HCFA transmittal number IM–93–1.

VI. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Copies can be purchased or reviewed as noted above.

Questions concerning Medicare items in Addenda III may be addressed to Margaret Cotton, Office of Issuances, Health Care Financing Administration, Room 688 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–5260.

Questions concerning Medicaid items in Addenda III may be addressed to Dusty Kowalewski, Medicaid Bureau, Office of Medicaid Policy, Health Care Financing Administration, Room 233 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 965–3377.

Questions concerning all other information may be addressed to Jacqueline Kidd, Regulations Staff, Health Care Financing Administration, room 132 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–4682.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: July 29, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Addendum I

This addendum lists the publication dates of the quarterly listing of program issuances and coverage decision updates to the Coverage Issues Manual.

March 20, 1990 (55 FR 10290)
February 6, 1991 (56 FR 4830)
July 5, 1991 (56 FR 30752)
November 22, 1991 (56 FR 58913)
January 22, 1992 (57 FR 2558)
March 16, 1992 (57 FR 9127)
June 11, 1992 (57 FR 24797)
October 16, 1992 (57 FR 47468)
January 7, 1993 (58 FR 3028)
March 31, 1993 (58 FR 16837)
July 9, 1993 (58 FR 36967)

Addendum II—Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was previously published on June 9, 1988 at 53 FR 21730 and supplemented on

September 22, 1988 at 53 FR 36891 and December 16, 1988 at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989 at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992 at 57 FR 47468.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS

[April Through June 1993]

Trans. No.	Manual/subject/publication number
	Intermediary Manual **Part 2—Audits, Reimbursement Program Administration (HCFA–Pub. 13–2)** **(Superintendent of Documents No. HE 22.8/6–2)**
392	• Maximum Payment Per Visit for Freestanding Federally Qualified Health Centers. Payment Limit for Freestanding FQHC Networks. Interim Cost Reporting Instructions for Freestanding FQHCs. Exception Option for Federally Funded Health Centers as of September 30, 1991.
393	• Completion of the Report of Benefit Savings. Medical Review Activity Reports. List of MR Codes, Categories, and Conversion Factors.
	Intermediary Manual **Part 3—Claims Process** **(Superintendent of Documents No. HE 22.8/6)**
IM–93–1	• Rules for Calculating Medicare Secondary Payer Amounts, Effect of Primary Payer Amounts, Effect of Primary Payments on Deductibles and Coinsurance, and Limitation on Right to Charge Beneficiary. Definition of Third Party Payer. Definition of Gross Amount Payable by Medicare. When Medicare Secondary Benefits Are Not Payable. When Medicare Secondary Benefits Are Payable. Calculating Medicare Secondary Payments When Proper Claim Has Been Filed. Calculating Medicare Secondary Payments When Proper Claim Has Not Been Filed With Third Party Payer. Effect of Primary Payments on Deductibles and Coinsurance. Right of Provider to Charge Beneficiary Who Has Received Third Party Payment. Duplicate Payments.
1591	• Fraud and Abuse.
1592	• Rural Health Clinic Services. RHC Services Defined. Services Furnished by RHCs Which Are Not RHC Services. Payment Under Part B for Non-RHC Services Furnished By Independent RHCs. Federally Qualified Health Center Services. Types of FQHC Services. Qualifications of FQHCs. Charges to Medicare Beneficiaries. Beneficiary Eligibility for FQHC Services. Review of Form HCFA–1450 for Inpatient and Outpatient Bills. Federally Qualified Health Centers.
1593	• Responsibility for Medicare Secondary Payer Outreach Program. National Standard Electronic PC-Print Software.
1594	• Mammography Screening.
1595	• Part A Inquiry Screen Display-HIQA. Part A Inquiry Reply Screen Display-HIQAR. Part A Inquiry Data-HUQA. Part A Inquiry Reply Data-HUQA. Health Insurance Master Record Inquiry. HIMR Main Menu. Beneficiary Master Information. Medicare Secondary Payer Information Group Health Organization. Hospice Enrollment. Surgery Information. End Stage Renal Disease. Beneficiary Cross-Reference. DMEPOS CMN Display. True Not In File Status. Claim History Information. Archieved History Information.
1596	• Medical Review of Home Health Services. HCFA–485—Home Health Certification and Plan of Treatment Data Elements. Medical Review Activity Reports.
1597	• Review of Hospice Bills. Billing for a Fourth Hospice Benefit Period. Focused Medical Review.
1598	• Hospital Outpatient Partial Hospitalization Services.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April Through June 1993]

Trans. No.	Manual/subject/publication number
1599	• Drugs and Biologicals. Drugs Covered Under Composite Rate Separately Billing Drugs. Antibiotics Furnished to Method II Patients.
1600	• CWF Utilization Edits. CWF Inpatient, SNF, Outpatient, Home Health, Hospice-Consistency Edits. CWF Adjustment Actions. Forms HCFA–L1001 and HCFA–L1002, Notification of Internal Adjustment Action(s) Taken by HCFA, Specifically the Common Working File.
1601	• Clinical Laboratory Improvement Amendments. Billing for Hospital Outpatient Services Furnished by Clinical Social Workers.
	Carriers Manual **Part 3—Claims Process (HCFA–Pub. 14–3)** **(Superintendent of Documents No. HE 22.8/7)**
IM–93–1	Rules for Calculating Medicare Secondary Payer Amounts, Effect of Primary Payments on Deductibles and Coinsurance, and Limitation on Right to Charge Beneficiary. Definition to Third Party Payer. When Medicare Secondary Benefits Are Payable. When Medicare Secondary Benefits Are Not Payable. Calculating Medicare Secondary Payments for Services Reimbursed on Reasonable Charge Baiss or Other Basis under Part B. Effect of Failure to File Proper Claim. Effect of Primary Payments on Deductibles and Coinsurance. Right of Physician or Supplier to Charge Beneficiary. Charging Expenses Against Annual Limit on Incurred Expenses for Services of Independently Practicing Physical Therapists.
1448	• Fraud and Abuse. Form SSA–3319, Referral of Potential Medicare Violation. Sample Letter to Notify Physician or Supplier of the Penalties for Assignment Violations. Form SSA–2808, Notice of Reported Assignment Agreement Violation.
1449	• Type of Service.
1450	• Drugs and Biologicals. Separately Billable Tests Furnished to Patients of Independent Dialysis Facilities.
1451	• List, Definition and Required Actions for Part B Basic Reply Disposition Codes.
1452	• List of Covered Surgical Procedures.
1453	• Notification of Payment.
1454	• Underpayments.
1455	• Physician and Supplier Billing Requirements for Services Furnished On or After September 1, 1990.
1456	• Medicare Participating Physicians/Suppliers Directory. Furnishing Participating Physicians/Suppliers Data to Railroad Retirement Board. Furnishing RRB with Participating Information for Other Than the General Enrollment Period.
1457	• Effect of Beneficiary Agreements Not to Use Medicare Coverage.
1458	• Claims for Outpatient Services Furnished by a Clinical Social Worker. Payment to Clinical Social Workers.
1459	• Outpatient Mental Health Treatment Limitation. Application of Limitation. Expenses Incurred Before 1990.
1460	• Denial of Medicare Payment for Compounded Drugs Produced in Violation of Federal, Food, Drug, and Cosmetic Act.
1461	• Physician and Supplier Billing Requirements for Services Furnished On or After September 1, 1990 (Inadvertently omitted from Trans. No. 1443).
	Carriers Manual **Part 4—Professional Relations (HCFA–Pub. 14–4)** **(Superintendent of Documents No. HE 22.8/7–4)**
7	• UPINs for Ordering/Referring Physicians. CWF Edits and Claims Processing Requirements. • Surrogate UPINs. Monitoring Compliance.
	Program Memorandum Intermediaries (HCFA–Pub. 60A) **(Superintendent of Documents No. HE 22.8/6–5)**
A–93–1	• Submission of Form HCFA–2540–92 (Skilled Nursing Facility and Skilled Nursing Facility Health Care Complex Cost Report).

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April Through June 1993]

Trans. No.	Manual/subject/publication number
	Program Memorandum Intermediaries/Carriers (HCFA–Pub. 60 A/B) (Superintendent of Documents No. HE 22.8/6–5)
AB–93–2	• Misleading Advertising or Solicitation by Providers of Medicare-Covered Services.
	State Operations Manual Provider Certification (HCFA–Pub. 7) (Superintendent of Documents No. HE 22.8/12)
258	• Reuse of Hemodialyzer and Other Dialysis Supplies.
259	• Clinical Laboratory Improvement Amendments of 1988.
	Regional Office Manual (HCFA–Pub. 23–2) Part 2—Medicare (Superintendent of Documents No. HE 22.8/8)
326	• Contractor Performance Evaluation Program. CPEP Principles. CPEP Review Report.
	Peer Review Organization (HCFA–Pub. 19) (Superintendent of Documents No. HE 8/8–15)
11	• Purpose of CAPs. Monitoring Responsibilities. CAP Format.
12	• Background. Definitions. Responsibilities of the Project Officer.
13	• General System Design—FFS. Peer Review Information Sampling System. PRO Process, Edit and Report System. Global Reports of Verified and Edited Reviews. Medical Review Automated Reporting System. Introduction. Boxing of Records—General. Boxing of Review Records. Boxing of Data. Boxing of Miscellaneous Records. Retention of Financial Records.
14	• Citations and Authority. Identification of Potential Violations. Requirements Prior to Initiating Sanction Procedures. Sanction Procedures for Substantial Violations. Sanction Procedures for Gross and Flagrant Violations. Procedures for Discussions With Practitioners or Other Persons. Initial Notification to the Practitioner or Other Person When Substantial and Gross and Flagrant Violations are Determined Concurrently. Practitioner Relocates to or Starts Practicing in Another PRO Area Prior to a Final Determination of a Violation. PRO Report to OIG. Review of PRO Report by the OIG. Imposition of Sanctions. Notification of Sanction to be Imposed. Effect of an Exclusion on Medicare Payments and Services. Reinstatement After Exclusion. Appeal Rights of the Practitioner or Other Person Under Section 1156. List of OIG Field Offices. Combined Initial Sanction Notice of Substantial Violation in a Substantial Number of Cases and in a Gross and Flagrant Violation.
15	• Authority. PRO/Carrier Meetings. Carrier Notice and Comment Process. PRO Medical Review Criteria. Carrier Advisory Committee. Reports.
16	• Request for Hearing of PRO Reconsideration of a Denial Determination. Preparing the Acknowledgment Letter. Assembling the Hearing Claim File. Prehearing Case Review. Routing the Hearing Claim File to OHA. Reporting Requirements.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April Through June 1993]

Trans. No.		Manual/subject/publication number
		Hearings by an ALJ.
		Appeals Council Review.
		Sample Acknowledgment Letter to Beneficiary/Representative When Hearing Request is Sent to the Hearing Office.
		How to Locate the Correct Hearing Office.
		Request for Hearing.
		Sample Letter to Fiscal Intermediary.
		Sample Enclosure for FI Letter.
		PRO Case Summary.
		Transmittal Notice—Hearing Case.
		Hearing Folder Cover Sheet.
17	•	Types of Denial.
		Notification of Denial.
		Timing of Denial Notice.
		Content of Denial Notice.
		Limitation of Liability Model Paragraphs.
		Reconsideration Model Paragraphs.
		Physician Attestation/Acknowledgment Errors Denial Model Notice.
		Record Not Submitted Timely Denial Model Notice.
		Billing Error Denial Model Notice.
		Preadmission Denial Model Notice.
		Admission Denial Model Notices.
		Continued Stay Denial Model Notices.
		Procedure Denial Model Notice.
		Day Outlier Denial Model Notice.
		Cost Outlier Denial Model Notices.
		DRG Changes as a Result of DRG Validation Model Notice.
		Outpatient/Ambulatory Surgery Denial Model Notices.
		Continued Stay Denial Completed Notice.
18	•	Responsibilities of the Board.
		Health Care Affiliate Limitations.
		Consumer Representative.
		Prohibition Against Sanctioned Board Members.
		Permitted Activities.
		Authority.
19	•	DRG Validation Re-reviews.
		Statutory and Regulatory Requirements.
		Requests for Reconsideration.
		PRO Reconsiderations.
		Reconsideration Process.
		Appeals.
		Reconsideration Notices—Hearings Model Paragraphs.
		Reconsideration Model Notice—Preadmission Denial.
		Reconsideration Model Notice—Admission Denial.
		Reconsideration Model Notice—Continued Stay Denial.
		Reconsideration Model Notice—Procedure Denial.
		Reconsideration Model Notice—Day Outlier Denial.
		Reconsideration Model Notice—Cost Outlier Denial.
		Re-Review Model Notice—DRG Changes as a Result of DRG Validation.
		Reconsideration Model Notice—Outpatient/Ambulatory Surgery Denial.
		Reconsideration Complete Notice—Continued Stay Denial.
		Hospital Manual (HCFA–Pub. 10) (Superintendent of Documents No. 22.88/2)
648	•	Billing for Mammography Screening.
649	•	Billing for Hospital Outpatient Partial Hospitalization Services.
650	•	Drugs and Biologicals.
		Drugs Covered Under Composite Rate.
		Separately Billable Drugs.
651 to 652	•	Notice to Beneficiaries.
		PRO Monitoring of Hospital Admission Notice Beneficiaries.
		An Important Message From Medicare.
	•	Clinical Laboratory Improvement Amendments.
		Billing for Hospital Outpatient Services Furnished by Clinical Social Workers.
		Home Health Agency Manual (HCFA–Pub. 11) (Superintendent of Documents No. HE 22.8/5)
260		Data Elements Needed to Render a Home Health Coverage Determination.
		HCFA–485—Home Health Certification and Plan of Treatment.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April Through June 1993]

Trans. No.	Manual/subject/publication number
261	Clinical Laboratory Improvement Amendments.
	Skilled Nursing Facility Manual (HCFA–Pub. 12) (Superintendent of Documents No. 22.8/3)
320	Billing for Mammography Screening.
321	Clinical Laboratory Improvement Amendments.
	Rural Health Clinic and Federally Qualified Health Center Manual (HCFA–Pub. 27) (Superintendent of Documents No. HE 22.8/19:985)
5	• Mental Health Services Limitation—Expenses Incurred for Physicians', Clinical Psychologists', and Clinical Social Workers Services Rendered in a Rural Health Clinic or Federally Qualified Health Center. Psychiatric Services Limitation Computation for Independent Rural Health Clinics and Federally Qualified Health Centers. Billing for Mawmmography Screening by Rural Health Clinics and Federally Qualified Health Centers.
6	• Clinical Laboratory Improvement Amendments.
	Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA–Pub. 29) (Superintendent of Documents No. HE.8/13)
60	• Laboratory Tests for Hemodialysis, Intermittent Peritoneal Dialysis and Continuous Cycling Peritoneal Dialysis.
61	• Clinical Laboratory Improvement Amendments.
	Hospice Manual (HCFA–Pub. 21) (Superintendent of Documents No. HE 22.8/18)
35	• Notice of Election. Completing the Uniform (Institutional Provider) Bill (Form HCFA–1450) Notice of Election. Billing for a Fourth Hospice Benefit Period.
36	• Clinical Laboratory Improvement Amendments.
	Provider Reimbursement Manual Part I—Chapter 27 Reimbursement for ESRD and Transplant Services (HCFA–Pub. 15–1–27) (Superintendent of Documents No. HE 22.8/4)
22	• Payment for Hepatitis B Vaccine Furnished to ESRD Patients.
	Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions (General) (HCFA–Pub. 15-IIA) (Superintendent of Documents No. HE 22.8/4)
15	• Submission of Cost Reports.
	Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions (Chapter 18) (HCFA–Pub. 15–II–R) (Superintendent of Documents No. HE 22.8/4)
1	• Outpatient Rehabilitation Provider Cost Report, Form HCFA–2088–92.
	Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions (Chapter 24) (HCFA–Pub. 15–IIX) (Superintendent of Documents No. HE 22.8/4)
5	• Worksheet A—Reclassification and Adjustment of Trial Balance of Expenses. Part I—All Provider Components. Part II—Hospital and Subproviders Only. Part A—Inpatient Hosptial Services Under PPS. Supplemental Worksheet F–2—Computation of Difference Between Total Interim Payments and Net Cost of Covered Services.
	Provider Reimbursement Manual Part II—Provider Cost Reporting Forms and Instructions (Chapter 28) (HCFA–Pub. 15–IIAB) (Superintendent of Documents No. HE 22.8/4)
2	• Corrections to Hospital and Hospital Health Care Complex Cost Report Form HCFA–2552–92 Issued October 1992. Part I—Analysis.

ADDENDUM III—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[April Through June 1993]

Trans. No.	Manual/subject/publication number
	Provider Reimbursement Manual **Part II—Provider Cost Reporting** **Forms and Instructions (Chapter 29)** **(HCFA–Pub. 15–IIAC)** **(Superintendent of Documents No. HE 22.8/4)**
1	• Independent Rural Health Clinic and Freestanding Federally Qualified Health Center Cost Report, Form HCFA–222–92.
	State Medicaid Manual **Part 4—Services (HCFA–Pub. 45–4)** **(Superintendent of Documents No. HE 22.8/10)**
62	• Less Than Effective and Identical, Related or Similar Drugs.
	State Medicaid Manual **Part 6—Payment for Services (HCFA–Pub. 45–6)** **(Superintendent of Documents No. HE 22.8/10)**
22	• Changes to Federal Upper Limits Listing.
	Medicare/Medicaid **Sanction—Reinstatement Report** **(HCFA–Pub. 69)**
93–3	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated.
93–4	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated.
93–5	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated.
93–6	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated.

ADDENDUM IV.—REGULATIONS AND NOTICES PUBLISHED APRIL THROUGH JUNE 1993

Publication date/citation	42 CFR Part	Title
Final Rules:		
01/19/93 (58 FR 4904)	433, 435, 436	Medicaid Program; Exemption of Poverty Level Pregnant Women from the Cooperation Requirements of Establishing Paternity and Obtaining Medical Support and Payments as a Condition of Eligibility; Technical Correction.
01/19/93 (58 FR 4908)	435, 436, 440	Medicaid Program; Eligibility and Coverage Requirements.
01/19/93 (58 FR 5212)	493	Medicare, Medicaid and CLIA Programs; CLIA Program Fee Collection; Correction.
01/19/93 (58 FR 5215)	493	Medicare, Medicaid and CLIA Programs; Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA) and Clinical Laboratory Improvement Act Program Fee Collection.

Publication date/Citation	Title
Notices:	
01/06/93 (58 FR 630)	Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 1993 (Correction).
01/07/93 (58 FR 2989)	Medicare and State Health Care Programs, Fraud and Abuse; Safe Harbors for Protecting Health Plans—Extension of Comment Period.
01/07/93 (58 FR 3028)	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—Third Quarter 1992.
01/15/93 (58 FR 4705)	Medicare Program; Uniform Hospital Billing and Payment Mechanisms..
01/21/93 (58 FR 5402)	Health Maintenance Organizations; HMO Qualification Determinations and Compliance Actions.
01/22/93 (58 FR 5617)	Health Care Programs; Fraud and Abuse; Amendments to OIG Exclusion and CMP Authorities Resulting From Public Law 100–93.
01/26/93 (58 FR 6095)	Medicaid Program; Limitations on Provider-Related Donations and Health Care-Related Taxes; Limitations on Payments to Disproportionate Share Hospitals; Correction.
02/12/93 (58 FR 8291)	Medicare Program; Meeting of the Practicing Physicians Advisory Council.
02/16/93 (58 FR 8568)	Medicare and Medicaid Programs; Requirements for Physician Incentive Plans in Prepaid Health Care Organizations.
02/19/93 (58 FR 9120)	Medicaid Program; Eligibility and Coverage Requirements.
02/19/93 (58 FR 9244)	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions (Correction).

Publication date/Citation	Title
03/02/93 (58 FR 12042)	Medicare Program; Peer Review Organizations: New PRO Contracts for All States and Territories and the District of Columbia.
03/31/93 (58 FR 16837)	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—Fourth Quarter 1992.

[FR Doc. 93–21243 Filed 8–31–93; 8:45 am]
BILLING CODE 4120–01–P

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting of the National Advisory Council on Aging

Notice is hereby given of a change for the meeting of the National Advisory Council on Aging, National Institute on Aging, September 29–30, 1993, to be held at the National Institutes of Health, Building 31, Conference Room 10, Bethesda, Maryland published in the **Federal Register** on August 12 (42978 Vol. 58, No. 154). This meeting was scheduled to be open to the public on Wednesday, September 29 from 8 until 12 noon and again on Thursday, September 30 from 8:30 a.m. until adjournment. The meeting was scheduled to be closed on Wednesday, September 29 from 1 to 3:30 p.m.

The meeting will now be open to the public on Wednesday, September 29, from 8 to 9:30 a.m. and again from 1 p.m. until recess and again on Thursday, September 30 from 8 a.m. until adjournment. The closed portion of the meeting will take place on Wednesday, September 29 from 9:30 a.m. to 12 noon.

Dated: August 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–21308 Filed 8–31–93; 8:45 am]
BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Research Training Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Research Training Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on October 3–5, 1993, at the Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on October 3, from 7:30 p.m. to approximately 8:30 p.m., to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on October 3, from 8:30 p.m. to adjournment on October 5, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Individuals who plan to attend and need special assistance, such as sign language interpretations or other reasonable accommodations, should contact the Scientific Review Administrator in advance of the meeting.

Dr. Kathryn Ballard, Scientific Review Administrator, NHLBI, Westwood Building, room 550, Bethesda, Maryland 20892, (301) 594–7450, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: August 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–21306 Filed 8–31–93; 8:45 am]
BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the National Heart, Lung, and Blood Advisory Council and Its Research Subcommittee and Training Subcommittee

Pursuant to Public 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, October 21–22, 1993, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892. In addition, the Research Subcommittee and the Training Subcommittee of the above Council will meet together on October 20, at the Marriott Hotel, Bethesda, Maryland.

The Council meeting will be open to the public on October 21 from 9 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., section 10(d) of Public Law 92–463, the Council meeting will be closed to the public from approximately 3:30 p.m. to recess on October 21 and from 8:30 a.m. to adjournment on October 22 for the review, discussion and evaluation of individual grant applications. The meetings of the Research Subcommittee and the Training Subcommittee of the above Council on October 20, will be closed from 7 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meetings and a roster of the Council members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Westwood Building, room 7A–17, National Institutes of Health, Bethesda, Maryland

20892, (301) 594–7454, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: August 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–21307 Filed 8–31–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretaries for Public and Indian Housing, Community Planning and Development, and Housing-Federal Housing Commissioner

[Docket Nos. N–93–3636; FR–3501–N–02, N–93–3628; FR–3353–N–02, N–93–3611; FR–3490–N–03]

Fund Availability for HOPE for Public and Indian Housing Homeownership Program (HOPE 1); HOPE for Homeownership of Multifamily Units (HOPE 2); and HOPE for Homeownership of Single Family Homes (HOPE 3)

AGENCY: Offices of the Assistant Secretaries for Public and Indian Housing, Community Planning and Development, and Housing-Federal Housing Commissioner, HUD.

ACTION: Notices of fund availability for the HOPE 1, 2, and 3 Programs for FY 1993; amendments.

SUMMARY: This Notice announces an increase in the amount of funds available for implementation grants under 1993 NOFAs published previously for the following programs: HOPE for Public and Indian Housing Homeownership Program (HOPE 1), HOPE for Homeownership of Multifamily Units (HOPE 2), and HOPE for Homeownership of Single Family Homes (HOPE 3) programs.

DATES: Application due dates for each program are the same as announced in the previously published NOFAs.

FOR FURTHER INFORMATION CONTACT: Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410: (HOPE 1) Gary Van Buskirk, Office of Resident Initiatives, room 4112, telephone (202) 708–4233; (HOPE 2) Margaret Milner, Office of Resident Initiatives, room 6130, telephone (202) 708–4542; and (HOPE 3) John Garrity, HOPE 3 Division, room 7158, telephone (202) 708–0324. To provide service for persons who are hearing- or speech-impaired, these numbers may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Purpose and Substantive Description

Earlier this year, the Department published three NOFAs announcing the availability of funding for implementation grants as follows: $182,047,160 for the HOPE for Public and Indian Housing Homeownership Program (HOPE 1) published August 2, 1993 (58 FR 41126); $102,200,000 for the HOPE for Multifamily Homeownership Program (HOPE 2) published July 16, 1993 (58 FR 38466); and $86,000,000 for the HOPE for Single Family Homeownership Program (HOPE 3) published July 7, 1993 (58 FR 36546). These funds were appropriated by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriation Acts for fiscal years 1992 and 1993. The Department did not include funds for planning grants ($24 million for HOPE 1; $5 million for HOPE 2; and $7 million for HOPE 3) in the HOPE NOFAs because those funds were under consideration for reprogramming in order to fund a larger number of implementation grants. The Department has concluded its processing of the reprogramming and is now making those funds available for implementation grants through this Notice.

Accordingly, the HOPE 1 NOFA is amended to increase the amount available by $24 million from $182,047,160 to $206,047,160; the HOPE 2 NOFA is amended to increase the amount available by $5 million from $102,200,000 to $107,200,000; and the HOPE 3 NOFA is amended to increase the amount available by $7 million from $86,000,000 to $93,000,000.

In addition, under the HOPE 3 final rule at 24 CFR 572.210(b), which was published in conjunction with the HOPE 3 NOFA, the amount made available for implementation grants has been allocated to each of the 10 HUD Regions by a formula. However, no Region will be allocated less than $4 million in order to ensure that national geographic diversity is maintained. The increased funding available results in the following revised allocation by HUD Region for FY 1993:

Region I	$4,020,000
Region II	9,771,000
Region III	8,586,000
Region IV	17,255,000
Region V	14,579,000
Region VI	14,208,000
Region VII	4,000,000
Region VIII	4,000,000
Region IX	12,581,000
Region X	4,000,000

Readers should refer to the NOFAs (publication dates and citations listed above) for other information concerning applications for funding under the HOPE programs. No information contained in those NOFAs, other than the amounts available, is changed by this Notice.

Dated: August 26, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–21296 Filed 8–31–93; 8:45 am]

BILLING CODE 4210–32–M

Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention

[Docket No. N–93–3447; FR–3263–N–02]

NOFA for Lead-Based Paint Abatement in Low- and Moderate-Income Private Housing: Announcement of Funding Awards

AGENCY: Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for Lead-Based Paint Abatement in Low- and Moderate-Income Private Housing. The announcement contains the names and addresses of the award winners and the amounts of awards.

FOR FURTHER INFORMATION CONTACT: Ellis G. Goldman, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755–1822, ext. 112. The TDD number for the hearing impaired is (202) 708–9300 (not a toll-free number), or 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The purpose of the competition was to award grant funding for approximately $47,700,000 for the grant program for lead-based paint abatement in low- and moderate-income private housing.

The 1993 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** notice published on Monday, July 6, 1992 (57 FR 29774). Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

A total of $25,537,820 already has been awarded to five grantees. An additional five grants currently are being negotiated and will be announced in a subsequent **Federal Register** notice. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards as follows:

NOFA FOR LEAD-BASED PAINT ABATEMENT IN LOW- AND MODERATE-INCOME PRIVATE HOUSING

Baltimore City Health Department, 303 E. Fayette Street, Baltimore, MD 21202	$5,710,451
State of California, Department of Economic Opportunity, 700 North Tenth Street, room 272, Sacramento, CA 95814	6,000,000
State of Rhode Island, Department of Health, 206 Cannon Building, Three Capitol Hill, Providence, RI 20908–5097	3,943,028
City of Cleveland, Department of Public Health, 1925 St. Clair Avenue, Cleveland, OH 44114	3,884,341
Commonwealth of Massachusetts, Executive Office of Communities and Development, 100 Cambridge Street, 18th Floor, Boston, MA 02202	6,000,000

Dated: August 25, 1993.

Arthur S. Newburg,

Director, Office of Lead-Based Paint Abatement and Poisoning Prevention.

[FR Doc. 93–21296 Filed 8–31–93; 8:45 am]

BILLING CODE 4210–32 M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–100–6321–01; G–3–360; Case File #OR–49268]

Environmental Assessment; Notice of Realty Action; Exchange of Public Lands

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of Availability, Environmental Assessment; Notice of Realty Action, Exchange of Public Lands.

SUMMARY: The Bureau of Land Management (BLM) in the State of Oregon, Douglas County, Roseburg District, has completed an environmental assessment (EA) and draft Finding of No Significant Impact (FONSI) for a proposed amendment to the North Umpqua Resource Area and Drain Resource Area Management Framework Plans (MFPs). The purpose of the plan amendments is to make available for exchange certain public lands managed by the BLM in Douglas County, Oregon. The MFP amendments will facilitate the Dunning Ranch exchange proposed by 2Linc., an Oregon corporation. Under the exchange proposal, up to 360 acres of revested Oregon and California (O & C) timber land would be exchanged for an approximately 6,600 acre ranch. With this publication in the **Federal Register**, the public is hereby notified of the availability of the proposed plan amendment EA and draft FONSI for review and comment.

DATES: Comments are due on or before November 1, 1993.

ADDRESSES: Bureau of Land Management, Roseburg District Office, 777 NW Garden Valley Blvd., Roseburg, OR 97470, Phone: (503) 440–4930.

FOR FURTHER INFORMATION CONTACT: Eileen Cotnam, BLM Realty Specialist (503) 440–4930. Copies of the EA and FONSI are available from the BLM at the address above.

SUPPLEMENTARY INFORMATION: Publication of this Notice Of Availability and Notice of Realty Action in the **Federal Register** is in conformance with regulations published in 43 CFR 1610.2 and 1610.3 and 43 CFR 2201.1.

Public lands proposed for exchange and private parcels offered in exchange were identified in a previous Notice of Realty Action published in the **Federal Register** (FR Doc. 93–5600, March 19, 1993, page 15160). Contingent upon approval of the amended MFPs, the described public lands will be in conformance with the approved land use plans and, therefore, suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1716.

The parcels being proposed for disposal are generally considered to be isolated and difficult to manage. These public lands are classified as suitable habitat for the Northern Spotted Owl (NSO), a Federally listed threatened species. No known NSO nesting sites occur within any exchange parcels. The public land parcels are also within the known distribution of the Columbian White-tailed Deer (CWTD), a Federally listed Endangered species.

The parcels identified for acquisition through the exchange process are considered to contain high public values including recreation, wetlands, wildlife, and special status plants. In particular, the 6,600 acre ranch has been classified as suitable CWTD habitat. If this land is secured (i.e. owned, controlled, protected, or otherwise dedicated to the conservation of CWTD), and other secure habitat is considered, the land base and habitat requirements set forth in the CWTD Recovery Plan would be met and the species may move towards being removed from endangered species status. The offered private parcels also contain important special status plant habitat (plant species with potential for listing as a threatened or endangered species).

The value of lands proposed for exchange have not been determined. As required by BLM regulation, the exchange values shall be fair market value as determined by appraisal. In the event appraised values are not equal, the exchange values would be equalized by a cash payment to the United States in an amount not to exceed twenty-five percent (25%) of the value of the public lands, or by deleting a parcel or parcels or a combination of both.

Public lands would be transferred subject to: (1) The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945); and (2) all valid existing easements, leases, permits, licenses, or other rights of record.

Formal consultation with the US Fish and Wildlife Service, a cooperating agency, concerning impacts to the Northern Spotted Owl, Marbled Murrelet, and Columbian White-tailed Deer is ongoing.

The EA analyzes the plan amendment and three alternatives (No Action,

Proposed Action, and Maximum Protection) for the proposed exchange.

The No Action Alternative would result in continuation of the existing situation. Under this alternative, none of the public lands would pass out of public ownership, and the private lands would not be acquired for the protection of CWTD habitat.

Under the Proposed Action, the Federal Government would acquire the surface and mineral estate of the offered private parcels in exchange for the surface and mineral estate of all or a portion of the selected public lands. The land obtained through this exchange would be managed for CWTD habitat and protection of special status plants. The acquired parcels would also be designated an "Area of Critical Environmental Concern", as identified in section 202 (c)(3) of the Federal Land Policy Management Act, except for up to 360 acres which would be managed primarily for timber production. The Proposed Action also identifies management prescriptions and restrictions which would be followed for the acquired lands.

The Maximum Protection Alternative would be similar to the proposed action except for the utilization of maximum discretionary authorities to protect or restrict any potential threat to the habitat. This alternative would include a "No Surface Occupancy" stipulation for energy and mineral resources, no livestock grazing, no vegetative product sales, no motorized or mechanized recreation, and no developed trails.

The BLM is inviting comments on the EA for the proposed land use plan amendments and the proposed exchange. Comments may be addressed to Gail Schaefer, BLM Resource Area Manager, at the Roseburg District Office. Comments should be submitted by November 1, 1993.

No public meetings are planned for this exchange proposal at this time. Potential need for public meetings will be evaluated based on the level of public input as a result of public notification procedures. Any public meetings will be announced at least 15 days in advance.

A proposed decision on the proposed exchange will be published later this summer and mailed to known interested parties. It will also be announced to local media and published in the **Federal Register**.

Dated: August 13, 1993.

James Moorhouse,

District Manager.

[FR Doc. 93-20378 Filed 8-31-93; 8:45 am]

BILLING CODE 4310-33-M

[MT-920-03-4110-03, MTM 76350]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas lease MTM 76350, Daniels County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in Sec. 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: August 23, 1993

Cynthia L. Embretson,

Chief, Fluids Adjudication Section.

[FR Doc. 93-21177 Filed 8-31-93; 8:45 am]

BILLING CODE 4310-DN-M

[CO-010-03-4330-02]

Temporary Travel Restrictions for the Fourmile Creek and Serviceberry Mountain Areas of Colorado

AGENCY: Little Snake Resource Area, Bureau of Land Management, DOI.

ACTION: Order of area, road and trail use restriction.

SUMMARY: This order closes certain public lands to motorized vehicle use except snowmobiles in the Fourmile Creek area and closes certain public lands to motor vehicle use except for all-terrain-vehicles and snowmobiles in the vicinity of Serviceberry Mountain areas in the Little Snake Resource Area, Craig District. This order modifies the existing Off Highway Vehicle (OHV) use "Open" designation on 4,600 acres. This order is issued under the authority of 43 CFR 8364.1 and 43 CFR 834.2(s) as a temporary measure while the off-highway vehicle (OHV) management portion of the Little Snake Resource Area, Resource Management Plan is reviewed and modified as needed to address public issues, concerns and needs, as well as resource uses, development, impacts and protection.

This order affects public lands in Moffat County thus described:

(1) Fourmile Creek area:

(A) The state school lands under easement to the BLM within:

T 11N, R 91W
Sec. 36 (east of fence adjacent to Moffat County Road 101)

(B) Public lands within:

T 11N, R 90W
Sec. 29, Lot 15
Sec. 31
Sec. 32
T 10N, R 90W
Sec. 5
Sec. 6
Sec. 7

(2) Public lands in the Serviceberry Mountain Area within:

T 12N, R 90W
Sec. 21, Lot 16 (south of the fence line)
Sec. 27
Sec. 28
Sec. 29
Sec. 32
Sec. 33
Sec. 34
T 11N, R 90W
Sec. 3

EFFECTIVE DATES: This restriction order shall be effective September 7, 1993, and shall remain in effect until rescinded or modified by the Authorized Officer.

SUPPLEMENTARY INFORMATION: Current OHV use designations for public lands in the area, established in the Little Snake Resource Area Resource Manage Plan, 1989, allow motorized vehicle use on and off the roads and trails year round. State and local agencies and neighboring landowners expressed concerns that the two easements would open the Serviceberry Mountain and Fourmile Creek to motorized traffic (consistent with the concurrent RMP travel management designation) and cause unacceptable impacts to natural resources, especially wildlife and soils.

The affected public lands includes identified soil erosion hazard and important high quality big game habitat. The public lands are neighbored by private lands and in many places the boundaries are not marked or otherwise identified, thus creating potential trespass situations. The area also contains several grazing allotments which at times require motorized vehicle access by the permittee for maintenance or range facilities. Given due consideration of the concerns expressed by the public and the potential impacts of unrestricted motorized vehicle use, a modification of existing OHV use designations is necessary to adequately protect natural resources on public land, minimize conflicts with other uses, prevent trespass problems, and ensure public

safety until these issues can be more thoroughly addressed in activity planning for these areas. Provisions will be made to allow for necessary motorized travel on the public lands for administrative purposes and to facilitate non-motorized public access to the public lands at Fourmile Creek and non-motorized and ATV access to the public lands at Serviceberry Mountain. The area, roads, and trails affected by this order will be posted with appropriate regulatory signs. Information, including detailed maps of the restricted area, roads and trails will be available at the access sites and in the Resource Area Office and District Office at the addresses shown below.

Persons who are exempt from the restrictions contained in this notice include:

1. Any Federal, State, or local officers engaged in fire, emergency and law enforcement activities.

2. BLM employees engaged in official duties.

3. Persons or agencies holding a valid permit or right of way on or across the restricted public land for access to private land, for purposes related to the access of private land on said easement only.

4. Persons or agencies holding a special use permit or right of way for access to maintenance and operations of authorized facilities within the restricted area, for purposes related to access for maintenance and operation of said authorized facilities, and provided such motorized use is limited to the routes specifically identified in the special use permit or right of way.

5. Grazing permittees authorized during the permitted grazing season for grazing related purposes provided such motorized use is limited to existing roads and trails and subject to any additional conditions in the grazing permit. Any motorized use before or after the permitted grazing season necessary for maintenance and operation of range facilities shall require advance approval by the authorized officer specifically authorizing such use and subject to whatever restrictions are deemed necessary.

Penalties

Violations of this restriction order are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT:

John Husband, Area Manager, Little Snake Resource Area, 1280 Industrial Avenue, Craig, Colorado 81625, (303) 824–4441

Bill Pulford, District Manager, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129, Phone: (303) 824–8261

Dated: August 26, 1993.

Robert W. Schneider,

Associate District Manager.

[FR Doc. 93–21227 Filed 8–31–93; 8:45 am]

BILLING CODE 4310–JB–M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–782300

Applicant: Zoological Society of San Diego, San Diego, CA

The applicant requests a permit to import one captive-born male Bactrian deer (*Cervus elaphus bactrianus*) from Tallinn Zoological Gardens, Tallinn, Estonia, for the purpose of enhancement of propagation and survival of the species.

PRT–781819

Applicant: Robert Case, Jackson, MS

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. M.J. D'Alton, "Kosierskraal", Bredasdorp, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–782298

Applicant: Jackson Zoological Park, Jackson, MS

The applicant requests a permit to export one captive-born male clouded leopard (*Neofelis nebulosa*) to Howletts & Port Lympne Wild Animal Parks, United Kingdom, for the purpose of enhancement of propagation and survival of the species.

PRT–781550

Applicant: Point Defiance Zoo & Aquarium, Tacoma, WA

The applicant requests a permit to export one captive-born male siamang (*Hylobates syndactylus*) to Jardin Zoologique Du Quebec, Quebec, Canada for the purpose of enhancement of propagation and survival of the species.

PRT–781895

Applicant: Metro Washington Park Zoo, Portland, OR

The applicant requests a permit to import eight pair of captive-born fruit bats (*Pteropus rodricensis*) from Black River Aviaries, River Noire, Mauritius, and the Royal Zoological Society of Ireland, Dublin, Ireland, for the purpose of enhancement of propagation and survival of the species.

PRT–781822

Applicant: William Hardy, Franklin Lakes, NJ

The applicant requests a permit to import up to 150 blood samples collected from cheetahs (*Acinonyx jubatus*) in Botswana during a predator trapping and relocation program. Samples will be used for scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: August 27, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–21297 Filed 8–31–93; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–639 and 640 (Final)]

Stainless Steel Flanges From India and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–639 and 640 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India and Taiwan of stainless steel flanges,[1]

[1] The imported products covered by these investigations (as defined by the U.S. Department

provided for in subheadings 7307.21.10 and 7307.21.50 of the Harmonized Tariff Schedule of the United States, that have been preliminarily found, by the U.S. Department of Commerce, to be sold in the United States at less than fair value. The Commission must complete final antidumping investigations no later than 45 days from Commerce's final determinations, or in this case by February 2, 1994.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: August 2, 1993.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain stainless steel flanges from India and Taiwan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on December 31, 1992, by Flowline Division, Markovitz Enterprises, Inc., New Castle, PA; Gerlin, Inc., Carol Stream, IL; Ideal Forging Corp., Southington, CT; and Maass Flange Corp., Houston, TX.

of Commerce) are certain forged stainless steel flanges, both finished and unfinished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connections; threaded, used for threaded line connections; slip-on and lap joint, used with stub ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this investigation are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM–351.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in these investigations will be placed in the nonpublic record on December 8, 1993, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on December 22, 1993, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 15, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 17, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigations as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is December 16, 1993. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is January 4, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before January 4. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: August 26, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–21273 Filed 8–31–93; 8:45 am]

BILLING CODE 7010–01–M

[Investigation No. 337–TA–356]

Certain Integrated Circuit Devices, Processes for Making Same, Components Thereof, and Products Containing Same; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S.

International Trade Commission on July 26, 1993, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of National Semiconductor Corporation, 2900 Semiconductor Drive, P.O. Box 58090, M/S 16–135, Santa Clara, California 95051, and Fairchild Semiconductor Corporation, 2900 Semiconductor Drive, P.O. Box 58090, M/S 16–135, Santa Clara, California 95051. A supplement to the complaint was filed on August 11, 1993.

The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain integrated circuit devices that have been processed abroad by a method covered by claim 2 of U.S. Letters Patent 4,325,984 or that infringe claims 1, 2, 3, 4, 5, 10, 11, 13, 14, 15, and 18 of U.S. Letters Patent 4,538,247, claims 5 and 8 of U.S. Letters Patent 4,346,351, claims 1, 2, and 3 of U.S. Letters Patent 4,075,509, claims 1, 2, 4, 8, 9, and 10 of U.S. Letters Patent 4,567,580, claim 1 of U.S. Letters Patent 4,238,839, and claims 4, 6, and 7 of U.S. Letters Patent 4,191,900, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Thomas L. Jarvis, Esq. (202–205–2568) or Mary Jane Boswell, Esq. (202–205–2582), Office of Unfair Import Investigations, U.S. International Trade Commission.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 25, 1993, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

Whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain integrated circuit devices, components thereof, or products containing same by reason of alleged infringement of (1) claims 1, 2, 3, 4, 5, 10, 11, 13, 14, 15, or 18 of U.S. Letters Patent 4,538,247, (2) claims 5 or 8 of U.S. Letters Patent 4,346,351, (3) claims 1, 2, or 3 of U.S. Letters Patent 4,075,509, (4) claims 1, 2, 4, 8, 9, or 10 of U.S. Letters Patent 4,567,580, (5) claim 1 of U.S. Letters Patent 4,238,839, (6) claims 4, 6, or 7 of U.S. Letters Patent 4,191,900, or (7) claim 2 of U.S. Letters Patent 4,325,984, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

National Semiconductor Corporation, 2900 Semiconductor Drive, P.O. Box 58090, M/S 16–135, Santa Clara, California 95051.
Fairchild Semiconductor Corporation, 2900 Semiconductor Drive, P.O. Box 58090, M/S 16–135, Santa Clara, California 95051.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Mitsubishi Electric Corporation, Mitsubishi Denki Building 2–3, Marunouchi 2-Chome, Chidyoda-ku, Tokyo 100, Japan.
Mitsubishi Electronics America, Inc., 5665 Plaza Drive, Cypress, California 90630.

(c) Thomas L. Jarvis, Esq. and Mary Jane Boswell, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401, Washington, DC 20436, who shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: August 26, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–21274 Filed 8–31–93; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) the agency form number, if any, and the appiicable component of the Department sponsoring the collection;

(3) how often the form must be filled out or the information is collected;

(4) who will be asked or required to respond, as well as a brief abstract;

(5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) an estimate of the total public burden (in hours) associated with the collection; and,

(7) an indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collections

(1) Telephone Verification System Pilot, Employer Assessment.
(2) G–897. Immigration and Naturalization Service.
(3) One-time response.
(4) Businesses or other for-profit, small businesses or organizations. This assessment will be used to determine the satisfaction of employers who are participating in the Telephone Verification System pilot program. The users of the system are various employers throughout the United States.
(5) 200 annual responses at .166 hours per response.
(6) 33 annual burden hours.
(7) Not applicable under 3504(h).
(1) Nonimmigrant classes; 1, 2, 3, 4, 5, 6, and 7; Control of Employment of Aliens.
(2) No form number. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households, Federal agencies or employees. This Standardized Supporting Letter for NATO Dependent Employment will facilitate applications for employment by dependents of certain principal aliens classified as NATO–1, 2, 3, 4, 5, 6, and 7 nonimmigrants by ensuring that they are given proper consideration.
(5) 125 annual responses at .25 hours per response.
(6) 31.25 annual burden hours.
(7) Not applicable under 3504(h).

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Arrival Information.
(2) Form N–14A. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. The information obtained through this collection will be used to identify arrival records of aliens applying for benefits. Needed primarily to identify arrival information for arrivals prior to 1924.
(5) 1,000 annual responses at .25 hours per response.
(6) 250 annual burden hours.
(7) Not applicable under 3504(h).
Public comment on these items is encouraged.

Dated: August 26, 1993.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 93–21199 Filed 8–31–93; 8:45 am]

BILLING CODE 4410–10–M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Archer Rubber Co.* Civil Action No. 90–40110, was lodged on August 18, 1993 with the United States District Court for the District of Massachusetts resolving the matter. The proposed Consent Decree concerns violations by Archer Rubber Co. of section 113 of the Clean Air Act ("CAA"), 42 U.S.C. 7413, and applicable provisions of the Massachusetts State Implementation Plan ("SIP") at Archer Rubber's facilities located in Milford, Massachusetts. The CAA violations alleged in the Complaint include emissions of volatile organic compounds in excess of the levels authorized by the Massachusetts SIP.

Under the terms of the Consent Decree, the defendant will pay a total civil penalty of $200,000 to the United States. In addition, Archer Rubber will undertake significant injunctive relief to come into compliance with the CAA and the Massachusetts SIP, including installation of emission control equipment, and testing of the equipment to insure that Archer Rubber's emissions comply with applicable limits.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Archer Rubber Co.*, DOJ Ref. #90–5–2–1–1493.

The proposed consent decree may be examined at the office of the United States Attorney, 1003 J.W. McCormack Post Office and Courthouse, Boston, MA 02109 c/o Sharon Williams, (617) 223–9403; the Region I Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $17.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–21180 Filed 8–31–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Resource Conservation and Recovery Act and the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 23, 1993, a proposed Consent Decree in *United States* versus *United Technologies Corporation*, No. H–90–715 (JAC) (D. Conn.), was lodged with the United States District Court for the District of Connecticut. The Second Amended Complaint in this action, which seeks civil penalties and injunctive relief, was filed by the United States against the United Technologies Corporation ("UTC"). The Second Amended Complaint alleges that UTC violated certain provisions of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6909 *et seq.*, at the following eight facilities located in the State of Connecticut: Six facilities that are part of the UTC's Pratt & Whitney Division ("P&W") located on Newell Street in Southington, Connecticut, Washington Avenue in North Haven, Connecticut, Aircraft Road in Southington, Connecticut, Aircraft Road in Middletown, Connecticut, Main Street in East Hartford, Connecticut, and Colt Street in East Hartford, Connecticut; one facility that is part of UTC's Hamilton Standard Division located in Windsor Locks, Connecticut; and one facility that is part of UTC's Sikorsky Aircraft Division located in Stratford, Connecticut. In addition, the Second Amended Complaint alleges that UTC violated certain provisions of the Clean Water Act ("CWA"), 33 U.S.C.

1251 *et seq.*, at all of the P&W facilities listed above (except for the P&W facility located at Colt Street in East Hartford, Connecticut), as well as the P&W facility located in Rocky Hill, Connecticut, the Hamilton Standard facility located in Windsor Locks, Connecticut, and the United Technologies Research Center located in East Hartford, Connecticut.

The State of Connecticut has filed a Complaint in Intervention in the action which joins in the CWA claims filed by the United States, and which also adds a number of related pendant claims under State law.

The proposed Consent Decree is a settlement of the claims filed by both the United States and the State of Connecticut. The Consent Decree provides that UTC will pay $4,251,910 to the United States, and $1,050,000 to the State of Connecticut, for a total civil penalty of $5,301,910. In addition, the Consent Decree sets forth specific injunctive relief related to the RCRA violations, the CWA violations, and the state law violations. The Consent Decree also requires UTC to implement an extensive multi-media environmental audit.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* versus *United Technologies Corporation*, DOJ No. 90–7–1–536.

The proposed Consent Decree may be examined at the Region I Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts 02203 (Amelia Katzen: 617–565–1133); at the office of the United States Attorney, District of Connecticut, Connecticut Financial Center, 24th Floor, 157 Church Street, New Haven, Connecticut 06150 (Sharon Jaffe: 203–773–2108), and at the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005 (202–624–0982).

A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $44.00 made payable to Consent Decree Library (25 cents per page reproduction cost).

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–21179 Filed 8–31–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Federal Water Pollution Control Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *In the Matter of Nautilus Motor Tanker Company, Ltd.*, Civil Action No. 90 CV 2419, was lodged on August 18, 1993 with the United States District Court for the District of New Jersey. The tanker M/T BT Nautilus on June 7, 1990 illegally discharged 250,000 gallons of No. 6 fuel oil into the New York/New Jersey Harbor in violation of the Federal Water Pollution Control Act as amended, 33 U.S.C. 1251 *et seq.* As a result of the illegal discharge of oil, natural resources owned by, or within the trusteeship of, the United States, the States of New York and New Jersey, and the City of New York, were injured or lost. The consent decree requires Nautilus to pay to the governments $3.3 million in compensation for natural resource damages and $700,000 in response costs in exchange for which Nautilus is released from all civil claims by the governments arising out of the spill. $3.3 million of the monies recovered will be placed in a trust account under the supervision of the court and will be used by the governments to restore, rehabilitate, replace, and acquire the equivalent of the natural resources injured by the spill.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In the Matter of Nautilus Motor Tanker Company, Ltd.*, DOJ Ref. #90–5–1–1–3575.

The proposed consent decree may be examined at the office of the United States Attorney, 970 Broad Street, room 502, Newark, New Jersey 07102; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–21181 Filed 8–31–93; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on July 23, 1993, Cambridge Isotope Lab, 20 Commerce Way, Woburn, Massachusetts 01801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Morphine (9300)	II

The firm will manufacture small quantities of the above controlled substances, labeled with stable isotopes for use as laboratory standards and for research and biochemical purposes only.

Any other such applicant and any person who is presently registered with DEA to manufacture substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 1, 1993.

Dated: August 25, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–21191 Filed 8–31–93; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on July 28, 1993, Johnson Matthey Inc., Custom

this is notice that on July 28, 1993, Johnson Matthey Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made written request to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance, 2,5-Dimethoxyamphetamine (7396).

The firm plans to procure the controlled substance for conversion to an exempt product for resale.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 1, 1993.

Dated: August 25, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–21188 Filed 8–31–93; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 17, 1993, Stepan Company, Natural Products Dept., 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040)	II
Cocaine (9041)	II
Benzoylecgonine (9180)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 1, 1993.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Director, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: August 25, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–21189 Filed 8–31–93; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on February 17, 1993, Stepan Company, Natural Products Dept., 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 1, 1993.

Dated: August 25, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–21190 Filed 8–31–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on recordkeeping/ reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Revision

Employment and Training Administration

Standard Job Corps Center RFP and Related Contractor Information Gathering

1205–0219; ETA 6–37, 6–38, 6–39, 6–124, 6–125, 6–127, 6–128, 2181, 2181A, 2110, 3–28, 6–131 A/B/C, 6–106, 6–101, 6–104, 6–105, 6–107, 6–108, 6–61, 6–102, 6–103, 6–40, 6–99, 6–112, 6–135, 6–136, 6–142B

On occasion, Weekly, Monthly, Quarterly, Semi-Annual, Annually

State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions, Small businesses or organizations

Form #	Affected public	Respondents	Frequency	Average time per response
ETA 6–37, 6–38, 6–39	JC Centers	108	Quarterly	15 minutes.
ETA 6–127	JC Centers	108	Monthly	2 hours.
ETA 6–125	JC Centers	108	Annually	15 minutes.
ETA 6–128	JC Centers	108	Annually	2 minutes.
ETA 2181, 2181A	JC Centers	250	Annually	2 hours.
ETA 2110	JC Centers	108	Monthly	2 1/2 hours.
ETA 6–124	JC Centers	108	Annually	1 hour.
ETA 6–142B	JC Centers	108	Monthly	3 hours, 33 minutes.
ETA 3–28	JC Centers	78	373	1 minute.
Center Oper Plan	JC Centers	78	Annually	28 hours.
Maintenance Plan	JC Centers	108	Annually	5 hours.
C/M Welfare Plan	JC Centers	108	Annually	2 hours.
Annual VST (if applicable)	JC Centers	108	Annually	4 hours.
Energy Conservation	JC Centers	108	Annually	5 hours.
Outreach, Screening (if applicable)	JC Centers	108	Annually	2 hours.
Annual Staff Training	JC Centers	108	Annually	1 hour.
ETA 6–131A	Corpsmembers	1,500	One-time	3 minutes.
ETA 6–131B	Corpsmembers	3,000	One-time	9 minutes.
ETA 6–131C	Corpsmembers	1,500	One-time	1 minute.
ETA 6–106	Corpsmembers	60,000	One-time	3 minutes.
ETA 6–101	Corpsmembers	500	As needed	3 minutes.
ETA 6–104	Corpsmembers	10,000	As needed	1 minute.
ETA 6–105	Corpsmembers	60,000	Annually	3 minutes.
ETA 6–107	Corpsmembers	60,000	Quarterly	3 minutes.
ETA 6–108	Corpsmembers	1,500	Weekly	3 minutes.
ETA 6–61	Corpsmembers	60,000	One-time	9 minutes.
ETA 6–102	Corpsmembers	3,500	As needed	9 minutes.
ETA 6–103	Corpsmembers	250	As needed	3 minutes.
ETA 6–40	Corpsmembers	60,000	One-time	2 minutes.
ETA 6–99	Corpsmembers	60,000	One-time	9 minutes.
ETA 6–112	Corpsmembers	60,000	One-time	1 minute.
ETA 6–135	Corpsmembers	60,000	One-time	1 minute.
ETA 6–136	Corpsmembers	60,000	One-time	9 minutes.
TWX Auth Med Terms	Corpsmembers	1,500	Occasionally	1 minute.
Procurement Activity	JC Contractors	4	As needed	2,200 hours.

109,485 total hours.

Standard Request for Proposal for the operation of a Job Corps Center completed by prospective contractors for competitive procurements and Federal paperwork requirements for contract operators of such centers.

Signed at Washington, DC this 26th day of August, 1993.

Richard B. Baker,

Acting Departmental Clearance Officer.

[FR Doc. 93–21272 Filed 8–31–93; 8:45 am]

BILLING CODE 4510–30–P

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Baylor Rush, Inc.

[Docket No. M–93–213–C]

Baylor Rush, Inc., P.O. Box 32, Saint Clair, Pennsylvania 17970 has filed a petition to modify the application of 30 CFR 75.332 (b)(1) and (b)(2) (working sections and working places) to its No. 2 Slope (I.D. No. 36–01789) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during preshift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Baylor Rush, Inc.

[Docket No. M–93–214–C]

Baylor Rush, Inc., P.O. Box 32, Saint Clair, Pennsylvania 17970 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 2 Slope (I.D. No. 36–01789) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. Baylor Rush, Inc.

[Docket No. M–93–215–C]

Baylor Rush, Inc., P.O. Box 32, Saint Clair, Pennsylvania 17970 has filed a petition to modify the application of 30 CFR 75.364(b) (1), (4), and (5) (weekly examination) to its No. 2 Slope (I.D. No. 36–01789) located in Schuylkill County, Pennsylvania. Due to hazardous conditions, daily or weekly traveling of the intake air course significantly increases the fall potential. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

4. Rhen Coal Company

[Docket No. M–93–216–C]

Rhen Coal Company, R.D. #3, Box 21, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.332 (b)(1) and (b)(2) (working sections and working places) to its Skidmore Slope (I.D. No. 36–08031) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during preshift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

5. Rhen Coal Company

[Docket No. M–93–217–C]

Rhen Coal Company, R.D. #3, Box 21, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Skidmore Slope (I.D. No. 36–08031) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

6. Rhen Coal Company

[Docket No. M–93–218–C]

Rhen Coal Company, R.D. #3, Box 21, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Skidmore Slope (I.D. No. 36–08031) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. Rhen Coal Company

[Docket No. M–93–219–C]

Rhen Coal Company, R.D. #3, Box 21, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4), and (5) (weekly examination) to its Skidmore Slope (I.D. No. 36–08031) located in Schuylkill County, Pennsylvania. Due to hazardous conditions, daily or weekly traveling of the intake air course significantly increases the fall potential. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

8. Rhen Coal Company

[Docket No. M–93–220–C]

Rhen Coal Company, R.D. #3, Box 21, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its Skidmore Slope (I.D. No. 36–08031) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

9. Rhen Coal Company

[Docket No. M–93–221–C]

Rhen Coal Company, R.D. #3, Box 21, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1200(i) (mine map) to its Skidmore Slope (I.D. No. 36–08031) located in Schuylkill County, Pennsylvania. The petitioner proposes

to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

10. Rhen Coal Company

[Docket No. M–93–222–C]

Rhen Coal Company, R.D. #3, Box 21, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Skidmore Slope (I.D. No. 36–08031) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

11. Tucker Hill Coal Company

[Docket No. M–93–223–C]

Tucker Hill Coal Company, 53 Water Street, New Philadelphia, Pennsylvania 17959 has filed a petition to modify the application of 30 CFR 75.332 (b)(1) and (b)(2) (working sections and working places) to its No. 1 Slope (I.D. No. 36–07478) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during preshift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

12. Tucker Hill Coal Company

[Docket No. M–93–224–C]

Tucker Hill Coal Company, 53 Water Street, New Philadelphia, Pennsylvania 17959 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 1 Slope (I.D. No. 36–07478) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

13. Tucker Hill Coal Company

[Docket No. M–93–225–C]

Tucker Hill Coal Company, 53 Water Street, New Philadelphia, Pennsylvania 17959 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its No. 1 Slope (I.D. No. 36–07478) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

14. Tucker Hill Coal Company

[Docket No. M–93–226–C]

Tucker Hill Coal Company, 53 Water Street, New Philadelphia, Pennsylvania 17959 has filed a petition to modify the application of 30 CFR 75.364(b) (1), (4), and (5) (weekly examination) to its No. 1 Slope (I.D. No. 36–07478) located in Schuylkill County, Pennsylvania. Due to hazardous conditions, daily or weekly traveling of the intake air course significantly increases the fall potential. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

15. Tucker Hill Coal Company

[Docket No. M–93–227–C]

Tucker Hill Coal Company, 53 Water Street, New Philadelphia, Pennsylvania 17959 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its No. 1 Slope (I.D. No. 36–07478) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

16. Tucker Hill Coal Company

[Docket No. M–93–228–C]

Tucker Hill Coal Company, 53 Water Street, New Philadelphia, Pennsylvania 17959 has filed a petition to modify the application of 30 CFR 75.1200(i) (mine map) to its No. 1 Slope (I.D. No. 36–07478) located in Schuylkill County, Pennsylvania. The petitioner proposes to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

17. Tucker Hill Coal Company

[Docket No. M–93–229–C]

Tucker Hill Coal Company, 53 Water Street, New Philadelphia, Pennsylvania 17959 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its No. 1 Slope (I.D. No 36–07478) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

18. S & M Coal Company

[Docket No. M–93–230–C]

S & M Coal Company, 189 N Street, Lykens, Pennsylvania 17048 has filed a petition to modify the application of 30 CFR 75.332 (b)(1) and (b)(2) (working sections and working places) to its Buck Mt. Slope (I.D. No. 36–02022) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during

preshift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

19. S & M Coal Company

[Docket No. M–93–231–C]

S & M Coal Company, 189 N Street, Lykens, Pennsylvania 17048 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Buck Mt. Slope (I.D. No. 36–02022) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

20. S & M Coal Company

[Docket No. M–93–232–C]

S & M Coal Company, 189 N Street, Lykens, Pennsylvania 17048 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Buck Mt. Slope (I.D. No. 36–02022) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

21. S & M Coal Company

[Docket No. M–93–233–C]

S & M Coal Company, 189 N Street, Lykens, Pennsylvania 17048 has filed a petition to modify the application of 30 CFR 75.364(b) (1), (4), and (5) (weekly examination) to its Buck Mt. Slope (I.D. No. 36–02022) located in Schuylkill County, Pennsylvania. Due to hazardous conditions, daily or weekly traveling of the intake air course significantly increases the fall potential. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

22. S & M Coal Company

[Docket No. M–93–234–C]

S & M Coal Company, 189 N Street, Lykens, Pennsylvania 17048 has filed a petition to modify the application of 30 CFR 75.1100 2(a)(2) (quantity and location of firefighting equipment) to its Buck Mt. Slope (I.D. No. 36–02022) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

23. S & M Coal Company

[Docket No. M–93–235–C]

S & M Coal Company, 189 N Street, Lykens, Pennsylvania 17048 has filed a petition to modify the application of 30 CFR 75.1200(i) (mine map) to its Buck Mt. Slope (I.D. No. 36–02022) located in Schuylkill County, Pennsylvania. The petitioner proposes to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

24. S & M Coal Company

[Docket No. M–93–236–C]

S & M Coal Company, 189 N Street, Lykens, Pennsylvania 17048 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Buck Mt. Slope (I.D. No. 36–02022) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

25. S & T Coal Company

[Docket No. M–93–237–C]

S & T Coal Company, R.D. #1, Box 56A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.332 (b)(1) and (b)(2) (working sections and working places) to its Bixler Mine (I.D. No. 36–01984) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during preshift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

26. S & T Coal Company

[Docket No. M–93–238–C]

S & T Coal Company, R.D. #1, Box 56A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Bixler Mine (I.D. No. 36–01984) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

27. S & T Coal Company

[Docket No. M–93–239–C]

S & T Coal Company, R.D. #1, Box 56A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its Bixler Mine (I.D. No. 36–01984) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water

storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

28. S & T Coal Company

[Docket No. M–93–240–C]

S & T Coal Company, R.D. #1, Box 56A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Bixler Mine (I.D. No. 36–01984) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

29. S & T Coal Company

[Docket No. M–93–241–C]

S & T Coal Company, R.D. #1, Box 56A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1400 to its Bixler Mine (I.D. No. 36–01984) located in Schuylkill County, Pennsylvania. The petitioner proposes to transport persons in a man cage or a gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device, instead of safety catches or no other less effective devices, because of steeply pitching and undulating slopes with numerous curves and knuckles in the main haulage slopes. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 1, 1993. Copies of these petitions are available for inspection at that address.

Dated: August 25, 1993.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 93–21257 Filed 8–31–93; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Notice is hereby given that a meeting of the Dance Program Dance Heritage Study Group will be held on September 8, 1993 from 10 a.m. to 5:30 p.m. This meeting will be held in room M–09, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. Topics of discussion will include Dance Preservation and Documentation.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with references to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: August 27, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–21231 Filed 8–31–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL CAPITAL PLANNING COMMISSION

Senior Executive Service; Performance Review Board; Members

AGENCY: National Capital Planning Commission.

ACTION: Notice of members of Senior Executive Service Performance Review Board.

SUMMARY: Section 4314(c) of title 5, U.S.C. (as amended by the Civil Service Reform Act of 1978) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards (PRB) to review, evaluate and make a final recommendation on performance appraisals assigned to individual members of the agency's Senior Executive Service. The PRB established for the National Capital Planning Commission also makes recommendations to the agency head regarding SES Performance awards, ranks and bonuses and recertification. Section 4314(c)(4) requires that notice of appointment of Performance Review Board members be published in the **Federal Register**.

The following persons have been appointed to serve as members of the Performance Review Board for the National Capital Planning Commission: Reginald W. Griffith, Eugene Kinlow, Syl Angel, Michael W. Crum, and Patricia G. Norry.

DATES: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Connie M. Harshaw, Executive Officer, National Capital Planning Commission, 801 Pennsylvania Ave, NW., Suite 301, Washington, DC 20576, (202) 724–0170.

Robert E. Gresham,

Asst. Exec. Dir. of Operations.

[FR Doc. 93–21258 Filed 8–31–93; 8:45 am]

BILLING CODE 7502–02–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 9, 1993, through August 20, 1993. The last biweekly notice was published on August 18, 1993 (58 FR 43922).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By October 1, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public

Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: August 9, 1993

Description of amendment request: The proposed change would revise setpoints for certain instrumentation listed in Technical Specification Tables 3.1.1, 3.2.B, 3.2.C-2, 3.2-G, and associated Bases. In conjunction with the setpoint evaluations, Boston Edison Company has reviewed the effects of increased calibration intervals on instrument drift. The increased calibration interval will not adversely affect plant operations or safety. The process and methodology for determining setpoints was presented in a Boston Edison submittal dated June 7, 1993.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not physically impact the design or functional requirements of associated systems. The proposed changes do not degrade the performance or increase the challenges to the associated safety systems assumed to function in the accident analyses. The proposed changes do not affect the availability of of equipment or systems required to mitigate the consequences of an accident, and do not affect the availability of redundant systems or equipment. The plant will continue to operate within the limits specified in the Core Operating Limits Report (COLR) and to take the same actions if setpoint limits are exceeded. In addition, the proposed setpoint changes were developed using the guidance provided in Generic Letter 91-04.

Therefore, the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes do not add or remove active components and therefore do not introduce failure mechanisms of a different type than those previously evaluated. In addition, the surveillance test requirements and the way surveillance tests are performed will remain unchanged. Since the intended operation and function of the analyzed systems do not change as a result of the setpoint analysis, no new initiators are introduced which are capable of initiating an accident which would render these systems unable to provide their required protection. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

Altnough the proposed Technical Specification changes will result in an increase in the interval between surveillance tests, the existing margins of safety are maintained through our proposed setpoint revisions. The proposed setpoint changes either increase the plant safety margin or maintain the existing margin and do not significantly impact the availability, performance, or intended function of the affected systems. Therefore, the assumptions in the accident analyses are not impacted, and the proposed Technical Specification changes do not significantly reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Walter R. Butler

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: August 5, 1993

Description of amendment request: The proposed amendment would provide a clarification of the emergency diesel generator testing requirements in Technical Specification (TS) 4.6.1.1 and 4.6.1.4. In TS 4.6.11 the amendment would replace the wording with more specific and detailed testing criteria which is more consistent with the improved Standard Technical Specifications. In TS 4.6.1.4 the change would include limitations for the continuous load rating and the short-term overload rating.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. These changes merely clarify Emergency Diesel Generator (EDG) surveillance requirements and load limits. The revised information would essentially involve no changes in the way that surveillance testing is being performed but would upgrade the TS to be consistent with current interpretations and standards and provide more specific and detailed criteria for surveillance testing and load limits. These surveillance tests and load limits help to ensure EDG operability and availability and have no impact on the probability or consequences of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes affect EDG surveillance testing criteria and load limits. They do not represent any changes in current testing methodologies; they merely update the TS to reflect current interpretations and standards. There will be no change to equipment or modes of operation or testing of equipment. No physical plant changes will result from this amendment. The proposed amendment involves wording only, and this is to reflect current interpretations and

standards. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The changes proposed only clarify existing EDG surveillance requirements. No requirements would be added or deleted by these changes; they would only result in more specific and detailed criteria. Further, these changes would not result in any changes to current testing procedures and methodologies. They would merely update the TS to current interpretations and standards. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29550

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: S. Singh Bajwa

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: July 26, 1993

Description of amendment request: The amendment request would incorporate into Technical Specification 3.7.1.2.b.1 the revised capabilities of the auxiliary feedwater (AFW) system design. The change also updates the Bases for 3.7.1.2 to incorporate the new design capabilities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will not adversely affect system performance. The proposed changes have no effect on the probability of occurrence of an accident previously evaluated since the AFW System is not related to the initiation of any analyzed accident. As an engineered safety system, AFW is required to mitigate those events which result in a decrease in secondary side inventory. With the addition of an auto-open feature, which utilizes the same signals as those which automatically start the motor driven pumps, the ability of the AFW System to maintain the heat sink capabilities of the steam generator is not affected. This project does not reduce system/equipment redundancy or independence nor does it have detrimental effects on single failure considerations. Likewise, the deletion of testing the auto-close feature on the AFW pump recirculation line isolation valves has no impact on the AFW System's ability to perform at its design functions.

Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated above, the proposed changes will not adversely affect system performance. No new failure mechanisms are introduced by this change request. This request does not introduce equipment or system operating parameters, configurations, or conditions that are not bounded by current FSAR assumptions. The fail-safe position of the FCVs both before and after the logic change is open. Failure of the control logic to the flow control valves will cause the valves to fail to the open position, providing full flow to the steam generators.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The changes described herein do not affect any safety limit and/or limiting safely system setting as governed by the Technical Specifications. The margin of safety for the AFW System as described in the BASES to Technical Specification 3.7.1.2 is not reduced as the pump capacities and the ability to perform a plant cooldown are not affected.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: S. Singh Bajwa

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: July 21, 1993

Description of amendment request: The amendment will revise the Technical Specifications (TS) to remove a footnote from Tables 3.3-9 and 4.3-7. These entries each reference a footnote which states: "Automatic termination of blowdown requirement will become effective upon completion of proposed modification to provide automatic termination." The modification has been completed and the footnote is no longer applicable. The licensee will add a new footnote to the TS for the steam generator blowdown radioactivity monitors which will state that the operability requirements for the monitors are not applicable during Modes 5 and 6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to eliminate the footnotes in Technical Specification Tables 3.3-7 and 4.3-9, which state that the requirement regarding the automatic termination of blowdown will become effective when a modification installing the capability is completed, reflects the completion of the plant design change providing this capability. These proposed changes will result in the establishment of minimum operability restrictions and surveillance requirements for the steam generator blowdown line gross radioactivity monitors. Also, the proposed changes to incorporate a footnote to denote that the operability requirements for the steam generator blowdown radioactivity monitors are not applicable during Modes 5 or 6 will permit CYAPCO to meet the intent of Technical Specification 3.3.3.7, and eliminate an unnecessarily restrictive requirement. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change to eliminate the footnotes in Technical Specification Tables 3.3-7 and 4.3-9, which state that the requirement regarding the automatic termination of blowdown will become effective when a modification installing the capability is completed, reflects the

completion of the plant design change providing this capability. These proposed changes will result in the establishment of minimum operability restrictions and surveillance requirements for the steam generator blowdown line gross radioactivity monitors. Also, the proposed change to incorporate a footnote to denote that the operability requirements for the steam generator blowdown radioactivity monitors are not applicable during Modes 5 or 6 will permit CYAPCO to meet the intent of Technical Specification 3.3.3.7, and eliminate an unnecessarily restrictive requirement. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed change to eliminate the footnotes in Technical Specification Tables 3.3-7 and 4.3-9, which state that the requirement regarding the automatic termination of blowdown will become effective when a modification installing the capability is completed, reflects the completion of the plant design change providing this capability. These proposed changes will result in the establishment of minimum operability restriction and surveillance requirements for the steam generator blowdown line gross radioactivity monitors, also, the proposed change to incorporate a footnote to denote that the operability requirements for the steam generator blowdown radioactivity monitors are not applicable during Modes 5 or 6 will permit CYAPCO to meet the intent of Technical Specification 3.3.3.7, and eliminate an unnecessarily restrictive requirement. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: July 26, 1993

Description of amendment request: The amendment will revise Action statement "a" of Technical Specification (TS) Section 3.5.1, "ECCS Subsystems - T_{avg} Greater Than of Equal to 350°F." This change will allow redundant train operability to be verified operable by examination of appropriate plant records rather than performing test of redundant equipment which would render the entire ECCS subsystem inoperable while the testing is being performed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve an SHC [significant hazards consideration] because the changes do not:

1. Involve a significant increase in the probability of consequences of an accident previously evaluated.

The proposed change to Technical Specification 3.5.1 ACTION statement "a" would replace the word "test" to "verify operability of" for the situation where one ECCS subsystem is inoperable. This change only affects the means by which a remaining HPSI [high pressure safety injection] pump, LPSI [low pressure safety injection] pump, or RHR [residual heat removal] pump is judged to be operable. It would not adversely affect the integrity of structures or systems whose loss may otherwise result in the initiation of a design-basis accident such as a LOCA. Neither would the change affect the consequences of an accident. The change to Section 3.5.1 would not affect the performance of the ECCS. Moreover, it would prevent the recurring situation whereby, due to the method of testing these pumps at the Haddam Neck Plant, the opposite train pump(s) is rendered inoperable when testing to fulfill the current requirements of the technical specifications. Rendering both trains of equipment inoperable results in an unnecessary elevated risk configuration at present. During this time of testing, which could be one hour or more, the plant is subjected to a condition where an event (e.g., LOCA) alone could increase the risk of core damage. Therefore, overall risks are minimized by verifying operability by the most prudent means under these circumstances. The consequences of a previously analyzed accident are not increased by the proposed change.

The changes to Technical Specification Sections 4.5.1 and 4.5.2 are proposed to achieve consistency with Section 3.5.1. They would move surveillance requirement 4.5.1b from Technical Specification 3/4.5.1 to Technical Specification 3/4.5.2, and reletter the remaining requirements. No surveillance requirements are changed, therefore, this aspect of the change will not impact the probability or consequences of accidents.

In summary, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

There is no change to the design of the plant. Only the method of confirming operability of an ECCS subsystem is affected by this proposed change. The failure modes of equipment is not affected. The overall availability of safety-related equipment is improved by not having to unnecessarily enter Technical Specification Section 3.0.3 as a consequence of the current requirement to test the opposite train pump. The changes to Sections 4.5.1 and 4.5.2 also do not create the possibility of a new or different kind of accident previously analyzed.

3. Involved a significant reduction in a margin of safety.

The changes will still require an operability verification if one subsystem were declared inoperable. This would involve an assessment within two hours of the potential cause of the pump being inoperable and a judgment as to the likelihood that the opposite train is similarly affected. The determination of operability can be made by analysis or inspection. Moreover, the wording of the proposed technical specification change does not preclude testing if this is the most prudent course of action. The proposed changes reduce the time that the opposite train is unavailable due to testing. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Connecticut Yankee Atomic Power Company (CYAPCO) and Northeast Nuclear Energy Company (NNECO), Docket Nos. 50-213, 50-245, 50-336 and 50-423, Haddam Neck Plant and Millstone Nuclear Power Station, Units 1, 2 and 3, Middlesex County and New London County, Connecticut

Date of amendment request: July 16, 1993

Description of amendment request: The amendments would change the submittal frequency of the Radioactive Effluent Release Report from semiannual to annual to be submitted by May 1 of each year. Also, CYAPCO and NNECO propose to consolidate the Radioactive Effluent Release Report and the Radioactive Effluents Dose Report into a single annual report entitled Radioactive Effluent Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated

The proposed changes are being requested to implement a revision to 10CFR50.36a published in the **Federal Register** on August 31, 1993[2], to ensure that each of the plant Technical Specifications are consistent with each other, and to consolidate the Radioactive Effluent Release Report and the Radioactive Effluents Dose Report into a single annual report. The proposed changes to the Technical Specifications do not alter any administrative controls over radioactive effluents, nor do they affect any accident evaluations. Also, the proposed changes do not involve any physical alterations to the plants with respect to radioactive effluents. The proposed changes would only affect the reporting requirements concerning routine data for radioactive effluents; thus, the proposed changes cannot affect the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated

The proposed changes are being requested to implement a revision to 10CFR50.36a published in the **Federal Register** on August 31, 1993[2], to ensure that each of the plant Technical Specifications are consistent with each other, and to consolidate the Radioactive Effluent Release Report and the Radioactive Effluents Dose Report into a single annual report. The proposed changes to the Technical Specifications do not alter any administrative controls over radioactive effluents, nor do they involve any physical alterations to the plants with respect to radioactive effluents. Also, the proposed changes do not change the method by which any safety-related system performs its function. The proposed changes would only affect the reporting requirements concerning routine data for radioactive effluents; thus, the proposed changes cannot create the possibility of a new or different kind of accident form any previously evaluated.

3. Involve a significant reduction in a margin of safety

The proposed changes are being requested to implement a revision to 10CFR50.36a published in the **Federal Register** on August 31, 1993[2], to ensure that each of the plant Technical Specifications are consistent with each other, and to consolidate the Radioactive Effluent Release Report and the Radioactive Effluents Dose Report into a single annual report. The proposed changes to the Technical Specifications do not alter any administrative controls over radioactive effluents, nor do they involve any physical alterations to the plants with respect to radioactive effluents. The proposed changes would only affect the reporting requirements concerning routine data for radioactive effluents; thus, the proposed changes cannot involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457, for the Haddam Neck Plant, and the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360, for Millstone, Units 1, 2 and 3.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: May 24, 1993

Description of amendment request: The proposed amendment would modify the leakage testing requirements for the primary containment isolation valves in the injection flow paths of the Low Pressure Coolant Injection (LPCI) mode of the Residual Heat Removal (RHR) system.

The change eliminates the designation of four current valves as containment isolation valves in Table 3.6.3-1. These valves will still be considered reactor coolant system pressure isolation valves. The proposed change would increase the allowable pressure isolation valve leakage for two valves from 1.0 to 10 gallons per minute (gpm) and reduces the allowable leakage for two other valves from 1.0 gpm to 0.4 gpm. The proposed change would also change the test methodology for two valves to test with water at 1045 plus or minus 10 psig for external leakage only. The amendment application also includes a related 10 CFR Part 50, Appendix J exemption request.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change modifies Containment Local Leak Rate Testing (LLRT) and Pressure Isolation Valve (PIV) testing requirement for valves installed in the Residual Heat Removal (RHR) system Low Pressure Coolant Injection (LPCI) mode injection line. The change does not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change does not change the physical plant or the manner in which it is operated. The change eliminates certain tests while retaining those necessary to assure that containment systems perform as intended. The new basis for meeting GDC 55 [Reactor Coolant Pressure Boundary Penetrating Containment] provides an equivalent level of protection against off-site radiation release. Therefore, the probability or consequences of any previously analyzed accident has not significantly increased.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not involve a change in the plant or the manner in which it is operated. The change eliminates certain tests while retaining those necessary to assure that containment systems perform as intended. No new accident modes are created.

3) Involve a significant reduction in a margin of safety. The change eliminates unnecessary testing which has caused significant radiation exposure and safety hazards [which may result if corrective maintenance is required in the hazardous drywell area where these valves are located]. All systems and structures continue to operate in the same manner as before. Sufficient protection against radiological releases continues to be maintained.

Where the licensee specifies that the change eliminates "unnecessary" testing it should be clarified that the licensee has proposed an alternative testing criterion which it believes meets the intent of Appendix J to 10 CFR Part 50 and will make the current method of testing the affected valves no longer necessary.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226

NRC Project Director: William M. Dean, Acting

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: January 13, 1993, as supplemented January 28 and April 26, 1993

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) 2.2.1, 3/4.1.2.5, 3/4.1.2.6, 3/4.3.3.12, 3/

4.5.1, 3/4.5.4, 3/4.9.2, their associated Bases and TS 6.9.1.9 to relocate the values of certain cycle-dependent limits from the TS to the Core Operating Limits Report (COLR). The NRC issued Generic Letter (GL) 88-16, dated October 4, 1988, that provided guidance to licensees on requests for relocation of the values of cycle-specific parameter limits from the TS to the COLR. The licensee's proposed amendment is its second response to the guidance of that GL. The licensee's first response to the GL was dealt with in Amendment Nos. 74 and 68 for Catawba Units 1 and 2 on May 17, 1990. Therefore, the COLR is already reflected in the Definitions Section of the TS. The licensee's second response to the GL, involving the TS listed above, addressed TS that are different from those addressed in its first response.

The proposed TS would require that the subject core operating limits be determined for each reload cycle in accordance with the referenced NRC approved methodology for these limits and be consistent with the applicable limits of the safety analysis. Finally, this report and any mid-cycle revisions shall be provided to the NRC upon issuance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed amendment will not increase the probability or consequences of an accident which has been previously evaluated. The cycle specific parameters which have been identified for relocation to the COLR will be calculated using NRC approved methodology and the Technical Specifications will continue to require operation within the cycle specific parameters. For the above reasons this amendment is considered administrative, and does not increase the probability or consequences of an accident previously evaluated.

Operation in accordance with this proposed amendment will not create any failure modes not bounded by previously evaluated accidents. Therefore, this change will not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

The Technical Specifications will continue to require operation within the bounds of the cycle-specific parameter limits. The cycle-specific parameter limits will be calculated using NRC approved methodology. In addition, each future reload will require a 10 CFR 50.59 safety review to assure that operation of the unit within the cycle-specific limits will not involve a reduction in a margin of safety. Therefore, no margins of safety are affected by the relocation of cycle-specific parameter limits to the COLR.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: July 14, 1993

Description of amendment request: The proposed amendments revise Technical Specification 3.1.2.9 to clarify the role of High Pressure Injection and Core Flood Tank deactivation in maintaining pilot operated relief valve operability for low temperature overpressure protection (LTOP), add restrictions regarding applicability of controls which assure 10 minutes are available for operator action to mitigate an LTOP event, revise the Pressure/Temperature limits and associated LTOP setpoints, and make associated administrative changes. Also, the Bases would be revised to be consistent with the above changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:

Each accident analysis addressed within the Oconee Final Safety Analysis Report (FSAR) has been examined with respect to the changes proposed within this amendment request. The probability of any Design Basis Accident (DBA) is not affected by this change, nor are the consequences of a DBA affected by this change, since administrative changes, additional restrictions which assure the ability to mitigate postulated LTOP [low temperature overpressure protection] events, additional restrictions which specify required actions in the event the second LTOP train is not restored as required, revised P/T [pressure/temperature] limits and associated LTOP setpoints based on NRC approved methods, and improved Bases are not considered to be an initiator or contributor to any accident analysis addressed in the Oconee FSAR.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated:

This license amendment includes administrative changes, additional restrictions which assure the ability to mitigate postulated LTOP events, additional restrictions which specify required actions in the event the second LTOP train is not restored as required, revised P/T limits and associated LTOP setpoints based on NRC approved methods, and improved Bases. Operation of ONS [Oconee Nuclear Station] in accordance with these proposed Technical Specifications will not create any failure modes not bounded by previously evaluated accidents. Consequently, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety:

Changes included in this amendment request will assure the ability to mitigate postulated LTOP events, thus preserving existing margins of safety. Therefore, there will be no significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: July 28, 1993

Description of amendment request: The proposed amendment would revise the Arkansas Nuclear One, Units No. 1 and 2 (ANO-1&2), Technical Specifications (TSs) for the Emergency Cooling Pond (ECP) to achieve consistency between the ANO-1 and ANO-2 TSs and clarify the point at which the water temperature is verified for the ECP. The applicable Bases would also be revised to reflect the changes and clarify the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The Emergency Cooling Pond (ECP) portion of the Ultimate Heat Sink is not an accident initiator. The accident mitigation features of the plant are not affected by the proposed changes. Revising the ANO-1 mode of applicability results in more restrictive controls on ECP operability and assures that the back-up source to the Dardanelle Reservoir is available whenever Service Water is required. The ANO-1 requirements for specified contained water volume and maximum average temperature have been revised to the more restrictive values specified by the ANO-2 TS and provide consistency between ANO-1, ANO-2, and the ECP design basis. Additional limitations and controls have been incorporated in the ANO-1 TS in the form of additional requirements for visual inspection that are currently specified in the ANO-2 TS. Other changes to both the ANO-1 and ANO-2 have been made to clarify the specifications and provide consistency between the two units and are characterized as administrative in nature. The ANO-1 and ANO-2 SARs [safety analysis reports] describe the original analyses associated with the ECP. The changes contained in this submittal are bounded by the existing accident analyses.

Therefore, this change does **not** involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from Any Previously Evaluated.

The changes do not allow the ECP to be operated in any new or different way from what is currently allowed. No design or configuration changes are associated with the proposed changes. The proposed changes provide consistency between ANO-1, ANO-2, and the ECP design basis. The ANO-1 and ANO-2 SARs describe the original analyses associated with the ECP. The changes contained in this submittal are bounded by the existing accident analyses.

Therefore, this change does **not** create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in a Margin of Safety.

Existing Technical Specification operability and surveillance requirements are not reduced by the proposed change, thus no margins of safety are reduced. Revising the ANO-1 mode of applicability results in more restrictive controls on ECP operability and assures that the back-up source to the Dardanelle Reservoir is available whenever Service Water is required. The ANO-1 requirements for specified contained water volume and maximum average temperature have been revised to the more restrictive values specified by the ANO-2 TS and provide consistency between ANO-1, ANO-2, and the ECP design basis. The addition of TS 4.13.1.4 to the ANO-1 TS constitutes an additional limitation, restriction, or control not presently included in the ANO-1 TS. Other changes to both the ANO-1 and ANO-2 TS have been made to clarify the specifications and provide consistency between the two units and are characterized as administrative in nature. The changes contained in this submittal are bounded by the existing accident analyses and involve no significant reduction in the margin of safety for either ANO-1 or ANO-2.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Harry Rood (Acting)

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: July 22, 1993

Description of amendment request: The proposed amendment would increase the time allowed during plant operation at full power with one Plant Protection System (PPS) channel in bypass, from 48 hours to until the next cold shutdown. The proposed amendment would also incorporate certain editorial changes to maintain consistency between tables and clarify the intent of the technical specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

Operation of the ANO-2 [Arkansas Nuclear One, Unit 2] PPS in a 2-out-of-3 logic mode has no effect on the probability of any accidents previously evaluated as it has no impact on the causes of initiating events in the plant. The proposed change reduces the probability of inadvertent actuations of the PPS due to an inoperable channel being placed in the tripped condition.

Operation of the ANO-2 PPS in a 2-out-of-3 logic mode has no effect on the consequences of an event previously evaluated since, with one channel of each functional unit in bypass, the PPS maintains a functional redundancy of one. This ensures protective system actuation in accordance with the assumptions of the accident analysis. The accident analysis has accounted for those events that might have an effect on the PPS due to the geometry of the plant or the installed sensors, and demonstrated acceptable results in such a case, assuming a single failure. A review of the high energy line break analysis has confirmed that there are no events that would affect a sensor or channel required to mitigate the consequences of a break in that location.

Based on results of these evaluations, extended operation with one PPS channel in bypass will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Operation of the ANO-2 PPS with an inoperable channel of Initiation Logic is allowed by the present ANO-2 Technical Specifications and is not affected by the proposed change. The one-hour Completion Time is consistent with that for the RPS [reactor protection system] Manual Trip. Operation with an inoperable channel of RPS Matrix Logic is not addressed by the current Technical Specifications and Limiting Condition for Operation (LCO) 3.0.3 applies. Including a new Action for RPS Matrix Logic, with a 48-hour restoration time is consistent with industry efforts to improve technical specifications and will not change the operation of the plant in such a manner as to significantly affect the probability or consequences of an accident previously analyzed. The probability of a random failure in a second Matrix Logic channel during any given 48-hour period is low, and is offset by the decreased risk from avoiding a forced shutdown on short notice.

Operations of the ESFAS [engineered safety feature actuation system] with a failed channel of Initiation, Matrix, or Actuation Logic is not addressed by the current ANO-2 Technical Specifications and LCO 3.0.3 applies. Addition of requirements for the ESFAS Logic with a 48-hour restoration time is consistent with industry efforts to improve technical specifications and will not change the operation of the plant in such a manner as to significantly affect the probability or consequences of an accident previously analyzed. The probability of a random failure in a second ESFAS channel during any given 48-hour period is low, and is offset by the decreased risk from avoiding a forced shutdown on short notice.

The proposed editorial changes will have no effect on plant operation and therefore will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Therefore, this change does **not** involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The only way the proposed change could alter the course of an event would be by the PPS failing to actuate when required. The attached analysis demonstrates that the PPS maintains a functional redundancy of one when operating in a 2-out-of-3 logic mode, thus the PPS will not fail in this manner. Therefore the attached analysis demonstrates

that there is no possibility of this change creating the possibility of a new or different kind of accident.

Based on results of these evaluations, extended operation with one PPS channel in bypass will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The RPS Matrix Logic is not addressed in the current ANO-2 Technical Specification, nor is (any of) the ESFAS Logic. The proposed change clarifies ACTIONs in accordance with the Technical Specifications for recent Combustion Engineering-designed plants (e.g., Palo Verde) and is consistent with industry efforts to improve technical specifications. No new method of operating the plant is created by this proposed change to add these new requirements to the RPS and ESFAS Logic; the only change being to allow operation with an inoperable channel of Logic for slightly longer than is currently permitted. Therefore, addition of the new specifications for the RPS and ESFAS Logic will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed editorial changes will have no effect on plant operation and therefore will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The ANO-2 PPS was originally designed as a 2-out-of-3 logic system with an additional channel as an installed spare. However, the plant was originally licensed as a 2-out-of-4 PPS logic plant. The proposed change provides the justification for allowing operation in a 2-out-of-3 logic mode. Review of the design and installation of the PPS has demonstrated that, while operating in a 2-out-of-3 logic mode, the functional redundancy of the PPS is one. For any design bases event, with the occurrence of any postulated single failure, the PPS will provide the protection assumed in the accident analysis. Therefore, there is no significant reduction in a margin of safety due to the proposed change to allow operation in a 2-out-of-3 logic mode.

Operation of the ANO-2 PPS with a more detailed breakout of the portions of the PPS logic will not result in any closer approach to the acceptance criteria by the consequences of any anticipated operational occurrence or accident previously evaluated. Therefore, there is no decrease in the margin of safety due to the proposed change.

The proposed editorial changes will have no effect on plant operation and therefore will not involve a significant reduction in a margin of safety.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Harry Rood, Acting Director

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: July 22, 1993

Description of amendment request: The proposed amendment would remove the cycle-specific variables from the Technical Specifications and control them under a new document called the Core Operating Limits Report (COLR), in accordance with Generic Letter 88-16. The proposed amendment would also revise the definition of shutdown margin in Technical Specification 1.13 to achieve consistency with NUREG-1432, Revision 0, "Revised Standard Technical Specifications [RSTS] for CE [Combustion Engineering] Plants."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The removal of cycle dependent variables from Technical Specifications and placing them into a COLR has no impact on plant operation or accident analyses since the proposed changes are administrative in nature. The Technical Specifications will continue to require operation within the core operational limits for each cycle reload calculated by the approved reload design methodologies. The appropriate actions required if limits are violated will remain in the Technical Specifications. The values or setpoints placed in the COLR are addressed in the reload report. The reload report presents the results of a cycle-specific evaluation of accidents addressed in the ANO-2 [Arkansas Nuclear One, Unit 2] SAR [safety analysis report]. The cycle-specific evaluation demonstrates that changes in the fuel cycle design and the corresponding COLR do not involve a significant increase in the probability or consequences of an accident previously evaluated. Therefore, the removal of cycle dependent variables from Technical Specification[s] does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Changing the definition of shutdown margin to be consistent with RSTS allows the use of an all CEAs [control element assemblies] inserted shutdown margin. The proposed change has no impact on the safety analyses because all CEAs will be verified fully inserted by two independent means, prior to not accounting for the single CEA of the highest reactivity worth fully withdrawn in the shutdown margin calculation. Therefore, the shutdown margin definition revision does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated.

The proposed changes to relocate the cycle-specific variables from Technical Specifications to the COLR are administrative in nature. No change in the design, configuration, or method of operation of the plant is made by this amendment. The cycle-specific variables will continue to be calculated using NRC approved methods. Technical Specifications will continue to require operation within the required core operating limits and appropriate actions will be taken if the limits are exceeded. Therefore, the removal of cycle-specific variables does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Changing the definition of shutdown margin does not introduce any new plant equipment or change the current plant design; therefore, the shutdown margin definition revision does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in a Margin of Safety.

Existing Technical Specification operability and surveillance requirements are not reduced by the proposed changes to relocate cycle-specific parameters to another document. The development of limits for a particular cycle will still conform to methods described in NRC approved documentation. The Technical Specifications still require that the core be operated within these limits and specify appropriate actions to be taken if the limits are violated. The cycle-specific COLR limits for future reloads will also be developed based on NRC approved methodologies. Each reload will involve a 10CFR50.59 safety review to assure that operation of the unit within the cycle-specific limits will not involve a significant reduction in a margin of safety. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Changing the definition of shutdown margin to be consistent with RSTS allows the use of an all CEAs inserted shutdown margin. This change does not decrease the margin to safety since all CEAs will be verified fully inserted by two independent means, prior to not accounting for the single CEA of the highest reactivity worth in the shutdown margin calculation.

Therefore, based on the reasoning presented above and the previous discussion

of this amendment request, Entergy Operations has determined that the requested changes do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Harry Rood (Acting)

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: July 22, 1993

Description of amendment request: The proposed amendment would relocate the containment isolation valve table from the containment systems specification to plant procedures, in accordance with Generic Letter (GL) 91-08.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequence[s] of an Accident Previously Evaluated.

Removal of Table 3.6-1 and replacement of associated references with explicit descriptions of affected components ensures that the TS [technical specification] requirements apply to all valves classified as containment isolation valves by the plant licensing basis. Since the existing TS operability and surveillance requirements, and the components to which they apply are not reduced, this change does **not** significantly increase the probability or consequence[s] of any previously analyzed accident.

The footnote added to TS 3.6.3.1 allows all valves with the locked or sealed closed feature to be opened under administrative controls. The existing note to Table 3.6-1 identifies specific valves that may be opened under administrative controls. This change allows all locked or sealed closed containment isolation valves to be opened under administrative controls to ensure that the affected component will perform its design function if necessary. These valves are not accident initiating components and do not increase the probability of an accident previously evaluated. Since the imposed operability restrictions ensure that these valves will be closed in the event of an accident, this change does **not** significantly increase the probability or consequence[s] of any previously analyzed accident.

Since deletion of the footnote identifying valves not subject to "Type C" testing, does not alter TS operability or surveillance requirements, this change does **not** significantly increase the probability or consequence[s] of any previously analyzed accident.

The valve isolation time requirements in TS 3.6.3.1 and Table 3.6-1 are redundant to the inservice testing required by TS 4.0.5 to verify stroke times of containment isolation valves. Since the TS 4.0.5 requirements to verify stroke times are unaffected, this change does **not** significantly increase the probability or consequence[s] of any previously analyzed accident.

The changes to Renumber pages: 3/4 6-22, 3/4 6-23 and 3/4 6-24 and to correct the grammatical error in TS 1.8.1 do not alter TS requirements and are administrative in nature. Since these changes are administrative in nature they do **not** significantly increase the probability or consequence[s] of any previously analyzed accident.

The Bases change clarifies the administrative controls required to open locked or sealed closed valves and references the procedure in which the new containment isolation valve table will be located. Since this change does not affect reactor operations or accident analyses, and has no radiological consequences, this change does **not** significantly increase the probability or consequence[s] of any previously analyzed accident.

Based on the discussions presented above, Entergy Operations has determined that these changes do **not** significantly increase the probability or consequence[s] of previously analyzed accident.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from Any Previously Evaluated.

The deletion of Table 3.6-1 and its associated references does not alter the operability or surveillance requirements of ANO-2 [Arkansas Nuclear One, Unit No. 2] TS. Since the design, configuration, and method of operation of the plant are not affected, this change does **not** create the possibility of a new or different kind of accident from any previously evaluated.

Since the footnote added to TS 3.6.3.1 does not establish a potential new accident precursor, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Deletion of the isolation time requirements in TS 3.6.3.1 and Table 3.6-1 does not change the design, configuration or method of operation of the plant. This change does not alter the TS requirements for verifying containment isolation valve stroke times. Since the requirements are unaltered, this change does **not** create the possibility of a new or different kind of accident from any previously evaluated.

The changes to Renumber pages 3/4 6-22, 3/4 6-23 and 3/4 6-24, to update the Index, and to correct grammatical error in TS 1.8.1 do not alter TS requirements and are administrative in nature. Since these change[s] are administrative in nature they do **not** create the possibility of a new or different kind of accident from any previously evaluated.

The proposed Bases changes clarify the TS requirements. These changes do not introduce any new mode of plant operation and therefore, do

not create the possibility of a new or different kind of accident from any previously evaluated.

Based on the discussions presented above, Entergy Operations has determined that these changes do **not** create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in a Margin of Safety.

Since the deletion of Table 3.6.1 and its associated references does **not** reduce existing TS operability and surveillance requirements, this change does not involve a significant reduction in a margin of safety.

Current TS allow the use of administrative controls as provisional measures to be taken while opening specific locked or sealed closed valves. This change extends the use of these controls to similar valves. Since the administrative controls required when these valves are opened, ensure that the valve will be closed in the event of an accident, this change does **not** involve a significant reduction in a margin of safety. The staff has reviewed this change and concludes in GL 91-08 that it is an acceptable alternative to identifying specific valves that may be opened under administrative controls.

Since deletion of the footnote to Table 3.6.1, identifying valves not subject to "Type C" testing, and deletion of the isolation time requirements in TS 3.6.3.1 and Table 3.6-1 do not reduce existing operability or surveillance requirements, this change does **not** involve a significant reduction in a margin of safety.

The administrative changes to Renumber pages: 3/4 6-22, 3/4 6-23 and 3/4 6-24, to update the Index, and to correct the grammatical error in TS 1.8.1 do not alter TS requirements. Since these change[s] are administrative in nature they do **not** involve a significant reduction in a margin of safety.

The proposed Bases changes clarify the TS requirements. Since these changes do not affect a safety limit, an LCO [limiting condition for operation], or a surveillance requirement, this change does not involve a significant reduction in a margin of safety.

Based on the discussions presented above, Entergy Operations has determined that these changes do **not** involve a significant reduction in a margin of safety.

Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested changes do **not** involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: Harry Rood (Acting)

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: July 14, 1993

Description of amendment request: This amendment will eliminate previous restrictions on ensuring operability of igniters in enclosed areas and igniters located in open areas adjacent to inoperable igniters. This amendment will also redefine the Hydrogen Ignition System as operable based solely on subsystem status. Additionally, the amendment proposes to remove certain lists of components from the Grand Gulf Nuclear Station (GGNS) Technical Specifications (TS) and changes to the TS and the TS Bases in accordance with NRC guidance provided in Generic Letter 91-08.

Basis for proposed no significant hazards consideration determination. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The proposed changes would result in the deletion of specified tables from the Technical Specification[s] (TS), as well as modification of TS and Bases as recommended by Generic Letter (GL) 91-08, and in accordance with Appendix A of the Generic Mark III Containment Hydrogen Control Safety Evaluation Report (SER). The tables to be deleted list plant components by division, location, and circuit. The component lists affected are: Hydrogen Igniter Circuits (Table 3.6.7.2-1); Hydrogen Igniters and Locations (Table 3.6.7.2-2); and Number of Igniters by Circuits (Table 4.6.7.2-1). Plant procedures will reflect relocation of the information included in each table specified above. Any changes to this information will be accomplished in accordance with the administrative controls required by TS 6.8 and 6.5.3. These controls ensure that there will be no increase in the probability or consequences of previously evaluated accidents without prior NRC approval.

Operability and surveillance requirements are revised to reflect generically acceptable requirements as described in the Generic SER. Accident analyses which assume hydrogen generation following a LOCA [loss-of-coolant accident] are not affected. There will be no modifications to plant equipment as a result of the proposed changes.

The hydrogen igniters are passive devices which would be actuated after initiation of a postulated accident. There is no known influence of the Hydrogen Ignition System (HIS) upon the probability of occurrence of the postulated accidents evaluated in the Hydrogen Control Program. Test results described in (3) below also demonstrate that no significant increase in the consequences of previously evaluated accident scenarios would be expected as a result of this change Therefore, no significant increase in the probability or consequences of an accident previously evaluated will result from these changes.

2. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated

The relocation of information from TS tables into plant procedures serves only to consolidate information on affected components outside of the TS for control under appropriate administrative requirements. This is accomplished via the guidance of GL 91-08. The proposed revisions to the TS do not involve a change in the manner in which these components will be operated, maintained, or monitored No components or systems are physically added, removed, or modified a result of the proposed changes.

The surveillance frequency in the proposed TS is consistent with the present TS and with the Generic Hydrogen Control SER. Use of current/voltage measurements to determine the operability of igniters in inaccessible area of containment is consistent with the SER and the present current technical specifications, and it minimizes personnel exposure to radiation and other occupational safety hazards.

This TS change does not affect the GGNS emergency operating procedures for the HIS, which are symptomatically based and are intended to encompass the conditions for a wide spectrum of accident conditions. The TS change creates no known possibility of a new or different kind of accident from those previously evaluated.

3. This change would not involve a significant reduction in a margin of safety.

The proposed revisions are being requested as a line item improvement to the Grand Gulf Nuclear Station (GGNS) TS to reduce the administrative burden on the NRC and GGNS when revisions to the subject component information become necessary. They are consistent with the guidance of GL 91-08 and the Generic SER for the Hydrogen Ignition System. The margin of safety associated with these components lists is unaffected by this proposed change since the operability and surveillance requirements are in accordance with the Generic SER. Additionally, the information from these tables is currently included in plant procedures which ensure that changes made are reviewed in accordance with the controls of TS 6.8 and 6.5.3. These provisions allow no decrease in the margin of safety without prior NRC approval

In GGNS plant-specific 1/4-scale testing, igniters were placed in the test facility at locations which correlated as closely as possible to igniter locations in the plant. In 1/4-scale tests, the igniters in enclosed areas and the second ring of igniters in the containment dome were not simulated. In addition, two other igniters in the containment dome were inoperable for the majority of the test program. Using this very conservative model, hydrogen concentrations were always maintained near the lower flammability limit, demonstrating that the HIS would control hydrogen as designed.

Furthermore, during an HCOG [Hydrogen Control Owners Group] scoping test, all Division I igniters and several Division II igniters were secured. In an igniter location configuration which was similar to Grand Gulf's, this resulted in a very limited number of igniters being used to simulate the actual number of igniters in the Grand Gulf containment. In this configuration, the ignition time was approximately the same as with the full complement of igniters. No delay in ignition was observed, nor did the combustion phenomena differ. The results of this test provide substantial confidence that the proposed TS, which would require that at least 90% igniters in the containment be operable, is very conservative and does not reduce the necessary margin of safety.

Since igniters in enclosed areas were not simulated, the 1/4-scale test results demonstrate that relaxation of the technical specifications with regard to the adjacent igniter provisions is acceptable and would not reduce the margin of safety inherent in the containment system and the hydrogen ignition system design and operation. Therefore this change, as proposed, does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington; DC 20005-3502

NRC Project Director: Harry Rood (Acting)

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: August 11, 1993

Description of amendment request: The proposed amendment would amend Technical Specification (TS) 3/4.3.7.10, entitled "Loose Part Detection System,"

by relocating Loose Part Detection Instrumentation from the TSs to other controlled documents maintained by the licensee under administrative control and subject to the review required by the requirements of 10 CFR 50.59.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change relocates Loose-Part Detection System Instrumentation requirements from the TS to plant administrative control consistent with the NRC Interim Policy Statement on Technical Specification Improvements. Criterion 1 of the Policy Statement indicates that the TS should include installed instrumentation that is used to detect, and indicate in the control room, a significant degradation of the reactor coolant pressure boundary. This criterion is intended to ensure that the TS control those instruments specifically installed to detect excessive reactor coolant system leakage. This criterion is not interpreted to include instrumentation used to detect precursors to reactor coolant pressure boundary leakage (e.g., Loose Part Detection Instrumentation). The proposed change does not affect any material condition of the plant that could directly contribute to causing or mitigating the effects of an accident. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. This change would not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change which does not involve any plant design changes (i.e., administrative only) will be adequately controlled by the 10CFR50.59 process which would not allow requirement or system modifications which would place the plant in an unanalyzed condition. The proposed change will not alter the operation of the plant or the manner in which it is operated. Therefore, the proposed change will create the possibility of a new or different kind of accident from any previously evaluated.

Further, the evaluation summarized in NEDO-31466 determined the loss of this instrumentation to be a non-significant risk contributor to core damage frequency and offsite release.

3. This change would not involve a significant reduction in the margin of safety.

The system maintenance history reveals that the reliability of the system is adequately demonstrated by the low failure rate of system components.

The proposed change will relocate Loose Part Detection System instrumentation from the TS to our administrative control. The proposed change will have no adverse impact on the reactor coolant system pressure boundary nor will any other system protective boundary or safety limit be affected. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: Harry Rood (Acting)

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: August 11, 1993

Description of amendment request: The proposed amendment would amend the Grand Gulf Nuclear Station (GGNS) Technical Specifications (TS) to support compliance with the new requirements of Title 10 Code of Federal Regulations Part 20 and Part 50.36a.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

The proposed revisions to the liquid and gaseous release rate limits and the relocation of the old 10CFR20.106 requirements to the new 10CFR20.1302 and the revision to the TS Bases for the Liquid Holdup Tank activity limit will involve no change in the types or amounts of effluents that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures.

The changes of definitions, terminology, paragraph references, and report submittal frequency are necessary to keep GGNS Technical Specifications consistent with revised federal regulations (i.e. 10CFR20 and 10CFR50.36a). Record retention and reporting requirements will continue to meet NRC regulations. These changes are administrative in nature and do not affect plant hardware or operation.

Decreasing the distance at which radiation measurements are taken is conservative, and will result in higher measured dose rates for a given radiological source. This change is required by the revised 10CFR20.

Based on the above, the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed changes would not create the possibility of a new or different kind of accident from any previous[ly] analyzed.

The proposed changes will not affect plant equipment or operation, nor will they result in a change to the configuration of any plant equipment. There will be no change in the types or increase in the amount of effluents released offsite. Therefore, these changes will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed revisions do not involve any changes in the types or increases in the amounts of effluents released offsite. The methodology used to control radioactive effluents and calculate effluent monitor setpoints will result in the same effluent release rate as the current methodology. The basic requirements for TS concerning effluent releases (10CFR50.36a) indicate that compliance with TS will keep average annual releases to small percentages of 10CFR20 limits. For liquid effluent releases, the annual dose of 500 mrem, upon which the concentrations in the old 10CFR20 are based, is a factor of 10 higher than the annual dose upon which the concentrations in the new 10CFR20 are based. The 50.36a requirements further indicate that operational flexibility is allowed, compatible with considerations of health and safety, which may temporarily result in releases higher than such small percentages, but still within the limits specified in the old 10CFR20.106 which references Appendix B maximum permissible concentrations (MPCs). For gaseous effluent releases, the limits associated with the gaseous release rate TS will be maintained at the current instantaneous dose rate limits. Compliance with the limits of the new 10CFR20.1301 will be demonstrated by operating within the limits of 10CFR50, Appendix I and 40CFR190. Use of a shorter measurement distance for determining high radiation areas is a conservative change, and will not result in an increase in individual or cumulative occupational exposures.

The administrative changes are necessary to keep GGNS Technical Specifications consistent with revised federal regulations. Record retention and reporting requirements will continue to meet NRC regulations. These changes will not affect plant hardware, operation, or configuration.

Therefore, the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Judge George W. Armstrong

Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: Harry Rood (Acting)

Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: August 11, 1993

Description of amendment request: The proposed amendment would amend the Grand Gulf Nuclear Station Technical Specifications Section 3/4.3.7.5, entitled "Accident Monitoring Instrumentation," by relocating certain accident monitoring instrumentation from the Technical Specifications to other controlled documents maintained by the licensee under administrative control and subject to the review required by 10 CFR 50.59.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change relocates accident monitoring instrumentation not designated as R.G. [Regulatory Guide] 1.97 Category I or Type A from the Technical Specifications to plant administrative control, consistent with the NRC Interim Policy Statement on Technical Specification Improvement. Criterion 1 of the Policy Statement indicates that the Technical Specifications should include installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary. This criterion is intended to ensure that the technical specifications control those instruments specifically installed to detect excessive reactor coolant system leakage. This criterion is not interpreted to include instrumentation used to detect precursors to reactor coolant pressure boundary leakage (i.e., non-category 1 or non-type A Reg. Guide. 1.97 variables). The proposed change does not affect any material condition of the plant that could directly contribute to causing or mitigating the effects of an accident.

The applicable surveillance requirements (operability testing, channel checks, and calibration requirements) proposed for relocation will be adequately controlled via the administrative requirements of Technical Specification[s] 6.8 and 6.5.3. Those requirements include review of changes for unreviewed safety questions in accordance with the provisions of 10CFR50.59. The requirements of 10CFR50.59 include a review of the evaluated change for impact on the probability of an accident previously evaluated. The requirements of 10CFR50.59 prevent any evaluated change which increases the probability or consequences of an accident previously evaluated from being made without prior NRC approval. These changes, therefore constitute an administrative revision only.

Therefore, this change does not significantly increase the probability or consequences of a previously evaluated accident.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change will not involve any plant design change. The proposed change will not alter the operation of the plant or the manner in which it is operated (i.e., administrative only). Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The information proposed for relocation will be adequately controlled via the administrative requirements of Technical Specification[s] 6.8 and 6.5.3. Those requirements include review of changes for unreviewed safety questions in accordance with the provisions of 10CFR50.59. The requirements of 10CFR50.59 include a review of the evaluated change for impact on the probability of an accident previously evaluated. The requirements of 10CFR50.59 prevent any evaluated change which increases the probability or consequences of an accident previously evaluated from being made without prior NRC approval. These changes, therefore constitute an administrative revision only.

Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change relocates accident monitoring instrumentation that is not designated as R. G. 1.97 Category I or Type A from the Technical Specifications to plant administrative control. The proposed change will have no adverse impact on the reactor coolant system pressure boundary nor will any other system protective boundary or safety limit be affected. Accident monitoring instrumentation that is designated as Category I or Type A are being retained in the technical specifications.

The information proposed for relocation will be adequately controlled via the administrative requirements of Technical Specification[s] 6.8 and 6.5.3. Those requirements include review of changes for unreviewed safety questions in accordance with the provisions of 10CFR50.59. The requirements of 10CFR50.59 include a review of the evaluated change for impact on the probability of an accident previously evaluated. The requirements of 10CFR50.59 prevent any evaluated change which increases the probability or consequences of an accident previously evaluated from being made without prior NRC approval. These changes, therefore constitute an administrative revision only.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

NRC Project Director: Harry Rood (Acting)

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: July 23, 1993

Description of amendment request: Pursuant to 10 CFR 50.90, Florida Power & Light Company (FPL) requests to amend Facility Operating Licenses DPR-67 and NPF-16 for St. Lucie Units 1 and 2, respectively. The proposed amendments are necessary as a result of the new Standards for Protection Against Radiation (10 CFR 20). It is requested that the proposed amendments be issued with an implementation date that coincides with 10 CFR 20.1008.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.92, a determination may be made that a proposed license amendment involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Each standard is discussed as follows.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Revisions to the St. Lucie Units 1 and 2 Technical Specifications, proposed in this submittal, are consistent with the regulations of the new 10 CFR Part 20. The changes being

proposed are administrative in nature to revise definitions, 10 CFR 20 references and area classifications. These changes are necessary to ensure compliance with the new 10 CFR Part 20 requirements. Assumptions, methods and conclusions contained in the plant safety analyses have not been altered.

Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not change the physical plant, the configuration or method of operation of any plant equipment or the modes of plant operation defined in the Facility License. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The changes proposed to the St. Lucie Unit 1 and 2 Technical Specifications are administrative in nature and assure compliance with the new 10 CFR Part 20. The existing levels of radiological control will not be reduced by these proposed changes and compliance with applicable regulatory requirements governing radioactive effluents and radiological environmental monitoring, including 10 CFR 50.36a, 10 CFR 50, Appendix I and 40 CFR 190, will continue to be maintained. Specifications provided to establish or maintain margins of safety have not been changed.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the discussion presented above and on the supporting Evaluation of Proposed TS Changes, FPL has concluded that this proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: July 2, 1993

Description of amendment request: The proposed amendments would revise Action a. of Technical Specification (TS) 3.11.1.4, Liquid Holdup Tanks. Currently, Action a. references a "Semiannual Radioactive Release Report." This would be renamed "Annual Radioactive Release Report." This change, in effect, decreases the frequency for submitting reports on events which lead to exceeding radioactive material limits for the liquid holdup tanks from a semiannual to an annual basis.

Basis for proposed no significant hazards consideration determination: The licensee notes that the proposed changes to TS 3.11.1.4 are consistent with those previously approved by the NRC in which the frequency of submittal of the Semiannual Radioactive Effluent Release Report was changed to an annual basis in accordance with a recent revision of 10 CFR 50.36a (57 FR 39353 dated August 31, 1992). These changes were approved by Amendment 61 (Unit 1) and Amendment 40 (Unit 2) on March 31, 1993. The changes presently proposed to TS 3.11.1.4 should have been requested as part of the previous amendment request but were inadvertently omitted during the preparation of that request.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes are administrative in nature and do not involve any changes to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. Also, the proposed changes do not alter the conditions or assumptions in any of the Final Safety Analysis Report (FSAR) accident analyses. Since the FSAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes. Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes are administrative in nature and do not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed changes. Also, there will be no change in the types or increase in the amount of effluents released offsite. Therefore, it can be concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes are administrative in nature and do not adversely impact the plant's ability to meet applicable regulatory requirements related to radioactive effluents and radiological environmental monitoring. The proposed changes would also eliminate an unnecessary burden of governmental regulation without reducing protection for public health and safety. Therefore, it can be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308

NRC Project Director: David B. Matthews

GPU Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, (TMI-2), Dauphin County, Pennsylvania

Date of amendment request: June 29, 1993

Description of amendment request: In a letter dated March 17, 1992, General Public Utilities Nuclear Corporation, GPUN or the licensee, requested the relocation of requirements in the Appendix A and B Technical Specifications related to radiological effluents to a new document called the Offsite Dose Calculation Manual (ODCM). The removal of these requirements from the Technical Specifications is in accordance with the guidance in NRC staff issued Generic Letter 89-01 dated January 31, 1989. The NRC staff issued License Amendment No. 43 to Facility License No. DPR-73 for TMI-2 on May 26, 1993, transferring

radiation monitoring and dose assessment requirements for the TMI-2 facility to the ODCM. The licensee, on June 29, 1993, notified the NRC staff by letter that they failed to include a change to Appendix A Technical Specifications Section 3.9.12, "Fuel Handling Building/Auxiliary Building Air Cleanup Systems" in their original March 17, 1992 amendment request. The current Technical Specification references an Appendix B instantaneous release rate for gaseous effluents that no longer exists in Appendix B. The release rates were relocated to the ODCM by the May 26, 1993 Amendment No. 43 to the TMI-2 license. The June 29, 1993 license amendment request proposes to resolve this administrative oversight by revising Section 3.9.12 of the Appendix A Technical Specifications to properly reference the ODCM for the instantaneous release rate for gaseous effluents.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided their analysis of the issue of no significant hazards consideration, which is presented below:

10 CFR 50.92 provides the criteria which the Commission uses to evaluate a No Significant Hazards Consideration. 10 CFR 50.92 states that an amendment to a facility license involves No Significant Hazards if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in a margin of safety.

This change would not involve a significant increase in the probability or consequences of an accident nor create the possibility of a new or different kind of accident because the change is administrative in nature and makes Appendix A Tech. Specs. consistent with License Amendment No. 43. This change would not involve a significant reduction of the margin of safety since it corrects an administrative omission in a prior License Amendment.

Therefore, the proposed changes involve no significant hazards considerations as defined by 10 CFR 50.92.

The NRC staff has reviewed the analysis of the licensee and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105

NRC Project Director: Seymour H. Weiss

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 5, 1993

Description of amendment request: The amendment changes the Technical Specifications (TS) by revising the Limiting Conditions for Operation of TSs 3.2.1.5, 3.2.1.6, 3.5.1, 3.5.5, 3.9.1 and associated Bases to reflect changes in systems containing borated water for Unit 1. The amendment would also change the implementation date from that originally submitted on January 14, 1993, of "Unit 1 fifth refueling outage" to "prior to Unit 1 restart from the current outage." There have been no changes to Unit 1 that deviate from the original submittal.

Houston Lighting & Power Company (HL&P) submitted the original amendment on January 14, 1993, with an implementation date of the third refueling outage for Unit 2 and the fifth refueling outage for Unit 1. The amendment was granted on May 25, 1993, with an implementation date of the third refueling outage for Unit 2. The amendments stated that for Unit 1, HL&P must reapply for the necessary final implementation.

After review, HP&L determined that no changes have been made that would affect the original application or the NRC staff's safety evaluation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed increase in boron concentrations increases the amount of boron delivered to the reactor core under accident conditions. This will decrease the reactivity of the core and will not increase the probability or consequences of an accident previously evaluated.

The reduction in the switchover time for the post-LOCA hot leg injection will ensure that the maximum allowable boric acid concentration will not be exceeded, thus maintaining the current margin to safety.

The proposed increase in the required volume of the Boric Acid Storage Tanks is to ensure that sufficient boric acid is available to borate the reactor coolant system and the water in the refueling canal such that the criticality limit during shutdown and refueling can be met for future cores.

The increase in the required minimum boron concentration in the refueling canal in Mode 6 does not modify or replace the K_{eff} reactivity limit. The design of each reload core is checked to ensure that the refueling criticality limit is met.

Therefore, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed increase in boron concentrations increases the amount of boron delivered to the reactor core under accident conditions. This increase in boron will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The reduction in the switchover time for the post-LOCA hot leg injection will ensure that the maximum allowable boric acid concentration will not be exceeded. This reduction in switchover time will maintain the current margin to safety. Therefore, the increase in the boron concentration will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed increase in the required volume of the Boric Acid Storage Tanks during shutdown and refueling is to ensure the reactor coolant system can be adequtely borated during shutdown. This increase in volume does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The increase in the required minimum boron concentration in the refueling canal in Mode 6 does not modify or replace the K_{eff} reactivity limit. Therefore, the increase in the boron concentration will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed increase in boron concentrations increases the amount of boron delivered to the reactor core under accident conditions. This will decrease the reactivity of the core and will not cause a decrease in a margin of safety.

The reduction in the switchover time for the post-LOCA hot leg injection will ensure that the maximum allowable boric acid concentration will not be exceeded, thus maintaining the current margin of safety.

The proposed increase in the required volume of the Boric Acid Storage Tanks is to ensure that sufficient boric acid is available to borate the water in the reactor coolant system and the refueling canal such that the criticality limit during shutdown and refueling can be met for future cores. Also, the increase in the required minimum boron

concentration in the refueling canal in Mode 6 does not modify or replace the K_{eff} reactivity limit.

The design of each reload core is checked to ensure that the refueling criticality limit is met. The proposed changes do not involve a change to the refueling criticality limit and serve to maintain the current margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: Suzanne C. Black

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 14, 1993

Description of amendment request: The proposed amendment would revise the Cooper Nuclear Station (CNS) Technical Specifications to support compliance with the new requirements of Title 10 Code of Federal Regulations Part 20. Additionally, the amendment would remove the Technical Specification (Section 3/4.8 and associated bases) governing the control of miscellaneous radioactive sources, in accordance with the guidance provided by NUREG-1433, "Standard Technical Specifications, General Electric Plants, BWR/4," which, unlike previous revisions of the BWR Standard Technical Specifications, does not contain any Technical Specifications addressing the testing of miscellaneous radioactive sealed sources. Finally, the proposed amendment includes a number of minor editorial changes unrelated to either revised 10 CFR Part 20 or miscellaneous radioactive sealed sources, such as page renumbering and capitalization of defined terms.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation

The first part of Proposed Change No. 117 involves numerous individual changes necessary to bring the CNS Technical Specifications into conformance with the revised 10 CFR [Part] 20 Rule. These changes are both editorial and administrative in nature, and do not affect any accident initiators or change any assumptions of the accident evaluations. These changes do not involve the modification or addition of any plant equipment, nor do they involve a change in plant settings that affect plant operation responses. Therefore, this part of the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The second part of Proposed Change No. 117 removes Section 3/4.8.A, its associated bases, and records retention requirements (Section 6.4.3) from the CNS Technical Specifications. These requirements will instead be addressed by CNS administrative procedures. This change is administrative in nature and is in accordance with guidance provided in NUREG-1433, "Standard Technical Specifications, General Electric Plants, BWR/4", which do not contain technical specifications for the control of miscellaneous sealed sources. The requirements of, and compliance to, License Condition 2.B.2.(3) of the CNS Facility Operating License are unaffected by this change. This proposed change does not affect any accident initiators or change any assumptions. There are no setpoint changes, changes to plant equipment, changes in maintenance, or changes in plant operations. Therefore, this part of the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The third part of Proposed Change No. 117 consists of editorial changes not directly related to the revised Part 20 portion of this proposed change. These changes include, but are not limited to, page renumbering and the capitalization of defined terms. These changes are editorial in nature and have no impact on plant equipment, plant design, or operations. These editorial changes do not modify or add any initiating parameters. Therefore, this part of the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility for a new or different kind of accident from any accident previously evaluated?

Evaluation

The first part of the proposed change involves numerous editorial and administrative changes related to the implementation of the revised 10 CFR [Part] 20. These individual changes do not result in the modification of any structure, system, or component, nor do these changes introduce or change any mode of plant operation. This part of the proposed change does not create the possibility for a new of different kind of accident from any accident previously evaluated.

The second part of the proposed change removes Section 3/4.8.A, its associated bases, and records retention requirements (Section 6.4.3) from the CNS Technical Specifications. This part of the proposed change is administrative in nature and does not involve the modification, addition, or deletion of any plant equipment, nor does it change or introduce any new mode of plant operation. This part of the proposed change does not create the possibility for a new of different kind of accident from any accident previously evaluated.

The third part of the proposed change consists of editorial changes not directly related to the revised Part 20 portion of this proposed amendment. These individual changes do not involve any alteration to plant design, setpoints, or operating parameters, nor do they introduce or change any mode of plant operation. Therefore, this part of the proposed change does not create the possibility for a new different kind of accident from any accident previously evaluated.

3. Does the proposed change create a significant reduction in the margin of safety?

Evaluation

The first part of the proposed change involve[s] the updating of applicable sections of the CNS Technical Specifications to be in agreement with the revised 10 CFR [Part] 20 Rule. The NRC has concluded that "incorporation of these changes will ensure that Part 20 continues to provide adequate protection of public health and safety" (FR Vol. 56, No.98, May 21, 1991). The revised Part 20 Rule contains several enhanced radiation safety requirements for members of the public and individuals exposed to occupational radiation. Implementation of the new regulation has no effect on plant safety setpoint settings or overall operation of the station, as it pertains to maintaining plant safety margins. Therefore, this part of the proposed change does not create a significant reduction in the margin of safety.

The second part of the proposed change removes Section 3/4.8.A, its associated bases, and records retention requirements (Section 6.4.3) from the CNS Technical Specifications. This part of the proposed change is administrative in nature and does not impact the operability determination of installed plant equipment, has no effect on plant safety setpoint settings, and does not have any effect on plant operations. Therefore, this part of the proposed change does not create a significant reduction in the margin of safety.

The third part of the proposed change consists of editorial changes not directly related to the revised Part 20 portion of this proposed change. These individual changes do not involve any change to plant design, equipment, instrument setpoints, or operation. Therefore, this part of the proposed change does not create a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: Harry Rood (Acting)

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: July 26, 1993

Description of amendment request: The proposed change would increase the maximum stroke time for reactor water cleanup (RWCU) system isolation valves CU-2, 3, 5, and 28 from 18 seconds to 20 seconds in Technical Specification Table 3.7.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10CFR50.92, NNECO has reviewed the proposed change described above and has concluded that it does not involve a significant hazards consideration (SHC) because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed increase in the allowable closure time for RWCU system isolation valves CU-2, 3, 5, and 28 from 18 to 20 seconds would have no impact on the core cooling aspect of a LOCA [loss of coolant accident]. With respect to the radiological consequences of a LOCA, the proposed valve closure time of 20 seconds is well within the 60-second closure limit assumed in the associated LOCA analysis. The proposed increase in closure time to 20 seconds is consistent with the Updated Final Safety Analysis Report analysis of RWCU line break in the reactor building which assumes a 20-second closure limit. The analysis results are used in calculating harsh environment impact in the reactor building and in calculating the off-site dose of an RWCU line break. The environmental profiles for the reactor building are not affected by this change. Therefore, this proposed change has no affect on the initiation, probability, or consequences of any previously evaluated accident scenarios.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The 20-second closure time for RWCU system isolation valves CU-2, 3, 5, and 28 has been previously analyzed and found to be consistent with design basis accident assumptions. The proposed increase in closure time to 20 seconds is consistent with the Updated Final Safety Analysis Report analysis of RWCU line break in the reactor building which assumes a 20-second closure limit. The analysis results are used in calculating harsh environment impact in the reactor building and in calculating the off-site dose of an RWCU line break. The environmental profiles for the reactor building are not affected by this change. As such, the potential for an unanalyzed accident is not created. No new failure modes are introduced.

3. Involve a significant reduction in a margin of safety.

Increased maximum allowable isolation times for RWCU valves do not diminish the ability to isolate the containment. The proposed change does not affect the consequences of any accidents previously analyzed, and no safety limits for the protective boundaries are impacted. Therefore, the proposed change does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company (NNECO), Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: July 27, 1993

Description of amendment request: The proposed changes would eliminate the exemption granted on May 10, 1985, for air lock testing and require Millstone Unit 1 to meet paragraph III.D.2(b)(ii) of Appendix J. Specifically, the proposed changes would: (1) delete the description of the May 10, 1985, Appendix J exemption pertaining to low pressure tests of the containment access air locks, described in the Millstone Unit 1 Operating License Section 2.D(2), (2) reword Technical Specification 4.7.A.3.d(2) to be consistent with paragraph III.D.2(b) of 10 CFR 50, Appendix J, and (3) revise the associated bases section.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10CFR50.92, NNECO has reviewed the proposed changes and has concluded that they do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes revise the operating license by eliminating the May 10, 1985, exemption which allowed low pressure tests of containment air locks; and revises Technical Specification 4.7.A.3.d(2) to eliminate the 10 psig test requirement and adds the Appendix J paragraph III.D.2(b)(ii) requirement to test the air lock at P_a (43 psig) prior to entering a mode in which primary containment integrity is required.

Elimination of the 10 psig test is conservative since actual leakage at 43 psig will be measured during the test. Testing of the air lock at 43 psig is already performed at least once every six months in accordance with the existing Technical Specification 4.7.A.3.d(2). The addition of a 43 psig LLRT [local leak rate test] prior to entering a mode where containment integrity is required provides additional assurance that the air locks are operable during the initial startup period. The change in test requirements does not degrade the performance of the containment personnel air lock, nor does it prevent actions assumed in the accident analysis. There is no change in the air lock or its function. Therefore, there is no effect on the probability or consequence of an accident.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not modify the function of the air lock, nor are any requirements being added or deleted. The only changes are the elimination of the 10 psig test requirement and addition of the Appendix J paragraph III.D.2(b)(ii) requirement to test the air lock at P_a prior to entering a mode in which primary containment integrity is required. A 43 psig LLRT is already performed at least once every six months in accordance with the existing technical specification. The elimination of the 10 psig test does not subject the air lock to a higher test pressure than previously experienced.

Testing the air lock seals prior to entering a mode in which containment integrity is required does not create a potential for a new accident since the test is only being performed at a higher pressure and is completed to demonstrate that the airlock is operable. Since there are no changes in the air lock or its operation and no new test criteria are being added, the potential for an unanalyzed accident is not created.

3. Involve a significant reduction in a margin of safety.

The proposed changes eliminate an exemption and technical specification requirements which allowed a 10 psig LLRT

in place of a 43 psig LLRT and adds the Appendix J paragraph III.D.2(b)(ii) requirement to test the air lock at P_a prior to entering a mode in which primary containment integrity is required. The changes are conservative since actual leakage at 43 psig will be measured during testing and an additional test, prior to entering a mode where containment integrity is required, will be performed. The changes do not degrade the performance of the containment personnel air lock, but rather the proposed changes meet the testing requirements of 10CFR50 Appendix J. Moreover, the proposed change does not reduce any of the operability requirements of the technical specifications; therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: July 7, 1993

Description of amendment request: The proposed amendment would revise Technical Specifications (TSs) 4.0.C and 4.0.D and the associated Bases to incorporate the guidance provided in NRC Generic Letter 87-09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements." The proposed change to TS 4.0.C would incorporate a 24-hour delay in implementing the Action Requirements due to a missed surveillance requirement when the Action Requirements provide a restoration time that is less than 24 hours. The proposed change to TS 4.0.D would allow mode changes to be made as required to comply with Action Requirements even if the surveillance requirements to enter a mode are not complete.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to [Technical] Specification 4.0.C will allow a delay of implementation of Action Requirements for up to 24 hours under certain conditions when a surveillance has been missed. Additionally, in some cases a surveillance should be delayed until proper plant conditions exist. This will not significantly increase the probability or consequences of an accident, in that surveillances normally verify system or component operability as opposed to discovering inoperability. Without the 24 hour delay, it is possible that a missed surveillance would force the plant to shutdown. Avoidance of these unnecessary shutdowns is beneficial since this reduces reactor vessel stresses which far outweighs any disadvantages associated with the additional 24 hours in which to perform a missed surveillance.

If a plant shutdown is required before a missed surveillance is completed, it is likely that it would be conducted when the plant is being shutdown because the completion of a missed surveillance would terminate the shutdown requirement. This is undesirable since it increases the risk to the plant and public safety by:

- placing the plant in a transient state involving changing plant conditions that offer the potential for an upset that could lead to a demand for the system or component being tested. This would occur when the system or component is either out of service to allow performance of the surveillance test or there is a lower level of confidence in its operability because the normal surveillance was exceeded. If the surveillance does demonstrate that the system or component is inoperable, it would be preferable to restore it to an operable status before making a major change in plant operating conditions.
- a shutdown would increase the pressure on the plant staff to expeditiously complete the required surveillance so the plant could be returned to power operation. This would further increase the potential for a plant upset when both the shutdown and surveillance activities place a demand on the plant operators.

The proposed change to [Technical] Specification 4.0.D will allow passage through an operational mode if required to comply with an Action Statement. This includes entry into a mode even if required surveillances for that mode are incomplete. The proposed Technical Specification will not result in a change to the design or operation of the facility, therefore, this change will not result in an increase in the probability or consequences of an accident previously evaluated.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to [Technical] Specification 4.0.C will allow the plant to continue operation for an additional 24 hours after discovery of a missed surveillance. Missing a surveillance does not mean that a component or system is inoperable. In most cases, surveillance demonstrates the continued operability of the components and systems. This change will not affect the design of the plant and will not allow the plant to be operated outside the currently allowed modes of operation.

The proposed change to [Technical] Specification 4.0.D will alleviate a conflict within the Technical Specifications. The change is necessary to allow the plant to proceed through or to required operational modes to comply with Action statement requirements even if applicable Surveillance Requirements may not have been performed. This change can not initiate a new or different kind of accident.

3. involve a significant reduction in the margin of safety.

The proposed change to Technical Specification 4.0.C will allow up to 24 hours to perform a missed surveillance. In some cases this will eliminate the need for a plant shutdown. The overall effect is a net gain in plant safety by avoiding unnecessary shutdowns and the associated system transients due to missed surveillances.

The proposed change to Technical Specification 4.0.D will eliminate an internal conflict within the Technical Specifications and allow the plant to proceed through or to required operational modes to comply with Action Requirements even if applicable Surveillance Requirements for that mode may not be performed. This change does not affect any margin of safety.

Implementation of these change to the FitzPatrick Surveillance Requirements is consistent with the guidance provide[d] by the NRC in Generic Letter 87-09. The NRC staff encourages licensees to implement these technical specification changes since they have concluded that this will result in improved Technical Specifications for all plants.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: July 7, 1993

Description of amendment request: The proposed changes remove Pages 4-1a and 4-1b of Section 4.2.1, "Aquatic Monitoring," from the Environmental Protection Plan.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would remove the sea turtle monitoring and reporting requirements from the Environmental Protection Plan (Appendix B to the facility operating license). The change is administrative in nature and would in no way affect the initial conditions, assumptions, or conclusions of the Hope Creek accident analyses. In addition, the proposed change would not affect the operation or performance of any equipment assumed in the accident analyses. Based on the above information, we conclude that the proposed change would not significantly increase the probability or consequences of an accident previously evaluated.

2. Will not created the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is administrative in nature and would in no way impact or alter the configuration or operation of the facility and would create no new modes of operation. We therefore conclude that the proposed changes would not create the possibility of a new or different kind of accident.

3. Will not involve a significant reduction in a margin of safety.

As indicated in the discussion of Criterion 1, the change is administrative in nature and would in no way affect plant or equipment operation or the accident analyses. We therefore conclude that the proposed change would not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: July 19, 1993, as supplemented by letter dated August 5, 1993. This notice supersedes the previous notice in its entirety (58 FR 16872 dated March 31, 1993).

Description of amendment request: This amendment request would delete line item 9, Boric Acid Tank Solution Level, from Tables 3.3-11 and 4.3-11 and the associated Action 3, of Technical Specification 3.3.3.7, Post Accident Monitoring System for both Salem, Units 1 and 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

[...]

The change does not involve a system that was assumed to function in any of the design/licensing basis analysis, therefore, the probability or consequences of an accident previously evaluated are not increased.

2. Does not created the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not introduce any design or physical configuration changes to the facility which could create new accident scenarios.

3. Does not involve a significant reduction in a margin of safety.

As stated in response to question number 1 above, the proposed change does not affect a system that was taken credit for or assumed to function under any of the design/licensing basis analysis. Consequently, there is no reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: June 4, 1993

Description of amendment request: The amendment would revise Technical Specification Tables 2.2-1 and 4.3-1 as well as Bases 3/4.2.2 and 3/4.2.3 by changing the Axial Flux Difference (AFD) penalty function, f_1 (Delta-I), defined in Note 1 of Table 2.2-1 for the Overtemperature Delta-T (OTDT) Reactor Trip Functional Unit. These changes will be accommodated by use of the available DNBR margin, as reflected in Bases 3/4.2.2 and 3/4.2.3, and by a recalibration tolerance reduction for the incore vs. excore AFD comparison surveillance in Note 3 of Table 4.3-1 from 3 percent to 2 percent.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the accident analyses documented in FSAR Chapter 15, [WCAP-10961-P], and WCAP-11883 since no hardware changes are proposed.

The OTDT reactor trip function is a primary trip credited in the FSAR Chapter 15 and WCAP-10961-P accident analyses. The OPDT reactor trip function provides backup protection against excessive power (fuel rod integrity protection within the fuel temperature design basis). No credit is explicitly taken for OPDT trips in those accident analyses, although the OPDT trip is credited in the analysis of a steamline break coincident with control rod withdrawal.

The OTDT setpoint is designed to ensure plant operation within the DNB design basis and hot leg boiling limit. The OTDT AFD penalty function, f_1 (Delta-I), is designed to ensure DNB protection from adverse axial power shapes. This AFD penalty function is generated based on expected axial power shapes from various ANS Condition I and II events. Changing the penalty function deadband, such that no penalty is incurred for axial flux differences between -23 percent and +10 percent Delta-I, as well as increasing the power reduction slope of the positive wing will have no effect on the accident analyses since those analyses do not model the f_1 (Delta-I) term in the OTDT setpoint equation. This penalty function accounts for axial power shape effects on the DNB criteria and independently lowers the OTDT setpoint to ensure a conservative reactor trip when faced with severe power shapes. Changing the slope of the positive wing will eliminate a DNBR penalty assessed due to the non-conservative nature in which Westinghouse previously calculated the AFD penalty function. Changing the deadband will require

the use of available DNBR margin as reflected in the revisions to the Bases.

The OTDT and OPDT (which for Callaway is a backup trip with no AFD penalty function) trips will continue to function in a manner consistent with the above analysis assumptions and the plant design basis. As such, there will be no degradation in the performance of or an increase in the number of challenges to equipment assumed to function during an accident situation.

The reactor trip system response time, beginning at the time the measured Delta-T exceeds the trip setpoint at the RTDs as defined in the Technical Specifications, will be unaffected. With the addition of the time constant inequality signs, the time between the beginning of a transient until the RTDs sense a Delta-T higher than the reactor trip setpoint will be reduced since the effect of the signal conditioning will be to lower the trip setpoint if the time constants are set in accordance with the conservative direction of the inequality signs.

These Technical Specification revisions do not involve any hardware changes nor do they affect the probability of any event initiators. There will be no change to normal plant operating parameters, ESF actuation setpoints, accident mitigation capabilities, accident analysis assumptions or inputs. The accident analyses do not model the OTDT AFD penalty function, therefore changes to that penalty function do not impact the conclusions of the accident analyses. The addition of the OTDT and OPDT time constant inequality signs has the effect of lowering the respective reactor trip setpoints. Therefore, these changes will not increase the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

As discussed above, there are no hardware changes associated with these Technical Specification revisions nor are there any changes in the method by which any safety-related plant system performs its safety function. Revisions to the OTDT AFD penalty function deadband and positive wing slope will require setpoint and scaling changes for the function generator (NCH) cards in the 7300 Process Protection System. The nature of these setpoint and scaling changes is straightforward and similar to those performed to implement Relaxed Axial Offset Control. The new requirement to recalibrate if the incore vs. excore AFD mismatch is greater than or equal to 2 percent does not affect the manner of plant operation. At most this would result in monthly recalibrations vs. the current quarterly recalibrations. This mismatch has historically been less than 2 percent and is usually less than 1 percent.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes. Therefore, the possibility of a new or different kind of accident is not created.

(3) Involve a significant reduction in a margin of safety.

There will be no change to the DNBR Correlation limit, the design DNBR limits, or the safety analysis DNBR limits discussed in BASES Section 2.1.1. Available DNBR margin will be used to widen the OTDT AFD penalty function deadband, as indicated in the revisions to BASES 3/4.2.2 and 3/4.2.3.

As discussed earlier, the response time of the OTDT and OPDT reactor trip functions will remain within the assumptions used in the accident analyses. The analyses of the events which credit the OTDT reactor trip will remain as presented in FSAR Chapter 15 and WCAP-10961-P.

The OTDT setpoint calculation includes terms that are dependentupon a gain factor determined by the slope of the positive wing of the AFD penalty function. One of these terms is derived from Note 3 of Technical Specification Table 4.3-1. That note deals with a monthly comparison of incore to excore AFD above 15 percent of rated thermal power. Currently there is a requirement to recalibrate, normally done on a quarterly interval, if the absolute difference in the incore vs. excore AFD is greater than or equal to 3 percent. It has been confirmed that the Z, S, and Allowable Value terms currently listed in Table 2.2-1 for the OTDT trip function will remain conservative, and no changes are required, by reducing the incore vs. excore AFD recalibration tolerance from 3 percent to 2 percent and implementing the new gain factor. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on DNBR limits, F_Q, F-delta-H, LOCA PCT, peak local power density, or any other margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: July 2, 1993

Description of amendment request: The proposed changes will update the augmented inspection program for sensitized stainless steel to incorporate the newer Code requirements, while maintaining the increased inspection philosophy of the Atomic Safety and Licensing Board.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of Surry Power Station in accordance with the proposed Technical Specification changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The proposed examination requirements will continue to provide assurance of system integrity for those systems containing sensitized stainless steel. Plant and specific system operations are not being changed. Therefore, changing the examination selection criteria and the examination technique for sensitized stainless steel does not increase the probability of or the consequences of any accident previously evaluated in the UFSAR [Updated Final Safety Analysis Report].

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Changing the examination selection criteria and the examination technique for sensitized stainless steel does not involve any physical modification of the plant or change in a method of operation. A new failure mode is not introduced. Therefore, a new or different type of accident is not made possible.

3 Involve a significant reduction in a margin of safety.

The proposed changes do not affect any safety limits or limiting safety system settings. System operating parameters are unaffected. The proposed examination requirements will continue to provide assurance of system integrity for those systems containing sensitized stainless steel. Thus the availability of equipment required to mitigate or assess the consequences of an accident is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-280, 50-281, 50-338, 50-339, Surry Power Station, Units No. 1 and No.2 Surry County, Virginia and North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: July 20, 1993

Description of amendment request: The proposed changes would delete the Technical Specification requirement for Surry 1&2 and NA-1&2 Station Nuclear Safety and Operating Committee (SNSOC) review of the Emergency and Security Plans since this requirement will remain in each of the respective plans. Also, audit frequencies are being deleted from the Technical Specifications while the listing of the specific audits will remain. As a result, the revised audit frequencies will be governed by the Emergency and Security Plans and a summary statement in the Operational Quality Assurance Program Topical Report which stipulate audit frequencies.

On April 1, 1993, the NRC published a notice of opportunity for public comment for a proposed generic communication (58 FR 17293) which provides guidance for relocating certain requirements (without reducing them) from the Technical Specifications to other NRC-approved program documents. The proposed generic communication specifically addresses the reviews and audits of the Emergency Plan and implementing procedures and the Physical Security Plan and implementing procedures. Currently, the requirements for these reviews and audits are incorporated into the Surry 1&2 and NA-1&2 Emergency and Security Plans. The proposed changes would delete the redundant references in the facilities' Technical Specifications to the requirements which originate in Title 10 of the Code of Federal Regulations [10 CFR 50.54(t) for Emergency Preparedness and 10 CFR 50.54(p), 10 CFR 73.40, 10 CFR 73.55, and 10 CFR 73.56 for Security].

The proposed amendments would eliminate the references to specific frequencies for each of the Technical Specification-required audits and eliminate reference to reviews and audits of the Emergency Plan and Security Plan. Instead, a statement would be added to the Operational Quality Assurance Program specifying that the audits listed in the Surry 1&2 and NA-1&2 Technical Specifications would be accomplished on a biennial (2 years) frequency as defined by Operational Quality Assurance Program commitments to NRC Regulatory Guide 1.74 and as directed by administrative procedures and/or management. The requirements for reviews and annual audits of the facility Emergency Plan and Security Plan (and their associated implementing procedures) are currently delineated within the NRC-approved Emergency Plans and Security Plans as provided for in the NRC's proposed generic communications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facilit[ies] in accordance with the proposed technical specifications would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The likelihood that an accident will occur is neither increased or decreased by this Technical Specification change which only affects review and audit frequencies. This Technical Specification change will not impact the function or method of operation of plant equipment. Thus, there is not a significant increase in the probability of a previously analyzed accident due to this change. No systems, equipment, or components are affected by the proposed changes. Thus, the consequences of the malfunction of equipment important to safety previously evaluated in the UFSAR [Updated Final Safety Analysis Report] are not increased by this change.

The proposed change only affects review and audit frequencies. As such, the proposed change has no impact on accident initiators or plant equipment, and thus, does not affect the probabilities or consequences of an accident.

Therefore, we conclude that this change does not significantly increase the probabilities or consequences of an accident.

(2) Operation of the facilit[ies] in accordance with the proposed technical specifications would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve changes to the physical plant or operations. Since program audits do not contribute to accident initiation, a change related to audit functions cannot produce a new accident scenario or produce a new type of equipment malfunction. Also, this change does not alter any existing accident scenarios. The proposed change does not affect equipment or its operation, and, thus, does not create the possibility of a new or different kind of accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident.

(3) Operation of the facilit[ies] in accordance with the proposed technical specifications would not involve a significant reduction in a margin of safety.

The proposed change concerning conduct of reviews and audits does not directly affect plant equipment or operation. Safety limits and limiting safety system settings are not affected by this proposed change.

Therefore, use of the proposed Technical Specification would not involve any reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Swem Library, College of William and Mary, Williamsburg, Virginia 23185, and The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration. For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: March 1, 1993, as supplemented July 26, 1993

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3/4.3.3, "Reactor Trip System Instrumentation," TS 3/4.3.2, "Engineered Safety Feature Actuation System Instrumentation," and their associated Bases to relax surveillance test intervals and allowed outage times for engineered safety features actuation system instrumentation based on Westinghouse Topical Report WCAP-

10271 as previously approved by the NRC.

Date of publication of individual notice in **Federal Register:** August 9, 1993 (58 FR 42350)

Expiration date of individual notice: September 8, 1993

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: June 7, 1993

Description of amendment request: The proposed amendment would revise the plant Technical Specifications (TS) to reflect the inclusion of gadolinia-urania in the fuel rod design description, to revise the borated water storage tank boron concentration limits, and to clarify the bases section of the TS. The proposed amendment would also place a reference in the TS to Babcock & Wilcox Topical Report BAW-10179P, "Safety Criteria and Methodology for Acceptable Cycle Reload Analyses."

Date of publication of individual notice in **Federal Register:** August 9, 1993 (58 FR 42352)

Expiration date of individual notice: September 8, 1993

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: May 14, 1993, supplemented June 10 and July 16, 1993.

Description of amendment request: The proposed amendment would modify the spent fuel pool storage pool that would introduce neutron absorbing (poison) rodlets (pins) into the stored fuel and increase the required burnup in Region C to permit removal of the cell blockers, thus increasing by 234 fuel assemblies the storage capacity of the spent fuel storage pool.

Date of publication of individual notice in **Federal Register:** August 10, 1993 (58 FR 42581)

Expiration date of individual notice: September 9, 1993

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: February 26, 1993, as supplemented July 27, 1993.

Brief description of amendment: The amendment revises Technical Specification 3/4.4.9, Pressure/Temperature Limits by replacing the current five year heatup and cooldown limitations with revised limitations based on predicted reactor vessel neutron exposure at eleven effective full power years of operation.

Date of issuance: August 20, 1993

Effective date: August 20, 1993

Amendment No. 38

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 31, 1993 (58 FR 16854) The July 27, 1993, supplemental letter provided clarifying information and did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 20, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: May 24, 1993, as supplemented July 9, 1993

Brief description of amendment: The amendment clarifies the Technical Specification that deals with the undervoltage breakers in the Reactor Protection System.

Date of issuance: August 16, 1993

Effective date: August 16, 1993

Amendment No.: 110

Facility Operating License No. DPR-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34073)

The July 9, 1993, letter provided clarifying information only and did not affect the Commission's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: November 16, 1992, as supplemented March 11, 1993.

Brief description of amendments: The amendments revise the Appendix A

Technical Specifications (TS) relating to the containment recirculation spray system. The amendments add TS coverage to address the failure of more subsystems than are now covered in TS. In addition, certain requirements that were only applicable to cycle 8 operation are deleted.

Date of issuance: August 11, 1993
Effective date: August 11, 1993
Amendment Nos.: 174, 54
Facility Operating License Nos. DPR-66 and NPF-73: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** January 21, 1993 (58 FR 5430)

The March 11, 1993, supplement provided information that did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 11, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: December 21, 1992
Brief description of amendments: These amendments revise the Appendix A TS relating to alternate source range neutron flux monitors. The amendments permit the use of alternate source range monitors provided the required visual and audible indications are available. The amendments also allow installation of the reactor core upper internals when only one monitor is available. In addition, the TS are expanded to cover the case where both monitors are inoperable.
Date of issuance: August 20, 1993
Effective date: As of date of issuance and to be implemented within 60 days of issuance.
Amendment Nos.: 175 and 55
Facility Operating License Nos. DPR-66 and NPF-73: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** March 25, 1993 (58 FR 16223)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 20, 1993

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 7, 1993.
Brief description of amendment: The amendment revised the Technical Specifications by allowing the third Type A Containment Integrated Leakage Rate Test in the first 10-year service period to be conducted at Refuel 7. This exceeds the allowed interval by approximately 4 months.
Date of issuance: August 12, 1993
Effective date: August 12, 1993
Amendment No.: 85
Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34079)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: May 20, 1993, as supplemented by letter dated July 15, 1993
Brief description of amendment: The amendment removed from the TS the operability requirements for the auto-test feature of the load shedding and sequencing (LSS) system, and increased the allowed outage time (AOT) in the TS for an inoperable LSS system from 8 to 12 hours.
Date of issuance: August 16, 1993
Effective date: August 16, 1993
Amendment No: 108
Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34076)

The additional information contained in the supplemental letter dated July 15, 1993, was clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: October 19, 1992, as supplemented May 3 and July 27, 1993
Brief description of amendments: The amendments delete the main steam isolation valve closure, the reactor scram, and the control room pressurization functions of the main steam line radiation monitors.
Date of issuance: August 17, 1993
Effective date: To be implemented no later than 60 days from the date of issuance
Amendment Nos.: 188 and 127
Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19482)

The May 3 and July 27, 1993, letters provided additional and clarifying information that did not change the no signficant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 17, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: March 19, 1993, as supplemented on July 23, 1993
Brief description of amendment: The amendment extends the effectiveness of the Technical Specification (TS) pressure vs. temperature limits until plant operation has reached 15.2 effective full power years (EFPY).
Date of issuance: August 16, 1993
Effective date: August 16, 1993
Amendment No.: 176
Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34080)

The July 23, 1993, submittal provided clarifying information that did not change the initial no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 16, 1993.

No significant hazards consideration comments received: No.

Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: December 27, 1991

Brief description of amendment: The amendment modifies Clinton Power Station Technical Specification 3/4.7.2, "Control Room Ventilation System," by revising Action Statement b.1 to provide an alternative where the operable Control Room Ventilation System does not have to be operated in the high radiation mode. Also, Surveillance Requirement 4.7.2.e.5 is revised to reference the control room pressure relative to the adjacent areas as opposed to the outside atmosphere as previously identified.

Date of issuance: August 5, 1993

Effective date: August 5, 1993

Amendment No.: 82

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 2, 1992 (57 FR 40213)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: April 16, 1993, as supplemented June 18, 1993

Brief description of amendments: Amendments change Technical Specification (TS) 6.9.1.8 and 6.9.1.9, "Semi-Annual Radioactive Effluent Release Report," to extend the Radioactive Effluent Release Report submittal frequency from semiannual to annual. The amendments also change TS 6.5.2.2, "Composition," 6.5.2.3, "Alternate Members," 6.5.2.9, "Authority," and 6.5.2.10, "Records," to reflect membership change in the Nuclear Safety and Design Review Committee charter.

Date of issuance: August 4, 1993

Effective date: August 4, 1993

Amendment Nos.: 174 and 157

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34080) The June 18, 1993 letter provided an administrative correction and did not affect the staff's initial no significant hazards consideration findings.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 4, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: June 7, 1993

Brief description of amendment: This amendment deletes the five-page list of safety-related shock suppressors (snubbers) from Technical Specification (TS) 3.20, while providing an additional Applicability statement. The additional Applicability statement clearly defines the safety-related scope of the snubber program controlled by the TS. In addition, snubber surveillance testing and recordkeeping requirements are changed to reflect the safety-related scope of the snubber program.

Date of issuance: August 16, 1993

Effective date: August 16, 1993

Amendment No.: 141

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 14, 1993 (58 FR 37972)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: May 26, 1993

Brief description of amendment: The amendment revises Technical Specifications 6.8.2 and 6.8.3c to require approval of plant procedures and administrative policies (and changes thereto) by the Branch Manager for the functional area of the procedure rather than requiring approval of these procedures and administrative policies by the Plant Manager.

Date of issuance: August 9, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 144

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36438)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 9, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: May 26, 1993

Brief description of amendment: The amendment revises Technical Specifications (TSs) 6.8.2 and 6.8.3c to require approval of plant procedures (and changes thereto) by the Branch Manager for the functional area of the procedure rather than requiring approval of these procedures by the Plant Manager. The amendment also corrects a typographical error in TS 6.8.1.i and deletes a footnote on TS page 6-16; the change to TS 6.8.2 incorporates the intent of the deleted footnote.

Date of issuance: August 9, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 45

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36439)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 9, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: February 27, 1993, as supplemented June 18, 1993

Brief description of amendment: The amendment revises Technical Specification Definition 1.9, "Critical Power Ratio," to replace the designation for the General Electric critical power correlation, "GEXL," with a more generic term. Changes have also been made to Bases Sections B2.1 and B3/4.2 to reflect the change to Definition 1.9, incorporate revisions to General Electric Company's approved analytical techniques, update references, and reflect changes made to the Reload Section of the Nine Mile Point Nuclear Station, Unit 2, Updated Safety Analysis Report.

Date of issuance: August 11, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 46

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 31, 1993 (58 FR 16866)

The June 18, 1993, submittal withdrew proposed changes to the recirculation flow upscale rod block setpoint.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 11, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: January 13, 1993.

Description of amendment request: The amendment modifies the frequency in submitting Radioactive Effluent Release Reports. The reporting frequency in Technical Specification (TS) 6.8.1.4 is revised from semiannual to annual. In addition, TS 6.8.1.4 is modified to reflect present plant conditions by eliminating footnotes concerning multi-unit sites and supplemental 30 day dose calculation reports. The Technical Specification Index and TS 3.3.3.9, 3.3.3.10, 3.11.1.4, 3.12.1, 3.12.2, 6.12, 6.13, and 6.14 referencing the Radioactive Effluent Release Report are changed to reflect the annual submittal requirement.

Date of issuance: August 16, 1993

Effective date: August 16, 1993

Amendment No.: 22

Facility Operating License No. NPF-86. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1993 (58 FR 16227).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit 1, Seabrook, New Hampshire

Date of amendment request: May 14, 1993

Description of amendment request: The amendment changes the footnote on page 1 of License NPF-86 to reflect the transfer of interest in the operating license from EUA Power Corporation to Great Bay Power Corporation.

Date of issuance: August 16, 1993

Effective date: August 16, 1993

Amendment No.: 23

Facility Operating License No. NPF-86. Amendment revised the License.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34083).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: April 15, 1993

Brief description of amendment: The proposed amendment would add a footnote which would extend the required date for inspection of steam generator tubes from August 21, 1993, to the end of the next refueling outage, but no later than September 30, 1993.

Date of issuance: August 19, 1993

Effective date: August 19, 1993

Amendment No.: 82

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 26, 1993 (58 FR 30197)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 19, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 9, 1992

Brief description of amendment: The amendment changed Technical Specification 3.2 (Table 3-5) to require a charcoal filter volumetric flow rate of between 4500 and 12000 cubic feet per minute. The amendment also included administrative changes. The remaining changes requested in the October 9, 1993, application remain under consideration and will be the subject of a future licensing action.

Date of issuance: August 10, 1993

Effective date: 30 days from the date of issuance

Amendment No.: 154

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55584)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 10, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 7, 1992, as supplemented by letters dated March 19, April 28, and May 14, 1993

Brief description of amendment: The amendment changed the Technical Specifications to increase the fuel storage capacity in the spent fuel pool to 1083 fuel assemblies.

Date of issuance: August 12, 1993

Effective date: August 12, 1993

Amendment No.: 155

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications and license.

Date of initial notice in **Federal Register:** February 2, 1993 (58 FR 6822)

The additional information contained in the supplemental letters dated March 19, April 28, and May 14, 1993, was clarifying in nature and, thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: May 4, 1993, and supplemented by letter dated July 15, 1993

Brief description of amendments: These amendments change the Technical Specifications to 1) decrease the test frequency of the drywell-to-suppression chamber bypass test to coincide with the test frequency for the Primary Containment Integrated Leak Rate Test, and 2) require an additional test to measure the vacuum breaker leakage area for those outages for which the drywell-to-suppression chamber bypass test is not scheduled.

Date of issuance: August 11, 1993

Effective date: August 11, 1993

Amendment Nos.: 129 and 98

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 9, 1993 (58 FR 32390)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 11, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania

Date of application for amendment: January 28, 1993

Brief description of amendment: This amendment revises the safety limit minimum critical power ratio for two recirculation loop and single recirculation loop operation to 1.07 and 1.08, respectively. The change was requested to accommodate installation and use of a new fuel type, GE-11 fuel, during Unit 3, Cycle 10 operation.

Date of issuance: August 18, 1993

Effective date: August 18, 1993

Amendment No.: 183

Facility Operating License No. DPR-56: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 3, 1993 (58 FR 12266)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 18, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: June 16, 1993, as supplemented by letter dated July 30, 1993.

Brief description of amendment: This amendment is in partial response to the licensee's application submitted June 16, 1993. The amendment extends the current intervals for certain surveillances that are required to be performed once each operating cycle until the end of the next refueling outage, currently scheduled to begin in January 1995. Specifically, the amendment extends the current intervals for bench checking and disassembling safety/relief valves in accordance with Technical Specifications (TSs) 4.6.E.1 and 4.6.E.2, and for testing excess flow check valves in accordance with TS 4.7.D.1.b.

Date of issuance: August 11, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 195

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36444)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 11, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: May 6, 1993

Brief description of amendment: This amendment modifies plant Technical Specification 3.3.2, Table 3.3.2-1, Action 26. The changes would eliminate the requirement to place the filtration, recirculation, and ventilation system (FRVS) in operation when the reactor vessel level instrumentation is inoperable.

Date of issuance: August 18, 1993

Effective date: As of the date of issuance and shall be implemented within 60 days of the date of issuance.

Amendment No.: 57

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34090)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 18, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: May 25, 1993, as supplemented on June 16, 1993, and June 30, 1993.

Brief description of amendment: The amendment reduces the minimum secondary pressure at which surveillance testing of the steam driven

emergency feedwater pump is allowed to "...greater than 865 psig."

Date of issuance: August 19, 1993

Effective date: August 19, 1993

Amendment No. 114

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** July 14, 1993 (58 FR 37975)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 19, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: October 30, 1991

Brief description of amendment: The amendment revised Technical Specifications 3.3.2-1 and 3.3.3-1 to clarify the logic for instrumentation used to isolate the High Pressure Core Spray (HPCS) test return valve and to initiate the HPCS system.

Date of issuance: August 11, 1993

Effective date: August 11, 1993

Amendment No. 50

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 11, 1991 (56 FR 64651)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 11, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 8, 1993, as supplemented by letter dated June 2, 1993.

Brief description of amendments: The amendment deletes Technical Specification Section 3.3.3.7, "Chlorine Detection Systems", and its associated Bases as a result of a future plant modification to remove the one-ton chlorine storage containers from the site. Surveillance Requirement 4.7.6e.5 is also deleted. These changes will be made effective upon the removal of the one-ton chlorine storage containers from the site.

Date of issuance: August 16, 1993

Effective date: August 16, 1993

Amendment No.: 66

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34098)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 1993

No significant hazards consideration comments received: No.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Dated at Rockville, Maryland, this 25th day of August 1993.

For the Nuclear Regulatory Commission

John A. Zwolinski,

Acting Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation

[Doc. 93-21131 Filed 8-31-93; 8:45 am]

BILLING CODE 7590-01-F

Advisory Committee on Reactor Safeguards, Subcommittee on Severe Accidents; Meeting

The ACRS Subcommittee on Severe Accidents will hold a meeting on September 22–24, 1993, Columbian-D Room at the Sheraton Portland Airport Hotel, 8235 NE. Airport Way, Portland, OR.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, September 22, 1993—8:30 a.m. until the conclusion of business.

Thursday, September 23, 1993—8:30 a.m. until the conclusion of business.

Friday, September 24, 1993—8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the severe accident and PRA issues associated with the GE ABWR design certification effort. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, GE Nuclear Energy, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. (EDT).

Persons planning the attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: August 23, 1993.

Paul A. Boehnert,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 93–21240 Filed 8–31–93; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Therman Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on September 21, 1993, at the Agricultural Science Room of the Oregon State University (OSU), LaSells Stewart Center, Corvallis, OR.

The meeting will be open to public attendance, with the exception of portions that will be closed to discuss information deemed proprietary to the Westinghouse Electric Corporation pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, September 21, 1993—8 a.m. until the conclusion of business.

The Subcommittee will continue its review of the Westinghouse integral systems test programs being conducted in support of the AP600 design certification effort. The meeting discussion will focus on the OSU integral systems test facility program. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Westinghouse Electric Corporation, the NRC staff, their respective contractors, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Paul Boehnert (telephone 301/492–8558) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting as urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: August 23, 1993.

Paul Boehnert,

Acting Chief, Nuclear Reactors Branch

[FR Doc. 93–21239 Filed 8–31–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–423; License No. NPF–49]

Northeast Utilities, (Millstone Nuclear Power Station); Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated August 2, 1993, Paul M. Blanch (Petitioner) has requested that the Executive Director for Operations take enforcement action for Northeast Utilities (NU) violations of 10 CFR 50.7. As grounds for this request, the Petitioner asserts a letter he received from Mr. James Lieberman, Director, Office of Enforcement, dated July 15, 1993, responding to Mr. Blanch's letter of June 4, 1993, in which he stated that many specifics were not addressed in an enforcement action taken against NU, was unresponsive. Therefore, Mr. Blanch requests: (1) That enforcement action be taken against Dr. Charles F. Sears, former NU Vice President of Nuclear and Environmental Engineering, for willful violation of 10 CFR 50.7 and deliberate misconduct as defined by 10 CFR 50.5 (Mr. Blanch alleges that the NRC's Office of Investigations (OI) identified Dr. Sears as one of those responsible for actions taken resulting in harassment, intimidation and discrimination (HI&D) directed against him); (2) that a Severity Level I violation be imposed upon the NU Corporate Officer responsible for directing that two of Mr. Blanch's subordinates be suspended, which Mr. Blanch alleges was a retaliatory action in violation of 10 CFR 50.7 and deliberate misconduct as defined by 10 CFR 50.5; (3) that three Severity Level I violations be imposed upon three NU corporate officers (for violations of 10 CFR 50.7 and deliberate misconduct as defined by 10 CFR 50.5) whom Mr. Blanch alleges OI concluded were responsible for various incidents of HI&D and attempted HI&D against him; (4) that a Severity Level I violation be issued for actions by Ed Richters, NU attorney, and a Severity Level II violation be issued to Thomas Shaffer, NU manager, whom Mr. Blanch asserts threatened certain individuals with letters of reprimand if they did not talk with NU contract attorneys prior to being interviewed by the Office of Investigations (OI), for violation of 10 CFR 50.7 and deliberate misconduct as defined by 10 CFR 50.5; and (5) that a minimum of a Severity Level II violation be issued for actions in violation of 10 CFR 50.7 and 10 CFR 50.5 by Mr. Allen Pollack, NU Manager of Internal Auditing. Mr. Blanch alleges that Mr. Pollack, who was responsible for conducting an audit of Mr. Blanch's engineering group, was found by OI to have used falsified credentials and to have arrived at invalid conclusions based on invalid documentation, and that Mr. Pollack was fully aware that the audit was retaliatory and in violation of 10 CFR 50.7.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Enforcement for action. As provided by § 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 23rd day of August, 1993.

For the Nuclear Regulatory Commission.

Joseph R. Gray,

Deputy Director, Office of Enforcement.

[FR Doc. 93–21235 Filed 8–31–93; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 162 to Facility Operating License No. DPR–61 issued to Connecticut Yankee Atomic Power Company (the licensee), which revised the Technical Specifications for operation of the Haddam Neck Plant located in Middlesex County, Connecticut. The amendment is effective as of the date of issuance.

The amendment modified the Technical Specifications to increase the shutdown margin (boron concentration) in Modes 1 through 5 to compensate for the additional reactivity added by a boron dilution event because of the transition from a stainless steel clad core to a zircaloy clad core.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 18, 1993, (58 FR 29012).

The Commission has prepared an Environmental Assessment related to

the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (58 FR 43661).

For further details with respect to the action see (1) the application for amendment dated April 23, 1993, and supplemented June 17, 1993, (2) Amendment No. 162 to License No. DPR–61, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 25th day of August 1993.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–21237 Filed 8–31–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–311]

Salem Nuclear Generating Station, Unit 2; Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–75 issued to Public Service Electric and Gas Company (the licensee) for operation of the Salem Nuclear Generating Station, Unit 2, located in Salem County, New Jersey.

The proposed amendment would modify the Technical Specifications for the A.C. power sources, on a one time basis, to allow connection of two new 500/13.8 kv transformer bus sections as part of the Salem switchyard project during the Unit 1 11th refueling outage. The change would extend the allowed outage time for one inoperable offsite power circuit from 72 hours to 120 hours for two separate action statement entries to allow switchyard modifications. It would also modify the emergency diesel generator testing requirements during the action statement entries.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes to Technical Specification 3.8.1.1 for Salem Unit No. 2:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the Salem Generating Station (SGS) Unit 2 Technical Specifications would allow extension of the action statements 3.8.1.1.a and 3.8.1.1.b, for one inoperable offsite power circuit, from 72 hours to 120 hours. This extension would apply to two separate action statement entries to enable bus connections for new 500/13.8 kv transformers as part of the Salem Switchyard Project. The proposed change would also reduce the number of Emergency Diesel Generator tests associated with the action statement entries.

The Salem Probabilistic Risk Assessment was used to compare the impact of extending the action time vs. the impact of manual reactor shutdown on core damage probability. The PRA results support two conclusions: (1) the risk of operating SGS Unit 2 for 48 hours beyond the 72 hour action time is less than the risk of shutting down the unit upon expiration of the 72 hour clock; and (2) increase in core damage probability associated with the increased action time is insignificant.

With one 500/13.8 kv transformer deenergized, and Unit 1 in a refueling outage, Unit 1 plant loads will be supplied by the one energized transformer. With Unit 2 operating, its plant electrical loads will be powered from the Unit 2 main generator via the Auxiliary Power Transformer (APT). In the event of a Unit 2 trip, the group bus (nonvital) loads will be transferred to the one 500/13.8 kv transformer. In order to minimize the effects of the potential load transfer, a 500/13.8 kv transformer will not be deenergized until the large Unit 1 balance of plant loads (i.e., condensate pumps, circulating water pumps, heater drain pumps and turbine auxiliaries cooling pumps), and reactor coolant pumps are secured. This will reduce the base load on the 500/13.8 kv transformer to accommodate the potential Unit 2 load transfer. The 500/13.8 kv transformers will not be removed from service unless the three Unit 2 EDG's are operable. These EDG's will be available to provide vital power in the event of a loss of offsite power.

The switchyard activities performed during the Unit 1 refueling outage are scheduled such that redundant decay heat removal and A.C. power capability will be maintained. The modifications will be performed in accordance with OSHA requirements relative to minimum clearance distances for energized equipment, and will be subject to the operations department administrative controls for switchyard equipment.

The proposed change would also exempt the Unit 2 EDG's from repetitive testing during the action statement entries. The Unit 2 EDG's will have been successfully tested to demonstrate operability prior to deenergizing a 500/13.8 kv transformer. Implementation of the switchyard modifications would not challenge EDG operability. The Improved Standard Technical Specifications as approved by NRC in NUREG 1431 do not require EDG testing with an inoperable offsite circuit.

Based on the above, the proposed changes do not involve a significant increase in probability or consequences of an accident.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change would extend the allowable time that SGS Unit 2 may operate with one inoperable offsite power circuit. It would not allow the plant to operate in any new configuration that is prohibited by the present plant Technical Specifications. The proposed change includes an exception to repetitive diesel testing while in an action statement for inoperable offsite power circuit. Deenergizing a 500/13.8 kv transformer will not affect EDG operability, and would not involve any changes to EDG operation. Therefore, the proposed changes do not involve any new or different kind of accident from any previously evaluated.

3. Do not involve a significant reduction in a margin of safety.

The Technical Specification requirements for A.C. power sources ensure that redundant electrical power is available to mitigate the consequences of any design basis accident and bring the plant to a safe shutdown condition. The proposed change would not affect the ability of SGS Unit 2 to recover from any design basis transient involving loss of offsite power plus a single failure of one EDG.

Unit 1 will be shutdown with redundant decay heat removal capability during implementation of the proposed change. Therefore, the proposed changes do not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 1, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Michael L. Boyle, Acting Director, Project Directorate I–2: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory

Commission, Washington, DC 20555, and to Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 4, 1993, and supplemented by letter dated August 24, 1993, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 26th day of August 1993.

For the Nuclear Regulatory Commission.

James C. Stone,

Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–21236 Filed 8–31–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 70–27, License No. SNM–42, EA 93–012]

Babcock & Wilcox, Lynchburg, VA; Order, Imposing Civil Monetary Penalty

I

Babcock and Wilcox Company, Naval Nuclear Fuel Division (NNFD or Licensee) is the holder of Special Nuclear Material (SNM) License No. SNM–42 issued by the Nuclear Regulatory Commission (NRC or Commission) on May 31, 1984. The license authorizes the Licensee to fabricate nuclear fuel components for the Naval Reactor Program, research and university reactor components, and compact reactor fuels. The license also authorizes the licensee to perform recovery/disposal operations of scrap fuel generated by the NNFD or other organizations in accordance with the conditions specified therein. The license, originally issued on August 27, 1956, was last renewed on May 31, 1984, with an expiration date of August 31, 1989. The license is currently under timely renewal.

II

An inspection of the Licensee's activities was conducted on December 1, 1992–January 15, 1993, and January 16–February 5, 1993. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated April 6, 1993. The Notice stated the nature of the violations, the NRC requirements that had been violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by letters dated May 6, 1993. In its response, the Licensee admitted all the violations in Section I.A. except Violation I.A.1., which was denied. In addition, the licensee noted an inaccuracy in the recitation of this violation. The Licensee admitted Violation I.B with the exception of example 5 (five), which the Licensee denied. The Licensee also noted an incorrect statement in that example. The Licensee admitted Violation I.C and the violations cited in Section II. The Licensee disagreed with the NRC staff's assessment of the safety significance of the violations and the application of the escalation and mitigation factors. The Licensee also was of the view that the problems cited in the Notice of Violation did not justify a civil penalty of $37,500 when compared to problems at other fuel facilities which have been assessed civil penalties.

III

After consideration of the Licensee's responses and the statements of fact, explanation, and argument for mitigation contained therein, as well as all information concerning these matters available to date, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $37,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region II, 101 Marietta Street NW., suite 2900, Atlanta, Georgia 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the requirements set forth in Violation I.A.1 and example 5 of Violation I.B as set forth in the Notice, and

(b) Whether, on the basis of Violation I.A.1 and example 5 of Violation I.B, and the other violations in the Notice, which the Licensee has admitted, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 20th day of August 1993.

James Lieberman,

Director, Office of Enforcement.

APPENDIX

Evaluation and Conclusion

On April 6, 1993, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Babcock and Wilcox NNFD responded in two letters dated May 6, 1993 that contained respectively an Answer and a Reply to the Notice. The licensee denied violation I.A.1 and example 5 of violation I.B. In addition,

the licensee disagreed with the NRC's characterization of the safety significance of the violations as reflected in the categorization of the violations as a Severity Level III problem, the application of the escalation and mitigation factors, and the amount of the proposed civil penalty.

The NRC's evaluation and conclusions regarding the licensee's responses are as follows:

I. Restatement of Violation I.A.1

On February 13, 1978, the nuclear criticality safety function authorized the handling of uranium solutions in the uranium recovery facility (URF) up to a maximum uranium concentration of 400 grams uranium per liter (facility limit) provided that the Raschig rings were maintained in accordance with ANSI–N16.4–1971 (1974 Standard) which was the predecessor of ANSI/ANS 8.5–1979. Special Nuclear Materials (SNM) License No. SNM–42 was renewed on May 31, 1984, and the requirements set forth below became effective.

License Condition No. 9 of License No. SNM–42 requires that licensed material be used in accordance with the statements, representatives, and conditions contained in Sections I through IV of the application (License Application) dated February 22, 1982, and supplements thereto.

Section III, Chapter 2, Paragraph 2.4 of the License Application specifies that "The Raschig rings will be used in accordance with Raschig ring standard (ANSI/ANS–85–1979)" (sic.)

Section 6.5.1 of American National Standards Institute/American Nuclear Society 8.5 dated 1979 (1979 Standard) requires inspections of Raschig rings used for primary criticality control, at intervals not exceeding 13 months, to be performed as described in Sections 6.1 through 6.4 of the Standard.

Section III, Chapter 1, Paragraph 1.2 of the License Application requires activities at Naval Nuclear Fuel Division (NNFD) involving special nuclear material to be conducted according to limits and controls established by Nuclear Criticality Safety (NCS) and approved by the Nuclear Licensing Board.

1. Section 5.5 of the 1971 and 1979 Standards requires the maximum solution concentration for a vessel to be based on Section 7 of the 1971 and 1979 Standards which specify, in part, that the maximum permissible concentration of homogeneous solutions of fissile materials in vessels packed with 32 glass volume percentage of borosilicate-glass Raschig rings is 400 grams of uranium per liter (gU/1).

Contrary to the above, activities involving special nuclear material were not conducted in accordance with the limits and controls established by NCS and approved by the Nuclear Licensing Board. Specifically, measurements made between December 16, 1992, and January 5, 1993, in the URF determined the glass volume fraction to be less than 32 percent in nine vessels where borosilicate Raschig rings were used as a nuclear criticality safety control. This condition may have existed since 1978 in that measurements made between November 1, 1978, and April 19, 1979, determined that the glass volume fraction in four of 12 vessels tested was less than 32 percent, while the facility was operated with an authorized facility limit of 400 gU/1.

Summary of Licensee's Response

The licensee stated that violation I.A.1 is incorrect and is not supported by the 1978 test results. The licensee contended that the measurement results from 1978 should have been rounded to the nearest whole number so that all tanks save one tested in 1978 contained glass volume fractions of at least 32%. The licensee also claimed that the one tank for which 1978 test results indicated glass volume fractions of 28.87% probably contained at least 32% glass after 1978 because the 1993 test results of this vessel indicated 32% glass volume fraction. The licensee also contended that although procedures were not in place to show technical compliance with the ANSI Standard, controls and other practices were in place to assure that other characteristics about the Raschig rings were maintained. Although volume fractions were not determined at 13 month intervals,and volumes were less than required, the licensee is of the view that the overall program for maintaining Raschig rings did assure safe conditions.

NRC Evaluation of Licensee's Response

The NRC does not agree with the licensee's statement that the percent volume fractions should be rounded up. Normal scientific practice allows for the rounding of numbers as noted in the licensee's response, but such a practice is not acceptable in cases such as this where the glass volume fraction must meet a minimum standard of 32% in order for the licensee to be in compliance with a nuclear criticality safety limit. It is a fact admitted by the licensee that all the fractions referenced were less than 32% prior to rounding up. The licensee's conclusion that the one tank that tested at 28.87% in 1978 and greater than 32% in 1993 could be valid, but the licensee did not demonstrate whether the 32% was in effect during the intervening years or whether there were additions of Raschig rings during this time to increase a substandard volume fraction. The information provided by the licensee in the response did not include information demonstrating that the tanks met the requirement at all times nor did it provide any basis for disputing the fact that the licensee failed to conduct operations in accordance with Nuclear Criticality Safety, Nuclear Licensing Board and license requirements regarding the use of Raschig ring filled vessels. The licensee implies that this is a technical violation, since other characteristics concerning the Raschig rings were maintained. The NRC disagrees with this statement. Compliance with the ANSI standard was required by the licensee's NCS evaluations and all NCS evaluations performed for the affected operations assumed the ANSI standard requirements regarding the Raschig ring filled vessels were being maintained. The percent volume fraction is a key item in compliance, since the criticality safety limits used by the licensee assumed a certain minimum volume fraction to be present.

II. Restatement of Example 5 of Violation I.B

License Condition No. 9 of SNM–42 requires that licensed material be used in accordance with statements, representations, and conditions contained in Section I through IV of the application dated February 22, 1982, and supplements thereto.

Section III, Chapter 1, Paragraph 1.2 of the License Application requires activities at NNFD involving special nuclear material to be conducted according to limits and controls established by NCS and approved by the Nuclear Licensing Board. These limits and controls are provided to operating areas in nuclear criticality safety procedures and in nuclear criticality safety postings.

Section II, Paragraph 6.0 of the License Application requires activities to be conducted in accordance with approved written procedures.

Section II, Paragraph 6.3 of the License Application requires nuclear criticality safety procedures and postings to be established for operations involving licensed material. These procedures and postings are to be generated by NCS and reviewed and approved by the operating departments.

Nuclear Criticality Safety Procedures NCS–700 "General Nuclear Criticality Safety Requirements," Revision 1, dated June 11, 1991, requires, in part, any

operation involving the storing, moving, or processing of SNM to have: An approved operating procedure, an approved nuclear safety procedure, and an appropriate nuclear safety posting.

Contrary to the above, the licensee conducted activities involving SNM either without establishing or at variance with NCS limits and controls in that:

5. From approximately June 1991 to January 22, 1993, uranium metal contained in waste from the Research and Test Reactor Fuel Elements (RTRFE) facility was routinely stored on a storage rack which was posted with NCS postings prohibiting the storage of uranium metal on the rack.

Summary of Licensee's Response

The licensee disagreed with this violation based on its interpretation of the intent of the NCS posting in question. The licensee stated: "Although the sign posted on the rack did prohibit uranium metal from being placed on the rack, it was not intended that the prohibition would apply to small amounts of uranium metal dust from boxline cleanouts." The licensee indicated that dust was the only type metal placed on the rack. The licensee further indicated that the intent of the posting was understood by licensee personnel. The licensee also indicated that the licensee auditor who identified this item was confused over the intent of the sign.

NRC Evaluation of Licensee's Response

The licensee argues that the violation should not stand since licensee personnel understood the intent of the posting, i.e., the posting prohibition was not meant to apply to the storing of uranium dust from boxline cleanouts. The NRC does not agree with this argument for two reasons.

First, the requirement necessarily states that NCS limits and controls provided in work areas in the form of NCS procedures and postings must be followed. Compliance with this requirement is not, and cannot be dependent on the individual understanding of licensee personnel as to the intent of the control or posting. The licensee recognized this in its NNFD Policy Statement—Nuclear Criticality Safety, dated March 1991, signed by the Vice President and General Manager which requires licensee staff to strictly comply with all nuclear criticality safety limits and controls. Second, the fact that at least one member of the licensee's staff, i.e., the auditor who identified this item, was not clear on the intent of the posting undercuts the licensee's contention that its employees understood the intent of the posting.

III. Summary of Licensee's Request for Mitigation

The licensee contended that the problems cited in the Notice do not justify a civil penalty of $37,500 when compared to problems at other fuel facilities which have been assessed civil penalties. The licensee also disagreed with the NRC's characterization of the safety significance of the individual problems. The licensee asserted its belief that no limits and controls were violated and that unsafe conditions did not exist. The licensee indicated that the safety margins required by the license were met although the Raschig rings were not maintained as required. The licensee also asserted that affected operations were not shut down to perform NCS evaluations but only to perform tests required by the ANSI standard. The licensee indicated that contrary to NRC's statements, management was involved in and attentive to the NCS program which resulted in a decrease in NCS audit findings from 1990 through 1992. The licensee stated that most of the audit findings which were violations were not identified as violations and therefore did not attract appropriate management attention.

The licensee further argued that the NRC incorrectly applied the escalation and mitigation factors. The licensee indicated that the violations described in the Notice were licensee identified as a result of the internal NCS audit program and that 50 percent escalation based on this factor was incorrect. The licensee indicated mitigation for past performance should be applied because only two Severity Level IV violations had been identified in the area of nuclear criticality safety over the past four years and no violations were identified during the last two years and that the NRC inappropriately used currently identified problems in its assessment of past performance. The licensee also indicated that escalation of the civil penalty by 100 percent for prior opportunity to identify was not appropriate because the problems had been identified by licensee audits. Furthermore, the licensee disagreed with the assertion that corrective actions for a 1988 enforcement case (EA 88–225) should have directly lead to identification of the current problems. The licensee also disagreed with the 100 percent escalation for duration because, in the licensee's view, use of this factor is reserved for violations involving "particularly safety significant violations" or where a "significant regulatory message is warranted," none of which applied to the instant case.

NRC Evaluation of Licensee's Request for Mitigation

The NRC continues to view the violations collectively as a significant regulatory concern. The significance was not based upon an actual criticality safety occurrence, but on the potential for one and weaknesses in the system for establishing and maintaining criticality safety controls. The violations, when viewed together, represent significant failures by the licensee to establish and maintain nuclear criticality safety controls for certain critical plant operations. In addition, the licensee permitted the nuclear criticality safety audit function to operate contrary to internal procedures and in a manner in which safety findings were not promptly closed. The licensee admitted that the findings were not properly categorized so that appropriate management attention would be given to them. This represents a significant failure in the nuclear criticality safety program and cause for NRC concern. The violations were thus collectively categorized as a Severity Level III problem in accordance with the Enforcement Policy, 10 CFR part 2, appendix C, section IV. This application of the Enforcement Policy is consistent with that utilized for escalated enforcement cases with other NRC licensees.

The NRC disagrees with the licensee's contention that controls were sufficient for Raschig ring use although not in full compliance. The nuclear criticality safety function approved the facility limit of 400 grams of uranium per liter based on the provision that the borosilicate-glass Raschig rings, including percent volume, were maintained in accordance with the ANSI standard. Based on the evidence available, this was not done. The licensee failed to establish a program to assure the required nuclear criticality safety controls (i.e., percent volume of Raschig rings) were implemented and maintained. When the nuclear criticality safety audit function identified that data did not exist to demonstrate that tanks contained a sufficient volume of Raschig rings, no action was taken to correct the situation until the NRC pointed out the license requirement.

After finally measuring the Raschig ring volume in January 1993, the licensee was able to demonstrate, based on data used in the establishment of the ANSI standard, that a margin of safety had been maintained. This did not eliminate the fact that from approximately 1978 until 1993, the

licensee operated Raschig ring filled tanks without knowing the volume occupied by the rings, and thus without knowing whether the safety margin implicit in the ANSI standard was in place.

The licensee contended that the NNFD staff did not shut down affected operations to perform nuclear criticality safety evaluations to correct the Raschig ring issues in Violation I.A. The activities identified in example 1 of violation I.B, however, were discontinued when the licensee could not locate the nuclear criticality safety evaluations and after NRC discussion with the licensee. The fourth paragraph in NRC's letter dated April 6, 1993, does incorrectly imply that operations were shut down in regard to the Raschig rings to perform evaluations. This error, however, does not negate the NRC conclusion that licensee management did not provide adequate attention to establishing compliance for the Raschig ring volumes. The licensee did not shut down operations to determine compliance until after discussions with the NRC.

Involvement by licensee management in the nuclear criticality safety program was not clearly evident to the NRC. This observation is based on the above statements as well as the extended period of time audit findings remained open. The licensee admits that part of the problem was due to improperly characterized audit findings not reaching management's attention. The licensee correctly states that the number of audit findings decreased from 1990 to 1992, but, of equal significance was the length of time audit findings remained open. During a nuclear criticality safety assessment performed by the NRC in 1990, it was noted that audit findings were remaining open for an extended period of time. The licensee took some action to correct that situation, but it was not sufficient to prevent repeated failures to correct audit findings which were observed during the subject inspections.

The NRC acknowledges that licensee personnel identified certain issues during nuclear criticality safety audits, but these were not recognized by the licensee as violations of license conditions requiring prompt action to assure safety and compliance. For example, the NRC had to identify to licensee management on December 16, 1992, that they were committed in the license application to follow the specific ANSI Standard for Raschig rings, and that an inability to demonstrate compliance was a violation of the conditions of the license. This was followed by a Confirmation of Action Letter on December 18, 1992. Also, the failure to post certain equipment was identified after an extended period of time to be symptomatic of the failure to have nuclear criticality safety evaluations on file. Further evidence that indicated that the licensee did not recognize these as violations is supported by the licensee's May 5, 1993, answer to the violations, in which the licensee indicated that most of the audit findings were not recognized as violations. Since the licensee did not realize that these were violations of their license conditions and take corrective action in a timely manner until the NRC raised the issue, the licensee was not given credit for identification. Therefore, in considering the factor of identification, escalation of 50 percent was warranted because the majority of the violations were identified by the NRC or by the licensee's staff as a result of questions raised by the NRC. The discussion of this factor in Section VI.B.1(a) of the NRC Enforcement Policy indicates that the purpose of this factor is to encourage licensees to monitor, supervise, and audit activities in order to assure safety and compliance. Mitigation for this factor would be inappropriate and unsupported by the facts in this case.

With respect to licensee performance, poor performance in oversight of the nuclear criticality safety program was discussed above. Further, the discussion of the licensee performance factor in Section VI.B.1(c) of the Enforcement Policy does not limit consideration to only enforcement history. Prior performance, as defined in the Enforcement Policy, also includes the licensee's overall performance in regulated activities such as those that would be analogous to areas reviewed in the Systematic Assessment of Licensee Performance (SALP) evaluations for power reactors. In applying this factor, neither escalation nor mitigation was warranted because an offset was considered appropriate in balancing generally good recent enforcement history and overall general improvements in operations with poor performance in oversight of the Nuclear Criticality Safety program. For example, in 1990, the NRC identified 27 weaknesses in the Nuclear Criticality Safety program and issued two Severity Level IV violations in the Nuclear Criticality Safety area. Also, in 1992, other weaknesses were identified in the Nuclear Criticality Safety area regarding internal notification, maintenance of equipment and monitoring of criticality alarm warning system for operability. The staff also considered the enforcement action taken in connection with EA 91–159 issued on December 6, 1991, following an enforcement conference conducted on November 25, 1991. As a result of that enforcement action, a Severity Level IV violation was issued for the failure to conduct an adequate evaluation of the response of the radiation detectors in the nuclear criticality monitoring system. This generally poor performance in oversight of the Nuclear Criticality Safety program was viewed as a contravening data point that offset any mitigation for your overall recent good improvements in operations.

The NRC disagrees with the licensee's conclusions that escalation of 100 percent for prior opportunity was incorrectly applied. The licensee contended the NRC was incorrect in stating that corrective actions for a 1988 enforcement action would have led them to identify the Raschig ring problem. The 1988 enforcement action was for the failure to establish adequate controls to implement the double contingency principle associated with unfavorable geometry containers, which included some containers in and around the uranium recovery facility. The NRC concluded that since the corrective actions included a review of the controls associated with those containers, the licensee should have reviewed controls for all such unfavorable geometry containers including any containing Raschig rings. This would have led to discovery of the Raschig ring problem. Of more significance to NRC's decision to escalate, were the indications of problems. Identified by the audit program, which were not recognized as a violation sooner. The licensee's multiple opportunities to identify and correct the violations were taken into consideration and resulted in escalation of the civil penalty for this factor.

As stated in Section VI.B.2(f) of the Enforcement Policy, the duration factor is normally applied in cases involving particularly safety significant violations or where a significant regulatory message is warranted. The NRC considers the licensee's failure to: (1) Implement a significant license condition pertaining to nuclear criticality safety (NCS), (2) conduct activities involving SNM in accordance with NCS limits and controls, and (3) provide an appropriate level of management attention toward the NCS audit program to collectively be a significant regulatory concern. In addition, the licensee was either aware or clearly should have been aware of most of those violations which existed for a significant length of time.

Therefore, the NRC concluded that escalation of the civil penalty by 100 percent was warranted to provide a significant regulatory message to the licensee that emphasizes the importance of appropriate management attention to, and oversight of, the NCS control program.

NRC Conclusion

The NRC has concluded that the violations in question (Violation I.A.1 and example 5 of Violation I.B) occurred as stated and neither an adequate basis for a reduction of the severity level nor for mitigation of the civil penalty was provided by the licensee. Consequently, the proposed civil penalty in the amount of $37,500 should be imposed by Order.

[FR Doc. 93-21238 Filed 8-31-93; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-443; License No. NPF-86]

North Atlantic Energy Service Corp., (Seabrook Station, Unit No. 1); Order Approving Transfer of License

I

EUA Power Corporation is the holder of a 12.1324-percent ownership share in Seabrook Station, Unit No. 1. Its interest in Seabrook Station, Unit No. 1, is governed by License No. NPF 86 issued by the U.S. Nuclear Regulatory Commission (NRC), pursuant to part 50 of title 10 of the Code of Federal Regulations (10 CFR), on March 15, 1990, in Docket No. 50-443. Under this license, only North Atlantic Energy Service Corporation (NAESCO), acting as agent and representative of 12 joint owners listed in the license, has the authority to operate Seabrook Station, Unit No. 1. Seabrook Station, Unit No. 1, is located in Rockingham County, New Hampshire.

II

By letter of May 14, 1993, from its counsel, Ropes & Grey, NAESCO requested an amendment to License No. NPF-86, to reflect the transfer of control of EUA Power Corporation's 12.1324-percent ownership share in Seabrook Station, Unit No. 1, to Great Bay Power Corporation. Great Bay Power Corporation is the surviving entity emerging from the bankruptcy proceedings of EUA Power Corporation.

The transfer of any right under License No. NPF-86 is subject to the NRC's approval pursuant to 10 CFR 50.80(a). On the basis of information provided in the May 14, 1993, letter from Ropes & Grey and other information before the Commission, the NRC staff has determined that Great Bay Power Corporation is qualified to be a holder of License No. NPF-86 and that the license transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

III

Accordingly, pursuant to sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201 et seq., and 10 CFR 50.80, it is hereby ordered that the transfer of control of EUA Power Corporation's 12.1324 -percent ownership share in Seabrook Station, Unit No. 1, through bankruptcy proceedings, with Great Bay Power Corporation emerging as the surviving entity, is approved subject to the following: (1) Should the transfer not be completed by February 15, 1994, this order will be null and void, and (2) on application and for good cause shown, this order may be extended for a short period beyond February 15, 1994.

Dated at Rockville, Maryland, this 16th day of August 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93-21232 Filed 8-31-93; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-19661; 812-7794]

American Capital Comstock Fund, Inc., et al.; Application

August 26, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: American Capital Comstock Fund, Inc., American Capital Enterprise Fund, Inc., American Capital Equity Income Fund, Inc., American Capital Growth and Income Fund, Inc., American Capital Life Investment Trust—Common Stock Portfolio, American Capital Life Investment Trust—Multiple Strategy Portfolio, American Capital Pace Fund, Inc., Common Sense Growth Fund, Common Sense Growth and Income Fund (collectively, the "Public Funds"), American Capital Small Capitalization Fund, Inc. (the "Small Cap Fund"), and American Capital Asset Management, Inc. ("American Capital").

RELEVANT ACT SECTIONS: Section 45(a).

SUMMARY OF APPLICATION: Applicants seek an order under section 45(a) that would declare that public disclosure of information submitted in support of another application and relating to anticipated annual cost savings is neither necessary nor appropriate in the public interest or for the protection of investors. In the other application (File No. 812-7795), applicants seek an order that would permit the Small Cap Fund to serve exclusively as an investment vehicle through which the Public Funds would invest portions of their assets in a portfolio of small capitalization stocks.

FILING DATE: The application was filed on September 30, 1991 and amended on April 29, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 20, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 2800 Post Oak Blvd., Houston, Texas 77056.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, at (202) 272-2190 or Robert A. Robertson, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Small Cap Fund is an open-end management investment company for which American Capital serves as investment adviser. The Small Cap Fund intends to invest at least 80% of its assets in equity securities of companies with a market capitalization less than that of the largest 500 publicly-traded companies.

2. The Public Funds are open-end management investment companies for which American Capital serves as

investment adviser or subadviser with investment discretion over the entire portfolio. Limited investment in the small capitalization sector of the securities markets is an appropriate part of the investment strategy of each of the Public Funds.

3. Applicants have filed another application (File No. 812–7795) requesting an order under sections 6(c) and 17(b) of the Act that would exempt applicants from sections 12(d)(1), 17(a)(1), and 17(a)(2), and under section 17(d) and rule 17d–1 thereunder permitting certain transactions. The order would permit the Public Funds to invest portions of their assets in the Small Cap Fund.

4. In support of the other application, applicants submitted information relating to anticipated annual cost savings comparing the difference in cost that brokers might experience if they executed certain orders for only one fund, rather than executing orders for the same aggregate number and value of shares, but for a number of funds.

Applicants' Legal Analysis

1. Section 45(a) provides that the information contained in any application filed with the SEC under the Act shall be made available to the public, unless and except insofar as the SEC finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors.

2. Applicants request an order under section 45(a) for the information they submitted to support their contention that an order enabling the Public Funds to invest in the Small Cap Fund would be likely to produce cost savings for the Public Funds. Applicants believe that it is possible for an interested person to understand and evaluate applicants' contention without knowing the precise amount of the cost savings that might be realized. Applicants believe, therefore, that disclosure of the information is not necessary in the public interest or for the protection of investors.

3. Applicants also believe that public disclosure of the information could result in harm to Public Fund shareholders. American Capital intends to try to negotiate lower brokerage commissions on the basis of anticipated cost savings to be realized by brokers. American Capital believes that its negotiating position would be weakened if the brokers knew exactly what American Capital believed those savings to be. Applicants believe, therefore, that public disclosure of the information is not appropriate in the public interest or for the protection of investors.

4. The Freedom of Information Act (5 U.S.C. 552) generally provides that all information provided to or generated by the government should be made available to the general public, with certain exceptions set forth in the statute. One of those exceptions is for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Applicants believe that the information that is the subject of this application falls within the exception described, and it thus is eligible for protection under the Freedom of Information Act.[1]

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21277 Filed 8–31–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19660; 812–7795]

American Capital Comstock Fund, Inc., et al.; Application

August 26, 1993.

AGENCY: Securities and Exchange Commission ("SEC.").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: American Capital Comstock Fund, Inc. ("Comstock Fund"), American Capital Enterprise Fund, Inc. ("Enterprise Fund"), American Capital Equity Income Fund, Inc. ("Equity Income Fund"), American Capital Growth and Income Fund, Inc. ("Growth and Income Fund"), American Capital Life Investment Trust-Common Stock Portfolio and American Capital Life Investment Trust-Multiple Strategy Portfolio ("Life Trust"), American Capital Pace Fund, Inc. ("Pace Fund"), Common Sense Growth Fund ("CS Growth Fund"), Common Sense Growth and Income Fund ("CSG & I Fund") (collectively, the "Public Funds"), American Capital Small Capitalization Fund, Inc. (the "Small Cap Fund"), and American Capital Asset Management, Inc. ("American Capital").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act exempting applicants from sections 12(d)(1), 17(a)(1), and 17(a)(2), and under section 17(d) and rule 17d–1 thereunder permitting certain transactions.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Small Cap Fund to serve exclusively as an investment vehicle through which the Public Funds would invest portions of their assets in a portfolio of small capitalization stocks.

FILING DATE: The application was filed on September 30, 1991 and amended on April 29, 1992, November 23, 1992, and April 26, 1993. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 20, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 2800 Post Oak Blvd., Houston, Texas 77056.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, at (202) 272–2190 or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Small Cap Fund is an open-end management investment company for which American Capital serves as investment adviser. The Small Cap Fund intends to invest at least 80% of its assets in equity securities of companies with a market capitalization less than that of the largest 750 publicly-traded companies. Although the Small Cap Fund is registered under the Act, it does not intend to make a public offering of its shares, and has not registered under the Securities Act of 1933.

2. American Capital will not charge any advisory fee for managing the Small Cap Fund, and there will be no sales

[1] Applicants recognize that any order granting the confidential treatment requested will be issued under section 45(a) only, and that any such order will not be dispositive of any Freedom of Information Act request filed by a third party.

load or other charge associated with distribution of the Small Cap Fund's shares. The Small Cap Fund will bear the other expenses it incurs, and such expenses thus will be borne indirectly by the Public Funds that invest in the Small Cap Fund.

3. The Public Funds are open-end management investment companies for which American Capital serves as investment adviser or subadviser with investment discretion over the entire portfolio. In future, the Public Funds may include any open-end management investment company for which American Capital becomes investment adviser or subadviser with investment discretion over the entire investment portfolio. Limited investment in the small capitalization sector of the securities markets is an appropriate part of the investment strategy of each of the Public Funds. Applicants seek an order that would permit the Public Funds to achieve this aspect of their investment strategy, in part, by investing in the Small Cap Fund.[1] Although the Public Funds differ with respect to the portion of total assets that they might invest in the small capitalization sector, their investment objectives and strategies with respect to that sector are identical.

4. Applicants expect that the initial investments in the Small Cap Fund will be the following. Comstock Fund will invest 3.5% of its net assets; Enterprise Fund will invest 10% of its net assets; Pace Fund will invest 8% of its net assets; CS Growth Fund will invest 10% of its net assets; and CSG & I Fund will invest 3.5% of its net assets. Based upon asset levels at September 30, 1992, these investments would have represented 6.8%, 14.9%, 39.6%, 34.3% and 4.3%, respectively, of the Small Cap Fund's assets.

5. American Capital believes that providing the Public Funds with a single investment vehicle that will invest in a broadly diversified portfolio of small capitalization stocks will provide the Public Funds with the most effective exposure to the performance of the small capitalization sector while simultaneously minimizing costs. American Capital expects the Small Cap Fund to invest in securities of 400 to 500 issuers to provide broad exposure to all elements of the small capitalization sector. In this regard, the Small Cap Fund will be more diversified than a Public Fund, which might—without the ability to invest in the Small Cap Fund—own securities of 20 to 30 small capitalization issuers. American Capital expects that the Small Cap Fund's diversification will benefit both the Small Cap Fund and the Public Funds by providing greater price stability and lower volatility, while capturing the performance benefits of broad exposure to the small capitalization sector.

6. American Capital expects the Small Cap Fund to increase the efficiency of the Public Funds' portfolio management. Because small capitalization issuers have smaller capitalization than other issuers, a Public Fund's investment of even 7% of its assets in the small capitalization sector might be spread across 20–25% of the total number of issues it owns. Thus the Public Fund's portfolio manager would have to spend a disproportionate amount of time following a large number of issuers that represent only a small portion of the Public Fund's total assets. By investing in the Small Cap Fund instead, the Public Fund would gain the benefit of exposure to the small capitalization sector without sacrificing a disproportionate amount of the portfolio manager's time.

7. When the Small Cap Fund begins operations, each Public Fund will exchange cash and small capitalization stocks from its portfolio for Small Cap Fund shares. The small capitalization stocks will be appropriate investments for the Small Cap Fund. The Small Cap Fund is likely to sell some of the stocks contributed by the Public Funds and use the proceeds to diversify its portfolio. After this beginning stage, American Capital expects both the transaction volume and turnover rate for the Small Cap Fund to be relatively small. It is likely that the Public Funds will buy or sell shares of the Small Cap Fund monthly or quarterly, rather than daily or weekly. This practice will reduce the Small Cap Fund's need to buy or sell portfolio securities to meet its cash flow needs.

8. Each Public Fund may have, in addition to its holdings in the Small Cap Fund, some direct investments in small capitalization stocks. American Capital has adopted a procedure to avoid unnecessary expense that could occur if the Small Cap Fund were to sell a particular stock at the same time a Public Fund were to purchase it, or vice versa. The Small Cap Fund will generate a list of stocks that it intends to purchase or sell, and will circulate the list among the portfolio managers of the Public Funds. If any Public Fund's portfolio manager wishes to buy or sell a stock on the list, the Small Cap Fund will effect the transaction directly with that Public Fund. The value of the stock will be the current market price, determined in accordance with rule 17a–7. Payment will be made by simultaneous transfer of cash or, if the Public Fund wishes to alter its investment in the Small Cap Fund, of Small Cap Fund shares with an equal value.

9. Applicants expect that the Small Cap Fund will have the same board of directors as Comstock Fund, Enterprise Fund, Equity Income Fund, Growth and Income Fund, Life Trust, and Pace Fund. Applicants believe that the board of directors will not be subject to conflicts of interest because the Small Cap Fund, as a vehicle for investment in the small capitalization sector, will serve the same purpose for each of the Public Funds. Moreover, American Capital has adopted procedures to ensure that the cost of any transaction that might benefit one Public Fund at the expense of the others will be borne by the Public Fund for whose benefit the transaction is executed.

10. To minimize the need for the Small Cap Fund to maintain large cash balances, American Capital will coordinate the Public Funds' purchases and sales of Small Cap Fund shares to minimize cash flows into and out of the Small Cap Fund. Initially, this will be accomplished by informal communication among portfolio managers. American Capital will monitor this process. If informal communications prove insufficient, American Capital will implement more formal procedures to ensure that communications take place in a timely and efficient manner.

11. American Capital believes that it will be able to coordinate purchases and redemptions of Small Cap Fund shares in virtually all instances. There may be occasions, however, when a single Public Fund purchases or redeems an unusually large amount of Small Cap Fund shares. Such a large transaction could cause the Small Cap Fund, and thus the Public Funds not involved in the transaction, to bear significant incremental trading costs associated with the acquisition or disposition of small capitalization stocks. Accordingly, if a Public Fund plans to make an unusually large purchase or redemption of Small Cap Fund shares, American Capital, as a fiduciary to all of the Public Funds and the Small Cap Fund, will cause the transaction to be executed in kind. In the case of a purchase, the Public Fund would acquire small capitalization stocks and exchange them for Small Cap Fund shares. For a redemption, the Small Cap Fund would

[1] American Capital is the investment adviser for two investment companies, American Capital Emerging Growth Fund, Inc. and the Emerging Growth Portfolio of WRL Series Fund, Inc., that invest most of their assets in the small capitalization sector. These investment companies will not invest in the Small Cap Fund, and are not parties to the application.

deliver small capitalization stocks to the Public Fund, which the Public Fund could then sell.

12. Each Public Fund's investment in the Small Cap Fund will be subject to the disclosure requirements of Guide 3 of the Guidelines for the Preparation and Filing of Form N–1A. The level of disclosure in the Public Fund's prospectus will correspond to the level of its investment in the Small Cap Fund. A Public Fund that invests less than 5% of its net assets in the Small Cap Fund will include a brief description of the Small Cap Fund, and a Public Fund that invests 5% or more of its net assets in the Small Cap Fund will include a more detailed description of the Small Cap Fund, its objectives, risks, and manner of operations.

Applicant's Legal Analysis

1. Section 12(d)(1)(A) provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Applicants request an exemption from section 12(d)(1) because, among other things, the Public Funds will own 100% of the stock of the Small Cap Fund, and a Public Fund's investment in the Small Cap Fund may represent more than 5% of that Public Fund's total assets. Applicants believe that the Small Cap Fund and the Public Funds will not be subject to any of the abuses that section 12(d)(1) was intended to prevent. For example, no Public Fund will be able to exercise undue influence over the management of the Small Cap Fund because the possibility that the Public Funds may redeem large amounts of Small Cap Fund shares will not disrupt the orderly management of the Small Cap Fund. The Small Cap Fund's ability to honor redemption requests with an in kind distribution of small capitalization stocks—rather than cash—will mitigate the costs associated with a large redemption. In addition, the Small Cap Fund will not cause investors in the Public Funds to bear two layers of costs. The Small Cap Fund will pay no advisory fee, and its shares will not be subject to any sales load or rule 12b–1 fee.

3. Applicants also request an exemption from section 17(a), which prohibits certain purchases and sales of securities between investment companies and their affiliated persons, as defined in section 2(a)(3). The Small Cap Fund and the Public Funds may be deemed to be under common control because American Capital is the investment adviser to all of them. Each of the Small Cap Fund and the Public Funds, therefore, would be an affiliated person of each other within the meaning of section 2(a)(3). Thus, purchases or sales of securities between the Small Cap Fund and a Public Fund may violate section 17(a).

4. Sections 6(c) and 17(b) set forth the standards for exempting a series of transactions from section 17(a). Under section 17(b), the terms of any such transaction must be reasonable and fair and must not involve overreaching on the part of any person, the transaction must be consistent with the policy of each investment company concerned, and the transaction must be consistent with the general purposes of the Act. In addition, under section 6(c), the exemption must be necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

5. Applicants believe that the proposed transactions meet the standards for relief under sections 6(c) and 17(b). Applicants believe that the terms of the transactions between the Small Cap Fund and the Public Funds are reasonable and fair and do not involve overreaching. The consideration paid and received for the purchase and redemption of Small Cap Fund shares will be based on the net asset value of the Small Cap Fund. The Small Cap Fund will not pay an advisory fee, and there will be no sales load or other charge associated with distribution of the Small Cap Fund's shares. Applicants believe that the transactions are consistent with the policies of the Public Funds and the Small Cap Fund. The Public Funds' investments in the Small Cap Fund, and the Small Cap Fund's issuance of shares, will be in accordance with each investment company's investment restrictions and policies. Applicants also believe that the transactions are consistent with the general purposes of the Act. Section 17(a) was intended to prohibit affiliated persons from furthering their own interests by, for example, selling property to an investment company at an inflated price or purchasing property from an investment company at less than fair value, and applicants believe that their proposal does not present those concerns.

6. Section 17(d) makes it unlawful for an affiliated person of a registered investment company to effect any transaction in which the company is a joint participant in contravention of SEC rules. Rule 17d–1 prohibits an affiliated person of any registered investment company, acting as principal, from participating in or effecting any transaction in a "joint enterprise or other joint arrangement" in which the company is a participant, without prior SEC approval. In considering a request for such approval, the SEC must consider whether the investment company's participation in the arrangement is "consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants." The participation of American Capital, the Public Funds, and the Small Cap Fund in the proposed transactions could constitute a joint enterprise or other joint arrangement within the meaning of rule 17d–1. Applicants believe that the proposed arrangement is consistent with the provisions, policies, and purposes of the Act because the sole purpose of the arrangement is to provide an efficient vehicle through which the Public Funds may invest in small capitalization stocks. In addition, applicants believe that the Public Funds will participate on an equal basis with each other, and that the participation of the Public Funds and the Small Cap Fund in the proposed arrangement will not be on basis less advantageous than American Capital's because American Capital will receive no advisory fee or other compensation from the Small Cap Fund.

Applicants' Conditions

Applicants agree that any order granting the exemptions they request will be subject to the following conditions:

1. Shares of the Small Cap Fund will not be subject to a sales load or redemption fee, and the Small Cap Fund will not have a distribution fee under a plan adopted in accordance with rule 12b–1.

2. American Capital will not charge any advisory fee for managing the Small Cap Fund.

3. Investment in shares of the Small Cap Fund will be in accordance with each Public Fund's respective investment restrictions and will be consistent with its policies as recited in

its registration statement and prospectus.

4. The Board of Directors of each Public Fund will determine, at least annually, that investment in the Small Cap Fund is in the best interest of the shareholders of the Public Fund, based upon a review of (a) the benefits to the Public Fund of using the Small Cap Fund to invest in the small capitalization sector, and (b) the expenses borne by the Public Fund as a result of its investment in the Small Cap Fund.

5. Each Public Fund will, as part of its reports to shareholders under section 30(d) of the Act and rule 30d–1 thereunder, include a listing of the securities held by the Small Cap Fund and the amount and value of such Public Fund's *pro rata* interest in each such security to the same extent as if such securities or interests therein were held directly by such Public Fund.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21278 Filed 8–31–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19659; 811–4230]

Colonial Advanced Strategies Gold Trust; Application

August 26, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Colonial Advanced Strategies Gold Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 7, 1993 and amended on August 9, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 20, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, One Financial Center, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a business trust under the laws of Massachusetts. On February 14, 1985, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on May 10, 1985, and an initial public offering commenced on June 28, 1985.

2. On April 12, 1991 and December 13, 1991, applicant's board of trustees approved an agreement and plan of reorganization (the "Plan") between applicant and Colonial Natural Resources Fund ("Natural Resources"), a newly formed series of Colonial Trust III—a registered management investment company. In addition, on December 13, 1991 and February 28, 1992, the board of trustees made the findings required by rule 17a–8 under the Act.[1]

3. On April 17, 1992, applicant mailed proxy materials to its shareholders. At a meeting held on May 15, 1992, applicant's shareholders approved the reorganization.

4. Pursuant to the Plan, on June 5, 1992, applicant transferred all of its assets to Natural Resources in consideration of Natural Resources' shares with the equivalent net asset value. The shares then were credited in open accounts in the names of applicant's former shareholders. On the date of the reorganization, applicant had 3,269,520 shares outstanding, having an aggregate net asset value of $32,698,964 and a per share net asset value of $10.

5. All expenses incurred in connection with the reorganization were borne by applicant and totaled $53,478.

6. There are no securityholders to whom distributions in complete liquidation of their interest have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant will file certificates of dissolution with Massachusetts authorities after the requested order is obtained.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21279 Filed 8–31–93; 8:45 am]

BILLING CODE 8010–01–M

[1] Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

[Release No. 34–32793; File No. SR–NYSE–93–04]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Listing and Trading of Quarterly Index Expiration Options Based on the New York Stock Exchange Composite Stock Index and Notice of Filing of Amendment No. 1 Relating to the Listing and Trading of Quarterly Index Expiration Options Based on the New York Stock Exchange Utility Index

August 24, 1993.

I. Introduction

On January 15, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of options on the NYSE Composite Stock Index ("NYA") that will expire on the second business day following the end of each calendar quarter ("Quarterly Index Expirations" or "QIXs"). Currently, all equity and stock index options traded on the Exchange expire on the Saturday immediately following the third Friday

[1] 15 U.S.C. § 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

of the expiration month. The NYSE intends to trade QIXs on the NYA ("QIX NYA") in addition to the existing NYA Index options expiring at the middle of the month.

Notice of the proposed rule change appeared in the **Federal Register** on March 31, 1993.[3] No comments were received on the proposed rule change. On March 17, 1993, the NYSE filed Amendment No. 1 in order to allow the Exchange to list and trade QIX options on the NYSE Utility Index. The Commission is approving the part of the proposal relating to QIX options on the NYA, while at the same time, publishing for comment the NYSE's filing of Amendment No. 1.[4]

II. Description of the Proposal

The Exchange proposes to add Supplementary Material .20 (a)(iii) to Rule 703 to provide for the listing of up to eight near-term quarterly expirations on NYA options. The NYSE would be permitted at any one time to have up to eight QIX NYA options open for trading with expiration on the second business day following the end of a calendar quarter. Presently, options traded at the NYSE expire on the Saturday following the third Friday of the expiration month.[5] Accordingly, QIXs will expire approximately two weeks apart from existing NYA options expirations in the quarterly month expiration.

The proposed QIX options will trade simultaneously with, not independent of, currently listed and traded NYA options. The proposed QIX options will be subject to the same rules that presently govern the trading of existing NYA options contracts, including sales practice rules, margin requirements, and floor trading procedures. Contract terms for the QIX options will be similar to the corresponding NYA options that presently trade on the Exchange. For example, QIX options on the NYA will have European-style exercise,[6] with the daily exercise settlement value based on the index value derived from the opening prices of its component stocks on the first business day following the end of the calendar quarter. In addition, the multiplier for QIX options may in the discretion of the Exchange be set at a level of up to 500 (in order to offer large-sized index contracts), instead of the customary 100 multiplier.[7]

With regard to position and exercise limits,[8] the NYSE proposes that QIX NYAs be aggregated with and treated identically to existing NYA options. Specifically, options on the NYA (QIX and non-QIX) are limited to 45,000 contracts on the same side of the market with no more than 25,000 contracts in the series having the nearest expiration.[9] The number of contracts in any QIX position having a multiplier other than 100 must be equalized to account for differences in index multipliers.[10] Therefore, for purposes of position and exercise limits, the number of NYA option contracts is derived by multiplying the number of contracts by the index multiplier and dividing the product by 100.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[11] In particular, the Commission believes that the proposed rule change is designed to provide investors with a tailored quarterly portfolio hedge that may be more suitable to their investment needs. Specifically, by providing investors with the ability to use QIX options that settle based on the opening value of component stocks on the business day prior to expiration (*i.e.* at the opening of business on the first business day following the end of a calendar quarter), the NYSE proposal will allow investors increased flexibility to tailor their portfolio positions to satisfy their investment objectives. For instance, according to the NYSE, the performance of portfolio managers and institutional investors is judged on a quarterly basis.[12] Therefore, in the past, these investors have been forced to pursue "quarterly hedges" in the over-the-counter ("OTC") market employing forwards, options, and/or swaps. Accordingly, the Commission believes the NYSE proposal is a reasonable response by the Exchange to meet the demands of sophisticated portfolio managers and other institutional investors who are increasingly using the OTC market in order to satisfy their hedging needs, and will thereby promote competition among these markets.[13]

In addition, the Commission believes that the NYSE proposal will help to promote the maintenance of a fair and orderly market because the purpose of the proposal is to extend the benefits of a listed, exchange market in NYA options to quarterly calendar expirations. The attributes of the Exchange's NYA options market versus an OTC market include, but are not limited to, a centralized market center, an auction market with posted market quotations and transaction reporting, standardized contract specifications, parameters and procedures for clearance and settlement, and the guarantee of the Options Clearing Corporation ("OCC") for all contracts traded on the Exchange.

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[3] *See* Securities Exchange Act Release No. 32048 (March 25, 1993), 58 FR 16895.

[4] On August 2, 1993, the Exchange filed with the Commission a clarifying amendment confirming that the NYSE intends to initially introduce QIX options limited to a multiplier of 100. In addition, the Exchange further clarified that positions in QIX options will be aggregated with positions in other NYSE-traded options based on the same index stock group. *See* letter from Daniel P. Odell, Assistant Secretary, NYSE, to Richard Zack, Branch Chief, Division of Market Regulation, SEC, dated July 29, 1993. Because this amendment is technical in nature and merely clarifies the NYSE proposal without substantive change, it has not been separately published for comment and is being approved herein.

[5] The NYSE trades index options with expirations of up to one year in length that expire at three month intervals. The Exchange allows for up to five expiration months with none farther out than twelve months. In addition, the NYSE also trades long-term index options that may expire three years from listing named "long-term series." The NYSE is not now proposing to list or trade QIX options with more than twelve months to expiration. Any such proposal would be filed with the Commission for review under Section 19(b) of the Act.

[6] A European-style option is one that may only be exercised by the holder during a specified period prior to expiration.

[7] The Exchange believes that increased contract size may be justified due to the larger portfolios now being managed by institutional investors. The NYSE's rules provide that position limits will be accordingly adjusted if the multiplier is other than 100. Initially, the Exchange intends to use only the 100 multiplier. The NYSE has stated that it will notify the Commission and submit an appropriate proposed rule change on Form 19b-4 prior to trading options with a multiplier other than 100. *See supra* note 4.

[8] Position limits are the maximum number of option contracts permitted on the same side of the market with respect to a single underlying interest that may be held or written by a single investor or group of investors acting in concert. Exercise limits are the maximum number of option contracts on the same side of the market on the same underlying interest that a single investor or group of investors acting in concert may exercise during any five consecutive business days.

[9] The hedge exemption found in NYSE Rule 704(c)(ii) is applicable to QIX and non-QIX NYA options up to an aggregate maximum position of 125,000 contracts on the same side of the market.

[10] As described in note 7, *supra*, the use of an index multiplier other than 100 would have to be specifically approved by the Commission.

[11] 15 U.S.C. 78f(b)(5) (1982).

[12] In addition, many investment strategies employed by these portfolio managers converge at the calendar quarter. Hence, traditional exchange-type expirations provide a less than perfect hedge for many institutions.

[13] The Commission has approved similar proposals by the American Stock Exchange, Inc. ("Amex") and the Chicago Board Options Exchange, Inc. ("CBOE") to trade QIX options on the Amex's Major Market, Institutional, and Standard & Poor's ("S&P") MidCap Indexes and the CBOE's S&P 100 and 500, and Russell 2000 Indexes. *See* Securities Exchange Act Release Nos. 31844 (February 9, 1993), 58 FR 8796 (Amex); 31800 (February 1, 1993), 58 FR 7274 (CBOE S&P 100 and 500); and 32693 (July 29, 1993), 58 FR 41817 (CBOE Russell 2000).

The Commission also notes that the Exchange's existing rules applicable to stock index options, including among others, strike price interval, bid/ask differential, price continuity, option exercise, sales practice rules, and position and exercise limits will apply to QIX options. In particular, QIX NYAs will be subject to the same 45,000 contract limit under Rule 704(b) as non-QIX options on the NYA, with a 25,000 contract limit for those series having the nearest expiration, and will be aggregated with other NYA option contracts.[14]

The Commission notes that QIX NYAs will be treated like existing NYA options including expiration settlement based on the opening values of the component securities. The Commission continues to believe that basing the settlement of index products on opening, as opposed to closing, prices on Expiration Fridays helps alleviate stock market volatility.[15] First, contra-side interest is easier to attract for the purpose of alleviating order imbalances from unwinding of index-related positions. In contrast to expirations at the close, overnight or weekend risk would be lessened for firms providing contra side interest since these market participants have the rest of the day to liquidate or trade out of their positions. Second, the market would have the remainder of the trading day to adjust to price movements occurring at the opening. Third, with an opening price settlement, traders are able to focus their entire attention to those orders associated with the expiration, and do not have to devote their attention to an ongoing auction market.[16]

The exercise settlement value for quarterly expiration NYA options will be based on the opening prices of the component securities on the business day prior to expiration, *i.e.*, at the opening of business on the first business day following the end of the calendar quarter.[17] The Exchange has proposed to value QIX options at the opening on the first business day after the end of the calendar quarter (rather than the last business day of the calendar quarter) in order to provide the investor with an opportunity to roll out of, or to close out, a position at the end of the calendar quarter. The Commission believes that this ability to roll out or close a position at the end of the calendar quarter could be beneficial to market participants because it will allow institutions to hedge over the full calendar quarter while using opening values for settlement which is consistent with Exchange efforts to reduce market volatility at expirations.

Moreover, QIX NYAs will never expire on an "Expiration Friday" or any other "Expiration Fridays" in March, June, September, and December, thereby diminishing the impact that QIX NYAs could have on the market. Accordingly, the Commission preliminarily believes that QIX NYA options will not compromise the protection of investors or have an adverse market effect. Of course, the Commission expects the NYSE to monitor the actual effect of QIXs once trading commences and take prompt action should any unanticipated adverse market effects develop.

Lastly, based on representations from the NYSE, the Commission believes that the NYSE and the Options Price Reporting Authority ("OPRA") will have adequate systems processing capacity to accommodate the additional options listed in connection with QIX options. Specifically, the Exchange represents that "OPRA should have adequate capacity to handle the volume in End-of-Quarter Options in the NYSE Composite Index."[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 of the proposal to trade QIX options on the NYSE's Utility Index. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by September 17, 1993.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal relating to QIX options based on the NYA is consistent with the Act and Section 6 of the Act, in particular.

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NYSE–93–04) is partially approved relating to QIX options based on the NYA.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21203 Filed 8–31–93; 8:45 am]

BILLING CODE 8010–01–M

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[14] NYA QIXs are entitled to certain hedge exemptions from position limits under the NYSE's rules. The NYSE's stock index option position limit hedge exemption pilot program enables public customers of a member organization, who have obtained NYSE approval, to hedge qualified long stock portfolios with NYSE-traded broad-based stock index option contracts (either long puts or short calls or a combination or an equivalent position) up to a maximum of 125,000 contracts without regard to the normal position limits. In order to use this broad-based stock index option hedge exemption, a public customer must have a previously-established, NYSE-approved stock portfolio that (a) is not long or short in each component stock or security readily convertible or economically equivalent to common stock and are distributed across at least four industry groups, (b) is comprised of at least 20 stocks, none of which account for more than 15% of the value of the portfolio, and (c) is carried in an account with a member organization, thus ensuring that the NYSE has the ability to conduct adequate surveillance of the hedged position. In addition, the hedge exemption cannot be used for purposes of index arbitrage.

[15] *See* Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 ("AM Settlement Approval Order").

[16] In addition, the NYSE's Opening Automated Report Service ("OARS") is available at the opening. OARS accepts pre-opening market orders up to 30,099 shares and executes these orders at the market opening. This enhancement to the NYSE's SuperDot system stores the pre-opening orders, continuously pairs buy and sell orders, and presents order imbalances to specialists up to the time each stock opens for trading. The NYSE believes that the use of its opening procedures reduces the impact of order imbalances on specialists and other market participants.

[17] If a component stock of the NYA does not open, the prior closing price will be used to calculate the exercise settlement value.

[18] *See* letter from David Krell, Vice President, Options & Index Products, NYSE, to Jeffrey Burns, Attorney, Division of Market Regulation, SEC, dated June 2, 1993, incorporating a letter from Joe Corrigan, Executive Director, OPRA, to David Krell, Vice President, Options & Index Products, NYSE, dated June 2, 1993.

[19] 15 U.S.C. § 78s(b)(2) (1982).

[20] 17 CFR 200.30–2(a)(12) (1993).

[Release No. 34–32792; File No. SR–Phlx–93–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to an Amendment to Floor Procedure Advice F–2 Regarding Time Stamping, Matching and Access to Matched Trade Tickets

August 24, 1993.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 29, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4, proposes to amend Floor Procedure Advice ("Advice") F–2, currently titled "Responsibility for Time Stamping and Matching," to: (1) Rename Advice F–2, "Time Stamping, Matching and Access to Matched Trades;" (2) require matched tickets to be submitted to the specialist post immediately upon execution; (3) require an execution time stamp on the reverse side of a trade ticket; (4) add provisions limiting access to matched trade tickets to participants in the transaction, the specialist in that option and floor officials acting in that capacity; (5) require specialist approval to access matched trade tickets; and (6) require specialists to keep matched tickets for a minimum of three years.

The text of the proposed rule change is available at the Office of the Secretary, Phlx, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Phlx Advice F–2 currently spells out the responsibilities pertaining to time stamping and matching floor tickets, imposing this duty upon the largest participant of a trade, or, where there is one buyer and one seller, upon the seller. The Phlx is proposing to separate this Advice into three sections. Section (a) would contain the current time stamping and matching responsibilities as well as two additions. First, trade participants would be required to submit matched tickets to the appropriate person at the specialist post immediately upon effecting a transaction in order to assure that the initiating party agrees with each contra-party's claim as to his or her level of participation as well as to ensure that the terms of the trade are correct. Immediate submissions also lessen the potential for losing a matched ticket before entry into Exchange trade comparison systems. Second, an execution time stamp would be required on the reverse side of the order ticket to distinguish the execution and order entry times for surveillance and audit trail purposes.

Because the Phlx is proposing to add provisions relating to access to matched trades to Advice F–2, the Exchange proposes to rename this Advice "Time Stamping, Matching and Access to Matched Trades." In this regard, the Phlx seeks to limit access to matched trade tickets to those with a legitimate interest: participants, the specialist in that option, and a floor official acting in that capacity. Intra-day, matched trade tickets are kept behind the specialist post on the floor after being inputted into the Exchange's trade comparison systems so that errors can be corrected. Thus, the Phlx is also proposing to require prior specialist permission before looking through these tickets. The Exchange believes that limiting access should reduce the number of instances where floor personnel access trade tickets to discern customers' identities or to ascertain trading patterns. In addition, the Phlx believes that supervising access to trade tickets should provide accountability for persons who access such tickets and help ensure that the trade tickets are returned to the specialist post in a timely manner.

Matched trade tickets serve important surveillance and operations functions. Once a trade has been processed for trade dissemination and clearing, it is then left in the possession of the attendant specialist. Accordingly, the Phlx is proposing to not only limit access to these tickets, but also to require specialists to keep all matched trade tickets in their possession for a period of three years, whether or not the specialist participated or acted as agent in any such trade.

The Phlx notes that Advice F–2 is applicable to both the equity options and foreign currency options floors, and thus, the Phlx proposes to add the notation "OF" after Advice F–2. In addition, the Phlx proposes to increase the fine schedule for this Advice and to apply the new fines on a three-ear cycle, such that repeat violations during the same three-year period would result in escalating fines.[1]

For the above reasons, the Phlx believes that the proposed rule change is consistent with Section 6 of the Act in general, and Section 6(b)(5), in particular, because it is designed to prevent fraudulent acts and practices, promote just and equitable principles of trade, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

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[1] Under the rolling three-year cycle, if there is no violation of Advice F–2 for three years, the next violation would be treated as a first occurrence. If there is a violation within three years after the most recent violation, the next highest fine will be issued. Thus, a third violation less than three years after a fine was issued for a second occurrence would be treated as a third occurrence, even though more than three years may have elapsed after the first occurrence.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the file number in the caption above and should be submitted by September 17, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-21202 Filed 8-31-93; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1856]

State Department Performance Review Board Members; At Large Board and OIG Board

In accordance with section 4314 (c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95-454), the Executive Resources Board of the Department of State has appointed the following individuals to the State Department Performance Review Board (At large Board) register.

Eileen K. Binns, Director of the Office of Administration, Bureau of Management, United States Information Agency

Kathleen J. Charles, Deputy Assistant Secretary for Resource Management, Bureau of Diplomatic Security, Department of State

Robert B. Dickson, Director of the Office of Acquisitions, Bureau of Administration, Department of State

Thomas C. Fingar, Director, Office of Analysis for East Asia and the Pacific, Bureau of Intelligence and Research, Department of State

James G. Hergen, Assistant Legal Adviser, Office of the Legal Adviser, Department of State.

The Inspector General of the Department of State has appointed the following individuals to the State Department Office of the Inspector General Performance Review Board register.

Richard Greene, Acting Chief Financial Officer, Bureau of Finance and Management Policy, Department of State

Katherine A. Brittin, Assistant Inspector General for Inspections, Department of Defense

Charles M. Hall, Assistant Inspector General for Inspections and Resources Management, Department of Commerce.

Dated: August 19, 1993.

Genta Hawkins Holmes,

Director General of the Foreign Service and Director of Personnel.

[FR Doc. 93-21182 Filed 8-31-93; 8:45 am]

BILLING CODE 4710-15-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Vehicle-Highway Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Vehicle-Highway Society of America (IVHS AMERICA) will hold a meeting of its Coordinating Council on October 6 and 7, 1993. IVHS AMERICA provides a forum for national discussion and recommendations on IVHS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of IVHS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on IVHS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of IVHS AMERICA will meet on October 6 from 8:30 a.m. to 6:30 p.m. p.s.t., and on October 7 from 8 a.m. to 12 p.m. p.s.t. The session is expected to focus on: (1) IVHS architecture and consensus building; (2) IVHS program planning; (3) advanced traveler information systems marketing; (4) technical committee and task force actions to the Council; (5) public/private partnership issues; (6) electronic toll and traffic management; (7) IVHS workshop proposals; (8) initiatives of the U.S. CAR consortium; and (9) draft IVHS AMERICA Management Plan status.

ADDRESSES: San Francisco ANA Hotel (Westin), 50 Third Street, San Francisco, CA 94103, (415) 974-6400.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Lauffer, FHWA, HTV-1, Washington, D.C. 20590, (202) 366-4558, office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except for legal holidays; or Mr. Daniel Toohey, IVHS AMERICA, 1776 Massachusetts Avenue, NW., Washington, D.C. 20036, (202) 857-1202.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: August 24, 1993.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 93-21210 Filed 8-31-93; 8:45 am]

BILLING CODE 4910-22-P

Federal Railroad Administration

[FRA Docket No. RST-93-2]

Union Pacific Railroad Co.; Petition for Waiver of Compliance

In accordance with 49 CFR part 211, notice is hereby given that Union Pacific Railroad Company (UP) has submitted a petition dated May 15 for a waiver of compliance with specific requirements of certain parts of title 49 Code of Federal Regulations for the purpose of improving the cycle frequency of their rail detector cars.

For the purposes of this waiver, the Union Pacific Railroad Company requests relief from certain requirements of the existing Track Safety Standards (49 CFR part 213). Specifically, the Union Pacific Railroad Company requests relief from paragraph (a) of § 213.113 "Defective Rails", which requires a track owner to initiate specified remedial action immediately following the discovery of certain rail defects in track.

The petitioner contends that their fleet of seven computer controlled rail detector cars contain the latest technology available, and, for example, consistently find transverse defects less than 5 percent and bolt hole cracks less than one-quarter inch. The petitioner states that the increase in the number of smaller rail defects found by this technology, some of which may require some form of remedial action under

[2] 17 CFR 200.30-3(a)(12) (1993).

§ 213.113, has resulted in a steady decline in their daily test mileage and therefore a decline in the cycle frequency of their rail detector cars. The petitioner further contends that the decrease in miles tested has resulted in an increase in service failures.

The petitioner proposes to classify the rail defects found by their rail detector cars into two categories, critical and non-critical. The larger rail defects would be classified as critical and will receive immediate attention as required by § 213.113(a) of the Track Safety Standards. The smaller defects would be classified as non-critical and will receive attention, if required by the Track Safety Standards, within a period of time not to exceed three days following their detection.

The petitioner states that the granting of this waiver will increase their annual test mileage by approximately 25 percent and therefore have a positive impact on safety by improving the cycle frequency of the rail detector cars. The petitioner further contends that this procedure will result in a decreasing number of critical defects found and also a decrease in the number of service failures. The petitioner anticipates there will be no direct cost to either the private sector, consumer, Federal, State and Local governments.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis of their request.

All communications concerning these proceedings should identify the appropriate docket number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before October 15, 1993, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on August 26, 1993.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93–21160 Filed 8–31–93; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 25, 1993.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0227.
Form Number: IRS Form 6251.
Type of Review: Resubmission.
Title: Alternative Minimum Tax—Individuals.
Description: Form 6251 is used by individuals with adjustments, tax preference items, taxable income above certain exemption amounts, or certain credits. Form 6251 computes the alternative minimum tax which is added to regular tax. The information is needed to ensure the taxpayer is complying with the law.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 243,538.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hours, 17 minutes
Learning about the law or the form—1 hour, 16 minutes
Preparing the form—2 hours, 2 minutes
Copying, assembling, and sending the form to the IRS—20 minutes
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 1,444,180 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–21259 Filed 8–31–93; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

August 25, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Special Request: The Department of the Treasury is requesting that the Office of Management and Budget review and approve the information collections listed below by October 8, 1993. All public comments must be received by close of business October 1, 1993.

Departmental Offices/Office of Data Management

OMB Number: 1505–0010.
Form Number: FC–2.
Type of Review: Revision.
Title: Monthly Consolidated Foreign Currency Report of Major Market Participants.
Description: Required by title II of Public Law 93–110 (31 U.S.C. 5315). This is used by the Federal Reserve System in connection with foreign exchange operations conducted for Treasury. Also published as aggregate data in the Treasury Bulletin Quarterly. Affects large firms.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Response: 4 hours.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 480 hours.

OMB Number: 1505–0012.
Form Number: FC–1.
Type of Review: Revision.
Title: Weekly Consolidated Foreign Currency Report of Major Market Participants.

Description: Required by title II of Public Law 93–110 (31 U.S.C. 5315). This is used by the Federal Reserve System in connection with foreign exchange operations conducted for Treasury. Also published as aggregate data in the Treasury Bulletin Quarterly. Affects large firms.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 25.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: Weekly.
Estimated Total Reporting Burden: 1,300 hours.
OMB Number: 1505–0014.
Form Number: FC–3.
Type of Review: Revision.
Title: Quarterly Consolidated Foreign Currency Report.
Description: Required by title II of Public Law 93–110 (31 U.S.C. 5315). This is used by the Federal Reserve System in connection with foreign exchange operations conducted for Treasury. Also published as aggregate data in the Treasury Bulletin Quarterly. Affects large firms.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 50.
Estimated Burden Hours Per Response: 8 hours.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 1,600 hours.
Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, room 3171, Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–21260 Filed 8–31–93; 8:45 am]

BILLING CODE 4810–25–P

Public Information Collection Requirements Submitted to OMB for Review

August 23, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS Form 9467.
Type of Review: New collection.
Title: Electronic Funds Transfer Refund Authorization.
Description: The authorization of disclosure to a taxpayer's financial institution of confidential tax return information is necessary to process the taxpayer's direct deposit refund request.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 250,000.
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 40,000 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–21261 Filed 8–31–93; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

August 24, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1377.
Form Number: IRS Form SWR 2826.
Type of Review: Reinstatement.
Title: Forms Distribution Improvement Survey.
Description: The proposed telephone study would be conducted on a national basis and would question individual taxpayers who call the IRS distribution centers to order tax forms, instructions, and/or publications. This study will attempt to identify taxpayers' actions and habits when filling out their tax returns. Additionally, taxpayers will be questioned to determine if they are willing to provide their social security number when they call to order tax forms. The information collected by this proposed study may allow the IRS to make changes to the forms distribution process that would (1) reduce the number of taxpayers having to call the IRS to order additional copies of items and (2) provide taxpayers with better service.
Respondents: Individuals or households.
Estimated Number of Respondents: 2,136.
Estimated Burden Hours Per Respondent: 3 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 102 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer

[FR Doc. 93–21262 Filed 8–31–93; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

August 23, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OBM for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0198.

Form Numbers: ATF REC 5110/03–ATF F 5110.28.

Type of Review: Reinstatement.

Title: Distilled Spirits Plant (DSP) Processing Records and Report.

Description: The information collected is necessary to account for and verify the processing of distilled spirits in bond. It is used to audit plant operations, monitor industry activities for the efficient allocation of personnel resources and the compilation of statistics.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 136.

Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours.

Frequency of Response: Monthly.

Estimated Total Reporting/ Recordkeeping Burden: 3,944 hours.

Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–21263 Filed 8–31–93; 8:45 am]

BILLING CODE 4810–31–P

Customs Service

Denial of Trade Name: "Dovex Incorporated"

ACTION: Denial of Trade Name "Dovex Incorporated".

SUMMARY: On April 9, 1993, a notice of application was published in the **Federal Register** (58 FR 18446). The notice advised that the trade name was used by Dovex Incorporated, in connection with cookware.

Following the publication of the notice of recordation, Customs was made aware that a prior user of the trade name who also has U.S. trademark registrations for "DOVEX," and "DOVEX WITH DESIGN," (U.S. Trademark Nos. 1,318,475 and 1,522,824) was recorded in this Office on June 16, 1993. Since Customs recognizes the existence of the trademarks and the prior use of the trade name Dovex Corp., the application of Dovex Inc., is hereby denied.

FOR FURTHER INFORMATION CONTACT: Delois P. Cooper, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Franklin Court), Washington, DC 20229 (202–482–6960).

Dated: August 25, 1993.

Timothy P. Trainer,

Acting Chief, Intellectual Property Rights Branch.

[FR Doc. 93–21159 Filed 8–31–93; 8:45 am]

BILLING CODE 4820–02–M

Internal Revenue Service

Individuals With Disabilities; Accomodations Evaluation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Notice is hereby given that the IRS is currently conducting an evaluation of its facilities, programs, policies and practices. A transition plan will be developed to make any needed improvements to accommodate individuals with disabilities and to meet the requirements of section 504 of the Rehabilitation Act of 1973, as amended.

DATES: This action is effective as of August 30, 1993, and expires September 17, 1993.

ADDRESSES: Interested persons are invited to mail comments to: Internal Revenue Service, Attn: C:EO:A, Room 2326/IR, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Patricia Mance at the address given above; telephone (202) 622–6783 (not a toll-free telephone number). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Department of Treasury Regulation 31 CFR part 17, Enforcement of Nondiscrimination on the Basis of Handicap in Treasury Programs, directs that the Department conduct its own activities in ways that are nondiscriminatory to people with disabilities. The Internal Revenue Service is providing an opportunity to interested persons, including persons and organizations representing disabled citizens, to participate by submitting comments. A separate notice will be given for review of the transition plan.

Dorothy Shaw,

Executive Assistant (Equal Opportunity)

[FR Doc. 93–21241 Filed 8–31–93; 8:45 am]

BILLING CODE 4830–01–U

federal register

Wednesday
September 1, 1993

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 412 and 413

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1994 Rates; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 413

[BPD–771–FC]

RIN 0938–AG23

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1994 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: We are revising the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes arising from our continuing experience with the system. In addition, in the addendum to this final rule with comment period, we are describing changes in the amounts and factors necessary to determine prospective payment rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes are applicable to discharges occurring on or after October 1, 1993, unless the statute provides otherwise. We are also setting forth rate-of-increase limits for hospitals and hospital units excluded from the prospective payment systems.

Finally, we are implementing certain changes in the hospital inpatient prospective payment systems resulting from the enactment of the Omnibus Budget Reconciliation Act of 1993 on August 10, 1993.

DATES: *Effective date:* This final rule with comment period is effective on October 1, 1993.

Comments: Comments on changes to the May 26, 1993 proposed rule resulting from provisions of the Omnibus Budget Reconciliation Act of 1993 will be considered if we receive them at the appropriate address, as provided below, no later than November 1, 1993. We will not consider comments concerning provisions that remain unchanged from the May 26, 1993 proposed rule or on provisions that were changed based on public comments.

ADDRESSES: Mail written comments (an original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–771–FC, P.O. Box 7517, Baltimore, MD 21207–0517.

If you prefer, you may deliver your written comments (an original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–771–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783–3238 or by faxing to (202) 275–6802. The cost for each copy is $4.50. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Barbara Wynn, (410) 966–4529.

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

Under section 1886(d) of the Social Security Act (the Act), a system of payment for the operating costs of acute hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively-set rates was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment for hospital inpatient operating costs is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). The regulations governing the hospital inpatient prospective payment system are located in 42 CFR part 412. On September 1, 1992, we published a final rule (57 FR 39746) to implement changes to the prospective payment system for hospital operating costs for Federal fiscal year (FY) 1993.

For cost reporting periods beginning before October 1, 1991, hospital inpatient operating costs were the only costs covered under the prospective payment system. Payment for capital-related costs had been made on a reasonable cost basis because, under sections 1886(a)(4) and (d)(1)(A) of the Act, those costs had been specifically excluded from the definition of inpatient operating costs. However, section 4006(b) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) revised section 1886(g)(1) of the Act to require that, for hospitals paid under the prospective payment system for operating costs, capital-related costs would also be paid under a prospective payment system effective with cost reporting periods beginning on or after October 1, 1991. As required by section 1886(g) of the Act, we replaced the reasonable cost-based payment methodology with a prospective payment methodology for hospital inpatient capital-related costs. Under the new methodology, effective for cost reporting periods beginning on or after October 1, 1991, a predetermined payment amount per discharge is made for Medicare inpatient capital-related costs. (See the August 30, 1991 final rule (56 FR 43358) for a complete discussion of the prospective payment system for hospital inpatient capital-related costs.)

B. Summary of the Provisions of the May 26, 1993 Proposed Rule

On May 26, 1993, we published a proposed rule in the **Federal Register** (58 FR 30222) to amend the prospective payment systems for operating costs and capital-related costs as follows:

- We proposed changes for FY 1994 DRG classifications and weighing factors as required by section 1886(d)(4)(C) of the Act. This section requires that we adjust the DRG classifications and relative weights at least annually.
- We proposed a revised wage index for discharges occurring on or after October 1, 1993, and, in particular, the implementation of new wage data and revised labor market areas based on the new Metropolitan Statistical Area (MSA) definitions established by the Office of Management and Budget on December 28, 1992. Specific issues addressed included revised labor market areas, updating the wage index data, revisions to the methodology for computing the wage index, options for phasing in the new wage index, and future refinements to labor market areas.

• We discussed several provisions of the regulations in 42 CFR parts 412 and 413 concerning the prospective payment system for operating costs and set forth certain proposed changes concerning:
—Outlier payments for transfer cases.
—Elimination of the regional floor.
—Rural referral centers.
—Hospitals in areas redesignated as rural.
—Disproportionate share adjustment.
—Direct graduate medical education payment.

• We set forth a proposed change to the prospective payment system for capital-related costs concerning the calculation of the disproportionate share adjustment for urban hospitals with more than 100 beds.

• We discussed proposed changes to the regulations at 42 CFR parts 412 and 413 for hospitals and hospital units excluded under the prospective payment system. The proposed changes concerned the following:
—Limitation of exclusions for distinct-part hospital units.
—Technical changes regarding the rate-of-increase ceiling on operating costs.
—Other technical changes.

• In the addendum to the proposed rule, we set forth proposed changes to the amounts and factors for determining the FY 1994 prospective payment rates for operating costs and capital-related costs. We also proposed new update factors for determining the rate-of-increase limits for cost reporting periods beginning in FY 1994 for hospitals and hospital units excluded from the prospective payment system.

• In appendix A of the proposed rule, we set forth an analysis of the impact that the changes described in the proposed rule would have on affected entities.

• In appendix B of the proposed rule, we set forth the technical appendix on the proposed FY 1994 capital acquisition model and budget neutrality adjustment.

• In appendix C of the proposed rule, we set forth our initial estimate of a recommended update factor for FY 1994 for both prospective payment hospitals and hospitals excluded from the prospective payment system, as required by section 1886(e)(3)(B) of the Act.

• In appendix D of the proposed rule, we provided our recommendation of the appropriate percentage changes for FY 1994, as required by sections 1886 (e)(4) and (e)(5) of the Act, for the following:
—Large urban, other urban, and rural average standardized amounts (and hospital-specific rates applicable to sole community hospitals) for hospital inpatient services paid for under the prospective payment system for operating costs.
—Target rate-of-increase limits to the allowable operating costs of hospital inpatient services furnished by hospitals and hospital units excluded from the prospective payment system.

• In appendix E of the proposed rule, we set forth a preliminary framework for developing the annual update factor for hospital inpatient capital-related costs.

In the May 26, 1993 proposed rule, we also discussed in detail the March 1, 1993 recommendations made by the Prospective Payment Assessment Commission (ProPAC). ProPAC is directed by the provisions of section 1886(e)(2)(A) of the Act to make recommendations on the appropriate percentage change factor to be used in updating the average standardized amounts beginning with FY 1986 and thereafter. In addition, section 1886(e)(2)(B) of the Act directs ProPAC to make recommendations regarding changes in each of the Medicare payment policies under which payments to an institution are prospectively determined. In particular, the recommendations relating to the hospital inpatient prospective payment systems are to include recommendations concerning the number of DRGs used to classify patients, adjustments to the DRGs to reflect severity of illness, and changes in the methods under which hospitals are paid for capital-related costs. Under section 1886(e)(3)(A) of the Act, the recommendations required of ProPAC under sections 1886(e)(2) (A) and (B) of the Act are to be reported to Congress not later than March 1 of each year.

We printed ProPAC's March 1, 1993 report, which includes its recommendations, as appendix G of the proposed rule. The recommendations, and the actions we proposed to take with regard to them (when an action is recommended), were discussed in detail in the appropriate sections of the preamble, the addendum, or the appendixes of the proposed rule.

Set forth below in sections II, III, IV, V, VI, VII, and VIII of this preamble, the addendum to this final rule, and the appendices, are detailed discussions of the May 26, 1993 proposed rule, the public comments received in response to the proposed rule, and the responses to those comments as well as any changes we are making.

We note that several of ProPac's recommendations concerned potential refinements to the current hospital labor market areas. Specifically, ProPAC recommended that the Secretary substantially revise the hospital wage index by developing hospital-specific labor market areas. One configuration would be to establish each hospital's labor market area based on its 10 nearest neighbors within a 50 air-mile radius. We believed that careful analysis of ProPAC's recommendation was necessary before we considered proposing such a significant change. Although we did not propose to implement ProPAC's recommendation in FY 1994, we sought public comment on the proposal. To facilitate the review and comment process, we published hospital-specific wage index values based on ProPAC's recommendation in appendix F of the proposed rule. Comments on ProPac's proposal were due on August 31, 1993, and we intend to discuss the comments and respond to them in a future rulemaking document.

C. Public Comments Received in Response to the May 26, 1993 Proposed Rule

A total of 171 items of correspondence containing comments on the May 26, 1993 proposed rule were received timely. The main areas of concern addressed by commenters were the following:

• Implementation of the FY 1994 wage index and the overall accuracy of the wage data.

• The amounts of the FY 1993 outlier payments.

• The rate of increase in the market basket and the update to the standardized amounts.

• The amount of the Federal capital rate.

• Revisions to rate-of-increase limits for hospitals and hospital units excluded from the prospective payment system.

• Requests for changes in DRG classification and relative weights.

D. Relevant Provisions of the Omnibus Budget Reconciliation Act of 1993

On August 10, 1993, the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) was enacted. The provisions of sections 13501, 13502, 13505, 13506, and 13563 of Public Law 103–66 made the following changes that affect Medicare payments for hospital inpatient services under the prospective payment system:

• The update factor for the standardized amounts for FY 1994 is the market basket rate of increase minus 2.5 percentage points for hospitals located in urban areas and the market basket rate of increase minus 1.0 percentage point for hospitals located in rural areas. The applicable percentage increases in

the update factors for FYs 1995 through FY 1998 are also established.

- Beginning in FY 1994, updates to the hospital-specific rates for sole community hospitals (SCHs) and Medicare-dependent, small rural hospitals (MDHs) will be made on a Federal fiscal year basis, rather than on a cost reporting period basis. The FY 1994 update will be computed taking into account the portion of the 12-month cost reporting period beginning during FY 1993 that occurred during FY 1994. In addition, the update for SCHs and MDHs is the market basket rate of increase minus 2.3 percentage points for FY 1994. The applicable percentage increase for FY 1995 and the methodology for computing the increase in FY 1996 and subsequent fiscal years also are established.
- The unadjusted standard Federal rate for capital payments to prospective payment hospitals is reduced by 7.4 percent for FY 1994. We note that this provision does not supersede the provision of section 1886(g) of the Act that requires that aggregate payments equal 10 percent less than the amount that would have been paid to hospitals under reasonable cost reimbursement.
- Hospitals in urban areas with wage indexes below the wage index for rural areas in the State and hospitals in a State comprised of a single urban area are not subject to further decreases in their wage indexes as a result of reclassification of other hospitals. Under the statute, this provision is effective retroactive to October 1, 1991.
- Hospitals classified as regional referral centers on September 30, 1992, will maintain that classification for cost reporting periods beginning in FYs 1993 and 1994, unless the area in which the hospital is located is redesignated as a Metropolitan Statistical Area by the Office of Management and Budget for such a fiscal year.
- The special payment provisions for Medicare-dependent, small rural hospitals (MDHs) are extended through discharges occurring before October 1, 1994. However, after a hospital's first three 12-month cost reporting periods as an MDH, there is a revision in the payment methodology.
- Hospitals that lost their classification as a regional referral center for cost reporting periods beginning during FY 1993 are entitled to receive a lump-sum payment equal to the difference between the hospital's actual aggregate payment during that period and the aggregate payment that the hospital would have received if the hospital had been classified as a regional referral center. Hospitals that lost their classification as MDHs for cost reporting periods beginning during FYs 1992 or 1993 are entitled to receive a similar lump-sum payment.
- Hospitals that fail to qualify as regional referral centers or MDHs as a result of a decision by the Medicare Geographic Classification Review Board to reclassify the hospital as being located in an urban area for either FY 1993 or FY 1994 may decline such reclassification.
- The regional floor provision, which allows hospitals in census regions for which regional standardized amounts exceed the national standardized amount to be paid based on 15 percent of the regional amount and 85 percent of the national amount, has been extended through FY 1996.
- For FYs 1994 through 1997, the applicable rate-of-increase percentages (the market basket percentage increase) for hospitals that are excluded from the prospective payment system are reduced by the lesser of one percentage point or the percentage point difference between 10 percent and the percentage by which the hospital's allowable operating costs of inpatient hospital services for cost reporting periods beginning in FY 1990 exceeds the hospital's target amount. Hospitals or distinct part hospital units with FY 1990 operating costs exceeding target amounts by 10 percent or more receive the market basket percentage increase.
- Payments to hospitals for the cost of administering blood clotting factor to Medicare beneficiaries who have hemophilia are reinstated retroactively to discharges occurring on or after December 19, 1991, and extended through discharges occurring before October 1, 1994.
- Effective with discharges occurring on or after August 10, 1993, the time spent by graduate medical residents providing services at a community health center under the ownership and control of a hospital are included in the hospital's resident count for purposes of computing indirect medical education payments.
- For cost reporting periods beginning in FYs 1994 and 1995, direct graduate medical education payments are not updated, except for payments for residents in primary care, and obstetrics and gynecology.
- Effective August 10, 1993, a resident in an approved preventive care training program may be counted as a full-time resident for up to 2 additional years beyond the initial residency period.

Each of these provisions and the changes to the regulations necessary to implement these provisions are described in greater detail in section IV of this preamble.

II. Changes to DRG Classifications and Relative Weights

A. Background

Under the prospective payment system, we pay for inpatient hospital services on the basis of a rate per discharge that varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources used to treat cases in other DRGs.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and relative weights annually. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The changes to the DRG classification system and the recalibration of the DRG weights for discharges occurring on or after October 1, 1993 are discussed below.

B. DRG Reclassification

1. General

Cases are classified into DRGs for payment under the prospective payment system based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using codes from the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD–9–CM). The intermediary enters the information into its claims system and subjects it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished.

After screening through the MCE and any further development of the claims, cases are classified by the GROUPER software program into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and

demographic information (that is, sex, age, and discharge status). It is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment.

Currently, cases are assigned to one of 489 DRGs in 25 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body (for example, MDC 6, Diseases and Disorders of the Digestive System); however, some MDCs are not constructed on this basis since they involve multiple organ systems (for example, MDC 22, Burns).

In general, principal diagnosis determines MDC assignment. However, there are four DRGs to which cases are assigned on the basis of procedure codes rather than first assigning them to an MDC based on the principal diagnosis. These are the DRGs for liver and bone marrow transplant (DRGs 480 and 481, respectively) and the two DRGs for tracheostomies (DRGs 482 and 483). Cases are assigned to these DRGs before classification to an MDC.

Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs generally are differentiated on the basis of diagnosis and age. Some surgical and medical DRGs are further differentiated based on the presence or absence of complications or comorbidities (hereafter CC).

Generally, GROUPER does not consider other procedures; that is, nonsurgical procedures or minor surgical procedures generally not performed in an operating room are not listed as operating room (OR) procedures in the GROUPER decision tables. However, there are a few non-OR procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

We proposed to make several changes to the DRG classification system for FY 1994. These proposed changes and the comments we received concerning them, as well as our responses to those comments and the final DRG changes are set forth below.

2. Major Head and Neck Procedures (DRG 49)

Cochlear implants were first covered by Medicare in 1986 and, in the September 3, 1986 prospective payment final rule (51 FR 31488), were assigned to DRG 49 (Major Head and Neck Procedures), the highest-weighted surgical DRG in MDC 3 (Diseases and Disorders of Ear, Nose, Mouth and Throat). Although cochlear implant procedures were not clinically similar to the procedures already assigned to DRG 49, it was the most appropriate surgical DRG within MDC 3 in terms of resource use. This original assignment was made on an interim basis, and we stated that we would continue to analyze these cases to determine if the assignment to DRG 49 and the resulting payment were appropriate and equitable.

Since the publication of the September 3, 1986 final rule, we have received complaints that the weight of DRG 49 is too low and does not adequately reflect the resources necessary for cochlear implants. We have conducted additional analyses of the cochlear procedures in several subsequent years, including in the prospective payment final rule published on September 1, 1992 (57 FR 39755). At that time, we analyzed the FY 1991 Medicare Provider Analysis and Review File (MedPAR) data for DRG 49 to determine the current charges and length of stay for cochlear implants and the other procedures assigned to that DRG. The ICD–9–CM procedure codes we used to identify these cases are 20.96 (Implantation or replacement of cochlear prosthetic device, NOS), 20.97 (Implantation or replacement of cochlear prosthetic device, single channel), and 20.98 (Implantation or replacement of cochlear prosthetic device, multiple channel). We found no cases coded with 20.97 and, in fact, these devices have been replaced by the multiple channel devices and are no longer available.

We found that, although the cochlear implant cases incurred higher charges than the average DRG 49 case, the 100 cases included in the MedPAR data were distributed across 53 hospitals with no hospital performing more than eight procedures. Therefore, we concluded that the volume was not sufficient to justify a DRG modification. However, since payment for cochlear implant patients had been an issue for several years, we stated that we would continue to evaluate the resource consumption related to cochlear implant cases and their impact on hospitals, as well as investigate and consider other options.

One option that commenters suggested last year was that we reassign the less costly cases in DRG 49 to DRG 63 (Other Ear, Nose, Mouth and Throat OR Procedures). Although we stated that we did not believe this would be an appropriate assignment for any of the cases in DRG 49 (57 FR 39756), we did believe that it was appropriate to review the procedures assigned to DRG 49 to determine if they are all appropriately placed in terms of resource consumption. It would be possible for one or two high-volume procedures with relatively low average charges to lower the weight for DRG 49. Therefore, using the FY 1992 MedPAR data, updated through December 1992, we reviewed the charge data for the procedures assigned to DRG 49 prior to publication of the proposed rule.

Of the 14 procedures other than cochlear implants assigned to DRG 49, only one procedure with more than 10 cases had an average standardized charge that was significantly lower than the average standardized charge for the DRG: Partial glossectomy (procedure code 25.2). The average charge for this procedure was $7,213 and the average charge for DRG 49 overall was $13,393. In addition, partial glossectomies are the second highest volume of cases in DRG 49 (579 out of 2,839 cases). If procedure code 25.2 were to be removed from DRG 49, the average standardized charge for the remaining cases would increase to $13,950.

Based on the FY 1992 MedPAR data updated through December 1992, there were 87 cochlear implant discharges, with an average standardized charge of $20,289. In the proposed rule, we also noted that, of the other procedures classified in DRG 49 with more than 10 cases, two incurred higher average charges than the cochlear procedures. Total mandibulectomy with synchronous reconstruction (procedure code 76.41) had the highest average charge ($33,473), and the average charge for bilateral radical neck dissection (procedure code 40.42) was $27,439.

Based on this analysis, we proposed to remove partial glossectomies from DRG 49 and place this procedure in DRGs 168 and 169 (Mouth Procedures).[1] The procedures assigned to these DRGs are clinically similar to partial glossectomies as well as comparable in terms of resource use.

Comment: We received only one comment on the proposed change to DRG 49, which was from the manufacturer of the cochlear implant device. The commenter acknowledged the action taken in the proposed rule toward improving the weight of DRG 49 and expressed appreciation for the resources HCFA has applied to their

[1] A single title combined with two DRG numbers is used to signify pairs. Generally, the first DRG is for cases with CC and the second is for cases without CC. If a third number is included, it represents cases of patients who are age 0–17. Occasionally, a pair of DRGs are split on age > 17 and age 0–17.

concern regarding payment for cochlear implants. However, the commenter remains concerned that Medicare beneficiaries will continue to face reduced access to cochlear implant technology until the implants are assigned to a DRG with a substantially higher weight. The commenter repeats two recommendations it has made in previous years: Move cochlear implants to DRG 1 (Craniotomy Age >17 except for Trauma) or remove the externally worn components of the device from the DRG hospital inpatient payment and allow separate Part B payment because these services are provided on an outpatient basis after discharge. In addition, consistent with the proposed changes, the commenter suggested that other low-resource use procedures be moved out of DRG 49.

The commenter concluded with reference to its continued belief that the charges submitted by some hospitals are too low to reflect the actual resource use of the procedure and the inpatient stay. The commenter states that charges below $17,000, the minimum charge to be expected for a cochlear implant, are still occurring for a high percentage of the hospital bills. While the commenter acknowledges the Medicare claims edit that was put in place in May 1991 to identify these cases, the commenter believes the edit is ineffective. The commenter continues to believe that bills with charges of less than $17,000 are either incorrectly charging for the implant device or are using the cochlear implant codes for procedures that are not cochlear implants. In the latter case, HCFA is paying for incorrectly billed procedures, resulting in artificially lower average charges for cochlear implants and an adverse effect on the weight for DRG 49.

Response: In the prospective payment final rule for FY 1993, published September 1, 1992, we noted our objections to the suggestion that cochlear implant procedures be moved to DRG 1 (57 FR 39755). In that document, we stated that the diagnosis code associated with the cochlear cases (code 389, Hearing loss) is not clinically coherent with the diagnosis codes assigned to MDC 1 (Diseases and Disorders of the Nervous System). In addition, the average standardized charge for DRG 1 is $24,086, which is $5,093 higher than the average standardized charge for cochlear implants ($18,993 based on the 89 cases in FY 1992 MedPAR file updated through June 1993).

The suggestion that the external components of implant devices be "unbundled" from other inpatient supplies and services and billed under Medicare Part B was also addressed in the September 1, 1992 final rule. As we stated in that rule, sections 1862(a)(14) and 1833(d) of the Act require that all services furnished to a Medicare beneficiary as part of a hospital inpatient stay are services covered under Medicare Part A and may not be paid for under Part B. As the external components are an integral part of the cochlear implant device, they are considered to be part of the services connected with the inpatient stay. Our position on this issue remains unchanged.

As to the assertion that charges by the hospital for less than $17,000 must represent billing errors, we note that, as stated in the September 1, 1992 final rule (57 FR 39755), instructions were sent to fiscal intermediaries to return to the hospital any claims where total charges for cochlear implants were less than $17,000. As part of our evaluation of cochlear implants for the proposed rule, we verified compliance with these instructions and confirmed that the intermediary is, in fact, returning to the hospital those claims with charges less than $17,000. Thus, the claims included in our MedPAR analysis have been validated as accurate by the hospital. Therefore, although the manufacturer asserts that the lower charges are incorrect or the hospital is billing for procedures that are not cochlear implants, we are assured that hospitals have been given the opportunity to verify their submitted charges, and, therefore, accept these charges as reliable.

With regard to this issue, we note that the charges we use in our analysis of DRG classification changes are "standardized" charges; that is, the charges submitted on the hospital inpatient bill have been standardized in accordance with the provisions of sections 1886(d)(2)(C) and (d)(9)(B)(ii) of the Act to remove the effects of certain sources of variation in costs among hospitals. These include case mix, differences in area wage levels, cost of living adjustments for Alaska and Hawaii, indirect medical education adjustments, and payments to hospitals serving a disproportionate share of low-income patients. When the effect of standardization is removed, and we review the nonstandardized charges as submitted by the hospital, the number of cochlear implant claims reporting total charges under $17,000 decreases significantly, from 42 percent (37 of 89 total cases) to less than 19 percent (17 cases).

In response to concern that, because of the DRG assignment, hospitals may not be able to afford to provide the cochlear implant to Medicare beneficiaries and they will continue to face reduced access to this technology, we once again note that a hospital may not refuse to provide a covered service to a Medicare beneficiary if it provides that service to other patients. Specifically, the Medicare regulations at 42 CFR 489.53(a)(2) provide that HCFA may terminate a hospital's Medicare provider agreement if it finds that the hospital places restrictions on the number of Medicare beneficiaries it will accept for treatment without placing the same restriction on the other populations it treats.

We are aware of the continuing concerns regarding payment for cochlear implant patients. As part of our proposal to move the partial glossectomy procedure from DRG 49 to DRGs 168 and 169, we evaluated all procedures assigned to DRG 49. As we noted in the proposed rule (58 FR 30224), partial glossectomy was the only procedure assigned to DRG 49 that had any significant volume (more than 10 cases) and a significantly lower average charge. We will continue to monitor the assignment of procedures to DRG 49 and to consider further classification changes as appropriate based on the volume and average charge of specific procedures.

3. Laparoscopic Cholecystectomy Procedures (DRGs 195–198)

Currently, when a patient whose principal diagnosis is classified to MDC 7 (Diseases and Disorders of the Hepatobiliary System and Pancreas) undergoes a cholecystectomy, the case is assigned to DRGs 195 through 198. The specific assignment is based on whether common bile duct exploration (C.D.E.) is performed and whether CCs are present. The DRGs' titles are as follows:

- DRG 195—Cholecystectomy with C.D.E. with CC.
- DRG 196—Cholecystectomy with C.D.E. without CC.
- DRG 197—Cholecystectomy without C.D.E. with CC.
- DRG 198—Cholecystectomy without C.D.E. without CC.

During the past few years, we have received comments suggesting that when a cholecystectomy procedure is performed by laparoscope, the case should be assigned to a different DRG or DRGs than are the other cholecystectomies. These commenters believe that this is appropriate because, although the laparoscopic (closed) procedure is more expensive than a traditional (open) cholecystectomy, use of the closed procedure results in shorter lengths of stay and, thus, lower

total resource use. Our original response to these commenters was that, in order to make this revision, the two types of cholecystectomies would have to be assigned separate ICD–9–CM procedure codes. Subsequently, effective with discharges occurring on or after October 1, 1991 (that is, beginning in FY 1992), separate procedure codes were established for the two types of procedures: 51.22 for open cholecystectomy and 51.23 for laparoscopic cholecystectomy.

Before we published the proposed rule, we analyzed the FY 1992 MedPAR data in which the new codes were used to assign cases to the four DRGs in MDC 7 to determine the most appropriate assignment for laparoscopic cholecystectomy procedures. We found that virtually all the laparoscopic cholecystectomy cases (approximately 99 percent) were assigned to DRGs 197 and 198. We also reviewed cases assigned to DRGs 193 and 194 (Biliary Tract Procedure Except Only Cholecystectomy with or without C.D.E.) and found that no laparoscopic cholecystectomies were assigned there.

After determining the distribution of laparoscopic cholecystectomy cases, we calculated total average standardized charges and lengths of stay for those cases as well as the open cholecystectomy cases in each of the affected DRGs. In DRGs 195 and 196, although the average length of stay for cases in which a laparoscopic cholecystectomy was performed is lower than the cases in which an open procedure was performed, the total average standardized charges were almost equal. For those cases assigned to DRGs 197 and 198, the average length of stay for the laparoscopic procedures is also less than that for the open procedures; however, the average standardized charge for the laparoscopic cases is much less than the charge for the open cholecystectomies.

	DRG 197		DRG 198	
	Length of stay	Average charge	Length of stay	Average charge
Laparoscopic procedure	6.4	11,873	2.3	6,415
Open procedure	10.2	15,750	5.4	7,887

Based on this analysis, we decided to leave the laparoscopic procedures with the open cholecystectomies in DRGs 195 and 196. However, the differences in length of stay and charges for the two types of procedures in DRGs 197 and 198 were large enough for us to propose reassignment of the laparoscopic cases. Since there is no other surgical DRG in MDC 7 that is similar clinically or in terms of resource use to the laparoscopic procedures, and because the cholecystectomy cases have traditionally been segregated from other procedures, we proposed to create two new DRGs for the laparoscopic procedures, as follows:

- DRG 493 Laparoscopic Cholecystectomy without C.D.E. with CC
- DRG 494 Laparoscopic Cholecystectomy without C.D.E. without CC

In addition, we proposed to revise the titles of DRGs 197 and 198 to read as follows:

- DRG 197 Cholecystectomy Except by Laparoscope without C.D.E. with CC
- DRG 198 Cholecystectomy Except by Laparoscope without C.D.E. without CC

We believe that the proposed reassignment of the laparoscopic cases to DRGs 493 and 494 would improve clinical coherence and provide for more appropriate payment. Further, this change would allow the payment for the traditional, open cholecystectomies to reflect the resource use necessary only for those procedures.

In the course of our analysis, we noted some claims that included procedure codes for both a laparoscopic cholecystectomy (51.23) and an open cholecystectomy (51.22). If a procedure is begun through the laparoscope and must be completed with an open procedure, the only code that should be included on the claim is the code for the open procedure. We are assuming that these claims did include an open procedure and, therefore, we believe the case should be assigned to DRGs 197 and 198. We would assign a claim to proposed DRGs 493 and 494 if the only cholecystectomy code in the claim is 51.23. Thus, coding the incomplete (or unsuccessful) closed procedure in addition to the open procedure will make no difference in assignment. However, we note that such double coding is incorrect.

Comment: We received many comments expressing concern about our proposal to create separate DRGs for laparoscopic cholecystectomy. In general, these commenters do not believe it is appropriate to establish a separate category at this time. Their main concern is that, although laparoscopic cholecystectomy is less costly on a "total-episode-of-care basis," the surgery supply costs and operating room costs are higher for these procedures than for the traditional open cholecystectomy procedures.

Further, the commenters are concerned that the new DRGs have been created based on only one year of data and we have not allowed enough time for the technology to evolve to maturity. More specifically, a few of the commenters believe that the charge data hospitals have reported for these procedures is flawed because hospitals are not reporting the increased cost of the laparoscopic surgical procedure. Another commenter stated that the charge data cited in the proposed rule is an approximation at best.

Some commenters objected to the proposed DRGs because they believe that payment for all cholecystectomies should relate to the patient condition and the episode of care, not the particular technology used. One commenter stated that even though this proposal may, in the short term, save the government money, in the long run it will result in either patient access problems or a tendency to continue performing the traditional, open cholecystectomies, resulting in total episode-of-care costs higher than the laparoscopic procedure.

Finally, one commenter believes that a final decision to proceed with the creation of these DRGs could force the performance of this procedure to move more rapidly, and perhaps prematurely, to an outpatient setting.

Response: When we calculate the DRG relative weights, we use the total charges reported by the hospital on its Medicare claim for the services it provided during a hospital inpatient stay. These charges specifically include, among others, operating room charges

and supply charges, which are separate entries on the claim form. The data in the MedPAR file incorporate all these separate charges as well as the total charges reported by the hospital. Thus, the file for FY 1992 contains the total charges reported by hospitals for laparoscopic cholecystectomies that they performed for discharges occurring during that year.

We do not doubt the commenter's statement that the operating room and surgery supply costs are higher for the laparoscopic procedure than are those costs for the open cholecystectomy. In fact, we made this same statement in the proposed rule (58 FR 30225). However, based on the total charge data reported by hospitals, the reduced costs associated with the shorter length of stay and fewer number of complications serve to lower the overall cost of a hospital stay for a laparoscopic procedure. Therefore, commenters' concern that we have not considered the entire episode-of-care costs in creating the new cholecystectomy DRGs is unfounded.

With regard to the commenters' request that we should delay the implementation of the new DRGs until the technology has evolved, we note that, of the total number of cholecystectomies performed in FY 1992 (150,727 cases in DRGs 195 through 198), approximately 55 percent were done laparoscopically. This percentage is even higher in the DRGs that we are splitting on the basis of approach (DRGs 197 and 198 (Cholecystectomy without C.D.E.)): 81,376 cases out of a total 134,661 or 60 percent. We believe that these numbers demonstrate that the new technology has evolved to the extent that it is being employed in a majority of Medicare cholecystectomy cases, and, therefore, creation of a DRG category for laparoscopic cholecystectomy is not premature.

Although, in general, we do not split DRGs for surgical procedures on the basis of the type of approach used in the procedure, we note that we have a long tradition of assigning procedures that are performed using either an open or closed approach to different DRGs based on the lower total resource use associated with the closed procedure. For example, lung biopsy can be performed either closed endoscopically (procedure code 33.27) or open (procedure code 33.28). The open procedure is assigned to DRG 75 (Major Chest Procedures) and the closed procedure is assigned to DRGs 76 and 77 (Other Respiratory System or Procedures). The FY 1994 relative weight for DRG 75 is 3.0397 and the weights for DRGs 76 and 77 are 2.4770 and 1.0443, respectively. Therefore, due to the large difference in the total average charge of the laparoscopic and open procedures and the volume of cases, we believe that it is appropriate to separate the two different approaches to cholecystectomy procedures into different DRGs.

Concerning the statement made by one commenter that this proposal may, in the short term, save the government money, we note that section 1886(d)(4)(C)(iii) of the Act requires that DRG reclassification and recalibration changes must be made in a manner that assures that aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. As discussed below in section II.C. of this preamble, in addition to normalizing the revised weights so that the average case weight before recalibration is equal to the average case weight after recalibration, we also make a budget neutrality adjustment to the standardized amounts. Therefore, the DRG classification or recalibration changes are designed to result in neither a savings nor a loss in total payments.

With regard to the commenters' concern that hospitals will limit the availability of laparoscopic cholecystectomies to Medicare beneficiaries, we repeat the statement we made above in response to a similar comment on the DRG 49 changes (section II.B.2 of this preamble). That is, the regulations at 42 CFR 489.53(a)(2) provide that HCFA may terminate a hospital's Medicare provider agreement if it finds that the hospital places restrictions on the number of Medicare beneficiaries it will accept for treatment if it does not place the same restrictions on the other populations it treats.

We disagree with the commenter that fears that the separation of the laparoscopic procedures from the open procedures may force these procedures to an outpatient setting prematurely. We believe that attending physicians will continue to determine the appropriate setting for surgical procedures and that these decisions are made based on medical factors rather than expected payment.

Comment: A few commenters objected to receiving payment only for the open procedure under DRG 197 or 198 in cases for which the laparoscopic approach was unsuccessfully attempted prior to performance of the open procedure. The commenters noted that they cannot predict which cases will result in a change of approach once the surgery is begun. One commenter requested that when a cholecystectomy is begun with the laparoscopic approach but completed with an open procedure, the hospital should receive the full payment amount for DRG 197 or 198 and part of the payment for DRG 493 or 494, as appropriate.

Response: Under the prospective payment system, a case is assigned to only one unique DRG based on the principal diagnosis, procedures performed, secondary diagnoses, and, in some cases, patient age, sex, and discharge status. Therefore, payment received for a case under the prospective payment system is based on the relative weight of only one DRG.

The situation referred to by the commenters is not unlike a case in which more than one procedure is performed. In those cases, only one procedure (or, in a few cases, two related procedures) dictates the DRG to which the case is assigned. If only one procedure is related to the principal diagnosis, then that procedure determines DRG assignment. If more than one procedure is related, then the case is assigned to a DRG based on surgical hierarchy. (See section II.B.5 of this preamble for a detailed discussion of surgical hierarchy.) If none of the procedures performed are related to the principal diagnosis, the case is assigned to one of the special DRGs for unrelated procedures (DRGs 468, 476, or 477). In no situation would a case receive more than one DRG payment. This is also true of cholecystectomies. If both the laparoscopic code (51.23) and the open code (51.22) are included on the claim, then the claim will be assigned to DRG 197 or 198, because of the higher weight of that class of DRGs. However, as noted in the proposed rule (58 FR 30226), such double coding is incorrect.

4. Tracheostomy Procedures (DRGS 482 and 483)

Effective with discharges occurring on or after October 1, 1990, all cases in which a tracheostomy is performed are assigned to either DRG 482 (Tracheostomy with Mouth, Larynx or Pharynx Disorder) or DRG 483 (Tracheostomy Except for Mouth, Larynx or Pharynx Disorder). The specific mouth, larynx, and pharynx diagnosis codes that occasion a case to be assigned to DRG 482 were listed in Table 6k of section IV of the addendum to the September 4, 1990 final rule (55 FR 36139). These cases were grouped separately because they incurred significantly lower charges than did the other tracheostomy cases. Cases with a principal diagnosis of a mouth, larynx, or pharynx disorder are more likely to require a tracheostomy as a therapeutic measure related to the principal

diagnosis rather than in response to respiratory failure requiring long-term ventilation.

It has been brought to our attention that several mouth, jaw, face, and neck diagnoses were not included on our original list of mouth, larynx and pharynx disorders. Since these diagnoses are clinically similar to those already on the list of diagnoses that cause assignment to DRG 482, we proposed adding them to that list effective with discharges occurring on or after October 1, 1993. The specific diagnosis codes are as follows:

054.2 Herpetic gingivostomatitis
099.51 Other venereal diseases due to Chlamydia trachomatis of pharynx
112.0 Candidiasis of mouth
170.1 Malignant neoplasm of mandible
173.0 Malignant neoplasm of skin of lip
176.2 Kaposi's sarcoma of palate
228.00 Hemangioma of unspecified site
228.01 Hemangioma of skin and subcutaneous tissue
228.09 Hemangioma of other sites
246.2 Cyst of thyroid
465.0 Acute laryngopharyngitis
465.8 Acute upper respiratory infections of other multiple sites
465.9 Acute upper respiratory infections of unspecified site
519.0 Tracheostomy complication
519.1 Other diseases of trachea and bronchus, not elsewhere classified
682.1 Cellulitis and abscess of neck
749.00–749.04 Cleft palate
749.10–749.14 Cleft lip
749.20–749.25 Cleft palate with cleft lip
750.21 Absence of salivary gland
750.22 Accessory salivary gland
750.23 Atresia, salivary duct
750.24 Congenital fistula of salivary gland
802.20–802.29 Fracture of mandible, closed
802.30–802.39 Fracture of mandible, open
802.4 Fracture of malar and maxillary bones, closed
802.5 Fracture of malar and maxillary bones, open
802.6 Fracture of orbital floor (blow-out), closed
802.7 Fracture of orbital floor (blow-out), open
802.8 Fracture of other facial bones, closed
802.9 Fracture of other facial bones, open
830.0 Closed dislocation of jaw
830.1 Open dislocation of jaw
873.40 Open wound of face, unspecified site, without mention of complication
873.41 Open wound of cheek, without mention of complication
873.50 Open wound of face, unspecified site, complicated
873.51 Open wound of cheek, complicated
874.02 Open wound of trachea, without mention of complication
874.12 Open wound of trachea, complicated
874.8 Open wound of neck, without mention of complication, not otherwise specified
874.9 Open wound of neck, complicated, not otherwise specified
900.82 Injury to multiple blood vessels of head and neck
900.89 Injury to other specified blood vessels of head and neck, not elsewhere classified
900.9 Injury to unspecified blood vessel of head and neck
925.1 Crushing injury of face and scalp
925.2 Crushing injury of neck
959.0 Face and neck injury, not otherwise specified

We note that diagnosis codes 925.1 and 925.2 are new codes that will be effective October 1, 1993. They replace current code 925 (Crushing injury of face, scalp, and neck). See Tables 6a and 6c in section V of the addendum to this final rule with comment.

We also proposed to change the titles of DRGs 482 and 483 to describe more accurately the types of cases that are classified to them. The proposed titles were as follows:

- DRG 482 Tracheostomy for Face, Mouth and Neck Diagnoses
- DRG 483 Tracheostomy Except for Face, Mouth and Neck Diagnoses

We received only one comment on this proposal, which supported our changes. Therefore, we are incorporating them into the final DRG classification system for FY 1994.

5. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the principal diagnosis is assigned. It is, therefore, necessary to have a decision rule by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of surgical classes from most to least resource intensive, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive surgical class.

Because the relative resource intensity of surgical classes can shift as a function of DRG reclassification and recalibration, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications, to determine if the ordering of classes coincided with the intensity of resource utilization, as measured by the same billing data used to compute the DRG relative weights.

A surgical class can be composed of one or more DRGs. For example, in MDC 5, the surgical class "heart transplant" consists of a single DRG (DRG 103) and the class "coronary bypass" consists of two DRGs (DRGs 106 and 107). Consequently, in many cases, the surgical hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive surgical class, therefore, involves weighting each DRG for frequency to determine the average resources for each surgical class. For example, assume surgical class A includes DRGs 1 and 2 and surgical class B includes DRGs 3, 4, and 5, and that the average charge of DRG 1 is higher than that of DRG 3, but the average charges of DRGs 4 and 5 are higher than the average charge of DRG 2. To determine whether surgical class A should be higher or lower than surgical class B in the surgical hierarchy, we would weight the average charge of each DRG by frequency (that is, by the number of cases in the DRG) to determine average resource consumption for the surgical class. The surgical classes would then be ordered from the class with the highest average resource utilization to that with the lowest, with the exception of "other OR procedures" as discussed below.

This methodology may occasionally result in a case involving multiple procedures being assigned to the lower-weighted DRG (in the highest, most resource-intensive surgical class) of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPER searches for the procedure in the most resource-intensive surgical class, which may sometimes occur in cases involving multiple procedures, this result is unavoidable.

Notwithstanding the foregoing discussion, there are a few instances where a surgical class with a lower average relative weight is ordered above a surgical class with a higher average relative weight. For example, the "other OR procedures" surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs, regardless of the fact that the relative weight for the DRG or DRGs in that surgical class may be higher than that for other surgical classes in the MDC. The "other OR procedures" class is a group of procedures that are least likely to be related to the diagnoses in

the MDC but are occasionally performed on patients with these diagnoses. Therefore, these procedures should only be considered if no other procedure more closely related to the diagnoses in the MDC has been performed.

A second example occurs when the difference between the average weights for two surgical classes is very small. We have found that small differences generally do not warrant reordering of the hierarchy since, by virtue of the hierarchy change, the relative weights are likely to shift such that the higher-ordered surgical class has a lower average weight than the class ordered below it.

Based on the preliminary recalibration of the DRGs, we proposed to modify the surgical hierarchy for MDC 3 (Diseases and Disorders of the Ear, Nose, Mouth and Throat) and MDC 9 (Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast) as follows:

a. In MDC 3, we proposed to reorder Myringotomy with Tube Insertion (DRGs 61 and 62) above Tonsil and Adenoid Procedure Except Tonsillectomy and/or Adenoidectomy Only (DRGs 57 and 58).

b. In MDC 9, we proposed to reorder Skin, Subcutaneous Tissue and Breast Plastic Procedures (DRG 268) above Breast Procedures (DRGs 257, 258, 259, 260, 261, and 262).

We received no comments concerning the proposed surgical hierarchy. In addition, based on a test of the proposed changes using the most recent MedPAR file (June 1993) and the revised GROUPER software, we find that the changes we proposed are still supported by the data and no additional changes are required. Therefore, the proposed surgical hierarchy is incorporated in this final rule with comment.

6. Refinement of Complications and Comorbidities List

There is a standard list of diagnoses that are considered complications or comorbidities (CCs). This list was developed by physician panels to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity. In preparing the original CC list, a substantial CC was defined as a condition that, because of its presence with a specific principal diagnosis, would increase the length of stay by at least 1 day for at least 75 percent of the patients.

In previous years, we have made changes to the standard list of CCs, either by adding new CCs or deleting CCs already on the list. For FY 1994, we did not propose any changes to the current CC list.

In the September 1, 1987 final notice concerning changes to the DRG classification system (52 FR 33143), we modified the GROUPER logic so that certain diagnoses included on the standard list of CCs would not be considered a valid CC in combination with a particular principal diagnosis. Thus, we created the CC Exclusions List. We made these changes to preclude coding of closely related conditions, to preclude duplicative coding or inconsistent coding from being treated as CCs, and to ensure that cases are appropriately classified between the complicated and uncomplicated DRGs in a pair.

In the May 19, 1987 proposed notice concerning changes to the DRG classification system (52 FR 18877), we explained that the excluded secondary diagnoses were established using the following five principles:

- Chronic and acute manifestations of the same condition should not be considered CCs for one another (as subsequently corrected in the September 1, 1987 final notice (52 FR 33154)).
- Specific and nonspecific (that is, not otherwise specified (NOS)) diagnosis codes for a condition should not be considered CCs for one another.
- Conditions that may not co-exist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, and benign/malignant, should not be considered CCs for one another.
- The same condition in anatomically proximal sites should not be considered CCs for one another.
- Closely related conditions should not be considered CCs for one another.

The creation of the CC Exclusions List was a major project involving hundreds of codes. The FY 1988 revisions were intended to be only a first step toward refinement of the CC list in that the criteria used for eliminating certain diagnoses from consideration as CCs were intended to identify only the most obvious diagnoses that should not be considered complications or comorbidities of another diagnosis. For that reason and in light of comments and questions on the CC list, we have continued to review the remaining CCs to identify additional exclusions and to remove diagnoses from the master list that have been shown not to meet the definition of a CC stated above, as appropriate. (See the September 30, 1988 final rule for the revision made for the discharges occurring in FY 1989 (53 FR 38485), the September 1, 1989 final rule for the revision made for discharges occurring in FY 1990 (54 FR 36552), the September 4, 1990 final rule for the revision made for discharges occurring in FY 1991 (55 FR 36126), the August 30, 1991 final rule for the revision made for discharges occurring in FY 1992 (56 FR 43209), and the September 1, 1992 final rule for the revisions made for discharges occurring in FY 1993 (57 FR 39753).)

We proposed a limited revision of the CC Exclusions List to take into account the changes that will be made in the ICD–9–CM diagnosis coding system effective October 1, 1993. (See section II.B.8 of this preamble, for a discussion of these changes.) These proposed changes were made in accordance with the principles established when we created the CC Exclusions List in 1987.

Tables 6f and 6g in section V of the addendum to this final rule contain the revisions to the CC Exclusions List that will be effective for discharges occurring on or after October 1, 1993. Each table shows the principal diagnoses with proposed changes to the excluded CCs. Each of these principal diagnoses is shown with an asterisk and the additions or deletions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

CCs that are added to the list are in Table 6f—Additions to the CC Exclusions List. Beginning with discharges on or after October 1, 1993, the indented diagnoses will not be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

CCs that are deleted from the list are in Table 6g—Deletions from the CC Exclusions List. Beginning with discharges on or after October 1, 1993, the indented diagnoses will be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained from the National Technical Information Service (NTIS) of the Department of Commerce. It is available in hard copy for $73.00 and on microfiche for $19.00, plus $3.00 for shipping and handling. A request for the FY 1988 CC Exclusions List (which should include the identification accession number, (PB) 88–133970) should be made to the following address: National Technical Information Service; United States Department of Commerce; 5285 Port Royal Road, Springfield, Virginia 22161; or by calling (703) 487–4650.

Users should be aware of the fact that all revisions to the CC Exclusions List (FYs 1989, 1990, 1991, 1992 and 1993) and those in Tables 6f and 6g of this

document must be incorporated into the list purchased from NTIS in order to obtain the CC Exclusions List applicable for discharges occurring on or after October 1, 1993.

Alternatively, the complete documentation of the GROUPER logic, including the current CC Exclusions List, is available from 3M/Health Information Systems (HIS), which, under contract with HCFA, is responsible for updating and maintaining the GROUPER program. The current DRG Definitions Manual, Version 10.0, is available for $195.00, which includes $15.00 for shipping and handling. Version 11.0 of this manual, which will include the changes proposed in this document as finalized in response to public comment, will be available in September 1993 for $195.00. These manuals may be obtained by writing 3M/HIS at: 100 Barnes Road; Wallingford, Connecticut 06492; or by calling (203) 949–0303.

Please specify the revision or revisions requested.

We received two comments concerning changes made to the CC Exclusions List for new ICD–9–CM diagnosis codes. Those comments and our response are set forth below in the section describing the changes to the ICD–9–CM coding system (section II.B.8. of this preamble).

7. Review of Procedure Codes in DRGs 468, 476, and 477

Each year, we review cases assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis), DRG 476 (Prostatic OR Procedure Unrelated to Principal Diagnosis), and DRG 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis) in order to determine whether procedures are properly assigned among these DRGs.

DRGs 468, 476, and 477 are reserved for those cases in which none of the OR procedures performed during a hospital inpatient stay is related to the principal diagnosis. These DRGs are intended to capture atypical cases, that is, those cases not occurring with sufficient frequency to represent a distinct, recognizable clinical group. DRG 476 is assigned to those discharges in which one or more of the following prostatic procedures are performed and are unrelated to the principal diagnosis:

60.0 Incision of prostate
60.12 Open biopsy of prostate
60.15 Biopsy of periprostatic tissue
60.18 Other diagnostic procedures on prostatic and periprostatic tissue
60.2 Transurethral prostatectomy
60.61 Local excision of lesion of prostate
60.69 Prostatectomy NEC
60.93 Repair of prostate
60.94 Control of (postoperative) hemorrhage of prostate
60.99 Other operations on prostate

All remaining OR procedures are assigned to DRGs 468 and 477, with DRG 477 assigned to those discharges in which the only procedures performed are nonextensive procedures that are unrelated to the principal diagnosis. The original list of the ICD–9–CM procedure codes for the procedures we consider nonextensive procedures if performed with an unrelated principal diagnosis was published in Table 6c in section IV of the addendum to the September 30, 1988 final rule (53 FR 38591). As part of the September 4, 1990, August 30, 1991, and September 1, 1992 final rules, we moved several other procedures from DRG 468 to 477. (See 55 FR 36135, 56 FR 43212, and 57 FR 23625, respectively.)

We annually conduct a review of procedures producing DRG 468 or 477 assignments on the basis of volume of cases in these DRGs with each procedure. Our medical consultants then identify those procedures occurring in conjunction with certain principal diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. This year's review did not identify any necessary changes; therefore, we did not propose to move any procedures from DRGs 468 or 477 to one of the surgical DRGs.

We also reviewed the list of procedures that produce assignments to each of DRG 468, 476, and 477 to ascertain if any of those procedures should be moved to one of the other DRGs based on average charges and length of stay. Generally, we move only those procedures for which we have an adequate number of discharges to analyze the data. Based on our review this year, we proposed several moves.

We identified two prostatic procedures currently assigned to DRG 468 that, in terms of resource use, would be more appropriately classified in DRG 476. Therefore, we proposed to assign the following prostatic procedures to DRG 476:

60.81 Incision of periprostatic tissue
60.82 Excision of periprostatic tissue

Based on our analysis of the OR procedures that produce DRG 477 assignments, we discovered five procedures that are significantly more resource intensive than the other procedures assigned to that DRG. Therefore, we proposed to move the following procedures to the list of procedures that result in assignment to DRG 468:

20.49 Other mastoidectomy
39.32 Suture of vein
39.53 Repair of arteriovenous fistula
43.42 Local excision of other lesion or tissue of stomach
70.50 Repair of cystocele and rectocele

Similarly, after reviewing and analyzing the procedures that assign cases to DRG 468 to determine if any of those procedures might more appropriately be classified to DRG 477, we proposed to move an extensive number of cases from DRG 468 to DRG 477.

All of the reassignments among DRGs 468, 476, and 477 will be effective with discharges beginning on or after October 1, 1993. We received no comments concerning the reassignments from DRG 477 to DRG 468 and those from DRG 468 to DRG 476. However, we received one comment on the procedures we proposed to move from DRG 468 to 477 as follows.

Comment: One commenter suggested that some of the procedures that we proposed to move to DRG 477 involve considerably more resources and risk to the patient than the other procedures in this DRG. The commenter requested that we reconsider the reassignment of the following procedures:

49.6 Excision of anus
83.5 Bursectomy
85.63 Rotator cuff repair
85.93 Revision of implant of breast
85.94 Removal of implant of breast
85.95 Insertion of breast tissue expander
85.96 Removal of breast tissue expander
85.99 Other operations of the breast

Response: As discussed in the proposed rule (58 FR 30228), in analyzing the procedures that produce assignments to each of DRG 468, 476, and 477 for possible reassignment, we use a two-step approach. First, we consider the charge and length-of-stay for each procedure compared to the overall average charge and length of stay for the DRG in which the procedure is currently assigned and the DRG to which we are considering reassignment. Second, our medical consultants provide clinical evaluation to determine the optimal, appropriate classification.

In a few cases, we proposed to move procedures that were members of a code "family," based on the charge and length of stay data associated with other members of the family. This was the case with our proposal to move the five breast procedures. The FY 1992 charge and length of stay data for procedure codes 85.94 and 85.96 were not only well below the average charge and length of stay for cases assigned to DRG

468, they were also far less than the average charge and length of stay for cases assigned to DRG 477. Based on the advice of our medical consultants and a review of the breast procedures currently assigned to DRG 477, we believe that, even though we had no cases to review for procedure codes 85.93, 85.95, and 85.99, they should all be moved. Since we review this list every year, we can analyze the validity of our change in future years. However, we strongly believe the move is appropriate.

For the other three procedures cited by the commenter, codes 49.6, 83.5, and 85.63, we had average charge and length of stay data for FY 1992. Again, each of these procedures had averages that were lower than the DRG 477 averages. Therefore, assigning these procedures to DRG 477 ensures more appropriate payment for these cases based on resource use, whereas leaving them in DRG 468 not only overpays these cases but serves to lower the average charge and, therefore, the relative weight for that DRG overall. The entire list of procedures that will be moved from DRG 468 to DRG 477 effective with discharges occurring on or after October 1, 1993 is set forth below in Table 6h in section V. of the addendum to this final rule with comment. We note that, although procedure code 86.3 (other local excision or destruction of lesion or tissue of skin and subcutaneous tissue) was included in Table 6h in the proposed rule, this procedure in not an OR procedure and should be removed from the list. (See the June 29, 1993 correction notice (58 FR 34742).)

8. Changes to the ICD–9–CM Coding System

As discussed above in section II.B.1. of this preamble, the ICD–9–CM is a coding system that is used for the reporting of diagnoses and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee charged with the mission of maintaining and updating the ICD–9–CM. This includes approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The Committee is co-chaired by the National Center for Health Statistics (NCHS) and HCFA. The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in Volume 1—Diseases: Tabular List and Volume 2—Diseases: Alphabetic Index, while HCFA has lead responsibility for the ICD–9–CM procedure codes included in Volume 3—Procedures: Tabular List and Alphabetic Index.

The Committee encourages participation in the above process by health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding fields, such as the American Health Information Management Association (AHIMA) (formerly American Medical Record Association (AMRA)), the American Hospital Association (AHA), and various physician specialty groups as well as physicians, medical record administrators, health information management professionals, and other members of the public to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for FY 1994 coding changes at public meetings held on May 7, August 4, and December 3, 1992, and finalized the coding changes after consideration of comments received at the meetings and in writing within 30 days following the December 1992 meeting. The initial meeting for consideration of coding issues for implementation in FY 1995 was held on May 6 and 7, 1993 and a second meeting was held on August 5, 1993. Copies of the minutes of these meetings may be obtained by writing to the co-chairpersons representing NCHS and HCFA. We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Sue Meads, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; NCHS; rm. 9–58; 6525 Belcrest Road; Hyattsville, Maryland 20782.

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; HCFA, Office of Coverage and Eligibility Policy; rm. 401 East High Rise Building; 6325 Security Boulevard; Baltimore, Maryland 21207.

The ICD–9–CM code changes that have been approved will become effective October 1, 1993. The new ICD–9–CM codes are listed, along with their DRG classifications, in Tables 6a and 6b (New Diagnosis Codes and New Procedure Codes, respectively) in section V of the addendum to this final rule with comment. As we stated above, the code numbers and their titles were presented for public comment in the ICD–9–CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved. Therefore, comments were solicited only on the proposed DRG classifications.

The Committee has also approved the expansion of certain ICD–9–CM codes to require an additional digit for valid code assignment. Diagnosis codes that have been replaced by expanded codes or have been deleted are in Table 6c (Invalid Diagnosis Codes). The invalid diagnosis codes will not be recognized by the GROUPER beginning with discharges occurring on or after October 1, 1993. The corresponding new expanded codes are included in Tables 6a and 6b. Revisions to diagnosis and procedure code titles are in Tables 6d (Revised Diagnosis Code Titles) and 6e (Revised Procedure Code Titles), which also include the proposed DRG assignments for these revised codes.

Throughout the year, we receive many requests from hospitals, doctors, and others for advice on the correct coding of hospital inpatient claims. Often, this request follows a change in coding made by a Peer Review Organization (PRO) during a DRG validation review. We would like to reiterate the responsibilities and authority of the PRO concerning correct coding as well as HCFA's role in the process of issuing coding advice.

Among the many duties of the PROs is responsibility for validating the accuracy of coded data on hospital bills for Medicare beneficiaries. The PROs verify that the ICD–9–CM codes on the bill accurately represent the principal and secondary diagnoses and procedures reported for Medicare patients. The PROs retain the ultimate authority for coding decisions and DRG validation concerning individual claims of these patients. The PROs should follow any official coding advice they have received from HCFA through the regional offices.

Because of the rapidly changing nature of medical technology, as well as accurate coding and sequencing of discharge diagnoses, PROs occasionally have questions concerning coding policy. The PROs forward their

questions to HCFA central office through their regional offices. After consulting with AHIMA and AHA, and obtaining clearance from NCHS, HCFA sends its response to the regional office that made the request. Copies are also sent to all other regional offices to share the information with PROs in their areas. Additional copies are sent to the SuperPRO, NCHS, AHA, and AHIMA for further dissemination.

The effective date of implementation of the coding advice is the date of the response. Approved final coding policy sent as instructions to the PROs supersedes any previously printed coding advice. In disputes about correct coding, final decisions by HCFA and NCHS will prevail.

Since any correspondence concerning HCFA's coding instructions to the PROs is in the public domain, that correspondence may be reprinted in any trade publication. For example, AHIMA has published these responses in their Journal of AHIMA on a regular basis. We encourage widespread dissemination of this official advice to assure greater consistency in coding practices for Medicare claims.

The comments we received regarding the ICD–9–CM coding changes fall into four general categories: Errors in our Tables 6a through 6f; disagreement about the assignment of a new or revised code as a CC; various requests for additional information about the ICD–9–CM codes; and comments about coding policy.

Based on the comments and our own review, we have corrected several misspellings and missing words in the code descriptions in Tables 6a and 6d. The codes for which changes have been made are as follows:

Table 6a: 078.88, 250.22, 250.23, 451.82, 451.83, 451.84, 704.02, 733.12, 733.16, V73.88, and V73.98.
Table 6d: 250.20, 250.21, and 995.0.

The latter three categories of comments are addressed below.

Comment: We received two comments urging us to change our designation of new, expanded diagnosis code 440.23 (Atherosclerosis of the extremities with ulceration) from non-CC to CC. The commenters believe that the new code, 440.23, is intended as a replacement for code 707.1 (Ulcer of lower limbs, except decubitus), which is considered a CC, and, thus, reason that code 440.23 should also be a CC.

Response: The new code 440.23 is one of three new codes that are further fifth-digit expansions of the existing 440.2 category of codes for atherosclerosis of the arteries of the extremities. The new 440.2X codes allow for more specific diagnoses to be coded in certain cases. There are cases that currently may be coded with 707.1 that now will be coded with 440.23, but the new code does not replace 707.1. Code 707.1 will still be used as is appropriate. That is, both codes will be available for use, but each describes different diagnoses.

We disagree with the commenter's assertion that 440.23 should be designated as a CC because 707.1 is a CC. The two codes describe different etiologies. The decision to make 440.23 a non-CC was based, in part, on the example of code 454.0 (Varicose veins of the lower extremities, with ulcer). The latter diagnosis is a non-CC and the coding structure is similar to that used for the ulcer described by 440.23. Further, our clinical experts believe that the diagnosis described by 440.23 is similar in severity and resource use to that described by 454.0, and, therefore, should not be designated as a CC.

Comment: One commenter objected to the non-CC designation given to some of the diabetes mellitus codes (250.10, 250.20, 250.30, 250.40, 250.50, 250.60, 250.70, 250.80, 250.90) that are currently counted as CCs. The commenter states that diabetes mellitus, both insulin dependent and noninsulin dependent, has been considered a comorbid condition for many years.

Response: Although the diagnosis code numbers for diabetes cited by the commenter are the same numbers that currently exist, they will no longer describe the same conditions effective October 1, 1993. The diabetes mellitus codes have been revised so that instead of two fifth-digit categories, there are now four. The cited codes (those ending with a fifth-digit of "0") will now be used to code only those cases in which the patient has diabetes that is adult-onset type, noninsulin dependent, and not stated as uncontrolled. The other three series of fifth-digit codes, which describe more serious diabetes mellitus diagnoses, are all designated as CCs.

We based our decision to designate the "0" category codes as non-CCs on the clinical judgment of our medical consultants, who believe that these patients do not require the same level of resource use as patients classified by the remaining 250 category of codes. We expect that with the new diabetes codes, which allow much more specific identification of patients' diabetic clinical profile, we will be better able to evaluate the resources required by patients who have diabetes as a secondary diagnosis.

Comment: We received two comments regarding Tables 6f, Additions to the CC Exclusions List, and 6g, Deletions From the CC Exclusions List, set forth in section V of the addendum to this final rule with comment period. One commenter pointed out that nine of the non-CC diabetes codes (250.10, 250.20, 250.30, 250.40, 250.50. 250.60, 250.70, 250.80, 250.90) appear in Table 6f. The commenter believes that only diagnosis codes that are designated as CCs should appear in that table. The other commenter noted that code 665.14 (Rupture of uterus during labor, postpartum condition or complication) had not been removed as it should have been from Table 6g.

Response: Section II.B.6 of the preamble, above, provides a full explanation of the Additions to, and Deletions from, the CC Exclusions Lists, Tables 6f and 6g. The appearance in Table 6f of the diabetes diagnosis codes specified by the commenter is correct. The codes appear two ways in that table, as principal diagnoses and as additions to the exclusions listed in columns below the principal diagnoses. In table 6f, the asterisked codes denote principal diagnoses for which the list of codes that are in an indented column beneath it will not be counted as CCs. For example, when code 250.10 is a principal diagnosis, as denoted with an asterisk, the codes listed beneath it (250.02, 250.03, 250.12, 250.13, * * * 780.03) will not be counted as a CC when coded for the same case. When a code that was previously a CC becomes a non-CC due to coding revisions (for example, 250.10), it will be printed in this list as one of the members in the indented columns beneath the principal diagnoses, as is appropriate, because it will no longer count as a CC for the listed (or any) principal diagnosis.

Regarding the second commenter's concern, code 665.14 appears in Table 6g because it is now an invalid code and is, therefore, being removed from the CC exclusions list. We note that all of the diagnosis codes that were considered CCs and that are now invalid codes (see Table 6c) appear in Table 6g.

Comment: One commenter requested that we publish revised diagnosis code category headings when a formerly valid diagnosis code is made invalid due to a revision of the codes in that group to require a fifth digit. These four-digit, invalid codes sometimes become category headings for the valid fifth-digit codes that were subdivided from the four-digit code. The commenter recommends that the revised category title headings also be added to the Tables set forth in the proposed and final rules.

Response: We publish the ICD–9–CM coding system changes in the proposed and final rules in order to display our CC and DRG assignments of new and

revised codes. We also publish an informational list of invalid codes that will no longer be recognized by the Medicare GROUPER. The proposed and final prospective payment rules are not a replacement for ICD–9–CM coding manuals. We publish only that coding information that is necessary for public understanding and implementation of the DRG classification system. Therefore, we do not believe that we should publish the information requested by the commenter.

Comment: We received one comment approving the addition of a fifth-digit to diagnosis code category 530 (Diseases of esophagus); however, the commenter stated that this change does not eliminate the sequencing dilemma between DRGs 174 and 175 and DRGs 182 through 184. The commenter believes the design of the fifth-digits in this category should follow the same methodology as category 535 (Gastritis and duodenitis) to ensure comparable DRG grouping.

Response: As discussed above in this section of the preamble, suggestions on coding issues involving diagnosis codes should be addressed to Sue Meads at NCHS.

Comment: Several commenters were disappointed in the very minor changes made to Volume 3 of the ICD–9–CM (the procedure codes) for FY 1994. One commenter stated that Volume 3 has not kept pace with the many advances in surgical techniques and several commenters stated that changes in these codes that were discussed at the Coordination and Maintenance Committee meetings held on May 7 and December 12, 1992 were not implemented in spite of broad public support.

Response: There are severe physical space constraints that limit the number of changes that can be made to the procedure codes in Volume 3. HCFA is aware that this Volume does not contain the most current codes to match changing technology, but, due to its current configuration, Volume 3 is limited to 4-digit codes. To date, there has been no consensus on how this Volume should be revised to accommodate more codes. We will continue to explore possible solutions to this problem.

Revisions and changes that are discussed at the Coordination and Maintenance Committee meetings during a particular year do not necessarily become final code changes. These meetings are a forum for discussion of ICD–9–CM coding changes and policy. As noted above, a Federal interdepartmental committee, the ICD–9–CM Coordination and Maintenance Committee, is charged with the mission of maintaining and updating the ICD–9–CM coding system. At the public meetings of the Committee, coding issues that have been brought to the Committee's attention are introduced for discussion with the public. Also, at these meetings, educational coding information is presented. The final changes made to the coding system are made through consensus of the Committee members after consideration of the oral comments made at the meetings and the written comments received in the 30 days following the final meeting for the year (generally held in December).

We again encourage commenters to address questions, comments, and suggestions on issues involving diagnosis codes to Sue Meads and those concerning the procedure codes to Patricia E. Brooks at the addresses set forth above.

Comment: We received several comments about the information presented in the proposed rule concerning coding advice provided by HCFA to its Peer Review Organizations (PROs). Commenters are concerned that the advice HCFA provides to the PROs and HCFA Regional Offices is not immediately available to the public and that this advice is being given without benefit of public comment. One commenter stated that HCFA should not have the authority to make coding decisions without public comment and publication.

Further concerns expressed were that the consistency of coding information will not be maintained if the information is not disseminated uniformly; that, if the implementation date is the date of HCFA's response to the PRO inquiry, there is no assurance that all affected parties across the nation will know about changes in time to implement the changes concurrently; and that HCFA seems to be abandoning the existing process for reaching consensus in coding advice.

Response: The process HCFA uses to communicate coding advice for Medicare beneficiaries to the PROs has been in place since HCFA entered into the PRO contract agreements several years ago. The description of that process in the proposed rule was informational and certainly not intended to be an announcement of a policy change.

As stated above in this section of the preamble, the PRO retains the ultimate authority for coding decisions and DRG validation concerning individual claims of Medicare patients. In disputes about correct coding, final decisions by HCFA and NCHS will prevail, as has always been the case.

While we cannot maintain mailing lists for dissemination of our correspondence concerning coding instructions to the PROs, it is in the public domain and may be reprinted.

9. Other Issues

a. DRG Refinements. For several years, we have been analyzing major refinements to the DRG classification system to compensate hospitals more equitably for treating severely ill Medicare patients. These refinements, generally referred to as severity of illness adjustments, would be based on using certain complications and comorbidities (CCs) to create DRGs specifically for very ill patients who consume far more resources than do other patients classified to the same DRGs in the current system. This approach has been taken by various other groups in refining the DRG system, most notably the research done for Yale and the changes incorporated by the State of New York into its all-payer DRG system.

Our preliminary work on these refinements is almost finished. As discussed in more detail below, our plan is to incorporate comments and suggestions we receive and to consider proposing the complete system as part of the FY 1995 prospective payment system proposed rule, which will be published in the spring of 1994. However, as the final rule published on September 1, 1992 (57 FR 39761) suggests, we would not propose to make significant changes to the DRG classification system unless we are able either to improve our ability to predict coding changes by validating in advance the impact that potential DRG changes may have on coding behavior, or to make methodological changes to prevent building the inflationary effects of the coding changes into future program payments.

Section 1886(d)(4)(C)(iii) of the Act mandates that DRG reclassification and recalibration changes should be implemented in such a manner that aggregate payments are not affected. Moreover, we do not believe it is prudent policy to make changes for which we cannot predict the effect on the case-mix index and, thus, payments. Our goal is to refine our methodology so that we can fulfill, in the most appropriate manner, both the statutory requirement to make appropriate DRG classification changes and to recalibrate DRG relative weights (as mandated by section 1886(d)(4)(C) of the Act) and the statutory mandate to make DRG changes in a budget neutral manner.

In addition to the severity changes, we also intend to improve the classification and relative weights of the DRGs that apply to newborns, children, and maternity patients. The Medicare population does not include many of these individuals. The original DRG classification system was developed from analysis of claims data representative of the total inpatient population. When we calculated the original Medicare weights for the DRGs to which newborn, children and maternity patients are classified, we used non-MedPAR discharge records from Maryland and Michigan hospitals because there were either no MedPAR cases or too few cases classified to these DRGs to provide a reasonably precise estimate of the average cost of care. (See the September 1, 1983 prospective payment final rule with comment period (48 FR 39768).) Since that time, because of the lack of MedPAR data, these low-volume DRGs have not been analyzed and refined, and the relative weights assigned to them may no longer be entirely reflective of the resources needed to treat the patients. We again intend to rely on data bases outside the MedPAR file to supplement our data.

We received several comments related to DRG refinement.

Comment: While the comments we received were generally supportive of our plans to refine the DRGs to compensate hospitals more equitably for treating severely ill Medicare patients, two commenters expressed opposition to the suspension of adjustments mandated by section 1886(d)(4)(C)(i) of the Act, stating that DRG improvements should not be delayed because of HCFA's inability to guarantee budget neutrality. One commenter believes concern over the impact of changes in coding behavior should not cause a delay in implementation as we have the ability to correct for forecasting errors in subsequent years. Another commenter stated that our statutory responsibility requires reasonable effort to assure budget neutrality but does not mandate that actual budget neutrality be achieved. This commenter recommended that we either refine the current method of estimating DRG classification impact or develop a new model for estimating the effects of DRG refinements. The commenter continued that we should not limit ourselves to relatively minor "tinkering" and believes that refusal to implement improvements in DRG payment equity is inappropriate.

Response: Our concerns over our ability to predict the impact of coding changes on DRG classification, and the limitations of our recalibration methodology in establishing budget neutrality, are discussed in detail in the June 4, 1992 proposed rule (57 FR 23626) and the September 1, 1992 final rule (57 FR 39759). In those documents, we stated our decision to limit DRG modifications to relatively insignificant changes that, in the aggregate, will increase program payments by less than 0.1 percent if we have underestimated by 10 percent the number of cases that will receive more favorable payment under the DRG classification changes that provide incentives for coding improvement. In that proposed rule, we solicited public comment on possible approaches that could be implemented in the future by legislation or administratively to account for coding changes that result from revisions in the DRGs. However, to date, we have not received any recommended methodology for DRG recalibration that is both feasible and appropriate. (See the September 1, 1992 final rule (57 FR 39762) for a full discussion of the comments we received and our responses.)

The comments received in response to our statement concerning future DRG refinement do not offer practical solutions to the problems we encounter in coding changes and the inflationary effects that accompany our current DRG recalibration methodology. First, as to the suggestion that we not delay implementation of DRG severity refinements because we have the ability to correct forecasting errors in future years, we note that we have made retroactive adjustments in the past but they have been less than satisfactory and have met with strong resistance. In fact, it was after we made a reduction of 1.22 percent in the DRG relative weights effective for FY 1990 to adjust for an increase in the average case-weight value due to several DRG classification changes made effective in FY 1987 that Congress enacted section 1886(d)(4)(C)(iii) of the Act. (See the September 1, 1989 final rule (54 FR 36468) for a detailed description of the retroactive reduction in DRG relative weights.) As noted above, this section requires that each year's DRG classification and recalibration changes be budget neutral to the year before. Therefore, contrary to the commenter's belief, we do not have the authority to correct past forecasting errors.

We continue to believe that, in the interests of fiscal responsibility, the best method of predicting the impact of DRG changes is one that solves the problem before it occurs or as soon thereafter as possible. Any adjustment methodology must be seen as fair and nonpunitive. Retroactive adjustments are more often perceived as punitive rather than as compensatory.

Section 1886(d)(4)(C)(iii) of the Act clearly requires that reclassification and recalibration changes beginning with FY 1991 be made in a manner that assures that the aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. While we agree with the commenter that we cannot guarantee "actual budget neutrality," our interpretation of this mandate is that we assure that, to the best of our ability, the reclassification and recalibration changes do not affect aggregate payments. Thus, the DRG changes we make must be based on the data we have available and that data must be reliable to predict how case-mix will change based on these DRG changes.

We reiterate our commitment to making changes in the DRG system to improve payment equity and our belief that it is not prudent policy to make changes for which we cannot predict the effect on the average case-mix index value and, thus, payments. The incentives to code the highest-weighted, appropriate DRG in any severity adjustment system must be balanced by predictable forecasting and recalibration precision.

Comment: Another commenter, supporting our approach to improve equity to hospitals treating severely ill Medicare patients, made two suggestions. First, DRG refinement should be kept simple so that it is not costly to implement and is relatively easy to audit, and, second, consideration should be given to State programs that have already instituted severity adjustments for hospital reporting on private pay patients. This commenter believes that multiple severity systems will impose financial burdens on hospitals and recommends that States be brought into the consultative process to consider data requirements.

Response: We agree that any DRG refinement should be efficient and efficacious, incurring minimal implementation and operating costs. In our quest for severity measurements that would enhance hospital payment equity, we have made a significant investment in the assessment of a variety of severity systems. One of our criteria for evaluating these methodologies has been the ease with which it could be introduced into the current DRG grouping systems. Our goal has been to identify a system that distinguishes levels of severity of illness but at the same time imposes little change in the information required or necessary coding. Thus, we have

focused on indicators for severity that rely on information routinely collected on hospital systems.

We appreciate the suggestion that we consider State programs that are already developed to avoid duplication and resulting multiple severity systems. As noted in the proposed rule (58 FR 30230) and above, we have considered State severity systems, primarily the system currently operative in New York State.

In addition, we have completed evaluation of other severity systems currently in use at the State level, most notably the Yale refined DRGs, used by the Ohio State Department of Health, and Medisgroups, required by Pennsylvania for all hospital reporting. We are receptive to comments and suggestions from States, as well as other interested parties, and look forward to evaluating their recommendations as applicable to Medicare DRG refinement. Once we finish the preliminary work on our severity adjustments, we plan to consult with interested organizations. We intend to publish a notice in the **Federal Register** announcing the availability of our draft proposal and requesting public comment, which we will take into consideration before formally proposing a revised DRG classification system.

Comment: We received one comment recommending that the severity adjustment for hospitals also include review of the physician side of the Medicare payment equation. While expressing approval of our efforts to refine DRGs to account for severity differences between hospital patient populations, this commenter believes that, in many cases, the patients that require the most extreme resource use in the hospital also require the most from the physician. The commenter acknowledges that the data they have seen at this time does not address the potential linkages between the hospital and physician but, nevertheless, recommends that our severity review include the physician payment component of health care cost.

Response: We acknowledge the importance of maintaining a perspective on health care costs that includes all providers and suppliers of health care services, including, but not limited to, hospitals and physicians. We appreciate the commenter's recognition of data limitations that impede linking physician and hospital costs into episodes of care. We have concentrated our efforts on data that were more readily available and reliable, as we believe this to be more productive in severity measurement assessment, but do not deny the role of physician payment in the total cost of care. As we progress in our evaluation, we shall be alert for possible data sources that would enhance our DRG refinement.

Comment: We received one comment concerning the planned improvement of the classification and relative weights of the DRGs that apply to newborns, children, and maternity patients. The commenter believes the non-Medicare data we use to improve these DRGs should include discharges from a wide variety of geographic areas. Further, we were cautioned against the use of charge information in determining relative weights. The commenter believes that, due to competitive pricing strategies involved with maternity services, charges may not be a good measure of relative resource consumption and requested that we consider using available cost information in refining DRG relative weights associated with non-Medicare cases.

Response: We agree with the commenter that a geographically dispersed data base will best reflect hospital inpatient resource use for the pediatric, newborn, and maternity cases that are not represented with sufficient volume in the Medicare population. Since calculating the original Medicare weights for the DRGs to which these cases are assigned, based on data from Maryland and Michigan, we have acquired access to other data sources. We intend to use a data base representing a national distribution of hospital claims to supplement MedPAR data.

In response to the commenter's suggestion that cost information, rather than charges, be used as the basis for establishing the relative weights for the pediatric, newborn, and maternity patients, we have not yet progressed far enough in our analysis to decide what data will be used to calculate the DRG weights. In calculating the DRG relative weights for Medicare discharges, we believe the use of charge data ensures a timely measure of resource consumption with maximum internal consistency and external validity. That is, fully coded Medicare charge data contains detailed information on diagnoses, procedures, age, sex, and discharge destination, thus permitting more accurate classification of cases than is possible using Medicare cost-based data.

The choice of a data base to construct relative DRG weights that most accurately reflect current relative resource use has been a basic issue in recalibration. Since FY 1986, the DRG weights have been based on charge data. For a discussion of the options considered and the reasons we chose to use charge data beginning in FY 1986, we refer the reader to the rules published on June 10, 1985 (50 FR 24372) and September 3, 1985 (55 FR 35652). Briefly, in order to determine if DRG relative weights based on charges accurately reflected the relative resource consumption across DRGs, we conducted a study that compared relative DRG weights computed based on costs with those based on charges for the same fiscal year. We found the cost-based weights and the weights based on charges were highly correlated, with a correlation coefficient of .99.

We most recently addressed the issue of recalibration based on cost data versus charge data in the September 1, 1989 final rule (54 FR 36470). In that document, we stated our belief that charge data continue to be preferable to the use of cost data. Ancillary "costs" are, in fact, ancillary charges adjusted by cost-to-charge ratios, and, thus, are dependent on charge data and are subject to the same limitations as the "charge" weights. In addition, the most current Medicare charge data available run approximately 2 years behind the impending fiscal year (for example, we are using FY 1992 data to establish relative weights for FY 1994), while the cost data lag by at least 3 years and considerably longer for audited data. The use of older cost data would delay the recognition of new technologies and changes in medical practice patterns.

Therefore, we continue to believe that, in general, the advantages of using fully coded, timely charge data outweigh any disadvantages that are inherent in the use of these data. We note that every effort is being made to ensure that our data and subsequent analysis will result in valid and reliable DRG classifications and relative weights for the newborn, pediatric, and maternity DRGs.

b. Mechanical Ventilation. Over the past several years, based on comments we have received, we have made several changes to the DRG classification system in order to recognize the higher costs of patients who require mechanical ventilation. Also, the ICD–9–CM procedure codes for mechanical ventilation and related procedures have undergone several revisions to better identify these patients.

Beginning with discharges occurring on or after October 1, 1987 (FY 1988), a new DRG was created for patients on mechanical ventilation in MDC 4 (Diseases and Disorders of the Respiratory System) (52 FR 33146, September 1, 1987). Those patients assigned to a medical DRG in MDC 4 who also receive mechanical ventilation (procedure code 93.92 (Other

mechanical assistance to respiration)) through insertion of an endotracheal tube (procedure code 96.04) were assigned to new DRG 475 (Respiratory System Diagnosis with Ventilator Support). At the same time, we created DRG 474 (Respiratory System Diagnosis with Tracheostomy) for those patients in MDC 4 who receive a tracheostomy (procedure codes 31.1, 31.21, or 31.29).

Effective October 1, 1988 (FY 1989), procedure code 93.92 was revised to "Other mechanical ventilation" and a new code 93.90 was created for continuous positive airway pressure (CPAP), which had previously been included in procedure code 93.92. The classification rules for DRG 475 were revised to incorporate this coding change so that medical cases in MDC 4 with both procedure codes 96.04 and 93.92 or 93.90 would be assigned to that DRG (53 FR 38591, September 30, 1988).

The DRG classification for mechanical ventilation patients assigned to DRG 475 was again revised effective with discharges beginning on or after October 1, 1989 to address the problem that hospitals were experiencing with patients on mechanical ventilation who had been intubated before being admitted to the hospital (54 FR 36454, September 1, 1989). With this change, the intubation code (96.04) would no longer be required for assignment to DRG 475. Thus, the only procedure code necessary for assignment to DRG 475 would be the mechanical ventilation (code 93.92). The new classification allowed mechanical ventilation patients who had been intubated or had a tracheostomy performed elsewhere to be assigned to DRG 475 in the receiving hospital (when the patient has no tracheostomy or surgical procedure performed during the hospital stay and has a principal diagnosis in MDC 4).

As a part of the FY 1991 changes to the DRG classification system, we created two new DRGs for patients who receive a tracheostomy during their inpatient stay (DRGs 482 and 483). Cases are assigned to these DRGs based on the presence of a tracheostomy procedure code before they are assigned by diagnosis to an MDC (55 FR 36015, September 4, 1990). As noted above, before this change, a tracheostomy case was assigned to DRG 474 only if the principal diagnosis was assigned to MDC 4. In response to that revision, we received many comments requesting that we make a similar expansion for the mechanical ventilation DRG. One of the problems we foresaw with such an expansion was distinguishing between patients who received short-term ventilator assistance from those who require long-term ventilation. Clearly, the latter group would consume far more resources than the former. However, the procedure codes in place at the time merely denoted that mechanical ventilation had been performed and not its duration. We stated that we would continue to analyze this issue.

In an attempt to complete that analysis, effective with discharges occurring on or after October 1, 1991, procedure code 93.92 was replaced with three new codes that denote time spent on mechanical ventilation. These new codes are: 96.70 (Continuous mechanical ventilation of unspecified duration), 96.71 (Continuous mechanical ventilation for less than 96 consecutive hours), and 96.72 (Continuous mechanical ventilation for 96 consecutive hours or more) (56 FR 43298; August 30, 1991).

The first full year of data using these new codes (FY 1992) has become available for analysis. (The FY 1992 data are used to propose changes to the FY 1994 DRG classification and relative weights and to calculate the final weights for that year.) We analyzed the mechanical ventilation cases in a 10 percent sample of the FY 1992 cases posted to the MedPAR file as of September 30, 1992. We determined the average charge and length of stay (LOS) for these cases by procedure code and by MDC, looking separately at surgical and medical cases. We believe that it is important to separate the medical and surgical cases because patients who are undergoing surgery are often routinely intubated and receive mechanical ventilation during the procedure and for a short period of time thereafter. The following table shows the results based on the 10 percent sample.

Procedure code	Duration of continuous ventilation	Type	Number of cases	Average charge ($)	Average LOS (Days)
96.70	Unspecified	Medical	353	24,474	11.9
		Surgical	77	60,864	27.3
96.71	<96 hours	Medical	10,657	17,584	8.8
		Surgical	2,500	33,967	14.9
96.72	>96 hours	Medical	5,207	43,981	19.1
		Surgical	2,081	91,566	38.1

Since our preliminary analysis of the 10 percent sample strongly suggests that there may be a need for further DRG refinement of these mechanical ventilation cases, especially those with long-term ventilation, we intend to analyze alternative approaches using the complete MedPAR data. We believe that changes to the DRG classification system that might require modification of the basic DRG logic, such as would be required to address mechanical ventilation cases outside the usual MDC structure, similar to tracheostomies, should be considered in conjunction with DRG refinements to account for severity of illness differences. Depending on the classification structure that emerges from the refinement activity, it could be possible to address the mechanical ventilation cases within the basic structure of the revised classification system by, for example, grouping such cases with other high resource cases within the existing DRGs (or group of DRGs). On the other hand, we might need to establish new DRGs exclusive to mechanical ventilation to which cases would be assigned on the basis of procedure codes rather than first assigning them to an MDC based on the principal diagnosis. Therefore, we will complete our analysis of the mechanical ventilation cases and consider the appropriate placement of these cases as a part of the larger DRG refinement work.

Comment: A national organization made several recommendations regarding the mechanical ventilation cases. They recommended that procedure codes 96.71 and 96.72 be used permanently and for all cases involving mechanical ventilation and that these codes be revised to increase the threshold that identifies the duration of the continuous mechanical ventilation from 96 hours to 120 hours. They also recommended that we restructure DRG 483 (now entitled "Tracheostomy Except for Face, Mouth,

and Neck Diagnoses") by assigning cases to this DRG based on the duration of mechanical ventilation, not on the method used to achieve the ventilation; that is, assign all long-term mechanical ventilation cases (identified by code 96.72) to DRG 483, regardless of whether the ventilation was achieved by endotracheal intubation or by tracheostomy. The commenter recommended that assignment to this new DRG 483 continue to be made before MDC assignment. The commenter also recommended that the title of DRG 483 be revised to reflect these classification changes and suggested the title "Prolonged Mechanical Ventilation."

Response: Procedure codes 96.71 and 96.72 for mechanical ventilation will continue to be valid and used in their current form (that is, with the same code number and title description) unless they are made invalid or revised according to the process described in section II.B.8 of this preamble (Changes to the ICD–9–CM Coding System). The recommendation to revise the codes by increasing the threshold that identifies the duration of continuous mechanical ventilation from 96 hours to 120 hours has been forwarded to the staff responsible for the procedure code revisions and will be discussed at the December 2, 1993 Coordination and Maintenance Committee Meeting. We note, however, that the current time duration of 96 hours was decided upon based on the recommendation of the commenter's organization. Any change in that designation will result in another 2-year wait for data related to the new codes.

Regarding the recommendation to require the use of procedure codes 96.71 and 96.72 to identify all cases in which mechanical ventilation is used (and the duration of that ventilation), we expect hospitals to fully code every case using the Uniform Hospital Discharge Data Set (UHDDS) definitions and instructions. The number of diagnosis and procedure codes that hospitals are able to report to the Medicare program through the billing process was increased from five to nine diagnosis codes and from three to six procedure codes effective October 1, 1991 (56 FR 43213, August 30, 1991). (Hospitals that had to make internal changes to accommodate the expansion were allowed a delay until April 1, 1992.) Our main purpose in expanding the fields was to provide us with additional information that we need to base future DRG classification revisions on the most complete possible data analysis.

As we noted in the proposed rule (58 FR 30231) and above, in this section, we will consider the commenter's recommendation to restructure DRG 483 or create a similar pre-MDC DRG for long-term mechanical ventilation cases as a part of our larger DRG severity of illness refinements.

c. DRG 209 (Major joint and limb reattachment procedures of lower extremity). In an effort to address concerns regarding the resources required for cases involving major joint replacements of the lower extremity, we have been analyzing these cases over the past few years to determine whether or not alternative DRG classifications would improve clinical coherence and better relate a hospital's patient mix to its resource demands.

Effective with discharges on or after October 1, 1989 (FY 1990), the ICD–9–CM procedure codes were revised to differentiate between initial joint replacements and revisions of joint replacements, and no longer differentiated between joint replacements that used methacrylate cement and those that did not (54 FR 36466 and 36549, September 1, 1989).

The data on these codes for joint replacements and revisions of joint replacements became available for analysis of DRG changes for FY 1992 as set forth in the September 4, 1990 final rule. Our analysis showed that although the revision of hip replacement cases are more expensive than the initial hip replacement cases assigned to DRG 209 (Major Joint and Limb Reattachment Procedures), the difference was not enough to justify reclassifying the revision cases (56 FR 43205). However, the analysis did indicate that separating the procedures of the upper extremity and procedures of the lower extremity would improve the DRG classification. Therefore, the upper extremity procedures were removed from DRG 209 and assigned to a new DRG 491 (Major Joint and Limb Reattachment Procedures of Upper Extremity), and the title of DRG 209 was revised to "Major Joint and Limb Reattachment Procedures of Lower Extremity."

In the September 1, 1992 final rule, we again addressed the classification of cases to DRG 209. In that rule, we analyzed the assignment of major limb reattachment procedures. Although we made no change to the DRG 209 assignments, we received comments that we should address major joint replacements of the lower extremity that involve infection or mechanical complications. The commenters stated that these cases are extremely resource intensive and, because a small number of specialty hospitals treat a disproportionate number of these cases, the hospitals are being systematically underpaid under the current DRG 209. In response, we stated that we would evaluate this issue as a part of our FY 1994 DRG analysis (57 FR 39751).

We analyzed DRG 209 cases with a principal diagnosis of infection or a principal diagnosis of mechanical or other complication. The diagnoses used in this analysis are listed below:

Infection diagnoses:

- 711.05 Pyogenic arthritis of the pelvic region and thigh
- 711.06 Pyogenic arthritis of the lower leg
- 711.07 Pyogenic arthritis of the ankle and foot
- 996.66 Infection and inflammatory reaction due to internal joint prosthesis
- 996.67 Infection and inflammatory reaction due to other internal orthopedic device, implant, and graft

Complication (mechanical or other) diagnoses:

- 733.1 Pathological fracture
- 996.4 Mechanical complication of internal orthopedic device, implant, and graft
- 996.77 Other complications due to internal joint prosthesis
- 996.78 Other complications due to other internal orthopedic device, implant, and graft

We analyzed the average standardized charges and average length of stay for DRG 209 cases with a principal diagnosis of infection or mechanical or other complication and for cases without such principal diagnoses. We found that approximately 10 percent of the total DRG 209 cases have one of the infection or complication diagnoses as principal. However, the average charge and length of stay for those cases is only slightly higher than that for all cases. In addition, the differences are well within one standard deviation of the average charge. Therefore, we did not propose any changes to the classification of cases in DRG 209.

Comment: We received a comment requesting that we quantify our discussion (that is, provide numerical descriptions) and provide additional data on various groupings of the infection, complication, and other cases in DRG 209. The commenter also requested that we evaluate the issues of infection and complication of prior hip replacements separately, as they had previously requested. The commenter also requested that we evaluate the impact of the disproportionate distribution that concentrates these more complicated cases in a few specialty hospitals.

Response: To evaluate the issue of whether or not the more complicated

hip replacements, which involve infection or complications, should be classified separately from the noncomplicated cases in DRG 209, we analyzed various classifications of these cases. The cases with infection or mechanical or other complications as principal diagnosis were evaluated as a group. We believe that this grouping of complicated cases is reflective of the types of infection and complication cases that the orthopedic specialty hospitals treat. This group of complicated cases was compared to the other (noninfection and noncomplication) cases in DRG 209 and to all cases assigned to DRG 209 under the current classification. We also evaluated the infection cases separately from the mechanical and other complication cases. A 10 percent sample of the FY 1992 cases (posted to the MedPAR as of September 30, 1992) was used for this analysis, and the results are summarized below.

Type of case	Number of cases	Average charge ($)	Average length of stay (days)
DRG 209: (All cases)	26,791	18,903	9.8
DRG 209: Without PDx infection or complication	24,111	18,625	9.8
DRG 209: With PDx of infection or complication	2,680	21,401	10.2
DRG 209: With PDx of infection	109	31,782	17.0
DRG 209: With PDx of complication	2,571	20,961	9.9

In this 10 percent sample, there were 26,791 cases in DRG 209 with an average charge of $18,903 and an average length of stay of 9.8 days. Approximately 10 percent of the cases in DRG 209 have either an infection or a complication (as indicated by the principal diagnosis (PDx)) and have an average charge of $21,401, which is only $2,498 (13 percent) higher than the average charge of all cases in DRG 209. We note that cases with a principal diagnosis of infection only have a much higher charge ($31,782) than the average for DRG 209 overall. However, there are fewer than 0.5 percent of the total DRG 209 cases in this category. Based on these findings, no revision to the classification of the cases in DRG 209 was proposed.

Regarding the commenter's request for additional data with which to evaluate these cases, as noted in the proposed rule (58 FR 30261), the complete MedPAR file is available to the public for $3,250 per fiscal year requested. This file, known as the "Expanded Modified MedPAR File," is created twice annually; the initial version for the proposed rule (May) and the final version at publication of the final rule (September). Requesters may call the Division of Data Documentation and Release request line at (410) 597–5151 or write to: Health Care Financing Administration, Public Use Files, Accounting Division, P.O. Box 17255, Baltimore, Maryland 21203–7255.

d. Epilepsy. Effective October 1, 1989, the diagnosis codes identifying epilepsy were modified to distinguish between intractable and nonintractable epilepsy. In addition, we added two new procedure codes to identify special procedures typically performed in the diagnosis and treatment of intractable epilepsy. Since the data on claims using these codes became available, we have conducted analyses to determine if the resource requirements of patients with intractable epilepsy differ from those required for all other epilepsy patients. (See the August 30, 1991 final rule (56 FR 43215) and the September 1, 1992 final rule (57 FR 39810).) As a result of these previous analyses, we concluded that, although intractable epilepsy patients have higher charges than do patients with nonintractable epilepsy, these differences are not significant enough to warrant any DRG classification change.

This year, we continued to monitor the resources that prospective payment hospitals use in treating epilepsy patients. The analysis set forth in the proposed rule, based on FY 1992 MedPAR data updated through December 1992, identified 21,684 discharges with a principal diagnosis of epilepsy in DRGs 24, 25, and 26 (Seizure and Headache). These patients represent 29 percent of all patients assigned to these DRGs, which is the same percentage as in last year's analysis using FY 1991 MedPAR data. Intractable epilepsy patients account for less than 4 percent of the DRGs' total discharges, which is also similar to the FY 1991 data.

This recent analysis resulted in findings comparable to previous analyses; that is, the intractable epilepsy cases incur higher average charges ($8,524) than the nonintractable cases ($6,958). These charges compare to average charges of $7,303 for all cases assigned to DRGs 24, 25, and 26. For all three DRGs, the average charge incurred by patients with intractable epilepsy remains higher than the average charge for nonintractable epilepsy patients and the average charge of each of the DRGs overall. However, this difference is well within the variation in charges above and below the average charge.

We also analyzed the average charge for those epilepsy patients who received video and radio-telemetered electroencephalographic monitoring (procedure code 89.19) and intracarotid amobarbital testing (procedure code 89.10). These are the special tests performed in the diagnosis and treatment of intractable epilepsy patients. The results of our analysis show that both intractable and nonintractable patients receive these services. For procedure code 89.10, the average charge for patients receiving this service is below the average charge for each of the DRGs and for both intractable and nonintractable cases. When procedure code 89.19 is present, the average charge is higher than the average charge for DRGs 24 and 25, but below the average charge for all intractable patients in DRGs 24 and 26. However, with fewer than 1 percent of the total epilepsy cases reporting 89.10 and only 1.6 percent reporting 89.19, we do not believe there is sufficient data to support a definitive statement regarding the impact on charges as a result of using of these procedures. Psychological services, another frequently cited service for intractable patients, were reported with even less frequency, with only six cases (an increase from the two cases in our previous analysis).

Provider-level analysis identified 975 hospitals treating intractable epilepsy patients. There were 844 hospitals treating fewer than 5 cases, 83 hospitals with 5 to 10 cases each, and 48 with 10 or more cases. The average charges for these hospitals follow a normal distribution, with some incurring average charges above and some below the average charge for all cases. We note that, of the 17 hospitals with 20 or more intractable epilepsy discharges, 13 (76 percent) had a lower average charge for

those cases than the average charge for all hospitals. Contrary to the assertions of high-volume epilepsy treatment centers, our analysis leads us to conclude that these hospitals may not be as disadvantaged by the current classification as other hospitals might be.

In conclusion, our analysis of both intractable and nonintractable epilepsy cases using FY 1992 MedPAR data confirms our prior conclusion that, although intractable epilepsy patients, particularly those with video-telemetered monitoring, do incur higher charges than patients without intractable epilepsy or telemetry, these differences are not currently of significant magnitude to justify a new DRG or other modification to the existing DRGs for these cases. We note, as we have in the past, that without accurate coding for the intensive services required for diagnosis and treatment of these patients, we cannot document consistent and reliable differences between patients receiving neurodiagnostic services and those not using these services. Given the low volume of patients, the minimal differences in average charges between intractable epilepsy cases and those of the DRG overall, the distribution of cases across a large number of hospitals, and the inconsistencies in charges between high-volume and other hospitals, we find there is insufficient evidence to justify a DRG modification at this time. Therefore, we did not propose any changes in DRG assignment for epilepsy patients.

Comment: We received one comment concerning the assignment of intractable epilepsy patients. The commenter disagreed with our decision not to revise the DRG classification system for patients with intractable epilepsy, particularly those receiving intensive neurodiagnostic monitoring. The commenter believes the DRG classification does not account for the greater resource use of these patients due to the difficulty in identifying these patients because there are a limited number of codes available and hospitals fail to consistently use the available codes. Further, the commenter continued, HCFA limited its analysis to averaged data that do not account for the financial risks facing hospitals with specialized epilepsy centers. The commenter believes that ProPAC's recommendation in its March 1, 1992 report for a revision of the DRG system for intractable epilepsy patients, especially those receiving intensive neurodiagnostic monitoring, is a more accurate representation of the financial problems faced by hospitals with epilepsy centers and encourages us to reassess its analysis and implement ProPAC's recommendation. (See the June 4, 1992 proposed rule for a copy of this recommendation (57 FR 23891) and the September 1, 1992 final rule for our response to this recommendation (57 FR 39810).) In addition, the commenter encourages us to work with the epilepsy community to develop a more accurate data base so that a fair determination can be made as to the appropriate adjustment in the DRG classification system for epilepsy patients.

The commenter also referred to an analysis conducted by HCFA that identified average charges for patients under the age of 65 with intractable epilepsy. In that analysis, patients under the age of 65 years classified to DRG 25 whose claims included procedure code 89.19 (Video and radio-telemetered electroencephalographic monitoring) showed higher average charges compared to other patients assigned to that DRG. According to the commenter, this is the population at risk: The disabled Medicare beneficiary under age 40 who is admitted to a specialized epilepsy center for comprehensive evaluation. The commenter expressed concern that this specific analytic finding was not addressed in the proposed rule.

The commenter concluded by referencing proposed budget reconciliation legislation that included a provision requiring the Secretary to analyze data for intractable epilepsy patients admitted for neurodiagnostic monitoring and to revise the DRG classification system for these patients as appropriate.

Response: Since the data using the revised diagnosis codes that distinguish between intractable and nonintractable epilepsy first became available with the FY 1990 MedPAR, we have routinely analyzed the costs of treating epilepsy, comparing intractable and nonintractable charges with and without the use of procedure codes 89.10 and 89.19. Our results have consistently found that, although intractable epilepsy patients were indeed more costly to treat than nonintractable cases, the difference was not sufficient to warrant any DRG classification change.

Since publication of the proposed rule, we have updated our analysis of both intractable and nonintractable epilepsy cases using the latest update to the FY 1992 MedPAR file (June 1993). Our reassessment of these data confirms our prior conclusion that, although intractable epilepsy patients, particularly those with video-telemetered monitoring, do incur higher charges than patients without intractable epilepsy or telemetry, the difference is not currently of significant magnitude to justify a new DRG or other modification to the existing DRGs for these cases. The following table summarizes our most recent epilepsy analysis findings, comparing the average charges between epilepsy and other cases assigned to the same DRG. For each entry, the number of cases is included in parenthesis.

	Intractable epilepsy	Nonintractable epilepsy	All epilepsy	All cases
DRG 24	$9,199	$7,398	$7,582	$7,627
	(1,576)	(13,882)	(15,458)	(56,761)
DRG 25	5,689	3,934	4,254	4,091
	(1,240)	(5,558)	(6,798)	(22,523)
DRG 26	17,202	6,568	5,911	7,314
	(1)	(9)	(10)	(42)
All Cases	7,657	6,408	6,566	6,623
	(2,817)	(19,449)	(22,266)	(79,326)

Resource use at the specialized epilepsy treatment centers compared to treatment by other providers was previously addressed in detail in the September 1, 1992 final rule (57 FR 39812). At that time, we noted that, of the 52 epilepsy special treatment centers identified, 8 had no Medicare epilepsy discharges, and the remaining 44 treated a variable number of cases with 28 percent of these providers incurring charges above average, but

well within the expected range for a normal distribution.

In the analysis of the most recent FY 1992 MedPAR data, we identified 37 specialized epilepsy treatment centers, with a volume of intractable epilepsy patients ranging from a low of 1 case to a high of 55 cases. We note that several of the specialty centers are children's hospitals, psychiatric hospitals, or psychiatric units in acute care hospitals, all of which are excluded from the prospective payment system. Thus, the data for these providers are not included, as our analysis is limited to acute care hospitals subject to the prospective payment system; that is, the facilities paid based on the DRG relative weights. The 588 intractable epilepsy cases treated at specialty centers had average charges of $8,276, compared to the $7,657 average charge of treatment for all intractable epilepsy patients. Although the specialty centers do experience higher average charges per patient, the difference ($619) is not great enough to justify a classification change.

The HCFA study referenced by the commenter, in which we examined the resource use for intractable epilepsy patients under 65 years of age who received procedure code 89.19 and are classified to DRG 25, was completed too late for inclusion in the proposed rule. In that study, we found that this group of patients did, in fact, have a higher resource use than either intractable epilepsy patients in DRG 24 or the intractable epilepsy patients without procedure 89.19 assigned to DRG 25. The following table summarizes the resource use by intractable epilepsy patients under age 65 compared to those of all ages:

DRG 25	All ages	Age < 65
All Cases	$4,091	$3,073
Intractable Epilepsy Cases	5,689	6,065
Intractable Epilepsy Cases with 89.19	8,391	8,499

These findings indicate that the use of procedure code 89.19 does have an impact on average charges in DRG 25. However, the magnitude of the difference is more a function of treatment utilizing telemetry than the age difference, since 97 percent of the 284 intractable epilepsy patients in DRG 25 who received this treatment were under age 65. However, the volume (276 cases) is not sufficient to justify a separate DRG for these patients.

As to the commenter's recommendation that we adopt ProPAC's recommendation and revise the DRG classification for patients with intractable epilepsy, particularly those receiving intensive neurodiagnostic monitoring, our objections to this recommendation are clearly stated in the prospective payment proposed rule June 4, 1992 (57 FR 23663) and in the final rule September 1, 1992 (57 FR 39810). Our current analysis of intractable epilepsy, with and without intensive neurodiagnostic monitoring, continues to support our position on this issue. That is, although intractable epilepsy patients incur higher charges than other patients within the same DRG, there is not a sufficient differential nor sufficient volume to warrant a DRG modification.

Although the proposed legislation referred to by the commenter was not included in the final budget bill (Pub. L. 103-66), we will continue to monitor the resource use by intractable epilepsy patients.

e. Automatic implantable cardioverter defibrillator (AICD) procedures (DRG 116). For several years, we received correspondence concerning the appropriate DRG assignment of certain procedures involving automatic implantable cardioverter defibrillators (AICDs). When a patient whose principal diagnosis is classified to MDC 5 (Diseases and Disorders of the Circulatory System) receives a total AICD system implant or replacement (procedure code 37.94), the case is assigned to DRG 104 or 105 (Cardiac Catheterization). However, prior to October 1, 1992, if a procedure was performed that involved the implantation or replacement of only part of the AICD system (that is, replacement or implant of either the leads or pulse generator only), the case was assigned to DRG 120 (Other Circulatory System OR Procedures). Effective with discharges occurring on or after October 1, 1992, these procedures were assigned to DRG 116 (Other Permanent Cardiac Pacemaker Implant or AICD Lead or Generator Procedure). Although we proposed no further changes to this DRG assignment for FY 1994, we received several comments.

Comment: Commenters requested that we change the assignment for procedures in which replacement or implantation of only part of the AICD system (either the leads or pulse generator) is performed from DRG 116 to DRG 115 (Permanent Cardiac Pacemaker Implantation with AMI, Heart Failure or Shock). The relevant procedure codes are the following: 37.95 (Implantation of automatic cardioverter/defibrillator lead(s) only), 37.96 (Implantation of automatic cardioverter/defibrillator pulse generator only), 37.97 (Replacement of automatic cardioverter/defibrillator lead(s) only), 37.98 (Replacement of automatic cardioverter/defibrillator pulse generator only).

The commenters expressed concern that, even with the revised classification to DRG 116, hospitals are not being adequately paid for these procedures. Based on the results of an August 1992 study commissioned by the AICD manufacturer, the commenters estimate that these procedures should be assigned to a DRG with a relative weight of 3.7300. (The FY 1994 proposed relative weights for DRGs 115 and 116 were 3.5820 and 2.4239, respectively.) Therefore, the commenters assert that assignment of AICD cases to DRG 115 would be more equitable.

Response: As explained in detail in the September 1, 1992 final rule (57 FR 39749), the current clinical composition and relative weights of the surgical DRGs in MDC 5 do not offer a perfect match with the AICD cases. After reviewing the current DRGs in terms of clinical coherence and similar resource use, we determined that DRG 116 was the best fit possible.

Since reassignment of these procedures to DRG 116, we have reanalyzed the cases based on the most recent update (June 1993) to the FY 1992 MedPAR file. Based on that file, the average standardized charge for AICD cases was $21,978 for the 1,186 cases assigned to DRG 116. The average standardized charge for all cases assigned to DRG 116 was $18,283 and, for DRG 115, was $27,356. The $3,695 difference between the average charge for AICD cases in DRG 116 and all cases in DRG 116 is well within the variation in charges for that DRG. However, the average charge for DRG 115 is $5,378 more than the average charge for an AICD case. Clearly, the difference in charges between the average AICD case and DRG 116 is less than the difference between the cases and DRG 115.

The lengths of stay for the AICD cases assigned to DRG 116 are similar to, and actually shorter than, those of all cases in DRG 116. The average length of stay for the AICD cases assigned to DRG 116 is 5.1 days compared to 6.8 days for all cases in DRG 116. The average length of stay for cases in DRG 115 is 13.5, more than twice as long as the AICD cases.

In past years, there have been differences in average charges between our analyses and those of the commenters. Although the commenters provided no average charge amounts this year, it is worth noting that our analyses include all cases in our data base, whereas the AICD studies have historically excluded those cases the manufacturer believes to be incorrectly

coded by the hospital or for which the charges reported by the hospital appear too low. The measures we have implemented to safeguard against miscoded AICD cases are explained in detail in the September 1, 1992 final rule (57 FR 39749).

We believe that the cost of the AICD device is largely responsible for the high average charge for these cases (the most recent price of which we are aware is $13,500). We believe as other device manufacturers enter the market, increased competition may result in a decrease in the price of these devices and a corresponding drop in the average charge for a hospital stay for AICD procedures.

Pending new developments and continued improvements in code and charge reporting, we believe continued assignment of these cases to DRG 116 is appropriate.

f. Simple pneumonia and pleurisy (DRG 89). Comment: We received two comments concerned with the proposed reduction in weight for DRG 89 (Simple Pneumonia and Pleurisy Age > 17 with CC). Although recognizing that these cases cannot be identified, these commenters stated that resistant pneumonia requires extra treatment resources and should, therefore, be classified in a separate DRG. We were urged to use caution in reducing the weight of DRG 89, considering how important a role pneumonia plays in the survival and prompt discharge of the elderly or the immunocompromised.

Response: In the proposed rule, we did not make any DRG classification changes to DRG 89. However, in recalibrating the weights, the proposed weight for DRG 89 fell from the FY 1993 level of 1.1581 to 1.1464. Each DRG weight is relative to the weight of all other DRGs, and a change in the charges for cases in any one DRG may affect the weight assigned to other DRGs. (See section II.C. of this preamble for a description of the methodology for recalibration of DRG relative weights.) Since we proposed no changes that affected the classification of cases to DRG 89, this reduction is merely a reflection of the fact that the average resource consumption of cases assigned to all other DRGs increased relative to the resource consumption of the DRG 89 cases.

We note that, although the relative weight for DRG 89 has been variable over time, with an increase in relative weight from FY 1985 to FY 1986 and again from FY 1987 to FY 1988, the pattern has been for steadily decreasing relative weights from FY 1988 to the present. The final DRG 89 relative weight for FY 1994 is 1.1447.

In response to the suggestion that resistant pneumonia be recognized in a separate DRG, this is not possible at this time, as the commenters acknowledge, because there is no way to distinguish these patients from other pneumonia cases through the ICD–9–CM diagnosis codes. The procedure for revising diagnosis codes is handled through the ICD–9–CM Coordination and Maintenance Committee as discussed above in section II.B.8 of this preamble.

g. Lung transplants. Comment: We received one comment urging that a national coverage determination be made for lung transplants. In addition, the commenter requested that one or more DRGs and respective weights be created for this procedure independent of the coverage determination to facilitate equitable payments for those cases in which a Part A fiscal intermediary approves a particular lung transplant case for coverage. The commenter has also recommended that when a national coverage decision is made, payment be made retroactive to the effective date of that coverage.

Response: We addressed a similar comment in the September 1, 1992 final rule (57 FR 39757). A final decision to cover lung transplants on a national basis has not yet been made by HCFA. It has not been our practice to create a new DRG category for an experimental procedure, but rather to assign the procedure to one of the available DRGs based on principal diagnosis and resource use. Thus, lung transplants (procedure code 33.5) are currently assigned to DRG 75 (Major Chest Procedures), the highest-weighted surgical DRG in MDC 4 (Diseases and Disorders of the Respiratory System). If national coverage is determined, we will review the conditions of that coverage and determine the appropriate placement of any new DRGs that are necessary.

We believe that it is inappropriate to create a DRG for an experimental procedure, especially one as resource-intensive as a lung transplant, for three reasons. First, we have very few Medicare cases upon which to build a relative weight. In addition, any weight we set must be used in recalibrating the weights of all other DRGs. Since the weight for lung transplants must, by the nature of the procedure, be one of the highest, if not the highest, weight in the DRG system, it will serve to lower, to some degree, the weights of all other lower-weighted DRGs. We do not believe it is fair for a procedure that has not yet been approved for coverage on a national basis to have an effect on the payment received by all other cases. Finally, we cannot predict which transplant cases will be approved for coverage, as this is a decision made by the fiscal intermediary on a case-by-case basis because there are no national coverage requirements. Therefore, we do not have a basis for estimating the number of transplant cases for the coming Federal fiscal year as is required by our recalibration process. (See section II.C. of this preamble, below, for a description of this process.) For all these reasons, we do not believe that we should create a DRG for lung transplants prior to the effective date of the national coverage decision.

We note that in the case of both heart and liver transplants, when a national coverage decision was made, enhanced payment under the newly created DRGs for those procedures (DRG 103 and 480, respectively) was made retroactive to the date of coverage. Unless there is some compelling reason why this should not be the case for lung transplants once they are approved for coverage, we intend to follow the same policy.

C. Recalibration of DRG weights. We proposed to use the same basic methodology for the FY 1994 recalibration as we did for FY 1993. (See the September 1, 1992 final rule (57 FR 39758).) That is, we proposed to recalibrate the weights based on charge data for Medicare discharges. However, we proposed to use the most current charge information available, the FY 1992 MedPAR file, rather than the FY 1991 MedPAR file. The MedPAR file is based on fully-coded diagnostic and surgical procedure data for all Medicare inpatient hospital bills.

The proposed recalibrated DRG relative weights were constructed from FY 1992 MedPAR data, received by HCFA through December 1992, from all hospitals subject to the prospective payment system and short-term acute care hospitals in waiver States. The FY 1992 MedPAR file at that time included data for approximately 10.6 million Medicare discharges. The MedPAR file updated through June 1993 includes data from approximately 10.7 million discharges and is the file used to calculate the weights set forth in Table 5 in section V of the addendum to this final rule with comment.

The methodology used to calculate the final DRG relative weights from the FY 1992 MedPAR file is as follows:

- All the claims were regrouped using the revised DRG classification revisions discussed above in section II.B of this preamble.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education costs, disproportionate share payments,

and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.

• The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.

• We then eliminated statistical outliers using the same criterion as was used in computing the current weights. That is, all cases outside of 3.0 standard deviations from the mean of the log distribution of charges per case for each DRG were eliminated.

• The average charge for each DRG was then recomputed (excluding the statistical outliers) and divided by the national average standardized charge per case to determine the relative weight.

• We established the relative weight for heart transplants (DRG 103) in a manner consistent with the methodology for all other DRGs except that the heart transplant cases that were used to establish the weight were limited to those Medicare-approved heart transplant centers that have cases in the FY 1992 MedPAR file. Similarly, we limited the liver transplant cases that were used to establish the weight for DRG 480 (Liver Transplant) to those hospitals that are Medicare-approved liver transplant centers.

• Acquisition costs for kidney, heart, and liver transplants continue to be paid on a reasonable cost basis. Unlike other excluded costs, the acquisition costs are concentrated in specific DRGs (DRG 302 (Kidney Transplant); DRG 103 (Heart Transplant); and DRG 480 (Liver Transplant)). Because these costs are paid separately from the prospective payment rate, it is necessary to make an adjustment to prevent the relative weights for these DRGs from including the effect of the acquisition costs. Therefore, we subtracted the acquisition charges from the total charges on each transplant bill that showed acquisition charges prior to computing the average charge for the DRG and prior to eliminating statistical outliers.

When we recalibrated the DRG weights for previous years, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. In the FY 1991 MedPAR data used to establish the FY 1993 weights, there were 37 DRGs that contained fewer than 10 cases. We proposed to use that same case threshold in recalibrating the DRG weights for FY 1994. Using the final FY 1992 MedPAR data set, there are 35 DRGs that contain fewer than 10 cases. We computed the weight for the 35 low-volume DRGs by adjusting the original weights of these DRGs by the percentage change in the average weight of the cases in the remaining DRGs.

The weights developed according to the methodology described above, using the DRG classification changes, result in an average case weight that is different from the average case weight before recalibration. Therefore, the new weights are normalized by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight prior to recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the prospective payment system.

Section 1886(d)(4)(C)(iii) of the Act requires that reclassification and recalibration changes beginning with FY 1991 be made in a manner that assures that the aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. Although normalization is intended to achieve this effect, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payment to hospitals is affected by factors other than average case weight. Therefore, as discussed in section II.A.4.b. of the Addendum to this final rule, we are making a budget neutrality adjustment to assure the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

III. Changes to Hospital Labor Market Areas and the Wage Index

A. Background

Under the Medicare prospective payment system, different payment rates are calculated for hospitals located in rural, urban, and large urban areas. For purposes of the standardized payment amount, section 1886(d)(2)(D) of the Social Security Act requires that we use Metropolitan Statistical Areas (MSAs) as defined by the Office of Management and Budget (OMB) to determine whether hospitals are located in rural, urban or large urban areas. In New England, we use New England County Metropolitan Areas (NECMAs) in making this determination.

Section 1886(d)(3)(E) of the Act requires that, as part of the methodology for determining prospective payments to hospitals, the Secretary shall adjust the urban and rural standardized amounts "for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level." In accordance with the broad discretion conferred by this provision, we have defined hospital labor market areas based on the definitions of MSAs issued by OMB. Additionally, as discussed below, we adjust the wage index to take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act.

For determining prospective payments to hospitals in FY 1993, the wage index is based on a HCFA survey of hospital wage and salary data for all hospitals subject to the prospective payment system with cost reporting periods ending in calendar year 1988. The FY 1993 wage index includes wages and salaries paid by a hospital, home office salaries, and fringe benefits. In addition, the FY 1993 wage index excludes salaries associated with non-hospital type services, such as skilled nursing facility or home health agency services.

In the May 26, 1993 proposed rule, we proposed several changes in the hospital wage index to determine the prospective payments to hospitals in FY 1994. Most significantly, we proposed to implement new labor market areas based on OMB's revised MSA definitions pursuant to our broad discretion under section 1886(d)(3)(E) of the Act to define labor market areas and implementing regulations at § 412.63 (b) and (p). In addition, we are using updated wage data to construct the wage index, as required by section 1886(d)(3)(E) of the Act. The changes we proposed to the labor market areas and to the hospital wage data are discussed in detail below.

B. Revised Labor Market Areas

1. Implementation of New MSA Definitions Based on 1990 Census Data

In the September 1, 1992 final rule, we stated that we planned to implement in FY 1994 the revised MSA definitions based on 1990 census data (57 FR 39768). On December 28, 1992, OMB announced revised MSAs. In accordance with § 412.63(b)(4), which provides that we adopt any revisions to the MSAs for payment purposes on the October 1 following the effective date of the change, we plan to adopt the revised MSAs on October 1, 1993. We indicated in the proposed rule that if OMB announced further revisions in the MSA definitions by June 30, 1993, we would reflect these revisions in the final rule. OMB announced changes on June 30, 1993, and we have adopted those changes in this final rule. Table 4a of the wage index tables in the addendum to this final rule lists the MSAs and

their member counties as set forth in OMB's announcement.

Comment: We received several comments concerning OMB's June 30, 1993 publication of revisions to the MSA definitions that were published on December 28, 1992. Specifically, some commenters objected to OMB's decision to revise the boundaries of the New York MSA to exclude certain New York, New Jersey, and Pennsylvania counties that were included in the New York MSA in the December 28, 1992 publication. The commenters believed that OMB's original decision to group all of the counties together was correct based on statistical analysis and census data. Other commenters urged us to adopt the revised MSA definitions for New York.

We also received comments about the appropriateness of the expansion of the Boston NECMA. One commenter supported the change as more reflective of the labor market area, while another commenter asserted that the change inappropriately expands the Boston NECMA and should not be implemented. Other commenters stated that any changes to the MSA definitions that adversely affect the wage index for hospitals in an area should not be adopted.

Response: As discussed above, section 1886(d)(2)(D) of the Act specifically requires the use of MSA definitions as established by OMB. Given this requirement, we believe we have an obligation to adopt the latest definitions established by OMB for standardized amount purposes. The provision under section 1886(d)(8)(A) of the Act with respect to transition payments for hospitals that lose their urban designation as a result of changes in the MSA definitions clearly indicates congressional expectation that we would adopt any revisions announced by OMB. In addition, pursuant to our broad discretion under section 1886(d)(3)(E) of the Act, we currently define labor market areas for purposes of the wage index on the basis of MSAs. Thus, until alternative labor market areas are established, we believe the MSA definitions should be applied consistently for purposes of both the standardized amount and labor market area designations. Therefore, effective October 1, 1993, we are implementing the revised MSA designations as announced by OMB on June 30, 1993.

2. Reclassification Issues Related to New MSAs

The new MSA definitions have considerable effect on geographic redesignations of hospitals under both sections 1886(d)(8)(B) and 1886(d)(10) of the Act. Section 1886(d)(8)(B) of the Act provides that, if certain conditions are met, the Secretary treats a hospital located in a rural county adjacent to one or more urban areas as being located in the urban area to which the greatest number of workers in the county commute, if the rural county would otherwise be considered part of an urban area under the standards for designating MSAs (and NECMAs) published in the **Federal Register** on January 3, 1980 (45 FR 956). Section 1886(d)(10) of the Act provided for the creation of the Medicare Geographic Classification Review Board (MGCRB). Guidelines concerning the criteria and conditions for hospital reclassification are located at §§ 412.230 through 412.236. Under the guidelines, hospitals may be reclassified individually for purposes of their wage index, standardized amount, or both. Hospitals may also be reclassified as a group for purposes of both the wage index and the standardized amount, but not solely for one of these measures. Section 1886(d)(8)(D) of the Act requires that additional payments to redesignated hospitals be financed through a budget neutrality adjustment to the urban standardized amounts.

As previously noted, section 1886(d)(3)(E) of the Act directs the Secretary to make an adjustment to the prospective payment system standardized amounts "by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level." Thus, we calculate a hospital wage index based on hospital wages in each hospital's labor market area. Pursuant to the broad discretion conferred by the statute, we have defined hospital labor market areas on the basis of MSAs since the inception of the prospective payment system. Sections 1886(d)(2)(D) and (d)(3)(D) of the Act require us to use MSAs for purposes of the standardized amount.

In the May 26, 1993 proposed rule, we proposed to implement the new MSA designations announced by the Office of Management and Budget (OMB) on December 28, 1992, for purposes of applying the wage index and standardized amounts for FY 1994. As noted above, this final rule reflects the latest MSA revisions announced by OMB on June 30, 1993. Examples of OMB's changes to the MSAs are:

(1) Additions or deletions of counties in existing MSAs;

(2) Newly established or eliminated MSAs;

(3) Mergers of existing MSAs; and

(4) MSA title changes (which do not affect Medicare payments).

Because the MGCRB decisions that would be effective in FY 1994 are based on the old MSA definitions, it was necessary to reconcile the implementation of the new MSA designations for FY 1994 with the MGCRB reclassification decisions for FY 1994. Under the revised MSA definitions, a number of reclassified hospitals are located in counties whose geographic assignments have now changed, and other hospitals have been reclassified to areas that have different boundaries under the new MSA definitions. For example, a hospital that was reclassified to another area by the MGCRB may also have been added to that area under the new MSA designations. In the proposed rule, we explained our proposed method for effectuating MGCRB decisions for FY 1994 in light of changes to the labor market areas (58 FR 30233).

We proposed to assign hospitals to the revised labor market area that includes most or all of the counties that comprise the labor market area to which the hospital was reclassified by the MGCRB based on current labor market area definitions. We proposed to modify the effect of the MGCRB's decisions only in those cases where the new MSA designations would preclude our implementing, in a rational manner, reclassification decisions based on the current MSA assignments. No commenters objected to our proposals in this area. The only comment that we received stated that our proposals were fair and reasonable. Therefore, as discussed below, we are adopting the proposed methodology for reconciling the MGCRB decisions for FY 1994 with the new MSA definitions.

Where MSA changes have occurred, we are applying the new MSA definitions to reclassified hospitals as follows:

- At the time of the proposed rule, we announced that 115 hospitals that had been reclassified by the MGCRB are located in counties that have been incorporated, under the new MSAs, into the area to which the hospitals were approved for reclassification. As a result of the new MSA definitions, hospitals in this situation will already be located in the area to which they were granted reclassification. Thus, under sections 1886(d)(8)(C) and (D) of the Act, the reclassifications granted by the MGCRB to these hospitals have no effect on the wage index and the budget neutrality adjustment required under section 1886(d)(8)(D) of the Act. For example, some hospitals located in the former Aurora-Elgin, Illinois MSA were granted

reclassification to the Chicago, Illinois MSA. Since the Aurora-Elgin, Illinois MSA has been incorporated into the Chicago, Illinois MSA under the new definitions, under our proposal, these hospitals would be paid by virtue of this change based on the payment rates applicable to the Chicago MSA and their wage data would be reflected in the wage index for the Chicago MSA.

We are implementing this policy as proposed. Based on the final reclassifications and recent revisions to the MSA designations, there are 77 affected hospitals.

- If a county is incorporated into a new area under the revised MSA definitions and a hospital in that county has been granted reclassification into a different area by application to the MGCRB, we proposed to implement the reclassifications as approved in the final administrative decision of the MGCRB or the Administrator. As of March 31, 1993, we had identified 25 reclassified hospitals for which this situation occurred. In these situations, we do not believe it would be appropriate to modify on our own the reclassifications requested by the hospital and approved by the MGCRB. However, under § 412.273(a)(2), if a hospital concluded that such reclassification would not be advantageous in light of the new MSA definitions, it had the opportunity to withdraw its reclassification application within 45 days from the publication of the proposed rule. Unless we received a withdrawal in these cases, we are implementing these reclassifications in this final rule with comment period.
- If a hospital was reclassified to an MSA based on its location in a county that is adjacent to a county that was formerly part of an MSA but has now been deleted from the MSA definition, we proposed to implement such reclassifications for FY 1994. We are implementing this policy in this final rule with comment period. The decisions in these cases were appropriately determined based on the current MSA definitions that the MGCRB was required to use to decide applications for FY 1994. We note that the MGCRB will use the new MSA definitions for purposes of adjudicating requests for FY 1995 reclassifications. Thus, these hospitals may no longer meet the proximity and adjacency guidelines at § 412.230(a) for future application periods.
- In cases where MSAs have merged or there is a title change, we proposed that reclassifications to those areas be implemented based on the boundaries of the revised MSAs. For example, the Odessa, Texas MSA and the Midland, Texas MSA have now been merged under the revised MSA definitions to form the Odessa-Midland, Texas MSA. Therefore, in this final rule, all hospitals reclassified to either the current Odessa MSA or the Midland MSA, have been assigned to the Odessa-Midland, Texas MSA for purposes of FY 1994 reclassifications.
- Based on the new MSA definitions, 17 of the 39 counties whose hospitals were deemed urban under section 1886(d)(8)(B) of the Act have now been designated part of MSAs. The 23 hospitals located in these counties will no longer be treated as reclassified hospitals for purposes of the wage index and the budget neutrality adjustment required under section 1886(d)(8)(D) of the Act. In FY 1994, 29 hospitals in 22 rural counties will continue to be deemed urban under section 1886(d)(8)(B) of the Act.

3. Technical Changes to the MGCRB Guidelines

Section 1886(d)(10)(D)(i)(II) of the Act requires the Secretary to publish guidelines "for determining whether the county in which the hospital is located should be treated as being a part of a particular Metropolitan Statistical Area." The statute does not specify the particular criteria to be used, but instead confers broad authority on the Secretary in establishing guidelines. Currently, § 412.232(b) allows hospital groups to seek reclassification based on MSA/NECMA standards published in the **Federal Register** on January 3, 1980 (applying 1980 census data) or the standards published on March 30, 1990 (applying 1990 census data). Pursuant to our authority under the statute, we proposed to update the guidelines by revising § 412.232(b) to specify that the standards published on March 30, 1990 and the census data from 1990 or later should be used.

Also, current guidelines with respect to wage index reclassifications based on an occupational-mix adjustment provide for the use of occupational-mix data from either the American Hospital Association survey or the Bureau of Labor Statistics survey. The Bureau of Labor Statistics discontinued its occupational-mix data survey after 1988. Since we are now using FY 1990 wage data to construct the wage index, the latest occupational mix data available from the Bureau of Labor Statistics are no longer consistent with the data reflected in the wage index. Therefore, we proposed to revise §§ 412.230(e)(2)(ii)(B) and 412.232(d)(2)(ii)(B) to eliminate this data source from the occupational mix guidelines. No comments were received on this issue, and we are implementing these changes in this final rule.

C. Updating the Wage Index Data

Section 1886(d)(3)(E) of the Act requires that the wage index be updated annually beginning October 1, 1993. This section further provides that the Secretary base the update on a survey of the wages and wage-related costs of short-term acute care hospitals in the United States. To the extent feasible, the survey should measure the earnings and paid hours of employment by occupational category and should exclude data with respect to the wages and wage-related costs incurred in furnishing skilled nursing facility services.

For determining prospective payments to hospitals in FY 1993, the wage index is based on a HCFA survey of hospital wage and salary data for all hospitals subject to the prospective payment system with cost reporting periods ending in calendar year 1988. In accordance with the statutory requirement to update the wage data annually beginning October 1, 1993, the FY 1994 wage index is based on data for hospital cost reporting periods beginning on or after October 1, 1989 and before October 1, 1990 (FY 1990).

D. Revisions to the Wage Index

For determining prospective payments to hospitals in FY 1994, effective for hospital discharges occurring on or after October 1, 1993 and before October 1, 1994, the wage index is based upon the data collected from the Medicare cost report (worksheet S–3, Part II) submitted by hospitals for cost reporting periods beginning in FY 1990.

All of the categories of data collected from worksheet S–3, Part II are included in the wage index computation. Therefore, the FY 1994 wage index reflects the following:

- Total short-term acute care hospital salaries and hours.
- Home office cost and hours.
- Fringe benefits associated with hospital and home office salaries.
- Contract labor cost and hours.
- The exclusion of salaries and hours for skilled nursing facility or other subprovider components that are not subject to the prospective payment system.

The inclusion of contract labor represents a change from the current wage index. At the request of the hospital industry, we also considered incorporating an allocation of overhead salaries and hours to the excluded components of the hospital.

Following is a discussion of our analysis of the wage data used to construct the wage index.

1. Verification of Wage Data From the Medicare Cost Report

The FY 1990 wage data was obtained from Worksheet S–3, Part II, of the HCFA–2552 submitted by short-term acute care hospitals. The wage data are reported electronically to HCFA through the Hospital Cost Report Information System (HCRIS). Because the initial data reported by hospitals on the cost report contained substantial deficiencies (including missing data items such as excluded hours and total paid hours), we initiated an intensive review of the wage data and made numerous edits to ensure optimal quality and accuracy. Medicare intermediaries were instructed to transmit any revisions through HCRIS by early January 1993. In the proposed rule, we discussed the review of the cost report data in detail (58 FR 30236).

The wage file used to construct the proposed wage index included data obtained in late January 1993 from the HCRIS data base and subsequent changes we received from intermediaries through March 15, 1993. To allow hospitals time to review the wage data used to construct the final hospital wage index, we forwarded to each hospital on April 16, 1993, a listing summarizing the FY 1990 wage data reported for the hospital. We advised hospitals to submit corrections to their intermediaries in time to allow for review and verification of the data before the development of the final wage index. We instructed the intermediaries to complete their verification of questionable data elements and to transmit any changes to the wage data, via HCRIS, no later than June 15, 1993. This deadline was necessary to allow sufficient time to download and edit the data, so that the final wage index calculation could be completed for development of the final prospective payment rates.

The final wage index reflects all wage data corrections transmitted by the intermediaries via HCRIS on or before June 15, 1993.

We note that, as discussed in the FY 1993 prospective payment system final rule (57 FR 39765), we eliminated midyear wage data corrections effective with requests for correction received on or after October 1, 1992. Accordingly, we will not make any midyear changes to the wage index values in FY 1994. We are revising § 412.63(p) to reflect the expiration of midyear wage index corrections.

Comment: We received numerous comments concerning the wage data collection process. The commenters believe that there were still many errors in the FY 1990 wage data due to problems in communications between the hospitals, the fiscal intermediaries, and HCFA. Commenters were concerned that revised data submitted to intermediaries were not reflected in the proposed rule and would not be reflected in the wage index for the final rule. Some commenters stated that the fiscal intermediaries had difficulties with the Medicare Cost Report (MCR) codes used to transmit data through HCRIS. Some claimed that the hospitals have not had enough time to fully examine their 1990 wage data. A number of commenters indicated that we should allow for midyear corrections, and two stated that we should apply them retroactively.

Response: We have taken significant steps to allow hospitals to reexamine the accuracy of their reported FY 1990 data. However, we believe that the ultimate responsibility for the accuracy of the wage data reported on the Medicare cost report rests with the hospitals. Hospitals are required to complete the worksheet S–3, Part II along with the rest of the cost report and to attest to its accuracy at the time the cost report is filed. The cost report is signed by an Officer or Administrator of the hospital certifying that the cost report is "a true, *correct* and complete statement prepared from the books and records of the provider in accordance with applicable instructions * * *." (Emphasis added.)

In addition, with respect to the FY 1990 wage data, hospitals have had numerous opportunities and ample time to report their data correctly. As early as the FY 1993 final rule, published on September 1, 1992, hospitals were put on notice that the FY 1990 cost report data would be used to update the wage index for FY 1994 (57 FR 39779). In November 1992 we sent each intermediary a listing of hospitals that had reported excluded wages and asked them to obtain certain additional overhead data. As part of that process, we asked intermediaries to resolve problems with any aberrant data. In December 1992 and January 1993, the fiscal intermediaries performed desk reviews for each hospital to ensure the reasonableness of the data. Revisions to the data resulting from these reviews were sent to HCFA by early January 1993.

In February 1993, we reviewed the data received and again asked intermediaries to review and, where necessary, correct data outside our range edits. So that hospitals would have another opportunity to review their wage data, rather than wait for the proposed rule to be published we sent each hospital a copy of the data for their respective hospital. These letters were addressed to the hospital administrator. A similar mailing was sent to each fiscal intermediary in order to facilitate the handling of requests for data corrections from the hospitals they service.

However, some hospitals indicated that they did not receive the letter or that it was misdirected and was not reviewed timely. To the extent that we were advised of these situations on a timely basis, we made every effort to ensure that the hospitals received their wage data for review. However, we believe that each hospital is responsible for the accuracy of its reported data when the cost report is filed. As such, it is necessary for each hospital to carefully complete the Worksheet S–3, Part II, when filing its Medicare cost report.

With respect to commenters' concerns that revised data submitted by hospitals to their fiscal intermediaries were not reflected in the proposed rule and would perhaps not be reflected in the final rule, we note that corrections to the data submitted to the HCRIS system after mid-March 1993 through development of the final wage index were not included in the proposed rule. However, any change submitted to the HCRIS system by June 15, 1993 has been utilized in the development of the final wage tables published in tables 4a through 4e of section V of the addendum to this final rule with comment. In cases where an intermediary submitted revised cost report data to HCRIS with an incorrect MCR code, we have taken steps, through direct contacts with the fiscal intermediaries, to correct this situation to ensure that all corrections submitted by intermediaries by June 15 are reflected in the final wage index. We are also including clarifying instructions in the desk review program to ensure that such problems do not occur in the future.

We believe that hospitals have been given ample time and opportunity to ensure the accuracy of their wage data. Moreover, one of the reasons for eliminating midyear corrections was to implement a system where hospital wage index values would not change unexpectedly during the year, thus allowing hospitals to operate efficiently throughout the fiscal year based on pre-established payment rates as published in this final rule. As such, we do not believe that the midyear correction of wage data should continue, especially in light of the problems related to geographic reclassification with respect

to the implementation of midyear corrections that were discussed in the September 1, 1992 final rule (57 FR 39765). Therefore, we are not allowing hospitals another opportunity to correct the 1990 wage data.

Comment: Commenters requested that we allow hospitals further opportunity to revise their wage data if the update to the prospective payment system rates is delayed to January 1, 1994.

Response: As indicated above, we believe hospitals have had more than sufficient time to correct their data. Moreover, Public Law 103-66 did not provide for a delay in the update to the prospective payment system rates. Therefore, no further revisions to the FY 1990 wage data will be accepted for purposes of the FY 1994 wage index.

Comment: Commenters suggested that each year HCFA send hospitals a preliminary listing of the wage data for all the hospitals in their respective labor market area, so they could check for any obvious discrepancies in the wage index data of other hospitals in their area. This would also enable hospitals to attempt to ensure the accuracy of the data for other hospitals in their labor market areas whose wages have the most impact on their particular wage index value.

Response: As indicated above, we believe that an annual mailing of the wage data to each hospital is unnecessary. Thus, we do not plan to repeat the mailing effort of April 1993. Each hospital is responsible for the accuracy of its own data and should complete its Medicare cost report in conformance with reporting instructions. However, we note that once the proposed wage index is published for each fiscal year, the wage data will be available to interested parties upon request. In addition, the cost report data submitted through HCRIS are available to hospitals on an ongoing basis. Hospitals concerned about area-wide problems are free to communicate with one another to identify errors. We note that we will use FY 1991 cost report data to update the wage index for FY 1995.

2. Patient Care-Related Contract Services

As part of Worksheet S–3, Part II, hospitals submitted data concerning labor-related payments and hours attributable to direct patient care-related contract services. Hospitals were instructed to exclude non-patient care contract services such as management and housekeeping services, nonlabor-related expenses such as payments for equipment and supplies, and any contract services for which labor-related payments or hours could not be accurately determined.

The hospital industry has repeatedly advocated including contract labor in the wage index in order to address the increasing use of contract services. As discussed in the May 9, 1990 proposed rule (55 FR 19443), data collected for contract services on the 1988 wage survey were unreliable for a number of reasons, including inaccurate and incomplete reporting of data. Thus, we were unable to include contract labor in subsequent wage indexes based on the 1988 wage survey data. For the FY 1990 cost report data, we clarified the instructions for reporting contract labor and developed additional edits for contract labor that were reviewed as part of the intermediary's desk review process. As discussed in the proposed rule (58 FR 30236), our analysis of contract wage data reported on the FY 1990 cost report indicates that the reported salaries and hours appear reasonable. Therefore, we proposed to include contract labor wages and hours in the wage index for FY 1994.

We attempted to verify the accuracy of contract data reported for hospitals having a contract labor average hourly wage exceeding $80.00 per hour, which represents the mean hourly wage plus 3 standard deviations. This is our standard method to identify and remove statistical outliers. For purposes of the wage final index, contract labor data for any hospital whose inflated contract labor average hourly wage exceeded $80.00 per hour, or was less than $5.00 per hour, were presumed to be unreasonable and were eliminated from the wage index computation. However, the fiscal intermediaries reexamined contract labor data costs in excess of $80.00 per hour, and the data were included if determined to be correct based on verified documentation.

These edits to the contract labor wage data resulted in the elimination of data for five hospitals with high contract labor average hourly wages and four hospitals with low contract labor average hourly wages. In each case where a hospital's contract labor average hourly wage did not meet our standards and was not substantiated as correct by the intermediary, we recalculated the hospital's average hourly wage exclusive of contract labor. We note that if a hospital's data were revised and no longer fell outside our limits, or the fiscal intermediary notified our office that the contract labor cost and hours have been verified and supported by documentation, then the final wage index reflects the contract data even though the data were not included in the proposed wage index.

In most labor market areas, the inclusion of contract labor in the wage index computation has a small effect on the average hourly wage. However, now that we have reasonably complete data, we believe including contract labor would more accurately and fairly reflect wage levels across hospitals and MSAs. Accordingly, after considering the public comments, we have included contract labor for direct patient care services in the final wage index for FY 1994.

Comment: Commenters indicated that they supported our proposal that contract labor be included in the computation of the wage index. However, some commenters questioned the accuracy and validity of the contract labor data. One commenter suggested that a special audit or review be done if the contract labor hours were greater than 5 percent of the total hours. The commenter stated that since hours associated with the provision of contract services seem to vary greatly, these measures were necessary to ensure the accuracy of the data.

Response: We believe that the edits we have applied to the contract labor costs are sufficient to ensure accuracy of the reported contract labor data. The current edits applied to contract labor costs are designed to eliminate aberrant or unverified contract labor data from the wage index. One edit we performed was to apply the mean plus three standard deviations for the reported contract labor hourly wage. For any hospital whose contract labor hourly rate exceeded these parameters, we contacted the appropriate intermediary in order to verify the accuracy of the reported data. If the intermediary could not obtain appropriate justification from the hospital as to why these costs were aberrant, the contract dollars and hours were eliminated from the calculation of the final wage index.

We identified 19 hospitals that had a contract labor average hourly wage above $80.00. As a result of this edit, the data for two hospitals were revised to reflect a correct contract labor rate, and included in the wage index. The contract labor data for five hospitals were eliminated because the data were not documented or reported correctly. The remaining 12 hospitals provided the intermediaries with adequate documentation to substantiate their reporting of a high contract labor rate and were included in the wage index.

We also eliminated contract labor data for four hospitals that reported inordinately low average hourly contract labor costs (that is, below $5.00 per hour). This is a change from the proposed wage index wherein we

excluded any contract labor costs below $3.35 per hour. After further consideration, we decided that given the fact that contract services are generally obtained through personnel agencies that charge a premium, we believe the $5.00 minimum standard is more appropriate than $3.35, which represented the minimum wage allowed by law.

We have not instituted any special audit or review in instances where contract labor hours exceeded 5 percent of total hours. We believe that it is reasonable to expect significant variations in the percent of contract labor costs to total salaries. The proportion of contract services used by individual hospitals could be affected by a number of circumstances, such as hospital size, range of services, and extent of personnel shortages in the area. We note that for hospitals that reported contract labor costs the average ratio of contract costs to total salaries was approximately 6 percent. We will, however, consider expanding our edits in the future to evaluate any cases with extremely high proportions (over 30 percent) of contract labor costs.

Comment: Several commenters suggested that we include Part A physician contract services as part of the contract labor definition. The commenters indicated that Part A physician services include some patient care related services and would therefore meet our definition, which limits includable contract services to only those associated with hands-on patient care. Other commenters were concerned that failure to include Part A physician contract services in States where hospitals are not allowed to directly hire physicians and must obtain their services on a contractual basis eliminates the hospitals' Part A services from the wage data. Conversely, a hospital that can directly hire a physician will have its physicians' salaries included in the wage index. These commenters asserted that since the average hourly wage for physicians are relatively high, there exists a definite disadvantage for these five States. Another commenter stated that the cost reporting instructions were clarified to specifically exclude Part B physicians services but not Part A physicians services.

Response: Under section 1887 of the Act, "professional medical services" (services directly related to patient care) are reimbursed under Part B, and "professional services that are rendered for the general benefit to patients in a hospital" are reimbursed under Part A. If physicians services are directly related to patient care, then those services would be billable under Part B. For purposes of the wage index, the cost report instructions specifically excluded Part B physicians services because these services are in fact directly related to patient care but they are otherwise reimbursable under Medicare. Part A physicians services were not specifically referenced in the cost reporting instructions because these services, unlike Part B physicians services, are not directly related to patient care, and therefore no clarification should have been necessary for purposes of reporting contract labor costs. It would not be appropriate to make exceptions to the definition of contract services prescribed in the cost reporting instructions for one type of contract service as opposed to any other contract service that is not directly related to hands-on patient care.

In those States where a hospital is restricted from directly hiring a physician, we believe that the hospital could consider using other administrative personnel to perform some of the administrative functions that physicians currently perform. This would enable the hospital to include the salaries paid to administrative personnel in the wage index computation.

Comment: We received two comments suggesting that we include management service contracts in the wage index, since we include salaries for home office personnel who perform similar services at a hospital. These commenters believe the definition for contract labor should be expanded to include these contract services.

Response: As stated above, the contract labor definition is limited to those services directly related to hands-on patient care. This definition was adopted to address the main concern expressed by hospitals with respect to the inclusion of contract labor in the wage index, that is, that many hospitals have problems hiring nurses in areas experiencing nursing shortages and must rely on contract labor sources. Thus, a hospital's decision to use contracted services in these situations is often driven by the need to overcome these staffing shortages. This is generally not the case with management contracts.

The costs of contract labor are generally higher than the cost of noncontract labor for the same services, and thus may not accurately reflect relative hospital wage rates across labor market areas. However, the situation described above illustrates why it may be appropriate to include the costs of contract services directly related to patient care. In accordance with the FY 1990 cost reporting instructions, the data used to develop the updated wage index do not encompass management services and therefore management costs are not included in the FY 1994 wage index computation. Management contracts encompass a wide range of services including legal services, personnel administration, and accounting or auditing services. Our concern is the difficulty in accurately removing the costs and hours for services such as legal and accounting from total management contracts. We do not believe it would be appropriate to include such contract services for some hospitals and not for others. A national data collection would be required before contract management services can be included in the wage index. However, we will reconsider this issue for future wage indexes as it may be appropriate to recognize certain management contracts where hospital administrators, CEOs and/or CFOs are contract employees, especially in small, rural hospitals that have difficulty recruiting top management personnel. We will evaluate the appropriateness and feasibility of including such contract management services in future wage data collections.

3. Allocation of General Service Salaries to Areas Excluded from Wage Index

The current wage index is constructed using data only for areas of the hospital that are related to the provision of hospital care to inpatients. Thus, we exclude the direct wages and hours associated with certain sub-provider components of the hospital, such as skilled nursing facilities and home health agencies, from the wage survey. The cost reporting form used to collect the FY 1990 wage data also includes within the definition of excluded areas rehabilitation and psychiatric distinct part units of the hospital that are excluded from the prospective payment system.

As stated in the proposed rule, we have received several suggestions from hospital representatives that, in addition to excluding the direct salaries and hours for sub-provider components of the hospital, HCFA should also exclude the general service, or overhead, wages and hours that are associated with these areas. Currently, for example, we include all of the wage costs associated with housekeeping in the wage index data, even if a facility has excluded sub-provider components that receive housekeeping services. In response to these suggestions, we initiated a special data collection to obtain the hours associated with workers in the general service areas of those hospitals that

reported excluded salaries and hours. We received general service hour data for 3,811 of the 5,436 hospitals for which we have wage data.

We analyzed this special survey data in conjunction with the wage data from the cost report to determine whether we could reasonably allocate the overhead wages and hours to the excluded areas of the hospital. In the proposed rule, we discussed this analysis in detail (58 FR 30237). For several reasons, we concluded that it would not be appropriate to use the overhead data collected in computing the wage index. These reasons included the large number of hospitals removed due to the edits, the large number of hospitals with large swings in their average hourly wages, and the large proportion of hospitals whose average hourly wages would decrease as a result of the allocation rather than increase. As a result, in the proposed rule we did not employ the allocation of general service salaries and hours to the excluded areas of hospitals in constructing the proposed FY 1994 wage index.

We solicited public comment on this issue, in particular, comments concerning alternative methods that might produce a more accurate and uniform allocation method and at the same time impose little or no additional reporting burden on the hospital industry. We indicated that under any acceptable allocation method, we would require that the method be used by all hospitals with excluded areas and that the intermediary be able to verify the accuracy of the reported data.

Comment: We received numerous comments regarding our decision not to allocate hospital overhead wages and hours to excluded areas of the hospital in the calculation of the proposed wage index. Most commenters believe that our decision not to allocate the overhead hours and wages to the excluded areas of the hospital is contrary to the statute, arguing that section 1886(d)(3)(E) of the Social Security Act requires the exclusion of salaries applicable to skilled nursing facilities. Other commenters believe that the basis of our decision not to exclude these hours and salaries, that is, that the data is of insufficient quality to ensure its accuracy, is inadequate. The commenters assert that the allocation should have been performed regardless of the data quality problem. Several commenters stated that they altered their cost report forms to include all general service hours and salaries, including those they had previously assigned to the excluded areas, based on a promise by HCFA that such data would be excluded in the wage index calculation. Other commenters believe that problems in the overhead allocation indicate problems in the overall wage and hour reporting used in the wage index calculation. Many commenters oppose our decision because they believe that it unfairly disadvantages rural hospitals, which may have a larger proportion of their workers in excluded areas than do urban hospitals. One commenter believes that our decision not to exclude the allocated wages and hours will disadvantage rural hospitals applying for reclassification for wage index purposes to the MGCRB, since hospitals must compare their average hourly wage to the average hourly wage for all hospitals in their current labor market area.

Response: Section 1886(d)(3)(E) of the Act specifies that, "*to the extent determined feasible by the Secretary,* such survey shall * * * exclude data with respect to the wages and wage-related costs incurred in furnishing skilled nursing facility services" (emphasis added). In the proposed rule, we discussed in detail our analysis of the data and our conclusion that it is not feasible to allocate overhead wages and hours to the excluded areas of the hospital (58 FR 30237).

In analyzing the proposed exclusion, we found that, even after data edits eliminated the allocations for 177 hospitals with questionable data, approximately two-thirds (2,412) of the remaining 3,634 hospitals had average hourly wages that were lower when the allocation was performed than when it was not. If the allocation were accurate, this would mean that, for the majority of hospitals with excluded areas, the average hourly wage for the overhead areas (such as laundry and housekeeping) is higher than that for patient care areas in the hospital (such as nursing). We do not believe that this could be the case for such a large number of hospitals, and we therefore concluded that the data collected regarding overhead hours was inaccurate. Because of the large number of hospitals removed through the edit process, the large number of hospitals with large swings in their average hourly wages, and the large proportion of hospitals whose average hourly wage would decrease rather than increase as a result of performing the allocation, we continue to believe it would be inappropriate to employ the allocation of general service salaries and hours to the excluded areas of hospitals in constructing the FY 1994 wage index.

We disagree with commenters who question the entire wage index calculation on the basis of the problems in the overhead allocation. The overhead hours were collected by use of a special hospital survey that was conducted well after the Medicare cost report was filed. As a result, the hours were not subject to a departmental allocation, as was the case for the overhead wages. Since hospitals were required to retroactively determine the overhead hours corresponding to the salaries reported on the cost report, it was more difficult to ensure that the hours reported by the hospitals in the survey would match the wages reported on the cost report, although we had hoped that the hours would be accurate.

With regard to the alteration of the cost reports due to any perceived promise by HCFA that the overhead wages and hours attributable to the excluded areas of the hospital would be removed from the wage index calculation, we note that hospitals are required to include all overhead salaries and hours in their cost reporting for the overhead cost centers, and not just those salaries and hours attributable to the acute care area of the hospital. We note that these hospitals had allocated a select portion of their overhead salaries to areas excluded from the wage index through accounting reclassifications, so that these salaries did not appear on Worksheet A, column 1 (which was used to determine salaries for the wage survey on Worksheet S–3), but were returned to the overhead areas in order to perform the step down of costs on Worksheet B, part I. As such, we believe that the changes made to these cost reports by the providers should have been made in any case and are irrelevant to the discussion of the allocation methodology.

We note that, although the overhead allocation would reduce the wage index values for a smaller proportion of rural areas than urban areas, the allocation would still reduce the wage index value for several rural areas. In this regard, we note that many of the commenters who supported the allocation are located in rural Nebraska, an area whose average hourly wage would decrease as a result of the allocation as currently calculated. Finally, we emphasize that our decision not to perform the overhead allocation was made in order to calculate the most accurate wage index possible.

We do not believe that this decision will have any consistent impact on hospitals applying for wage index reclassification. The effect on any applicant hospital, the labor market area in which it is currently located, or the labor market area to which the hospital is applying will differ across hospitals and labor market areas. Moreover, we believe that our decisions regarding the appropriate structure of the wage index

should be directed toward establishing an accurate reflection of wage variation across different labor market areas. As such, we believe our decision with respect to the overhead allocation is consistent with the goals of the reclassification process, because the allocation would not result in a more accurate wage comparison under either § 412.230(e)(1) (iii) or (iv).

Comment: Some commenters believe that the overhead allocation could be performed by allowing hospitals with excluded areas to directly allocate these salaries to the excluded areas. These commenters advocate various methods, including altering the reporting on Worksheet A (on which providers report their direct costs, including salary costs) and adding a stepdown procedure to Worksheet S–3, to allocate overhead hours and salaries to all of the hospital's cost centers.

Response: We believe that the difficulties we experienced with the overhead allocation arose from incorrect reporting of overhead hours, rather than the allocation methodology itself. For the FY 1994 wage index, the FY 1990 cost reports included data for overhead salaries but not overhead hours; we collected data for overhead hours by conducting a special survey in November 1992. In this special data collection we conducted for the FY 1990 cost reports, the overhead hours were determined retroactively. However, the FY 1992 cost report allows for the direct reporting of both overhead salaries and overhead hours on the Worksheet S–3, and we hope that this will allow an accurate allocation. We believe that more accurate reporting of hours will occur on the FY 1992 cost reports because the overhead salaries and hours will be determined at the same time.

Comment: A commenter believes that hospitals with a low ratio of excluded salaries to total salaries do not have an incentive to make sure that their overhead hour data are correct. As a result, the commenter believes that any hospital with a high ratio of excluded to total salaries should be allowed to perform the allocation. In addition, the commenter believes that the allocation should be at the election of the provider, so that providers whose average hourly wage after the allocation is lower than before the allocation could refuse the allocation.

Response: We believe it would be inappropriate to perform the allocation for some hospitals and not others. We disagree with the commenter's suggestion that the allocation should be performed only in those situations where a provider's average hourly wage is increased as a result. The purpose of the allocation is to reflect more accurately the wages and salaries in the acute care area of the hospital by excluding salaries and hours associated with the excluded areas of the hospital. We believe it would be inconsistent to include some types of costs for some hospitals and not others.

E. Computation of the Wage Index

As noted in section III.C. above, we based the FY 1994 wage index on wage data reported on the FY 1990 cost report. The final wage index is comprised of data from 5,407 hospitals paid under the prospective payment system and short-term acute care hospitals in waiver States. The method used to compute the wage index is as follows:

Step 1—We gathered data from each of the non-Federal short-term acute care hospitals for which data were reported on the Worksheet S–3, Part II of the Medicare cost report for the hospital's cost reporting periods beginning on or after October 1, 1989, and before October 1, 1990. Each hospital was assigned to its appropriate urban or rural area based on the MSA definitions to be used in the prospective payment system in FY 1994 prior to any reclassifications under sections 1886(d)(8) or 1886(d)(10) of the Act. In addition, we included data from a few hospitals that had cost reporting periods beginning in September, 1989 and reported more than a 52-week cost reporting period. The data were included because no other data from these hospitals would be available for the cost reporting period described above, and particular labor market areas might be affected due to the omission of these hospitals. However, we generally describe this wage data as FY 1990 data.

Step 2—For each hospital, we subtracted the excluded salaries (that is, salaries attributable to skilled nursing facility and other sub-provider components) from gross hospital salaries to determine net hospital salaries. To the net hospital salaries, we added hospital contract labor costs, hospital fringe benefits, and any home office salaries and fringe benefits reported by the hospital to determine total salaries plus fringe benefits.

Step 3—For each hospital, we inflated or deflated, as appropriate, the total salaries plus fringe benefits resulting from Step 2 to a common period to determine total adjusted salaries. To make the wage inflation adjustment, we used the percentage change in average hourly earnings for each 30-day increment from October 14, 1989 through September 15, 1991, for hospital industry workers from S.I.C. 806, Bureau of Labor Statistics Employment and Earnings Bulletin. The annual inflation rate used was 5.6 percent. The inflation factors used to inflate the hospital's data were based on the midpoint of the cost reporting period as indicated below.

Midpoint of Cost Reporting Period

After	Before	Adjustment factor
10/14/89	11/15/89	1.075355
11/14/89	12/15/89	1.070483
12/14/89	01/15/90	1.065634
01/14/90	02/15/90	1.060806
02/14/90	03/15/90	1.056000
03/14/90	04/15/90	1.051216
04/14/90	05/15/90	1.046453
05/14/90	06/15/90	1.041713
06/14/90	07/15/90	1.036993
07/14/90	08/15/90	1.032295
08/14/90	09/15/90	1.027619
09/14/90	10/15/90	1.022963
10/14/90	11/15/90	1.018329
11/14/90	12/15/90	1.013715
12/14/90	01/15/91	1.009123
01/14/91	02/15/91	1.004551
02/14/91	03/15/91	1.000000
03/14/91	04/15/91	.995470
04/14/91	05/15/91	.990960
05/14/91	06/15/91	.986470
06/14/91	07/15/91	.982001
07/14/91	08/15/91	.977552
08/14/91	09/15/91	.973124

For example, the midpoint of a cost reporting period beginning January 1, 1990 and ending December 31, 1990 is June 30, 1990. An inflation adjustment factor of 1.036993 was applied to the hospital's wages. In addition, for the data for any cost reporting period that began in FY 1990 and covers a period of less than 360 days or greater than 370 days, we annualized the data to reflect a 1-year cost report. Annualization is accomplished by dividing the data by the number of days in the cost report and then multiplying the results by 365.

Step 4—For each hospital, we subtracted the reported excluded hours from the gross hospital hours to determine net hospital hours. We increased the net hours by the addition of any reported contract labor hours and home office hours to determine total hours.

Step 5—As part of our editing process, we eliminated the contract labor data for 9 hospitals that reported aberrant contract labor wages (over $80.00 or less than $5.00 per hour). However, if the intermediary indicated through the verification process that the contract labor salaries and hours had been reviewed and found to be accurate, we did not eliminate the data even if the average hourly wage exceeded the edit limit. In addition, we deleted data for 29 hospitals that are no longer participating

in the Medicare program, for which we lacked sufficient documentation to verify data that failed our edits. We retained the data for other hospitals that are no longer participating in the Medicare program because these hospitals contributed to the relative wage levels in their labor market areas during their FY 1990 cost reporting period. We note that no deletions were necessary for fringe benefit costs. In addition, no deletions to the home office data were required as all outstanding edits from the proposed wage data have been resolved.

Step 6—Within each urban or rural labor market area we added the total adjusted salaries plus fringe benefits obtained in Step 3 for all hospitals in that area to determine the total adjusted salaries plus fringe benefits for the labor market area.

Step 7—We divided the total adjusted salaries plus fringe benefits obtained in Step 6 by the sum of the total hours (from Step 4) for all hospitals in each labor market area to determine an average hourly wage for the area.

Step 8—We added the total adjusted salaries plus fringe benefits obtained in Step 3 for all hospitals in the nation and then divided the sum by the national sum of total hours from Step 4 to arrive at a national average hourly wage. Using the data as described above, the national average hourly wage is $17.2621.

Step 9—For each urban or rural labor market area, we calculated the hospital wage index value by dividing the area average hourly wage obtained in Step 7 by the national average hourly wage computed in Step 8.

Comment: Commenters suggested that we eliminate from the wage index computation hospitals that have terminated participation in the Medicare program. The commenters believe that wage data from terminated hospitals do not reflect the wages paid in a labor market area, since the terminated hospital may be in the process of closing its operations. In addition, the commenters stated that when the hospital closed, intermediaries would not be able to verify the data reported while the hospital was still operating.

Response: We have always maintained that any hospital that is in operation during the data collection period should be included in the database, since the hospital's data reflects conditions occurring in that labor market area during the period surveyed. Moreover, we believe that, in general, this is the most practical and equitable way to administer the data collection process, because it would be difficult to define which terminated hospitals should be excluded. For example, if a hospital terminates just before the proposed rule or between the proposed rule and the final rule, it would be very difficult to ensure that such a hospital was identified as terminated, since our analysis of the database is accomplished well before the final rule is published.

However, we agree that it is appropriate to eliminate data for terminated hospitals when there is reason to believe that the data are incorrect and cannot be verified due to the facility's closure. In the proposed rule, we only eliminated terminated hospitals if the data failed a critical edit that precluded us from computing an average hourly wage for those hospitals. In developing the final wage index, we have eliminated wage data for those terminated hospitals that failed any of our reasonableness edits. We believe this is appropriate since in most cases any aberrant data reported by terminated hospitals cannot be evaluated for reasonableness because hospital records may not be available to the intermediaries. However, if the wage data for a terminated hospital did not fail any of our edits for reasonableness it remains in the database and has been used in developing the wage index for the labor market area.

Comment: One commenter questioned our use of paid hours instead of worked hours in the computation of the wage index.

Response: We have always used total paid hours because they more appropriately reflect what is included in total salary. For example, if an individual takes paid sick leave, the corresponding hours need to be included in the total hours. This is appropriate because salaries are based on a specified work period (such as 40 hours per week) that includes any time during that period covered by paid leave, as well as any non-productive time for which the employee receives a salary (such as a paid lunch period). The definition for total hours will be clarified in the cost reporting instructions to specify that total hours mean total paid hours.

Comment: We received several comments concerning perceived problems with the reporting of fringe benefits. Some commenters indicated that there are inconsistencies across intermediaries in their decisions regarding allowable fringe benefits. In addition, some commenters requested that we recognize additional cost items as fringe benefits, while others questioned the appropriateness of certain fringe benefit costs included in the wage index.

Response: Fringe benefits are an integral part of employee compensation and are therefore an important component of the wage index, which is designed to reflect differences in labor costs across areas. Since we first began collecting fringe benefit costs for inclusion in the hospital wage index, we have instructed hospitals and intermediaries to apply the longstanding definition of fringe benefits included in section 2144 of the Provider Reimbursement Manual. Under this section, fringe benefits are defined as "amounts paid to, or on behalf of, an employee from which the employee derives a personal benefit."

This section also requires that, where applicable, fringe benefits must be reported to the IRS.

There may be questions as to whether a particular cost qualifies as a fringe benefit. Therefore, to assist intermediaries in determining which costs should be allowed as fringe benefits and should be included in the calculation of the wage index, we sent to each intermediary a list of some costs that might be included as fringe benefits. This list was developed based on our experience in handling fringe benefit issues that have come to our attention, to promote the consistent treatment of fringe benefits. However, this list was intended as a guideline only and was not intended to be all-inclusive. The intermediary determines if the costs meet the requirements listed in the Provider Reimbursement Manual.

We note that a particular cost might be considered a fringe benefit in one situation but not another. For example, parking costs are not generally considered a fringe benefit. However, in limited situations where free parking is not available to any employees in the area, free parking to employees could be considered a fringe benefit. The intermediary must evaluate such situations on a case by case basis for compliance with the prescribed definition of fringe benefits.

In order to provide further guidance, we have instituted a survey asking the major hospital associations, fiscal intermediaries, and other interested parties to comment on what specific cost items should be recognized as fringe benefits based on the longstanding definition included the Provider Reimbursement Manual. The results of that survey are not yet available. However, it is our intent to work with the hospital industry to develop a comprehensive list of what should be considered as fringe benefits. This list will then be available to all hospitals and intermediaries.

Comment: Two commenters suggested that we remove the data reported by a hospital from the wage index when the hospital reports no fringe benefits on Worksheet S–3. One commenter stated that in cases where hospitals directly charge fringe benefits to salaries, it is not appropriate for intermediaries to ask hospitals to retroactively provide a detailed breakdown of its fringe benefit costs.

Response: It has been a longstanding policy to allow hospitals to directly charge fringe benefits and other overhead costs to each cost center. Therefore, it would be inappropriate to eliminate a hospital's wage data because it elected to directly charge its fringe benefits to salaries. In cases where no fringe benefit costs were reported on line 6 of Worksheet S–3, intermediaries were asked to review the wage data to ensure that this was correct. However, we believe it is important that reported fringe benefit costs are appropriate for inclusion in the wage index. Therefore, we are considering requiring all hospitals to submit a detailed list with their Medicare cost report outlining those cost items included in fringe benefits. If this policy is adopted, hospitals may want to change their allocation method to allow easier determination of these fringe benefits. However, because of limited recordkeeping with respect to statistical data at some hospitals, such as public hospitals, it is not feasible to restrict the direct charging of overhead costs.

Comment: One commenter asserted that the wage data were revised for many hospitals that failed edits based on further instructions from HCFA. The commenter asserts that the regulations do not support such instructions and believes that the revisions, in effect, amount to retroactive rulemaking with respect to material wage index elements. For example, the commenter cited instructions with respect to contract labor costs that specified that Part B physicians contract costs should not be included. Because the instructions did not specifically exclude Part A physicians contract costs, the commenter argues that such costs are includable and any disallowance is a retroactive change in policy.

Response: Additional information provided to intermediaries by no means constitute a retroactive change in policy, but rather instructions concerning existing policies. It is common practice for fiscal intermediaries to seek guidance from HCFA on the appropriate interpretation of policies with respect to the allowability of certain costs. For example, the list of fringe benefits we issued to intermediaries in November 1992 was issued as a guideline to assist them in determining what should be considered a fringe benefit based on current policy with respect to the definition of fringe benefit costs. As discussed above, the disallowance of Part A physician costs is also a clarification of our definition for contract labor (that is, that only contract services directly related to hands-on patient care are includable). We continue to believe that issuing clarifications to intermediaries is necessary to ensure that only appropriate fringe benefits and contract labor costs are included in developing the wage index. The fiscal intermediary should settle a cost report in conformance with the appropriate instructions. Where there are questionable items the intermediary can refer to HCFA's guidelines.

Comment: Many commenters expressed concern over the process used to edit the FY 1990 wage index data. Some commenters pointed out specific problems with the edit process and provided suggestions for refinements, such as establishing a process for resolving issues raised by desk reviews at the time of tentative settlement of the cost report. Others cited inconsistencies between the HCRIS edits and the desk review edits. Several suggested that we create a work group comprised of representatives of hospitals, fiscal intermediaries, and HCFA in order to develop an ongoing mechanism to ensure that wage data are reported accurately and consistently.

Response: We are continuing our efforts to refine the edit process. We agree that an ongoing mechanism for early review of the wage data is needed, and we are working to establish such a process for future wage index updates. As this is the first year in which cost report data were used to compute the wage index, we could not anticipate the extent of the problems that occurred with the reporting of data. Because the HCRIS edits were in place at the time the FY 1990 cost report data were originally transmitted, we had expected that fewer data elements would fail edits. When we discovered that this was not the case (either due to bypasses of the edits or other errors), we initiated a special review program to deal with not only the comparisons of cost variances between the 1988 data and the FY 1990 data but also the HCRIS-type edits as well. We will continue to evaluate and update the edits included in our desk review package and welcome industry input into this process. In this regard, we are planning to convene a workgroup to discuss options for redefining labor market areas, and we will include the desk review edit process in the workgroup discussions. We will continue to strive to construct a better desk review package, consistent HCRIS edits, and a clearer set of instructions for the worksheet S–3, Part II.

Comment: A commenter suggested that HCFA establish an appeals process for disputes over corrections submitted by hospitals to intermediaries. The commenter stated that since the work sheet S-3 does not affect reimbursement for the FY 1992 cost report, hospitals are not able to make appeals through the Provider Reimbursement Review Board.

Response: We do not believe such a formal appeals process is necessary. Moreover, we do not believe that a formal appeals process would be feasible, since the process could not be completed before the development of the final wage index. In the few cases where the hospital and the intermediary have disagreed on specific cost items reported on worksheet S-3, the issue has been resolved by contacts between the hospital or intermediary and HCFA. Often after telephone discussions with the caller or writer, the issues were resolved.

We continue to believe that this method will resolve most disputes between hospitals and intermediaries.

However, if a hospital still feels that the issue has merit and believes that its intermediary is incorrectly handling the adjustment, the hospital has the option of requesting that the intermediary re-review the issue and ask that the intermediary receive HCFA's concurrence. The intermediary should send to HCFA a letter outlining the hospital's and intermediary's handling of the adjustment, and ask for clarification. After evaluating the facts, HCFA will contact the intermediary with the decision; the intermediary will, in turn, notify the hospital.

However, this process must be completed at least 3 months prior to the publication of the final rule, to afford the intermediary sufficient time to retransmit changes if necessary to the HCRIS system. Therefore, hospitals must submit such requests to their intermediary at least 4 months prior to our publication of the final rule. The hospital can evaluate the data HCFA is using either by requesting from the intermediary a copy of the worksheet S-3, Part II that has transmitted to HCRIS, or as indicated in the proposed rule, by requesting a copy of the public use wage file.

We believe that this process for resolving issues in dispute between the hospital and the intermediary will facilitate settling these disagreements

without the extensive delays inherent in a formal appeals process.

F. Revision to the Wage Index Based on Hospital Redesignations

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more Metropolitan Statistical Areas (MSAs) are considered to be located in one of the adjacent MSAs if certain standards are met. Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system.

The methodology for determining the wage index values for redesignated hospitals is applied jointly to the hospitals located in those rural counties that were deemed urban under section 1886(d)(8)(B) of the Act and those hospitals that were reclassified as a result of the MGCRB decisions under section 1886(d)(10) of the Act. Section 1886(d)(8)(C) of the Act provides that the application of the wage index to redesignated hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on the wage index value for the MSA to which they have been redesignated. Therefore, the wage index values were determined by considering the following:

- If including the wage data for the redesignated hospitals reduces the MSA wage index value by 1 percentage point or less, the MSA wage index value determined exclusive of the wage data for the redesignated hospitals applies to the redesignated hospitals. We note that if the wage index value for the MSA increases as a result of reclassification, the data for the reclassified hospitals is included in the MSA's wage index value.
- If including the wage data for the redesignated hospitals reduces the wage index value for the area to which the hospitals are redesignated by more than 1 percentage point, the hospitals that are redesignated are subject to the wage index value of the area that results from including the wage data of the redesignated hospitals (the "combined" wage index value). However, the wage index value for the redesignated hospitals cannot be reduced below the wage index value for the rural areas of the State in which the hospitals are located.
- Rural areas whose wage index values would be reduced by excluding the data for hospitals that have been redesignated to another area continue to have their wage index calculated as if no redesignation had occurred. Those rural areas whose wage index value increases as a result of excluding the wage data for the hospitals that have been redesignated to another area have their wage index calculated exclusive of the redesignated hospitals.
- The wage index value for an urban area is calculated exclusive of the wage data for hospitals that have been reclassified to another area. However, geographic reclassification may not reduce the wage index for an urban area below the Statewide rural average.

We note that, except for those rural areas where redesignations would reduce the rural wage index value, the wage index value for each area is computed exclusive of the data for hospitals that have been redesignated from the area for purposes of their wage index. As a result, several MSAs listed in Table 4a have no hospitals remaining in the MSA. This is because all the hospitals in these original MSAs have been reclassified to another area by the MGCRB. For those areas, we have listed the Statewide rural wage index value.

The revised wage index values effective for discharges occurring on or after October 1, 1993 are shown in Tables 4a, 4b, and 4c of the addendum to this final rule. Hospitals that are redesignated should use the wage index values shown in Table 4c. (Hospitals that were redesignated to an MSA under section 1886(d)(8)(B) of the Act or reclassified by a decision of the MGCRB should not use Table 4c if they have also been assigned to the same MSA based on the new OMB definitions.) For some areas, more than one wage index value will be shown in Table 4c. This occurs when hospitals from more than one State are included in the group of redesignated hospitals, and one State has a higher Statewide rural wage index value than the wage index value otherwise applicable to the redesignated hospitals. In addition, tables 4d and 4e list the average hourly wage for each labor market area based on the FY 1990 wage data. Hospitals can use this information in applying to the MGCRB for wage index reclassifications for FY 1995.

The final FY 1994 wage index values incorporate all reclassification decisions made by the MGCRB and the Administrator for FY 1994. There were 431 hospitals redesignated for purposes of the wage index (including hospitals redesignated under both sections 1886(d)(8)(B) and 1886(d)(10) of the Act). This number does not include MGCRB decisions that result in a reclassification to the same labor market area as the hospital is assigned under the revised MSA definitions. It does include changes that resulted from withdrawals of requests for reclassification, appeals, and the Administrator's review process.

Comment: One commenter expressed concern over labor market areas where the urban wage index is already lower than the Statewide rural wage index, and, as a result of reclassifications, is reduced even further. The commenter stated that in the past, HCFA has interpreted the provisions of section 1886(d)(8)(C) of the Act as limiting protection from wage index reductions to urban areas whose wage index values initially are above the Statewide rural wage index but fall below it due to reclassifications. The commenter asked that this protection be extended to urban areas whose wage index is below the Statewide rural wage index value.

Response: Section 13501(b) of Public Law 103–66 revises section 1886(d)(8)(C) of the Act to provide hold-harmless protection in this situation. The statute specifies that if the urban area has a wage index below the wage index for the rural area in the State in which it is located, or the urban area is located in a State that is composed of a single urban area, the urban wage index will not be reduced as a result of reclassifications. This statutory provision is effective retroactively to October 1, 1991. We will identify the affected hospitals and provide a payment adjustment for discharges occurring in FY 1992 and FY 1993. In addition, this change has been incorporated in the wage index values included in this final rule, and the payment effects have been reflected in the FY 1994 budget neutrality adjustments required under sections 1886(d)(3)(E) and 1886(d)(8)(D). Therefore, if excluding the wage data for the reclassified hospitals would reduce the wage index value for an urban area whose wage index is already below that of its Statewide rural area, the hospitals in the urban area continue to have their wage index value calculated as if no reclassifications have occurred. Also, if excluding the wage data for reclassified hospitals from an urban area located in a State that is comprised of a single urban area (for example, Rhode Island) reduces the wage index value, the hospitals in that area continue to have their wage index value calculated as if no reclassifications had occurred.

Comment: One commenter noted that hospitals have 45 days from publication of the proposed rule to withdraw their applications for geographic reclassification. The commenter asserted that since changes may occur in the wage index values between the publication of the proposed rule and the final rule due to editing and the

correction of errors in the FY 1990 data, hospitals should be permitted to withdraw their applications up to October 1, 1993 or the effective date of the wage index, whichever is later. The commenter believes this would have little effect on the budget neutrality adjustment required by statute.

Response: We believe that the proposed rule constitutes the latest feasible resource for providing hospitals with the necessary information to decide whether to withdraw requests for reclassification. We recognize that the proposed wage index values will change slightly as a result of withdrawal requests, the effect of any decisions by the MGCRB or the Administrator that were not issued in time to be taken into account in the proposed rule, and the effect of any further corrections to the wage data.

However, even if withdrawals after the 45-day deadline had no impact on the budget neutrality adjustment, they would have a direct impact on the area wage index values both for the area in which the hospital is located and the area to which it had previously been reclassified. Therefore, we cannot extend the 45-day deadline, because doing so would not provide reasonable time to take withdrawals into account in the development of the final wage index and prospective payment system rates. Moreover, if we allowed withdrawals up to October 1, 1993, hospitals would no longer be able to use the data in this rule to file MGCRB applications by October 1, 1993, because both the wage indexes and the average hourly wages would change as a result of the withdrawals. We note that although hospitals are permitted to withdraw their applications for reclassification at any time during the 45-day period, if an MGCRB decision has already been made, a hospital that requests that its application be withdrawn may not request that the MGCRB decision be reinstated after publication of the prospective payment system final rule.

G. Options for Phasing In the New Wage Index

Since FY 1991, the hospital wage index has been based on 1988 wage survey data. When we updated the wage index for FY 1991 to base it on the 1988 data, we proposed to limit the change in the wage index value of any labor market area whose wage index value would have changed more than 10 percent (55 FR 19445). Specifically, we proposed to limit the change in the wage index value to 10 percent plus half of the change above 10 percent. At that time, there were 38 labor market areas that would have been subject to the proposed limit, 23 of which faced more than a 10 percent decrease in their wage index value. In our September 4, 1990 final rule (55 FR 36041), we limited the change (in response to public comment) to 8 percent plus half the change above 8 percent.

Subsequently, section 4002(d)(1)(A) of Public Law 101-508, enacted November 5, 1990, delayed implementation of the updated wage data for 3 months. Further, section 4002(d)(1)(B) of Public Law 101-508 specified that the wage index used for payments for discharges occurring on or after January 1, 1991 was to be calculated using only data from the 1988 wage survey. For FY 1991 payments, the effect of these two provisions was essentially to provide hospitals with a blend of 25 percent 1984 wage data and 75 percent 1988 wage data.

Section 1886(d)(3)(E) of the Act requires the Secretary to update the wage index annually beginning October 1, 1993. Given concerns about the redistributional effect on payments to hospitals that result from updated wage data, we examined whether a phase-in of the updated wage data for FY 1994 would be appropriate. However, a phase-in of the FY 1994 wage index based on FY 1990 data is more complicated than a phase-in of the FY 1991 wage index because of the effects the new MSA definitions and geographic reclassifications by the MGCRB.

As discussed in detail in the proposed rule (58 FR 30240), we do not believe it would be appropriate to phase in the changes in MSA definitions and the geographic reclassifications. The statute provides for hospital payments based on geographic location unless the hospital has been reclassified by the MGCRB or is subject to section 1886(d)(8) of the Act. In addition, we do not believe it is appropriate to provide additional payments to hospitals no longer reclassified by the MGCRB or to limit payments to newly reclassified hospitals, which would occur under any hospital-level phase-in of the new wage index values. We explored three options for implementing the updated wage data and solicited comments in the proposed rule. The first option was to implement the new wage index without any phase-in. The second option was to blend the wage index values for each labor market area, using 50 percent of a wage index based on 1988 survey data and 50 percent of a wage index based on FY 1990 wage data. Both wage indexes under this option would be calculated using the revised MSA definitions and FY 1994 geographic reclassifications. In this way, the changes in geographic reclassification and the MSA changes would be fully accounted for in the wage index and would not be phased in; only the updated wage data would be phased in. Finally, we explored placing a cap of 10 percent on the maximum change in wage index value that hospitals in a given labor market area could experience due to the new wage data.

We proposed to implement the FY 1990 wage data without any phase-in. Given our statutory obligation to update the wage index annually to reflect updated wage data, we continue to believe the most recent data are the most accurate and therefore, the most appropriate data to construct the wage index. As noted in the proposed rule, the effects of the updated wage index on hospitals under each of the MSA-level phase-in options are not significantly different, and the number of area-level wage index values with substantial changes are much fewer than for the FY 1991 wage index update. After consideration of the phase-in alternatives, we proposed not to phase in the FY 1994 wage index, but solicited public comments on this issue.

Comment: We received several comments regarding a possible phase-in of the wage index. A few commenters urged that we use a 50-50 blend of the final wage index used for FY 1993 and the FY 1994 wage index constructed as in the proposed rule. These commenters cited overall data errors and reporting inconsistencies as a reason for supporting a phase-in. Several commenters urged that the new MSA definitions be implemented immediately, but that the 1988 wage survey data and the FY 1990 cost report data be used in a blend. All of these commenters believe that their preferred blend option would lessen the impact of the new wage index and help to ensure the financial stability of hospitals. Other commenters supported our proposed approach advocating the immediate use of the FY 1990 wage data and the new MSA definitions, without any phase-in.

Response: We believe that the FY 1990 data is much more accurate than any we have used previously and that a phase-in, which would continue the use of data that is now 6 years old, would be inappropriate when more recent data are available. The FY 1990 data have been subjected to comprehensive edits and revisions, both before and after the publication of the proposed rule. We are confident that this process has produced accurate data and a wage index that reflect relative hospital labor costs.

With regard to the commenters' concerns regarding reporting

consistency, although we cannot ensure complete intermediary consistency during the data review and audit process, we believe that application of the reporting rules by intermediaries has been more consistent than ever. As discussed in detail above, we have established comprehensive procedures to ensure that the data we used to develop the final wage index were accurate.

Finally, we note that the number of hospitals facing large increases or decreases in their wage index values due to the implementation of the new wage index is less than in the proposed rule, due to the data correction process. Two hundred eighty-one hospitals have a wage index value that is more than 10 percent lower than their current wage index, compared with 330 such hospitals based on the wage index in the proposed rule. We note that most of these large decreases were attributable to hospitals that lost their wage index reclassifications in FY 1994 after application of the revised MGCRB guidelines. In fact, only 25 of the hospitals had large decreases in their wage index value that were not attributable to a change in their reclassification status. In addition, the number of hospitals with a wage index value increase of more than 10 percent has also declined, from 217 hospitals in the proposed rule to 165 hospitals (134 of which did not change wage index reclassification status) in this final rule. Further, the number of hospitals facing a reduction in their wage index values of between 5 and 10 percent has declined from 721 to 652, while the number facing an increase of between 5 and 10 percent has remained essentially unchanged (from 211 hospitals in the proposed rule to 208 hospitals based on the final wage index).

For all of these reasons, we do not believe a phase-in of the wage index is necessary. The new data are more reflective of hospitals' current labor market situations than the 1988 wage data, and we do not believe we should continue to use older data when more recent data are available. In addition, as noted, the number of hospitals and labor market areas facing large changes in wage index value has decreased from the proposed rule.

Comment: One commenter opposes the continued use of the hospital wage index to adjust hospital prospective payments. This commenter believes that the volatility of the wage index indicates that hospitals that have refused to change inefficient behaviors are being rewarded, rather than differences in labor market characteristics.

Response: We disagree with the commenter. Section 1886(d)(3)(E) of the Act specifically requires that we adjust hospital payments to reflect area wage differences. Moreover, we believe that there are continuing, substantial differences in the labor costs that hospitals face that are beyond the control of those hospitals. For example, we believe that wages in New York City, New York, are higher than those in Dothan, Alabama for reasons other than the labor cost inefficiency of New York City hospitals.

The differences in labor costs across the country (as shown by the wide variation in wage index values) arise from a variety of factors. Different costs of living (as in the Dothan, AL and New York City example) are reflected in overall wage rates. In addition, competitive forces in different labor market areas, even with the same general cost of living, will result in disparate wage rates for certain classes of employees that are beyond the control of employers. The nursing shortages that have occurred in different parts of the country over the past several years are just one hospital-industry specific example. Further, as the general economy of a region fares better or worse, labor costs will vary as well.

If the commenter's views were accurate, labor market areas would have to be substantially or completely composed of inefficient hospitals (in the sense of having unnecessarily high labor costs) in order to reward hospitals for their inefficiency. An inefficient hospital in a labor market area composed of otherwise efficient hospitals would result in a wage index value for the area that would be slightly higher than necessary to compensate the majority of the hospitals in the labor market area for their labor costs, but that would be a great deal lower than that necessary to compensate the hospital with the inefficiently high labor costs. We believe that changes in wage index values are primarily due to changes in the labor market conditions that hospitals face. There is no evidence that wage fluctuations across areas are caused by inefficiencies, nor does the commenter provide any such evidence. We are, however, examining alternative labor market area definitions (as described in the proposed rule at 58 FR 30242).

H. Future Updates to Labor Market Areas

As discussed in section III.B above, the proposed FY 1994 wage index incorporates the labor market areas that result from OMB's revised MSA definitions based on the 1990 census data. The Prospective Payment Assessment Commission (ProPAC) has recommended that the Secretary substantially revise the hospital wage index under the prospective payment system for FY 1994 (Recommendation 11). Specifically, ProPAC recommends that we develop hospital-specific labor market areas based on geographic proximity, using each hospital's "nearest neighbors" for purposes of a revised wage index. An example studied by ProPAC was to establish each hospital's labor market area based on its 10 nearest neighbors within a 50-mile radius. ProPAC has also recommended that if HCFA is unable to implement a wage index using hospital-specific labor market areas in FY 1994, Congress should freeze the current wage index (and the wage index reclassifications approved for FY 1993).

As stated in the proposed rule, we do not believe it would be feasible or advisable to attempt to implement ProPAC's recommendation in FY 1994. Although we recognize that ProPAC's recommendation may have promise, we believe that careful analysis of the impact of such a proposal on hospitals is necessary before proposing to adopt such a significant change. In addition, there are also a number of administrative issues that must be carefully considered before ProPAC's proposal could be implemented, including the possible development of an exceptions or appeals process to resolve disputes concerning the labor market areas. Therefore, to facilitate a thorough analysis of ProPAC's proposal, we published in the proposed rule hospital-specific wage index values using ProPAC's data on hospital locations and the new FY 1990 hospital wage data (Appendix F). The tables indicate what each hospital's wage index value would be if the wage index were based on the wage data for the hospital and its 10 nearest neighbors up to a radius of 50 air miles. The tables also show which hospitals are in each hospital's labor market area based on ProPAC's data base. Subsequently, we discovered a technical error in the wage index values and republished a revised wage index value for each hospital in a correction notice issued June 29, 1993 (58 FR 34742).

We solicited public comments on the feasibility of ProPAC's proposal and suggestions concerning the development of an exceptions or appeals process, if appropriate, for possible implementation in FY 1995. We also solicited comments on a number of other issues such as the feasibility of using road miles instead of air miles, a process to use to verify hospital's

locations, and what the process should be to establish a wage index for new hospitals. We stated that we planned to continue our analysis of alternatives based on the current MSA based system that have appeared promising in the past, and that we planned to evaluate all potential labor market revisions using the same basic criteria. Comments on these issues were due to HCFA by August 31, 1993.

Comment: We have already received a number of comments dealing with the substance of the nearest neighbor proposal. We will not address those at this time because the deadline for comments was not until August 31, 1993. However, some commenters have stated that they are unable to comment meaningfully on the information we have published because of the errors in hospital location as determined in ProPAC's data base. Commenters also asserted that since ProPAC is conducting additional research on various aspects of the nearest neighbor proposal, the data we used to calculate the nearest neighbor hypothetical wage index values do not reflect ProPAC's final recommendation. One commenter stated that since we had published revised wage index values, HCFA should allow additional time for the public to submit comments. Another commenter suggested that in publishing a proposal for new labor market configurations, HCFA should make relevant supporting data (such as the address and longitude and latitude used for each hospital) readily available to the public and establish a process to be used to correct errors in the data. Some commenters noted that the point at which a hospital's longitude and latitude is taken could make a difference in determining if a hospital is included in a given labor market area. One commenter suggested that after ProPAC makes its final proposal that HCFA should publish the wage index values that would result from every alternative developed by ProPAC and give hospitals 90 days to comment.

Response: ProPAC recommended in its March 1, 1993 report that HCFA adopt its nearest neighbor proposal for implementation in FY 1994. For the reasons we outlined in the May 26, 1993 proposed rule, we do not believe it is feasible to do so for FY 1994 (58 FR 30242). However, because we believe that the proposal may have merit, we published hypothetical wage index values for every prospective payment system hospital on which we were given data in order to give the public time to study the proposal.

Regarding commenters concern about errors in ProPAC's database, we were aware that ProPAC's hospital location data base had not been verified. Thus, we stated in the proposed rule that "The determination of which hospitals comprise each hospital-specific labor market area is based on ProPAC's data base and has not been verified. Prior to implementation of hospital-specific labor market areas, we would verify the location of all hospitals." (58 FR 30242). In another section we asked for comments on the preferred process for verifying a hospital's location and noted that for large campuses a reference point would be needed to determine a hospital's longitude and latitude. We also noted that ProPAC had used six different data bases to develop its hospital location file. We cannot correct the hospital location file until we determine how to verify hospital location so that a consistent process can be used for every prospective payment system hospital. We gave the public an opportunity to comment on the issues involved in verifying hospital locations as well as other aspects of our labor market research because we believe it is important to allow the public to participate in the initial stages of our research. Public comment will also give us an indication of the extent of the errors in the data base.

In response to the commenter that requested additional time to study the revised wage data, we note that the correction notice was published June 29, 1993 and that comments were not due until August 31, 1993. Moreover, the correction notice only revised the wage index values, not the list of hospitals' nearest neighbors that was originally published. Thus, the public has had an additional month to analyze that aspect of the proposal, and we believe this constitutes ample opportunity for analysis and comment.

As outlined in the proposed rule, our plan is to analyze the comments we receive as well as to conduct the research we have outlined. We will also continue to consult with ProPAC and will study any additional information they develop. If the nearest neighbor wage index appears promising, we will develop and carry out a process to verify hospital locations in conjunction with the fiscal intermediaries and hospitals. Based on the information we receive, we may publish a proposal for revised labor market areas in the Spring of 1994 for public comment. We would include information describing all aspects of our proposal, and the public would have an opportunity to comment. We would consider all comments before issuing a final rule for implementation.

IV. Other Changes to the Prospective Payment System for Inpatient Operating Costs

A. Payment for Blood Clotting Factor for Hemophilia Inpatients (§§ 412.2 and 412.115)

Hemophilia is a blood disorder characterized by prolonged coagulation time, caused by an inherited deficiency of a factor in plasma necessary for blood to clot. Hemophilia encompasses three conditions: Factor VIII deficiency (classical hemophilia); Factor IX deficiency (plasma thromboplastin component); and Von Willebrand's disease. The most common factors required by hemophiliacs to increase coagulation are Factor VIII and Factor IX; a small number of hemophiliacs have developed inhibitors to these factors and require special treatment.

Under section 6011 of Public Law 101–239, Congress amended section 1886(a)(4) of the Act to provide that prospective payment hospitals receive an additional payment for the costs of administering blood clotting factor to Medicare hemophiliacs who are hospital inpatients. This add-on payment was effective for blood clotting factor furnished on or after June 19, 1990, and before December 19, 1991. We addressed the issue of payment for Medicare inpatients with hemophilia who require blood clotting factors in detail in the April 20, 1990 final rule with comment period (55 FR 15157), the September 4, 1990, final rule (55 FR 36000), and the final rule published August 30, 1991 (56 FR 43223). Section 13505 of Public Law 103–66 amended section 6011(d) of Public Law 101–239 to extend the period covered by the add-on payment for blood clotting factors administered to Medicare inpatients with hemophilia through September 30, 1994. Thus, section 6011 of Public Law 101–239 as amended provides for additional payment to be made to hospitals under the prospective payment system for the administration of blood clotting factor to Medicare hospital inpatients who have hemophilia for discharges occurring on or after June 19, 1990, and before October 1, 1994.

We are calculating the add-on payment for the extended period of applicability using the same methodology we used in FYs 1990, 1991, and 1992. The payment for blood clotting factor is based on a predetermined price per unit of clotting factor multiplied by the number of units provided. We establish a price per unit of clotting factor based on the most current price listing available from the Drug Topics Red Book, the publication

of pharmaceutical average wholesale prices (AWP). We set three separate add-on amounts, one for each of the three basic types of clotting factor. The add-on payment amount for each of the three factor types is based on the median AWP of the several products available in that category of factor, discounted by 15 percent.

To account for new products, the discontinuation of existing products, and other changes affecting the price of these factors, we reevaluate the price per unit for blood clotting factors for each Federal fiscal year based on the most current Drug Topics Red Book. In the August 30, 1991 final rule, we calculated updated prices for FY 1992 effective with discharges occurring on or after October 1, 1991, as follows:

Factor VIII	$0.72 per unit
Factor IX	0.26 per unit
Other Hemophilia Blood Clotting Factor	1.11 per unit

Given the extension of coverage under section 13505 of Public Law 103–66 for the add-on payment, the above prices remain in effect for discharges occurring in FY 1992; that is, from October 1, 1991 through September 30, 1992.

Due to the retroactive application of section 13505 of Public Law 103–66, we must calculate add-on payment prices for both FYs 1993 and 1994. We followed our past practice and set separate prices for each of those Federal fiscal years using the most recent Drug Topics Red Book. Thus, for discharges occurring in FY 1993, we calculated the price per unit of blood clotting factor based on the 1992 Drug Topics Red Book. Following the same methodology, that is, identifying the median price in the range of a specific factor type discounted by 15 percent, we are establishing the following prices per unit effective for discharges occurring in FY 1993 (October 1, 1992, through September 30, 1993):

Factor VIII	$0.76 per unit
Factor IX	0.30 per unit
Other Hemophilia Blood Clotting Factor	1.02 per unit

For discharges occurring during FY 1994, following the AWP guidelines in the 1993 Drug Topics Red Book, the updated prices per unit of factor are as follows:

Factor VIII	$0.76 per unit
Factor IX	0.33 per unit
Other Hemophilia Blood Clotting Factor	1.02 per unit

These prices will be effective for add-on payment for blood clotting factor administered to inpatients who have hemophilia for discharges beginning on or after October 1, 1993, through September 30, 1994.

As determined in prior years, we included in the category "Other" those new products that were most similar in terms of cost and effectiveness.

When the add-on payment for blood clotting factors was first implemented, specific codes were developed to identify these factors. (See the April 20, 1990, final rule with comment period (55 FR 15159).) We intend to use these same codes for both the retroactive and prospective periods covered by section 6011 of Public Law 101–239, as amended.

Because these codes were not required to be included on hospital inpatient claims for discharges occurring on or after December 19, 1991, hospitals that wish to receive payment for blood clotting factor provided to hemophiliacs will have to submit amended bills for discharges occurring on or after that date.

We will re-issue instructions to Medicare hospitals and fiscal intermediaries concerning the codes to use for clotting factor and how to use them. We note that payment will be made for blood clotting factor only if there is an ICD–9–CM diagnosis code for hemophilia included on the bill.

We have revised §§ 412.2(f)(8) and 412.115(b) to reflect the new effective date.

B. Outlier Payments for Transfer Cases (§ 412.4)

Since a Medicare discharge is the basis of payment under the prospective payment system, it is necessary to distinguish between discharges in which a patient has received complete treatment and discharges in which the patient is transferred to another acute care hospital for related care. If a full DRG payment were made to each hospital involved in a transfer situation regardless of the length of time the patient spent in the sending hospital before transfer, there would be a strong incentive to increase transfers, thereby unnecessarily endangering patients' health. Therefore, in a transfer situation, the regulations at § 412.4(d) provide that full payment is made to the final discharging hospital and each transferring hospital is paid a per diem rate for each day of the stay, not to exceed the full DRG payment that would have been made if the patient had been discharged without being transferred. The per diem rate is determined by dividing the full DRG payment that would have been paid in a nontransfer situation by the geometric mean length-of-stay for the DRG into which the case falls. Two exceptions to the transfer payment policy are transfer cases classified into DRG 385 (Neonates, Died or Transferred to Another Acute Care Facility) or DRG 456 (Burns, Transferred to Another Acute Care Facility), which are not paid on a per diem basis but receive the full DRG payment instead.

Transferring hospitals are also eligible for outlier payments for cases that meet the cost outlier criteria established for all other cases classified to the DRG. They are not, however, eligible for day outlier payments.

Since the inception of the prospective payment system, there has been concern that the flat per diem payment fails to account for the likelihood that the beginning of a patient's hospitalization is the most resource intensive portion of the stay. Thus, comments received in response to the September 1, 1983 interim final rule, which first implemented the prospective payment system, recommended that the transferring hospital should receive either the full DRG amount or should be paid on a sliding scale to reflect the higher costs of the first few days of a patient's stay. Our response at that time was that little or no data were provided in support of this position and that we believed that in many cases the bulk of a patient's treatment is received after the patient is transferred (49 FR 245, January 3, 1984).

In response to the requirement of section 9113 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272), we prepared a report to Congress on the impact of outlier and transfer payment policy on rural hospitals (Review of the Impact of Outlier and Transfer Payment Policies Upon Rural Hospitals, May 1988). In this report, we examined the appropriateness of transfer payment policy for cases categorized by their length-of-stay at the transferring hospital. We found that, for transfer cases, the ratios of per diem payments to total charges were actually highest for cases with the shortest lengths-of-stay and, therefore, we recommended no changes in the per diem payment methodology.

In its March 1, 1992 Report to Congress, ProPAC recommended that the flat per diem methodology should be replaced with a graduated per diem methodology in order to recognize the higher daily costs associated with the first few days in a patient's stay. This recommendation has been repeated in the March 1, 1993 ProPAC report (Recommendation 16). In its reports, ProPAC cites a study conducted by RAND as evidence that average daily costs are highest during the first part of a patient's stay ("How Services and Costs Vary by Day of Stay for Medicare

Hospital Stays," RAND Report No. R–3870–ProPAC, March 1990). In response to the March 1, 1992 recommendation, we noted in the September 1, 1992 final rule (57 FR 39808) that RAND's study was not designed to evaluate transfer payment policy and included nontransfer cases in the analysis. Therefore, we did not implement ProPAC's recommendation because, among other things, the RAND report findings and the findings of our 1988 report did not agree. However, we stated that we would continue to examine transfer payment alternatives.

In order to analyze whether costs for transfer cases are indeed higher during the first few days of hospitalization prior to transfer, we contracted with RAND to conduct a study of Medicare transfer cases (contract number 500–92–0023). This analysis examined the characteristics of cases identified in the FY 1991 MedPAR file as transfers by their discharge destination. Using this criterion, the percentage of all cases identified as transfers was 2.75 percent. The percentage of rural cases that were transfers was 5.10 percent.

Prior to analyzing the per diem costs of transfer cases, RAND first examined the DRG-adjusted average costs of hospitals with a high proportion of transfers relative to other hospitals in order to determine whether these hospitals had higher overall costs per case. Rural hospitals above the 75th percentile in terms of their proportion of transfer cases had costs per case very similar to the average cost per case for all rural hospitals. The average cost per case for urban hospitals above the 75th percentile was below the average for all urban hospitals.

Having established that hospitals with the greatest proportions of transfer cases do not have a pattern of costs that are in excess of the average, the analysis turned to determining whether transfer cases are adequately compensated under the current payment methodology. The analysis separately examined transfers paid using the per diem method (cases where the patient was transferred prior to reaching the geometric mean length-of-stay) and transfer cases paid the full DRG amount (length-of-stay prior to transfer was equal to or greater than the geometric mean). Approximately 64 percent of the transfers examined were paid on the per diem basis. When RAND estimated payments for these transfer cases, the result was a ratio of Medicare payments to costs among transfer cases paid a per diem of 0.7221. However, among transfer cases receiving the full DRG amount, the ratio was only 0.6203. The ratio for all cases (transfer and nontransfer) was 0.9592 and for nontransfer cases it was 0.9665.

Dividing transfers into those with lengths of stay less than or greater than the geometric mean indicates not only that the payment-to-cost ratio for transfer cases is substantially less than the ratio for nontransfer cases, but also that, even for transfer cases receiving the full DRG amount, payments are, on average, much less than costs. Since transfer cases with length of stay equal to or longer than the geometric mean for the DRG receive the full DRG payment, revising the per diem payment methodology will not improve the payment-to-cost ratios for these cases. As we stated in the proposed rule, RAND's analysis is exploring all aspects of Medicare policy pertaining to transfer cases, including these cases, and we will continue to analyze appropriate policy changes.

Comparing the per diem payment based on geometric mean length of stay (our current policy) among cases that are transferred prior to reaching the geometric mean length of stay, RAND found that the first day of a stay costs a little over twice the per diem payment amount for cases in medical DRGs, and two-and-one-half times the per diem payment amount for cases in surgical DRGs (less than 1 percent of all cases classified to surgical DRGs are transfers). Among medical DRG transfer cases, the costs of the second day of a stay are about 20 percent higher than the applicable per diem payment amount, and each succeeding day costs about 10 percent more than the applicable per diem amount. Among surgical cases, the costs of each day after the first day are actually below the applicable per diem amount.

To evaluate the impact of replacing the flat per diem methodology with one designed to reflect the observed relationship between costs and the first few days of hospitalization, RAND simulated a transfer payment methodology that multiplies the flat per diem amounts by the coefficients referred to above. The improvement in payment-to-cost ratios was significant, from 0.7221 under current policy to 0.9719 using the scaled per diem. As part of its analysis, RAND also simulated the impacts of a transfer payment policy that would pay twice the per diem for the first day of hospitalization and a flat per diem after that. The results were similar to those using the per diem coefficients described above.

However, the effect of a graduated per diem on payment-to-cost ratios is not the only issue. Another consideration is the need to specify the transfer payment formula so as to fairly pay for these cases without creating an adverse impact on the incentives to provide appropriate care. While there is some concern that the current payment methodology discourages transfers due to the flat per diem payments, shifting the payments too much towards the first few days of hospitalization could actually encourage inappropriate transfers. Because of this, we intend to thoroughly analyze the various options and the resulting payments before making a change in our current transfer policy.

We note that ProPAC, in its March 1, 1993 report, recommended that Congress provide authority to the Secretary to implement a graduated per diem in a budget neutral manner. To implement the per diem coefficients in a budget neutral manner by offsetting the standardized amounts by a factor reflecting the additional payments made to short-stay transfer cases, RAND estimates a reduction in the standardized amounts of 0.32 percent would be necessary.

Transferring hospitals are also eligible to receive payments for cost outliers. Currently, in order to qualify, these cases must meet the same thresholds as nontransfer cases. Since cases transferred prior to reaching the geometric mean length-of-stay are paid less than the full DRG amount, they must incur much larger losses relative to their payments before qualifying for outlier payments. For example, using the FY 1993 cost outlier thresholds (the greater of 2.0 times the prospective payment rate for the DRG or $35,500), a discharge classified to a DRG with a prospective payment rate of $10,000 (geometric mean length-of-stay of 5 days) would have to incur a loss of at least $25,500 to qualify for outlier payments. However, a transfer classified to this same DRG that was sent to another hospital after 1 day would receive $2,000 under the per diem payment and would have to incur a loss of at least $33,500 to qualify for outlier payments. The loss prior to receiving any outlier payments is much greater for the transfer case ($2,000/$35,500 or a 0.0563 payment-to-cost ratio) than for the discharge case ($10,000/$35,500 or a 0.2817 payment-to-cost ratio).

For cases transferred prior to reaching the DRG geometric mean length-of-stay, we proposed that the cost outlier thresholds for such cases be set based on the per diem payment rate instead of the prospective payment rate for the DRG. For example, if the proposed methodology had been in place in FY 1993, the FY 1993 cost outlier thresholds for transfer cases would have

been the greater of: (1) 2.0 times the total per diem payment rate for the DRG or, (2) $35,500 divided by the geometric mean length-of-stay for the DRG, multiplied by the length-of-stay prior to transfer. (The FY 1994 thresholds are discussed in section II.A.4.d.ii. of the addendum to this preamble.) Under this method, using the FY 1993 cost outlier thresholds, the proportional loss for a transfer case would be identical to that for a discharge in the same DRG. Using the example described above, the fixed threshold for the transfer case will be reduced to $7,100 ($35,500/5), and the payment-to-cost ratio will rise to 0.2817 ($2,000/$7,100).

RAND estimated the impact upon transfer cases of this change. Under the current policy, only 1.35 percent of transfer cases qualify for cost outlier payments, and only 0.05 percent of transfers that are paid the per diem qualify for outlier payments. (Of transfers paid the full DRG amount, 3.63 percent meet the thresholds.) Under the per diem thresholds described above, 3.17 percent of transfer cases will qualify for cost outlier payments, including 2.93 percent of transfers paid using per diem and 3.17 percent of transfers paid the full DRG amount. The overall impact of this change on transfers paid the per diem rate is to increase the average payment per transfer case for outliers from $9 to $66. As a result of this change, the simulated average payment-to-cost ratio of transfers paid the per diem rises to 0.7417.

We are continuing to work with RAND to evaluate all aspects of transfer payment policy, including the impact on receiving hospitals of accepting transfers and the incentive to transfer patients back to community hospitals for recuperative care. We anticipate receiving the results of this analysis later this year.

Comment: In its comments, ProPAC supported our proposal that the cost outlier thresholds for transfer cases be based on the per diem payment rate instead of the prospective payment rate for the applicable DRG, noting that currently, transfer cases must incur much larger losses relative to their payments before qualifying for outlier payments. All other comments we received regarding this proposal were also supportive.

Response: We agree that this change in policy represents a significant improvement in case-level payment equity. Although the overall effect on transfer cases paid the per diem is marginal (a 2.7 percent improvement in their payment-to-cost ratios), the impact on individual cases can be significant.

Comment: Three commenters objected to our proposal not to implement a change in the transfer per diem payment methodology at this time. One commenter found unwarranted our concern that any new per diem payment methodology might create an incentive to transfer patients unnecessarily. This commenter pointed out that hospitals do not control transfers, rather physicians and family members dictate the appropriateness of a transfer. Another commenter contended that it is unlikely that hospitals would transfer patients based on the desire to receive a higher Medicare payment. The third commenter did not understand how more closely equating the payment-to-cost ratio of transfers paid the per diem to that of nontransfer cases would increase any adverse incentives that already exist.

Although ProPAC did not express an objection to our decision not to propose such a change for FY 1994, it did indicate its belief that the payment methodology analyzed by RAND will not result in inappropriate transfers. On the other hand, a major national hospital association recommended that we continue our work toward assuring that transfer payment policy provide proper incentives to both transferring and receiving hospitals.

Response: We continue to believe that it is appropriate to minimize any financial incentive created by the transfer payment methodology either to not transfer patients appropriately or to transfer patients inappropriately. We also believe that the commenters understate the role of hospital financial incentives in the decision to transfer a patient. We note that ProPAC, in its March 1, 1993, report, expressed the need for further examination of whether hospitals currently have the appropriate incentive to transfer patients, particularly for recuperative care. Also, as noted above, a national hospital association indicated its concern that transfer payment policy provide proper incentives. While we do not believe that financial impact is paramount among the factors influencing the decision of whether to transfer patients, we do believe they can be a significant consideration.

The current methodology was designed to be neutral in terms of these incentives, absent evidence that the costs per day of a transfer case are not evenly distributed throughout the stay. However, analyses by RAND and ProPAC indicate that transfer cases appear systematically to be paid less relative to their costs compared to nontransfer cases. We are concerned that this creates a significant adverse incentive against appropriately transferring patients, and thus we are examining alternatives that would both improve upon current payment equity and minimize the financial implications of the decision to transfer a patient.

The issue is more complicated, however, than suggested by the third commenter, who questions why equal payment-to-cost ratios for transfer and nontransfer cases would create adverse financial incentives. To illustrate, RAND simulated a graduated transfer payment methodology that resulted in payment-to-cost ratios for transfers roughly equal to those of nontransfers. (After publication of the proposed rule, RAND published its final report, with slightly different payment amounts from the preliminary results relied on for the proposed rule. "An Evaluation of Medicare Payments for Transfer Cases," RAND Report No. MR–304–HCFA.) The average payment-to-cost ratio using the graduated per diem methodology for transfers paid the per diem was 0.9722, compared to 0.9719 in the proposed rule. The ratio for nontransfers (0.9665) was unaffected.) Under this methodology (which used a per diem amount calculated by dividing the full DRG amount by the arithmetic mean length-of-stay rather than the smaller geometric mean length-of-stay), transfers assigned to medical DRGs were paid 2.69 times the per diem amount for the first day, 1.55 times the per diem amount for the second day, and 1.37 times the per diem amount for subsequent days, until the full DRG amount is reached. Although this methodology improves upon current payment equity for transfer cases by paying higher amounts for cases transferred within the first day or two after admission, we have several concerns regarding its application for payment policy.

First, as with any such estimate, the coefficients are dependent on the specification of the model and the data employed. Ensuring the continued validity of the per diem weighting factors would require frequent reestimation as other payment parameters change and more recent data become available. Second, we are concerned that weighting the per diem amounts by the coefficients directly from the regression may overstate the precision of the estimates of costs per day prior to transfer. Because available data do not attribute charges or costs to a particular day, the estimated costs for each additional day reflect the incrementally higher costs per case compared to transfers occurring one day earlier. If, in transfers occurring after three or more days, for example, costs

per day were more evenly distributed than the per diem payments, the higher payments of the first day or two may generate an incentive to transfer the patient prior to the point at which costs equal payments.

While we do not believe that hospitals are driven to either transfer or not transfer patients for purely financial reasons, and the results of the analyses by RAND and ProPAC clearly demonstrate that cases transferred out are currently underpaid on average, there are also significant unresolved issues at this time in terms of developing a graduated per diem payment methodology. We intend to evaluate further the issues discussed above, as well as RAND's findings regarding the costs at the receiving hospital, before making any further changes to transfer payment policy. In addition, as noted above, ProPAC recommends that Congress provide authority to the Secretary to implement future changes in a budget neutral manner, and we intend to seek that authority.

C. Changes to the Update Factors for Federal Rates for Inpatient Operating Costs (§ 412.63)

Public Law 103–66 made several revisions to the applicable percentage change (the update factor) to the Federal rates for prospective payment hospitals. Section 13501(a)(1) of Public Law 103–66 amended section 1886(b)(3)(B)(i) of the Act to provide for reductions in the update factors for the Federal rates for inpatient operating costs for FYs 1994 through 1997. The update factor for FY 1994 is now the market basket rate of increase minus 2.5 percentage points for hospitals located in urban areas and the market basket rate of increase minus 1.0 percentage point for hospitals located in rural areas. For FY 1995, the update for hospitals in urban areas is the market basket rate of increase minus 2.5 percentage points, while the rural update, that is, the update needed to make the rural payment rate equal to the other urban rate) is unchanged. For FY 1996, the update for all areas is the market basket rate of increase minus 2.0 percentage points. For FY 1997, the update for all areas is the market basket rate of increase minus 0.5 percentage point. For FY 1998 and subsequent years, the update for all areas is the market basket rate of increase. The specific updates to be applied for FY 1994 are discussed in the addendum and Appendix C to this document.

In this final rule with comment period, we are making the necessary changes to § 412.63 to implement these provisions.

D. Elimination of the Regional Floor (§ 412.70)

Section 4002(d) of Public Law 100–203 amended section 1886(d)(1)(A)(iii) of the Act to establish a "regional floor" for the prospective payment rate applicable to a hospital, effective for discharges occurring on or after April 1, 1988 and before October 1, 1990. Section 115(b)(1) of Public Law 101–403 (Continuing Appropriations, 1991, enacted on October 1, 1990) amended section 1886(d)(1)(A)(iii) of the Act to extend the regional floor provision through October 20, 1990.

Section 4002(e) of Public Law 101–508 further amended section 1886(d)(1)(A)(iii) of the Act to extend the regional floor provision through discharges occurring before October 1, 1993. In accordance with this section, hospital payments have been based on the greater of the national average standardized amount or the sum of 85 percent of the national average standardized amount and 15 percent of the average standardized amount for the Census region in which they are located. In the proposed rule, we announced that because the statutory authority for the regional floor was to expire on October 1, 1993, we would discontinue its use effective with discharges occurring on or after October 1, 1993. We received a number of comments supporting the continuation of the regional floor. After publication of the proposed rule, Congress enacted Public Law 103–66. Section 13501(f) of that law amended section 1886(d)(1)(A)(iii) of the Act to extend the regional floor provision through September 30, 1996. Therefore, we are revising § 412.70 to reflect the continued use of the regional floor through September 30, 1996.

E. Changes to the Update Factor Applied to Hospital-Specific Rates (§ 412.73)

Under section 1886(b)(3) (C) and (D) of the Act, certain hospitals that qualify as sole community hospitals (SCHs) and Medicare-dependent, small rural hospitals (MDHs) are paid using the higher of their FY 1982 or FY 1987 hospital-specific rate, updated through the current year. Section 13501(a)(2) of Public Law 103–66 amended section 1886(b)(3)(B) of the Act by adding a new paragraph (iv) to specify that, starting in FY 1994, updates to the hospital-specific rates will be made on a Federal fiscal year basis rather than on a cost reporting period basis. That section further states that the FY 1994 update factor will be computed taking into account the portion of the 12-month cost reporting period beginning during FY 1993 that occurred during FY 1994. As a result, the hospital-specific rate will be updated to October 1, 1993 as opposed to the beginning of the cost reporting period that begins in FY 1994.

In order to take into account the portion of the cost reporting period that began in FY 1993 and that occurs during FY 1994, the 1993 update factor used to determine the FY 1994 rate (and future rates) will be deemed to be the update factor necessary to update the hospital-specific rate to October 1, 1993. This will not in any way affect payments during FY 1993; in all cases, the payments for discharges occurring during the portion of FY 1993 that occurred in the cost reporting period that began during FY 1993 will be calculated using the full 1993 update of 4.1 percentage points. The deemed update will be used only to determine the hospital-specific rate starting in FY 1994. The deemed update factors are as follows:

FY 1993 cost reporting period beginning between	Deemed FY 1993 update factor (percent)
10/1/92–10/31/92	4.1000
11/1/92–11/30/92	3.7520
12/1/92–12/31/92	3.4052
1/1/93–1/31/93	3.0595
2/1/93–2/28/93	2.7150
3/1/93–3/31/93	2.3716
4/1/93–4/30/93	2.0294
5/1/93–5/31/93	1.6883
6/1/93–6/30/93	1.3484
7/1/93–7/31/93	1.0096
8/1/93–8/31/93	0.6719
9/1/93–9/30/93	0.3354

We calculated the deemed update factor by compounding the FY 1993 update factor using the number of months of the cost reporting period occurring in FY 1993. We raised 1.041 (the amount applied to the hospital-specific rates for cost reporting periods that began in FY 1993) to a power equal to the number of months in the cost reporting period that occurred during FY 1993 divided by 12, and determined the relevant percentage increase. For instance, for the update factor calculated for cost reporting periods beginning in June 1993, we raised 1.041 to the $^{4}/_{12}$ power, which equals 1.013484. The percentage increase is therefore 1.3484 percent (1.013484 − 1, converted to percentage terms).

In addition, new section 1886(b)(3)(B)(iv) specifies that the update factor for SCHs and MDHs paid using the hospital-specific rate will be the market basket rate of increase minus 2.3 percentage points for FY 1994, the market basket rate of increase minus 2.2 percentage points for FY 1995, and for

FY 1996 and beyond, the market basket rate of increase. The specific updates to be applied for FY 1994 are discussed in the addendum and appendix C to this document.

In this final rule with comment period, we are making the necessary changes to § 412.73 to implement these provisions.

F. Rural Referral Centers (§ 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, § 412.96 sets forth the criteria a hospital must meet in order to receive special treatment under the prospective payment system as a rural referral center (that is, payment is based on the other urban payment rate rather than the rural payment rate). One of the criteria under which a rural hospital may qualify as a referral center is to have 275 or more beds available for use. A rural hospital that does not meet the bed size criterion can qualify as a rural referral center if the hospital meets two mandatory criteria (number of discharges and case-mix index) and at least one of three optional criteria (medical staff, source of inpatients, or volume of referrals). With respect to the two mandatory criteria, a hospital is classified as a rural referral center if its—

- Case-mix index is at least equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- Number of discharges is at least 5,000 discharges per year or, if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (We note that the number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. In determining the proposed national and regional case-mix index values, we followed the same methodology we used in the November 24, 1986 final rule, as set forth in regulations at § 412.96(c)(1)(ii). Therefore, the proposed national case-mix index value included all urban hospitals nationwide, and the proposed regional values were the median values of urban hospitals within each census region, excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.105).

The values in the proposed rule were based on discharges occurring during FY 1992 (October 1, 1991 through September 30, 1992) and included bills posted to HCFA's records through December 1992. Therefore, in addition to meeting other criteria, we proposed that to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 1993, a hospital's case-mix index value for FY 1992 would have to be at least—

- 1.2919; or
- Equal to the median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by HCFA for the census region in which the hospital is located. (See table set forth in the May 26, 1993, proposed rule at 58 FR 30247.)

Based on the latest data available (through June 1993), the final national case-mix value is 1.2944 and the median case-mix values for each region are set forth in the table below:

Region	Case-mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.1863
2. Middle Atlantic (PA, NJ, NY)	1.1923
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.3055
4. East North Central (IL, IN, MI, OH, WI)	1.2224
5. East South Central (AL, KY, MS, TN)	1.2432
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	1.2159
7. West South Central (AR, LA, OK, TX)	1.2892
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.3479
9. Pacific (AK, CA, HI, OR, WA)	1.3039

For the benefit of hospitals seeking to qualify as referral centers or those wishing to know how their case-mix index value compares to the criteria, we are publishing each hospital's FY 1992 case-mix index value in Table 3C in section V of the addendum to this final rule. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

2. Discharges

Section 412.96(c)(2)(i) provides that HCFA will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining referral center status. As specified in section 1886(d)(5)(C)(ii) of the Act, the national standard is set at 5,000 discharges. However, we proposed to update the regional standards. The proposed regional standards were based on discharges for urban hospitals' cost reporting periods that began during FY 1991 (that is, October 1, 1990 through September 30, 1991). That is the latest year for which we have complete discharge data available.

Therefore, in addition to meeting other criteria, we proposed that to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 1993, the number of discharges a hospital must have for its cost reporting period that began during FY 1992 would have to be at least—

- 5,000; or
- Equal to the median number of discharges for urban hospitals in the census region in which the hospital is located. (See table set forth in the May 26, 1993, proposed rule at 58 FR 30247.)

Based on the latest discharge data available, the final median numbers of discharges for urban hospitals by census region are as follows:

Region	Number of discharges
1. New England (CT, ME, MA, NH, RI, VT)	7468
2. Middle Atlantic (PA, NJ, NY)	8749
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	7533
4. East North Central (IL, IN, MI, OH, WI)	7647
5. East South Central (AL, KY, MS, TN)	5875
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	5339
7. West South Central (AR, LA, OK, TX)	5050
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	8257
9. Pacific (AK, CA, HI, OR, WA)	5358

We note that all the regional standards now exceed the national of 5,000. Therefore, 5,000 discharges is now the standard all hospitals will have to meet. We reiterate that, to qualify for rural referral center status for cost reporting periods beginning on or after October 1, 1993, an osteopathic hospital's number of discharges for its cost reporting period that began during FY 1992 would have to be at least 3,000.

Comment: One commenter suggested that we modify the case-mix index values and discharges used to qualify for rural referral center status to reflect the impact of transfer cases. The commenter pointed out that the transfer-adjusted case-mix index and number of discharges values would be more

precise and that since these values are already calculated for capital base-year redeterminations, no additional information would be required.

Response: The commenter has offered an interesting suggestion. However, we believe it would be inappropriate to implement such a change in this final rule. First, the transfer-adjusted case-mix index values and transfer adjustments to discharges that are calculated for capital base-year redetermination are based on individual hospital's fiscal years whereas, for referral center purposes, the case-mix index values for individual hospitals and for the national and regional values are based on Federal fiscal years. Thus, contrary to the commenter's assertion, a separate calculation would be necessary.

In addition, there may be policy reasons arguing against the commenters suggestion. Section 2311(a) of Public Law 98–369 (Deficit Reduction Act of 1984) amended section 1886(d)(5)(C)(i) of the Act by providing that effective October 1, 1984, a rural hospital can seek referral center classification on the basis that certain of its operating characteristics (as determined by the Secretary) are similar to those of a typical urban hospital located in the same census region. Section 9302(d)(1) of Public Law 99-509 (Omnibus Budget Reconciliation Act of 1986) further amended section 1886(d)(5)(C)(i) of the Act by providing that a rural hospital can qualify as a referral center if, in addition to meeting other criteria as required by the Secretary, its case-mix index is equal to or greater than the median case mix index for urban hospitals (other than hospitals with approved teaching programs) located in the same census region, and if it has at least 5,000 (3,000 for rural osteopathic hospitals) discharges a year or, if less, the median number of discharges for urban hospitals in the region in which hospital is located.

Thus, there is an extensive legislative history requiring that referral centers demonstrate that they are similar to either urban hospitals nationwide or to urban hospitals located within the same census region. There is an equally strong indication of Congressional intent that referral centers serve as the resource to which smaller, rural community hospitals may transfer their "sickest" patients; that is, Congressional debates on the rural referral center provision contemplated that such hospitals would be large, technologically sophisticated hospitals serving patients from a diverse geographic area.

Generally we believe that there should be a greater number of patients transferring into referral centers from other hospitals than transferring out to other hospitals. Conversely, in the past, we have found that generally rural hospitals transfer more cases than they receive. To the extent that our premise concerning referral centers is true, any transfer adjustment to discharges might serve to disadvantage a rural hospital seeking referral center status. For rural referral centers seeking to maintain their status, the effects of a transfer adjustment to discharges may or may not be advantageous, since we would also have to apply the transfer adjustment to determine the median number of discharges from urban hospitals nationally and within each census region. Since some of the regional urban median values are very close to the 5,000 national standard, the effect may or may not be significant.

In regard to the impact of transfer cases on case-mix index values, we believe that in most instances the effects of any adjustment will be negligible because, again, we would also adjust for transfers the national and regional case-mix index values for urban hospitals.

Although we are not implementing the commenter's suggestion in this year's final rule, we will consider the effects of such a policy change and, if warranted, may propose a revision in the proposed rule concerning changes to the prospective payment system for FY 1995.

Comment: One commenter stated that, for purposes of determining whether a hospital has 275 beds under § 412.96(b)(1)(ii), we have revised the criterion from an available bed count during the cost reporting period (§ 412.118(b)) to an average for the full cost reporting period (§ 412.105(b)). The commenter states that this method disadvantages hospitals that temporarily close a wing for remodeling and suggests that a hospital be required to maintain an average of 275 beds for only a majority (183 days) of the cost reporting period.

Response: There has been no change in our policy regarding counting days since the bed-count criterion was lowered from 500 to 275 effective for discharges on or after April 1, 1988 (section 4005(d) of Pub. L. 100–203). Section 412.118(b) was redesignated as § 412.105(b) as a part of the FY 1992 final rule (August 30, 1991; 56 FR 43241) and is worded exactly as it was previously. Thus, although the regulation section number changed, the policy did not.

In the September 30, 1988, final rule with comment period (53 FR 38513), we discussed in detail how we would count beds to determine whether a hospital meets the 275-bed criterion. As set forth in that final rule and codified at § 412.96(b)(1)(ii), we allow a hospital attempting to qualify initially for rural referral center status to submit convincing evidence to show that it has increased its bed count since its most recently completed cost reporting period. That is, a hospital may submit documentation to show that its bed count has increased because it transferred a previously excluded unit to prospective payment status; it expanded the number of beds it permanently maintains and has available for patient lodging; it reopened beds previously closed for renovation; or it merged with one or more other hospitals.

We do not allow an existing rural referral center to use these same methods to maintain its referral center status because, as we have previously stated, we believe it is important for a hospital to demonstrate that it has maintained at least 275 beds on average throughout its entire cost reporting period not just for a particular portion of the year, even if portions of the hospital were temporarily closed.

Thus, we do not agree with the commenter's suggestion and are not adopting it.

3. Retention of Referral Center Status

Section 412.96(f) states that each hospital receiving the referral center adjustment is reviewed every 3 years to determine if the hospital continues to meet the criteria for referral center status. To retain status as a referral center, a hospital must meet the criteria for classification as a referral center specified in § 412.96(b)(1) or (b)(2) or (c) for 2 of the last 3 years, or for the current year.

The requirement for triennial review was originally added to the regulations in 1984, to be effective for cost reporting periods beginning on or after October 1, 1987 (the end of the first 3 years of the referral center adjustment). However, two statutory moratoriums on the performance of the triennial reviews were enacted by Congress. The second of these moratoriums expired as of October 1, 1992. Therefore, the first triennial reviews of referral centers were implemented effective with cost reporting periods beginning on or after October 1, 1992. See the June 4, 1992 proposed rule (57 FR 23647) and the September 1, 1992 final rule (57 FR 39787) for a detailed explanation of the moratorium and the implementation of the triennial reviews.

Since publication of the proposed rule on May 26, 1993, Public Law 103–66 was enacted. Section 13501(d)(1) of Public Law 103–66 provides that any hospital that was classified as a rural referral center as of September 30, 1992, will continue to be so classified for the hospital's cost reporting periods beginning during FYs 1993 and 1994, unless the area in which the hospital is located is redesignated as an MSA by OMB for that fiscal year. (See section III.B of this preamble for a detailed discussion of the new MSA designations.)

Therefore, any hospital that lost its referral center status because of its failure to meet the triennial review requirements will be reinstated as a referral center retroactive to the date of termination. Section 13501(d)(3) of Public Law 103–66 provides that a lump-sum retroactive payment be made to the hospital equal to the difference between the aggregate payment made to the hospital under the prospective payment system (excluding outlier payments) and the amount the hospital would have received had its referral center status not been terminated. We have sent instructions to HCFA regional offices to terminate triennial review and to reinstate referral center status to all hospitals that were terminated. We are issuing separate instructions to the Medicare fiscal intermediaries concerning the calculation of the lump-sum retroactive payment due each affected referral center and will issue payment as soon as possible.

Some referral centers, anticipating the loss of the referral center adjustment during FY 1993 because of failure to meet the triennial review criteria, sought and were approved for reclassification of their standardized amounts to urban areas through the MGCRB. Normally, hospitals approved for reclassification have only 45 days from the date of the proposed rule to withdraw their request. However, because of the retroactive reinstatement of referral center status, the law provides that hospitals in this situation may retroactively withdraw their requests for reclassification. That is, section 13501(d)(2) of Public Law 103–66 provides that, should any hospital fail to qualify for reinstatement as a referral center due to its reclassification to an urban area by the MGCRB for its standardized amount for FY 1993 or 1994, or both, the hospital must be notified of its failure to requalify for referral center status and be given the opportunity to decline reclassification retroactively.

Generally, because a redesignated hospital received payment at the same rate it would have had it remained a referral center (that is, using the other urban standardized amount), any retroactive payment amounts will be minimal. If the hospital elects to decline reclassification, its referral center status will be reinstated back to the date it was terminated and payment will be calculated (including the lump-sum amount) as if the reclassification had never occurred. If the hospital elects to retain its reclassification, it will be considered to have voluntarily terminated its referral center status effective with the date of its reclassification or effective with the date it lost its referral center status because of triennial review, whichever is earlier. (See the August 30, 1991, final rule (56 FR 43200–43202) for a full discussion of the impact of geographic reclassification of the standardized amount on referral center status.)

We have revised § 412.96(g)(2) to reflect the extension of rural referral center status and the moratorium on triennial review.

Comment: We received one comment suggesting that we eliminate the triennial review requirement and that all referral centers keep their status for at least another 2 years.

Response: Because of the enactment of section 13501(d) of Public Law 103–66, as discussed above, the commenter's suggestion is made moot.

G. Hospitals in Areas Redesignated as Rural (§ 412.102)

On December 28, 1992, the Office of Management and Budget (OMB) announced revisions to the Metropolitan Statistical Area (MSA) definitions based on 1990 census data. As a result, 20 counties that were previously part of MSAs lost their urban status and are now part of a rural area. However, on June 30, 1993, OMB announced further revisions to the MSA definitions. As a result, urban status has been restored to 5 of the affected counties. Therefore, beginning October 1, 1993, the date on which the new MSA definitions will be implemented under the prospective payment system, the hospitals in 15 counties will be paid based on the rural standardized amount instead of an urban standardized amount. Section 1886(d)(8)(A) of the Act provides for an adjustment to the payment amounts for hospitals reclassified from urban to rural after April 20, 1983. Under the statute, a hospital that loses its urban status as a result of an OMB redesignation occurring after April 20, 1983, qualifies for special consideration by having the standardized amount payment reduction phased in over a 2-year period. We note that the impact of this provision will be minimized because in FY 1995 the rural standardized amount will be set equal to the other urban standardized amount.

As described at § 412.102, in the first year that a hospital loses urban status, an eligible hospital will receive, in addition to its rural average standardized amount, two-thirds of the difference between its present rural standardized amount and the urban standardized amount that it would have received had it retained its urban status. In the second year, the hospital's additional payment will be one third of the difference between the rural standardized amount and the appropriate urban standardized amount.

Section 1886(d)(8)(A) of the Act specifies that eligible hospitals will receive these special transition payments for two cost reporting periods. This provision was part of the Deficit Reduction Act of 1984 (Pub. L. 98–369), enacted on July 18, 1984. In drafting the law, Congress specified the use of cost reporting periods rather than Federal fiscal years because at that time hospitals were phasing into the prospective payment system at the beginning of their cost reporting periods. However, applying a literal reading of the statute at this time would result in denying some hospitals a full year of transition payments if their cost reporting periods do not coincide with the Federal fiscal year. To avoid such differential treatment, we proposed to implement these special transition payments at the beginning of the Federal fiscal year, which is consistent with the effective date of the revised MSA definitions. As proposed, we have revised § 412.102 to reflect this change.

In addition, since a hospital's payment status for the disproportionate share hospital adjustment provided under § 412.106 depends on its urban/rural designation for purposes of the standardized amount payment, where applicable, we proposed to include disproportionate share hospital payments in determining the amount of transition payments a hospital would receive.

Comment: Several commenters suggested that HCFA was incorrectly interpreting the 2-year phase-in allowed for under section 1886(d)(8)(A) of the Act for hospitals reclassified from urban to rural as a result of the Office of Management and Budget's 1990 revisions to Metropolitan Statistical Areas. HCFA has taken the position that the transition payment does not encompass differences in the wage index. The commenter asserts that section 1886(d)(8)(A) of the Act does not

distinguish between the wage index and standardized amount and that Congress therefore intended the phase-in to include all differences in payment.

Response: We have always taken the position that the transition payment in section 1886(d)(8)(A) of the Act applies only to the standardized amount and not to the wage index. According to the statute, the transition payment is based in part on "the amount which *would have been payable* to such hospital * * * *on the basis of an urban classification*." (Emphasis added.) Accordingly, HCFA considers the amount of payment the hospital would receive if it were classified as an urban hospital.

Under the statute, a hospital's status as urban or rural determines which average standardized amount it receives. In contrast, the wage index value that a hospital receives does not depend on the hospital's status as an "urban" hospital or a "rural" hospital by itself. Instead, the wage index value depends on the labor market area in which the hospital is located. Therefore, we believe the transition payment does not encompass differences in a hospital's wage index.

The legislative history supports this interpretation. Section 1886(d)(8)(A) of the Act was enacted by the Deficit Reduction Act (DEFRA) of 1984. The Conference Report states:

> Different Federal rates are calculated for hospitals located in rural areas and hospitals located in urban areas. * * * The Senate Amendment would provide that hospitals located in counties redesignated as rural since enactment of the prospective payment system would be allowed a two-year transition to the rural rates.

H.R. Conf. Rep. No. 861, 98th Congress, 2d Sess. 1299 (1984). This language indicates that Congress intended to limit the transition payment to the standardized amounts and did not intend to encompass the wage index.

Significantly, the statutory provision closely parallels a change to Medicare regulations proposed by HCFA prior to the date of enactment. On July 3, 1984, we published a proposed prospective payment system rule (49 FR 27422). The Office of Management and Budget issued revised MSA designations on June 30, 1983, and we proposed to exercise our exceptions authority to implement by regulation a 2-year transition for hospitals in areas redesignated from urban to rural. Under the proposal, in the first year a hospital would have received, in addition to its rural Federal rate, two-thirds of the difference between the rural Federal standardized amount and the urban standardized amount; in the second year, the hospital would have received one-third of the difference.

On July 18, 1984, after the proposed rule was published, Congress enacted section 1886(d)(8)(A) of the Act. This statutory provision, like the proposed transition payment described above, provides for a 2-year transition from the urban rate to the rural rate, under which hospitals receive two-thirds of the difference in the first year and one-third of the difference in the second year.

This historical background indicates that Congress adopted HCFA's methodology for computing the amount of transition payments. The preamble to the July 3, 1984, proposed rule includes a specific summary of the computation, the first two steps of which are as follows:

- Adjust the labor-related portions of the Federal urban and rural standardized amounts by the *rural area wage index;*
- Determine the difference between the adjusted urban and rural standardized amounts. (See 49 FR 27426 (emphasis added).)

Thus, the July 3, 1984 proposed rule, published prior to the enactment of section 1886(d)(8)(A) of the Act, makes clear that the amount of the transition payment was to be based on the difference between the Federal urban and rural standardized amounts after each had been adjusted by the rural area wage index. There is no evidence that Congress intended to change the proposed methodology.

On August 31, 1984, we published a final rule to implement section 1886(d)(8)(A) of the Act. HCFA has always interpreted the statute to mean that transition payments encompass only the difference in the standardized amounts. Now, however, the commenters raise the argument that, because labor market areas are based on MSAs, the distinction between the standardized amounts and the wage index is illogical. They also argue that most of the decrease in payment resulting from the new MSAs arises from the difference in the wage index, and that HCFA's policy is inconsistent with the purpose of the transition payment, which is to soften the financial impact of MSA redesignations.

We acknowledge the concerns of the commenters, but as the earlier discussion indicates, we do not believe the statute was intended to address differences in the wage index. The wage index does not depend on a hospital's status as urban or rural. Moreover, other hospitals may also be subject to a decrease in their wage index as a result of the new MSA designations. The statute confers broad discretion on the Secretary in applying the wage index, and we do not believe that Congress intended for us to apply section 1886(d)(8)(A) of the Act to grant a wage index transition payment to some hospitals, when other hospitals do not receive such a transition payment. Finally, at the time section 1886(d)(8)(A) of the Act was enacted, the difference between the urban standardized amount and the rural standardized amount was greater than it is today; therefore, the financial impact of receiving the rural standardized amount as opposed to the urban standardized amount was greater than it is today. We believe the statute was intended to address this difference only.

H. Indirect Costs for Graduate Medical Education Programs (§ 412.105)

Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals that have residents in an approved graduate medical education program receive an additional payment to reflect the higher indirect operating costs associated with graduate medical education. The regulations governing the calculation of this additional payment are set forth at § 412.105. Each hospital's additional indirect medical education (IME) payment is determined by multiplying the hospital's total DRG revenue by the applicable IME adjustment factor. The adjustment is based on the hospital's resident-to-bed ratio. Currently, to be included in a hospital's resident count, a resident must be assigned to a portion of the hospital subject to the prospective payment system or the outpatient department of the hospital.

Section 13506 of Public Law 103–66 amended section 1886(d)(5)(B)(iv) of the Act to provide that, interns and residents providing services at any entity receiving a grant under section 330 of the Public Health Service Act that is under the ownership or control of a hospital (if the hospital incurs all, or substantially all, of the costs of the services furnished by the interns and residents) are to be included in the hospital's resident count for IME. These entities are commonly known as community health centers. Therefore, we are revising § 412.105(g) to reflect this change. We will be issuing instructions to fiscal intermediaries concerning the implementation of this revision. In the interim, if a hospital believes it is entitled to additional payments under this provision, the hospital should contact its fiscal intermediary.

I. Disproportionate Share Adjustment (§ 412.106)

Section 1886(d)(5)(F) of the Act provides for additional payments for hospitals that serve a disproportionate share of low income patients. Section 1886(d)(5)(F)(vii), as added by section 6003(c)(1)(B) of Public Law 101–239, specifies the formula for determining the disproportionate share adjustment percentage for hospitals that are located in an urban area and have 100 or more beds, or are located in a rural area and have 500 or more beds. The statute establishes different payment formulas for different years, including a change in the formula for discharges occurring on or after October 1, 1993.

Regulations concerning the disproportionate share adjustment are set forth at § 412.106. Under § 412.106(c)(1)(i), a hospital that is located in an urban area and has 100 or more beds, or is located in a rural area and has 500 or more beds, must have a "disproportionate patient percentage" of at least 15 percent to qualify for a disproportionate share payment adjustment. Section 412.106(d)(2) sets forth the formulas for determining the disproportionate payment adjustment factors applicable to these two groups of hospitals.

We are not making changes to any part of § 412.106 in this final rule. However, we wish to ensure that hospitals are aware of the revised payment formulas that will take effect in FY 1994. Specifically, for discharges occurring on or after October 1, 1993 and before October 1, 1994, any such hospital with a disproportionate share patient percentage greater than 20.2 percent will receive a disproportionate share adjustment equal to 5.88 percent plus 80 percent of the difference between 20.2 percent and the hospital's disproportionate patient percentage. If one of these types of hospitals has a disproportionate patient percentage of at least 15 percent but not more than 20.2 percent, for discharges occurring on or after October 1, 1993, it will receive a disproportionate share adjustment equal to 2.5 percent plus 65 percent of the difference between 15 percent and the hospital's disproportionate patient percentage.

J. Medicare-Dependent, Small Rural Hospitals (§ 412.108)

Section 6003(f) of Public Law 101–239, which added section 1886(d)(5)(G) to the Act, created a new category of hospitals eligible for a special payment adjustment under the prospective payment system. The adjustment was limited to Medicare-dependent, small rural hospitals (MDHs) and was effective for cost reporting periods beginning on or after April 1, 1990, and ending on or before March 31, 1993. Section 1886(d)(5)(G)(iii) of the Act defines an MDH as any hospital that meets all of the following criteria:

- The hospital is located in a rural area.
- The hospital has 100 or fewer beds.
- The hospital is not classified as an SCH (as defined at § 412.92) at the same time that it is receiving payment under this provision.
- In the hospital's cost reporting period that began during FY 1987, not less than 60 percent of its inpatient days or discharges were attributable to patients covered by Medicare Part A benefits.

(See the April 20, 1990, final rule with comment period (55 FR 15154–15156) and the September 4, 1990, final rule (55 FR 35994–35998) for a full discussion of the qualifying criteria and payment methodology for MDHs.) The regulations concerning the MDH provision are set forth at § 412.108. With the expiration of the provision for cost reporting periods ending on or before March 31, 1993, payment to MDHs reverted to the standard rural Federal payment rates under the prospective payment system.

Section 13501(e) of Public Law 103–66 amended section 1886(d)(5)(G) of the Act to extend the MDH provision through discharges occurring before October 1, 1994. Under the revised provision, for their first three 12-month cost reporting periods beginning on or after April 1, 1990, MDHs will be paid using the same methodology that is used to pay sole community hospitals, that is, based on whichever of the following rates yields the greatest aggregate payment for the cost reporting period:

- The national Federal rate applicable to the hospital;
- The updated hospital-specific rate using FY 82 cost per discharge; or
- The updated hospital-specific rate using FY 1987 cost per discharge.

After the first three 12-month cost reporting periods, for discharges occurring in any subsequent cost reporting period (or portion thereof) but before October 1, 1994, MDHs will be paid the Federal rate plus 50 percent of the amount, if any, by which the hospital's updated applicable (1982 or 1987) hospital-specific rate exceeds the national Federal rate. The MDH provision expires for all hospitals effective with discharges occurring on and after October 1, 1994, the date on which the urban/rural payment differential will be eliminated. After three 12-month cost reporting periods, the add-on payment to an MDH will be reduced to 50 percent of the difference by which the hospital's updated 1982 or 1987 cost per discharge exceeds the fully Federal rural rates applicable to the hospital.

Hospitals that were previously paid under the MDH provision need take no action to be reinstated. The Medicare fiscal intermediaries will automatically revise the payment methodology for all previously entitled MDHs unless there is evidence that the hospital no longer meets the qualifying criteria, for example, the hospital is located in an area that has been redesignated by OMB as an urban area, the hospital now has more than 100 beds, or the hospital has subsequently qualified as an SCH.

Section 13501(e)(3) of Public Law 103–66 provides for a lump-sum retroactive payment to each MDH equal to the difference between the aggregate payment made to the hospital under the prospective payment system (section 1886 of the Act) (excluding outlier payments) and the amount the hospital would have received had its MDH status continued uninterrupted. Again, previously qualified MDHs need take no action to qualify for this lump-sum payment. The fiscal intermediaries will calculate the difference between the amount the hospital received (excluding outlier payments) and the amount to which the hospital is entitled as an MDH and will issue a lump-sum payment to the hospital as soon as possible. For hospitals that no longer meet the criteria to qualify for MDH status, the lump-sum adjustment will be calculated from the date on which the hospital lost its MDH status to the date on which the hospital ceased to meet the criteria, for example, the date the hospital was redesignated to an urban area or qualified as an SCH.

Some hospitals, anticipating the loss of MDH status with the end of their cost reporting period ending on or before March 31, 1993, applied for and were approved for reclassification to urban areas for purposes of receiving the urban rate through the MGCRB. Normally, hospitals approved for reclassification have only 45 days from the date of the proposed rule to withdraw their request. However, the statute provides that hospitals in this situation may retroactively withdraw their requests for reclassification. That is, section 13501(e)(2) of Public Law 103–66 provides that should any hospital fail to qualify for reinstatement as an MDH due to its reclassification to an urban area by the MGCRB for FY 1993 or 1994, the hospital must be notified of its failure to requalify for MDH status and be given the opportunity to decline

reclassification retroactively. If the hospital elects to decline reclassification, its MDH status will be reinstated back to the date it lost its MDH status and payment will be calculated (including the lump-sum amount) as if the reclassification had never occurred. If the hospital elects to retain its reclassification, it will not be considered to be an MDH for the fiscal year for which it elects to retain reclassification.

We have revised the regulations at § 412.108 (a) and (c) to include the new effective date and payment methodology for MDHs.

K. Direct Graduate Medical Education Payment (§ 413.86)

1. Elimination of Cost of Living Update in Per Resident Amounts for Direct Medical Education

Section 1886(h) of the Act requires the calculation of hospital-specific approved per resident graduate medical education amounts for cost reporting periods beginning on or after July 1, 1985, based on the hospital's allowable costs for its cost reporting period beginning during Federal FY 1984. Section 1886(h)(2)(D) of the Act generally provides for updating the approved per resident amount for subsequent years by the estimated percentage change in the Consumer Price Index (CPI–U).

Section 13563(a)(1) of Public Law 103–66 requires that for cost reporting periods beginning in FYs 1994 and 1995 the approved per resident amount for a hospital will be updated for primary care residents and obstetrics and gynecology (OB–GYN) residents only. For all other residents, the per resident amount for cost reports beginning in Federal FYs 1994 and 1995 will not be updated for inflation. The effect of this change for teaching hospitals with both primary care (or OB–GYN) residents and non-primary care residencies is to have two different per resident amounts for those cost reporting periods. One amount (for primary care and OB–GYN residents) will reflect the prior period per resident amount with the CPI–U adjustment and one amount (for all other residents) will reflect the prior period per resident amount without the adjustment.

In addition, section 13563(a)(2) amended section 1886(h)(5) to specify that the term "primary care resident" means a resident enrolled in an approved medical residency training program in family medicine, general internal medicine, general pediatrics, preventive medicine, geriatric medicine or osteopathic general practice.

Section 1886(h)(4) of the Act bases payment for direct GME costs on a hospital's number of full-time equivalent (FTE) residents multiplied by a hospital-specific per resident amount. The number of FTE residents is determined by applying a weighting factor to each resident. A resident in an initial residency period is weighted as 1.0. If the resident is not in an initial residency period the weighting factor is reduced, as specified at § 413.86(g)(3). The initial residency period is defined at § 413.86(g)(1), as the minimum number of years of formal training necessary to satisfy the requirements for initial board eligibility in the particular specialty plus one year, not to exceed five years.

Section 13563(b) of Public Law 103–66 also added a preventive medicine residency provision to the GME payment provisions at section 1886(h) of the Act. Section 1886(h)(5)(F) of the Act is amended to allow a hospital to treat a resident or fellow in an approved preventive medicine residency or fellowship program the same as a resident in a geriatric program for purposes of determining whether a resident is in an initial residency period. That is, a preventive medicine resident or fellow would also be allowed to be counted as an FTE resident weighted as 1.0, for up to an additional 2 years beyond the initial residency period limitations. This change is effective on August 10, 1993. Before this effective date, the weighted FTE factor for preventive medicine residents beyond their initial residency period was reduced as specified at § 413.86(g)(3).

In this final rule we are revising the regulations at § 413.86, concerning direct graduate medical education payments, to implement these statutory requirements. We are adding to the regulations at § 413.86(b) the statutory definition of primary care resident. "Primary care resident" is a resident enrolled in an approved medical residency training program in family medicine, general internal medicine, general pediatrics, preventive medicine, geriatric medicine or osteopathic general practice.

We are also revising § 413.86(e)(3) to add paragraph (e)(3)(ii), which limits to primary care residents and OB–GYN residents only the adjustment of each hospital's per resident amount in the previous cost reporting period by the projected change in the CPI–U, for cost reporting periods beginning in FYs 1994 and 1995.

Finally, we are adding a sentence to the end of the first paragraph in § 413.86(g)(1) to specify that, effective August 10, 1993, a resident or fellow in an approved preventive medicine residency or fellowship program may also be counted as a full FTE resident for up to 2 additional years beyond the initial residency period limitations.

2. Technical Change

As proposed, we are making a technical change to correct an error in § 413.86(h)(2). In the second sentence of § 413.86(h)(2), we are revising the phrase "On or before July 1, 1986 and before July 1, 1987," to read "On or after July 1, 1986 and before July 1, 1987,".

L. Other Technical Changes (§§ 412.1, 412.2, 412.75, 412.108 and 412.234)

As proposed, we are making other technical changes to the regulations in §§ 412.1, 412.2, 412.75 and 412.108 to remove and replace obsolete language and to correct references.

We are also republishing provisions in § 412.234(b) that were inadvertently deleted from the regulations text published in the latest edition of the Code of Federal Regulations (CFR) due to an error in amendatory language in our September 1, 1992 final rule. In order to provide the public with the complete text of the provisions of § 412.234(b), pending publication of the next edition of the CFR, we are publishing § 412.234(b) in its entirety.

V. Changes and Clarifications to the Prospective Payment System for Capital-Related Costs

A. Evaluation of Provisions Relating to Obligated Capital for Hospitals Subject to Lengthy Certificate-of-Need (CON) Process (§ 412.302(c)(2))

Section 412.302(c)(2) specifies the conditions under which capital projects may be treated as obligated capital for hospitals subject to a lengthy CON process. As we noted in the policy changes and clarifications made in the last capital prospective payment system update published on September 1, 1992 (57 FR 39792–39793), we intend to conduct a systematic evaluation of the appropriateness of changing the criteria established in that regulation. We explained that any reassessment would be made within the policy framework used to establish the initial transition payment policies (August 30, 1991 final rule, 56 FR 43391–43394). We stated that we believed it would be premature to make modifications to the CON provisions based on the comments we received to the proposed rule changes (June 4, 1992 proposed rule, 57 FR 23651) without sufficient information about the extent of any potential problems unique to such hospitals. We

solicited information from the hospitals that had not already advised us of their concerns but were also concerned about the issues raised by the commenters.

As stated in the proposed rule, we do not have the prerequisite information to complete our assessment in time for consideration during the FY 1994 rulemaking process. Therefore, we will continue our efforts to evaluate capital prospective payment system policies on which we receive comments and expect to report on them in the proposed rule setting forth our FY 1995 capital payment policies and rates. In the interim, we continue to solicit hospital information on this matter.

Comment: We received two comments urging immediate adoption of the changes to § 412.302(c)(2) that we have under reassessment and ongoing solicitation for comment. The commenters assert that delay in making the requested revisions prevents certain hospitals from securing adequate capital formation or financing. The requested changes to the regulations are the same as those previously sought and described in the preamble to the September 1, 1992 final rule (57 FR 39792–39793).

Response: As the commenters acknowledge, these comments are virtually identical to those discussed in the preamble to the September 1, 1992, final rule. We believe that our original rationale and concerns over making immediate revisions to the obligated capital criteria in certificate-of-need (CON) situations continue to be appropriate.

As we pointed out in the FY 1993 final rule, any modifications should be made only after we have sufficient information about the extent of the problems cited by commenters and can determine whether the issues raised apply to any other hospital situations. In order to do so, we would conduct an evaluation of how the transition rules affect hospitals initiating major capital projects and solicit information from hospitals in similar circumstances who had not already advised us of these concerns. We pointed out that we were retaining the current regulation's thresholds because to do otherwise would give hospitals subject to CON processes even more favorable treatment than that afforded other hospitals. We also noted that any reassessment of the current thresholds would be made solely within the policy framework used to establish the initial transition payment policies.

Although data are not yet available that will allow evaluation of the effects of current transition rule payments for hospitals in these and similar circumstances (see 58 FR 30249), the comments submitted in response to our 2 requests in the last 12 months indicate that this issue apparently is limited to very few hospitals located in a single geographic area. The comments received to date on this issue indicate that not more than 9 hospitals, and possibly as few as 2 hospitals, would benefit from the changes suggested to the regulations that specifically address the lengthy CON provision for obligated capital determinations (that is, § 412.302(c)(2)). In addition, the comments identify locally imposed conditions as the primary cause of those affected hospitals' inability to meet the current obligated capital thresholds for their long-standing capital modernization plans. Thus, locally imposed conditions, rather than the capital prospective system criteria, which already recognize the lengthy CON process some hospitals faced at the time our transition rules were implemented, are the source of the problem.

We believe, therefore, that extending the time for announcing a final decision on this matter may be advantageous to those who have consistently advocated the suggested changes. It also will provide more time for hospitals in similar situations in other areas to alert us to whether there is any broader extent of concern over the pertinent thresholds and to assess any potentially negative payment impact reflected in the first transition year data, once that information is available. Due to these considerations we will retain in the regulations the current criteria for lengthy CON situations, at least until the FY 1995 prospective payment system rulemaking process while we continue to study this issue.

B. Evaluation of Provision Relating to Exceptions Payment (§ 412.348)

Although the May 26, 1993 proposed rule did not address any issues regarding policy on exceptions payments, we received one comment concerning exceptions payment policy. Section 412.348 of the regulations provides that, during the transition period, a hospital may receive additional payments under an exceptions process when its payments under the prospective payment system for capital-related costs are less than a minimum percentage, established by class of hospital, of the hospital's reasonable inpatient capital-related costs. The amount of the exceptions payment is the difference between the hospital's minimum payment percentage and the payments the hospital would receive under the capital prospective payment system in the absence of an exceptions payment. The comparison is made on a cumulative basis for all cost reporting periods during which the hospital is subject to the capital-PPS transition methodology.

The minimum payment levels by class of hospitals for FY 1994 are:

- For sole community hospitals, 90 percent;
- For urban hospitals with at least 100 beds that have a disproportionate share of at least 20.2 percent or that received more than 30 percent of net revenue from State or local funds for indigent care, 80 percent;
- For all other hospitals, 70 percent of the hospital's reasonable inpatient capital-related costs.

As we stated in the August 30, 1991, final rule for the prospective payment system for capital-related costs (56 FR 43362 and 43409), we will revise the minimum payment levels during any subsequent transition year, if necessary, to keep total payments under the exceptions process at no more than 10 percent of aggregate capital prospective payments. Section 412.348(f) requires that total estimated payments under the exceptions process may not exceed 10 percent of the total estimated capital prospective payments (exclusive of hold-harmless payments for old capital) for the same fiscal year.

Comment: One commenter pointed out that a specific group of hospitals in a particular geographic region has scheduled major modernization projects during the initial years of the capital prospective payment system transition period. The commenter recommended that HCFA maintain the transition period cumulative payment floor for high disproportionate share hospitals at 80% of actual Medicare inpatient capital-related costs and extend the 80% minimum payment level for those hospitals for ten years beyond the transition period. The basis for these recommendations is that the affected hospitals will not have had the opportunity to accrue retained earnings during lower-than-average cost years under capital-PPS to fund the needed modernization project.

Response: As is the case with the provision related to obligated capital for hospitals in CON situations (section V.A above), we have received no information to indicate that this issue affects more than a small number of hospitals in a limited geographic area. We are committed to maintaining a limit on the amount of exceptions payments of 10 percent of total capital prospective payments. Therefore, it may become necessary to reduce the minimum payment levels later in the transition to keep within the 10 percent limit. We

thus cannot adopt the recommendation that the minimum payment level for high disproportionate share hospitals be maintained at the 80 percent level throughout the transition period. We also believe that it is still premature to consider whether to adopt an exceptions provision after the transition period is over. We will study this issue later in the transition when we have more experience with prospective payments for capital-related costs. In any case, we do not believe that the difficulties of a small group of hospitals justifies major changes to the prospective payment system for capital-related costs. As the conference committee report accompanying the legislation establishing the prospective payment system for capital-related costs noted, by the time the system was implemented in October, 1991, hospitals had "had more than eight years since the Congress originally indicated its intent to reimburse for capital-related costs on a prospective basis." H.R. Report No. 495, 100th Cong., 1st Sess. 535 (1987). Thus, hospitals had ample opportunity to adjust their capital projects to the realities of payment under a prospective system. The affected hospitals have not yet expended funds on the projects cited. They therefore still have time to assure that they can fund the projects from the expected level of regular payments under the prospective payment system for capital-related costs.

C. Specific Adjustment for Taxes to the Federal Capital Prospective System Rate

Although the May 26, 1993 proposed rule did not address the ongoing issue of determining whether an adjustment to the capital prospective payment system Federal rate is appropriate to recognize the tax costs that proprietary hospitals must pay, we received two comments on this issue.

Comment: Two commenters recommended that HCFA exclude the cost of property taxes from the Federal capital rate base, provide a payment adjustment mechanism to proprietary hospitals to recognize this unique cost for that group of hospitals, and eliminate any inequitable distribution of capital prospective payments among all hospitals. One commenter submitted a specific methodology that would utilize hospital-specific tax assessment cost data to make a base year adjustment to the Federal rate and develop an adjustment factor that would remove State and local government incentives to adopt or increase provider-specific assessments.

Response: In the August 30, 1991, final rule, we acknowledged the need to study this issue and determine whether special treatment is feasible and appropriate for a specific component of capital-related costs, such as taxes (56 FR 43364–43365). In addition to noting our general opposition to singling out costs for specific payment adjustment action, we indicated that we also shared the concerns offered in the comments that property taxes and assessments are legitimate costs that vary across hospital groups and that including those costs in the rate base may overpay some hospitals and underpay others. This matter is further complicated by the fact that some commenters also asserted that non-proprietary hospitals were subject to other assessments in lieu of taxes. Thus, we concluded that additional information was needed on this issue before a comprehensive decision could be made. However, we did not have (and at this time still do not have) any data available to help determine whether and how to deal with special treatment of such costs in the capital prospective payment system rate payments. Neither HCFA's data base nor interested hospital industry sources we contacted could provide actual data (rather than estimates) on this capital cost item.

To obtain the information necessary to evaluate and address this issue, we have changed the hospital cost report to secure data on all types of property assessments effective for cost reports for hospital fiscal years beginning in FY 1992. That information will not be available in reliable form before the end of 1993. We hope to provide our initial analysis of this information for public review and comment during the FY 1995 rulemaking process.

In the interim, we reiterate our belief that currently property taxes are adequately represented in a hospital's payment for old capital under the hold harmless payment methodology and in the hospital-specific rate of the fully prospective payment methodology. Thus, the impact of not providing special treatment will be minimal in the first few years of the transition period when the hospital-specific payment basis constitutes the major portion of hospital capital payments. In the meantime we will give careful consideration to this matter.

D. Reduction to the Standard Federal Capital Rate and Provision for Redetermination of Hospital Payment Methodologies (§§ 412.308 and 412.336)

Section 13501(a)(3) of Public Law 103–66 amended section 1886(g)(1)(A) of the Act to require that, for discharges occurring after September 30, 1993, the unadjusted standard Federal rate be reduced by 7.4 percent. The purpose of the reduction is to correct inflation forecast errors that had accumulated by May 1993. By that time, the estimates of the increases in Medicare inpatient capital costs per case from FY 1989 to FY 1992 had declined from 31.30 percent (as stated in the August 30, 1991, final rule) to 21.57 percent. The 7.4 percent reduction to the standard Federal rate was calculated to account for those revised estimates (1.2157/1.3130=.926, a 7.4 percent decrease). This provision of Public Law 103–66 also requires that, for cost reporting periods beginning on or after October 1, 1993, the Secretary redetermine which hospital payment methodology is to be applied under the capital prospective payment system transition rules to take that reduction into account.

In this final rule, we are revising two sections of the capital prospective payment system regulations to implement these statutory requirements. Specifically, we are revising the regulations at § 412.308 to provide for the required 7.4 percent reduction to the unadjusted standard Federal rate. We are adding a new § 412.308(b)(2) to provide that, effective FY 1994, the standard Federal rate is reduced by 7.4 percent. Under current § 412.308(b), HCFA determined the standard Federal rate by adjusting the FY 1992 updated national average cost per discharge by a factor so that estimated aggregate payments based on the standard Federal rate adjusted by the payment adjustments described in § 412.312(b) equal estimated aggregate payments based solely on the national average cost per discharge. Section 412.308(c) further provides that the standard Federal rate is updated for inflation each Federal fiscal year and adjusted each year by an outlier adjustment factor, an exceptions payment adjustment factor, and two budget neutrality factors to determine the Federal capital payment rate for that year. Thus, the standard Federal rate is to be distinguished from the annual Federal rate actually used in making payment under the capital prospective payment system. The standard Federal rate is the underlying or base rate used to determine the Federal rate for each Federal fiscal year by applying the formula described in § 412.308(c). The annual Federal rate is the result of that determination process in § 412.308(c).

Because this reduction applies to the base rate prior to the application of the adjustment factors for outliers, exceptions, and budget neutrality, the reduction does not have the effect of lowering the FY 1994 Federal rate 7.4

percent compared to FY 1993. Rather, the 7.4 percent reduction to the standard Federal rate interacts with the annual rate adjustments (for example, the budget neutrality factor designed to assure that aggregate payments are 90 percent of estimated reasonable costs) to produce a 9.33 percent reduction in the FY 1994 Federal rate compared to FY 1993. We discuss the effect of this reduction to the standard Federal rate and other changes in the adjustment factors to the FY 1994 Federal rate in Part III of the Addendum to this final rule.

We note that the full effect of the 7.4 percent reduction to the standard Federal rate will become evident only when the budget neutrality requirement expires in FY 1996. Until FY 1996, the 7.4 percent reduction in the standard Federal rate will have no effect on aggregate capital prospective payments. This is because the change in the Federal rate is offset in FY 1994 and FY 1995 by the requirement that aggregate payments equal 90 percent of estimated payments on the basis of reasonable costs. Thus, we estimate that actual aggregate payments under the capital prospective payment system will increase 2.99 percent in FY 1994 over FY 1993. (As we explain in Part III of the addendum, this increase is the result of the estimated increase in actual costs of 9.45 percent in FY 1994 over FY 1993, less the estimated excess in aggregate payments during FY 1993 of 6.27 percent over the budget neutrality target.) However, we expect to realize significant savings from the effect of the change in FYs 1996, 1997, and 1998, when there is no longer a budget neutrality requirement tying aggregate payments to a percentage of estimated costs. Until then, the budget neutrality provision will cause other elements of the system to adjust so that aggregate payments will equal 90 percent of estimated reasonable costs.

In addition, we are adding a new paragraph (d) to § 412.336 to provide for redetermination of the hospital payment methodology to take into account the 7.4 percent reduction to the standard Federal rate.

The original payment methodology determinations for the capital prospective payment system transition were made in accordance with § 412.336(a). A hospital whose FY 1992 hospital-specific rate was greater than the FY 1992 Federal rate (after adjustment to account for the effects of the payment adjustments and outlier payments) has received payment under the hold-harmless methodology. Under § 412.344, hold harmless hospitals receive the greater of 100 percent of the Federal rate per discharge, or 85 percent of old capital costs plus a ratio of the Federal rate for new capital per discharge. (Under § 412.344(b), hospitals receiving payment based on 100 percent of the Federal rate during the later of FY 1994 or the year in which obligated capital comes on line continue to receive payment on that basis for the rest of the transition.)

A hospital whose FY 1992 hospital-specific rate was lower than its adjusted FY 1992 Federal rate has received payments based on the fully prospective methodology. Under § 412.340, fully prospective hospitals receive a payment per discharge based on a blend of the hospital-specific rate and the Federal rate (for cost reporting periods beginning in FY 1994, 70 percent of the hospital-specific rate and 30 percent of the Federal rate).

Under § 412.328(f), a fully prospective hospital can request a redetermination of its hospital-specific rate to account for increases in old capital costs (for example, obligated capital that is brought into use for patient care) in cost reporting years subsequent to the hospital base year. Under § 412.336(b), a hospital whose redetermined hospital-specific rate is higher than the adjusted Federal rate applicable to the new period is paid under the hold-harmless methodology effective with the beginning of the new base period. The redetermination mechanism thus provides an opportunity for fully prospective hospitals to receive the benefits of the hold harmless payment methodology on the basis of an increased hospital-specific rate. Once a hospital is paid under the hold harmless methodology, whether after the original payment methodology determination or only after a redetermination of the hospital-specific rate, the hospital is paid under that methodology for the remainder of the transition (56 FR 43403).

Since a hospital once paid under the hold-harmless methodology continues to be paid under that methodology for the remainder of the transition, the purpose of the payment methodology redetermination required under Public Law 103–66 is to allow fully prospective hospitals a further opportunity to receive payments under the hold-harmless payment methodology. To fulfill the requirements of Public Law 103–66, this final rule with comment provides that the intermediaries will compare the FY 1994 hospital-specific rate of each fully prospective hospital with the FY 1994 adjusted Federal rate of that hospital. A fully prospective hospital whose FY 1994 hospital-specific rate is higher than its FY 1994 adjusted Federal rate will be paid under the hold-harmless methodology beginning with its first cost reporting period beginning on or after October 1, 1993 and through the remainder of the transition. A fully prospective hospital whose FY 1994 hospital-specific rate is lower than its FY 1994 adjusted Federal rate will continue to be paid under the fully prospective methodology (unless the intermediary determines separately, after a redetermination of the hospital-specific rate to reflect an increase in old capital costs, as provided under § 412.328(f), that the hospital should be paid under the hold-harmless methodology).

Hospitals already paid under the hold-harmless methodology prior to FY 1994 will continue to be paid on that basis. However, in accordance with the provisions of § 412.344 (a) and (b), intermediaries determine whether each hold-harmless hospital receives 100 percent of the Federal rate, or 85 percent of old capital costs plus a ratio of the Federal rate for new capital. Accordingly, the reduction of the standard Federal rate may affect whether a hold-harmless hospital is paid 100 percent of the Federal rate, or the hold-harmless payment for old capital plus a ratio of the Federal rate for new capital. Section 412.344 (a) and (b) already provide that hospitals receive the higher of these formulae at least through FY 1994. (The requirement of § 412.344(b) for continued basis of payment remains in effect.) Therefore, no new provision is required in the regulations to take into account the effect of the reduction to the Federal rate on hold-harmless hospitals.

E. Disproportionate Share Adjustment Factor (§ 412.320)

Under section 1886(d)(5)(F)(i)(II) of the Act, hospitals may qualify for a disproportionate share adjustment and receive additional payments for operating costs. The August 30, 1991 final rule implementing the capital prospective payment system established a special provision under which these hospitals may receive an additional adjustment to the Federal rate for the prospective payment system for capital-related costs. Section 412.320(b)(2), as added by the final rule of August 30, 1991, establishes a disproportionate share adjustment of 14.16 percent to the capital Federal rate for these hospitals. As we explained in the preamble to the final rule (56 FR 43377), our intent was to establish a capital disproportionate share adjustment for these hospitals that would result from deeming them to have a disproportionate patient percentage equivalent to that which

would generate their operating disproportionate share payment, using the formula for urban hospitals with at least 100 beds. For discharges occurring on or after October 1, 1991, those hospitals qualified for an operating disproportionate share adjustment of 35 percent, which was equivalent to having a disproportionate share patient percentage of 65.4 based on the operating disproportionate share formula that was in effect for urban hospitals with at least 100 beds. Using the disproportionate share patient percentage of 65.4, we established the capital disproportionate share adjustment factor of 14.16 percent for these hospitals.

Section 1886(d)(5)(F)(vii) of the Act, as added by section 6003(c)(1)(B) of Public Law 101–239, specifies the formula for determining the disproportionate share adjustment percentage for hospitals that are located in an urban area and that have 100 or more beds. The statute establishes different payment formulas for different years, including a change in the formula for discharges occurring on or after October 1, 1993. Specifically, for discharges occurring on or after October 1, 1993 and before October 1, 1994, a hospital with a disproportionate share patient percentage greater than 20.2 percent will receive a disproportionate share adjustment equal to 5.88 percent plus 80 percent of the difference between 20.2 percent and the hospital's disproportionate share percentage.

Under this new formula, a hospital receiving a disproportionate share adjustment of 35 percent would be deemed to have a disproportionate share percentage of 56.6. In turn, a disproportionate share percentage of 56.6 yields a capital disproportionate share adjustment of 12.14 percent. Thus, the disproportionate share adjustment provided under § 412.320(b)(2) is no longer the adjustment that would result from deeming those hospitals to have the disproportionate share percentage that would yield their operating disproportionate share adjustment. We therefore proposed to revise the regulation so that the capital disproportionate share adjustment for these hospitals is once again consistent with the original rationale for making the adjustment.

We proposed to revise the regulation so that the capital disproportionate share adjustment for these hospitals changes automatically with any future revisions of the operating disproportionate share formula. We thus proposed to revise § 412.320(b)(2) to provide that the capital disproportionate share adjustment for eligible hospitals is the adjustment that results from deeming those hospitals to have the disproportionate share percentage that would yield their operating disproportionate share adjustment.

Comment: We received one comment on the proposed change. The commenter pointed out that, while it is understandable to provide that the capital disproportionate share adjustment will change automatically with revisions to the operating disproportionate share formula, the reduction in the disproportionate share adjustment from 14.16 percent in FY 1993 to 12.14 percent in FY 1994 will disadvantage disproportionate share hospitals, who are generally large teaching hospitals and who traditionally treat the poor.

Response: As explained above, a 14.16 percent disproportionate share adjustment for these hospitals is no longer consistent with the results of the changes at section 1886(d)(5)(F)(vii) of the Act. Furthermore, maintaining the adjustment at 14.16 percent would give these hospitals an advantage in their treatment under the capital prospective payment system in comparison to their treatment under the operating prospective payment system. This is because, without the change that we proposed to § 412.320(b)(2), these hospitals would receive payment based on a disproportionate share percentage of 65.4, while at the same time receiving operating payments equivalent to having a disproportionate share percentage of 56.6. We do not believe that such a disparity is appropriate.

We are therefore making all of the above changes as proposed. For FY 1994, this provision will result in a disproportionate share adjustment of 12.14 percent.

The additional capital disproportionate share payments to these hospitals will continue to be made at the same time that the additional operating disproportionate share payments are made, that is, as the result of application for these payments under § 412.106(c)(2).

VI. Changes for Hospitals Excluded From the Prospective Payment System

A. Limitation of Exclusions for Distinct-Part Hospital Units (§ 412.25)

Since the inception of the prospective payment system for hospital inpatient services, certain types of specialty-care hospitals and hospital units have been excluded from that system under section 1886(d)(1)(B) of the Act. The hospitals currently excluded are psychiatric, rehabilitation, children's, long-term care, and cancer hospitals. The units currently excluded are psychiatric or rehabilitation units of hospitals that are distinct part units (as defined by the Secretary) of hospitals paid under the prospective payment system.

In the proposed rule, we discussed several longstanding policies. We have always believed it is self-evident that when an entire hospital is excluded from the prospective payment system, a separate component of the hospital cannot qualify for a second and distinct exclusion as a psychiatric or rehabilitation unit. To allow a second exclusion would be redundant, since the entire institution is already excluded from the prospective payment system. We also indicated that it has been our policy that a hospital that does not otherwise qualify as an excluded hospital cannot obtain exclusion from the prospective payment system in its entirety by allocating all its beds between an excluded psychiatric and an excluded rehabilitation unit. Thus, exclusion of a unit is available only to units of institutions that have at least enough beds subject to payment under the prospective payment system to meet the requirements of § 413.24(c) regarding adequacy of cost information and the related instructions in sections 2336.1 (C) and (D) of the Medicare Provider Reimbursement Manual (HCFA Pub. 15–1). Finally, we stated that it has been our view that only one unit of each type (psychiatric or rehabilitation) can be approved in any hospital. However, these policies are not set forth explicitly in the regulations.

Because the current regulations are not explicit on these points, some institutions have expressed interest in reorganizing themselves in novel ways in order to obtain types of exclusions not contemplated by the statute. For example, representatives of an excluded psychiatric hospital may seek to set aside a part of the hospital for providing rehabilitation care to non-psychiatric patients, and may request exclusion of that facility as a rehabilitation unit. Since the facility is currently excluded from the prospective payment system in its entirety, the ceiling for the hospital encompasses costs associated with the unit. Thus, it would be inappropriate to apply a target amount to the unit that is different from (and higher than) the rate for the hospital as a whole (including the unit). If we were to allow a unit's ceiling to be artificially inflated in this way, we would diminish the incentive for efficient operation that is provided by the ceiling. Such an action would be at cross purposes with the intent of section 1886(b) of the Act.

In other cases, a hospital may wish to organize itself into two components, one that could qualify as an excluded rehabilitation unit and one that could qualify as an excluded psychiatric unit. Thus, a hospital that does not qualify as a psychiatric, rehabilitation, or other type of excluded hospital nevertheless could be excluded in its entirety from the prospective payment system. We believe that if a hospital does not qualify for exclusion from the prospective payment system as an excluded hospital, then some part of the hospital should be subject to payment under the prospective payment system. Accordingly, we would not approve exclusion of all units of a hospital if, as a result, all of the hospital beds would be excluded.

Finally, as noted above, a hospital may seek to set up multiple excluded units of the same type and obtain a separate target amount for each unit, thus defeating the purpose of the ceiling. The target amount is based on a system of averages and is intended to apply to all discharges of a hospital or unit, thereby encouraging the efficient delivery of needed health care.

To avoid the kinds of distortions in payment that would occur if we granted these types of exclusions, we proposed to revise the regulations concerning common requirements for excluded distinct part hospital units to state explicitly the policies described above, as they have been applied since the inception of the rate-of-increase ceiling. Specifically, we proposed to revise § 412.25 to allow a psychiatric or rehabilitation unit to be excluded only if the unit is a component of a hospital that is under the prospective payment system, and the hospital has a sufficient number of beds that are subject to the prospective payment system to permit the provision of adequate cost information as specified in § 413.24(c). We also proposed to revise the regulations to state explicitly that only one unit of each type (psychiatric or rehabilitation) is allowed in each hospital. We emphasized that these revisions would merely codify existing policy, and do not represent new substantive policies that would be effective only prospectively.

We received two comments on the proposal to revise § 412.25(a)(1) to state explicitly that a hospital unit is not eligible for a separate exclusion if it is part of a hospital that is eligible for exclusion in its entirety from the prospective payment system.

Comment: One commenter favored the proposed change, but stated that it should apply only to components of already excluded hospitals, not to hospitals that operate in separate buildings that also house other separately licensed and participating hospitals.

Response: We agree with this commenter, and do not plan to prohibit separate exclusions for separately licensed and participating hospitals that are housed in separate parts of the same building. For example, if a rehabilitation hospital and a psychiatric hospital each lease a different wing or floor of the same structure, but each has its own separate State license and Medicare participation agreement, each may be excluded if it meets applicable requirements.

Comment: One commenter stated that the proposal would discourage the efficient use of health care facilities in certain situations, citing the example of a community in which a psychiatric hospital has too many beds, while there is also a local shortage of rehabilitation beds. Under these circumstances, the commenter believes the most efficient use of space would require the psychiatric hospital to set up a separate rehabilitation unit, an option that would not be available under our proposal. The commenter also expressed the view that we have no statutory authority to prohibit the establishment of excluded units within already excluded hospitals.

Response: We agree that hospitals should be able to reorganize their operations to meet changing community needs, but we do not believe that the proposal would restrict that ability significantly. For example, in the hypothetical situation described by the commenter, the hospital would not be prohibited from participating as a general hospital that would have both an excluded psychiatric and an excluded rehabilitation unit, as well as the acute care capacity that will be needed, at least occasionally, by the patients of each unit. We also do not believe the proposal exceeds our authority to administer the exclusion provisions of the law; the statute confers broad discretion on the Secretary to define the circumstances under which a unit may be excluded.

We also received one comment on our proposal to revise § 412.25(a)(1) to state that a hospital unit cannot be excluded if its exclusion would leave the hospital with insufficient beds under the prospective payment system to allow the provision of adequate cost information.

In addition, we note that we are making one clarifying change in the proposed language for § 412.25(a)(1)(ii). The proposed regulations text provides that a unit of a hospital may be excluded if among other things, the hospital is not "eligible for" exclusion in its entirety. The purpose of the proposal is to avoid duplicating existing prospective payment system exclusions; it is not intended to apply to situations in which a hospital theoretically could meet the exclusion criteria and obtain an exclusion, but has not actually done so. To clarify this point we have revised the proposed regulations text to make clear that a unit cannot be excluded if it is part of an institution that is excluded in its entirety from the prospective payment system.

Comment: A commenter expressed support for the proposed change, stating that a hospital should not be allowed to have an excluded unit unless at least some part of the hospital is subject to the prospective payment system. However, the commenter stated that the "sufficient number of beds" guideline is too vague, and recommended that we adopt a specific numerical standard that could be used in a hospital's planning process.

Response: We understand the commenter's concern. However, we also are concerned that a uniform numerical standard for all hospitals might unnecessarily restrict some hospitals' flexibility to allocate beds to excluded and nonexcluded facilities, and believe that individual intermediaries are better able to determine how many prospective payment system beds must be maintained at each hospital to allow accurate cost reporting. Therefore, we have not revised the regulations to include a specific numerical standard.

Three comments were received on the proposal to revise § 412.25(d) to allow only one excluded unit of each type in any hospital.

Comment: A commenter asked for confirmation that the proposed revision to § 412.25(d) would only preclude multiple units of the same type, and would not prohibit a hospital from having two units of different types, such as a rehabilitation and a psychiatric unit.

Response: The commenter's view is correct; any hospital having units that meet the exclusion criteria would be free to set up both a rehabilitation unit and a psychiatric unit.

Comment: Two commenters stated that the proposed revision to § 412.25(d) would discourage some hospitals from adding needed specialty programs, such as a geriatric psychiatric program. One commenter reasoned that this would occur because those programs could be more costly than current programs and might cause the unit's cost to exceed the TEFRA target amount. To prevent this result, the commenter suggested that hospitals be allowed exclusions for

multiple units of each type, so that a new unit could be established, and a separate target amount set, for each added program. Another commenter stated that the exclusion provisions of the Medicare law were designed to exclude specialty hospital care from the prospective payment system, and argued that the proposal would be inconsistent with this objective.

Response: We do not agree that the commenters' concerns justify allowing multiple units and target amounts. On the contrary, we are concerned that such a policy could add an unintended incentive to facilities to fragment their operations in an effort to maximize payment. In particular, we do not believe the proposal is inconsistent with the exclusion provisions of the law (section 1886(d)(1)(B) of the Act). Those provisions do not mandate exclusion of all varieties of specialty care, but only require that specific types of dedicated units (psychiatric and rehabilitation units) be excluded. Our proposal would not further restrict the types of units to be excluded but would only prohibit the establishment of multiple units offering variations of the same types of care. Therefore, we are not making any revisions in this final rule based on this comment.

In addition, we received comments relating to provisions for which we had not proposed changes, and to changes that were adopted through previous publications. Because these comments do not relate to the provisions of the proposed rule, we have not responded to them in this document.

B. Ceiling on the Rate of Increase in Hospital Inpatient Costs—Rate-of-Increase Percentages and Update Factors (§ 413.40(c))

Section 13502 of Public Law 103-66 amended section 1886(b)(3)(B) of the Act, which provides the applicable rate-of-increase percentages to be applied to the target amounts for hospitals and hospital distinct part units excluded from the prospective payment system.

The applicable rate-of-increase percentage for the cost reporting period beginning during FY 1994 is the market basket percentage increase adjusted as follows. First, the "update adjustment percentage" is calculated by determining the percentage by which the hospital's costs subject to the ceiling exceed the hospital's ceiling (target amount times Medicare discharges) for the 12-month cost reporting period beginning in FY 1990.

Then, the applicable reduction is calculated as the lesser of 1 percentage point or the result of subtracting the hospital's "update adjustment percentage" from 10 percent.

The rate of increase percentage is the market basket percentage increase less the applicable reduction, except in the following situations:

- If the hospital's "update adjustment percentage" is 10 percent or more, there is no applicable reduction and its rate-of-increase percentage is the percentage increase in the hospital market basket.
- If a hospital's FY 1990 rate-of-increase ceiling was greater than cost subject to the ceiling, the rate-of-increase percentage is the percentage increase in the hospital market basket minus 1 percentage point.
- If a hospital did not have a 12-month cost reporting period beginning in FY 1990 that was subject to the rate-of-increase limitation, its applicable rate-of-increase percentage is the percentage increase in the hospital market basket minus one percentage point.

For cost reporting periods beginning in FY 1995 through 1997, the hospital's update adjustment percentage is its "update adjustment percentage" from the previous year plus the previous year's applicable reduction. The hospital's applicable reduction and applicable rate-of-increase percentage are then determined in the same manner as for FY 1994. The fiscal intermediary is to determine the applicable rate-of-increase percentage based on the methodology described above. Examples of how this provision applies in determining the applicable rate-of-increase percentages are as follows:

Example 1

Cost reporting period beginning in FY 1990:	
Allowable inpatient operating costs	$10,600
Rate-of-increase ceiling	$10,000
Percentage by which costs exceed ceiling)	6.00%
FY 1994:	
Update adjustment percentage (percentage by which costs exceed ceiling)	6.00%
Difference between 10% and update adjustment percentage	4.00%
Applicable reduction (lesser of 1% and the difference between 10% and the update adjustment percentage)	1.00%
Applicable rate-of-increase percentage is the market basket percentage increase minus the applicable reduction of 1%.	
FY 1995:	
Update adjustment percentage (last year's update adjustment percentage plus last year's applicable reduction)	7.00%
Difference between 10% and update adjustment percentage	3.00%
Applicable reduction (lesser of 1% and the difference between 10% and the update adjustment percentage)	1.00%
Applicable rate-of-increase percentage is the market basket percentage increase minus the applicable reduction of 1%.	
FY 1996:	
Update adjustment percentage (last year's update adjustment percentage plus last year's applicable reduction)	8.00%
Difference between 10% and update adjustment percentage	2.00%
Applicable reduction (lesser of 1% and the difference between 10% and the update adjustment percentage)	1.00%
Applicable rate-of-increase percentage is the market basket percentage increase minus the applicable reduction of 1%.	
FY 1997:	
Update adjustment percentage (last year's update adjustment percentage plus last year's applicable reduction)	9.00%
Difference between 10% and update adjustment percentage	1.00%
Applicable reduction (lesser of 1% and the difference between 10% and the update adjustment percentage)	1.00%
Applicable rate-of-increase percentage is the market basket percentage increase minus the applicable reduction of 1%.	

Example 2

Cost reporting period beginning in FY 1990:	
Allowable inpatient operating costs	$10,800
Rate-of-increase ceiling	$10,000
Percentage by which costs exceed ceiling	8.00%
FY 1994:	
Update adjustment percentage (percentage by which costs exceed ceiling)	8.00%
Difference between 10% and update adjustment percentage	2.00%
Applicable reduction (lesser of 1% and the difference between 10% and the update adjustment percentage)	1.00%
Applicable rate-of-increase percentage is the market basket percentage increase minus the applicable reduction of 1%.	
FY 1995:	
Update adjustment percentage (last year's update adjustment percentage plus last year's applicable reduction)	9.00%
Difference between 10% and update adjustment percentage	1.00%
Applicable reduction (lesser of 1% and the difference between 10% and the update adjustment percentage)	1.00%
Applicable rate-of-increase percentage is the market basket percentage increase minus the applicable reduction of 1%.	

FY 1996:	
Update adjustment percentage (last year's update adjustment percentage plus last year's applicable reduction)	10.00%
Because the update adjustment percentage is at least 10%, the applicable rate-of-increase percentage for FY 1996 and FY 1997 is the market basket percentage increase.	

Example 3

Cost reporting period beginning in FY 1990:	
Allowable inpatient operating costs	$10,950
Rate-of-increase ceiling	$10,000
Percentage by which costs exceed ceiling	9.50%
FY 1994:	
Update adjustment percentage (percentage by which costs exceed ceiling)	9.50%
Difference between 10% and update adjustment percentage	0.50%
Applicable reduction (lesser of 1% and the difference between 10% and the update adjustment percentage)	0.50%
Applicable rate-of-increase percentage is the market basket percentage increase minus the applicable reduction of 0.50%.	
FY 1995:	
Update adjustment percentage (last year's update adjustment percentage plus last year's applicable reduction)	10.00%
Because the update adjustment percentage is at least 10%, the applicable rate-of-increase percentage for FY 1995 through FY 1997 is the market basket percentage increase.	

Example 4

Cost reporting period beginning in FY 1990:	
Allowable inpatient operating costs	$9,000
Rate-of-increase ceiling	$10,000
Percentage by which costs exceed ceiling	0.00%
FY 1994:	
Applicable reduction	1.00%
Because costs did not exceed the rate-of-increase ceiling in FY 1990, the applicable rate-of-increase percentage for FY 1994 through FY 1997 is the market basket percentage increase minus 1%.	

For cost reporting periods beginning in FY 1998 and following, the applicable rate-of-increase percentage is the percentage increase in the hospital market basket.

We are revising proposed § 413.40(c)(2) by adding paragraphs (v) and (vi) to set forth the new rate-of-increase percentage provisions. We are also revising the proposed § 413.40(a)(3) by adding the definition of "update adjustment factor."

C. Ceiling on the Rate of Increase in Hospital Inpatient Costs—Adjustments (§ 413.40(g))

1. Proposed Rule Provisions

The rate-of-increase ceiling is based on an assumption that, except for inflation, a provider's year-to-year inpatient operating costs should remain comparable to its base year. Each hospital's target amount is adjusted annually, at the beginning of its cost reporting period, by an applicable rate-of-increase percentage for the Federal fiscal year in which the cost reporting period begins. Section 1886(b)(4)(A) of the Act authorizes the Secretary to grant an exemption from, or an adjustment or exception to, the rate-of-increase ceiling where events beyond the hospital's control or extraordinary circumstances create a distortion in the hospital's inpatient operating costs.

To implement section 1886(b)(4)(A) of the Act, regulations at § 413.40 provide that HCFA may adjust a hospital's operating costs that were considered in establishing a base year cost per case for purposes of determining the target amount, including the period subject to the limit and the hospital's base period. Section 413.40(g) provides that such an adjustment may be made only if the hospital exceeds its ceiling for the cost reporting period and only to the extent the hospital's costs are reasonable, attributable to the circumstances specified as creating the cost distortion, and are verified by the intermediary.

In the August 30, 1991 final rule (56 FR 43232), we set forth our policy for target amount adjustments for significant wage increases. Effective with cost reporting periods beginning on or after April 1, 1990, significant increases in wages since the base period are recognized as a basis for an adjustment in the target amount under § 413.40(g).

To qualify for an adjustment, the excluded hospital or hospital unit must be located in a labor market area that is determined to have an average hourly wage that increased significantly more than the national average hourly wage between the hospital's base period and the period subject to the ceiling. We use the hospital wage index for prospective payment hospitals to determine the rate of increase in the average hourly wage in the labor market area. For a hospital to qualify for an adjustment, the increase in its wage index value based on 1982 wage data and its wage index value based on the latest applicable wage data must be at least 8 percent. If the hospital's base period begins in FY 1984 or later, the increase in the wage index value based on 1984 data and the wage index value based on the latest applicable wage data must be at least 8 percent. Sections 413.40(g)(4)(A) and (B) specify that 1988 wage data is to be used for comparisons of wage index values to those based on 1982 or 1984 wage data. Since we will be updating the wage index information yearly, we are replacing the specific requirements based on 1988 wage data with more general provisions based on a comparison of the wage index based on wage survey data collected for the cost reporting period subject to the ceiling to the wage index based on wage survey data collected for the base year cost reporting period. If survey data are not available for one (or both) of the cost reporting periods used in the comparison, the wage index based on the latest available survey data collected prior to that cost reporting period will be used. For example, to make the comparison between a 1983 base period and a hospital's cost reporting period beginning in FY 1992, we would use the rate of increase between the wage index based on 1982 wage data and the wage index based on the FY 1990 data, since the FY 1990 data are the most recent data that are currently available. Further, the comparison is made without regard to geographic reclassifications made by the MGCRB under sections 1886(d)(8) and (10) of the Act. Therefore, the comparison is made based on the wage index value of the labor market area in which the hospital is actually located.

The geographic areas in which the percentage difference in wage indexes was sufficient to qualify for a wage index adjustment are listed in Table 10 of section V of the addendum to this final rule. The table is constructed with old MSAs instead of the revised MSAs effective October 1, 1993 because current adjustment requests are for years prior to FY 1994.

We determine the amount of the adjustment for wage increases by considering three factors for the time between the base period and the period for which an adjustment is requested: The rate of increase in the hospital's average hourly wage; the rate of increase in the average hourly wage in the labor market area in which the hospital is located; and, the rate of increase in the national average hourly wage for hospital workers. The adjustment is limited to the amount by which the lower of the hospital's or the labor market area's rate of increase in average hourly wages significantly exceeds the national increase (that is, exceeds the national rate of increase by more than 8 percent). For purposes of computing the adjustment, the relative rate of increase

in the average hourly wage for the labor market area is assumed to have been the same over each of the intervening years between the wage surveys.

To determine the rate of increase in the national average hourly wage, we use the average hourly earnings (AHE) component of the wages and salaries portion of the market basket. This measure is derived from the 1982-based market basket since the 1987-based market basket uses the employment cost index (ECI) for hospital workers as the price proxy for this component. Unlike the AHE, the ECI for hospital workers can be measured historically only back to 1986. In addition, the ECI does not adjust for skill-mix shifts and, therefore, measures only the change in wage rates per hour.

The average hourly earnings for hospital workers as measured by the market basket show the following increases:

1983 = 8.4 percent
1984 = 5.6 percent
1985 = 5.4 percent
1986 = 4.1 percent
1987 = 4.7 percent
1988 = 6.5 percent
1989 = 6.9 percent
1990 = 5.6 percent
1991 = 5.6 percent
1992 = 4.8 percent
1993 = 4.2 percent
1994 = 4.8 percent

We use the following methodology to determine if an adjustment for significant wage increases is appropriate:

Step 1: Compare the hospital's rate of increase in average hourly wages to the rate of increase in the labor market area in which the hospital is located. The hospital's rate of increase is calculated by dividing its average hourly wage in the year for which the adjustment is requested by its average hourly wage in the base year. The rate of increase in the labor market area is computed by multiplying the cumulative percentage increase in the AHE for hospital workers by the applicable percentage change in the wage index. The lower of the two rates of increase will be used in Step 3.

Step 2: Determine the threshold for the adjustment. The threshold is equal to the cumulative percentage increase in the AHE for hospital workers over the period in question multiplied by 1.08.

Step 3: Subtract the amount determined in Step 2 from the lower of the two amounts determined in Step 1. This result is the percentage increase that is considered significantly above the increase that is accounted for by the update factor.

Step 4: Determine the proportion of the hospital's operating costs that is attributable to wages and fringe benefits. Adjust this proportion of the hospital's target amount to account for the wage increase by multiplying it by the percentage increase determined in Step 3. As with other adjustments under § 413.40(g), the adjustment is made only to the extent the hospital's costs are in excess of the target amount.

Since we provide a specific methodology to be used to make the wage adjustment, we authorized the intermediary to make the determinations on these requests for an adjustment due to a significant wage increase.

We received no comments on the methodology change described above. Therefore, we are adopting this change as proposed.

2. Changes Based on New Legislation

Section 13502 also amended section 1886(b)(4)(A) of the Act by adding a new subsection (ii) that provides that the payment reductions resulting from the hospital receiving less than market basket as its percentage increase will not be considered in determining adjustments under § 413.40(g). In determining an adjustment, the applicable rate-of-increase percentage for the cost reporting period or periods (FY 1994 through FY 1997) will be deemed to be the percentage increase in the hospital market basket. That is, in determining the amount of the adjustment a hospital may warrant under the regulatory adjustment provisions, the adjustment can not exceed the difference between the allowable Medicare inpatient operating costs and the rate-of-increase ceiling adjusted for the payment reduction. For example, a rehabilitation hospital's inpatient operating costs were $1,800,000 and the ceiling (after application of an update of market basket minus 1 percentage point) was $1,700,000. The costs in excess of the ceiling is $100,000. If the hospital had been awarded the market basket increase, the ceiling would have been $1,785,000 and the hospital's inpatient operating costs would have exceeded the ceiling by $15,000. Therefore, the maximum adjustment the hospital may qualify for under this provision is $15,000 and not the $100,000 by which the hospital's inpatient operating costs actually exceed the ceiling.

We are adding new § 413.40(g)(5) to implement the adjustment restriction on payment reductions resulting from the rate-of-increase percentage determination.

D. Technical Changes Regarding the Ceiling on the Rate of Increase in Hospital Inpatient Costs (§ 413.40)

We proposed several technical changes to the regulations in § 413.40, which concern the ceiling on the rate of increase in hospital inpatient costs. These changes are necessary to define terms, clarify current provisions, correct citations, and remove obsolete material that applies to cost reporting periods for which a final notice of amount of program reimbursement (NPR) has long since been issued.

The specific changes we proposed to make are as follows:

• *Definitions.* In § 413.40, concerning the ceiling on the rate of increase in hospital inpatient costs, the terms "ceiling" and "target amount" heretofore have been used interchangeably. Although the terms are closely related, they have different meanings. Therefore, to eliminate any possible confusion, we proposed to add a new paragraph (a)(3) to define "target amount" and "ceiling." "Target amount" means the per discharge (case) limitation, derived from the hospital's allowable net Medicare inpatient operating costs in the hospital's base year, and updated for each subsequent hospital cost reporting period by the appropriate annual rate-of-increase percentage. "Ceiling" is the aggregate upper limit on the amount of a hospital's net Medicare inpatient operating costs that the program will recognize for payment purposes. For each cost reporting period, the ceiling is determined by multiplying the updated target amount for that period by the number of Medicare discharges during that period.

In addition, for the convenience of the reader, we proposed to define "date of discharge," "market basket index," "net inpatient operating costs," "rate-of-increase percentage," and "update factor" in the new paragraph (a)(3).

"Date of discharge" is the earliest of the following dates:

(1) The date the patient has exhausted Medicare Part A hospital inpatient benefits (including the election to use lifetime reserve days) during his or her spell of illness;

(2) The date the patient is formally released as specified in § 412.4(a)(1) of this chapter;

(3) The date the patient is transferred to another facility; or

(4) The date the patient dies.

"Market basket index" is HCFA's projection of the annual percentage increase in hospital inpatient operating costs. The market basket index is a wage and price index that incorporates

weighted indicators of changes in wages and prices that are representative of the mix of goods and services included in the most common categories of hospital inpatient operating costs subject to the ceiling.

"Net inpatient operating costs" include the costs of routine services, ancillary services, and intensive care services incurred by a hospital in furnishing covered inpatient services to Medicare beneficiaries. Net inpatient operating costs exclude capital-related costs, the costs of approved medical education programs, and heart, kidney, and liver acquisition costs incurred by approved transplantation centers. These costs are identified and excluded from inpatient operating costs before the application of the ceiling.

"Rate-of-increase percentage" is the percentage by which each hospital's target amount from the preceding fiscal year will be increased. "Update factor" is the decimal equivalent of the rate-of-increase percentage. The update factor is the value by which a hospital's target amount for the preceding year is multiplied in order to determine the target amount for the following year. For example, if the rate-of-increase percentage for a year is 2.7 percent, the update factor for that year is 1.027.

In conjunction with these changes, we proposed to make conforming changes to §§ 413.40(c) and (d). Specifically, in § 413.40(c), concerning costs subject to the ceiling, we proposed to remove the terms "target rate" and "target rate percentage," and replace these terms with "target amount" and "rate-of-increase percentage," respectively. In some instances, the terms "target amount," "ceiling" and "target rate percentage" were used interchangeably in paragraph (c); therefore, we also proposed to replace these terms with the appropriate terms. We proposed to delete current paragraph (c)(2), since the date of discharge would be defined in paragraph (a)(3). In current paragraph (c)(3) (which we would redesignate as paragraph (c)(2)), we proposed to include the update factors with the rate-of-increase percentages for FYs 1986 through 1988 since, as defined earlier, the update factor is the decimal equivalent of the rate-of-increase percentage. We also proposed to remove current paragraph (c)(3)(ii) since the market basket index would be defined in paragraph (a)(3), and in current paragraph (c)(3)(i)(D), change the reference to paragraph (c)(3)(ii) to read (a)(3).

In paragraph (d) of § 413.40, concerning the application of the target amount in determining the amount of payment, we proposed to replace the terms "target amount" and "reimbursement" with the appropriate terms. In paragraph (d)(1)(i) of § 413.40, we proposed to add a reference to paragraph (a)(3).

• *Clarifications.* In § 413.40(a)(1), concerning the ceiling on the rate of increase in hospital inpatient costs, we proposed to clarify that the ceiling applies to the operating costs incurred by a hospital in furnishing inpatient hospital services "to Medicare beneficiaries," and we proposed to change the term "reimbursement" to read "the amount of Medicare payment."

In § 413.40(b)(1), concerning the cost reporting periods subject to the rate-of-increase ceiling, we proposed to clarify the policy on the base period for new excluded units. Specifically, the base period for a newly established excluded distinct part unit is the first cost reporting period of at least 12 months following the unit's certification to participate in the Medicare program. We also proposed to divide paragraph (b)(1) into 3 subparagraphs, for ease of use.

In § 413.40(b)(3), concerning cost reporting periods of other than 12 months, we proposed to clarify that the ceiling does not apply to cost reporting periods of fewer than 12 months that occur in conjunction with a change in operations of the facility, as defined in paragraph (b)(1)(iii). The ceiling will apply to cost reporting periods of fewer than 12 months that result solely from the approval of a hospital's request for a change in accounting cycle, as specified in § 413.24(f)(3).

We proposed to remove §§ 413.40 (c)(1)(ii) and (c)(1)(iii), since those components of net inpatient operating cost that are subject to, and those that are excluded from, the application of the ceiling, are now defined in paragraph (a)(3).

In § 413.40(e)(1), concerning the timing of a hospital's request for an adjustment to the amount of payment allowed under the rate-of-increase ceiling, we proposed to clarify our policy on the deadline for requests for an adjustment to the ceiling.

In § 413.40(e)(4), concerning notification and review of a hospital's request regarding a payment adjustment, we proposed to clarify that the right to review under subpart R of part 405 is contingent upon the intermediary's issuance of a notice of amount of program reimbursement that disallows costs for which the hospital had requested an adjustment, as specified in § 405.1801(a), which refers to pertinent definitions, and § 405.1835, which addresses the provider's right to a hearing before the Provider Reimbursement Review Board (PRRB).

In § 413.40(e)(6), concerning a hospital's request for a review of a decision on a request for a payment adjustment, we proposed to change the term "reconsideration" to "review" in order to distinguish the review process from the formal reconsideration process.

In § 413.40(f)(1), concerning exemptions for new hospitals from the rate-of-increase ceiling, we proposed to redesignate paragraphs (f)(1)(ii) and (f)(2) as (f)(2) and (f)(3), respectively, and add new paragraphs (f)(1)(ii) and (f)(1)(iii) to clarify that the hospital's intermediary must notify a hospital of its exempt status, and to clarify that the right to review under subpart R of part 405 is contingent upon the intermediary's issuance of a notice of amount of program reimbursement for a cost reporting period that is affected by the intermediary's exemption determination to the financial detriment of the hospital, as specified in § 405.1801(a), which refers to pertinent definitions, and § 405.1835, which addresses the provider's right to a Board hearing. In the redesignated paragraph (f)(2), we proposed to clarify that a new distinct part unit does not qualify for an exemption unless the unit is located in an acute care hospital that, were it an excluded hospital, would qualify for the new hospital exemption. We also proposed to remove a redundant reference to the base period for newly established excluded units.

In § 413.40(i)(3), we proposed to add the term "update factor" to follow the term "rate-of-increase percentages" to be consistent with the changes in paragraph (c)(3) that clarify the methodology for updating the target amount.

• *Citation corrections.* In §§ 413.40(a)(2)(ii), paragraph (b)(1)(i), and redesignated paragraph (f)(2), we proposed to correct a reference to § 412.32 and replace it with § 412.30 since § 412.32 was removed in the September 1, 1992, final rule (see 57 FR 39821). In § 413.40(a)(2)(ii), we proposed to remove a reference to § 412.94(b) since § 412.94 was removed in the September 4, 1990, final rule (see 55 FR 36070). In § 413.40(f)(2), we also proposed to revise references to paragraph (f)(1)(i) to read (f)(1).

In § 413.40(f)(3), concerning exemptions for a risk-basis HMO, we proposed to correct a reference to § 417.250(c) and replace it with § 417.401 since § 412.250 was removed as an obsolete provision (see 56 FR 51985, October 17, 1991).

• *Removal of obsolete material.* In § 413.40(a)(1), concerning the ceiling on

the rate of increase in hospital inpatient costs, we proposed to delete a reference to costs that are included in FY 1982 base years. We also proposed to eliminate the reference to "exceptions to" the ceiling to reflect the clarifying changes made to §§ 413.40 (g) and (h) (see 56 FR 43231 and 43242, August 30, 1991).

In § 413.40(b)(3), concerning cost reporting periods of other than 12 months, we proposed to remove obsolete language that refers to prorating percentage rates of increase across fiscal years.

In current § 413.40(c)(5) (which we proposed to redesignate as paragraph (c)(4)), concerning the applicable update factor, we proposed to remove references to the proration of rate-of-increase percentages across years since these provisions ceased as of January 3, 1984 (see 49 FR 336). We also proposed to remove a now redundant reference to the development and proration of rate-of-increase percentages, and substitute language clarifying the policy on the application of rate-of-increase percentages to target amounts.

In § 413.40(d)(1)(ii), concerning the general application of the target amount in determining the amount of payment, we proposed to add references to paragraphs (d)(2) and (d)(3), and remove an obsolete reference to cost reporting periods beginning prior to October 1, 1983. In conjunction with these changes, we proposed to remove paragraphs (d)(1)(iii) and (d)(1)(iv).

In § 413.40(d)(2), concerning inpatient operating costs that are less than or equal to the ceiling, we proposed to remove paragraph (d)(2)(iii), which contains an obsolete reference to § 413.30.

In § 413.40(d)(3), concerning inpatient operating costs that are greater than the ceiling, we proposed to remove all references to cost reporting periods beginning on or after October 1, 1982 and before October 1, 1991.

Finally, we proposed to remove and reserve § 413.40(h), concerning the target amount revisions for the Medicare Catastrophic Coverage Act of 1988 (Public Law 100–360), since these regulations are now obsolete.

Comment: One commenter stated that the language in the preamble and regulations is unclear regarding appeal rights to the PRRB for disallowed costs. The proposed § 413.40(e)(4)(ii) states that a provider could not appeal an adjustment until a notice of program reimbursement has been issued that "disallows costs for which the hospital had requested an adjustment." The commenter expressed concern that the intent may be to preclude a provider from pursuing through the appeal process both disallowed costs and those denied in an adjustment request.

Response: The confusion regarding the intent of the regulations may come from the term "disallowed costs." For purposes of the review process described in § 413.40(e)(4), the term "disallowed costs" encompasses both costs that have been disallowed by the fiscal intermediary as unreasonable and therefore, will not be reimbursed by Medicare regardless of the TEFRA limits, and those costs that are allowable but were not reimbursed since they exceeded the TEFRA target amount. These latter costs are the subject of adjustment requests. Hospitals have the right to appeal both costs disallowed by the fiscal intermediary as well as costs denied through the adjustment process, providing an NPR has been issued.

Comment: One commenter recommended that the regulations be modified to assure that hospitals be given detailed explanation by the fiscal intermediary upon notification from HCFA regarding decisions on adjustment requests. The commenter referred to the regulations requiring that HCFA fully explain adjustment decisions but indicated that some fiscal intermediaries fail to pass this information on to the hospital.

Response: The regulations already state at § 413.40(e)(4) that "the intermediary notifies the hospital of the decision, including a full explanation of the grounds for the decision." We believe this language clearly indicates the intermediaries' responsibility regarding notification of adjustment decisions to providers.

Two commenters addressed other aspects of our adjustment policy that were not the subject of the proposed rule, specifically the provision for additional payment when hospital inpatient operating costs exceed the rate-of-increase limitation and the 8 percent threshold for wage increase adjustments. Both of these issues were addressed in detail in our August 30, 1991, final rule at 56 FR 43229 and 43233, respectively.

We received no other comments on these proposed technical changes and are adopting all of them as proposed.

E. Related Technical Changes (§§ 412.62, 412.63, 412.73 and 412.98)

As proposed, we are making minor technical changes to the regulations in §§ 412.62, 412.63, 412.73 and 412.98 to reflect the numbering and terminology changes in § 413.40.

VII. Other ProPAC Recommendations

As required by law, we reviewed the March 1, 1993 report submitted by ProPAC to Congress and gave its recommendations careful consideration in conjunction with the proposals set forth in the proposed rule. We also responded to the individual recommendations in the proposed rule. The comments we received on the treatment of the ProPAC recommendations are set forth below along with our responses to those comments. However, if we received no comments from the public concerning a ProPAC recommendation or our response to that recommendation, we have not repeated the recommendation and response in the discussion below. Recommendations 5, 9, and 10 concerning the update factors for inpatient operating costs are discussed in Appendix C to this final rule. Recommendations 6 and 7 concerning the update factors for capital costs are discussed in Appendix D. Recommendation 16 concerning Medicare transfer payment policy is discussed in section IV of this preamble. The remaining recommendations on which we received comments are discussed below.

A. Controlling Spending Across Sites of Care (Recommendation 3)

Recommendation: ProPAC believes the Medicare program should continue to seek effective methods to control its total spending across all sites of care. Total Medicare spending is growing at rates much greater than can be explained by inflation and increases in the number of enrollees. The growth in spending is straining the resources of the Medicare trust funds, adding to the Federal deficit, and creating substantial financial burdens for Medicare beneficiaries.

Response to the Proposed Rule: We agree that controlling the rate of growth in health care spending both in the Medicare program and in the health care sector in general is of critical importance. The Medicare program has various mechanisms in place to stem the growth in spending for some services. For inpatient hospital services, the prospective payment system has been shown to slow the growth in Medicare spending compared with estimates of growth in program payments under reasonable cost reimbursement. The reform of Medicare physician payments, although recently enacted, has demonstrated a reduction in the growth of program expenditures in its first year. We are also developing a prospective payment system for outpatient services

that will provide the appropriate economic incentives to help control the growth of Medicare outpatient spending.

However, we acknowledge the need to extend these cost control methods to other providers and to control the growth in the volume of services provided. We are developing alternative payment systems for hospitals and units that are excluded from the prospective payment system, for skilled nursing facilities, and for home health agencies. The Medicare volume performance standards (MVPS) system is one mechanism available for controlling the volume of services provided. The MVPS provides physicians with incentives to control the volume of services they provide. Similar mechanisms for other services do not exist, although we continue to explore other means of controlling the growth in the volume of services provided, such as bundling payment for multiple services into a single payment.

Ultimately, the key to controlling spending across sites of care lies in the reform of the health care system. One of the goals of reforming health care is slowing the rate of increase in public and private health care costs and, thus, health care spending overall.

Comment: ProPAC continues to support our efforts to develop and implement policies to control Medicare spending, and agrees that health care reform may provide opportunity to control overall health care costs; however, at the same time, the Commission urges us to seek more immediate measures to control spending under the Medicare program.

Response: We believe that our response on this subject in the proposed rule continues to be appropriate.

B. Data for Evaluating Case-Mix Index Change Recommendation 8)

Recommendation: The Secretary should collect the data necessary to apportion case-mix index change into its real and upcoding components.

Response in the Proposed Rule: We agree with ProPAC that it would be desirable to separate case-mix index (CMI) change into its real and upcoding components. In the past, estimates of real CMI change and upcoding were based on a sample of medical records analyzed by the SuperPRO in its evaluation of PRO performance (SuperPRO is an organization of health care professionals whose responsibility is to provide HCFA with an independent, professionally recognized evaluation of PRO medical determinations). The Fourth Scope of Work for the SuperPRO is now under development, and we will take into account ProPAC's recommendations regarding the sampling scheme. However, we note that SuperPRO's mission is to improve the validity of PRO medical review decisions in accordance with our Health Care Quality Improvement Initiative (HCQII). The HCQII shifts the emphasis of PRO review activity from review of individual cases to the review of patterns of care and patterns of outcomes. As a result, it may no longer be possible for SuperPRO to collect the data necessary to analyze real CMI change. If this proves to be the case, the Uniform Clinical Data Set System (UCDSS) may be a means for collecting the necessary data elements to analyze CMI change. Assuming the data necessary for evaluating CMI change can be obtained through an analysis of a random sample of medical records, we believe that the data could be abstracted using the UCDSS. The UCDSS can be restructured, as necessary, to collect the type of variables needed to evaluate CMI change. The UCDSS is currently being pilot tested at 5 PRO sites. We do not plan to implement UCDSS on a nationwide basis before January 1995. We look forward to working with ProPAC to explore alternative methods of analyzing CMI change.

Comment: ProPAC supports the Secretary's efforts to investigate data sources necessary to apportion the case-mix index into its real and upcoding components. While the Uniform Clinical Data Set System appears promising for this purpose, ProPAC encourages the Secretary to consider modifying the SuperPRO's Fourth Scope of Work to provide for a sampling scheme that can provide this information.

Response: The SuperPRO contract expired July 1993. The purpose of the SuperPRO contract was to validate the accuracy of the individual medical review decisions and other individual review determinations made by the PROs under their HCFA contracts. With the implementation of the Health Care Quality Improvement Initiative (HCQII), the purpose of PRO case review has changed from identifying individual problem cases to identifying patterns of problems. As a result, the review no longer entails large medical record samples for each State; consequently, the alternative proposed is not viable. Nonetheless, HCFA will pursue other opportunities within HCQII to assist in the evaluation of case-mix index change.

C. Improving Outlier Payment Policy (Recommendation 14)

Recommendation: The Commission believes that the following changes should be made in the current policy for identifying outlier cases and determining outlier payments under the prospective payment system:

- In determining outlier payment, the increasing emphasis on cost outliers relative to day outliers should continue, with the goal of eliminating day outlier payment over three years;
- The cost outlier threshold should be a fixed dollar amount (adjusted for differences in area wages and cost of living) above the payment rate received by the hospital for each case, regardless of the DRG to which the case is assigned;
- Neither the estimated cost of the case nor the outlier payment amount should be adjusted to reflect the hospital's indirect medical education or disproportionate share status;
- The marginal cost factor for cost outliers should be increased to 80 percent;
- The outlier payment pool should be set at 6 percent; and
- The payment rate for cases in each DRG should reflect the anticipated percentage of outlier payments for that DRG.

ProPAC believes these changes would improve the effectiveness of outlier payment policy in protecting against the risk of large losses on some cases.

Response in the Proposed Rule: We continue to evaluate outlier payment policy in order to ensure that outlier payments are appropriately targeted at those cases that present the largest burden to hospitals. We are currently examining several possible refinements to outlier payment policy, including most of those recommended by the Commission.

The Commission first recommends that we continue to increase the emphasis on cost outlier cases relative to day outlier cases, with the goal of eliminating day outlier payments in 3 years. In our September 1, 1992, final rule, we made a major change to day outlier payment policy: we initiated the use of the arithmetic mean length of stay to determine the day outlier payment per diem, and we reduced the day outlier marginal cost factor to 55 percent. At that time, we made a commitment (at 57 FR 39782) to assess the full effects of that change before we established further changes in the day outlier payment methodology. As a result, we believe that it would be inappropriate to propose any further changes to day outlier payment policy at this time.

The Commission's second outlier policy recommendation concerns the formula for determining the cost outlier threshold. Currently, the cost outlier threshold is the greater of a fixed dollar amount (adjusted for differences in area wages and cost of living) or 2.0 times the DRG payment for the case. For some time, research performed by the RAND Corporation for HCFA has indicated that a modification of that formula would improve outlier payment equity. Under the modified methodology (now recommended by ProPAC as well), the cost outlier threshold would be the DRG payment for the case plus a fixed dollar amount (still adjusted for area wage levels and cost of living) for all cases, so that any case with a specified dollar loss would be eligible for outlier payment, regardless of its DRG classification. However, section 1886(d)(5)(A)(ii) of the Act mandates that the cost outlier threshold take its current form of the greater of a fixed multiple of the DRG payment rate or a fixed dollar amount. Therefore, until there is a statutory change, we are precluded from using the fixed loss threshold.

The Commission's third outlier recommendation concerns the method by which we adjust the charges of a case to cost in order to compare them to the cost outlier threshold. Currently, those charges are standardized to remove the effects of the indirect costs of medical education (IME) and the costs associated with serving a disproportionate share of low income patients (DSH). A cost-to-charge ratio is then applied in order to determine the operating and capital costs of the case to be compared to the cost thresholds. The resulting cost outlier payment amount is then subject to adjustment by the relevant IME and DSH payment adjustments that were used to determine the operating and capital costs of the case. The Commission advocates that we eliminate the standardization of the costs for IME and DSH, and that cost outlier payments should no longer be adjusted to reflect the additional IME and DSH costs. The effect of standardizing costs to remove the effects of IME and DSH is to increase the threshold faced by those hospitals.

The statute requires that we pay IME and DSH payments on outlier payments (under sections 1886(d)(5)(B)(i) and 1886(d)(5)(F)(ii) of the Act, respectively); therefore, we believe it would be inappropriate to implement the Commission's recommendation without a change to the statute. Moreover, we believe that changes to the outlier standardization method should be considered in conjunction with the overall level of the IME and DSH adjustments. In this regard, we believe that the IME adjustment to prospective payments for operating costs is currently too high when compared to the differences in Medicare costs associated with teaching activity. Since the elimination of the standardization would further increase payments to teaching hospitals, we believe it would be appropriate to make this change only in conjunction with a reduction in the level of the IME adjustment (see Recommendation 15 below).

The Commission's next two outlier recommendations concern the marginal cost factor for cost outlier payments and the percentage of outlier payments. Section 1886(d)(5)(A)(iii) of the Act specifies that the amount of day and cost outlier payments shall approximate the marginal cost of care beyond the threshold, while section 1886(d)(5)(A)(iv) of the Act specifies that the total amount of outlier payments for discharges in a fiscal year may not be less than 5 percent nor more than 6 percent of the total payments projected or estimated to be made based on DRG prospective payment rates for discharges in that year. We currently set the thresholds so that total estimated outlier payments are 5.1 percent of total estimated DRG payments. When determining the percentage of payments that will be made for outliers, it is important to balance the protection for losses associated with outlier cases with the reduction in the standardized amounts that hospitals receive for all cases. Increasing the outlier payment percentage would result in an offsetting reduction in the standardized amounts. Unless the outlier payment percentage were increased, an increase in the marginal cost factor for cost outlier cases (currently 75 percent) would necessitate more restrictive cost outlier thresholds or further reductions in day outlier payments. We believe the current outlier policies achieve an appropriate balance and are not proposing to make any changes at this time. However, we will re-examine the issues of the outlier payment percentage and marginal cost factor for cost outliers at the same time we evaluate the effects of the day outlier policy changes.

ProPAC's final recommendation concerns the financing of outlier payments through a DRG-by-DRG payment reduction, rather than the current system-wide reduction. We look forward to further discussions of this issue, but are not aware of a feasible method of implementing such a change. We will continue to examine possible refinements to outlier policy, in order to provide the best protection possible to hospitals that are faced with unusually resource-intensive cases.

Comment: ProPAC reiterated its recommendation that we increase the marginal cost factor for cost outliers from 70 to 80 percent and that the outlier payment pool be set at 6 percent. The Commission maintains that a 6 percent outlier pool is necessary to effectively address the risk hospitals face for treating exceptionally costly cases. ProPAC also believes that hospitals treating exceptionally costly cases should receive a higher percentage of those costs.

Response: We believe that our response to these issues in the proposed rule continues to be appropriate.

D. Indirect Medical Education Adjustment to Prospective Payment System Operating Payments (Recommendation 15)

Recommendation: ProPAC recommends that the indirect medical education adjustment to the prospective payment system operating payments be reduced from its current level of 7.7 percent to 7.0 percent for fiscal year 1994. This reduction should be implemented with the anticipated decrease in indirect medical education payments returned to all hospitals through a proportionate increase in the standardized payment amounts.

Response in the Proposed Rule: This recommendation is very similar to ProPAC's recommendation on the level of the indirect medical education (IME) adjustment for FY 1993, to which we responded in the proposed (57 FR 23661) and final (57 FR 39804) rules concerning the changes to the prospective payment systems for FY 1993. We continue to disagree with ProPAC's methodology for estimating the indirect cost effect of teaching without accounting for the disproportionate share (DSH) adjustment. Also, we believe that the resident-to-average daily census (ADC) ratio rather than the resident-to-bed ratio is the most appropriate measure of teaching intensity.

One difference in ProPAC's recommendation for FY 1994 is that the reduction in IME payments would be returned to all hospitals through an increase in the standardized amounts. For FY 1993, ProPAC recommended the reduction in IME payments be returned to teaching hospitals that qualify for the DSH payment adjustment, by increasin the DSH adjustment. This aspect of ProPAC's FY 1993 recommendation stemmed from concern that hospitals receiving both adjustments have lower total margins than other hospitals, even though their margins on Medicare

patients are among the highest of any hospital group. However, as a result of increases in the level of the DSH adjustment enacted by the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508), ProPAC no longer believes the IME savings should be targeted toward teaching, DSH hospitals. Instead, the savings would be redistributed among all hospitals.

We agree that the IME adjustment should be reduced. When the capital prospective payment system was implemented beginning in FY 1992, we estimated the indirect effect of graduate medical education on total costs (excluding direct graduate medical education costs) to be an increase of approximately 2.82 percent for every 10 percent increase in the resident-to-ADC ratio. The President's FY 1994 budget recommends reducing the IME adjustment for the operating prospective payment system from its current level to the equivalent of a 5.65 percent increase for every 10 percent increase in the resident-to-bed ratio. (An IME adjustment of 5.65 percent based on the resident-to-bed ratio produces the same payment result as an adjustment of 3.43 percent that is based on resident-to-ADC ratio. See the discussion below comparing the different formulas.) Effective for discharges occurring on or after January 1, 1996, and before January 1, 1998, the budget would reduce IME payments to approximately a 3.51 percent increase for every 10 percent increase in teaching intensity (as measured by hospitals' resident-to-ADC ratios). Effective for discharges on or after January 1, 1998, the adjustment would be further reduced to approximately 3.43 percent. This proposal would also change the specification of the operating IME adjustment formula to make it similar to that used for the capital IME adjustment factor.

Under the President's budget proposal, the reduced IME payments would be used for deficit reduction rather than being redistributed to all hospitals through the standardized amounts. By delaying the reduction for 2 years, the proposal allows teaching hospitals time to prepare. Furthermore, to the extent that health care reform addresses some of the non-Medicare social issues currently facing many major teaching hospitals, the current high level of the adjustment may no longer be needed to subsidize non-Medicare operations. We believe that payments to nonteaching hospitals are adequate and that it would be inappropriate to increase their payments by making the teaching reduction budget neutral.

We note that the difference between the President's budget proposal and ProPAC's proposal (or the current adjustment) is not as large as the percentage increases might suggest. That is because, by convention, this adjustment has been described as the percentage increase in payments that occurs when the ratio increases slightly from zero (0.001), multiplied by the amount necessary to characterize the ratio increase as 10 percent. We believe the adjustments can better be compared by describing them in terms of the average adjustment factor (weighted by DRG payments plus outliers) they produce. Because these average adjustment factors are weighted by payments, they reflect the different levels of overall IME payments under the various formulas. For example, under the current operating IME formula, the weighted average IME adjustment factor is 0.133 (or an average per case adjustment for teaching hospitals of 13.3 percent). Under ProPAC's recommendation, we estimate the average adjustment factor would be 0.128 (an average adjustment of 12.8 percent per case). Under the President's budget proposal, for discharges on or after January 1, 1996, through December 31, 1997, the average factor would be 0.096, and, on or after January 1, 1998, it would be 0.094 (that is, average adjustments of 9.6 and 9.4 percent per case, respectively).

Comment: ProPAC commented on several issues addressed in our response to their comment in the proposed rule. First, ProPAC continues to believe that the IME adjustment should begin to be reduced effective in FY 1994, and points out that subsidization of non-Medicare operations is not an objective of the IME adjustment. They further believe that the savings from reducing IME should be returned to all hospitals through a budget neutral increase in the standardized payment amounts, in light of concern that the Medicare operating margin for nonteaching hospitals was −9.4 percent during FY 1991. This position was also taken by another commenter. That commenter opposes any reduction in IME, but, should a reduction occur, the commenter believes that the decrease in anticipated IME payments should be redistributed to all hospitals in light of the overall negative Medicare operating margins. The commenter stated that using any IME reduction as a budget-cutting tool is inappropriate and contrary to the budget neutrality concept of the prospective payment system.

Another commenter recommended that no further adjustments be made to the IME adjustment until refinements are made to the DRG classification system to properly recognize cost differences related to severity of illness. The commenter believes that a reduction of IME payments would place a disproportionate burden on a segment of the industry that has already borne significant payment reductions. Finally, one commenter stated that teaching hospitals' Medicare operating margins may indicate they are overpaid and suggested removing these payments from the base rates and pooling the dollars. This commenter states that this would allow these facilities to be monitored with efficiency incentives as a reward for lower cost programs, and would encourage primary care residencies.

The second issue raised by ProPAC relates to our disagreement with its methodology for estimating the indirect cost effect of teaching without accounting for the DSH adjustment. ProPAC indicates that our position does not reflect the unique objective of the DSH adjustment. Specifically, ProPAC commented that it is inappropriate to control for DSH in the estimate of IME cost because DSH does not reflect cost differences.

Third, ProPAC repeated its previous opposition to our recommendation for a statutory revision that would change the measure of teaching intensity from the resident-to-bed ratio to the ratio of residents-to-average daily census. ProPAC contends that this revision would shift the distribution of IME payments away from high-occupancy hospitals toward low-occupancy hospitals. The Commission goes on to state that a central objective of the prospective payment system is to encourage hospitals to use resources efficiently and changing to average daily census in the denominator of the IME equation would reward inefficiency.

Finally, ProPAC expressed its shared interest in finding a better convention to describe the level of the IME adjustment, stating that the current convention is an imprecise and often misinterpreted hospital-level description of the relationship between teaching intensity and the adjustment factor. The HCFA recommended convention, however, is an aggregate-level description affected by factors unrelated to teaching activity, such as the distribution of cases across teaching hospitals and outlier payment rules.

Response: We wholeheartedly agree with ProPAC's statement that subsidization of non-Medicare operations is not an objective of the IME adjustment. We have consistently recommended lowering the IME adjustment to a level more in line with

the actual effect of graduate medical education on inpatient operating costs. Although ProPAC has indicated that further reductions beyond its FY 1994 recommendation should occur only after an examination of the financial status of teaching hospitals, we share their belief that the objective of the IME adjustment is to compensate teaching hospitals for their IME costs. While our best estimate of those costs is significantly less than ProPAC's (as described above in our response in the proposed rule), the underlying premises of our positions are very similar. That is, the IME adjustment should be reduced, but it should be done in a way that recognizes the critical roles teaching hospitals play in meeting many of society's health care needs.

We disagree with the comment suggesting that no further reductions in IME should occur until the DRG classification system is refined further. The IME adjustment has not been changed since October 1, 1988, while the DRG classification system is refined annually. Furthermore, our estimate of the IME cost relationship controlled for case-mix variation using the GROUPER in place at the time (1991). To the extent that teaching hospitals have higher costs due to more severely ill patients that are not explained by controlling for case-mix, those costs would be reflected in the IME estimate. Also, the commenter's point that a reduction in IME payments would place a disproportionate burden on teaching hospitals is unsubstantiated in light of the singularly high Medicare operating margins of these hospitals.

With regard to the commenter's position that the savings from reducing IME should be returned to all hospitals through a budget-neutral increase in the standardized payment amounts, and their contention that it is inappropriate and contrary to the concept of the prospective payment system to use the savings from reducing IME as a budget-cutting tool, any such increase must be examined in the larger contexts of health care reform and deficit reduction. In response to the suggestion that IME payments should be pooled and used to reward efficiency and promote primary care residencies, these are beyond the current objective of the IME adjustment as stated above.

With respect to ProPAC's point that it is inappropriate to include a DSH variable when estimating the IME cost effect, our position has not changed from that stated in the September 1, 1992 final rule (57 FR 39805). Congress recognized the overlapping costs accounted for by these two adjustments by simultaneously revising the level of the IME adjustment when the DSH adjustment was enacted in 1986 and twice hence. Our analysis indicates that there is evidence of significantly higher costs related to DSH among urban hospitals with 100 or more beds. This group of hospitals, which will receive 96 percent of all DSH payments during FY 1994, includes the large majority of teaching hospitals. Failing to account for the higher costs shown to be associated with DSH for these hospitals results in some of the cost effects of DSH being reflected in the IME estimate, thus creating the potential for double payment of DSH costs. The fact that teaching hospitals will receive approximately 66 percent of all FY 1994 DSH payments (over $2 billion) illustrates the significance of such potential overpayments.

Similarly, with regard to ProPAC's opposition to the resident-to-average daily census ratio, we discussed in detail our reasons for preferring this ratio in the September 1, 1992 final rule (57 FR 39807). While ProPAC is correct that this change would result in a one-time redistribution of IME payments, its argument that changing the denominator would reward inefficiency is not persuasive. We believe the resident-to-average daily census ratio is a more straightforward and appropriate measure of teaching intensity. Therefore, we are recommending the change as a refinement to the IME adjustment, not as a reward for low-occupancy hospitals or a penalty for high-occupancy hospitals. Contrary to ProPAC's comment, we believe that hospitals will have an incentive to minimize average daily census and this is a result entirely consistent with the general incentives of the prospective payment system. Furthermore, the IME adjustment is intended to recognize the costs associated with the teaching process. Provided that a hospital is maintaining a training environment in accordance with the criteria of its national approving organization, our responsibility is to compensate the hospital for those costs as accurately and equitably as possible. We believe the resident-to-average daily census ratio represents an improvement in this regard.

Finally, regarding the convention used to describe the IME adjustment, we acknowledge ProPAC's shared concern that the current description of the adjustment may be inadequate, and we agree that there is a need for an improved description of the rate of increase in the adjustment as teaching intensity rises. However, the weighted-average IME adjustment factor facilitates comparisons between adjustment formulas using different measures of teaching intensity and different formula specifications. Because it reflects total IME payments, this description is necessarily dependent on the factors that affect these payments, such as hospitals' case mix and percentages of outlier cases.

E. Evaluating and Improving Medicare Quality of Care Mechanisms (Recommendation 17)

Recommendation: ProPAC recommends that HCFA assess the methods Medicare uses to monitor quality of care. The Medicare program should adequately fund these evaluations as well as ongoing efforts to monitor and assure the quality of care delivered to its beneficiaries. Further, HCFA should coordinate its quality assurance programs with those of the rest of the health care industry.

Response in the Proposed Rule: In its report, ProPAC implies that the PROs have had no methods for improving quality of care based on individual case review, other than merely notifying the physician or provider, on the one hand, and imposing sanctions, on the other, a system that many physicians regard as punitive. It also states that the present PRO methods fail to discern systematic patterns of poor quality care, and are oriented toward punishing providers for past care, rather than modifying future performance.

Although PROs already have a number of interventions available to them, including educational interventions and corrective action plans, HCFA, through the PRO program, is addressing ProPAC's concerns by implementing a quality improvement mechanism called pattern analysis, with educational feedback to physicians. Under this method, hospital records are still sampled and reviewed, but the emphasis is on examining patterns of care at both the physician and the facility level.

In concert with this new system, HCFA is also developing an approach to evaluate PRO performance in the use of pattern analysis, and to ensure that measurable improvements have been made in the quality of care. HCFA is working to develop a methodology that will:

- Quantify change;
- Measure performance against the baseline; and
- Provide continuous feedback to the hospitals.

The individual case review performed under the present contracts and under SOW IV will allow the PROs to identify individual instances of poor quality care. Additionally, the beneficiary-specific sampling mechanism used

under SOW IV allows HCFA to track the individual beneficiary's care over a period of time. The result should be a definitive picture of the health delivery system available to the individual Medicare beneficiary, and an emerging picture of the relationship of the care provided by multiple facilities to the same individual.

However, case review, by itself, is not a cost-effective means of identifying and dealing with quality concerns. Under SOW IV, HCFA will supplement individual case review with a data-driven approach to monitoring care and outcomes and a cooperative approach to working with the health care community to improve care. The major changes are that PROs will use clinical and other data bases to examine patterns of care and outcomes, focus primarily on the differences that occur regularly between the observed and the achievable in both care and outcomes (rather than isolated cases), and identify variations that are concerns or of interest (practices that generally result in positive outcomes) by monitoring patterns of care and outcomes. PROs will be encouraged to conduct more detailed studies of the sources of outstanding problems or performance, and how and why they occurred. Under SOW IV, PROs will work cooperatively with the health care community by providing information pertaining to patterns of quality concerns to medical associations and to individual physicians and providers.

ProPAC further states that HCFA should coordinate its quality assurance efforts with those being conducted in the rest of the health care industry including quality assurance activities in hospitals, the National Committee for Quality Assurance, and the Joint Commission on Accreditation of Healthcare Organizations.

HCFA concurs that coordination with others in the health care industry concerned with quality of care is advisable. We welcome cooperative efforts. It should be noted that under SOW IV, the PROs will be working directly with those in hospitals responsible for internal quality assurance (for example, quality assurance committees) to utilize PRO-obtained information in improving the quality of care delivered to Medicare beneficiaries.

As reported in the Journal of the American Medical Association, new quality management models focusing on improving the processes of producing typical care rather than using inspection to correct unusual errors are emerging outside the health care industry. The models suggest that we should inspect care in order to identify patterns of care and outcomes, not to focus on individual concerns. Under SOW IV, PROs will conduct medical review of a limited number of cases and use the resulting data to identify common care and outcomes.

The PRO will analyze the review data looking for positive and negative outcomes, and provide feedback to the providers and practitioners that they may use as a basis for positive changes in future patient care behavior. In effect, the PRO's feedback serves to reinforce good behavior, and provide evidence of behaviors which may result in poor outcomes. The success will be measured by the decline in the use of a specific pattern of medical care which has been shown statistically to produce less favorable outcomes than another given the same set of medical circumstances.

Comment: ProPAC reiterated the comments they submitted in their original recommendations.

Response: We believe our original response to these comments remains appropriate.

F. Update to Composite Rate for Dialysis Services (Recommendation 18)

Recommendation: ProPAC recommends that the composite rate payment for dialysis services be updated by 2.5 percent for fiscal year 1994. ProPAC believes that this increase in payments will allow facilities to deliver high quality dialysis services to Medicare beneficiaries with end-stage renal disease.

Response in the Proposed Rule: ProPAC's recommended increase would raise facilities' composite payment rates an average of $3.15 per treatment, and Medicare expenditures about $50 million annually. In constructing its recommendation, ProPAC used a framework similar to that employed in updating payments for PPS hospitals. This framework included an estimated market basket rate of increase in input prices, quality-enhancing scientific and technological advances, and a productivity improvement target. A discretionary adjustment of minus 2 percentage points was made to reflect the relationship between payments and estimated fiscal year 1993 costs.

Over the years renal facilities have controlled their costs. At this time, however, there is concern that inflation and new regulatory costs will erode renal facilities' operating margins and that this erosion could adversely affect the quality of patient care. In its report, ProPAC cited these factors as reasons for recommending a payment increase. Its recommendations would increase all renal facilities payment rates, even though 69 percent of all independent outpatient hemodialysis treatments are furnished at facilities with costs below their payment rates. For these independent providers, ProPAC's comparison of per treatment composite payments to estimated per treatment costs for 1993 indicates that payments exceed average costs by nearly 9 percent. Furthermore, the number of facilities reporting Medicare revenues in excess of Medicare reported costs increased by 62 from FYs 1990 to 1991.

We do not believe a 2.5 percent increase for all renal facilities is justified at this time. Increasing the payment rate for a facility whose costs are below its payment rate does not ensure quality of care, nor does it match payment with the proper level of medical resources needed to furnish a dialysis treatment. We note that since 1983, the number of renal facilities has increased at a rate of one new facility every 3.4 days. Moreover, during the last 3 years, the number of renal facilities has grown even faster, at a rate of one facility every 2.8 days. This increase in the number of new ESRD facilities does not support the argument that payment rates are too low to foster growth. Although the growth in the number of facilities can be attributed in part to growth in patient population, we believe that the increasing number of renal facilities also reflects the continuing economic viability of the industry, as evidenced by the fact that a majority of these new facilities are for-profit, independent facilities.

Hospital-based renal facilities, on the other hand, have historically reported Medicare costs in excess of Medicare payments. The 1990 and 1991 hospital cost data continue to display a wide range of costs per treatments. Attempts have been made to explain why hospital-based renal facilities report a wider variance of cost per treatment. However, for whatever reasons, hospitals have been less successful than independent facilities in keeping their costs below their payment rates. Even though hospitals report costs in excess of their payment rates, the number of hospital-based facilities continues to grow, but at a much slower pace than independent facilities. We believe the composite rate exception process provides an adequate mechanism to adjust payment levels for those renal facilities, particularly hospital-based ones, that report higher costs and are able to relate these amounts to the exception criteria specified in regulations at § 413.170.

Section 4201 of Public Law 101–508 mandated that ProPAC recommend an annual update for dialysis payments.

Following is a discussion of the appropriate factors to be considered for such an update if there were substantiated evidence of a need to update payment rates to ESRD providers.

The purpose of a payment update is to account for changes in conditions that affect providers' costs of production. The intent is to insure that payments per treatment cover costs per treatment for efficient providers of services. Factors to consider in determining the need for and size of an update should include inflation, productivity and economies of scale, and scientific and technological advancement that increases costs and enhances health.

Inflation

A key consideration in updating payment rates is the appropriate price measure to be used. HCFA has two areas of concern about ProPAC's input price index recommendation.

The first is the appropriateness of the proposed cost share categories and weights for the current distribution of costs among ESRD facilities. The cost shares for the ProPAC ESRD input price index were developed from 1991 Medicare cost report data on dialysis facilities. However, the 1991 data on cost shares are from unaudited cost reports. Therefore, these data may be biased for particular categories of costs, and their use could raise valid questions about the integrity of the payment process. HCFA is currently conducting an audit of ESRD facility costs to be completed in the fall of 1993. This audit should provide valuable information regarding ESRD cost levels and cost shares by provider type.

ProPAC's recommendation identifies only four categories of cost: capital, labor, other direct costs, and overhead. Medicare cost reports indicate that it may be possible to further disaggregate costs to show individual cost categories for wages and salaries, employee benefits, depreciation of plant and equipment, depreciation of movable equipment, drugs, supplies, laboratory and overhead. HCFA input price index analyses for hospitals, home health agencies and skilled nursing facilities suggest that more disaggregation of cost categories is needed than the ProPAC index employs for its ESRD input price index. When the audited data sources become available, the additional cost categories should be considered.

Our second area of concern is the appropriateness of the price proxies identified for the cost share categories in the ESRD input price index. We believe it is inappropriate to use the price proxies from the hospital prospective payment system, SNF, and HHA input price indexes to measure price growth for ESRD providers, as ProPAC has proposed. ESRD facilities purchase inputs in many markets that are unique to the ESRD industry. ProPAC's March 1993 report provides evidence of substantial declines in the prices of key inputs to ESRD treatments. None of the other price indexes reflect these price declines. HCFA is evaluating data from the Bureau of Labor Statistics and other sources that suggest the possibility of providing some wage and price measures specific to the ESRD industry.

Productivity and Economies of Scale

Understanding changes in productivity and economies of scale is essential to the development of an update formula. As firms become more productive, they can produce the same level of outputs using smaller levels of inputs. This is also true for firms experiencing increasing economies of scale. Over a certain range of growth in treatments per facility, firms that increase capacity utilization achieve greater specialization and higher levels of efficiency. This phenomenon produces unit cost reductions, which, if unaccounted for in an update methodology, could result in excessive payments relative to costs.

ProPAC estimates indicate that the ESRD industry has experienced considerable productivity growth in the last decade. ProPAC doubts that future growth in productivity will continue at current rates, but does not make a persuasive case why a decline in ESRD industry productivity growth should be the most likely scenario. If historical trends hold, further cost reductions can be expected in the near term. When new ESRD firms enter the industry, typically the number of treatments per facility is relatively low. As these facilities expand utilization rates, large productivity gains are likely. Failure to adjust payments for productivity gains would diminish ESRD providers' incentive to take productivity enhancing actions.

Science and Technological Advancement

In the last decade, the ESRD industry has witnessed ongoing scientific and technological innovation. Some of these innovations were cost-increasing but quality-enhancing. In spite of this, ProPAC indicates that industry productivity gains have lowered costs per treatment more than scientific and technological innovations have increased costs. The lack of evidence indicating that a major change in this relationship is imminent implies that there is no basis to increase payment per treatment at this time.

As discussed above, HCFA and ProPAC analyses indicate that current payment levels substantially exceed costs for the independent facilities. HCFA maintains an exceptions procedure for those facilities whose costs legitimately exceed payments. These facts suggest it is not appropriate to update payment rates at this time. In addition, ProPAC acknowledges that their input price index does not effectively measure changes in costs for ESRD providers.

We support the development of an update methodology as a paradigm for analyzing and monitoring payment levels for ESRD providers. However, existing data do not indicate the need for an update at this time. HCFA will continue to work with ProPAC to develop a valid input price index as well as an update methodology that accounts for changes in science and technology, productivity growth and changing economies of scale.

Comments and Responses

We received comments on a number of related issues, as discussed below.

1. Exceptions Process

In the proposed rule, we stated that a payment rate increase was not justified for all renal facilities at this time since many independent renal facilities reported Medicare revenues in excess of Medicare allowable costs. We indicated that the exception process provides relief for those renal facilities that meet the exception criteria in the composite rate regulation. Under this process, renal facilities may receive additional payments.

Comment: One commenter believes that small renal facilities will not apply for exceptions because they lack the expertise in submitting exception requests. In addition, the commenter suggests that it is not reasonable for small renal facilities to incur costs in preparing an exception, especially if the additional revenue does not cover the cost of preparing an exception request.

Response: We understand the commenter's concern and realize that this may be a problem for small renal facilities. However, we believe that the current process is adequate for approving additional revenues for those facilities that meet the isolated essential facility criteria. We have recently revised these instructions to more clearly indicate the procedures a facility must follow in filing an exception request. We anticipate that these instructions will be less burdensome to facilities.

Comment: A commenter complained that the exception process takes too much time.

Response: Under section 1881(b)(7) of the Act, HCFA is required to process exceptions within 60 working days of the receipt of the exception request, or the exception is deemed approved. HCFA has processed all exception requests received from intermediaries within this stringent time frame.

Comment: One commenter indicated that the exception process was originally intended to be available on a regular basis, and stated that the exception process has been opened in an irregular manner and only six times in the past 10 years.

Response: Under regulations at § 413.170(f), we have opened the exception process when payment rates are revised. We have also voluntarily opened the exception process on several occasions. Opening the exception process on an annual basis would place a burden on renal facilities to qualify for an exception each year.

Comment: A commenter stated that the exception criteria are vague, and that we are inconsistent in our interpretation of the criteria. The commenter also stated that the cost standards (which make up the rates and are used to determine exception amounts) are outdated and need to be revised.

Response: The regulations provide guidelines for evaluating exception requests. However, each facility has different circumstances and must be reviewed on a case-by-case basis. Thus, we believe it would not be appropriate to set forth narrow criteria that might appropriately address some situations and not others.

We note that the composite rate is currently set by statute. Nevertheless, the cost standards now in use will be reevaluated when the current ESRD audits are completed and the data are analyzed. We plan to revise these standards when payment rates are revised.

Comment: A commenter explained that there are forces affecting costs that are beyond its control. In some areas the rate is capped at $139 per treatment even though the wage index would have afforded a higher payment rate. The commenter stated that the wage index should have an appeal process.

Response: We believe that the costs necessary to administer and to monitor the appeal system would not be justified. Moreover, for services furnished on or after January 1, 1991, section 9335 of Public Law 99–509, as amended by section 4201 of Public Law 101–508, prescribes by statute the composite payment rate. Once Congress enacts legislatien to revise composite payment rates, we will consider using the most current HCFA wage index to compute payment rates. At that time, we will examine the need to continue the payment limitation of $139.00 and the wage index floor of 90 percent.

2. Renal Facilities Reporting Medicare Revenues in Excess of Medicare Costs

Several commenters were concerned about our statements that 69 percent of outpatient treatments are performed at independent renal facilities reporting Medicare revenues in excess of Medicare costs. Our analysis did not take into consideration home patients or other revenues generated by renal facilities. ProPAC data showed that independent renal facilities had an average 9 percent profit factor.

Comment: Several commenters pointed out that since 69 percent of the facilities are profitable, 31 percent of the facilities do not cover their costs. Further, an industry with 31 percent of the business not covering their costs is an industry whose viability is in question.

Response: We stated that 69 percent of outpatient treatments furnished by independent facilities reported dialysis revenues in excess of composite rate costs. A number of facilities that were not reporting excess Medicare revenues were new facilities in operation for less than 2 years. Under-utilized new facilities tend to report costs in excess of revenues. In computing composite payment rates, we used the median costs of hospital and independent renal facilities. This methodology presumes 50 percent of treatments are furnished below the median. The purpose of the payment methodology is to pay a reasonable amount for furnishing a maintenance dialysis treatment, and facilities are afforded the opportunity to apply for an exception if the circumstances warrant such an increase.

Comment: One commenter stated that the profit factor of 9 percent does not include items like bad debts and the overhead allocated to Epoietin (EPO). The commenter argues that if such items were accounted for, the result would be a lower profit factor.

Response: It is correct that the 9 percent figure did not reflect the effects of bad debts or the effects of overhead allocated to EPO. However, this percentage also did not reflect the effects of home patients or revenues generated from other services furnished by renal facilities. As home costs are generally less than in-facility costs, a typical facility would benefit from furnishing services to home patients. Regarding EPO, we are in the process of addressing this issue. We are revising cost report instructions to eliminate the requirement to allocate overhead cost to EPO. Furthermore, the current audits will eliminate overhead allocated to EPO. This will enable us to eliminate the effects this allocation has on composite rate costs.

3. ProPAC's Proposed 2.5 Percent Rate Increase

All of the respondents recommended the adoption of ProPAC's proposed 2.5 percent rate increase. Many believed the logic behind HCFA's rejection of the proposal to be flawed.

Comment: All commenters wanted HCFA to reconsider its position that ProPAC's proposed 2.5 percent rate increase was unnecessary.

Response: Since the inception of the composite payment rate, the renal industry has maintained that the payment levels are not adequate and should be increased. As noted above, however, for services furnished on or after January 1, 1991, the composite payment rate is set by statute. Furthermore, although the ESRD industry continues to grow. The growth rate of renal facilities would not continue if there were not a reasonable expectation of financial rewards. While a payment rate increase may be justified for some facilities, a 2.5 percentage increase for all facilities at this time does not appear justified.

Comment: Several commenters argued that the increase in the number of dialysis facilities was not related to the profitability in the industry but rather reflects only the overall increase in the number of ESRD patients.

Response: We are aware that there have been significant increases in the number of ESRD patients. However, regardless of the population increase, entrepreneurs would not invest capital if a reasonable expectation of return on investment did not exist. The vast majority of new facilities are "for-profit". We believe that the rate of entry of for-profit firms does provide economic evidence of the financial attractiveness and profitability of the industry. As long as patient population continues to grow, new facilities will enter the market. In addition, existing facilities will continue to expand. As these facilities expand and their utilization increases, data have shown that these facilities will report lower costs per treatment. These larger facilities furnish the majority of treatments and tend to report revenues in excess of costs.

4. Establish a Separate Rate for Hospitals

Comment: One commenter recommended that we establish a separate rate for hospital-based ESRD facilities. The commenter believes that since these facilities treat a sicker population with more complications, they should be paid a higher rate.

Response: Currently, section 1881(b)(7) of the Act requires a separate rate computation for hospital-based facilities. This rate reflects the characteristics of hospital-based facilities. We note that ProPAC, in its analysis of patient data, found no difference between patients treated at hospital facilities and independent facilities. We also note that ESRD facilities may seek an exception on the basis of atypical patient mix.

Comment: ProPAC expressed concern about our position regarding whether price proxies from other input price indexes should be used in an input price index for end stage renal facilities.

Response: We believe that ProPAC's concerns result from misunderstanding HCFA's position as expressed in the proposed rule. ProPAC expressed concern about "* * * the Secretary's assertion that it is inappropriate for a dialysis market basket to use price proxies that also are used in other health care facility market baskets." However, in the proposed rule we stated that "it is inappropriate to use the price proxies from the prospective payment system, SNF, and HHA input price indexes to measure price growth for ESRD providers, *as ProPAC has proposed*" (emphasis added). This language in the proposed rule was intended to take issue with the specific application of these price proxies in ProPAC's report rather than the general question of whether or not they should be used.

HCFA's input price proxies for the hospital, SNF and HHA indexes are not tailored to the unique cost categories of ESRD facilities. In choosing a price proxy, relevancy and market structure need to be taken into account. Relevancy relates the specific category of cost to a price proxy that captures the patterns of cost unique to that cost category. Market structure considerations include the extent to which competition or administered prices determine price levels and changes. ProPAC's comments explained why it is necessary to balance market structure considerations with relevancy in certain situations, such as when there is vertical integration among ESRD providers and suppliers of ESRD inputs. If there is vertical integration among ESRD providers and input suppliers, then the prices of dialysis inputs may to some degree reflect corporate cost accounting decisions rather than market forces. In such a situation, it might be misleading to use industry-specific price measures exclusively to measure costs.

Also, we believe that the issue of whether to use an ESRD input price index for payment purposes has not been adequately considered at this time due to lack of data. While developing and monitoring an input price index for the ESRD industry is desirable, we believe that such an index should not be adopted for payment purposes until it has been studied to understand its characteristics relative to the industry's actual performance.

Comment: One commenter said that increasing the number of cost categories in ProPAC's ESRD input price index would add unnecessary complexity to the payment mechanism.

Response: We agree that adding unnecessary complexity to an input price index would not be constructive. However, ProPAC's proposal, which uses only four broad cost categories, does not allow sufficient delineation of cost structures for fair payment. We believe that the number of cost categories in an input price index should be determined by the structure of costs in the industry. The number of categories should allow heterogeneity of costs across categories and homogeneity of costs within categories. This principle has guided the development of all of the input price indexes that HCFA uses for reimbursement under Medicare. This criterion is necessary to aid in the selection of price proxies that are representative of the cost growth in the categories for which they are being selected. For example, ProPAC proposed to use a category called "other direct costs" to represent all factors other than capital, labor, and overhead expenses. This residual cost category includes a heterogeneous mixture of inputs unique to the ESRD industry as well as general to the overall economy. Based on data supplied by ProPAC, it is likely that this cost category encompasses an unknown mixture of costs that are rising and costs that are falling. Appropriate disaggregation of this broad category will be useful for both the ESRD providers and the regulators. HCFA believes the benefits of increasing the number of cost categories outweigh the risk of introducing complexity into the payment mechanism.

Comment: Several commenters asserted that the rate of productivity gain in the ESRD industry has declined over time and that future gains cannot be expected to match the large productivity gains that the industry experienced during the 1980s. These commenters conclude that unless cost growth is offset by productivity gains, ESRD providers will be harmed by the increasing financial pressure.

Response: Even if there has been a decline in the rate of increase in productivity among ESRD providers, we have not seen evidence that demonstrates that efficient providers are not receiving adequate payments relative to costs. Given that ProPAC has estimated a 9 percent profit margin for independent facilities for 1993, we do not see the basis for concluding that a 2.5 percent update is necessary to prevent a decline in the access to services and quality of care in ESRD facilities. As noted above, the continuing rapid growth in for-profit firm entry is significant and suggests that current financial conditions for renal facilities are attractive and profitable. Also, it is likely, at least in the short term, that there will be continued productivity gains as new providers become more experienced and more efficient.

Comment: Several commenters suggested that the pending ESRD facility audit results will provide useful information on the current cost structure and level of ESRD costs relative to payment levels.

Response: Like the commenters, we are optimistic that the audit will provide useful information for assessing the appropriateness of payment rates relative to cost levels for efficient providers. We appreciate the industry's support of this initiative.

G. Improving Data Quality and Program Administration for Dialysis Services (Recommendation 19)

Recommendation: ProPAC is concerned that the dialysis facility data are inadequate for assessing costs across providers and modalities and changes in costs over time. ProPAC believes that HCFA should regularly audit the cost reports of a representative sample of dialysis facilities and maintain a database with this information. ProPAC states that HCFA should also improve policies to ensure the consistency of the data across providers through changes in program administration.

Response in the Proposed Rule: Renal cost data come from cost reports filed by renal facilities. After renal facilities file their cost reports, intermediaries transmit the cost report data to the Hospital Cost Reporting Information System (HCRIS) in HCFA. For the most part, the renal cost reports are not

audited and represent "as-submitted" data. Currently, the composite payment rates are not based on audits of renal facilities cost. Therefore, no benefit would be derived from auditing these facilities on a regular basis. However, intermediaries still perform a limited desk review on these cost reports, especially if a renal facility is claiming bad debts.

Auditing renal cost reports to improve the quality of the data would not be cost effective. Furthermore, audits would only correct a small percentage of the data. To improve overall quality of the renal cost data, administrators of renal facilities must take a more active role in ensuring that renal data submitted by their facilities are correct.

In 1992, we reviewed the 1990 cost data to identify renal facilities with cost report data that did not appear to be correct. We instructed intermediaries to contact those renal facilities that submitted questionable cost data. Intermediaries are responsible for correcting cost report data and for submitting a revised cost report to HCRIS. In addition, intermediaries are responsible for informing HCFA about problems with the renal cost report data. The most notable of these problems deals with the reporting of costs and treatments for home patients under Method I and Method II. Under Method I, Medicare pays for home patients under the composite payment rate system; under Method II, the beneficiary deals directly with the supplier. In many instances, renal facilities either have combined Method I and Method II costs or they have combined Method I and Method II treatments. Combining costs or combining treatments is incorrect. To eliminate this problem, renal facilities should separately report costs for Method I and Method II home patients on their cost reports. Only Method I treatments are to be reported on the facilities cost report. In addition, renal facilities also have reported data that did not represent patient weeks for continuous ambulatory peritoneal dialysis (CAPD) and continuous cycling peritoneal dialysis (CCPD) services. This resulted in incorrect cost per treatment computations. The remaining errors by facilities included omitting information, using incorrect statistics for allocation, and using incorrect treatments to calculate their cost per treatment. These problems heighten the concern about using unaudited data for any analysis.

To reduce future problems, we are adding edits to HCRIS so that cost reports are rejected if they include treatments without costs, or costs without treatments. Also, these edits will reject renal cost reports if facilities do not report patient weeks for CAPD and CCPD.

In addition, we are preparing more detailed instructions to intermediaries and renal facilities for the purpose of:

- Helping facilities complete their renal cost reports properly;
- Making intermediaries aware of the errors in cost reports submitted by renal facilities and having the errors corrected in future cost reporting periods; and
- Explaining the proper procedures for facilities to follow in completing their cost reports, in order to eliminate these common errors.

These initiatives should help improve the reliability of the renal cost data without the need for regular audits. In the future, renal administrators should ensure that costs are not missing, treatments are reported correctly, Method I and Method II home costs are reported properly, and patient weeks are reported for CAPD and CCPD services.

We are in the process of auditing audit renal facilities in FY 1993 as recommended by ProPAC. Limited audit funds were made available to accomplish this special audit task. We have selected a scientific sample of 150 renal facilities to audit. Before selecting the audit sample, we discussed with ProPAC staff the design and limitation of the audit sample. The results of the audits will enable ProPAC to estimate the reasonable costs of furnishing a maintenance dialysis treatment in a hospital renal facility and in an independent renal facility. However, some issues raised by section 4201(b) of Public Law 101–508, such as the cost of furnishing a treatment in a rural facility and adjustment for patient mix, are beyond the scope of this audit sample.

ProPAC also believes that current procedures for reporting overhead costs for administration of EPO, while not affecting payment, may distort cost data. The renal cost report instructions for independent facilities require renal facilities to allocate overhead costs to EPO. Because this drug is expensive and frequently administered, a substantial amount of a facility's overhead costs are allocated to it. This allocation understates the costs of furnishing dialysis treatments. We are planning to revise the independent cost report to eliminate this concern about EPO and to make other necessary changes. We do not expect to receive data from the revised independent cost report before 1995. However, the audits planned for 1993 will include an adjustment to eliminate the allocation of overhead to the EPO cost center on the independent cost report.

Another concern raised by ProPAC is the possibility that services that should be incorporated under the composite rate will be paid for separately because of inadequate coordination within fiscal intermediaries and across fiscal intermediaries and carriers. ProPAC states that when the fiscal intermediary or carrier is processing bills, there is no means of distinguishing which dialysis-related services should be included in the composite rate. ProPAC recommends that HCFA develop a list of services for inclusion within the composite rate to resolve this inconsistency.

The composite rate payment is a comprehensive prospective payment per treatment that provides an incentive for the efficient delivery of outpatient maintenance dialysis services to Medicare beneficiaries. The composite rate includes payment for all dialysis related items and services furnished to the patient by the ESRD facility. The determination as to whether an item or service is covered under the composite rate payment does not depend on the frequency that dialysis patients require the item or service, or the number of patients who require it.

The development of a list of items and services included under the composite rate is not a simple matter. Although there is a group of services routinely furnished to ESRD patients that are dialysis related, such as nursing, social work services, equipment and supplies, there may be other services that are dialysis related only under certain circumstances and for certain patients. Further, there are multiple modes of dialysis, such as several means of peritoneal dialysis, hemodialysis, and hemofiltration. Each method involves different supplies that are directly related to dialysis.

Thus, while isolated cases of errors may occur under the claims processing system, we believe that the current safeguards provide sufficient assurance that services directly related to the dialysis session are included in the composite payment rate and, at the same time, allow for flexibility to address these isolated cases.

If we were to develop a list as ProPAC has suggested, we believe such a list might not be sufficiently comprehensive, or may be too comprehensive, resulting, under certain circumstances, in inappropriate inclusion or exclusion of items and services under the composite rate. Further, given the rapid changes that occur in technology, we would envision such a list as quickly becoming obsolete and subject to suggested additions and deletions.

ProPAC is also concerned that intermediaries and carriers have

excessive latitude in determining medical justification for services that may be paid separately outside the composite rate. ProPAC believes this situation has resulted in coverage variation for these services.

In most cases, HCFA delegates medical necessity decisions to its contractors. After extensive assessments by the Office of Health Technology Assessment, we have issued national coverage policies for a few services and procedures; however, contractors make coverage determinations for the vast majority of procedures and services.

Contractors develop their individual medical necessity policies by considering the medical literature and local consultants' medical opinions. Although such contractor discretion may result in inconsistency among the carriers and intermediaries in Medicare claims processing, we believe such variation is consistent with the intent of the law that allows local practices to be reflected in Medicare coverage policies.

Medical directors from our contractors convene regularly for meetings with HCFA to discuss issues that have arisen. In this forum, contractors share their local practices and have an opportunity to hear alternative strategies. We believe that this open forum promotes consistency without being restrictive.

Comments and Responses

Again, we received comments on a number of related issues, as discussed below.

1. Data Quality

Comment: Several commenters were concerned about the quality of data used by HCFA. Complaints included outdated cost reports, limited intermediary understanding of ESRD, a lack of system edit checks, and improper training of the intermediaries.

Response: As discussed in our above response from the proposed rule, we have initiated several measures to improve data quality, and ProPAC has expressed support for our efforts. We have added edit checks to the facility reporting system so that obvious errors are detected. These edits included identification of cost reports that show treatments with no costs, or vice versa, and no patient weeks for CAPD and CCPD. We are providing more detailed instructions to providers and intermediaries including a description of common errors. Further, both the independent facility cost report (HCFA 265) and the hospital-based cost reports (HCFA 2552) are being revised to maximize data quality.

Comment: ProPAC expressed its support for HCFA's performing audits in 1993, but argued that audits should be more regular to ensure that quality data is maintained.

Response: The 1993 audits currently underway will cost in excess of $1 million. This is a substantial amount of money at a time when audit funds continue to decline and other Medicare expenditures are significantly higher. As reimbursement is not determined from the cost report, an annual audit is unnecessary. While future availability of audit funds is at best tenuous, we are considering a schedule under which we would audit ESRD facilities every 3 years, provided audit funds are available. In between these years, the unaudited data (with improved edits, better intermediary and provider instructions, and revised cost reports) can be used as a proxy to evaluate ESRD costs.

2. EPO Rates

Comment: One commenter recommended that no further cuts be made to the payment rates for EPO, without a comprehensive evaluation of the potential effects on patient outcomes of any such changes in reimbursement.

Response: Public Law 103–66 (enacted August 10, 1993) requires a reduction in the payment rate from $11 to $10 per one thousand units. HCFA will issue instructions implementing this provision.

3. Services Not Covered Under the Composite Rate

Comment: One commenter was pleased to see that HCFA would no longer require facilities to allocate overhead to EPO. The commenter also believes that this policy should be applied to any separately billable item shown on the cost report.

Response: The payment for EPO and for other separately billable items are handled differently. The EPO payment rate per dosage is set by statute, while other separately billable items are paid generally according to the amount shown in the Drug Topics Red Book. We believe that the amounts included in the Drug Topics Red Book are reasonable payments. There is also a significant difference between the volume of EPO costs and separately billable items.

4. Cost Data From Independent Facilities vs. Cost Data From Hospital-Based Facilities

Comment: One commenter questioned our use of cost data from independent facilities only, and not from hospital-based facilities.

Response: We did not use cost data for hospital-based renal facilities because we concluded that these data were not reliable or reasonable. Intermediary auditors who are conducting the current audits have reported that a substantial number of hospital renal facilities do not properly maintain statistics to allocate renal department costs. Independent renal facilities tend to control and to report their costs properly, since this is their primary source of revenues.

5. Quality of Care

Comment: One commenter reflected the dialysis community's widespread concern about the current and future quality of care.

Response: Needless to say, we share the commenter's concern about the quality of patient care. However, the issue that needs to be addressed is the price level at which patients will receive adequate dialysis. Commenters argue that the current payment level is not adequate. Once medical standards are established for dialysis treatments, the inputs necessary to produce the desired level of dialysis can be quantified and we will reevaluate payment rates.

6. Improving Data Quality and Program Administration for Dialysis Services

Comment: ProPAC was concerned that services that should be incorporated under the composite rate might be paid for separately because of inadequate coordination within fiscal intermediaries and across fiscal intermediaries and carriers. ProPAC recommended that HCFA develop a list of services for inclusion within the composite rate. As a result of HCFA's response in the proposed rule, ProPAC acknowledges the need to accommodate different modes of dialysis and the variation in local medical practice patterns in services under the composite rate; ProPAC, therefore, no longer recommends the development of a list of services paid for under that rate. ProPAC believes that HCFA should continue to explore methods to improve the comparability of data across dialysis facilities.

In contrast, two commenters expressed support for ProPAC's earlier recommendation for a list of services covered under the composite rate. The first commenter supports the recommendation for three reasons:

(1) Spelling out the bundle of services will make it possible to determine the agreed upon costs of providing dialysis treatments;

(2) There is wide variation among the Medicare intermediaries in interpreting

what services are included in the composite rate and a list would make payments more predictable and lessen uncertainty and variation; and

(3) HCFA has begun adding services to the composite rate that had been separately billable.

Response: While the commenter's first assertion may be true, we disagree with the second assertion and refer the commenter to ProPAC's more recent position that HCFA needs to accommodate different modes of dialysis and variation in local medical practice patterns in services under the composite rate and therefore no longer requests a list. Furthermore, we do not agree that HCFA has recently added many services to the composite rate; the only services that have been determined to be covered under the composite rate are services that are the same or comparable to services that have always been covered under the rate; any policy clarification did not change the coverage of services.

The other commenter in support of ProPAC's earlier request for a comprehensive list of composite rate services states that HCFA often takes advantage of the current ambiguity about the covered bundle of services by trying to force facilities to pay for new items or services that were never contemplated when the composite rate was established. An example given is that HCFA has sought to make facilities pay for the costs for intradialytic parenteral/enteral nutrition (IDPN) but has abandoned the proposal.

To the contrary, IDPN is not part of the Medicare ESRD benefit. However, parenteral/enteral nutrition (PEN) may be covered under Medicare. An ESRD facility or PEN supplier may bill Medicare separately from the composite rate for PEN solution if the patient meets all of the requirements for PEN coverage. ESRD facility staff time used to administer PEN solution is not covered by Medicare and not included in the composite rate. Since it is not covered under Medicare, it is not part of the composite rate nor may a facility bill Medicare separately for it.

Again, the services that have been determined to be covered under the composite rate are the same as services that have always been included in the composite rate; any policy clarifications did not change the scope of services encompassed. A service not already under the rate may be separately billable.

Comment: This same commenter states that our policy of allowing local Medicare contractors to determine coverage decisions on issues on which there is no national policy is inconsistent with HCFA's practice of convening centralized meetings of contractor medical directors on variations in coverage. The commenter states that these centralized meetings evade the rulemaking process HCFA must follow to make national coverage policy. The commenter states that if local variations in coverage are undesirable, then we should set national policy; conversely, if local medical directors should be setting policy, HCFA should not try to influence those decisions in their central meetings.

Response: We are not required to employ the rulemaking process in order to make national coverage policies. At times, we convene central meetings to determine whether a national policy should be issued. Sometimes national coverage policies result from these meetings. However, if the meeting participants decide no national policy is appropriate, then discretion is left to the local directors. HCFA usually issues manual instructions to implement national coverage policies. We see no inconsistency in this process.

H. Beneficiary Liability for Hospital Outpatient Services (Recommendation 21)

Recommendation: For Medicare outpatient services that are paid prospectively, beneficiary Part B coinsurance should be limited to 20 percent of the Medicare allowed payment. Until prospective payment systems can be implemented for all Medicare outpatient services, beneficiary Part B liability should be based on an estimate of 20 percent of costs.

Response in the Proposed Rule: We share ProPAC's concern that beneficiaries may be paying a disproportionate share of the total payment for hospital outpatient services under the current cost-based system. As noted above, we are in the process of developing a prospective payment system for hospital outpatient services that will be moving away from the use of hospital-specific costs and charges as a basis for payment. We believe that it would be most appropriate to make any changes to beneficiary coinsurance in conjunction with the implementation of this hospital outpatient prospective payment system. Therefore, as we develop the new payment system, we are reviewing the issue of beneficiary liability and are working to come up with an approach that will be fair to beneficiaries, while minimizing the negative financial impact on the Medicare program.

Comment: We received two comments regarding this recommendation and response. ProPAC reiterated its belief that the Secretary should not delay correcting beneficiary liability for outpatient services until the implementation of prospective payment. The other commenter shares this view and asks that an interim solution to high beneficiary copayment be adopted that would set some limits on reasonable charges.

Response: We understand the concern expressed by the two commenters. However, we continue to believe that a meaningful solution to the high level of beneficiary liability can be achieved most quickly through the implementation of a prospective payment system in the near future. The time and effort needed to develop an interim solution might detract from the development of a prospective payment system that would make possible an equitable solution for all parties.

I. Nursing Facility Wage Index (Recommendation 22)

Recommendation: The Secretary should collect data on employee compensation and paid hours of employment for nursing facilities that care for Medicare beneficiaries. Once these data become available, the Secretary should develop a nursing facility wage index, and use it to adjust Medicare skilled nursing facility (SNF) payments.

Response in the Proposed Rule: We have no way of knowing what impact a SNF wage index would have on payment for individual SNFs. A change in the wage index would undoubtedly impact SNFs positively in some areas, while posing a disadvantage for SNFs in other areas (possibly a major one). Considering this impact, as well as our serious concerns about developing an accurate SNF wage index and the reporting burden imposed on HCFA, the intermediaries, and the providers (based on our prior attempts to develop and implement a home health agency (HHA) specific wage index), we believe it would be inappropriate to initiate data collection, development and implementation of a SNF-specific wage index at this time.

In 1988 we implemented an HHA specific wage index based on data received from HHAs. Subsequently, HCFA and Congress received numerous provider complaints concerning the burden that the reporting requirements posed and the accuracy of the data. As a result, Congress passed legislation that repealed the mandate for the Secretary to develop the HHA wage index. Instead, the hospital wage index was again mandated for HHAs. This legislation had a retroactive effective

date requiring HCFA to develop and issue new cost limits using the hospital wage index. These new limits were then applied retroactively to one period and to future periods, causing confusion among both providers and fiscal intermediaries.

Based on the HHA experience, we believe SNFs would have similar difficulty developing and maintaining the data needed for HCFA to develop an accurate SNF wage index. In particular, the reporting burden on the smaller freestanding SNFs (especially rural SNFs), which do not have the sophisticated accounting systems that hospitals have, would be significant and would reduce the accuracy of the data.

In addition, the reporting burden would be a disincentive for SNFs electing low-volume prospective payment to continue participation in the Medicare program, resulting in a reduction in access to SNF care for Medicare beneficiaries. This would be true especially in rural areas. SNFs that elect this alternative payment system do so primarily to avoid the large reporting burden associated with the normal cost reimbursement system. Finally, auditing and/or verifying the data would place a burden on Medicare fiscal intermediaries.

We believe it would be inadvisable to adopt a SNF-specific wage index that would not be as accurate as the current hospital wage index. In addition, even before a SNF wage index could be implemented, the Medicare program, SNFs, and the fiscal intermediaries would be impacted negatively by the reporting burden required by this recommendation. Consequently, we believe the major effort necessary to collect data and construct a wage index would be an inappropriate use of scarce government resources.

In addition, at the direction of Congress (section 4008(k) of Public Law 101–508), HCFA is currently developing a prospective payment system for SNFs that will include a methodology to account for geographic variations in prevailing wage levels. Rather than expending a major effort to develop a wage index for the current SNF retrospective reimbursement system, we would focus our efforts on the development of a new prospective payment system. Consequently, we recommend continued use of the hospital wage index until the current SNF payment system is replaced.

Comment: ProPAC continues to recommend that data be collected and the impact of a SNF wage index be evaluated.

Response: The Conference Committee report accompanying Public Law 103–66 (H. R. Rep. No. 2264, 103rd Cong., 1st Sess. 745–747 (1993)) states that the conferees expect that the Secretary will begin to collect data on employee compensation and hours of employment specific to skilled nursing facilities, for potential use in development of a skilled nursing facility wage index, within 1 year of enactment.

VIII. Other Required Information

A. Paperwork Reduction Act

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

B. Requests for Data From the Public

In order to respond promptly to public requests for data related to the prospective payment system, we have set up a process under which commenters can gain access to the raw data on an expedited basis. Generally, the data are available in computer tape format or cartridges; however, some files are available on diskette. In our May 26, 1993 proposed rule, we published a list of data sets that are available for purchase (58 FR 30261). We received one comment concerning this process.

Comment: One commenter expressed concern about two of the public use files available from HCFA. The commenter stated that the 12/92 update of the provider-specific file has 0 values for the disproportionate share (DSH) adjustment for the majority of DSH hospitals. In addition, the commenter is concerned about swing bed and outpatient data on the PPS-8 minimum data set (cost report data for cost reporting periods beginning on or after October 1, 1990 and before October 1, 1991). The commenter believes that we should make available accurate files used in developing the proposed rule.

Response: We make every effort to ensure that the data used to develop the proposed rule are accurate and available on a timely basis. The DSH adjustment factor variable on the provider-specific file is no longer used, either in pricing bills or in the rulemaking process. We now use, both in the prospective payment system Pricer program and in the rulemaking process, the DSH patient percentage (composed of the Medicaid patient percentage and the SSI percentage), and compute the relevant operating and capital DSH adjustment factors. As a result, fiscal intermediaries may not be filling in the DSH adjustment factor field of the provider-specific file.

With regard to the PPS–8 minimum data set, we note that none of the fields about which the commenter is concerned were used in developing the proposed rule. Instead, we used discharge data from the Medicare Provider Analysis and Review (MedPAR) file for FY 1992, because we believe that discharges over a consistent Federal fiscal year (which are subject to the same payment rules and GROUPER), rather than over varying hospital cost reporting periods, provide a more accurate estimate of the cases for a future Federal fiscal year. The only data that we used from the cost reports are the number of beds, and patient days for those providers for which an operating teaching factor is reported (a resident-to-bed ratio) but no capital factor is reported (which requires the ratio of residents to average daily census). For this final rule, we used the PPS–8 cost reports in part to determine the cost inflation factor used in estimating the outlier thresholds (as described in the Addendum to this regulation), but we adjusted for errors in the swing bed discharge field, and are confident that our cost inflation factor accurately represents the change in hospital costs per case.

Even though the minimum data set has minimal use in developing the prospective payment system rule, it is used for other hospital analyses and we are therefore concerned about its accuracy. The cost report data are put through a range of edits before being included in the minimum data set. The edits are both fatal (that is, the data will not be included if the data that triggered the edit are not corrected) and advisory (the fiscal intermediary must either correct the data or reaffirm that the data are correct). We are aware of the difficulties with the swing bed discharge data and are currently refining our edit process in order to eliminate the problem. The outpatient capital reduction amount included in the minimum data set is currently computed by us rather than submitted directly. There is a programming problem related to its computation, and we are working to correct this field. This does not affect program payments as determined in the cost report settlement process.

C. Response to Comments

Because of the large number of items of correspondence we normally receive on FR documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all

comments we receive by the date and time specified in the "DATES" section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document. Comments on changes to the May 26, 1993 proposed rule resulting from provisions of the Omnibus Budget Reconciliation Act of 1993 will be considered if we receive them by the date specified in the "DATES" section of this preamble. We will not consider comments concerning provisions that remain unchanged from the May 26, 1993 proposed rule or on provisions that were changed based on public comments.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as follows:

A. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102, 1815(e), 1820, 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395i-4, 1395hh, and 1395ww).

Subpart A—General Provisions

2. In paragraph (a) of § 412.1, the third sentence is revised, and an additional sentence is added after the revised third sentence to read as follows:

§ 412.1 Scope of part.

(a) * * * Payment for other costs related to inpatient hospital services (organ acquisition costs incurred by hospitals with approved organ transplantation centers, the costs of qualified nonphysician anesthetist's services, as described in § 412.113(c), and direct costs of approved nursing and allied health educational programs) is made on a reasonable cost basis. Payment for the direct costs of graduate medical education is made on a per resident amount basis in accordance with § 413.86 of this chapter. * * *

* * * * *

3. Section 412.2 is amended as follows:

a. Paragraph (b)(2)(i) is revised.

b. In paragraph (f)(8), the phrase "For discharges on or after June 19, 1990 and before December 19, 1991," is revised to read "For discharges on or after June 19, 1990, and before October 1, 1994,".

The revision is to read as follows:

§ 412.2 Basis of payment.

* * * * *

(b) * * *

(2) * * *

(i) Limitation of liability days payable under the payment procedures for custodial care and services that are not reasonable and necessary as specified in § 411.400 of this chapter.

* * * * *

Subpart B—Hospital Services Subject To and Excluded From the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs

4. In § 412.25, paragraph (a)(1) is revised and paragraph (d) is added to read as follows:

§ 412.25 Excluded distinct part hospital units: Common requirements.

(a) * * *

(1) Be part of an institution that—

(i) Has in effect an agreement under part 489 of this chapter to participate as a hospital;

(ii) Is not excluded in its entirety from the prospective payment systems; and

(iii) Has enough beds that are not excluded from the prospective payment systems to permit the provision of adequate cost information, as required by § 413.24(c) of this chapter.

* * * * *

(d) *Number of excluded units.* Each hospital may have only one unit of each type (psychiatric or rehabilitation) excluded from the prospective payment systems.

Subpart D—Basic Methodology for Determining Prospective Payment Federal Rates for Inpatient Operating Costs

§ 412.62 [Amended]

5. In § 412.62(c)(2), the parenthetical phrase "(as defined in § 413.40(c)(3) of this chapter)" is revised to read "in the hospital market basket".

6. Section 412.63 is amended as follows:

a. In paragraph (c)(2)(i), the phrase "under § 413.40(c) of this chapter;" is revised to read "in the hospital market basket;";

b. In paragraph (g) introductory text, the parenthetical phrase "(as described in § 413.40(c)(3)(ii))—" is revised to read "(as defined in § 413.40(a)(3) of this chapter)—";

c. In the introductory text of paragraphs (j) and (k), the parenthetical phrase "(generally described in § 413.40(c)(3)(ii) of this subchapter)—" is revised to read "(as defined in § 413.40(a)(3) of this chapter)—"; and

d. Paragraphs (l) and (m) are revised, paragraphs (n) through (p) are redesignated as paragraphs (q) through (s), new paragraphs (n) through (p) are added, and redesignated paragraph (s)(2) is revised to read as follows:

§ 412.63 Federal rates for inpatient operating costs for fiscal years after Federal fiscal year 1984.

* * * * *

(l) *Applicable percentage change for fiscal year 1994.* The applicable percentage change for fiscal year 1994 is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this chapter)—

(1) Minus 1.0 percentage point for hospitals located in rural areas.

(2) Minus 2.5 percentage points for hospitals located in large urban areas and other urban areas.

(m) *Applicable percentage change for fiscal year 1995.* The applicable percentage change for fiscal year 1995 is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this chapter)—

(1) Plus, for hospitals located in rural areas, the percentage increase necessary so that the average standardized amounts computed under paragraphs (c) through (i) of § 412.63 are equal to the average standardized amounts for hospitals located in an urban area other than a large urban.

(2) Minus 2.5 percentage points for hospitals located in large urban areas and other urban areas.

(n) *Applicable percentage change for fiscal year 1996.* The applicable percentage change for fiscal year 1996 is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this chapter) minus 2.0 percentage points for all areas.

(o) *Applicable percentage change for fiscal year 1997.* The applicable percentage change for fiscal year 1997 is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this chapter) minus 0.5 percentage point for all areas.

(p) *Applicable percentage change for fiscal year 1998 and for subsequent years.* The applicable percentage change for fiscal year 1998 and for subsequent years is the percentage increase in the market basket index for prospective

payment hospitals (as defined in § 413.40(a) of this chapter) for all areas.

* * * * *

(s) * * *

(2) If an error is discovered before October 1, 1992, in the survey data that results in a change to the wage index value for an area, the revised wage index is effective prospectively from the date the change to the wage index is made.

* * * * *

Subpart E—Determination of Transition Period Payment Rates for the Prospective Payment System for Inpatient Operating Costs

§ 412.70 [Amended]

7. In § 412.70, the phrase "For discharges occurring on or after April 1, 1988 and before October 1, 1993," is revised to read "For discharges occurring on or after April 1, 1988, and before October 1, 1996,".

8. Section 412.73 is amended as follows:

a. In paragraph (c)(1), the phrase "the target rate percentage determined under § 413.40(c)(3) of this chapter," is revised to read "the rate-of-increase percentage determined under § 413.40(c)(2) of this chapter,".

b. Paragraph (c)(9) is revised and new paragraphs (c)(10) through (c)(12) are added to read as follows:

§ 412.73 Determination of the hospital-specific rate based on a Federal fiscal year 1982 base period.

* * * * *

(c) * * *

(9) *For Federal fiscal years 1992 and 1993.* For Federal fiscal years 1992 and 1993, the update factor is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this chapter). For purposes of determining the hospital-specific rate for FY 1994 and following, the FY 1993 update factor is deemed to be that factor necessary to update the hospital-specific rate from the beginning of the cost reporting period that began in FY 1993 to September 30, 1993.

(10) *For Federal fiscal year 1994.* For Federal fiscal year 1994, the update factor is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of the chapter) minus 2.3 percentage points.

(11) *For Federal fiscal year 1995.* For Federal fiscal year 1995, the update factor is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this chapter) minus 2.2 percentage points.

(12) *For Federal fiscal years 1996 and following.* For Federal fiscal years 1996 and following, the update factor is the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this chapter).

* * * * *

§ 412.75 [Amended]

9. In § 412.75(d), the phrase "the update factor is determined using the methodology set forth in § 412.73 (c)(5) through (c)(9)." is revised to read "the update factor is determined using the methodology set forth in § 412.73 (c)(5) through (c)(12)."

Subpart G—Special Treatment of Certain Facilities Under the Prospective Payment System for Inpatient Operating Costs

§ 412.96 [Amended]

10. In § 412.96(g)(2), the phrase "HCFA discontinues the adjustment beginning on the first day of the hospital's next cost reporting period beginning on or after October 1, 1992." is revised to read "HCFA discontinues the adjustment beginning on the first day of the hospital's next cost reporting period beginning on or after October 1, 1994."

§ 412.98 [Amended]

11. In § 412.98(b), in the first sentence, the phrase "under § 413.40(c)(4) of this chapter" is revised to read "under § 413.40(c)(3) of this chapter".

12. Section 412.102 is revised to read as follows:

§ 412.102 Special treatment: Hospitals reclassified as rural.

Effective on or after October 1, 1983, a hospital reclassified as rural, as defined in § 412.62(f), may receive an adjustment to its rural Federal payment amount for operating costs for two successive fiscal years.

(a) *First year adjustment.* The hospital's rural average standardized amount and disproportionate share payments as described in § 412.106 are adjusted on the basis of an additional amount that equals two-thirds of the difference between the urban standardized amount and disproportionate share payments applicable to the hospital before its reclassification and the rural standardized amount and disproportionate share payments otherwise applicable to the Federal fiscal year for which the adjustment is made.

(b) *Second year adjustment.* If a hospital continues to be reclassified as rural, its rural average standardized amount and disproportionate share payments are adjusted on the basis of an additional amount that equals one-third of the difference between the urban standardized amount and disproportionate share payments applicable to the hospital before its reclassification and the rural standardized amounts and disproportionate share payments otherwise applicable to the Federal fiscal year for which the adjustment is made.

13. In § 412.105, paragraphs (g)(1)(ii) and (g)(1)(iii), and paragraph (g)(2)(v) are revised to read as follows:

§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.

* * * * *

(g) * * *

(1) * * *

(ii) In order to be counted, the resident must be assigned to one of the following areas:

(A) The portion of the hospital subject to the prospective payment system.

(B) The outpatient department of the hospital.

(C) For discharges occurring on or after August 10, 1993, any entity receiving a grant under section 330 of the Public Health Service Act that is under the ownership or control of the hospital (if the hospital incurs all, or substantially all, of the costs of the services furnished by those residents).

(iii) Full-time equivalent status is based on the total time necessary to fill a residency slot. No individual may be counted as more than one full-time equivalent. If a resident is assigned to more than one hospital, the resident counts as a partial full-time equivalent based on the proportion of time worked in any of the areas of the hospital listed in paragraph (g)(1)(ii) of this section, to the total time worked by the resident. A part-time resident or one working in an area of the hospital other than those listed under paragraph (g)(1)(ii) of this section (such as a freestanding family practice center or an excluded distinct part hospital unit) would be counted as a partial full-time equivalent based on the proportion of time assigned to an area of the hospital listed in paragraph (g)(1)(ii) of this section, compared to the total time necessary to fill a full-time internship or residency slot.

* * * * *

(2) * * *

(v) The proportion of the total time necessary to fill a residency slot that the resident is assigned to an area of the hospital listed under paragraph (g)(1)(ii) of this section.

* * * * *

14. Section 412.108 is amended as follows:

a. In paragraph (a)(1), the phrase "For cost reporting periods beginning on or after April 1, 1990 and ending before April 1, 1993," is revised to read "For cost reporting periods beginning on or after April 1, 1990, and before October 1, 1994,".

b. In paragraph (a)(2), the two sentences should be combined to make one single paragraph. At the end of the first sentence of the paragraph, the phrase "under §§ 412.25 through 412.32" is revised to read "under §§ 412.25 through 412.30".

c. Paragraph (c) is revised to read as follows:

§ 412.108 Special treatment: Medicare-dependent, small rural hospitals.

* * * * *

(c) *Payment methodology.* A hospital that meets the criteria in paragraph (a) of this section is paid for its inpatient operating costs the sum of paragraphs (c)(1) and (c)(2) of this section.

(1) The Federal payment rate applicable to the hospital as determined under § 412.63, subject to the regional floor defined in § 412.70(c)(6).

(2) The amount, if any, determined as follows:

(i) For discharges occurring during the first three 12-month cost reporting periods that begin on or after April 1, 1990, 100 percent of the amount that the Federal rate determined under paragraph (c)(1) of this section exceeds the higher of the following:

(A) The hospital-specific rate as determined under § 412.73.

(B) The hospital-specific rate as determined under § 412.75.

(ii) For discharges occurring during any subsequent cost reporting period (or portion thereof) and before October 1, 1994, 50 percent of the amount that the Federal rate determined under paragraph (c)(1) of this section exceeds the higher of the following:

(A) The hospital-specific rate as determined under § 412.73.

(B) The hospital-specific rate as determined under § 412.75.

* * * * *

Subpart H—Payments to Hospitals Under the Prospective Payment Systems

§ 412.115 [Amended]

15. In § 412.115(b), the phrase "For discharges on or after June 19, 1990, and before December 19, 1991," is revised to read "For discharges on or after June 19, 1990, and before October 1, 1994,".

Subpart L—The Medicare Geographic Classification Review Board

16. In § 412.230, paragraph (e)(2)(ii) introductory text is republished, and paragraph (e)(2)(ii)(B) is revised to read as follows:

§ 412.230 Criteria for an individual hospital seeking redesignation to another rural area or an urban area

* * * * *

(e) * * *

(2) * * *

(ii) For data of other hospitals, the hospital must provide the data concerning the following: * * *

(B) If the hospital is requesting reclassification under § 412.230(e)(1)(iii)(B), occupational-mix data to demonstrate the average occupational mix for each employment category in the adjacent area. Occupational-mix data can be obtained from surveys conducted by the American Hospital Association.

17. In § 412.232, paragraph (b) is revised, paragraph (d)(2)(ii) introductory text is republished and paragraph (d)(2)(ii)(B) is revised to read as follows:

§ 412.232 Criteria for all hospitals in a rural county seeking urban redesignation.

* * * * *

(b) *Metropolitan character.* The group of hospitals must demonstrate that the county in which the hospitals are located meets the standards for redesignation to an MSA or an NECMA as an outlying county that were published in the **Federal Register** on March 30, 1990 (55 FR 12154) using Bureau of the Census data or Bureau of Census estimates made after 1990.

* * * * *

(d) * * *

(2) * * *

(ii) For data of other hospitals, the hospitals must provide the following: * * *

(B) Occupational-mix data to demonstrate the average occupational mix for each employment category in the adjacent area. Occupational-mix data can be obtained from surveys conducted by the American Hospital Association.

18. In § 412.234, paragraph (b) is revised to read as follows:

§ 412.234 Criteria for all hospitals in an urban county seeking redesignation to another urban area.

* * * * *

(b) *Wage criteria.* In applying the following numeric criteria, rounding of numbers to meet the qualifying percentages is not permitted.

(1) *Aggregate hourly wage.* The aggregate average hourly wage of all hospitals in the urban county must be at least 85 percent of the average hospital hourly wage in the MSA or NECMA to which the hospitals in the county seek reclassification; or

(2) *Aggregate hourly wage weighted for occupational mix.* The aggregate average hourly wage of all hospitals in the urban county, weighted for occupational categories, is at least 90 percent of the occupationally adjusted hourly wage, in the MSA or NECMA to which the hospitals in the county seek reclassification.

* * * * *

Subpart M—Prospective Payment System for Inpatient Hospital Capital Costs

19. In § 412.308, paragraph (b) is revised to read as follows:

§ 412.308 Determining and updating the Federal rate.

* * * * *

(b) *Standard Federal rate.* The standard Federal rate is used to determine the Federal rate for each fiscal year in accordance with the formula specified in paragraph (c) of this section.

(1) HCFA determines the standard Federal rate by adjusting the FY 1992 updated national average cost per discharge by a factor so that estimated aggregate payments based on the standard Federal rate adjusted by the payment adjustments described in § 412.312(b) equal estimated aggregate payments based solely on the national average cost per discharge.

(2) Effective FY 1994, the standard Federal rate used to determine the Federal rate each year under paragraph (c) of this section is reduced by 7.4 percent.

* * * * *

20. In § 412.320, paragraph (b)(2) is revised to read as follows:

§ 412.320 Disproportionate share adjustment factor.

* * * * *

(b) * * *

(2) If a hospital meets the criteria in § 412.106(c)(2) for purposes of hospital inpatient operating prospective payments, the disproportionate share adjustment factor is the factor that results from deeming the hospital to have the same disproportionate share patient percentage that would yield its operating disproportionate share adjustment.

21. In § 412.336, paragraph (d) is added to read as follows:

§ 412.336 Transition period payment methodologies.

* * * * *

(d) *Special Rule for Redetermination of Hospital Payment Methodology.* For cost reporting periods beginning on or after October 1, 1993, the intermediary redetermines the hospital payment methodologies to take into account the reduction to the standard Federal rate provided in § 412.308(b)(2):

(1) For a hospital paid under the fully prospective payment methodology in the last hospital cost reporting period beginning before October 1, 1993, the intermediary compares the hospital's FY 1994 hospital-specific rate with the hospital's FY 1994 Federal rate (after taking into account the estimated effect of the payment adjustments and outlier payments).

(i) A hospital with a FY 1994 hospital-specific rate that is above the FY 1994 adjusted Federal rate is paid under the hold-harmless payment methodology described in § 412.344.

(ii) Subject to the provisions of § 412.328(f), a hospital with a FY 1994 hospital-specific rate that is below the FY 1994 adjusted Federal rate continues to be paid under the fully prospective payment methodology as described in § 412.340.

(iii) The intermediary notifies the hospital of the new determination of the hospital's payment methodology within 90 days of the hospital's first cost reporting period beginning on or after October 1, 1993. The new determination is effective to the beginning of the hospital's first cost reporting period beginning on or after October 1, 1993.

(2) A hospital paid under the hold-harmless payment methodology in the last cost reporting period beginning before October 1, 1993, will continue to be paid in accordance with the provisions of § 412.344.

B. Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833(a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); sec. 104(c) of Pub. L. 100–360 as amended by sec. 608(d)(3) of Pub. L. 100–485 (42 U.S.C. 1395ww (note)); and sec. 101(c) of Pub. L. 101–234 (42 U.S.C. 1395ww (note)).

Subpart C—Limits on Cost Reimbursement

2. Section 413.40 is revised to read as follows:

§ 413.40 Ceiling on the rate of increase in hospital inpatient costs.

(a) *Introduction*—(1) *Scope.* This section implements section 1886(b) of the Act, establishing a ceiling on the rate of increase in operating costs per case for hospital inpatient services furnished to Medicare beneficiaries that will be recognized as reasonable for purposes of determining the amount of Medicare payment. This rate-of-increase ceiling applies to hospital cost reporting periods beginning on or after October 1, 1982. This section also sets forth rules governing exemptions from and adjustments to the ceiling.

(2) *Applicability.* (i) This section is not applicable to—

(A) Hospitals reimbursed in accordance with section 1814(b)(3) of the Act or under State reimbursement control systems that have been approved under section 1886(c) of the Act and subpart C of part 403 of this chapter; or

(B) Hospitals that are paid under the prospective payment systems for inpatient hospital services in accordance with section 1886 (d) and (g) of the Act and part 412 of this chapter.

(ii) For cost reporting periods beginning on or after October 1, 1983, this section applies to hospitals excluded from the prospective payment system in accordance with § 412.23 of this chapter, and psychiatric and rehabilitation units (distinct parts) excluded from the prospective payment system in accordance with §§ 412.25 through 412.30 of this chapter.

(3) *Definitions.* As used in this section—

Ceiling is the aggregate upper limit on the amount of a hospital's net Medicare inpatient operating costs that the program will recognize for payment purposes. For each cost reporting period, the ceiling is determined by multiplying the updated target amount, as defined in this paragraph, for that period by the number of Medicare discharges during that period.

Date of discharge is the earliest of the following dates:

(A) The date the patient has exhausted Medicare Part A hospital inpatient benefits (including the election to use lifetime reserve days) during his or her spell of illness.

(B) The date the patient is formally released as specified in § 412.4(a)(1) of this chapter.

(C) The date the patient is transferred to another facility.

(D) The date the patient dies.

Market basket index is HCFA's projection of the annual percentage increase in hospital inpatient operating costs. The market basket index is a wage and price index that incorporates weighted indicators of changes in wages and prices that are representative of the mix of goods and services included in the most common categories of hospital inpatient operating costs subject to the ceiling, as described in paragraph (c)(1) of this section.

Net inpatient operating costs include the costs of routine services, ancillary services, and intensive care services (as defined in § 413.53(b)) incurred by a hospital in furnishing covered inpatient services to Medicare beneficiaries. Net inpatient operating costs exclude capital-related costs as described in § 413.130, the costs of approved medical education programs as described in §§ 413.85 and 413.86, and heart, kidney, and liver acquisition costs incurred by approved transplantation centers. These costs are identified and excluded from inpatient operating costs before the application of the ceiling.

Rate-of-increase percentage is the percentage by which each hospital's target amount from the preceding Federal fiscal year is increased.

Target amount is the per discharge (case) limitation, derived from the hospital's allowable net Medicare inpatient operating costs in the hospital's base year, and updated for each subsequent hospital cost reporting period by the appropriate annual rate-of-increase percentage.

Update adjustment percentage is the percentage by which a hospital's allowable inpatient operating service costs for the 12-month cost reporting period beginning in Federal fiscal year 1990 exceeds the hospital's ceiling for that period.

Update factor is the decimal equivalent of the rate-of-increase percentage. The update factor is the value by which a hospital's target amount for the preceding year is multiplied in order to determine the target amount for the following year. For example, if the rate-of-increase percentage for a year is 2.7 percent, the update factor for that year is 1.027.

(b) *Cost reporting periods subject to the rate-of-increase ceiling*—(1) *Base period.* Each hospital's target amount is based on its allowable net inpatient operating costs per case from the cost reporting period of at least 12 months immediately preceding the first cost reporting period subject to the rate-of-increase ceiling established under this section. If the immediately preceding cost reporting period is a short reporting

period (fewer than 12 months), the first period of at least 12 months subsequent to that short period is the base period.

(i) The target amount established under this provision remains applicable to a hospital or excluded distinct part hospital unit, as described in §§ 412.25 through 412.30 of this chapter, despite intervening cost reporting periods during which the hospital or excluded distinct part hospital unit is not subject to the ceiling as a result of other provisions of the law or regulations, or nonparticipation in the Medicare program, unless the hospital or excluded distinct part hospital unit qualifies as a new hospital or excluded distinct part hospital unit under the provisions of paragraph (f) of this section.

(ii) The base period for a newly established excluded distinct part unit is the first cost reporting period of at least 12 months following the unit's certification to participate in the Medicare program.

(iii) When the operational structure of a hospital or distinct part unit changes (that is, a freestanding hospital becomes a distinct part unit or vice versa) the base period is the first cost reporting period of at least 12 months effective with the revised Medicare certification classification.

(2) *Periods subject to the ceiling.* The ceiling established under this section applies to all cost reporting periods that—

(i) Begin on or after October 1, 1982; and

(ii) Immediately follow the base period established under paragraph (b)(1) of this section unless the exception in paragraph (b)(3) of this section is applicable.

(3) *Periods of other than 12 months.* The ceiling established under this section does not apply to cost reporting periods of fewer than 12 months that occur in conjunction with a change in operation of the facility, as defined in paragraph (b)(1)(iii) of this section, as a result of changes in ownership, merger, or consolidation. However, the ceiling applies to cost reporting periods of fewer than 12 months that result solely from the approval of a hospital's request for a change in accounting cycle, as specified in § 413.24(f)(3).

(c) *Costs subject to the ceiling*—(1) *Applicability.* The ceiling established under this section applies to net operating costs incurred by a hospital in furnishing inpatient hospital services to Medicare beneficiaries.

(2) *Rate-of-increase percentages and update factors.* The applicable rate-of-increase percentages and update factors are determined as follows:

(i) *Federal fiscal year 1986.* The applicable rate-of-increase percentage for cost reporting periods beginning on or after October 1, 1985 and before September 30, 1986 is five twenty-fourths of one percent, and the update factor is 1.00208333. For purposes of determining the target amount for cost reporting periods beginning on or after October 1, 1986, the applicable percentage increase for cost reporting periods beginning during Federal fiscal year 1986 is deemed to have been one-half percent, and the update factor is 1.005.

(ii) *Federal fiscal year 1987.* The applicable rate-of-increase percentage for cost reporting periods beginning on or after October 1, 1986 and before September 30, 1987 is 1.15 percent; the update factor is 1.0115.

(iii) *Federal fiscal year 1988.* The applicable rate-of-increase percentage for cost reporting periods beginning on or after October 1, 1987 and before October 1, 1988 is 2.3238 percent; the update factor is 1.023238. For purposes of updating the target amount for cost reporting periods beginning on or after October 1, 1988, the rate-of-increase percentage for cost reporting periods beginning during FY 1988 is deemed to have been 2.7 percent; the update factor is deemed to have been 1.027.

(iv) *Federal fiscal year 1989 through Federal fiscal year 1993.* The applicable rate-of-increase percentage for cost reporting periods beginning on or after October 1, 1988, and before October 1, 1993, is the percentage increase projected by the hospital market basket index (as defined in paragraph (a)(3) of this section).

(v) *Federal fiscal year 1994 through Federal fiscal year 1997.* The applicable rate-of-increase percentage for cost reporting periods beginning on or after October 1, 1993, and before October 1, 1998, is the market basket percentage increase minus the lesser of, 1 percentage point, or the percentage point difference between 10 percent and the hospital's "update adjustment percentage" (as defined in paragraph (a)(3) of this section); for hospitals with an "update adjustment percentage" of at least 10 percent, the applicable rate-of-increase percentage is the market basket percentage increase. The "update adjustment percentage" is increased in each Federal fiscal year by the sum of the hospital's applicable reductions applied to the market basket percentage increase for previous Federal fiscal years.

(vi) *Federal fiscal year 1998 and following.* The applicable rate-of-increase percentage for cost reporting periods beginning on or after October 1, 1998, is the percentage increase projected by the hospital market basket index.

(3) *Target amount.* The intermediary will establish a target amount for each hospital. The target amount for each cost reporting period is determined as follows:

(i) For the first cost reporting period to which this ceiling applies, the target amount equals the hospital's allowable net inpatient operating costs per case for the hospital's base period increased by the update factor for the subject period.

(ii) For subsequent cost reporting periods, the target amount equals the hospital's target amount for the previous cost reporting period increased by the update factor for the subject cost reporting period, unless the provisions of paragraph (c)(4)(ii) of this section apply.

(4) *Applicable update factor.* (i) The applicable update factor is derived from the prospectively determined rate-of-increase percentage published by HCFA. The update factor for each Federal fiscal year is applied prospectively to the target amount for each cost reporting period beginning during the Federal fiscal year.

(ii) In the case of cost reporting periods of less than 12 months, the target amount determined for a hospital's first cost reporting period beginning in a Federal fiscal year applies to subsequent periods beginning in the same Federal fiscal year.

(d) *Application of the target amount in determining the amount of payment*—(1) *General process.* (i) At the end of each cost reporting period subject to this section, the hospital's intermediary will compare a hospital's allowable net inpatient operating costs with that hospital's ceiling (as defined in paragraph (a)(3) of this section) for that period.

(ii) The hospital's actual allowable costs will be determined without regard to the lesser of cost or charges provisions of § 413.13, and in accordance with the provisions of paragraphs (d)(2) or (d)(3) of this section, as applicable.

(2) *Net inpatient operating costs are less than or equal to the ceiling.* If a hospital's allowable net inpatient operating costs do not exceed the hospital's ceiling, payment to the hospital will be determined on the basis of the lower of the—

(i) Net inpatient operating costs plus 50 percent of the difference between inpatient operating costs and the ceiling; or

(ii) Net inpatient operating costs plus 5 percent of the ceiling.

(3) *Net inpatient operating costs are greater than the ceiling.* For cost reporting periods beginning on or after October 1, 1991, if a hospital's allowable net inpatient operating costs exceed the hospital's ceiling, payment will be based on the lower of the—

(i) Ceiling plus 50 percent of the allowable net inpatient operating costs in excess of the ceiling; or

(ii) 110 percent of the ceiling.

(e) *Hospital requests regarding adjustments to the payment allowed under the rate-of-increase ceiling*—(1) *Timing of application.* A hospital may request an adjustment to the rate-of-increase ceiling imposed under this section. The hospital's request to its fiscal intermediary may be made upon receipt of the intermediary's notice of amount of program reimbursement (NPR) and must be made no later than 180 days after the date on the intermediary's NPR for the cost reporting period for which the hospital requests an adjustment.

(2) *Intermediary recommendation.* Unless HCFA has authorized the intermediary to make the decision, the intermediary makes a recommendation on the hospital's request to HCFA, which makes the decision. HCFA issues a decision to the intermediary no later than 180 days after receipt of the completed application and the intermediary's recommendation.

(3) *Intermediary decision.* If HCFA has authorized the intermediary to make the decision, the intermediary issues a decision no later than 180 days after receipt of the completed application.

(4) *Notification and review.* (i) The intermediary notifies the hospital of the decision, including a full explanation of the grounds for the decision. A decision issued under paragraph (e)(2) or (e)(3) of this section is considered final unless the hospital submits additional information and requests a review of the decision no later than 180 days after the date on the intermediary's notice of the decision.

(ii) The final decision is subject to review under the provider reimbursement determination and appeal procedures in subpart R of part 405 of this chapter, provided the hospital has received an NPR for the cost reporting period in question, and the NPR disallows costs for which the hospital had requested an adjustment (see the definitions in § 405.1801(a) of this chapter and the provisions regarding a provider's right to a Board hearing in § 405.1835 of this chapter).

(5) *Extending time limit for PRRB review of NPR.* The time required to review the request is considered good cause for the granting of an extension of the time limit to apply for review of the notice of amount of program reimbursement by the Provider Reimbursement Review Board, as specified in § 405.1841(b) of this chapter.

(6) *Applicability.* The provisions in paragraphs (e)(1) through (e)(5) of this section apply to a hospital's initial request for an adjustment and to a request for a review of the original decision based on additional data.

(f) *Exemptions*—(1) *New hospitals.* (i) A new hospital is exempt from the rate-of-increase ceiling imposed under this section. The exemption begins when the hospital accepts its first patient and ends at the end of the first cost reporting period ending at least 2 years after the hospital accepts its first patient. The first cost reporting period of at least 12 months beginning at least 1 year after the hospital accepts its first patient is the base year, in accordance with paragraph (b) of this section. For purposes of this section, a new hospital is a provider of hospital inpatient services that—

(A) Has operated as the type of hospital for which HCFA granted it approval to participate in the Medicare program, under present or previous ownership (or both), for less than two full years; and

(B) Has provided the type of hospital inpatient services for which HCFA granted it approval to participate in the Medicare program, for less than two years.

(ii) Within 180 days of the date a hospital is excluded from the prospective payment system, the intermediary determines whether the hospital is exempt from the rate-of-increase ceiling. The intermediary notifies the hospital of its determination and the hospital's base period.

(iii) A decision issued under paragraph (f)(1) of this section is considered final unless the hospital submits additional information and requests a review of the decision no later than 180 days after the date on the intermediary's notice of the decision. The final decision is subject to review under the provider reimbursement determination and appeal procedures in subpart R of part 405 of this chapter, provided the hospital has received an NPR for the cost reporting period in question and the NPR does not reflect an exemption (see the definitions in § 405.1801(a) of this chapter and the provisions regarding a provider's right to a Board hearing in § 405.1835 of this chapter).

(2) *New distinct part units.* A newly established distinct part unit that is excluded from the prospective payment system under the provisions of §§ 412.25 through 412.30 of this chapter does not qualify for the exemption afforded to a new hospital under paragraph (f)(1) of this section unless the distinct part unit is located in an acute care hospital that, if it were subject to the provisions of this section, would qualify as a new hospital under paragraph (f)(1) of this section.

(3) *Risk-basis HMOs.* Items or services that are furnished to beneficiaries enrolled in an HMO by a hospital that is either owned or operated by a risk-basis HMO or related to a risk-basis HMO by common ownership or control are exempt from the rate-of-increase ceiling (see the definition of an entity with a risk sharing contract in § 417.401 of this chapter).

(g) *Adjustments*—(1) *General rule.* HCFA may adjust the amount of the operating costs considered in establishing the rate-of-increase ceiling for one or more cost reporting periods, including both periods subject to the ceiling and the hospital's base period, under the circumstances specified below. When an adjustment is requested by the hospital, HCFA makes an adjustment only to the extent that the hospital's operating costs are reasonable, attributable to the circumstances specified, separately identified by the hospital, and verified by the intermediary. HCFA may grant an adjustment requested by the hospital only if a hospital's operating costs exceed the rate-of-increase ceiling imposed under this section.

(2) *Extraordinary circumstances.* HCFA may make an adjustment to take into account unusual costs (in either a cost reporting period subject to the ceiling or the hospital's base period) due to extraordinary circumstances beyond the hospital's control. These circumstances include, but are not limited to, strikes, fire, earthquakes, floods, or similar unusual occurrences with substantial cost effects.

(3) *Comparability of cost reporting periods*—(i) *Adjustment for distortion.* HCFA may make an adjustment to take into account factors that would result in a significant distortion in the operating costs of inpatient hospital services between the base year and the cost reporting period subject to the limits.

(ii) *Factors.* The adjustments described in paragraph (g)(3)(i) of this section, include, but are not limited to, adjustments to take into account:

(A) FICA taxes (if the hospital did not incur costs for FICA taxes in its base period).

(B) Services billed under part B of Medicare during the base period, but

paid under part A during the subject cost reporting period.

(C) Malpractice insurance costs (if malpractice costs were not included in the base year operating costs).

(D) Increases in service intensity or length of stay attributable to changes in the type of patient served.

(E) A change in the inpatient hospital services that a hospital provides, and that are customarily provided directly by similar hospitals, such as an addition or discontinuation of services or treatment programs.

(F) The manipulation of discharges to increase reimbursement.

(iii) *Adjusting operating costs.* Without a formal request from a hospital, HCFA may adjust the amount of operating costs determined under paragraph (c)(1) of this section to take into account certain adjustments. These adjustments include, but are not limited to, adjustments under paragraphs (g)(3)(ii) (A), (B), (C), (E), and (F) of this section.

(4) *Significant wage increase*—(i) *Criteria.* HCFA may make an adjustment to take into account a significant increase in wages occurring between the base period and the cost reporting period subject to the ceiling if there is a significant increase in the average hourly wage for the geographic area in which the hospital is located (determined by reference to the wage index for prospective payment hospitals without regard to geographic reclassifications under sections 1886(d)(8) and (10) of the Act). For this purpose, there is a significant wage increase if the wage index value based on wage survey data collected for the cost reporting period subject to the ceiling is at least 8.0 percent higher than the wage index value based on survey data collected for the base year cost reporting period. If survey data are not available for the cost reporting periods used in the comparison, the wage index value based on the latest available survey data collected prior to that cost reporting period is used.

(ii) *Amount of the adjustment.* The adjustment for a significant wage increase equals the amount by which the lesser of the following calculations exceeds 108 percent of the increase in the national average hourly earnings for hospital workers:

(A) The rate of increase in the average hourly wage in the geographic area (determined by applying the applicable increase in the area wage index value to the rate of increase in the national average hourly earnings for hospital workers).

(B) The rate of increase in the hospital's average hourly wage.

(5) *Adjustment limitations.* For cost reporting periods beginning on or after October 1, 1993, and before October 1, 1998, the payment reductions under paragraph (c)(2)(v) of this section will not be considered when determining adjustments under this paragraph.

(h) [Reserved]

(i) *Assignment of a new base period*—(1) *General rule.* (i) Effective with cost reporting periods beginning on or after April 1, 1990, HCFA may assign a new base period to establish a revised ceiling if the new base period is more representative of the reasonable and necessary cost of furnishing inpatient services and all the following conditions apply:

(A) The actual allowable inpatient costs of the hospital in the cost reporting period that would be affected by the revised ceiling exceed the target amount established under paragraph (c) of this section.

(B) The hospital documents that the higher costs are the result of substantial and permanent changes in furnishing patient care services since the base period. In making this determination, HCFA takes into consideration the following factors:

(*1*) Changes in the services provided by the hospital.

(*2*) Changes in applicable technologies and medical practices.

(*3*) Differences in the severity of illness among patients or types of patients served.

(C) The adjustments described in paragraph (g) of this section would not result in recognition of the reasonable and necessary costs of providing inpatient services.

(ii) The revised ceiling is based on the necessary and proper costs incurred during the new base period.

(A) Increases in overhead costs (for example, administrative and general costs and housekeeping costs) are not taken into consideration unless the hospital documents that these increases result from substantial and permanent changes in furnishing patient care services.

(B) In determining whether wage increases are necessary and proper, HCFA takes into consideration whether increases in wages and wage-related costs for hospitals in the labor market area exceed the national average increase.

(2) *New base period.* The new base period is the first cost reporting period that is 12 months or longer that reflects the substantial and permanent change.

(3) *New applicable rate-of-increase percentages and update factors.* The revised target amount resulting from the assignment of a new base period is increased by the applicable rate-of-increase percentages (update factors) described in paragraph (c)(2) of this section.

Subpart F—Specific Categories of Costs

3. Section 413.86 is amended as follows:

a. In paragraph (b), the definition "Primary care resident" is added, in alphabetical order.

b. Paragraph (e)(3) is revised.

c. In paragraph (g)(1), an additional sentence is added after the first sentence.

d. In paragraph (h)(2), in the second sentence, the phrase "On or before July 1, 1986 and before July 1, 1987," is revised to read "On or after July 1, 1986, and before July 1, 1987,".

The revision and additions are to read as follows:

§ 413.86 Direct graduate medical education payments.

* * * * *

(b) * * *

Primary care resident is a resident enrolled in an approved medical residency training program in family medicine, general internal medicine, general pediatrics, preventive medicine, geriatric medicine or osteopathic general practice.

* * * * *

(e) * * *

(3) *For cost reporting periods beginning on or after July 1, 1986.* For cost reporting periods beginning on or after July 1, 1986, a hospital's base-period per resident amount is adjusted as follows:

(i) Except as provided in paragraph (e)(3)(ii) of this section, each hospital's per resident amount for the previous cost reporting is adjusted by the projected change in the CPI-U for the 12-month cost reporting period. This adjustment is subject to revision during the settlement of the cost report to reflect actual changes in the CPI-U that occurred during the cost reporting period.

(ii) For cost reporting periods beginning on or after October 1, 1993 through September 30, 1995, each hospital's per resident amount for the previous cost reporting period will not be adjusted for any resident FTEs who are not either a primary care resident or an obstetrics and gynecology resident.

* * * * *

(g) * * *

(1) * * * Effective August 10, 1993, residents or fellows in an approved preventive medicine residency or fellowship program may also be counted

as a full FTE resident for up to two additional years beyond the initial residency period limitations. * * *

* * * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 23, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 24, 1993.

Donna E. Shalala,

Secretary.

[**Note:** The following addendum and appendixes will not appear in the Code of Federal Regulations.]

Addendum—Schedule of Standardized Amounts Effective With Discharges On or After October 1, 1993 and Update Factors and Rate-of-Increase Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 1993

I. Summary and Background

In this addendum, we are setting forth the amounts and factors for determining prospective payment rates for Medicare inpatient operating costs and Medicare inpatient capital-related costs. We are also setting forth new rate-of-increase percentages for updating the target amounts for hospitals and hospital units excluded from the prospective payment system.

For discharges occurring on or after October 1, 1993, except for sole community hospitals, Medicare-dependent, small rural hospitals, hospitals located in Puerto Rico, and hospitals subject to the regional floor, each hospital's payment per discharge under the prospective payment system is based on 100 percent of the Federal national rate.

Sole community hospitals and Medicare-dependent, small rural hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal national rate (subject to the regional floor), the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge. Hospitals in Puerto Rico are paid on the basis of a rate per discharge comprised of 75 percent of a Puerto Rico rate and 25 percent of a national rate (section 1886(d)(9)(A) of the Act). Hospitals affected by the regional floor are paid on the basis of 85 percent of the Federal national rate and 15 percent of the Federal regional rate (section 13501(f) of Public Law 103–66 amended section 1886(d)(1)(a)(iii) of the Act to extend the regional floor through FY 1996).

As discussed below in section II, we are making changes in the determination of the prospective payment rates for Medicare inpatient operating costs. The changes, to be applied prospectively, will affect the calculation of the Federal rates. In section III we discuss changes we are making in the determination of the prospective payment rates for Medicare inpatient capital-related costs. Section IV sets forth our changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system. The tables to which we refer in the preamble to the final rule are presented at the end of this addendum in section V.

II. Changes to Prospective Payment Rates for Inpatient Operating Costs for FY 1994

The basic methodology for determining prospective payment rates for inpatient operating costs is set forth at § 412.63 for hospitals located outside of Puerto Rico. The basic methodology for determining the prospective payment rates for inpatient operating costs for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below, we discuss the manner in which we are changing some of the factors used for determining the prospective payment rates. The Federal and Puerto Rico rate changes will be effective with discharges occurring on or after October 1, 1993. As required by section 1886(d)(4)(C) of the Act, we must adjust the DRG classifications and relative weights for discharges in FY 1994.

In summary, the standardized amounts set forth in Tables 1a, 1b, and 1c of section V of this addendum were—

- Updated by 1.8 percent for urban hospitals and 3.3 percent for rural hospitals (that is, the market basket percentage increase of 4.3 percent minus 2.5 percent for urban areas and the market basket percentage increase of 4.3 percent minus 1.0 percent for rural areas);
- Adjusted to ensure budget neutrality as provided for in sections 1886(d)(4)(C)(iii) and (d)(3)(E) of the Act by applying new budget neutrality adjustment factors to the urban and rural standardized amounts;
- Adjusted to ensure budget neutrality as provided for in section 1886(d)(8)(D) of the Act by removing the FY 1993 budget neutrality factor and applying a revised factor; and
- Adjusted by removing the FY 1993 outlier offsets and applying the revised urban and rural outlier offsets.

A. Calculation of Adjusted Standardized Amounts

1. *Standardization of base-year costs or target amounts.* Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the September 1, 1983 interim final rule (48 FR 39763) contains a detailed explanation of how base-year cost data were established in the initial development of standardized amounts for the prospective payment system and how they are used in computing the Federal rates.

Section 1886(d)(9)(B)(i) of the Act required that Medicare target amounts be determined for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates (52 FR 33043, 33066).

The standardized amounts are based on per discharge averages of adjusted hospital costs from a base period or, for Puerto Rico, adjusted target amounts from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886(d)(2)(C) and (d)(9)(B)(ii) of the Act required that the updated base-year per discharge costs and, for Puerto Rico, the updated target amounts, respectively, be standardized in order to remove from the cost data the effects of certain sources of variation in cost among hospitals. These include case mix, differences in area wage levels, cost of living adjustments for Alaska and Hawaii, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients.

Since the standardized amounts have already been adjusted for differences in case mix, wages, cost-of-living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, no additional adjustments for these factors for FY 1994 were made. That is, the standardization adjustments reflected in the FY 1994 standardized amounts are the same as those reflected in the FY 1993 standardized amounts.

Sections 1886(d)(2)(H) and (d)(3)(E) of the Act require that, in making payments under the prospective payment system, the Secretary adjust the proportion of payments that are wage-related (as estimated by the Secretary from time to time). Beginning with October 1, 1990, when the market basket was rebased, we have considered

71.40 percent of costs to be labor-related for purposes of the prospective payment system.

Comment: One commenter asked why the ratio of the labor-related share of the rural standardized amount to the combined labor-related and nonlabor-related shares is higher than the ratio for the other urban and large urban standardized amounts, since the wage index values for rural areas generally are lower.

Response: The difference results from the standardization process. The labor-related payment rate equals the labor-related share of the standardized amount times the wage index. In order to determine the labor-related share of each standardized amount, we first take the applicable cost per case for each hospital, multiply it by the labor-related share of the hospital market basket (currently 71.40 percent), and divide that number by the wage index for the hospital. The individual hospital labor shares are then averaged for all rural hospitals to determine the rural labor-related share. Since, as the commenter points out, hospitals in rural areas tend to have lower wage index values than hospitals in urban areas, the resulting labor share tends to be higher for rural hospitals, if other factors are equal. This is because dividing a given number by a smaller number will yield a larger result than dividing it by a larger number. The process is explained in detail in the September 1, 1983, interim final rule at 48 FR 39765.

2. *Computing urban and rural averages within geographic areas.* Section 1886(d)(3) of the Act requires the Secretary to compute three average standardized amounts for discharges occurring in a fiscal year: One for hospitals located in rural areas; one for hospitals located in large urban areas; and one for hospitals located in other urban areas. In addition, under section 1886(d)(9)(B)(iii) of the Act, the average standardized amount per discharge must be determined for hospitals located in urban and rural areas in Puerto Rico. Hospitals in Puerto Rico are paid a blend of 75 percent of the applicable Puerto Rico standardized amount and 25 percent of a national standardized payment amount.

Section 1886(d)(2)(D) of the Act defines a "large urban area" as an urban area with a population of more than 1,000,000. In addition, section 4009(i) of Public Law 100–203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Urban areas that do not meet the definition of a "large urban area" are referred to as "other urban areas."

Based on 1991 population estimates published by the Bureau of the Census, 55 large urban areas meet the criteria to be defined as large urban areas for FY 1994. (These consist of the 51 areas identified in the proposed rule, and an additional 4 areas identified as a result of OMB's June 30, 1993, revisions to the MSA definitions.) These areas are identified by an asterisk in Table 4a.

Table 1a contains the three national standardized amounts that continue to be applicable to most hospitals. Table 1b sets forth the 27 regional standardized amounts that continue to be applicable for hospitals located in census areas subject to the regional floor. Under section 1886(d)(9)(A)(ii) of the Act, the national standardized payment amount applicable to hospitals in Puerto Rico consists of the discharge-weighted average of the national rural standardized amount, the national large urban standardized amount, and the national other urban standardized amount (as set forth in Table 1a). The national average standardized amount for Puerto Rico is set forth in Table 1c. This table also includes the three standardized amounts that are applicable to most hospitals in Puerto Rico.

3. *Updating the average standardized amounts.* In accordance with section 1886(d)(3)(A) of the Act, we are updating the large urban, other urban, and rural average standardized amounts using the applicable percentage increases specified in section 1886(b)(3)(B)(i) of the Act. Section 1886(b)(3)(B)(i)(IX) of the Act (as amended by section 13501(a) of Public Law 103–66) specifies the following update factors for the standardized amounts for FY 1994:

- The market basket percentage increase of 4.3 percent minus 2.5 percent (that is 1.8 percent) for hospitals located in urban areas.
- The market basket percentage increase of 4.3 percent minus 1.0 percentage points (that is, 3.3 percent) for hospitals located in rural areas.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecasted hospital market basket increase for FY 1994 is 4.3 percent.

Although the update factor for FY 1994 is set by law, we were required by section 1886(e)(3)(B) of the Act to report to Congress no later than March 1, 1993 on our initial recommendation of update factors for FY 1994 for both prospective payment hospitals and hospitals excluded from the prospective payment system. For general information purposes, we published the report to Congress as appendix C to the proposed rule. This recommendation was based on an earlier forecast of the hospital market basket increase. Our final recommendation on the update factors (which is required by sections 1886(e)(4)(A) and (e)(5)(A) of the Act), is set forth as appendix D to this final rule.

4. *Other adjustments to the average standardized amounts—a. Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment.* Section 1886(d)(4)(C)(iii) of the Act specifies that beginning in FY 1991, the annual DRG reclassifications and recalibration of the relative weights must be made in a manner that assures that aggregate payments to hospitals are not affected. As discussed in section II of the preamble, we normalized the recalibrated DRG weights by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight prior to recalibration. While this adjustment is intended to ensure that recalibration does not affect total payments to hospitals, our analysis indicates that the normalization adjustment does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals.

Section 1886(d)(3)(E) of the Act specifies that the hospital wage index must be updated based on new survey data no later than October 1, 1990 and on an annual basis beginning October 1, 1993. This provision also requires that any updates or adjustments to the wage index must be made in a manner that assures that aggregate payments to hospitals are not affected by the change in the wage index.

To comply with the requirement of section 1886(d)(4)(C)(iii) of the Act that the DRG reclassification and recalibration of the relative weights be budget neutral and the requirement in section 1886(d)(3)(E) of the Act that the updated wage index be implemented in a budget neutral manner, we compared aggregate payments using the FY 1993 relative weights and the wage index effective October 1, 1992 to aggregate payments using the proposed FY 1994 relative weights and wage index. The same methodology was used for the FY 1993 budget neutrality adjustment. (See the discussion in the September 1, 1992 final rule (57 FR 39832).) Based on this comparison, we computed a proposed budget neutrality adjustment factor equal to .997819. The final budget

neutrality adjustment factor is equal to .999003. This budget neutrality adjustment factor is applied to the standardized amounts without removing the effects of the FY 1993 budget neutrality adjustment. We do not remove the prior budget neutrality adjustment because the statute requires that aggregate payments after the changes in the DRG relative weights and wage index equal estimated payments prior to the changes. If we removed the prior year adjustment, we would not be able to satisfy this condition.

In addition, we are continuing to apply the same FY 1994 adjustment factor to the hospital-specific rates that are effective October 1, 1993, in order to ensure that we meet the statutory requirement that aggregate payments neither increase nor decrease as a result of the implementation of the DRG weights and updated wage index. (See the discussion in the September 4, 1990 final rule (55 FR 36073).)

b. *Reclassified hospitals—budget neutrality adjustment.* Section 1886(d)(8)(B) of the Act provides that certain rural hospitals are deemed urban. In addition, section 1886(d)(10) of the Act provides for the reclassification of hospitals based on determinations by the Medicare Geographic Classification Review Board (MGCRB). Under section 1886(d)(10) of the Act, a hospital may be reclassified for purposes of the standardized amount or the wage index, or both.

Section 1886(d)(8)(D) of the Act specifies two budget neutrality objectives that must be met. First, the FY 1994 urban standardized amounts are to be adjusted so as to assure that total aggregate payments under the prospective payment system after implementation of the provisions of sections 1886(d)(8)(B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. Second, the rural standardized amounts are to be adjusted to assure that aggregate payments to rural hospitals not affected by these provisions neither increase nor decrease as a result of implementation of these provisions. We note that some rural referral centers have been reclassified for purposes of the standardized amount. The budget neutrality adjustment for geographic reclassifications does not include the cost of paying the other urban standardized amount to rural referral centers or hospitals that lost their rural referral center status as a result of reclassification, since they are already paid on this basis in the absence of reclassification. Rather, the budget neutrality adjustment includes only the difference between the payments to these hospitals after reclassification and payments as a rural referral center before reclassification (for example, higher disproportionate share payments or the difference between large urban and other urban rates, as applicable). The following adjustment factors, necessary to achieve the requisite budget neutrality constraints, were applied to the proposed standardized amounts:

Urban	Rural
.993665	.998805

The following adjustment factors were applied to the final standardized amounts:

Urban	Rural
.992529	.999472

The adjustment factors are applied to the standardized amounts after removing the effects of the FY 1993 budget neutrality adjustment factors. We note that the proposed FY 1994 adjustments reflect wage index and standardized amount reclassifications approved by the MGCRB or the Administrator as of March 15, 1993. The final budget neutrality adjustment factors reflect the effects of all reclassification decisions and changes in these decisions resulting from appeals and review of the MGCRB's decisions for FY 1994, or from a hospital's request for the withdrawal of a reclassification.

c. *Retroactive budget neutrality adjustment to reflect FY 1993 midyear wage index corrections.* In the September 4, 1990 final rule (55 FR 36042), we set forth under § 412.63(l) (redesignated at § 412.63(p)) our policy for making midyear corrections in the wage index and applying those corrections on a prospective basis effective with discharges occurring on or after the date the corrections are made. As described in that rule, when midyear corrections are made under the provisions of § 412.63(l), the correction in the wage index value for the affected area is effective prospectively from the date the revision is made; however, both the corresponding prospective adjustment to the wage index values for all other wage areas (to reflect the effect of the corrected data on the national average hourly wage), and the budget neutrality adjustment to the standardized amounts required by section 1886(d)(3)(E) of the Act (to account for the effect on payments of the midyear corrections), are not made until the beginning of the next fiscal year. We note that midyear wage index corrections will not be recognized in FY 1994.

To account for the effect that midyear corrections in the wage index for FY 1993 had on program payments for that year, we have computed a retroactive budget neutrality adjustment factor of .998188. This adjustment was computed by comparing FY 1993 aggregate payments before the wage data corrections were made with aggregate payments after the revised wage index values were implemented. This adjustment has been applied to the FY 1994 standardized amounts after removing the effects of the FY 1993 budget neutrality adjustment for midyear wage corrections made in FY 1992.

d. *Outliers.* Section 1886(d)(5)(A) of the Act provides that, in addition to the basic prospective payment rates, payments must be made for discharges involving day outliers and may be made for cost outliers. Section 1886(d)(3)(B) of the Act requires that the urban and rural standardized amounts be separately reduced by the proportion of estimated total DRG payments attributable to estimated outlier payments for hospitals located in urban areas and those located in rural areas. Section 1886(d)(9)(B)(iv) of the Act requires that the urban and rural standardized amounts applicable to hospitals in Puerto Rico be reduced by the proportion of estimated total DRG payments attributable to estimated outlier payments.

Consequently, instead of a uniform reduction factor applying equally to all the standardized amounts, there are two separate reduction factors, one applicable to the urban standardized amounts and the other applicable to the rural standardized amounts. Furthermore, section 1886(d)(5)(A)(iv) of the Act directs that outlier payments in any year may not be less than 5 percent nor more than 6 percent of total payments projected to be made based on the prospective payment rates.

i. *Factors affecting outlier thresholds.* In the September 1, 1992 final rule (at 57 FR 39783), we discussed several factors that could have been responsible for FY 1991 outlier payments being lower than expected. We also indicated that we would continue to explore possible refinements to the outlier estimation methodology that would help ensure that actual outlier payments are as close as possible to estimated outlier payments (as a fraction of total DRG payments).

We examined the various adjustment factors that are used to estimate cost

outlier payments. These include adjustments for the indirect costs of medical education (IME) and for hospitals serving a disproportionate share of low income patients (DSH), the hospital cost-to-charge ratios, and the charge inflation factor. We decided not to make any adjustments to the IME and DSH adjustments currently used to estimate outlier payments because they do not change in any predictable fashion. As a result, there is no accurate adjustment that we can make to these adjustment factors that would improve our estimation methodology. However, we have noted a continued trend with respect to changes in costs relative to charges. Over time, charges have continued to increase at a faster rate than costs, so that cost-to-charge ratios have been declining. Because we use the latest available cost-to-charge ratios (which may be as much as 2 years old) to convert billed charges to costs for purposes of estimating cost outlier payments, we may be overestimating outlier payments in setting the thresholds. As a result, actual payments may be lower than estimated. In order to alleviate this problem, we are using a cost inflation factor rather than a charge inflation factor to estimate FY 1994 costs. In other words, instead of inflating the FY 1992 charge data by a charge inflation factor for 2 years in order to estimate FY 1994 charge data and then applying the cost-to-charge ratio, we will adjust the charges by the cost-to-charge ratio and then inflate the estimated costs for 2 years of cost inflation. In this manner, we will be automatically adjusting for any changes in the cost-to-charge ratios that may occur, since the relevant variable is the costs estimated for a given case.

In setting the FY 1994 outlier thresholds, we used a cost inflation factor of 8.3 percent. This is the average increase in cost per case between PPS–5 (data from cost reporting periods beginning in FY 1988) and PPS–8 (data from cost reporting periods beginning in FY 1991), for a matched set of hospitals. We made an audit adjustment for any cost report that had not been settled, based on the average ratio between submitted and final cost report data. This adjustment was made separately for Medicare inpatient capital costs and Medicare inpatient operating costs. We used the actual settlement ratio for PPS–5 cost report data, since most cost reports for that period had been settled, but used the settlement ratio from PPS–6 (data from cost reporting periods beginning in FY 1989) for the PPS–7 and PPS–8 cost reports, since the PPS–7 and PPS–8 settlement ratios currently available are based on many fewer hospitals (approximately 55 percent for PPS–7 and 6 percent for PPS–8, as opposed to 92 percent for PPS–6).

ii. *FY 1992 and FY 1993 outlier payments.* In the June 4, 1992 proposed rule (57 FR 23645), we discussed several reasons for a difference between actual and estimated outlier payments as a percentage of total DRG payments for FY 1992. At that time, we estimated that actual FY 1992 outlier payments would be approximately 3.6 percent of FY 1992 total DRG payments. We also estimated that total DRG payments for FY 1992 would be higher than estimated at the time that we set the FY 1992 outlier thresholds. Thus, we stated our belief that hospitals were not necessarily disadvantaged by the lower than estimated outlier payment percentage. Our current estimate is that actual FY 1992 outlier payments will be approximately 3.6 percent of total DRG payments. At the same time, we estimate that FY 1992 total DRG payments per case were 2.4 percent higher than we estimated when we set the FY 1992 outlier thresholds. This estimate is based on the June 30, 1992, update of the provider-specific file and the June 30, 1993, update of the MedPAR file.

We believe that using a cost inflation factor in setting the FY 1994 outlier thresholds, rather than a charge inflation factor, will further improve our estimation methodology in order that actual outlier payments as a percentage of total DRG payments will equal estimated outlier payments as a percentage of total DRG payments.

In the September 1, 1992 final rule, we set the outlier thresholds so that estimated operating outlier payments were equal to 5.1 percent of estimated total estimated operating prospective payments. We currently estimate that FY 1993 outlier payments will be 4.5 percent of total DRG payments.

Although we now estimate that FY 1993 outlier payments will be lower than anticipated, we note that FY 1993 total DRG payments per case will be approximately 1.0 percent higher than we estimated when setting the FY 1993 outlier thresholds. In addition, we note that the estimate of the market basket rate of increase used to set the FY 1993 rates was 4.1 percentage points, while our current estimate for the FY 1993 market basket rate of increase is 3.2 percent. Thus, the net effect is that hospitals are receiving higher FY 1993 payments than would have been established based on the more recent data.

Comment. Some commenters are concerned about our projection that FY 1993 payments will be lower than we estimated when we set the FY 1993 outlier thresholds. These commenters urge that we establish a method of monitoring outlier payments during a fiscal year, so that we can prospectively change the outlier thresholds in the event that projected outlier payments are not between 5 and 6 percent of total DRG payments. These commenters support our efforts to establish a cost inflation factor and to refine the estimation process.

Response: We responded to similar comments in the final rule for FY 1993 (57 FR 39784). Section 1886(d)(5)(A)(iv) of the Act requires that outlier payments be between 5 and 6 percent of the total payments "projected or estimated to be made" based on diagnosis-related group (DRG) prospective payment rates for discharges in that year. We set the FY 1993 outlier thresholds so that estimated outlier payments were the appropriate fraction of estimated total DRG payments. We used the most recent Medicare discharge and hospital-specific data available to estimate total payments and the percentage of payments for outliers. This is necessarily a prospective process and the resulting estimate may prove to be inaccurate.

We currently estimate that FY 1993 outlier payments may not be equal to the 5.1 percent level that we originally estimated when setting the FY 1993 outlier thresholds. However, we do not believe that Congress envisioned we would revise, in midyear, any of the estimates of the factors used to set prospective payment amounts for a given Federal fiscal year. These factors include not only the outlier thresholds, but the market basket rate of increase used to establish the update factors, the recalibration of the DRG rates, and the various required budget neutrality provisions. The market basket rate of increase has been overestimated for the past three fiscal years, but we have not made adjustments to the standardized amounts during the year as new estimates of the market basket rate of increase became available. Further, our most recent estimate of the FY 1993 market basket rate of increase is 3.2 percent, or 0.9 percentage points lower than that used to establish the FY 1993 standardized amounts. In addition, although we now have evidence that we underestimated the recalibration budget neutrality factor applied to the standardized amounts, we have not contemplated changing that factor. We do not believe it would be appropriate to make these midyear corrections to the standardized amounts, given the requirements under sections 1886(d)(6)

and 1886(e)(5)(B) of the Act that we publish annual prospective payment system rates by September 1 of each year. This provision ensures that hospitals have advance notice of the rates that will be in effect for the upcoming fiscal year. While our current estimate of FY 1993 outlier payments is lower than our estimate in the FY 1993 final prospective payment system rule, our estimate for standard payments (DRG payments plus outlier payments) is higher as is our estimate for total prospective payments. Any midyear correction to the standardized amounts and adjustment factors would have to remove any anticipated payments in excess of our total payment target in order to maintain budget neutrality.

Comment: Several commenters believe that section 1886(d)(5)(A)(iv) of the Act requires that actual outlier payments for any fiscal year be between 5 and 6 percent of total DRG payments as estimated to be made in that fiscal year. Other commenters believe that we should retroactively pay out any difference between actual and estimated outlier payments.

Response: Again, section 1886(d)(5)(A)(iv) of the Act requires that outlier payments in each fiscal year be between 5 and 6 percent of the total payments "projected or estimated to be made" based on DRG prospective payment rates for discharges in that year. The statute requires that we set outlier payment policy based on estimates, and we make every effort to ensure that our estimates are as accurate as possible. We have always set the outlier thresholds based on the most current data available at the time, and we continue to refine the estimation methodology.

For several years, commenters have suggested that HCFA has failed to pay out funds set aside for outlier cases in a given fiscal year. This issue was discussed most recently in the August 30, 1991, final rule (56 FR 43227), and previously in the September 3, 1986, final rule (51 FR 31525), the September 1, 1987, final rule (52 FR 33048), the September 30, 1988, final rule (53 FR 38508), the September 1, 1989, final rule (54 FR 36500), and the September 4, 1990, final rule (55 FR 36077). As indicated in our previous responses, there are no funds explicitly set aside for outlier cases. If actual outlier payments are less than estimated outlier payments, this does not mean that the Medicare program retains the difference. In fact, in some years, actual total payments (including outlier payments) have been greater than estimated payments. Also, we do not make adjustments if we pay more in outlier payments than we estimated at the time we set the outlier thresholds.

iii. *FY 1994 outlier thresholds.* For FY 1993, the day outlier threshold is the geometric mean length of stay for each DRG plus the lesser of 23 days or 3.0 standard deviations. The cost outlier threshold is the greater of 2.0 times the prospective payment rate for the DRG or $35,500 ($32,500 for hospitals that have not yet entered the prospective payment system for inpatient capital-related costs). The outlier adjustments for FY 1993 standardized amounts were .944598 for the urban rates, .978420 for the rural rates, and .9496 for the capital Federal rate.

For FY 1994, we proposed to set the day outlier threshold at the geometric mean length of stay for each DRG plus the lesser of 23 days or 3.0 standard deviations and the cost outlier threshold at the greater of 2.0 times the prospective payment rate for the DRG or $36,000 ($33,000 for hospitals that have not yet entered the prospective payment system for capital-related costs). The thresholds that we are establishing in this final rule are: for day outliers, the geometric mean length of stay for each DRG plus the lesser of 23 days or 3.0 standard deviations, and for cost outliers, the greater of 2.0 times the prospective payment rate for the DRG or $36,000 ($33,000 for hospitals that have not yet entered the prospective payment system for capital-related costs).

The FY 1994 outlier thresholds will result in a slight increase in the proportion of outliers paid as cost outliers relative to those paid as day outliers. We estimate that 46.9 percent of outlier cases will be paid using the cost outlier methodology and 53.1 percent will be paid using the day outlier methodology. Cases that meet the day outlier threshold but that are paid using the cost outlier methodology, because it yields the higher payment, will represent 17.3 percent of all outlier cases. Our simulation of FY 1994 outlier payments based on FY 1992 MedPAR data indicates that the percentage of outlier cases that will qualify as day outliers is about 70.4 percent. The cases qualifying as day outliers will receive 74.2 percent of operating outlier payments in FY 1994. An estimated 29.6 percent of outlier cases will be cost-only outlier cases, which will receive about 25.8 percent of operating outlier payments. The following table illustrates this finding in greater detail:

Type of outlier	Percentage of outlier cases	Percentage of operating outlier payments	Percentage of capital outlier payments	Percentage of total outlier payments
Meets day threshold only	44.4	18.6	17.0	18.4
Meets day and cost thresholds, paid using day methodology	8.6	13.1	11.9	12.9
Meets day and cost thresholds, paid using cost methodology	17.3	42.5	42.3	42.5
Subtotal—All cases meeting day threshold	70.4	74.2	71.1	73.9
Meets cost threshold only	29.6	25.8	28.9	26.1
Total	100.0	100.0	100.0	100.0

When we modeled the combined operating and capital outlier payments, we found that using a common set of thresholds resulted in a slightly higher percentage of outlier payments for capital-related costs than for operating costs. We estimate the final thresholds for FY 1994 will result in outlier payments equal to 5.1 percent of operating DRG payments and 5.5 percent of capital payments based on the Federal rate.

We proposed to establish outlier thresholds that would be applicable to both inpatient operating costs and inpatient capital-related costs. The proposed outlier adjustment factors applied to the standardized amounts and the capital Federal rate for FY 1994 were as follows:

Urban standardized amount	Rural standardized amount	Capital Federal rate
.945752	.977589	.9455

We proposed to apply the outlier adjustment factors after removing the effects of the FY 1993 outlier adjustment factors on the standardized amounts and the capital Federal rate.

The final outlier adjustment factors applied to the standardized amounts and the capital Federal rate for FY 1994 are as follows:

Urban standardized amount	Rural standardized amount	Capital Federal rate
.945960	.977157	.9454

As proposed, we will continue to set the outlier thresholds so that estimated outlier payments equal 5.1 percent of estimated total operating prospective payments. The model that we use to determine the outlier thresholds necessary to target our desired outlier payment percentage for FY 1994 uses the FY 1992 MedPAR file and the most recent available information on hospital-specific payment parameters (such as the cost-to-charge ratios). This information is based on the June, 1993 update of the provider-specific file used in the PRICER program.

iv. *Other changes concerning outliers.* Because of the change to the calculation of day outlier payments beginning in FY 1993, we are now including the arithmetic mean length of stay in Table 5 of section V of this addendum. When we recalibrate DRG weights, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight and geometric mean length of stay. DRGs that do not have at least 10 cases are considered to be low volume DRGs. For the low volume DRGs, we use the original geometric mean lengths of stay, because no arithmetic mean length of stay was calculated based on the original data.

Table 8a in section V of this addendum contains the updated Statewide average operating cost-to-charge ratios for urban hospitals and for rural hospitals to be used in calculating cost outlier payments for those hospitals for which the intermediary is unable to compute a reasonable hospital-specific cost-to-charge ratio. Effective October 1, 1993, these Statewide average ratios replace the ratios published in the September 1, 1992 final rule (57 FR 39944). Table 8b contains comparable Statewide average capital cost-to-charge ratios. These average ratios will be used to calculate cost outlier payments for those hospitals for which the intermediary computes operating cost-to-charge ratios lower than 0.295580 or greater than 1.287780 and capital cost-to-charge ratios lower than 0.012983 or greater than 0.247433. This range represents 3.0 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals. The cost-to-charge ratios in Tables 8a and 8b will be applied to all hospital-specific cost-to-charge ratios based on cost report settlements occurring during FY 1994.

B. Adjustments for Area Wage Levels and Cost of Living

This section contains an explanation of the application of two types of adjustments to the adjusted standardized amounts that will be made by the intermediaries in determining the prospective payment rates as described in this addendum. For discussion purposes, it is necessary to present the adjusted standardized amounts divided into labor and nonlabor portions. Tables 1a, 1b, and 1c, as set forth in this addendum, contain the actual labor-related and nonlabor-related shares that will be used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico.

1. *Adjustment for area wage levels.* Sections 1886(d)(3)(E) and 1886(d)(9)(C)(iv) of the Act require that an adjustment be made to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by the intermediaries by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III of the preamble, we discuss certain revisions we are making to the wage index. This index is set forth in Tables 4a through 4e of this addendum.

2. *Adjustment for cost of living in Alaska and Hawaii.* Section 1886(d)(5)(H) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken into account in the adjustment for area wages described above. For FY 1994, the adjustment necessary for nonlabor-related costs for hospitals in Alaska and Hawaii will be made by the intermediaries by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below. The Office of Personnel Management published revised cost-of-living adjustment factors on June 18, 1993 at 58 FR 33506, and these adjustment factors are reflected in the table below.

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
County of Honolulu	1.225
County of Hawaii	1.15
County of Kauai	1.175
County of Maui	1.225
County of Kalawao	1.225

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

C. DRG Relative Weights

As discussed in section II of the preamble, we have developed a DRG classification system for hospital inpatient discharges, and have developed relative weights for each DRG that reflect the resource utilization of cases in that DRG relative to Medicare cases in other DRGs. The intermediary calculates the prospective payment amount by multiplying the applicable standardized amount by the relative weight for the DRG to which the discharge is assigned.

Table 5 of section V of this addendum contains the relative weights that we will use for discharges occurring in FY 1994. These factors have been recalibrated as explained in section II of the preamble.

D. Calculation of Prospective Payment Rates for FY 1994

General Formula for Calculation of Prospective Payment Rates for FY 1994:

Prospective payment rate for all hospitals located outside Puerto Rico except sole community hospitals and Medicare-dependent, small rural hospitals = Federal rate.

Prospective payment rate for sole community hospitals = Whichever of the following rates yields the greatest aggregate payment: 100 percent of the Federal rate, 100 percent of the FY 1982 hospital-specific rate, or 100 percent of the FY 1987 hospital-specific rate.

Prospective payment rate for Medicare-dependent, small rural hospitals = 100 percent of the Federal rate plus, if the greater of the FY 1982 hospital-specific rate and the FY 1987 hospital-specific rate is higher than the Federal rate, an adjustment depending on the hospital's cost reporting period as follows:

- For discharges occurring during the first 3 12-month cost reporting periods that began on or after April 1, 1990, the amount by which the greater hospital-specific rate exceeds the Federal rate; and
- For discharges occurring during any subsequent cost reporting period, 50

percent of the difference between the greater hospital-specific rate and the Federal rate.

Prospective payment rate for Puerto Rico = 75 percent of the Puerto Rico rate + 25 percent of a discharge-weighted average of the large urban, other urban, and rural national rates.

1. *Federal rate.* For discharges occurring on or after October 1, 1993 and before October 1, 1994, except for sole community hospitals, Medicare-dependent, small rural hospitals, hospitals subject to the regional floor, and hospitals in Puerto Rico, the hospital's rate is comprised exclusively of the Federal national rate. Hospitals located in counties that were reclassified from urban to rural due to redesignation of MSAs by the Office of Management and Budget shall have their rural average standardized amount adjusted on the basis of an additional amount that equals two-thirds of the difference between the urban and rural standardized amounts. Section 1886(d)(1)(A)(iii) of the Act, as amended by section 13501(f) of Public Law 103–66, provides that the Federal rate is comprised of 100 percent of the Federal national rate except for those hospitals located in census regions that have a regional rate that is higher than the national rate. The Federal rate for hospitals located in census regions that have a regional rate that is higher than the national rate equals 85 percent of the Federal national rate plus 15 percent of the Federal regional rate. For discharges occurring on or after October 1, 1993, rural hospitals in regions I, II, III, and IV and urban hospitals in regions I, IV, and VI are affected by the regional floor.

The Federal rates are determined as follows:

Step 1—Select the appropriate regional or national adjusted standardized amount considering the type of hospital and designation of the hospital as large urban, other urban, or rural (see Tables 1a and 1b, section V of this addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located (see Tables 4a, 4b, and 4c, section V of this addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount (adjusted if appropriate under Step 3).

Step 5—Multiply the final amount from Step 4 by the relative weight corresponding to the appropriate DRG (see Table 5, section V of this addendum).

2. *Hospital-specific rate (applicable only to sole community hospitals and medicare-dependent, small rural hospitals).* Sections 1886(d)(5)(D)(i) and (b)(3)(C) of the Act provide that sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: The Federal rate, the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge.

Section 1886(d)(5)(G) of the Act, as amended by section 13501(e) of Public Law 103–66, specifies that payments to Medicare-dependent, small rural hospitals are calculated as follows:

Prospective payment rate for Medicare-dependent, small rural hospitals = 100 percent of the Federal rate plus, if the greater of the FY 1982 hospital-specific rate and the FY 1987 hospital specific rate is greater than the Federal rate, an adjustment depending on the hospital's cost reporting period as follows:

- For discharges occurring during the first 3 12-month cost reporting periods that began on or after April 1, 1990, the amount by which the greater hospital-specific rate exceeds the Federal rate; and
- For discharges occurring during any subsequent cost reporting period, 50 percent of the difference between the greater hospital-specific rate and the Federal rate.

Hospital-specific rates have been determined for each of these hospitals based on both the FY 1982 cost per discharge and the FY 1987 cost per discharge. For a more detailed discussion of the calculation of the FY 1982 hospital-specific rate and the FY 1987 hospital-specific rate, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772); the April 20, 1990 final rule with comment (55 FR 15150); and the September 4, 1990 final rule (55 FR 35994).

a. *Updating the FY 1982 and FY 1987 hospital-specific rates for FY 1994 cost reporting periods.* For discharges occurring on or after October 1, 1993, we are increasing the hospital-specific rates by 2.0 percent (the hospital market basket percentage increase minus 2.3 percentage points) for sole community hospitals located in all areas and Medicare-dependent, small rural hospitals. Section 1886(b)(3)(C)(ii) of the Act, as amended by section 13501(a)(2) of Public Law 103–66, provides that the update factor applicable to the hospital-specific rates for sole community hospitals equals the update factor under section 1886(b)(3)(B)(iv) of the Act, which was added by section 13501(a)(2) of Public Law 103–66. For discharges occurring during FY 1994, the update factor is the market basket rate of increase minus 2.3 percentage points, taking into account any porion of the 12-month cost reporting period beginning during FY 1993 that occurred during FY 1994. In order to implement this provision, we are deeming the FY 1993 updates to be those necessary to update the hospital-specific rate to October, 1, 1993 as described in section IV of the preamble to this final rule.

b. *Calculation of hospital-specific rate.* For discharges occurring on or after October 1, 1993 and before October 1, 1994, the applicable hospital-specific rate will be calculated by multiplying a hospital's deemed hospital-specific rate for the preceding cost reporting period by the applicable update factor (that is, 1.020). In addition, the hospital-specific rate will be adjusted by the budget neutrality adjustment factor (that is, .999003) as discussed in section II.A.4.b. of this addendum. This resulting rate will be used in determining which rate applies to a sole community hospital or Medicare-dependent, small rural hospital for discharges occurring on or after October 1, 1993, based on the formula set forth above.

3. *General formula for calculation of prospective payment rates for hospitals located in Puerto Rico beginning on or after October 1, 1993 and before October 1, 1994*—a. *Puerto Rico rate.*

The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban, other urban, or rural designation of the hospital (see Table 1c, section V of the addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate wage index (see Tables 4a and 4b, section V of the addendum).

Step 3—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount.

Step 4—Multiply the result in Step 3 by 75 percent.

Step 5—Multiply the amount from Step 4 by the appropriate DRG relative weight (see Table 5, section V of the addendum).

b. *National rate.* The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1c,

section V of the addendum) by the appropriate wage index.

Step 2—Add the amount from Step 1 and the nonlabor-related portion of the national average standardized amount.

Step 3—Multiply the result in Step 2 by 25 percent.

Step 4—Multiply the amount from Step 3 by the appropriate DRG relative weight (see Table 5, section V of the addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

III. Changes to Payment Rates for Inpatient Capital-Related Costs for FY 1994

The prospective payment system for hospital inpatient capital-related costs was implemented for cost reporting periods beginning on or after October 1, 1991 During a 10-year transition period extending through FY 2001, hospital inpatient capital-related costs are paid on the basis of an increasing proportion of the capital prospective payment system Federal rate and a decreasing proportion of the historical costs for capital.

The basic methodology for determining Federal capital prospective rates is set forth at §§ 412.308 through 412.352 of the regulations. Below we discuss the factors that we used to determine the Federal rate and the hospital-specific rate for FY 1994. The rates will be effective for discharges occurring on or after October 1, 1993

We computed the FY 1992 standard Federal payment rate for capital-related costs under the prospective payment system by updating the FY 1989 Medicare inpatient capital cost per case by an actuarial estimate of the increase in Medicare inpatient capital costs per case. Each year after FY 1992 we updated the standard Federal rate for increases in capital-related costs as provided in § 412.308(c)(1). Also, § 412.308(c)(2) provides that the Federal rate is adjusted annually by a factor equal to the estimated additional payments under the Federal rate for outlier cases, determined as a proportion of total capital payments under the Federal rate. For FY 1992 through FY 2001, § 412.308(c)(3) requires that the Federal rate be reduced by an adjustment factor equal to the estimated additional payments made for exceptions under § 412.348, and § 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that the annual DRG reclassification and the recalibration of DRG weights and changes in the geographic adjustment factor are budget neutral. For FY 1992 through FY 1995, § 412.352 requires that the Federal rate also be adjusted by a budget neutrality factor, so that estimated aggregate payments for inpatient hospital capital costs will equal 90 percent of the estimated payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year. In addition, Public Law 103–66 requires that, effective for discharges occurring after September 30, 1993, the unadjusted standard Federal rate be reduced by 7.4 percent.

The hospital-specific rate for each hospital was calculated by dividing the hospital's Medicare inpatient capital-related costs for a specified base year by its Medicare discharges (adjusted for transfers), and dividing the result by the hospital's case mix index (also adjusted for transfers). The resulting case-mix adjusted average cost per discharge was then updated to FY 1992 based on the national average increase in Medicare's inpatient capital cost per discharge and adjusted by the exceptions payment adjustment factor and the budget neutrality adjustment factor to yield the FY 1992 hospital-specific rate. The hospital-specific rate is updated each year after FY 1992 for inflation and for changes in the exceptions payment adjustment factor and the budget neutrality adjustment factor.

To determine the appropriate budget neutrality adjustment factors and the exceptions payment adjustment factor, we developed a dynamic model of Medicare inpatient capital-related costs, that is, a model that projects changes in Medicare inpatient capital-related costs over time. The model and its application are described more fully in appendix B.

In accordance with section 1886(d)(9)(A) of the Act, under the prospective payment system for inpatient operating costs, hospitals located in Puerto Rico are paid under a special payment formula. These hospitals are paid a blended rate that takes into account their geographical designation and is comprised of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. Section 412.374 provides for the use of this blended payment system for payments to Puerto Rico hospitals under the prospective payment system for inpatient capital-related costs. Accordingly, for capital-related costs we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national Federal rate for capital. Hospitals in Puerto Rico are paid based on 75 percent of the Puerto Rico rate and 25 percent of the Federal rate.

A. Determination of Federal Inpatient Capital-Related Prospective Payment Rate Update

For FY 1993, the Federal rate was $417.29. In the proposed rule, we stated that the proposed FY 1994 Federal rate was $394.88. In this final rule, we are establishing an FY 1994 Federal rate of $378.34.

In the discussion that follows, we explain the factors that were used to determine the proposed FY 1994 Federal rate. In particular, we explain why the FY 1994 Federal rate has decreased 9.33 percent compared to the FY 1993 Federal rate, and 4.19 percent compared to the proposed FY 1994 Federal rate. We also explain that aggregate payments under the capital proposal increase by 2.99 percent.

The major factor contributing to the decrease in the Federal rate is the 7.4 percent reduction to the unadjusted standard Federal rate required under section 13501(a)(3) of Public Law 103–66. We explain this reduction and its effect on the FY 1994 Federal rate in section III.A.1 below.

Another factor contributing to the decrease in the FY 1994 rate in comparison to FY 1993 is the requirement at 42 CFR 412.352 that estimated payments each year from FY 1992 through FY 1995 for capital costs equal 90 percent of what would have been payable that year on a reasonable cost basis. Based on the most recent data, we now estimate that capital payments for FY 1992 equal 98.56 percent of reasonable costs, and that capital payments for FY 1993 equal 95.64 percent of reasonable costs. The data thus indicate that the budget neutrality adjustments for FY 1992 and FY 1993 were not sufficient to meet the 90 percent target and that, as a consequence, the Federal rates for both FY 1992 and FY 1993 were higher than they should have been. While we do not retroactively adjust the budget neutrality factor and the Federal rate for previous years to account for revised estimates, we do employ the most recent information available to refine the budget neutrality adjustment for subsequent years. The result is a lower budget neutrality adjustment factor for FY 1994 to FY 1993 (partially offset by the effect of the reduction to the standard Federal rate, as discussed in sections III.A.1 and III.A.5 below), which contributes to the decrease in the Federal rate.

The decrease in the Federal rate for FY 1994 also can be attributed in part

to an anticipated increase in exceptions payments. Section 412.308(c)(3) requires that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated additional payments for exceptions under § 412.348 determined as a proportion of total payments under the hospital-specific rate and the Federal rate. We estimate that there will be a six-fold increase in exceptions payments in FY 1994 compared to FY 1993. (Because we now estimate that total capital payments exceeded the budget neutrality target by 5.64 percentage points (which equals a 6.27 percent reduction) in FY 1993, we now estimate that exceptions for FY 1993 will be 70 percent lower than we estimated in the FY 1993 final rule.) We expect exceptions payments to increase during the transition period as payments are based increasingly on the Federal rate. The anticipated increase for FY 1994 is fully consistent with that expectation.

Although the Federal rate for FY 1994 is 9.33 percent lower than the FY 1993 Federal rate, we estimate that total capital payments per case will increase 2.99 percent in FY 1994. The increase in total payments per case is due to the increase in the budget neutrality target to equal 90 percent of estimated FY 1994 capital costs per case. Since section 1886(g)(1)(A) of the Act requires that estimated payments equal 90 percent of estimated reasonable costs for capital-related expenses, payments under the capital prospective payment system can be expected to increase as capital costs per case increase. The increase in payments per case from FY 1993 to FY 1994 (2.99 percent) is less than the total estimated increase in capital costs per case between FY 1993 and FY 1994 (9.45 percent) because estimated FY 1993 payments were 6.27 percent higher than the FY 1993 budget neutrality target. As a result, payments must increase less than the full increase in costs to prevent estimated payments for FY 1994 from exceeding 90 percent of reasonable cost. Specifically, the increase in payments from FY 1993 to FY 1994 is determined by dividing the increase in cost per case by the excess of FY 1993 payments over the budget neutrality target (that is, 1.0945/1.0627 = 1.0299). We discuss the determination of the budget neutrality target in section III.A.3 below.

Finally, it should be noted that total payments to hospitals under the prospective payment system for capital-related costs will be relatively insensitive to changes in the Federal rate even after the expiration of the budget neutrality provision in FY 1996. Since capital payments constitute about 10 percent of hospital payments, a 1 percent change in the Federal rate yields only about a 0.1 percent change in actual payments to hospitals.

1. *Public Law 103–66 reduction to the standard Federal rate.* Section 13501(a)(3) of Public Law 103–66 requires that, for discharges occurring after September 30, 1993, the unadjusted standard Federal rate be reduced by 7.4 percent. As we discuss in section V.D of the preamble to this final rule with comment period, the purpose of the reduction is to correct for inflation forecast errors that accrued up to the time of the proposed rule for FY 1994.

The regulation changes required to implement this statutory requirement are discussed in section V.D of the preamble. Here we discuss the effects of the required reduction on the computation of the FY 1994 Federal capital rate.

Under § 412.708(b), HCFA determines the standard Federal rate by adjusting the FY 1992 updated national average cost per discharge by a factor so that estimated payments based on the standard Federal rate adjusted by the payment adjustments described in § 412.312(b) equal estimated aggregate payments based solely on the national average cost per discharge. Section 412.308(c) provides further that the standard Federal rate is updated for inflation each Federal fiscal year and adjusted each year by an outlier payment adjustment factor, an exceptions payment adjustment factor, and two budget neutrality factors to determine the Federal capital payment rate for that year. Thus, the standard Federal rate is to be distinguished from the annual Federal rate actually used in making payment under the capital prospective payment system. The standard Federal rate is, in effect, the underlying or base rate used to determine the annual Federal rate by means of the formula in § 412.308(c). The annual Federal capital rate is the result of that determination process in section 412.308(c).

Because the 7 4 percent reduction applies to the standard Federal rate before the application of the adjustment factors for outliers, exceptions, and budget neutrality, the reduction to the standard Federal rate does not have the effect of simply lowering the FY 1994 Federal rate by 7 4 percent compared to FY 1993. Rather, the 7.4 percent reduction to the standard Federal rate is one factor contributing to the overall 9.33 percent reduction in the FY 1994 Federal rate compared to FY 1993. This is because the 7.4 percent reduction to the standard Federal rate has an effect on the level of the other adjustments applied to determine the FY 1994 Federal rate. In particular, the 7.4 percent reduction to the standard Federal rate affects the budget neutrality adjustment applied to assure that aggregate payments equal 90 percent of estimated aggregate costs. Since the standard Federal rate before the budget adjustment has already been reduced by 7.4 percent, a lesser reduction to the rate (and, therefore, a higher budget neutrality adjustment factor) is necessary to meet the 90 percent target. This is the primary reason why the budget neutrality adjustment factor has increased from 0.8726 in the proposed rule to 0.8947 in this final rule, despite the reduction in the FY 1994 budget neutrality target, which we discuss in section III.A.5 below. (The increase in the budget neutrality adjustment factor due to the reduction of the standard Federal rate would have been greater if it had not been partially offset by the effect of the reduction in the budget neutrality target.)

The full effect of the 7.4 percent reduction to the standard Federal rate will become evident only when the budget neutrality requirement expires in FY 1996. Until FY 1996, the reduction to the standard Federal rate will have no effect on aggregate capital prospective payments. This is because aggregate payments are set at 90 percent of estimated reasonable costs in FY 1994 and FY 1995, as required by the budget neutrality provision. Barring further changes to the system (such as further reductions in the standard Federal rate), the FY 1996 Federal rate should be 7.4 percent lower than it would have been in the absence of the reduction to the standard Federal rate. Therefore, the reduction in the standard Federal rate will yield substantial savings beginning in FY 1996.

2. *Standard Federal rate update.* Section 412.308(c)(1)(i) provides that for FY 1993 through FY 1995, the standard Federal rate is updated on the basis of a lagged 2-year moving average of the actual increase, adjusted for case-mix index change, in Medicare inpatient capital-related costs per case for the fiscal years 3 and 4 years before the fiscal year in question. For FY 1994, the increase is based on the increase in Medicare inpatient capital-related costs per case from FY 1989 through FY 1991. These are the most recent fiscal years for which cost report data are available. To determine the amount of the increase, we apportioned a hospital's costs and discharges to each fiscal year based on the number of months in the hospital's cost reporting period that occurred

during the applicable fiscal year. Thus, an individual hospital may have more than one cost report included in the calculation.

In the proposed rule, we stated that the proposed FY 1994 update factor for the Federal rate would be 3.10 percent. In this final rule, based on the most recent data, we are providing that the final FY 1994 update factor for the Federal rate is 3.04 percent. The following chart, based on the June 1993 update of HCRIS, shows how this figure was computed:

CAPITAL COSTS PER CASE INCREASE FROM COST REPORT DATA

Fiscal year	(1) Number hospitals 1st HCR	(2) Number hospitals 2nd HCR[1]	(3) Unadj. capital cost per case	(4) Increase in cost per case (unadj.)	(5) Audit adjusted capital cost per case[2]	(6) Increase in adjusted cost per case	(7) Average 2-year increase in adjusted cost per case	(8) Observed CMI	(9) Adj. to CMI	(10) Adjusted CMI	(11) CMI adjusted increase	(12) Update (average two-year increase of CMI adjusted rate of increase)
1989	4,299	5,493	$509.54	.....	$506.26							
1990	4,269	5,411	$555.31	8.98%	$538.65	6.40%	.....	0.85%	1.22%	2.08%	4.23%	
1991	4,162	5,287	$608.23	9.53%	$562.50	4.43%	5.42%	2.51%	.....	2.51%	1.87%	3.04%

[1] Columns 1 and 2 represent the numbers of hospital cost reports used in developing capital costs per case figures in column 3. Since hospital cost reporting periods do not all coincide with the Federal fiscal year, data for a given Federal fiscal year must be derived from more than one hospital cost report, allocated proportionately to the Federal fiscal year. For example, for a hospital with a cost reporting period beginning January 1, one quarter of its cost report for the period ending December 31, 1987 would be allocated to Federal fiscal year 1988, and three quarters of its cost report for the period ending December 31, 1988 would be allocated to Federal fiscal year 1987. Column 1 represents the number of cost reports used that ended in the Federal fiscal year in question. Column 2 represents the number of cost reports used that began in the Federal fiscal year in question. Column 2 is greater than Column 1 because Column 2 includes cost reports for hospitals whose cost reporting period coincides with the Federal year along with cost reports for those hospitals whose cost reporting periods do not coincide with the Federal fiscal year. Column 1 includes only cost reports for hospitals whose cost reporting periods do not coincide with the Federal fiscal year.

[2] Figures in column 5 represent capital costs per case, adjusted for the anticipated effects of cost report audits and reopenings, from the June 1993 update of HCRIS. The following factors were used in adjusting capital costs per case figures from column 3 for the effects of audits and reopenings:

Audit Adjustment Applied to As-Submitted Cost Reports
Cost reporting periods beginning in:
FY 1989—0.9107
FY 1990—0.9265
FY 1991—0.9063
Audit Adjustment Applied to Settled Cost Reports
All years—1.0036
The costs per case figures that result after the application of these audit adjustments to submitted and settled cost reports, respectively, are entered in Column 5.

For the final rule, we have recalculated the FY 1994 update factor on the basis of the June 1993 update of HCRIS. We note that the final FY 1994 update factor has changed only slightly from the proposed update of 3.10 percent. This 0.06 percentage point difference is due to slightly lower capital costs per case amounts in the most recent HCRIS data.

As we explained in the final rule for FY 1990 (54 FR 36471), 1.22 percent of the total increase in case mix from FY 1987 to FY 1988 resulted from FY 1988 GROUPER changes and recalibration. In other words, 1.22 percent of the increase in case mix from FY 1987 to FY 1988 did not represent an increase in resource requirements that should be recognized in increased payments in subsequent years. To assure that this distortion was not continued into subsequent years, we reduced the FY 1990 weights to remove prospectively the 1.22 percent increase in the average weight attributable to GROUPER changes and recalibration in FY 1988. In computing the capital update factor, we adjust each year's rate of increase in capital costs per case for observed case-mix increase in that year. Since 1.22 percent was removed from the FY 1990 weights to adjust for the effects of administrative changes on the DRG weights in 1988, that reduction must be reincorporated into the case mix increase for FY 1990. The purpose of this adjustment is to assure consistent measures of case mix.

We note that the effect of the update on the Federal rate is limited by the requirement of budget neutrality until FY 1996. Thus, although the update factor for inflation is 3.04 percent, the FY 1994 Federal rate is lower than the FY 1993 Federal rate because of the effects of the budget neutrality adjustment and the Public Law 103–66 reduction to the standard Federal rate. We also note that the FY 1994 budget neutrality target is determined by the estimate of FY 1994 capital costs, not by the 2-year average update factor applied to the FY 1993 Federal rate. We discuss the basis for the budget neutrality target further in section III.A.4 below.

Comment. One commenter recommended that an add-on adjustment be employed in setting the update factor to account for appropriate changes in new technology prior to the adoption of an analytical update framework in FY 1996.

Response The present update factor is based on a 2-year moving average of actual increases in Medicare inpatient capital-related costs per discharge. Since the actual costs include spending for new technology, the cost of new technology is already accounted for in the update factor. A separate adjustment for new technology would constitute double-counting and is therefore not appropriate, as long as the update is determined by the average of actual cost increases in recent years. However, we do believe that the cost of new technology is a factor that should be accounted for in the capital analytical update framework that will be used beginning in FY 1996. We discuss the methodology for incorporating appropriate changes in cost for new

technology into the update framework in appendix D.

3. *Outlier payment adjustment factor.* Section 412.312(c) establishes a unified outlier methodology for inpatient operating and inpatient capital-related costs. A single set of thresholds is used to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on the portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments (for example, 30 percent for cost reporting periods beginning in FY 1994 for hospitals paid under the fully prospective methodology). Section 412.308(c)(2) provides that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated additional payments under the Federal rate for outlier cases, determined as a proportion of inpatient capital-related payments under the Federal rate. The outlier thresholds are set so that estimated outlier payments are 5.1 percent of estimated inpatient operating payments. The inpatient capital-related outlier reduction factor is then set according to the estimated inpatient capital-related outlier payments that would be made if all hospitals were paid according to 100 percent of the Federal rate. For purposes of calculating the outlier thresholds and the outlier reduction factor, we model all hospitals as if paid 100 percent of the Federal rate because, as explained above, outlier payments are made only on the portion of the Federal rate that is included in the hospital's inpatient capital-related payments.

The September 1, 1992 final rule, we estimated that outlier payments for FY 1993 would equal 5.04 percent of inpatient capital-related payments based on the Federal rate. Accordingly, we applied an outlier adjustment factor of 0.9496 to the Federal rate. Based on the thresholds as set forth in section II.A.4.d of the preamble, we estimate that outlier payments will equal 5.46 percent of inpatient capital-related payments based on the Federal rate in FY 1994. We are therefore applying an outlier adjustment factor of 0.9454 to the Federal rate. The outlier reduction factors are not built permanently into the rates; that is, they are not applied cumulatively in determining the Federal rate. Therefore, the net change in the outlier adjustment to the Federal rate for FY 1994 is .9454/.9496 or 0.9956. Thus, the outlier adjustment reduces the FY 1994 Federal rate by 0.44 percent (0.9956–1) compared with the FY 1993 outlier adjustment.

4. *Budget neutrality adjustment factor for changes in DRG weights and the geographic adjustment factor.* Section 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that estimated aggregate payments for the fiscal year based on the Federal rate after any changes resulting from the annual reclassification and recalibration of the DRG weights and changes in the geographic adjustment factor equal estimated aggregate payments that would have been made on the basis of the Federal rate without such changes. We used the actuarial model described in appendix B to estimate the aggregate payments that would have been made on the basis of the Federal rate without changes in the DRG classifications and weights and in the geographic adjustment factor. We also used the model to estimate aggregate payments that would be made on the basis of the Federal rate as a result of those changes. We then used these figures to compute the adjustment required to maintain budget neutrality for changes in DRG weights and in the geographic adjustment factor.

For FY 1993, we calculated a GAF/DRG budget neutrality factor of 0.9980. For FY 1994, we proposed a GAF/DRG budget neutrality factor of 1.0046. In this final rule, we are applying a factor of 1.0053 to meet this requirement. The GAF/DRG budget neutrality factors are built permanently into the rates; that is, they are applied cumulatively in determining the Federal rate. This follows from the requirement that aggregate payments each year be no more than it is estimated that they would have been in the absence of the changes from the annual DRG reclassification and recalibration and in the geographic adjustment factor. The incremental change in the adjustment from FY 1993 to FY 1994 is 1.0053. The cumulative change in the GAF/DRG budget neutrality adjustment to the Federal rate is 1.0033 (.9980 x 1.0053).

We note that this factor accounts for changes due to DRG classification changes and recalibration and in the geographic adjustment factor. It also incorporates the effects on the geographic adjustment factor of FY 1994 geographic reclassification decisions made by the MGCRB compared to FY 1993 decisions. However, it does not account for changes in payments due to changes in the disproportionate share and indirect medical education adjustment factors or in the large urban add-on.

5. *Budget neutrality adjustment factor to assure aggregate payments equal 90 percent of reasonable cost payments.* Section 1886(g)(1)(A) of the Act requires that aggregate payments made each year in FY 1992 through FY 1995 for hospital inpatient services be reduced in a manner that results in payments equal to 90 percent of what the Secretary estimates would have been payable on a reasonable cost basis for inpatient capital-related costs in that year. No retroactive increase or decrease is made if aggregate payments are greater than or less than 90 percent of actual Medicare inpatient capital-related costs for that year.

Section 412.352 of the regulations provides that HCFA determines an adjustment to the hospital-specific rate and the Federal rate proportionately, so that the estimated payments for capital in each year from FY 1992 through FY 1995 will equal 90 percent of what would have been payable that year on a reasonable cost basis. The effect of this provision is that the reduction required under section 1886(g)(1)(A) of the Act is realized entirely through a reduction in the prospective payments for capital costs (that is, no reduction is made for this purpose in the reasonable cost payments for old capital) in FY 1992 through FY 1995

For FY 1993, we determined that a budget neutrality factor of 0.9162 was required, so that estimated aggregate payments for inpatient capital-related costs would equal 90 percent of what would have been payable on a reasonable cost basis in that year. For FY 1994, we proposed a budget neutrality factor of 0.8726. In this final rule, we are establishing a budget neutrality factor of .8947. The budget neutrality adjustment factor for FY 1994 is 2.35 percent lower than the FY 1993 budget neutrality adjustment (0.9162), and 2.53 percent higher than the budget neutrality factor in the proposed rule (0.8726). Below we explain how two factors, the 7.4 percent reduction to the standard Federal rate and the decrease in the budget neutrality target for FY 1994, account for these changes.

As we explain in appendix B, we determine the budget neutrality adjustment factor on the basis of a projected FY 1994 capital costs per case budget neutrality target. We develop this target from available data on average Medicare capital costs per case for all short-term acute care hospitals subject to the capital prospective payment system (that is, data from excluded and waiver hospitals were eliminated). For the May 26, 1993, proposed rule, we had data from the March 1993 update of HCRIS on the average Medicare capital cost per case for FY 1991. We adjusted this figure for the effects of audits and updated it to FY 1994 on the basis of estimated rates

of increase in Medicare capital costs per case. For the final rule, we have actual data for FY 1991 from the June 1993 HCRIS update. We also have revised estimates of the rates of increase in Medicare capital costs per case for the years FY 1992 through FY 1994.

In the proposed rule for FY 1994 (58 FR 30277–30279), we explained how changes in the FY 1991 cost per case data and in the rate of increase estimates for FY 1992 through FY 1994 produced an 8.67 percent decline in the budget neutrality target for FY 1994. That decline was the result of two factors. First, the actual FY 1991 capital cost per case from the March 1993 HCRIS update that we used in the proposed rule for FY 1994 was 5.20 percent lower than we had estimated in the final rule for FY 1993.

Second, in the final rule for FY 1993, we had estimated that there would be a 31.63 percent increase in Medicare inpatient capital cost per case between FY 1991 and FY 1994. In the proposed rule for FY 1994, we estimated that there would be a 26.68 percent increase in Medicare inpatient capital cost per case between FY 1991 and FY 1994.

For this final rule, there is a further 2.10 percent decline in the FY 1994 budget neutrality target, for a cumulative decline in the target of 10.59 percent since the final rule for FY 1993. The rate-of-increase estimate for FY 1992 through FY 1994 has declined further from 26.68 percent in the proposed rule to 24.30 percent in this final rule. The following chart shows how the rate-of-increase estimates for FY 1992 through FY 1994 were calculated in the proposed rule and in this final rule for FY 1994.

COMPARISON OF FACTORS FOR MEDICARE INPATIENT CAPITAL COST PER CASE INCREASES: FY 1994 PROPOSED RULE (PR) AND FY 1994 FINAL RULE (FR)

[In percentages]

Estimate for FY	(1) Total inpatient capital			(2) Medicare share			(1)x(2)=(3) Medicare inpatient capital			(4) Medicare enrollment			(5) Admissions incidence			(4)x(5)=(6) Medicare admissions			(3)/(6)=(7) Estimate increase in Medicare inpatient capital cost per case		
	FY94 PR	FY94 FR	Change	FY94 PR	FY94 FR	Change	FY94 PR	FY94 FR	Change	FY94 PR	FY94 FR	Change	FY94 PR	FY94 FR	Change	FY94 PR	FY94 FR	Change	FY94 PR	FY94 FR	Change
1992	7.07	6.77	−0.34	3.10	2.81	−0.28	10.68	9.77	−0.82	1.99	1.82	−0.17	2.72	2.75	0.03	4.77	4.62	−0.14	5.64	4.92	−0.68
1993	8.00	8.00	0.00	3.30	3.30	0.00	11.56	11.56	0.00	1.89	2.03	0.14	0.30	1.02	0.72	2.19	3.07	0.86	9.17	8.24	−0.85
1994	9.00	9.00	0.00	3.60	3.60	0.00	12.92	12.92	0.00	1.73	2.11	0.37	0.97	1.03	0.06	2.71	3.17	0.45	9.94	9.45	−0.45

The chart shows the causes of the decline in the rate-of-increase projections since the proposed rule. For FY 1992, the decline in the projected rate of increase is due to a 0.82 percent decline in the projected rate of increase of total Medicare capital costs and a 0.14 percent increase in the projected rate of increase of Medicare admissions. Together these factors produced a 0.68 percent decline in the projected rate of increase of Medicare inpatient capital costs per case. For FY 1993, the 0.85 percent decline in the projected rate of increase is due entirely to the decline in the projected rate of increase in Medicare admissions. For FY 1994, the 0.45 percent decline in the projected rate of increase is also due entirely to the decrease in the projected rate of increase in Medicare admissions.

In addition to the decline in the rate of increase estimates since the proposed rule, there has been a slight (−0.13 percent) decrease in the FY 1991 cost per case in the June 1993 HCRIS data, compared to the March 1993 HCRIS data which we used in the proposed rule. The following chart shows the combined effect of the reduced rates of increase estimates and the reduced FY 1991 cost per case by comparing the projections from FY 1991 to FY 1994 at the time of the proposed rule and in this final rule for FY 1994:

EFFECT OF REVISED RATE OF INCREASE ESTIMATES ON CALCULATION OF FY 1994 BUDGET NEUTRALITY TARGET

	Capital cost per case	Percent change in rate of increase	Percent change in capital cost per case
FY 1991 Cost per Case:			
Proposed: March 93 HCRIS	[1] $566.98	N/A	−0.13
Final: June 93 HCRIS	[2] 566.220		
FY 1992 Adjusted Cost:			
Proposed Rate: 5.64%	598.96		
Final Rate: 4.92%	594.09	−0.68	−0.81
FY 1993 Adjusted Cost:			
Proposed Rate: 9.17%	653.91		
Final Rate: 8.24%	643.05	−0.85	−1.66
FY 1994 Adjusted Cost:			
Proposed Rate: 9.94%	718.93		
Final Rate: 9.45%	703.85	−0.45	−2.10
Cumulative		−1.97	

[1] FY 1991 cost per case based on March 1993 HCRIS data, audit-adjusted, excluding waiver hospitals and PPS-excluded hospitals.
[2] FY 1991 cost per case based on June 1993 HCRIS data, audit-adjusted, excluding waiver hospitals and PPS-excluded hospitals.

The chart shows that the cumulative effect of the revised rates of increase is to lower the FY 1994 budget neutrality target by 1.97 percent. Together with the 0.13 percent decline due to updated HCRIS data, this accounts for the 2.10

percent reduction in the FY 1994 capital cost per case budget neutrality target compared to the level estimated in the FY 1994 proposed rule. In turn, the 2.10 percent reduction in the FY 1994 budget neutrality target since the proposed rule, together with the 8.67 percent decline between the final rule for FY 1993 and the proposed rule, accounts for the 10.59 percent decline in the FY 1994 budget neutrality target in this final rule compared to the final rule for FY 1993.

The cumulative 10.59 percent reduction in the FY 1994 budget neutrality target, together with the effect of the 7.4 percent reduction in the standard Federal rate, accounts for the 2.35 percent reduction in the FY 1994 budget neutrality adjustment compared to the FY 1993 budget neutrality adjustment. The effect of the decline in the budget neutrality target alone, in the absence of the 7.4 percent reduction to the standard Federal rate, would have been an even lower budget neutrality adjustment for FY 1994. We estimate that, in the absence of the 7.4 percent reduction to the standard Federal rate, the FY 1994 budget neutrality adjustment would have been 0.8576 instead of the 0.8947 in this final rule. (In making this estimate, we used the same outlier effects as we did with the 7.4 percent reduction to the standard Federal rate. If we had recalibrated outliers for the unreduced standard Federal rate, the estimated rate and budget neutrality factor might have been slightly different. This estimate is, however, adequate for purposes of evaluating the relative impact of the 7.4 percent reduction to the standard Federal rate.) With a base Federal rate that is 7.4 percent lower, a lesser reduction to the rate (and therefore a higher budget neutrality adjustment factor, 0.8947 as opposed to 0.8576) is adequate to meet the lower FY 1994 budget neutrality target. Thus, the cause of the 2.35 percent reduction in the FY 1994 budget neutrality adjustment compared to FY 1993 arises largely from the 10.59 percent decline in the budget neutrality target, partially offset by the effect of the 7.4 percent reduction to the standard Federal rate.

The decline in the budget neutrality target and the 7.4 percent reduction to the standard Federal rate also account for the 2.53 percent increase in the final FY 1994 budget neutrality adjustment compared to the proposed rule. The increase in the adjustment since the proposed rule is due to the effect of the 7.4 percent reduction to the standard Federal rate (which allows a lesser reduction to the rate, and hence a higher adjustment factor, as explained above), partially offset by the 2.10 percent decline in the FY 1994 budget neutrality target (which reduces the budget neutrality factor) since the proposed rule.

For FY 1994, we proposed a budget neutrality factor of 0.8726 to realize the 90 percent target. In this final rule, the budget neutrality adjustment factor is 0.8947. The budget neutrality factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the Federal rate. The net adjustment to the FY 1994 Federal rate will therefore be .8947/.9162 or 0.9765.

Comment: One commenter noted that the most significant factor in the proposed 5.37 percent decrease in the Federal rate was the change in the budget neutrality factor. The commenter contended that the lower estimates of capital spending which caused the change in the budget neutrality factor indicate either that hospitals are controlling their spending or that reimbursement has been insufficient to meet the expected level of capital spending. The commenter contended that, under either circumstance, it was inappropriate to propose to further reduce the level of Medicare payment.

Response: Whatever the causes of the declining capital cost per case target for setting the budget neutrality target, we are required to adjust the Federal rate and the hospital-specific rate so that aggregate payments under the prospective payment system for capital-related costs equal 90 percent of what it is estimated would have been paid on the basis of reasonable costs. Furthermore, we did not propose a reduction in payments, as the commenter states. As we have stated before, we estimated that aggregate payments under the prospective payment system for capital-related costs would have increased 3.8 percent under the rates and factors in the proposed rule. In this final rule, we estimate that aggregate payments will increase 2.99 percent. We do not believe that the level of payments under the capital prospective payment system has been inadequate, especially since the estimated 2.99 percent increase in payments for FY 1994 represents an increase over payments that we estimate were 95.64 percent of cost in FY 1993 and 98.56 percent of cost in FY 1992.

Comment: One commenter expressed concern that inaccurate estimates of the budget neutrality target would create a vicious cycle in which payments are reduced, leading to increased interest rates for hospital financing, thus resulting in further underestimations of the actual amount of capital expenditures.

Response: Since aggregate payments increase both under the rates and factors in the proposed rule and this final rule, the commenter's concerns are unfounded. We also note that our most recent estimates of capital cost per case increases suggest that we previously *over*-estimated, rather than under-estimated, the amounts of capital expenditures in recent years.

Comment: One commenter noted that the proposed rule included the effect of reductions in FY 1991, FY 1992, and FY 1993 capital cost per case from previously published amounts. The commenter contended that, to protect the prospective nature of the system, HCFA should not be making retroactive changes to previously published amounts. Another commenter noted that changes in these estimates indicates the need for more accurate forecasts of actual hospital capital expenditures.

Response: It is precisely the need to make better forecasts of capital cost per case that requires us to revise previously published figures. For example, we have revised our estimates of capital cost per case increases in FY 1992, FY 1993, and FY 1994. We base these estimates on the best data and trend analysis available at the time. As we update the data and trend analysis, the accuracy of these estimates should increase. The commenter's concern about the accuracy of our estimates confirms our practice of revising them as better data and trend analysis become available. The prospective nature of the system is not threatened by revising previous estimates of cost per case in various years, since we use the revised estimates only to set the budget neutrality adjustment factor and the rate for the current year, not to revise the rates for prior years.

6. *Exceptions payment adjustment factor.* Section 412.308(c)(3) requires that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated additional payments for exceptions under § 412.348 determined as a proportion of total payments under the hospital-specific rate and Federal rate. The model developed for determining the budget neutrality adjustment factor is also used to estimate payments under the exceptions payment process and to determine the exceptions payment adjustment factor.

For FY 1993, we estimated that exceptions payments would equal 2.44 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we applied an exceptions reduction factor of 0.9756 (1–0.0244) in determining the Federal rate. For FY 1994, we estimated in the

May 26, 1993, proposed rule that exceptions payments would equal 6.01 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we proposed to apply an exceptions reduction factor of 0.9399 to determine the FY 1994 Federal rate. For the final rule, we estimate that exceptions payments for FY 1994 will equal 5.15 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We are therefore applying an exceptions payment reduction factor of 0.9485 to the Federal rate for FY 1994.

The final exceptions reduction factor for FY 1994 is thus 2.35 percent lower than the factor for FY 1993, and 0.91 percent higher than the factor in the FY 1994 proposed rule. We have always expected exceptions payments to increase during the transition period as payments are based increasingly on the Federal rate. This explains the higher level of exceptions payments for FY 1994 as compared to FY 1993.

We believe that two factors account for the 0.91 percent increase in the exceptions reduction factor since the proposed rule. One is the 2.10 percent reduction in the budget neutrality target, as explained in section III.A.5 above. Since hospital costs in FY 1994 are now estimated to be 2.10 percent lower than previously estimated, fewer hospitals than we originally estimated will qualify for exceptions payments by falling below their minimum payment levels, and those that still do qualify may receive somewhat smaller payments.

The other factor is the 7.4 percent reduction to the standard Federal rate. Because of this reduction, we are implementing a special redetermination of the payment methodology for hospitals previously paid under the fully prospective payment methodology. As a result of this special redetermination, some of these hospitals will receive payment under the more advantageous hold-harmless payment methodology during FY 1994 and through the rest of the transition. Fewer of these hospitals than we originally estimated should thus qualify for exceptions payments by receiving regular payments that fall short of their minimum payment levels.

The exceptions reductions factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the Federal rate. The net adjustment to the FY 1994 Federal rate is therefore .9485/.9756, or 0 9722.

Comment Two commenters noted that exceptions payments are funded by reducing the Federal rate and the hospital-specific rates. Thus, the commenters argued that inaccurate assumptions can result in withholding more funds than are needed to make exceptions payments. The commenters contended that, in the absence of provisions to redistribute excess money from the pool of money reserved for exceptions, inaccurate projections can artificially reduce payment rates.

Response As we stated in the final rule for the capital prospective payment system (56 FR 43413), there is no "pool" set aside in a fund for exceptions payments. Rather, the Federal rate and hospital-specific rates are reduced by the estimated amount of exceptions payments for the fiscal year. Consistent with the concept of exceptions payments, the exceptions reduction factor (like the other factors) is determined on the basis of the best data available when the factor is established. There is no retroactive adjustment if actual payments are more or less than anticipated. The appropriate adjustment factors are reestimated annually on the basis of new data, but no retroactive correction is made for prior years. Not only would such an adjustment violate the prospective nature of rate-setting, but it would also be impractical. It would require an adjustment both when exception payments are less than the amount anticipated in setting the adjustment and when payments exceed the amount anticipated in setting the adjustment.

Also, we note that even if actual exceptions payments are lower than estimated, this does not mean total payments are lower than estimated. The lower estimated level of exceptions payments for FY 1993 was the direct result of the fact that regular payments were estimated to have exceeded the budget neutrality target that year. These factors are directly related; that is, as regular payments exceed the budget neutrality target, fewer hospitals fall short of the minimum payment levels that qualify them for exceptions payments, and those that do qualify receive smaller exceptions payments. The lower estimate of exceptions payments for FY 1993 was thus due to the fact that fewer exception payments, and lower exception payment amounts, were necessary to ensure that hospitals received their minimum payment levels. We do not believe that, because we now estimate that regular payments exceeded the budget neutrality target in any fiscal year, we should then also pay hospitals more (in the form of the "redistribution" recommended by the commenters) for not making exceptions payments that would have exceeded the established minimum payment levels.

Comment. Several commenters contended that HCFA has not adequately justified why exceptions payments were estimated to be 6.01 percent of aggregate payments in FY 1994 as compared to only 2.45 percent in FY 1993. The commenters also noted that HCFA estimated in the proposed rule that exceptions payments would increase six-fold in FY 1994 over FY 1993. These commenters contended that HCFA should not change estimates of exceptions without substantial new information. Two commenters contended that the fact that the observed level of exceptions in FY 1993 was 63 percent lower than estimated in the final rule for FY 1993 raises questions about the validity of HCFA's estimation method.

Response We stated in the proposed rule (58 FR 30275) that "we now estimate that exceptions for FY 1993 will be 63 percent lower than we originally estimated." All our current figures on exceptions are estimates, and thus we made no statement about the "observed" level of exceptions payments for FY 1993. We will not begin to have data on actual exceptions payments until cost reports for FY 1992 are settled in FY 1995 and FY 1996. In the meantime, our estimates of the level of exceptions payments in any given year change with new data or revised estimates of those factors in the system that affect the level of exceptions payments.

In the FY 1993 final rule, we estimated that exceptions payments would be 2.44 percent of aggregate payments based on the Federal rate and the hospital-specific rate (not 2.45 percent of aggregate payments under the capital prospective payment system, as stated by the commenters). In the May 26, 1993 proposed rule for FY 1994, we estimated that exceptions payments for FY 1993 would be 63 percent lower than our estimate last year. As we explained in the response to the previous comment, the revised estimate of exceptions for FY 1993 was related to the revised budget neutrality estimate for FY 1993. Since our more recent estimate showed that aggregate payments under the prospective payment system for capital-related costs in FY 1993 were 5.89 percent higher than the budget neutrality target, we also estimate that fewer hospitals qualified for exceptions payments by falling short of the minimum payment levels, and that those who did qualify received smaller exceptions payments.

In the proposed rule for FY 1994, we estimated that exceptions payments in FY 1994 would be 6.01 percent of aggregate payments based on the

Federal rate and the hospital-specific rate. In this final rule, we are estimating that exceptions payments in FY 1994 will be 5.15 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We also currently estimate that exceptions payments in FY 1993 will be 70 percent lower than we estimated at the time of the final rule in FY 1993. This revised estimate is directly related to our estimate that aggregate payment will be 95.64 percent of reasonable cost, or 6.27 percent over the budget neutrality target in FY 1993. The higher level of payments means that fewer hospitals will qualify for exceptions payments by falling below their minimum payments, and that those that still do qualify will receive lower payments.

The regulations require us to reduce the Federal rate and the hospital-specific rate each year by a factor equal to the estimated additional payments for exceptions, determined as a proportion of total payments under the hospital-specific rate and the Federal rate. We use the best available data each year to determine our estimates as appropriate, and we continue to refine our methodology as appropriate. We do not believe that we should retain estimates that no longer have the best empirical and methodological support. We also do not believe that the prospective nature of the system is jeopardized by refining our estimates, since we do not retroactively adjust the exceptions reductions factors for previous years, but rather use our revised estimates to set the factor more accurately for the current year.

We have always expected exceptions payments to increase during the transition as payments are based increasingly on the Federal rate and decreasingly on factors related to hospital cost experience (that is, the hospital-specific rate, which was derived from hospital base year costs, and the hold-harmless payment of 85 percent for old capital costs). While our estimates concerning the annual amount of exceptions payments have changed with new data and new estimates on factors that affect exceptions payments, all our estimates have been consistent with this expectation.

7. *Standard Federal rate for FY 1994.* For FY 1993, the Federal rate was $417.29. With the changes we proposed to the factors used to establish the Federal rate, we proposed that the FY 1994 Federal rate would be $394.88. In this final rule, we are establishing an FY 1994 Federal rate of $378.34. The final Federal rate for FY 1994 was calculated as follows:

- The FY 1994 update factor is 1.0304.
- The FY 1994 outlier adjustment factor is 0.9454.
- The FY 1994 budget neutrality adjustment factor that is applied to the standard Federal payment rate for changes in the DRG relative weights and in the geographic adjustment factor is 1.0053.
- The FY 1994 budget neutrality adjustment factor that is applied to the standard Federal payment rate and the hospital-specific rate to assure that aggregate payments equal 90 percent of payments that would have been made on a reasonable cost basis is 0.8947.
- The FY 1994 exceptions payments adjustment factor is 0.9485.

Since the Federal rate has already been adjusted for differences in case mix, wages, cost of living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, we proposed to make no additional adjustments in the standard Federal rate for these factors other than the budget neutrality factors for changes in the DRG relative weights and the geographic adjustment factor.

Comment. One commenter contended that the proposed reduction in capital payments did not allow adequately for inflation. Another commenter contended that the proposed reduced rate would inhibit hospitals' ability to pay for preexisting debt. Other commenters contended that the proposed reduction in the Federal rate would increase the financial risk of hospital funding arrangements and thus increase the interest rates charged to hospitals.

Response. We did not propose a reduction in capital payments, but in the capital Federal rate. Under the proposed rule, aggregate payments under the capital prospective payment system would have increased by 3.8 percent. Since section 1886(g)(1)(A) of the Act requires that estimated payments equal 90 percent of reasonable costs for capital-related expenses, until the expiration of the budget neutrality requirement in FY 1996, payments under the capital prospective payment system can be expected to increase as capital costs per case increase. The proposed increase from FY 1993 to FY 1994 was less than the total estimated increase in capital costs per case between FY 1993 and FY 1994 because, at the time of the proposed rule, we estimated that FY 1993 payments were 95.3 percent of reasonable costs, or 5.89 percent higher than the budget neutrality target. The estimated increase in cost per case in FY 1994 divided by the excess of estimated FY 1993 payments over the budget neutrality target set the rate of increase in payments in the proposed rule (1.0994/1.0589=1.038, a 3.8 percent increase).

As we explained in the introduction to section III above, we now estimate that FY 1993 payments were 95.64 percent of reasonable costs, or 6.3 percent higher than the budget neutrality target. The estimated increase in cost per case in FY 1994 divided by the estimated excess of FY 1993 payments over the budget neutrality target (1.0945/1.0627) yields the estimated 2.99 percent increase in aggregate payments with the rates and factors we are adopting in this final rule. We believe that this increase in payments, together with the payments that we estimate that hospitals have received during the first 2 years of the prospective payment system for capital-related costs, should allow hospitals to pay for preexisting debt. The increase in payments is a much more important factor in gauging the adequacy of payments, and the risks of hospital financing arrangements, than changes in the Federal rate alone.

Comment: Several commenters contended that uncertainty in capital reimbursement has caused bond down-ratings. One commenter noted that the proposed 5.4 percent reduction to the Federal rate represented a reversal from the levels previously projected by HCFA. Another commenter stated that changes in the rates from the levels projected make it difficult for a hospital to plan adequately for the coming year.

Response. We are sensitive to the concerns of hospitals that there be predictability in the levels of their capital payments. We make our projections based on the best data available, and we share them so that the public also will have the most current information. At the same time, we have a statutory obligation to assure that payments equal 90 percent of what would have been paid on a reasonable cost basis. To fulfill that statutory obligation, we must revise our estimates for rate-setting purposes as better data become available. When we published our previous projections, we cautioned that they were only estimates, and that they were subject to revisions resulting from continued methodological refinements, more recent data, and payment policy changes. Some differences between the projections and the FY 1994 Federal rate were to be expected.

We are providing a chart that shows how each of the factors and adjustments for FY 1994 affected the computation of the final FY 1994 Federal rate in

comparison to the FY 1993 Federal rate. The final FY 1994 update factor has the effect of increasing the Federal rate 3.04 percent compared to the rate in FY 1993 while the final geographic and DRG budget neutrality factor has the effect of increasing the Federal rate by 0.53 percent. The final FY 1993 exceptions reduction factor has the effect of decreasing the final Federal rate by 2.78 percent compared to the exceptions reduction for FY 1993. The final FY 1994 budget neutrality adjustment factor has the effect of reducing the final FY 1994 rate by 2.35 percent compared to the budget neutrality reduction in FY 1993. Finally, the Public Law 103–66 reduction to the standard Federal rate has the effect of reducing the FY 1994 Federal rate by 7.4 percent. The combined effect of all the proposed changes is to decrease the final Federal rate by 9.33 percent compared to the Federal rate for FY 1993.

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 1993 FEDERAL RATE AND FY 1994 FEDERAL RATE

		Change	Percent change
Public Law 103–66 Standard Federal Rate Reduction	0.9260	0.9260	−7.40
Update factor: [1]			
FY 1993	1.0607	.....	.....
FY 1994	1.0304	1.0304	3.04
GAF/DRG adjustment factor: [1]			
FY 1993	0.9980	.....	.....
FY 1994	1.0053	1.0053	0.53
Outlier adjustment factor: [2]			
FY 1993	0.9496	.....	.....
FY 1994	0.9454	0.9956	−0.44
Exceptions adjustment factor:			
FY 1993 [2]	0.9756	.....	.....
FY 1994	0.9485	0.9722	−2.78
Budget neutrality adjustment factor: [2]			
FY 1993	0.9162	.....	.....
FY 1994	0.8947	0.9765	−2.35
Federal Rate:			
FY 1993	$417.29	.....	.....
FY 1994	$378.34	0.9067	−9.33

[1] The update factor and the GAF/DRG budget neutrality factors are built permanently into the rates. Thus, for example, the incremental change from FY 1993 to FY 1994 resulting from the application of the 1.0053 GAF/DRG budget neutrality factor for FY 1994 is 1.0053.

[2] The outlier reduction factor, the exceptions reduction factor, and the budget neutrality factor to assure that payments do not exceed 90 percent of what it is estimated would have been paid on the basis of reasonable cost are not built permanently into the rates; that is, these factors are not applied cumulatively in determining the rates. Thus, for example, the net change resulting from the application of the FY 1994 exceptions reduction factor is 0.9485/0.9756, or 0.9722.

We are also providing a chart that shows how the final FY 1994 Federal rate differs from the proposed FY 1994 Federal rate.

COMPARISON OF FACTORS AND ADJUSTMENTS: PROPOSED FY 1994 FEDERAL RATE AND FINAL FY 1994 FEDERAL RATE

		Change	Percent change
Public Law 103–66 Standard Federal Rate Reduction	0.9260	0.9260	−7.40
Update factor:			
Proposed FY 1994	1.0310	.....	.....
Final FY 1994	1.0304	0.9994	−0.06
GAF/DRG adjustment factor:			
Proposed FY 1994	1.0046	.....	.....
Final 1994	1.0053	1.0007	0.07
Outlier adjustment factor:			
Proposed FY 1994	0.9455	.....	.....
Final FY 1994	0.9454	0.9999	−0.01
Exceptions adjustment factor:			
Proposed FY 1994	0.9399	.....	.....
Final FY 1994	0.9485	1.0091	0.91
Budget neutrality adjustment factor:			
Proposed FY 1994	0.8729	.....	.....
Final FY 1994	0.8947	1.0253	2.53
Federal Rate:			
Proposed FY 1994	$394.88	.....	.....
Final FY 1994	$378.34	0.9581	−4.19

This chart shows that the effect of the 7 4 percent reduction to the standard Federal rate which was enacted after the proposed rule, is partially offset by other factors, especially the 2.53 percent increase in the budget neutrality factor.

We discuss the reasons for the change in the budget neutrality factor in section III.A.5 above.

We have refined our budget neutrality and exceptions reduction factors for FY 1994 on the basis of the most recent data at our disposal. We have not retroactively adjusted the Federal rate for FY 1993 in determining the rate for FY 1994.

8. *Special rate for Puerto Rico hospitals.* For FY 1993, the special rate for Puerto Rico hospitals was $320.99. With the changes we proposed making to the factors used to determine the rate, the proposed FY 1994 special rate for Puerto Rico was $303.75, in this final rule, the standard rate for Puerto Rico is $291.03.

B. Determination of Hospital-Specific Rate Update

Section 412.328(e) of the regulations provides that the hospital-specific rate for FY 1994 be determined by adjusting the FY 1993 hospital-specific rate by the following factors:

1. *Hospital-specific rate update factor.* The hospital-specific rate is updated in accordance with the update factor for the standard Federal rate determined under § 412.308(c)(1). For FY 1994, we proposed that the hospital-specific rate be updated by a factor of 1.0310. In this final rule, we are updating the hospital-specific rate by a factor of 1.0304.

2. *Exceptions payment adjustment factor.* For FY 1992 through FY 2001, the updated hospital-specific rate is reduced by an adjustment factor equal to the estimated additional payments for capital-related costs for exceptions under § 412.348, determined as a proportion of the total amount of payments under the hospital-specific rate and the Federal rate. For FY 1994, we estimated in the proposed rule that exceptions payments would be 6.01 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We therefore proposed that the updated hospital-specific rate be reduced by a factor of 0.9399. In this final rule, we are applying an exceptions reduction factor of 0.9485 to the hospital-specific rate. The exceptions reductions factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the hospital-specific rate. The net adjustment to the FY 1994 hospital-specific rate is therefore .9485/.9756, or 0.9722.

3. *Budget neutrality adjustment factor.* For FY 1992 through FY 1995, the updated hospital-specific rate is adjusted by a budget neutrality adjustment factor determined under § 412.352, so that estimated aggregate payments under the capital prospective payment system will equal 90 percent of what would have been payable on a reasonable cost basis. (The budget neutrality adjustment for changes in the DRG relative weights and in the geographic adjustment factor is not applied to the hospital-specific rate.) For FY 1994, we proposed a budget neutrality factor of 0.8726. In this final rule, we are applying a budget neutrality factor of 0.8947 to the hospital-specific rate. The budget neutrality factor is not built permanently into the rates; that is, the factor is not applied cumulatively in determining the hospital-specific rate. The net adjustment to the FY 1994 hospital-specific rate is therefore .8947/.9162, or 0.9765.

4. *Net change to hospital-specific rate.* We are providing a chart below to show the net change to the hospital-specific rate. The chart shows the factors for FY 1993 and FY 1994 and the net adjustment for each factor. It also shows that the cumulative net adjustment from FY 1993 to FY 1994 is 0.9784, which represents a decrease of 2.16 percent to the hospital-specific rate, as opposed to the 5.4 percent decrease to the hospital-specific rate in the proposed rule. The lower decrease in the hospital-specific rate in the final rule as compared to the proposed rule is due primarily to the effects of the 7.4 percent reduction to the standard Federal rate. As we have explained in section III.A.5 above, one effect of the reduced standard Federal rate is a higher (.8947 as compared to .8726) budget neutrality adjustment to the final FY 1994 Federal rate and hospital-specific rate compared to the proposed rule. The FY 1994 hospital-specific rate for each hospital is determined by multiplying the FY 1993 hospital-specific rate by the cumulative net adjustment of 0.9784.

FINAL FY 1994 UPDATE AND ADJUSTMENTS TO HOSPITAL-SPECIFIC RATES

		Net adjustment	Percent change
Update factor:			
FY 93	1.0607	.....	.....
FY 94	1.0304	1.0304	3.10
Exceptions payment adjustment factor:			
FY 93	0.9755	.....	.....
FY 94	0.9485	0.9722	−2.78
Budget neutrality factor:			
FY 93	0.9162	.....	.....
FY 94	0.8947	0.9765	−2.35
Cumulative adjustments:			
FY 93	0.9481	.....	.....
FY 94	0.9275	0.9784	−2.16

Note: The update factor for the hospital-specific rate is applied cumulatively in determining the rates. Thus, the incremental increase in the update factor from FY 1993 to FY 1994 is 1.0304. In contrast, the exceptions payment adjustment factor and the budget neutrality factor are not applied cumulatively. Thus, for example, the incremental increase in the budget neutrality factor from FY 1993 to FY 1994 is .8947/.9162, or .9765.

C. Calculation of Inpatient Capital-Related Prospective Payments for FY 1994

During the capital prospective payment system transition period, a hospital is paid for the inpatient capital-related costs under one of two alternative payment methodologies: the fully prospective payment methodology or the hold-harmless methodology. The payment methodology applicable to a particular hospital is determined when a hospital comes under the prospective payment system for capital-related costs by comparing its hospital-specific rate to the Federal rate applicable to the hospital's first cost reporting period under the prospective payment system. The applicable Federal rate was determined by adjusting:

• For outliers by dividing the standard Federal rate by the outlier reduction factor for that fiscal year; and,

• For the payment adjustment factors applicable to the hospital (that is, the hospital's geographic adjustment factor, the disproportionate share adjustment factor, and the indirect medical education adjustment factor, where appropriate).

If the hospital-specific rate is above the applicable Federal rate, the hospital is paid under the hold-harmless methodology. If the hospital-specific rate is below the applicable Federal rate, the hospital is paid under the fully prospective methodology.

To take into account the 7 4 percent reduction to the standard Federal rate, the payment methodology for hospitals paid under the fully prospective payment methodology in the last cost reporting period beginning before to October 1, 1993 will be redetermined by comparing the hospital's FY 1994 hospital-specific rate with its FY 1994 applicable Federal rate (that is, the FY 1994 Federal rate adjusted for the effects of the payments adjustment and outlier payments). If the FY 1994 hospital-specific rate is higher than the FY 1994 adjusted Federal rate, the hospital will be paid under the hold-harmless payment methodology during its first cost reporting period beginning after October 1, 1993 and throughout the rest of the transition. We discuss this provision further in section V.D. of the preamble to this final rule.

For purposes of calculating payments for each discharge under both the hold-harmless payment methodology and the fully prospective payment methodology, the standard Federal rate is adjusted as follows: (Standard Federal Rate) × (DRG weight) × (Geographic Adjustment Factor) × (Large Urban Add-on, if applicable) × (for hospitals located in Alaska and Hawaii, COLA adjustment) × (1+Disproportionate Share Adjustment Factor + Indirect Medical Education Adjustment Factor, if applicable). The result is termed the adjusted Federal rate.

Payments under the hold-harmless methodology are determined under one of two formulas. A hold-harmless hospital is paid the higher of:

• 100 percent of the adjusted Federal rate for each discharge; or

• An old capital payment equal to 85 percent (100 percent for sole community hospitals) of the hospital's allowable Medicare inpatient old capital costs per discharge for the cost reporting period plus a new capital payment based on a percentage of the adjusted Federal rate for each discharge. The percentage of the adjusted Federal rate equals the ratio of the hospital's allowable Medicare new capital costs to its total Medicare inpatient capital-related costs in the cost reporting period.

Once a hospital receives payment based on 100 percent of the adjusted Federal rate in a cost-reporting period beginning on or after October 1, 1993 (or the first cost reporting period after obligated capital that is recognized as old capital under § 412.302(c) is put in use for patient care, if later), the hospital continues to receive capital prospective payment system payments on that basis for the remainder of the transition period.

Payment for each discharge under the fully prospective methodology is the sum of:

• The hospital-specific rate multiplied by the DRG relative weight for the discharge and by the applicable hospital-specific transition blend percentage for the cost reporting period; and

• The adjusted Federal rate multiplied by the Federal transition blend percentage.

The blend percentages for cost reporting periods beginning in FY 1994 are 30 percent of the adjusted Federal rate and 70 percent of the hospital-specific rate.

Hospitals may also receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on that portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments. For fully prospective hospitals, that portion is 30 percent of the Federal rate for discharges occurring in cost reporting periods beginning during FY 1994. Thus, a fully prospective hospital will receive 30 percent of the capital-related outlier payment calculated for the case for discharges occurring in cost reporting periods beginning in FY 1994 For hold-harmless hospitals paid 85 percent of their reasonable costs for old inpatient capital, the portion of the Federal rate that is included in the hospital's outlier payments is based on the hospital's ratio of Medicare inpatient costs for new capital to total Medicare inpatient capital costs. For hold-harmless hospitals that are paid 100 percent of the Federal rate, 100 percent of the Federal rate is included in the hospital's outlier payments.

The rules to establish outlier thresholds for FY 1994 are published in section II.A.4.d of the Addendum to this final rule. For FY 1994, as proposed, a case qualifies as a cost outlier if the cost for the case (after standardization for the indirect teaching adjustment and disproportionate share adjustment) is greater than the larger of 2 times the prospective payment rate for the case or $36,000. A case also qualifies as a day outlier for FY 1994 if the length of stay is greater than the geometric mean length of stay for the DRG plus the lesser of 3 standard deviations of the length of stay or 23 days.

During the capital prospective payment system transition period, any hospital may also receive an additional payment under an exceptions process if its total inpatient capital-related payments are less than a minimum percentage of its allowable Medicare inpatient capital-related costs. The minimum payment level is established by class of hospital under § 412.348. The minimum payment levels for portions of cost reporting periods occurring in FY 1994 are:

• Sole community hospitals (located in either an urban or rural area), 90 percent;

• Urban hospitals with at least 100 beds and a disproportionate share patient percentage of at least 20.2 percent and urban hospitals with at least 100 beds that qualify for disproportionate share payments under § 412.106(c)(2), 80 percent, and,

• All other hospitals, 70 percent.

Under § 412.348(d), the amount of the exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to that system. Any amount by which the hospital's cumulative payments exceed its cumulative minimum payment is deducted from the additional payment that would otherwise be payable for a cost reporting period.

New hospitals are exempted from the capital prospective payment system for their first 2 years of operation and are paid 85 percent of their reasonable costs during that period. A new hospital's old capital costs are its allowable costs for capital assets that were put in use for patient care on or before the later of December 31, 1990 or the last day of the hospital's base year cost reporting period, and are subject to the rules pertaining to old capital and obligated capital as of the applicable date. Effective with the third year of operation, we will pay the hospital under either the fully prospective methodology, using the appropriate transition blend in that Federal fiscal year, or the hold-harmless methodology

If the hold-harmless methodology is applicable, the hold-harmless payment for assets in use during the base period will extend for 8 years, even if the hold-harmless payments extend beyond the normal transition period.

IV. Rate-of-Increase Percentages for Hospitals and Hospital Units Excluded From the Prospective Payment System

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in § 413.40 of the regulations. Under these limits, an annual target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost experience trended forward by the applicable rate-of-increase percentages (update factors). The target amount is multiplied by the number of Medicare discharges in a hospital's cost reporting period, yielding the ceiling on aggregate Medicare inpatient operating costs for the cost reporting period.

Effective with cost reporting periods beginning on or after October 1, 1991, a hospital that has Medicare inpatient operating costs in excess of its ceiling is paid its ceiling plus 50 percent of its costs in excess of the ceiling. Total payment may not exceed 110 percent of the ceiling. A hospital that has inpatient operating costs less than its ceiling will continue to be paid its costs plus the lower of—

- Fifty percent of the difference between the inpatient operating costs and the ceiling; or
- Five percent of the ceiling.

Each hospital's target amount is adjusted annually, at the beginning of its cost reporting period, by an applicable rate-of-increase percentage. Section 13502 of Pub. L. 103–66 amended section 1886(b)(3)(B) of the Act to provide that for cost reporting periods beginning on or after October 1, 1993 and before October 1, 1994, the applicable rate-of-increase percentage is the market basket percentage increase minus the lesser of, one percentage point, or the percentage point difference between 10 percent and the hospital's "update adjustment percentage" except for hospitals with an "update adjustment percentage" of at least 10 percent. The rate-of-increase percentage for hospitals in the latter case will be the market basket percentage increase. The "update adjustment percentage" is the percentage by which a hospital's allowable inpatient operation costs exceeds the hospital's ceiling for the cost reporting period beginning in Federal fiscal year 1990. For cost reporting periods beginning on or after October 1, 1994 and before October 1, 1997, the update adjustment percentage is the update adjustment percentage from the previous year plus the previous year's applicable reduction. The applicable reduction and applicable percentage are then determined in the same manner as for FY 1994. The most recent forecasted market basket increase for FY 1994 for hospitals and hospital units excluded from the prospective payment system is 4.3 percent.

V. Tables

This section contains the tables referred to throughout the preamble to this final rule and in this addendum. For purposes of this final rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1a, 1b, 1c, 1d, 3C, 4a, 4b, 4c, 4d, 4e, 5, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 7A, 7B, 8a, 8b, 9 and 10 are presented below. The tables presented below are as follows:

Table 1a—National Adjusted Operating Standardized Amounts, Labor/Nonlabor
Table 1b—Regional Adjusted Operating Standardized Amounts, Labor/Nonlabor
Table 1c—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor
Table 1d—Capital Standard Federal Payment Rate
Table 3C—Hospital Case Mix Indexes for Discharges Occurring in Federal Fiscal Year 1992
Table 4a—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas
Table 4b—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas
Table 4c—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals That Are Reclassified
Table 4d—Average Hourly Wage for Urban Areas
Table 4e—Average Hourly Wage for Rural Areas
Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric Mean Length of Stay, and Length of Stay Outlier Cutoff Points Used in the Prospective Payment System
Table 6a—New Diagnosis Codes
Table 6b—New Procedure Codes
Table 6c—Invalid Diagnosis Codes
Table 6d—Revised Diagnosis Code Titles
Table 6e—Revised Procedure Code Titles
Table 6f—Additions to the CC Exclusions List
Table 6g—Deletions to the CC Exclusions List
Table 6h—Additional OR Procedures That Group to DRG 477
Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 92 MedPAR Update 12/92 GROUPER V 10.0
Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 92 MedPAR Update 12/92 GROUPER V 11.0
Table 8a—Statewide Average Operating Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) April 1993
Table 8b—Statewide Average Capital Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) April 1993
Table 9—1992 Transfer Adjusted Case-Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations
Table 10—Percentage Difference in Wage Indexes for Areas That Qualify for a Wage Index Exception for Excluded Hospitals and Units

TABLE 1A—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large Urban		Other Urban		Rural	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2,646.19	1,090.21	2,604.30	1,072.95	2,698.19	869.31

TABLE 1B—REGIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

	Large Urban		Other Urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
1. New England (CT, ME, MA, NH, RI, VT)	2,778.92	1,136.39	2,734.93	1,120.37	2,991.46	1,031.69
2. Middle Atlantic (PA, NJ, NY)	2,496.61	1,078.50	2,457.09	1,061.43	2,864.92	975.30
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2,665.05	995.33	2,622.86	979.58	2,738.74	845.71
4. East North Central (IL, IN, MI, OH, WI)	2,810.97	1,177.65	2,766.47	1,159.00	2,773.33	939.95
5. East South Central (AL, KY, MS, TN)	2,557.71	901.26	2,517.22	886.99	2,714.37	788.64
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	2,665.81	1,073.03	2,623.60	1,056.05	2,638.17	842.55
7. West South Central (AR, LA, OK, TX)	2,650.47	986.59	2,608.51	972.95	2,530.11	774.85
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2,556.76	1,058.92	2,516.28	1,042.16	2,558.62	891.18
9. Pacific (AK, CA, HI, OR, WA)	2,487.02	1,209.59	2,447.65	1,190.44	2,488.47	1,003.96

TABLE 1C—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large Urban		Other Urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
Puerto Rico	2,379.97	494.98	2,342.29	487.14	1,839.16	396.47
National	2,644.11	1,028.04				

TABLE 1D—CAPITAL STANDARD FEDERAL PAYMENT RATE

	Rate
National	378.34
Puerto Rico	291.03

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1992
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Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix
010001	01.3184	010094	01.2019	020024	01.0867	030091	01.0202	040081	00.9104
010004	01.0100	010095	01.0165	020025	00.9006	030092	01.4882	040082	01.3064
010005	01.1294	010096	00.8975	020026	01.1945	030093	01.3409	040084	01.1107
010006	01.3899	010097	00.9347	020027	00.9344	030094	01.3651	040085	01.2388
010007	01.0576	010098	01.0022	030001	01.3419	030095	01.2314	040088	01.2804
010008	01.0172	010099	01.0354	030002	01.7678	030898	00.7882	040090	00.9114
010009	01.0876	010100	01.1528	030003	01.3136	030899	00.8352	040091	01.2890
010010	01.1274	010101	01.0476	030004	00.9667	040001	01.0977	040093	01.0473
010011	01.4176	010102	00.9065	030006	01.6141	040002	01.2152	040095	00.8358
010012	01.2562	010103	01.6271	030007	01.2629	040003	01.0095	040100	01.1378
010015	01.0017	010104	01.5563	030008	01.9427	040004	01.2636	040105	00.9958
010016	01.1189	010108	01.2383	030009	01.1971	040005	01.0042	040106	01.1699
010018	00.8782	010109	01.0576	030010	01.4708	040007	01.5985	040107	01.0750
010019	01.1914	010110	00.9045	030011	01.4278	040008	01.2054	040109	01.0807
010020	00.9172	010112	01.1615	030012	01.2367	040010	01.1813	040114	01.7965
010021	01.2188	010113	01.6379	030013	01.2189	040011	00.9588	040116	01.3758
010022	00.9645	010114	01.2682	030014	01.4856	040013	00.9205	040118	01.2007
010023	01.3586	010115	00.8747	030016	01.2726	040014	01.2251	040119	01.1432
010024	01.2923	010117	01.0771	030017	01.3939	040015	01.1193	040124	01.1323
010025	01.2247	010118	01.2168	030018	01.7192	040016	01.5380	040126	00.9748
010027	00.8708	010119	01.1622	030019	01.2500	040017	01.2942	040133	00.8231
010029	01.5021	010120	00.9548	030022	01.5171	040018	01.3335	040898	00.8089
010031	01.2301	010121	01 1005	030023	01.2800	040019	01.1858	040899	00.8443
010032	00.8265	010122	00.9082	030024	01.6496	040020	01.4690	050002	01.3452
010033	01.9344	010123	01.2434	030025	01.1151	040021	01.2892	050006	01.3273
010034	01.0190	010124	01.2601	030027	01.0789	040022	01.7093	050007	01.5974
010035	01.1932	010125	01.0373	030030	01.6671	040024	01.0271	050008	01.4267
010036	01.1536	010126	01.1367	030033	01.2252	040025	00.9725	050009	01.5871
010038	01.2225	010127	01.5178	030034	01.1085	040026	01.5472	050013	02.1223
010039	01.6322	010128	00.8829	030035	01.2894	040027	01.2950	050014	01.1343
010040	01.3226	010129	01.0348	030036	01.2201	040028	00.9958	050015	01.4248
010043	00.9662	010130	01.1170	030037	01.9042	040029	01.1238	050016	01.1686
010044	01.0824	010131	01.2493	030038	01.5227	040030	00.8678	050017	01.9988
010045	01.0399	010134	00.7874	030040	00.9988	040031	00.9401	050018	01.4103
010046	01.3962	010136	01.0490	030041	00.9784	040032	00.9539	050019	00.8366
010047	00.8684	010137	01.2143	030043	01.2156	040035	00.9504	050021	01.2713
010049	01.0837	010138	00.9468	030044	01.0726	040036	01.3241	050022	01.4735
010050	00.9382	010139	01.6484	030046	01.0220	040037	01.1470	050024	01.3473
010051	00.8987	010143	01.1499	030047	01.0151	040039	01.1996	050025	01.6186
010052	00.9691	010144	01.3371	030049	01.0504	040040	01.0472	050026	01.4649
010053	01.0134	010145	01.2354	030054	00.8335	040041	01.1581	050028	01.2998
010054	01.2658	010146	01.0251	030055	01.2018	040042	01.2687	050029	01.2960
010055	01.3531	010148	00.9838	030059	01.3791	040044	00.9406	050030	01.3355
010056	01.3573	010149	01.3896	030060	01.0428	040045	00.9728	050032	01.2359
010058	00.9853	010150	01.0463	030061	01.5193	040047	01.0305	050033	01.4545
010059	01.0531	010152	01.2892	030062	01.3318	040048	01.1511	050036	01.6849
010061	00.9933	010153	02.1383	030064	01.4920	040050	01.1239	050038	01.3523
010062	00.9684	010155	01.0413	030065	01.4732	040051	01.0703	050039	01.6543
010064	01.6350	010898	00.7956	030067	01.0456	040053	01.1278	050040	01.2019
010065	01.2408	010899	00.9642	030068	01.0327	040054	00.9608	050041	01.2633
010066	00.8511	020001	01.4964	030069	01.3161	040055	01.4192	050042	01.2301
010068	01.2129	020002	01.0126	030071	00.9394	040058	01.0167	050043	01.5121
010069	01.1391	020004	01.1405	030072	00.8540	040060	00.9686	050045	01.2616
010072	01.1839	020005	00.9016	030073	01.0768	040062	01.4595	050046	01.1954
010073	00.9380	020006	01.1053	030074	00.8810	040063	01.4793	050047	01.7795
010078	01.2043	020007	00.8771	030075	00.9243	040064	00.9105	050051	01.0755
010079	01.1066	020008	00.9970	030076	01.0227	040066	01.1519	050052	00.8884
010080	01.0086	020009	00.9161	030077	00.9098	040067	01.0545	050053	01.3922
010081	01.8425	020010	00.9024	030078	01.0521	040069	01.0600	050054	01.3290
010083	01.0647	020011	00.9956	030079	00.8527	040070	00.9852	050055	01.2733
010084	01.2935	020012	01.1509	030080	01.6622	040071	01.4447	050056	01.3599
010085	01.2556	020013	01.0535	030083	01.4020	040072	01.0547	050057	01.4798
010086	01.0142	020014	01.0319	030084	01.0761	040074	01.2072	050058	01.3939
010087	01.7903	020017	01.4214	030085	01.4203	040075	01.1001	050060	01.5104
010089	01.1351	020018	00.9516	030086	01.1947	040076	01.1536	050061	01.3597
010090	01.5745	020019	00.8909	030087	01.6297	040077	00.9271	050063	01.4012
010091	00.9961	020020	00.7904	030088	01.3134	040078	01.2252	050065	01.5591
010092	01.3901	020021	00.8397	030089	01.3501	040080	01.0759	050066	01.2809

Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix
050067	01.3386	050150	01.2357	050257	01.0623	050366	01.3484	050478	01.0043
050068	01.0342	050152	01.3914	050258	01.3158	050367	01.2610	050481	01.4948
050069	01.6767	050153	01.6461	050260	00.9921	050369	01.2606	050482	00.9882
050070	01.2582	050154	01.1832	050261	01.1558	050373	01.3506	050483	01.1561
050071	01.3090	050155	01.1296	050262	01.8002	050376	01.3760	050485	01.6688
050072	01.3123	050158	01.7111	050263	01.2223	050377	00.9205	050486	01.4781
050073	01.2608	050159	01.3080	050264	01.4274	050378	01.1243	050488	01.2123
050074	01.0574	050161	01.3486	050267	01.5351	050379	01.0728	050489	01.0203
050075	01.2905	050167	01.3664	050269	01.1050	050380	01.6118	050491	01.4273
050076	01.5470	050168	01.6690	050270	01.3201	050382	01.3933	050492	01.2630
050077	01.6412	050169	01.5602	050272	01.3950	050385	01.4299	050494	01.0494
050078	01.3689	050170	01.4664	050274	01.1312	050387	00.9659	050496	01.8218
050079	01.4813	050172	01.3533	050276	01.1097	050388	00.9362	050497	00.9107
050080	01.2882	050173	01.2867	050277	01.3786	050390	01.2633	050498	01.2607
050081	01.6031	050174	01.6974	050278	01.3852	050391	01.3797	050502	01.6793
050082	01.4397	050175	01.3192	050279	01.2394	050392	00.9456	050503	01.2712
050084	01.5551	050177	01.2482	050280	01.4330	050393	01.4892	050506	01.4949
050088	01.0966	050179	01.2505	050281	01.3630	050394	01.5033	050510	01.2901
050089	01.3485	050180	01.5103	050282	01.3818	050396	01.6092	050512	01.2641
050090	01.2767	050181	01.2525	050283	01.3640	050397	00.9120	050515	01.3312
050091	01.2599	050183	01.1984	050286	01.0394	050401	01.1810	050516	01.5631
050092	00.9144	050186	01.4137	050289	01.7308	050404	01.1358	050517	01.4177
050093	01.5391	050188	01.4154	050290	01.5587	050406	01.1016	050522	01.3809
050095	01.5486	050189	01.0085	050291	01.2048	050407	01.2638	050523	01.2380
050096	01.0386	050191	01.4014	050292	01.1322	050410	01.1185	050526	01.3120
050097	01.4466	050192	01.2034	050293	01.3196	050411	01.3164	050528	01.2839
050099	01.6847	050193	01.3288	050295	01.3620	050414	01.2747	050530	00.9260
050100	01.8603	050194	01.2519	050296	01.1616	050417	01.1989	050531	01.3260
050101	01.4067	050195	01.5799	050298	01.2230	050418	01.2687	050534	01.2825
050102	01.3321	050196	01.3426	050299	01.2845	050419	01.2706	050535	01.4484
050103	01.4286	050197	01.9071	050300	01.2917	050420	01.3886	050537	01.2438
050104	01.3441	050199	01.3350	050301	01.3217	050421	01.3516	050539	01.1919
050107	01.3391	050204	01.3997	050302	01.3826	050423	01.0125	050541	01.5332
050108	01.4358	050205	01.3610	050305	01.5241	050424	01.7277	050542	01.0835
050109	02.1526	050207	01.3267	050307	01.4950	050425	01.2745	050543	01.4038
050110	01.1689	050208	01.2986	050308	01.5558	050426	01.3971	050545	00.9657
050111	01.3533	050211	01.3337	050309	01.2797	050427	00.7685	050546	00.9134
050112	01.4679	050212	00.9062	050310	01.1819	050430	00.9846	050547	00.9787
050113	01.2124	050213	01.3383	050312	01.7946	050431	01.1102	050548	00.5777
050114	01.5016	050214	01.6064	050313	01.1421	050432	01.5648	050549	01.7935
050115	01.5351	050215	01.4198	050315	01.3064	050433	01.0039	050550	01.9174
050116	01.4455	050217	01.2689	050317	01.3692	050434	01.0706	050551	01.2708
050117	01.2965	050219	01.3323	050320	01.4180	050435	01.2406	050552	01.1046
050118	01.1522	050220	01.2933	050324	01.8454	050436	01.0099	050557	01.5234
050121	01.3299	050222	01.5650	050325	01.2400	050438	01.5579	050559	01.3108
050122	01.4894	050224	01.6121	050327	01.5917	050440	01.3409	050560	01.3584
050124	01.2008	050225	01.3770	050328	01.2804	050441	01.8279	050561	01.1847
050125	01.3317	050226	01.4215	050329	01.2201	050443	00.9113	050564	01.2646
050126	01.4286	050228	01.3313	050331	01.3474	050444	01.2625	050565	01.2564
050127	01.2761	050230	01.4152	050333	00.9740	050446	00.9452	050566	00.9890
050128	01.5715	050231	01.5123	050334	01.4973	050447	01.1833	050567	01.6773
050129	01.4671	050232	01.7969	050335	01.2708	050448	01.2407	050568	01.3608
050131	01.1487	050233	01.2258	050336	01.2953	050449	01.2521	050569	01.2322
050132	01.3647	050234	01.2612	050337	01.2805	050451	01.0487	050570	01.7107
050133	01.2283	050235	01.4684	050342	01.3218	050454	01.8497	050571	01.4579
050135	01.3263	050236	01.3959	050343	01.0649	050455	01.9525	050573	01.6481
050136	01.4045	050238	01.4758	050345	01.2944	050456	01.3118	050575	01.2296
050137	01.2337	050239	01.3911	050348	01.8379	050457	01.8740	050577	01.2485
050138	01.7985	050240	01.4753	050349	01.0010	050458	00.9751	050578	01.3345
050139	01.2226	050241	01.2715	050350	01.3761	050459	01.2591	050579	01.3975
050140	01.3264	050242	01.4078	050351	01.5125	050464	01.8174	050580	01.2564
050143	01.4244	050243	01.4789	050352	01.3039	050467	01.2809	050581	01.4198
050144	01.4794	050245	01.3554	050353	01.6376	050468	01.3851	050583	01.6814
050145	01.3446	050248	01.1131	050355	01.0194	050469	01.1028	050584	01.2212
050146	01.1689	050251	01.1663	050357	01.9078	050470	01.1335	050585	01.3658
050147	00.7313	050253	00.9050	050359	01.1061	050471	01.7972	050586	01.2399
050148	01.1350	050254	01.1634	050360	01.4885	050476	01.2583	050587	01.3447
050149	01.3725	050256	01.7668	050363	01.3622	050477	01.3970	050588	01.3773

Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix
050589	01.2704	050898	00.7857	060104	01.2926	100014	01.2734	100092	01.5123
050590	01.3103	050899	00.8627	070001	01.7615	100015	01.3747	100093	01.4953
050591	01.1728	060001	01.5384	070002	01.8441	100016	01.0243	100098	01.2265
050592	01.3361	060003	01.2037	070003	01.1416	100017	01.6273	100099	01.2422
050593	01.3040	060004	01.2148	070004	01.1172	100018	01.3396	100100	01.3550
050594	01.8694	060006	01.2350	070005	01.3122	100019	01.5091	100102	01.1492
050597	01.3160	060007	01.1388	070006	01.2731	100020	01.2406	100103	00.9786
050598	01.3941	060008	01.0563	070007	01.3913	100022	01.6453	100105	01.4238
050599	01.6112	060009	01.4008	070008	01.2475	100023	01.2953	100106	01.1019
050601	01.3624	060010	01.5628	070009	01.2164	100024	01.3305	100107	01.2699
050603	01.4194	060011	01.1675	070010	01.4900	100025	01.5507	100108	01.1455
050604	01.4453	060012	01.4349	070011	01.2235	100026	01.5313	100109	01.2344
050607	01.1772	060013	01.1839	070012	01.2399	100027	00.8642	100110	01.4577
050608	01.1695	060014	01.6742	070013	01.3956	100028	01.2954	100112	01.0045
050609	01.3784	060015	01.5192	070015	01.2809	100029	01.4370	100113	01.9932
050613	01.0892	060016	01.1867	070016	01.2818	100030	01.2534	100114	01.4716
050615	01.3186	060018	01.2613	070017	01.3195	100032	01.8892	100117	01.3899
050616	01.3312	060020	01.4945	070018	01.3446	100034	01.6551	100118	01.1957
050618	01.2082	060022	01.6559	070019	01.1532	100035	01.5071	100121	01.1711
050619	01.3352	060023	01.4919	070020	01.4167	100038	01.6672	100122	01.3935
050622	01.2085	060024	01.6154	070021	01.2521	100039	01.6679	100124	01.3305
050623	01.4671	060026	01.4479	070022	01.6885	100040	01.6824	100125	01.1781
050624	01.2641	060027	01.4245	070023	01.2967	100042	01.1758	100126	01.5119
050625	01.5155	060028	01.4032	070024	01.2801	100043	01.4285	100127	01.6064
050630	01.2180	060029	01.0222	070025	01.7282	100044	01.3964	100128	02.2290
050633	01.1649	060030	01.4140	070026	01.1828	100045	01.4067	100129	01.3371
050635	01.3118	060031	01.5252	070027	01.2810	100046	01.3129	100130	01.1685
050636	01.3598	060032	01.3857	070028	01.5078	100047	01.6205	100131	01.2565
050637	01.1831	060033	01.1693	070029	01.2214	100048	01.0245	100132	01.3585
050638	00.9402	060034	01.3650	070030	01.2393	100049	01.3530	100134	01.0247
050641	01.1258	060036	01.1776	070031	01.2844	100050	01.2269	100135	01.5274
050643	00.9296	060037	00.9889	070033	01.3666	100051	01.3305	100137	01.1574
050644	01.0685	060038	01.0653	070034	01.3058	100052	01.3031	100138	01.0059
050655	00.8780	060041	01.0717	070035	01.3592	100053	01.2647	100139	01.0366
050660	01.0771	060042	00.9868	070036	01.2815	100054	01.2538	100140	01.1062
050661	00.9004	060043	00.9201	070898	00.7953	100055	01.3586	100142	01.1247
050662	00.8410	060044	01.1633	070899	00.8437	100056	01.5273	100143	01.2191
050663	01.0600	060046	01.0253	080001	01.6213	100057	01.2966	100144	01.2152
050666	00.8646	060047	00.8943	080002	01.1675	100059	01.5240	100145	01.3484
050667	00.9996	060049	01.0599	080003	01.2763	100060	01.8043	100146	01.1024
050668	01.1774	060050	01.2530	080004	01.2756	100061	01.5119	100147	01.1151
050670	00.8312	060052	01.0204	080005	01.3027	100062	01.7528	100150	01.3634
050671	01.1320	060053	01.1352	080006	01.1535	100063	01.2470	100151	01.7970
050672	00.6540	060054	01.2160	080007	01.2702	100065	01.1231	100152	01.4402
050674	01.1751	060056	00.9271	080898	00.7998	100067	01.4028	100154	01.6110
050675	01.5339	060057	01.1409	080899	00.9119	100068	01.5091	100156	01.1263
050676	00.8456	060058	00.8298	090001	01.4469	100069	01.4103	100157	01.5639
050677	01.3436	060060	00.9939	090002	01.2659	100070	01.3653	100159	01.0219
050678	01.1145	060062	00.9434	090003	01.3988	100071	01.3472	100160	01.2225
050680	01.3434	060063	01.0813	090004	01.5734	100072	01.3055	100161	01.5011
050682	00.8933	060064	01.4053	090005	01.2905	100073	01.7987	100162	01.3597
050684	01.2259	060065	01.3399	090006	01.3004	100074	01.3258	100164	00.9560
050685	01.1349	060066	01.0240	090007	01.2764	100075	01.7025	100165	00.9377
050686	01.2700	060068	01.2254	090008	01.4387	100076	01.4665	100166	01.4452
050688	01.1824	060070	01.0031	090010	00.9912	100077	01.2940	100167	01.4203
050689	01.4767	060071	01.1781	090011	01.8896	100078	01.2564	100168	01.2849
050690	01.1993	060072	00.9189	090898	00.7823	100079	00.9314	100169	01.8514
050693	01.3064	060073	00.9769	090899	00.8432	100080	01.6109	100170	01.4949
050694	01.1653	060075	01.2572	100001	01.4451	100081	01.0834	100172	01.2933
050695	01.1759	060076	01.3939	100002	01.3953	100082	01.4229	100173	01.6317
050696	01.8238	060085	00.9443	100004	01.0098	100083	01.3016	100174	01.3773
050697	01.3528	060087	01.5402	100005	00.9952	100084	01.4246	100175	00.9897
050698	01.1722	060088	01.0322	100006	01.5798	100085	01.3219	100176	01.9904
050699	00.9809	060090	00.8479	100007	01.9250	100086	01.3392	100177	01.3345
050700	01.4069	060096	00.9776	100008	01.7229	100087	01.7834	100179	01.6789
050701	01.1869	060100	01.3315	100009	01.4716	100088	01.6103	100180	01.4079
050702	00.9099	060101	01.4863	100010	01.3897	100089	01.2782	100181	01.3403
050703	00.7896	060103	01.3910	100012	01.5401	100090	01.3555	100183	01.3759

Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix
100185	01.1917	100275	01.3581	110071	00.9926	110163	01.3764	130010	00.9366
100186	01.3608	100276	01.3077	110072	00.9783	110164	01.3422	130011	01.3437
100187	01.3712	100277	00.9711	110073	01.2091	110165	01.2575	130012	01.0276
100189	01.2648	100278	00.9765	110074	01.3015	110166	01.4286	130013	01.2506
100191	01.3345	100279	01.3206	110075	01.2150	110168	01.6087	130014	01.2761
100194	01.2380	100280	01.4681	110076	01.3485	110169	00.7689	130015	01.0052
100196	01.2199	100281	01.1961	110078	01.5697	110171	01.3111	130016	00.8340
100199	01.2463	100898	00.7489	110079	01.3576	110172	01.2436	130017	01.0018
100200	01.3067	100899	00.8338	110080	01.1099	110174	01.0489	130018	01.5352
100203	01.2076	110001	01.1870	110082	02.1230	110176	01.1042	130019	01.2157
100204	01.5996	110002	01.2009	110083	01.6058	110177	01.3838	130021	00.8411
100206	01.4123	110003	01.3242	110085	01.1590	110178	01.2337	130022	01.1858
100207	01.4871	110004	01.1884	110086	01.0327	110179	01.1575	130024	01.1002
100208	01.5534	110005	01.3383	110087	01.2556	110181	00.9830	130025	01.0746
100209	01.5476	110006	01.2542	110088	00.8800	110183	01.3255	130026	01.0936
100210	01.7271	110007	01.4327	110089	01.2087	110184	01.1842	130027	00.8838
100211	01.3226	110008	01.1462	110091	01.3426	110185	01.1117	130028	01.2364
100212	01.7281	110009	01.0429	110092	01.0644	110186	01.2668	130029	01.0448
100213	01.6057	110010	02.0158	110093	00.9112	110187	01.1687	130030	01.0804
100217	01.2127	110011	01.1263	110094	01.0707	110188	01.3472	130031	00.9469
100218	00.9074	110013	01.0365	110095	01.2877	110189	01.0591	130034	00.9860
100219	01.5459	110014	01.0599	110096	01.1009	110190	01.1706	130035	00.9442
100220	01.8088	110015	01.0762	110097	01.0691	110191	01.2990	130036	01.2040
100221	01.5296	110016	01.2105	110098	00.9383	110192	01.3193	130037	01.1637
100222	01.2406	110017	00.9898	110100	01.0825	110193	01.2273	130039	01.3255
100223	01.4153	110018	01.1653	110101	01.0411	110194	00.9896	130040	00.8685
100224	01.4147	110020	01.2500	110103	00.9065	110195	01.1546	130043	01.0175
100225	01.2724	110023	01.1868	110104	01.1553	110198	01.3523	130044	00.8825
100226	01.3738	110024	01.3429	110105	01.1538	110200	01.9651	130045	00.9074
100227	01.0125	110025	01.2842	110107	01.6337	110201	01.3426	130048	01.0678
100228	01.2566	110026	01.1129	110108	00.8981	110203	00.9964	130049	01.2237
100229	01.3876	110027	01.0406	110109	01.0594	110204	00.6703	130054	01.0264
100230	01.3150	110028	01.6027	110111	01.1345	110205	01.0523	130056	00.9922
100231	01.7472	110029	01.2812	110112	01.0627	110207	01.1849	130058	00.9742
100232	01.3229	110030	01.2519	110113	01.0078	110208	01.0370	130060	01.0969
100234	01.3693	110031	01.2816	110114	01.1175	110898	00.8005	140001	01.2681
100235	01.3634	110032	01.1050	110115	01.7132	110899	00.8561	140002	01.2104
100236	01.3895	110033	01.3586	110117	01.0744	120001	01.7206	140003	01.0116
100237	02.1907	110034	01.4702	110118	01.0360	120002	01.1992	140004	00.9798
100238	01.4000	110035	01.3279	110120	01.0628	120003	01.0415	140005	00.9090
100239	01.4538	110036	01.6956	110121	01.1209	120004	01.2506	140007	01.4136
100240	00.8015	110037	01.0422	110122	01.3072	120005	01.2633	140008	01.3816
100241	00.9631	110038	01.3638	110124	01.0421	120006	01.1612	140010	01.3357
100242	01.3300	110039	01.3357	110125	01.1494	120007	01.5790	140011	01.0808
100243	01.4500	110040	01.0248	110127	00.8814	120009	00.8847	140012	01.2507
100244	01.3581	110041	01.0552	110128	01.1658	120010	01.6719	140013	01.5485
100246	01.3645	110042	01.0143	110129	01.6300	120011	01.2336	140014	01.1193
100248	01.6333	110043	01.5553	110130	01.0611	120012	00.9620	140015	01.2336
100249	01.2764	110044	01.1486	110132	01.1594	120014	01.1722	140016	00.9761
100252	01.2449	110045	01.0795	110134	00.8486	120015	01.0773	140018	01.5374
100253	01.3994	110046	01.2018	110135	01.0876	120016	00.9497	140019	00.9010
100254	01.6195	110048	01.1257	110136	01.2594	120018	00.9628	140024	01.0258
100255	01.3472	110049	01.0687	110140	00.9063	120019	01.1765	140025	01.1395
100256	01.9104	110050	01.0426	110141	00.9400	120021	00.9054	140026	01.1307
100258	01.7024	110051	00.9886	110142	01.0793	120022	01.5949	140027	01.0916
100259	01.4506	110052	00.9172	110143	01.2751	120024	01.0500	140029	01.3876
100260	01.3692	110054	01.2474	110144	01.1862	120026	01.2577	140030	01.5315
100262	01.3940	110055	00.9155	110146	00.9428	120027	01.4508	140031	01.0430
100263	01.4268	110056	00.9240	110149	01.1723	120898	00.7956	140032	01.2801
100264	01.4229	110059	01.2243	110150	01.3029	120899	00.8443	140033	01.2112
100265	01.2972	110061	01.0094	110152	01.0540	130001	00.9616	140034	01.1153
100266	01.3607	110062	00.9303	110153	01.0737	130002	01.3758	140035	01.0631
100267	01.3265	110063	01.0152	110154	00.9507	130003	01.1791	140036	01.1407
100268	01.2223	110064	01.2793	110155	01.0733	130005	01.3996	140037	01.0028
100269	01.3948	110065	00.9597	110156	00.9038	130006	01.7350	140038	01.1462
100270	00.8875	110066	01.3219	110157	01.1366	130007	01.4741	140039	01.0104
100271	01.5611	110069	01.1856	110161	01.2699	130008	01.0129	140040	01.2486
100273	01.1541	110070	00.9882	110162	00.8412	130009	00.9906	140041	01.1074

Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix
140042	01.0555	140128	01.1292	140218	00.9388	150033	01.5815	150112	01.1899
140043	01.2600	140129	01.0685	140220	01.1145	150034	01.2907	150113	01.1860
140045	00.9909	140130	01.1816	140223	01.5364	150035	01.3888	150114	01.0467
140046	01.2236	140132	01.5118	140224	01.3325	150036	01.0380	150115	01.3165
140047	01.0776	140133	01.3405	140228	01.4852	150037	01.2339	150122	01.0958
140048	01.1985	140135	01.2127	140229	00.9243	150038	01.2084	150123	00.9635
140049	01.3183	140137	01.0424	140230	00.9204	150039	00.9607	150124	01.1736
140051	01.3263	140138	01.0584	140231	01.5809	150042	01.2057	150125	01.4058
140052	01.2625	140139	01.0816	140233	01.6444	150043	01.0809	150126	01.5333
140053	01.7779	140140	01.0136	140234	01.1720	150044	01.2773	150127	01.0869
140054	01.3456	140141	01.0139	140236	01.0061	150045	01.1658	150128	01.1775
140055	00.9578	140143	01.0741	140239	01.5976	150046	01.5287	150129	01.2536
140058	01.1500	140144	01.0585	140240	01.3831	150047	01.6730	150130	01.1102
140059	01.0771	140145	01.0854	140242	01.5294	150048	01.1644	150132	01.3335
140061	01.1115	140146	01.0007	140245	01.0076	150049	01.1229	150133	01.1929
140062	01.2557	140147	01.1972	140246	01.0681	150050	01.1511	150134	01.1968
140063	01.3558	140148	01.6324	140250	01.2161	150051	01.2641	150135	00.9424
140064	01.2160	140150	01.3688	140251	01.3638	150052	01.0089	150136	00.9042
140065	01.4120	140151	01.1742	140252	01.3320	150053	01.0360	150898	00.7956
140066	01.2313	140152	01.1050	140253	01.1988	150054	01.1531	150899	00.8299
140067	01.7615	140155	01.2094	140258	01.4277	150056	01.6772	160001	01.1698
140068	01.3111	140158	01.3701	140271	01.0755	150057	02.2621	160002	01.2932
140069	01.0665	140159	01.1906	140275	01.2158	150058	01.5582	160003	01.0531
140070	01.2754	140160	01.1576	140276	02.0132	150059	01.1761	160005	01.0229
140074	01.1019	140161	01.1207	140280	01.2224	150060	01.1979	160007	01.0108
140075	01.3958	140162	01.6977	140281	01.5539	150061	01.2052	160008	01.1228
140077	01.0925	140164	01.2260	140285	01.3296	150062	01.0079	160009	01.2713
140079	01.2899	140165	01.1101	140286	01.1485	150063	01.1408	160012	01.1431
140080	01.8717	140166	01.2075	140288	01.5690	150064	01.0564	160013	01.2761
140081	01.2015	140167	01.1395	140289	01.2636	150065	01.1121	160014	00.9350
140082	01.2912	140168	01.1588	140290	01.3937	150066	01.0948	160016	01.2580
140083	01.2751	140170	00.9390	140291	01.2585	150067	01.0918	160018	00.9798
140084	01.2148	140171	00.9890	140292	01.2268	150069	01.2451	160020	01.0971
140086	01.1244	140172	01.5077	140294	01.1224	150070	01.0727	160021	01.1460
140087	01.4647	140173	01.0640	140297	01.4071	150071	01.0996	160023	01.0930
140088	01.4536	140174	01.4067	140299	00.9685	150072	01.3248	160024	01.5108
140089	01.2385	140176	01.2290	140898	00.7956	150073	01.0419	160025	01.8985
140090	01.3546	140177	01.3330	140899	00.8611	150074	01.5012	160026	01.0955
140091	01.6055	140179	01.2684	150001	01.0650	150075	01.2057	160027	01.1460
140093	01.2125	140180	01.3774	150002	01.4082	150076	01.1077	160028	01.2290
140094	01.2395	140181	01.3109	150003	01.6496	150077	01.2717	160029	01.4331
140095	01.2232	140182	01.3197	150004	01.4324	150078	01.0110	160030	01.3029
140097	00.9461	140184	01.1563	150005	01.1864	150079	01.1320	160031	01.0647
140098	01.3201	140185	01.3787	150006	01.2114	150082	01.4294	160032	01.1426
140100	01.2948	140186	01.2385	150007	01.2292	150084	01.8247	160033	01.3952
140101	01.1288	140187	01.3783	150008	01.3616	150085	00.9809	160034	00.9804
140102	01.0246	140188	00.9931	150009	01.2963	150086	01.1974	160035	00.9518
140103	01.3736	140189	01.1426	150010	01.2149	150088	01.1569	160036	01.0332
140105	01.3065	140190	01.1429	150011	01.2691	150089	01.3379	160037	01.1005
140107	01.0721	140191	01.3967	150012	01.6180	150090	01.2977	160039	01.0243
140108	01.1799	140192	00.9878	150013	01.2585	150091	01.1838	160040	01.2668
140109	01.1235	140193	00.9818	150014	01.4062	150092	01.0270	160041	01.1346
140110	01.3201	140197	01.2025	150015	01.2318	150094	00.9883	160043	01.0374
140112	01.0858	140199	01.0089	150017	01.7326	150095	01.0158	160044	01.2980
140113	01.4567	140200	01.4307	150018	01.2672	150096	01.0444	160045	01.6632
140114	01.3061	140202	01.2819	150019	01.0953	150097	01.0792	160046	01.0322
140115	01.2403	140203	01.2399	150020	01.1000	150098	01.0942	160047	01.3978
140116	01.3284	140205	00.9386	150021	01.6790	150099	01.2483	160048	01.1135
140117	01.2740	140206	01.0982	150022	01.1624	150100	01.6634	160049	00.9855
140118	01.5415	140207	01.4205	150023	01.3918	150101	01.0952	160050	01.0091
140119	01.6263	140208	01.4687	150024	01.2278	150102	01.0516	160051	01.1540
140120	01.2653	140209	01.6560	150025	01.5480	150103	01.0696	160052	00.9525
140121	01.1880	140210	01.0299	150026	01.2126	150104	01.1871	160054	01.0488
140122	01.4272	140211	01.1823	150027	01.0162	150105	01.1646	160055	00.9854
140123	01.2227	140212	01.1898	150029	01.2371	150106	01.0681	160056	01.0439
140124	01.1711	140213	01.2142	150030	01.0924	150109	01.2696	160057	01.3606
140125	01.2340	140215	01.0844	150031	01.0053	150110	00.8958	160058	01.7011
140127	01.2865	140217	01.2390	150032	01.7097	150111	01.1076	160059	01.2844

Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix
160060	01.0705	160143	01.1082	170074	01.0384	170172	00.9652	180072	01.0290
160061	00.9977	160145	01.0226	170075	00.8727	170173	00.7621	180075	00.9867
160062	01.0277	160146	01.3641	170076	01.0352	170174	00.8708	180078	01.0991
160063	01.0834	160147	01.1697	170077	00.9084	170175	01.2330	180079	00.9998
160064	01.5602	160151	01.1133	170079	00.9336	170176	01.4589	180080	01.1322
160065	01.0618	160152	00.9792	170080	01.0055	170898	00.7570	180081	01.4759
160066	01.1195	160153	01.6465	170081	01.0530	170899	00.8231	180085	01.3187
160067	01.2953	160898	00.8503	170082	00.9175	180001	01.1934	180087	01.0532
160068	01.0509	160899	00.8432	170084	00.9059	180002	01.1222	180088	01.6640
160069	01.3733	170001	01.1982	170085	00.9192	180004	01.1533	180092	01.1942
160070	01.0798	170004	01.0328	170086	01.6149	180005	01.0385	180093	01.3979
160071	01.0613	170006	01.2112	170087	01.3512	180006	00.9320	180094	01.0021
160072	01.0498	170008	01.0555	170088	00.8922	180007	01.4445	180095	01.0098
160073	00.9685	170009	01.1190	170089	00.9925	180009	01.2122	180099	01.0550
160074	01.0256	170010	01.2010	170090	00.9598	180010	01.8107	180101	01.2918
160075	01.1227	170011	01.4483	170092	00.8236	180011	01.1640	180102	01.4425
160076	01.0156	170012	01.4332	170093	00.9628	180012	01.2925	180103	01.9068
160077	01.0707	170013	01.2614	170094	01.1058	180013	01.3236	180104	01.4002
160079	01.3353	170014	01.0814	170095	01.1731	180014	01.5306	180105	00.9435
160080	01.1651	170015	00.9876	170097	00.9250	180015	01.1188	180106	00.8986
160081	01.0777	170016	01.5478	170098	01.1049	180016	01.2298	180108	00.9259
160082	01.7412	170017	01.2237	170099	01.3912	180017	01.2830	180115	00.9988
160083	01.5186	170018	01.0165	170100	00.8924	180018	01.1993	180116	01.3753
160085	01.2509	170019	01.1659	170101	01.0571	180019	01.2331	180117	01.1000
160086	00.9718	170020	01.2218	170102	00.9710	180020	01.0739	180118	00.9703
160088	01.0775	170022	01.2045	170103	01.2236	180021	01.0174	180120	00.8976
160089	01.1913	170023	01.3620	170104	01.4312	180023	00.8687	180121	01.1101
160090	01.0295	170024	01.2065	170105	01.0131	180024	01.3355	180122	00.9955
160091	01.1145	170025	01.2557	170106	00.9255	180025	01.1484	180123	01.4404
160092	00.9348	170026	01.0475	170108	00.8286	180026	01.1752	180124	01.3229
160093	01.1418	170027	01.2217	170109	01.0735	180027	01.1968	180125	01.0359
160094	01.1542	170030	00.9290	170110	00.9268	180028	01.0245	180126	00.9863
160095	01.0658	170031	00.8815	170112	00.9407	180029	01.3234	180127	01.2371
160097	01.1452	170032	01.0299	170113	01.0400	180030	01.1903	180128	01.1465
160098	01.0204	170033	01.2565	170114	01.0594	180031	01.0314	180129	01.1007
160099	01.0895	170034	00.9776	170115	00.9990	180032	01.0305	180130	01.3551
160101	01.1072	170035	00.9468	170116	01.1105	180033	01.0505	180132	01.2452
160102	01.4165	170036	00.8852	170117	00.9479	180034	00.9856	180133	01.2313
160103	00.9720	170037	01.0735	170119	01.0287	180035	01.4652	180134	01.0232
160104	01.1933	170038	00.8888	170120	01.3406	180036	01.1032	180136	01.3530
160106	01.0641	170039	01.0256	170121	00.8749	180037	01.2775	180137	01.7720
160107	01.1598	170040	01.4194	170122	01.8176	180038	01.3397	180138	01.2432
160108	01.0811	170041	01.0305	170123	01.6793	180040	01.9924	180139	01.0617
160109	00.9347	170043	01.0236	170124	00.9840	180041	01.0588	180898	00.7869
160110	01.5186	170044	01.1241	170126	00.9081	180042	01.1098	180899	00.8443
160111	01.0672	170045	01.0367	170128	00.9968	180043	01.1139	190001	00.9386
160112	01.3828	170049	01.2919	170131	01.2200	180044	01.0898	190002	01.5769
160113	01.0037	170050	00.9569	170133	01.1145	180045	01.1812	190003	01.3510
160114	00.9536	170051	00.9763	170134	00.9336	180046	01.1281	190004	01.2830
160115	01.0491	170052	01.0489	170137	01.1493	180047	01.1191	190005	01.3542
160116	01.2630	170053	00.8892	170139	01.0089	180048	01.1842	190006	01.1111
160117	01.3369	170054	01.0773	170140	01.0980	180049	01.3375	190007	01.0783
160118	00.9907	170055	01.0494	170142	01.3506	180050	01.3396	190008	01.5153
160120	00.9600	170056	00.9873	170143	01.1636	180051	01.1413	190009	01.1163
160122	01.2022	170057	00.9977	170144	01.4409	180053	01.2239	190010	00.9328
160123	01.1476	170058	01.0889	170145	01.2114	180054	01.0399	190011	01.1135
160124	01.1324	170060	01.0480	170146	01.3093	180055	01.0749	190013	01.2313
160126	01.1917	170061	01.1666	170147	01.1682	180056	01.0550	190014	01.0844
160129	01.0782	170062	00.9271	170148	01.3322	180058	00.8997	190015	01.1949
160130	01.1101	170063	00.8363	170150	01.0984	180059	00.9319	190017	01.2106
160131	01.1679	170064	01.1082	170151	01.0407	180060	00.8735	190018	01.2074
160133	01.1717	170066	00.8849	170152	01.0120	180063	01.0589	190019	01.4507
160134	00.9620	170067	00.9909	170159	01.0763	180064	01.1404	190020	01.1812
160135	00.9799	170068	01.2842	170160	00.9317	180065	00.9817	190025	01.2587
160138	01.1056	170069	00.9750	170164	01.0581	180066	01.2535	190026	01.3652
160140	01.0661	170070	00.9897	170166	01.0034	180067	01.8256	190027	01.4261
160141	00.8460	170072	00.9371	170168	00.9510	180069	01.1604	190029	01.2638
160142	01.0971	170073	01.0654	170171	01.2075	180070	01.0745	190033	00.9438

Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix
190034	01.2179	190148	00.9593	200025	01.1679	210055	01.2270	220084	01.2091
190035	01.4124	190149	00.9697	200026	00.9999	210056	01.3927	220086	01.5838
190036	01.6955	190151	01.0761	200027	01.1783	210057	01.2429	220088	01.4920
190037	01.0166	190152	01.3672	200028	01.0065	210058	01.8423	220089	01.3108
190039	01.4480	190155	00.9543	200031	01.2723	210059	01.3072	220090	01.2056
190040	01.3858	190156	00.8564	200032	01.2903	210060	01.1020	220092	01.1762
190041	01.5578	190158	01.2649	200033	01.6941	210898	00.7390	220094	01.2573
190043	01.1260	190160	01.1360	200034	01.1863	210899	00.9480	220095	01.2020
190044	01.1025	190161	00.8949	200037	01.1658	220001	01.1962	220097	01.0307
190045	01.2825	190162	01.2000	200038	01.0122	220002	01.3684	220098	01.2621
190046	01.4691	190164	01.1444	200039	01.2858	220003	01.1408	220099	01.1061
190047	01.0713	190165	01.0611	200040	01.0306	220004	01.2407	220100	01.2242
190048	01.0784	190166	01.0572	200041	01.1391	220006	01.3116	220101	01.3751
190049	01.0177	190167	01.2633	200043	00.6909	220008	01.1819	220102	00.7578
190050	01.0740	190170	01.0121	200050	01.1536	220010	01.1367	220104	01.1867
190053	01.0898	190173	01.4173	200051	01.0023	220011	01.1606	220105	01.1469
190054	01.3100	190175	01.8346	200052	01.0635	220012	01.1983	220106	01.1159
190059	00.9326	190176	01.4895	200055	01.0977	220015	01.2049	220107	01.1527
190060	01.3455	190177	01.4578	200062	00.9518	220016	01.2109	220108	01.1351
190064	01.4881	190178	01.0041	200063	01.2137	220017	01.2647	220110	01.9375
190065	01.4944	190182	01.0674	200066	01.2106	220019	01.0964	220111	01.1581
190071	00.9013	190183	01.1597	200898	00.7832	220020	01.1609	220114	01.0586
190075	01.4157	190184	00.9418	200899	00.8443	220021	01.2594	220115	00.7331
190077	00.8724	190185	01.2092	210001	01.3079	220023	01.1870	220116	01.8280
190078	01.1310	190186	00.8759	210002	01.9364	220024	01.1977	220118	01.9757
190079	01.2423	190187	00.8798	210003	01.4562	220025	01.1120	220119	01.3092
190081	00.9097	190189	00.5025	210004	01.3089	220026	01.3553	220120	01.0360
190083	01.0021	190190	00.9680	210005	01.2097	220028	01.3947	220123	00.9783
190086	01.3062	190191	01.2507	210006	01.1451	220029	01.1617	220126	01.2491
190088	01.3407	190193	01.2359	210007	01.4925	220030	01.1338	220128	01.0921
190089	01.0772	190194	01.2312	210008	01.3136	220031	01.6837	220131	01.1019
190090	01.1914	190196	00.8919	210009	01.7598	220033	01.2800	220133	00.8199
190092	01.2884	190197	01.2411	210010	01.1807	220035	01.2167	220135	01.1399
190095	01.0672	190198	01.1420	210011	01.2805	220036	01.5021	220153	01.0045
190098	01.4567	190199	01.1854	210012	01.6066	220038	01.2435	220154	00.9300
190099	01.1682	190200	01.5245	210013	01.3203	220041	01.1597	220156	01.2604
190102	01.5030	190201	01.3007	210015	01.1941	220042	01.1438	220162	01.3364
190103	00.9066	190202	01.4335	210016	01.9038	220045	01.2738	220163	01.8768
190106	01.1187	190203	01.5699	210017	01.0945	220046	01.3840	220171	01.6570
190109	01.1102	190204	01.5142	210018	01.2570	220048	01.2187	220173	00.5499
190110	00.9479	190205	01.5683	210019	01.4089	220049	01.2561	220897	05.1516
190111	01.5384	190206	01.4212	210022	01.3711	220050	00.9808	220898	00.8024
190112	01.2784	190207	01.2149	210023	01.3058	220051	01.1404	220899	00.8315
190113	01.2964	190208	00.8595	210024	01.2984	220052	01.2460	230001	01.1302
190114	00.9675	190211	00.6135	210025	01.2972	220053	01.2595	230002	01.2718
190115	01.3146	190212	00.9044	210026	01.3267	220055	01.1914	230003	01.2055
190116	01.2081	190213	00.9668	210027	01.2201	220057	01.2397	230004	01.6733
190118	01.0448	190214	00.8187	210028	01.0765	220058	01.0325	230005	01.2748
190120	00.9397	190215	03.6094	210029	01.3649	220060	01.1334	230006	01.0692
190122	01.2435	190216	00.8091	210030	01.0564	220062	00.8562	230007	01.0971
190124	01.4418	200001	01.2745	210031	01.7864	220063	01.1494	230012	00.9196
190125	01.3794	200002	01.0960	210032	01.2291	220064	01.1862	230013	01.2543
190127	01.4443	200003	01.1124	210033	01.1261	220065	01.2213	230014	01.1529
190128	00.8919	200006	01.1327	210034	01.2173	220066	01.2972	230015	01.3311
190130	00.9670	200007	01.0809	210035	01.1482	220067	01.2764	230017	01.5403
190131	01.2170	200008	01.2441	210036	01.2625	220068	00.6167	230019	01.5651
190132	01.1206	200009	01.7055	210037	01.2211	220070	01.1345	230020	01.6375
190133	00.9796	200012	01.1198	210038	01.3842	220071	01.8403	230021	01.5935
190134	00.9951	200013	01.0874	210039	01.2267	220073	01.2327	230022	01.2579
190135	01.3375	200015	01.2473	210040	01.3417	220074	01.2249	230024	01.5191
190136	01.0383	200016	01.0123	210043	01.2496	220075	00.8092	230027	01.0670
190138	00.7000	200017	01.2729	210044	01.2145	220076	01.2257	230029	01.5022
190140	01.0688	200018	01.1512	210045	01.0035	220077	01.6797	230030	01.2533
190142	01.0096	200019	01.2509	210046	01.1112	220079	01.1293	230031	01.4339
190144	01.1025	200020	01.0966	210048	01.1824	220080	01.1756	230032	01.7505
190145	00.9556	200021	01.1731	210049	01.1477	220081	01.0341	230034	01.1705
190146	01.5216	200023	00.8329	210051	01.3056	220082	01.2350	230035	01.1417
190147	00.9867	200024	01.2114	210054	01.2408	220083	01.1502	230036	01.2907

Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix
230037	01.1444	230133	01.1640	230253	01.0816	240072	01.0026	240153	01.0352
230038	01.6187	230134	01.2405	230254	01.2636	240073	00.9865	240154	00.9451
230040	01.2889	230135	01.2813	230257	01.1612	240075	01.2174	240155	00.9516
230041	01.1898	230137	01.1530	230259	01.0979	240076	01.1525	240157	01.0623
230042	01.1365	230138	00.8798	230264	01.2197	240077	00.9183	240160	00.9710
230043	00.6022	230141	01.5947	230266	01.1682	240078	01.4028	240161	00.9439
230046	01.8281	230142	01.1889	230269	01.2341	240079	01.1045	240162	01.0509
230047	01.2644	230143	01.2601	230270	01.2746	240080	01.4010	240163	00.9156
230053	01.4459	230144	01.2190	230273	01.5598	240082	01.1735	240166	01.0994
230054	01.6900	230145	01.1540	230275	00.9816	240083	01.3385	240169	01.0036
230055	01.1974	230146	01.2745	230276	01.0800	240084	01.3539	240170	01.0627
230056	00.9377	230147	01.5056	230277	01.1995	240085	00.8658	240171	01.0024
230058	01.1228	230149	01.2042	230278	00.9707	240086	01.1494	240172	01.1128
230059	01.4805	230150	01.3423	230898	00.8027	240087	01.1194	240173	01.0071
230060	01.1303	230151	01.4043	230899	00.8546	240088	01.4581	240175	00.8588
230062	01.1123	230153	01.0842	240001	01.5591	240089	01.1182	240176	00.9598
230063	01.2824	230154	01.0493	240002	01.6629	240090	01.0191	240179	01.0073
230065	01.4624	230155	01.1095	240003	01.1957	240091	00.9082	240180	00.9487
230066	01.3232	230156	01.6427	240004	01.4744	240093	01.2910	240183	01.3732
230068	01.3828	230157	01.3886	240005	00.8935	240094	00.9527	240184	00.9682
230069	01.1070	230159	01.2497	240006	01.1380	240096	01.0564	240187	01.2756
230070	01.3160	230162	00.9746	240007	01.0822	240097	01.1141	240192	00.9030
230071	00.6384	230165	01.7622	240008	01.0769	240098	00.9599	240193	01.0840
230072	01.2082	230167	01.2388	240009	01.0600	240099	00.9508	240196	00.6236
230075	01.3344	230169	01.3559	240010	01.9058	240100	01.2708	240200	00.9069
230076	01.2507	230171	01.1103	240011	01.0705	240101	01.3412	240205	00.9107
230077	02.1143	230172	01.1963	240013	01.2559	240102	01.0094	240206	00.7972
230078	01.2621	230173	01.2949	240014	01.1504	240103	01.0766	240207	01.1944
230080	01.2919	230174	01.2820	240016	01.3887	240104	01.1881	240210	01.2594
230081	01.1995	230175	01.0468	240017	01.1134	240105	00.9206	240211	00.9038
230082	01.1539	230176	01.2465	240018	01.2369	240106	01.2795	240898	00.7882
230085	01.2210	230178	01.0169	240019	01.3596	240107	00.8709	240899	00.8710
230086	01.0127	230180	01.0918	240020	01.2333	240108	00.9362	250001	01.5399
230087	01.1174	230184	01.1290	240021	01.0621	240109	01.0081	250002	00.7765
230089	01.3480	230186	00.9792	240022	01.0988	240110	01.0310	250003	00.9589
230090	01.0476	230188	01.2248	240023	01.1315	240111	00.9775	250004	01.4356
230092	01.2529	230189	00.9251	240025	01.1725	240112	00.9831	250005	00.9835
230093	01.1982	230190	01.1447	240027	01.0606	240114	01.0416	250006	00.9773
230095	01.1916	230191	00.8970	240028	01.0528	240115	01.5474	250007	01.2244
230096	01.0654	230193	01.3368	240029	01.1988	240116	00.9184	250008	00.9372
230097	01.5500	230194	01.1860	240030	01.3277	240117	01.1036	250009	01.1156
230099	01.2724	230195	01.3058	240031	00.9458	240119	00.8475	250010	01.0025
230100	01.1690	230197	01.2242	240036	01.4736	240121	00.9609	250012	00.8733
230101	01.1318	230199	01.1549	240037	01.0787	240122	01.1381	250015	00.9607
230103	01.0271	230201	01.0165	240038	01.4693	240123	01.0794	250016	00.8719
230104	01.6803	230204	01.3064	240040	01.2452	240124	01.0091	250017	01.0209
230105	01.5971	230205	01.0249	240041	01.1851	240125	00.9293	250018	00.8363
230106	01.1301	230207	01.2716	240043	01.1773	240127	00.9329	250019	01.3365
230107	00.9164	230208	01.0791	240044	01.1741	240128	01.1364	250020	01.0016
230108	01.1772	230211	00.9307	240045	01.0608	240129	01.0413	250021	00.9026
230110	01.2499	230212	01.1131	240047	01.4131	240130	01.0184	250023	00.8015
230111	01.0338	230213	01.0639	240048	01.2781	240132	01.2706	250024	00.9050
230113	01.0124	230216	01.3194	240049	01.7230	240133	01.1282	250025	01.0061
230114	00.6462	230217	01.1899	240050	01.1148	240135	00.8918	250027	00.9713
230115	00.9698	230219	00.9790	240051	00.9245	240136	00.8937	250029	00.9231
230116	00.9002	230221	01.2634	240052	01.2132	240137	01.1670	250030	00.9331
230117	01.8809	230222	01.3368	240053	01.4695	240138	00.8527	250031	01.2064
230118	01.2624	230223	01.2949	240056	01.3104	240139	00.9820	250032	01.3393
230119	01.2358	230227	01.4365	240057	01.7114	240140	00.7380	250033	01.0033
230120	01.0471	230228	01.2444	240058	00.9840	240141	01.0351	250034	01.4589
230121	01.2632	230230	01.3782	240059	01.1410	240142	01.1385	250035	00.8741
230122	01.3263	230232	01.0052	240061	01.4766	240143	00.9277	250036	01.0085
230124	01.0877	230235	01.0119	240063	01.5036	240144	00.9921	250037	00.9102
230125	01.3536	230236	01.3646	240064	01.1795	240145	01.0649	250038	00.8891
230128	01.3192	230237	01.1827	240065	01.0480	240146	00.9352	250039	00.9782
230129	01.9560	230239	01.1941	240066	01.3455	240148	01.0028	250040	01.1900
230130	01.6273	230241	01.1864	240069	01.1632	240150	00.9566	250042	01.1580
230132	01.4221	230244	01.3795	240071	01.1107	240152	00.9781	250043	00.9090

Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix
250044	01.0473	250141	01.1657	260085	01.5326	260899	00.8228	280014	01.0428
250045	01.1864	250898	00.8559	260086	01.1041	270002	01.2251	280015	00.9748
250046	01.0265	250899	00.8698	260089	01.0699	270003	01.1832	280017	01.1827
250047	00.8965	260001	01.5707	260091	01.6009	270004	01.6430	280018	00.9702
250048	01.3857	260002	01.3737	260092	01.0858	270006	00.8964	280020	01.4395
250049	00.9585	260003	00.9599	260094	01.0903	270007	01.0817	280021	01.1521
250050	01.2125	260004	01.0397	260095	01.3922	270009	01.0825	280022	01.0292
250051	00.9174	260005	01.4687	260096	01.4752	270011	01.0993	280023	01.3202
250057	01.1432	260006	01.4662	260097	01.2022	270012	01.4842	280024	00.8529
250058	01.1760	260007	01.3411	260100	01.0440	270013	01.2819	280025	00.9922
250059	01.0629	260008	01.2948	260102	01.0075	270014	01.6488	280026	01.2369
250060	00.7890	260009	01.2502	260103	01.3183	270016	00.8745	280028	00.9854
250061	00.8942	260011	01.5834	260104	01.7238	270017	01.2230	280029	01.0613
250062	00.9611	260012	01.0017	260105	01.9227	270019	00.9323	280030	01.8618
250063	00.8628	260013	01.2306	260107	01.3340	270021	01.1487	280031	01.0409
250065	00.8900	260014	01.6464	260108	01.7083	270023	01.3190	280032	01.2267
250066	00.9767	260015	01.2268	260109	01.0493	270024	00.9570	280033	01.0677
250067	00.9783	260016	01.6060	260110	01.6254	270026	00.9755	280034	01.2409
250068	00.8565	260017	01.2002	260111	01.0109	270027	01.1239	280035	00.9618
250069	01.2495	260018	01.0024	260112	01.4424	270028	01.0544	280037	00.9845
250071	01.0909	260019	01.0022	260113	01.1709	270029	01.1327	280038	01.0469
250072	01.2504	260020	01.6911	260115	01.0948	270030	01.0155	280039	01.1272
250073	00.9859	260021	01.3040	260116	01.1773	270031	00.9423	280040	01.5812
250076	00.9279	260022	01.4028	260119	01.1644	270032	01.1473	280041	00.9943
250077	00.9437	260023	01.2386	260120	01.2877	270033	00.9096	280042	00.9338
250078	01.3960	260024	01.0578	260122	01.2572	270035	00.9991	280043	01.0640
250079	00.8720	260025	01.2719	260123	00.9566	270036	01.0216	280045	01.0703
250081	01.2428	260027	01.5170	260127	01.0220	270039	00.9767	280046	00.9779
250082	01.2026	260029	01.1847	260128	00.9554	270040	01.0454	280047	01.1901
250083	00.9154	260030	01.1670	260129	01.0885	270041	00.9269	280048	01.1206
250084	01.1659	260031	01.4396	260131	01.2490	270044	01.2229	280049	01.0482
250085	01.0603	260032	01.6513	260134	01.2638	270046	00.9698	280050	01.0145
250086	00.9991	260033	01.3646	260137	01.1782	270047	00.9950	280051	00.9488
250088	01.0369	260034	01.0911	260138	01.8874	270048	01.0553	280052	01.0393
250089	01.0214	260035	01.0616	260141	02.1225	270049	01.6485	280054	01.2263
250091	00.9586	260036	01.0241	260142	01.1699	270050	01.0347	280055	00.9146
250093	01.1766	260037	01.2948	260143	00.9856	270051	01.2403	280056	00.9873
250094	01.2487	260039	01.2185	260146	01.1902	270052	01.0314	280057	01.0298
250095	01.0067	260040	01.4628	260147	01.0086	270053	00.9789	280058	01.1157
250096	01.1606	260042	01.1971	260148	01.0036	270055	00.6705	280060	01.5309
250097	01.1915	260044	01.0715	260158	01.0543	270057	01.1327	280061	01.3186
250098	00.8690	260047	01.3484	260159	01.1434	270058	00.8771	280062	01.1679
250099	01.2247	260048	01.4423	260160	01.1230	270059	00.8983	280064	01.0573
250100	01.2312	260050	01.0850	260162	01.0904	270060	00.8912	280065	01.1625
250101	00.8580	260051	01.1498	260163	01.1934	270063	00.8807	280066	01.0617
250102	01.4900	260052	01.2498	260164	01.1381	270067	00.9368	280068	00.9701
250104	01.3720	260053	01.1146	260166	01.2070	270068	00.8296	280070	01.2179
250105	00.9316	260054	01.3382	260172	01.0053	270072	00.8245	280073	00.9880
250107	00.9947	260055	01.0822	260173	01.0288	270073	01.2172	280074	01.1250
250109	00.9407	260057	01.2591	260175	01.1373	270074	00.8855	280075	01.2557
250112	01.0254	260059	01.1251	260176	01.6226	270075	00.9132	280076	00.9680
250117	01.1272	260061	01.0984	260177	01.2979	270076	00.8250	280077	01.2516
250119	01.0188	260062	01.1714	260178	01.5342	270079	00.8914	280078	01.0864
250120	01.0266	260063	01.1740	260179	01.4914	270080	01.1023	280079	01.0308
250122	01.2128	260064	01.3768	260180	01.5708	270081	00.9382	280080	01.1301
250123	01.2588	260065	01.6884	260183	01.5767	270082	00.9416	280081	01.5001
250124	00.8932	260066	01.1278	260186	01.1638	270083	01.0878	280082	01.3382
250125	01.2861	260067	00.9312	260188	01.3542	270084	00.8941	280083	00.9476
250126	01.0194	260068	01.8067	260189	00.8693	270898	00.8024	280084	00.9869
250127	00.7758	260070	01.1725	260190	01.1773	270899	00.8443	280085	00.9105
250128	00.9426	260073	01.0728	260191	01.1961	280001	01.0482	280088	01.6844
250129	00.8723	260074	01.1585	260193	01.2724	280003	01.9394	280089	01.0653
250131	00.9282	260077	01.4769	260195	01.1184	280005	01.4339	280090	00.9574
250134	00.9408	260078	01.1305	260197	01.2118	280009	01.5348	280091	01.0503
250136	00.7886	260079	01.0009	260198	01.2413	280010	03.4238	280092	00.9364
250138	01.2497	260080	01.1264	260200	01.2104	280011	01.0128	280094	01.1132
250139	00.7669	260081	01.4254	260202	01.2520	280012	01.1794	280097	00.8642
250140	00.9025	260082	01.1355	260898	00.8503	280013	01.9231	280098	00.9837

Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix
280101	01.0937	300899	00.8442	310085	01.2098	320899	00.8960	330095	01.2447
280102	00.8573	310001	01.7032	310086	01.2065	330001	01.1438	330096	01.1132
280104	01.0018	310002	01.8442	310087	01.2087	330002	01.4243	330097	01.2031
280105	01.2333	310003	01.2580	310088	01.1847	330003	01.3075	330100	00.6781
280106	01.1196	310005	01.2245	310090	01.2286	330004	01.3579	330101	01.6278
280107	01.0025	310006	01.1926	310091	01.2256	330005	01.7282	330102	01.2866
280108	01.0471	310008	01.3004	310092	01.3427	330006	01.3380	330103	01.1953
280109	00.8618	310009	01.1752	310093	01.1320	330007	01.3396	330104	01.3562
280110	00.8623	310010	01.2554	310096	01.8704	330008	01.1660	330106	01.5712
280111	01.2175	310011	01.2290	310105	01.1536	330009	01.3073	330107	01.2163
280114	00.9306	310012	01.6010	310108	01.3397	330010	01.2091	330108	01.1827
280115	01.0551	310013	01.2947	310110	01.2029	330011	01.1730	330110	01.0962
280117	01.1176	310014	01.5904	310111	01.2640	330012	01.6096	330111	01.1369
280118	01.0701	310015	01.7185	310112	01.2394	330013	02.0962	330114	00.9544
280119	00.8959	310016	01.2632	310113	01.2181	330014	01.4742	330115	01.2707
280123	00.7645	310017	01.3321	310115	01.1446	330016	00.9967	330116	00.9889
280898	00.8154	310018	01.2481	310116	01.2486	330019	01.2659	330118	01.5665
280899	00.8709	310019	01.6785	310118	01.2523	330020	01.0415	330119	01.6152
290001	01.6104	310020	01.2370	310119	01.5219	330022	00.9401	330121	00.9780
290002	00.9693	310021	01.2557	310120	01.1050	330023	01.1999	330122	01.2843
290003	01.6761	310022	01.2188	310121	01.1161	330024	01.7968	330125	01.7708
290005	01.1747	310024	01.2473	310898	00.8024	330025	01.0795	330126	01.1630
290006	01.0120	310025	01.1606	310899	00.8443	330027	01.4338	330127	01.2820
290007	01.7973	310026	01.2613	320001	01.4317	330028	01.3208	330128	01.4989
290008	01.3000	310027	01.2751	320002	01.2656	330029	01.0736	330132	01.1424
290009	01.4996	310028	01.1495	320003	01.1473	330030	01.1447	330133	01.2932
290010	01.1124	310029	01.7952	320004	01.2040	330033	01.1540	330135	01.2672
290011	00.9990	310031	02.6143	320005	01.2287	330034	01.0697	330136	01.2636
290012	01.3341	310032	01.2750	320006	01.3135	330036	01.1503	330140	01.6790
290013	01.0405	310034	01.2259	320009	01.4620	330037	01.0396	330141	01.3023
290014	01.0033	310036	01.2212	320011	00.9896	330038	01.1647	330142	01.3755
290015	00.8412	310037	01.2195	320012	01.0410	330039	00.8725	330144	01.0279
290016	01.0938	310038	01.7734	320013	01.0551	330041	01.3644	330148	01.0043
290018	00.9035	310039	01.2862	320014	00.9138	330043	01.2413	330151	01.1009
290019	01.2246	310040	01.2175	320016	01.1534	330044	01.1795	330152	01.3795
290020	01.2048	310041	01.2661	320017	01.2441	330045	01.3591	330153	01.4989
290021	01.5282	310042	01.1619	320018	01.3493	330046	01.5738	330154	01.4583
290022	01.6436	310043	01.2152	320019	01.4638	330047	01.2300	330157	01.2597
290027	01.0616	310044	01.2543	320021	01.7061	330048	01.2581	330158	01.2943
290029	00.8721	310045	01.2743	320022	01.2404	330049	01.2130	330159	01.3076
290032	01.3466	310047	01.2754	320023	01.1054	330053	01.0582	330160	01.4637
300001	01.2813	310048	01.2502	320030	00.9918	330055	01.3757	330161	01.0257
300003	01.8497	310049	01.3307	320031	00.9371	330056	01.4324	330162	01.2967
300005	01.2873	310050	01.1799	320032	00.9381	330057	01.6166	330163	01.1568
300006	01.1128	310051	01.2781	320033	01.1669	330058	01.3115	330164	01.3464
300007	01.1242	310052	01.2087	320035	01.1181	330059	01.4692	330166	00.9268
300008	01.2835	310054	01.2555	320037	01.1340	330061	01.3321	330167	01.5484
300009	01.1585	310056	01.1523	320038	01.2461	330062	01.0706	330169	01.3836
300010	01.1714	310057	01.2676	320046	01.0415	330064	01.3560	330171	01.3182
300011	01.2464	310058	01.1626	320048	01.3088	330065	01.1551	330175	01.0709
300012	01.3383	310060	01.1870	320056	00.8849	330066	01.2255	330177	00.9993
300013	01.2264	310061	01.1904	320057	01.0453	330067	01.3172	330179	00.9113
300014	01.3084	310062	01.3007	320058	00.8769	330072	01.3529	330180	01.2120
300015	01.1263	310063	01.3402	320059	01.0262	330073	01.2027	330181	01.2931
300016	01.2599	310064	01.2372	320060	00.8850	330074	01.2287	330182	02.3225
300017	01.2032	310067	01.2542	320061	01.2372	330075	01.0449	330183	01.3750
300018	01.2110	310069	01.1470	320062	00.9339	330078	01.3838	330184	01.2938
300019	01.2918	310070	01.3033	320063	01.2964	330079	01.1401	330185	01.1771
300020	01.2471	310072	01.2539	320065	01.2295	330080	01.2665	330186	01.0514
300021	01.1838	310073	01.4201	320067	00.8716	330082	01.1914	330188	01.2030
300022	01.1127	310074	01.3236	320068	00.9895	330084	00.9584	330189	00.8562
300023	01.2537	310075	01.2965	320069	01.1045	330085	01.3619	330191	01.2484
300024	01.2004	310076	01.3560	320070	00.9608	330086	01.3084	330193	01.3303
300026	01.1051	310077	01.6230	320074	01.1077	330088	01.0767	330194	01.7676
300029	01.2874	310078	01.2499	320076	01.1966	330090	01.6770	330195	01.6034
300033	01.0425	310081	01.2396	320079	01.1573	330091	01.3758	330196	01.3457
300034	01.8650	310083	01.2688	320080	00.6470	330092	00.9945	330197	01.0284
300898	00.7825	310084	01.2238	320898	00.8060	330094	01.2186	330198	01.3554

Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix
330199	01.3293	330315	01.1584	340040	01.7854	340135	00.8679	350055	00.9508
330201	01.4955	330316	01.2528	340041	01.2259	340136	00.9373	350056	00.8768
330202	01.4220	330327	00.9353	340042	01.1445	340137	01.1745	350058	01.0178
330203	01.3798	330331	01.2210	340044	01.0655	340138	01.1782	350060	00.9468
330204	01.3378	330332	01.2464	340045	00.9992	340141	01.5711	350061	00.9743
330205	01.1203	330333	01.2667	340047	01.8441	340142	01.1885	350063	00.8795
330208	01.1770	330336	01.2694	340048	01.2335	340143	01.3316	350064	00.7983
330209	01.2394	330338	01.1631	340049	00.6791	340144	01.3129	350065	00.9795
330211	01.1845	330339	00.7865	340050	01.1995	340145	01.3058	350066	00.8528
330212	01.2036	330340	01.1561	340051	01.1900	340146	01.0431	350898	00.8061
330213	01.0769	330350	01.7856	340052	01.0746	340147	01.2910	350899	00.8566
330214	01.7095	330353	01.2067	340053	01.5650	340148	01.4261	360001	01.2534
330215	01.1923	330354	01.2822	340054	01.0576	340151	01.1772	360002	01.1623
330218	01.2973	330357	01.3439	340055	01.2102	340153	01.8088	360003	01.6539
330219	01.5433	330359	00.9383	340060	01.1361	340154	00.8271	360006	01.7876
330221	01.2325	330372	01.2610	340061	01.6473	340155	01.4934	360007	01.1273
330222	01.2373	330381	01.2419	340063	01.0260	340156	00.8605	360008	01.2352
330223	01.0665	330383	01.3578	340064	01.1072	340158	01.1242	360009	01.3393
330224	01.2125	330385	01.1998	340065	01.2437	340159	01.1506	360010	01.1763
330225	01.2013	330386	01.1395	340067	01.1199	340160	01.0602	360011	01.2571
330226	01.2758	330387	00.8997	340068	01.2966	340162	01.3085	360012	01.2595
330229	01.2174	330389	01.8623	340069	01.7627	340164	01.3391	360013	01.0783
330230	01.5058	330390	01.2279	340070	01.2476	340166	01.4142	360014	01.2130
330231	01.0768	330393	01.6018	340071	01.0787	340168	00.5580	360015	01.4871
330232	01.2653	330394	01.4432	340072	01.0752	340898	00.8024	360016	01.4893
330233	01.4736	330395	01.3567	340073	01.3927	340899	00.8299	360017	01.7169
330234	02.0040	330396	01.1829	340075	01.1832	350001	01.0397	360018	01.4584
330235	01.1690	330397	01.3141	340080	01.0965	350002	01.7022	360019	01.1941
330236	01.3491	330398	01.2166	340084	01.0557	350003	01.1439	360020	01.2954
330238	01.0952	330399	01.3516	340085	01.2707	350004	01.9044	360021	01.2256
330239	01.1592	330898	00.7874	340087	01.1950	350005	01.1972	360024	01.2390
330240	01.2573	330899	00.8416	340088	01.2190	350006	01.3237	360025	01.1888
330241	01.8831	340001	01.3275	340089	00.9514	350007	01.0583	360026	01.1311
330242	01.2808	340002	01.8310	340090	01.1344	350008	00.9790	360027	01.5505
330244	01.0491	340003	01.1707	340091	01.6714	350009	01.1810	360028	01.3271
330245	01.2671	340004	01.4039	340093	01.0543	350010	01.0781	360029	01.1186
330246	01.2141	340005	01.1584	340094	01.3618	350011	01.7832	360030	01.1530
330247	00.6761	340006	01.1632	340096	01.1743	350012	01.0574	360031	01.2536
330249	01.2474	340007	01.1548	340097	01.0329	350013	01.0814	360032	01.1513
330250	01.2292	340008	01.1310	340098	01.6391	350014	01.0791	360034	01.1439
330252	00.9569	340009	01.1592	340099	01.1880	350015	01.5344	360035	01.4568
330254	01.0180	340010	01.3166	340100	00.9069	350016	00.9438	360036	01.1944
330258	01.3081	340011	01.0653	340101	00.9958	350017	01.3332	360037	01.9975
330259	01.3523	340012	01.0944	340104	00.9594	350018	01.0228	360038	01.5263
330261	01.2567	340013	01.2427	340105	01.3416	350019	01.5401	360039	01.2661
330263	01.0461	340014	01.6714	340106	01.1219	350020	01.3209	360040	01.3090
330264	01.2179	340015	01.2328	340107	01.3241	350021	01.1082	360041	01.3118
330265	01.2475	340016	01.1139	340109	01.3153	350023	00.9288	360042	01.0940
330267	01.2624	340017	01.2893	340111	01.1961	350024	01.0438	360044	01.0706
330268	01.0664	340018	01.1950	340112	01.0492	350025	00.9913	360045	01.4303
330270	01.9181	340019	01.0903	340113	01.9497	350027	00.9878	360046	01.1307
330273	01.2918	340020	01.2273	340114	01.4635	350029	00.9542	360047	01.0638
330275	01.2869	340021	01.2286	340115	01.4781	350030	01.0454	360048	01.8010
330276	01.2095	340022	01.0707	340116	01.8039	350033	00.9567	360049	01.2728
330277	01.1707	340023	01.2410	340119	01.2852	350034	00.9009	360050	01.1993
330279	01.2521	340024	01.2421	340120	01.0940	350035	00.9347	360051	01.4864
330281	00.5564	340025	01.1648	340121	01.0442	350036	00.9277	360052	01.6739
330285	01.6005	340027	01.1522	340122	00.9954	350038	01.0516	360054	01.3102
330286	01.3404	340028	01.4274	340123	01.1463	350039	00.9653	360055	01.2086
330288	01.0046	340030	01.9430	340124	01.0855	350041	01.0079	360056	01.2997
330290	01.7419	340031	01.0832	340125	01.4556	350042	00.9900	360057	00.9696
330293	01.1743	340032	01.2968	340126	01.3572	350043	01.5915	360058	01.1388
330304	01.2439	340034	01.2151	340127	01.2000	350044	00.8474	360059	01.5215
330306	01.3946	340035	01.0925	340129	01.3028	350047	01.2464	360062	01.6256
330307	01.1950	340036	01.1686	340130	01.3873	350049	01.1328	360063	01.1168
330308	01.2255	340037	01.2536	340131	01.3318	350050	00.9934	360064	01.4693
330309	01.2257	340038	01.2255	340132	01.4166	350051	00.9741	360065	01.2504
330314	01.2790	340039	01.2798	340133	01.1226	350053	00.9322	360066	01.2613

Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix
360067	01.0740	360142	00.9717	370005	00.9811	370099	01.1542	380020	01.3715
360068	01.5459	360143	01.2909	370006	01.2456	370100	01.0232	380021	01.2129
360069	01.0070	360144	01.2747	370007	01.1946	370103	00.9117	380022	01.2118
360070	01.4999	360145	01.5707	370008	01.4141	370105	01.9947	380023	01.2526
360071	01.3052	360147	01.1791	370011	00.9766	370106	01.3715	380024	01.3452
360072	01.1468	360148	01.1536	370012	00.8910	370108	01.1451	380025	01.2531
360074	01.3338	360149	01.1119	370013	01.6822	370110	00.9650	380026	01.3461
360075	01.4440	360150	01.2642	370014	01.2877	370112	01.0130	380027	01.2294
360076	01.2684	360151	01.3654	370015	01.1424	370113	01.1008	380029	01.1227
360077	01.4318	360152	01.4909	370016	01.3570	370114	01.6068	380031	00.9753
360078	01.3300	360153	01.1774	370017	00.9907	370117	01.4619	380033	01.6789
360079	01.6767	360154	01.0857	370018	01.2298	370121	01.3348	380035	01.2271
360080	01.2041	360155	01.2947	370019	01.2474	370122	01.1059	380036	01.0689
360081	01.3128	360156	01.1299	370020	01.2799	370123	01.1900	380037	01.2657
360082	01.2860	360159	01.1632	370021	00.9849	370125	01.0332	380038	01.2972
360083	01.2322	360161	01.2233	370022	01.3024	370126	01.0470	380039	01.2975
360084	01.4918	360162	01.2459	370023	01.4091	370131	01.0631	380040	01.3569
360085	01.6665	360163	01.7052	370025	01.3406	370133	01.0758	380042	01.0774
360086	01.3369	360164	00.9391	370026	01.4199	370138	01.1593	380047	01.6180
360087	01.3577	360165	01.0792	370028	01.7214	370139	01.0297	380048	01.0548
360088	01.1776	360166	01.1096	370029	01.1887	370140	01.1081	380050	01.3194
360089	01.0813	360169	01.0496	370030	01.2372	370141	01.4212	380051	01.4747
360090	01.2394	360170	01.1451	370032	01.3621	370146	01.0660	380052	01.2107
360091	01.2692	360172	01.3984	370033	01.1174	370148	01.3338	380055	01.1838
360092	01.1437	360174	01.1942	370034	01.1482	370149	01.2283	380056	01.0961
360093	01.2853	360175	01.1397	370035	01.4525	370153	01.1418	380060	01.3738
360094	01.2371	360176	01.2204	370036	01.0052	370154	00.9639	380061	01.6329
360095	01.2835	360177	01.2106	370037	01.5460	370156	01.0811	380062	00.9756
360096	01.1080	360178	01.2498	370038	01.0032	370157	00.9035	380063	01.2334
360098	01.3723	360179	01.2524	370039	01.2782	370158	01.1006	380064	01.3182
360099	01.0650	360180	02.2001	370040	01.0759	370159	01.2605	380065	00.9686
360100	01.2759	360184	00.8025	370041	01.0391	370161	01.2575	380066	01.2062
360101	01.6803	360185	01.2094	370042	00.8807	370163	00.8880	380068	00.9978
360102	01.2769	360186	01.1901	370043	01.0168	370165	01.1324	380069	01.2411
360103	01.3282	360187	01.2880	370045	01.0092	370166	01.1092	380070	01.0540
360104	00.8937	360188	01.0681	370046	00.9333	370169	01.0395	380071	01.2572
360106	01.1125	360189	01.0250	370047	01.2195	370170	00.9783	380072	00.9225
360107	01.1391	360192	01.3144	370048	01.2188	370171	01.0136	380075	01.3931
360108	01.0289	360193	01.3230	370049	01.3436	370172	00.9019	380078	01.1569
360109	01.0295	360194	01.1442	370051	00.9852	370173	01.2381	380081	01.1417
360112	01.6491	360195	01.2173	370054	01.2764	370174	00.9734	380082	01.2589
360113	01.2918	360197	01.1654	370056	01.4479	370176	01.2259	380083	01.1622
360114	01.0447	360200	01.1348	370057	01.1008	370177	00.9699	380084	01.2297
360115	01.2431	360203	01.1274	370059	01.2336	370178	01.0015	380087	01.0743
360116	01.0758	360204	01.2462	370060	01.0235	370179	00.9605	380088	00.9436
360118	01.2672	360210	01.1554	370063	01.1827	370180	00.9839	380089	01.3093
360119	01.2255	360211	01.1679	370064	01.0099	370183	01.1330	380090	01.3165
360120	00.7546	360212	01.4509	370065	01.0625	370186	00.9484	380091	01.1747
360121	01.2717	360213	01.1356	370069	01.1063	370189	00.9916	380094	01.0142
360122	01.3348	360218	01.2873	370071	01.0167	370190	01.0816	380898	00.8383
360123	01.1999	360230	01.3400	370072	00.9499	370898	00.7870	380899	00.8276
360124	01.2052	360231	01.0886	370076	01.1771	370899	00.7961	390001	01.2884
360125	01.0612	360232	01.0889	370077	01.1818	380001	01.3274	390002	01.2966
360126	01.2130	360234	01.2742	370078	01.5009	380002	01.1890	390003	01.1671
360127	01.0741	360236	01.1766	370079	00.9184	380003	01.1920	390004	01.2620
360128	01.0532	360238	00.9128	370080	00.9571	380004	01.8633	390005	01.0247
360129	01.0136	360239	01.1610	370082	00.9897	380005	01.1644	390006	01.7442
360130	01.1429	360240	00.5767	370083	00.9551	380006	01.2568	390007	01.2196
360131	01.2181	360241	00.6038	370084	00.9760	380007	01.7372	390008	01.1831
360132	01.2239	360242	01.4433	370085	00.8630	380008	01.0578	390009	01.5841
360133	01.3977	360243	00.9187	370086	01.2103	380009	01.6823	390010	01.1516
360134	01.5354	360244	00.7968	370089	01.3061	380010	01.1702	390011	01.1706
360135	01.1295	360245	00.9883	370091	01.5841	380011	01.1552	390012	01.2238
360136	01.1278	360898	00.8302	370092	01.0818	380013	01.2218	390013	01.2089
360137	01.5526	360899	00.8967	370093	01.7477	380014	01.3178	390014	00.6912
360139	01.0331	370001	01.6929	370094	01.4151	380017	01.8111	390015	01.0853
360140	01.0409	370002	01.1927	370095	00.8996	380018	01.8943	390016	01.1722
360141	01.4347	370004	01.2491	370097	01.3036	380019	01.1193	390017	01.1894

Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix
390018	01.2229	390097	01.3126	390176	01.1466	390899	00.8517	410012	01.6547
390019	01.0880	390098	01.6395	390178	01.3075	400001	01.2067	410013	01.1794
390021	01.0174	390100	01.6719	390179	01.2890	400002	01.2762	410898	00.7956
390022	01.3353	390101	01.2080	390180	01.3831	400003	01.2025	410899	00.8315
390023	01.1985	390102	01.2748	390181	01.0472	400004	01.1643	420002	01.3531
390024	00.7999	390103	01.1001	390183	01.0791	400005	01.0243	420004	02.0065
390025	00.7817	390104	01.0892	390184	01.1516	400006	01.2732	420005	01.0739
390026	01.2453	390106	01.0005	390185	01.1270	400007	01.1409	420006	01.4045
390027	01.7938	390107	01.1912	390186	01.0366	400008	01.2120	420007	01.5400
390028	01.7686	390108	01.2603	390189	01.0636	400009	00.9809	420009	01.2405
390029	01.7668	390109	01.1855	390191	01.1329	400010	00.9305	420010	01.0614
390030	01.1534	390110	01.4920	390192	01.1087	400011	01.0389	420011	01.1212
390031	01.1575	390111	01.7279	390193	01.1677	400012	01.0234	420014	01.0692
390032	01.2000	390112	01.2045	390194	01.1058	400013	01.0374	420015	01.3027
390035	01.2662	390113	01.2120	390195	01.6457	400014	01.3062	420016	01.2120
390036	01.2413	390114	01.0550	390196	01.2942	400015	01.2514	420018	01.6640
390037	01.2224	390115	01.2825	390197	01.2804	400016	01.2790	420019	01.1621
390039	01.1195	390116	01.1782	390198	01.2104	400017	01.0975	420020	01.2329
390040	00.9842	390117	01.1770	390199	01.2728	400018	01.2488	420022	00.9879
390041	01.2490	390118	01.1226	390200	01.0584	400019	01.5851	420023	01.3585
390042	01.2979	390119	01.3303	390201	01.2879	400021	01.3256	420026	01.9356
390043	01.0783	390121	01.1764	390203	01.2512	400022	01.2790	420027	01.3318
390044	01.5586	390122	01.0405	390204	01.2489	400024	01.0545	420028	01.1364
390045	01.3466	390123	01.2550	390205	01.2369	400026	00.8668	420029	01.8346
390046	01.4505	390125	01.1782	390206	01.3034	400027	01.1780	420030	01.2513
390047	01.5017	390126	01.1957	390209	00.9264	400028	01.0637	420031	01.0011
390048	01.1341	390127	01.1389	390211	01.1453	400029	01.0261	420032	00.9316
390049	01.5619	390128	01.1415	390213	01.2165	400031	01.1418	420033	01.1939
390050	01.9721	390130	01.1102	390215	01.1702	400032	01.1386	420035	00.7343
390051	02.1509	390131	01.1812	390217	01.1478	400044	01.2355	420036	01.2699
390052	01.1570	390132	01.1095	390219	01.2328	400048	01.0630	420037	01.1867
390054	01.1228	390133	01.5534	390220	01.1308	400061	01.7720	420038	01.2796
390055	01.7069	390135	01.2334	390222	01.2191	400079	01.1625	420039	01.1477
390056	01.0779	390136	01.2082	390223	01.7069	400087	01.2492	420040	01.2416
390057	01.2678	390137	01.1857	390224	00.9321	400088	00.5448	420042	01.0715
390058	01.3227	390138	01.2120	390225	01.2157	400089	00.9929	420043	01.2403
390059	01.4308	390139	01.4538	390226	01.6426	400094	00.9115	420044	01.1508
390060	01.1515	390142	01.6984	390228	01.2071	400096	01.1894	420048	01.1626
390061	01.2359	390145	01.1904	390229	01.5015	400102	01.1721	420049	01.1435
390062	01.1546	390146	01.1942	390231	01.3381	400103	01.4142	420051	01.5886
390063	01.6826	390147	01.2126	390233	01.2687	400104	01.2555	420053	01.0501
390064	01.4478	390148	01.1482	390235	01.8098	400105	01.2890	420054	01.2013
390065	01.1711	390149	01.1829	390236	01.2628	400106	01.1814	420055	01.0572
390066	01.2596	390150	01.1652	390237	01.4913	400109	01.5198	420056	01.1189
390067	01.6240	390151	01.2532	390238	00.9107	400110	01.1475	420057	01.1405
390068	01.2718	390152	01.0519	390242	01.2019	400111	01.1770	420059	00.9772
390069	01.2372	390153	01.2105	390244	00.8953	400112	01.2178	420061	01.2671
390070	01.2202	390154	01.1602	390245	01.3455	400113	01.2818	420062	01.4107
390071	01.0503	390155	01.2007	390246	01.1741	400114	01.0229	420064	01.0741
390072	00.9939	390156	01.3511	390247	01.0536	400115	00.9724	420065	01.3190
390073	01.4896	390157	01.1590	390249	01.1324	400117	01.2168	420066	00.9439
390074	01.2036	390158	01.2851	390252	00.7841	400118	01.1674	420067	01.1899
390075	01.2669	390159	01.2717	390256	01.6995	400120	01.3176	420068	01.2193
390076	01.2445	390160	01.1782	390258	01.2963	400121	01.1824	420069	01.0735
390078	01.0492	390161	01.1592	390260	01.2779	400122	00.9273	420070	01.3021
390079	01.6698	390162	01.2304	390261	01.8888	400123	01.1444	420071	01.3921
390080	01.2048	390163	01.1546	390262	01.7824	400898	00.7430	420072	01.0022
390081	01.2248	390164	02.1200	390263	01.4342	400899	00.8299	420073	01.2987
390083	01.1717	390165	01.0984	390265	01.2701	410001	01.3365	420074	00.9923
390084	01.1558	390166	01.1098	390266	01.1147	410002	01.1414	420075	01.0104
390086	01.1024	390167	01.2431	390267	01.2026	410004	01.4388	420076	01.1978
390088	01.3097	390168	01.1555	390268	01.2669	410005	01.3085	420078	01.6568
390090	01.7546	390169	01.2591	390270	01.2954	410006	01.2048	420079	01.5645
390091	01.1291	390170	01.6964	390272	00.6037	410007	01.5823	420080	01.3066
390092	01.2187	390171	01.1137	390275	00.5337	410008	01.1556	420081	00.8313
390093	01.2772	390172	01.1751	390277	00.5607	410009	01.3276	420082	01.3517
390095	01.2211	390173	01.1175	390278	00.9215	410010	01.0619	420083	01.1847
390096	01.2319	390174	01.6169	390898	01.0669	410011	01.2057	420084	00.7573

Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix
420085	01.2910	430898	00.7854	440090	01.1426	440206	00.9142	450088	01.1101
420086	01.4245	430899	00.8466	440091	01.1721	440898	00.7868	450089	01.2332
420087	01.5452	440001	01.0375	440095	01.1350	440899	00.8833	450101	01.3987
420088	01.2119	440002	01.5764	440100	01.1896	450002	01.4432	450102	01.6532
420089	01.3383	440003	01.1457	440102	01.1238	450004	01.1202	450104	01.2137
420091	00.5469	440006	01.3594	440103	01.2305	450005	01.6991	450107	01.4906
420092	01.0956	440007	01.0199	440104	01.3103	450007	01.3804	450108	01.0440
420098	00.8629	440008	00.9806	440105	01.2811	450008	01.3187	450109	01.0266
420099	00.8568	440009	01.0506	440109	01.3849	450010	01.2982	450110	01.1678
430004	01.1636	440010	00.9163	440110	01.3208	450011	01.6286	450111	01.2517
430005	01.2119	440011	01.2089	440111	01.2896	450014	01.9810	450112	01.2600
430007	01.1497	440012	01.3575	440114	01.3445	450015	01.4882	450113	01.2810
430008	01.1876	440014	00.9036	440115	01.3863	450016	01.6534	450115	01.0549
430009	01.0816	440015	01.5553	440120	01.1819	450018	01.6282	450116	01.4623
430010	01.1753	440016	00.9491	440121	00.9953	450020	01.9779	450119	01.1912
430011	01.3122	440017	01.5104	440125	01.1958	450021	01.8184	450121	01.4068
430012	01.3044	440018	01.3287	440128	00.7516	450023	01.4141	450123	01.0743
430013	01.2064	440019	01.4858	440130	01.1361	450024	01.4619	450124	01.4723
430014	01.2715	440020	01.2209	440131	01.3785	450025	01.5122	450126	01.3493
430015	01.0944	440022	01.1128	440132	01.1068	450027	01.2759	450127	00.9613
430016	01.7346	440023	01.0825	440133	01.1578	450028	01.3668	450128	01.1820
430017	01.1660	440024	01.3184	440135	01.3880	450029	01.4163	450130	01.4733
430018	00.9631	440025	01.2327	440136	01.2834	450031	01.6165	450131	01.2553
430022	00.9714	440026	01.3084	440137	01.3377	450032	01.2120	450132	01.4788
430023	00.8666	440029	01.2350	440141	01.1460	450033	01.6221	450133	01.4922
430024	00.9981	440030	01.1285	440142	01.1555	450034	01.5197	450135	01.6346
430025	01.0094	440031	01.0384	440143	01.3025	450035	01.4968	450137	01.4065
430026	00.9432	440032	00.9982	440144	01.2306	450037	01.4486	450140	00.8573
430027	01.7196	440033	01.0382	440145	01.3489	450039	01.2276	450142	01.4017
430028	01.0902	440034	01.4085	440146	00.3712	450040	01.6006	450143	01.0165
430029	01.0273	440035	01.2405	440147	00.3940	450042	01.6202	450144	01.1112
430031	00.9322	440038	01.0462	440148	01.1084	450043	01.4853	450145	00.9808
430033	01.0455	440039	01.6097	440149	01.1752	450044	01.5588	450146	01.0476
430034	01.0330	440040	00.8918	440150	01.3087	450046	01.3958	450147	01.3427
430036	01.0386	440041	00.8547	440151	01.2729	450047	01.0487	450148	01.3368
430037	00.9385	440048	01.1870	440152	01.3027	450050	01.1741	450149	01.3820
430038	01.0803	440047	00.8943	440153	01.3877	450051	01.5966	450150	00.9532
430039	01.0525	440048	01.6580	440154	00.7992	450052	01.0865	450151	01.1045
430040	00.9282	440049	01.6456	440156	01.3255	450053	01.1298	450152	01.3943
430041	00.9279	440050	01.1484	440157	01.1210	450054	01.6770	450153	01.5609
430042	01.0154	440051	00.9156	440159	01.1880	450055	01.1360	450154	01.1385
430043	01.1896	440052	01.2014	440160	01.3076	450056	01.5899	450155	01.0944
430044	00.9575	440053	01.1512	440161	01.3790	450057	01.4060	450157	01.0387
430047	01.1549	440054	01.0356	440166	01.3415	450058	01.5102	450160	00.9158
430048	01.1048	440056	01.0479	440168	01.3257	450059	01.3761	450162	01.2527
430049	00.9792	440057	00.9530	440170	01.3574	450060	01.4622	450163	01.0370
430051	01.0049	440058	01.1739	440173	01.1771	450063	00.9770	450164	00.9886
430054	00.9686	440059	01.1936	440174	00.3470	450064	01.4714	450165	00.9848
430056	00.8711	440060	01.2532	440175	01.1614	450065	01.0488	450166	00.8337
430057	00.9116	440061	01.1797	440176	01.2922	450068	01.7256	450169	00.8846
430060	01.0131	440063	01.4202	440178	01.1446	450070	01.1884	450170	01.1076
430062	00.8266	440064	01.0922	440180	01.1057	450072	01.1626	450175	01.3442
430064	01.0730	440065	01.1891	440181	01.3434	450073	01.0470	450176	01.2764
430065	00.9470	440067	01.1798	440182	00.9260	450074	01.3246	450177	01.0765
430066	00.9861	440068	01.1546	440183	01.1979	450076	01.4411	450178	01.1038
430073	01.1732	440069	01.1342	440184	01.2979	450078	00.9906	450179	00.8749
430076	00.9776	440070	00.9335	440185	01.1826	450079	01.4864	450181	00.9906
430077	01.3883	440071	01.3369	440186	01.0925	450080	01.2204	450184	01.4101
430079	00.9847	440072	01.3771	440187	01.1364	450081	01.1867	450185	01.0400
430080	00.9018	440073	01.3117	440189	01.4364	450082	00.9925	450187	01.2481
430081	00.9407	440074	00.8573	440192	01.1229	450083	01.6373	450188	01.0075
430082	00.8682	440076	01.0244	440193	01.2311	450085	01.9819	450190	01.1932
430083	00.8822	440079	00.8743	440194	01.1239	450087	01.4170	450191	01.1243
430084	00.9276	440081	01.1306	440196	00.9506	450090	01.1434	450192	01.1081
430085	00.9085	440082	01.8649	440197	01.3316	450092	01.2225	450193	02.1278
430086	00.9407	440083	01.2186	440200	01.1814	450094	01.2718	450194	01.1905
430087	00.9943	440084	01.2326	440203	01.0216	450096	01.4614	450195	01.3266
430088	00.9812	440087	01.0119	440205	00.9475	450097	01.3850	450196	01.3416

Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix
450197	01.1656	450353	01.2027	450551	01.0528	450678	01.4895	450899	00.8574
450200	01.3767	450355	01.1403	450558	01.8078	450681	01.5900	460001	01.6735
450201	00.9812	450358	02.0119	450559	00.9966	450682	01.2451	460003	01.4719
450203	01.1950	450362	00.9220	450561	01.5987	450683	01.3270	460004	01.7636
450209	01.4525	450365	00.8901	450563	01.1744	450684	01.3010	460005	01.3031
450210	01.0771	450366	01.6534	450565	01.2845	450686	01.3875	460006	01.2416
450211	01.2420	450369	01.1059	450570	01.0566	450688	01.3209	460007	01.4484
450213	01.4250	450370	01.1520	450571	01.4712	450690	01.3459	460008	01.3069
450214	01.3460	450371	01.0868	450573	00.9928	450691	01.3509	460009	01.7757
450217	01.0969	450372	01.2892	450574	00.9570	450694	01.1652	460010	01.9775
450219	01.1409	450373	01.1951	450575	00.9503	450696	01.2510	460011	01.3854
450221	01.0616	450374	00.7756	450578	00.9856	450697	01.4011	460013	01.4878
450222	01.7149	450376	01.4361	450580	01.1285	450698	00.8967	460014	01.0513
450224	01.2976	450378	01.2578	450583	00.9739	450700	00.8980	460015	01.2383
450229	01.3784	450379	01.5615	450584	01.2047	450702	01.3461	460016	00.9217
450231	01.5761	450381	00.8876	450586	01.0826	450703	01.4287	460017	01.3428
450233	01.0463	450388	01.6776	450587	01.3004	450704	01.3127	460018	00.9454
450234	00.9726	450389	01.1956	450591	01.1346	450705	00.7704	460019	00.9629
450235	00.9663	450393	01.2869	450596	01.3166	450706	01.1892	460020	01.0292
450236	01.1588	450395	01.0741	450597	01.0628	450709	01.2079	460021	01.3830
450237	01.5721	450399	00.9583	450603	00.8758	450711	01.6957	460022	00.9368
450239	01.2409	450400	01.0551	450604	01.2670	450712	00.7958	460023	01.1350
450241	00.8583	450403	01.2856	450605	01.3016	450713	01.2913	460024	00.9811
450243	00.9012	450410	01.0824	450607	00.9119	450715	01.3294	460025	00.7888
450246	01.0473	450411	00.9768	450609	00.8804	450716	01.2280	460026	00.9522
450249	00.8981	450417	01.0759	450610	01.4441	450717	01.2473	460027	00.9711
450253	01.1033	450418	01.4423	450614	01.1103	450718	01.1775	460029	01.1056
450258	01.1295	450419	01.2166	450615	00.9720	450723	01.2534	460030	01.1223
450259	01.1554	450422	00.7248	450617	01.3733	450724	01.1765	460032	00.9693
450264	00.8332	450423	01.2789	450620	01.1703	450725	01.0347	460033	01.0375
450269	00.9850	450424	01.2849	450623	01.1475	450726	00.8494	460035	00.8764
450270	01.1513	450429	00.9090	450626	00.9764	450727	00.9181	460036	01.0078
450271	01.1454	450431	01.5705	450628	00.9725	450728	00.8566	460037	00.9720
450272	01.2949	450438	01.0012	450630	01.5689	450729	01.0332	460039	00.8843
450276	01.0316	450446	00.8950	450631	01.6490	450730	01.3675	460041	01.2418
450278	01.0661	450447	01.2528	450632	00.9990	450732	01.1367	460042	01.4527
450280	01.2697	450450	01.0045	450633	01.5143	450733	01.3759	460043	01.6470
450283	01.0162	450451	01.0333	450634	01.3828	450734	01.2183	460044	01.1736
450286	01.0437	450457	01.6539	450637	01.3192	450735	00.8396	460046	01.6223
450288	01.1887	450460	01.0207	450638	01.4524	450742	01.2571	460047	01.6782
450289	01.3610	450462	01.7202	450639	01.5463	450743	01.3522	460049	02.0970
450292	01.2724	450464	00.9699	450641	00.9309	450745	00.9319	460898	00.7956
450293	01.0348	450465	01.2114	450643	01.1272	450746	00.8605	460899	00.8299
450296	01.2140	450467	01.0246	450644	01.6626	450747	01.2985	470001	01.1473
450297	01.0456	450469	01.2376	450646	01.5649	450749	01.0704	470003	01.9465
450299	01.3424	450473	01.1206	450647	01.9196	450750	01.0195	470004	01.0515
450303	00.9316	450475	01.1437	450648	01.0951	450751	01.1697	470005	01.2251
450306	01.0047	450484	01.5403	450649	01.0285	450754	00.9348	470006	01.1808
450307	01.1066	450488	01.2257	450651	01.9084	450755	01.0689	470008	01.1580
450309	01.0272	450489	01.0301	450652	00.9396	450757	00.9415	470010	01.0586
450315	01.2144	450497	01.1558	450653	01.3471	450758	01.8121	470011	01.2368
450320	01.3125	450498	00.9930	450654	00.9660	450759	01.0510	470012	01.2403
450321	00.8001	450508	01.4382	450656	01.3679	450760	01.1575	470013	01.1382
450322	00.9636	450514	01.1062	450658	00.9752	450761	01.0542	470015	01.2499
450324	01.5206	450517	00.9731	450659	01.4577	450763	01.0749	470018	01.1680
450325	01.1968	450518	01.3150	450660	01.6676	450765	01.0577	470020	00.9978
450327	01.0394	450523	01.5970	450661	01.1988	450766	01.6749	470023	01.2061
450330	01.1114	450530	01.2979	450662	01.3698	450768	01.1035	470024	01.1033
450334	01.0556	450534	00.9871	450665	01.0241	450769	00.9400	490001	01.0797
450337	01.1329	450535	01.2339	450666	01.2497	450770	01.0568	490002	01.0695
450340	01.3477	450537	01.3542	450668	01.5758	450771	01.4336	490003	00.6320
450341	00.9829	450538	01.1629	450669	01.2851	450775	01.2567	490004	01.2387
450346	01.3132	450539	01.1476	450670	01.2810	450776	00.9218	490005	01.4484
450347	01.1759	450544	01.2656	450672	01.6188	450777	00.9251	490006	01.1253
450348	00.9955	450545	01.1075	450673	01.0416	450778	00.9503	490007	01.9942
450349	01.1709	450546	01.3436	450674	00.8683	450779	01.3022	490008	01.2137
450351	01.2881	450547	00.9623	450675	01.3833	450781	01.1594	490009	01.6347
450352	01.2172	450550	01.0995	450677	01.2639	450898	00.8237	490010	01.1456

Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix
490011	01.3461	490108	00.8690	500061	01.0524	510023	01.0658	520031	01.1036
490012	01.6344	490109	00.8992	500062	00.9785	510024	01.3903	520032	01.1936
490013	01.1462	490110	01.2467	500064	01.5258	510025	00.9026	520033	01.2079
490014	01.6835	490111	01.1694	500065	01.2163	510026	00.9815	520034	01.2054
490015	01.4541	490112	01.5277	500068	01.0045	510027	01.0158	520035	01.2268
490017	01.3085	490113	01.2875	500069	01.0613	510028	01.1423	520037	01.8045
490018	01.1039	490114	01.0763	500071	01.3313	510029	01.2987	520038	01.2519
490019	01.1086	490115	01.2314	500072	01.1874	510030	01.1157	520039	01.0357
490020	01.1004	490116	01.1844	500073	00.8908	510031	01.3225	520040	01.3748
490021	01.4283	490117	01.1327	500074	01.1497	510033	01.2749	520041	01.1079
490022	01.2401	490118	01.6983	500075	01.2217	510035	01.0320	520042	01.1285
490023	01.2133	490119	01.3609	500076	01.2654	510036	01.0604	520044	01.3591
490024	01.6752	490120	01.3010	500077	01.2515	510038	01.0525	520045	01.6903
490027	01.0363	490122	01.1920	500078	01.2345	510039	01.3294	520047	01.0116
490028	01.2894	490123	01.1735	500079	01.2261	510040	01.0143	520048	01.3956
490030	01.3272	490124	01.1442	500080	00.8384	510043	00.9906	520049	01.8151
490031	01.0224	490126	01.2140	500084	01.1023	510046	01.2254	520051	02.0240
490032	01.6846	490127	01.0528	500085	01.0423	510047	01.1479	520053	01.0284
490033	01.1802	490129	00.8523	500086	01.3638	510048	01.1371	520054	01.1166
490035	01.0386	490130	01.1769	500088	01.3058	510050	01.2384	520056	01.2938
490037	01.1755	490131	00.9533	500089	00.9561	510053	00.9757	520057	01.1794
490038	01.2324	490898	00.8559	500090	00.9159	510055	01.1894	520058	01.0811
490040	01.4061	490899	00.8561	500092	01.0742	510058	01.1864	520059	01.1979
490041	01.1836	500001	01.2654	500094	00.9119	510059	01.1667	520060	01.2276
490042	01.2640	500002	01.4624	500096	01.6007	510060	01.1566	520062	01.2096
490043	01.2185	500003	01.2528	500097	01.2205	510061	01.0343	520063	01.1724
490044	01.2540	500005	01.7054	500098	00.9184	510062	01.1905	520064	01.5477
490045	01.1670	500007	01.3054	500101	00.9131	510063	01.0791	520066	01.2738
490046	01.3858	500008	01.8513	500102	00.9648	510065	01.0039	520068	00.9968
490047	01.1058	500009	01.2967	500104	01.1794	510066	01.1330	520069	01.1737
490048	01.4563	500011	01.2536	500106	01.0805	510067	01.1981	520070	01.3710
490050	01.3431	500012	01.4992	500107	01.1309	510068	01.1032	520071	01.1515
490052	01.4815	500014	01.7253	500108	01.0503	510070	01.1833	520074	01.0798
490053	01.2445	500015	01.2896	500110	01.2168	510071	01.2490	520075	01.4136
490054	01.0445	500016	01.3370	500118	01.1967	510072	01.0552	520076	01.1402
490057	01.4349	500019	01.2299	500119	01.2997	510076	00.9549	520077	00.9982
490059	01.4570	500021	01.4669	500122	01.2802	510077	01.1876	520078	01.4114
490060	01.0508	500023	01.2623	500123	01.0015	510080	01.0420	520082	01.2748
490063	01.6192	500024	01.5428	500124	01.2657	510081	01.0109	520083	01.5731
490066	01.2154	500025	01.6595	500125	00.9956	510082	00.9711	520084	01.0780
490067	01.2419	500026	01.3513	500127	00.9825	510084	00.9994	520087	01.5493
490069	01.3763	500027	01.5636	500129	01.6821	510085	01.2936	520088	01.2323
490071	01.4376	500028	01.0150	500132	00.9084	510086	01.1017	520089	01.5458
490073	01.3847	500029	01.0282	500134	00.6687	520002	01.2630	520090	01.1765
490074	01.3503	500030	01.3145	500135	01.0874	520003	01.1233	520091	01.2450
490075	01.2967	500031	01.2673	500137	00.8110	520004	01.2461	520092	01.1581
490077	01.1944	500033	01.2133	500138	05.7358	520006	01.0773	520094	01.1585
490079	01.2724	500035	01.4986	500139	01.3487	520007	01.0853	520095	01.3975
490083	00.7042	500036	01.2627	500140	01.2302	520008	01.3615	520096	01.4615
490084	01.1032	500037	01.2283	500141	01.2480	520009	01.5789	520097	01.3383
490085	01.1552	500039	01.3147	500143	00.8284	520010	01.1080	520098	01.7557
490088	01.1437	500041	01.2158	500898	00.8024	520011	01.1672	520100	01.2501
490089	01.0875	500042	01.3302	500899	00.8443	520012	00.9706	520101	01.1370
490090	01.2096	500043	01.2098	510001	01.6282	520013	01.3292	520102	01.1927
490091	01.1654	500044	01.8679	510002	01.2818	520014	01.1163	520103	01.3362
490092	01.2096	500045	01.1746	510004	00.9496	520015	01.1626	520107	01.2514
490093	01.2688	500048	00.9045	510005	00.9557	520016	01.0807	520109	01.0184
490094	01.1362	500049	01.1911	510006	01.2549	520017	01.2058	520110	01.0592
490095	01.2520	500050	01.3135	510007	01.4175	520018	01.0251	520111	01.0241
490097	01.0975	500051	01.6129	510008	01.0871	520019	01.3034	520112	01.1481
490098	01.3140	500052	01.2216	510009	01.0605	520021	01.2243	520113	01.1873
490099	00.9549	500053	01.2756	510012	01.0181	520024	01.1064	520114	01.0718
490100	01.3416	500054	01.8769	510013	01.1238	520025	01.0907	520115	01.2402
490101	01.1334	500055	01.1095	510015	00.9667	520026	01.0478	520116	01.2315
490104	00.9354	500057	01.3255	510016	01.0097	520027	01.1180	520117	01.0671
490105	00.7256	500058	01.4697	510018	01.0555	520028	01.3870	520118	00.9620
490106	00.8678	500059	01.1046	510020	01.0862	520029	00.9510	520120	01.0568
490107	01.2010	500060	01.3017	510022	01.0564	520030	01.5748	520121	00.9919

Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix	Provider	Case mix
520122	01.0130	520144	01.0364	520161	01.0330	530003	00.8796	530017	00.9848
520123	01.0173	520145	01.0112	520170	01.2579	530004	00.9320	530018	00.9947
520124	01.1117	520146	01.1620	520171	00.9793	530005	01.1532	530019	00.9900
520130	00.9745	520148	01.0927	520173	01.1033	530006	01.1493	530022	01.0950
520131	01.0552	520149	01.0520	520174	01.4214	530007	01.0519	530023	00.8916
520132	01.1941	520151	01.0856	520176	00.8365	530008	01.2328	530024	01.0250
520134	01.0987	520152	01.1365	520177	01.4778	530009	01.0236	530025	01.2723
520135	00.9722	520153	01.0085	520178	01.1582	530010	01.2737	530026	01.0529
520136	01.4972	520154	01.1165	520180	00.7304	530011	01.1401	530027	00.9495
520138	01.8587	520156	01.0321	520898	00.7870	530012	01.5951	530029	00.9014
520139	01.2485	520157	01.0779	520899	00.8299	530014	01.2190	530031	00.9405
520140	01.4834	520159	00.8579	530001	01.4040	530015	01.1436	530032	01.2902
520141	01.1483	520160	01.7555	530002	01.2218	530016	01.1974	530898	00.8089
520142	00.9572								

Note: Case mix indexes do not include discharges from PPS-exempt units. Case mix indexes include cases received in HCFA central office through June 1993.

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index	GAF
Abilene, TX	0.8830	0.9183
Taylor, TX		
Aguadilla, PR	0.5525	0.6661
Aguada, PR		
Aguadilla, PR		
Moca, PR		
Akron, OH	0.8122	0.8672
Portage, OH		
Summit, OH		
Albany, GA	0.8493	0.8942
Dougherty, GA		
Lee, GA		
Albany-Schenectady-Troy, NY	0.9033	0.9327
Albany, NY		
Montgomery, NY		
Rensselaer, NY		
Saratoga, NY		
Schenectady, NY		
Schoharie, NY		
Albuquerque, NM	0.9861	0.9905
Bernalillo, NM		
Sandoval, NM		
Valencia, NM		
Alexandria, LA	0.9130	0.9396
Rapides, LA		
Allentown-Bethlehem-Easton, PA	0.9973	0.9982
Carbon, PA		
Lehigh, PA		
Northampton, PA		
Altoona, PA	0.9342	0.9545
Blair, PA		
Amarillo, TX	0.8667	0.9067
Potter, TX		
Randall, TX		
Anchorage, AK	1.2201	1.1459
Anchorage, AK		
Ann Arbor, MI	1.2539	1.1676
Lenawee, MI		
Livingston, MI		
Washtenaw, MI		
Anniston, AL	0.7998	0.8581

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Calhoun, AL		
Appleton-Oshkosh-Neenah, WI	0.8743	0.9121
Calumet, WI		
Outagamie, WI		
Winnebago, WI		
Arecibo, PR	0.3705	0.5066
Arecibo, PR		
Camuy, PR		
Hatillo, PR		
Asheville, NC	0.9175	0.9427
Buncombe, NC		
Madison, NC		
Athens, GA	0.8324	0.8819
Clarke, GA		
Madison, GA		
Oconee, GA		
*Atlanta, GA	0.9402	0.9587
Barrow, GA		
Bartow, GA		
Carroll, GA		
Cherokee, GA		
Clayton, GA		
Cobb, GA		
Coweta, GA		
De Kalb, GA		
Douglas, GA		
Fayette, GA		
Forsyth, GA		
Fulton, GA		
Gwinnett, GA		
Henry, GA		
Newton, GA		
Paulding, GA		
Pickens, GA		
Rockdale, GA		
Spalding, GA		
Walton, GA		
Atlantic City-Cape May, NJ	1.0584	1.0396
Atlantic City , NJ		
Cape May, NJ		
Augusta-Aiken, GA-SC	0.8899	0.9232

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Columbia, GA		
McDuffie, GA		
Richmond, GA		
Aiken, SC		
Edgefield, SC		
Austin-San Marcos, TX	0.9209	0.9451
Bastrop, TX		
Caldwell, TX		
Hays, TX		
Travis, TX		
Williamson, TX		
Bakersfield, CA	1.0857	1.0579
Kern, CA		
*Baltimore, MD	1.0036	1.0025
Anne Arundel, MD		
Baltimore, MD		
Baltimore City, MD		
Carroll, MD		
Harford, MD		
Howard, MD		
Queen Annes, MD		
Bangor, ME	0.9191	0.9439
Penobscot		
Barnstable-Yarmouth, MA	1.3351	1.2189
Barnstable, MA		
Baton Rouge, LA	0.8659	0.9061
Ascension, LA		
East Baton Rouge, LA		
Livingston, LA		
West Baton Rouge, LA		
Beaumont-Port Arthur, TX	0.8934	0.9257
Hardin, TX		
Jefferson, TX		
Orange, TX		
Bellingham, WA	1.1147	1.0772
Whatcom, WA		
Benton Harbor, MI	0.7923	0.8526
Berrien, MI		
*Bergen-Passaic, NJ	1.1331	1.0893
Bergen, NJ		
Passaic, NJ		
Billings, MT	0.8992	0.9298

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Yellowstone, MT		
Biloxi-Gulfport-Pascagoula, MS	0.8056	0.8624
Hancock, MS		
Harrison, MS		
Jackson, MS		
Binghamton, NY	0.9098	0.9373
Broome, NY		
Tioga, NY		
Birmingham, AL	0.9006	0.9308
Blount, AL		
Jefferson, AL		
St. Clair, AL		
Shelby, AL		
Bismarck, ND	0.8759	0.9133
Burleigh, ND		
Morton, ND		
Bloomington, IN	0.8525	0.8965
Monroe, IN		
Bloomington-Normal, IL	0.8566	0.8994
McLean, IL		
Boise City, ID	0.8883	0.9221
Ada, ID		
Canyon, ID		
*Boston-Brockton-Nashua, MA-NH	1.1503	1.1006
Bristol, MA		
Essex, MA		
Middlesex, MA		
Norfolk, MA		
Plymouth, MA		
Suffolk, MA		
Worcester, MA		
Hillsborough, NH		
Merrimack, NH		
Rockingham, NH		
Strafford, NH		
Boulder-Longmont, CO	0.8197	0.8727
Boulder, CO		
Brazoria, TX	0.8655	0.9058
Brazoria, TX		
Bremerton, WA	0.9529	0.9675
Kitsap, WA		
Brownsville-Harlingen-San Benito, TX	0.8479	0.8932
Cameron, TX		
Bryan-College Station, TX	0.9054	0.9342
Brazos, TX		
*Buffalo-Niagara Falls, NY	0.9117	0.9387
Erie, NY		
Niagara, NY		
Burlington, VT	0.9458	0.9626
Chittenden, VT		
Franklin, VT		
Grand Isle, VT		
Caguas, PR	0.5039	0.6254
Caguas, PR		
Cayey, PR		
Cidra, PR		
Gurabo, PR		
San Lorenzo, PR		
Canton-Massillon, OH	0.8718	0.9103
Carroll, OH		
Stark, OH		
Casper, WY	0.8408	0.8880
Natrona, WY		
Cedar Rapids, IA	0.8475	0.8929
Linn, IA		
Champaign-Urbana, IL	0.8720	0.9105
Champaign, IL		
Charleston-North Charleston, SC	0.8947	0.9266
Berkeley, SC		
Charleston, SC		
Dorchester, SC		
Charleston, WV	0.8786	0.9152
Kanawha, WV		
Putnam, WV		
*Charlotte-Gastonia-Rock Hill, NC-SC	0.9648	0.9758
Cabarrus, NC		
Gaston, NC		
Lincoln, NC		
Mecklenburg, NC		
Rowan, NC		
Union, NC		
York, SC		
Charlottesville, VA	0.9477	0.9639
Albemarle, VA		
Charlottesville City, VA		
Fluvanna, VA		
Greene, VA		
Chattanooga, TN-GA	0.9088	0.9366
Catoosa, GA		
Dade, GA		
Walker, GA		
Hamilton, TN		
Marion, TN		
Cheyenne, WY	0.7538	0.8240
Laramie, WY		
*Chicago, IL	1.0593	1.0402
Cook, IL		
De Kalb, IL		
Du Page, IL		
Grundy, IL		
Kane, IL		
Kendall, IL		
Lake, IL		
McHenry, IL		
Will, IL		
Chico-Paradise, CA	1.0071	1.0049
Butte, CA		
*Cincinnati, OH-KY-IN	0.9548	0.9688
Dearborn, IN		
Ohio, IN		
Boone, KY		
Campbell, KY		
Gallatin, KY		
Grant, KY		
Kenton, KY		
Pendleton, KY		
Brown, OH		
Clermont, OH		
Hamilton, OH		
Warren, OH		
Clarksville-Hopkinsville, TN-KY	0.6826	0.7699
Christian, KY		
Montgomery, TN		
*Cleveland-Lorain-Elyria, OH	0.9817	0.9874
Ashtabula, OH		
Cuyahoga, OH		
Geauga, OH		
Lake, OH		
Lorain, OH		
Medina, OH		
Colorado Springs, CO	0.9464	0.9630
El Paso, CO		
Columbia, MO	0.9312	0.9524
Boone, MO		
Columbia, SC	0.8851	0.9198
Lexington, SC		
Richland, SC		
Columbus, GA-AL	0.7562	0.8258
Russell, AL		
Chattanoochee, GA		
Harris, GA		
Muscogee, GA		
*Columbus, OH	0.9902	0.9933
Delaware, OH		
Fairfield, OH		
Franklin, OH		
Licking, OH		
Madison, OH		
Pickaway, OH		
Corpus Christi, TX	0.8334	0.8827
Nueces, TX		
San Patricio, TX		
Cumberland, MD-WV	0.8103	0.8658
Allegany, MD		
Mineral, WV		
*Dallas, TX	0.9649	0.9758
Collin, TX		
Dallas, TX		
Denton, TX		
Ellis, TX		
Henderson, TX		
Hunt, TX		
Kaufman, TX		
Rockwall, TX		
Danville, VA	0.7881	0.8495
Danville City, VA		
Pittsylvania, VA		
Davenport-Rock Island-Moline, IA-IL	0.8300	0.8802
Scott, IA		
Henry, IL		
Rock Island, IL		
Dayton-Springfield, OH	0.9424	0.9602
Clark, OH		
Greene, OH		
Miami, OH		
Montgomery, OH		
Daytona Beach, FL	0.8826	0.9180
Flagler, FL		
Volusia, FL		
Decatur, AL	0.7995	0.8579
Lawrence, AL		
Morgan, AL		
Decatur, IL	0.8011	0.8591
Macon, IL		
*Denver, CO	1.0935	1.0631

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Adams, CO		
Arapahoe, CO		
Denver, CO		
Douglas, CO		
Jefferson, CO		
Des Moines, IA	0.8676	0.9073
Dallas, IA		
Polk, IA		
Warren, IA		
*Detroit, MI	1.0790	1.0534
Lapeer, MI		
Macomb, MI		
Monroe, MI		
Oakland, MI		
St. Clair, MI		
Wayne, MI		
Dothan, AL	0.7793	0.8430
Dale, AL		
Houston, AL		
Dover, DE	0.8728	0.9110
Kent, DE		
Dubuque, IA	0.8324	0.8819
Dubuque, IA		
Duluth-Superior, MN-WI	0.9166	0.9421
St. Louis, MN		
Douglas, WI		
Dutchess County, NY	1.0623	1.0423
Dutchess, NY		
Eau Claire, WI	0.8481	0.8933
Chippewa, WI		
Eau Claire, WI		
El Paso, TX	0.9537	0.9681
El Paso, TX		
Elkhart-Goshen, IN	0.8560	0.8990
Elkhart, IN		
Elmira, NY	0.8558	0.8989
Chemung, NY		
Enid, OK	0.7985	0.8572
Garfield, OK		
Erie, PA	0.9169	0.9423
Erie, PA		
Eugene-Springfield, OR	0.9480	0.9641
Lane, OR		
Evansville-Henderson, IN-KY	0.8904	0.9236
Posey, IN		
Vanderburgh, IN		
Warrick, IN		
Henderson, KY		
Fargo-Moorhead, ND-MN	0.9557	0.9694
Clay, MN		
Cass, ND		
Fayetteville, NC	0.8519	0.8960
Cumberland, NC		
Fayetteville-Springdale-Rogers, AR	0.7247	0.8021
Benton, AR		
Washington, AR		
Flint, MI	1.0689	1.0467
Genesee, MI		
Florence, AL	0.7707	0.8366
Colbert, AL		
Lauderdale, AL		
Florence, SC	0.8671	0.9070
Florence, SC		
Fort Collins-Loveland, CO	0.9685	0.9921
Larimer, CO		
*Ft. Lauderdale, FL	1.0573	1.0389
Broward, FL		
Fort Myers-Cape Coral, FL	0.9279	0.9500
Lee, FL		
Fort Pierce-Port St. Lucie, FL	1.0477	1.0324
Martin, FL		
St. Lucie, FL		
Fort Smith, AR-OK	0.7611	0.8295
Crawford, AR		
Sebastian, AR		
Sequoyah, OK		
Fort Walton Beach, FL	0.8825	0.9180
Okaloosa, FL		
Fort Wayne, IN	0.8893	0.9228
Adams, IN		
Allen, IN		
De Kalb, IN		
Huntington, IN		
Wells, IN		
Whitley, IN		
*Fort Worth-Arlington, TX	0.9550	0.9690
Hood, TX		
Johnson, TX		
Parker, TX		
Tarrant, TX		
Fresno, CA	1.0244	1.0166
Fresno, CA		
Madera, CA		
Gadsden, AL	0.7747	0.8396
Etowah, AL		
Gainesville, FL	0.8911	0.9241
Alachua, FL		
Galveston-Texas City, TX	0.9865	0.9907
Galveston, TX		
Gary, IN	0.8740	0.9119
Lake, IN		
Porter, IN		
Glens Falls, NY	0.9393	0.9580
Warren, NY		
Washington, NY		
Goldsboro, NC	0.8399	0.8874
Wayne, NC		
Grand Forks, ND-MN	0.8795	0.9158
Polk, MN		
Grand Forks, ND		
Grand Rapids-Muskegon-Holland, MI	0.9764	0.9838
Allegan, MI		
Kent, MI		
Muskegon, MI		
Ottawa, MI		
Great Falls, MT	0.8906	0.9237
Cascade, MT		
Greeley, CO	0.8714	0.9100
Weld, CO		
Green Bay, WI	0.8852	0.9199
Brown, WI		
*Greensboro-Winston-Salem-High Point, NC	0.9283	0.9503
Alamance, NC		
Davidson, NC		
Davie, NC		
Forsyth, NC		
Guilford, NC		
Randolph, NC		
Stokes, NC		
Yadkin, NC		
Greenville, NC	0.9331	0.9537
Pitt, NC		
Greenville-Spartanburg-Anderson, SC	0.8715	0.9101
Anderson, SC		
Cherokee, SC		
Greenville, SC		
Pickens, SC		
Spartanburg, SC		
Hagerstown, MD	0.8830	0.9183
Washington, MD		
Hamilton-Middletown, OH	0.8122	0.8672
Butler, OH		
Harrisburg-Lebanon-Carlisle, PA	0.9995	0.9997
Cumberland, PA		
Dauphin, PA		
Lebanon, PA		
Perry, PA		
*Hartford, CT	1.2086	1.1385
Hartford, CT		
Litchfield, CT		
Middlesex, CT		
Tolland, CT		
Hickory-Morganton, NC	0.8800	0.9162
Alexander, NC		
Burke, NC		
Caldwell, NC		
Catawba, NC		
Honolulu, HI	1.0995	1.0671
Honolulu, HI		
Houma, LA	0.7765	0.8409
Lafourche, LA		
Terrebonne, LA		
*Houston, TX	0.9908	0.9937
Chambers, TX		
Fort Bend, TX		
Harris, TX		
Liberty, TX		
Montgomery, TX		
Waller, TX		
Huntington-Ashland, WV-KY-OH	0.8971	0.9283
Boyd, KY		
Carter, KY		
Greenup, KY		
Lawrence, OH		
Cabell, WV		
Wayne, WV		
Huntsville, AL	0.8158	0.8699
Limestone, AL		
Madison, AL		
*Indianapolis, IN	0.9871	0.9911

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Boone, IN		
Hamilton, IN		
Hancock, IN		
Hendricks, IN		
Johnson, IN		
Madison, IN		
Marion, IN		
Morgan, IN		
Shelby, IN		
Iowa City, IA	0.9706	0.9798
Johnson, IA		
Jackson, MI	0.9277	0.9499
Jackson, MI		
Jackson, MS	0.7519	0.8226
Hinds, MS		
Madison, MS		
Rankin, MS		
Jackson, TN	0.8007	0.8588
Madison, TN		
Jacksonville, FL	0.8968	0.9281
Clay, FL		
Duval, FL		
Nassau, FL		
St. Johns, FL		
Jacksonville, NC	0.7197	0.7983
Onslow, NC		
Jamestown, NY	0.7688	0.8352
Chautaqua, NY		
Janesville-Beloit, WI	0.8415	0.8885
Rock, WI		
Jersey City, NJ	1.0966	1.0652
Hudson, NJ		
Johnson City-Kingsport-Bristol, TN-VA	0.8472	0.8927
Carter, TN		
Hawkins, TN		
Sullivan, TN		
Unicoi, TN		
Washington, TN		
Bristol City, VA		
Scott, VA		
Washington, VA		
Johnstown, PA	0.8784	0.9150
Cambria, PA		
Somerset, PA		
Joplin, MO	0.7697	0.8359
Jasper, MO		
Newton, MO		
Kalamazoo-Battlecreek, MI	1.0945	1.0638
Calhoun, MI		
Kalamazoo, MI		
Van Buren, MI		
Kankakee, IL	0.8458	0.8916
Kankakee, IL		
*Kansas City, KS-MO	0.9538	0.9681

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Johnson, KS		
Leavenworth, KS		
Miami, KS		
Wyandotte, KS		
Cass, MO		
Clay, MO		
Clinton, MO		
Jackson, MO		
Lafayette, MO		
Platte, MO		
Ray, MO		
Kenosha, WI	0.8846	0.9195
Kenosha, WI		
Killeen-Temple, TX	1.0169	1.0115
Bell, TX		
Coryell, TX		
Knoxville, TN	0.9247	0.9478
Anderson, TN		
Blount, TN		
Knox, TN		
Loudon, TN		
Sevier, TN		
Union, TN		
Kokomo, IN	0.8616	0.9030
Howard, IN		
Tipton, IN		
La Crosse, WI-MN	0.8409	0.8881
Houston, MN		
La Crosse, WI		
Lafayette, LA	0.8144	0.8688
Acadia, LA		
Lafayette, LA		
St. Landry, LA		
St. Martin, LA		
Lafayette, IN	0.8415	0.8885
Clinton, IN		
Tippecanoe, IN		
Lake Charles, LA	0.8134	0.8681
Calcasieu, LA		
Lakeland-Winter Haven, FL	0.8335	0.8827
Polk, FL		
Lancaster, PA	0.9520	0.9669
Lancaster, PA		
Lansing-East Lansing, MI	0.9633	0.9747
Clinton, MI		
Eaton, MI		
Ingham, MI		
Laredo, TX	0.6953	0.7797
Webb, TX		
Las Cruces, NM	0.8919	0.9246
Dona Ana, NM		
Las Vegas, NV-AZ	1.0714	1.0484
Mohave, AZ		
Clark, NV		
Nye, NV		
Lawrence, KS	0.8793	0.9157
Douglas, KS		
Lawton, OK	0.8453	0.8913
Comanche, OK		
Lewiston-Auburn, ME	0.9644	0.9755
Androscoggin, ME		
Lexington, KY	0.8291	0.8796

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Bourbon, KY		
Clark, KY		
Fayette, KY		
Jessamine, KY		
Madison, KY		
Scott, KY		
Woodford, KY		
Lima, OH	0.8441	0.8904
Allen, OH		
Auglaize, OH		
Lincoln, NE	0.8904	0.9236
Lancaster, NE		
Little Rock-North Little Rock, AR	0.8306	0.8806
Faulkner, AR		
Lonoke, AR		
Pulaski, AR		
Saline, AR		
Longview-Marshall, TX	0.8720	0.9105
Gregg, TX		
Harrison, TX		
Upshur, TX		
*Los Angeles-Long Beach, CA	1.2719	1.1790
Los Angeles, CA		
Louisville, KY-IN	0.9407	0.9590
Clark, IN		
Floyd, IN		
Harrison, IN		
Scott, IN		
Bullitt, KY		
Jefferson, KY		
Oldham, KY		
Lubbock, TX	0.8678	0.9075
Lubbock, TX		
Lynchburg, VA	0.8226	0.8748
Amherst, VA		
Bedford City, VA		
Bedford, VA		
Campbell, VA		
Lynchburg City, VA		
Macon, GA	0.9704	0.9796
Bibb, GA		
Houston, GA		
Jones, GA		
Peach, GA		
Twiggs, GA		
Madison, WI	0.9977	0.9984
Dane, WI		
Mansfield, OH	0.8158	0.8699
Crawford, OH		
Richland, OH		
Mayaguez, PR	0.5397	0.6555
Anasco, PR		
Cabo Rojo, PR		
Hormigueros, PR		
Mayaguez, PR		
Sabana Grande, PR		
San German, PR		
McAllen-Edinburg-Mission, TX	0.8497	0.8945
Hidalgo, TX		
Medford-Ashland, OR	0.9768	0.9841
Jackson, OR		
Melbourne-Titusville-Palm Bay, FL	0.9356	0.9554

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Brevard, FL		
*Memphis, TN-AR-MS	0.8546	0.8980
Crittenden, AR		
De Soto, MS		
Fayette, TN		
Shelby, TN		
Tipton, TN		
Merced, CA	1.0021	1.0014
Merced, CA		
*Miami, FL	0.8515	0.8958
Dade, FL		
*Middlesex-Somerset-Hunterdon, NJ	1.0871	1.0589
Hunterdon, NJ		
Middlesex, NJ		
Somerset, NJ		
*Milwaukee, WI	0.9240	0.9473
Milwaukee, WI		
Ozaukee, WI		
Washington, WI		
Waukesha, WI		
*Minneapolis-St. Paul, MN-WI	1.0855	1.0578
Anoka, MN		
Carver, MN		
Chisago, MN		
Dakota, MN		
Hennepin, MN		
Isanti, MN		
Ramsey, MN		
Scott, MN		
Sherburne, MN		
Washington, MN		
Wright, MN		
Pierce, WI		
St. Croix, WI		
Mobile, AL	0.7801	0.8436
Baldwin, AL		
Mobile, AL		
Modesto, CA	1.1471	1.0985
Stanislaus, CA		
Monmouth-Ocean, NJ	1.0062	1.0056
Monmouth, NJ		
Ocean, NJ		
Monroe, LA	0.7663	0.8334
Ouachita, LA		
Montgomery, AL	0.7564	0.8260
Autauga, AL		
Elmore, AL		
Montgomery, AL		
Muncie, IN	0.8546	0.8980
Delaware, IN		
Myrtle Beach, SC	0.7906	0.8514
Horry, SC		
Naples, FL	0.9646	0.9756
Collier, FL		
*Nashville, TN	0.9105	0.9378
Cheatham, TN		
Davidson, TN		
Dickson, TN		
Robertson, TN		
Rutherford TN		
Sumner, TN		
Williamson, TN		
Wilson, TN		
*Nassau-Suffolk, NY	1.2855	1.1877
Nassau, NY		
Suffolk, NY		
*New Haven-Bridgeport-Stamford-Danbury-Waterbury, CT	1.2289	1.1516
Fairfield, CT		
New Haven, CT		
New London-Norwich, CT	1.1589	1.1063
New London, CT		
*New Orleans, LA	0.9443	0.9615
Jefferson, LA		
Orleans, LA		
Plaquemines, LA		
St. Bernard, LA		
St. Charles, LA		
St. James, LA		
St. John The Baptist, LA		
St. Tammany, LA		
*New York, NY	1.4020	1.2604
Bronx, NY		
Kings, NY		
New York, NY		
Putnam, NY		
Queens, NY		
Richmond, NY		
Rockland, NY		
Westchester, NY		
*Newark, NJ	1.1145	1.0771
Essex, NJ		
Morris, NJ		
Sussex, NJ		
Union, NJ		
Warren, NJ		
Newburgh, NY-PA	0.8560	0.8990
Orange, NY		
Pike, PA		
*Norfolk-Virginia Beach-Newport News, VA-NC	0.8541	0.8976
Currituck, NC		
Chesapeake City, VA		
Gloucester, VA		
Hampton City, VA		
Isle of Wight, VA		
James City, VA		
Mathews, VA		
Newport News City, VA		
Norfolk City, VA		
Poquoson City, VA		
Portsmouth City, VA		
Suffolk City, VA		
Virginia Beach City VA		
Williamsburg City, VA		
York, VA		
*Oakland, CA	1.4369	1.2818
Alameda, CA		
Contra Costa, CA		
Ocala, FL	0.8490	0.8940
Marion, FL		
Odessa-Midland, TX	0.8735	0.9115
Ector, TX		
Midland, TX		
Oklahoma City, OK	0.8455	0.8914
Canadian, OK		
Cleveland, OK		
Logan, OK		
McClain, OK		
Oklahoma, OK		
Pottawatomie, OK		
Olympia, WA	1.0326	1.0222
Thurston, WA		
Omaha, NE-IA	0.9900	0.9931
Pottawattamie, IA		
Cass, NE		
Douglas, NE		
Sarpy, NE		
Washington, NE		
*Orange County, CA	1.3409	1.2225
Orange, CA		
*Orlando, FL	0.9782	0.9850
Lake, FL		
Orange, FL		
Osceola, FL		
Seminole, FL		
Owensboro, KY	0.7654	0.8327
Daviess, KY		
Panama City, FL	0.8359	0.8845
Bay, FL		
Parkersburg-Marietta, WV-OH	0.7748	0.8397
Washington, OH		
Wood, WV		
Pensacola, FL	0.8429	0.8896
Escambia, FL		
Santa Rosa, FL		
Peoria-Pekin, IL	0.8365	0.8849
Peoria, IL		
Tazewell, IL		
Woodford, IL		
*Philadelphia, PA-NJ	1.1265	1.0850
Burlington, NJ		
Camden, NJ		
Gloucester, NJ		
Salem, NJ		
Bucks, PA		
Chester, PA		
Delaware, PA		
Montgomery, PA		
Philadelphia, PA		
*Phoenix-Mesa, AZ	1.0223	1.0152
Maricopa, AZ		
Pinal AZ		
Pine Bluff, AR	0.8714	0.9100
Jefferson, AR		
*Pittsburgh, PA	0.9950	0.9966
Allegheny, PA		
Beaver, PA		
Butler, PA		
Fayette, PA		
Washington, PA		
Westmoreland, PA		
Pittsfield, MA	1.1001	1.0675
Berkshire, MA		
Ponce, PR	0.5167	0.6362

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Guayanilla, PR		
Juana Diaz, PR		
Penuelas, PR		
Ponce, PR		
Villalba, PR		
Yauco, PR		
Portland, ME	0.9381	0.9572
Cumberland, ME		
Sagadahoc, ME		
York, ME		
*Portland-Vancouver, OR-WA	1.1051	1.0708
Clackamas, OR		
Columbia, OR		
Multnomah, OR		
Washington, OR		
Yamhill, OR		
Clark, WA		
*Providence-Warwick, RI	1.0717	1.0466
Bristol, RI		
Kent, RI		
Newport, RI		
Providence, RI		
Washington, RI		
Provo-Orem, UT	0.9960	0.9973
Utah, UT		
Pueblo, CO	0.8260	0.8773
Pueblo, CO		
Punta Gorda, FL	0.9133	0.9398
Charlotte, FL		
Racine, WI	0.8298	0.8801
Racine, WI		
Raleigh-Durham-Chapel Hill, NC	0.9521	0.9569
Chatham, NC		
Durham, NC		
Franklin, NC		
Johnston, NC		
Orange, NC		
Wake, NC		
Rapid City, SD	0.8220	0.8744
Pennington, SD		
Reading, PA	0.9082	0.9362
Berks, PA		
Redding, CA	1.1822	1.1084
Shasta, CA		
Reno, NV	1.2009	1.1336
Washoe, NV		
Richland-Kennewick-Pasco, WA	0.9214	0.9455
Benton, WA		
Franklin, WA		
Richmond-Petersburg, VA	0.8801	0.9163
Charles City County, VA		
Chesterfield, VA		
Colonial Heights City, VA		
Dinwiddie, VA		
Goochland, VA		
Hanover, VA		
Henrico, VA		
Hopewell City, VA		
New Kent, VA		
Petersburg City, VA		
Powhatan, VA		
Prince George, VA		
Richmond City, VA		
*Riverside-San Bernardino, CA	1.2021	1.1343
Riverside, CA		
San Bernardino, CA		
Roanoke, VA	0.8358	0.8644
Botetourt, VA		
Roanoke, VA		
Roanoke City, VA		
Salem City, VA		
Rochester, MN	1.0078	1.0053
Olmsted, MN		
*Rochester, NY	0.9761	0.9836
Genesee, NY		
Livingston, NY		
Monroe, NY		
Ontario, NY		
Orleans, NY		
Wayne, NY		
Rockford, IL	0.8708	0.9096
Boone, IL		
Ogle, IL		
Winnebago, IL		
Rocky Mount, NC	0.8743	0.9121
Edgecombe, NC		
Nash, NC		
*Sacramento, CA	1.2165	1.1436
El Dorado, CA		
Placer, CA		
Sacramento, CA		
Saginaw-Bay City-Midland, MI	0.9549	0.9689
Bay, MI		
Midland, MI		
Saginaw, MI		
St. Cloud, MN	0.9825	0.9880
Benton, MN		
Stearns, MN		
St. Joseph, MO	0.8811	0.9170
Andrews, MO		
Buchanan, MO		
*St. Louis, MO-IL	0.9192	0.9439
Clinton, IL		
Jersey, IL		
Madison, IL		
Monroe, IL		
St. Clair, IL		
Franklin, MO		
Jefferson, MO		
Lincoln, MO		
St. Charles, MO		
St. Louis, MO		
St. Louis City, MO		
Warren, MO		
Salem, OR	0.9443	0.9615
Marion, OR		
Polk, OR		
Salinas, CA	1.3187	1.2066
Monterey, CA		
*Salt Lake City-Ogden, UT	0.9669	0.9772
Davis, UT		
Salt Lake, UT		
Weber, UT		
San Angelo, TX	0.7887	0.8500
Tom Green, TX		
*San Antonio, TX	0.8210	0.8737
Bexar, TX		
Comal, TX		
Guadalupe, TX		
Wilson, TX		
*San Diego, CA	1.1908	1.1270
San Diego, CA		
*San Francisco, CA	1.4066	1.2644
Marin, CA		
San Francisco, CA		
San Mateo, CA		
*San Jose, CA	1.4254	1.2747
Santa Clara, CA		
*San Juan-Bayamon, PR	0.4668	0.6194
Aguas Buenas, PR		
Barceloneta, PR		
Bayamon, PR		
Canovanas, PR		
Carolina, PR		
Catano, PR		
Ceiba, PR		
Comerio, PR		
Corozal, PR		
Dorado, PR		
Fajardo, PR		
Florida, PR		
Guaynabo, PR		
Humacao, PR		
Juncos, PR		
Los Piedras, PR		
Loiza, PR		
Luquillo, PR		
Manati, PR		
Naranjito, PR		
Rio Grande, PR		
San Juan, PR		
Toa Alta, PR		
Toa Baja, PR		
Trujillo Alto, PR		
Vega Alta, PR		
Vega Baja, PR		
Yabucoa, PR		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
San Luis Obispo-Atascadero-Paso Robles, CA	1.2505	1.1654
San Luis Obispo		
Santa Barbara-Santa Maria-Lompoc, CA	1.1637	1.1094
Santa Barbara, CA		
Santa Cruz-Watsonville, CA	0.9727	0.9812
Santa Cruz, CA		
Santa Fe, NM	0.9985	0.9990
Los Alamos, NM		
Santa Fe, NM		
Santa Rosa, CA	1.3084	1.2021
Sonoma, CA		
Sarasota-Bradenton, FL	0.9712	0.9802
Manatee, FL		
Sarasota, FL		
Savannah, GA	0.8675	0.9072
Bryan, GA		
Chatham, GA		
Effingham, GA		
Scranton—Wilkes-Barre—Hazleton, PA	0.8605	0.9022
Columbia, PA		
Lackawanna, PA		
Luzerne, PA		
Wyoming, PA		
*Seattle-Bellevue-Everett, WA	1.0985	1.0664
Island, WA		
King, WA		
Snohomish, WA		
Sharon, PA	0.8885	0.9222
Mercer, PA		
Sheboygan, WI	0.8229	0.8750
Sheboygan, WI		
Sherman-Denison, TX	0.8912	0.9242
Grayson, TX		
Shreveport-Bossier City, LA	0.8967	0.9281
Bossier, LA		
Caddo, LA		
Webster, LA		
Sioux City, IA-NE	0.8537	0.8973
Woodbury, IA		
Dakota, NE		
Sioux Falls, SD	0.8719	0.9104
Lincoln, SD		
Minnehaha, SD		
South Bend, IN	0.9486	0.9645
St. Joseph, IN		
Spokane, WA	1.0170	1.0116
Spokane, WA		
Springfield, IL	0.8727	0.9110
Menard, IL		
Sangamon, IL		
Springfield, MO	0.7866	0.8484
Christian, MO		
Greene, MO		
Webster, MO		
Springfield, MA	1.0320	1.0218
Hampden, MA		
Hampshire, MA		
State College, PA	0.9446	0.9617
Centre, PA		
Steubenville-Weirton, OH-WV	0.8013	0.8592
Jefferson, OH		
Brooke, WV		
Hancock, WV		
Stockton-Lodi, CA	1.1147	1.0772
San Joaquin, CA		
Sumter, SC	0.7691	0.8355
Sumter, SC		
Syracuse, NY	0.9869	0.9910
Cayuga, NY		
Madison, NY		
Onondaga, NY		
Oswego, NY		
Tacoma, WA	1.0165	1.0113
Pierce, WA		
Tallahassee, FL	0.8339	0.8830
Gadsden, FL		
Leon, FL		
*Tampa-St. Petersburg-Clearwater, FL	0.9351	0.9551
Hernando, FL		
Hillsborough, FL		
Pasco, FL		
Pinellas, FL		
Terre Haute, IN	0.8599	0.9018
Clay, IN		
Vermillion, IN		
Vigo, IN		
Texarkana, AR-Texarkana, TX	0.8085	0.8645
Miller, AR		
Bowie, TX		
Toledo, OH	0.9970	0.9979
Fulton, OH		
Lucas, OH		
Wood, OH		
Topeka, KS	0.9221	0.9460
Shawnee, KS		
Trenton, NJ	1.0103	1.0070
Mercer, NJ		
Tucson, AZ	0.9843	0.9892
Pima, AZ		
Tulsa, OK	0.8311	0.8810
Creek, OK		
Osage, OK		
Rogers, OK		
Tulsa, OK		
Wagoner, OK		
Tuscaloosa, AL	0.8511	0.8955
Tuscaloosa, AL		
Tyler, TX	0.9119	0.9388
Smith, TX		
Utica-Rome, NY	0.8705	0.9094
Herkimer, NY		
Oneida, NY		
Vallejo-Fairfield-Napa, CA	1.2013	1.1338
Napa, CA		
Solano, CA		
Ventura, CA	1.2161	1.1434
Ventura, CA		
Victoria, TX	0.8928	0.9253
Victoria, TX		
Vineland-Millville-Bridgeton, NJ	1.0046	1.0031
Cumberland, NJ		
Visalia-Tulare-Porterville, CA	1.0667	1.0452
Tulare, CA		
Waco, TX	0.7748	0.8397
McLennan, TX		
*Washington, DC-MD-VA-WV	1.0828	1.0560
District of Columbia, DC		
Calvert, MD		
Charles, MD		
Frederick, MD		
Montgomery, MD		
Prince Georges, MD		
Alexandria City, VA		
Arlington, VA		
Clarke, VA		
Culpepper, VA		
Fairfax, VA		
Fairfax City, VA		
Falls Church City, VA		
Fauquier, VA		
Fredericksburg City, VA		
King George, VA		
Loudoun, VA		
Manassas City, VA		
Manassas Park City, VA		
Prince William, VA		
Spotsylvania, VA		
Stafford, VA		
Warren, VA		
Berkeley, WV		
Jefferson, WV		
Waterloo-Cedar Falls, IA	0.8726	0.9109
Black Hawk, IA		
Wausau, WI	0.9774	0.9845
Marathon, WI		
West Palm Beach-Boca Raton, FL	1.0254	1.0173
Palm Beach, FL		
Wheeling, OH-WV	0.7694	0.8357
Belmont, OH		
Marshall, WV		
Ohio, WV		
Wichita, KS	0.9777	0.9847
Butler, KS		
Harvey, KS		
Sedgwick, KS		
Wichita Falls, TX	0.7951	0.8547
Archer, TX		
Wichita, TX		
Williamsport, PA	0.8503	0.8949
Lycoming, PA		
Wilmington-Newark, DE-MD	1.0667	1.0452
New Castle, DE		
Cecil, MD		
Wilmington, NC	0.9037	0.9330
New Hanover, NC		
Brunswick, NC		
Yakima, WA	0.9421	0.9600
Yakima, WA		
Yolo, CA	1.1391	1.0933
Yolo, CA		
York, PA	0.9075	0.9357
York, PA		
Youngstown-Warren, OH	0.9327	0.9534

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index	GAF
Columbiana, OH Mahoning, OH Trumbull, OH		
Yuba City, CA Sutter, CA Yuba, CA	1.0585	1.0397
Yuma, AZ Yuma, AZ	0.9617	0.9736

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban area	Wage index	GAF
Alabama	0.6935	0.7783
Alaska	1.2939	1.1930
Arizona	0.8488	0.8938
Arkansas	0.6871	0.7734
California	0.9727	0.9812
Colorado	0.8197	0.8727
Connecticut	1.2545	1.1680
Delaware	0.8359	0.8845
Florida	0.8515	0.8958
Georgia	0.7573	0.8267
Hawaii	1.0641	1.0569
Idaho	0.8471	0.8926
Illinois	0.7316	0.8073
Indiana	0.7693	0.8356
Iowa	0.7327	0.8082
Kansas	0.7069	0.7886
Kentucky	0.7511	0.8220
Louisiana	0.7118	0.7923
Maine	0.8493	0.8942
Maryland	0.8618	0.9032
Massachusetts	1.0741	1.0502
Michigan	0.8616	0.9030
Minnesota	0.8141	0.8686
Mississippi	0.6657	0.7568
Missouri	0.7331	0.8085
Montana	0.8029	0.8604
Nebraska	0.7166	0.7961
Nevada	0.9324	0.9532
New Hampshire	0.9684	0.9783
New Jersey [1]		
New Mexico	0.7460	0.8197
New York	0.8560	0.8990
North Carolina	0.7604	0.8436
North Dakota	0.7204	0.7969
Ohio	0.8122	0.8672
Oklahoma	0.6884	0.7744
Oregon	0.9176	0.9428
Pennsylvania	0.8784	0.9150
Puerto Rico	0.5256	0.6437
Rhode Island [1]		
South Carolina	0.7691	0.8355
South Dakota	0.6960	0.7802
Tennessee	0.7536	0.8239
Texas	0.7522	0.8220
Utah	0.9025	0.9322
Vermont	0.8765	0.9137
Virginia	0.7656	0.8328
Washington	0.9348	0.9548
West Virginia	0.7569	0.8568
Wisconsin	0.8298	0.8661
Wyoming	0.7833	0.8460

[1] All counties within the State are classified urban.

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

Area reclassified to	Wage index	GAF
Albany, GA	0.8493	0.8842
Albany-Schenectady-Troy, NY	0.9033	0.9327
Albuquerque, NM	0.9861	0.9905
Alexandria, LA	0.9130	0.9386
Anchorage, AK	1.2291	1.1459
Anchorage, AK (Rural Alaska Hospitals)	1.2939	1.1930
Atlanta, GA	0.9402	0.9587
Augusta-Aiken, GA-SC	0.8898	0.9232
Baton Rouge, LA	0.8659	0.9061
Benton Harbor, MI	0.7923	0.8526
Benton Harbor, MI (Rural Michigan Hosp.)	0.8616	0.9030
Bergen-Passaic, NJ	1.1331	1.0883
Billings, MT	0.8992	0.9296
Biloxi-Gulfport, MS	0.7807	0.8441
Binghamton, NY	0.8820	0.9176
Birmingham, AL	0.9006	0.9308
Bismarck, ND	0.8475	0.8929
Boston-Brockton-Nashua, MA-NH	1.1563	1.1096
Brazoria, TX	0.8441	0.8904
Bryan-College Station, TX	0.8864	0.9207
Caguas, PR	0.5039	0.6254
Caguas, PR (Rural Puerto Rico Hospitals)	0.5256	0.6437
Charleston-North Charleston, SC	0.8947	0.9266
Charleston, WV	0.8786	0.9152
Charlotte-Gastonia-Rock Hill, NC-SC	0.9640	0.9758
Chattanooga, TN-GA	0.8929	0.9254
Chicago, IL	1.0593	1.0402
Chico-Paradise, CA	1.0071	1.0049
Cincinnati, OH-KY-IN	0.9548	0.9688
Cleveland-Lorain-Elyria, OH	0.9686	0.9786
Columbia, MO	0.8967	0.9281
Columbus, OH	0.9902	0.9833
Dallas, TX	0.9648	0.9758
Davenport-Rock Island-Moline, IA-IL	0.8360	0.8802
Dayton-Springfield, OH	0.9424	0.9602
Denver, CO	1.0821	1.0555
Des Moines, IA	0.9676	0.9073
Detroit, MI	1.0790	1.0534
Dothan, AL	0.7792	0.8430
Dubuque, IA	0.8324	0.8819
Duluth-Superior, MN-WI	0.9166	0.9421
Dutchess County, NY	0.9629	1.0423
Elkhart-Goshen, IN	0.8369	0.8867
Eugene-Springfield, OR	0.9490	0.9641
Fargo-Moorhead, ND-MN	0.9111	0.9362
Fayetteville, NC	0.8261	0.8788
Flint, MI	1.0689	1.0457
Florence, AL	0.7707	0.8366
Florence, SC	0.8671	0.9070
Fort Lauderdale, FL	1.0573	1.0389
Fort Pierce-Port St. Lucie, FL	0.9676	0.9815
Fort Smith, AR	0.7611	0.8295
Fort Walton Beach, FL	0.8891	0.9084
Fort Wayne, IN	0.8893	0.9226
Fort Worth-Arlington, TX	0.9550	0.9680
Fresno, CA	1.0244	1.0166
Gadsden, AL	0.7747	0.8396
Glens Falls, NY	0.9393	0.9590
Great Falls, MT	0.8906	0.9237
Green Bay, WI	0.8852	0.9189
Greenville-Spartanburg-Anderson, SC	0.8715	0.9101
Harrisburg-Lebanon-Carlisle, PA	0.9995	0.9897
Hartford, CT	1.1968	1.1309
Honolulu, HI	1.0995	1.0671
Houston, TX	0.9908	0.9837
Huntington-Ashland, WV-KY-OH	0.8817	0.9174
Huntsville, AL	0.7954	0.8549
Indianapolis, IN	0.9871	0.9811
Jackson, MS	0.7519	0.8226
Jackson, TN	0.8007	0.8588
Johnson City-Kingsport-Bristol, TN-VA	0.8472	0.8827
Joplin, MO	0.7697	0.8359
Kalamazoo-Battlecreek, MI	1.0749	1.0507
Kansas City, KS-MO	0.9536	0.9681
Kokomo, IN	0.8440	0.8903
Lafayette, LA	0.8144	0.8666
Lafayette, IN	0.8415	0.8885
Lansing-East Lansing, MI	0.9633	0.9747
Lexington, KY	0.8291	0.8796
Lima, OH	0.8441	0.8904
Lincoln, NE	0.8469	0.8924
Little Rock-North Little Rock, AR	0.8306	0.8806
Los Angeles-Long Beach, CA	1.2719	1.1790
Macon, GA	0.9254	0.9483
Mansfield, OH	0.8158	0.8699
Medford-Ashland, OR	0.9768	0.9841
Memphis, TN-AR-MS	0.8341	0.8832
Miami, FL	0.7704	0.8364
Miami, FL (Rural Florida Only)	0.8515	0.8958
Middlesex-Somerset-Hunterdon, NJ	1.0651	1.0441
Milwaukee, WI	0.9240	0.9473
Minneapolis-St. Paul, MN-WI	1.0855	1.0578
Modesto, CA	1.1471	1.0995
Monroe, LA	0.7663	0.8334
Montgomery, AL	0.7584	0.8260
Myrtle Beach, SC	0.7906	0.8514
Nashville, TN	0.9196	0.9378
New Haven-Bridgeport-Stamford-Danbury-Waterbury, CT	1.2289	1.1516
New London-Norwich, CT	1.1589	1.1063

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area reclassified to	Wage index	GAF
New Orleans, LA	0.9443	0.9615
New York, NY	1.4020	1.2604
Newark, NJ	1.1145	1.0771
Newburgh, NY-PA	0.9908	0.9937
Oakland, CA	1.4369	1.2818
Odessa-Midland, TX	0.8735	0.9115
Oklahoma City, OK	0.8455	0.8914
Olympia, WA	1.0326	1.0222
Omaha, NE-IA	0.9900	0.9931
Orange County, CA	1.3409	1.2225
Owensboro, KY	0.7654	0.8327
Peoria-Pekin, IL	0.8249	0.8765
Philadelphia, PA-NJ	1.1160	1.0781
Pittsburgh, PA	0.9786	0.9853
Portland-Vancouver, OR-WA	1.1051	1.0708
Provo-Orem, UT	0.9609	0.9731
Pueblo, CO	0.8260	0.8773
Raleigh-Durham-Chapel Hill, NC	0.9521	0.9669
Reno, NV	1.2009	1.1336
Roanoke, VA	0.8358	0.8844
Saginaw-Bay City-Midland, MI	0.9549	0.9689
St. Cloud, MN	0.9711	0.9801
St. Louis, MO-IL	0.9192	0.9439
Salinas, CA	1.3087	1.2023
Salt Lake City-Ogden, UT	0.9669	0.9772
San Francisco, CA	1.4086	1.2644
San Juan, PR	0.4969	0.6194
Santa Fe, NM	0.9503	0.9657
Santa Rosa, CA	1.2827	1.1859
Seattle-Bellevue-Everett, WA	1.0985	1.0664
Sherman-Denison, TX	0.8912	0.9242
South Bend, IN	0.9305	0.9519
Springfield, IL	0.8727	0.9110
Syracuse, NY	0.9749	0.9827
Tampa-St. Petersburg-Clearwater, FL	0.9351	0.9551
Texarkana, TX-Texarkana, AR	0.8085	0.8645
Topeka, KS	0.9221	0.9460
Tucson, AZ	0.9843	0.9892
Tulsa, OK	0.8311	0.8810
Tyler, TX	0.9012	0.9312
Victoria, TX	0.8659	0.9061
Waterloo-Cedar Falls, IA	0.8726	0.9109
Wausau, WI	0.9225	0.9463
Wichita, KS	0.9356	0.9554
Rural Alabama	0.6935	0.7783
Rural Georgia	0.7573	0.8267
Rural Kentucky	0.7511	0.8220
Rural Kentucky (Rural TN Hospitals)	0.7536	0.8239
Rural Louisiana	0.7118	0.7923
Rural Michigan	0.8616	0.9030
Rural Minnesota	0.8141	0.8686
Rural North Carolina	0.7804	0.8438
Rural South Dakota	0.6960	0.7802
Rural South Dakota (Rural ND Hospitals)	0.7168	0.7961
Rural Utah	0.9025	0.9322
Rural Virginia	0.7656	0.8328
Rural West Virginia	0.7969	0.8560

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS

Urban area	Average hourly wage
Abilene, TX	15.2428
Aguadilla, PR	9.5376
Akron, OH	15.9696
Albany, GA	14.6612
Albany-Schenectady-Troy, NY	15.5936
Albuquerque, NM	16.9473
Alexandria, LA	15.7609
Allentown-Bethlehem-Easton, PA-NJ	17.3217
Altoona, PA	16.1256
Amarillo, TX	14.9613
Anchorage, AK	21.0609
Ann Arbor, MI	21.6446
Anniston, AL	13.8059
Appleton-Oshkosh-Neenah, WI	15.0928
Arecibo, PR	6.3951
Asheville, NC	15.8386
Athens, GA	14.3693
Atlanta, GA	16.2225
Atlantic City-Cape May, NJ	18.2697
Augusta-Aiken, GA-SC	15.3613
Austin-San Marcos, TX	15.8961
Bakersfield, CA	18.7418
Baltimore, MD	17.3241
Bangor, ME	15.8649
Barnstable-Yarmouth, MA	23.0459
Baton Rouge, LA	14.9472
Beaumont-Port Arthur, TX	15.4227
Bellingham, WA	19.2426
Benton Harbor, MI	13.6759
Bergen-Passaic, NJ	19.5203
Billings, MT	15.5216
Biloxi-Gulfport-Pascagoula, MS	13.9062
Binghamton, NY	15.7043
Birmingham, AL	15.5459
Bismarck, ND	15.1194
Bloomington, IN	14.7166
Bloomington-Normal, IL	14.7875
Boise City, ID	15.3344
Boston-Boston-Nashua, MA-NH	19.8567
Boulder-Longmont, CO	16.9518
Brazoria, TX	15.8292
Bremerton, WA	16.4485
Brownsville-Harlingen-San Benito, TX	14.6360
Bryan-College Station, TX	15.6292
Buffalo-Niagara Falls, NY	15.7378
Burlington, VT	16.3272
Caguas, PR	8.1607
Canton-Massillon, OH	15.0487
Casper, WY	14.5147
Cedar Rapids, IA	14.6304
Champaign-Urbana, IL	15.0530
Charleston-North Charleston, SC	15.4444
Charleston, WV	15.1664
Charlotte-Gastonia-Rock Hill, NC-SC	16.6550
Charlottesville, VA	16.3597
Chattanooga, TN-GA	15.6884
Cheyenne, WY	13.0128
Chicago, IL	18.2865
Chico-Paradise, CA	17.3847
Cincinnati, OH-KY-IN	16.4814
Clarksville-Hopkinsville, TN-KY	11.7823
Cleveland-Lorain-Elyria, OH	16.9469
Colorado Springs, CO	16.3362
Columbia, MO	16.0745
Columbia, SC	15.2795
Columbus, GA-AL	13.0533

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Columbus, OH	17.0935
Corpus Christi, TX	14.3870
Cumberland, MD-WV	13.9876
Dallas, TX	16.6570
Danville, VA	13.6045
Davenport-Moline-Rock Island, IA-IL	14.3268
Dayton-Springfield, OH	16.2585
Daytona Beach, FL	15.2349
Decatur, AL	13.8006
Decatur, IL	13.8290
Denver, CO	18.8756
Des Moines, IA	14.9768
Detroit, MI	18.6254
Dothan, AL	13.4521
Dover, DE	15.0658
Dubuque, IA	14.3690
Duluth-Superior, MN-WI	15.8224
Dutchess County, NY	18.3373
Eau Claire, WI	14.6399
El Paso, TX	16.4626
Elkhart-Goshen, IN	14.7770
Elmira, NY	14.7734
Enid, OK	13.7836
Erie, PA	15.8276
Eugene-Springfield, OR	16.3648
Evansville, Henderson, IN-KY	15.3706
Fargo-Moorhead, ND-MN	16.4981
Fayetteville, NC	14.7062
Fayetteville-Springdale-Rogers, AR	12.5094
Flint, MI	18.4508
Florence, AL	12.7308
Florence, SC	14.9671
Fort Collins-Loveland, CO	17.0633
Fort Lauderdale, FL	18.1586
Fort Myers-Cape Coral, FL	16.0177
Fort Pierce-Port St. Lucie, FL	18.0857
Fort Smith, AR-OK	13.1172
Fort Walton Beach, FL	15.2332
Fort Wayne, IN	15.2786
Fort Worth-Arlington, TX	16.4673
Fresno, CA	17.6839
Gadsden, AL	13.3587
Gainesville, FL	15.3822
Galveston-Texas City, TX	17.0298
Gary, IN	16.5894
Glens Falls, NY	16.0572
Goldsboro, NC	14.4976
Grand Forks, ND-MN	15.1824
Grand Rapids-Muskegon-Holland, MI	16.8377
Great Falls, MT	15.2809
Greeley, CO	15.0424
Green Bay, WI	15.2804
Greensboro-Winston-Salem-High Point, NC	16.0242
Greenville, NC	16.1067
Greenville-Spartanburg-Anderson, SC	15.0442
Hagerstown, MD	15.2431
Hamilton-Middletown, OH	15.8440
Harrisburg-Lebanon-Carlisle, PA	17.2197
Hartford, CT	20.8621
Hickory-Morganton, NC	15.1912
Honolulu, HI	18.9797
Houma, LA	13.4037
Houston, TX	17.1024
Huntington-Ashland, WV-KY-OH	15.4852
Huntsville, AL	14.0820

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Indianapolis, IN	17.0389
Iowa City, IA	16.7544
Jackson, MI	16.0144
Jackson, MS	12.8639
Jackson, TN	13.8213
Jacksonville, FL	15.4805
Jacksonville, NC	12.4243
Jamestown, NY	13.2714
Janesville-Beloit, WI	14.5269
Jersey City, NJ	18.8943
Johnson City-Kingsport-Bristol, TN-VA	14.6243
Johnstown, PA	15.1922
Joplin, MO	13.2863
Kalamazoo-Battle Creek, MI	18.8930
Kankakee, IL	14.5998
Kansas City, KS-MO	16.4648
Kenosha, WI	15.2700
Killeen-Temple, TX	17.5544
Knoxville, TN	15.9627
Kokomo, IN	14.8730
LaCrosse, WI	14.5157
Lafayette, LA	13.9831
Lafayette, IN	14.5264
Lake Charles, LA	14.0403
Lakeland-Winter Haven, FL	14.3878
Lancaster, PA	16.4341
Lansing-East Lansing, MI	16.6290
Laredo, TX	12.0031
Las Cruces, NM	15.3965
Las Vegas, NV-AZ	18.4945
Lawrence, KS	15.1783
Lawton, OK	14.5916
Lewiston-Auburn, ME	16.6482
Lexington, KY	14.2745
Lima, OH	14.5715
Lincoln, NE	15.3702
Little Rock-North Little Rock, AR	14.3384
Longview-Marshall, TX	15.0533
Los Angeles-Long Beach, CA	21.9551
Louisville, KY-IN	16.2382
Lubbock, TX	14.9804
Lynchburg, VA	14.1996
Macon, GA	16.7503
Madison, WI	17.2224
Mansfield, OH	14.0825
Mayaguez, PR	9.3158
McAllen-Edinburg-Mission, TX	14.6669
Medford-Ashland, OR	16.0752
Melbourne-Titusville-Palm Bay, FL	16.1502
Memphis, TN-AR-MS	14.7522
Merced, CA	17.2976
Miami, FL	18.2567
Middlesex-Somerset-Hunterdon, NJ	18.8082
Milwaukee-Waukesha, WI	15.9496
Minneapolis-St Paul, MN-WI	18.7387
Mobile, AL	13.4667
Modesto, CA	19.8014
Monmouth-Ocean, NJ	17.7266
Monroe, LA	13.2274
Montgomery, AL	12.9554
Muncie, IN	14.7522
Myrtle Beach, SC	14.1760
Naples, FL	16.6512
Nashville, TN	15.7168
Nassau-Suffolk, NY	23.2995
New Haven-Bridgeport-Stamford-Danbury-Waterbury, CT	21.2015
New London-Norwich, CT	19.8762
New Orleans, LA	16.2855
New York, NY	24.2016
Newark, NJ	20.4375
Newburgh, NY-PA	17.6526
Norfolk-Virginia Beach-Newport News, VA	14.7428
Oakland, CA	24.5895
Ocala, FL	14.6554
Odessa-Midland, TX	15.0776
Oklahoma City, OK	14.5953
Olympia, WA	17.8255
Omaha, NE-IA	17.0887
Orange County, CA	21.5261
Orlando, FL	16.8863
Owensboro, KY	13.2122
Panama City, FL	14.4288
Parkersburg-Marietta, WV-OH	13.3748
Pensacola, FL	14.5499
Peoria-Pekin, IL	14.4402
Philadelphia, PA-NJ	19.4459
Phoenix-Mesa, AZ	17.6465
Pine Bluff, AR	15.0421
Pittsburgh, PA	17.1758
Pittsfield, MA	18.9899
Ponce, PR	8.9188
Portland, ME	16.2826
Portland-Vancouver, OR-WA	19.0763
Providence-Warwick, RI	18.5006
Provo-Orem, UT	17.1937
Pueblo, CO	14.2589
Punta Gorda, FL	15.7648
Racine, WI	15.2123
Raleigh-Durham-Chapel Hill, NC	16.4360
Rapid City, SD	14.1890
Reading, PA	15.6775
Redding, CA	20.0625
Reno, NV	20.7293
Richland-Kennewick-Pasco, WA	15.9052
Richmond-Petersburg, VA	15.1929
Riverside-San Bernardino, CA	20.9353
Roanoke, VA	14.3877
Rochester, MN	17.3966
Rochester, NY	16.8499
Rockford, IL	15.0320
Rocky Mount, NC	14.8904
Sacramento, CA	20.9985
Saginaw-Bay City-Midland, MI	16.4403
St Cloud, MN	16.9596
St Joseph, MO	15.2095
St Louis, MO-IL	15.8494
Salem, OR	16.2476
Salinas, CA	22.7627
Salt Lake City-Ogden, UT	16.4651
San Angelo, TX	13.6142
San Antonio, TX	14.1713
San Diego, CA	20.5556
San Francisco, CA	24.5559
San Jose, CA	24.6056
San Juan-Bayamon, PR	8.5769
San Luis Obispo-Atascadero-Paso Robles, CA	21.4715
Santa Barbara-Santa Maria-Lompoc, CA	20.0870
Santa Cruz-Watsonville, CA	21.9981
Santa Fe, NM	17.2367
Santa Rosa, CA	22.5856
Sarasota-Bradenton, FL	16.7642
Savannah, GA	14.9751
Scranton-Wilkes Barre-Hazleton, PA	14.8535
Seattle-Bellevue-Everett, WA	18.9627
Sharon, PA	15.3367
Sheboygan, WI	14.2050
Sherman-Denison, TX	15.3671
Shreveport-Bossier City, LA	15.4784
Sioux City, IA-NE	14.7364
Sioux Falls, SD	15.0515
South Bend, IN	16.3751
Spokane, WA	17.5559
Springfield, IL	15.0651
Springfield, MO	13.5780
Springfield, MA	17.8144
State College, PA	16.3064
Steubenville-Weirton, OH-WV	13.8318
Stockton-Lodi, CA	19.2415
Sumter, SC	13.4801
Syracuse, NY	17.0361
Tacoma, WA	17.5469
Tallahassee, FL	14.3948
Tampa-St. Petersburg-Clearwater, FL	16.1114
Terre Haute, IN	14.8434
Texarkana, TX-Texarkana, AR	13.7395
Toledo, OH	17.2103
Topeka, KS	15.9172
Trenton, NJ	17.4405
Tucson, AZ	16.9839
Tulsa, OK	14.3472
Tuscaloosa, AL	14.6920
Tyler, TX	15.7416
Utica-Rome, NY	14.9019
Vallejo-Fairfield-Napa, CA	21.6135
Ventura, CA	21.5700
Victoria, TX	15.4109
Vineland-Millville-Bridgeton, NJ	17.3413
Visalia-Tulare-Porterville, CA	18.4141
Waco, TX	13.3752
Washington, DC-MD-VA-WV	18.6909
Waterloo-Cedar Falls, IA	14.8989
Wausau, WI	16.8715
West Palm Beach-Boca Raton, FL	17.7005
Wheeling, WV-OH	13.2821
Wichita, KS	16.8772
Wichita Falls, TX	13.7258
Williamsport, PA	14.6785
Wilmington-Newark, DE-MD	18.4130
Wilmington, NC	15.5999
Yakima, WA	16.2629
Yolo, CA	19.6627
York, PA	15.6647
Youngstown-Warren, OH	16.1008
Yuba City, CA	18.2712
Yuma, AZ	16.6005

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS

Nonurban area	Average hourly wage
Alabama	11.9571
Alaska	22.3107
Arizona	14.6513
Arkansas	11.8608
California	16.7905

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

Nonurban area	Average hourly wage
Colorado	14.1494
Connecticut	21.6549
Delaware	14.4299
Florida	14.6984
Georgia	13.0720
Hawaii	18.4430
Idaho	14.6223
Illinois	12.6290
Indiana	13.2797
Iowa	12.6481
Kansas	12.2027
Kentucky	12.9648
Louisiana	12.2472
Maine	14.6611
Maryland	14.8770
Massachusetts	18.5413

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

Nonurban area	Average hourly wage
Michigan	14.8731
Minnesota	14.0532
Mississippi	11.4921
Missouri	12.6551
Montana	13.6589
Nebraska	12.3729
Nevada	16.0944
New Hampshire	16.7167
New Jersey [1]	.....
New Mexico	12.9116
New York	14.7769
North Carolina	13.4713
North Dakota	12.4349
Ohio	14.0197
Oklahoma	11.8639
Oregon	15.8401

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

Nonurban area	Average hourly wage
Pennsylvania	15.0077
Puerto Rico	9.0352
Rhode Island [1]	.....
South Carolina	13.2754
South Dakota	12.0147
Tennessee	13.0082
Texas	12.9852
Utah	15.5784
Vermont	15.1308
Virginia	13.2159
Washington	16.1360
West Virginia	13.6687
Wisconsin	14.3243
Wyoming	13.5214

[1] All counties within the State are classified urban.

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
1	01	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.1556	10.5	14.7	34
2	01	SURG	CRANIOTOMY FOR TRAUMA AGE >17	3.1381	10.4	14.6	33
3	01	SURG [1]	CRANIOTOMY AGE 0–17	3.0176	12.7	12.7	36
4	01	SURG	SPINAL PROCEDURES	2.3847	8.1	12.0	31
5	01	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.5361	4.8	6.1	28
6	01	SURG	CARPAL TUNNEL RELEASE	.6271	2.1	3.4	25
7	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC WITH CC.	2.5180	10.7	18.8	34
8	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC.	.8576	2.9	4.6	26
9	01	MED	SPINAL DISORDERS & INJURIES	1.3397	6.7	10.5	30
10	01	MED	NERVOUS SYSTEM NEOPLASMS WITH CC	1.2819	7.1	10.5	30
11	01	MED	NERVOUS SYSTEM NEOPLASMS W/O CC	.7691	4.2	5.9	27
12	01	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	.9449	6.6	9.4	30
13	01	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.8108	6.2	7.8	29
14	01	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.2056	6.7	9.3	30
15	01	MED	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS.	.6766	4.0	5.1	27
16	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.1141	6.5	8.8	29
17	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	.6648	4.3	5.6	27
18	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS WITH CC	.9202	5.6	7.4	29
19	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.5927	3.8	5.1	27
20	01	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS.	2.0613	8.4	12.1	31
21	01	MED	VIRAL MENINGITIS	1.4304	6.8	9.1	30
22	01	MED	HYPERTENSIVE ENCEPHALOPATHY	.7286	4.1	5.1	27
23	01	MED	NONTRAUMATIC STUPOR & COMA	.8407	4.1	6.0	27
24	01	MED	SEIZURE & HEADACHE AGE >17 WITH CC	.9759	5.1	7.0	28
25	01	MED	SEIZURE & HEADACHE AGE >17 W/O CC	.5426	3.3	4.3	26
26	01	MED	SEIZURE & HEADACHE AGE 0–17	.9878	3.6	5.9	27
27	01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.3311	4.0	7.5	27
28	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 WITH CC.	1.2078	5.8	8.9	29
29	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC.	.5941	3.3	4.8	26
30	01	MED [1]	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17	.3660	2.0	2.0	17
31	01	MED	CONCUSSION AGE >17 WITH CC	.7335	4.2	6.0	27
32	01	MED	CONCUSSION AGE >17 W/O CC	.4494	2.5	3.4	22
33	01	MED [1]	CONCUSSION AGE 0–17	.2540	1.6	1.6	9
34	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM WITH CC	1.1103	5.6	7.9	29
35	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.5656	3.6	4.9	27

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
36	02	SURG	RETINAL PROCEDURES	.6087	1.7	2.1	9
37	02	SURG	ORBITAL PROCEDURES	.7843	2.6	3.9	26
38	02	SURG	PRIMARY IRIS PROCEDURES	.3716	2.1	2.6	15
39	02	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.4723.	1.5	1.9	8
40	02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.5586	2.1	3.2	25
41	02	SURG[1]	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17	.3782	1.6	1.6	7
42	02	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS.	.5777	1.8	2.4	13
43	02	MED	HYPHEMA	.3814	3.4	4.3	24
44	02	MED	ACUTE MAJOR EYE INFECTIONS	.5949	5.2	6.3	28
45	02	MED	NEUROLOGICAL EYE DISORDERS	.6047	3.4	4.3	26
46	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	.7288	4.3	6.1	27
47	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.4047	2.8	3.8	26
48	02	MED[1]	OTHER DISORDERS OF THE EYE AGE 0–17	.4155	2.9	2.9	26
49	03	SURG	MAJOR HEAD & NECK PROCEDURES	1.7937	5.3	7.6	28
50	03	SURG	SIALOADENECTOMY	.6732	2.0	2.4	12
51	03	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY.	.6515	2.0	2.8	18
52	03	SURG	CLEFT LIP & PALATE REPAIR	.7697	2.2	3.0	19
53	03	SURG	SINUS & MASTOID PROCEDURES AGE >17	.7645	2.0	3.2	25
54	03	SURG[1]	SINUS & MASTOID PROCEDURES AGE 0–17	.7124	3.2	3.2	22
55	03	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES.	.5761	1.7	2.6	17
56	03	SURG	RHINOPLASTY	.6412	1.9	2.8	19
57	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	.9116	3.3	5.2	26
58	03	SURG[1]	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17.	.3203	1.5	1.5	4
59	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	.4158	1.6	1.9	9
60	03	SURG[1]	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17.	.2704	1.5	1.5	4
61	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	1.0307	2.8	5.3	26
62	03	SURG[1]	MYRINGOTOMY W TUBE INSERTION AGE 0–17	.3194	1.3	1.3	5
63	03	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES.	1.0520	3.6	5.4	27
64	03	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.1571	5.3	8.9	28
65	03	MED	DYSEQUILIBRIUM	.4952	3.1	3.9	23
66	03	MED	EPISTAXIS	.4909	3.2	4.1	25
67	03	MED	EPIGLOTTITIS	.8481	3.9	4.8	27
68	03	MED	OTITIS MEDIA & URI AGE >17 WITH CC	.7158	4.7	5.7	28
69	03	MED	OTITIS MEDIA & URI AGE >17 W/O CC	.5126	3.6	4.4	23
70	03	MED	OTITIS MEDIA & URI AGE 0–17	.3978	2.5	3.4	25
71	03	MED	LARYNGOTRACHEITIS	.6838	3.8	4.7	27
72	03	MED	NASAL TRAUMA & DEFORMITY	.6079	3.4	4.9	26
73	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17.	.7591	4.2	5.7	27
74	03	MED[1]	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17.	.3545	2.1	2.1	20
75	04	SURG	MAJOR CHEST PROCEDURES	3.0397	10.6	13.0	34
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.4770	10.4	14.4	33
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.0443	4.1	6.4	27
78	04	MED	PULMONARY EMBOLISM	1.4292	8.2	9.7	31
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 WITH CC.	1.7332	8.7	11.3	32
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC.	.9278	6.1	7.5	29
81	04	MED[1]	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17	1.1408	6.1	6.1	29
82	04	MED	RESPIRATORY NEOPLASMS	1.3105	6.6	9.3	30
83	04	MED	MAJOR CHEST TRAUMA WITH CC	.9403	5.7	7.5	29
84	04	MED	MAJOR CHEST TRAUMA W/O CC	.4986	3.3	4.3	26
85	04	MED	PLEURAL EFFUSION WITH CC	1.1891	6.6	8.7	30
86	04	MED	PLEURAL EFFUSION W/O CC	.6691	3.9	5.1	27
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.3495	5.6	7.8	29
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.0067	5.8	7.1	29
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 WITH CC	1.1447	6.8	8.4	30
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.6990	5.1	5.9	27

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				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0–17	.7767	3.8	5.2	27
92	04	MED	INTERSTITIAL LUNG DISEASE WITH CC	1.2039	6.6	8.4	30
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	.7550	4.6	5.9	28
94	04	MED	PNEUMOTHORAX WITH CC	1.2433	6.7	8.8	30
95	04	MED	PNEUMOTHORAX W/O CC	.6067	4.1	5.1	27
96	04	MED	BRONCHITIS & ASTHMA AGE >17 WITH CC	.8776	5.5	6.6	29
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	.6067	4.2	4.9	24
98	04	MED	BRONCHITIS & ASTHMA AGE 0–17	.6840	3.5	4.7	27
99	04	MED	RESPIRATORY SIGNS & SYMPTOMS WITH CC	.7149	3.4	4.5	26
100	04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	.5004	2.4	2.9	16
101	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES WITH CC	.9035	4.8	6.5	28
102	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.5282	3.1	4.0	26
103	05	SURG	HEART TRANSPLANT	14.0215	25.9	36.6	49
104	05	SURG	CARDIAC VALVE PROCEDURES W CARDIAC CATH	7.6559	16.5	19.4	40
105	05	SURG	CARDIAC VALVE PROCEDURES W/O CARDIAC CATH	5.7990	11.6	13.7	35
106	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.6791	12.9	14.5	36
107	05	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.2005	9.8	10.9	33
108	05	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.8690	11.8	15.1	35
109	.....		NO LONGER VALID	.0000	.0	.0	0
110	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES WITH CC	4.0494	9.5	12.7	33
111	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.3214	6.9	8.0	30
112	05	SURG	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	1.9736	4.2	5.7	27
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE.	2.7931	13.5	18.3	36
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS.	1.5631	8.3	11.6	31
115	05	SURG	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK.	3.5886	10.9	13.3	34
116	05	SURG	OTH PERM CARDIAC PACEMAKER IMPLANT OR AICD LEAD OR GEN PROC.	2.4248	5.0	6.8	28
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT.	1.1328	3.3	4.8	26
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.5419	2.4	3.7	25
119	05	SURG	VEIN LIGATION & STRIPPING	.9834	3.5	6.0	26
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.9626	6.6	11.4	30
121	05	MED	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE.	1.6017	7.4	9.1	30
122	05	MED	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE.	1.1325	5.2	6.4	28
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.4116	2.9	5.2	26
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG.	1.2307	4.2	5.6	27
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG.	.7960	2.3	3.1	23
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.7299	14.6	19.4	38
127	05	MED	HEART FAILURE & SHOCK	1.0234	5.7	7.4	29
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.7825	7.0	8.0	30
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.1959	2.2	4.1	25
130	05	MED	PERIPHERAL VASCULAR DISORDERS WITH CC	.9042	6.0	7.7	29
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.5831	4.6	5.8	28
132	05	MED	ATHEROSCLEROSIS WITH CC	.7594	3.8	5.2	27
133	05	MED	ATHEROSCLEROSIS W/O CC	.5257	2.8	3.6	22
134	05	MED	HYPERTENSION	.5614	3.6	4.6	27
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 WITH CC.	.8609	4.5	6.2	28
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 W/O CC.	.5489	3.0	3.9	24
137	05	MED[1]	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17.	.6530	3.3	3.3	26
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS WITH CC.	.8038	4.2	5.5	27
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC.	.4946	2.8	3.5	20
140	05	MED	ANGINA PECTORIS	.6241	3.4	4.2	24
141	05	MED	SYNCOPE & COLLAPSE WITH CC	.7053	4.1	5.3	27
142	05	MED	SYNCOPE & COLLAPSE W/O CC	.5150	3.0	3.8	21
143	05	MED	CHEST PAIN	.5189	2.6	3.2	17

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				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.0659	4.7	6.7	28
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.6122	3.0	3.9	26
146	06	SURG	RECTAL RESECTION WITH CC	2.4955	11.3	12.7	34
147	06	SURG	RECTAL RESECTION W/O CC	1.5328	8.0	8.9	30
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES WITH CC	3.1719	12.7	15.2	36
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC .	1.5127	8.0	8.7	27
150	06	SURG	PERITONEAL ADHESIOLYSIS WITH CC	2.5505	10.9	13.3	34
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.1738	5.7	7.1	29
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES WITH CC	1.7955	8.6	10.2	32
153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC ..	1.0821	6.3	6.9	25
154	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 WITH CC.	4.1338	13.9	17.6	37
155	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 W/O CC.	1.3811	6.5	7.9	30
156	06	SURG[1]	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17.	.8668	6.0	6.0	29
157	06	SURG	ANAL & STOMAL PROCEDURES WITH CC	1.0048	4.5	6.3	28
158	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.5100	2.3	2.9	17
159	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 WITH CC.	1.0901	4.5	6.0	28
160	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC.	.6378	2.6	3.3	18
161	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 WITH CC.	.8260	3.2	4.6	26
162	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC.	.4823	1.7	2.2	11
163	06	SURG	HERNIA PROCEDURES AGE 0–17	.6795	3.2	3.9	25
164	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG WITH CC.	2.1679	9.2	10.6	32
165	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC.	1.2055	5.9	6.6	24
166	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG WITH CC.	1.3413	5.5	6.7	28
167	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC.	.7801	3.4	3.9	16
168	03	SURG	MOUTH PROCEDURES WITH CC	1.0321	3.5	5.5	27
169	03	SURG	MOUTH PROCEDURES W/O CC	.5824	2.0	2.6	16
170	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES WITH CC	2.7524	10.5	15.3	34
171	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC .	1.0894	4.6	6.2	28
172	06	MED	DIGESTIVE MALIGNANCY WITH CC	1.3063	6.8	10.1	30
173	06	MED	DIGESTIVE MALIGNANCY W/O CC	.6318	3.4	5.0	26
174	06	MED	G.I. HEMORRHAGE WITH CC	.9657	5.2	6.5	28
175	06	MED	G.I. HEMORRHAGE W/O CC	.5354	3.5	4.1	20
176	06	MED	COMPLICATED PEPTIC ULCER	1.0453	5.6	7.3	29
177	06	MED	UNCOMPLICATED PEPTIC ULCER WITH CC	.7986	4.8	5.9	28
178	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	.5804	3.5	4.2	20
179	06	MED	INFLAMMATORY BOWEL DISEASE	1.1072	6.8	8.8	30
180	06	MED	G.I. OBSTRUCTION WITH CC	.9180	5.5	7.1	28
181	06	MED	G.I. OBSTRUCTION W/O CC	.4969	3.6	4.4	24
182	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 WITH CC.	.7617	4.6	5.9	28
183	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC.	.5291	3.2	4.0	23
184	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0–17.	.4735	2.8	3.8	26
185	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17.	.8248	4.2	5.8	27
186	03	MED[1]	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0–17.	.4251	2.9	2.9	23
187	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	.5852	2.6	3.7	26
188	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 WITH CC.	1.0050	5.1	7.1	28
189	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC.	.4775	2.7	3.7	26
190	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17	.7577	4.2	5.6	27
191	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES WITH CC	4.3319	14.3	18.8	37
192	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.6460	7.4	9.3	30

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				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
193	07	SURG	BILIARY TRACT PROC W CC EXCEPT ONLY CHOLECYST W OR W/O C.D.E..	3.0940	13.2	15.7	36
194	07	SURG	BILIARY TRACT PROC W/O CC EXCEPT ONLY CHOLECYST W OR W/O C.D.E.	1.5991	7.7	9.3	31
195	07	SURG	CHOLECYSTECTOMY W C.D.E. WITH CC	2.4066	10.2	11.9	33
196	07	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC	1.5073	6.9	8.1	30
197	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. WITH CC.	2.0082	8.2	10.0	31
198	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC.	1.0432	4.5	5.4	27
199	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY.	2.3557	10.3	13.7	33
200	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY.	2.8054	8.7	13.4	32
201	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES.	3.1526	12.2	17.5	35
202	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.3176	6.7	9.2	30
203	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS.	1.2180	6.5	9.4	30
204	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.1302	5.9	7.7	29
205	07	MED	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA WITH CC.	1.2470	6.4	9.0	29
206	07	MED	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W/O CC.	.6181	3.6	5.2	27
207	07	MED	DISORDERS OF THE BILIARY TRACT WITH CC	.9896	5.1	6.7	28
208	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	.5521	2.9	3.7	24
209	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES—LOWER EXTREMITY.	2.3491	8.6	9.6	31
210	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 WITH CC.	1.8702	10.0	11.7	33
211	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC.	1.3031	7.6	8.6	31
212	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17.	1.4486	4.3	6.0	27
213	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.7485	8.9	12.3	32
214	08	SURG	BACK & NECK PROCEDURES WITH CC	1.8857	7.3	9.1	30
215	08	SURG	BACK & NECK PROCEDURES W/O CC	1.0926	4.4	5.3	26
216	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	2.0570	9.6	13.8	33
217	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND, FOR MUSCSKELET & CONN TISS DIS.	3.0563	13.1	20.4	36
218	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 WITH CC.	1.4195	6.3	8.2	29
219	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC.	.9015	3.9	4.8	25
220	08	SURG [1]	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0–17.	.9556	5.3	5.3	28
221	08	SURG	KNEE PROCEDURES WITH CC	1.7992	7.1	10.1	30
222	08	SURG	KNEE PROCEDURES W/O CC	.9846	3.6	5.0	27
223	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC.	.8126	2.8	3.5	20
224	08	SURG	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC.	.6698	2.3	2.8	14
225	08	SURG	FOOT PROCEDURES	.8568	3.3	5.1	26
226	08	SURG	SOFT TISSUE PROCEDURES WITH CC	1.3096	5.4	8.0	28
227	08	SURG	SOFT TISSUE PROCEDURES W/O CC	.6866	2.6	3.4	22
228	08	SURG	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC.	.8225	2.4	3.6	25
229	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC.	.5679	1.8	2.4	14
230	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR.	.9353	3.8	5.8	27
231	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR.	1.1159	3.7	5.9	27
232	08	SURG	ARTHROSCOPY	1.1082	3.1	5.5	26

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
233	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC WITH CC.	1.8454	7.9	11.1	31
234	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC.	.9321	3.7	5.2	27
235	08	MED	FRACTURES OF FEMUR	.9730	6.4	10.2	29
236	08	MED	FRACTURES OF HIP & PELVIS	.7922	5.9	8.1	29
237	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH.	.5536	4.0	5.3	27
238	08	MED	OSTEOMYELITIS	1.5082	9.7	13.0	33
239	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	1.0388	7.2	9.5	30
240	08	MED	CONNECTIVE TISSUE DISORDERS WITH CC	1.1488	6.5	8.8	30
241	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	.5682	4.1	5.3	27
242	08	MED	SEPTIC ARTHRITIS	1.1356	7.5	10.0	30
243	08	MED	MEDICAL BACK PROBLEMS	.7011	5.0	6.6	28
244	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES WITH CC	.7437	5.2	7.0	28
245	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	.4798	3.6	4.8	27
246	08	MED	NON-SPECIFIC ARTHROPATHIES	.5962	4.2	5.4	27
247	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE.	.5547	3.5	4.7	26
248	08	MED	TENDONITIS, MYOSITIS & BURSITIS	.6939	4.5	6.0	27
249	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	.6638	3.7	5.5	27
250	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 WITH CC.	.7174	4.4	6.3	27
251	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC.	.4449	2.7	3.7	26
252	08	MED[1]	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17.	.3615	1.8	1.8	.15
253	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 WITH CC.	.7706	5.4	7.6	28
254	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W/O CC.	.4272	3.3	4.5	26
255	08	MED[1]	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0–17.	.4796	2.9	2.9	26
256	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES.	.6366	3.6	4.9	27
257	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY WITH CC	.8845	3.8	4.6	21
258	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.6959	3.0	3.4	13
259	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY WITH CC	.8372	3.1	4.7	26
260	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.5743	2.0	2.5	11
261	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION.	.7272	2.1	2.6	14
262	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY.	.6071	2.3	3.5	25
263	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS WITH CC.	2.4460	13.5	19.0	37
264	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC.	1.2346	7.8	10.7	31
265	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC.	1.4065	5.8	9.0	29
266	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC.	.7108	2.9	4.3	26
267	09	SURG	PERIANAL & PILONIDAL PROCEDURES	.6592	2.6	4.3	26
268	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES.	.8198	2.7	4.3	26
269	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROCEDURE WITH CC.	1.7166	7.8	11.6	31
270	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROCEDURE W/O CC.	.6456	2.7	3.9	26
271	09	MED	SKIN ULCERS	1.1783	8.1	10.8	31
272	09	MED	MAJOR SKIN DISORDERS WITH CC	1.0206	6.8	8.8	30
273	09	MED	MAJOR SKIN DISORDERS W/O CC	.6514	4.8	6.4	28
274	09	MED	MALIGNANT BREAST DISORDERS WITH CC	1.1183	6.3	9.6	29
275	09	MED	MALIGNANT BREAST DISORDERS W/O CC	.5050	2.7	3.9	26
276	09	MED	NON-MALIGANT BREAST DISORDERS	.6351	4.4	5.8	27
277	09	MED	CELLULITIS AGE >17 WITH CC	.8917	6.6	8.0	30

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
278	09	MED	CELLULITIS AGE >17 W/O CC	.5828	5.0	5.9	26
279	09	MED[1]	CELLULITIS AGE 0–17	.7618	4.2	4.2	24
280	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 WITH CC.	.6755	4.4	6.1	27
281	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC.	.4195	3.0	4.0	26
282	09	MED[1]	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17.	.3540	2.2	2.2	19
283	09	MED	MINOR SKIN DISORDERS WITH CC	.7253	5.0	6.6	26
284	09	MED	MINOR SKIN DISORDERS W/O CC	.4469	3.4	4.5	26
285	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE, NUTRIT, & METABOL DISORDERS.	2.5637	13.3	18.2	36
286	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.2821	8.2	10.1	31
287	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS.	2.1927	12.4	18.1	35
288	10	SURG	O.R. PROCEDURES FOR OBESITY	2.0725	6.9	10.5	30
289	10	SURG	PARATHYROID PROCEDURES	.9920	3.4	4.9	26
290	10	SURG	THYROID PROCEDURES	.7637	2.5	3.1	16
291	10	SURG	THYROGLOSSAL PROCEDURES	.5074	1.7	2.0	9
292	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC WITH CC.	2.7658	11.1	16.1	34
293	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC.	1.1010	4.7	7.1	28
294	10	MED	DIABETES AGE >35	.7466	5.4	6.9	28
295	10	MED	DIABETES AGE 0–35	.7562	4.2	5.6	27
296	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 WITH CC.	.9313	5.6	7.8	29
297	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC.	.5244	3.8	4.8	27
298	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17	.5627	3.2	4.6	26
299	10	MED	INBORN ERRORS OF METABOLISM	.8271	4.4	6.4	27
300	10	MED	ENDOCRINE DISORDERS WITH CC	1.0982	6.6	8.7	30
301	10	MED	ENDOCRINE DISORDERS W/O CC	.5777	3.8	5.1	27
302	11	SURG	KIDNEY TRANSPLANT	3.8871	12.9	14.9	36
303	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM.	2.5929	10.3	12.4	33
304	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL WITH CC.	2.3897	9.4	12.7	32
305	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC.	1.1127	4.7	5.9	28
306	11	SURG	PROSTATECTOMY WITH CC	1.2474	6.1	8.2	29
307	11	SURG	PROSTATECTOMY W/O CC	.6620	3.3	4.0	18
308	11	SURG	MINOR BLADDER PROCEDURES WITH CC	1.4452	5.8	8.5	29
309	11	SURG	MINOR BLADDER PROCEDURES W/O CC	.7580	2.8	3.7	26
310	11	SURG	TRANSURETHRAL PROCEDURES WITH CC	.9006	3.7	5.2	27
311	11	SURG	TRANSURETHRAL PROCEDURES W/O CC	.5206	2.0	2.5	13
312	11	SURG	URETHRAL PROCEDURES, AGE >17 WITH CC	.8334	3.6	5.4	27
313	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC	.4551	2.0	2.6	15
314	11	SURG[1]	URETHRAL PROCEDURES, AGE 0–17	.4470	2.3	2.3	25
315	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.0341	6.5	11.6	29
316	11	MED	RENAL FAILURE	1.2903	6.2	8.9	29
317	11	MED	ADMIT FOR RENAL DIALYSIS	.5194	2.8	4.0	26
318	11	MED	KIDNEY & URINARY TRACT NEOPLASMS WITH CC	1.1215	5.8	8.6	29
319	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	.5298	2.5	3.4	25
320	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 WITH CC.	.9677	6.3	7.9	29
321	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC.	.6112	4.6	5.4	26
322	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0–17	.4952	3.9	4.5	21
323	11	MED	URINARY STONES WITH CC, &/OR ESW LITHOTRIPSY	.7290	3.0	4.1	26
324	11	MED	URINARY STONES W/O CC	.3864	2.0	2.4	12
325	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 WITH CC.	.6607	4.1	5.6	27
326	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC.	.4024	2.7	3.4	21
327	11	MED[1]	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17.	.7169	3.1	3.1	26

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
328	11	MED	URETHRAL STRICTURE AGE >17 WITH CC	.6597	3.6	5.0	27
329	11	MED	URETHRAL STRICTURE AGE >17 W/O CC	.3881	1.9	2.4	14
330	11	MED[1]	URETHRAL STRICTURE AGE 0–17	.2882	1.6	1.6	9
331	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 WITH CC.	.9829	5.2	7.2	28
332	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC.	.5430	2.9	4.1	26
333	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17.	.9641	5.0	7.2	28
334	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC	1.7535	7.4	8.1	25
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.3630	6.2	6.6	20
336	12	SURG	TRANSURETHRAL PROSTATECTOMY WITH CC	.8540	4.3	5.2	23
337	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC	.6050	3.2	3.6	11
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	.9395	3.8	5.8	27
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	.8093	3.1	4.6	26
340	12	SURG[1]	TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17	.4483	2.4	2.4	13
341	12	SURG	PENIS PROCEDURES	.9646	3.1	4.0	25
342	12	SURG	CIRCUMCISION AGE >17	.5848	2.6	3.8	26
343	12	SURG[1]	CIRCUMCISION AGE 0–17	.3916	1.7	1.7	6
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY.	1.0183	3.1	4.3	26
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY.	.7344	3.2	4.6	26
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, WITH CC	.9338	5.3	7.8	28
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	.4928	2.5	3.8	26
348	12	MED	BENIGN PROSTATIC HYPERTROPHY WITH CC	.6856	3.9	5.5	27
349	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O CC	.3904	2.3	3.3	22
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.6668	4.6	5.5	27
351	12	MED[1]	STERILIZATION, MALE	.3447	1.3	1.3	5
352	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.5326	3.1	4.4	26
353	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY.	1.9624	8.8	10.7	32
354	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG WITH CC.	1.3794	6.5	7.6	29
355	13	SURG	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC.	.8717	4.4	4.7	13
356	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES.	.7096	3.5	4.0	15
357	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIG.	2.3153	9.4	11.5	32
358	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY WITH CC.	1.1042	5.2	5.9	21
359	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC.	.7834	3.9	4.1	11
360	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES	.8126	3.8	4.7	25
361	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1.0037	3.2	5.0	26
362	13	SURG[1]	ENDOSCOPIC TUBAL INTERRUPTION	.5151	1.4	1.4	5
363	13	SURG	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	.6340	2.9	3.9	23
364	13	SURG	D&C, CONIZATION EXCEPT FOR MALIGNANCY	.5930	2.6	3.8	26
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES.	1.7034	6.6	9.6	30
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM WITH CC.	1.1948	6.1	9.4	29
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	.4769	2.6	3.6	26
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	.9489	5.8	7.5	29
369	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS.	.5201	3.0	4.4	26
370	14	SURG	CESAREAN SECTION W CC	.8699	4.9	5.9	24
371	14	SURG	CESAREAN SECTION W/O CC	.6289	3.8	4.0	10
372	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.5174	3.1	4.3	26
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3247	2.0	2.2	8
374	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C	.5859	2.6	3.2	15
375	14	SURG[1]	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C.	.7049	4.4	4.4	27
376	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE.	.3894	2.6	3.5	24

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				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
377	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE.	.9600	3.0	4.4	26
378	14	MED	ECTOPIC PREGNANCY	.7580	3.1	3.6	16
379	14	MED	THREATENED ABORTION	.3346	2.4	3.4	25
380	14	MED	ABORTION W/O D&C	.2958	1.6	2.1	10
381	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY.	.3943	1.6	2.0	9
382	14	MED	FALSE LABOR	.1240	1.2	1.3	4
383	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS.	.4059	3.1	4.3	26
384	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS.	.2620	2.1	2.8	19
385	15	MED[1]	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	1.2648	1.8	1.8	25
386	15	MED[1]	EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE.	3.7722	17.9	17.9	41
387	15	MED[1]	PREMATURITY W MAJOR PROBLEMS	1.8869	13.3	13.3	36
388	15	MED[1]	PREMATURITY W/O MAJOR PROBLEMS	1.1965	8.6	8.6	32
389	15	MED	FULL TERM NEONATE W MAJOR PROBLEMS	1.5295	5.3	10.7	28
390	15	MED	NEONATE W OTHER SIGNIFICANT PROBLEMS	.9165	4.4	7.0	27
391	15	MED[1]	NORMAL NEWBORN	.2294	3.1	3.1	11
392	16	SURG	SPLENECTOMY AGE >17	3.3043	10.6	14.3	34
393	16	SURG[1]	SPLENECTOMY AGE 0–17	1.5723	9.1	9.1	32
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS.	1.6781	5.3	9.9	28
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.8057	4.5	6.2	27
396	16	MED	RED BLOOD CELL DISORDERS AGE 0–17	.3079	1.8	2.3	13
397	16	MED	COAGULATION DISORDERS	1.2292	5.3	7.3	28
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS WITH CC.	1.2431	6.1	7.8	29
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC.	.6822	4.0	5.1	27
400	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.5309	8.1	12.4	31
401	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC.	2.3778	10.0	14.6	33
402	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC.	.6850	3.3	5.1	26
403	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.6757	7.8	11.3	31
404	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.7377	3.8	5.4	27
405	17	MED[1]	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17.	1.0761	4.9	4.9	28
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC.	2.6133	9.9	13.5	33
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC.	1.1204	4.5	5.9	28
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC.	1.4241	4.9	8.4	28
409	17	MED	RADIOTHERAPY	.9922	5.8	8.5	29
410	17	MED	CHEMOTHERAPY WITHOUT ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	.6679	2.9	3.6	20
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.4152	2.2	2.9	20
412	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	.4758	2.1	3.2	25
413	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG WITH CC.	1.3849	7.2	10.6	30
414	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC.	.7091	4.1	6.0	27
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES.	3.5723	14.2	19.8	37
416	18	MED	SEPTECEMIA AGE >17	1.5141	7.2	10.0	30
417	18	MED	SEPTECEMIA AGE 0–17	.7002	4.9	5.7	27
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	.9665	6.2	7.9	29
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 WITH CC	.9511	5.5	7.0	28
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.6365	4.2	5.1	27
421	18	MED	VIRAL ILLNESS AGE >17	.6759	4.2	5.3	27
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17.	.5888	3.5	4.5	27
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.6246	7.7	10.7	31

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
424	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS.	2.4684	13.9	23.2	37
425	19	MED	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION.	.7127	4.3	6.0	27
426	19	MED	DEPRESSIVE NEUROSES	.6128	5.0	7.2	28
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.6184	4.9	7.3	28
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.7084	5.7	9.2	29
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.9379	7.4	11.0	30
430	19	MED	PSYCHOSES	.9153	8.4	12.0	31
431	19	MED	CHILDHOOD MENTAL DISORDERS	.6980	5.8	8.7	29
432	19	MED	OTHER MENTAL DISORDER DIAGNOSES	.7357	4.5	7.4	27
433	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.3512	2.8	4.2	26
434	20	MED	ALC/DRUG ABUSE OR DEPENDENCE, DETOX OR OTHER SYMPT TRT WITH CC.	.7321	5.1	6.9	28
435	20	MED	ALC/DRUG ABUSE OR DEPENDENCE, DETOX OR OTHER SYMPT TRT W/O CC.	.4529	4.2	5.8	27
436	20	MED	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	.9691	15.1	17.9	38
437	20	MED	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY.	.9970	12.8	15.2	36
438	.....		NO LONGER VALID	.0000	.0	.0	0
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.3853	6.1	9.9	29
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	1.7125	7.6	11.9	31
441	21	SURG	HAND PROCEDURES FOR INJURIES	.7122	2.2	3.6	25
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES WITH CC	1.9292	5.8	9.3	29
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	.7398	2.4	3.4	25
444	21	MED	TRAUMATIC INJURY AGE > 17 W CC	.7431	4.9	6.5	28
445	21	MED	TRAUMATIC INJURY AGE > 17 W/O CC	.4635	3.2	4.1	26
446	21	MED[1]	TRAUMATIC INJURY AGE 0–17	.4959	2.4	2.4	22
447	21	MED	ALLERGIC REACTIONS AGE >17	.4869	2.5	3.3	22
448	21	MED[1]	ALLERGIC REACTIONS AGE 0–17	.3588	2.9	2.9	17
449	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 WITH CC.	.7929	3.8	5.4	27
450	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC.	.4224	2.2	2.9	19
451	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17	1.0266	4.2	6.0	27
452	21	MED	COMPLICATIONS OF TREATMENT WITH CC	.8232	4.0	5.8	27
453	21	MED	COMPLICATIONS OF TREATMENT W/O CC	.4177	2.6	3.5	23
454	21	MED	OTHER INJURY, POISONING & TOXIC EFF DIAG WITH CC	.9107	4.3	6.6	27
455	21	MED	OTHER INJURY, POISONING & TOXIC EFF DIAG W/O CC	.4166	2.3	3.2	23
456	22	MED	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	2.1688	5.1	10.4	28
457	22	MED	EXTENSIVE BURNS W/O O.R. PROCEDURE	1.6312	2.6	5.3	26
458	22	SURG	NON-EXTENSIVE BURNS W SKIN GRAFT	3.7459	15.2	21.8	38
459	22	SURG	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC.	2.1042	10.7	15.4	34
460	22	MED	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	1.0508	6.0	8.7	29
461	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES.	.8656	2.4	5.0	25
462	23	MED	REHABILITATION	1.7205	13.5	17.0	36
463	23	MED	SIGNS & SYMPTOMS W CC	.7249	4.7	6.4	28
464	23	MED	SIGNS & SYMPTOMS W/O CC	.4591	2.9	3.8	25
465	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.3740	1.9	2.9	20
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.5516	2.4	4.6	25
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.4168	2.5	5.1	26
468	.....		EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	3.4842	12.9	18.5	36
469	.....		PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS[2].	.0000	.0	.0	0
470	.....		UNGROUPABLE[2]	.0000	.0	.0	0
471	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY.	3.8651	10.6	12.4	34
472	22	SURG	EXTENSIVE BURNS W O.R. PROCEDURE	11.6933	17.8	31.0	41
473	17	MED	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17.	3.5702	9.6	16.9	33
474	04		NO LONGER VALID	.0000	.0	.0	0

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM—Continued

				Relative weights	Geometric mean LOS	Arithmetic mean LOS	Outlier threshold
475	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT.	3.7175	9.8	14.2	33
476	.....		PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	2.2361	13.4	16.7	36
477	.....		NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	1.4628	6.0	9.9	29
478	05	SURG	OTHER VASCULAR PROCEDURES W CC	2.1897	6.6	10.0	30
479	05	SURG	OTHER VASCULAR PROCEDURES W/O CC	1.3027	4.0	5.3	27
480	.....	SURG	LIVER TRANSPLANT	19.4679	27.6	37.2	51
481	.....	SURG	BONE MARROW TRANSPLANT	14.3709	36.2	39.7	59
482	.....	SURG	TRACHEOSTOMY FOR FACE, MOUTH AND NECK DIAGNOSES.	3.5756	13.3	17.6	36
483	.....	SURG	TRACHEOSTOMY EXCEPT FOR FACE, MOUTH AND NECK DIAGNOSES.	16.9858	43.9	56.7	67
484	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5.6612	13.3	20.6	36
485	24	SURG	LIMB REATTACH., HIP AND FEMUR PROCS FOR MULTI SIGN TRAUMA.	3.2361	12.5	15.8	35
486	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA.	4.6756	10.2	16.7	33
487	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.9379	7.3	11.1	30
488	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE	4.3859	15.8	22.1	39
489	25	MED	HIV W MAJOR RELATED CONDITION	1.8468	8.8	13.4	32
490	25	MED	HIV W OR W/O OTHER RELATED CONDITION	1.1174	5.3	8.4	28
491	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES—UPPER EXTREMITY.	1.6092	5.0	6.0	28
492	17	MED	CHEMOTHERAPY WITH ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	3.5861	10.9	17.2	34
493	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. WITH CC.	1.5268	4.3	6.2	27
494	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC.	.8233	1.7	2.3	13

[1] Medicare data have been supplemented by data from Maryland and Michigan for low volume DRGS.
[2] DRGS 469 and 470 contain cases which could not be assigned to valid DRGS.
Note: Geometric mean is used only to determine payment for transfer cases.
Note: Arithmetic mean is used only to determine payment for outlier cases.
Note: Relative weights are based on Medicare patient data and may not be appropriate for other patients.

TABLE 6A.—NEW DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
077.98	Unspecified disease of conjunctiva due to Chlamydiae	N	02	46, 47, 48
077.99	Unspecified diseases of conjunctiva due to viruses	N	02	46, 47, 48
078.10	Other diseases due to viruses and Chlamydiae, viral warts, unspecified	N	09	283, 284
078.11	Other diseases due to viruses and Chlamydiae, Condyloma acuminatum	N	09	283, 284
078.19	Other diseases due to viruses and Chlamydiae, other specified viral warts	N	09	283, 284
078.88	Other specified diseases due to Chlamydiae	N	18	421, 422
079.4	Human papilloma virus	N	18	421, 422
079.50	Retrovirus, unspecified	N	18	421, 422
079.51	Human T-cell lymphotrophic virus, type I [HTLV–I]	N	18	421, 422
079.52	Human T-cell lymphotrophic virus, type II [HTLV–II]	N	18	421, 422
079.53	Human immunodeficiency virus, type 2 [HIV 2]	N	18	421, 422
079.59	Other specified retrovirus	N	18	421, 422
079.88	Other specified chlamydial infection	N	18	421, 422
079.89	Other specified viral infection	N	18	421, 422
079.98	Unspecified chlamydial infection	N	18	421, 422
			25	490
079.99	Unspecified viral infection	N	18	421, 422
			25	490
088.82	Babesiosis	N	18	423
114.4	Chronic pulmonary coccidioidomycosis	N	04	79, 80, 81
			25	489
114.5	Pulmonary coccidioidomycosis, unspecified	N	04	79, 80, 81
			25	489
250.02	Diabetes mellitus without mention of complication, type II [non-insulin dependent type] [NIDDM type] [adult-onset type] or unspecified type, uncontrolled	Y	10	294, 295

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
250.03	Diabetes mellitus without mention of complication, type I [insulin dependent type] [IDDM] [juvenile type], uncontrolled	Y	10	294, 295
250.12	Diabetes with ketoacidosis, type II [non-insulin dependent type] [NIDDM type] [adult-onset type] or unspecified type, uncontrolled	Y	10	294, 295
250.13	Diabetes with ketoacidosis, type I [insulin dependent type] [IDDM] [juvenile type], uncontrolled	Y	10	294, 295
250.22	Diabetes with hyperosmolarity, type II [non-insulin dependent type] [NIDDM type] [adult-onset type] or unspecified type, uncontrolled	Y	10	294, 295
250.23	Diabetes with hyperosmolarity, type I [insulin dependent type] [IDDM] [juvenile type], uncontrolled	Y	10	294, 295
250.32	Diabetes with other coma, type II [non-insulin dependent type] [NIDDM type] [adult-onset type] or unspecified type, uncontrolled	Y	10	294, 295
250.33	Diabetes with other coma, type I [insulin dependent type] [IDDM] [juvenile type], uncontrolled	Y	10	294, 295
250.42	Diabetes with renal manifestations, type II [non-insulin dependent type] [NIDDM type] [adult-onset type] or unspecified type, uncontrolled	Y	11	331, 332, 333
250.43	Diabetes with renal manifestations, type I [insulin dependent type] [IDDM] [juvenile type], uncontrolled	Y	11	331, 332, 333
250.52	Diabetes with ophthalmic manifestations, type II [non-insulin dependent type] [NIDDM type] [adult-onset type] or unspecified type, uncontrolled	Y	02	46, 47, 48
250.53	Diabetes with ophthalmic manifestations, type I [insulin dependent type] [IDDM] [juvenile type], uncontrolled	Y	02	46, 47, 48
250.62	Diabetes with neurological manifestations, type II [non-insulin dependent type] [NIDDM type] [adult-onset type] or unspecified type, uncontrolled	Y	01	18, 19
250.63	Diabetes with neurological manifestations, type I [insulin dependent type] [IDDM] [juvenile type], uncontrolled	Y	01	18, 19
250.72	Diabetes with peripheral circulatory disorders, type II [non-insulin dependent type] [NIDDM type] [adult-onset type] or unspecified type, uncontrolled	Y	05	130, 131
250.73	Diabetes with peripheral circulatory disorders, type I [insulin dependent type] [IDDM] [juvenile type], uncontrolled	Y	05	130, 131
250.82	Diabetes with other specified manifestations, type II [non-insulin dependent type] [NIDDM type] [adult-onset type] or unspecified type, uncontrolled	Y	10	294, 295
250.83	Diabetes with other specified manifestations, type I [insulin dependent type] [IDDM] [juvenile type], uncontrolled	Y	10	294, 295
250.92	Diabetes with unspecified complication, type II [non-insulin dependent type] [NIDDM type] [adult-onset type] or unspecified type, uncontrolled	Y	10	294, 295
250.93	Diabetes with unspecified complication, type I [insulin dependent type] [IDDM] [juvenile type], uncontrolled	Y	10	294, 295
283.10	Non-autoimmune hemolytic anemia, unspecified	Y	15	387, 389[1]
			16	395, 396
			25	490
283.11	Hemolytic uremic syndrome	Y	15	387, 389[1]
			16	395, 396
			25	490
283.19	Other non-autoimmune hemolytic anemias	Y	15	387, 389[1]
			16	395, 396
			25	490
337.20	Reflex sympathetic dystrophy, unspecified	N	01	18, 19
337.21	Reflex sympathetic dystrophy of the upper limb	N	01	18, 19
337.22	Reflex sympathetic dystrophy of the lower limb	N	01	18, 19
337.29	Reflex sympathetic dystrophy of other specified site	N	01	18, 19
344.81	Other specified paralytic syndromes, Locked-in state	N	01	34, 35
344.89	Other specified paralytic syndromes	N	01	34, 35
355.71	Causalgia of lower limb	N	01	18, 19
355.79	Other mononeuritis of lower limb	N	01	18, 19
433.00	Occlusion and stenosis of basilar artery, without mention of cerebral infarction	N	01	15
433.01	Occlusion and stenosis of basilar artery, with cerebral infarction	Y	01	14
			15	387, 389[1]
433.10	Occlusion and stenosis of carotid artery, without mention of cerebral infarction	N	01	15
433.11	Occlusion and stenosis of carotid artery, with cerebral infarction	Y	01	14
			15	387, 389[1]
433.20	Occlusion and stenosis of vertebral artery, without mention of cerebral infarction	N	01	15
433.21	Occlusion and stenosis of vertebral artery, with cerebral infarction	Y	01	14
			15	387, 389[1]
433.30	Occlusion and stenosis of multiple and bilateral arteries, without mention of cerebral infarction	N	01	15
433.31	Occlusion and stenosis of multiple and bilateral arteries, with cerebral infarction	Y	01	14
			15	387, 389[1]
433.80	Occlusion and stenosis of other specified precerebral artery, without mention of cerebral infarction	N	01	15
433.81	Occlusion and stenosis of other specified precerebral artery, with cerebral infarction	Y	01	14

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
			15	387, 389 [1]
433.90	Occlusion and stenosis of unspecified precerebral artery, without mention of cerebral infarction	N	01	15
433.91	Occlusion and stenosis of unspecified precerebral artery, with cerebral infarction	Y	01	14
			15	387, 389 [1]
434.00	Cerebral thrombosis without mention of cerebral infarction	N	01	15
			15	387, 389 [1]
434.01	Cerebral thrombosis with cerebral infarction	Y	01	14
			15	387, 389 [1]
434.10	Cerebral embolism without mention of cerebral infarction	N	01	15
			15	387, 389 [1]
434.11	Cerebral embolism with cerebral infarction	Y	01	14
			15	387, 389 [1]
434.90	Cerebral artery occlusion, unspecified, without mention of cerebral infarction	N	01	15
			15	387, 389 [1]
434.91	Cerebral artery occlusion, unspecified, with cerebral infarction	Y	01	14
			15	387, 389 [1]
440.23	Atherosclerosis of the extremities with ulceration	N	05	130, 131
440.24	Atherosclerosis of the extremities with gangrene	Y	05	130, 131
			15	387, 389 [1]
440.29	Other atherosclerosis of the extremities	N	05	130, 131
441.6	Thoracoabdominal aneurysm, ruptured	Y	05	130, 131
441.7	Thoracoabdominal aneurysm, without mention of rupture	N	05	130, 131
451.82	Phlebitis and thrombophlebitis of superficial veins of upper extremities	N	05	130, 131
451.83	Phlebitis and thrombophlebitis of deep veins of upper extremities	N	05	130, 131
451.84	Phlebitis and thrombophlebitis of upper extremities, unspecified	N	05	130, 131
530.10	Esophagitis, unspecified	N	06	182, 183, 184
530.11	Reflux esophagitis	N	06	182, 183, 184
530.19	Other esophagitis	N	06	182, 183, 184
530.81	Esophageal reflux	N	06	182, 183, 184
530.82	Esophageal hemorrhage	Y	06	174, 175
530.83	Esophageal leukoplakia	N	06	182, 183, 184
530.84	Tracheoesophageal fistula	Y	06	182, 183, 184
			15	387, 389 [1]
530.89	Other specified disorders of the esophagus	N	06	182, 183, 184
704.02	Telogen effluvium	N	09	283, 284
733.10	Pathologic fracture, unspecified site	Y	08	239
			15	387, 389 [1]
733.11	Pathologic fracture of the humerus	Y	08	239
			15	387, 389 [1]
733.12	Pathologic fracture of distal radius and ulna	Y	08	239
			15	387, 389 [1]
733.13	Pathologic fracture of vertebrae	Y	08	239
			15	387, 389 [1]
733.14	Pathologic fracture of neck of femur	Y	08	239
			15	387, 389 [1]
733.15	Pathologic fracture of other specified part of femur	Y	08	239
			15	387, 389 [1]
733.16	Pathologic fracture of tibia and fibula	Y	08	239
			15	387, 389 [1]
733.19	Pathologic fracture of other specified site	Y	08	239
			15	387, 389 [1]
747.60	Anomaly of the peripheral vascular system, unspecified site	N	05	130, 131
747.61	Gastrointestinal vessel anomaly	N	05	130, 131
747.62	Renal vessel anomaly	N	05	130, 131
747.63	Upper limb vessel anomaly	N	05	130, 131
747.64	Lower limb vessel anomaly	N	05	130, 131
747.69	Anomalies of other specified sites of peripheral vascular system	N	05	130, 131
747.82	Spinal vessel anomaly	N	01	34, 35
780.03	Persistent vegetative state	Y	01	23
			15	387, 389 [1]
788.20	Retention of urine, unspecified	Y	11	325, 326, 327
			15	387, 389 [1]
788.21	Incomplete bladder emptying	N	11	325, 326, 327
			15	387, 389 [1]
788.29	Other specified retention of urine	Y	11	325, 326, 327
			15	387, 389 [1]
788.41	Urinary frequency	N	11	325, 326, 327
788.42	Polyuria	N	11	325, 326, 327
788.43	Nocturia	N	11	325, 326, 327
788.61	Splitting of urinary stream	N	11	325, 326, 327

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
788.62	Slowing of urinary stream	N	11	325, 326, 327
788.69	Other abnormality of urination	N	11	325, 326, 327
790.91	Abnormal arterial blood gases	N	23	463, 464
790.92	Abnormal coagulation profile	N	23	463, 464
790.93	Elevated prostate specific antigen (PSA)	N	23	463, 464
790.99	Other nonspecific findings on examination of blood	N	23	463, 464
925.1	Crushing injury of face and scalp	Y	21	444, 445, 446
			24	487[2]
			.....	482
925.2	Crushing injury of neck	Y	21	444, 445, 446
			24	487[2]
			.....	482
995.60	Anaphylactic shock due to unspecified food	N	21	447, 448
995.61	Anaphylactic shock due to peanuts	N	21	447, 448
995.62	Anaphylactic shock due to crustaceans	N	21	447, 448
995.63	Anaphylactic shock due to fruits and vegetables	N	21	447, 448
995.64	Anaphylactic shock due to tree nuts and seeds	N	21	447, 448
995.65	Anaphylactic shock due to fish	N	21	447, 448
995.66	Anaphylactic shock due to food additives	N	21	447, 448
995.67	Anaphylactic shock due to milk products	N	21	447, 448
995.68	Anaphylactic shock due to eggs	N	21	447, 448
995.69	Anaphylactic shock due to other specified food	N	21	447, 448
V05.3	Need for inoculation against viral hepatitis	N	23	467
V05.4	Need for inoculation against varicella	N	23	467
V09.0	Infection with microorganisms resistant to penicillins	N	18	423
V09.1	Infection with microorganisms resistant to cephalosporins and other B-lactam antibiotics	N	18	423
V09.2	Infection with microorganisms resistant to macrolides	N	18	423
V09.3	Infection with microorganisms resistant to tetracyclines	N	18	423
V09.4	Infection with microorganisms resistant to aminoglycosides	N	18	423
V09.50	Infection with microorganisms resistant to quinolones and fluoroquinolones, without mention of resistance to multiple quinolones and fluoroquinolones	N	18	423
V09.51	Infection with microorganisms resistant to quinolones and fluoroquinolones, with resistance to multiple quinolones and fluoroquinolones	N	18	423
V09.6	Infection with microorganisms resistant to sulfonamides	N	18	423
V09.70	Infection with microorganisms resistant to other specified antimycobacterial agents, without mention of resistance to multiple antimycobacterial agents	N	18	423
V09.71	Infection with microorganisms resistant to other specified antimycobacterial agents, with resistance to multiple antimycobacterial agents	N	18	423
V09.80	Infection with microorganisms resistant to other specified drugs, without mention of resistance to multiple drugs	N	18	423
V09.81	Infection with microorganisms resistant to other specified drugs, with resistance to multiple drugs	N	18	423
V09.90	Infection with drug-resistant microorganisms, unspecified, without mention of multiple drug resistance	N	18	423
V09.91	Infection with drug-resistant microorganisms, unspecified, with multiple drug resistance	N	18	423
V72.81	Pre-operative cardiovascular examination	N	23	467
V72.82	Pre-operative respiratory examination	N	23	467
V72.83	Other specified pre-operative examination	N	23	467
V72.84	Pre-operative examination, unspecified	N	23	467
V72.85	Other specified examination	N	23	467
V73.88	Special screening examination, Other specified chlamydial diseases	N	23	467
V73.89	Special screening examination, Other specified viral diseases	N	23	467
V73.98	Special screening examination, Unspecified chlamydial disease	N	23	467
V73.99	Special screening examination, Unspecified viral disease	N	23	467

[1] Diagnosis code is classified as a "major problem" in these DRGs.
[2] Diagnosis code is assigned to the "significant head trauma" body site category.

TABLE 6B.—NEW PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
54.25	Peritoneal lavage	N		

TABLE 6C.—INVALID DIAGNOSIS CODES [1]

Diagnosis code	Description	CC	MDC	DRG
077.9	Unspecified diseases of conjunctiva due to viruses and Chlamydiae	N	02	46, 47, 48
078.1	Other diseases due to viruses and Chlamydiae, viral warts	N	09	283, 284
079.8	Other specified viral and Chlamydial infections	N	18	421, 422
079.9	Unspecified viral and Chlamydial infections	N	18	421, 422
			25	490
283.1	Non-autoimmune hemolytic anemias	Y	15	387, 389 [2]
			16	395, 396
			25	490
344.8	Other specified paralytic syndromes	N	01	34, 35
355.7	Other mononeuritis of lower limb	N	01	18, 19
433.0	Occlusion and stenosis of the basilar artery	Y	01	15
433.1	Occlusion and stenosis of the carotid artery	Y	01	15
433.2	Occlusion and stenosis of the vertebral artery	Y	01	15
433.3	Occlusion and stenosis of multiple and bilateral precerebral arteries	Y	01	15
433.8	Occlusion and stenosis of other specified precerebral artery	N	01	15
433.9	Occlusion and stenosis of unspecified precerebral artery	N	01	15
434.0	Cerebral thrombosis	Y	01	14
			15	387, 389 [2]
434.1	Cerebral embolism	Y	01	14
			15	387, 389 [2]
434.9	Cerebral artery occlusion, unspecified	Y	01	14
			15	387, 389 [2]
530.1	Esophagitis	N	06	182, 183, 184
530.8	Other specified disorders of esophagus	N	06	182, 183, 184
665.12	Rupture of uterus during labor, delivered, with mention of postpartum complication	Y	14	370, 371, 372, 373, 374, 375
665.14	Rupture of uterus during labor, postpartum condition or complication	Y	14	376, 377
733.1	Pathologic fracture	Y	08	239
			15	387, 389 [2]
747.6	Other anomalies of peripheral vascular system	N	05	130, 131
788.2	Retention of urine	Y	11	325, 326, 327
			15	387, 389 [2]
788.4	Frequency of urination and polyuria	N	11	325, 326, 327
788.6	Other abnormality of urination	N	11	325, 326, 327
790.9	Other nonspecific findings on examination of blood	N	23	463, 464
925	Crushing injury of face, scalp and neck	Y	21	444, 445, 446
			24	487
V72.8	Other special examinations	N	23	467
V73.8	Special screening examination for other specified viral and Chlamydial diseases	N	23	467
V73.9	Special screening examination for unspecified viral disease	N	23	467

[1] See Table 6a for new diagnosis codes (4- or 5-digits) that will be considered valid by the FY 1993 GROUPER.
[2] Diagnosis code is classified as a "major problem" in these DRGs.

TABLE 6D.—REVISED DIAGNOSIS CODE TITLES

Diagnosis code	Description	CC	MDC	DRG
078.5	Cytomegaloviral disease	N	18	421, 422
078.89	Other specified diseases due to viruses	N	18	421, 422
250.00	Diabetes mellitus without mention of complication, type II [non-insulin dependent type] [NIDDM] [adult-onset type] or unspecified type, not stated as uncontrolled	N	10	294, 295
250.01	Diabetes mellitus without mention of complication, type I [insulin dependent type] [IDDM] [juvenile type], not stated as uncontrolled	Y	10	294, 295
250.10	Diabetes with ketoacidosis, type II [non-insulin dependent type] [NIDDM] [adult-onset type] or unspecified type, not stated as uncontrolled	N	10	294, 295
250.11	Diabetes with ketoacidosis, type I [insulin dependent type] [IDDM] [juvenile type], not stated as uncontrolled	Y	10	294, 295
250.20	Diabetes with hyperosmolarity, type II [non-insulin dependent type] [NIDDM] [adult-onset type] or unspecified type, not stated as uncontrolled	N	10	294, 295
250.21	Diabetes with hyperosmolarity, type I [insulin dependent type] [IDDM] [juvenile type], not stated as uncontrolled	Y	10	294, 295
250.30	Diabetes with other coma, type II [non-insulin dependent type] [NIDDM] [adult-onset type] or unspecified type, not stated as uncontrolled	N	10	294, 295
250.31	Diabetes with other coma, type I [insulin dependent type] [IDDM] [juvenile type], not stated as uncontrolled	Y	10	294, 295
250.40	Diabetes with renal manifestations, type II [non-insulin dependent type] [NIDDM] [adult-onset type] or unspecified type, not stated as uncontrolled	N	11	331, 332, 333
250.41	Diabetes with renal manifestations, type I [insulin dependent type] [IDDM] [juvenile type], not stated as uncontrolled	Y	11	331, 332, 333

TABLE 6D.—REVISED DIAGNOSIS CODE TITLES—Continued

Diagnosis code	Description	CC	MDC	DRG
250.50	Diabetes with ophthalmic manifestations, type II [non-insulin dependent type] [NIDDM] [adult-onset type] or unspecified type, not stated as uncontrolled	N	02	46, 47, 48
250.51	Diabetes with ophthalmic manifestations, type I [insulin dependent type] [IDDM] [juvenile type], not stated as uncontrolled	Y	02	46, 47, 48
250.60	Diabetes with neurological manifestations, type II [non-insulin dependent type] [NIDDM] [adult-onset type] or unspecified type, not stated as uncontrolled	N	01	18, 19
250.61	Diabetes with neurological manifestations, type I [insulin dependent type] [IDDM] [juvenile type], not stated as uncontrolled	Y	01	18, 19
250.70	Diabetes with peripheral circulatory disorders, type II [non-insulin dependent type] [NIDDM] [adult-onset type] or unspecified type, not stated as uncontrolled	N	05	130, 131
250.71	Diabetes with peripheral circulatory disorders, type I [insulin dependent type] [IDDM] [juvenile type], not stated as uncontrolled	Y	05	130, 131
250.80	Diabetes with other specified manifestations, type II [non-insulin dependent type] [NIDDM] [adult-onset type] or unspecified type, not stated as uncontrolled	N	10	294, 295
250.81	Diabetes with other specified manifestations, type I [insulin dependent type] [IDDM] [juvenile type], not stated as uncontrolled	Y	10	294, 295
250.90	Diabetes with unspecified complication, type II [non-insulin dependent type] [NIDDM] [adult-onset type] or unspecified type, not stated as uncontrolled	N	10	294, 295
250.91	Diabetes with unspecified complication, type I [insulin dependent type] [IDDM] [juvenile type], not stated as uncontrolled	Y	10	294, 295
251.1	Other specified hypoglycemia	N	10	300, 301
302.0	Ego-dystonic homosexuality	N	19	432
354.4	Causalgia of upper limb	N	01	18, 19
451.11	Phlebitis and thrombophlebitis of femoral vein (deep) (superficial)	Y	05	128
493.20	Chronic obstructive asthma, without mention of status asthmaticus	Y	04	88
493.21	Chronic obstructive asthma, with status asthmaticus	Y	04	88
788.33	Mixed incontinence, (male) (female)	N	11	325, 326, 327
790.7	Bacteremia	Y	18	416, 417
795.5	Nonspecific reaction to tuberculin skin test without active tuberculosis	N	04	79, 80, 81
995.0	Other anaphylactic shock	N	21	447, 448

TABLE 6E.—REVISED PROCEDURE CODE TITLES

Procedure code	Description	OR	MDC	DRG
33.26	Closed [percutaneous] [needle] biopsy of lung	N		
86.72	Advancement of pedicle graft	Y	01	7, 8
			03	63
			05	120
			06	170, 171
			08	217
			09	263, 264, 265, 266
			10	287
			21	439
			22	458, 472
			24	486

TABLE 6F.—ADDITIONS TO THE CC EXCLUSIONS LIST

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CCs that are added to the list are in Table 6f—Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

*0700	05609	07030	07051	0720	07279	25012	25032
78003	05671	07031	07052	0721	0728	25013	25033
*0701	05679	07041	07053	0722	*1144	25020	25040
78003	0568	07042	07059	0723	1140	25021	25041
*07020	07020	07043	0706	07271	*1145	25022	25042
78003	07021	07049	0709	07272	1140	25023	25043
*07021	07030	07051	0720	07279	*25000	25030	25050
78003	07031	07052	0721	0728	25002	25031	25051
*07030	07041	07053	0722	*07989	25003	25032	25052
78003	07042	07059	0723	0520	25012	25033	25053
*07031	07043	0706	07271	0521	25013	25040	25060
78003	07049	0709	07272	0527	25022	25041	25061
*07041	07051	0720	07279	0528	25023	25042	25062
78003	07052	0721	0728	0529	25032	25043	25063
*07042	07053	0722	*07988	0530	25033	25050	25070
78003	07059	0723	0520	05310	25042	25051	25071
*07043	0706	07271	0521	05311	25043	25052	25072
78003	0709	07272	0527	05312	25052	25053	25073
*07049	0720	07279	0528	05313	25053	25060	25080
78003	0721	0728	0529	05319	25062	25061	25081
*07051	0722	*07989	0530	05379	25063	25062	25082
78003	0723	0520	05310	0538	25072	25063	25083
*07052	07271	0521	05311	05479	25073	25070	25090
78003	07272	0527	05312	0548	25082	25071	25091
*07053	07279	0528	05313	0550	25083	25072	25092
78003	0728	0529	05319	0551	25092	25073	25093
*07059	*07988	0530	05379	0552	25093	25080	2510
78003	0520	05310	0538	05571	78003	25081	2513
*0706	0521	05311	05479	05579	*25001	25082	2580
78003	0527	05312	0548	0558	25002	25083	2581
*0709	0528	05313	0550	05600	25003	25090	2588
78003	0529	05319	0551	05601	25012	25091	2589
*07888	0530	05379	0552	05609	25013	25092	76001
0520	05310	0538	05571	05671	25022	25093	78003
0521	05311	05479	05579	05679	25023	2510	*25010
0527	05312	0548	0558	0568	25032	2513	25002
0528	05313	0550	05600	07020	25033	2580	25003
0529	05319	0551	05601	07021	25042	2581	25012
0530	05379	0552	05609	07030	25043	2588	25013
05310	0538	05571	05671	07031	25052	2589	25022
05311	05479	05579	05679	07041	25053	78001	25023
05312	0548	0558	0568	07042	25062	78003	25032
05313	0550	05600	07020	07043	25063	*25003	25033
05319	0551	05601	07021	07049	25072	25001	25042
05379	0552	05609	07030	07051	25073	25002	25043
0538	05571	05671	07031	07052	25082	25003	25052
05479	05579	05679	07041	07053	25083	25010	25053
0548	0558	0568	07042	07059	25092	25011	25062
0550	05600	07020	07043	0706	25093	25012	25063
0551	05601	07021	07049	0709	78003	25013	25072
0552	05609	07030	07051	0720	*25002	25020	25073
05571	05671	07031	07052	0721	25001	25021	25082
05579	05679	07041	07053	0722	25002	25022	25083
0558	0568	07042	07059	0723	25003	25023	25092
05600	07020	07043	0706	07271	25010	25030	25093
05601	07021	07049	0709	07272	25011	25031	78003

*25011	25082	2580	25012	25032	*25031	25082	2580
25002	25083	2581	25013	25033	25002	25083	2581
25003	25090	2588	25020	25040	25003	25090	2588
25012	25091	2589	25021	25041	25012	25091	2589
25013	25092	78001	25022	25042	25013	25092	78001
25022	25093	78003	25023	25043	25022	25093	78003
25023	2510	*25020	25030	25050	25023	2510	*25040
25032	2513	25002	25031	25051	25032	2513	25002
25033	2580	25003	25032	25052	25033	2580	25003
25042	2581	25012	25033	25053	25042	2581	25012
25043	2588	25013	25040	25060	25043	2588	25013
25052	2589	25022	25041	25061	25052	2589	25022
25053	78001	25023	25042	25062	25053	78001	25023
25062	78003	25032	25043	25063	25062	78003	25032
25063	*25013	25033	25050	25070	25063	*25033	25033
25072	25001	25042	25051	25071	25072	25001	25042
25073	25002	25043	25052	25072	25073	25002	25043
25082	25003	25052	25053	25073	25082	25003	25052
25083	25010	25053	25060	25080	25083	25010	25053
25092	25011	25062	25061	25081	25092	25011	25062
25093	25012	25063	25062	25082	25093	25012	25063
78003	25013	25072	25063	25083	78003	25013	25072
*25012	25020	25073	25070	25090	*25032	25020	25073
25001	25021	25082	25071	25091	25001	25021	25082
25002	25022	25083	25072	25092	25002	25022	25083
25003	25023	25092	25073	25093	25003	25023	25092
25010	25030	25093	25080	2510	25010	25030	25093
25011	25031	78003	25081	2513	25011	25031	78003
25012	25032	*25021	25082	2580	25012	25032	*25041
25013	25033	25002	25083	2581	25013	25033	25002
25020	25040	25003	25090	2588	25020	25040	25003
25021	25041	25012	25091	2589	25021	25041	25012
25022	25042	25013	25092	78001	25022	25042	25013
25023	25043	25022	25093	78003	25023	25043	25022
25030	25050	25023	2510	*25030	25030	25050	25023
25031	25051	25032	2513	25002	25031	25051	25032
25032	25052	25033	2580	25003	25032	25052	25033
25033	25053	25042	2581	25012	25033	25053	25042
25040	25060	25043	2588	25013	25040	25060	25043
25041	25061	25052	2589	25022	25041	25061	25052
25042	25062	25053	78001	25023	25042	25062	25053
25043	25063	25062	78003	25032	25043	25063	25062
25050	25070	25063	*25023	25033	25050	25070	25063
25051	25071	25072	25001	25042	25051	25071	25072
25052	25072	25073	25002	25043	25052	25072	25073
25053	25073	25082	25003	25052	25053	25073	25082
25060	25080	25083	25010	25053	25060	25080	25083
25061	25081	25092	25011	25062	25061	25081	25092
25062	25082	25093	25012	25063	25062	25082	25093
25063	25083	78003	25013	25072	25063	25083	78003
25070	25090	*25022	25020	25073	25070	25090	*25042
25071	25091	25001	25021	25082	25071	25091	25001
25072	25092	25002	25022	25083	25072	25092	25002
25073	25093	25003	25023	25092	25073	25093	25003
25080	2510	25010	25030	25093	25080	2510	25010
25081	2513	25011	25031	78003	25081	2513	25011

25012	5849	5809	25063	37702	25003	25032	33510
25013	585	5810	25072	78001	25012	25033	33511
25020	59010	5811	25073	78003	25013	25040	33519
25021	59011	5812	25082	*25053	25022	25041	33520
25022	5902	5813	25083	25001	25023	25042	33521
25023	78001	58181	25092	25002	25032	25043	33522
25030	78003	58189	25093	25003	25033	25050	33523
25031	*25043	5819	78003	25010	25042	25051	33524
25032	25001	5834	*25052	25011	25043	25052	33529
25033	25002	5845	25001	25012	25052	25053	3358
25040	25003	5846	25002	25013	25053	25060	3359
25041	25010	5847	25003	25020	25062	25061	340
25042	25011	5848	25010	25021	25063	25062	3432
25043	25012	5849	25011	25022	25072	25063	3440
25050	25013	585	25012	25023	25073	25070	34501
25051	25020	59010	25013	25030	25082	25071	34510
25052	25021	59011	25020	25031	25083	25072	34511
25053	25022	5902	25021	25032	25092	25073	3452
25060	25023	78001	25022	25033	25093	25080	3453
25061	25030	78003	25023	25040	78003	25081	34541
25062	25031	*25050	25030	25041	*25061	25082	34551
25063	25032	25002	25031	25042	25002	25083	34561
25070	25033	25003	25032	25043	25003	25090	34571
25071	25040	25012	25033	25050	25012	25091	34581
25072	25041	25013	25040	25051	25013	25092	34591
25073	25042	25022	25041	25052	25022	25093	3481
25080	25043	25023	25042	25053	25023	2510	3491
25081	25050	25032	25043	25060	25032	2513	34981
25082	25051	25033	25050	25061	25033	2580	34982
25083	25052	25042	25051	25062	25042	2581	3580
25090	25053	25043	25052	25063	25043	2588	3581
25091	25060	25052	25053	25070	25052	2589	3590
25092	25061	25053	25060	25071	25053	3200	3591
25093	25062	25062	25061	25072	25062	3201	78001
2510	25063	25063	25062	25073	25063	3202	78003
2513	25070	25072	25063	25080	25072	3203	*25063
2580	25071	25073	25070	25081	25073	3207	25001
2581	25072	25082	25071	25082	25082	32081	25002
2588	25073	25083	25072	25083	25083	32082	25003
2589	25080	25092	25073	25090	25092	32089	25010
5800	25081	25093	25080	25091	25093	3209	25011
5804	25082	78003	25081	25092	78003	3210	25012
58081	25083	*25051	25082	25093	*25062	3211	25013
5809	25090	25002	25083	2510	25001	3213	25020
5810	25091	25003	25090	2513	25002	3214	25021
5811	25092	25012	25091	2580	25003	3218	25022
5812	25093	25013	25092	2581	25010	3220	25023
5813	2510	25022	25093	2588	25011	3221	25030
58181	2513	25023	2510	2589	25012	3222	25031
58189	2580	25032	2513	37700	25013	3229	25032
5819	2581	25033	2580	37701	25020	3240	25033
5834	2588	25042	2581	37702	25021	3241	25040
5845	2589	25043	2588	78001	25022	3249	25041
5846	5800	25052	2589	78003	25023	325	25042
5847	5804	25053	37700	*25060	25030	3314	25043
5848	58081	25062	37701	25002	25031	3350	25050

25051	33524	43411	25050	4463	25091	78001	43311
25052	33529	43491	25051	4464	25092	78003	43321
25053	3358	4416	25052	4465	25093	*25080	43331
25060	3359	78003	25053	4466	2510	25002	43381
25061	340	*25071	25060	4467	2513	25003	43391
25062	3432	25002	25061	4510	2580	25012	43401
25063	3440	25003	25062	45111	2581	25013	43411
25070	34501	25012	25063	45119	2588	25022	43491
25071	34510	25013	25070	4512	2589	25023	4416
25072	34511	25022	25071	45181	43301	25032	78003
25073	3452	25023	25072	452	43311	25033	*25082
25080	3453	25032	25073	4530	43321	25042	25001
25081	34541	25033	25080	4531	43331	25043	25002
25082	34551	25042	25081	4532	43381	25052	25003
25083	34561	25043	25082	4533	43391	25053	25010
25090	34571	25052	25083	4538	43401	25062	25011
25091	34581	25053	25090	4539	43411	25063	25012
25092	34591	25062	25091	78001	43491	25072	25013
25093	3481	25063	25092	78003	436	25073	25020
2510	3491	25072	25093	*25073	4372	25082	25021
2513	34981	25073	2510	25001	4374	25083	25022
2580	34982	25082	2513	25002	4375	25092	25023
2581	3580	25083	2580	25003	4376	25093	25030
2588	3581	25092	2581	25010	4410	43301	25031
2589	3590	25093	2588	25011	4411	43311	25032
3200	3591	43301	2589	25012	4413	43321	25033
3201	78001	43311	43301	25013	4415	43331	25040
3202	78003	43321	43311	25020	4416	43381	25041
3203	*25070	43331	43321	25021	4440	43391	25042
3207	25002	43381	43331	25022	4441	43401	25043
32081	25003	43391	43381	25023	44421	43411	25050
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85212	85402	6809	6801	03841	6828	6809	6801
85213	85403	6820	6802	03842	6829	6820	6802
85214	85404	6821	6803	03843	*V0951	6821	6803
85215	85405	6822	6804	03844	0380	6822	6804
85216	85406	6823	6805	03849	0381	6823	6805
85219	85409	6825	6806	0388	0382	6825	6806
85220	85410	6826	6807	0389	0383	6826	6807
85221	85411	6827	6808	6800	03840	6827	6808
85222	85412	6828	6809	6801	03841	6828	6809
85223	85413	6829	6820	6802	03842	6829	6820
85224	85414	*V091	6821	6803	03843	*V0970	6821
85225	85415	0380	6822	6804	03844	0380	6822
85226	85416	0381	6823	6805	03849	0381	6823
85229	85419	0382	6825	6806	0388	0382	6825
85230	9251	0383	6826	6807	0389	0383	6826
85231	9252	03840	6827	6808	6800	03840	6827
85232	*9290	03841	6828	6809	6801	03841	6828
85233	9251	03842	6829	6820	6802	03842	6829
85234	9252	03843	*V093	6821	6803	03843	*V0980
85235	*9299	03844	0380	6822	6804	03844	0380
85236	9251	03849	0381	6823	6805	03849	0381
85239	9252	0388	0382	6825	6806	0388	0382
85240	*9588	0389	0383	6826	6807	0389	0383
85241	9251	6800	03840	6827	6808	6800	03840
85242	9252	6801	03841	6828	6809	6801	03841
85243	*9590	6802	03842	6829	6820	6802	03842
85244	9251	6803	03843	*V0950	6821	6803	03843
85245	9252	6804	03844	0380	6822	6804	03844
85246	*9598	6805	03849	0381	6823	6805	03849
85249	9251	6806	0388	0382	6825	6806	0388
85250	9252	6807	0389	0383	6826	6807	0389
85251	*9599	6808	6800	03840	6827	6808	6800

6801	03841	6828
6802	03842	6829
6803	03843	
6804	03844	
6805	03849	
6806	0388	
6807	0389	
6808	6800	
6809	6801	
6820	6802	
6821	6803	
6822	6804	
6823	6805	
6825	6806	
6826	6807	
6827	6808	
6828	6809	
6829	6820	
*V0981	6821	
0380	6822	
0381	6823	
0382	6825	
0383	6826	
03840	6827	
03841	6828	
03842	6829	
03843	*V0991	
03844	0380	
03849	0381	
0388	0382	
0389	0383	
6800	03840	
6801	03841	
6802	03842	
6803	03843	
6804	03844	
6805	03849	
6806	0388	
6807	0389	
6808	6800	
6809	6801	
6820	6802	
6821	6803	
6822	6804	
6823	6805	
6825	6806	
6826	6807	
6827	6808	
6828	6809	
6829	6820	
*V0990	6821	
0380	6822	
0381	6823	
0382	6825	
0383	6826	
03840	6827	

TABLE 6G.—DELETIONS TO THE CC EXCLUSIONS LIST

CCs that are deleted from the list are in Table 6g—Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

*0798	0530	4333	*2818	2831	4341	7882	66514
0520	05310	4340	2831	*2840	4349	*59654	*64691
0521	05311	4341	*2819	2831	436	7882	66512
0527	05312	4349	2831	*2848	*4341	*59655	66514
0528	05313	*25080	*2820	2831	4340	7882	*64693
0529	05319	4330	2831	*2849	4341	*59659	66512
0530	05379	4331	*2821	2831	4349	7882	66514
05310	0538	4332	2831	*2850	436	*5968	*64890
05311	05479	4333	*2822	2831	*4349	7882	66512
05312	0548	4340	2831	*2851	4340	*5969	66514
05313	0550	4341	*2823	2831	4341	7882	*64891
05319	0551	4349	2831	*2858	4349	*5996	66512
05379	0552	*25081	*2824	2831	436	7882	66514
0538	05571	4330	2831	*2859	*4350	*600	*64892
05479	05579	4331	*2825	2831	4330	7882	66512
0548	0558	4332	2831	*2898	*4351	*6010	66514
0550	05600	4333	*28260	2831	4332	7882	*64893
0551	05601	4340	2831	*2899	*436	*6011	66512
0552	05609	4341	*28261	2831	4340	7882	66514
05571	05671	4349	2831	*34461	4341	*6012	*64894
05579	05679	*25090	*28262	7882	4349	7882	66512
0558	0568	4330	2831	*3448	*45989	*6013	66514
05600	07020	4331	*28263	3432	4330	7882	*650
05601	07021	4332	2831	3440	4331	*6014	66512
05609	07030	4333	*28269	*4330	4332	7882	66514
05671	07031	4340	2831	4330	4333	*6018	*66500
05679	07041	4341	*2827	4331	4340	7882	66512
0568	07042	4349	2831	4332	4341	*6019	66514
07020	07043	*25091	*2828	4333	4349	7882	*66501
07021	07049	4330	2831	*4331	*4599	*6020	66512
07030	07051	4331	*2829	4330	4330	7882	66514
07031	07052	4332	2831	4331	4331	*6021	*66503
07041	07053	4333	*2830	4332	4332	7882	66512
07042	07059	4340	2831	4333	4333	*6022	66514
07043	0706	4341	*2831	*4332	4340	7882	*66510
07049	0709	4349	2800	4330	4341	*6028	66512
07051	0720	*27411	2814	4331	4349	7882	66514
07052	0721	7882	2818	4332	*5308	*6029	*66511
07053	0722	*2800	2824	4333	5304	7882	66512
07059	0723	2831	28260	*4333	5307	*64680	66514
0706	07271	*2801	28261	4330	9981	66512	*66512
0709	07272	2831	28262	4331	*5933	66514	66500
0720	07279	*2808	28263	4332	7882	*64681	66501
0721	0728	2831	28269	4333	*5934	66512	66503
0722	*25070	*2809	2830	*4338	7882	66514	66510
0723	4330	2831	2831	4330	*5935	*64682	66511
07271	4331	*2810	2832	4331	7882	66512	66512
07272	4332	2831	2839	4332	*5960	66514	66514
07279	4333	*2811	2840	4333	7882	*64683	*66514
0728	4340	2831	2848	*4339	*5964	66512	66500
*0799	4341	*2812	2849	4330	7882	66514	66501
0520	4349	2831	2850	4331	*59651	*64684	66503
0521	*25071	*2813	2851	4332	7882	66512	66510
0527	4330	2831	*2832	4333	*59652	66514	66511
0528	4331	*2814	2831	*4340	7882	*64690	66512
0529	4332	2831	*2839	4340	*59653	66512	66514

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*66550	66514	80627	82110	*925	80069	80139	80226
66512	*66982	80628	82111	80000	80070	80140	80227
66514	66512	80629	*7530	80001	80071	80141	80228
*66551	66514	80630	7882	80002	80072	80142	80229
66512	*66983	80631	*75310	80003	80073	80143	80230
66514	66512	80632	7882	80004	80074	80144	80231
*66554	66514	80633	*75311	80005	80075	80145	80232
66512	*66984	80634	7882	80006	80076	80146	80233
66514	66512	80635	*75312	80009	80079	80149	80234
*66580	66514	80636	7882	80010	80080	80150	80235
66512	*66990	80637	*75313	80011	80081	80151	80236
66514	66512	80638	7882	80012	80082	80152	80237
*66581	66514	80639	*75314	80013	80083	80153	80238
66512	*66991	8064	7882	80014	80084	80154	80239
66514	66512	8065	*75315	80015	80085	80155	8024
*66582	66514	80660	7882	80016	80086	80156	8025
66512	*66992	80661	*75316	80019	80089	80159	8026
66514	66512	80662	7882	80020	80090	80160	8027
*66583	66514	80669	*75317	80021	80091	80161	8028
66512	*66993	80670	7882	80022	80092	80162	8029
66514	66512	80671	*75319	80023	80093	80163	80300
*66584	66514	80672	7882	80024	80094	80164	80301
66512	*66994	80679	*7532	80025	80095	80165	80302
66514	66512	8068	7882	80026	80096	80166	80303
*66590	66514	8069	*7533	80029	80099	80169	80304
66512	*7331	8080	7882	80030	80100	80170	80305
66514	7331	8082	*7534	80031	80101	80171	80306
*66591	8058	8083	7882	80032	80102	80172	80309
66512	8059	80843	*7535	80033	80103	80173	80310
66514	80600	80849	7882	80034	80104	80174	80311
*66592	80601	80851	*7536	80035	80105	80175	80312
66512	80602	80852	7882	80036	80106	80176	80313
66514	80603	80853	*7537	80039	80109	80179	80314
*66593	80604	80859	7882	80040	80110	80180	80315
66512	80605	8088	*7538	80041	80111	80181	80316
66514	80606	8089	7882	80042	80112	80182	80319
*66594	80607	82000	*7539	80043	80113	80183	80320
66512	80608	82001	7882	80044	80114	80184	80321
66514	80609	82002	*7809	80045	80115	80185	80322
*66940	80610	82003	7882	80046	80116	80186	80323
66512	80611	82009	*7882	80049	80119	80189	80324
66514	80612	82010	7882	80050	80120	80190	80325
*66941	80613	82011	*7886	80051	80121	80191	80326
66512	80614	82012	7882	80052	80122	80192	80329
66514	80615	82013	*7889	80053	80123	80193	80330
*66942	80616	82019	7882	80054	80124	80194	80331
66512	80617	82020	*7909	80055	80125	80195	80332
66514	80618	82021	7907	80056	80126	80196	80333
*66944	80619	82022	*7998	80059	80129	80199	80334
66512	80620	82030	7882	80060	80130	8021	80335
66514	80621	82031	*8738	80061	80131	80220	80336
*66960	80622	82032	925	80062	80132	80221	80339
66512	80623	8208	*8739	80063	80133	80222	80340
66514	80624	8209	925	80064	80134	80223	80341
*66981	80625	82100	*9050	80065	80135	80224	80342
66512	80626	82101	925	80066	80136	80225	80343

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80344	80414	80484	85145	85215	85405
80345	80415	80485	85146	85216	85406
80346	80416	80486	85149	85219	85409
80349	80419	80489	85150	85220	85410
80350	80420	80490	85151	85221	85411
80351	80421	80491	85152	85222	85412
80352	80422	80492	85153	85223	85413
80353	80423	80493	85154	85224	85414
80354	80424	80494	85155	85225	85415
80355	80425	80495	85156	85226	85416
80356	80426	80496	85159	85229	85419
80359	80429	80499	85160	85230	925
80360	80430	8500	85161	85231	*9290
80361	80431	8501	85162	85232	925
80362	80432	8502	85163	85233	*9299
80363	80433	8503	85164	85234	925
80364	80434	8504	85165	85235	*9588
80365	80435	8505	85166	85236	925
80366	80436	8509	85169	85239	*9590
80369	80439	85100	85170	85240	925
80370	80440	85101	85171	85241	*9598
80371	80441	85102	85172	85242	925
80372	80442	85103	85173	85243	*9599
80373	80443	85104	85174	85244	925
80374	80444	85105	85175	85245	
80375	80445	85106	85176	85246	
80376	80446	85109	85179	85249	
80379	80449	85110	85180	85250	
80380	80450	85111	85181	85251	
80381	80451	85112	85182	85252	
80382	80452	85113	85183	85253	
80383	80453	85114	85184	85254	
80384	80454	85115	85185	85255	
80385	80455	85116	85186	85256	
80386	80456	85119	85189	85259	
80389	80459	85120	85190	85300	
80390	80460	85121	85191	85301	
80391	80461	85122	85192	85302	
80392	80462	85123	85193	85303	
80393	80463	85124	85194	85304	
80394	80464	85125	85195	85305	
80395	80465	85126	85196	85306	
80396	80466	85129	85199	85309	
80399	80469	85130	85200	85310	
80400	80470	85131	85201	85311	
80401	80471	85132	85202	85312	
80402	80472	85133	85203	85313	
80403	80473	85134	85204	85314	
80404	80474	85135	85205	85315	
80405	80475	85136	85206	85316	
80406	80476	85139	85209	85319	
80409	80479	85140	85210	85400	
80410	80480	85141	85211	85401	
80411	80481	85142	85212	85402	
80412	80482	85143	85213	85403	
80413	80483	85144	85214	85404	

TABLE 6H.—ADDITIONAL OR PROCEDURES THAT GROUP TO DRG 477

Code	Description
19.11	Stapedectomy with incus replacement.
19.19	Other stapedectomy.
19.9	Other repair of middle ear.
20.21	Incision of mastoid.
20.22	Incision of petrous pyramid air cells.
20.23	Incision of middle ear.
20.32	Biopsy of middle and inner ear.
20.39	Other diagnostic procedures on middle and inner ear.
21.62	Fracture of the turbinates.
21.72	Open reduction of nasal fracture.
21.82	Closure of nasal fistula.
21.83	Total nasal reconstruction.
27.21	Biopsy of bony palate.
27.22	Biopsy of uvula and soft palate.
27.31	Local excision or destruction of lesion or tissue of bony palate.
27.32	Wide excision or destruction of lesion or tissue of bony palate.
27.42	Wide excision of lesion of lip.
27.49	Other excision of mouth.
27.53	Closure of fistula of mouth.
27.54	Repair of cleft lip.
27.55	Full-thickness skin graft to lip and mouth.
27.56	Other skin graft to lip and mouth.
27.57	Attachment of pedicle or flap graft to lip and mouth.
27.59	Other plastic repair of mouth.
27.71	Incision of uvula.
27.72	Excision of uvula.
27.73	Repair of uvula.
27.79	Other operations on uvula.
27.92	Incision of mouth, unspecified structure.
27.99	Other operations on oral cavity.

TABLE 6H.—ADDITIONAL OR PROCEDURES THAT GROUP TO DRG 477 Continued

Code	Description
38.59	Ligation and stripping of varicose veins, lower limb veins.
49.51	Left lateral anal sphincterotomy.
49.52	Posterior anal sphincterotomy.
49.6	Excision of anus.
54.29	Other diagnostic procedures on abdominal region.
64.49	Other repair of penis.
64.92	Incision of penis.
64.93	Division of penile adhesions.
71.22	Incision of Bartholin's gland (cyst).
71.24	Excision or other destruction of Bartholin's gland (cyst).
71.29	Other operations on Bartholin's gland.
77.56	Repair of hammer toe.
77.57	Repair of claw toe.
77.60	Local excision of lesion or tissue of bone, unspecified site.
77.61	Local excision of lesion or tissue of bone, scapula, clavicle, and thorax (ribs and sternum).
77.62	Local excision of lesion or tissue of bone, humerus.
77.63	Local excision of lesion or tissue of bone, radius and ulna.
77.64	Local excision of lesion or tissue of bone, carpals and metacarpals.
77.65	Local excision of lesion or tissue of bone, femur.
77.67	Local excision of lesion or tissue of bone, tibia and fibula.
77.98	Total ostectomy, tarsals and metatarsals.
78.60	Removal of implanted devices from bone, unspecified site.

TABLE 6H.—ADDITIONAL OR PROCEDURES THAT GROUP TO DRG 477 Continued

Code	Description
78.61	Removal of implanted devices from bone, scapula, clavicle, and thorax (ribs and sternum).
78.63	Removal of implanted devices from bone, radius and ulna.
78.64	Removal of implanted devices from bone, carpals and metacarpals.
78.65	Removal of implanted devices from bone, femur.
78.68	Removal of implanted devices from bone, tarsals and metatarsals.
80.70	Synovectomy, unspecified site.
80.71	Synovectomy, shoulder.
80.72	Synovectomy, elbow.
80.73	Synovectomy, wrist.
80.74	Synovectomy, hand and finger.
80.75	Synovectomy, hip.
80.77	Synovectomy, ankle.
80.78	Synovectomy, foot and toe.
80.79	Synovectomy, other specified sites.
83.02	Myotomy.
83.19	Other division of soft tissue.
83.32	Excision of lesion of muscle.
83.5	Bursectomy.
83.62	Delayed suture of tendon.
83.63	Rotator cuff repair.
83.64	Other suture of tendon.
83.65	Other suture of muscle or fascia.
85.93	Revision of implant of breast.
85.94	Removal of implant of breast.
85.95	Insertion of breast tissue expander.
85.96	Removal of breast tissue expander(s).
85.99	Other operations on the breast.
86.4	Radical excision of skin lesion.
86.62	Other skin graft to hand.

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY

[FY92 Medpar Update 06/93 Grouper V10.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
001	30645	14.8027	4	6	11	18	30
002	6016	14.6115	4	6	10	18	29
003	1	7.0000	7	7	7	7	7
004	5593	12.2246	2	4	8	15	25
005	64718	6.3315	2	3	4	7	12
006	691	3.7916	1	1	2	3	9
007	6699	18.9427	3	6	11	21	39
008	2549	4.5100	1	1	3	6	10
009	1753	10.8374	2	4	7	12	21
010	21061	10.5331	2	4	7	13	22
011	3413	5.9051	1	2	4	8	12
012	20938	10.1033	2	4	7	11	18
013	5948	8.0728	3	4	6	10	14
014	351789	9.5466	2	4	7	11	18
015	135558	5.2814	2	3	4	6	9
016	10876	9.0780	2	4	6	10	17
017	2539	5.7625	2	3	4	7	11
018	16345	7.6857	2	3	6	9	14
019	6577	5.1011	1	2	4	7	10
020	7442	12.1074	3	5	9	15	24
021	1048	9.1584	3	4	7	12	18
022	9141	5.2865	2	3	4	6	10
023	3335	6.4351	1	2	4	7	13
024	57428	7.2836	2	3	5	8	14
025	21856	4.3315	1	2	3	5	8

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY92 Medpar Update 06/93 Grouper V10.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
026	42	5.9286	1	2	3	8	12
027	3000	7.5517	1	1	4	9	17
028	8986	9.0393	2	3	6	11	18
029	3446	4.9800	1	2	3	6	9
030	2	16.5000	1	1	32	32	32
031	3718	6.3553	1	2	4	7	12
032	2323	3.5510	1	1	2	4	7
034	14530	8.1948	2	3	6	10	16
035	3483	5.0164	1	2	4	6	9
036	18853	2.1110	1	1	2	2	4
037	2635	4.1199	1	1	2	5	9
038	610	2.7230	1	1	2	3	5
039	7651	1.9344	1	1	1	2	3
040	2772	3.3222	1	1	2	4	8
041	1	1.0000	1	1	1	1	1
042	17996	2.4577	1	1	2	3	5
043	174	4.3506	1	2	4	5	7
044	1929	6.4785	2	4	5	8	11
045	2628	4.3158	1	2	4	5	8
046	2890	6.2907	1	2	4	7	12
047	1574	3.8774	1	1	3	5	7
049	2877	7.1477	1	3	5	8	14
050	4607	2.5500	1	1	2	3	4
051	493	3.0507	1	1	2	3	6
052	190	3.0368	1	1	2	3	7
053	5564	3.4127	1	1	2	3	8
054	3	2.6667	1	1	1	6	6
055	3255	2.8556	1	1	1	3	6
056	986	3.0061	1	1	2	3	6
057	653	5.4518	1	2	3	6	12
058	1	1.0000	1	1	1	1	1
059	143	1.9930	1	1	1	2	3
060	1	5.0000	5	5	5	5	5
061	332	5.8012	1	1	2	6	13
063	4809	5.4858	1	2	3	6	11
064	4052	8.9477	1	3	6	11	19
065	33354	4.0082	1	2	3	5	7
066	7804	4.2203	1	2	3	5	7
067	477	4.8281	2	2	4	6	9
068	14785	5.8092	2	3	5	7	10
069	4535	4.3711	2	2	4	5	7
070	34	3.3529	1	1	2	4	9
071	155	4.6581	1	2	4	6	8
072	634	5.4858	1	2	3	6	10
073	6817	5.8646	1	2	4	7	11
075	35361	13.1441	5	7	10	16	25
076	42795	14.5684	4	7	11	18	28
077	3397	6.3924	1	2	4	9	13
078	27169	9.6781	4	7	9	12	16
079	161412	11.4045	4	6	9	14	21
080	8896	7.5988	3	4	6	9	13
081	6	13.6667	4	5	13	15	15
082	69653	9.3095	2	4	7	12	19
083	7528	7.6367	2	4	6	9	14
084	1804	4.3564	1	2	3	5	8
085	16957	8.7191	2	4	7	11	17
086	1572	5.1215	1	2	4	7	10
087	54371	7.8815	1	4	6	10	15
088	285467	7.2656	3	4	6	9	13
089	409028	8.4770	3	5	7	10	15
090	43193	5.9887	3	4	5	7	10
091	40	5.2000	1	2	4	6	10
092	9800	8.5142	3	4	7	11	16
093	1396	5.9341	2	3	5	7	11
094	9917	8.8737	3	4	7	11	17
095	1214	5.1392	2	3	4	6	9
096	104197	6.7299	3	4	6	8	12
097	28984	4.9399	2	3	4	6	8
098	22	4.6818	1	2	3	6	11
099	28511	4.5867	1	2	3	6	9

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY92 Medpar Update 06/93 Grouper V10.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
100	11021	2.9403	1	2	2	4	5
101	19153	6.5887	2	3	5	8	12
102	3375	4.0963	1	2	3	5	8
103	361	36.7091	11	16	22	45	84
104	20072	19.5867	9	12	17	24	34
105	18350	14.0404	7	9	11	16	24
106	85529	14.7421	8	10	13	17	24
107	59611	11.2231	7	8	9	12	17
108	7152	15.1695	6	8	12	18	27
110	55055	12.8807	3	7	10	15	24
111	5676	7.9778	3	6	8	9	12
112	156648	5.7016	2	2	4	7	11
113	39070	18.5726	5	8	13	22	37
114	8063	11.7993	3	5	9	15	23
115	9423	13.4586	5	8	11	16	24
116	72006	6.8476	2	3	5	9	13
117	3792	4.9306	1	2	3	6	10
118	8036	3.7341	1	1	2	4	8
119	2821	6.1765	1	2	3	7	15
120	36822	11.6486	1	3	7	15	26
121	158061	9.2050	3	6	8	11	16
122	98585	6.4580	2	4	6	8	11
123	56565	5.2656	1	1	3	6	13
124	138747	5.7075	1	2	5	7	11
125	82874	3.1753	1	1	2	4	7
126	4448	19.4076	5	9	15	28	40
127	659531	7.5454	2	4	6	9	14
128	23706	8.1073	4	5	7	9	13
129	5794	4.1588	1	1	1	5	11
130	76089	7.8141	2	4	7	9	14
131	24891	5.8331	1	3	6	8	10
132	12277	5.3713	1	2	4	6	10
133	3637	3.6665	1	2	3	5	7
134	28392	4.7593	2	2	4	6	9
135	6557	6.3448	2	3	5	8	12
136	1317	3.9567	1	2	3	5	7
138	197096	5.6616	2	3	4	7	11
139	69620	3.5015	1	2	3	4	7
140	339000	4.3345	1	2	3	5	8
141	80174	5.5357	2	3	4	6	10
142	35300	3.8142	1	2	3	5	7
143	128790	3.2701	1	2	3	4	6
144	59263	6.8718	1	3	5	8	14
145	7659	3.9393	1	2	3	5	8
146	8199	12.9716	7	8	11	15	21
147	1660	8.7795	5	7	8	10	12
148	148850	15.5280	7	9	12	18	28
149	16768	8.7417	5	7	8	10	13
150	22820	13.4127	5	8	11	16	23
151	4638	7.1175	2	4	6	9	13
152	4870	10.3390	5	6	9	12	17
153	1983	6.9067	4	5	7	8	10
154	37533	17.7817	6	9	14	21	33
155	3853	7.9792	3	5	7	9	13
156	1	59.0000	59	59	59	59	59
157	13454	6.5372	2	3	5	8	13
158	8418	2.9260	1	1	2	4	6
159	17193	6.1270	2	3	5	7	12
160	11631	3.2797	1	2	3	4	6
161	21551	4.7541	1	2	3	6	10
162	15964	2.2571	1	1	2	3	4
163	17	6.9412	1	2	4	5	7
164	5267	10.7384	5	7	9	13	18
165	1712	6.6069	3	5	6	8	10
166	3033	6.8919	3	4	6	8	12
167	2274	3.8852	2	2	3	5	6
168	1787	5.7140	1	2	3	7	12
169	1271	2.6255	1	1	2	3	5
170	13360	15.5580	3	7	11	19	31
171	1345	6.3152	1	3	5	8	12

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY92 Medpar Update 06/93 Grouper V10.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
172	31102	10.1226	2	4	7	13	21
173	2803	4.9907	1	2	4	6	10
174	219458	6.6744	2	3	5	8	12
175	27498	4.1475	2	2	4	5	7
176	14169	7.4333	2	4	6	9	14
177	13643	5.9770	2	3	5	7	11
178	5408	4.1910	2	2	4	5	7
179	9427	9.0188	3	4	7	11	17
180	77672	7.3171	2	4	6	9	14
181	21439	4.4063	2	2	4	6	8
182	234138	6.0378	2	3	5	7	11
183	73884	4.0106	1	2	3	5	7
184	56	4.6607	1	2	3	5	7
185	3876	5.8950	1	2	4	7	12
186	5	3.0000	1	1	2	3	7
187	1051	3.7831	1	1	2	5	8
188	51046	7.2351	2	3	5	9	14
189	8552	3.7239	1	1	3	5	8
190	82	5.5976	2	3	4	6	12
191	10768	18.9597	6	9	14	23	37
192	905	9.3370	3	5	8	11	16
193	11805	15.9205	7	9	13	19	28
194	1148	9.3336	3	6	8	12	16
195	14704	12.2164	5	7	10	14	20
196	1362	8.0742	4	5	7	9	13
197	86264	8.1245	2	4	7	10	15
198	48397	3.1960	1	1	2	4	7
199	2980	13.7520	4	6	11	18	27
200	1898	13.5537	2	5	10	17	27
201	1718	17.5809	4	7	12	22	36
202	19394	8.2655	2	4	7	11	18
203	30329	9.3810	2	4	7	12	19
204	42958	7.8597	2	4	6	9	15
205	23409	9.0845	2	4	7	11	18
206	2064	5.2306	1	2	4	6	10
207	38588	6.8225	2	3	5	8	13
208	12703	3.7462	1	2	3	5	7
209	296052	9.7374	5	7	8	11	15
210	126848	12.0937	5	7	10	14	20
211	26650	8.6760	4	6	8	10	13
212	12	6.0000	2	3	3	5	8
213	6013	12.6280	3	5	9	15	25
214	48485	9.3414	3	5	7	11	17
215	39365	5.3790	2	3	4	7	9
216	7003	13.9025	3	6	10	18	28
217	17471	20.5655	4	7	14	26	44
218	20406	8.4959	3	4	6	10	15
219	17889	4.8434	2	3	4	6	8
220	1	5.0000	5	5	5	5	5
221	5123	10.2889	2	4	7	12	21
222	4816	5.0675	1	2	4	6	10
223	17830	3.6633	1	2	3	4	7
224	8600	2.8476	1	2	2	3	5
225	9116	5.2473	1	2	3	6	12
226	6053	8.3210	2	3	5	10	18
227	6072	3.5049	1	2	2	4	7
228	4193	3.8452	1	1	2	4	8
229	2218	2.3778	1	1	2	3	5
230	3110	6.3756	1	2	4	7	13
231	10892	6.1243	1	2	3	7	14
232	891	5.6285	1	2	3	6	14
233	5344	11.2852	3	5	8	14	22
234	2852	5.1623	1	2	4	7	10
235	6128	10.3659	2	4	6	11	22
236	39120	8.2903	2	4	6	10	16
237	1644	5.5109	1	2	4	7	11
238	6599	13.0441	4	6	9	16	27
239	62653	9.7262	3	4	7	12	19
240	11451	9.0190	2	4	7	11	18
241	3651	5.3339	1	3	4	7	10

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY92 Medpar Update 06/93 Grouper V10.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
242	2341	10.1909	3	5	7	13	20
243	98133	6.7623	2	3	5	8	13
244	11711	7.2756	2	3	5	8	14
245	5217	4.9166	1	2	4	6	9
246	1595	5.8533	2	3	4	7	11
247	10143	4.8250	1	2	3	6	9
248	6686	6.3422	2	3	4	7	12
249	9403	5.7241	1	2	4	7	12
250	3504	6.7663	2	3	4	8	13
251	2718	3.7384	1	1	3	4	7
253	17557	7.9243	2	3	5	9	15
254	11098	4.5761	1	2	3	6	9
256	9618	5.0917	1	2	3	6	10
257	29264	4.7445	2	3	4	5	8
258	25105	3.3707	2	2	3	4	5
259	4405	5.0173	1	2	3	5	10
260	5547	2.5379	1	1	2	3	4
261	2822	2.6956	1	1	2	3	5
262	1088	3.6866	1	1	2	4	8
263	30497	19.3934	5	8	14	23	39
264	3827	11.0065	3	5	8	14	23
265	5119	9.3192	2	3	6	11	19
266	3850	4.3330	1	1	3	6	9
267	343	4.6589	1	1	2	5	10
268	1267	4.8327	1	1	2	5	10
269	11597	11.7831	2	4	8	15	24
270	4746	4.0790	1	1	2	5	8
271	20280	11.0986	3	5	8	13	20
272	6829	9.0349	3	4	7	11	17
273	1963	6.3729	2	3	5	8	13
274	2786	9.7168	2	3	7	12	20
275	316	3.9525	1	1	3	5	8
276	820	6.0963	1	3	5	7	11
277	75991	8.2038	3	4	7	10	14
278	24996	5.9826	2	3	5	7	10
279	4	4.2500	3	3	3	4	7
280	13453	6.3997	2	3	5	7	12
281	6871	4.1550	1	2	3	5	8
282	2	4.0000	1	1	7	7	7
283	5761	6.8424	2	3	5	8	13
284	2159	4.6711	1	2	3	6	9
285	6028	18.7019	5	8	14	22	36
286	1923	10.7696	4	5	8	12	20
287	6859	18.5727	4	7	12	21	37
288	597	10.6868	3	4	6	10	23
289	4195	5.2119	2	2	3	5	11
290	9779	3.3088	1	2	2	3	6
291	134	2.2164	1	1	2	3	4
292	5465	16.2216	3	7	12	20	32
293	422	6.9526	1	2	5	9	14
294	89488	7.0743	2	4	5	8	13
295	3432	5.7118	2	3	4	7	10
296	223961	8.0417	2	3	6	9	15
297	40204	5.0151	2	2	4	6	9
298	85	4.6588	1	2	3	6	10
299	905	6.4597	1	2	4	8	14
300	12240	8.8636	3	4	7	11	17
301	1986	5.1782	1	2	4	6	9
302	7288	15.3548	7	9	12	18	26
303	18687	12.5838	6	7	10	15	22
304	14102	12.9068	4	6	9	16	26
305	3053	5.9338	2	3	5	8	11
306	12300	8.4354	2	3	6	11	17
307	3705	4.0453	2	2	3	4	7
308	10230	8.7899	2	3	6	11	18
309	3958	3.7415	1	2	3	5	8
310	34860	5.3686	1	2	4	6	11
311	16587	2.5641	1	1	2	3	5
312	2877	5.7553	1	2	4	7	11
313	1558	2.5822	1	1	2	3	5

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY92 Medpar Update 06/93 Grouper V10.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
314	1	14.0000	14	14	14	14	14
315	29339	11.8597	1	3	7	14	25
316	54129	9.0190	2	4	7	11	18
317	712	4.0014	1	2	3	4	8
318	6562	8.7667	2	3	6	11	18
319	715	3.4559	1	1	2	4	7
320	169351	8.1285	3	4	6	9	14
321	26294	5.5118	2	3	5	7	9
322	72	4.5000	2	2	4	6	8
323	20318	4.2033	1	2	3	5	8
324	11880	2.4516	1	1	2	3	5
325	9358	5.8166	2	3	4	7	11
326	3167	3.5185	1	2	3	4	6
327	5	3.0000	1	1	3	4	5
328	1111	5.0405	1	2	4	6	10
329	233	2.4635	1	1	2	3	5
331	32156	7.3443	2	3	5	9	15
332	5181	4.2000	1	2	3	5	8
333	330	7.2152	1	3	5	10	14
334	32963	8.2811	5	6	7	9	12
335	15419	6.6237	4	5	6	8	9
336	97162	5.3928	2	3	4	6	9
337	76828	3.5894	2	3	3	4	5
338	12513	5.9170	1	2	4	7	13
339	3998	4.8034	1	2	3	5	10
340	2	1.5000	1	1	2	2	2
341	11158	4.1761	1	2	3	5	7
342	356	3.9607	1	1	2	5	8
344	7165	4.5001	1	2	3	5	8
345	2181	4.8211	1	2	3	5	10
346	7270	7.8989	2	3	6	10	16
347	842	4.1865	1	1	2	5	8
348	3958	5.5634	1	2	4	7	11
349	1290	3.3372	1	1	2	4	6
350	7892	5.7272	2	3	5	7	10
352	719	4.4924	1	2	3	5	9
353	2476	11.0973	4	6	8	13	21
354	9959	7.9497	4	5	6	9	14
355	5914	4.7345	3	4	4	5	7
356	34105	4.0375	2	3	4	5	6
357	7168	11.7307	4	6	9	14	22
358	26877	6.1405	3	4	5	7	10
359	28006	4.1303	3	3	4	5	6
360	9753	4.9183	2	3	4	5	8
361	495	5.3495	1	2	3	6	12
362	3	1.0000	1	1	1	1	1
363	5675	4.1572	1	2	3	4	8
364	2397	3.8302	1	1	2	5	8
365	2982	9.7965	2	4	6	12	21
366	4852	9.4431	2	3	6	12	21
367	744	3.6183	1	1	2	4	7
368	1542	7.6031	2	4	6	9	14
369	2503	4.5282	1	2	3	5	9
370	840	6.4512	3	4	4	6	10
371	817	4.2130	3	3	4	4	5
372	560	4.6625	1	2	3	4	8
373	2833	2.4073	1	2	2	3	3
374	135	3.3185	1	2	2	3	5
375	8	4.8750	2	2	2	3	6
376	141	3.5319	1	2	2	4	7
377	36	4.4167	1	2	2	6	8
378	168	3.5595	1	2	3	4	6
379	322	3.6056	1	1	2	4	7
380	74	2.0811	1	1	1	2	4
381	219	2.0776	1	1	1	2	4
382	70	1.3286	1	1	1	1	2
383	1032	4.3566	1	2	3	5	9
384	131	3.3130	1	1	2	3	7
385	1	2.0000	2	2	2	2	2
387	2	37.5000	25	25	50	50	50

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY92 Medpar Update 06/93 Grouper V10.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
389	14	10.7143	1	2	5	9	15
390	24	6.9583	1	2	4	6	13
392	2531	14.3588	5	7	10	17	28
393	2	5.5000	5	5	6	6	6
394	1965	10.2270	1	2	6	12	24
395	70903	6.3540	1	3	5	8	12
396	15	2.2667	1	1	2	2	5
397	14151	7.3964	2	3	5	9	15
398	15378	7.9237	3	4	6	10	15
399	1411	5.1715	2	3	4	7	10
400	8419	12.5542	2	4	8	16	27
401	6946	14.7702	3	6	11	19	30
402	2182	5.0513	1	2	3	7	11
403	30458	11.3015	2	4	8	14	24
404	4636	5.3807	1	2	4	7	11
406	3772	13.7291	3	6	10	17	28
407	936	5.9113	2	3	5	7	10
408	4351	8.6592	1	2	5	10	20
409	7593	8.6394	2	4	5	10	19
410	116875	3.6554	1	2	3	5	6
411	143	2.9161	1	1	2	4	5
412	122	3.1885	1	1	2	4	6
413	9257	10.6720	2	4	8	14	22
414	1385	6.0375	1	2	4	8	13
415	32706	19.9277	5	9	15	24	40
416	153866	10.0606	2	5	8	12	19
417	41	5.5854	2	3	5	7	10
418	15619	8.0603	3	4	6	10	15
419	17469	7.2810	2	4	5	8	13
420	3339	5.1848	2	3	4	6	9
421	13954	5.4872	2	3	4	7	10
422	113	4.8142	2	2	3	6	8
423	8608	10.8040	3	5	7	13	22
424	2716	23.4013	3	8	15	26	45
425	18917	6.3405	2	3	4	7	12
426	5729	7.2702	2	3	5	9	15
427	2086	7.3672	1	3	5	9	15
428	1140	9.7596	1	3	6	11	20
429	32931	11.9431	3	4	7	13	22
430	58500	12.1914	2	5	9	15	24
431	260	8.7077	2	3	6	10	15
432	516	7.3624	1	2	4	8	15
433	6584	4.2101	1	1	3	5	10
434	19278	7.1922	2	3	5	8	14
435	13134	5.8267	1	3	4	7	11
436	2515	17.6175	6	11	17	25	28
437	11702	15.1542	5	9	14	21	28
439	1006	10.8400	1	3	7	13	22
440	4434	12.1601	2	4	8	15	26
441	754	3.7599	1	1	2	4	7
442	12999	9.5555	1	3	6	11	20
443	5215	3.4512	1	1	2	4	7
444	3572	6.8340	2	3	5	8	13
445	1706	4.2374	1	2	3	5	8
447	3308	3.3909	1	1	2	4	7
448	2	3.0000	1	1	5	5	5
449	29530	5.6665	1	2	4	7	11
450	7107	3.0125	1	1	2	4	6
451	10	6.0000	1	2	6	7	8
452	19059	5.9426	1	2	4	7	12
453	5183	3.6122	1	2	3	4	7
454	3620	6.8771	1	2	4	8	14
455	999	3.3323	1	1	2	4	7
456	225	10.4356	1	2	5	13	25
457	147	5.2721	1	1	1	7	11
458	1697	21.9446	5	9	17	27	43
459	523	15.4207	4	6	11	20	35
460	2370	8.7570	2	4	6	11	17
461	4869	5.2676	1	1	2	4	13
462	8719	16.8764	5	8	15	22	31

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY92 Medpar Update 06/93 Grouper V10.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
463	9651	6.6073	2	3	5	8	13
464	2850	4.1800	1	2	3	5	7
465	349	3.3668	1	1	2	3	7
466	3449	5.3920	1	1	2	5	10
467	3531	5.3452	1	1	2	4	9
468	67089	18.4453	4	8	14	23	36
471	8410	12.7150	6	8	10	14	21
472	176	30.9602	3	7	24	48	64
473	8653	16.9279	2	4	10	26	40
475	76670	14.2388	2	6	11	18	28
476	10205	16.8602	6	10	14	20	29
477	36896	10.2451	1	3	7	13	21
478	113118	10.0601	2	4	7	13	21
479	16307	5.1934	1	2	4	7	10
480	215	37.0372	13	16	25	42	79
481	98	39.8776	21	27	34	48	64
482	7089	17.8175	6	9	13	21	34
483	37098	55.8427	17	28	43	68	104
484	337	20.3976	2	8	16	28	43
485	2727	16.0689	6	8	12	18	30
486	2102	16.6912	1	7	12	21	34
487	3442	11.1426	2	4	8	14	22
488	741	22.2389	6	9	17	28	44
489	7122	13.4944	3	5	9	16	28
490	2352	8.4256	2	3	5	10	17
491	7592	6.0461	2	3	5	7	10
492	1394	17.1729	3	5	9	27	37
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TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY

[FY92 Medpar Update 06/93 Grouper V11.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
001	30645	14.8027	4	6	11	18	30
002	6016	14.6115	4	6	10	18	29
003	1	7.0000	7	7	7	7	7
004	5593	12.2246	2	4	8	15	25
005	64718	6.3315	2	3	4	7	12
006	691	3.7916	1	1	2	3	9
007	6641	19.0101	3	6	11	21	39
008	2607	4.6594	1	1	3	6	11
009	1753	10.8374	2	4	7	12	21
010	20981	10.5477	2	4	7	13	22
011	3493	5.9230	1	2	4	8	12
012	20936	10.1033	2	4	7	11	18
013	5948	8.0728	3	4	6	10	14
014	351789	9.5466	2	4	7	11	18
015	135558	5.2814	2	3	4	6	9
016	10565	9.1921	2	4	6	11	17
017	2850	5.7011	2	3	4	7	10
018	16170	7.6985	2	3	6	9	14
019	6752	5.1374	1	2	4	7	10
020	7442	12.1074	3	5	9	15	24
021	1048	9.1584	3	4	7	12	18
022	9141	5.2865	2	3	4	6	10
023	3335	6.4351	1	2	4	7	13
024	56761	7.3118	2	3	5	8	14
025	22523	4.3476	1	2	3	5	8
026	42	5.9286	1	2	3	8	12
027	3000	7.5517	1	1	4	9	17
028	8922	9.0641	2	3	6	11	18
029	3510	4.9909	1	2	3	6	9
030	2	16.5000	1	1	32	32	32
031	3686	6.3729	1	2	4	7	12
032	2355	3.5618	1	1	2	4	7
034	14397	8.2206	2	3	6	10	16

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY92 Medpar Update 06/93 Grouper V11.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
035	3616	5.0304	1	2	4	6	10
036	18853	2.1110	1	1	2	2	4
037	2635	4.1199	1	1	2	5	9
038	610	2.7230	1	1	2	3	5
039	7651	1.9344	1	1	1	2	3
040	2772	3.3222	1	1	2	4	6
041	1	1.0000	1	1	1	1	1
042	17996	2.4577	1	1	2	3	5
043	174	4.3506	1	2	4	5	7
044	1929	6.4785	2	4	5	8	11
045	2628	4.3158	1	2	4	5	8
046	2847	6.3319	1	2	5	7	12
047	1617	3.8689	1	1	3	5	7
049	2286	7.8801	2	3	5	9	15
050	4607	2.5500	1	1	2	3	4
051	493	3.0507	1	1	2	3	6
052	191	3.0576	1	1	2	3	7
053	5564	3.4127	1	1	2	3	8
054	3	2.6667	1	1	1	6	6
055	3255	2.8556	1	1	1	3	6
056	986	3.0061	1	1	2	3	6
057	662	5.4834	1	2	3	6	12
059	143	1.9930	1	1	1	2	3
060	1	5.0000	5	5	5	5	5
061	337	5.7567	1	1	2	6	13
062	1	1.0000	1	1	1	1	1
063	4809	5.4858	1	2	3	6	11
064	4052	8.9477	1	3	6	11	19
065	33354	4.0082	1	2	3	5	7
066	7804	4.2203	1	2	3	5	7
067	477	4.8281	2	2	4	6	9
068	14743	5.8097	2	3	5	7	10
069	4577	4.3828	2	2	4	5	7
070	34	3.3529	1	1	2	4	9
071	155	4.6581	1	2	4	6	8
072	634	5.4858	1	2	3	6	10
073	6817	5.8646	1	2	4	7	11
075	35360	13.1443	5	7	10	16	25
076	42775	14.5713	4	7	11	18	28
077	3417	6.4044	1	2	4	9	13
078	27169	9.6781	4	7	9	12	16
079	161360	11.4055	4	6	9	14	21
080	8948	7.6015	3	4	6	9	13
081	6	13.6667	4	5	13	15	15
082	69653	9.3095	2	4	7	12	19
083	7508	7.6380	2	4	6	9	14
084	1824	4.3871	1	2	3	5	8
085	16950	8.7214	2	4	7	11	17
086	1579	5.1127	1	2	4	7	10
087	54371	7.8815	1	4	6	10	15
088	285467	7.2656	3	4	6	9	13
089	408801	8.4780	3	5	7	10	15
090	43420	5.9927	3	4	5	7	10
091	40	5.2000	1	2	4	6	10
092	9797	8.5143	3	4	7	11	16
093	1399	5.9385	2	3	5	7	11
094	9908	8.8769	3	4	7	11	17
095	1223	5.1406	2	3	4	6	9
096	104096	6.7312	3	4	6	8	12
097	29085	4.9415	2	3	4	6	8
098	22	4.6818	1	2	3	6	11
099	28418	4.5902	1	2	3	6	9
100	11114	2.9449	1	2	2	4	5
101	19125	6.5911	2	3	5	8	12
102	3403	4.1037	1	2	3	5	8
103	361	36.7091	11	16	22	45	84
104	20072	19.5867	9	12	17	24	34
105	18350	14.0404	7	9	11	16	24
106	85529	14.7421	8	10	13	17	24
107	59611	11.2231	7	8	9	12	17

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY92 Medpar Update 06/93 Grouper V11.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
108	7152	15.1695	6	8	12	18	27
110	54790	12.8976	3	7	10	15	24
111	5941	8.0411	3	6	8	9	12
112	156648	5.7016	2	2	4	7	11
113	39070	18.5726	5	8	13	22	37
114	8063	11.7993	3	5	9	15	23
115	9423	13.4586	5	8	11	16	24
116	72006	6.8476	2	3	5	9	13
117	3792	4.9306	1	2	3	6	10
118	8036	3.7341	1	1	2	4	8
119	2821	6.1765	1	2	3	7	15
120	36822	11.6486	1	3	7	15	26
121	158061	9.2050	3	6	8	11	16
122	98585	6.4580	2	4	6	8	11
123	56565	5.2656	1	1	3	6	13
124	138747	5.7075	1	2	5	7	11
125	82674	3.1753	1	1	2	4	7
126	4448	19.4076	5	9	15	28	40
127	659531	7.5454	2	4	6	9	14
128	23706	8.1073	4	5	7	9	13
129	5794	4.1588	1	1	1	5	11
130	75699	7.8320	2	4	7	9	14
131	25281	5.8100	1	3	6	7	10
132	12204	5.3756	1	2	4	6	10
133	3710	3.6857	1	2	3	5	7
134	28392	4.7593	2	2	4	6	9
135	6491	6.3644	2	3	5	8	12
136	1383	3.9790	1	2	3	5	7
138	195893	5.6664	2	3	4	7	11
139	70823	3.5250	1	2	3	4	7
140	339000	4.3345	1	2	3	5	8
141	78226	5.5585	2	3	4	6	10
142	37248	3.8565	1	2	3	5	7
143	128790	3.2701	1	2	3	4	6
144	59124	6.8774	1	3	5	8	14
145	7798	3.9491	1	2	3	5	8
146	8189	12.9753	7	8	11	15	21
147	1670	8.7862	5	7	8	10	12
148	148782	15.5307	7	9	12	18	28
149	16836	8.7450	5	7	8	10	13
150	22805	13.4169	5	8	11	16	24
151	4653	7.1171	2	4	6	9	13
152	4865	10.3396	5	6	9	12	17
153	1988	6.9140	4	5	7	8	10
154	37519	17.7853	6	9	14	21	33
155	3867	7.9796	3	5	7	9	13
156	1	59.0000	59	59	59	59	59
157	13428	6.5426	2	3	5	8	13
158	8444	2.9285	1	1	2	4	6
159	17167	6.1311	2	3	5	7	12
160	11657	3.2800	1	2	3	4	6
161	21495	4.7590	1	2	3	6	10
162	16020	2.2593	1	1	2	3	4
163	17	6.9412	1	2	4	5	7
164	5263	10.7410	5	7	9	13	18
165	1716	6.6084	3	5	6	8	10
166	3029	6.8957	3	4	6	8	12
167	2278	3.8854	2	2	3	5	6
168	2050	5.7117	1	2	3	7	12
169	1584	2.7134	1	1	2	3	5
170	13357	15.5596	3	7	11	19	31
171	1348	6.3197	1	3	5	8	12
172	31086	10.1248	2	4	7	13	21
173	2819	4.9954	1	2	4	6	10
174	219284	6.6758	2	3	5	8	12
175	27672	4.1522	2	2	4	5	7
176	14169	7.4333	2	4	6	9	14
177	13606	5.9799	2	3	5	7	11
178	5445	4.1958	2	2	4	5	7
179	9427	9.0188	3	4	7	11	17

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY92 Medpar Update 06/93 Grouper V11.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
180	77596	7.3181	2	4	6	9	14
181	21515	4.4129	2	2	4	6	8
182	233729	6.0401	2	3	5	7	11
183	74293	4.0144	1	2	3	5	7
184	56	4.6607	1	2	3	5	7
185	3876	5.8950	1	2	4	7	12
186	5	3.0000	1	1	2	3	7
187	1051	3.7831	1	1	2	5	8
188	51002	7.2377	2	3	5	9	14
189	8596	3.7266	1	1	3	5	8
190	82	5.5976	2	3	4	6	12
191	10765	18.9617	6	9	14	23	37
192	908	9.3447	3	5	8	11	16
193	11800	15.9239	7	9	13	19	28
194	1153	9.3270	3	6	8	12	16
195	14698	12.2173	5	7	10	14	20
196	1368	8.0826	4	5	7	9	13
197	39568	10.2108	4	6	8	12	18
198	13717	5.3802	2	3	5	7	9
199	2980	13.7520	4	6	11	18	27
200	1898	13.5537	2	5	10	17	27
201	1718	17.5809	4	7	12	22	36
202	19394	9.2655	2	4	7	11	18
203	30329	9.3810	2	4	7	12	19
204	42958	7.8597	2	4	6	9	15
205	23402	9.0861	2	4	7	11	18
206	2071	5.2265	1	2	4	6	10
207	38531	6.8251	2	3	5	8	13
208	12760	3.7520	1	2	3	5	7
209	296052	9.7374	5	7	8	11	15
210	126674	12.0965	5	7	10	14	20
211	26824	8.6851	4	6	8	10	13
212	12	6.0000	2	3	3	5	8
213	6013	12.6280	3	5	9	15	25
214	48347	9.3483	3	5	7	11	17
215	39503	5.3845	2	3	4	7	9
216	7003	13.9025	3	6	10	18	28
217	17470	20.5658	4	7	14	26	44
218	20366	8.4990	3	4	6	10	15
219	17931	4.8484	2	3	4	6	8
220	1	5.0000	5	5	5	5	5
221	5114	10.2976	2	4	7	12	21
222	4825	5.0680	1	2	4	6	10
223	17816	3.6639	1	2	3	4	7
224	8613	2.8474	1	2	2	3	5
225	9116	5.2473	1	2	3	6	12
226	6042	8.3247	2	3	5	10	18
227	6083	3.5099	1	2	2	4	7
228	4187	3.8428	1	1	2	4	8
229	2224	2.3862	1	1	2	3	5
230	3110	6.3756	1	2	4	7	13
231	10892	6.1243	1	2	3	7	14
232	891	5.6285	1	2	3	6	14
233	5306	11.3064	3	5	8	14	22
234	2890	5.2038	1	2	4	7	10
235	6128	10.3659	2	4	6	11	22
236	39120	8.2903	2	4	6	10	16
237	1644	5.5109	1	2	4	7	11
238	6599	13.0441	4	6	9	16	27
239	62653	9.7262	3	4	7	12	19
240	11418	9.0264	2	4	7	11	18
241	3684	5.3439	1	3	4	7	10
242	2341	10.1909	3	5	7	13	20
243	98133	6.7623	2	3	5	8	13
244	11667	7.2825	2	3	5	8	14
245	5261	4.9211	1	2	4	6	9
246	1595	5.8533	2	3	4	7	11
247	10143	4.8250	1	2	3	6	9
248	6686	6.3422	2	3	4	7	12
249	9403	5.7241	1	2	4	7	12

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY92 Medpar Update 06/93 Grouper V11.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
250	3490	6.7642	2	3	4	8	13
251	2732	3.7566	1	1	3	4	7
253	17490	7.9305	2	3	5	9	15
254	11165	4.5866	1	2	3	6	9
256	9618	5.0917	1	2	3	6	10
257	29199	4.7458	2	3	4	5	8
258	25145	3.3716	2	2	3	4	5
259	4390	5.0239	1	2	3	5	10
260	5560	2.5388	1	1	2	3	4
261	2738	2.6870	1	1	2	3	5
262	1087	3.6835	1	1	2	4	8
263	30484	19.3958	5	8	14	23	39
264	3840	11.0156	3	5	8	14	23
265	5111	9.3260	2	3	6	11	19
266	3858	4.3344	1	1	3	6	9
267	343	4.6589	1	1	2	5	10
268	1379	4.7150	1	1	2	5	9
269	11585	11.7873	2	4	8	15	24
270	4758	4.0883	1	1	2	5	9
271	20280	11.0986	3	5	8	13	20
272	6820	9.0339	3	4	7	11	17
273	1972	6.3884	2	3	5	8	13
274	2785	9.7199	2	3	7	12	20
275	317	3.9432	1	1	3	5	8
276	820	6.0963	1	3	5	7	11
277	75899	8.2040	3	4	7	10	14
278	25088	5.9901	2	3	5	7	10
279	4	4.2500	3	3	3	4	7
280	13401	6.4050	2	3	5	7	12
281	6923	4.1616	1	2	3	5	8
282	2	4.0000	1	1	7	7	7
283	5748	6.8500	2	3	5	8	13
284	2172	4.6639	1	2	3	6	9
285	6028	18.7019	5	8	14	22	36
286	1923	10.7696	4	5	8	12	20
287	6859	18.5727	4	7	12	21	37
288	597	10.6868	3	4	6	10	23
289	4195	5.2119	2	2	3	5	11
290	9779	3.3088	1	2	2	3	6
291	134	2.2164	1	1	2	3	4
292	5452	16.2320	3	7	12	20	32
293	435	7.0989	1	2	5	9	15
294	89488	7.0743	2	4	5	8	13
295	3432	5.7118	2	3	4	7	10
296	223410	8.0468	2	3	6	9	15
297	40755	5.0281	2	2	4	6	9
298	85	4.6588	1	2	3	6	10
299	905	6.4597	1	2	4	8	14
300	12212	8.8693	3	4	7	11	17
301	2014	5.1946	1	2	4	6	9
302	7288	15.3548	7	9	12	18	26
303	18687	12.5838	6	7	10	15	22
304	14092	12.9107	4	6	9	16	26
305	3063	5.8389	2	3	5	8	11
306	12292	8.4371	2	3	6	11	17
307	3713	4.0493	2	2	3	4	7
308	10221	8.7927	2	3	6	11	18
309	3967	3.7459	1	2	3	5	8
310	34824	5.3709	1	2	4	6	11
311	16623	2.5655	1	1	2	3	5
312	2873	5.7567	1	2	4	7	11
313	1562	2.5877	1	1	2	3	5
314	1	14.0000	14	14	14	14	14
315	29339	11.8597	1	3	7	14	26
316	54129	9.0190	2	4	7	11	18
317	712	4.0014	1	2	3	4	8
318	6555	8.7713	2	3	6	11	18
319	722	3.4654	1	1	2	4	7
320	169187	8.1296	3	4	6	9	14
321	26458	5.5199	2	3	5	7	9

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY92 Medpar Update 06/93 Grouper V11.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
322	72	4.5000	2	2	4	6	8
323	20295	4.2034	1	2	3	5	8
324	11903	2.4548	1	1	2	3	5
325	9344	5.8202	2	3	4	7	11
326	3181	3.5181	1	2	3	4	6
327	5	3.0000	1	1	3	4	5
328	1111	5.0405	1	2	4	6	10
329	233	2.4635	1	1	2	3	5
331	32095	7.3491	2	3	5	9	15
332	5242	4.2068	1	2	3	5	9
333	330	7.2152	1	3	5	10	14
334	32945	8.2810	5	6	7	9	12
335	15437	6.6260	4	5	6	8	9
336	96961	5.3937	2	3	4	6	9
337	77029	3.5930	2	3	3	4	5
338	12513	5.9170	1	2	4	7	13
339	3998	4.8034	1	2	3	5	10
340	2	1.5000	1	1	2	2	2
341	11158	4.1761	1	2	3	5	7
342	356	3.9607	1	1	2	5	9
344	7165	4.5001	1	2	3	5	8
345	2181	4.9211	1	2	3	5	10
346	7264	7.9010	2	3	6	10	16
347	848	4.1946	1	1	2	5	8
348	3947	5.5695	1	2	4	7	11
349	1301	3.3374	1	1	2	4	6
350	7892	5.7272	2	3	5	7	10
352	719	4.4924	1	2	3	5	9
353	2476	11.0973	4	6	8	13	21
354	9951	7.9513	4	5	6	9	14
355	5922	4.7362	3	4	4	5	7
356	34105	4.0375	2	3	4	5	6
357	7168	11.7307	4	6	9	14	22
358	26849	6.1414	3	4	5	7	10
359	28034	4.1314	3	3	4	5	6
360	9753	4.9183	2	3	4	5	8
361	495	5.3495	1	2	3	6	12
362	3	1.0000	1	1	1	1	1
363	5675	4.1572	1	2	3	4	8
364	2397	3.8302	1	1	2	5	8
365	2982	9.7985	2	4	6	12	21
366	4851	9.4442	2	3	6	12	21
367	745	3.6188	1	1	2	4	7
368	1542	7.6031	2	4	6	9	14
369	2503	4.5282	1	2	3	5	9
370	840	6.4512	3	4	4	6	10
371	817	4.2130	3	3	4	4	5
372	560	4.6625	1	2	3	4	8
373	2833	2.4073	1	2	2	3	3
374	135	3.3185	1	2	2	3	5
375	8	4.8750	2	2	2	3	6
376	141	3.5319	1	2	2	4	7
377	36	4.4167	1	2	2	6	8
378	168	3.5595	1	2	3	4	5
379	322	3.6056	1	1	[illegible]	4	7
380	74	2.0811	1	1	1	2	4
381	219	2.0776	1	1	1	2	4
382	70	1.3286	1	1	1	1	2
383	1032	4.3566	1	2	3	5	9
384	131	3.3130	1	1	[illegible]	3	7
385	1	2.0000	2	2	2	2	2
387	2	37.5000	25	25	50	50	50
389	14	10.7143	1	2	5	9	15
390	24	6.9583	1	2	4	8	13
392	2531	14.3588	5	7	10	17	28
393	2	5.5000	5	5	6	6	6
394	1965	10.2270	1	2	6	12	24
395	70903	6.3540	1	3	5	8	12
396	15	2.2667	1	1	2	2	5
397	14151	7.3964	2	3	5	9	15

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY92 Medpar Update 06/93 Grouper V11.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
398	15369	7.9259	3	4	6	10	15
399	1420	5.1655	2	3	4	7	10
400	8419	12.5542	2	4	8	16	27
401	6942	14.7681	3	6	11	19	30
402	2186	5.0759	1	2	3	7	11
403	30443	11.3045	2	4	8	14	24
404	4651	5.3799	1	2	4	7	11
406	3766	13.7430	4	6	10	17	28
407	942	5.9055	2	3	5	7	10
408	4351	8.6592	1	2	5	10	20
409	7593	8.6394	2	4	5	10	19
410	116875	3.6554	1	2	3	5	6
411	143	2.9161	1	1	2	4	5
412	122	3.1885	1	1	2	4	6
413	9253	10.6756	2	4	8	14	22
414	1389	6.0274	1	2	4	8	13
415	32706	19.9277	5	9	15	24	40
416	153866	10.0606	2	5	8	12	19
417	41	5.5854	2	3	5	7	10
418	15619	8.0603	3	4	6	10	15
419	17447	7.2839	2	4	5	8	13
420	3361	5.1833	2	3	4	6	9
421	13954	5.4872	2	3	4	7	10
422	113	4.8142	2	2	3	6	8
423	8608	10.8040	3	5	7	13	22
424	2716	23.4013	3	8	15	26	45
425	18917	6.3405	2	3	4	7	12
426	5729	7.2702	2	3	5	9	15
427	2086	7.3672	1	3	5	9	15
428	1140	9.7596	1	3	6	11	20
429	32931	11.9431	3	4	7	13	22
430	58500	12.1914	2	5	9	15	24
431	260	8.7077	2	3	6	10	15
432	516	7.3624	1	2	4	8	15
433	6584	4.2101	1	1	3	5	10
434	19226	7.1977	2	3	5	8	14
435	13186	5.8241	1	3	4	7	11
436	2515	17.6175	6	11	17	25	28
437	11702	15.1542	5	9	14	21	28
439	1006	10.8400	1	3	7	13	22
440	4434	12.1601	2	4	8	15	26
441	754	3.7599	1	1	2	4	7
442	12964	9.5660	1	3	6	11	20
443	5250	3.4661	1	1	2	4	7
444	3563	6.8397	2	3	5	8	13
445	1715	4.2391	1	2	3	5	8
447	3308	3.3909	1	1	2	4	7
448	2	3.0000	1	1	5	5	5
449	29486	5.6689	1	2	4	7	11
450	7151	3.0193	1	1	2	4	6
451	10	6.0000	1	2	6	7	8
452	18984	5.9572	1	2	4	7	12
453	5258	3.5926	1	2	3	4	7
454	3608	6.8861	1	2	4	8	14
455	1011	3.3422	1	1	2	4	7
456	225	10.4356	1	2	5	13	25
457	147	5.2721	1	1	1	7	11
458	1697	21.9446	5	9	17	27	43
459	523	15.4207	4	6	11	20	35
460	2370	8.7570	2	4	6	11	17
461	4869	5.2676	1	1	2	4	13
462	8719	16.8764	5	8	15	22	31
463	9589	6.6267	2	3	5	8	13
464	2912	4.1679	1	2	3	5	7
465	349	3.3668	1	1	2	3	7
466	3449	5.3920	1	1	2	5	10
467	3531	5.3452	1	1	2	4	9
468	65648	18.6393	4	8	14	23	36
471	8410	12.7150	6	8	10	14	21
472	176	30.9602	3	7	24	48	64

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY92 Medpar Update 06/93 Grouper V11.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
473	8653	16.9279	2	4	10	26	40
475	76670	14.2388	2	6	11	18	28
476	10235	16.8470	6	10	14	20	29
477	38307	10.2193	1	3	7	13	21
478	111961	10.0930	2	4	7	13	21
479	17464	5.3049	1	2	4	7	10
480	215	37.0372	13	16	25	42	79
481	98	39.8776	21	27	34	48	64
482	7470	18.0909	6	9	13	21	35
483	36717	56.1816	18	28	44	68	104
484	337	20.3976	2	8	16	28	43
485	2727	16.0689	6	8	12	18	30
486	2105	16.6803	1	7	12	21	34
487	3442	11.1426	2	4	8	14	22
488	737	22.1900	6	9	17	28	44
489	7126	13.5044	3	5	9	16	28
490	2352	8.4256	2	3	5	10	17
491	7592	6.0461	2	3	5	7	10
492	1394	17.1729	3	5	9	27	37
493	46526	6.3613	1	2	5	8	13
494	34850	2.3457	1	1	1	3	5
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TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) AUGUST 1993

State	Urban	Rural
ALABAMA	0.462	0.516
ALASKA	0.570	0.639
ARIZONA	0.509	0.608
ARKANSAS	0.576	0.543
CALIFORNIA	0.485	0.531
COLORADO	0.575	0.603
CONNECTICUT	0.603	0.600
DELAWARE	0.602	0.549
DISTRICT OF COLUMBIA	0.545	.....
FLORIDA	0.474	0.465
GEORGIA	0.573	0.556
HAWAII	0.618	0.601
IDAHO	0.657	0.640
ILLINOIS	0.550	0.619
INDIANA	0.655	0.664
IOWA	0.604	0.731
KANSAS	0.555	0.691
KENTUCKY	0.571	0.571
LOUISIANA	0.521	0.568
MAINE	0.692	0.606
MASSACHUSETTS	0.685	0.749
MICHIGAN	0.557	0.661
MINNESOTA	0.611	0.696
MISSISSIPPI	0.607	0.556
MISSOURI	0.543	0.563
MONTANA	0.576	0.683
NEBRASKA	0.575	0.703
NEVADA	0.445	0.662
NEW HAMPSHIRE	0.620	0.663
NEW JERSEY	0.791	.....
NEW MEXICO	0.562	0.556
NEW YORK	0.640	0.738
NORTH CAROLINA	0.620	0.558
NORTH DAKOTA	0.660	0.693
OHIO	0.620	0.649
OKLAHOMA	0.545	0.595
OREGON	0.605	0.671

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) AUGUST 1993 Continued

State	Urban	Rural
PENNSYLVANIA	0.500	0.583
PUERTO RICO	0.543	0.670
RHODE ISLAND	0.632	.....
SOUTH CAROLINA	0.543	0.527
SOUTH DAKOTA	0.635	0.687
TENNESSEE	0.567	0.569
TEXAS	0.534	0.629
UTAH	0.607	0.652
VERMONT	0.675	0.625
VIRGINIA	0.565	0.593
WASHINGTON	0.690	0.734
WEST VIRGINIA	0.583	0.547
WISCONSIN	0.703	0.719
WYOMING	0.634	0.794

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) AUGUST 1993

State	Ratio
ALABAMA	0.059
ALASKA	0.115
ARIZONA	0.066
ARKANSAS	0.065
CALIFORNIA	0.046
COLORADO	0.056
CONNECTICUT	0.038
DELAWARE	0.054
DISTRICT OF COLUMBIA	0.043
FLORIDA	0.060
GEORGIA	0.055
HAWAII	0.073

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) AUGUST 1993 Continued

State	Ratio
IDAHO	0.078
ILLINOIS	0.051
INDIANA	0.069
IOWA	0.064
KANSAS	0.067
KENTUCKY	0.064
LOUISIANA	0.080
MAINE	0.043
MASSACHUSETTS	0.065
MICHIGAN	0.054
MINNESOTA	0.057
MISSISSIPPI	0.059
MISSOURI	0.061
MONTANA	0.076
NEBRASKA	0.060
NEVADA	0.044
NEW HAMPSHIRE	0.069
NEW JERSEY	0.072
NEW MEXICO	0.063
NEW YORK	0.064
NORTH CAROLINA	0.051
NORTH DAKOTA	0.073
OHIO	0.063
OKLAHOMA	0.063
OREGON	0.060
PENNSYLVANIA	0.053
PUERTO RICO	0.078
RHODE ISLAND	0.033
SOUTH CAROLINA	0.069
SOUTH DAKOTA	0.074
TENNESSEE	0.064
TEXAS	0.068
UTAH	0.055
VERMONT	0.057
VIRGINIA	0.064
WASHINGTON	0.084

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) AUGUST 1993 Continued

State	Ratio
WEST VIRGINIA	0.065
WISCONSIN	0.053
WYOMING	0.076

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
010001	10/01/91	09/30/92	1.3186	0.9981
010004	10/01/91	09/30/92	1.0081	0.9816
010005	10/01/91	09/30/92	1.1244	0.9754
010007	10/01/91	09/30/92	1.0564	0.9853
010008	10/01/91	09/30/92	1.0147	0.9914
010009	08/01/91	07/31/92	1.0963	0.9714
010010	10/01/91	09/30/92	1.1290	0.9666
010016	10/01/91	09/30/92	1.1181	0.9783
010019	10/01/91	09/30/92	1.1954	0.9873
010021	10/01/91	09/30/92	1.2100	0.9876
010029	10/01/91	09/30/92	1.5050	0.9971
010032	01/01/92	12/31/92	0.8384	0.9722
010033	10/01/91	09/30/92	1.9336	0.9971
010035	10/01/91	09/30/92	1.1946	0.9821
010040	01/01/92	12/31/92	1.3507	0.9923
010043	10/01/91	09/30/92	0.9675	0.9392
010044	10/01/91	09/30/92	1.0815	0.9719
010045	10/01/91	09/30/92	1.0385	0.9699
010047	10/01/91	09/30/92	0.8685	0.9817
010049	09/01/91	08/31/92	1.0899	0.9738
010051	10/01/91	09/30/92	0.8946	0.9283
010052	10/01/91	09/30/92	0.9706	0.9278
010058	10/01/91	09/30/92	1.0482	0.9649
010061	10/01/91	09/30/92	0.9883	0.9689
010062	10/01/91	09/30/92	0.9656	0.9757
010065	01/01/92	12/31/92	1.2663	0.9887
010069	10/01/91	09/30/92	1.1362	0.9666
010073	10/01/91	09/30/92	0.9374	0.9556
010079	10/01/91	09/30/92	1.1089	0.9793
010081	09/01/91	08/31/92	1.8475	0.9962
010083	10/01/91	09/30/92	1.0680	0.9846
010084	01/01/92	12/31/92	1.3121	0.9978
010087	10/01/91	09/30/92	1.7861	0.9956
010092	10/01/91	09/30/92	1.3926	0.9990
010094	09/01/91	08/31/92	1.2046	0.9781
010095	10/01/91	09/30/92	1.0149	0.9530
010096	10/01/91	09/30/92	0.8911	0.9675
010097	10/01/91	09/30/92	0.9295	0.9623
010099	10/01/91	09/30/92	1.0313	0.9833
010100	10/01/91	09/30/92	1.1561	0.9762
010102	10/01/91	09/30/92	0.9042	0.9442
010108	11/01/91	10/31/92	1.2514	0.9888
010109	10/01/91	09/30/92	1.0562	0.9845
010110	10/01/91	09/30/92	0.8997	0.9428
010112	10/01/91	09/30/92	1.1675	0.9732
010115	10/01/91	09/30/92	0.8750	0.9380
010117	10/01/91	09/30/92	1.0803	0.9735
010119	10/01/91	09/30/92	1.1631	0.9884
010120	10/01/91	09/30/92	0.9577	0.9501
010122	01/01/92	12/31/92	0.8710	0.9324
010123	09/01/91	08/31/92	1.2504	0.9760
010124	09/01/91	08/31/92	1.2556	0.9814
010125	10/01/91	09/30/92	1.0355	0.9786
010126	10/01/91	09/30/92	1.1396	0.9743
010127	09/01/91	08/31/92	1.5259	0.9979
010129	10/01/91	09/30/92	1.0321	0.9658
010130	10/01/91	09/30/92	1.1202	0.9530
010137	10/01/91	09/30/92	1.2125	0.9923

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
010139	01/01/92	12/31/92	1.6242	0.9978
010143	10/01/91	09/30/92	1.1472	0.9702
010144	01/01/92	12/31/92	1.3127	0.9896
010146	10/01/91	09/30/92	1.0272	0.9784
010149	09/01/91	08/31/92	1.3877	0.9914
010152	10/01/91	09/30/92	1.2938	0.9771
010153	10/01/91	09/30/92	2.1383	1.0000
010155	10/01/91	09/30/92	1.0459	0.9162
020001	01/01/92	12/31/92	1.4773	0.9978
020005	10/01/91	09/30/92	0.9100	0.9278
020006	01/01/92	12/31/92	1.1334	0.9706
020012	01/01/92	12/31/92	1.2046	0.9919
020013	01/01/92	12/31/92	0.9999	0.9847
020017	09/01/91	08/31/92	1.4289	0.9911
020025	01/01/92	12/31/92	0.9055	0.9443
030001	01/01/92	12/31/92	1.3880	0.9864
030002	01/01/92	12/31/92	1.7889	0.9981
030004	10/01/91	09/30/92	0.9681	0.9788
030006	08/01/91	06/31/92	1.9526	0.9989
030012	01/01/92	12/31/92	1.2256	0.9856
030013	10/01/91	09/30/92	1.2242	0.9856
030014	01/01/92	12/31/92	1.4775	0.9977
030018	01/01/92	12/31/92	1.7522	0.9980
030023	01/01/92	12/31/92	1.2759	0.9886
030025	01/01/92	12/31/92	1.1073	0.9474
030030	09/01/91	08/31/92	1.6604	0.9983
030035	01/01/92	12/31/92	1.3106	0.9886
030036	01/01/92	12/31/92	1.2136	0.9859
030038	10/01/91	09/30/92	1.5224	0.9993
030041	01/01/92	12/31/92	0.9724	0.9673
030044	10/01/91	09/30/92	1.0533	0.9499
030046	01/01/92	12/31/92	1.0269	0.9869
030047	01/01/92	12/31/92	1.0153	0.9383
030060	01/01/92	12/31/92	1.0530	0.9880
030061	01/01/92	12/31/92	1.5369	0.9989
030062	01/01/92	12/31/92	1.3233	0.9573
030065	01/01/92	12/31/92	1.4969	0.9971
030067	10/01/91	09/30/92	1.0345	0.9664
030068	01/01/92	12/31/92	1.0341	0.9401
030069	01/01/92	12/31/92	1.3022	0.9804
030083	09/01/91	08/31/92	1.4114	0.9862
030085	09/01/91	08/31/92	1.4130	0.9853
030086	09/01/91	08/31/92	1.1895	0.9725
030087	10/01/91	09/30/92	1.6298	0.9992
030088	01/01/92	12/31/92	1.3370	0.9891
030089	01/01/92	12/31/92	1.3715	0.9879
030092	01/01/92	12/31/92	1.5045	0.9955
030093	01/01/92	12/31/92	1.3715	0.9888
030094	09/01/91	08/31/92	1.3657	0.9892
040004	01/01/92	12/31/92	1.2531	0.9952
040005	10/01/91	09/30/92	0.9984	0.9421
040007	09/01/91	08/31/92	1.5965	0.9994
040010	01/01/92	12/31/92	1.1821	0.9899
040014	09/01/91	08/31/92	1.2160	0.9924
040018	01/01/92	12/31/92	1.3093	0.9862
040020	10/01/91	09/30/92	1.4673	0.9978
040021	01/01/92	12/31/92	1.2891	0.9807
040024	10/01/91	09/30/92	1.0227	0.9386
040027	01/01/92	12/31/92	1.2972	0.9902
040028	10/01/91	09/30/92	0.9974	0.9593
040029	01/01/92	12/31/92	1.1137	0.9630
040031	01/01/92	12/31/92	0.8883	0.9568
040036	01/01/92	12/31/92	1.3501	0.9905
040041	09/01/91	08/31/92	1.1543	0.9832
040042	01/01/92	12/31/92	1.2756	0.9860
040044	01/01/92	12/31/92	0.9115	0.9368
040045	01/01/92	12/31/92	0.9796	0.9441
040047	01/01/92	12/31/92	1.0248	0.9783
040050	10/01/91	09/30/92	1.1194	0.9814
040064	01/01/92	12/31/92	0.9226	0.9517
040066	01/01/92	12/31/92	1.1550	0.9870
040067	10/01/91	09/30/92	1.0494	0.9862
040072	12/01/91	11/30/92	1.0722	0.9672

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
040075	01/01/92	12/31/92	1.0723	0.9872
040078	01/01/92	12/31/92	1.2299	0.9920
040081	10/01/91	09/30/92	0.9047	0.9320
040085	01/01/92	12/31/92	1.2421	0.9843
040100	01/01/92	12/31/92	1.1283	0.9843
040105	10/01/91	09/30/92	0.9959	0.9605
040106	10/01/91	09/30/92	1.1730	0.9665
040107	10/01/91	09/30/92	1.0680	0.9529
040114	01/01/92	12/31/92	1.8025	0.9989
040118	01/01/92	12/31/92	1.1715	0.9886
040119	10/01/91	09/30/92	1.1420	0.9893
050002	10/01/91	09/30/92	1.3432	0.9872
050007	01/01/92	12/31/92	1.5795	0.9980
050008	01/01/92	12/31/92	1.4727	0.9873
050013	01/01/92	12/31/92	2.0647	0.9996
050018	01/01/92	12/31/92	1.3554	0.9919
050021	09/01/91	08/31/92	1.2850	0.9891
050022	01/01/92	12/31/92	1.4864	0.9989
050024	01/01/92	12/31/92	1.3408	0.9902
050030	12/01/91	11/30/92	1.3340	0.9856
050032	09/01/91	08/31/92	1.2408	0.9861
050053	01/01/92	12/31/92	1.3889	1.0000
050058	10/01/91	09/30/92	1.3970	0.9951
050060	09/01/91	08/31/92	1.5019	0.9986
050061	09/01/91	08/31/92	1.3318	0.9918
050070	01/01/92	12/31/92	1.2468	0.9794
050071	01/01/92	12/31/92	1.3132	0.9859
050072	01/01/92	12/31/92	1.3270	0.9864
050073	01/01/92	12/31/92	1.2518	0.9829
050074	01/01/92	12/31/92	1.0749	0.9748
050075	01/01/92	12/31/92	1.3016	0.9920
050076	01/01/92	12/31/92	1.5692	0.9621
050078	01/01/92	12/31/92	1.3641	0.9895
050080	01/01/92	12/31/92	1.3052	0.9826
050081	09/01/91	08/31/92	1.5944	0.9903
050084	01/01/92	12/31/92	1.5491	0.9985
050091	09/01/91	08/31/92	1.2599	0.9897
050096	01/01/92	12/31/92	1.1753	0.9972
050097	01/01/92	12/31/92	1.4475	0.9936
050099	12/29/91	12/27/92	1.8651	0.9982
050100	10/01/91	09/30/92	1.8618	0.9980
050101	01/01/92	12/31/92	1.4188	0.9805
050102	01/01/92	12/31/92	1.3309	0.9930
050103	01/01/92	12/31/92	1.4848	0.9960
050107	12/01/91	11/30/92	1.3334	0.9888
050108	01/01/92	12/31/92	1.4568	0.9802
050109	01/01/92	12/31/92	2.0945	0.9974
050111	01/01/92	12/31/92	1.3902	1.0000
050112	10/01/91	09/30/92	1.4686	0.9962
050117	01/01/92	12/31/92	1.3199	0.9970
050121	01/01/92	12/31/92	1.3684	0.9895
050122	01/01/92	12/31/92	1.4806	0.9983
050125	01/01/92	12/31/92	1.3393	0.9918
050126	11/01/91	10/31/92	1.4140	0.9973
050127	10/01/91	09/30/92	1.2748	0.9799
050131	01/01/92	12/31/92	1.1859	0.9942
050132	10/01/91	09/30/92	1.3676	0.9896
050135	10/01/91	09/30/92	1.3277	0.9950
050137	01/01/92	12/31/92	1.2326	0.9800
050138	01/01/92	12/31/92	1.8003	0.9930
050139	01/01/92	12/31/92	1.2516	0.9916
050140	01/01/92	12/31/92	1.3095	0.9862
050144	09/01/91	08/31/92	1.4840	0.9939
050145	01/01/92	12/31/92	1.3534	0.9843
050146	10/01/91	09/30/92	1.1683	1.0000
050149	10/01/91	09/30/92	1.3733	0.9891
050150	01/01/92	12/31/92	1.2572	0.9723
050154	10/01/91	09/30/92	1.1838	0.9756
050155	10/01/91	09/30/92	1.1282	0.9957
050160	10/01/91	09/30/92	1.5576	0.9948
050173	09/01/91	08/31/92	1.3060	0.9901
050180	12/30/91	12/28/92	1.5354	0.9969
050189	10/01/91	09/30/92	0.9991	0.9496

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
050196	01/01/92	12/31/92	1.3681	0.9835
050204	10/01/91	09/30/92	1.4069	0.9970
050205	01/01/92	12/31/92	1.3739	0.9945
050208	01/01/92	12/31/92	1.2970	0.9884
050211	01/01/92	12/31/92	1.3115	0.9902
050212	09/01/91	08/31/92	1.0405	1.0000
050214	01/01/92	12/31/92	1.6537	0.9935
050217	01/01/92	12/31/92	1.2459	0.9762
050219	01/01/92	12/31/92	1.3646	0.9786
050222	10/01/91	09/30/92	1.5656	0.9968
050224	09/15/91	09/13/92	1.6066	0.9977
050225	01/01/92	12/31/92	1.4203	0.9899
050226	10/01/91	09/30/92	1.4231	0.9983
050231	01/01/92	12/31/92	1.5197	0.9968
050233	10/01/91	09/30/92	1.2312	0.9795
050234	10/01/91	09/30/92	1.2625	0.9814
050235	01/01/92	12/31/92	1.4719	0.9961
050236	01/01/92	12/31/92	1.4064	0.9881
050238	01/01/92	12/31/92	1.4654	0.9874
050239	01/01/92	12/31/92	1.4126	0.9963
050241	01/01/92	12/31/92	1.2713	0.9750
050251	01/01/92	12/31/92	1.1829	0.9583
050253	10/01/91	09/30/92	0.9050	1.0000
050254	11/01/91	10/31/92	1.1604	0.9822
050256	11/01/91	10/31/92	1.7433	0.9947
050257	01/01/92	12/31/92	1.0228	0.9933
050264	09/01/91	08/31/92	1.4274	0.9923
050269	10/01/91	09/30/92	1.1044	0.9953
050270	10/01/91	09/30/92	1.3233	0.9877
050272	10/01/91	09/30/92	1.3962	0.9917
050282	10/01/91	09/30/92	1.3907	0.9892
050288	08/01/91	07/31/92	1.1037	0.9622
050298	01/01/92	12/31/92	1.2120	0.9717
050300	01/01/92	12/31/92	1.3016	0.9918
050301	01/01/92	12/31/92	1.3499	0.9848
050302	01/01/92	12/31/92	1.3726	0.9819
050305	12/29/91	12/27/92	1.5282	0.9971
050309	01/01/92	12/31/92	1.3050	0.9965
050310	09/01/91	08/31/92	1.1866	0.9939
050313	01/01/92	12/31/92	1.1747	0.9830
050317	01/01/92	12/31/92	1.3474	0.9802
050324	10/01/91	09/30/92	1.8370	0.9963
050327	01/01/92	12/31/92	1.5568	0.9952
050335	01/01/92	12/31/92	1.2680	0.9767
050336	01/01/92	12/31/92	1.3037	0.9779
050345	10/01/91	09/30/92	1.2991	0.9891
050351	01/01/92	12/31/92	1.4881	0.9970
050352	01/01/92	12/31/92	1.2869	0.9674
050357	10/01/91	09/30/92	1.9039	0.9942
050363	09/01/91	08/31/92	1.3469	0.9734
050366	01/01/92	12/31/92	1.3486	0.9804
050367	01/01/92	12/31/92	1.2729	0.9731
050369	01/01/92	12/31/92	1.2742	0.9851
050385	08/01/91	07/31/92	1.4294	0.9773
050391	01/01/92	12/31/92	1.3910	0.9881
050394	01/01/92	12/31/92	1.5156	0.9992
050396	01/01/92	12/31/92	1.6055	0.9995
050404	01/01/92	12/31/92	1.1480	0.9660
050407	01/01/92	12/31/92	1.3184	0.9966
050411	01/01/92	12/31/92	1.2999	0.9870
050417	01/01/92	12/31/92	1.2033	0.9701
050420	01/01/92	12/31/92	1.3617	0.9955
050425	01/01/92	12/31/92	1.2814	0.9864
050426	09/01/91	08/31/92	1.3923	0.9926
050427	09/01/91	08/31/92	0.7841	0.9704
050431	09/01/91	08/31/92	1.1489	1.0000
050438	10/01/91	09/30/92	1.5605	0.9969
050440	01/01/92	12/31/92	1.3689	0.9801
050441	09/01/91	08/31/92	1.8142	0.9965
050447	09/01/91	08/31/92	1.1677	0.9828
050455	01/01/92	12/31/92	1.9282	0.9983
050458	01/01/92	12/31/92	0.9671	0.9715
050469	01/01/92	12/31/92	1.1386	0.9812
050471	09/01/91	08/31/92	1.7968	0.9978
050478	01/01/92	12/31/92	1.0081	0.9368
050481	09/01/91	08/31/92	1.5072	0.9959
050483	10/01/91	09/30/92	1.1576	0.9975
050486	10/01/91	09/30/92	1.4791	0.9945
050489	10/01/91	09/30/92	1.0192	0.9921
050492	09/01/91	08/31/92	1.2679	0.9799
050498	01/01/92	12/31/92	1.2795	0.9769
050503	10/01/91	09/30/92	1.2687	0.9895
050508	08/01/91	07/31/92	1.5083	0.9890
050510	01/01/92	12/31/92	1.2832	0.9872
050512	01/01/92	12/31/92	1.2856	0.9829
050515	01/01/92	12/31/92	1.3422	0.9862
050517	10/01/91	09/30/92	1.4182	0.9944
050523	01/01/92	12/31/92	1.2567	0.9706
050526	09/01/91	08/31/92	1.3200	0.9750
050531	09/01/91	08/31/92	1.3131	0.9934
050537	01/01/92	12/31/92	1.2694	0.9743
050541	01/01/92	12/31/92	1.5277	0.9822
050543	01/01/92	12/31/92	1.2753	1.0000
050549	01/01/92	12/31/92	1.7959	0.9972
050550	09/01/91	08/31/92	1.7556	0.9798
050552	01/01/92	12/31/92	1.1609	0.9937
050557	10/01/91	09/30/92	1.5224	0.9987
050561	01/01/92	12/31/92	1.1698	0.9885
050567	01/01/92	12/31/92	1.6961	0.9972
050570	11/01/91	10/31/92	1.7141	0.9953
050571	10/01/91	09/30/92	1.4550	0.9903
050575	10/01/91	09/30/92	1.2301	0.9960
050580	01/01/92	12/31/92	1.3417	0.9915
050585	01/01/92	12/31/92	1.3207	0.9764
050586	09/01/91	08/31/92	1.2379	0.9875
050587	01/01/92	12/31/92	1.3352	0.9848
050588	09/01/91	08/31/92	1.3853	0.9832
050590	01/01/92	12/31/92	1.3030	0.9812
050591	09/01/91	08/31/92	1.1750	0.9921
050592	09/01/91	08/31/92	1.3344	0.9804
050593	01/01/92	12/31/92	1.3609	0.9680
050597	10/01/91	09/30/92	1.3185	0.9807
050604	01/01/92	12/31/92	1.4123	0.9708
050609	01/01/92	12/31/92	1.3610	0.9880
050619	01/01/92	12/31/92	1.3132	0.9928
050624	10/01/91	09/30/92	1.2654	0.9829
050630	01/01/92	12/31/92	1.2264	0.9822
050635	01/01/92	12/31/92	1.3146	0.9935
050644	09/01/91	08/31/92	1.0671	0.9934
050655	01/01/92	12/31/92	0.8024	0.9886
050663	10/01/91	09/30/92	1.0602	0.9980
050670	09/01/91	08/31/92	0.8312	1.0000
050674	01/01/92	12/31/92	1.1629	0.9917
050677	01/01/92	12/31/92	1.3405	0.9863
050680	01/01/92	12/31/92	1.3376	0.9698
050686	01/01/92	12/31/92	1.3049	0.9909
050690	01/01/92	12/31/92	1.2621	0.9824
050695	01/01/92	12/31/92	1.2593	0.9677
050698	01/01/92	12/31/92	1.2175	1.0000
060001	01/01/92	12/31/92	1.5311	0.9990
060003	01/01/92	12/31/92	1.2249	0.9880
060004	01/01/92	12/31/92	1.2153	0.9626
060006	01/01/92	12/31/92	1.3098	0.9910
060007	01/01/92	12/31/92	1.1682	0.9614
060009	01/01/92	12/31/92	1.4137	0.9975
060010	01/01/92	12/31/92	1.5911	0.9974
060011	01/01/92	12/31/92	1.1935	0.9891
060018	01/01/92	12/31/92	1.2752	0.9763
060022	01/01/92	12/31/92	1.6574	0.9970
060027	01/01/92	12/31/92	1.4324	0.9974
060029	01/01/92	12/31/92	1.0010	0.9524
060030	01/01/92	12/31/92	1.4122	0.9909
060033	01/01/92	12/31/92	1.1283	0.9771
060034	01/01/92	12/31/92	1.3958	0.9958
060037	01/01/92	12/31/92	0.9759	0.9331
060038	01/01/92	12/31/92	1.0358	0.9849
060041	01/01/92	12/31/92	1.0472	0.9916
060042	01/01/92	12/31/92	0.9853	0.9701
060043	01/01/92	12/31/92	0.9647	0.9538
060044	01/01/92	12/31/92	1.1799	0.9814
060046	01/01/92	12/31/92	1.0249	0.9792
060047	01/01/92	12/31/92	0.8681	0.9258
060049	01/01/92	12/31/92	1.1039	0.9347
060050	01/01/92	12/31/92	1.2200	0.9700
060052	01/01/92	12/31/92	1.0243	0.9480
060053	01/01/92	12/31/92	1.0391	0.9559
060056	01/01/92	12/31/92	0.9359	0.9729
060057	01/01/92	12/31/92	1.0995	0.9609
060058	01/01/92	12/31/92	0.8763	0.8926
060060	01/01/92	12/31/92	0.9934	0.9793
060062	01/01/92	12/31/92	0.9723	0.8973
060063	01/01/92	12/31/92	1.1480	0.9897
060064	01/01/92	12/31/92	1.4280	0.9960
060065	09/01/91	08/31/92	1.3393	0.9926
060066	01/01/92	12/31/92	0.9805	0.9541
060068	01/01/92	12/31/92	1.2855	0.9712
060070	01/01/92	12/31/92	0.9779	0.9697
060071	01/01/92	12/31/92	1.1859	0.9812
060072	10/01/91	09/30/92	0.9127	0.9643
060073	01/01/92	12/31/92	0.9682	0.9232
060075	01/01/92	12/31/92	1.2354	0.9829
060076	01/01/92	12/31/92	1.4156	0.9873
060085	01/01/92	12/31/92	0.9676	0.9514
060087	09/01/91	08/31/92	1.5356	0.9937
060088	01/01/92	12/31/92	1.0363	0.9403
060090	01/01/92	12/31/92	0.9206	0.9712
060096	11/01/91	10/31/92	0.9900	0.9097
060101	10/01/91	09/30/92	1.5047	0.9675
060103	01/01/92	12/31/92	1.3594	0.9840
070001	10/01/91	09/30/92	1.7528	0.9995
070002	10/01/91	09/30/92	1.8438	0.9993
070003	10/01/91	09/30/92	1.1375	0.9773
070004	10/01/91	09/30/92	1.1173	0.9815
070005	10/01/91	09/30/92	1.3118	0.9897
070006	10/01/91	09/30/92	1.2735	0.9980
070007	10/01/91	09/30/92	1.3923	0.9911
070008	10/01/91	09/30/92	1.2487	0.9921
070009	10/01/91	09/30/92	1.2102	0.9921
070010	10/01/91	09/30/92	1.4882	0.9991
070011	10/01/91	09/30/92	1.2250	0.9894
070012	10/01/91	09/30/92	1.2416	0.9900
070013	10/01/91	09/30/92	1.3970	0.9837
070015	10/01/91	09/30/92	1.2834	0.9912
070016	10/01/91	09/30/92	1.2811	0.9938
070017	10/01/91	09/30/92	1.3201	0.9898
070018	10/01/91	09/30/92	1.3400	0.9955
070019	10/01/91	09/30/92	1.1565	0.9842
070020	10/01/91	09/30/92	1.4185	0.9901
070021	10/01/91	09/30/92	1.2527	0.9868
070022	10/01/91	09/30/92	1.6879	0.9968
070023	10/01/91	09/30/92	1.2977	0.9930
070024	10/01/91	09/30/92	1.2803	0.9906
070025	10/01/91	09/30/92	1.7275	0.9980
070026	10/01/91	09/30/92	1.1869	0.9840
070027	10/01/91	09/30/92	1.2809	0.9890
070028	10/01/91	09/30/92	1.5076	0.9995
070029	10/01/91	09/30/92	1.2211	0.9905
070030	10/01/91	09/30/92	1.2386	0.9934
070031	10/01/91	09/30/92	1.2872	0.9895
070033	10/01/91	09/30/92	1.3677	0.9926
070034	10/01/91	09/30/92	1.3060	0.9965
070035	10/01/91	09/30/92	1.3567	0.9938
070036	10/01/91	09/30/92	1.2812	0.9871
080005	10/01/91	09/30/92	1.3030	0.9911
090002	01/01/92	12/31/92	1.2461	0.9895
090005	01/01/92	12/31/92	1.2978	0.9982
090006	01/01/92	12/31/92	1.3106	0.9974
090007	10/01/91	09/30/92	1.2765	0.9824
090008	01/01/92	12/31/92	1.4644	0.9911

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
100001	10/01/91	09/30/92	1.4423	0.9989
100002	10/01/91	09/30/92	1.3965	0.9988
100004	10/01/91	09/30/92	1.0073	0.9444
100005	10/01/91	09/30/92	0.9957	0.9969
100006	10/01/91	09/30/92	1.5770	0.9979
100007	01/01/92	12/31/92	1.9216	0.9981
100008	10/01/91	09/30/92	1.7208	0.9958
100009	10/01/91	09/30/92	1.4712	0.9976
100012	10/01/91	09/30/92	1.5411	0.9995
100014	10/01/91	09/30/92	1.2861	0.9778
100015	08/01/91	07/31/92	1.3695	0.9931
100017	10/01/91	09/30/92	1.6256	0.9961
100018	10/01/91	09/30/92	1.3410	0.9871
100019	10/01/91	09/30/92	1.5067	0.9991
100020	12/01/91	11/30/92	1.2350	0.9921
100022	10/01/91	09/30/92	1.6345	0.9973
100023	10/01/91	09/30/92	1.2961	0.9853
100024	10/01/91	09/30/92	1.3313	0.9818
100025	01/01/92	12/31/92	1.5517	0.9999
100026	10/01/91	09/30/92	1.5305	0.9996
100028	10/01/91	09/30/92	1.2950	0.9763
100029	10/01/91	09/30/92	1.4407	0.9904
100030	10/01/91	09/30/92	1.2535	0.9803
100034	01/01/92	12/31/92	1.6427	0.9990
100035	09/01/91	08/31/92	1.5034	0.9995
100040	01/01/92	12/31/92	1.7020	0.9976
100042	01/01/92	12/31/92	1.1884	0.9960
100043	10/01/91	09/30/92	1.4288	0.9884
100044	10/01/91	09/30/92	1.3995	0.9909
100045	10/01/91	09/30/92	1.4130	0.9826
100046	01/01/92	12/31/92	1.3161	0.9763
100047	01/01/92	12/31/92	1.6662	0.9952
100048	10/01/91	09/30/92	1.0230	0.9778
100049	10/01/91	09/30/92	1.3536	0.9753
100050	01/01/92	12/31/92	1.1957	0.9958
100051	10/01/91	09/30/92	1.3211	0.9533
100052	10/01/91	09/30/92	1.3044	0.9874
100053	10/01/91	09/30/92	1.2577	0.9953
100054	08/01/91	07/31/92	1.2784	0.9755
100055	10/01/91	09/30/92	1.3603	0.9923
100056	01/01/92	12/31/92	1.5296	0.9936
100057	10/01/91	09/30/92	1.3015	0.9546
100060	01/01/92	12/31/92	1.7592	0.9969
100061	09/01/91	08/31/92	1.5167	0.9942
100062	10/01/91	09/30/92	1.7520	0.9986
100063	01/01/92	12/31/92	1.2610	0.9851
100065	10/01/91	09/30/92	1.1245	0.9948
100069	01/01/92	12/31/92	1.4513	0.9935
100071	10/01/91	09/30/92	1.3487	0.9892
100072	10/01/91	09/30/92	1.3031	0.9760
100074	10/01/91	09/30/92	1.3254	0.9863
100077	09/01/91	08/31/92	1.3020	0.9832
100078	10/01/91	09/30/92	1.2603	0.9753
100080	10/01/91	09/30/92	1.6124	0.9989
100081	10/01/91	09/30/92	1.0808	0.9894
100082	10/01/91	09/30/92	1.4225	0.9988
100085	01/01/92	12/31/92	1.3150	0.9914
100087	10/01/91	09/30/92	1.7753	0.9988
100088	10/01/91	09/30/92	1.6079	0.9941
100089	01/01/92	12/31/92	1.2837	0.9886
100090	10/01/91	09/30/92	1.3542	0.9872
100092	10/01/91	09/30/92	1.5114	0.9974
100093	10/01/91	09/30/92	1.4922	0.9950
100098	10/01/91	09/30/92	1.2589	0.9701
100099	10/01/91	09/30/92	1.2385	0.9613
100100	01/01/92	12/31/92	1.3730	0.9983
100102	10/01/91	09/30/92	1.1513	0.9708
100103	10/01/91	09/30/92	0.9816	0.9582
100105	10/01/91	09/30/92	1.4218	0.9843
100107	09/01/91	08/31/92	1.2631	0.9754
100108	10/01/91	09/30/92	1.1488	0.9894
100109	01/01/92	12/31/92	1.2429	0.9728
100110	09/01/91	08/31/92	1.4473	0.9899

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
100117	10/01/91	09/30/92	1.3994	0.9988
100118	11/01/91	10/31/92	1.2063	0.9790
100121	10/01/91	09/30/92	1.1730	0.9628
100124	11/01/91	10/31/92	1.3512	0.9742
100127	10/01/91	09/30/92	1.6066	0.9989
100128	10/01/91	09/30/92	2.2196	0.9984
100130	10/01/91	09/30/92	1.1714	0.9832
100131	09/01/91	08/31/92	1.2552	0.9852
100132	01/01/92	12/31/92	1.3858	0.9843
100134	10/01/91	09/30/92	1.0333	0.9084
100135	10/01/91	09/30/92	1.5275	0.9983
100137	10/01/91	09/30/92	1.1612	0.9805
100138	10/01/91	09/30/92	1.0076	0.9680
100139	10/01/91	09/30/92	1.0301	0.9682
100140	10/01/91	09/30/92	1.1069	0.9757
100142	10/01/91	09/30/92	1.1256	0.9782
100143	01/01/92	12/31/92	1.1802	1.0000
100144	10/01/91	09/30/92	1.2089	0.9882
100146	10/01/91	09/30/92	1.1095	0.9543
100147	10/01/91	09/30/92	1.1128	0.9717
100150	09/01/91	08/31/92	1.3830	0.9869
100151	01/01/92	12/31/92	1.8024	0.9991
100154	10/01/91	09/30/92	1.6151	0.9986
100156	11/01/91	10/31/92	1.1441	0.9835
100157	10/01/91	09/30/92	1.5638	0.9988
100159	10/01/91	09/30/92	1.0167	0.9590
100162	10/01/91	09/30/92	1.3563	0.9891
100164	10/01/91	09/30/92	0.9560	1.0000
100165	01/01/92	12/31/92	0.9788	0.9986
100167	09/01/91	08/31/92	1.4113	0.9948
100169	11/01/91	10/31/92	1.8395	0.9985
100170	10/01/91	09/30/92	1.4949	0.9962
100173	10/01/91	09/30/92	1.6302	0.9988
100174	10/01/91	09/30/92	1.3789	0.9923
100175	10/01/91	09/30/92	0.9896	0.9679
100176	10/01/91	09/30/92	1.9887	0.9972
100177	10/01/91	09/30/92	1.3346	0.9926
100180	09/01/91	08/31/92	1.4171	0.9928
100181	12/01/91	11/30/92	1.3789	0.9897
100183	01/01/92	12/31/92	1.3753	0.9952
100185	10/01/91	09/30/92	1.1731	0.8991
100187	01/01/92	12/31/92	1.3717	0.9913
100189	01/01/92	12/31/92	1.2670	0.9872
100196	09/01/91	08/31/92	1.2189	0.9842
100199	09/01/91	08/31/92	1.2437	0.9956
100203	09/30/91	09/30/92	1.2141	0.9937
100206	12/01/91	11/30/92	1.4164	0.9908
100208	01/01/92	12/31/92	1.6070	0.9949
100210	01/01/92	12/31/92	1.7159	0.9963
100211	09/01/91	08/31/92	1.3224	0.9796
100212	09/01/91	08/31/92	1.7181	0.9987
100217	09/01/91	08/31/92	1.2196	0.9774
100220	01/01/92	12/31/92	1.8427	0.9994
100221	09/01/91	08/31/92	1.5496	0.9977
100223	09/01/91	08/31/92	1.4358	0.9858
100224	01/01/92	12/31/92	1.4361	0.9891
100226	09/01/91	08/31/92	1.3710	0.9920
100227	09/01/91	08/31/92	1.0175	0.9952
100228	09/01/91	08/31/92	1.2593	0.9909
100229	09/01/91	08/31/92	1.3973	0.9902
100232	10/01/91	09/30/92	1.3255	0.9790
100234	09/01/91	08/31/92	1.3943	0.9904
100235	09/30/91	09/30/92	1.3488	0.9861
100237	10/01/91	09/30/92	2.1856	0.9990
100238	09/01/91	08/31/92	1.3991	0.9919
100241	10/01/91	09/30/92	0.9586	0.9780
100243	09/01/91	08/31/92	1.4388	0.9892
100246	01/01/92	12/31/92	1.3649	0.9920
100248	08/01/91	07/31/92	1.6316	0.9989
100253	10/01/91	09/30/92	1.3995	0.9861
100255	01/01/92	12/31/92	1.3390	0.9954
100259	09/01/91	08/31/92	1.4492	0.9670
100260	10/01/91	09/30/92	1.3746	0.9847

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
100262	10/01/91	09/30/92	1.3958	0.9910
100263	09/01/91	08/31/92	1.4221	0.9790
100265	10/01/91	09/30/92	1.2977	0.9830
100266	10/01/91	09/30/92	1.3578	0.9788
100267	01/01/92	12/31/92	1.2996	0.9807
100269	09/01/91	08/31/92	1.4228	0.9831
100273	09/01/91	08/31/92	1.1433	0.9715
100275	01/01/92	12/31/92	1.3791	0.9874
100278	10/01/91	09/30/92	0.9840	0.8676
110001	10/01/91	09/30/92	1.1865	0.9890
110002	01/01/92	12/31/92	1.2464	0.9756
110004	10/01/91	09/30/92	1.1860	0.9927
110005	01/01/92	12/31/92	1.3790	0.9485
110006	10/01/91	09/30/92	1.2544	0.9935
110009	11/01/91	10/31/92	1.0189	0.9688
110010	09/01/91	08/31/92	2.0181	0.9986
110013	10/01/91	09/30/92	1.0322	0.9601
110014	08/01/91	07/31/92	1.0257	0.9864
110018	01/01/92	12/31/92	1.1554	0.9579
110020	09/01/91	08/31/92	1.2338	0.9839
110023	01/01/92	12/31/92	1.2085	0.9457
110024	01/01/92	12/31/92	1.3335	0.9896
110025	10/01/91	09/30/92	1.2842	0.9845
110028	12/30/91	12/28/92	1.6148	0.9986
110029	10/01/91	09/30/92	1.2851	0.9868
110030	09/01/91	08/31/92	1.2345	0.9665
110032	10/01/91	09/30/92	1.1055	0.9656
110033	08/01/91	07/31/92	1.3551	0.9877
110036	01/01/92	12/31/92	1.6949	0.9982
110037	01/01/92	12/31/92	1.0421	0.9886
110038	10/01/91	09/30/92	1.3637	0.9947
110044	10/01/91	09/30/92	1.1433	0.9681
110045	08/01/91	07/31/92	1.0687	0.9667
110046	11/01/91	10/31/92	1.2013	0.9732
110048	10/01/91	09/30/92	1.1205	0.9654
110049	10/01/91	09/30/92	1.0682	0.9691
110050	01/01/92	12/31/92	1.0159	0.9761
110059	10/01/91	09/30/92	1.2223	0.9760
110061	10/01/91	09/30/92	1.0027	0.9582
110063	12/01/91	11/30/92	1.0131	0.9666
110065	01/01/92	12/31/92	0.9454	0.9868
110070	11/01/91	10/31/92	0.9889	0.9270
110072	01/01/92	12/31/92	0.9693	0.9576
110073	08/01/91	07/31/92	1.2179	0.9628
110074	10/01/91	09/30/92	1.3028	0.9875
110075	10/01/91	09/30/92	1.2164	0.9833
110076	10/01/91	09/30/92	1.3461	0.9873
110078	09/01/91	08/31/92	1.5748	0.9982
110079	01/01/92	12/31/92	1.3562	0.9977
110080	10/01/91	09/30/92	1.1105	0.9952
110082	01/01/92	12/31/92	2.1219	0.9989
110083	01/01/92	12/31/92	1.6028	0.9992
110086	09/01/91	08/31/92	1.0576	0.9669
110087	09/01/91	08/31/92	1.2495	0.9866
110088	01/01/92	12/31/92	0.8704	0.9264
110089	01/01/92	12/31/92	1.2237	0.9770
110091	10/01/91	09/30/92	1.3424	0.9781
110092	10/01/91	09/30/92	1.0662	0.9782
110095	10/01/91	09/30/92	1.2931	0.9808
110096	01/01/92	12/31/92	1.0954	0.9769
110097	01/01/92	12/31/92	1.0599	0.9745
110100	01/01/92	12/31/92	1.0552	0.9681
110105	10/01/91	09/30/92	1.1548	0.9858
110107	10/01/91	09/30/92	1.6346	0.9980
110111	10/01/91	09/30/92	1.1352	0.9794
110112	09/01/91	08/31/92	1.0593	0.9792
110114	10/01/91	09/30/92	1.1151	0.9750
110115	01/01/92	12/31/92	1.6905	0.9985
110118	10/01/91	09/30/92	1.0214	0.9405
110120	10/01/91	09/30/92	1.0630	0.9561
110121	10/01/91	09/30/92	1.1212	0.9747
110122	10/01/91	09/30/92	1.3102	0.9863
110129	01/01/92	12/31/92	1.6243	0.9983

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
110130	12/01/91	11/30/92	1.0666	0.9853
110142	10/01/91	09/30/92	1.0712	0.9892
110144	10/01/91	09/30/92	1.1831	0.9818
110146	01/01/92	12/31/92	0.9593	0.9439
110150	10/01/91	09/30/92	1.2946	0.9749
110166	10/01/91	09/30/92	1.4311	0.9858
110171	11/01/91	10/31/92	1.3401	0.9916
110172	10/01/91	09/30/92	1.2452	0.9901
110177	09/01/91	08/31/92	1.3811	0.9969
110179	01/01/92	12/31/92	1.1576	0.9837
110187	01/01/92	12/31/92	1.1718	0.9838
110189	01/01/92	12/31/92	1.0736	0.9620
110190	01/01/92	12/31/92	1.1542	0.9441
110192	09/01/91	08/31/92	1.3206	0.9842
110193	01/01/92	12/31/92	1.2250	0.9770
110195	10/01/91	09/30/92	1.1524	0.9784
110196	11/01/91	10/31/92	1.3514	0.9841
110200	10/01/91	09/30/92	1.9640	0.9974
110201	09/01/91	08/31/92	1.3497	0.9964
110203	10/01/91	09/30/92	0.9947	0.9839
120006	01/01/92	12/31/92	1.1525	0.9811
120011	01/01/92	12/31/92	1.2484	0.9963
120022	01/01/92	12/31/92	1.6308	0.9989
130001	12/01/91	11/30/92	0.9579	0.9686
130002	10/01/91	09/30/92	1.3832	0.9849
130005	01/01/92	12/31/92	1.3965	0.9829
130006	10/01/91	09/30/92	1.7355	0.9989
130009	10/01/91	09/30/92	0.9902	0.9577
130010	10/01/91	09/30/92	0.9366	0.9790
130011	01/01/92	12/31/92	1.4033	0.9741
130012	10/01/91	09/30/92	1.0336	0.9188
130014	10/01/91	09/30/92	1.2757	0.9839
130015	10/01/91	09/30/92	0.9979	0.9570
130016	10/01/91	09/30/92	0.8296	0.9910
130018	10/01/91	09/30/92	1.5366	0.9966
130019	01/01/92	12/31/92	1.2135	0.9657
130021	12/01/91	11/30/92	0.8163	0.9906
130024	09/01/91	08/31/92	1.1242	0.9540
130025	10/01/91	09/30/92	1.0692	0.9813
130026	01/01/92	12/31/92	1.1071	0.9740
130027	10/01/91	09/30/92	0.8829	0.9840
130028	10/01/91	09/30/92	1.2349	0.9916
130030	10/01/91	09/30/92	1.0672	0.9598
130031	10/01/91	09/30/92	0.9441	0.9811
130034	10/01/91	09/30/92	0.9832	0.9498
130036	01/01/92	12/31/92	1.2102	0.9828
130037	10/01/91	09/30/92	1.1593	0.9599
130039	10/01/91	09/30/92	1.3344	0.9771
130040	10/01/91	09/30/92	0.8622	0.9806
130043	10/01/91	09/30/92	1.0157	0.9806
130044	10/01/91	09/30/92	0.8828	0.9573
130045	10/01/91	09/30/92	0.9083	0.9723
130049	12/01/91	11/30/92	1.2285	0.9870
130054	10/01/91	09/30/92	1.0264	0.9867
130056	10/01/91	09/30/92	0.9922	1.0000
140002	01/01/92	12/31/92	1.2321	0.9896
140004	10/01/91	09/30/92	0.9798	0.9667
140007	09/01/91	08/31/92	1.4213	0.9964
140008	01/01/92	12/31/92	1.3808	0.9925
140010	10/01/91	09/30/92	1.3367	0.9967
140012	01/01/92	12/31/92	1.2588	0.9911
140013	01/01/92	12/31/92	1.5634	0.9973
140015	10/01/91	09/30/92	1.2340	0.9825
140019	09/01/91	08/31/92	0.8997	0.9683
140029	01/01/92	12/31/92	1.3479	0.9960
140031	01/01/92	12/31/92	1.0365	0.9761
140033	09/01/91	08/31/92	1.2096	0.9927
140034	01/01/92	12/31/92	1.1394	0.9841
140036	10/01/91	09/30/92	1.1372	0.9734
140039	01/01/92	12/31/92	1.0027	0.9857
140046	01/01/92	12/31/92	1.2327	0.9748
140048	01/01/92	12/31/92	1.2178	0.9837
140049	11/01/91	10/31/92	1.3294	0.9968

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
140051	10/01/91	09/30/92	1.3270	0.9904
140062	01/01/92	12/31/92	1.2988	0.9878
140054	09/29/91	09/26/92	1.3440	0.9876
140058	10/01/91	09/30/92	1.1506	0.9857
140062	01/01/92	12/31/92	1.2437	0.9885
140063	01/01/92	12/31/92	1.3457	0.9941
140064	10/01/91	09/30/92	1.2199	0.9858
140065	01/01/92	12/31/92	1.4088	0.9955
140066	01/01/92	12/31/92	1.2196	0.9899
140067	10/01/91	09/30/92	1.7616	0.9979
140074	10/01/91	09/30/92	1.1003	0.9566
140079	01/01/92	12/31/92	1.2908	0.9926
140080	01/01/92	12/31/92	1.8604	0.9958
140084	01/01/92	12/31/92	1.2048	0.9921
140087	01/01/92	12/31/92	1.4509	0.9919
140090	01/01/92	12/31/92	1.3536	0.9971
140093	09/01/91	08/31/92	1.2179	0.9801
140094	01/01/92	12/31/92	1.2309	0.9939
140095	09/01/91	08/31/92	1.2286	0.9841
140097	01/01/92	12/31/92	0.9500	0.9775
140098	01/01/92	12/31/92	1.2525	0.9883
140101	12/01/91	11/30/92	1.1348	0.9794
140103	01/01/92	12/31/92	1.3538	0.9911
140105	01/01/92	12/31/92	1.3178	0.9800
140107	01/01/92	12/31/92	1.1127	0.9538
140108	01/01/92	12/31/92	1.2187	0.9930
140112	10/01/91	09/30/92	1.0861	0.9676
140113	01/01/92	12/31/92	1.4464	0.9969
140118	01/01/92	12/31/92	1.5750	0.9976
140122	01/01/92	12/31/92	1.4340	0.9974
140123	01/01/92	12/31/92	1.2312	0.9967
140125	01/01/92	12/31/92	1.2126	0.9899
140128	10/01/91	09/30/92	1.1289	0.9590
140129	01/01/92	12/31/92	1.0500	0.9836
140130	01/01/92	12/31/92	1.2019	0.9939
140132	10/01/91	09/30/92	1.5149	0.9985
140135	10/01/91	09/30/92	1.2147	0.9859
140137	01/01/92	12/31/92	1.0174	0.9517
140139	10/01/91	09/30/92	1.0847	0.9647
140141	08/01/91	07/31/92	0.9802	0.9700
140143	10/01/91	09/30/92	1.0712	0.9826
140147	12/01/91	11/30/92	1.1752	0.9794
140148	10/01/91	09/30/92	1.6335	0.9968
140152	01/01/92	12/31/92	1.0862	0.9963
140155	01/01/92	12/31/92	1.2020	0.9914
140160	08/01/91	07/31/92	1.1467	0.9813
140161	10/01/91	09/30/92	1.1229	0.9760
140162	10/01/91	09/30/92	1.7007	0.9948
140167	10/01/91	09/30/92	1.1326	0.9826
140176	10/01/91	09/30/92	1.2278	0.9881
140180	01/01/92	12/31/92	1.4157	0.9975
140181	01/01/92	12/31/92	1.2898	0.9940
140182	11/01/91	10/31/92	1.2992	0.9948
140185	01/01/92	12/31/92	1.3862	0.9869
140186	01/01/92	12/31/92	1.2332	0.9900
140188	09/01/91	08/31/92	0.9892	0.9548
140191	01/01/92	12/31/92	1.3866	0.9976
140192	10/01/91	09/30/92	0.9837	0.9843
140197	10/01/91	09/30/92	1.2036	0.9832
140202	01/01/92	12/31/92	1.2760	0.9845
140203	10/01/91	09/30/92	1.2370	0.9747
140206	10/01/91	09/30/92	1.0963	0.9894
140207	01/01/92	12/31/92	1.4332	0.9983
140208	01/01/92	12/31/92	1.4550	0.9981
140209	01/01/92	12/31/92	1.6839	0.9997
140211	09/01/91	08/31/92	1.1735	0.9825
140212	01/01/92	12/31/92	1.1757	0.9982
140217	09/01/91	08/31/92	1.2483	0.9824
140220	10/01/91	09/30/92	1.1099	0.9799
140233	10/01/91	09/30/92	1.6447	0.9970
140236	10/01/91	09/30/92	1.0058	0.9841
140240	01/01/92	12/31/92	1.3907	0.9959
140252	11/01/91	10/31/92	1.3333	0.9939

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
140253	10/01/91	09/30/92	1.1978	0.9970
140258	01/01/92	12/31/92	1.4178	0.9958
140271	01/01/92	12/31/92	1.0623	0.9685
140281	09/01/91	08/31/92	1.5602	0.9977
140285	01/01/92	12/31/92	1.3315	0.9852
140288	01/01/92	12/31/92	1.5942	0.9966
140289	01/01/92	12/31/92	1.2643	0.9870
140290	09/01/91	08/31/92	1.3911	0.9891
140291	01/01/92	12/31/92	1.2639	0.9746
140292	01/01/92	12/31/92	1.2049	0.9737
140294	01/01/92	12/31/92	1.1280	0.9681
150001	01/01/92	12/31/92	1.0865	0.9793
150002	01/01/92	12/31/92	1.3657	0.9957
150003	01/01/92	12/31/92	1.8810	0.9971
150004	01/01/92	12/31/92	1.4556	0.9985
150005	01/01/92	12/31/92	1.1771	0.9845
150006	01/01/92	12/31/92	1.2209	0.9783
150007	01/01/92	12/31/92	1.2362	0.9746
150008	01/01/92	12/31/92	1.3538	0.9982
150009	01/01/92	12/31/92	1.2975	0.9934
150010	01/01/92	12/31/92	1.2134	0.9828
150013	01/01/92	12/31/92	1.2455	0.9704
150015	01/01/92	12/31/92	1.2102	0.9898
150017	01/01/92	12/31/92	1.7812	0.9992
150018	01/01/92	12/31/92	1.2701	0.9841
150020	10/01/91	09/30/92	1.1002	0.9924
150021	01/01/92	12/31/92	1.6604	0.9988
150022	01/01/92	12/31/92	1.1466	0.9796
150023	09/01/91	08/31/92	1.4020	0.9959
150024	01/01/92	12/31/92	1.2102	0.9923
150026	01/01/92	12/31/92	1.2214	0.9778
150027	01/01/92	12/31/92	0.9947	0.9670
150029	01/01/92	12/31/92	1.2180	0.9836
150030	01/01/92	12/31/92	1.0820	0.9744
150031	10/01/91	09/30/92	0.9997	0.9587
150033	01/01/92	12/31/92	1.5813	0.9990
150034	01/01/92	12/31/92	1.2838	0.9973
150035	01/01/92	12/31/92	1.4009	0.9968
150036	01/01/92	12/31/92	1.0153	0.9935
150037	01/01/92	12/31/92	1.2309	0.9756
150038	01/01/92	12/31/92	1.2268	0.9813
150039	10/01/91	09/30/92	0.9572	0.9317
150042	01/01/92	12/31/92	1.2136	0.9888
150044	01/01/92	12/31/92	1.2796	0.9902
150045	10/01/91	09/30/92	1.1669	0.9734
150047	01/01/92	12/31/92	1.6450	0.9985
150048	01/01/92	12/31/92	1.1687	0.9881
150049	01/01/92	12/31/92	1.1275	0.9771
150050	01/01/92	12/31/92	1.1572	0.9781
150051	10/01/91	09/30/92	1.2642	0.9928
150052	01/01/92	12/31/92	0.9972	0.9627
150053	01/01/92	12/31/92	1.0294	0.9680
150054	01/01/92	12/31/92	1.1586	0.9834
150057	01/01/92	12/31/92	2.3371	0.9934
150058	01/01/92	12/31/92	1.5967	0.9986
150059	01/01/92	12/31/92	1.1646	0.9863
150060	01/01/92	12/31/92	1.1858	0.9705
150061	01/01/92	12/31/92	1.2247	0.9788
150062	01/01/92	12/31/92	1.0102	0.9602
150063	01/01/92	12/31/92	1.0909	0.9762
150064	10/01/91	09/30/92	1.0525	0.9700
150065	01/01/92	12/31/92	1.1178	0.9748
150066	01/01/92	12/31/92	1.0756	0.9630
150067	01/01/92	12/31/92	1.0817	0.9765
150069	01/01/92	12/31/92	1.2445	0.9753
150070	01/01/92	12/31/92	1.0736	0.9649
150071	01/01/92	12/31/92	1.0890	0.9565
150072	01/01/92	12/31/92	1.2986	0.9724
150073	01/01/92	12/31/92	1.0339	0.9741
150074	10/01/91	09/30/92	1.5018	0.9983
150075	10/01/91	09/30/92	1.2068	0.9956
150078	01/01/92	12/31/92	1.0191	0.9814
150079	10/01/91	09/30/92	1.1277	0.9745

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
150086 ...	01/01/92	12/31/92	1.1952	0.9810
150091 ...	01/01/92	12/31/92	1.1606	0.9521
150092 ...	01/01/92	12/31/92	1.0379	0.9193
150094 ...	01/01/92	12/31/92	1.0220	0.9680
150095 ...	10/01/91	09/30/92	1.0142	0.9826
150096 ...	01/01/92	12/31/92	1.0045	0.9586
150097 ...	01/01/92	12/31/92	1.0666	0.9679
150098 ...	01/01/92	12/31/92	1.1215	0.9595
150101 ...	01/01/92	12/31/92	1.0876	0.9603
150102 ...	01/01/92	12/31/92	1.0801	0.9839
150104 ...	01/01/92	12/31/92	1.1612	0.9593
150105 ...	01/01/92	12/31/92	1.1338	0.9669
150106 ...	01/01/92	12/31/92	1.0605	0.9650
150109 ...	01/01/92	12/31/92	1.2500	0.9958
150111 ...	01/01/92	12/31/92	1.0823	0.9788
150112 ...	01/01/92	12/31/92	1.1896	0.9853
150113 ...	01/01/92	12/31/92	1.1706	0.9856
150114 ...	01/01/92	12/31/92	1.0350	0.9609
150122 ...	01/01/92	12/31/92	1.1169	0.9486
150123 ...	08/01/91	07/31/92	0.9703	0.9894
150124 ...	10/01/91	09/30/92	1.1744	0.9792
150127 ...	10/01/91	09/30/92	1.0763	0.9543
150128 ...	10/01/91	09/30/92	1.1775	0.9918
150129 ...	09/01/91	08/31/92	1.2346	0.9894
150132 ...	01/01/92	12/31/92	1.3499	0.9982
150133 ...	01/01/92	12/31/92	1.1965	0.9560
150136 ...	09/01/91	08/31/92	0.9106	1.0000
160001 ...	11/01/91	10/31/92	1.1724	0.9721
160002 ...	10/01/91	09/30/92	1.2928	0.9632
160003 ...	01/01/92	12/31/92	1.0688	0.9745
160008 ...	10/01/91	09/30/92	1.1203	0.9786
160024 ...	01/01/92	12/31/92	1.5259	0.9972
160044 ...	01/01/92	12/31/92	1.2759	0.9705
160045 ...	09/01/91	08/31/92	1.6482	0.9987
160047 ...	10/01/91	09/30/92	1.3997	0.9900
160051 ...	10/01/91	09/30/92	1.1529	0.9730
160071 ...	01/01/92	12/31/92	1.0498	0.9490
160072 ...	01/01/92	12/31/92	1.0701	0.9790
160082 ...	08/01/91	07/31/92	1.7268	0.9995
160092 ...	01/01/92	12/31/92	0.9476	0.9520
160099 ...	10/01/91	09/30/92	1.0936	0.9650
160104 ...	12/01/91	11/30/92	1.2143	0.9829
160110 ...	01/01/92	12/31/92	1.5237	0.9977
160111 ...	09/01/91	08/31/92	1.0698	0.9784
160122 ...	10/01/91	09/30/92	1.1978	0.9575
160129 ...	01/01/92	12/31/92	1.0885	0.9532
160130 ...	10/01/91	09/30/92	1.1110	0.9769
160131 ...	01/01/92	12/31/92	1.1627	0.9780
160133 ...	01/01/92	12/31/92	1.1128	0.9839
160136 ...	01/01/92	12/31/92	1.0635	0.9666
160147 ...	01/01/92	12/31/92	1.1967	0.9680
170001 ...	01/01/92	12/31/92	1.1893	0.9753
170004 ...	01/01/92	12/31/92	1.0133	0.9701
170006 ...	10/01/91	09/30/92	1.2083	0.9839
170008 ...	09/01/91	08/31/92	1.0676	0.9721
170012 ...	10/01/91	09/30/92	1.4371	0.9870
170014 ...	01/01/92	12/31/92	1.0626	0.9503
170017 ...	01/01/92	12/31/92	1.2185	0.9863
170018 ...	01/01/92	12/31/92	0.9917	0.9555
170019 ...	01/01/92	12/31/92	1.1695	0.9764
170022 ...	10/01/91	09/30/92	1.2008	0.9599
170023 ...	01/01/92	12/31/92	1.3691	0.9885
170024 ...	10/01/91	09/30/92	1.2087	0.9769
170026 ...	10/01/91	09/30/92	1.0376	0.9790
170027 ...	10/01/91	09/30/92	1.2242	0.9817
170030 ...	01/01/92	12/31/92	0.9061	0.9286
170031 ...	01/01/92	12/31/92	0.8844	0.9894
170032 ...	10/01/91	09/30/92	1.0263	0.9667
170033 ...	01/01/92	12/31/92	1.2700	0.9788
170034 ...	01/01/92	12/31/92	0.9563	0.9962
170035 ...	10/01/91	09/30/92	0.9437	0.9086
170036 ...	01/01/92	12/31/92	0.8329	0.9468
170038 ...	01/01/92	12/31/92	0.9091	0.9436

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
170039 ...	01/01/92	12/31/92	1.0317	0.9819
170041 ...	01/01/92	12/31/92	1.0022	0.9725
170043 ...	01/01/92	12/31/92	0.9838	0.9756
170049 ...	01/01/92	12/31/92	1.2877	0.9852
170050 ...	01/01/92	12/31/92	0.8202	0.9418
170054 ...	01/01/92	12/31/92	1.0711	0.9608
170055 ...	01/01/92	12/31/92	1.0181	0.9911
170060 ...	01/01/92	12/31/92	1.0354	0.9701
170062 ...	10/01/91	09/30/92	0.9213	0.9731
170063 ...	01/01/92	12/31/92	0.8547	0.9537
170064 ...	01/01/92	12/31/92	1.0561	0.9712
170066 ...	01/01/92	12/31/92	0.8923	0.9223
170068 ...	01/01/92	12/31/92	1.2844	0.9804
170070 ...	01/01/92	12/31/92	0.9668	0.9595
170073 ...	01/01/92	12/31/92	1.0717	0.9588
170075 ...	10/01/91	09/30/92	0.8671	0.9695
170076 ...	01/01/92	12/31/92	1.1315	0.9990
170077 ...	01/01/92	12/31/92	0.9082	0.9602
170079 ...	01/01/92	12/31/92	0.9923	0.9759
170080 ...	01/01/92	12/31/92	1.0063	0.9733
170081 ...	01/01/92	12/31/92	1.0199	0.9666
170082 ...	01/01/92	12/31/92	0.9100	0.9599
170086 ...	10/01/91	09/30/92	1.6157	0.9997
170087 ...	10/01/91	09/30/92	1.3504	0.9984
170088 ...	01/01/92	12/31/92	0.8895	0.9458
170090 ...	01/01/92	12/31/92	1.0146	0.9386
170092 ...	01/01/92	12/31/92	0.8042	0.9894
170094 ...	01/01/92	12/31/92	1.0848	0.9643
170097 ...	01/01/92	12/31/92	0.9445	0.9555
170098 ...	01/01/92	12/31/92	1.0952	0.9830
170099 ...	01/01/92	12/31/92	1.3686	0.9982
170101 ...	10/01/91	09/30/92	1.0528	0.9800
170102 ...	01/01/92	12/31/92	0.9585	0.9485
170104 ...	01/01/92	12/31/92	1.4286	0.9989
170106 ...	09/01/91	08/31/92	0.9027	0.8932
170108 ...	01/01/92	12/31/92	0.8520	0.9420
170109 ...	01/01/92	12/31/92	1.0978	0.9627
170110 ...	01/01/92	12/31/92	0.9357	0.9761
170112 ...	01/01/92	12/31/92	0.9539	0.9785
170113 ...	01/01/92	12/31/92	1.0483	0.9721
170114 ...	01/01/92	12/31/92	1.0620	0.9857
170116 ...	01/01/92	12/31/92	1.0899	0.9667
170117 ...	01/01/92	12/31/92	0.9137	0.9896
170119 ...	01/01/92	12/31/92	1.0035	0.9698
170120 ...	01/01/92	12/31/92	1.3420	0.9815
170121 ...	01/01/92	12/31/92	0.8737	0.9911
170122 ...	10/01/91	09/30/92	1.8179	0.9984
170123 ...	01/01/92	12/31/92	1.6939	0.9989
170124 ...	01/01/92	12/31/92	0.9592	0.9617
170126 ...	10/01/91	09/30/92	0.8968	0.9607
170128 ...	01/01/92	12/31/92	1.0045	0.9191
170131 ...	01/01/92	12/31/92	1.2020	0.9727
170134 ...	01/01/92	12/31/92	0.9361	0.9857
170137 ...	01/01/92	12/31/92	1.1745	0.9793
170139 ...	01/01/92	12/31/92	0.9981	0.9838
170143 ...	01/01/92	12/31/92	1.1626	0.9714
170144 ...	10/01/91	09/30/92	1.4402	0.9935
170145 ...	01/01/92	12/31/92	1.2000	0.9907
170146 ...	01/01/92	12/31/92	1.3386	0.9974
170147 ...	10/01/91	09/30/92	1.1690	0.9763
170148 ...	10/01/91	09/30/92	1.3316	0.9981
170150 ...	01/01/92	12/31/92	1.1036	0.9740
170151 ...	01/01/92	12/31/92	1.0460	0.9809
170152 ...	01/01/92	12/31/92	1.0044	0.9748
170160 ...	01/01/92	12/31/92	0.8755	0.9578
170164 ...	01/01/92	12/31/92	1.0135	0.9747
170166 ...	01/01/92	12/31/92	1.0008	0.9888
170168 ...	01/01/92	12/31/92	0.8127	0.9118
170174 ...	01/01/92	12/31/92	0.8558	0.9574
170175 ...	09/01/91	08/31/92	1.2436	0.9705
170176 ...	09/01/91	08/31/92	1.4609	0.9972
180001 ...	01/01/92	12/31/92	1.1934	0.9945
180004 ...	10/01/91	09/30/92	1.1546	0.9661

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
180009 ...	10/01/91	09/30/92	1.2101	0.9968
180010 ...	09/01/91	08/31/92	1.8258	0.9989
180011 ...	09/01/91	08/31/92	1.1506	0.9688
180014 ...	09/01/91	08/31/92	1.5286	0.9989
180015 ...	01/01/92	12/31/92	1.1279	0.9914
180016 ...	01/01/92	12/31/92	1.2078	0.9880
180017 ...	10/01/91	09/30/92	1.2806	0.9913
180019 ...	12/01/91	11/30/92	1.2550	0.9824
180023 ...	10/01/91	09/30/92	0.8663	0.9717
180025 ...	09/01/91	08/31/92	1.1622	0.9720
180026 ...	01/01/92	12/31/92	1.2114	0.9546
180030 ...	10/01/91	09/30/92	1.1773	0.9777
180031 ...	10/01/91	09/30/92	1.0290	0.9842
180035 ...	01/01/92	12/31/92	1.4695	0.9992
180036 ...	01/01/92	12/31/92	1.1212	0.9905
180037 ...	09/01/91	08/31/92	1.2790	0.9909
180040 ...	01/01/92	12/31/92	1.9702	0.9988
180041 ...	10/01/91	09/30/92	1.0594	0.9617
180043 ...	10/01/91	09/30/92	1.0996	0.9613
180044 ...	10/01/91	09/30/92	1.0887	0.9781
180045 ...	01/01/92	12/31/92	1.1774	0.9901
180048 ...	10/01/91	09/30/92	1.1845	0.9837
180051 ...	12/01/91	11/30/92	1.1723	0.9786
180058 ...	01/01/92	12/31/92	0.8998	0.9502
180059 ...	01/01/92	12/31/92	0.9195	0.9752
180060 ...	01/01/92	12/31/92	0.9410	1.0000
180063 ...	10/01/91	09/30/92	1.0571	0.9882
180064 ...	10/01/91	09/30/92	1.1381	0.9696
180066 ...	11/01/91	10/31/92	1.2600	0.9651
180072 ...	10/01/91	09/30/92	1.0281	0.9768
180078 ...	10/01/91	09/30/92	1.0976	0.9836
180079 ...	10/01/91	09/30/92	0.9993	0.9815
180081 ...	01/01/92	12/31/92	1.4930	0.9946
180085 ...	01/01/92	12/31/92	1.3214	0.9944
180088 ...	01/01/92	12/31/92	1.6746	0.9985
180094 ...	01/01/92	12/31/92	0.9938	0.9731
180095 ...	10/01/91	09/30/92	1.0080	0.9713
180099 ...	10/01/91	09/30/92	1.0498	0.9848
180102 ...	01/01/92	12/31/92	1.4371	0.9972
180103 ...	09/01/91	08/31/92	1.9116	0.9969
180104 ...	09/01/91	08/31/92	1.3909	0.9990
180106 ...	09/01/91	08/31/92	0.8993	0.9696
180115 ...	11/01/91	10/31/92	1.0053	0.9662
180116 ...	09/01/91	08/31/92	1.3589	0.9856
180120 ...	01/01/92	12/31/92	0.9085	0.9510
180121 ...	01/01/92	12/31/92	1.1222	0.9735
180123 ...	09/01/91	08/31/92	1.4361	0.9952
180124 ...	10/01/91	09/30/92	1.3194	0.9952
180126 ...	11/01/91	10/31/92	1.0137	0.9530
180127 ...	08/01/91	07/31/92	1.2055	0.9826
180128 ...	09/01/91	08/31/92	1.1298	0.9851
180130 ...	09/01/91	08/30/92	1.3604	0.9960
180132 ...	09/01/91	08/31/92	1.2470	0.9839
180133 ...	09/01/91	08/31/92	1.2237	0.9902
180136 ...	09/01/91	08/31/92	1.3416	0.9936
180137 ...	09/01/91	08/31/92	1.7632	0.9901
180138 ...	01/01/92	12/31/92	1.2139	0.9889
190002 ...	10/01/91	09/30/92	1.5783	0.9992
190003 ...	09/01/91	08/31/92	1.3731	0.9720
190004 ...	10/01/91	09/30/92	1.2763	0.9859
190013 ...	01/01/92	12/31/92	1.2339	0.9823
190018 ...	10/01/91	09/30/92	1.2087	0.9754
190025 ...	10/01/91	09/30/92	1.2613	0.9865
190026 ...	10/01/91	09/30/92	1.3644	0.9983
190034 ...	01/01/92	12/31/92	1.2272	0.9833
190039 ...	01/01/92	12/31/92	1.4452	0.9989
190040 ...	10/01/91	09/30/92	1.3863	0.9970
190043 ...	01/01/92	12/31/92	1.1185	0.9737
190044 ...	10/01/91	09/30/92	1.1011	0.9816
190046 ...	01/01/92	12/31/92	1.4878	0.9988
190049 ...	01/01/92	12/31/92	1.0579	0.9698
190050 ...	11/01/91	10/31/92	1.0673	0.9704
190053 ...	12/01/91	11/30/92	1.1033	0.9586

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
190059	11/01/91	10/31/92	0.9268	0.9592
190060	01/01/92	12/31/92	1.3562	0.9974
190064	01/01/92	12/31/92	1.5056	0.9992
190065	10/01/91	09/30/92	1.4938	0.9987
190077	01/01/92	12/31/92	0.8843	0.9728
190078	01/01/92	12/31/92	1.1095	0.9780
190079	08/01/91	07/31/92	1.2667	0.9908
190083	10/01/91	09/30/92	0.9985	0.9799
190088	09/01/91	08/31/92	1.3225	0.9700
190089	10/01/91	09/30/92	1.0742	0.9824
190090	09/01/91	08/31/92	1.1936	0.9719
190092	01/01/92	12/31/92	1.2913	0.9949
190095	10/01/91	09/30/92	1.0647	0.9759
190099	09/01/91	08/31/92	1.1681	0.9413
190102	10/01/91	09/30/92	1.5027	0.9989
190106	09/01/91	08/31/92	1.1105	0.9882
190109	10/01/91	09/30/92	1.1055	0.9855
190111	10/01/91	09/30/92	1.5395	0.9991
190113	01/01/92	12/31/92	1.3169	0.9987
190115	01/01/92	12/31/92	1.3402	0.9900
190116	01/01/92	12/31/92	1.2083	0.9864
190118	10/01/91	09/30/92	1.0449	0.9719
190120	09/01/91	08/31/92	0.9466	0.9356
190125	10/01/91	09/30/92	1.3803	0.9982
190127	10/01/91	09/30/92	1.4316	0.9930
190128	10/01/91	09/30/92	0.8899	0.9989
190130	10/01/91	09/30/92	0.9644	0.9772
190134	10/01/91	09/30/92	0.9962	0.9659
190135	10/01/91	09/30/92	1.3419	0.9993
190136	10/01/91	09/30/92	1.0370	0.9801
190142	11/01/91	10/31/92	1.0040	0.9745
190144	09/01/91	08/31/92	1.1023	0.9727
190145	10/01/91	09/30/92	0.9551	0.9930
190146	01/01/92	12/31/92	1.5225	0.9988
190147	10/01/91	09/30/92	0.9833	0.9680
190149	10/01/91	09/30/92	0.9600	0.9631
190151	10/01/91	09/30/92	1.0749	0.9903
190160	09/01/91	08/31/92	1.1375	0.9949
190162	01/01/92	12/31/92	1.2284	0.9971
190164	01/01/92	12/31/92	1.1532	0.9803
190167	09/01/91	08/31/92	1.2722	0.9681
190175	01/01/92	12/31/92	1.4899	1.0000
190177	01/01/92	12/31/92	1.4639	0.9954
190178	09/01/91	08/31/92	1.0023	0.9670
190184	10/01/91	09/30/92	0.9391	0.9751
190185	01/01/92	12/31/92	1.2147	0.9978
190186	10/01/91	09/30/92	0.8742	0.9619
190189	01/01/92	12/31/92	0.4785	0.8493
190191	01/01/92	12/31/92	1.2426	0.9834
190193	01/01/92	12/31/92	1.2415	0.9871
190194	10/01/91	09/30/92	1.2374	0.9671
190197	01/01/92	12/31/92	1.2454	0.9917
190198	09/01/91	08/31/92	1.1440	0.9940
190200	09/01/91	08/31/92	1.5160	0.9988
190201	09/01/91	08/31/92	1.2723	0.9783
190202	09/01/91	08/31/92	1.4200	0.9950
190203	01/01/92	12/31/92	1.5751	0.9993
190205	09/01/91	08/31/92	1.5557	0.9903
190206	09/01/91	08/31/92	1.4407	0.9970
190207	09/01/91	08/31/92	1.2051	0.9894
190208	01/01/92	12/31/92	0.8497	0.9266
190211	01/01/92	12/31/92	0.5891	0.8428
190212	01/01/92	12/31/92	0.9245	0.5679
200001	01/01/92	12/31/92	1.2469	0.9936
200006	10/01/91	09/30/92	1.1295	0.9625
200007	11/01/91	10/31/92	1.0878	0.9629
200009	10/01/91	09/30/92	1.7036	0.9983
200017	09/01/91	08/31/92	1.2635	0.9970
200018	01/01/92	12/31/92	1.1575	0.9838
200021	10/01/91	09/30/92	1.1731	0.9848
200025	01/01/92	12/31/92	1.1401	0.9954
200026	10/01/91	09/30/92	1.0001	0.9886
200027	01/01/92	12/31/92	1.2005	0.9744

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
200028	12/01/91	11/30/92	1.0064	0.9834
200031	01/01/92	12/31/92	1.2656	0.9916
200032	01/01/92	12/31/92	1.2928	0.9765
200033	09/29/91	09/26/92	1.6946	0.9969
200034	01/01/92	12/31/92	1.1853	0.9883
200041	01/01/92	12/31/92	1.1271	0.9870
200043	01/01/92	12/31/92	0.6678	0.9889
200052	10/01/91	09/30/92	1.0629	0.9906
200055	01/01/92	12/31/92	1.0870	0.9635
200062	01/01/92	12/31/92	0.9494	0.9802
200066	10/01/91	09/30/92	1.2088	0.9803
210006	01/01/92	12/31/92	1.1386	0.9910
210011	01/01/92	12/31/92	1.2762	0.9923
210049	01/01/92	12/31/92	1.1620	0.9849
220001	10/01/91	09/30/92	1.1984	0.9902
220002	10/01/91	09/30/92	1.3690	0.9979
220003	10/01/91	09/30/92	1.1392	0.9857
220004	10/01/91	09/30/92	1.2464	0.9905
220006	10/01/91	09/30/92	1.3072	0.9925
220008	10/01/91	09/30/92	1.1828	0.9852
220010	10/01/91	09/30/92	1.1380	0.9901
220012	10/01/91	09/30/92	1.2010	0.9796
220015	10/01/91	09/30/92	1.2065	0.9920
220016	10/01/91	09/30/92	1.2091	0.9878
220017	10/01/91	09/30/92	1.2646	0.9946
220019	10/01/91	09/30/92	1.0960	0.9902
220020	10/01/91	09/30/92	1.1616	0.9911
220021	10/01/91	09/30/92	1.2586	0.9919
220023	10/01/91	09/30/92	1.1869	0.9976
220024	10/01/91	09/30/92	1.1967	0.9929
220025	10/01/91	09/30/92	1.1035	0.9848
220026	10/01/91	09/30/92	1.3578	0.9939
220028	10/01/91	09/30/92	1.3934	0.9975
220029	10/01/91	09/30/92	1.1572	0.9843
220030	10/01/91	09/30/92	1.1354	0.9747
220031	09/29/91	09/26/92	1.6894	0.9968
220033	10/01/91	09/30/92	1.2806	0.9942
220035	10/01/91	09/30/92	1.2168	0.9935
220036	10/01/91	09/30/92	1.5025	0.9974
220038	10/01/91	09/30/92	1.2406	0.9750
220042	10/01/91	09/30/92	1.1450	0.9853
220045	10/01/91	09/30/92	1.2713	0.9920
220046	10/01/91	09/30/92	1.3818	0.9943
220048	10/01/91	09/30/92	1.2186	0.9938
220049	10/01/91	09/30/92	1.2657	0.9815
220050	10/01/91	09/30/92	0.9807	0.9817
220051	10/01/91	09/30/92	1.1397	0.9948
220052	10/01/91	09/30/92	1.2461	0.9887
220053	10/01/91	09/30/92	1.2572	0.9912
220055	10/01/91	09/30/92	1.1916	0.9915
220057	10/01/91	09/30/92	1.2380	0.9893
220058	10/01/91	09/30/92	1.0292	0.9794
220060	10/01/91	09/30/92	1.1333	0.9839
220062	10/01/91	09/30/92	0.8572	0.9941
220063	10/01/91	09/30/92	1.1468	0.9919
220064	10/01/91	09/30/92	1.1871	0.9883
220065	10/01/91	09/30/92	1.2150	0.9801
220066	10/01/91	09/30/92	1.2978	0.9964
220067	10/01/91	09/30/92	1.2786	0.9889
220068	10/01/91	09/30/92	0.6161	0.9861
220070	10/01/91	09/30/92	1.1342	0.9865
220071	10/01/91	09/30/92	1.8418	0.9979
220073	10/01/91	09/30/92	1.2340	0.9920
220074	10/01/91	09/30/92	1.2250	0.9891
220075	10/01/91	09/30/92	0.7895	0.9917
220076	10/01/91	09/30/92	1.2280	0.9854
220077	10/01/91	09/30/92	1.6789	0.9988
220079	10/01/91	09/30/92	1.1308	0.9924
220080	10/01/91	09/30/92	1.1747	0.9901
220081	10/01/91	09/30/92	1.0308	0.9892
220082	10/01/91	09/30/92	1.2324	0.9934
220084	10/01/91	09/30/92	1.2126	0.9757
220088	10/01/91	09/30/92	1.4957	0.9909

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
220089	10/01/91	09/30/92	1.3113	0.9919
220090	10/01/91	09/30/92	1.2079	0.9862
220092	10/01/91	09/30/92	1.1752	0.9860
220094	10/01/91	09/30/92	1.2495	0.9868
220095	10/01/91	09/30/92	1.2031	0.9812
220097	10/01/91	09/30/92	1.0291	0.9955
220098	10/01/91	09/30/92	1.2588	0.9835
220099	10/01/91	09/30/92	1.1048	0.9888
220100	10/01/91	09/30/92	1.2249	0.9899
220101	10/01/91	09/30/92	1.3777	0.9906
220102	10/01/91	09/30/92	0.7578	1.0000
220104	10/01/91	09/30/92	1.1878	0.9941
220105	10/01/91	09/30/92	1.1476	0.9863
220106	10/01/91	09/30/92	1.1174	0.9844
220107	10/01/91	09/30/92	1.1528	0.9917
220108	10/01/91	09/30/92	1.1357	0.9901
220110	10/01/91	09/30/92	1.9376	0.9961
220111	10/01/91	09/30/92	1.1625	0.9728
220116	09/29/91	09/26/92	1.8300	0.9988
220118	10/01/91	09/30/92	1.9805	0.9984
220119	10/01/91	09/30/92	1.3088	0.9901
220120	10/01/91	09/30/92	1.0368	0.9951
220123	10/01/91	09/30/92	0.9678	0.9604
220126	10/01/91	09/30/92	1.2545	0.9737
220128	10/01/91	09/30/92	1.0910	0.9928
220135	10/01/91	09/30/92	1.1400	0.9770
220156	10/01/91	09/30/92	1.2594	0.9883
220162	10/01/91	09/30/92	1.3541	0.7725
220171	10/01/91	09/30/92	1.6567	0.9975
220173	01/01/92	12/31/92	0.5473	1.0000
230003	10/01/91	09/30/92	1.2065	0.9796
230007	01/01/92	12/31/92	1.0945	0.9631
230012	01/01/92	12/31/92	0.9131	1.0000
230013	01/01/92	12/31/92	1.2310	0.9953
230015	01/01/92	12/31/92	1.2925	0.9799
230017	01/01/92	12/31/92	1.5435	0.9993
230020	01/01/92	12/31/92	1.6515	0.9978
230021	10/01/91	09/30/92	1.5927	0.9979
230022	01/01/92	12/31/92	1.2723	0.9807
230040	10/01/91	09/30/92	1.2920	0.9829
230042	01/01/92	12/31/92	1.1099	0.9885
230053	01/01/92	12/31/92	1.4739	0.9992
230055	01/01/92	12/31/92	1.1953	0.9992
230056	10/01/91	09/30/92	0.9340	0.9679
230063	01/01/92	12/31/92	1.3248	0.9916
230065	01/01/92	12/31/92	1.4576	0.9963
230071	11/01/91	10/31/92	0.6333	0.9957
230076	01/01/92	12/31/92	1.2402	0.9961
230078	10/01/91	09/30/92	1.2544	0.9758
230080	10/01/91	09/30/92	1.2833	0.9853
230087	01/01/92	12/31/92	1.1028	0.9784
230089	09/01/91	08/31/92	1.3433	0.9966
230090	01/01/92	12/31/92	0.9141	0.9926
230096	10/01/91	09/30/92	1.0657	0.9763
230101	10/01/91	09/30/92	1.1356	0.9587
230103	01/01/92	12/31/92	1.0245	0.9685
230105	01/01/92	12/31/92	1.5897	0.9989
230107	01/01/92	12/31/92	0.9123	0.9577
230110	10/01/91	09/30/92	1.2529	0.9849
230114	01/01/92	12/31/92	0.6452	1.0000
230115	01/01/92	12/31/92	0.9945	0.9545
230118	10/01/91	09/30/92	1.2669	0.9677
230119	10/01/91	09/30/92	1.2351	0.9960
230121	01/01/92	12/31/92	1.2709	0.9718
230122	10/01/91	09/30/92	1.3250	0.9891
230125	10/01/91	09/30/92	1.3442	0.9795
230128	01/01/92	12/31/92	1.3140	0.9964
230129	01/01/92	12/31/92	1.9552	0.9969
230130	01/01/92	12/31/92	1.6129	0.9989
230134	01/01/92	12/31/92	1.1985	0.9817
230135	01/01/92	12/31/92	1.2813	0.9778
230137	10/01/91	09/30/92	1.1514	0.9897
230138	01/01/92	12/31/92	0.8695	1.0000

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
230141	10/01/91	09/30/92	1.5954	0.9876
230143	01/01/92	12/31/92	1.2632	0.9813
230145	10/01/91	09/30/92	1.1562	0.9704
230146	01/01/92	12/31/92	1.2609	0.9772
230149	01/01/92	12/31/92	1.1620	0.9607
230150	10/01/91	09/30/92	1.3425	0.9976
230151	01/01/92	12/31/92	1.3912	0.9830
230155	01/01/92	12/31/92	1.0883	0.9573
230165	07/07/91	07/04/92	1.7452	0.9890
230167	01/01/92	12/31/92	1.2429	0.9922
230169	10/01/91	09/30/92	1.3542	0.9939
230171	01/01/92	12/31/92	1.0984	0.9872
230175	10/01/91	09/30/92	1.0320	0.8987
230184	10/01/91	09/30/92	1.1327	0.9866
230186	01/01/92	12/31/92	1.0170	0.9873
230190	01/01/92	12/31/92	1.2444	0.9517
230191	01/01/92	12/31/92	0.9078	0.9670
230193	01/01/92	12/31/92	1.3343	0.9883
230194	01/01/92	12/31/92	1.2266	0.9662
230195	10/01/91	09/30/92	1.3036	0.9821
230197	10/01/91	09/30/92	1.2248	0.9944
230204	10/01/91	09/30/92	1.3054	0.9944
230205	10/01/91	09/30/92	1.0314	0.9384
230208	01/01/92	12/31/92	1.1111	0.9786
230211	01/01/92	12/31/92	0.9239	0.9789
230213	01/01/92	12/31/92	1.0975	0.9745
230216	01/01/92	12/31/92	1.3094	0.9909
230217	01/01/92	12/31/92	1.1788	0.9721
230223	01/01/92	12/31/92	1.3007	0.9882
230227	01/01/92	12/31/92	1.4420	0.9963
230228	01/01/92	12/31/92	1.2603	0.9918
230230	01/01/92	12/31/92	1.3550	0.9906
230235	01/01/92	12/31/92	0.9902	0.9660
230236	10/01/91	09/30/92	1.3643	0.9947
230237	10/01/91	09/30/92	1.1837	0.9953
230239	10/01/91	09/30/92	1.1918	0.9659
230244	10/01/91	09/30/92	1.3782	0.9899
230253	10/01/91	09/30/92	1.0822	0.9513
230254	01/01/92	12/31/92	1.2590	0.9888
230257	07/07/91	07/04/92	1.1392	0.9825
230259	01/01/92	12/31/92	1.1343	0.9816
230269	01/01/92	12/31/92	1.2361	0.9923
230273	01/01/92	12/31/92	1.5873	0.9982
230276	01/01/92	12/31/92	1.0585	0.9951
230277	01/01/92	12/31/92	1.1904	0.9832
240001	01/01/92	12/31/92	1.5726	0.9976
240003	09/01/91	08/31/92	1.2151	0.9769
240004	01/01/92	12/31/92	1.4708	0.9849
240006	01/01/92	12/31/92	1.1839	0.9566
240007	10/01/91	09/30/92	1.0857	0.9697
240008	10/01/91	09/30/92	1.0762	0.9692
240010	01/01/92	12/31/92	1.9200	0.9956
240011	10/01/91	09/30/92	1.0680	0.9747
240013	10/01/91	09/30/92	1.2594	0.9717
240014	01/01/92	12/31/92	1.0992	0.9501
240016	10/01/91	09/30/92	1.3890	0.9685
240019	01/01/92	12/31/92	1.3225	0.9913
240020	10/01/91	09/30/92	1.2343	0.9685
240021	10/01/91	09/30/92	1.0745	0.9375
240022	01/01/92	12/31/92	1.1040	0.9548
240023	01/01/92	12/31/92	1.1384	0.9591
240025	01/01/92	12/31/92	1.1560	0.9688
240027	10/01/91	09/30/92	1.0579	0.9677
240028	10/01/91	09/30/92	1.0486	0.9685
240029	10/01/91	09/30/92	1.1944	0.9724
240030	01/01/92	12/31/92	1.3249	0.9806
240031	01/01/92	12/31/92	0.9818	0.9229
240036	01/01/92	12/31/92	1.4914	0.9968
240041	10/01/91	09/30/92	1.1856	0.9829
240043	01/01/92	12/31/92	1.2095	0.9891
240045	10/01/91	09/30/92	1.0647	0.9824
240047	01/01/92	12/31/92	1.4315	0.9951
240048	09/01/91	08/31/92	1.2788	0.9910

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
240050	09/01/91	08/31/92	1.1119	0.9445
240051	10/01/91	09/30/92	0.9179	0.9129
240052	10/01/91	09/30/92	1.2130	0.9858
240056	01/01/92	12/31/92	1.2814	0.9833
240057	01/01/92	12/31/92	1.7262	0.9965
240058	10/01/91	09/30/92	0.9881	0.9356
240059	10/01/91	09/30/92	1.1391	0.9704
240061	01/01/92	12/31/92	1.4921	0.9950
240063	09/01/91	08/31/92	1.5005	0.9878
240064	01/01/92	12/31/92	1.1961	0.9808
240066	10/01/91	09/30/92	1.3461	0.9795
240069	01/01/92	12/31/92	1.1361	0.9687
240071	01/01/92	12/31/92	1.0950	0.9682
240072	01/01/92	12/31/92	0.9816	0.9458
240073	01/01/92	12/31/92	0.9735	0.9559
240076	01/01/92	12/31/92	1.1524	0.9526
240078	01/01/92	12/31/92	1.4048	0.9962
240079	10/01/91	09/30/92	1.1003	0.9578
240080	01/01/92	12/31/92	1.4249	0.9959
240082	01/01/92	12/31/92	1.1917	0.9781
240083	01/01/92	12/31/92	1.3343	0.9546
240084	01/01/92	12/31/92	1.3348	0.9698
240085	01/01/92	12/31/92	0.8743	0.9438
240086	10/01/91	09/30/92	1.1526	0.9712
240087	01/01/92	12/31/92	1.1004	0.9640
240088	01/01/92	12/31/92	1.4575	0.9728
240091	01/01/92	12/31/92	0.9426	0.9573
240093	10/01/91	09/30/92	1.2976	0.9718
240094	10/01/91	09/30/92	0.9545	0.9388
240096	01/01/92	12/31/92	1.0663	0.9367
240097	01/01/92	12/31/92	1.0696	0.9487
240098	10/01/91	09/30/92	0.9608	0.9651
240100	12/01/91	11/30/92	1.2673	0.9861
240102	01/01/92	12/31/92	1.0124	0.9611
240103	10/01/91	09/30/92	1.0727	0.9609
240105	10/01/91	09/30/92	0.9027	0.9257
240106	01/01/92	12/31/92	1.2745	0.9929
240107	01/01/92	12/31/92	0.8651	0.9677
240108	10/01/91	09/30/92	0.9306	0.9600
240109	01/01/92	12/31/92	1.0045	0.9905
240111	01/01/92	12/31/92	0.9985	0.9429
240112	01/01/92	12/31/92	0.9589	0.9621
240114	01/01/92	12/31/92	1.0315	0.9473
240115	01/01/92	12/31/92	1.5328	0.9988
240116	10/01/91	09/30/92	0.9108	0.9577
240117	11/01/91	10/31/92	1.1021	0.9570
240119	01/01/92	12/31/92	0.8378	0.9682
240121	10/01/91	09/30/92	0.9623	0.9380
240122	10/01/91	09/30/92	1.1262	0.9743
240123	01/01/92	12/31/92	1.0794	0.9518
240124	01/01/92	12/31/92	1.0050	0.9846
240127	01/01/92	12/31/92	0.9501	0.9799
240128	01/01/92	12/31/92	1.1485	0.9691
240130	01/01/92	12/31/92	1.0219	0.9526
240132	01/01/92	12/31/92	1.2348	0.9890
240133	01/01/92	12/31/92	1.1015	0.9533
240135	10/01/91	09/30/92	0.9245	0.8963
240136	01/01/92	12/31/92	0.8765	0.9636
240138	10/01/91	09/30/92	0.8496	0.9759
240139	10/01/91	09/30/92	0.9835	0.9543
240140	01/01/92	12/31/92	0.7435	0.9389
240141	01/01/92	12/31/92	1.0071	0.9518
240142	01/01/92	12/31/92	1.1435	0.9738
240143	10/01/91	09/30/92	0.9003	0.8522
240144	01/01/92	12/31/92	0.9796	0.9391
240146	10/01/91	09/30/92	0.9287	0.9293
240148	01/01/92	12/31/92	1.0056	0.9458
240150	10/01/91	09/30/92	0.9541	0.9916
240152	01/01/92	12/31/92	0.9577	0.9604
240153	10/01/91	09/30/92	1.0245	0.9675
240154	01/01/92	12/31/92	0.9623	0.9456
240155	10/01/91	09/30/92	0.9382	0.9015
240157	09/01/91	08/31/92	1.0534	0.9427

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
240161	10/01/91	09/30/92	0.9421	0.9745
240162	01/01/92	12/31/92	1.0692	0.9568
240163	01/01/92	12/31/92	0.9121	0.9630
240166	10/01/91	09/30/92	1.0999	0.9552
240169	01/01/92	12/31/92	0.9867	0.9593
240170	01/01/92	12/31/92	1.0683	0.9849
240172	01/01/92	12/31/92	1.0794	0.9295
240173	01/01/92	12/31/92	0.9895	0.9739
240176	10/01/91	09/30/92	0.9654	0.9823
240179	01/01/92	12/31/92	1.0257	0.9732
240180	01/01/92	12/31/92	0.9648	0.9552
240184	10/01/91	09/30/92	0.9685	0.9972
240187	01/01/92	12/31/92	1.2731	0.9732
240192	01/01/92	12/31/92	0.9373	0.9726
240193	10/01/91	09/30/92	1.0897	0.9776
240196	01/01/92	12/31/92	0.6262	0.9983
240200	01/01/92	12/31/92	0.8916	0.8915
240207	01/01/92	12/31/92	1.2108	0.9779
240210	09/01/91	08/31/92	1.2627	0.9827
240211	10/01/91	09/30/92	0.9038	1.0000
250002	10/01/91	09/30/92	0.7803	0.9667
250003	10/01/91	09/30/92	0.9540	0.9448
250004	10/01/91	09/30/92	1.4352	0.9979
250005	10/01/91	09/30/92	0.9820	0.9613
250007	10/01/91	09/30/92	1.2223	0.9960
250008	10/01/91	09/30/92	0.9356	0.9785
250009	10/01/91	09/30/92	1.1155	0.9864
250010	10/01/91	09/30/92	1.0011	0.9583
250012	01/01/92	12/31/92	0.8727	0.9572
250015	10/01/91	09/30/92	0.9571	0.9651
250018	10/01/91	09/30/92	0.9380	0.9661
250019	10/01/91	09/30/92	1.3364	0.9981
250020	10/01/91	09/30/92	1.0008	0.9899
250021	10/01/91	09/30/92	0.8894	0.9289
250023	10/01/91	09/30/92	0.7965	0.9660
250024	10/01/91	09/30/92	0.8972	0.9464
250025	10/01/91	09/30/92	1.0039	0.9670
250027	10/01/91	09/30/92	0.9706	0.9509
250029	01/01/92	12/31/92	0.9244	0.9401
250030	01/01/92	12/31/92	0.9222	0.9646
250035	10/01/91	09/30/92	0.8721	0.9567
250036	10/01/91	09/30/92	1.0096	0.9668
250037	10/01/91	09/30/92	0.8998	0.9377
250038	10/01/91	09/30/92	0.8875	0.9686
250039	10/01/91	09/30/92	0.9783	0.9603
250040	10/01/91	09/30/92	1.1899	0.9939
250042	10/01/91	09/30/92	1.1587	0.9839
250043	10/01/91	09/30/92	0.8978	0.9220
250045	10/01/91	09/30/92	1.1888	0.9583
250047	10/01/91	09/30/92	0.8987	0.9541
250048	01/01/92	12/31/92	1.3971	0.9990
250049	10/01/91	09/30/92	0.9542	0.9811
250050	10/01/91	09/30/92	1.2143	0.9790
250051	10/01/91	09/30/92	0.9089	0.9434
250057	10/01/91	09/30/92	1.1396	0.9730
250058	10/01/91	09/30/92	1.1727	0.9897
250059	10/01/91	09/30/92	1.0619	0.9597
250060	10/01/91	09/30/92	0.7875	0.9726
250061	10/01/91	09/30/92	0.8895	0.9763
250062	01/01/92	12/31/92	0.9767	0.9401
250063	10/01/91	09/30/92	0.8602	0.9663
250065	10/01/91	09/30/92	0.8908	0.9629
250066	10/01/91	09/30/92	0.9760	0.9659
250067	10/01/91	09/30/92	0.9737	0.9694
250068	10/01/91	09/30/92	0.8589	0.9638
250069	01/01/92	12/31/92	1.2278	0.9972
250071	10/01/91	09/30/92	1.0951	0.9403
250073	01/01/92	12/31/92	0.9778	0.9603
250076	10/01/91	09/30/92	0.9230	0.9253
250077	10/01/91	09/30/92	0.9401	0.9751
250078	10/01/91	09/30/92	1.3983	0.9975
250079	10/01/91	09/30/92	0.8692	0.9813
250081	10/01/91	09/30/92	1.2434	0.9969

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
250082	10/01/91	09/30/92	1.2044	0.9899
250083	01/01/92	12/31/92	0.9217	0.9662
250084	10/01/91	09/30/92	1.1612	0.9915
250085	10/01/91	09/30/92	1.0603	0.9530
250086	10/01/91	09/30/92	0.9966	0.9636
250088	10/01/91	09/30/92	1.0319	0.9669
250089	01/01/92	12/31/92	1.0457	0.9764
250091	10/01/91	09/30/92	0.9527	0.9765
250093	10/01/91	09/30/92	1.1745	0.9862
250095	10/01/91	09/30/92	1.0040	0.9775
250096	10/01/91	09/30/92	1.1610	0.9885
250097	10/01/91	09/30/92	1.1902	0.9785
250098	10/01/91	09/30/92	0.8662	0.9619
250099	10/01/91	09/30/92	1.2299	0.9885
250100	10/01/91	09/30/92	1.2292	0.9851
250101	10/01/91	09/30/92	0.8567	0.9522
250104	10/01/91	09/30/92	1.3724	0.9988
250105	10/01/91	09/30/92	0.9287	0.9752
250107	10/01/91	09/30/92	0.9945	0.9698
250109	10/01/91	09/30/92	0.9359	0.9505
250112	10/01/91	09/30/92	1.0196	0.9348
250117	01/01/92	12/31/92	1.1059	0.9752
250120	10/01/91	09/30/92	1.0260	0.9925
250122	09/01/91	08/31/92	1.2345	0.9927
250124	01/01/92	12/31/92	0.9016	0.9700
250125	01/01/92	12/31/92	1.2873	0.9887
250136	01/01/92	12/31/92	0.7427	0.9726
250139	10/01/91	09/30/92	0.7701	0.9380
250140	10/01/91	09/30/92	0.9044	0.9795
260003	09/01/91	08/31/92	0.9593	0.9721
260004	01/01/92	12/31/92	1.0369	0.9838
260005	01/01/92	12/31/92	1.4875	0.9942
260011	01/01/92	12/31/92	1.5699	0.9965
260012	10/01/91	09/30/92	1.0054	0.9745
260014	01/01/92	12/31/92	1.6686	0.9986
260015	01/01/92	12/31/92	1.1861	0.9489
260017	01/01/92	12/31/92	1.2034	0.9698
260018	10/01/91	09/30/92	1.0014	0.9617
260019	01/01/92	12/31/92	0.9880	0.9552
260021	10/01/91	09/30/92	1.3035	0.9901
260023	10/01/91	09/30/92	1.2377	0.9966
260024	12/01/91	11/30/92	1.0652	0.9779
260025	10/01/91	09/30/92	1.2761	0.9826
260027	01/01/92	12/31/92	1.5441	0.9988
260029	10/01/91	09/30/92	1.1874	0.9797
260030	10/01/91	09/30/92	1.1647	0.9724
260032	01/01/92	12/31/92	1.6931	0.9984
260034	01/01/92	12/31/92	1.0835	0.9870
260035	12/01/91	11/30/92	1.1394	0.9833
260036	01/01/92	12/31/92	1.0509	0.9816
260039	09/01/91	08/31/92	1.2131	0.9819
260040	10/01/91	09/30/92	1.4589	0.9994
260044	01/01/92	12/31/92	1.0590	0.9703
260050	01/01/92	12/31/92	1.0883	0.9690
260053	10/01/91	09/30/92	1.1145	0.9860
260054	01/01/92	12/31/92	1.3079	0.9934
260057	10/01/91	09/30/92	1.2519	0.9726
260062	10/01/91	09/30/92	1.1708	0.9939
260063	01/01/92	12/31/92	1.1619	0.9708
260064	01/01/92	12/31/92	1.3863	0.9876
260068	01/01/92	12/31/92	1.8099	0.9992
260070	01/01/92	12/31/92	1.1446	0.9272
260073	01/01/92	12/31/92	1.0471	0.9822
260074	01/01/92	12/31/92	1.1757	0.9644
260078	01/01/92	12/31/92	1.1413	0.9783
260080	09/01/91	08/31/92	1.1236	0.9281
260091	01/01/92	12/31/92	1.6048	0.9969
260092	01/01/92	12/31/92	1.0697	0.9696
260097	10/01/91	09/30/92	1.1981	0.9723
260100	10/01/91	09/30/92	1.0344	0.9744
260102	01/01/92	12/31/92	1.0157	0.9569
260103	01/01/92	12/31/92	1.3422	0.9895
260107	10/01/91	09/30/92	1.3324	0.9995

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
260110	01/01/92	12/31/92	1.6302	0.9974
260111	01/01/92	12/31/92	0.9557	0.9753
260113	10/01/91	09/30/92	1.1696	0.9861
260116	01/01/92	12/31/92	1.1936	0.9828
260119	01/01/92	12/31/92	1.2028	0.9715
260120	12/01/91	11/30/92	1.2829	0.9772
260122	11/01/91	10/31/92	1.2405	0.9721
260123	01/01/92	12/31/92	0.9558	0.9849
260134	01/01/92	12/31/92	1.2512	0.9787
260136	01/01/92	12/31/92	1.8797	0.9996
260158	01/01/92	12/31/92	1.0516	0.9646
260159	01/01/92	12/31/92	1.1499	0.9694
260160	01/01/92	12/31/92	1.1313	0.9710
260162	01/01/92	12/31/92	1.0940	0.9873
260166	01/01/92	12/31/92	1.2167	0.9868
260178	01/01/92	12/31/92	1.5329	0.9956
260179	01/01/92	12/31/92	1.5160	0.9983
260180	01/01/92	12/31/92	1.5702	0.9978
260188	01/01/92	12/31/92	1.3697	0.9890
260190	01/01/92	12/31/92	1.1763	0.9866
260191	01/01/92	12/31/92	1.2143	0.9854
260193	01/01/92	12/31/92	1.2730	0.9714
260195	09/27/91	09/24/92	1.1093	0.9747
260200	01/01/92	12/31/92	1.1985	0.9728
260202	10/01/91	09/30/92	1.2509	0.9801
270002	10/01/91	09/30/92	1.2247	0.9732
270006	10/01/91	09/30/92	0.8924	0.9845
270007	10/01/91	09/30/92	1.0801	0.9868
270013	01/01/92	12/31/92	1.2590	0.9860
270014	01/01/92	12/31/92	1.6577	0.9985
270019	01/01/92	12/31/92	0.9039	0.9558
270021	10/01/91	09/30/92	1.1490	0.9926
270030	01/01/92	12/31/92	0.9911	0.8875
270033	01/01/92	12/31/92	0.9241	0.9423
270035	10/01/91	09/30/92	0.9990	0.9824
270039	01/01/92	12/31/92	0.9643	0.9698
270048	11/01/91	10/31/92	1.0713	0.9689
270057	01/01/92	12/31/92	1.1468	0.9792
270059	11/01/91	10/31/92	0.9055	0.9594
270063	10/01/91	09/30/92	0.8684	0.9511
270083	01/01/92	12/31/92	1.0911	0.9285
270084	01/01/92	12/31/92	0.8999	0.9536
280001	10/01/91	09/30/92	1.0432	0.9699
280005	09/01/91	08/31/92	1.4483	0.9946
280012	01/01/92	12/31/92	1.1867	0.9824
280015	10/01/91	09/30/92	0.9757	0.9788
280017	08/01/91	07/31/92	1.1650	0.9751
280025	09/01/91	08/31/92	0.9820	0.9809
280030	09/01/91	08/31/92	1.8652	0.9994
280031	10/01/91	09/30/92	1.0286	0.9654
280032	01/01/92	12/31/92	1.2210	0.9874
280034	09/01/91	08/31/92	1.2515	0.9829
280038	10/01/91	09/30/92	1.0472	0.9689
280039	10/01/91	09/30/92	1.1303	0.9487
280040	01/01/92	12/31/92	1.5880	0.9977
280041	01/01/92	12/31/92	1.0241	0.9710
280046	01/01/92	12/31/92	0.9620	0.9918
280047	01/01/92	12/31/92	1.1664	0.9847
280048	10/01/91	09/30/92	1.1116	0.9965
280054	10/01/91	09/30/92	1.2239	0.9591
280057	10/01/91	09/30/92	1.0348	0.9741
280058	10/01/91	09/30/92	1.1163	0.9726
280061	01/01/92	12/31/92	1.3253	0.9866
280065	01/01/92	12/31/92	1.1640	0.9888
280074	10/01/91	09/30/92	1.1211	0.9663
280076	08/01/91	07/31/92	0.9954	0.9674
280079	08/01/91	07/31/92	0.9971	0.9871
280081	10/01/91	09/30/92	1.4976	0.9965
280083	11/01/91	10/31/92	0.9455	0.9659
280085	01/01/92	12/31/92	0.8957	0.9824
280088	09/23/91	09/20/92	1.6805	0.9995
280089	10/01/91	09/30/92	1.0631	0.9934
280101	10/01/91	09/30/92	1.0974	0.9842

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
280102	01/01/92	12/31/92	0.8610	0.9195
280106	08/01/91	07/31/92	1.1155	0.9691
280107	11/01/91	10/31/92	0.9711	0.9817
280108	01/01/92	12/31/92	1.0796	0.9856
280109	08/01/91	07/31/92	0.8282	0.9615
280114	08/01/91	07/31/92	0.9586	0.9877
280115	01/01/92	12/31/92	1.0496	0.9757
290003	09/01/91	08/31/92	1.6898	0.9987
290005	09/01/91	08/31/92	1.1696	0.9923
290006	01/01/92	12/31/92	1.0168	0.9637
290009	01/01/92	12/31/92	1.5005	0.9968
290010	01/01/92	12/31/92	1.1176	0.9748
290018	10/01/91	09/30/92	0.9006	0.9861
290021	01/01/92	12/31/92	1.5395	0.9971
290022	10/01/91	09/30/92	1.6419	0.9991
290032	01/01/92	12/31/92	1.3675	0.9818
300001	10/01/91	09/30/92	1.2799	0.9950
300005	10/01/91	09/30/92	1.2861	0.9918
300006	10/01/91	09/30/92	1.1213	0.9565
300007	10/01/91	09/30/92	1.1247	0.9690
300008	10/01/91	09/30/92	1.2693	0.9859
300009	10/01/91	09/30/92	1.1572	0.9632
300011	01/01/92	12/31/92	1.2570	0.9871
300012	10/01/91	09/30/92	1.3394	0.9871
300013	10/01/91	09/30/92	1.2277	0.9897
300014	10/01/91	09/30/92	1.3041	0.9871
300016	10/01/91	09/30/92	1.2606	0.9864
300017	08/01/91	07/31/92	1.2127	0.9761
300018	01/01/92	12/31/92	1.2103	0.9941
300020	10/01/91	09/30/92	1.2471	0.9920
300021	10/01/91	09/30/92	1.1725	0.9868
300022	01/01/92	12/31/92	1.0940	0.9737
300023	10/01/91	09/30/92	1.2469	0.9844
300024	10/01/91	09/30/92	1.2039	0.9772
300028	10/01/91	09/30/92	1.1005	0.9726
300033	10/01/91	09/30/92	1.0460	0.9713
310001	01/01/92	12/31/92	1.6997	0.9994
310002	01/01/92	12/31/92	1.8497	0.9988
310003	01/01/92	12/31/92	1.2653	0.9949
310005	01/01/92	12/31/92	1.2268	0.9879
310006	01/01/92	12/31/92	1.2061	0.9943
310008	01/01/92	12/31/92	1.2944	0.9948
310009	01/01/92	12/31/92	1.1564	0.9955
310010	01/01/92	12/31/92	1.2714	0.9935
310011	01/01/92	12/31/92	1.2411	0.9844
310012	01/01/92	12/31/92	1.5827	0.9988
310013	01/01/92	12/31/92	1.2836	0.9950
310014	01/01/92	12/31/92	1.5492	0.9978
310015	01/01/92	12/31/92	1.7109	0.9990
310016	01/01/92	12/31/92	1.2410	0.9957
310017	01/01/92	12/31/92	1.3421	0.9917
310018	01/01/92	12/31/92	1.2392	0.9950
310019	01/01/92	12/31/92	1.6755	0.9987
310020	01/01/92	12/31/92	1.2396	0.9952
310021	01/01/92	12/31/92	1.2729	0.9943
310022	01/01/92	12/31/92	1.2160	0.9933
310024	01/01/92	12/31/92	1.2406	0.9906
310025	01/01/92	12/31/92	1.1817	0.9902
310026	01/01/92	12/31/92	1.2971	0.9973
310027	01/01/92	12/31/92	1.2847	0.9961
310028	01/01/92	12/31/92	1.1591	0.9786
310029	01/01/92	12/31/92	1.7776	0.9972
310031	01/01/92	12/31/92	2.5415	0.9980
310032	01/01/92	12/31/92	1.2594	0.9909
310034	01/01/92	12/31/92	1.2332	0.9939
310036	01/01/92	12/31/92	1.2269	0.9925
310037	01/01/92	12/31/92	1.2193	0.9923
310038	01/01/92	12/31/92	1.7697	0.9980
310039	01/01/92	12/31/92	1.2935	0.9957
310040	01/01/92	12/31/92	1.2163	0.9969
310041	01/01/92	12/31/92	1.2614	0.9959
310042	01/01/92	12/31/92	1.1912	0.9996
310043	01/01/92	12/31/92	1.2329	0.9975

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
310044	01/01/92	12/31/92	1.2654	0.9912
310045	01/01/92	12/31/92	1.2949	0.9983
310047	01/01/92	12/31/92	1.2757	0.9883
310048	01/01/92	12/31/92	1.2485	0.9940
310049	01/01/92	12/31/92	1.3287	0.9974
310050	10/01/91	09/30/92	1.1790	0.9939
310051	01/01/92	12/31/92	1.2673	0.9964
310052	01/01/92	12/31/92	1.2019	0.9964
310054	01/01/92	12/31/92	1.2595	0.9967
310056	01/01/92	12/31/92	1.1734	0.9869
310057	01/01/92	12/31/92	1.2689	0.9913
310058	01/01/92	12/31/92	1.1678	0.9976
310060	01/01/92	12/31/92	1.1739	0.9923
310061	01/01/92	12/31/92	1.1984	0.9872
310062	01/01/92	12/31/92	1.3227	0.9981
310063	01/01/92	12/31/92	1.3434	0.9957
310064	01/01/92	12/31/92	1.2427	0.9896
310067	01/01/92	12/31/92	1.2509	0.9917
310069	01/01/92	12/31/92	1.1773	0.9854
310070	01/01/92	12/31/92	1.2868	0.9961
310072	01/01/92	12/31/92	1.2285	0.9845
310073	01/01/92	12/31/92	1.4494	0.9976
310074	01/01/92	12/31/92	1.3024	0.9912
310075	01/01/92	12/31/92	1.3066	0.9952
310076	01/01/92	12/31/92	1.3200	0.9975
310077	01/01/92	12/31/92	1.6279	0.9983
310078	01/01/92	12/31/92	1.2270	0.9978
310081	01/01/92	12/31/92	1.2380	0.9908
310083	01/01/92	12/31/92	1.2775	0.9959
310084	01/01/92	12/31/92	1.2199	0.9934
310085	01/01/92	12/31/92	1.2084	0.9937
310086	01/01/92	12/31/92	1.2069	0.9913
310087	01/01/92	12/31/92	1.2115	0.9845
310088	01/01/92	12/31/92	1.1564	0.9825
310090	01/01/92	12/31/92	1.1942	0.9924
310091	01/01/92	12/31/92	1.2336	0.9790
310092	01/01/92	12/31/92	1.3530	0.9962
310093	01/01/92	12/31/92	1.1591	0.9920
310096	01/01/92	12/31/92	1.9002	0.9993
310105	01/01/92	12/31/92	1.2171	0.9866
310108	01/01/92	12/31/92	1.3307	0.9947
310110	01/01/92	12/31/92	1.2014	0.9959
310111	01/01/92	12/31/92	1.2861	0.9934
310112	01/01/92	12/31/92	1.2403	0.9973
310113	01/01/92	12/31/92	1.2347	0.9881
310115	01/01/92	12/31/92	1.1457	0.9952
310116	01/01/92	12/31/92	1.2471	0.9961
310118	10/01/91	09/30/92	1.2513	0.9976
310120	01/01/92	12/31/92	1.1088	0.9930
310121	01/01/92	12/31/92	1.1830	0.9896
320019	09/01/91	08/31/92	1.4757	0.9977
320035	01/01/92	12/31/92	1.1760	0.9783
320038	09/01/91	08/31/92	1.2418	0.9612
320063	09/01/91	08/31/92	1.2920	0.9765
320067	01/01/92	12/31/92	0.8450	0.9680
330001	01/01/92	12/31/92	1.1625	0.9901
330002	01/01/92	12/31/92	1.4424	0.9977
330003	01/01/92	12/31/92	1.2954	0.9976
330004	01/01/92	12/31/92	1.3585	0.9950
330005	01/01/92	12/31/92	1.7356	0.9988
330006	01/01/92	12/31/92	1.3471	0.9957
330007	01/01/92	12/31/92	1.3378	0.9962
330008	01/01/92	12/31/92	1.1859	0.9868
330009	01/01/92	12/31/92	1.2959	0.9978
330010	01/01/92	12/31/92	1.1855	0.9931
330011	01/01/92	12/31/92	1.1903	0.9938
330012	01/01/92	12/31/92	1.6053	0.9964
330013	01/01/92	12/31/92	2.0557	0.9975
330014	01/01/92	12/31/92	1.4840	0.9886
330016	01/01/92	12/31/92	1.0202	0.9721
330019	01/01/92	12/31/92	1.2732	0.9943
330020	01/01/92	12/31/92	1.0648	0.9891
330023	01/01/92	12/31/92	1.1846	0.9899

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
330024	01/01/92	12/31/92	1.8013	0.9996
330025	01/01/92	12/31/92	1.0709	0.9894
330027	01/01/92	12/31/92	1.4942	0.9905
330028	01/01/92	12/31/92	1.3303	0.9950
330029	01/01/92	12/31/92	1.1114	0.9950
330030	01/01/92	12/31/92	1.1674	0.9860
330033	01/01/92	12/31/92	1.1601	0.9869
330034	01/01/92	12/31/92	1.0494	0.9910
330036	01/01/92	12/31/92	1.1736	0.9964
330037	01/01/92	12/31/92	1.0631	0.9904
330038	01/01/92	12/31/92	1.1532	0.9878
330039	01/01/92	12/31/92	0.8611	0.9739
330041	01/01/92	12/31/92	1.3579	0.9981
330043	01/01/92	12/31/92	1.2634	0.9918
330044	01/01/92	12/31/92	1.1813	0.9928
330045	01/01/92	12/31/92	1.3783	0.9931
330046	01/01/92	12/31/92	1.5554	0.9976
330047	01/01/92	12/31/92	1.2506	0.9962
330048	01/01/92	12/31/92	1.2242	0.9919
330049	01/01/92	12/31/92	1.2714	0.9904
330053	01/01/92	12/31/92	1.0702	0.9919
330055	01/01/92	12/31/92	1.3805	0.9934
330056	01/01/92	12/31/92	1.4338	0.9967
330057	01/01/92	12/31/92	1.6471	0.9978
330058	01/01/92	12/31/92	1.2994	0.9938
330059	01/01/92	12/31/92	1.4774	0.9991
330061	01/01/92	12/31/92	1.3460	0.9945
330062	01/01/92	12/31/92	1.0877	0.9769
330064	01/01/92	12/31/92	1.3396	0.9988
330065	01/01/92	12/31/92	1.1680	0.9937
330066	01/01/92	12/31/92	1.2485	0.9955
330067	01/01/92	12/31/92	1.3153	0.9855
330072	01/01/92	12/31/92	1.3479	0.9959
330073	01/01/92	12/31/92	1.1897	0.9892
330074	01/01/92	12/31/92	1.2462	0.9902
330075	01/01/92	12/31/92	1.0599	0.9894
330078	01/01/92	12/31/92	1.3716	0.9980
330079	01/01/92	12/31/92	1.1660	0.9896
330082	01/01/92	12/31/92	1.2104	0.9921
330084	01/01/92	12/31/92	0.9685	0.9852
330085	01/01/92	12/31/92	1.3685	0.9919
330086	01/01/92	12/31/92	1.3094	0.9959
330088	01/01/92	12/31/92	1.0924	0.9788
330090	01/01/92	12/31/92	1.7046	0.9960
330091	01/01/92	12/31/92	1.3586	0.9955
330092	01/01/92	12/31/92	1.0315	0.9784
330094	01/01/92	12/31/92	1.2037	0.9830
330095	01/01/92	12/31/92	1.2444	0.9982
330097	01/01/92	12/31/92	1.2034	0.9848
330100	01/01/92	12/31/92	0.6796	0.9974
330101	01/01/92	12/31/92	1.6524	0.9970
330102	01/01/92	12/31/92	1.3112	0.9974
330103	01/01/92	12/31/92	1.2047	0.9815
330104	01/01/92	12/31/92	1.3418	0.9951
330106	01/01/92	12/31/92	1.5912	0.9993
330107	01/01/92	12/31/92	1.1950	0.9839
330108	01/01/92	12/31/92	1.2092	0.9925
330111	01/01/92	12/31/92	1.1360	0.9806
330114	01/01/92	12/31/92	0.9748	0.9784
330115	01/01/92	12/31/92	1.2699	0.9834
330116	01/01/92	12/31/92	0.9466	0.9456
330118	01/01/92	12/31/92	1.5841	0.9968
330119	01/01/92	12/31/92	1.6307	0.9988
330121	01/01/92	12/31/92	0.9720	0.9658
330122	01/01/92	12/31/92	1.3167	0.9945
330125	01/01/92	12/31/92	1.7546	0.9976
330126	01/01/92	12/31/92	1.1731	0.9917
330132	01/01/92	12/31/92	1.1881	0.9766
330133	01/01/92	12/31/92	1.3016	0.9964
330135	01/01/92	12/31/92	1.2544	0.9782
330136	01/01/92	12/31/92	1.2578	0.9933
330140	01/01/92	12/31/92	1.6783	0.9996
330141	01/01/92	12/31/92	1.2982	0.9962

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
330144	01/01/92	12/31/92	1.0131	0.9810
330148	01/01/92	12/31/92	0.9951	0.9706
330151	01/01/92	12/31/92	1.0967	0.9767
330152	01/01/92	12/31/92	1.4173	0.9863
330153	01/01/92	12/31/92	1.5776	0.9854
330154	01/01/92	12/31/92	1.4514	0.9989
330157	01/01/92	12/31/92	1.2577	0.9944
330158	01/01/92	12/31/92	1.3111	0.9944
330159	01/01/92	12/31/92	1.3192	0.9953
330160	01/01/92	12/31/92	1.4567	0.9968
330161	01/01/92	12/31/92	0.9522	0.9981
330162	01/01/92	12/31/92	1.2996	0.9918
330163	01/01/92	12/31/92	1.1442	0.9910
330164	01/01/92	12/31/92	1.3646	0.9945
330166	01/01/92	12/31/92	0.9329	0.9696
330167	01/01/92	12/31/92	1.5331	0.9986
330169	01/01/92	12/31/92	1.3841	0.9968
330171	01/01/92	12/31/92	1.2977	0.9968
330175	01/01/92	12/31/92	1.0771	0.9937
330179	01/01/92	12/31/92	0.8890	0.9815
330180	01/01/92	12/31/92	1.1933	0.9958
330181	01/01/92	12/31/92	1.2740	0.9939
330182	01/01/92	12/31/92	2.3619	0.9987
330183	01/01/92	12/31/92	1.3509	0.9955
330184	01/01/92	12/31/92	1.3151	0.9935
330185	01/01/92	12/31/92	1.1968	0.9909
330186	01/01/92	12/31/92	1.0760	0.9847
330188	01/01/92	12/31/92	1.2259	0.9953
330189	01/01/92	12/31/92	0.8364	1.0000
330191	01/01/92	12/31/92	1.2482	0.9971
330193	01/01/92	12/31/92	1.3500	0.9968
330194	01/01/92	12/31/92	1.7910	0.9981
330195	01/01/92	12/31/92	1.5769	0.9986
330197	01/01/92	12/31/92	1.0413	0.9820
330198	01/01/92	12/31/92	1.3714	0.9951
330201	01/01/92	12/31/92	1.4678	0.9994
330203	01/01/92	12/31/92	1.3755	0.9987
330205	01/01/92	12/31/92	1.1507	0.9822
330208	01/01/92	12/31/92	1.1943	0.9933
330209	01/01/92	12/31/92	1.2446	0.9829
330211	01/01/92	12/31/92	1.1607	0.9876
330212	01/01/92	12/31/92	1.1982	0.9963
330213	01/01/92	12/31/92	1.0779	0.9706
330214	01/01/92	12/31/92	1.6805	0.9994
330215	01/01/92	12/31/92	1.1896	0.9895
330218	01/01/92	12/31/92	1.2769	0.9885
330219	01/01/92	12/31/92	1.5206	0.9978
330221	01/01/92	12/31/92	1.2242	0.9947
330222	01/01/92	12/31/92	1.2172	0.9746
330223	01/01/92	12/31/92	1.0544	0.9622
330224	01/01/92	12/31/92	1.2362	0.9929
330225	01/01/92	12/31/92	1.2320	0.9959
330226	01/01/92	12/31/92	1.2783	0.9922
330229	01/01/92	12/31/92	1.2296	0.9829
330230	01/01/92	12/31/92	1.5137	0.9939
330232	01/01/92	12/31/92	1.2527	0.9966
330233	01/01/92	12/31/92	1.5033	0.9980
330235	01/01/92	12/31/92	1.1588	0.9960
330236	01/01/92	12/31/92	1.3504	0.9964
330238	01/01/92	12/31/92	1.1186	0.9848
330239	01/01/92	12/31/92	1.1723	0.9961
330241	01/01/92	12/31/92	1.8625	0.9965
330242	01/01/92	12/31/92	1.2945	0.9950
330245	01/01/92	12/31/92	1.2543	0.9889
330246	01/01/92	12/31/92	1.2027	0.9911
330247	01/01/92	12/31/92	0.6823	0.9986
330249	01/01/92	12/31/92	1.2669	0.9948
330250	01/01/92	12/31/92	1.2236	0.9961
330252	01/01/92	12/31/92	0.9576	0.9348
330254	01/01/92	12/31/92	0.9927	0.9827
330258	01/01/92	12/31/92	1.2801	0.9906
330259	01/01/92	12/31/92	1.3661	0.9946
330261	01/01/92	12/31/92	1.2340	0.9935

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
330263	01/01/92	12/31/92	1.0625	0.9832
330264	01/01/92	12/31/92	1.2262	0.9872
330265	01/01/92	12/31/92	1.2677	0.9934
330267	01/01/92	12/31/92	1.2644	0.9945
330268	01/01/92	12/31/92	1.0670	0.9530
330270	01/01/92	12/31/92	1.9302	0.9946
330273	01/01/92	12/31/92	1.3190	0.9670
330275	01/01/92	12/31/92	1.2640	0.9977
330276	01/01/92	12/31/92	1.2364	0.9886
330277	01/01/92	12/31/92	1.1747	0.9820
330279	01/01/92	12/31/92	1.2664	0.9964
330281	01/01/92	12/31/92	0.5608	1.0000
330285	01/01/92	12/31/92	1.6813	0.9983
330286	01/01/92	12/31/92	1.3388	0.9947
330288	01/01/92	12/31/92	1.0106	0.9841
330290	01/01/92	12/31/92	1.7578	0.9986
330293	01/01/92	12/31/92	1.1648	0.9940
330304	01/01/92	12/31/92	1.2557	0.9921
330306	01/01/92	12/31/92	1.3857	0.9960
330307	01/01/92	12/31/92	1.2278	0.9801
330308	01/01/92	12/31/92	1.2536	0.9942
330309	01/01/92	12/31/92	1.2225	0.9924
330314	01/01/92	12/31/92	1.2416	0.9946
330315	01/01/92	12/31/92	1.1629	0.9917
330316	01/01/92	12/31/92	1.2485	0.9937
330327	01/01/92	12/31/92	0.9073	0.9773
330331	01/01/92	12/31/92	1.2267	0.9938
330332	01/01/92	12/31/92	1.2329	0.9952
330333	01/01/92	12/31/92	1.2617	0.9964
330336	01/01/92	12/31/92	1.3219	0.9858
330338	01/01/92	12/31/92	1.1616	0.9954
330339	01/01/92	12/31/92	0.7386	0.9833
330340	01/01/92	12/31/92	1.1554	0.9673
330350	01/01/92	12/31/92	1.8039	0.9988
330353	01/01/92	12/31/92	1.1972	0.9933
330357	01/01/92	12/31/92	1.3621	0.9920
330359	01/01/92	12/31/92	0.9108	0.9606
330372	01/01/92	12/31/92	1.2644	0.9931
330381	01/01/92	12/31/92	1.2519	0.9990
330386	01/01/92	12/31/92	1.1400	0.9737
330387	01/01/92	12/31/92	0.8989	1.0000
330389	01/01/92	12/31/92	1.8829	0.9958
330390	01/01/92	12/31/92	1.2283	0.9960
330393	01/01/92	12/31/92	1.6220	0.9983
330394	01/01/92	12/31/92	1.4257	0.9981
330395	01/01/92	12/31/92	1.3711	0.9877
330397	01/01/92	12/31/92	1.3349	0.9961
330398	01/01/92	12/31/92	1.1771	0.9921
330399	01/01/92	12/31/92	1.3448	0.9986
340001	10/01/91	09/30/92	1.3303	0.9824
340002	10/01/91	09/30/92	1.8311	0.9975
340003	10/01/91	09/30/92	1.1683	0.9568
340004	10/01/91	09/30/92	1.4036	0.9970
340005	10/01/91	09/30/92	1.1612	0.9749
340006	10/01/91	09/30/92	1.1677	0.9448
340007	10/01/91	09/30/92	1.1553	0.9702
340008	10/01/91	09/30/92	1.1280	0.9754
340009	10/01/91	09/30/92	1.1606	0.9914
340010	09/29/91	10/03/92	1.3195	0.9787
340011	10/01/91	09/30/92	1.0619	0.9720
340012	10/01/91	09/30/92	1.0947	0.9839
340013	10/01/91	09/30/92	1.2450	0.9728
340015	10/01/91	09/30/92	1.2341	0.9780
340016	10/01/91	09/30/92	1.1150	0.9801
340017	10/01/91	09/30/92	1.2899	0.9876
340018	10/01/91	09/30/92	1.1840	0.9801
340021	10/01/91	09/30/92	1.2316	0.9885
340022	10/01/91	09/30/92	1.0689	0.9629
340023	01/01/92	12/31/92	1.2484	0.9891
340024	10/01/91	09/30/92	1.2425	0.9596
340025	10/01/91	09/30/92	1.1635	0.9829
340027	10/01/91	09/30/92	1.1513	0.9920
340028	10/01/91	09/30/92	1.4270	0.9931

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
340031	10/01/91	09/30/92	1.0868	0.9748
340034	10/01/91	09/30/92	1.2178	0.9636
340035	10/01/91	09/30/92	1.0925	0.9761
340036	10/01/91	09/30/92	1.1858	0.9766
340037	10/01/91	09/30/92	1.2547	0.9926
340038	10/01/91	09/30/92	1.2257	0.9719
340039	10/01/91	09/30/92	1.2778	0.9812
340040	10/01/91	09/30/92	1.7660	0.9992
340041	10/01/91	09/30/92	1.2310	0.9697
340042	10/01/91	09/30/92	1.1433	0.9769
340044	10/01/91	09/30/92	1.0610	0.9719
340045	10/01/91	09/30/92	0.9931	0.9645
340048	10/01/91	09/30/92	1.2343	0.9093
340049	10/01/91	09/30/92	0.6791	1.0000
340050	10/01/91	09/30/92	1.1977	0.9722
340051	10/01/91	09/30/92	1.1897	0.9761
340052	10/01/91	09/30/92	1.0730	0.9683
340053	10/01/91	09/30/92	1.5648	0.9993
340054	10/01/91	09/30/92	1.0527	0.9685
340055	10/01/91	09/30/92	1.2093	0.9847
340060	10/01/91	09/30/92	1.1350	0.9638
340063	10/01/91	09/30/92	1.0188	0.9671
340064	10/01/91	09/30/92	1.1056	0.9734
340065	10/01/91	09/30/92	1.2285	0.9680
340067	10/01/91	09/30/92	1.1193	0.9792
340068	10/01/91	09/30/92	1.2994	0.9758
340069	10/01/91	09/30/92	1.7634	0.9940
340070	10/01/91	09/30/92	1.2492	0.9709
340071	10/01/91	09/30/92	1.0749	0.9556
340072	10/01/91	09/30/92	1.0742	0.9812
340075	10/01/91	09/30/92	1.1810	0.9861
340080	10/01/91	09/30/92	1.0880	0.9632
340084	10/01/91	09/30/92	1.0521	0.9831
340085	10/01/91	09/30/92	1.2701	0.9857
340087	10/01/91	09/30/92	1.1957	0.9866
340088	10/01/91	09/30/92	1.2183	0.9757
340089	10/01/91	09/30/92	0.9456	0.9628
340090	10/01/91	09/30/92	1.1340	0.9559
340091	10/01/91	09/30/92	1.6709	0.9991
340093	10/01/91	09/30/92	1.0531	0.9856
340094	10/01/91	09/30/92	1.3615	0.9824
340096	10/01/91	09/30/92	1.1727	0.9665
340097	10/01/91	09/30/92	1.0310	0.9555
340098	09/29/91	09/28/92	1.6374	0.9976
340099	10/01/91	09/30/92	1.1799	0.9760
340101	01/01/92	12/31/92	0.9984	0.9652
340104	10/01/91	09/30/92	0.9596	0.9704
340105	10/01/91	09/30/92	1.3428	0.9971
340106	10/01/91	09/30/92	1.1225	0.9833
340107	01/01/92	12/31/92	1.2604	0.9747
340109	10/01/91	09/30/92	1.3163	0.9842
340111	10/01/91	09/30/92	1.1943	0.9614
340112	10/01/91	09/30/92	1.0516	0.9596
340113	10/01/91	09/30/92	1.9493	0.9991
340114	10/01/91	09/30/92	1.4635	0.9990
340115	10/01/91	09/30/92	1.4767	0.9970
340119	10/01/91	09/30/92	1.2858	0.9763
340120	10/01/91	09/30/92	1.0893	0.9692
340121	10/01/91	09/30/92	1.0371	0.9702
340122	10/01/91	09/30/92	1.0030	0.9361
340123	10/01/91	09/30/92	1.1485	0.9693
340124	10/01/91	09/30/92	1.0842	0.9637
340125	10/01/91	09/30/92	1.4541	0.9941
340126	10/01/91	09/30/92	1.3594	0.9806
340127	10/01/91	09/30/92	1.1979	0.9638
340129	10/01/91	09/30/92	1.3007	0.9791
340130	10/01/91	09/30/92	1.3925	0.9795
340131	10/01/91	09/30/92	1.3316	0.9884
340132	10/01/91	09/30/92	1.4253	0.9582
340133	10/01/91	09/30/92	1.1228	0.9685
340141	10/01/91	09/30/92	1.5680	0.9984
340142	10/01/91	09/30/92	1.1905	0.9758
340145	10/01/91	09/30/92	1.3136	0.9686

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
340146	10/01/91	09/30/92	1.0421	0.9692
340147	10/06/91	10/04/92	1.2924	0.9921
340151	10/01/91	09/30/92	1.1762	0.9841
340159	10/01/91	09/30/92	1.1500	0.9727
340162	01/01/92	12/31/92	1.2636	0.9839
340166	10/01/91	09/30/92	1.4162	0.9895
340168	10/01/91	09/30/92	0.5580	1.0000
350004	10/01/91	09/30/92	1.8983	0.9991
350007	10/01/91	09/30/92	1.0530	0.9753
350015	01/01/92	12/31/92	1.5322	0.9872
350016	01/01/92	12/31/92	0.9350	0.9624
350018	10/01/91	09/30/92	1.0202	0.9814
350019	01/01/92	12/31/92	1.5679	0.9958
350020	10/01/91	09/30/92	1.3204	0.9908
350023	01/01/92	12/31/92	0.9744	0.9531
350024	10/01/91	09/30/92	1.0449	0.9750
350027	10/01/91	09/30/92	0.9851	0.9616
350033	01/01/92	12/31/92	0.9587	0.9686
350036	01/01/92	12/31/92	1.1091	0.9679
350041	01/01/92	12/31/92	0.9990	0.9735
350042	01/01/92	12/31/92	1.0134	0.9873
350051	01/01/92	12/31/92	0.9811	0.9930
350055	01/01/92	12/31/92	0.9324	0.9209
350066	10/01/91	09/30/92	0.8568	0.9883
360001	01/01/92	12/31/92	1.2559	0.9916
360002	01/01/92	12/31/92	1.1500	0.9698
360007	01/01/92	12/31/92	1.1104	0.9855
360009	01/01/92	12/31/92	1.3291	0.9873
360010	01/01/92	12/31/92	1.1607	0.9776
360012	01/01/92	12/31/92	1.2662	0.9883
360013	01/01/92	12/31/92	1.0885	0.9772
360015	01/01/92	12/31/92	1.4796	0.9986
360016	01/01/92	12/31/92	1.4936	0.9986
360018	01/01/92	12/31/92	1.4812	0.9988
360019	01/01/92	12/31/92	1.2150	0.9853
360020	01/01/92	12/31/92	1.2992	0.9944
360021	01/01/92	12/31/92	1.2208	0.9856
360024	01/01/92	12/31/92	1.2470	0.9900
360025	01/01/92	12/31/92	1.1544	0.9850
360026	01/01/92	12/31/92	1.1384	0.9928
360027	01/01/92	12/31/92	1.5476	0.9978
360030	01/01/92	12/31/92	1.1567	0.9735
360032	01/01/92	12/31/92	1.1422	0.9747
360034	01/01/92	12/31/92	1.1390	0.9572
360036	01/01/92	12/31/92	1.2041	0.9821
360037	01/01/92	12/31/92	2.0310	0.9920
360038	01/01/92	12/31/92	1.5149	0.9985
360039	01/01/92	12/31/92	1.2677	0.9924
360041	01/01/92	12/31/92	1.3394	0.9913
360042	01/01/92	12/31/92	1.1099	0.9549
360044	01/01/92	12/31/92	1.0736	0.9702
360046	01/01/92	12/31/92	1.1474	0.9748
360047	01/01/92	12/31/92	1.0719	0.9666
360049	01/01/92	12/31/92	1.2907	0.9937
360050	01/01/92	12/31/92	1.2432	0.9504
360051	01/01/92	12/31/92	1.5045	0.9971
360055	01/01/92	12/31/92	1.2006	0.9901
360056	01/01/92	12/31/92	1.2856	0.9881
360057	01/01/92	12/31/92	0.9790	0.9671
360059	01/01/92	12/31/92	1.5255	0.9952
360063	01/01/92	12/31/92	1.1889	0.9678
360064	01/01/92	12/31/92	1.4854	0.9954
360065	01/01/92	12/31/92	1.2658	0.9844
360066	01/01/92	12/31/92	1.2578	0.9858
360067	01/01/92	12/31/92	1.0808	0.9837
360068	01/01/92	12/31/92	1.5481	0.9990
360069	01/01/92	12/31/92	1.0135	0.9544
360070	01/01/92	12/31/92	1.5157	0.9947
360071	01/01/92	12/31/92	1.2869	0.9778
360072	01/01/92	12/31/92	1.1486	0.9732
360074	10/01/91	09/30/92	1.3322	0.9941
360075	01/01/92	12/31/92	1.4634	0.9960
360076	01/01/92	12/31/92	1.3168	0.9877

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
360077	01/01/92	12/31/92	1.4310	0.9967
360078	01/01/92	12/31/92	1.2902	0.9887
360079	01/01/92	12/31/92	1.6702	0.9969
360080	01/01/92	12/31/92	1.1923	0.9937
360081	01/01/92	12/31/92	1.3096	0.9960
360082	01/01/92	12/31/92	1.2854	0.9898
360083	01/01/92	12/31/92	1.2466	0.9846
360084	01/01/92	12/31/92	1.5328	0.9949
360086	01/01/92	12/31/92	1.3574	0.9868
360087	01/01/92	12/31/92	1.3647	0.9888
360088	01/01/92	12/31/92	1.1591	0.9759
360089	01/01/92	12/31/92	1.0965	0.9712
360091	01/01/92	12/31/92	1.2534	0.9884
360092	01/01/92	12/31/92	1.1457	0.9726
360093	01/01/92	12/31/92	1.2550	0.9601
360094	01/01/92	12/31/92	1.2065	0.9960
360095	01/01/92	12/31/92	1.2824	0.9861
360096	01/01/92	12/31/92	1.0981	0.9862
360098	01/01/92	12/31/92	1.3980	0.9906
360099	10/01/91	09/30/92	1.0659	0.9735
360100	01/01/92	12/31/92	1.2883	0.9898
360101	01/01/92	12/31/92	1.7042	0.9874
360102	01/01/92	12/31/92	1.2667	0.9903
360103	01/01/92	12/31/92	1.3262	0.9970
360104	01/01/92	12/31/92	0.9194	0.9919
360106	01/01/92	12/31/92	1.1369	0.9872
360107	09/01/91	08/31/92	1.1149	0.9894
360108	01/01/92	12/31/92	1.0176	0.9600
360109	01/01/92	12/31/92	1.0674	0.9725
360112	01/01/92	12/31/92	1.6766	0.9991
360113	01/01/92	12/31/92	1.3060	0.9924
360114	01/01/92	12/31/92	1.0617	0.9786
360115	01/01/92	12/31/92	1.2183	0.9883
360116	01/01/92	12/31/92	1.0540	0.9604
360118	01/01/92	12/31/92	1.2386	0.9842
360119	01/01/92	12/31/92	1.2301	0.9902
360120	01/01/92	12/31/92	0.8202	1.0000
360121	10/01/91	09/30/92	1.2751	0.9783
360122	01/01/92	12/31/92	1.3295	0.9917
360123	01/01/92	12/31/92	1.2116	0.9915
360124	01/01/92	12/31/92	1.2214	0.9878
360125	01/01/92	12/31/92	1.0791	0.9765
360126	01/01/92	12/31/92	1.2388	0.9912
360127	01/01/92	12/31/92	1.0562	0.9754
360128	01/01/92	12/31/92	1.0543	0.9819
360129	01/01/92	12/31/92	1.0223	0.9848
360130	01/01/92	12/31/92	1.1294	0.9886
360131	01/01/92	12/31/92	1.2096	0.9858
360132	01/01/92	12/31/92	1.2199	0.9892
360133	01/01/92	12/31/92	1.4237	0.9957
360135	01/01/92	12/31/92	1.1422	0.9876
360136	01/01/92	12/31/92	1.0894	0.9178
360137	01/01/92	12/31/92	1.5592	0.9966
360139	01/01/92	12/31/92	1.0080	0.9419
360140	01/01/92	12/31/92	1.0259	0.9816
360141	01/01/92	12/31/92	1.4459	0.9982
360142	01/01/92	12/31/92	0.9856	0.9551
360143	01/01/92	12/31/92	1.2874	0.9921
360144	01/01/92	12/31/92	1.2738	0.9904
360145	01/01/92	12/31/92	1.5562	0.9965
360147	10/01/91	09/30/92	1.1781	0.9896
360148	01/01/92	12/31/92	1.1971	0.9871
360149	01/01/92	12/31/92	1.1108	0.9882
360150	01/01/92	12/31/92	1.2532	0.9879
360151	01/01/92	12/31/92	1.3815	0.9892
360152	01/01/92	12/31/92	1.4989	0.9973
360153	01/01/92	12/31/92	1.1847	0.9830
360154	01/01/92	12/31/92	1.0782	0.9755
360155	01/01/92	12/31/92	1.3238	0.9934
360156	10/01/91	09/30/92	1.1299	0.9735
360159	01/01/92	12/31/92	1.1973	0.9743
360162	01/01/92	12/31/92	1.2116	0.9904
360163	01/01/92	12/31/92	1.7238	0.9966

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
360164	01/01/92	12/31/92	0.9228	0.9806
360165	11/01/91	10/31/92	1.0648	0.9764
360166	01/01/92	12/31/92	1.1530	0.9888
360169	01/01/92	12/31/92	1.0676	0.9350
360170	01/01/92	12/31/92	1.1382	0.9722
360172	01/01/92	12/31/92	1.3950	0.9833
360174	01/01/92	12/31/92	1.1901	0.9836
360175	01/01/92	12/31/92	1.1445	0.9737
360176	01/01/92	12/31/92	1.2475	0.9767
360177	01/01/92	12/31/92	1.2729	0.9674
360179	12/29/91	12/27/92	1.2504	0.9952
360180	01/01/92	12/31/92	2.1939	0.9986
360184	01/01/92	12/31/92	0.7996	0.9503
360186	01/01/92	12/31/92	1.2301	0.9561
360188	01/01/92	12/31/92	1.0577	0.9697
360189	01/01/92	12/31/92	1.0850	0.9846
360192	01/01/92	12/31/92	1.3418	0.9922
360193	01/01/92	12/31/92	1.3367	0.9925
360194	10/01/91	09/30/92	1.1461	0.9779
360195	01/01/92	12/31/92	1.2020	0.9558
360197	01/01/92	12/31/92	1.1992	0.9431
360200	01/01/92	12/31/92	1.1345	0.9590
360203	01/01/92	12/31/92	1.1392	0.9754
360204	01/01/92	12/31/92	1.2556	0.9875
360210	01/01/92	12/31/92	1.1477	0.9817
360211	01/01/92	12/31/92	1.1837	0.9893
360212	01/01/92	12/31/92	1.4474	0.9967
360213	01/01/92	12/31/92	1.1295	0.9787
360218	01/01/92	12/31/92	1.3028	0.9831
360230	01/01/92	12/31/92	1.3347	0.9916
360231	01/01/92	12/31/92	1.0903	0.9755
360232	01/01/92	12/31/92	1.0782	0.9770
360234	01/01/92	12/31/92	1.2893	0.9928
360236	01/01/92	12/31/92	1.1713	0.9893
360239	01/01/92	12/31/92	1.1713	0.9854
360240	01/01/92	12/31/92	0.5568	1.0000
360241	01/01/92	12/31/92	0.5805	0.9805
370001	01/01/92	12/31/92	1.6880	0.9989
370002	01/01/92	12/31/92	1.2001	0.9841
370006	10/01/91	09/30/92	1.2486	0.9815
370007	01/01/92	12/31/92	1.1497	0.9713
370014	10/01/91	09/30/92	1.2893	0.9774
370017	01/01/92	12/31/92	0.9879	0.9639
370018	11/01/91	10/31/92	1.2368	0.9871
370020	10/01/91	09/30/92	1.2776	0.9742
370021	09/01/91	08/31/92	0.9781	0.9621
370025	10/01/91	09/30/92	1.3412	0.9833
370032	11/01/91	10/31/92	1.3665	0.9983
370033	10/01/91	09/30/92	1.1177	0.9930
370037	01/01/92	12/31/92	1.5534	0.9981
370039	11/01/91	10/31/92	1.2674	0.9761
370040	10/01/91	09/30/92	1.0749	0.9855
370049	01/01/92	12/31/92	1.3558	0.9749
370051	10/01/91	09/30/92	0.9786	0.9618
370054	01/01/92	12/31/92	1.2663	0.9797
370057	01/01/92	12/31/92	1.1219	0.9897
370077	01/01/92	12/31/92	1.2458	0.9879
370078	01/01/92	12/31/92	1.5195	0.9982
370092	10/01/91	09/30/92	1.0792	0.9567
370093	09/01/91	08/31/92	1.7379	0.9975
370094	01/01/92	12/31/92	1.4423	0.9985
370095	01/01/92	12/31/92	0.8996	0.9755
370105	10/01/91	09/30/92	1.9973	0.9945
370106	11/01/91	10/31/92	1.3876	0.9986
370108	10/01/91	09/30/92	1.1438	0.9663
370114	10/01/91	09/30/92	1.6053	0.9994
370121	09/01/91	08/31/92	1.3452	0.9661
370141	09/01/91	08/31/92	1.4461	0.9944
370146	01/01/92	12/31/92	1.0750	0.9673
370148	09/01/91	08/31/92	1.3271	0.9886
370149	10/01/91	09/30/92	1.2336	0.9698
370157	10/01/91	09/30/92	0.9098	0.9742
370161	11/01/91	10/31/92	1.2572	0.9829

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
370165	10/01/91	09/30/92	1.1334	0.9766
370169	01/01/92	12/31/92	1.0575	0.9767
370176	01/01/92	12/31/92	1.2282	0.9833
370177	01/01/92	12/31/92	0.9639	0.9836
370179	10/01/91	09/30/92	0.9587	0.9580
370189	01/01/92	12/31/92	1.0518	0.9881
370190	01/01/92	12/31/92	1.2695	1.0000
380004	01/01/92	12/31/92	1.7954	0.9809
380006	01/01/92	12/31/92	1.2676	0.9843
380010	01/01/92	12/31/92	1.1229	0.9858
380014	01/01/92	12/31/92	1.3408	0.9877
380018	10/01/91	09/30/92	1.8928	0.9979
380019	01/01/92	12/31/92	1.1380	0.9885
380020	10/01/91	09/30/92	1.3743	0.9822
380021	10/01/91	09/30/92	1.2149	0.9909
380022	10/01/91	09/30/92	1.2160	0.9861
380026	01/01/92	12/31/92	1.3335	0.9590
380029	10/01/91	09/30/92	1.1244	0.9592
380036	01/01/92	12/31/92	1.0590	0.9395
380038	08/01/91	07/31/92	1.3043	0.9801
380039	01/01/92	12/31/92	1.2683	0.9798
380042	01/01/92	12/31/92	1.0824	0.9602
380047	01/01/92	12/31/92	1.6102	0.9959
380050	10/01/91	09/30/92	1.3220	0.9880
380051	10/01/91	09/30/92	1.4752	0.9967
380052	01/01/92	12/31/92	1.2151	0.9825
380055	01/01/92	12/31/92	1.1806	0.9902
380056	01/01/92	12/31/92	1.0921	0.9727
380060	01/01/92	12/31/92	1.3667	0.9914
380061	01/01/92	12/31/92	1.6283	0.9992
380064	08/01/91	07/31/92	1.3160	0.9883
380068	10/01/91	09/30/92	0.9905	0.9615
380070	01/01/92	12/31/92	1.0553	0.9536
380075	01/01/92	12/31/92	1.3872	0.9919
380082	01/01/92	12/31/92	1.2519	0.9916
380091	01/01/92	12/31/92	1.1953	0.9870
390028	01/01/92	12/31/92	1.7388	0.9990
390054	01/01/92	12/31/92	1.1457	0.9783
390060	01/01/92	12/31/92	1.1246	0.9864
390128	01/01/92	12/31/92	1.1399	0.9903
390169	01/01/92	12/31/92	1.2492	0.9969
390186	01/01/92	12/31/92	0.9501	0.9785
390224	10/01/91	09/30/92	0.9310	0.9748
390237	01/01/92	12/31/92	1.4765	0.9982
390272	09/01/91	08/31/92	0.6160	1.0000
400002	01/01/92	12/31/92	1.3244	0.9996
400005	01/01/92	12/31/92	1.0313	0.9993
400007	01/01/92	12/31/92	1.1457	0.9993
400008	01/01/92	12/31/92	1.2396	0.9953
400010	10/01/91	09/30/92	0.9300	0.9970
400011	01/01/92	12/31/92	1.0449	0.9949
400014	01/01/92	12/31/92	1.3118	0.9982
400016	10/01/91	09/30/92	1.2791	0.9997
400017	01/01/92	12/31/92	1.0904	0.9994
400019	01/01/92	12/31/92	1.6000	0.9989
400022	01/01/92	12/31/92	1.2896	0.9995
400024	01/01/92	12/31/92	1.0823	0.9984
400032	01/01/92	12/31/92	1.1299	0.9985
400089	01/01/92	12/31/92	0.9379	1.0000
400094	01/01/92	12/31/92	0.9182	0.9972
400098	01/01/92	12/31/92	1.1958	0.9985
400108	10/01/91	09/30/92	1.1813	0.9979
400109	10/01/91	09/30/92	1.5198	0.9997
400111	01/01/92	12/31/92	1.1536	0.9964
400112	09/01/91	08/31/92	1.2283	0.9952
400113	10/01/91	09/30/92	1.2847	0.9951
400115	01/01/92	12/31/92	0.9684	0.9972
400117	01/01/92	12/31/92	1.2015	0.9985
400118	01/01/92	12/31/92	1.1761	0.9985
400120	01/01/92	12/31/92	1.3179	0.9997
410001	10/01/91	09/30/92	1.3347	0.9932
410002	10/01/91	09/30/92	1.1398	0.9942
410004	10/01/91	09/30/92	1.4385	0.9925

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
410005	10/01/91	09/30/92	1.3075	0.9968
410006	10/01/91	09/30/92	1.2046	0.9861
410007	10/01/91	09/30/92	1.5820	0.9967
410008	10/01/91	09/30/92	1.1549	0.9827
410009	10/01/91	09/30/92	1.3271	0.9957
410010	10/01/91	09/30/92	1.0443	0.9794
410011	10/01/91	09/30/92	1.2045	0.9943
410012	10/01/91	09/30/92	1.6533	0.9986
410013	10/01/91	09/30/92	1.1821	0.9821
420005	01/01/92	12/31/92	1.0616	0.9754
420009	10/01/91	09/30/92	1.2382	0.9547
420010	10/01/91	09/30/92	1.0617	0.9539
420011	10/01/91	09/30/92	1.1237	0.9741
420014	10/01/91	09/30/92	1.0623	0.9610
420015	10/01/91	09/30/92	1.3033	0.9872
420016	10/01/91	09/30/92	1.2075	0.9861
420018	09/29/91	09/26/92	1.6524	0.9969
420019	10/01/91	09/30/92	1.1569	0.9804
420020	10/01/91	09/30/92	1.2338	0.9732
420023	01/01/92	12/31/92	1.3544	0.9856
420026	09/08/91	09/05/92	1.9255	0.9986
420027	09/29/91	09/26/92	1.3321	0.9921
420028	10/01/91	09/30/92	1.1480	0.9425
420029	10/01/91	09/30/92	1.8346	0.9835
420030	01/01/92	12/31/92	1.2273	0.9693
420031	10/01/91	09/30/92	0.9940	0.9226
420033	10/01/91	09/30/92	1.1918	0.9733
420036	10/01/91	09/30/92	1.2707	0.9702
420037	10/01/91	09/30/92	1.1891	0.9697
420038	10/01/91	09/30/92	1.2825	0.9757
420039	10/01/91	09/30/92	1.1511	0.9709
420040	10/01/91	09/30/92	1.2424	0.9940
420042	10/01/91	09/30/92	1.0743	0.9784
420043	10/01/91	09/30/92	1.2392	0.9879
420044	10/01/91	09/30/92	1.1475	0.9875
420048	10/01/91	09/30/92	1.1542	0.9817
420049	10/01/91	09/30/92	1.1452	0.9788
420051	10/01/91	09/30/92	1.5887	0.9976
420054	09/01/91	08/31/92	1.2027	0.9617
420055	10/01/91	09/30/92	1.0463	0.9781
420056	10/01/91	09/30/92	1.1265	0.9270
420057	10/01/91	09/30/92	1.1345	0.9715
420059	10/01/91	09/30/92	0.9789	0.9572
420061	10/01/91	09/30/92	1.2768	0.9596
420064	10/01/91	09/30/92	1.0722	0.9622
420065	09/01/91	08/31/92	1.3049	0.9978
420066	10/01/91	09/30/92	0.9470	0.9573
420067	10/01/91	09/30/92	1.1874	0.9817
420068	10/01/91	09/30/92	1.2189	0.9910
420069	10/01/91	09/30/92	1.0663	0.9465
420070	10/01/91	09/30/92	1.3034	0.9824
420071	10/01/91	09/30/92	1.3942	0.9896
420072	10/01/91	09/30/92	0.9938	0.9565
420073	10/01/91	09/30/92	1.2987	0.9909
420074	10/01/91	09/30/92	0.9888	0.9513
420075	10/01/91	09/30/92	1.0061	0.9892
420076	01/01/92	12/31/92	1.1815	0.9952
420078	10/01/91	09/30/92	1.6560	0.9979
420081	10/01/91	09/30/92	0.8313	0.9986
420086	10/01/91	09/30/92	1.4242	0.9947
420087	10/01/91	09/30/92	1.5443	0.9993
420088	10/01/91	09/30/92	1.2123	0.9914
420089	09/01/91	08/31/92	1.3136	0.9875
430008	01/01/92	12/31/92	1.2358	0.9761
430009	01/01/92	12/31/92	1.1168	0.9452
430013	10/01/91	09/30/92	1.2057	0.9770
430014	10/01/91	09/30/92	1.2712	0.9856
430015	08/01/91	07/31/92	1.0674	0.9803
430016	10/01/91	09/30/92	1.7349	0.9974
430023	09/01/91	08/31/92	0.8890	0.9622
430024	01/01/92	12/31/92	0.9965	0.9529
430026	01/01/92	12/31/92	0.9841	0.9622
430028	01/01/92	12/31/92	1.1107	0.9790

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
430031	01/01/92	12/31/92	0.9441	0.9444
430034	01/01/92	12/31/92	1.0297	0.9464
430036	01/01/92	12/31/92	1.0050	0.9812
430040	10/01/91	09/30/92	0.9224	0.9736
430041	01/01/92	12/31/92	0.8938	0.9267
430043	01/01/92	12/31/92	1.1607	0.9689
430044	01/01/92	12/31/92	0.9269	0.9589
430047	01/01/92	12/31/92	1.1647	0.9840
430048	01/01/92	12/31/92	1.1441	0.9796
430049	01/01/92	12/31/92	0.9656	0.9398
430051	01/01/92	12/31/92	1.0102	0.9576
430056	01/01/92	12/31/92	0.8746	0.8975
430057	01/01/92	12/31/92	0.9053	0.9639
430060	01/01/92	12/31/92	0.9653	0.8888
430064	12/01/91	11/30/92	1.0625	0.9730
430065	10/01/91	09/30/92	0.9443	0.9555
430073	10/01/91	09/30/92	1.1778	0.9906
430076	01/01/92	12/31/92	1.0042	0.9512
430079	01/01/92	12/31/92	0.9682	0.9835
430080	10/01/91	09/30/92	0.9111	0.9368
430087	01/01/92	12/31/92	0.9635	0.9552
430088	01/01/92	12/31/92	0.9562	0.9774
440008	01/01/92	12/31/92	0.9782	0.9767
440018	11/01/91	10/31/92	1.3250	0.9731
440020	09/30/91	09/30/92	1.2126	0.9711
440034	01/01/92	12/31/92	1.4131	0.9988
440046	01/01/92	12/31/92	1.2539	0.9942
440047	09/01/91	08/31/92	0.8911	0.9601
440048	10/01/91	09/30/92	1.6585	0.9987
440049	01/01/92	12/31/92	1.6549	0.9990
440050	01/01/92	12/31/92	1.1616	0.9888
440058	01/01/92	12/31/92	1.1456	0.9680
440061	10/01/91	09/30/92	1.1785	0.9708
440064	01/01/92	12/31/92	1.0757	0.9730
440067	09/01/91	08/31/92	1.1497	0.9761
440068	10/01/91	09/30/92	1.1549	0.9816
440071	01/01/92	12/31/92	1.3774	0.9981
440072	01/01/92	12/31/92	1.3559	0.9553
440078	10/01/91	09/30/92	1.0232	0.9626
440079	01/01/92	12/31/92	0.8761	0.9713
440081	01/01/92	12/31/92	1.1362	0.9786
440083	01/01/92	12/31/92	1.2372	0.9855
440087	01/01/92	12/31/92	1.0286	0.9447
440091	09/01/91	08/31/92	1.4689	0.9979
440095	01/01/92	12/31/92	1.0287	0.9825
440100	01/01/92	12/31/92	1.1088	0.9594
440105	09/01/91	08/31/92	1.1819	0.9789
440110	01/01/92	12/31/92	1.0081	0.9674
440120	01/01/92	12/31/92	1.4758	0.9993
440125	01/01/92	12/31/92	1.4902	0.9985
440146	01/01/92	12/31/92	0.8519	0.9788
440148	01/01/92	12/31/92	1.1183	0.9852
440149	11/01/91	10/31/92	1.1718	0.9744
440150	01/01/92	12/31/92	1.3026	0.9905
440157	01/01/92	12/31/92	1.0385	0.9625
440161	01/01/92	12/31/92	1.5738	0.9983
440168	01/01/92	12/31/92	1.0282	0.9514
440173	09/01/91	08/31/92	1.4605	0.9952
440174	01/01/92	12/31/92	0.9352	0.9446
440178	09/01/91	08/31/92	1.2405	0.9871
440181	01/01/92	12/31/92	1.0224	0.9862
440182	01/01/92	12/31/92	0.9338	0.9784
440184	01/01/92	12/31/92	1.3411	0.9906
440185	09/01/91	08/31/92	1.1930	0.9906
440186	11/01/91	10/31/92	1.0877	0.9657
440189	08/01/91	07/31/92	1.4475	0.9912
440194	09/01/91	08/31/92	1.3374	0.9767
440198	01/01/92	12/31/92	0.9527	0.9759
440200	12/01/91	11/30/92	1.1802	0.9493
440203	01/01/92	12/31/92	1.0374	0.9795
440205	01/01/92	12/31/92	1.0169	0.9782
450002	01/01/92	12/31/92	1.4552	0.9988
450005	09/01/91	08/31/92	1.0892	0.9737

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
450010	10/01/91	09/30/92	1.2943	0.9966
450011	01/01/92	12/31/92	1.6154	0.9965
450014	01/01/92	12/31/92	1.0762	0.9450
450015	10/01/91	09/30/92	1.4925	0.9978
450016	01/01/92	12/31/92	1.6715	0.9984
450018	09/01/91	08/31/92	1.6393	0.9980
450020	01/01/92	12/31/92	1.0608	0.9624
450024	10/01/91	09/30/92	1.4576	0.9838
450025	01/01/92	12/31/92	1.5180	0.9960
450028	01/01/92	12/31/92	1.3705	0.9925
450032	10/01/91	09/30/92	1.2127	0.9757
450033	09/01/91	08/31/92	1.6230	0.9966
450037	10/01/91	09/30/92	1.4468	0.9984
450039	10/01/91	09/30/92	1.2254	0.9964
450047	10/01/91	09/30/92	1.0490	0.9754
450050	01/01/92	12/31/92	1.1383	0.9697
450053	01/01/92	12/31/92	1.1171	0.9424
450054	09/01/91	08/31/92	1.6828	0.9961
450055	10/01/91	09/30/92	1.1385	0.9625
450058	09/01/91	08/31/92	1.5209	0.9987
450059	01/01/92	12/31/92	1.3689	0.9839
450063	10/01/91	09/30/92	0.9767	0.9477
450065	10/01/91	09/30/92	1.0371	0.9509
450068	10/01/91	09/30/92	1.7296	0.9986
450072	01/01/92	12/31/92	1.1746	0.9702
450073	01/01/92	12/31/92	1.0606	0.9579
450076	09/01/91	08/31/92	1.4351	1.0000
450080	10/01/91	09/30/92	1.2222	0.9674
450081	01/01/92	12/31/92	1.1663	0.9758
450082	10/01/91	09/30/92	0.9844	0.9542
450083	11/01/91	10/31/92	1.6260	0.9914
450085	10/01/91	09/30/92	1.0820	0.9587
450087	09/01/91	08/31/92	1.4192	0.9889
450094	01/01/92	12/31/92	1.2529	0.9947
450097	01/01/92	12/31/92	1.4175	0.9920
450098	11/01/91	10/31/92	1.1052	0.9632
450101	09/01/91	08/31/92	1.4050	0.9973
450104	01/01/92	12/31/92	1.2206	0.9809
450107	01/01/92	12/31/92	1.5156	0.9984
450108	10/01/91	09/30/92	1.0410	0.9348
450110	10/01/91	09/30/92	1.1696	0.9912
450112	01/01/92	12/31/92	1.2456	0.9800
450118	09/01/91	08/31/92	1.4567	0.9989
450119	10/01/91	09/30/92	1.1917	0.9869
450121	10/01/91	09/30/92	1.4026	0.9983
450124	10/01/91	09/30/92	1.4706	0.9983
450127	10/01/91	09/30/92	0.9656	0.9632
450139	01/01/92	12/31/92	1.4583	0.9961
450131	08/01/91	07/31/92	1.2390	0.9916
450132	10/01/91	09/30/92	1.4825	0.9959
450133	10/01/91	09/30/92	1.4868	0.9969
450135	10/01/91	09/30/92	1.6270	0.9975
450137	10/01/91	09/30/92	1.4066	0.9979
450140	10/01/91	09/30/92	0.8672	0.9706
450142	09/01/91	08/31/92	1.4027	0.9903
450144	10/01/91	09/30/92	1.1089	0.9855
450145	01/01/92	12/31/92	0.9803	0.9610
450146	10/01/91	09/30/92	1.0512	0.9504
450148	10/01/91	09/30/92	1.3343	0.9776
450149	11/01/91	10/31/92	1.4172	0.9942
450150	10/01/91	09/30/92	0.9469	0.9591
450151	10/01/91	09/30/92	1.1041	0.9723
450152	10/01/91	09/30/92	1.3968	0.9781
450153	01/01/92	12/31/92	1.5501	0.9987
450154	10/01/91	09/30/92	1.1453	0.9674
450155	10/01/91	09/30/92	1.0219	0.9850
450160	10/01/91	09/30/92	0.9185	0.9473
450162	09/30/91	09/30/92	1.2403	0.9787
450163	01/01/92	12/31/92	1.0470	0.9480
450164	10/01/91	09/30/92	0.9872	0.9788
450165	01/01/92	12/31/92	1.0093	0.9818
450166	01/01/92	12/31/92	0.9427	0.9840
450169	01/01/92	12/31/92	0.8650	0.9148

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
450176 ...	10/01/91	09/30/92	1.2747	0.9825
450178 ...	01/01/92	12/31/92	1.0940	0.9704
450181 ...	01/01/92	12/31/92	0.9824	0.9524
450185 ...	10/01/91	09/30/92	1.0419	0.9101
450187 ...	01/01/92	12/31/92	1.2621	0.9880
450191 ...	01/01/92	12/31/92	1.1441	0.9693
450193 ...	10/01/91	09/30/92	2.1266	0.9993
450194 ...	01/01/92	12/31/92	1.1905	0.9871
450195 ...	01/01/92	12/31/92	1.3052	0.9761
450196 ...	01/01/92	12/31/92	1.3688	0.9941
450197 ...	09/01/91	08/31/92	1.1728	0.9940
450200 ...	10/01/91	09/30/92	1.3768	0.9977
450201 ...	01/01/92	12/31/92	0.9907	0.9800
450203 ...	10/01/91	09/30/92	1.1992	0.9772
450209 ...	10/01/91	09/30/92	1.4517	0.9939
450210 ...	01/01/92	12/31/92	1.0697	0.9565
450211 ...	01/01/92	12/31/92	1.2259	0.9924
450213 ...	01/01/92	12/31/92	1.4268	0.9963
450214 ...	09/01/91	08/31/92	1.3384	0.9812
450224 ...	10/01/91	09/30/92	1.3045	0.9665
450229 ...	09/01/91	08/31/92	1.3705	0.9919
450231 ...	01/01/92	12/31/92	1.5625	0.9991
450234 ...	10/01/91	09/30/92	0.9703	0.9484
450236 ...	10/01/91	09/30/92	1.1503	0.9854
450237 ...	01/01/92	12/31/92	1.5567	0.9963
450239 ...	08/01/91	07/31/92	1.2651	0.9747
450243 ...	09/01/91	08/31/92	0.9175	0.9554
450246 ...	10/01/91	09/30/92	1.0275	0.9602
450253 ...	01/01/92	12/31/92	1.1037	0.9808
450259 ...	01/01/92	12/31/92	1.1609	0.9865
450264 ...	10/01/91	09/30/92	0.8296	0.9523
450271 ...	01/01/92	12/31/92	1.1382	0.9675
450272 ...	01/01/92	12/31/92	1.2826	0.9689
450276 ...	10/01/91	09/30/92	1.0337	0.9823
450280 ...	01/01/92	12/31/92	1.2676	0.9921
450283 ...	11/01/91	10/31/92	1.0145	0.9487
450286 ...	01/01/92	12/31/92	1.0219	0.9769
450292 ...	10/01/91	09/30/92	1.2658	0.9671
450293 ...	01/01/92	12/31/92	0.9865	0.9475
450296 ...	01/01/92	12/31/92	1.2347	0.9750
450297 ...	01/01/92	12/31/92	1.0749	0.9905
450299 ...	09/01/91	08/31/92	1.3453	0.9805
450303 ...	01/01/92	12/31/92	0.9145	0.9624
450306 ...	01/01/92	12/31/92	1.0009	0.9620
450315 ...	09/01/91	08/31/92	1.2631	0.9909
450321 ...	01/01/92	12/31/92	0.8372	0.9467
450322 ...	01/01/92	12/31/92	0.9946	0.9535
450327 ...	10/01/91	09/30/92	1.0735	0.9711
450334 ...	10/01/91	09/30/92	1.0526	0.9970
450337 ...	11/01/91	10/31/92	1.1152	0.9706
450340 ...	01/01/92	12/31/92	1.3402	0.9904
450346 ...	09/01/91	08/31/92	1.3123	0.9963
450347 ...	01/01/92	12/31/92	1.1665	0.9759
450348 ...	09/01/91	08/31/92	0.9993	0.9704
450352 ...	10/01/91	09/30/92	1.2165	0.9578
450353 ...	09/01/91	08/31/92	1.1849	0.9509
450355 ...	08/01/91	07/31/92	1.1345	0.9505
450358 ...	01/01/92	12/31/92	1.9941	0.9984
450365 ...	01/01/92	12/31/92	0.8918	0.9880
450369 ...	10/01/91	09/30/92	1.1056	0.9663
450371 ...	01/01/92	12/31/92	1.1127	0.9878
450373 ...	11/01/91	10/31/92	1.1958	0.9654
450374 ...	10/01/91	09/30/92	0.7739	0.9268
450378 ...	09/01/91	08/31/92	1.2620	0.9894
450388 ...	10/01/91	09/30/92	1.6764	0.9982
450389 ...	11/01/91	10/31/92	1.2062	0.9789
450399 ...	10/01/91	09/30/92	0.9551	0.9650
450403 ...	10/01/91	09/30/92	1.2863	0.9868
450417 ...	01/01/92	12/31/92	1.0511	0.9489
450419 ...	10/01/91	09/30/92	1.2174	0.9694
450422 ...	10/01/91	09/30/92	0.7213	0.9919
450423 ...	09/01/91	08/31/92	1.2884	0.9767
450424 ...	01/01/92	12/31/92	1.2831	0.9854

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
450429 ...	12/01/91	11/30/92	0.9062	0.9877
450431 ...	01/01/92	12/31/92	1.5794	0.9980
450438 ...	01/01/92	12/31/92	1.0271	0.9530
450446 ...	01/01/92	12/31/92	0.9213	1.0000
450450 ...	10/01/91	09/30/92	1.0028	0.9685
450462 ...	10/01/91	09/30/92	1.7181	0.9979
450464 ...	10/01/91	09/30/92	0.9553	0.9568
450465 ...	10/01/91	09/30/92	1.2167	0.9839
450475 ...	10/01/91	09/30/92	1.1450	0.9782
450484 ...	09/01/91	08/31/92	1.5170	0.9935
450488 ...	10/01/91	09/30/92	1.2310	0.9694
450514 ...	01/01/92	12/31/92	1.0949	0.9797
450518 ...	01/01/92	12/31/92	1.3403	0.9900
450523 ...	01/01/92	12/31/92	1.6219	0.9919
450530 ...	12/01/91	11/30/92	1.2990	0.9828
450534 ...	10/01/91	09/30/92	0.9778	0.9615
450535 ...	01/01/92	12/31/92	1.2535	0.9909
450538 ...	01/01/92	12/31/92	1.1910	0.9700
450544 ...	08/01/91	07/31/92	1.2722	0.9957
450547 ...	10/01/91	09/30/92	0.9612	0.9518
450550 ...	01/01/92	12/31/92	1.0915	0.9902
450558 ...	09/01/91	08/31/92	1.7969	0.9969
450559 ...	10/01/91	09/30/92	0.9908	0.9265
450561 ...	10/01/91	09/30/92	1.5975	0.9971
450565 ...	10/01/91	09/30/92	1.2870	0.9823
450571 ...	10/01/91	09/30/92	1.4701	0.9984
450574 ...	10/01/91	09/30/92	0.9578	0.9575
450575 ...	10/01/91	09/30/92	0.9522	0.9737
450578 ...	10/01/91	09/30/92	0.9863	0.9897
450580 ...	10/01/91	09/30/92	1.1296	0.9754
450583 ...	10/01/91	09/30/92	0.9610	0.9779
450584 ...	10/01/91	09/30/92	1.2060	0.9708
450587 ...	09/01/91	08/31/92	1.3063	0.9841
450591 ...	10/01/91	09/30/92	1.1351	0.9771
450596 ...	10/01/91	09/30/92	1.3229	0.9696
450597 ...	10/01/91	09/30/92	1.0558	0.9778
450604 ...	01/01/92	12/31/92	1.2804	0.9750
450605 ...	01/01/92	12/31/92	1.2912	0.9857
450607 ...	10/01/91	09/30/92	0.9172	0.9625
450609 ...	10/01/91	09/30/92	0.8863	0.9754
450614 ...	10/01/91	09/30/92	1.1170	0.9245
450615 ...	01/01/92	12/31/92	0.9708	0.9588
450617 ...	09/01/91	08/31/92	1.3752	0.9934
450623 ...	10/01/91	09/30/92	1.1443	0.9511
450626 ...	10/01/91	09/30/92	0.9677	0.9263
450628 ...	10/01/91	09/30/92	0.9691	0.9732
450631 ...	09/01/91	08/31/92	1.6383	0.9978
450632 ...	10/01/91	09/30/92	0.9953	0.9552
450633 ...	09/01/91	08/31/92	1.5283	0.9963
450634 ...	01/01/92	12/31/92	1.3966	0.9935
450637 ...	09/01/91	08/31/92	1.2903	0.9838
450639 ...	10/01/91	09/30/92	1.5471	0.9973
450644 ...	09/01/91	08/31/92	1.6651	0.9918
450646 ...	01/01/92	12/31/92	1.5928	0.9972
450647 ...	09/01/91	08/31/92	1.9394	0.9986
450648 ...	10/01/91	09/30/92	1.0943	0.9736
450652 ...	10/01/91	09/30/92	0.9343	0.9464
450654 ...	10/01/91	09/30/92	0.9626	0.9893
450656 ...	01/01/92	12/31/92	1.3794	0.9936
450659 ...	01/01/92	12/31/92	1.4566	0.9972
450661 ...	01/01/92	12/31/92	1.2854	0.9970
450662 ...	09/01/91	08/31/92	1.4017	0.9891
450666 ...	09/01/91	08/31/92	1.2448	0.9891
450672 ...	08/01/91	07/31/92	1.6184	0.9989
450673 ...	10/01/91	09/30/92	1.0376	0.9796
450677 ...	01/01/92	12/31/92	1.2607	0.9940
450683 ...	10/01/91	09/30/92	1.3273	0.9779
450690 ...	09/01/91	08/31/92	1.3373	0.9960
450696 ...	11/01/91	10/31/92	1.2387	1.0000
450697 ...	01/01/92	12/31/92	1.4012	0.9920
450700 ...	01/01/92	12/31/92	0.8936	0.9817
450702 ...	09/01/91	08/31/92	1.3247	0.9901
450703 ...	01/01/92	12/31/92	1.4539	0.9898

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
450705 ...	10/01/91	09/30/92	0.7704	1.0000
450706 ...	01/01/92	12/31/92	1.1861	0.9656
450711 ...	10/01/91	09/30/92	1.6961	0.9968
450712 ...	11/01/91	10/31/92	0.7991	1.0000
450713 ...	01/01/92	12/31/92	1.3301	0.9934
450715 ...	09/01/91	08/31/92	1.3403	0.9940
450716 ...	01/01/92	12/31/92	1.2429	0.9742
450717 ...	01/01/92	12/31/92	1.2749	0.9797
450718 ...	01/01/92	12/31/92	1.1745	0.9815
450724 ...	01/01/92	12/31/92	1.1751	0.9955
450725 ...	09/01/91	08/31/92	1.0337	1.0000
450726 ...	10/01/91	09/30/92	0.8454	0.9659
450727 ...	10/01/91	09/30/92	0.9186	0.9722
450728 ...	10/01/91	09/30/92	0.8536	0.9194
450729 ...	01/01/92	12/31/92	1.0219	1.0000
450733 ...	09/01/91	08/31/92	1.3711	0.9837
450734 ...	09/01/91	08/31/92	1.2011	1.0000
450735 ...	01/01/92	12/31/92	0.8125	0.9110
450745 ...	01/01/92	12/31/92	0.9314	0.9684
450746 ...	10/01/91	09/30/92	0.8587	0.8419
450747 ...	01/01/92	12/31/92	1.2963	0.9848
450751 ...	01/01/92	12/31/92	1.1967	0.9655
450754 ...	10/01/91	09/30/92	0.9322	0.9755
450757 ...	01/01/92	12/31/92	0.9324	0.9235
450761 ...	10/01/91	09/30/92	1.0579	0.9770
450763 ...	10/01/91	09/30/92	1.0765	0.9697
450765 ...	01/01/92	12/31/92	0.9863	0.9851
450766 ...	01/01/92	12/31/92	1.6658	0.9986
460001 ...	01/01/92	12/31/92	1.6587	0.9968
460004 ...	01/01/92	12/31/92	1.7745	0.9960
460006 ...	01/01/92	12/31/92	1.2522	0.9877
460007 ...	01/01/92	12/31/92	1.4770	0.9630
460010 ...	01/01/92	12/31/92	1.9731	0.9996
460011 ...	01/01/92	12/31/92	1.4211	0.9680
460013 ...	09/01/91	08/31/92	1.4685	0.9865
460014 ...	01/01/92	12/31/92	1.0944	0.9421
460015 ...	01/01/92	12/31/92	1.2491	0.9736
460016 ...	01/01/92	12/31/92	0.9306	0.9636
460017 ...	09/01/91	08/31/92	1.3058	0.9627
460018 ...	01/01/92	12/31/92	0.9545	0.9617
460019 ...	01/01/92	12/31/92	0.9542	0.9556
460020 ...	01/01/92	12/31/92	1.0005	0.9594
460021 ...	01/01/92	12/31/92	1.4011	0.9925
460022 ...	01/01/92	12/31/92	0.9265	0.9901
460023 ...	01/01/92	12/31/92	1.1746	0.9694
460024 ...	10/01/91	09/30/92	0.9938	0.9704
460025 ...	01/01/92	12/31/92	0.7762	1.0000
460026 ...	01/01/92	12/31/92	0.9597	0.9480
460027 ...	01/01/92	12/31/92	0.9496	1.0000
460029 ...	01/01/92	12/31/92	1.1287	0.8929
460033 ...	01/01/92	12/31/92	1.0269	0.8904
460036 ...	01/01/92	12/31/92	0.9989	0.8970
460039 ...	01/01/92	12/31/92	0.8621	0.9418
460041 ...	09/01/91	08/31/92	1.2272	0.9776
460042 ...	10/01/91	09/30/92	1.4468	0.9870
460043 ...	01/01/92	12/31/92	1.4123	0.9548
460044 ...	01/01/92	12/31/92	1.1685	0.9625
460046 ...	01/01/92	12/31/92	1.4828	0.9487
460047 ...	11/01/91	10/31/92	1.6790	0.9991
470001 ...	10/01/91	09/30/92	1.1527	0.9781
470003 ...	10/01/91	09/30/92	1.9456	0.9983
470004 ...	10/01/91	09/30/92	1.0530	0.9879
470005 ...	10/01/91	09/30/92	1.2232	0.9898
470006 ...	10/01/91	09/30/92	1.1761	0.9764
470008 ...	10/01/91	09/30/92	1.1594	0.9873
470010 ...	10/01/91	09/30/92	1.0595	0.9597
470011 ...	10/01/91	09/30/92	1.2377	0.9868
470012 ...	10/01/91	09/30/92	1.2410	0.9888
470013 ...	10/01/91	09/30/92	1.1331	0.9859
470015 ...	10/01/91	09/30/92	1.2366	0.9937
470018 ...	10/01/91	09/30/92	1.1658	0.9787
470020 ...	10/01/91	09/30/92	0.9977	0.9795
470023 ...	10/01/91	09/30/92	1.2092	0.9631

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
470024	10/01/91	09/30/92	1.0986	0.9517
490001	10/01/91	09/30/92	1.0787	0.9760
490003	10/01/91	09/30/92	0.6321	1.0000
490004	01/01/92	12/31/92	1.2371	0.9901
490005	01/01/92	12/31/92	1.4687	0.9966
490006	10/01/91	09/30/92	1.1263	0.9802
490008	01/01/92	12/31/92	1.1786	0.9924
490011	01/01/92	12/31/92	1.3507	0.9939
490012	08/01/91	07/31/92	1.0161	0.9680
490013	09/01/91	08/31/92	1.1436	0.9846
490014	01/01/92	12/31/92	1.7045	0.9895
490017	09/01/91	08/31/92	1.3140	0.9881
490018	01/01/92	12/31/92	1.1227	0.9741
490019	10/01/91	09/30/92	1.1077	0.9744
490020	01/01/92	12/31/92	1.1155	0.9769
490021	01/01/92	12/31/92	1.4379	0.9968
490023	10/01/91	09/30/92	1.2136	0.9937
490024	10/01/91	09/30/92	1.6750	0.9988
490027	10/01/91	09/30/92	1.0367	0.9867
490030	10/01/91	09/30/92	1.3237	0.9952
490031	01/01/92	12/31/92	1.0203	0.9696
490033	01/01/92	12/31/92	1.1696	0.9706
490037	01/01/92	12/31/92	1.1836	0.9833
490038	10/01/91	09/30/92	1.2311	0.9849
490040	09/30/91	09/28/92	1.4066	0.9959
490041	01/01/92	12/31/92	1.1985	0.9881
490042	10/01/91	09/30/92	1.2605	0.9843
490044	10/01/91	09/30/92	1.2502	0.9890
490045	10/01/91	09/30/92	1.1678	0.9931
490047	10/01/91	09/30/92	1.0939	0.9692
490048	01/01/92	12/31/92	1.4672	0.9987
490050	01/01/92	12/31/92	1.3543	0.9968
490052	01/01/92	12/31/92	1.5030	0.9992
490054	10/01/91	09/30/92	1.0337	0.9726
490057	01/01/92	12/31/92	1.4605	0.9998
490059	09/01/91	08/31/92	1.4553	0.9993
490060	09/01/91	08/31/92	1.0516	0.9904
490063	01/01/92	12/31/92	1.6108	0.9982
490066	01/01/92	12/31/92	1.2128	0.9671
490067	01/01/92	12/31/92	1.2473	0.9889
490069	10/01/91	09/30/92	1.3757	0.9980
490071	01/01/92	12/31/92	1.4783	0.9986
490073	09/01/91	08/31/92	1.4037	0.9887
490074	01/01/92	12/31/92	1.3425	0.9926
490075	01/01/92	12/31/92	1.2781	0.9907
490077	10/01/91	09/30/92	1.1940	0.9929
490079	01/01/92	12/31/92	1.2893	0.9850
490083	10/01/91	09/30/92	0.7056	0.9852
490084	01/01/92	12/31/92	1.1111	0.9333
490085	10/01/91	09/30/92	1.1507	0.9677
490088	10/01/91	09/30/92	1.1365	0.9709
490089	10/01/91	09/30/92	1.0924	0.9716
490091	10/01/91	09/30/92	1.1667	0.9931
490092	01/01/92	12/31/92	1.2033	0.9766
490095	01/01/92	12/31/92	1.2460	0.9851
490097	09/01/91	08/31/92	1.1009	0.9856
490099	09/01/91	08/31/92	0.9600	0.9758
490100	10/01/91	09/30/92	1.3428	0.9972
490101	01/01/92	12/31/92	1.1177	0.9887
490107	01/01/92	12/31/92	1.1994	0.9895
490110	10/01/91	09/30/92	1.2451	0.9923
490112	09/01/91	08/31/92	1.5170	0.9985
490113	11/01/91	10/31/92	1.2885	0.9647
490115	10/01/91	09/30/92	1.2326	0.9804
490116	09/01/91	08/31/92	1.1784	0.9799
490117	12/01/91	11/30/92	1.1290	0.9919
490122	01/01/92	12/31/92	1.2064	0.9918
490126	10/01/91	09/30/92	1.2154	0.9826
490129	01/01/92	12/31/92	0.8523	1.0000
490130	01/01/92	12/31/92	1.1883	0.9845
500001	01/01/92	12/31/92	1.2875	0.9810
500002	01/01/92	12/31/92	1.4518	0.9951
500003	01/01/92	12/31/92	1.2616	0.9858

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
500005	01/01/92	12/31/92	1.7267	0.9980
500007	01/01/92	12/31/92	1.2956	0.9739
500009	01/01/92	12/31/92	1.2949	0.9903
500011	01/01/92	12/31/92	1.2546	0.9865
500012	01/01/92	12/31/92	1.5006	0.9970
500014	01/01/92	12/31/92	1.7497	0.9972
500015	01/01/92	12/31/92	1.2786	0.9847
500016	01/01/92	12/31/92	1.3410	0.9896
500019	01/01/92	12/31/92	1.2609	0.9718
500024	01/01/92	12/31/92	1.5708	0.9966
500025	01/01/92	12/31/92	1.8509	0.9990
500026	01/01/92	12/31/92	1.3634	0.9883
500027	01/01/92	12/31/92	1.5397	0.9982
500028	01/01/92	12/31/92	1.0850	0.9787
500029	01/01/92	12/31/92	1.0390	0.9575
500031	01/01/92	12/31/92	1.2662	0.9606
500033	01/01/92	12/31/92	1.2411	0.9657
500035	01/01/92	12/31/92	1.5169	0.9915
500036	11/01/91	10/31/92	1.2648	0.9919
500037	01/01/92	12/31/92	1.2075	0.9864
500042	01/01/92	12/31/92	1.3443	0.9842
500043	01/01/92	12/31/92	1.1551	0.9304
500044	01/01/92	12/31/92	1.8674	0.9990
500045	01/01/92	12/31/92	1.1343	0.9859
500048	08/01/91	07/30/92	0.9105	0.9742
500049	01/01/92	12/31/92	1.2088	0.9897
500050	10/01/91	09/30/92	1.3141	0.9907
500051	10/01/91	09/30/92	1.6114	0.9965
500052	01/01/92	12/31/92	1.2418	0.9949
500053	01/01/92	12/31/92	1.2641	0.9838
500054	01/01/92	12/31/92	1.8848	0.9991
500055	08/01/91	07/31/92	1.1042	0.9626
500057	10/01/91	09/30/92	1.3290	0.9920
500058	01/01/92	12/31/92	1.5264	0.9832
500059	01/01/92	12/31/92	1.1129	0.9333
500060	01/01/92	12/31/92	1.3106	0.9738
500061	01/01/92	12/31/92	1.0114	0.9513
500062	01/01/92	12/31/92	0.9607	0.9418
500065	01/01/92	12/31/92	1.2108	0.9654
500068	01/01/92	12/31/92	1.0058	0.9907
500069	01/01/92	12/31/92	1.0480	0.9196
500071	01/01/92	12/31/92	1.3691	0.9656
500072	01/01/92	12/31/92	1.1894	0.9782
500073	01/01/92	12/31/92	0.9775	0.9524
500074	01/01/92	12/31/92	1.1989	0.9839
500075	01/01/92	12/31/92	1.1502	0.9790
500077	08/01/91	07/31/92	1.2469	0.9909
500078	11/01/91	10/31/92	1.2447	0.9925
500079	10/01/91	09/30/92	1.2255	0.9799
500080	01/01/92	12/31/92	0.8745	0.9518
500084	01/01/92	12/31/92	1.1145	0.9858
500085	01/01/92	12/31/92	1.0553	0.9610
500088	01/01/92	12/31/92	1.3013	0.9926
500089	01/01/92	12/31/92	0.9321	0.9718
500090	01/01/92	12/31/92	0.9456	0.9323
500092	01/01/92	12/31/92	1.1068	0.9628
500094	01/01/92	12/31/92	0.9138	0.9429
500096	01/01/92	12/31/92	0.9918	0.9324
500097	01/01/92	12/31/92	1.1954	0.9319
500098	01/01/92	12/31/92	0.8916	0.9732
500101	01/01/92	12/31/92	0.9458	0.9790
500102	01/01/92	12/31/92	0.9799	0.9830
500106	01/01/92	12/31/92	1.0985	0.9848
500107	01/01/92	12/31/92	1.0946	0.9800
500110	01/01/92	12/31/92	1.2239	0.9659
500118	01/01/92	12/31/92	1.1656	0.9516
500119	01/01/92	12/31/92	1.3258	0.9849
500122	01/01/92	12/31/92	1.2809	0.9735
500123	01/01/92	12/31/92	0.9590	1.0000
500124	01/01/92	12/31/92	1.2880	0.9839
500125	01/01/92	12/31/92	0.9825	0.9569
500129	01/01/92	12/31/92	1.6946	0.9973
500132	01/01/92	12/31/92	0.9196	0.9682

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
500134	01/01/92	12/31/92	0.6826	0.9984
500140	10/01/91	09/30/92	1.2302	1.0000
500143	01/01/92	12/31/92	0.7104	1.0000
510001	01/01/92	12/31/92	1.6124	0.9957
510002	09/01/91	08/31/92	1.2852	0.9761
510004	11/01/91	10/31/92	0.9862	0.9258
510005	01/01/92	12/31/92	0.9515	0.9562
510006	10/01/91	09/30/92	1.2544	0.9904
510007	10/01/91	09/30/92	1.4173	0.9998
510008	01/01/92	12/31/92	1.0901	0.9915
510009	01/01/92	12/31/92	0.9843	0.9779
510012	10/01/91	09/30/92	1.0164	0.9839
510013	10/01/91	09/30/92	1.1245	0.9979
510016	01/01/92	12/31/92	1.0155	0.9701
510018	10/01/91	09/30/92	1.0571	0.9748
510022	01/01/92	12/31/92	1.6722	0.9989
510029	10/01/91	09/30/92	1.3002	0.9916
510030	10/01/91	09/30/92	1.1164	0.9941
510031	01/01/92	12/31/92	1.3484	0.9897
510033	01/01/92	12/31/92	1.2654	0.9912
510038	10/01/91	09/30/92	1.0505	0.9709
510039	01/01/92	12/31/92	1.3629	0.9942
510040	01/01/92	12/31/92	1.1382	1.0000
510047	01/01/92	12/31/92	1.1408	0.9894
510048	01/01/92	12/31/92	1.1200	0.9893
510050	10/01/91	09/30/92	1.2395	0.9914
510053	10/01/91	09/30/92	0.9759	0.9567
510055	10/01/91	09/30/92	1.1883	0.9961
510059	01/01/92	12/31/92	1.2882	1.0000
510060	09/01/91	08/31/92	1.1590	0.9870
510063	01/01/92	12/31/92	1.0502	0.9782
510065	01/01/92	12/31/92	0.9797	0.9669
510066	01/01/92	12/31/92	1.1210	0.9886
510067	09/01/91	08/31/92	1.2017	0.9914
510068	10/01/91	09/30/92	1.1045	0.9742
510076	01/01/92	12/31/92	0.8875	0.9751
510077	10/01/91	09/30/92	1.1806	0.9689
510081	10/01/91	09/30/92	1.0126	0.9817
510082	01/01/92	12/31/92	0.9942	0.9695
510084	01/01/92	12/31/92	0.9983	0.9737
510085	10/01/91	09/30/92	1.2929	0.9864
520002	10/01/91	09/30/92	1.2685	0.9712
520003	01/01/92	12/31/92	1.1428	0.9721
520008	10/01/91	09/30/92	1.3626	0.9965
520010	01/01/92	12/31/92	1.1352	0.9360
520012	10/01/91	09/30/92	0.9616	0.9768
520014	10/01/91	09/30/92	1.1206	0.9821
520018	10/01/91	09/30/92	1.0257	0.9685
520019	10/01/91	09/30/92	1.3041	0.9786
520021	10/01/91	09/30/92	1.2221	0.9899
520024	10/01/91	09/30/92	1.0987	0.9751
520026	01/01/92	12/31/92	1.0609	0.9713
520029	10/01/91	09/30/92	0.9437	0.9629
520031	10/01/91	09/30/92	1.1075	0.9790
520032	10/01/91	09/30/92	1.1876	0.9673
520033	09/01/91	08/30/92	1.2231	0.9620
520034	10/01/91	09/30/92	1.1980	0.9641
520035	01/01/92	12/31/92	1.2381	0.9870
520037	10/01/91	09/30/92	1.6047	0.9993
520038	01/01/92	12/31/92	1.3106	0.9724
520039	01/01/92	12/31/92	1.0205	0.9506
520042	10/01/91	09/30/92	1.1168	0.9755
520045	01/01/92	12/31/92	1.6726	0.9981
520048	10/01/91	09/30/92	1.3964	0.9948
520049	10/01/91	09/30/92	1.9158	0.9966
520053	01/01/92	12/31/92	1.0308	0.9393
520054	01/01/92	12/31/92	1.0693	0.9816
520056	10/01/91	09/30/92	1.2947	0.9893
520057	01/01/92	12/31/92	1.1666	0.9791
520058	10/01/91	09/30/92	1.0808	0.9717
520059	10/01/91	09/30/92	1.2014	0.9752
520060	10/01/91	09/30/92	1.2270	0.9655
520062	10/01/91	09/30/92	1.2125	0.9647

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
520064 ...	12/29/91	12/27/92	1.5587	0.9921
520069 ...	01/01/92	12/31/92	1.1605	0.9897
520070 ...	01/01/92	12/31/92	1.3924	0.9836
520071 ...	10/01/91	09/30/92	1.1535	0.9725
520077 ...	10/01/91	09/30/92	0.9922	0.9519
520078 ...	01/01/92	12/31/92	1.4302	0.9967
520082 ...	08/01/91	07/31/92	1.2916	0.9825
520083 ...	01/01/92	12/31/92	1.5742	0.9990
520084 ...	10/01/91	09/30/92	1.0770	0.9816
520089 ...	01/01/92	12/31/92	1.5293	0.9964
520090 ...	10/01/91	09/30/92	1.1716	0.9577
520095 ...	01/01/92	12/31/92	1.3811	0.9704
520100 ...	01/01/92	12/31/92	1.2615	0.9845
520101 ...	10/01/91	09/30/92	1.1426	0.9619
520102 ...	01/01/92	12/31/92	1.2112	0.9637
520103 ...	10/01/91	09/30/92	1.3418	0.9784
520107 ...	01/01/92	12/31/92	1.2694	0.9835

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
520109 ...	10/01/91	09/30/92	1.0144	0.9764
520110 ...	01/01/92	12/31/92	1.0834	0.9837
520113 ...	10/01/91	09/30/92	1.1841	0.9712
520115 ...	10/01/91	09/30/92	1.2398	0.9728
520116 ...	10/01/91	09/30/92	1.2326	0.9723
520117 ...	09/01/91	08/31/92	1.0924	0.9472
520118 ...	01/01/92	12/31/92	0.9694	0.9435
520123 ...	10/01/91	09/30/92	1.0192	0.9558
520130 ...	10/01/91	09/30/92	0.9756	0.9506
520131 ...	01/01/92	12/31/92	1.0530	0.9345
520135 ...	01/01/92	12/31/92	0.9756	0.9487
520138 ...	12/29/91	12/27/92	1.8410	0.9988
520139 ...	09/02/91	08/30/92	1.2562	0.9838
520140 ...	01/01/92	12/31/92	1.5116	0.9976
520144 ...	10/01/91	09/30/92	1.0360	0.9639
520145 ...	01/01/92	12/31/92	0.9855	0.9910
520146 ...	01/01/92	12/31/92	1.1186	0.9659

TABLE 9.—1992 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
520148 ...	01/01/92	12/31/92	1.0822	0.9827
520149 ...	01/01/92	12/31/92	1.0505	0.9174
520152 ...	10/01/91	09/30/92	1.1367	0.9597
520153 ...	10/01/91	09/30/92	1.0092	0.9475
520154 ...	10/01/91	09/30/92	1.1106	0.9683
520156 ...	01/01/92	12/31/92	1.0433	0.9536
520157 ...	01/01/92	12/31/92	1.0208	0.9449
520160 ...	01/01/92	12/31/92	1.7582	0.9969
520171 ...	01/01/92	12/31/92	0.9871	0.9706
520173 ...	10/01/91	09/30/92	1.1001	0.9760
520174 ...	01/01/92	12/31/92	1.4154	0.9915
520177 ...	01/01/92	12/31/92	1.5240	0.9939
530007 ...	07/01/91	07/30/92	1.0702	0.9474
530008 ...	01/01/92	12/31/92	1.2141	0.9706
530010 ...	01/01/92	12/31/92	1.2472	0.9791
530023 ...	01/01/92	12/31/92	0.9519	0.9302
530032 ...	01/01/92	12/31/92	1.3032	0.9781

TABLE 10.—PERCENTAGE DIFFERENCE IN WAGE INDEXES FOR AREAS THAT QUALIFY FOR A WAGE INDEX EXCEPTION FOR EXCLUDED HOSPITALS AND UNITS

Area	1982–1990 percentage difference	1984–1990 percentage difference	1988–1990 percentage difference
Rural Connecticut	21.008	23.410	.....
Rural Hawaii	.....	20.984	11.094
Rural Maryland	.....	8.298	.....
Rural Massachusetts	17.936	21.776	.....
Rural New Hampshire	.....	9.265	.....
Rural Puerto Rico	.....	.....	26.493
Aguadilla, PR	.....	20.475	20.976
Albany, GA	.....	9.126	.....
Alexandria, LA	.....	8.018	10.431
Ann Arbor, MI	.....	11.235	13.051
Bergen-Passaic, NJ	.....	.....	9.840
Boston-Lowell-Brockton-Lawrence-Salem, MA	.....	9.785	.....
Bridgeport-Stamford-Norwalk-Danbury, CT	.....	10.518	.....
Burlington, NC	.....	8.423	.....
Caguas, PR	.....	19.104	.....
Charlotte-Gastonia-Rock Hill, NC–SC	8.274	15.347	.....
Decatur, AL	.....	8.207	.....
El Paso, TX	.....	.....	9.447
Florence, SC	13.823	12.656	.....
Greensboro-Winston-Salem-High Point, NC	.....	9.325	.....
Hartford-Middletown-New Britain, CT	.....	10.032	.....
Hickory, NC	.....	8.487	.....
Houma-Thibodaux, LA	.....	.....	8.756
Killeen-Temple, TX	15.947	.....	.....
Knoxville, TN	.....	12.229	.....
Las Cruse, NM	.....	.....	12.784
Macon-Warner Robins, GA	.....	24.478	10.225
Manchester-Nashua, NH	11.187	12.561	.....
Mayaguez, PR	.....	12.354	13.107
McAllen-Edinburg-Mission, TX	.....	10.757	10.140
Middlesex-Somerset-Hunterdon, NJ	.....	9.810	.....
Monmouth-Ocean, NJ	.....	9.503	.....
Nassau-Suffolk, NY	.....	11.597	.....
New Bedford-Fall River-Attleboro, MA	10.877	13.672	.....
New Haven-West Haven-Waterbury, CT	8.376	12.593	.....
New London-Norwich, CT	.....	8.033	.....
Newark, NJ	.....	9.900	.....
Omaha, NE–IA	.....	.....	10.359
Orange County, NY	10.959	15.011	.....
Orlando, FL	.....	8.176	.....
Pine Bluff, AR	9.779	9.160	10.712

TABLE 10.—PERCENTAGE DIFFERENCE IN WAGE INDEXES FOR AREAS THAT QUALIFY FOR A WAGE INDEX EXCEPTION FOR EXCLUDED HOSPITALS AND UNITS—Continued

Area	1982–1990 percentage difference	1984–1990 percentage difference	1988–1990 percentage difference
Pittsfield, MA	8.333	.....	.....
Ponce, PR	.....	.....	9.466
Portsmouth-Dover-Rochester, NH	8.979	.....	.....
Poughkeepsie, NY	.....	9.303	.....
Providence-Pawtucket-Woonsocket, RI	.....	10.139	.....
Redding, CA	.....	17.503	10.181
Riverside-San Bernardino, CA	.....	.....	8.684
Santa Fe, NM	.....	.....	9.271
Victoria, TX	9.791	8.340	.....
West Palm Beach-Boca Raton-Delray Beach, FL	.....	8.361	.....
Wilmington, NC	.....	11.530	.....
Worcester-Fitchburg-Leominster, MA	.....	11.702	.....
Yuma, AZ	.....	.....	8.242

Appendix A—Regulatory Impact Analysis

I. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any final rule that meets one of the E.O. 12291 criteria for a "major rule," that is, a rule that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- A significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area or New England County Metropolitan Area.

Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent New England Metropolitan County. Thus, for purposes of the prospective payment system, we classified these hospitals as urban hospitals.

It is clear that the changes being implemented in this document will affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this final rule with comment period, constitutes a combined regulatory impact analysis and regulatory flexibility analysis in accordance with E.O. 12291 and the RFA.

II. Changes in the Final Rule

There are no major policy changes in this final rule from the policies proposed in the proposed rule. However, since we published the proposed rule, the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) (OBRA 93) was enacted. Several provisions of Public Law 103–66 have significant impacts on the results of our impact analysis, since they affect inpatient hospital payments for the operating and capital prospective payment systems during FY 1994, and, in some cases, FY 1993. These provisions are:

- The update factor for the standardized amounts for FY 1994 is the market basket rate of increase minus 2.5 percentage points for hospitals located in urban areas and the market basket rate of increase minus 1.0 percentage point for hospitals located in rural areas.
- Beginning in FY 1994, updates to the hospital-specific rates for sole community hospitals (SCHs) and Medicare-dependent, small rural hospitals (MDHs) will be made on a Federal fiscal year basis, rather than on a cost reporting period basis. The FY 1994 update will be computed taking into account the portion of the 12-month cost reporting period beginning during FY 1993 that occurs during FY 1994. In addition, the update for SCHs and MDHs is the market basket rate of increase minus 2.3 percentage points for FY 1994.
- The unadjusted standard Federal rate for capital payments to prospective payment hospitals is reduced by 7.4 percent for FY 1994. We note that this provision does not supersede the provision of section 1886(g) of the Act that requires that aggregate payments equal 10 percent less than the amount that would have been paid to hospitals under reasonable cost reimbursement.
- Hospitals in urban areas with wage indexes below the wage index for rural areas in the State and hospitals in a State comprised of a single urban area are not subject to further decreases in their wage indexes as a result of reclassification of other hospitals. Under the statute, this provision is effective retroactive to October 1, 1991.
- Hospitals classified as regional referral centers (RRCs) on September 30, 1992, will maintain that classification for cost reporting periods beginning in FYs 1993 and 1994, unless the area in which the hospital is located is redesignated as a Metropolitan Statistical Area (MSA) by the Office of Management and Budget (OMB) for such a fiscal year.
- The special payment provisions for Medicare-dependent, small rural hospitals (MDHs) are extended through discharges occurring before October 1,

1994. However, after a hospital's first three 12-month cost reporting periods as an MDH, there is a revision in the payment methodology.

- Hospitals that lost their classification as an RRC for cost reporting periods beginning during FY 1993 are entitled to receive a lump-sum payment equal to the difference between the hospital's actual aggregate payment during that period and the aggregate payment that the hospital would have received if the hospital had been classified as an RRC. Hospitals that lost their classification as MDHs for cost reporting periods beginning during FYs 1992 or 1993 are entitled to receive a similar lump-sum payment.
- Hospitals that fail to qualify as RRCs or MDHs as a result of a decision by the Medicare Geographic Classification Review Board (MGCRB) to reclassify the hospital as being located in an urban area for either FY 1993 or FY 1994 may decline such reclassification.
- The regional floor provision, which allows hospitals in census regions for which regional standardized amounts exceed the national standardized amount to be paid based on 15 percent of the regional amount and 85 percent of the national amount, has been extended through FY 1996.
- For FYs 1994 through 1997, the applicable rate-of-increase percentages (the market basket percentage increase) for hospitals that are excluded from the prospective payment system are reduced by the lesser of one percentage point or the percentage point difference between 10 percent and the percentage by which the hospital's allowable operating costs of inpatient hospital services for cost reporting periods beginning in FY 1990 exceeds the hospital's target amount. Hospitals or distinct part hospital units with FY 1990 operating costs exceeding target amounts by 10 percent or more receive the market basket percentage increase.
- Payments to hospitals for the cost of administering blood clotting factor to Medicare beneficiaries who have hemophilia are reinstated retroactively to discharges occurring on or after December 19, 1991, and extended through discharges occurring before October 1, 1994.
- Effective with discharges occurring on or after August 10, 1993, the time spent by graduate medical residents providing services at a community health center under the ownership and control of a hospital are included in the hospital's resident count for purposes of computing indirect medical education payments.
- For cost reporting periods beginning in FYs 1994 and 1995, direct graduate medical education payments are not updated, except for payments for residents in primary care, and obstetrics and gynecology.
- Effective August 10, 1993, a resident in an approved preventive care training program may be counted as a full-time resident for up to 2 additional years beyond the initial residency period.

While the changes due to Public Law 103–66 have significant effects on payments, they do not greatly affect the regulatory impacts of the policy changes we are implementing in this final rule with comment period in comparison with the regulatory impacts discussed in the proposed rule. Rather, differences in this final rule impact analysis compared to that in the proposed rule appear to be the result of using later or more complete hospital data. For example, a more complete FY 1992 MEDPAR file is now available compared to the one available at the time of the proposed rule. In addition, more recent hospital-specific data, including cost reports, are used in this analysis.

Since publication of the May 26, 1993 proposed rule, the latest hospital market basket forecast projects an increase of 4.3 percent in the operating costs of hospitals paid under the prospective payment system, compared to the 4.2 percent market basket increase published in the proposed rule. Prior to passage of Public Law 103–66, the urban standardized amounts for FY 1994 were to be updated at a rate equal to the market basket forecast, and the rural standardized amount was to be updated by the market basket plus 1.5 percent. As noted above, the Act now specifies that the FY 1994 update to the urban standardized amounts is the market basket minus 2.5 percent, and the update to the rural standardized amount is market basket minus 1.0 percent. This results in a 1.8 percent update in the urban standardized amounts rather than the 4.2 percent projected at the time of the proposed rule. The rural standardized amount will be updated by 3.3 percent rather than 5.7 percent. The hospital-specific rates for sole community hospitals and Medicare-dependent, small rural hospitals will be updated by 2.0 percent (market basket minus 2.3 percent) as specified in Public Law 103–66. This represents a decline from the full market basket update of 4.2 percent published in the proposed rule.

For hospitals and units excluded from the prospective payment system, Public Law 103–66 amended section 1886(b)(3)(B) of the Act to provide that for cost reporting periods beginning on or after October 1, 1993 and before October 1, 1994, the applicable rate-of-increase percentage is the market basket percentage increase minus the lesser of 1 percent, or the percentage difference between 10 percent and the hospital's "update adjustment percentage," except for hospitals with an update adjustment percentage of at least 10 percent. The rate-of-increase percentage for hospitals in the latter case is the market basket percentage increase. The update adjustment percentage is the percentage by which a hospital's allowable inpatient operating costs exceed the hospital's ceiling for the cost reporting period beginning in FY 1990. For cost reporting periods beginning on or after October 1, 1994 and before October 1, 1997, the update adjustment percentage is the update adjustment percentage from the previous year plus the sum of the previous years' applicable reductions. The applicable reduction and applicable percentage are then determined in the same manner as for FY 1994. The most recent forecasted market basket increase for FY 1994 for hospitals and units excluded from the prospective payment system is 4.3 percent.

With regard to the capital prospective payment system, we have revised our estimate of the rate of increase in capital costs per case and our budget neutrality target. The FY 1994 Federal rate and the hospital-specific rate will decrease 9.33 percent and 2.16 percent, respectively, from their FY 1993 levels. We now estimate that FY 1994 payments per case will increase 2.99 percent over FY 1993 levels. The impacts of these revised increases are illustrated in the analyses below.

III. Limitations of Our Analysis

In the analysis that follows, we examine the effects on hospital payments of changes required by statute and the changes implemented through this final rule. This is accomplished by estimating the effects of a given policy change holding other payment variables constant. We would expect hospitals to adapt to many of these changes, and to the extent they are able to do so, the actual impacts will vary from the estimates discussed below. However, we cannot accurately predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as admissions, lengths of stay, or case mix.

IV. Hospitals Included In and Excluded From the Prospective Payment System

The prospective payment systems for hospital inpatient operating and capital-

related costs encompass nearly all general, short-term, acute care hospitals that participate in the Medicare program. Only 55 short-term, acute care hospitals remain excluded from the prospective payment system under section 1814(b)(3) of the Act (in Maryland) or a demonstration project (in the Finger Lakes region of New York State). Thus, as of August 1993, approximately 5,300 hospitals were receiving prospectively based payments for furnishing inpatient services. This represents about 83 percent of all Medicare-participating hospitals. The majority of this impact analysis focuses on this set of hospitals.

The remaining 17 percent are specialty hospitals that are excluded by statute from the prospective payment system and continue to be paid on the basis of their reasonable costs, subject to a rate-of-increase ceiling on their inpatient operating costs per discharge. These hospitals include psychiatric, rehabilitation, long-term, children's, and cancer hospitals. The impact on these hospitals of the changes implemented in this final rule is discussed below.

V. Impact on Excluded Hospitals and Units

Approximately 1,000 specialty hospitals are excluded from the prospective payment system and are instead paid on a reasonable cost basis subject to the rate-of-increase ceiling under § 413.40. In addition, over 1,900 psychiatric and rehabilitation units in hospitals that are subject to the prospective payment system and 9 hospitals extensively involved in either the treatment of cancer or cancer research are also excluded from the prospective payment system and paid in accordance with § 413.40.

The applicable update for these hospitals and units was described above and in the preamble to this final rule. The impact depends on the cumulative cost increases experienced by each hospital and excluded unit, since its applicable base period. For excluded hospitals and units that have maintained their cost increases at a level below the percentage increases in the target amounts since their base period, the major effect will be on the level of incentive payments these hospitals and units receive. Conversely, for excluded hospitals and units with per-case cost increases above the cumulative update in their target amount, the major effect will be on the amount of excess costs that the hospitals will have to absorb.

In this context, we note that for cost reporting periods beginning on or after October 1, 1992, § 413.40(d)(3)(iii) allows an excluded hospital or unit whose costs exceed the rate-of-increase ceiling to receive the lower of its rate-of-increase ceiling plus 50 percent of reasonable costs in excess of the ceiling, or 110 percent of its ceiling. In addition, under the various provisions set forth in § 413.40, excluded hospitals and units can obtain substantial relief from the rate-of-increase ceiling for significant, yet justifiable, increases in operating costs that exceed the target amount. At the same time, however, by generally limiting payment increases to the growth rate in the hospital market basket, we continue to provide an incentive for excluded hospitals and units to restrain the growth in their spending for patient services.

VI. Quantitative Impact Analysis of the Proposed Policy Changes Under Prospective Payment System for Operating Costs

A. Basis and Methodology of Estimates

In this final rule with comment period, we are implementing policy changes and payment rate updates for the prospective payment systems for operating and capital-related costs. We have prepared separate analyses of the changes to each system, beginning with changes to the operating prospective payment system.

The data used in developing the quantitative analyses presented below are taken from FY 1992 inpatient billing data and the most current hospital-specific data that are used for payment purposes. Although the analyses of the changes to the operating prospective payment system do not incorporate any actual cost data, the most recently available hospital cost report data were utilized to create some of the variables by which hospitals are categorized.

Our analysis has several qualifications. First, as pointed out above, we do not make adjustments for behavioral changes that hospitals may adopt in response to these policy changes. Second, due to the interdependent nature of the prospective payment system, it is very difficult to precisely isolate and quantify the impact associated with a given change. Third, the results of our analysis are, of course, dependent on the quality of the data employed. We have attempted to construct each variable using the best available source, and we are confident that our simulations accurately project likely impacts on various hospital groups. For individual hospitals, however, data biases may occur.

The simulations estimate total payments under the operating prospective payment system given various combinations of payment parameters. Short-term acute care hospitals not paid under the prospective payment system (hospitals in the New York Finger Lakes demonstration project, and hospitals in Maryland) are excluded from the simulations. Payments under the capital prospective payment system, or payments for other than inpatient operating costs, are not estimated in this section. Estimated payment impacts of FY 1994 changes to the capital prospective payment system are discussed later in this impact analysis. For purposes of determining which method of payment to apply for SCHs or MDHs (the Federal payment rate or the applicable hospital-specific payment rate as prescribed by section 1886(d)(5)(D)(i) of the Act), we assume that all such hospitals have a cost reporting period that coincides with the Federal fiscal year.

B. Impact of Public Law 103–66

The enactment of Public Law 103–66 since the publication of the proposed rule has necessitated broadening the scope of our impact analysis to isolate the impacts of that statute from the impact of other changes in this final rule. Most notable is the reduction in the update factors. Both the urban and the rural update factors were reduced 2.5 percentage points. (Public Law 103–66 specifies that the rural update for FY 1994 is the market basket minus 1.0 percentage point; before this the rural update was market basket plus 1.5 percentage points.) Therefore, all hospitals have a smaller overall increase from FY 1993 to FY 1994 than they would have had absent Public Law 103–66.

Changes resulting from Public Law 103–66 have varying effects on different groups of hospitals. The most dramatic in terms of altering the percent change in payments from FY 1993 to FY 1994 is the extension of the special payment protection for Medicare-dependent, small rural hospitals (MDHs) through cost reporting periods ending before October 1, 1994. Because this extension was made retroactive, it results in higher FY 1993 payments to hospitals that had lost their MDH status during that year. Consequently, the higher FY 1993 baseline reduces the net change in payments from FY 1993 to FY 1994. Although the extension of this provision leads to higher payments for these hospitals in FY 1994, the payments are at a reduced rate relative to FY 1993 (for FY 1994, Public Law 103–66 provides that MDHs receive 50 percent of the difference between the hospital-specific rate and the Federal payment rate for MDHs paid on the basis of the hospital-

specific rate). In addition, for MDHs and for SCHs, the update in the hospital-specific payment rate is reduced to 2.0 percent. The net effect, despite the provision in Public Law 103–66 extending the MDH provision, is that payments in FY 1994 are now estimated to be even further below FY 1993 levels than the decrease estimated in the proposed rule.

While this effect is most evident in the MDH rows in the tables, it is also apparent among other hospital groups as well. For example, one may expect that rural hospitals as a group would not have their FY 1993 to FY 1994 payment changes reduced by the smaller update factors to the same degree as urban hospitals, due to the extension of the MDH protection. However, while FY 1994 payments to rural hospitals are not reduced as a result of Public Law 103–66 to the same extent as urban hospitals, the effects of the MDH provision and the reduction in the update factor discussed above also impact on total payments to rural hospitals. As a result, the FY 1993 to FY 1994 change in payments for rural hospitals is reduced from the proposed rule level by the same degree as the reduction for urban hospitals. This outcome is illustrated in Table I below.

Table I displays the overall impacts of Public Law 103–66. This represents a departure from previous impact analyses, including the proposed rule, where we have focused primarily on the major policy changes being implemented through the rulemaking process. We believe this is necessary to demonstrate that the significant variances between the impacts shown in the proposed rule and those reported here are, for the most part, due to the statutory changes in Public Law 103–66. Following the discussion of the impacts due to Public Law 103–66, we present the impacts due to the other changes we are implementing in this final rule with comment period.

Table I categorizes hospitals by various geographic and special payment groups to illustrate the varying impacts on different types of hospitals. The top row of the table shows the overall impact on the 5,302 hospitals included in the analysis. This is 84 fewer hospitals than were included in the impact analysis in the FY 1993 final rule (57 FR 39989). (Data for 119 hospitals that were included in last year's analysis were not available for analysis this year, primarily due to closures; however, data were available this year for 35 hospitals for which data were not available last year.) The next three rows of Table I contain hospitals categorized according to their geographic location (large urban, other urban or rural) based on the new MSA definitions. There are 1,636 hospitals located in large urban areas (populations over 1 million), 1,344 hospitals in other urban areas (populations of 1 million or fewer), and 2,322 hospitals in rural areas.

The next three rows categorize hospitals that changed their geographic location due to the new MSA definitions. The first row shows that 108 hospitals were located in counties with MSA designations that changed from rural to urban. It does not include 23 other hospitals that have been deemed urban under section 1886(d)(8)(B) of the Act and are located in counties that are now designated as MSAs under the revised MSA definitions. The next row contains hospitals located in counties that changed from urban to rural status under the new MSA definitions, and the third row contains hospitals located in counties that changed from other urban to large urban MSA designations. There were three hospitals in counties that changed from large urban to other urban. Due to the small cell size, this category is not shown. The next two groupings are by hospital bed size and urban or rural MSA designations. The final groupings under geographic location are by census divisions, determined on the basis of geographic location in either an urban or rural county under the new MSA definitions.

To illustrate the effects of hospital geographic reclassifications for FY 1994, the second part of Table I shows changes in payments based on a hospital's FY 1994 payment classification for purposes of the standardized amount under the prospective payment system after any reclassifications under sections 1886(d)(10) of the Act, rather than its actual geographic location. For example, as noted above, the number of hospitals included in our analysis that are actually located in large urban, other urban, and rural areas is 1,636, 1,344, and 2,322, respectively. After incorporating reclassifications, the number of large urban, other urban, and rural hospitals is 1,816, 1,421, and 2,065, respectively.

The next three groupings examine the impacts of the proposed changes on hospitals grouped by whether they have residency programs (teaching hospitals), whether they receive DSH payments, and whether they receive some combination of these two adjustments. We have changed our definition of major teaching hospitals in this analysis so that they are now defined according to whether the hospital has 100 or more residents. In the past, we have defined major teaching hospitals based on whether they had resident-to-bed ratios of .25 or more. We believe that our new definition results in a more homogeneous grouping of those hospitals that are defined as having major teaching programs. Furthermore, since the indirect medical education adjustment for the capital prospective payment system is based on the resident-to-average daily census ratio, it is inconsistent to define major teaching hospitals based on resident-to-bed ratios. As a result of this change, 45 hospitals defined as major teaching hospitals for FY 1993 are defined as minor teaching hospitals for FY 1994. Conversely, 37 hospitals that were defined as minor teaching become major teaching under the new definition.

Disproportionate share hospitals are grouped according to their payment status during FY 1994. That is, hospitals located in rural counties that have been reclassified as urban by the MGCRB for purposes of assigning the standardized amount are categorized here as urban, since they are considered urban in determining the amount of their DSH adjustment. The rural DSH hospitals, therefore, including those in the rural referral center and sole community hospital categories, represent hospitals that were not reclassified for the standardized amount. The next category groups hospitals paid on the basis of the urban standardized amount in terms of whether they receive the indirect medical education adjustment or the DSH adjustment, or both.

The next six rows categorize rural hospitals by special payment groups (sole community hospitals, rural referral centers, and MDHs). Rural hospitals reclassified for purposes of the standardized amount for FY 1994 are not included here. The MDH and rural referral center (RRC) rows include all hospitals that we have identified as MDHs or RRCs that were not reclassified for purposes of the standardized amount or both the wage index and the standardized amount. Because Public Law 103–66 permits MDHs and RRCs that failed to qualify as a result of a reclassification decision by the MGCRB for either FY 1993 or FY 1994 to decline their reclassification, it was necessary to project which hospitals would exercise this option. Those projected to do so are included here. As a result, the number of reclassified hospitals is lower than the number in the proposed rule, and the numbers of RRCs and MDHs are larger. In the proposed rule, 164 hospitals were identified as having received payments as MDHs during FY 1993. We now show 461 hospitals that will continue to benefit from this provision.

The rural referral centers (156), sole community hospitals (558), and rural referral center/sole community hospitals (47) shown here were not reclassified for purposes of the standardized amount. There are 41 rural referral centers and 14 sole community hospitals that would be reclassified for the standardized amount in FY 1994 and are therefore not included in these rows.

The next two groupings are based on type of ownership and the hospital's Medicare utilization expressed as a percent of total patient days. Data needed to calculate Medicare utilization percentages were unavailable for 66 hospitals.

The next series of groupings concern the geographic reclassification status of hospitals. The first three groups of rows display hospitals that were reclassified by the MGCRB for either FY 1993 or FY 1994, or for both years, by urban/rural location. A total of 672 hospitals that were reclassified for FY 1993 are not reclassified for FY 1994 (278 urban hospitals and 394 rural hospitals), and only 114 hospitals are reclassified for the first time for FY 1994. (Among other factors, the effects of the revised guidelines to qualify for wage index reclassifications for FY 1994 (see § 412.230(e)) are reflected here.) The next rows illustrate the overall number of reclassifications, as well as the numbers of reclassified hospitals grouped by urban and rural location.

TABLE I.—IMPACT ANALYSIS OF FINAL OPERATING COST PROSPECTIVE PAYMENT SYSTEM CHANGES FOR FY 1994

	Num. of hosps.[1]	FY 93 Effects of OBRA[2] (1)	FY 94 Baseline prior to OBRA[3] (2)	FY 94 Baseline after OBRA[4] (3)	Combined impact of final rule changes[5] (4)	All changes prior to reclassification[6] (5)	All changes[7] (6)
(By Geographic Location)							
All Hospitals	5,302	0.2	4.7	−1.8	0.2	3.0	3.1
Large urban areas (populations over 1 million)	1,636	0.0	4.9	−1.9	1.0	3.9	4.2
Other urban areas (populations of 1 million or fewer)	1,344	0.1	4.8	−2.0	−0.4	2.3	2.5
Rural areas	2,322	1.4	3.5	−1.0	−1.4	1.1	0.3
Hospitals changing MSA due to 1990 census:							
Rural to urban	108	2.5	2.6	−2.9	17.3	16.9	9.7
Urban to rural	13	0.0	4.5	−2.2	−0.7	1.5	2.1
Other urban to large urban	143	0.0	4.5	−1.7	3.5	6.4	5.3
Urban hospitals:	2,980	0.0	4.8	−2.0	0.5	3.3	3.6
0–99 beds	750	0.3	4.0	−2.1	1.5	3.3	3.2
100–199 beds	899	0.0	4.8	−2.0	0.7	3.4	3.5
200–299 beds	611	0.0	4.6	−2.0	0.3	2.9	3.2
300–499 beds	529	0.0	4.9	−1.9	0.2	3.1	3.5
500 or more beds	191	0.0	5.0	−1.9	0.7	3.8	4.1
Rural hospitals:	2,322	1.4	3.5	−1.0	−1.4	1.1	0.3
0–49 beds	1,180	2.3	2.9	−0.7	−1.6	0.4	−0.2
50–99 beds	708	1.8	3.2	−0.7	−1.6	0.8	0.4
100–149 beds	222	1.4	3.3	−0.9	−1.3	1.0	1.1
150–199 beds	106	0.6	4.3	−1.2	−1.2	1.8	−0.3
200 or more beds	106	0.7	4.0	−1.5	−1.0	1.4	0.5
Urban by region:							
New England	172	0.0	3.8	−1.5	1.5	3.8	3.2
Middle Atlantic	447	0.0	5.0	−2.2	2.3	5.0	5.7
South Atlantic	453	0.1	5.1	−2.2	0.9	3.7	3.7
East North Central	498	0.0	3.9	−1.2	−0.8	1.8	2.0
East South Central	170	0.0	5.3	−2.1	−0.4	2.6	3.2
West North Central	187	0.0	4.8	−2.1	−0.6	2.0	2.3
West South Central	380	0.1	5.3	−2.1	−0.6	2.5	2.9
Mountain	121	0.0	4.9	−2.1	−0.4	2.3	2.6
Pacific	502	0.0	5.3	−2.2	0.2	3.2	3.6
Puerto Rico	50	0.0	4.9	−2.2	3.4	6.0	6.3
Rural by region:							
New England	53	0.5	3.7	−0.9	0.3	3.1	3.7
Middle Atlantic	85	1.9	2.5	−0.7	1.4	3.2	2.4
South Atlantic	302	0.7	4.4	−1.7	−1.9	0.8	0.1
East North Central	313	2.1	2.2	−0.1	−1.9	0.2	−0.6
East South Central	289	0.5	5.2	−1.6	−2.0	1.4	0.1
West North Central	542	2.6	2.4	−0.3	−1.1	0.9	1.0
West South Central	361	2.3	2.7	−0.5	−1.7	0.4	−0.5
Mountain	227	0.5	4.4	−1.7	−1.4	1.2	−0.3
Pacific	145	0.5	4.4	−1.8	−1.7	0.8	0.1
Puerto Rico	5	0.0	5.5	−2.3	12.3	15.8	22.4
(By Payment Classification)							
All hospitals	5,302	0.2	4.7	−1.8	0.2	3.0	3.1
Large urban areas (populations over 1 million)	1,816	0.0	4.8	−1.9	0.9	3.8	4.2

TABLE I.—IMPACT ANALYSIS OF FINAL OPERATING COST PROSPECTIVE PAYMENT SYSTEM CHANGES FOR FY 1994—Continued

	Num. of hosps.[1]	FY 93 Effects of OBRA[2] (1)	FY 94 Baseline prior to OBRA[3] (2)	FY 94 Baseline after OBRA[4] (3)	Combined impact of final rule changes[5] (4)	All changes prior to reclassification[6] (5)	All changes[7] (6)
Other urban areas (populations of 1 million or fewer)	1,421	0.1	4.8	−2.0	−0.5	2.2	2.4
Rural areas	2,065	1.4	3.5	−1.0	−1.4	1.1	−0.2
Teaching status:							
Non-teaching	4,261	0.4	4.4	−1.8	0.1	2.7	2.7
Fewer than 100 residents	821	0.0	4.7	−1.9	−0.1	2.7	2.9
100 or more residents	220	0.0	5.2	−1.9	1.0	4.2	4.7
Disproportionate share hospitals (DSH):							
Non-DSH	3,481	0.3	4.1	−1.7	0.0	2.3	2.4
Urban DSH:							
100 beds or more	1,302	0.0	5.2	−2.0	0.6	3.7	4.1
Fewer than 100 beds	140	0.1	5.0	−2.2	2.2	4.9	4.3
Referral centers (RRC)	48	0.3	4.8	−1.6	−1.4	1.7	−1.1
Other rural DSH hosp.:							
100 beds or more	60	0.0	6.2	−2.2	−2.3	1.4	0.8
Fewer than 100 beds	159	0.9	5.0	−1.8	−2.3	0.8	0.2
Urban teaching and DSH:							
Both teaching and DSH	605	0.0	5.3	−2.0	0.6	3.8	4.2
Teaching and no DSH	386	0.0	4.3	−1.8	0.0	2.4	2.8
No teaching and DSH	837	0.1	5.0	−2.0	0.7	3.6	3.8
No teaching and no DSH	1,409	0.1	4.3	−1.9	0.4	2.7	3.1
Rural hospital types:							
Nonspecial status hospitals	843	0.0	5.7	−2.1	−2.2	1.2	−0.1
RRC	156	0.4	4.1	−1.5	−1.4	1.1	−1.0
SCH	558	0.0	4.6	−1.7	−0.2	2.6	2.0
MDH	461	12.1	−6.4	4.7	−1.4	−3.3	−2.7
SCH and RRC	47	0.3	3.9	−0.9	−0.5	2.4	0.6
SCH and MDH	1,066	3.2	1.4	0.1	−0.6	0.9	0.4
Type of ownership:							
Voluntary	3,059	0.1	4.6	−1.8	0.2	2.9	3.1
Proprietary	776	0.1	5.0	−2.0	0.4	3.3	3.6
Government	1,467	0.7	4.8	−1.7	0.2	3.2	3.1
Medicare utilization as a percent of inpatient days:							
0–25	309	0.0	5.8	−2.1	0.2	3.8	4.5
25–50	1,614	0.0	5.1	−1.9	0.4	3.4	3.7
50–65	2,301	0.2	4.5	−1.8	0.1	2.7	2.7
Over 65	1,012	1.2	3.3	−1.4	0.0	1.8	1.8
Hospitals Reclassified by the Medicare Geographic Review Board							
Reclassification status during FY93 and FY94							
Reclassified during both FY93 and FY94	551	0.5	4.4	−1.5	0.6	3.4	4.1
Urban	188	0.2	4.8	−1.9	1.8	4.6	5.3
Rural	363	1.2	3.9	−0.9	−1.4	1.4	2.2
Reclassified during FY94 only	114	0.2	4.5	−1.7	0.3	3.0	7.5
Urban	41	0.0	4.7	−1.9	0.7	3.4	7.1
Rural	73	1.0	3.8	−1.0	−1.2	1.6	8.8
Reclassified during FY93 only	672	0.4	4.0	−1.6	1.8	4.2	0.2
Urban	278	0.2	4.2	−1.9	3.4	5.7	1.9
Rural	394	0.9	3.7	−1.2	−1.0	1.4	−3.1
FY 94 Reclassifications:							
All reclassified hosp.	669	0.5	4.4	−1.6	0.5	3.4	4.5
All nonreclassified hospitals	4,606	0.2	4.7	−1.9	0.2	2.9	3.0
All urban reclassified hospitals	230	0.1	4.8	−1.9	1.6	4.4	5.6
Urban nonreclassified hospitals	2,750	0.0	4.8	−2.0	0.4	3.2	3.4
All reclassified rural hospitals	439	1.2	3.9	−0.9	−1.4	1.5	2.8
Rural nonreclassified hospitals	1,856	1.6	3.3	−1.0	−1.4	0.9	−0.9
Other reclassified:							
Hospitals (section 1886(D)(8)(B))	27	0.0	4.0	−1.8	−1.3	0.7	1.5

[1] Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Hospital-specific data and discharges data are from FY 1992, and hospital cost report data are from reporting periods beginning in FY 1991.

[2] This column illustrates the changes in FY 1993 payments due to the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66 (OBRA)). In particular, it illustrates the higher payments received by Medicare-dependent, small rural hospitals (MDHs).

TABLE I.—IMPACT ANALYSIS OF FINAL OPERATING COST PROSPECTIVE PAYMENT SYSTEM CHANGES FOR FY 1994—Continued

[3] This column displays the payment impacts of the pre-OBRA statutory changes for FY 1994 (4.2 percent update to the urban amount and 5.7 percent update for the rural amount, higher disproportionate share payments), after incorporating the FY 1993 payment effects shown in the previous column. It reflects the fact that, prior to OBRA, the special payment protection for MDHs would be eliminated for FY 1994, as would the regional floor provision.

[4] This column shows the payment effects of OBRA during FY 1994, relative to FY 1994 payments prior to OBRA.

[5] This column displays the combined effects of the changes to the prospective payment system described in this final rule. The individual impacts of these changes are shown in a separate table.

[6] Shown here are the combined effects of all of the FY 1994 policy changes prior to geographic reclassification by the Medicare Geographic Classification Review Board (MGCRB), compared to FY 1993 payments prior to geographic reclassification. Although it incorporates all of the changes displayed in columns 2 through 4, the sum of those columns may be slightly different from the percentage changes shown here, due to rounding errors and interactive effects.

[7] This column shows the combined effects as described for the previous column, but compares FY 1994 total payments after MGCRB reclassifications to total FY 1993 payments after reclassification.

Column 1, labeled "FY 1993 Effects of OBRA 93" demonstrates the changes in FY 1993 payments after Public Law 103–66 compared to the level prior to its enactment. As discussed above, the increases in payments to rural areas stem from the retroactive extension of the MDH provision during FY 1993. In order to facilitate this discussion of the impacts of Public Law 103–66 in the comparison of FY 1993 and FY 1994 payments, the payment simulations in the first five columns of Table 1 reflect impacts prior to geographic reclassification. Because we believe it is important to show the effects of geographic reclassification separately, the FY 1994 baseline simulation models payments to hospitals based on their geographic location. Therefore, including geographic reclassification in the FY 1993 simulations shown here would bias the comparison to the FY 1994 baseline, since all hospitals reclassified during FY 1993 would lose their reclassification in the FY 1994 baseline. Of course, since actual FY 1993 and FY 1994 payments reflect reclassifications, we do directly compare total payments after geographic reclassification in the last column of the table.

In the row displaying the impact on rural hospitals, the effect of Public Law 103–66 in FY 1993 is a 1.4 percent increase in payments. The MDH row shows that the strongest factor in this increase is a 12.1 percent rise in payments among this group due to the retroactive extension of the MDH provision. This increase in FY 1993 payments is important to this analysis because, as pointed out earlier, it results in a larger FY 1993 baseline for rural hospitals, and, thus, a smaller net change in FY 1994 than they would otherwise experience. This effect is illustrated in subsequent columns, and is discussed further below. Also, payments to RRCs increase by 0.4 percent due to the reinstatement of RRCs that have regained RRC status as a result of the provisions of Public Law 103–66. Finally, we note that there are some increases among urban hospital groups (for example, a 0.3 percent increase among urban hospitals with fewer than 100 beds), contrary to what one might anticipate. The explanation lies in the row of hospitals changing from rural to urban due to the 1990 census. The net increase in payments for these hospitals in FY 1993 is 2.5 percent. However, since these hospitals are considered urban in FY 1994, they are no longer eligible to qualify as MDHs. The impact of this effect is shown in Column 2.

Column 2 displays the change in payments from a simulation incorporating the higher FY 1993 payments due to Public Law 103–66, relative to a simulation of FY 1994 payments as they would have been prior to enactment of Public Law 103–66. This comparison is useful to help understand the significant variation shown here in the changes in payments to hospitals from those shown in the proposed rule. The impact on all hospitals of these changes would have been a 4.7 percent increase in payments from FY 1993. The majority of that increase would have been attributable to the pre-Public Law 103–66 update factors (4.2 percent for the urban amounts and 5.7 percent for the rural amount). Because urban hospitals receive such a large proportion (over 86 percent) of total payments in comparison to rural hospitals, the average update per case is much closer to the urban update. Of course, these update amounts were superseded by those included in Public Law 103–66. Two other significant factors reflected here, but no longer in effect, are the elimination of the regional floors and of the special payment protection for MDHs. Eliminating the regional floor would have resulted in approximately a 0.2 percent decrease in total payments. Ending the MDH provision in FY 1994 would have resulted in a net decrease in payments to these hospitals of 6.4 percent, relative to their FY 1993 payments after reinstatement of the MDH provision.

Another significant change included here remains in effect after enactment of Public Law 103–66 as well. This is an increase in the disproportionate share (DSH) payment adjustment for urban hospitals with 100 or more beds and for rural hospitals with 500 or more beds, effective for discharges occurring on or after October 1, 1993, in accordance with section 1886(d)(5)(F)(vii) of the Act. This results in a net increase in total payments of 0.4 percent.

Another significant change between the FY 1993 and FY 1994 payments compared in this column is the lower than expected level of outlier payments estimated to be made during FY 1993. As discussed in the addendum to this final rule, we now estimate that outlier payments during FY 1993 will be 4.5 percent of total DRG payments. When the FY 1993 final rule was published on September 1, 1992 (57 FR 39833), we estimated FY 1993 outlier payments would be 5.1 percent of total DRG payments, and the FY 1993 standardized amounts were set accordingly. Similarly, we estimate that outlier payments during FY 1994 will be 5.1 percent of total DRG payments. The

0.6 percent higher level of FY 1994 outlier payments overall is also reflected in this column.

Hospitals in urban areas experience the greatest increase in payments (4.9 percent for large urban hospitals and 4.8 percent for other urban hospitals). They benefit the most from both the new DSH formula and the higher outlier payments. This is particularly true for hospitals in large urban areas, whose payments rise approximately 0.5 percent due to the new DSH formula, and 0.6 percent due to the higher outlier payments.

Hospitals in rural areas experience a payment increase of 3.5 percent. The scheduled elimination of the MDH provision before the enactment of Public Law 103–66, as reflected in the FY 1994 payments in this column, is a significant cause of the lower percentage change for all rural hospitals. Also, these hospitals experience a lower increase in outlier payments than urban hospitals do. Their outlier payments increase by only 0.5 percent from FY 1993. Finally, although the update to the rural standardized amount is 5.7 percent, this row includes rural referral centers paid on the basis of the other urban amount (updated by 4.2 percent), and sole community hospitals paid on the basis of their hospital-specific rates (also updated by 4.2 percent).

In examining this column, it is important to note that the effects of hospitals redesignated as a result of the 1990 census changes are not shown here. These changes are a major component of the changes being implemented by this final rule, and thus, are not reflected until Column 4 of the table. Therefore, in Column 2 and Column 3, we treat the hospitals in these rows as if they were paid according to their designation prior to the census changes. As a result, the percentage changes in Column 2 for these rows reflect the changes discussed above, before considering the effects the new census designations. The relatively small increase for rural hospitals in counties that become urban reflects the fact that 16 of these hospitals had their MDH status reinstated for FY 1993.

Column 3 displays the impacts of Public Law 103–66 on the FY 1994 baseline. This column shows the percent changes in FY 1994 payments under Public Law 103–66 compared to FY 1994 payments before the statutory changes, as described in Column 2. The most significant differences here from the previous FY 1994 baseline are: The lower updates to the standardized amounts and the hospital-specific payment rates, the extension of the MDH payment protection (albeit at a lower level than for FY 1993), and the extension of the regional floor. The overall change from payments under the pre-Public Law 103–66 FY 1994 baseline is a 1.8 percent reduction for all hospitals. Payments to urban hospitals are 2.0 percent lower, and payments to rural hospitals are 1.0 percent lower.

The impact upon rural hospitals here is again due to the MDHs, as well as RRCs. Since this column shows the impact of moving from an FY 1994 baseline without special treatment of MDHs to one where they receive 50 percent of the difference between their hospital-specific payment rate and their applicable Federal rate, their net change is a 4.7 percent increase in their FY 1994 baseline after Public Law 103–66. In addition, by reinstating RRCs that no longer meet the eligibility criteria at § 412.96, Public Law 103–66 resulted in payment increases to hospitals previously paid as RRCs but paid as non-RRC rural hospitals in the pre-Public Law 103–66 baseline.

Among the census divisions, the impact of reinstating the regional floor is apparent among the regions that would have lost this special protection in FY 1994 prior to the passage of Public Law 103–66. Among the urban census divisions, hospitals in the New England, East North Central, and West North Central regions all are helped by the regional floor. Although payments in these regions are still less than they would be prior to Public Law 103–66, they do not decline as much as payments to urban hospitals generally. The most significant impacts occur in the New England and the East North Central regions, where payments are 1.5 percent and 1.2 percent lower, respectively, compared to the average urban decrease of 2.0 percent. Among rural census divisions, New England, the Middle Atlantic, the South Atlantic, and the East North Central all benefit from the regional floor. The most significant impacts of the regional floor, when compared to the average rural payment decrease of 1.1 percent, are in New England (0.9 percent lower payments), the Middle Atlantic (0.7 percent lower payments) and East North Central regions (0.1 percent lower payments).

In summary, the effects of the changes enacted by Public Law 103–66 are to retroactively increase FY 1993 total payments by 0.2 percent, and decrease FY 1994 total payments by 1.8 percent. The net change in payments from FY 1993 to FY 1994 is subsequently 2.0 percent less than it would have been in the absence of Public Law 103–66. For urban hospitals, FY 1993 payments are unchanged and FY 1994 payments decrease 2.0 percent, thus resulting in a 2.0 percent smaller change from FY 1993 payments. For rural hospitals, FY 1993 payments increase by 1.4 percent, and FY 1994 payments are 1.0 percent less, resulting in a net effect of reducing the change from FY 1993 by 2.4 percent from what it would otherwise be.

Column 4 in Table I is the sum of the changes in FY 1994 payments that result from the changes implemented in this final rule. These changes and their impacts are discussed separately below. Specifically, this column displays the impacts of adding the following changes to the post-Public Law 103–66 FY 1994 baseline model described in the previous column:

- The effects of the annual reclassification of DRGs and the recalibration of the DRG weights required by section 1886(d)(4)(C) of the Act.
- The effects of changes in the standardized payment amounts hospitals receive due to changes in MSA definitions.
- The effects of the new MSA definitions on the wage index.
- The effects of changes in wage index values reflecting the FY 1990 wage survey data.

This column serves to demonstrate that the impacts of the changes we are implementing through this final rule are not significantly different from the impacts we described in the proposed rule (see 58 FR 30419). For example, the combined impact for all hospitals is a 0.2 percent increase, due to hospitals in counties previously designated as rural that become urban as a result of the 1990 census. Similarly, in the proposed rule, the combined effects of these changes for large urban, other urban, and rural hospitals, were: an increase of 1.1 percent for large urban hospitals, a decrease of 0.5 percent for other urban hospitals, and a decrease of 1.7 percent for rural hospitals. The corresponding numbers in this rule are: a 1.0 percent increase, a 0.4 percent decrease, and a 1.4 percent decrease, all very similar to the combined changes from the proposed rule. Some variations in the impacts between the final and the proposed rules do occur for particular hospital groups, and these are discussed later in this analysis within the context of the individual changes.

Column 5 shows the combined effects of the changes displayed in Columns 2 through 4, relative to FY 1993 payments, without consideration of the effects of geographic reclassifications by the MGCRB that are effective in either FY 1993 or FY 1994. The percent changes represent the effect of moving

from the post-Public Law 103-66 FY 1993 baseline to the FY 1994 simulation described in Column 4, which incorporates the statutory changes and the changes described in this final rule. Within reasonable bounds for rounding differences and interactive effects, the percent changes in this column are equal to the sum of the changes in the previous three columns.

The changes shown here represent, prior to the effects of the reclassification decisions by the MGCRB, the changes in hospital payments for FY 1994. The changes due to reclassification are thoroughly discussed below. The major point here, however, is that the reduced increase for rural hospitals compared to the proposed rule (that is, 1.1 percent versus 3.3 percent, before reclassifications), is entirely due to the recent changes made by Public Law 103-66. As a result of this statute, FY 1993 payments increased by 1.4 percent, and FY 1994 payments declined by 1.0 percent, which together reduce the change in rural hospitals' payments by 2.4 percent, roughly the difference between the change in this column and the effect of all changes prior to reclassification in the proposed rule. This result is somewhat misleading in that rural hospitals actually experience a smaller reduction in payments as a result of the statutory changes, relative to urban hospitals, when the statute's effect on total payments for both FY 1993 and FY 1994 is considered.

Column 5 also incorporates the impact of the 0.6 percent lower than estimated outlier payments during FY 1993. The biggest gains in this column are among hospitals in counties previously designated as rural that, as a result of the 1990 census, are now designated as urban. Their payments relative to last year (prior to reclassification) would increase 16.9 percent. Also, payments to hospitals in MSAs that were other urban during FY 1993 and are now large urban would increase, prior to geographic reclassification, by 6.4 percent. These increases are much less than those estimated in the proposed rule, however, and reflect revisions to the wage indexes and changes in the redesignations of MSAs that have occurred in the interim. These changes are discussed in more detail later in this analysis, when we examine the impacts of the changes implemented by this final rule. Finally, payments to hospitals that were urban in FY 1993 and are now rural increase overall, prior to geographic reclassification, by 1.5 percent.

Hospitals paid as MDHs experience a decline in total payments prior to geographic reclassification from FY 1993 to FY 1994 of 3.3 percent. However, similar to the effect discussed above for all rural hospitals, MDHs are better off overall as a result of Public Law 103–66. This is because the dramatic rise in their FY 1993 payments more than offsets the benefits they receive during FY 1994. Although the combined effect of the final rule changes for MDHs is not far off the combined effect in the proposed rule, direct comparisons are problematic. This is because the proposed rule identified only 164 hospitals receiving payments as MDHs during FY 1993. Due to the reinstatement of this provision by Public Law 103–66, we now have identified 461 hospitals that will receive payment as MDHs.

Another special rural hospital group with below average payment increases for FY 1994 is rural referral centers (a 1.1 percent increase). As noted previously, these hospitals also benefitted from Public Law 103–66, in that RRCs that no longer meet the eligibility criteria are able to continue to be paid as RRCs in FYs 1993 and 1994. The effects of this are shown in Column 3, where RRCs experience only 1.5 percent lower payments after Public Law 103–66. However, RRCs do experience a 1.4 percent decrease in payments due to the final rule changes. This outcome is discussed more fully in the discussion of Table 3.

A rural hospital group faring notably better than the rural average is sole community hospitals, with an increase from FY 1993 to FY 1994 of 2.6 percent, before geographic reclassifications are taken into account. As noted earlier, these hospitals continue to receive the benefit of a special payment protection allowing them to be paid the greater of their applicable prospective payment amount, or the higher of their updated FY 1982 or FY 1987 hospital-specific rates.

By March 30 of each year, the MGCRB issues reclassification decisions that will be effective for the next fiscal year beginning on October 1. The MGCRB may reclassify a hospital to an adjacent urban area or to a rural area with which it has a close proximity for the purposes of using the other area's standardized amount, wage index value, or both. (A rural referral center or a sole community hospital may be redesignated to an area that is not an adjacent county.)

Column 6 reflects changes in payments after accounting for both FY 1993 and FY 1994 reclassifications by the MGCRB. The FY 1994 standardized payment amounts and wage index values incorporate the MGCRB's reclassification decisions that will be effective for FY 1994, including all decisions made by the HCFA Administrator through the appeals and review process for MGCRB decisions and any reclassification withdrawal requests that were received by the MGCRB. These Administrator's decisions and withdrawals may affect the wage index value for specific geographic areas relative to those used in the impact analysis in the May 26, 1993 proposed rule. They may also determine whether a redesignated hospital receives the wage index of the area to which it is redesignated or a combined wage index that includes the data for both the hospitals already in the area and the redesignated hospitals.

The difference in the overall changes shown in Columns 5 and 6 (a 3.0 percent increase and 3.1 percent increase, respectively) is due to the different FY 1993 baselines that are used for comparison. The FY 1993 baseline in Column 5 is an estimate of FY 1993 payments before geographic reclassifications are taken into account. The FY 1993 baseline in Column 6 is an estimate of FY 1993 payments after geographic reclassifications are taken into account. Both baselines incorporate the effects of Public Law 103–66. When the FY 1993 standardized amounts were determined, the budget neutrality adjustment factor for geographic reclassification ensured that total FY 1993 payments before and after reclassification were equal. However, since our current estimates of FY 1993 payments are based on more recent data than when the standardized amounts were established, the pre- and post-reclassification total payment amounts in the two FY 1993 baselines are not equal for purposes of this impact analysis. As a result, the post-reclassification comparison results in a 0.1 percent higher increase in payments between FY 1993 and FY 1994 than the pre-reclassification comparison. The geographic reclassification budget neutrality factor appled to the FY 1994 standardized amounts ensures that total payments after reclassification equal total payments prior to reclassification.

Comparing the percentage changes prior to reclassification in Column 5 with the percentage changes after reclassification in Column 6 shows higher payments to hospitals in large urban areas after reclassification, slightly higher payments to hospitals in other urban areas after reclassification, and lower payments to hospitals in rural areas. A significant factor leading to the higher payments in large urban areas is the smaller reduction in the FY 1994 standardized amounts for geographic reclassification budget neutrality. The

final FY 1993 budget neutrality factor applied to the urban standardized amounts was 0.987471. The final FY 1994 urban budget neutrality factor is .992529. For hospitals in other urban areas, the impact of this smaller factor is offset by fewer geographic reclassifications during FY 1994.

Other urban areas and rural areas have a large number of hospitals that were reclassified by the MGCRB during FY 1993 but are not reclassified during FY 1994. Two factors primarily account for the decline in reclassifications. The first factor is the requirement, first applicable for FY 1994 reclassifications, that hospitals' average hourly wage must be at least 108 percent of the average hourly wage of the area in which they are located in order to be eligible for reclassification for purposes of the wage index. The second factor is the effect of the new MSA designations. Some previously reclassified hospitals are now considered part of the MSA to which they had been reclassified. The following chart illustrates the status of FY 1993 reclassified hospitals for FY 1994. Because the chart shows the status of FY 1993 reclassified hospitals for FY 1994, the number of hospitals in each category do not match those in Table I. Some hospitals that were used to develop the FY 1993 impact had no FY 1994 data available. Similarly, some hospitals used to develop the FY 1994 impact tables did not have any data available for FY 1993, and could not be included in this chart.

IMPACT OF MSA CHANGES AND RECLASSIFICATION CHANGES

	Effect of new MSA definitions			
	Remain rural	Moved from rural to urban	Moved from urban to rural	Remain urban
Total	2,329	108	13	2,871
FY 1993 Wage Only	606	46	1	227
FY 94 wage only	173	4	0	17
FY 94 standardized amount	54	1	0	7
FY 94 both	22	1	0	40
FY 94 not reclassified	357	40	1	163
FY 1993 Standardized Amount Only	58	9	0	17
FY 94 wage only	1	0	0	0
FY 94 standardized amount	43	1	0	11
FY 94 both	1	0	0	0
FY 94 not reclassified	13	8	0	6
FY 1993 Both	72	18	1	124
FY 94 wage only	9	1	0	1
FY 94 standardized amount	38	3	1	40
FY 94 both	20	0	0	61
FY 94 not reclassified	5	14	0	22
FY 1993 Not Reclassified	1,593	35	11	2,503
FY 1994 wage only	24	0	0	4
FY 94 standardized amount	46	0	0	11
FY 94 both	4	0	0	24
FY 94 not reclassified	1,519	35	11	2,464
FY 1993 Other Reclassified	50			
FY 94 other reclassified	27			
FY 94 urban non-reclassified	23			

The rows in the chart group hospitals by reclassification status in FY 1993, and within each group, the status of the hospitals during FY 1994. For purposes of this chart, hospitals that have been designated under the revised MSA definitions to the same MSA to which they were reclassified by the MGCRB are considered nonreclassified in FY 1994. This includes approximately 77 hospitals. The columns display the effects of the new MSA definitions. For example, during FY 1993, there were 606 rural hospitals reclassified for purposes of the wage index that remained rural after the new MSA definitions. Of these 606 hospitals, however, 357 are not reclassified for FY 1994, and 54 are now reclassified for the standardized amount instead of the wage index. Similarly, more than half of the 72 rural hospitals remaining rural that were reclassified for both the wage index and standardized amount in FY 1993 will be reclassified only for the standardized amount in FY 1994. Of the 227 hospitals that remain urban that were reclassified for their wage index for FY 1993, 163 will not be reclassified for FY 1994, and 7 will be reclassified for purposes of the standardized amount instead. Thus, the new 108 percent threshold for wage index reclassification appears to have greatly reduced the number of reclassifications for wage index purposes for FY 1994.

The second column indicates that, of 108 hospitals that moved from rural to urban status as a result of the new MSA definitions, 73 had been reclassified during FY 1993 (FY 1993 data were missing for 3 hospitals among this group). As a result, when the effects of geographic reclassifications are taken into account, the payment increase for this group of hospitals declines from 16.9 percent to 9.7 percent. Many of these hospitals were already receiving the benefit of higher urban payments in FY 1993 due to reclassification.

In contrast, the third column in the chart shows the FY 1993 and FY 1994 reclassification status of the 13 hospitals located in counties previously defined as urban that are now rural. One of these hospitals was reclassified for purposes of the wage index in FY 1993 but is not reclassified in FY 1994. Also, one hospital that was reclassified for both the wage index and the standardized amount in FY 1993 is only reclassified for the standardized amount in FY 1994 Despite losing their reclassification status and moving from urban to rural status, however, the total payments for this group during FY 1994 are 2.1

percent higher than their FY 1993 payments. This effect, however, is entirely due to one hospital in this group becoming a sole community hospital due to its new rural status. The 35.6 percent increase experienced by this hospital offsets the losses of all the others.

The rows showing hospitals grouped according to whether they receive the large urban, other urban, or the rural standardized amounts after reclassification further illustrate the impact on rural hospitals of fewer reclassifications. The net payment change for the 2,065 hospitals is a 0.2 percent decrease. Prior to reclassification, FY 1994 payments to this group increased by 1.1 percent. This post-reclassification decline is primarily attributable to 387 of these hospitals that were reclassified for FY 1993 but not for FY 1994.

Among rural hospitals by special payment category, rural referral centers that are not reclassified have notably lower payments, after accounting for the effects of the reclassification of other rural hospitals. Their net change in payments from FY 1993 is negative 1.0 percent. Of this group, 120 were reclassified for the wage index for FY 1993, but only 55 retained their reclassification status for FY 1994. Rural hospitals without any special payment provisions have a net decrease of 0.1 percent after considering reclassification, down from 1.2 percent in Column 5. Of the 843 hospitals in this group, 133 were reclassified for FY 1993 but are not reclassified for FY 1994.

For the most part, urban hospitals have higher payment increases after the effects of geographic reclassification are taken into account than they did in the previous column. Again, this is generally due to the smaller budget neutrality reduction resulting from fewer overall reclassifications and relatively fewer urban hospitals losing geographic reclassification status during FY 1994 (compared to the number of rural hospitals losing their reclassification status). Rural hospital groups, on the other hand, generally do not do as well when the reclassification effects are considered. An exception is the five rural hospitals in Puerto Rico, where one reclassified hospital has a large payment increase (22.4 percent).

Among rural hospitals grouped by census divisions, several categories stand out as experiencing significantly lower payments after accounting for reclassification. The largest decline is in the Mountain region, where the total change in payments for FY 1994 falls to negative 0.3 percent after reclassification (from an increase of 1.2 percent prior to reclassification). The second largest decline is in the East South Central region (from 1.4 percent before reclassification to 0.1 percent after reclassification). Other significant declines are evident in the Middle Atlantic (from 3.2 percent to 2.4 percent); the Pacific (from 0.8 percent to 0.1 percent); and the East North Central (from 0.2 percent to negative 0.6 percent).

Among hospitals grouped by reclassification status during FY 1993 and FY 1994, the changes are predictable. Hospitals reclassified for FY 1993 but not for FY 1994 experience lower payments when reclassification is taken into account compared to the previous column. The reverse holds true for hospitals reclassified for FY 1994 but not reclassified for FY 1993.

We also examined the impact of reclassification on payments to reclassified and nonreclassified hospitals in FY 1994. This analysis is presented in Table II, below. This analysis compares FY 1994 payments for reclassified hospitals with payment levels that assume reclassified hospitals are paid on the basis of their actual geographic location rather than reclassified location.

TABLE II.—EFFECTS ON PAYMENTS PER CASE OF GEOGRAPHIC RECLASSIFICATION OF HOSPITALS UNDER CURRENT RECLASSIFICATION POLICIES

	Number of hospitals	(a) Payment per case without reclassification [1]	(b) Payment per case after reclassification	(c) Percent change in payment per case due to reclassication only [2]
FY 94 reclassifications				
All reclassified hospitals	669	5,423	5,697	5.0
Standardized amount only	259	5,249	5,369	2.3
Wage index only	236	4,979	5,414	8.7
Both	174	6,044	6,323	4.6
All urban reclassified hospitals	230	6,580	6,762	2.8
Standardized amount only	75	6,340	6,375	0.6
Wage index only	28	7,648	8,240	7.7
Both [3]	127	6,492	6,679	2.9
All reclassified rural hospitals	439	4,090	4,470	9.3
Standardized amount only	184	3,807	4,038	6.0
Wage index only	208	4,284	4,678	9.2
Both [4]	47	3,964	4,666	17.7
All nonreclassified hospitals	4,606	6,157	6,116	−0.7
Urban non-reclassified hospitals	2,750	6,582	6,534	−0.7
Rural non-reclassified hospitals	1,856	3,804	3,803	0.0

[1] This column shows payments without regard to any previous MGCRB reclassification decision. This column reflects the fact that reclassifications are in effect for only 1 fiscal year.

[2] This column only shows the percentage change in payments resulting from decisions of the MGCRB for FY 1994. It does not reflect other changes such as outliers, DRG recalibration or the update.

[3] The number of hospitals includes 111 facilities that were reclassified as part of 15 urban group applications.

[4] The number of hospitals includes 1 facility that was reclassified as part of 1 rural group application.

Table II shows the changes in payments per case for all FY 1994 reclassified and nonreclassified hospitals in urban and rural locations for each of the three reclassification categories (standardized amount only, wage index only, or both). As evidenced by the increase in payment for all reclassified hospitals (5.0 percent) and the decrease in payments for nonreclassified hospitals (0.7 percent), the effects of the MGCRB reclassification decisions are significant. Hospitals located in rural areas that were reclassified for purposes of both their wage index value and their standardized amount will receive the largest percentage increase in payments per case. They can expect an average increase of 17.7 percent above what they would receive without reclassification. The 75 hospitals located in urban areas that were reclassified for purposes of their standardized amounts will receive an increase in payments per case of 0.6 percent compared to what they would receive if there were no reclassifications. Although 65 of these hospitals are in other urban areas and were reclassified to large urban areas, the remaining hospitals were reclassified either from large urban to large urban (6 hospitals) or from other urban to other urban (4 hospitals), thus diluting the overall payment impact.

The reclassification of hospitals primarily affects payment to nonreclassified hospitals through changes in the wage index and through the geographic reclassification budget neutrality adjustment required by section 1886(d)(8)(D) of the Act. Among hospitals that were not reclassified, the overall impact of hospital reclassifications would be an average decrease in payments per case of about −0.7 percent. Nonreclassified rural hospitals experience no payment change.

C. Impact of Changes Implemented by This Final Rule With Comment Period

Table III displays the impacts of the changes implemented in this final rule. To illustrate the impacts of the FY 1994 DRG reclassifications and recalibration of the DRG weights, the new MSA definitions, and the new wage survey data, these changes are added one at a time to the FY 1994 baseline model. The FY 1994 baseline simulation modeled total payments using the FY 1993 GROUPER (version 10.0), standardized amounts updated to FY 1994 but assigned on the basis of the old MSA definitions, and the FY 1993 wage indexes assigned based on geographic location according to the old MSA definitions and without regard to geographic reclassifications by the MGCRB. The FY 1994 baseline includes the higher DSH formula (although assigned based on old MSA definitions).

In column 1 of Table III, we present the combined effects of the revised DRG classification system, and the subsequent recalibration of the DRG weights incorporating these revised DRGs, as discussed in the preamble to this final rule. Section 1886(d)(4)(C)(i) of the Act requires us each year to make appropriate classification changes and to recalibrate the DRG weights in order to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The impact of DRG reclassification and recalibration on aggregate payments is required by section 1886(d)(4)(C)(iii) of the Act to be budget neutral.

The first line of Column 1 of Table III demonstrates that the overall effect of these changes is budget neutral. That is, the percentage change when adding the version 11.0 GROUPER to the FY 1994 baseline for all hospitals is 0.0. The redistributional impact of the final DRG classification and recalibration changes across hospital groupings is small. Other than a decrease of 0.3 percent for hospitals redesignated from urban to rural as a result of the 1990 census and rural DSH hospitals with fewer than 100 beds, and a 0.4 percent increase among urban hospitals in Puerto Rico, the impact of these changes is generally 0.2 percent or less. We project that most hospitals will experience essentially no effect. Where decreases occur, they are concentrated among small urban and rural hospitals. Payments to rural hospitals with fewer than 50 beds and rural hospitals with between 50 and 99 beds would be 0.2 percent and 0.1 percent lower, respectively, than they would be without the changes in DRG classifications and weights. Payments to urban hospitals with fewer than 100 beds would also, on average, be 0.1 percent lower. However, urban hospitals with 200 or more beds would experience increases in payments of 0.1 percent.

As discussed throughout this final rule, beginning October 1, 1993, we will adopt the revised MSA definitions based on 1990 census data that were announced by the Office of Management and Budget on December 28, 1992. Column 2 of Table III measures the change in payments attributable to hospitals changing from rural to urban (and vice versa), as a result of the new MSA designations, for purposes of the standardized amounts and DSH payments. It does not include the effect of the change in status on the hospital wage index. The overall effect on total payments of implementing the new MSA designations for purposes of the standardized amount and DSH payments is a 0.2 percent increase, due to the higher payments going to redesignated hospitals. This reflects a $148 million increase in total payments.

Table III shows that 108 hospitals were located in counties that were formerly designated as rural but are now urban. These hospitals will begin to receive either the other urban or the large urban standardized amount, whichever is applicable (just under one-third of these hospitals will receive the large urban standardized amount during FY 1994). They will also be considered urban hospitals for other payment purposes as well, such as determining eligibility for DSH payments. This category does not include 23 hospitals that have been treated as urban hospitals under section 1886(d)(8)(B) of the Act and are located in counties now designated as MSAs under the revised OMB definitions.

To demonstrate the impacts of the MSA changes on standardized amount and DSH payments, Column 2 shows the percentage changes from the previous simulation—the FY 1994 baseline plus the DRG reclassification and recalibration effects—by assigning the standardized amounts and paying DSH on the basis of the new MSA definitions. Hospitals that have been paid on the basis of the rural standardized amount and will now be paid as urban hospitals will receive an increase in payments of 8.1 percent. Hospitals in newly designated large urban areas receive payments that are 1.7 percent higher (the difference between the other urban and large urban standardized amounts is about 1.6 percent).

Curiously, hospitals that are in counties previously designated urban but now designated rural will experience an average payment increase of approximately 6.9 percent. As mentioned above, however, this effect is the result of one hospital in this category experiencing a payment increase in excess of 23 percent due to its corresponding change to an SCH. All 12 other hospitals in this group will receive decreases in payments. However, section 1886(d)(8)(A) of the Act provides for an adjustment to the payment amounts for these hospitals. In the first year that a hospital loses urban status, an eligible hospital will receive, in addition to its rural average standardized amount, two-thirds of the difference between its present rural standardized amount plus DSH payments and the urban standardized

amount plus DSH payments that it would have received if it had retained its urban status. In the second year, the hospital's additional payment will be one-third of the difference between the rural standardized amount plus DSH payments and the appropriate urban standardized amount plus DSH payments.

Because the urban/rural categories in Table III are based on the new MSAs, the payment increase for urban hospitals reflects the higher payments to rural hospitals in counties redesignated as urban and hospitals in other urban counties redesignated as large urban. Also, the urban/rural bed size and region categories demonstrate the positive impact of this change on urban hospitals and the generally negative impact on rural hospitals.

Urban hospitals with fewer than 100 beds and urban hospitals located in the New England census division experience 0.6 percent higher payments in this column. Among the 741 urban hospitals with fewer than 100 beds, 76 are located in counties that were previously rural but are now urban under the new MSA definitions, and 30 of these hospitals are in counties that were previously defined as other urban but are now large urban. Of the 172 urban hospitals in New England, 48 are hospitals that were previously in other urban counties that are now designated large urban.

Among hospitals grouped by their payment status, the most notable impact is on the category of urban hospitals with fewer than 100 beds that receive DSH payments. Payments to these hospitals increase 1.1 percent. Among the 140 hospitals in this category, 17 were in counties redesignated from rural to urban, and thus receive a DSH adjustment of 5 percent instead of 4 percent or none at all (5 of these hospitals did not meet the higher eligibility requirement for rural hospitals with fewer than 100 beds).

Among hospitals that were reclassified by the MGCRB for FY 1993 but not for FY 1994, 107 hospitals were in counties going either from rural to urban or from other urban to large urban. This helps explain the 1.1 percent higher payments for this group of hospitals.

As discussed in the preamble to this final rule, we are also assigning the wage index based on the new MSA definitions. Column 3 shows the impacts of this change. Beginning from a baseline using the new MSAs to assign the standardized amounts but using the old MSAs to assign the FY 1993 wage index values, we measure the payment impact of calculating and then assigning the wage indexes based on the new MSAs. The effect of the FY 1990 wage data is not shown here. Rather, for purposes of this column, we analyzed the effect of a wage index based on the new MSAs and 1988 survey data relative to a wage index based on the old MSAs and 1988 survey data.

Except for the categories identified in the previous column as benefitting from assigning the standardized amounts based on the new MSAs, the general effect of this change is to lower payments. Total payments are 0.1 percent less after this change. This does not mean, however, that actual total payments for FY 1994 will be less than they would be otherwise. As described in the addendum to this final rule, section 1886(d)(3)(E) of the Act requires that any updates or adjustments to the wage index must be made in a budget neutral manner. The new MSA assignments are only part of the changes being proposed for the wage index. We are also incorporating wage data for cost reporting periods beginnning in FY 1990. The effects of the new wage data are shown in column 4 of Table III and are discussed below. The net change in total estimated FY 1994 payments due to the proposed revisions to the wage index is budget neutral (−0.1 percent due to the new MSAs and 0.1 percent due to the new wage survey data).

The reason for the −0.1 percent change overall in Column 3 relates primarily to the hospitals moving to areas with higher wage index values and the characteristics of those hospitals relative to the areas they are leaving. The average hourly wage of hospitals in counties redesignated from rural to urban are generally higher than the average hourly wages of the hospitals in the rural areas to which they were previously designated, but are lower than the average hourly wages of the hospitals in the urban areas to which they are now designated. The percent increase in payments among this group of hospitals due to the new MSA wage index assignments is 7.2 percent. Among hospitals in counties previously designated as other urban that are now in large urban areas, the effect is 1.6 percent higher payments. This is only half of the effect displayed for this group of hospitals in the proposed rule. This results from the fact that, as a result of the Office of Management and Budget's revision of the MSA definitions in the interim, there were fewer hospital redesignations from other urban areas to large urban areas. The 13 hospitals that change from urban to rural experience a 6.0 percent decrease in payments as a result of receiving the rural wage index.

Most of the categories of hospitals noted previously as benefitting from the new MSA definitions benefit here as well: urban DSH hospitals with fewer than 100 beds (1.1 percent increase), hospitals reclassified for FY 1993 but not FY 1994 (1.0 percent), and urban hospitals with fewer than 100 beds (1.0 percent).

Significant impacts occur among other hospital groups as well. Payments to rural hospitals in the New England and South Atlantic census division are 0.5 percent and 0.6 percent lower, respectively, after determining the wage indexes based on the new MSAs. Payments to the 5 rural Puerto Rico hospitals increase by 0.9 percent, however. Among rural DSH hospitals, payments fall by 1.2 percent to those with 100 or more beds and by 0.5 percent to rural DSH hospitals with fewer than 100 beds. Also experiencing 0.6 percent payment declines here are rural hospitals that do not receive any special payment treatment.

The second major change to the FY 1994 wage index is that it is based on data submitted for hospital cost reporting periods beginning on or after October 1, 1989 and before September 30, 1990. The FY 1993 wage index is based on a HCFA survey of hospital wage and salary data for all hospitals subject to the prospective payment system with cost reporting periods ending in calendar year 1988. Column 4 displays the effects of the updated data. As noted in the previous discussion, the overall effect of this change is a 0.1 percent rise in payments, offsetting the −0.1 percent change attributable to the effects of the new MSA designations, so that the combined impact of the final changes to the wage index is 0.0.

The results illustrate that, relative to the 1988 data, the new survey data produce higher wage index values for hospitals in large urban areas and lower wage index values for hospitals in rural areas. Also, among the hospitals located in counties that change their MSA status, hospitals in areas moving from rural to urban have 1.2 percent higher payments when the new wage data are included. The hospitals redesignated from urban to rural lose 0.9 percent in payments under this column.

The negative impact on rural hospitals is consistent across various bed size categories, although there is some variation among rural hospitals by region. Puerto Rico, with only 5 rural hospitals, is helped considerably by the new survey data, showing an 11.6 percent rise in payments. We believe this is largely attributable to the inclusion of the contract wage data reported on the FY 1990 cost reports.

Payments to urban hospitals in Puerto Rico also increased, by 2.9 percent. Rural hospitals in the East North Central, East South Central, and West South Central census divisions experience the biggest declines among rural hospitals: −1.8 percent, −1.4 percent, and −1.3 percent, respectively.

Among urban hospitals by bedsize, those with 500 or more beds experience the greatest increases due to the new survey data (0.7 percent). Examining urban hospitals by region, the higher wage indexes among Puerto Rico's urban hospitals were noted above. Other urban regions benefitting from the new data are the New England and the Middle Atlantic census divisions, with 1.0 percent and 2.0 percent higher payments, respectively. On the other hand, payments fall for urban hospitals in the East North Central (−1.0 percent), East South Central (−0.9 percent), West North Central (−0.6 percent), and the West South Central (−0.8 percent).

Among special payment categories, the largest decreases are experienced by rural DSH hospitals with fewer than 100 beds (−1.2 percent), rural hospitals not eligible for any of the special rural hospital classifications (−1.2 percent), RRCs (−1.5 percent), and MDHs (−0.9 percent). The trend of urban hospitals experiencing increases and rural hospitals experiencing decreases continues within hospitals grouped by their FY 1994 reclassification status.

Column 5 of Table III shows the combined effects of the four changes discussed above. It corresponds to Column 4 in Table I. The percent changes in Column 4 are calculated by comparing the changes in FY 1994 payments after these changes to the post-Public Law 103–66 FY 1994 baseline before making any of these changes. While the sum of the changes shown in Columns 1 through 4 generally equal the overall changes shown in this column, they may not add exactly. This results from rounding variances and interactive effects. For example, the DRG and wage index changes are multiplicative rather than additive.

TABLE III.—IMPACT ANALYSIS OF FINAL OPERATING COST

[Prospective Payment System Changes for FY 1994]

	No. of hosps.[1]	Recalibration change[2] (1)	New MSA: Standard amounts[3] (2)	New MSA: Wage index[4] (3)	New wage survey data[5] (4)	Combined final rule changes[6] (5)
By geographic location:						
All Hospitals	5,302	0.0	0.2	−0.1	0.1	0.2
Large urban areas (Populations over 1 million)	1,636	0.1	0.3	−0.1	0.8	1.0
Other urban areas (Populations of 1 million or fewer)	1,344	0.0	0.2	0.0	−0.6	−0.4
Rural areas	2,322	−0.1	0.0	−0.2	−1.1	−1.4
Hospitals Changing MSA Due to 1990 Census:						
Rural to urban	108	0.0	8.1	7.2	1.2	17.3
Urban to rural	13	−0.3	6.9	−6.0	−0.9	−0.7
Other urban to large urban	143	0.1	1.7	1.6	0.2	3.5
Urban Hospitals	2,980	0.1	0.3	−0.1	0.2	0.5
0–99 beds	750	−0.1	0.6	1.0	−0.1	1.5
100–199 beds	899	0.0	0.4	0.1	0.1	0.7
200–299 beds	611	0.1	0.3	−0.1	0.0	0.3
300–499 beds	529	0.1	0.2	−0.2	0.1	0.2
500 or more beds	191	0.1	0.3	−0.3	0.7	0.7
Rural Hospitals	2,322	−0.1	0.0	−0.2	−1.1	−1.4
0–49 beds	1,180	−0.2	−0.2	−0.2	−1.0	−1.6
50–99 beds	708	−0.1	−0.2	−0.3	−1.0	−1.6
100–149 beds	222	0.0	−0.1	−0.3	−0.9	−1.3
150–199 beds	106	0.0	0.0	−0.1	−1.0	−1.2
200 or more beds	106	0.0	0.3	−0.2	−1.2	−1.0
Urban by region:.						
New England	172	0.0	0.6	−0.1	1.0	1.5
Middle Atlantic	447	0.2	0.4	−0.2	2.0	2.3
South Atlantic	453	0.0	0.4	0.0	0.4	0.9
East North Central	498	0.1	0.2	0.0	−1.0	−0.8
East South Central	170	0.0	0.4	0.0	−0.9	−0.4
West North Central	187	0.0	0.1	−0.1	−0.6	−0.6
West South Central	380	0.1	0.1	0.1	−0.8	−0.6
Mountain	121	0.0	0.1	−0.2	−0.3	−0.4
Pacific	502	0.0	0.1	−0.1	0.2	0.2
Puerto Rico	50	0.4	0.4	−0.3	2.9	3.4
Rural by region:.						
New England	53	−0.1	0.0	−0.5	0.9	0.3
Middle Atlantic	85	0.0	0.9	0.0	0.6	1.4
South Atlantic	302	0.0	−0.1	−0.6	−1.2	−1.9
East North Central	313	−0.1	−0.1	0.0	−1.8	−1.9
East South Central	289	−0.2	−0.2	−0.2	−1.4	−2.0
West North Central	542	−0.1	−0.1	0.0	−0.9	−1.1
West South Central	361	−0.1	−0.1	−0.2	−1.3	−1.7
Mountain	227	−0.1	−0.1	−0.1	−1.1	−1.4
Pacific	145	0.0	−0.1	−0.3	−1.2	−1.7
Puerto Rico	5	−0.1	−0.2	0.9	11.6	12.3

TABLE III.—IMPACT ANALYSIS OF FINAL OPERATING COST—Continued

[Prospective Payment System Changes for FY 1994]

	No. of hosps.[1]	Recalibration change[2] (1)	New MSA: Standard amounts[3] (2)	New MSA: Wage index[4] (3)	New wage survey data[5] (4)	Combined final rule changes[6] (5)
By payment classification:						
All hospitals	5,302	0.0	0.2	−0.1	0.1	0.2
Large urban areas (Populations over 1 million)	1,816	0.1	0.3	−0.1	0.7	0.9
Other urban areas (Populations of 1 million or fewer)	1,421	0.0	0.2	0.0	−0.7	−0.5
Rural areas	2,065	−0.1	0.0	−0.2	−1.0	−1.4
Teaching status:						
Non-teaching	4,261	0.0	0.3	0.1	−0.2	0.1
Fewer than 100 residents	821	0.1	0.2	−0.2	−0.1	−0.1
100 or more residents	220	0.1	0.3	−0.4	1.0	1.0
Disproportionate share hospitals (DSH):						
Non-DSH	3,481	0.0	0.2	−0.1	−0.1	0.0
Urban DSH:.						
100 beds or more	1,302	0.1	0.3	−0.1	0.3	0.6
Fewer than 100 beds	140	−0.1	1.1	1.1	0.0	2.2
Rural DSH:						
Sole Community (SCH)	112	−0.1	−0.1	−0.1	−0.6	−0.9
Referral centers (RRC)	48	0.0	0.1	−0.2	−1.3	−1.4
Other rural DSH hosp:.						
100 beds or more	60	−0.1	−0.4	−1.2	−0.7	−2.3
Fewer than 100 beds	159	−0.3	−0.3	−0.5	−1.2	−2.3
Urban teaching and DSH:						
Both teaching and DSH	605	0.1	0.2	−0.3	0.5	0.6
Teaching and no DSH	386	0.1	0.2	−0.2	0.0	0.0
No teaching and DSH	837	0.0	0.5	0.2	−0.1	0.7
No teaching and no DSH	1,409	0.0	0.2	0.1	0.1	0.4
Rural hospital types:						
Nonspecial Status Hospitals	843	−0.1	−0.3	−0.6	−1.2	−2.2
RRC	156	0.0	0.1	0.0	−1.5	−1.4
SCH	558	−0.1	0.4	−0.1	−0.4	−0.2
MDH	461	−0.2	−0.2	−0.2	−0.9	−1.4
SCH and RRC	47	0.0	0.1	−0.1	−0.4	−0.5
SCH and MDH	1,066	−0.1	0.1	−0.1	−0.6	−0.6
Type of ownership:						
Voluntary	3,059	0.1	0.2	−0.1	0.0	0.2
Proprietary	776	0.0	0.1	−0.1	0.4	0.4
Government	1,467	0.0	0.3	−0.1	0.0	0.2
Medicare utilization as a percent of inpatient days:						
0–25	309	0.0	0.1	−0.2	0.2	0.4
25–50	1,614	0.1	0.2	−0.2	0.3	0.4
50–65	2,301	0.0	0.3	0.0	−0.2	0.1
Over 65	1,012	0.0	0.2	−0.1	−0.1	0.0
Hospitals reclassified by the Medicare geographic Review board:						
Reclassification status during FY 93 and FY 94:						
Reclassified during both FY 93 and FY 94	551	0.0	0.3	−0.1	0.3	0.6
Urban	188	0.1	0.5	−0.1	1.3	1.8
Rural	363	−0.1	0.0	−0.1	−1.2	−1.4
Reclassified during FY 94 only	114	0.1	0.2	−0.2	0.2	0.3
Urban	41	0.1	0.2	−0.2	0.6	0.7
Rural	73	−0.1	−0.1	−0.1	−1.0	−1.2
Reclassified during FY 93 only	672	0.0	0.8	1.0	0.0	1.8
Urban	278	0.1	1.1	1.6	0.5	3.4
Rural	394	0.0	0.3	−0.2	−1.1	−1.0
FY 94 Reclassifications:						
All Reclassified hosp	669	0.0	0.3	−0.1	0.3	0.5
All nonreclassified hospitals	4,606	0.0	0.2	−0.1	0.0	0.2
All urban reclassified hospitals	230	0.1	0.5	−0.1	1.2	1.6
Urban nonreclassified hospitals	2,750	0.1	0.3	−0.1	0.1	0.4
All reclassified rural hospitals	439	−0.1	0.0	−0.1	−1.2	−1.4
Rural nonreclassified hospitals	1,856	−0.1	0.0	−0.3	−1.0	−1.4
Other reclassified hospitals (section 1886(D)(8)(B))	27	−0.1	0.1	0.0	−1.3	−1.3

[1] Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Hospital-specific data and discharges data are from FY 1992, and hospital cost report data are from reporting periods beginning in FY 1991.

[2] Recalibration of the DRG weights and classification changes are based on FY 1992 MEDPAR data and are performed annually in accordance with section 1886(d)(4)(C) of the Act.

TABLE III.—IMPACT ANALYSIS OF FINAL OPERATING COST

[Prospective Payment System Changes for FY 1994]

[3] This column reflects all of the payment impacts of the new MSA definitions based on the 1990 census except those related to the wage index.

[4] This column shows the payment effects of the new MSA definitions on the wage index.

[5] This column displays the combined effects of the changes to the prospective payment system described in this final rule. Although it incorporates all of the changes displayed in columns 2 through 4, the sum of those columns may be slightly different from the percentage changes shown here, due to rounding errors and interactive effects.

Table IV presents the projected average payments per case under the changes for FY 1994 for urban and rural hospitals and for the different categories of hospitals shown in Tables I and III. It compares the projected payments with the average estimated per case payments that were during FY 1993. Thus, this table presents, in terms of the average dollar amounts paid per discharge, the combined effects of the changes presented in Table I. That is, the percentage changes shown in the last column of Table I equal the percentage change in average payments from October 1, 1993 to October 1, 1994.

TABLE IV.—IMPACT ANALYSIS OF FINAL OPERATING COST PROSPECTIVE PAYMENT SYSTEM CHANGES FOR FY 1994

	Number of hospitals (1)	Average FY 1993 payments per case (2)	Average FY 1994 payments per case (3)	All changes (4)
By geographic location:				
All hospitals	5,302	5,874	6,058	3.1
Large urban areas (populations over 1 million)	1,636	6,786	7,074	4.2
Other urban areas (populations of 1 million or fewer)	1,344	5,731	5,875	2.5
Rural areas	2,322	4,000	4,014	0.3
Hospitals changing MSA due to 1990 census:				
Rural to urban	108	4,545	4,987	9.7
Urban to rural	13	4,068	4,171	2.1
Other urban to large urban	143	6,090	6,413	5.3
Urban hospitals	2,980	6,328	6,553	3.6
0–99 beds	750	4,379	4,518	3.2
100–199 beds	899	5,352	5,539	3.5
200–299 beds	611	5,864	6,051	3.2
300–499 beds	529	6,650	6,883	3.5
500 or more beds	191	8,153	8,491	4.1
Rural hospitals	2,322	4,000	4,014	0.3
0–49 beds	1,180	3,347	3,340	-0.2
50–99 beds	708	3,696	3,710	0.4
100–149 beds	222	4,129	4,173	1.1
150–199 beds	106	4,265	4,250	-0.3
200 or more beds	106	4,817	4,840	0.5
Urban by region:				
New England	172	6,635	6,850	3.2
Middle Atlantic	447	6,921	7,316	5.7
South Atlantic	453	6,006	6,228	3.7
East North Central	498	6,181	6,304	2.0
East South Central	170	5,537	5,716	3.2
West North Central	187	6,165	6,304	2.3
West South Central	380	5,817	5,986	2.9
Mountain	121	6,195	6,355	2.6
Pacific	502	7,164	7,423	3.6
Puerto Rico	50	2,425	2,577	6.3
Rural by Region:				
New England	53	4,725	4,898	3.7
Middle Atlantic	85	4,428	4,534	2.4
South Atlantic	302	4,100	4,105	0.1
East North Central	313	4,060	4,033	-0.6
East South Central	289	3,664	3,667	0.1
West North Central	542	3,727	3,764	1.0
West South Central	361	3,703	3,685	-0.5

TABLE IV.—IMPACT ANALYSIS OF FINAL OPERATING COST PROSPECTIVE PAYMENT SYSTEM CHANGES FOR FY 1994—Continued

	Number of hospitals (1)	Average FY 1993 payments per case (2)	Average FY 1994 payments per case (3)	All changes (4)
Mountain	227	4,301	4,290	−0.3
Pacific	145	4,830	4,836	0.1
Puerto Rico	5	1,561	1,910	22.4
By payment classification:				
All hospitals	5,302	5,874	6,058	3.1
Large urban areas (populations over 1 million)	1,816	6,670	6,950	4.2
Other urban areas (populations of 1 million or fewer)	1,421	5,608	5,741	2.4
Rural areas	2,065	3,980	3,973	−0.2
Teaching Status:				
Non-teaching	4,261	4,895	5,025	2.7
Fewer than 100 residents	821	6,319	6,503	2.9
100 or more residents	220	9,584	10,000	4.7
Disproportionate share hospitals (DSH):				
Non-DSH	3,481	5,283	5,410	2.4
Urban DSH:.				
100 Beds or more	1,302	6,869	7,148	4.1
Fewer than 100 beds	140	4,190	4,370	4.3
Rural DSH:.				
Sole community (SCH)	112	3,823	3,887	1.7
Referral centers (RRC)	48	4,936	4,884	−1.1
Other rural DSH hospitals:.				
100 beds or more	60	3,526	3,553	0.8
Fewer than 100 beds	159	3,117	3,122	0.2
Urban teaching and DSH:.				
Both teaching and DSH	605	7,869	8,198	4.2
Teaching and no DSH	386	6,530	6,710	2.8
No teaching and DSH	837	5,482	5,692	3.8
No teaching and no DSH	1,409	5,103	5,263	3.1
Rural hospital types:.				
Nonspecial status hospitals	843	3,459	3,455	−0.1
RRC	156	4,686	4,641	−1.0
SCH	558	3,994	4,074	2.0
MDH	461	3,459	3,364	−2.7
SCH and RRC	47	4,813	4,841	0.6
SCH and MDH	1,066	3,982	3,997	0.4
Type of ownership:.				
Voluntary	3,059	6,016	6,201	3.1
Proprietary	776	5,373	5,566	3.6
Government	1,467	5,549	5,720	3.1
Medicare utilization as a percent of inpatient days:.				
0–25	309	7,551	7,892	4.5
25–50	1,614	6,774	7,022	3.7
50–65	2,301	5,371	5,519	2.7
Over 65	1,012	4,710	4,793	1.8
Hospitals reclassified by the medicare geographic review board:				
Reclassification status during FY93 and FY94:				
Reclassified during both FY93 and FY94	551	5,457	5,679	4.1
Urban	188	6,429	6,768	5.3
Rural	363	4,413	4,508	2.2
Reclassified during FY94 only	114	5,414	5,820	7.5
Urban	41	6,289	6,735	7.1
Rural	73	3,823	4,157	8.8
Reclassified during FY93 only	672	5,114	5,121	0.2
Urban	278	5,740	5,846	1.9
Rural	394	4,239	4,109	−3.1
FY94 reclassifications:				
All reclassified hospitals	669	5,450	5,697	4.5
All nonreclassified hospitals	4,606	5,941	6,116	3.0
All urban reclassified hospitals	230	6,406	6,762	5.6
Urban nonreclassified hospitals	2,750	6,321	6,534	3.4
All reclassified rural hospitals	439	4,349	4,470	2.8
Rural nonreclassified hospitals	1,856	3,838	3,803	−0.9
Other reclassified hospitals (section 1886(D)(8)(B))	27	4,378	4,445	1.5

VII. Impact of Changes in the Capital Prospective Payment System

A. General Considerations

Our impact analysis of payment changes for capital-related costs is limited by the lack of hospital-specific data on future hospital capital investments. The lack of hospital-specific data limits our impact analysis in the following ways:

- Major investment in hospital capital assets (for example, in building and major fixed equipment) occurs at irregular intervals. As a result, there can be significant variation in the growth rates of Medicare capital-related costs per case among hospitals. We do not have the necessary hospital-specific budget data to project the hospital capital growth rate for an individual hospital.
- Moreover, our policy of recognizing certain obligated capital as old capital complicates the problem of projecting future capital-related costs for individual hospitals. Under § 412.302(c), a hospital was required to notify its intermediary that it has obligated capital by the later of October 1, 1992 or 90 days after the beginning of the hospital's first cost reporting period under the capital prospective payment system. The intermediary must then notify the hospital of its determination whether the criteria for recognition of obligated capital have been met by the later of the end of the hospital's first cost reporting period subject to the capital prospective payment system or 9 months after the receipt of the hospital's notification. The amount that is recognized as old capital is limited to the lesser of the actual allowable costs when the asset is put in use or the estimated costs of the capital expenditure at the time it was obligated. Intermediary determinations regarding obligated capital are still being reported to us. Therefore, we do not know actual obligated capital commitments to be used in the FY 1994 capital cost projections. Without knowing what proportion of an individual hospital's future capital spending will qualify as old capital, we cannot accurately project how an individual hospital will be affected by the transition payment policies.

In Table V of this appendix, we present the redistributive effects that are expected to occur between "hold-harmless" hospitals and "fully prospective" hospitals in FY 1994. In addition, we have integrated sufficient hospital-specific information into our actuarial model to project the impact of FY 1994 capital payment policies by the standard prospective payment system hospital groupings. We caution that while we now have actual data on the effects of the transition payment methodology and interim payments under the capital prospective payment system and cost report data for most hospitals, we need to generate randomly hypothetical data for the change in old capital costs, new capital costs for each year, and obligated amounts that will be put in use for patient care services and recognized as old capital each year. This means that we continue to be unable to predict accurately an individual hospital's FY 1994 capital costs; however, with the more recent data on the experience to date under the capital prospective payment system, there is adequate information to estimate the aggregate impact on most hospital groupings.

Comment: One commenter objected to our use of hypothetical data for the changes in old capital costs, new capital costs, and obligated amounts that will be put in use for patient care. The commenter stated that changes should not be proposed on the basis of incomplete data, and urged HCFA to obtain the requisite data.

Response: We have no choice but to use randomly generated data for these purposes at this time. The law requires us to estimate total hospital capital costs in order to set the budget neutrality target each year. In order to make that estimate, estimates of old capital changes, new capital changes, and obligated capital are necessary. In the absence of a substantial data base on which to base projections of these factors, we employ the random generation method described above. We believe that this method allows us to make the most reliable estimates possible. However, we have made every effort to progressively incorporate as much actual data as possible into the model. We have used multiple sources for actual data such as provider-specific files, cost reports, and capital audit files. We have also revised the cost reports to collect data on old capital, new capital, and obligated capital amounts separately. However, we do not yet have actual cost report data on these factors because the cost reports for the first years under capital-PPS have not yet been completely filed. As these cost reports become available we will be able to incorporate actual experience into our analysis.

We have revised Table V after the publication of the proposed rule to provide some information on the effects of the 7.4 percent reduction to the standard Federal rate required under section 13501(a)(3) of Public Law 103–66. (Table V in this final rule was presented as Table IV in the proposed rule.) Specifically, we are presenting separate blocks in the table to show (1) what the effects on FY 1994 payments would have been in the absence of the 7.4 percent reduction to the standard Federal rate, and (2) the effects of all changes, including the 7.4 percent reduction to the standard rate, on payments in FY 1994. We have also added Table Va to provide more detailed information on the effects of Public Law 103–66. In Tables V and Va, we used the same outlier effects that we used in conjunction with setting the final rate for FY 1994 (that is, the rate with the effects of the 7.4 percent reduction to the standard rate). If we had recalibrated outliers for the unreduced Federal rate, the budget neutrality factor and the estimated rate might have been slightly different. However, the estimates in Tables V and Va of the effects without the reduction to the standard Federal rate are adequate for the purpose of evaluating the relative impact of the 7.4 percent reduction to the standard Federal rate.

We present the transition payment methodology by hospital grouping in Table VI. In Table VII, we present the results of the cross-sectional analysis using the results of our actuarial model. This table presents the aggregate impact of the FY 1994 payment policies. We have also revised Table VII to provide information on the effects of Public Law 103–66. In Table VIII, we present a simulation of payments based on 100 percent of the Federal rate. This simulation shows the average percentage change in the 100 percent Federal rate payments attributable to the revised rate and changes in payment adjustments.

B. Projected Impact Based on the FY 1994 Actuarial Model

1. *Assumptions.* In this impact analysis, we model dynamically the impact of the capital prospective payment system from FY 1993 to FY 1994 using an actuarial model. The FY 1994 actuarial model, described in appendix B of this final rule, integrates actual data from individual hospitals with randomly generated capital cost amounts and ratios developed from the results of the capital acquisition model used in the August 30, 1991 final rule. We have available capital cost data from cost reports beginning in FY 1989, FY 1990, and FY 1991 received through the June 30, 1993 update of the Hospital Cost Reporting Information System (HCRIS), interim payment data for hospitals already receiving capital prospective payments through PRICER, and data reported by the intermediaries

that include the hospital-specific rate determinations that have been made through June 1993 in the Provider-Specific file. We used these data to determine the FY 1994 capital rates. However, we do not have individual hospital data on old capital changes, new capital formation, and obligated capital. Because we can combine actual data for individual hospitals with the results from the capital acquisition model, we need to generate randomly only the old and new capital changes and obligated capital. All Federal rate payment parameters are assigned to the applicable hospital.

For purposes of this impact analysis, the FY 1994 actuarial model includes the following assumptions:

- Medicare inpatient capital costs per discharge will increase at the following rates during these periods:

Fiscal year	Average percentage increase in capital costs per discharge
1993	8.24
1994	9.45

- The Medicare case-mix index will increase by 1.3 percent in FY 1993 and 2.0 percent in FY 1994 and thereafter.
- The Federal capital rate as well as the hospital-specific rate will be updated by the 2-year moving average increase in Medicare capital costs per case, net of case mix change increase, between FY 1989 and FY 1991. The FY 1994 update is 3.04 percent (see Addendum, Part III).
- Consistent with the budget neutrality constraints provided in section 1886(g)(1)(A) of the Act, estimated aggregate Medicare payments under the capital prospective payment system in FY 1994 will equal 90 percent of the total amount that would have payable for Medicare inpatient capital-related costs on a reasonable cost basis. The budget neutrality adjustment factor is applied to the Federal and hospital-specific rates only and not to the hold-harmless payment for old capital.

2. *Results.* We have used the actuarial model to estimate the change in payment for capital-related costs from FY 1993 to FY 1994. To show the effect of the capital prospective payment system on low capital cost hospitals and high capital cost hospitals, we are presenting separately in Table V the results of our simulation for low capital cost and high capital cost hospitals. We consider a hospital to be a low capital cost hospital if, based on a comparison of its initial hospital-specific rate and the applicable Federal rate, it will be paid under the fully prospective payment methodology. A high capital cost hospital is a hospital that, based on its initial hospital-specific rate, will be paid under the hold-harmless payment methodology. Based on our actuarial model, the breakdown of hospitals is as follows:

CAPITAL TRANSITION PAYMENT METHODOLOGY

Type of hospital	Percent of hospitals	FY 1994 percent of discharges	FY 1994 percent of capital costs	FY 1994 percent of capital payments
Low cost hospital ..	69	65	53	56
High cost hospital ..	31	35	47	44

A low capital cost hospital may request to have its hospital-specific rate redetermined based on old capital costs in the current year, through the later of the hospital's cost reporting period beginning in FY 1994 or the first cost reporting period beginning after obligated capital comes into use (within the limits established in § 412.302(c) for putting obligated capital in use for patient care). If the redetermined hospital-specific rate is greater than the adjusted Federal rate, these hospitals will be paid under the hold-harmless payment methodology. Public Law 103–66 requires a 7.4 percent reduction to the standard Federal rate. Public Law 103–66 also provides for a special redetermination of hospital payment methodologies to take into account that reduction. We discuss this provision in section V.D of the Preamble to this final rule. Regardless of whether the hospital would become a hold-harmless payment hospital as a result of a redetermination in FY 1993 or FY 1994, we have continued to show these hospitals as low capital cost hospitals in Table V.

The following table shows our estimate of the percentage of low capital cost hospitals that would be paid under the hold-harmless payment methodology through a hospital-specific rate redetermination and the basis of their payment under the hold-harmless payment methodology. The table includes the effects of Public Law 103–66.

Fiscal year	Percent of low cost hospitals that qualify for hold-harmless methodology	Of these, percent that are paid:	
		100% Federal rate	Hold-harmless
1993	3.4	37	63
1994	11.3	39	61

The large increase in the number of low cost hospitals that qualify for the hold-harmless methodology is primarily a result of the 7.4 percent reduction to the standard Federal rate. As a result of the redeterminations required to take into account that reduction, a large number of hospitals that would not otherwise have qualified as hold-harmless will receive payment under the hold-harmless methodology.

Assuming no behavioral changes in capital expenditures, Table V displays the percentage change in payments from FY 1993 to FY 1994 using the above described actuarial model.

TABLE V.—FINAL CAPITAL BUDGET NEUTRALITY FOR FY 1993–1994

[Impact of Changes for FY 1994 on Payments Per Discharge]

	No. of hosps.	Discharges	Adjusted federal payment	Average federal percent	Hospital specific payment	Hold-harmless payment	Exceptions payment	Total payment	
FY 1993 Payments Per Discharge									
Low Cost Hospitals	3,629	6,730,867	$140.93	21.44	$359.64	$15.03	$3.63	$519.25	
Fully Prospective	3,361	6,157,778	131.73	20.00	373.75		1.95	507.45	
Rebase—Fully Prospective	146	310,309	129.94	20.00	384.06		34.36	548.37	
Rebase—100% Federal Rate	45	128,095	651.51	100.00		651.51			
Rebase—Hold Harmless	77	134,685	101.53	16.45		751.38	12.88	865.80	
High Cost Hospitals	1,640	3,654,435	303.71	45.26		485.73	1.97	791.42	
100% Federal Rate	478	1,269,750	694.10	100.00				694.10	
Hold Harmless	1,162	2,384,684	95.84	14.55		744.37	3.02	843.23	
Total Hospitals	5,269	10,385,303	198.21	29.93	233.08	180.66	3.05	615.02	
FY 1994 Payments Per Discharge Before Effects of OBRA '93									
Low Cost Hospitals	3,629	6,733,457	$194.64	30.84	$300.47	$17.80	$29.22	$542.15	4.41
Fully Prospective	3,353	6,151,812	189.61	30.00	312.72		26.60	528.94	4.23
Rebase—Fully Prospective	149	311,273	186.81	30.00	319.41		86.07	592.30	8.00
Rebase—100% Federal Rate	33	91,436	634.15	100.00				634.15	−2.66
Rebase—Hold Harmless	94	178,935	156.86	25.83		670.13	35.23	862.22	−0.41
High Cost Hospitals	1,640	3,655,773	318.04	48.66		470.20	13.39	801.64	1.29
100% Federal Rate	439	1,168,288	691.29	100.00				691.29	−0.40
Hold Harmless	1,201	2,487,485	142.73	22.45		691.04	19.69	853.47	1.21
Total Hospitals	5,269	10,389,230	238.06	37.26	197.74	176.99	23.65	633.45	2.99
FY 1994 Payments Per Discharge After Effects of OBRA '93									
Low Cost Hospitals	3,629	6,733,457	$211.18	34.63	$272.25	$36.80	$27.32	$547.56	5.45
Fully Prospective	3,087	5,586,551	183.48	30.00	312.56		25.65	522.70	3.00
Rebase—Fully Prospective	132	271,737	182.70	30.00	320.25		77.61	580.56	5.87
Rebase—100% Federal Rate	161	427,583	623.69	100.00				623.69	−4.26
Rebase—Hold Harmless	249	447,584	180.12	31.40		553.73	31.27	765.12	−11.62
High Cost Hospitals	1,640	3,655,773	291.29	46.12		486.52	13.83	791.65	0.02
100% Federal Rate	389	1,053,983	676.59	100.00				676.59	−2.52
Hold Harmless	1,251	2,601,790	135.20	22.04		683.62	19.43	838.26	−0.59
Total Hospitals	5,269	10,389,230	239.37	38.77	176.45	195.05	22.57	633.45	2.99

TABLE V–A.—IMPACT OF OBRA '93 ON FY 1994 PAYMENTS PER DISCHARGE

	Remain on fully prospective	Fully prospective to 100% federal	Fully prospective to hold harmless	Remain on 100% federal	100% federal to hold harmless	Remain on hold harmless	All hospitals
Number of Hospitals	3,219	129	154	421	51	1,295	5,269
Number of Discharges	5,858,288	336,393	268,403	1,145,173	114,551	2,666,420	10,389,230
Adjusted Federal Payment:							
Before OBRA	$189.83	$194.46	$175.43	$694.95	$609.10	$143.68	$238.06
After OBRA	183.44	626.42	199.26	671.58	75.79	138.85	239.37
Percent Change	−3.3	222.1	13.5	−3.3	−87.5	−3.3	0.5
Average Federal Percent:							
Before OBRA	30.0	30.0	30.0	100.0	100.0	22.6	37.2
After OBRA	30.0	100.0	35.2	100.0	12.8	22.6	38.7
Hospital Specific Payment:							
Before OBRA	$299.85	$445.55	$434.96				$194.74
After OBRA	312.92					176.45	
Percent Change	4.3	−100.0	−100.0				−9.3

TABLE V–A.—IMPACT OF OBRA '93 ON FY 1994 PAYMENTS PER DISCHARGE—Continued

	Remain on fully prospective	Fully prospective to 100% federal	Fully prospective to hold harmless	Remain on 100% federal	100% federal to hold harmless	Remain on hold harmless	All hospitals
Hold Harmless Payment:							
Before OBRA	.....	.....	.....	.....	.....	$589.63	$176.99
After OBRA	.....	.....	$476.40	.....	$521.54	589.63	195.05
Percent Change	.....	.....	.....	.....	.....	0.0	10.2
Exceptions Payment:							
Before OBRA	$29.68	.....	$61.69	.....	.....	$20.73	$23.65
After OBRA	29.01	.....	27.82	.....	.....	21.41	22.57
Percent Change	−2.2	.....	−54.8	.....	.....	3.2	−4.5
Total Payment:							
Before OBRA	$519.37	$640.02	$672.09	$694.95	$609.10	$854.06	$633.45
After OBRA	525.39	626.42	703.49	671.58	597.33	849.90	633.45
Percent Change	1.1	−2.1	4.6	−3.3	−1.9	−0.4	0.0

Under section 1886(g)(1)(A) of the Act, aggregate payments under the capital prospective payment system for FY 1992 through 1995 are to equal 90 percent of what would have been payable on a reasonable cost basis in each year, respectively. (See Addendum, Part III for a full discussion of the capital budget neutrality provision.) We project that in FY 1993 aggregate payments under the capital prospective payment system will be 95.64 percent of reasonable costs, or 6.27 percent higher than the 90 percent target. We also estimate an increase in capital cost per case of 9.45 percent from FY 1993 to FY 1994. To achieve budget neutrality in FY 1994, we estimate there would be an aggregate 2.99 percent increase in Medicare capital payments over the FY 1993 payments (1.0945/1.0627 = 1.0299).

We project that, including the effects of Public Law 103–66, high capital cost hospitals will experience an average case-weighted increase of 0.02 percent and low capital cost hospitals will experience an average increase in payments per discharge of 5.45 percent (compared to 1.29 percent and 4.41 percent, respectively, in the absence of the reduction to the standard Federal rate required by Public Law 103–66). The relatively greater gain for low-cost hospitals is the result of numerous hospitals from this category moving into the more advantageous hold-harmless payment methodology as a result of hospital-specific rate redeterminations and the payment methodology redeterminations provided under Public Law 103–66.

For hospitals paid under the fully prospective payment methodology, the Federal rate payment percentage will increase from 20 percent to 30 percent and the hospital-specific rate payment percentage will decrease from 80 percent to 70 percent in FY 1994.

The Federal rate payment percentage for a hospital paid under the hold-harmless payment methodology is based on the hospital's ratio of new capital costs to total capital costs. The average Federal rate payment percentage for those hospitals receiving a hold-harmless payment for old capital is estimated to increase from 14.55 percent to 22.04 percent. We estimate the percentage of hold-harmless hospitals paid based on 100 percent of the Federal rate will decrease from 29 percent to 24 percent. (The decrease would have been only to 27 percent in the absence of the 7.4 percent reduction to the Federal rate.)

The average hospital-specific rate payment per discharge falls from $233.08 in FY 1993 to $176.45 in FY 1994. The average hospital-specific rate payment per discharge would have been $194.74 in the absence of Public Law 103–66. A decline in the average hospital-specific rate payment per discharge from FY 1993 to FY 1994 is to be expected because of the reduction in the hospital-specific rate blend percentage and the 2.16 percent decrease in the hospital-specific rate from FY 1993 to FY 1994. The average hospital-specific rate payment per discharge is also lower than it would have been in the absence of Public Law 103–66, despite the fact that an indirect result of the 7.4 percent reduction to the standard Federal rate is a relative increase in the hospital-specific rate (a lesser reduction from FY 1993 to FY 1994 than would otherwise have been the case). That is because one result of Public Law 103–66 is a redetermination of the applicable hospital payment methodology to take into account the reduction to the standard Federal rate. As a result of those redeterminations, many hospitals previously paid under the fully prospective methodolgy will receive payment under the hold-harmless payment methodology. The hospitals that qualify to switch from fully prospective to hold-harmless will be those among the fully prospective hospitals with relatively high hospital-specific rates. Those hospitals that become hold-harmless will no longer receive any portion of their payments based on the hospital-specific rate. The remaining hospitals in the fully prospective group will thus have a lower average hospital-specific rate payment per discharge despite the fact that each of them will have a higher hospital-specific rate per discharge payment than in the absence of Public Law 103–66. Indeed, Table Va shows just this latter result. The average hospital-specific rate payment per discharge increases 4.3 percent (from $299.85 to $312.92) for those hospitals that remain fully prospective after the effects of Public Law 103–66 are taken into account.

Fully prospective hospitals that qualify for a redetermination and then receive hold-harmless payments would have experienced a 0.41 percent decline in payments in FY 1994 in the absence of Public Law 103–66. That same category of hospitals can be expected to experience an 11.62 percent decrease in FY 1994 after the effects of Public Law 103–66. Both declines reflect the movement into that category, intensified by the redeterminations provided under Public Law 103–66, of hospitals with old capital amounts relatively smaller than the hospitals previously in that category. These hospitals reduce the average hold-harmless payment per discharge for the larger resulting group.

Table Va shows a different aspect of these and other effects of Public Law 103–66. This table shows the effects separately for six stable categories of hospitals. As a result, none of the results in Table Va is affected by changing membership in any category, as is the

case in Table V. The six categories are: (1) Hospitals that are fully prospective before and after the effects of Public Law 103–66; (2) hospitals that switch from fully prospective to receiving payments based on 100% of the Federal rate as a result of Public Law 103–66; (3) hospitals that switch from fully prospective to receiving hold-harmless payments as a result of Public Law 103–66; (4) hospitals receiving payments based on 100% of the Federal rate before and after Public Law 103–66; (5) hospitals that switch from receiving payments based on 100% of the Federal rate to hold-harmless payments as a result of Public Law 103–66; and (6) those hospitals that were hold-harmless before Public Law 103–66 and remain hold-harmless (the effects of Public Law 103–66 produce no change in payment methodology for these hospitals). The table shows the difference, for each category, between the payments hospitals would have received in the absence of Public Law 103–66, and the payments they receive as a result of Public Law 103–66.

Hospitals that remain fully prospective will receive an average payment per discharge 1.1 percent higher than they would have without Public Law 103–66. The increase results from a 4.3 percent higher average hospital-specific rate payment per discharge, partially offset by a 3.3 percent lower Federal rate payment per discharge. The higher average hospital-specific rate payment per dischage is the result of the relative increase in the hospital-specific rate discussed above (i.e., the hospital-specific rate is higher than it would have been in the absence of Public Law 103–66 as an indirect effect of the 7.4 percent reduction to the standard Federal rate).

Hospitals that switch from fully prospective to 100% of the Federal rate will receive average payments per discharge 2.1 percent lower than the fully prospective payments they would have received in the absence of Public Law 103–66. We used our model to conduct a special analysis of the 129 hospitals that fall into this category. We found that about 92 of these hospitals (71 percent) will receive payments at 100% of the Federal rate that exceed their total Medicare capital costs. An additional 22 of the hospitals (17 percent) will receive payments that are between 90 percent and 100 percent of total costs (90 percent is the overall budget neutrality target for the initial years of the capital-PPS transition period). The remaining hospitals, (approximately 15, or 12 percent) will receive payments that are at least 85 percent of total costs (85 percent is the current level of hold-harmless payment for old capital, and it was the level of reimbursement under the reasonable cost system immediately prior to the introduction of prospective payment for capital). Although these hospitals would have received higher payments without the redetermination required by Public Law 103–66, the comparison of their payments to costs shows that overall payments to them are reasonable.

Hospitals that switch from fully prospective to receiving hold-harmless payments will receive average payments per discharge 4.6 percent greater than they would have received as fully prospective hospitals in the absence of Public Law 103–66. This is because they will receive the benefit of hold-harmless payments per discharge for old capital (an average of $476.40) greater than the hospital-specific rate payments per discharge they would have received as fully prospective hospitals (an average of $434.96), as well as larger Federal rate payments per discharge, due to an increase of the Federal rate portion of their payments from 30 percent (the FY 1994 blend percentage under the fully prospective methododology) to 35.2 percent (their average ratio of new to total Medicare capital), which more than offsets the 3.3 percent decline in Federal rate payments due to the reduction to the standard Federal rate.

Hospitals that remain 100% Federal will receive average payments per discharge 3.3 percent lower than they would have received in the absence of Public Law 103–66. The 3.3 percent decrease reflects the difference between the final FY 1994 Federal rate and our estimate of what the FY 1994 Federal rate would have been in the absence of the Public Law 103–66. The difference is due to the 7.4 percent reduction to the standard Federal rate, partially offset by a budget neutrality adjustment that is 4.33 percent higher than it would have been without the reduction to the base rate. Although these hospitals experience a decrease in average payments per discharge, they still receive 100% Federal rate payments in FY 1994 because 100% percent Federal rate payments are more advantageous for them than hold-harmless payments.

Hospitals that switch from 100% Federal rate payments to hold-harmless will receive average payments per discharge 1.9 percent lower than they would have received in the absence of Public Law 103–66. However, this reduction in average payments per discharge is less than the reduction they would have experienced if they had continued to receive payments based on 100% of the Federal rate (−1.9 percent compared to −3.3 percent). Finally, hold-harmless hospitals receive average payments per discharge 0.4 percent less than they would have received in the absence of Public Law 103–66. This is the result of the 3.3 percent decrease in the Federal rate payment, which constitutes an average of 22.6 percent of the payment for hospitals in this category.

We are making no changes in our exceptions policies in FY 1994. As a result, the minimum payment levels are still:

- 90 percent for sole community hospitals;
- 80 percent for urban hospitals with 100 or more beds and a disproportionate share patient percentage of 20.2 percent or more; or,
- 70 percent for all other hospitals.

We estimate that exceptions payments will increase from 0.5 percent of payments to 3.5 percent of payments in FY 1994. The projected distribution of the payments is shown in the table below:

ESTIMATED FISCAL YEAR 1994 EXCEPTIONS PAYMENTS

Type of hospital	No. of hospitals	Percent of exceptions of payments
Low Capital Cost	279	78
High Capital Cost	118	22
Total	397	100

C. Cross-Sectional Comparison of Capital Prospective Payment Methodologies

Table VI presents a cross-sectional summary of hospital groupings by capital prospective payment methodology. This distribution is generated by our actuarial model.

TABLE VI.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS

	(1) Total No. of hospitals	(2) Hold-harmless		(3)
		Percentage paid hold-harmless (A)	Percentate paid fully federal (B)	Percentage paid fully prospective rate
By Geographic Location				
All hospitals	5,269	28.4	10.4	61.2
Large urban areas (populations over 1 million)	1,621	32.9	13.6	53.3
Other urban areas (populations of 1 million of fewer)	1,331	34.0	12.9	53.0
Rural areas	2,317	22.1	6.7	71.1
Urban hospitals	2,952	33.4	13.3	53.2
0-99 beds	725	31.1	9.5	59.3
100-199 beds	897	41.3	12.5	46.0
200-299 beds	610	35.2	14.9	49.8
300-499 beds	529	25.8	16.0	58.0
500 or more beds	191	19.8	18.8	61.2
Rural hospitals	2,317	22.1	6.7	71.1
0-49 beds	1,176	15.9	4.8	79.1
50-99 beds	707	26.3	7.4	66.1
100-149 beds	222	34.2	9.4	56.3
150-199 beds	106	25.4	10.3	64.1
200 or more beds	106	33.9	13.2	52.8
By Region				
Urban by Region	2,952	33.4	13.3	53.2
New England	172	18.0	9.3	72.6
Middle Atlantic	447	21.2	17.6	61.0
South Atlantic	450	44.4	13.5	42.0
East North Central	496	22.7	12.9	64.3
East South Central	170	45.2	11.1	43.5
West North Central	186	34.9	12.9	52.1
West South Central	373	54.6	16.6	28.6
Mountain	119	43.6	15.1	41.1
Pacific	491	28.1	9.5	62.3
Puerto Rico	48	25.0	8.3	66.6
Rural by Region	2,317	22.1	6.7	71.1
New England	53	15.0	3.7	81.1
Middle Atlantic	85	17.6	8.2	74.1
South Atlantic	300	26.0	8.6	65.3
East North Central	313	18.2	5.4	76.3
East South Central	288	30.9	6.9	62.1
West North Central	542	16.0	5.5	78.4
West South Central	359	26.1	8.9	64.9
Mountain	227	23.7	5.7	70.4
Pacific	145	21.3	6.2	72.4
By Payment Classification				
All hospitals	5,269	28.4	10.4	61.2
Large urban areas (populations over 1 million)	1,801	32.9	13.6	53.4
Other urban areas (populations of 1 million of fewer)	1,408	33.0	11.8	55.1
Rural areas	2,060	21.4	6.6	71.8
Teaching Status:				
Non-teaching	4,228	29.5	9.3	61.0
Fewer than 100 Residents	821	26.0	14.3	59.5
100 or more Residents	220	15.9	16.3	67.7
Disproportionate share hospitals (DSH):				
Non-DSH	3,455	26.9	9.1	63.9
Urban DSH:				
100 or more beds	1,301	33.2	14.9	51.8
Less than 100 beds	135	25.9	10.3	63.7
Rural DSH:				
Sole Community (SCH)	112	19.6	5.3	75.0
Referral Center (RRC)	48	29.1	18.7	52.0
Other Rural:				
100 or more beds	60	40.0	1.6	58.3
Less than 100 beds	158	25.9	6.3	67.7
Urban teaching and DSH:				
Both teaching and DSH	605	22.6	17.3	60.0
Teaching and no DSH	386	24.8	11.6	63.4
No teaching and DSH	831	39.7	12.5	47.7
No teaching and no DSH	1,387	35.6	11.4	52.8

TABLE VI.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS—Continued

	(1) Total No. of hospitals	(2) Hold-harmless		(3)
		Percentage paid hold-harmless (A)	Percentate paid fully federal (B)	Percentage paid fully prospective rate
Rural Hospital Types:				
Non special status hospitals	838	19.2	7.2	73.5
RRC	156	32.0	10.8	57.0
SCH	558	25.2	5.7	68.9
Medicare-dependent hospitals (MDH)	461	15.8	4.9	79.1
SCH or MDH	1,066	21.6	5.5	72.7
Type of Ownership:				
Voluntary	3,035	27.1	11.3	61.5
Proprietary	770	54.8	12.7	32.4
Government	1,464	17.3	7.3	75.2
Medicare Utilization as a Percent of Inpatient Days:				
0–25	302	28.1	7.2	64.5
25–50	1,612	32.0	11.4	56.5
50–65	2,301	28.3	10.6	61.0
Over 65	1,010	23.7	9.0	67.2

As we explain in appendix B, we were not able to determine a hospital-specific rate for 33 of the 5,302 hospitals in our data base. Consequently, the payment methodology distribution is based on 5,269 hospitals. These data should be fully representative of the payment methodologies that will be applicable to hospitals.

The cross-sectional distribution of hospital by payment methodology is provided by: (1) Geographic location, (2) region, and (3) payment classification. This provides an indication of what percentage of hospitals within a particular hospital grouping will be paid under the fully prospective payment methodology and under the hold-harmless methodology.

Table VI indicates that 61.2 percent of hospitals are paid under the fully prospective payment methodology. (This does not include low cost hospitals that, following a hospital-specific rate determination, are now paid under the hold-harmless payment methodology.) As expected, a relatively higher percentage of rural and governmental hospitals (71.1 percent and 75.2 percent, respectively), are being paid on the fully prospective methodology. This is a reflection of their lower than average capital costs per case. In contrast, only 32.4 percent of proprietary hospitals are being paid under the fully prospective methodology. As we noted in the August 30, 1991 final rule (56 FR 43430), we found that 62.7 percent of proprietary hospitals have a capital cost per case above the national average cost per case.

D. Cross-Sectional Analysis of Changes in Aggregate Payments

We used our actuarial model to estimate the potential impact of our proposed changes for FY 1994 on total capital payments per case using a universe of 5,269 hospitals. The individual hospital payment parameters are taken from the best available data, including: The June 30, 1992 and June 30, 1993 updates to the Provider-Specific file, cost report data, and audit information supplied by intermediaries. Table VI presents a comparison of payments per discharge for FY 1993 and FY 1994. It also presents the portion of total percentage change in payments that can be attributed to Federal rate changes alone. Federal rate changes for FY 1994 include the 9.33 percent decrease in the Federal rate, a 2.0 percent increase in case mix, changes in the adjustments to the Federal rate (for example, the effect of the new hospital wage index and reclassifications by the Medicare Geographic Classification Review Board on the geographic adjustment factor.) The residual increase over the change attributable to the Federal rate changes can be attributed to the effects of transition changes, which include: the change from 20 percent to 30 percent in the portion of the Federal rate for fully prospective hospitals, the hospital-specific rate update, changes in the proportion of new to total capital for hold-harmless hospitals, changes in old capital (for example, obligated capital put in use), hospital-specific rate redeterminations, and exceptions. The comparisons are provided by: (1) Geographic location and (2) payment classification and payment region.

To highlight the effects of the 7.4 percent reduction to the standard Federal rate required under Public Law 103–66, we have added columns showing what payments would have been for each class of hospital without the reduction, and the percentage change due only to effects of the reduction (including the special redeterminations of payment methodology required by Public Law 103–66). The fifth column shows the change in payments from FY 1993 to FY 1994 (the fourth column compared to the second column). The sixth column shows the change in payments due to the effects of Public Law 103–66 (the fourth column compared to the third column). The seventh column shows the portion of the change in the fifth column attributable to Federal rate changes alone (i.e., isolating the Federal rate changes in the comparison of the fourth column to the second column). Thus, the changes shown in the sixth and seventh columns are already included in the total change shown in the fifth column.

The simulation results show that, on average, payments per case can be expected to increase 3.0 percent in FY 1994. The results show that the effect of the Federal rate changes alone is to decrease payments by 2.0 percent. However, the decrease attributable to the Federal rate changes is more than offset by a 4.9 percent increase attributable to the effects of transition changes and the increase in the budget neutrality target.

By geographic location, urban hospitals can be expected to experience

a 3.1 percent increase. Rural hospitals are expected to experience a 2.2 percent increase. Urban hospitals will lose 1.9 percent from the Federal rate changes. Rural hospitals will lose 2.7 percent from the Federal rate changes. Urban hospitals will gain 5.0 percent from the effects of transition changes. Rural hospitals will gain 4.9 percent from the effects of transition changes. The Public Law 103–66 changes produce no effect for urban hospitals as a class. The 2.2 percent overall increase for rural hospitals includes a 0.2 percent increase from the effects of Public Law 103–66, probably as a result of higher hospital-specific rate payments.

By region, urban hospitals of the New England region have the highest rate of increase (12.3 percent, of which –2.3 percent is due to Federal rate changes and 14.6 percent to the effects of transition changes). The increase for these hospitals includes 0.1 percent from the effects of Public Law 103–66. Urban hospitals of the West North Central region fare the worst: these hospitals will experience a 0.8 percent decline in payments, of which –2.1 percent is attributable to Federal rate changes and 1.3 percent to the effects of transition changes. These hospitals would have lost 1.0 percent overall without a 0.2 percent increase from the effects of Public Law 103–66.

By type of ownership, government hospitals are projected to have the highest rate of increase (4.2 percent, of which –2.4 percent is due to Federal rate changes and 6.6 percent to the effects of transition changes). No part of their increase is due to the Public Law 103–66 changes. Payments to proprietary hospitals will increase 2.7 percent (–1.6 percent is due to the Federal rate changes and 4.3 percent to the effects of transition changes). These hospitals would have experienced a 3.2 percent increase except for a –0.5 percent change due to the effects of Public Law 103–66. Payments to voluntary hospitals will increase 2.8 percent (–2.1 percent is due to Federal rate changes and 4.9 percent to the effects of transition changes). Their increase would have been 2.9 percent except for a 0.1 percent decrease due to the effects of Public Law 103–66.

Section 1886(d)(10) of the Act established the Medicare Geographic Classification Review Board (MGCRB). Hospitals may apply for reclassification for the purpose of obtaining another area's wage index value, standardized payment amount, or both. Although there is only a single national Federal capital rate, a hospital's geographic classification for purposes of the operating standardized amount does affect a hospital's capital payments as a result of the large urban add-on and the disproportionate share adjustment for urban hospitals with 100 or more beds. Reclassification for wage index purposes affects the geographic adjustment factor since that factor is constructed from the hospital wage index.

To present the effects of geographic reclassification for FY 1994 compared to FY 1993, we show the average payment percentage increase for hospitals reclassified in each fiscal year and in total. For FY 1994 reclassifications, we are indicating those hospitals reclassified for standardized amount purposes only, for wage index purposes only, and for both factors. The reclassified groups are compared to all other nonreclassified hospitals. These categories are further identified by urban and rural designation.

Hospitals reclassified for FY 1994 as a whole are projected to experience a 3.6 percent increase in payments (–1.6 percent attributable to Federal rate changes and 5.2 percent attributable to the effects of transition changes). Nonreclassified hospitals will gain 2.9 percent (–2.1 percent from the Federal rate changes and 5.0 percent from transition effects). Urban reclassified hospitals will experience the greatest gains (4.5 percent, of which –1.3 percent is attributable to the Federal rate changes and 5.8 percent to transition changes).

The changes due to Public Law 103–66 are uniformly small. The greatest gain is only 0.9 percent (for rural hospitals of the Pacific region, who will probably gain from payment methodology redeterminations). The greatest decrease is only –0.9 percent (hospitals reclassified only during FY 1994). Most increases and decreases due to Public Law 103–66 are much smaller.

TABLE VII.—COMPARISON OF TOTAL PAYMENTS PER CASE (FY 1993 PAYMENTS COMPARED TO FY 1994 PAYMENTS)

	Number of hospitals	Average FY 1993 payments/case	Average FY 1994 payments/case before OBRA	Average FY 1994 payments/case after OBRA	All changes	Change due to OBRA	Portion attributable to Federal rate change
By Geographic Location:							
All hospitals	5,269	615	633	633	3.0	0.0	–2.0
Large urban areas (populations over 1 million)	1,621	697	716	716	2.7	0.0	–1.8
Other urban areas (populations of 1 million or fewer)	1,331	621	645	644	3.6	–0.1	–2.1
Rural areas	2,317	411	419	420	2.2	0.2	–2.7
Urban hospitals	2,952	664	685	685	3.1	0.0	–1.9
0–99 beds	725	500	515	515	3.1	0.0	–1.5
100–199 beds	897	620	645	643	3.5	–0.2	–1.8
200–299 beds	610	637	649	650	2.0	0.1	–2.0
300–499 beds	529	670	700	701	4.4	0.0	–2.0
500 or more beds	191	793	809	808	1.8	–0.1	–1.9
Rural hospitals	2,317	411	419	420	2.2	0.2	–2.7
0–49 beds	1,176	299	309	311	3.7	0.6	–2.9
50–99 beds	707	379	390	391	3.3	0.3	–2.7
100–149 beds	222	449	456	457	1.6	0.1	–2.7
150–199 beds	106	430	449	449	4.3	0.0	–2.8
200 or more beds	106	519	514	516	–0.6	0.2	–2.5
By Region:							
Urban by Region	2,952	664	685	685	3.1	0.0	–1.9

TABLE VII.—COMPARISON OF TOTAL PAYMENTS PER CASE (FY 1993 PAYMENTS COMPARED TO FY 1994 PAYMENTS)—Continued

	Number of hospitals	Average FY 1993 payments/case	Average FY 1994 payments/case before OBRA	Average FY 1994 payments/case after OBRA	All changes	Change due to OBRA	Portion attributable to Federal rate change
New England	172	602	676	677	12.3	0.1	−2.3
Middle Atlantic	447	678	697	696	2.5	−0.2	−1.8
South Atlantic	450	673	695	692	2.7	−0.4	−1.8
East North Central	496	610	623	626	2.6	0.5	−2.4
East South Central	170	618	673	673	8.9	0.0	−2.0
West North Central	186	668	661	662	−0.8	0.2	−2.1
West South Central	373	751	756	751	0.0	−0.6	−1.6
Mountain	119	686	693	693	0.6	0.0	−2.3
Pacific	491	718	743	745	3.7	0.2	−1.8
Puerto Rico	48	284	285	286	0.4	0.2	−0.7
Rural by Region	2,317	411	419	420	2.2	0.2	−2.7
New England	53	438	465	463	5.6	−0.4	−1.1
Middle Atlantic	85	418	419	419	0.3	0.0	−2.6
South Atlantic	300	441	452	454	2.8	0.5	−2.5
East North Central	313	400	410	413	3.2	0.6	−3.3
East South Central	288	392	395	394	0.7	−0.1	−2.6
West North Central	542	370	385	385	4.0	0.0	−2.5
West South Central	359	405	403	403	−0.5	0.0	−2.9
Mountain	227	472	489	490	3.7	0.1	−2.4
Pacific	145	440	444	448	1.7	0.9	−3.4
By Payment Classification:							
All hospitals	5,269	615	633	633	2.9	0.0	−2.0
Large urban areas (populations over 1 million)	1,801	689	709	709	2.8	0.0	−1.8
Other urban areas (populations of 1 million or fewer)	1,408	606	628	627	3.4	0.0	−2.2
Rural areas	2,060	404	412	413	2.2	0.2	−2.8
Teaching Status:							
Non-teaching	4,228	551	563	563	2.1	0.0	−2.0
Fewer than 100 Residents	821	645	670	671	4.0	0.0	−2.2
100 or more Residents	220	851	885	883	3.7	−0.1	−1.8
Disproportionate share hospitals (DSH):							
Non-DSH	3,455	572	580	580	1.4	0.0	−2.1
Urban DSH:							
100 or more beds	1,301	693	728	727	4.8	−0.1	−2.0
Less than 100 beds	135	448	448	449	0.4	0.2	−1.6
Rural DSH:							
Sole Community (SCH)	112	367	370	372	1.5	0.5	−1.9
Referral Center (RRC)	48	507	514	514	1.3	0.0	−2.6
Other Rural:							
100 or more beds	60	400	400	403	0.8	0.7	−1.9
Less than 100 beds	158	324	330	330	1.8	−0.1	−2.8
Urban teaching and DSH:							
Both teaching and DSH	605	746	785	784	5.1	−0.1	−2.1
Teaching and no DSH	386	658	671	673	2.1	0.3	−2.0
No teaching and DSH	831	617	643	643	4.1	0.0	−1.8
No teaching and no DSH	1,387	600	604	603	0.6	−0.1	−1.9
Rural Hospital Types:							
Non special status hospitals	838	351	356	358	1.9	0.4	−2.9
RRC	156	489	489	490	0.0	0.0	−3.1
SCH	558	400	414	416	3.8	0.2	−2.4
Medicare-dependent hospitals (MDH)	461	308	324	326	5.7	0.5	−3.1
SCH or MDH	1,066	395	411	412	4.3	0.3	−2.5
Hospitals Reclassified by the Medicare Geographic Classification Review Board:							
Reclassification Status During FY93 and FY94:.							
Reclassified During Both FY93 and FY94	551	581	603	603	3.6	0.0	−1.8
Reclassified During FY94 Only	114	632	661	654	3.4	−0.9	−0.5
Reclassified During FY93 Only	651	498	506	507	1.8	0.1	−3.4
FY94 Reclassifications:							
All Reclassified Hospitals	669	588	611	610	3.6	−0.2	−1.6
All Nonreclassified Hospitals	4,573	619	637	637	2.9	0.0	−2.1
All Urban Reclassified Hospitals	230	691	725	722	4.5	−0.4	−1.3
Urban Nonreclassified Hospitals	2,722	661	681	681	2.9	0.0	−2.0
All Reclassified Rural Hospitals	439	470	480	480	2.2	0.1	−2.0
Rural Nonreclassified Hospitals	1,851	384	392	393	2.3	0.3	−3.1
Other Reclassified Hospitals (Section 1886(D)(8)(B))	27	445	432	433	−2.7	0.0	−1.8

TABLE VII.—COMPARISON OF TOTAL PAYMENTS PER CASE (FY 1993 PAYMENTS COMPARED TO FY 1994 PAYMENTS)—Continued

	Number of hospitals	Average FY 1993 payments/case	Average FY 1994 payments/case before OBRA	Average FY 1994 payments/case after OBRA	All changes	Change due to OBRA	Portion attributable to Federal rate change
Type of Ownership:							
Voluntary	3,035	623	640	640	2.8	0.1	−2.1
Proprietary	770	696	719	715	2.7	−0.5	−1.6
Government	1,464	505	527	527	4.2	0.0	−2.4
Medicare Utilization as a Percent of Inpatient Days:							
0–25	302	639	668	669	4.7	0.2	−1.9
25–50	1,612	694	717	716	3.1	−0.1	−2.0
50–65	2,301	576	590	591	2.5	0.1	−2.1
Over 65	1,010	529	549	550	3.8	0.0	−2.1

E. Cross-Sectional Analysis of Changes in the Federal Rate.

The analysis in Table VIII examines the impact of following changes in the Federal rate set forth in section III of the addendum to this final rule—

- The effects of the annual reclassification of DRGs and the recalibration of the DRG weights required by section 1886(d)(4)(C) of the Act (column 4).
- The effects of changes in the geographic adjustment factor (column 5).
- The effects of all changes, including those separately displayed in columns 4 and 5.

To estimate the impact of DRG changes and changes due to the geographic adjustment factor, we simulated payments based on 100 percent of the Federal rate. Thus, the simulation in Table VIII is not representative of changes in capital prospective payment system payments from FY 1993 to FY 1994. Rather, it reflects the percentage change in payments for hospitals receiving 100 percent of the Federal rate. For other hospitals, it reflects the percentage change in the Federal rate portion of the payments, holding the proportion of the Federal rate payment constant. Unlike the Federal rate payment change in Table VII, the analysis in Table VIII does not include any increase in Federal rate payments attributable to anticipated increases in the case-mix index.

To present the effects of the separate policy changes displayed in columns 4 and 5, we added each change incrementally, so that the percentages in each column represent the differences in payment relative to the previous column. The baseline for comparison is an FY 1994 system absent any of the changes above. For example, column 4 displays the impact of DRG reclassifications and recalibration relative to estimated FY 1994 payments absent these changes. Similarly, column 5 shows the impact of the changes in the geographic adjustment factor over and above the changes resulting from DRG reclassifications and recalibration. The changes in the geographic adjustment factor result from the combined effect on the hospital wage index of the new MSAs, updated wage data, and geographic reclassifications. Column 6 displays the combined changes from the previous columns, as well as the effects of other factors affecting Federal rate payments. The other factors include: the change in the standard Federal rate, the effect of the new MSAs and geographic reclassifications on large urban status, and a 0.7 percent increase in outlier payments. Column 6 compares estimated FY 1994 Federal rate payments to estimated FY 1993 Federal rate payments. Thus, only the last column reflects the effects of all quantifiable policy changes on simulated FY 1994 Federal rate payments.

The table shows that Federal rate payments can be expected to decrease 8.5 percent overall prior to consideration of any increase in the case-mix index. This decrease is due to the 9.3 percent decrease in the Federal rate, which is partially offset by the 0.7 percent increase in outlier payments and the 0.1 percent increase due to large urban changes.

The table also shows the distributional effects of the changes in Federal rate payments from DRG reclassifications and recalibration, and from changes in the geographic adjustment factor due to the new hospital wage index and geographic reclassifications. The DRG changes are expected to produce only minimal effects on the distribution of Federal rate payments and parallel the effects of the same changes on operating payments. The highest gain from DRG reclassifications and recalibration is projected at 0.4 percent (for urban hospitals in Puerto Rico), while the largest loss is projected at −0.3 percent (for hospitals changing MSA from urban to rural as a result of the 1990 census).

The geographic adjustment factor changes are in relation to the FY 1993 geographic adjustment factor based on FY 1993 geographic reclassifications. The 1.0 percent increase in Federal rate payments to large urban hospitals is largely attributable to the new wage data; the decreases in payments to other urban and rural hospitals reflect the combined effect of the new wage data and fewer geographic reclassifications for purposes of the hospital wage index. Hospitals that are reclassified for FY 1994 only are expected to experience a 4.1 percent increase in payments from the effects of geographic reclassification. Hospitals reclassified for FY 1993 only will experience an estimated 3.2 percent decrease in payments.

For FY 1994 reclassifications, reclassified hospitals as a group are expected to experience a 0.7 percent increase in payments from the effects of changes in the geographic adjustment factor. Nonreclassified hospitals as a group will experience an estimated decrease of 0.1 percent in payments from the effects of reclassifications.

Because of the impact on rural hospitals of the changes in the geographic adjustment factor, urban hospitals will experience a lower (−8.1 percent) overall decrease in Federal rate payments than rural hospitals (−11.3 percent). (However, only 6.7 percent of rural hospitals are paid by the 100% Federal rate formula represented in this table.) By region, rural hospitals in the

Mountain region will experience the greatest decrease (−12.6 percent), while rural hospitals in Puerto Rico will experience a small increase (1.6 percent, and the only increase of any category). Hospitals changing from urban MSAs to rural areas will experience the greatest decrease (−18.3 percent).

TABLE VIII.—HEALTH CARE FINANCING ADMINISTRATION 1994 FINAL CAPITAL PAYMENT SIMULATION BY GEOGRAPHIC LOCATION

	(1)	(2)	(3)	(4)	(5)	(6)
	No. of hosps.	Payment per case FY 1993	Payment per case FY 1994	Recalibration change	Reclassification change	All changes
All Hospitals	5,302	653	598	0.0	0.0	−8.5
Large Urban Areas (Populations over 1 Million)	1,636	746	689	0.1	1.0	−7.6
Other Urban Areas (Populations of 1 Million or Fewer)	1,344	644	587	0.0	−0.7	−8.8
Rural Areas	2,322	453	402	−0.1	−2.3	−11.3
Hospitals Changing MSA due to 1990 Census:						
Rural to Urban	108	513	495	0.0	7.0	−3.5
Urban to Rural	13	472	386	−0.3	−10.1	−18.3
Other Urban to Large Urban	143	672	633	0.1	0.6	−5.8
Urban Hospitals	2,980	702	645	0.1	0.3	−8.1
0–99 Beds	750	506	466	−0.1	0.9	−8.0
100–199 Beds	899	610	561	0.0	0.4	−8.2
200–299 Beds	611	667	612	0.1	0.1	−8.3
300–499 Beds	529	734	674	0.1	0.2	−8.2
500 or More Beds	191	862	796	0.1	0.7	−7.8
Rural Hospitals	2,322	453	402	−0.1	−2.3	−11.3
0–49 Beds	1,180	379	335	−0.2	−2.2	−11.7
50–99 Beds	708	423	375	−0.1	−2.3	−11.4
100–149 Beds	222	471	420	0.0	−1.4	−10.7
150–199 Beds	106	484	425	0.0	−3.1	−12.1
200 or More Beds	106	537	477	0.0	−2.6	−11.2
Urban by Region:						
New England	172	726	668	0.0	0.5	−8.1
Middle Atlantic	447	749	700	0.2	2.2	−6.6
South Atlantic	453	674	621	0.0	0.5	−7.9
East North Central	498	685	620	0.1	−1.2	−9.5
East South Central	170	620	571	0.0	−0.4	−7.9
West North Central	187	698	636	0.0	−0.4	−9.0
West South Central	380	659	605	0.0	−0.4	−8.2
Mountain	121	707	646	0.0	−0.1	−8.6
Pacific	502	790	725	0.0	0.5	−8.3
Puerto Rico	50	288	269	0.4	2.9	−6.4
Rural by Region:						
New England	53	523	481	−0.1	1.3	−8.0
Middle Atlantic	85	495	447	0.0	−0.3	−9.7
South Atlantic	302	468	416	0.0	−2.4	−11.1
East North Central	313	461	404	−0.1	−3.2	−12.3
East South Central	289	416	367	−0.2	−2.5	−11.7
West North Central	542	426	380	−0.1	−1.5	−10.9
West South Central	361	423	373	−0.1	−2.9	−12.0
Mountain	227	476	416	−0.1	−4.1	−12.6
Pacific	145	540	477	0.0	−2.6	−11.6
Puerto Rico	5	216	219	−0.1	12.9	1.6
(By Payment Classification):						
All Hospitals	5,302	653	598	0.0	0.0	−8.5
Large Urban Areas (Populations over 1 Million)	1,816	736	680	0.1	0.8	−7.6
Other Urban Areas (Populations of 1 Million or Fewer)	1,421	631	573	0.0	−0.6	−9.1
Rural Areas	2,065	449	396	−0.1	−2.6	−11.7
Teaching Status:						
Non-Teaching	4,261	563	513	0.0	−0.2	−8.9
Fewer than 100 Residents	821	705	644	0.1	−0.3	−8.6
100 or More Residents	220	968	896	0.1	1.0	−7.5
Disproportionate Share Hospitals (DSH):						
Rural Non-DSH	2,065	449	396	−0.1	−2.6	−11.7
Urban Non-DSH	949	496	454	−0.1	0.3	−8.6
Urban DSH (100 Beds or More)	2,288	709	652	0.1	0.3	−8.1
Urban Teaching and DSH:						
Both Teaching and DSH	935	788	723	0.1	0.3	−8.1
Teaching and no DSH	56	581	534	−0.1	0.8	−8.1
No Teaching and DSH	1,353	626	575	0.0	0.4	−8.1
No Teaching and no DSH	893	492	449	−0.1	0.2	−8.6
Rural Hospital Types:						

TABLE VIII.—HEALTH CARE FINANCING ADMINISTRATION 1994 FINAL CAPITAL PAYMENT SIMULATION BY GEOGRAPHIC LOCATION—Continued

	(1)	(2)	(3)	(4)	(5)	(6)
	No. of hosps.	Payment per case FY 1993	Payment per case FY 1994	Recalibration change	Reclassification change	All changes
Nonspecial Status Hospitals	843	414	366	-0.1	-2.2	-11.5
RRC	156	526	463	0.0	-3.3	-11.9
SCH	558	426	378	-0.1	-2.2	-11.3
MDH	461	379	334	-0.2	-2.1	-11.7
SCH and RRC	47	519	456	0.0	-3.5	-12.2
SCH and MDH	1,066	429	379	-0.1	-2.5	-11.6
Type of Ownership:						
Voluntary	3,059	671	614	0.1	0.0	-8.5
Proprietary	776	619	571	0.0	0.5	-7.8
Government	1,467	592	537	0.0	-0.3	-9.2
Medicare Utilization as a Percent of Inpatient Days						
0—25	309	763	700	0.0	0.8	-8.2
25—50	1,614	735	674	0.1	0.3	-8.2
50—65	2,301	612	559	0.0	-0.3	-8.8
Over 65	1,012	546	496	0.0	-0.4	-9.2
Unknown	66	793	743	0.2	3.2	-6.3
(By Payment Classification):						
Hospitals Reclassified by the Medicare Geographic Review Board:						
Reclassification Status During FY93 and FY94:						
Reclassified During Both FY93 and FY94	551	616	567	0.0	0.1	-8.0
Reclassified During FY94 Only	114	606	581	0.1	4.1	-4.0
Reclassified During FY93 Only	672	579	511	0.0	-3.2	-11.6
FY 94 Reclassifications:						
All Reclassified Hosp	669	614	569	0.0	0.7	-7.4
All Nonreclassified Hospitals	4,606	660	602	0.0	-0.1	-8.7
Urban Reclassified Hospitals	230	714	669	0.1	1.1	-6.3
Urban Nonreclassified Hospitals	2,750	701	643	0.1	0.3	-8.3
Rural Reclassified Hospitals	439	499	452	-0.1	-0.1	-9.3
Rural Nonreclassified Hospitals	1,856	432	379	-0.1	-3.5	-12.4
Other Reclassified:						
Hospitals (Section 1886(D)(8)(B))	27	506	457	-0.1	0.6	-9.7

VIII. Impact of Changes to Graduate Medical Education Payment Provisions

Section 1886(h) of the Social Security Act requires the calculation of hospital-specific approved per resident graduate medical education amounts for cost reporting periods beginning on or after July 1, 1985, based on the hospital's allowable costs for its cost reporting period beginning during Federal fiscal year 1984. Section 1886(h)(2)(D) of the Act generally provides for updating the approved per resident amount for subsequent years by the estimated percentage change in the Consumer Price Index.

Section 13563(a)(1) of the Omnibus Budget Reconciliation Act of 1993 (OBRA 93) requires that for cost reporting periods beginning in Federal fiscal years 1994 and 1995 the approved per resident amount for a hospital will be updated for primary care residents and obstetrics and gynecology residents only. For all other residents the per resident amount for cost reports beginning in Federal fiscal years 1994 and 1995 will not be updated for inflation. The effect of this change for teaching hospitals with both primary care and non-primary care residencies is to have two different per resident amounts for those cost reporting periods. One per resident amount which reflects the prior period amount with the Consumer Price Index (CPI–U) adjustment and one without the adjustment. OBRA 93 limited, by definition, primary care resident to mean a resident enrolled in an approved medical residency training program in family medicine, general internal medicine, general pediatrics, preventive medicine, geriatric medicine or osteopathic general practice.

This final rule with comment period implements the statutory requirement at section 13563(a)(1) of the Omnibus Budget Reconciliation Act of 1993 to control the growth in payments to hospitals with currently approved GME programs by limiting the application of the CPI–U adjustment to the per resident payment amount for either primary care residents or obstetrics and gynecology residents. The following table presents the estimated savings expected to be achieved from implementing this statutory requirement, relative to what would have been paid for GME had prior period payments been adjusted by CPI–U for all residents.

Medicare Program Savings [1]

[In fiscal years and in millions of dollars]

1994	1995	1996	1997	1998
10	30	60	60	70

[1] Figures are rounded to the nearest $10 million.

Although this final rule with comment period implements provisions to reduce Medicare payments for GME, it is difficult to predict the effects these reductions will have on specific GME programs. We know that patient revenues generally comprise the major portion of GME funding, but the proportion of funding varies depending on a hospital's affiliation and the specialty programs that the hospital operates. State-run hospitals, for example, depend less on patient

revenues than do unaffiliated or church-affiliated hospitals. Also, oncology GME programs tend to receive more funding from sources other than patient revenues (e.g. grants and gifts), than GME programs in family practice.

This final rule with comment period also implements the statutory requirement at section 13563(b)(1)(B) of the Omnibus Budget Reconciliation Act of 1993 which extended the exception currently applied to geriatric residents at section 1886(h)(5)(F), to preventive medicine residents. Effective August 10, 1993, a period of up to two years during which an individual is in a preventive medicine residency will not be counted against any limitation on the initial residency period.

Based on the data that is currently available, we are unable to estimate the costs associated with the implementation of this change. However, we believe that the impact will be negligible since this provision only applies to 119 interns in preventive medicine programs where participation in the program has resulted in the intern's exceeding the initial residency period.

Appendix B—Technical Appendix on the Capital Acquisition Model and Budget Neutrality Adjustment

Section 1886(g)(1)(A) of the Act requires that for FY 1992 through FY 1995 aggregate prospective payments for operating costs under section 1886(d) and prospective payments for capital costs under section 1886(g) of the Act be reduced each year in a manner that results in a 10 percent reduction of the amount that would have been payable on a reasonable cost basis for capital-related costs in that year. Under § 412.352, the 10 percent reduction is generated entirely from the capital prospective payments. A budget neutrality adjustment factor is applied to the Federal rate and hospital-specific rate so that total capital payments for FY 1992 through FY 1995 equal 90 percent of Medicare inpatient capital costs in each year.

To calculate the budget neutrality adjustment, we must be able to project the rate at which old capital will be depreciated and written off and at which new capital will be acquired and depreciated. (Old capital costs are depreciation, lease, interest expenses, and other capital-related costs defined in § 412.302 that are in use or obligated on or before December 31, 1990.)

In developing the FY 1992 prospective payment rates, there were limited capital data available that could be used to project payments under the capital prospective payment system and develop the budget neutrality adjustment factor. Consequently, we developed a capital acquisition model that relied on Monte Carlo random simulation techniques to project capital costs for 6000 hypothetical hospitals. This model is described in detail in the August 30, 1991 final rule (56 FR 43517–43522). The model will be referred to as the capital acquisition model in the following discussion.

Since publication of the August 30, 1991 final rule, capital data have become available that can be incorporated directly into the determination of budget neutrality. In the September 1, 1992 final rule (57 FR 40005–40008), we incorporated more recent data including the June 30, 1992 update of the Provider-Specific File that provides the data items needed by the PRICER program used by the intermediaries to determine interim capital payments to hospitals, cost reports for cost reporting periods beginning in FY 1989 (PPS–6) (that overlap the base year for determining the hospital-specific rate) and FY 1990 (PPS–7), and data reported by the intermediaries that includes the hospital-specific rate determinations that have been made through June 1992. We are using updates of these data to set the FY 1994 capital rates. The updated files include the Provider-Specific file as of June 30, 1992 and June 30, 1993 and cost reports for cost reporting periods beginning in FY 1991 (PPS–8) as well as the June 1993 update of the files for earlier cost reporting periods.

The available data sources directly supply, or can be used to calculate, the hospital-specific rate. For those hospitals with capital data in the Provider-Specific File, the payment methodology as well as the estimated FY 1992 and FY 1993 hold-harmless amounts and new capital ratios for hospitals paid under the hold-harmless payment methodology are also available.

The available data still lack certain items which are required for the determination of budget neutrality. These items are the hospital's new capital costs for each year, its old capital costs for each year, and the obligated capital amounts that will be put in use for patient care services and recognized as old capital each year.

For FY 1993, we implemented an integrated model that starts with the available data for existing hospitals and back-fills the missing items with results from the capital acquisition model that was used to develop the FY 1992 payment rates. We are continuing to use this integrated model. Since hospitals under alternative payment system waivers are currently excluded from the capital prospective payment system, we excluded these hospitals (hospitals in Maryland and hospitals in the Finger Lakes Area Hospital Corporation in New York) from our model.

We have not modified the parameters of the FY 1992 capital acquisition model; however, we analyzed several capital growth patterns generated by that model to backfill the elements for which actual data are not available. These patterns include the distribution of growth rates in old capital (exclusive of obligated capital), the new capital ratio (which includes obligated capital), and the ratio of obligated capital costs for assets being put in use for patient care to total capital costs. In all cases, the distributions from the model were fitted to the beta distribution. The beta distribution is a two parameter distribution with the range restricted from zero to one. The growth rate for old capital (which is exclusive of obligated capital) must be between zero and one since depreciation and interest on old capital cannot increase. The ratio of new capital to total capital and the ratio of obligated capital to total capital are necessarily between zero and one. Hence, the beta distribution is ideal for these purposes, especially since the two parameters provide a range of shapes.

With regard to the new capital ratio for years after FY 1992, the model fits the change in the ratio from one year to the next to the beta distribution. This is to prevent large swings in the new capital ratio over time. It is possible to have a decrease in the new capital ratio since some new capital may have a short life time compared to old capital. Therefore, we rescaled the range of the changes in the ratios since the beta distribution must have numbers between zero and one.

We first developed hospital-specific rates for FY 1992 and FY 1993. These rates were developed from both the June 1992 (for the 1992 rates) and June 1993 (for the 1993 rates) updates of the Provider-Specific file. These files contain the actual amounts used by the intermediaries with the PRICER program to compute interim capital prospective payments. We also used audit information provided by the intermediaries. Data from all of these files were used to determine consistent FY 1992 and FY 1993 hospital-specific rates. Many of the FY 1992 hospital-specific rates in the June 1992 update of the Provider-Specific file were preliminary determinations, and in many of these cases they were greater than the FY 1993 hospital-specific rates.

Our procedure was to use the audit data, when available, as the "best"

source of the hospital-specific rate, and then to ensure that the FY 1993 rate exceeded the FY 1992 rate by a factor of at least 1.0062 (which represents the increase in the hospital-specific rate from FY 1992 to FY 1993, established by the final rule of September 1, 1992). This methodology ensured that most hospitals would have a hospital-specific rate increase of 0.62 percent and that the remaining hospitals would have a larger increase. Because hospitals can request an upward redetermination of the hospital-specific rate, we expect that some hospitals would increase more than 0.62 percent.

After performing the above determination, some hospitals still had zeroes for the hospital-specific rates. For these hospitals, we used cost reports for reporting periods beginning in FY 1988 (PPS–5), FY 1989 (PPS–6), FY 1990 (PPS–7) and FY 1991 (PPS–8) to develop a hospital-specific rate. If the hospital-specific rate could be determined from more than one cost report, the cost report with a reporting period closest to the hospital-specific rate base year was chosen.

The following table summarizes the sources of the hospital-specific rates.

HOSPITAL-SPECIFIC RATE SOURCES BY NUMBER OF HOSPITALS

Data source	Number of hospitals
Provider-Specific File & Audit File	5,232
Provider-Specific File only	19
PPS–6 Cost Reports	11
PPS–7 Cost Reports	7
Total	5,269

(Note: We were not able to determine a hospital-specific rate for 33 of the 5,302 hospitals in the analysis data base. Consequently, we modeled capital budget neutrality using 5,269 hospitals.)

The model also develops the old capital amount for each hospital. For FY 1992 the model uses the hold-harmless payments per discharge from the June 1992 Provider-Specific File if available. If the actual hold-harmless amount is not available, the model develops an estimate from the hospital-specific rate. It computes an FY 1990 capital cost per discharge by dividing the FY 1992 hospital-specific rate by factors used to inflate base year capital cost per discharge to FY 1992 as set forth in the August 30, 1991 final rule (56 FR 43390). The model updates the base year capital per discharge to FY 1992 using a 2-year rate of increase (FY 1990 to FY 1992) in old capital that is randomly generated from the beta distribution described above. This old capital amount for FY 1992 excludes any obligated capital that has been put in use since the base year. Excluding obligated capital from the old capital growth factors produces a more stable growth sequence with lower variance. The development of the hospital's obligated capital costs is described below. Before we update the hospital's old capital costs in a given year, the model adds the obligated capital that is first depreciated in the current year to the old capital cost for that year. As a result, any obligated capital depreciation and interest expense projected by the model is incorporated into the hospital's old capital costs in subsequent years including FY 1993 and FY 1994.

For FY 1993 the model uses the hold-harmless payments per discharge from the June 1993 Provider-Specific file if available. If the actual hold-harmless amount is not available, the model develops an estimate by generating a one year rate of increase from the Beta distribution and applying this increase to the FY 1992 hold-harmless amount. Hold-harmless amounts for later years are developed in the same way. Amounts for obligated capital are developed as described above.

The model also develops the new capital ratio for each hospital. If available, the model uses the hospital's FY 1992 new capital ratio from the Provider-Specific File. If the actual new capital ratio is not available, the model generates the ratio from a beta distribution as described above. For purposes of fitting the new capital ratio to the beta distribution, the model treats obligated capital as new capital. The model restricts the new capital ratio to 90 percent in all cases. After fitting the FY 1992 new capital ratio, the year-to-year change in the new capital ratio is fit to the beta distribution. The new capital ratio combined with the old capital amount generates the total capital costs.

Finally, the model develops the obligated capital ratio for obligations first being depreciated in the year under analysis. It generates an obligated capital ratio using a beta distribution fitted to the results of the capital acquisition model (and obligated capital assumptions) as described above. This ratio is an offset to the new capital ratio. Consequently, the obligated capital ratio is restricted to the magnitude of the new capital ratio. The new capital ratio is reduced by the obligated capital ratio.

If a hospital has a hold-harmless payment amount available in the Hospital-Specific File, this amount includes the effect of obligated capital on its FY 1992 and FY 1993 old capital costs per discharge. Therefore, the model does not generate any additional FY 1992 or FY 1993 obligated capital for these hospitals. We generated obligated capital amounts for all hospitals for FY 1994 and later.

The model does not recompute the hospital's total capital costs for obligated capital. Instead, obligated capital costs are the product of the obligated capital ratio rate and total capital costs. The hospital's costs for new capital are the product of the revised new capital ratio times the hospital's total capital costs.

We computed the average total capital cost per discharge from the capital costs that were generated by the model and compared the results to total capital costs per discharge that we had projected independently of the model. We adjusted the component amounts of total capital costs (old capital, obligated capital, and new capital) proportionately so that the total capital costs per discharge generated by the model match the independently projected capital costs per discharge.

To summarize, the model integrates actual data with randomly generated amounts developed from the results of the capital acquisition model. For purposes of aggregate capital, we generated at most three numbers for each hospital each year. Only the old capital increase, new capital ratio, and obligated capital ratio are randomly generated.

Once each hospital's capital-related costs are generated, the model projects capital payments. We use the actual payment parameters (for example, the case-mix index and the geographic adjustment factor), that are applicable to the specific hospital.

To project capital payments, the model first assigns the applicable payment methodology (fully prospective or hold-harmless) to the hospital. If available, the model uses the payment methodology method indicated in the Provider-Specific File. Otherwise, the model determines the methodology by comparing the hospital's FY 1992 hospital-specific rate to the adjusted Federal rate applicable to the hospital. The model simulates Federal rate payments using the assigned payment parameters and hospital-specific estimated outlier payments. The case-mix index for a hospital is derived from the 1992 MEDPAR file using the FY 1994 DRGs and relative weights published in this final rule. The case-mix index is increased each year after FY 1992 consistent with the continuing trend in case-mix increase.

We have analyzed the case-mix increases for FY 1992 and FY 1993 using all admissions reported through July 1993. The measured case-mix increase for FY 1992 is 1.52 percent and 0.46 percent for FY 1993. After analyzing the effects of data completion for earlier years, we estimate that the case-mix increase will be approximately 1.6 percent and 1.3 percent for FY 1992 and FY 1993, respectively. We have observed that admission incidence has increased in both FY 1992 and FY 1993 which reduces the increases in case mix because most of the additional admissions are low severity cases, such as influenza admissions. We do not expect the admission incidence to continue to increase at the FY 1992 and FY 1993 rates, and consistent with lower admission incidence, we expect future case mix to increase at 2 percent as it has in the past. Consequently, the model increases the FY 1992 case mix by 1.3 percent for FY 1993, and by 2.0 percent for FY 1994 and later. (Since we are using FY 1992 cases for our analysis, the FY 1992 increase in case-mix has no effect on the FY 1994 Federal rate. It does affect the estimated update for the FY 1995 Federal rate displayed in the projection table in this appendix.)

Changes in geographic classification and corrections in the hospital wage data used to establish the hospital wage index affect the geographic adjustment factor. Changes in the DRG classification system and the relative weights affect the case-mix index.

Section 13501(a)(3) of Public Law 103–66 requires that, for discharges occurring after September 30, 1993, the unadjusted standard Federal rate be reduced by 7.4 percent. Further, this law requires that, for cost reporting periods beginning on or after October 1, 1993, the Secretary redetermine hospital payment methodologies under the capital-PPS transition system to take that reduction in account. Consequently, the model reduces the unadjusted standard Federal rate by 7.4 effective FY 1994. Because of the budget neutrality provisions in effect through FY 1995, this provision does not reduce aggregate payments for capital in FY 1994. Since this provision reduces the Federal rate, to maintain budget neutrality, the hospital-specific rate must be further increased. (The reasons for these results are discussed in Part III, sections A.7 and B.4 of the Addendum to this final rule.) Consistent with the legislation, the model makes a FY 1994 redetermination for fully prospective hospitals and models them as hold-harmless hospitals if their FY 1994 hospital-specific rate is greater than the FY 1994 Federal rate.

Section 412.308(c)(4)(ii) requires that the estimated aggregate payments for the fiscal year, based on the Federal rate after any changes resulting from DRG reclassifications and recalibration and the geographic adjustment factor, equal the estimated aggregate payments based on the Federal rate that would have been made without such changes. For FY 1993, the budget neutrality adjustment factor is .9980. To determine the factor for FY 1994, we first determined the portion of the Federal rate that would be paid for each hospital in FY 1994 based on its applicable payment methodology. We then compared what aggregate Federal rate payments would be based on the FY 1993 DRG relative weights and FY 1993 geographic adjustment factor to aggregate Federal rate payments based on the FY 1994 relative weights and the FY 1994 geographic adjustment factor. In making the comparison, we held the FY 1994 Federal rate portion constant and set the other budget neutrality adjustment factor and exceptions reduction factor to 1.00. We determined that to achieve budget neutrality for the changes in the geographic adjustment factor and DRG classifications and relative weights, a budget neutrality adjustment of 1.0053 should be applied to the FY 1993 adjustment of .9980 to yield a cumulative adjustment of 1.0033.

The methodology used to determine the recalibration and geographic (DRG/GAF) budget neutrality adjustment factor is similar to that used in establishing budget neutrality adjustments under the prospective payment system for operating costs. One difference is that under the operating prospective payment system, the budget neutrality adjustments for the effect of geographic reclassifications are determined separately from the effects of other changes in the hospital wage index and the DRG weights. Under the capital prospective payment system, there is a single DRG/GAF budget neutrality adjustment factor for changes in the geographic adjustment factor (including geographic reclassification) and the DRG relative weights. In addition, there is no adjustment for the effects that geographic reclassification has on the other payment parameters, such as the payments for serving low income patients or the large urban add-on.

In addition to computing the DRG/GAF budget neutrality adjustment factor, we used the model to project total aggregate payments under the prospective payment system and to compute the budget neutrality adjustment factor that would result in estimated payments under the capital prospective payment system equal to 90 percent of what would have been payable on a reasonable cost basis. This budget neutrality factor is applied to the Federal and hospital-specific rates, but not to the hold-harmless payments.

Additional payments under the exceptions process are financed through a reduction in the Federal and hospital-specific rates. Therefore, we used the model to calculate estimated exceptions payments and the exceptions reduction factor. This exceptions reduction factor ensures that estimated aggregate payments under the capital prospective payment system, including exceptions payments, equal what aggregate payments would be under the capital prospective payment system without an exceptions process. Since changes in the level of the payment rates change the level of payments under the exceptions process, the budget neutrality and exceptions adjustments factors must be determined through iteration. Further, these two factors interact with each other so that they must be determined simultaneously. We successfully determined values for these factors so that the exceptions adjustment factor is correct and estimated payments under the capital prospective payment system equal 90 percent of estimated Medicare inpatient capital costs.

In the August 30, 1991 final rule (56 FR 43517), we indicated that we would publish each year the estimated payment factors generated by the model to determine payments for the next 5 years. The table below provides the actual factors for FY 1992, FY 1993, and FY 1994 , and the estimated factors that would be applicable through FY 1998. We caution that, except with respect to FY 1992, FY 1993, and FY 1994, these are estimates only, and are subject to revisions resulting from continued methodological refinements, more recent data, and any payment policy changes that may occur. In this regard, we note that in making these projections we have assumed that the cumulative DRG/GAF adjustment factor will remain at 1.0033 for FY 1994 and later because we do not have sufficient information to estimate the change that will occur in the factor for years after FY 1994.

The projections are as follows:

Fiscal year	Increase in cost per discharge [1]	Update factor	Exceptions reduction factor	Budget neutrality factor	Federal rate (after outlier reduction)
1992	3.27	N/A	.9813	.9602	415.59
1993	6.85	6.07	.9756	.9162	[2] 417.29
1994	7.31	3.04	.9485	.8947	[3] 378.34
1995	8.01	2.57	.9000	.9470	389.74
1996	8.14	5.05	.9000	N/A	432.34
1997	8.19	7.08	.9000	N/A	462.95
1998	8.43	7.66	.9000	N/A	498.41

[1] Note: Adjusted for estimated 1.6 percent annual increase in case-mix for FY 1992, 1.3 percent for FY 1993 and 2.0 percent for FY 1994 and later.

[2] Note: Includes the DRG/GAF adjustment factor of 0.9880 and the change in the outlier adjustment from 0.9497 in FY 1992 to 0.9496 in FY 1993.

[3] Note: Includes the 7.4 percent reduction in the unadjusted standard Federal rate. Also includes the DRG/GAF adjustment factor of 1.0033 and the change in the outlier adjustment from 0.9496 in FY 1993 to 0.9454 in FY 1994. Future adjustments are, for purposes of this projection, assumed to remain at the same level.

Comments: We received several comments on the capital acquisition model and the assumptions and projections employed in the model. Some commenters expressed concern that HCFA has not shared the details of the capital acquisition model. One commenter objected to the rate reduction in the proposed rule unless HCFA is able to demonstrate a rational basis for its projections and subject those projections to public scrutiny. Other commenters contended that the proposed reduction to the Federal rate illustrates the sensitivity of the capital rate estimates to the assumptions used in the capital acquisition model. These commenters asserted that lack of precision in these estimates has led to repeated corrections to model estimates.

Response: It is important to distinguish between the capital acquisition model and the assumptions that the model employs. The assumptions are capital cost-per-case projections that determine the aggregate expenditure level from which the budget neutrality target is derived. We have published the details of the capital cost-per-case projections and the revisions we have made to them on several occasions (most recently in our May 26, 1993 proposed rule at 58 FR 30278). We have received no specific comments on the derivation of these projections. We present another account of the current assumptions and revisions to them in Part III, section A.5 of the Addendum to this final rule. We base these projections on the best available data and trend analysis available at the time when we derive them. As we update the data and trend analysis, the accuracy of the projections should improve. This is why we continue to revise them in each successive rulemaking document. Commenters' concerns about the accuracy of the projections confirm our practice of continually revising these projections. By design, the capital acquisition model is constrained to the assumptions that project capital expenditure changes, so that the assumptions drive the model results. As we stated in the August 30, 1991 final rule for prospective payment system for capital-related costs (56 FR 43521), the "model is integrated from several sources and requires intimate knowledge of all these sources and their interactions to successfully perform any meaningful analysis." For this reason, it has been our policy not to release the model and its accompanying code. However, we continue to publish a description of the model in each prospective payment system rulemaking document, and we believe that this description, along with our detailed presentation of the assumptions and changes to the capital expenditure projections, should provide sufficient basis for public evaluation of proposed changes to the rates and factors.

Appendix C—Recommendation of Update Factors for Operating Cost Rates of Payment for Inpatient Hospital Services

I. Background

Several provisions of the Act address the setting of update factors for services furnished in FY 1994 by hospitals subject to the prospective payment system and those excluded from the prospective payment system. Section 1886(b)(3)(B)(i)(IX) of the Act, as amended by section 13501(a)(1) of Public Law 103–66, sets the FY 1994 applicable percentage increases for prospective payment hospitals for FY 1994 as the market basket percentage increase minus 2.5 percentage points for hospitals located in urban areas and the market basket percentage increase minus 1.0 percentage points for hospitals located in rural areas.

Section 1886(b)(3)(B)(ii) of the Act, as amended by section 13502(a)(1)(C) of Public Law 103–66, sets the FY 1994 percentage increase in the rate-of-increase limits for hospitals and hospital units excluded from the prospective payment system equal to the rate of increase in the hospital market basket minus a reduction factor (not to exceed −1.0 percent) depending on the provider's operating costs and target amounts, as described in section IV.E of the preamble to this final rule.

Beginning in FY 1994, section 1886(b)(3)(B)(iv), as added by section 13501(a)(2)(A) of Public Law 103–66, moves the update to the hospital-specific rate applicable to sole community hospitals and Medicare-dependent, small rural hospitals from a cost reporting period basis to a Federal fiscal year basis. Under this section, the update to the hospital-specific rate for FY 1994 is equal to the rate of increase in the hospital market basket minus 2.3 percentage points, taking into account the portion of hospital cost reporting periods beginning in FY 1993 that occur during FY 1994.

Therefore, in accordance with section 1886(d)(3)(A) of the Act, we are updating the average standardized amounts, the hospital-specific rates, and the rate-of-increase limits for hospitals excluded from the prospective payment system as provided for in section 1886(b)(3)(B) of the Act, as set forth above. Based on the currently forecasted market basket increase of 4.3 percent for hospitals subject to the prospective payment system, the updates in the standardized amounts are 1.8 percent for hospitals in urban areas and 3.3 percent for hospitals in rural areas. The update in the hospital-specific rate applicable to sole community hospitals and Medicare-dependent, small rural hospitals is 2.0 percent (after appropriate adjustment to account for the portion of the hospital's cost reporting period beginning during FY 1993 that occurs during FY 1994). The

update for hospitals excluded from the prospective payment system is based on the currently forecasted percentage increase in the market basket for these hospitals and equals 4.3 percent minus an appropriate reduction factor (not to exceed −1.0 percent), as described in section VI.B of the preamble.

Sections 1886(e)(2)(A) and (e)(3)(A) of the Act require that the Prospective Payment Assessment Commission (ProPAC) recommend to the Congress by March 1, 1993 an update factor for FY 1994 that takes into account changes in the market basket index, hospital productivity, technological and scientific advances, the quality of health care provided in hospitals, and long-term cost effectiveness in the provision of inpatient hospital services.

Section 1886(e)(4) of the Act requires that the Secretary, taking into consideration the recommendations of ProPAC, recommend update factors for FY 1994 that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. As required by section 1886(e)(5) of the Act, we published the recommended FY 1994 update factors under section 1886(e)(4) of the Act as Appendix D of the May 26, 1993, proposed rule (58 FR 30441).

II. Secretary's Final Recommendations for Updating the Prospective Payment System Standardized Amounts

We received several public comments concerning our proposed recommendation. After consideration of the arguments presented, we have decided that our final recommendation will be the same as our proposed recommendation. That is, we are recommending that the standardized amounts be increased by an average amount equal to the market basket percentage increase minus 1.9 percentage points for hospitals located in urban areas and the market basket percentage increase minus 0.8 percentage points for hospitals in rural areas. We are recommending an increase equal to the market basket rate of increase minus 1.9 percentage points for the hospital-specific rate for sole community hospitals. We believe that the hospital-specific rate should be updated by the same percentage increase as the urban standardized amounts. Our recommendation for a higher update to the rural standardized amount is intended to reduce the differential between the standardized amounts for other urban and rural hospitals, which is not an applicable consideration for hospital-specific rates.

In recommending these increases, we have followed section 1886(e)(4) of the Act, which requires that we take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. In addition, as required by section 1886(e)(4) of the Act, we have taken into consideration the recommendations of ProPAC. We believe our analyses, which measure changes in hospital productivity, scientific and technological advances, practice pattern changes, and changes in case mix, support a recommendation that the update for urban hospitals and the hospital-specific rates applicable to sole community hospitals be no more than the market basket minus 1.9 percentage points. We note that the results of our framework supported an update in the range of the market basket rate of increase minus 2.8 percentage points to the market basket rate of increase minus 1.9 percentage points. The update for hospitals located in urban areas set forth in Public Law 103–66 for FY 1994, that is, the market basket rate of increase minus 2.5 percentage points, falls within the range supported by our framework.

We believe a higher update for the standardized amount applicable to rural hospitals is appropriate in order to phase out the differential between the rural and other urban standardized amounts, as required by section 4002(c) of Public Law 101–508. We are recommending that the rural standardized amount be updated by an average amount equal to the market basket rate of increase minus 0.8 percentage points.

As we noted in the proposed rule (58 FR 30445), we disagree with ProPAC's recommendation that the hospital-specific rates applicable to sole community hospitals be increased by the update factor applicable to the rural standardized amounts. We believe that the considerations used to develop the update recommendations for the urban standardized amounts are also applicable to the hospital-specific rates, and that the differential update applied to the rural standardized amounts to eliminate the difference between the rural and other urban standardized amounts is not a relevant consideration for the hospital-specific rates.

Comment: A few commenters disagree with our recommended updates of the market basket rate of increase minus 1.9 percentage points for urban hospitals, and the market basket rate of increase minus 0.8 percentage points for rural hospitals. The commenters believe that updates lower than the change in the market basket are insufficient to ensure hospital financial stability, and urge that we implement the updates set forth in Public Law 101–508, that is, the market basket rate of increase for urban hospitals, and the market basket rate of increase plus 1.5 percentage points for rural hospitals.

Response: We believe that our recommended updates are sufficient to ensure the continued availability of efficiently provided care of high quality for Medicare beneficiaries. As explained in Appendix D of the proposed rule, our recommended updates are lower than the increase in the market basket because of previous market basket forecast errors, expected hospital productivity gains, and the difference between real case-mix increase and total case-mix increase. We will, however, implement the updates in accordance with the statute.

Comment: A few commenters agree with ProPAC that the share of hospital wages in the market basket should be increased.

Response: A detailed response to this comment was provided in the September 4, 1990, final rule (55 FR 36047) when the current hospital market basket was implemented. As we stated in the May 26, 1993 proposed rule (58 FR 30445), we believe that it would be equally inappropriate to use 100 percent internal (that is, hospital industry-specific) price proxies or 100 percent external price proxies. We prefer to use economy-wide proxies for those occupations that are generally employed both inside and outside hospitals, such as managers, administrators, clerical and maintenance workers. We believe that the economy-wide rate of increase is the more appropriate measure for these types of employees, since that is the relevant labor market for these employees. In contrast, we use hospital-industry proxies for those categories of workers, such as registered nurses, that are not hired in large numbers in other sectors of the economy.

Comment: Some commenters believe that it would be appropriate to adjust the market basket for the cost of new technologies.

Response: We do not believe that it is appropriate to adjust the market basket for the cost of new technologies. The update framework accounts for the role of new technologies in two ways. First, we account for cost-increasing, quality-enhancing new technologies in the intensity component of our update recommendation (which is an add-on to the market basket rate of increase). Second, we account for cost-decreasing new technologies through a productivity adjustment. This adjustment allows for

those technologies that allow hospitals to treat their patients at lower cost.

Comment: A commenter believes that rural hospitals should receive the same update as urban hospitals, rather than the higher updates recommended by us and required by the Act.

Response: We believe that it is appropriate to set a higher update for the rural standardized amount, given the requirement under section 1886(d)(3)(A)(iii) of the Act that the rural standardized amount be set equal to the other urban standardized amount in FY 1995. The higher update provides for a gradual transition to the elimination of the rural standardized amounts.

Comment: A commenter disagrees with our use of the FY 1992 forecast error in setting our recommended update amounts. This commenter believes that since the actual FY 1992 update was the market basket rate of increase minus 1.6 percentage points for hospitals located in urban areas, and the forecast error in the FY 1992 market basket rate of increase was only 1.3 percentage points, the forecast error was built into the rates, and should not be removed through the FY 1994 update factor.

Response: The FY 1992 update factor was set by law at the market basket rate of increase minus 1.6 percentage points. If the FY 1992 rate of increase had been correctly forecast, the FY 1992 update would have been 1.3 percentage points lower. While we do not believe that it would be appropriate to recoup the excess payments made, we believe that the current standardized amounts should reflect the correct rate of increase.

Comment: A commenter believes that the prospective payment system rates are inadequate, and should be increased to reflect the current costs of treating Medicare beneficiaries.

Response: We believe that payments under the prospective payment system are sufficient for the provision of effective and efficiently provided care of high quality to Medicare beneficiaries. Accordingly, we believe that costs in excess of prospective payments are generally reflective of industry inefficiencies. In the September 1, 1992 final rule (57 FR 40014), we presented an analysis of expected increases in cost per case. Expected increases were determined based on changes in real case mix, productivity, and allowable intensity (that portion of the increase in the cost of services provided per discharge due to within DRG severity increases and cost increasing new technology). We compared the expected increases in cost per case to the increases in payment per case, and found that payments per case have increased at a sufficient rate to compensate for the expected cost per case increases.

III. Secretary's Final Recommendation for Updating the Rate-of-Increase Limits for Excluded Hospitals and Units

We received several public comments concerning our proposed recommendation on the update factor for excluded hospitals and hospital units. After consideration of all the arguments presented, we have decided that our final recommendation will be that hospitals and hospital units excluded from the prospective payment system receive an update equal to the percentage increase in the market basket that measures input price increases for services furnished by excluded hospitals minus 1.0 percentage point. Thus, given the current estimate of the change in the market basket for excluded hospitals of 4.3 percent, our final recommendation is an update of 3.3 percent. We note that the updates for hospitals and units excluded from the prospective payment system as set in Public Law 103–66 is the market basket rate of increase minus 1.0 percentage point, adjusted to account for the relationship between the provider's allowable operating cost per case and its target amount.

Comment: One commenter believes that the proposed update for rural facilities excluded from the prospective payment system should be the same as that for rural facilities subject to the prospective payment system, that is, the market basket rate of increase plus 1.5 percentage points. The commenter states that excluded rural facilities face the same increase in costs that rural prospective payment system providers do, and that, as a result, their updates should be the same.

Response: The updates that we will implement for rural facilities, both those subject to the prospective payment system and those excluded from the prospective payment system, are those mandated by the Social Security Act. Further, we note that the additional update for rural hospitals subject to the prospective payment system is designed to achieve a gradual transition in reducing the differential between the rural and other urban standardized amounts, before these amounts become equivalent beginning in FY 1995. Facilities excluded from the prospective payment system are paid based on the lesser of their average cost per case or their updated rate of increase limit. As a result, rural excluded facilities are paid based on their own costs, either current year costs, or for updated base year costs.

Appendix D—Development of Update Framework for Prospective Payment System for Inpatient Hospital Capital-Related Costs

I. Introduction

For FY 1992 through FY 1995, § 412.308(c)(1) provides that the update for the capital prospective payment rates (Federal rate and hospital-specific rate) will be based on a 2-year moving average of actual increases in Medicare inpatient capital costs per discharge. The regulations provide that, beginning in FY 1996, HCFA will determine the update in the capital prospective payment rates based on an analytical framework that will take into account (1) changes in the price of capital (which we will incorporate into a capital input price index), and (2) appropriate changes in capital requirements resulting from development of new technologies and other factors (such as the diffusion of existing technologies and existing hospital capacity and utilization). The objective of the capital update framework is to determine a rate of increase in aggregate capital prospective payments which, along with a rate of increase in DRG operating payments, ensures a joint flow of capital and operating services for efficient and effective care for Medicare patients.

Although the analytical framework will not be employed to determine the annual update factor until FY 1996, we are presenting a series of preliminary models, using available data and concepts, of an update framework for the prospective payment system for hospital inpatient capital-related costs. We have presented models in the final rules for FY 1992 and FY 1993, and in the proposed rule for FY 1994. We received six comments on the most recent model, which was published as appendix E to the May 26, 1993 proposed rule. These comments are discussed below in sections II.C. and II.D.

The model update framework includes a capital input price index that parallels the operating input price index. The capital input price index measures the pure price changes associated with changes in capital-related costs (prices × "quantities"). The composition of capital-related costs is maintained at base-year FY 1987 proportions in the capital input price index. As such, the composition of capital reflects the underlying capital acquisition process. We selected FY 1987 as the base year for this

preliminary capital input price index for consistency with the operating input price index. We would periodically update both the operating and the capital input price indexes to reflect the changing composition of inputs for capital and operating costs. We expect to have rebased the capital and operating input price indexes by the time we implement the final capital update framework for FY 1996. The capital input price index below illustrates the methodology we propose to employ.

The model capital update framework, like the revised operating update framework, incorporates several policy adjustments in addition to the capital input price index. We would adjust for case-mix index-related changes, for intensity, and for the efficient and cost-effective use of capital (such as movable equipment, buildings and fixed equipment) in the hospital industry, as well as for error in the capital input price index forecast.

In developing the model framework, we are attempting as much as possible to maintain consistency with the revised operating framework, in order to facilitate the eventual development of a single prospective payment system update framework. We are also concerned with promoting the goals that motivated the adoption of the capital prospective payment system, especially the goals of promoting more effective and efficient utilization of capital resources in the hospital industry and establishing incentives for hospitals to make cost-effective decisions regarding acquisition of new capital resources.

It is important to emphasize that this presentation represents our current thinking, and that we encourage submission of comments and recommendations for further improvements. We are especially interested in suggestions regarding the proposed adjustment factor for capital productivity and efficiency. We also remain interested in suggestions regarding the capital input price index, the proposed policy adjustment factor for intensity, and alternative methodologies for deriving the factors. We welcome information concerning empirical studies and sources of data that could be useful in developing the framework. We will consider comments and recommendations on any aspect of the model framework in making further developments for presentation in next year's rulemaking process for the prospective payment system. Comments should be sent by December 31, 1993 to: Update Framework, Division of Hospital Payment Policy, 1-H-1 East Low Rise, Baltimore, Maryland 21207.

II. Measurement of Capital Input Price Increases

A. Introduction

HCFA proposed a capital input price index (CIPI) as one component in developing future update factors for the Federal rate in the September 1, 1992 **Federal Register**. We presented a revised version of the CIPI in the May 26, 1993 **Federal Register**. The proposed CIPI paralleled the operating input price index since both indexes were designed to measure input price changes for hospitals' current year expenses, that is, to separate pure price changes from quantity and expenditure changes. The operating sector input price index measures input price changes for operating-related expenses. The CIPI measures input price changes for capital-related expenses.

B. The HCFA Capital Input Price Index

The current version of the CIPI is based on the following assumptions:

- The Federal rate is based on the concept of capital-related expenses of capital assets used for patient care in the fiscal year and, therefore, any change in the Federal rate should take into account expected changes in the input price aspects of capital-related expenses;
- Capital-related expenses are defined as the sum of depreciation expense, capital-related interest costs, and other capital-related costs, including taxes, insurance, and leases; and
- The input prices related to capital-related expenses are beyond the control of the hospital industry (that is, the hospital is a price-taker, not a price-setter).

These assumptions lead directly to a definition of a CIPI that takes into account the price aspects of changes in depreciation expense, interest costs, and other capital-related costs. Further, the assumptions lead directly to input prices for depreciation expense and interest costs which, unlike operating costs, have a time dimension that must be captured in the CIPI.

In its original proposal, HCFA recommended that three categories of capital-related expenses be included in the CIPI: depreciation expense, interest costs, and other capital-related costs (taxes and insurance). We continue to believe these categories should be used in the CIPI. In response to comments and suggestions on our September 1, 1992 proposal, and in order to apply new research findings, we proposed a number of revisions to our original CIPI proposal in the May 26, 1993 **Federal Register**.

HCFA revised its original CIPI proposal in the following major respects:

- In its original proposal, HCFA implicitly assumed that the capital structure (the proportion of depreciation expense, interest costs, and other capital costs) for rentals and leases was the same as that for capital owner-operators. The results of the 1987 Assets and Expenditure Survey by the Bureau of the Census, Department of Commerce, called that assumption into question. We thus explicitly incorporated leasing costs into our index weighting system to reflect the results of the Survey.
- We continue to use historical purchase prices to evaluate the contribution of each year's depreciation amount within the time span limits imposed by the expected life of assets. However, we dropped the assumption that the same proportion of current real capital stock was acquired each year starting with the current year back to the earliest year in the expected life of the stock. Rather, we now use a proportional weight for each year that reflects the historic patterns of purchases of assets. A representative weighted mean price is computed for each relevant time span. The effect of this change is to give more weight to price changes in more recent periods. Thus, in periods of rapid inflation, the proportionately weighted price tends to rise more rapidly than the fixed weight price and, conversely, the price declines faster as inflation abates. Proportional weighting is a direct consequence of the definition of depreciation expenses and therefore is a correct procedure by definition.
- We continue to use two categories of straight-line depreciation expense: Building and fixed equipment, and movable equipment. However, additional data analysis required revision in the expected life for the two categories. We proposed to use 24 years expected life for buildings and fixed equipment, replacing the 25-year estimate used last year, and 10 years expected life for movable equipment, replacing the 7-year estimate used last year. The effect of these changes is to include fewer historic prices for building and fixed equipment and to include more historic prices for movable equipment.
- We continue to use FY 1987 as a base year for the CIPI. We revised the relative expenditure weights for each major capital-related expense category to reflect more recent data analysis and to account for findings in the 1987 Assets and Expenditure Survey, Bureau of the Census, Department of Commerce. The revised relative weights

reflect our best estimates of the combined capital-related expenses for hospital owner-operators and for leasers of capital equipment to hospital owner-operators. The revised estimates allocate a relative weight of .6479 to depreciation, .3305 to interest, and .0201 to other capital-related expenses compared to .655, .295 and .050 for the respective categories in our prior version. Similarly, we adopted relative internal expenditure weights for depreciation expense of .4694 for building and fixed equipment and .5306 for movable equipment compared to .540 and .460 for the respective categories in our prior version.

• In our original proposal for the interest section of the CIPI we adopted a number of assumptions about the input price proxies, weights, and types of and expected lives for debt instruments that we have revised in our more recent version. In the absence of definitive information on the expected life of debt instruments, we originally chose an average 20-year life for loans on building and fixed equipment and an average 6-year life for loans on movable equipment. In our more recent version, we proposed to use the same expected life for loan instruments as we use for expected life in the depreciation section, 24 years for building and fixed equipment loans and 10 years for movable equipment loans. These expected lives are proxies for actual loan terms and may be improved upon.

• In our original version we used a mortgage model to approximate the changing impact of old debt instruments on current interest amounts as the debt instruments age (that is, the decline in payments for interest as the principal is paid off). In our more recent version, we proposed to use a serial bond model, rather than a mortgage model, to approximate these effects. We adopted the bond model because it is simpler, because it purportedly applies to a large proportion of hospital debt, and because it closely simulates the interest payment effects for both bonds and mortgage financing. Consistent with weighting the historical purchase prices of capital assets, we now use a proportional weight for each year that reflects historic patterns of acquiring debt instruments. A representative weighted mean "price" for interest costs is computed for each relevant time span. An effect of this change is to give more weight to interest rate changes in more recent periods. More recent principal amounts are larger than earlier amounts because both the quantity of real capital financed and the purchase price per unit of real capital (two components of principal amounts) are larger in recent periods. The historic weighting method is a direct consequence of our definition of interest costs and, therefore, is a correct procedure by definition.

The purpose of these revisions was to adjust weights associated within the CIPI to reflect industry experience more accurately.

We use the same price proxies in the May 26, 1993 version that we described in the September 1, 1992 Federal Register. A number of alternative price proxies have been brought to our recent attention but, as yet, none meet the criteria we described in the FY 1993 final rule. Those criteria are: the price proxy data must be publicly available; it must be based on valid sampling designs; and it must have been collected for a sufficiently long period of time to ensure stability and credibility. We will continue to study possible alternative price proxies.

We applied our revised methodology using historical price proxy changes through 1992 and Data Resources Inc. (DRI) price proxy projections through 1998 (Table 1). The effects of recent declines in interest rates and in the purchase price of investment goods is apparent in the historical sections of Table 1.

TABLE 1.—HCFA CAPITAL INPUT PRICE INDEX PERCENT CHANGES, TOTAL AND COMPONENTS, FISCAL YEARS 1985 TO 1998

	Total capital related costs	Depreciation expense	Interest expense	Other capital related costs
Weight (1987)	1.0000	0.6479	0.3305	0.0216
Fiscal Year:				
Historical:				
1985	6.2	5.9	7.0	6.0
1986	4.3	5.2	2.4	5.5
1987	3.6	4.7	1.1	5.2
1988	3.7	4.3	2.4	4.8
1989	3.1	4.0	1.2	4.5
1990	2.8	3.7	0.9	4.3
1991	2.4	3.3	0.5	4.0
1992	1.6	2.6	−0.7	3.8
Forecast:				
1993	1.6	2.8	−0.8	3.7
1994	1.9	2.8	0.2	3.6
1995	2.2	2.8	1.0	3.5
1996	2.3	2.9	1.1	3.5
1997	2.7	2.9	2.1	3.5
1998	2.8	3.0	2.5	3.5

Source: Health Care Financing Administration.

The deceleration in price increases associated with depreciation amounts indicates more rapid deceleration for movable equipment than for building and fixed equipment (Table 2), a trend that we attribute to the older purchase prices captured by the longer expected life built into the building and fixed equipment category.

TABLE 2.—HCFA DEPRECIATION COMPONENT OF CAPITAL INPUT PRICE INDEX, PERCENT CHANGES, TOTAL AND SUBCOMPONENTS, FISCAL YEARS 1985 TO 1998

	Total depreciation expense	Building and fixed equipment depreciation expense	Movable equipment depreciation expense
Weight (1987)	.6479	.3041	.3438

TABLE 2.—HCFA DEPRECIATION COMPONENT OF CAPITAL INPUT PRICE INDEX, PERCENT CHANGES, TOTAL AND SUBCOMPONENTS, FISCAL YEARS 1985 TO 1998—Continued

	Total depreciation expense	Building and fixed equipment depreciation expense	Movable equipment depreciation expense
Fiscal Year:			
Historical:			
1985	5.9	6.0	5.7
1986	5.2	5.5	4.9
1987	4.7	5.2	4.3
1988	4.3	4.8	3.9
1989	4.0	4.5	3.6
1990	3.7	4.3	3.2
1991	3.3	4.0	2.7
1992	2.6	3.8	1.6
Forecast:			
1993	2.8	3.7	2.0
1994	2.8	3.6	2.0
1995	2.8	3.5	2.2
1996	2.9	3.5	2.3
1997	2.9	3.5	2.4

TABLE 2.—HCFA DEPRECIATION COMPONENT OF CAPITAL INPUT PRICE INDEX, PERCENT CHANGES, TOTAL AND SUBCOMPONENTS, FISCAL YEARS 1985 TO 1998—Continued

	Total depreciation expense	Building and fixed equipment depreciation expense	Movable equipment depreciation expense
1998	3.0	3.5	2.5

Source: Health Care Financing Administration

The effects of recent declines in interest rates were a major factor in the decelerating price associated with interest costs (Table 3). To obtain the total interest-related price change for each major asset category in Table 3, we multiplied the ratio changes in interest rates and purchase prices and converted the product to the percentage changes shown in the table.

TABLE 3.—HCFA INTEREST COMPONENT OF CAPITAL INPUT PRICE INDEX, PERCENT CHANGES

[Total and Subcomponents, Fiscal Years 1985 to 1998]

	Total	Building and fixed equipment			Movable equipment		
	Interest price change	Interest price change	Interest rate change	Purchase price change	Interest price change	Interest rate change	Purchase price change
Weight (1987)	0.3305	0.2393			0.0912		
Fiscal Year							
Historical:							
1985	7.0	7.7	1.5	6.0	5.1	−0.5	5.7
1986	2.4	3.5	−1.9	5.5	−0.7	−5.3	4.9
1987	1.1	2.3	−2.7	5.2	−1.9	−6.0	4.3
1988	2.4	3.3	−1.5	4.8	−0.1	−3.8	3.9
1989	1.2	2.1	−2.3	4.5	−1.2	−4.7	3.6
1990	0.9	1.6	−2.5	4.3	−1.1	−4.1	3.2
1991	0.5	1.1	−2.7	4.0	−1.2	−3.8	2.7
1992	−0.7	0.4	−3.3	3.8	−3.3	−4.8	1.6
Forecast:							
1993	−0.8	−0.1	−3.7	3.7	−2.6	−4.5	2.0
1994	0.2	0.6	−2.9	3.6	−0.8	−2.8	2.0
1995	1.0	1.1	−2.3	3.5	0.7	−1.5	2.2
1996	1.1	1.1	−2.3	3.5	1.0	−1.3	2.3
1997	2.1	1.9	−1.5	3.5	2.4	0.0	2.4
1998	2.5	2.3	−1.1	3.5	2.9	0.4	2.5

C. ProPAC Recommendation for Updating the Capital Prospective Payment System Federal Rate

ProPAC recommends the use of an update framework based on the premise that capital prospective payments are for future capital purchases. The ProPAC update framework includes a capital market basket component that measures 1-year changes in the purchase prices of a fixed basket of capital goods purchased by hospitals. The ProPAC framework also includes several policy adjustment factors. A forecast error correction factor adjusts payment rates so that the effects of past errors are not perpetuated. A financing policy adjustment accounts for the effects of substantial deviations from long-term trends in interest rates on hospital capital costs. The capital update framework also includes adjustments for scientific and technological advances, productivity, and case-mix change similar to those employed in the ProPAC operating update framework.

Comment: In its comment on the version of the update framework that appeared in the May 26, 1993 **Federal Register**, ProPAC agreed that both the ProPAC and HCFA update frameworks have the same goal—to ensure a flow of resources that will allow for the efficient and effective care of Medicare patients.

ProPAC also noted our observation (58 FR 30447) that there is a fundamental difference between the two frameworks. ProPAC believes that a prospective update should provide Medicare payments that are reflective of future capital prices rather than historical values, as in HCFA's model framework. ProPAC notes that HCFA bases its model on an interpretation of current law. ProPAC further states that its update methodology is fully consistent with the Medicare statute.

Response: A significant philosophical difference persists between the ProPAC and HCFA frameworks. ProPAC's framework is based on the premise that capital prospective payments are for future capital purchases. Thus, ProPAC's proposed capital market basket reflects the projected increase in the purchase price of capital goods from one year to the next. To put it another way, the market basket under the ProPAC framework reflects the price of replacing current capital stock at future prices.

HCFA's framework is based on the premise that capital prospective payments are for hospitals' future capital-related expenses rather than for future capital-related purchases. That is, HCFA's framework addresses the expenses associated with hospitals' given stock of capital in a particular fiscal year; ProPAC's framework ignores hospitals' present stock of capital and focuses on costs of capital purchases that hospitals will make in a particular fiscal year.

We continue to believe that the HCFA model framework is more consistent with the statutory intent, with Medicare program precedent, and with the methodology by which the Federal capital rate was originally developed. Section 1886(g)(1)(A) of the Act provides that "* * * instead of any amounts that are otherwise payable under this title with respect to the reasonable costs of * * * hospitals for capital-related costs of inpatient hospital services, the Secretary shall * * * provide for payment *for such costs* in accordance with a prospective payment system* * *". (Emphasis added.) This section of the Act further provides that the term "capital-related costs" has the meaning given to the term by the Secretary as of September 30, 1987. In the Medicare program, the term "capital-related costs" has always included the historical or accounting costs for capital, that is, net depreciation, as well as interest, taxes, insurance, and leases on depreciable assets.

ProPAC points out that the statute requires the Secretary to provide for "payment" (not reimbursement) of capital-related costs. It is true that the term "payment" is not as restrictive as "reimbursement." Unlike "reimbursement," the term "payment" does not necessarily require strict correlation between the amount of payment and the costs incurred in providing services. Nevertheless, the statute does state that the "payment" is "for" capital-related costs, thus linking the payment to those costs. Accordingly, the Federal capital rate was originally developed on the basis of the FY 1989 national average Medicare inpatient capital-related cost per case. To maintain consistency, we believe that the update should also be based on projected changes in the historical costs of capital.

It is important to note that the HCFA update methodology is not based solely on an interpretation of the statute. Even if we could agree that the ProPAC and HCFA approaches are equally consistent with the statute and with program precedent, we would prefer the HCFA methodology. That is because there is a sound economic reason for regarding the current purchase price of capital assets alone as an inadequate measure of the price of capital. The crucial distinguishing feature of capital assets is that they are consumed over time. Normal accounting rules recognize this feature of capital assets by prorating the expense of capital acquisitions over more than one time period. An expense (the product of price and quantity) prorated over more than one time period carries an implicit price factor into future periods that must be accounted for in any capital input price index. Consideration of the costs for all capital currently in use for patient care, not just the costs for current capital purchases, is necessary for this purpose. We do not believe that the ProPAC index adequately captures this aspect of changes in capital input prices.

Another way to understand the difference between the HCFA and ProPAC approaches, and our basis for rejecting the ProPAC approach, is in terms of the estimates developed by HCFA and the Bureau of Economic Analysis (BEA), Department of Commerce. HCFA and the BEA periodically estimate hospital consumption expenditures and hospital investment expenditures. Hospital consumption expenditures include expenses for labor, capital consumption allowances for depreciation and other expenses including capital related interest, other capital related expenses for taxes and insurance, and other non-capital related expenses. Hospital investment expenditures represent current year total outlays for new capital purchases (before amortization and depreciation allocation). These outlays derive from new debt or from equity financing. Current hospital investment outlays therefore generate future capital-related expenses for depreciation and future interest payments for debt but are relevant to current capital related expenses only insofar as a portion of incurred expenses for depreciation and interest applicable to current capital purchases is prorated to the current year.

HCFA proposes to create a capital input price index that relates to consumption expenditures rather than investment expenditures. HCFA's proposal thus is consistent with the input price index historically applied to update factors under the operating-PPS system. The HCFA operating-PPS Input Price Index and the HCFA CIPI are each designed to address the input price aspects of rates of change in the Medicare expenditure portion of these hospital consumption expenditures.

The ProPAC approach, however, confuses prorated capital related expenses incurred by hospitals for past capital purchases (the capital portion of hospital annual consumption expenditures) with current outlays for capital investments made by hospitals before pro-ration to annual expense amounts using Medicare cost principles (hospital investment expenditures). ProPAC proposes to apply a capital input price index based only on prices and appropriate interest rates for current investment expenditures rather than for pro-rated capital-related expenses for all capital purchases, past and present. Thus, ProPAC proposes to continue the operating input price index related to consumption expenditures, but to create a capital input price index related to investment expenditures. In contrast, the HCFA approach provides consistency with the existing operating-PPS input price index.

D. Other Comments

Comment: Two commenters supported HCFA's decision to include leasing costs in the CIPI. The commenters noted that leasing represents an important management tool in controlling costs while staying abreast of design advances.

Response: We continue to believe that changes in leasing costs should be reflected in the CIPI. Including such costs in the CIPI is a direct result of basing the CIPI on the change in capital-related expenses, rather than on the annual change in capital purchase prices, as in the ProPAC index.

Comment: One commenter disagreed with ProPAC's recommended framework, which ignores a hospital's present stock of capital and focuses only on the costs of capital purchases that hospitals will make in a particular year. The commenter contended that the ProPAC approach does not take into account all the expenses associated with the on-going cost of capital assets.

Response: As discussed above, we agree with this comment.

Comment: One commenter observed that capital rentals differ from capital leases. The commenter observed that lessees are required to keep leased equipment for the duration of a lease whether or not it continues to be needed, but that rentals have no specific term and, therefore, the equipment can be returned if it is no longer needed. The commenter suggested that renting may provide more efficient use of capital resources under some circumstances and should be recognized separately in the CIPI.

Response: We are seeking information to demonstrate what proportions of total capital-related expenses relate to leases and to rentals, and whether distinguishing leases and rentals would result in a material difference in the rates of change in the CIPI.

Comment: Two commenters objected to HCFA's proposal to increase the expected life of movable equipment from 7 years to 10 years in the CIPI. The commenters suggested that this change may assume a slower rate of technological change than may be reasonable.

Response: We derive the expected life of movable equipment from Medicare cost reports by dividing the balance sheet book value for movable equipment by the current year depreciation amount. Information currently available from Medicare cost reports for recent years indicate that the expected life for movable equipment tends to be approximately 10 years. Recent instructions for improved reporting of capital-related expenses on the Medicare cost report may suggest a different expected life for movable equipment. We will incorporate any changes dictated by the data.

III. Case-Mix Adjustment and Adjustment for Forecast Error

The case-mix index (CMI) is the measure of the average DRG weight for cases paid under the prospective payment system. Because the DRG weight determines the prospective payment for each case, any percentage increase in the CMI corresponds to an equal percentage increase in hospital payments.

The case-mix index can change for any of several reasons: because the average resource use of Medicare patients changes ("real" case-mix change), because changes in hospital coding of patient records result in higher weight DRG assignments ("coding effects"), and because the annual DRG reclassification and recalibration changes may not be budget neutral ("reclassification effect"). In the revised update framework for the prospective payment system for operating costs, we adjust the update upwards to allow for real case-mix change, but remove the effects of coding changes on the case-mix index. We also remove the effect on total payments of prior changes to the DRG classifications and relative weights, in order to retain budget neutrality for all CMI-related changes other than patient severity (for example, we adjust for the effects of the FY 1992 DRG reclassification and recalibration as part of our FY 1994 update recommendation). The operating adjustment consists of a reduction for total observed case-mix change, an increase for the portion of case-mix change that we determine is due to real case-mix change rather than coding modifications, and an adjustment for the effect of prior DRG reclassification and recalibration changes. We proposed to adopt this CMI adjustment as well in the capital update framework.

We received no comments on the proposed CMI adjustment.

The revised operating update framework contains an adjustment for forecast error. The input price index forecast is based on historical trends and relationships ascertainable at the time the update factor is established for the following year. In any given year there can be unanticipated price fluctuations that can result in differences between the actual increase in prices faced by hospitals and the forecast used in calculating the update factors. We continue to believe that the capital update framework should include a forecast error adjustment factor. In setting a prospective payment rate under the proposed framework, we would make an adjustment for forecast error only if our estimate of the capital input price index rate of increase for any year is off by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of the forecast error. Thus, for example, we would adjust for a forecast error made in FY 1996 through an adjustment to the FY 1998 update.

We received no comments on the proposed forecasting error adjustment.

IV. Policy Adjustment Factors

The capital input price index measures the pure price changes associated with changes in capital-related costs (prices x "quantities"). The composition of capital-related costs is maintained at base-year 1987 proportions in the capital input price index. We would address appropriate changes in the amount and composition of capital stock through the policy adjustment factors.

The revised update framework for the prospective payment system for operating costs includes factors designed to adjust the input price index rate of increase for policy considerations. Under the revised operating framework, we adjust for service productivity (the efficiency with which providers produce individual services such as laboratory tests and diagnostic procedures) and intensity (the amount of services used to produce a discharge). The service productivity factor for the operating update framework reflects a forward-looking adjustment for the changes that hospitals can be expected to make in service-level productivity during the year. A hospital retains any productivity increases above the average.

The intensity factor for the operating update framework reflects how hospital services are utilized to produce the final product—the discharge. This component accounts for changes in the use of quality-enhancing services, changes in within-DRG severity, and expected modification of practice patterns to remove cost-ineffective services. We originally proposed that the intensity adjustment factor in the revised operating-PPS framework be adopted in the capital update framework. That factor remains a part of our developing framework. Under the revised operating update framework, we calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI hospital component) and changes in real case mix. The use of total charges in the calculation of the proposed intensity factor makes it a total intensity factor, that is, charges for capital services are already built into the calculation of the factor. We can therefore incorporate the proposed intensity adjustment from the operating update framework into the capital update framework. In the absence of reliable estimates of the proportions of the overall annual intensity increases that are due, respectively, to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity, we

proposed to assume, as in the revised operating update framework, that one-half of the annual increase is due to each of these factors. The capital update framework would thus provide an add-on to the input price index rate of increase of one-half of the estimated annual increase in intensity to allow for within-DRG severity increases and the adoption of quality-enhancing technology.

In our previous discussions of an efficiency adjustment, we suggested that the adjustment should take into account two considerations. One is that capital inputs, unlike operating inputs, are generally fixed in the short run. The productivity target in the revised operating framework operates on a short-term, year-to-year basis. Targets for capital efficiency and cost-effectiveness, however, must operate on a longer term basis. The other consideration is that, prior to the adoption of the capital prospective payment system, Medicare payment policy for capital-related costs, as well as the policies of other payers, did not provide sufficient incentives for efficient and cost-effective capital spending. As a result, capital costs per case, and therefore base year prospective capital rates, may be higher than would have been consistent with capital acquisition policy in more efficiency-oriented markets. A guiding principle in devising an efficiency adjustment is therefore that Medicare capital prospective payment rates should not provide for maintenance of capital in excess of the level that would be produced in an efficiency-oriented competitive market.

As a preliminary examination of this issue, we analyzed the change in actual Medicare capital cost per case for FYs 1986–1991 in relation to the change in the capital input price index (which accounts for change in the input prices for capital-related costs), and the other adjustment factors that we were then proposing to include in the framework, that is, the increase in real case mix, and the increase in intensity due to quality-enhancing technological change and within-DRG complexity. We found rates of increase in spending per case that exceeded the rate of increase attributable to inflation in capital input prices, quality-enhancing intensity increases, and real case-mix growth.

Economic theory suggests that an industry with a guaranteed return on capital (such as the hospital industry prior to prospective payment for capital-related costs) would have a tendency to be overly capitalized relative to more competitive industries. This is because the incentive for firms in such an industry is to compete on the basis of more capital-intensive production processes than firms in other industries. As a result, capital costs per case, and therefore base year prospective capital rates, may be higher than would have been consistent with capital acquisition policy in more efficiency-oriented competitive markets.

Our analysis was designed to examine whether hospitals had in fact responded to the incentives of the cost-based reimbursement system for capital by expanding beyond what was necessary for efficient and cost-effective delivery of services. The analysis confirmed that volume and intensity of capital acquisition far outpaced the increase in capital input prices during the years between the implementation of the prospective payment system for operating costs and the introduction of the capital prospective payment system. Even accounting for real CMI increases and increases in intensity attributable to cost-increasing but quality-enhancing new technologies, there remains a large excess of capital-related spending.

The following tables show the results of our most recent analysis, based on the most current data available and the most recent projections. Differences between these tables and the tables in the May 26, 1993, **Federal Register** are due to revised figures for average capital cost per case increases, based on the most recent data and projections. Table 4 shows the results when real case-mix increase is assumed to be 1.0 percent annually. Table 5 shows the results when real case-mix increase is assumed to be 1.4 percent annually.

TABLE 4.—CUMULATIVE PERCENTAGE CHANGE IN CAPITAL-RELATED COST PER CASE DUE TO INFLATION, REAL CMI, AND INTENSITY, 1986–1991

Year	CIPI [1]	Real CMI [2]	Allowable intensity [3]	Resulting increase [4]	Percent change cost/case [5]	Residual [6]
1986	4.3	1.0	2.1	7.6	19.9	11.5
1987	3.6	1.0	2.5	7.3	14.9	7.1
1988	3.7	1.0	1.5	6.3	7.3	0.9
1989	3.1	1.0	0.5	4.7	8.1	3.3
1990	2.8	1.0	0.2	4.0	6.4	2.3
1991	2.4	1.0	0.1	3.5	4.4	0.8
Cumulative (compounded)	.....	.....	.....	38.2	77.5	28.4

[1] Figures from Table 1, section III.
[2] Assuming that real CMI increase is 1.0 percent annually.
[3] One half of observed intensity increase, as determined by the of the joint operating/capital intensity measure.
[4] The increase attributable to inflation, real CMI, and allowable intensity, calculated as the product of the rates of increase of those factors (that is, 1.043×1.01×1.021=1.076 for 1986).
[5] Figures supplied by HCFA's Office of the Actuary.
[6] The actual increase in average cost per case divided by the increase attributable to inflation, real CMI, and allowable intensity (that is, 1.199/1.075=1.115, an 11.5 percent residual for 1986).

TABLE 5.—CUMULATIVE PERCENTAGE CHANGE IN CAPITAL-RELATED COST PER CASE DUE TO INFLATION, REAL CMI, AND INTENSITY, 1986–1991

Year	CIPI [1]	Real CMI [2]	Allowable intensity [3]	Resulting increase [4]	Percent change cost/case [5]	Residual [6]
1986	4.3	1.4	1.9	7.8	19.9	11.3

TABLE 5.—CUMULATIVE PERCENTAGE CHANGE IN CAPITAL-RELATED COST PER CASE DUE TO INFLATION, REAL CMI, AND INTENSITY, 1986–1991—Continued

Year	CIPI [1]	Real CMI [2]	Allowable intensity [3]	Resulting increase [4]	Percent change cost/case [5]	Residual [6]
1987	3.6	1.4	2.3	7.5	14.9	6.9
1988	3.7	1.4	1.3	6.5	7.3	0.7
1989	3.1	1.4	0.3	4.9	8.1	3.1
1990	2.8	1.4	0.0	4.2	6.4	2.1
1991	2.4	1.4	−0.1	3.7	4.4	0.6
Cumulative (compounded)	.....	.....	.....	39.9	77.5	26.9

[1] Figures are from Table 1, section III.
[2] Assuming that real CMI increase is 1.4 percent annually.
[3] One half of intensity increase as determined by the methodology of the joint operating/capital intensity measure.
[4] The increase attributable to inflation, real CMI, and allowable intensity, calculated as the product of the rates of increase of those factors (that is, 1.043x1.014x1.019=1.078 for 1986).
[5] Figures supplied by HCFA's Office of the Actuary.
[6] The actual increase in average cost per case divided by the increase attributable to inflation, real CMI, and allowable intensity (that is, 1.199/1.077=1.113, an 11.3 percent residual for 1986.

We believe that the long-run adjustment for capital efficiency and cost-effectiveness should take into account the efficiency and effectiveness of the capital resources present in the base year for the capital prospective payment system. We do not believe that Medicare capital payment rates should provide for maintenance of capital in excess of the level that would be produced in an efficiency-oriented competitive market. The capital efficiency adjustment should be designed to give hospitals an incentive to reduce inefficiency and ineffectiveness in capital resources.

In the absence of another approach, we suggested in the May 26, 1993 proposed rule that the residual analysis could provide the basis for a capital efficiency adjustment (58 FR 30457). To the degree that base year rates for the capital prospective payment system reflect costs that were higher than those that would have been consistent with capital acquisition policy in a more efficiency-oriented competitive market, we suggested that the annual update could be reduced on a long-term basis. Such an adjustment would not necessarily imply the eventual removal of the entire residual we have identified from the capital update. Rather, we would continue to study the data in order to identify the proportion of the residual that should be employed to reduce the update and the rate at which the adjustment should be applied. We would also take into account the 7.4 percent reduction to the standard Federal rate mandated by Public Law 103–66. (We discuss this reduction in section V.C of the preamble to this final rule, and in section III.A of the addendum.) As we have previously noted, our eventual goal is to develop a unified update framework for both the capital and the operating prospective payment system. Such a framework will require a total factor productivity measure. While we work to develop a unified framework incorporating a total factor measure, we would employ the residual analysis as the basis for an adjustment within the capital prospective payment system update framework to encourage a gradual reduction in capital stock above the level required for efficient and cost-effective care.

Comment: We received three comments on the policy adjustment factors in the previous model framework. One commenter recommended that an add-on adjustment for new technology be included in the framework. Two commenters disagreed with our approach to an efficiency adjustment. Specifically, these commenters took issue with our contention that Medicare capital payment rates should not provide for maintenance of capital in excess of what would be produced in an efficiency-oriented competitive market. The commenters argued that this approach ignores a very important difference between competitive business practice and the provision of hospital care. Competitive businesses may choose not to serve customers who are unable to pay. Community hospitals cannot choose to refuse service to those who cannot pay. The commenters urged HCFA to keep this fact in mind in developing the update framework.

Response: As we explained above, the methodology for developing the intensity adjustment in the model framework already accounts for the introduction of quality-enhancing new technology. We therefore do not believe that a separate technology adjustment is necessary or appropriate.

The efficiency adjustment included in the previous model framework was designed to be an interim measure, pending the development of a unified update framework for the prospective payment system with a total factor productivity adjustment. To the extent that base year rates for the capital prospective payment system reflect costs that were higher than those consistent with capital acquisition policy in a more efficiency-oriented competitive market, we suggested that the rate might be reduced on a long-run basis.

It is not clear how the provision of uncompensated care by community hospitals poses an objection to the efficiency adjustment in the model framework. Certainly the provision of uncompensated care does not account for the residual uncovered in our analyses. The residual measures the excess in the rate of change, during the years immediately prior to the implementation of the prospective payment system for capital-related costs, in Medicare capital cost per case over what can be accounted for by the increase in real case mix and the increase in intensity due to quality-enhancing technological change and within-DRG complexity. During the years in question, Medicare capital costs were reimbursed at a fixed percentage of cost (85 percent of cost in the period just prior to the implementation of the capital prospective payment system). Thus, the cost-ineffective capital spending patterns suggested by the residual analyses in no way result from costs for uncompensated care. Rather, the residual suggests that the hospital industry may have responded to the incentives of the cost-based reimbursement system for Medicare capital costs by expanding beyond what

was necessary for efficient and cost-effective delivery of services. We also do not believe that the provision of uncompensated care by community hospitals otherwise provides a reason to forego an adjustment designed to correct for excessive costs built into a rate designed for payment of Medicare beneficiaries.

Accordingly, we continue to believe that an efficiency adjustment should encourage the reduction in excess capital stock by reducing the rate over a number of years. The residual analysis would provide the basis for the reduction, although we would not necessarily remove all the residual. We would continue to study the data in order to identify the proportion of the residual that should be employed to reduce the update and the rate at which the adjustment should be applied.

We emphasize again that this approach to a capital efficiency adjustment represents only our current thinking. We believe that further development may be necessary before such an efficiency adjustment is ready for use as part of the update framework. We continue to welcome suggestions for improvement of the adjustment and we remain interested in considering suggestions for alternative approaches. In addition, we would welcome information on the possible effects of an efficiency adjustment on various segments of the hospital industry.

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September 1, 1993

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 121
Protective Breathing Equipment Training; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 24792; Amendment No. 121–234]

RIN 2120–AD76

Protective Breathing Equipment Training

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA revises the current regulations requiring Part 121 crewmembers to perform an approved firefighting drill using protective breathing equipment (PBE). The current rule requiring training of Part 121 crewmembers in the use of protective breathing equipment (PBE) requires the use of the PBE while fighting an actual fire. This final rule will permit air carriers to use a simulated fire during PBE training if their training includes an additional firefighting drill with an actual fire. This action was prompted by a letter from the Association of Flight Attendants (AFA) and petitions for exemption from Pan American World Airways (Pan Am) and United Airlines, Inc. The objective of the amendment is to ensure that each crewmember accomplishes a firefighting drill in which the crewmember combats an actual fire in addition to, or combined with, a PBE drill.

DATES: This final rule is effective September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Larry Youngblut, Project Development Branch, AFS–240, Air Transportation Division, Flight Standards Service, 304B, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8096.

SUPPLEMENTARY INFORMATION:

Availability of the final rule

Any person may obtain a copy of this amendment by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the amendment number of this final rule.

Background

The requirement for Part 121 crewmembers to perform an approved firefighting drill using PBE is prescribed in § 121.417(c)(1)(i) of the Federal Aviation Regulations (FAR). The regulation requires that each crewmember perform a one-time, approved firefighting drill with an actual fire during initial training, using at least one type of installed hand fire extinguisher appropriate for the type of fire to be fought and the type of installed PBE required by § 121.337.

On May 26, 1987, the current requirement was issued in Amendment No. 121–193, Protective Breathing Equipment (52 FR 20950; June 3, 1987). The amendment was based on National Transportation Safety Board (NTSB) recommendations and on information received from investigations of accidents in which smoke and noxious fumes may have impeded crewmembers fighting cabin fires. In addressing these safety concerns, the rule included a training requirement for crewmembers to perform an approved firefighting drill, fighting an actual fire, using PBE.

On March 14, 1989, the FAA issued Advisory Circular (AC) 121–31, Training on Protective Breathing Equipment, which provided guidance for crewmember training using PBE. This AC incorrectly offered two options for meeting the firefighting drill requirements. In the first option, a carrier could require each crewmember to perform a firefighting drill by fighting an actual fire using an appropriate fire extinguisher while wearing PBE. The second option, known as a "split drill," allowed crewmembers to perform the firefighting drill by fighting a simulated fire using an appropriate fire extinguisher while wearing PBE. However, the crewmember was required to perform an additional drill, which did not have to include the use of PBE, but which had to include the fighting of an actual fire using an appropriate fire extinguisher.

The FAA received a number of inquiries about the recommended firefighting drills described in AC 121–31. Action Notice 8430.40, Training on Protective Breathing Equipment, issued on June 7, 1989, also allowed the split drill, but additionally suggested that a carrier could use simulation for both drills if the training had been approved by the Air Transportation Division. In a January 26, 1990, letter to the FAA, AFA requested enforcement of § 121.417(c)(1)(i). AFA's letter stated that some flight attendant trainees are not fighting an actual fire while wearing PBE in the firefighting drill, as required by the regulation. AFA maintained that several carriers are not in compliance with the regulation and that any deviation from the requirements should be handled through the exemption process.

The FAA, in response to AFA's letter, stated that an actual fire must be fought during the drill required by § 121.417(c)(1)(i) and that PBE must be worn while fighting an actual fire in that drill. Therefore, any carrier who is not using an actual fire during the drill required in § 121.417(c)(1)(i) is not complying with the regulation.

United Airlines, Inc., filed a petition for exemption dated September 17, 1990. The petition requested exemption from § 121.417(c)(1)(i) in order to permit the one-time firefighting drill to be accomplished using "fire simulation." The petition stated that the use of training aids was not evaluated in the preamble to Amendment No. 121–193 and that an appropriate course of action is to improve training aids and apply them to carefully developed training objectives. The petition also stated that, with the exception of the preamble language of Amendment No. 121–193, the language of the final rule appears to allow a firefighting drill using simulated fires instead of actual fires. In addition, the petitioner expressed environmental concerns about the use of actual fires, the discharge of Halon fire extinguishers during firefighting training, and possible bans or restrictions of such training imposed by political jurisdictions.

Review of Industry Practices

An FAA review of Part 121 air carrier firefighting training programs disclosed that more than one-half of all of part 121 air carrier training programs require crewmembers to fight an actual fire while wearing PBE during firefighting drills. An additional one-fourth of the air carrier training programs require crewmembers to perform two firefighting drills—one in which they fight a simulated fire while wearing PBE and another in which they fight an actual fire without using PBE. The remaining air carrier training programs use only fire simulation in their firefighting and PBE drills despite an FAA interpretation, based on the preamble to Amendment 121–193 (52 FR 20950), that an actual fire must be fought during initial training.

Notice of Proposed Rulemaking No. 92–11

On August 14, 1992, the FAA proposed in Notice No. 92–11 that air carriers be allowed to separate the training required by § 121.417 into two categories: training on PBE and training on firefighting equipment. The FAA determined that simulated training should be allowed during the training on PBE, but also maintained its longstanding position that it is essential

longstanding position that it is essential that crewmembers complete a one-time firefighting drill in which they combat an actual fire with an appropriate fire extinguisher as a part of training on firefighting equipment. Thus, the notice proposed to allow the training required under § 121.417 to be accomplished in two drills (a PBE drill using simulation and a firefighting drill using an actual fire) or one drill in which the crewmember fights an actual fire while wearing the PBE unit.

Discussion of Comments

The FAA received eight comments, including two late-filed comments, on the proposed rule.

The Association of Professional Flight Attendants (APFA) comments that it supports the action of the notice, i.e., fighting an actual fire as a part of the required drill; however, APFA also believes that the "split drill" is less effective. APFA states that flight attendants who have actually fought cabin fires have expressed a concern that the removal of the PBE from its container was much more difficult and time consuming than they anticipated. APFA recommends that a PBE drill be defined as an emergency drill in which a crewmember demonstrates the proper removal and use of the PBE, and that removal be emphasized in the training.

FAA response: The FAA has issued guidance to Principal Operations Inspectors that they should ensure that their assigned air carriers have FAA approved training courses which replicate the forces necessary to open the pouches. The FAA agrees with APFA's comment and believes that this improvement in training will have the results that the APFA wants.

The Regional Airline Association (RAA) supports the proposal, but objects to the requirement to use a fire extinguisher and PBE unit identical to that installed in the airplane instead of equivalent extinguishers and appropriate PBE training devices. The RAA is concerned that this would mean an additional training drill if a cabin crewmember is reassigned to an airplane that used a different type of fire extinguisher. The Association also urges the FAA to reword the final rule so that substitutes for HALON extinguishers may be used in order to avoid damaging the environment. RAA also proposed that the compliance date be no sooner than 1 year after the effective date.

FAA response: Simulated PBE equipment, i.e., a training hood, is acceptable if it is approved by the principal operations inspector (POI). A training hood must accurately replicate the forces necessary to open the pouch. Some airlines have installed PBE equipment in pouches which are stapled and therefore are difficult to open. When this is the case it is important that the "training" pouch simulate the forces necessary to open the actual equipment.

While it is important that each crewmember operate the fire extinguishers that are installed on the airplane, it is not necessary that installed fire extinguishers be used to actually fight the fire. The intent of the rule is that training programs accomplish the training objectives of having crewmembers know how to use the equipment and experience the psychological aspects of fighting a real fire. The training objective of knowing how to use a fire extinguisher can be met by having each crewmember remove the fire extinguisher from stowage and demonstrate the proper operation. The benefit of experiencing the psychological effect of being faced with an actual fire and having to control it can be met by the use of other extinguishing agents. To incorporate this concept in the amendatory language, definitions for simulation devices for both fire extinguishers and PBE units are added to the definitions section of the amendment.

The FAA acknowledges the comment from RAA indicating that some certificate holders may need additional time to comply with the requirement to fight an actual fire. The FAA will address the problems of those certificate holders on an individual basis.

The Air Transport Association (ATA) likewise urges the use of "training hoods" so that airlines are able to avoid higher costs associated with use of actual PBE units. ATA also notes that the FAA issued policy statements that HALON extinguishers should be avoided. ATA urges that language be added which clearly specifies the use of "other extinguishing agents" for aircraft where HALON extinguishers are used. ATA states that it continues to support United Airlines' petition for exemption to permit the use of simulation alone for the required drill. ATA states that it finds FAA inconsistent in promulgating the Advanced Qualification Program rule, which supports innovation and simulation in training, while at the same time repudiating those goals by requiring a live fire for the PBE drill.

Air Wisconsin also urges the FAA to allow training hoods and states that if carriers are required to use the approved PBE units the cost would be staggering.

An individual physician comments that the reuse of PBE units by different individuals could result in the transmission of disease, particularly hepatitis and tuberculosis. This individual urges instead that the FAA permit the use of training devices to preclude imposing an unnecessary financial burden on airlines.

FAA response: The FAA approves of the use of "training hoods" if they properly simulate the PBE equipment that is installed on the aircraft. The FAA believes that there are many "training hoods" available which do this. Most of the training problems which have been noted have concerned the opening of the pouch which houses the PBE. It is important that crewmembers receive training on the removal of the PBE from the pouch especially when the pouch is stapled and difficult to open.

This final rule allows airlines to use extinguishing materials other than HALON during the actual firefighting portion of the PBE drill. Therefore, incorporating the phrase "other extinguishing agents" is unnecessary.

The FAA does not believe that requiring crewmembers to experience the psychological effects of fighting an actual fire is in conflict with the principles of the Advanced Qualification Program rule. The training objectives of being able to use a fire extinguisher properly and to correctly use PBE are still subject to innovation and simulation. The FAA believes that by allowing the "split drill" it is encouraging the use of creativity in simulation.

The Association of Flight Attendants (AFA) opposes the proposed revision. AFA quotes one attendant who states that the PBE unit makes everything look different and particularly distorts the appearance of the fire. This crewmember found it beneficial to have experienced how the mask would feel, how the fire would look, and how the fire would respond to the extinguisher while wearing the mask. Noting that there are gradations in the sophistication of simulation, AFA urges the FAA to define the quality of the actual and simulated fires. AFA also encourages that, if the split drill is allowed, the FAA require for those carriers that elect to use it—(1) recurrent training every 24 months to reinforce the actual one-time fire experience, and (2) a drill that includes taking the PBE out of the stowed position, donning it, and learning the indications for a low or depleted oxygen supply.

FAA response: One of the reasons that the FAA has decided to allow the split drill is to provide the opportunity for airlines to use simulation and innovation during fire extinguisher training. The agency agrees that distortion occurs and believes that this training will give the flight attendant

experience in many aspects of distortion.

The FAA is aware that there are many types and grades of fires which are appropriate to the fire fighting portion of the PBE drill, and individual POI's are given the responsibility of approving the fire. The quality of fire to be used in this training is contingent on the location of the fire, the airline facilities, and local ordinances. It would be difficult for the FAA to provide guidance which would be appropriate to each situation.

The FAA will continue to monitor the PBE drills and their effectiveness, and, if it believes that further instruction should be provided during recurrent training, it will make this a requirement. The present requirement in § 121.417(b)(2), "individual instruction in the location, function, operation of emergency equipment * * *" should indicate that instruction should be given on PBE during the emergency training portion of an air carrier's approved training program.

In addition, § 121.417(c)(2) requires, "Additional emergency drill requirements to be accomplished during initial training and once each 24 calendar months during recurrent training." This additional training in § 121.417(c)(2)(i)(C) includes "Each type of emergency oxygen system to include protective breathing equipment." This means that a drill must be performed each 24 months which includes the operation of PBE. The FAA agrees with AFA that this drill should include removing the PBE from its stowed position, donning it, and demonstrating knowledge of the low oxygen indicators.

The FAA does not believe it is necessary to expose crewmembers to an actual fire every 24 months.

The Air Line Pilots Association (ALPA) opposes the proposed revision, stating that PBE training should be as realistic as possible, not given an artificial separation by a split drill that will leave crewmembers with incomplete training. ALPA states that the training is incomplete because if a crewmember had to actually fight a cabin fire, he or she would never before have used the PBE and firefighting equipment together.

FAA response: The FAA finds that the training objectives in the use of PBE can be met through either the two separate drills or one combined drill. The training benefits of the simulation are different from the psychological benefit of experiencing an actual fire. For example, locating a fire in a seat cushion, lavatory, or galley would be impracticable to duplicate with an actual fire, but such an experience has a recognized training benefit. In addition, the FAA recognizes that although not all firefighting situations require the use of PBE, they usually require the use of a fire extinguisher. Therefore, the experience of fighting an actual fire with a fire extinguisher has a separate, and intrinsic, benefit.

Finally, one comment was received from a training company, which had no substantive comments on the NPRM.

Intent of the Amendment

Based on its review of current industry practices, Pan Am and United Airlines' petitions for exemption, and letters from AFA, the FAA has reevaluated the requirements of the current regulation and hereby amends the rule. The objective of the current regulation is to train crewmembers on the use of PBE and firefighting equipment available on aircraft in which they are assigned duties. This training includes the activation of PBE and fire extinguishers in fighting an actual fire. Currently, crewmembers are required to meet these training objectives by performing an approved firefighting drill in which they fight an actual fire with an appropriate fire extinguisher while wearing PBE. The FAA has determined, however, that air carriers should be allowed to separate this training into two categories: training on PBE and training on firefighting equipment. The FAA has also determined that simulated fires should be allowed during training on PBE, but that it is essential that crewmembers complete a one-time firefighting drill in which they combat an actual fire with an approved fire extinguisher as a part of training on firefighting equipment.

Under this amendment, air carriers may continue to combine the training on PBE and firefighting equipment training into one drill if an actual fire is used during the training. However, if simulated fires are used during PBE training, each crewmember must complete a separate firefighting drill with an actual fire using a fire extinguisher. Crewmembers would still be required to have knowledge and skill relating to firefighting techniques and the operation and use of PBE, as well as first-hand knowledge of how an actual fire reacts to a fire extinguisher.

General Discussion of the Amendment

Section 121.417

Section 121.417(c)(1)(i) requires crewmembers to combat an actual or simulated fire using at least one type of installed hand fire extinguisher, or approved simulation device, appropriate for the type of fire, while wearing the appropriate type of PBE. This requirement is designated as a PBE drill, and it emphasizes the correct use of PBE in a firefighting scenario. The crewmember performs the drill by using PBE while combatting an actual or simulated fire.

The FAA acknowledges the training benefits of simulation and the various firefighting scenarios that may be enacted when using a simulated fire in combination with a mock-up of an aircraft cabin, galley, oven, lavatory, or passenger seat. In addition to demonstrating proper operation of the emergency firefighting equipment, crewmembers can be trained in proper crew coordination, communication, and decision-making. Many major air carriers currently conduct PBE training in sophisticated cabin trainers that are equipped with various types of devices that simulate smoke and fire. The FAA recognizes that training with simulated fires, in addition to a fire extinguishing drill that includes an actual fire, is beneficial because it allows various aircraft firefighting situations to be created in the environments in which they are likely to take place. The FAA also recognizes that many air carriers may choose not to use simulation. These carriers are then required to have their crewmembers perform the PBE drill using an actual fire, as prescribed by current § 121.417(c)(1)(i). In such a combined drill, crewmembers still demonstrate the proper use of PBE and fight an actual fire using an appropriate type of fire extinguisher wearing PBE.

Section 121.417(c)(1)(ii)

This new paragraph requires air carriers to conduct approved firefighting drills in which crewmembers fight an actual fire using an installed hand fire extinguisher appropriate for the type of fire. The requirement does not apply to crewmembers whose PBE drill under § 121.417(c)(1)(i) is conducted with an actual fire. The FAA acknowledges that the firefighting drill, including an actual fire, is a one-time requirement; therefore, if a crewmember fights an actual fire during the PBE drill, the crewmember need not perform another drill with an actual fire. Furthermore, crewmembers are not required to fight an actual fire in the additional initial or recurrent training drills set forth in current § 121.417(c)(2).

This added section emphasizes the importance of firefighting training that includes a drill in which a crewmember fights an actual fire. The psychological effect of facing an actual fire cannot be achieved through simulation.

The FAA's primary goal in revising these requirements is to clarify and reinforce the present requirement that crewmembers undergo a one-time training drill in which they combat an actual fire. This was stated in the preambles to Amendment No. 121–193 and Amendment 121–220. By permitting air carriers to allow crewmembers to perform the currently required PBE firefighting drill with a simulated fire, the FAA would allow air carriers additional flexibility in providing quality training for various types of situations.

One of AFA's primary concerns is that there are crewmembers working in the industry who have not fought an actual fire in training. This amendment modifies the current requirement by providing an alternative to the current regulation. However, each crewmember would still be required to fight an actual fire in initial training. The FAA recognizes that, although not all firefighting situations require the use of PBE, they usually require the use of a fire extinguisher. Therefore, the FAA believes that the change in the structure of the current regulation enhances firefighting training objectives.

Section 121.417(d)

Section 121.417(d) will require any crewmember who serves in part 121 operations to have completed the PBE drill and the firefighting drill in paragraphs (c)(1)(i) or (c)(1)(ii) by [insert effective date of final rule], the effective date of this amendment. The FAA has determined that this will allow sufficient time for carriers to determine which crewmembers have completed the training as prescribed by this amendment. If it has not been given in initial training it will be necessary for the air carrier to give that training in recurrent training sessions or in specially scheduled sessions. It will be necessary for air carriers to schedule sessions efficiently.

This section also contains a provision that would credit crewmembers who have performed the PBE and firefighting drills described in paragraphs (c)(1)(i) and (c)(1)(ii) with meeting the requirements of the regulation if the firefighting training and PBE training was performed after May 26, 1987. However, to receive credit, the carrier must present to the Director of Flight Standards Service information or documentation showing that the crewmember accomplished firefighting training in a manner that would meet the requirements of the amendment.

The May 26, 1987, date corresponds to the date of issuance of Amendment No. 121–193. The FAA believes that it is not feasible for credit to be given for firefighting drills performed prior to May 26, 1987, because requirements for firefighting drills involving an actual fire, simulated fire, or PBE training did not exist in the FAR prior to that date.

Section 121.417(f)

This final rule amends § 121.417(f) by defining the terms "actual fire," "approved fire extinguisher," "approved PBE simulation device," "observe," "perform," "simulated fire," "combats," and "PBE drill" to this section. For the purposes of this final rule, "actual fire" means an ignited combustible material, in controlled conditions, of a sufficient magnitude and duration to accomplish the training objectives outlined in paragraphs (c)(1)(i) and (c)(1)(ii) of the rule. The FAA is not requiring exact dimensions and types of materials to be used for actual fires in the firefighting drills. To do so would mean that crewmembers might have to be retrained because their previous training might not meet these specific requirements. This additional training could impose an additional cost on air carriers.

A review of current industry practice shows that air carriers frequently contact local or airport fire departments prior to conducting any type of firefighting training, and, in some cases, fire department personnel are present during training. Many local fire departments provide training course outlines on the use of small, hand fire extinguishers, and they also typically provide training on the operation of hand fire extinguishers to employees of local businesses and organizations. These employees are given the opportunity to extinguish an actual fire under fire department supervision.

Among the materials used by fire departments and air carriers in creating actual fires are kerosene or diesel fuel floating on water in a metal pan or drum. These types of fires are ignited outdoors in an open area. Some air carriers and fire departments have constructed indoor fire rooms or fire pits in which they ignite materials such as seat cushions and use exhaust fans to eliminate smoke.

The amendment defines a "simulated fire" as an artificial duplication of a fire used to create the various firefighting situations that could occur on an aircraft. Smoke simulation is a component of that fire simulation. Artificial smoke may be used to simulate smoke coming from a galley oven, under a lavatory door, or under a passenger seat.

Under the amendment, "combats," used in this context, means fighting an actual or simulated fire until such fire is extinguished. In the case of a simulated fire, extinguishment would be determined by the instructor.

The amendment defines "PBE drill" as an emergency drill in which a crewmember demonstrates the proper use of protective breathing equipment while fighting an actual or simulated fire.

The FAA plans to issue an AC or Operations Bulletin providing additional detailed guidance on the use of PBE, actual fires, and adequate simulation of a fire. The guidance will be based on industry practices that experience has shown to be adequate.

Section 121.417(c)(1)(iii)

Section 121.417(c)(1)(ii) is redesignated as § 121.417(c)(1)(iii). The emergency evacuation drill requirements listed in this section would remain unchanged.

Paperwork Reduction Act

Information collection requirements for part 121 have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Numbers as follows: for Part 121, OMB Control Number 2120–0008.

Regulatory Evaluation Summary

This rule is not a major rule under Executive Order 12291 but is a significant rule under the Department of Transportation Regulatory Policies and Procedures. The rule will impose no costs on society (aviation industry, public, or government). Also, no quantifiable benefits are derived from the rule.

The rule will impose no costs because it prescribes neither additional constraints nor requirements on the airlines. The amendment simply responds to requests by the industry for clarification of PBE requirements. This rule will allow Part 121 carriers to choose between two options to meet firefighting training requirements. The rule makes clear that either of the two options is sufficient to comply with the FAR. Airlines may choose the least costly of these options.

Although the amendment will not place additional requirements on Part 121 operators, it ensures that each crewmember combats an actual fire in addition to or in combination with a PBE drill without additional requirements. Hence, the FAA considers this a cost beneficial rule.

International Trade Impact Analysis

This rule will have no effect on the sale of foreign products or services in the United States. The rule also does not affect the sale of United States products or services in foreign countries. Hence, all foreign and domestic trade will be equally unaffected by this rule.

Regulatory Flexibility Act Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that government regulations do not needlessly and disproportionately burden small businesses. The RFA requires the FAA to review each rule that may have a significant economic impact on a substantial number of small entities. This amendment will not impose additional costs at all. Hence, the rule will not impose a significant cost on a substantial number of small entities.

Objectives of and Legal Basis of the Rule

The objective of the amendment, which is discussed in detail in the preamble to this regulation, is to provide an increased margin of safety against the hazards of in-flight fires. The legal basis of the proposal comes from sections 313(a), (314)(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958, as amended (49 U.S.C App 1354(a), 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502); 49 U.S.C. 106(g) (Revised Public Law 97–449, January 12, 1983).

Good Cause Justification for Immediate Effective Date

This amendment is being made effective immediately because delay could have an immediate impact on training of crewmembers and ultimately upon passenger service in the air carrier industry.

Accordingly, I find that good cause exists for making this final rule effective immediately.

Federalism Implications

The amendment will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the RFA. This amendment is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation of the amendment was not prepared since it was determined that the rule will impose no costs on society.

List of Subjects in 14 CFR Part 121

Aviation safety, Air carriers, Aircraft, Transportation, Airmen, Federal Aviation Administration, Reporting and record keeping requirements, Safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 121 of the Federal Aviation Regulations (14 CFR part 121) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. App 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Section 121.417 is amended by revising paragraphs (c)(1)(i), (d), and (f), redesignating current paragraph (c)(1)(ii) as (c)(1)(iii) and adding a new paragraph (c)(1)(ii) to read as follows:

§ 121.417 Crewmember emergency training.

* * * * *

(c) * * *

(1) * * *

(i) At least one approved protective breathing equipment (PBE) drill in which the crewmember combats an actual or simulated fire using at least one type of installed hand fire extinguisher or approved fire extinguisher that is appropriate for the type of actual fire or simulated fire to be fought while using the type of installed PBE required by § 121.337 or approved PBE simulation device as defined by paragraph (d) of this section for combatting fires aboard airplanes;

(ii) At least one approved firefighting drill in which the crewmember combats an actual fire using at least one type of installed hand fire extinguisher or approved fire extinguisher that is appropriate for the type of fire to be fought. This firefighting drill is not required if the crewmember performs the PBE drill of paragraph (c)(1)(i) by combating an actual fire; and

* * * * *

(d) After September 1, 1993, no crewmember may serve in operations under this part unless that crewmember has performed the PBE drill and the firefighting drill described by paragraphs (c)(1)(i) and (c)(1)(ii) of this section, as part of a one-time training requirement of paragraphs (c)(1) or (c)(2) of this section as appropriate. Any crewmember who performs the PBE drill and the firefighting drill prescribed in paragraphs (c)(1)(i) and (c)(1)(ii) of this section after May 26, 1987, is deemed to be in compliance with this regulation upon presentation of information or documentation, in a form and manner acceptable to the Director, Flight Standards Service, showing that the appropriate drills have been accomplished.

* * * * *

(f) For the purposes of this section the following definitions apply:

(1) *Actual fire* means an ignited combustible material, in controlled conditions, of sufficient magnitude and duration to accomplish the training objectives outlined in paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(2) *Approved fire extinguisher* means a training device that has been approved by the Administrator for use in meeting the training requirements of § 121.417(c).

(3) *Approved PBE simulation device* means a training device that has been approved by the Administrator for use in meeting the training requirements of § 121.417(c).

(4) *Combats,* in this context, means to properly fight an actual or simulated fire using an appropriate type of fire extinguisher until that fire is extinguished.

(5) *Observe* means to watch without participating actively in the drill.

(6) *PBE drill* means an emergency drill in which a crewmember demonstrates the proper use of protective breathing equipment while fighting an actual or simulated fire.

(7) *Perform* means to satisfactorily accomplish a prescribed emergency drill using established procedures that stress the skill of the persons involved in the drill.

(8) *Simulated fire* means an artificial duplication of smoke or flame used to create various aircraft firefighting scenarios, such as lavatory, galley oven, and aircraft seat fires.

Issued in Washington, DC, on August 26, 1993.

David R. Hinson,

Administrator.

[FR Doc. 93–21280 Filed 8–27–93; 2:18 pm]

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Part IV

Environmental Protection Agency

40 CFR Part 80

Approval of South Carolina's Petition to Relax the Federal Reid Vapor Pressure Volatility Standard for South Carolina; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–4702–9]

Approval of South Carolina's Petition to Relax the Federal Reid Vapor Pressure Volatility Standard for South Carolina From 7.8 psi to 9.0 psi

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this document EPA is approving as a direct final rule the State of South Carolina's petition to relax the Reid Vapor Pressure Standard (RVP) applicable to gasoline introduced into commerce from June 1 to September 15 in the former Cherokee County ozone nonattainment area from 7.8 pounds per square inch (psi) to 9.0 psi. South Carolina's petition is based on evidence that the Cherokee County area does not need the 7.8 psi standard to maintain ozone attainment. Cherokee County and the State of South Carolina have met the requirements for redesignation from nonattainment to attainment status contained in section 107(d)(3)(E) of the Clean Air Act as amended (the Act) and EPA has redesignated Cherokee County as a result. EPA believes that further imposition of the 7.8 psi volatility standard would impose needless costs in light of South Carolina's attainment of the National Ambient Air Quality Standard (NAAQS) for ozone and completion of an EPA approved ozone maintenance plan that demonstrates ozone attainment for the next 10 years with 9.0 psi gasoline. This action is being taken without prior proposal because EPA believes that this final rulemaking is noncontroversial, for the reasons discussed above and because of the limited scope of this rulemaking.

DATES: This action will be effective on November 1, 1993, unless notice is received by October 1, 1993, that someone wishes to submit adverse or critical comments. If notice of intention to submit adverse comments is received and the effective date is delayed, timely notice withdrawing this action will be published in the **Federal Register**. Please direct all correspondence to the addresses shown below.

ADDRESSES: Materials relevant to this rulemaking have been placed in Docket (A–93–24) by EPA. The docket is located at the Air Docket Section (LE–131), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, in room M–1500 Waterside Mall may be inspected from 8:30 a.m. to 12:00 p.m. and from 1:30 p.m. to 3:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket material.

Comments or notice of intent to submit adverse or critical comments should be submitted (in duplicate if possible) to the Air Docket Section at the above address. A copy should also be sent to Mr. Michael Ball at the EPA address listed below: U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW. (6406–J), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael Ball of the Regional/State/Local Coordination Section (202) 233–9005 and at the above address.

SUPPLEMENTARY INFORMATION:

I. Introduction

This notice describes EPA's action to approve as a direct final rule South Carolina's request to change the federal Reid Vapor Pressure (RVP) standard of 7.8 psi to 9.0 psi in the Cherokee former ozone nonattainment area from June 1 to September 15. The remainder of this notice is divided into five parts. Section II provides the background for this action. Section III provides the Agency's policy regarding relaxation of volatility standards in nonattainment areas redesignated as attainment. Section IV reviews the South Carolina request and supporting evidence. Section V reviews EPA's redesignation of Cherokee County as attainment. Finally, Section VI presents EPA's action and rationale.

II. Background

On August 19, 1987, EPA proposed a two-phase national program to reduce summertime gasoline volatility [1]. EPA had found that gasoline had become increasingly volatile, which caused an increase in evaporative emissions from gasoline-powered sources. These emissions are referred to as volatile organic compounds (VOC), a precursor for ozone. These gasoline-related VOC emissions are currently a major contributor to the nation's serious ground level ozone problem, which harms human health and the public welfare. The Agency published a notice of final rulemaking on March 22, 1989 that promulgated Phase I of the program to require VOC reductions that were available through refining changes that could be accomplished by the beginning of the 1989 summer ozone season, when they went into effect [2]. The Phase II volatility standards were finalized on June 11, 1990 [3]. These volatility standards went into effect May 1, 1992.

The final rule for the Phase I program established a federal volatility standard in South Carolina of (10.5) psi for the month of May, and 9.5 for June through September 15. The Phase II rule required a further reduction in the volatility standard to 9.0 psi for May and 7.8 psi for June 1 through September 15 beginning in 1992. The Phase I and Phase II standards were applicable on a statewide basis.

Congress established somewhat different requirements for the fuel volatility program in the Clean Air Act Amendments of 1990. Section 211(h)(1) of the Act, as amended, required that EPA promulgate regulations making it unlawful nationwide to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce, gasoline with an RVP level in excess of 9.0 psi during the high ozone season as defined by the Administrator. It further provides that EPA shall establish more stringent RVP standards in nonattainment areas if EPA finds such standards are "necessary to achieve comparable evaporative emissions reductions, on a per vehicle basis, in such areas, taking into consideration the enforceability of such standards, the need of an area for emission control, and economic factors." Section 211(h) prohibits the regulations from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that it allows EPA to impose a lower standard in any former ozone nonattainment area which is redesignated to attainment.

On May 29, 1991, EPA published a Notice of Proposed Rulemaking that proposed to modify the Phase II summer ozone volatility standards to reflect new section 211(h) of the Act.[4] In this notice, EPA proposed that the RVP standard be 9.0 psi in all attainment areas where that standard was not already in place beginning in 1992. The effect of this proposal was to prohibit the sale of gasoline with a Reid Vapor Pressure above 9.0 psi during the summer ozone season in all areas designated attainment for ozone for 1992 and beyond. For areas that have been designated as nonattainment, EPA proposed that the original Phase II standards published on June 11, 1990 should not be changed. On December 12, 1991 EPA finalized these modifications.[5]

On November 6, 1991, EPA issued its ozone nonattainment designations in

[1] 52 FR 31274 (August 18, 1987).
[2] 54 FR 11868 (March 22, 1989).
[3] 54 FR 23658 (June 11, 1990).
[4] 56 FR 24242 (May 29, 1991).
[5] 56 FR 64704 (December 12, 1991).

the **Federal Register** pursuant to section 107(d)(1)(C) of the Act, as amended. In the November 6, 1991 notice, EPA designated Cherokee County, South Carolina as a "marginal" nonattainment area. Under the original Phase II volatility rule, a statewide standard was established in South Carolina that required 7.8 psi gasoline to be provided from June 1 to September 15. The modifications to the Phase II rule finalized on December 12, 1991, pursuant to section 211(h) of the Act as amended require that areas in South Carolina that were designated as nonattainment in the November 6, 1991 notice be provided with 7.8 psi gasoline. For all other areas of South Carolina the applicable standard was revised to 9.0 psi from May 1 to September 15.

III. EPA Policy Regarding Relaxation of Volatility Standards in Nonattainment Areas Redesignated as Attainment

Under the amended Phase II regulations, any change in the volatility standard for an area must be accomplished through a separate rulemaking revising the applicable standard for that area, even for an area that was designated as nonattainment in the November 6, 1991 notice but is subsequently redesignated as being in attainment.[6] Thus, for nonattainment areas where EPA mandated a Phase II volatility standard of 7.8 psi RVP in the December 12, 1991 rulemaking, the 7.8 psi standard will remain in effect, even after such an area is redesignated as being in attainment, until a separate rulemaking is completed that revises the RVP standard in that area from 7.8 psi to 9.0 psi.[7]

The Agency believes that relaxation of any RVP standard change is best accomplished in conjunction with the redesignation process. In order for an ozone nonattainment area to be redesignated as being in attainment for ozone, revised section 107(d)(3) of the Act requires the state to make a showing, pursuant to section 175A of the Act, that the area is capable of maintaining attainment for the ozone NAAQS for ten years. This maintenance plan may demonstrate that the area is capable of maintaining attainment for ten years without the more stringent volatility standard. However, the maintenance plan could also show that the more stringent volatility standard is or may be necessary for the area to maintain its attainment with the ozone NAAQS. Therefore, in the context of a request for redesignation, the Agency will not relax the volatility standard unless the maintenance plan demonstrates to the satisfaction of the Agency that the area will maintain attainment for ten years without the need for the more stringent volatility standard.[8]

IV. South Carolina's Petition and Maintenance Plan

On July 20, 1992, Mr. R. Lewis Shaw, South Carolina Deputy Commissioner for Environmental Quality Control, acting as the representative for South Carolina Governor Carroll Campbell, petitioned EPA to redesignate Cherokee County to attainment for ozone, and permanently relax the Federal RVP standard from 7.8 psi to 9.0 psi for the months of June through September 15 for the years 1994 and beyond. This request was based on three years (1989, 1990, 1991) of quality assured monitoring data that showed that Cherokee County had not violated the NAAQS for ozone[9] and on the South Carolina Department of Health and Environmental Control's (DHEC) "Cherokee County Attainment Demonstration and Ten-Year Maintenance Plan" which was included within the petition to redesignate and relax the RVP standard for Cherokee County. This document was submitted to fulfill the requirements for both redesignation and relaxing the RVP standard.

In the petition the state cited reasons for justifying a permanent relaxation of the RVP standard. DHEC submitted air quality data for Cherokee County that demonstrated that Cherokee County had attained the ozone NAAQS for the three-year period extending from 1989–1991, during which time the RVP standard for gasoline during the summer months was 9.5 psi. During that period, there were no exceedances, and hence, no violations of the ozone standard. In addition, the maintenance plan stated that Federal Motor Vehicle Control Program (FMVCP) requirements for lower tailpipe standards have further reduced emissions in Cherokee County.

DHEC further asserted that as a small, rural county, and as South Carolina's only ozone nonattainment area, the 7.8 RVP requirement has been very disruptive in that gasoline distributors have been reluctant to stock this gasoline for such a small market. DHEC claims that distributors will not deliver the 7.8 psi RVP gasoline in quantities less than a full 7,000-gallon tank truck load. DHEC contends that this has caused gasoline marketers to be charged a higher cost for distribution. This has created a burden for small businesses without the necessary storage capacity.

The Cherokee County maintenance plan includes a requirement to assess growth factors on a triennial basis with the contingency to assess on a yearly basis if the projection inventory is exceeded by 10% or more. The projection inventory reflects both the allowable emission rate, as well as the expected emission rate and expected actual production or activity level. The plan contains a contingency to implement additional control measures such as Control Technique Guidelines (CTG) categories within nine (9) months should the area violate the ozone NAAQS. South Carolina has utilized a 9.0 psi RVP in its maintenance plan to demonstrate long-term attainment of the ozone NAAQS without the use of the 7.8 psi RVP standard required in EPA's RVP final regulations.[10]

V. EPA Approval of the Cherokee County Maintenance Plan and Redesignation

On December 15, 1992, EPA announced a direct final rule in the **Federal Register** that approved the maintenance plan and redesignation of Cherokee County, South Carolina, to attainment for ozone.[11] In this rulemaking, EPA's Regional Administrator for Region IV determined that the State has met and fulfilled the requirements for redesignation contained in section 107(d)(3)(E) of the Clean Air Act Amendments of 1990.

Included in that determination were findings that the area had attained the NAAQS for ozone, that the improvements in air quality were due to permanent and enforceable emission

[6] Relaxation of RVP standards associated with the redesignation process was discussed in the preamble to EPA's final rule modifying the Phase II volatility standards (56 FR 64706, December 12, 1991).

[7] Similarly, when an area originally designated being in attainment is redesignated nonattainment, the volatility level of the gasoline will stay at 9.0 psi RVP unless and until EPA promulgates a rulemaking changing the RVP in that area (56 FR 64706, December 12, 1991).

[8] As stated in the preamble for the Agency's initial Phase II volatility standards (see 55 FR 23609), and in the preamble in the proposal to revise those standards (56 FR 24244), EPA may also promulgate a rule to revise the volatility standard in a particular nonattainment area in order to enhance local air quality and/or increase the economic efficiency of the program. The Governor of a state, or his designee, may petition EPA for a less stringent standard if such a standard is consistent with the requirements of the Act and if the state can document: (1) Particular local economic impact that makes the less stringent standard appropriate and (2) sufficient alternative programs to achieve attainment and maintenance of the NAAQS for ozone.

[9] The Federal standard for RVP in Cherokee County from 1989–1991 was 9.5 psi. As required for nonattainment areas in the Southeast an RVP of 7.8 psi went into effect for Cherokee County on June 1, 1992.

[10] 56 FR 64706 (December 12, 1992).

[11] 57 FR 59300 (December 15, 1992).

reductions, and that the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the Act.

The finding that the area had attained the NAAQS for ozone was based on the data indicating that Cherokee County had no violations in 1989, 1990 and 1991. The finding that permanent enforceable VOC emissions reductions have been obtained was based on evidence that the FMVCP had reduced emissions in Cherokee County and that federal requirements to reduce gasoline RVP had gone into effect in 1989.

In finding that the maintenance plan meets the requirements of section 175A, EPA cited the elements of the plan discussed above. EPA noted that the plan relied on a gasoline volatility level of 9.0 psi RVP, not 7.8 psi, as is required under current regulations. However, the final rule found that Cherokee County had demonstrated that it can maintain the ozone NAAQS using the less stringent volatility level of 9.0 psi RVP. On that basis, the maintenance plan was approved. No comments were received subsequently and the redesignation of Cherokee County to attainment for ozone became effective on February 16, 1993.

VI. EPA's Final Action

Beginning on the effective date of this rule, EPA is today relaxing the RVP standard for Cherokee County, South Carolina from 7.8 psi to 9.0 psi between June 1 and September 15 for the years 1994 and beyond. South Carolina has met the criteria for relaxation of the RVP standard discussed in the December 12, 1991 notice. The State has in place a fully approved implementation plan for Cherokee County that demonstrates that the county can maintain the ozone NAAQS without the 7.8 psi standard.

South Carolina's approved implementation and maintenance plan does not require a RVP standard more stringent than 9.0 psi. EPA's approval of this plan was based on evidence that the Cherokee County area does not need the 7.8 psi standard to maintain ozone attainment. Based upon the approval of the maintenance plan, which demonstrates attainment and maintenance of the ozone NAAQS standard for 10 years with a 9.0 psi RVP standard for gasoline, EPA believes sufficient alternative programs are in place to achieve attainment and maintenance of the ozone NAAQS and that further imposition of the 7.8 psi volatility standard would impose needless costs.[12]

[12] In the May 29, 1991 notice proposing to modify the Phase II volatility standards, EPA estimated that the 7.8 psi standard will increase the cost of gasoline by approximately 1.1 cents per gallon over the 9.0 psi standard. In addition, as noted above, South Carolina states that special circumstances in Cherokee County may create an added burden for businesses in that area.

This action is being taken without prior proposal because EPA believes that this relaxation in the RVP regulation is noncontroversial; the effect of this rulemaking is limited to Cherokee County, South Carolina; and EPA anticipates no significant comments on this action. Today's action is based on the same information that EPA relied on in its approval of South Carolina's maintenance plan. EPA noted specifically in its December 15, 1992 **Federal Register** notice that it intended to relax the volatility standard in Cherokee County to 9.0 psi in the near future. EPA received no adverse comments regarding its approval of the maintenance plan or the redesignation of Cherokee County to attainment. Further imposition of the 7.8 psi RVP standard would impose needless costs in light of Cherokee County's attainment and maintenance of the ozone NAAQS utilizing 9.0 psi RVP gasoline.

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If such notice is received, this action will be withdrawn and two subsequent notices will be published. One notice, which will be published before the effective date, will withdraw the final action. Another notice will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. Interested persons are invited to submit comments on this proposed approval. EPA will consider all comments received within thirty days of the publication of this notice.

Consequently, this procedure still allows the opportunity for public comment and opportunity for oral presentation of data that is required under CAA section 307(d). This procedure merely provides an expedited procedure for final action where a rulemaking is not expected to be controversial and no adverse comment is expected.

VII. Environmental Impact

The amendment is not expected to cause Cherokee county to violate the NAAQS for ozone. The Cherokee County nonattainment area has met the NAAQS since 1989. That is, Cherokee County, has not recorded an exceedance during the time when the RVP standard in Cherokee county was no more stringent than 9.0 psi.

VIII. Economic Impact

The relaxation of the 7.8 psi standard to 9.0 psi will result in a cost savings to consumers of approximately 1.1 cents per gallon at the pump.

IX. Administrative Requirements

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant impact on a substantial number of small entities. In such circumstances, a regulatory flexibility analysis is not required.

Under Section 605 of the Regulatory Flexibility Act, I certify that these regulations will not have a significant impact on a substantial number of small entities. The regulatory revision is limited to the Cherokee County area and should have no significant economic impact on a substantial number of small entities. These regulations, therefore, do not require a regulatory flexibility analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. Major regulations have an annual effect on the economy in excess of $100 million, have a significant adverse impact on competition, investment, employment or innovation, or result in a major price increase. This final action in the rulemaking package does not constitute a major rule according to the established criteria. In fact, as discussed above, this action will reduce the cost of compliance with Federal requirements in this area. Therefore, I have determined that this proposal does not constitute a "major" rule.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. OMB had no comments and concurred on this rulemaking.

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, EPA must obtain OMB clearance for any activity that will involve collecting substantially the same information from 10 or more non-Federal respondents. This direct

final rule does not create any new information requirements or contain any new information collection activities.

The statutory authority for the action in this notice today is granted to EPA by Sections 114, 211, 301(a), and 307 of the Clean Air Act as amended (42 USC 7414, 7545, 7601(a), and 7607).

List of Subjects in 40 CFR Part 80

Administrative practice and procedures, Air pollution control, Environmental protection, Motor vehicle and motor vehicle engines, Fuel additives, Gasoline, Motor vehicle pollution, Penalties. Reporting and recordkeeping requirements.

Dated: August 25, 1993.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211, and 301(a) of the Clean Air Act as amended, 42 USC 7414, 7545 and 7601(a).

2. Section 80.27 is amended by revising the entry for "South Carolina" to the table in paragraph (a)(2) and by redesignating the footnote reference following "Colorado" and the second footnote 1 at the end of the table as footnote 2 to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a) * * *

APPLICABLE STANDARDS[1] 1992 AND SUBSEQUENT YEARS

State	May	June	July	August	September
* * * * * * *					
South Carolina[3]	9.0	9.0	9.0	9.0	9.0
* * * * * * *					

[1] Standards are expressed in pounds per square inch (psi)

[2] * * *

[3] The standard for nonattainment areas in South Carolina from June 1 until September 15 in 1992 and 1993 was 7.8 psi.

[FR Doc. 93-21251 Filed 8-31-93; 8:45 am]

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federal register

Wednesday
September 1, 1993

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 804 and 807
Medical Devices; Medical Device Distributor Reporting; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 804 and 807

[Docket No. 91N–0295]

Medical Devices; Medical Device Distributor Reporting; Opportunity for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; opportunity for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comments on the final rule on medical device distributor reporting, which is published elsewhere in this issue of the **Federal Register**. The medical device distributor reporting tentative final rule became final on May 28, 1992, by operation of the Safe Medical Devices Act of 1990 (the SMDA), as amended by the Medical Device Amendments of 1992 (the 1992 amendments). Although not required to do so, FDA realizes that there may be issues not previously considered, such as technical issues on specific provisions, and therefore is providing this additional time for comment. If changes are warranted by comments, FDA will make further changes in the rules.

DATES: Written comments by October 1, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 594–4765.

SUPPLEMENTARY INFORMATION: The SMDA of 1990 (Pub. L. 101–629), which became law on November 28, 1990, included provisions requiring FDA rulemaking to implement distributor reporting requirements. The 1992 amendments (Pub. L. 102–300), which amended certain distributor reporting requirements in the SMDA, became effective on June 16, 1992. Pursuant to the provisions of the SMDA, the regulatory provision relating to distributor reporting in the November 26, 1991, tentative final rule became final by operation of the statute on May 28, 1992. These regulatory provisions were subsequently amended on June 16, 1993, by operation of certain provisions in the 1992 amendments. The final rule on distributor reporting published elsewhere in this issue of the **Federal Register** explains the distributor reporting and statutory deadline provisions in more detail.

FDA has already provided opportunities for public comment on the proposal that preceded the rule published today as required by the Administrative Procedure Act. FDA is issuing a final rule based on consideration of these comments to the November 26, 1991, proposed tentative final rule in the near future. Until that time, the rule that is published elsewhere in this issue of the **Federal Register** will govern the reporting requirements for distributors. Although FDA is allowing additional comments on this rule, this action is in no way required by the Administrative Procedure Act. FDA is not interested in receiving comments that it has already received and considered. Although the agency does not believe that any public purpose would be served by reopening for further comment at this time the issues already addressed in the final rule being published, FDA recognizes that in any rulemaking there may be technical issues involving specific provisions that have not been considered. Therefore, the agency is providing 30 days for comment on this final rule on such issues. Comments should be identified with the docket number found in brackets in the heading of this document. FDA will publish additional changes in the final rule if comments bring to FDA's attention an issue, not already considered, that warrants revision.

Under 21 CFR 10.40(e), an opportunity for comment on this final rule is being provided. Interested persons may, on or before October 1, 1993, submit to the Dockets Management Branch (address above) written comments regarding this final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This document is issued under the authority of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 360j, 371, and 374) and under authority delegated to the Commissioner of Food and Drugs.

Dated: August 25, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–21185 Filed 8–31–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 91N–0295]

21 CFR Parts 804 and 807

Medical Devices; Medical Device Distributor Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; notification of status under the Safe Medical Devices Act; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the tentative final rule on medical device distributor reporting that appeared in the **Federal Register** of November 26, 1991 (56 FR 60024), is now a final rule by operation of law. This final rule requires distributors to submit reports to FDA and to manufacturers, of deaths, serious illnesses, and serious injuries related to medical devices and to submit reports to manufacturers of certain malfunctions that may cause a death, serious illness, or serious injury, if the malfunction were to recur. The final rule also changes the reporting standard for certain distributors that are importers, and changes the definition of the term "serious injury" to conform to a recent statutory amendment. In issuing this final rule, FDA is announcing that the tentative final rule relating to adverse event reporting requirements for distributors, including importers, has the status of a final rule, as of May 28, 1992, by operation of law under the Safe Medical Devices Act of 1990 (the SMDA), as amended by the Medical Device Amendments of 1992 (the 1992 amendments), and is setting forth the regulations reflecting those requirements. FDA is also amending the regulations, based on consideration of comments on the November 26, 1991, tentative final rule, to require distributors to register their facilities and to list their devices with FDA.

DATES: Part 804 is effective May 28, 1992; the amendments to part 807 are effective October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Chester T. Reynolds, Center for Devices and Radiological Health (HFZ–306), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1156.

SUPPLEMENTARY INFORMATION:

I. Background

The current regulatory framework for medical device reporting requirements is the result of four statutes:

(1) The Federal Food, Drug, and Cosmetic Act of 1938 (21 U.S.C. 321–394) (the act);

(2) The Medical Device Amendments of 1976 (Pub. L. 94–295) (the 1976 amendments), which amended the act to establish the first comprehensive framework for the regulation of medical devices;

(3) The SMDA (Pub. L. 101–629), which amended the act to correct noted problems with the implementation and enforcement of the 1976 amendments; and

(4) The Medical Device Amendments of 1992 (Pub. L. 102–300) (the 1992 amendments), which amended certain provisions of the act relating to devices.

Section 519 of the act (21 U.S.C. 360i), as added by the 1976 amendments, authorized FDA to issue regulations to require manufacturers, importers, and distributors to maintain such records, make such reports, and provide such information to FDA as may reasonably be necessary to ensure that devices are not adulterated or misbranded and are otherwise safe and effective for human use. The legislative history of the 1976 amendments reflects clear congressional intent to permit FDA to require, under the authority of section 519 of the act, device manufacturers, importers, and distributors to report to FDA product defects and adverse effects of the firms' devices. (See H. Rept. 853, 94th Cong., 2d sess. 23 (1976).) Among other things, section 519 of the act states that any reporting requirement established under the authority of that section: (1) May not be unduly burdensome (considering the cost of compliance and the need for the requirement); (2) shall state the purpose for any required report or information and identify to the fullest extent practicable such report or information; (3) may not, except in certain circumstances, require the disclosure of a patient's identity; and (4) may not, except in certain circumstances, require the manufacturer, distributor, or importer of a class I device to maintain records, or to submit information not in its possession, unless such report or information is necessary to determine whether a device is misbranded or adulterated. The House Report cautions, however, that these limitations "should not be construed * * * as limiting the Secretary's authority to obtain information needed to insure that the public is protected from potentially hazardous devices." Id. at 24.

In discussing the notification provisions of section 518 of the act (21 U.S.C. 360h), the House Report, the principal legislative document on the amendments, states:

> The notification provision is similar to, and to some extent patterned after, comparable authority contained in the National Traffic and Motor Vehicle Safety Act of 1966, the Radiation Control for Health and Safety Act of 1968, and the Consumer Product Safety Act of 1972. These statutes also include requirements that manufacturers provide notification of defects in their products to appropriate Federal agencies. The Committee determined that a comparable provision in new section 518(a) with respect to devices would be unnecessary since the Secretary could require the reporting of such information under the recordkeeping and reporting authority provided in new section 519 of the Act.

(H. Rept. 853, supra, at 21.)

In its discussion of section 519 of the act, the House Report lists examples of reasonable reporting requirements, including reports of defects, adverse reactions, and patient injuries. That Congress intended FDA to use its authority under section 519 of the act to protect the public from potentially hazardous devices, as well as devices with confirmed hazards, is also clear from the legislative history. Id. at 24.

In the Federal Register of September 14, 1984 (49 FR 36348), FDA issued the current medical device reporting (MDR) regulations (21 CFR part 803). The regulations require manufacturers and importers of medical devices, including diagnostic devices, to report to FDA whenever the manufacturer or importer becomes aware of information that reasonably suggests that one of its marketed devices: (1) May have caused or contributed to a death or serious injury, or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

Since the enactment of the 1976 amendments, Congress has focused considerable attention on FDA's implementation and enforcement of the act with respect to medical devices. During this time, the General Accounting Office (GAO), Office of Technology Assessment (OTA), and Office of Inspector General of the Department of Health and Human Services (OIG) conducted investigations and issued reports on problems associated with significant weaknesses in FDA's information gathering ability and its followup mechanisms for information that is received. S. Rept. 513, 101st Cong., 2d sess. 15 (1990). A GAO study, for example, noted that although FDA has received more than a seven-fold increase in reports associated with device-related problems since the promulgation of the MDR regulation, serious under reporting of device-related, reportable events exists. GAO also noted that many firms are unaware of their obligation to report device-related deaths, injuries, and malfunctions to FDA, and that device-related deaths in hospitals are rarely reported to either FDA or the manufacturer. A GAO followup study in 1989 concluded that despite implementation of the MDR regulations, serious shortcomings exist.

Congress concluded from its own hearings and investigations and from its review of the GAO, OTA, and OIG investigations and reports that the 1976 amendments were not always adequate to protect the public health. (H. Rept. 808, 101st Cong., 2d sess. 13–14 (1990), S. Rept. 513, 101st Cong., 2d sess. 13–16 (1990).) On November 28, 1990, to correct these problems, the SMDA was signed into law to amend the medical device provisions of the act.

The SMDA added section 519(b)(1) to the act (21 U.S.C. 360i(b)(1)) to require that certain device user facilities report deaths related to medical devices to FDA and to the manufacturer, if known. FDA may also, by regulation, include outpatient diagnostic facilities in this requirement.

Although since 1976, under section 519 of the act, FDA has had the authority to require distributors to report adverse effects and deficiencies of devices, the agency until this point had not implemented this authority. However, the legislative history of the SMDA reflects Congress' belief that FDA must require distributors to make such reports because distributors may be the first to recognize possible device problems. (See H. Rept. 808, 101st Cong., 2d sess. 22–23 (1990).) Accordingly, the SMDA added section 519(a)(6) to the act to require distributors to report to FDA adverse effects and deficiencies of devices, and to submit copies of these reports to manufacturers. Id.

The SMDA also added section 519(d) to the act requiring reporting manufacturers and distributors to certify to FDA the number of reports submitted in a year or the fact that no such reports have been submitted to the agency. This requirement was directly in response to a GAO finding that certification would increase the efficiency of the MDR. (See S. Rept. 513, 101st Cong., 2d sess. 26 (1990).)

The SMDA directed FDA to issue a proposal to implement distributor

reporting and recordkeeping requirements within 9 months of the enactment. (See section 3(c)(1)(A) of the SMDA.) The SMDA provides that the proposed rule relating to distributor reporting would become final 18 months after the enactment of the SMDA, May 28, 1992, if a final rule was not promulgated by that date.

On November 26, 1991 (56 FR 60024), under the authority of sections 502, 510, 519, 520, 701, and 704 of the act (21 U.S.C. 352, 360, 360i, 360j, 371, and 374), FDA issued a proposed rule designated as a "tentative final rule" that would implement the reporting requirements of the SMDA relating to manufacturers, distributors, and user facilities. This tentative final rule would require device user facilities and distributors, including importers, to submit reports to FDA and/or the manufacturers, of deaths, serious illnesses, and serious injuries related to medical devices. This tentative final rule also proposed to amend existing reporting requirements in 21 CFR part 803 for manufacturers to conform them with the proposed reporting requirements for user facilities and distributors. Further, it proposed to require distributors and manufacturers to report certain malfunctions that may cause a death, serious illness, or serious injury. Under the tentative final rule and pursuant to section 519(d) of the act, distributors and manufacturers would also be required to certify annually the number of reportable events submitted during the previous calendar year or the fact that no such reports were received.

The tentative final rule also proposed to amend 21 CFR part 807 to require distributors to register and list with FDA, pursuant to section 510 of the act. This exercise of authority is necessary to implement the new adverse event reporting requirements for distributors.

II. Comments

In the **Federal Register** of January 24, 1992 (57 FR 2861), FDA announced that it was extending the comment period for the tentative final rule until February 26, 1992. FDA received over 300 comments on the tentative final rule. At present, FDA is still considering the comments on the tentative final rule relating to manufacturer, distributor, and user facility adverse event reporting and has not issued a final rule that is based on consideration of those comments. Because FDA did not promulgate a final rule for distributor reporting by May 28, 1992, however, the provisions in the tentative final rule relating to distributor adverse event reporting automatically became the final rule on that date pursuant to section 3(c) of the SMDA.

On June 16, 1992, subsequent to the statutory provision making the tentative final rule with respect to distributors automatically final, additional statutory provisions further amending distributor reporting requirements became law (the 1992 amendments). Section 5(a) of the 1992 amendments adopts a single standard to determine when injuries caused by devices must be reported to FDA: A manufacturer, importer, or user facility is required to report a device-related, adverse event to FDA when information reasonably suggests that a device * * * "may have caused or contributed to * * * death or * * * serious injury."

Section 5(a) of the 1992 amendments also adopts a single definition for the types of injuries that manufacturers, importers, distributors, and user facilities must report. This definition requires reporting of an injury that is life threatening, results in permanent impairment of a body function or permanent damage to a body structure, or necessitates medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure. This definition differs from the previous statutory definition of "serious injury" that is applied to device user facilities in that it deletes the requirement that an injury must require immediate intervention to preclude permanent impairment or damage in order to qualify as a reportable injury.

The effective date of the amendments made by section 5(a) of the 1992 amendments is either 1 year from the date of the enactment of the 1992 amendments, or on the effective date of the FDA regulations implementing such amendments, whichever occurs first. Because FDA has not issued regulations implementing the 1992 amendments, the provisions of the 1992 amendments became effective by operation of law on June 16, 1993. See section 5(b) of the 1992 amendments.

FDA is issuing this rule and notifying the public pursuant to the directive of section 3(c)(2) of the SMDA that distributor adverse event reporting requirements proposed in the November 26, 1991, tentative final rule are now final. This final rule reflects certain changes from the November 26, 1991, tentative final rule that conform to the 1992 amendments that became effective on June 16, 1993. In addition, FDA is issuing this final rule, based on consideration of comments received in response to the tentative final rule, requiring distributors to register their establishments and list their devices.

At a later date, FDA intends to amend the final distributor reporting regulation and to issue final regulations governing manufacturer and user facility reporting to reflect the changes to the reporting requirements for user facilities and manufacturers made by the 1992 amendments. These future final regulations will also reflect consideration of comments relating to adverse event reporting submitted in response to the November 26, 1991, tentative final rule.

Under the provisions of this final rule that became effective by operation of law, distributors, other than importers, are required to submit a report to FDA, and a copy of such report to the manufacturer, containing the information required by new § 804.28, as soon as practicable, but not later than 10 working days after the distributor becomes aware of information from any source, that reasonably suggests that there is a probability that a device marketed by the distributor has caused or contributed to a death, serious illness, or serious injury. Distributors, other than importers, must also submit reports to the manufacturer containing the information required by new § 804.28, as soon as practicable, but not later than 10 working days after the distributor becomes aware of information, from any source, that one of the devices marketed by the distributor has malfunctioned and such information reasonably suggests there is a probability that the device or any other device marketed by the distributor would cause a death, serious illness, or serious injury, if the malfunction were to recur.

Distributors that are importers are subject to a slightly different standard as required by the 1992 amendments. Specifically, an importer must submit a report to FDA, and a copy of such report to the manufacturer, containing the information required by new § 804.28, as soon as practicable, but not later than 10 working days after the importer becomes aware of information from any source that one of the devices marketed by the importer may have caused or contributed to a death or serious injury. Importers are also required to submit reports to the manufacturer containing the information required under new § 804.28 as soon as practicable but not later than 10 working days after the importer becomes aware of information, from any source, that reasonably suggests, that one of its marketed devices has malfunctioned and such device or a similar device marketed by the importer would be likely to cause or to contribute to a death or serious injury if the malfunction were to recur.

The agency is aware that many distributors have limited capabilities to conduct followup investigations or failure analyses, or both. It is also unlikely that device user facilities are accustomed to providing patient or adverse device experience followup information to distributors. Consequently, a distributor's role in the MDR process is one of an intermediary who forwards data from user facilities, or any other source, to FDA and the manufacturer. Distributors are not required to investigate the cause of adverse device events; rather, they are required to assess whether or not a reportable event has occurred. This responsibility includes review and verification of data that they receive and supplying information that is within a distributor's control to FDA or the manufacturer, or both.

On June 3, 1993, FDA announced the availability of a new form for adverse event reports from manufacturers, user facilities, and distributors in the **Federal Register** (58 FR 31596). This single form replaces certain existing reporting forms and is to be used for reporting adverse events and product problems with devices as well as medications and other products regulated by the agency. This form will be required on the date that the final rule, based on comments to the November 26, 1991, tentative final rule, for user facility, manufacturer, and distributor reporting requirements becomes effective, or November 30, 1993, whichever occurs later. In the meantime, distributors are encouraged to submit reports on these forms. These forms may be obtained from the Division of Small Manufacturers Assistance, (HFZ–220), Center for Devices and Radiological Health, 5600 Fishers Lane, Rockville, MD 20857. Bulk copies of the form may be obtained from the Consolidated Forms and Publications Distribution Center, Washington Commerce Center, 3222 Hubbard Rd., Landover, MD 20785.

The final rule also requires that distributors certify annually to FDA either the number of MDR's during the previous annual reporting period, or that the distributor did not receive any reportable events during this period. Annual certification will follow the same schedule as registration. Distributors must also establish files of information related to MDR's and retain the files for 2 years from the date the report or information was submitted to FDA or the manufacturer or for a period of time equivalent to the design and expected life of the device, whichever is longer.

In order to implement the new adverse event reporting requirements, FDA is now issuing a final rule, based on comments on the tentative final rule, requiring distributors to register and list. The tentative final rule proposed revising current § 807.22(c) to require distributors who initiate or develop specifications for a device and distributors who repackage or relabel a device to submit a listing form and maintain an historical file (§ 807.22(c)(1) and (c)(2)). Such persons, however, are already required to list under current § 807.20(a) and (c). Therefore, in the final regulation, FDA is deleting proposed registration and listing requirements in § 807.22(c)(1) and (c)(2) for persons who initiate or develop device specifications or who repackage or relabel because these requirements would be duplicative of the existing requirements under current § 807.20(a) and (c). Accordingly, because such persons are already required to list, the new listing requirements for distributors add new requirements only for persons who do not initiate or develop the specifications for the device or repackage or relabel the device. Although these distributors are not required to submit a listing form, they must submit, for each device, listing information including the name and address of the manufacturer. Such distributors shall also be prepared to submit, when requested by FDA, the proprietary name, if any, and the common or usual name of each device for which they are distributors. The final regulations states that certain entities that manufacture devices according to another parties specifications or that sterilize devices are exempt from registration and listing requirements.

FDA received several comments relating to the distributor registration and listing requirements proposed in the tentative final rule. They are summarized below:

A. § 807.3(g)—Definitions

1. Some comments stated that clarification was needed for the difference between manufacturers and distributors.

A distributor, as defined in § 807.3(g), is any person who furthers the marketing of a device, but does not repackage, or otherwise change the container, wrapper, or labeling of the device package. A manufacturer includes any person who repackages or otherwise changes the container, wrapper, or labeling of a device in furtherance of the distribution of the device. To the extent that manufacturers are also engaged in the distribution process, they are only required to report as manufacturers.

B. § 807.20—Who Must Register and Submit a Device List

2. Two comments argued that FDA does not have authority to require distributors to register and list.

FDA does not agree with these comments. The plain language of the act provides FDA with explicit authority to require distributors to register and list. Section 510(c) of the act states that:

> "[e]very person upon first engaging in the manufacture, preparation, *propagation*, compounding, or processing of * * * a device or devices in any establishment which he owns or operates in any State shall immediately register with the Secretary his name, place of business, and such establishment."

(Emphasis added).

This language makes it clear that FDA has authority to require distributors to register because they are engaged in the "propagation" of devices. Although neither the statute nor the legislative history define the term "propagation," this term is defined in Webster's Ninth New Collegiate Dictionary as "the spreading of something abroad or into new regions." (Merriam Co. 1990). Certainly, persons who distribute medical devices in interstate commerce are "spreading * * * something * * * into new regions" and, therefore, are persons who propagate medical devices within the meaning of the statute. Moreover, the language of section 510(c) of the act demonstrates that Congress intended to provide FDA with broad authority to require persons who are engaged in a wide range of activities with respect to medical devices to register their devices. Accordingly, Congress not only authorized FDA to require persons to register who are engaged in the manufacture of devices, but also authorized FDA to require persons to register who are engaged in the "preparation, propagation, compounding, or processing" of medical devices. These words taken together, or individually, provide FDA with authority to require registration of any person who is involved with the distribution of medical devices.

The statute also provides clear authority to require distributors to list their devices. FDA's authority to require distributors to list derives directly from the agency's authority to require distributors to register. Specifically, section 510(j)(1) of the act requires that "[e]very person who registers under subsection (b), (c), or (d) shall, at the time of registration under any such subsection, file with the Secretary a list of all * * * devices * * * which are being

manufactured, prepared, propagated, compounded, or processed by him for commercial distribution." Accordingly, because FDA has authority to require distributors, as propagators of devices, to register, FDA also has authority to require distributors to list their devices pursuant to section 510(j)(1) of the act.

3. One comment stated that distributor listing information is duplicative of manufacturer listing information and that therefore, distributors should not be required to establish costly procedures to obtain and provide listing information. One comment suggested that distributors of devices be exempted from the registration and listing requirements. Another comment suggested that distributors of domestic devices be exempt form registering.

FDA does not agree with the comments that requiring distributors to list provides information that duplicates manufacturer listing information nor does FDA agree that distributors in general or distributors of domestic devices should be exempt from these requirements. Obtaining listing information from both manufacturers and distributors allows FDA to have an accurate up-to-date inventory of medical devices that is necessary to implement the agency's regulatory and enforcement authorities. Manufacturer listing information alone does not provide FDA with information about who distributes products. Distributor registration and listing information is necessary because it will provide additional information that will help FDA in enforcement of distributor medical device reporting requirements, and in implementing product recalls and notifications under section 518 of the act. Accordingly, the final rule requires distributors to provide registration and listing information.

4. Two comments requested that multisite distributors be allowed the option of decentralized registration. Another comment stated that multisite distributors should be allowed the option to choose which location would be the reporting location and FDA contact location for purposes of FDA registration and reporting.

FDA agrees that multisite distributors should have the option of registering only a central location or each location. Under the final regulation, a multisite distributor who chooses to file registration for only one central location, must register only the primary or principal place of business establishment located in the United States where the MDR complaint files are maintained.

C. § 807.21—Times for Establishment Registrationand Device Listing

5. One comment requested clarification as to when the distributor registration requirement is effective.

On June 15, 1992, FDA issued a letter notifying distributors that registration requirements were effective on July 15, 1992. FDA has reconsidered this position and is extending the deadline for submission of registration requirements to October 1, 1993. Distributors will also be required to list their devices as of October 1, 1993.

D. § 807.22—How and Where to Register and List

6. One comment suggested that this section be revised, so that there is a distinction between a repackager and a distributor.

The agency disagrees that this section should be modified because the definition does make a distinction between distributors and repackagers. Under the definition any person who changes the package or label is not a distributor. Repackagers or relabelers are considered manufacturers, and they must register and list as such.

E. § 807.65—Exemptions for Device Establishments

7. Two comments asked whether dental supply stores must register.

Under section 807.65(e) dental supply stores that dispense or sell devices in the regular course of business at the retail level are exempt from registration requirements.

The codified text below contains only those adverse event reporting requirements from the November 26, 1991, tentative final rule, as amended by the 1992 amendments, which apply to distributors, since only the distributor reporting requirements have become final. Incorporation of the distributor requirements from the tentative final rule into part 803 as it is currently written is not feasible because of organizational changes in the text. Therefore, the distributor reporting requirements are being codified separately at this time in new 21 CFR part 804. When the final rule is published in its entirety, the distributor requirements will be removed from part 804, and all of the reporting requirements for manufacturers, device user facilities and distributors, including importers, will be merged into 21 CFR part 803.

III. Paperwork Reduction Act of 1980

The recordkeeping and reporting requirements for medical device distributors, including importers, were submitted to the Office of Management and Budget (OMB) for review as part of the tentative final rule that was published in the **Federal Register** of November 26, 1991, that proposed the adverse event reporting requirements for manufacturers, distributors and user facilities. These recordkeeping and reporting requirements have been approved by OMB under control number 0910–0059 "Medical Devices: Medical Device Reporting, User Facility Reporting, Distributor Reporting, Manufacturer Reporting, Certification, Registration," and are in conformance with the Paperwork Reduction Act of 1980 (44 U.S.C. ch. 35).

OMB has also approved the new adverse event reporting form for use by distributors, as well as user facilities and manufacturers under control number 0910–0291 "MedWatch: FDA's Medical Products Reporting Program." The availability of the form was announced by the agency in the **Federal Register** of June 3, 1993 (58 FR 31596), and the form is in conformance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. ch. 35).

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect or the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Economic Impact

In conjunction with the agency's issuance of the tentative final rule proposing to require device user facilities and distributors, including importers, to submit reports of certain adverse events to FDA and to manufacturers (56 FR 60024, November 26, 1991), FDA placed on file at the Dockets Management Branch a copy of the agency's threshold assessment of the economic effects of this rule.FDA has carefully examined the economic impact of this action in accordance with the requirements of Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). The agency concludes that the rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. A copy of the document supporting this determination is on file at the Dockets Management Branch (address above) and may be seen in that office between

9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 804

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 807

Confidential business information, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, new part 804 is added and part 807 is amended as follows:

1. New part 804 is added to read as follows:

PART 804—MEDICAL DEVICE DISTRIBUTOR REPORTING

Subpart A—General Provisions

Sec.
804.1 Scope.
804.3 Definitions.
804.9 Public availability of reports.

Subpart B—Reports and Records

804.25 Reports by distributors.
804.27 Where to submit a report.
804.28 Reporting form.
804.30 Annual certification.
804.31 Additional requirements.
804.32 Supplemental information.
804.33 Alternative reporting requirements.
804.34 Written MDR procedures.
804.35 Files.

Authority: Secs. 502, 510, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 360, 360i, 360j, 371, 374).

Subpart A—General Provisions

§ 804.1 Scope.

(a) FDA is requiring medical device distributors to report deaths, serious illnesses, and serious injuries that are attributed to medical devices. Distributors are also required to report certain device malfunctions and to submit a report to FDA annually certifying the number of medical device reports filed during the preceding year, or that no reports were filed. These reports enable FDA to protect the public health by helping to ensure that devices are not adulterated or misbranded and are otherwise safe and effective for their intended use. In addition, device distributors are required to establish and maintain complaint files or incident files as described in § 804.35, and to permit any authorized FDA employee at all reasonable times to have access to, and to copy and verify, the records contained in this file. This part supplements, and does not supersede, other provisions of this subchapter, including the provisions of part 820 of this chapter.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21, unless otherwise noted.

§ 804.3 Definitions.

(a) Act means the Federal Food, Drug, and Cosmetic Act.

(b) and (c) [Reserved]

(d) *Distributor* means any person, including any person who imports a device into the United States, who furthers the marketing of a device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user but who does not repackage or otherwise change the container, wrapper, or labeling of the device or device package. One who repackages or otherwise changes the container, wrapper, or labeling, is a manufacturer under § 804.3(k).

(e) *Distributor Report Number* means the number that uniquely identifies each report submitted by a distributor. Distributors who receive or submit reports shall use their seven digit FDA registration number, calendar year that the report is received, and a sequence number. For example, the complete number will appear as follows: 1234567–1991–0001. Distributor report numbers shall also be required on FDA form 3500A.

(f) *FDA* means the Food and Drug Administration.

(g) [Reserved]

(h) *Incident files* are those files containing documents or other information, which are related to adverse events that may have been caused by a device.

(i) *Information that reasonably suggests that there is a probability that a device has caused or contributed to a death or serious injury or serious illness* means information, including professional, scientific, or medical facts, observations, or opinions, which would cause a reasonable person to believe that a device caused or contributed to a death, serious injury, or serious illness.

(j) *Malfunction* means the failure of a device to meet any of its performance specifications or otherwise to perform as intended. Performance specifications include all claims made in the labeling for the device. The intended performance of a device refers to the objective intent of the persons legally responsible for the labeling of the device. The intent is determined by such persons' expressions or may be shown by the circumstances surrounding the distribution of the device. This objective intent may, for example, be shown by labeling claims, advertising matter, or oral or written statements by such persons or their representatives. It also may be shown by the circumstances that the device is, with the knowledge of such persons or their representatives, offered and used to perform a function for which it is neither labeled nor advertised.

(k) *Manufacturer* means any person who manufactures, prepares, propagates, compounds, assembles, or processes a device chemically, physically, biologically, or by other procedures. The term includes any person who:

(1) Repackages or otherwise changes the container, wrapper, or labeling of a device in furtherance of the distribution of the device from the original place of manufacture, to the person who makes final delivery or sale to the ultimate user or consumer;

(2) Initiates specifications for devices that are manufactured by a second party for subsequent distribution by the person initiating the specifications; or

(3) Manufactures components or accessories which are devices that are ready to be used and are intended to be commercially distributed and are intended to be used as is, or are processed by a licensed practitioner or other qualified person to meet the needs of a particular patient.

(l) *MDR* means medical device report.

(m) *MDR reportable event* means:

(1) The event for which a distributor, other than an importer, required to report under this part has received or become aware of information that reasonably suggests that there is a probability that a device has caused or contributed to a death, serious illness, or serious injury; or

(2) The event for which an importer required to report under this part has received or become aware of information that reasonably suggests that a device may have caused or contributed to a death or serious injury; or

(3) A malfunction, for which a distributor, other than an importer, required to report under this part has received or become aware of information that reasonably suggests that there is a probability that the device, if the malfunction were to recur, would be likely to cause or contribute to a death, serious illness, or serious injury; or

(4) A malfunction, for which an importer required to report under this part has received or become aware of information that reasonably suggests that a device has malfunctioned and that such device or a similar device would be likely to cause or contribute

to a death or serious injury if the malfunction were to recur.

(n) through (p) [Reserved]

(q) *Permanent* means nonreversible impairment or damage.

(r) *Probability, probable, or probably* means, for purposes of this section, that a person would have reason to believe, based upon an analysis of the event and device, that the device has caused or contributed to an adverse event. This term does not signify statistical probability.

(s) *A remedial action* is any recall, repair, modification, adjustment, relabeling, destruction, inspection, patient monitoring, notification, or any other action relating to a device that is initiated by a distributor, in response to information that it receives or otherwise becomes aware of, that reasonably suggests that one of its marketed devices has caused or contributed to an MDR reportable event.

(t) *Serious illness* means an event that:

(1) Is life threatening;

(2) Results in permanent impairment of a body function or permanent damage to the body structure; or

(3) Necessitates immediate medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure.

(u) *Serious injury* means an event that:

(1) Is life threatening;

(2) Results in permanent impairment of a body function or permanent damage to a body structure, or

(3) Necessitates medical or surgical intervention to preclude permanent impairment of a body function or permanent damage to a body structure.

(v) [Reserved]

(w) *Work day* means Monday through Friday excluding Federal holidays. Federal holidays include New Year's Day, Martin Luther King Jr.'s Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(x) Any term defined in section 201 of the act shall have the same definition unless otherwise defined in this part.

§ 804.9 Public availability of reports.

(a) Any report, including any FDA record of a telephone report, submitted under this part is available for public disclosure in accordance with part 20 of this chapter.

(b) Before public disclosure of a report, FDA will delete from the report:

(1) Any information that constitutes trade secret or confidential commercial or financial information under § 20.61 of this chapter; and

(2) Any personnel, medical, and similar information, including the serial numbers of implanted devices, which would constitute a clearly unwarranted invasion of personal privacy under § 20.63 of this chapter; provided, that, except for the information under § 20.61 of this chapter, FDA will disclose to a patient who requests a report all the information in the report concerning that patient.

Subpart B—Reports and Records

§ 804.25 Reports by distributors.

(a)(1) A distributor, other than an importer, shall submit to FDA a report, and a copy of such report to the manufacturer, containing the information required by § 804.28 on FDA form 3500A as soon as practicable, but not later than 10 working days after the distributor receives or otherwise becomes aware of information from any source, including user facilities, individuals, or medical or scientific literature, whether published or unpublished, that reasonably suggests that there is a probability that a device marketed by the distributor has caused or contributed to a death, serious illness, or serious injury.

(2) An importer shall submit to FDA a report, and a copy of such report to the manufacturer, containing the information required by § 804.28 on FDA form 3500A as soon as practicable, but not later than 10 working days after the importer receives or otherwise becomes aware of information from any source, including user facilities, individuals, or medical or scientific literature, whether published or unpublished, that reasonably suggests that one of its marketed devices may have caused or contributed to a death or serious injury.

(b)(1) A distributor, other than an importer, shall submit to the manufacturer a report containing information required by § 804.28 on FDA form 3500A, as soon as practicable, but not later than 10 working days after the distributor receives or otherwise becomes aware of information from any source, including user facilities, individuals, or through the distributor's own research, testing, evaluation, servicing, or maintenance of one of its devices, that one of the devices marketed by the distributor has malfunctioned and such information reasonably suggests that there is a probability that the device or any other device marketed by the distributor would cause a death, serious illness, or serious injury, if the malfunction were to recur.

(2) An importer shall submit to the manufacturer a report containing information required by § 804.28 on FDA form 3500A, as soon as practicable, but not later than 10 working days after the importer receives or otherwise becomes aware of information from any source, including user facilities, individuals, or through the distributor's own research, testing, evaluation, servicing, or maintenance of one of its devices, that one of the devices marketed by the importer has malfunctioned and that such device or a similar device marketed by the importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur.

§ 804.27 Where to submit a report.

(a) Any telephone report required under this part shall be provided to 301–427–7500.

(b) Any facsimile report required under this part shall be provided to 301–881–6670.

(c) Any written report or additional information required under this part shall be submitted to:

Food and Drug Administration,
Center for Devices and Radiological Health,
Distributor Report,
P.O. Box 3002,
Rockville, MD 20847–3002.

§ 804.28 Reporting form.

(a) Each distributor that submits a report on an MDR reportable event shall complete and submit the applicable portions of FDA form 3500A in so far as the information is known or should be known to the distributor, and submit it to FDA, and to the manufacturer as required by § 804.25.

(b) Each distributor shall submit the information requested on FDA form 3500A, including:

(1) Identification of the source of the report.

(i) Type of source that reported the event to thedistributor (e.g., lay user owner; lay user lessee, hospital, nursing home, outpatient diagnostic facility, outpatient treatment facility, ambulatory surgical facility);

(ii) Distributor report number;

(iii) Name, address, and telephone number of the reporting distributor and the source that reported the event to the distributor; and

(iv) Name of the manufacturer of the device.

(2) Date information.

(i) The date of the occurrence of the event;

(ii) The date the source that reported the event to the distributor became aware of the event;

(iii) The date the event was reported to the manufacturer and/or FDA; and

(iv) The date of this report.

(3) The type of MDR reportable event, e.g., death, serious illness, serious

injury, or malfunction, and whether an imminent hazard was involved;

(4) Patient information including age, sex, diagnosis, and medical status immediately prior to the event and after the event;

(5) Device information including brand and labeled name, generic name, model number or catalog number or other identifying numbers, serial number or lot number, purchase date, expected shelf life/expiration date (if applicable), whether the device was labeled for single use, and date of implant (if applicable);

(6) Maintenance/service information data including the last date of service performed on the device, where service was performed, whether service documentation is available, and whether service was in accordance with the service schedule;

(7) Whether the device is available for evaluation and, if not, the disposition of the device;

(8) Description of the event.

(i) Who was operating or using the device when the eventoccurred;

(ii) Whether the device was being used as labeled or as otherwise intended;

(iii) The location of the event;

(iv) Whether there was multi-patient involvement, and if so, how many patients were involved;

(v) A list of any other devices whose performance may have contributed to the event and their manufacturers, and the results of any analysis or evaluation with respect to such device (or a statement of why no analysis or evaluation was performed); and

(vi) A complete description of the event including, but not limited to, what happened, how the device was involved, the nature of the problem, patient followup/treatment required, and any environmental conditions that may have influenced the event.

(9) The results of any analysis of the device and the event, including:

(i) The method of evaluation or an explanation of why no evaluation was necessary or possible;

(ii) The results and conclusions of the evaluation;

(iii) The corrective actions taken; and

(iv) The degree of certainty concerning whether the device caused or contributed to the reported event;

(10) The name, title, address, telephone number, and signature of the person who prepared the report.

804.30 Annual certification.

Distributors required to report under this section shall submit a certification report to FDA by the date designated for annual registration for the firm in § 807.21 of this chapter. This date will cover the period ending 1 month before the month of the scheduled date of mailing as indicated in § 807.21(a). The report will contain the following information:

(a) The name, address, telephone number, and FDA registration number of the distributor;

(b) A statement certifying that:

(1) The distributor listed in paragraph (a) of this section has filed reports under this section during the previous 12-month period and all MDR reportable events have been submitted to FDA and/or to the appropriate manufacturer. The report will also include the number of death, serious injury or serious illness reports that were submitted to FDA, and the number of malfunction reports that were submitted to manufacturers; or

(2) The distributor listed in paragraph (a) of this section did not receive any reportable events during the previous 12-month period.

(c) The name, address, title, telephone number, and signature of the individual making the certification for the firm. This person must be a responsible person designated by the firm.

§ 804.31 Additional requirements.

Requests for additional information. If FDA determines that the protection of the public health requires information in addition to that included in the medical device reports submitted to FDA under this part, the distributor shall, upon FDA's request, submit such additional information. Any request by FDA under this section shall state the reason or purpose for which the information is being requested, and specify a due date for the submission of such information.

§ 804.32 Supplemental information.

(a) Only one MDR is required under this part if the distributor becomes aware, from more than one source, of information concerning the same patient and the same event.

(b) An MDR that would otherwise be required under this section is not required by the distributor if:

(1) The distributor determines that the information received is erroneous in that a death, serious injury, serious illness, or the malfunction did not occur; or

(2) The distributor determines that the information received is erroneous in that the device that is the subject of the information was distributed by another distributor. A distributor shall forward to FDA any report that is erroneously sent to the distributor, with a cover letter explaining that the product in question is not distributed by that firm.

(c) A report or information submitted by a distributor under this part (and any release by FDA of that report or information) does not necessarily reflect a conclusion by the party submitting the report or by FDA that the report or information constitutes an admission that the device, the establishment submitting the report, or employees thereof, caused or contributed to a death, serious injury, serious illness, or malfunction. A distributor need not admit, and may deny, that the report or information submitted under this part constitutes an admission that the device, the party submitting the report, or employees thereof, caused or contributed to a death or serious injury, serious illness, or malfunction.

§ 804.33 Alternative reporting requirements.

(a) Distributors may request exemptions from any or all of the reporting requirements in this part. These requests are required to be in writing and to include both the information necessary to identify the firm and device and an explanation why the request is justified.

(b) FDA may grant a distributor, in writing, an exemption from any or all of the reporting requirements in this part and may change the frequency of reporting to quarterly, semiannually, annually, or other appropriate time periods. In granting such exemptions, FDA may impose other reporting requirements to ensure the protection of public health and safety. FDA may also authorize the use of alternative reporting media such as magnetic tape or disk, in lieu of FDA forms.

(c) FDA may revoke alternative reporting options, in writing, if FDA determines that protection of the public health justifies a return to the requirements as stated in this part.

§ 804.34 Written MDR procedures.

Device distributors shall maintain and implement written MDR procedures in the following areas:

(a) Training and education programs informing employees about obligations under this section, including how to identify and report MDR reportable events;

(b) Internal systems that provide for timely and effective identification, communication, and evaluation of events that may be subject to MDR requirements, a standardized review process/procedure for determining when an event meets the criteria for reporting under this part, and timely transmission of complete MDR's to FDA and/or manufacturers; and

(c) Documentation and recordkeeping requirements for:

(1) Information that may be the subject of an MDR;

(2) All MDR's and information submitted to FDA and manufacturers;

(3) Information that facilitates the submission of certification reports; and

(4) Systems that ensure access to information that facilitates timely followup and inspection by FDA.

§ 804.35 Files.

(a) A device distributor shall establish a device complaint file in accordance with § 820.198 of this chapter and maintain a record of any information, including any written or oral communication, received by the distributor concerning all events that were considered for possible reporting under this part. Device incident records shall be prominently identified as such and shall be filed by device. The file shall also contain a copy of any MDR along with any additional information submitted to FDA under this part. A distributor shall maintain records that document the submission of copies of MDR's to manufacturers.

(b) A device distributor shall retain copies of the records required to be maintained under this section for a period of 2 years from the date that the report or additional information is submitted to FDA under § 804.25, or for a period of time equivalent to the design and expected life of the device, whichever is greater, even if the distributor has ceased to distribute the device that is the subject of the report or the additional information.

(c) A device distributor shall maintain the device complaint files established under this section at the distributor's principal business establishment. A distributor that is also a manufacturer may maintain the file at the same location as the manufacturer maintains its complaint file under §§ 820.180 and 820.198 of this chapter. A device distributor shall permit any authorized FDA employee, during all reasonable times, to have access to, and to copy and verify, the records required by this part.

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND DISTRIBUTORS OF DEVICES

2. The authority citation for 21 CFR part 807 is revised to read as follows:

Authority: Secs. 301, 501, 502, 510, 513, 515, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374).

3. Part 807 is amended by revising the part heading to read as follows:

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND DISTRIBUTORS OF DEVICES

4. Section 807.3 is amended by revising paragraphs (d)(2) and (g), by amending paragraph (e)(3) by removing the word "and" after the semicolon at the end of the paragraph, by amending paragraph (e)(4) by removing the period at the end of the paragraph and by adding in its place "; and", and by adding new paragraph (e)(5) to read as follows:

§ 807.3 Definitions.

* * * * *

(d) * * *

(2) Distribution of domestic or imported devices; or

* * * * *

(e) * * *

(5) The annual certification of medical device reports required by § 804.30 of this chapter or forwarding the certification form to the person designated by the firm as responsible for the certification.

* * * * *

(g) Distributor means any person who furthers the marketing of a device from the original place of manufacture, whether domestic or imported, to the person who makes final delivery or sale to the ultimate consumer or user, but does not repackage, or otherwise change the container, wrapper, or labeling of the device or device package.

* * * * *

5. Section 807.20 is amended by revising paragraph (a)(4) and by adding new paragraphs (c) and (d) to read as follows:

§ 807.20 Who must register and submit a device list.

(a) * * *

(4) Distributors;

* * * * *

(c) Distributors of domestic or imported devices must register and fulfill their listing obligations as described in § 807.22(c) of this part. Distributors with multiple sites may submit one registration for all sites or submit a registration for each site. If a multisite distributor chooses to file one registration, the registration must be from the principal business establishment which maintains the MDR complaint files.

(d) Registration and listing requirements shall not pertain to any person who:

(1) Manufacturers devices for another party who both initiated the specifications and commercially distributes the device;

(2) Sterilizes devices on a contract basis for other registered facilities who commercially distribute the devices.

* * * * *

6. Section 807.21 is revised to read as follows:

§ 807.21 Times for establishment registration and device listing.

(a) An owner or operator of an establishment who has not previously entered into an operation defined in § 807.20 shall register within 30 days after entering into such an operation and submit device listing information at that time. An owner or operator of an establishment shall update its registration information annually within 30 days after receiving registration forms from FDA. FDA will mail form FDA-2891a to the owners or operators of registered establishments according to a schedule based on the first letter of the name of the owner or operator. The schedule is as follows:

First letter of owner or operator name	Date FDA will mail forms
A, B, C, D, E	March.
F, G, H, I, J, K, L, M .	June.
N, O, P, Q, R	August.
S, T, U, V, W, X, Y, Z	November.

(b) Owners or operators of all registered establishments shall update their device listing information every June and December or, at their discretion, at the time the change occurs.

7. Section 807.22 is amended by revising paragraphs (a) and (c) to read as follows:

§ 807.22 How and where to register establishments and list devices.

(a) The first registration of a device establishment shall be on form FDA-2891 (Initial Registration of Device Establishment). Forms are obtainable upon request from the Center for Devices and Radiological Health (HFZ–342), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, or from the Food and Drug Administration (FDA) district offices. Subsequent annual registration shall be accomplished on form FDA-2891a (Annual Registration of Device Establishment), which will be furnished by FDA to establishments whose registration for that year was validated under § 807.35(a). The forms will be mailed to the owner or operators of all establishments in accordance with the schedule as described in § 807.21(a). The completed form shall be mailed to

the above-designated address within 30 days after receipt from FDA.

* * * * *

(c) The listing obligations of the distributor are satisfied as follows:

(1) The distributor is not required to submit a form FDA-2892 for those devices for which such distributor did not initiate or develop the specifications for the device or repackage or relabel the device. However, the distributor shall submit, for each device, the name and address of the manufacturer. Distributors shall also be prepared to submit, when requested by FDA, the proprietary name, if any, and the common or usual name of each device for which they are the distributors; and

(2) The distributor shall update the information required by paragraphs (c)(1) of this section at the intervals specified in § 807.30.

8. Section 807.25 is amended by revising paragraph (b) to read as follows:

§ 807.25 Information required or requested for establishment registration and device listing.

* * * * *

(b) The owner or operator shall identify the device activities of the establishment such as manufacturing, repackaging, or distributing devices.

* * * * *

9. Section 807.65 is amended by revising paragraph (e) and by removing and reserving paragraph (g) to read as follows:

§ 807.65 Exemptions for device establishments.

* * * * *

(e) Pharmacies, surgical supply outlets, or other similar retail establishments making final delivery or sale to the ultimate user. This exemption also applies to a pharmacy or other similar retail establishment that purchases a device for subsequent distribution under its own name, e.g., a properly labeled health aid such as an elastic bandage or crutch, indicating "distributed by" or "manufactured for" followed by the name of the pharmacy.

* * * * *

Dated: August 25, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–21184 Filed 8–31–93; 8:45 am]

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federal register

Wednesday
September 1, 1993

Part VI

Department of Housing and Urban Development

Leasing of HUD-Owned Single Family Properties to State and Local Governments for Use in Law Enforcement; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-93-3651; FR-3556-N-01]

Leasing of HUD-Owned Single Family Properties to State and Local Governments for Use in Law Enforcement

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: Today, HUD is announcing a set-aside under the Single Family Property Disposition Regulations that is designed to enhance the quality of life by increasing public safety in high crime neighborhoods. Under this set-aside, HUD will make available for lease, to state and local governments for use by local law enforcement agencies, up to 100 single-family homes from the HUD-owned housing inventory. Leased properties will be used for law enforcement purposes, e.g., satellite police stations; however, leased properties may not be used for detention facilities. Assisting local governments in making the presence of law enforcement agencies available, where necessary and desirable, will further the Department's objective of creating a safe and decent housing environment for all American families.

DATES: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Jackie Campbell, Deputy Director, Office of Insured Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–3046; the telecommunications device for the deaf (TDD) telephone number is (202) 708–4594. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

HUD's regulations at 24 CFR Part 291, Disposition of HUD-acquired Single Family Property, allow the Secretary to lease properties for a variety of purposes that advance the Department's mission. Section 291.200 authorizes the Department to lease acquired properties to "other government agencies for defense, *law enforcement*, or other purposes" when the Secretary determines that it is in the interest of the Department.

A major goal of the Department is to use its resources in a manner that enhances the general well-being of American communities. Promoting safe neighborhoods is a critical component of the Nation's housing policy. Recently, a number of localities have begun to focus greater effort into encouraging closer cooperation between police officers and residents of the communities that they serve. Under this concept, a safer environment is believed to stem from the continuing and routine presence of officers in the community, rather than the situation where officers merely react to specific criminal activities.

An example of "community policing" was recently described in the Washington Post of May 15, 1993. According to the article, several "satellite" or "mini"-police stations are being operated in northern Virginia, with the police presence designed to "build trust and address the root cause of crime instead of simply dealing with the aftermath."

The Department wants to assist these kinds of efforts. Accordingly, it will utilize its authority under 24 CFR part 291 to make available, for this purpose, up to 100 single-family properties nationwide. Ten properties will be allocated to each of the ten HUD Regions. Circumstances under which properties can be leased are described immediately below.

II. Requirements for Leasing of Properties

Requirements for participation in this set-aside under 24 CFR 291.200 fall into three categories, as follows:

A. Eligible lessees;
b. Eligible properties; and
C. Lease/Purchase Terms.

A. Eligible lessees

Only a unit of state or local government can apply to lease a property under this set-aside. Only one property may be leased by a single unit of government at a time. The applicant/lessee (hereinafter lessee) can use the property for law enforcement activity (e.g., a satellite duty station), but cannot use the property as a detention facility. Moreover, the property cannot be used for such purposes as a community social/resource center, drug rehabilitation center, or halfway house.

For many communities, an added law enforcement presence will result in a variety of benefits, ranging from reduced crime to increased property values. However, because this set-aside under 24 CFR 291.200 is designed to serve community residents, the Department will require lessees to certify that there is community support for the proposed police substation.

B. Eligible Properties

HUD plans to allocate 100 properties under this set-aside; ten per Region. (If demand is slight in one area, HUD may reallocate units accordingly.) The property must be located in a "high-crime" area. A written certification that attests to this fact shall be required of the official responsible for law enforcement in the jurisdiction within which the property is located. Also, there must be a significant number of properties with FHA-insured mortgages in the neighborhood to be served. HUD will make this determination. Eligible properties may not be under lease in another program, or under contract for sale.

C. Lease/Purchase Terms

A single family property, leased under this set-aside pursuant to 24 CFR 291.200, shall have a lease term that cannot exceed one year. The rental rate for the lease term will be one dollar. The lessee will be responsible for property taxes, hazard and liability insurance, repairs, maintenance and all other costs associated with the operation and maintenance of the property.

The lessee may not alter or repair the property (except for emergency repairs) without the prior written approval of HUD. Where HUD has approved major alterations or repairs to the property, section 504 of the Americans with Disabilities Act will apply, if applicable. Absent express written approval to the contrary, the property must be restored to its original, unaltered condition upon its return to the Department. Under HUD's lease-option program, the lessee may elect to purchase the property at any time during the term of the lease. Where the option to purchase is exercised, the purchase price will reflect the HUD-approved fair market value of the property as of the date the lease was executed, less the HUD approved discount in effect on the date that the purchase option is executed. If the lessee elects not to purchase the property, it will vacate the property immediately upon expiration of the lease term.

III. Participation in the Set-Aside Under 24 CFR 291.200

Properties will be leased to qualified lessees on a first come, first served basis. Interested governmental units should contact the local HUD Field Office in their jurisdiction for information on leasing of properties.

IV. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk room 10276, 451 Seventh Street, SW., Washington, DC 20410.

B. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, any terms and conditions imposed by HUD on States that may lease Single Family properties under this set-aside comport with statutory requirements under section 203 of the National Housing Act and HUD's regulation under 24 CFR part 291. Such requirements promote the intent of the Congress, and therefore, no further review is necessary or appropriate.

C. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from leasing 100 Single Family properties nationwide to state and local governments for use in law enforcement.

Dated: August 20, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–21212 Filed 8–31–93; 8:45 am]

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Vol. 58, No. 168

Wednesday, September 1, 1993

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46073–46528.....1

CFR PARTS AFFECTED DURING SEPTEMBER

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List August 19, 1993

TABLE OF EFFECTIVE DATES AND TIME PERIODS—SEPTEMBER 1993

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

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A new table will be published in the first issue of each month.

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September 3	September 20	October 4	October 18	November 2	December 2
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September 8	September 23	October 8	October 25	November 8	December 7
September 9	September 24	October 12	October 25	November 8	December 8
September 10	September 27	October 12	October 25	November 9	December 9
September 13	September 28	October 13	October 28	November 12	December 13
September 14	September 29	October 14	October 29	November 15	December 13
September 15	September 30	October 15	November 1	November 15	December 14
September 16	October 1	October 18	November 1	November 15	December 15
September 17	October 4	October 18	November 1	November 16	December 16
September 20	October 5	October 20	November 4	November 19	December 20
September 21	October 6	October 21	November 5	November 22	December 20
September 22	October 7	October 22	November 8	November 22	December 20
September 23	October 8	October 25	November 8	November 22	December 22
September 24	October 12	October 25	November 8	November 23	December 23
September 27	October 12	October 27	November 12	November 26	December 27
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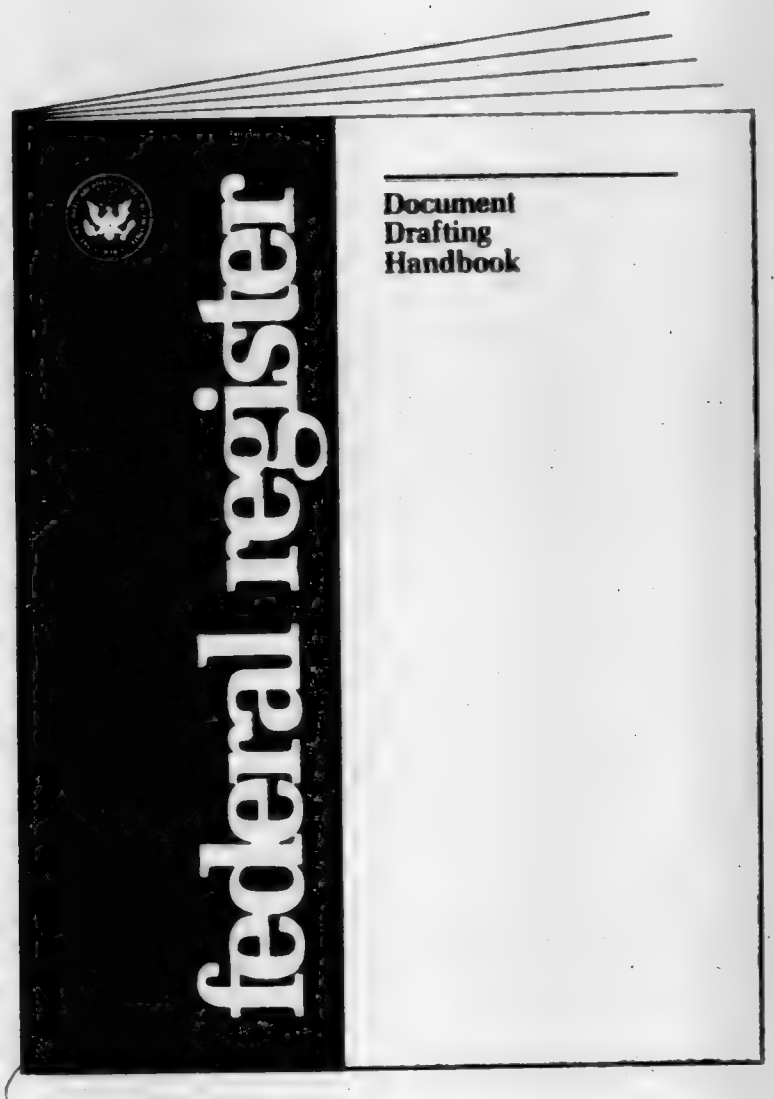

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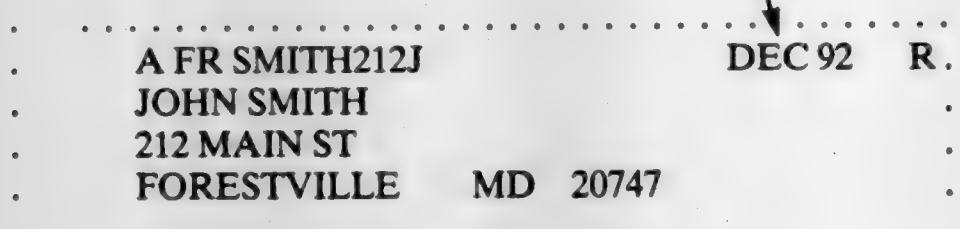

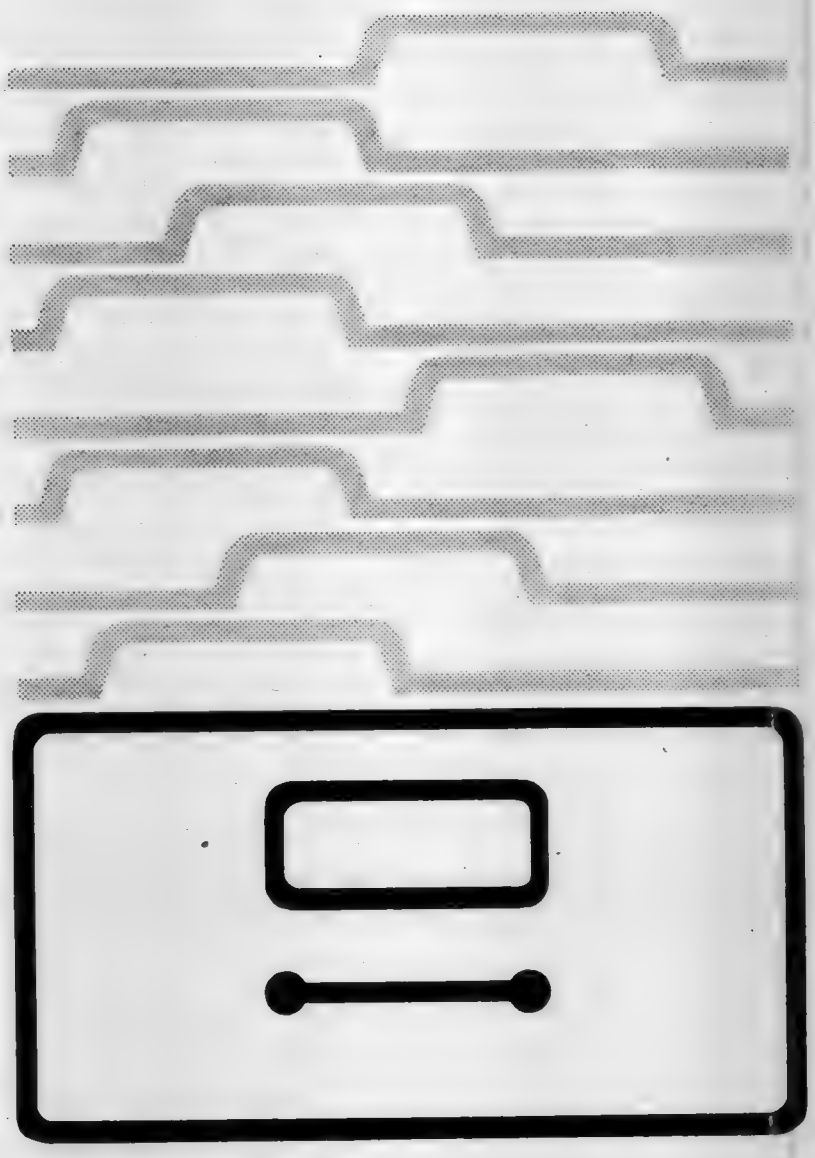

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in the Code of Federal Regulations (CFR)

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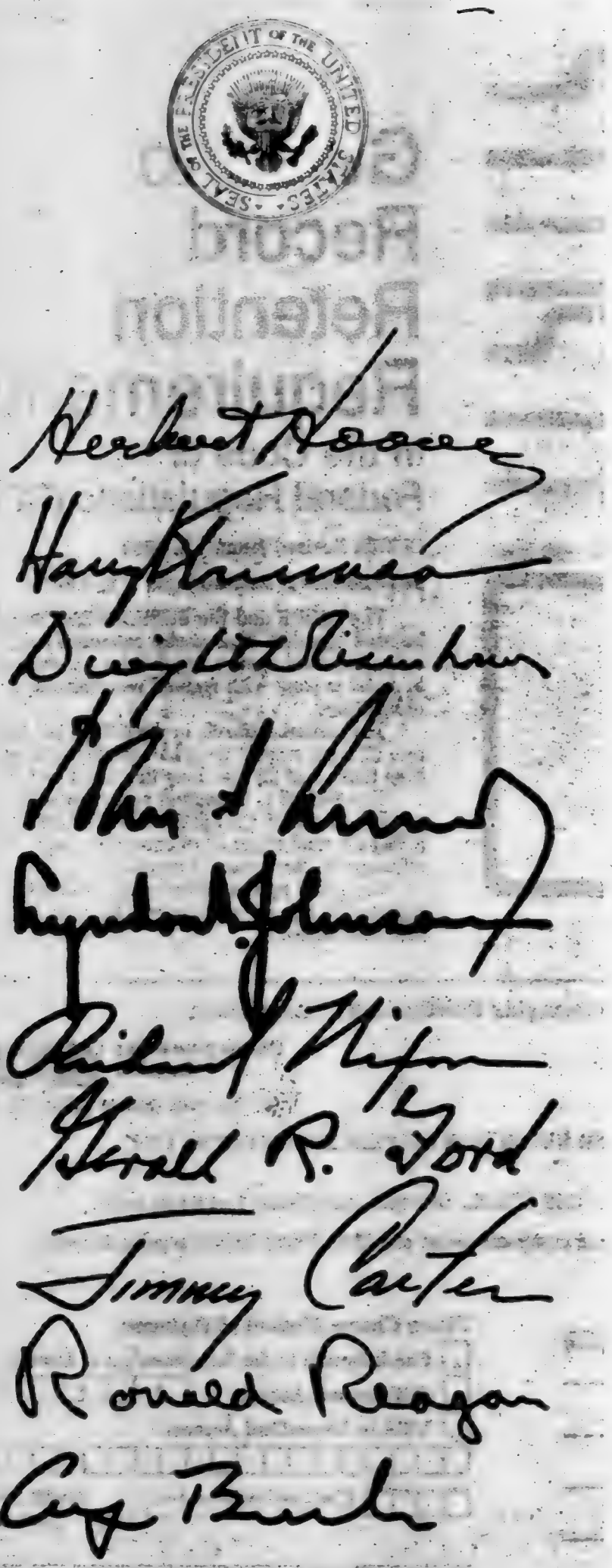

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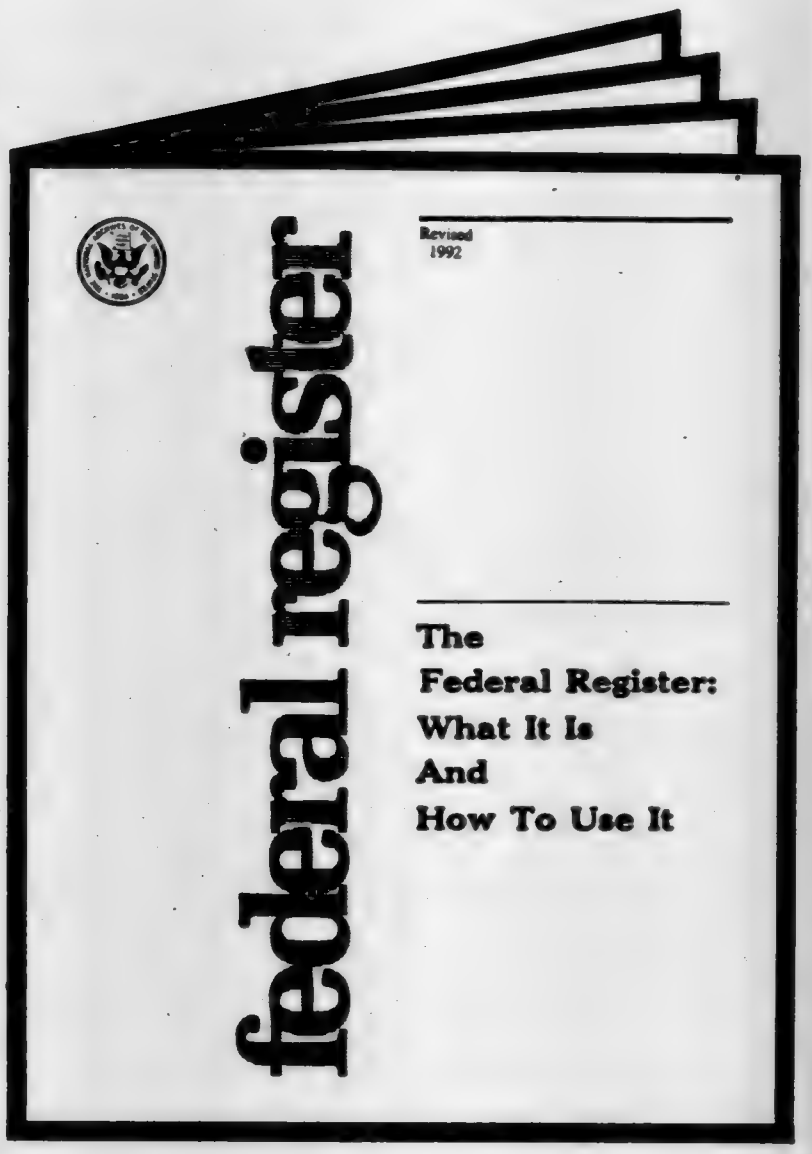

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Thursday
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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 7 and 34

[Docket NO. 93-15]

Other Real Estate Owned

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing a final rule that removes two interpretive rulings concerning real estate held as other real estate owned (OREO). The final rule also adds a new subpart dealing with OREO to the OCC's regulation concerning real estate lending and appraisals. This final rule is needed to simplify and clarify OCC's requirements regarding national bank treatment of OREO. The intended effect of this final rule is to expand the options that national banks may use to dispose of OREO in order to preclude possible violations of law.

DATES: This final rule is effective on September 17, 1993.

FOR FURTHER INFORMATION CONTACT: F. John Podvin, Jr., Attorney, Bank Operations and Assets Division, (202) 874–4460; or Thomas E. Watson, National Bank Examiner, Traditional Activities Division, (202) 874–5170, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

OREO is comprised generally of all real estate acquired and held by a national bank that is not currently in use or contemplated for use in the foreseeable future as bank premises. National banks acquire most OREO through foreclosure proceedings or by similar conveyance. A national bank's ability to hold OREO, as well as other real estate, is subject to 12 U.S.C. 29, a provision of the National Bank Act.

As a general rule, under 12 U.S.C. 29, a national bank must dispose of a parcel of OREO within five years of the date that the holding period begins. However, the Comptroller may approve a national bank's application to extend the holding period for OREO up to an additional five years if: (1) The bank has made a good faith attempt to dispose of the property within the five year period; or (2) disposal within the five year period would be detrimental to the bank.

One of the OCC regulations interpreting 12 U.S.C. 29 is 12 CFR 7.3025 (§ 7.3025), which prescribes the procedures for the proper handling and disposition of a national bank's OREO. On August 8, 1979, the OCC published a final rule in the **Federal Register** (44 FR 46428) which amended § 7.3025. The amendment attempted to bring the accounting treatment of OREO into conformity with Statement of Financial Accounting Standards No. 15, Accounting by Debtors and Creditors for Troubled Debt Restructuring, adopted by the Financial Accounting Standards Board (FASB) in June 1977. The amended § 7.3025 imposed requirements on national banks addressing several issues, including generally: how the bank must book OREO, how the bank must use appraisals to obtain and monitor the "fair value" of a parcel of OREO, what actions the bank must take if the value of the OREO deteriorates, what actions the bank may take while holding a parcel of OREO, and how the bank can meet the disposal requirements of 12 U.S.C. 29.

An accounting change that occurred after the OCC amended § 7.3025 caused conflict between the treatment of OREO under generally accepted accounting principles (GAAP) and the legal treatment under § 7.3025. In 1982, the FASB issued Statement of Financial Accounting Standards No. 66, Accounting for Sales of Real Estate (FAS 66), which altered GAAP. FAS 66 established five alternative accounting methods that a bank could use to record a sale of real estate. The introduction of FAS 66 resulted in conflicts between the treatment of OREO under GAAP and under § 7.3025.

Two statutory changes also made this rulemaking advisable. First, the Depository Institutions Deregulation and Monetary Control Act of 1980, sec. 701, Public Law 96–221, 94 Stat. 132 amended 12 U.S.C. 29 (1980 amendment). The 1980 amendment gives the OCC authority to extend the holding period for a parcel of OREO for up to five additional years subject to the conditions discussed earlier. The 1980 amendment also provides that banks may expend funds to develop and improve OREO if the expenditures are needed to enable the bank to recover its total investment in the property. Finally, the 1980 amendment provides that these expenditures can be made only upon notification to the Comptroller, subject to any conditions and limitations the Comptroller shall prescribe. These changes were previously implemented by OCC supervisory policies.

Second, Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, 103 Stat. 183 (12 U.S.C. 3331 *et seq.*) required the OCC to prescribe appropriate standards for the performance of real estate appraisals in connection with federally related transactions. The OREO appraisal requirements in § 7.3025 predated this statutory change. The fair value appraisal requirements in § 7.3025(g) and (h) were inconsistent with the regulation implementing Title XI of FIRREA, codified at 12 CFR part 34, subpart C (the OCC's general appraisal requirements).

II. The Proposed Rule

On May 5, 1993, the OCC issued a proposed rule, pursuant to 12 U.S.C. 29 and 93a, to clarify and simplify the legal treatment of OREO. See 58 FR 26695. Furthermore, the proposed rule sought to encourage national banks to comply with the disposal requirements of 12 U.S.C. 29 by providing financing to creditworthy borrowers who wish to purchase OREO. The OCC proposed to remove two of its Interpretive Rulings: (1) Real estate acquired as salvage on uncollectible loans, codified at 12 CFR 7.3020; and (2) Other real estate owned, codified at 12 CFR 7.3025. In their place, the OCC proposed to establish a new subpart E in 12 CFR part 34, entitled Other Real Estate Owned, consolidating all OREO requirements.

With these proposed changes, the OCC intended to simplify the treatment of OREO by: (1) Increasing and expanding the options that a national bank may use to dispose of OREO; (2) eliminating inconsistencies in current OREO appraisal requirements; (3) incorporating the statutory changes discussed in the background section; (4) removing conflicting OREO accounting guidance from the current regulation; and (5) providing other miscellaneous guidance.

The OCC invited public comment on any aspect of the proposed rule for a 30-day period ending on June 4, 1993. The OCC received 39 comment letters from banks, bank holding companies, accounting firms, trade groups, individuals and the Office of Management and Budget. Thirty-six commenters specifically supported the proposed rule. Three commenters raised issues without expressing either support for or opposition to the proposed rule.

Pursuant to 12 U.S.C. 29 and 93a, this final rule revises the proposed rule based on the 39 comment letters and makes other changes to clarify the requirements in the proposed rule.

III. Review of Comments

The following is a discussion of the issues raised by the commenters, the OCC's responses to those issues, and a summary of changes made to the proposed rule.

A. Disposal and Covered Transactions Real Estate

The proposed rule provided that, for purposes of 12 U.S.C. 29, disposal of OREO occurs when a national bank enters into a sales transaction that results in the property no longer being considered covered transactions real estate (CTRE). Under the proposed rule, a parcel of OREO remains CTRE whenever the bank is involved in a transaction where: (1) The transaction is not given sales treatment under GAAP; (2) the transaction does not involve a loan guaranteed or insured by the United States Government or by an agency of the United States Government or a loan eligible for purchase by a federally sponsored instrumentality that purchases loans (direct or indirect government guarantees); and (3) the bank has not received or accumulated from the purchaser, an amount in cash, principal and interest payments, and private mortgage insurance totaling 10 percent of the sales price.

Several commenters suggested reducing the down-payment requirement in the third part of the proposed CTRE definition from 10 percent to 5 percent for residential properties. The OCC considered this suggestion but decided to keep the down-payment requirement at 10 percent for the following reasons.

A national bank will avail itself of the CTRE option for disposal under 12 U.S.C. 29 only when the transaction does not qualify for any of the other disposal options now available to national banks in this final rule. Two of the options available to national banks, sales treatment under GAAP and a direct or indirect government guarantee, generally permit down-payments of less than 10 percent of the sales price for residential property. The OCC believes that a substantial number of residential transactions will either qualify for sales treatment under GAAP, or will involve a direct or indirect government guarantee. Consequently, the OCC believes the commenters' suggestions are already incorporated into the final rule.

The OCC revised the 10 percent level in the proposed CTRE definition to include the receipt and accumulation of interest payments to encourage national banks to finance the sale of OREO parcels to creditworthy borrowers. The OCC believes the 10 percent level represents a significant investment in the property by the purchaser and demonstrates the purchaser's ability to repay a loan that did not qualify for any of the other disposal options available under this final rule.

One commenter suggested that other real estate equity, savings deposits, certificates of deposit, and investment-grade stocks and bonds should be included in the proposed CTRE definition, in addition to cash, principal and interest payments and private mortgage insurance. The OCC generally adheres to GAAP in determining which instruments can be used in lieu of cash. Since GAAP does not consider these instruments equivalent to cash for purposes of determining a down-payment, the OCC has not included them in the CTRE disposal option.

Another commenter suggested that abuse may result from deleting certain provisions in § 7.3025(b) from the proposed CTRE definition. These provisions include the prohibition on allowing loan terms more favorable than those customarily required by the bank and the requirement that the usual risks and rewards of ownership be passed from the bank to the purchaser. The commenter stated that, under the proposal, the bank could adjust the interest rate and the sales price in order to accomplish disposal under 12 U.S.C. 29.

The OCC understands that national banks need flexibility in negotiating terms to dispose of OREO. At the same time, banks must operate in accordance with prudent banking practice. The OCC believes that the potential abuse cited by the commenter can be prevented by requiring banks to measure the sales price in accordance with GAAP. Under Accounting Principles Board Opinion No. 21, when a transaction involves a non-market rate of interest, the sales price is adjusted to reflect a market rate of interest. In response to this comment, the OCC amended the CTRE disposal option to provide that the sales price is measured in accordance with GAAP.

The OCC recognized that the first two parts of the proposed CTRE definition, sales treatment under GAAP and direct or indirect government guarantees, were clearly defined disposal options that comply with 12 U.S.C. 29. However, the third part of the proposed CTRE definition concerned a transitional situation where the bank receives a down-payment and accumulates payments based on various forms of financing in order to comply with the disposal requirement under 12 U.S.C. 29. To clarify this provision, the OCC moved the first two disposal options in the CTRE definition from § 34.81(b) of the proposed rule to § 34.83(a) of the final rule. The OCC also moved the disposal provisions in the third part of the proposed CTRE definition to § 34.83(a) of the final rule. The CTRE disposal option now states that a national bank that enters into a transaction that does not qualify for disposal under any of the other disposal options in the final rule may comply with its obligation to dispose of OREO when it receives or accumulates from the purchaser, an amount in cash, principal and interest payments, and private mortgage insurance totaling 10 percent of the sales price, as measured in accordance with GAAP. Finally, the OCC changed the CTRE definition from a negative to a positive statement. The definition now states that CTRE is a parcel of debts previously contracted real estate or former banking premises that the national bank is in the process of disposing of in accordance with the CTRE disposal option.

B. Holding Period

The proposed rule contained provisions relating to the operation of the holding period for OREO, which was discussed in the background section. Several commenters raised issues about the operation of the holding period for CTRE. One commenter questioned whether the holding period in 12 U.S.C. 29 continued to run when a parcel is CTRE. The holding period of 12 U.S.C. 29 is

applicable to CTRE until disposal occurs.

The OCC amended § 34.82(b) of the proposed rule by removing a provision explaining when the holding period begins in the case of CTRE reverting to the bank. This action clarifies that the holding period: (1) Begins on the date that ownership of the property is originally transferred to a national bank; and (2) ends when a national bank enters into a sales transaction that qualifies for disposal under the CTRE disposal option.

Another commenter asked whether a bank was required to apply for an extension of the initial five year holding period if a parcel was CTRE. A parcel of CTRE is involved in a transitional financing arrangement, in which the disposal requirements of 12 U.S.C. 29 have not been met. A bank must apply to extend the holding period for up to an additional five years for every parcel of OREO, including CTRE, that will be held beyond the initial five year holding period.

By definition, CTRE indicates a bank's attempt to dispose of the parcel by financing its sale. Thus, the OCC is likely to approve a bank's application to extend the holding period for CTRE. Also, it is unlikely that parcels will remain CTRE for long periods of time because accumulated principle and interest payments will be included along with cash and private mortgage insurance in the calculation of 10 percent of the sales price, as measured in accordance with GAAP. This should speed disposition of the parcel.

Two commenters observed that a requirement to file applications for extensions of the holding period annually was burdensome. In response to these comments, the OCC contacted the appropriate district offices to determine if there was any policy requiring annual applications to extend the holding period. The OCC found that while there were no OCC policies explicitly requiring annual applications to extend the holding period, the wording of one district's policy may have inadvertently fostered an annual application practice. Based on these findings, the affected district is revising the wording of its policies to allow for a five year extension. The extension may be less than five years if the OCC has supervisory concerns. This determination will be made on a case by case basis considering factors such as: the bank's OREO policies and procedures, management expertise, and safe and sound banking principles.

One commenter requested clarification on when the holding period begins for former banking premises upon relocation to new banking quarters. The commenter suggested that the holding period for such property should begin on the date that the former banking premises is vacated by all bank personnel using the premises. The OCC agrees that clarification is needed. Consequently, the final rule states that the holding period for former banking premises begins on the date that relocation to new banking quarters is complete. The OCC will make this determination on a case-by-case basis.

Finally, one commenter was concerned that in certain instances a national bank may be precluded from selling a parcel of OREO acquired through foreclosure because of a statutorily mandated redemption period. A statutory redemption period occurs after foreclosure and is a time period during which the borrower/former owner of the OREO has the right to repurchase the property by repaying the amount owed to the bank. The commenter pointed out that prospective purchasers are unlikely to finalize a purchase of OREO if it is subject to being reclaimed by a former owner.[1] The commenter suggested that the start of the holding period be delayed during the redemption period.

As stated earlier, the holding period generally begins on the date that ownership of the property is originally transferred to a national bank. At a foreclosure sale located in a state with statutory redemption rights, a national bank acquires an ownership interest in a parcel of real estate amounting to equitable title, which is less than full, legal title. Notwithstanding, a bank's acquisition of equitable title is sufficient to classify the parcel as OREO. However, the OCC agrees with the commenter that the beginning of the holding period should be delayed during the statutory redemption period because, as a practical matter, national banks cannot dispose of OREO subject to a statutory redemption period. Therefore, the OCC amended the final rule to implement the commenter's suggestion.

C. Future Bank Expansion

The proposed rule stated that real estate acquired for future bank expansion should normally be used within three years. The proposed rule also required that prior to acquisition of real estate for future bank expansion, the bank must state, by board resolution or other official action, definite plans for its use.

Several commenters took issue with the requirement that the statement of planned use be executed prior to acquisition. These commenters preferred the original language in § 7.3025(f), which required the statement for planned use after holding future bank expansion real estate for one year. Several commenters felt that banks need sufficient time to properly formulate expansion plans. One commenter pointed out that if the statement was required within one year of acquisition, the bank's board of directors would not have to approve relatively minor acquisitions that were put to use prior to the one year date. The OCC agrees with these commenters and its final rule now requires the statement of planned use after holding future bank expansion real estate for one year.

Another commenter suggested increasing, from three years to five years, the normal time period for use of future bank expansion real estate. The commenter pointed out that section 502.1 of the Comptroller's Handbook for National Bank Examiners provides that strategic planning focuses on the long-term deployment of resources to achieve corporate goals. The commenter went on to state that the normal time frame for most strategic plans is five years. Based on this comment, the final rule now provides that real estate acquired for future bank expansion should normally be used within five years.

One commenter suggested that future bank expansion real estate should be treated differently if it is contiguous to bank premises that is currently in use. As stated earlier, the OCC understands the need for banks to plan strategically in order to achieve corporate goals. The OCC provided banks with additional flexibility in planning for the future by expanding the normal time period for use of future bank expansion real estate to five years. However, the OCC notes that it will treat all types of future bank expansion real estate the same, consistent with 12 U.S.C. 29, this final rule, and principles of safe and sound banking.

Finally, the OCC wishes to clarify the meaning of the phrase "definite plans for its use" in the context of future bank expansion. Within one year of acquiring such property, the bank must state, by board of directors resolution or other official action, definite plans for its use, for example: The property was acquired and will be used as a full service branch office. Detailed information such as architectural plans, contractor cost estimates, and site impact studies are

[1] The time period differs among states varying from two months to two years, but is usually one year. See Robert Kratovil & Raymond J. Werner, *Modern Mortgage Law and Practice* § 42.06 (1987).

not necessary for a statement of definite plans for the parcel's use.

D. Appraisals

The proposed rule required that upon transfer to OREO, a national bank must substantiate a parcel's market value by obtaining an appraisal in accordance with the OCC's general appraisal requirements or by obtaining an appropriate evaluation if an appraisal is not required. An appraisal or evaluation was not required under the proposed rule if the bank already had a valid appraisal or an appropriate evaluation on file for the parcel. The bank also was required to monitor the value of each parcel of OREO pursuant to its own prudent collateral evaluation policy.

One commenter suggested that the final rule specifically state that the threshold level[2] in the OCC's general appraisal requirements applies to OREO appraisals. The OCC believes that this clarification is helpful and stated in the final rule that the threshold level specifically applies to OREO appraisals.

Two commenters requested that the OCC clarify what amount is used to determine the transaction value for OREO appraisals. The transaction value is the amount that is used to determine if a transaction is exempt from the OCC's general appraisal requirements because it is equal to or less than the threshold level, which is discussed earlier. The OCC agrees that clarification is warranted and included a definition for transaction value in the final rule. For purposes of OREO appraisals, the transaction value is the recorded investment amount, which is defined in this regulation. The final rule defines recorded investment amount as either: the recorded loan balance, as defined by GAAP; or the net book value for former bank premises.

Another commenter asked whether a national bank was required to obtain an appraisal or evaluation when a parcel of OREO is sold. The OCC determined that a national bank is not required to obtain a new appraisal or evaluation when selling a parcel of OREO if the national bank consummated the sale based on a valid appraisal or an appropriate evaluation.

Most commenters favored the proposed change from fair value appraisals to market value appraisals. However, three commenters suggested that the use of market value could be considered less stringent than GAAP. One commenter requested that the OCC describe how its new appraisal and evaluation standards conform to GAAP and section 37 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1831n. Section 37 of the FDIA generally requires that the OCC prescribe accounting principles which are no less stringent than GAAP.

A market value appraisal conforms to GAAP because it is generally equivalent to fair value. Specifically, the American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide entitled, Guide for the Use of Real Estate Appraisal Information (as of December 31, 1990), written by the AICPA, provides as follows on page one, "[t]he auditor can generally relate the definition of fair value in the accounting literature to the appraiser's definition of market value." Based on the foregoing, the OCC believes that a market value appraisal is acceptable under and conforms to GAAP.

Several commenters supported the OCC's proposal to replace its current method to monitor the value of OREO, an annual OREO reappraisal/recertification, with a prudent collateral evaluation policy. One suggested that the OCC define or provide specific guidelines on the contents of a prudent collateral evaluation policy. The commenter suggested that the policy might include some of the following: mass appraisal techniques, monitoring values by trend analysis or sampling techniques, or updating existing appraisals.

The OCC elected not to reduce a national bank's flexibility by placing specific requirements within the final rule since these techniques or practices may not be beneficial or useful for all national banks. Rather, bank management should establish a prudent collateral evaluation policy that addresses the following: the bank's specific needs, the complexity and composition of the bank's real estate loan portfolio, the bank's known or potentially troublesome real estate lending risks and prudent banking practices.

National banks should consult the following OCC documents in developing their prudent collateral evaluation policy: Banking Circular 208 (Rev.), Guidelines for Troubled Real Estate Loans (March 20, 1992); Banking Circular 225 (Rev.), Real Estate Appraisal and Evaluation Guidelines (September 28, 1992); Banking Circular 265, Interagency Guidelines for Real Estate Lending Policies (December 31, 1992); and Comptroller's Handbook for National Bank Examiners, Section 213 (Real Estate Loans), Section 214 (Real Estate Construction Loans), and Section 219 (Other Real Estate Loans).

In the final rule, the OCC replaced the phrase "prudent collateral evaluation policy" with the phrase "prudent real estate collateral evaluation policy" in order to achieve uniformity with Banking Circular 208 (Rev.). Replacing the current requirement with the prudent real estate collateral evaluation policy will give national banks flexibility in monitoring the value both of real estate collateral and OREO. The OCC's action also allows national banks to supervise their OREO property with the same policy they use to supervise classified commercial real estate loans.

Finally, the OCC shortened and clarified the exception to the general rule requiring a bank to obtain an appraisal or evaluation upon transfer of a parcel into OREO. The exception now provides that if a national bank has a valid appraisal or an appropriate evaluation on a real estate loan, which was obtained in accordance with the OCC's general appraisal requirements, then the bank is not required to obtain another appraisal or evaluation when the bank acquires ownership of the property. The bank remains subject to the continuing requirement to follow its prudent real estate collateral evaluation policy.

E. Additional Expenditures and Notification

The proposed rule stated that normal repairs and maintenance expenses for OREO shall be expensed when incurred and that notification is not required for such expenses. Several commenters pointed out that this provision may not conform to GAAP. The commenters suggested that the determination of whether an expenditure is capitalized or expensed should reflect GAAP and they suggested deleting the provision.

The OCC agrees that the capitalization/expense determination should reflect GAAP. The OCC's reason for including this provision in the proposed rule was to clarify that normal repairs and maintenance costs incurred to protect the value of the collateral do not require notification. Therefore, to prevent unnecessary filings and the associated burden on banks, the OCC retained the provision but changed it to clarify that notification is not required for normal repairs and maintenance costs incurred to protect the value of the collateral.

In the preamble to the proposed rule, the OCC stated that normal repairs and maintenance expenditures included re-fitting an existing building for new

[2] The current threshold level is $100,000. See 12 CFR 34.43(a)(1). However, the OCC, in conjunction with the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision, has proposed an increase in the threshold level to $250,000. See 58 FR 31878 (June 4, 1993). The threshold level adopted by the OCC in its final rule will apply to OREO appraisals.

tenants. One commenter suggested clarifying the final rule by including the re-fitting language into the regulatory text. The OCC agrees with the commenter and the language in the final rule now provides that notification is also not required for refitting an existing building for new tenants.

The proposed rule also provided that, for other real estate owned that is being developed or improved, a national bank may only make further prudent advances to complete the project if they: (1) Are reasonably calculated to reduce any shortfall between the parcel's market value and the bank's recorded investment amount; and (2) are not made for the purpose of speculation in real estate.

One commenter pointed out that the proposed rule implied that expenditures may only be made to "complete" an unfinished construction or development project. The commenter suggested permitting development activities whether or not the project has started. The commenter went on to say that the prohibition on speculation in real estate should be deleted because it was unnecessary and could be open to interpretation in light of the language limiting expenditures to those that reduce any shortfall between the parcel's market value and the bank's recorded investment amount. The commenter indicated that the prohibition on real estate speculation would lead to disagreements between lenders and examiners over what constituted speculation.

The OCC understands the commenter's concerns. As stated earlier, 12 U.S.C. 29 provides that after notification to the OCC and subject to the conditions and limitations prescribed by the OCC, banks may expend funds to develop and improve OREO if the expenditures are needed to enable the bank to recover its total investment in the property. Permitting limited expenditures allows the bank to complete an unfinished project or to preserve the current status of an OREO asset. The OCC believes limiting expenditures is prudent, reasonable and should be retained in the final rule.

The OCC believes that speculation in real estate is an unsafe and unsound banking practice, in light of long-standing case law and the statutory provisions limiting bank investment in real estate and requiring disposal of OREO within the holding period. Therefore, the condition that expenditures cannot be made for the purpose of speculation in real estate is appropriate and was retained in the final rule.

The OCC notes that the financed sale of bank assets, including OREO assets, is exempt from the national bank lending limits in 12 U.S.C. 84. Therefore, the bank may provide financing for any improvement or development project sought by the purchaser of an OREO asset, subject only to safe and sound banking principles.

One commenter suggested that unimproved land should be specifically excluded from development or improvement because these actions would be speculative in nature. The OCC agrees that in most cases the development or improvement of unimproved land is speculative. The regulatory text in the final rule prohibits speculation. In addition, a blanket prohibition would exclude the rare occurrence where development or improvement of unimproved land would be reasonably calculated to reduce any shortfall between the parcel's market value and the bank's recorded investment amount and would not be speculation in real estate. Therefore, the OCC does not believe a blanket prohibition is necessary.

Finally, the proposed rule provided that a bank shall notify the appropriate supervisory office at least 30 days before implementing a development or improvement plan for OREO that would cause the sum of the bank's recorded investment amount, and any unpaid prior liens on the property, to exceed 10 percent of the bank's capital and surplus. The OCC revised these provisions in the final rule to clarify that notification is required when the sum of the development or improvement plan's estimated cost, the bank's current recorded investment amount, and any unpaid prior liens on the property exceeds 10 percent of the bank's capital and surplus. The OCC further clarified that notification is required only once. The OCC will review plans to complete development or improvement of OREO during the examination process.

F. Treatment of Leases

The proposed rule included capitalized leases within the definition of former banking premises and subjected them to the corresponding requirements in the proposed rule. Several commenters raised the issue of treatment of leases under the proposed rule. One commenter suggested excluding operating leases from coverage, or liberalizing treatment of non-coterminous subleases of former banking premises.

The OCC believes that both capitalized and operating leases should be covered in the final rule because they both represent an interest in real estate and are covered by 12 U.S.C. 29. Therefore, the OCC clarified the definitions of both debts previously contracted real estate and former banking premises to include both capitalized and operating leases. The OCC also added a paragraph to the section on disposition of real estate to clarify the OCC's historical position that a national bank may comply with its obligation under 12 U.S.C. 29 to dispose of a capitalized or operating lease by obtaining an assignment or a coterminous sublease.

The OCC notes that use of a non-coterminous sublease is permissible. However, use of a non-coterminous sublease does not constitute disposal under 12 U.S.C. 29. Moreover, if the unexpired term of a non-coterminous sublease exceeds the permissible holding period, a violation of law occurs after the expiration of the holding period. Any remedial action for a violation will depend in part on the diligence of the bank's attempts to dispose of the lease by obtaining an assignment or a coterminous sublease and the documentation reflecting its efforts.

Another commenter pointed out that the disposition of a lease was not covered by the proposed rule because lease terminations are not covered by FAS 66 but rather by other provisions of GAAP. That commenter suggested that the OCC specifically mention that lease terminations are governed by GAAP. The proposed rule provided that the accounting treatment for OREO must be in accordance with the Instructions for the Preparation of the Consolidated Reports of Condition and Income (Call Report Instructions). The Call Report Instructions are silent with regard to lease terminations, which means that they are governed by GAAP. Therefore, the OCC believes that it is not necessary to follow the commenter's suggestion. The accounting treatment of OREO is discussed in more detail below.

G. Accounting Treatment

The proposed rule stated that sales of OREO shall be accounted for in accordance with the Call Report Instructions. Several commenters suggested that the OCC clarify how OREO transactions that meet the disposal requirements in the proposed rule will be accounted for on the Call Report.

The primary concern that the OCC sought to address in amending the OREO regulations was to provide national banks with more options to meet their statutory obligation to

dispose of OREO within the holding period in 12 U.S.C. 29. A secondary concern was to remove conflicting OREO accounting guidance from its OREO regulation and to require that OREO accounting be performed in accordance with the Call Report Instructions.

"Disposal" under this final rule is only for the purposes of 12 U.S.C. 29 and does not affect how an asset is reported in the Call Report. The accounting treatment for an OREO asset "disposed of for purposes of 12 U.S.C. 29" is found in the Call Report Instructions (Schedule RC–M), which were revised effective with the June 30, 1993 Call Report. The revision eliminated almost all exceptions to GAAP, which were previously included in the instructions to Schedule RC–M. However, in accounting for OREO and sales of it, national banks must comply with the provisions included in the Call Report Glossary entry for "Sales of Assets", including the recourse provisions.

Finally, one commenter stated that the accounting treatment language in the proposed rule could be read to cover only sales of OREO, but not how OREO is reported on the bank's books. The OCC agrees that the Call Report Instructions should govern all aspects of the accounting treatment of OREO, not just sales of OREO. Therefore, the OCC clarified the accounting treatment language in the final rule, which now provides that OREO and sales of it shall be accounted for in accordance with the Call Report Instructions.

H. Other Issues

Two commenters asked whether the final rule would be applied retroactively. The OCC believes that the final rule will apply to OREO and OREO transactions in existence on the final rule's effective date. A new section entitled "Application" is included in the final rule.

Two commenters asked about interagency consistency in the treatment of OREO. Financial institutions regulated by the Federal banking and thrift agencies are subject to different laws regarding disposal of real estate. As stated earlier, 12 U.S.C. 29 is in the National Bank Act, which covers national banks. This final rule prescribes the procedures for the proper handling and disposition of a national bank's OREO consistent with 12 U.S.C. 29.

The Federal Deposit Insurance Corporation and the Federal Reserve Board follow the Call Report Instructions and relevant state law on treatment of real estate acquired by state banks that they regulate. The Federal Reserve Board's Regulation Y prescribes the procedures and the proper handling and disposition of real estate acquired by bank holding companies. See 12 CFR 225.22(c)(1); see also 12 CFR 225.140. Finally, the Office of Thrift Supervision issued Regulatory Bulletin 30 on January 25, 1993, which provides guidance on use of the "salvage powers doctrine". The specific issues relating to a thrift's use of salvage powers to assist a service corporation and a thrift's re-evaluation of real estate owned are dealt with in two regulations, 12 CFR 563.38 and 12 CFR 563.172 respectively. The Office of Thrift Supervision does not have a regulation generally addressing the proper handling and disposition of real estate acquired by thrifts. Real estate owned by thrifts is accounted for in accordance with 12 CFR 563c.102.

Another commenter was concerned that the proposed rule did not directly address the issue of selling OREO pursuant to a land contract or a lease in which the lessee has an option to purchase the property. In both cases, the bank continues to hold legal title to the property and has a reversionary interest in the property.

The OCC believes that a sale under a "land contract" or a "contract for deed" satisfies the disposal requirements of 12 U.S.C. 29 because it is a legitimate land sales transaction. However, the OCC does not believe the same treatment should be given to leases with an option to purchase. The distinguishing feature is that at the expiration of a land contract, title to the property automatically transfers to the purchaser and the bank need not take any further action to implement the transfer. Conversely, in a lease/purchase option transaction, the bank must take steps to dispose of the property if the lessee does not exercise the option to purchase. In response to this comment, the OCC added a paragraph to the final rule stating that a bank can comply with its obligation to dispose of OREO by selling the property under a land contract or a contract for deed.

Finally, one commenter suggested that the OCC consider including all stock acquired and held in satisfaction of a debt previously contracted within the OREO holding period. The OCC considered the stock to be outside the scope of the rulemaking since stock is not covered by 12 U.S.C. 29.

15–Day Delayed Effective Date

Pursuant to 12 U.S.C. 553(d) (1) and (3), the Administrative Procedure Act, the OCC is making this final rule effective on September 17, 1993. The OCC finds that good cause exists for a 15-day delayed effective date because this final rule replaces an outdated regulation that conflicted with GAAP and contained inconsistent appraisal requirements. The final rule provides national banks with additional flexibility in disposing of OREO. It also clarifies the accounting treatment of OREO, which now must be accounted for in accordance with the Call Report Instructions. The OCC finds that a 30-day delay in the effective date of the final rule would be contrary to the public interest because the delay would preclude national banks from using the flexible disposal treatment and the clarified accounting treatment in preparing their third quarter Call Reports. A 15-day delayed effective date will increase credit availability by allowing national banks to shift resources from administering OREO into providing credit to creditworthy borrowers. Finally, this final rule is a substantive rule that grants a limited exception to the appraisal requirement. See 12 CFR 34.84(b).

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation will reduce burden on national banks, regardless of size, by clarifying existing statutory and regulatory requirements.

Executive Order 12291

The OCC has determined that this amendment is not a "major rule" and therefore does not require a Regulatory Impact Analysis. The impact of this final rule is expected to be slight and will benefit banks by clarifying existing regulations.

Paperwork Reduction Act

The collections of information contained in this final rule have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1557–0153.

The estimated annual burden per respondent for the application in § 34.82(a) varies from 30 minutes to 3 hours, depending on individual circumstances, with an estimated average of 1 hour. The estimated annual burden per respondent for the notification in § 34.85(b) varies from 1 to 8 hours, depending on individual circumstances, with an estimated average of 4 hours.

Comments concerning the accuracy of these burden estimates and suggestions

for reducing burden should be directed to the Office of the Comptroller of the Currency, Legislative, Regulatory, and International Activities, Attention: 1557–0153, 250 E Street, SW., Washington, DC 20219, and the Office of Management and Budget, Paperwork Reduction Project (1557–0153), Washington, DC 20503.

List of Subjects

12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, parts 7 and 34 of chapter I of title 12 of the Code of Federal Regulations are amended as set forth below:

PART 7—INTERPRETIVE RULINGS

1. The authority citation for part 7 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a.

§ 7.3020 [Removed]

2. Section 7.3020 is removed.

§ 7.3025 [Removed]

3. Section 7.3025 is removed.

PART 34—REAL ESTATE LENDING AND APPRAISALS

4. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a, 371, 1701j–3, 1828(o), and 3331 *et seq.*

5. A new Subpart E—Other Real Estate Owned is added to part 34 to read as follows:

Subpart E—Other Real Estate Owned

Sec.
34.81 Definitions.
34.82 Holding period.
34.83 Disposition of real estate.
34.84 Appraisal requirements.
34.85 Additional expenditures and notification.
34.86 Accounting treatment.
34.87 Application.

Subpart E—Other Real Estate Owned

§ 34.81 Definitions.

(a) *Other real estate owned* is:
(1) Covered transactions real estate;
(2) Debts previously contracted real estate; and
(3) Former banking premises.

(b) *Covered transactions real estate* is a parcel of debts previously contracted real estate or former banking premises that the national bank is in the process of disposing of in accordance with § 34.83(a)(6).

(c) *Debts previously contracted real estate* means real estate (including capitalized and operating leases) acquired by a national bank through any means in full or partial satisfaction of a debt or debts previously contracted.

(d) *Former banking premises* means real estate (including capitalized and operating leases) for which banking use is no longer contemplated. This includes real estate originally acquired for future expansion that will no longer be used for future expansion or other banking purposes.

(e) *Market value* is determined in accordance with subpart C of this part.

(f) *Recorded investment amount* means:
(1) The recorded loan balance, as defined by generally accepted accounting principles; or
(2) Net book value for former banking premises.

(g) *Transaction value* means the recorded investment amount.

§ 34.82 Holding period.

(a) *Holding period for other real estate owned.* Pursuant to 12 U.S.C. 29, a national bank may hold other real estate owned for a period not to exceed five years, except that the Comptroller may approve an application by the bank to extend the holding period for up to an additional five years, if:
(1) The bank has made a good faith attempt to dispose of the other real estate owned within the five-year period; or
(2) Disposal of the other real estate owned within the five-year period would be detrimental to the bank.

(b) *When the holding period begins.* The holding period begins on the date that:
(1) Ownership of the property is originally transferred to a national bank;
(2) Relocation from former banking premises to new banking premises is complete; or
(3) A decision is made not to use real estate acquired for future bank expansion.

(c) *Effect of statutory redemption period on the beginning of the holding period.* For debts previously contracted real estate that is subject to a redemption period imposed under state law, the holding period begins at the expiration of the redemption period.

§ 34.83 Disposition of real estate.

(a) *Disposal.* Other real estate owned shall be disposed of within the holding period permitted by 12 U.S.C. 29 at any time that prudent judgment dictates, but in no event later than the end of such holding period.

(1) A national bank may comply with its obligation under 12 U.S.C. 29 to dispose of other real estate owned by entering into a transaction that is accorded sales treatment under generally accepted accounting principles.

(2) A national bank may comply with its obligation under 12 U.S.C. 29 to dispose of other real estate owned by entering into a transaction that involves a loan guaranteed or insured by the United States government or by an agency of the United States government or a loan eligible for purchase by a federally sponsored instrumentality that purchases loans.

(3) A national bank may comply with its obligation under 12 U.S.C. 29 to dispose of other real estate owned by selling the property pursuant to a land contract or a contract for deed.

(4) A national bank may comply with its obligation under 12 U.S.C. 29 to dispose of debts previously contracted real estate by retaining the property for its own use as bank premises or by transferring it to a subsidiary or affiliate for use in the business of the subsidiary or affiliate.

(5) A national bank may comply with its obligation under 12 U.S.C. 29 to dispose of a capitalized or operating lease by obtaining an assignment or a coterminous sublease.

(6) A national bank that enters into a transaction that does not qualify for disposal under paragraphs (a) (1) through (5) of this section may comply with its obligation under 12 U.S.C. 29 to dispose of other real estate owned when it receives or accumulates from the purchaser an amount in cash, principal and interest payments, and private mortgage insurance totaling 10 percent of the sales price, as measured in accordance with generally accepted accounting principles.

(b) *Disposal efforts and documentation.* The national bank shall make diligent efforts to dispose of each parcel of other real estate owned and shall maintain documentation adequate to reflect those efforts.

(c) *Future bank expansion.* Real estate acquired for future bank expansion should normally be used within five years. After holding such real estate for one year, the bank shall state, by board of directors resolution or other official action, definite plans for its use. The resolution or other official action shall be available for inspection by national bank examiners.

§ 34.84 Appraisal requirements.

(a) *In general.* (1) Upon transfer to other real estate owned, the national bank shall substantiate the parcel's market value by obtaining either:

(i) An appraisal in accordance with subpart C of this part; or

(ii) An appropriate evaluation when the transaction value is equal to or less than the threshold amount in subpart C of this part.

(2) The national bank shall develop a prudent real estate collateral evaluation policy that allows the bank to monitor the value of each parcel of other real estate owned in a manner consistent with prudent banking practice.

(b) *Exception.* If a national bank has a valid appraisal or an appropriate evaluation on a real estate loan, which was obtained in accordance with subpart C of this part, then the bank is not required to obtain another appraisal or evaluation when the bank acquires ownership of the property. However, the bank shall continue to follow the prudent real estate collateral evaluation policy required in paragraph (a)(2) of this section.

(c) *Sales of other real estate owned.* A national bank is not required to obtain a new appraisal or evaluation when selling other real estate owned if the sale was consummated based on a valid appraisal or an appropriate evaluation.

§ 34.85 Additional expenditures and notification.

(a) *Additional expenditures on other real estate owned.* (1) Notification under paragraph (b)(1) of this section is not required for re-fitting an existing building for new tenants or for normal repairs and maintenance costs incurred to protect the value of the collateral.

(2) For other real estate owned that is a development or improvement project, a national bank may make prudent advances to complete the project if they:

(i) Are reasonably calculated to reduce any shortfall between the parcel's market value and the bank's recorded investment amount; and

(ii) Are not made for the purpose of speculation in real estate.

(b) *Notification procedures.* (1) A national bank shall notify the appropriate supervisory office at least 30 days before implementing a development or improvement plan for other real estate owned when the sum of the plan's estimated cost, the bank's current recorded investment amount, and any unpaid prior liens on the property, exceeds 10 percent of the bank's capital and surplus, as defined in § 3.100 of this title. Notification under this paragraph is required only once.

(2) The required notification must include any documentation necessary to demonstrate that the additional expenditure is consistent with the conditions and limitations in paragraphs (a)(2)(i) and (ii) of this section.

(3) If the appropriate supervisory office imposes no additional conditions or limitations on the national bank's plan within 30 days following receipt of the bank's notification by the OCC, then on the thirty-first day following receipt of the bank's notification by the OCC (or sooner if notified by the OCC), the bank may implement the plan to develop or improve the other real estate owned.

§ 34.86 Accounting treatment.

Other real estate owned and sales of it shall be accounted for in accordance with the Instructions for the preparation of the Consolidated Reports of Condition and Income.

§ 34.87 Application.

The provisions of this subpart are applicable to all other real estate owned, including other real estate owned in existence on September 17, 1993.

Dated: August 30, 1993.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

[FR Doc. 93–21415 Filed 9–1–93; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–87; Special Conditions No. 25–ANM–75]

Special Conditions: Modified Boeing Model 727, 727–100, 727C, 727–100C, and 727–200 Series Airplanes; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions with request for comments.

SUMMARY: These special conditions are issued for Boeing Model 727, 727–100, 727C, 727–100C, and 727–200 series airplanes modified by Comtran International, Inc. of San Antonio, Texas. The modification includes the installation of high-technology digital avionics systems or other electronic systems that perform critical or essential functions. The applicable type certification regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

DATES: The effective date of these special conditions is August 17, 1993. Comments must be received on or before October 18, 1993.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief, Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–87, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked; Docket No. NM–87. Comments may be inspected in the Rule Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: William Schroeder, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (206) 227–2148.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comment received. All comments submitted will be available in the Rule Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–87." The postcard will be date stamped, and returned to the commenter.

Background

On April 13, 1993, Comtran International, Inc., 1770 Sky Place Blvd., San Antonio, Texas, 78216, applied for a supplemental type certificate to modify Boeing Model 727–100 series airplanes. The proposed modification includes the installation of digital avionics, including an electronic flight instrument system (EFIS) and an engine indication and crew alerting system (EICAS), which are vulnerable to lightning and high-intensity radiated fields (HIRF) external to the airplane. Other similar modifications often installed when updating to digital avionics include attitude and heading reference systems (AHRS). Because these are typical modernization modifications for retrofitting state-of-the-art avionics and electronics to older airplanes, it is expected that Comtran International, Inc. will apply for supplemental type certificates for installation of similar modifications on Boeing Model 727, 727–100, 727C, 727–100C, and 727–200 series airplanes in the near future. Therefore, Comtran International, Inc. will need appropriate lightning and HIRF criteria available for application to those projects.

Boeing Model 727, 727–100, 727C, 727–100C, and 727–200 series airplanes are all listed on Type Certificate A3WE. The airplanes are pressurized, 199 to 189 passenger (depending on the specific model and airplane configuration), large commercial transport type airplanes having a maximum operating altitude of 42,000 feet. The airplanes are powered by three aft fuselage-mounted turbojet or turbofan engines, depending on the specific model and airplane configuration.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the FAR, Comtran International, Inc. must show that the modified Boeing Model 727, 727–100, 727C, 727–100C, and 727–200 series airplanes continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A3WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. A3We include the following: CAR 4b dated December 31, 1953, including Amendments 4b–1 thru 4b–11, and Special CAR SR–422B. In addition, the certification basis includes certain special conditions and exemptions that are not relevant to these special conditions. These special conditions will form an additional part of the type certification basis when critical or essential digital avionics/electronic systems are being modified or installed.

If the Administrator finds that the applicable airworthiness regulations (i.e., CAR 4b or part 25, as amended) do not contain adequate or appropriate safety standards for Boeing Model 727, 727–100, 727C, 727–100C, and 727–200 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with new-technology avionics and electronic systems. There are two regulations that specially pertain to lightning protection: 1 for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing Model 727, 727–100, 727C, 727–100C, and 727–200 series airplanes that would require that new technology electrical and electronic systems, such as electronic flight instrument systems, electronic engine indication and crew alerting systems, digital avionics systems, and electronic propulsion controls be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with the lightning special conditions, clarification of the threat definition of lightning is needed. The following "threat definition," based on FAA Advisory Circular (AC) 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition, with the exception of the multiple burst environment which has been changed to agree with the latest recommendations from the SAE AE4L Committee.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in AC 20–53A, will provide a consistent and reasonable standard that is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike-Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. When a single event upset of input/output signals may not

affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation, and

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of repetitive Component H waveforms in 3 sets of 20 pulses each. The minimum time between individual Component H pulses within a burst is 50 microseconds; the maximum is 1000 microseconds. The 3 bursts are distributed according to the following constraints: (1) The minimum period between subsequent bursts is 300ms, and (2) the maximum period between subsequent bursts is 300ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$$i(t) = I_0 (e^{-at} - e^{-bt})$$

where:

t = time in seconds,

i = current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp	=218,810	109,405	54,703	10,572
a, sec^{-1}	=11,354	22,708	22,708	187,191
b, sec^{-1}	=647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics:

i_{peak}	=200 KA	100 KA	50 KA	10 KA
and,				
$(di/dt)_{max}$(amp/sec)	=1.4 × 10^{11} @t = 0+sec	1.4 × 10^{11} @t = 0+sec	0.7 × 10^{11} @t = 0+sec	2.0 × 10^{11} @t = 0+sec
di/dt, (amp/sec)	= 1.0 × 10^{11} @t = .5μs	1.0 × 10^{11} @t = .25μs	0.5 × 10^{11} @t = .25μs	.....
Action Integral (amp^2 sec)	2.0 × 10^6	0.25 × 10^6	0.625 × 10^6	.....

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS and EICAS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Futhermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2 MHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1 GHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

Conclusion

This action affects only certain unusual or novel design features on Boeing Model 727, 727–100, 727C, 727–100C, and 727–200 series airplanes. It is not a rule of general applicability and affects only Comtran International, Inc., when they apply to the FAA for approval of modifications involving these features on Model 727, 727–100, 727C, 727–100C, and 727–200 series airplanes.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may have not been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation Safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 727, 727–100, 727C, 727–100C, and 727–200 series airplanes modified by Comtran International, Inc. of San Antonio, Texas.

1. *Lightning Protection.* a. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

3. The following definitions apply with respect to these special conditions:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on August 17, 1993.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 93–21392 Filed 9–1–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ASO–14]

Alteration of VOR Federal Airways and Jet Routes and Establishment of the Sidon Reporting Point; MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action reflects the name change of the Greenwood, MS, very high frequency omnidirectional range/tactical air navigation (VORTAC) to the Sidon, MS, VORTAC. The Greenwood, MS, VORTAC is located approximately 10 miles west of the Greenwood-Leflore Airport. The FAA has determined that its current name is misleading because confusion exists between Greenwood, MS, and Greenville, MS, which are located adjacent to each other. Also, to avoid pilot confusion, navigational aids (NAVAID) not located on the airport surface should not have the same name as the primary airport. This action reflects the name change, where necessary, in all airway and jet routes that have Greenwood in their text.

EFFECTIVE DATE: 0901 UTC, November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On February 17, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to reflect the name change of the Greenwood, MS, VORTAC to the Itta Bena, MS, VORTAC (58 FR 8724).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. However, the FAA has now decided to rename the NAVAID "Sidon" in lieu of "Itta Bena," which is the name of a nearby community. The high altitude reporting points and the Greenwood, MS, low altitude reporting point referred to in the original proposal have been deleted from this final rule because the new airspace reclassification rule which becomes effective September 16, 1993, will delete all domestic high altitude reporting points and a number of low altitude reporting points. Except for editorial changes and the renaming of the NAVAID from "Itta Bena" to "Sidon," this amendment is the same as that proposed in the notice. Jet routes, domestic VOR Federal airways, and low altitude reporting points are published in paragraphs 2004, 6010(a), and 7001, respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The jet routes, domestic VOR Federal airways, and low altitude reporting point listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations reflects the name change of the Greenwood VORTAC to the Sidon VORTAC. The Greenwood, MS, VORTAC is located approximately 10 miles west of the Greenwood-Laflore Airport. This name change will end the confusion that currently exists between Greenwood,

MS, and Greenville, MS, which are located adjacent to the other.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter than will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–35 [Revised]

From New Orleans, LA, via McComb, MS; Sidon, MS; Memphis, TN; Farmington, MO; St. Louis, MO; Capital, IL; Pontiac, IL; Joliet, IL; to Northbrook, IL.

* * * * *

J–52 [Revised]

From Vancouver, BC, Canada, via Spokane, WA; Salmon, ID; Dubois, ID; Rock Springs, WY; Denver, CO; Kiowa, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Ardmore, OK, 309° radials; Ardmore; Dallas-Fort Worth, TX; Texarkana, AR; Sidon, MS; Bigbee, MS; Vulcan, AL; Atlanta, GA; Colliers, SC; Columbia, SC; Raleigh-Durham, NC; to Richmond, VA. The portion within Canada is excluded.

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Paragraph 6010(a)—Domestic VOR Federal Airways

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V–9 [Revised]

From Leeville, LA, via INT Leeville, 333° and New Orleans, LA, 181° radials; New Orleans; McComb, MS; Jackson, MS; Sidon, MS; Gilmore, AR; Malden, MO; Farmington, MO; St. Louis, MO; Capital, IL; Pontiac, IL; INT Pontiac 343° and Rockford, IL, 169° radials; Rockford; Janesville, WI; Madison, WI; Oshkosh, WI; Green Bay, WI; Iron Mountain, MI; to Houghton, MI.

* * * * *

V–11 [Revised]

From Brookley, AL; Greene County, MS; Jackson, MS; Sidon, MS; Holly Springs, MS; Dyersburg, TN; Cunningham, KY; Pocket City, IN; Indianapolis, IN; Marion, IN; Fort Wayne, IN; to INT Fort Wayne 038° and Carleton, MI, 262° radials.

* * * * *

V–278 [Revised]

From Texico, NM, via Plainview, TX; Guthrie, TX; Bridgeport, TX; Blue Ridge, TX; Paris, TX; Texarkana, AR; Monticello, AR; Greenville, MS; Sidon, MS; Bigbee, MS; to Vulcan, AL.

* * * * *

V–535 [Revised]

From Sidon, MS; INT Sidon 010° and Holly Springs, MS, 225° radials; Holly Springs.

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V–555 [Revised]

From New Orleans, LA, via Picayune, MS; McComb, MS; INT McComb 019° and Jackson, MS, 169° radials; Jackson; INT Jackson 010° and Sidon, MS, 159° radials; to Sidon.

* * * * *

V–557 [Revised]

From McComb, MS, via INT McComb 348° and Jackson, MS, 199° radials; Jackson, INT Jackson 340° and Sidon, MS, 189° radials; to Sidon.

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Paragraph 7001—Domestic Low Altitude Reporting Points

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Sidon, MS [New]

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Issued in Washington, DC, on August 27, 1993.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93–21391 Filed 9–1–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 580

Haitian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final Rule; amendment.

SUMMARY: Consistent with United Nations Security Council Resolution 861 of August 27, 1993, and the August 27, 1993 announcement of the Secretary General of the Organization of American States, the Treasury Department is amending the Haitian Transactions Regulations to suspend U.S. sanctions against Haiti. The rule prospectively suspends trade restrictions against Haiti and authorizes new financial and other transactions with the Government of Haiti. It does not unblock property of the Government of Haiti that was blocked on or before August 31, 1993 at 9:35 a.m., e.d.t., nor does it affect enforcement actions involving prior violations of the Regulations. Blocked property of the Government of Haiti will be unblocked by specific license on a case-by-case basis. However, all blocked property of the Banque de l'Union Haitienne, and of all individuals previously listed in Appendix A to the Regulations, is unblocked.

EFFECTIVE DATE: August 31, 1993 at 9:35 a.m.. e.d.t.

FOR FURTHER INFORMATION CONTACT: John T. Roth, Chief of Policy Programming (tel: 202/622–2500), Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The Haitian Transactions Regulations, 31 CFR Part 580 (the "Regulations"), were issued by the Treasury Department to implement Executive Order Nos. 12775 (56 FR 50641, October 7, 1991) and 12779 (56 FR 55975, October 30, 1991), declaring a national emergency with respect to Haiti under the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), and ordering specific measures against the *de facto* regime in Haiti.

Consistent with United Nations Security Council Resolution 861 of August 27, 1993, and the August 27, 1993 announcement of the Secretary General of the Organization of American States, the Office of Foreign Assets Control ("FAC") is amending the Regulations to add § 580.518,

authorizing trade transactions with Haiti and transactions involving property in which the Government of Haiti has an interest, where those transactions arise after August 31, 1993. The effect of this amendment is that transactions involving property interests of the Government of Haiti that come within the United States or into the possession or control of United States persons after August 31, 1993, or in which an interest of the Government of Haiti arises thereafter, are no longer prohibited. Newly authorized transactions include, but are not limited to, otherwise lawful exportations to and importations from Haiti, brokering transactions, and transfers of funds to the Government of Haiti for obligations due and payable after August 31, 1993.

Section 580.518 further provides that property of the Government of Haiti blocked as of August 31, 1993, remains blocked. Such property will be unblocked by specific license on a case-by-case basis. All previously blocked property of the following, however, is unblocked: (1) All individuals previously listed in Section I of Appendix A to Part 580; and (2) Banque de L'Union Haitienne, S.A.

Treasury is also amending Appendix A to this part to remove all individuals and one private entity from the list of blocked persons of the *de facto* regime in Haiti.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 580

Blocking of assets, Exports, Haiti, Imports, Specially designated nationals, Transfers of assets.

For the reasons set forth in the preamble, 31 CFR part 580 is amended as set forth below:

PART 580—HAITIAN TRANSACTIONS REGULATIONS

1. The authority citation for part 580 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; E.O. 12775, 56 FR 50641, 3 CFR, 1991 Comp., p. 349; E.O. 12779, 56 FR 55975, 3 CFR, 1991 Comp., p. 367; E.O. 12853, 58 FR 35843, July 2, 1993.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. Section 580.518 is added to subpart E to read as follows:

§ 580.518 Authorization of new transactions; suspension of certain prohibitions.

(a) Except as provided in paragraph (b) of this section, the prohibitions contained in §§ 580.201, 580.202, 580.204, 580.205, 580.206, 580.208, and 580.211 do not apply to any transaction occurring after August 31, 1993 at 9:35 a.m., e.d.t.

(b) Unless otherwise authorized by the Office of Foreign Assets Control, all property and interests in property of the Government of Haiti that were blocked on or before August 31, 1993 at 9:35 a.m., e.d.t., remain blocked.

(c) All property and interests in property of the following are unblocked:

(1) All individuals previously listed in Section I of Appendix A to this part — "Blocked Individuals of the De Facto Regime in Haiti"; and

(2) Banque de l'Union Haitienne, S.A.

Appendix A to Part 580—Blocked Persons of the De Facto Regime in Haiti

3. Section I of Appendix A to Part 580—"Blocked Individuals of the De Facto Regime in Haiti"—is removed and reserved.

4. Section II of Appendix A to Part 580—"Blocked Entities of the De Facto Regime in Haiti"—is amended to remove the entry "Banque de l'Union Haitienne, S.A. (a.k.a. BUH), Angle rues Du Quae et Bonne Foi, Boite Postale 275, Port-au-Prince, Haiti."

Dated: August 30, 1993.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: August 30, 1993.

Ronald K. Noble,

Assistant Secretary for Enforcement.

[FR Doc. 93–21536 Filed 8–31–93; 9:35 am]

BILLING CODE 4810–25–W

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN25–1–5726; FRL–4703–3]

Approval and Promulgation of a Small Business Assistance Program; Indiana

AGENCY: Environmental Protection Agency (U.S. EPA).

ACTION: Final rule.

SUMMARY: The U.S. EPA approves the requested State Implementation Plan (SIP) revision submitted by the State of Indiana for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). The implementation plan was submitted by the State to satisfy the Federal mandate, found in the Clean Air Act (Act), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the Act. The rationale for the approval is set forth in this notice; additional information is available at the address indicated below.

EFFECTIVE DATE: This action will be effective November 1, 1993 unless notice is received within 30 days that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments can be mailed to J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch, AR–18J, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Copies of the State's submittal and U.S. EPA's technical support document are available for inspection during normal business hours at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3189.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Act, as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the Act requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the Federally approved SIP. In addition, the Act directs the U.S. EPA to oversee these small business assistance programs and report to Congress on their implementation. The requirements

for establishing a Program are set out in section 507 of Title V of the Act. In January 1992, U.S. EPA issued Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The State of Indiana has submitted a requested SIP revision to U.S. EPA in order to satisfy the requirements of section 507. In order to gain full approval, the State submittal must provide for each of the following Program elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Analysis

Indiana has met all of the requirements of section 507 by submitting a SIP revision that implements all required Program elements.

1. Small Business Assistance Program

Section 507(a) sets forth six requirements [1] that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act. The State has met this requirement by establishing outreach methods in the Air Quality Small Business Assistance Program (AQSBAP). The State will use existing small business groups (i.e., trade associations, economic development groups) to disseminate information through their newsletters, publications, and/or regularly scheduled conferences. Also, the State will use a toll-free information clearinghouse telephone number operated by the AQSBAP to serve as an easy access point for businesses to obtain information.

[1] A seventh requirement of section 507(a), establishment of an Ombudsman office, is discussed in the next section.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The State has met this requirement by making assistance available on these subjects through the Indiana Department of Environmental Management (IDEM) Office of Pollution Prevention and Technical Assistance.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner. The State has met this requirement by providing the following advice and assistance through the AQSBAP telephone hotline: Identification of applicable rules, determination whether a permit is needed, identification of available methods for achieving compliance, and explanation of the permitting procedures.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the Act. The State has met this requirement by having the Ombudsman develop a fact sheet that notifies small businesses of their rights under the Act and explains their legal recourse should they be notified of a violation. The Ombudsman will also develop fact sheets notifying small businesses of those proposed and final rules issued under the Act that affect their businesses.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act. The State has met this requirement by having the Ombudsman develop and distribute a list of consultants that can provide audits to identify the State and Federal air quality requirements a source is subject to and to recommend methods of achieving compliance. This list will be updated annually. The Ombudsman will also develop a fact sheet that provides information useful in selecting a consultant.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of (A) any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. The State has met this requirement by authorizing under Indiana law (IC 13–7–7–6) that any person affected by any rule adopted by a board, who believes that the imposition of the rule would impose an undue hardship or burden on the person, may apply to the IDEM Commissioner for a variance from the rule. The AQSBAP will prepare information for eligible small businesses as to the availability of such procedures and provide guidance in submitting such requests.

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The State has met this requirement by establishing the Ombudsman in the Office of Business Relations within IDEM. Some of the staff is already on board; additional staff has been authorized to provide initial resources for the Ombudsman. These positions are planned to be operational by November 1993. The Ombudsman will act as a liaison between small businesses and the staff of IDEM. The Ombudsman will have direct access to the staff of the Governor's Office, the existing Ombudsman staff in the Indiana Department of Commerce, the Commissioner of IDEM, and the IDEM Office of Air Management staff.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a CAP that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The State has met this requirement by authorizing the Governor to select 2 members to represent the general public, the State House of Representatives and State Senate to select 2 members each to represent small businesses, and the Commissioner of IDEM to select one

member to represent the agency responsible for issuing air pollution control operating permits.

In addition to establishing the minimum membership of the CAP, the Act delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to U.S. EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act;[2] (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The State has met these requirements by including these responsibilities in the duties of the CAP.

4. Eligibility

Section 507(c)(1) of the Act defines the term "small business stationary source" as a stationary source that:

(A) is owned or operated by a person who employs 100 or fewer individuals,

(B) is a small business concern as defined in the Small Business Act;

(C) is not a major stationary source;

(D) does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) emits less than 75 tpy of all regulated pollutants.

The State of Indiana has established a mechanism for ascertaining the eligibility of a source to receive assistance under the Program, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the Act. The State will make all Program services (i.e., hosting conferences, voluntary audits) available only to businesses that meet all the above criteria. Less time-consuming services (i.e., telephone consultations, mailing of literature) will be available to businesses that meet at least the first criteria listed above. The State will distribute public information brochures that explain what businesses are eligible for the Program. Also, Program staff will develop and keep current a list of businesses that do not meet the eligibility definition in section 507 of the Act.

[2] Section 507(e)(1)(B) requires the CAP to report on the *compliance* of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, U.S. EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

The State of Indiana has not provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1) (C), (D), and (E) of the Act but do not emit more than 100 tpy of all regulated pollutants. This provision is an option the State may adopt as part of its Program. It is not required for program approval.

The State of Indiana has not provided for exclusion from the small business stationary source definition, after consultation with the U.S. EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the Act. This provision is an option the State may adopt as part of its Program. This approach meets U.S. EPA requirements because it does not limit program participation by small businesses.

III. Final Rulemaking

Because the requested Indiana Program SIP revision meets the Act requirements discussed above, U.S. EPA is approving the SIP revision submitted by the State of Indiana.

The State of Indiana has submitted a SIP revision implementing each of the required Program elements required by section 507 of the Act. The Small Business Assistance Program staff is scheduled to be hired in January 1994. The Ombudsman is to be appointed in August 1993 and the Ombudsman staff hired in October 1993. The CAP is to be appointed in October 1993 and the CAP is to begin operation in January 1994. The draft final Program description is to be submitted to U.S. EPA in January 1994 and the final Program is to be submitted in March 1994. U.S. EPA is, therefore, approving this submittal.

Because U.S. EPA considers this action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on November 1, 1993. However, if we receive notice by October 4, 1993 that someone wishes to submit adverse comments, then U.S. EPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any SIP. U.S. EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989 the Office of Management and Budget (OMB) waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirement of Section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on U.S. EPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., U.S. EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, U.S. EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this rule, U.S. EPA is approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved today does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the State.

Therefore, because U.S. EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

List of Subjects in 40 CFR Part 52

Air pollution control, Small business assistance program.

Dated: August 20, 1993.

Valdas V. Adamkus,

Regional Administrator.

For the reasons set out in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.798 is added to read as follows:

§ 52.798 Small business stationary source technical and environmental compliance assistance program.

The Indiana program submitted on January 14, 1993, as a requested revision to the Indiana State Implementation Plan satisfies the requirements of section 507 of the Clean Air Act Amendments of 1990.

[FR Doc. 93–21363 Filed 9–1–93; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 228

[FRL 4701–1]

Ocean Dumping; Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action EPA designates an Ocean Dredged Material Disposal Site (ODMDS) in the Atlantic Ocean offshore Fort Pierce, Florida, as an EPA-approved ocean dumping site for the dumping of suitable dredged material. This action is necessary to provide an acceptable ocean dumping site for consideration as a disposal option for dredged material disposal projects in the Fort Pierce, Florida vicinity. This final site designation is for an indefinite period of time but is subject to continued monitoring in order to insure that unacceptable adverse environmental impacts do not occur.

EFFECTIVE DATE: This designation shall become effective on October 4, 1993.

ADDRESSES: Wesley B. Crum, Chief, Coastal Programs Section, Water Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

The file supporting this designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), room 2904 (rear), 401 M Street, SW., Washington, DC 20460.
EPA/Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.
Department of the Army, Jacksonville District Corps of Engineers, P.O. Box 4970, Jacksonville, FL 32232–0019.

FOR FURTHER INFORMATION CONTACT: Christopher J. McArthur, 404/347–1740.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the sites are located. This designation of a site offshore Fort Pierce, Florida; which is within Region IV, is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under the Act (40 CFR chapter I, subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 (January 11, 1977)). The list established the existing Fort Pierce site as an interim site.

B. EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et seq.*, requires that federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major federal actions significantly affecting the quality of the human environment. The object of NEPA is to build careful consideration of all environmental aspects of rulemakings into the agency decision-making process. EPA has committed to prepare EISs in connection with ocean disposal site designations such as this.

EPA, in cooperation with the Jacksonville District of the U.S. Army Corps of Engineers (COE), has prepared a Final EIS entitled "Final Environmental Impact Statement for Designation of a Fort Pierce, Florida Ocean Dredged Material Disposal Site." This Final Rule may include excerpts from the EIS. Anyone desiring a copy of the EIS may obtain one from the address given above. The public comment period on this EIS will close on September 13, 1993.

The action discussed in the EIS is the permanent designation of an ocean dredged material disposal site near Fort Pierce, Florida. The purpose of the action is to provide an environmentally acceptable location for ocean disposal.

The need for the permanent designation of the Fort Pierce ODMDS is based on a continuing U.S. Army Corps of Engineers need for ocean disposal of maintenance dredged material from the Fort Pierce area. The need for ocean disposal will be determined on a case-by-case basis as part of the COE's process of issuing permits for ocean disposal for private/federal actions and a public review process for their own actions.

For the Fort Pierce Harbor ODMDS, the COE and EPA would evaluate all federal dredged material disposal projects pursuant to the EPA criteria given in the Ocean Dumping Regulations (40 CFR parts 220–229) and the COE regulations (33 CFR 209.120 and 209.145).

The COE also issues MPRSA permits to private applicants for the transport of dredged material intended for disposal after compliance with these regulations is determined. EPA has the right to disapprove any ocean disposal project if, in its judgement, all provisions of MPRSA and the associated implementing regulations have not been met.

The EIS discusses the need for this site designation and examines ocean disposal site alternatives to the final action. The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation use and is based on one of a series of disposal site environmental studies. The environmental studies and final designation are being conducted in accordance with the requirements of the MPRSA, the Ocean Dumping Regulations, and other applicable federal environmental legislation.

EPA has evaluated the site designation for consistency with the State of Florida's (the State) approved coastal management program. EPA has determined that the designation of the site is consistent to the maximum extent practicable with the State coastal management program, and has submitted this determination to the State for review in accordance with EPA policy. In addition, as part of the NEPA process, EPA has consulted with the State regarding the effects of the dumping at the site on the State coastal zone. EPA concurs with the state of Florida regarding the use of suitable material for beach nourishment, in circumstances where this use is practical and environmentally sound.

Pursuant to section 7 of the Endangered Species Act, the National Marine Fisheries Service (NMFS) has been asked by EPA to concur with EPA's conclusion that this site designation will not affect the endangered species under their jurisdictions. The NMFS in a letter dated March 3, 1993 concurred with the determination that populations of endangered or threatened species under their purview would not be adversely affected by the action.

This final rulemaking notice fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Designation

On March 5, 1993, EPA proposed designation of this site to provide an acceptable ocean dumping site for consideration as a disposal option for dredged material disposal projects in the Fort Pierce, Florida vicinity. The public comment period on this proposed action closed on April 5, 1993. No comments were received on the proposed rule.

The site is located east of Fort Pierce Harbor, Florida, approximately 4 nautical miles (nmi) offshore and occupies an area of about 1 square nautical mile (nmi^2), approximately 1 nmi by 1 nmi. Water depths within the area range from 40 to 54 feet. The coordinates of the Fort Pierce site are as follows:

27°28′00″N 80°12′33″W;
27°28′00″N 80°11′27″W;
27°27′00″N 80°11′27″W; and
27°27′00″N 80°12′33″W.

Center coordinates are 27°27′30″N and 80°12′00″W.

D. Regulatory Requirements

Pursuant to the Ocean Dumping Regulations, 40 CFR part 228, five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to prevent any temporary perturbations associated with the disposal from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. If, at any time, disposal operations at a site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists the 11 specific factors used in evaluating a proposed disposal site to assure that the general criteria are met. The site, as discussed below under the eleven specific factors, is accpetable under the five general criteria except for the preference for sites located off the Continental Shelf. EPA has determined, based on the information presented in the Final EIS, that a site off the Continental Shelf is not feasible and that no environmental benefit would be obtained by selecting such a site instead of that stated in this action. Historical use at the existing site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment.

The characteristics of the site are reviewed below in terms of these 11 factors.

1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast (40 CFR 228.6(a)(1))

The boundary and center coordinates of the site are given above. The site is located about 4 nmi offshore of Fort Pierce Harbor, Florida. The site is approximately a 1 nmi by 1 nmi square configuration. Water depth in the area ranges from 40 to 54 feet.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

The Fort Pierce ODMDS is located in general proximity to breeding, spawning, nursery, feeding, and passage areas for a wide variety of marine and estuarine organisms. The most active breeding and nursery areas are located in the Indian River estuary and along adjacent beaches or in offshore waters and reef areas. While breeding, spawning, and feeding activities may take place in the ODMDS, these activities are not believed to be confined to, concentrated in, or dependent on this area. Specific migration routes are not known in the Fort Pierce area. While marine and estuarine species would be expected to pass through the ODMDS, passage is not geographically restricted to this area. The motility of organisms passing through the area makes significant impacts from dredged material disposal unlikely.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3))

Beaches and adjacent nearshore areas approximately 4 nmi west of the ODMDS support a wide variety of recreational activities. Several protected areas lie inshore west of the ODMDS. The largest of these is the Indian River Aquatic Preserve that encompasses almost all inshore waters between the barrier islands and the west Florida mainland. Other protected areas in the Fort Pierce ODMDS vicinity include the North Fork St. Lucie Aquatic Preserve, the Savannas State Preserve, Pepper Beach State Park, and Fort Pierce Inlet State Park. The Florida Department of Environmental Regulation (FDER) has given the waters of these areas special protection by designating them as Outstanding Florida Waters (OFWs). Past surveys indicated one natural reef and one artificial reef site are located in the Fort Pierce ODMDS vicinity. The natural reef area is located approximately 1.3 nmi due east of the disposal site and has been described by Florida Sea Grant (1979) as a flat bottom with heavy coral growth. The artificial reef site has been established approximately 1.5 nmi southeast of the ODMDS. More recent investigations have revealed the presence of hard bottom communities in the northern portion of the interim site resulting in a shift in location of the site to 0.5 miles to the south. Model studies indicates that it is unlikely that any significant amount of disposed material would be transported as far as these sites from the disposal area.

4. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any (40 CFR 228(a)(4))

It is anticipated that the site will be used primarily for disposal of maintenance material from the Fort Pierce Harbor entrance channel and turning basin. Sediments of the entrance channel are predominantly sand, while those of the turning basin are finer sands, shell and silt. Annual volumes have averaged 21,000 cubic yards. Annual volumes are expected to increase to a maximum of approximately 117,000 cy. Each disposal plan must be evaluated on a case-by-case basis to ensure that ocean disposal is the best alternative and that the material meets the Ocean Dumping Criteria in 40 CFR part 227.

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

The geographic and physical setting of the candidate site poses no special problems for monitoring or surveillance. Water depth at the site is amenable to diver collection or surface sampling and does not require use of a large, specialized surface vessel. The areal extent of the site allows use of towed trawls for bottom and water column sampling. Baseline data collected at the site can serve as reference information for future monitoring and aid in assessing possible perturbations resulting from disposal at the site. A detailed Site Management and Monitoring Plan (SMMP) was developed for the Fort Pierce ODMDS. A copy of the SMMP can be found in the EIS. This plan establishes a sequence of monitoring surveys to be undertaken to determine any impacts resulting from disposal activities. These surveys can include bathymetry, sediment tracking, benthic faunal analyses, video and side scan sonar surveys.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area Including Prevailing Current Direction and Velocity, if Any (40 CFR 228.6(a)(6))

Currents in the area are mainly wind driven. Net current flow is alongshore with the direction of movement related to season. In 1989, the Army Corps of Engineers Waterways Experiment Station (WES) performed a technical study of the Gulf Stream meanders, spin-off eddies and prevailing tides and currents off the east coast of Florida with respect to the potential for contamination of nearshore amenities by dredged material placed in the Fort Pierce ODMDS. A numerical modeling approach was used for estimating both short-term and long-term rate of dredged material dispersal at the ODMDS. The modeling of the short-term dumping operation was performed using the disposal from an Instantaneous Dump (DIFID) model. Long-term simulations were conducted to determine whether non-storm related currents are capable of transporting sediments outside of the ODMDS over long periods of time. The effects of storm erosion were separately modeled by simulating the passage of a storm surge over the site. Current velocities used were estimated. The results of the study indicate that the Fort Pierce ODMDS poses no threat to reef areas.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7))

Dredged materials have been disposed at the Fort Pierce Harbor interim ODMDS since 1949. An environmental survey of the Fort Pierce Harbor ODMDS was conducted in December 1985. This survey detected no consistent differences in water quality, sediment quality, or sediment composition between the ODMDS and nearby areas. Potential disposal-induced changes in benthic macro-invertebrate community structure were localized within the ODMDS and did not extend beyond ODMDS boundaries. Prior disposals at the ODMDS have resulted in minor localized changes in the community structure of the area. Deposit feeding macroinfauna are dominant at the disposal site while suspension feeding macroinfauna are dominant in the surrounding area. This may be due to higher organic content in the discharged materials. If this is the case, it would be an indication of the high level of stability of the discharged materials since the last disposal took place in May 1983. There are no differences in the abundance or diversity of the meiofauna of the disposal area, although nematode:harpacticoid ratios are highest within the disposal area, which may be a further indication of the higher organic content of the discharged materials. No differences in epibenthic invertebrate, fish, or plankton populations are evident. It is expected that any further discharge at the site would not significantly change these conditions.

8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8))

The Fort Pierce Harbor ODMDS is located about 2.5 nmi outside the seaward extent of the Fort Pierce Inlet entrance channel. Use of this site to date has not interfered with shipping and continued intermittent use of the site should not disrupt either commercial shipping or recreational boating.

Most commercial and recreational fishing activity is concentrated in inshore and nearshore waters or at offshore natural or artificial reefs. The nearest natural reef is located 1.3 nmi east of the disposal site (Florida Sea Grant, 1979). Because of the north-south orientation of the prevailing currents, no adverse impacts to this reef area have occurred from dredged material disposal operations. An artificial reef area has recently been established approximately 1.5 nmi southeast of the ODMDS.

No mineral extraction, desalination, or mariculture activities occur in the immediate area. Recreational and scientific resources are extensive throughout the area but are not geographically limited to the disposal site or nearby waters.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9))

Water quality at the ODMDS is variable and influenced both by discharges from inshore estuarine systems and by periodic oceanic intrusions. Estuarine discharges are greatest during the wet season, from late summer to early fall, and may deliver both nutrients and anthropogenic contaminants to coastal waters. Nutrients may also be introduced to shelf waters by upwellings (Worth and Hollinger, 1977). Surface and bottom waters sampled in the ODMDS vicinity in December 1985 did not contain measurable concentrations of selected trace metals, pesticides, hydrocarbons, or PCBs.

Benthic communities in the ODMDS vicinity have been described from a survey conducted in December 1985 and 1992. Nematodes, copepoda crustaceans, and larval polychaetes are the most abundant representatives of the meifaunal community. The area's diverse benthic macroinvertebrate fauna are dominated by carnivorous polychaete worms of the family Syllidae. Other abundant macroinfaunal groups included nematodes, oligochaete worms, molluscs, amphipod crustaceans and turbellarians.

Epibenthic invertebrates characteristics of the disposal site vicinity include the crabs *Portunus gibbesi* and *Portunus spinimanus*, the shrimp, *Trachypenaeus constrictus*, the sea urchin, *Lytechinus variegatus*, starfish and brittle stars (Camp el al, 1977).

The demersal fish fauna of the area are not abundant (Futch and Dwinell, 1977). Fish characteristic of the sandy offshore ODMDS environment include leopard sea robin (*Prionotus scitulus*), sand perch (*Diplectrum formosum*), and lizardfish (*Synodus foetens*).

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))

The Fort Pierce Harbor ODMDS has been utilized since 1949. To date, no nuisance species have been reported from the interim ODMDS or nearby previously utilized disposal sites. The potential for the development or recruitment of nuisance species at this site is considered quite low. A December 1985 survey of the ODMDS vicinity yielded no evidence of undesirable organisms.

11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance (40 CFR 228.6(a)(11))

It is unlikely that significant natural or cultural features of historical importance exist at the disposal site. In the unlikely event that historical features are present on site, they will have been covered with sand and would be further covered by continued disposal operations.

E. Site Management

Site management of the Fort Pierce ODMDS is the responsibility of EPA as well as the COE. The COE issues permits to private applicants for ocean disposal; however, EPA/Region IV assumes overall responsibility for site management.

A Site Management and Monitoring Plan (SMMP) was developed as a part of the process of completing the EIS. This plan will be revised and maintained as a living document by a Site Monitoring and Management Team consisting of representatives of EPA, COE, other federal agencies, and state agencies. This plan provides a framework for both site management and for the monitoring of effects of disposal activities. Site management may include strategically locating and/or orienting dredged material within the site boundaries relative to predominant current patterns. Monitoring could involve sediment mapping of disposed material to determine any movement of material off of the site. Determination of the significance of any biological impacts of dredged material outside the ODMDS boundaries would then be appropriate. The SMMP can be found in Appendix D of the EIS.

F. Action

The EIS concludes that the site may appropriately by designated for use. The site is compatible with the general criteria used for site evaluation.

The designation of the Fort Pierce site as an EPA-approved ODMDS is being published as final Rulemaking. Overall management of this site is the responsibility of the Regional Administrator of EPA/Region IV.

It should be emphasized that, if an ODMDS is designated, such a site designation does not constitute EPA's approval of actual disposal of material at sea. Before ocean dumping of dredged material at the site may commence, the COE must evaluate a permit application according to EPA's Ocean Dumping Criteria. EPA reviews and has the right to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met.

The Fort Pierce ODMDS is not restricted to disposal use by Federal Projects; private applicants may also dispose suitable dredged material at the ODMDS once relevant regulations have been satisfied. This site is restricted, however, to suitable dredged material from the Fort Pierce Harbor, Florida vicinity.

G. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the designation will only have the effect of providing a disposal option for dredged material. Consequently, this Rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this Rule does not necessitate preparation of a Regulatory Impact Analysis.

This Rule does not contain any information collection requirements subject to Office Management and Budget review under the Paperwork Reduction Act of 1980. 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: July 30, 1993.

Approved by:

Patrick M. Tobin,

Acting Regional Administrator.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) the dredged material disposal site "Fort Pierce Harbor" and adding paragraph (b)(93) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(93) Fort Pierce Harbor; Fort Pierce, Florida; Ocean Dredged Material Disposal Site _____Region IV.

Location:

27°28′30″N	80°12′33″W;
27°28′30″N	80°11′27″W;
27°27′30″N	80°11′27″W; and
27°27′30″N	80°12′33″W.

Size: 1 square nautical miles.

Depth: Average range 40 to 54 feet.

Primary use: Dredged material.

Period of use: Continuing use.

Restrictions: Disposal shall be limited to suitable dredged material from the greater Fort Pierce, Florida vicinity. All dredged material consisting of greater than 10% fine grained material (grain size of less than 0.074mm) by weight shall be limited to that part of the site east of 80°12′00″W and south of 27°27′20″N.

[FR Doc. 93–21255 Filed 9–1–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21, 22, and 94

[ET Docket No. 92–9; FCC 93–351]

Redevelopment of Spectrum To Encourage Innovation in the Use of New Telecommunications Technologies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this Report and Order the Commission adopts Rules to complete a regulatory framework for relocating fixed microwave operations where necessary to implement services using emerging technologies in the 2 GHz bands. This action is necessary to provide 2 GHz spectrum for future wireless communications services while preventing disruption to incumbent 2 GHz fixed microwave licensees. This action facilitates future authorizations of a broad range of new wireless communications services that employ emerging technologies.

EFFECTIVE DATE: October 4, 1993.

FOR FURTHER INFORMATION CONTACT: Fred Lee Thomas, Office of Engineering and Technology, (202) 653–6204.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order and Memorandum Opinion and Order adopted July 15, 1993, and released August 13, 1993. A summary of the Further Notice of Proposed Rule Making initiating this proceeding and the First Report and Order being reconsidered may be found at 57 FR 49020 (October 29, 1992). This action will not add to or decrease the public reporting burden. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Summary of Third Report and Order and Memorandum Opinion and Order

1. The Third Report and Order (Order) adopts rules that provide for the fair and equitable sharing of 2 GHz spectrum by new services and the existing fixed microwave services that currently use these frequencies, and for the relocation of existing 2 GHz facilities to other spectrum where necessary. The plan

provides licensees of services using emerging technologies with access to 2 GHz frequencies in a reasonable timeframe, and at the same time prevents disruption to existing 2 GHz operations and minimizes the economic impact on the existing licensees.

2. The Order adopts separate relocation policies for frequencies to be used by licensed emerging technology services and those to be used for unlicensed devices. For licensed services a fixed two year period is established, commencing with the Commission's acceptance of applications for services that use new technologies. During this period negotiations over the terms of relocation are encouraged but not required. After this fixed period expires, an emerging technology licensee may initiate a one year period for mandatory negotiations between the fixed microwave licensee and the emerging technology licensee. For unlicensed devices a single one year mandatory negotiation period is adopted that will commence with the initiation of negotiations by manufacturers of unlicensed devices or their representatives. For both licensed services and unlicensed devices, after expiration of the mandatory negotiation period, involuntary relocation of the fixed microwave facilities may be sought if agreement is not reached by the parties. In all instances of involuntary relocation the emerging technology provider will be required to pay all costs associated with the relocation.

3. The Order authorizes the grant of tax certificates to incumbent fixed microwave licensees for any sale or exchange of property in connection with voluntary agreements for relocation concluded during the fixed two year voluntary negotiation period.

4. With regard to resolving disputes resulting from relocation negotiations, the Commission concluded that such disputes can be resolved best through individual mediation and arbitration efforts rather than Commission adjudication. This approach is consistent with the Commission's commitment to use alternative dispute resolution (ADR) techniques to expedite and improve its administrative processes whenever feasible, (See Use of Alternative Dispute Resolution Procedures in Commission Proceedings and Proceedings in which the Commission is a Party, 6 FCC Rcd 5669 (1991)). However, if negotiations are unsuccessful during the periods defined above, the parties may refer the matter to the Commission for resolution. In resolving disputes, the Commission will take the action it deems appropriate, either on the license of the incumbent or the authority of the emerging technology provider.

5. The Memorandum Opinion and Order addresses four petitions for clarification or reconsideration of its decisions in the First Report and Order in this proceeding, including the definition of public safety licensees. The public safety facilities exempt from mandatory relocation are defined as those part 94 facilities currently licensed on a primary basis under § 90.19 Police Radio Service; § 90.21 Fire Radio Service; § 90.27 Emergency Medical Radio Service; and subpart C of part 90, Special Emergency Radio Services, of which the majority of communications carried are directly used for police, fire, or emergency medical services operations involving safety of life and property. As an additional safeguard, current licensees of other part 94 facilities licensed on a primary basis under the eligibility requirements of part 90 subparts B and C may request similar treatment upon demonstrating that the majority of the communications carried on those facilities are used for operations involving safety of life and property.

6. Regulatory Flexibility Analysis. Pursuant to 5 U.S.C. 603, an initial Regulatory Flexibility Analysis was incorporated in the First Report and Order and Third Notice of Proposed Rule Making (First R&O/Third Notice,) *supra*. Written comments on the proposals in the First R&O/Third Notice, including the Regulatory Flexibility Analysis, were requested.

A. Need for and Objective of Rules. Our objective is to provide spectrum for the development and implementation of new innovative technologies and services, while preventing disruption to current users of that spectrum. Providing spectrum for emerging technologies is necessary in order to bring new services to the public and to foster U.S. competitiveness in the global telecommunications marketplace.

B. Issues Raised by the Public in Response to the Initial Analysis. Many parties supported reallocating spectrum to accommodate emerging technologies. Although most suggested modifications to specific proposals set forth in the Third Notice, they did not suggest modifications specifically to the initial regulatory flexibility analysis with the exception of the U.S. Small Business Administration (USSBA).[1] USSBA, while generally supporting the Commission's actions in this proceeding, argues that the Commission should consider requiring the incumbents to pay for their relocation to other bands or alternative media because many of the potential users of the 2 GHz spectrum are small businesses who lack the substantial capital needed to move the incumbents. It claims this will delay or inhibit the development of emerging technologies. Further, it argues that most of the incumbents are large business that recoup their cost through rate regulation and, therefore, they would not suffer as their increased cost due to relocation would be absorbed, for the most part, by their customers. USSBA also suggests that tax certificates or deferred payment schedules should be considered as an alternative to reduce the substantial costs faced by small businesses in developing emerging telecommunications technologies.

We are cognizant that the cost to relocate the incumbent facilities is substantial and will to some degree impede both large and small businesses' ability to develop emerging technologies. However, as stated above, the 2 GHz fixed microwave bands support a number of industries that provide vital services to the public; therefore, we are committed to ensuring that the incumbents' services are not disrupted and that the economic impact of this proceeding on the incumbents is minimized. Further, we must take into consideration that not all of the incumbent licensees are big business, particularly in the bands above 2 GHz, and that many of the licensees are local government entities that are not funded through rate regulation.

We believe that tax certificates would further our policy of encouraging voluntary agreements to relocate fixed microwave facilities to other bands or other media during the initial two year period. Tax certificates would remove the possibility of any financial disincentive to relocate in instances that a 2 GHz fixed user may be deemed to have received a capital gain under the tax laws due to new facilities acquired to implement the relocation. In Telócator, the Commission broadly interpreted its authority to issue tax certificates, as defined in section 1071 of the IRS Code, to include services other than a radio broadcasting station in order to further the Commission's pro-competitive policies. As with our tax certificate policy to cover certain cellular radio transactions set forth in Telocator, we find it in the public interest to authorize grant of tax certificates to incumbent fixed microwave operators during the initial

[1] See USSBA at 5–7.

two year period to facilitate voluntary agreements effectuating our policy of providing 2 GHz spectrum for emerging technology providers. Accordingly, we are authorizing the grant of tax certificates for any sale or exchange of property in connection with voluntary agreements for the relocation of fixed microwave facilities during the two year period.

C. Any Significant Alternative Minimizing Impact on Small Entities and Consistent With Stated Objectives. We have reduced burdens wherever possible. The regulatory burdens we have retained are necessary in order to ensure that the public receives the benefits of innovative new services in a prompt and efficient manner. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities.

7. Accordingly, *it is ordered*, That the petitions for clarification or reconsideration filed by American Public Power Association, Apple Computer, Inc., Pacific Telesis Group, and the Utilities Telecommunications Council are granted to the degree stated above and are denied in all other respects.

8. Further, *it is ordered*, That parts 21, 22, and 94 of the Commission's rules and regulations are amended as specified below, effective 30 days after publication in the **Federal Register**. This action is taken pursuant to sections 4(i), 7(a), 303(c), 303(g), and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(g), and 303(r).

9. *It is further ordered*, That this proceeding is terminated.

List of Subjects in 47 CFR Parts 21, 22 and 94

Radio.

Amendatory Text

I. Part 21 of chapter I of title 47 of the Code of Federal Regulations is amended to read as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552.

2. Section 21.50 is revised to read as follows:

§ 21.50 Transition of the 2.11–2.13 and 2.16–2.18 GHz bands from Domestic Public Fixed Radio Services to emerging technologies.

(a) Licensees proposing to implement services using emerging technologies may negotiate with Domestic Public Fixed Radio licensees in these bands for the purpose of agreeing to terms under which the existing licensees would relocate their operations to other fixed microwave bands or other media, or alternatively, to accept a sharing arrangement with the emerging technology licensee that may result in an otherwise impermissible level of interference to the existing licensee's operations.

(b) Domestic Public Fixed Radio licensees in bands allocated for licensed emerging technology services will maintain primary status in these bands until two years after the Commission commences acceptance of applications for an emerging technology services, and until one year after an emerging technology service licensee initiates negotiations for relocation of the fixed microwave licensee's operations or, in bands allocated for unlicensed emerging technology services, until one year after an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations.

(c) The Commission will amend the operating license of the fixed microwave operator to secondary status only if the following requirements are met:

(1) The service applicant, provider, licensee, or representative using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable, additional costs that the relocated fixed microwave licensee might incur as a result of operation in another fixed microwave band or migration to another medium;

(2) The emerging technology service entity completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave frequencies and frequency coordination; and

(3) The emerging technology service entity builds the replacement system and tests it for comparability with the existing 2 GHz system.

(d) The 2 GHz microwave licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff.

(e) If within one year after the relocation to new facilities the 2 GHz microwave licensee demonstrates that the new facilities are not comparable to the former facilities, the emerging technology service entity must remedy the defects or pay to relocate the microwave licensee back to its former or equivalent 2 GHz frequencies.

II. Part 22 of chapter I of title 47 of the Code of Federal Regulations is amended to read as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 22.50 is revised to read as follows:

§ 22.50 Transition of the 2.11–2.13 and 2.16–2.18 GHz bands from Public Mobile Service to emerging technologies.

(a) Licensees proposing to implement services using emerging technologies may negotiate with Public Mobile Service licensees in this band for the purpose of agreeing to terms under which the existing licensees would relocate their operations to other fixed microwave bands or other media, or alternatively, to accept a sharing arrangement with the emerging technology licensee that may result in an otherwise impermissible level of interference to the existing licensee's operations.

(b) Public Mobile Service licensees in bands allocated for licensed emerging technology services will maintain primary status in these bands until two years after the Commission commences acceptance of applications for an emerging technology services, and until one year after an emerging technology service licensee initiates negotiations for relocation of the fixed microwave licensee's operations or, in bands allocated for unlicensed emerging technology service, until one year after an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations.

(c) The Commission will amend the operating license of the fixed microwave operator to secondary status only if the following requirements are met:

(1) The service applicant, provider, licensee, or representative using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any

reasonable, additional costs that the relocated fixed microwave licensee might incur as a result of operation in another fixed microwave band or migration to another medium;

(2) The emerging technology service entity completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave frequencies and frequency coordination; and

(3) The emerging technology service entity builds the replacement system and tests it for comparability with the existing 2 GHz system.

(d) The 2 GHz microwave licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff.

(e) If within one year after the relocation to new facilities the 2 GHz microwave licensee demonstrates that the new facilities are not comparable to the former facilities, the emerging technology service entity must remedy the defects or pay to relocate the microwave licensee back to its former or equivalent 2 GHz frequencies.

III. Part 94 of chapter I of title 47 of the Code of Federal Regulations is amended to read as follows:

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

1. The authority citation for part 94 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 94.59 is revised to read as follows:

§ 94.59 Transition of the 1.85–1.99, 2.13–2.15, and 2.18–2.20 GHz bands from Private Operational-Fixed Microwave Service to emerging technologies.

(a) Licensees proposing to implement services using emerging technologies may negotiate with Private Operational-Fixed Microwave Service licensees in these bands for the purpose of agreeing to terms under which the existing licensees would relocate their operations to other fixed microwave bands or other media, or alternatively, to accept a sharing arrangement with the emerging technology licensee that may result in an otherwise impermissible level of interference to the existing licensee's operations.

(b) Private Operational-Fixed Microwave Service licensees, with the exception of public safety facilities defined in paragraph (f) of this section who will be exempt from any mandatory relocation, in bands allocated for licensed emerging technology services will maintain primary status in these bands until two years after the Commission commences acceptance of applications for an emerging technology service, and until one year after an emerging technology service licensee initiates negotiations for relocation of the fixed microwave licensee's operations or, in bands allocated for unlicensed emerging technology services, until one year after an emerging technology unlicensed equipment supplier or representative initiates negotiations for relocation of the fixed microwave licensee's operations.

(c) The Commission will amend the operation license of the fixed microwave operator to secondary status only if the following requirements are met:

(1) The service applicant, provider, licensee, or representative using an emerging technology guarantees payment of all relocation costs, including all engineering, equipment, site and FCC fees, as well as any reasonable, additional costs that the relocated fixed microwave licensee might incur as a result of operation in another fixed microwave band or migration to another medium;

(2) The emerging technology service entity completes all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedure and, if radio facilities are used, identifying and obtaining, on the incumbents' behalf, new microwave frequencies and frequency coordination; and

(3) The emerging technology service entity builds the replacement system and tests it for comparability with the existing 2 GHz system.

(d) The 2 GHz microwave licensee is not required to relocate until the alternative facilities are available to it for a reasonable time to make adjustments, determine comparability, and ensure a seamless handoff.

(e) If within one year after the relocation to new facilities the 2 GHz microwave licensee demonstrates that the new facilities are not comparable to the former facilities, the emerging technology service entity must remedy the defects or pay to relocate the microwave licensee back to its former or equivalent 2 GHz frequencies.

(f) Public safety facilities are not required to be relocated, provided that the majority of communications carried on those facilities are used for police, fire, or emergency medical services operations involving safety of life and property.

The facilities within this exception are those part 94 facilities currently licensed on a primary basis under the eligibility requirements of § 90.19 of this chapter, Police Radio Service; § 90.21 of this chapter, Fire Radio Service; § 90.27 of this chapter, Emergency Medical Radio Service; and subpart C of part 90 of this chapter, Special Emergency Radio Services. As an additional safeguard, current licensees of other part 94 facilities licensed on a primary basis under the eligibility requirements of part 90, subparts B and C of this chapter, are permitted to request similar treatment upon demonstrating that the majority of the communications carried on those facilities are used for operations involving safety of life and property.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–21353 Filed 9–1–93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 93–119; RM–8215]

Radio Broadcasting Services; Hali'imaile, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 288C for Channel 288A at Hali'imaile, Hawaii, and modifies the construction permit for Station KPMW(FM) to specify operation on Channel 288C, at the request of RC Broadcasting, Inc. See 58 FR 26947, May 6, 1993. Channel 288C can be allotted to Hali'imaile, Hawaii, in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.9 kilometers (8 miles) southwest. The coordinates for Channel 288C at Hali'imaile are North Latitude 20–49–24 and West Longitude 156–27–27. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–119, adopted August 10, 1993, and released August 27, 1993. The full text of this

Commission decision is available for inspection and copying during nomal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by removing Channel 288A and adding Channel 288C at Hali'imaile.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–21313 Filed 9–1–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–117, RM–8214]

Radio Broadcasting Services; Kahalu'u, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 291C for Channel 291A at Kahalu'u, Hawaii, and modifies the license for Station KLEO(FM) to specify operation on Channel 291C, at the request of Brewer Broadcasting Corp. See 58 FR 26947, May 6, 1993. Channel 291C can be allotted to Kahalu in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 17.6 kilometers (11 miles) north of the community at coordinates 19–44–30 and 155–57–23. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–117, adopted August 10, 1993, and released August 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by removing Channel 291A and adding Channel 291C at Kahalu'u.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–21312 Filed 9–1–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

[Docket No. 74–14; Notice 82]

RIN 2127–AE46

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: For a number of years, vehicle manufacturers have been permitted to comply with the agency's automatic crash protection requirements by means of any technology that provides the specified levels of protection in a 30 miles per hour barrier crash test. The two types of automatic crash protection currently chosen by manufacturers for installation in their vehicles are air bags and automatic belts. However, pursuant to a new statutory requirement, this final rule specifies that manufacturers must install air bags.

In addition, this final rule requires that labels bearing specified information about air bags be placed in vehicles equipped with air bags, and that additional, more detailed information about air bags be provided in the owner's manual. These requirements are intended to ensure that consumers will have access to important safety information about the air bags installed in their vehicles.

DATES: *Effective date:* These amendments are effective March 1, 1994. *Compliance dates:* Mandatory air bag requirements: See the Compliance Dates section at the beginning of the "Supplementary Information" section. Owner's manual requirements: March 1, 1994. Vehicle label requirements: September 1, 1994.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received by October 4, 1993.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, Chief, Frontal Crash Protection Division, Office of Vehicle Safety Standards, NRM–12, 400 Seventh Street SW., Washington, DC 20590. Mr. Cohen can be reached by telephone at (202) 366–2264.

SUPPLEMENTARY INFORMATION:

I. Compliance Dates

At least 95 percent of each manufacturer's passenger cars manufactured on or after September 1, 1996 and before September 1, 1997 must be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating position. Every passenger car manufactured on or after September 1, 1997 must be so equipped.

At least 80 percent of each manufacturer's light trucks manufactured on or after September 1, 1997 and before September 1, 1998 must be equipped with an air bag and a manual lap/shoulder belt. Manufacturers may count towards compliance with the 80 percent requirement those light trucks it produces that are equipped with an air bag and manual lap/shoulder belt at the driver's position and a dynamically-tested manual lap/shoulder belt at the right front passenger's position.

Every light truck manufactured on or after September 1, 1998 must be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating positions. Multistage light trucks are required to comply with the same requirements that apply to comparable single stage light trucks.

II. Background

A. Existing Standard

Standard No. 208, *Occupant Crash Protection*, is intended to reduce the likelihood of occupant deaths and the likelihood and severity of occupant injuries in crashes. The standard has long required the installation of safety belts in passenger cars and other vehicles. Since September 1, 1989, Standard No. 208 has also required each new passenger car to be equipped with automatic crash protection for outboard front-seat occupants. Automatic crash protection requirements for trucks, multipurpose passenger vehicles (MPVs) and buses are being phased in over a three-year period beginning September 1, 1994.

Vehicles equipped with automatic crash protection protect their occupants by means that require no action by vehicle occupants. The two types of automatic crash protection currently offered on new vehicles are automatic safety belts (which help to ensure belt use) and air bags (which supplement safety belts and offer some protection even when safety belts are not used). The effectiveness of the automatic crash protection in a vehicle is assessed through dynamic testing. A vehicle must comply with specified injury criteria, as measured on a test dummy, when tested in a 30 miles per hour barrier crash test.

B. Statutory Requirement for Rulemaking

Section 2508 of the NHTSA Authorization Act of 1991 (part of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)) requires the agency to issue, not later than September 1, 1993, a final rule making certain amendments to Standard No. 208. This section requires that automatic crash protection must be provided by an inflatable restraint (i.e., an air bag) in passenger cars and in trucks, buses, and MPV's (other than walk-in van-type trucks and vehicles designed to be exclusively sold to the United States Postal Service) with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. (These vehicles, other than passenger cars, are collectively referred to as light trucks throughout the remainder of this preamble.) The section also requires that the seating positions protected by an air bag must also be equipped with a lap/shoulder belt. A schedule of dates by which vehicles must be equipped with air bags and lap/shoulder belts at both front outboard seating positions is set forth in the Act. The Act also requires certain information about air bags and lap/shoulder belts to appear in the owner's manual of new vehicles and requires NHTSA to establish procedures for providing temporary exemptions from the air bag requirement if there is an interruption in the supply of air bag components due to unavoidable events not within the control of vehicle manufacturers.

C. December 1992 Proposal

On December 14, 1992, NHTSA published in the **Federal Register** (57 FR 59043) a notice of proposed rulemaking (NPRM) to implement the requirements of section 2508. Both with respect to the issues of which vehicles would be subject to the air bag mandate and the schedule for compliance, the agency simply followed the requirements specified in the statute.

The agency explained in the NPRM that, with respect to passenger cars, at least 95 percent of each manufacturer's passenger cars manufactured on or after September 1, 1996 and before September 1, 1997 would be required to be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating position. Every passenger car manufactured on or after September 1, 1997 would have to be so equipped.

NHTSA explained that, with respect to light trucks, the proposal would require that a least 80 percent of each manufacturer's light trucks manufactured on or after September 1, 1997 and before September 1, 1998 be equipped with an air bag and a manual lap/shoulder belt. The agency noted, however, unlike the requirements for passenger cars, the Act does not require the air bag and manual lap/shoulder belt to be provided at both the driver's and right front passenger's seating position on light trucks manufactured between September 1, 1997 and September 1, 1998. Instead, each manufacturer may count, towards compliance with the 80 percent air bag requirement, those of its light trucks that are equipped with an air bag and manual lap/shoulder belt at the driver's position and a dynamically-tested manual lap/shoulder belt at the right front passenger's position. Every light truck manufactured on or after September 1, 1998 would have to be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating positions.

NHTSA also proposed to require certain safety information about air bags and safety belts to be provided in the owner's manual of vehicles equipped with air bags and on labels to be placed on the sun visors. The agency's proposal to require information to be provided in the owner's manual essentially followed the requirements of section 2508. In response to that section's directive that this requirement take effect as soon as possible, the agency proposed an effective date of 180 days after publication of a final rule.

The agency's proposal to require information to be provided on the sun visors was issued in response to a petition for rulemaking from the Motor Vehicle Manufacturers Association (now the American Automobile Manufactures Association or AAMA, and hereafter referred to by that name). NHTSA proposed to require five brief statements to be placed on the sun visor, as well as an additional label elsewhere in the vehicle to alert occupants to the information on the sun visors and the location of the air bag. The agency also proposed to update an existing labeling requirement concerning air bag maintenance to limit it to vehicles equipped with air bag systems that require periodic maintenance or replacement.

As required by section 2508, NHTSA also proposed procedures for providing temporary exemptions from the air bag requirement if there is an interruption in the supply of air bag components due to unavoidable event not within the control of vehicle manufactures. Finally, the agency proposed reporting requirements to accompany the phase-in of the requirement for mandatory air bags.

III. Public Comments

NHTSA received about 25 comments, including ones from nine auto manufacturers, several automotive trade associations, insurance affiliates, medical and safety organizations, and the Institute of Scrap Recycling Industries (ISRI). Because the agency simply followed the requirement specified in section 2508 in developing its proposal with respect to the vehicles subject to the air bag mandate and the schedule for compliance, the agency did not receive any comments concerning those issues beyond ones of general support. However, NHTSA received numerous comments concerning the proposal to require safety information to be provided on the sun visor and on the proposed procedures for providing temporary exemptions from the air bag requirement. In addition, ISRI raised concerns about hazards to auto recycling operations which it believes are created by air bag canisters. Further, the Environmental Protection Agency (EPA) provided comments on the agency's Environmental Assessment. A more specific discussion of the

comments, and the agency's responses, are set forth below.

IV. Agency Decision

A. Requirement for Air Bags

Under today's final rule, at least 95 percent of each manufacturer's passenger cars manufactured on or after September 1, 1996 and before September 1, 1997 are required to be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating position. Every passenger car manufactured on or after September 1, 1997 must be so equipped.

In addition, at least 80 percent of each manufacturer's light trucks manufactured on or after September 1, 1997 and before September 1, 1998 must be equipped with an air bag and a manual lap/shoulder belt. However, manufacturers may count, towards compliance with the 80 percent air bag requirement, their light trucks that are equipped with an air bag and manual lap/shoulder belt at the driver's position and a dynamically tested manual lap/shoulder belt at the right front passenger's position. Every light truck manufactured on or after September 1, 1998 must be equipped with an air bag and a manual lap/shoulder belt at both the driver's and right front passenger's seating positions. Multistage light trucks are required to comply with the same requirements that apply to comparable single stage light trucks.

B. Information to Appear on Labels and in Owner's Manuals

1. Labels

NHTSA proposed to require the following five statements to be placed on the sun visors of vehicles equipped with air bags:

For maximum safety protection in all types of crashes, you must always wear your safety belt.
Do not install rearward-facing child restraints in any front passenger seat position.
Do not sit or lean unnecessarily close to the air bag.
Do not place any objects over the air bag or between the air bag and yourself.
See the owner's manual for further information and explanations.

In addition, for those vehicles for which regular maintenance or scheduled replacement is recommended for the air bag, NHTSA proposed to require the recommended maintenance or replacement schedule to appear on the sun visor label. The agency also proposed to require additional labels to alert vehicle occupants to the presence of the sun visor labels and the location of the air bag. The agency noted that there would be a particular concern about alerting occupants to the sun visor label if manufacturers affixed the label on the side of the visor that is not generally visible. NHTSA indicated that one possibility would be to require a label to be placed on each air bag cover stating: "Contains air bag. Please read important safety information labeled on sun visor."

NHTSA received numerous comments concerning its labeling proposal. The vast majority of the commenters generally supported the agency's proposal, although a number recommended various changes in the content of the label.

As indicated above, the agency issued its labeling proposal in response to a petition for rulemaking submitted by AAMA. That organization stated that it strongly supports NHTSA's proposal of a requirement that a label be permanently affixed to the sun visor for each front outboard seating position equipped with an air bag, and the agency's goal of ensuring that the text of the label achieves the optimal balance between the need to inform the public about the types of occupant behavior and uses that may reduce the effectiveness of air bags and the equally important need of avoiding a label with added language that would potentially create an information overload.

While AAMA agreed that the language proposed by NHTSA would promote consumer understanding about air bags and proper use of air-bag-equipped vehicles, it suggested several changes which it believes would result in even greater benefits. That organization stated that the purpose of its suggested modifications would be to:

(1) Provide a "signal" word and symbol;

(2) Identify the risk;

(3) Provide instructions; and

(4) Identify the consequences of failing to follow instructions.

AAMA also commented that it recognizes that numerous factors make it extremely difficult to determine what type of label is likely to be the most effective. That organization stated that it believes that the importance of a uniform label outweighs any differences between the version proposed by the agency and AAMA's suggested version.

The Automotive Occupant Restraints Council (AORC) commented that the proposed sun visor label will provide valuable information to the public about the proper use of the seat belt/air bag safety equipment which is not necessarily widespread through other information sources, yet is essential for maximum protection.

Volkswagen stated that it agrees that the ideas expressed in the proposed label should be included. It suggested adding a title to the label, such as "Important Air Bag Safety Information," to alert consumers to its subject matter. That company also suggested that the label indicate that air bags are not designed to deploy in various types of crashes, such as side impacts, and include a statement about the consequences of failing to observe the recommendations on the label.

SafetyBeltSafe U.S.A. recommended adding a statement indicating the presence of an air bag. By contrast, the Advocates for Highway and Auto Safety (Advocates) argued that, as the installation schedule for air bags proceeds, it may be necessary to indicate by a label which vehicles are not equipped with air bags.

Honda and Volvo Recommended that NHTSA not require specific language for the sun visor label, suggesting instead that the agency permit each manufacturer to use the proposed language as guidance for creating their own language. Honda noted that the agency had used this approach for the information that must appear in the owner's manual, on the basis that the manufacturer could present the information in the most effective manner and in a way that is tailored to the features of the air bag system in the particular vehicle. That company argued that the same logic should be applied to the wording of the sun visor label.

Advocates stated that it does not believe that a special notice or label regarding the means of obtaining the maximum protection from the installed air bag needs to be permanently affixed to the vehicle, and that the required statement of such information in the owner's manual is sufficient. That organization stated, however, that it is aware that manufacturers are already providing this information voluntarily in various forms, and argued that it would be counterproductive to present this information by way of unnecessarily alarming statements. Advocates stated that, for this reason, it supports the uniform information label proposed by the agency as a straightforward means of communicating the do's and don'ts that should be followed to obtain the maximum safety protection from the air bag. That organization stated that if NHTSA determines that such a label is needed, no other informational statements, directions or warnings should be permitted to confuse the intended message.

The Coalition for Consumer Health and Safety (Coalition) stated that it is

concerned that motor vehicle manufacturers may put their own language on labels that will inadvertently alarm motor vehicle occupants. That organization stated that it supports the agency's draft language in the NPRM for an information label and opposes expanding upon the proposed language.

The National Automobile Dealers Association (NADA) stated that it believes consumer information regarding proper air bag use should be confined to the owner's manual. It argued that while it may be worthwhile to highlight the existence of such owner's manual information with a label inside the passenger compartment, an extensive, permanent sun visor label may constitute information overload.

The second and third of the proposed information statements, i.e., those dealing with placement of rearward-facing child restraints and sitting too close to the air bag, generated a number of specific comments. SafetyBeltSafe U.S.A. recommended a stronger warning about placing rearward-facing child restraints in front passenger seat positions. That organization also suggested adding a schematic drawing to the label text, showing an infant in a child restraint with the international "no" sign superimposed, for persons who do not understand written English well. Robert Potter, a private individual, argued that some consumers seeing the proposed language about placement of rearward-facing child restraints may believe the solution is to turn the child restraint to a forward-facing position, and suggested alternative language.

AAMA suggested specifying different labels for vehicles with driver-only air bags and for vehicles with air bags for drivers and right-front occupants, because the language addressing child restraints does not apply to driver side air bags. Since the concern about placement of rearward-facing child restraints only applies to vehicles with passenger-side air bags, the final rule provides that the statement may be omitted from vehicles with driver-only air bags.

Advocates argued that the proposed statement advising occupants not to sit or lean "unnecessarily close" to the air bag is vague and might cause drivers to position their seats further back than usual, in a more rearward position than is optimal. Advocates suggested the following statement: "Adjust the driver's seat to the proper position for the size and height of the driver, but do not lean unnecessarily close to the air bag."

The Insurance Institute for Highway Safety (IIHS) stated that the proposed warning not to sit too close or lean over the air bag implies that being too close to the steering wheel is a problem only in cars with air bags. That organization stated that the steering wheel is the number one hazard for drivers in crashes in all types of vehicles and that, similarly, the dashboard and the windshield are dangerous impact surfaces for front seat passengers who are sitting too far forward for the vehicle's restraint system to work properly. IIHS argued that the proposed warning could mislead the public by implying that air bags can cause fatal or serious injuries that would not have occurred in a comparable vehicle without an air bag, and stated that the warning about sitting too close should apply to all vehicles and not just those equipped with air bags.

After considering the comments, NHTSA has decided to adopt the sun visor labeling requirement largely as proposed. Under today's final rule, the wording of the five information statements is the same as set forth in the NPRM. However, the phrase "CAUTION, TO AVOID SERIOUS INJURY:" is added at the top as a heading. In addition, the final rule specifies that no other information may appear on the same side of the sun visor to which the label is affixed. Except as noted below, no other information about air bags or the need to wear seat belts may appear anywhere on the sun visors.

As discussed in the NPRM, the purpose of the sun visor labeling requirement is to ensure that vehicle occupants have the basic information necessary to receive the maximum safety protection from their air bags. In developing the language for the proposed label, the agency sought to set forth the basic do's and don't's that occupants should follow to obtain maximum protection from air bags, while avoiding a label which creates an "information overload," in response to which, consumers would likely pay less attention to the information.

NHTSA agrees with those commenters which recommended adding a title or heading to the sun visor label, for the purpose of drawing attention to the label. The agency is adopting the phrase "CAUTION, TO AVOID SERIOUS INJURY:" since it will attract occupants' attention to the label and provide a brief statement of the risks of improper use and consequences of failing to follow the instructions. NHTSA also notes that the brevity of that heading will ensure that it will not contribute to an "information overload." The agency is not adopting a symbol in addition to the words, since it believes that the words will draw sufficient attention to the label.

NHTSA does not agree with NADA's suggestion that the statements proposed in the NPRM create an information overload. In particular, the agency disagrees with that organization's characterization of the statements as an "extensive" label. The agency avoided an extensive label by proposing to require only five or six brief statements on the label.

However, NHTSA is not adding additional statements to the label because it believes that such additions would contribute to an "information overload," thereby diluting the impact of the most important information. The agency agrees that it is appropriate to provide consumers with additional information about the proper use of air bags, such as information about the crash modes for which air bags are designed to work, and further explanation about the risks of improper use and the consequences of failing to follow instructions. However, NHTSA believes that the sun visor label is not the appropriate place to provide such additional information. The agency believes that persons are likely to spend only a very limited time reading labels while seated in their vehicles. Therefore, it is crucial to ensure that labels providing important safety information are brief and identify the most important information. Manufacturers are free, of course, to provide additional information in other places, such as the owner's manual.

The agency also does not believe it is necessary to add an additional statement specifically indicating the presence of an air bag. The statements on the sun visor label already include several references to air bags. NHTSA notes that a requirement for a label indicating that a vehicle is not equipped with air bags would be outside the scope of this rulemaking. The agency observes, however, that prospective purchasers can easily find out from dealers whether a vehicle has air bags.

NHTSA has also concluded that the sun visor label should be uniform for all vehicles. The agency agrees with AAMA that a uniform label is necessary to ensure that all vehicle occupants are repetitively exposed to consistent information and instructions and in a consistent format, since consistency and repeated exposure are most likely to result in appropriate consumer behavior. Given the benefits of consistency and repeated exposure, as well as the need to avoid information overload, the agency is not adopting the suggestion of Honda and Volvo that

manufacturers be permitted to formulate their own labels.

While the agency carefully considered the comments recommending various changes in the statements dealing with placement of rearward-facing child restraints and sitting too close to the air bag, it decided not to make any changes in those statements. With respect to SafetyBeltSafe USA's suggestion for a stronger warning about child restraints, NHTSA believes that the statement "Do not install rearward-facing child restraints in any front passenger seat position" is already strong. The agency is not adopting that organization's suggestion for the addition of a schematic drawing concerning the use of rearward-facing child restraints since it believes that such an addition would contribute toward an information overload. Manufacturers are free, of course, to provide schematic drawings in the owner's manual.

NHTSA does not agree with Mr. Potter's suggestion that some occupants seeing the language about placement of rearward-facing children restraints are likely to believe the solution is to turn the child restraint to a forward-facing position. However, the agency shares that commenter's concern that consumers may not understand the proper use of rearward-facing child restraints. In a separate rulemaking, the agency has not proposed to require a label on child restraint systems that can be used in rear-facing positions. The label would provide instructions about proper placement of the child restraint. See 58 FR 19792, April 16, 1993. Thus, in another forum, the agency is taking steps to ensure that consumers understand the correct use of such child restraints. The agency is therefore not adopting Mr. Potter's suggestion for changing the statement about child restraints.

BMW requested that manfuacturers be permitted to omit the statement about placement of rearward-facing child restraints if "technical means, whatever they may be," can prevent inflation of the air bag if a child is restrained. The agency does not believe it would be appropriate to consider granting BMW's request without knowing more abut the technical means that might be used.

NHTSA does not agree with Advocates' suggestion that the statement advising occupants not to "sit or lean unnecessarily close to the air bag" is vague and likely to cause some drivers to position their seats in a position that is more rearward than optimal. The agency notes that occupants consider a number of factors in determining which seating position is optimal for them. This statement provides occupants with one additional factor to consider in making that decision. The agency believes that drivers reading the admonition not to sit or lean "unnecessarily close" to the air bag will understand that it is, of course, necessary for them to sit in a position that is sufficiently forward to have good visibility and enable them to reach the vehicle's controls.

NHTSA agrees with IIHS that the safety concern about front seat occupants sitting or leaning too far forward is equally valid for vehicles not equipped with air bags as for vehicles with air bags, given the hazard of contacting the steering wheel, dashboard and windshield. However, the agency does not believe that the statement about sitting too close to the air bag implies that this is a problem only in vehicles with air bags. For the reasons discussed below, the agency is not adopting that organization's suggestion to require the warning for all vehicles.

As discussed in the NPRM, the agency proposed this statement because sitting or leaning too close to the air bag creates the chance of injury from a deploying air bag. While it may true that the same occupant behavior in vehicles without air bags creates a risk of similar injury from other sources, that fact does not reduce the need to advise occupants not to sit too close to the air bag. The agency notes that a labeling requirement for vehicles without air bags would be outside the scope of this rulemaking. NHTSA observes, however, that any such requirement would soon be moot as an ever increasing number of vehicles are equipped with air bags.

The agency also notes that ensuring that consumers have appropriate knowledge about safe conduct in the vicinity of air bags is important for promoting continued consumer acceptance of air bags. If persons hear about someone being injured by a deploying air bag, it is important that they understand that the risks of such an injury can be reduced or eliminated by safe conduct around the air bag, including not sitting or leaning too close to the air bag.

Commenters on the agency's labeling proposal addressed a number of issues in addition to those relating to the content of the sun visor label. Several commenters requested greater flexibility in where the label may be located. GM commented that although it agrees that the sun visor is a potentially desirable location, it does not believe a requirement specifying that location is essential or always practicable. That company stated that the addition of sun visors of such features as vanity mirrors, with and without lighting, and secondary sunshades may restrict the area to which a label can be affixed. It also stated that specific vehicle geometry may dictate that the optimal position for the label is on the headliner above the sun visor. GM suggested that the agency require the label to be affixed "on or near" the sun visor. AAMA's comment made a similar argument. Rover stated that it is probable that in most cases a sun visor would be likely to be the most convenient place for the label, but requested that alternative locations be permitted provided that the message may be easily read by a person with normal eyesight seated at each of the front outboard seating positions. BMW requested that the label be permitted on either the windshield or the sun visor.

NHTSA also received numerous comments concerning the issue of additional requirements, such as "alert" labels, to ensure that occupants are aware of the air bag information label and/or the location of the air bag. The American Medical Association (AMA) stated that the air bag information should be required to appear on both sides of the sun visor, so that it is constantly visible. That organization stated that, in addition, the agency should require alert labels to draw attention to the sun visor label.

The American Academy of Pediatrics (AAP) stated that, due to its concern about the proper use of infant seats in vehicles with air bags, it believes it is critical to alert passengers to the presence of the safety information on the sun visor. That organization recommended the placement of a label in a constantly visible location, such as the air bag cover, which states that the vehicle contains an air bag and that important safety information is labeled on the sun visor.

SafetyBeltSafe U.S.A. stated that it is essential that the air bag information label be visible at all times. That organization stated that it would be acceptable for the label to be on the back side of the visor only if a separate, brief label was permanently affixed to the dashboard or in a similar, prominent position.

Advocates stated that it has no opinion on which side of the visor the information label should be placed. It added, however, that placement in the constantly visible location is most reliable for obtaining the attention of the driver, but that it may be distracting to the driver to have the label in view at all times when the sun visor is not in use. That organization stated that NHTSA should consider whether one label should be placed on the driver's

sun visor where it will not generally be visible and another label on the passenger side sun visor in the constantly visible location. Advocates commented that information about the location of the installed air bag is, or could be, provided in the owner's manual.

GM stated that it does not believe that an additional label to alert an occupant to the location of the air bag label is warranted. That company also stated that it does not believe that a label identifying the air bag on the steering wheel and instrument panel is necessary to heighten public awareness, nor would it enhance motor vehicle safety. GM argued that the air bag label, along with the ongoing level of public education regarding air bag availability and positioning, make it unnecessary to label the air bag's specific position in a vehicle.

Volkswagen stated that it believes that a reference label on the steering wheel hub or instrument panel directing occupants to the sun visor label is unnecessary. That company argued that the air bag label should reach the attention of consumers based on its display on the sun visor and the inclusion of related information in the owner's manual.

Honda stated that a permanent label inside the occupant compartment advising that the vehicle has an air bag and referring to the sun visor label is not necessary or appropriate. That company argued that this is not information that every vehicle occupant needs every time they enter the car. Honda stated that it believes that a removable label or hung tag in a new vehicle would be sufficient. That company also requested that if the agency requires air bag covers to be labeled with a symbol that it consider the abbreviation for Supplemental Restraint System, "SRS."

Rover commented that it agrees that there may be a need to alert occupants to the location of the air bag information if it is not visible. That company suggested that this notice need only be visible when the air bag information is not in view. Rover suggested that the agency permit a smaller reminder notice to be on one side of the sun visor when the air bag information is on the other. Rover also stated that if NHTSA determines that there is a need for air bag covers to be marked with a symbol, the agency should permit alternative markings such as "SRS" or "AIR BAG."

AORC commented that additional removable warning stickers affixed to the air bag cover or embossed universal symbols alerting the occupant to the sun visor information will not direct the second or later owner to the visor since the sticker will have been removed and the symbol, by itself, will not refer an occupant to the sun visor.

After considering the comments, NHTSA has decided to require a label providing information about safe conduct around air bags to be located on both sun visors. In addition, if the label on the passenger side sun visor is not visible when the visor is in the stowed position, an additional "alert" label is required to be permanently affixed either to that visor so that the label is visible when the visor is in that position or to the cover of the air bag for the passenger seating position, at the option of the manufacturer. This option will give the manufacturers flexibility in deciding where to place the alert label. Thus, when the passenger side sun visor is in the most common position, i.e., the stowed position, either the information itself will be visible on the visor or an alert label will be visible. The agency believes that this requirement will ensure that passengers are aware of the information. Since drivers are more likely to use the sun visor, as well as have greater familiarity with the vehicle they drive, the agency has concluded that a requirement for the information to be placed on either side of the visor is sufficient to ensure that drivers are aware of the information.

The agency believes that the benefits associated with requiring a uniform label are maximized by requiring a standardized location, i.e., placement on the sun visors. Occupants who may wish to check the label will easily be able to find it on all vehicles. Moreover, a standardized location for the label enables the agency to require a uniform alert label to refer occupants to the location of the air bag information label. In addition, all vehicles have sun visors, the sun visors are always in the immediate field of view of occupants, and sun visors are likely to be permanent locations.

The agency disagrees with GM's arguments that the sun visor location presents practicability problems for some vehicles. Manufacturers can design sun visors so that they can include the label as well as features such as vanity mirrors and secondary sunshades. The agency notes, for example, that some manufacturers currently provide safety information about occupant restraints on a panel on the underside of the sun visor which flips up to expose the vanity mirror.

The agency agrees with the views expressed by the medical community, represented by the AMA and AAP, about the importance of the safety information set forth on the sun visor label. Since sun visors are normally left in the stowed position, however, the agency believes there is a need to alert occupants to the passenger side sun visor label only if the label is on the side of the sun visor that is not visible in the stowed position. As indicated above, since drivers are more likely to use the sun visor, as well as have greater familiarity with the vehicle they drive, the agency believes that a requirement for the information to be placed on either side of the visor is sufficient to ensure that drivers are aware of the information. NHTSA does not agree with the AMA that is necessary for the full safety information to be constantly in the view of the driver since the specified requirements are sufficient to ensure that occupants are aware of the information.

As indicated above, NHTSA indicated in the NPRM that it was considering requiring a label to be placed on each air bag cover stating: "Contains air bag. Please read important safety information labeled on sun visor." For those vehicles required to have an alert label, the agency has concluded that a message which reads "Air Bag. See Sun Visor." should be used for labels affixed to the air bag cover, and a message which reads "Air Bag. See Other Side." should be used for labels affixed to the sun visor. These messages will convey the same message in less space. The agency is specifying "Air Bag" instead of "SRS" since consumers are more likely to understand its meaning. NHTSA has decided that it is unnecessary to require labeling of the location of air bags generally, since all vehicles will soon have air bags and consumers are likely to understand where they are located.

Toyota commented that the information required for the sun visor label could be provided in the form of a separate label that is attached to the sun visor, or incorporated into the sun visor mold so that it is printed directly on the sun visor during the manufacturing process. That company stated that the latter option would result in less expensive manufacture of the sun visor and a reduction in the number of vehicle assembly parts, and requested that the final rule permit both options.

The agency agrees that both options identified by Toyota should be permitted and has drafted the final rule to permit them. NHTSA notes, however, that the specified information could be difficult to read if contrasting colors were not used, e.g., if the information were molded in the form of raised letters having the same color as the background. In order to ensure legibility, the final rule specifies that the

letters must be of a color that contrasts with the background of the label.

Toyota also raised an issue concerning the agency's proposal to update Standard No. 208's existing labeling requirement concerning air bag maintenance to limit it to vehicles equipped with air bag systems that require periodic maintenance or replacement. That company noted that while the preamble stated that the recommended maintenance or replacement schedule would have to appear on the sun visor label, the proposed regulatory text stated the information "may be combined" with the information required on the sun visor label. Toyota stated that it does not believe that it would be necessary to limit the passenger compartment location for a maintenance or replacement label to the sun visor label, and that it assumes the agency intended to give the manufacturer the option to select a different interior location.

Toyota is correct that the agency intended to provide manufacturers with the option of providing maintenance and replacement information on either the sun visor label or elsewhere in the passenger compartment. The agency is therefore adopting the regulatory text proposed in the NPRM.

AORC recommended that the agency require air bags to be maintenance free for the life of the vehicle since air bags are mandated safety equipment and it should not be left to the owner to assure performance. It therefore suggested that no maintenance label should be allowed.

NHTSA notes that the issue of requiring air bags to be maintenance free is outside the scope of this rulemaking. Therefore, the agency cannot consider adopting AORC's suggestion as a final rule. The agency observes, however, that the market has been moving in the direction of maintenance-free air bags.

2. Owner's Manuals

Section 2508(a)(2) requires that the amendment to Standard 208 shall also require, to be effective as soon as possible after the promulgation of such amendment, that the owner's manuals for passenger cars and trucks, buses, and multipurpose passenger vehicles equipped with air bags include a statement in an easily understandable format that:

(a) The vehicle is equipped with an inflatable restraint referred to as an "air bag" and a lap and shoulder belt in either or both the front outboard seating positions;

(b) The air bag is a supplemental restraint;

(c) It does not substitute for lap and shoulder belts which must also be correctly used by an occupant in such seating position to provide restraint or protection not only from frontal crashes but from other types of crashes or accidents; and

(d) All occupants, including the driver should always wear their lap and shoulder belts, where available, or other safety belts, whether or not there is an inflatable restraint.

In accordance with that section, the agency proposed to require that this information be provided in owner's manuals of vehicles equipped with air bags. NHTSA noted that it was not proposing to establish the precise language that must appear in the owner's manual. Instead, under the proposal, manufacturers were to be required to provide this information in their owner's manuals, and allowed to choose the language they believe would most effectively convey the information to readers of the owner's manual.

In addition to the statutorily required information on the importance of belt use, the agency also proposed to require the owner's manual to provide safety information about air bags, consistent with the information provided on the sun visor label. In particular, NHTSA proposed to require that the owner's manual provide any necessary precautions regarding the proper positioning of occupants, including children, at seating positions equipped with air bags to ensure maximum safety protection for those occupants, and information about not placing objects on the air bag over or between the occupant and the air bag. As with the other owner's manual information, the agency did not propose the exact language that must appear, but instead proposed to permit manufacturers flexibility to choose the most effective language for their vehicles.

NHTSA received very few comments concerning the content of the information required to be provided in the owner's manual, other than ones of general support for the agency's proposal. However, SafetyBeltSafe U.S.A. commented that complete information on the positioning of infants in cars with passenger side air bags is essential in the owner's manual. It identified several points that it believes should be included.

NHTSA is adopting the owner's manual requirement as proposed. The agency believes that a requirement specifying that the owner's manual must provide any necessary precautions regarding the proper positioning of children at seating positions equipped with air bags to ensure maximum safety protection for those occupants is sufficient to ensure that information along the lines identified by SafetyBeltSafe U.S.A. will be provided. The agency further believes that providing manufacturers flexibility in choosing the language will result in more effective messages that are tailored for individual vehicles. Therefore, the agency is not providing more specific requirements concerning the information that must be provided.

3. Effective Date

In response to the statutory directive that the requirement for information in owner's manuals take effect as soon as possible (for the information that is required by statute), the agency proposed that the requirement become effective 180 days after publication of a final rule. The agency tentatively concluded that 180 days leadtime is needed to allow vehicle manufacturers to incorporate this new language into the owner's manuals of their vehicles equipped with air bags, but yet ensures that the public will be provided with this information in new vehicle owner's manuals as soon as possible. The agency proposed the same effective date for the other information to be included in the owner's manual, i.e., the information not required by statute, and for the labeling requirement.

Toyota stated that the proposed effective date of 180 days after issuance of a final rule would be insufficient for it to make the necessary design and retooling changes to ensure compliance. It requested one year's leadtime.

GM commented that, with a final rule expected around September 1, 1993, an effective date 180 days after publication of the final rule would occur during the 1994 model year. That company stated that this would force an unnecessary mid-model year change to vehicles manufactured with an air bag system. It requested an effective date of September 1 of the calendar year following publication of the final rule. Volvo requested the same effective date.

Honda stated that if the agency publishes a final rule by September 1, 1993 and establishes an effective date of March 1, 1994, it would expect no problem in complying. That company stated that an effective date occurring near the end of the model year, i.e., during July or August, would create difficulties since manufacturers are heavily involved in preparation for the next model year. It added that a change so late would affect few production vehicles and thus not be cost effective.

SafetyBeltSafe U.S.A. commented that both the warning label and owner's manual requirement should go into effect as soon as practicable, so parents can have the benefit of the warning on the greatest number of vehicles equipped with passenger air bags. That

organization stated that 180 days leadtime seemed reasonable.

After considering the comments, NHTSA has decided to make the owner's manual requirements effective 180 days after publication of today's final rule, but to make the vehicle labeling requirements effective September 1, 1994. Since the former requirements only involve adding a statement to the owner's manual, they require relatively little leadtime. Moreover, since they can be met simply by adding an insert to the owner's manual, they do not require manufacturers to reprint existing owner's manuals. Since no commenter provided any arguments demonstrating that more than 180 days is required to meet the owner's manual requirements, and given the statutory requirement that the requirements take effect as soon as possible, the agency is making them effective 180 days after publication of today's final rule.

NHTSA recognizes that longer leadtime is required for the vehicle labeling requirements, since manufacturers may have to change the designs of their sun visors. Such changes may require retooling. Therefore, the agency is making these requirements effect September 1, 1994, thereby providing about a year's leadtime.

C. Temporary Exemption From Air Bag Requirements

Section 2508(c) requires the agency to prescribe the procedures to be followed by manufacturers in applying for temporary exemptions from the air bag requirements, as well as the content and timing of any such applications. That section also provides that a temporary exemption from the air bag installation requirements shall be granted only if the agency finds that there has been a disruption in the supply of any inflatable restraint component, or a disruption in the use and installation by the manufacturer of such component due to unavoidable events not under the control of the manufacturer, which will prevent the manufacturer from meeting its anticipated production volume of vehicles with air bags. In addition, the statute provides that any temporary exemptions must be conditioned upon the manufacturer's commitment to recall the exempted vehicles promptly to install the omitted air bags when adequate supplies of air bags become available to satisfy both anticipated production and recall volume requirements. The statute also provides that notice of each application for temporary exemption shall be published in the **Federal Register** and each notice of grant or denial shall be published in the **Federal Register**, along with the reasons therefor.

NHTSA proposed to provide a temporary exemption section in Standard No. 208 that is modeled closely after the temporary exemption provisions set forth in 49 CFR part 555. In the NPRM, the agency explained the proposed procedures as follows:

> Each application for a temporary exemption from the air bag requirement would have to identify the components for the air bag system that have become unavailable due to circumstances beyond the manufacturer's control, explain briefly the cause of the disruption and why it is beyond the manufacturer's control, estimate the anticipated duration of the disruption, set forth any other information the manufacturer believes the agency should consider in reaching a decision on the application, and contain an unconditional statement by the applicant that an air bag will be installed in every vehicle at those seating positions for which a temporary exemption is granted in response to the application. The vehicle manufacturer would also have to propose a reasonable time within which it would recall all vehicles granted an exemption pursuant to this application and install the omitted air bags, and explain why it believes that period of time is reasonable.
>
> Upon receipt of an application for temporary exemption, NHTSA would review the application to see if it was complete. The manufacturer would be advised if the application did not contain all the necessary information. If the application were complete, NHTSA would publish notice of the application in the **Federal Register**. After reviewing the information available to it, NHTSA would issue its decision to grant or deny the exemption application. In no event would NHTSA's final decision on the application be issued later than 60 days after the date on which a complete petition was received.
>
> If NHTSA were to grant a temporary exemption, it would state that the exemption applies to vehicles manufactured between specified dates. The exemption would generally begin upon the date the grant notice was published in the **Federal Register** and end on the date specified in the notice. Under the proposal, the exempted manufacturer would be required to affix a label within the passenger compartment of every vehicle not equipped with an air bag. This label would state in block capitals:
>
> THIS VEHICLE DOES NOT CONTAIN AN AIR BAG IN CONFORMANCE WITH THE FEDERAL MOTOR VEHICLE SAFETY STANDARD FOR OCCUPANT CRASH PROTECTION. IT WAS EXEMPTED PURSUANT TO NHTSA EXEMPTION NO. _____.
>
> This label could only be removed from the vehicle after the manufacturer had recalled the vehicle and installed the required air bag(s). Upon removal of the label, the vehicle would be certified as complying with all the occupant crash protection requirements of Standard No. 208.
>
> In addition, this notice proposes that if any vehicles are delivered without an air bag, pursuant to an exemption, the manufacturer shall furnish written notification to the dealer and to the first purchaser of the vehicle for purposes other than resale that:
>
> 1. This vehicle does not conform to Federal Motor Vehicle Safety Standard No. 208, because it is not equipped with an inflatable restraint at (insert the affected seating positions).
> 2. The vehicle was allowed to be sold pursuant to NHTSA Exemption No. (insert appropriate exemption number).
> 3. The reason this vehicle was exempted from the requirement for an inflatable restraint was because of factors beyond the vehicle manufacturer's control.
> 4. The vehicle manufacturer will recall this vehicle not later than (insert the time set forth in the exemption) and install the missing inflatable restraint at no charge.
> 5. If the reader has any questions or would like some further information, he or she may contact the manufacturer at (insert an address and telephone number).

NHTSA received numerous comments on the proposed temporary exemption procedures. Commenters addressed the vehicles for which the exemptions are available, the timing of the agency's response, the information required to be provided in petitions, the information required to be provided to consumers, and the manner for providing the information to consumers.

GM, Ford and Chrysler requested that the agency make the temporary exemptions available for vehicles manufactured before the statutory requirement for air bags takes effect. GM and Ford noted that a significant increase in air bag system production is expected to occur this summer as passenger car air bags are added to many car models, and expressed concern that this increased production is likely to result in an increased risk of the unavoidable conditions that may disrupt the supply of air bag components. The three manufacturers requested that the temporary exemptions be made available immediately for vehicles whose design incorporates an air bag to meet the requirements of Standard No. 208.

NHTSA notes that its authority to issue exemptions from safety standards is very limited. Section 2508(c) provides the agency authority to exempt motor vehicles from the requirements of subsection (a) or (b), or both, under specified circumstances. Those subsections do not require air bags in any passenger cars manufactured before September 1, 1996 or light trucks manufactured before September 1, 1997. Therefore, this exemption authority does not apply to vehicles manufactured before those dates, and the agency cannot make section 2508(c) exemptions

available for vehicles manufactured before those dates.

The only exemption authority the agency has for vehicles manufactured before the statutorily mandated dates for installing air bags is that expressly set forth in section 123 of the Safety Act (15 U.S.C. 1410). See *Nader* v. *Volpe*, 320 F. Supp. 266 (D.D.C. 1970). While that section provides several bases for granting exemptions, only one would be relevant to a situation where there is a disruption in the supply of air bags. Under section 123(a)(1)(A), the agency can provide temporary exemptions where compliance would cause substantial economic hardship to a manufacturer that has made a good faith effort to comply with the standard. However, since Congress authorized NHTSA to grant such exemptions only to manufacturers whose total annual production of motor vehicles is 10,000 or less, that type of exemption would not be available to major manufacturers such as GM, Ford and Chrysler.

Several commenters argued that the proposed 60-day period for NHTSA to respond to a petition is too long. GM stated that the proposed procedures would not provide the necessary relief in a timely manner to avoid costly plant closings should the need for a temporary exemption arise. That company stated that the proposed time for responding to a petition may result in plant closings for up to two months. GM stated that with the current scheduling practices of part deliveries to the assembly plants, a plant closing could become necessary within days after an unavoidable disruption in the supply of a part's scheduled delivery. It requested that some means be provided to allow an immediate exemption during the time a formal agency determination is being considered, such as allowing the manufacturer to make the initial decision to continue to produce the vehicles, under the same conditions of a formal petition being granted, until the agency evaluation is completed.

Ford stated that considering the extent of economic hardship that could result from a 60-day assembly shutdown due to an air bag supply disruption, it believes that it should be possible for the agency to decide whether to grant a petition in much less than 60 days. That company stated that it believes the agency should grant or deny any petition within 15 calendar days of receipt of a completed petition for temporary exemption. Ford also suggested that any exemption become effective as soon as it is issued, since the few days required for publication in the **Federal Register** could cause unnecessary economic hardship.

Chrysler stated that the proposed 60-day time period could mean a 60-day cessation in production of the vehicles in question unless it or its vendors maintained an expensive stock of vulnerable system elements to cover that contingency. That company stated that it fails to see how it would take more than a few days to verify the validity of a manufacturer's claim regarding the availability of air bag systems or components.

AORC requested that NHTSA provide a response within one to two weeks. That organization stated that this time frame is reasonable and would allow current supply practices to remain in effect.

After considering the comments, NHTSA has decided to provide that the agency will respond to petitions within 15 days after receipt of a complete petition. While NHTSA believes that extraordinary efforts may be necessary for the agency to finish the necessary analysis and respond to a petition in such a short time period, it is persuaded that a longer period could result in unnecessary economic hardship. For the same reason, the agency has also decided to make an exemption effective at the time it is issued. While NHTSA is adopting a 15-day response time, it notes that, if for some reason it is unable to respond within that time period, the delay would not result in an automatic grant of the petition.

The agency cannot adopt GM's request to provide immediate exemptions that are effective during the time a petition is being considered. Section 2508(c) provides that the agency may grant an exemption only if it finds that there has been a disruption in the supply of any inflatable restraint component, or a disruption in the use and installation by the manufacturer of such component due to unavoidable events not under the control of the manufacturer, that will prevent the manufacturer from meeting its anticipated production volume of vehicles with air bags. Thus, an exemption cannot become effective until the agency makes the required finding.

Ford stated that it is concerned about the proposed requirement that an exemption application contain an unconditional statement by the manufacturer that an inflatable restraint system will be installed in every vehicle at those seating positions for which a temporary exemption is requested in the application. That company stated that it does not believe that a manufacturer could provide such an unconditional statement, because the vehicles are not in the control of the manufacturer. Ford noted that a vehicle may not be remediable because the customer may refuse to have an air bag installed, or the vehicle may have been put out of service, exported or otherwise become unavailable for installation of the air bag. That company suggested that the agency require a statement that the vehicle manufacturer will make all reasonable efforts to install the air bag free of charge to the owner, including all efforts normally used to complete a safety recall ordered by the agency. Chrysler expressed similar concerns in its comment.

NHTSA recognizes that manufacturers cannot install air bags in vehicles that are destroyed in collisions or which owners refuse to return during a recall. The agency has revised the regulatory text in the final rule to make it clear that manufacturers must unconditionally commit to conduct a recall, but do not have to guarantee that air bags will be installed in vehicles that owners do not return. However, in order to ensure that air bags are installed in as many vehicles as possible, the agency is requiring manufactures to submit a plan setting forth steps they will take to ensure that air bags will be installed in as many vehicles as practicable.

Ford also expressed concerned about the agency's proposal to require an exemption petition to include an estimate of the time needed to correct the disruption, and for the dealer-purchaser notice to include the date for recall and installation of the missing air bags. That company stated that experience from past supply disruptions leads it to believe that estimating the length of a disruption is not a precise endeavor and that disruptions can last longer than originally expected. Ford also stated that the proposed requirement could cause unnecessary customer dissatisfaction if the vehicle manufacturer is unable to meet the specified date due to factors beyond its control.

Ford argued that the statute does not require that the manufacturer estimate the time to correct the disruption in applying for an exemption. Ford noted that the statute specifies that an exemption shall be conditioned upon the manufacturer's commitment to recall within a reasonable period of time proposed by the manufacturer and approved by the Secretary after such components became available in sufficient quantities to satisfy both anticipated production and recall volume requirements. That company stated that it believes that Congress did not expect that manufacturers would be

able to estimate the length of any supply disruption, and therefore would be unable to estimate the end date by which a recall would be completed. It stated that it believes that a recall date should not be required, but that the manufacturer should have the flexibility to provide an estimated recall date other than in the petition for exemption.

Chrysler stated that it believes it would be very difficult, if not impossible in some circumstances, for a manufacturer to provide anything more specific than an estimate of the time when a missing inflatable restraint will be replaced, as opposed to the "not later than" time proposed to be required in the dealer-purchaser notice. That company stated that, in some instances, it may be necessary for an air bag component supplier to completely re-establish a production facility, and that specifying a date and time for the resumption of deliveries can be only an estimate.

NHTSA notes that several dates are relevant in the exemption process. One is the date an exemption begins, an issue which was discussed above. Another is the date an exemption ends, i.e., the date when a manufacturer may no longer produce vehicles within air bags. A third relevant date is when exempted vehicles will be recalled to install the missing air bags. This would actually include a number of dates, since a recall would necessarily take place over a period of time.

Section 2508(c) requires that any exemption or renewal must be conditioned upon the manufacturer's commitment to recall the exempted vehicles for installation of omitted inflatable restraints within a reasonable time proposed by the manufacturer and approved by the Secretary after such components become available in sufficient quantities to satisfy both anticipated production and recall volume requirements. Thus, the establishment of a time for recall is a necessary part of the exemption process. However, the agency believes that the language of section 2508(c) does not specify when the establishment of a time for recall must take place, i.e., as part of the granting of an exemption or at a later time.

The agency believes it would be desirable to specify a time for recall as part of the granting of an exemption. The setting of a date would ensure that a manufacturer would not procrastinate on a recall. In addition, purchasers would have assurance as to when an air bag would be installed.

NHTSA is persuaded by the comments, however, that in some possible circumstances, e.g., a major disruption in the supply of sodium azide, there may be too much uncertainty for a manufacturer to provide reliable estimates of when a disruption will be corrected or a recall take place. For the same reason, it may not be possible for the agency to make a determination as to what would constitute a "reasonable" time for recall.

The agency believes that the appropriate way to deal with this possibility is to provide greater flexibility in the exemption procedures. NHTSA is therefore requiring in the final rule that manufacturers provide estimates of various dates or explain why it is not possible to provide such estimates. The agency is also providing that it may attach such conditions as the Administrator may deem appropriate to a temporary exemption, including but not limited to requiring manufacturers to provide progress reports at specified times (including, as appropriate and to the extent possible, estimates of dates and times concerning when a supply disruption will be corrected and when recall will take place). Thus, If NHTSA decides that it is not possible to set certain dates as part of the grant of a petition, it may include appropriate conditions as part of the exemption to ensure that dates are set as soon as possible.

Similarly, the final rule specifies that, unless otherwise provided by NHTSA in an exemption, the manufacturer must provide certain information to dealers and purchasers, including a date by which the manufacturer will recall the vehicle. Thus, if NHTSA decides that a manufacturer cannot provide such a date, it may provide in the exemption that a date need not be given.

Advocates stated that another sentence should be added to the exemption label indicating to the purchaser the date by which the vehicle will be recalled by the manufacturer for the purpose of installing the air bag and that it will be installed at no charge. That organization also stated that the label should be installed in the location where the air bag would have been installed had no exemption been necessary. The Coalition recommended that the agency add a statement to the label with the date by which the manufacturer will recall the vehicle for installation of the air bag and a phone number the consumer can call for more information. Robert Schlegel stated that there should be a large marking on the exterior glass surface of the vehicle that makes it obvious to a prospective purchaser that a vehicle does not have an air bag.

NHTSA believes that the proposed requirement for a label to be affixed within the passenger compartment is sufficient to ensure that a prospective purchaser will know that a vehicle does not have an air bag. The agency is not specifying a more specific location for the label since the appropriate location is likely to vary depending on the interior design of the vehicle. While the agency agrees that it is important for consumers to be aware of the date by which the vehicle will be recalled (if it is possible for the manufacturer to provide such a date) and a phone number they can call for more information, this information will be included, to the extent possible, in the dealer-purchaser notice. NHTSA has therefore decided that it is unnecessary to also require the information on the exemption label.

Ford stated that the exemption label should not be required to contain the NHTSA exemption number. That manufacturer stated that requiring any specific information on the exemption label would likely further delay the resumption of vehicle production while labels are produced and distributed to assembly plants. Ford stated that it would prefer to design print generic exemption labels as soon as an exemption procedure is established.

While NHTSA recognizes that generic exemption labels could provide a minor benefit to manufacturers, the agency believes it is important that consumers be provided with the exemption number on the label. The agency notes that this provision has long been a part of the temporary exemption requirements set forth in 49 CFR part 555, and enables the consumer to easily identify the specific temporary exemption that is applicable. Moreover, the agency does not believe that this requirement is burdensome or will create any significant delays. Manufacturers can set up procedures in advance to ensure that exemption labels can be produced on short notice should the need arise.

Ford also stated that it believes the proposed wording for the vehicle exemption label and dealer-purchaser notices should be considered illustrative, but should not prevent a manufacturer from adopting wording that might be more appropriate to the vehicle or more readily understood by its customers. However, the agency has drafted the wording in a way that is understandable and appropriate for all vehicles. If the agency permitted manufacturers to adopt their own wording, the message could become diluted. However, since the agency can provide for changes in the notice as part of an exemption, a manufacturer could request a change that it believes is appropriate as part of its petition.

NADA stated that neither the statute nor the proposed regulation specifies the manner by which the notice is to be provided to the dealer or to the first purchaser at retail. That organization stated that to ensure that purchasers at retail receive this information, it urged the agency to specify that the manufacturer must insert in or include with the owner's manual the notification of the exemption.

The agency agrees with NADA that the regulation should specify how manufacturers must provide the notice to retail purchasers. NHTSA has decided to require manufacturers to provide the notice by registered mail within two weeks after purchase. The agency is specifying the use of registered mail because that means of notification will draw attention to the notice and ensure that purchasers are likely to read it.

In the NPRM, the agency proposed a provision stating that decisions to grant or deny petitions would be the final agency action on applications, so no petitions for reconsideration of such decisions would be processed or considered by the agency. Chrysler stated that it fails to see why the agency finds it necessary to propose that no petitions for reconsideration would be considered regarding its decision to grant, or more importantly, to deny a temporary exemption.

NHTSA does not believe that there is any reason to provide for petitions for reconsideration on agency responses to exemption petitions. The agency notes that it has not provided for such procedures in similar regulations. If a manufacturer whose petition has been denied obtains new supporting information not previously considered by the agency, it can submit a new exemption petition. NHTSA will not, however, consider petitions which are merely repetitious. If someone obtains information demonstrating that an exemption should be terminated, it can provide that information to the agency and request the agency to terminate the exemption. While the agency has decided not to provide for petitions for reconsideration, it has also decided that it is unnecessary to specifically cover this point in the regulatory text.

NHTSA notes that it proposed, as part of the exemption provisions, to specify that removal of the vehicle exemption label by the manufacturer or any of its dealers or distributors would constitute a certification that the vehicle complies in full with the inflatable restraint system requirement of Standard No. 208. The agency decided that such a provision is unnecessary.

D. Reporting Requirements

Whenever the agency specifies a phase-in of some performance requirement, it is necessary for enforcement of that phase-in to require manufacturers to report at the end of the production period its total production of vehicles and the number of such vehicles that are certified as complying with the relevant performance requirement. Accordingly, since section 2508 mandates a phase-in of air bags as the exclusive means of complying with the automatic crash protection requirements, it is necessary to amend the reporting requirements to require manufacturers to report what percentage of their production is equipped with air bags certified as complying with the crash protection requirements. The agency proposed to amend Part 585 in this manner.

Ford requested that the proposed reporting requirements apply only to vehicle manufacturers that do not provide inflatable restraint systems in 100 percent of cars (or trucks) during the applicable phase-in. That company stated that it expects 100 percent of its affected vehicles to be equipped with inflatable restraints during the two phase-in periods. Ford suggested that any manufacturer which did not file under part 585 would effectively be claiming that 100 percent of its affected vehicles met the inflatable restraint criteria. Honda provided a similar comment, suggesting that the agency accept a manufacturer's statement if the manufacturer achieves 100 percent compliance.

NHTSA agrees that a simplified reporting option should be provided for manufacturers that achieve 100 percent compliance. Under the final rule, such a manufacturer may submit a summary statement, signed by an official representative, that all affected vehicles comply. The agency believes that it would be inappropriate to accept the lack of a filing as a statement of 100 percent compliance, since there could be a number of explanations for lack of receipt of a filing, e.g., a filing might have become lost in the mail.

E. Other Issues

1. Due Care

Standard No. 208 includes a provision which states that a vehicle shall not be deemed to be in noncompliance with the standard if its manufacturer establishes that it did not know in the exercise of due care that such vehicle is not in conformity with the standard. Advocates commented that this provision amounts to a disclaimer and employs a subjective standard that is at odds with the clear wording of the National Traffic and Motor Vehicle Safety Act and with judicial interpretations of that Act. That organization argued that the agency should decline to extend the provision to the amended portions of Standard No. 208 or, alternatively, should issue a separate final rule deleting the "due care" provision from the standard entirely.

As noted by Advocates, the "due care" provision was added to Standard No. 208 in 1986. This provision has been a part of the agency's air bag provision since that time. The agency is currently considering, as indicated by its Semi-Annual Regulatory Agenda, proposing to delete the provision from Standard No. 208. See 58 FR 24722, April 26, 1993.

Since NHTSA did not propose to delete the "due care" provision in the NPRM, Advocates' request is outside the scope of this rulemaking. The agency will continue to consider whether to issue an NPRM to delete the provision.

2. Auto Recycling

ISRI stated that air bag canisters create hazards to auto recycling. That organization stated that the detonation of air bag inflator canister inside an auto shredder could easily ignite the air/hydrocarbon mixture present there and cause a significant explosion, as well as liberate sodium azide, which is classified as a toxic substance by the Environmental Protection Agency (EPA), into the air or onto the ground. ISRI stated that NHTSA should establish a regulatory requirement, as part of this rulemaking, that requires air bag and/or auto manufacturers to take steps to create incentives for the removal and recycling of air bag canisters prior to the delivery of auto hulks for shredding.

ISRI stated that perhaps the most effective and market-based solution would be to require air bag or auto manufacturers to buy back air bag canisters from suppliers of auto hulks prior to delivery for recycling. That organization stated that under the proposed program, auto dismantlers would willingly remove air bag canisters for resale to anyone willing to pay them an amount necessary to justify their expense to remove them. ISRI stated that an alternative canister repurchase plan could be formulated to place on the air bag manufacturers the duty to buy back their own canisters.

NHTSA notes that the automotive industry and the Society of Automotive Engineers recommend that every air bag be deliberately deployed before the vehicle is shredded (i.e., "fired" using a remote test connection) thereby

rendering the inflator/module harmless. Further, the automotive industry is providing technical instructions in current service manuals regarding the proper disposal techniques of air bags, which is the deliberate deployment before the vehicle is shredded.

Auto recyclers can thus avoid any hazards by deploying air bags before shredding. NHTSA also observes that ISRI's recommendation to require air bag or vehicle manufacturers to buy back air bags is outside the scope of this rulemaking. Moreover, NHTSA does not have the authority to establish such requirements.

3. Definition of Inflatable Restraint System

The agency proposed a provision that would define inflatable restraint system as an air bag that is concealed in the steering wheel or in the instrument panel until it is activated in a crash. GM commented that the incorporation of specific air bag locations into the definition would restrict future restraint system design practices. The agency does not wish to unnecessarily restrict future air bag designs. Therefore, it has removed the specified locations from the definition included in the final rule.

4. Air Bag Alone Test Requirements

BMW noted that the agency's occupant crash protection requirements must be met both with the air bag alone and with the combination of the air bag and a safety belt. That manufacturer argued that this results in major tests costs. BMW argued that the air bag alone requirement exists because NHTSA regarded the air bag as a primary and not supplemental restraint system and that the proposal apparently revises this agency view. It recommended that the agency only retain the combination test requirement. However, while NHTSA agrees that it is very important for occupants to wear their safety belts in vehicles equipped with air bags, the agency also believes it is important to require occupant crash protection in situations where occupants are not wearing safety belts. Therefore, the agency is not adopting BMW's suggestion.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the costs and other impacts associated with this rulemaking action. Based on that consideration, NHTSA has determined that this final rule is not "major" within the meaning of Executive Order 12291, because the costs should be well below the $100 million threshold for categorizing a rule as "major." However, this final rule is "significant" within the meaning of the Department of Transportation's regulatory policies and procedures, because of the level of public interest. Accordingly, NHTSA has prepared a final regulatory evaluation (FRE), a copy of which has been placed in the docket for this rulemaking action.

The FRE may be briefly summarized as follows. The agency believes that almost all manufacturers were planning on using air bags in their vehicles produced during the model years affected by this final rule. Hence, the costs associated with this final rule will be very small. There will be some minor costs associated with the labeling requirements and owner's manual requirements, but again the agency believes that most manufacturers are already labeling the sun visors in their cars equipped with air bags and providing information in the owner's manuals. The FRE estimates the consumer cost of each label to be $0.06 to $0.11. Since the final rule requires two or three labels per vehicle, the consumer cost for the labels would be $0.12 to $0.33. The FRE also provides estimates of the benefits and costs of an all air bag fleet compared to an all automatic belt fleet.

Regulatory Flexibility Act

NHTSA has also considered the effects of this regulatory action under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Final stage manufacturers and alterers are the small entities primarily affected by this final rule. However since the agency believes that all the major manufacturers (which provide the incomplete or complete vehicles to final stage manufacturers and alterers) were planning to install air bags voluntarily, and since it also believes that air bags will be available in all or nearly all models during the 80 percent phase-in year for light trucks (thereby enabling alterers and final stage manufacturers to obtain vehicles already equipped with air bags), the final rule will not have any significant effect on final stage manufacturers or alterers. Moreover, since the final rule will not significantly affect the price of passenger cars or light trucks, it will not have any significant economic impact on small businesses, small organizations, and small governmental units which purchase these vehicles.

National Environmental Policy Act

NHTSA analyzed the environmental issues associated with air bags as part of its requirements for automatic crash protection in new cars (49 FR 28962; July 17, 1984) and light trucks and vans (56 FR 12472; March 26, 1991), and determined that the widespread introduction and use of air bags would not have a significant impact on human health or the environment. Based on those analyses, which were conducted pursuant to the National Environmental Policy Act, NHTSA has determined that today's final rule will not have a significant impact on human health or the environment. A discussion related to the environmental issues associated with air bags can be found in Docket No. 74–14; Notice 36 (for passenger cars) and Docket No. 74–14; Notice 70 (for light trucks and vans). In addition, EPA submitted comments on the environmental aspects of the NPRM. NHTSA's response to EPA, as well as EPA's incoming letter, has been placed in the docket.

Executive Order 12612 (Federalism)

The agency has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this rule have been approved by the Office of Management and Budget in accordance with 44 U.S.C. Chapter 35, under OMB No. 2127–0535. As noted earlier, the final rule incorporates a simplified reporting option for manufacturers that achieve 100 percent compliance.

Civil Justice Reform

This final rule will not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for

reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

49 CFR Part 585

Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 571 and 585 are amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended by revising S4.1.4; removing existing S4.1.5 through S4.1.5.2(d), inclusive, and adding a new S4.1.5 through S4.1.5.3; removing existing S4.2.6 and adding a new S4.2.6 through S4.1.6.2; revising S4.5.1; revising S4.5.3.1; and adding S12 through S12.7.3(e). The revised and added paragraphs read as follows:

§ 571.208 Standard No. 208, Occupant Crash Protection.

* * * * *

S4.1.4 *Passenger cars manufactured on or after September 1, 1989, but before September 1, 1996.*

* * * * *

S4.1.5 *Passenger cars manufactured on or after September 1, 1996.*

S4.1.5.1 *Frontal/angular automatic protection system.*

(a) Each passenger car manufactured on or after September 1, 1996 shall:

(1) At each front outboard designated seating position meet the frontal crash protection requirements of S5.1 by means that require no action by vehicle occupants;

(2) At any front designated seating positions that are not "outboard designated seating positions," as that term is defined at 49 CFR 571.3, and at any rear designated seating positions that are not "rear outboard designated seating positions," as that term is defined at S4.1.4.2(c) of this standard, have a Type 1 or Type 2 seat belt assembly that conforms to Standard No. 209 and S7.1 and S7.2 of this standard; and

(3) At each front designated seating position that is an "outboard designated seating position," as that term is defined at 49 CFR 571.3, and at each rear designated seating position that is a "rear outboard designated seating positions," as that term is defined at S4.1.4.2(c) of this standard, have a Type 2 seat belt assembly that conforms to Standard No. 209 and S7.1 through S7.3 of this standard, and, in the case of the Type 2 seat belt assemblies installed at the front outboard designated seating positions, meet the frontal crash protection requirements with the appropriate anthropomorphic test dummy restrained by the Type 2 seat belt assembly in addition to the means that requires no action by the vehicle occupant.

(b) For the purposes of this section, an *inflatable restraint system* means an air bag that is activated in a crash.

S4.1.5.2 *Passenger cars manufactured on or after September 1, 1996 and before September 1, 1997.*

S4.1.5.2.1 The amount of passenger cars complying with the requirement of S4.1.5.1(a)(1) by means of an inflatable restraint system at the driver's and right front passenger's position shall be not less than 95 percent of the manufacturer's total production of passenger cars manufactured on or after September 1, 1996, and before September 1, 1997. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

S4.1.5.2.2 *Passenger cars produced by more than one manufacturer.*

S4.1.5.2.2.1 For the purpose of calculating the production of passenger cars by each manufacturer during the period specified in S4.1.5.2, a passenger car produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S4.1.5.2.2.2:

(a) A passenger car that is imported into the United States shall be attributed to the importer.

(b) A passenger car manufactured within the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

S4.1.5.2.2.2 A passenger car produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers, as specified in an express written contract, reported to the National Highway Traffic Safety Administration pursuant to part 585 of this chapter, between the manufacturer so specified and the manufacturer to which the vehicle otherwise would be attributed, pursuant to S4.1.5.2.2.1.

S4.1.5.3 *Passenger cars manufactured on or after September 1, 1997.* Each passenger car manufactured on or after September 1, 1997 shall comply with the requirement of S4.1.5.1(a)(1) by means of an inflatable restraint system at the driver's and right front passenger's position. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

* * * * *

S4.2.6 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997.* Each truck, bus, and multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, which is manufactured on or after September 1, 1997, shall comply with the requirements of S4.1.5.1 of this standard (as specified for passenger cars), except that walk-in van-type trucks and vehicles designed to be sold exclusively to the U.S. Postal Service may meet the requirements of S4.2.1.1 or S4.2.1.2 of this standard instead of the requirements of S4.1.5.1.

S4.2.6.1 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997 and before September 1, 1998.*

S4.2.6.1.1 The amount of trucks, buses, and multipurpose passenger vehicles complying with the requirements of S4.1.5.1(a)(1) of this standard by means of an inflatable restraint system shall be not less than 80 percent of the manufacturer's total combined production of subject vehicles manufactured on or after September 1, 1997 and before September 1, 1998. Each truck, bus, or multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1997 and before September 1, 1998, whose driver's seating position complies with S4.1.5.1(a)(1) by means of an inflatable restraint system and whose right front passenger's seating position is equipped with a manual Type 2 seat belt assembly that complies with S5.1 of this standard, with the seat belt assembly adjusted in accordance with S7.4.2 of this standard, shall be counted as a vehicle complying with

S4.1.5.1(a)(1) by means of an inflatable restraint system. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

S4.2.6.1.2 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less produced by more than one manufacturer.*

S4.2.6.1.2.1 For the purpose of calculating the production by each manufacturer during the period specified in S4.2.6.1.1, a truck, bus, or multipurpose passenger vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S4.2.6.1.2.2:

(a) A vehicle that is imported into the United States shall be attributed to the importer.

(b) A vehicle manufactured within the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

S4.2.6.1.2.2 A truck, bus, or multipurpose passenger vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers, as specified in an express written contract, reported to the National Highway Traffic Safety Administration pursuant to part 585 of this chapter, between the manufacturer so specified and the manufacturer to which the vehicle otherwise would be attributed, pursuant to S4.2.6.1.2.1.

S4.2.6.2 *Trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1998.* Each truck, bus, or multipurpose vehicle with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less manufactured on or after September 1, 1998 shall comply with the requirement of S4.1.5.1(a)(1) by means of an inflatable restraint system at the driver's and right front passenger's position. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care the such vehicle is not in conformity with the requirement of this standard.

* * * * *

S4.5.1 *Labeling and owner's manual information.*

(a) Air bag maintenance or replacement information. If the vehicle manufacturer recommends periodic maintenance or replacement of an inflatable restraint system, as that term is defined in S4.1.5.1(b) of this standard, installed in a vehicle, that vehicle shall be labeled with the recommended schedule for maintenance or replacement. The schedule shall be specified by month and year, or in terms of vehicle mileage, or by intervals measured from the date appearing on the vehicle certification label provided pursuant to 49 CFR part 567. The label shall be permanently affixed to the vehicle within the passenger compartment and lettered in English in block capital and numerals not less than three thirty-seconds of an inch high. This label may be combined with the label required by S4.5.1(b) of this standard to appear on the sun visor. If some regular maintenance or replacement of the inflatable restraint system(s) in a vehicle is recommended by the vehicle manufacturer, the owner's manual shall also set forth the recommended schedule for maintenance or replacement.

(b) Label on sun visor above front outboard seating positions equipped with inflatable restraint.

(1) For vehicles manufactured on or after September 1, 1994, each front outboard seating position that provides an inflatable restraint shall have a label permanently affixed to the sun visor for such seating position on either side of the sun visor, at the manufacturer's option. Except as provided in S4.5.1(b)(3), this label shall read:

CAUTION

TO AVOID SERIOUS INJURY:

For maximum safety protection in all types of crashes, you must always wear your safety belt.
Do not install rearward-facing child seats in any front passenger seat position.
Do not sit or lean unnecessarily close to the air bag.
Do not place any objects over the air bag or between the air bag and yourself.
See the owner's manual for further information and explanations.

(2) The color of the lettering on the label shall contrast with the background of the label. No other information shall appear on the same side of the sun visor to which the label is affixed. Except for an air bag alert label placed on the visor pursuant to S4.5.1(c) of this standard, no other information about air bags or the need to wear seat belts shall appear anywhere on the sun visor.

(3) If the vehicle does not have an inflatable restraint at any front seating position other than that for the driver, the statement "Do not install rearward-facing child seats in any front passenger seat position" may be omitted from the label.

(c) Air bag alert label. If the label required by S4.5.1(b) for a sun visor (other than the sun visor for the driver seating position) is not visible when the sun visor is in the stowed position, an air bag alert label shall be permanently affixed either to that visor so that the label is visible when the visor is in that position or to the cover of the air bag for that seating position, at the option of the manufacturer. An air bag alert label affixed to an air bag cover pursuant to this paragraph shall read "Air Bag. See Sun Visor." An air bag alert label affixed to an sun visor pursuant to this paragraph shall read "Air bag. See Other Side." The color of the lettering on the label shall contrast with the background of the label.

(d) At the option of the manufacturer, the requirements in S4.5.1(b) and S4.5.1(c) for labels that are permanently affixed to specified parts of the vehicle may instead be met by permanent marking or molding of the required information.

(e) Information to appear in owner's manual. The owner's manual for any vehicle equipped with an inflatable restraint system shall include a description of the vehicle's air bag system in an easily understandable format. The owner's manual shall include a statement to the effect that the vehicle is equipped with an air bag and a lap/shoulder belt at one or both front outboard seating positions, and that the air bag is a supplemental restraint at those seating positions. The information shall emphasize that all occupants, including the driver, should always wear their seat belts whether or not an air bag is also provided at their seating position to minimize the risk of severe injury or death in the event of a crash. The owner's manual shall also provide any necessary precautions regarding the proper positioning of occupants, including children, at seating positions equipped with air bags to ensure maximum safety protection for those occupants. The owner's manual shall also explain that no objects should be placed over or near the label identifying the air bag on the steering wheel and instrument panel, because any such objects could cause harm if the vehicle is in a crash severe enough to cause the air bag to inflate.

* * * * *

S4.5.3.1. An automatic belt that provides only pelvic restraint may not be used pursuant to S4.5.3 to meet the

requirements of an option that requires a Type 2 seat belt assembly. An automatic belt may not be used pursuant to S4.5.3 to meet the requirements of S4.1.5.1(a)(3) for a Type 2 seat belt assembly at any seating position equipped with an inflatable restraint system pursuant to S4.1.5.2, S4.1.5.3, S4.2.6.1, or S4.2.6.2 of this standard.

* * * * *

S12. *Temporary Exemption from Requirement for Inflatable Restraint System.*

S12.1 *Scope.* This section establishes procedures for filing and processing applications for temporary exemption from the requirements in this standard that vehicles be equipped with inflatable restraint systems.

S12.2 *Definitions.*

Line means a name that a manufacturer applies to a group of motor vehicles of the same make which have the same body or chassis, or otherwise are similar in construction or design. A *line* may, for example, include 2-door, 4-door, station wagon, and hatchback vehicles of the same make.

S12.3 *Standard of review.* In order to receive a temporary exemption from the inflatable restraint requirement, a vehicle manufacturer must demonstrate in its application that there has been a disruption in the supply of one or more inflatable restraint system components, or a disruption in the use and installation by the manufacturer of any such component due to unavoidable events not under the control of the manufacturer, which will prevent a manufacturer from meeting its anticipated production volume of vehicles with inflatable restraint systems.

S12.4 *Exemption applications—General requirements.* Each application for a temporary exemption from the inflatable restraint requirements must—

(a) Be written in the English language;

(b) Be submitted in three copies to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590;

(c) State the full and address of the manufacturer, the nature of its organization (individual, partnership, corporation, etc.), and the name of the State or country under the laws of which it is organized;

(d) Identify the motor vehicle line or lines for which the temporary exemption is being sought;

(e) Set forth in full the data, views, and arguments of the manufacturer that would support granting the temporary exemption, including the specific information required by S12.5; and

(f) Specify and segregate any part of the information and data submitted in the application that should be withheld from public disclosure in accordance with part 512 of this chapter.

S12.5 *Exemption applications—Specific content requirements.* Each application for a temporary exemption from the inflatable restraint requirement must include:

(a) A clear and specific identification of any component in the inflatable restraint system that has become unavailable due to circumstances beyond the manufacturer's control, and a diagram showing the location of such component within the restraint system and within the vehicle;

(b) A clear and specific explanation of the cause or causes of the disruption in the supply of the component, and a showing that such disruption is beyond the control of the manufacturer;

(c) An estimate of the length of time that will be needed to correct the disruption and again incorporate the subject components into current production, or an explanation of why it is not possible to provide such an estimate;

(d) A complete statement of the bases for the manufacturer's belief that NHTSA should grant a temporary exemption in response to this application;

(e) An unconditional statement by the manufacturer that it will recall every vehicle for which a temporary exemption is requested in the application; to install all missing inflatable restraint systems;

(f) A plan setting forth steps the manufacturer will take to ensure that as many exempted vehicles as possible will be returned for installation of missing inflatable restraint systems;

(g) A proposed reasonable period of time after the disruption in the supply of inflatable restraint system components is corrected that the manufacturer estimates will ensure a sufficient quantity of components for both anticipated production and retrofit of those vehicles for which a temporary exemption is requested in the application, so that the vehicle manufacturer can recall those vehicles for which a temporary exemption is requested and install inflatable restraint systems in them, together with a demonstration of why the manufacturer believes this proposed period of time is reasonable for completing this recall, or an explanation of why it is not possible to provide such an estimate;

(h) A proposed date for termination of the exemption;

(i) A proposed date by which all exempted vehicles will have been recalled and had inflatable restraints installed (assuming owners returned their vehicles in a timely matter in response to a first notice by the manufacturer), or an explanation of why it is not possible to provide such an estimate.

S12.6 *Processing an application for a temporary exemption.* (a) NHTSA will process any application for temporary exemption that contains the information specified in S21.4 and S12.5. If an application fails to provide the information specified in S12.4 and S12.5, NHTSA will not process the application, but will advise the manufacturer of the information that must be provided if the agency is to process the application.

(b) Notice of each application for temporary exemption shall be published in the **Federal Register**.

(c) NHTSA will issue its decision to grant or deny the requested temporary exemption not later than 15 days after the agency receives a complete petition, as defined in paragraph (a). However, a failure to issue a decision within this time does not result in a grant of the petition.

(d) Notice of each decision to grant or deny a temporary exemption, and the reasons for granting or denying it, will be published in the **Federal Register**.

(e) The Administrator may attach such conditions as he or she deems appropriate to a temporary exemption, including but not limited to requiring manufacturers to provide progress reports at specified times (including, as appropriate and to the extent possible, estimate of dates and times concerning when a supply disruption will be corrected and when recall will take place) and requiring manufacturers to take specific steps to ensure that as many exempted vehicles as possible will be returned for installation of missing inflatable restraint systems.

(f) Unless a later effective date is specified in a notice announcing an agency decision to grant a temporary exemption, a temporary exemption from the inflatable restraint requirement will become effective upon the date the decision is issued.

S12.7 *Labels and written notice announcing temporary exemption.*

S12.7.1 It shall be a condition of every temporary exemption from the inflatable restraint requirement that the manufacturer of exempted vehicles comply with the provisions of S12.7.2 and S12.7.3.

S12.7.2 (a) The manufacturer of any vehicle granted a temporary exemption from the inflatable restraint requirement shall affix a label within the passenger compartment of such vehicle. The label

shall set forth the following information in block capital letters and numerals not less than three thirty-seconds of an inch high:

THIS VEHICLE DOES NOT CONTAIN AN AIR BAG IN CONFORMANCE WITH THE FEDERAL MOTOR VEHICLE SAFETY STANDARD FOR OCCUPANT CRASH PROTECTION. IT WAS EXEMPTED PURSUANT TO NHTSA EXEMPTION NO. (insert number assigned by NHTSA).

(b) This label shall not be removed until after the vehicle manufacturer has recalled the vehicle and installed an inflatable restraint system at those seating positions for which it was granted an exemption.

S12.7.3 The manufacturer of any vehicle that is delivered without an inflatable restraint system, pursuant to a temporary exemption granted under this section, shall, at the time of delivery of the vehicle, provide a written notice to the dealer to whom the vehicle is delivered. The manufacturer shall also provide a written notice by registered mail to the first purchaser of the vehicle for purposes other than resale, within two weeks after purchase Unless otherwise provided for by the Administrator in the exemption, such notice shall provide the following information:

(a) This vehicle does not conform to Federal Motor Vehicle Safety Standard No. 208, because it is not equipped with an inflatable restraint at (insert the affected seating positions).

(b) The vehicle was allowed to be sold pursuant to NHTSA Exemption No. (insert appropriate exemption number).

(c) The reason this vehicle was exempted from the requirement for an inflatable restraint was because of factors beyond the manufacturer's control.

(d) The manufacturer will recall this vehicle not later than (insert the time set forth in the exemption) and install the missing inflatable restraint at no charge.

(e) If the reader has any questions or would like some further information, he or she may contact the manufacturer at (insert an address and telephone number).

* * * * *

PART 585—AUTOMATIC RESTRAINT PHASE-IN REPORTING REQUIREMENTS

3. The authority citation for part 585 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

4. Section 585.1 is revised to read as follows:

§ 585.1 Scope.

This part establishes requirements for manufacturers of passenger cars to submit reports, and to maintain records related to the reports, concerning the number of cars equipped with inflatable restraint systems in compliance with the requirement of S4.1.5.2 of Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208). This part also establishes requirements for manufacturers of trucks, buses, and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less to submit reports, and to maintain records related to the reports, concerning the number of such vehicles equipped with automatic crash protection in compliance with the requirements of S4.2.5 of Standard No. 208 and the number of such vehicles equipped with inflatable restraint systems in compliance with the requirement of S4.2.6.1 of Standard No. 208.

5. Section 585.2 is revised to read as follows:

§ 585.2 Purpose.

The purpose of these reporting requirements is to aid the National Highway Traffic Safety Administration in determining whether a vehicle manufacturer has complied with the requirements of Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208) to install automatic crash protection in specified percentages of the manufacturer's annual production and to install an inflatable restraint system that provides automatic crash protection in a specified percentage of the manufacturer's annual production.

6. Section 585.3 is revised to read as follows:

§ 585.3 Applicability.

This part applies to manufacturers of passenger cars and to manufacturers of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

7. Section 585.5 is revised to read as follows:

§ 585.5 Reporting requirements.

(a) *General reporting requirements—Passenger cars.* Within 60 days after the end of the production year ending August 31, 1997, each manufacturer that manufactured any passenger cars for sale in the United States shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirement of Standard No. 208 (49 CFR 571.208) for installation of inflatable restraint systems that provide automatic crash protection in 95 percent of its cars manufactured during that production year.

(b) *General reporting requirements—Light trucks, buses, and multipurpose passenger vehicles.*—(1) *Automatic crash protection.* Within 60 days after the end of the production years ending August 31, 1995, August 31, 1996, and August 31 1997, each manufacturer that manufactured any trucks, buses, or multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during the production year (other than walk-in van-type trucks, vehicles designed to be sold exclusively to the U.S. Postal Service, vehicles manufactured for operation by persons with disabilities, vehicles manufactured in two or more stages, or vehicles that were altered after previously having been certified in accordance with part 567 of this chapter) shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of Standard No. 208 (49 CFR 571.208) for installation of automatic crash protection in such vehicles manufactured during that production year. This report need not be filed by any manufacturer whose production consists exclusively of:

(i) Vehicles manufactured in two or more stages;

(ii) Walk-in van-type trucks;

(iii) Vehicles designed to be sold exclusively to the U.S. Postal Service;

(iv) Vehicles manufactured for operation by persons with disabilities; and/or

(v) Vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

(2) *Inflatable restraint system that provides automatic crash protection.* Within 60 days after the end of the production year ending August 31, 1998, each manufacturer that manufactured any trucks, buses, or multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during the production year (other than walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service) shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of Standard No. 208 (49 CFR 571.208) for installation of inflatable restraint systems that provide automatic crash protection in 80 percent of such vehicles manufactured during

that production year. This report need not be filed by any manufacturer whose production consists exclusively of:

(i) Walk-in van-type trucks; and/or

(ii) Vehicles designed to be sold exclusively to the U.S. Postal Service.

(c) Each report submitted in compliance with paragraphs (a), (b)(1), or (b)(2) of this section shall:

(1) Identify the manufacturer;

(2) State the full name, address, and title of the official responsible for preparing the report;

(3) Identify the production year for which the report is filed;

(4) Provide the information specified in paragraph (d) of this section;

(5) Be written in the English language;

(6) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; and

(7)(i) In the case of a report filed pursuant to paragraph (a) of this section, expressly state whether the manufacturer has complied with the requirement of S4.1.5.2 of Standard No. 208 (§ 571.208 of this chapter);

(ii) In the case of a report filed pursuant to paragraph (b)(1) of this section, expressly state whether the manufacturer has complied with the requirements of S4.2.5 of Standard No. 208 (§ 571.208 of this chapter); and

(iii) In the case of a report filed pursuant to paragraph (b)(2) of this section, expressly state whether the manufacturer has complied with the requirements of S4.2.6.1 of Standard No. 208 (§ 571.208 of this chapter).

(d) *Report content*—(1) *Passenger cars.* Each manufacturer that certifies that all of its passenger cars for the production year ending August 31, 1997 comply with S4.1.5.1(a)(1) of Standard No. 208 (49 CFR 571.208) by means of an inflatable restraint system at the driver's and right front passenger's position shall so state. Each other manufacturer shall submit the information specified below.

(i) *Basis for phase-in production goals.* Each manufacturer shall report the total number of passenger cars it manufactured for sale in the United States for the production year ending August 31, 1997.

(ii) *Production.* Each manufacturer shall report the number of passenger cars manufactured for sale in the United States for the production year ending August 31, 1997 that it certified as complying with S4.1.5.1(a) of Standard No. 208 (§ 571.208 of this chapter) because they were equipped with an inflatable restraint system that provided automatic crash protection at both the driver's and the right front passenger's seating position.

(iii) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S4.1.5.2.2 of § 571.208 of this chapter shall:

(A) Report the existence of each such contract, including the names of all parties to the contract, and explain how the contract affects the report being filed; and

(B) Report the number of cars covered by each such contract.

(2) *Trucks, buses, and multipurpose passenger vehicles.* Each manufacturer that certifies that all of its trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, manufactured during the production year ending August 31, 1998 comply with S4.1.2.1 of Standard No. 208 (49 CFR 571.208) by means of an inflatable restraint system at the driver's and right front passenger's position shall so state. Each other manufacturer shall submit the information specified below.

(i) *Automatic crash protection*—(A) *Basis for phase-in production goals.* Each manufacturer shall report the number of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that it manufactured for sale in the United States for each of the three preceding production years, or, at the manufacturer's option, for the production year for which the report is filed. A manufacturer that did not manufacture any trucks, buses, or multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less during each of the three preceding production years must report the number of trucks, buses, or multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less it manufactured during the production year for which the report is filed. However, manufacturers are not required to report any information with respect to those vehicles that are manufactured in two or more stages, walk-in van-type trucks, vehicles designed to be sold exclusively to the U.S. Postal Service, vehicles manufactured for operation by persons with disabilities, and/or vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

(B) *Production.* Each manufacturer shall report for the production year for which the report is filed, and for each preceding production year, to the extent that trucks, buses, and multipurpose passenger vehicles produced during the preceding production years are treated under § 571.208 of this chapter as having been produced during the production period for which the report is filed, the information specified in paragraphs (d)(2)(i)(B)(*1*) through (d)(2)(i)(B)(*3*) of this section, inclusive, with respect to its trucks, buses, and multipurpose vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

(*1*) The number of those vehicles certified as complying with S4.1.2.1 of Standard No. 208 (49 CFR 571.208) because they are equipped with automatic seat belts and the seating positions at which those belts are installed;

(*2*) The number of those vehicles certified as complying with S4.1.2.1 of Standard No. 208 (49 CFR 571.208) because they are equipped with air bags and the seating positions at which those air bags are installed; and

(*3*) The number of those vehicles certified as complying with S4.1.2.1 of Standard No. 208 (49 CFR 571.208) because they are equipped with other forms of automatic crash protection, which forms of automatic crash protection shall be described, and the seating positions at which those forms of automatic crash protection are installed.

(C) *Vehicled produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S4.2.5.6.2 of § 571.208 of this chapter shall:

(*1*) Report the existence of each such contract, including the names of all parties to the contract, and explain how the contract affects the report being filed; and

(*2*) Report the number of vehicles covered by each such contract.

(ii) *Inflatable restraint system that provides automatic crash protection*—(A) *Basis for phase-in production goals.* Each manufacturer shall report the total number of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less that it manufactured for sale in the United States for the production year ending August 31, 1998. However, manufacturers are not required to report any information with respect to those vehicles that are walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service.

(B) *Production.* Each manufacturer shall report the number of trucks, buses, and multipurpose passenger vehicles with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds that it manufactured for sale in the United States for the production year ending August 31, 1998 that it certified as complying with S4.1.5.1(a) of Standard No. 208 (§ 571.208 of this chapter) because they were equipped with an inflatable restraint system that provided automatic crash protection.

(C) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S4.2.6.1.2 of § 571.208 of this chapter shall:

(1) Report the existence of each such contract, including the names of all parties to the contract, and explain how the contract affects the report being filed; and

(2) Report the number of vehicles covered by each such contract.

7. Section 585.6 is revised to read as follows:

§ 585.6 Records.

Each manufacturer shall maintain records of the vehicle identification number and type of automatic crash protection for each vehicle for which information was reported under § 585.5 until December 31, 1999.

Issued on August 30, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–21419 Filed 9–1–93; 3:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 58, No. 169
Thursday, September 2, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket 91-016-2]

Chicken Disease Caused by Salmonella Enteritidis; Public Hearing

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public hearing.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service is hosting a public hearing on the proposed rule on chicken disease caused by *Salmonella enteritidis* that we published in the Federal Register on August 2, 1993. The public hearing will be held in Washington, DC, on September 7, 1993.

DATES: The public hearing will be held on Tuesday, September 7, 1993, from 11 a.m. until 3 p.m.

ADDRESSES: The public hearing will be held in room 3501, South Building, United States Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. John Mason, Director, Salmonella Enteritidis Control Program, VS, APHIS, USDA, room 205, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, (301) 436-4363.

SUPPLEMENTARY INFORMATION: This public hearing is being held on the proposed rule on chicken disease caused by *Salmonella enteritidis* (Docket No. 91-016-1, 58 FR 41048-41061), published August 2, 1993. The comment period on the proposed rule ends October 1, 1993. The rule proposes to make the following major changes to the current *Salmonella enteritidis* (SE) regulations: (1) Exempting certain flocks from the testing requirements of the regulations, if the flocks are participating in certain voluntary *Salmonella* testing programs; (2) removing requirements for testing blood and internal organ samples from Test Flocks; (3) adding requirements to test Study Flocks for SE by testing egg samples; (4) adding requirements to trap and test rodents; (5) substituting the terms SE-positive status (Environment) and SE-positive status (Eggs) for the terms Test status and Infected status, and (6) allowing SE-Positive houses and flocks to be released from regulation only through depopulation, cleaning, and disinfection, not through negative testing.

The public hearing will be held on Tuesday, September 7, 1993, in room 3501, South Building, United States Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC.

A representative of the Animal and Plant Health Inspection Service (APHIS) will preside at the public hearing. Any interested person may appear and be heard in person, by attorney, or by other representative. Persons who wish to speak at the public hearing will be asked to sign in with their name and organization, to establish a record for the hearing.

The public hearing will begin at 11 a.m. and is scheduled to end at 3 p.m. local time. However, the hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing.

If the number of speakers at the hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

The purpose of the hearing is to give interested persons an opportunity for oral presentation of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at the hearing, except to clarify or explain provisions of the proposed rule.

Done in Washington, DC, this 31st day of August 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-21586 Filed 9-1-93; 8:45 am]

BILLING CODE 3410-34-P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 936

[No. 93-66]

Community Support Requirements for Insurance Company and Credit Union Members of the Federal Home Loan Bank System

AGENCY: Federal Housing Finance Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Housing Finance Board (Finance Board) is requesting public comment to assist it in amending the regulation creating its Community Support Program (CSP). The CSP implements section 710(c) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), which requires all members of the Federal Home Loan Bank System (FHLBank System) to meet standards of community investment or service in order to maintain continued access to long-term FHLBank System advances. To date, the Finance Board has reviewed for Community Support purposes only members covered by the Community Reinvestment Act of 1977 (CRA) because the existing regulation contains minimal guidance as to reviewing members not covered by CRA. The Finance Board intends to amend the regulation to specify procedures to review members not covered by CRA, specifically, insurance company and credit union members, and is requesting public comment to assist in developing those procedures.

DATES: Comments must be received on or before November 1, 1993.

ADDRESSES: Comments should be sent to: Elaine L. Baker, Associate Director and Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Kathleen S. Brueger, Associate Director, Housing Finance Directorate, (202) 408-2821, or Sylvia Martinez, Director, Housing Finance Directorate, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. General

FIRREA, Public Law No. 101–73, 103 Stat. 183, established the Finance Board as an independent agency in the executive branch of the federal government. It is the successor agency to the Federal Home Loan Bank Board with respect to oversight of the FHLBanks.

Virtually all savings associations supervised by the Office of Thrift Supervision are members of the FHLBank System, as are many state chartered savings banks supervised by the Federal Deposit Insurance Corporation. The membership also includes insurance companies, which have been eligible for membership since the creation of the FHLBank System in 1932. With the passage of FIRREA, membership was opened as well to commercial banks and credit unions that make long-term home mortgage loans, subject to financial soundness and home financing qualifications.

Section 710 (c) of FIRREA added a new section 10(g) to the Federal Home Loan Bank Act of 1932 (Bank Act), 12 U.S.C. 1430(g), as follows:

(g) Community Support Requirements—

(1) In General.—Before the end of the 2-year period beginning on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Board shall adopt regulations establishing standards of community investment or service for members of Banks to maintain continued access to long-term advances.

(2) Factors To Be Included.—The regulations promulgated pursuant to paragraph (1) shall take into account factors such as a member's performance under the Community Reinvestment Act of 1977 and the member's record of lending to first-time homebuyers.

To implement this section, the Finance Board issued a regulation on November 21, 1991 (56 FR 58639), preceded by both an advance notice of proposed rulemaking (56 FR 387) and a proposed rule (56 FR 26346), which established a Community Support Program for the FHLBank System (12 CFR part 936).

The regulation defines "Community Support" in § 936.1 as follows:

(1) Extensions of credit for purchase, construction, or rehabilitation of owner-occupied and rental housing for households whose incomes do not exceed 115 percent of the median income for the area, with demonstrable efforts to finance housing for households whose incomes do not exceed 80 percent of the area median income and for households whose incomes do not exceed 50 percent of the area median income;

(2) Extensions of credit to finance commercial and economic development activities that benefit very low-, low- or moderate-income neighborhoods, including very low-, low-, and moderate-income minority neighborhoods and rural communities;

(3) Development and extension of other loan products, financial services and programs to address community credit needs, including those described in Comprehensive Housing Affordability Strategy Plans, 24 CFR part 91, or as identified by FHLBank Advisory Councils;

(4) Marketing plans and related outreach activities targeted to households in minority, very low-, low- or moderate-income, or rural communities, including first-time homebuyers;

(5) Active participation in loan consortia, regional lending activities, and similar efforts that benefit very low-income and low- or moderate-income households or which further the activities described in paragraphs (i) (1) through (4) of this section, both within and outside a member's usual market areas and communities;

(6) Any additional loan products, financial services programs or activities that further the items described in paragraphs (i) (1) through (5) of this section; and

(7) In the case of institutions not covered by CRA, such as credit unions, loan products, financial services, programs or activities that further the items described in paragraphs (i) (1) through (5) of this section.

12 CFR 936.1.

Under the requirements of the Program, all members of the FHLBank System are to be revised by the Finance Board for their record of Community Support approximately every two years. If a member is found not to have met the Community Support standard, the Finance Board asks the member to create, with the help of its FHLBank, a one-year Community Support Action Plan (Action Plan) to improve its performance under the standard. As indicated in § 936.7 of the regulation, members that refuse to participate in the Community Support review or, if requested, to create an Action Plan the Finance Board can approve, or that fail to substantially meet the goals of an Action Plan they have implemented may lose access to long-term FHLBank System advances.

12 CFR 936.7.

II. Review Under the Community Support Program

Members selected for Community Support review are requested to provide the Finance Board with a Community Support Statement (Statement). Completing the Statement involves filling out a one-page form and attaching the following four items: (1) The public disclosure portion of the member's most recent evaluation under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 (CRA evaluation); (2) a description of how the member assists first-time homebuyers; (3) if applicable, a summary of any final administrative or judicial rulings within the preceding two years for fair lending, including fair housing, violations; and (4) any additional information the member wishes to include that relates to its Community Support performance.

The CRA evaluation portion of the Community Support Statement is a critical component of the Community Support review. Through the CRA evaluation, the Finance Board is able to rely on an expert, objective on-site assessment of performance that covers significant aspects of Community Support. In the preamble to the Community Support regulation, the Finance Board indicated that it would place primary emphasis on a member's CRA evaluation and would focus in particular on the assessment factors within the CRA evaluation that most directly relate to Community Support.

The Finance Board began reviewing members of the FHLBank System pursuant to the Community Support requirements in February 1992. To date, the Finance Board has reviewed over 1,800 FHLBank System members. Only members covered by the CRA have been reviewed for Community Support thus far, because the existing review procedures rely on members' ability to supply CRA evaluations. Therefore, only savings associations, savings bank and commercial bank members of the FHLBank System have been reviewed. No credit union or insurance company FHLBank System members have been reviewed because they are not subject to or examined for CRA.

III. Treatment of Members Not Covered by CRA Under the Existing Regulatory Provisions

The existing Community Support regulatory provisions offer minimal guidance with regard to Community Support review procedures for members not covered by the CRA. Specifically, the regulation indicates that a Community Support Statement shall include,

(3) In the case of credit unions and other members who are not subject to the Community Reinvestment Act, a detailed description of the member's Community Support activities.

12 CFR 936.3(b).

The preamble to the regulation explains this paragraph by stating that,

(t)he small group of members not covered by CRA, such as credit unions, will be required to submit a written statement explaining how they identify the credit needs of their members and how their loan products and services meet Community Support standards. The Board recognizes the unique circumstances of insurance companies and will work with these members on a case-by-case basis to fulfill the basic purpose of this Part as to these members.

56 FR 58639.

The regulation's only other reference to members not covered by CRA is in the definition of "Community Support":

(7) In the case of institutions not covered by CRA, such as credit unions, loan products, financial services, programs or activities that further the items described in paragraphs (i)(1) through (5) of this section.

12 CFR 936.1(i)(7).

The Finance Board recognizes that the minimal guidance in the regulation with regard to Community Support compliance by members not covered by CRA has created ambiguity on the part of both current and potential FHLBank System members not covered by CRA. Therefore, the Finance Board proposes to amend the regulation to specify the Community Support requirements for such members.

IV. Issues for Consideration

In preparing to promulgate a proposed rule on Community Support requirements for members not covered by CRA, the Finance Board seeks the broadest possible public comment on all aspects of the various relevant issues. All interested parties, including insurance companies, credit unions, community groups, FHLBanks and their Advisory Councils, lenders, public interest groups, current and prospective FHLBank System members, trade associations, federal financial regulators, state and local government agencies, other financial service providers, and private citizens are encouraged to comment.

The questions presented below (numbered consecutively 1 through 31 for ease of reference) are intended to elicit comments on all significant issues. However, the list is not intended to be exclusive. The Finance Board seeks comments on any and all relevant issues.

A. Definition of "Community Support" for Members Not Covered by CRA

The Finance Board defined the term "Community Support" (§ 936.1) to encompass and encourage a wide variety of efforts to benefit communities, particularly very low-, low- and moderate-income, minority and rural households. The existing definition includes: The design and offering of loan products; actual extensions of credit; and, marketing and outreach efforts. Participation in consortia is highlighted as well in order to give credit for Community Support activities by a member both within and outside its CRA-delineated community.

The definition of "Community Support" for members not covered by CRA, specifically, "loan products, financial services, programs or activities" that further the items described in the definition of "Community Support" (12 CFR 936.1 (i)(7)), provides little guidance, given its general nature. Therefore, the Finance Board seeks comment on what specifically should constitute "Community Support" for these members.

The answer to the first question below is central to the amendment process and directly affects the remainder of the questions regarding how "Community Support" should be defined for members not covered by CRA. While various approaches to the Community Support review for members not covered by CRA may be attractive from a policy perspective, the Finance Board must ensure that members will be able to comply. Therefore, the Finance Board must caution that all the approaches discussed below may not turn out to be equally available once all impediments to compliance by insurance company and credit union members are known.

1. Are there statutory or regulatory limitations or restrictions that would impede the Finance Board from applying existing Community Support lending and other requirements to insurance company and/or credit union members (for example, credit union charter restrictions on lending only to members, or state law limitations on investments by insurance companies)?

2. Should there be a different definition of Community Support for insurance company and credit union members than for all other FHLBank System members? Should there be different definitions for insurance company versus credit union members?

3. How should "Community Support" be defined for FHLBank System members not covered by CRA, specifically, insurance company and credit union members? What activities should serve to meet the Community Support standard for these members?

B. Form of Compliance

The Bank Act section which creates the Community Support requirement lists CRA performance as one of two factors which the Finance Board is to take into account in its implementing regulations for Community Support. 12 U.S.C. 1430(g). In keeping with the statutory emphasis, the Finance Board relies heavily on the CRA evaluation in conducting a member's Community Support review.

Besides furnishing an objective third-party assessment of community lending efforts based on an on-site examination, using the CRA also ensures that a member's financial condition, size, any legal impediments and local conditions are all taken into account in evaluating the member's efforts. Using the CRA evaluation also minimizes the paperwork burden for the member in complying with the review procedures.

Since insurance company and credit union members are not covered by CRA, the Finance Board will not be able to rely on any CRA evaluation in conducting a Community Support review of one of these members.

Approaches for dealing with the absence of a CRA evaluation for insurance company and credit union members could include the Finance Board's requiring that these members nevertheless comply with CRA criteria or the Finance Board's establishing a parallel CRA requirement adapted to the institutional differences of these members. One issue the Finance Board would need to address involves the CRA concept of a delineated community. While meeting the credit needs of a delineated community is central to the CRA requirements, the Community Support regulation focuses not on meeting the needs of a particular community, but rather on meeting the needs of underserved households, specifically, very low-, low- and moderate-income, minority and rural households. Insurance company and credit union members are not likely to have a designated geographic community comparable to the CRA concept of "community" (with the exception of credit unions with geographic common bonds), and both may operate on a national scale. At the same time, credit unions operate within lending limitations related to their fields of membership.

4. Since the statute creating the Community Support Program requires the Finance Board to take into account CRA, should the Finance Board require

insurance company and credit union members to comply with CRA or some equivalent of CRA? How would compliance be assessed?

5. Should the Finance Board require members that are not covered by CRA to define a community for Community Support purposes? Is that a workable concept for these members? Are there Community Support policy reasons to do so?

6. Would requiring the members that are not covered by CRA to delineate a community and then focus their Community Support efforts on meeting that community's needs create unnecessary work for the members, result in artificial "communities", and needlessly dilute investments with regard to Community Support's targeted households?

Another approach for dealing with the absence of a CRA evaluation for insurance company and credit union members would be to apply entirely separate criteria, making no attempt to subject these members to CRA or CRA-like criteria. Such an approach might be structured so that the absence of a third-party on-site examination is minimized.

7. Should the Finance Board designate certain activities as appropriate standards for evaluating those members not covered by CRA, with evidence of participation in such activities substituting for the CRA portion of the Community Support Statement provided by CRA-covered members?

A national community reinvestment fund approach as described in questions 8 through 13 below might capitalize on the fact that insurance company and credit union members are not covered by CRA. Specifically, because insurance company and credit union members are not required under CRA to focus on the credit needs of a particular community, investments could be directed through the fund to underserved households and communities or to support, for example, new Department of Housing and Urban Development initiatives, without regard to location within or outside the members' communities.

8. Should the Finance Board, the FHLBank System, or some other organization create some form of national community reinvestment fund in which members not subject to CRA could invest, with evidence of such investment substituting for the CRA portion of the Community Support Statement?

9. What should be considered approved uses for such a fund?

10. How could the fund coordinate its activities with proposed community development and economic empowerment legislation, such as the Community Development Banking and Financial Institutions Act of 1993, assuming this legislation is enacted?

11. Who should administer such a fund? (For example, should the Finance Board or the FHLBanks administer such a fund, or should the Finance Board consider the feasibility of using experienced non-profit intermediaries to do so?)

12. Instead of creating a new fund, should the Finance Board encourage participation by insurance company and credit union members in similar ventures managed by experienced non-profit intermediaries if all uses of invested funds would meet Community Support standards?

13. How should the appropriate level of investment in a fund by the insurance company or credit union member be determined? For example, should minimum percentages based on asset size be established?

14. Depending on the Community Support approach taken, what information should be required to be reported by members not covered by CRA?

Besides supplying a CRA evaluation, members reviewed for Community Support are required to provide information as to their efforts to assist first-time homebuyers, and to indicate whether there have been any final judgments of a fair lending nature against them within the previous two years.

15. Is there any reason why members not covered by CRA should not be subject to the other Statement information requirements applicable to CRA-covered members, specifically, providing information on assistance to first-time homebuyers and reporting any final judgments in the last two years related to fair lending violations? If not, why? If separate standards are deemed appropriate, how should such separate standards be defined?

C. Measure of Degree of Commitment of Resources

CRA evaluations take into account the examined institution's financial condition, size, any legal impediments, and local economic conditions in assessing the institution's record of meeting its community's credit needs. In so doing, the CRA evaluation provides a context in which to evaluate the individual institution's performance.

In utilizing the CRA evaluation as a substantial part of the Community Support review, the Finance Board incorporates these factors into its assessment as well. Since insurance company and credit union members are not required to undergo CRA examination, the Finance Board has no similar assessment on which to rely in reviewing these members.

16. How should the Finance Board establish a context for assessing insurance company and credit union members' efforts, given that the Finance Board does not have a CRA evaluation on which to rely for this perspective?

17. Are there reports currently prepared by these members which would provide such a context?

18. Should the Finance Board require insurance company and credit union members to report information regarding their financial condition and size, any legal impediments, and local economic conditions so that the Finance Board may assess the degree of commitment by the member in the context of its resources and capabilities?

19. If such information is solicited, how should the information be verified?

20. Should the Finance Board consider requiring that a specific percentage of insurance company and/or credit union members' assets be directed to community investment/Community Support-related activities (or some similar requirement)? If so, what would be an appropriate threshold? A specified percentage approach would make Community Support a far less flexible standard with regard to members not covered by CRA, but would at the same time provide a more predictable outcome. Could this result in a less or more rigorous standard than that required of members covered by CRA?

D. Fair Lending Issues

One of the requirements for members completing a Community Support Statement is to provide information on any final administrative or judicial ruling against the member of a fair lending or fair housing nature within the previous two years. In the preamble to the Community Support regulation, the Finance Board indicated that this information was being required because it would bear directly upon the member's Community Support performance and may have occurred since the CRA examination was conducted (and thus would not be reflected in the CRA evaluation).

If no final rulings have been issued, the member need provide no further information. However, members covered by CRA are reviewed for any practices of a discriminatory nature in the course of their CRA evaluation, and the Finance Board includes this assessment in its review for Community Support purposes.

21. Since insurance company and credit union members are not reviewed for fair lending performance in the course of a CRA examination, should the Finance Board require these non-CRA covered members to report their fair lending, including fair housing, efforts as part of their Community Support review (in addition to reporting information on final judgments)?

22. FIRREA amended the Home Mortgage Disclosure Act of 1975 (HMDA) 12 U.S.C. 2803, to require financial institutions to report the race, sex, and income of credit applicants. The Finance Board incorporates analysis of CRA-covered members' HMDA data into its Community Support review by virtue of the federal financial regulator's inclusion of HMDA data analysis in the CRA evaluation. Credit unions are subject to the reporting requirements of HMDA, but are not subject to CRA. For consistency, should the Finance Board require credit union members to report their HMDA information to the Finance Board as part of the Community Support requirements?

23. Congress is considering legislation to address discriminatory (redlining) practices by insurance companies in making their insurance products available. As part of the Community Support review, should the Finance Board require information from insurance company members regarding their respective efforts to sell their home insurance products without regard to race, color, religion, national origin, sex, and all the other prohibited bases included in the federal fair lending laws?

E. Public Comment Process

Participation by the public in the Community Support review process has assisted the Finance Board in assessing community needs and the effectiveness of member efforts. The Community Support regulation (§ 936.8) requires each of the FHLBanks to maintain a mailing list for Community Support review notice purposes. These lists include all Advisory Council members, public interest and community organizations in their respective districts, and any other organizations or individuals that have requested to be advised when members have been selected for review.

24. How can the Finance Board ensure that public comments will be provided with regard to insurance company and credit union members selected for Community Support review?

F. Timing of the Community Support Review

The Community Support regulation (§ 936.4) requires that members be reviewed for their Community Support performance approximately every two years. As described in the preamble to the regulation, the Finance Board selects one-eighth of the FHLBank System membership in each district for review each calendar quarter of the two-year review cycle. Members are selected to the extent possible based on chronological sequence of their most recent CRA evaluation, with new members not reviewed until after one year of membership.

Insurance company and credit union members, not being subject to the community investment requirements of CRA, cannot be presumed to have a record to review for Community Support purposes at the time of their initial Community Support reviews.

25. Should the Finance Board consider requiring insurance company and credit union members to submit a Community Support Action Plan in lieu of being reviewed for their Community Support performance to date? The Action Plan could then serve as a baseline for subsequent reviews, and would provide a safe harbor in the event of this being the member's first involvement in community investment activities.

26. Should the Finance Board consider making Community Support a threshold requirement for new insurance company and credit union members?

27. Should insurance companies and credit unions that are already members of the FHLBank System be treated differently from prospective insurance company and credit union members?

G. Residential Lending Commitment

In the regulation (§ 936.7(c)), the Finance Board indicated that it may restrict a member's access to long-term advances if its Community Support Statement "does not adequately establish a reasonable commitment to residential lending and Community Support", and the member fails to address deficiencies by implementing an Action Plan. Similarly, the statute and the regulation require the Finance Board to take into account a member's record of lending to first-time homebuyers as a condition for access to long-term advances.

28. In the case of insurance company and credit union members, should the purchase of loans and securities alone be deemed satisfactory evidence of a commitment to residential lending and Community Support? How should these loans and securities be evaluated by the Finance Board to assure that they meet Community Support standards?

29. How should the Finance Board evaluate an insurance company or credit union member's record of lending to first-time homebuyers? Should the purchase of loans and securities satisfy this requirement? How should the Finance Board evaluate whether a security interest in a loan satisfactorily meets this standard?

30. Should the Finance Board require some measure of loan origination by insurance company and credit union members as a part of the Community Support standard?

H. Regulatory Burden

In promulgating the Community Support regulation, the Finance Board stated that it intended to strike a balance between the policy goals of FIRREA and enhancing the FHLBank System's role as a community lending partner, and at the same time not impairing the System's attractiveness to new members. The Finance Board hoped to achieve such a balance in part by relying on existing CRA documentation to minimize paperwork for members and to avoid any costly new level of examination.

31. How can the Finance Board structure the Community Support requirements to encourage and ensure Community Support activities by members not covered by CRA and still keep any paperwork burden minimized?

After analyzing the comments and suggestions received in response to this advance notice, the Finance Board will publish a proposed rule for comment prior to a regulation. The Finance Board will welcome comments from all interested persons at each stage of the rulemaking process.

Dated: August 25, 1993.

By the Federal Housing Finance Board.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 93–21366 Filed 9–1–93; 8:45 am]

BILLING CODE 6720–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Fixed Size Standard Levels

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is re-proposing a rule designed to streamline its size

standards by reducing the number of fixed size standard levels to nine. This will be achieved by retaining the five existing employee-based levels and establishing four new receipts-based levels. The four new receipts-based levels reflect an inflationary adjustment applied to SBA's current and most common receipts-based size standards. SBA believes that the current system of thirty size standard levels has led to confusion and has created a needless complication of the size standards. SBA believes that adopting a limited number of fixed size standard levels, each representing significantly different firm sizes, would make it easier for a business to know which size standard applies to it. Furthermore, as a part of this proposed change, an adjustment for inflation has been applied to the streamlined receipts-based size standards which will, in effect, restore eligibility to firms that have lost their status over time solely because of inflation. This proposal to streamline the size standards is essentially the same as was proposed on December 31, 1992.

DATE: Comments must be submitted on or before November 1, 1993.

ADDRESSES: Send comments to: Gary M. Jackson, Director, Size Standards Staff, 409 3rd Street, SW—suite 8150, U.S. Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Ajoy K. Sinha, Size Standards Staff, (202) 205–6618.

SUPPLEMENTARY INFORMATION: On December 31, 1992, the SBA published a proposed rule (57 FR 62515) proposing to streamline its size standards by reducing the number of fixed size standards levels to nine. Furthermore, as a part of SBA's simplification of the numerical size standards, adjustments had been made to the receipts-based size standard levels proposed at that time to account for the effects of inflation since March 12, 1984, the time of the last general inflationary adjustment to receipts-based size standards (49 FR 5024). However, the incoming Administration directed that all recently published but not finalized rules were to be thoroughly reviewed, and all Government Agencies were to determine their implications. (Office of Management and Budget Memorandum on Regulatory Review, dated January 22, 1993, to Heads and Acting Heads of Federal Agencies.) The SBA withdrew the proposed rule on February 19, 1993 (58 FR 9131) so it could further evaluate the implications of such a standard.

The newly appointed SBA Administration has completed its review of the previously published rule, and believes the SBA's simplification of size standards has continued merit and deserves consideration by SBA and the public. Hence, SBA is re-proposing to streamline its size standards by reducing the number of fixed size standard levels to nine. This will be achieved by retaining the five existing employee-based levels and establishing four new receipts-based levels. SBA believes that the current system of thirty size standard levels has led to confusion and has created a needless complication of the size standards. SBA believes that adopting a limited number of fixed size standard levels, each representing significantly different firm sizes, would make it easier for a business to know which size standard applies to it. The nine fixed size standard levels are as follows:

Nine Fixed Size Standard Levels

Proposed New Standards

$5.0 million in annual receipts
$10.0 million in annual receipts
$18.0 million in annual receipts
$25.0 million in annual receipts

Existing Standards To Be Retained

100 employees
500 employees
750 employees
1000 employees
1500 employees

As part of SBA's simplification of the numerical size standards, adjustments have been made to the receipts-based size standard levels proposed at this time to account for the effects of inflation since March 12, 1984, the time of the last general inflationary adjustment to receipts-based size standards (see 49 FR 5024).

In determining the rate of inflation, SBA has utilized the Gross Domestic Product (GDP) Implicit Price Deflator calculated and published by the U.S. Department of Commerce, which is the broadest single measure of inflation. It measures price changes in the total national output of goods and services in terms of the expenditures by which those goods and services were acquired. These expenditures cover personal consumption, business investment, and government purchases.

The methodology utilized in determining the appropriate inflation adjustment is essentially the same as was used for inflation adjustments in 1975 and 1984, and is as follows:

1. Determine the base period used to establish the current size standard, and
2. Determine the GDP deflator from the end of that base period to the most recent point in time for which the GDP deflator has been published.

This inflation adjustment is based on the last index value used for the 1984 inflation adjustment and the latest available index value. The 1984 adjustment accounted for inflation up to the 3rd quarter of 1982, the latest available index at the time of the proposed adjustment. For purposes of this rule, the 3rd quarter of 1982 is therefore the base period for which SBA calculated the amount of inflation that has occurred since the last adjustment. The U.S. Department of Commerce's latest data show index values of 84.3 for the 3rd quarter of 1982 and 122.9 for the 1st quarter of 1993. This change records inflation of 45.8 percent for the time between these two periods.

The inflation adjustment percentage is then applied to SBA's most common receipts-based size standards—$3.5 million, $7.0 million, $12.5 million and $17.0 million. After application of the adjustment percentage and rounding off, these four receipts-based size standards would become the four receipts-based size standard levels of $5.0 million, $10.0 million, $18.0 million and $25.0 million. [Note: The December 31, 1992 proposed rule listed one fixed level at $24.0 million. Because of the availability of more current data on inflation, this proposed rule adjusts that level to $25.0 million. The three other fixed receipts-based standards do not change despite the more current data.]

In order to achieve the twin goals of adjusting for inflation and streamlining the SBA size standards, the inflation adjustment would then be calculated for each of the existing receipts-based size standards, except where legally prohibited from doing so as described below. This preliminary standard would then be adjusted to the closest size standard among the four receipts-based size standards. As a result, forty-seven size standards would receive an inflation adjustment that is either larger or smaller than the 45.8 percent inflator. Furthermore, in most of these cases, there would be a moderate difference between the proposed receipt-based size standard level and a fully adjusted size standard. Also, in no industry would a firm currently defined as small business lose its status as an eligible small business for SBA programs as a result of this proposal.

The industries receiving other than a full 45.8 percent inflation adjustment, listed by Standard Industrial Classification (SIC) code (see attached table for industry title), are as follows:

More Than Full Adjustment—SIC codes 0211, 0912, 0913, 0919, 0921, 0971, 4724, 4961, 5271, 5331, 5521,

5812 (part), 5983, 6515 (part), 6531, 7216, 7217, 7381, 7382.

Less Than Full Adjustment—SIC codes 4841, 4899, 5311, 5411, 5511, 5541, 5611, 5621, 5651, 5661, 5722, 5731, 5734, 7349, 7812, 7819, 7822, 7371, 7372, 7373, 7374, 7375, 7376, 7377, 7378, 7379, 8744 (part), 8721.

Also, in keeping in line with SBA's twin objectives of adjusting for inflation and streamlining its size standards, four footnotes (8, 12, 15, and 16) are being adjusted similar to the industry size standards. Size standards for Offshore Marine Services (part of SIC Major Groups 44 and 45), Retail Sale of Aircraft (part of SIC code 5599), Leasing of Building Space to the Federal Government by Owners (part of SIC Major Group 65) and industries without a specific size standard listed in SIC Division I—Services, are being established at $18.0 million, $10.0 million, $18.0 million and $5.0 million, respectively.

Finally, it must be noted that the size standards for certain industries have been either established by statute or prohibited by statute from change until after September 30, 1996. The size standards for these industries will remain at their current levels. Title VII of Public Law 100–656 established the "Small Business Competitiveness Demonstration Program" to test the competitiveness of small business on Federal procurements. That program prohibits a change in size standards before September 30, 1996 for the Construction industries (SIC codes 1521–1799); the Engineering, Architecture, Surveying and Mapmaking industries (SIC codes 8711, 8712, 8713, and part of SIC code 7389); and the Refuse Systems and Related Services industries (SIC code 4953 and part of SIC code 4212). Also, Public Law 99–272 established the size standard for both Agricultural Production—Crops, (SIC codes 0111–0191); and Livestock and Animal Specialties, (SIC codes 0212–0291, except SIC codes 0211 and 0252) at $500,000.

SBA specifically invites comment on the appropriateness of these fixed size standards levels or on alternative size standards (either higher or lower). SBA is willing to consider industry data and other information prior to making a final decision on a size standard. Comments on the proposed standards or suggestions on other standards should address the questions of:

- The interaction of these size standards with SBA's programs;
- The relative levels of participation at different size standards;
- The effect of these proposed size standards or other alternative size standards on business firms within these industries;
- The prospect of significant new entrants into these industries in response to this program; and
- The impact of higher size standards on smaller-sized businesses.

Compliance with Regulatory Flexibility Act, Executive Orders 12291, 12612, and 12778, and the Paperwork Reduction Act

General

SBA considers that this proposed rule will have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq*). In addition, this proposed rule constitutes a major rule for the purpose of Executive Order 12291. Immediately below SBA has set forth a summary regulatory impact analysis and an initial regulatory flexibility analysis of this proposed rule.

(1) Description of Entities to Which the Rule Applies

SBA estimates that an additional 22,000 firms will be considered small if this rule were to become final. These firms would become eligible to seek assistance offered by SBA's programs, provided they meet other program requirements. Many of these concerns probably had small business status in 1984, when the last comprehensive revision of size standards was issued by SBA, but since have lost eligibility because of general price increases. The current changes, in fact, operate roughly as adjustments for price changes (inflation) since that date but also streamline the size standards table. Over 11,000 of the firms gaining eligibility operate in retail trade while approximately 9,000 operate in the services industries (Divisions G and I, respectively, of the SIC system of classifying industries). Other firms affected by this rule include service firms within the agricultural or mining sectors, or firms in those transportation industries with receipt-based size standards. Firms which would become eligible for SBA assistance if this rule were to become final cumulatively generate $95 billion in annual sales. This figure is less than 5 percent of the total sales in those industries with higher size standards. The new size standards would not impose a regulatory burden because they do not regulate or control business behavior.

(2) Description of Potential Benefits of the Rule

Under this proposed rule for SBA's procurement programs, there are no easily quantifiable benefits. However, the additional competition may result in a lower price to the Government for its procurements which have been set aside, but SBA is not able to quantify this benefit. Also, the higher size standards may allow for a limited number of additional procurements now competed on an unrestricted basis to be reserved for small business set-aside or 8(a) contracting. In the 7(a) Loan Program, it is estimated that 250 loans amounting to $100 millions would be made to the newly defined small firms.

(3) Description of Potential Costs of the Rule

The changes in size standards as they impact on Government procurement should not add any element of cost to the Government and, in fact, as described above may reduce the cost to the procuring Federal agency. Similarly, the rule should not result in any extra costs with respect to the 7(a) Loan Program. The amount of lending authority SBA can make or guarantee is established by appropriation.

The competitive effects of size standards revisions differ from those normally associated with regulations affecting key economic factors such as the price of goods and services, costs, profits, growth, innovation, mergers, and foreign trade. The change to size standards is not anticipated to have any appreciable effect on any of these factors, although smaller-sized businesses or 8(a) firms may be unsuccessful in competing for some Federal procurement opportunities because of the presence of the larger, newly defined small businesses; some of which will be more competitive in winning Federal procurements.

(4) Description of the Potential Net Benefits from the Rule

From the above discussion, SBA believes that, because the potential costs of this proposed rule are minimal, the potential net benefits would approach fairly closely the potential benefits. The impact of the new size standard will appear predominantly in the Federal procurement area.

(5) Description of Reasons Why This Action is Being Taken and Objectives of Rule

SBA has provided above a statement of the reasons why the new size standards are proposed and a statement of the reasons for and objectives of this proposal.

(6) Legal Basis for Proposed Rule

The legal basis for the proposal is sections 3(a) and 5(b) of the Small

Businesses Act, 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c).

(7) Federal Rules

There are no Federal rules which duplicate, overlap or conflict with this proposed rule. SBA has statutorily been given exclusive jurisdiction in establishing size standards.

(8) Significant Alternatives to Proposed Rule

This proposed rule will establish the most appropriate individual size standard by which to define those small businesses that are eligible for SBA's assistance programs. There are no significant alternatives to defining a small business.

SBA certifies that this proposed rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612. SBA further certifies that this proposed rule will not add any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C., chapter 35. For purposes of Executive Order 12778, SBA certifies that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small business.

Accordingly, part 121 of 13 CFR is amended as follows:

PART 121—[AMENDED]

1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c).

2. Section 121.601 is amended by revising the heading to the table of "Size Standards by SIC Industry" and Division A, B, E, G, H, and I to read as follows:

SIZE STANDARDS BY SIC INDUSTRY

[For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $5.0 million in annual receipts]

SIC (* = new SIC code in 1987, not used in 1972)	Description (N.E.C. = not elsewhere classified)	Size standards in number of employees or millions of dollars
	Division A—Agriculture	
	Major Group 01—Agricultural Production—Crops	
0111	Wheat	$0.5
0112	Rice	$0.5
0115	Corn	$0.5
0116	Soybeans	$0.5
0119	Cash Grains, N.E.C.	$0.5
0131	Cotton	$0.5
0132	Tobacco	$0.5
0133	Sugarcane and Sugar Beets	$0.5
0134	Irish Potatoes	$0.5
0139	Field Crops, Except Cash Grains, N.E.C.	$0.5
0161	Vegetables and Melons	$0.5
0171	Berry Crops	$0.5
0172	Grapes	$0.5
0173	Tree Nuts	$0.5
0174	Citrus Fruits	$0.5
0175	Deciduous Tree Fruits	$0.5
0179	Fruits and Tree Nuts, N.E.C.	$0.5
0181	Ornamental Floriculture Nursery Products	$0.5
0182	Food Crops Grown Under Cover	$0.5
0191	General Farms, Primarily Crop	$0.5
	Major Group 02—Livestock and Animal Specialties	
0211	Beef Cattle Feedlots (Custom)	$5.0
0212	Beef Cattle, Except Feedlots	$0.5
0213	Hogs	$0.5
0214	Sheep and Goats	$0.5
0219	General Livestock, Except Dairy and Poultry	$0.5
0241	Dairy Farms	$0.5
0251	Broiler, Fryer, and Roaster Chickens	$0.5
0252	Chicken Eggs	$10.0
0253	Turkeys and Turkey Eggs	$0.5
0254	Poultry Hatcheries	$0.5
0259	Poultry and Eggs, N.E.C.	$0.5
0271	Fur-Bearing Animals and Rabbits	$0.5
0272	Horses and Other Equines	$0.5
0273	Animal Aquaculture	$0.5
0279	Animal Specialties, N.E.C.	$0.5
0291	General Farms, Primarily Livestock and Animal Specialities	$0.5

SIZE STANDARDS BY SIC INDUSTRY—Continued

[For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $5.0 million in annual receipts]

SIC (* = new SIC code in 1987, not used in 1972)	Description (N.E.C. = not elsewhere classified)	Size standards in number of employees or millions of dollars
	Major Group 07—Agricultural Services	
0711	Soil Preparation Services	$5.0
0721	Crop Planting, Cultivating, and Protecting	$5.0
0722	Crop Harvesting, Primarily by Machine	$5.0
0723	Crop Preparation Service for Market, Except Cotton Ginning	$5.0
0724	Cotton Ginning	$5.0
0741	Veterinary Services for Livestock	$5.0
0742	Veterinary Services for Animal Specialties	$5.0
0751	Livestock Services, Except Veterinary	$5.0
0752	Animal Specialty Services, Except Veterinary	$5.0
0761	Farm Labor Contractors and Crew Leaders	$5.0
0762	Farm Management Services	$5.0
0781	Landscape Counseling and Planning	$5.0
0782	Lawn and Garden Services	$5.0
0783	Ornamental Shrub and Tree Services	$5.0
	Major Group 08—Forestry	
0811	Timber Tracts	$5.0
0831	Forest Nurseries and Gathering of Forest Products	$5.0
0851	Forestry Services	$5.0
	Major Group 09—Fishing, Hunting, and Trapping	
0912	Finfish	$5.0
0913	Shellfish	$5.0
0919	Miscellaneous Marine Products	$5.0
0921	Fish Hatcheries and Preserves	$5.0
0971	Hunting and Trapping, and Game Propagation	$5.0
	Division B—Mining	
	Major Group 10—Metal Mining	
1011	Iron Ores	500
1021	Copper Ores	500
1031	Lead and Zinc Ores	500
1041	Gold Ores	500
1044	Silver Ores	500
1061	Ferroalloy Ores, Except Vanadium	500
1081	Metal Mining Services	$5.0
1094	Uranium-Radium-Vanadium Ores	500
1099	Miscellaneous Metal Ores, N.E.C.	500
	Major Group 12—Coal Mining	
1221*	Bituminous Coal and Lignite Surface Mining	500
1222*	Bituminous Coal Underground Mining	500
1231*	Anthracite Mining	500
1241*	Coal Mining Services	$5.0
	Major Group 13—Oil and Gas Extraction	
1311	Crude Petroleum and Natural Gas	500
1321	Natural Gas Liquids	500
1381	Drilling Oil and Gas Wells	500
1382	Oil and Gas Field Exploration Services	$5.0
1389	Oil and Gas Field Services, N.E.C.	$5.0
	Major Group 14—Mining and Quarrying of Nonmetallic Minerals, Except Fuels	
1411	Dimension Stone	500
1422	Crushed and Broken Limestone	500
1423	Crushed and Broken Granite	500
1429	Crushed and Broken Stone, N.E.C.	500
1442	Construction Sand and Gravel	500

SIZE STANDARDS BY SIC INDUSTRY—Continued

[For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $5.0 million in annual receipts]

SIC (* = new SIC code in 1987, not used in 1972)	Description (N.E.C. = not elsewhere classified)	Size standards in number of employees or millions of dollars
1446	Industrial Sand	500
1455	Kaolin and Ball Clay	500
1459	Clay, Ceramic, and Refractory Minerals, N.E.C.	500
1474	Potash, Soda, and Borate Minerals	500
1475	Phosphate Rock	500
1479	Chemical and Fertilizer Mineral Mining, N.E.C.	500
1481	Nonmetallic Minerals Services, Except Fuels	$5.0
1499	Miscellaneous Nonmetallic Minerals, Except Fuels	500
	Division E—Transportation, Communications, Electric, Gas, and Sanitary Services	
	Major Group 40—Railroad Transportation	
4011	Railroads, Line-Haul Operating	1,500
4013	Railroad Switching and Terminal Establishments	500
	Major Group 41—Local and Suburban Transit and Interurban Highway Passenger Transportation	
4111	Local and Suburban Transit	$5.0
4119	Local Passenger Transportation, N.E.C.	$5.0
4121	Taxicabs	$5.0
4131	Intercity and Rural Bus Transportation	$5.0
4141	Local Bus Charter Service	$5.0
4142	Bus Charter Service, Except Local	$5.0
4151	School Buses	$5.0
4173*	Terminal and Service Facilities for Motor Vehicle Passenger Transportation	$5.0
	Major Group 42—Motor Freight Transportation and Warehousing	
4212	Local Trucking Without Storage	$18.0
4213	Trucking, Except Local	$18.0
4214	Local Trucking With Storage	$18.0
4215*	Courier Services, Except by Air	$18.0
4221	Farm Product Warehousing and Storage	$18.0
4222	Refrigerated Warehousing and Storage	$18.0
4225	General Warehousing and Storage	$18.0
4226	Special Warehousing and Storage, N.E.C.	$18.0
4231	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation	$5.0
	Major Group 44—Water Transportation	
4412	Deep Sea Foreign Transportation of Freight	500
4424*	Deep Sea Domestic Transportation of Freight	500
4432*	Freight Transportation on the Great Lakes—St. Lawrence Seaway	500
4449*	Water Transportation of Freight, N.E.C.	500
4481*	Deep Sea Transportation of Passengers, Except by Ferry	500
4482*	Ferries	500
4489*	Water Transportation of Passengers, N.E.C.	500
4491*	Marine Cargo Handling	$18.0
4492*	Towing and Tugboat Services	$5.0
4493*	Marinas	$5.0
4499*	Water Transportation Services, N.E.C.	$5.0
	Major Group 45—Transportation by Air	
4512*	Air Transportation, Scheduled	1,500
4513*	Air Courier Services	1,500
4522	Air Transportation, Nonscheduled	1,500
4581*	Airports, Flying Fields, and Airport Terminal Services	$5.0
	Major Group 46—Pipelines, Except Natural Gas	
4612	Crude Petroleum Pipelines	1,500
4613	Refined Petroleum Pipelines	1,500
4619	Pipelines, N.E.C.	$25.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

[For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $5.0 million in annual receipts]

SIC (* = new SIC code in 1987, not used in 1972)	Description (N.E.C. = not elsewhere classified)	Size standards in number of employees or millions of dollars
	Major Group 47—Transportation Services	
4724*	Travel Agencies	$5.0
4725*	Tour Operators	$5.0
4729	Arrangement of Passenger Transportation, N.E.C.	$5.0
4731*	Arrangement of Transportation of Freight and Cargo	$18.0
4741*	Rental of Railroad Cars	$5.0
4783	Packing and Crating	$18.0
4785*	Fixed Facilities and Inspection and Weighing Services for Motor Vehicle Transportation	$5.0
4789	Transportation Services, N.E.C.	$5.0
	Major Group 48—Communications	
4812*	Radiotelephone Communications	1,500
4813*	Telephone Communications, Except Radiotelephone	1,500
4822	Telegraph and Other Message Communications	$5.0
4832	Radio Broadcasting Stations	$5.0
4833	Television Broadcasting Stations	$10.0
4841*	Cable and Other Pay Television Services	$10.0
4899	Communications Services, N.E.C.	$10.0
	Major Group 49—Electric, Gas, and Sanitary Services	
4911	Electric Services	(1 4,000,000)
4922	Natural Gas Transmission	$5.0
4923	Gas Transmission and Distribution	$5.0
4924	Natural Gas Distribution	500
4925	Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution	$5.0
4931	Electric and Other Services Combined	$5.0
4932	Gas and Other Services Combined	$5.0
4939	Combination Utilities, N.E.C.	$5.0
4941	Water Supply	$5.0
4952	Sewerage Systems	$5.0
4953	Refuse Systems	$6.0
4959	Sanitary Services, N.E.C.	$5.0
4961	Steam and Air-Conditioning Supply	$10.0
4971	Irrigation Systems	$5.0
	Division G—Retail Trade[2]	
	Major Group 52—Building Materials, Hardware, Garden Supply, and Mobile Home Dealers	
5211	Lumber and Other Building Materials Dealers	$5.0
5231	Paint, Glass, and Wallpaper Stores	$5.0
5251	Hardware Stores	$5.0
5261	Retail Nurseries, Lawn and Garden Supply Stores	$5.0
5271	Mobile Home Dealers	$10.0
	Major Group 53—General Merchandise Stores	
5311	Department Stores	$18.0
5331	Variety Stores	$10.0
5399	Miscellaneous General Merchandise Stores	$5.0
	Major Group 54—Food Stores	
5411	Grocery Stores	$18.0
5421*	Meat and Fish (Seafood) Markets, Including Freezer Provisioners	$5.0
5431	Fruit and Vegetable Markets	$5.0
5441	Candy, Nut, and Confectionery Stores	$5.0
5451	Dairy Products Stores	$5.0
5461*	Retail Bakeries	$5.0
5499	Miscellaneous Food Stores	$5.0
	Major Group 55—Automotive Dealers and Gasoline Service Stations	
5511	Motor Vehicle Dealers (New and Used)	$18.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

[For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $5.0 million in annual receipts]

SIC (* = new SIC code in 1987, not used in 1972)	Description (N.E.C. = not elsewhere classified)	Size standards in number of employees or millions of dollars
5521	Motor Vehicle Dealers (Used Only)	$18.0
5531	Auto and Home Supply Stores	$5.0
5541	Gasoline Service Stations	$5.0
5551	Boat Dealers	$5.0
5561	Recreational Vehicle Dealers	$5.0
5571	Motorcycle Dealers	$5.0
5599	Automotive Dealers, N.E.C.	$5.0
	Major Group 56—Apparel and Accessory Stores	
5611	Men's and Boys' Clothing and Accessory Stores	$5.0
5621	Women's Clothing Stores	$5.0
5632*	Women's Accessory and Specialty Stores	$5.0
5641	Children's and Infants' Wear Stores	$5.0
5651	Family Clothing Stores	$5.0
5661	Shoe Stores	$5.0
5699	Miscellaneous Apparel and Accessory Stores	$5.0
	Major Group 57—Home Furniture, Furnishings, and Equipment Stores	
5712	Furniture Stores	$5.0
5713	Floor Covering Stores	$5.0
5714	Drapery, Curtain, and Upholstery Stores	$5.0
5719	Miscellaneous Homefurnishings Stores	$5.0
5722	Household Appliance Stores	$5.0
5731*	Radio, Television, and Consumer Electronics Stores	$5.0
5734*	Computer and Computer Software Stores	$5.0
5735*	Record and Prerecorded Tape Stores	$5.0
5736*	Musical Instrument Stores	$5.0
	Major Group 58—Eating and Drinking Places	
5812	Eating Places, Except Food Service, Institutional	$5.0
5812	Food Service, Institutional	$18.0
5813	Drinking Places (Alcoholic Beverages)	$5.0
	Major Group 59—Miscellaneous Retail	
5912	Drug Stores and Proprietary Stores	$5.0
5921	Liquor Stores	$5.0
5932*	Used Merchandise Stores	$5.0
5941	Sporting Goods Stores and Bicycle Shops	$5.0
5942	Book Stores	$5.0
5943	Stationery Stores	$5.0
5944	Jewelry Stores	$5.0
5945	Hobby, Toy, and Game Shops	$5.0
5946	Camera and Photographic Supply Stores	$5.0
5947	Gift, Novelty, and Souvenir Shops	$5.0
5948	Luggage and Leather Goods Stores	$5.0
5949	Sewing, Needlework, and Piece Goods Stores	$5.0
5961	Catalog and Mail-Order Houses	$18.0
5962	Automatic Merchandising Machine Operators	$5.0
5963	Direct Selling Establishments	$5.0
5983	Fuel Oil Dealers	$10.0
5984	Liquefied Petroleum Gas (Bottled Gas) Dealers	$5.0
5989*	Fuel Dealers, N.E.C.	$5.0
5992	Florists	$5.0
5993	Tobacco Stores and Stands	$5.0
5994	News Dealers and Newsstands	$5.0
5995*	Optical Goods Stores	$5.0
5999	Miscellaneous Retail Stores, N.E.C.	$5.0
	Division H—Finance, Insurance, and Real Estate	
	Major Group 60—Depository Institutions	
6021*	National Commercial Banks	$100,000,000

SIZE STANDARDS BY SIC INDUSTRY—Continued

[For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $5.0 million in annual receipts]

SIC (* = new SIC code in 1987, not used in 1972)	Description (N.E.C. = not elsewhere classified)	Size standards in number of employees or millions of dollars
6022	State Commercial Banks	$100,000,000
6029*	Commercial Banks, N.E.C.	$100,000,000
6035*	Savings Institutions, Federally Chartered	$100,000,000
6036*	Savings Institutions, Not Federally Chartered	$100,000,000
6061	Credit Unions, Federally Chartered	$100,000,000
6062	Credit Unions, Not Federally Chartered	$100,000,000
6081	Branches and Agencies of Foreign Banks	$100,000,000
6082	Foreign Trade and International Banks	$100,000,000
6091	Nondeposit Trust Facilities	$5.0
6099	Functions Related to Depositor Banking, N.E.C.	$5.0
	Major Group 61—Nondepository Institution	
6141	Personal Credit Institutions	$5.0
6153	Short-Term Business Credit Institutions, Except Agriculture	$5.0
6159	Miscellaneous Business Credit Institutions	$5.0
6162	Mortgage Bankers and Loan Correspondents	$5.0
6163	Loan Brokers	$5.0
	Major Group 62—Security and Commodity Brokers, Dealers, Exchanges and Services	
6211	Security Brokers, Dealers and Flotation Companies	$5.0
6221	Commodity Contracts Brokers and Dealers	$5.0
6231	Security and Commodity Exchanges	$5.0
6282	Investment Advice	$5.0
6289	Services Allied With the Exchange of Securities or Commodities, N.E.C.	$5.0
	Major Group 63—Insurance Carriers	
6311	Life Insurance	$5.0
6321	Accident and Health Insurance	$5.0
6324	Hospital and Medical Service Plans	$5.0
6331	Fire, Marine, and Casualty Insurance	1,500
6351	Surety Insurance	$5.0
6361	Title Insurance	$5.0
6371	Pension, Health and Welfare Funds	$5.0
6399	Insurance Carriers, N.E.C.	$5.0
	Major Group 64—Insurance Agents, Brokers, and Service	
6411	Insurance Agents, Brokers, and Service	$5.0
	Major Group 65—Real Estate	
6512	Operators of Nonresidential Buildings	$5.0
6513	Operators of Apartment Buildings	$5.0
6514	Operators of Dwellings Other Than Apartment Buildings	$5.0
6515	Operators of Residential Mobile Home Sites	$5.0
	Leasing of Building Space to Federal Government by Owners	$18.0
6517	Lessors of Railroad Property	$5.0
6519	Lessors of Real Property, N.E.C.	$5.0
6531	Real Estate Agents and Managers	$5.0
6541	Title Abstract Offices	$5.0
6552	Land Subdividers and Developers, Except Cemeteries	$5.0
6353	Cemetery Subdividers and Developers	$5.0
	Major Group 67—Holding and Other Investment Offices	
6712	Offices of Bank Holding Companies	$5.0
6719	Offices of Holding Companies, N.E.C.	$5.0
6722	Management Investment Offices, Open-End	$5.0
6726	Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices.	$5.0
6732	Educational, Religious, and Charitable Trusts	$5.0
6733	Trusts, Except Educational, Religious, and Charitable	$5.0
6792	Oil Royalty Traders	$5.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

[For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System the size standard is $5.0 million in annual receipts]

SIC (* = new SIC code in 1987, not used in 1972)	Description (N.E.C. = not elsewhere classified)	Size standards in number of employees or millions of dollars
6794	Patent Owners and Lessors	$5.0
6798	Real Estate Investment Trusts	$5.0
6799	Investors, N.E.C.	$5.0
	Division I—Services	
	Major Group 70—Hotels, Rooming Houses, Camps, and Other Lodging Places	
7011	Hotels and Motels	$5.0
7021	Rooming and Boarding Houses	$5.0
7032	Sporting and Recreational Camps	$5.0
7033	Recreational Vehicle Parks and Campsites	$5.0
7041	Organization Hotels and Lodging Houses, on Membership Basis	$5.0
	Major Group 72—Personal Services	
7211	Power Laundries, Family and Commercial	$10.0
7212	Garment Pressing, and Agents for Laundries and Drycleaners	$5.0
7213	Linen Supply	10.0
7215	Coin-Operated Laundries and Drycleaning	$5.0
7216	Drycleaning Plants, Except Rug Cleaning	$5.0
7217	Carpet and Upholstery Cleaning	$5.0
7218	Industrial Launderers	$10.0
7219	Laundry and Garmet Services, N.E.C.	$5.0
7221	Photographic Studios, Portrait	$5.0
7231	Beauty Shops	$5.0
7241	Barber Shops	$5.0
7251	Shoe Repair Shops and Shoeshine Parlors	$5.0
7261	Funeral Service and Crematories	$5.0
7291*	Tax Return Preparation Services	$5.0
7299	Miscellaneous Personal Services, N.E.C.	$5.0
	Major Group 73—Business Services	
7311	Advertising Agencies	$5.0
7312	Outdoor Advertising Services	$5.0
7313	Radio, Television, and Publishers' Advertising Representatives	$5.0
7319	Advertising, N.E.C.	$5.0
7322*	Adjustment and Collection Services	$5.0
7323*	Credit Reporting Services	$5.0
7331	Direct Mail Advertising Services	$5.0
7334*	Photocopying and Duplicating Services	$5.0
7335*	Commercial Photography	$5.0
7336*	Commercial Art and Graphic Design	$5.0
7338*	Secretarial and Court Reporting Services	$5.0
7342	Disinfecting and Pest Control Services	$5.0
7349	Building Cleaning and Maintenance Services, N.E.C.	$10.0
7352*	Medical Equipment Rental and Leasing	$5.0
7353*	Heavy Construction Equipment Rental and Leasing	$5.0
7359*	Equipment Rental and Leasing, N.E.C.	$5.0
7361	Employment Agencies	$5.0
7363*	Help Supply Services	$5.0
7371*	Computer Programming Services	$18.0
7372	Prepackaged Software	$18.0
7373*	Computer Intergrated Systems Design	$18.0
7374	Computer Processing and Data Preparation and Processing Services	$18.0
7375*	Information Retrieval Services	$18.0
7376*	Computer Facilities Management Services	$18.0
7377*	Computer Rental and Leasing	$18.0
7378*	Computer Maintenance and Repair	$18.0
7379	Computer Related Services, N.E.C.	$18.0
7381*	Detective, Guard, and Armored Car Services	$10.0
7382*	Security Systems Services	$10.0
7383*	News Syndicates	$5.0
7384*	Photofinishing Laboratories	$5.0
7389*	Business Services, N.E.C.	$5.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

[For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $5.0 million in annual receipts]

SIC (* = new SIC code in 1987, not used in 1972)	Description (N.E.C. = not elsewhere classified)	Size standards in number of employees or millions of dollars
	Major Group 75—Automotive Repair, Services, and Parking	
7513	Truck Rental and Leasing, Without Drivers	$18.0
7514*	Passenger Car Rental	$18.0
7515*	Passenger Car Leasing	$18.0
7519	Utility Trailer and Recreational Vehicle Rental	$5.0
7521*	Automobile Parking	$5.0
7532*	Top, Body, and Upholstery Repair Shops and Paint Shops	$5.0
7533*	Automotive Exhaust System Repair Shops	$5.0
7534	Tire Retreading and Repair Shops	$10.0
7536*	Automotive Glass Replacement Shops	$5.0
7537*	Automotive Transmission Repair Shops	$5.0
7538	General Automotive Repair Shops	$5.0
7539	Automotive Repair Shops, N.E.C.	$5.0
7542	Carwashes	$5.0
7549	Automotive Services, Except Repair and Carwashes	$5.0
	Major Group 76—Miscellaneous Repair Services	
7622	Radio and Television Repair Shops	$5.0
7623	Refrigeration and Air-Conditioning Service and Repair Shops	$5.0
7629	Electrical and Electronic Repair Shops, N.E.C.	$5.0
7631	Watch, Clock, and Jewelry Repair	$5.0
7641	Reupholstery and Furniture Repair	$5.0
7692	Welding Repair	$5.0
7694	Armature Rewinding Shops	$5.0
7699	Repair Shops and Related Services, N.E.C.	$5.0
	Major Group 78—Motion Pictures	
7812*	Motion Picture and Video Tape Production	$18.0
7819	Services Allied to Motion Picture Production	$18.0
7822*	Motion Picture and Video Tape Distribution	$18.0
7829	Services Allied to Motion Picture Distribution	$5.0
7832	Motion Picture Theaters, Except Drive-In	$5.0
7833	Drive-In Motion Picture Theaters	$5.0
7841*	Video Tape Rental	$5.0
	Major Group 79—Amusement and Recreation Services	
7911	Dance Studios, Schools, and Halls	$5.0
7922	Theatrical Producers (Except Motion Picture) and Miscellaneous Theatrical Services	$5.0
7929	Bands, Orchestras, Actors, and Other Entertainers and Entertainment Groups	$5.0
7933	Bowling Centers	$5.0
7941	Professional Sports Clubs and Promoters	$5.0
7991*	Physical Fitness Facilities	$5.0
7993	Coin-Operated Amusement Devices	$5.0
7996	Amusement Parks	$5.0
7997	Membership Sports and Recreation Clubs	$5.0
7999	Amusement and Recreation Services, N.E.C.	$5.0
	Major Group 80—Health Services	
8011	Offices and Clinics of Doctors of Medicine	$5.0
8021	Offices and Clinics of Dentists	$5.0
8031	Offices and Clinics of Doctors of Osteopathy	$5.0
8041	Offices and Clinics of Chiropractors	$5.0
8042	Offices and Clinics of Optometrists	$5.0
8043*	Offices and Clinics of Podiatrists	$5.0
8049	Offices and Clinics of Health Practitioners, N.E.C.	$5.0
8051	Skilled Nursing Care Facilities	$5.0
8052*	Intermediate Care Facilities	$5.0
8059	Nursing and Personal Care Facilities N.E.C.	$5.0
8062	General Medical and Surgical Hospitals	$5.0
8063	Psychiatric Hospitals	$5.0
8069	Specialty Hospitals, Except Psychiatric	$5.0
8071	Medical Laboratories	$5.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

[For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $5.0 million in annual receipts]

SIC (* = new SIC code in 1987, not used in 1972)	Description (N.E.C. = not elsewhere classified)	Size standards in number of employees or millions of dollars
8072	Dental Laboratories	$5.0
8082*	Home Health Care Services	$5.0
8092*	Kidney Dialysis Centers	$5.0
8093*	Specialty Outpatient Facilities, N.E.C.	$5.0
8099*	Health and Allied Services, N.E.C.	$5.0
	Major Group 81—Legal Services	
8111	Legal Services	$5.0
	Major Group 82—Educational Services	
8211	Elementary and Secondary Schools	$5.0
8221	Colleges, Universities, and Professional Schools	$5.0
8222	Junior Colleges and Technical Institutes	$5.0
8231	Libraries	$5.0
8243	Data Processing Schools	$5.0
8244	Business and Secretarial Schools	$5.0
8249	Vocational Schools, N.E.C.	$5.0
8299	Schools and Educational Services, N.E.C.	$5.0
8299	Flight Training Services	$18.0
	Major Group 83—Social Services	
8322*	Individual and Family Social Services	$5.0
8331	Job Training and Vocational Rehabilitation Services	$5.0
8351	Child Day Care Services	$5.0
8361	Residential Care	$5.0
8399	Social Services, N.E.C.	$5.0
	Major Group 84—Museums, Art Galleries, and Botanical and Zoological Gardens	
8412*	Museums and Art Galleries	$5.0
8422*	Arboreta and Botanical or Zoological Gardens	$5.0
	Major Group 86—Membership Organizations	
8611	Business Associations	$5.0
8621	Professional Membership Organizations	$5.0
8631	Labor Unions and Similar Labor Organizations	$5.0
8641	Civic, Social, and Fraternal Associations	$5.0
8651	Political Organizations	$5.0
8661	Religious Organizations	$5.0
8699	Membership Organizations, N.E.C.	$5.0
	Major Group 87—Engineering, Accounting, Research, Management, and Related Services	
8711*	Engineering Services:	
	Military and Aerospace Equipment and Military Weapons and Contracts and Subcontracts for Engineering Services awarded under the National Energy Policy Act of 1992.	$13.5
	Marine Engineering and Naval Architecture	$9.0
	Other Engineering Services	$2.5
8712*	Architectural Services (Other Than Naval)	$2.5
8713*	Surveying Services	$2.5
8721*	Accounting, Auditing, and Bookkeeping Services	$5.0
8731*	Commercial Physical and Biological Research:	
	Aircraft	1,500
	Aircraft Parts, and Auxiliary Equipment, and Aircraft Engines and Engine Parts	1,000
	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts.	1,000
	Other Commercial Physical and Biological Research	500
8732*	Commercial Economic, Sociological, and Educational Research	$5.0
8733*	Noncommercial Research Organizations	$5.0
8734*	Testing Laboratories	$5.0
8741*	Management Services	$5.0
8742*	Management Consulting Services	$5.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

[For all industries not specifically listed in this table, except for those in Divisions I and J of the SIC System, the size standard is $5.0 million in annual receipts]

SIC (* = new SIC code in 1987, not used in 1972)	Description (N.E.C. = not elsewhere classified)	Size standards in number of employees or millions of dollars
8743*	Public Relations Services	$5.0
8744*	Facilities Support Management Services	$5.0
	Base Maintenance	$18.0
8748*	Business Consulting Services, N.E.C.	$5.0
	Major Group 89—Services, Not Elsewhere Classified	
8999	Services, N.E.C.	$5.0

[1] Megawatt hrs.
[2] Not Applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.

3. Section 121.601, Standard Industrial Classification Table, footnote 8 is revised to read as follows:

[8] Offshore Marine Services: The applicable size standard shall be $18.0 million for firms furnishing specific transportation services to a concern engaged in offshore oil and/or natural gas exploration, drilling production, marine research; such services encompass passenger and freight transportation, anchor handling, and related logistical services to and from the work site.

4. Section 121.601, Standard Industrial Classification Table, footnote 12 is revised to read as follows:

[12] SIC code 5599: For retail firms whose principal line of business is the retail sale of aircraft, a $10.0 million size standard shall apply.

5. Section 121.601, Standard Industrial Classification Table, footnote 15 is amended by revising the first sentence to read as follows:

[15] Major Group 65—Leasing of building space to the Federal Government by Owners: For purposes of Government procurement, a size standard of $18.0 million in gross receipts is established for owners of building space that is leased to the Federal Government. The standards for those procurements shall apply to the concern which owns the property and not to those acting as an agent for the owning concern. There is no size standard concerning the agent in a leasing arrangement. * * *

6. Section 121.601, Standard Industrial Classification Table, footnote 16 is revised to read as follows:

[16] Division I—Services: For all industries not specifically listed in this division, the size standard is $5.0 million.

Dated: July 15, 1993.

Erskine B. Bowles,

Administrator, U.S. Small Business Administration.

[FR Doc. 93–21365 Filed 9–1–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–93–14]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received November 1, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No.———, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave. SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on August 26, 1993.

Danvers Long,

Acting Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 27375.

Petitioner: Professional Pilots Federation.

Regulations Affected: 14 CFR 121.383(c).

Description of Rulechange Sought: To modify § 121.383 by repealing subsection (c), thereby negating the present requirement that part 121 air carriers refrain from utilizing pilots who have reached the age of 60 and permitting pilots to operate in that capacity after reaching the age of 60.

Petitioner's Reason for the Request: The petitioner feels that Federal law and policy; operational and regulatory developments since promulgation of the rule in 1960; together with the results of the recent FAA Civil Aeromedical Institute study that found no correlation between increased pilot age and increased accident rates; compel repeal of the rule.

Disposition of Petitions

Docket No.: 25850.

Petitioner: The Aviation Consumer Action Project and Victims of Pan AM Flight 103.

Sections of the FAR Affected: 14 CFR part 108.

Description of Rulechange Sought: To require U.S. air carriers to notify passengers of credible threats to flights and to establish a hotline to supply information about all threats.

Denial, August 10, 1993.

[FR Doc. 93-21394 Filed 9-1-1993-8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 93-AAL-2]

Proposed Modification of Class E Airspace; Kotzebue, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to modify the Class E airspace at Kitzebue, AK. The proposed action would correct the legal description which inadvertently eliminated the Class E extensions during the Terminal Airspace Reconfiguration Amendment No. 71-16. Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "control zone," and airspace designated from the surface for an airport where there is no operating control tower will be Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for instrument flight rules (IFR) operators executing established standard instrument approach procedures (SIAP).

DATES: Comments must be received on or before October 14, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Air Traffic Division, AAL-500, Docket No. 93-AAL-02, 222 West 7th Avenue #14, Anchorage, AK 99513-7587.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Alaskan Region, Third Floor, Module B, Federal Building U.S. Courthouse, 222 West 7th Avenue, Anchorage, AK.

An informal docket may also be examined during normal business hours in the Office of the Manager, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, System Management Branch, AAL-531, Federal Aviation Administration, Module G, 222 West 7th Avenue #14, Anchorage, AK 99513-7587; telephone number: (907) 271-5898.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-AAL-2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at Module G, Federal Building U.S. Courthouse, 222 West 7th Avenue, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, AAL-531, Air Traffic Division, 222 West 7th Avenue #14, Anchorage, AK 99513-7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E airspace at Kotzebue, AK. This amendment would correct the legal description which inadvertently eliminated the control zone extensions during the Terminal Airspace Reconfiguration Amendment No. 71-16. These changes are needed to provide controlled airspace to the surface to contain IFR operations at the airport. Airspace reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "control zone," and airspace designated from the surface, including any arrival extensions, for an airport where there is no operating control tower will be Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the VOR and NDB SIAP's at the Kotzebue Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 in effect as of September 16, 1993. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

AAL AK E2 Kotzebue, AK [Revised]
Kotzebue, Ralph Wien Memorial Airport, AK (lat. 66°53'04"N, long. 162°35'56"W)
Kotzebue VOR/DME (lat. 66°53'08"N, long. 162°32'24"W)
Hotham NDB (lat. 66°54'05"N, long. 162°33'52"W)

Within a 4.3-mile radius of the Ralph Wien Memorial Airport and within 2.6 miles each side of the 039° bearing from the Hotham NDB extending from the 4.3-mile radius to 8.9 miles northeast of the airport and within 2.4 miles each side of the 091° radial from the Kotzebue VOR/DME extending from the 4.3-mile radius to 11.5 miles east of the airport and within 2.4 miles each side of the 278° radial from the Kotzebue VOR/DME extending from the 4.3-mile radius to 10.2 miles west of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory).

* * * * *

Issued in Anchorage, AK, on August 18, 1993.

Henry A. Elias,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 93–21388 Filed 9–1–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 207

[Docket No. 92N–0291]

Drug Listing Compliance Verification Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its drug listing regulations to codify FDA's current practice of periodically sending drug listing information to drug firms (manufacturers, repackers, and private label distributors) with a request that they review, correct, and return it to FDA within 30 days of its receipt. The proposal would help the agency maintain an accurate and complete list of currently marketed drug products.

DATES: Comments by November 1, 1993. FDA proposes that any final rule based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Howard P. Muller, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8049.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) requires a list of all drug products in commercial distribution be provided to the agency. Section 510 of the act (21 U.S.C. 360) requires the owner or operator of every drug establishment engaged in the manufacture, preparation, propagation, compounding, or processing of a drug or drugs to register the establishment with FDA and to submit to the agency a list of its drug products. The act also requires that this list be updated every 6 months (21 U.S.C. 360(j)(2)).

The Drug Listing Branch provides FDA with current information on many drugs in commercial distribution in the United States. Many of the agency's major drug regulatory projects, such as product recalls, depend upon complete and accurate drug listing information. Other Government agencies also use the drug listing information. For example, the Health Care Financing Administration uses the data base to identify reimbursable products for the Medicaid program.

A. Product Listing and Establishment Registration Forms

FDA's regulations in 21 CFR part 207 implement 21 U.S.C. 360. Under 21 CFR 207.21, the owner or operator of an establishment must register the establishment within 5 days of entering into the manufacture or processing of a drug product and must list every drug product in commercial distribution. The establishment must use Form FDA–2656 for the initial registration, listing such information as its business name and address, and the type of ownership or operation (see 21 CFR 207.22 and 207.25). FDA then assigns an establishment registration number. In addition, each establishment is required to submit a list of drugs, including bulk drug substances, on Form FDA–2657 and to update this list each June and December (see 21 CFR 207.22, 207.25, and 207.30). (If a registered establishment reports on behalf of a private label distributor, 21 CFR 207.20 requires the use of Form FDA–2658.) Forms FDA–2657 and FDA–2658 are used to provide required information on each marketed drug, including: (1) The product trade name, (2) the package size and type, (3) a copy of the labels and package insert, (4) the quantity of an ingredient, and (5) the initial marketing date.

B. Compliance Verification Reports

FDA maintains a computer data base containing the establishment registration and drug product information submitted by drug establishments on Forms FDA–2656, FDA–2657, and FDA–2658. The computer data base has two major components: (1) A registration component containing the files on the registered establishments, and (2) a drug listing component containing drug product information in separate files for prescription, over-the-counter, and bulk drug products.

An internal Government study tested the accuracy of the prescription drug listing files by contacting many drug firms to determine whether the information contained in the data base corresponded to the products actually marketed by the firm. The study uncovered a substantial number of errors, due to a variety of causes. For example, some firms failed to list products or listed products inaccurately. Also, FDA has experienced some data processing problems, which the agency is working to correct.

FDA has a compliance program designed to increase the accuracy of the agency's computerized drug product files. The initial phase of the program is focusing on the prescription drug product file. As part of the compliance program, the agency periodically sends to each drug firm a hard copy printout of the agency's computer drug product files that lists the establishment's prescription drugs as reported on Form FDA–2657 or Form FDA–2658. This printout is known as the "Compliance

Verification Report." FDA attaches to the Compliance Verification Report a letter that asks each establishment to verify or correct the listed information and return it to the agency within 30 days. The letter explains that the drug listing information entered in the Compliance Verification Report will substitute for the corresponding portion of the next required updating of drug listing requirements and will not need to be resubmitted on Form FDA–2657. The letter contains instructions regarding other corrections that must be made on Form FDA–2657 or Form FDA–2658 rather than on the Compliance Verification Report.

II. Explanation of the Proposed Rule

FDA is proposing to amend 21 CFR part 207 to incorporate the Compliance Verification Report into the drug listing regulations. Current § 207.3 would be amended in paragraph (a)(3), § 207.31 would be redesignated as § 207.32, and new § 207.31 would describe the Compliance Verification Report and require that any establishment that receives a Compliance Verification Report review, correct, and return it to FDA within 30 days of its receipt. Information entered into the Compliance Verification Report that would fulfill an information requirement of any subsequent semi-annual drug listing requirement would not need to be resubmitted on Form FDA–2657. Drug products, in commercial distribution, which are not listed on the Compliance Verification Report, must be submitted by the establishment to FDA on a Form FDA–2657 or Form FDA–2658 in accordance with the regulations.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

The agency has carefully considered the economic impact of this proposed rule and has determined that it requires neither a regulatory impact analysis as specified by Executive Order 12291, nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The agency believes that the proposed rule, if finalized, would generate costs that are well below the thresholds that would signify a major rule. Therefore, the proposed rule does not require a regulatory impact analysis.

The proposed rule would revise the current reporting requirements, which will enable FDA to maintain a more accurate data base of drug listing information. Further, the proposed rule would provide a procedure for drug firms to verify, or correct, drug listing information related to their drug products. Much of the information that is entered into the Compliance Verification Report will substitute for current updating information requirements. No new information would be required by the proposed rule.

FDA believes that, if any costs result from the rule, the amount would be comparatively small in relation to the potential benefits. Accordingly, the agency concludes that the proposed rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

V. Paperwork Reduction Act of 1980

All reporting and recordkeeping requirements for the Compliance Verification Report as required by this proposed regulation have been approved by the Office of Management and Budget (OMB) under control number 0910–0045 "Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution."

The Compliance Verification Report does not solicit any new or additional information from drug establishments than is already required and approved under OMB No. 0910–0045. As explained elsewhere in this preamble, the Compliance Verification Report provides establishments with a summary of their marketed products as reflected in FDA files. Establishments are asked to update this information directly on the report, instead of on Form FDA–2657. Any new product information would continue to be listed on Form FDA–2657.

VI. Effective Date

FDA proposes that any final rule based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

VII. Request for Comments

Interested persons may, on or before November 1, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 207

Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 207 be amended as follows:

PART 207—REGISTRATION OF PRODUCERS OF DRUGS AND LISTING OF DRUGS IN COMMERCIAL DISTRIBUTION

1. The authority citation for 21 CFR part 207 continues to read as follows:

Authority: Secs. 301, 501, 502, 505, 506, 507, 510, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 355, 356, 357, 360, 360b, 371, 374); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

§ 207.3 [Amended]

2. Section 207.3 *Definitions* is amended in paragraph (a)(3) by removing "§ 207.31(a)(2)" and adding in its place "§ 207.32(a)(2)".

§ 207.32 [Redesignated from § 207.31]

3. Section 207.31 is redesignated as § 207.32 and new § 207.31 is added to subpart C to read as follows:

§ 207.31 Compliance verification report.

(a) FDA periodically reviews the accuracy of its drug listing files by mailing to drug establishments a Compliance Verification Report, which is a copy of their individual drug listing file. The Compliance Verification Report contains information on some or all of the drug products listed by the establishment.

(b) An establishment that receives a Compliance Verification Report shall review and correct the information in the Compliance Verification Report and return it to FDA within 30 days of its receipt. Information supplied in response to the Compliance Verification Report that fulfills an information requirement under § 207.30 need not be resubmitted on Form FDA–2657.

(c) Establishments that have drug products in commercial distribution, which are not listed on the Compliance Verification Report, shall submit these drug product listings to FDA on Form FDA-2657 (and Form FDA-2658, when reporting for a private label distributor), in accordance with 207.20, 207.21, 207.22, 207.25, and 207.30.

Dated: June 30, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-21245 Filed 8-31-93; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 334

[Docket No. 78N-036L]

RIN 0905-AA06

Laxative Drug Products For Over-The-Counter Human Use; Proposed Amendment to The Tentative Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking to amend the tentative final monograph for over-the-counter (OTC) laxative drug products to include conditions under which docusate salts, i.e., docusate calcium, docusate potassium, and docusate sodium, are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Drug Products (the Panel), public comments on the advance notice of proposed rulemaking that was based on those recommendations, and a comment submitted in response to the tentative final monograph for OTC laxative drug products that was published in the **Federal Register** of January 15, 1985 (50 FR 2124). This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by December 31, 1993. New data by September 2, 1994. Comments on the new data by November 2, 1994. Written comments on the agency's economic impact determination by December 31, 1993.

ADDRESSES: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 21, 1975 (40 FR 12902), FDA published under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC laxative, antidiarrheal, emetic, and antiemetic drug products, together with the recommendations of the Panel, which was the advisory review panel responsible for evaluating data on the active ingredients in these drug classes. The agency's proposed regulation, in the form of a tentative final monograph, for OTC laxative drug products was published in the **Federal Register** of January 15, 1985 (50 FR 2124).

In the advance notice of proposed rulemaking, the Panel recommended that docusate calcium [1], docusate potassium [2], and docusate sodium [3] in the recommended dosages be classified in Category I (generally recognized as safe and effective) as OTC stool softener laxatives (40 FR 12902 at 12912). Subsequently, FDA became aware of information in animal studies implicating docusate sodium as a potential animal teratogen (Refs. 1, 2, and 3), thereby raising questions about the Panel's conclusions and recommendations for these laxative ingredients. Because evaluation of the animal studies had not been completed when FDA published the tentative final monograph on OTC laxative drug products in 1985, the agency did not discuss docusate salts and stated that a separate document would be published to address the status of these ingredients (50 FR 2124 at 2125). The agency has completed its evaluation of these animal studies and is now proposing that these docusate salts are safe and effective for OTC laxative use.

In response to the advance notice of proposed rulemaking, seven manufacturers, one university, and one individual submitted comments concerning docusate salts. These comments are also addressed in this document. Copies of the comments received are on public display in the Dockets Management Branch (address above).

The chemical name for docusate sodium is butanedioic acid, sulfo-, 1,4-bis(2-ethylhexyl)ester, sodium salt (Ref. 4). Docusate calcium, docusate potassium, and docusate sodium are chemically identical, with the exception of the substitution of a calcium or potassium salt for the sodium salt. The agency is unaware of any data demonstrating that the substitution of the calcium or potassium ion for the sodium ion in the docusate formulation would have a significant effect on the biological activity of the docusate anion. The agency believes that any toxicological effects are due to the organic portion of the molecule, and not to the calcium, potassium, or sodium portion.

Oral administration of docusate calcium and docusate sodium has been studied in pregnant rats (Ref. 1). Ingestion of docusate calcium at levels of 1,500 to 2,000 milligrams per kilogram (mg/kg) body weight or docusate sodium at levels of 2,000 mg/kg by pregnant rats throughout gestation days 6 through 15 resulted in increased fetal resorptions and produced significant incidences of fetal malformations, consisting primarily of exencephaly frequently associated with spina bifida and microphthalmia. However, 2,000 mg/kg of docusate calcium was not teratogenic when ingested for shorter periods of time (days 6 to 8, 8 to 10, or 10 to 12) during gestation.

In the same study, gavage dosing of docusate calcium at 750 mg/kg per day (mg/kg/day) during days 6 to 15 of gestation resulted in fetal resorptions and skeletal abnormalities, primarily incomplete ossification of cranial bones. In most instances, mean maternal weight gain was somewhat reduced after gavage doses of 750 mg/kg. Docusate calcium administered by gavage to pregnant rats at 1,000 and 1,500 mg/kg during various 3-day periods of gestation was not teratogenic but did cause fetal resorption and maternal deaths. The data from these teratology studies in the rat support a no-effect level of 500 mg/kg of docusate calcium, which is 100 times the human laxative dose of 300 mg/day.

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[1] The Panel designated this ingredient "dioctyl calcium sulfosuccinate." However, docusate calcium is currently the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1992."

[2] The Panel designated this ingredient "dioctyl potassium sulfosuccinate." However, docusate potassium is currently the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1992."

[3] The Panel designated this ingredient "dioctyl sodium sulfosuccinate." However, docusate sodium is currently the official name for this ingredient in the "USAN and the USP dictionary of drug names, 1992."

A teratology study of docusate calcium in dogs was inconclusive (Ref. 2). Pregnant dogs received 0, 50, or 200 mg/kg of docusate calcium in capsules during gestational days 14 through 30. Fetuses were surgically delivered on the 55th day of gestation and examined for gross external, internal soft tissue, and skeletal malformations. There were some minor fetal skeletal malformations in the 50 mg/kg group. However, because of the lack of good controls, it could not be determined whether these were embryotoxic effects of docusate calcium or reflected normal skeletal variations in this strain. The toxic effects in the 200 mg/kg treated group included resorptions, fetal weight loss, and malformations. However, at this dose, it was not possible to distinguish the teratogenic effects of the docusate calcium from the effects of general maternal toxicity.

A three-generation reproduction dietary exposure study of docusate sodium at levels of 0, 0.5, and 1 percent in the diet was conducted in rats (Ref. 3). Mothers received 0.5 percent (approximately 440 mg/kg/day) or 1 percent (approximately 890 mg/kg/day) of docusate sodium prior to the first mating. Successive generations were divided into two groups: (1) Mothers who were fed docusate sodium continuously, and (2) mothers who stopped receiving docusate sodium 24 hours prior to expected delivery and did not receive any throughout lactation. Pups from group one mothers exhibited decreased mean body weight and increased mortality prior to weaning compared to pups from group two mothers. No malformations were noted among any of the pups. However, because it was not reported whether the births were supervised, it was not possible to rule out the possibility that the mothers ate any deformed pups. No maternal toxicity from docusate sodium was noted. The agency was unable to assign a no-effect level for docusate sodium in this study because preweaning deaths occurred at the lowest dose level tested. The design of the study was inadequate to determine whether docusate sodium was directly or indirectly toxic to pups because the docusate may have altered the taste of the milk, which the pups then refused to drink, or because the mothers were not secreting milk.

The possibility exists in these rat studies that docusate sodium produced teratogenic and reproductive effects in rats by interfering with pantothenic acid by blocking its absorption or perhaps its utilization. Pantothenic acid deficiency in pregnant rats has been associated with resorptions and malformations, most frequently exencephaly and eye malformations. These fetal effects can occur in the absence of obvious signs of toxicity in pregnant rats. A possible mechanism by which docusate calcium and docusate sodium create a deficiency of pantothenic acid has been ascribed to micellar entrapment of pantothenate in the small intestine by high levels of docusate. One unresolved matter, however, was that concentrations of pantothenic acid were not determined in maternal liver or in the fetus, so it was not known if a general deficiency state was created or if the docusate interfered with the cellular activities of pantothenic acid in the fetus.

FDA considered the above data as suggesting that docusate salts were teratogenic in animals, thereby suggestive of possible human effects. Therefore, FDA convened a panel of scientists from other agencies within the Federal government to review the available data, information, and views concerning the teratogenicity and reproductive toxicity of docusate salts. The Dioctyl Sodium Sulfosuccinate Scientific Review Panel (the DSS Panel) issued its report in March 1984 (Ref. 5) with the following conclusions:

(1) Docusate calcium, docusate potassium, and docusate sodium should not be considered potential human teratogens.

(2) The findings of the three-generation reproduction study of docusate sodium in rats (in which treatment was continued through lactation and a significant decrease in pup survival was observed during lactation) provide grounds for concern that should be explored further.

(3) There was no compelling reason to alter the accepted 1,000-fold safety factor (used for teratogens by FDA) based on the data reviewed.

(4) For therapeutic uses of docusate sodium, a safety margin of nearly 120-fold is adequate.

(5) The data suggest that docusate sodium has the potential to produce adverse reproductive effects in the laboratory animals treated with large doses, but it appears the human risk is very low.

The DSS Panel, therefore, recommended conduct of the following studies:

(1) A standard FDA three-generation reproductive study of docusate sodium using rats and mice and including pair-fed and untreated controls.

(2) Additional pharmacokinetics and biotransformation studies of docusate sodium to include a determination of the occurrence of docusate sodium and its metabolites in breast milk.

(3) Continued epidemiologic surveillance of pregnancy outcome in women treated with docusate salts.

Subsequently, FDA amended its proposed requirements to:

(1) Defer the reproduction study in mice, pending completion and evaluation of the reproduction study in rats, (2) delete the pair-fed controls in the reproduction study, and (3) require performance of a pharmacokinetic study if toxic effects in rat pups during lactation were confirmed.

A final report of the rat reproduction study was submitted to the agency as a citizen petition to reopen the administrative record for this rulemaking (Ref. 6). In this study, docusate sodium was administered in the diet to three successive generations of male and female rats with 30 rats per sex per group (30/sex/group) at levels of 0.0, 0.1, 0.5, and 1 percent. The males in the original parental group (F0) were exposed to the diets for at least 10 weeks and the females were exposed for 2 weeks prior to mating that produced the F1 litters. All descendant animals were exposed to the test material in utero, while nursing, continuously from weaning throughout mating, gestation, and lactation. The exceptions were the F3 litters that were sacrificed after weaning and animals from other generations that were culled or not selected for parents of the succeeding generation. The report included summaries and individual data on mean body weight, body weight gain, food consumption, and compound consumption for males and females during the premating phases; group mean and individual body weight and food intake data and compound consumption for females during gestation and lactation; male fertility indices, summary and individual litter data through day 21 of lactation, and gross pathological observations of all adults and the F3 weanlings.

After reviewing these data, the agency concluded that docusate sodium administered in the diet to three successive generations of rats at levels of 0.5 percent and 1 percent caused a reduction in body weights for parental males of all generations and for F1 and F2 females. In addition, the pup weights were lower than those of the controls. There was no evidence of effects on growth or reproductive performance except for the isolated incidence of an increased number of pups born dead (stillbirths) in the F3 litters of the 1 percent group, and some pups in the F2 and F3 litters had suckling problems.

The high percentage (90 percent or greater) of pup survival to weaning in this study might be attributed to the

high quality of the conduct of the study and the analysis of the diet for pantothenic acid content to ensure that the level of the vitamin was optimal. After further evaluation, the agency concluded that the teratogenicity seen in earlier studies of docusate calcium and docusate sodium in this species (Ref. 3) was due specifically to a surfactant induced deficiency of the B vitamin calcium pantothenate.

To address the question of human risk involving use of docusate sodium and a possible pantothenic acid deficiency, the agency examined the literature to determine if there was any evidence of this problem. The agency was unable to find any clinical evidence in the literature that showed pantothenic acid deficiency or possible toxicity problems, even to a moderate degree. The distribution of pantothenic acid in foods is so widespread that an occurrence of a deficiency of the vitamin is probably extremely rare (Refs. 7 and 8). In fact, evidence of dietary deficiency of pantothenic acid alone has not been clinically recognized in man. A deficiency syndrome has been experimentally induced in human volunteers by administration of a metabolic antagonist, omega-methylpantothenic acid, imposed on a pantothenic acid-deficient diet. However, it has been impossible to induce an isolated deficiency of the vitamin in less than at least 9 months on a natural diet alone (Ref. 8). The customary intake of pantothenic acid from ordinary foods in the United States is approximately 5 to 20 mg/day (Ref. 8). The estimated safe and adequate daily dietary intake of pantothenic acid for adults is estimated to be 5 to 10 mg/day (Ref. 8). Therefore, the probability of observing pantothenic acid deficiency in the United States is considered to be extremely low.

A search of the literature from 1985 through 1991 has revealed no articles suggesting teratogenic or reproductive problems associated with docusate salts. Results of epidemiologic surveillance of pregnancy outcome in women treated with docusates have been inconclusive, supporting neither safety nor increased risk of birth defects (Ref. 9).

The usual daily human dose of docusate sodium as a laxative is 50 to 500 mg/day (Ref. 10), which is 1 to 10 mg/kg/day based on the FDA standard of an average adult weight of 50 kg. The no adverse effect level from teratology studies in rats is 500 mg/kg/day; for reproductive toxicity it is about 50 to 150 mg/kg/day. After considering these data, the agency has determined that the human dosages of docusate salts proposed in this tentative final monograph do not pose reproductive or teratological problems and that these ingredients can be generally recognized as safe and effective OTC laxatives. The agency is amending § 334.20 to include docusate salts as stool softener laxatives. In addition to the specific labeling proposed for these ingredients in § 334.62 in this document, docusate salts will also be required to bear the labeling proposed for all laxative drug products in § 334.50 [50 FR 2124 at 2153). Section 334.50 limits use of the product to "relief of occasional constipation" and proposes the following warnings: (1) "Do not use laxative products when abdominal pain, nausea, or vomiting are present unless directed by a doctor," (2) "If you have noticed a sudden change in bowel habits that persists over a period of 2 weeks, consult a doctor before using a laxative," (3) "Laxative products should not be used for a period longer than 1 week unless directed by a doctor," (4) "Rectal bleeding or failure to have a bowel movement after use of a laxative may indicate a serious condition. Discontinue use and consult your doctor," (5) "Do not use this product if you are on a low salt diet unless directed by a doctor" for products containing more than 5 milliequivalents (115 mg) of sodium in the maximum recommended daily dose, and (6) "Do not use this product if you have kidney disease unless directed by a doctor" for products containing more than 25 milliequivalents (975 mg) of potassium in the maximum recommended daily dose. (In the **Federal Register** of April 25, 1991 (56 FR 19222), the agency proposed to amend the general labeling provisions for OTC drug products to provide uniform sodium content labeling for all orally administered OTC drug products. Should that proposed amendment be published as a final rule, any existing requirements relating to sodium labeling in the laxative monograph will be superseded.] The agency believes that the proposed labeling will provide for the safe and effective OTC use of docusate salts. Accordingly, in this amendment to the tentative final monograph for OTC laxative drug products, the agency is proposing that docusate calcium (oral dosage forms), docusate potassium (rectal enema dosage form), and docusate sodium (oral dosage forms) be classified as Category I stool-softener laxative ingredients at the dosages discussed below.

References

(1) Hoechst-Roussel Pharmaceuticals,Inc., "Teratogenic Evaluation of Larger Oral Dosages of Dioctyl Calcium Sulfosuccinate (and Dioctyl Sodium Sulfosuccinate) in the Rat," Experiment 0972–45, OTC Vol. 090043, Docket No. 78N–036L, Dockets Management Branch.

(2) International Research and Development Corp. for Hoechst-Roussel Pharmaceuticals, Inc., "DCS Teratology Study in Beagle Dogs," in the final report of the Dioctyl Sodium Sulfosuccinate Scientific Review Panel, app. 4, Attachment 62, March 1984, Docket No. 84N-0184, Dockets Management Branch.

(3) American Cyanamid Co., "Aerosol OT: Successive Generation Studies in Rats," Report No. 70–239, OTC Vol. 090093, Docket No. 78N–036L, Dockets Management Branch.

(4) "USAN and the USP Dictionary of Drug Names," edited by C. A. Fleeger, United States Pharmacopeial Convention, Inc., Rockville, MD, p. 220, 1992.

(5) Final Report of the Dioctyl Sodium Sulfosuccinate Scientific Review Panel, "Reproductive Toxicity of Dioctyl Sodium and Calcium Sulfosuccinate—A Report to the Acting Commissioner of Food and Drugs," March 1984, Docket No. 84N–0184, Dockets Management Branch.

(6) Comment No. CP6, Docket No. 78N–036L, Dockets Management Branch.

(7) Shils, M. E., and V. R. Young, "Modern Nutrition in Health and Disease," 7th ed., Lea & Febiger, Philadelphia, pp. 383–387, 1988.

(8) Gennaro, A., editor, "Remington's Pharmaceutical Sciences," 18th ed., Mack Publishing Co., Easton, PA, pp. 1016–1017, 1990.

(9) Rosa, F. W., "Birth Defect Diagnoses with First Trimester Docusate Exposures in Michigan Medicaid Data," draft of unpublished study, dated June 2, 1987, in OTC Vol. 090TFM2, Docket No. 78N–036L, Dockets Management Branch.

(10) "USP DI. Drug Information for the Health Care Professional," Vol. I, 13th ed., United States Pharmacopeial Convention, Inc., Washington, pp. 1717–1759, 1993.

I. The Agency's Tentative Conclusions on The Comments

1. One comment requested that the Panel's recommendation in § 334.20(c), which provides for an oral dosage form of docusate sodium, be amended to provide for a rectal dosage form of this ingredient. The comment argued that the Panel provided for a rectal dosage form of docusate potassium in § 334.20(b) and concluded that the calcium, potassium, and sodium docusate salts are safe and effective in the amounts usually taken orally or rectally in laxative drug products (40 FR 12902 at 12912). The comment concluded that the monograph should provide for the same rectal dosage of docusate sodium in § 334.20(c) as present for docusate potassium in § 334.20(b).

The agency has reviewed the Panel's recommendations regarding oral and rectal dosage forms of docusate salts (40 FR 12902 at 12941). The Panel recommended as Category I an oral

dosage for docusate calcium and docusate sodium of 50 to 360 mg daily for adults and children over 12 years of age. For docusate calcium, the Panel recommended an oral dosage of 50 to 150 mg daily for children 2 to 12 years of age, and 25 mg daily for infants under 2 years of age. For docusate sodium, the recommended dosage was 50 to 150 mg daily for children 2 to 12 years of age, and 20 to 25 mg for infants under 2 years of age. The Panel also recommended as Category I a rectal dosage of docusate potassium of 50 to 250 mg daily for adults and children over 12 years of age, and 100 mg daily for children 2 to 12 years of age.

As discussed above, docusate calcium, docusate potassium, and docusate sodium are chemically identical, with the exception of the substitution of a calcium or potassium salt for the sodium salt. The data on the marketed products submitted to the Panel included information only on oral dosage forms for docusate calcium and docusate sodium, and on rectal enema dosage forms for docusate potassium. The agency is unaware of any data demonstrating that the substitution of the calcium or potassium ion for the sodium ion in the docusate formulation would have a significant effect on the biological activity of the docusate anion. The agency is aware of several products in which docusate potassium is marketed in an oral dosage form (Refs. 1 and 2) and no products in which docusate calcium is marketed in a rectal dosage form (Refs. 2 and 3). Although the American Drug Index lists three products in which docusate sodium is marketed in a rectal dosage form (Ref. 3), the manufacturers of these products state that the products are not currently marketed (Refs. 4, 5, and 6). No safety or effectiveness data have been submitted for any of these products and, in addition, no data have been submitted to show that the individual docusate salts are therapeutically equivalent when used interchangeably in oral or rectal dosage forms. Thus, the agency concludes that safety and effectiveness have been established only for the docusate salt dosage forms recommended by the Panel, and these are the only dosage forms being included in this tentative final monograph. Manufacturers of docusate salt products in other dosage forms, as noted above, need to submit data on these products to support the use of the various docusate salts interchangeably in both oral and rectal dosage forms. Such data should address the safety of the docusate salt in the dosage form not included in the monograph and the pharmacologic/therapeutic equivalence of the specific docusate salt(s) in both oral and rectal dosage forms. The agency invites interested persons to submit such data for consideration.

References

(1) "Physicians' Desk Reference forNonprescription Drugs," 14th ed., Medical Economics Data, Montvale, NJ, pp. 668–669, 1993.

(2) Curry, C. E., and D. Tatum-Butler, "Laxative Products" in "Handbook of Nonprescription Drugs," 9th ed., American Pharmaceutical Association, Washington, pp. 343–378, 1990.

(3) Billups, N. F., and S. M. Billups, editors, "American Drug Index," 36th ed., J. B. Lippincott Co., St. Louis, pp. 204–205,1991.

(4) Memorandum of telephone conversation between L. Gilbert, WebconPharmaceuticals, and D. Hernanedz, FDA, dated September 14, 1992, in OTC Vol. 090TFM2, Docket No. 78N–036L, Dockets Management Branch.

(5) Memorandum of telephone conversation between S. Kolakowsky, Carter Products, and D. Hernandez, FDA, dated September 14, 1992, in OTC Vol. 090TFM2, Docket No. 78N–036L, Dockets Management Branch.

(6) Memorandum of telephone conversation between S. Scheindlin, Lemmon Co., and D. Hernandez, FDA, dated September 14, 1992, in OTC Vol. 090TFM2, Docket No. 78N–036L, Dockets Management Branch.

2. Several comments objected to the wording of the drug interaction precaution recommended by the Panel in § 334.62(b), which states: "Do not take this product if you are presently taking a prescription drug or mineral oil." One comment argued that this drug interaction precaution was unnecessarily discriminatory and should be deleted because many food products that are consumed daily contain natural and synthetic emulsifiers, surfactants, and "softening agents" that may cause interactions with oral prescription drugs or mineral oil. Two of the comments argued that unless specific adverse drug interactions can be proven, it is not appropriate to require a general precaution statement. Another comment argued that it would be more useful to the consumer if known specific drugs, such as mineral oil, that interact with stool softeners were listed rather than using a general warning against the use of stool softeners with prescription drugs. Three of the comments urged that the drug interaction precaution in § 334.62(b) be further amended to add the statement "* * * except on the advice of a physician," because doctors often recommend the concomitant use of a laxative product to counteract the constipation problem that may occur with some prescription drugs. One comment further suggested that the negatively worded drug interaction precaution be revised to read, "Consult your physician if you are taking mineral oil," because this positively worded statement would help consumers avoid the chance of a drug interaction.

The agency does not consider the drug interaction precaution statement in § 334.62(b) to be discriminatory because the laxative monograph sets forth conditions for the safe and effective use of ingredients for drug and not food use. Although foods may contain surfactants such as those found in stool softener laxatives, these ingredients are generally present in foods in much lower amounts than in laxatives and, therefore, pose a much lower risk of interaction with drugs.

The Panel suggested a possible interaction between the stool softener ingredients and prescription drugs significant enough to justify a warning and stated that docusate sodium possesses potent detergent properties that may facilitate gastrointestinal or hepatic uptake of other drugs, thereby potentiating their activities (40 FR 12902 at 12912). The agency, however, has been unable to verify that any detrimental interaction occurs. A search of scientific literature reveals no conclusive data or information to substantiate this suggested problem (Refs. 1 through 7). One pilot bioavailability study (Ref. 7) suggested that there is a reduction in tetracycline availability due to docusate sodium, but the results were not statistically significant in this small study. The agency invites any interested person to submit data showing an interaction between docusate salts and any prescription drug for the agency's consideration.

The agency agrees with the Panel that the absorption of mineral oil may be enhanced by docusate sodium and these agents should not be taken concurrently (40 FR 12902 at 12912).

The agency disagrees with the suggestion that the negatively worded drug interaction precaution "Do not take this product if * * *" would be more helpful to consumers if reworded to read, "Consult your physician if * * *," because the key advice is that consumers should not take the drug under certain circumstances. The wording suggested by the comment could easily mislead consumers into thinking that they should take the product first and consult their physician later. The agency agrees, however, that the drug interaction precaution should be expanded to allow concomitant use of stool softeners with mineral oil if

deemed necessary by a doctor. In an effort to make the labeling clearer and easier to understand, the phrase suggested by several comments "* * * except on the advice of a physician" has been simplified and reworded to "* * * unless directed by a doctor." Accordingly, in this tentative final monograph, this drug interaction precaution is revised to read: "Drug interaction precaution: Do not take this product if you are presently taking mineral oil, unless directed by a doctor."

References

(1) Brunton, L. L., "Agents AffectingGastrointestinal Water Flux and Motility, Digestants, and Bile Acids" in "The Pharmacological Basis of Therapeutics, 8th ed., edited by A. G. Gilman, et al., Pergamon Press Co., Inc., New York, pp. 914–932, 1990.

(2) Osol, A., R. Pratt, and A. Gennaro,"The United States Dispensatory," 27th ed., J. B. Lippincott Co., Philadelphia, pp. 438–439, 1973.

(3) Curry, C. E., and D. Tatum-Butler, "Laxative Products" in "Handbook of Nonprescription Drugs," 9th ed., American Pharmaceutical Association, Washington, pp. 343-378, 1990.

(4) "USP DI, Drug Information for the Health Care Professional," Vol. I, 13th ed., United States Pharmacopeial Convention, Inc., Washington, pp. 1717–1759, 1993.

(5) "Drug Evaluations," 6th ed.,American Medical Association, Chicago, p. 982, 1986.

(6) Gennaro, A., editor, "Remington'sPharmaceutical Sciences," 18th ed., Mack Publishing Co., Easton, PA, pp. 1016–1017, 1990.

(7) Shah, V. P., et al., "Influence of Dioctyl Sodium Sulfosuccinate on the Absorption of Tetracycline," Biopharmaceutics and Drug Disposition, 7:27–33, 1986.

3. One comment expressed concern about the Panel's Category I classification of docusate sodium in combination with stimulant laxatives in § 334.32(a), which included as oral dosage forms: (1) Docusate sodium and casanthranol, (2) docusate sodium and danthron, (3) docusate sodium and phenolphthalein, (4) docusate sodium and senna concentrate, and (5) docusate calcium and danthron. The comment cited three references that discuss the potential dangers of such combinations (Refs. 1, 2, and 3). The comment felt that the Panel's report was well-researched, but expressed surprise that these references were not mentioned.

The agency has reviewed the references cited by the comment and notes that they were not reviewed by the Panel. The article by Smith (Ref. 1) deals with possible damage to the myenteric plexus from long-term administration of anthraquinone laxatives and does not address any problems or dangers arising from the administration of combinations of docusate sodium and stimulant laxatives. The other two references (Refs. 2 and 3) both quote the same study in which the oral LD50 for danthron (1,8-dihydroxyanthraquinone) in rats was lowered from over 22 mg/kg when administered alone to 9 mg/kg when administered in combination with an unspecified amount of docusate sodium. The study concludes that this effect can only be due to increased absorption of danthron because the animals died with symptoms of systemic toxicity.

A well-designed, well-controlled study by Case, Smith, and Nelson (Ref. 4) in mice shows considerably higher LD50 values of 7 grams per kilogram (g/kg) for danthron, 2.64 g/kg for docusate sodium, and 3.42 g/kg for a danthron/docusate sodium mixture (1:2 ratio). This study attributes the lower LD50 values cited in the two earlier studies (Refs. 2 and 3) to a typographical error in the original study. Case, Smith, and Nelson point out that the mg/kg values are more logical and in closer agreement with current findings if read in terms of g/kg rather than mg/kg. Case, Smith, and Nelson also conducted a 1-year chronic toxicity study in dogs (Ref. 4). No toxic effects and no evidence of any changes in the myenteric plexus at levels of 15 mg/kg/day of danthron in combination with 30 mg/kg/day of docusate sodium were shown. Because these levels are considerably lower than the g/kg amounts discussed above, the agency concludes that the comment's concerns have been adequately addressed by subsequent reports in the literature.

In January 1987, a leading U. S. pharmaceutical manufacturer informed FDA that it would voluntarily cease manufacture and distribution of products containing danthron. The company's decision was partly in response to published studies in Britain and Japan that strongly suggested that chronic administration of high doses of danthron to rats and mice resulted in the development of intestinal and liver tumors and that danthron is, therefore, potentially a carcinogen in man (Refs. 5 and 6). Danthron, in common with other anthraquinone compounds, has also been shown to exhibit a positive mutagenic effect in some in vitro models (Refs. 7 and 8). FDA subsequently initiated a total recall to the retail-dispensing level of all danthron-containing drug products, by sending a recall letter to all registered drug firms and distributors (Ref. 9). FDA stated that "danthron toxicity in humans has not been specifically demonstrated, but because of potential risk, FDA has requested an immediate halt to all manufacturing, relabeling, repackaging, and further distribution of human drug products containing danthron" (Ref. 10). Accordingly, FDA is not including the combination of docusate sodium and danthron in this tentative final monograph. The other four docusate salt and stimulant laxative combination products mentioned by the comment and recommended as Category I by the Panel are being proposed for inclusion in the monograph in the absence of specific data indicating a safety problem.

References

(1) Smith, B., "Effect of Irritant Purgatives on the Myenteric Plexus in Man and the Mouse," Gut, 9:139–143, 1968.

(2) Smith, B., "The Neuropathology of the Alimentary Tract," The Williams and Wilkins Co., Baltimore, pp. 92–98, 1972.

(3) Godfrey, H., "Dangers of Dioctyl Sodium Sulfosuccinate in Mixtures," Journal of the American Medical Association, 215:643, 1971.

(4) Case, M. T., J. K. Smith, and R. A. Nelson, "Acute Mouse and Chronic Dog Toxicity Studies on Danthron, Dioctyl Sodium Sulfosuccinate, Paloxalkol and Combinations,"Drug and Chemical Toxicology, 1:89–101, 1977.

(5) Mori, H., et al., "Induction ofIntestinal Tumors in Rats by Chrysazin," British Journal of Cancer, 52:781–783, 1985.

(6) Mori, H., et al., "Carcinogenicity of Chrysazin in Large Intestine and Liver of Mice," Japanese Journal of Cancer Research, 77:871–876, 1986.

(7) Brown, J. P., and R. J. Brown, "Mutagenesis by 9,10-Anthraquinone Derivatives and Related Compounds in Salmonella Typhimurium," Mutation Research, 40:203–224, 1976.

(8) Tikkanen, L., T. Matsushima, and S. Natori, "Mutagenicity of Anthraquinones in the Salmonella Preincubation Test," Mutation Research, 116:297–303, 1983.

(9) FDA drug recall letter concerningdanthron-containing drug products, in OTC Vol. 090TFM2, Docket No. 78N–036L, Dockets Management Branch.

(10) FDA press release on danthron drug products, in OTC Vol. 090TFM2, Docket No. 78N–036L, Dockets Management Branch.

4. One comment requested that recommended § 334.32(b)(1) be amended to provide for a combination of docusate sodium and glycerin in a rectal dosage form, in addition to the combination of docusate potassium and glycerin recommended by the Panel. The comment argued that historically docusate sodium is the best-known and most widely used of the docusate salts, that it is pharmaceutically compatible with glycerin, and that it is no less effective and no more toxic than docusate potassium.

The agency is unaware of any data demonstrating that the substitution of the sodium ion for the potassium ion in

the docusate formulation would have a significant effect on the biologic activity of the docusate anion (see comment 1). However, no data have been submitted to support the assumption that the effectiveness of docusate sodium would be comparable to docusate potassium in a combination rectal dosage formulation with glycerin or that the toxicity would not be increased. Therefore, the agency is not including in this tentative final monograph the rectal dosage form combination recommended by the comment. The agency is including in this tentative final monograph the two rectal enema dosage combinations classified by the Panel as Category I: (1) Docusate potassium and glycerin, and (2) docusate potassium and sorbitol.

II. The Agency's Tentative Conclusions and Adoptionof The Panel's Report

A. Summary of Ingredient Categories and Testing of Category II and III Conditions

1. Summary of Ingredient Categories

The agency has reviewed the docusate salt active ingredients submitted to the Panel, as well as other data and information available at this time, and concurs with the Panel's Category I classification of docusate calcium and docusate sodium in oral dosage forms and docusate potassium in a rectal dosage form for use as OTC laxative drug products. As a convenience to the reader, the following list is included as a summary of the Panel's recommendations and the agency's proposed categorization of stool softener active ingredients.

Active ingredient	Panel	Agency
Docusate calcium		
Docusate potassium		
Docusate sodium		

2. Testing of Category II and Category III Conditions

Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any docusate salt condition not included in this tentative final monograph by following the procedures outlined in the agency's policy statement published in the **Federal Register** of September 29, 1981 (46 FR 47740) and clarified April 1, 1983 (48 FR 14050). That policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

B. Summary of the Agency's Changes

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report and recommended monograph conditions for docusate salt ingredients with the changes described in FDA's responses to the comments above and with other changes described in the summary below. A summary of the changes made by the agency follows.

1. The wording of the drug interaction precaution recommended by the Panel in § 334.62(b) has been revised to read: "Drug interaction precaution: Do not take this product if you are presently taking mineral oil, unless directed by a doctor." (See comment 2.)

2. The agency is not including in this tentative final monograph the combinations of docusate calcium or docusate sodium and danthron because of a 1987 recall of all danthron-containing products based on evidence of potential carcinogenicity in humans. (See comment 3.)

3. The Panel recommended dosages for children under 2 years of age for docusate calcium and docusate sodium. The agency, however, in the tentative final monograph for OTC laxative drug products (50 FR 2124 at 2148) proposed that dosages for children under 2 years of age not appear in the OTC labeling because of the concern that constipation in infants may be a sign of a more serious condition that should be properly diagnosed by a doctor. Therefore, dosages for children under 2 years of age for docusate calcium and docusate sodium are being included in this tentative final monograph only under professional labeling.

4. The Panel recommended docusate sodium and senna concentrate as a permitted active ingredient combination (40 FR 12902 at 12921). However, in the tentative final monograph for OTC laxative drug products, the dosages for senna preparations were revised to provide dosages for sennosides A and B only (50 FR 2124 at 2140 and 2141). Therefore, sennosides A and B are being used to describe this combination in this amendment.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC laxative drug products, is a major rule.

In the economic assessment, the agency also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC laxative drug products is not expected to pose such an impact on small businesses. All conditions reviewed by the Panel are proposed for inclusion in the monograph except one condition that was removed from the market in 1987. Only some minor relabeling will be necessary. This will be a one-time expense when the final monograph is issued. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on laxative drug products. Types of impact may include, but are not limited to, costs associated with product testing, relabeling, repackaging, or reformulating. Comments regarding the impact of this rulemaking on OTC laxative drug products should be accompanied by appropriate documentation. Because the agency has not previously invited specific comment on OTC laxative drug products containing docusate salts as active ingredients, a period of 120 days from the date of publication of this proposed rule in the **Federal Register** is being provided for comments and data on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before December 31, 1993, submit to the Dockets Management Branch (address above) written comments, objections, or requests for oral hearing before the

Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before December 31, 1993. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled hearing will be announced in the **Federal Register**.

Interested persons, on or before September 2, 1994, may also submit in writing new data demonstrating safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before November 2, 1994. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47740). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addresssed to the Dockets Management Branch (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only comments and data submitted prior to the closing of the administrative record on November 2, 1994. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner of Food and Drugs finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR part 334

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 334 (as proposed in the **Federal Register** of January 15, 1985, 50 FR 2124) be amended as follows:

PART 334—LAXATIVE DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 334 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 334.20 is amended by adding text to read as follows:

§ 334.20 Stool softener laxative active ingredients.

The active ingredient of the product consists of any of the following when used within the dosage limits established for each ingredient in § 334.62(d):

(a) Docusate calcium.

(b) Docusate potassium.

(c) Docusate sodium.

3. Section 334.30 is amended by adding new paragraphs (i), (j), and (k) to read as follows:

§ 334.30 Permitted combinations of active laxative ingredients.

* * * * *

(i) The following stool softener laxative ingredient may be combined with the following stimulant laxative ingredients provided the combination is labeled according to §§ 334.60 and 334.62:

(1) Docusate sodium identified in § 334.20(c) and casanthranol identified in § 334.18(c)(1).

(2) Docusate sodium identified in § 334.20(c) and phenolphthalein identified in § 334.18(g).

(3) Docusate sodium identified in § 334.20(c) and sennosides A and B identified in § 334.18(h).

(j) The following stool softener laxative ingredient may be combined with the following bulk-forming laxative ingredient provided the combination is labeled according to §§ 34.52 and 334.62: Docusate sodium identified in § 334.20(c) and sodium carboxymethylcellulose identified in § 334.10(b)(2).

(k) The following stool softener laxative ingredient may be combined with the following hyperosmotic laxative ingredients provided the combination is labeled according to §§ 334.54 and 334.62:

(1) Docusate potassium identified in § 334.20(b) and glycerin identified in § 334.12(a).

(2) Docusate potassium identified in § 334.20(b) and sorbitol identified in § 334.12(b).

4. Section 334.62 is amended by adding text to paragraphs (c) and (d) to read as follows:

§ 334.62 Labeling of stool softener laxative drug products.

* * * * *

(c) *Warnings.* In addition to the warnings identified in § 334.50(b), the labeling of the product contains the following statement under the heading "Drug Interaction Precaution": "Do not take this product if you are presently taking mineral oil, unless directed by a doctor."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions."

(1) *For products containing docusate calcium identified in § 334.20(a).* Adults and children 12 years of age and over: oral dosage is 50 to 360 milligrams. Children 2 to under 12 years of age: oral dosage is 50 to 150 milligrams. The dose may be taken as a single daily dose or in divided doses. Children under 2 years of age: consult a doctor.

(2) *For products containing docusate potassium identified in § 334.20(b).* Adults and children 12 years of age and over: rectal enema dosage is 50 to 250 milligrams in a single daily dose. Children 2 to under 12 years of age: rectal enema dosage is 100 milligrams in a single daily dose. Children under 2 years of age: consult a doctor.

(3) *For products containing docusate sodium identified in § 334.20(c).* Adults and children 12 years of age and older: oral dosage is 50 to 360 milligrams. Children 2 to under 12 years of age: oral dosage is 50 to 150 milligrams. This dose may be taken as a single daily dose or in divided doses. Children under 2 years of age: consult a doctor.

5. Section 334.80 is amended by revising the introductory text and by adding paragraphs (c)(12) and (c)(13) to read as follows:

§ 334.80 Professional labeling.

The labeling of the product provided to health professionals (but not to the general public) contains the following information in addition to the labeling identified in §§ 334.50, 334.52, 334.54, 334.56, 334.58, 334.60, and 334.62.

* * * * *

(c) * * *

(12) *For products containing docusate calcium identified in § 334.20(a).* Children under 2 years of age: oral dosage is 25 milligrams in a single daily dose or in divided doses.

(13) *For products containing docusate sodium identified in § 334.20(c).* Children under 2 years of age: oral dosage is 20 to 50 milligrams in a single daily dose or in divided doses.

Dated: August 26, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–21368 Filed 9–1–93; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS–400079A; FRL–4643–7]

Chromium, Nickel, and Copper in Stainless Steel, Brass, and Bronze; Toxic Chemical Release Reporting; Community Right-To-Know; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of comment period.

SUMMARY: EPA is extending the comment period for a denial of petition published in the **Federal Register** of June 29, 1993. The document denied three petitions to exempt reporting of chromium in stainless steel, nickel in stainless steel, and chromium, nickel, and copper in stainless steel, brass, and bronze from the list of toxic chemicals subject to section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). The original comment period ended August 30, 1993; the comment period is extended until November 1, 1993.

DATES: Written comments must be received by November 1, 1993.

ADDRESSES: Written comments must be submitted in triplicate to: OPPT Docket Clerk, TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460, Attention: Docket Control Number OPPTS–400079.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS–120, 401 M St., SW., Washington, DC 20460, Toll free number: 800–535–0202, Toll number: 703–412–9877, TDD Toll free number: 800–553–7672.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 29, 1993 (58 FR 34738), EPA denied three petitions to exempt reporting of: (1) Chromium present in stainless steel, (2) nickel contained in stainless steel and other alloys, (3) chromium, nickel, and copper contained in stainless steels and solid copper based metals, such as brass and bronze, from section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). The denial cited a lack of information concerning whether certain forms of brass, bronze, and stainless steel corrode under various processing, use, or disposal conditions. On August 13, 1993, EPA received a request for a 60–day extension of the comment period from the Industrial Fasteners Institute and the Forging Industry Association. In response, EPA is extending the comment period until November 1, 1993.

List of Subjects in 40 CFR Part 372

Chemicals, Community-right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: August 27, 1993.

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93–21405 Filed 9–1–93; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–57

Collection of Debts by Federal Tax Refund Offset

AGENCY: General Services Administration.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amend 41 CFR chapter 105 by adding Part 105–57, Collection of Debts by Federal Tax Refund Offset. The proposed regulation establishes procedures for GSA to refer past due legally enforceable debts to the Internal Revenue Service (IRS) for offset against income tax refunds of taxpayers owing debts to GSA. The proposed regulation is needed because GSA is required to participate in the tax refund offset program by the Cash Management Improvement Act Amendments of 1992, Public Law 102–589.

DATES: All comments must be in writing and must be received on or before October 4, 1993.

ADDRESSES: Written comments should be sent to LeRoy Boucher, Director, Office of Finance (BC), General Services Administration, 18th and F Streets, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Bernie Kanzler, Office of Finance, Financial Information Control Division (BCD) (202–501–2923).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in cost to consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and the consequence of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Regulatory Flexibility Act

The General Services Administration has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*).

List of Subjects in 41 CFR Part 105–57

Claims, Income taxes.

For the reasons set out in the preamble, GSA proposes to amend 41 CFR chapter 105 as follows:

PART 105–57—COLLECTION OF DEBTS BY TAX REFUND OFFSET

1. Part 105–57 is added to read as follows:

PART 105–57—COLLECTION OF DEBTS BY TAX REFUND OFFSET

Sec.

105–57.001 Purpose.
105–57.002 Applicability and scope.
105–57.003 Administrative charges.
105–57.004 Reasonable attempt to notify.
105–57.005 Notice requirement before offset.
105–57.006 Consideration of evidence.
105–57.007 Change in conditions after submission to IRS.

Authority: 31 U.S.C. 3720A, Pub. L. 98–369.

§ 105–57.001 Purpose.

This part establishes procedures for the General Services Administration (GSA) to refer past due debts to the Internal Revenue Service (IRS) for offset

against income tax refunds of taxpayers owing debts to GSA.

§ 105–57.002 Applicability and scope.

(a) These regulations implement 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past due legally enforceable debt owed to the United States.

(b) For purposes of this section, a past due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Has been delinquent for at least three months but, except in the case of a judgement debt, has not been delinquent more than ten years at the time the offset is made;

(2) With respect to which, GSA has given the taxpayer at least 60 days, from the date of notification, to present evidence that all or part of the debt is not past due or legally enforceable, has considered such evidence, and has determined that the debt is past due and legally enforceable;

(3) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(4) Cannot be currently collected pursuant to the administrative offset provisions of 31 U.S.C. 3716;

(5) Has been disclosed by GSA to a credit reporting agency, including a consumer reporting agency as authorized by 31 U.S.C. 3711(f);

(6) With respect to which, GSA has notified, or has made a reasonable attempt to notify, the taxpayer that the debt is past due and, unless repaid within 60 days thereafter, will be referred to the IRS for offset against any income tax refunds due the taxpayer;

(7) Is at least $25.00;

(8) All other requirements of 31 U.S.C. 3720A and the Department of the Treasury regulations relating to eligibility of a debt for tax refund offset, codified at 26 CFR 301.6402–6T, have been satisfied.

§ 105–57.003 Administrative charges.

All administrative charges incurred in connection with the referral of debts to the IRS will be added to the debt, thus increasing the amount of the offset.

§ 105–57.004 Reasonable attempt to notify.

In order to constitute a reasonable attempt to notify the debtor, GSA must have used a mailing address for the debtor obtained from the IRS pursuant to the Internal Revenue Code, 26 U.S.C. 6103(m)(2) or (m)(4), within one year preceding the attempt to notify the debtor.

§ 105–57.005 Notice requirement before offset.

The notification provided by GSA to the debtor will inform the debtor how to go about presenting evidence to GSA that all or part of the debt is either not past due or is not legally enforceable.

§ 105–57.006 Consideration of evidence.

Evidence submitted by the debtor will be considered by officials or employees of GSA. Any determination that an amount of such debt is past due and legally enforcement will be made by such officials or employees. Evidence that the debt is affected by a bankruptcy proceeding involving the debtor shall bar referral of the debt.

§ 105–57.007 Change in conditions after submission to IRS.

If the amount of a debt is reduced after submission by GSA and offset by IRS, GSA will refund to the debtor any excess amount and will promptly notify IRS of the refund. GSA will also promptly notify the IRS if, after submission of a debt to the IRS for offset, GSA:

(a) Determines that an error has been made with respect to the information submitted,

(b) Receives a payment or credits a payment to an account submitted, or

(c) Receives notification that the debtor has filed for bankruptcy under title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged.

Dated: June 25, 1993.

William B. Early, Jr.,

Acting Chief Financial Officer.

[FR Doc. 93–21316 Filed 9–1–93; 8:45 am]

BILLING CODE 6820–34–M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 607

Claims Collection; Salary Offset

AGENCY: National Science Foundation.

ACTION: Proposed regulation.

SUMMARY: This proposed regulation implements the Debt Collection Act of 1982, Public Law 97–365, as amended, codified in 5 U.S.C. 5514, which authorizes the Federal government to collect debts owed by a Federal employee to the United States through salary offset.

DATES: Comments must be submitted no later than October 4, 1993.

ADDRESSES: Send written comments to Jesse E. Lasken, Assistant General Counsel, National Science Foundation, 1800 G Street NW., room 501, Washington, DC 20550. Comments will be available for inspection at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Jesse E. Lasken at 202–357–9435 or by writing to the address above.

SUPPLEMENTARY INFORMATION: Under the Debt Collection Act of 1982, when the head of a Federal agency or his or her designee determines that an employee of an agency is indebted to the United States or is notified by a head of another Federal agency that an agency employee is indebted to the United States, the employee's debt may be offset against his or her salary. Certain due process rights must be afforded to an employee before salary offset deductions begin. As is required by the Debt Collection Act of 1982, this regulation is consistent with salary offset regulations issued by the Office of Personnel Management, 5 CFR part 550, subpart K.

Paperwork Reduction Act

This regulation does not include provisions for information collection that require review and approval by the Office of Management and Budget under section 3518 of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq., and 5 CFR part 1320.

Regulatory Flexibility Act

The Director of NSF certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule applies only to individual Federal employees. Accordingly, no regulatory flexibility analysis is required.

Executive Order 12291

This rule is not a "major rule" as defined under Executive Order 12291 and no regulatory impact analysis is required.

List of Subjects in 45 CFR Part 607

Administrative offset, Administrative practice and procedures, Claims, Debt collection, Government employees, Wages.

Dated: August 30, 1993.

Lawrence Rudolph,

Acting General Counsel.

For the reasons set out in the preamble, part 607 of title 45 of the Code of Federal Regulations is proposed to be added to read as follows:

PART 607—SALARY OFFSET

Sec.

607.1 Purpose and scope.
607.2 Definitions.
607.3 Applicability.
607.4 Notice requirements before offset.

607.5 Hearing.
607.6 Written decision.
607.7 Coordinating offset with another Federal agency.
607.8 Procedures for salary offset.
607.9 Refunds.
607.10 Statute of limitations.
607.11 Non-waiver of rights.
607.12 Interest, penalties, and administrative costs.

Authority: 5 U.S.C. 5514; E.O. 12107, 3 CFR, 1978 Comp., p. 264; 5 CFR part 550, subpart K.

§ 607.1 Purpose and scope.

(a) This regulation provides procedures for the collection by administrative offset of a federal employee's salary without his or her consent to satisfy certain debts owed to the Federal government. These regulations apply to all federal employees who owe debts to the National Science Foundation (NSF) and to current employees of NSF who owe debts to other Federal agencies. This regulation does not apply when the employee consents to recovery from his or her current pay account.

(b) This regulation does not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 et seq.;

(2) The Social Security Act, 42 U.S.C. 301 et seq.;

(3) The tariff laws of the United States; or

(4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(c) This regulation does not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) This regulation does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act, 31 U.S.C. 3711 et seq., and 4 CFR parts 101 through 105.

(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office. This regulation does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

(f) Matters not addressed in these regulations should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 et seq.

§ 607.2 Definitions.

For the purposes of this part the following definitions will apply:

Agency means an executive agency as defined at 5 U.S.C. 105, including the U.S. Postal Service and the U.S. Postal Rate Commission; a military department as defined at 5 U.S.C. 102; an agency or court in the judicial branch; an agency of the legislative branch, including the U.S. Senate and House of Representatives; and other independent establishments that are entities of the Federal government.

Certification means a written debt claim received from a creditor agency which requests the paying agency to offset the salary of an employee.

Chief Financial Officer means the Chief Financial Officer of NSF or such other official of NSF who is designated by the Chief Financial Officer to determine whether an employee is indebted to the United States and to take action to collect such debts.

Creditor agency means an agency of the Federal Government to which the debt is owed.

Debt means an amount owed by a Federal employee to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

Disposable pay means the amount that remains from an employee's federal pay after required deductions for social security, Federal, State or local income tax, health insurance premiums, retirement contributions, life insurance premiums, Federal employment taxes, and any other deductions that are required to be withheld by law.

Hearing official means an individual responsible for conducting a hearing with respect to the existence or amount of a debt claimed, or the repayment schedule of a debt, and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Chief Financial Officer or of persons having supervision or control over the Chief Financial Officer.

NSF means the National Science Foundation.

Paying agency means the agency that employs the individual who owes the debt and authorizes the payment of his or her current pay.

Salary offset means an administrative offset to collect a debt pursuant to 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

§ 607.3 Applicability.

These regulations are to be followed when:

(1) NSF is owed a debt by an individual who is a current employee of the NSF; or

(2) NSF is owed a debt by an individual currently employed by another Federal agency; or

(3) NSF employs an individual who owes a debt to another Federal agency.

§ 607.4 Notice requirements before offset.

(a) Salary offset shall not be made against an employee's pay unless the employee is provided with written notice signed by the Chief Financial Officer of the debt at least 30 days before salary offset commences.

(b) The written notice shall contain:

(1) A statement that the debt is owed and an explanation of its nature and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of interest, penalties, and administrative charges, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collections Standards at 4 CFR 101.1 et seq.;

(5) The employee's right to inspect, request, and receive a copy of government records relating to the debt;

(6) The employee's opportunity to establish a written schedule for the voluntary repayment of the debt in lieu of offset;

(7) The employee's right to an oral hearing or a determination based on a review of the written record ("paper hearing") conducted by an impartial hearing official concerning the existence or the amount of the debt, or the terms of the repayment schedule;

(8) The procedures and time period for petitioning for a hearing;

(9) A statement that a timely filing of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing (if requested) will be issued by the hearing official not later

than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that knowingly false or frivolous statements, representations, or evidence may subject the employee to appropriate disciplinary procedures and/or statutory penalties;

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and

(14) A statement that the proceedings regarding such debt are governed by section 5 of the Debt Collection Act of 1982 (5 U.S.C. 5514).

§ 607.5 Hearing.

(a) *Request for hearing.* (1) An employee may file a petition for an oral or paper hearing in accordance with the instructions outlined in the agency's notice to offset.

(2) A hearing may be requested by filing a written petition addressed to the Chief Financial Officer stating why the employee disputes the existence or amount of the debt or, in the case of an individual whose repayment schedule has been established other than by a written agreement, concerning the terms of the repayment schedule. The petition for a hearing must be received by the Chief Financial Officer not later than fifteen (15) calendar days after the employee's receipt of the offset notice, or notice of the terms of the payment schedule, unless the employee can show good cause for failing to meet the filing deadline.

(b) *Hearing procedures.* (1) The hearing will be presided over by an impartial hearing official.

(2) The hearing shall conform to procedures contained in the Federal Claims Collection Standards, 4 CFR 102.3(c). The burden shall be on the employee to demonstrate that the existence or the amount of the debt is in error.

§ 607.6 Written decision.

(a) The hearing official shall issue a final written opinion no later than 60 days after the filing of the petition.

(b) The written opinion will include a statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings, and conclusions; the amount and validity of the debt, if any; and the repayment schedule, if any.

§ 607.7 Coordinating offset with another Federal agency.

(a) When the NSF is the creditor agency and the Chief Financial Officer determines that an employee of another agency (i.e., the paying agency) owes a debt to the NSF, the Chief Financial Officer shall, as appropriate:

(1) Certify in writing to the paying agency that the employee owes the debt, the amount and basis of the debt, the date on which payment was due, and the date the Government's right to collect the debt accrued, and that this part 607 has been approved by the Office of Personnel Management.

(2) Unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of the required procedures, and the written consent is sent to the paying agency, the Chief Financial Officer must advise the paying agency of the action(s) taken under this part 607, and the date(s) they were taken.

(3) Request the paying agency to collect the debt by salary offset. If deductions must be made in installments, the Chief Financial Officer may recommend to the paying agency the amount or percentage of disposable pay to be collected in each installment;

(4) Arrange for a hearing upon the proper petitioning by the employee;

(b) When the NSF is the creditor agency and the employee is in the process of separating from the federal service, the NSF must submit its debt claim to the paying agency as provided in this part. The paying agency must certify the total amount collected, give a copy of the certification to the employee, and send a copy of the certification and notice of the employee's separation to the NSF. If the paying agency is aware that the employee is entitled to Civil Service Retirement and Disability Fund or other similar payments, it must certify to the agency responsible for making such payments that the debtor owes a debt, including the amount of the debt, and that the provisions of 5 CFR 550.1108 have been followed.

(c) When the NSF is the creditor agency and the employee has already separated from federal service and all payments due from the paying agency have been paid, the Chief Financial Officer may request, unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset.

(d) When the NSF is the paying agency, upon receipt of a properly certified debt claim from another agency, deductions will be scheduled to begin at the next established pay interval. The employee must receive written notice that NSF has received a certified debt claim from the creditor agency, the amount of the debt, the date salary offset will begin, and the amount of the deduction(s). NSF shall not review the merits of the creditor agency's determination of the validity or the amount of the certified claim. If the employee transfers to another agency after the creditor agency has submitted its debt claim to NSF and before the debt is collected completely, NSF must certify the amount collected. One copy of the certification must be furnished to the employee. A copy must be furnished to the creditor agency with notice of the employee's transfer.

§ 607.8 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Chief Financial Officer's notice of intention to offset as provided in § 607.4. Debts will be collected in one lump sum where possible. If the employee is financially unable to pay in one lump sum, collection must be made in installments

(b) Debts will be collected by deduction at officially established pay intervals from an employee's current pay account unless alternative arrangements for repayment are made.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. The deduction for the pay intervals for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(d) Unliquidated debts may be offset against any financial payment due to a separated employee including but not limited to final salary or leave payment in accordance with 31 U.S.C. 3716.

§ 607.9 Refunds.

(a) NSF will promptly refund to an employee any amounts deducted to satisfy debts owed to NSF when the debt is waived, found not owed to NSF, or when directed by an administrative or judicial order.

(b) Another creditor agency will promptly return to NSF any amounts deducted by NSF to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when

directed by an administrative or judicial order.

(c) Unless required by law, refunds under this paragraph shall not bear interest.

§ 607.10 Statute of limitations.

If a debt has been outstanding for more than 10 years after NSF's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 607.11 Non-waiver of rights.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that the employee may have under 5 U.S.C. 5514 or any other provision of law.

§ 607.12 Interest, penalties, and administrative costs.

Charges may be assessed on a debt for interest, penalties, and administrative costs in accordance with 31 U.S.C. 3717 and the Federal Claims Collection Standards, 4 CFR 101.1 et seq.

[FR Doc. 93–21435 Filed 9–1–93; 8:45 am]
BILLING CODE 7555–01–M

45 CFR Part 608

Claims Collection; Administrative Offset

AGENCY: National Science Foundation.

ACTION: Proposed regulation.

SUMMARY: This proposed regulation implements the claims and debt collection procedures of 31 U.S.C. 3711, 3716, 3718 and 3720A. Subject to various limitations and due process requirements, these sections authorize agencies to seek collection of claims, to report claims to consumer reporting agencies, to compromise claims, to administratively offset claims, and to offset claims against tax refunds.

DATES: Comments must be submitted no later than October 4, 1993.

ADDRESSES: Send written comments to Jesse E. Lasken, Assistant General Counsel, National Science Foundation, 1800 G Street NW., room 501, Washington, DC 20550. Comments will be available for inspection at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Jesse E. Lasken at 202–357–9435 or by writing to the address above.

SUPPLEMENTARY INFORMATION: These proposed regulations and a related proposed regulation implementing the salary offset provisions at 5 U.S.C. 5514 (to be issued as 45 CFR Part 607) are intended to provide a regulatory framework under which NSF can effectively utilize the authorities of 31 U.S.C. 3711, 3716, 3718 and 3720A and participate in various interagency cooperative programs designed to improve the ability of Federal agencies to collect debts owing to them with due regard to appropriate procedural safeguards. 31 U.S.C. 3711 and 3716 require agencies to issue regulations. The Department of the Treasury also requires agencies to issue a regulation in order to utilize the Federal Tax Refund Offset Program established pursuant to 31 U.S.C. 3720A. By this regulation and delegations under related statutes not covered by this regulation, the implementation of NSF's debt collection program and the exercise of the authority granted by the statutes will be delegated by the Director of NSF to its Chief Financial Officer.

Paperwork Reduction Act

This regulation does not include provisions for information collection that require review and approval by the Office of Management and Budget Under section 3518 of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and 5 CFR part 1320.

Regulatory Flexibility Act

The Director of NSF certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. NSF data indicates that a very small debt is owed to NSF. Hence, this regulation will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96–354, 5 U.S.C. 605(b). Accordingly, no regulatory flexibility analysis is required.

Executive Order 12291

This rule is not a "major rule" as defined under Executive Order 12291 and no regulatory impact analysis is required.

List of Subjects in 45 CFR Part 608

Administrative offset, Administrative practice and procedures, Claim collection, Debt collection, and Tax refund offset.

Authority: 31 U.S.C. 3711, 3716, 3718 and 3720A.

Dated: August 30, 1993.

Lawrence Rudolph,

Acting General Counsel.

For the reasons set out in the preamble, part 608 of title 45 of the Code of Federal Regulations is proposed to be added to read as follows:

PART 608—CLAIMS COLLECTION AND ADMINISTRATIVE OFFSET

Sec.

608.1 Purpose and scope.
608.2 Collection, Compromise, and use of Consumer Reporting Agencies.
608.3 Administrative Offset.
608.4 Reductions of Tax Refunds.

Authority: 31 U.S.C. §§ 3711, 3716, 3718 and 3720A.

PART 608—CLAIMS COLLECTION AND ADMINISTRATIVE OFFSET

§ 608.1 Purpose and Scope.

(a) This part sets forth policies and procedures for the collection and compromise claims and the administrative offset of claims by the National Science Foundation (NSF) pursuant to 31 U.S.C. 3711, 3716, 3718 and 3720A. It is not intended to limit or govern the rights of the NSF or the United States to collect, compromise, or administratively offset debts or claims under other authority and procedures that may be legally available to it.

(b) Matters not addressed in this regulation should be reviewed and handled in accordance with applicable statutory provisions and the Federal Claims Collection Standards issued jointly by the Attorney General and the Comptroller General (4 CFR Parts 101–105).

(c) Any action other than the issuance of regulations specifically required to be done by the head of the agency by any of the statutes or regulations referred to in subsections (a) and (b) of this section shall be done on behalf of NSF by its Chief Financial Officer or by those to whom the Chief Financial Officer delegates authority. This is not intended to prevent the Chief Financial Officer from issuing additional internal procedures and guidance consistent with this regulation.

§ 608.2. Collection, Compromise, and use of Consumer Reporting Agencies.

(a) Subject to the specific limitations and procedures of 31 U.S.C. 3711 and in accordance with the applicable provisions of the Federal Claims Collection Standards, NSF, acting through its Chief Financial Officer or those to whom he or she delegates authority or assigns responsibilities, shall try to collect claims of the United States Government for money or

property arising out of the activities of NSF or that are referred to NSF and may compromise or suspend or end collection action of certain claims. In making demands for payment, NSF will follow the guidance set forth at 4 CFR 102.2. In appropriate cases, as authorized by and subject to 31 U.S.C. 3718 and 4 CFR 102.6, NSF may contract for collection services. Before compromising or suspending or ending the collection of a claim in excess of $5,000, the matter shall be referred to the NSF Office of General Counsel for legal review.

(b) When trying to collect a claim of the Government (except for claims under the Internal Revenue Code of 1986, 26 U.S.C. 1 et seq.), NSF may disclose to a consumer reporting agency information from a system of records that an individual is responsible for a claim if (i) a notice published pursuant to 5 U.S.C. 552a(3)(4) indicates that information in the system of records may be disclosed to a consumer reporting agency that an individual is responsible for a claim and (ii) if the Chief Financial Officer of NSF decides that the claim is valid and overdue. Such disclosures to a consumer reporting agency will be done only under the conditions and procedures specified in 31 U.S.C. 3711(f) and in the Federal Claims Collections Standards. Specifically, before NSF provides the information to the consumer reporting agency, the individual will be given the notice required by 31 U.S.C. 3711(f)(1)(C); and in accordance with 4 CFR 102.5(c), the right of administrative review to be provided to the individual shall be consistent with the provisions of 4 CFR 102.3(c). If NSF does not have a current address for theindividual in its files, it will take reasonable action to locate the individual, but if unsuccessful will mail the notice to the individual's last known address. NSF will disclose information only to a consumer reporting agency that gives satisfactory assurances that it is complying with all laws of the United States relating to providing consumer credit information. The information provided by NSF shall be limited to the type of information described in 31 U.S.C. 3711(f)(1)(F). Moreover, NSF will not provide such information until it has established internal procedures to disclose promptly to a consumer reporting agency to which disclosure is made of any substantial changes in the condition or amount of the claim and to verify or correct promptly information about the claim on request of a consumer reporting agency for verification of information disclosed.

(c) If in response to the notice referred to in (b) of this section, the individual repays or agrees in writing with NSF to a repayment plan, the information will not be disclosed to a consumer reporting agency. If in response to the notice referred to in (b) of this section the individual requests a review or reconsideration of the claim, information shall not be disclosed to the consumer reporting agency until such a review is provided.

(d) The review referred to in (c) of this section shall be based only on the written documentation in the file, including any additional written information provided by the individual in response to the notice referred to in (b) of this section. A written summary briefly describing the nature of the review performed and the conclusion reached shall be made. The written summary and conclusion shall be referred to the NSF Office of General Counsel for legal review. After legal review, a copy of the written summary shall be sent to the individual.

§ 608.3 Administrative Offset.

(a) If NSF is unable to collect a claim from a person after trying to do so in accordance with § 608.2, NSF may collect the claim by administrative offset subject to the procedures and limitations of 31 U.S.C. 3716 and the applicable provisions of the Federal Claims Collection Standards. Determinations to pursue administrative offset shall be made on a case-by-case basis taking into account the considerations specified at 31 U.S.C. 3716(b) and 4 CFR 102.3(a). Before employing administrative offset, NSF will comply with the notice, hearing, review, or other procedural requirements of 31 U.S.C. 3716(a) and 4 CFR 102.3 (b) and (c). Furthermore, before an administrative offset is taken by NSF pursuant to the authority of this part 608, the matter shall be referred to the Office of General Counsel for legal review to ensure that the required procedures have been followed.

(b) When another agency requests NSF to administratively offset a claim owing to that agency, NSF will normally comply with such request if the requesting agency has provided the certification required by 4 CFR 102.3(f) and offset would not be contrary to law. Before imposing administrative offsets at the request of another agency under this part 608, the matter shall be referred to the NSF Office of General Counsel for legal review.

(c)(1) In appropriate cases, NSF may request another agency to administratively set off a claim owed to NSF. Before making the certification to the other agency required by 4 CFR 102.3(f), the matter shall be referred to the NSF Office of General Counsel for legal review.

(2) Unless otherwise prohibited by law, NSF may request that monies that are due and payable to a debtor from the Civil Service Retirement and Disability Fund, the Foreign Service Retirement Fund or any other Federal retirement fund be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments debts owed the United States by the debtor. Such requests shall be made to the appropriate officials of the respective fund servicing agency in accordance with such regulations as may be prescribed by that agency. The requests for administrative offset will certify in writing that (i) the debtor owes the United States a debt and the amount of the debt; (ii) NSF has complied with applicable regulations and procedures; and (iii) NSF has followed the requirements of the Federal Claims Collection Standards as made applicable by this section. Once NSF decides to request offset from a Federal retirement fund, it will make the request as soon as practical after completion of the applicable procedures in order that the fund servicing agency may identify and flag the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the fund and to ensure that offset will be initiated prior to the expiration of the statute of limitations.

(3) If NSF collects part or all of the debt by other means before deductions are made or completed pursuant to this subsection (c) of this section, NSF shall act promptly to modify or terminate its request for offset.

(4) This subsection does not require or authorize the fund servicing agency to review the merits of (i) NSF's determination with respect to the amount and validity of the debt, (ii) NSF's determination as to waiver under an applicable statute, or (iii) NSF's determination to provide or not provide an oral hearing.

(d) No collection by administrative offset shall be made on any debt that has been outstanding for more than ten years unless facts material to the Government's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering the debt.

(e) Administrative offset under this section will not be initiated against:

(1) A debt in which administrative offset of the type of debt involved is explicitly provided for or prohibited by

statutes other than 31 U.S.C. 3716, including debts subject to the Salary offset procedures at 45 CFR part 607;

(2) Debts owed by other agencies of the United States or by any State or local Government; or

(3) Debts arising under the Internal Revenue Code of 1954; the Social Security Act; or the tariff laws of the United States.

§ 608.4 Reductions of Tax Refunds.

(a) In accordance with regulations and guidance issued by the Secretary of the Treasury at 26 CFR 301.6402 et seq. and the requirements of 31 U.S.C. 3720A, NSF will participate in the Federal Tax Refund Offset Program for offset against income tax refunds of persons owing past due legally enforceable debts to NSF.

(b) For purposes of this section, a past-due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Except in the case of a judgment debt, has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made;

(2) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(3) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by NSF against amounts payable to or on behalf of the debtor by or on behalf of NSF;

(4) With respect to which NSF has notified or has made a reasonable attempt to notify the taxpayer that the debt is past-due and, unless repaid within 60 days thereafter, the debt will be referred to the IRS for offset against any overpayment of tax;

(5) With respect to which NSF has given the taxpayer at least 60 days from the date of notification to present evidence that all or part of the debt is not past-due or legally enforceable, has considered the evidence presented by such taxpayer, and has determined that an amount of such debt is past-due and legally enforceable;

(6) Has been disclosed by NSF to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless a consumer reporting agency would be prohibited from using such information by 15 U.S.C. 1681c, or unless the amount of the debt does not exceed $100.00;

(7) Is at least $25.00;

(8) All other requirements of 31 U.S.C. 3720A and the Internal Revenue Service regulations at 26 CFR 301.6402–6 et seq. relating to the eligibility of a debt for tax return offset have been satisfied.

(c) NSF will make a request for reduction of an IRS tax refund only after the NSF determines that an amount is owed and past-due and provides the debtor with 60 days written notice. NSF's notice of intention to collect by IRS tax refund offset (Notice of Intent) will state:

(1) The amount of the debt;

(2) That unless the debt is repaid within 60 days from the date of the NSF's Notice of Intent, NSF intends to collect the debt by requesting the IRS to reduce any amounts payable to the debtor as refunds of Federal taxes paid by an amount equal to the amount of the debt and all accumulated interest and other charges;

(3) That the debtor has a right to present evidence that all or part of the debt is not past-due or legally enforceable; and

(4) A mailing address for forwarding any written correspondence and a contact name and phone number for any questions.

(d) A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past-due or not legally enforceable. To exercise this right, the debtor must:

(1) Send a written request for a review of the evidence to the address provided in the notice.

(2) State in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or is not legally enforceable.

(3) Include with the request any documents which the debtor wishes to be considered or state that additional information will be submitted within the remainder of the 60-day period.

(e) The failure of a debtor to respond as provided in subsection (d) of this section will result in an automatic referral of the debt to the IRS without further action by NSF. If the debtor responds, NSF will consider all available evidence related to the debt and issue a written determination, including supporting rationale, whether its prior determination that the debt it past-due and legally enforceable is sustained, amended, or canceled. Before this determination is made the matter shall be referred to the NSF Office of General Counsel for legal review. NSF will give prompt notification of this determination to the debtor.

[FR Doc. 93–21436 Filed 9–1–93; 8:45 am]

BILLING CODE 7555–01–M

ACTION

45 CFR Parts 1207 and 1208

Senior Companion/Foster Grandparent Income Eligibility

AGENCY: ACTION.

ACTION: Proposed rule.

SUMMARY: ACTION is proposing to revise the process for determining income eligibility for Foster Grandparent and Senior Companion volunteers. The proposed rule will revise the Foster Grandparent Program's (FGP) and the Senior Companion Program's (SCP) income eligibility guidelines so as to make them more inclusive. This action will make the Programs more responsive to local economic conditions, to the special economic conditions affecting the elderly, and to the particular needs of individuals at 100 percent of poverty or below. The effect of this rule change will be to meet more fully the Programs' goals of targeting low-income seniors and taking into account circumstances appropriate to local situations.

DATES: Comments must be received no later than October 18, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Thomas E. Endres, Acting Assistant Director, Older American Volunteer Programs, ACTION, 1100 Vermont Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Thomas E. Endres, 202–606–4855.

SUPPLEMENTARY INFORMATION:

I. Background

These ACTION programs are authorized pursuant to sections 211 and 213 of the Domestic Volunteer Service Act of 1973, as amended, Public Law 93–113, 87 Stat. 194.

ACTION regulations governing Senior Companion income eligibility, 45 CFR 1207.3–5 (a)(3) and (4), Foster Grandparent income eligibility, 45 CFR 1208.3–5 (a)(3) and (4) provide:

(3) To be enrolled, a Foster Grandparent/Senior Companion cannot have an annual income from all sources exceeding the ACTION income eligibility guideline for the state in which he or she resides. The ACTION income eligibility guideline for each state is the higher amount of either: (i) 125% of the poverty line as set forth in section 625 of the Economic Opportunity Act of 1964 as amended by Pub. L. 92–424 (42 U.S.C. 2971d), or (ii) 100% of the poverty line plus the amount the state supplements the Federal Supplemental Security Income (SSI). In cases where a Foster Grandparent/Senior Companion is a member of a household in

which other persons share common expenses, his or her income eligibility is determined by the combined income of members of the household.

(4) Once enrolled, a Foster Grandparent/Senior Companion shall remain eligible to serve and to receive a stipend as long as his or her income does not exceed the prescribed ACTION income guideline by 20%. Income eligibility shall be reviewed annually by the sponsor.

II. Problems Under the Current Rule

Under the current rule, those states which provide SSI supplementations in excess of 125 percent of Health and Human Services (HHS) Poverty Income Guidelines receive special consideration. This assures eligibility for potential participants living in states with generous SSI supplements. It does not, however, account for cost of living differences between states.

Further, the current rule does not take into account cost of living differences within states.

The current rule results in a large differential in income eligibility in a few states. Based on ACTION's current guidelines, for a household of four:

Initial eligibility to enroll ranges from 125 to 160 percent of poverty.

During the second and following years of service, volunteers are allowed to have incomes up to 20 percent above the applicable income guideline. For those volunteers, eligibility ranges from 145 to 180 percent of poverty.

Five states—Alaska, California, Colorado, Connecticut, and Massachusetts have income eligibility guidelines greater than 125 percent of poverty, because of their level of SSI supplementation. However, there is no correlation between these states and poverty or cost-of-living data.

The current rule excludes from the Programs some seniors who may meet the low-income eligibility requirement. Examples are:

Seniors who live with roommates to afford living expenses may not be eligible when their roommates' income is counted.

Seniors who support adult children and do not have access to the children's income may not be eligible when the children's income is counted.

Seniors who have high out-of-pocket medical expenses may not be eligible even when their income, after medical costs, may be no more than that of a volunteer whose medical expenses are fully covered by Medicaid.

The Domestic Volunteer Service Act requires that individuals whose income is not more than 100 percent of the poverty level be given special consideration for program participation. However, the current rule does not provide for any special consideration of individuals whose income is at or below 100 percent of the poverty level.

III. Proposed Resolution of Problems Under Current Regulations

There are three areas which the proposed rule seeks to amend, so as to ameliorate the problems addressed in section II. These relate to the definition of "household," inclusion of an allowable medical expense deduction, and an alternative to the current approach for accounting for cost of living differentials.

For each of these areas, various approaches were considered, as appropriate to each particular concern. Accordingly, in Paragraph A, a variety of alternatives are considered in the context of their respective strengths and weaknesses; in Paragraph B, strengths and weaknesses are considered in the context of a single option, and in Paragraph C, different alternatives are presented. A summary of these considerations is set forth below.

A. Alternatives to the current rule's definition of "household":

1. Count only the senior's income.

Strengths

- Excludes the income of related and unrelated people who live with the senior but do not contribute to the senior's support.

Weaknesses

- Excludes the income of a spouse who lives with the senior.
- Excludes the income of other relatives who live with and provide support for the senior.

2. Count the senior and the spouse's income when the spouse lives with the senior.

Strengths

- Excludes the income of related and unrelated people who live with the senior but do not contribute to the senior's support.
- Includes the income of a spouse who lives with the senior.

Weaknesses

- Excludes the income of relatives who live with and provide support for the senior.

3. Count the income of all related people who live with and provide support for the senior.

Strengths

- Excludes the income of related and unrelated people who live with the senior but do not contribute to the senior's support.
- Includes the income of a spouse and all other related people who live with and provide support for the senior.

Weaknesses

- Counts the total income of relatives who provide support regardless of the amount of the support.
- Regulations would need to define both "family" and "support," and would be complex and subject to interpretation.
- Administration would be difficult for projects.

4. Count the senior's and the spouse's income when the spouse lives with the senior. Count the money and the value of in-kind support relatives provide to the senior or spouse as income.

Strengths

- Includes the spouse's income with the spouse lives with the senior.
- Excludes the income of other related and unrelated people who live with the senior.
- Counts the actual benefits provided to the senior by relatives as income.

Weaknesses

- Regulations would be complex and subject to interpretation. Regulations would need to define "in-kind support" and place a value on that support.
- Administration would be difficult for projects.

5. Count the senior's and the spouse's income. Permit project directors to define and count the value of in-kind support relatives provide to the senior or to the spouse as income.

Strengths

- Includes the spouse's income when the spouse lives with the senior.
- Excludes the income of other related and unrelated people who live with the senior.
- Permits project directors the discretion to count the actual benefits provided to the senior by relatives as income, when appropriate.

Weaknesses

- Permits variation in the way income is determined between projects when in-kind income is counted.

B. Inclusion of a medical expense deduction up to a specified cap:

Strengths

- Permits projects to enroll volunteers who would meet the income guidelines if out-of-pocket medical expenses were deducted from income.
- Capping the deduction maintains the Programs' low-income focus.
- Permits implementation of the deduction in such a way as to minimize the administrative burden on projects.

Weaknesses

• Increases the pool of eligible seniors without a corresponding increase in available volunteer slots.

C. Alternatives to the current approach to accounting for cost of living differences:

1. VISTA Subsistence Rates Alternatives

VISTA provides different subsistence rates across the country to take account of cost of living differences. These are based on a matrix of various economic indicators. The alternatives considered in using these different rates in determining alternatives for FGP/SCP were:

a. 10 percent cost-of-living differential in those counties with the highest subsistence rate under the VISTA program.

b. 10 percent cost-of-living differential in those counties with the two highest subsistence rates under the VISTA program.

c. Poverty ceiling for FGP/SCP counties based directly on VISTA subsistence payments by location:

VISTA	FGP/SCP
95%	115%
100%	105%
110%	130%
115%	135%

2. Department of Labor Lower Level Standard Income Levels

Alternatives

The Department of Labor publishes different lower level standard income levels (LLSIL) by region (metropolitan and nonmetropolitan), as well as for 25 metropolitan statistical areas, to function as eligibility data for participation under the Job Training Partnership Act.

LLSIL data were used to examine the following alternative income eligibility guidelines for FGP/SCP:

a. 10 percent cost-of-living differential if 70 percent of LLSIL exceeds 125 percent of poverty.

b. Greater of 125 percent of poverty or 70 percent of LLSIL.

c. Eligibility is 80 percent of LLSIL.

3. Housing and Urban Development Alternatives

HUD publishes income data for 341 metropolitan areas and for 2,415 non-metropolitan counties based on the prior decennial Census updated annually. HUD's very low-income guidelines were used to examine the following alternatives for FGP/SCP:

a. 10 percent cost-of-living differential if HUD limit exceeds 150 percent of poverty.

b. 10 percent cost-of-living differential if HUD limit exceed 125 percent of poverty.

c. The greater of 125 percent of poverty or HUD limit.

IV. Participation in Proposed Rule Making

The Director of ACTION appointed an Older American Volunteer Program Income Eligibility Task Force to examine the income eligibility criteria for volunteer participation in the Foster Grandparent and Senior Companion Programs. As regards the issue of participation in rule making, the Task Force membership was composed of representatives from ACTION Headquarters and field offices as well as FGP and SCP project directors. The Task Force surveyed all ACTION Regional and State Office program directors as well as all Foster Grandparent and Senior Companion project directors.

V. Anticipated Impact of the Proposed Rule

The Foster Grandparent and Senior Companion Programs will continue to target low-income seniors. By eliminating the household definition and instituting a medical expense deduction, the proposed rule will emphasize the Programs' low-income focus as it will provide opportunities to low-income seniors who may have been excluded from the Programs including:

Low-income seniors who live with, but receive no support from, relatives.

Low-income seniors who live with roommates to save money.

Seniors who live on low-incomes after paying out-of-pocket medical expenses.

The proposed adjustment to the annual income guidelines will:

Maintain the Programs' focus on low-income seniors.

End the inequity whereby a few States, as a result of their SSI supplementations, are able to increase the eligible volunteer pool and thereby fail to target low-income seniors.

Provide a more equitable system that, to the extent possible, accounts for real differences in costs of living within and between states, as required.

Provide a system that is simple and easy to administer. FGP/SCP would obtain the most current VISTA subsistence rates and apply them routinely.

The changes will not increase the burden on project administration.

VI. List of Subjects in 45 CFR Parts 1207 and 1208

Aged, Grant programs-social programs, Reporting and recordkeeping requirements, Volunteers.

VII. Proposed Rule—Senior Companion Program

For the reasons set forth in the preamble, 45 CFR part 1207 is proposed to be amended as follows.

PART 1207—SENIOR COMPANION PROGRAM

1. The authority citation for part 1207 continues to read as follows:

Authority: Sec. 211(d), (e); 212, 213, 221, 222, 223, 402(14) and 420 of Pub. L. 93–113, 87 Stat. 402, 403, 404, 407 and 414, sec. 213 of Pub. L. 97–35, 97 Stat. 487, 42 U.S.C. 5011(b), (d) and (e); 5012, 5022, 5023, 5042(14), 5060 and 5013.

2. Section 1207.1–2 is amended by removing the definition of *Household.* and by adding the following definitions in alphabetical order:

§ 1207.1–2 Definitions.

* * * * *

Allowable medical expenses are annual out-of-pocket expenses for health insurance premiums, health care services and medications provided to the applicant, enrollee, or spouse and were not and will not be paid for by Medicare, Medicaid, other insurance, or by any other third party and, shall not exceed 15 percent of the applicable ACTION income guideline. *Annual income* is counted for the past 12 months and includes: The applicant or enrollee's income and, the applicant or enrollee's spouse's income, if the spouse lives in the same residence. Project directors may count the value of shelter, food, and clothing, if provided at no cost by persons related to the applicant, enrollee, or spouse.

* * * * *

3. Section 1207.3–1 is amended by adding a paragraph (v) reading as follows:

§ 1207.3–1 Sponsor responsibility.

* * * * *

(v) Assure that individuals whose income is at or below 100 percentum of the poverty level receive special consideration for participation in the Program.

4. Section 1207.3–5 is amended by revising paragraphs (a)(3), (a)(4), and (c)(5) to read as follows:

§ 1207.3–5 Senior companions.

(a) * * *

(3) To be enrolled, a Senior Companion cannot have an annual income from all sources, after deducting allowable medical expenses, exceeding the ACTION income eligibility guideline for the state in which he or she resides. The ACTION income eligibility guideline for each state is 125

percent of the poverty line as set forth in section 625 of the Economic Opportunity Act of 1964, as amended by Pub. L. 92–424 (42 U.S.C. 2971(d)); except (i) in those primary metropolitan statistical areas (PMSA), metropolitan statistical areas (MSA) and nonmetropolitan counties identified by the Director as being higher in cost of living, as determined by application of the VISTA subsistence rates, whereby the guideline shall be 10 percent above that amount; and (ii) in Alaska, whereby the guideline may be waived by the ACTION State Director for individual locations if a project demonstrates that low-income individuals, in that location, are participating in the project. No Senior Companion currently participating in the Program, shall become ineligible as a result of this change in guidelines.

(4) Once enrolled, a Senior Companion shall remain eligible to serve and to receive a stipend as long as his or her annual income, after deducting allowable medical expenses, does not exceed the prescribed ACTION income eligibility guideline by 20 percent. Income eligibility shall be reviewed annually by the sponsor.

* * * * *

(c) * * *

(5) *Stipends.* A Senior Companion will receive a stipend in an amount determined by ACTION and payable in regular installments. The minimum amount of the stipend is set by law and may be adjusted by the Director from time to time. When both the eligible husband and wife serve as a Foster Grandparent or Senior Companion, only one spouse shall be entitled to receive a stipend. Both spouses in such cases shall be entitled to other direct benefits. Only in cases where enrolled Foster Grandparents or Senior Companions marry, may each continue to receive a stipend.

* * * * *

VIII. Proposed Rule—Foster Grandparent Program

PART 1208—FOSTER GRANDPARENT PROGRAM

5. The authority citation for part 1208 continues to read as follows:

Authority: Secs. 211(a), 212, 222, 223, 402(14) and 420 of Pub. L. 93–113, 87 Stat. 402, 403, 404, 407 and 414, 42 U.S.C. 5011 (a) and (f), 5012, 5021, 5022, 5023, 5042(14), and 5060.

6. Section 1208.1–2 is amended by removing the definition of *Household* and by adding the following definitions in alphabetical order:

§ 1208.1–2 Definitions.

* * * * *

Allowable medical expenses are annual out-of-pocket expenses for health insurance premiums, health care services and medications provided to the applicant, enrollee, or spouse and were not and will not be paid for by Medicare, Medicaid, other insurance, or other third party and, shall not exceed 15 percent of the applicable ACTION income guideline.

Annual income is counted for the past 12 months and includes: The applicant or enrollee's income and, the applicant or enrollee's spouse's income, if the spouse lives in the same residence. Project directors may count the value of shelter, food, and clothing, if provided at no cost by persons related to the applicant, enrollee, or spouse.

* * * * *

7. Section 1208.3–1 is amended by adding a paragraph (v) reading as follows:

§ 1208.3–1 Sponsor responsibility.

* * * * *

(v) Assure that individuals whose income is at or below 100 percentum of the poverty level receive special consideration for participation in the program.

8. Section 1208.3–5 is amended by revising paragraphs (a)(3), (a)(4), and (c)(5) to read as follows:

§ 1208.3–5 Foster grandparents.

(a) * * *

(3) To be enrolled, a Foster Grandparent cannot have an annual income from all sources, after deducting allowable medical expenses, exceeding the ACTION income eligibility guideline for the state in which he or she resides. The ACTION income eligibility guideline for each state is 125 percent of the poverty line as set forth in section 625 of the Economic Opportunity Act of 1964, as amended by Pub. L. 92–424 (42 U.S.C. 2971(d)), except: (i) In those primary metropolitan statistical areas (PMSA), metropolitan statistical areas (MSA) and nonmetropolitan counties identified by the Director as being higher in cost of living, as determined by application of the VISTA subsistence rates, whereby the guideline shall be 10 percent above that amount; and (ii) in Alaska, whereby the guideline may be waived by the ACTION State Director for individual location if a project demonstrates that low-income individuals in that location are participating in the project. No Foster Grandparent currently participating in the Program, shall become ineligible as a result of this change in guidelines.

(4) Once enrolled, a Foster Grandparent shall remain eligible to serve and to receive a stipend as long as his or her annual income, after deducting allowable medical expenses, does not exceed the prescribed ACTION income eligibility guideline by 20 percent. Income eligibility shall be reviewed annually by the sponsor.

* * * * *

(c) * * *

(5) *Stipends.* A Foster Grandparent will receive a stipend in an amount determined by ACTION and payable in regular installments. The minimum amount of the stipend is set by law and may be adjusted by the Director from time to time. When both the eligible husband and wife serve as a Foster Grandparent or Senior Companion, only one spouse shall be entitled to receive a stipend. Both spouses in such cases shall be entitled to other direct benefits. Only in cases where enrolled Foster Grandparents or Senior Companions marry, may each continue to receive a stipend.

* * * * *

Dated: August 27, 1993.

G. Gary Kowalczyk,

Acting Director.

[FR Doc. 93–21374 Filed 9–1–93; 8:45 am]

BILLING CODE 6050–28–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–239; RM–8313]

Radio Broadcasting Services; Quincy, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Quincy Community Radio proposing the allotment of Channel 240C3 at Quincy, Washington, as its second local FM transmission service. Channel 240C3 can be allotted to Quincy with a site restriction of 3.5 kilometers (2.2 miles) northeast. The coordinates for Channel 240C3 at Quincy are North Latitude 47–15–13 and West Longitude 119–48–58. Since Quincy is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been requested.

DATES: Comments must be filed on or before October 18, 1993, and reply comments on or before November 2, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Esq., Pepper & Corazzini, 1776 K Street NW., suite 200, Washington, DC 20006 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–239, adopted August 13, 1993, and released August 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–21314 Filed 9–1–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 930828–3228; I.D. #080593A]

RIN 0648–AC99

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement the conservation and management measures proposed in Amendment 4 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP). This proposed rule includes: A moratorium on most new entrants into the scallop fishery; allocations of days-at-sea (DAS) that vessels may fish for scallops based on three vessel groups (Full-time, Part-time, and Occasional); a requirement to purchase and install Vessel Tracking Systems (VTS) for Full-time and Part-time vessels and a call-in system for Occasional vessels to monitor DAS; permits for vessel operators and dealers; an open access scallop permit for vessels landing up to 400 pounds (181.44 kg) of shucked scallops or up to 50 U.S. bushels (17.62 hl) of in-shell scallops per trip; limitations on upgrading of vessel size and engine horsepower; a prohibition on acquiring more than a 5 percent ownership interest in the total number of limited access scallop vessels; mandatory reporting for permitted vessels and dealers; crew-size limits; maximum dredge and trawl sweep size restrictions; minimum ring and mesh size restrictions; framework measures to adjust the effort control and other measures; a minimum shell height restriction; and an annual option for vessels in the Part-time or Occasional category to fish in the next higher vessel group if they use one dredge not to exceed 10.5 feet (3.2 m) and a crew not to exceed five. This proposed amendment also includes a definition of overfishing for Atlantic sea scallops and a determination that the sea scallop resource is overfished. The intent of this amendment is to reduce the fishing mortality rate and rebuild the stock of Atlantic sea scallops.

DATES: Comments on the proposed rule must be received on or before October 14, 1993. If Amendment 4 is approved, NMFS will publish a list of certified vendors of VTS. To be included in the first list expected to be published, information from vendors supporting their request for VTS certification must be received September 29, 1993.

ADDRESSES: Comments on the proposed rule, Amendment 4, or its supporting documents should be sent to Richard Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Sea Scallop Plan."

Comments regarding the burden-hour estimates or any other aspect of the collection-of-information requirements contained in this proposed rule should be sent to the Northeast Regional Director (**ADDRESS LISTED ABOVE**) and the Office of Management and Budget (Attention NOAA Desk Officer), Washington, DC 20503.

Copies of Amendment 4, its regulatory impact review (RIR), initial regulatory flexibility analysis (IRFA), and the final supplemental environmental impact statement (FSEIS) are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (U.S. Rte. 1), Saugus, MA 01906–1097.

Information from sources interested in certifying fishing vessel tracking systems should be sent to Richard Roe, Northeast Regional Director (**ADDRESS LISTED ABOVE**). Mark the outside of the envelope "Certification of VTS."

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic Sea Scallop Fishery Management Plan (FMP) was implemented by emergency regulations effective May 15, 1982 (47 FR 20776). On August 13, 1982, final regulations to implement the FMP were issued (47 FR 35990).

Conservation and management of the sea scallop resource under the FMP has relied on a single measure, a meat count/shell height standard. The standard has varied between 40 meats per pound (MPP) with a corresponding shell height of 3¼ inch (83 mm) in 1982, to the current 30 MPP (3½ inches (89 mm)). Amendment 2 to the FMP (53 FR 23634) adjusted the meat count standard to allow a spawning tolerance of 10 percent from October through January, and Amendment 3 (55 FR 433) required that sea scallops be offloaded during a designated 12-hour period.

On March 2, 1989 (54 FR 16123), the Council established a control date to inform prospective entrants into the sea scallop fishery that after this date future access to the fishery would not be assured, should a management program be implemented that limited the number of participants.

Proposed Amendment 4 was prepared by the Council in consultation with the Mid-Altantic and South Atlantic Fishery Management Councils. A notice of a draft supplemental environmental

impact statement (DSEIS) was published on December 24, 1992 (57 FR 61422). The public comment period for the DSEIS ended on February 23, 1993. At the May 13, 1993, New England Fishery Management Council meeting, the Council voted to approve Amendment 4 for submission to the Secretary of Commerce. A notice of availability for the proposed amendment was published in the **Federal Register** on August 10, 1993 (58 FR 42522).

Overfishing Definition

Amendment 4 proposes the following definition of overfishing for the Atlantic sea scallop resource: Overfishing for the Atlantic sea scallop resource is defined as a fishing mortality rate that, if continued, results in a spawning stock biomass of five percent or less of the maximum spawning potential (MSP). The fishing mortality rate (F) corresponding to 5 percent MSP is currently estimated at 0.97. The most recent assessment estimates that the current (F) is between 1.5 and 1.8. Recruitment in recent years has been unusually high. Unless this trend continues, scallop stocks will decline rapidly at the current F.

To reduce fishing mortality below the overfishing definition threshold, the Council proposes to reduce fishing effort by approximately 40 percent over 7 years. Because the impact of effort controls and gear restrictions on the resource is uncertain, the Council estimates that actual effort reduction needed could be as low as 35 percent or as high as 70 percent.

The MSP threshold may be adjusted as additional biological information becomes available. To make changes to the MSP level, the updated targets will be reviewed by the Scallop Plan Development Team and approved by the Scallop Committee and Council.

Proposed Management Measures

Amendment 4 proposes to replace a management system containing biological controls (minimum size of sea scallops through average meat counts and minimum shell height), only, with a more comprehensive combination of management measures, including both effort control (including extensive permitting and reporting requirements) and biological control (minimum shell height).

Meat-count management was rejected because incoming year classes were subject to increased mortality as they became vulnerable to the gear, and vessels had difficulty staying within the legal meat count and making a viable trip at the same time. Compounding the problem was an increase in the total number of vessels fishing for scallops, which contributed to increased fishing effort resulting in increased fishing mortality.

Amendment 4 proposes that fishing mortality (i.e., fishing effort) be controlled by placing limits on the number of days that vessels can spend at sea fishing for scallops. Thus, the number of vessels that will be allocated DAS must also be controlled to ensure that the DAS limits are not exceeded. These DAS will be allocated to three vessel groups based on a vessel's directed fishing effort during 1985–1990 (Full-time, Part-time, and Occasional). Fishing effort will be reduced from current levels over 7 years until the fishing mortality rate falls below the overfishing definition.

Amendment 4 would establish two basic permit categories, limited access and general. Limited access permits allow a vessel to possess more than 400 pounds (181.44 kg) of shucked sea scallops (50 bushels (17.62 hl) of in-shell scallops) subject to DAS allocations. Vessels that would qualify for a limited access permit are:

(1) Vessels that had a Federal scallop permit during 1988 or 1989, and landed more than 400 pounds (181.44 kg) of scallops on at least one trip during that period;

(2) Vessels that were being constructed and/or re-rigged for the scallop fishery by March 2, 1989, and had a Federal scallop permit and landed scallops on or before March 2, 1990; and

(3) Vessels that changed ownership between March 2, 1989, and November 28, 1990, had a Federal scallop permit and landed scallops between 1982 to 1988, and had a Federal scallop permit and landed over 400 pounds (181.44 kg) of scallops on any one trip in 1990.

To take advantage of the eligibility criteria, the vessel owner must apply for a limited access scallop permit before the expiration of 12 months from the date of publication of the final rule in the **Federal Register**. Vessel owners who are denied a limited access permit would have the right to appeal and the opportunity for a hearing. The proposed regulations also include provisions allowing a vessel to fish in the scallop fishery, and specifying the vessel's level of participation during the appeal.

Limited access permits would transfer with the vessel and would not be otherwise transferable; however, the vessel must remain in the same fleet category (Full-time, Part-time, Occasional) or move to a lower category. Vessels that are upgraded, whether by refitting or replacement, would be limited to a single increase of 20 percent or less in horsepower, and 10 percent or less in the vessel's length, gross registered tonnage, and net tonnage. Once a vessel has been upgraded, and its horsepower increased, no additional increases in horsepower are permitted. Likewise, once its length, gross registered tonnage, or net tonnage has been increased, no additional increases in those quantities are permitted. A vessel with a limited access permit could be upgraded once, provided that the upgrade did not exceed the limitations listed above. No person or business entity could acquire an ownership interest in more than 5 percent of the number of vessels issued limited access scallop permits. However, a person with greater than 5 percent ownership interest of vessels issued limited access scallop permits at the time of initial application into the limited access fishery, may continue to maintain ownership of such vessels, but may not acquire additional vessels.

If the owner of a vessel with a limited access permit fails to renew the vessel's permit in any year, the vessel would not be eligible to obtain a limited access permit in subsequent years. Additionally, if a vessel owner voluntarily relinquishes a vessel's Federal limited access scallop permit, that permit cannot be renewed or re-issued.

If fishing mortality declines faster than anticipated and stock conditions improve, the Council will have authority, through framework measures included in the amendment, to recommend to the Regional Director actions to relax the moratorium rules and allow new entrants instead of allowing more DAS to participants.

Vessels that do not qualify for a limited access permit would be allowed to obtain a general scallop permit and to land up to 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops per trip. No more than one trip could be landed within a calendar day. Possession of up to 40 pounds (18.14 kg) of scallops for personal consumption would not require a Federal scallop permit. Sale of any amount of scallops without a Federal scallop permit would be prohibited.

Transfer-at-sea of scallops would be prohibited. Transfer-at-sea of all fish would be prohibited for Federal scallop permit holders. This prohibition may impact on other fisheries, such as the Atlantic bluefin tuna fishery, and comment is invited.

To monitor DAS, all Full-time and Part-time vessels would be required to purchase and use on board the vessel a VTS unit. Occasional vessels would be required to use a call-in system. Part-

time vessels would be required to purchase a VTS unit because it would insure a high level of compliance with DAS restrictions.

In additional to DAS restrictions, the amendment proposes certain crew and gear restrictions. For limited access vessels, crew size would be limited to nine, including the captain, unless the vessel elected to fish under the smaller dredge category. Scallop dredge vessels would be limited to a combined maximum dredge width of 31 feet (9.4 m). The Council informed the Regional Director that its intent was to allow the current industry standards for both small (10.5-foot (3.2 m)) and large (two 15-foot (4.6 m)) dredges to continue and that the measurement procedure for compliance monitoring should be consistent. Subsequent research has shown that the 15-foot (4.6 m) dredge currently in use by the industry is an inside dredge measurement, whereas the 10.5-foot (3.2 m) dredge currently in use by the small vessel fleet is an outside measurement. To comply with the Council's intent, the regulations specify outside measurements for both small and large dredges (31 feet (9.4 m) and 10.5 feet (3.2 m)).

Scallop dredge rings would be restricted to a minimum size of 3¼ inch (83 mm) in years one and two and 3½ inch (89 mm) in year three and beyond. Chafing gear, cookies, or other obstructing devices would be prohibited from dredge tops. No more than double links would be allowed between rings, and the top twine of the dredge would be restricted to 5½ inches (13.97 cm) or greater. Scallop trawl vessels would be limited to a maximum sweep of 144 feet (43.9 m), and nets must be 5½ inch (13.97 cm) mesh or greater (5 inches (12.7 cm) south of the Hudson Canyon line until year three, then 5½ inches (13.97 cm) thereafter). Vessels electing to fish under the small dredge category would be limited to one dredge no wider than 10.5 feet (3.2 m) and no more than a five person crew. Limited access scallop vessels fishing under the DAS program would be prohibited from having shucking machines and those that shuck at sea would be prohibited from having sorting machines.

Permits would be required for the operator of any vessel issued a limited access or general category permit or in possession of more than 40 pounds (18.14 kg) of Atlantic sea scallops. Permits would be required for dealers who purchase Atlantic sea scallops. A Dealer is defined as any person who receives scallops for a commercial purpose from the owner or operator of a vessel other than only for transport on land.

To keep track of the days at sea and the commercial catch, dealers and vessel operators would be required to submit reports. Dealers would have to submit these reports on a weekly and annual basis. Owners and operators of vessels with scallop permits would have to submit their daily fishing logs on a monthly basis.

The amendment also includes the following provisions to address the traditional small boat fleets: Vessels that have qualified for a limited access permit and are in either the Part-time or Occasional category, at the beginning of each year, may elect to fish in the next higher vessel category if they accept the limits of the small dredge category, that is, they use, throughout the year, one dredge not to exceed 10.5 feet (3.2 m) and a maximum crew of 5.

To gather more specific data on the scallop resource, permitted vessels would be required to take an observer if requested by the Regional Director. The observer requirement could be waived by the Regional Director if the vessel is unsafe or not equipped to carry an observer on board. The cost of an observer's accommodations and food would be borne by the vessel owner. Also, all permitted dealers would be required to allow NMFS authorized agents to sample sea scallops.

Although not specifically included in the amendment, these regulations would allow vessels with limited access permits to carry-over a maximum of 10 days from one year to the next. The Regional Director determined that this provision was necessary to prevent vessel owners from feeling obligated to fish at the end of each year despite unfavorable weather conditions. The Council endorsed this change at its August 10–11, 1993 meeting.

If Amendment 4 is approved, dates of implementation of various administrative management measures in the amendment may have to be staggered to some extent to minimize any adverse financial impacts on fisherman by providing a reasonable amount of time to become familiar with various requirements and comply with permit requirements, VTS requirements and reporting requirements.

Framework Measures

Amendment 4 includes framework measures to implement adjustments to the effort control and other measures in the amendment as needed in order to meet the Amendment's objectives. Annually, upon request by the Council, but at a minimum in 1996 and 1999, the Regional Director would be required to provide the Council with information on the status of the sea scallop resource. Within 60 days of receipt of that information, the Plan Development Team (PDT) would be required to determine if the existing measures are adequate to meet the reduced fishing mortality rate target levels. The PDT would be required to prepare findings and recommendations and report them to the Council. After receiving the PDT's findings and recommendations, the Council would determine whether adjustments or additions to the management measures are necessary to meet the goals and objectives of the FMP. The Council would then develop and analyze appropriate management measures over the span of at least two Council meetings. The Council would have to select management measures from the list specified in the proposed rule or as otherwise contained in the FMP. After developing the proposed management measures, the Council would be required to make a recommendation to the Regional Director. The recommendation would have to include supporting rationale and, if management measures are recommended, an analysis of the impacts and a recommendation whether to publish the management measures as a final rule.

To recommend that the management measures should be published as a final rule, the Council would have to consider at least the following factors and provide supporting analysis for each factor considered: (1) Whether the timing of the availability of data on which the recommended management measures are based provides adequate time to publish a proposed rule and have the regulations in place for the entire fishing season; (2) whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures; (3) whether there is an immediate need to provide further protection for the scallop resource; and, (4) whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule. The consideration of these factors is necessary to help the Regional Director determine whether it is appropriate to allow critical management measure adjustments to be promulgated without a proposed rule in order to maximize the protection of the Atlantic sea scallop resource. The consideration of these factors is necessary to justify a conclusion that there is a good cause under the Administrative Procedures Act and the Magnuson Act to waive prior public

comment and cooling-off period requirements.

If the Council recommends additions or adjustments to management measures and if the Regional Director concurs with the Council's recommendations, including any recommendation to publish proposed management measures as a final rule, the action would be published as a final rule without further prior public comment. The Regional Director could choose the option of publishing the recommended management measures as a proposed rule, however, regardless of the Council's recommendation. If the Regional Director does not concur with the Council's recommendation, the Council will be notified in writing of the non-concurrence.

If the Council does not recommend any additions or adjustments to current management measures, no further action would be required.

Vessel Tracking System Specifications

This amendment proposes that vessel owners holding Part-time or Full-time sea scallop permits be required to purchase and install electronic tracking systems to enable a vessel's DAS to be monitored. Section 650.25(a)(2) of this proposed rule includes the technical specifications these systems would be required to meet in order to be approved by NMFS for purchase by vessel owners. Concurrent with this proposed rule, NMFS is asking vendors interested in having systems certified for use in this fishery to submit information to the Northeast Regional Director (SEE ADDRESSES) showing that the system meets each of the specifications included in § 650.25(a)(2). This information must be received no later than October 4, 1993. The Regional Director will then publish a list of certified systems in the **Federal Register.**

To provide interested members of the public with a clear understanding of what would be required if Amendment 4 is approved, and because this amendment would substantially amend every provision of the current requirements, proposed 50 CFR part 650 is published here in its entirety.

Some of the DAS allocation numbers in the narrative of the final SEIS were not revised in that document to reflect the corrected numbers, which appear in Table 44 of the final SEIS.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires the Secretary to publish implementing regulations proposed by a Council within 15 days of the receipt of a proposed amendment and proposed regulations. At this time, the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared a final supplemental environmental impact statement (FSEIS) for Amendment 4 describing the possible impacts on the environment as a result of this rule. A copy of the FSEIS may be obtained from the Council (see **ADDRESSES**).

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the draft RIR that demonstrates positive net present value over a 15-year period compared to a continuation of the current program. Employment and net benefits to the fishery are lowest in year three of the rebuilding program (estimated decreases of 14 and 23 percent, respectively), and non-wage variable costs are expected to increase by 14 percent during the first year of implementation, the only year in which they do increase. These estimated short-term losses are offset by long-term gains with an estimated increase of $114.1 million in the present value of ex-vessel net benefits over the 15-year time period. Additionally, productivity is expected to increase; there should be no detrimental effect on competition, investment or innovation in the fishery. A copy of the RIR may be obtained from the Council (see **ADDRESSES**).

The Council prepared an initial regulatory flexibility analysis (IRFA), which concludes that this proposed rule, if adopted, may have significant effects on a substantial number of small entities. There are approximately 400–600 vessels that rely on scallops for a portion of their revenue. All are considered small entities. Of these, more than 150 vessels would not qualify for the vessel moratorium and may have to redirect effort into other fisheries. Approximately 63 percent of the 150 vessels, however, depend on sea scallops for 15 percent or less of their total revenue and may be able to compensate by participating in the general scallop fishery (no moratorium, landings up to 400 pounds (181.44 kg)). For those vessels qualifying for the limited access fishery, there are significant short-term losses in revenue that are offset by long-term gains. A copy of the IRFA may be obtained from the Council (see **ADDRESSES**).

The proposed rule contains eight new collection-of-information requirements and revises four existing requirements subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget (OMB) for approval. The public's reporting burdens for these collection-of-information requirements are indicated in the parentheses in the following statements and include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The new reporting requirements are:

(1) Dealer permits, (5 minutes/response);

(2) Operator permits, (1 hour/response);

(3) Notice requirements for observer deployment, (2 minutes/response);

(4) Proof of installation of vessel tracking system, (2 minutes/response);

(5) Automated vessel tracking system, (0 minutes/response);

(6) Vessel call-in requirement, (2 minutes/response);

(7) Days-at-sea exemption program, (2 minutes/response);

(8) Vessel logbooks, being submitted under #0648–0212 (5 minutes/response).

Revisions to the existing requirements are:

(1) Limited access permits, OMB #0648–0202, will be issued to vessels with documented history of participation in the fishery—appeal of denied permits will require written submission (3 hours/response);

(2) Limited access permits, OMB #0648–0202, will specify allowed days-at-sea—appeal of the days-at-sea allocation will require written submission (5 hours/response);

(3) Dealer purchase reports that were previously voluntary, OMB #0648–0229, will be mandatory (2 minutes/response);

(4) Annual processed products reports that were previously voluntary, OMB #0648–0018, will be mandatory (2 minutes/response).

Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burdens, to Richard Roe, NMFS, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (see **ADDRESSES**, above).

List of Subjects in 50 CFR part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: August 30, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 650 is proposed to be revised to read as follows:

PART 650—ATLANTIC SEA SCALLOP FISHERY

Subpart A—General Provisions

Sec.

650.1 Purpose and scope.
650.2 Definitions.
650.3 Relation to other laws.
650.4 Vessel permits.
650.5 Operator permits.
650.6 Dealer permits.
650.7 Recordkeeping and reporting requirements.
650.8 Vessel identification.
650.9 Prohibitions.
650.10 Facilitation of enforcement.
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Subpart B—Management Measures

650.20 Shell-height standard.
650.21 Gear and crew restrictions.
650.22 Possession restrictions.
650.23 Transfer-at-sea.
650.24 Days-at-sea (DAS) allocations.
650.25 Monitoring requirements.
650.26 DAS notification program.
650.27 DAS exemption program.
650.28 At-sea observer coverage.
650.29 Experimental fishing exemption.

Subpart C—Framework Adjustments to Management Measures

650.40 Framework specifications.

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 650.1 Purpose and scope.

The purpose of this part is to implement the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP), which was prepared and adopted by the New England Fishery Management Council in consultation with the Mid-Atlantic and South Atlantic Fishery Management Councils, and approved by the Assistant Administrator for Fisheries (NOAA).

§ 650.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Atlantic sea scallop or *scallop* means the species *Placopecten magellanicus* throughout its range.

Authorized Officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard; or any U.S. Coast Guard personnel accompanying and acting under the direction of such officer.

(2) Any special agent or fisheries enforcement officer of NMFS.

(3) Any person designated by the head of any Federal or state agency that has entered into an agreement with the Secretary and the Commandant of the U.S. Coast Guard to enforce the provisions of the Magnuson Act.

Chafing gear or cookies mean steel, rubberized or other types of donut rings, disks, washers, twine, or other material attached to or between the steel rings of a sea scallop dredge.

COLREGS Demarcation Lines mean the lines of demarcation delineating those waters upon which mariners must comply with the International Regulations for Preventing Collisions at Sea, 1972, (33 CFR part 80), and those waters upon which mariners shall comply with the Inland Navigation Rules.

Council means the New England Fishery Management Council.

Days-at-sea (DAS) means the 24-hour periods of time during which a fishing vessel is deemed to be absent from port for purposes of scallop fishing. DAS are calculated beginning when a vessel leaves port and ending when the vessel returns to port.

Dealer means any person who receives scallops for a commercial purpose from the owner or operator of a vessel, other than exclusively for transport on land.

Dredge or *dredge gear* means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any other modification to this design that can be used in the harvest of Atlantic sea scallops.

Dredge top means the mesh panel in the top of a dredge and immediately adjacent rings and links found between the bail of the dredge, the club stick and the two side panels. The bail of the dredge is the rigid structure of the forward portion of the dredge that connects to the warp and holds the dredge open. The club stick is the rigid bar at the tail of the dredge bag that is attached to the rings.

Dredge vessel means any fishing vessel that is equipped for fishing using dredge gear and that is capable of catching Atlantic sea scallops.

Fishery Management Plan (FMP) means the Fishery Management Plan for Atlantic Sea Scallops and any amendments thereto.

Fishing, or to fish, means any activity that involves:

(1) The catching, taking, or harvesting of fish;

(2) The attempted catching, taking, or harvesting of fish;

(3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2), or (3) of this definition.

Gross registered tonnage means the gross registered tonnage specified on the U.S. Coast Guard documentation.

Land means to enter port with fish on board, to begin offloading fish, or to offload fish.

Net tonnage means the net tonnage specified on the U.S. Coast Guard documentation.

NMFS means the National Marine Fisheries Service, NOAA.

Offload means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel.

Operator means the master, captain, or other individual in charge of a fishing vessel's operations.

Postmark means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt, or receipt received upon hand delivery to an authorized representative of NMFS.

Regional Director means the Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, or a designee.

Reporting month means a period of time beginning at 0001 hours local time on the first day of each calendar month and ending at 2400 hours local time on the last day of each calendar month.

Reporting week means a period of time beginning at 0001 local time on Sunday; and ending at 2400 hours local time the following Saturday.

Re-rig or re-rigged means physical alteration of the vessel or its gear in order to transform the vessel into one capable of fishing commercially for sea scallops.

Sea Scallop Plan Development Team (PDT) means a team of technical experts appointed by the Council.

Shell height is a straight line measurement from the hinge to the outermost part of the shell, that is, the edge furthest away from the hinge.

Shucking or *to shuck* means opening scallops and separating the meat or the adductor muscle from the shell.

Shucking machine means any mechanical device that automatically removes scallops from their shell.

Sorting machine means any mechanical device that automatically sorts whole scallops by shell height, size, or other physical characteristics.

Transfer means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel and move same to another vessel.

Trawl means gear consisting of a net that is towed and is capable of catching sea scallops. It includes Danis hand Scottish seine gear.

Trawl sweep means the total length of the footrope on a trawl net that is directly attached to the webbing of a net.

Trip is the period of time during which a fishing vessel is deemed to be absent from port for the purpose of fishing, beginning when the vessel leaves port and ending when the vessel returns to port.

Under agreement for construction means that the keel has been laid and that there is a written agreement to construct a fish vessel.

Vessel registered length means the registered length specified on the U.S. Coast Guard documentation or on the state registration (for undocumented vessels), if state-registered length is verified by an authorized officer.

Vessel Tracking System (VTS) means a vessel positioning system certified by NMFS for use on scallop vessels as required by this part.

VTS unit means a device installed on board a vessel used for vessel positioning as required by this part.

§ 650.3 Relation to other laws.

The relation of this part to other laws is set forth in § 620.3 of this chapter.

§ 650.4 Vessel permits.

Any vessel of the United States that fishes for, possesses, retains, or lands Atlantic sea scallops in quantities greater than 5 bushels (176.2 1) in-shell or 40 pounds (18.14 kg) shucked scallops per trip, except vessels that fish exclusively for sea scallops in state waters, must have aboard the vessel either a valid limited access permit or a valid general scallop permit issued under this section.

(a) *Limited access permits.* Any vessel of the United States that retains or lands more than 400 pounds (181.44 kg) of shucked scallops per trip or the equivalent amount of in-shell scallops (50 U.S bushels (17.62 hl)), except vessels fishing for sea scallops exclusively in state waters, must have a Federal limited access scallop permit. To qualify for a limited access permit a vessel must meet the following applicable criteria:

(1) *Eligibility in 1994.* To be eligible to obtain a limited access permit for 1994, a vessel must meet one of the following criteria:

(i) *Criteria.* (A) The vessel held a Federal scallop permit in 1988 or 1989 and the vessel landed more than 400 pounds (181.44 kg) of shucked scallops or the equivalent amount of in-shell scallops (50 U.S bushels (17.62 hl)) on any one trip completed during 1988 or 1989; or,

(B) The vessel was under written agreement for construction or for re-rigging on or prior to March 2, 1989, and the vessel obtained a Federal scallop permit and landed scallops between March 2, 1989 and March 2, 1990; or,

(C) The vessel was purchased between March 2, 1989, and November 28, 1990; it had a Federal scallop permit and landed scallops between January 1, 1982 and January 1, 1988; and it had a Federal scallop permit and landed more than 400 pounds (181.44 kg) of scallops on any one trip in 1990; or,

(D) The vessel is replacing a vessel that meets any of the criteria contained in paragraphs (a)(1)(i) (A), (B) or (C) of this section, and the vessel meets the criteria described in paragraph (a)(4) of this section.

(ii) No more than one vessel may qualify, at any one time, for a limited access permit based on another vessel's fishing and permit history, unless authorized by the Regional Director. If more than one vessel owner claims eligibility for a limited access permit, based on one vessel's fishing and permit history, the Regional Director shall determine who is entitled to qualify for the permit and the DAS allocation according to paragraph (a)(3) of this section.

(iii) Application for a limited access permit under this section will not be accepted after 12 months after the effective date of the final regulations for Amendment 4. This section does not affect annual permit renewals.

(2) *Eligibility in 1995 and thereafter.* To be eligible to renew or apply for a limited access permit after 1994, a vessel must have obtained a limited access permit the preceding year, or the vessel must be replacing a vessel that had obtained a limited access permit the preceding year, and, if applicable, the vessel must meet the criteria described in paragraph (a)(4) of this section. If more than one vessel owner claims eligibility to apply for a limited access permit based on one vessel's fishing and permit history after 1994, the Regional Director shall determine who is entitled to qualify for the permit and the DAS allocation according to paragraph (a)(3) of this section.

(3) *Change in ownership.* The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible evidence, verifying that the transferor/seller is retaining the vessel fishing and permit history for purposes of replacing the vessel.

(4) *Replacement vessels.* To be eligible to replace a vessel that has been issued a limited access permit, the replacement vessel must meet the following criteria:

(i) The replacement vessel's horsepower may not exceed by more than 20 per cent the horsepower of the vessel that was first issued a limited access permit. The horsepower of the replacement vessel may not exceed the horsepower of the vessel being replaced if the horsepower of the vessel first issued a permit has been increased through upgrade or vessel replacement since that permit was issued; and,

(ii) The replacement vessel's length, gross registered tonnage, and net tonnage may not exceed by more than 10 percent the length, gross registered tonnage, and net tonnage of the vessel being replaced, based on specifications provided in the initial application of the vessel first issued a limited access permit. The length, gross registered tonnage, and net tonnage of the replacement vessel may not exceed the length, gross registered tonnage, and net tonnage of the vessel first issued a permit if any or all of these specifications have been increased since that permit was issued through upgrading or vessel replacement. For the purposes of this paragraph, a state-registered or undocumented vessel will be considered to be 5 gross registered tons.

(5) *Upgraded vessel.* To remain eligible to retain a valid limited access permit, or to renew a limited access permit, a vessel may be upgraded, whether through refitting or replacement, only if the upgrade complies with the following limitations:

(i) The vessel's horsepower may be increased, whether through refitting or replacement, only once. Such an increase may not exceed 20% of the horsepower of the vessel first issued a limited access permit as specified in that vessel's permit application for a limited access permit; and,

(ii) The vessel's length, gross registered tonnage or net tonnage may be upgraded, whether through refitting or replacement, only one. Such an increase shall not exceed 10% each of the length, gross registered tonnage, and net tonnage of the vessel first issued a limited access permit as specified in that vessel's application for a limited access permit. This limitation allows only one upgrade, at which time any or all three specifications of vessel size must be increased.

(iii) A replacement of a vessel that does not result in an increasing

horsepower, length, gross registered tonnage or net tonnage is not considered an upgrade for purposes of this section.

(6) *Notification of eligibility for 1994.* (i) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence that they meet the criteria described in paragraph (a)(1) of this section that they qualify for a limited access permit if they meet the requirements contained in paragraphs (c) through (g) of this section.

(ii) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access permit by submitting the information described in paragraphs (a)(1) through (5) of this section. In the event the application is denied, the applicant may request an appeal as specified in paragraph (a)(9) of this section. If, through either of these procedures, the Regional Director determines that the vessel meets the eligibility criteria, a limited access permit will be issued to the vessel.

(7) *Percentage ownership restrictions.* (i) Any vessel owner is eligible to apply for and be issued the initial limited access permit for a vessel in 1994 provided the vessel meets all pertinent criteria in this part regardless of ownership in other scallop vessels.

(ii) For the years 1995 and thereafter, except as provided in paragraph (a)(7)(iii) of this section, a vessel owner is not eligible to be issued a limited access scallop permit for a vessel if the issuance of the permit will result in the vessel owner, or any person who is a shareholder or partner of the vessel owner, having an ownership interest in limited access vessels in excess of 5 percent of the number of all limited access vessels at the time of permit application.

(iii) Vessel owners who were initially issued a permit for a vessel in 1994, or were issued or renewed a permit for a vessel in 1995 and thereafter in compliance with the ownership restrictions in paragraph (a)(7)(ii) of this section, are eligible to renew such permit(s), regardless of whether the renewal of the permits will exceed the 5 percent ownership restrictions.

(iv) Having an ownership interest includes, but is not limited to, persons who are shareholders in a vessel owned by a corporation or who are partners (general or limited) to a vessel owner.

(8) *Consolidation restriction.* Limited access scallop permits and DAS allocations may not be combined or consolidated from two, or more vessels, onto one vessel.

(9) *Appeal of denial of limited access permit.* (i) Any applicant denied a limited access permit, may appeal the denial within 30 days of the notice of denial. Any such appeal must be based on one or more of the following grounds and must be in writing, stating the grounds for the appeal:

(A) The information used by the Regional Director was based on mistaken or incorrect data;

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(C) The applicant has new or additional information that might change an initial decision.

(ii) The Regional Director will appoint a designee who will make the initial decision on the written appeal.

(iii) If the applicant is not satisfied with the initial decision, the appeal may be presented at either a hearing before an officer appointed by the Regional Director or before an Advisory Appeals Board if established pursuant to paragraph (a)(9)(iv)(B) of this section. The vessel owner forfeits the option to have a hearing before an officer appointed by the Regional Director if he/she requests a review by the Advisory Appeals Board, if such a board is established.

(iv) *Recommendations to the Regional Director*—(A) *Hearing Officer.* If an appeal is reviewed by a hearing officer, the hearing officer shall make a finding and recommendation to the Regional Director which shall be advisory only.

(B) *Advisory Appeals Board.* The Regional Director may establish, or request the Council to establish, an Advisory Appeal Board. If such a board is established and approved by the Regional Director, an appealing vessel owner who is not satisfied with the initial decision, may request that an appeal be reviewed by the Appeals Board. If such a request is made, the Regional Director shall forward the appeal to the Appeals Board within 15 days after receipt of the appeal. Any appeal reviewed by the Appeals Board made up of other than Federal employees shall be open to the public, including all documentation presented to support the appeal. The Appeals Board shall make findings and recommendations that shall be advisory to the Council, which in turn shall provide a recommendation to the Regional Director.

(v) The Regional Director's decision on this appeal is the final administrative decision of the Department of Commerce.

(vi) *Status of vessels pending appeal.* (A) A vessel for which an application has been completed and an appeal has been initiated may fish under the Full-time DAS allocation, pending the appeal, if NMFS has evidence, or the vessel owner can present credible evidence at the time of the appeal, that the vessel participated in at least 10 trips, each landing more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops, in any consecutive 12-month period during 1991–1992.

(B) A vessel owner appealing under this part who cannot meet the criteria specified in paragraph (a)(9)(iv)(A) of this section, but who can establish through credible evidence, or NMFS records, that his/her vessel fished at least 5 trips, each landing more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops, in any 12 consecutive month period during 1991–1992, may fish under the Part-time DAS allocation of days, pending appeal.

(C) Vessel owners appealing under this part who cannot meet the criteria specified in paragraphs (a)(9)(vi) (A) or (B) of this section, but who can establish through credible evidence, or NMFS records, that their vessel fished at least 1 trip, landing more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops, during 1991–1992, may fish under the Occasional DAS allocation of days, pending appeal.

(D) The decision and notification whether to allow any vessel that presents evidence under paragraphs (a)(9)(vi) (A) through (C) of this section to fish under one of the three categories of DAS, pending the appeal, will be provided by the Regional Director in a letter. Any such decision is the final administrative decision of the Department of Commerce on fishing activity pending the appeal. The authorizing letter must be carried on board the vessel while participating in the DAS program.

(b) *General scallop permit.* Any vessel of the United States that is not in possession of a limited access permit, and that possesses, retains, or lands between 40 pounds (18.14 kg) and 400 pounds (181.44 kg) of shucked meats per trip, or the equivalent amount of in-shell scallops (5 and 50 U.S. bushels (176.2 l and 17.62 hl), respectively), except vessels that fish exclusively in state waters for scallops, must have a general scallop permit.

(c) *Condition.* Vessel owners who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel and vessel's

fishing, catch, crew size, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), will be subject to all requirements of this part, unless exempted from such requirements under § 650.27. The vessel and all such fishing, catch, crew size, and gear will remain subject to all applicable state or local requirements. If a requirement of this part and a management measure required by state or local law differ, any vessel owner permitted to fish in the EEZ must comply with the more restrictive requirement.

(d) *Vessel application.* Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Director. The application must be signed by the owner of the vessel, or the owner's authorized representative, and submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section. Applicants for limited access permits who have not been notified of eligibility by the Regional Director shall provide information with the application sufficient for the Regional Director to determine whether the vessel meets the eligibility requirements specified under paragraph (a)(1) of this section. Applications for 1994 limited access permits must be submitted by the date 12 months after date of effectiveness of the final rule. Acceptable forms of proof include, but are not limited to, state weigh-out records, packout forms, settlement sheets, grocery receipts, fuel receipts, and bridge logs.

(e) *Information requirements.* (1) An application for either a limited access or general scallop permit must contain the following information, and any other information required by the Regional Director: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a copy of vessel's U.S. Coast Guard documentation or, if undocumented, state registration number and a copy of the state registration; home port and principal port of landing; length; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction; type of propulsion; approximate fish-hold capacity; type of fishing gear used by the vessel; number of crew; permit category; if the owner is a corporation, a copy of the Certificate of Incorporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; and name and signature of the owner or the owner's authorized representative.

(2) Applications for a limited access scallop permit must also contain the following:

(i) For every person named by applicants for limited access permits pursuant to paragraph (e)(1) of this section, the names of all other vessels in which that person has an ownership interest and for which a limited access scallop permit has been issued or applied for;

(ii) The engine horsepower of the vessel as specified in the vessel's permit documentation as of August 3, 1992; or, if the engine horsepower is different from that stated in the vessel's Federal scallop permit as of August 3, 1992, sufficient documentation to ascertain the different engine horsepower;

(iii) If applying for Full-time or Part-time limited access permit, or if opting to use a VTS unit although not required, a copy of the vendor installation receipt from a NMFS-certified VTS vendor as described in § 650.25(a); and

(iv) If applying for the small dredge program set forth under § 650.21(e), an annual declaration into the program.

(f) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (g) of this section.

(g) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904 and under § 650.4(a)(9), the Regional Director shall issue a vessel permit within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a completed application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received and the applicant has submitted all applicable reports specified at § 650.7.

(ii) The application was not submitted and received in a timely fashion in accordance with paragraphs (a)(1)(iii) and (p) of this section.

(iii) The applicant and applicant's vessel failed to meet all eligibility requirements described in paragraphs (a) (1) and (2) of this section.

(iv) For applicants applying for a Full-time or Part-time limited access permit, the applicant has failed to meet all of the VTS requirements as described in § 650.25.

(v) The applicant has failed to meet any other application requirements stated in 50 CFR part 650.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(h) *Expiration.* A permit will expire upon the renewal date specified by the Regional Director.

(i) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or until it otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director as specified in paragraph (l) of this section. Federal fishing vessel permits must be renewed annually.

(j) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the owner or authorized representative, stating the need for replacement, the name of the vessel, and the fishing permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with the Magnuson Act, may be charged for issuance of the replacement permit.

(k) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the vessel and owner to whom it is issued.

(l) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, the permit holder must report the change in writing to the Regional Director. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(m) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(n) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by an authorized officer.

(o) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(p) *Limited access permit renewal.* To renew or apply for a limited access permit in 1995 and thereafter, a completed application must be received by the Regional Director by December 31 of the year before the permit is needed. For example, to receive a limited access permit for 1996, vessel owners must apply by December 31, 1995. Failure to renew a limited access permit in any year bars the renewal of the permit in subsequent years.

(q) *Voluntary relinquishment of limited access permits.* If a vessel's Federal limited access scallop permit is voluntarily relinquished, no Federal scallop permit may be re-issued or renewed based on the vessel's history, or to any vessel relying on the vessel's history.

§ 650.5 Operator permits.

(a) Any operator of a vessel issued a limited access or general scallop permit, or any operator of a vessel fishing for scallops in the EEZ or in possession of more than 40 pounds (18.14 kg) of shucked scallops, or 5 U.S. bushels (176.2 l) of in-shell scallops, in or harvested from the EEZ, must have in his/her possession a valid operator's permit issued under this part.

(b) *Operator application.* Applicants for a permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Condition.* Vessel operators who apply for a fishing operator's permit under this section must agree as a condition of this permit that the operator and vessel's fishing, catch, crew size, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), will be subject to all requirements of this part, unless exempted from such requirements under § 650.27. The vessel and all such fishing, catch, crew size, and gear will remain subject to all applicable state or local requirements. If a requirement of this part and a management measure required by state or local law differ, any vessel operator permitted to fish in the EEZ must comply with the more restrictive requirement.

(d) *Information requirements.* An applicant must provide all the following information any other information required by the Regional Director: name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional) and signature of the applicant. Two color passport size photographs of the applicant must also be provided with the permit application.

(e) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Financial Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (f) of this section.

(f) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director shall issue an operator's permit within 30 days of receipt of a completed application if the criteria specified herein are met. Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(g) *Expiration.* The permit will expire upon the renewal date specified by the Regional Director.

(h) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or until it otherwise expires, or ownership changes, or the applicant has failed to report a change in the information on the permit application to the Regional Director as specified in paragraph (k) of this section.

(i) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the permit number assigned. An applicant for a replacement permit must also provide two color passport size photos of the applicant. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with the Magnuson Act, may be charged.

(j) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(k) *Change in application information.* A change in the permit holder's name, address or telephone number must be reported in writing to the Regional Director within 15 days of the change in information. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(l) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(m) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(n) *Sanctions.* Vessel operators with suspended or revoked permits may not be on board a Federally permitted fishing vessel in any capacity. Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(o) *Vessel owner responsibility.* Vessel owners are responsible for ensuring that their vessels are operated by an individual with a valid operator's permit issued under this section.

§ 650.6 Dealer permits.

(a) All dealers must have in their possession a valid permit issued under this part.

(b) *Dealer application.* Applicants for a dealer's permit under this section must submit a completed application on an appropriate form provided by the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Information requirements.* Applications must contain the following information and any other information required by the Regional Director: Company name, place(s) of business, mailing address(es) and telephone number(s); owner's name; dealer permit number; and name and signature of the person responsible for the truth and accuracy of the report. If the dealer represents a corporation, a certificate of incorporation must be included with the application. If a partnership, a copy of the Partnership Agreement and the names and addresses of all partners must be included with the application.

(d) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in

accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section.

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to an applicant unless the applicant has failed to submit a completed application. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified in § 650.7(a). Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* A permit will expire upon the renewal date specified by the Regional Director.

(g) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or until it otherwise expires or the applicant has failed to report any change in the information on the permit application to the Regional Director as required by paragraph (j) of this section.

(h) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with the Magnuson Act, may be charged.

(i) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom, or other business entity to which, it is issued.

(j) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, the permit holder must report the change in writing to the Regional Director. If written notice of the change in formation is not received by the Regional Director within 15 days, the permit is void.

(k) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(l) *Display.* Any permit, or a valid duplicate thereof, issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(m) *Federal versus state requirements.* If a requirement of this part differs from a fisheries management measure required by state law, any dealer issued a Federal permit must comply with the more restrictive requirement.

(n) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

§ 650.7 Recordkeeping and reporting requirements.

(a) *Dealers*—(1) *Weekly report.* Dealers shall provide at least the following information to the Regional Director, or official designee, on a weekly basis on forms supplied by or approved by, or by means approved by, the Regional Director. If authorized in writing by the Regional Director, dealers may submit reports electronically or through other media. The following information, and any other information required by the Regional Director, must be provided: Name and mailing address of dealer; dealer number; name and permit number of the vessels from which scallops are landed or received; dates of purchases; pounds by species; price by species; and port landed.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section are required to complete the "Employment Data" section of the Annual Processed Products Reports; the other information on that form is voluntary. Reports shall be submitted to an address supplied by the Regional Director.

(3) *Inspection.* The dealer shall make copies of the required reports that have been submitted, should have been submitted, or the records upon which the reports were based, available immediately upon request for inspection by an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections.

(4) *Record retention.* Copies of reports, and records upon which the reports were based, must be retained and available for review for one year after the date of the last entry on the report. The dealer shall retain such reports and records at its principal place of business.

(5) *Submitting reports.* Reports must be sent and postmarked within 3 days after the end of each reporting week. Each dealer will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a dealer permit.

(b) *Vessel owners*—(1) *Fishing log reports.* The owner of any vessel holding a Federal scallop permit shall maintain on board the vessel an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Director. Vessel owners may submit reports electronically, for example using the VTS, or through other media approved by the Regional Director. The following information, and any other information required by the Regional Director, must be provided: Vessel name; USCG documentation number (or state registration number if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; gear fished; quantity and size of gear mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; all species landed and discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and permit number.

(2) *When to fill in the log.* Such log reports must be filled in, except for information required but not yet ascertainable, before offloading has begun. At the end of a fishing trip all information in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* Owners and operators shall, immediately upon request, make fishing log reports currently in use, or to be submitted, available for inspection by an authorized officer, or an employee of the NMFS designated by the Regional Director to make such inspections at any time during or after a trip.

(4) *Record retention.* Copies of fishing log reports must be retained and available for review for one year after the date of the last entry on the report.

(5) *Submitting reports.* Fishing log reports must be sent and, if mailed, postmarked, within 15 days of the last calendar day of the month in which a trip was landed. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a fishing permit. If no fishing trip is made during a month, a report so stating must be submitted.

§ 650.8 Vessel identification.

(a) *Vessel name.* Each fishing vessel subject to this part and over 25 feet (7.6 m) in length must display its name on

the port and starboard sides of the bow and, as possible, on its stern.

(b) *Official number.* Each fishing vessels subject to this part over 25 feet (7.6 m) in length must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be visible from above by enforcement vessels and aircraft. The official number is the U.S. Coast Guard documentation number or the vessel's state registration number for vessels not required to be documented under title 46 of U.S. Code.

(c) *Numerals.* The official number must be permanently affixed in contrasting block Arabic numerals at least 18 inches (45.7 cm) in height for vessels over 65 feet (19.8 m), and at least 10 inches (25.4 cm) in height for all other vessels over 25 feet (7.6 m) in length.

(d) *Duties of owner and operator.* The owner and operator of each vessel subject to this part will:

(1) Keep the vessel name and official number clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from an enforcement vessel or aircraft.

§ 650.9 Prohibitions.

(a) In addition to the prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a limited access scallop permit or a general scallop permit under § 650.4, or a letter under § 650.4(a)(9)(vi)(D), to do any of the following:

(1) Possess, retain, or land in-shell sea scallops smaller than the minimum size specified in § 650.20(a) at or prior to the time when a dealer receives or possesses those sea scallops for a commercial purpose. All Atlantic sea scallops will be subject to inspection and enforcement, in accordance with the compliance and sampling procedures specified in § 650.20(b), up to and including the time when a dealer receives or possesses sea scallops for a commercial purpose.

(2) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, and other requirements of § 650.7(b).

(3) Possess, retain, or land sea scallops unless the operator of the vessel has been issued an operator's permit under § 650.5, and the permit is on board the vessel and is valid.

(4) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application as required under § 650.4(l) or § 650.5(k).

(5) Make any false statement in connection with an application under § 650.4 or § 650.5.

(6) Fail to affix and maintain permanent markings as required by § 650.8.

(7) Sell or transfer, or attempt to sell or transfer, to a dealer any sea scallops unless the dealer has a valid dealer's permit issued under § 650.6.

(8) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove, or otherwise transfer Atlantic sea scallops or fish from one vessel to another.

(b) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a limited access permit under § 650.4(a), or a letter under § 650.4(a)(9)(vi)(D), to do any of the following:

(1) Possess, retain, or land more than 400 pounds (181.44 kg) of shucked sea scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 650.26, unless exempted from DAS allocations as provided in § 650.27.

(2) Fail to have a certified, operational, and functioning VTS unit that meets the specifications of § 650.25(a) on board the vessel at all times, unless the vessel is not subject to the VTS requirements specified in § 650.26.

(3) If the vessel is not subject to VTS requirements specified in § 650.26, fail to comply with any aspect of the call-in system as specified in § 650.26(b).

(4) Combine, transfer, or consolidate DAS allocations from any vessel onto another vessel that has its own DAS allocation.

(5) Have an ownership interest in more than 5 percent of the total number of vessels issued limited access permits, except as provided in § 650.4(a)(7)(iii).

(6) Increase or upgrade the horsepower of such vessel or its replacement except as specified in § 650.4(a)(5).

(7) Increase or upgrade the length, gross registered tonnage or net tonnage of such vessel or its replacement except as specified in § 650.4(a)(5).

(8) Fish under the DAS allocation program with trawl nets that have a maximum sweep exceeding 144 feet (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net.

(9) Fish under the DAS allocation program with, or have available for immediate use, trawl nets of mesh smaller than the minimum size, as specified in § 650.21(a)(2).

(10) Fish under the DAS allocation program with trawl nets that use chafing gear or other means or devices that violate the provisions of § 650.21(a)(3).

(11) Fish under the DAS allocation program with dredge gear that has a maximum combined dredge width greater than 31 feet (9.4 m), measured at the widest point in the bail of each dredge.

(12) Fish under the DAS allocation program with dredge gear that uses net or net material on the top half of the dredge of a minimum mesh size smaller than that specified in § 650.21(b)(2).

(13) Fish under the DAS allocation program with dredge gear containing rings that have minimum sizes smaller than those specified in § 650.21(b)(3).

(14) Use more than double links between rings of dredge gear.

(15) Use cookies, chafing gear or other gear, means, or devices on the top half of a dredge that obstruct the openings in or between the rings, other than double links as specified and described in § 650.21(b)(4).

(16) Fish under the DAS allocation program with more than 9 persons, including the operator, on board the vessel, unless otherwise authorized by the Regional Director.

(17) Fish under the small dredge program as specified in § 650.21(e) with a dredge that is greater than 10 feet 6 inches (3.2 m) in overall width, as measured at the widest point in the bail of the dredge.

(18) Fish under the small dredge program as specified in § 650.21(e) with more than 5 persons, including the operator, on board the vessel, unless otherwise authorized by the Regional Director.

(19) Use shucking machines on board a vessel, or sorting machines on board a vessel that shucks scallops at sea, unless otherwise authorized by the Regional Director.

(20) Refuse or fail to carry an observer if requested to do so by the Regional Director.

(21) Interfere with or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer conducting his or her duties aboard a vessel.

(22) Fail to provide an observer with the required food, accommodations, access, and assistance, as specified in § 650.28.

(23) Fail to comply with any requirement for declaring in and out of the DAS allocation program as specified in § 650.26.

(24) Fail to comply with any requirement for participating in the DAS

Exemption Program as specified in § 650.27.

(c) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a general scallop permit under § 650.4(b) to possess, retain, or land more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops.

(d) In addition to the general prohibitions specified in § 620.7 of this chapter and the prohibitions specified in paragraphs (a), (b) and (c) of this section, it is unlawful for any person to do any of the following:

(1) Possess, retain, or land sea scallops in excess of 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 l) of the in-shell scallops unless:

(i) The scallops were harvested by a vessel that has been issued a general or limited access scallop permit under § 650.4, or a letter under § 650.4(a)(9)(vi)(D), or

(ii) The scallops were harvested by a vessel without a Federal scallop permit and that fishes for scallops exclusively in state waters.

(2) Possess, retain, or land sea scallops in excess of 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops unless:

(i) The scallops were harvested by a vessel that has been issued a limited access scallop permit under § 650.4(a), or a letter under § 650.4(a)(9)(vi)(D), or

(ii) The scallops were harvested by a vessel without a Federal scallop permit and that fishes for scallops exclusively in state waters.

(3) Possess, retain, or land sea scallops in excess of 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 l) of the in-shell scallops unless:

(i) The scallops were harvested by a vessel with an operator on board who has been issued an operator's permit under § 650.5 and the permit is on board the vessel and is valid, or

(ii) The scallops were harvested by a vessel not issued a Federal scallop permit and that fishes for scallops exclusively in state waters.

(4) Land, offload, cause to be offloaded, sell, or transfer, or attempt to land, or attempt to land, offload, cause to be offloaded, sell or transfer sea scallops, from a fishing vessel, whether on land or at sea, as an owner or operator without accurately preparing and submitting, in a timely fashion, the documents required by § 650.7, unless the scallops were harvested by a vessel without a Federal sea scallop permit and that fishes for scallops exclusively in state waters.

(5) Purchase or receive scallops, or attempt to purchase or receive scallops, whether on land or at sea, as a dealer without accurately preparing, submitting and retaining, in a timely fashion, the documents required by § 650.7.

(6) Land, offload, remove, otherwise transfer, or attempt to land, offload, remove or otherwise transfer, Atlantic sea scallops from one vessel to another.

(7) Sell, barter or trade, or otherwise transfer, or attempt to sell, barter or trade, or otherwise transfer, for a commercial purpose any sea scallops from a trip whose catch is 40 pounds (18.14 kg) of shucked scallops or less, or 5 U.S. bushels (176.1 l) of in-shell scallops unless the vessel has been issued a valid Federal general or limited access scallop permit under § 650.4, or a letter under § 650.4(a)(9)(vi)(D), or the scallops were harvested by a vessel without a Federal scallop permit that fishes for scallops exclusively in state waters.

(8) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, sea scallops taken from a fishing vessel, unless in possession of a valid dealer's permit issued under § 650.6.

(9) Purchase, possess, or receive for commercial purposes, or attempt to purchase or receive for commercial purposes, sea scallops caught by a vessel other than one issued a valid federal general or limited access sea scallop permit under § 650.4, or a letter under § 650.4(a)(9)(vi)(D), unless the scallops were harvested by a vessel without a Federal scallop permit and that fishes for scallops exclusively in state waters.

(10) Assault, resist, oppose, impede, harass, intimidate, or interfere with either a NMFS-approved observer aboard a vessel, or an authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part.

(11) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any Atlantic sea scallops.

(12) Make any false statement on any report required to be submitted or maintained under § 650.7.

(13) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VTS or VTS signal required to be installed on, or transmitted by, Full-time and Part-time limited access scallop vessels or any other vessel required to use a VTS by this part.

(14) Possess, retain, or land in-shell sea scallops smaller than the minimum size specified in § 650.20 at or prior to the time when a dealer receives or possesses those sea scallops for a commercial purpose. All Atlantic sea scallops will be subject to inspection and enforcement for non-conformity, in accordance with the compliance and sampling procedures specified in § 650.20, up to and including the time when a dealer receives or possesses those sea scallops for a commercial purpose.

(15) Violate any provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

(e) Any person possessing, retaining, or landing sea scallops in excess of 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 l) of in-shell scallops at or prior to the time when those scallops are received or possessed by a dealer is subject to all of the prohibitions specified in paragraphs (a) and (b) of this section, unless the scallops were harvested by a vessel without a Federal scallop permit and that fishes for scallops exclusively in state waters.

(f) *Presumption.* Sea scallops that are possessed, retained, or landed at or prior to the time when the scallops are received by a dealer, or sea scallops that are possessed by a dealer, are presumed to be harvested from the EEZ. A preponderance of all submitted evidence, that such scallops were harvested by a vessel without a Federal scallop permit and fishing exclusively for scallops in state waters, will be sufficient to rebut the presumption.

§ 650.10 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 650.11 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 650.20 Shell-height standard.

(a) The minimum shell height for in-shell Atlantic sea scallops is 3½ inches (89 mm).

(b) Compliance and sampling. Compliance with the specified shell-height standards will be determined by inspection and enforcement up to and including the first transfer of scallops from a fishing vessel to a dealer, or person acting in the capacity of a dealer, as follows: the authorized officer will take samples of forty scallops each at random from the total amount of scallops in possession. The person in

possession of the scallops may request that as many as ten samples (400 scallops) be examined as a sample group. A sample group fails to comply with the standard if more than ten percent of all scallops sampled are less than the shell height specified by the standard. The shell height shall be measured in a straight line from the hinge of the scallop to the outermost part of the curve on the leading edge. The total amount of scallops in possession will be deemed in violation of this regulation and subject to forfeiture if the sample group fails to comply with the standard.

§ 650.21 Gear and crew restrictions.

(a) *Trawl vessel gear restrictions.* Trawl vessels issued a limited access permit under § 650.4(a), while fishing under the DAS program for sea scallops, must comply with the following:

(1) *Maximum sweep.* The maximum trawl sweep must not exceed 144 feet (43.9 m) as measured by the total length of the footrope that is directly attached to the webbing of the net.

(2) *Minimum mesh size restrictions.* (i) In 1994 and 1995, the minimum mesh size is 5 inches (12.7 cm) south of a line commencing at the shoreline and proceeding easterly along 39°10′ N. Latitude until it intersects the outer boundary of the EEZ, and 5½ inches (13.97 cm) for any scallop trawl net north of this line.

(ii) In 1996 and beyond, the minimum size for any scallop trawl net in all areas is 5½ inches (13.97 cm).

(iii) No vessel may have available for immediate use any net, or any piece of a net, not meeting the requirements specified in paragraph (a)(2)(i) of this section, or mesh that is rigged in a manner that is inconsistent with paragraph (a)(3) of this section. A net that conforms to one of the following specifications and that can be shown not to have been in recent use is considered not to be "available for immediate use":

(A) A net stowed below deck, provided:

(*1*) It is located below the main working deck from which the net is deployed and retrieved;

(*2*) The towing wires, including the "leg" wires, are detached from the net;

(*3*) It is fan-folded (flaked) and bound around its circumference.

(B) A net stowed and lashed down on deck, provided:

(*1*) It is fan-folded (flaked) and bound around its circumference;

(*2*) It is securely fastened to the deck or rail of the vessel; and

(*3*) The towing wires, including the leg wires, are detached from the net.

(C) A net that is on a reel and is covered and secured, provided:

(*1*) The entire surface of the net is covered with canvas or other similar material that is securely bound;

(*2*) The towing wires, including the leg wires, are detached from the net; and

(*3*) The codend is removed from the net and stored below deck.

(D) Nets that are secured in a manner authorized by the Regional Director, provided that the Regional Director has reviewed the alternative manner of securing nets.

(iv) Mesh sizes shall be determined by using a wedgeshaped gauge having a taper of two centimeters in eight centimeters and a thickness of 2.3 millimeters inserted into the meshes under a pressure or pull of five kilograms. The mesh size will be the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net will be measured at least five meshes away from the lacings, running parallel to the long axis of the net.

(3) *Chafing gear and other gear obstructions.* (i) A fishing vessel may not use any means, device, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net, except that, one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the regulated portion of a trawl net. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purposes of this subparagraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net.

(ii) A fishing vessel may not use any mesh construction or other means on, or in the top of, the regulated portion of the net, as defined in paragraph (a)(3)(i) of this section, if it obstructs the meshes of the net, or otherwise diminishes the effectiveness of the mesh size.

(iii) No net may be used in which the bars entering or exiting the knots twist around each other.

(b) *Dredge vessel gear restrictions.* All dredge vessels holding a Federal sea scallop permit under § 650.4 and in possession of sea scallops, or limited access vessels in the DAS Program, with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 400 or less pounds (181.44 kg) of sea scallops, must comply with the following restrictions:

(1) *Dredge width.* The maximum combined dredge width on a permitted scallop dredge vessel shall not exceed 31 feet (9.4 m) measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section.

(2) *Minimum mesh size.* (i) The minimum mesh size of net material on the top of a scallop dredge is 5½ inches (13.97 cm).

(ii) Mesh size is measured as provided in paragraph (a)(2)(iv) of this section.

(3) *Minimum ring size.* (i) For 1994 and 1995, the minimum inside ring size of a scallop dredge is 3¼ inches (83 mm).

(ii) For 1996 and thereafter, the minimum inside ring size is 3½ inches (89 mm).

(iii) Ring sizes are determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement shall not include normal welds from ring manufacturing or links. The ring size will be the average of the measurements of any series of 20 consecutive rings. The rings to be measured will be at least five rings away from the mouth, and at least two rings away from other rigid portions of the dredge.

(4) *Chafing gear and other gear obstructions.* (i) No chafing gear or cookies shall be used on the top of a scallop dredge;

(ii) No more than double links between rings shall be used in or on scallop dredges;

(iii) No material, device, net, or dredge configuration or design shall be used if it results in obstructing the release of scallops that would have passed through a legal size net and dredge that did not have in use any such material, device, or net or dredge configuration or design.

(c) *Crew restrictions.* Limited access vessels fishing under the scallop DAS program may have no more than nine people, including the operator, on board unless fishing under the small dredge program specified in § 650.21(e), or otherwise authorized by the Regional Director.

(d) *Sorting and shucking machines.* (1) Shucking machines are prohibited on all limited access vessels fishing under the scallop DAS program.

(2) Sorting machines are prohibited on limited access vessels fishing under

the scallop DAS program that shuck scallops at sea.

(e) *Small dredge program restrictions.* Any vessel owner whose vessel is assigned to either the Part-time or Occasional category may request to be placed in one category higher on the annual vessel permit application as described under § 650.4(e)(2)(iv). Vessel owners making such a request will be placed in the appropriate category, for the entire year, if they agree to comply with the following restrictions when fishing under the DAS program described in § 650.24, or are in possession of more than 400 lbs. (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of inshell scallops:

(1) The vessel must fish exclusively with one dredge no more than 10.5 foot (3.2 m) in width;

(2) The vessel is prohibited from having more than one dredge on board or in use; and,

(3) The vessel may have no more than five people, including the captain, on board.

§ 650.22 Possession restrictions.

(a) Owners or operators of vessels with a Limited Access permit that have declared out of the DAS program as specified in § 650.26, or have used up their DAS allocations and vessels possessing a General Scallop Permit, unless exempted under the DAS exemption program described under § 650.27, are prohibited from retaining, landing, or possessing more than 400 pounds (181.44 kg) of shucked scallops, or 50 U.S. bushels (17.62 hl) of in-shell scallops per trip, with not more than one scallop trip allowable in any calendar day.

(b) Owners or operators of vessels without a Federal sea scallop permit, except vessels fishing for scallops exclusively in state waters, are prohibited from retaining, landing or possessing more than 40 pounds (18.14 kg) of shucked sea scallops, or 5 U.S. bushels (176.2 l) of in-shell sea scallops. Owners or operators of vessels without Federal scallop permits are prohibited from selling, bartering, or trading sea scallops harvested from Federal waters.

§ 650.23 Transfer-at-sea.

(a) Owners or operators of vessels permitted under § 650.4 are prohibited from transferring or attempting to transfer fish from one vessel to another vessel, or other conveyance, at-sea.

(b) All persons are prohibited from transferring or attempting to transfer sea scallops from one vessel to another vessel, or other conveyance, at-sea.

§ 650.24 Days-at-sea (DAS) allocations.

Each vessel issued a limited access permit shall be assigned to a DAS category based on evidence and criteria as specified in paragraph (a) of this section. Limited access permits will indicate which category the vessel is assigned to. Vessels are prohibited from fishing for, landing, or possessing more than 400 pounds (181.44 kg) of sea scallops per trip once their allocated number of DAS, as specified under paragraph (c) of this section, are used up.

(a) *Criteria for assigning DAS categories.* All vessels qualifying for a limited access permit under the criteria specified in § 650.4(a) shall be assigned to the Full-time, Part-time, or Occasional DAS category based on the formulas specified in paragraph (b) of this section and the following:

(1) *Full-time.* A vessel shall be assigned to the Full-time category if that vessel has averaged at least 150 days of directed scallop fishing annually according to the formulas specified in paragraph (b) of this section;

(2) *Part-time.* A vessel shall be assigned to the Part-time category if that vessel has averaged more than 37 days but less than 150 days of directed scallop fishing annually according to the formulas specified in paragraph (b) of this section;

(3) *Occasional.* A vessel shall be assigned to the Occasional category if that vessel has averaged 37 days or less of directed scallop fishing annually according to the formulas specified in paragraph (b) of this section.

(b) *DAS formulas.* A vessel's average number of days of directed scallop fishing for purposes of assigning the vessel to one of the categories specified in paragraph (a) of this section shall be determined by applying one of the following formulas to the data, information, or other credible evidence available to the Regional Director. Scallop DAS for this purpose is defined as the total days at sea on trips with landings of more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.62 hl) of in-shell scallops.

(1) The following formulas apply to all vessels qualifying for limited access permits, with the exception of vessels that qualify under paragraph § 650.4(a)(1)(i)(C). The DAS formula applicable to that group of vessels is specified in paragraph (b)(2) of this section. Vessel owners may choose their 1990 history under paragraph (b)(1)(i) of this section, or a calculation based on the 1985–1990 history, as applicable, under paragraph (b)(1)(ii). DAS are calculated from the formulas below and the result is applied to the DAS categories described in paragraph (a) of this section.

(i) *1990 fishing history.* For any vessel that fished for scallops in 1990, the number of scallop DAS may be determined by calculating the total number of DAS on scallop trips ending in 1990; or,

(ii) *1985–1990 fishing history.* For vessels with history in the scallop fishery between 1985 and 1990, inclusive, the number of years history is determined as follows. With the exception of the adjustments specified under paragraphs (b)(1) (iii) and (iv) of this section, vessels whose calculated scallop history is based on a formula below must use their entire history in the scallop fishery and may not elect to use a formula based on fewer years history in the fishery.

(A) *Four or more years history.* Calculate the total number of scallop DAS for each year, exclude the high and low years of days at sea and average the remaining years; or,

(B) *Three year history.* Calculate the total number of scallop DAS for each year, average the high and low years of days at sea, and then average the result with the third year; or,

(C) *Two year history.* Calculate the total number of scallop DAS for each year, average the two years' DAS; or,

(D) *One year history.* Calculate the actual number of scallop DAS for that year.

(iii) *Pro-ration.* If a limited access vessel entered the scallop fishery for the first time during the relevant time period, the first year shall be pro-rated to a full year by pro-rating on an annual basis the number of DAS the vessel actually incurred on trips landing more than 400 pounds (181.44 kg) of scallops to determine the number of days at sea the vessel would have incurred had the vessel been in the fishery for the full year. The pro-ration formula is as follows: The total number of scallop DAS in that year is divided by the percentage of the year the vessel was in the fishery (by month). In pro-rating the days for such vessels, the Regional Director shall take into account the date the vessel entered the fishery, the vessel's subsequent fishing history, and other relevant information.

(iv) *New owner.* Vessel owners who purchased their vessel during the 1985–1990 time period may request that the DAS formulas be based solely on their individual history in the scallop fishery, excluding all previous owner's scallop histories. Under this option a vessel's first year in the fishery may be pro-rated based on the criteria specified in paragraph (b)(1)(iii) of this section.

(2) For vessels qualifying for a limited access scallop permit under paragraph § 650.4(a)(1)(i)(C). Pro-rate to a full year the total number of days the vessel would have fished and landed over 400 pounds (181.44 kg) of scallops in 1990 based on the actual number of days the vessel did fish in 1990 and the criteria specified in paragraph (b)(1)(iii) of this section. Then, calculate the average number of DAS for trips landing more than 400 pounds (181.44 kg) of scallops for the years 1991 and 1992. The number of days to determine the category shall be the lower number between the pro-rated 1990 days and the average of DAS in 1991 and 1992.

(c) *DAS allocations.* Each vessel qualifying for one of the three categories specified in paragraph (a) of this section shall be allocated, annually, the maximum number of days at sea (DAS) it may participate in the limited access scallop fishery, according to the category for which it qualifies. A vessel that has declared out of the scallop fishery pursuant to the provisions of § 650.26, or has used up its allocated DAS, may leave port without being assessed a DAS as long as it does not possess, retain, or land more than 400 pounds (181.44 kg) of shucked scallops or 50 U.S. bushels (17.61 hl) of in-shell scallops and complies with the other requirements of this part.

(1) *Annual DAS allocations.* The annual allocations of DAS for each category of vessel specified in paragraph (a) of this section shall be as follows:

DAS category	1994	1995–96	1997	1998–99	2000+
Full-time	204	182	164	142	120
Part-time	91	82	66	57	48
Occasional	18	16	14	12	10

(2) *Accrual of DAS.* DAS shall accrue in hourly increments, with all partial hours counted as full hours. A DAS is calculated beginning when a vessel leaves port and ending when the vessel returns to port as follows:

(i) DAS for vessels that are under the VTS monitoring system described in § 650.25 are counted beginning with the first hourly location signal received showing that the vessel crossed the COLREGS Demarcation Line leaving port and ending with the first hourly location signal received showing that the vessel crossed the COLREGS Demarcation Line upon its return to port.

(ii) DAS for vessels fishing under the call-in notification system are counted using the departure date and time reported under § 650.26(b).

(d) *Adjustments in annual DAS allocations.* Adjustments in annual DAS allocations, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in subpart C of this part.

(e) *Notice of initial DAS category.* The Regional Director will notify all owners of vessels that are deemed eligible to be issued a limited access scallop permit pursuant to § 650.4(a)(6) as to which category the vessel qualifies for based on data, information and other evidence available to the Regional Director.

(f) *Appeal of DAS category.* (1) *Appeal criteria.* Initial placement of a vessel into a vessel category may be appealed to the Regional Director within 30 days of receipt of the notice of a vessel's DAS category. Any such appeal must be based on one or more of the following grounds, and must be in writing stating the grounds for the appeal:

(i) The information used by the Regional Director was based on mistaken or incorrect data;

(ii) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria; or

(iii) The applicant has new or additional information which might change the initial decision.

(2) The Regional Director will appoint a designee who will make an initial decision on the written appeal.

(3) If the applicant is not satisfied with the initial decision, the appeal may be presented at either a hearing before an officer appointed by the Regional Director or before an Advisory Appeals Board as described in § 650.4(a)(9)(iv) of this section. The vessel owner forfeits the option to have a hearing before an officer appointed by the Regional Director if he/she requests a review by the Advisory Appeals Board, if such a board is established.

(4) Recommendations to the Regional Director. (i) Hearing Officer. If an appeal is reviewed by a hearing officer, the hearing officer shall make a finding and recommendation to the Regional Director which shall be advisory only.

(ii) Advisory Appeals Board. If an Advisory Appeals Board is established under § 650.4(a)(9)(iv), an appealing vessel owner who is not satisfied with the initial decision, may request that an appeal be reviewed by the Appeals Board. If such a request is made, the Regional Director shall forward the appeal to the Appeals Board within 15 days after receipt of the appeal. Any appeal reviewed by the Appeals Board made up of other than Federal employees shall be open to the public, including all documentation presented to support the appeal. The Appeals Board shall make findings and recommendations that shall be advisory to the Council, which in turn shall provide a recommendation to the Regional Director.

(5) The Regional Director's decision on this appeal is the final administrative decision of the Department of Commerce.

(6) Status of vessels pending appeal. All vessels, while appealing their DAS category, may fish under the DAS allocation allowed under the next higher category than the vessel's initial category placement, regardless of what category the vessel is appealing to be placed in, and are subject to all requirements applicable to such category of vessels unless otherwise exempted. That is , if a vessel was initially placed in the Part-time category, that vessel may fish up to the maximum number of DAS allocated to Full-time vessels until the Regional Director has made a final determination on the appeal. If a vessel is initially placed in the Occasional category, that vessel may fish up to the DAS allocated to Part-time vessels, regardless of what category the Occasional vessel is appealing to be placed in, until the Regional Director has made a final determination on the appeal. Any DAS spent fishing for scallops shall be counted against the DAS allocation of the category that the vessel is ultimately placed in. If, before this appeal is decided, a vessel exceeds the number of days it is finally allocated after appeal the excess days will be subtracted from the vessel's allocation of days in 1995.

(g) *End-of-year-over.* Limited access vessels with unused DAS on December 31 of any year may carry-over a maximum of 10 DAS into the next year. At no time may more than 10 DAS be carried over.

(h) *Good Samaritan credit.* Limited access vessels fishing under the DAS

program and that spend time at sea for one of the following reasons, and that can document the occurrence through the Coast Guard, will be credited for the time documented:

(1) time spent assisting in a Coast Guard search and rescue, operation; or,

(2) time spent assisting the Coast Guard in towing a disabled vessel.

§ 650.25 Monitoring requirements.

(a) *Full-time and Part-time limited access vessels.* To be issued a Full-time or Part-time limited access scallop permit as specified in § 650.4(a), all vessels must provide documentation to the Regional Director that the vessel has an operational VTS unit on board that meets the minimum performance criteria specified in paragraph (a)(2) of this section, or as modified annually as specified in paragraph (a)(1) of this section. This VTS must be a certified unit as specified in paragraph (a)(1) of this section.

(1) *Certification.* The Regional Director will annually certify VTS's that meet minimum performance criteria specified in paragraph (a)(2) of this section. Any changes to the performance criteria will be published annually in the **Federal Register** and a list of certified systems will be published in the **Federal Register** upon addition or deletion of a system from the list. In the event that a system is deleted from the list, vessel owners that purchased that system prior to publication of the revised list will be considered to be in compliance with the requirement to have a certified unit.

(2) *Minimum VTS performance criteria.* The basic required features of the VTS are as follows:

(i) The VTS shall be tamper proof, i.e., shall not permit the input of false positions; furthermore, it a system uses satellites to determine position, satellite selection should be automatic to provide an optimal fix and should not be capable of being manually overridden;

(ii) VTS equipment shall be fully automatic and operational at all times regardless of weather and environmental conditions;

(iii) VTS equipment shall be capable of tracking vessels in all U.S. waters in the Atlantic Ocean from the shoreline of each coastal state to a line 215 nautical miles offshore and shall provide position accuracy to within 400 meters (1,300 feet);

(iv) The VTS shall have the capability of transmitting and storing information including vessel identification, date, time, and latitude/longitude;

(v) The VTS shall provide accurate hourly position transmissions every day of the year. In addition, the VTS shall allow NOAA/NMFS to poll individual vessels or any set of vessels at any time and receive position reports in real time; for the purposes of this specification, "real time" shall constitute data that reflect a delay of 15 minutes or less between the displayed information and the vessel's actual position;

(vi) The VTS must be capable of providing network message communications between the vessel and shore. The VTS shall allow NMFS to initiate communications or data transfer at any time;

(vii) The VTS vendor shall be capable of transmitting position data to a NMFS-designated computer system via a modem at a minimum speed of 9600 baud. Transmission will be in ASCII test in a file format acceptable to NMFS;

(viii) The VTS must be capable of providing vessel locations relative to international boundaries and fishery management areas;

(ix) The VTS vendor must have the capacity to archive vessel position histories for a minimum of 1 year and to provide transmission to NMFS of specified portions of archived data in response to NMFS requests and in a variety of media (tape, floppy, etc).

(3) *Operating requirements.* All required VTS units must transmit a signal indicating the vessel's accurate position at least every hour, 24 hours a day, throughout the year.

(4) *Presumption.* Failure of a VTS unit to transmit an hourly signal of a vessel's position shall be presumed to count against a DAS, or fraction thereof, for as long as the unit fails to transmit a signal. Provision of a preponderance of evidence that the failure to transmit was due to an unavoidable malfunction or disruption of the transmission that occurred while the vessel was declared out of the scallop fishery or was not at sea will be sufficient to rebut the presumption.

(5) *Replacement.* Should a VTS unit require replacement, vessel owners must submit documentation to the Regional Director, within 3 days and prior to their next trip, verifying that the new VTS unit is an operational certified system as described under paragraph (a)(1) of this section.

(6) *Access.* As a condition to obtaining a Full-time or Part-time scallop permit, all vessel owners must agree to allow the NOAA/NMFS, the U.S. Coast Guard, and their authorized officers or designees access to the vessels' DAS and location data obtained from its VTS at the time of or after its transmission to the vendor or receiver, as the case may be.

(7) *Tampering.* Tampering with a VTS, or a VTS signal, is prohibited. Tampering includes any activity that is likely to affect the unit's:

(i) ability to operate properly;

(ii) signal; or

(iii) the accuracy of the vessel's position fix.

(b) *Occasional limited access vessels.* Vessels qualifying for a DAS allocation under the Occasional category as described under § 650.24(a)(3), may participate in either the DAS notification program using the VTS procedures described in § 650.26(a) or the call-in procedures described in § 650.25(b).

§ 650.26 DAS notification program.

(a) *VTS notification.* Owners of scallop vessels with Full-time or Part-time limited access vessel permits, owners of vessels with Occasional limited access permits that have elected to fish under the VTS monitoring system specified in § 650.25, and vessels fishing under the small dredge program specified in § 650.24(e), must notify the Regional Director by VTS, prior to leaving port, of their intent to fish under their DAS allocation as follows:

(1) Full-time scallop vessels are deemed to be fishing under the DAS allocation program unless they declare out of the sea scallop fishery for a specific time period by notifying the Regional Director.

(2) Owners of Part-time scallop vessels may not fish in the DAS allocation program unless they declare into the scallop fishery for a specific time period by notifying the Regional Director.

(3) If the VTS is not available, and if authorized by the Regional Director, a vessel owner must notify as required in paragraphs (a)(1) and (a)(2) of this section and report using the call-in notification system described under paragraph (b) of this section.

(b) *Call-in notification.* Owners of vessels qualifying for a DAS allocation under the occasional category as described under § 650.24(a)(3) or fishing in the Part-time category under the Appeal Program described in § 650.24(f), who have not elected to fish under the VTS monitoring system described in § 650.25, and vessels fishing during appeal as specified in § 650.4(a)(9)(vi)(D), must notify the Regional Director of participation in the scallop DAS allocation program prior to leaving port on each trip. Vessel owners may participate in the VTS notification system described under paragraph (a) of this section, or may notify the Regional Director by calling (508–281–9335) or faxing (508–281–9135) the following

information at least 2 hours prior to leaving port and within one hour of return to port: Owner and caller name and phone number; the vessel's name and permit number; and the time, and departure date or ending date, as appropriate.

§ 650.27 DAS exemption program.

Any vessel holding a limited access scallop permit under section § 650.4(a) may request an exemption from the DAS Program while scallop fishing exclusively landward of the outer boundary of a state's waters. Any such exemption granted will exempt the vessel from the DAS requirements specified under § 650.24(c).

(a) *VTS notification.* Vessel owners requesting a DAS exemption via a VTS shall:

(1) Notify NMFS, via their VTS, prior to the vessel's first trip under the DAS exemption program, that the vessel will be fishing exclusively in state waters for scallops; and,

(2) Notify NMFS, via their VTS, prior to the vessel's first planned trip in the EEZ, that the vessel is to resume fishing under the vessel's DAS allocation.

(b) *Other methods of notification.* Vessel owners opting to request entry into the DAS exemption program via fax or phone shall:

(1) Notify NMFS by calling 508–281–9335 or faxing 508–281–9135 the following information at least 7 days prior to the date on which the exemption is requested: owner and caller name and address; vessel name and permit number; and beginning and ending dates of the exemption period;

(2) Remain in the exemption program a minimum of 7 days; and,

(3) If an exemption holder has been in the program a minimum of 7 days and wishes to withdraw earlier than the designated end of the exemption period, the exemption holder must notify the Regional Director of early withdrawal from the program. Notification of withdrawal is made by calling 508–281–9335 or by faxing 508–281–9135. When providing notice, the exemption holder will specify that the request is for withdrawal from the program and provide the vessel name and permit number, and the name and phone number of the caller. The exemption holder may not leave port to fish for scallops in the EEZ until 48 hours after notification of early withdrawal is received by the Regional Director.

(c) A vessel participating in the DAS exemption program may not fish in the EEZ during the participation period.

(d) Participation in the DAS exemption program expires when the owner's or vessel's name changes.

(e) Vessels participating in the DAS exemption program continue to be subject to all the other requirements of this part.

§ 650.28 At-sea observer coverage.

(a) The Regional Director may require observers for any vessel holding a Federal sea scallop permit.

(b) Owners of vessels selected for observer coverage will be required to notify the appropriate Regional or Center Director, as specified by the Regional Director, before commencing any fishing trip that may result in the harvest of any Atlantic sea scallops. Notification procedures will be specified in selection to vessel owners.

(c) An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew;

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties;

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position;

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish; and

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

§ 650.29 Experimental fishing exemption.

(a) The Regional Director may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the sea scallop resource or fishery.

(b) The Regional Director may not grant such exemption unless its is determined that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the sea scallop resource and fishery; or

(2) Create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this part except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the exempted activity. This letter must be carried aboard the vessel seeking the benefit of such exemption.

Subpart C—Framework Adjustments to Management Measures

§ 650.40 Framework specifications.

(a) Annually, upon request from the Council, but at a minimum in the years 1996 and 1999, the Regional Director will provide the Council with information on the status of the sea scallop resource.

(b) Within 60 days of receipt of that information, the Council's Plan Development Team (PDT) shall assess the condition of the Atlantic sea scallop resource to determine the adequacy of the total allowable DAS reduction schedule, described in § 650.24(c), to achieve the target fishing mortality rate. In addition, the PDT shall make a determination whether other resource conservation issues exist that require a management response in order to meet the goals and objectives outlined in the FMP. The PDT shall report its findings and recommendations to the Council. In its report to the Council, the PDT shall provide the appropriate rationale and economic and biological analysis for its recommendation utilizing the most current catch, effort, and other relevant data from the fishery.

(c) After receiving the PDT findings and recommendations, the Council shall determine whether adjustments, or additional management measures, are necessary to meet the goals and objectives of the FMP. If the Council determines that adjustments to, or additional, management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments to, or addition of, management measures must come from one or more of the following categories:

(1) DAS changes;
(2) shell height;
(3) offloading window re-instatement;
(4) effort monitoring;
(5) data reporting;
(6) trip limits;
(7) gear restrictions;
(8) permitting restrictions;
(9) crew limits;

(10) small mesh line;

(11) on board observers;

(12) any other management measures currently included in the FMP.

(d) After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Director. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Director on whether to publish the management measures as a final rule. If the Council recommends that the management measures should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the timing of the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule and have regulations in place for an entire harvest/fishing season;

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(3) Whether there is an immediate need to provide further protection for the resource; and,

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(e) If the Council's recommendation includes adjustments or additions to management measures, and if after reviewing the Council's recommendation and supporting information:

(1) The Regional Director concurs with the Council's recommended management measures and determines that the recommended management measures may be published as a final rule based on the factors specified in paragraph (d), the action will be published in the **Federal Register** as a final rule; or,

(2) The Regional Director concurs with the Council's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Director concurs with the Council recommendation, the action will be published as a final rule in the **Federal Register**; or

(3) The Regional Director does not concur with the Council's recommended management measures, the Council will be notified, in writing, of the reasons for the non-concurrence. The Council may reconsider its prior action and recommend a new action under paragraph (d) of this section.

(f) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

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Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Regulation and the Model Rules Working Group; Public Meetings

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of meetings of the Committee on Regulation and of the Model Rules Working Group of the Administrative Conference of the United States.

Committee on Regulation

DATES: Monday, September 20, 1993 from 9:00 a.m. to 1:00 p.m.

ADDRESSES: Office of the Chairman, Administrative Conference, 2120 L Street, NW., suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

Model Rules Working Group

DATES: Monday, September 20, 1993, at 12 noon.

ADDRESSES: Washington Office Center, 409 3rd Street, SW., suite 320, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary J. Edles, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Committee on Regulation will meet to continue to discuss the project on federal agency use of audited self-certification as a regulatory technique and the status of any other pending projects. The project is being undertaken for the Conference by Professor Douglas Michael of the University of Kentucky. The Committee will also discuss a new study by Professor Donald Hornstein of the University of North Carolina School of Law, on pesticides registration and cancellation.

The Model Rules Working Group will meet for the last time to discuss the final set of model rules of practice and procedure which can be used by Federal agencies informal adjudications.

Attendance at the meetings is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: August 30, 1993.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 93–21414 Filed 9–1–93; 8:45 am]

BILLING CODE 6110–01–W

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 930637–3137]

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of establishment of a Laboratory Accreditation Program (LAP)—NVLAP Energy Efficient Lighting Products Program (EEL).

SUMMARY: The National Voluntary Laboratory Accreditation Program (NVLAP), National Institute of Standards and Technology (NIST), announces the establishment of the Energy Efficient Lighting Products Program. The program is in accord with the intent of the original request by the National Electrical Manufacturers' Association as announced previously in the **Federal Register**.

EFFECTIVE DATE: September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Persons desiring to obtain an application package or further information for the EEL program should write to the National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, Building 411, room A162, Gaithersburg, MD 20899; Phone 301–975–4016; FAX 301–926–2884.

SUPPLEMENTARY INFORMATION:

Background

This notice is issued in accordance with § 7.17 of the NVLAP Procedures (15 CFR part 7). In May 1991, NIST announced (56 FR 22396 May 15, 1991) the development of the NVLAP program, "Accreditation for Testing Energy Efficient Lighting (EEL) Products." NVLAP determines a laboratory's ability to meet established criteria and technical requirements for accreditation of specific test methods through on-site assessments by technical experts and laboratory participation in proficiency testing programs. In the implementation of the EEL Program, NVLAP offers accreditation for testing the electrical, photometric, colorimetric, and life-performance characteristics of fluorescent, incandescent, and high-intensity discharge lamps, and includes test methods for photometric characteristics of luminaires (lighting fixtures). The EEL program requirements have been established and are available from NVLAP in an application package that includes the program handbook, list of test methods offered for accreditation, application forms, and fee schedule.

Scope of Accreditation

The standard test methods and related performance standards listed below comprise the scope of accreditation of the EEL program.

Notation: LM signifies documents developed by the Illuminating Engineering Society (IES).

LM–9—Electrical and photometric measurements of fluorescent lamps
LM–10—Photometric testing of outdoor fluorescent luminaires
LM–20—Photometric measuring and reporting tests on reflector type lamps
LM–31—Photometric testing of roadway luminaires using incandescent filament and high intensity discharge lamps
LM–35—Photometric testing of floodlights using incandescent filament or discharge lamps
LM–40—Life performance testing of fluorescent lamps

LM–41—Photometric testing of indoor fluorescent luminaires
LM–45—Electrical and photometric measurements of general service incandescent lamps
LM–46—Photometric testing of indoor luminaires using high intensity discharge or incandescent filament lamps
LM–47—Life testing of high intensity discharge (HID) lamps
LM–49—Life testing of general lighting incandescent filament lamps
LM–51—Electrical and photometric measurements of high intensity discharge lamps
LM–58—Guide to spectroradiometric measurements
LM–65—Life testing of single-ended compact fluorescent lamps
LM–66—Electrical and photometric measurements of single-ended compact fluorescent lamps

Notation: ANSI designates American National Standards Institute.

ANSI C78.375—Fluorescent lamps—guide for electrical measurements
ANSI C78.386—Mercury lamps—methods of measuring characteristics
ANSI C78.387—Metal-halide lamps—methods of measuring characteristics
ANSI C78.388—High-pressure sodium lamps—methods of measuring characteristics

Dated: August 27, 1993.

Arati Prabhakar,

Director.

[FR Doc. 93–21328 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–13–M

Bureau of Export Administration

[Docket No. 930823-3223]

Foreign Availability Assessment: Certain Telecommunications Transmission Equipment

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of initiation of an assessment and request for comments.

SUMMARY: Pursuant to section 5(f) of the Export Administration Act of 1979, as amended (EAA), the Office of Foreign Availability (OFA) is providing notice that it has initiated an assessment of foreign availability of telecommunications transmission equipment operating according to the synchronous digital hierarchy at digital transfer rates up to 623 million bits per second to controlled countries. These items are controlled for national security reasons under subparagraph (a) of Export Control Classification Number (ECCN) 5A02A of the Commerce Control List (CCL) (15 CFR 799.1, Supp. 1): Telecommunications Transmission Equipment. OFA will assess foreign availability under the provisions of Part 791 of the Export Administration Regulations (EAR). OFA is seeking public comments on the foreign availability of these items worldwide.

DATES: The period for submission of information will close October 4, 1993.

ADDRESSES: Submit information relating to this foreign availability assessment to: Steven C. Goldman, Director, Office of Foreign Availability, Bureau of Export Administration, U.S. Department of Commerce, room 1087, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Freedom of Information Record Inspection Facility, room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Michael Andrews, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 482-5953.

SUPPLEMENTARY INFORMATION: Under sections 5(f) and 5(h) of the EAA, OFA assesses the foreign availability of goods and technology whose export is controlled for national security reasons. Part 791 of the Export Administration Regulations (EAR) (15 CFR part 730 *et seq.*) establishes the procedures and criteria for determining the foreign availability of goods and technology. OFA is publishing this notice pursuant to sections 5(f)(3) and 5(f)(9) of the EAA.

On August 9, 1993, OFA accepted a foreign availability submission pursuant to section 5(f) of the EAA relating to the decontrol of telecommunications transmission equipment operating according to the synchronous digital hierarchy at digital transfer rates up to 623 million bits per second to controlled countries. These items are controlled for national security reasons under subparagraph (a) of Export Control Classification Number (ECCN) 5A02A of the Commerce Control List (CCL) (15 CFR 799.1, Supp. 1): Telecommunications Transmission Equipment.

Telecommunications transmission equipment is used to send simultaneously multiple voice conversations and digital data packets between different locations in telephone networks. The synchronous digital hierarchy is the most recent internationally-defined protocol standard for the design and installation of telecommunications transmission equipment.

Upon acceptance of the submission, OFA initiated a foreign availability assessment of the item. By January 9, 1994, the Department intends to submit for publication in the **Federal Register** its determination of the foreign availability of the item.

To assist OFA in assessing such foreign availability, any person may submit relevant information to OFA at the above address.

The following information would be especially useful:

—Product names and model designations of the U.S. and non-U.S. items;
—Names and locations of non-U.S. sources;
—Key performance elements, attributes, and characteristics of the items on which quality comparisons may be made;
—Non-U.S. sources' production quantities and/or sales of any allegedly comparable item;
—An estimate of market demand and the potential economic impact of the control on the U.S. item;
—Extent to which any allegedly comparable item is based on U.S. technology;
—Product names, model designations, and value of U.S. controlled parts and components incorporated in any allegedly comparable item: and
—Information supporting the proposition that the foreign item is in fact available to the country or countries for which foreign availability is alleged.

Evidence supporting such relevant information may include, but is not limited to: Foreign manufacturers' catalogs, brochures, or operations or maintenance manuals; articles from reputable trade publications; photographs; and depositions based upon eyewitness accounts. Supplement No. 1 to part 791 of the EAR provides additional examples of evidence that would be helpful to the investigation.

OFA will also accept comments or information accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted to OFA separately from any non-confidential information. The top of each page should be marked with the term "Confidential Information." Confidential submissions must include a statement from the submitter that the material is commercial or financial

information which the submitter does not customarily release to the public. If OFA will not accept the submission in confidence, it will return it. A non-confidential summary must accompany such submissions of confidential information. OFA will make the summary available for public inspection.

Regardless of whether the submitter has requested confidential treatment, OFA will maintain the confidentiality of any information exempt from disclosure under the Freedom of Information Act (5 U.S.C. 522). This may include communications from agencies of the United States Government and foreign governments which are exempt from disclosure under the Freedom of Information Act.

All other information received in response to this notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires written comments. Oral comments must be followed by written memoranda, which also will be a matter of public record and will be available for public review and copying.

The public record of information received in response to this notice will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations.

Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 482–5653.

Due to the strict statutory time limitations in which Commerce must make its determination, the period for submission of relevant information will close October 4, 1993. The Department will consider all information received before the close of the comment period in developing the assessment. Information received after the end of the period will be considered if possible, but its consideration cannot be assured. Accordingly, the Department encourages persons who wish to provide information related to this foreign availability submission to do so at the earliest possible time to permit the Department the fullest consideration of the information.

Dated: August 27, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93–21432 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–DT–P

Computer Systems Technical Advisory Committee; Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held September 22 & 23, 1993, in the Herbert C. Hoover Building, room 1617M(2), 14th Street & Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to computer systems/peripherals or technology.

Agenda

Executive Session

September 22, 9 a.m.—10 a.m.

1. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

General Session

September 22, 10 a.m.–3 p.m.

2. Opening remarks by the Chairmen.
3. Presentation of papers or comments by the public.
4. Discussion on treatment of software, commodity or technical data.
5. Discussion on safeguard conditions for high performance computers.
6. Update on controls on graphics equipment and on RAMDACs (digital-to-analog converters) under the Missile Technology Regime.
7. Discussion on Composite Theoretical Performance (CTP) clip levels for the project license, the distribution license, et al.
8. Discussion on CTP formula changes.
9. Report on the new CCL numbering system.
10. Status report on Elaine III.

Executive Session

September 22, 3 p.m.–5 p.m.

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Executive Session

September 23, 9 a.m.–3:30 p.m.

12. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Sessions of the meeting will open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA, room 1621, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: August 27, 1993.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 93–21431 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–DT–M

Economics and Statistics Administration

Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000–2009; Meeting

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463, as amended by Public Law 94–409) we are giving notice of a meeting of the Advisory Committee of the Task Force for Designing the Year 200 Census and Census-Related Activities for 2000–2009. The meeting will convene on Thursday, September 23, 1993,

continuing through Friday, September 24, 1993, at the DuPont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC. The Advisory Committee is composed of a Chair, twenty-five member organizations, and nine ex officio members, all appointed by the Secretary of Commerce. The Advisory Committee will consider the goals of the census and user needs for information provided by the census, and provide a perspective from the standpoint of the outside user community on how proposed design for the 2000 Census realize those goals and satisfy those needs. The Advisory Committee shall consider all aspects of the conduct of the census of population and housing for the year 2000, and shall make recommendations for improving that census.

DATES: The meeting will begin at 1 p.m. on Thursday, September 23, 1993, and adjourn at 4 p.m. on Friday, September 24, 1993.

ADDRESSES: The meeting will take place at the DuPont Plaza Hotel, 1500 New Hampshire Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Persons wishing additional information regarding this meeting, or who wish to submit written statements or questions, may contact Thomas P. DeCair, Department of Commerce, Bureau of the Census, room 2066, Federal Building 3, Washington, DC 20233. Telephone: (301) 763–7298.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes consideration of a test design recommendation for the 1995 test census, and other items that the Chair and Advisory Committee members deem appropriate for this meeting. The meeting is open to the public. A brief period will be set aside for public comment and questions. However, persons with extensive questions or statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Susan Knight on (301) 763–7298.

Dated: August 25, 1993.

Frederick T. Knickerbocker,

Acting Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 93–21433 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–EA–M

Foreign-Trade Zones Board

[Docket 45–93]

Foreign-Trade Zone 50—Long Beach, CA; Application for Subzone, Alps Manufacturing (USA) Plants (Computer/Telecommunication/Video Equipment and Auto Parts) Long Beach/Los Angeles Port of Entry Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Harbor Commissioners of the City of Long Beach, California, grantee of FTZ 50, requesting special-purpose subzone status for the computer/telecommunication/video equipment and auto electronic parts manufacturing facilities of Alps Manufacturing (USA), Inc. (Alps) (affiliated with Alps Electric Company, Ltd., Japan), in Garden Grove and in Compton, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 16, 1993.

The Alps facilities involve two sites: Site 1 (13.5 acres)—main manufacturing plant, 7301 Orangewood Avenue, Garden Grove (Orange County); and, Site 2 (2.7 acres)—warehousing and packaging facility, 1701 West Walnut Parkway, Compton (Los Angeles County). The facilities (650 employees) are currently used to manufacture computer keyboards, graphic input devices, floppy disk drives, auto switches, and auto airbag clock spring reel devices. Other products that may be manufactured at the facilities include a variety of computer/telecommunication/video equipment/components and auto electronic components, including laptop/palmtop computers, printers, computer game units and cartridges, joysticks, hard disk drives, liquid crytal displays (LCDs), monitors, keyboard switches, LAN systems, keyless entry devices, heads-up displays, computer docking systems, control panel assemblies with LCD, digital pen pointers, remote control units, digital compass units, cellular phone assemblies, multipiler module assemblies, auto switch modules, RF tuners, and optical/mechanical equipment.

Certain parts and materials are sourced from abroad (some 25 percent of finished product value) including: Switches, cables, circuit boards, components for disk drive units, and switch assemblies. Other products that may also be sourced from abroad include parts for computer and other data processing equipment, audio/video equipment/components, TV receivers/parts, glass envelopes, lenses, electrical equipment, capacitors, resistors, transistors, microphones, instruments, medical equipment, radar/radio equipment, motor vehicle parts, fasteners, springs, shafts, wire, certain chemicals, rubber products, packaging materials, and typewriter ribbons.

Zone procedures would exempt Alps from Customs duty payments on the foreign materials that are exported. On its domestic sales, the company would be able to choose the duty rates that apply to the finished products (zero to 8.2%). The duty rates on foreign-sourced components currently used at the plant range from duty-free to 5.3 percent, and the duty rate on other components that may also be sourced from abroad range from duty-free to 16 percent. For example, keyboards are duty free while the rate on certain keyboard components is 5.3 percent. The application indicates that zone savings will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 1, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 16, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 11000 Wilshire Boulevard, Room 9200, Los Angeles, CA 90049

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: August 23, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–21425 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 46–93]

Foreign-Trade Zone 158—Vicksburg/Jackson, MS; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Vicksburg/Jackson Foreign-Trade Zone, Inc. (VJFTZ), grantee of FTZ 158, requesting authority to expand its zone at sites in the Vicksburg and Jackson, Mississippi, area, within the Vicksburg/Jackson Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 18, 1993.

FTZ 158 was approved on April 11, 1989 (Board Order 430, 54 FR 15480; 4/18/89), and currently consists of two sites in the Vicksburg/Jackson, Mississippi, area:

Site 1 (26 acres)—parcel within the Emmitte W. Haining Industrial Center, Port of Vicksburg Public Terminal, Yazoo River Division Canal, Warren County, one mile northwest of Vicksburg.

Site 2 (27 acres)—two parcels at the Jackson International Airport, Jackson.

The applicant is now requesting authority to expand existing Sites 1 and 2, and to add five new sites to the zone. As proposed, the project would involve seven public sites (5500 acres), all of which are owned or controlled by the County of Warren or the City of Jackson or affiliated agencies:

Site 1—Expand to include the entire Emmitte W. Haining Industrial Center, Warren County (353 acres).

Site 2—Expand to include the entire Jackson International Airport complex, Jackson (2,242 acres).

Site 3—Ceres Research and Industrial Interplex (1,286 acres), on I–20, Warren County.

Site 4—Vicksburg Airport Industrial Park (230 acres), Vicksburg.

Site 5—Greater Jackson Industrial Center (544 acres), on I–55, south of Jackson in Hinds County.

Site 6—Hawkins Field Industrial Park (559 acres), south of I–220/U.S. 49 Interchange, Jackson.

Site 7—Northwest Industrial Park (350 acres), one mile north of I–220/U.S. 49 Interchange, north of Jackson in Hinds County.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 1, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 16, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 201 West Capitol Street, 310 Millsaps Building, Jackson, Mississippi 39201–2005

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: August 23, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–21246 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 47–93]

Foreign-Trade Zone 158—Jackson, MS; Application for Subzone Status Peavey Electronics Corporation Facilities (Electronic Audio/Acoustical Products) Meridian, Mississippi, Area

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Vicksburg/Jackson Foreign-Trade Zone, Inc., grantee of FTZ 158, requesting special-purpose subzone status for the electronic audio and acoustical products manufacturing facilities of the Peavey Electronics Corporation (PEC), located in the Meridian, Mississippi, area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 19, 1993.

The proposed subzone would consist of PEC's nine manufacturing/warehousing facilities in the Meridian area, some 80 miles east of Jackson: Site 1 (2 acres)—engineering/manufacturing facility, 611 10th Avenue, Meridian (Lauderdale County), Mississippi; Site 2 (2 acres)—manufacturing and research facility, 14th Avenue and 20th Street, Meridian; Site 3 (19 acres)—manufacturing plant, 710 A Street, Meridian; Site 4 (7 acres)—manufacturing plant, State Highway 80 West in Morton (Scott County), Mississippi; Site 5 (4 acres)—warehouse, 200 Bonita Drive, Meridian; Site 6 (9 acres)—warehouse/repair facility, 326 State Highway 11 and 80, Meridian; Site 7 (38 acres)—manufacturing plant, Route 2 and State Highway 503, Decatur (Newton County), Mississippi, approximately 20 miles west of Meridian; Site 8 (45 acres)—two manufacturing plants and a distribution facility within the Northeast Industrial Park located six miles east of Meridian; and, Site 9 (1 acre)—manufacturing plant, 416 18th Avenue in Meridian. The facilities (1,955 employees) are used to produce a variety of electronic hi-fidelity audio and acoustical products for the U.S. market and export, including amplifiers, loudspeakers, musical instrument processors, mixers, microphones, musical instruments (guitars, keyboards), public address systems, lighting equipment, and related accessories. Components and materials purchased from abroad include: loudspeaker parts, diodes, capacitors, resistors, electric motors, musical instrument parts, and wiring harnesses (duty rate range: Free—6.6%).

Zone procedures would exempt PEC from Customs duty payments on the foreign components used in export production. On its domestic sales, PEC would be able to choose the duty rates that apply to finished electronic audio and acoustical products (5% average rate) for the foreign components noted above. The application indicates that the savings from zone procedures would help improve the company's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 1, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 16, 1993).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 310 Millsaps Building, 201 W. Capitol Street, Jackson, MS 39201

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street & Constitution Avenue, NW., Washington, DC 20230

Dated: August 23, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–21427 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–007]

Certain High-Capacity Pagers From Japan; Determination Not To Revoke Antidumping Duty Order

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce has determined not to revoke the antidumping duty order on certain high-capacity pagers from Japan because it continues to be of interest to an interested party.

EFFECTIVE DATE: September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Philip C. Marchal or Michael R. Rill, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; (202) 482–5505.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 34116) its intent to revoke the antidumping duty order on high-capacity pagers from Japan (48 FR 37058, August 16, 1983). We invited interested parties to comment on our intent to revoke the order.

Scope of the Review

Imports covered by the order are shipments of certain high-capacity pagers from Japan. The term "high-capacity pagers" covers tone-only paging signal receivers, 3,000 or more of which can be operated in a paging system on a single radio frequency channel. Prior to January 1, 1989, the merchandise was classified under items 685.1686 and 685.7036 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 8527.90.80 and 8531.80.00 of the Harmonized Tariff Schedules (HTS). TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Determination Not To Revoke

The Department may revoke an order if the Secretary of Commerce concludes that the order is no longer of interest to interested parties as defined in 19 CFR 353.2(k). Because we had not received a request for an administrative review of this order for the last four consecutive annual anniversary months, we published a notice of intent to revoke pursuant to 19 CFR 353.25(d)(4)(i).

On August 14, 1992, Motorola, the petitioner, objected in writing to our intent to revoke the order. We received no further comments.

Based on Motorola's objection, the Department has concluded that the order continued to be of interest to an interested party. Therefore, we no longer intend to revoke the antidumping duty order on certain high-capacity pagers from Japan.

Dated: April 9, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–21430 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–508–064]

Roses From Israel; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on roses from Israel. Domestic interested parties who object to this revocation must submit their comments in writing not later than thirty days from the publication date of this notice.

EFFECTIVE DATE: September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Anna T. Milone or Philip Pia, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4406 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1980, the Department of Commerce ("the Department") published a countervailing duty order on roses from Israel (45 FR 58516). The Department has not received a request to conduct an administrative review of this countervailing duty order for at least four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity To Object

Not later than thirty days after the publication date of this notice, domestic interested parties, as defined in § 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If no interested parties request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), or if no domestic interested parties object to the Department's intent to revoke pursuant to this notice, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: August 25, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–21428 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–614–601]

Steel Wire From New Zealand; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on steel wire from New Zealand. Domestic interested parties who object to this revocation must submit their comments in writing not later than thirty days from the publication date of this notice.

EFFECTIVE DATE: September 2, 1993.

FOR FURTHER INFORMATION CONTACT:
Anna T. Milone or Sarah Givens, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4406 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 1986, the Department of Commerce ("the Department") published a countervailing duty order on steel wire from New Zealand (51 FR 31156). The Department has not received a request to conduct an administrative review of this countervailing duty order for at least four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than thirty days after the publication date of this notice, domestic interested parties, as defined in § 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If no interested parties request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), or if no domestic interested parties object to the Department's intent to revoke pursuant to this notice, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: August 24, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–21429 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–DS–P

State University of New York, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93–047. *Applicant:* State University of New York, Stony Brook, NY 11794. *Instrument:* In-Situ Large Volume Filtration System. *Manufacturer:* Challenger Oceanic Systems and Services, United Kingdom. *Intended Use:* See notice at 58 FR 34029, June 23, 1993. *Reasons:* The foreign instrument provides programmable in situ filtration and capture of particles in water columns with a flow rate to 1200 liters of water per hour to a depth of more than 5000 m. *Advice Received From:* The National Ocean Service, July 16, 1993.

Docket Number: 93–050. *Applicant:* Lamont-Doherty Earth Observatory of Columbia University, Palisades, NY 10964. *Instrument:* Multi-Sensor Core Logger. *Manufacturer:* GEOTEK, United Kingdom. *Intended Use:* See notice at 58 FR 34029, June 23, 1993. *Reasons:* The foreign instrument provides high precision measurements of: (1) Compressional (p-wave) velocities, (2) gamma ray attenuation and (3) magnetic susceptibility. *Advice Received From:* A private research institution, July 26, 1993.

The National Ocean Service and a private research institution advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–21423 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–DS–F

University of Illinois at Chicago; Decision on Application for Duty-free Entry of Scientific Instrument

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 92–184. *Applicant:* University of Illinois at Chicago, Department of Chemistry (m/c 111), 801 W. Taylor Street, Room 4500, Chicago IL 60607-7061. *Instrument:* Excimer-pumped Dye Lasers, Models LEXtra 50 and LPD 3002. *Manufacturer:* Lambda Physik, Germany. *Date of Denial without Prejudice to Resubmission:* June 9, 1993.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–21424 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the final evaluation findings for Rhode Island and Oregon Coastal Management Programs, and Sapelo Island (Georgia), Tijuana River (California), Hudson River (New York) and Jobos Bay (Puerto Rico) National Estuarine Research Reserves (NERR). Section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended, requires a continuing review of the performance of coastal states with respect to coastal management and the operation and management of NERRs.

The States of Rhode Island and Oregon were found to be implementing and enforcing their Federally approved coastal management program, addressing the national coastal management objectives identified in CZMA section 303(2)(A)–(K), and adhering to the programmatic terms of their financial assistance awards. Tijuana River, Sapelo Island, and Jobos Bay NERRs were found to be not fully adhering to NERR System goals, to their federally approved management plans, and to the terms of their financial assistance awards. Hudson River NERR was found to be satisfactorily adhering to programmatic requirements of the NERR system.

Copies of these final evaluation findings may be obtained upon request from: Vickie Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, Silver Spring, Maryland 20910 (301) 713–3087.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: August 27, 1993.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 93–21372 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 082793C]

Gulf of Mexico Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) and its Committees will meet on September 13–16, 1993. The meetings will be held at the Doubletree Hotel, 300 Canal Street, New Orleans, LA; telephone: (504) 581–1300. The agenda is as follows:

Council

The Council will convene on September 15 at 8:30 a.m. and recess at 5 p.m. Council agenda items and the times allocated for discussion are as follows:

From 8:45 a.m. to 12 noon: Receive public testimony on 1994 Total Allowable Catches (TACs) for Red Grouper and Red Snapper, and receive Public Testimony on Red Snapper Commercial Vessel Trip Limits for 1994;

(**Note:** Testimony cards must be turned in to staff before the start of public testimony).

From 1 p.m. to 5 p.m.: Receive the Reef Fish Management Committee report.

The Council will reconvene at 8:30 a.m. on September 16 and adjourn at 12 p.m. It will receive reports from the following Committees:

(1) 8:30 a.m. to 9:30 a.m.—Reef Fish Management Committee (continued);

(2) 9:30 a.m. to 10 a.m.—Mackerel Management Committee;

(3) 10 a.m. to 10:30 a.m.—Coral Management Committee;

(4) 10:30 a.m. to 11 a.m.—Habitat Protection Committee;

(5) 11 a.m. to 12 p.m.—Shark Operations Team report on meeting held in Silver Spring, Maryland, on July 27–28, 1993; and Enforcement reports, Director's reports, and Election of Chairman and Vice Chairman.

Committees

The Coral Management Committee and the Habitat Committee will meet on September 13 at 1 p.m. and adjourn at 5:30 p.m. The Mackerel Management Committee and the Reef Fish Management Committee will meet on September 14 at 8 a.m. and adjourn at 5 p.m.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: August 27, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–21417 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 082793B]

North Pacific Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet during the week of September 20, 1993. The Council's Advisory Panel, Scientific and Statistical Committee and Comprehensive Planning Committee will begin their meetings at 1 p.m. on September 20. The Plan Amendment Advisory Group (PAAG) is scheduled to also meet on September 20 at 8 a.m. The Council will begin its plenary session at 1 p.m. on September 21 and continue through the week until the agenda is completed. All meetings except for the PAAG Committee meeting will be held at the Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK; telephone: (907) 272–7411. The location of the PAAG Committee meeting will be announced at a later date.

The Council will consider and may take action on any of the following agenda items:

(1) Election of officers;

(2) Reports by the National Marine Fisheries Service (NMFS), the Alaska Department of Fish and Game, and the United States Coast Guard, the NMFS Marine Mammal Laboratory, and the Polar Research Board on a Bering Sea Ecosystems Study;

(3) Receive a status report on the implementation of the North Pacific Fisheries Research Plan and consider observer requirements for 1994;

(4) Final review of amendment proposals for inclusion in the Sablefish and Halibut Individual Fishing Quota (IFQ) Plan, and review of the final rule and implementation plan for the IFQ program;

(5) Review of the pollock Community Development Programs and consideration of recommendations for 1994–1995;

(6) Progress report and further direction to staff on alternatives for the Comprehensive Rationalization Program, and a review of a request for proposals for the Social Impact Assessment for the plan;

(7) Review of a concept paper on full utilization of species under Council jurisdiction;

(8) Final review of a management alternatives for the scallop fishery;

(9) Report on the 1993 halibut fishery, review of proposals submitted for the 1994 halibut season, and a discussion of possible caps on halibut caught by halibut charter operations;

(10) Approval of initial Stock Assessment and Fishery Evaluation reports for the Gulf of Alaska and Bering Sea/Aleutian Islands groundfish fisheries for 1994. Setting of initial groundfish and bycatch specifications for the 1994 fisheries, and bycatch rate standards for the Vessel Incentive program;

(11) Final review and approval of the following proposed amendments to the groundfish fishery management plans:

(a) Rockfish rebuilding alternatives for the Gulf of Alaska; and

(b) Exclusive registration alternatives for the Gulf of Alaska and Bering Sea/Aleutian Islands groundfish fisheries.

(12) Initial review of a plan amendment for a trawl closure around the Pribilof Islands;

(13) Final review of a regulatory amendment to allow disclosure of Prohibited Species Catch rates by vessel name;

(14) Initial review of the following proposed regulatory amendments:

(a) Directed fishing standards for 1994, and

(b) Require all processors to weigh fish;

(15) Other groundfish subjects on the agenda include:

(a) A concept paper on a salmon Vessel Incentive Program;

(b) Preliminary report on restricting trawl mesh size to 8 inches, and

(c) A report on the status of an industry-sponsored "Salmon Foundation;" and

(16) Review current tasking and give staff direction.

Other committees and workgroups may also meet during the week. All meetings are open to the public with the exception of a Council Executive session scheduled for the noon hour one day during the week. During executive sessions the Council will receive reports on litigation, international affairs, and personnel matters.

FOR FURTHER INFORMATION CONTACT: The North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: August 27, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–21416 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 082793D]

Pacific Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's Coastal Pelagic Species Plan Development Team and the Advisory Subpanel will meet on the dates and at the locations listed below to continue preparation of the coastal pelagic species fishery management plan. Current work is focused on harvest formulas, allocation, bycatch and a management framework. On September 23 and October 13 the two groups will meet jointly.

Meetings in La Jolla will be in the small conference room at the National Marine Fisheries Service, Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA. Meetings in Long Beach will be at the California Department of Fish and Game, 330 Golden Shore, suite 50, Long Beach, CA.

Group	Location	Time	Date
Team	La Jolla	10 a.m.	September 8.
Team/ Subpanel.	Long Beach.	10 a.m.	September 23.
Team	La Jolla	10 a.m.	September 29.
Team/ Subpanel.	Long Beach.	10 a.m.	October 13.

FOR FURTHER INFORMATION OR FOR PERSONS WISHING TO ATTEND, PLEASE CONTACT: Larry Jacobson on (619) 546–7117 or Patricia Wolf on (310) 590–5175 prior to the date listed herein to confirm that meeting dates and locations have not been changed.

Dated: August 27, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–21418 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–22–P

Membership of the National Oceanic and Atmospheric Administration Performance Review Boards

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of membership of NOAA Performance Review Boards.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C., 4314(c)(4), NOAA announces the appointment of persons to serve as members of NOAA Performance Review Boards (PRBs). The NOAA PRBs are responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and amounts, initial recommendations for potential rank awards and recertification. The appointment of these members to the NOAA PRBs will be for periods of 24 months service beginning September 30, 1993.

EFFECTIVE DATE: The effective date of service of appointees to the NOAA Performance Review Boards is September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Williams, Senior Executive Service Program Officer, Personnel and Civil Rights Office, Office of Administration, NOAA, 1315 East-West Highway, Silver Spring, Maryland 20910, (301) 713–0530.

SUPPLEMENTARY INFORMATION: The names and titles of the members of the NOAA PRBs (NOAA officials unless otherwise identified) are set forth below:

Katharine W. Kimball, Deputy Assistant Secretary, Office of the Under Secretary
J. Michael Hall, Director, Office of Global Programs, Office of the Deputy Under Secretary
Donald Scavia, Director, NOAA Coastal Ocean Program Office, Office of the Deputy Under Secretary
Robert M. Valone, Director, Systems Program Office, Office of the Deputy Under Secretary
William H. Hooke, Deputy Chief Scientist, Office of the Chief Scientist
Robert F. Fagin, Director, Office of Administration
Donald E. Humphries, Deputy Director, Office of Administration
Martha R. Lumpkin, Director, Central Administrative Support Center, Office of Administration
Meredith J. Jones, General Counsel
Glenn A. Flittner, Director, Office of Research and Environmental Information, National Marine Fisheries Service (NMFS)
Nancy Foster, Deputy Assistant Administrator, NMFS
Morris M. Pallozzi, Director, Office of Enforcement, NMFS
Rolland A. Schmitten, Director, Northwest Region, NMFS
Andrew Robertson, Chief, Coastal Monitoring & Bioeffects Assessment Division, NOS
David L. Evans, Senior Scientist, NOS
Carol W. Beaver, Chief, Aeronautical Charting Division, NOS
Kenneth D. Hadeen, Director, National Climatic Data Center, National Environmental Satellite, Data and Information Services (NESDIS)
P. Krishna Rao, Director, Office of Research and Applications, NESDIS
Gregory W. Withee, Deputy Assistant Administrator for Environmental Information Services, NESDIS
Richard P. Augulis, Director, Central Region, National Weather Service (NWS)
Lois J. Gajdys, Chief, Management and Budget, NWS
Eugenia Kalnay, Chief, Development Division, National Meteorological Center, NWS
Walter Telesetsky, Director, Office of Systems Operations, NWS
Hugo F. Bezdek, Director, Atlantic Oceanographic and Meteorological Laboratories, Office of Oceanic and Atmospheric Research (OAR)
Syukuro Manabe, Supervisory Research Meteorologist, Geophysical Fluid Dynamics Laboratories, OAR
Kikuro Miyakoda, Supervisory Research Meteorologist, Geophysical Fluid Dynamics Laboratories, OAR
Alan R. Thomas, Deputy Assistant Administrator, OAR
Alexander E. MacDonald, Director, Forecast Systems Laboratories, OAR
Joseph E. Clark, Deputy Director, National Technical Information Service, Department of Commerce (DOC)
Burton Colvin, Deputy Director Academic Affairs, National Institute of Standards and Technology (NIST), DOC
Frederick T. Knickerbocker, Executive Director, Economic Affairs, DOC

Chris Kuyatt, Coordinator of Radiation, NIST, DOC
Roy R. Mullen, Associate Chief, National Mapping Division, United States Geological Survey, Department of Interior
Joe D. Simmons, Deputy Director, Center for Basic Standards, National Institutes of Science and Technology, DOC
Sheldon Wiederhorn, Scientific Assistant to Director, NIST, DOC
Michael A. Levitt, Assistant General Counsel for Legislation and Regulation, General Counsel, DOC

Dated: August 20, 1993.

Diana H. Josephson,

Deputy Under Secretary.

[FR Doc. 93–21310 Filed 9–1–93; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Readiness

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Readiness will meet in closed session on September 7, September 20, October 8, and October 26, 1993 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition) on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will provide advice, recommendations, and supporting rationale on the components of a Readiness Early Warning System to insure that our forces do not become "hollow," and, where deficiencies may begin to emerge, to suggest corrective actions.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: August 27, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–21362 Filed 9–1–93; 8:45 am]

BILLING CODE 3000–04–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by September 3, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Cary Green, Department of Education, 7th & D Streets SW., room 4682, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: August 26, 1993

Cary Green,

Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review: Expedited
Title: Private School Survey (PSS)
Frequency: Biennially
Affected Public: Individuals or households; Non-profit institutions
Reporting Burden:
Responses: 30,000
Burden Hours: 15,000
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The Private School Survey (PSS) is a national survey of private elementary and secondary schools. This data collection activity is intended to build an NCES universe frame of private schools to generate bi-annual data on the total number of private schools, teachers, and students. These data have been collected since the 1989–90 academic year.
Additional Information: An expedited review is requested in order to have sufficient time to prepare the survey for mail-out in October. Based on the results of the field test only minor changes have been made to this questionnaire. There are now eighteen (18), rather than fifteen (15), questions on the form. There is no change in burden associated with these changes. We are requesting OMB clearance by September 3, 1993.

[FR Doc. 93–21321 Filed 9–1–93; 8:45 am]

BILLING CODE 4000–01–P

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by September 8, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Cary Green, Department of Education, 7th & D Streets SW., room 4682, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: August 26, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review: Expedited
Title: National Assessment of Educational Progress (NAEP), 1993 Field Test, 1994 Full Scale Assessment and Background Questionnaires, Mathematics, Reading, Science, U.S. History, and World Geography
Frequency: Biennially
Affected Public: Individuals or households; State or local governments
Reporting Burden:
Responses: 468,905
Burden Hours: 539,416
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The NAEP is a congressionally mandated data collection of assessment and background information. Respondents will be students at grade 4, grade 8, and grade 12, teachers, and principals. The 1993/94 assessment will be conducted in the following subjects: Mathematics, reading, science, U.S. history, and world geography. Results of the assessments will be linked to background characteristics of the students, teachers and school.
Additional Information: An expedited review is requested in order to maintain a schedule of beginning field work in early October. Based on results of the field test, only minor changes have been made to this questionnaire. There is no change in burden associated with these changes. We are requesting OMB clearance by September 8, 1993.

[FR Doc. 93–21322 Filed 9–1–93; 8:45 am]
BILLING CODE 4000–01–P

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: September 27, 1993, beginning at 9 a.m. and ending at 5 p.m.; and September 28, 1993, beginning at 8:30 a.m. and ending at 12 noon.

ADDRESSES: Bates College, the Muskie Archives, Central and Campus Avenues, in Lewiston, Maine 04240.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, room 4600, ROB–3, 7th & D Streets SW., Washington, DC 20202–7582 (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, conducting a study of institutional lending in the Stafford Student Loan Program, and assisting with activities related to reauthorization of the Higher Education Act of 1965. As a result of the passage of the Higher Education Amendments of 1992, the Congress directed the Advisory Committee to assist with a series of special assessments and conduct an in-depth study of student loan simplification. Earlier this year, Congress requested the Advisory Committee to examine the President's direct lending proposal as an alternative to the existing student loan program. Congress further charged the Committee with evaluating and advising the Secretary and the Congress on the operation of the Federal Direct Student Loan and Federal Family Education Loan Programs. The Advisory Committee will meet in Lewiston, Maine on Monday, September 27, 1993, from 9 a.m. to 5 p.m., and on Tuesday, September 28, from 8:30 a.m. to 12 noon.

The proposed agenda includes (a) a discussion on budget reconciliation; (b) a direct lending update; (c) an update on the delivery system; and (d) an Advisory Committee regulatory update and planning session for the upcoming year's agenda. Space is limited and you are encouraged to register early if you plan to attend. To register, please contact the Advisory Committee staff office at (202) 708–7439. The registration deadline is September 17, 1993.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, room 4600, 7th and D Streets SW., Washington, DC from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: August 30, 1993.

Debra L. Schweikert,

Associate Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 93-21434 Filed 9-1-93; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP92-182-000, et al.]

Availability of a Final Environmental Impact Statement for the Proposed FGT Phase III Expansion Project

August 27, 1993.

In the matter of Florida Gas Transmission Co., Docket Nos. CP92-182-000, CP92-182-001, CP92-182-002, CP92-182-004; Transcontinental Gas Pipe Line Corp. and Florida Gas Transmission Co., Dockets No. CP92-415-000, CP92-415-002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has made available a final environmental impact statement (FEIS) on the more than 800 miles of natural gas pipeline facilities proposed in the above-referenced dockets.

The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, including receipt of necessary permits and approvals, would have limited adverse environmental impact. The FEIS evaluates alternatives to the proposal.

The proposed action involves construction of pipeline, new compressor stations, and addition of compression at various existing compressor stations in Louisiana, Mississippi, Alabama, and Florida. Florida Gas Transmission Company (FGT) proposes to construct 814.4 miles of pipeline and abandon 66.8 miles of pipeline. The proposed new pipeline facilities would consist of:

- 601.0 miles of pipeline loop on FGT's existing mainline;
- 166.1 miles of new pipeline on the West Leg;
- 25.9 miles of pipeline loop on FGT's lateral systems; and
- 21.42 miles of pipeline to customer facilities.

In addition, FGT proposes to:

- Install about 39,000 horsepower (hp) of compression at three new compressor stations;
- Add 66,800 hp of additional compression at seven existing compressor stations;
- Abandon one compressor station; and
- Transfer 1,202 hp of compression from one compressor station to another.

FGT also proposes to:

- Construct 9 new meter stations and 14 new regulators; and
- Upgrade 7 existing meter stations and 1 regulator.

Additionally, FGT and Transcontinental Gas Pipe Line Corporation propose to construct a new 10,766-hp compressor station and a new regulator.

The proposed FGT Phase III Expansion Project would transport 541,117 thousand cubic feet per day (Mcfd) of natural gas in the winter season and 522,573 Mcfd of natural gas during the summer season to FGT's customers located primarily in Florida.

The FEIS will be used in the regulatory decision-making process at the FERC and may be presented as evidentiary material in formal hearings at the FERC. While the period for filing interventions in this case has expired, motions to intervene out-of-time can be filed with the FERC in accordance with the Commission's Rules of Practice and Procedures, 18 CFR 385.214(d). Further, anyone desiring to file a protest with the FERC should do so in accordance with 18 CFR 385.211.

The FEIS has been placed in the public files of the FERC and is available for public inspection in the: Federal Energy Regulatory Commission, Division of Public Information, 941 North Capitol Street NE., room 3104, Washington, DC 20426, (202) 208-1371.

Copies of the FEIS have been mailed to Federal, state, and local agencies, public interest groups, libraries, newspapers, individuals who have requested the FEIS, and other parties to this proceeding.

A limited number of copies of the FEIS are available from: Mr. Mark Jensen, Project Manager, Environmental Policy and Project Analysis Branch, Office of Pipeline and Producer Regulation, room 7312, 825 North Capitol Street NE., Washington, DC 20426, (202) 208-1121.

The FEIS will be available from the National Technical Information Service (NTIS), Springfield, Virginia. Please call the NTIS at (703) 487-4780 to obtain the identification number and information on how to order additional copies.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21359 Filed 9-1-93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2459-005]

West Penn Power Co.; Intent To Prepare An Environmental Assessment and Conduct Public Scoping Meetings

August 27, 1993.

The Federal Energy Regulatory Commission (FERC) has received an application for relicense of the existing Lake Lynn Project No. 2459. The Lake Lynn Project is located on the Cheat River in Monongalia County, West Virginia, and Fayette County, Pennsylvania.

The FERC staff intends to prepare an Environmental Assessment (EA) on this hydroelectric project in accordance with the National Environmental Policy Act.

The EA will objectively consider both site specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EA will be issued and circulated for review by all the interested parties. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

Scoping Meetings

Two public scoping meetings will be conducted on Tuesday, October 5, 1993. A scoping meeting oriented toward resource agencies will be conducted from 1 p.m. to 4 p.m., at the Morgantown Public Library; 373 Spruce Street, Morgantown, West Virginia. A scoping meeting oriented toward the public will be conducted from 7 p.m. to 10 p.m., at the Cheat Lake Elementary School on Tyrone Road, in Morgantown, West Virginia.

Interested individuals, organizations, and agencies are invited to attend either or both meetings and assist the staff in identifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meetings, a scoping document outlining subject areas to be addressed in the EA will be mailed to agencies and interested individuals on the FERC mailing list. Copies of the scoping document will also be available at the scoping meetings.

Objectives

At the scoping meetings the staff will: (1) Identify reasonable alternatives that should be evaluated in the EA; (2)

identify significant environmental issues related to the proposed project; (3) determine the depth of analysis for issues to be addressed in the EA; (4) identify resource issues that are not important and do not require detailed analysis; (5) solicit from the meeting participants all available information, especially quantified data, on the resources at issue; and (6) encourage statements from experts and the public on issues that should be analyzed in the EA, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The meetings will be recorded by a court reporter and all statements (oral and written) thereby become a part of the formal record of the Commission proceedings on the Lake Lynn Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying the issues to be addressed in the EA.

Participants wishing to make oral comments at the public meeting are asked to keep them to five minutes to allow everyone the opportunity to speak.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meeting. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, until November 4, 1993.

All written correspondence should clearly show the following caption on the first page: Lake Lynn Project No. 2459.

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list.

Further, if a party or interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

If you have any questions please contact Thomas Dean at (202) 219–2778.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21334 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–24–000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

August 27, 1993.

Take notice that on August 25, 1993, Equitrans, Inc. (Equitrans), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective October 1, 1993:

First Revised Sheet No. 5
First Revised Sheet No. 6
First Revised Sheet No. 8

Pursuant to Order No. 472, the Commission authorized pipeline companies to track and pass through to their customers their annual charges under an Annual Charge Adjustment (ACA) clause. The 1993 ACA unit surcharge approved by the Commission is $.0026 per Mcf. Equitrans states that it has converted this Mcf rate to a dekatherm (Dth) rate of $.0025 per Dth. Attached at Exhibit A to the filing is information sufficient to support this conversion.

Pursuant to § 154.51 of the Commission's Regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective October 1, 1993.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21335 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2458 and 2572]

Great Northern Paper, Inc.; Date Change for Comments

August 27, 1993.

The Federal Energy Regulatory Commission (FERC) held scoping meetings on Wednesday, August 25, 1993, in Millinocket, Maine for the Ripogenus and Penobscot Mills Projects. Previously, in the Notice of Intent to Hold Scoping Meetings and Site Visit, the Commission indicated that September 1, 1993 would be the deadline for submitting written scoping comments. This deadline has extended to September 8, 1993. Comments should be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All correspondence should clearly show one or both of the following captions on the first page:

Penobscot Mills Project No. 2458, Maine
Ripogenus Project No. 2572, Maine

Further, interested persons are reminded of the Commission's Rules of Practice and Procedure, requiring parties or interceders (as defined in 18 CFR 385.2010) filing written comments or documents with the Commission, to serve a copy of the written comments or documents on each person whose name is on the official service list for the proceeding. See 18 CFR 4.34(b).

For further information, please contact Edward R. Meyer at (202) 208–7998.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21358 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–67–000]

LG&E Power Generation, L.P.; Application for Determination of Exempt Wholesale Generator Status

August 27, 1993.

On August 24, 1993, LG&E Power Generation, L.P., 12500 Fair Lakes Circle, suite 260, Fairfax, Virginia, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The applicant will be a limited partnership engaged directly and exclusively in the business of owning a 50 MW natural gas-fired facility to be located in Southeast Virginia, and selling electric energy at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 20, 1993 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21336 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–89–001]

MIGC, Inc.; Motion To Place Suspended Tariff Sheets Into Effect

August 27, 1993.

Take notice that on August 24, 1993, MIGC, Inc. (MIGC), tendered for filing a motion to place into effect First Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1.

MIGC states that the subject tariff sheet, which has been renumbered as a result of the Commission acceptance of MIGC's Order No. 636 compliance filing, is to become effective September 1, 1993 pursuant to the Commission's April 2, 1993 order in the above referenced docket.

MIGC states that a copy of its motion and the accompanying tariff sheet has been served on all jurisdictional customers and interested state commissions and all persons on the Commission's official service list in Docket No. RP93–89–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before September 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21337 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–623–000]

Montaup Electric Co.; Filing

August 27, 1993.

Take notice that on August 9, 1993, Montaup Electric Company tendered an amendment to its original filing in this docket to place a cap of $11.65 per kilowatt per year on the price that can be charged for transmission service under the formula rate appended to the contract.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21338 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Project no. 1982 Wisconsin]

Northern States Power Co.; Intent To File an Application for a New License

August 27, 1993.

Take notice that Northern States Power Company, the existing licensee for the Holcombe Hydroelectric Project No. 1982, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 1982 was issued effective July 1, 1948, and expires June 30, 1998.

The project is located on the Chippewa River in Chippewa & Rusk Counties, Wisconsin. The principal works of the Holcombe Project include a dam with a concrete gated ogee spillway section about 462 feet long, earth embankment sections about 4,200 feet long, and a powerhouse section; a reservoir with a capacity of about 46,000 acre feet; a concrete and brick powerhouse with 48,000 HP in three units; a substation and appurtenant works.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702–0008.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21339 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–174–000]

Northwest Pipeline Corp., Proposed Change in FERC Gas Tariff

August 27, 1993.

Take notice that on August 19, 1993, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A the following tariff sheet:

Second Revised Sheet No. 313

Northwest states that the purpose of this filing is to clarify the eligibility requirements pertaining to the Rate Schedule TF–1 (Small Customer).

Northwest requests any waivers of the Commission's regulations as may be required to make the tendered tariff sheet effective on April 1, 1993, the same effective date as Substitute First Revised Sheet No. 313 which is the page being replaced. In the alternative, Northwest requests an effective date of September 20, 1993, which is thirty (30) days from the date of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 3, 1993. Protests will be considered by

the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21340 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–679–000]

Richfield Gas Storage System; Application

August 27, 1993.

Take notice that on August 25, 1993, Richfield Gas Storage System (Richfield), 4200 E. Skelly Drive, suite 560, Tulsa, Oklahoma 74135, filed in Docket No. CT93–679–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) requesting a blanket certificate of public convenience and necessity authorizing Richfield to engage in any of the activities specified in subpart F of part 157 of the Commission's Regulations, as may be amended from time to time, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Richfield is a "natural gas company" within the meaning of the NGA and as determined by the Commission in Docket No. CP92–285–000. It is explained that Richfield owns and operates an underground interstate natural gas storage field and related pipeline facilities in Kansas. Richfield asserts that it has no outstanding budget-type certificates and no currently effective sales rate schedules. Richfield states that it does have currently effective storage rate schedules, providing firm storage service under Rate Schedule FSS–1 and interruptible storage service under Rate Schedule ISS–1.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 7, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval to abandon are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Richfield to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21343 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF93–104–000]

Southern California Gas Co.; Amendment to Filing

August 27, 1993.

On August 20, 1993, Southern California Gas Company tendered for filing a supplement to its filing in this docket.

The supplement pertains to the ownership structure and technical aspects of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by September 15, 1993, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21333 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–66–000]

Tenneco Power Generation Co., Application for Determination of Exempt Wholesale Generator Status

August 27, 1993.

On August 25, 1993, Tenneco Power Generation Company ("Tenneco Power") filed with the Federal Energy Regulatory Commission ("Commission") an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Tenneco Power is a Delaware corporation that proposes to construct, own and operate a proposed natural gas-fired, simple cycle, combustion turbine power plant in Clark County, Nevada.

Any person desiring to be heard concerning the application should file a motion to intervene or comments with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 20, 1993, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21344 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–65–000]

UC Operating Services; Application for Determination of Exempt Wholesale Generator Status

August 27, 1993.

On August 23, 1993, UC Operating Services ("UCOS"), a California general partnership with its principal place of business at 9881 Broken Land Parkway, Columbia, Maryland 21046, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale

generator status pursuant to part 365 of the Commission's regulations.

UCOS intends to provide operating services for a pulvurized coal-fired cogeneration facility with a maximum net power production capacity of between approximately 165 MW (summer) and 167 MW (winter). All of the facility's electric power net of the facility's operating electric power will be purchased at wholesale by one or more public utilities.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 20, 1993 and must be served on UCOS. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21345 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–49–000]

Williston Basin and Interstate Pipeline Co.; Annual Charge Adjustment Filing

August 27, 1993.

Take notice that on August 25, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume Nos. 1–A, 1–B and 2, the following revised tariff sheets, with a proposed effective date of October 1, 1993:

First Revised Volume No. 1

Fifty-first Revised Sheet No. 10

Original Volume No. 1–A

Forty-third Revised Sheet No. 11
Forty-eighth Revised Sheet No. 12

Original Volume No. 1–B

Thirty-ninth Revised Sheet No. 10
Thirty-ninth Revised Sheet No. 11

Original Volume No. 2

Forty-ninth Revised Sheet No. 10
Forty-fifth Revised Sheet No. 11B

Williston Basin states that the instant filing reflects a revision to the Federal Energy Regulatory Commission's Annual Charge Adjustment (ACA) unit charge amount pursuant to the Commission's Statement of Annual Charges under 18 CFR part 382 and the General Terms and Conditions of Williston Basin's FERC Gas Tariff, First Revised Volume No. 1, section 30; Original Volume No. 1–A, section 27; and Original Volume No. 1–B, section 25. Williston Basin states that the filing incorporates the Commission approved ACA surcharge of .260 cents per Mcf (.247 cents per dkt on the Williston Basin system), an increase of .03 cents per Mcf from the current amount as authorized by the Commission.

Williston Basin states that copies of the filing were served upon the company's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21346 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–39–013]

Wyoming Interstate Co., Ltd.; Compliance Filing

August 27, 1993.

Take notice that on August 6, 1993, Wyoming Interstate Company, Ltd. (WIC) tendered for filing in compliance with the Commission's July 7, 1993 order its revise plan for flow through the excess deferred income taxes (DIT) through its commodity rate. WIC also filed its statement of the amount of its excess DIT on a before tax (gross up) basis.

WIC states that Attachment 1 to the filing reflects the amount of the excess DIT on an after tax and before tax (gross up) basis.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21347 Filed 9–1–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4703–7]

EPA Region III Comprehensive Environmental Response, Compensation and Liability Act Program; Transfer and Disclosure of Information to Contractors and Subcontractors

SUMMARY: EPA Region III has authorized certain contractors and subcontractors access to information which has been submitted to EPA under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). Some of this information may be claimed or determined to be confidential business information (CBI).

DATES: Contractor access to this information is immediate. Comments concerning CBI access will be accepted on or before October 4, 1993.

FOR FURTHER INFORMATION CONTACT: Susan Janowiak (3HW43), Chief, Contracts and State Oversight Section, EPA Region III (215–597–8573).

SUPPLEMENTARY INFORMATION: The contractors and subcontractors listed below provide certain services to EPA Region III, including: (1) Information management support services for the operation of a file room in Philadelphia, Pennsylvania; (2) compilation and organization of documents and information; and (3) review and analysis of documents and information. In performing these tasks, employees of the contractors and subcontractors listed below have access to Agency documents for purposes of document processing, filing, abstracting, analyzing, inventorying, retrieving, tracking, etc. The documents to which these contractors and subcontractors have access potentially include all

documents submitted under the Comprehensive Environmental Response, Compensation and Liability Act. Some of these documents may contain information claimed as confidential business information ("CBI").

Pursuant to EPA regulations at 40 CFR part 2, subpart B, EPA has determined that these contractors and subcontractors require access to CBI to perform the work required under the contracts and subcontracts. These regulations provide for five days notice before contractors are given CBI. Such notice had not previously been given with respect to prior disclosure of these documents; this notice is intended to correct that oversight, as well as to provide notice of all future disclosures of such information by EPA Region III to the contractors listed below.

All of the listed contractors and subcontractors are required by contract to protect confidential information. When the contractors' and subcontractors' need for the documents is completed, the contractors and subcontractors will return them to EPA. The contractors and subcontractors to which this notice applies are as follows:

Contractor/subcontractor	Contract No.
Black and Veatch Waste Science and Technology Corporation	68–W8–0091
(ARCS contractor, performing site assessments, remedial investigations, feasibility studies, remedial design, remedial actions and oversight of potentially responsible party actions) Subcontractor: Earth Technology Corp.	
CDM-Federal Programs Corporation	68–W9–0004
(Technical Enforcement Support (TES) contractor, preforming PRP searches, negotiation support, litigation support, PRP oversight support services for RI/FS, removal, remedial design, remedial action, risk assessment, analytical activities, community relations, expert witnesses, cost recovery, technical document review and management and project management support activities) Subcontractors: CDM, Inc., Techlaw, Inc., Booz-Allen and Hamilton, Inc., SAIC, Versar, A.T. Kearney, The Cadmus Group, Labat Anderson, Inc., Viar and Company, Lee Wan and Associates, Inc., Tetra Tech, Inc.	
CH2M Hill	68–W8–0090
(ARCS contractor, as described above)	
Dynamic Corporation	68–W9–0005
(TES contractor, as described above) Subcontractors: PRC Environmental Management, Inc., Black and Veatch Waste Science and Technology Corp., Resource Applications, Inc., PEI Associates, Inc.	
Ebasco	68–01–7250
(Remedial Engineering Management (REM) contractor, performing remedial investigations and feasibility studies, engineering design and construction of remedial actions, community relations activities, and support of enforcement actions) Subcontractors: Aepco, Inc., Aquatec, Inc., ICF Corp., E.C. Jordan, NUS, Environmental Science and Engineering, Inc., Weston Geophysical	
Ecology and Environment, Inc	68–W8–0085
(ARCS contractor, as described above)	
Environmental Technology, Inc	68–S2–3002
(Emergency Response Cleanup Services (ERCS) contractor, conducting emergency response and removal actions) Subcontractors: Guardian Environmental Services, Inc., Petroclean, Inc., Gilarde Environmental Services, Inc.	
Halliburton NUS Corporation	68–W8–0037
(Halliburton NUS Environmental Corporation) (ARCS contractor, as described above) Subcontractor: Garnett Fleming	
Roy F. Weston, Inc.	68W0–0036
(Technical Assistance Team (TAT) contractor, supporting the removal and prevention program, including inspections, response monitoring, enforcement support, training and analytical services) Subcontractors: Foster Wheeler, Resource Application, C.C. Johnson	
TechLaw, Inc	68–W0–0001
(Regional Evidence Audit contractor, evaluating chemical information related to sites, and other information concerning liability)	
Tetra Tech, Inc	68–W8–0092
(ARCS contractor, as described above)	

Dated: August 6, 1993.

Abraham Ferdas,

Acting Director, Hazardous Waste Management Division, EPA Region III.

[FR Doc. 93–21402 Filed 9–1–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4702–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before October 4, 1993.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Administration and Resource Management

Title: Application for Federal Construction (ICR No. 874.05; OMB No. 2030–0018).

Abstract: This ICR is an extension of an existing information collection that authorizes the use of the application form used by States and municipalities to apply for financial assistance to build treatment works. The authority is provided under EPA's Grants for Wastewater Treatment Works, at Title II of the Clean Water Act, and in accordance with 40 CFR parts 31 and 35. The information is used by EPA or State officials to determine the applicant's eligibility for funding and the ability to perform the tasks required in completing the project.

Under this ICR, applicants/recipients must perform information collection activities that include providing: (1) A certification establishing the project's priority for funding and an indication that there has been adequate public participation; (2) standard assurances for grant eligibility; (3) budget information for both the initial request and for subsequent amendments; and (4) a summary of all other regulations affecting the project. Applicants must also complete Standard Form 424, a form used across the federal government that requires the applicant to provide basic information (financial, application type, identification) common to all grant applicants. Applicants must maintain records related to the construction grant application for a period of 3 years.

Burden Statement: Public reporting burden for respondents subject to this collection of information is estimated to average 20.5 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information. Annual recordkeeping burden is estimated to average 1 hour per respondent.

Respondents: State or local governments.

Estimated Number of Respondents: 150.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3,075 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this

collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: August 26, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–21400 Filed 9–1–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4703–6]

Workshop on Ecological Risk Assessment Issues for 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD)

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: This notice announces a U.S. Environmental Protection Agency (EPA) workshop to examine the utility for future ecological risk assessments of data and methods presented in a recent EPA report. This report, entitled Interim Report on Data and Methods for the Assessment of 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) Risks to Aquatic Life and Associated Wildlife (EPA/600/R–93/055), released in March, 1993, provides data and describes exposure, bioaccumulation, and toxic effects relationships for TCDD.

DATES: The workshop will begin on Tuesday, September 14, 1993, at 8:30 a.m. and end on Wednesday, September 15, 1993, at 4 p.m. Members of the public may attend as observers.

ADDRESSES: The meeting will be held at the Radisson Hotel Metrodome, 615 Washington Avenue SE., Minneapolis, MN.

Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the workshop. To attend the workshop as an observer, call Eastern Research Group at 617/674–7374 or contact Helen Murray, Eastern Research Group, Inc., 110 Hartwell Avenue, Lexington, Massachusetts, 02173, Tel: 617/674–7307. Space is limited.

FOR FURTHER INFORMATION CONTACT: Clare Stine, U.S. Environmental Protection Agency (RD–672), 401 M Street SW., Washington, DC, 20460, Telephone (202) 260–6743.

SUPPLEMENTARY INFORMATION: The Interim Report on Data and Methods for the Assessment of 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) Risks to Aquatic Life and Associated Wildlife (Interim Report), released in March, 1993, compiled and critically reviewed current scientific literature concerning toxicity and exposure data for TCDD-related effects on aquatic and wildlife species. The report is one aspect of a larger EPA scientific assessment of risks to human health and the environment associated with exposure to TCDD.

At the workshop, a peer panel will discuss use of data and methods in the Interim Report for ecological risk assessments and will identify major scientific uncertainties and related research needs.

As announced on April 29, 1993 (58 FR 25987), single copies of the Interim Report can be obtained from the ORD Publications Office, CERI, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Tel: 513/569–7562. Please give your name, mailing address, and EPA document number EPA/600/R–93/055.

Dated: August 24, 1993.

Gary J. Foley,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93–21401 Filed 9–1–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0394.

Title: Section 1.420, Additional procedures in proceedings for amendment of FM, TV or Air-Ground Table of Allotments.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 30 responses; 1.5 hours average burden per response; 45 hours total annual burden.

Needs and Uses: Section 1.420 requires a petitioner seeking to withdraw or dismiss its expression of interest in allotment proceedings to file a request for approval. This request would include a copy of any related written agreement and an affidavit certifying that neither the party withdrawing its interest nor its principals has received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition, an itemization of the expenses for which it is seeking reimbursement, and the terms of any oral agreement. Each remaining party to any written or oral agreement must submit an affidavit within 5 days of petitioner's request for approval stating that is has paid no consideration to the petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses. The data is used by FCC staff to ensure that an expression of interest in applying for, constructing, and operating a station was filed under appropriate circumstances and not to extract payment in excess of legitimate and prudent expenses.

OMB Number: 3060–0452.

Title: Section 73.3589, Threats to file petitions to deny or informal objections.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 15 responses; 1 hour average burden per response; 15 hours total annual burden per response.

Needs and Uses: Section 73.3589 requires an applicant or licensee to file with the FCC a copy of any written agreement related to the dismissal or withdrawal of a threat to file a petition to deny or informal objection and an affidavit certifying that neither the would-be petitioner nor any person or organization related to the would-be petitioner has not or will not receive any consideration in excess of legitimate and prudent expenses incurred in threatening to file. The data is used to ensure that a threat to file a petition to deny or informal objection was made under appropriate circumstances and

not to extract payments in excess of legitimate and prudent expenses.

OMB Number: 3060–0423.

Title: Section 73.3588, Dismissal of petitions to deny or withdrawal of informal objections.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 80 responses; 4.25 hours average burden per response; 340 hours total annual burden per response.

Needs and Uses: Section 73.3588 requires a petitioner to obtain approval from the FCC to dismiss or withdraw its petition to deny when it is filed against a renewal application and applications for new construction permits, modifications, transfers and assignments. This request for approval must contain a copy of any written agreement, an affidavit stating that the petitioner has not received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition and an itemization of the expenses for which it is seeking reimbursement. Each remaining party to any written or oral agreement must submit an affidavit within 5 days of the petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses. The data is used by FCC staff to ensure that a petition to deny or informal objection was filed under appropriate circumstances and not to extract payments in excess of legitimate and prudent expenses.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–21315 Filed 9–1–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

[Notice 1993–21]

Filing Dates for the Michigan Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special elections.

SUMMARY: Michigan has scheduled special elections on November 2, 1993, and December 7, 1993, in the Third Congressional District to fill the seat of the late Representative Paul Henry.

Committees required to file reports in connection with the Special Primary Election should file a 12-day Pre-Primary Report on October 21, 1993. Committees required to file reports in connection with both the Special Primary and Special General Election to be held on December 7, 1993, must file a 12-day Pre-Primary Report, a 12-day Pre-General Report on November 26, 1993, and a Post-General Report on January 10, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Information Division, 999 E Street, NW., Washington, DC 20463, Telephone: (202) 219–3420; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates in the Special Primary and Special General Elections and all other political committees not filing monthly which support candidates in these elections shall file a 12-day Pre-Primary Report on October 21, 1993, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through October 13, 1993; a 12-day Pre-General Election Report on November 26, 1993, with coverage dates from October 14, 1993, through November 17, 1993; and a consolidated 30-day Post-General and Year-End Report on January 10, 1994, with coverage dates from November 18, 1993, through December 31, 1993.

All principal campaign committees of candidates in the Special Primary Election only and all other political committees not filing monthly which support candidates in the Special Primary Election, but not in the Special General Election, shall file a 12-day Pre-Primary Report on October 21, 1993, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through October 13, 1993; and a Year-End Report on January 31, 1994, with coverage dates from October 14, 1993, through December 31, 1993.

All political committees not filing monthly which support candidates in the Special General only shall file a 12-day Pre-General Election Report on November 26, 1993, with coverage dates from the last report filed or the date of the committee's first activity, whichever is later, through November 17, 1993; and a consolidated 30-day Post-General and Year-End Report on January 10, 1994, with coverage dates from November 18, 1993, through December 31, 1993.

CALENDAR OF REPORTING DATES FOR MICHIGAN SPECIAL ELECTIONS

Report	Period Covered	Reg./cert. mailing date*	Filing date
I. All committees, except monthly filers, involved in the Special Primary (11/02) and Special General (12/07) must file			
Pre-Primary	**07/01/93–10/13/93	10/18/93	10/21/93
Pre-General	10/14/93–11/17/93	11/22/93	11/26/93
Post-General and Year-End***	11/18/93–12/31/93	01/10/94	01/10/94
II. All committees, except monthly filers, involved in the Special Primary (11/02) only must file			
Pre-Primary	**07/01/93–10/13/93	10/18/93	10/21/93
Year-End	10/14/93–12/31/93	01/31/94	01/31/94
III. All committees, except monthly filers, involved in the Special General (12/07) only must file			
Pre-General	**07/01/93–11/17/93	11/22/93	11/26/93
Post-General and Year-End***	11/18/93–12/31/93	01/10/94	01/10/94

*Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

**The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

***The consolidated Post-General and Year-End Report is due by 01/10/94. Committees that wish to assert their legal rights to file the Year-End Report by 1/31/94 must file two separate reports: the Post-General Report by 1/06/94; and the Year-End Report by 1/31/94, which will cover four days (12/28–12/32).

Dated: August 27, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93–21327 Filed 9–1–93; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–997–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois, (FEMA–997–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: August 27, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Illinois dated July 9, 1993, is hereby amended to include the following area among those area determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993: Cook County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–21409 Filed 9–1–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–993–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–993–DR), dated June 11, 1993, and related determinations.

EFFECTIVE DATE: August 25, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 25, 1993.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–21410 Filed 9–1–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1001–DR]

North Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota, (FEMA–1001–DR), dated July 26, 1993, and related determinations.

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Dakota dated July 26, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 26, 1993: Divide and Williams Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–21411 Filed 9–1–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following item has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3601, et seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, 800 North Capitol Street NW., room 900, Washington, DC 20573, telephone number (202) 523–5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Item Submitted for OMB Review

46 CFR Part 580

FMC requests extension of clearance for the Commission's regulation to enforce the tariff filing provisions of section 8 of the Shipping Act of 1984. The rule requires common carriers and conferences of such common carriers to file with the Commission and keep open to public inspection, tariffs showing all rates, fares, and charges for transportation between U.S. and foreign ports and between points on any through route which is established.

For approximately 2400 respondents, the Commission estimates 776,620 annual responses and 270,730 annual manhours. Total estimated annual cost to the Government is $701,700; estimated annual cost to the public is $4,975,314.

Joseph C. Polking,

Secretary.

[FR Doc. 93–21360 Filed 9–1–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P57–93, et al.]

Petitions for Temporary Exemption From Electronic Tariff Filing Requirements; Filing

In the matter of Petition No. P57–93, Container Development Group Corp.; Petition No. P58–93, D.X.I. Inc. on Behalf of Trans-Atlantic American Flag Liner Operators

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from ATFI filing deadlines.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than September 9, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on the following:

P57–93—Mr. Vaughan Hedges, President, Container Development Group Corporation, 711 E. Wardlow Road, Suite 204, Long Beach, California 90807

P58–93—Ms. Mary K. DeVitis, Manager, Tariff Conversion, D.X.I. Incorporated, 200 Hightower Blvd., suite 202, Pittsburgh, PA 15205.

Copies of the petitions are available for examination at the Washington, D.C. office of the Secretary of the Commission, 800 N. Capitol Street NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–21361 Filed 9–1–93; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Advisory Committee Meeting on Head Start Quality and Expansion

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to Public Law 92–463, the Federal Advisory Committee Act, that the Advisory Committee on Head Start Quality and Expansion will hold its second meeting on Monday, September 20, 1993, from 9 a.m. to 5 p.m., and Tuesday, September 21, 1993, from 9 a.m. to 1 p.m. The meeting will be held at the Madison Hotel, 1177 15th Street NW., Washington, DC 20005.

The meeting shall be open to the public. The proposed agenda will include a discussion of all subcommittee reports and recommendations.

Records shall be kept of all Committee proceedings and shall be available for public inspection at 370 L'Enfant Promenade SW., Aerospace Building, suite 600, Washington, DC 20447.

If a sign language interpreter is needed, contact David Siegel at the address and telephone below.

FOR FURTHER INFORMATION CONTACT: David Siegel, 7th floor, Aerospace Building, 370 L'Enfant Promenade SW., Washington, DC 20047 (202) 401–9215.

Dated: August 27, 1993.

Ann Rosewater,

Deputy Assistant Secretary for Policy and External Affairs.

[FR Doc. 93–21364 Filed 9–1–93; 8:45 am]

BILLING CODE 4184–01–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, August 6, 1993.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package)

1. Supplemental Security Income (SSI) Wage Reports—0960–NEW. The information on forms SSA–425, 426 and 427 will be used by the Social Security Administration to determine if recipient reporting can improve payment accuracy and reduce the administrative costs associated with wage verification.

Number of Respondents: 3,200
Frequency of Response: 12, 6 and 4 times per year
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 5,325 hours

2. Statement of Marital Relationship (By One of the Parties)— 0960–0038. The information on form SSA–754 is used by the Social Security Administration to prove or disprove the existence of a common-law marriage. The respondents are applicants for benefits who allege such a marriage.

Number of Respondents: 30,000
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 15,000 hours

3. Black Lung Student's Statement Regarding Resumption of School Attendance and Report of Black Lung Student Beneficiary at End of School Year—0960–0314 and 0960–0322. The information on forms SSA–2602 and SSA–2613 is used by the Social Security Administration to determine whether or not a student beneficiary will resume (or has resumed) full-time school attendance at an approved educational institution. If so, he or she will be continuously entitled to benefits. The respondents are children of disabled or deceased coal miners and officials of the schools they attend.

Number of Respondents: 8,000
Frequency of Response: 2 times per year
Average Burden Per Response: (2602)=5 minutes; (2613)=7.5 minutes
Estimated Annual Burden: 1,667 hours

4. Domestic Service Questionnaire—0960–0047. The information on form SSA–7155 is used to determine if the domestic services performed by an individual in the home of a son or daughter are covered employment under the Social Security Act. The respondents are sons or daughters who employ claimants for benefits as domestics.

Number of Respondents: 12,000
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 6,000 hours

5. Final Regulation Concerning Review Procedures Under the Coal Industry Retiree Health Benefit Act of 1992—0960–NEW. The information provided as a result of this regulation will be used by the Social Security Administration (SSA) to reexamine its determination concerning the assignment of retired coal miners to an existing coal mine operator. The respondents will be coal mine operators who appeal that determination and submit evidence supporting their appeal.

SSA has requested emergency processing by the Office of Management and Budget (OMB) and expects to have OMB approval by 9/15/93.

Number of Respondents: 4,000
Frequency of Response: 1
Average Burden Per Response: 1 hour
Estimated Annual Burden: 4,000 hours

OMB Desk Officer: Laura Oliven

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: August 27, 1993.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 93–21367 Filed 9–1–93; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–93–3663]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below

have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 26, 1993.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Public Housing Construction Report

Office: Public and Indian Housing

Description of the Need for the Information and its Proposed Use: This information enables the Department to identify problem areas and/or inadequacies of a public housing project under construction so that corrective action can be taken in a timely manner.

Form Number: HUD–5378

Respondents: State or Local Government and Non-Profit Institutions

Frequency of Submission: Semimonthly

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–5378	200		24		.25		1,200
Recordkeeping	4,000		1		.04		192

Total Estimated Burden Hours: 1,392

Status: Reinstatement

Contact: William Thorson, HUD, (202) 708–4703, Angela Antonelli, OMB, (202) 395–6880

Dated: August 26, 1993

Proposal: Mortgagee Review Board

Office: Housing

Description of the Need for the Information and its Proposed Use: Section 202(c) of the HUD Reform Act of 1989 established within the Department a Mortgagee Review Board for the purpose of imposing administrative sanctions on HUD-approved mortgagees that violate the Department's requirements in the origination and servicing of HUD–FHA insured mortgages.

Form Number: None

Respondents: Businesses or Other For-Profit and Small Businesses or Organizations

Frequency of Submission: Annually

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	70		1		92.5		6,472

Total Estimated Burden Hours: 6,472

Status: Extension

Contact: Andrew Zirneklis, HUD, (202) 708–1824, Angela Antonelli, OMB, (202) 395–6880

Dated: August 25, 1993

Proposal: Contract and Subcontract Reporting for Housing's Multifamily Program

Office: Housing

Description of the Need for the Information and its Proposed Use: The collection of data on minority business enterprise (MBE) participation in HUD programs is a Departmental responsibility and responds to Executive Orders 11625 and 12432. This information is vital for monitoring progress toward accomplishing MBE goal.

Form Number: HUD–2516

Respondents: State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions, and Small Businesses or Organizations

Frequency of Submission: Semi-Annually

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–2516	733		2		1		1,466

Total Estimated Burden Hours: 1,466
Status: Reinstatement
Contact: Sandra Foy, HUD, (202) 708–4466, Angela Antonelli, OMB, (202) 395–6880
Dated: August 25, 1993
Proposal: Electricity, Gas, Water, and Sewage Disposal Data
Office: Public and Indian Housing
Description of the Need for the Information and its Proposed Use: The forms will be used by PHAs for compiling, by housing project and utility service, utility consumptions and costs for a calendar year. HUD will use the information in reviewing PHAs utility operation and in determining if PHAs are controlling utility costs.
Form Number: HUD–51466A, 51466B, and 51466C
Respondents: State or Local Governments, and Non-Profit Institutions
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual reporting	3,000		8		.5		12,000

Total Estimated Burden Hours: 12,000
Status: Reinstatement
Contact: Charles Ashmore, HUD, (202) 708–0840, Angela Antonelli, OMB, (202) 395–6880
Dated: August 12, 1993
Proposal: General Conditions
Office: Public and Indian Housing
Description of the Need for the Information and Its Proposed Use: The form is required for construction contracts awarded by Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs). The form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 24 CFR 85.36, HUD program regulations on grantee procurement, and HUD Handbooks implementing those regulations. The form is used by PHAs and IHAs in solicitations to provide necessary contract clauses.
Form Number: HUD–5370
Respondents: State or Local Governments
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	3,895		1		1		3,895

Total Estimated Burden Hours: 3,895
Status: Extension
Contact: Williams Thorson, HUD, (202) 708–4703, Angela Antonelli, OMB, (202) 395–6880
Dated: August 12, 1993
Proposal: Contract and Subcontract Activity Report for Public and Indian Housing
Office: Public and Indian Housing
Description of the Need for the Information and Its Proposed Use: Executive Orders 11625 and 12432 establish the Department's responsibility for the collection of data on Minority Business Enterprise participation in HUD programs vital to program monitoring. The affected public includes PHAs/IHAs, contractors, and minority businesses.
Form Number: HUD–2516
Respondents: State or Local Governments, Businesses or Other For-Profit, and Small Businesses or Organizations
Frequency of Submission: Semi-annually
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Public Housing Authorities	3,230		2		1		6,460
Indian Housing Authorities	170		2		1		340

Total Estimated Burden Hours: 6,800
Status: Extension
Contact: Walter Preysnar, HUD, (202) 708–0846, Angela Antonelli, OMB, (202) 395–6880
Dated: August 12, 1993
Proposal: Request for financial information
Office: Housing
Description of the Need for the Information and its Proposed Use: The information provided on Form HUD–92068F will be used in evaluating a mortgagor's eligibility for assistance under the Department's mortgage assistance program.
Form Number: HUD–92068F
Respondents: Individuals or Households, Businesses or Other For-Profit, and Federal Agencies or Employees
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92068F	100.000		1		.5		50,000

Total Estimated Burden Hours: 50,000
Status: Extension
Contact: David Dwyer, HUD, (202) 708–3664, Angela Antonelli, OMB, (202) 395–6880
Dated: August 12, 1993.

Proposal: Request for Credit Approval of Substitute Mortgagor
Office: Housing
Description of the Need for the Information and its Proposed Use: Form HUD–92210 is an application form to approve the credit of a substitute mortgagor who desires to assume an insured mortgage loan and a notification form to document the file that the substitute mortgage is financially accepted.
Form Number: HUD–92210
Respondents: Individuals or Households
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92210	1,000		10		1		10,000

Total Estimated Burden Hours: 10,000
Status: Extension
Contact: Charlene Weaver, HUD, (202) 708–1672, Angela Antonelli, OMB, (202) 395–6880
Dated: August 12, 1993.

Proposal: Format: Memorandum of Acceptance for Occupancy (MAO)
Office: Public and Indian Housing
Description of the Need for the Information and its Proposed Use: The Format will be used by a public housing agency to formalize a determination that the contractor has completed all or portions of a project to the point that the completed portions may provide satisfactory housing with safe access and essential utilities in place.
Form Number: None
Respondents: State or Local Governments and Non-Profit Institutions
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	50		2		.50		50
Recordkeeping	100		1		.25		25

Total Estimated Burden Hours: 75
Status: Reinstatement
Contact: William C. Thorson, HUD, (202) 708–4703, Angela Antonelli, OMB, (202) 395–6880
Dated: August 18, 1993

Proposal: Mortgage Insurance—Single Family Claims Without Conveyance of Title
Office: Housing
Description of the Need for the Information and its Proposed Use: Section 426 of the Housing and Urban/Rural Recovery Act of 1983 allows mortgagees to submit claims for insurance benefits without conveying the title to the Secretary of HUD.
Form Number: HUD–91022
Respondents: Businesses or Other For-Profit
Frequency of Submission: On occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–91022	750		4		4.14		3,100

Total Estimated Burden Hours: 3,100
Status: Extension
Contact: Dorothy Butler, HUD, (202) 755–7330, Angela Antonelli, OMB, (202) 395–6880
Dated: August 10, 1993

Proposal: Management Reviews of Multifamily Projects
Office: Housing
Description of the Need for the Information and its Proposed Use: Form HUD–9834 will be used when conducting on-site reviews of project operations to evaluate the quality of project management, determine the causes of project problems, devise corrective actions to safeguard the Department's financial interest, and ensure decent, safe, and sanitary housing for tenants.
Form Number: HUD–9834
Respondents: Businesses or Other For-Profit and Non-Profit Institutions
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Management review questionnaire	1,120		1		4		4,480

Total Estimated Burden Hours: 4,480
Status: Extension
Contact: James J. Tahash, HUD, (202) 708–3944, Angela Antonelli, OMB, (202) 395–6880
Dated: August 10, 1993
Proposal: American Housing Survey—1994 Metropolitan Sample
Office: Policy Development and Research
Description of the Need for the Information and its Proposed Use: The 1994 AHS–MS is a longitudinal study that collects current information on the quality, availability, and cost of housing in eleven selected metropolitan areas. The study also provides information on demographic and other characteristics of the occupants. Federal and local government agencies use AHS data to evaluate housing issues.
Form Number: AHS–61, 62, 63, 66, 67, 68, and 590
Respondents: Individuals or Households
Frequency of Submission: Annually
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	45,000		1		.54		24,435

Total Estimated Burden Hours: 24,435
Status: Revision
Contact: Duane T. McGough, HUD, (202) 708–1060, Daniel Weinberg, Census, (301) 763–8550, Angela Antonelli, OMB, (202) 395–6880
Dated: August 6, 1993
Proposal: Performance Funding System Data Collection Forms
Office: Public and Indian Housing
Description of the Need for the Information and its Proposed Use: These forms are used by Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) to calculate the annual operation subsidy eligibility under the Performance Funding System. They are used by the Department to evaluate the PHAs/IHAs' annual operating budget.
Form Number: HUD–52720A, 52720B, 52720C, 52721, 52722A, 52722B, and 52723
Respondents: State or Local Governments
Frequency of Submission: Annually
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collections	3,119		Varies		Varies		23,190

Total Estimated Burden Hours: 23,190
Status: Reinstatement
Contact: Joan DeWitt, HUD, (202) 708–1872, Angela Antonelli, OMB, (202) 395–6880
Dated: August 6, 1993
Proposal: Housing Owner's Certification and Application for Tenant Assistance Payments, Schedule of Tenant Assistance Payments Due, Schedule of Section 8 Special Claims, Special Claims Worksheet
Office: Housing
Description of the Need for the Information and its Proposed Use: These forms are used by owners to request monthly housing assistance payments for eligible families, to limit the number of section 8 units to those families whose incomes are less than 50 percent of the area median, and to restrict admission of ineligible tenants.
Form Number: HUD–52670; HUD–52670A, and HUD–52671A thru D
Respondents: Individuals or Households and Businesses or Other For-Profit
Frequency of Submission: Monthly
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	352,045		1		.452		158,124

Total Estimated Burden Hours: 159,124
Status: Extension
Contact: James J. Tahash, HUD, (202) 708–3944, Angela Antonelli, OMB, (202) 395–6880
Dated: August 6, 1993

[FR Doc. 93–21350 Filed 9–1–93; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–93–3664]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to:

Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 25, 1993.

John T. Murphy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Floodplain Management and Protection of Wetlands (FR–865)
Office: Community Planning and Development
Description of the Need for the Information and Its Proposed Use: 24 CFR part 55 prescribes decisionmaking procedures that applicants and grantees in certain programs must comply with before HUD assistance can be used for projects that may effect floodplains and wetlands. Records must be kept and maintained by the recipients to document compliance of projects with the Executive Orders.
Form Number: None
Respondents: State or Local Governments
Frequency of Submission: Annually
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	3,200		1		.40		1,280

Total Estimated Burden Hours: 1,280
Status: New
Contact: Truman Goins, HUD, (202) 708–2894, Angela Antonelli, OMB, (202) 395–6880

Dated: August 25, 1993.

[FR Doc. 93–21351 Filed 9–1–93; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–920–03–4120–03; COC 53560]

Coal Lease Offering By Sealed Bid; Routt County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that certain coal resources in the lands hereinafter described in Routt County, Colorado, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 11 a.m., Thursday, October 7, 1993. Sealed bids must be submitted no later than 10 a.m., Thursday, October 7, 1993.

ADDRESSES: The lease sale will be held in the Conference Room, Fourth Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, First Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Karen Purvis at (303) 239–3795.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder submitting the highest offer, provided that the high bid meets the fair market value determination of the coal resource. The minimum bid for this tract is $100 per acre or fraction thereof. No bid less than $100 per acre or fraction thereof will be considered. The minimum bid is not intended to represent fair market value.

Sealed bids received after the time specified above will not be considered.

In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

Fair market value will be determined by the authorized officer after the sale.

Coal Offered

The coal resource to be offered is limited to coal recoverable by underground mining methods in the Wadge seam in the following lands:

Sixth Principal Meridan

T. 5 N., R. 86 W.,
Sec. 31, lots 1, 2, W½NE¼, and E½NW¼;
T. 5 N., R. 87 W.,
Sec. 36, lots 1, 2, W½NE¼, and NW¼.

The land described contains 544.08 acres, more or less.

Total recoverable reserves are estimated to be 3,584,000 tons. The Wadge seam underground minable coal is ranked as high volatile C bituminous coal. The estimated coal quality for the Wadge seam on an as-received bases is as follows:

Btu	11,213 Btu/lb.
Moisture	9.52%
Sulfur Content	0.44%
Ash Content	9.94%

Rental and Royalty

The lease issued as a result of this offering will provide for payment of an

annual rental of $3 per acre or fraction thereof and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR part 206.

Notice of Availability

Bidding instruction for the offered tract are included in the Detailed Statement of Coal Lease Sale. Copies of the statement and the proposed coal lease are available upon request in person or by mail from the Colorado State Office at the address given above. The case file is available for inspection in the Public Room, Colorado State Office, during normal business hours at the address given above.

Dated: August 24, 1993.

Richard D. Tate,

Chief, Mining Law and Solid Minerals Adjudication Section.

[FR Doc. 93-21318 Filed 9-1-93; 8:45 am]

BILLING CODE 4310-JB-M

[ID-942-03-4730-12]

Filing of Plats of Survey; Idaho

The official plat of the following described land was to be officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m. September 3, 1993. The official filing of this plat is hereby stayed pending final resolution of a protest of the survey.

The plat, representing the dependent resurvey of portions of the west boundary, subdivisional lines, and meanders of the right and left banks of the Salmon River, the subdivision of section 7, and the survey of the meanders of left bank of the Salmon River, T. 20 N., R. 22 E., Boise Meridian, Idaho, Group No. 811, was accepted, July 23, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: August 23, 1993.

Jerrold E. Knight,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 93-21323 Filed 9-1-93; 8:45 am]

BILLING CODE 4310-GG-M

National Park Service

General Management Plan, Cabrillo National Monument, California; Intent To Prepare an Environmental Impact Statement

SUMMARY: The National Park Service will prepare a General Management Plan/Environmental Impact Statement (GMP/EIS) for Cabrillo National Monument, California and initiate the scoping process for this document. This notice is in accordance with 40 CFR 1501.7 and 40 CFR 1508.22, of the regulations of the President's Council on Environmental Quality for the National Environmental Policy Act of 1969, Public Law 91-190.

BACKGROUND: The GMP will replace the monument's Master Plan completed in 1976. The purpose of the GMP will be to state the management philosophy for the monument and provide strategies for addressing major issues facing the monument consistent with management objectives. Two types of strategies will be presented in the GMP: (1) Those required to properly manage cultural and natural resources; and (2) those required to provide for safe, accessible and appropriate use of those resources. Based on these strategies, the GMP will identify the programs, actions and support facilities needed for their implementation.

Persons wishing to comment or express concerns on the management issues and future management direction of Cabrillo National Monument should address these, along with any questions, to the Superintendent, Cabrillo National Monument, P.O. Box 6670, San Diego, CA 92166 (telephone 619-557-5450). Also, public scoping sessions will be held at the park auditorium on October 19, 1993, from 1 to 4 p.m., and on October 21, 1993, at 7 to 9 p.m. All comments on the scoping of the proposed GMP/EIS should be received no later than October 31, 1993.

The responsible official is Stanley T. Albright, Regional Director, Western Region, National Park Service. The draft GMP/EIS is expected to be available for public review in summer, 1994, and the final GMP/EIS and Record of Decision completed approximately one year later.

Dated: August 24, 1993.

Lewis Albert,

Acting Regional Director, Western Region.

[FR Doc. 93-21412 Filed 9-1-93; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-355 (Preliminary) and Investigations Nos. 731-TA-659 and 660 (Preliminary)]

Grain-Oriented Silicon Electrical Steel From Italy and Japan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary countervailing duty investigation and preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigation No. 701-TA-355 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) and preliminary antidumping investigations Nos. 731-TA-659 and 660 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of alleged subsidized imports from Italy or alleged less than fair value imports from Italy and Japan of grain-oriented silicon electrical steel, provided for in subheadings 7225.10.00, 7226.10.10, and 7226.10.50 of the Harmonized Tariff Schedule of the United States. The Commission must complete preliminary antidumping and countervailing duty investigations in 45 days, or in this case by October 12, 1993.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed

on August 26, 1993, by counsel on behalf of Allegheny Ludlum Corp., Pittsburgh, PA, Armco, Inc., Butler, PA, the Butler Armco Independent Union, Butler, PA, the United Steelworkers of America, Pittsburgh, PA, and the Zanesville Armco Independent Union, Zanesville, OH.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on September 16, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Mary Messer (202–205–3193) not later than September 14, 1993 to arrange for their appearance. Parties in support of the imposition of countervailing and/or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before September 21, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to these investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: August 27, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–21352 Filed 9–1–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–348

Certain In-Line Roller Skates With Ventilated Boots and In-Line Roller Skates With Axle Aperture Plugs and Component Parts Thereof

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

In the matter of Notice of Commission determination not to review an initial determination granting a joint motion to terminate the investigation as to one respondent on the basis of a consent order agreement.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation granting a joint motion to terminate the investigation with respect to respondent Innovative Sport Systems, Inc. (Innovative) on the basis of a consent order agreement.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Anjali K. Singh, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3117. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: On February 18, 1993, Rollerblade, Inc. filed a complaint with the Commission alleging unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The unfair acts alleged in the complaint are the unauthorized importation into the United States, the sale for importation, and the sale within the United States after importation of certain in-line roller skates with ventilated boots, and in-line roller skates with axle aperture plugs and component parts thereof, that allegedly infringe claims 1, 2, 3, 4, 5, 6, 7 or 8 of U.S. Letters Patent 5,171,033, and/or claim 5 of U.S. Letters Patent 5,048,848. On March 18, 1993, the Commission voted to institute an investigation of the complaint and published notice of its investigation in the **Federal Register** (58 FR 16204 (March 25, 1993)).

On July 16, 1993, complainant Rollerblade, Inc. and respondent Innovative jointly moved for the termination of the investigation with respect to Innovative on the basis of a consent order agreement (Motion No. 348–23). On July 23, 1993, the Commission investigative attorney filed a response in support of the motion. On July 27, 1993, the ALJ issued an ID (Order No. 19) granting Motion No. 348–23 and terminating the investigation with respect to Innovative. No petitions for review, or agency or public comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53(h) (19 CFR 210.53(h)).

Issued: August 27, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–21348 Filed 9–1–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32327]

Dennis Washington and Washington Corporations—Reacquisition and Control Exemption—Westran, Inc.; Notice

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–44 Dennis Washington's and Washington Corporations' (WCorpII) reacquisition of a controlling interest in Westran, Inc. (WT), from a voting trust. Upon completion of the transaction, Mr. Washington would be in control of two carriers, WT and Montana Rail Link, Inc. (MRL). The Commission exempted the common control of WT and MRL, by WCorpII's predecessor, also named Washington Corporations, in Finance Docket No. 31412, *Washington Corporations—Control Exemption—Western Transport Crane and Rigging, Inc. and Montana Rail Link, Inc.* (not printed), served August 24, 1989. The exemption is subject to standard employee protective conditions.

DATES: This exemption will be effective on October 1, 1993. Petitions to stay must be filed by September 13, 1993, and petitions to reopen must be filed by September 21, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32327 to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Adam M. Mycyk, Weiner, Brodsky, Sidman & Kidder, P.C., Suite 800, 1350 New York Avenue, NW., Washington, DC 20005–4797.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721].

Decided: August 25, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 93–21543 Filed 8–31–93; 10:36 am]
BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Lodging of Consent Order Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 42 U.S.C. 9622(i) and with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(D)(2), notice is hereby given that a proposed consent order in *United States* v. *Accra Pac, Inc., and Kenneth R. Everett and Diana Lee Power, in their capacity as personal co-representatives of the Estate of Warner Baker*, Civil Action No. H89–0113, has been lodged with the United States District Court for the Northern District of Indiana on August 23, 1993.

The Consent Decree resolves the claims against defendants under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* The proposed consent order provides for remedial action by defendants of contaminated soil and groundwater at the Accra Pac site, 2600 Industrial Parkway, Elkhart, Indiana, the payment of defendants of $250,000 for past response costs of the United States, and the payment by the Baker Estate of a $50,000 penalty for failure to comply with an Administrative Order of the U.S. Environmental Protection Agency.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent order. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Accra Pac, Inc., et al.*, D.J. Ref. 90–11–3–412.

The proposed consent decree may be examined at the office of the United States Attorney for the Northern District of Indiana, 204 S. Main Street, South Bend, Indiana 46601, at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $21.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Myles E. Flint,
Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–21324 Filed 9–1–93; 8:45 am]
BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Open Software Foundation, Inc.

Notice is hereby given that, on August 2, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open Software Foundation, Inc. ("OSF") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new, non-voting members of OSF are as follows: Universitat Konstanz, Konstanz, GERMANY; Johns Hopkins University, Laurel, MD; ESIGETEL, Avon, FRANCE; Pennsylvania State University, University Park, PA; The University of Western Ontario, London, Ontario, CANADA; Ford Motor Company, Allen Park, MI; Enabling Technologies Group, Inc., Atlanta, GA; University of Florida, Gainesville, FL; University of Wisconsin, Madison, Madison, WI; Mirrors International, Inc., Taipei, TAIWAN; SingaLab Pte. Ltd., Chadwick, SINGAPORE; Purdue University, West Lafayette, IN; Phillips Petroleum Company, Bartlesville, OK; Open Environment Corporation, Cambridge, MA; Konkuk University, Seoul, KOREA; Technion, Haifa, ISRAEL; Loral Corporation, San Jose, CA; NetLabs, Inc., Los Altos, CA; and the University of California, San Diego, La Jolla, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSF intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, OSF and the Open Software Foundation Institute, Inc. (the "Institute") filed its original notification

pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 7, 1988, (53 FR 34594).

The last notification was filed with the Department on May 3, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 27, 1993 (58 FR 30815).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–21325 Filed 9–1–93; 8:45 am]

BILLING CODE 4410–01–M

Bureau of Justice Assistance

FY 1993 Discretionary Program Application Kit—Police Hiring Supplement Program

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Department of Justice.

ACTION: Public announcement of the availability of the Application Kit for Fiscal Year 1993 Discretionary Grants Program—Police Hiring Supplement Program. Awards will be made by the Bureau of Justice Assistance pursuant to the Anti-Drug Abuse Act of 1988.

SUMMARY: The Bureau of Justice Assistance (BJA) is publishing this Notice to inform interested parties of the availability of the FY 1993 Discretionary Grant Program Application Kit for the Police Hiring Supplement Program. The following is a reprint of the sections of the Application Kit which describe the program and application requirements. A description of administrative requirements and copies of the application forms have not been reprinted in this notice, but are contained in the Application Kit.

Overview

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (BJA), announces a new competitive grant program, the program requirements, and administrative guidance for jurisdictions eligible to apply for grants under this program. The Police Hiring Supplement Program is hereinafter referred to as the Program.

The Program will make direct grants to law enforcement jurisdictions to hire and/or rehire additional sworn law enforcement officers as part of an overall plan or strategy to address crime and related problems through community policing. An applicant's plan should reflect its community's unique needs and be responsive to local circumstances. In general, community policing is designed to forge effective crime-fighting partnerships between law enforcement and the community. These partnerships, using a problem-oriented approach, can result in innovative and tailored strategies for preventing and controlling crime. As part of their community policing efforts, communities have used various strategies to address crime problems, including multi-disciplinary crime prevention teams, public education programs, neighborhood resource centers, and foot patrols.

A total of $150 million is available for these grants, beginning in Fiscal Year 1993. Fifty percent of the funds ($75 million) will be awarded to applicants serving jurisdictions with populations of 150,000 and above. Fifty percent of the funds ($75 million) will be awarded to applicants serving jurisdictions with populations of less than 150,000. These funds may be used to help pay salaries and fringe benefits of newly sworn officers, excluding overtime, for a 3-year period. Funding will commence at the time, and not until, a hired or rehired officer is sworn in. The deployment of new hires and the selection of the officers to implement the individual projects funded under this Program will be at the discretion of the local jurisdiction.

Program Goals and Objectives

The goals of the Program are to:

- Increase the number of sworn law enforcement officers serving areas where they are needed most.
- Improve the long-term ability of law enforcement agencies to engage in community policing by deploying additional sworn law enforcement officers.
- Improve public safety through innovative crime prevention, including community policing.

The objectives are to:

- Hire additional law enforcement officers to increase sworn officer deployment and expand community policing designed to prevent crime, promote problem solving, and enhance public safety.
- Rehire law enforcement officers who have been laid off (as a result of State and local budget reductions) to increase sworn officer deployment and expand community policing.

Eligibility Requirements

Applications are invited from all law enforcement agencies, or consortia of law enforcement agencies, that can demonstrate a significant need for additional sworn law enforcement officers and are committed to using community policing to address crime and related problems in their jurisdictions. Eligible applicants under this program are law enforcement agencies that recruit and hire law enforcement officers who serve local communities. State law enforcement agencies may apply if they have law enforcement jurisdiction and provide local law enforcement services to communities within their State.

Application Requirements

The application must be developed in consultation with community groups and appropriate public and private agencies and must: A. Demonstrate the jurisdiction's public safety need for additional sworn law enforcement officers; B. include a strategy for community policing in the jurisdiction; C. include an implementation plan that specifies how the funds awarded under this project will help deploy additional sworn police for community policing activities; D. describe a plan to continue the project and retain the positions at the end of the grant period; E. discuss the availability and use of non-project funds and resources from other organizations; and F. provide a detailed budget proposal to support the grant request.

A. Public Safety Need: (40 Percent of the Selection Criteria)

Provide a narrative that describes the community's need for additional sworn law enforcement officers, as well as the reason(s) local funding is not available to meet these needs. The narrative should describe the jurisdiction's overall crime situation and highlight positive steps already taken to improve law enforcement effectiveness. These highlights might include, for example, any efforts already made to reduce the number of sworn officers in administrative positions. It is important to make the strongest case possible. Include any special conditions or factors that help to document your needs, such as relevant demographic trends and/or significant unemployment problems resulting from plant or military base closings, natural disasters, etc.

In addition to the narrative, provide information on the following factors, to the extent that it is available:

1. The population for the jurisdiction according to the 1990 U.S. Census.
2. The unemployment rate for the jurisdiction for each of the last 5 years.
3. The ratio of population to sworn officers, expressed as number of residents per sworn officer.
4. The number and types of citizen calls for service (i.e., emergency, non-emergency, violent offense, property offense, etc.) handled by patrol officers for each of the last 5 years.

5. The jurisdiction's Uniform Crime Report (UCR) rates (or their equivalent) for all Part I offenses for each of the last 5 years.

6. The actual number of full-time and part-time civilians and sworn law enforcement officers employed during each of the last 5 years.

7. The number of officers deployed, by function (administrative, patrol, and investigative), during each of the last 5 years.

8. The actual number of sworn officers laid off and/or furloughed during each of the last 5 years.

9. The actual operational expenditures for police services and total expenditures by the jurisdiction for each of the past 5 years.

10. The expenditures for police overtime and/or the amount of compensatory time granted in lieu of overtime spending for each of the past 5 years; provide an explanation for overtime expenditures.

B. Strategy: (30 Percent of the Selection Criteria)

Develop a 3-year strategy that specifies how additional sworn law enforcement officers would lead to increased community policing targeted against crime and related problems in the jurisdiction.

The strategy narrative should describe:

1. Any community policing activities currently used by the applicant, emphasizing those efforts that promote law enforcement partnerships with citizens and non-law enforcement organizations.

2. How the applicant will involve community leaders and residents in planning, implementing, and coordinating this project with non-law enforcement organizations.

3. How the applicant will coordinate this project with other criminal justice system components, including an assessment of the effects of additional police on these agencies.

4. The specific geographic area(s) to be served by this project and the crime and related problems that community policing would address effectively.

5. The specific strategies and innovations that the applicant will employ to respond to identified problems.

6. How the applicant will select the officers who will be assigned to community policing. (These officers do not need to be the officers actually hired with these project funds.)

7. How the applicant will assess how well the project was implemented and the extent to which the strategy has achieved the Program's goals and objectives.

C. Implementation Plan: (10 Percent of the Selection Criteria)

Provide a plan for implementing the strategy described in B. above. Provide a detailed schedule that includes milestones for significant tasks. The schedule and milestones must include the expected dates when newly hired/rehired officers will be sworn and deployed. Also provide the dates when officers will be assigned to project-related community policing activities.

D. Continuation and Retention Plan: (10 Percent of the Selection Criteria)

Describe how the applicant intends to continue this project and retain the positions created with the project funds following the conclusion of the grant period. If possible, include an endorsement of the jurisdiction's continuation and retention plan by local budget authorities.

E. Additional Resource Commitments: (10 Percent of the Selection Criteria)

Applicants are encouraged to apply other resources, Federal, State, local, or private, in support of this project. Describe the sources and the amounts of non-project funding or resources that will be available from all sources. Describe how those resources will be used. If no other funds or resources are available, please explain.

F. Budget Proposal

The application must contain a budget and budget narrative that specifically identifies salary and fringe benefits costs. Salary and fringe benefits costs are the only allowable costs. Standard fringe benefits paid by the jurisdiction should be supported by a list of itemized costs explaining what is included in the benefits package. Expenditure of project funds for overtime is expressly forbidden. The budget breakdown must show the number of officers to be hired, the salary and fringe benefits per officer, and the total salary and fringe benefits costs. Estimate scheduled salary increases, if any, over the life of the grant.

Program Evaluation

In addition to the assessment referenced in Application Requirements, section B, number 7, a national-level evaluation of this Program may be conducted in the future. The evaluation would use some combination of process and impact measures that may include, but would not be limited to, crime and victimization indices, quality-of-life measures, community perceptions, indications of changes in management philosophy, and individual police perceptions of their own work. Evaluators may visit sites to collect data for the evaluation. All selected applicants must be willing to participate in such national evaluation.

Selection Criteria

Applications will be evaluated based on the extent to which they meet the following weighted criteria:

Public Safety Need—40 percent
Soundness of Strategy—30 percent
Clarity and Appropriateness of Implementation Plan—10 percent
Continuation and Retention Plan—10 percent
Additional Resource Commitments—10 percent

The Department of Justice will award grants to those applicants that best meet all these criteria. Consideration may also be given to equitable distribution of grants based on geographic or other factors.

Federal Share

For each officer funded under this program, the Federal share may not exceed the greater of (1) 75 percent of the total salary and benefits over the life of the grant, up to a maximum of $75,000; or (2) 50 percent of the total salary and benefits over the life of the grant. The authorized Federal share per officer may be increased upon submission of sufficient evidence of extraordinary economic hardship, resulting from such factors as economic dislocation, a natural disaster, or other severe mitigating circumstances. An increase in the Federal share will be granted only in the most extreme circumstances. If the applicant agency is requesting an increase in Federal share, include the narrative and documentation justifying the request as an appendix to the application. Indicate on Standard Form 424—Budget Information—in Section F, Block 23, that a request is being submitted. Grantees may specify how the Federal share is disbursed over the life of the grant.

Distribution of Funds

As stated in the Overview, the total amount available for this program is $150 million, which will be allocated as follows:

1. $75 million will be allocated for grants to applicants serving jurisdictions with populations of 150,000 and above.

2. $75 million will be allocated for grants to applicants serving jurisdictions with populations of less than 150,000.

Application Process

All applications must be submitted on 8½ × 11 paper. The program narrative portion of the application should be no more than 30 pages double-spaced and should be printed on one side of the paper only. All applicants must also submit an Application for Federal Assistance (Standard Form 424), a signed original and two copies. To facilitate review, applicants are encouraged to submit one additional copy of their application. A copy of this form is provided in Appendix B of this application kit. Video presentations will not be accepted. Applications submitted via FAX will not be accepted.

Executive Order 12372 requires applicants from State and local units of government or other organizations providing services within a State to submit a copy of the application to the State Single Point of Contact (SPOC), if one exists, and if the Program has been selected for review by the State. A list of the State Single Point of Contacts is available in Appendix A of this application kit. Applicants must contact their State SPOC to determine if the Program has been selected for review by the State.

In addition to the required standard assurances that are part of the Standard Form 424, each application must include a certification that Federal funds made available under the grant will not be used to supplant State or local funds, but will be used to increase the amount of State or local funds that would be available for law enforcement purposes in the absence of Federal funds.

In submitting applications which involve a consortium of more than one agency, the relationships among the parties must be set forth in the application. In the event of a consortium submission, one agency must be designated as the payee to receive and disburse project funds and to be responsible for the supervision and coordination of the activities of the consortium members. Each co-applicant must sign the Standard Form-424.

Application Format

The following format and guidance are provided to assist the applicant in writing and organizing the program narrative section of the application. To assist the application review, the narrative should be presented in the same order as in the Application Requirements above:

Public Safety Need Section

This descriptive narrative should respond to Section A, page 2.

Information relating to items 1–10 should be displayed in a list format in the order in which they appear.

Strategy Section

This descriptive narrative should respond to Section B, page 2.

Implementation Plan Section

This descriptive narrative should respond to Section C, page 3.

Continuation and Retention Plan Section

This descriptive narrative should respond to Section D, page 3.

Additional Resource Commitments Section

This descriptive narrative should respond to Section E, page 3.

Budget

Use Standard Form 424—Budget Information—to display the total cost for each allowable category (i.e., Salary and Fringe Benefits) of the application. Refer to the Federal Share section if an increase in the Federal share is requested.

Budget Narrative

Include an itemization of proposed costs for personnel salaries, fringe benefits, and any scheduled salary increases. This descriptive narrative should respond to Section F, page 3. The narrative should also provide detail on Federal and non-Federal shares.

Standard Form 424

Most items on the cover page of the Standard Form 424 are self-explanatory. For purposes of this application, please include the following information:

Face Sheet, Block 7
Type of Applicant: If the applicant is representing a consortium of agencies, specify by checking Block N and entering Consortium.

Face Sheet, Block 10
Catalogue of Federal Domestic Assistance: The Number for this program is 16.580.
Title: Drug Control and System Improvement Discretionary Grant Program

Face Sheet, Block 11
Descriptive Title of Applicant's Project: List the following information in this order:
Police Hiring Supplement
Population of jurisdiction to be served: _____
Total number of sworn officers to be hired: _____
Name of jurisdiction to be served (i.e., "County of" or "City of"):
_____

Section F, Block 23
Indicate if the Applicant is requesting an increase in the Federal share.

Award Period

Grants will be awarded to help pay for salary and fringe benefits for a 3-year period.

Maximum Award Amount

- Eligible applicants serving a jurisdiction with a population of less than 150,000 may apply for a maximum of $1 million over the life of the grant.
- Eligible applicants serving a jurisdiction with a population between 150,000 and 749,999 may apply for a maximum of $2 million over the life of the grant.
- Eligible applicants serving a jurisdiction with a population between 750,000 and 2,000,000 may apply for a maximum of $3 million over the life of the grant.
- Eligible applicants serving a jurisdiction with a population in excess of 2,000,000 may apply for a maximum of $4 million over the life of the grant.

No waiver of the maximum award amounts will be granted.

DATES: Applications for funding under this program will be considered competitively in three rounds. Applications that are not selected in the first two rounds will be reconsidered during the subsequent round(s). It is anticipated that awards will be made in November and December 1993.

Round 1: Applications received no later than October 14, 1993, will be considered under Round 1.

Round 2: Applications received no later than November 1, 1993, will be considered under Round 2.

Round 3: Applications received and/or postmarked no later than December 1, 1993, will be considered under Round 3.

ADDRESSES: The original and three copies of the application must be submitted. To facilitate review, applicants are encouraged to submit one additional copy of their application. Copies should be sent to: U. S. Department of Justice, Office of Justice Programs, Control Desk, room 948, 633 Indiana Avenue NW., Washington, DC. 20531.

FOR FURTHER INFORMATION CONTACT: A special technical assistance line has been established at the Bureau of Justice Assistance to respond to requests for information and/or an Application Kit. Copies of the Application Kit were mailed on August 30, 1993, to all Members of Congress, police departments, sheriff's offices, mayor's offices, offices of the county executive,

State and local criminal justice planners, Indian tribes with law enforcement authority, and U.S. Attorneys' Offices. The technical assistance line can be reached by calling (202) 307–1480, Monday through Friday, 8 a.m. to 5 p.m., eastern time.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under section 6091 of the Anti-Drug Abuse Act of 1988, Public Law 100–690, 102 Stat. 4181, 4328, 42 U.S.C. 3742(2).

Background

On July 2, 1993, the Bureau of Justice Assistance received a supplemental appropriation to the Edward Byrne Memorial State and Local Law Enforcement Assistance Administration Discretionary Grants Program in the amount of $150 million to implement the Police Hiring Supplement Program.

Curtis H. Straub,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 93–21183 Filed 9–1–93; 8:45 am]

BILLING CODE 4410–18–P

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on July 27, 1993, Bridgeway Trading Corporation, 7401 Metro Blvd., suite 480, Minneapolis, Minnesota 55439, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360) a basic class of controlled substance in Schedule I.

This application is exclusively for the importation of marihuana seed which will be rendered non-viable and used as bird seed.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 1, 1993.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Director, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: August 26, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–21330 Filed 9–1–93; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on August 10, 1993, Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396).	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenylacetone (8501)	II

Celgene Corporation plans to manufacture small quantities of the above controlled substances utilizing bio-catalysis to develop manufacture and sell high value-added compounds important to pharmaceutical and agrochemical industries.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 1, 1993.

Dated: August 26, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–21329 Filed 9–1–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–7226, et al.]

Proposed Exemptions; Haziehurst & Associates, Inc., Profit Sharing Plan and Savings, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the

evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemptions and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Hazlehurst & Associates, Inc. Profit Sharing and Savings Plan (the Plan), Located in Bellevue, Washington, [Application No. D–7226]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, effective July 31, 1987, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to two past loans of money from the individual account in the Plan of David M. Gladstone (Gladstone), a party in interest with respect to the Plan, to Gladstone, provided that, as of July 31, 1987, the following conditions have been met:

1. The terms of the loans have been at least as favorable as the Plan could obtain in an arm's-length transaction with an unrelated party;

2. The two loans together have not exceeded 25 percent of the assets of the individual account of Gladstone throughout the term of the loans;

4. The collateral securing the loans has been maintained throughout the duration of the loans at no less than 200 percent of the balance of the loans; and

5. The loans have involved only Gladstone's segregated account in the Plan.

Effective Date: If granted, this proposed exemption will be effective as of July 31, 1987.

Summary of Facts and Representations

1. Hazlehurst & Associates, Inc. (the Employer) is engaged in the business of consulting and actuarial services. The Plan provides for segregated accounts for each participant and permits each participant to direct the investments of his or her account among certain funds. As of September 30, 1987, the plan had 62 participants and total assets of approximately $4.4 million. The Plan permits loans to its participants and such loans must be made in accordance with section 408(b)(1) of the Act.

2. Gladstone is a Plan participant as well as a 29.5 percent owner of the Employer. The assets in Gladstone's account totaled $445,058 as of March 31, 1987. On that date, there were two loans outstanding in Gladstone's account. The loans involve only Gladstone's segregated account in the Plan and do not affect the accounts of other Plan participants. The applicant represents that the statutory criteria of section 408(b)(1) of the Act, which permits loans to Plan participants under certain conditions, were satisfied in regard to the two loans. The two loans were made at different times with different terms to maturity. Loan A, at an interest rate of 7.5 percent, had $20,035 remaining to its expiration in December 1996. Loan B, at an interest rate of 15.0 percent, had $27,130 remaining to its expiration in June 1989. Both loans were amortized through monthly payments of principal and interest. The two loans together accounted for approximately 10.6 percent of the assets in Gladstone's account.

3. Effective August 1, 1987, the Employer became a Subchapter S corporation as defined in Code section 1371. Section 408(d)(1) of the Act provides, in part, that section 408(b) of the Act shall not apply to any transaction in which a plan lends any part of the corpus or income of the plan to any person who is with respect to the plan an owner-employee (as defined in section 401(c)(3) of the Code). For purposes of section 408(d) of the Act, a shareholder employee (as defined in section 1379 of the Code) is deemed to be an owner-employee. The applicant represents that Gladstone is a shareholder employee in regard to section 408(d). Accordingly, loans from the Plan to Gladstone in accordance with the provisions of section 408(b)(1) of the Act were no longer exempt under that section following the conversion of the Employer to a Subchapter S corporation.

4. The applicant represents that the interest rate on Loan A was raised to 15.0 percent as of July 31, 1987, in order to bring it more in line with comparable interest rates prevailing at that time.[1] The two loans originally were made with Gladstone's account balance in the Plan serving as security for the loans. however, effective July 31, 1987, the collateral on the loans consisted of shares of Essex Communications Corporation (Essex) common stock, which were traded on the NASDAQ national market system, or other marketable securities of comparable value. The applicant represents that there is no other encumbrance on such securities and that Gladstone owned a sufficient number of shares of Essex stock such that the collateral has been maintained at no less than 200 percent (in Essex stock or other marketable

[1] The Department expresses no opinion as to whether the specific terms of the loans were in conformity with the provisions of section 408(b)(1) of the Act. That section requires, among other things, that the loans bear a reasonable rate of interest.

securities) of the balance of the two loans throughout the term of the loans.[2]

5. The applicant represents that a security agreement, effective July 31, 1987, duly perfected in accordance with the laws of the State of Washington created a first lien on such securities. The Administrative Committee of the Plan, which is comprised of three employees of the Employer, has monitored the loans and will take whatever action is appropriate to enforce the rights of the account of Gladstone in the Plan under the terms of the loans, including foreclosing on the collateral if necessary.

Linda S. Morris, a vice president of the Rainier National Bank of Tukwila, Washington (the Bank), an unrelated commercial bank, stated that the Bank would have been willing on July 31, 1987, to make the same loans to Gladstone on the same terms. The applicant represents that all the payments due on the loans prior to and after the conversion of the Employer to Subchapter S status have been received by the Plan timely and in full.

6. In summary, the applicant represents that the transactions have satisfied the statutory criteria of section 408(a) of the Act because: (1) As of March 1987, the two loans combined accounted for only about 10.6 percent of the assets in Gladstone's account; (2) shares of Essex common stock owned by Gladstone which were traded on the NASDAQ national market system (or other marketable securities of comparable value) have served as the security for the loans; (3) the collateral has been maintained at no less than 200 percent of the balance of the loans throughout the term of the loans; and (4) the transactions involve only Gladstone's segregated account in the Plan and do not affect the accounts of other Plan participants.

Notice to Interested Persons: Because Gladstone is the only participant in the Plan to be affected by the transactions, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this proposed exemption in the **Federal Register**.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Thrift Incentive Stock Ownership Plan (the Plan) of The Dime Savings Bank of New York, FSB, Located in New York, New York, [Application No. D–9440]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the past acquisition by the Plan of certain stock rights (the Rights) pursuant to a stock rights offering (the Offering) by The Dime Savings Bank of New York, FSB (the Employer), the sponsor of the Plan; (2) the past holding of the Rights by the Plan during the subscription period of the Offering; and (3) the disposition or exercise of the Rights by the Plan; provided that the following conditions are satisfied:

(A) The Plan's acquisition and holding of the Rights occurred in connection with the Offering made available to all shareholders of common stock of the Employer;

(B) All holders of the common stock of the Employer were treated in the same manner with respect to the Offering, including the Plan; and

(C) All decisions regarding the holding and disposition of the Rights by the Plan were made, in accordance with Plan provisions for individually-directed investment of participant accounts, by the individual Plan participants whose accounts in the Plan received Rights in connection with the Offering, including all determinations regarding the exercise or sale of the Rights received through the Offering (except for those participants who failed to file timely and valid instructions concerning the Rights, in which case the Rights were sold).

Effective Date: This exemption, if granted, will be effective as of April 15, 1993.

Summary of Facts and Representations

1. The Employer is a Federal savings bank with its corporate headquarters in New York, New York. As of April 15, 1993, there were issued and outstanding 23,363,422 shares of Employer common stock (the Common Stock), of which 138,235 shares, or about .6 percent, were owned by the Plan. The Plan is a defined contribution employee benefit plan intended to satisfy the requirements of sections 401(a) and 401(k) of the Code. The trustee of the Plan is Citibank, N.A. (the Trustee), located in New York, New York. The Plan provides for individual participant accounts (the Accounts) and participant-directed investment of the Accounts among four investment funds, one of which invests exclusively in the Common Stock (the Stock Fund). The other investment funds are a Savings Fund, a Fixed Income Fund, and an Equity Fund. As of March 31, 1993, there were 1,257 participants in the Plan, 219 of whose Accounts were invested or partially invested in the Stock Fund. As of March 31, 1993, the Plan held total assets of approximately $25,062,764.

2. The Employer represents that as a result of losses related to nonperforming assets, it became subject to a capital directive (the Directive) issued by its primary regulator, the Office of Thrift Supervision (OTS). In the Directive, the OTS required the Employer to file a capital plan to achieve target levels of capital. The capital plan submitted by the Employer and approved by the OTS on December 30, 1992 requires, among other things, that the Employer raise at least $125 million in new equity capital no later than the second calendar quarter of 1993. The Employer represents that in consultation with its financial advisors and after discussion with the OTS, the Employer determined that the most appropriate means to raise this new equity capital was through a rights offering (the Offering) to all holders of the Common Stock.

3. On April 15, 1993 (the Record Date), the Employer commenced the Offering by issuing to all holders of Common Stock as of the Record Date 1.1 transferable subscription rights (the Rights)[3] for each share of Common Stock held. The number of Rights actually distributed to each shareholder was rounded up to the nearest whole Right. Each Right conferred upon its holder an entitlement (the Basic Privilege) to purchase one share of Common Stock (an Additional Share) at an exercise price of $6.00 per share. Each Right also conferred on its holder a second privilege (the Oversubscription Privilege) allowing each Right holder exercising the Basic Privilege in full to subscribe for an additional, unlimited number of Additional Shares, also at the exercise price of $6.00 per share, which remained available after satisfaction of subscriptions pursuant to the Basic Privilege. All funds submitted in exercise of Oversubscription Privileges

[2] Essex was purchased by a limited partnership in November 1987 and the cash proceeds from the purchase of the Essex shares in Gladstone's account were reinvested in other publicly traded shares of stock.

[3] The Department notes that the Rights do not constitute "qualifying employer securities" within the meaning of section 407(d)(5) of the Act.

were deposited in escrow with the Mellon Securities Trust Company pending satisfaction of all Basic Privilege subscriptions. If the number of Additional Shares available to satisfy Oversubscription Privilege requests were insufficient to meet all such requests, the available Additional Shares were to be allocated pro rata among all Oversubscription Privilege subscribers in proportion to the number of Common Stock shares owned by each subscriber as of the Record Date. The Employer authorized the issuance of up to 33,180,164 Additional Shares through the Offering, which also featured a management offering, a standby underwriting agreement, and standby purchase agreements, none of which are involved in the exemption proposed herein.

While the Rights were generally transferable, the Oversubscription Privileges were not transferable. The Employer represents that the Offering did not involve any guarantee or other assurance that any market would develop or remain available during the Offering. However, the Rights traded on the New York Stock Exchange through the last trading day prior to the expiration of the Offering.[4] The Offering was initially announced to expire at 5 p.m. on May 5, 1993, at which time no further exercises of Rights could occur. On April 28, 1993, the Employer announced that the expiration date for the Offering was extended from May 5 to May 10, 1993.

4. In anticipation of the Offering, the Plan and its related trust agreement (the Trust Agreement) were amended to permit each Plan participant with an Account balance invested in the Stock Fund (the Invested Participants) as of March 31, 1993 to direct the Trustee either to exercise or sell the Rights attributable to his or her Stock Fund account, and such amendments also established the procedure for such directions. The Employer represents that on April 16, 1993, all Invested Participants were sent, by overnight mail, a copy of the Offering circular published by the Employer, a letter from the Plan administrator providing information about the Offering, a letter from the Trustee describing the procedures for participant directions with respect to the Offering, and a direction form. The direction forms sent to Invested Participants enabled them to direct the Trustee either to exercise the Rights allocable to their Stock Fund accounts or to sell such Rights on the open market. As provided in the Plan and the Trust Agreement as amended, with respect to any Invested Participant who failed to submit a direction form to the Trustee by the due date, or submitted an invalid direction form, the Trustee was required to sell the Rights on the open market, and the Employer represents that this required sale was disclosed to the Invested Participants in the informational documents sent on April 16, 1993.

5. For each Invested Participant who directed the Trustee to exercise Rights attributable to his or her Stock Fund account, the funds which were needed to pay the exercise price were obtained by redeeming specific investments in the Invested Participant's Plan Account in the following order of priority: (a) Savings Fund, (b) Fixed Income Fund, (c) Equity Fund, and (d) Stock Fund. Within each investment fund, redemptions and liquidations were made from the following different types of contributions under the Plan, by fully redeeming one contribution type within an investment fund before redeeming the next contribution type within that same fund in the following order of priority: (a) after-tax personal contributions, (b) rollover contributions and rollover transfer contributions, (c) pre-tax personal contributions, and (d) bank matching contributions.

6. Where amounts were redeemed from the investment funds prior to the last day of the Offering, the Plan and Trust Agreement as amended provided that the Trustee deposit the proceeds of such redemptions in a special short-term investment account pending the Trustee's payment to the subscription agent of the exercise price for the Additional Shares. Rights were exercisable by an Invested Participant only to the extent of funds available in his or her Account in the Plan. If amounts in an Invested Participant's Account were insufficient to pay the exercise price for all Additional Shares subscribed for, the Plan and the Trust Agreement, as amended, provided that the Trustee was to attempt to sell any Rights not exercised. The proceeds of any Rights that were sold and any income from the special short-term investment account were credited, with respect to such sale proceeds, to the Accounts of the Invested Participants whose allocable Rights were sold, and in the case of such income, to the Accounts of the Invested Participants whose redemption proceeds were deposited in the special short-term investment account.

7. In the event that the market price for the Common Stock, including the effect of any applicable brokerage commissions and other expenses, at the time the Trustee would submit Rights for exercise, was less than the exercise price under the Offering, the Plan and Trust Agreement, as amended, provided that the Trustee would not exercise such Rights. However, in the above situation, an Invested Participant was permitted to direct the Trustee to (a) apply the proceeds otherwise available to pay the exercise price for Additional Shares to the purchase of Common Stock shares on the open market, or (b) refrain from purchasing any Common Stock, either through exercise of the Rights or on the open market, and thereby to allow such Rights to expire. The Employer represents that at 10 a.m. on May 10, 1993, the date of expiration of the Offering and the date on which the Trustee exercised Rights on behalf of Invested Participants directing the exercise of the Rights, the exercise price of a Right was less than the market price for a share of Common Stock on the New York Stock Exchange, after giving effect to any applicable brokerage commissions and other expenses. Accordingly, the Trustee exercised all Rights for which a direction to exercise was submitted by an Invested Participant.

8. The Employer represents that in order to give the Trustee sufficient time to perform the administrative procedures required to review participant direction forms and implement directions, including, as required, the liquidation of other Plan investments, the procedure for participant direction with respect to the Offering included timing deadlines for the filing of instructions in advance of the expiration of the Offering. Accordingly, Invested Participants were required to return the direction forms to the Trustee by 5 p.m. on April 28, 1993, with respect to Accounts which did not require the liquidation of Stock Fund assets in order to obtain funds for the exercise of the Rights. However, with respect to any Invested Participant whose direction to exercise Rights necessitated the redemption of funds from his or her Account balance in the Stock Fund, the deadline for filing direction forms with the Trustee was April 26, 1993, due to additional administrative procedures involved in the liquidation of assets from the Stock Fund.

9. The Employer represents that the following is a summary of the Offering:

(a) A total of 33,117,332 Rights were exercised. Among 219 Invested Participants, 79 directed the exercise of Rights, resulting in the exercise of 52,581 Rights, or about 0.16 percent of the total number of Rights exercised.

[4] The common stock of the Dime Savings Bank of New York, FSB is also traded on the New York Stock Exchange.

(b) Among the Invested Participants, 35 affirmatively directed that the Rights allocated to their Accounts be sold, resulting in the sale of 66,633 Rights.

(c) Among the Invested Participants, 108 did not respond.[5] In accordance with the Plan and Trust Agreement, as amended, the Rights allocated to their Accounts were sold, resulting in the sale of 32,820 Rights.

(d) A total of 1,953,949 Additional Shares were issued through the Oversubscription Privilege, including 30,702 shares, or about 1.57 percent of the total, acquired by the Plan on behalf of 30 Invested Participants who elected to exercise the Oversubscription Privilege.

(e) An additional 2,404,452 Additional Shares had been requested, but not acquired, through the Oversubscription Privilege, requiring the return of $14,426,712 to oversubscribing shareholders. Of these amounts, 7,176 Additional Shares were requested, but not acquired, on behalf of oversubscribing Invested Participants, requiring the return of $43,056 to the Plan on behalf of oversubscribing Invested Participants, constituting about 0.30 percent of the total amount refunded to oversubscribers.

(f) The Employer represents that all directions and instructions which were filed by Invested Participants with respect to the Offering were observed and executed by the Trustee, and that all Invested Participants had been notified adequately in advance of the Offering of the procedure for directing and instructing the Trustee with respect to their Accounts' rights under the Offering. Accordingly, the Employer represents that all actions by the Trustee relating to the Offering, with respect to the Accounts, were pursuant to express participant directions, except for the Accounts of participants who failed to file timely and valid instructions with the Trustee pursuant to the procedure. The Employer maintains that the Trustee's action on behalf of Accounts whose participants failed to file instructions with the Trustee, which was the sale of the Rights received by such Accounts, was fully disclosed in the direction form and explanatory materials sent to Invested Participants, and was consistent with the participant-directed nature of investments under the Plan.

[5] The results reported above indicate a total of 222 Invested Participants, although there were only 219 Invested Participants as of the Record Date of the Offering. Because certain Invested Participants directed that some of their Rights be exercised and that some be sold, those Invested Participants were counted twice.

10. In summary, the applicant represents that the transactions satisfied the criteria of section 408(a) of the Act for the following reasons: (1) The Plan's acquisition of the Rights resulted from an independent act of the Employer; (2) With respect to all aspects of the Offering, all holders of Common Stock were treated in the same manner, including the Plan; (3) All decisions with respect to the Plan's acquisition, holding, and control of the Rights were made by the individual Invested Participants whose Accounts held interests in the Stock Fund, except for those participants who failed to file timely and valid instructions, in which case the rights were sold; and (4) The acquisition and holding of Rights by the Plan affected only about 17.4 percent of the Plan's participants, whose Accounts held only about .06 percent of the Common Stock outstanding as of the Record Date of the Offering.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of August, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 93–21421 Filed 9–1–93; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 93–53; Exemption Application No. D–9370, et al.]

Grant of Individual Exemptions; Pro Golf Discount/Distributors of Atlanta, Inc. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Pro Golf Discount/Distributors of Atlanta, Inc., Profit Sharing Plan (the Plan) Located in Norcross, Georgia [Prohibited Transaction Exemption 93–53; Exemption Application No. D–9370]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale for cash of certain limited partnership interests (the Interests) from the Plan to William B. Neidlinger (Neidlinger), a party interest with respect to the Plan, provided that the following conditions are met:

1. The fair market value of the Interests is established by a general partner of the partnerships who is independent of Neidlinger and Pro Golf Discount/Distributors of Atlanta, Inc. (the Employer);

2. Neidlinger pays all cash to the Plan for the Interests;

3. The cash payment is no less than the greater of the current fair market value of the Interests or the total expenditures of the Plan on the Interests as of the date of sale; and

4. The Plan pays no fees or other expenses in connection with the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 9, 1993, at 58 FR 32375.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Hanover Orthopaedic Associates, Inc., Profit Sharing Plan (the Plan) Located in Hanover, Pennsylvania [Prohibited Transaction Exemption 93–54; Application No. D–9384]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) shall not apply to the proposed sale (the Sale) from R. James Rinker, M.D.'s (Dr. Rinker) individually-directed account (the Account) in the Plan of certain property (the Property) to Dr. Rinker, a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The Sale is a one-time cash transaction;

(b) The Plan is not required to pay any commissions, costs or other expenses in connection with this transaction;

(c) The Property is appraised by a qualified, independent appraiser; and

(d) The sales price for the Property reflects its fair market value on the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 12, 1993 at 58 FR 37528.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Riser Foods, Inc., Employee Savings and Retirement Plan (the Plan) Located in Bedford Heights, Ohio [Prohibited Transaction Exemption 93–55; Exemption Application No. D–9323]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the extension of credit over a one-year period (the Loans) to the Plan by Riser Foods, Inc., the sponsor of the Plan, with respect to a group annuity contract (the GAC) issued by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit); and (2) the potential repayment of the Loans (the Repayments) by the Plan; provided that the following conditions are satisfied:

(A) All terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party;

(B) No interest and/or expenses are paid by the Plan;

(C) The Repayments shall not exceed the amount of the Loans;

(D) The Repayments shall not exceed the amounts actually received by the Plan from Mutual Benefit, any state guaranty fund, and any other responsible third party payors with respect to the GAC (the GAC Proceeds); and

(E) The Repayments of the Loans shall be waived to the extent that the total amount of the Loans exceeds the total GAC Proceeds.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 12, 1993 at 58 FR 37526.

TEMPORARY NATURE OF EXEMPTION: This exemption shall apply to Loans executed within one year from the date on which the first of such Loans is executed.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

John William Boor, M.D. Profit Sharing Plan and Trust Located in West Chester, PA [Prohibited Transaction Exemption 93–56; Application No. D–9273]

Exemption

The restrictions of section 406(a)(1)(A)–(D) and (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by the Plan of two undeveloped parcels of real property (the Parcels) to John W. Boor, M.D. and his wife, Barbara Boor, (Dr. and Mrs. Boor), parties in interest with respect to the Plan; provided that the following conditions are met: (a) The sales of the Parcels will be one-time transactions for cash; (b) the fair market value of the Parcels will be determined by an independent qualified appraiser on the date of the sales; (c) the purchase price paid by Dr. and Mrs. Boor will be the greater of the cost to the Plan to acquire and hold the Parcels or the aggregate fair market value of the Parcels on the date of the sales; (d) the terms of the transactions are no less favorable to the Plan than those obtainable in similar transactions negotiated at arm's length with unrelated third parties; (e) the Plan will pay no costs, or commissions associated with the transactions, nor any other expenses associated with the

application for exemption; and (f) the account of Jane Forsythe in the Plan will receive compensation of an amount reflecting a ten percent (10%) rate of return, annualized from September 1, 1992, through the date the payment is made.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 29, 1993, at 58 FR 34825.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

Southwest-Tex Leasing Co., Inc., Profit Sharing Plan (the Plan) Located in San Antonio, TX [Prohibited Transaction Exemption 93–57; Exemption Application No. D–8871]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain undeveloped real property (the Property) to Walker Resources, Inc., a party in interest with respect to the Plan for the greater of $95,800 or the fair market value of the Property at the time the sale transaction is consummated.

This exemption is conditioned on the following requirements: (1) The sale is a one-time transaction for cash; (2) the Plan does not pay any real estate fees or commissions in connection therewith; (3) the sales price reflects the greater of $95,800 or the fair market value of the Property as determined by a qualified, independent appraiser on the date of the sale; and (4) an independent fiduciary monitors the proposed sale transaction on behalf of the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 12, 1993 at 58 FR 37512.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of August, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–21420 Filed 9–1–93; 8:45 am]

BILLING CODE 4510–29–P

MERIT SYSTEMS PROTECTION BOARD

Appointment of Members to the Performance Review Board

AGENCY: Merit Systems Protection Board.

ACTION: Notice of Appointment of Members to the Performance Review Board.

SUMMARY: This notice publishes the names of the new and current members of the Performance Review Board as required by 5 U.S.C. 4314(c)(4).

Lonnie L. Crawford has been appointed Chairman of the Performance Review Board (PRB) at the Merit Systems Protection Board. Mary L. Jennings has been appointed as a new member. Lois E. Hartman, Harold Kessler and P.J. Winzer will continue to serve on the PRB.

EFFECTIVE DATE: September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Marsha Scialdo Boyd, Director, Human Resources Management, 1120 Vermont Avenue, NW., Washington, DC 20419.

Dated: August 30, 1993.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 93–21422 Filed 9–1–93; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–072]

Intent To Grant an Exclusive Patent License; Pinnacle Imaging, Inc.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Pinnacle Imaging, Inc. of Irvine, California, an exclusive, royalty-bearing, revocable license to practice the invention described and claimed in U.S. Patent No. 5,029,220, entitled "Optical Joint Correlator for Real-Time Image Tracking and Retinal Surgery," filed on July 2, 1991. The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245, subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the partially exclusive license.

DATES: Comments to this notice must be received by November 1, 1993.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 358–2041.

Dated: August 25, 1993.

Edward A. Frankle,

General Counsel.

[FR Doc. 93–21354 Filed 9–1–93; 8:45 am]

BILLING CODE 7501–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Scientific Computing; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing.

Date and Time: September 20, 1993; 8:30 a.m. to 5 p.m.

Place: Room 417, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Robert Voigt, Program Director, New Technologies, rm. 417, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7727.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 30, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–21385 Filed 9–1–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Astronomical Sciences.

Date and Time: September 20 and September 27, 1993.

Place: Rm. 1242 and 543, National Science Foundation.

Type of Meeting: Closed.

Contact Person: Dr. Benjamin B. Snavely, room 615, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9793.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 27, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–21383 Filed 9–1–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in the Division of Biological and Critical Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: September 28, 1993; 8:30 a.m.–5 p.m.

Place: National Science Foundation, 1800 G Street, NW., room 1133, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Fred Heineken, Program Director, Biotechnology and Biochemical Engineering, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9545.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovative Research (SBIR) proposals for the Biomedical Engineering and Research to Aid Persons with Disabilities Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 30, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–21382 Filed 9–1–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design & Manufacturing Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following 5 meetings:

Name: Special Emphasis Panel in Design & Manufacturing Systems.

Dates & Locations: September 22 (2), September 22–23, and September 28, 1993 (2). Meetings will be held at the National Science Foundation from 8:30–5 p.m. each day.

Contact Persons: Dr. Thom Hodgson, Dr. Stan Settles, Dr. Hank Grant, Dr. Cheena Srinivasan, and Dr. Bruce Kramer, Design & Manufacturing Systems, room 1128, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–5167.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research (SBIR) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 30, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–21387 Filed 9–1–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems.

Date and Time: September 20, 1993; 8:30 a.m.

Place: Room 500A–D, 1110 Vermont Avenue, Washington, DC.

Type of Meeting: Closed.

Contact Person: Brian J. Clifton and Linton G. Salmon, Program Director, ECS, room 1151, NSF, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9618.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Small Business Innovation Research (SBIR) proposals for the Solid State and Microstructures Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 27, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–21384 Filed 9–1–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Polar Programs; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Panel Name: Polar Ocean and Climate Sciences Panel Meeting.
Date and Time: September 20, 1993, 8 a.m.–5 p.m.
Place: National Science Foundation, room 523, 1800 G. Street N.W. Washington, D.C. 20550.
Type of Meeting: Closed.
Contact Person: Bernhard Lettau, Program Manager, OPP, 620 National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7894.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 30, 1993.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 93–21381 Filed 9–1–93; 8:45 am]
BILLING CODE 7555–01–M

Phase I Small Business Innovation Research Review Panel; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Polar Programs.
Date and time: September 21, 1993.
Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, DC.
Type of Meeting: Closed.
Contact Person: Mr. Charles E. Myers, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7818.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 30, 1993.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 93–21386 Filed 9–1–93; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Meeting; National State Liaison Officers

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of National State Liaison Officers' meeting.

On September 29 and 30, 1993, the Nuclear Regulatory Commission (NRC) will sponsor a national meeting with the State Liaison Officers to discuss items of mutual regulatory interest. The State Liaison Officers are appointed by each of the fifty Governors and the Commonwealth of Puerto Rico to provide a communication channel between the States and NRC. Topics of discussion will include: Decommissioning of Contaminated Sites, Low-Level Waste, Medical Misadministration, Materials Licensing, Plant License Renewal, High-Level Waste, International Nuclear Activities, Dry Cask Storage and Emergency Planning. The meeting will be conducted at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852. The meeting is open to the public for attendance and observation and will take place from 8:30 a.m. until 5 p.m. on Wednesday, September 29 and from 8:30 until 12 noon on Thursday, September 30. Questions regarding the meeting should be directed to Mindy Landau at (301) 504–2308.

Dated at Rockville, Maryland, this 25th day of August, 1993.

For the Nuclear Regulatory Commission.

Richard L. Bangart,
Director, Office of State Programs.

[FR Doc. 93–21355 Filed 9–1–93; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co., Fermi–2; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43, issued to the Detroit Edison Company (the licensee), for operation of the Fermi–2 facility located in Frenchtown Township, Monroe County, Michigan. The proposed amendment would make changes to job titles and changes to the Onsite Review Organization identified in section 6.0 of the Technical Specifications included as Appendix A to the Facility Operating License. The proposed amendment would also make changes to the overtime limit restrictions and control requirements located in section 6.0 of the Technical Specifications.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 1, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the result of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extend of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible

effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to William M. Dean: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92

For further details with respect to this action, see the application for amendment dated May 24, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 25th day of August.

For the Nuclear Regulatory Commission.

William M. Dean,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–21356 Filed 9–1–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–344]

Portland General Electric Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–1, issued to Portland General Electric Company (the licensee), for operation of the Trojan Nuclear Plant located in Columbia County, Oregon.

The proposed amendment would revise license condition 2.C.(8) concerning the Trojan Nuclear Plant (Trojan) Fire Protection Program. The licensee proposed this new license condition in accordance with Generic Letters 86–10 and 88–12, and as part of a request to relocate those portions of the Trojan Technical Specifications (TS) that are related to the Trojan Fire Protection Program from the TS to Topical Report PGE–1012, "Trojan Nuclear Plant Fire Protection Plan."

Portland General Electric submitted a timely application for this proposed amendment on March 16, 1993, and a notice was published on June 23, 1993, in the **Federal Register** (58 FR 34088) as required by Commission regulations 10 CFR 50.91(a)(2). However, the NRC staff noted that because of an administrative error, the notice did not identify that, in addition to relocating the Fire Protection Program, the proposed amendment included the revised license condition. This notice is being issued specifically to identify the inclusion of the revised license condition in the amendment request. It is being issued as an exigent 15-day notice because more than 60 days have already been provided for public comment, with no comments received.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of

a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendment does not involve a significant increase in the probability or the consequences of an accident previously evaluated.

This amendment merely relocates the fire protection program elements from the [Trojan Technical Specifications] TTS to PGE–1012. No change is being made to the content of the TTS being relocated. Operating limitations will continue to be imposed, and required surveillances will continue to be performed in accordance with written procedures and instructions auditable by the NRC.

Although proposed future changes to the fire protection program elements previously located in the TTS will no longer be controlled by 10 CFR 50.90, proposed changes to the TS requirements relocated to PGE–1012 will be evaluated by a safety evaluation in accordance with the requirements of 10 CFR 50.59 to determine whether an unreviewed safety question exists. Changes that do represent an unreviewed safety question will receive prior NRC approval before implementation.

Thus, programmatic controls will continue to assure that this change will not have the effect of permitting future proposed fire protection program changes to create an unreviewed safety question. It is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

PGE–1012, incorporated by reference in Trojan FSAR Section 9.5.1, contains the Trojan fire hazards analysis. This amendment merely relocates the fire protection TS requirements from the TTS to PGE–1012. No change to the fire protection TS requirements is being made and thus the change does not create the possibility of a new or different accident from those previously evaluated.

As noted above, proposed changes to the TS requirements relocated to PGE–1012 will be evaluated by a safety evaluation in accordance with the requirements of 10 CFR 50.59 to determine whether an unreviewed safety question exists. Changes that do represent an unreviewed safety question will receive prior NRC approval before implementation.

3. The proposed license amendment does not involve a significant reduction in the margin of safety.

This change does not involve a reduction to the approved fire protection program or TS fire protection requirements. The TS fire protection requirements are being relocated, without alteration to PGE–1012. Since there is no change to the requirements, there is no reduction in the margin of safety.

As noted above, proposed changes to the TS requirements relocated to PGE–1012 will be evaluated by a safety evaluation in accordance with the requirements of 10 CFR 50.59 to determine whether an unreviewed safety question exists. Changes that do represent an unreviewed safety question will receive prior NRC approval before implementation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 17, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of

the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Non-Power Reactors and Decommissioning Project Directorate, Michael Masnik, Senior Project Manager, U.S. Nuclear Regulatory Commission, OWFN MS 11–B–20, Washington, DC 20555: Date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Leonard A. Girard, Esquire, Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97304, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 16, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 27th day of August 1993.

For the Nuclear Regulatory Commission.

Michael K. Webb,

Acting Project Manager, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–21357 Filed 9–1–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Inc.

August 27, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Factory Stores of America, Inc.
Common Stock, $.01 Par Value (File No. 7–11216)

Garan, Inc.
Common Stock, $.01 Par Value (File No. 7–11217)

MuniVest Pennsylvania Insured Fund
Shares of Beneficial Interest, $.10 Par Value (File No. 7–11218)

MuniYield Arizona Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–11219)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 20, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–21373 Filed 9–1–93; 8:45 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

Aquatic Plant Management Program; Record of Decision

AGENCY: Tennessee Valley Authority.

ACTION: Issuance of the record of decision for TVA's supplemental environmental impact statement, "Aquatic Plant Management Program".

SUMMARY: Notice is hereby given in accordance with the National Environmental Policy Act (NEPA) and section 5.4.9 of TVA's implementing procedures, 45 FR 54111–15 (1980), that TVA has decided to adopt the preferred alternative in its final supplemental environmental impact statement (SEIS),

"Aquatic Plant Management Program." This final SEIS was made available to the public the week of June 14, 1993, and notice of its availability was published in the **Federal Register** on June 25, 1993, at 58 FR 34434. TVA has decided to continue its integrated Aquatic Plant Management Program and to better involve the public in deciding where aquatic plants should be managed on individual reservoirs.

FOR FURTHER INFORMATION CONTACT: Robert Pryor, Manager, Environmental Compliance, Water Management, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 10C, Knoxville, Tennessee 37902–1499, telephone (615) 632-6695. Copies of the final SEIS may be obtained from M. Paul Schmierbach, Manager, Environmental Quality Staff, Tennessee Valley Authority, 400 Summit Hill Drive, WT 8B, Knoxville, Tennessee 37902–1499.

SUPPLEMENTARY INFORMATION: TVA's SEIS updates TVA's Final EIS, "Control of Eurasian Watermilfoil," that was released in 1972. The SEIS evaluates the potential environmental impacts associated with TVA's efforts to manage excessive aquatic vegetation growth in its reservoir system. In addition to Eurasian watermilfoil, populations of other non-native species, including hydrilla and spinyleaf naiad, and a few native species, have increased to problem levels in several TVA mainstream reservoirs. Left unmanaged, these plants have the potential to create mosquito habitat and conflict with navigation, recreation, and water supply uses because of their ability to grow profusely and form dense aquatic beds.

TVA began its Aquatic Plant Management Program after Eurasian watermilfoil began to propagate in the TVA reservoir system in the late 1950s and early 1960s. Because of the open habitat and the absence of natural controls, this exotic plant quickly spread throughout the reservoir system. TVA experimented with different control methods but the early 1960s had identified water-level manipulations (reservoir drawdowns), supplemented with the use of herbicides (2,4–D), as the best means of managing watermilfoil. In 1968, watermilfoil covered approximately 25,000 reservoir surface acres but, as TVA gradually increased its control efforts, watermilfoil populations began to decline.

The National Environmental Policy Act was enacted in 1970, and TVA released an EIS on its Aquatic Plant Management Program in September 1972. This EIS examined a number of alternative management strategies including no control, mechanical controls, biological controls, water-level manipulation alone, and use of 2,4–D alone. The EIS examined in detail the potential impacts of 2,4–D, including potential health risks and its toxicity to animals and aquatic organisms; and it also provided information about other aquatic herbicides. The 1972 EIS indicated that TVA would continue to monitor advancements in aquatic plant management—including the development of new aquatic herbicides—for possible use in the program.

Since the release of the initial EIS, the program has evolved to address the additional plant species which have become problems in the reservoir system. Water-level manipulations supplemented with treatments of 2,4–D proved to be ineffective against most of these new species but other EPA-approved herbicides worked. These other herbicides were added to the program after they were further tested by TVA. Today's program continues to rely on a integrated management strategy. The number of herbicides used in the program has increased to reflect the existence of new problem species and improvements in aquatic herbicides, and the number of species managed in the program has increased. However, water-level manipulations supplemented with herbicide treatments remain TVA's preferred control techniques.

The goal of the program is not to eradicate all aquatic plants but to manage them in "priority" areas—those areas where use conflicts occur—such as public access areas; water supply intakes; marinas; and residential, public, and commercial docks. Aquatic plants can provide valuable habitat for fish and wildlife; and consequently, most of the aquatic plant acreage on TVA's reservoirs is left untreated and unmanaged except for the effects achieved by water-level manipulation.

Alternatives Considered

The following alternatives were considered by TVA and were evaluated in the SEIS: (1) No control, (2) the current program which includes water-level manipulations and supplemental herbicide treatments, (3) biological controls, (4) mechanical controls, and (5) physical controls. It is difficult to identify which of these may be environmentally preferable because they each have potential negative environmental effects.

The "no control" alternative was viewed by a number of those commenting on the SEIS as environmentally preferable, but left unchecked some exotic aquatic plants can grow so profusely that native species are lost. In addition, dense plant beds can provide increased habitat for disease vectors (e.g., mosquitoes), pose safety risks to swimmers, and result in decreased dissolved oxygen levels and increased biochemical oxygen demand. TVA's analyses suggest that, in the future, appropriate biological controls could potentially be integrated into the Aquatic Plant Management Program and such controls would likely be more environmentally benign. However, an "appropriate" biological control method, such as grass carp, would have to incorporate safeguards which ensure that the result is not simply replacing one problem exotic species with another. TVA will continue to investigate promising biological controls.

Basis for Decision

Under the TVA Act, TVA has broad responsibilities for navigation, flood control, reforestation, improvement of marginal lands, and agricultural and industrial development in the Tennessee Valley. In the context of these broad goals, the TVA Act specifically directs TVA to manage its reservoir system primarily for navigation, flood control, and power generation. Consistent with these purposes and TVA's statutory responsibilities, TVA attempts to manage its reservoir system to allow multiple uses by the public. TVA's Aquatic Plant Management Program is one of the ways that TVA seeks to promote and secure multiple uses of its reservoirs.

The central issue in the SEIS review process was the use of herbicides as a component of TVA's current program. Some of those commenting expressed concern about the health and environmental effects of aquatic herbicides and the role of herbicide treatments in the substantial decline in aquatic vegetation on TVA reservoirs that occurred in 1990. Broad assertions were made that TVA was harming the reservoir system and a number of anecdotal reports were received about diseased and deformed fish, especially on Chickamauga Reservoir. Specific questions about the effect of inert ingredients in herbicide formulations, the potential for synergistic and cumulative impacts from multiple herbicide treatments, and the potential health effects of 2,4–D were asked. TVA's SEIS addresses all of these concerns, and they have been considered in the decision made to continue the program.

There has been a substantial decline in aquatic plant populations following a period of extreme aquatic plant growth during the recordbreaking drought which occurred in Tennessee Valley in the mid to late 1980s. Regional flooding occurring in 1989 literally washed away huge amounts of aquatic plants, and a return to more normal rainfall conditions in 1990 broke the drought and produced more normal growing conditions for aquatic plants. TVA's program had very little to do with this substantial decline. In the last two years, aquatic plant acreage on most reservoirs has once again begun to increase, and TVA is receiving a growing number of requests to continue its management activities.

TVA's information does not confirm the reports of high incidences of diseased and deformed fish. In response to the comments, TVA conducted special fishing sampling on its Chickamauga and Guntersville Reservoirs. Fish populations on both of these reservoirs appear to be both abundant and healthy. Although fishing catch rates appear to be down on both of these reservoirs, TVA's studies indicate that popular game species such as bass remain abundant.

There are unavoidable risks associated with the use of any chemicals such as herbicides which are formulated to kill unwanted plant species, but TVA has structured its program to minimize the use of herbicides and these risks. TVA uses only EPA-approved herbicides that are formulated for aquatic environments and are low risk, and it uses only limited amounts in limited areas. The herbicide labeling process employed by EPA, that results in the approval of herbicides for specified uses, requires analysis and consideration of potential health and environmental effects. Both chronic and acute effects are considered and, although more attention is given to the active ingredient of a herbicide formulation, evaluations of whole formulations (active and inert ingredients) are conducted. EPA does not approve a label for a herbicide until it determines that its use will not cause unreasonable adverse effects to humans, crops, wildlife, or to the environment as a whole. TVA applicators are well trained and the limited amounts of herbicides used in the program are applied in a manner which minimizes the risk of public exposure.

TVA does not rely solely on the herbicide labeling process despite the substantial safeguards it provides. TVA monitors and stays abreast of all pertinent herbicide research activities and conducts its own herbicide-related research activities. For example, TVA is currently engaged in an extensive herbicide research and monitoring program on Guntersville Reservoir to obtain more information about and a better understanding of herbicide persistence, potential for bioaccumulation, and effectiveness. Over the more than twenty years of its program, TVA has conducted numerous research and monitoring studies and perhaps has, as an institution, some of the best experience and expertise in aquatic herbicide effects and effectiveness in the country.

TVA's studies and experience confirm that, when used according to label instructions, aquatic herbicides do not pose undue risks to public health or the environment. The SEIS concludes that TVA's management program, including its use of aquatic herbicides, has not resulted in significant adverse impacts on the environment, including sensitive resources. For example, the program is planned to avoid the use of herbicides in areas where threatened and endangered species are located and is otherwise conducted in a manner to avoid impacting such species. Years of post-treatment monitoring have not indicated the existence of cumulative or synergistic effects and such effects are not likely to occur considering the kinds of herbicides used (low persistence) and the limited areas in which they are used (less than two percent of huge reservoirs).

To date, TVA has not found a better method of managing excessive amounts of watermilfoil than the use of 2,4-D, and ceasing use of this herbicide would limit our ability to effectively manage this exotic species. TVA is paying close attention to EPA's ongoing review of the health effects of 2,4-D. In the last several years, 2,4-D's potential carcinogenic properties have again been questioned. Although EPA has not restricted its use, EPA has required additional analyses and studies. There have been hundreds of studies which have not found adverse health or environmental effects from use of 2,4-D. TVA does not expect that EPA's current review will conclude that use of 2,4-D poses undue risks of adverse effects much less that the limited and careful way in which TVA uses it poses such risks. However, TVA's use of 2,4-D has declined and should the ongoing review indicate that TVA's use of 2,4-D poses a legitimate cause for concern or should TVA's monitoring or research activities detect cause for concern, TVA will modify its use of this herbicide, including dropping it from the program if appropriate.

Although TVA's decision is to continue its integrated plant management program, this does not mean that consideration of other management methods will cease. A fundamental feature of TVA's program is the evaluation of new management methods and the incorporation of methods which prove to be more effective and more environmentally safe. This will continue.

For example, TVA is in the midst of a multi-year assessment of the merits of grass carp, a fish species which prefers to eat hydrilla. TVA released 100,000 sterile grass carp into Guntersville to better determine their effectiveness in the control of hydrilla and their potential effect on other species. To date, the results have been promising, and TVA could add this biological control method as a component of its integrated management program. TVA is also continuing to evaluate the merits of mechanical harvesters. It appears that mechanical harvesters may not be economical in most situations. They also tend to generate plant fragments which can lead to colonization downstream, and they can have localized negative environmental effects including killing small fish caught in the harvester and increasing turbidity. However, in some settings such as in proximity to drinking water intakes, they could be the control method of choice; and TVA may add this as another component of its program.

Decision

For the reasons summarized above and explained in greater detail in its SEIS, TVA has decided to continue its integrated Aquatic Plant Management Program. This means that it will continue to limit the supplemental use of herbicides to those areas where excessive plant growth conflicts with legitimate uses of the TVA reservoir system and to apply herbicides only when plant growth in these areas becomes excessive. TVA will also continue to follow herbicide research activities undertaken by EPA and others and will continue its own research and monitoring activities. It will adjust its program to account for the results of these external and internal research activities to ensure that the risks of adverse health and environmental impacts remain low. It will also continue to evaluate and incorporate new management methods into the program that are determined to be more effective and more environmentally safe.

TVA has also decided to make one process change in its program: More formal involvement of interested

members of the public and other agencies in the planning of management activities on each reservoir. The SEIS refers to this as the "master planning" process, a process which TVA employed on a trial basis on Guntersville Reservoir several years ago. Essentially with this process, reservoir-specific management plans are developed through an interactive public process. Because substantial resources are required to do this and critical personnel are limited in number, master plans will have to be developed sequentially for the reservoirs on which management activities are conducted. In the interim, TVA's current planning process will be employed (this also involves preparation of reservoir-specific management plans which are publicly available). TVA will initiate the master planning process first on Chickamauga. This effort is expected to commence by September of this year.

Dated: August 23, 1993.

Norman A. Zigrossi,

President, Resource Group.

[FR Doc. 93–21326 Filed 9–1–93; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–93–39]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 22, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on August 25, 1993.

Danvers Long,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27362
Petitioner: Ventura Air Services, Inc.
Sections of the FAR Affected: 14 CFR 91.511(a)(2), 135.165(a)(1) and (a)(6) and (b)(6) and (7)
Description of Relief Sought: To allow the Ventura Air Services, Inc. to conduct extended overwater operations using a single high frequency communications system and a single long-range navigation system.

Docket No.: 27390
Petitioner: Mr. Wayne K. Guessford
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow the petitioner to serve as a pilot in Part 121 air carrier operations after his 60th birthday.

Docket No.: 27397
Petitioner: Mr. Paul E. Ebiner
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow the petitioner to serve as a pilot in Part 121 air carrier operations after his 60th birthday.

Docket No.: 27401
Petitioner: Mr. Alan Watson
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow the petitioner to serve as a pilot in Part 121 air carrier operations after his 60th birthday.

Dispositions of Petitions

Docket No.: 27137
Petitioner: Industrial Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit Industrial Helicopters, Inc. (IHI) to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, August 18, 1993, Exemption No. 5721*

Docket No.: 27138
Petitioner: Heli-Lift, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To allow Heli-Lift, Inc. (HLI) to operate without a TSO–C112 (Mode S) transponder installed on HLI's aircraft operating under the provisions of part 135. *Grant, August 10, 1993, Exemption No. 5713*

Docket No.: 27142
Petitioner: Horizon Helicopters
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To allow Horizon Helicopters (HHL) to operate without a TSO–C112 (Mode S) transponder installed on HHL's aircraft operating under the provisions of part 135. *Grant, August 10, 1993, Exemption No. 5714*

Docket No.: 27144
Petitioner: New York Helicopters
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To allow New York Helicopters (NYH) to operate without a TSO–C112 (Mode S) transponder installed on NYH's aircraft operating under the provisions of part 135. *Grant, August 10, 1993, Exemption No. 5712*

Docket No.: 27166
Petitioner: Puget Sound Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To allow Puget Sound Helicopters, Inc. (PHI) to operate without a TSO–C112 (Mode S) transponder installed on PHI's aircraft operating under the provisions of part 135. *Grant, August 10, 1993, Exemption No. 5710*

Docket No.: 27167
Petitioner: Alaska Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To allow Alaska Helicopters, Inc. (AHI) to operate

without a TSO–C112 (Mode S) transponder installed on AHI's aircraft operating under the provisions of part 135. *Grant, August 10, 1993, Exemption No. 5709*

Docket No.: 27205
Petitioner: Federal Express Corporation
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To allow Federal Express Corporation (FEC) to operate without a TSO–C112 (Mode S) transponder installed on FEC's aircraft operating under the provisions of part 135. *Grant, August 10, 1993, Exemption No. 5711*

Docket No.: 27230
Petitioner: ERA Aviation, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To allow ERA Aviation, Inc. (ERA) to operate without a TSO–C112 (Mode S) transponder installed on ERA's aircraft operating under the provisions of part 135. *Grant, August 10, 1993, Exemption No. 5718*

Docket No.: 27258
Petitioner: Air Methods
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To allow Air Methods (AMD) to operate without a TSO–C112 (Mode S) transponder installed on AMD's aircraft operating under the provisions of part 135. *Grant, August 10, 1993, Exemption No. 5720*

Docket No.: 27309
Petitioner: State of Louisiana, Department of Social Services on Behalf of Mr. David Abshire
Sections of the FAR Affected: 14 CFR 65.71(a)(2)
Description of Relief Sought/ Disposition: To enable Mr. David Abshire to become eligible for a mechanic certificate and associated ratings although he cannot speak the English Language. *Grant, August 18, 1993, Exemption No. 5719*

[FR Doc. 93–21393 Filed 9–1–93; 8:45 am]
BILLING CODE 4910–13–M

RTCA, Inc. 7th Meeting of Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Band (118–137 MHZ)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., appendix I), notice is hereby given for Special Committee 172 meeting to be held October 4–7, 1993, in the RTCA Conference Room at 1140 Connecticut Avenue, SW, suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Introductory Remarks (starting @ 9:30 a.m. first day only); (2) Approval of summary of sixth meeting; (3) General discussion of activities; (4) WG's 1 & 2 meet sequentially (equivalence of 1½ day each) (a) WG1, VHF, Communications System Recommendations (b) WG 2, VHF Radio Signal-in Space MASPS; (5) Plenary reconvenes (a) Review progress of working groups (b) Task assignment; (6) Other business; (7) Date and place of next meeting.

Specific Schedule: Monday, October 4 WG1 (1½ days +),Tuesday, October 5 WG2 (1½ days +), Thursday October 7 Plenary (½ day).

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 26, 1993.

Joyce J. Gillen,
Designated Officer.

[FR Doc. 93–21389 Filed 9–1–93; 8:45 am]
BILLING CODE 4910–13–M

Technical Standard Order (TSO)–C22g, Safety Belts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of change to technical standard order.

SUMMARY: By this notice, a change is incorporated into Technical Standard Order (TSO) C22g. This change deletes the last sentence in the Applicability paragraph. The applicability paragraph did not allow the manufacture of previously approved safety belts.

DATES: September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

SUPPLEMENTARY INFORMATION:

Background

A notice of availability of proposed TSO–C22g was issued March 17, 1992. The proposed TSO–22g stated that "safety belts approved prior to the date of the TSO may no longer be manufactured under the provision of their original approval." This was a special proposed restriction, not included in TSO's in general. As a result of comments to the proposal, the applicability statement was modified to read "Safety belts approved prior to the date of this TSO may continue to be manufactured for an additional six months at which time they may no longer be manufactured under the provisions of their original approval." Subsequent to publication of the TSO, additional information was submitted to the FAA indicating an adverse economic impact of the restriction, even as modified. If the FAA had received this information prior to publication of the TSO, the restriction would have been deleted. Accordingly, the FAA has decided to remove this restriction and permit the manufacture of safety belts approved prior to the date of issuance of TSO–C22g.

Because this change relieves a restriction, the deletion of this requirement is made effective upon publication of this notice.

Issued in Washington, DC, on August 27, 1993.

John K. McGrath,
Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 93–21390 Filed 9–1–93; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 27, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0050.
Form Number: CF 3347 and CF 3347A.
Type of Review: Extension.
Title: Declaration of Owner of Merchandise Obtained (other than) in

Pursuance of a Purchase or Agreement to Purchase and Declaration of Importer of Record When Entry is Made by a Agent.
Description: CF 3347 and CF 3347A allows an agent to submit, subsequent to making entry, the declaration of the importer of record which is required by statute. Also, the CF 3347 and CF 3347A permits a nominal importer of record to file the declaration of the actual owner and be relieved of statutory liability for the payment of increased duties.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 950.
Estimated Burden Hours Per Respondent: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 570 hours.
Clearance Officer: Ralph Meyer, (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–21396 Filed 9–1–93; 8:45 am]

BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

August 27, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: New.
Form Number: CF 426 and CF 427.
Type of Review: New collection.
Title: Medical History Forms.
Description: These forms are used to determine medical history of persons applying for position that are considered arduous or hazardous. This information is provided to the physicians who conduct the physical examinations.
Respondents: Individuals or households.
Estimated Number of Respondents: 700.
Estimated Burden Hours Per Respondent: 45 minutes.
Frequency of Response: Other (one time).
Estimated Total Reporting Burden: 525 hours.
Clearance Officer: Ralph Meyer, (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, N.W., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–21397 Filed 9–1–93; 8:45 am]

BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review.

August 27, 1993.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0074.
Form Number: IRS Form 1040, Schedule D and Form 1040 Pay Voucher.
Type of Review: Resubmission.
Title: U.S. Individual Income Tax Return.
Description: This form is used by individuals to report their income tax and compute their correct tax liability. The data is used to verify that the items reported on the form are correct and are also for general statistical use.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 68,786,268.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 1040 and 1040 payment voucher	Schedule D
Recordkeeping	3 hr., 8 min..	51 min.
Learning about the law or the form.	2 hr., 45 min..	43 min.
Preparing the form	3 hr., 45 min..	1 hr., 19 min.
Copying, assembling, and sending the form to the IRS.	53 min.	48 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 1,119,587,324 hours.
OMB Number: 1545–0188.
Form Number: IRS Form 4868.
Type of Review: Resubmission.
Title: Application for Automatic Extension of Time to File U.S. Individual Income Tax Return.
Description: Form 4868 is used by taxpayers to apply for an automatic four-month extension of time to file Form 1040, Form 1040A, or Form 1040EZ. This form contains data used by the IRS to determine if a taxpayer qualifies for the extension.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 5,572,999.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—26 minutes
Learning about the law or the form—13 minutes
Preparing the form—16 minutes
Copying, assembling, and sending the form to the IRS—20 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 6,966,248 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, N.W. Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–21398 Filed 9–1–93; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

August 27, 1993.

The Department of Treasury has submitted the following public

information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: IRS Form 8841.

Type of Review: New collection.

Title: Deferral of Additional 1993 Taxes.

Description: Form 8841 will be used by individuals to compute their deferral of additional 1993 taxes (retroactive taxes). The information is needed to ensure that the taxpayer has figured his deferral amount correctly according to the law.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 1,000,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—46 minutes

Learning about the law or the form—6 minutes

Preparing the form—32 minutes

Copying, assembling, and sending the form to the IRS—20 minutes.

Frequency of Response: Other (once only, for 1993).

Estimated Total Reporting/ Recordkeeping Burden: 1,830,000 hours.

OMB Number: 1545–0191.

Form Number: IRS Form 4952.

Type of Review: Revision.

Title: Investment Interest Expense Deduction.

Description: Form 4952 is used by taxpayers who paid or accrued interest on money borrowed to purchase or carry investment property. The form is used to compute the allowable deduction for interest on investment indebtedness and the information obtained is necessary to verify the amount actually deducted.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 800,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—13 minutes

Learning about the law or the form—15 minutes

Preparing the form—21 minutes

Copying, assembling, and sending the form to the IRS—10 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 792,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001; New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–21399 Filed 9–1–93; 8:45 am]

BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 169
Thursday, September 2, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (Eastern Time) September 14, 1993.

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be open to the public and part of the Meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes.
2. Report to the Commission: Office of General Counsel.
3. Extension of Management Directives 713 and 714 (Federal Sector Affirmative Employment) to October 1, 1994.

Closed Session

1. Litigation Authorization: General Counsel Recommendations.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 663-7100 (voice) and (202) 663-4077 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663-4070.

Dated: August 31, 1993.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 93-21590 Filed 8-31-93; 2:23 pm]

BILLING CODE 6750-06-M

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 44401, August 20, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., Wednesday, August 25, 1993.

CHANGES IN THE MEETING: The following topic was added to the open portion of the meeting:

- Calculation of Area Median Income for Purposes of the Affordable Housing Program.

The following topic was moved from the closed portion of the meeting to the open portion of the meeting:

- System 2000.

Although the System 2000 topic was eligible for consideration in the closed session of the meeting pursuant to exemption (9)(B) in section 552b(c) of title 5 of the United States Code, the Board determined that the public interest would be best served if the topic was discussed in the open portion of the meeting.

The Board further determined that agency business required its consideration of these matters on less than seven days notice to the public and that no earlier notice of these changes in the subject matter of the meeting was practicable.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408-2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93-21576 Filed 8-31-93; 2:41 pm]

BILLING CODE 6725-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, September 7, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-21512 Filed 8-31-93; 9:25 pm]

BILLING CODE 6210-01-P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, September 8, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 31, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-21611 Filed 8-31-93; 3:55 pm]

BILLING CODE 6210-01-P

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of August 30, 1993.

A closed meeting will be held on Thursday, September 2, 1993, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday,

September 2, 1993, at 10:00 a.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.
Litigation Matter.

Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum at (202) 272–2300.

Dated: August 31, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–21602 Filed 8–31–93; 3:41 pm]
BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 58, No. 169
Thursday, September 2, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Permanent Regulatory Program, Statutory and Regulatory Modifications

Correction

In proposed rule document 93-19351 beginning on page 42903 in the issue of Thursday, August 12, 1993, in the second column, in the **DATES** section, "September 6, 1993" is corrected to read "September 7, 1993."

BILLING CODE 1505-01-D

federal register

Thursday
September 2, 1993

Part II

Department of Agriculture

Forest Service

36 CFR Part 242

Department of the Interior

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska; 1994–1995 Subsistence Taking of Wildlife; Proposed Rules

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AB43

Subsistence Management Regulations for Public Lands in Alaska; 1994–1995 Subsistence Taking of Wildlife Regulations

AGENCY: Forest Service, Agriculture; and Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes regulations for seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses during the 1994–1995 regulatory year. This rule making is necessary because subpart D regulations require annual public review. When final, this rulemaking will replace hunting and trapping regulations in "Subsistence Management Regulations for Public Lands in Alaska, Subpart D—1993–1994 Subsistence Taking of Fish and Wildlife Regulations," which expire on June 30, 1994.

DATES: Written public comments and proposals to change this proposed rule will be accepted through October 14, 1993. Public meetings on this proposed rulemaking will be held from September 27–October 8, 1993, at the following locations in Alaska: Anchorage, Barrow, Bethel, Fairbanks, Galena, Kodiak, Kotzebue, Naknek, Nome, and Sitka. Written proposals to change subpart D regulations will be compiled and distributed for additional public review during the second week of November 1993. A second 60-day public comment period will follow distribution of the compiled proposal packet. Written public comments on distributed proposals will be accepted during the second public comment period. Oral comments on proposals to change subpart D regulations may be presented to the Federal Subsistence Board (Board) during a public meeting scheduled to be held in April 1994. At that meeting, the Board will deliberate and take final action on proposals received that request changes to this proposed rule.

ADDRESSES: Written comments and proposals for changes to these proposed regulations may be sent to the Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Richard S. Pospahala, Office of Subsistence Management, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447. For questions specific to National Forest System lands, contact Norman R. Howse, Assistant Director Subsistence, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802–1628, telephone (907) 586–8890.

SUPPLEMENTARY INFORMATION:

Proposed Changes from 1993–1994 Seasons and Bag Limit Regulations

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Consequently, this proposed rule reflects regulation changes for the 1994–1995 regulatory year that are approved by the Board. Regulations contained in this proposed rule will take effect on July 1, 1994, unless elements are changed by subsequent Board action following the public review process outlined herein.

The text of the 1993–1994 subpart D final rule served as the foundation for the 1994–1995 subpart D proposed rule. Editorial changes and other modifications to the 1993–1994 final rule have been made to clarify and enhance Federal subsistence management program regulations for the 1994–1995 regulatory year. These include:

- Deletion of definition/classification for *fur animal.*
- New definitions of *designated hunter, harvest limit, hunting, marmot, ram,* and *trapping.*
- Deletion of fish and shellfish taking regulations.
- Modified methods and means restrictions associated with the taking of wildlife by hunting and trapping.
- Modified Unit tables to distinguish between hunting and trapping seasons, and harvest limits.
- Restriction on the use of hooks to take wildlife.
- Deletion of same-day-airborne regulations for taking of certain furbearers.
- Change in harvest limit restrictions of "bull" moose to "antlered bull" moose in certain Units.

Subpart D regulations were originally established from a framework of State of Alaska fish and game regulations. The 1993–1994 subpart D regulations were modified to remove certain provisions which have no Federal subsistence management application. Additional efforts to clarify the subsistence regulations are reflected in this proposed rule. The classification of *fur animal* has been removed, and regulations have been modified to clarify the methods, means, seasons, and harvest limits for trapping and hunting of furbearers. Moreover, *trapping* and *hunting* are defined, and the seasons and harvest limits for species taken relative to hunting and trapping methods and means are identified in the season tables for each Unit. In certain Units, moose harvest limits that were restricted to "bulls" have been modified to "antlered bulls" in an attempt to reduce take of cows or calf moose.

A same-day-airborne regulation that allowed the taking of arctic fox, red fox, coyote, and lynx, if over 100 feet from a landed aircraft has been removed. This regulation appears to be inconsistent with subsistence uses of these species and may promote violations of § ____.25(b)(1) (iv) and (v) found herein.

Subsistence Taking of Fish and Shellfish Regulations

This proposed rule contains no subsistence fishing or shellfish taking provisions. Subsistence fishing and shellfish regulations are presently being revised to conform with Federal regulatory authorities, and to simplify applicable area restrictions, methods, means, seasons, and harvest limits. In addition, the Board will propose to the Secretaries of the Interior and Agriculture that the regulatory year governing subsistence fish and shellfish taking activities be changed from the June 1–July 30 annual cycle to a January 1–December 31 cycle in order to provide more consistency during those months when fish and shellfish are most commonly harvested. The subsistence fish/shellfish revised regulations will be put forth in a separate proposed rule approximately November 1, 1993.

Applicability of Subparts A, B, and C

Subparts A, B, and C of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.24 and 36 CFR 100.1 to 100.24, remain effective and apply to this proposed rule for subpart D. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 100.4 apply to regulations found in this subpart. The identified sections include definitions for the following terms:

Regulatory year which "means July 1 through June 30";

Federal Lands which "means lands and waters and interests therein title to which is in the United States"; and

Public land or *public lands* which "means lands situated in Alaska which are Federal lands, except—

(1) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal Law;

(2) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) Lands referred to in Section 19(b) of the Alaska Native Claims Settlement Act."

Navigable Waters

At this time, Federal subsistence management program regulations apply to all non-navigable waters located on public lands and to navigable waters located on the public lands identified at 50 CFR 100.3(b) and 36 CFR 242.3(b) of the Subsistence Management Regulations for Public Lands in Alaska, subparts A, B, and C (57 FR 22940–22964) published May 29, 1992. Nothing in these regulations is intended to enlarge or diminish authorities of the Departments to manage submerged lands, title to which is held by the United States Government.

Public Review Process—Regulation Comments, Proposals, and Public Meetings

Written comments or proposed regulation changes may be submitted in writing to the address identified at the beginning of this rulemaking by October 14, 1993. Comments or proposals may also be presented at public meetings to be held from September 27–October 8, 1993 in Anchorage, Barrow, Bethel, Fairbanks, Galena, Kodiak, Kotzebue, Naknek, Nome, and Sitka.

Proposals should be specific to subpart D regulations, including changes to subsistence seasons, harvest limits, and/or methods and means. Proposals submitted to the Board should include, at minimum, the following information:

a. The name, address, and telephone number of the individual or organization submitting the proposal;

b. The section and/or paragraph of the proposed rule for which the change is being suggested;

c. A statement explaining why the change is necessary;

d. A proposed solution;

e. Suggested wording for the regulation addition or change; and

f. Any supporting information.

Proposals which fail to include the above information, or proposals which are beyond the scope of authorities in subpart D, may be rejected. The public is encouraged to use standardized proposal forms to submit recommendations to the Board. Proposal forms may be obtained from the U.S. Fish and Wildlife Service at the address listed above.

Following public distribution of proposals for changes to the 1994–1995 proposed subpart D regulations, a second 60-day comment period will be provided to allow public review of those proposals that will be considered by the Board. A second series of public meetings will be held in February 1994, to assist in developing recommendations to the Board. Written comments on proposals may be submitted to the U.S. Fish and Wildlife Service before conclusion of the second comment period which is presently scheduled to end on January 21, 1994. The Board will discuss and evaluate proposed changes to this rule during a public meeting scheduled to be held in Anchorage, April 11–15, 1994. The public may provide additional oral testimony on specific proposals before the Board at that time.

Federal Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Public Lands in Alaska, 36 CFR 242.11 (1992) and 50 CFR 100.11 (1992), and for the purposes identified therein, Alaska has been divided into ten subsistence resource regions, each of which is to be represented by a Regional Advisory Council (Council). The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. Presently, the Councils are composed of no fewer than seven and no more than thirteen members who are residents of the region and are knowledgeable of local subsistence concerns. Charters for these councils were approved and signed by former Secretary Lujan on January 19, 1993.

An extensive recruitment effort for Council member nominations was conducted by personnel from each of the five Federal agencies responsible for subsistence management in Alaska. These efforts resulted in 260 applicants for 84 Council positions. The Board reviewed the list of applicants and submitted its recommendations for Council membership to the Offices of the Secretaries of Interior and Agriculture on June 4, 1993. The Board recommendations were made with due consideration of adequate geographical, cultural, and user diversity within each region. As specified in the Council charters, initial appointments will be staggered from one to three years. Subsequent appointments will carry 3-year terms. Appointment terms expire on December 2 of the appropriate year.

As of July 20, 1993, Secretarial appointments of Council members had not been made. The Board anticipates that the Councils will be operational in the near future, and once established, will have a substantial role in helping residents of the region review this proposed rule and make comments on it. If timely established, each Council will conduct the identified public meetings following publication of this proposed rule and/or those for review of regulation proposals. Moreover, the Council Chairs will be invited to represent their Council at the Board meeting in April 1994.

Conformance With Statutory and Regulatory Authorities

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501–3520. They apply to the use of public lands in Alaska. The information collection requirements described above are approved by the OMB under 44 U.S.C. 3501 and have been assigned clearance number 1018–0075.

Public reporting burden for this form is estimated to average 0.1382 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1016–0075), Washington, DC 20903. Additionally, information collection requirements may be imposed, if the Councils and Local Advisory Committees subject to the Federal Advisory Committee Act, are established under subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Economic Effects

Executive Order 12291, "Federal Regulation," of February 19, 1981, requires the preparation of regulatory impact analysis for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions.

The Departments of the Interior and Agriculture have determined that this rule making is not a "major rule" within the meaning of Executive Order 12291 and certify that it will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rule making will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates they will not be significant.

These regulations do not meet the threshold criteria of "Federalism Effects," as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretaries to provide for a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no significant taking implications related to any property rights as outlined by Executive Order 12630.

Drafting Information

These regulations were drafted under the guidance of Richard S. Pospahala, Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Thomas H. Boyd, Alaska State Office, Bureau of Land Management; John Hiscock, Alaska Regional Office, National Park Service; John Borbridge, Alaska Area Office, Bureau of Indian Affairs; and Norman Howse, USDA, Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and record keeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public lands, Reporting and record keeping requirements, Wildlife.

Words of Issuance

For the reasons set out in the preamble, Title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, are amended as set forth below.

PART _____—SUBSISTENCE MANAGEMENT REGULATIONS FOR FEDERAL PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR part 100 is revised to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. In subpart D § _____.25 is revised to read as follows:

Subpart D—Subsistence Taking of Fish and Wildlife

§ ___.25 Subsistence taking of wildlife.

(a) Definitions. The following definitions shall apply to all regulations contained in this section.

ADF&G means the Alaska Department of Fish and Game.

Aircraft means any kind of airplane, glider, or other device used to transport people or equipment through the air, excluding helicopters.

Airport means an airport listed in the Federal Aviation Administration, Alaska Airman's Guide and chart supplement.

Animal means those species with a vertebral column (backbone).

Antler means one or more solid, horn-like appendages protruding from the head of a caribou, deer, or moose.

Antlered means any caribou, deer, or moose having at least one visible antler.

Antlerless means any caribou, deer, or moose not having visible antlers attached to the skull.

Bear means black bear, or brown or grizzly bear.

Bow means a longbow, recurve bow, or compound bow, excluding a crossbow, or any bow equipped with a mechanical device that holds arrows at full draw.

Broadhead means an arrowhead that is not barbed and has two or more steel cutting edges having a minimum cutting diameter of not less than seven-eighths inch.

Brow tine means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

Buck means any male deer.

Bull means any male moose, caribou, or musk oxen.

Closed season means the time when wildlife may not be taken.

Cub bear means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

Designated hunter means a licensed hunter who may take all or a portion of another licensed hunter(s) harvest limit(s) only under special seasons established to provide for such taking.

Edible meat means the breast meat of ptarmigan and grouse, and, those parts of black bear, brown and grizzly bear, caribou, deer, mountain goat, moose, musk oxen, and Dall sheep that are typically used for human consumption which are: the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and radius-ulna (elbow), hindquarters as far as the distal joint (bottom) of the tibia-fibula (hock) and that portion of the animal between the front and hindquarters; however, *edible meat* of species listed above does not include: meat of the head, meat that has been damaged and made inedible by the method of taking, bones, sinew, and incidental meat reasonably lost as a result of boning or close trimming of the bones, or viscera.

Fifty-inch (50-inch) moose means a bull moose with an antler spread of 50 inches or more.

Full curl horn means the horn of a Dall sheep ram; the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken, or that the sheep is at least 8 years of age as determined by horn growth annuli.

Furbearer means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, red squirrel, flying squirrel, ground squirrel, marmot, wolf or wolverine.

Grouse collectively refers to all species found in Alaska, including spruce grouse, ruffed grouse, blue grouse and sharp-tailed grouse.

Hare or hares collectively refers to all species of hares (commonly called rabbits) in Alaska and includes snowshoe hare and tundra hare.

Harvest limit means the number of any one species permitted to be taken by any one person in a Unit or portion of a Unit in which the taking occurs.

Highway means the driveable surface of any constructed road.

Household means that group of people residing in the same residence.

Hunting means the taking of wildlife within established hunting seasons with archery equipment or firearms, and as authorized by a required hunting license.

Marmot collectively refers to all species of marmot that occur in Alaska including the hoary marmot, Alaska marmot, and the woodchuck.

Motorized vehicle means a motor-driven land, air or water conveyance.

Open season means the time when wildlife may be taken by hunting or trapping; an open season includes the first and last days of the prescribed season period.

Otter means river or land otter only, excluding sea otter.

Permit hunt means a hunt for which State or Federal permits are issued by registration or other means.

Poison means any substance which is toxic, or poisonous upon contact or ingestion.

Possession means having direct physical control of wildlife at a given time or having both the power and intention to exercise dominion or control of wildlife either directly or through another person or persons.

Ptarmigan collectively refers to all species found in Alaska, including white-tailed ptarmigan, rock ptarmigan, and willow ptarmigan.

Ram means a male Dall sheep.

Registration permit means a permit which authorizes hunting and is issued to a person who agrees to the specified hunting conditions. Hunting permitted by a registration permit begins on an announced date and continues throughout the open season, or until the season is closed by Board action. Registration permits are issued in the order applications are received and/or are based on priorities as determined by 50 CFR § 100.17 and 36 CFR § 242.17.

Sealing means placing a mark or tag on a portion of a harvested animal by an authorized representative of the ADF&G; *sealing* includes collecting and recording information about the conditions under which the animal was harvested, and measurements of the specimen submitted for sealing, or surrendering a specific portion of the animal for biological information.

Seven-eighths curl horn means the horn of a male Dall sheep, the tip of which has grown through seven-eighths (315 degrees) of a circle, described by the outer surface of the horn, as viewed from the side, or with both horns broken.

Skin, hide, pelt or fur mean any tanned or untanned external covering of an animal's body; excluding bear. The skin, hide, fur or pelt of a bear shall mean the entire external covering with claws attached.

Spike-fork moose means a bull moose with only one or two tines on either antler; male calves are not spike-fork bulls.

Take or *Taking* means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Tine or *antler point* refers to any point on an antler, the length of which is greater than its width and is at least one inch.

Transportation means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

Trapping means the taking of furbearers within established trapping seasons and with a required trapping license.

Unclassified wildlife or unclassified species means all species of animals not otherwise classified by the definitions herein, or regulated under other Federal law as listed in § ____.25(i).

Ungulate means any species of hoofed mammal, including deer, caribou, moose, mountain goat, Dall sheep, and musk oxen.

Unit means one of the 26 geographical areas in the State of Alaska known as Game Management Units, or GMU, and collectively listed in § ____.25 as Units.

Wildlife means any hare (rabbit), ptarmigan, grouse, ungulate, bear, furbearer, or unclassified species and includes any part, product, egg, or offspring thereof, or carcass or part thereof.

(b) Wildlife, including ptarmigan, grouse, hares, furbearers, ungulates, and bear may be taken for subsistence uses by any method, except as prohibited below or by other Federal statute. Taking wildlife for subsistence uses by a prohibited method is a violation of this regulation. Seasons are closed unless opened by Federal regulation. Hunting or trapping during a closed season or in an area closed by these regulations is prohibited.

(1) Except for special provisions found at § ____.25(k)(1) through (26), the following methods and means of taking wildlife for subsistence uses are prohibited:

(i) Shooting from, on, or across a highway;

(ii) Using any poison;

(iii) Using a helicopter in any manner, including transportation of individuals, equipment or wildlife; however, this prohibition does not apply to transportation of an individual, gear, or wildlife during an emergency rescue operation in a life-threatening situation;

(iv) Taking wildlife from a motorized vehicle, except from a motor-driven boat if the motor has been completely shut off, and the boat's progress from the motor's power has ceased;

(v) Using a motorized vehicle to drive, herd, or molest wildlife;

(vi) Using or being aided by use of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) Using a firearm other than a shotgun, muzzle-loaded rifle, rifle or pistol using center-firing cartridges, for the taking of ungulates, bear, wolves or wolverine, except that—

(A) An individual in possession of a valid trapping license may use a firearm that shoots rimfire cartridges to take wolves and wolverine.

(B) A muzzle-loading rifle of .54-caliber or larger, or a .45-caliber muzzle-loading rifle with a 250-grain, or larger, elongated slug may be used to take brown bear, black bear, moose, musk oxen and mountain goat;

(viii) Using or being aided by use of a pit, fire, artificial light, radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, a conventional steel trap with a jaw spread over nine inches, or a conibear style trap with a jaw spread over 11 inches;

(ix) Using a snare, except that an individual in possession of a valid hunting license may use snares to take unclassified wildlife, ptarmigan, grouse, or hares; and individuals in possession of a valid trapping license may use snares to take furbearers;

(x) Using a trap to take ungulates or bear;

(xi) Using hooks;

(xii) Using a crossbow in any area restricted to hunting by bow and arrow only to take ungulates, bear, wolf or wolverine;

(xiii) Taking of ungulates, bear, wolf, or wolverine with a bow, unless the bow is capable of casting a 7/8 inch wide broadhead-tipped arrow at least 175 yards horizontally, and the arrow and broadhead together weigh at least one ounce (437.5 grains);

(xiv) Using bait for taking ungulates, bear, wolf, or wolverine; except, bait may be used to take wolves and wolverine with a trapping license, and bait may be used to take black bears with a hunting license as authorized in Unit-specific regulations at § ____.25(k)

(1) through (26). Baiting of black bears is subject to the following restrictions:

(A) No person may establish a black bear bait station unless he or she first registers the site with ADF&G;

(B) A person using bait shall clearly mark the site with a sign reading "black bear bait station" that also displays the person's hunting license number and ADF&G assigned number;

(C) Only biodegradable materials may be used for bait; only the head, bones, viscera, or skin of legally harvested fish and wildlife may be used for bait;

(D) No person may use bait within one-quarter mile of a publicly maintained road or trail;

(E) No person may use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground, or developed recreational facility;

(F) A person using bait shall remove litter and equipment from the bait station site when hunting is completed;

(G) No person may give or receive remuneration for the use of a bait station, including barter or exchange of goods;

(H) No person may have more than two bait stations with bait present at any one time;

(xv) Taking swimming ungulates, bear, wolves or wolverine;

(xvi) Taking or assisting in the taking of ungulates, bear, wolves, or wolverine before 3 a.m. following the day in which airborne travel occurred (except for flights in regularly scheduled commercial aircraft); however, this restriction does not apply to subsistence taking of deer;

(xvii) Taking a bear cub or a sow accompanied by cub(s).

(2) Wildlife taken in defense of life or property is not a subsistence use; wildlife so taken is subject to State regulations.

(3) The following methods and means of trapping furbearers, for subsistence uses pursuant to the requirements of a trapping license are prohibited, in addition to the prohibitions listed at § ____.25(b)(1):

(i) Disturbing or destroying a den, except that any muskrat pushup or feeding house may be disturbed in the course of trapping;

(ii) Disturbing or destroying any beaver house;

(iii) Taking beaver by any means other than a steel trap or snare, except that firearms may be used in certain Units with established seasons as identified in Unit-specific regulations found in this subpart;

(iv) Taking otter with a steel trap having a jaw spread of less than five and seven-eighths inches during any closed mink and marten season in the same Unit;

(v) Using a net, or fish trap (except a blackfish or fyke trap);

(vi) Taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation, or by landing within one mile of a beaver trap or set used by the transported person;

(vii) Taking or assisting in the taking of furbearers by firearm before 3 a.m. on the day following the day on which airborne travel occurred; however, this does not apply to a trapper using a firearm to dispatch furbearers caught in a trap or snare;

(c) Possession and Transportation of Wildlife. (1) Except as specified in § ____.25(c)(3)(ii) or (c)(4), or as otherwise provided, no person may take a species of wildlife in any Unit, or portion of a Unit, if that person's total statewide take of that species has already been obtained under Federal and State regulations in other Units, or portions of other Units.

(2) An animal taken under Federal or State regulations by any member of a community with an established community harvest limit for that species counts toward the community harvest limit for that species. Except for wildlife taken pursuant to § ____.6(f)(3), an animal taken by an individual as part of a community harvest limit counts toward that individual's harvest limit for that species taken under Federal or State regulations for areas outside of the community harvest area.

(3) Individual harvest limits. (i) Harvest limits authorized by § ____.25 and bag limits established in State regulations may not be accumulated.

(ii) Wildlife taken by a designated hunter for another person pursuant to § ____.6(f)(2), counts toward the individual harvest limit of the person for whom the wildlife is taken.

(4) The harvest limit specified for a trapping season for a species and the harvest limit set for a hunting season for the same species are separate and distinct. This means that a person who has taken a harvest limit for a particular species under a trapping season may take additional animals under the harvest limit specified for a hunting season or vice versa.

(5) A brown/grizzly bear taken in a Unit or portion of a Unit having a harvest limit of one brown/grizzly bear per year counts against a one brown/grizzly bear every four regulatory years harvest limit in other Units; an individual may not take more than one brown/grizzly bear in a regulatory year.

(6) A harvest limit applies to the number of animals that can be taken during a regulatory year; however, harvest limits for grouse, ptarmigan, and caribou (in some Units) are regulated by the number that may be taken per day. Harvest limits of grouse and ptarmigan are also regulated by the number that can be held in possession.

(7) Unless otherwise provided, any person who gives or receives wildlife shall furnish, upon a request made by a Federal or State agent, a signed statement describing the following: names and addresses of persons who gave and received wildlife, the time and place that the wildlife was taken, and identification of species transferred. Where a qualified subsistence user has designated another qualified subsistence user to take wildlife on his or her behalf in accordance with § ____.6, the permit shall be furnished in place of a signed statement.

(8) A rural Alaska resident who has been designated to take wildlife on behalf of another rural Alaska resident in accordance with § ____.6, shall promptly deliver the wildlife to that rural Alaska resident.

(9) No person may possess, transport, give, receive or barter wildlife that was taken in violation of Federal or State statutes or a regulation promulgated thereunder.

(10) Evidence of sex and identity. (i) If subsistence take of Dall sheep is restricted to a ram, no person may possess or transport a harvested sheep unless both horns accompany the animal.

(ii) If the subsistence taking of an ungulate, except sheep, is restricted to one sex in the local area, no person may possess or transport the carcass of an animal taken in that area unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal; however, § ____.25(c)(10)(ii) does not apply to the carcass of an ungulate that has been butchered and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(iii) If a moose harvest limit includes an antler size or configuration restriction, no person may possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. A person possessing a set of antlers with less than the required number of brow tines on one antler shall leave the antlers naturally attached to the unbroken, uncut skull plate; however, § ____.25(c)(10)(iii) does not apply to a moose carcass or its parts that have been butchered and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(d) A person who takes an animal that has been marked or tagged for scientific studies must, within a reasonable time, notify the ADF&G or the agency identified on the collar or marker, when and where the animal was taken. Any ear tag, collar, radio, tattoo, or other identification must be retained with the hide until it is sealed, if sealing is required; in all cases, any identification equipment must be returned to the ADF&G or to an agency identified on such equipment.

(e) Sealing of bear skins and skulls. (1) Sealing requirements for bear shall apply to brown bears taken in all Units, and black bears of all color phases taken in Units 1–6, 11–14, 16, and 20.

(2) No person may possess or transport from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of ADF&G in accordance with State or Federal regulations, except that the skin and skull of a brown bear taken under a registration permit in the Western Alaska Brown Bear Management Area or the Northwest Alaska Brown Bear Management Area need not be sealed unless removed from the area.

(3) A person who possesses a bear shall keep the skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin; however, this provision shall not apply to brown bears taken within the Western Alaska Brown Bear Management Area or the Northwest Alaska Brown Bear Management Area which are not removed from the Management Area.

(i) In areas where sealing is required by Federal regulations, no person may possess or transport the hide of a bear which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(ii) If the skin or skull of a bear taken in the Western Alaska Brown Bear Management Area is removed from the area, it must be sealed by an ADF&G representative in Bethel, Dillingham, or McGrath; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iii) If the skin or skull of a bear taken in the Northwestern Alaska Brown Bear Management Area is removed from the area, it must be sealed by an ADF&G representative in Barrow, Fairbanks, Galena, or Kotzebue; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(4) No person may falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G in accordance with State regulations.

(f) Sealing of beaver lynx, marten, otter, wolf, and wolverine. No person may possess or transport from Alaska the untanned skin of a marten taken in Units 1–5, 7, 13(E), and 14–16 or the untanned skin of a beaver, lynx, otter, wolf, or wolverine, whether taken inside or outside the state, unless the skin has been sealed by an authorized representative of ADF&G in accordance with State regulations.

(g) A person who takes a species listed in § ____.25(f) but who is unable to present the skin in person, must complete and sign a temporary sealing form and ensure that the completed temporary sealing form and skin are presented to an authorized representative of ADF&G for sealing consistent with requirements listed in § ____.25(f).

(h) Utilization of Wildlife. (1) No person may use wildlife as food for a dog or furbearer, or as bait, except for the following:

(i) The hide, skin, viscera, head, or bones of wildlife;

(ii) The skinned carcass of a furbearer;

(iii) Squirrels, hares (rabbits), grouse and ptarmigan; however, the breast meat of grouse and ptarmigan may not be used as animal food or bait;

(iv) Unclassified wildlife.

(2) A person taking wildlife for subsistence shall salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel or otter;

(ii) The hide and edible meat of a brown bear, except that the hide of brown bears taken in the Western and Northwestern Alaska Brown Bear Management Areas need not be salvaged;

(iii) The hide and edible meat of a black bear;

(iv) The hide or meat of squirrels, hares (rabbits), marmots, beaver, muskrats, or unclassified wildlife.

(3) Failure to salvage edible meat of ungulates, bear, or grouse and ptarmigan is prohibited.

(4) Failure to salvage the edible meat may not be a violation if such failure is caused by circumstances beyond the control of a person, including theft of the harvested wildlife, unanticipated weather conditions, or unavoidable loss to another animal.

(i) The regulations found in § ____.25 do not apply to the subsistence taking and use of wildlife regulated pursuant to the Fur Seal Act of 1966 (80 Stat. 927, 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531–1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361–1407), and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703–711), or any amendments to these Acts. The taking and use of wildlife, covered by these Acts, will conform to the specific provisions contained in these Acts, as amended, and any implementing regulations.

(j) Rural residents, non-rural residents, and nonresidents not specifically prohibited by Federal regulations from hunting or trapping on public lands in an area, may hunt or trap on public lands in accordance with the appropriate State regulations.

(k) Unit Regulations. Subsistence taking of unclassified wildlife, all squirrel species, and marmots is allowed in all Units, without harvest limits, for the period of July 1–June 30. Subsistence taking of wildlife outside established Unit seasons, or in excess of the established Unit harvest limits, is prohibited unless otherwise modified by subsequent regulation. Taking of wildlife under State regulations on public lands is permitted, except as otherwise restricted at § ____.25(k) (1) through (26). Additional Unit-specific restrictions or allowances for subsistence taking of wildlife are identified at § ____.25(K) (1) through (26).

(1) Unit 1. Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Caamano Point, and all islands in Stephens Passage and Lynn Canal north of Taku Inlet:

(i) Unit 1(A) consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal, excluding all drainages of Ernest Sound;

(ii) Unit 1(B) consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound and Seward Passage;

(iii) Unit 1(C) consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock including Berners Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the

latitude of Eldred Rock, excluding drainages into Farragut Bay;

(iv) Unit 1(D) consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(v) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses;

(B) Unit 1(A)—in the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bear;

(C) Unit 1(B)—the Anan Creek drainage is closed to the taking of black bear;

(D) Unit 1(C):

(*1*) The area within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area, is closed to hunting;

(*2*) The area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier, is closed to the taking of mountain goat;

(vi) In the following areas, the trapping of furbearers for subsistence uses is prohibited on public lands:

(A) Glacier Bay National Park;

(B) Unit 1(C), Juneau area:

(*1*) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(*2*) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(*3*) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area;

(*4*) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail.

(vii) Unit-specific regulations;

(A) Bait may be used to hunt black bear in Units 1(A), 1(B), and 1(D) between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

Harvest limits	Open season
Hunting:	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear.	Sept. 1 to June 30.
Brown Bear:	
1 bear every four regulatory years by State registration permit only.	Sept. 15 to Dec. 31. Mar. 15 to May 31.
Deer:	
Unit 1(A)—4 antlered deer.	Aug. 1 to Dec. 31.
Unit 1(B)—2 antlered deer.	Aug. 1 to Dec. 31.
Unit 1(C)—4 deer; however, antlerless deer may be taken only from Sept. 15 to Dec. 31.	Aug. 1 to Dec. 31. Aug. 1 to Dec. 31.
Goat:	
Unit 1(A)—Revillagigedo Island only.	No open season.
Unit 1(B)—that portion north of the Bradfield Canal and the North Fork of the Bradfield River. 1 goat by State registration permit only; that portion between LeConte Bay and the North Fork of Bradfield River/Canal will require a Federal registration permit for the taking of a second goat; the taking of kids or nannies accompanied by kids is prohibited. Federal permits may be obtained from U.S. Forest Service offices in Petersburg and Wrangell.	Aug. 1 to Dec. 31.
Unit 1(B)—that portion south of Bradfield Canal, east of Ernest Sound, west of Anan Creek/Anan Lake/Boulder Lake drainage, and north of Frosty Creek. Public lands are closed to goat hunting.	No open season.
Unit 1(A) and Unit 1(B)—Remainder—2 goats by State registration permit only.	Aug. 1 to Dec. 31.
Unit 1(C)—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River—1 goat by State registration permit only.	Oct. 1 to Nov. 30.
Unit 1(C)—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier, and all drainages of the Chilkat Range south of the Endicott River.	No open season.
Remainder of Unit 1(C)—1 goat by State registration permit only.	Aug. 1 to Nov. 30.
Unit 1(D)—that portion lying north of the Katzehin River and northeast of the Haines highway—1 goat by State registration permit only.	Sept. 15 to Nov. 30.
Remainder of Unit 1(D)—1 goat by State registration permit only.	Aug. 1 to Dec. 31.
Moose:	
Unit 1(A)—1 antlered bull.	Sept. 15 to Oct. 15.
Unit 1(B)—south and east of LeConte Bay and Glacier—1 antlered bull with spike-fork or 50-inch antlers (or 3 brow tines on either antler), by Federal registration permit only. Public lands are closed to the taking of moose, except by qualified rural residents who have obtained a Federal registration permit. Public lands within the Stikine River drainage are closed, except to Wrangell residents.	Sept. 15 to Oct. 15.
Remainder of Unit 1(B).	No open season.
Unit 1(C)—excluding drainages of Berners Bay—1 antlered bull by State registration permit only.	Sept. 15 to Oct. 15.
Unit 1(D)	No open season.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.

Harvest limits	Open season
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1 to Apr. 30.
Lynx:	
2 lynx	Dec. 1 to Feb. 15.
Wolf:	
No limit	July 1 to June 30.
Wolverine:	
1 wolverine	Nov. 10 to Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession.	Aug. 1 to May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 1 to May 15.
Trapping:	
Beaver:	
Unit 1 (A), (B), and (C)—No limit.	Dec. 1 to May 15.
Coyote:	
No limit	Dec. 1 to Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1 to Feb. 15.
Lynx:	
No limit	Dec. 1 to Feb. 15.
Marten:	
No limit	Dec. 1 to Feb. 15.
Mink and Weasel:	
No limit	Dec. 1 to Feb. 15.
Muskrat:	
No limit	Dec. 1 to Feb. 15.
Otter:	
No limit	Dec. 1 to Feb. 15.
Wolf:	
No limit	Nov. 10 to Apr. 30.
Wolverine:	
No limit	Nov. 10 to Apr. 30.

(2) Unit 2. Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the western most point on Warren Island.

(i) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

(ii) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear.	Sept. 1 to June 30.
Deer:	
4 antlered deer	Aug. 1 to Dec. 31.
Coyote:	
2 coyotes.	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1 to Apr. 30.
Lynx:	
2 lynx	Dec. 1 to Feb. 15.
Wolf:	
No limit	July 1 to June 30.
Wolverine:	
1 wolverine	Nov. 10 to Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession.	Aug. 1 to May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 1 to May 15.
Trapping:	
Beaver:	
No limit	Dec. 1 to May 15.
Coyote:	
No limit	Dec. 1 to Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1 to Feb. 15.
Lynx:	
No limit	Dec. 1 to Feb. 15.
Marten:	
No limit	Dec. 1 to Feb. 15.
Mink and Weasel:	
No limit	Dec. 1 to Feb. 15.
Muskrat:	
No limit	Dec. 1 to Feb. 15.
Otter:	
No limit	Dec. 1 to Feb. 15.
Wolf:	
No limit	Nov. 10 to Apr. 30.
Wolverine:	
No limit	Nov. 10 to Apr. 30.

(3) Unit 3.

(i) Unit 3 consists of all islands west of Unit 1(B), north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevarof, Woronkofski, Etolin, Wrangell, and Deer Islands;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Petersburg vicinity, a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to Crystal Lake campground is closed to the taking of ungulates, bear, wolves and wolverine;

(B) The Petersburg Creek drainage on Kupreanof Island is closed to the taking of black bears;

(C) Blind Slough draining into Wrangell Narrows and a strip one-fourth mile wide on each side of Blind Slough, from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the Blind Slough bridge, are closed to all hunting.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

Harvest limits	Open season
Hunting:	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear.	Sept. 1 to June 30.
Deer:	
Unit 3—Mitkof Island, Woewodski Island, Butterworth Islands, and that portion of Kupreanof Island which includes Lindenburg Peninsula east of the Portage Bay/Duncan Canal Portage—1 antlered deer by State registration permit only; however, the city limits of Petersburg and Kupreanof are closed to hunting.	Oct. 15 to Oct. 31.
Remainder of Unit 3—2 antlered deer.	Aug. 1 to Nov. 30.
Moose:	
Unit 3—Mitkof and Wrangell Islands—1 antlered bull with spike-fork or 50-inch antler (or 3 brow tines on either antler).	Oct. 1 to Oct. 15.
Remainder of Unit 3	No open season.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1 to Apr. 30.
Lynx:	
2 lynx	Dec. 1 to Feb. 15.
Wolf:	
No limit	July 1 to June 30.
Wolverine:	
1 wolverine	Nov. 10—Feb. 15
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession.	Aug. 1 to May 15.

Harvest limits	Open season
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 1 to May 15.
Trapping:	
Beaver:	
Unit 3—Mitkof Island No limit.	Dec. 1 to Apr 15.
Unit 3—except Mitkof Island.	
No limit	Dec. 1 to May 15.
Coyote:	
No limit	Dec. 1 to Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1 to Feb. 15.
Lynx:	
No limit	Dec. 1 to Feb. 15.
Marten:	
No limit	Dec. 1 to Feb. 15.
Mink and Weasel:	
No limit	Dec. 1 to Feb. 15.
Muskrat:	
No limit	Dec. 1 to Feb. 15.
Otter:	
No limit	Dec. 1 to Feb. 15.
Wolf:	
No limit	Nov. 10 to Apr. 30.
Wolverine:	
No limit	Nov. 10 to Apr. 30.

(4) Unit 4.

(i) Unit 4 consists of all islands south and west of Unit 1(C) and north of Unit 3 including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Seymour Canal Closed Area (Admiralty Island) including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay including Swan and Windfall Islands, is closed to the taking of bears;

(B) The Salt Lake Bay Closed Area (Admiralty Island) including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay, is closed to the taking of bears;

(C) Port Althorp (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock), is closed to the taking of brown bears;

(D) Northeast Chichagof Controlled Use Area (NECCUA) consisting of that portion of Unit 4 on Chichagof Island north of Tenakee Inlet and east of Idaho Inlet and north of Trail River, and north of a line from the headwaters of Trail River to the head of Tenakee Inlet is closed to the use of any motorized land vehicle for brown bear hunting, or for the taking of marten, mink, or weasel.

(iii) Unit-specific regulations;

(A) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

(B) [Reserved].

Harvest limits	Open season
Hunting:	
Brown Bear:	
Unit 4—Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58 °N. lat., 136° 21′ W. long.), to Rodgers Point (57° 35′ N. lat., 135° 33′ W. long.) including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57° 34′ N. lat., 135° 25′ W. long.), to the entrance of Gut Bay (56° 44′ N. lat. 134° 38′ W. long.) including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear every four regulatory years by State registration permit only.	Sept. 15 to Dec. 31. Mar. 15 to May 31.
Unit 4—that portion in the Northeast Chichagof Controlled Use Area—1 bear every four regulatory years by State registration permit only.	Mar. 15 to May 20.
Remainder of Unit 4—1 bear every four regulatory years by State registration permit only.	Sept. 15 to Dec. 31. Mar. 15 to May 20.

Harvest limits	Open season
Deer:	
Unit 4—All drainages of Chichagof Island west of the drainage divide which begins at the southwest entrance of Gull Cove and extends southward to Point Leo. This includes all drainages into Slocum Arm, Lisianski Inlet, Idaho Inlet, and all offshore islands including the Inian Islands. Lemesurier Island is excluded. All of Admiralty Island and its associated offshore islands that lie within Unit 4. That portion of Baranof Island south of the divide from North Point of Kasnyku Bay southwest to North Cape of Whale Bay—6 deer; however, antlerless deer may be taken only from Sept. 15 to Jan. 31.	Aug. 1 to Jan. 31.
Unit 4—All drainages of Chichagof Island east of the drainage divide which begins at the southwest entrance of Gull Cove and extends southward to the divide between Trail River and Upper Tenakee Inlet and including all drainages into Tenakee Inlet and into Chatham Straits north of the Kook Lake drainage. Lemesurier, Pleasant, and associated offshore islands are included—6 deer; however, antlerless deer may be taken only from Sept. 15 to Jan 31. Public lands are closed to the taking of deer beginning Nov. 1, except for residents of Unit 4, Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection or Wrangell.	Aug. 1 to Jan. 31.

Harvest limits	Open season
Unit 4—All drainages of Baranof Island extending north of the divide from North Point of Kasnyku Bay southwest to North Cape of Whale Bay; and all drainages on Chichagof Island draining into Peril Straits, Hoonah Sound, and Salisbury Sound east of Point Leo, and all offshore islands including Kruzof, Biorka, and Catherine—4 deer; however, antlerless deer may be taken only from Sept. 15 to Dec. 31. Public lands are closed to the taking of deer by persons who are not residents of Unit 4, Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, or Wrangell.	Aug. 1 to Dec. 31.
Goat:	
1 goat by State registration permit only.	Aug. 1 to Dec. 31.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases):	
2 foxes	Nov. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day	Sept. 1 to Apr. 30.
Lynx:	
2 lynx	Dec. 1 to Feb. 15.
Wolf:	
No limit	July 1 to June 30.
Wolverine:	
1 wolverine	Nov. 10 to Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharptailed):	
5 per day, 10 in possession.	Aug. 1 to May 15.
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 1 to May 15.
Trapping:	
Beaver:	
Unit 4—that portion east of Chatham Strait—No limit.	Dec. 1 to May 15.
Remainder of Unit 4	No open season.
Coyote:	
No limit	Dec. 1 to Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases):	
No limit	Dec. 1 to Feb. 15.
Lynx:	
No limit	Dec. 1 to Feb. 15.
Marten:	
Unit 4—that portion within the NECCUA—No limit. Marten trapping on public lands within the NECCUA is prohibited, except by rural Alaska residents.	Dec. 1 to Dec. 31.
Remainder of Unit 4—No limit.	Dec. 1 to Feb. 15.
Mink and Weasel:	
Unit 4 that portion within the NECCUA—No limit. The taking of mink and weasel on public lands within the NECCUA is prohibited, except to rural Alaska residents.	Dec. 1 to Dec. 31.
Remainder of Unit 4—No limit.	Dec. 1 to Feb. 15.
Muskrat:	
No limit	Dec. 1 to Feb. 15.
Otter:	
No limit	Dec. 1 to Feb. 15.
Wolf:	
No limit	Nov. 10 to Apr. 30.
Wolverine:	
No limit	Nov. 10 to Apr. 30.

(5) Unit 5.

(i) Unit 5 consists of all Gulf of Alaska drainages and islands between Cape Fairweather and the center line of Icy Bay, including the Guyot Hills;

(A) Unit 5(A) consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(B) Unit 5(B) consists of the remainder of Unit 5;

(ii) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Boats may not be used to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled.

Harvest limits	Open season
Hunting:	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear.	Sept. 1 to June 30.
Brown Bear:	
1 bear every four regulatory years.	Sept. 1 to May 31.
Deer:	
Unit 5(A)—1 buck.	
Unit 5(B)	Nov. 1 to Nov. 30. No open season.
Goat:	
1 goat by State registration permit only.	Aug. 1 to Dec. 31.
Moose:	
Unit 5(A), except Nunatak Bench—1 antlered bull by State registration permit only. The season will be closed when 60 antlered bulls have been taken from the Unit. The season will be closed in that portion west of the Dangerous River when 30 antlered bulls have been taken in that area. From Oct. 15 to Oct. 21, public lands will be closed to taking of moose, except by rural Alaska residents of Unit 5(A).	Oct. 15 to Nov 15.
Unit 5(B)—1 antlered bull by State registration permit only. The season will be closed when 25 antlered bulls have been taken from the entirety of Unit 5(B).	Sept. 1 to Dec. 15.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Nov. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
5 hares per day.	Sept. 1 to Apr. 30.
Lynx:	
2 lynx	Dec. 1 to Feb. 15
Wolf:	
5 wolves	Aug. 1 to Apr. 30.
Wolverine:	
1 wolverine	Nov. 10 to Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharptailed):	
5 per day, 10 in possession.	Aug. 1 to May 15.
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 1 to May 15.
Trapping:	
Beaver:	
No limit	Nov. 10 to May 15.
Coyote:	
No limit	Dec. 1 to Feb. 15.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Dec. 1 to Feb. 15.
Lynx:	

Harvest limits	Open season
2 lynx	Dec. 1 to Feb. 15.
Marten:	
No limit	Nov. 10 to Feb. 15.
Mink and Weasel:	
No limit	Nov. 10 to Feb. 15.
Muskrat:	
No limit	Dec. 1 to Feb. 15.
Otter:	
No limit	Nov. 10 to Feb. 15.
Wolf:	
No limit	Nov. 10 to Apr. 30.
Wolverine:	
No limit	Nov. 10 to Apr. 30.

(6) Unit 6.

(i) Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages:

(A) Unit 6(A) consists of Gulf of Alaska drainages east of Palm Point near Katalla including Kanak, Wingham, and Kayak Islands;

(B) Unit 6(B) consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(C) Unit 6(C) consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(D) Unit 6(D) consists of the remainder of Unit 6;

(ii) For the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Goat Mountain goat observation area, which consists of that portion of Unit 6(B) bounded on the north by Miles Lake and Miles Glacier, on the south and east by Pleasant Valley River and Pleasant Glacier, and on the west by the Copper River, is closed to the taking of mountain goat;

(B) The Heney Range goat observation area, which consists of that portion of Unit 6(C) south of the Copper River Highway and west of the Eyak River, is closed to the taking of mountain goat.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) Coyotes may be taken in Units 6(B) and 6(C) with the aid of artificial lights.

Harvest limits	Open season
Hunting:	
Black Bear:	
1 bear	Sept. 1 to June 30.
Deer:	
4 deer; however, antlerless deer may be taken only from Nov. 1 to Dec. 31.	Aug. 1 to Dec. 31.
Goats:	
Unit 6(A), (B)—1 goat by State registration permit only.	Aug. 20 to Jan. 31.
Unit 6(C)	No open season.
Unit 6(D) (subareas RG242, RG243, RG224, RG249, RG266 and RG252 only)—1 goat by Federal registration permit only. Federal permits may be obtained from the U.S. Forest Service office in Cordova. In each of the Unit 6(D) subareas, goat seasons will be closed when harvest limits for that subarea are reached. Harvest quotas are as follows: RG242—2 goats, RG243—2 goats, RG224—2 goats, RG249—2 goats, RG266—4 goats, RG252—1 goat.	Aug. 20 to Jan. 31.
Unit 6(D) (subarea RG245)—The taking of goats is prohibited on all public lands.	No open season.
Coyote:	
Unit 6(A) and (D)—2 coyotes.	Sept. 1 to Apr. 30.
Unit 6(B)—No limit	July 1 to June 30.
Unit 6(C)—South of the Copper River Highway and east of the Heney Range—No limit.	July 1 to June 30.
Remainder of Unit 6(C)—No limit.	July 1 to June 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Nov. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Dec. 15 to Jan. 15.
Wolf:	
2 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
5 per day, 10 in possession.	Aug. 1 to May 15.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 1 to May 15.
Trapping:	
Beaver:	
Trapping—20 beaver per season.	Dec. 1 to Mar. 31.
Coyote:	
Unit 6(A), (B) and (D)—No limit.	Nov. 10 to Mar. 31.
Unit 6(C)—South of the Copper River Highway and east of the Heney Range—No limit.	Nov. 10 to Apr. 30.
Remainder of Unit 6(C)—No limit.	Nov. 10 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10 to Feb. 28.
Lynx:	
No limit	Dec. 15 to Jan. 15.
Marten:	
No limit	Nov. 10 to Jan. 31.
Mink and Weasel:	
No limit	Nov. 10 to Jan. 31.
Muskrat:	
No limit	Nov. 10 to June 10.
Otter:	
No limit	Nov. 10 to Mar. 31.
Wolf:	
No limit	Nov. 10 to Mar. 31.
Wolverine:	
No limit	Nov. 10 to Feb. 28.

(7) Unit 7.

(i) Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Kenai Fjords National Park is closed to all subsistence uses;

(B) The Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek and Byron Glacier, is closed to hunting; however, grouse, ptarmigan, hares, and squirrels may be hunted with shotguns after September 1.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15; except Resurrection Creek and its tributaries.

(B) A firearm may be used to take beaver with a trapping license in Unit 8 from Nov. 10 to Apr. 30.

Harvest limits	Open season
Hunting:	
Black Bear:	
Unit 7—3 bears	July 1 to June 30.
Coyote:	
No limit	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Nov. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Wolf:	
1 wolf	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Mar. 31.
Trapping:	
Beaver:	
20 Beaver per season.	Dec. 1 to Mar. 31.
Coyote:	
No limit	Nov. 10 to Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10 to Feb. 28.
Marten:	
No limit	Nov. 10 to Jan. 31.
Mink and Weasel:	
No limit	Nov. 10 to Jan. 31.
Muskrat:	
No limit	Nov. 10 to May 15.
Otter:	
No limit	Nov. 10 to Feb. 28.
Wolf:	
No limit	Nov. 10 to Feb. 28.
Wolverine:	
No limit	Nov. 10 to Feb. 28.

(8) Unit 8. Unit 8 consists of all islands southeast of the centerline of Shelikof Strait including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands.

Harvest limits	Open season
Hunting:	
Deer:	
Unit 8—that portion of Kodiak Island north of a line from the head of Settlers Cove to Crescent Lake (57°52′ N. lat., 152°58′ W. long.), and east of a line from the outlet of Crescent Lake to Mount Ellison Peak and from Mount Ellison Peak to Pokati Point at Whale Passage, and that portion of Kodiak Island east of a line from the mouth of Saltery Creek to Crag Point, and adjacent small islands in Chiniak Bay—1 deer; however, antlerless deer may be taken only from Oct. 25 to Oct. 31.	Aug. 1 to Oct. 31.
Unit 8—that portion of Kodiak Island and adjacent islands south and west of a line from the head of Terror Bay to the head of the south-western most arm of Ugak Bay—5 deer; however, antlerless deer may be taken only from Oct. 1 to Dec. 31.	Aug. 1 to Dec. 31.
Remainder of Unit 8—5 deer; however, antlerless deer may be taken only from Oct. 1 to Dec. 31; no more than 1 antlerless deer may be taken from Oct. 1 to Nov. 30.	Aug. 1 to Dec. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10 to Mar. 31.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
30 beaver per season.	Nov. 10 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10 to Mar. 31.
Marten:	
No limit	Nov. 10 to Jan. 31.
Mink and Weasel:	
No limit	Nov. 10 to Jan. 31.
Muskrat:	
No limit	Nov. 10 to June 10.
Otter:	
No limit	Nov. 10 to Jan. 31.

(9) Unit 9

(i) Unit 9 consists of the Alaska Peninsula and adjacent islands including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage; drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands:

(A) Unit 9(A) consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(B) Unit 9(B) consists of the Kvichak River drainage;

(C) Unit 9(C) consists of the Alagnak (Branch) River drainage, the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(D) Unit 9(D) consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(E) Unit 9(E) consists of the remainder of Unit 9;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Katmai National Park is closed to all subsistence uses;

(B) The use of motorized vehicles, excluding aircraft, boats, or snowmobiles used for hunting and transporting a hunter or harvested animal parts, is prohibited from Aug. 1 to Nov. 30 in the Naknek Controlled Use Area, which includes all of Unit 9(C) within the Naknek River drainage upstream from and including the King Salmon Creek drainage; however, this restriction does not apply to a motorized vehicle on the Naknek-King Salmon, Lake Camp, and Rapids Camp roads and on the King Salmon Creek trail.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Brown Bear:	

Harvest limits	Open season
Unit 9(B)—1 bear every four regulatory years.	Oct. 1 to Oct. 21 (odd years only); May 10 to May 25 (even years only).
Unit 9(E)—1 bear by Federal registration permit only.	Oct. 1 to Dec. 31; May 10 to May 25.
Caribou:	
Unit 9(A), (B), and (C)—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Sept. 30 and no more than 1 caribou may be taken Oct. 1–Nov. 30.	Aug. 10 to Mar. 31.
Unit 9(D)—1 bull. Public lands are closed to the hunting of caribou except by rural Alaska residents of Unit 9(D) and False Pass.	Aug. 10 to Sept. 30; Dec. 1 to Mar. 31.
Unit 9(E)—that portion south of Seal Cape on the Pacific side of the Alaska Peninsula divide—4 caribou; only bulls may be taken between July 1 and Aug. 9.	July 1 to Apr. 30.
Remainder of Unit 9(E)—4 caribou.	Aug. 10 to Apr. 30.
Sheep:	
1 ram with 7/8 curl horn.	Aug. 10 to Sept. 20.
Moose:	
Unit 9(A)—1 antlered bull.	Sept. 1 to Sept. 15.
Unit 9(B)—1 antlered bull.	Sept. 1 to Sept. 15; Dec. 1 to Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the north—1 antlered bull. The December hunt will be by Federal registration permit only.	Sept. 1 to Sept. 15; Dec. 1 to Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the south—1 antlered bull. However, during the December hunt, antlerless moose may be taken by Federal registration permit only. The antlerless season will be closed when 5 antlerless moose have been taken. Public lands are closed during December for the hunting of moose, except by eligible rural Alaska residents.	Sept. 1 to Sept. 15; Dec. 1 to Dec. 31.
Remainder of Unit 9(C)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31.	Sept. 1 to Sept. 15; Dec. 1 to Dec. 31.
Unit 9(E)—1 antlered bull.	Sept. 1 to Sept. 20; Dec. 1 to Dec. 31.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Arctic (Blue and White):	
No limit	Dec. 1 to Mar. 15.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Nov. 10 to Feb. 28.
Wolf:	
10 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
40 beaver per season.	Jan. 1 to Mar. 31.
Coyote:	
No limit	Nov. 10 to Mar. 31.
Fox, Arctic (Blue and White):	
No limit	Nov. 10 to Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10 to Feb. 28.
Lynx:	
No limit	Nov. 10 to Feb. 28.
Marten:	
No limit	Nov. 10 to Feb. 28.
Mink and Weasel:	
No limit	Nov. 10 to Feb. 28.
Muskrat:	
No limit	Nov. 10 to June 10.
Otter:	
No limit	Nov. 10 to Mar. 31.
Wolf:	
No limit	Nov. 10 to Mar. 31.
Wolverine:	
No limit	Nov. 10 to Feb. 28.

(10) Unit 10.

(i) Unit 10 consists of the Aleutian Islands, Unimak Island and the Pribilof Islands;

(ii) On Otter Island in the Pribilof Islands the taking of any wildlife species for subsistence uses is prohibited.

Harvest limits	Open season
Hunting:	
Caribou:	
Unit 10—Unimak Island only—1 bull. Public lands are closed to the hunting of caribou except by rural Alaska residents of False Pass.	Aug. 10 to Sept. 30; Dec. 1 to Mar. 31.
Remainder of Unit 10—No limit.	July 1 to June 30.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Arctic (Blue and White Phase):	
No limit	July 1 to June 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Wolf:	
2 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Arctic (Blue and White Phase):	
No limit	July 1 to June 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1 to Feb. 15.
Mink and Weasel:	
No limit	Nov. 10 to Feb. 28.
Muskrat:	
No limit	Nov. 10 to June 10.

Harvest limits	Open season
Otter:	
No limit	Nov. 10 to Mar. 31.
Wolf:	
No limit	Nov. 10 to Mar. 31.
Wolverine:	
No limit	Nov. 10 to Feb. 28.

(11) Unit 11. Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier.

(i) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved]

(ii) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Caribou	No open season.
Sheep:	
1 sheep	Aug. 10 to Sept. 20.
Moose:	
1 antlered bull	Aug. 25 to Sept. 20.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Dec. 15. to Jan. 15.
Wolf:	
5 wolves	Aug. 10 to Apr. 30
Wolverine:	
1 wolverine	Sept. 1 to Jan. 31.
Public lands are closed to the taking of wolverine except by eligible rural Alaska residents.	
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Mar. 31.
Trapping:	
Beaver:	
30 beaver per season.	Nov. 10 to Apr. 30.
Coyote:	
No limit	Nov. 10 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10 to Feb. 28.
Lynx:	
No limit	Dec. 15 to Jan. 15.
Marten:	
No limit	Nov. 10 to Jan. 31.
Mink and Weasel:	
No limit	Nov. 10 to Jan. 31.
Muskrat:	
No limit	Nov. 10 to June 10.
Otter:	
No limit	Nov. 10 to Mar. 31.
Wolf:	
No limit	Nov. 10 to Mar. 31.
Wolverine:	
2 wolverine	Nov. 10 to Jan. 31.
Public lands are closed to the taking of wolverine except by eligible rural Alaska residents.	

(12) Unit 12. Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage.

(i) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Trapping of wolves in Units 12 during March, April or October with a steel trap, or with a snare smaller than 3X, is prohibited.

(ii) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Caribou:	
Unit 12—that portion west of the Nabesna River within the drainages of Jack Creek, Platinum Creek, and Totschunda Creek—The taking of caribou is prohibited on public lands.	No open season.
Remainder of Unit 12—1 bull.	Sept. 1 to Sept. 20.
1 bull caribou may be taken by a Federal registration permit during a winter season to be announced for the rural Alaska residents of Tetlin and Northway only.	Winter season to be announced by the Federal Subsistence Board.
Moose:	
Unit 12—that portion drained by the Tanana, Nabesna, and Chisana Rivers east of the Tetlin Reservation boundary and north of the Winter Trail from Pickerel Lake to the Canadian border—1 antlered bull.	Sept. 1 to Sept. 15; Nov. 20 to Nov. 30.
Unit 12—that portion lying east of the Nabesna River and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 antlered bull.	Sept. 1 to Sept. 30.
Unit 12—Remainder—1 antlered bull.	Sept. 1 to Sept. 15.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1 to Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Nov. 1 to Jan. 31.
Wolf:	
5 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
15 beaver per season.	Nov. 1 to Apr. 15.
Coyote:	
No limit	Nov. 1 to Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1 to Feb. 28.
Lynx:	
No limit	Nov. 1 to Jan. 31.
Marten:	
No limit	Nov. 1 to Feb. 28.
Mink and Weasel:	
No limit	Nov. 1 to Feb. 28.
Muskrat:	
No limit	Sept. 20 to June 10.
Otter:	
No limit	Nov. 1 to Apr. 15.

Harvest limits	Open season
Wolf:	
No limit	Oct. 1 to Apr. 30.
Wolverine:	
No limit	Nov. 1 to Feb. 28.

(13) Unit 13.

(i) Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of Denali National Park at Windy; the drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north bank of the Talkeetna River; the drainages into the east bank of the Chickaloon River; the drainages of the Matanuska River above its confluence with the Chickaloon River:

(A) Unit 13(A) consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(B) Unit 13(B) consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning;

(C) Unit 13(C) consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(D) Unit 13(D) consists of that portion of Unit 13 south of Unit 13(A);

(E) Unit 13(E) consists of the remainder of Unit 13;

(ii) Within the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) lands within Mount McKinley National Park as it existed prior to December 2, 1980 are closed to subsistence. Subsistence uses as authorized by § ____.25(k)(13) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) use of motorized vehicles or pack animals for hunting is prohibited from Aug. 5—Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) except for access and transportation of harvested wildlife on Sourdough and Haggard Creeks, Meiers Lake trails, or other trails designated by the Board, the use of motorized vehicles for subsistence hunting, is prohibited in the Sourdough Controlled Use Area. The Sourdough Controlled Use Area consists of that portion of Unit 13(B) bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Meiers Creek Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Caribou:	
2 caribou by Federal registration permit only. Hunting within the Trans-Alaska Oil Pipeline right-of-way is prohibited. The right-of-way is identified as the area occupied by the pipeline (buried or above ground) and the cleared area 25 feet on either side of the pipeline.	Aug. 10 to Sept. 20, Jan. 5 to Mar. 31.
Sheep:	
Unit 13—excluding Unit 13(D) and the Tok and Delta Management Areas—1 ram with 7/8 curl horn.	Aug. 10 to Sept. 20.
Moose:	
1 antlered bull moose by Federal registration permit only; only 1 permit will be issued per household.	Aug. 25 to Sep. 20.
Coyote:	
2 coyotes	Sept. 1 to Feb. 15.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Dec. 15 to Jan. 15.
Wolf:	
10 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine. Public lands are closed to the taking of wolverine, except by eligible rural Alaska residents.	Sept. 1 to Jan. 31.

Harvest limits	Open season
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Mar. 31.
Trapping:	
Beaver:	
30 beaver per season.	Nov. 10 to Apr. 30.
Coyote:	
No limit	Nov. 10 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10 to Feb. 28.
Lynx:	
No limit	Dec. 15 to Jan. 15.
Marten:	
No limit	Nov. 10 to Jan. 31.
Mink and Weasel:	
No limit	Nov. 10 to Jan. 31.
Muskrat:	
No limit	Nov. 10 to June 10.
Otter:	
No limit	Nov. 10 to Mar. 31.
Wolf:	
No limit	Nov. 10 to Mar. 31.
Wolverine:	
2 wolverine. Public lands are closed to the taking of wolverine, except by eligible rural Alaska residents.	Nov. 10 to Jan. 31.

(14) Unit 14.

(i) Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south bank of the Talkeetna River:

(A) Unit 14(A) consists of drainages in Unit 14 bounded on the west by the Susitna River, on the north by Willow Creek, Peters Creek, and by a line from the head of Peters Creek to the head of the Chickaloon River, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;

(B) Unit 14(B) consists of that portion of Unit 14 north of Unit 14(A);

(C) Unit 14(C) consists of that portion of Unit 14 south of Unit 14(A);

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) the Fort Richardson Management Area, consisting of the Fort Richardson Military Reservation, is restricted to the subsistence taking of ungulates, bear, wolves, or wolverine by permit only;

(B) the Anchorage Management Area, consisting of all drainages south of Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek is closed to subsistence taking of wildlife for subsistence uses.

(iii) Unit-specific regulations;

(A) In Unit 14(A), bait may be used to hunt black bear between April 15 and May 25;

(B) In Unit 14(B), bait may be used to hunt black bear between April 15 and May 31.

Harvest limits	Open season
Hunting:	
Black Bear:	
Unit 14 (A) and (C)—1 bear.	July 1 to June 30.
Brown Bear:	
Unit 14(A)—1 bear every four regulatory years.	Sept. 15 to Oct. 10. May 1 to May 25.
Coyote:	
Unit 14 (A) and (C)—2 coyotes.	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 14—2 foxes	Nov. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
Unit 14(A)—5 hares per day.	July 1 to June 30.
Unit 14(C)—5 hares per day.	Sept. 8 to Apr. 30.
Lynx:	
2 lynx	Dec. 15 to Jan. 15.
Wolf:	
Unit 14(A)—4 wolves	Aug. 10 to Apr. 30.
Unit 14(C)—1 wolf	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 14(A)—15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Unit 14(C)—5 per day, 10 in possession.	Sept. 8 to Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 14(A)—10 per day, 20 in possession.	Aug. 10 to Mar. 31.
Unit 14(C)—10 per day, 20 in possession.	Sept. 8 to Mar. 31.
Remainder of Unit 14—20 per day, 40 in possession.	Aug. 10 to Mar. 31.
Trapping:	
Beaver:	
Unit 14(A)—30 beaver per season.	Nov. 10 to Apr. 30.
Unit 14(C)—that portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, the Twentymile River and the drainages of Knik River outside Chugach State Park—20 beaver per season.	Dec. 1 to Apr. 15.
Coyote:	
Unit 14(A)—No limit	Nov. 10 to Mar. 31.
Unit 14(C)—No limit	Nov. 10 to Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 14(A)—No limit	Nov. 10 to Feb. 28.
Unit 14(C)—1 fox	Nov. 10 to Feb. 28.
Lynx:	
No limit	Dec. 15 to Jan. 15.
Marten:	
No limit	Nov. 10 to Jan. 31.
Mink and Weasel:	
No limit	Nov. 10 to Jan. 31.
Muskrat:	
No limit	Nov. 10 to May 15.
Otter:	
Unit 14(A)—No limit	Nov. 10 to Mar. 31.
Unit 14(C)—No limit	Nov. 10 to Feb. 28.
Wolf:	
Unit 14(A)—No limit	Nov. 10 to Mar. 31.
Unit 14(C)—No limit	Nov. 10 to Feb. 28.
Wolverine:	
No limit	Nov. 10 to Feb. 28.

(15) Unit 15.

(i) Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet and Turnagain Arm from Gore Point to the point where longitude line 150° 00′ W. crosses the coastline of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150° 00′ W. to the mouth of the Russian River, then southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west of the Chugach National Forest boundary:

(A) Unit 15(A) consists of that portion of Unit 15 north of the Kenai River and Skilak Lake;

(B) Unit 15(B) consists of that portion of Unit 15 south of the Kenai River and Skilak Lake, and north of the Kasilof River, Tustumena Lake, Glacier Creek, and Tustumena Glacier;

(C) Unit 15(C) consists of the remainder of Unit 15;

(ii) The Skilak Loop Management Area, which consists of that portion of Unit 15(A) bounded by a line beginning

at the eastern most junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its western most junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning, is closed to the taking of wildlife, except that grouse and ptarmigan may be taken only from October 1 to March 1 by bow and arrow only;

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15;

(B) The Skilak Loop Wildlife Management Area is closed to subsistence trapping of furbearers;

(C) That portion of Unit 15(B) east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier is closed to the trapping of marten;

(D) Taking a red fox in Unit 15 by any means other than a steel trap or snare is prohibited.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Coyote:	
No limit	Sept. 1 to Apr. 30.
Hare (Snowshoe and Tundra):	
No limit.	July 1 to June 30.
Wolf:	
1 Wolf	Aug. 10 to Apr. 30.
Wolverine:	
1 Wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 15(A) and (B)—20 per day, 40 in possession.	Aug. 10 to Mar. 31.
Unit 15(C)—20 per day, 40 in possession.	Aug. 10 to Dec. 31.
Unit 15(C)—5 per day, 10 in possession.	Jan. 1 to Mar. 31.
Trapping:	
Beaver:	
20 Beaver per season.	Dec. 1 to Mar. 31.
Coyote:	
No limit	Nov. 10 to Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
1 Fox	Nov. 10 to Feb. 28.
Marten:	
Unit 15(B)—that portion east of the Kenai River, Skilak Lake, Skilak River and Skilak Glacier.	No open season.
Remainder of Unit 15—No limit.	Nov. 10 to Jan. 31.
Mink and Weasel:	
No limit	Nov. 10 to Jan. 31.
Muskrat:	
No limit	Nov. 10 to May 15.
Otter:	
Unit 15(A), (B)—No limit.	Nov. 10 to Jan. 31.
Unit 15(C)—No limit	Nov. 10 to Feb. 28.
Wolf:	
No limit	Nov. 10 to Feb. 28.
Wolverine:	
Unit 15(B) and (C)—No limit.	Nov. 10 to Feb. 28.

(16) Unit 16.

(i) Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its confluence with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kahiltna Glacier:

(A) Unit 16(A) consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;

(B) Unit 16(B) consists of the remainder of Unit 16;

(ii) The Mount McKinley National Park, as it existed prior to December 2, 1980, is closed to subsistence uses. Subsistence uses as authorized by § ____.25(k)(16) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Caribou:	
1 caribou	Aug. 10 to Oct. 31.
Moose:	
Unit 16(B)—Redoubt Bay Drainages south and west of, and including the Kustatan River drainage—1 antlered bull.	Sept. 1 to Sept. 15.
Remainder of Unit 16(B)—1 moose; however, antlerless moose may be taken only from Sept. 25 to Sept. 30 and from Dec. 1 to Feb. 28 by Federal registration permit only.	Sept. 1 to Sept. 30 Dec. 1 to Feb. 28.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Dec. 15 to Jan 15.
Wolf:	
4 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Mar. 31.
Trapping:	
Beaver:	
30 beaver per season.	Nov. 10 to Apr. 30.
Coyote:	
No limit	Nov. 10 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10 to Feb. 28.
Lynx:	
No limit	Dec. 15 to Jan. 15.
Marten:	
No limit	Nov. 10 to Jan. 31.
Mink and Weasel:	
No limit	Nov. 10 to Jan. 31.
Muskrat:	
No limit	Nov. 10 to June 10.
Otter:	
No limit	Nov. 10 to Mar. 31.
Wolf:	
No limit	Nov. 10 to Mar. 31.
Wolverine:	
No limit	Nov. 10 to Feb. 28.

(17) Unit 17.

(i) Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points

including Hagemeister Island and the Walrus Islands:

(A) Unit 17(A) consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17(B) consists of the Nushagak River drainage upstream from, and including the Mulchatna River drainage, and the Wood River drainage upstream from the outlet of Lake Beverley;

(C) Unit 17(C) consists of the remainder of Unit 17;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Except for aircraft and boats and in legally permitted hunting camps, the Upper Mulchatna Controlled Use Area consisting of Unit 17(B), is closed from Aug. 1–Nov. 1 to the use of any motorized vehicle for hunting ungulates, bear, wolves and wolverine, including transportation of hunters and parts of ungulates, bear, wolves or wolverine;

(B) The Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19 (A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Brown Bear:	
Unit 17(A) and that portion of Unit 17(B) draining into the Nuyakuk Lake and Tikchik Lake—1 bear.	Sept. 1 to May 31.
Remainder of Unit 17(B)—1 bear every four regulatory years.	Sept. 20 to Oct. 10. May 10 to May 25.
Unit 17(C)—1 bear every four regulatory years.	Sept. 10 to Oct. 10. Apr. 10 to May 25.
Caribou: Unit 17 (B) and (C)—that portion of 17(C) east of the Nushagak River—4 caribou; however, no more than 2 caribou may be taken Aug. 10 to Aug. 31, and no more than 1 caribou may be taken Sept. 1 to Nov. 30.	Aug. 10 to Mar. 31.
Sheep:	
1 ram with full curl horn or larger.	Aug. 10 to Sept. 20.
Moose:	
Unit 17(B)—that portion that includes all the Mulchatna River drainage upstream from and including the Chilchitna River drainage—1 antlered bull.	Sept. 1 to Sept. 20.
Remainder of Unit 17(B)—1 antlered bull; however, during the period Aug. 20 to Aug. 31 bull moose may be taken by State registration permit only.	Aug. 20 to Sept. 20. Dec. 1 to Dec. 31.
Unit 17(C)—that portion that includes the lowithla drainage and Sunshine Valley and all lands west of Wood River and south of Aleknagik Lake—1 antlered bull; however, during the period Aug. 20 to Aug. 31 bull moose may be taken by State registration permit only.	Aug. 20 to Sept. 15.
Remainder of Unit 17(C)—1 antlered bull; however, during the period Aug. 20 to Aug. 31 bull moose may be taken by State registration permit only.	Aug. 20 to Sept. 15. Dec. 1 to Dec. 31.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Arctic (Blue and White Phase):	
No limit	Dec. 1 to Mar. 15.
Fox, Red (including Cross, Black and Silver Phases):	
2 foxes	Sept. 1 to Feb. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Nov. 10 to Feb. 28.
Wolf:	
10 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharptailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
Unit 17(A)—20 beaver per season.	Jan. 1 to Jan. 31.
Unit 17 (B) and (C)—20 beaver per season.	Jan. 1 to Feb. 28.
Coyote:	
No limit	Nov. 10 to Mar. 31.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 10 to Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10 to Feb. 28.
Lynx:	
No limit	Nov. 10 to Feb. 28.
Marten:	
No limit	Nov. 10 to Feb. 28.
Mink and Weasel:	
No limit	Nov. 10 to Feb. 28.
Muskrat:	
No limit	Nov. 10 to June 10.
Otter:	
No limit	Nov. 10 to Mar. 31.
Wolf:	
No limit	Nov. 10 to Mar. 31.
Wolverine:	
No limit	Nov. 10 to Feb. 28.

(18) Unit 18.

(i) Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimiut and the drainages flowing into the Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthew, and adjacent islands between Cape Newenham and the Pastolik River;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) The Kalskag Controlled Use Area which consists of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, northwesterly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag is closed to the use of aircraft for hunting any ungulate, bear, wolf, or wolverine, including the transportation of any hunter and ungulate, bear, wolf, or wolverine part; however, this does not apply to transportation of a hunter or

ungulate, bear, wolf, or wolverine part by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the Area and points outside the Area;

(B) The Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations;

(A) A firearm may be used to take beaver under a trapping license in Unit 18 from Apr. 1–Jun. 10.

(B) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Brown Bear:	
1 bear	Sept 1 to May 31.
Caribou:	
Unit 18—that portion south of the Yukon River—Kilbuck caribou herd; rural Alaska residents domiciled in Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaaskiak, Napakiak, Kasiguk, Atmauthluak, Nunapitchuk, Tuntutuliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills, only. A Federal registration permit is required. The number of permits available for these hunts will be determined at a later date. The taking of caribou will be prohibited when a total unit harvest of 130 bulls has been reached in either or both hunts administered by the Federal Subsistence Board or ADF&G.	Dec. 15 to Jan. 9. Feb. 23 to Mar. 15.
Remainder of Unit 18	No open season.
Moose:	
Unit 18—that portion north and west of a line from Cape Romanzof to Kuzilvak Mountain, and then to Mountain Village, and west of, but not including, the Andreafsky River drainage; and those portions contained in the Kanektok and Goodnews drainages. Remainder of Unit 18—1 antlered moose. A 10-day hunt (1 bull, evidence of sex required) will be opened by announcement sometime between Dec. 1 and Feb. 28.	No open season. Sept. 1 to Sept. 30 Winter season to be announced.
Public lands in Unit 18 are closed to the hunting of moose, except by rural Alaska residents of Unit 18 and Upper Kalskag.	
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1 to Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Nov. 10 to Mar. 31.
Wolf:	
4 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to May 30.
Trapping:	
Beaver:	
No limit	Nov. 1 to June 10.
Coyote:	
No limit	Nov. 10 to Mar. 31.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 10 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10 to Mar. 31.
Lynx:	
No limit	Nov. 10 to Mar. 31.
Marten:	
No limit	Nov. 10 to Mar. 31.
Mink and Weasel:	
No limit	Nov. 10 to Jan. 31.
Muskrat:	
No limit	Nov. 10 to June 10.
Otter:	
No limit	Nov. 10 to Mar. 31.
Wolf:	
No limit	Aug. 10 to Apr. 30. Nov. 10 to Mar. 31.
Wolverine:	
No limit	Nov. 10 to Mar. 31.

(19) Unit 19.

(i) Unit 19 consists of the Kuskokwim River drainage upstream from Lower Kalskag:

(A) Unit 19(A) consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19(B);

(B) Unit 19(B) consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(C) Unit 19(C) consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.26 miles south of the northwest corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(D) Unit 19(D) consists of the remainder of Unit 19;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence uses. Subsistence uses as authorized by § _____.25(k)(19) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) The Upper Kuskokwim Controlled Use Area, which consists of that portion of Unit 19(D) upstream from the mouth of Big River including the drainages of the Big River, Middle Fork, South Fork, East Fork, and Tonzona River, and bounded by a line following the west bank of the Swift Fork (McKinley Fork) of the Kuskokwim River to 152°50′ W. long., then north to the boundary of Denali National Preserve, then following the western boundary of Denali National Preserve north to its intersection with the Minchumina-Telida winter trail, then west to the crest of Telida Mountain, then north along the crest of Munsatli Ridge to elevation 1,610, then northwest to Dyckman Mountain and following the crest of the divide between the Kuskokwim River and the Nowitna drainage, and the divide between the Kuskokwim River and the Nixon Fork River to Loaf bench mark on Halfway Mountain, then south to the west side of Big River drainage, the point of beginning, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area, or between a publicly owned airport within the area and points outside the area;

(C) The Western Alaska Brown Bear Management Area, which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, is open to brown bear hunting by State registration permit in lieu of a resident tag; no resident tag is required for taking brown bears in the Western Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Brown Bear:	
Unit 19(A) and (B) that portion which is downstream of and including the Aniak River drainage—1 bear.	Sept. 1 to May 31.
Remainder of Unit 19(A), (B), and (D)—1 bear every four regulatory years.	Sept. 10 to May 25.
Caribou:	
Unit 19(A) north of Kuskokwim River—1 caribou.	Aug. 10 to Sept. 30. Nov. 1 to Feb. 28.
Unit 19(A) south of the Kuskokwim River, and Unit 19(B) (excluding rural Alaska residents of Lime Village)—4 caribou.	Aug. 10 to Mar. 31.
Unit 19(C)—1 caribou	Aug. 10 to Oct. 10.
Unit 19(D) south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou.	Nov. 1 to Jan. 31.
Remainder of Unit 19(D)—1 caribou.	Aug. 10 to Sept. 30.
Unit 19—Rural Alaska residents domiciled in Lime Village only; no individual harvest limit but a village harvest quota of 200 caribou; cows and calves may not be taken from Apr. 1 to Aug. 9.	July 1 to June 30.
Sheep:	
1 ram with 7/8 curl	Aug. 10 to Sept. 20.
Moose:	
Unit 19—Rural Alaska residents of Lime Village only—No individual harvest limit, but a village harvest quota of 40 moose; either sex.	July 1 to June 30.
Unit 19(A)—1 moose; however, antlerless moose may be taken only from Jan. 1 to Jan. 10 and Feb. 1 to Feb. 5.	Sept. 5 to Sept. 25. Jan. 1 to Jan. 10. Feb. 1 to Feb. 5.
Unit 19(B)—1 antlered bull.	Sept. 1 to Sept. 30.
Unit 19(C)—1 antlered bull.	Sept. 1 to Oct. 10.
Unit 19(D)—that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 antlered bull.	Sept. 1 to Sept. 30.
Unit 19(D)—remainder of the Upper Kuskokwim Controlled Use Area—1 bull.	Sept. 1 to Sept. 30. Dec. 1 to Feb. 28.
Remainder of Unit 19(D)—1 antlered bull.	Sept. 1 to Sept. 30. Dec. 1 to Dec. 15.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1 to Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Nov. 1 to Feb. 28.
Wolf:	
10 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharptailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow, and Whitetailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
No limit	Nov. 1 to Apr. 15.
Coyote:	
No limit	Nov. 1 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov 1. to Mar. 31.
Lynx:	
No limit	Nov. 1 to Feb. 28.
Marten:	
No limit	Nov. 1 to Feb. 28.
Mink and Weasel:	
No limit	Nov. 1 to Feb. 28.
Muskrat:	
No limit	Nov. 1 to June 10.
Otter:	
No limit	Nov. 1 to Apr. 15.
Wolf:	
No limit	Nov. 1 to Mar. 31.
Wolverine:	
No limit	Nov. 1 to Mar. 31.

(20) Unit 20.

(i) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages and the Tanana River drainage north of Unit 13 and

downstream from the east bank of the Robertson River:

(A) Unit 20(A) consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River;

(B) Unit 20(B) consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(C) Unit 20(C) consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(D) Unit 20(D) consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding the Banner Creek drainage;

(E) Unit 20(E) consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(F) Unit 20(F) consists of the remainder of Unit 20;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) Lands within Mount McKinley National Park as it existed prior to December 2, 1980, are closed to subsistence uses. Subsistence uses as authorized by § _____.25(k)(20) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) Use of motorized vehicles or pack animals for hunting is prohibited from Aug. 5–Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft, boats, licensed highway vehicles, and snowmobiles. The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area;

(D) The Glacier Mountain Controlled Use Area, which consists of that portion of Unit 20(E) bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway, is closed to the use of any motorized vehicle for hunting from August 5–September 20; however, this does not prohibit motorized access via, or transportation of harvested wildlife on, the Taylor Highway or any airport;

(E) The Minto Flats Management Area, which consists of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 118, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River three miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning, is open to moose hunting by permit only;

(F) The Fairbanks Management Area, which consists of the Goldstream subdivision OSE ¼ SE ¼, Section 28 and Section 33, Township 2 North, Range 1 West, Fairbanks Meridian) and that portion of Unit 20(B) bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to the divide between Rosie Creek and Cripple Creek, then down Cripple Creek to its confluence with Ester Creek, then up Ester Creek to its confluence with Ready Bullion Creek, then up Ready Bullion Creek to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its intersection with the Trans-Alaska Pipeline, then southerly along the pipeline right-of-way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning, is open to moose hunting by bow and arrow only;

(G) The Ferry Trail Management Area, which consists of that portion of Unit 20(A) bounded on the north by the Rex Trail; on the west by the east bank of the Nenana River from its intersection with the Rex Trail south to the divide forming the north boundary of the Lignite Creek drainage; on the south by that divide easterly and southerly to the headwaters of Sanderson Creek at Usibelli Peak, then along a southwesterly line to the confluence of Healy Creek and Coal Creek, then upstream easterly along the south bank of Healy Creek to the north fork of Healy Creek, then along the north fork of Healy Creek to its headwaters; on the east by a straight line from the headwaters of Healy Creek to the headwaters of Dexter Creek, then along Dexter Creek to the Totatlanika River, then down the east bank of the Totatlanika River to the Rex Trail is open to caribou hunting by permit only.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30;

(B) Trapping of wolves in Unit 20(E) during March, April or October with a steel trap, or with a snare smaller than 3X, is prohibited.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Brown Bear:	
Unit 20—except Unit 20(E)—1 bear every four regulatory years.	Sept. 1 to May 31.
Caribou:	
Unit 20(E)—that portion drained by the Yukon River downstream from and including the Seventy-mile and Charley Rivers, the North Fork Fortymile River upstream from and including Independence Creek, the Middle Fork Fortymile River upstream from Fish Creek, and the Mosquito Fork Fortymile River upstream from and including Ketchumstuck Creek—1 caribou.	Aug. 10 to Sep 30. Dec. 1 to Feb. 28.
Unit 20(E)—Remainder of Unit 20(E) accessible by the Taylor Highway and associated trails, as described in the permit—1 caribou by Federal registration permit only; however, only bulls may be taken prior to Dec. 1.	Aug. 10 to Sept. 30. Dec. 1 to Feb. 28.
Unit 20(F)—South of the Yukon River and west of the Dalton Highway—1 bull.	Aug. 10 to Sept. 20.
Unit 20(F)—Tozitna River drainage—1 caribou; however, only bull caribou may be taken Aug. 10—Sept. 30.	Aug. 10 to Sept. 30. Nov. 26 to Dec. 10. Mar. 1 to Mar. 15.
Remainder of Unit 20(F)—1 bull.	Aug. 10 to Sept. 30.
Moose:	
Unit 20(A)—the Ferry Trail Management Area—1 bull with spike-fork or 50-inch antlers.	Sept. 1 to Sept. 20.
Remainder of Unit 20(A)—1 antlered bull.	Sept. 1 to Sept. 20.
Unit 20(B)—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only.	Sept. 1 to Sept. 20. Jan. 10 to Feb. 28.
Unit 20(B)—the drainage of the Middle Fork of the Chena River and that portion of the Salcha River Drainage upstream from and including Goose Creek—1 antlered bull.	Sept. 1 to Sept. 20.
Remainder of Unit 20(B)—1 antlered bull.	Sept. 1 to Sept. 20.
Unit 20(C)—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1 to Sept. 30.
Unit 20(E)—that portion drained by the Ladue, Sixty-mile, and Forty-mile Rivers (all forks) from Mile 9½ to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 antlered bull.	Sept. 1 to Sept. 15.
Remainder of Unit 20(E)—that portion draining into the Yukon River upstream from and including the Charley River drainage to and including the Boundary Creek drainages and the Taylor Highway from mile 145 to Eagle—1 antlered bull.	Sept. 5 to Sept. 25.
Unit 20(F)—that portion within the Dalton Highway Corridor Management Area—1 antlered bull by Federal registration permit only.	Sept. 1 to Sept. 25.
Remainder of Unit 20(F)—1 antlered bull.	Sept. 1 to Sept. 25.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1 to Mar. 15.
Hare (Snowshoe and Tundra):	
No limit.	July 1 to June 30.
Lynx:	
Unit 20(E)—2 lynx	Nov. 1 to Jan. 31.
Remainder of Unit 20—2 lynx.	Dec. 1 to Jan. 31.
Wolf:	
10 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 20(D)—that portion south of the Tanana River and west of the Johnson River—15 per day, 30 in possession, provided that not more than 5 per day and 10 in possession are sharp-tailed grouse.	Aug. 25 to Mar. 31.
Unit 20—Remainder—15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 20—those portions within five miles of Alaska Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary) and that portion of Alaska Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession.	Aug. 10 to Mar. 31.
Unit 20—Remainder—20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
Unit 20(A)—25 beaver.	Nov. 1 to Apr. 15.
Unit 20(B), Unit 20(C), and Unit 20(E)—25 beaver.	Nov. 1 to Apr. 15.
Unit 20(D)—15 beaver.	Feb. 1 to Apr. 15.
Unit 20(F)—50 beaver.	Nov. 1 to Apr 15.
Coyote:	
Unit 20(E)—No limit	Nov. 1 to Feb. 28.
Remainder Unit 20—No limit	Nov. 1 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1 to Feb. 28.
Lynx:	
Unit 20(E)—No limit	Nov. 1 to Jan. 31.
Remainder Unit 20—No limit.	Dec. 1 to Jan. 31.
Marten:	
No limit	Nov. 1 to Feb. 28.
Mink and Weasel:	
No limit	Nov. 1 to Feb. 28.
Muskrat:	
Unit 20(E)—No limit	Sept. 20 to June 10.
Remainder of Unit 20—No limit.	Nov. 1 to June 10.

Harvest limits	Open season
Otter:	
No limit	Nov. 1 to Apr. 15.
Wolf:	
Unit 20(E)—No limit	Oct. 1 to Apr. 30.
Remainder of Unit 20—No limit.	Nov. 1 to Mar. 31.
Wolverine:	
No limit	Nov. 1 to Feb. 28.

(21) Unit 21.

(i) Unit 21 consists of drainages into the Yukon River upstream from Paimiut to, but not including the Tozitna River drainage on the north bank, and to, but not including the Tanana River drainage on the south bank; and excluding the Koyukuk River upstream and including from the Dulbi River drainage:

(A) Unit 21(A) consists of the Innoko River drainage upstream from and including the Iditarod River drainage, and the Nowitna River drainage upstream from the Little Mud River;

(B) Unit 21(B) consists of the Yukon River drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Nowitna River drainage upstream from the Little Mud River, and excluding the Melozitna River drainage upstream from Grayling Creek;

(C) Unit 21(C) consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage;

(D) Unit 21(D) consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(E) Unit 21(E) consists of the Yukon River drainage from Paimiut upstream to, but not including the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57′ N. lat., 156° 41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(B) The Paradise Controlled Use Area, which consists of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stanstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Iditarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the area and points outside the area.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) A firearm may be used to take beaver with a trapping license in Unit 21(E) from Apr. 1—June 1.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Brown Bear:	
1 bear every four regulatory years.	Sept. 1 to May 31.
Caribou:	
Unit 21(A), (B), (C), and (E)—1 caribou.	Aug. 10 to Sept. 30.
Unit 21(D)—North of the Yukon River and east of the Koyukuk River 1 caribou; however, 2 additional caribou may be taken during a winter season to be announced.	Aug. 10 to Sept. 30. Winter season to be announced.
Unit 21(D)—Remainder (Western Arctic Caribou herd)—5 caribou per day; however, cow caribou may not be taken May 16–June 30..	July 1 to June 30.
Moose:	
Unit 21(A)—1 antlered bull.	Sept. 5 to Sept. 30. Nov. 1 to Nov. 30.
Unit 21(B) and (C)—1 antlered bull.	Sept. to 5 to Sept. 25.
Unit 21(D)—that portion of the Koyukuk Controlled Use Area within the boundary of the Koyukuk National Wildlife Refuge, 1 moose; however, antlerless moose may be taken only from Sept. 21—Sept. 25 and Feb. 1—Feb. 5; moose may not be taken within one-half mile of the Yukon River during the February season.	Sept. 1 to Sept. 25. Feb. 1 to Feb. 5.
Unit 21(D)—Remainder—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Feb. 1–Feb. 5. Moose may not be taken within one-half mile of the Yukon River during the February season.	Sept. 5 to Sept. 25. Feb. 1 to Feb. 5.
Unit 21(E)—1 moose; however, only antlered bulls may be taken from Sept. 5–Sept. 25.	Sept. 5 to Sept. 25. Feb. 1 to Feb. 10.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1 to Mar 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Nov. 1 to Feb. 28.

Harvest limits	Open season
Wolf:	
10 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
Unit 21(E)—No Limit	Nov. 1 to June 1.
Remainder of Unit 21—No Limit	Nov. 1 to Apr. 15.
Coyote:	
No limit	Nov. 1 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1 to Feb. 28.
Lynx:	
No limit	Nov. 1 to Feb. 28.
Marten:	
No limit	Nov. 1 to Feb. 28.
Mink and Weasel:	
No limit	Nov. 1 to Feb. 28.
Muskrat:	
No limit	Nov. 1 to June 10.
Otter:	
No limit	Nov. 1 to Apr. 15.
Wolf:	
No limit	Nov. 1 to Mar. 31.
Wolverine:	
No limit	Nov. 1 to Mar. 31.

(22) Unit 22.

(i) Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers:

(A) Unit 22(A) consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands;

(B) Unit 22(B) consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage;

(C) Unit 22(C) consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands;

(D) Unit 22(D) consists of that portion of Unit 22 draining into the Bering Sea north of, but not including, the Tisuk River to and including Cape York, and St. Lawrence Island;

(E) Unit 22(E) consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding, the Goodhope River drainage, and including Little Diomede Island and Fairway Rock.

(ii) Unit-specific regulations;

(A) A firearm may be used to take beaver with a trapping license in Unit 22 during the established seasons.

(B) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Brown Bear:	
Unit 22 (C)—1 bear every four regulatory years.	Sept. 1 to Oct. 31. May 10 to May 25.
Remainder of Unit 22—1 bear every four regulatory years.	Sept. 1 to Oct. 31. Apr. 15 to May 25.
Caribou:	
Unit 22(A) and (B)—5 caribou per day; however, cow caribou may not be taken May 16 to June 30.	July 1 to June 30.
Moose:	
Unit 22(A)—1 antlered bull.	Aug. 1 to Sept. 30. Dec. 1 to Jan. 31.
Unit 22(B)—1 moose; however, antlerless moose may be taken only from Dec. 1 to Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1 to Jan. 31.
Unit 22(C)—1 antlered bull.	Sept. 1 to Sept. 14.
Unit 22(D)—1 moose; however, antlerless moose may be taken only from Aug. 1 to Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1 to Mar. 31.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes	Nov. 1 to Apr. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Nov. 1 to Apr. 15.
Wolf:	
No limit	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.

Harvest limits	Open season
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
Unit 22(A) and (B)—50 beaver.	Nov. 1 to June 10.
Unit 22(C), (D), and (E)—50 beaver.	Nov. 1 to Apr. 15.
Coyote:	
No limit	Nov. 1 to Apr. 15.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 1 to Apr. 15.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1 to Apr. 15.
Lynx:	
No limit	Nov. 1 to Apr. 15.
Marten:	
No limit	Nov. 1 to Apr. 15.
Mink and Weasel:	
No limit	Nov. 1 to Jan. 31.
Muskrat:	
No limit	Nov. 1 to June 10.
Otter:	
No limit	Nov. 1 to Apr. 15.
Wolf:	
No limit	Nov. 1 to Apr. 15.
Wolverine:	
No limit	Nov. 1 to Apr. 15.

(23) Unit 23.

(i) Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Noatak Controlled Use Area, which consists of that portion of Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Kugururok River, and extending easterly along the Noatak River to the mouth of Sapun Creek, is closed for the period August 20—September 20 to the use of aircraft in any manner either for hunting of ungulates, bear, wolves, or wolverine, or for transportation of hunters or harvested species;

(B) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24 west of the Dalton Highway Corridor Management Area, and Unit 26(A) is open to brown bear hunting by State registration permit in

lieu of a resident tag; no resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting; aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations;

(A) Motor-driven boats or snowmobiles may be used to take caribou;

(B) Swimming caribou may be taken with a firearm using rimfire cartridges;

(C) A firearm may be used to take beaver with a trapping license in all of Unit 23 from Nov. 1 to Jun. 10.

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Brown Bear:	
Unit 23—except the Baldwin Peninsula north of the Arctic Circle—1 bear.	Sept. 1 to May 31.
Remainder of Unit 23—1 bear every four regulatory years.	Sept. 1 to Oct. 10. Apr. 15 to May 25.
Caribou:	
5 caribou per day; however, cow caribou may not be taken May 16 to June 30.	July 1 to June 30.
Sheep:	
Unit 23—that portion south and east of the Noatak River, excluding Gates of the Arctic National Park, 1 ram with 7/8 curl horn or larger. A Federal registration permit is required. A harvest quota will be announced before the permit hunt.	Aug. 10 to Sept. 20.
Unit 23—that portion south and east of the Noatak River, excluding Gates of the Arctic National Park, 1 sheep. The hunt will be closed when 30 sheep have been taken. From Oct. 1 to Apr. 30, public lands will be closed to the taking of sheep, except by rural Alaska residents of Unit 23 living north of the Arctic Circle.	Oct. 1 to Apr. 30.
Moose:	
Unit 23—that portion north and west of and including the Kivalina River drainage—1 moose; no person may take a cow accompanied by a calf.	July 1 to Mar. 31.
Unit 23—that portion lying within the Noatak River drainage—1 moose; however, antlerless moose may be taken only from Nov. 1 to Mar. 31; no person may take a cow accompanied by a calf.	Aug. 1 to Mar. 31.
Remainder of Unit 23—1 moose; no person may take a cow accompanied by a calf.	Aug. 1 to Mar. 31.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Arctic (Blue and White Phase):	
2 foxes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1 to Mar. 15.
Hare: (Snowshoe and Tundra)	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Dec. 1 to Jan. 15.
Wolf:	
10 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
Unit 23—the Kobuk and Selawik River drainages—50 beaver.	Nov. 1 to June 10.
Remainder of Unit 23—30 beaver.	Nov. 1 to June 10.
Coyote:	
No limit	Nov. 1 to Apr. 15.
Fox, Arctic (Blue and White Phase):	
No limit	Nov. 1 to Apr. 15.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1 to Apr. 15.
Lynx:	
3 lynx	Dec. 1 to Jan. 15.
Marten:	
No limit	Nov. 1 to Apr. 15.
Mink and Weasel:	
No limit	Nov. 1 to Jan. 31.
Muskrat:	
No limit	Nov. 1 to June 10.
Otter:	
No limit	Nov. 1 to Apr. 15.
Wolf:	
No limit	Nov. 1 to Apr. 15.
Wolverine:	
No limit	Nov. 1 to Apr. 15.

(24) Unit 24.

(i) Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft, boats, licensed highway vehicles, and snowmobiles. The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area;

(B) The Kanuti Controlled Use Area, which consists of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR, is closed during moose-hunting seasons to the use of aircraft for hunting moose,

including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area;

(C) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65°57′ N. lat., 156° 41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek, then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(D) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24 west of the Dalton Highway Corridor Management Area, and Unit 26(A), is open to brown bear hunting by State registration permit in lieu of a resident tag. No resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Unit 24—that portion west of the Dalton Highway Corridor Management Area—1 bear.	Sept. 1 to May 31.
Remainder of Unit 24—1 bear every four regulatory year..	Sept. 1 to May 31.
Caribou:	
Unit 24—the Kanuti River drainage upstream from Kanuti, Chalatna Creek, the Fish Creek drainage (including Bonanza Creek)—1 bull.	Aug. 10 to Sept. 30.
Remainder of Unit 24—5 caribou per day; however, cow caribou may not be taken May 16 to June 30.	July 1 to June 30.
Sheep:	
Unit 24—that portion within the Gates of the Arctic National Park—3 sheep.	Aug. 1 to Apr. 30.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10 to Sept. 20.
Remainder of Unit 24—1 ram with 7/8 curl horn or larger.	Aug. 10 to Sept. 20.
Moose:	
Unit 24—that portion within the Koyukuk Controlled Use Area—1 moose; however, antlerless moose may be taken only from Sept. 21 to Sept. 25, Dec. 1 to Dec. 10, and Mar. 1 to Mar. 10.	Sept. 5 to Sept. 25. Dec. 1 to Dec. 10. Mar. 1 to Mar. 10.
Unit 24—that portion that includes the John River drainage upstream from, but excluding the Hunt Fork drainage—1 moose.	Aug. 1 to Dec. 31.
Unit 24—the Alatna River drainage upstream from and including Helpmejack Creek drainage, the John River drainage upstream from and including the Malemute Fork drainage and downstream from and including the Hunt Fork drainage, the Wild River drainage upstream from and including the Michigan Creek drainage, and the North Fork Koyukuk River drainage north of the Bettles/Coldfoot winter trail—1 moose; however, antlerless moose may be taken only from Sept. 21 to Sept. 25 and Mar. 1 to Mar. 10.	Aug. 25 to Sept. 25. Mar. 1 to Mar. 10.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 antlered bull by Federal registration permit only.	Aug. 25 to Sept. 25.
Remainder of Unit 24—1 antlered bull. Public lands in the Kanuti Controlled Use Area are closed to taking of moose, except by eligible rural Alaska residents.	Aug. 25 to Sept. 25.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1 to Mar. 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
2 lynx	Nov. 1 to Feb. 28.
Wolf:	
10 wolves	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharptailed):	
15 per day, 30 in possession.	Aug. 10 to Apr. 30.

Harvest limits	Open season
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
No limit	Nov. 1 to Apr. 15.
Coyote:	
No limit	Nov. 1 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1 to Feb. 28.
Lynx:	
No limit	Nov. 1 to Feb. 28.
Marten:	
No limit	Nov. 1 to Feb. 28.
Mink and Weasel:	
No limit	Nov. 1 to Feb. 28.
Muskrat:	
No limit	Nov. 1 to June 10.
Otter:	
No limit	Nov. 1 to Apr. 15.
Wolf:	
No limit	Nov. 1 to Mar. 31.
Wolverine:	
No limit	Nov. 1 to Mar. 31.

(25) Unit 25.

(i) Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River:

(A) Unit 25(A) consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjik Creek, the Coleen River drainage, and the Old Crow River drainage;

(B) Unit 25(B) consists of the Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainages into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(C) Unit 25(C) consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20(E) boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(D) Unit 25(D) consists of the remainder of Unit 25;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft, boats, licensed highway vehicles, and snowmobiles. The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area;

(B) The Arctic Village Sheep Management Area, which encompasses approximately 567,680 acres north and west of Arctic Village. The area consists of that portion of Unit 25(A) which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Cane Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake and a larger tributary, to a major, unnamed tributary located directly south of Little Njoo Mountain; the boundary leaves the river and continues upstream along this unnamed tributary, northwesterly, for approximately 6 miles where the stream forks into two roughly equal drainages; the boundary follows the eastern most fork, proceeding almost due north to the headwaters and intersects the Continental Divide; the boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 20 miles along the divide to an unnamed peak, elevation 6,460, located north of the most southerly major fork of the headwaters of Cane Creek; then the boundary continues due south 1.5 miles to the high point of a saddle, then down the headwaters tributary to Cane Creek and down the creek to the confluence of Cane Creek and the East Fork Chandalar. Sheep hunting in this area is restricted to residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik.

(iii) Unit-specific regulations;

(A) Bait may be used to hunt black bear between April 15 and June 30.

(B) [Reserved]

Harvest limits	Open season
Hunting:	
Black Bear:	
3 bears	July 1 to June 30.
Caribou:	
Unit 25(A), (B), and the remainder of Unit 25(D)—10 caribou; however, no more than 5 caribou may be transported from these units per regulatory year.	July 1 to Apr. 30.
Unit 25(C)—1 bull	Aug. 10 to Sept. 20. Feb. 15 to Mar. 15.
Unit 25 (D)—that portion of Unit 25(D) drained by the west fork of the Dall River west of 150° W. long.—1 bull.	Aug. 10 to Sept. 30.
Sheep:	
Unit 25(A)—that portion within the Dalton Highway Corridor Management Area—3 sheep by Federal registration permit only; the Aug. 10—Sept. 20 season is restricted to 1 ram with 7/8 curl horn or larger.	Oct. 1 to Apr. 30. Aug. 10 to Sept. 20.
Units 25(A)—Arctic Village Sheep Management Area—2 rams by Federal registration permit only. Public lands are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik and Chalkytsik.	Aug. 10 to Apr. 30.
Remainder of Unit 25(A)—3 sheep by Federal registration permit only.	Aug. 10 to Apr. 30.
Moose:	
Unit 25(A)—that portion within the Dalton Highway Management Area—1 antlered bull by Federal registration permit only.	Aug. 25 to Sept. 25. Dec. 1 to Dec. 10.
Remainder of Unit 25(A)—1 antlered bull.	Aug. 25 to Sept. 25. Dec. 1 to Dec. 10.
Unit 25(B)—that portion within the Porcupine River drainage upstream from, but excluding the Coleen River drainage—1 antlered bull.	Aug. 25 to Sept. 30. Dec. 1 to Dec. 10.

Harvest limits	Open season
Remainder of Unit 25(B)—1 antlered bull.	Aug. 25 to Sept. 25. Dec. 1 to Dec. 15.
Unit 25(C)—1 antlered bull.	Sept. 1 to Sept. 15.
Unit 25(D) (West)—that portion lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25(D) boundary—1 antlered bull by a Federal registration permit. Alternate permits allowing for designated hunters are available to qualified applicants who reside in Beaver, Birch Creek, or Stevens Village. Moose hunting on public land in this portion of Unit 25(D) (West) is closed at all times except for residents of Beaver, Birch Creek and Stevens Village during seasons identified above. The moose season will be closed when 30 antlered moose have been harvested in the entirety of Unit 25(D) (West).	Aug. 25 to Sept. 25. Nov. 1 to Dec. 20.
Remainder of Unit 25(D)—1 antlered moose.	Aug. 25 to Sept. 25. Dec. 1 to Dec. 20.
Coyote:	
2 coyotes	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1 to Mar 15.
Hare (Snowshoe and Tundra):	
No limit	July 1 to June 30.
Lynx:	
Unit 25(C)—2 lynx	Dec. 1 to Jan. 31.
Remainder of Unit 25—2 lynx.	Nov. 1 to Feb. 28.
Wolf:	
Unit 25(A)—No limit	Aug. 10 to Apr. 30.
Remainder of Unit 25—10 wolves.	Aug. 10 to Apr. 30.
Wolverine:	
1 wolverine	Sept. 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharptailed):	
Unit 25(C)—15 per day, 30 in possession.	Aug. 10 to Mar. 31.
Remainder of Unit 25—15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow, and Whitetailed):	
Unit 25(C)—those portions within 5 miles of Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary), and that portion of Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession.	Aug. 10 to Mar. 31.
Remainder of Unit 25—20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Beaver:	
Unit 25(C)—25 beaver.	Nov. 1 to Apr. 15.
Remainder of Unit 25—50 beaver.	Nov. 1 to Apr. 15.
Coyote:	
No limit	Nov. 1 to Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1 to Feb. 28.
Lynx:	
Unit 25(C)—No limit	Dec. 1 to Jan. 31.
Remainder of Unit 25—No limit.	Nov. 1 to Feb. 28.
Marten:	
No limit	Nov. 1 to Feb. 28.
Mink and Weasel:	
No limit	Nov. 1 to Feb. 28.
Muskrat:	
No limit	Nov. 1 to June 10.
Otter:	
No limit	Nov. 1 to Apr. 15.
Wolf:	
No limit	Nov. 1 to Mar. 31.
Wolverine:	
Unit 25(C)—No limit	Nov. 1 to Feb. 28.
Remainder of Unit 25—No limit.	Nov. 1 to Mar. 31.

(26) Unit 26.

(i) Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border including the Firth River drainage within Alaska:

(A) Unit 26(A) consists of that portion of Unit 26 lying west of the Itkillik River drainage and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(B) Unit 26(B) consists of that portion of Unit 26 east of Unit 26(A), west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(C) Unit 26(C) consists of the remainder of Unit 26;

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Unit 26(A) Controlled Use Area, which consists of Unit 26(A), is closed to the use of aircraft in any manner for moose hunting, including transportation of moose hunters or parts of moose from Aug. 1—Aug. 31. No hunter may take or transport a moose, or part of a moose in Unit 26(A) after having been transported by aircraft into the unit. However, this does not apply to transportation of moose hunters or moose parts by regularly scheduled flights to and between villages by carriers that normally provide scheduled service to this area, nor does it apply to transportation by aircraft to or between publicly owned airports;

(B) The Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, is closed to the use of motorized vehicles, except aircraft, boats, licensed highway vehicles, and snowmobiles. The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. The use of licensed highway vehicles is limited only to designated roads within the Dalton Highway Corridor Management Area;

(C) The Northwest Alaska Brown Bear Management Area, which consists of those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24 west of the Dalton Highway Corridor Management Area,

and Unit 26(A), is open to brown bear hunting by State registration permit in lieu of a resident tag. No resident tag is required for taking brown bears in the Northwest Alaska Brown Bear Management Area, provided that the hunter has obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

Harvest limits	Open season
Hunting:	
Black Bear: 3 bears	July to June 30.
Brown Bear:	
Unit 26(A)—1 bear	Sept. 1 to May 31.
Remainder of Unit 26—1 bear every four regulatory years.	Sept. 1 to May 31.
Caribou:	
Unit 26(A)—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1 to June 30.
Unit 26(B)—5 caribou; however, cow caribou may be taken only from Oct. 1–Apr. 30.	July 1 to June 30.
Unit 26(C)—10 caribou; however, not more than 5 caribou may be transported from Unit 26(C) per regulatory year.	July 1 to Apr. 30.
Sheep:	
Unit 26(A)—those portions within the Gates of the Arctic National Park—3 sheep.	Aug. 1 to Apr. 30.
Unit 26(B)—that portion within the Dalton Highway Corridor Management Area—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10 to Sept. 20.
Remainder of Unit 26(A) and (B)—including the Gates of the Arctic National Preserve—1 ram with 7/8 curl horn or larger.	Aug. 10 to Sept. 20.
Unit 26(C)—3 sheep per regulatory year; the Aug. 10–Sept. 20 season is restricted to 1 ram with 7/8 curl horn or larger. A Federal registration permit is required for the Oct. 1–Apr. 30 season, except for residents of the City of Kaktovik. Kaktovik residents may harvest sheep in accordance with a Federal community harvest strategy for Unit 26(C) which provides for take of up to two harvest limits of 3 sheep by designated hunter. Procedures for Federal permit issuance and community reporting will be mutually developed by Kaktovik and Federal representatives prior to the season opening.	Aug. 10 to Sept. 20. Oct. 1 to Apr. 30.
Moose:	
Unit 26(A)—1 moose; however, no person may take a cow accompanied by a calf.	Aug. 1 to Dec. 31.
Unit 26(B)—that portion within two miles of the Dalton Highway.	No open season.
Unit 26(B) Remainder and (C)—1 moose.	Aug. 1 to Dec. 31.
Musk Oxen: Unit 26(C)—1 bull by Federal registration permit only; up to 10 permits may be issued to rural Alaska residents of the village of Kaktovik only. Public lands are closed to the taking of musk oxen, except by rural Alaska residents of the village of Kaktovik.	Oct. 1 to Oct. 31. Mar. 1 to Mar. 31.
Coyote: 2 coyotes	Sept. 1 to Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes.	Sept. 1 to Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 26(A) and (B)—10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1 to Mar. 15.
Unit 26(C)—10 foxes	Nov. 1 to Apr 15.
Hare (Snowshoe and Tundra): No limit.	July 1 to June 30.
Lynx: 2 Lynx	Nov. 1 to Apr. 15.
Wolf: No limit	Aug. 10 to Apr. 30.
Wolverine: 1 wolverine	Sept 1 to Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession.	Aug. 10 to Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession.	Aug. 10 to Apr. 30.
Trapping:	
Coyote: No limit	Nov. 1 to Apr. 15.
Fox, Arctic (Blue and White Phase): No limit.	Nov. 1 to Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit.	Nov. 1 to Apr. 15.
Lynx: No limit	Nov. 1 to Apr. 15.
Marten: No limit	Nov. 1 to Apr. 15.
Mink and Weasel: No limit	Nov. 1 to Jan. 31.
Muskrat: No limit	Nov. 1 to June 10.
Otter: No limit	Nov. 1 to Apr. 15.
Wolf: No limit	Nov. 1 to Apr. 15.
Wolverine: No limit	Nov. 1 to Apr. 15.

Ronald B. McCoy,

Interim Chair, Federal Subsistence Board.

Michael A. Barton,

Regional Forester, USDA-Forest Service.

[FR Doc. 93–21154 Filed 9–1–93; 8:45 am]

BILLING CODE 3410–11–P, 4310–55–P

federal register

Thursday
September 2, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Petition for Acknowledgment of Existence as an Indian Tribe; Chukchansi Yokotch Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Chukchansi Yokotch Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Chukchansi Yokotch Tribe, c/o Ms. Lynda L. Appling, 4962 Watt Road, Mariposa, California 95338–9743, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on May 25, 1993, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under section 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

FOR FURTHER INFORMATION CONTACT: Holly Reckord, (202) 208–3592.

Dated: July 30, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–21317 Filed 9–1–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Thursday
September 2, 1993

Part IV

Department of Education

National Institute on Disability and Rehabilitation Research; Knowledge Dissemination and Utilization Program; Proposed Funding Priority; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Knowledge Dissemination and Utilization Program Proposed Funding Priority

AGENCY: Department of Education.

ACTION: Notice of proposed funding priority for fiscal years 1994–1995 for the Knowledge Dissemination and Utilization Program.

SUMMARY: The Secretary proposes a funding priority for the Knowledge Dissemination and Utilization (D&U) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1994–1995. The Secretary takes this action to ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and others is utilized fully to improve the lives of individuals with disabilities and their families.

DATES: Comments must be received on or before October 1, 1993.

ADDRESSES: All comments concerning these proposed priority should be addressed to David Esquith, U.S. Department of Education, 400 Maryland Avenue SW., Switzer Building, room 3424, Washington, DC 20202–2601.

FOR FURTHER INFORMATION CONTACT: David Esquith. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: This notice contains one proposed priority under the D&U program and additional selection criteria for this proposed priority. The proposed priority would develop and test new informational and instructional materials related to the communication requirements of the Americans with Disabilities Act (ADA).

Authority for the D&U program of NIDRR is contained in sections 202 and 204(a) and 204(b)(5) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations.

This proposed priority supports the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Under the regulations for this program (see 34 CFR 351.32), the Secretary may establish research priority by reserving funds to support particular research activities.

The Secretary will announce the final funding priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priority, the availability of funds, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing an additional priority, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this program only applications that meet this absolute priority:

Proposed Priority—Materials Development to Facilitate Accessibility in Communications

Background

Public Law 101–336, the Americans with Disabilities Act (ADA), was enacted on July 26, 1990, and prohibits discrimination against individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. This announcement focuses on access for people with communication disabilities.

Although there are no existing data on the prevalence of communication impairments on a national level, the population is significant ("A Report of the Task Force on the National Strategic Research Plan," National Institute on Deafness and Other Communication Disorders (NIDCD), 1989). For example, at least 28 million citizens have some degree of hearing loss, while over 2 million are profoundly deaf. Another 1.75 million have severe speech impairment (NIDCD, 1989). Individuals with vision impairments, cognitive impairments, and motor impairments are also impeded in their abilities to use a full range of existing methods of communications, such as public transportation signs and announcements, automated teller machines, and telephones.

In appropriating funds for NIDRR for fiscal year 1991, Congress instructed NIDRR to initiate a program of technical assistance to facilitate the implementation of the ADA. NIDRR established this initiative by funding ten Regional Disability and Business Technical Assistance Centers (RDBTACs), two national peer training projects, and three projects for materials development—two focused on employment and one focused on public accommodations. NIDRR attempted to establish a materials development project to focus on the accessible communications requirements of the Act, but did not receive acceptable applications for that project. However, NIDRR's subsequent experience with the ADA has reinforced the need for materials and technical assistance and training activities to make those with responsibilities and those with rights under the ADA aware of their rights and duties, and aware of the nature of communications barriers and of potential solutions.

Successful implementation of the ADA for persons with communication disabilities will depend, in part, on the extent to which obstacles to community integration caused by communication barriers can be identified and solutions developed and disseminated. These include not only technical solutions, but also non-technical aids for individuals who require basic terminology, short sentences, pictograms, repetition, and other techniques, to facilitate better integration into the community. The identification of significant barriers and of acceptable solutions must involve individuals with a range of communication disabilities. The target audiences for the materials developed by this project will be the RDBTACs funded by NIDRR, individuals with communication disabilities, employers, public and private operators of public accommodations, State and local governments, public and private service providers, communications industries, and regulators of communications industries.

An applicant for an award under this priority must demonstrate how the proposed activities will address the needs of individuals with disabilities who are from minority backgrounds. This is expected to include issues of language and preferred communications media, and is expected to be reflected in the proposed technical assistance and training, the target populations for dissemination, and the accessibility of the formats of the materials.

Proposed Priority

A materials development project to facilitate accessibility in communications shall—

- Identify useful newly available technology and develop consumer-run orientation programs to inform consumers about new technology;
- Identify needs based on the requirements of the ADA for information about technology and services, and develop materials to educate employers, operators of public accommodations, State and local government officials, public and private service providers, and the communication industries;
- Develop materials that explain the rights of individuals with communication disabilities and the responsibilities of covered entities established under the ADA, and disseminate these materials in accessible formats to the RDBTACs and to other relevant parties;
- Develop practical information on appropriate technologies and services that can be used in different kinds of settings where compliance with the ADA is required;
- Develop innovative methods of information exchange and new materials that illustrate solutions to problems experienced by people with various types of communication disabilities, and make these available to RDBTACs and other relevant parties;
- Develop, test, and evaluate training modules that demonstrate the appropriate use of the latest technology in telecommunication and other communication methods for meeting the communication requirements of the ADA and make these modules, along with technical assistance, available to the RDBTACs and other relevant parties;
- Coordinate with the Federal Communications Commission, the Department of Justice, the Equal Employment Opportunity Commission, the Department of Transportation and the Architectural and Transportation Barrier Compliance Board in the development and dissemination of materials;
- Establish and maintain liaison with researchers and providers concerned with communication devices and services, in order to disseminate consumer perspectives and to encourage the introduction of new and responsive technology; and
- Develop its materials, including brochures, publications and instructional materials, in formats that will adequately accommodate various individual communication modes.

Selection Criteria

The regulations that apply to the Knowledge Dissemination and Utilization program, 34 CFR Part 355, apply to this priority. However, because of the specialized nature of these activities and the potential importance of this project to the successful implementation of the ADA, NIDRR has added several factors to the selection criteria in 34 CFR 350.34 by which applications under this priority will be evaluated. NIDRR has added 60 points to the selection criteria for these projects, so that the maximum possible score for an application in section 350.33(e) is increased to 160 points. NIDRR has distributed the additional points as follows:

(a) The applicant proposes an effective approach to the timely development and production of materials and instructional content in formats and styles that are accessible to individuals with a range of sensory, communication, cognitive, and learning disabilities. (Weight: 4; Total Points: 20)

(b) The applicant presents an effective plan to pilot test, and evaluate and modify as needed, materials and training programs on appropriate target audiences, including individuals who have various types of disabilities and parents of individuals with disabilities, employers with various sized work forces, and appropriate representatives of service providers, business, labor, State and local governments, and the general public. (Weight: 4; Total Points: 20)

(c) The applicant involves individuals with disabilities, parents or other family members of individuals with disabilities, as well as representatives of the covered entities and other target populations, in the design and delivery of the informational and instructional content and format. (Weight: 4; Total Points: 20) (Approved by the Office of Management and Budget under Control Number 1820–0027)

Invitation to Comment:

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in Room 3423, Switzer Building, 330 C Street SW., Washington, DC between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR parts 350 and 355.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133D, Knowledge Dissemination and Utilization Program)

Dated: August 26, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–21319 Filed 9–1–93; 8:45 am]

BILLING CODE 4000–01–P

federal register

Thursday
September 2, 1993

Part V

Department of Education

National Institute on Disability and Rehabilitation Research; Research and Demonstration Projects; Proposed Funding Priorities; Notice

DEPARTMENT OF EDUCATION

4000–01–P

National Institute on Disability and Rehabilitation Research; Research and Demonstration Project, Proposed Funding Priorities

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for fiscal years 1994 and 1995 for research and demonstration projects.

SUMMARY: The Secretary proposes funding priorities for Research and Demonstration (R&D) projects under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1994–1995. The Secretary takes this action to focus research attention on areas of national need consistent with NIDRR's long-range planning process. These priorities are intended to improve rehabilitation services and address problems encountered by individuals with disabilities in their daily activities.

DATES: Comments must be received on or before October 1, 1993.

ADDRESSES: All comments concerning these proposed priorities should be addressed to David Esquith, U.S. Department of Education, 400 Maryland Avenue SW., Switzer Building, room 3424, Washington, DC 20202–2601.

FOR FURTHER INFORMATION CONTACT: David Esquith. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: This notice contains two proposed priorities for the R&D program. These proposed priorities focus on (1) the rehabilitation of migrant workers, and (2) community planning and education to facilitate the implementation of the Americans with Disabilities Act (ADA). Authority for the R&D program of NIDRR is contained in section 204(a) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762).

Under this program the Secretary makes awards to public agencies and organizations and to nonprofit and for-profit private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. This program is designed to assist in the provision of vocational and other rehabilitation services through planning and conducting of research and demonstrations. It is also designed to assist in the development of solutions to the problems encountered by individuals with handicaps in their daily activities (see 34 CFR 351.1). Under the regulations for this program (see 34 CFR 351.32), the Secretary may establish research priorities by reserving funds to support the research activities listed in 34 CFR 351.10.

These proposed priorities support the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The Secretary will announce the final funding priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priorities, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under this program only applications that meet one of these absolute priorities:

Proposed Priority 1—Rehabilitation of Migrant and Seasonal Farmworkers with Disabilities

Background

Estimates of the national population of migrant and seasonal farmworkers (MSFW) vary widely, ranging from low estimates on the order of 1.3 million persons to high estimates of approximately 6 million persons. The divergence is, in part, definitional as the higher estimates tend to include more casual hired farm labor, farm owners, and workers in agriculturally-related industries.

Migrant and seasonal farmworkers experience higher rates of orthopedic disabilities, tuberculosis, intestinal parasitic infestation, influenza, pneumonia, gastrointestinal diseases, and skin diseases than the national average. They are also at high risk for accidents and pesticide exposure (Dever and Alan, "Migrant Health Status: Profile of a Population with Complex Health Problems," National Migrant Resource Program, Inc., Austin, TX, 1991). A 1974 survey of Texas farmworkers indicated that 37 percent of respondents reported back pain of some sort and 44 percent found it impossible or extremely difficult to stoop, bend, or kneel (Cortes, "Handicapped Migrant Farm Workers," Interstate Research Associates, Washington, DC, December, 1974). A slightly lower proportion, 34 percent, found it difficult to lift or carry weights of ten pounds or to remain standing for long periods. More recent data on the disability status of MSFW are needed.

Approximately half (52 percent) of the MSFW who apply for State vocational rehabilitation services are accepted for service, slightly less than the Rehabilitation Services Administration (RSA) national rate of acceptance of 60 percent for all categories of applicants (Final Report: Contract #300–85–0134, "The Vocational Rehabilitation of Migrant and Seasonal Farmworkers," U.S. Department of Education, Rehabilitation Services Administration, Department of Education, 1987).

Proposed Priority

An R&D project on rehabilitation of migrant and seasonal farmworkers shall—

- Determine the incidence, prevalence, and demographic distribution of disability among MSFW, levels of employment and unemployment for MSFW with disabilities, and identify patterns of rehabilitation service use;
- Identify barriers to service delivery as a basis for designing improved models of rehabilitation service delivery;
- Identify rehabilitation service needs of MSFW with disabilities, including needs for coordination with school systems and State education agencies to improve transition services for students receiving special and regular education;
- Coordinate with the RSA evaluation of the status of MSFW within the State vocational rehabilitation service system; and
- Identify future research needs related to MSFW with disabilities and the training needs of professionals providing vocational rehabilitation services to MSFW.

Proposed Priority 2—Community Planning and Education to Further the Implementation of the Americans With Disabilities Act

Background

The ADA guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications. Successfully implementing the ADA requires the identification and removal of physical, attitudinal, policy, procedural and communication barriers to equal opportunity for persons with disabilities throughout the public and private sectors of the community.

Community Planning

Title II of the ADA prohibits discrimination on the basis of disability in State and local government programs and activities. (See 28 CFR part 35). It requires each State and local government to "provide effective communications and to evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of [Title II] and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications." These self-evaluations were to be completed by January 26, 1993. Further, Title II requires all new construction and alteration of facilities to be accessible.

Title III of the ADA prohibits private entities such as schools, restaurants, hotels, retail stores and service establishments from discriminating against individuals with disabilities and requires the removal of physical barriers in existing facilities, if removal is readily achievable. If removal of physical barriers is not readily achievable in existing facilities, Title III requires covered entities to offer to provide services using alternative methods. Title III also requires effective communication which may require the provision of auxiliary aids and services to individuals with vision or hearing impairments or other individuals with disabilities, unless an undue burden would result, and requires all new construction and alterations of public accommodations and commercial facilities to be accessible. Title III became effective January 26, 1992.

NIDRR currently supports a $5 million technical assistance initiative on the ADA as well as a number of related research projects. NIDRR's Region VII, Disability and Business Technical Assistance Center, has piloted a community planning initiative on the ADA and early indications support the need for and utility of community planning.

A community planning and education program has the potential to create an environment that supports compliance with the ADA by both the public and private sectors. For example, State and local governments can modify the provisions of State or local building codes to be consistent with the requirements of the Standards for Accessible Design contained in the ADA regulations for public accommodations and commercial facilities, thus making it easier for businesses who must comply with State or local codes to comply with the ADA. Likewise, careful planning can ensure that money spent for curb ramps provides access to public services as well as privately owned businesses.

NIDRR proposes a small number of research and demonstration projects to develop, evaluate, and disseminate effective models of community planning and education to facilitate the implementation of the ADA. The projects to be funded under this priority are research efforts that would investigate and demonstrate how the implementation of the ADA at the community level may be supported by systematic planning and education.

While the ADA will affect virtually every aspect of community life, current efforts to comply with the ADA are being undertaken primarily by individual covered entities such as local governments or private businesses. For this reason, NIDRR proposes to support the development and validation of community planning and education models addressing all of the entities in the community that have requirements under the ADA using a community-wide approach to problem solving.

The ADA's broad mandate covers a wide array of individuals and entities. As a result, a community planning and education initiative on the ADA should include community and business planners, persons with disabilities and their families, State and local government officials, employers, and owners of public accommodations. In order to develop and implement such an initiative, participants need to understand the requirements of the ADA and be familiar with existing technical resources.

NIDRR recognizes the need for an array of community planning and education models that take into account such factors as the size, geographic location, and economic base of the community. NIDRR expects to award a number of grants in order to address the needs of different types of communities (e.g., urban, rural, suburban, industrial, etc.). Applicants shall designate and describe the community where the grant will operate.

This priority is intended to produce models that will assist government entities in complying with the ADA requirements that apply to public services, as well as to assist private entities in complying with the requirements under the ADA that apply to public accommodations, commercial facilities, and employers.

Community Education

One of the incidental benefits of the ADA is that it is raising the awareness of the general public about the issues and concerns of persons with disabilities and their families. The successful implementation of an ADA community planning enterprise may be substantially dependent on the degree to which the general public is familiar with the requirements of the ADA and appreciates the positive impact its successful implementation will have on persons with disabilities and their families as well as on the community at large.

Proposed Priority

A Research and Demonstration Project on community planning and education to further the implementation of the ADA shall—

- Within six months after the award date for the grant, develop a model of community planning and education to facilitate compliance with the ADA and inform the community about the requirements of the ADA and its relationship to the daily lives of persons with disabilities and their families;
- Ensure that those involved in the development and implementation of the model include community and business planners, persons with disabilities and their families, State and local government officials, employers, owners and managers of places of public accommodation, and other interested community leaders who understand the requirements of the ADA and are familiar with resources that are available to assist them to undertake their activities;
- Utilize ADA technical assistance materials developed by the Federal government or approved Federal government grantee materials;
- Coordinate its activities with the Regional Disability and Business Technical Assistance Center serving the community;
- Evaluate the implementation of the model of community planning and education to determine if it has

facilitated the implementation of the ADA in the community; and

• Disseminate the findings of the evaluation to similarly situated communities and to Federal agencies with enforcement responsibilities under the ADA.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3423, Mary Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8 a.m. and 3:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR parts 350 and 351

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133A, Research and Demonstration Projects)

Dated: August 26, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–21320 Filed 9–1–93; 8:45 am]

BILLING CODE 4000–01–P

federal register

Thursday
September 2, 1993

Part VI

Federal Communications Commission

47 CFR Part 76
Cable TV Act of 1992; Final Rule and Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92-266; FCC 93-428]

Cable TV Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: The Commission has adopted a First Order on Reconsideration, Second Report and Order and Third Notice of Proposed Rule Making clarifying several of the Commission's cable rate regulations. The Third Notice of Proposed Rule Making segment of this decision may be found elsewhere in this **Federal Register**. The First Order on Reconsideration, Second Report and Order portion of this action clarifies the Commission's cable rate regulation rules for cable operators, subscribers, local franchising authorities and the Commission. This action is taken to respond to petitions for reconsideration of the Report and Order and Third Notice of Proposed Rule Making in this proceeding. Our actions are further intended to ensure that subscribers pay reasonable rates for regulated cable services with minimum regulatory and administrative burden on cable entities.

EFFECTIVE DATE: September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Bruce Romano, (202) 632-5414; Beverly McKittrick, (202) 632-5414; Jennifer A. Manner, (202) 653-5940.

SUPPLEMENTARY INFORMATION:

Synopsis of First Order on Reconsideration and Second Report and Order

I. Introduction

1. In the Rate Order and Further Notice of Proposed Rule Making in MM Docket No. 92-266 ("Rate Order" and "Further Notice", 58 FR 29736 and 29769, May 21, 1993) this Commission adopted rules and established policies to implement cable rate regulation pursuant to the dictates of the Cable Consumer Protection and Competition Act of 1992 ("1992 Cable Act," "Cable Act of 1992" or "Act"). The primary results of the Rate Order were: (1) Development of a process for identifying those situations where effective competition exists (and rate regulation is thus precluded); (2) establishment of the boundaries between local, state, and federal responsibilities; and (3) development of procedural and substantive rules to govern the regulation of basic service tier rates, cable programming service tier rates, equipment rates, and rates for leased access channels. The Further Notice addressed whether the Commission should refine its initial rate-setting analysis by excluding from its sample of systems facing effective competition the rates of one statutorily identified group of systems, *i.e.*, cable systems with less than 30 percent penetration.

2. The issues raised in petitions for reconsideration of the Rate Order are as numerous and as varied as the regulations and policies adopted therein. With the first stages of cable rate regulation imminent, the Commission undertakes today to dispose of as many of the most pressing issues as possible, with the remaining issues to be resolved in the near future. Accordingly, this First Order on Reconsideration, Second Rate Order and Third Notice of Proposed Rule Making, ("Rate Reconsideration") is the first of two Orders that will dispose of issues raised in petitions for reconsideration of the Rate Order. It also resolves the further rulemaking issue raised in the Further Notice.

3. We find good cause under the Administrative Procedure Act to make this Order effective upon publication in the **Federal Register**. As explained below, the clarifications to our rules adopted in this Order refine our benchmark system of rate regulation. It is important these changes go into effect as soon as practical, in order to facilitate compliance of cable operators with the 1992 Cable Act and the Commission's implementing regulations, which go into effect September 1, 1993. Accordingly, we will make this Order and the implementing rule changes effective upon publication in the **Federal Register**. We also revise our rules to make them reflect the September 1, 1993, effective date adopted in an Order on July 27, 1993.

II. Summary

4. Specifically, this Rate Reconsideration effects the following actions:

(1) With regard to the benchmark methodology adopted in the Rate Order for setting rates, it:

Affirms the Commission's determination to set initial rates for all regulated tiers of service at a level that approximates as closely as possible that which would occur in a competitive marketplace;

Affirms the Commission's decision to use the universe of cable systems facing effective competition, strictly as defined in the statute, as a guide for establishing the competitive rate level; and

Affirms the use of a benchmark formula based on the rates of competitive systems, in conjunction with a rate rollback based on the "competitive differential" between rates charged by competing systems and noncompeting systems, for determining each cable system's legally permissible initial rate;

(2) With regard to price caps and the mechanisms for determining permissible rate increases, this Order:

Affirms that rates for regulated service set by the benchmark will be governed by a price cap mechanism once initial regulated rates are determined;

Affirms the accordance of external cost treatment to retransmission consent fees incurred after October 6, 1994, other programming cost increases, franchise fees, taxes and the costs of franchise requirements including PEG channels;

Affirms, in general and at this time, that costs associated with upgrades and other capital improvements be evaluated using cost-of-service principles and not be passed through as external costs;

Determines that only costs of meeting franchise requirements specifically enumerated in the franchise agreement will be eligible for external cost treatment;

Establishes a test for external treatment of taxes;

Lifts the limitation on programming cost increases for affiliated program services in favor of rules designed to prevent abuse of the pass-through allowance while not restricting recovery for programming cost increases that occur generally in the marketplace; and

Affirms the starting date for external costs treatment.

(3) With regard to rate-setting procedures, this Order:

Rejects arguments that refunds for overcharges on the basic service tier are not permissible under the Act;

Rejects the contention that franchise authorities can specify the content of the basic tier (beyond inclusion of PEG channels) under the statute;

Allows cable operators to file rate increases quarterly while requiring that filings reflecting increases in external costs also reflect any decreases in such costs; and

Requires cable operators to file revised rates reflecting decreases in external costs no later than one year from the date on which the decrease occurs.

(4) This Order addresses several questions regarding the regulation of rates for equipment and for installations. Specifically, it:

Affirms the decisions regarding the type of equipment regulated with basic service tier;

Affirms the application of the "actual cost" standard to cable programming service equipment and installations;

Holds that a cable operator's sale of equipment is unregulated when the cable operator provides subscribers the opportunity to lease the same equipment at regulated rates;

Affirms the application of the actual cost standard to additional connections;

Rejects several proposals to amend the guidelines for determining the "actual cost" of equipment on FCC Form 393, part III; and

Provides some clarifications regarding the use of Form 393.

(5) With regard to the guidelines and the procedures for determining whether or not a cable system is subject to effective competition, this Order:

Provides that where a cable system has elected not to serve parts of a franchise area, those parts will not be considered when defining the franchise area for purposes of the first statutory effective competition test; and

Reiterates that data regarding levels of subscription, used to establish the presence or absence of effective competition, can be provided by competitors in the aggregate.

5. Petitions concerning rules applicable to cable service generally are not addressed herein. These include questions concerning the requirement that cable systems have a geographically uniform rate structure, especially as regards bulk discounts and systems subject to effective competition; questions whether certain practices constitute evasions of the rules; the grandfathering of certain rate agreements; and subscriber bill itemizations. Questions regarding all aspects of the rules to govern leased access channels will also await resolution in the next reconsideration Order.

6. This Order also resolves the Further Notice by concluding that systems with less than 30 percent penetration should continue to be included in the universe of competitive systems used to develop benchmark rates. This result is dictated both by the clear statutory language, which defines such systems as being subject to effective competition, and by the absence of any compelling policy reason to exclude these systems from our analysis. In the Third Notice of Proposed Rulemaking, we seek comment on several critical issues, including:

(1) How to apply the benchmark methodology when a cable system adds or deletes channels on a going-forward basis;

(2) Whether cable systems that completed rebuilds immediately before regulation, and whose rates are below the benchmark level, should be permitted to raise their rates to the benchmark;

(3) Whether cable operators should be required to use a consistent rate-setting approach (either benchmark or cost-of-service) for all regulated tiers of service; and

(4) How systems upgrades required by local franchise agreements should be handled under the benchmark/price cap approach.

III. Order on Reconsideration

A. Benchmark Issues

1. Background

7. The Notice in this proceeding sought comment on several possible bases for setting rates for regulated cable systems, including: rates charged by systems facing effective competition; systems' past regulated rates; the current average rates of cable systems; and the average or typical costs of providing cable service. To aid in designing an appropriate rate-setting structure, the Commission obtained information concerning current rates, past rates, and system characteristics from a random sample of approximately 300 cable systems and from 141 systems that appeared to be subject to effective competition, as defined by the statute. This competitive sample included systems facing widespread direct competition from rival multichannel video service providers (both commercial and municipal) and systems with penetration rates below 30 percent.

8. The industry survey confirmed Congress' conclusion, reflected in the 1992 Cable Act, that the average rates of systems not subject to effective competition exceed those of systems subject to effective competition. Analysis of the survey data revealed that this "competitive differential" was approximately 10 percent on an industry average. Based on the statute and the survey results, the Rate Order concluded that the reasonableness of rates for the basic service tier, and the unreasonableness of rates for cable programming services, should both be determined by reference to rates of systems facing effective competition.

9. Accordingly, the Commission adopted a "benchmark" approach to project for any regulated system the rates that would be charged by a similarly situated system operating in a competitive marketplace. This approach will be used to set operators' initial rates. A system's actual rates that are at or below the competitive level, as determined by the benchmark formula, on the date of initial regulation will be deemed reasonable; actual rates above the benchmark-derived level will be presumed unreasonable, and must be reduced unless justified in a cost-of-service showing. Such rates above the benchmark must be reduced up to 10 percent from September 30, 1992 levels, (or until they reach the benchmark, if that is less than a 10 percent reduction), in order to recapture for subscribers the competitive rate differential found to exist on an industry-wide basis. This same benchmark formula and rollback liability applies to all regulated tiers of service, although the rules with respect to cable programming service are triggered by the filing of a complaint.

10. Petitions for reconsideration, oppositions and replies have been filed by numerous parties challenging (and supporting) various aspects of the benchmark regulations, and comments and reply comments have been filed regarding the use of low penetration systems in the competitive sample. In addition, some of the parties seeking reconsideration of the Rate Order also addressed the issues raised in the Further Notice. Issues such as the use of a benchmark and rollback methodology for setting rates, having a competitive rate as our goal in rate-setting, the propriety of using only "competitive systems" as defined in the statute to determine competitive rates, and compliance with the Administrative Procedure Act are disposed of in the Rate Reconsideration.

2. Discussion

a. *Effective Competition as Primary Factor.* 11. Various petitioners challenge the Commission's primary reliance on competitive rates in setting the benchmark rates. These petitioners contend that the Commission did not take into account the other factors listed in sections 623 (b) and (c) of the Communications Act for consideration in setting rates, including, for instance, the factors of reasonable profits for cable operators or rates charged by similarly-situated systems. Moreover, they argue, such cost variables as system size, geographic location, and franchise and programming costs were not considered. Other petitioners contend that other sources of revenue such as advertising and shopping channels were not taken into account.

12. After reviewing petitioners' arguments, we conclude that the Rate Order properly placed primary weight on rates of systems subject to effective competition in fashioning the

benchmark approach. Congress' findings, the overall structure of the Act, the statutory goal for the basic and cable programming service tiers, and the statutory factors for rate determinations all point to a strong congressional intent that cable subscribers should pay rates consistent with a level of rates that would prevail if their systems were subject to effective competition.

Additionally, and significantly, while we ultimately based the rate-setting methodology on the rates and other characteristics of competing systems, we took all of the statutory factors into account when developing this rate regulation scheme. In this regard, it is necessary to consider the various rate regulation mechanisms employed—benchmarks, cost-of-service showings and price caps—not in isolation, but as part of a regulatory system that incorporates the various statutory factors.

13. For example, petitioners overlook the fact that competing businesses must charge rates that are designed to cover all relevant costs and to provide for a profit in order to remain in business. Thus, when the Commission bases benchmark calculations on the rates charged by firms subject to effective competition, it effectively accounts for the costs of providing service for those systems, and also the need for any viable company to earn a "normal" or "competitive" rate of return. Also, the rate-setting formulation considered those variable system characteristics which statistical analysis showed to be the most significant, by including them in the benchmark formula. The other statutory factors are provided for in the price cap allowances. To the extent that petitioners are arguing that the Commission must take into account each individual system's costs and profit in setting its rates, that can be accomplished through a cost of service showing, for which the Commission has provided.

In sum, however, the Commission's benchmark rates are designed to adhere not only to the statutory factors but also to the Act's mandate that the administrative burden on all parties be reduced to the extent possible. Primary reliance on a benchmark formula based on competitive rates, as an initial means of determining regulated cable rates, with supplemental reliance on cost of service showings, is thus a reasonable approach and is consistent with provisions of the Cable Act of 1992.

b. *Application of the Benchmark Rates.* 14. Several petitioners seek reconsideration of certain specific aspects of the benchmark approach. For instance, some petitioners seek to allow systems with rates below the applicable benchmark rates to raise their rates up to the benchmark level. They contend that otherwise, the "good actors" that kept rates low before regulation will be "punished" because they may have to remain below the benchmark indefinitely. As stated in the Rate Order, however, the decision to cap the rates of operators already below the benchmark was based on the assessment that such below-benchmark rates were reasonable to each such cable system, since it voluntarily selected that rate level before regulation began. Accordingly, unless the operator was acting irrationally, its chosen rate level presumably enables it to recover its costs (which most likely are lower than average). Petitioners do not challenge this assessment or provide evidence that its assumptions are unfounded. In any event, as with all cable systems subject to regulation, if any operator's below-benchmark permitted rates are no longer sufficient to cover costs, it may initiate a cost of service showing.

15. Other petitioners argue that noncompeting systems with rates above the benchmark are being treated differently than competitive systems that have rates above the benchmark. Noting that the noncompeting systems will have to reduce their rates while the systems subject to effective competition will not, they claim that such different treatment of two similarly situated classes of systems is impermissible. However, these two classes of systems are not similarly situated. A competitive system can be presumed to be charging a competitive, "reasonable" rate by virtue of the presence of competition, whereas a system free of competition, enjoying market power, cannot be presumed to be charging a competitive rate, as illustrated by our data sample and analysis. The reasonable competitive rate for such a system can only be surmised by reference to the benchmark and rollback provisions derived from the sampling and analysis of the rates of competitive and non-competitive cable systems. The statute clearly states that systems that are subject to effective competition, as defined in the statute, may not have their rates regulated by the Commission or the local franchise authority. Thus, the 1992 Cable Act expressly provides for the different treatment of these different classes of systems. To the extent commenters are raising questions concerning the fact that the benchmark is based on average rates of systems subject to effective competition, these questions will be addressed in the Second Order on Reconsideration.

c. *Compliance with the Administrative Procedure Act.* 16. Some petitioners contend that the Commission has violated the Administrative Procedure Act in connection with its adoption of benchmark rules by failing to give adequate notice of "either the terms or substance of the proposed rule or a description of the subjects and issues involved." They claim that the benchmark rates established in the Rate Order are not a logical outgrowth of the rulemaking process. They further claim that parties did not have notice or opportunity to comment on the basic aspects of the methodology that would be used to determine the benchmark. For instance, they claim that none of the following items were disclosed in this proceeding until the Rate Order:

(1) The statistical tool or model that would be used in the regression analysis;

(2) Which factors would be significant in determining rates;

(3) The assumptions that would be made in connection with creating the benchmark;

(4) The adjustments that would be made to data; and

(5) The treatment of uncertainty in the statistical results.

17. The courts have long held that in applying 5 U.S.C. 553(b)(3), the notice requirement is satisfied so long as the content of the agency's final rule is a "logical outgrowth" of its rulemaking proposal. Moreover, the focus of the "logical outgrowth" test has been "whether * * * [the party], *ex ante*, should have anticipated that such a requirement might be imposed." Furthermore, the "[n]otice need not contain every precise proposal which the agency ultimately may adopt as a rule. Rather notice is sufficient if the description of the 'subjects and issues involved' affords interested parties a reasonable opportunity to participate in the rulemaking." If an agency were forced to adopt only rules as they were originally proposed, it would result in an interminable step-by-step process of a new notice and comment each time the rules slightly deviated from the original proposal.

18. The Notice went into considerable detail describing the proposals for creating a benchmark for cable rates and soliciting comments from parties. Indeed, the proposal ultimately adopted by the Commission, *i.e.*, benchmark rates based on rates charged by systems facing effective competition, was extensively discussed in the Notice. Notification was given that, to the extent sufficient data was available, regression analysis or some other statistical

technique could be used to determine how rates varied due to different characteristics. Petitioners thus had an opportunity to comment on the very form of benchmark ultimately selected by the Commission. While it is true that the precise benchmark formula was not included in the Notice such specification was impossible until the Commission conducted its statistical and regression analysis. However, the sample database was released to the public and an opportunity for public comment on the data was provided. The choice of the specific statistical method in calculating the benchmark rates is an appropriate matter for agency discretion.

19. Petitioners further argue that the Commission failed to give "a concise general statement of [the rule's] basis and purpose," because the Commission did not explicitly address certain comments. This argument, however, must also be rejected. "This section has never been interpreted to require the agency to respond to every comment, or to analyze every issue or alternative raised by the comments, no matter how insubstantial." The Rate Order took into account all significant comments concerning the establishment of benchmark rates.

20. Finally, some petitioners contend that the Commission did not respond to concerns raised by commenters that the data from overbuild systems was skewed because of price wars and that there were flaws in the data identified by NCTA. However, NCTA did not indicate in its original comments, and does not indicate in its petition for reconsideration, what effect, if any, the alleged errors in the sample data base would have in computing the benchmark rates. Accordingly, the Commission did not ignore any relevant factors in its decision.

B. Definitions and Findings of Effective Competition

21. Under the 1992 Cable Act, the rates of a cable system may be regulated only if the system is not subject to "effective competition." The Act provides that effective competition is presumed to exist if any one of three tests is fulfilled. The Rate Order set out the rules interpreting and implementing these statutory tests, and explained how various new video programming distribution services would be considered under the relevant tests. Several parties have requested reconsideration of discrete aspects of these rules.

1. Low Penetration Systems

22. Under the first statutory test, effective competition exists if "fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system." The Commission adopted a rule repeating almost *verbatim* the language of the statute and stated that, for purposes of applying this rule, the subscribership of each cable system in a franchise area will be measured separately and not aggregated with other systems.

23. Several groups of franchising authorities urge the Commission to define the term "franchise area" for purposes of the first effective competition test as "the area within a franchising authority's jurisdiction that an operator is required to service or that it in fact serves" or as the *de facto* (homes passed) rather than *de jure* (authorized) franchise area. In response, several cable operators contend that this approach conflicts with the express language or plain meaning of the statute and thus may not be adopted by the Commission.

24. Notwithstanding the concerns expressed by franchising authorities regarding the coverage of this statutory provision we are not in a position to alter the plain language of the statute through our regulations. The term "franchise area" is used for a variety of purposes within the statute and our rules and has a commonly understood meaning in the industry and in regulatory parlance. A franchise area is the area a system operator is granted authority to serve in its franchise. Thus, the substitution of a "homes passed" for "homes in the franchise area" test does not appear to be consistent with the plain language of the statute. Moreover, because franchise authorities themselves have both the authority to define the area to be served an anti-"redline" authority, they are not without the ability to themselves address some of the concerns raised in the reconsideration petitions.

25. We do believe, however, that there may be some limited situations (such as, for example, where a system operator has county-wide operating rights but has determined to serve only a specific named community within that area) where use of a more restricted "franchise area" definition may be both appropriate and consistent with the statutory language. An affirmative decision by a system operator to restrict service logically redefines its franchise area in terms of the objectives of this provision. Accordingly, we will permit franchise authorities to demonstrate the boundaries of such a redefined franchise area. Such a showing, however, will be limited to situations in which a system operator has itself, through its own conduct, self-defined the areas to be served to such an extent that this redefined area accurately portrays the operator's "franchise area." The fact that a franchise area has not yet been filled out by construction of a system would not by itself be taken as redefining the service area.

2. Procedures Regarding Effective Competition Demonstrations

26. A cable operator is presumed not to be subject to effective competition and carries the burden of rebutting this presumption with evidence of the presence of effective competition as defined in the Act. To obtain access to information necessary to rebut this presumption, cable operators may request from a competitor information regarding the competitor's reach and penetration, if such information is not otherwise available. The rule requires that competitors must respond to such requests within 15 days, and that responses may be limited to numerical totals.

27. One petitioner alleges that some cable operators are requesting that competitors reveal, pursuant to the above rule, specific subscriber information, including lists of subscribers and their addresses. As stated in the Rate Order, however, "responses may be limited to the numerical totals needed to calculate the distributor's reach and penetration in the franchise area." A competitor need only supply these aggregate totals. Lists of subscribers and their addresses clearly do not fall into this category and should not ordinarily be disclosed. If cable operators are alleged to have abused their right to request effective competition data from a competitor, the Commission will, as indicated in the Rate Order, deal with such situations on a case-by-case basis.

28. A joint petition filed on behalf of several cable MSOs expresses concern that some cable operators may not be able to demonstrate the presence of effective competition in sufficient time to stay a franchising authority's certification to regulate basic cable rates, because competitors may not respond to requests for information on their penetration and reach within 15 days. The petitioners are concerned that these competitors have no incentive to cooperate with cable operators and that there is no enforcement mechanism for this rule.

29. We believe that cable's competitors generally should be able to comply with requests for aggregate data

on reach and penetration within the required 15 days. Since such information is likely critical to a competitor's billing and marketing efforts, it should be readily available. The joint petitioners mere speculate that competitors will intentionally withhold or delay providing information; there is currently no evidence of such conduct. Moreover, many of the most significant competitors to incumbent systems, such as other cable systems and MMDS systems, are either licensed or regulated in part by the Commission, and enforcement proceedings thus can be instituted against them should they deliberately fail to respond as required. And, as indicated in the Rate Order, if unresponsiveness does threaten to become a prevalent problem, the Commission could require periodic reporting from all competitors.

30. Finally, relief can be provided to cable systems in individual cases of unresponsiveness as necessary and appropriate. Such relief could consist of an extension of time to file a petition for reconsideration challenging a franchising authority's certification. Alternatively, an operator can file a request for revocation of a franchising authority's certification pursuant to section 623(a)(5) of the Communications Act, even after the time for filing reconsideration of a franchising authority's certification has passed.

C. Tier Neutral Rate-Setting Methodology

31. In the Rate Order, the Commission adopted a tier-neutral framework for rate-setting that is the same benchmark formula and rollback requirements are to be applied to basic tier services and to cable programming tier services. It concluded that the Act's directions, on the one hand, to "ensure that rates for the basic service tier are reasonable," and, on the other hand, to "establish * * * criteria for identifying, in individual cases, rates for cable programming services that are unreasonable," merely reflect the different procedural schemes Congress adopted for these different tiers—that is, basic tier rates are to be pre-approved by local franchise authorities and cable programming tier rates are to be addressed by this Commission and only when challenged by a complainant. Some parties had argued that different regulatory schemes were required for basic cable and cable programming services because the factors listed in the Act to be considered in determining the appropriate rate level for each tier differed somewhat. The Commission held, however, that the differently stated factors did not mandate different rate-setting approaches, but rather could accommodate the same rate standard for both tiers if that standard adequately balanced, and took into account, the respective factors for each tier. Moreover, the benefits of tier neutrality were found to outweigh other considerations that would favor adoption of different rate standards for the basic and cable programming service tiers. Specifically, the tier-neutral approach removes any incentive for moving programming from the basic to cable programming service tiers, or vice versa, and reduces the administrative burdens on cable operators and regulators by greatly simplifying the rate-setting process.

32. A number of petitioners, primarily cable operators, reiterate their arguments that rates for basic and for cable programming service tiers should be regulated by different standards, given the different factors for consideration stated in the Act. But these petitioners offer no new insight on this analysis. Their arguments were fully considered and rejected in the Rate Order and are not extensively reanalyzed here. Accordingly, we deny their requests for reconsideration of our decisions on this issue. A few petitioners, however, have raised new arguments that we will now address.

33. Time Warner and Newhouse contend that, because the tier neutral scheme averages all tier costs into an initial average per-channel rate, it violates the statutory directive that the Commission take into account only those joint and common costs that are properly allocable to the basic service tier when developing rate standards for that tier. This argument is unavailing. This statutory provision provides that only a reasonable allocation of joint and common costs should be allocated to the basic service tier, but leaves to the Commission's discretion the determination of what is a reasonable allocation. The benchmark methodology uses per channel rates established by averages, but it then multiplies that per-channel rate by the number of channels in a given tier in order to establish the permissible rate for that service tier. This approach provides a reasonable allocation of rates (and presumably costs) in that it is in direct proportion to the level of service provided on each tier, as measured by the number of channels of service supplied to the subscriber. If petitioners' argument is meant to assume that non-basic tier costs are higher than basic tier costs, they do not demonstrate that this is necessarily the case. Moreover, one reason for the adoption of tier neutrality was to eliminate any incentive for operators to move services to other tiers where they could charge relatively higher prices without necessarily corresponding higher costs.

34. Booth contests the Commission's premise that allowing operators to charge relatively more for cable programming services would result in a "stripped down" basic tier, and insists that the Commission has no evidence of this. Our longstanding experience with rate regulated companies, however, has taught us that such entities have every incentive to maximize revenues to the extent permitted by regulation. In the instant case, it is entirely likely that a cable operator who could maximize revenue by moving programming services to the tier that enabled him to charge the highest per channel rate would do so. It is well within our discretion to make such predictive determinations, Booth's contrary claims notwithstanding. Moreover, some record evidence indicates that operators were in fact retiering in anticipation of the adoption of rate regulations.

35. Affiliated and Liberty argue that the tier-neutral scheme creates an incentive to offer on a per-channel basis the programming now offered on tiers, noting that such *a la carte* programming is not regulated by the Cable Act. However, any such incentive to avoid regulation of the rate for a programming service (or services) is created by the statute itself and occurs irrespective of tier neutrality in rate setting. Even in the absence of tier neutrality, rates on all tiers would be regulated to "reasonable" competitive levels. The desire to avoid such regulation would seem primarily a function of the actual rate permitted under the regulation. Additionally, restructuring program offerings to provide more *a la carte* services is not *per se* undesirable, as offering programming on a per-channel basis increases consumer choice, which is one of the goals of the Act. Moreover, as noted in the Rate Order, it is not clear that operators, as a business matter, have unlimited ability to shift programming from tiers to per-channel offerings.

36. Finally, Northland and Affiliated Regional Communications contend that tier neutrality eliminates any incentive to carry high-quality programming as part of a regulated offering. This argument, however, ignores the fact that the benchmark calculation is based on the rates of operating (and thus presumably viable) cable systems subject to effective competition, which incur programming costs, including the costs for high-priced programming services. Also, high-priced programming should have some value to the system

from a marketing, penetration, and customer satisfaction standpoint in order to justify its carriage; any exceptional price can be offset by the numerous lower-priced and no charge programming services carried by cable systems. To the extent new program services may come at a relatively high price, their treatment is addressed in the Third Further Notice of Proposed Rulemaking. Finally, as a regulatory matter, the operator retains the option to offer any or all programming on an unregulated per-channel basis, or to submit a cost-of-service showing rather than rely on the benchmark approach. Accordingly, these petitions for reconsideration of the tier neutral methodology for rate setting will be denied.

E. Rate Regulation of Equipment and Installations

37. Section 623(b)(3) of the Communications Act requires the Commission to establish standards, based on actual costs, for the rates charged for equipment and installation used to receive basic cable service on one or more outlets. Pursuant to section 623(c) of the Communications Act, the Commission also must establish criteria to determine whether rates for cable programming services, including the installation and rental of equipment used to receive such programming, are unreasonable. This section addresses petitions for reconsideration discussing the equipment to be regulated, the manner in which rates charged for equipment and installations shall be determined and the relevant entries on Form 393 for calculating such rates.

1. Equipment Covered by Basic Service Regulation

38. Section 623(b)(3) directs the Commission to establish standards for setting, on the basis of actual cost, the rate for lease of equipment used by subscribers to receive the basic service tier, including converter boxes and remote control units, and lease of monthly connections for additional television receivers. The Rate Order stated the Commission's belief that Congress intended the actual cost standard to apply broadly to all equipment used to receive the basic service tier, even if it is also used to receive other cable services. The Commission concluded that Congress' decision to change the terminology from "equipment *necessary* by subscribers to receive the basic service tier," found in the House Report, to "equipment *used* by subscribers," (emphases added) found in the Conference Report and adopted in the Act, was significant and was specifically intended to broaden the class of equipment subject to regulation on an actual cost basis. The Rate Order also concluded that Congress had decided that equipment would be regulated unless a finding was made that the entire cable system was subject to effective competition.

39. Several petitioners, primarily cable operators, seek reconsideration of the Commission's broad reading of "equipment used to receive the basic service tier." These parties argue that only certain fundamental equipment used to receive the basic service tier, and not equipment whose use for basic service, is only incidental to its primary purpose, should be regulated pursuant to the "actual cost" standard specified in section 623(b) of the Communications Act. Under this approach, equipment installed when the subscriber chooses to have access to cable programming services would be regulated under the "not unreasonable" standard in section 623(c) and equipment used to access unregulated per-channel or per-program services would remain unregulated, even if that equipment also accesses signals on the basic service tier. The petitioners argue that, when substituting the phrase "used" to receive the basic service tier for the phrase "necessary" to receive the basic service tier, Congress merely intended to broaden the language in the Act so as to include remote control devices and other ancillary equipment used by basic subscribers which might not be considered "necessary" for basic service. Several cable operators contend that, if Congress intended all equipment to be priced on the "actual cost" standard, the Cable Act would not have specifically referred to descrambling equipment used to receive pay services by a basic-only subscriber. These parties argue that our interpretation of the Act makes this reference in section 623(b)(3)(A) superfluous because such equipment would already have been included under the actual cost standard.

40. Further, some petitioners note that regulating as part of basic service the equipment used to deliver cable programming services or pay services renders meaningless Congress' decision to add equipment and installation to the definition of cable programming service. In this regard, Cablevision states that if Congress intended a broad reading of "equipment used to receive the basic service tier," it would not have chosen to include equipment in the definition of cable programming services. In contrast, NATOA believes that the Commission is correct in subjecting equipment "used" to receive basic service to actual cost regulation regardless of whether it is also used to receive any other programming service.

41. We affirm our prior conclusion that Congress intended the actual cost standard to apply broadly to all equipment used to receive the basic service tier. Notwithstanding petitioners' reiteration of their prior arguments, we continue to believe that the interpretation in the Rate Order of the legislative history, including the changes in the language in section 623(b) and in the definition of cable programming service is correct. Moreover, we note that if we were to adopt a narrow interpretation of "used to receive the basic service tier," as advocated by several of the petitioners, only a small percentage of equipment would be subject to regulation under the "actual cost" standard specified in section 623(b) of the Communications Act. According to April 1993 estimates, 74 percent of cable households receive some per-channel service along with basic cable. Many of these subscribers use converters to receive their pay services, the rates for which would not be regulated under petitioners' interpretation of the Act. It is thus apparent that adoption of petitioners' approach would result in a significant amount of unregulated equipment, thereby undermining Congress' concern over the high rates charged for cable equipment.

42. We further observe that Congress intended that our regulations establish equipment rates similar to those that would exist in a competitive environment. Under the "actual cost" standard, cable operators recover their costs including a reasonable profit. This will result in rates comparable to those that would exist in a competitive environment, thus subjecting a reasonable amount of equipment to a standard that furthers Congress' intention.

43. Some petitioners also argue that an inclusive interpretation of equipment subject to the "actual cost" standard will stifle technological development in subscribers equipment. They claim that this interpretation will discourage innovation by depriving manufacturers and cable operators of the financial rewards commensurate with the risks inherent in the design and development of advanced equipment. Cablevision further asserts that the Commission's failure to exempt from rate regulation converters that add incremental features unrelated to the receipt of cable services, such as handsets for personal communications services and facsimile machines, frustrates the public policy goals of promoting innovation and investment in the design and

development of advanced converters and is inconsistent with the Commission's policy with respect to common carriers of permitting the offering of customer premises equipment (CPE) on a deregulated basis.

44. We remain convinced that our regulatory scheme will not stifle technological development. Cable operators are entitled under this section of the Act to recover the costs, and earn a reasonable profit, for any equipment used to receive the basic tier. The revenues they receive thus should approximate their revenues in a competitive market. There is nothing in the record—nor in the Commission's experience—which suggests that equipment manufacturers and cable operators need to be able to charge higher than competitive rates in order to develop innovative equipment. To the contrary, this Commission has long held that competition is a spur to technological development, not a hindrance. Moreover, even if a specified piece of equipment is subject to regulation, any services provided using that equipment other than basic service or cable programming services, whether cable-related or not, remain unregulated. Cable operators thus have the option of using revenue derived from unregulated services to cover any equipment-related costs that they do not wish to recover through equipment charges. As noted in the Rate Order, nothing in the Cable Act prevent a cable operator from offering equipment below cost to encourage its use.

45. A number of petitioners argue that where a competitive market for similar equipment exists within the franchise area, such equipment should be unregulated. They contend that this approach is consistent with Congress' intent to rely on the competitive marketplace to the extent feasible, citing section 2(b)(2) of the 1992 Cable Act. In opposition, GTE approves of the regulations, asserting that, if properly executed, they will lead to the kind of competition that has emerged in the telephone industry in installation, maintenance, repair, and lease/purchase of equipment.

46. These petitioners merely reiterate arguments considered in the initial decision not to establish a separate effective competition test for equipment, and that decision is affirmed. The Rate Order indicated that the information necessary to establish an effective competition test for equipment and installation is not available at this time, and the petitioners have not provided additional information with respect to creating a standard for determining when the market is competitive. The Commission, recognizing that competition for cable equipment technologies is evolving, will continue to monitor the marketplace and will reexamine this issue at an appropriate time.

2. Application of the Actual Cost Standard

47. Section 623(b)(3) of the Communications Act requires that the rates for equipment and installation used to receive basic service reflect their actual cost. In order to determine the actual cost of equipment and installations, cable operators must unbundle each piece of equipment and must separate equipment from installation. They also must utilize a specific methodology for determining the actual cost of each piece of equipment and installation. Under this methodology, the cable operator must establish an Equipment Basket to which it assigns the direct costs of service installation, additional outlets, and leasing and repairing equipment. In the Equipment Basket, the cable operator must allocate the system's joint and common costs that service installation, leasing, and equipment repair share with other system activities (but not general system overhead), plus a reasonable profit. The guidelines that cable operators must follow to calculate these actual costs are set forth in FCC Form 393, part III. Cable operators must also unbundle and apply this actual cost standard to cable programming service equipment and installations to determine whether charges for these items are not unreasonable as required by section 623(c).

48. NCTA and several cable operators seek reconsideration of the decision to require unbundling and to apply the same actual cost methodology to equipment and installation charges for the basic service tier and for cable programming services. They argue that cable service and equipment are interdependent goods and bundling should be permitted. NCTA and others ask that the Commission allow equipment and installation charges for cable programming services to be above actual costs, as long as overall rates are reasonable, stating that such subsidization will allow cable operators to offer a low-cost basic service.

49. These parties merely restate the argument disposed of in the Rate Order that section 623(c) of the Communications Act sets forth a "not unreasonable" rate standard for cable programming services, including equipment and installation, as opposed to the "actual cost" requirement for the basic service tier, found in section 623(b). In developing a comprehensive regulatory scheme for rate regulation, however, a tier-neutral benchmark approach was found to best fulfill the stated goals of the Cable Act. Consistent with that decision, the programming portion of cable programming service is subject to the same benchmarks as basic tier programming. Since Congress defined this service with an equipment and installation component, we concluded that an actual cost standard is most appropriate for determining equipment and installation charges, notwithstanding the discretion afforded to select an alternative approach. Although this fundamental decision has been challenged on reconsideration, petitioners have failed to present any alternative methodology we might use when evaluating whether the rates for cable programming service equipment are "not unreasonable." Accordingly, we affirm our decision to use the actual cost standard to measure the reasonableness of rates for cable programming service equipment and installations. This standard will protect consumers from unreasonable rates and at the same time permit cable operators to earn revenues comparable to those that could be gained in a competitive environment.

50. Petitioners' argument that we not require unbundling of equipment and program service charges also was fully analyzed and rejected in the Rate Order. As we discussed in that decision, an unbundling requirement is the most effective means of ensuring that rates for program services and rates for consumer equipment each meet the separate standards of reasonableness set forth in the 1992 Cable Act and the Commission's Rules. In addition, an unbundling requirement best addresses Congress' concerns that bundling practices have played a significant role in enhancing cable's market power. In view of the petitioners' failure to raise new and persuasive arguments on this issue, we affirm our decision to require the unbundling of program service and equipment rates.

51. Time-Warner seeks reconsideration of the decision to apply the actual cost standard to the sale of equipment. It argues that the statute does not address this matter and that the Commission is not empowered to establish such rate regulation. Further, Time-Warner contends, this action is not in the public interest, since a competitive market exists for the equipment available for sale. Whether the requirements of section 623(b)(3) for establishing a "price or rate" for "installation and lease of equipment" includes the sale of such equipment is

unclear. However, we decline to exempt from regulation sales of equipment if to do so would merely create a loophole that would allow cable operators to avoid our equipment rules. Section 623(h) empowers the Commission to prevent evasions of our rules, which we believe could occur if operators were free to convert leasing arrangements to "installment sales contracts" and thereby avoid regulation of equipment rates. On the other hand, there is no need for the Commission to regulate the sale of equipment where comparable equipment is available from operators on a leased—and regulated—basis. Therefore, we conclude that equipment sales by an operator will be unregulated where the operator offers subscribers the same equipment under regulated leased rates.

3. Additional Connections

52. Section 623(b)(3)(B) of the Communications Act requires the Commission to establish rate standards, on the basis of actual costs, for installation and monthly use of connections for additional television receivers. The Rate Order stated that the costs associated with additional connections should be included in the Equipment Basket and that operators should recover such costs in the related equipment and installation charges. Equipment and installation charges for additional connections are to be calculated in a manner similar to that prescribed for the primary cable outlet, although it is expected that there will be a smaller charge for installing an additional connection that does not require a separate visit to the subscriber's home. In addition, a cable operator is permitted to recover additional charges, through a monthly charge limited to the operator's additional programming costs, for programming it transmits to additional outlets. Any network costs incurred to facilitate the provision of multiple outlets to subscribers is treated as general system overhead and is to be recovered through program service rates.

53. Several cable operators request that the rules be modified to permit monthly service charges for additional outlets beyond the lease of the additional equipment needed to receive cable service at these additional connections. Parties contend that the Commission erred in interpreting the statute and legislative history to limit additional outlet charges to cover only the lease of the needed equipment. They argue that this approach prevents operators from charging subscribers for the value inherent in the discretionary option of having cable service available at additional outlets. Others, however, argue that where Congress intended for the actual cost standard to apply only to equipment it specifically so stated, and, thus, value-based monthly service charges are not intended for additional connections.

54. The petitioners have raised no new arguments and the Commission's interpretation in the Rate Order of section 623(b)(3) of the Communication Act, which sets forth the items to be regulated on the basis of actual cost, is affirmed. In paragraph (A) of section 623(b)(3), equipment is specifically mentioned, while in paragraph (B) of that section the relevant term is "monthly use of connections for additional television receivers" (emphasis supplied). In light of the difference in terminology, it appears that monthly use of connections denotes the receipt of the service at additional home outlets. Thus, there seems to be no basis in the statute for allowing cable operators to charge for the "value" of additional connections above and beyond their actual costs. The Rate Order determined that the best method for recovery of such costs is through related equipment and installation charges. Operators may also charge subscribers for any additional programming costs they incur when providing services to additional outlets. In addition, revenue from equipment, including that from additional outlets, was added into the revenue from cable service to determine the rate per-channel that is the basis for the benchmark measurements. The revenue previously received from additional outlets will, under the benchmark regime, now come from per-channel charges for cable service. Therefore, there is an opportunity for cable operators to continue to earn such revenues under the benchmark approach.

55. Petitioners also state that the Commission failed to take into account the costs incurred in designing a cable system capable of providing a signal strong enough to serve multiple outlets in a home. In particular, Time Warner asserts that cable networks have been designed to accommodate an expected number of additional outlet requests, a number that is likely to rise significantly beyond the capability of existing networks if this service must be offered at cost. These cable operators argue that they should have a means to recover the costs of these needed network improvements without the burden of cost-of-service showings. In this regard, Arizona recommends that the Commission permit cable operators to recover the costs of providing additional connections through a modest monthly charge that represents a percentage of the capital expenditures for the network, the capital costs involved with providing the additional outlet and the costs of maintenance of such outlets.

56. Petitioners' claim that their networks are not currently designed to accommodate the increased number of additional connections that will be requested is not substantiated with evidence in the record of this proceeding. Moreover, no party has provided sufficient information upon which we could determine an allowance based on current incremental system costs or future costs resulting from increased demand. Thus, until the demand for additional connections unable to be accommodated is known, no further consideration of this matter is needed. The rules, in general, provide a means to examine individual cases, including through a cost-of-service proceeding. Moreover, should parties provide evidence at a later date to substantiate their claims, the Commission can reevaluate the situation.

4. Guidelines for Determining Equipment and Installation Charges

57. The Commission developed Part III of FCC Form 393 to provide the methodology for calculating the actual costs of equipment and installation charges for cable service in the Equipment Basket. A number of reconsideration petitions address the general guidelines for determining actual cost. Some petitioners also seek modifications of the form or request clarifications regarding its use. In addition, a number of questions relating to the calculation of the actual cost of equipment and installations have arisen since the adoption of the Rate Order. Several of these issues are addressed in turn below.

58. Some cable interests argue that the permitted rate of return of 11.25 percent is too low and has no basis other than its use as the rate allowed local telephone exchange carriers. As evidence that a higher rate is justified, Booth America observes that the average bond yield over the past two years for the cable industry set by the investment community is higher than comparable bonds for local telephone exchange carriers (8–15 percent vs. 7–9 percent). The relative bond yields for different industries, however, is not necessarily correlative to the reasonable rates of return for the regulated segments of those industries. The choice of an 11.25 percent rate of return for regulated cable equipment was based on the

Commission's experience in rate making. However, the allowed rate of return can be adjusted by the Commission, if the current provision proves to be unfair to either cable operators or to ratepayers. Further, cable operators may apply the rate of return at a rate "grossed up" for income taxes, and the instructions for the calculation of income taxes includable in Column G of Schedules A and C have been revised to reflect this change.

59. A number of cable operators state that the actual cost methodology does not recognize the costs of tax liability attributable to partnerships, Subchapter S corporations and sole proprietorships. They observe that these taxes are not paid by the operator, but by the ultimate owners. However, they claim that these taxes are legitimate costs of providing equipment and services and should be recoverable. These petitioners, however, misconstrue the workings and purposes of these provisions. All taxes, including income taxes for those business entities required to pay income taxes, are taken into account in our actual cost methodology. The provision for income taxes is made to compensate the business entity for a cost of doing business and to allow it thereby to earn a fair after-tax return on investment. Any business with a statutory income tax obligation thus may include the cost of such obligation in its rate calculations. However, because Subchapter S corporations, partnerships, and sole proprietorships do not have an income tax obligation as business entities, this provision is not applicable to them. Accordingly, such entities that do not have income tax obligations would enter zero in Column D of Schedules A and C. For corporations with income tax obligations, the amount included in Column D is based on the "grossed-up" statutory rates, not the tax rate actually paid.

60. Arizona asserts that the methodology for determining monthly equipment charges depends on the extent to which equipment has been depreciated. It claims the original cost cannot be recovered over its remaining useful life in some situations and suggests that cable operators be allowed to calculate the monthly equipment lease charge using a *pro forma* methodology that permits recovery of original costs. Baraff states that Form 393 appears to permit an operator to include equipment and service not previously offered. However, it observes that the form relies on historical data for determining a permitted rate and seeks clarification that an operator may use prospective costs where it anticipates offering new equipment.

61. The methodology specified for development of rates for leased equipment is dependent to an extent on the amount of accumulated depreciation associated with each equipment type. This is necessarily so because it is assumed that recovery has already been attained for that portion of plant for which depreciation has been taken and no provision should be made for recovery beyond the cost of the plant. This assumption is founded on the expectation that operators use standard accounting practices, which would employ depreciation lives commensurate with the economic productivity of assets and would thus match the costs of the plant with the revenues generated by the use of such plant.

62. The equipment rates, however, are not dependent on the accumulated depreciation balance alone. As a result, the rates for one operator with a higher proportion of accumulated depreciation will not necessarily be lower than another operator with a lower proportion of depreciation. For example, if all factors except age are equal, including original cost and useful life of equipment, the rates should be the same for both operators. The one with the newer equipment and, therefore, lower accumulated depreciation will simply be allowed to charge customers for a longer period until full recovery is attained.

63. To the extent that systems have failed to recover amounts now reflected in accumulated depreciation, the amount would be reflected in the system's accumulated loss. It is recognized that the failure to make recovery and the accumulation of losses result from policies involving business strategies put in place before the introduction of regulation. Comment has been sought on the need to make special provision for such losses in a separate cost of service proceeding. Whatever the result of that inquiry, the procedures for rate development for equipment should apply sound ratemaking principles and assume good accounting practices. Recovery of past shortfalls will be considered as a separate item.

64. In establishing the rules for the pricing of equipment, we intended that operators would have a methodology for pricing leased equipment in such a way that would effectively allow recovery of full cost over the equipment life. In theory, then, a piece of equipment would be fully paid for just when it is ready for retirement and new equipment must be installed. Recalculation of rates for each equipment type is allowed annually and customer charges should be adjusted up or down based on the recalculation. As newer models are employed, a separate rate shall be developed. In such case, when the new model is introduced during the interim, a rate may be calculated and used until the annual recalculation is made. Alternatively, however, where the operator expects eventually to replace the older model upon retirement with a newer model that is not significantly different, operators may phase the new equipment in by developing a weighted average rate for both the new and old items.

65. A few petitioners request clarification or modification to allow use of data averaged on a system-wide or accounting unit basis throughout Form 393, not just in selected places, to alleviate some of the burdens of completing the form. Form 393 does not actually specify the level of averaging that is allowed or required for equipment costs. The form is designed, however, to develop rates for each franchise within an operator's system. We clarify that the allocation of equipment costs to the franchise level may reflect averaging to the extent permitted by the cost accounting and allocation provisions of Section 76.924 of our rules.

66. While not raised specifically in the petitions, several other matters need to be explained or clarified. Lost converters should not require separate consideration in the calculation of equipment rates inasmuch as the depreciation rates may take into account a normal loss, and retirement of such lost items will adjust the net plant balance. To the extent that there is an unusual number of lost items which is not provided for in depreciation rates, a reasonable adjustment may be made to recover the cost. Likewise, unusual maintenance may not be adequately provided for. For instance, where a company sends one equipment type out for repair instead of doing the work itself, such amount will be averaged over all equipment types if the expense is included on Schedule B. To remedy this, the expense should be included on Schedule C, Column H with notation and documentation. This will ensure that the cost is averaged over the specific equipment type only and not over all equipment.

67. Annual recalculations of equipment costs should be based on the annual data for the operator's previous fiscal year. When, however, there has been an unusual change in operations that would not be adequately reflected in the previous year's annual data,

subject to acceptance by the local franchising authority, or by the FCC when applicable, a representative month may be used for the calculation of rates. Further, when there would be no material difference in results from using a representative month rather than the past fiscal year, and where the local franchise authority, or the FCC when applicable, finds it acceptable, a representative month may be used. In both cases, the operator should attach a brief statement to Form 393 explaining why it is appropriate to use a representative month.

68. The equipment calculations provide that the cost of maintaining equipment is to be included in the charge made for the equipment. Accordingly, there should not also be a separate charge made to customers for service calls to maintain company owned equipment on customers' premises.

69. The charge for service installation is to be calculated on the basis of the hourly service charge (HSC). This charge includes the direct labor as well as the capital costs of the service installations as determined on Schedule A of Form 393, part III. Consistent with our determination to unbundle installation and equipment charges in the Rate Order, it does not include the cost of material for the drop, connections, inside wire, or other equipment installed. These items are either capitalized as distribution plant or separately chargeable to customers in equipment prices. The installation labor may include all labor from the drop inward, including the cost of labor to install the drop and connections. Since the cost of the drop material is capitalizable as distribution plant, the expected maintenance to the drop over its useful life shall not be included in the installation charge. Installations are not to be capitalized and are, therefore, not includable on Schedule C of Form 393, part III. Finally, the installation charge may be a one time charge or set up in installments.

F. Procedural and Jurisdictional Issues

1. Preemption of Franchise Agreements Barring Rate Regulation

70. The Rate Order stated that the 1992 Cable Act preempts provisions in existing franchising agreements barring rate regulation by franchising authorities. It cited the House Report which stated that all franchising authorities, regardless of preexisting provisions in a franchise agreement, now have the right to regulate basic cable service rates if they meet the certification requirements. In this regard, it noted that Congress would not have expressly grandfathered specified types of rate regulation agreements in section 623(j) of the Communications Act had it intended that any other rate regulation agreements would continue in force and effect.

71. One petitioner, representing cable interests, requests that the Commission allow cable operators and franchising authorities to enter into new agreements under which local authorities would forbear regulation. This petitioner contends that such agreements serve the public interest to the extent that a franchising authority may negotiate benefits such as upgrades and expanded services areas, or where it determines that it can make better use of its franchise fees than in costly rate regulation. The petitioner proposes that such agreements may not be conditioned on some alternate form of rate regulation, and that they permit the franchising authority to seek certification if the cable operator breaches the agreement. Another group of cable operators asserts that such agreements would reduce the number of Commission cost-of-service proceedings and appeals of local cost-of-service proceedings, as well as permit negotiation for service options that may not be easily obtained without cost-of-service showings.

72. We believe that the types of arrangements described by the petitioners are not permitted under the Act. As the Conference Report stated the goal of section 623(a) of the Communications Act "is to protect subscribers of any cable system that is not subject to effective competition from rates that exceed the rates that would be charged if such a system were subject to effective competition." It is apparent that Congress did not intend to permit local franchising authorities to bargain away this statutory protection for local subscribers in exchange for some other related or wholly unrelated benefit, whether perceived or actual. Under the current regulatory scheme, a franchising authority that does not believe rate regulation is necessary may simply choose not to seek certification from the Commission. The franchising authority may conclude, for instance, that the cable operator's basic rate is reasonable and its service satisfactory, or the franchise fee may be earmarked for other governmental purposes. As stated in the Rate Order, the Commission will not assume jurisdiction at this time where a franchising authority does not apply for certification. Such a decision by the franchising authority, however, does not and cannot preclude it from seeking certification in the future if circumstances warrant local rate regulation.

2. Cable Operator Responses to Cable Programming Services Complaints

73. Section 623(c)(1)(B) of the Communications Act requires the Commission to establish "fair and expeditious procedures for the receipt, consideration and resolution of complaints" regarding cable programming services. Section 623(c)(3) provides that, with the exception of complaints filed during the 180-day period following the effective date of our rules, cable programming service complaints must be filed within "a reasonable period of time" following a change in rates, including a change in rates resulting from a tiering change. The Rate Order interpreted "reasonable period of time" as 45 days from the time a subscriber receives a bill from the cable operator that reflects the rate increase. The Rate Order also determined that the complainant must supply certain readily available factual information to make a "minimum showing," on a standard complaint form, to receive adjudication of the complaint. Complaints that fail initially to meet the minimum showing requirement will be dismissed without prejudice and the complainant will be given one additional opportunity to file a corrected complaint. Absent a Commission notification that the complaint fails to make the minimum showing, the cable operator must respond within 30 days from the date of service. A cable operator failing to file and serve a response to a valid complaint may be deemed in default, and an order may be entered against the cable operator finding the rate in question to be unreasonable and mandating appropriate relief.

74. Certain cable operators argue that the Commission should first determine whether a complaint is meritorious before the operator is obligated to respond. Petitioners contend that the burden should not be placed on the cable operator to respond in 30 days if the Commission is unable to dismiss frivolous complaints within that time period. They argue that if the Commission does not first determine that a complaint fails to meet the minimal requirements, then the cable operator should be able to respond simply that the complaint is deficient and not be required to justify its rates.

75. We believe that cable programming service complaint procedures adopted in the Rate Order effectively implement the statutory mandate. With respect to patently defective complaints, Commission

processing should eliminate such complaints within 30 days, prior to an operator's response. If petitioners mean to implicate complaints that are not patently defective, they would seem to transform the subscriber's "minimum showing" requirement into a *prima facie* showing requirement, which would be in direct contradiction to the purpose of Section 623. Petitioners' proposal would also delay Commission consideration of the subscriber's complaint, because the subscriber and the Commission would ultimately wait longer for the cable operator's substantive response before the rates could be considered. As a practical matter, the cable operator, not the subscriber, is privy to the information that will support its rates. Moreover, most cable operators can be expected to have already performed a benchmark calculation to some level of precision in setting their rates. The 30-day time period for cable operator responses to a cable programming services complaint (unless dismissal occurs during that period) thus sufficiently addresses the Commission's ability to review the complaints in a complete and timely fashion, while preserving congressional intent to place a minimal burden on subscribers.

3. Refund Liability Pursuant to Unsuccessful Effective Competition Challenge

76. The Rate Order stated that a cable operator may file a petition for reconsideration of the franchising authority's certification within 30 days after the certification is granted. It also stated that if the petition for reconsideration challenges the presumption that effective competition is absent, rate regulation will be automatically stayed until resolution of the petition. If the petition is resolved in the franchising authority's favor, *i.e.*, no effective competition is found, the cable operator would be subject to refund liability back to the date the petition was filed. The Commission adopted this procedure to protect the rights of cable operators to be free of rate regulation in the event effective competition does exist, while ensuring that subscribers receive compensation for any overages charged during the pendency of an ultimately unsuccessful petition.

77. A number of municipalities contend that refund liability dating back only to the date of filing the petition for reconsideration, if misinterpreted, could encourage cable operators to make such filings regardless of the petition's underlying merits, because it would reduce their refund liability by at least a month, and possibly much longer. This would occur because the cable operator's refund liability goes back potentially to the effective date of the rate rules, i.e., September 1, 1993, for the systems serving most subscribers. If a franchising authority were to seek certification on October 1, 1993, and the cable operator were to challenge that certification request on the basis of effective competition on October 31, 1993, the provision could be read to limit the operator's refund liability to October 31, 1993. This would remove the refund liability for a two-month period, even if the operator were to ultimately lose the effective competition challenge. Petitioners are correct in pointing out this unintended and inappropriate possibility. Therefore, cable operators filing an effective competition challenge will be subject to the same refund liability as all other systems should their challenges prove unsuccessful, and § 76.911(c)(3) of the Commission's rules is clarified accordingly.

4. Basic Tier Definition

78. Section 3(b)(7)(A) of the 1992 Cable Act provides that the minimum contents of the basic service tier should include: all signals carried in fulfillment of the requirements of sections 614 and 615 of the Communications Act; any public, educational, or government access channels required by the franchise; and any signal of any television broadcast station that is provided by the cable operator to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station. The Rate Order stated that this statutory definition of the basic service tier preempted provisions in franchise agreements that require additional services to be carried on the basic tier.

79. A number of municipalities argue that this interpretation is inconsistent with preexisting sections of the Communications Act, added by the 1984 Cable Act, that have not been superseded by the 1992 Cable Act, such as section 625(a)(1)(B), relating to the modification of existing franchise obligations. Petitioners argue that because this provision permits a franchising authority to prohibit a cable operator from changing the "mix, quality or level" of cable services required in a franchise unless the cable operator demonstrates that such "mix, quality or level" of services remain the same after any modification, a franchising authority could prohibit the retiering of programming from basic to another tier.

80. Petitioners also argue that because section 624(b)(2)(B) of the Communications Act allows franchising authorities to enforce requirements "for broad categories of video programming or other services," Congress did not intend to preempt preexisting franchise agreements. In any event, they contend, requirements in an existing agreement are those to which the franchising authority and the cable operator have already agreed, and were not imposed unilaterally by the franchising authority.

81. One petitioner argues that the 1992 Cable Act amended the 1984 Cable Act specifically to permit franchising authorities to take into account the number of channels on a tier in deciding whether to renew a franchise. The petitioner points out that, in the 1992 Cable Act, Congress specifically omitted the 1984 Act's prohibition against taking into account the "level" of services for renewal purposes, so that, it argues, franchising authorities now can require a certain level of services, *i.e.*, specify the number of channels on the basic tier, in renewal negotiations.

82. Petitioners also argue that because section 625(d) allows cable operators to rearrange service from one tier to another if rates for these tiers are not subject to regulation, the above reasoning is logical only with respect to cable operators not subject to rate regulation. The argue that this provision would be unnecessary if all cable operators could freely move services from one tier to another.

83. In response to these assertions, a number of cable interests argue that the elements of basic service should be at the cable operators' discretion, and not imposed as part of a franchise agreement. As one such petitioner points out, the franchising authority could require so many basic channels that they would control the rates of all satellite-delivered programming services and have the power to control retiering, which would nullify the Commission's sole jurisdiction over cable programming services in section 623. The municipalities reply that if cable operators have the sole discretion to add satellite-delivered programing to the basic tier, this already eliminates the Commission's sole jurisdiction over those channels.

84. We reaffirm the Rate Order's preemption of franchise agreements that purport to mandate distribution of additional services on the basic tier beyond the new statutory requirement. The legislative history of the 1992 Cable Act is unequivocal that Congress intended to give cable operators the right to determine the elements of the basic tier, subject to the minimum

statutory requirements. We believe that this flexibility is unaffected by the franchising authority's new right to take into account the "level" of services at renewal time. Indeed, the Senate Report indicates that section 626 was amended to "allow the franchising authority to consider the level of service provided *over the system* throughout the franchise term." Thus, it appears that the franchising authority's right to consider the "level" of services does not relate only to the basic tier, or to specific channels, but to the system capacity as a whole.

85. The fact that Congress left section 625 unchanged suggests that a franchising authority may deny a modification request, based on the franchising authority's determination that the cable operator has changed the "mix, quality and level" of services required by the franchise. But this determination must similarly relate to the system as a whole, not just to the specific composition of the basic tier. Thus, the municipalities have not presented any persuasive arguments that Congress intended to grant them discretion over the basic tier composition.

86. The affirmative authorization in section 625(d) of the Communications Act for system operators to switch services among unregulated service tiers, although of less import following adoption of the 1992 Act, is not inconsistent with the view expressed in the Rate Order and in the Conference Report that, in the regulated environment, the basic tier is to be composed of the broadcast and access channels specified in the statute and such other services "that the cable operator may choose to provide." While we are bound to take into account the comprehensive statutory scheme, to harmonize, if possible, seemingly contradictory provisions, and to construe the statute in a manner that does not render certain provisions superfluous, we must also accord substantial weight to recently-enacted amendments and their legislative history. In this case, that history evinces Congress' intention to displace the franchising authority's discretion over the composition of the basic tier. Allowing franchising authorities to continue to enforce service requirements for the basic tier that are well beyond the statutory requirements would clearly compromise Congress' principal concern in enacting the 1992 Cable Act that cable operators provide local services on a basic tier at reasonable rates. Thus, we affirm our prior conclusion that franchising authorities do not have the authority under the Act to require carriage on the basic tier of channels other than those set forth in the statute.

G. The Price Cap Governing Cable Service Rates

87. In the Rate Order, we determined that rates for regulated cable service would be governed by a price cap mechanism once initial regulated rates were determined either through the benchmark or cost-of-service approaches. Capped rates may be adjusted annually for inflation. In addition, cable operators may pass through to subscribers increases in certain categories of external costs to the extent that such increases exceed inflation: costs of retransmission consent fees incurred after October 6, 1994, other programming cost increases, taxes, and the costs of franchise requirements including PEG access channels. Franchise fees are also accorded external cost treatment. A number of petitioners and responding commenters have expressed concerns about, and/or suggested modifications to, various features of our price cap requirements. We address these concerns and proposals in turn.

1. External Costs

88. General Issues. Several petitioners urge the Commission to adopt suggested overarching criteria for determining eligible categories of external costs. They contend, for example, that operators have substantial bargaining control over programming costs, franchise fees, and other franchise requirements, and that only costs that are beyond the control of the cable operator should be subject to external treatment. Several telephone companies contend that telephone companies subject to price cap requirements can only pass through costs triggered by administrative, legislative, or judicial action beyond the control of the carriers, and that we should limit passthrough of external costs to the same extent that we permit telephone companies to do so. Telephone companies also urge that we incorporate a sharing feature in the price cap mechanism for cable service similar to the one that we have included in the price cap rules for telephone carriers. NATOA argues that external treatment should only be accorded to franchise fees because the Commission's benchmark formula generally reflects all costs other than franchise fees and that allowing external treatment for other costs would permit operators to recover such costs twice.

89. As indicated, our price cap governing cable service rates accords external cost treatment to costs of retransmission consent fees incurred after October 6, 1994, other programming cost increases, franchise fees, taxes, and the costs of franchise requirements including PEG access channels. We adopted each category of external costs based on the considerations pertaining to the category as discussed in the Rate Order. As modified and clarified below, we believe that these external costs will permit an initial implementation of cable service rate regulation that will achieve the goals for that regulation expressed in the Rate Order. These categories of costs will broaden cable operators' opportunities to recover the actual changes in such costs, instead of relying on a general inflation adjustment, while at the same time not being so extensive as to undermine the benefits of a price cap mechanism as the primary method of regulation of cable service rates. We will also monitor the impact of these categories of external costs and will modify and refine them as necessary to assure that, as a whole, they will achieve our goals for rate regulation of cable service. For these reasons, we do not find it necessary to adopt the more restrictive overarching standards for determination of external costs sought by some petitioners.

90. More particularly, we do not believe that the cable operators' control over the costs in question should be the exclusive criterion for selection of external costs. Thus, as discussed in the Rate Order, other objectives such as assuring the continued growth of programming diversity may dictate different criteria. Telephone companies have failed to advance a sufficient reason why we should adopt as an overriding policy goal achieving parity in price cap mechanisms for the two industries. Instead, our price cap requirements for cable and telephone services are, and should be, based on the respective, separate considerations discussed in the proceedings in which we adopted those respective requirements. In addition, under the price cap mechanism changes in external costs are compared to inflation. Increases in external costs more than inflation will be reflected in rate increases, and decreases in such costs and increases less than inflation will be reflected in rate reductions. Thus, contrary to NATOA's assertions, there is no double recovery for costs accorded external treatment. For these reasons, we will not change the scope of our external cost treatment.

91. Retransmission Consent Fees. In the Rate Order, we observed that not treating retransmission consent fees as external to the price cap may provide

operators the greatest incentive to drive a hard bargain with broadcasters over the value of broadcast signals. However, we recognized that such an approach could risk the non-carriage of broadcast signals if an operator and broadcaster are unable to reach a final agreement regarding a retransmission consent fees. In addition, we concluded that treating retransmission consent fees as external to the price cap would provide greater assurance that broadcast signals are carried because operators could recover these costs through increased rates for cable service. The Commission thus determined that providing external treatment for increases in costs associated with retransmission consent fees best balances these competing interests. However, in order to prevent any sudden increase in subscriber rates due to initial retransmission consent fees, we provided that external treatment for retransmission consent fees would commence after October 6, 1994. External treatment is limited to the new or additional fees beyond those already being charged on that date.

92. Cable operators agree with the Commission's decision to treat costs associated with retransmission consent fees as external to the price cap. However, they dispute the justification for delaying such treatment of retransmission consent fees until October 6, 1994, as described above. Blade contends that although operators have long carried broadcast signals, cable service rates historically have not reflected a significant "value" for these signals. If we preclude operators from recouping these costs, Blade threatens to drop a number of broadcast signals demanding retransmission consent fees.

93. We are not persuaded that we should alter the starting date for external cost treatment of retransmission consent fees. As we stated in the Rate Order, delaying the external treatment of retransmission consent fees until that date will protect consumers from abrupt rate increases in response to new retransmission consent arrangements occurring on or after October 6, 1993. We believe that protecting consumers from abrupt rate increases fulfills our statutory mandate and should be accorded greater weight than the fact that retransmission consent fees are new costs to cable operators. Delaying the starting date for external cost treatment for retransmission consent fees also is more likely to encourage cable operators to negotiate a fair price for retransmission consent fees. We do not believe that this will lead to significant numbers of cable operators dropping stations instead of seeking to negotiate a fair price for retransmission consent fees. In addition, as stated in the Rate Order, we believe that cable rates already reflect the value of broadcast signals offered to subscribers. Thus, to some extent, retransmission consent fees merely reflect compensation to broadcasters already received by cable operators from subscribers. Accordingly, we will not alter the starting date for external cost treatment for retransmission consent fees. As we stated in the Rate Order, we will closely monitor initial retransmission consent agreements for their potential impact upon subscriber rates. If additional measures appear necessary to protect subscribers from unwarranted increases in the rates for cable service on the basic tier, we will reexamine this treatment of retransmission consent fees.

94. System Upgrades. In the Rate Order, we concluded that we should not give external treatment to costs of system improvements. We stated that such expenditures are likely to be significant and, if automatically passed through, could lead to substantially increased rates. We also stated that local authorities should be permitted to carefully weigh the costs and benefits of network improvements. We then held that costs of network improvements could be recovered through cost-of-service showings to the extent they cannot be recovered through rates regulated under the price cap scheme. We stated that we would monitor the effects of treating network improvement costs this way and, if it appeared that this treatment thwarts the development of new technologies and services, would review our decision as necessary.

95. Cable operators urge the Commission to accord external treatment for costs associated with upgrades and other capital improvements. They state that the Commission's benchmark/price cap mechanism does not account for upgrade costs. Thus, they assert, operators will be unable to recover costs of expansion of systems, except through cost of service showings, despite the Commission's stated goal to "permit the continued growth of [cable] services." Comcast argues that requiring operators to recoup such costs only through cost-of-service showings is an untenable option, such that operators may choose not to undertake upgrade expansions at all. These parties suggest that we permit upgrade costs to be treated externally, subject to evaluation by the local authorities.

96. Other petitioners support the current treatment of cable system upgrade costs, as described in the Rate Order. These petitioners argue that cable operators should not be permitted to recover these costs externally from the benchmark/price cap mechanism because upgrade costs are reflected in the survey data on which the benchmark formula is based. In particular, they note that systems which upgraded their plant and operations prior to September 30, 1992 were sampled in the survey and the rates resulting from such upgrades are represented in our benchmark approach. Thus, these commenters claim, permitting external treatment for such costs would result in operators' double-recovery of upgrade costs. They also contend that these costs are within the control of operators because, unless required by regulators or authorities, the final decision whether to expand the system naturally rests with the cable operator. NATOA argues that permitting external treatment for upgrade costs may not be in the public interest because only a few subscribers may receive the benefits related to a system expansion whose costs will be subsidized by all subscribers. GTE argues that if the substantial costs associated with system expansions are permitted to be passed-through directly to subscribers, cable systems will have no incentive to make only prudent investments in plant and equipment. BellSouth is concerned primarily that permitting operators to pass-through upgrade costs will allow them to recoup the costs of establishing new non-regulated services, such as two-way communications services, within the rates for regulated services.

97. As stated in the Rate Order, upgrade costs can be significant and could substantially affect cable rates. After reviewing the petitions for reconsideration, we continue to believe that such costs should be evaluated using cost-of-service principles, and should not simply be passed through to subscribers where local franchise authorities have the opportunity for only a cursory review. System upgrades will normally involve capital expenditures that will be recovered over a number of years. A determination of the appropriate recovery of such costs, including a fair rate of return and the proper allocation of costs to regulated and unregulated services, necessarily involves cost-of-service issues. Accordingly, we believe that establishment of any external treatment for upgrade expenditures should await adoption of cost-of-service standards that can then govern any external treatment of such costs. In the Cost-of-Service Proceeding we are also examining streamlined treatment of

upgrade costs. If adopted, this could provide a treatment of upgrade expenditures substantially similar to external treatment. We therefore will address in that proceeding whether and how we might establish external treatment for upgrade expenditures. Also, if the upgrade involves a change in the number of channels offered, we are continuing to examine methodologies to take into account the increased costs. In the interim, operators seeking to recover such costs may do so through a cost-of-service showing.

98. Costs of Franchise Requirements. The Cable Act of 1992 requires that in setting basic service rates, we take into account the reasonably and properly allocable portion of, *inter alia*: The cost of satisfying franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise, and the costs of any public, educational, and governmental access programming required by the franchising authority. The regulatory framework for regulation of cable service adopted in the Rate Order took these costs into account in part by providing that the costs of satisfying franchise requirements, including the cost of satisfying franchise requirements for local, public, educational, and governmental access channels, would be accorded external cost treatment. We stated that these costs are largely beyond the control of the cable operator, and should be passed on to subscribers without a cost-of-service showing.

99. On reconsideration, municipalities generally urge the Commission to define narrowly the scope of costs of franchise requirements that cable systems will be permitted to pass-through directly to subscribers as external costs. King County contends that franchise-related costs are not beyond the control of operators in that cable systems bargain actively with authorities over long periods of time over these requirements. Michigan Communities warns the Commission that operators will attempt to turn the Commission's price cap into a "price floor" by characterizing most major franchise-related costs as external costs. It is concerned that operators will attempt to force authorities to permit operators to characterize anything in a new franchise agreement as a franchise requirement entitled to pass-through treatment. It states that operators will seek external cost treatment for all new standards required of operators by law, including customer service standards, technical standards, SEC requirements, local zoning laws, social security payments, and any other legal requirement tightened since the last franchise agreement. NATOA urges the Commission to define the term "costs of franchise requirements" to include only direct and verifiable monetary costs specifically enumerated by a dollar amount in a franchise agreement to satisfy franchise requirements imposed by the authority. In addition, NATOA believes that the Commission should not accord external treatment to franchise-related costs that operators currently provide on a voluntary basis such as customer service-related costs that many operators incur in voluntarily complying with minimum service standards adopted by NCTA. NATOA also argues generally that it is unfair to allow operators to pass-through costs they may currently incur, such as costs incurred to comply with the Commission's recently adopted customer service standards.

100. Cable operators, on the other hand, generally argue that external treatment of franchise-related costs appropriately allows them to recover the costs of items required by local authorities in exchange for franchises, and that such costs are largely under the control of local authorities. NCTA contends that there is no justifiable distinction between franchise-related costs specifically enumerated by a dollar amount within a franchise agreement and those requiring in-kind expenditures. NCTA states that NATOA misunderstands current Commission rules, which permit the pass-through only of increases in external costs that exceed the GNP–PI. Continental asserts that certain costs, particularly PEG access channels and institutional networks, should be treated externally from the price cap because these are clearly traditional franchise requirements. Continental further objects to permitting local authorities to exclude overhead for PEG access channels and requiring operators to spread franchise-related costs over the franchise agreement term. Continental notes that it has expended tremendous funds for customer service; thus, it believes that it should be permitted to recover at least increases in these costs due to new government standards, as permitted under the Commission's current rules.

101. We believe that the scope of costs that are eligible for external treatment as costs of satisfying franchise requirements should be guided by the statutory language indicating that our regulatory framework for the basic service tier should take such factors into account. Thus, such costs include the costs of satisfying franchise requirements to support public, educational, or governmental channels or the use of such channels or any other services required under the franchise, and the costs of any public, educational, and governmental access programming required by the franchising authority.

102. This statutory language should be interpreted in a way that will produce equitable results for operators and subscribers. We believe that this objective will be met by providing that only increases in the costs of complying with services specifically required in the franchise documents will be eligible for external treatment. This will permit local authorities and individual systems to work cooperatively to establish the costs of meeting franchise requirements that will be accorded external treatment. If specifically required by franchising authorities, however, we believe that costs of meeting such requirements should be accorded external treatment. This will include meeting technical and customer service standard requirements that exceed the federal standards and potentially upgrade requirements. The costs of simply complying with federal customer service and technical standards, however, will not be treated as external costs. We believe that this approach will be fair to operators by assuring that they can recover costs of meeting local requirements.

103. Taxes. The Cable Act of 1992 requires the Commission in establishing regulations governing rates for the basic service tier to take into account, *inter alia*, the reasonably and properly allocable portion of taxes and fees imposed by any state or local authority on transactions between cable operators and subscribers, and assessments of general applicability imposed by a governmental entity applied against cable operators or cable subscribers. In the Rate Order, we determined that we met the statutory directive to take general assessments into account by providing for a general inflation adjustment to capped rates that could be expected to recover increases in such costs. We met the statutory directive to take into account taxes imposed directly on the provision of cable television service by providing for external treatment of these taxes under our benchmark/price cap requirements. Thus, our rules provide that increases in state and local taxes applicable to the provision of cable television service are external costs and may be passed-through to subscribers without a cost-of-service showing.

104. On reconsideration, several petitioners request that we afford external treatment to certain California taxes that are imposed on cable

operators in that state. Specifically, these parties ask that the California possessory interest tax be treated as an external cost for purposes of the initial rate benchmarks and future rate increases. They argue that while this levy is not an industry-specific tax, it is nevertheless assessed in a unique manner against cable operators that warrants external cost treatment under § 76.922(d)(2)(i)(A) of our rules. In this regard, they describe the tax as being different from a generally applicable property tax that would be accounted for in the GNP-PI adjustment. Furthermore, they explain that it is a significant tax outside the control of cable operators. One petitioner also requests similar external treatment for the California utility user tax. The utility user tax is described as a local tax on customers of California utilities and cable television service.

105. Our rule concerning external treatment of taxes is formulated to encompass only taxes imposed by state or local authorities on transactions between cable operators and cable subscribers; taxes of general applicability applied against cable operators and subscribers are to be recovered through inflation adjustment to capped rates. This approach is narrowly tailored to protect consumers while assuring that cable operators may recover special taxes applicable to the provision of cable television service.

106. Based on the record before us we are unable to conclude that the California possessory interest tax is, in every instance, the type of tax that is entitled to be passed through to subscribers separately and specifically, rather than accounted for and recovered as part of the GNP-PI inflation adjustment. However, we do not disagree with petitioners that such taxes may be entitled to external treatment on a going forward basis where they are in fact, as CCTA suggests, "in essence and effect" taxes on "transactions between cable operators and cable subscribers." Whether or not they are entitled to this treatment is dependent on the manner of assessment.

107. As CCTA indicates, the proper assessment technique has been the subject of ongoing litigation in California and it appears that different jurisdictions within the state have chosen to apply the tax in different ways so that in some situations the levy may be applied in a common fashion to cable and other businesses whereas in other situations cable may be subject to a relatively unique assessment process. As CCTA's own data indicate, for some systems the levy is nominal in amount and in others it is much more significant. Where the assessment is very directly related to subscriber revenues, such as where the tax is based on a value of intangible assets formula effectively calculated from the operator's income for the provisions of cable service, then such a tax should, we believe, be treatable as a costs subject to "external treatment" on a going forward basis. Where this is not done and the assessment process is not different for cable and other business, we would expect this tax to be one of the costs to be accounted for under the inflation adjustment process. This result is, we believe, consistent with the statutory provisions mandating that our regulations take into account taxes imposed on system operators. Such taxes are clearly beyond the control of the system operator and this process should both avoid unnecessary cost of service showings and create a measure of accountability for the costs imposed.

108. Limitations on External Treatment of Costs of Affiliated Programming. In the Rate Order, we indicated that the pass-through of increases to the program services of affiliated programmers is limited to the lesser of the annual incremental percentage increase in such costs or the GNP–PI. We defined affiliated programmers in the same manner as they are defined for purposes of the program access rules. We indicated that we took this approach with respect to affiliated programming out of concern about the abuses that might occur if we were to permit vertically integrated cable operators to engage in unlimited pass-throughs of programming costs to their subscribers.

109. Subsequently, in the Cost-of-Service NPRM, we offered for comment a proposal to replace the cap on affiliated programming increases with affiliate transaction safeguards that would prevent cable MSOs from imposing unreasonable programming costs on regulated cable subscribers. As a possible safeguard, we proposed to prescribe the methodology for determining the value of such costs that could be recovered in regulated cable service rates. In particular, we asked whether we should require cable operators to record affiliate transactions at prevailing company prices offered in the marketplace to third parties, whenever the supplying affiliate has established such prices, or at fair market value.

110. Cable operators and programmers contend that the cap of affiliated programming increases will adversely affect the cable programming marketplace. They argue that cable systems will not want to absorb affiliated program increases and will therefore either drop such services or will offer them a la carte. In either case, they claim that subscriber programming choice will suffer. Affected affiliated programmers, they point out, would include entities that provide regional sports programming, minority entertainment programming and non-profit, public affairs programming (*i.e.*, C–SPAN). They also believe the restriction will hurt the ability of affiliated programmers to compete with nonaffiliated program services and will discourage investment in the development of new, high quality program services. They further assert that many innovative program services exist today because cable MSOs were willing to invest in their services at critical stages of development.

111. Petitioners also challenge the need for such a restriction and argue there is no evidence in the record to support adoption of such a rule. They regard the Commission's cost-shifting concerns as theoretical. In practice, under the new regulatory regime, they believe cable MSOs will be more concerned with increasing subscribership than with obtaining any marginal benefit from unreasonable cost-shifting. Some petitioners also assert that the Commission's program access rules, and other rate evasion measures provided for under the 1992 Cable Act, adequately protect against any objectionable cost-shifting behavior without the need for a limit on the recovery of affiliated programming costs.

112. Petitioners propose several different approaches to the treatment of affiliated programming costs. For example, Turner Broadcasting suggests that we only apply our affiliated programming pass-through restriction in cases where there is evidence of discriminatory pricing to affiliated systems and when a program service is primarily distributed to affiliated cable systems. On the other hand, Discovery Communications requests that we allow complete external recovery of all programming cost increases above GNP–PI, regardless of affiliation. Other petitioners suggest that we adopt some sort of transactional safeguards similar to the proposal in the Cost-of-Service NPRM. TCI, Colony Communications and Liberty Media suggest that we allow cable operators to use prevailing company prices, if offered in the marketplace to third parties, to determine programming costs that may be passed-through. Another proposal by Viacom International would permit cable operators to pass-through as affiliated programming costs at least the

average increase in nonaffiliated programming expense experienced by systems of comparable size without a GNP–PI cap. Telephone companies and municipalities support our treatment of affiliated programming and generally oppose any further expansion of our external cost categories.

113. Where rate regulated industries have the ability and incentive to recover costs of unregulated activities from regulated service subscribers, we traditionally have established safeguards to prevent such improper cost shifting. Accordingly, we conclude that we should maintain in place some type of safeguard.

114. However, we are persuaded by petitioners that a cap on affiliated programming charges could limit operators' ability to recover otherwise fair increases in the costs of programming that exceed inflation. As we indicated in the Rate Order, we attach great importance at this stage of rate regulation to the continued growth of programming. On balance, we thus believe that we should adopt an initial regulatory approach that is somewhat more liberal in permitting external treatment of affiliated programming costs. Specifically, we will replace the cap on affiliated programming costs with affiliate transaction requirements of the type proposed by some petitioners and additionally proposed in the Cost-of-Service NPRM. Cable operators may pass-through the costs of affiliated programming that exceed inflation as long as the price charged to the affiliated system reflects either prevailing company prices offered in the marketplace to third parties (where the affiliated program supplier has established such prices) or the fair market value of the programming. We are amending § 76.922(d)(2)(vi) to reflect this change. We will further examine this issue based on the record obtained in the Cost-of-Service Proceeding and we may refine these requirements in that proceeding, if necessary.

115. We will not modify the attribution standard for identifying affiliated programming services as was suggested by Liberty Media. We find that use of the 5 percent attribution standard that was adopted in the program access proceeding is appropriate for determining when our affiliate transaction requirements described above should come into play. This measure of affiliation will capture most instances in which ownership relationships between programmers and cable systems could create incentives to pass through excessive costs to cable subscribers. Also, this relatively inclusive attribution standard is warranted in light of our decision to allow the pass-through of reasonable affiliated programming cost increases above the rate of inflation. As with our affiliated programming limitations generally, we may further examine this ownership affiliation standard in the Cost-of-Service Proceeding.

2. Starting Date for External Cost Treatment

116. In the Rate Order, we determined that for all categories of external costs, other than franchise fees and retransmission consent fees, changes in external costs shall be measured from the date on which the system becomes subject to regulation, or 180 days from the effective date of our regulations, whichever occurs first. Any changes in external costs occurring prior to that date, including those since September 30, 1992, will not be accorded external treatment. For those systems whose base rate is determined by reference to September 30, 1992 rates, the Commission determined that the permitted rate will be calculated by adjusting rates as of that date forward only for inflation until the date of regulation or 180 days from the effective date of regulation, whichever occurs first. We recognized that precluding external treatment for cost increases over this initial period may unnecessarily encourage cost-of-service showings by those operators who have experienced high external costs during the interim. However, we stated that this approach will save operators the burden of identifying external costs since September 30, 1992. We determined that this approach, instead of permitting addition of external costs from September 30, 1992, would best balance administrative practicality against permitting operators the opportunity automatically to recover external costs.

117. Several cable operators object to the starting date for external treatment of costs established in the Rate Order. These commenters argue generally that this approach creates a "gap" period of between one year and 18 months, during which increases in external costs above inflation incurred may never be recovered. Thus, these parties contend that initial benchmark-determined rates may not be compensatory. Discovery argues that the starting date for external cost treatment established in the Rate Order may not serve the public interest goal of expanding cable service because many operators may hesitate to incur certain external cost increases prior to the initial date of regulation, such as programming costs associated with additional channels. These commenters generally favor eliminating the "gap" by establishing a single date on which external treatment of appropriate cost increases may begin, *e.g.*, October 1, 1992, or the effective date of our rules.

118. Under our starting date for external cost treatment, cable operators whose rates are determined by reference to September 30, 1992 rates will be permitted to adjust those rates forward by inflation to the initial date of regulation, or 180 days from the effective date of our regulations, whichever occurs first, and thereafter may recover increases in external costs. Increasing rates by a general measure of inflation should, on average, permit most cable operators to roughly approximate increases in costs since September 30, 1992. In any event, operators whose costs have increased more than inflation may attempt to recover the costs experienced since September 30, 1992 through a cost-of-service showing. Requiring or permitting external cost treatment through the benchmark process since September 30, 1992 may provide a more accurate measure of external costs for most cable operators but would entail considerably more administrative burden on operators and regulators. In particular, such an approach would entail detailed identification of costs back to that time. In addition, because regulation will be taking place on a tier basis, it would be necessary to track changes in external costs on a tier basis and account for service restructuring and retiering that may have occurred since that time. It would also be necessary to apply our cost accounting and cost allocation requirements back to September 30, 1992. We believe that the administrative difficulties involved in establishing September 30, 1992 as the starting date for external cost treatment outweighs any greater accuracy involved. Accordingly, we will retain the starting date for external costs established in the Rate Order.

3. Frequency of Rate Adjustments Based on Increases or Decreases in External Costs

119. In the Rate Order, we provided for an annual inflation adjustment to capped rates. We also have indicated in response to formally submitted questions that cable operators should file rates increases no more than once per year.

120. Cable operators argue that permitting rate adjustments based on legitimate changes in external costs only once per year unfairly burdens operators by forcing them to absorb these costs until the next opportunity to file for a rate increase. Cablevision, for example,

argues that this "lag" time can be more than a year in some instances. These operators thus argue that cable systems should be permitted to file for rate increases based on changes in external costs as such costs arise. These commenters express particular concern over recovering as soon as possible the programming costs associated with adding a new channel. NATOA, on the other hand, expresses general satisfaction with our current rules permitting such rate filings only annually.

121. Limiting capped rates to annual adjustments for increases in external costs clearly would involve lesser administrative burdens on operators and regulators than more frequent filings. On the other hand, annual filings would require cable operators to forgo recovery of external costs for up to one year, which could create undue hardships should a system experience a significant increase in costs mid-year. In addition, we note that in an unregulated environment cable operators have generally instituted rate increases only on an annual basis. And, cable operators have incentives to reduce consumer concern over rate increases by not instituting frequent rate increases. For these reasons, we conclude that we need not limit rate increases on account of increases in external costs to an annual basis, although we believe that in the vast majority of such cases increases will occur only once a year.

122. Under our external cost requirements, however, increases in external costs are permitted to be reflected in rates only to the extent they exceed inflation. Increases in external costs thus must be compared to the inflation index. The GNP–PI inflation index is released quarterly and is later updated. We provide that operators may file rate increases no more frequently than quarterly on account of increases in external costs. We also require that where rate increases are made based on a comparison to the initial quarterly inflation index, adjustments must be made in subsequent rate filings to reflect the final index. Our FCC Form 394 and instructions, to be released in the near future, will prescribe the precise manner of making these adjustments. We also will monitor the flexibility we give today to cable operators to make relatively frequent rate increases, and stress that we can impose more stringent limitations at a later date if necessary to protect consumers.

123. We also recognize that cable operators may experience decreases in external costs on a going-forward basis. Prompt reflection of such decreases in rates would benefit consumers. At the same time, a requirement for immediate rate filings to reflect decreases in external costs could significantly increase burdens on operators and regulators. Accordingly, we will not require such rate filings. Instead, we require that any filing to reflect increases in external costs or the annual inflation adjustment must also reflect any decreases in such costs that have occurred over the same period. In addition, we require that operators file revised rates to reflect decreases in external costs no later than one year from when such decreases occur. These requirements will assure that consumers will generally receive the benefits of decreases in external costs within a reasonable time frame without imposing significant burdens on operators.

IV. Second Report and Order

124. While the Rate Order established a benchmark methodology based on the rates of systems subject to effective competition, the Further Notice sought comment on whether cable systems with less than 30 percent penetration should be included in the "competitive" sample. When data from all systems in the competitive sample were used, the competitive differential was calculated at approximately 10 percent. However, when data from systems with less than 30 percent penetration were excluded from the analysis, a competitive rate differential of roughly 28 percent was calculated. This result occurs because many of the low penetration systems have rates which were significantly above the rates of other systems in the "competitive" sample.

125. The Further Notice queried whether such low penetration systems could be lawfully excluded from benchmark calculations, given the 1992 Cable Act's definition of such systems as being subject to effective competition. Comment was also sought on whether, as a policy matter, systems in low penetration areas should be excluded or given less weight in calculating the competitive rate differential in order to produce a "better" measure of that differential. In addition, comment was sought on how to redefine the benchmark formula and how to phase in any further rate reductions if exclusion of such systems were found to be lawful and appropriate. Finally, comment was sought on the impact on consumers and the industry, and the proper application of, any new competitive rate differential.

126. Most commenters contend that the Commission, having chosen to use a benchmark that is designed to approximate the rates that systems subject to effective competition charge for cable service, must use the statutory definition of systems subject to effective competition. Other commenters, however, argue that the Commission is bound by this definition only when determining which systems are exempt from rate regulation.

127. The question at issue, then, is whether the Commission may adopt a definition of systems subject to "effective competition" for purposes of establishing its benchmark rate formula that differs from the definition of that term set forth in the statute. As various commenters noted, this issue is quite similar to the question decided in *American Civil Liberties Union* v. *FCC*, 823 F.2d 1554 (D.C. Cir. 1987) ("*ACLU*"), *cert. denied*, 485 U.S. 959 (1988). In *ACLU*, the court held that, notwithstanding the legislative history that seemed to support the Commission's authority to redefine "basic cable service," the statutory definition was itself clear and unambiguous and could not be overridden by legislative history. *Id.* at 1567, 68. As numerous commenters point out, the 1992 Cable Act also defines "effective competition" in a manner that is clear on its face. Moreover, the commenters have pointed to no legislative history that suggests that the Commission has discretion to redefine that term.

128. We thus conclude that the statutory definition controls when determining reasonable or unreasonable rates pursuant to section 623 of the Act based on our benchmark approach. In particular, we believe that, to be most consistent with the clear statutory language, cable systems with less than 30 percent penetration should continue to be included in the sample of systems subject to effective competition which is used to calculate the benchmark rates.

129. Despite the clear statutory language, various commenters argue that rates for low penetration systems, should be excluded from the benchmark formula calculation, because such rates are allegedly disproportionately high. Even if the Act's "effective competition" definition were not binding on the Commission, however, the commenters have not presented convincing arguments as to why low penetration systems should be excluded from the sample. While many commenters speculate about various reasons why systems with less than 30 percent penetration might have higher rates than other competitive systems, there is no factual support for their contentions or upon which the Commission could conclude that exclusion of rates for such systems from the benchmark would produce a "better" measure of the

competitive rate differential. In addition, some commenters suggest that defining low penetration systems as subject to effective competition would parallel the antitrust theory that companies with less than 30 percent of the market share do not have monopoly power. This theory holds that without monopoly power, a firm lacks the power to raise prices significantly above cost for any significantly period of time. Thus, to the extent that a cable company with less than 30 percent penetration is unable to exert substantial market power, its rate should approximate the rates charged by competitive systems, which also are unable to raise prices substantially above costs. This theory also is consistent both with Congress', concern that cable systems, in general, were accumulating monopoly power which led to monopoly profits and with its simultaneous decision to include systems with less than 30 percent penetration when defining which systems face effective competition. See sections 2(a) and 3(a) of the 1992 Cable Act.

130. Moreover, it would not serve the public interest to exclude low penetration systems from the benchmark calculation, as suggested by some commenters, merely because such exclusion would result in larger rate reductions which those commenters seek. Benchmark rates which are 10 percent below prevailing rates in the cable industry will substantially comply with the congressional mandate to ensure that subscribers pay reasonable rates for cable service. Future surveys will gather information on competitive rates as well as system costs, and if greater rate reductions appear appropriate on the basis of such additional information, the Commission will be in a better position to decide the issue at that time. Now, however, based on the instant record, we believe that a more cautious approach in setting cable rates is the better course.

131. Finally, some petitioners and commenters argue that the universe of systems subject to effective competition used in calculating the benchmark rates should not include municipal systems, systems competing with municipal systems or systems involved in head-to-head competition that have been operating for less than five years—even though each of these systems faces effective competition as defined in the Act. These parties contend that municipal systems do not charge "competitive" rates because they are subsidized by taxpayers, share costs with other municipal services, and do not make a profit. NCTA purported to support these contentions with studies showing that a few municipal systems were subsidized and/or not making a profit. However, these municipal systems responded that the information and assumptions used in the studies were not accurate and that NCTA's conclusions were unfounded. Some parties proffered a study concluding that overbuild systems in operation for less than five years charge lower rates than other overbuild systems. However, even if true, this does not mean that these systems are not viable enterprises in the long term, *i.e.*, making a "profit" of some kind. Indeed, there is nothing in the record to support the contentions that overbuilt competitive systems of any particular age are engaged in "price wars," and are charging rates that do not allow them to recover costs or otherwise provide for viable operation. Thus, petitioners' speculation concerning the costs and profits of municipal and overbuild systems is not sufficient to warrant their exclusion from the effective competition sample data—even if the Commission had the discretion to do so. As thoroughly explained in the preceding paragraphs, we do not believe we are free to change the definition of systems subject to effective competition merely because petitioners might devise a definition they think is more appropriate. Since Congress defined municipal systems and overbuilds as subject to effective competition, we will not exclude them from our benchmark analysis.

VII. Final Regulatory Flexibility Act Analysis

132. A final Regulatory Flexibility Act statement was published in the Rate Order at paragraphs 564–574. That analysis remains the same.

X. Ordering Clauses

133. *It is further ordered*, That part 76 of the Commission's rules, 47 CFR part 76, is amended, as indicated below.

134. *It is further ordered*, That the Petitions for Reconsideration are granted in part, denied in part, and to the extent that Petitions raise issues unresolved in this Rate Reconsideration, they will be disposed of in future orders.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Title 47, part 76 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: Sec. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309; 532; 533; 535; 542; 552; 554, as amended, 106 Stat. 1460.

2. Section 76.911 is amended by revising paragraph (c)(3) to read as follows:

§ 76.911 Petition for reconsideration of certification.

* * * * *

(c) * * *

(3) In any case in which a stay of rate regulation has been granted, if the petition for reconsideration is denied, the cable operator may be required to refund any rates or portion of rates above the permitted tier charge or permitted equipment charge which were collected from the date the operator implements a prospective rate reduction back in time to September 1, 1993, or one year, whichever is shorter.

* * * * *

3. Section 76.922 is amended by revising paragraph (d)(2)(vi) to read as follows:

§ 76.922 Rates for the basic service tier and cable programming services tier.

* * * * *

(d) * * *

(2) * * *

(vi) Adjustments to permitted per channel charges on account of increases in costs of programming obtained from affiliated programmers that exceed inflation as long as the price charged to the affiliated system reflects either prevailing company prices offered in the marketplace to third parties (where the affiliated program supplier has established such prices) or the fair market value of the programming.

* * * * *

4. Section 76.931 is revised to read as follows:

§ 76.931 Notification of basic tier availability.

A cable operator shall provide written notification to subscribers of the availability of basic tier service by November 30, 1993, or three billing cycles from September 1, 1993, and to new subscribers at the time of installation. This notification shall include the following information:

(a) That basic tier service is available;

(b) The cost per month for basic tier service;

(c) A list of all services included in the basic service tier.

§ 76.942 [Amended]

5. Section 76.942(c)(1) is amended by removing the reference to "June 21, 1993", and by adding "September 1, 1993", in its place.

§ 76.951 [Amended]

6. Section 76.951(b)(4)(i) is amended by removing the reference to "June 21, 1993", and by adding "September 1, 1993", in its place.

7. Section 76.953 is amended by revising paragraph (a) to read as follows:

§ 76.953 Limitation on filing a complaint.

(a) *Complaint regarding a rate in effect on September 1, 1993.* Notwithstanding paragraph (b) of this section, a complaint regarding a rate for cable programming service or associated equipment in effect on September 1, 1993, must be filed by February 28, 1994.

* * * * *

[FR Doc. 93-21376 Filed 9-1-93; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92-266; FCC No. 93-426]

Cable TV Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has adopted a First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rule Making regarding implementation of the Cable Television Consumer Protection and Competition Act of 1992. The First Order on Reconsideration, Second Report and Order segment of this decision may found elsewhere in this **Federal Register**. The Third Notice of Proposed Rule Making segment proposes rules governing rates for the addition or deletion of channels to regulated cable service; rates for cable systems that completed rebuilds before regulation; consistent rate-setting approaches for all regulated tiers; and rates for cable services offered by systems that upgrade pursuant to franchise agreement. This action will provide notice to the public that the Commission intends to amend its rate regulations governing regulated cable services. This action is intended to provide a record on which the Commission can establish requirements governing the regulated cable service.

DATES: Comments due September 30, 1993; reply comments due October 7, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Bruce Romano, (202) 632-5414; Beverly McKittrick, (202) 632-5414; Jennifer A. Manner, (202) 653-5940.

SUPPLEMENTARY INFORMATION:

Synopsis of Notice

1. In this Notice, we seek comment on:

(1) The appropriate methodology for use of the benchmark to adjust capped rates when channels are added or deleted from a regulated tier;

(2) Whether we should permit cable operators who have completed rebuilds immediately prior to regulation, and whose rates are below benchmark level, to raise their rates to the benchmark;

(3) Whether we should permit cable operators to elect either the benchmark or cost-of-service approach for different tiers of regulated service after the initial period of rate regulation; and

(4) Whether we should permit external cost treatment for costs of upgrades required by local franchise authorities, and, if so, whether local or federal standards should govern rate adjustments based on costs of such required upgrades.

I. Adjustment to Capped Rates Because of Additional or Deletion of Channels

2. The Rate Order provided that cable operators may pass-through, after the initial regulated rate is determined, any increases in programming costs incurred for regulated services that exceed inflation. The Rate Order, however, did not specify the methodology for using the benchmark approach to determine rates when channels are added or deleted from service offerings.

3. Several cable operators and programmers request further guidance on how an operator seeking to add channels will be able to reflect associated programming costs in rates. They argue that the current benchmark formulation does not allow cable operators to charge an amount sufficient to cover costs for programming to fill new channels, creating disincentives for the addition of new facilities and services that could benefit subscribers. Programmers argue that these disincentives encourage the offering of programming on an a la carte basis. They point out that the benchmark rate applicable to all channels decreases as the cable operator adds channels, and that as the number of channels increase, the break-even cost of any new programming substantially decreases. They argue that a declining per channel benchmark rate as channels are added discourages the development and carriage of higher-quality and higher-cost programming. These parties thus urge the Commission to clarify that channels added by a cable operator after the implementation of rate regulation would not alter the capped rate for existing channels. They further urge that cable operators be permitted to adjust the price of the regulated tier to which the channels are added by an amount reflecting the cost of the new programming plus a reasonable rate of return.

4. Under the regulatory framework adopted in the Rate Order, cable operators may elect between the benchmark and cost-of-service approaches for setting initial regulated rates. Cable operators may use either of these approaches for setting new regulated tier rates when channels are added to, or deleted from, either the basic or cable programming services tiers. In the Cost-of-Service Proceeding we are considering requirements that will govern rates for cable service based on costs, including when channels are added or deleted from regulated tiers. In the Rate Order, as indicated, we did not provide specific guidance on how to adjust rates when channels are added or deleted for those operators seeking to use the benchmark approach for rate setting instead of cost-of-service showings. We are therefore offering for comment several approaches to use of the benchmark to determine adjustments to capped rates when channels are added or deleted.

5. We tentatively conclude that any methodology we adopt should achieve the goals of protecting consumers from unreasonable rates while assuring the continued growth of the cable industry and the additional services that it can provide to subscribers. Thus, the methodology that we select should provide sufficient incentives for cable operators to invest in continued growth of cable television service while not permitting operators to raise rates to unreasonable levels. We solicit comment on these goals and on the extent to which the alternative methodologies described below, or other methodologies, will permit achievement of these objectives.

6. One proposed methodology for use of the benchmark to adjust capped rates when channels are added or deleted provided that the charge should consist of the sum of: 1) the current permitted charge for the existing channels on the tier; and 2) a charge for the new channels consisting of the benchmark rate for the total number of channels on the tier multiplied by the number of new channels. We tentatively conclude that we should reject this approach, despite its apparent ease of calculation. First, we note that this approach would permit tier pricing above economies of scale observed in the industry survey and reflected in the benchmark. Additionally, there is no apparent analytical or empirical basis for using the benchmark per channel rate for only the new channels on a tier and pricing the old channels on the basis of the pre-upgraded rate. Furthermore, we are not certain that this methodology would work for determining the new permitted rate associated with channel deletions. In addition, this approach could result in significantly higher rates than other options. We solicit comment on our tentative conclusion not to adopt this approach.

7. A second approach would be to require that the new permitted rate for a regulated tier with added or deleted channels would be the benchmark per channel rate based on the new number of channels on the system multiplied by the number of channels on the tier. This

the number of channels on the tier. This approach could require that systems with rates above the benchmark reduce them to the benchmark level when channels are added, including for existing channels. At the same time. It would permit systems with rates below the benchmark to come up to the benchmark level when channels are added. This approach could also be applied to adjust rates when channels are deleted. We tentatively conclude that we should not adopt this approach because it would create substantial disincentives for cable operators with rates above the benchmark to add channels. Conversely, it could create undue incentives for systems with below benchmark rates to add channels, permitting substantially increase rates. We solicit comment on this tentative conclusion.

8. A third approach would be to require that the new permitted per channel rate be the existing permitted per channel rate adjusted for programming expense, as described below, and adjusted to reflect the same proportionate per channel rate increase or decrease observed in the benchmark curve. Under this option, the new permitted per channel rate would not directly reflect the benchmark rate but only the benchmark's proportionate increase or decrease in per channel rates. For example, if the benchmark rate per channel decreases 3% based on the number of channels the cable operator is adding to a regulated tier, then the cable operator's new per channel rate will also reflect a 3% decrease from current levels, separate from any adjustments for programming expense or other external costs. Thus, this methodology would permit capped rates to maintain their relative position above or below the benchmark, prior to adjustments for external costs.

9. We believe that there may be several benefits to this approach. Maintaining the relative position of current rates to benchmark rates is consistent with the overall treatment of above and below benchmark systems envisioned in the Rate Order. Thus, in the Rate Order we did not require all systems with above benchmark rates to lower rates to the benchmark, or permit those with rates below the benchmark to come up to the benchmark. Under this methodology, these distinctions would be preserved. At the same time, the new per channel rate would reflect the same proportionate per channel rate decreases observed in benchmark rates. This would benefit subscribers by requiring that rates reflect the same efficiencies and economies of scale observed in benchmark rates. Accordingly, we tentatively conclude that we should adopt this third approach.

10. In the Rate Order, we stated that we would permit cable operators to pass through to subscribers increases in programming costs on a going forward basis. We believe that this determination should apply not only to increase in programming costs for channels offered as of the initial date of regulation but to programming associated with additional channels. This will preserve incentives for cable operators to provide additional programming services to subscribers. Accordingly, we further tentatively conclude that under the methodology for application of the benchmark to determine rates when channels are added or deleted, we should provide that cable operators may recover the actual increased cost of programming incurred when regulated channels are added to a regulated tier, and that rates must reflect any decreases in programming costs, measured on a per channel per subscriber basis.

11. Benchmark rates per channel presumptively include programming costs because it is reasonable to assume that the rates on which the benchmark is based were set at a level that enabled cable operators to fully recover costs, including those incurred for programming. Therefore, if we permit cable operators to pass-through programming costs when channels are added, and also permit recovery of the full capped rate per channel, the operator would receive a double recovery of programming expense—the actual amount associated with the channel additions and the amount already included in the capped per channel rate. Accordingly, we tentatively conclude that we should include in our methodology a programming offset for channel additions and deletions that will preclude this double recovery.

12. To illustrate, under the above tentative conclusions, in order to use the benchmark to determine new permitted rates when channels are added or deleted from a regulated tier, cable operators would first identify the level of programming costs for the tier on the initial date of regulation on a per subscriber per channel basis and subtract it from the current permitted per channel rate. The operator would then determine the percentage difference between the benchmark per channel rate for the existing number of channels and the benchmark per channel rate for the new number of channels. This percentage change would then be applied to the previously determined current permitted per channel rate minus programming expenses. The operator would then add its actual programming expense (for both the old and the new channels) determined on a per channel per subscriber basis to the "base" to obtain the new permitted per channel rate. We solicit comment on the above described methodology and on whether it would protect consumers while permitting the continued growth and success of the cable industry. Specifically, we seek comment on whether this methodology would provide incentives to cable operators to add programming services, as well as whether the methodology would create disincentives with respect to certain types of programming services.

13. Commenters should provide more than generalized allegations to assist the Commission in determining which method for adjusting benchmark rates will provide sufficient incentives for cable operators to invest in continued growth of cable service. In evaluating the above alternatives for use of the benchmark to adjust capped rates when channels are added or deleted, cable operators and other commenters should provide factual information, including cost data that will provide a firm basis for choosing the best methodology. Commenters should also address the extent to which penetration, subscribership and revenues increase when systems add channels and how such gains should be reflected in rates and our benchmark methodology.

II. Upgrades Initiated Shortly Before Rate Regulation

14. Some cable operators with rates below benchmark levels may have initiated or completed system upgrades shortly before rate regulation. It is possible that the initiation of rate regulation could prevent systems with rates below benchmark levels from raising rates to recover such upgrade costs. While cable operators could seek to recover such costs through a cost-of-service showing, we solicit comment and suggestions on alternatives to a full cost-of-service showing that could permit recovery of such upgrade costs. In particular, we solicit comment on whether the streamlined cost-of-service showing proposed in the Cost-of-Service NPRM should be applied in this context. Alternatively, we solicit comment on whether we should simply permit cable operators that have undertaken upgrades shortly before regulation to raise rates to the benchmark level without any cost showing. This would avoid the burdens of cost-of-service determinations while assuring that rates will not rise to above

benchmark levels. We solicit comment on appropriate criteria for identifying upgrades that would be eligible for either of these alternatives.

III. Operator Discretion to Select Benchmark or Cost-of-Service for Different Regulated Tiers

15. The Rate Order did not explicitly state whether cable operator is permitted to choose the cost-of-service approach for one tier and benchmark approach for the other tier, or whether parallel treatment for both tiers is required in setting initial rates. In the Rate Order we establish a regulatory framework governing rates for cable service that is tier neutral. The current rule governing the setting of initial rates, § 76.922(b), may be read to allow the cable operators to elect one showing on one tier and another showing on another tier. A number of interested parties seek guidance on whether systems have discretion to select different rate-setting approaches for different program service tiers.

16. Several cable operators and cable interests state that requiring a uniform selection is undesirable because: (1) It would prevent cable operators from offering a discounted or "lifeline" basic tier service, which they ostensibly would do if they could seek a cost-of-service showing only on the cable programming services tier; (2) it would encourage a greater number of cost-of-service filings for the basic tier, as cable operators that would have been satisfied with a benchmark analysis for their basic tier rates will be required to make a cost-of-service showing on basic in order to make that showing on another tier; (3) it would require cable operators to duplicate the same case before different regulatory bodies; (4) Congress intended different schemes for the different tiers; and (5) since cost structures differ among tiers, a cable operator should be allowed to choose the appropriate regulatory scheme. On the other hand, NATOA contends that cable operators should be required to make parallel showings for both tiers, when both proceedings occur within a reasonable time of each other. NATOA argues that such a requirement would prevent cable operators from "gaming," *i.e.*, deciding whether it would be advantageous to submit a cost-of-service showing on one tier and a benchmark analysis on another. NATOA believes that allowing different showings would undermine the Commission's intention that the same "reasonable" rate determination be made on both tiers. Another petitioner argues that if the Commission adopts a parallel approach to the setting of initial regulated rates, the Commission should conduct a single cost-of-service proceeding, rather than authorize the franchising authorities to hear such cases. According to this commenter, parallel showings will not promote uniform rates on both tiers, because the per-channel, per-subscriber benchmark rate may differ between the tiers, depending upon the initial date of regulation.

17. Based on the record before us at this time, we tentatively conclude that cable operators should be required to elect either the benchmark or the cost-of-service approach for all regulated tiers. Thus, if a system becomes subject to regulation at the local level and seeks to justify its basic service rates using the benchmark system, the reasonableness of its cable programming services rates will also be judged under the benchmark should a complaint be filed about those rates with the Commission. Similarly, if an operator has more than one tier of cable programming services and receives a complaint regarding the rates for all of those tiers, it must justify the reasonableness of each rate using a consistent approach.

18. We believe at this point that requiring operators to use the same rate-setting approach when supporting the reasonableness of various regulated rates during the initial stages of rate regulation best protects our decision to develop a benchmark system based on tier neutrality and also eliminates any incentive to "game" the regulatory process. As noted in the preceding section, we have implemented a benchmark approach based on tier-neutrality in order to simplify the initial rate-setting process, remove a regulatory incentive to retier or move individual channels from one tier to another, and reduce administrative burdens. If an operator was permitted to elect the benchmark approach for one service tier and cost-of-service for another, however, it would have an incentive to retier its services and place all of its low cost and cost free programming on the tier to which the benchmark will be applied while moving its most expensive programming to the tier for which a cost-of-service showing will be made. In so doing, the operator could be allowed to charge a per channel rate for the low cost tier based on the benchmark (which is an averaged rate) that actually far exceeds its costs for that tier (and, thus, the rate it would be able to charge under a cost-of-service showing). At the same time, the operator may be able to charge a higher-than-benchmark rate for the other service tier through a cost-of-service showing, based on its higher costs for that tier. This result would seriously undermine the rate averaging and tier-neutrality concepts built into the benchmark approach by allowing operators to apply the average per channel rates derived from the benchmark formula only to certain tiers. As importantly, cable operators selectively applying the benchmark system in this fashion would be able to charge higher overall rates than would be allowed if either the benchmark or the cost-of-service approach had been applied consistently across all regulated program tiers.

19. Out of an abundance of caution, to avoid such adverse consequences during the initial stages of regulation, we tentatively conclude that operators should be required to use the same rate-setting approach to justify the reasonableness of all regulated service rates. We recognize petitioners' concerns that, if they then elect the cost-of-service approach, they will be required to make cost-of-service showings before two different regulatory entities. This possibility, of course, is a function of the Cable Act itself, which gives local franchising authorities primary authority over basic service rates and the FCC exclusive authority over rates for cable programming services. Nonetheless, we are mindful of the difficulties that could result from this situation. Accordingly, we seek comment below on procedures we might implement to coordinate the local and federal regulatory processes as much as possible. In addition, we invite comment on whether our tentative conclusion to require a consistent rate-setting approach is necessary to avoid gaming of the regulatory process and to protect our initial benchmark approach.

20. We also solicit comment on whether we should establish longer term limitations on cable operators discretion to choose between these different alternatives to rate setting, and what those limitations should be. For example, we could require on a permanent basis that cable operators use the same approach for tiers that are concurrently subject to regulation. However, even if we require that the same rate setting approach be used for all regulated tiers, we also believe that cable operators should be permitted reasonable opportunities to switch from benchmarking to cost-of-service, and *vice versa*. Thus, we could require that operators use the same approach for both tiers within a calendar year but permit them to convert to the other approach after using one approach for that period of time. We solicit comment on whether this alternative is feasible or other alternatives should be adopted. We solicit comment on whether we should not adopt any limitations on

operator discretion to elect different approaches for rate setting for different tiers after the initial phase of rate regulation.

21. We also solicit comment on what procedural requirements we should adopt to provide for coordination between local franchising authorities and the Commission if we adopt limitations on operators' ability to select different approaches for different tiers. For example, if a cable operator elects cost-of-service, would there be a need for coordination between the two jurisdictions? What requirements should we adopt, if any, for coordination of cost proceedings at the local and federal level? If a cost proceeding is initiated in one jurisdiction, and at a later date a different tier becomes subject to regulation, should we provide that the proceedings may proceed independently, or should we take other steps for coordinated or concurrent decision making? Should we require that the determination of one jurisdiction will govern, or be given considerable weight in, setting rates for the tier subject to the oversight of the other jurisdiction? This could reduce administrative burdens on cable operators by, for example, requiring only one cost-of-service showing. It would also promote tier neutrality by assuring that per channel rates based on the same costs or benchmark data will result in the same per channel rates prior to adjustments for external costs. We solicit comment on whether such provisions would be consistent with the local and federal regulation of cable service rates envisioned in the Cable Act of 1992. We note that absent adoption of provisions of this sort, the Commission may rely on established procedures for review by the Commission of local decisions to assure that rate determinations for different tiers are consistent with our rules.

IV. Cost of Upgrades Required by Local Franchising Authorities

22. Finally, we solicit comment on whether we should permit external cost treatment for costs of upgrades required by local franchise authorities. This would be consistent with our general approach of permitting external cost treatment of costs of franchise requirements. On the other hand, upgrade costs could be significant and external treatment for such costs could mean in many cases that a significant component of capped rates will be based on costs. This could undermine the benefits that we believe can be achieved by using benchmarks and price caps as the primary method for regulating cable service rates instead of cost-of-service. We solicit comment on these considerations.

23. We also solicit comment on two alternatives for determining the adjustments to rates based on franchise required upgrade costs if we permit external treatment of them. First, we could require that any such costs be governed by the cost-of-service standards that we adopt in the Cost-of-Service Proceeding. This would have the advantage of providing for uniform treatment of such costs for all cable systems. This would also permit the Commission to assure that such standards and resulting rates reflect a federal balancing of goals for regulation of cable service rates. Second, we could permit local franchise authorities to determine the way in which rates would be adjusted to reflect upgrade costs, including over what period of time such costs would be recovered, the operator's profit on upgrade costs, and other issues involved in cost-of-service standards. This option would establish more local control and responsibility for adjustments to rates on account of upgrades. Either of these alternatives could be applied to only the basic tier or to other regulated tiers as well. We solicit comment on these alternatives.

V. Initial Regulatory Flexibility Act Analysis

24. Pursuant to section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

25. *Reason for action.* The Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services. The Commission has adopted rate regulations that require a comparison to the rates of cable systems subject to effective competition, as defined in the Cable Act of 1992. This Notice proposes to establish regulations governing the setting of rates for regulated cable service based on programming costs.

26. *Objectives.* To propose rules to implement section 623 of the Cable Television Consumer Protection and Competition Act of 1992. We also desire to adopt rules that will be easily interpreted and readily applicable and, whenever possible, minimize the regulatory burden on affected parties.

27. *Legal Basis.* Action as proposed for this rulemaking is contained in Sections 4(i), 4(j), 303(r) and 623 of the Communications Act of 1934, as amended.

28. *Description, potential impact and number of small entities affected.* Until we receive more data, we are unable to estimate the number of small cable systems that would be affected by any of the proposals discussed in the Notice. We have, however, attempted to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers as required by Section 623(i) of the Cable Act of 1992.

29. *Reporting, record keeping and other compliance requirements.* The proposals under consideration in this Notice do include new reporting and record keeping requirements for cable systems. These reporting requirements include the possibility of filings by cable operators of financial data annually at the Commission.

30. *Federal rules which overlap, duplicate or conflict with this rule.* None.

31. *Any significant alternatives minimizing impact on small entities and consistent with stated objectives.* Wherever possible, the Notice proposes general rules, or alternative rules for small systems, to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers as required by section 3(i) of the Cable Act of 1992.

VI. Paperwork Reduction Act

32. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

VII. Procedural Provisions

33. For purposes of this non-restricted informal rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time of issuance of a notice of proposed rulemaking until the time a draft Order proposing a substantive disposition of the proceeding is placed on the Commission's Open Meeting Agenda. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments or pleadings and oral arguments) between a person outside this addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation addressing matters not fully covered in any written summary must be served on this Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation discussed above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally § 1.1231 of the Commission's Rules. 47 CFR 1.1231.

34. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before September 30, . 1993 and reply comments on or before October 7, 1993. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, room 239, Federal Communications Commission, 1919 M Street NW., Washigton, DC 20554.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–21375 Filed 9–1–93; 8:45 am]

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federal register

Thursday
September 2, 1993

Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Antifungal, Anorectal, and Nailbiting and Thumbsucking Deterrent Drug Products; Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 80N-0476]

RIN 0905-AA06

Topical Antifungal Drug Products for Over-the-Counter Human Use; Certain Labeling Claims

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that certain labeling claims for over-the-counter (OTC) topical antifungal drug products are not generally recognized as safe and effective and are misbranded. FDA is issuing this final rule after considering the report and recommendations of the Advisory Review Panel on OTC Antimicrobial II Drug Products and public comments on an advance notice of proposed rulemaking and a notice of proposed rulemaking that were based on those recommendations. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: March 2, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 23, 1982 (47 FR 12480), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC topical antifungal drug products, together with the recommendations of the Advisory Review Panel on OTC Antimicrobial II Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by June 21, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by July 21, 1982.

In accordance with § 330.10(a)(10), the data and information considered by the Panel, after deletion of a small amount of trade secret information, were placed on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC topical antifungal drug products was published in the **Federal Register** of December 12, 1989 (54 FR 51136). Interested persons were invited to file by March 12, 1990, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by March 12, 1990. New data could have been submitted until December 12, 1990, and comments on the new data until February 12, 1991.

In evaluating OTC topical antifungal drug products, the Panel discussed ringworm of the scalp and ringworm of the nails (47 FR 12480 at 12487) and concluded:

> *Tinea capitis* (ringworm of the scalp) and *tinea unguium* (ringworm of the nails). Fungal infections of the scalp and nails tend to be chronic. They respond poorly to topical therapy, partly because of the thickness of the nails and the depth of the hair roots. Both sites of infection provide inaccessible locations for fungi, thus drastically decreasing the penetration of topical antifungals. For this reason, OTC topical antifungals must be labeled that they are not effective for the treatment of ringworm of the scalp or nails.

The Panel recommended that the following labeling statement appear in the directions for all OTC topical antifungal drug products: "This product is not effective on the scalp or nails." (See 47 FR 12480 at 12566.)

No data were submitted in response to the Panel's report to support the use of OTC topical antifungal drug products on the scalp or the nails. However, one comment did request that the Panel's recommended statement "this product is not effective on the scalp or nails" be changed to read "this product is not effective in the treatment of fungal infections of the hair and nails." The agency responded that it was retaining the Panel's statement in the directions proposed in the tentative final monograph because the comment did not submit any data to support its suggested change. (See comment 32, 54 FR 51136 at 51155.)

In response to the tentative final monograph, one submission (Ref. 1) was received that contained clinical data to support the safety and effectiveness of a combination of antifungal and keratolytic ingredients for the topical treatment of fungal infections of the nails. The clinical data included the results of a double-blind, randomized, clinical comparison of a product containing a combination of antifungal ingredients (undecylenic acid and chloroxylenol) and keratolytic ingredients (salicylic acid and acetic acid) to its vehicle containing isopropyl alcohol and benzocaine in the topical treatment of fungal infections of the toenails. This study had a major flaw in that it was not designed to demonstrate the contribution of each of the five active ingredients (undecylenic acid, acetic acid, salicylic acid, chloroxylenol, and benzocaine) to the effectiveness of the product's total formulation. The study should have included a comparison of the total formulation minus each of the active ingredients to the total formulation and to the vehicle in order to demonstrate the contribution of each of the active ingredients in the combination.

The clinical data also included the results of an open, uncontrolled study that did not provide any useful information to establish effectiveness. The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Ref. 2).

The agency is aware that a number of OTC topical antifungal drug products are currently being marketed with claims for use of the product on the scalp or on the nails. No evidence has been submitted to date to establish that any OTC topical antifungal drug products are effective for the treatment of fungal infections on the scalp or on the nails. The Commissioner has determined that OTC topical antifungal active ingredients are not generally recognized as safe and effective for use on the scalp or on the nails. Therefore, the Commissioner is issuing a separate final rule on all topical antifungal active ingredients present in any product bearing claims that it is indicated for the treatment of fungal infections on the scalp or on the nails. FDA has elected to act on OTC topical antifungal drug products bearing these claims before finalizing the rest of the monograph in order to expedite removal from the market of products that lack adequate evidence of effectiveness.

Any OTC topical antifungal drug product bearing any claims or directions for use of the product on the scalp or on the nails may not continue to be initially introduced or delivered for introduction into interstate commerce unless it is the subject of an approved application or abbreviated application (hereinafter called application). The agency is amending 21 CFR part 310 by adding to subpart E, new § 310.545(a)(22)(iii) (21 CFR 310.545(a)(22)(iii)) to include any topical antifungal drug products labeled

for use on the scalp or on the nails. Any claims or directions for using an OTC topical antifungal drug product on the scalp or on the nails should be eliminated from OTC drug products by March 2, 1994, regardless of whether further testing is undertaken to justify future use. Thereafter, any OTC drug product containing any topical antifungal active ingredient and labeled or intended for use on the scalp or on the nails will be considered nonmonograph and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 of the regulations is required for marketing. Therefore, on or after March 2, 1994, no OTC drug product containing any OTC topical antifungal active ingredient labeled or intended for use on the scalp or on the nails may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product containing any active ingredient subject to this final rule that is repackaged or relabeled after the effective date of this final rule must be in compliance with the final rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are urged to comply voluntarily with this final rule at the earliest possible date.

The agency concludes that there is no basis for the continued marketing of any OTC topical antifungal drug products with claims or directions for use on the scalp or on the nails. The agency points out that publication of this final rule does not preclude a manufacturer's testing an antifungal ingredient for these uses. New, relevant data can be submitted to the agency at a later date as the subject of an application that may provide for prescription or OTC marketing status. (See 21 CFR part 314.) As an alternative, where there are adequate data establishing general recognition of safety and effectiveness for these uses, such data may be submitted in an appropriate citizen petition to amend the final monograph for OTC topical antifungal drug products. (See 21 CFR 10.30.) However, marketing of products containing topical antifungal active ingredients and bearing these claims may not begin or continue while the data are being evaluated by the agency.

References

(1) Comment No. C30, Docket No. 80N–0476, Dockets Management Branch.

(2) Letter from W. E. Gilbertson, FDA, to G. Mendoza, Kramer Laboratories, Inc., coded LET 24, Docket No. 80N–0476, Dockets Management Branch.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (54 FR 51136 at 51160). As a result of this final rule, some manufacturers will need to relabel their products to delete these claims and/or the directions for use related to these claims. The agency has identified about a dozen OTC topical antifungal drug products marketed with claims for use on the nails. All of these products will need to be relabeled. Based on information provided by a nonprescription drug manufacturer's association, the estimated average cost of a labeling revision is about $2,000.00 per product label. Several of the currently marketed products will also need to be reformulated after the final monograph is issued because they either contain monograph ingredients at nonmonograph concentrations or contain combinations of ingredients that are not included in the final monograph. All products can be reformulated to allowable monograph conditions and remain in the marketplace with appropriate relabeling. The cost of reformulation will vary among manufacturers based on the reformulation choice selected and the costs involved to do product specific stability testing and other standard manufacturing procedures.

Early finalization of the nonmonograph status of the claims listed in this notice will benefit both consumers and manufacturers. Consumers will benefit from the early removal from the marketplace of product claims for which safety and effectiveness have not been established. This will result in a direct economic savings to consumers. Manufacturers of products with such claims will benefit from being able to use alternative claims that have been proposed and will be recognized by the agency as being generally recognized as safe and effective, without incurring additional expense of clinical testing to support these claims. (See proposed § 333.250(b), 54 FR 51136 at 51161.) Based on the information above, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 is revised to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by adding new paragraph (a)(22)(iii), by revising the introductory text of paragraph (d), and by adding new paragraph (d)(12) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(22) * * *

(iii) Any ingredient(s) labeled with claims or directions for use on the scalp or on the nails.

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(12) of this section.

* * * * *

(12) March 2, 1994, for products subject to paragraph (a)(22)(iii) of this section.

Dated: August 26, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–21369 Filed 9–1–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 310

[Docket No. 80N–0050]

RIN 0905–AA06

Anorectal Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing afinal rule establishing that any over-the-counter (OTC) drug product containing live yeast cell derivative (LYCD) for anorectal use is not generally recognized as safe and effective and is misbranded. This final rule evaluates data on LYCD that were still under review when an earlier final rule on OTC anorectal drug products was issued. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: September 2, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 27, 1980 (45 FR 35576), FDA published an advance notice of proposed rulemaking to establish a monograph for OTC anorectal drug products together with the recommendations of the Advisory Review Panel on OTC Hemorrhoidal Drug Products (the Panel), which was the advisory review panel responsible for evaluating the data on the active ingredients in this class of drugs. The agency's tentative final monograph on OTC anorectal drug products was published in the **Federal Register** of August 15, 1988 (53 FR 30756). LYCD was considered safe for use as an OTC wound-healing agent for limited use (1 week or less), but was classified as Category III (available data are insufficient to classify as effective for use as an OTC woundhealing agent in the anorectal area, and further testing is required) (53 FR 30765).

One comment, submitted at the end of the period for the submission of new data, contained the results of two new clinical studies in support of the effectiveness of LYCD in the relief of hemorrhoidal symptoms (Ref. 1). These studies remained under review at the time of publication of the agency's final rule on OTC anorectal drug products in the **Federal Register** of August 3, 1990 (55 FR 31776); that rule did not address the final status of LYCD. The agency stated that in order to complete the publication of the final monograph for OTC anorectal drug products without undue delay, the agency was not addressing the data submitted on LYCD in that document, and that the data would be addressed as soon as the agency's review was completed. The agency's evaluation of those data now completes the anorectal drug products rulemaking with respect to LYCD. The only other pending issues relating to hydrocortisone, as discussed in the final rule (55 FR 31776), will be addressed in a future issue of the **Federal Register** to complete the rulemaking on OTC anorectal drug products.

In its final conclusions on OTC anorectal drug products (55 FR 31776), the agency listed a number of anorectal ingredients that it considered to be nonmonograph ingredients. The agency stated that on or after August 5, 1991 (12 months after the final rule was published), no OTC drug product that is subject to the monograph and that contains a nonmonograph condition, i.e., a condition that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application.

When the final rule was issued in August 1990, none of the nonmonograph ingredients were listed in a regulation. Since then, the agency has established 21 CFR 310.545, which contains a list of certain active ingredients that are not generally recognized as safe and effective for certain OTC drug uses. The agency is adding § 310.545(a)(26) to include the nonmonograph anorectal active ingredients discussed in the final rule of August 3, 1990, as well as LYCD. The date of nonmonograph status for all of the ingredients, except for LYCD, listed in § 310.545(a)(26) was August 5, 1991. The date of nonmonograph status of LYCD is September 2, 1994. This timeframe for LYCD is consistent with that provided for other nonmonograph ingredients in the August 3, 1990, final rule. The agency's detailed comments on the data are on file in the Dockets Management Branch (Ref. 1).

Reference

(1) Comment No. C19, Docket No. 80N–0050, Dockets Management Branch (HFA–305),Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

II. The Agency's Final Conclusions on Live Yeast Cell Derivative for Anorectal Use

One comment submitted the results of two studies (WBI–1987 and WM–444B) to support the effectiveness of LYCD for relief of hemmorhoidal symptoms of pain, itching, burning, or irritation, and for shrinking swelling of hemorrhoidal tissue caused by inflammation (Ref. 1). The comment also referred to other data that it had submitted to the rulemaking on OTC skin protectant drug products in support of LYCD's effectiveness as a wound healing agent (Ref. 2). The comment stated its belief that the skin protectant data also support the use of LYCD as a wound healing agent in the anorectal area. The comment cited the Panel's discussion of the nature of data required to support the effects of wound-healing agents on anorectal wounds in the advance notice of proposed rulemaking (45 FR 35576-at 35658), where it stated "* * * an agent that causes a significant increase in the healing of wounds at other sites, and also relieves anorectal clinical symptoms over a similar time period can be considered an anorectal wound-healing agent." The comment concluded that the agency would accept evidence of wound-healing efficacy from tissues other than in the anorectal area.

The agency has evaluated the two studies and determined that they are incapable of demonstrating the effectiveness of LYCD for relief of hemorrhoidal symptoms of pain, itching, burning, or irritation. The studies also do not contain data showing that LYCD shrinks swelling of hemorrhoidal tissue caused by inflammation. The conduct of studies WBI–1987 and WM–444B was independently inspected by agency field investigators who found evidence that the data submitted were unreliable.

A. Study WBI–1987

This study was a double-blind, randomized, parallel group comparison of LYCD versus ointment vehicle for the relief of hemorrhoidal discomfort. The purpose was to show the effectiveness of LYCD in an ointment as a wound healing agent. On case report forms, subjects were to record (by vertical marks on 100 millimeter (mm) visual analog scales) their assessment of two qualities of hemorrhoidal pain, i.e., irritation and burning, immediately before treatment, and 5, 15, 30, 45, and 60 minutes after treatment. The two qualities of hemorrhoidal pain were analyzed as separate scores. Hemorrhoidal pain relief was assessed at each post-treatment evaluation by the

participant circling one of six adjectives ranging from "complete relief" to "no relief." On the 100 mm analog scale, improvement from baseline for the active preparation and for the control, respectively, were 65.0 and 44.1 for irritation, and 72.7 versus 46.0 for burning, according to the sponsor's analysis. Comparison of the two treatments for both parameters was analyzed by the two-sample t-test, which showed statistically significant differences for both parameters ($p < 0.001$). Mean total pain relief on a six-category scale was reported as 3.8 for the active preparation and 2.8 for the control ($p < 0.001$).

A global assessment of efficacy was also to be provided at the conclusion of the 1-hour study. The subject graded the overall effectiveness of the medication by circling the appropriate number on a scale where 1 represented "poor" and 10 represented "excellent." All 20 subjects treated with the active preparation gave a global evaluation score of 8 or better, and 13 subjects graded it as excellent (10). Mean global assessment rated was 9.6 for the active preparation and 7.3 for the control ($p < 0.001$). None of the control subjects graded the treatment as excellent.

While these results seem to infer effectiveness, it does not appear that the case report forms, on which all critical data were to be recorded by the subject, were in fact contemporaneously filled out by the subjects. The circles and vertical lines used to record scores were all of two easily distinguishable types; they did not show the diversity that would be expected if each subject filled out his or her own clinical report form. For one subject who was included in the study twice, there were clear differences in the manner and style of the subject's markings on the visual analog scales on two different occasions. The differences would be unlikely if the subject had actually filled out the form. Thus, it appears that study personnel filled out the forms, which is a clear violation of the protocol and which raises major questions as to the blinding and integrity of the study. If the forms were not filled out by subjects at the time of that rating, as the protocol required, there can be no assurance that the forms represent actual reports by the subjects at the appropriate measurement time and not, for example, ratings filled out by study personnel aware of treatment assignments.

Questions concerning who filled out the forms and when they were filled out were asked of the investigator. He responded to the agency by letter dated November 19, 1991 (Ref. 3), but the response did not address the issue of who filled out the forms. The investigator dealt with other problems and emphasized future improvements in his practices. Thus, although the reported results of the study might support effectiveness, the significant discrepancy between the reported and the actual method of data collection does not allow the agency to conclude that bias on the part of the investigator or analyst has been shown to be minimized.

B. Study WM–444B

This study was a double-blind, parallel group clinical trial using a methodology similar to Study WB–1987, but with the subjective assessment testing period extended to include 75–, 90–, 105–, and 120–minute assessment times. The purpose of this study was also to demonstrate the effectiveness of LYCD ointment in relief of hemorrhoidal pain. Of 100 subjects eligible to enter the study, 50 were allocated to the active preparation and 50 to the vehicle. The effect of the active preparation was significantly greater than that of the vehicle for all variables at all evaluation points.

Unfortunately, this study cannot be considered an adequate and well-controlled study because the method of blinding provides no assurance that the study was, in fact, blinded successfully. The tear-off portions of the label (under which the tube's contents were revealed) were closed by rubber cement. There was no way to tell whether the tear-off section had been opened because the rubber cement closure could be replaced readily. Agency reviewers found that they could easily open the labels to reveal the identity of the medication, re-close them, and then attach them on the case report form of the respective subjects, without altering their appearance. Thus, there is no assurance that the study was blinded, as planned. Ordinarily, in studies that are adequately double-blinded, once labels are opened they cannot be closed again without appearing altered. In the absence of secure blinding, there is no evidence that the subjects were not biased by suggestions from the nurses, the coordinator, or the principal investigator.

Study WM–444B also had other deficiencies and significant departures from commonly accepted investigational practices: (1) There was no record of lot numbers on the tubes for the product tested; thus there was no assurance that the drug product used in the clinical trial was the same formulation as the drug product proposed for marketing, and (2) the allocation of samples for each test site was not addressed.

Standards for effectiveness of an OTC drug that is generally recognized as safe and effective are set forth in 21 CFR 330.10(a)(4)(ii), which states that proof of effectiveness of such an OTC drug shall consist of controlled clinical investigations as defined in § 314.126(b)(21 CFR 314.126(b)), unless this requirement is waived as not reasonably applicable or essential and another method is adequate. Based on inadequate measures taken by the investigative team to minimize bias on the parts of the subjects and the observers, the agency finds that the studies were not conducted in conformance with 21 CFR 314.126(b)(5).

In conclusion, the agency does not consider either study capable of demonstrating the effectiveness of LYCD for any anorectal uses. Therefore, the studies are inadequate to support the use of LYCD to relieve symptoms of hemorrhoidal pain, itching, burning, or irritation, or to shrink hemorrhoids. The agency's detailed comments on the data are on file in the Dockets Management Branch (address above) (Ref. 4).

References

(1) Comments No. C19 and SUP5, Docket No. 80N–0050, Dockets Management Branch.

(2) Comments No. C34, AMD, C57, SUP, and LET11 through LET14, Docket No. 78N–0021, Dockets Management Branch.

(3) Second attachment to letter from W. E. Gilbertson, FDA, to J. R. Jacobs, Whitehall Laboratories, coded LET25, Docket No. 80N-0050, Dockets Management Branch.

(4) Letter from W. E. Gilbertson, FDA, to J. R. Jacobs, Whitehall Laboratories, coded LET25, Docket No. 80N–0050, Dockets Management Branch.

C. Data Submitted to the Skin Protectant Rulemaking

The comment's data on LYCD as a skin protectant wound healing agent were not used in arriving at the agency's conclusion on LYCD's effectiveness as an anorectal wound healing agent. The Panel stated that studies to test the effects of agents on wound healing must be designed with the use site in mind, i.e., where there is compression (due to sitting), stretching of surface and subcutaneous tissue on a sporadic basis (due to walking, bowel movement), increased moisture, chafing (due to clothing and opposed body surfaces), and gross contamination by aerobic and/or anaerobic bacteria and yeast (45 FR 35576 at 35658). The Panel compared testing under those conditions with testing on many body wounds that can be maintained at a relative degree of cleanliness, immobilized, and covered consistently or exposed to air. The Panel further pointed out that although the wound-healing process may be similar

in the anorectal and other areas, the natural impediments are not and thus any experimental design germaine to the anorectal area must consider these impediments. The agency agrees with the Panel's conclusions and further notes that the data in support of LYCD as a skin protectant wound-healing agent consisted of studies on subjects with burns and with surgically induced abrasions (Ref. 1). Testing in these studies did not take into account the differences in treatment area as described by the Panel. Accordingly, these studies are not acceptable to support the use of LYCD as a wound-healing agent in the anorectal area.

Reference

(1) Comments No. C34, AMD, C57, SUP, and LET11 through LET14, Docket No. 78N–0021, Dockets Management Branch.

The agency has determined that LYCD for any OTC anorectal use is not generally recognized as safe and effective. The agency is amending § 310.545(a) and (d) to establish that LYCD and certain other active ingredients are not generally recognized as safe and effective and are misbranded for use in OTC anorectal drug products. Therefore, LYCD as an ingredient for OTC anorectal use is considered a nonmonograph ingredient and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and is a new drug within the meaning of section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application or abbreviated application under section 505 of the act (21 U.S.C. 355) and part 314 of the regulations (21 CFR part 314) is required for marketing. In appropriate circumstances, a citizen petition to amend the monograph (21 CFR part 346) and containing new data to support LYCD's use as an anorectal active ingredient may be submitted under 21 CFR 10.30 in lieu of an application. Any drug product containing LYCD as an anorectal active ingredient for OTC use initially introduced or initially delivered for introduction into interstate commerce or repackaged or relabeled after the effective date of this final rule is not in compliance with the regulation and is subject to regulatory action.

The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC anorectal drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC anorectal drug products is not expected to pose such an impact on small businesses. This final rule only affects the status of LYCD for OTC anorectal use. The agency is aware of only a few LYCD-containing OTC anorectal drug products that are currently marketed. These products also contain shark liver oil, petrolatum, or cocoa butter, acceptable anorectal protectants (Refs. 1, 2, and 3). Thus, the products can be reformulated to delete the LYCD and be relabeled to delete any claims specifically related to LYCD. Anorectal protectant ingredients and claims in accord with §§ 346.14 and 346.50 can be used. For all other active nonmonograph ingredients listed in this final rule, the effective date of August 5, 1991, has already occurred. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

References

(1) Physicians' Desk Reference for Nonprescription Drugs, 13th ed., Medical Economics Co., Inc., Oradell, NJ, 1992, pp. 752–753.

(2) Physicians' Desk Reference for Nonprescription Drugs, 13th ed., Medical Economics Co., Inc., Oradell, NJ, 1992, p. 777.

(3) Drug Facts and Comparisons, 46th ed., Facts and Comparisons, St. Louis, 1992, p. 2163.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by adding new paragraph (a)(26), by revising the introductory text of paragraph (d), and by adding new paragraphs (d)(13) and (d)(14) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(26) *Anorectal drug products*—(i) *Anticholinergic drug products.*
Atropine
Belladonna extract
(ii) *Antiseptic drug products.*
Boric acid
Boroglycerin
Hydrastis
Phenol
Resorcinol
Sodium salicylic acid phenolate
(iii) *Astringent drug products.*
Tannic acid
(iv) *Counterirritant drug products.*
Camphor (greater than 3 to 11 percent)
Hydrastis
Menthol (1.25 to 16 percent)
Turpentine oil (rectified) (6 to 50 percent)
(v) *Keratolytic drug products.*
Precipitated sulfur
Sublimed sulfur
(vi) *Local anesthetic drug products.*
Diperodon
Phenacaine hydrochloride
(vii) *Other drug products.*
Collinsonia extract
Escherichia coli vaccines
Lappa extract
Leptandra extract
Live yeast cell derivative
Mullein
(viii) *Protectant drug products.*
Bismuth oxide
Bismuth subcarbonate
Bismuth subgallate
Bismuth subnitrate
Lanolin alcohols
(ix) *Vasoconstrictor drug products.*
Epinephrine undecylenate
(x) *Wound healing drug products.*
Cholecalciferol

Cod liver oil
Live yeast cell derivative
Peruvian balsam
Shark liver oil
Vitamin A

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(14) of this section.

* * * * *

(13) August 5, 1991, for products subject to paragraphs (a)(26) of this section, except for those that contain live yeast cell derivative.

(14) September 2, 1994, for products subject to paragraph (a)(26)(vii) and (a)(26)(x) of this section that contain live yeast cell derivative.

Dated: August 27, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–21370 Filed 9–1–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 310

[Docket No. 80N–0146]

RIN 0905–AA06

Nailbiting and Thumbsucking Deterrent Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any nailbiting and thumbsucking deterrent drug product for over-the-counter (OTC) human use is not generally recognized as safe and effective and is misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on OTC nailbiting and thumbsucking deterrent drug products that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: March 2, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 17, 1980 (45 FR 69122), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), a proposed rule to establish a monograph for OTC nailbiting and thumbsucking deterrent drug products, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by January 15, 1981. Reply comments in response to comments filed in the initial comment period could be submitted by February 16, 1981.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC nailbiting and thumbsucking deterrent drug products was published in the **Federal Register** of September 3, 1982 (47 FR 39096). Interested persons were invited to file by November 2, 1982, written comments, objections, or requests for a oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by January 2, 1983. New data could have been submitted until September 3, 1983, and comments on the new data until November 3, 1983.

In the **Federal Register** of November 7, 1990 (55 FR 46914), the agency published a final rule in 21 CFR part 310 establishing that certain active ingredients that had been under consideration in a number of OTC drug rulemaking proceedings were not generally recognized as safe and effective. That final rule was effective on May 7, 1991 and included, in § 310.545(a)(13), denatonium benzoate, an active ingredient under consideration in the rulemaking for OTC nailbiting and thumbsucking deterrent drug products. This ingredient was determined to be nonmonograph because no additional data had been submitted establishing that it was generally recognized as safe and effective as a nailbiting and thumbsucking deterrent. Final agency action on all other OTC nailbiting and thumbsucking deterrent drug products occurs with the publication of this final rule.

In the proposed rule, the agency did not propose any OTC nailbiting and thumbsucking deterrent active ingredient as generally recognized as safe and effective and not misbranded. However, the agency proposed monograph labeling in the event that data were submitted that resulted in the upgrading of any ingredient to monograph status in the final rule. In this final rule, however, no active ingredient has been determined to be generally recognized as safe and effective for use in OTC nailbiting and thumbsucking deterrent drug products. Therefore, proposed subpart C of 21 CFR part 358 for OTC nailbiting and thumbsucking deterrent drug products is not being issued as a final regulation.

This final rule declares OTC drug products containing OTC nailbiting and thumbsucking deterrent active ingredients to be new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)), for which an application or abbreviated application (hereinafter called application) approved under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 is required for marketing. In the absence of an approved application, products containing these drugs for this use also would be misbranded under section 502 of the act (21 U.S.C. 352). In appropriate circumstances, a citizen petition to establish a monograph may be submitted under 21 CFR 10.30 in lieu of an application.

This final rule amends 21 CFR part 310 to include drug products containing nailbiting and thumbsucking deterrent ingredients by adding to subpart E new § 310.536 (21 CFR 310.536). The inclusion of OTC nailbiting and thumbsucking deterrent drug products in part 310 follows FDA's established policy for regulations in which there are no monograph conditions. (See, e.g., §§ 310.510, 310.519, 310.525, 310.526, 310.532, 310.533, and 310.534.) If, in the future, any ingredient is determined to be generally recognized as safe and effective for use in an OTC nailbiting and thumbsucking deterrent drug product, the agency will promulgate an appropriate regulation at that time.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA does not use the terms "Category I" (generally recognized as safe and

effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage. In place of Category I, the term "monograph conditions" is used; in place of Categories II or III, the term "nonmonograph conditions" is used.

In the proposed rule for OTC nailbiting and thumbsucking deterrent drug products (47 FR 39096 at 39097), the agency advised that it would provide a period of 12 months after the date of publication of the final monograph in the Federal Register for relabeling and reformulation of nailbiting and thumbsucking deterrent drug products to be in compliance with the monograph. Although data and information were submitted on sucrose octaacetate in response to the proposed rule, they were not sufficient to support monograph conditions, and no monograph is being established at this time. Therefore, nailbiting and thumbsucking deterrent drug products that are subject to this rule are not generally recognized as safe and effective and are misbranded (nonmonograph conditions). In the proposed rule (45 FR 69122), the agency advised that conditions excluded from the monograph (Category II) would be effective 6 months after the date of publication of a final monograph in the Federal Register. Because no OTC drug monograph is being established for this class of drug products, the agency is adopting this 6-months effective date for the nonmonograph conditions for these drug products. Therefore, on or after March 2, 1994, no OTC drug products that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved application.

In response to the proposed rule on OTC nailbiting and thumbsucking deterrent drug products, one State Department of Health, one drug manufacturer, and one drug manufacturer's association submitted comments. Copies of the comments received are on public display in the Dockets Management Branch (address above). Additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notices published in the Federal Register of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179), or to additional information that has come to the agency's attention since publication of the notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comments

A. General Comments

1. One comment contended that OTC drug monographs are interpretive, as opposed to substantive, regulations. The comment referred to statements on this issue submitted earlier to other OTC drug rulemaking proceedings.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the Federal Register of May 11, 1972 (37 FR 9464), and in paragraph 3 of the preamble to the tentative final monograph for OTC antacid drug products, published in the Federal Register of November 12, 1973 (38 FR 31260). FDA reaffirms the conclusions stated in those documents. Court decisions have confirmed the agency's authority to issue substantive regulations by informal rulemaking. (See, e.g., *National Nutritional Foods Association* v. *Weinberger*, 512 F.2d 688, 696–98 (2d Cir. 1975) and *National Association of Pharmaceutical Manufacturers* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd*, 637 F.2d 887 (2d Cir. 1981).)

2. One comment contended that nailbiting and thumbsucking deterrents are not drugs within the meaning of section 201(g) of the act (21 U.S.C. 321(g)) and thus are not the proper subject of an OTC drug monograph. The comment asserted that nailbiting and thumbsucking are not "diseases" within the meaning of the act, but are instead regarded as "habits." The comment stated that the Panel found fingernail biting to be an "extremely common habit" and thumbsucking to be "a natural act of the newborn" or "an empty or simple habit as a result of learned behavior." The comment also stated that nailbiting and thumbsucking are not listed or classified in any recognized texts as diseases, but are instead regarded as habits, and quoted *Webster's Third New International Dictionary* to show that nailbiting and thumbsucking are habits and not diseases. Referring to the definition of a "drug" in section 201(g)(1)(B) of the act, the comment contended that nailbiting and thumbsucking deterrent products do not cure, mitigate, treat, or prevent a disease, and claimed that such a product "has no pharmacological effect—it just tastes bad" and thus "discourages certain bad habits." The comment argued that because these products stop a habit and a habit does not qualify as a disease, these products cannot be regulated as drugs within the meaning of the act. Several court cases were cited to support this position.

The agency has considered the above arguments and disagrees with the contention that nailbiting and thumbsucking deterrents are not drugs. As noted above, the act defines a drug, in part, in section 201(g)(1) as "* * * (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals * * *."

While nailbiting and thumbsucking may be habits, they are also conditions which, if left untreated, can result in disease. The Panel (45 FR 69122 at 69123) noted that nailbiting results in fine needlelike projections at the edge of the nail which cause splits and mild paronychia (inflammation involving folds of tissue surrounding the nail). The Panel also stated that when nails are bitten excessively, open wounds result, making this area highly susceptible to infections. Nailbiting deterrents are intended to stop the "habit" and thereby prevent the disease conditions from occurring.

In its consideration of thumbsucking, the Panel referred to numerous reports showing an association of thumbsucking with malocclusion (faulty closure of upper and lower teeth) (45 FR 69122 at 69124). The Panel stated that persistent thumbsucking may lead to the incomplete eruption of the incisors as well as affect the development of muscles of the lips, thus affecting swallowing. The Panel added that arch and palate formation may be adversely affected, causing deviation of the nasal septum and mouthbreathing, and that a crossbite or other occlusal abnormalities may also develop. The Panel also stated that thumbsucking may affect respiration, mastication, speech, and swallowing (45 FR 69124). Further, the Panel stated that if thumbsucking continues past age 4 it should be treated, because continued thumbsucking may lead to clinically significant medical problems.

Promotional packaging material submitted to the Panel by a manufacturer (Ref. 1) claims that nailbiting results in harm to the digestive tract if the nails are swallowed, and that nailbiting provides a convenient entry of germs into the body, thus causing the risk of infection. The same promotional material warns against the possibility of malformation

of the bite of children whose thumbsucking habit is not stopped. Another manufacturer (Ref. 2), in its labeling submitted to the Panel, included the statement "* * * Allow the medication to dry thoroughly * * *." These labeling statements indicate that some manufacturers intend for the product to prevent disease.

Nailbiting and thumbsucking may lead to abnormal, unhealthy conditions that, if not alleviated, may cause disease. Therefore, the agency considers products used to alleviate these conditions as products intended to prevent disease. Accordingly, such products are drugs under section 201(g)(1)(B) of the act and are therefore the proper subject of an OTC drug monograph.

References

(1) OTC Vol. 160054.
(2) OTC Vol. 160010.

3. In response to an agency feedback letter to a manufacturer of nailbiting deterrent products (Ref. 1), the manufacturer asserted that nailbiting prevention products are not drugs per se and could be labeled so that they would be cosmetics under the act (Ref. 2). The manufacturer submitted examples of labeling for its products in support of this position. This comment also cited portions of a statement made by the agency in the tentative final monograph for OTC dandruff, seborrheic dermatitis, and psoriasis drug products (51 FR 27346 at 27347 to 27348, July 30, 1986). The comment cited the following statement regarding dandruff shampoos in further support of its position:

> * * * the mere use of the word "dandruff" does not automatically render a shampoo or other hair care product subject to regulation as a drug. * * * When the use of the term "dandruff" deals only with appearance and not with the treatment or prevention of the underlying disease condition * * * the product is cosmetic in nature.

In order to establish the proper context for answering this comment, it is necessary to quote the entire relevant section, from which the portion was extracted in the comment. It reads as follows:

> The agency agrees with the original comment that the mere use of the word "dandruff" does not automatically render a shampoo or other hair care product subject to regulation as a drug. The Federal Food, Drug, and Cosmetic Act defines a "drug" as an article "[intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease * * * [or] intended to affect the structure or any function of the body. * * * (See 21 U.S.C. 321(g)(1)(B) and (C).) A "cosmetic," on the other hand, is defined as an article intended to be "applied to the human body * * * for cleansing, beautifying, promoting attractiveness, or altering the appearance." (See 21 U.S.C. 321(i)(1).) *The product's intended use, therefore, determines whether it is a "drug," a "cosmetic," or both. This intended use may be inferred from the product's labeling, promotional material, advertising, and any other relevant factor.* [emphasis added] See, e.g., *National Nutritional Foods Association* v. *Mathews*, 557 F.2d 325, 334 (2d Cir. 1977). When the use of the term "dandruff" deals only with appearance and not with the treatment or prevention of the underlying disease condition, as in the context that a product removes loose flakes of dandruff or cleans the hair of dandruff flakes or scales, the product is cosmetic in nature. This position is clearly and correctly stated by the agency in the letters cited by the original comment (Refs. 1 and 2).
>
> *Any use of the term dandruff that would make or imply a claim for the prevention, control, or treatment of dandruff beyond the simple mechanical removal of flakes and scales would, of course, render the product a drug. Examples of claims that would cause a hair care product to become a drug include terms such as* "antidandruff," "dandruff control shampoo," "dandruff treatment," or "*prevents dandruff.*" The agency further concludes that the differences between drug and cosmetic claims are sufficiently clear that the statement requested by the first comment is unnecessary. [emphasis added]

The labeling on nailbiting considered by the Panel, as discussed above, was clearly for the prevention of disease. The Panel believed, as does the agency, based in part on the products' marketing history, that the predominant intended use of the products was medical in nature. This pattern of use establishes the intent that brings the product within the drug definition of the act. A relevant source for determining a product's status can be the consumer's intent in using the product. The FDA is not bound by the manufacturer's subjective claims, but can find actual therapeutic intent on the basis of objective evidence. *Action on Smoking and Health* v. *Harris*, 655 F.2d 236 (DC Cir. 1980); *National Nutritional Foods Association*, supra 325, 334. While nailbiting prevention products may also be cosmetics in that they are intended to affect appearance, they nonetheless are also, and primarily, drugs because they are intended to prevent disease. As drugs, the products must be shown to be generally recognized as safe and effective or be the subject of an approved new drug application to be lawfully marketed.

With respect to the comment, this manufacturer's subjective intent too, at least up to the time that it was advised that the studies under review did not establish safety and effectiveness, as discussed below, apparently was that the products were drugs. In fact, the manufacturer submitted studies to the agency in support of OTC drug monograph status (Ref. 3). Even the labeling submitted with the comment reflects that position, especially the "Active Ingredients" section of the labeling. It is, of course, elementary that drugs have active ingredients; cosmetics have ingredients but not active ingredients.

The agency does not agree with the shampoo analogy cited by the comment with reference to the quoted extract. The claim "Stops nail biting," which is in the labeling submitted, is analogous to the shampoo claim "prevents dandruff," not "washes away flakes." And, as reference to the full passage from the quoted tentative final monograph shows, the agency concluded there that the claim "prevents dandruff" was a drug claim for a shampoo. In the current situation, the agency concludes that products intended to prevent nailbiting are drugs. Such products, depending on their labeling and other factors, may also be regulated, but not solely, as cosmetics.

References

(1) Letter from W. E. Gilbertson, FDA, to P. S. Reichertz, coded LET4, Docket No. 80N–0146, Dockets Management Branch.
(2) Letter from N. L. Buc to W. E. Gilbertson, FDA, coded LET5, Docket No. 80N–0146, Dockets Management Branch.
(3) Comment No. C00005, Docket No. 80N–0146, Dockets Management Branch.

B. Comments on Sucrose Octaacetate

4. One comment submitted data from three clinical studies to show the effectiveness of sucrose octaacetate as a nailbiting and thumbsucking deterrent (Refs. 1, 2, and 3). The comment contended that the intensely bitter taste of this ingredient is a matter of aversion therapy.

Another comment contended that "It goes without saying that any ingredient which has an intensely bitter taste which is applied to the nails (or thumbs) will deter one from placing the nail (or thumb) in his/her mouth." The comment maintained that 32 and 15 years of marketing experience for two of its products, with consumer acceptance, is a testament to their effectiveness. Based on the clinical studies and years of marketing experience, the comment concluded that there is sufficient evidence of effectiveness to place this ingredient in Category I under 21 CFR 330.10(a)(4)(ii), which states:

Effectiveness means a reasonable expectation that, in a significant proportion of the target population, the pharmacological effect of the drug, when used under adequate directions for use and warnings against unsafe use, will provide clinically significant relief of the type claimed. Proof of effectiveness shall consist of controlled clinical investigations as defined in § 314.126(b) of this chapter, unless this requirement is waived on the basis of a showing that it is not reasonably applicable to the drug or essential to the validity of the investigation and that an alternative method of investigation is adequate to substantiate effectiveness. Investigations may be corroborated by partially controlled or uncontrolled studies, documented clinical studies by qualified experts, and reports of significant human experience during marketing. * * * General recognition of effectiveness shall ordinarily be based upon published studies which may be corroborated by unpublished studies and other data.

The agency has reviewed the three clinical studies (Refs. 1, 2, and 3) and determined that the data are not adequate to support general recognition of sucrose octaacetate as safe and effective as an OTC nailbiting and thumbsucking deterrent. The data included the results of three parallel group, randomized, 6-week, placebo-controlled studies from three different research centers: (1) Marquette University School of Dentistry, (2) Eastman Dental Center, and (3) Tufts University School of Dental Medicine. (In this discussion, these studies will be referred to as the "Marquette," "Eastman," and "Tufts" studies, respectively.) These studies were designed solely to assess the effect of sucrose octaacetate during use. No attempt was made to determine the effectiveness of "aversion therapy" in changing the subjects' behavior after the drug was no longer being given.

Each study included approximately 50 subjects with a history of chronic nailbiting. Subjects were randomly assigned to treatment and placebo-control groups. The treatment groups received a solution containing sucrose octaacetate, and the control group received a solution identical in all respects but excluding sucrose octaacetate. Subjects were instructed to apply the solution to the nails at least 5 times daily and after each handwashing by brushing it over the fingernails and the surrounding skin. Subjects made entries into diaries that were collected at each weekly visit. Nails were photographed prior to the study period and at weekly intervals, using 35 millimeter (mm) film. A 1 mm standard was placed on the nail prior to photographing. The photographs were projected to a magnification of 10 times, where 1 mm. was equal to 1 centimeter. Measurements were made from the cuticle to the edge of the free nail and from the cuticle to the edge of the nail bed. The length of the free nail was calculated as the difference between these two measurements. Results were evaluated by investigator examination and comparison of photographs of the nails taken prior to and during the 6-week study period. Results were expressed as mean changes in the length of the full nail (from the cuticle to the edge of the free nail) and the free nail (nailplate extending beyond the nail bed) for all five digits.

The Marquette study included 52 subjects (25 received sucrose octaacetate and 27 received placebo). Overall, 18 of 25 subjects in the treated group (72 percent) responded positively (defined as steady growth of all finger and thumb nails). In the placebo group, only 6 of 27 subjects (22 percent) responded positively. According to the sponsor, the length of free nail showed a statistically significant ($p \leq 0.001$) treatment effect at the end of 6 weeks. Mean differences between sucrose octaacetate and placebo for men and women were about 0.7 mm. The growth in full nail was also numerically greater for the treated group than for the control group, but the difference between the groups was not significant.

The Eastman study included 51 subjects. Thirty-five of the subjects were 16 years of age or younger, with 19 receiving the test solution and 16 receiving the placebo. Sixteen subjects ranged from 17 to 50 years of age, with 7 subjects receiving the test solution and 9 receiving the placebo. Weekly evaluations of nail growth were performed on the two separate age groups. No reason was given for analyzing the results as two separate groups. This analysis was not called for in the protocol. However, data on both older and younger subjects were presented. The investigator stated that statistical evaluation of the data was only done on the group aged 16 years and younger because of the wide difference in age of the older group. In contrast to the other two studies, only the data on total nail growth of all nails over the entire test period for each subject were provided. Free nail growth was not calculated. Calculation of the free nail growth (done in the other studies) requires careful photographing to insure sharpness, color reproducibility, and consistency. Many of the subjects in this study used nail polish, sometimes making measurement of the free nail impossible. Analysis of the data from the younger group showed no significant differences in total nail growth between the test and control groups. Thus, the study does not support the effectiveness of the product as a nailbiting deterrent.

The Tufts study enrolled 50 subjects, 29 in the test group and 21 in the placebo group. This study included a minimum of 5 weeks of observation as opposed to the 6 weeks called for in the protocol. By the Mann-Whitney U test, statistically significant differences were seen at 5 weeks in both the free nail ($p < 0.0001$) and the full nail ($p < 0.0003$) analyses. The control group showed a relatively large response to the placebo during the first 3 weeks, after which growth leveled off. The nails of the test group continued to improve so that the test group and the control group differed significantly after 3 weeks for free nails and after 4 weeks for full nails. P values were supplied for the treatment by period interaction. They were statistically significant.

The Marquette and Tufts studies appear to suggest some effect of sucrose octaacetate in decreasing nailbiting during use. Apart from the questionable relevance of the finding to the use of such products (discussed below), the agency cannot conclude that the two studies are well-controlled clinical trials. Important details are lacking about the conduct of the studies: (1) The method of randomization was not provided. Although random treatment allocation appears to have been used, in the Tufts study missing participant numbers, use of the same number for two people, and the imbalance between the groups (29 vs 21) raise questions about failure of randomization, omission of or addition of participants, errors, or dropouts. (2) The reports do not indicate whether or not the photographs of the fingernails were interpreted with the observer unaware of treatment assignment, which is critical to determining whether potential observer biases were minimized. (3) It is not clear what was the primary end point, total or free nail growth. How the two measures differ and their independence was not clearly discussed. (4) Subjects' responses, other than those relating to nail growth, were not evaluated.

A number of subjects, in their diary entries, alluded to perceived adverse changes in the appearance or consistency of the nail, a disappearance or decrease in intensity of the bad taste with time, a switch from nailbiting to tearing at soft tissue, and/or an irritation of open wounds. These and any other adverse effects were ignored in the reports and summary, which did not acknowledge that unwanted effects may or may not have been present. The studies thus fail to adequately assess the

safety of sucrose octaacetate. Although the two studies appear to confirm one another, the investigators expressed the results in different ways: change, total length differences. Thus, it is difficult to directly compare results.

The 6-week duration of the studies and the failure to follow subjects off treatment allows assignment only of a short-term effect of sucrose octaacetate as a nailbiting deterrent. As stated in the comment, the objective of using sucrose octaacetate (bitter taste) is to break the nailbiting habit through aversion therapy, an action that can only be evidenced if subjects stop using the sucrose octaacetate and a persistent effect on the nailbiting habit is clearly shown. The product is not intended to be used indefinitely. The design of further studies should reflect the therapeutic goal; i.e., the studies need to show effects on nailbiting persisting after use of the drug is completed.

While some of the submitted studies might, if described more fully, suggest that sucrose octaacetate has a small effect on nailbiting while being used, there is no evidence that the effect persisted after the treatment was stopped or that the drug has an effect on breaking the nailbiting habit. Accordingly, the agency is not including sucrose octaacetate in this final rule as a monograph ingredient.

References

(1) Azhdari, S. S., "Nail Biter Sucrose Octa Acetate Efficacy Study," unpublished study in Comment No. C00005, Docket No. 80N–0146, Dockets Management Branch.

(2) Johnson, E., S. Schwartz, and R. E. Clark, "Placebo-controlled, Double Blind, Parallel Group Evaluation of the Efficacy of Sucrose Octa Acetate (SOA) in Suppression of Nail Biting," unpublished study in Comment No. C00005, Docket No. 80N–0146, Dockets Management Branch.

(3) Sveen, O. B., "Sucrose Octa Acetate Efficacy Study," unpublished study in Comment No. C00005, Docket No. 80N–0146, Dockets Management Branch.

5. One comment contended that the results of studies designed to assess the effectiveness of sucrose octaacetate as a nailbiting deterrent (specifically, the three studies discussed in comment 3) could also be related to thumbsucking because the drug works by a conditioning action.

The agency does not agree with the comment. In discussing testing guidelines, the Panel specifically stated that a double-blinded study, using the vehicle as a control, in a patient population of nailbiters as well as thumbsuckers was needed (45 FR 69122 at 69127). The three studies contained data only on nailbiting. The agency agrees that the results of studies done on a nailbiting population, even if persuasive for effectiveness in that condition, would not constitute evidence of effectiveness as a thumbsucking deterrent. Moreover, the supposed similar effects are based on the idea that a "conditioning" action would be effective in both conditions; in fact, the nailbiting studies cannot provide support for such an effect because sucrose octaacetate was used throughout the study. The agency is not aware of any basis for assuming that the drive or motivation for nailbiting would be equal in magnitude to that for thumbsucking and that, consequently, the same adverse taste would equally deter both habits. The thumb is in the mouth longer during thumbsucking than is the finger during nailbiting. Phenomena such as tolerance or tachyphylaxis could therefore be important to different extents in nailbiters and thumbsuckers. Comments recorded in the diaries of a number of the subjects in the studies indicated that the bitter taste of sucrose octaacetate either vanished completely or was materially changed in intensity with time, suggesting that tolerance might occur. Thumbsuckers who are strongly driven may tolerate the few minutes of adverse effect in order to derive the longer-term (presumed) benefit of thumbsucking.

The submitted data did not include any direct assessment of sucrose octaacetate as a deterrent for thumbsucking, nor any evidence of a "conditioning" effect in any setting. The agency has no basis for assuming that the bitter taste of sucrose octaacetate would have a favorable short- or long-term effect on thumbsucking.

C. Comments on Labeling

6. Several comments discussed suggested labeling for OTC nailbiting and thumbsucking deterrent drug products. Because no active ingredients have been classified as a monograph condition in this final rule for OTC nailbiting and thumbsucking deterrent drug products, the agency is not addressing the comments' requests. Data in the form of a new drug application or a petition to establish a monograph, pursuant to 21 CFR 10.30, may be submitted to support an ingredient's safety and effectiveness as a nailbiting and/or thumbsucking deterrent. Should such data demonstrate an ingredient's safety and effectiveness for this use, the agency will then consider labeling recommendations such as those made by the comments.

II. The Agency's Final Conclusions on OTC Nailbiting and Thumbsucking Deterrent Drug Products

At this time, there is a lack of data from adequate and well-controlled, double-blind studies to establish that denatonium benzoate, sucrose octaacetate, or any other ingredients are safe and effective for use as a nailbiting or thumbsucking deterrent. The agency has determined that no active ingredient has been found to be generally recognized as safe and effective for OTC use as a nailbiting or thumbsucking deterrent.

In the **Federal Register** of November 7, 1990 (55 FR 46914), the agency published a final rule in 21 CFR part 310, establishing that certain active ingredients that had been under consideration in a number of OTC drug rulemaking proceedings were not generally recognized as safe and effective. That final rule was effective on May 7, 1991, and included in § 310.545(a)(13) the ingredient denatonium benzoate that had been previously considered under this rulemaking for use as a nailbiting or thumbsucking deterrent. The final rule in this document establishes that any OTC nailbiting or thumbsucking deterrent drug product is not generally recognized as safe and effective and expands the nonmonograph ingredients to include all other nailbiting and thumbsucking deterrent active ingredients, such as sucrose octaacetate. Therefore, any ingredient that is labeled, represented, or promoted for OTC use as a nailbiting or thumbsucking deterrent is considered nonmonograph and misbranded under section 502 of the act and is a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 of the regulations is required for marketing. In appropriate circumstances, a citizen petition to establish a monograph may be submitted under 21 CFR 10.30 in lieu of an application. Any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule that is not in compliance with the regulation is subject to regulatory action. In order to avoid duplication in listing OTC nailbiting and thumbsucking active ingredients in more than one regulation and for ease in locating these ingredients in the CFR, the agency is listing all of these ingredients in a single regulation in 21 CFR 310.536 entitled "drug products containing active ingredients offered over-the-counter (OTC) for use as a

nailbiting or thumbsucking deterrent." Accordingly, § 310.545(a)(13) is being removed.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (47 FR 39096 at 39098). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that not one of these rules, including this final rule for OTC nailbiting and thumbsucking deterrent drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC nailbiting and thumbsucking deterrent drug products is not expected to pose such an impact on small businesses because only a limited number of products are affected. As noted above, the ingredient denatonium benzoate has already been removed from OTC nailbiting and thumbsucking deterrent drug products. The agency is only aware of several products that contain the ingredient sucrose octaacetate. The agency is aware of one product that contains the ingredient cayenne pepper as the listed active ingredient. Based on the limited number of affected products, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.536 is added to subpart E to read as follows:

§ 310.536 Drug products containing active ingredients offered over-the-counter (OTC) for use as a nailbiting or thumbsucking deterrent.

(a) Denatonium benzoate and sucrose octaacetate have been present in OTC nailbiting and thumbsucking deterrent drug products. There is a lack of adequate data to establish general recognition of the safety and effectiveness of these and any other ingredients (e.g., cayenne pepper) for OTC use as a nailbiting or thumbsucking deterrent. Based on evidence currently available, any OTC drug product containing ingredients offered for use as a nailbiting or thumbsucking deterrent cannot be generally recognized as safe and effective.

(b) Any OTC drug product that is labeled, represented, and promoted as a nailbiting or thumbsucking deterrent is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) for which an approved application or abbreviated application under section 505 of the act and part 314 of this chapter is required for marketing. In the absence of an approved new drug application or abbreviated new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted for OTC use as a nailbiting or thumbsucking deterrent is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

(d) After March 2, 1994, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

§ 310.545 [Amended]

3. Section 310.545 *Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses* is amended by removing and reserving paragraph (a)(13).

Dated: August 26, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–21371 Filed 9–1–93; 8:45 am]

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federal register

Thursday
September 2, 1993

Part VIII

Department of Education

34 CFR Part 232
Drug-Free Schools and Communities Emergency Grants Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 232

RIN 1810–AA66

Drug-Free Schools and Communities Emergency Grants Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Emergency Grants Program to add projects that combat drug and alcohol abuse by students in the most troubled areas of a local educational agency (LEA) to the list of the types of projects the Secretary may assist; to clarify eligibility requirements; and to ensure that applicants are able to demonstrate the basis of their eligibility to receive a grant.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Madeline Bosma, U.S. Department of Education, 400 Maryland Avenue SW., room 2123, FOB 6, Washington, DC 20202–6439. Telephone: (202) 401–1258. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On March 23, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for the Emergency Grants Program in the **Federal Register** (58 FR 15748–49).

Part 232 governs the administration of the Drug-Free Schools and Communities Emergency Grants Program. The changes to part 232 will: (1) Add to the list of the types of projects the Secretary may assist those projects that focus on combating drug and alcohol abuse by students in the most troubled areas of an LEA, and will provide examples of indices of those areas; (2) clarify the emergency grants eligibility requirements related to section 1006 of chapter 1 of title I of the Elementary and Secondary Education Act of 1965; and (3) require that applicants include in their applications a statement of how they meet these eligibility requirements. These changes are needed to target program funds where they are most needed and to ensure that applicants understand and demonstrate their eligibility to receive an emergency grant.

In the preamble to the NPRM, the Secretary listed six factors to assist applicants for emergency grants in identifying the most troubled areas of an LEA. After considering public comment, the Secretary has incorporated these factors into § 232.5(e) of the regulations. Except for this change, there are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, three parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable authority—are not addressed.

Section 232.5 What Types of Projects May the Secretary Assist Under This Program?

Comment: One commenter suggested additional factors—lack of parental involvement (measured by attendance at parent teacher conferences and PTA meetings) and the presence of public housing near the target school—to assist applicants in identifying the most troubled areas of an LEA. Another commenter suggested that the proposed factors might not be applicable in all parts of the country, and that comprehensive services may be equally as critical in communities that are not densely populated metropolitan areas.

Discussion: Applicants are not required to use the six factors in the Secretary's list to identify the most troubled areas of an LEA. The factors are listed merely to provide assistance to applicants in identifying areas that may be troubled. The Secretary believes that parental involvement is an essential element of school improvement; however, the Secretary does not agree with the commenter that attendance at parent teacher conferences and PTA meetings is necessarily an accurate measure of parental involvement. The Secretary also does not agree that the mere presence of public housing near the target school necessarily warrants the conclusion that the area is "troubled." Instead, the Secretary believes that one of the factors already listed—overcrowded housing conditions—is a better general indicator. Because the list of factors is not mandatory, but intended as an example only, each LEA, whether urban, suburban, or rural, will be able to identify its own troubled areas using the factors in the Secretary's list or other factors applicable in the LEA's own area.

Changes: The list of factors contained in the preamble to the NPRM has been added to § 232.5(e) to assist applicants in identifying the most troubled areas of an LEA.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 232

Drug abuse, Drug-free schools and communities, Education department, Elementary and secondary education, Grant programs-education, Local educational agencies, Reporting and recordkeeping.

(Catalog of Federal Domestic Assistance Number 84.233A Emergency Grants Program)

Dated: July 27, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends part 232 of title 34 of the Code of Federal Regulations as follows:

PART 232—DRUG-FREE SCHOOLS AND COMMUNITIES EMERGENCY GRANTS PROGRAM

1. The authority citation for part 232 continues to read as follows:

Authority: 20 U.S.C. 3216, unless otherwise noted.

2. Section 232.2 is revised to read as follows:

§ 232.2 What parties are eligible for a grant under this program?

A local educational agency is eligible to receive a grant if it—

(a)(1) Receives, or is eligible to receive, assistance under section 1006 of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2712); or

(2) Meets the criteria of clauses (i) and (ii) of section 1006(a)(1)(A) of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2712(a)(1)(A)(i) and (ii)); and

(b) Serves an area—

(1) In which there are a large number or a high percentage of—

(i) Arrests for, or while under the influence of, drugs or alcohol; or

(ii) Convictions of youth for drug- or alcohol-related crimes;

(2) In which there are a large number or a high percentage of referrals of youths to drug and alcohol abuse treatment and rehabilitation programs; and

(3) That has a significant drug and alcohol abuse problem.

(Authority: 20 U.S.C. 3216)

3. Section 232.4 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively, by adding a new paragraph (a), and by revising the OMB control number following the section to read as follows:

§ 232.4 What must an application include?

* * * * *

(a) A statement of the basis for the applicant's eligibility under § 232.2(a)(1) or (2);

* * * * *

(Approved by the Office of Management and Budget under control number 1810–0561)

(Authority: 20 U.S.C. 3216)

4. Section 232.5 is amended by removing the word "or" at the end of paragraph (c), by removing the period at the end of paragraph (d) and adding in its place "; or", and by adding a new paragraph (e) to read as follows:

§ 232.5 What types of projects may the Secretary assist under this program?

* * * * *

(e) Implement comprehensive programs to combat drug and alcohol abuse by students in the most troubled areas of a local educational agency, which may be characterized by factors such as—

(1) Open-air drug markets;

(2) High unemployment;

(3) High homicide rates;

(4) Overcrowded housing conditions;

(5) Boarded-up businesses and dwellings; or

(6) Limited access to basic goods, health and other social services.

[FR Doc. 93–21438 Filed 9–1–93; 8:45 am]

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV93–915–1 FR]

Avocados Grown in South Florida; Finalize Revised Maturity Requirements for Fresh Avocados

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action finalizes without change an interim final rule which revised maturity requirements for avocados grown in Florida by adjusting the shipping dates in the shipping schedule for several avocado varieties to synchronize those dates with the 1993 and 1994 calendar years. The maturity requirements are designed to ensure that only mature fruit is shipped to the fresh market, thereby improving grower returns and promoting orderly marketing conditions.

EFFECTIVE DATE: October 4, 1993.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–720–5331; or William Pimental, Southeast Marketing Field Office, USDA/AMS, PO Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 915 (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the order. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 40 avocado handlers subject to regulation under the marketing order covering avocados grown in Florida, and about 300 avocado producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the Florida avocado handlers and producers may be classified as small entities.

The Avocado Administrative Committee (committee) unanimously recommended the revised maturity requirements for Florida avocados. This committee works with the Department in administering the order, and it meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida avocados. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations, information submitted by the committee and other information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Maturity requirements for avocados grown in Florida, based on minimum weights, diameters, and skin color, are specified in § 915.322 (7 CFR 915.322), and are in effect on a continuous basis. These maturity requirements specify minimum weights and diameters for specific shipping periods for some 60 varieties of avocados, and color specifications for those varieties which turn red or purple when mature. The maturity requirements for the various varieties of avocados are different, because each variety has different characteristics. The maturity requirements for each avocado variety are based on maturity test results.

These maturity requirements are designed to prevent shipments of immature avocados to the fresh market, especially during the early part of the harvest season for each variety. Providing fresh markets with mature fruit is an important aspect of creating consumer satisfaction and is in the interest of both producers and consumers. Fresh shipments of Florida avocados usually begin with light shipments of early varieties in May, and they continue until the following March or April, with heaviest shipments occurring from July through December

The interim final rule was issued on June 23, 1993, and published in the **Federal Register** (58 FR 34684, June 29, 1993), with an effective date of June 29, 1993, and a 30-day comment period ending July 29, 1993. No comments were received.

The interim final rule revised the shipping schedules for the avocado varieties specified in Table 1 of paragraph (a)(2) of § 915.322 (7 CFR part 915) to synchronize those schedules with the 1993 and 1994 calendar years. That rule also made necessary corrections in the section by adjusting the final date of regulation from Monday to Sunday for each variety listed in the shipping schedule.

The maturity requirements, based on minimum weights, diameters, and skin color, specified in § 944.31 (7 CFR 944.31) for imported avocados were indefinitely suspended by a final rule issued May 15, 1991 (56 FR 23009, May 20, 1991). Therefore, this action will not impact imported avocados until the suspension is lifted.

A minimum grade requirement of U.S. No. 2 currently in effect on a continuous basis for avocados grown in Florida under § 915.306 (7 CFR part 915), and for avocados imported into the United States under § 944.28 (7 CFR part 944) remains in effect unchanged by this action.

Florida avocado handlers may ship, exempt from the minimum grade, size, and maturity requirements effective under the order, up to 55 pounds of avocados during any one day under a minimum quantity provision, and up to 20 pounds of avocados as gift packs in individually addressed containers. Also, avocados grown in Florida utilized in commercial processing are not subject to the grade, size, and maturity requirements under the order.

This action reflects the committee's and the Department's appraisal of the need to maintain the revised maturity requirements for Florida avocados. The Department's view is that this action will have a beneficial impact on producers and handlers since it will continue to help ensure that only mature avocados are shipped to fresh markets. The committee considers that maturity requirements for Florida grown avocados are necessary to improve grower returns and promote orderly marketing conditions. Although compliance with these maturity requirements will affect costs to handlers, these costs will be offset by the benefits of providing the trade and consumers with mature avocados.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, as published in the **Federal Register** (58 FR 34684, June 29, 1993), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

§ 915.322 [Amended]

2. Accordingly, the interim final rule amending the provisions of § 915.332, which was published in the **Federal Register** (58 FR 34684, June 29, 1993), is adopted as a final rule without change.

Note: This section will appear in the annual Code of Federal Regulations.

Dated: August 30, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–21525 Filed 9–2–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 947

[Docket No. FV93–947–2FR]

Irish Potatoes Grown in Oregon-California; Finalize Amendment of the Pack Requirements (M.O. No. 947)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that specifies that Oregon-California potatoes packed in any cartons must meet the same grade and size requirements previously specified for potatoes packed in 50-pound cartons. The revised requirements are expected to improve the marketing of Oregon-California potatoes and increase returns to such potato producers.

EFFECTIVE DATE: October 4, 1993.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Specialist, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, telephone (202) 690–0464 or FAX (202) 720–5698; or Teresa Hutchinson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Northwest Marketing Field Office, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204; telephone (503) 326–2725 or FAX (503) 326–7440.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 114 and Order No. 947 (order), both as amended, regulating the handling of Irish potatoes grown in Oregon-California and the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has a principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions

in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 550 producers of potatoes in the Oregon-California production area and approximately 40 handlers who are subject to regulation under the order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Oregon-California fresh market potatoes are regulated year-round by grade, size, quality, and maturity. These regulations have been issued on a continuing basis subject to amendment, modification, or suspension as may be recommended by the Oregon-California Potato Committee (Committee). The Committee met March 10, 1993, and unanimously recommended this amendment. It is authorized pursuant to § 947.52(a)(3) of the order. Section 947.52(a)(3) authorizes regulation of the handling of particular grades, sizes, qualities or maturities of any or all varieties differently, for different portions of the production area, for different uses or outlets, for potatoes for prepeeling to different markets, for different packs or for any combination of the foregoing, during any period.

The interim final rule was issued on June 3, 1993, and published in the **Federal Register** of June 15, 1993, (58 FR 33018), to be effective upon publication. That rule amended section 947.340 and provided a 30-day comment period which ended July 15, 1993. No comments were received.

That action amended the requirements specified in § 947.340(e) of the handling regulation by deleting the 50-pound reference regarding potatoes packed in cartons. The deletion of this reference requires the potatoes that handlers pack in any carton meet the same grade and size currently specified for potatoes packed in 50-pound cartons. Such potatoes shall be either: (1) U.S. No. 1 grade or better, except that potatoes that fail to meet U.S. No. 1 grade only because of hollow heart and/or internal discoloration may be shipped provided the lot contains not more than 10 percent damage by hollow heart and/or internal discoloration, or not more than 5 percent serious damage by internal defects; or (2) U.S. No. 2 potatoes weighing at least 10 ounces. Other size requirements are as follows: (1) Potatoes shipped to points within the continental United States shall be at least 2 inches in diameter or 4 ounces in weight, and potatoes shipped to export destinations shall be at least 1½ inches in diameter; (2) red-skinned varieties of potatoes may be shipped without regard to any minimum size requirement, if they otherwise grade at least U.S. No. 1; or (3) all non-redskinned varieties of potatoes that measure 1¾ inches in diameter or less may be shipped if such potatoes otherwise grade at least U.S. No. 1.

The Committee had been informed by food service and institutional buyers, both domestic and foreign, that a smaller carton weight was more desirable for some users than the currently used 50-pound carton. These buyers indicated that they need a smaller carton for ease of handling resulting in less risk of injury. Smaller cartons also require less of the limited storage space available to such buyers and the quicker turnover means fresher potatoes for their clientele. However, the buyers still want to be provided with the same quality of potatoes as packed in 50-pound cartons.

Previously, potatoes packed in containers other than 50-pound cartons had to meet only minimum U.S. No. 2 grade requirements. This change in the handling regulation reflects the industry's current practice of providing a high quality product to users of potatoes packed in cartons.

Last season, the pack regulations for potatoes in 50-pound cartons were changed to allow U.S. No. 2 grade to be shipped, if the potatoes weighed at least 10 ounces each. Handlers packing such potatoes have reported great success and high acceptance by the receivers.

Based on the above information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matters presented, the information and recommendations submitted by the Committee and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (58 FR 33018, June 15, 1993), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is amended as follows:

PART 947—IRISH POTATOES GROWN IN OREGON-CALIFORNIA

1. The authority citation for 7 CFR part 947 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending the provisions of § 947.340, which was published in the June 15, 1993, **Federal Register** (58 FR 33018), is adopted as a final rule without change.

Note: This section will appear in the Code of Federal Regulations.

Dated: August 30, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–21524 Filed 9–2–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1160

[DA–92–29–A]

RIN 0581–AA44

Fluid Milk Promotion Program; Procedure for Conduct of Referenda and Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From an Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes procedures for conducting the initial referendum and any subsequent referenda that may be conducted among fluid milk processors in connection with the new fluid milk promotion order that is being issued concurrently with this document. This rule also establishes rules of practice governing proceedings on petitions by fluid milk processors to modify or to be exempted from the promotion order.

EFFECTIVE DATE: September 3, 1993.

FOR FURTHER INFORMATION CONTACT: Bonnie O. Tanner, Head, Promotion and Research Staff, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6909.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Invitation to Submit Comments and Notice of Public Meeting: Issued April 16, 1993; published April 21, 1993 (58 FR 21512).

This rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as a "non-major" rule under the criteria contained therein.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Fluid Milk Promotion Act of 1990 (Title XIX, subtitle H, of the Food, Agriculture, Conservation, and Trade Act of 1990) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1999K of the Act, any person subject to a fluid milk promotion order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. A person subject to an order is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his/her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The most current information available indicates that there currently are about 620 fluid milk processors in the 48 contiguous States. The final rule for the fluid milk promotion program, which is being issued concurrently with this document, exempts about 40 percent of these processors on the basis that they process and distribute no more than 500,000 pounds of fluid milk products per month. Small businesses in the fluid milk processing industry have been defined by the Small Business Administration (13 CFR 121.601) as those employing fewer than 500 employees. Under the fluid milk promotion order, most of the fluid milk processors who would be subject to the provisions of the order would be classified as small entities.

The promotion order requires each fluid milk processor who processes and markets commercially over 500,000 pounds of fluid milk products per month to remit 20 cents per hundredweight of such products. Initially, such collections would occur only for six months during the first 30 months the order is effective, and would total about $55 million. Because the 20-cent rate would amount to less than 2 percent of the per hundredweight cost of raw milk to affected processors, the economic impact of the assessment would not be significant.

This final rule relates only to referendum rules and rules of practice governing proceedings on petitions to modify or to be exempted from a promotion order. Any information required under this rule would be readily available from records currently maintained by all processors. Thus, any increased recordkeeping resulting from this rule would be insignificant.

Based on the above, the Administrator of AMS has determined that the issuance of this rule will not have a significant economic effect on a substantial number of small entities.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are included in this final rule have been approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581–0093. This action sets forth the regulations establishing procedures for the conduct of referenda in connection with the fluid milk promotion order and rules of practice governing proceedings on petitions to modify or to be exempted from such an order. Information collection requirements in these regulations include:

(1) A registration form and certification of eligibility to vote to be used in 1993 and at least once thereafter to indicate that fluid milk processors are eligible and intend to participate in referenda. The processors also would be asked to indicate the volume of fluid milk products marketed by them during a representative period. The estimated maximum number of respondents for this form would be 365, with an estimated average reporting burden of 60 minutes per response;

(2) A referendum ballot to be used in 1993 and at least once thereafter to indicate whether fluid milk processors favor continuance of the promotion order. The estimated maximum number of respondents for this form would be 365, with an estimated average reporting burden of 30 minutes per response.

It should be noted that under the law the promotion program expires at the end of 1996.

Findings and Determinations

The only comments received regarding the Procedure for Conduct of Referenda in Connection with a Fluid Milk Promotion Order were filed by the Milk Industry Foundation (MIF), proponents of the fluid milk promotion program. The MIF comments stated that the proposed referenda regulations should be changed to accommodate a procedure for challenging the voting eligibility of processors registering their intention to participate in any referendum. In addition, MIF's comments suggested that the order should require the Secretary to establish and announce prior to the referendum period the threshold level of fluid milk sales that must be represented by fluid milk processors voting in favor of the order if the order is approved.

The MIF comments provide the basis for improving the proposed procedure for referenda held concerning the fluid milk promotion program. The opportunity for interested persons to challenge the eligibility of entities registering in advance to vote in referenda will be, in effect, an extra check on whether the referendum agent has compiled a proper list of eligible voters. It is not unusual in the dairy industry today to have a variety of ownership arrangements, for example, and the initial list of eligible voters might not properly reflect existing arrangements. This could possibly be brought to light through a challenge of the voter list. The identity of fluid milk processors who actually vote will not be disclosed, however.

Advance publication of the milk sales information will make the industry aware prior to a referendum of what volume of fluid milk products will have to be marketed during the representative period by processors expressing approval of the order if the order is to become effective. The language adopted will not specify that the threshold approval level be published in the referendum notice, as suggested by MIF, but instead will require its publication sometime prior to the referendum period. It is anticipated that fluid milk processors will be asked to supply the referendum agent with information on their sales sometime after the notice of referendum and before the referendum period. The threshold approval level should be available at the time ballots are mailed to the eligible voters.

Other changes made in the proposed referenda rules combine two sections that were entitled "Conduct of referenda" and "Time for voting" to clarify and provide a more complete description of the referenda process. Also, some of the proposed "Notice of referendum" language is changed to assure that the timeframe of any referendum held under this part allows for all of the necessary steps.

The proposal also is revised to clearly indicate that a person voting in a referendum must be processing and marketing fluid milk products at the time of voting and at the time of registering to vote. In addition, such person must have been a fluid milk processor, as defined under the order, during the representative period that the Secretary establishes for the particular referendum.

No comments were filed with respect to the Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted From an Order, and the proposed rules of practice are included in this final rule without substantive change.

Additional Findings

Pursuant to 5 U.S.C. 553, it is hereby found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. To become effective, an order to implement the fluid milk promotion program must be approved in a referendum. In order to conduct a referendum in a timely manner, this rule should be made effective as soon as possible. The final rule is essentially the same as the proposed rule published on April 21, 1993. Therefore, this final rule is effective on the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1160

Fluid milk products, Milk, Promotion.

For the reasons set forth in the preamble, Title 7 of the Code of Federal Regulations is hereby amended by adding part 1160 to read as follows:

PART 1160—FLUID MILK PROMOTION PROGRAM

Subpart—Procedure for Conduct of Referenda in Connection with a Fluid Milk Promotion Order

Sec.

1160.600 General.
1160.601 Definitions.
1160.602 Conduct of referendum.
1160.603 Who may vote.
1160.604 Duties of the referendum agent.
1160.605 Date of referendum.
1160.606 Notice of referendum.
1160.607 Tabulation of ballots.
1160.608 Confidential information.
1160.609 Supplementary instructions.

Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted from an Order

1160.650 Words in the singular form.
1160.651 Definitions.
1160.652 Institution of proceeding.

Authority: 7 U.S.C. 6401–6417.

Subpart—Procedure for Conduct of Referenda in Connection with a Fluid Milk Promotion Order

§ 1160.600 General.

Referenda to determine whether eligible fluid milk processors favor the issuance, continuance, termination or suspension of a Fluid Milk Promotion Order authorized by the Fluid Milk Promotion Act of 1990 shall be conducted in accordance with this subpart.

§ 1160.601 Definitions.

As used in this subpart:

(a) *Act* means the Fluid Milk Promotion Act of 1990 (Subtitle H of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, 7 U.S.C. 6401–6417) and any amendments thereto.

(b) *Department* means the United States Department of Agriculture.

(c) *Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(d) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(e) *Order* means a Fluid Milk Promotion Order, and any amendments thereto, authorized by the Act.

(f) *Board* means the National Fluid Milk Processor Promotion Board established pursuant to the Act.

(g) *Assessment* means the monies that are collected and remitted to the Board pursuant to the Act.

(h) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative association or other entity.

(i) *Fluid milk processor* means any person who is defined as a fluid milk processor under the order, or under the proposed order on which the initial referendum is held.

(j) *Referendum agent* means the person designated by the Secretary to conduct the referendum.

(k) *Representative period* means the period designated by the Secretary pursuant to Sections 1999N and 1999O of the Act.

§ 1160.602 Conduct of referendum.

(a) The referendum shall be conducted by mail in the manner prescribed in this subpart. The referendum agent may utilize such personnel or agencies of the Department as are deemed necessary by the Administrator. There shall be no voting except within the time specified by the referendum agent.

(b) The referendum agent shall mail to each fluid milk processor that has properly registered to participate in the referendum:

(1) A ballot containing a description of the question(s) upon which the referendum is being held;

(2) Instructions for completing the ballot; and

(3) A statement as to the time within which the ballot must be mailed to the referendum agent.

§ 1160.603 Who may vote.

(a) Each person who was a fluid milk processor during the representative period, as determined by the Secretary, and who at the time of voter registration and when voting is processing and marketing commercially fluid milk products in consumer-type packages in the United States shall be entitled to vote in a referendum, and no such person shall be refused a ballot. Any person casting more than one ballot with conflicting votes shall thereby invalidate all ballots cast by such person in such referendum. Each person voting shall have registered with the referendum agent prior to the voting period. Each ballot cast shall contain a certification by the person casting the ballot that such person is qualified to vote. All information required on the ballot pertinent to the identification of the person voting must be supplied and certified to as being correct in order for the ballot to be valid.

(b) Voting by proxy or agent will not be permitted. However, the ballot of a fluid milk processor who is other than an individual may be cast by a person who is duly authorized to do so, and such ballot shall contain a certification by such person that the entity on whose behalf the ballot is cast was a fluid milk processor during the representative period. All information required on the ballot pertinent to the identification of the fluid milk processor on whose behalf the ballot is cast must be

supplied and certified to as being correct in order for the ballot to be valid.

§ 1160.604 Duties of the referendum agent.

The referendum agent, in addition to any other duties imposed by this subpart, shall:

(a) Determine and publicly announce prior to the voting period the total volume of fluid milk products marketed by all processors of fluid milk in the United States during the representative period and the portion of such volume that must be represented by those fluid milk processors voting in favor of the question included on the ballot if the referendum question is to pass.

(b)(1) Within 12 days after the deadline for registering to vote in the referendum, the referendum agent shall make available upon request a list of those fluid milk processors that properly registered. Any challenge of a processor's eligibility to vote must be received by the referendum agent within 17 days of the deadline for voter registration.

(2) If the voting eligibility of any fluid milk processor is challenged within the timeframe specified in § 1160.604(b)(1), the referendum agent shall review the challenge and make a final determination regarding the processor's eligibility to vote.

(3) Prior to the time of mailing ballots to fluid milk processors, the referendum agent shall prepare a final list of eligible voters and make such list available upon request.

(c) Verify the eligibility of all persons voting in the referendum by reviewing all ballots cast to assure that each ballot:

(1) Was mailed within the prescribed time;

(2) Contains all certifications required attesting to the eligibility of the person to vote, and that the person voting filed with the referendum agent prior to the voting period the advance registration required pursuant to § 1160.606(a)(1); and

(3) Was completed with respect to all necessary information pertinent to the identification of the person voting so that additional verification can be conducted by the referendum agent to substantiate the eligibility of each such person to vote.

(d) Conduct further verification, as necessary, to determine the eligibility of each person to vote. Such verification may be completed by reviewing readily available sources of information, including the following:

(1) Records of the Department;

(2) Fluid milk processors' records; and

(3) Any other reliable sources of information which may be available to the referendum agent.

(e) Further verify ballots to avoid a duplication of votes. The following criteria shall serve as a guide:

(1) Each fluid milk processor that is other than an individual shall be regarded as one person for voting purposes;

(2) No more than one vote may be cast on behalf of any one fluid milk processor; and

(3) In the event that more than one individual claim the right to vote and cast a ballot for a fluid milk processor, concurring votes of such individuals shall be treated as one vote while any conflicting votes shall thereby invalidate all ballots cast by such individuals.

§ 1160.605 Date of referendum.

A referendum shall be held:

(a) During the 60-day period immediately preceding the initial effective date of the order for the purpose of approving the order;

(b) Whenever prescribed by the order; and

(c) For the purpose of suspending or terminating the order or adjusting the rate of assessment:

(1) At the direction of the Secretary; or

(2) Upon request of the Board or upon request of any group of fluid milk processors that among them marketed during a representative period, as determined by the Secretary, 10 percent or more of the volume of fluid milk products marketed by all processors of fluid milk in the United States during that period.

§ 1160.606 Notice of referendum.

The referendum agent shall provide at least 30 days' notice of any referendum authorized by the Act by:

(a) Mailing to each known person processing fluid milk products a notice of referendum, which shall include:

(1) An advance registration form to be filed with the referendum agent prior to the voting period by any person choosing to vote in the referendum, with a statement as to the time within which the registration form must be mailed to the referendum agent;

(2) A copy of the final rule, when applicable;

(3) A sample ballot containing a description of the question(s) upon which the referendum is being held; and

(4) Rules for participating in the referendum, including a statement as to the time within which the ballot must be mailed to the referendum agent; and

(b) Giving public notice of the referendum:

(1) By furnishing press releases and other information to available media of public information (including but not limited to press, radio, and television facilities) announcing the time within which ballots must be completed and mailed to the referendum agent, eligibility requirements, required certifications to cast a valid ballot, where additional information, ballots and instructions may be obtained, and other pertinent information; and

(2) By such other means as the referendum agent may deem advisable.

§ 1160.607 Tabulation of ballots.

(a) The referendum agent shall verify the validity of all ballots cast in accordance with the instructions and requirements specified in §§ 1160.602 through 1160.606. Ballots that are not valid shall be marked "disqualified" with a notation on the ballot as to the reason for the disqualification.

(b) The total number of ballots cast, including the disqualified ballots, shall be ascertained. The number of ballots cast approving, the number of ballots cast disapproving, and the pounds of fluid milk products distributed during the representative period by the processors represented in each grouping of ballots, shall also be ascertained. The ballots marked "disqualified" shall not be considered as approving or disapproving, and the persons who cast such ballots shall not be regarded as participating in the referendum.

(c) The referendum agent shall notify the Administrator of the number of ballots cast, the count of the votes, the number of disqualified ballots, and the volume of fluid milk products associated with the ballots cast as prescribed in § 1160.607(b). The referendum agent shall seal the ballots and transmit to the Administrator a complete detailed report of all actions taken in connection with the referendum and all other information furnished to or compiled by the referendum agent.

(d) Announcement of the results of the referendum will be made only at the direction of the Secretary. The referendum agent or others who assist in the referendum shall not disclose the results of the referendum or the total number of ballots and votes cast.

§ 1160.608 Confidential information.

The ballots cast, the identity of any person who voted, or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the referendum agent, except the list of eligible voters, shall be regarded as confidential.

§ 1160.609 Supplementary instructions.

The Administrator is authorized to issue instructions and to prescribe forms and ballots, not inconsistent with the provisions of this subpart, to govern the conduct of referenda by referendum agents.

Subpart—Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted From an Order

§ 1160.650 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1160.651 Definitions.

As used in this subpart:

(a) *Act* means the Fluid Milk Promotion Act of 1990 (Subtitle H of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, 7 U.S.C. 6401–6417) and any amendments thereto.

(b) *Department* means the United States Department of Agriculture.

(c) *Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(d) *Judge* means any administrative law judge in the Office of Administrative Law Judges, United States Department of Agriculture.

(e) *Administrator* means the Administrator of the Department's Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(f) *Federal Register* means the publication provided for by the Federal Register Act, approved July 26, 1935 (44 U.S.C. 1501–1511), and acts supplementing and amending it.

(g) *Order* means the Fluid Milk Promotion Order and any amendments thereto under 7 CFR Part 1160.

(h) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative association or other entity operating as a fluid milk processor as defined in § 1160.108 of the order.

(i) *Proceeding* means a proceeding before the Secretary arising under Section 1999K of the Act.

(j) *Hearing* means that part of the proceeding which involves the submission of evidence.

(k) *Party* includes the Department.

(l) *Hearing clerk* means the hearing clerk, United States Department of Agriculture, Washington, DC.

(m) *Presiding officer* means the administrative law judge conducting a proceeding under the Act;

(n) *Presiding officer's report* means the presiding officer's report to the Secretary and includes the presiding officer's proposed findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis therefor; proposed order, and proposed rulings on findings, conclusions and orders submitted by the parties.

(o) *Petition* includes an amended petition.

§ 1160.652 Institution of proceeding.

(a) *Filing and service of petitions.* Any person subject to an order desiring to complain that any order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, shall file with the hearing clerk five copies of a petition in writing addressed to the Secretary, requesting a modification of such order or to be exempted from such order. Promptly upon receipt of the petition, the hearing clerk shall transmit a true copy thereof to the Administrator and the Department's General Counsel, respectively.

(b) *Contents of petitions.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application thereof, which are complained of;

(3) A full statement of the facts (avoiding a mere repetition of detailed evidence) upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the order or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law; and

(5) Requests for the specific relief which the petitioner desires the Secretary to grant.

(c) *An application to dismiss petition—Filing, contents, and responses thereto.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the Act or with the requirements of paragraph (b) of this section, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk an application to dismiss the petition, or any portion thereof, on one or more of the grounds stated in this paragraph. Such application shall specify the grounds of objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The application may be accompanied by a memorandum of law. Upon receipt of such application, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition of such application, including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the application to the Judge for the Judge's consideration.

(d) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from any order shall be governed by §§ 900.52(c)(2) through 900.71 of this title (Rules of Practice Governing Proceedings on Petitions to Modify or to Be Exempted From Marketing Orders). However, each reference to "marketing order" in the title shall mean "order" for the purpose of this part.

Dated: August 30, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–21522 Filed 9–2–93; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-32-AD; Amendment 39-8663; AD 93-16-06]

Airworthiness Directives; Canadair Model CL-215-1A10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Canadair Model CL-215-1A10 series airplanes, that requires modification of the right aileron and aileron tab. This amendment is prompted by an updated flutter analysis performed by the manufacturer, which revealed a potential flutter condition on these airplanes. The actions specified by this AD are intended to prevent potential flutter of the rudder-aileron interconnect tab, which could result in reduced controllability of the airplane.

DATES: Effective October 4, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 4, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeff Casale, Aerospace Engineer, Airframe Branch, ANE-172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6220; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Canadair Model CL-215-1A10 series airplanes was published in the Federal Register on April 30, 1993 (58 FR 26076). That action proposed to require modification of the right aileron and aileron tab.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Currently, there are no Canadair Model CL-215-1A10 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it will require approximately 20 work hours per airplane to accomplish the required actions, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of this AD will be $1,100 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-16-06 Canadair: Amendment 39-8663. Docket 93-NM-32-AD.

Applicability: Model CL-215-1A10 series airplanes; serial numbers 1001 through 1125 inclusive, not equipped with powered ailerons; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent potential flutter of the rudder-aileron interconnect tab, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, on the right wing install weights to the aileron balance weight mounting channel and washers to the interconnect tab mass balance arms, in accordance with Canadair Model CL-215-1A10 Alert Service Bulletin 215-A435, dated August 14, 1990.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with Canadair Model CL-215-1A10 Alert Service Bulletin 215-A435, dated August 14, 1990. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 4, 1993.

Issued in Renton, Washington, on August 13, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-21518 Filed 9-2-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-NM-18-AD; Amendment 39-8661; AD 93-16-04]

Airworthiness Directives; Short Brothers Model SD3-SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3-SHERPA series airplanes, that requires replacement of the existing earth wires on certain electrical panels with earth wires having a larger current-carrying capacity. This amendment is prompted by a report that the existing earth wires are too small to carry the electrical current that would be introduced into the wires, if certain internal failures were to occur in the panels. The actions specified by this AD are intended to prevent overheating and burning of the earth wires and a resultant fire.

DATES: Effective October 4, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 4, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202-3719. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Short Brothers Model SD3-SHERPA series airplanes was published in the **Federal Register** on May 14, 1993 (58 FR 28529). That action proposed to require replacement of the existing earth wires on electrical panels 29C and 30C with earth wires having a larger current-carrying capacity.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,200, or $440 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-16-04 Short Brothers, PLC: Amendment 39-8661. Docket 93-NM-18-AD.

Applicability: Model SD3-SHERPA series airplanes; serial numbers SH3201 through SH3205 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating and burning of the earth wires and a resultant fire, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace the existing 24-gauge earth wires on electrical panels 29C and 30C on the bottom of frame 74 with 16-gauge earth wires, in accordance with Shorts Service Bulletin SD3 SHERPA-24-1, dated May 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement shall be done in accordance with Shorts Service Bulletin SD3 SHERPA-24-1, dated May 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Short Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3719. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 4, 1993.

Issued in Renton, Washington, on August 12, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21519 Filed 9–2–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–12–AD; Amendment 39–8662; AD 93–16–05]

Airworthiness Directives; Short Brothers, PLC, Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Short Brothers Model SD3–60 series airplanes, that requires repetitive inspections to detect cracking in the attachment lugs of the horizontal stabilizer and replacement of cracked lugs with serviceable parts. This amendment is prompted by reports of fatigue cracking in the attachment lugs of the horizontal stabilizer that developed during fatigue testing conducted by the manufacturer. The actions specified by this AD are intended to prevent reduced structural integrity of the attachment of the horizontal stabilizer to the airplane.

DATES: Effective October 4, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 4, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202–3719. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–60 series airplanes was published in the **Federal Register** on April 7, 1993 (58 FR 18053). That action proposed to require repetitive inspections to detect cracking in the attachment lugs of the horizontal stabilizer and replacement of cracked lugs with serviceable parts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposal.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 81 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $71,280, or $880 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–16–05 Short Brothers, PLC: Amendment 39–8662. Docket 93–NM–12–AD.

Applicability: All Model SD3–60 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the attachment of the horizontal stabilizer to the airplane, accomplish the following:

(a) Prior to the accumulation of 20,000 total landings on the horizontal stabilizer or within 3 months after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 4,000 landings, perform an ultrasonic inspection to detect cracking in the attachment lugs of the horizontal stabilizer in accordance with Shorts Service Bulletin SD360–55–19, dated January 18, 1993. If any cracked lug is found, prior to further flight, replace the lug with a serviceable part in accordance with the service bulletin and continue to inspect at intervals not to exceed 4,000 landings in accordance with this paragraph.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections and replacement shall be done in accordance with Shorts Service Bulletin SD360–55–19, dated January 18, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained

from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202–3719. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 4, 1993.

Issued in Renton, Washington, on August 12, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21520 Filed 9–2–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–03–AD; Amendment 39–8640; AD 93–14–16]

Airworthiness Directives; British Aerospace (Commercial Aircraft), Limited, Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace (Commercial Aircraft), Limited, Model ATP airplanes, that requires placing a life limit on certain bolts that attach the left- and right-hand aft isolator brackets to the engine subframe aft mounting beams. This AD also provides an optional terminating action for the requirement to replace those bolts at regular intervals. This amendment is prompted by results of fatigue tests and service experience, which indicate that these bolts are subject to fatigue failure prior to the fatigue lives specified in the airplane maintenance manual for these airplanes. The actions specified by this AD are intended to prevent structural failure of the engine support structure.

DATES: Effective October 4, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 4, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace (Commercial Aircraft), Limited, Model ATP airplanes was published in the **Federal Register** on March 19, 1993 (58 FR 15114). That action proposed to require placing a life limit of 5,000 landings on certain bolts that attach the left- and right-hand aft isolator brackets to the engine subframe aft mounting beams.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Since issuance of that proposed AD, Jetstream Aircraft, Limited, issued Service Bulletin ATP–54–10–35256A, Revision 1, dated April 16, 1993. That service bulletin describes procedures for replacement of the existing bolts on the aft isolator brackets on the engine mounting beams with improved bolts having a longer fatigue life. The FAA has revised the final rule to include accomplishment of that modification as optional terminating action for the requirement to replace the bolts every 5,000 landings.

Jetstream Aircraft, Limited, has also issued Revision 1 to Service Bulletin ATP–54–9, dated May 10, 1993, which references the modification described previously as terminating action for bolt replacement. The FAA has revised the final rule to reflect the latest revision to that service bulletin as an additional source of service information. The economic analysis paragraph, below, has also been revised to reflect the costs involved with accomplishment of this optional terminating action.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. The cost for required parts will be minimal. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $550, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

Should an operator elect to accomplish the optional terminating action that is provided by this AD action, the number of work hours required to accomplish it will be approximately 12 per airplane (excluding engine removal/refit), and the cost of required parts will be minimal.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-14-16 British Aerospace (Commercial Aircraft), Limited: Amendment 39-8640, Docket 93-NM-03-AD.

Applicability: Model ATP airplanes having aft isolator bracket attachment bolts, part number A102-4E or A102-5E; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent structural failure of the engine support structure, accomplish the following:

(a) For airplanes on which the aft isolator bracket attachment bolts have accumulated less than 5,000 total landings as of the effective date of this AD: Prior to the accumulation of 5,000 total landings on the bolts, or within 1,250 hours time-in-service after the effective date of this AD, whichever occurs later, remove the bolts and replace them with new or serviceable parts, in accordance with Jetstream Aircraft, Limited, Service Bulletin ATP-54-9, dated December 9, 1992, or Revision 1, dated May 10, 1993. Thereafter, prior to the accumulation of 5,000 total landings on any bolt, replace it with a new or serviceable bolt, in accordance with the service bulletin.

(b) For airplanes on which the aft isolator bracket attachment bolts will have accumulated 5,000 or more total landings before it is replaced in accordance with paragraph (a) of this AD: Prior to the accumulation of 5,000 total landings or within 150 hours time-in-service after the effective date of this AD, whichever occurs later, perform a visual inspection of the aft isolator bracket attachment bolts to determine if each bolt is in position, and to detect failed or cracked bolts, in accordance with Jetstream Aircraft, Limited, Service Bulletin ATP-54-9, dated December 9, 1992, or Revision 1, dated May 10, 1993.

(1) If any bolt is missing, failed, or cracked, prior to further flight, replace all four bolts in the assembly with new or serviceable parts, in accordance with the service bulletin. Thereafter, prior to the accumulation of 5,000 total landings on any bolt, replace it with a new or serviceable bolt, in accordance with the service bulletin.

(2) If no bolt is missing, failed, or cracked, repeat the visual inspection thereafter at intervals not to exceed 150 hours time-in-service. Within 1,250 hours time-in-service after the effective date of this AD, replace each bolt with a new or serviceable part, in accordance with the service bulletin. Thereafter, prior to the accumulation of 5,000 total landings on any bolt, replace it with a new or serviceable bolt, in accordance with the service bulletin.

(c) Replacement of the existing bolts on the aft isolator brackets on the engine mounting beams with improved bolts (Modification 35256A) in accordance with Jetstream Aircraft, Limited, Service Bulletin ATP-54-10-35256A, Revision 1, dated April 16, 1993, constitutes terminating action for replacement of the bolts every 5,000 landings, as required by paragraphs (a), (b)(1), and (b)(2) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The replacement and inspection shall be done in accordance with Jetstream Aircraft, Limited, Service Bulletin ATP-54-9, dated December 9, 1992; or Jetstream Aircraft, Limited, Service Bulletin ATP-54-9, Revision 1, dated May 10, 1993. The modification shall be done in accordance with Jetstream Aircraft, Limited, Service Bulletin ATP-54-10-35256A, Revision 1, dated April 16, 1993, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1	1	April 16, 1993.
2-5	0	March 2, 1993.
6	(1)	
7	1	Not dated.

[1] This page is not used.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 4, 1993.

Issued in Renton, Washington, on July 19, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-21515 Filed 9-2-93; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 93-NM-23-AD; Amendment 39-8660; AD 93-16-03]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146 series airplanes, that requires inspection of the autopilot pitch servomotor mounting to ensure that foul pins and the corresponding foul pin holes are aligned properly, and corrective action, if necessary. This amendment is prompted by reports indicating that incorrect autopilot pitch servomotor mountings and mounting brackets may have been installed on these airplanes. The actions specified by this AD are intended to prevent adverse airplane flight characteristics during autopilot operation.

DATES: Effective October 4, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 4, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, Inc., Avro Division, 22070 Broderick Drive, Sterling, Virginia 20166. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146 series airplanes was published in the **Federal Register** on May 3, 1993 (58 FR 21955). That action proposed to require inspection of the autopilot pitch servomotor mounting to ensure that foul pins and the corresponding foul pin holes are aligned properly, and corrective action, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposal.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $55. This total cost figure assumes that the affected operator has not yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–16–03 British Aerospace: Amendment 39–8660. Docket 93–NM–23–AD.

Applicability: Model BAe 146 airplanes, as listed in British Aerospace BAe 146 Inspection Service Bulletin S.B. 27–135, dated April 23, 1992, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent adverse airplane flight characteristics during autopilot operation, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a visual inspection of the autopilot pitch servomotor mounting to identify the part number on the dataplate in accordance with British Aerospace BAe 146 Inspection Service Bulletin S.B. 27–135, dated April 23, 1992.

(b) If the part number is 209RAA6–135CAF (for Model BAe 146–100A and –200A series airplanes) or 209RAA6–175ABC (for Model BAe 146–300A series airplanes), prior to further flight, perform a visual inspection of the position of the foul pin holes in the mounting bracket in accordance with British Aerospace BAe 146 Inspection Service Bulletin S.B. 27–135, dated April 23, 1992.

(1) If the foul pin holes align with foul pin hole positions "CAF" (for Model BAe 146–100A and –200A series airplanes) or "ABC" (for Model BAe 146–300A series airplanes) on the mounting bracket, no further action is required by this AD.

(2) If the foul pin holes do not align with foul pin hole positions "CAF" (for Model BAe 146–100A and –200A) or "ABC" (for Model BAe 146–300A series airplanes) on the mounting bracket, accomplish the requirements of paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Prior to further flight, perform a torque check of the autopilot pitch servomotor mounting in accordance with the service bulletin to ensure that the slip torque corresponds to the values specified in the service bulletin. If the autopilot pitch servomotor mounting slip torque does not correspond to the values specified in the service bulletin, prior to further flight, remove the autopilot pitch servomotor mounting and install a serviceable autopilot pitch servomotor mounting having the correct slip torque in accordance with the service bulletin.

(ii) Within 12 months after the effective date of this AD, modify the mounting bracket and reposition the foul pins on the servomotor mounting in accordance with the service bulletin.

(c) If the part number is not 209RAA6–135CAF (for Model BAe 146–100A and –200A series airplanes) or 209RAA6–175ABC (for Model BAe 146–300A series airplanes), prior to further flight, remove the autopilot pitch servomotor and servomotor mounting, modify the mounting bracket, and install an autopilot pitch servomotor and servomotor mounting having part number 209RAA6–135CAF (for Model BAe 146–100A and –200A series airplanes) or 209RAA6–175ABC (for Model BAe 146–300A series airplanes), in accordance with British Aerospace BAe 146 Inspection Service Bulletin S.B. 27–135, dated April 23, 1992.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and corrective actions shall be done in accordance with British Aerospace BAe 146 Inspection Service Bulletin S.B. 27–135, dated April 23, 1992, which includes Appendices A1 and A2. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from British Aerospace, Inc., Avro Division, 22070 Broderick Drive, Sterling, Virginia 20166. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 4, 1993.

Issued in Renton, Washington, on August 12, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21517 Filed 9–2–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–CE–51–AD; Amendment 39–8258; AD 93–13–08]

Airworthiness Directives; Aerostar Aircraft Corporation PA–60–600 (Aerostar 600) and PA–60–700 (Aerostar 700) Series (Formerly Piper) Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes a correction to Airworthiness Directive (AD) 93–13–08 concerning certain Aerostar Aircraft Corporation PA–60–600 and PA–60–700 airplanes, which was published in the **Federal Register** on July 6, 1993 (58 FR 36131). That publication inadvertently referenced one of the right landing gear torque link part numbers as the left one and one of the left landing gear torque link part numbers as the right one. This action references these part numbers correctly.

EFFECTIVE DATE: August 20, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Swope, Aerospace Engineer, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; Telephone (206) 227–2589.

SUPPLEMENTARY INFORMATION: On June 29, 1993, the Federal Aviation Administration (FAA) issued AD 93–13–08, Amendment 39–8621 (58 FR 36131, July 6, 1993), which applies to certain Aerostar PA–60–600 (Aerostar 600) and PA–60–700 (Aerostar 700) series airplanes. The AD requires either replacing the existing main landing gear torque links with improved design torque links, part number (P/N) 400126–501 and 400126–503 (left main landing gear) and P/N 400126–502 and 400126–504 (right main landing gear); or repetitively inspecting these existing main landing gear torque links, and, if found cracked, replacing with the part number torque links referenced above. The actions are accomplished in accordance with Aerostar Service Bulletin No 746C, dated September 15, 1992. AD 93–13–08 superseded AD 92–11–08, Amendment 39–8258.

The AD inadvertently referenced P/N 400126–502 as a left main landing gear torque link and referenced P/N 400126–503 as a right main landing gear torque link. These torque links should have been referenced as right and left, respectively.

Need for Correction

As published, the final regulations have incorrectly referenced P/N 400126–502 and P/N 400126–503 as left main landing gear torque links and right main landing gear torque links, respectively. This could cause confusion when parts are ordered or the torque links are installed.

Correction of Publication

Accordingly, the publication of July 6, 1993 (58 FR 36131) of Amendment 39–8621; AD 93–13–08, which was the subject of FR Doc. 93–15812, is corrected as follows:

§ 39.13 [Corrected]

On page 36132, in the second column, in § 39.13, in lines 4 and 5 of paragraph (a)(1) of AD 93–13–08, replace: "400126–502 (left main landing gear) and P/N 400126–503 and 400126–504 (right main", with: "400126–503 (left main landing gear) and P/N 400126–502 and 400126–504 (right main".

On page 36132, in the second column, in § 39.13, in lines 4 and 5 paragraph (a)(2)(i) of AD 93–13–08, replace: "(P/N) 400126–501 and 400126–502 (left main landing gear) and P/N 400126–503 and", with: "(P/N) 400126–501 and 400126–503 (left main landing gear) and P/N 400126–502 and".

On page 36132, in the third column, in § 39.13, in lines 6 and 7 of paragraph (a)(2)(iii) of AD 93–13–08, replace: "502 (left main landing gear) and P/N 400126–503 and 400126–504 (right main landing", with: "503 (left main landing gear) and P/N 400126–502 and 400126–504 (right main landing".

Issued in Kansas City, Missouri, on August 12, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21545 Filed 9–2–93; 8:45am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–31–AD; Amendment 39–8664; AD 93–16–07]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace, Model BAe 146 series airplanes, that requires inspection of the airbrake servo-valve assembly to determine whether an improperly manufactured servo-valve has been installed, and replacement of discrepant parts. This amendment is prompted by reports that, during production, faulty feedback springs were installed in certain airbrake servo-valves. The actions specified by this AD are intended to prevent malfunction of the airbrake; this could result in uncommanded airbrake extension or retraction, which, subsequently, could adversely affect airplane performance.

DATES: Effective October 4, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 4, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, Inc., Avro Division, 22070 Broderick Drive, Sterling, Virginia 20166. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146 series airplanes was published in the **Federal Register** on May 17, 1993 (58 FR 28801). That action proposed to require one-time visual inspection of the airbrake servo-valve assembly to determine whether an improperly manufactured servo-valve has been installed, and replacement of discrepant parts. This amendment is prompted by reports that, during production, faulty feedback springs were installed in certain airbrake servo-valves.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 48 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $18,480, or $385 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-16-07 British Aerospace: Amendment 39-8664. Docket 93-NM-31-AD.

Applicability: Model BAe 146 series airplanes; on which Fairey Hydraulics airbrake servo-valve assembly, part number 3799H1, has been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent malfunction of the airbrake; this could result in uncommanded airbrake extension or retraction, which, subsequently, could adversely affect airplane performance, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a visual inspection to determine whether Abex servo-valve, part number 72189, has been installed and to identify the serial number on the Abex servo-valve, in accordance with British Aerospace BAe 146 Inspection Service Bulletin S.B. 27-133, dated January 31, 1992.

(1) If an Abex servo-valve, part number 72189, has been installed, having a serial number listed in Table 1 of the service bulletin: Prior to further flight, accomplish the requirements of paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Remove the existing servo-valve assembly in accordance with the service bulletin.

(ii) Perform a visual inspection to detect metallic debris in the filter mesh in the servo-valve in accordance with the service bulletin. If any debris is detected, replace the currently installed airbrake actuator with a new or serviceable airbrake actuator, and install a new or serviceable servo-valve assembly in accordance with the service bulletin.

(2) If an Abex servo-valve has been installed and has a serial number listed in Table 2 of the service bulletin: Prior to further flight, reidentify the servo-valve in accordance with the service bulletin.

(3) If an Abex servo-valve has been installed and has a serial number not listed in either Table 1 or 2 of the service bulletin: No further action is required by this AD.

(b) As of the effective date of this AD, no Fairey Hydraulics airbrake servo-valve assembly, part number 3799H1, shall be installed on any airplane unless that airbrake servo-valve assembly is in compliance with the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection, removal, replacement, and reidentification shall be done in accordance with British Aerospace BAe 146 Inspection Service Bulletin S.B. 27-133, dated January 31, 1992, which includes Appendix A1 to Service Bulletin S.B. 27-133, dated January 31, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, Inc., Avro Division, 22070 Broderick Drive, Sterling, Virginia 20166. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 4, 1993.

Issued in Renton, Washington, on August 13, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-21516 Filed 9-2-93; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8485]

RIN 1545-AR09

Nondiscrimination Requirements for Qualified Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to the final regulations under section 401(a)(4) of the Internal Revenue Code of 1986. They interpret the section 401(a)(4) requirement that contributions or benefits provided under a tax-qualified retirement plan not discriminate in favor of highly compensated employees. This section and the minimum coverage requirements of section 410(b) form a coordinated nondiscrimination rule that prohibits a tax-qualified retirement plan from being designed or operated in favor of highly compensated employees. These regulations reflect changes made by the Tax Reform Act of 1986 and by the Technical and Miscellaneous Revenue Act of 1988. The regulations provide the guidance necessary to comply with the law and affect sponsors of, and participants in, tax-qualified retirement plans.

DATES: These regulations are effective January 1, 1994, and apply to plan years beginning on or after January 1, 1994, except as provided in the transition rules of § 1.401(a)(4)-13.

FOR FURTHER INFORMATION CONTACT: Dave Munroe, Patricia McDermott, or Marjorie Hoffman at (202) 622-4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 19, 1991, final regulations under section 401(a)(4) (T.D. 8360) were published in the **Federal Register** (56 FR 47524). In the **Federal Register** of August 10, 1992 (57 FR 35536), the Internal Revenue Service published proposed regulations to extend the effective date of the final regulations under section 401(a)(4) and

related regulations generally to plan years beginning on or after January 1, 1994.

On January 12, 1993, proposed regulations amending the final regulations were published in the **Federal Register** (58 FR 3876). Written comments were received from the public on the proposed regulations, and a public hearing was held on April 23, 1993. After consideration of all of the written comments received and the statements made at the public hearing, the proposed regulations are adopted as modified by this Treasury decision.

Coordination With Other Guidance

The regulations under section 401(a)(4) were developed in conjunction with regulations under related statutory nondiscrimination provisions governing tax-qualified retirement plans, principally sections 401(a)(17), 401(a)(26), 401(l), 410(b), 414(r), and 414(s). Proposed amendments to the regulations under sections 401(l), 410(b), and 414(s) were published on April 22, 1993. The Treasury and the Service intend in the near future to finalize those proposed regulations and to propose modifications to the regulations under section 414(r), on which employers will be able to rely pending final regulations. Together, these regulations provide coordinated and comprehensive guidance on those statutory provisions.

This coordinated approach to the nondiscrimination requirements provides taxpayers with an integrated framework for applying the nondiscrimination provisions of the Internal Revenue Code. In addition, this approach makes it possible to simplify many of the related nondiscrimination rules. For example, the development of the rules under section 401(a)(4) permitted substantial simplification of the minimum participation rules previously proposed under section 401(a)(26) (finalized as T.D. 8375 on December 4, 1991, 56 FR 63410). Similarly, the Treasury and the Service will finalize a proposed revenue ruling (published in Announcement 93–12, 1993–4 I.R.B. 71) identifying the guidance that they propose to obsolete when the section 401(a)(4) regulations are effective.

In conjunction with the development of the January 1993 proposed regulations under section 401(a)(4), the Treasury and the Service issued a proposed revenue procedure (published in Announcement 92–81, 1992–22 I.R.B. 56) reducing the frequency of testing where appropriate and describing the quality of data that may be used to substantiate compliance with the nondiscrimination regulation. The Treasury and the Service intend to finalize this guidance shortly, taking into account comments received on the proposed revenue procedure.

1. Overview of Regulations

Section 401(a)(4) provides generally that a plan is a qualified plan only if the contributions or the benefits provided under the plan do not discriminate in favor of highly compensated employees. These final regulations are the exclusive means for determining whether the nondiscrimination requirement is satisfied. A plan, therefore, will satisfy section 401(a)(4) only if it complies both in form and in operation with these regulations. However, the regulations contain a direct delegation of authority allowing the Commissioner to provide, in revenue rulings, notices, and other guidance of general applicability, any additional rules that may be necessary or appropriate in applying the nondiscrimination requirements of section 401(a)(4).

Section 1.401(a)(4)–1 of the regulations sets forth the three basic requirements a plan must satisfy under section 401(a)(4) and provides rules on how these requirements are applied. The first requirement is that either the contributions or the benefits provided under a plan must be nondiscriminatory in amount. Under the regulations, a plan generally is permitted to satisfy this requirement on the basis of either contributions or benefits, regardless of whether the plan is a defined contribution plan or a defined benefit plan. The second requirement is that the benefits, rights, and features provided under the plan must be made available to employees in a nondiscriminatory manner. The benefits, rights, and features subject to this requirement are optional forms of benefit (such as retirement annuities and single sum payments), ancillary benefits (such as disability benefits), and other rights and features (such as plan loans and investment options). The third requirement is that the effect of plan amendments (including grants of past service credit) and plan terminations must be nondiscriminatory.

The proposed regulations issued in January 1993 make a number of significant changes to the section 401(a)(4) requirements contained in the September 1991 regulations. These changes are intended to simplify substantially the regulatory requirements and to increase their flexibility. Major changes in the proposed regulations include the following:

- Allowing defined benefit plans to recognize service with another employer or during a leave of absence in a wide range of circumstances and expanding the circumstances in which benefits under such plans are determined without regard to offsets of benefits under other plans.
- Liberalizing the fresh-start rules (that permit benefits before a certain date to be disregarded) by allowing a plan to disregard benefit increases resulting from higher compensation after the fresh-start date for fresh starts that occur both before and after the effective date of the regulations.
- Modifying the general test by adding a facts-and-circumstances safety valve and eliminating the detailed rules used to determine accrual rates.
- Replacing objective testing for benefits provided to former employees with a flexible facts-and-circumstances analysis.

In general, comments received on the proposed regulations were favorable. As a result, these final regulations incorporate the changes contained in the January 1993 proposed regulations. In addition, in response to comments, certain modifications have been made that further simplify and increase flexibility in compliance alternatives. The more significant modifications made in these final regulations are discussed below.

2. Nondiscrimination in Amount of Contributions or Benefits

The regulations retain the two basic testing alternatives for determining nondiscrimination in the amount of contributions or benefits. Safe-harbor testing, which focuses primarily on the provisions of the plan, provides design-based or simplified testing methods for plans with essentially uniform benefits. The uniformity requirements of the safe harbors sufficiently reduce the risk of discrimination in the amount of contributions or benefits so that further testing of actual results is considered unnecessary. In contrast to safe-harbor testing, general testing focuses on actual results under the plan and permits plans providing for diversity in contributions or benefits to demonstrate that, despite this diversity, the plan satisfies the nondiscriminatory amounts requirement.

a. Changes Affecting Safe-Harbor Testing

Sections 1.401(a)(4)–2 and 1.401(a)(4)–3 of the proposed regulations contained a number of safe-harbor testing alternatives intended to cover many basic types of plan designs. These regulations finalize, with minor

revisions, the specific requirements for safe harbors contained in the proposed regulations. In response to comments, the safe harbor for defined contribution plans with uniform points allocation formulas is modified to eliminate the requirement that points be provided for compensation. In addition, in order to facilitate use of the defined benefit plan safe harbors, the definition of uniform normal retirement age is expanded to provide generally that a plan's normal retirement provisions do not fail to be uniform merely because benefits commence on different dates for different employees, provided that each employee's normal retirement date does not differ by more than six months from a uniform normal retirement age.

Representatives of multiemployer plans commented that it is common for these plans to condition receipt of a retroactive benefit increase on future service. As a result, the safe harbors were not available in testing the portion of the plan covering noncollectively bargained employees. The commentators noted that these conditions are contained in these plans as protection against potential windfalls to employees who return to work for a short period for any of the participating employers. In response to these comments, these regulations add a special rule in § 1.401(a)(4)–3(f) permitting a multiemployer plan to disregard such a service condition, provided that the condition applies to all employees in the multiemployer plan and the service required does not exceed five years.

Some commentators have noted that the safe-harbor rules do not accommodate certain plans that meet the safe-harbor requirements in most but not all respects. The commentators have, therefore, suggested that a method be incorporated into the regulations to allow certain plans failing to meet the requirements for a safe harbor to show that this failure does not result in discrimination without requiring that the plan satisfy the general test.

The Treasury and the Service have given extensive consideration to these comments. In evaluating a potential revision to safe-harbor testing to provide access for such plans, the Treasury and the Service are concerned that such a method would substantially undercut the design basis of the safe harbors and the assurance of nondiscrimination provided by the uniformity requirements. Consequently, the suggested change has not been made. Nevertheless, to the extent that the Service is able to identify appropriate means of facilitating access to safe-harbor testing, it is intended that the Commissioner will exercise the authority delegated under the regulations to provide alternative testing methods or procedures.

The final regulations modify several other provisions of the proposed regulations that affect both safe-harbor testing and general testing. These changes, discussed below, increase the number of plans that are able to meet the nondiscriminatory amounts requirement on a safe-harbor basis.

b. Changes Affecting General Testing

Both §§ 1.401(a)(4)–2 and 1.401(a)(4)–3 of the regulations contain a general test for plans that are not using safe-harbor testing to demonstrate nondiscrimination in the amount of contributions or benefits. This test focuses on the actual allocation or accrual rates provided to employees in the plan and compares those rates to determine whether the plan discriminates in favor of highly compensated employees. A facts-and-circumstances safety valve is provided for an otherwise nondiscriminatory defined benefit plan that would pass the general test if no more than 5 percent of the highly compensated employees were disregarded. In response to comments, access to this 5-percent safety valve has been broadened by providing that 5 percent of the number of highly compensated employees may be determined by rounding fractional numbers to the nearest whole number. Although some comments suggested extending the safety-valve concept to defined contribution plans, the allocation rates in those plans do not generally have the sensitivity to employer demographics that make the safety valve necessary and appropriate for defined benefit plans. Therefore, the regulations do not adopt this suggestion.

Changes to the general test for defined benefit plans in the proposed regulations substantially reduced the sensitivity of the general test to relatively minor differences in accrual rates, thereby making the results of the test more stable. As a result of these changes, and in the interest of simplification, the proposed regulations do not provide certain options contained in the September 1991 regulations, including, in particular, the floor on most valuable accrual rates and the option in specified cases to test most valuable accrual rates only.

Certain commentators have requested reinstatement of both alternatives. The floor on most valuable accrual rates generally allowed substitution of an employee's higher most valuable accrual rate determined in a prior year for the employee's most valuable accrual rate determined in the current year. Use of the floor ensures that an employee's most valuable accrual rate does not decrease merely because the employee continues working beyond the age of greatest early retirement subsidy. This option has been reinstated in response to comments indicating that the continued utility of the rule outweighs any incremental complexity.

However, the Treasury and the Service have not reinstated the option to test most valuable accrual rates only. This alternative was available only in limited circumstances and the requirements for access to the alternative were frequently misinterpreted. After consideration of the limited utility of the option, in conjunction with the significant simplification of the general test, the Treasury and the Service believe that the increased complexity and potential for confusion outweigh the utility of the option.

c. Rules Applicable to Both Safe-Harbor Testing and General Testing

The regulations contained in §§ 1.401(a)(4)–3 and 1.401(a)(4)–13 provide rules for disregarding benefits accrued before a certain date in determining whether a defined benefit plan satisfies a safe harbor or in determining accrual rates under the general test. These "fresh-start" rules also allow plans to disregard certain increases in benefits due to increases in compensation after the fresh-start date. However, to narrow the potential for discrimination, the proposed regulations limited the increased benefit that can be disregarded to an amount determined by multiplying the benefit as of the fresh-start date by the ratio of the employee's current compensation to the employee's compensation as of the fresh-start date (the fraction method).

Commentators have suggested that it would be administratively easier to substitute an employee's current compensation directly into the formula used to determine the pre-fresh-start benefits rather than to use the fraction method. In response to these comments, these regulations permit this substitution of current compensation, provided that this approach is not reasonably expected over time to discriminate significantly in favor of highly compensated employees.

In response to comments, changes also have been made to the definition of average annual compensation. Average annual compensation, as defined in § 1.401(a)(4)–3(e) of the regulations, must be used under the plan's formula for purposes of the defined benefit plan safe harbors and for purposes of

determining accrual rates under the general test. The proposed regulations permit periods of compensation to be disregarded in determining average annual compensation where an employee performs no services or performs services for less than a threshold of one half of a full-time work schedule. These regulations expand the permissible periods that can be disregarded by allowing an employer to select a threshold that does not exceed three-fourths of a full-time work schedule. The regulations also provide that the threshold may be prorated in the case of an employee whose normal work schedule is part time.

The proposed regulations also provide an exception from the consecutive-year requirement for determining average annual compensation. The exception is limited to plans that do not use permitted disparity. Some commentators requested that this exception be extended to all plans. However, the Treasury and the Service believe that permitting the use of nonconsecutive-year compensation by plans that use permitted disparity would be inconsistent with the explicit section 401(l)(5)(C)(i) requirement for consecutive-year compensation contained in the definition of average annual compensation. Therefore, this requested change has not been made.

Certain commentators also requested that employers be allowed to treat an affiliate (e.g., a joint venture) that is not a member of the employer's controlled group under section 414 of the Code as though it were a member of the employer's controlled group in the context of the nondiscrimination rules (including sections 401(a)(4) and 401(k)). The suggested change would eliminate separate employer-by-employer nondiscrimination testing of the multiple employer plans arising from the coverage of some or all joint venture employees in plans of the joint venture partners.

While the regulations finalize significant changes to the service crediting rules intended to address many of these concerns, they do not adopt this proposed change. The statutory controlled group rules of section 414 provide a detailed definition of employer that is generally applicable for all qualification requirements and that does not contain an exception for section 401(a)(4). The Treasury and the Service believe that the section 414 definition of employer governs for purposes of section 401(a)(4) and that it is inappropriate to provide an inconsistent definition of employer in the context of nondiscrimination testing.

3. Testing and Retroactive Correction of the Availability of Benefits, Rights, and Features

The regulations in § 1.401(a)(4)–4 provide that optional forms of benefit, ancillary benefits, and other rights and features must be currently available to a group of employees that satisfies the nondiscriminatory classification requirement of section 410(b) without regard to the average benefit percentage test. In addition, the group of employees to whom these benefits, rights, and features are effectively available must not substantially favor highly compensated employees.

In determining whether a benefit, right, or feature is currently available to a group of employees, the regulations provide that certain conditions imposed by a plan on the availability of a benefit, right, or feature may be disregarded. In response to comments, these regulations modify the proposed regulations by expanding the conditions that may be disregarded in determining current availability to include the following: (1) A requirement that a specified percentage of an employee's accrued benefit be nonforfeitable, (2) a requirement for execution of a waiver of rights under any federal or state law, and (3) a requirement for a particular family status (rather than only marital status as under the proposed regulations). In addition, in the case of multiemployer plans, a reasonable condition on the availability of an ancillary benefit or other right or feature requiring recent service may be disregarded, provided that all employees in the multiemployer plan are subject to the condition.

Many commentators requested that the retroactive correction provisions of the proposed regulations be expanded to include a correction mechanism for the availability of benefits, rights and features. These commentators noted that, even though they carefully monitor their plans to ensure that these availability requirements are met on a continuing basis, failures will occur.

In response to these comments, § 1.401(a)(4)–11(g) of these regulations is modified to permit certain corrective amendments to the availability of benefits, rights, and features. Because it is difficult or impossible, in many cases, to make a benefit, right, or feature meaningfully available on a retroactive basis, a corrective amendment increasing availability is required only on a prospective basis. However, in order to take the correction into account for a plan year, the group of employees to whom the benefit, right, or feature is available (after taking the amendment into account) generally must satisfy the nondiscriminatory requirement of section 410(b) using the safe-harbor percentage applicable to the plan. In addition, the amendment must remain in effect until the end of the plan year following the year in which the amendment is effective, and must not be part of a pattern of amendments used to correct repeated failures of the same benefit, right or feature. Other rules relating to retroactive correction also apply (e.g., the requirement that the correction be made no later than the 15th day of the 10th month after the close of a plan year).

As an alternative to increasing availability, the regulations also permit an employer to make a corrective amendment by the last day of the plan year eliminating the benefit, right, or feature (to the extent permitted under section 411(d)(6)). In that case, the amendment will be treated as if it were in effect throughout the plan year for purposes of nondiscrimination testing. In addition, the regulations are modified to allow for retroactive correction for purposes of satisfying the section 401(k) and (m) coverage and availability requirements if certain conditions are satisfied.

4. Nondiscrimination Testing of Plan Amendments and Plan Terminations

Section 1.401(a)(4)–5 of the regulations provides for facts-and-circumstances testing of the effect of plan amendments (including plan amendments granting past service), focusing on whether the timing of a plan amendment or series of amendments discriminates significantly in favor of highly compensated employees or highly compensated former employees. In addition, this section contains pre-termination restrictions on payments to certain highly compensated employees, to which these regulations make minor clarifying modifications.

5. Employee Contributions in Defined Benefit Plans and Imputation of Permitted Disparity

Section 1.401(a)(4)–6 of the regulations contains rules for defined benefit plans that include employee contributions. In general, benefits derived from employer contributions must be tested separately from those derived from employee contributions. In order to facilitate nondiscrimination testing, the regulations contain simplified alternatives to the section 411(c) method for determining the portion of the benefit derived from employer contributions. Section 1.401(a)(4)–7 contains rules for taking permitted disparity into account in

general testing. These regulations finalize, with minor revisions, the rules contained in these sections of the proposed regulations.

6. Cross-testing

Section 1.401(a)(4)–8 contains rules for testing defined contribution plans on the basis of benefits and defined benefit plans on the basis of contributions. This section sets forth the method for determining equivalent accrual rates in the case of a defined contribution plan or equivalent allocation rates in the case of a defined benefit plan and coordinates the testing of these rates with the general tests in §§ 1.401(a)(4)–2 and 1.401(a)(4)–3. In response to comments, these rules have been modified to provide that an employer that is cross-testing a defined contribution plan by using the current plan year as the measurement period under the general test may disregard income, expenses, gains, and losses allocated during the current plan year that are attributable to the allocation for the current plan year. Thus, such an employer may generally test by taking into account only contributions and forfeitures allocated during the current plan year.

This section also provides safe-harbor-testing rules for defined benefit plans that are part of a floor offset arrangement. The fresh-start rules in § 1.401(a)(4)–13 have been made more flexible in their application to floor offset plans that have been amended to eliminate the offset provision for future accruals.

The September 1991 regulations in §§ 1.401(a)(4)–8 and 1.401(a)(4)–13 also provided safe-harbor-testing rules for cash balance plans. Those rules generated significant comment. Because the Treasury and the Service are continuing to review these comments, amendments to those rules will be proposed at a later date.

7. Plan Aggregation and Disaggregation

Section 1.401(a)(4)–9 requires plans that are aggregated for purposes of section 410(b) to be aggregated for purposes of section 401(a)(4) testing. In general, an aggregated plan is tested under the same rules applicable to single plans. However, special rules are provided for an aggregated plan that includes one or more defined contribution plans and one or more defined benefit plans (DB/DC plan). This section also contains rules that allow a plan to be restructured and treated as consisting of separate component plans that may be tested separately under section 401(a)(4). In response to comments, minor modifications and clarifications have been made.

8. Nondiscrimination Testing of Former Employees

The regulations require separate testing of former employees under § 1.401(a)(4)–10. As under the proposed regulations, the amount of contributions or benefits and the availability of benefits, rights, and features provided to former employees will be nondiscriminatory if all of the relevant facts and circumstances show that the plan does not discriminate significantly in favor of highly compensated former employees.

9. Vesting and Service Crediting

Section 1.401(a)(4)–11 contains facts-and-circumstances rules for determining whether the vesting and service crediting provisions of a plan are nondiscriminatory. Specifically, the rules allow plans to recognize service with another employer (either by granting pre-participation service when an employee transfers from the other employer or by imputing service after an employee has transferred to the other employer) or to impute service during a leave of absence or a period of reduced work schedule, provided that the following facts-and-circumstances standards are met: (i) All similarly-situated employees are treated in the same way, (ii) there is a legitimate business reason for crediting the service, and (iii) the crediting of the service does not discriminate significantly in favor of highly compensated employees.

In response to comments, these regulations clarify that the pre-participation and imputed service rules apply to defined contribution plans, as well as to defined benefit plans. However, service crediting generally is not relevant for amounts testing of defined contribution plans except to determine whether a plan meets the uniform points allocation formula safe harbor. In addition, the rules for cross-testing defined contribution plans allow only years of service in which an employee has benefited under the plan to be taken into account. The limits under section 415(c) also may limit the extent to which service and compensation outside the controlled group may be taken into account under a defined contribution plan.

10. Definitions

The regulations contain a number of important definitions used in applying the rules contained in the regulations. In addition to the change to the definition of uniform normal retirement age described in the earlier discussion of safe-harbor testing, the regulations incorporate modifications to certain definitions which were proposed in related regulations.

11. Effective Dates

The regulations generally are effective for plan years beginning on or after January 1, 1994, or, in the case of governmental plans and plans maintained by tax-exempt organizations, for plan years beginning on or after January 1, 1996. For plan years beginning on or after the first day of the first plan year to which the amendments made by section 1112(a) of the Tax Reform Act of 1986 (TRA '86) apply and before the applicable regulatory effective date, § 1.401(a)(4)–13 provides that a plan must be operated in accordance with a reasonable, good faith interpretation of the requirements of section 401(a)(4), taking into account pre-existing guidance and the amendments made by TRA '86 to related Code provisions, such as sections 401(l), 401(a)(17), and 410(b). Whether compliance is reasonable and in good faith generally will be determined on the basis of all relevant facts and circumstances, including the extent to which the employer has consistently resolved unclear issues in its favor. Reasonable, good faith compliance will be deemed to exist, however, if a plan is operated in accordance with the 1990 proposed regulations, the September 1991 regulations, the January 1993 proposed regulations, or these final regulations.

In Notice 92–36, 1992–2 C.B. 364, the Service provided transition relief and extended the date by which plan amendments to comply with TRA '86 must be made generally until the close of the first plan year for which these regulations are effective. This extended amendment date and related transition relief, combined with the reasonable, good faith compliance standard, are designed to ensure that plan sponsors have a reasonable period in which to amend qualified plans.

Governmental Plans

The regulations retain the special transition rule for governmental plans. Thus, section 401(a)(4) is deemed satisfied in the case of governmental plans described in section 414(d) for plan years beginning before 1996. Some commentators have suggested that governmental plans should not be subject to nondiscrimination testing. However, in the absence of statutory provisions excepting governmental plans from these requirements, the regulations recognize their applicability. Nevertheless, the Treasury and the

Service recognize that governmental plans may have certain unique features relating to the sponsoring employer's status as a governmental entity. Comments have been received on such features, and additional comments are specifically requested from governmental employers regarding appropriate modifications to the regulations to take into account the operation of governmental plans.

Plans Maintained by More Than One Employer

Multiple employer plans must satisfy section 401(a)(4) on an employer-by-employer basis rather than on the basis of participating employers in the aggregate. Any noncollectively bargained portion of a multiemployer plan is tested as a multiple employer plan. The consequences of failure to satisfy section 401(a)(4) with respect to any component of this testing process may affect the plan for all participating employers. The regulations do not provide an exception to this rule. However, where a multiemployer plan or a multiple employer plan fails to satisfy section 401(a)(4), the Commissioner could, in a proper case, treat the plan as satisfying section 401(a)(4) for innocent employers by requiring corrective and remedial action with respect to the plan. Such remedial action could include allowing the withdrawal of an offending employer, allowing a disqualifying defect to be cured within a reasonable period of time after the plan administrator has or should have knowledge of the disqualifying event or was otherwise notified by the Service of the disqualifying defect, or requiring plan amendments to prevent future disqualifying events. In addition, it is anticipated that guidance on data collection and testing will be provided for multiemployer plans in the proposed revenue procedure on substantiating compliance when that document is finalized.

Effect on Other Laws

Compliance with the provisions of these regulations does not ensure compliance with other applicable Federal laws, including, but not limited to, the provisions of Title I of the Employee Retirement Income Security Act of 1974, which are administered by the Secretary of Labor pursuant to Reorganization Plan Number 4 of 1978. Employers should note that plan amendments pursuant to this regulation may necessitate reporting and disclosure under that Act, including requirements relating to summary plan descriptions and summaries of material modifications.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Nancy J. Marks, David Munroe, Marjorie Hoffman, and Patricia McDermott of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.401–4 is amended by revising the section heading and paragraph (d) to read as follows:

§ 1.401–4 Discrimination as to contributions or benefits (before 1994).

* * * * *

(d)(1) Except as provided in paragraph (d)(2) of this section, the provisions of this section do not apply to plan years beginning on or after January 1, 1994. For rules applicable to plan years beginning on or after January 1, 1994, see §§ 1.401(a)(4)–1 through 1.401(a)(4)–13.

(2) In the case of plans maintained by organizations exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), the provisions of this section do not apply to plan years beginning on or after January 1, 1996. For rules applicable to plan years beginning on or after January 1, 1996, see §§ 1.401(a)(4)–1 through 1.401(a)(4)–13.

Par. 3. Section 1.401(a)–4 is amended by revising the section heading and paragraph A–6(a) to read as follows:

§ 1.401(a)–4 Optional forms of benefit (before 1994).

* * * * *

A–6: (a) *General effective date*—(1) *In general.* Except as otherwise provided in this section, the provisions of this section are effective January 30, 1986, and do not apply to plan years beginning on or after January 1, 1994. For rules applicable to plan years beginning on or after January 1, 1994, see §§ 1.401(a)(4)–1 through 1.401(a)(4)–13.

(2) *Plans of tax-exempt organizations.* In the case of plans maintained by organizations exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), except as otherwise provided in this section, the provisions of this section are effective January 30, 1986, and do not apply to plan years beginning on or after January 1, 1996. For rules applicable to plan years beginning on or after January 1, 1996, see §§ 1.401(a)(4)–1 through 1.401(a)(4)–13.

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Paragraph 4. Sections 1.401(a)(4)–0 through 1.401(a)(4)–8(c)(2)(iii) and §§ 1.401(a)(4)–8(d) through 1.401(a)(4)–13(e) are revised and § 1.401(a)(4)–8(c)(2)(iv) is added to read as follows:

§ 1.401(a)(4)–0 Table of contents.

This section contains a listing of the major headings of §§ 1.401(a)(4)–1 through 1.401(a)(4)–13.

§ 1.401(a)(4)–1 Nondiscrimination requirements of section 401(a)(4)

(a) In general.
(b) Requirements a plan must satisfy.
  (1) In general.
  (2) Nondiscriminatory amount of contributions or benefits.
  (3) Nondiscriminatory availability of benefits, rights, and features.
  (4) Nondiscriminatory effect of plan amendments and terminations.
(c) Application of requirements.
  (1) In general.
  (2) Interpretation.
  (3) Plan-year basis of testing.
  (4) Application of section 410(b) rules.
  (5) Collectively-bargained plans.
  (6) Former employees.
  (7) Employee-provided contributions and benefits.
  (8) Allocation of earnings.
  (9) Rollovers, transfers, and buybacks.

(10) Vesting.
(11) Crediting service.
(12) Governmental plans.
(13) Employee stock ownership plans.
(14) Section 401(h) benefits.
(15) Definitions.
(16) Effective dates and fresh-start rules.
(d) Additional guidance.

§ 1.401(a)(4)–2 Nondiscrimination in amount of employer contributions under a defined contribution plan

(a) Introduction.
(1) Overview.
(2) Alternative methods of satisfying nondiscriminatory amount requirement.
(b) Safe harbors.
(1) In general.
(2) Safe harbor for plans with uniform allocation formula.
(3) Safe harbor for plans with uniform points allocation formula.
(4) Use of safe harbors not precluded by certain plan provisions.
(c) General test for nondiscrimination in amount of contributions.
(1) General rule.
(2) Determination of allocation rates.
(3) Satisfaction of section 410(b) by a rate group.
(4) Examples.

§ 1.401(a)(4)–3 Nondiscrimination in amount of employer-provided benefits under a defined benefit plan

(a) Introduction.
(1) Overview.
(2) Alternative methods of satisfying nondiscriminatory amount requirement.
(b) Safe harbors.
(1) In general.
(2) Uniformity requirements.
(3) Safe harbor for unit credit plans.
(4) Safe harbor for plans using fractional accrual rule.
(5) Safe harbor for insurance contract plans.
(6) Use of safe harbors not precluded by certain plan provisions.
(c) General test for nondiscrimination in amount of benefits.
(1) General rule.
(2) Satisfaction of section 410(b) by a rate group.
(3) Certain violations disregarded.
(4) Examples.
(d) Determination of accrual rates.
(1) Definitions.
(2) Rules of application.
(3) Optional rules.
(4) Examples.
(e) Compensation rules.
(1) In general.
(2) Average annual compensation.
(3) Examples.
(f) Special rules.
(1) In general.
(2) Certain qualified disability benefits.
(3) Accruals after normal retirement age.
(4) Early retirement window benefits.
(5) Unpredictable contingent event benefits.
(6) Determination of benefits on other than plan-year basis.
(7) Adjustments for certain plan distributions.
(8) Adjustment for certain QPSA charges.
(9) Disregard of certain offsets.
(10) Special rule for multiemployer plans.

§ 1.401(a)(4)–4 Nondiscriminatory availability of benefits, rights, and features

(a) Introduction.
(b) Current availability.
(1) General rule.
(2) Determination of current availability.
(3) Benefits, rights, and features that are eliminated prospectively.
(c) Effective availability.
(1) General rule.
(2) Examples.
(d) Special rules.
(1) Mergers and acquisitions.
(2) Frozen participants.
(3) Early retirement window benefits.
(4) Permissive aggregation of certain benefits, rights, or features.
(5) Certain spousal benefits.
(6) Special ESOP rules.
(7) Special testing rule for unpredictable contingent event benefits.
(e) Definitions.
(1) Optional form of benefit.
(2) Ancillary benefit.
(3) Other right or feature.

§ 1.401(a)(4)–5 Plan amendments and plan terminations

(a) Introduction.
(1) Overview.
(2) Facts-and-circumstances determination.
(3) Safe harbor for certain grants of benefits for past periods.
(4) Examples.
(b) Pre-termination restrictions.
(1) Required provisions in defined benefit plans.
(2) Restriction of benefits upon plan termination.
(3) Restrictions on distributions.
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§ 1.401(a)(4)–6 Contributory defined benefit plans

(a) Introduction.
(b) Determination of employer-provided benefit.
(1) General rule.
(2) Composition-of-work-force method.
(3) Minimum-benefit method.
(4) Grandfather rules for plans in existence on May 14, 1990.
(5) Government-plan method.
(6) Cessation of employee contributions.
(c) Rules applicable in determining whether employee-provided benefits are nondiscriminatory in amount.
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(2) Same rate of contributions.
(3) Total-benefits method.
(4) Grandfather rule for plans in existence on May 14, 1990.

§ 1.401(a)(4)–7 Imputation of permitted disparity

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(b) Adjusting allocation rates.
(1) In general.
(2) Employees whose plan year compensation does not exceed taxable wage base.
(3) Employees whose plan year compensation exceeds taxable wage base.
(4) Definitions.
(5) Example.
(c) Adjusting accrual rates.
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(2) Employees whose average annual compensation does not exceed covered compensation.
(3) Employees whose average annual compensation exceeds covered compensation.
(4) Definitions.
(5) Employees with negative unadjusted accrual rates.
(6) Example.
(d) Rules of general application.
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(2) Exceptions from consistency requirements.
(3) Overall permitted disparity.

§ 1.401(a)(4)–8 Cross-testing

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(b) Nondiscrimination in amount of benefits provided under a defined contribution plan.
(1) General rule.
(2) Determination of equivalent accrual rates.
(3) Safe-harbor testing method for target benefit plans.
(c) Nondiscrimination in amount of contributions under a defined benefit plan.
(1) General rule.
(2) Determination of equivalent allocation rates.
(3) Safe harbor testing method for cash balance plans.
(d) Safe-harbor testing method for defined benefit plans that are part of a floor-offset arrangement.
(1) General rule.
(2) Application of safe-harbor testing method to qualified offset arrangements.

§ 1.401(a)(4)–9 Plan aggregation and restructuring

(a) Introduction.
(b) Application of nondiscrimination requirements to DB/DC plans.
(1) General rule.
(2) Special rules for demonstrating nondiscrimination in amount of contributions or benefits.
(3) Optional rules for demonstrating nondiscrimination in availability of certain benefits, rights, and features.
(c) Plan restructuring.
(1) General rule.
(2) Identification of component plans.
(3) Satisfaction of section 401(a)(4) by a component plan.
(4) Satisfaction of section 410(b) by a component plan.
(5) Effect of restructuring under other sections.
(6) Examples.

§ 1.401(a)(4)–10 Testing of former employees

(a) Introduction.
(b) Nondiscrimination in amount of contributions or benefits.
(1) General rule.

(2) Permitted disparity.
(3) Examples.
(c) Nondiscrimination in availability of benefits, rights, or features.

§ 1.401(a)(4)–11 Additional rules

(a) Introduction.
(b) Rollovers, transfers, and buybacks.
(1) Rollovers and elective transfers.
(2) Other transfers. [Reserved]
(3) Employee buybacks.
(c) Vesting.
(1) General rule.
(2) Deemed equivalence of statutory vesting schedules.
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(4) Examples.
(d) Service-crediting rules.
(1) Overview.
(2) Manner of crediting service.
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(e) Family aggregation rules. [Reserved]
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(1) In general.
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§ 1.401(a)(4)–12 Definitions

§ 1.401(a)(4)–13 Effective dates and fresh-start rules

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§ 1.401(a)(4)–1 Nondiscrimination requirements of section 401(a)(4).

(a) *In general.* Section 401(a)(4) provides that a plan is a qualified plan only if the contributions or the benefits provided under the plan do not discriminate in favor of HCEs. Whether a plan satisfies this requirement depends on the form of the plan and on its effect in operation. In making this determination, intent is irrelevant. This section sets forth the exclusive rules for determining whether a plan satisfies section 401(a)(4). A plan that complies in form and operation with the rules in this section therefore satisfies section 401(a)(4).

(b) *Requirements a plan must satisfy*—(1) *In general.* In order to satisfy section 401(a)(4), a plan must satisfy each of the requirements of this paragraph (b).

(2) *Nondiscriminatory amount of contributions or benefits*—(i) *General rule.* Either the contributions or the benefits provided under the plan must be nondiscriminatory in amount. It need not be shown that both the contributions and the benefits provided are nondiscriminatory in amount, but only that either the contributions alone or the benefits alone are nondiscriminatory in amount.

(ii) *Defined contribution plans*—(A) *General rule.* A defined contribution plan satisfies this paragraph (b)(2) if the contributions allocated under the plan (including forfeitures) are nondiscriminatory in amount under § 1.401(a)(4)–2. Alternatively, a defined contribution plan (other than an ESOP) satisfies this paragraph (b)(2) if the equivalent benefits provided under the plan are nondiscriminatory in amount under § 1.401(a)(4)–8(b). Section 1.401(a)(4)–8(b) includes a safe-harbor testing method for contributions provided under a target benefit plan.

(B) *Section 401(k) plans and section 401(m) plans.* A section 401(k) plan is deemed to satisfy this paragraph (b)(2) because § 1.410(b)–9 defines a section 401(k) plan as a plan consisting of elective contributions under a qualified cash or deferred arrangement (i.e., one that satisfies section 401(k)(3), the nondiscriminatory amount requirement applicable to qualified cash or deferred arrangements). A section 401(m) plan satisfies this paragraph (b)(2) only if the plan satisfies §§ 1.401(m)–1(b) and 1.401(m)–2. Contributions under a nonqualified cash or deferred arrangement, elective contributions described in § 1.401(k)–1(b)(4)(iv) that fail to satisfy the allocation and compensation requirements of § 1.401(k)–1(b)(4)(i), matching contributions that fail to satisfy § 1.401(m)–1(b)(4)(ii)(A), and qualified nonelective contributions treated as elective or matching contributions for certain purposes under §§ 1.401(k)–1(b)(5) and 1.401(m)–1(b)(5), respectively, are not subject to the special rule in this paragraph (b)(2)(ii)(B), because they are not treated as part of a section 401(k) plan or section 401(m) plan as those terms are defined in § 1.410(b)–9. The contributions described in the preceding sentence must satisfy paragraph (b)(2)(ii)(A) of this section.

(iii) *Defined benefit plans.* A defined benefit plan satisfies this paragraph (b)(2) if the benefits provided under the plan are nondiscriminatory in amount under § 1.401(a)(4)–3. Alternatively, a defined benefit plan satisfies this paragraph (b)(2) if the equivalent allocations provided under the plan are nondiscriminatory in amount under § 1.401(a)(4)–8(c). Section 1.401(a)(4)–8(c) includes a safe-harbor testing method for benefits provided under a cash balance plan. In addition, § 1.401(a)(4)–8(d) provides a safe-harbor testing method for benefits provided under a defined benefit plan that is part of a floor-offset arrangement.

(3) *Nondiscriminatory availability of benefits, rights, and features.* All benefits, rights, and features provided under the plan must be made available in the plan in a nondiscriminatory manner. Rules for determining whether this requirement is satisfied are set forth in § 1.401(a)(4)–4.

(4) *Nondiscriminatory effect of plan amendments and terminations.* The timing of plan amendments must not have the effect of discriminating significantly in favor of HCEs. Rules for determining whether this requirement is satisfied are set forth in § 1.401(a)(4)–5(a). Section 1.401(a)(4)–5(b) provides additional requirements regarding plan terminations.

(c) *Application of requirements*—(1) *In general.* The requirements of paragraph (b) of this section must be applied in accordance with the rules set forth in this paragraph (c).

(2) *Interpretation.* The provisions of §§ 1.401(a)(4)–1 through 1.401(a)(4)–13 must be interpreted in a reasonable manner consistent with the purpose of preventing discrimination in favor of HCEs.

(3) *Plan-year basis of testing.* The requirements of paragraph (b) of this section are generally applied on the basis of the plan year and on the basis of the terms of the plan in effect during the plan year. Thus, unless otherwise provided, the compensation, contributions, benefit accruals, and other items used to apply these requirements must be determined with respect to the plan year being tested. However, § 1.401(a)(4)–11(g) provides rules allowing for corrective amendments made after the close of the plan year to be taken into account in

satisfying certain requirements under paragraph (b) of this section.

(4) *Application of section 410(b) rules*—(i) *Relationship between sections 401(a)(4) and 410(b).* To be a qualified plan, a plan must satisfy both sections 410(b) and 401(a)(4). Section 410(b) requires that a plan benefit a nondiscriminatory group of employees, and section 401(a)(4) requires that the contributions or benefits provided to employees benefiting under the plan not discriminate in favor of HCEs. Consistent with this requirement, the definition of a plan subject to testing under section 401(a)(4) is the same as the definition of a plan subject to testing under section 410(b), i.e., the plan determined after applying the mandatory disaggregation rules of § 1.410(b)–7(c) and the permissive aggregation rules of § 1.410(b)–7(d). In addition, whichever testing option is used for the plan year under § 1.410(b)–8(a) (e.g., quarterly testing) must also be used for purposes of determining whether the plan satisfies section 401(a)(4) for the plan year.

(ii) *Special rules for certain aggregated plans.* Special rules are set forth in § 1.401(a)(4)–9(b) for applying the nondiscriminatory amount and availability requirements of paragraphs (b)(2) and (b)(3) of this section to a plan that includes one or more defined benefit plans and one or more defined contribution plans that have been permissively aggregated under § 1.410(b)–7(d).

(iii) *Restructuring.* In certain circumstances, a plan may be restructured on the basis of employee groups and treated as comprising two or more plans, each of which is treated as a separate plan that must independently satisfy sections 401(a)(4) and 410(b). Rules relating to restructuring plans for purposes of applying the requirements of paragraph (b) of this section are set forth in § 1.401(a)(4)–9(c).

(iv) *References to section 410(b).* Except as otherwise specifically provided, references to satisfying section 410(b) in §§ 1.401(a)(4)–1 through 1.401(a)(4)–13 mean satisfying § 1.410(b)–2 (taking into account any special rules available in satisfying that section, other than the permissive aggregation rules of § 1.410(b)–7(d)). In the case of a plan described in section 410(c)(1) that has not made the election described in section 410(d) and is not subject to section 403(b)(12)(A)(i), references in §§ 1.401(a)(4)–1 through 1.401(a)(4)–13 to satisfying section 410(b) mean satisfying section 410(c)(2).

(5) *Collectively-bargained plans.* The requirements of paragraph (b) of this section are treated as satisfied by a collectively-bargained plan that automatically satisfies section 410(b) under § 1.410(b)–2(b)(7).

(6) *Former employees.* In applying the nondiscriminatory amount and availability requirements of paragraphs (b)(2) and (b)(3) of this section, former employees are tested separately from active employees, unless otherwise provided. Rules for applying paragraphs (b)(2) and (b)(3) of this section to former employees are set forth in § 1.401(a)(4)–10.

(7) *Employee-provided contributions and benefits.* In applying the nondiscriminatory amount requirement of paragraph (b)(2) of this section, employee-provided contributions and benefits are tested separately from employer-provided contributions and benefits, unless otherwise provided. Rules for determining the amount of employer-provided benefits under a defined benefit plan that include employee contributions not allocated to separate accounts are set forth in § 1.401(a)(4)–6(b), and rules for applying paragraph (b)(2) of this section to employee contributions under such a plan are set forth in § 1.401(a)(4)–6(c). See paragraph (b)(2)(ii)(B) of this section for rules applicable to employee contributions allocated to separate accounts.

(8) *Allocation of earnings.* Notwithstanding any other provision in §§ 1.401(a)(4)–1 through 1.401(a)(4)–13, a defined contribution plan does not satisfy paragraph (b)(2) of this section if the manner in which income, expenses, gains, or losses are allocated to accounts under the plan discriminates in favor of HCEs or former HCEs.

(9) *Rollovers, transfers, and buybacks.* In applying the requirements of paragraph (b) of this section, rollover (including direct rollover) contributions described in section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), or 408(d)(3), elective transfers described in § 1.411(d)–4, Q&A–3(b), transfers of assets and liabilities described in section 414(l), and employee buybacks are treated in accordance with the rules set forth in § 1.401(a)(4)–11(b).

(10) *Vesting.* A plan does not satisfy the nondiscriminatory amount requirement of paragraph (b)(2) of this section unless it satisfies § 1.401(a)(4)–11(c) with respect to the manner in which employees vest in their accrued benefits.

(11) *Crediting service.* A plan does not satisfy paragraphs (b)(2) and (b)(3) of this section unless it satisfies § 1.401(a)(4)–11(d) with respect to the manner in which employees' service is credited under the plan. Service other than actual service with the employer may not be taken into account in determining whether the plan satisfies paragraphs (b)(2) and (b)(3) of this section except as provided in § 1.401(a)(4)–11(d).

(12) *Governmental plans.* The rules of this section apply to a governmental plan within the meaning of section 414(d), except as provided in §§ 1.401(a)(4)–11(f) and 1.401(a)(4)–13(b).

(13) *Employee stock ownership plans.* [Reserved]

(14) *Section 401(h) benefits.* In applying the requirements of paragraph (b) of this section, the portion of a plan providing benefits described in section 401(h) is tested separately from the portion of the same plan providing retirement benefits, and thus is not required to satisfy this section. Rules applicable to section 401(h) benefits are set forth in § 1.401–14(b)(2).

(15) *Definitions.* In applying the requirements of this section, the definitions in § 1.401(a)(4)–12 govern.

(16) *Effective dates and fresh-start rules.* In applying the requirements of this section, the effective dates set forth in § 1.401(a)(4)–13 govern. Section 1.401(a)(4)–13 also provides certain transition and fresh-start rules that apply for purposes of this section.

(d) *Additional guidance.* The Commissioner may, in revenue rulings, notices, and other guidance, published in the Internal Revenue Bulletin, provide any additional guidance that may be necessary or appropriate in applying the nondiscrimination requirements of section 401(a)(4), including additional safe harbors and alternative methods and procedures for satisfying those requirements. See § 601.601(d)(2)(ii)(*b*) of this chapter.

§ 1.401(a)(4)–2 Nondiscrimination in amount of employer contributions under a defined contribution plan.

(a) *Introduction*—(1) *Overview.* This section provides rules for determining whether the employer contributions allocated under a defined contribution plan are nondiscriminatory in amount as required by § 1.401(a)(4)–1(b)(2)(ii)(A). Certain defined contribution plans that provide uniform allocations are permitted to satisfy this requirement by meeting one of the safe harbors in paragraph (b) of this section. Plans that do not provide uniform allocations may satisfy this requirement by satisfying the general test in paragraph (c) of this section. See § 1.401(a)(4)–1(b)(2)(ii)(B) for the exclusive tests applicable to section 401(k) plans and section 401(m) plans.

(2) *Alternative methods of satisfying nondiscriminatory amount requirement.*

A defined contribution plan is permitted to satisfy paragraph (b)(2) or (c) of this section on a restructured basis pursuant to § 1.401(a)(4)–9(c). Alternatively, a defined contribution plan (other than an ESOP) is permitted to satisfy the nondiscriminatory amount requirement of § 1.401(a)(4)–1(b)(2)(ii)(A) on the basis of equivalent benefits pursuant to § 1.401(a)(4)–8(b).

(b) *Safe harbors*—(1) *In general.* The employer contributions allocated under a defined contribution plan are nondiscriminatory in amount for a plan year if the plan satisfies either of the safe harbors in paragraph (b)(2) or (b)(3) of this section. Paragraph (b)(4) of this section provides exceptions for certain plan provisions that do not cause a plan to fail to satisfy this paragraph (b).

(2) *Safe harbor for plans with uniform allocation formula*—(i) *General rule.* A defined contribution plan satisfies the safe harbor in this paragraph (b)(2) for a plan year if the plan allocates all amounts taken into account under paragraph (c)(2)(ii) of this section for the plan year under an allocation formula that allocates to each employee the same percentage of plan year compensation, the same dollar amount, or the same dollar amount for each uniform unit of service (not to exceed one week) performed by the employee during the plan year.

(ii) *Permitted disparity.* If a plan satisfies section 401(l) in form, differences in employees' allocations under the plan attributable to uniform disparities permitted under § 1.401(l)–2 (including differences in disparities that are deemed uniform under § 1.401(l)–2(c)(2)) do not cause the plan to fail to satisfy this paragraph (b)(2).

(3) *Safe harbor for plans with uniform points allocation formula*—(i) *General rule.* A defined contribution plan (other than an ESOP) satisfies the safe harbor in this paragraph (b)(3) for a plan year if it satisfies both of the following requirements:

(A) The plan must allocate amounts under a uniform points allocation formula. A uniform points allocation formula defines each employee's allocation for the plan year as the product of the total of all amounts taken into account under paragraph (c)(2)(ii) of this section and a fraction, the numerator of which is the employee's points for the plan year and the denominator of which is the sum of the points of all employees in the plan for the plan year. For this purpose, an employee's points for a plan year equal the sum of the employee's points for age, service, and units of plan year compensation for the plan year. Under a uniform points allocation formula, each employee must receive the same number of points for each year of age, the same number of points for each year of service, and the same number of points for each unit of plan year compensation. (See § 1.401(a)(4)–11(d)(3) regarding service that may be taken into account as years of service.) A uniform points allocation formula need not grant points for both age and service, but it must grant points for at least one of them. If the allocation formula grants points for years of service, the plan is permitted to limit the number of years of service taken into account to a single maximum number of years of service. A uniform points allocation formula need not grant points for units of plan year compensation, but if it does, the unit used must be a single dollar amount for all employees that does not exceed $200.

(B) For the plan year, the average of the allocation rates for the HCEs in the plan must not exceed the average of the allocation rates for the NHCEs in the plan. For this purpose, allocation rates are determined in accordance with paragraph (c)(2) of this section, without imputing permitted disparity and without grouping allocation rates under paragraphs (c)(2) (iv) and (v) of this section, respectively.

(ii) *Example.* The following example illustrates the safe harbor in this paragraph (b)(3):

Example. (a) Plan A has a single allocation formula that applies to all employees, under which each employee's allocation for the plan year equals the product of the total of all amounts taken into account for all employees for the plan year under paragraph (c)(2)(ii) of this section and a fraction, the numerator of which is the employee's points for the plan year and the denominator of which is the sum of the points of all employees for the plan year. Plan A grants each employee 10 points for each year of service (including pre-participation service and imputed service credited under Plan A that satisfies § 1.401(a)(4)–11(d)(3)) and one point for each $100 of plan year compensation. For the 1994 plan year, the total allocations are $71,200, and the total points for all employees are 7,120. Each employee's allocation for the 1994 plan year is set forth in the table below.

Employee	Years of service	Plan year compensation	Points	Amount of allocation	Allocation rate (percent)
H1	20	$150,000	1,700	$17,000	11.3
H2	10	150,000	1,600	16,000	10.7
H3	30	100,000	1,300	13,000	13.0
H4	3	100,000	1,030	10,300	10.3
N1	10	40,000	500	5,000	12.5
N2	5	35,000	400	4,000	11.4
N3	3	30,000	330	3,300	11.0
N4	1	25,000	260	2,600	10.4
Total	.....	.....	7,120	71,200	.....

(b) Under these facts, for the 1994 plan year, Plan A allocates amounts under a uniform points allocation formula within the meaning of paragraph (b)(3)(i)(A) of this section.

(c) For the 1994 plan year, the average allocation rate for the HCEs (H1 through H4) is 11.3 percent, and the average allocation rate for NHCEs (N1 through N4) is 11.3 percent. Because the average of the allocation rates for the HCEs does not exceed the average of the allocation rates for the NHCEs, Plan A satisfies paragraph (b)(3)(i)(B) of this section and, thus, the safe harbor in this paragraph (b)(3) for the 1994 plan year.

(4) *Use of safe harbors not precluded by certain plan provisions*—(i) *In general.* A plan does not fail to satisfy this paragraph (b) merely because the plan contains one or more of the provisions described in this paragraph (b)(4). Unless otherwise provided, any such provision must apply uniformly to all employees.

(ii) *Entry dates.* The plan provides one or more entry dates during the plan year as permitted by section 410(a)(4).

(iii) *Certain conditions on allocations.* The plan provides that an employee's allocation for the plan year is conditioned on either the employee's employment on the last day of the plan

year or the employee's completion of a minimum number of hours of service during the plan year (not to exceed 1,000), or both. Such a provision may include an exception from this condition for all employees whose employment terminates during the plan year or only for those employees whose employment terminates during the plan year on account of one or more of the following circumstances: retirement, disability, death, or military service.

(iv) *Certain limits on allocations.* The plan limits allocations otherwise provided under the allocation formula to a maximum dollar amount or a maximum percentage of plan year compensation, limits the dollar amount of plan year compensation taken into account in determining the amount of allocations, or applies the restrictions of section 409(n) or the limits of section 415.

(v) *Lower allocations for HCEs.* The allocations provided to one or more HCEs under the plan are less than the allocations that would otherwise be provided to those employees if the plan satisfied this paragraph (b) (without regard to this paragraph (b)(4)(v)).

(vi) *Multiple formulas*—(A) *General rule.* The plan provides that an employee's allocation under the plan is the greater of the allocations determined under two or more formulas, or is the sum of the allocations determined under two or more formulas. This paragraph (b)(4)(vi) does not apply to a plan unless each of the formulas under the plan satisfies the requirements of paragraph (b)(4)(vi) (B) through (D) of this section.

(B) *Sole formulas.* The formulas must be the only formulas under the plan.

(C) *Separate testing.* Each of the formulas must separately satisfy this paragraph (b). A formula that is available solely to some or all NHCEs is deemed to satisfy this paragraph (b)(4)(vi)(C).

(D) *Availability*—(*1*) *General rule.* All of the formulas must be available on the same terms to all employees.

(*2*) *Formulas for NHCEs.* A formula does not fail to be available on the same terms to all employees merely because the formula is not available to any HCEs, but is available to some or all NHCEs on the same terms as all of the other formulas in the plan.

(*3*) *Top-heavy formulas.* In the case of a plan that provides the greater of the allocations under two or more formulas, one of which is a top-heavy formula, the top-heavy formula does not fail to be available on the same terms to all employees merely because it is available solely to all non-key employees on the same terms as all the other formulas under the plan. Furthermore, the top-heavy formula does not fail to be available on the same terms as the other formulas under the plan merely because it is conditioned on the plan's being top-heavy within the meaning of section 416(g). Finally, the top-heavy formula does not fail to be available on the same terms as the other formulas under the plan merely because it is available to all employees described in § 1.416–1, Q&A M–10 (i.e., all non-key employees who have not separated from service as of the last day of the plan year). The preceding sentence does not apply, however, unless the plan would satisfy section 410(b) if all employees who are benefiting under the plan solely as a result of receiving allocations under the top-heavy formula were treated as not currently benefiting under the plan. For purposes of this paragraph (b)(4)(vi)(D)(*3*), a top-heavy formula is a formula that provides the minimum benefit described in section 416(c)(2) (taking into account, if applicable, the modification in section 416(h)(2)(A)(ii)(II)).

(E) *Provisions may be applied more than once.* The provisions of this paragraph (b)(4)(vi) may be applied more than once. For example, a plan satisfies this paragraph (b) if an employee's allocation under the plan is the greater of the allocations under two or more formulas, and one or more of those formulas is the sum of the allocations under two or more other formulas, provided that each of the formulas under the plan satisfies the requirements of paragraph (b)(4)(vi) (B) through (D) of this section.

(F) *Examples.* The following examples illustrate the rules in this paragraph (b)(4)(vi):

Example 1. Under Plan A, each employee's allocation equals the sum of the allocations determined under two formulas. The first formula provides an allocation of five percent of plan year compensation. The second formula provides an allocation of $100. Plan A satisfies this paragraph (b)(4)(vi).

Example 2. Under Plan B, each employee's allocation equals the greater of the allocations determined under two formulas. The first formula provides an allocation of seven percent of plan year compensation and is available to all employees who complete at least 1,000 hours of service during the plan year and who have not separated from service as of the last day of the plan year. The second formula is a top-heavy formula that provides an allocation of three percent of plan year compensation and that is available to all employees described in § 1.416–1, Q&A M–10. Plan B does not satisfy the general rule in paragraph (b)(4)(vi)(D)(*1*) of this section because the two formulas are not available on the same terms to all employees (i.e., an employee is required to complete 1,000 hours of service during the plan year to receive an allocation under the first formula, but not under the second formula). Nonetheless, because the second formula is a top-heavy formula, the special availability rules for top-heavy formulas in paragraph (b)(4)(vi)(D)(*3*) of this section apply. Thus, the second formula does not fail to be available on the same terms as the first formula merely because the second formula is available to all employees described in § 1.416–1, Q&A M–10, as long as the plan would satisfy section 410(b) if all employees who are benefiting under the plan solely as a result of receiving allocations under the top-heavy formula were treated as not currently benefiting under the plan. This is true even if the plan conditions the availability of the second formula on the plan's being top-heavy for the plan year.

Example 3. The facts are the same as in *Example 2*, except that the first formula is available to all employees who have not separated from service as of the last day of the plan year, regardless of whether they complete at least 1,000 hours of service during the plan year. Plan B still does not satisfy the general rule in paragraph (b)(4)(vi)(D)(*1*) of this section because the two formulas are not available on the same terms to all employees (i.e., the second formula is only available to all non-key employees). Nonetheless, because the second formula is a top-heavy formula, the special availability rules for top-heavy formulas in paragraph (b)(4)(vi)(D)(*3*) of this section apply. Thus, the second formula does not fail to be available on the same terms as the first formula merely because the second formula is available solely to all non-key employees.

(c) *General test for nondiscrimination in amount of contributions*—(1) *General rule.* The employer contributions allocated under a defined contribution plan are nondiscriminatory in amount for a plan year if each rate group under the plan satisfies section 410(b). For purposes of this paragraph (c), a rate group exists under a plan for each HCE and consists of the HCE and all other employees in the plan (both HCEs and NHCEs) who have an allocation rate greater than or equal to the HCE's allocation rate. Thus, an employee is in the rate group for each HCE who has an allocation rate less than or equal to the employee's allocation rate.

(2) *Determination of allocation rates*—(i) *General rule.* The allocation rate for an employee for a plan year equals the sum of the allocations to the employee's account for the plan year, expressed either as a percentage of plan year compensation or as a dollar amount.

(ii) *Allocations taken into account.* The amounts taken into account in determining allocation rates for a plan year include all employer contributions and forfeitures that are allocated or treated as allocated to the account of an employee under the plan for the plan year, other than amounts described in paragraph (c)(2)(iii) of this section. For this purpose, employer contributions include annual additions described in

§ 1.415–6(b)(2)(i) (regarding amounts arising from certain transactions between the plan and the employer). In the case of a defined contribution plan subject to section 412, an employer contribution is taken into account in the plan year for which it is required to be contributed and allocated to employees' accounts under the plan, even if all or part of the required contribution is not actually made.

(iii) *Allocations not taken into account.* Allocations of income, expenses, gains, and losses attributable to the balance in an employee's account are not taken into account in determining allocation rates.

(iv) *Imputation of permitted disparity.* The disparity permitted under section 401(l) may be imputed in accordance with the rules of § 1.401(a)(4)–7.

(v) *Grouping of allocation rates*—(A) *General rule.* An employer may treat all employees who have allocation rates within a specified range above and below a midpoint rate chosen by the employer as having an allocation rate equal to the midpoint rate within that range. Allocation rates within a given range may not be grouped under this paragraph (c)(2)(v) if the allocation rates of HCEs within the range generally are significantly higher than the allocation rates of NHCEs in the range. The specified ranges within which all employees are treated as having the same allocation rate may not overlap and may be no larger than provided in paragraph (c)(2)(v)(B) of this section. Allocation rates of employees that are not within any of these specified ranges are determined without regard to this paragraph (c)(2)(v).

(B) *Size of specified ranges.* The lowest and highest allocation rates in the range must be within five percent (not five percentage points) of the midpoint rate. If allocation rates are determined as a percentage of plan year compensation, the lowest and highest allocation rates need not be within five percent of the midpoint rate, if they are no more than one quarter of a percentage point above or below the midpoint rate.

(vi) *Consistency requirement.* Allocation rates must be determined in a consistent manner for all employees for the plan year.

(3) *Satisfaction of section 410(b) by a rate group*—(i) *General rule.* For purposes of determining whether a rate group satisfies section 410(b), the rate group is treated as if it were a separate plan that benefits only the employees included in the rate group for the plan year. Thus, for example, under § 1.401(a)(4)–1(c)(4)(iv), the ratio percentage of the rate group is determined taking into account all nonexcludable employees regardless of whether they benefit under the plan. Paragraph (c)(3) (ii) and (iii) of this section provide additional special rules for determining whether a rate group satisfies section 410(b).

(ii) *Application of nondiscriminatory classification test.* A rate group satisfies the nondiscriminatory classification test of § 1.410(b)–4 (including the reasonable classification requirement of § 1.410(b)–4(b)) if and only if the ratio percentage of the rate group is greater than or equal to the lesser of—

(A) The midpoint between the safe and the unsafe harbor percentages applicable to the plan; and

(B) The ratio percentage of the plan.

(iii) *Application of average benefit percentage test.* A rate group satisfies the average benefit percentage test of § 1.410(b)–5 if the plan of which it is a part satisfies § 1.410(b)–5 (without regard to § 1.410(b)–5(f)). In the case of a plan that relies on § 1.410(b)–5(f) to satisfy the average benefit percentage test, each rate group under the plan satisfies the average benefit percentage test (if applicable) only if the rate group separately satisfies § 1.410(b)–5(f).

(4) *Examples.* The following examples illustrate the general test in this paragraph (c):

Example 1. Employer X maintains two defined contribution plans, Plan A and Plan B, that are aggregated and treated as a single plan for purposes of sections 410(b) and 401(a)(4) pursuant to § 1.410(b)–7(d). For the 1994 plan year, Employee M has plan year compensation of $10,000 and receives an allocation of $200 under Plan A and an allocation of $800 under Plan B. Employee M's allocation rate under the aggregated plan for the 1994 plan year is 10 percent (i.e., $1,000 divided by $10,000).

Example 2. The employees in Plan C have the following allocation rates (expressed as a percentage of plan year compensation): 2.75 percent, 2.80 percent, 2.85 percent, 3.25 percent, 6.65 percent, 7.33 percent, 7.34 percent, and 7.35 percent. Because the first four rates are within a range of no more than one quarter of a percentage point above and below 3.0 percent (a midpoint rate chosen by the employer), under paragraph (c)(2)(v) of this section the employer may treat the employees who have those rates as having an allocation rate of 3.0 percent (provided that the allocation rates of HCEs within the range generally are not significantly higher than the allocation rates of NHCEs within the range). Because the last four rates are within a range of no more than five percent above and below 7.0 percent (a midpoint rate chosen by the employer), the employer may treat the employees who have those rates as having an allocation rate of 7.0 percent (provided that the allocation rates of HCEs within the range generally are not significantly higher than the allocation rates of NHCEs within the range).

Example 3. (a) Employer Y has only six nonexcludable employees, all of whom benefit under Plan D. The HCEs are H1 and H2, and the NHCEs are N1 through N4. For the 1994 plan year, H1 and N1 through N4 have an allocation rate of 5.0 percent of plan year compensation. For the same plan year, H2 has an allocation rate of 7.5 percent of plan year compensation.

(b) There are two rate groups under Plan D. Rate group 1 consists of H1 and all those employees who have an allocation rate greater than or equal to H1's allocation rate (5.0 percent). Thus, rate group 1 consists of H1, H2, and N1 through N4. Rate group 2 consists only of H2 because no other employee has an allocation rate greater than or equal to H2's allocation rate (7.5 percent).

(c) The ratio percentage for rate group 2 is zero percent—i.e., zero percent (the percentage of all nonhighly compensated nonexcludable employees who are in the rate group) divided by 50 percent (the percentage of all highly compensated nonexcludable employees who are in the rate group). Therefore rate group 2 does not satisfy the ratio percentage test under § 1.410(b)–2(b)(2). Rate group 2 also does not satisfy the nondiscriminatory classification test of § 1.410(b)–4 (as modified by paragraph (c)(3) of this section). Rate group 2 therefore does not satisfy section 410(b) and, as a result, Plan D does not satisfy the general test in paragraph (c)(1) of this section. This is true regardless of whether rate group 1 satisfies § 1.410(b)–2(b)(2).

Example 4. (a) The facts are the same as in *Example 3*, except that N4 has an allocation rate of 8.0 percent.

(b) There are two rate groups in Plan D. Rate group 1 consists of H1 and all those employees who have an allocation rate greater than or equal to H1's allocation rate (5.0 percent). Thus, rate group 1 consists of H1, H2 and N1 through N4. Rate group 2 consists of H2, and all those employees who have an allocation rate greater than or equal to H2's allocation rate (7.5 percent). Thus, rate group 2 consists of H2 and N4.

(c) Rate group 1 satisfies the ratio percentage test under § 1.410(b)–2(b)(2) because the ratio percentage of the rate group is 100 percent—i.e., 100 percent (the percentage of all nonhighly compensated nonexcludable employees who are in the rate group) divided by 100 percent (the percentage of all highly compensated nonexcludable employees who are in the rate group).

(d) Rate group 2 does not satisfy the ratio percentage test of § 1.410(b)–2(b)(2) because the ratio percentage of the rate group is 50 percent—i.e., 25 percent (the percentage of all nonhighly compensated nonexcludable employees who are in the rate group) divided by 50 percent (the percentage of all highly compensated nonexcludable employees who are in the rate group).

(e) However, rate group 2 does satisfy the nondiscriminatory classification test of § 1.410(b)–4 because the ratio percentage of the rate group (50 percent) is greater than the safe harbor percentage applicable to the plan under § 1.410(b)–4(c)(4) (45.5 percent).

(f) Under paragraph (c)(3)(iii) of this section, rate group 2 satisfies the average benefit percentage test, if Plan D satisfies the average benefit percentage test. (The

requirement that Plan D satisfy the average benefit percentage test applies even though Plan D satisfies the ratio percentage test and would ordinarily not need to run the average benefit percentage test.) If Plan D satisfies the average benefit percentage test, then rate group 2 satisfies section 410(b) and thus, Plan D satisfies the general test in paragraph (c)(1) of this section, because each rate group under the plan satisfies section 410(b).

Example 5. (a) Plan E satisfies section 410(b) by satisfying the nondiscriminatory classification test of § 1.410(b)–4 and the average benefit percentage test of § 1.410(b)–5 (without regard to § 1.410(b)–5(f)). See § 1.410(b)–2(b)(3). Plan E uses the facts-and-circumstances requirements of § 1.410(b)–4(c)(3) to satisfy the nondiscriminatory classification test of § 1.410(b)–4. The safe and unsafe harbor percentages applicable to the plan under § 1.410(b)–4(c)(4) are 29 and 20 percent, respectively. Plan E has a ratio percentage of 22 percent.

(b) Rate group 1 under Plan E has a ratio percentage of 23 percent. Under paragraph (c)(3)(ii) of this section, the rate group satisfies the nondiscriminatory classification requirement of § 1.410(b)–4, because the ratio percentage of the rate group (23 percent) is greater than the lesser of—

(1) The ratio percentage for the plan as a whole (22 percent); and

(2) The midpoint between the safe and unsafe harbor percentages (24.5 percent).

(c) Under paragraph (c)(3)(iii) of this section, the rate group satisfies section 410(b) because the plan satisfies the average benefit percentage test of § 1.410(b)–5.

§ 1.401(a)(4)–3 Nondiscrimination in amount of employer-provided benefits under a defined benefit plan.

(a) *Introduction*—(1) *Overview.* This section provides rules for determining whether the employer-provided benefits under a defined benefit plan are nondiscriminatory in amount as required by § 1.401(a)(4)–1(b)(2)(iii). Certain defined benefit plans that provide uniform benefits are permitted to satisfy this requirement by meeting one of the safe harbors in paragraph (b) of this section. Plans that do not provide uniform benefits may satisfy this requirement by satisfying the general test in paragraph (c) of this section. Paragraph (d) of this section provides rules for determining the individual benefit accrual rates needed for the general test. Paragraph (e) of this section provides rules for determining compensation for purposes of applying the requirements of this section. Paragraph (f) of this section provides additional rules that apply generally for purposes of both the safe harbors in paragraph (b) of this section and the general test in paragraph (c) of this section. See § 1.401(a)(4)–6 for rules for determining the amount of employer-provided benefits under a contributory DB plan, and for determining whether the employee-provided benefits under such a plan are nondiscriminatory in amount.

(2) *Alternative methods of satisfying nondiscriminatory amount requirement.* A defined benefit plan is permitted to satisfy paragraph (b) or (c) of this section on a restructured basis pursuant to § 1.401(a)(4)–9(c). Alternatively, a defined benefit plan is permitted to satisfy the nondiscriminatory amount requirement of § 1.401(a)(4)–1(b)(2)(iii) on the basis of equivalent allocations pursuant to § 1.401(a)(4)–8(c). In addition, a defined benefit plan that is part of a floor-offset arrangement is permitted to satisfy this section pursuant to § 1.401(a)(4)–8(d).

(b) *Safe harbors*—(1) *In general.* The employer-provided benefits under a defined benefit plan are nondiscriminatory in amount for a plan year if the plan satisfies each of the uniformity requirements of paragraph (b)(2) of this section and any one of the safe harbors in paragraphs (b)(3) (unit credit plans), (b)(4) (fractional accrual plans), and (b)(5) (insurance contract plans) of this section. Paragraph (b)(6) of this section provides exceptions for certain plan provisions that do not cause a plan to fail to satisfy this paragraph (b). Paragraph (f) of this section provides additional rules that apply in determining whether a plan satisfies this paragraph (b).

(2) *Uniformity requirements*—(i) *Uniform normal retirement benefit.* The same benefit formula must apply to all employees. The benefit formula must provide all employees with an annual benefit payable in the same form commencing at the same uniform normal retirement age. The annual benefit must be the same percentage of average annual compensation or the same dollar amount for all employees who will have the same number of years of service at normal retirement age. (See § 1.401(a)(4)–11(d)(3) regarding service that may be taken into account as years of service.) The annual benefit must equal the employee's accrued benefit at normal retirement age (within the meaning of section 411(a)(7)(A)(i)) and must be the normal retirement benefit under the plan (within the meaning of section 411(a)(9)).

(ii) *Uniform post-normal retirement benefit.* With respect to an employee with a given number of years of service at any age after normal retirement age, the annual benefit commencing at that employee's age must be the same percentage of average annual compensation or the same dollar amount that would be payable commencing at normal retirement age to an employee who had that same number of years of service at normal retirement age.

(iii) *Uniform subsidies.* Each subsidized optional form of benefit available under the plan must be currently available (within the meaning of § 1.401(a)(4)–4(b)(2)) to substantially all employees. Whether an optional form of benefit is considered subsidized for this purpose may be determined using any reasonable actuarial assumptions.

(iv) *No employee contributions.* The plan must not be a contributory DB plan.

(v) *Period of accrual.* Each employee's benefit must be accrued over the same years of service that are taken into account in applying the benefit formula under the plan to that employee. For this purpose, any year in which the employee benefits under the plan (within the meaning of § 1.410(b)–3(a)) is included as a year of service in which a benefit accrues. Thus, for example, a plan does not satisfy the safe harbor in paragraph (b)(4) of this section unless the plan uses the same years of service to determine both the normal retirement benefit under the plan's benefit formula and the fraction by which an employee's fractional rule benefit is multiplied to derive the employee's accrued benefit as of any plan year.

(vi) *Examples.* The following examples illustrate the rules in this paragraph (b)(2):

Example 1. Plan A provides a normal retirement benefit equal to two percent of average annual compensation times each year of service commencing at age 65 for all employees. Plan A provides that employees of Division S receive their benefit in the form of a straight life annuity and that employees of Division T receive their benefit in the form of a life annuity with an automatic cost-of-living increase. Plan A does not provide a uniform normal retirement benefit within the meaning of paragraph (b)(2)(i) of this section because the annual benefit is not payable in the same form to all employees.

Example 2. Plan B provides a normal retirement benefit equal to 1.5 percent of average annual compensation times each year of service at normal retirement age for all employees. The normal retirement age under the plan is the earlier of age 65 or the age at which the employee completes 10 years of service, but in no event earlier than age 62. Plan B does not provide a uniform normal retirement benefit within the meaning of paragraph (b)(2)(i) of this section because the same uniform normal retirement age does not apply to all employees.

Example 3. Plan C is an accumulation plan under which the benefit for each year of service equals one percent of plan year compensation payable in the same form to all employees commencing at the same uniform normal retirement age. Under paragraph (e)(2) of this section, an accumulation plan may substitute plan year compensation for

average annual compensation. Plan C provides a uniform normal retirement benefit within the meaning of paragraph (b)(2)(i) of this section, because all employees with the same number of years of service at normal retirement age will receive an annual benefit that is treated as the same percentage of average annual compensation.

Example 4. The facts are the same as in *Example 3*, except that the benefit for each year of service equals one percent of plan year compensation increased by reference to the increase in the cost of living from the year of service to normal retirement age. Plan C does not provide a uniform normal retirement benefit, because the annual benefit defined by the benefit formula can vary for employees with the same number of years of service at normal retirement age, depending on the age at which those years of service were credited to the employee under the plan.

Example 5. Plan D provides a normal retirement benefit of 50 percent of average annual compensation at normal retirement age (age 65) for employees with 30 years of service at normal retirement age. Plan D provides that, in the case of an employee with less than 30 years of service at normal retirement age, the normal retirement benefit is reduced on a pro rata basis for each year of service less than 30. However, if an employee with less than 30 years of service at normal retirement age continues to work past normal retirement age, Plan D provides that the additional years of service worked past normal retirement age are taken into account for purposes of the 30 years of service requirement. Thus, an employee who has 26 years of service at age 65 but who does not retire until age 69 with 30 years of service will receive a benefit of 50 percent of average annual compensation. Plan D provides uniform post-normal retirement benefits within the meaning of paragraph (b)(2)(ii) of this section.

Example 6. (a) Plan E is amended on February 14, 1994, to provide an early retirement window benefit that consists of an unreduced early retirement benefit to employees who terminate employment after attainment of age 55 with 10 years of service and between June 1, 1994, and November 30, 1994. The early retirement window benefit is a single subsidized optional form of benefit. Paragraph (b)(2)(iii) of this section requires that the subsidized optional form of benefit be currently available (within the meaning of § 1.401(a)(4)–4(b)(2)) to substantially all employees. Section 1.401(a)(4)–4(b)(2)(ii)(A)(*2*) provides that age and service requirements are not disregarded in determining the current availability of an optional form of benefit if those requirements must be satisfied within a specified period of time. Thus, the early retirement window benefit is not currently available to an employee unless the employee will satisfy the eligibility requirements for the early retirement window benefit by the close of the early retirement window benefit period. Plan E will fail to satisfy paragraph (b)(2)(iii) of this section unless substantially all of the employees satisfy the eligibility requirements for the early retirement window benefit by November 30, 1994. However, see § 1.401(a)(4)–9(c)(6), *Example 2*, for an example of how a plan with an early retirement window benefit may be restructured into two component plans, each of which satisfies the safe harbors of this paragraph (b).

(b) A similar analysis would apply if, instead of an unreduced early retirement benefit, the early retirement window benefit consisted of a special schedule of early retirement factors, defined by starting with the plan's usual schedule and then treating each employee eligible for the early retirement window benefit as being five years older than the employee actually is, but not older than the employee's normal retirement age.

Example 7. Plan F generally provides a normal retirement benefit of 1.5 percent of an employee's average annual compensation multiplied by the employee's years of service with the employer. For employees transferred outside of the group of employees covered by the plan, the plan's benefit formula takes into account only years of service prior to the transfer, but determines average annual compensation taking into account section 414(s) compensation both before and after the transfer. Plan F does not satisfy the requirements of paragraph (b)(2)(v) of this section with respect to transferred employees, because their benefits are accrued over years of service (i.e., after transfer) that are not taken into account in applying the plan's benefit formula to them. However, see *Example 2* of paragraph (b)(6)(x)(B) of this section for an example of how a plan that continues to take transferred employees' section 414(s) compensation into account after their transfer may still satisfy this paragraph (b).

(3) *Safe harbor for unit credit plans*—(i) *General rule.* A plan satisfies the safe harbor in this paragraph (b)(3) for a plan year if it satisfies both of the following requirements:

(A) The plan must satisfy the 133⅓ percent accrual rule of section 411(b)(1)(B).

(B) Each employee's accrued benefit under the plan as of any plan year must be determined by applying the plan's benefit formula to the employee's years of service and (if applicable) average annual compensation, both determined as of that plan year.

(ii) *Example.* The following example illustrates the rules in this paragraph (b)(3):

Example. Plan A provides that the accrued benefit of each employee as of any plan year equals the employee's average annual compensation times a percentage that depends on the employee's years of service determined as of that plan year. The percentage is 2 percent for each of the first 10 years of service, plus 1.5 percent for each of the next 10 years of service, plus 2 percent for all additional years of service. Plan A satisfies this paragraph (b)(3).

(4) *Safe harbor for plans using fractional accrual rule*—(i) *General rule.* A plan satisfies the safe harbor in this paragraph (b)(4) for a plan year if it satisfies each of the following requirements:

(A) The plan must satisfy the fractional accrual rule of section 411(b)(1)(C).

(B) Each employee's accrued benefit under the plan as of any plan year before the employee reaches normal retirement age must be determined by multiplying the employee's fractional rule benefit (within the meaning of § 1.411(b)–1(b)(3)(ii)(A)) by a fraction, the numerator of which is the employee's years of service determined as of the plan year, and the denominator of which is the employee's projected years of service as of normal retirement age.

(C) The plan must satisfy one of the following requirements:

(*1*) Under the plan, it must be impossible for any employee to accrue in a plan year a portion of the normal retirement benefit described in paragraph (b)(2)(i) of this section that is more than one-third larger than the portion of the same benefit accrued in that or any other plan year by any other employee, when each portion of the benefit is expressed as a percentage of each employee's average annual compensation or as a dollar amount. In making this determination, actual and potential employees in the plan with any amount of service at normal retirement must be taken into account (other than employees with more than 33 years of service at normal retirement age). In addition, in the case of a plan that satisfies section 401(l) in form, an employee is treated as accruing benefits at a rate equal to the excess benefit percentage in the case of a defined benefit excess plan or at a rate equal to the gross benefit percentage in the case of an offset plan.

(*2*) The normal retirement benefit under the plan must be a flat benefit that requires a minimum of 25 years of service at normal retirement age for an employee to receive the unreduced flat benefit, determined without regard to section 415. For this purpose, a flat benefit is a benefit that is the same percentage of average annual compensation or the same dollar amount for all employees who have a minimum number of years of service at normal retirement age (e.g., 50 percent of average annual compensation), with a pro rata reduction in the flat benefit for employees who have less than the minimum number of years of service at normal retirement age. An employee is permitted to accrue the maximum benefit permitted under section 415 over a period of less than 25 years, provided that the flat benefit under the

plan, determined without regard to section 415, can accrue over no less than 25 years.

(*3*) The plan must satisfy the requirements of paragraph (b)(4)(i)(C)(*2*) of this section (other than the requirement that the minimum number of years of service for receiving the unreduced flat benefit is at least 25 years), and, for the plan year, the average of the normal accrual rates for all nonhighly compensated nonexcludable employees must be at least 70 percent of the average of the normal accrual rates for all highly compensated nonexcludable employees. The averages in the preceding sentence are determined taking into account all nonexcludable employees (regardless of whether they benefit under the plan). In addition, contributions and benefits under other plans of the employer are disregarded. For purposes of this paragraph (b)(4)(i)(C)(*3*), normal accrual rates are determined under paragraph (d) of this section.

(ii) *Examples.* The following examples illustrate the rules in this paragraph (b)(4). In each example, it is assumed that the plan has never permitted employee contributions.

Example 1. Plan A provides a normal retirement benefit equal to 1.6 percent of average annual compensation times each year of service up to 25. Plan A further provides that an employee's accrued benefit as of any plan year equals the employee's fractional rule benefit multiplied by a fraction, the numerator of which is the employee's years of service as of the plan year, and the denominator of which is the employee's projected years of service as of normal retirement age. The greatest benefit that an employee could accrue in any plan year is 1.6 percent of average annual compensation (this is the case for an employee with 25 or fewer years of projected service at normal retirement age). Among potential employees with 33 or fewer years of projected service at normal retirement age, the lowest benefit that an employee could accrue in any plan year is 1.212 percent of average annual compensation (this is the case for an employee with 33 years of projected service at normal retirement age). Plan A satisfies paragraph (b)(4)(i)(C)(*1*) of this section because 1.6 percent is not more than one third larger than 1.212 percent.

Example 2. Plan B provides a normal retirement benefit equal to 1.0 percent of average annual compensation up to the integration level, and 1.6 percent of average annual compensation above the integration level, times each year of service up to 35. Plan B further provides that an employee's accrued benefit as of any plan year equals the employee's fractional rule benefit multiplied by a fraction, the numerator of which is the employee's years of service as of the plan year and the denominator of which is the employee's projected years of service as of normal retirement age. For purposes of satisfying the one third larger rule in paragraph (b)(4)(i)(C)(*1*) of this section, because Plan B satisfies section 401(l) in form, all employees with less than 35 projected years of service are assumed to accrue benefits at the rate of 1.6 percent of average annual compensation (the excess benefit percentage under the plan). Plan B satisfies paragraph (b)(4)(i)(C) of this section because all employees with 33 or fewer years of projected service at normal retirement age accrue in each plan year a benefit of 1.6 percent of average annual compensation.

Example 3. Plan C provides a normal retirement benefit equal to four percent of average annual compensation times each year of service up to 10 and one percent of average annual compensation times each year of service in excess of 10 and not in excess of 30. Plan C further provides that an employee's accrued benefit as of any plan year equals the employee's fractional rule benefit multiplied by a fraction, the numerator of which is the employee's years of service as of the plan year, and the denominator of which is the employee's projected years of service as of normal retirement age. The greatest benefit that an employee could accrue in any plan year is four percent of average annual compensation (this is the case for an employee with 10 or fewer years of projected service at normal retirement age). Among employees with 33 or fewer years of projected service at normal retirement age, the lowest benefit that an employee could accrue in a plan year is 1.82 percent of average annual compensation (this is the case of an employee with 33 years of projected service at normal retirement age). Plan C fails to satisfy this paragraph (b)(4) because four percent is more than one third larger than 1.82 percent. See also § 1.401(a)(4)–9(c)(6), *Example 3.*

Example 4. Plan D provides a normal retirement benefit of 100 percent of average annual compensation, reduced by four percentage points for each year of service below 25 the employee has at normal retirement age. Plan D further provides that an employee's accrued benefit as of any plan year is equal to the employee's fractional rule benefit multiplied by a fraction, the numerator of which is the employee's years of service as of the plan year, and the denominator of which is the employee's projected years of service at normal retirement age. In the case of an employee who has five years of service as of the current plan year, and who is projected to have 10 years of service at normal retirement age, the employee's fractional rule benefit would be 40 percent of average annual compensation, and the employee's accrued benefit as of the current plan year would be 20 percent of average annual compensation (the fractional rule benefit multiplied by a fraction of five years over 10 years). Plan D satisfies this paragraph (b)(4).

Example 5. The facts are the same as in *Example 4*, except that the normal retirement benefit is 125 percent of average annual compensation, reduced by five percentage points for each year of service below 25 that the employee has at normal retirement age. Plan D satisfies this paragraph (b)(4), even though an employee may accrue the maximum benefit allowed under section 415 (i.e., 100 percent of the participant's average compensation for the high three years of service) in less than 25 years.

Example 6. The facts are the same as in *Example 1*, except that the plan determines each employee's accrued benefit by multiplying the employee's projected normal retirement benefit (rather than the fractional rule benefit) by the fraction described in *Example 1*. In determining an employee's projected normal retirement benefit, the plan defines each employee's average annual compensation as the average annual compensation the employee would have at normal retirement age if the employee's annual section 414(s) compensation in future plan years equaled the employee's plan year compensation for the prior plan year. Under these facts, Plan A does not satisfy paragraph (b)(4)(i)(B) of this section because the employee's accrued benefit is determined on the basis of a projected normal retirement benefit that is not the same as the employee's fractional rule benefit determined in accordance with § 1.411(b)–1(b)(3)(ii)(A).

Example 7. Plan E provides a normal retirement benefit of 50 percent of average annual compensation, with a pro rata reduction for employees with less than 30 years of service at normal retirement age. Plan E further provides that an employee's accrued benefit as of any plan year is equal to the employee's fractional rule benefit multiplied by a fraction, the numerator of which is the employee's years of service as of the plan year, and the denominator of which is the employee's projected years of service at normal retirement age. For purposes of determining this fraction, the plan limits the years of service taken into account for an employee to the number of years the employee has participated in the plan. However, all years of service (including years of service before the employee commenced participation in the plan) are taken into account in determining an employee's normal retirement benefit under the plan's benefit formula. Plan E fails to satisfy this paragraph (b)(4) because the years of service over which benefits accrue differ from the years of service used in applying the benefit formula under the plan. See paragraph (b)(2)(v) of this section.

Example 8. (a) Plan F provides a normal retirement benefit equal to 2.0 percent of average annual compensation, plus 0.65 percent of average annual compensation above covered compensation, for each year of service up to 25. Plan F further provides that an employee's accrued benefit as of any plan year equals the sum of—

(1) The employee's fractional rule benefit (determined as if the normal retirement benefit under the plan equaled 2.0 percent of average annual compensation for each year of service up to 25) multiplied by a fraction, the numerator of which is the employee's years of service as of the plan year and the denominator of which is the employee's projected years of service as of normal retirement age; plus

(2) 0.65 percent of the employee's average annual compensation above covered compensation multiplied by the employee's years of service (up to 25) as of the current plan year.

(b) Although Plan F satisfies the fractional accrual rule of section 411(b)(1)(C), the plan fails to satisfy this paragraph (b)(4) because the plan does not determine employees' accrued benefits in accordance with paragraph (b)(4)(i)(B) of this section.

(5) *Safe harbor for insurance contract plans.* A plan satisfies the safe harbor in this paragraph (b)(5) if it satisfies each of the following requirements:

(i) The plan must satisfy the accrual rule of section 411(b)(1)(F).

(ii) The plan must be an insurance contract plan within the meaning of section 412(i).

(iii) The benefit formula under the plan must be one that would satisfy the requirements of paragraph (b)(4) of this section if the stated normal retirement benefit under the formula accrued ratably over each employee's period of plan participation through normal retirement age in accordance with paragraph (b)(4)(i)(B) of this section. Thus, the benefit formula may not recognize years of service before an employee commenced participation in the plan because, otherwise, the definition of years of service for determining the normal retirement benefit would differ from the definition of years of service for determining the accrued benefit under paragraph (b)(4)(i)(B) of this section. See paragraph (b)(4)(ii), *Example 7*, of this section. Notwithstanding the foregoing, an insurance contract plan adopted and in effect on September 19, 1991, may continue to recognize years of service prior to an employee's participation in the plan for an employee who is a participant in the plan on that date to the extent provided by the benefit formula in the plan on such date.

(iv) The scheduled premium payments under an individual or group insurance contract used to fund an employee's normal retirement benefit must be level annual payments to normal retirement age. Thus, payments may not be scheduled to cease before normal retirement age.

(v) The premium payments for an employee who continues benefiting after normal retirement age must be equal to the amount necessary to fund additional benefits that accrue under the plan's benefit formula for the plan year.

(vi) Experience gains, dividends, forfeitures, and similar items must be used solely to reduce future premiums.

(vii) All benefits must be funded through contracts of the same series. Among other requirements, contracts of the same series must have cash values based on the same terms (including interest and mortality assumptions) and the same conversion rights. A plan does not fail to satisfy this requirement, however, if any change in the contract series or insurer applies on the same terms to all employees. But see § 1.401(a)(4)–5(a)(4), *Example 12* (change in insurer considered a plan amendment subject to § 1.401(a)(4)–5(a)).

(viii) If permitted disparity is taken into account, the normal retirement benefit stated under the plan's benefit formula must satisfy § 1.401(l)–3. For this purpose, the 0.75-percent factor in the maximum excess or offset allowance in § 1.401(l)–3(b)(2)(i) or (b)(3)(i), respectively, adjusted in accordance with § 1.401(l)–3(d)(9) and (e), is reduced by multiplying the factor by 0.80.

(6) *Use of safe harbors not precluded by certain plan provisions*—(i) *In general.* A plan does not fail to satisfy this paragraph (b) merely because the plan contains one or more of the provisions described in this paragraph (b)(6). Unless otherwise provided, any such provision must apply uniformly to all employees.

(ii) *Section 401(l) permitted disparity.* The plan takes permitted disparity into account in a manner that satisfies section 401(l) in form. Thus, differences in employees' benefits under the plan attributable to uniform disparities permitted under § 1.401(l)–3 (including differences in disparities that are deemed uniform under § 1.401(l)–3(c)(2)) do not cause a plan to fail to satisfy this paragraph (b).

(iii) *Different entry dates.* The plan provides one or more entry dates during the plan year as permitted by section 410(a)(4).

(iv) *Certain conditions on accruals.* The plan provides that an employee's accrual for the plan year is less than a full accrual (including a zero accrual) because of a plan provision permitted by the year-of-participation rules of section 411(b)(4).

(v) *Certain limits on accruals.* The plan limits benefits otherwise provided under the benefit formula or accrual method to a maximum dollar amount or to a maximum percentage of average annual compensation (e.g., by limiting service taken into account in the benefit formula) or in accordance with section 401(a)(5)(D), applies the limits of section 415, or limits the dollar amount of compensation taken into account in determining benefits.

(vi) *Dollar accrual per uniform unit of service.* The plan determines accruals based on the same dollar amount for each uniform unit of service (not to exceed one week) performed by each employee with the same number of years of service under the plan during the plan year. The preceding sentence applies solely for purposes of the unit credit safe harbor in paragraph (b)(3) of this section.

(vii) *Prior benefits accrued under a different formula.* The plan determines benefits for years of service after a fresh-start date for all employees under a benefit formula and accrual method that differ from the benefit formula and accrual method previously used to determine benefit accruals for employees in a fresh-start group for years of service before the fresh-start date. This paragraph (b)(6)(vii) applies solely to plans that satisfy § 1.401(a)(4)–13(c) with respect to the fresh start.

(viii) *Employee contributions.* The plan is a contributory DB plan that would satisfy the requirements of paragraph (b) of this section if the plan's benefit formula provided benefits at employees' employer-provided benefit rates determined under § 1.401(a)(4)–6(b). This paragraph (b)(6)(viii) does not apply to a plan tested under paragraph (b)(4) or (b)(5) of this section unless the plan satisfies one of the methods in § 1.401(a)(4)–6 (b)(4) through (b)(6). A minimum benefit added to the plan solely to satisfy § 1.401(a)(4)–6(b)(3) is not taken into account in determining whether this paragraph (b)(6)(viii) is satisfied.

(ix) *Certain subsidized optional forms.* The plan provides a subsidized optional form of benefit that is available to fewer than substantially all employees because the optional form of benefit has been eliminated prospectively as provided in § 1.401(a)(4)–4(b)(3).

(x) *Lower benefits for HCEs*—(A) *General rule.* The benefits (including any subsidized optional form of benefit) provided to one or more HCEs under the plan are inherently less valuable to those HCEs (determined by applying the principles of § 1.401(a)(4)–4(d)(3)) than the benefits that would otherwise be provided to those HCEs if the plan satisfied this paragraph (b) (determined without regard to this paragraph (b)(6)(x)). These inherently less valuable benefits are deemed to satisfy this paragraph (b).

(B) *Examples.* The following examples illustrate the rules in this paragraph (b)(6)(x):

Example 1. Plan A would satisfy this paragraph (b) (determined without regard to this paragraph (b)(6)(x)), except for the fact that it fails to satisfy the requirement of paragraph (b)(2)(iii) of this section (i.e., a subsidized optional form must be available to substantially all employees on similar terms). Each subsidized optional form in the plan is available to all the NHCEs on similar terms, but one of the subsidized optional forms of benefit is not available to any of the HCEs. Plan A satisfies this paragraph (b), because

Plan A is a safe harbor plan with respect to the NHCEs and provides inherently less valuable benefits to the HCEs.

Example 2. (a) Plan B would satisfy this paragraph (b) (determined without regard to this paragraph (b)(6)(x)), except for the fact that some employees are not being credited with years of service under the plan, but are continuing to accrue benefits as a result of compensation increases. These are employees who have been transferred from the employer that sponsors Plan B to another member of the controlled group whose employees are not covered by Plan B. For these employees, Plan B fails to satisfy the requirement of paragraph (b)(2)(v) of this section (i.e., each employee's benefit must accrue over the same years of service used in applying the benefit formula).

(b) Plan B is restructured into two component plans under the provisions of § 1.401(a)(4)–9(c). One component plan (Component Plan B1) consists of all NHCEs who are not being credited with years of service under the plan's benefit formula but are continuing to accrue benefits as a result of compensation increases, and the other component plan (Component Plan B2) consists of the balance of the employees.

(c) Component Plan B1 satisfies this section and section 410(b), because it benefits only NHCEs.

(d) Component Plan B2 is treated as satisfying this paragraph (b), because Plan B would satisfy this paragraph (b) (determined without regard to this paragraph (b)(6)(x)) with respect to the employees in Component Plan B2 but for the fact that it provides inherently less valuable benefits to some HCEs in that component plan (i.e., the employees who are credited only with compensation increases rather than both years of service and compensation increases).

(e) Under § 1.401(a)(4)–9(c), if Component Plan B2 satisfies section 410(b), then Plan B satisfies this section.

(xi) *Multiple formulas*—(A) *General rule.* The plan provides that an employee's benefit under the plan is the greater of the benefits determined under two or more formulas, or is the sum of the benefits determined under two or more formulas. This paragraph (b)(6)(xi) does not apply to a plan unless each of the formulas under the plan satisfies the requirements of paragraph (b)(6)(xi) (B) through (D) of this section.

(B) *Sole formulas.* The formulas must be the only formulas under the plan.

(C) *Separate testing.* Each of the formulas must separately satisfy the uniformity requirements of paragraph (b)(2) of this section and also separately satisfy one of the safe harbors in paragraphs (b)(3) through (b)(5) of this section. A formula that is available solely to some or all NHCEs is deemed to satisfy this paragraph (b)(6)(xi)(C).

(D) *Availability*—(*1*) *General rule.* All of the formulas must be available on the same terms to all employees.

(*2*) *Formulas for NHCEs.* A formula does not fail to be available on the same terms to all employees merely because the formula is not available to any HCEs, but is available to some or all NHCEs on the same terms as all of the other formulas in the plan.

(*3*) *Top-heavy formulas.* Rules parallel to those in § 1.401(a)(4)–2(b)(4)(vi)(D)(*3*) apply in the case of a plan that provides the greater of the benefits under two or more formulas, one of which is a top-heavy formula. For purposes of this paragraph (b)(6)(xi)(D)(*3*), a top-heavy formula is a formula that provides a benefit equal to the minimum benefit described in section 416(c)(1) (taking into account, if applicable, the modification in section 416(h)(2)(A)(ii)(I)).

(E) *Provisions may be applied more than once.* The provisions of this paragraph (b)(6)(xi) may be applied more than once. See § 1.401(a)(4)–2(b)(4)(vi)(E) for an example of the application of these provisions more than once.

(F) *Examples.* The following examples illustrate the rules in this paragraph (b)(6)(xi):

Example 1. Under Plan A, each employee's benefit equals the sum of the benefits determined under two formulas. The first formula provides one percent of average annual compensation per year of service. The second formula provides $10 per year of service. Plan A is eligible to apply the rules in this paragraph (b)(6)(xi).

Example 2. Under Plan B, each employee's benefit equals the greater of the benefits determined under two formulas. The first formula provides $15 per year of service and is available to all employees who complete at least 500 hours of service during the plan year. The second formula provides 1.5 percent of average annual compensation per year of service and is available to all employees who complete at least 1,000 hours of service during the plan year. Plan B does not satisfy this paragraph (b)(6)(xi) because the two formulas are not available on the same terms to all employees.

Example 3. Under Plan C, each employee's benefit equals the greater of the benefits determined under two formulas. The first formula provides $15 per year of service and is available to all employees who complete at least 1,000 hours of service during the plan year. The second formula provides the minimum benefit described in section 416(c)(1) and is available to all non-key employees who complete at least 1,000 hours of service during the plan year. Plan C does not satisfy the general rule in paragraph (b)(6)(xi)(D)(*1*) of this section because the two formulas are not available on the same terms to all employees (i.e., the second formula is only available to all non-key employees). Nonetheless, because the second formula is a top-heavy formula, the special availability rules for top-heavy formulas in paragraph (b)(6)(xi)(D)(*3*) of this section apply. Thus, the second formula does not fail to be available on the same terms as the first formula merely because the second formula is available solely to all non-key employees on the same terms. This is true even if the plan conditions the availability of the second formula on the plan's being top-heavy for the plan year.

Example 4. Under Plan D, each employee's benefit equals the greater of the benefits determined under two formulas. The first formula is available to all employees and provides a benefit equal to 1.5 percent of average annual compensation per year of service. The second formula is only available to NHCEs and provides a benefit equal to two percent of average annual compensation per year of service, minus two percent of the primary insurance amount per year of service. The amount of the offset is not limited to the maximum permitted offset under § 1.401(l)–3(b). Under paragraph (b)(6)(xi)(D)(*2*) of this section, both formulas are treated as available to all employees on the same terms. Furthermore, even though the second formula does not satisfy any of the safe harbors in this paragraph (b), the formula is deemed to satisfy the separate testing requirement under paragraph (b)(6)(xi)(C) of this section, because the formula is available solely to some or all NHCEs.

Example 5. Plan E is a unit credit plan that provides a benefit of one percent of average annual compensation per year of service to all employees. In 1994, the plan is amended to provide a benefit of two percent of average annual compensation per year of service after 1993, while continuing to provide a benefit of one percent of average annual compensation per year of service for all years of service before 1994. Thus, the plan's amended benefit formula provides a benefit equal to the sum of the benefits determined under two benefit formulas: one percent of average annual compensation per year of service, plus one percent of average annual compensation per year of service after 1993. Plan E satisfies this paragraph (b)(6)(xi).

Example 6. The facts are the same as in *Example 5*, except that the plan amendment in 1994 decreases the benefit to 0.75 percent of average annual compensation per year of service after 1993, while retaining the one-percent formula for all years of service before 1994. Thus, the plan's amended benefit formula provides a benefit equal to the sum of the benefits determined under two benefit formulas: 0.75 percent of average annual compensation per year of service, plus 0.25 percent of average annual compensation per year of service before 1994. Under these facts, the second formula does not separately satisfy any of the safe harbors in this paragraph (b) because the years of service over which each employee's benefit accrues under the second formula (i.e., all years of service) are not the same years of service that are taken into account in applying the benefit formula under the plan to that employee (i.e., years of service before 1994). See paragraph (b)(2)(v) of this section. But see paragraph (b)(6)(vii) of this section and § 1.401(a)(4)–13, which provide rules under which Plan E, as amended, may be able to satisfy this paragraph (b).

Example 7. Plan F provides a benefit to all employees of one percent of average annual compensation per year of service. Employee

M was hired as the president of the employer in December 1994 and was not a HCE under section 414(q) during the 1994 calendar plan year. In 1994, Plan F is amended to provide a benefit that is the greater of the benefit determined under the pre-existing formula in the plan and a new formula that is available solely to some NHCEs (including Employee M). The new formula does not satisfy the uniformity requirements of paragraph (b)(2) of this section, because it provides a different benefit for some NHCEs than for other NHCEs. As a result of this change, Employee M receives a higher accrual in 1994 than the NHCEs who are not eligible for the new formula. In 1995, when Employee M first becomes a HCE, the second formula no longer applies to Employee M. It would be inconsistent with the purpose of preventing discrimination in favor of HCEs for Plan F to use the special rule for a formula that is available solely to some or all NHCEs to satisfy the separate testing requirement of paragraph (b)(6)(xi)(C) of this section for the 1994 calendar plan year. See § 1.401(a)(4)–1(c)(2).

(c) *General test for nondiscrimination in amount of benefits*—(1) *General rule.* The employer-provided benefits under a defined benefit plan are nondiscriminatory in amount for a plan year if each rate group under the plan satisfies section 410(b). For purposes of this paragraph (c)(1), a rate group exists under a plan for each HCE and consists of the HCE and all other employees (both HCEs and NHCEs) who have a normal accrual rate greater than or equal to the HCE's normal accrual rate, and who also have a most valuable accrual rate greater than or equal to the HCE's most valuable accrual rate. Thus, an employee is in the rate group for each HCE who has a normal accrual rate less than or equal to the employee's normal accrual rate, and who also has a most valuable accrual rate less than or equal to the employee's most valuable accrual rate.

(2) *Satisfaction of section 410(b) by a rate group.* For purposes of determining whether a rate group satisfies section 410(b), the same rules apply as in § 1.401(a)(4)–2(c)(3). See paragraph (c)(4) of this section and § 1.401(a)(4)–2(c)(4), *Example 3* through *Example 5*, for examples of this rule.

(3) *Certain violations disregarded.* A plan is deemed to satisfy paragraph (c)(1) of this section if the plan would satisfy that paragraph by treating as not benefiting no more than five percent of the HCEs in the plan, and the Commissioner determines that, on the basis of all of the relevant facts and circumstances, the plan does not discriminate with respect to the amount of employer-provided benefits. For this purpose, five percent of the number of HCEs may be determined by rounding to the nearest whole number (e.g., 1.4 rounds to 1 and 1.5 rounds to 2). Among the relevant factors that the Commissioner may consider in making this determination are—

(i) The extent to which the plan has failed the test in paragraph (c)(1) of this section;

(ii) The extent to which the failure is for reasons other than the design of the plan;

(iii) Whether the HCEs causing the failure are five-percent owners or are among the highest paid nonexcludable employees;

(iv) Whether the failure is attributable to an event that is not expected to recur (e.g., a plant closing); and

(v) The extent to which the failure is attributable to benefits accrued under a prior benefit structure or to benefits accrued when a participant was not a HCE.

(4) *Examples.* The following examples illustrate the rules in this paragraph (c):

Example 1. (a) Employer X has 1100 nonexcludable employees, N1 through N1000, who are NHCEs, and H1 through H100, who are HCEs. Employer X maintains Plan A, a defined benefit plan that benefits all of these nonexcludable employees. The normal and most valuable accrual rates (determined as a percentage of average annual compensation) for the employees in Plan A for the 1994 plan year are listed in the following table.

Employee	Normal accrual rate	Most valuable accrual rate
N1 through N100	1.0	1.4
N101 through N500	1.5	3.0
N501 through N750	2.0	2.65
N751 through N1000	2.3	2.8
H1 through H50	1.5	2.0
H51 through H100 ..	2.0	2.65

(b) There are 100 rate groups in Plan A because there are 100 HCEs in Plan A.

(c) Rate group 1 consists of H1 and all those employees who have a normal accrual rate greater than or equal to H1's normal accrual rate (1.5 percent) and who also have a most valuable accrual rate greater than or equal to H1's most valuable accrual rate (2.0 percent). Thus, rate group 1 consists of H1 through H100 and N101 through N1000.

(d) Rate group 1 satisfies the ratio percentage test of § 1.410(b)–2(b)(2) because the ratio percentage of the rate group is 90 percent, i.e., 90 percent (the percentage of all nonhighly compensated nonexcludable employees who are in the rate group) divided by 100 percent (the percentage of all highly compensated nonexcludable employees who are in the rate group).

(e) Because H1 through H50 have the same normal accrual rates and the same most valuable accrual rates, the rate group with respect to each of them is identical. Thus, because rate group 1 satisfies section 410(b), rate groups 2 through 50 also satisfy section 410(b).

(f) Rate group 51 consists of H51 and all those employees who have a normal accrual rate greater than or equal to H51's normal accrual rate (2.0 percent) and who also have a most valuable accrual rate greater than or equal to H51's most valuable accrual rate (2.65 percent). Thus, rate group 51 consists of H51 through H100 and N501 through N1000. (Even though N101 through N500 have a most valuable accrual rate (3.0 percent) greater than H51's most valuable accrual rate (2.65 percent), they are not included in this rate group because their normal accrual rate (1.5 percent) is less than H51's normal accrual rate (2.0 percent).)

(g) Rate group 51 satisfies the ratio percentage test of § 1.410(b)–2(b)(2) because the ratio percentage of the rate group is 100 percent, i.e., 50 percent (the percentage of all nonhighly compensated nonexcludable employees who are in the rate group) divided by 50 percent (the percentage of all highly compensated nonexcludable employees who are in the rate group).

(h) Because H51 through H100 have the same normal accrual rates and the same most valuable accrual rates, the rate group with respect to each of them is identical. Thus, because rate group 51 satisfies section 410(b), rate groups 52 through 100 also satisfy section 410(b).

(i) The employer-provided benefits under Plan A are nondiscriminatory in amount because each rate group under the plan satisfies section 410(b).

Example 2. The facts are the same as in *Example 1*, except that H96 has a most valuable accrual rate of 3.5. Each of the rate groups is the same as in *Example 1*, except that rate group 96 consists solely of H96 because no other employee has a most valuable accrual rate greater than 3.5. Because the plan would satisfy the test in paragraph (c)(1) of this section by treating H96 (who constitutes less than five percent of the HCEs in the plan) as not benefiting, the Commissioner may determine under paragraph (c)(3) of this section that, on the basis of all of the relevant facts and circumstances, the plan does not discriminate with respect to the amount of benefits.

(d) *Determination of accrual rates*—(1) *Definitions*—(i) *Normal accrual rate.* The normal accrual rate for an employee for a plan year is the increase in the employee's accrued benefit (within the meaning of section 411(a)(7)(A)(i)) during the measurement period, divided by the employee's testing service during the measurement period, and expressed either as a dollar amount or as a percentage of the employee's average annual compensation.

(ii) *Most valuable accrual rate.* The most valuable accrual rate for an employee for a plan year is the increase in the employee's most valuable optional form of payment of the accrued benefit during the measurement period, divided by the employee's testing service during the measurement period, and expressed either as a dollar amount

or as a percentage of the employee's average annual compensation. The employee's most valuable optional form of payment of the accrued benefit is determined by calculating for the employee the normalized QJSA associated with the accrued benefit that is potentially payable in the current or any future plan year at any age under the plan and selecting the largest (per year of testing service). If the plan provides a QSUPP, the most valuable accrual rate also takes into account the QSUPP payable in conjunction with the QJSA at each age under the plan. Thus, the most valuable accrual rate reflects the value of all benefits accrued or treated as accrued under section 411(d)(6) that are payable in any form and at any time under the plan, including early retirement benefits, retirement-type subsidies, early retirement window benefits, and QSUPPs. In addition, the most valuable accrual rate must take into account any such benefits that are available during a plan year, even if the benefits cease to be available before the end of the current or any future plan year.

(iii) *Measurement period.* The measurement period can be—

(A) The current plan year;

(B) The current plan year and all prior years; or

(C) The current plan year and all prior and future years.

(iv) *Testing service*—(A) *General rule.* Testing service means an employee's years of service as defined in the plan for purposes of applying the benefit formula under the plan, subject to the requirements of paragraph (d)(1)(iv)(B) of this section. Alternatively, testing service means service determined for all employees in a reasonable manner that satisfies the requirements of paragraph (d)(1)(iv)(B) of this section. For example, the number of plan years that an employee has benefited under the plan within the meaning of § 1.410(b)–3(a) is an acceptable definition of testing service because it determines service in a reasonable manner and satisfies paragraph (d)(1)(iv)(B) of this section. See also § 1.401(a)(4)–11(d)(3) (additional limits on service that may be taken into account as testing service).

(B) *Requirements for testing service*—(1) *Employees not credited with years of service under the benefit formula.* An employee must be credited with testing service for any year in which the employee benefits under the plan (within the meaning of § 1.410(b)–3(a)), unless that year is part of a period of service that may not be taken into account under § 1.401(a)(4)–11(d)(3). This rule applies even if the employee does not receive service credit under the benefit formula for that year (e.g., because of a service cap in the benefit formula or because of a transfer out of the group of employees covered by the plan).

(2) *Current year testing service.* In the case of a measurement period that is the current plan year, testing service for the plan year equals one (1).

(2) *Rules of application*—(i) *Consistency requirement.* Both normal and most valuable accrual rates must be determined in a consistent manner for all employees for the plan year. Thus, for example, the same measurement periods must be used, and the rules of this paragraph (d)(2) and any available options described in paragraph (d)(3) of this section must be applied consistently. If plan benefits are not expressed as straight life annuities beginning at employees' testing ages, they must be normalized.

(ii) *Determining plan benefits, service and compensation*—(A) *In general.* Potential plan benefits, testing service, and average annual compensation must be determined in a reasonable manner, reflecting actual or projected service and compensation only through the end of the measurement period. The determination of potential plan benefits is not reasonable if it incorporates an assumption that, in future years, an employee's compensation will increase or the employee will terminate employment before the employee's testing age (other than the assumptions under paragraph (d)(1)(ii) of this section that the employee's service will end in connection with the payment of each potential QJSA in future years).

(B) Section 415 limits. For purposes of determining accrual rates under this paragraph (d), plan benefits are generally determined without regard to whether those benefits are permitted to be paid under section 415. However, plan provisions implementing any of the limits of section 415 may be taken into account in applying this paragraph (d) if the plan does not provide for benefit increases resulting from section 415(d)(1) adjustments for former employees who were employees in a plan year in which such plan provisions were taken into account in applying this paragraph (d). If the limits of section 415 are taken into account under this paragraph (d)(2)(ii)(B) as of the end of the measurement period, they must also be taken into account as of the beginning of the measurement period. If the limits of section 415 are not taken into account in testing the plan for the current plan year, but were taken into account in testing the plan for the preceding plan year, any resulting increase in the accrued benefits taken into account in testing the plan is treated as an increase in accrued benefits during the current plan year.

(iii) *Requirements for measurement period that includes future years*—(A) *Discriminatory pattern of accruals.* A measurement period that includes future years (as described in paragraph (d)(1)(iii)(C) of this section) may not be used if the pattern of accruals under the plan discriminates in favor of HCEs (i.e., if projected benefits for HCEs are relatively frontloaded when compared to the degree of front loading or backloading for NHCEs). This determination is made based on all of the relevant facts and circumstances.

(B) *Future-period limitation.* Future years beginning after an employee's attainment of the employee's testing age (or after the employee's assumed termination in the case of most valuable accrual rates) may not be included in the measurement period.

(3) *Optional rules*—(i) *Imputation of permitted disparity.* The disparity permitted under section 401(l) may be imputed in accordance with the rules of § 1.401(a)(4)–7.

(ii) *Grouping of accrual rates*—(A) *General rule.* An employer may treat all employees who have accrual rates within a specified range above and below a midpoint rate chosen by the employer as having an accrual rate equal to the midpoint rate within that range. Accrual rates within a given range may not be grouped under this paragraph (d)(3)(ii) if the accrual rates of HCEs within the range generally are significantly higher than the accrual rates of NHCEs in the range. The specified ranges within which all employees are treated as having the same accrual rate may not overlap and may be no larger than provided in paragraph (d)(3)(ii)(B) of this section. Accrual rates of employees that are not within any of these specified ranges are determined without regard to this paragraph (d)(3)(ii).

(B) *Size of specified ranges.* In the case of normal accrual rates, the lowest and highest accrual rates in the range must be within five percent (not five percentage points) of the midpoint rate. In the case of most valuable accrual rates, the lowest and highest accrual rates in the range must be within 15 percent (not 15 percentage points) of the midpoint rate. If accrual rates are determined as a percentage of average annual compensation, the lowest and highest accrual rates need not be within five percent (or 15 percent) of the midpoint rate, if they are no more than one twentieth of a percentage point above or below the midpoint rate.

(iii) *Fresh-start alternative*—(A) *General rule.* Notwithstanding the definition of measurement period provided in paragraph (d)(1)(iii) of this section, a measurement period for a fresh-start group is permitted to be limited to the period beginning after the fresh-start date with respect to that group if the plan makes a fresh start that satisfies § 1.401(a)(4)–13(c) (without regard to § 1.401(a)(4)–13(c)(2)(i) and (ii)). If the measurement period is so limited or the measurement period is the plan year (whether or not so limited), any compensation adjustments during the measurement period to the frozen accrued benefit as of the fresh-start date that are permitted under the rules of § 1.401(a)(4)–13(d) may be disregarded in determining the increase in accrued benefits during the measurement period, but only if—

(*1*) The plan makes a fresh start as of the fresh-start date that satisfies § 1.401(a)(4)–13(c) (without regard to § 1.401(a)(4)–13(c)(2)(ii)) in conjunction with a bona fide amendment to the benefit formula or accrual method under the plan; and

(*2*) The amendment provides for adjustments to employees' frozen accrued benefits as of the fresh-start date in accordance with the rules of § 1.401(a)(4)–13(d).

(B) *Application of consistency requirements.* Limiting the application of the fresh-start alternative in this paragraph (d)(3)(iii) to a fresh-start group that consists of fewer than all employees does not violate the consistency requirement of paragraph (d)(2)(i) of this section.

(iv) *Floor on most valuable accrual rate.* In lieu of determining an employee's most valuable accrual rate in accordance with the definition in paragraph (d)(1)(ii) of this section, an employer may determine an employee's most valuable accrual rate for the current plan year as the employee's highest most valuable accrual rate determined for any prior plan year. This option may be used only if the employee's normal accrual rate has not changed significantly from the normal accrual rate for the relevant prior plan year and, there have been no plan amendments in the interim period since that prior plan year that affect the determination of most valuable accrual rates.

(4) *Examples.* The following examples illustrate the rules in this paragraph (d):

Example 1. The employees in Plan A have the following normal accrual rates (expressed as percentage of average annual compensation): 0.8 percent, 0.83 percent, 0.9 percent, 1.9 percent, 2.0 percent, and 2.1 percent. Because the first three rates are within a range of no more than one twentieth of a percentage point above or below 0.85 percent (a midpoint rate chosen by the employer), the employer may treat the employees who have those rates as having an accrual rate of 0.85 percent (provided that the accrual rates of HCEs within the range are not significantly higher than the accrual rates for NHCEs within the range). Because the last three rates are within a range of no more than five percent above or below 2.0 percent (a midpoint rate chosen by the employer), the employer may treat the employees who have those rates as having an accrual rate of 2.0 percent (provided that the accrual rates of HCEs within the range are not significantly higher than the accrual rates for NHCEs within the range).

Example 2. Employer X maintains a plan under which headquarters employees accrue a benefit of 1.25 percent of average compensation for the first 10 years of service and 0.75 percent of average compensation for subsequent years of service, while all other employees accrue a benefit of one percent of compensation for all years of service. Assume that the group of headquarters employees does not satisfy section 410(b). Under these facts, the pattern of accruals under the plan discriminates in favor of HCEs, and, therefore, under paragraph (d)(2)(iii)(A) of this section, the measurement period for determining accrual rates under the plan may not include future service.

(e) *Compensation rules*—(1) *In general.* This paragraph (e) provides rules for determining average annual compensation. Safe harbor plans that satisfy paragraph (b) of this section must determine benefits either as a dollar amount unrelated to employees' compensation or as a percentage of each employee's average annual compensation. In contrast, plans that must satisfy the general test of paragraph (c) of this section are not required under this section to determine benefits under any particular definition of compensation or in any particular manner, but the accrual rates used in testing these plans must be expressed either as a dollar amount or determined as a percentage of each employee's average annual compensation.

(2) *Average annual compensation*—(i) *General rule.* An employee's average annual compensation is the average of the employee's annual section 414(s) compensation determined over the averaging period in the employee's compensation history during which the average of the employee's annual section 414(s) compensation is the highest. For this purpose, an averaging period must consist of three or more consecutive 12-month periods, but need not be longer than the employee's period of employment. An employee's compensation history may begin at any time, but must be continuous, be no shorter than the averaging period, and end in the current plan year.

(ii) *Certain permitted modifications to average annual compensation*—(A) *Use of plan year compensation.* If the measurement period for determination of accrual rates is the current plan year, or the plan is an accumulation plan that satisfies paragraph (b) of this section, then plan year compensation may be substituted for average annual compensation.

(B) *Drop-out years.* Any of the following types of 12-month periods in an employee's compensation history may be disregarded in determining the employee's average annual compensation (including for purposes of the requirement to average section 414(s) compensation over consecutive 12-month periods), but only if the plan disregards the employee's compensation for those periods in determining benefits—

(*1*) The 12-month period in which the employee terminates employment;

(*2*) All 12-month periods in which the employee performs no services; or

(*3*) All 12-month periods in which the employee performs services for less than a specified number of hours or specified period of time in the 12-month period. The specified number of hours or specified period of time may be selected by the employer, but may not exceed three quarters of the time that an employee in the same job category working on a full-time basis would perform services during that 12-month period.

(C) *Drop-out months within 12-month periods.* If a plan determines an employee's average annual compensation using 12-month periods that do not end on a fixed date (e.g., average annual compensation as of a date is defined as the average of the employee's section 414(s) compensation for the 60 consecutive months within the compensation history in which the average is highest), then, for purposes of determining a 12-month period, any of the following type of months may be disregarded (including for purposes of the requirement to average section 414(s) compensation over consecutive 12-month periods), but only if the plan disregards the employee's compensation for those months in determining benefits—

(*1*) The month in which the employee terminates employment;

(*2*) All months in which the employee performs no services; or

(*3*) All months in which the employee performs services for less than a specified number of hours or specified period of time in the month. The specified number of hours or specified period of time may be selected by the employer, but may not exceed three

quarters of the time that an employee in the same job category working on a full-time basis would perform services during that month.

(D) *Employees working less than full-time.* In the case of an employee who normally works less than full-time, the rules in paragraphs (e)(2)(ii)(B)(*3*) and (e)(2)(ii)(C)(*3*) of this section may be applied in relation to that employee's normal work schedule (instead of a full-time employee's work schedule) by prorating the specified number of hours or specified period of time, based on the employee's normal work schedule as a fraction of a full-time schedule.

(E) *Exception from consecutive-periods requirement for certain plans.* The requirement that the periods taken into account under paragraph (e)(2)(i) of this section be consecutive does not apply in the case of a plan that is not a section 401(l) plan, provided that it does not take permitted disparity into account under § 1.401(a)(4)–7. This paragraph (e)(2)(ii)(E) applies only if the plan does not take into account whether 12-month periods of compensation are consecutive in determining average compensation for purposes of calculating benefits.

(iii) *Consistency requirements.* Average annual compensation must be determined in a consistent manner for all employees.

(3) *Examples.* The following examples illustrate the rules in this paragraph (e):

Example 1. Plan A is a defined benefit plan. Plan A determines benefits on the basis of the average of each employee's annual compensation for the five consecutive plan years (or the employee's period of employment, if shorter) during the employee's compensation history in which the average of the employee's annual compensation is the highest. The compensation history used for this purpose is the last 10 plan years, plus the current plan year. In determining compensation for each plan year in the compensation history, Plan A defines compensation using a single definition that satisfies section 414(s) as a safe harbor definition under § 1.414(s)–1(c). Plan A determines benefits on the basis of average annual compensation.

Example 2. Plan B is a defined benefit plan. Plan B determines benefits on the basis of the average of each employee's compensation for the five consecutive 12-month periods (or the employee's period of employment, if shorter) during the employee's compensation history in which the average of the employee's annual compensation is the highest. The compensation history used for this purpose is the 10 consecutive 12-month periods ending on the employee's termination date. In determining the average, Plan B disregards all months in which the employee performs services for less than 100 hours (60 percent of a full-time work schedule of 173 hours). In the case of an employee whose normal work schedule is less than a full-time schedule, Plan B disregards all months in which that employee performs services for less than 60 percent of the employee's normal work schedule. Plan B defines compensation for each 12-month period using a single definition that satisfies § 1.414(s)–1. Plan B determines benefits on the basis of average annual compensation.

Example 3. (a) The facts are the same as in *Example 1*, except that, for plan years prior to 1996, the compensation for a plan year was determined under a rate of pay definition of compensation that satisfies section 414(s), while, for plan years after 1995, the compensation for a plan year is determined using a definition that satisfies section 414(s) as a safe harbor definition under § 1.414(s)–1(c).

(b) The underlying definition of compensation for each plan year in the employee's compensation history is section 414(s) compensation, because for each plan year the definition satisfies the requirements for section 414(s) compensation under § 1.401(a)(4)–12. Therefore, Plan A determines benefits on the basis of average annual compensation, even though the underlying definition used to measure the amount of compensation for each plan year in an employee's compensation history is not the same for all plan years.

Example 4. The facts are the same as in *Example 1*, except that Plan A determines benefits on the basis of the average of the employee's annual section 414(s) compensation for the five consecutive 12-month periods ending on June 30 during the employee's compensation history in which the average is highest. An employee's compensation history begins when the employee commences participation in the plan and ends in the current plan year. In the case of an employee with less than five consecutive years of plan participation as of June 30, the compensation history is extended prior to the employee's commencement of participation to include the five consecutive 12-month periods ending on June 30 of the current plan year (or the employee's total period of employment, if shorter). Plan A determines benefits on the basis of average annual compensation.

Example 5. The facts are the same as in *Example 4*, except that Plan A determines benefits on the basis of the average of each employee's compensation for the employee's entire compensation history. Plan A determines benefits on the basis of average annual compensation.

(f) *Special rules*—(1) *In general.* The special rules in this paragraph (f) apply for purposes of applying the provisions of this section to a defined benefit plan. Any special rule provided in this paragraph (f) that is optional must, if used, apply uniformly to all employees.

(2) *Certain qualified disability benefits.* In general, qualified disability benefits (within the meaning of section 411(a)(9)) are not taken into account under this section. However, a qualified disability benefit that results from the crediting of compensation or service for a period of disability in the same manner as actual compensation or service is credited under a plan's benefit formula is permitted to be taken into account under this section as an accrued benefit upon the employee's return to service with the employer following the period of disability, provided that the qualified disability benefit is then treated in the same manner as an accrued benefit for all purposes under the plan.

(3) *Accruals after normal retirement age*—(i) *General rule.* An employee's accruals for any plan year after the plan year in which the employee attains normal retirement age are taken into account for purposes of this section. However, any plan provision that provides for increases in an employee's accrued benefit solely because the employee has delayed commencing benefits beyond the normal retirement age applicable to the employee under the plan may be disregarded, but only if—

(A) The same uniform normal retirement age applies to all employees; and

(B) The percentage factor used to increase the employee's accrued benefit is no greater than the largest percentage factor that could be applied to increase actuarially the employee's accrued benefit using any standard mortality table and any standard interest rate.

(ii) *Examples.* The following examples illustrate the rules of this paragraph (f)(3). In each example, it is assumed that the plan satisfies the requirements of paragraph (f)(3)(i)(A) and (B) of this section.

Example 1. Plan A provides a benefit of two percent of average annual compensation per year of service for all employees. In addition, Plan A provides an actuarial increase in an employee's accrued benefit of six percent for each year that an employee defers commencement of benefits beyond normal retirement age. For employees who continue in service beyond normal retirement age, the employee's two-percent accrual for the current plan year is offset by the six-percent actuarial increase, as permitted under section 411(b)(1)(H)(iii)(II). For purposes of this section, the actuarial increase (and hence the offset) may be disregarded, and thus all employees may be treated as if they were accruing at the rate of two percent of average annual compensation per year.

Example 2. The facts are the same as in *Example 1*, except that the employee's two-percent accrual for the current plan year is not offset by the six-percent actuarial increase. The employer may disregard the actuarial increase and thus may treat all employees as if they were accruing at the rate of two percent of average annual compensation per year.

(4) *Early retirement window benefits*—(i) *General rule.* In applying the requirements of this section, all early retirement benefits, retirement-type subsidies, QSUPPs, and other optional forms of benefit under a plan, and changes in the plan's benefit formula, are taken into account regardless of whether they are permanent features of the plan or are offered only to employees whose employment terminates within a limited period of time. Additional rules and examples relevant to the testing of early retirement window benefits are found in *Example 6* of paragraph (b)(2)(vi) of this section; paragraph (b)(2)(ii)(A)(2), *Example 2* of paragraph (c)(2), paragraph (d)(3), and *Example 3* of paragraph (e)(1)(iii) of § 1.401(a)(4)–4; paragraph (c)(4)(i) and *Example 2* of paragraph (c)(6) of § 1.401(a)(4)–9; and the definition of benefit formula in § 1.401(a)(4)–12.

(ii) Special rules—(A) *Year in which early retirement window benefit taken into account.* Notwithstanding paragraph (f)(4)(i) of this section, an early retirement window benefit is disregarded for purposes of determining whether a plan satisfies this section with respect to an employee for all plan years other than the first plan year in which the benefit is currently available (within the meaning of § 1.401(a)(4)–4(b)(2)) to the employee. For purposes of this paragraph (f)(4)(ii)(A), in determining which plan years the benefit is currently available, an early retirement window benefit that consists of a temporary change in the plan's benefit formula is treated as an optional form of benefit.

(B) *Treatment of early retirement window benefit that consists of temporary change in benefit formula.* An early retirement window benefit is disregarded for purposes of determining an employee's normal accrual rate, even if the early retirement window benefit consists of a temporary change in a plan's benefit formula. However, if an early retirement window benefit consists of a temporary change in a plan's benefit formula, the plan does not satisfy paragraph (b) of this section during the period for which the change is effective unless the plan satisfies paragraph (b) of this section both reflecting the temporary change in the benefit formula and disregarding that change.

(C) *Effect of early retirement window benefit on most valuable accrual rate.* In determining an employee's most valuable optional form of payment of the accrued benefit (which is used in determining the employee's most valuable accrual rate under paragraphs (d)(1)(ii) and (f)(4)(i) of this section), an early retirement window benefit that is currently available to the employee (within the meaning of paragraph (f)(4)(ii)(A) of this section) and that is not disregarded for a plan year under paragraph (f)(4)(ii)(A) of this section is taken into account in that plan year with respect to the employee's accrued benefit as of the earliest of the employee's date of termination, the close of the early retirement window, or the last day of that plan year.

(D) *Effect of early retirement window benefit on average benefit percentage test.* Notwithstanding paragraph (c)(2) of this section, a rate group under a plan that provides an early retirement window benefit is deemed to satisfy the average benefit percentage test of § 1.410(b)–5 if—

(*1*) All rate groups under the plan would satisfy the ratio percentage test of § 1.410(b)–2(b)(2) if the early retirement window benefit were disregarded; and

(*2*) The group of employees to whom the early retirement window benefit is currently available (within the meaning of paragraph (f)(4)(ii)(A) of this section) satisfies section 410(b) without regard to the average benefit percentage test of § 1.410(b)–5.

(iii) *Early retirement window benefit defined.* For purposes of this paragraph (f)(4), an early retirement window benefit is an early retirement benefit, retirement-type subsidy, QSUPP, or other optional form of benefit under a plan that is available, or a change in the plan's benefit formula that is applicable, only to employees who terminate employment within a limited period specified by the plan (not to exceed one year) under circumstances specified by the plan. A benefit does not fail to be described in the preceding sentence merely because the plan contains provisions under which certain employees may receive the benefit even though, for bona fide business reasons, they terminate employment within a reasonable period after the end of the limited period. An amendment to an early retirement window benefit that merely extends the periods in the preceding sentences is not treated as a separate early retirement window benefit, provided that the periods, as extended, satisfy the preceding sentences. However, any other amendment to an early retirement window benefit creates a separate early retirement window benefit.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (f)(4):

Example 1. (a) Plan A provides a benefit of one percent of average annual compensation per year of service and satisfies the requirements of paragraph (b)(2) of this section. Thus, the plan provides the same benefit to all employees with the same years of service under the Plan. Plan A is amended to treat all employees with ten or more years of service who terminate employment after attainment of age 55 and between March 1, 1999, and January 31, 2000, as if they had an additional five years of service under the benefit formula. However, in order to ensure the orderly implementation of the early retirement window, the plan amendment provides that designated employees in the human resources department who would otherwise be eligible for the early retirement window benefit are eligible to be treated as having the additional five years of service only if they terminate between January 1, 2000, and April 30, 2000.

(b) The additional benefits provided under this amendment are tested as benefits provided to employees rather than former employees. The effect of this amendment is temporarily to change the benefit formula for employees who are eligible for the early retirement window benefit because the amendment changes (albeit temporarily) the amount of the benefit payable to those employees at normal retirement age. See the definition of benefit formula in § 1.401(a)(4)–12. Assume that the additional years of service credited to employees eligible for the window benefit do not represent past service (within the meaning of § 1.401(a)(4)–11(d)(3)(i)(B)) or pre-participation or imputed service (within the meaning of § 1.401(a)(4)–11(d)(3)(ii)(A) or (B), respectively) and thus may not be taken into account as years of service. See § 1.401(a)(4)–11(d)(3)(i)(A) (regarding years of service that may not be taken into account under § 1.401(a)(4)–1(b)(2)). Thus, the window-eligible employees are entitled to a larger benefit (as a percentage of average annual compensation) than other employees with the same number of years of service, and the plan does not satisfy the uniform normal retirement benefit requirement of paragraph (b)(2)(i) of this section.

(c) Plan A is restructured under the provisions of § 1.401(a)(4)–9(c) into two component plans: Component Plan A1, consisting of all employees who are not eligible for the early retirement window benefit and all of their accruals and benefits, rights, and features under the plan, and Component Plan A2, consisting of all employees who are eligible for the early retirement window benefit (including the designated employees in the human resource department) and all of their accruals and benefits, rights, and features under the plan.

(d) Component Plan A1 still satisfies paragraph (b) of this section, because there has been no change for the employees in that component plan. Similarly, Component Plan A2 satisfies paragraph (b) of this section disregarding the change in the benefit formula.

(e) Because the early retirement window benefit consists of a temporary change in the benefit formula, paragraph (f)(4)(ii)(B) of this section requires that the plan satisfy the requirements of paragraph (b) of this section reflecting the change in order to remain a safe

harbor plan. After reflecting the change, Component Plan A2 still provides the same benefit (albeit higher than under the regular benefit formula) to all employees with the same years of service that may be taken into account in testing the plan, and thus the benefit formula (as temporarily amended) satisfies the requirements of paragraphs (b)(2)(i) and (ii) of this section.

(f) Since Component Plan A2 also satisfies all of the other requirements of paragraph (b)(2) of this section and the safe harbor of paragraph (b)(3) of this section reflecting the change in the benefit formula, Component Plan A2 satisfies this paragraph (b) both reflecting and disregarding the change in the benefit formula. Thus, Component Plan A2 satisfies paragraph (b) of this section.

Example 2. The facts are the same as in *Example 1*, except that Plan A's benefit formula used the maximum amount of permitted disparity under section 401(l) prior to the amendment. The analysis is the same as in paragraphs (a) through the first sentence of paragraph (e) of *Example 1*. In order to satisfy the requirements of paragraph (b)(2) of this section, a plan that uses permitted disparity must satisfy the requirements of section 401(l) after reflecting the change in the benefit formula. Because, as stated in *Example 1*, the additional five years of service may not be taken into account for purposes of satisfying paragraph (b) of this section, the disparity that results from crediting that service exceeds the maximum permitted disparity under section 401(l). Thus, Component Plan A2 does not satisfy the requirements of paragraph (b) of this section.

Example 3. The facts are the same as in *Example 1*, except that Plan A is tested under the general test in paragraph (c) of this section. The early retirement window benefit is disregarded for purposes of determining the normal accrual rates, but is taken into account in 1999 for purposes of determining the most valuable accrual rates, of employees who were eligible for the early retirement window benefit (regardless of whether they elected to receive it). As stated in *Example 1*, the additional five years of service do not represent past service, pre-participation service, or imputed service, and thus under § 1.401(a)(4)–11(d)(3)(i)(A) may not be taken into account as testing service.

(5) *Unpredictable contingent event benefits*—(i) *General rule.* In general, an unpredictable contingent event benefit (within the meaning of section 412(l)(7)(B)(ii)) is not taken into account under this section until the occurrence of the contingent event. Thus, the special rule in § 1.401(a)(4)–4(d)(7) (treating the contingent event as having occurred) does not apply for purposes of this section. In the case of an unpredictable contingent event that is expected to result in the termination from employment of certain employees within a period of time consistent with the rules for defining an early retirement window benefit in paragraph (f)(4)(iii) of this section, the unpredictable contingent event benefit available to those employees is permitted to be treated as an early retirement window benefit, thus permitting the rules of paragraph (f)(4) of this section to be applied to it.

(ii) *Example.* The following example illustrates the rules of this paragraph (f)(5):

Example. (a) Employer X operates various manufacturing plants and maintains Plan A, a defined benefit plan that covers all of its nonexcludable employees. Plan A provides an early retirement benefit under which employees who retire after age 55 but before normal retirement age and who have at least 10 years of service receive a benefit equal to their normal retirement benefit reduced by four percent per year for each year prior to normal retirement age. Plan A also provides a plant-closing benefit under which employees who satisfy the conditions for receiving the early retirement benefit and who work at a plant where operations have ceased and whose employment has been terminated will receive an unreduced normal retirement benefit. The plant-closing benefit is an unpredictable contingent event benefit.

(b) During the 1997 plan year, Employer X had no plant closings. Therefore, the plant-closing benefit is not taken into account for the 1997 plan year in determining accrual rates or in applying the safe harbors in paragraph (b) of this section.

(c) During the 1998 plan year, Employer X begins to close one plant. Employees M through Z, who are employees at the plant that is closing, are expected to terminate employment with Employer X during the plan year and will satisfy the conditions for the plant-closing benefit. Therefore, in testing Plan A under this section for the 1998 plan year, the availability of the plant-closing benefit to Employees M through Z must be taken into account in determining their accrual rates or in determining whether the plan satisfies one of the safe harbors under paragraph (b) of this section.

(d) Because the employees eligible for the unpredictable contingent event benefit are expected to terminate employment with Employer X during a period consistent with the rules for defining an early retirement window benefit, in testing Plan A under this section for the 1998 plan year, the special rules in paragraph (f)(4)(ii) of this section may be applied. Thus, for example, normal accrual rates may be determined without reference to the unpredictable contingent event benefit.

(e) Despite the closing of the plant, Employee Q remains an employee into the 1999 plan year. Under paragraph (f)(4)(ii)(A) of this section, the availability of the plant-closing benefit to Employee Q may be disregarded in the 1999 plan year.

(6) *Determination of benefits on other than plan-year basis.* For purposes of this section, accruals are generally determined based on the plan year. Nevertheless, an employer may determine accruals on the basis of any period ending within the plan year as long as the period is at least 12 months in duration. For example, accruals for all employees may be determined based on accrual computation periods ending within the plan year.

(7) *Adjustments for certain plan distributions.* For purposes of this section, an employee's accrued benefit includes the actuarial equivalent of prior distributions of accrued benefits from the plan to the employee if the years of service taken into account in determining the accrued benefits that were distributed continue to be taken into account under the plan for purposes of determining the employee's current accrued benefit. For purposes of this paragraph (f)(7), actuarial equivalence must be determined in a uniform manner for all employees using reasonable actuarial assumptions. A standard interest rate and a standard mortality table are among the assumptions considered reasonable for this purpose. Thus, for example, if an employee has commenced receipt of benefits in accordance with the minimum distribution requirements of section 401(a)(9), and the plan reduces the employee's accrued benefit to take into account the amount of the distributions, the employee's accrued benefit for purposes of this section is restored to the value it would have had if the distributions had not occurred.

(8) *Adjustment for certain QPSA charges.* For purposes of this section, an employee's accrued benefit includes the cost of a qualified preretirement survivor annuity (QPSA) that reduces the employee's accrued benefit otherwise determined under the plan, as permitted under § 1.401(a)–20, Q&A–21. Thus, an employee's accrued benefit for purposes of this section is determined as if the cost of the QPSA had not been charged against the accrued benefit. This paragraph (f)(8) applies only if the QPSA charges apply uniformly to all employees.

(9) *Disregard of certain offsets*—(i) *General rule.* For purposes of this section, an employee's accrued benefit under a plan includes that portion of the benefit that is offset under an offset provision described in § 1.401(a)(4)–11(d)(3)(i)(D). The rule in the preceding sentence applies only to the extent that the benefit by which the benefit under the plan being tested is offset is attributable to periods for which the plan being tested credits pre-participation service (within the meaning of § 1.401(a)(4)–11(d)(3)(ii)(A)) that satisfies § 1.401(a)(4)–11(d)(3)(iii) or past service (within the meaning of § 1.401(a)(4)–11(d)(3)(i)(B)), and only if—

(A) The benefit under the plan being tested is offset by either—

(*1*) Benefits under a qualified defined benefit plan or defined contribution plan (whether or not terminated); or

(*2*) Benefits under a foreign plan that are reasonably expected to be paid; and,

(B) If any portion of the benefit that is offset is nonforfeitable (within the meaning of section 411), that portion is offset by a benefit (or portion of a benefit) that is also nonforfeitable (or vested, in the case of a foreign plan).

(ii) *Examples.* The following examples illustrate the rules in this paragraph (f)(9):

Example 1. (a) Employer X maintains two qualified defined benefit plans, Plan A and Plan B. Plan B provides that, whenever an employee transfers to Plan B from Plan A, the service that was credited under Plan A is credited in determining benefits under Plan B. The Plan A service credited under Plan B is pre-participation service that satisfies § 1.401(a)(4)–11(d)(3)(iii). Plan B offsets the benefits determined under Plan B by the employee's vested benefits under Plan A. Plan A does not credit additional benefit service or accrual service after employees transfer to Plan B.

(b) The Plan B provision providing for an offset of benefits under Plan A satisfies § 1.401(a)(4)–11(d)(3)(i)(D). This is because the provision applies to similarly-situated employees and the benefits under Plan A that are offset against the Plan B benefits are attributable to pre-participation service taken into account under Plan B.

(c) This paragraph (f)(9) applies in determining the benefits that are taken into account under this section for employees in Plan B who are transferred from Plan A. This is because the offset provision is described in § 1.401(a)(4)–11(d)(3)(i)(D), the benefits under the other plan by which the benefits under the plan being tested are offset are attributable solely to pre-participation service that satisfies § 1.401(a)(4)–11(d)(3)(iii), and the benefits are offset solely by vested benefits under another qualified plan. Thus, for example, the accrual rates of employees in Plan B are determined as if there were no offset, i.e., by adding back the benefits that are offset to the net benefits under Plan B.

(d) The result would be the same even if Plan A continued to recognize compensation paid after the transfer in the determination of benefits under Plan A. However, if Plan A continued to credit benefit or accrual service after the transfer, then, to the extent that Plan B's offset of benefits under Plan A increased as a result, the additional benefits offset under Plan B would not be added back in determining the benefits under Plan B that are taken into account under this section.

Example 2. The facts are the same as in *Example 1*, except that Plan A is not a plan described in paragraph (f)(9)(i)(A) of this section. None of the benefits under Plan B that are offset by benefits under Plan A may be added back in determining the benefits under Plan B that are taken into account under this section. Thus, benefits under Plan B are tested on a net basis.

(10) *Special rule for multiemployer plans.* For purposes of this section, if a multiemployer plan increases benefits for service prior to a specific date subject to a plan provision requiring employees to complete a specified amount of service (not to exceed five years) after that date, then benefits are permitted to be determined disregarding the service condition, provided that the condition is applicable to all employees in the multiemployer plan (including collectively bargained employees).

§ 1.401(a)(4)–4 Nondiscriminatory availability of benefits, rights, and features.

(a) *Introduction.* This section provides rules for determining whether the benefits, rights, and features provided under a plan (i.e., all optional forms of benefit, ancillary benefits, and other rights and features available to any employee under the plan) are made available in a nondiscriminatory manner. Benefits, rights, and features provided under a plan are made available to employees in a nondiscriminatory manner only if each benefit, right, or feature satisfies the current availability requirement of paragraph (b) of this section and the effective availability requirement of paragraph (c) of this section. Paragraph (d) of this section provides special rules for applying these requirements. Paragraph (e) of this section defines optional form of benefit, ancillary benefit, and other right or feature.

(b) *Current availability*—(1) *General rule.* The current availability requirement of this paragraph (b) is satisfied if the group of employees to whom a benefit, right, or feature is currently available during the plan year satisfies section 410(b) (without regard to the average benefit percentage test of § 1.410(b)–5). In determining whether the group of employees satisfies section 410(b), an employee is treated as benefiting only if the benefit, right, or feature is currently available to the employee.

(2) *Determination of current availability*—(i) *General rule.* Whether a benefit, right, or feature that is subject to specified eligibility conditions is currently available to an employee generally is determined based on the current facts and circumstances with respect to the employee (e.g., current compensation, accrued benefit, position, or net worth).

(ii) *Certain conditions disregarded*—(A) *Certain age and service conditions*—*(1) General rule.* Notwithstanding paragraph (b)(2)(i) of this section, any specified age or service condition with respect to an optional form of benefit or a social security supplement is disregarded in determining whether the optional form of benefit or the social security supplement is currently available to an employee. Thus, for example, an optional form of benefit that is available to all employees who terminate employment on or after age 55 with at least 10 years of service is treated as currently available to an employee, without regard to the employee's current age or years of service, and without regard to whether the employee could potentially meet the age and service conditions prior to attaining the plan's normal retirement age.

(*2*) *Time-limited age or service conditions not disregarded.* Notwithstanding paragraph (b)(2)(ii)(A)(*1*) of this section, an age or service condition is not disregarded in determining the current availability of an optional form of benefit or social security supplement if the condition must be satisfied within a limited period of time. However, in determining the current availability of an optional form of benefit or a social security supplement subject to such an age or service condition, the age and service of employees may be projected to the last date by which the age condition or service condition must be satisfied in order to be eligible for the optional form of benefit or social security supplement under the plan. Thus, for example, an optional form of benefit that is available only to employees who terminate employment between July 1, 1995, and December 31, 1995, after attainment of age 55 with at least 10 years of service is treated as currently available to an employee only if the employee could satisfy those age and service conditions by December 31, 1995.

(B) *Certain other conditions.* Specified conditions on the availability of a benefit, right, or feature requiring a specified percentage of the employee's accrued benefit to be nonforfeitable, termination of employment, death, satisfaction of a specified health condition (or failure to meet such condition), disability, hardship, family status, default on a plan loan secured by a participant's account balance, execution of a covenant not to compete, application for benefits or similar ministerial or mechanical acts, election of a benefit form, execution of a waiver of rights under the Age Discrimination in Employment Act or other federal or state law, or absence from service, are disregarded in determining the employees to whom the benefit, right, or feature is currently available. In addition, if a multiemployer plan includes a reasonable condition that limits eligibility for an ancillary benefit, or other right or feature, to those employees who have recent service

under the plan (e.g., a condition on a death benefit that requires an employee to have a minimum number of hours credited during the last two years) and the condition applies to all employees in the multiemployer plan (including the collectively bargained employees) to whom the ancillary benefit, or other right or feature, is otherwise currently available, then the condition is disregarded in determining the employees to whom the ancillary benefit, or other right or feature, is currently available.

(C) *Certain conditions relating to mandatory cash-outs.* In the case of a plan that provides for mandatory cash-outs of all terminated employees who have a vested accrued benefit with an actuarial present value less than or equal to a specified dollar amount (not to exceed $3,500) as permitted by sections 411(a)(11) and 417(e), the implicit condition on any benefit, right, or feature (other than the mandatory cash-out) that requires the employee to have a vested accrued benefit with an actuarial present value in excess of the specified dollar amount is disregarded in determining the employees to whom the benefit, right, or feature is currently available.

(D) *Other dollar limits.* A condition that the amount of an employee's vested accrued benefit or the actuarial present value of that benefit be less than or equal to a specified dollar amount is disregarded in determining the employees to whom the benefit, right, or feature is currently available.

(E) *Certain conditions on plan loans.* In the case of an employee's right to a loan from the plan, the condition that an employee must have an account balance sufficient to be eligible to receive a minimum loan amount specified in the plan (not to exceed $1,000) is disregarded in determining the employees to whom the right is currently available.

(3) *Benefits, rights, and features that are eliminated prospectively*—(i) *Special testing rule.* Notwithstanding paragraph (b)(1) of this section, a benefit, right, or feature that is eliminated with respect to benefits accrued after the later of the eliminating amendment's adoption or effective date (the elimination date), but is retained with respect to benefits accrued as of the elimination date, and that satisfies this paragraph (b) as of the elimination date, is treated as satisfying this paragraph (b) for all subsequent periods. This rule does not apply if the terms of the benefit, right, or feature (including the employees to whom it is available) are changed after the elimination date.

(ii) *Elimination of a benefit, right, or feature*—(A) *General rule.* For purposes of this paragraph (b)(3), a benefit, right, or feature provided to an employee is eliminated with respect to benefits accrued after the elimination date if the amount or value of the benefit, right, or feature depends solely on the amount of the employee's accrued benefit (within the meaning of section 411(a)(7)) as of the elimination date, including subsequent income, expenses, gains, and losses with respect to that benefit in the case of a defined contribution plan.

(B) *Special rule for benefits, rights, and features that are not section 411(d)(6)-protected benefits.* Notwithstanding paragraph (b)(3)(ii)(A) of this section, in the case of a benefit, right, or feature under a defined contribution plan that is not a section 411(d)(6)-protected benefit (within the meaning of § 1.411(d)–4, Q&A–1), e.g., the availability of plan loans, for purposes of this paragraph (b)(3)(ii) each employee's accrued benefit as of the elimination date may be treated, on a uniform basis, as consisting exclusively of the dollar amount of the employee's account balance as of the elimination date.

(C) *Special rule for benefits, rights, and features that depend on adjusted accrued benefits.* For purposes of this paragraph (b)(3), a benefit, right, or feature provided to an employee under a plan that has made a fresh start does not fail to be eliminated as of an elimination date that is the fresh-start date merely because it depends solely on the amount of the employee's adjusted accrued benefit (within the meaning of § 1.401(a)(4)–13(d)(8)).

(c) *Effective availability*—(1) *General rule.* Based on all of the relevant facts and circumstances, the group of employees to whom a benefit, right, or feature is effectively available must not substantially favor HCEs.

(2) *Examples.* The following examples illustrate the rules of this paragraph (c):

Example 1. Employer X maintains Plan A, a defined benefit plan that covers both of its highly compensated nonexcludable employees and nine of its 12 nonhighly compensated nonexcludable employees. Plan A provides for a normal retirement benefit payable as an annuity and based on a normal retirement age of 65, and an early retirement benefit payable upon termination in the form of an annuity to employees who terminate from service with the employer on or after age 55 with 30 or more years of service. Both HCEs of Employer X currently meet the age and service requirement, or will have 30 years of service by the time they reach age 55. All but two of the nine NHCEs of Employer X who are covered by Plan A were hired on or after age 35 and, thus, cannot qualify for the early retirement benefit. Even though the group of employees to whom the early retirement benefit is currently available satisfies the ratio percentage test of § 1.410(b)–2(b)(2) when age and service are disregarded pursuant to paragraph (b)(2)(ii)(A) of this section, absent other facts, the group of employees to whom the early retirement benefit is effectively available substantially favors HCEs.

Example 2. Employer Y maintains Plan B, a defined benefit plan that provides for a normal retirement benefit payable as an annuity and based on a normal retirement age of 65. By a plan amendment first adopted and effective December 1, 1998, Employer Y amends Plan B to provide an early retirement benefit that is available only to employees who terminate employment by December 15, 1998, and who are at least age 55 with 30 or more years of service. Assume that all employees were hired prior to attaining age 25 and that the group of employees who have, or will have, attained age 55 with 30 years of service by December 15, 1998, satisfies the ratio percentage test of § 1.410(b)–2(b)(2). Assume, further, that the employer takes no steps to inform all eligible employees of the early retirement option on a timely basis and that the only employees who terminate from employment with the employer during the two-week period in which the early retirement benefit is available are HCEs. Under these facts, the group of employees to whom this early retirement window benefit is effectively available substantially favors HCEs.

Example 3. Employer Z amends Plan C on June 30, 1999, to provide for a single sum optional form of benefit for employees who terminate from employment with Employer Z after June 30, 1999, and before January 1, 2000. The availability of this single sum optional form of benefit is conditioned on the employee's having a particular disability at the time of termination of employment. The only employee of the employer who meets this disability requirement at the time of the amendment and thereafter through December 31, 1999, is a HCE. Under paragraph (b)(2)(ii)(B) of this section, the disability condition is disregarded in determining the current availability of the single sum optional form of benefit. Nevertheless, under these facts, the group of employees to whom the single sum optional form of benefit is effectively available substantially favors HCEs.

(d) *Special rules*—(1) *Mergers and acquisitions*—(i) *Special testing rule.* A benefit, right, or feature available under a plan solely to an acquired group of employees is treated as satisfying paragraphs (b) and (c) of this section during the period that each of the following requirements is satisfied:

(A) The benefit, right, or feature must satisfy paragraphs (b) and (c) of this section (determined without regard to the special rule in section 410(b)(6)(C)) on the date that is selected by the employer as the latest date by which an employee must be hired or transferred into the acquired trade or business for an employee to be included in the

acquired group of employees. This determination is made with reference to the plan of the current employer and its nonexcludable employees.

(B) The benefit, right, or feature must be available under the plan of the current employer after the transaction on the same terms as it was available under the plan of the prior employer before the transaction. This requirement is not violated merely because of a change made to the benefit, right, or feature that is permitted by section 411(d)(6), provided that—

(*1*) The change is a replacement of the benefit, right, or feature with another benefit, right, or feature that is available to the same employees as the original benefit, right, or feature, and the original benefit, right, or feature is of inherently equal or greater value (within the meaning of paragraph (d)(4)(i)(A) of this section) than the benefit, right, or feature that replaces it; or

(*2*) The change is made before January 12, 1993.

(ii) *Scope of special testing rule.* This paragraph (d)(1) applies only to benefits, rights, and features with respect to benefits accruing under the plan of the current employer, and not to benefits, rights, and features with respect to benefits accrued under the plan of the prior employer (unless, pursuant to the transaction, the plan of the prior employer becomes the plan of the current employer, or the assets and liabilities with respect to the acquired group of employees under the plan of the prior employer are transferred to the plan of the current employer in a plan merger, consolidation, or other transfer described in section 414(l)).

(iii) *Example.* The following example illustrates the rules of this paragraph (d)(1):

Example. Employer X maintains Plan A, a defined benefit plan with a single sum optional form of benefit for all employees. Employer Y acquires Employer X and merges Plan A into Plan B, a defined benefit plan maintained by Employer Y that does not otherwise provide a single sum optional form of benefit. Employer Y continues to provide the single sum optional form of benefit under Plan B on the same terms as it was offered under Plan A to all employees who were acquired in the transaction with Employer X (and to no other employees). The optional form of benefit satisfies paragraphs (b) and (c) of this section immediately following the transaction (determined without taking into account section 410(b)(6)(C)) when tested with reference to Plan B and Employer Y's nonexcludable employees. Under these facts, Plan B is treated as satisfying this section with respect to the single sum optional form of benefit for the plan year of the transaction and all subsequent plan years.

(2) *Frozen participants.* A plan must satisfy the nondiscriminatory availability requirement of this section not only with respect to benefits, rights, and features provided to employees who are currently benefiting under the plan, but also separately with respect to benefits, rights, and features provided to nonexcludable employees with accrued benefits who are not currently benefiting under the plan (frozen participants). Thus, each benefit, right, and feature available to any frozen participant under the plan is separately subject to the requirements of this section. A plan satisfies paragraphs (b) and (c) of this section with respect to a benefit, right, or feature available to any frozen participant under the plan only if one or more of the following requirements is satisfied:

(i) The benefit, right, or feature must be one that would satisfy paragraphs (b) and (c) of this section if it were not available to any employee currently benefiting under the plan.

(ii) The benefit, right, or feature must be one that would satisfy paragraphs (b) and (c) of this section if all frozen participants were treated as employees currently benefiting under the plan.

(iii) No change in the availability of the benefit, right, or feature may have been made that is first effective in the current plan year with respect to a frozen participant.

(iv) Any change in the availability of the benefit, right, or feature that is first effective in the current plan year with respect to a frozen participant must be made in a nondiscriminatory manner. Thus, any expansion in the availability of the benefit, right, or feature to any highly compensated frozen participant must be applied on a consistent basis to all nonhighly compensated frozen participants. Similarly, any contraction in the availability of the benefit, right, or feature that affects any nonhighly compensated frozen participant must be applied on a consistent basis to all highly compensated frozen participants.

(3) *Early retirement window benefits.* If a benefit, right, or feature meets the definition of an early retirement window benefit in § 1.401(a)(4)–3(f)(4)(iii) (or would meet that definition if the definition applied to all benefits, rights, and features), the benefit, right, or feature is disregarded for purposes of applying this section with respect to an employee for all plan years other than the first plan year in which the benefit is currently available to the employee.

(4) *Permissive aggregation of certain benefits, rights, or features*—(i) *General rule.* An optional form of benefit, ancillary benefit, or other right or feature may be aggregated with another optional form of benefit, ancillary benefit, or other right or feature, respectively, and the two may be treated as a single optional form of benefit, ancillary benefit, or other right or feature, if both of the following requirements are satisfied:

(A) One of the two optional forms of benefit, ancillary benefit, or other rights or features must in all cases be of inherently equal or greater value than the other. For this purpose, one benefit, right, or feature is of inherently equal or greater value than another benefit, right, or feature only if, at any time and under any conditions, it is impossible for any employee to receive a smaller amount or a less valuable right under the first benefit, right, or feature than under the second benefit, right, or feature.

(B) The optional form of benefit, ancillary benefit, or other right or feature of inherently equal or greater value must separately satisfy paragraphs (b) and (c) of this section (without regard to this paragraph (d)(4)).

(ii) *Aggregation may be applied more than once.* The aggregation rule in this paragraph (d)(4) may be applied more than once. Thus, for example, an optional form of benefit may be aggregated with another optional form of benefit that itself constitutes two separate optional forms of benefit that are aggregated and treated as a single optional form of benefit under this paragraph (d)(4).

(iii) *Examples.* The following examples illustrate the rules in this paragraph (d)(4):

Example 1. Plan A is a defined benefit plan that provides a single sum optional form of benefit to all employees. The single sum optional form of benefit is available on the same terms to all employees, except that, for employees in Division S, a five-percent discount factor is applied and, for employees of Division T, a seven-percent discount factor is applied. Under paragraph (e)(1) of this section, the single sum optional form of benefit constitutes two separate optional forms of benefit. Assume that the single sum optional form of benefit available to employees of Division S separately satisfies paragraphs (b) and (c) of this section without taking into account this paragraph (d)(4). Because a lower discount factor is applied in determining the single sum optional form of benefit available to employees of Division S than is applied in determining the single sum optional form of benefit available to employees of Division T, the first single sum optional form of benefit is of inherently greater value than the second single sum optional form of benefit. Under these facts, these two single sum optional forms of benefit may be aggregated and treated as a single optional form of benefit for purposes of this section.

Example 2. The facts are the same as in *Example 1*, except that, in order to receive the single sum optional form of benefit, employees of Division S (but not employees of Division T) must have completed at least

20 years of service. The single sum optional form of benefit available to employees of Division S is not of inherently equal or greater value than the single sum optional form of benefit available to employees of Division T, because an employee of Division S who terminates employment with less than 20 years of service would receive a smaller single sum amount (i.e., zero) than a similarly-situated employee of Division T who terminates employment with less than 20 years of service. Under these facts, the two single sum optional forms of benefit may not be aggregated and treated as a single optional form of benefit for purposes of this section.

(5) *Certain spousal benefits.* In the case of a plan that includes two or more plans that have been permissively aggregated under § 1.410(b)–7(d), the aggregated plan satisfies this section with respect to the availability of any nonsubsidized qualified joint and survivor annuities, qualified preretirement survivor annuities, or spousal death benefits described in section 401(a)(11), if each plan that is part of the aggregated plan satisfies section 401(a)(11). Whether a benefit is considered subsidized for this purpose may be determined using any reasonable actuarial assumptions. For purposes of this paragraph (d)(5), a qualified joint and survivor annuity, qualified preretirement survivor annuity, or spousal death benefit is deemed to be nonsubsidized if it is provided under a defined contribution plan.

(6) *Special ESOP rules.* An ESOP does not fail to satisfy paragraphs (b) and (c) of this section merely because it makes an investment diversification right or feature or a distribution option available solely to all qualified participants (within the meaning of section 401(a)(28)(B)(iii)), or merely because the restrictions of section 409(n) apply to certain individuals.

(7) *Special testing rule for unpredictable contingent event benefits.* A benefit, right, or feature that is contingent on the occurrence of an unpredictable contingent event (within the meaning of section 412(l)(7)(B)(ii)) is tested under this section as if the event had occurred. Thus, the current availability of a benefit that becomes an optional form of benefit upon the occurrence of an unpredictable contingent event is tested by deeming the event to have occurred and by disregarding age and service conditions on the eligibility for that benefit to the extent permitted for optional forms of benefit under paragraph (b)(2) of this section.

(e) *Definitions*—(1) *Optional form of benefit*—(i) *General rule.* The term optional form of benefit means a distribution alternative (including the normal form of benefit) that is available under a plan with respect to benefits described in section 411(d)(6)(A) or a distribution alternative that is an early retirement benefit or retirement-type subsidy described in section 411(d)(6)(B)(i), including a QSUPP. Except as provided in paragraph (e)(1)(ii) of this section, different optional forms of benefit exist if a distribution alternative is not payable on substantially the same terms as another distribution alternative. The relevant terms include all terms affecting the value of the optional form, such as the method of benefit calculation and the actuarial assumptions used to determine the amount distributed. Thus, for example, different optional forms of benefit may result from differences in terms relating to the payment schedule, timing, commencement, medium of distribution (e.g., in cash or in kind), election rights, differences in eligibility requirements, or the portion of the benefit to which the distribution alternative applies.

(ii) *Exceptions*—(A) *Differences in benefit formula or accrual method.* A distribution alternative available under a defined benefit plan does not fail to be a single optional form of benefit merely because the benefit formulas, accrual methods, or other factors (including service-computation methods and definitions of compensation) underlying, or the manner in which employees vest in, the accrued benefit that is paid in the form of the distribution alternative are different for different employees to whom the distribution alternative is available. Notwithstanding the foregoing, differences in the normal retirement ages of employees or in the form in which the accrued benefit of employees is payable at normal retirement age under a plan are taken into account in determining whether a distribution alternative constitutes one or more optional forms of benefit.

(B) *Differences in allocation formula.* A distribution alternative available under a defined contribution plan does not fail to be a single optional form of benefit merely because the allocation formula or other factors (including service-computation methods, definitions of compensation, and the manner in which amounts described in § 1.401(a)(4)–2(c)(2)(iii) are allocated) underlying, or the manner in which employees vest in, the accrued benefit that is paid in the form of the distribution alternative are different for different employees to whom the distribution alternative is available.

(C) *Distributions subject to section 417(e).* A distribution alternative available under a defined benefit plan does not fail to be a single optional form of benefit merely because, in determining the amount of a distribution, the plan applies a lower interest rate to determine the distribution for employees with a vested accrued benefit having an actuarial present value not in excess of $25,000, as required by section 417(e)(3) and § 1.417(e)–1.

(D) *Differences attributable to uniform normal retirement age.* A distribution alternative available under a defined benefit plan does not fail to be a single optional form of benefit, to the extent that the differences are attributable to differences in normal retirement dates among employees, provided that the differences do not prevent the employees from having the same uniform normal retirement age under the definition of uniform normal retirement age in § 1.401(a)(4)–12.

(iii) *Examples.* The following examples illustrate the rules in this paragraph (e)(1):

Example 1. Plan A is a defined benefit plan that benefits all employees of Divisions S and T. The plan offers a qualified joint and 50-percent survivor annuity at normal retirement age, calculated by multiplying an employee's single life annuity payment by a factor. For an employee of Division S whose benefit commences at age 65, the plan provides a factor of 0.90, but for a similarly-situated employee of Division T the plan provides a factor of 0.85. The qualified joint and survivor annuity is not available to employees of Divisions S and T on substantially the same terms, and thus it constitutes two separate optional forms of benefit.

Example 2. Plan B is a defined benefit plan that benefits all employees of Divisions U and V. The plan offers a single sum distribution alternative available on the same terms and determined using the same actuarial assumptions, to all employees. However, different benefit formulas apply to employees of each division. Under the exception provided in paragraph (e)(1)(ii)(A) of this section, the single sum optional form of benefit available to employees of Division U is not a separate optional form of benefit from the single sum optional form of benefit available to employees of Division V.

Example 3. Defined benefit Plan C provides an early retirement benefit based on a schedule of early retirement factors that is a single optional form of benefit. Plan C is amended to provide an early retirement window benefit that consists of a temporary change in the plan's benefit formula (e.g., the addition of five years of service to an employee's actual service under the benefit formula) applicable in determining the benefits for certain employees who terminate employment within a limited period of time. Under the exception provided in paragraph (e)(1)(ii)(A) of this section, the early retirement optional form of benefit available to window-eligible employees is not a

separate optional form of benefit from the early retirement optional form of benefit available to the other employees.

(2) *Ancillary benefit.* The term ancillary benefit means social security supplements (other than QSUPPs), disability benefits not in excess of a qualified disability benefit described in section 411(a)(9), ancillary life insurance and health insurance benefits, death benefits under a defined contribution plan, preretirement death benefits under a defined benefit plan, shut-down benefits not protected under section 411(d)(6), and other similar benefits. Different ancillary benefits exist if an ancillary benefit is not available on substantially the same terms as another ancillary benefit. Principles similar to those in paragraph (e)(1)(ii) of this section apply in making this determination.

(3) *Other right or feature*—(i) *General rule.* The term other right or feature generally means any right or feature applicable to employees under the plan. Different rights or features exist if a right or feature is not available on substantially the same terms as another right or feature.

(ii) *Exceptions to definition of other right or feature.* Notwithstanding paragraph (e)(3)(i) of this section, a right or feature is not considered an other right or feature if it—

(A) Is an optional form of benefit or an ancillary benefit under the plan;

(B) Is one of the terms that are taken into account in determining whether separate optional forms of benefit or ancillary benefits exist, or that would be taken into account but for paragraph (e)(1)(ii) of this section (e.g., benefit formulas or the manner in which benefits vest); or

(C) Cannot reasonably be expected to be of meaningful value to an employee (e.g., administrative details).

(iii) *Examples.* Other rights and features include, but are not limited to—

(A) Plan loan provisions (other than those relating to a distribution of an employee's accrued benefit upon default under a loan);

(B) The right to direct investments;

(C) The right to a particular form of investment, including, for example, a particular class or type of employer securities (taking into account, in determining whether different forms of investment exist, any differences in conversion, dividend, voting, liquidation preference, or other rights conferred under the security);

(D) The right to make each rate of elective contributions described in § 1.401(k)–1(g)(3) (determining the rate based on the plan's definition of the compensation out of which the elective contributions are made (regardless of whether that definition satisfies section 414(s)), but also treating different rates as existing if they are based on definitions of compensation or other requirements or formulas that are not substantially the same);

(E) The right to make after-tax employee contributions to a defined benefit plan that are not allocated to separate accounts;

(F) The right to make each rate of after-tax employee contributions described in § 1.401(m)–1(f)(6) (determining the rate based on the plan's definition of the compensation out of which the after-tax employee contributions are made (regardless of whether that definition satisfies section 414(s)), but also treating different rates as existing if they are based on definitions of compensation or other requirements or formulas that are not substantially the same);

(G) The right to each rate of allocation of matching contributions described in § 1.401(m)–1(f)(12) (determining the rate using the amount of matching, elective, and after-tax employee contributions determined after any corrections under §§ 1.401(k)–1(f)(1)(i), 1.401(m)–1(e)(1)(i), and 1.401(m)–2(c), but also treating different rates as existing if they are based on definitions of compensation or other requirements or formulas that are not substantially the same);

(H) The right to purchase additional retirement or ancillary benefits under the plan; and

(I) The right to make rollover contributions and transfers to and from the plan.

§ 1.401(a)(4)–5 Plan amendments and plan terminations.

(a) *Introduction—(1) Overview.* This paragraph (a) provides rules for determining whether the timing of a plan amendment or series of amendments has the effect of discriminating significantly in favor of HCEs or former HCEs. For purposes of this section, a plan amendment includes, for example, the establishment or termination of the plan, and any change in the benefits, rights, or features, benefit formulas, or allocation formulas under the plan. Paragraph (b) of this section sets forth additional requirements that must be satisfied in the case of a plan termination.

(2) *Facts-and-circumstances determination.* Whether the timing of a plan amendment or series of plan amendments has the effect of discriminating significantly in favor of HCEs or former HCEs is determined at the time the plan amendment first becomes effective for purposes of section 401(a), based on all of the relevant facts and circumstances. These include, for example, the relative numbers of current and former HCEs and NHCEs affected by the plan amendment, the relative length of service of current and former HCEs and NHCEs, the length of time the plan or plan provision being amended has been in effect, and the turnover of employees prior to the plan amendment. In addition, the relevant facts and circumstances include the relative accrued benefits of current and former HCEs and NHCEs before and after the plan amendment and any additional benefits provided to current and former HCEs and NHCEs under other plans (including plans of other employers, if relevant). In the case of a plan amendment that provides additional benefits based on an employee's service prior to the amendment, the relevant facts and circumstances also include the benefits that employees and former employees who do not benefit under the amendment would have received had the plan, as amended, been in effect throughout the period on which the additional benefits are based.

(3) *Safe harbor for certain grants of benefits for past periods.* The timing of a plan amendment that credits (or increases benefits attributable to) years of service for a period in the past is deemed not to have the effect of discriminating significantly in favor of HCEs or former HCEs if the period for which the service credit (or benefit increase) is granted does not exceed the five years immediately preceding the year in which the amendment first becomes effective, the service credit (or benefit increase) is granted on a reasonably uniform basis to all employees, benefits attributable to the period are determined by applying the current plan formula, and the service credited is service (including pre-participation or imputed service) with the employer or a previous employer that may be taken into account under § 1.401(a)(4)–11(d)(3) (without regard to § 1.401(a)(4)–11(d)(3)(i)(B)). However, this safe harbor is not available if the plan amendment granting the service credit (or increasing benefits) is part of a pattern of amendments that has the effect of discriminating significantly in favor of HCEs or former HCEs.

(4) *Examples.* The following examples illustrate the rules in this paragraph (a):

Example 1. Plan A is a defined benefit plan that covered both HCEs and NHCEs for most of its existence. The employer decides to wind up its business. In the process of ceasing operations, but at a time when the plan covers only HCEs, Plan A is amended

to increase benefits and thereafter is terminated. The timing of this plan amendment has the effect of discriminating significantly in favor of HCEs.

Example 2. Plan B is a defined benefit plan that provides a social security supplement that is not a QSUPP. After substantially all of the HCEs of the employer have benefited from the supplement, but before a substantial number of NHCEs have become eligible for the supplement, Plan B is amended to reduce significantly the amount of the supplement. The timing of this plan amendment has the effect of discriminating significantly in favor of HCEs.

Example 3. Plan C is a defined benefit plan that contains an ancillary life insurance benefit available to all employees. The plan is amended to eliminate this benefit at a time when life insurance payments have been made only to beneficiaries of HCEs. Because all employees received the benefit of life insurance coverage before Plan C was amended, the timing of this plan amendment does not have the effect of discriminating significantly in favor of HCEs or former HCEs.

Example 4. Plan D provides for a benefit of one percent of average annual compensation per year of service. Ten years after Plan D is adopted, it is amended to provide a benefit of two percent of average annual compensation per year of service, including years of service prior to the amendment. The amendment is effective only for employees currently employed at the time of the amendment. The ratio of HCEs to former HCEs is significantly higher than the ratio of NHCEs to former NHCEs. In the absence of any additional factors, the timing of this plan amendment has the effect of discriminating significantly in favor of HCEs.

Example 5. The facts are the same as in *Example 4*, except that, in addition, the years of prior service are equivalent between HCEs and NHCEs who are current employees, and the group of current employees with prior service would satisfy the nondiscriminatory classification test of § 1.410(b)–4 in the current and all prior plan years for which past service credit is granted. The timing of this plan amendment does not have the effect of discriminating significantly in favor of HCEs or former HCEs.

Example 6. Employer V maintains Plan E, an accumulation plan. In 1994, Employer V amends Plan E to provide that the compensation used to determine an employee's benefit for all preceding plan years shall not be less than the employee's average annual compensation as of the close of the 1994 plan year. The years of service and percentage increases in compensation for HCEs are reasonably comparable to those of NHCEs. In addition, the ratio of HCEs to former HCEs is reasonably comparable to the ratio of NHCEs to former NHCEs. The timing of this plan amendment does not have the effect of discriminating significantly in favor of HCEs or former HCEs.

Example 7. Employer W currently has six nonexcludable employees, two of whom, H1 and H2, are HCEs, and the remaining four of whom, N1 through N4, are NHCEs. The ratio of HCEs to former HCEs is significantly higher than the ratio of NHCEs to former NHCEs. Employer W establishes Plan F, a defined benefit plan providing a benefit of one percent of average annual compensation per year of service, including years of service prior to the establishment of the plan. H1 and H2 each have 15 years of prior service, N1 has nine years of past service, N2 has five years, N3 has three years, and N4 has one year. The timing of this plan establishment has the effect of discriminating significantly in favor of HCEs.

Example 8. Assume the same facts as in *Example 7*, except that N1 through N4 were hired in the current year, and Employer W never employed any NHCEs prior to the current year. Thus, no NHCEs would have received additional benefits had Plan F been in existence during the preceding 15 years. The timing of this plan establishment does not have the effect of discriminating significantly in favor of HCEs or former HCEs.

Example 9. The facts are the same as in *Example 7*, except that Plan F limits the grant of past service credit to five years, and the grant of past service otherwise satisfies the safe harbor in paragraph (a)(3) of this section. The timing of this plan establishment is deemed not to have the effect of discriminating significantly in favor of HCEs or former HCEs.

Example 10. The facts are the same as in *Example 9*, except that five years after the establishment of Plan F, Employer W amends the plan to provide a benefit equal to two percent of average annual compensation per year of service, taking into account all years of service since the establishment of the plan. The ratio of HCEs to former HCEs who terminated employment during the five-year period since the establishment of the plan is significantly higher than the ratio of NHCEs to former NHCEs who terminated employment during the five-year period since the establishment of the plan. Although the amendment described in this example might separately satisfy the safe harbor in paragraph (a)(3) of this section, the safe harbor is not available with respect to the amendment because, under these facts, the amendment is part of a pattern of amendments that has the effect of discriminating significantly in favor of HCEs.

Example 11. Employer Y maintains Plan G, a defined benefit plan, covering all its employees. In 1995, Employer Y acquires Division S from Employer Z. Some of the employees of Division S had been covered under a defined benefit plan maintained by Employer Z. Soon after the acquisition, Employer Y amends Plan G to cover all employees of Division S and to credit those who were in Division S's defined benefit plan with years of service for years of employment with Employer Z. Because the timing of the plan amendment was determined by the timing of the transaction, the timing of this plan amendment does not have the effect of discriminating significantly in favor of HCEs or former HCEs. See also § 1.401(a)(4)–11(d)(3) for other rules regarding the crediting of pre-participation service.

Example 12. Plan H is an insurance contract plan within the meaning of section 412(i). For all plan years before 1999, Plan H purchases insurance contracts from Insurance Company J. In 1999, Plan H shifts future purchases of insurance contracts to Insurance Company K. The shift in insurance companies is a plan amendment subject to this paragraph (a).

(b) *Pre-termination restrictions*—(1) *Required provisions in defined benefit plans.* A defined benefit plan has the effect of discriminating significantly in favor of HCEs or former HCEs unless it incorporates provisions restricting benefits and distributions as described in paragraph (b)(2) and (3) of this section at the time the plan is established or, if later, as of the first plan year to which §§ 1.401(a)(4)–1 through 1.401(a)(4)–13 apply to the plan under § 1.401(a)(4)–13(a) or (b). This paragraph (b) does not apply if the Commissioner determines that such provisions are not necessary to prevent the prohibited discrimination that may occur in the event of an early termination of the plan. The restrictions in this paragraph (b) apply to a plan within the meaning of § 1.410(b)–7(b) (i.e., a section 414(l) plan). Any plan containing a provision described in this paragraph (b) satisfies section 411(d)(2) and does not fail to satisfy section 411(a) or (d)(3) merely because of the provision.

(2) *Restriction of benefits upon plan termination.* A plan must provide that, in the event of plan termination, the benefit of any HCE (and any former HCE) is limited to a benefit that is nondiscriminatory under section 401(a)(4).

(3) *Restrictions on distributions*—(i) *General rule.* A plan must provide that, in any year, the payment of benefits to or on behalf of a restricted employee shall not exceed an amount equal to the payments that would be made to or on behalf of the restricted employee in that year under—

(A) A straight life annuity that is the actuarial equivalent of the accrued benefit and other benefits to which the restricted employee is entitled under the plan (other than a social security supplement); and

(B) A social security supplement, if any, that the restricted employee is entitled to receive.

(ii) *Restricted employee defined.* For purposes of this paragraph (b), the term restricted employee generally means any HCE or former HCE. However, an HCE or former HCE need not be treated as a restricted employee in the current year if the HCE or former HCE is not one of the 25 (or a larger number chosen by the employer) nonexcludable employees and former employees of the employer with the largest amount of compensation in the current or any

prior year. Plan provisions defining or altering this group can be amended at any time without violating section 411(d)(6).

(iii) *Benefit defined.* For purposes of this paragraph (b), the term benefit includes, among other benefits, loans in excess of the amounts set forth in section 72(p)(2)(A), any periodic income, any withdrawal values payable to a living employee or former employee, and any death benefits not provided for by insurance on the employee's or former employee's life.

(iv) *Nonapplicability in certain cases.* The restrictions in this paragraph (b)(3) do not apply, however, if any one of the following requirements is satisfied:

(A) After taking into account payment to or on behalf of the restricted employee of all benefits payable to or on behalf of that restricted employee under the plan, the value of plan assets must equal or exceed 110 percent of the value of current liabilities, as defined in section 412(l)(7).

(B) The value of the benefits payable to or on behalf of the restricted employee must be less than one percent of the value of current liabilities before distribution.

(C) The value of the benefits payable to or on behalf of the restricted employee must not exceed the amount described in section 411(a)(11)(A) (restrictions on certain mandatory distributions).

(v) *Determination of current liabilities.* For purposes of this paragraph (b), any reasonable and consistent method may be used for determining the value of current liabilities and the value of plan assets.

(4) *Operational restrictions on certain money purchase pension plans.* A money purchase pension plan that has an accumulated funding deficiency, within the meaning of section 412(a), or an unamortized funding waiver, within the meaning of section 412(d), must comply in operation with the restrictions on benefits and distributions as described in paragraphs (b)(2) and (b)(3) of this section. Such a plan does not fail to satisfy section 411(d)(6) merely because of restrictions imposed by the requirements of this paragraph (b)(4).

§ 1.401(a)(4)–6 Contributory defined benefit plans.

(a) *Introduction.* This section provides rules necessary for determining whether a contributory DB plan satisfies the nondiscriminatory amount requirement of § 1.401(a)(4)–1(b)(2). Paragraph (b) of this section provides rules for determining the amount of benefits derived from employer contributions (employer-provided benefits) under a contributory DB plan for purposes of determining whether the plan satisfies § 1.401(a)(4)–1(b)(2) with respect to such amounts. Paragraph (c) of this section provides the exclusive rules for determining whether a contributory DB plan satisfies § 1.401(a)(4)–1(b)(2) with respect to the amount of benefits derived from employee contributions not allocated to separate accounts (employee-provided benefits). See § 1.401(a)(4)–1(b)(2)(ii)(B) for the exclusive tests applicable to employee contributions allocated to separate accounts under a section 401(m) plan.

(b) *Determination of employer-provided benefit*—(1) *General rule.* An employee's employer-provided benefit under a contributory DB plan for purposes of section 401(a)(4) equals the difference between the employee's total benefit and the employee's employee-provided benefit under the plan. The rules of section 411(c) generally must be used to determine the employee's employer-provided benefit for this purpose. However, paragraphs (b)(2) through (b)(6) of this section provide alternative methods for determining the employee's employer-provided benefit.

(2) *Composition-of-workforce method*—(i) *General rule.* A contributory DB plan that satisfies paragraph (b)(2)(ii) (A) and (B) of this section may determine employees' employer-provided benefit rates under the rules of paragraph (b)(2)(iii) of this section.

(ii) *Eligibility requirements*—(A) *Uniform rate of employee contributions.* A contributory DB plan satisfies this paragraph (b)(2)(ii)(A) if all employees make employee contributions at the same rate, expressed as a percentage of plan year compensation (the employee contribution rate). A plan does not fail to satisfy this paragraph (b)(2)(ii)(A) merely because it eliminates employee contributions for all employees with plan year compensation below a specified contribution breakpoint that is either a stated dollar amount or a stated percentage of covered compensation (within the meaning of § 1.401(l)–1(c)(7)); or merely because all employees make employee contributions at the same rate (expressed as a percentage of plan year compensation) with respect to plan year compensation up to the contribution breakpoint (base employee contribution rate) and at a higher rate (expressed as a percentage of plan year compensation) that is the same for all employees with respect to plan year compensation above the contribution breakpoint (excess employee contribution rate). A plan described in paragraph (c)(4)(i) of this section that satisfies paragraph (c)(4)(iii) of this section is deemed to satisfy this paragraph.

(B) *Demographic requirements*—(*1*) *In general.* A contributory DB plan satisfies this paragraph (b)(2)(ii)(B) if it satisfies either of the demographic tests in paragraph (b)(2)(ii)(B) (*2*) or (*3*) of this section.

(*2*) *Minimum percentage test.* This test is satisfied only if more than 40 percent of the NHCEs in the plan have attained ages at least equal to the plan's target age, and more than 20 percent of the NHCEs in the plan have attained ages at least equal to the average attained age of the HCEs in the plan. For this purpose, a plan's target age is the lower of age 50 or the average attained age of the HCEs in the plan minus X years, where X equals 20 minus the product of five times the employee contribution rate under the plan. In no case, however, may X years be fewer than zero (0) years. Thus, for example, if the average attained age of the HCEs in the plan is 53 and the employee contribution rate is two percent of plan year compensation, the plan's target age is 43 years (i.e., $53 - (20 - (5 \times 2))$).

(*3*) *Ratio test.* This test is satisfied only if the percentage of all nonhighly compensated nonexcludable employees, who are in the plan and who have attained ages at least equal to the average attained age of the HCEs in the plan, is at least 70 percent of the percentage of all highly compensated nonexcludable employees, who are in the plan and who have attained ages at least equal to the average attained age of the HCEs in the plan. Attained ages must be determined as of the beginning of the plan year. In lieu of determining the actual distribution of the attained ages of the HCEs, an employer may assume that 50 percent of all HCEs have attained ages at least equal to the average attained age of the HCEs.

(iii) *Determination of employer-provided benefit*—(A) *Safe harbor plans other than section 401(l) plans.* For purposes of applying the exception to the safe harbor in § 1.401(a)(4)–3(b)(6)(viii) with respect to employer-provided benefits under a plan other than a section 401(l) plan, the employee's entire accrued benefit is treated as employer-provided.

(B) *Section 401(l) plans*—(*1*) *General rule.* For purposes of applying the exception to the safe harbor in § 1.401(a)(4)–3(b)(6)(viii) with respect to employer-provided benefits under a section 401(l) plan, an employee's base benefit percentage and excess benefit percentage are reduced, or an employee's gross benefit percentage is reduced, by subtracting the product of

the employee contribution rate and the factor determined under paragraph (b)(2)(iv) of this section from the respective percentages for the plan year. For this purpose, the employee contribution rate is the highest rate of employee contributions applicable to any potential level of plan year compensation for that plan year under the plan.

(*2*) *Excess plans with varying contribution rates.* In the case of a defined benefit excess plan described in the second sentence of paragraph (b)(2)(ii)(A) of this section, solely for purposes of reducing an employee's base benefit percentage as required under paragraph (b)(2)(iii)(B)(*1*) of this section, it may be assumed that the employee's employee contribution rate equals the weighted average of the base employee contribution rate and the excess employee contribution rate. In determining this weighted average, the weight of the base employee contribution rate is equal to a fraction, the numerator of which is the lesser of the integration level and the contribution breakpoint and the denominator of which is the integration level. The weight of the excess employee contribution rate is equal to the difference between one and the weight of the base employee contribution rate.

(*3*) *Offset plans with varying contribution rates.* In the case of an offset plan described in the second sentence of paragraph (b)(2)(ii)(A) of this section, an equivalent adjustment to the alternative method in paragraph (b)(2)(iii)(B)(*2*) of this section may be made to the offset percentage.

(C) *Employer-provided benefits under the general test.* For purposes of applying the general test of § 1.401(a)(4)–3(c) with respect to employer-provided benefits, an employee's normal and most valuable accrual rates otherwise determined under § 1.401(a)(4)–3(d) (without applying any of the options under § 1.401(a)(4)–3(d)(3) other than the fresh-start alternative of § 1.401(a)(4)–3(d)(3)(iii)) are each reduced by subtracting the product of the employee's contributions (expressed as a percentage of plan year compensation) and the factor determined under paragraph (b)(2)(iv) of this section from the respective accrual rates. A plan may then apply the optional rules in § 1.401(a)(4)–3(d)(3) (i) and (ii) to this resulting accrual rate.

(D) *Additional limitation.* A plan may not use the composition-of-workforce method provided in this paragraph (b)(2) to determine an employee's base benefit percentage, excess benefit percentage, gross benefit percentage, offset percentage, or accrual rates unless employee contributions have been made at the same rate (or rates) throughout the period after the fresh-start date or throughout the measurement period used to determine accrual rates.

(iv) *Determination of plan factor.* The factor for a plan is determined under the following table based on the average entry age of the employees in the plan and on whether the plan determines benefits based on average compensation. For this purpose, average entry age equals the average attained age of all employees in the plan, minus the average years of participation of all employees in the plan. A plan is treated as determining benefits based on average compensation if it determines benefits based on compensation averaged over a specified period not exceeding five consecutive years (or the employee's entire period of employment with the employer, if shorter).

TABLE OF FACTORS

Average entry age	Factors	
	Average compensation benefit formula	Other formulas
Less than 30	0.5	0.75
30 to 40	0.4	0.6
Over 40	0.2	0.3

(v) *Examples.* The following examples illustrate the rules of this paragraph (b)(2):

Example 1. Plan A is a contributory DB plan that is a defined benefit excess plan providing a benefit equal to 2.0 percent of employees' average annual compensation at or below covered compensation, plus 2.5 percent of average annual compensation above covered compensation, times years of service up to 35. Under the plan, average annual compensation is determined using a five-consecutive-year period for purposes of § 1.401(a)(4)–3(e)(2). The plan requires employee contributions at a rate of four percent of plan year compensation for all employees. Assume that the plan satisfies the demographic requirements of paragraph (b)(2)(ii)(B) of this section. Under these facts, the plan satisfies the eligibility requirements of paragraph (b)(2)(ii) of this section. Assume, further, that the average attained age for all employees in the plan is 55, and that the average years of participation of all employees in the plan is 10. The average entry age for the plan is therefore 45, and, accordingly, the appropriate factor under the table is 0.2. Thus, in applying the safe harbor requirements of § 1.401(a)(4)–3(b) to this plan for the plan year (including the requirements of § 1.401(l)–3), the employee's base benefit percentage and excess benefit percentage are each reduced by 0.8 percent (4 percent × 0.2) and equal 1.2 percent and 1.7 percent, respectively.

Example 2. The facts are the same as in *Example 1*, except that the employee contribution rate is two percent of plan year compensation up to the covered compensation level, and four percent for plan year compensation at or above that contribution breakpoint. The employer elects to apply the alternative method in paragraph (b)(2)(iii)(B)(*2*) of this section to determine the reduction in the base benefit percentage. Because the contribution breakpoint is equal to the integration level, the weight of the employee contribution rate below the contribution breakpoint is 100 percent, and the weight of the employee contribution rate above the contribution breakpoint is zero. Thus, the weighted average of employee contribution rates is two percent. Under the alternative method in paragraph (b)(2)(iii)(B)(*2*) of this section, the reduction in the employee's base benefit percentage is 0.4. In applying the safe harbor requirements of § 1.401(a)(4)–3(b) to this plan (including the requirements of § 1.401(l)–3), the employee's base benefit percentage is 1.6 percent, and the employee's excess benefit percentage is 1.7.

Example 3. The facts are the same as in *Example 1*, except that the employee contribution rate is two percent of plan year compensation up to 50 percent of the covered compensation level, and four percent for plan year compensation at or above that contribution breakpoint. Because the contribution breakpoint is equal to 50 percent of the integration level, the weight of the employee contribution rate below the contribution breakpoint is 50 percent, and the weight of the employee contribution rate above the contribution breakpoint is 50 percent. Thus, the weighted average of employee contribution rates is three percent. Under the alternative method in paragraph (b)(2)(iii)(B)(*2*) of this section, the reduction in the employee's base benefit percentage is 0.6. In applying the safe harbor requirements of § 1.401(a)(4)–3(b) to this plan (including the requirements of § 1.401(l)–3), the employee's base benefit percentage is 1.4 percent, and the employee's excess benefit percentage is 1.7.

Example 4. The facts are the same as in *Example 1*, except that the plan is tested using the general test in § 1.401(a)(4)–3(c). Assume Employee M benefits under Plan A and has a normal accrual rate for the plan year (calculated with respect to Employee M's total accrued benefit) of 2.2 percent of average annual compensation. In applying the general test in § 1.401(a)(4)–3(c) with respect to employer-provided benefits, this rate is reduced by 0.8 to yield a normal accrual rate of 1.4 percent. This rate may then be adjusted using either of the optional rules in § 1.401(a)(4)–3(d)(3)(i) or (ii).

(3) *Minimum-benefit method*—(i) *Application of uniform factors.* A contributory DB plan that satisfies the uniform rate requirement of paragraph (b)(2)(ii)(A) of this section and the minimum benefit requirement of paragraph (b)(3)(ii) of this section may apply the adjustments provided in

paragraph (b)(2)(iii) of this section as if the average entry age of employees in the plan were within the range of 30 to 40, without regard to the actual demographics of the employees in the plan.

(ii) *Minimum benefit requirement.* This requirement is satisfied if the plan provides that, in plan years beginning on or after the effective date of these regulations, as set forth in § 1.401(a)(4)–13(a) and (b), each employee will accrue a benefit that equals or exceeds the sum of—

(A) The accrued benefit derived from employee contributions made for plan years beginning on or after the effective date of these regulations, determined in accordance with section 411(c); and

(B) Fifty percent of the total benefit accrued in plan years beginning on or after the effective date of these regulations, as determined under the plan benefit formula without regard to that portion of the formula designed to satisfy the minimum benefit requirement of this paragraph (b)(3)(ii).

(iii) *Example.* The following example illustrates the minimum-benefit method of this paragraph (b)(3):

Example. Plan A is contributory DB plan. For the plan year beginning in 1994, Employee M participates in Plan A and accrues a benefit under the terms of the plan (without regard to the minimum benefit requirement of paragraph (b)(3)(ii) of this section) of $3,000. The portion of Employee M's benefit accrual for the plan year beginning in 1994 derived from employee contributions is $2,000, determined by applying the rules of section 411(c) to such contributions. The requirement of paragraph (b)(3)(ii) of this section is not satisfied for the plan year beginning in 1994 unless the plan provides that Employee M's benefit accrual for the plan year beginning in 1994 is equal to $3,500 ($2,000 + (50 percent × $3,000)).

(4) *Grandfather rule for plans in existence on May 14, 1990.* A contributory DB plan that satisfies paragraph (c)(4) of this section may determine an employee's employer-provided benefit by subtracting from the employee's total benefit the employee-provided benefits determined using any reasonable method set forth in the plan, provided that it is the same method used in determining whether the plan satisfies paragraph (c)(4)(ii)(D) of this section.

(5) *Government-plan method.* A contributory DB plan that is established and maintained for its employees by the government of any state or political subdivision or by any agency or instrumentality thereof may treat an employee's total benefit as entirely employer-provided.

(6) *Cessation of employee contributions.* If a contributory DB plan provides that no employee contributions may be made to the plan after the last day of the first plan year beginning on or after the effective date of these regulations, as set forth in § 1.401(a)(4)–13 (a) and (b), the plan may treat an employee's total benefit as entirely employer-provided.

(c) *Rules applicable in determining whether employee-provided benefits are nondiscriminatory in amount*—(1) *In general.* A contributory DB plan satisfies § 1.401(a)(4)–1(b)(2) with respect to the amount of employee-provided benefits for a plan year only if the plan satisfies the requirements of paragraph (c)(2), (c)(3), or (c)(4) of this section for the plan year. This requirement applies regardless of the method used to determine the amount of employer-provided benefits under paragraph (b) of this section.

(2) *Same rate of contributions.* This requirement is satisfied for a plan year if the employee contribution rate (within the meaning of paragraph (b)(2)(ii)(A) of this section) is the same for all employees for the plan year.

(3) *Total-benefits method.* This requirement is satisfied for a plan year if—

(i) The total benefits (i.e., the sum of employer-provided and employee-provided benefits) under the plan would satisfy § 1.401(a)(4)–3 if all benefits were treated as employer-provided benefits; and

(ii) The plan's contribution requirements satisfy paragraph (b)(2)(ii)(A) of this section.

(4) *Grandfather rules for plans in existence on May 14, 1990*—(i) *In general.* This requirement is satisfied for a plan year if the plan contained provisions as of May 14, 1990, that meet the requirements of paragraph (c)(4)(ii) or (c)(4)(iii) of this section.

(ii) *Graded contribution rates.* The plan's provisions meet the requirements of this paragraph (c)(4)(ii) if all the following requirements are met:

(A) The provisions require employee contributions at a greater rate (expressed as a percentage of compensation) at higher levels of compensation than at lower levels of compensation.

(B) The required rate of employee contributions is not increased after May 14, 1990, although the level of compensation at which employee contributions are required may be increased or decreased.

(C) All employees are permitted to make employee contributions under the plan at a uniform rate with respect to all compensation, beginning no later than the last day of the first plan year to which these regulations apply, as set forth in § 1.401(a)(4)–13 (a) and (b).

(D) The benefits provided on account of employee contributions at lower levels of compensation are comparable to those provided on account of employee contributions at higher levels of compensation.

(iii) *Prior year compensation.* The plan's provisions meet the requirements of this paragraph (c)(4)(iii) if they are part of a plan maintained by more than one employer that requires employee contributions and the rate of required employee contributions, expressed as a percentage of compensation for the last calendar year ending before the beginning of the plan year, is the same for all employees.

§ 1.401(a)(4)–7 Imputation of permitted disparity.

(a) *Introduction.* In determining whether a plan satisfies section 401(a)(4) with respect to the amount of contributions or benefits, section 401(a)(5)(C) allows the disparities permitted under section 401(l) to be taken into account. For purposes of satisfying the safe harbors of §§ 1.401(a)(4)–2(b)(2) and 1.401(a)(4)–3(b), permitted disparity may be taken into account only by satisfying section 401(l) in form in accordance with § 1.401(l)–2 or 1.401(l)–3, respectively. For purposes of the general tests of §§ 1.401(a)(4)–2(c) and 1.401(a)(4)–3(c), permitted disparity may be taken into account only in accordance with the rules of this section. In general, this section allows permitted disparity to be arithmetically imputed with respect to employer-provided contributions or benefits by determining an adjusted allocation or accrual rate that appropriately accounts for the permitted disparity with respect to each employee. Paragraph (b) of this section provides rules for imputing permitted disparity with respect to employer-provided contributions by adjusting each employee's unadjusted allocation rate. Paragraph (c) of this section provides rules for imputing permitted disparity with respect to employer-provided benefits by adjusting each employee's unadjusted accrual rate. Paragraph (d) of this section provides rules of general application.

(b) *Adjusting allocation rates*—(1) *In general.* The rules in this paragraph (b) produce an adjusted allocation rate for each employee by determining the excess contribution percentage under the hypothetical formula that would yield the allocation actually received by the employee, if the plan took into account the full disparity permitted under section 401(l)(2) and used the taxable wage base as the integration level. This adjusted allocation rate is

used to determine whether the amount of contributions under the plan satisfies the general test of § 1.401(a)(4)–2(c) and to apply the average benefit percentage test on the basis of contributions under § 1.410(b)–5(d). Paragraphs (b)(2) and (b)(3) of this section apply to employees whose plan year compensation does not exceed and does exceed, respectively, the taxable wage base, and paragraph (b)(4) of this section provides definitions.

(2) *Employees whose plan year compensation does not exceed taxable wage base.* If an employee's plan year compensation does not exceed the taxable wage base, the employee's adjusted allocation rate is the lesser of the A rate and the B rate determined under the formulas below, where the permitted disparity rate and the unadjusted allocation rate are determined under paragraph (b)(4) (ii) and (iv) of this section, respectively.

A Rate=2×unadjusted allocation rate

B Rate=unadjusted allocation rate+permitted disparity rate

(3) *Employees whose plan year compensation exceeds taxable wage base.* If an employee's plan year compensation exceeds the taxable wage base, the employee's adjusted allocation rate is the lesser of the C rate and the D rate determined under the formulas below, where allocations and the permitted disparity rate are determined under paragraph (b)(4) (i) and (ii) of this section, respectively.

$$\text{C Rate} = \frac{\text{allocations}}{\text{plan year compensation} - \frac{1}{2}\text{ taxable wage base}}$$

$$\text{D Rate} = \frac{\text{allocations} + (\text{permitted disparity rate} \times \text{taxable wage base})}{\text{plan year compensation}}$$

(4) *Definitions.* In applying this paragraph (b), the following definitions govern—

(i) *Allocations.* Allocations means the amount determined by multiplying the employee's plan year compensation by the employee's unadjusted allocation rate.

(ii) *Permitted disparity rate*—(A) *General rule.* Permitted disparity rate means the rate in effect as of the beginning of the plan year under section 401(l)(2)(A)(ii) (e.g., 5.7 percent for plan years beginning in 1990).

(B) *Cumulative permitted disparity limit.* Notwithstanding paragraph (b)(4)(ii)(A) of this section, the permitted disparity rate is zero for an employee who has benefited under a defined benefit plan taken into account under § 1.401(l)–5(a)(3) for a plan year that begins on or after one year from the first day of the first plan year to which these regulations apply, as set forth in § 1.401(a)(4)–13 (a) and (b), if imputing permitted disparity would result in a cumulative disparity fraction for the employee, as defined in § 1.401(l)–5(c)(2), that exceeds 35. See § 1.401(l)–5(c)(1) for special rules for determining whether an employee has benefited under a defined benefit plan for this purpose.

(iii) *Taxable wage base.* Taxable wage base means the taxable wage base, as defined in § 1.401(l)–1(c)(32), in effect as of the beginning of the plan year.

(iv) *Unadjusted allocation rate.* Unadjusted allocation rate means the employee's allocation rate determined under § 1.401(a)(4)–2(c)(2)(i) for the plan year (expressed as a percentage of plan year compensation), without imputing permitted disparity under this section.

(5) *Example.* The following example illustrates the rules in this paragraph (b):

Example. (a) Employees M and N participate in a defined contribution plan maintained by Employer X. Employee M has plan year compensation of $30,000 in the 1990 plan year and has an unadjusted allocation rate of five percent. Employee N has plan year compensation of $100,000 in the 1990 plan year and has an unadjusted allocation rate of eight percent. The taxable wage base in 1990 is $51,300.

(b) Because Employee M's plan year compensation does not exceed the taxable wage base, Employee M's A rate is 10 percent (2×5 percent), and Employee M's B rate is 10.7 percent (5 percent+5.7 percent). Thus, Employee M's adjusted allocation rate is 10 percent, the lesser of the A rate and the B rate.

(c) Employee N's allocations are $8,000 (8 percent×$100,000). Because Employee N's plan year compensation exceeds the taxable wage base, Employee N's C rate is 10.76 percent ($8,000 divided by ($100,000 – (½×$51,300))), and Employee N's D rate is 10.92 percent (($8,000+ (5.7 percent×$51,300)) divided by $100,000). Thus, Employee N's adjusted allocation rate is 10.76 percent, the lesser of the C rate and the D rate.

(c) *Adjusting accrual rates*—(1) *In general.* The rules in this paragraph (c) produce an adjusted accrual rate for each employee by determining the excess benefit percentage under the hypothetical plan formula that would yield the employer-provided accrual actually received by the employee, if the plan took into account the full permitted disparity under section 401(l)(3)(A) in each of the first 35 years of an employee's testing service under the plan and used the employee's covered compensation as the integration level. This adjusted accrual rate is used to determine whether the amount of employer-provided benefits under the plan satisfies the alternative safe harbor for flat benefit plans under § 1.401(a)(4)–3(b)(4)(i)(C)(*3*) or the general test of § 1.401(a)(4)–3(c), and to apply the average benefit percentage test on the basis of benefits under § 1.410(b)–5. Paragraphs (c)(2) and (c)(3) of this section apply to employees whose average annual compensation does not exceed and does exceed, respectively, covered compensation, and paragraph (c)(4) of this section provides definitions. Paragraph (c)(5) of this section provides a special rule for employees with negative unadjusted accrual rates.

(2) *Employees whose average annual compensation does not exceed covered compensation.* If an employee's average annual compensation does not exceed the employee's covered compensation, the employee's adjusted accrual rate is the lesser of the A rate and the B rate determined under the formulas below, where the permitted disparity factor and the unadjusted accrual rate are determined under paragraph (c)(4)(iii) and (v) of this section, respectively.

A Rate=2×unadjusted accrual rate

B Rate=unadjusted accrual rate+permitted disparity factor

(3) *Employees whose average annual compensation exceeds covered compensation.* If an employee's average annual compensation exceeds the employee's covered compensation, the employee's adjusted accrual rate is the

lesser of the C rate and D rate determined under the formulas below, where the employer-provided accrual and the permitted disparity factor are determined under paragraph (c)(4)(ii) and (iii) of this section, respectively.

$$\text{C Rate} = \frac{\text{employer-provided accrual}}{\text{average annual compensation} - \frac{1}{2}\text{ covered compensation}}$$

$$\text{D Rate} = \text{employer-provided accrual} + \frac{(\text{permitted disparity factor} \times \text{covered compensation})}{\text{average annual compensation}}$$

(4) *Definitions.* For purposes of this paragraph (c), the following definitions apply.

(i) *Covered compensation.* Covered compensation means covered compensation as defined in § 1.401(l)–1(c)(7). Notwithstanding § 1.401(l)–1(c)(7)(iii), an employee's covered compensation must be automatically adjusted each plan year for purposes of applying this paragraph (c).

(ii) *Employer-provided accrual.* Employer-provided accrual means the amount determined by multiplying the employee's average annual compensation by the employee's unadjusted accrual rate.

(iii) *Permitted disparity factor*—(A) *General rule.* Permitted disparity factor for an employee means the sum of the employee's annual permitted disparity factors determined under paragraph (c)(4)(iii)(B) of this section for each of the years in the measurement period used for determining the employee's accrual rate in § 1.401(a)(4)–3(d)(1), divided by the employee's testing service during that measurement period.

(B) *Annual permitted disparity factor*—(*1*) *Definition.* An employee's annual permitted disparity factor is generally 0.75 percent adjusted, pursuant to § 1.401(l)–3(e), using as the age at which benefits commence the lesser of age 65 or the employee's testing age. No adjustments are made in the annual permitted disparity factor unless an employee's testing age is different from the employee's social security retirement age. An annual permitted disparity factor that is less than the annual permitted disparity factor described in the first sentence of this paragraph (c)(4)(iii)(B)(*1*) may be used if it is a uniform percentage of that factor (e.g., 50 percent of the annual permitted disparity factor) or a fixed percentage (e.g., 0.65 percent) for all employees.

(*2*) *Annual permitted disparity factor after 35 years.* For purposes of determining the sum described in paragraph (c)(4)(iii)(A) of this section, the annual permitted disparity factor for each of the employee's first 35 years of testing service is the amount described in paragraph (c)(4)(iii)(B)(*1*) of this section, and the annual permitted disparity factor in any subsequent year equals zero. This rule applies regardless of whether the end of the measurement period extends beyond an employee's first 35 years of testing service. Thus, for example, if the measurement period is the current plan year and the employee completed 35 years of testing service prior to the beginning of the current plan year, under this paragraph (c)(4)(iii)(B)(*2*) the annual permitted disparity factor in the current plan year (and hence the sum of the annual permitted disparity factors for each year in the measurement period) is zero.

(*3*) *Cumulative permitted disparity limit.* The 35 years used in paragraph (c)(4)(iii)(B)(*2*) of this section must be reduced by the employee's cumulative disparity fraction, as defined in § 1.401(l)–5(c)(2), but determined solely with respect to the employee's total years of service under all plans taken into account under § 1.401(l)–5(a)(3) during the measurement period, other than the plan being tested.

(iv) *Social security retirement age.* Social security retirement age means social security retirement age as defined in section 415(b)(8).

(v) *Unadjusted accrual rate.* Unadjusted accrual rate means the normal or most valuable accrual rate, whichever is being determined for the employee under § 1.401(a)(4)–3(d), expressed as a percentage of average annual compensation, without imputing permitted disparity under this section.

(5) *Employees with negative unadjusted accrual rates.* Notwithstanding the formulas in paragraph (c)(2) and (c)(3) of this section, if an employee's unadjusted accrual rate is less than zero, the employee's adjusted accrual rate is deemed to be the employee's unadjusted accrual rate.

(6) *Example.* The following example illustrates the rules in this paragraph (c):

Example. (a) Employees M and N participate in a defined benefit plan that uses a normal retirement age of 65. The plan is being tested for the plan year under § 1.401(a)(4)–3(c), using unadjusted accrual rates determined using a plan year measurement period under § 1.401(a)(4)–3(d)(1)(iii)(A). Employee M has an unadjusted normal accrual rate of 1.48 percent, average annual compensation of $21,000, and an employer-provided accrual of $311 (1.48 percent×$21,000). Employee N has an unadjusted normal accrual rate of 1.7 percent, average annual compensation of $106,000, and an employer-provided accrual of $1,802 (1.7 percent×$106,000). The covered compensation of both Employees M and N is $25,000, and social security retirement age for both employees is 65. Neither employee has testing service of more than 35 years and neither has ever participated in another plan.

(b) Because Employee M's average annual compensation does not exceed covered compensation, Employee M's A rate is 2.96 percent (2.0×1.48 percent), and Employee M's B rate is 2.23 percent (1.48 percent+0.75 percent). Thus, Employee M's adjusted accrual rate is 2.23 percent, the lesser of the A rate and the B rate.

(c) Because Employee N's average annual compensation exceeds covered compensation, Employee N's C rate is 1.93 percent ($1,802/($106,000 – (0.5×$25,000))), and Employee N's D rate is 1.88 percent (($1,802+(0.75 percent×$25,000))/$106,000). Thus, Employee N's adjusted accrual rate is 1.88 percent, the lesser of the C rate and the D rate.

(d) *Rules of general application*—(1) *Eligible plans.* The rules in this section may be used only for those plans to which the permitted disparity rules of section 401(l) are available. See § 1.401(l)–1(a)(3).

(2) *Exceptions from consistency requirements.* A plan does not fail to

satisfy the consistency requirements of § 1.401(a)(4)–2(c)(2)(vi) or § 1.401(a)(4)–3(d)(2)(i) merely because the plan does not impute disparity for some employees to the extent required to comply with paragraph (d)(3) of this section, or because the plan does not impute disparity for any employees (including self-employed individuals within the meaning of section 401(c)(1)) who are not covered by any of the taxes under section 3111(a), section 3221, or section 1401.

(3) *Overall permitted disparity.* The annual overall permitted disparity limits of § 1.401(l)–5(b) apply to the employer-provided contributions and benefits for an employee under all plans taken into account under § 1.401(l)–5(a)(3). Thus, if an employee who benefits under the plan for the current plan year also benefits under a section 401(l) plan for the plan year ending with or within the current plan year, permitted disparity may not be imputed for that employee for the plan year. See § 1.401(l)–5(b)(9), *Example 4.* Similarly, if an employee who benefits under the plan for the current plan year also benefits under another plan of the employer for the plan year ending with or within the current plan year, disparity may be imputed for that employee under only one of the plans.

§ 1.401(a)(4)–8 Cross-testing.

(a) *Introduction.* This section provides rules for testing defined benefit plans on the basis of equivalent employer-provided contributions and defined contribution plans on the basis of equivalent employer-provided benefits under § 1.401(a)(4)–1(b)(2). Paragraphs (b)(1) and (c)(1) of this section provide general tests for nondiscrimination based on individual equivalent accrual or allocation rates determined under paragraphs (b)(2) and (c)(2) of this section, respectively. Paragraphs (b)(3), (c)(3), and (d) of this section provide additional safe-harbor testing methods for target benefit plans, cash balance plans, and defined benefit plans that are part of floor-offset arrangements, respectively, that generally may be satisfied on a design basis.

(b) *Nondiscrimination in amount of benefits provided under a defined contribution plan—(1) General rule.* Equivalent benefits under a defined contribution plan (other than an ESOP) are nondiscriminatory in amount for a plan year if the plan would satisfy § 1.401(a)(4)–2(c)(1) for the plan year if an equivalent accrual rate, as determined under paragraph (b)(2) of this section, were substituted for each employee's allocation rate in the determination of rate groups. A plan does not fail to satisfy this paragraph (b)(1) merely because allocations are made at the same rate for employees who are older than their testing age (determined without regard to the current-age rule in paragraph (4) of the definition of *Testing age* in § 1.401(a)(4)–(12) as they are made for employees who are at that age.

(2) *Determination of equivalent accrual rates*—(i) *Basic definition.* An employee's equivalent accrual rate for a plan year is the annual benefit that is the result of normalizing the increase in the employee's account balance during the measurement period, divided by the number of years in which the employee benefited under the plan during the measurement period, and expressed either as a dollar amount or as a percentage of the employee's average annual compensation. A measurement period that includes future years may not be used for this purpose.

(ii) *Rules of application*—(A) *Determination of account balance.* The increase in the account balance during the measurement period taken into account under paragraph (b)(2)(i) of this section does not include income, expenses, gains, or losses allocated during the measurement period that are attributable to the account balance as of the beginning of the measurement period, but does include any additional amounts that would have been included in the increase in the account balance but for the fact that they were previously distributed (including a reasonable adjustment for interest). In the case of a measurement period that is the current plan year, an employer may also elect to disregard the income, expenses, gains, and losses allocated during the current plan year that are attributable to the increase in account balance since the beginning of the year, and thus, determine the increase in account balance during the plan year taking into account only the allocations described in § 1.401(a)(4)–2(c)(2)(ii). In addition, an employer may disregard distributions made to a NHCE as well as distributions made to any employee in plan years beginning before a selected date no later than January 1, 1986.

(B) *Normalization.* The account balances determined under paragraph (b)(2)(ii)(A) of this section are normalized by treating them as single-sum benefits that are immediately and unconditionally payable to the employee. A standard interest rate, and a straight life annuity factor that is based on the same or a different standard interest rate and on a standard mortality table, must be used in normalizing these benefits. In addition, no mortality may be assumed prior to the employee's testing age.

(iii) *Options.* Any of the optional rules in § 1.401(a)(4)–3(d)(3) (e.g., imputation of permitted disparity) may be applied in determining an employee's equivalent accrual rate by substituting the employee's equivalent accrual rate (determined without regard to the option) for the employee's normal accrual rate (i.e., not most valuable accrual rate) in that section where appropriate. For this purpose, however, the last sentence of the fresh-start alternative in § 1.401(a)(4)–3(d)(3)(iii)(A) (dealing with compensation adjustments to the frozen accrued benefit) is not applicable. No other options are available in determining an employee's equivalent accrual rate except those (e.g., selection of alternative measurement periods) specifically provided in this paragraph (b)(2). Thus, for example, none of the optional special rules in § 1.401(a)(4)–3(f) (e.g., determination of benefits on other than a plan year basis under § 1.401(a)(4)–3(f)(6)) is available.

(iv) *Consistency rule.* Equivalent accrual rates must be determined in a consistent manner for all employees for the plan year. Thus, for example, the same measurement periods and standard interest rates must be used, and any available options must be applied consistently if at all.

(3) *Safe-harbor testing method for target benefit plans*—(i) *General rule.* A target benefit plan is a money purchase pension plan under which contributions to an employee's account are determined by reference to the amounts necessary to fund the employee's stated benefit under the plan. Whether a target benefit plan satisfies section 401(a)(4) with respect to an equivalent amount of benefits is generally determined under paragraphs (b)(1) and (b)(2) of this section. A target benefit plan is deemed to satisfy section 401(a)(4) with respect to an equivalent amount of benefits, however, if each of the following requirements is satisfied:

(A) *Stated benefit formula.* Each employee's stated benefit must be determined as the straight life annuity commencing at the employee's normal retirement age under a formula that would satisfy the requirements of § 1.401(a)(4)–3(b)(4)(i)(C) (*1*) or (*2*), and that would satisfy each of the uniformity requirements in § 1.401(a)(4)–3(b)(2) (taking into account the relevant exceptions provided in § 1.401(a)(4)–3(b)(6)), if the plan were a defined benefit plan with the same benefit formula. In determining whether these requirements are satisfied, the rules of § 1.401(a)(4)–3(f) do not apply.

and, in addition, except as provided in paragraph (b)(3)(vii) of this section, an employee's stated benefit at normal retirement age under the stated benefit formula is deemed to accrue ratably over the period ending with the plan year in which the employee is projected to reach normal retirement age and beginning with the latest of: the first plan year in which the employee benefited under the plan, the first plan year taken into account in the stated benefit formula, and any plan year immediately following a plan year in which the plan did not satisfy this paragraph (b)(3). Thus, except as provided in paragraph (b)(3)(vii) of this section, under § 1.401(a)(4)–3(b)(2)(v) an employee's stated benefit may not take into account service in years prior to the first plan year that the employee benefited under the plan, and an employee's stated benefit may not take into account service in plan years prior to the current plan year unless the plan satisfied this paragraph (b)(3) in all of those prior plan years.

(B) *Employer and employee contributions.* Employer contributions with respect to each employee must be based exclusively on the employee's stated benefit using the method provided in paragraph (b)(3)(iv) of this section, and forfeitures and any other amounts under the plan taken into account under § 1.401(a)(4)–2(c)(2)(ii) (other than employer contributions) are used exclusively to reduce employer contributions. Employee contributions (if any) may not be used to fund the stated benefit.

(C) *Permitted disparity.* If permitted disparity is taken into account, the stated benefit formula must satisfy § 1.401(l)–3. For this purpose, the 0.75-percent factor in the maximum excess or offset allowance in § 1.401(l)–3(b)(2)(i) or (b)(3)(i), respectively, as adjusted in accordance with § 1.401(l)–3(d)(9) (and, if the employee's normal retirement age is not the employee's social security retirement age, § 1.401(l)–3(e)), is further reduced by multiplying the factor by 0.80.

(ii) *Changes in stated benefit formula.* A plan does not fail to satisfy paragraph (b)(3)(i) of this section merely because the plan determines each employee's stated benefit in the current plan year under a stated benefit formula that differs from the stated benefit formula used to determine the employee's stated benefit in prior plan years.

(iii) *Stated benefits after normal retirement age.* A target benefit plan may limit increases in the stated benefit after normal retirement age consistent with the requirements applicable to defined benefit plans under section 411(b)(1)(H) (without regard to section 411(b)(1)(H)(iii)), provided that the limitation applies on the same terms to all employees. Thus, post-normal retirement benefits required under § 1.401(a)(4)–3(b)(2)(ii) must be provided under the stated benefit formula, subject to any uniformly applicable service cap under the formula.

(iv) *Method for determining required employer contributions*—(A) *General rule.* An employer's required contribution to the account of an employee for a plan year is determined based on the employee's stated benefit and the amount of the employee's theoretical reserve as of the date the employer's required contribution is determined for the plan year (the determination date). Paragraph (b)(3)(iv)(B) of this section provides rules for determining an employee's theoretical reserve. Paragraph (b)(3)(iv)(C) and (D) of this section provides rules for determining an employer's required contributions.

(B) *Theoretical reserve*—(1) *Initial theoretical reserve.* An employee's theoretical reserve as of the determination date for the first plan year in which the employee benefits under the plan, the first plan year taken into account under the stated benefit formula (if that is the current plan year), or the first plan year immediately following any plan year in which the plan did not satisfy this paragraph (b)(3), is zero.

(2) *Theoretical reserve in subsequent plan years.* An employee's theoretical reserve as of the determination date for a plan year (other than a plan year described in paragraph (b)(3)(iv)(B)(*1*) of this section) is the employee's theoretical reserve as of the determination date for the prior plan year, plus the employer's required contribution for the prior plan year (as limited by section 415, but without regard to the additional contributions described in paragraph (b)(3)(v) of this section) both increased by interest from the determination date for the prior plan year through the determination date for the current plan year, but not beyond the determination date for the plan year that includes the employee's normal retirement date. (Thus, an employee's theoretical reserve as of the determination date for a plan year does not include the amount of the employer's required contribution for the plan year.) The interest rate for determining employer contributions that was in effect on the determination date in the prior plan year must be applied to determine the required interest adjustment for this period. For plan years beginning after the effective date applicable to the plan under § 1.401(a)(4)–13(a) or (b), a standard interest rate must be used, and may not be changed except on the determination date for a plan year.

(C) *Required contributions for employees under normal retirement age.* The required employer contributions with respect to an employee whose attained age is less than the employee's normal retirement age must be determined for each plan year as follows:

(*1*) Determine the employee's fractional rule benefit (within the meaning of § 1.411(b)–1(b)(3)(ii)(A)) under the plan's stated benefit formula as if the plan were a defined benefit plan with the same benefit formula.

(*2*) Determine the actuarial present value of the fractional rule benefit determined in paragraph (b)(3)(iv)(C)(*1*) of this section as of the determination date for the current plan year, using a standard interest rate and a standard mortality table that are set forth in the plan and that are the same for all employees, and assuming no mortality before the employee's normal retirement age.

(*3*) Determine the excess, if any, of the amount determined in paragraph (b)(3)(iv)(C)(*2*) of this section over the employee's theoretical reserve for the current plan year determined under paragraph (b)(3)(iv)(B) of this section.

(*4*) Determine the required employer contribution for the current plan year by amortizing on a level annual basis, using the same interest rate used for paragraph (b)(3)(iv)(C)(*2*) of this section, the result in paragraph (b)(3)(iv)(C)(*3*) of this section over the period beginning with the determination date for the current plan year and ending with the determination date for the plan year in which the employee is projected to reach normal retirement age.

(D) *Required contributions for employees over normal retirement age.* The required employer contributions with respect to an employee whose attained age equals or exceeds the employee's normal retirement age is the excess, if any, of the actuarial present value, as of the determination date for the current plan year, of the employee's stated benefit for the current plan year (determined using an immediate straight life annuity factor based on a standard interest rate and a standard mortality table, for an employee whose attained age equals the employee's normal retirement age) over the employee's theoretical reserve as of the determination date.

(v) *Effect of section 415 and 416 requirements.* A target benefit plan does not fail to satisfy this paragraph (b)(3)

merely because required contributions under the plan are limited by section 415 in a plan year. Similarly, a target benefit plan does not fail to satisfy this paragraph (b)(3) merely because additional contributions are made consistent with the requirements of section 416(c)(2) (regardless of whether the plan is top-heavy).

(vi) *Certain conditions on allocations.* A target benefit plan does not fail to satisfy this paragraph (b)(3) merely because required contributions under the plan are subject to the conditions on allocations permitted under § 1.401(a)(4)–2(b)(4)(iii).

(vii) *Special rules for target benefit plans qualified under prior law*—(A) *Service taken into account prior to satisfaction of this paragraph.* For purposes of determining whether the stated benefit formula satisfies paragraph (b)(3)(i)(A) of this section (e.g., whether the period over which an employee's stated benefit is deemed to accrue is the same as the period taken into account under the stated benefit formula as required by paragraph (b)(3)(i)(A) of this section), a target benefit plan that was adopted and in effect on September 19, 1991, is deemed to have satisfied this paragraph (b)(3), and an employee is treated as benefiting under the plan, in any year prior to the effective date applicable to the plan under § 1.401(a)(4)–13 (a) or (b) that was taken into account in the stated benefit formula under the plan on September 19, 1991, if the plan satisfied the applicable nondiscrimination requirements for target benefit plans for that prior year.

(B) *Initial theoretical reserve.* Notwithstanding paragraph (b)(3)(iv)(B)(1) of this section, a target benefit plan under which the stated benefit formula takes into account service for an employee for plan years prior to the first plan year in which the plan satisfied this paragraph (b)(3), as permitted under paragraph (b)(3)(vii)(A) of this section, must determine an initial theoretical reserve for the employee as of the determination date for the last plan year beginning before such plan year under the rules of § 1.401(a)(4)–13(e).

(C) *Satisfaction of prior law.* In determining whether a plan satisfied the applicable nondiscrimination requirements for target benefit plans for any period prior to the effective date applicable to the plan under § 1.401(a)(4)–13 (a) or (b), no amendments after September 19, 1991, other than amendments necessary to satisfy section 401(l), are taken into account.

(viii) *Examples.* The following examples illustrate the rules in this paragraph (b)(3):

Example 1. (a) Employer X maintains a target benefit plan with a calendar plan year that bases contributions on a stated benefit equal to 40 percent of each employee's average annual compensation, reduced pro rata for years of participation less than 25, payable annually as a straight life annuity commencing at normal retirement age. The UP–84 mortality table and an interest rate of 7.5 percent are used to calculate the contributions necessary to fund the stated benefit. Required contributions are determined on the last day of each plan year. The normal retirement age under the plan is 65. Employee M is 39 years old in 1994, has participated in the plan for six years, and has average annual compensation equal to $60,000 for the 1994 plan year. Assume that Employee M's theoretical reserve as of the last day of the 1993 plan year is $13,909, determined under § 1.401(a)(4)–13(e), and that required employer contributions for 1993 were determined using an interest rate of six percent.

(b) Under these facts, Employer X's 1994 required contribution to fund Employee M's stated benefit is $1,318, calculated as follows:

(1) Employee M's fractional rule benefit is $24,000 (40 percent of Employee M's average annual compensation of $60,000).

(2) The actuarial present value of Employee M's fractional rule benefit as of the last day of the 1994 plan year is $30,960 (Employee M's fractional rule benefit of $24,000 multiplied by 1.290, the actuarial present value factor for an annual straight life annuity commencing at age 65 applicable to a 39-year-old employee, determined using the stated interest rate of 7.5 percent and the UP–84 mortality table, and assuming no mortality before normal retirement age).

(3) The actuarial present value of Employee M's fractional rule benefit ($30,960) is reduced by Employee M's theoretical reserve as of the last day of the 1994 plan year. The theoretical reserve on that day is $14,744—the $13,909 theoretical reserve as of the last day of the 1993 plan year, increased by interest for one year at the rate of six percent. Because the required contribution for the 1993 plan year is taken into account under § 1.401(a)(4)–13(e)(2) in determining the theoretical reserve as of the last day of the 1993 plan year, it is not added to the theoretical reserve again in this paragraph (b)(3) of this *Example 1.* The resulting difference is $16,216 ($30,960 – $14,744).

(4) The $16,216 excess of the actuarial present value of Employee M's fractional rule benefit over Employee M's theoretical reserve is multiplied by 0.0813, the amortization factor applicable to a 39-year-old employee determined using the stated interest rate of 7.5 percent. The product of $1,318 is the amount of the required employer contribution for Employee M for the 1994 plan year.

Example 2. (a) The facts are the same as in *Example 1*, except that as of January 1, 1995, the plan's stated benefit formula is amended to provide for a stated benefit equal to 45 percent of average annual compensation, reduced pro rata for years of participation less than 25, payable annually as a straight life annuity commencing at normal retirement age. For the 1995 plan year, Employee M's average annual compensation continues to be $60,000. The mortality table used for the calculation of the employer's required contributions remains the same as in the prior plan year, but the plan's stated interest rate is changed to 8.0 percent effective as of December 31, 1995.

(b) Under these facts, Employer X's required contribution for Employee M is $1,290, calculated as follows:

(1) Employee M's fractional rule benefit is $27,000 (45 percent of $60,000).

(2) The actuarial present value of Employee M's fractional rule benefit as of the last day of the 1995 plan year is $32,319 ($27,000 multiplied by 1.197, the actuarial present value factor for an annuity commencing at age 65 applicable to a 40-year-old employee, determined using the stated interest rate of 8.0 percent and the UP–84 mortality table, and assuming no mortality before normal retirement age).

(3) The actuarial present value of Employee M's fractional rule benefit ($32,319) is reduced by Employee M's theoretical reserve as of the last day of the 1995 plan year. The theoretical reserve as of that day is $17,267—the $14,744 theoretical reserve as of the last day of the 1994 plan year plus the $1,316 required contribution for the 1994 plan year, both increased by interest for one year at the rate of 7.5 percent. The resulting difference is $15,052 ($32,319 – $17,267).

(4) The result in paragraph (b)(3) of this *Example 2* is multiplied by 0.0857, the amortization factor applicable to a 40-year-old employee determined using the stated interest rate of 8.0 percent. The product, $1,290, is the amount of the required employer contribution for Employee M for the 1995 plan year.

(c) *Nondiscrimination in amount of contributions under a defined benefit plan*—(1) *General rule.* Equivalent allocations under a defined benefit plan are nondiscriminatory in amount for a plan year if the plan would satisfy § 1.401(a)(4)–3(c)(1) (taking into account § 1.401(a)(4)–3(c)(3)) for the plan year if an equivalent normal and most valuable allocation rate, as determined under paragraph (c)(2) of this section, were substituted for each employee's normal and most valuable accrual rate, respectively, in the determination of rate groups.

(2) *Determination of equivalent allocation rates*—(i) *Basic definitions.* An employee's equivalent normal and most valuable allocation rates for a plan year are, respectively, the actuarial present value of the increase over the plan year in the benefit that would be taken into account in determining the employee's normal and most valuable accrual rates for the plan year, expressed either as a dollar amount or as a percentage of the employee's plan year compensation. In the case of a

contributory DB plan, the rules in § 1.401(a)(4)–6(b)(1), (b)(5), or (b)(6) must be used to determine the amount of each employee's employer-provided benefit that would be taken into account for this purpose.

(ii) *Rules for determining actuarial present value.* The actuarial present value of the increase in an employee's benefit must be determined using a standard interest rate and a standard mortality table, and no mortality may be assumed prior to the employee's testing age.

(iii) *Options.* The optional rules in § 1.401(a)(4)–2(c)(2)(iv) (imputation of permitted disparity) and (v) (grouping of rates) may be applied to determine an employee's equivalent normal and most valuable allocation rates by substituting those rates (determined without regard to the option) for the employee's allocation rate in that section where appropriate. In addition, the limitations under section 415 may be taken into account under § 1.401(a)(4)–3(d)(2)(ii)(B), and qualified disability benefits may be taken into account as accrued benefits under § 1.401(a)(4)–3(f)(2), in determining the increase in an employee's accrued benefit during a plan year for purposes of paragraph (c)(2)(i) of this section, if those rules would otherwise be available. No other options are available in determining an employee's equivalent normal and most valuable allocations rate except those (e.g., selection of alternative standard interest rates) specifically provided in this paragraph (c)(2). Thus, while all of the mandatory rules in § 1.401(a)(4)–3(d) and (f) for determining the amount of benefits used to determine an employee's normal and most valuable accrual rates (e.g., the treatment of early retirement window benefits in § 1.401(a)(4)–3(f)(4)) are applicable in determining an employee's equivalent normal and most valuable allocation rates, none of the optional rules under § 1.401(a)(4)–3 is available (except the options relating to the section 415 limits and qualified disability benefits noted above).

(iv) *Consistency rule.* Equivalent allocation rates must be determined in a consistent manner for all employees for the plan year. Thus, for example, the same standard interest rates must be used, and any available options must be applied consistently if at all.

* * * * *

(d) *Safe-harbor testing method for defined benefit plans that are part of a floor-offset arrangement*—(1) *General rule.* A defined benefit plan that is part of a floor-offset arrangement is deemed to satisfy the nondiscriminatory amount requirement of § 1.401(a)(4)–1(b)(2) if all of the following requirements are satisfied:

(i) Under the floor-offset arrangement, the accrued benefit (as defined in section 411(a)(7)(A)(i)) that would otherwise be provided to an employee under the defined benefit plan must be reduced solely by the actuarial equivalent of all or part of the employee's account balance attributable to employer contributions under a defined contribution plan maintained by the same employer (plus the actuarial equivalent of all or part of any prior distributions from that portion of the account balance). If any portion of the benefit that is being offset is nonforfeitable, that portion may be offset only by a benefit (or portion of a benefit) that is also nonforfeitable. In determining the actuarial equivalent of amounts provided under the defined contribution plan, an interest rate no higher than the highest standard interest rate must be used, and no mortality may be assumed in determining the actuarial equivalent of any prior distributions from the defined contribution plan or for periods prior to the benefit commencement date under the defined benefit plan.

(ii) The defined benefit plan may not be a contributory DB plan (unless it satisfies § 1.401(a)(4)–6(b)(6)), and benefits under the defined benefit plan may not be reduced by any portion of the employee's account balance under the defined contribution plan (or prior distributions from that account) that are attributable to employee contributions.

(iii) The defined benefit plan and the defined contribution plan must benefit the same employees.

(iv) The offset under the defined benefit plan must be applied to all employees on the same terms.

(v) All employees must have available to them under the defined contribution plan the same investment options and the same options with respect to the timing of preretirement distributions.

(vi) The defined benefit plan must satisfy the uniformity requirements of § 1.401(a)(4)–3(b)(2) and the unit credit safe harbor in § 1.401(a)(4)–3(b)(3) without taking into account the offset described in paragraph (d)(1)(i) of this section (i.e., on a gross-benefit basis), and the defined contribution plan must satisfy any of the tests in § 1.401(a)(4)–2(b) or (c). Alternatively, the defined benefit plan must satisfy any of the tests in § 1.401(a)(4)–3(b) or (c) without taking into account the offset described in paragraph (d)(1)(i) of this section, and the defined contribution plan must satisfy the uniform allocation safe harbor in § 1.401(a)(4)–2(b)(2).

(vii) The defined contribution plan may not be a section 401(k) plan or a section 401(m) plan.

(2) *Application of safe-harbor testing method to qualified offset arrangements.* A defined benefit plan that is part of a qualified offset arrangement as defined in section 1116(f)(5) of the Tax Reform Act of 1986, Public Law No. 99–514, is deemed to satisfy the requirements of paragraph (d)(1)(vi) and (vii) of this section, if the only defined contribution plans included in the qualified offset arrangement are section 401(k) plans, section 401(m) plans, or both, and the defined benefit plan would satisfy the requirements of paragraph (d)(1)(vi) of this section assuming the elective contributions for each employee under the defined contribution plan were the same (either as a dollar amount or as a percentage of compensation) for all plan years since the establishment of the plan.

§ 1.401(a)(4)–9 Plan aggregation and restructuring.

(a) *Introduction.* Two or more plans that are permissively aggregated and treated as a single plan under §§ 1.410(b)–7(d) must also be treated as a single plan for purposes of section 401(a)(4). See § 1.401(a)(4)–12 (definition of plan). An aggregated plan is generally tested under the same rules applicable to single plans. Paragraph (b) of this section, however, provides special rules for determining whether a plan that consists of one or more defined contribution plans and one or more defined benefit plans (a DB/DC plan) satisfies section 401(a)(4) with respect to the amount of employer-provided benefits and the availability of benefits, rights, and features. Paragraph (c) of this section provides rules allowing a plan to be treated as consisting of separate component plans and allowing the component plans to be tested separately under section 401(a)(4).

(b) *Application of nondiscrimination requirements to DB/DC plans*—(1) *General rule.* Except as provided in paragraph (b)(2) of this section, whether a DB/DC plan satisfies section 401(a)(4) is determined using the same rules applicable to a single plan. In addition, paragraph (b)(3) of this section provides an optional rule for demonstrating nondiscrimination in availability of benefits, rights, and features provided under a DB/DC plan.

(2) *Special rules for demonstrating nondiscrimination in amount of contributions or benefits*—(i) *Application of general tests.* A DB/DC plan satisfies section 401(a)(4) with respect to the amount of contributions

or benefits for a plan year if it would satisfy § 1.401(a)(4)–3(c)(1) (without regard to the special rule in § 1.401(a)(4)–3(c)(3)) for the plan year if an employee's aggregate normal and most valuable allocation rates, as determined under paragraph (b)(2)(ii)(A) of this section, or an employee's aggregate normal and most valuable accrual rates, as determined under paragraph (b)(2)(ii)(B) of this section, were substituted for each employee's normal and most valuable accrual rates, respectively, in the determination of rate groups.

(ii) *Determination of aggregate rates*—(A) *Aggregate allocation rates.* An employee's aggregate normal and most valuable allocation rates are determined by treating all defined contribution plans that are part of the DB/DC plan as a single plan, and all defined benefit plans that are part of the DB/DC plan as a separate single plan; and determining an allocation rate and equivalent normal and most valuable allocation rates for the employee under each plan under §§ 1.401(a)(4)–2(c)(2) and 1.401(a)(4)–8(c)(2), respectively. The employee's aggregate normal allocation rate is the sum of the employee's allocation rate and equivalent normal allocation rate determined in this manner, and the employee's aggregate most valuable allocation rate is the sum of the employee's allocation rate and equivalent most valuable allocation rate determined in this manner.

(B) *Aggregate accrual rates.* An employee's aggregate normal and most valuable accrual rates are determined by treating all defined contribution plans that are part of the DB/DC plan as a single plan, and all defined benefit plans that are part of the DB/DC plan as a separate single plan; and determining an equivalent accrual rate and normal and most valuable accrual rates for the employee under each plan under §§ 1.401(a)(4)–8(b)(2) and 1.401(a)(4)–3(d), respectively. The employee's aggregate normal accrual rate is the sum of the employee's equivalent accrual rate and the normal accrual rate determined in this manner, and the employee's aggregate most valuable accrual rate is the sum of the employee's equivalent accrual rate and most valuable accrual rate determined in this manner.

(iii) *Options applied on an aggregate basis.* The optional rules in § 1.401(a)(4)–2(c)(2)(iv) (imputation of permitted disparity) and (v) (grouping of rates) may not be used to determine an employee's allocation or equivalent allocation rate, but may be applied to determine an employee's aggregate normal and most valuable allocation rates by substituting those rates (determined without regard to the option) for the employee's allocation rate in that section where appropriate. The optional rules in § 1.401(a)(4)–3(d)(3) (e.g., imputation of permitted disparity) may not be used to determine an employee's accrual or equivalent accrual rate, but may be applied to determine an employee's aggregate normal and most valuable accrual rate by substituting those rates (determined without regard to the option) for the employee's normal and most valuable accrual rates, respectively, in that section where appropriate.

(iv) *Consistency rule*—(A) *General rule.* Aggregate normal and most valuable allocation rates and aggregate normal and most valuable accrual rates must be determined in a consistent manner for all employees for the plan year. Thus, for example, the same measurement periods and interest rates must be used, and any available options must be applied consistently, if at all, for the entire DB/DC plan. Consequently, options that are not permitted to be used under § 1.401(a)(4)–8 in cross-testing a defined contribution plan or a defined benefit plan (such as measurement periods that include future periods, non-standard interest rates, the option to disregard compensation adjustments described in § 1.401(a)(4)–13(d), or the option to disregard plan provisions providing for actuarial increases after normal retirement age under § 1.401(a)(4)–3(f)(3)) may not be used in testing a DB/DC plan on either a benefits or contributions basis, because their use would inevitably result in inconsistent determinations under the defined contribution and defined benefit portions of the plan.

(B) *Exception for section 415 alternative.* A DB/DC plan does not fail to satisfy the consistency rule in paragraph (b)(2)(iv)(A) of this section merely because the limitations under section 415 are not taken into account, or may not be taken into account, under § 1.401(a)(4)–3(d)(2)(ii)(B) in determining employees' accrual or equivalent allocation rates under the defined benefit portion of the plan, even though those limitations are applied in determining employees' allocation and equivalent accrual rates under the defined contribution portion of the plan.

(3) *Optional rules for demonstrating nondiscrimination in availability of certain benefits, rights, and features*—(i) *Current availability.* A DB/DC plan is deemed to satisfy § 1.401(a)(4)–4(b)(1) with respect to the current availability of a benefit, right, or feature other than a single sum benefit, loan, ancillary benefit, or benefit commencement date (including the availability of in-service withdrawals), that is provided under only one type of plan (defined benefit or defined contribution) included in the DB/DC plan, if the benefit, right, or feature is currently available to all NHCEs in all plans of the same type as the plan under which it is provided.

(ii) *Effective availability.* The fact that it may be difficult or impossible to provide a benefit, right, or feature described in paragraph (b)(3)(i) of this section under a plan of a different type than the plan or plans under which it is provided is one of the factors taken into account in determining whether the plan satisfies the effective availability requirement of § 1.401(a)(4)–4(c)(1).

(c) *Plan restructuring*—(1) *General rule.* A plan may be treated, in accordance with this paragraph (c), as consisting of two or more component plans for purposes of determining whether the plan satisfies section 401(a)(4). If each of the component plans of a plan satisfies all of the requirements of sections 401(a)(4) and 410(b) as if it were a separate plan, then the plan is treated as satisfying section 401(a)(4).

(2) *Identification of component plans.* A plan may be restructured into component plans, each consisting of all the allocations, accruals, and other benefits, rights, and features provided to a selected group of employees. The employer may select the group of employees used for this purpose in any manner, and the composition of the groups may be changed from plan year to plan year. Every employee must be included in one and only one component plan under the same plan for a plan year.

(3) *Satisfaction of section 401(a)(4) by a component plan*—(i) *General rule.* The rules applicable in determining whether a component plan satisfies section 401(a)(4) are the same as those applicable to a plan. Thus, for this purpose, any reference to a plan in section 401(a)(4) and the regulations thereunder (other than this paragraph (c)) is interpreted as a reference to a component plan. As is true for a plan, whether a component plan satisfies the uniformity and other requirements applicable to safe harbor plans under §§ 1.401(a)(4)–2(b) and 1.401(a)(4)–3(b) is determined on a design basis. Thus, for example, plan provisions are not disregarded merely because they do not currently apply to employees in the component plan if they will apply to those employees as a result of the mere passage of time.

(ii) *Certain testing rules involving averaging.* The safe harbor in

§ 1.401(a)(4)–2(b)(3) for plans with uniform points allocation formulas are not available in testing (and thus cannot be satisfied by) contributions under a component plan. See §§ 1.401(k)–1(b)(3)(iii) and 1.401(m)–1(b)(3)(iii) for rules regarding the inapplicability of restructuring to section 401(k) plans and section 401(m) plans.

(4) *Satisfaction of section 410(b) by a component plan*—(i) *General rule.* The rules applicable in determining whether a component plan satisfies section 410(b) are generally the same as those applicable to a plan. However, a component plan is deemed to satisfy the average benefit percentage test of § 1.410(b)–5 if the plan of which it is a part satisfies § 1.410(b)–5 (without regard to § 1.410(b)–5(f)). In the case of a component plan that is part of a plan that relies on § 1.410(b)–5(f) to satisfy the average benefit percentage test, the component plan is deemed to satisfy the average benefit percentage test only if the component plan separately satisfies § 1.410(b)–5(f). In addition, all component plans of a plan are deemed to satisfy the average benefit percentage test if the plan makes an early retirement window benefit (within the meaning of § 1.401(a)(4)–3(f)(4)(iii)) currently available (within the meaning of § 1.401(a)(4)–3(f)(4)(ii)(A)) to a group of employees that satisfies section 410(b) (without regard to the average benefit percentage test), and if it would not be necessary for the plan or any rate group or component plan of the plan to satisfy that test in order for the plan to satisfy sections 401(a)(4) and 410(b) in the absence of the early retirement window benefit.

(ii) *Relationship to satisfaction of section 410(b) by the plan.* Satisfaction of section 410(b) by a component plan is relevant solely for purposes of determining whether the plan of which it is a part satisfies section 401(a)(4), and not for purposes of determining whether the plan satisfies section 410(b) itself. The plan must still independently satisfy section 410(b) in order to be a qualified plan. Similarly, satisfaction of section 410(b) by a plan is relevant solely for purposes of determining whether the plan, and not the component plan, satisfies section 410(b). Thus, for example, a component plan that does not satisfy the ratio percentage test of § 1.410(b)–2(b)(2) must still satisfy the average benefit test of § 1.410(b)–2(b)(3), even though the plan of which it is a part satisfies the ratio percentage test.

(5) *Effect of restructuring under other sections.* The restructuring rules provided in this paragraph (c) apply solely for purposes of sections 401(a)(4) and 401(l), and those portions of sections 410(b), 414(s), and any other provisions that are specifically applicable in determining whether the requirements of section 401(a)(4) are satisfied. Thus, for example, a component plan is not treated as a separate plan under section 401(a)(26).

(6) *Examples.* The following examples illustrate the rules in this paragraph (c):

Example 1. Employer X maintains a defined benefit plan. The plan provides a normal retirement benefit equal to 1.0 percent of average annual compensation times years of service to employees at Plant S, and 1.5 percent of average annual compensation times years of service to employees at Plant T. Under paragraph (c)(2) of this section, the plan may be treated as consisting of two component defined benefit plans, one providing retirement benefits equal to 1.0 percent of average annual compensation times years of service to the employees at Plant S, and another providing benefits equal to 1.5 percent of average annual compensation times years of service to employees at Plant T. If each component plan satisfies sections 401(a)(4) and 410(b) as if it were a separate plan under the rules of this paragraph (c), then the entire plan satisfies section 401(a)(4).

Example 2. (a) Employer Y maintains Plan A, a defined benefit plan, for its Employees M, N, O, P, Q, and R. Plan A provides benefits under a uniform formula that satisfies the requirements of § 1.401(a)(4)–3(b)(2) and (b)(3) before it is amended on February 14, 1994. The amendment provides an early retirement window benefit that is a subsidized optional form of benefit under § 1.401(a)(4)–3(b)(2)(iii) and that is available on the same terms to all employees who satisfy the eligibility requirements for the window. The early retirement window benefit is available only to employees who retire between June 1, 1994, and November 30, 1994.

(b) Assume that Employees M, N, and O will be eligible to receive the window benefit by the end of the window period and Employees P, Q, and R will not. Because substantially all employees will not satisfy the eligibility requirements for the early retirement window benefit by the close of the early retirement window benefit period, Plan A fails to satisfy the uniform subsidies requirement of § 1.401(a)(4)–3(b)(2)(iii). See § 1.401(a)(4)–3(b)(2)(vi), *Example 6.*

(c) Under paragraph (c)(2) of this section, Employees M, N, O, P, Q, and R may be grouped into two component plans, one consisting of Employees M, N, and O, and all their accruals and other benefits, rights, and features under the plan (including the early retirement window benefit), and another consisting of Employees P, Q, and R, and all their accruals and other benefits, rights, and features under the plan. Each of the component plans identified in this manner satisfies the uniform subsidies requirement of § 1.401(a)(4)–3(b)(2)(iii), and thus satisfies § 1.401(a)(4)–3(b). The entire plan satisfies section 401(a)(4) under the rules of this paragraph (c), if each of these component plans also satisfies section 410(b) as if it were a separate plan (including, if applicable, the reasonable classification requirement of § 1.410(b)–4(b), and taking into account the special rule of paragraph (c)(4)(i) of this section that forgives the average benefit percentage test in certain situations in which the average benefit percentage test would be required solely as a result of the early retirement window benefit).

Example 3. (a) Employer Z maintains Plan B, a defined benefit plan with a benefit formula that provides two percent of average annual compensation for each year of service up to 20 to each employee. Assume that Plan B would satisfy the fractional accrual rule safe harbor in § 1.401(a)(4)–3(b)(4), except that some employees accrue a portion of their normal retirement benefit in the current plan year that is more than one-third larger than the portion of the same benefit accrued by other employees for the current plan year, and the plan therefore fails to satisfy the one-third-larger requirement of § 1.401(a)(4)–3(b)(4)(i)(C)(*1*).

(b) Employer Z restructures Plan B into two plans, one covering employees with 30 years or less of service at normal retirement age, and the other covering all other employees. Each component plan would separately satisfy the one-third-larger requirement of § 1.401(a)(4)–3(b)(4)(i)(C)(*1*) if the only employees taken into account were those employees included in the component plan in the current plan year. Under paragraph (c)(3)(i) of this section and § 1.401(a)(4)–3(b)(4)(i)(C)(*1*), however, the component plans do not satisfy the one-third-larger requirement because the safe harbor determination is made taking into account the effect of the plan benefit formula on any potential employee in the component plan (other than employees with more than 33 years of service at normal retirement age), and not just those employees included in the component plan in the current plan year.

§ 1.401(a)(4)–10 Testing of former employees.

(a) *Introduction.* This section provides rules for determining whether a plan satisfies the nondiscriminatory amount and nondiscriminatory availability requirements of § 1.401(a)(4)–1(b)(2) and (3), respectively, with respect to former employees. Generally, this section is relevant only in the case of benefits provided through an amendment to the plan effective in the current plan year. See the definitions of employee and former employee in § 1.401(a)(4)–12.

(b) *Nondiscrimination in amount of contributions or benefits*—(1) *General rule.* A plan satisfies § 1.401(a)(4)–1(b)(2) with respect to the amount of contributions or benefits provided to former employees if, under all of the relevant facts and circumstances, the amount of contributions or benefits provided to former employees does not discriminate significantly in favor of former HCEs. For this purpose, contributions or benefits provided to former employees includes all

contributions or benefits provided to former employees or, at the employer's option, only those contributions or benefits arising out of the amendment providing the contributions or benefits. A plan under which no former employee currently benefits (within the meaning of § 1.410(b)–3(b)) is deemed to satisfy this paragraph (b).

(2) *Permitted disparity.* Section 401(l) and § 1.401(a)(4)–7 generally apply to benefits provided to former employees in the same manner as those provisions apply to employees. Thus, for example, for purposes of determining a former employee's cumulative permitted disparity limit, the sum of the former employee's total annual disparity fractions (within the meaning of § 1.401(l)–5) as an employee continues to be taken into account. However, the permitted disparity rate applicable to a former employee is determined under § 1.401(l)–3(e) as of the age the former employee commenced receipt of benefits, not as of the date the employee receives the accrual for the current plan year.

(3) *Examples.* The following examples illustrate the rules in this paragraph (b):

Example 1. Employer X maintains a section 401(l) plan, Plan A, that uses maximum permitted disparity. Plan A is amended to increase the benefits of all former employees in pay status. The percentage increase for each former employee is reasonably comparable to the adjustment in social security benefits under section 215(i)(2)(A) of the Social Security Act since the former employee commenced receipt of benefits. Plan A does not fail to satisfy this paragraph (b) merely because of the amendment.

Example 2. The facts are the same as in *Example 1*, except that the amendment provides an across-the-board 20 percent increase in benefits for all former employees in pay status. The cost of living has increased at an average rate of three percent in the two years preceding the amendment, and some HCEs have retired and become former HCEs during that period. Because this amendment increases the disparity in the plan formula beyond the maximum permitted disparity adjusted for any reasonable approximation of the increase in the cost of living since the HCEs retired, Plan A discriminates significantly in favor of former HCEs, and thus does not satisfy this paragraph (b).

Example 3. The facts are the same as in *Example 1*, except that Plan A is only amended to increase the benefits of former employees in pay status who terminated employment with Employer X after attaining early retirement age. The determination of whether the amendment causes Plan A to fail to satisfy this paragraph (b) must take into account the relative numbers of former HCEs and former NHCEs who have terminated employment with Employer X after attaining early retirement age.

(c) *Nondiscrimination in availability of benefits, rights, or features.* A plan satisfies section 401(a)(4) with respect to the availability of benefits, rights, and features provided to former employees if any change in the availability of any benefit, right, or feature to any former employee is applied in a manner that, under all of the relevant facts and circumstances, does not discriminate significantly in favor of former HCEs. For purposes of demonstrating that a plan satisfies section 401(a)(4) with respect to the availability of loans provided to former employees, an employer may treat former employees who are parties in interest within the meaning of section 3(14) of the Employee Retirement Income Security Act of 1974 as employees.

§ 1.401(a)(4)–11 Additional rules.

(a) *Introduction.* This section provides additional rules for determining whether a plan satisfies section 401(a)(4). Paragraph (b) of this section provides rules for the treatment of the portion of an employee's accrued benefit or account balance that is attributable to rollovers, transfers between plans, and employee buybacks. Paragraph (c) of this section provides rules regarding vesting. Paragraph (d) of this section provides rules regarding service crediting. Paragraph (e) of this section, regarding family aggregation, and paragraph (f) of this section, regarding governmental plans, are reserved. Paragraph (g) of this section provides rules regarding the extent to which corrective amendments may be made for purposes of section 401(a).

(b) *Rollovers, transfers, and buybacks*—(1) *Rollovers and elective transfers.* The portion of an employee's accrued benefit or account balance under a plan that is attributable to rollover (including direct rollover) contributions to the plan that are described in section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), or 408(d)(3), or elective transfers to the plan that are described in § 1.411(d)–4, Q&A–3(b), is not taken into account in determining whether the plan satisfies the nondiscriminatory amount requirement of § 1.401(a)(4)–1(b)(2).

(2) *Other transfers.* [Reserved]

(3) *Employee buybacks*—(i) *Rehired employee buyback of previous service.* An employee's repayment to a plan of a prior distribution from the plan (including reasonable interest from the time of the distribution) that results in the restoration of the employee's accrued benefit under the plan (or the service associated with that accrued benefit) that would otherwise be disregarded in determining the employee's accrued benefit in accordance with section 411 on account of the distribution is not treated as an employee contribution for purposes of §§ 1.401(a)(4)–1 through 1.401(a)(4)–13.

(ii) *Make-up of missed employee contributions.* If a contributory DB plan gives all employees who did not make employee contributions for a prior period the right to make the missed contributions at a later date (including reasonable interest from the time of the missed contributions) and, once the contributions have been made, determines benefits under the plan by treating the employee contributions (excluding the interest) as if they were actually made during that prior period, then those contributions must satisfy § 1.401(a)(4)–6(c) as if they were employee contributions actually made during that prior period. Thus, for example, § 1.401(a)(4)–6(c)(2) is not satisfied for the current plan year if the employee contribution rate (within the meaning of § 1.401(a)(4)–6(b)(2)(ii)(A) but determined without regard to the interest) for the employees making up missed contributions is different than the employee contribution rate applicable to other employees during the prior period. The rule in this paragraph (b)(3)(ii) may be extended to employees who did not make employee contributions for a period of service that is or would otherwise have been credited under the plan and that preceded their participation in the plan.

(c) *Vesting*—(1) *General rule.* A plan satisfies this paragraph (c) if the manner in which employees vest in their accrued benefits under the plan does not discriminate in favor of HCEs. Whether the manner in which employees vest in their accrued benefits under a plan discriminates in favor of HCEs is determined under this paragraph (c) based on all of the relevant facts and circumstances, taking into account any relevant provisions of sections 401(a)(5)(E), 411(a)(10), 411(d)(1), 411(d)(2), 411(d)(3), 411(e), and 420(c)(2), and taking into account any plan provisions that affect the nonforfeitability of employees' accrued benefits (e.g., plan provisions regarding suspension of benefits permitted under section 411(a)(3)(B)), other than the method of crediting years of service for purposes of applying the vesting schedule provided in the plan.

(2) *Deemed equivalence of statutory vesting schedules.* For purposes of this paragraph (c), the manner in which employees vest in their accrued benefits under the vesting schedules in section 411(a)(2) (A) and (B) are treated as equivalent to one another, and the manner in which employees vest in

their accrued benefits under the vesting schedules in section 416(b)(1) (A) and (B) are treated as equivalent to one another.

(3) *Safe harbor for vesting schedules.* The manner in which employees vest in their accrued benefits under a plan is deemed not to discriminate in favor of HCEs if each combination of plan provisions that affect the nonforfeitability of any employee's accrued benefit would satisfy the nondiscriminatory availability requirements of § 1.401(a)(4)–4 if that combination were an other right or feature.

(4) *Examples.* The following examples illustrate the rules in this paragraph (c):

Example 1. Plan A provides the six-year graded vesting schedule described in section 416(b)(1)(B). In 1996, Plan A is amended to provide the five-year vesting schedule described in section 411(a)(2)(A). To comply with section 411(a)(10)(B), the plan amendment also provides that all employees with at least three years of service may elect to retain the prior vesting schedule. The manner in which employees vest in their accrued benefits under Plan A does not discriminate in favor of HCEs merely because the prior vesting schedule continues to apply to the accrued benefits of electing employees, even if, at the time of the election or in future years, the prior vesting schedule applies only to a group of employees that does not satisfy section 410(b).

Example 2. The facts are the same as in *Example 1*, except that, for administrative convenience in complying with section 411(a)(10)(B), the plan amendment automatically provides all employees employed on the date of the amendment with the higher of the nonforfeitable percentages determined under either schedule. The manner in which employees vest in their accrued benefits under Plan A does not discriminate in favor of HCEs merely because, for administrative convenience in complying with section 411(a)(10), the amendment exceeds the requirements of section 411(a)(10). The result would be the same if the plan amendment automatically provided the higher of the nonforfeitable percentages only to those employees with at least three years of service.

Example 3. (a) Employer Y maintains Plan B covering all of its employees. On January 1, 1996, Employer Y sells Division M to Employer Z, and all of the employees in Division M become employees of Employer Z. Employer Y obtains a determination letter that the resulting cessation of participation by these employees in Plan B constitutes a partial termination. Therefore, in order to satisfy section 411(d)(3), Plan B fully vests the accrued benefit of each of the employees of Division M whose participation in Plan B ceased as a result of the sale on January 1, 1996.

(b) The manner in which employees vest in their accrued benefits under Plan B does not discriminate in favor of HCEs merely because, in order to satisfy section 411(d)(3), the accrued benefits of all employees affected by the partial termination become fully vested. This is true even if the affected group of employees does not satisfy section 410(b).

Example 4. (a) The facts are the same as in *Example 3*, except that Employer Y does not obtain a determination letter that the sale of Division M to Employer Z will cause a partial termination. Instead, based on its reasonable belief that the sale will cause a partial termination, and in order to ensure that Plan B will satisfy section 411(d)(3), Employer Y amends Plan B to vest fully the accrued benefit on January 1, 1996 of each of the employees it reasonably believes to be an affected employee.

(b) The manner in which employees vest in their accrued benefits under Plan B does not discriminate in favor of HCEs merely because, based on Employer Y's reasonable belief that the sale will cause a partial termination, Plan B is amended to vest fully the accrued benefits of each of the employees it reasonably believes to be an affected employee.

(d) *Service-crediting rules*—(1) *Overview*—(i) *In general.* A defined benefit plan or a defined contribution plan does not satisfy this paragraph (d) with respect to the manner in which service is credited under the plan unless the plan satisfies paragraph (d)(2) of this section. Paragraph (d)(3) of this section provides rules for determining whether service other than actual service with the employer may be taken into account in determining whether a defined benefit plan or a defined contribution plan satisfies § 1.401(a)(4)–1 (b)(2) or (b)(3). (However, for purposes of cross-testing a defined contribution plan, only years in which the employee benefited under the plan may be taken into account in determining equivalent accrual rates. See § 1.401(a)(4)–8(b)(2)(i).) The rules of this paragraph (d) apply separately to service credited under a plan for each different purpose under the plan, including, but not limited to: application of the benefit formula (benefit service), application of the accrual method (accrual service), application of the vesting schedule (vesting service), entitlement to benefits, rights, and features (entitlement service), application of the requirements for eligibility to participate in the plan (eligibility service).

(ii) *Special rule for pre-effective date service.* A plan is deemed to satisfy this paragraph (d) with respect to service credited for periods prior to the effective date applicable to the plan under § 1.401(a)(4)–13 (a) or (b) under a plan provision adopted and in effect as of February 11, 1993 (and any such service may be taken into account for purposes of satisfying § 1.401(a)(4)–1 (b)(2) or (b)(3)), if the plan satisfied the applicable nondiscrimination requirements with respect to the service that were in effect for all relevant periods prior to the applicable effective date.

(2) *Manner of crediting service*—(i) *General rule.* A plan satisfies this paragraph (d)(2) if, on the basis of all of the relevant facts and circumstances, the manner in which employees' service is credited for all purposes under the plan does not discriminate in favor of HCEs.

(ii) *Equivalent service-crediting methods.* For purposes of this paragraph (d)(2), a service-crediting method used for a specified purpose that is based on hours of service, as provided in 29 CFR 2530.200b–2, and a service-crediting method used for the same purpose that is based on one of the equivalencies set forth in 29 CFR 2530.200b–3, are treated as equivalent if the service-crediting methods are otherwise the same.

(iii) *Safe harbor for service-crediting.* The manner in which service is credited under a plan for a specified purpose is deemed to satisfy this paragraph (d)(2) if each combination of service-crediting provisions applied for that purpose would satisfy the nondiscriminatory availability requirements of § 1.401(a)(4)–4 if that combination were an other right or feature.

(iv) *Examples.* The following examples illustrate the rules in this paragraph (d)(2):

Example 1. (a) Plan A covers both salaried employees and hourly employees. All of the HCEs in Plan A are salaried employees. For administrative convenience, salaried employees in Plan A (none of whom are part-time) have their years of service calculated in accordance with the elapsed time provisions in § 1.410(a)–7. Hourly employees in Plan A (most of whom are scheduled to work 2,000 hours in a year) have their hours of service calculated in accordance with 29 CFR 2530.200b–2 and are credited with a year of service for each plan year in which they complete 1,000 hours of service.

(b) Plan A does not fail to satisfy this paragraph (d)(2) merely because different service-crediting provisions are applied to salaried and hourly employees for administrative convenience. The service-crediting provisions for hourly employees in Plan A are reasonably comparable to the service-crediting provisions for salaried employees. This is because the amount of service credited to hourly employees who complete fewer than 1,000 hours of service before termination of employment (i.e., quit, retirement, discharge, or death) during the plan year (and are treated less favorably than the salaried employees with the same period of employment during the plan year) is balanced by the amount of service credited to hourly employees who complete more than 1,000 hours of service before termination of employment during the plan year (who are treated more favorably than the salaried employees with the same period of employment during the plan year).

Example 2. (a) The facts are the same as in *Example 1*, except Plan A requires hourly

employees to complete 2,000 hours of service in order to be credited with a full year of service, with a pro rata reduction for hourly employees who complete fewer than 2,000 hours of service.

(b) Plan A does not fail to satisfy this paragraph (d)(2) merely because different service-crediting provisions are applied to salaried and hourly employees for administrative convenience. The service-crediting provisions for hourly employees in Plan A are reasonably comparable to the service-crediting provisions for salaried employees. This is because the amount of service credited to hourly employees whose employment terminates (i.e., quit, retire, are discharged, or die) during the plan year is reasonably comparable to the amount of service credited to salaried employees whose employment is terminated during the plan year with the same period of employment during the plan year.

(3) *Service-crediting period*—(i) *Limitation on service taken into account*—(A) *General rule.* Except as otherwise provided in this paragraph (d)(3), service for periods in which an employee does not perform services as an employee of the employer or in which the employee did not participate in the plan may not be taken into account in determining whether the plan satisfies § 1.401(a)(4)–1 (b)(2) and (b)(3). In addition, in determining whether a plan satisfies § 1.401(a)(4)–1 (b)(2) and (b)(3), no more than one year of service may be taken into account with respect to any 12-consecutive-month period (with adjustments for shorter periods, if appropriate) unless the additional service is required to be credited under section 410 or 411, whichever is applicable.

(B) *Past service.* Notwithstanding paragraph (d)(3)(i)(A) of this section, service for periods in which an employee performed services as an employee of the employer and did not participate in a plan, but in which the employee would have participated in the plan but for the fact that the plan (or the plan amendment extending coverage to the employee) was not in existence during that period, may be taken into account in determining whether the plan satisfies § 1.401(a)(4)–1 (b)(2) and (b)(3). This is because service for such periods generally would have been credited for the employee but for the timing of the plan establishment or amendment, and the timing of the plan establishment or amendment must satisfy § 1.401(a)(4)–5(a).

(C) *Pre-participation and imputed service.* Notwithstanding paragraph (d)(3)(i)(A) of this section, to the extent that a plan treats pre-participation service and imputed service as actual service with the employer, such service may be taken into account in determining whether the plan satisfies § 1.401(a)(4)–1 (b)(2) and (b)(3) if the service satisfies each of the requirements in paragraph (d)(3)(iii) of this section taking into account, in the case of imputed service, the additional rules in paragraph (d)(3)(iv) of this section.

(D) *Additional limitations on service-crediting in the case of certain offsets.* Notwithstanding paragraphs (d)(3)(i) (B) and (C) of this section, if a plan credits benefit service or accrual service under paragraph (d)(3)(i) (B) or (C) of this section for a period before an employee becomes a participant in the plan, but offsets the benefits determined under the plan by benefits under another plan (whether or not qualified or terminated) that are attributable to the same period for which that service is credited, then that service may not be taken into account for purposes of determining whether the first plan satisfies § 1.401(a)(4)–1 (b)(2) or (b)(3) unless the offset provision applies on the same basis to all similarly-situated employees (within the meaning of paragraph (d)(3)(iii)(A) of this section).

(ii) *Definitions*—(A) *Pre-participation service.* For purposes of this section, pre-participation service includes all years of service credited under a plan for years of service with the employer or a prior employer for periods before the employee commenced or recommenced participation in the plan (other than past service described in paragraph (d)(3)(i)(B) of this section).

(B) *Imputed service.* For purposes of this section, imputed service includes any service credited for periods after an employee has commenced participation in a plan while the employee is not performing services as an employee for the employer (including a period in which the employee performs services for another employer, e.g., a joint venture), or while the employee has a reduced work schedule and would not otherwise be credited with service at the level being credited under the general terms of the plan.

(iii) *Requirements for pre-participation and imputed service*—(A) *Provision applied to all similarly-situated employees*—(*1*) *General rule.* A plan provision crediting pre-participation service or imputed service to any HCE must apply on the same terms to all similarly-situated NHCEs. Whether two employees are similarly situated for this purpose must be determined based on reasonable business criteria, generally taking into account only the circumstances resulting in the employees being covered under the plan or being granted imputed service and on the situation of the employees (e.g., the plan in which the employees benefit or the employer by which they are employed) during the period for which the pre-participation service or imputed service is credited. For example, employees who enter a plan as a result of a particular merger and who participated in the same plan of a prior employer are generally similarly situated. As another example, employees who are transferred to different joint ventures or different spun-off divisions are generally not similarly situated.

(*2*) *Examples.* The following examples illustrate the rules in this paragraph (d)(3)(iii)(A):

Example 1. Employer X maintains defined benefit Plans A and B and defined contribution Plan C. Plan A covers all employees who work at the headquarters of Employer X. Plan B covers some employees in Division M of Employer X, and Plan C covers the other employees of Division M. Plans B and C have not been aggregated for purposes of satisfying section 401(a)(4) or 410(b) for the period for which service is being credited. Plan A provides that, whenever an employee covered by Plan B transfers from Division M to the headquarters, the employee's service credited under Plan B is credited under Plan A, and the employee's benefit under Plan A is offset by the employee's benefit under Plan B. However, Plan A provides for no similar recognition of service or offset for employees covered by Plan C who transfer from Division M to the headquarters. Plan A does not fail to satisfy this paragraph (d)(3)(iii)(A) merely because it credits service for employees transferring from Plan B but not from Plan C, because it is reasonable to treat employees participating in different plans that have not been aggregated as not being similarly situated.

Example 2. The facts are the same as in *Example 1*, except that Employer X acquires two trades or businesses from different employers. Employees of the acquired trades or businesses become employees of Division M and become covered by Plan B. In addition, Plan B is amended to credit service with one of the trades or businesses but not the other. Plan B does not fail to satisfy this paragraph (d)(3)(iii)(A) merely because it credits service for one acquired trade or business but not another, because it is reasonable to treat employees of one acquired trade or business as not similarly situated to employees of another acquired trade or business.

(B) *Legitimate business reason*—(*1*) *General rule.* There must be a legitimate business reason, based on all of the relevant facts and circumstances, for a plan to credit imputed service or for a plan to credit pre-participation service for a period of service with another employer.

(*2*) *Relevant facts and circumstances when crediting service with another employer.* The following are examples

of relevant facts and circumstances for determining whether a legitimate business reason exists for a plan to credit pre-participation or imputed service for a period of service with another employer as service with the employer: whether one employer has a significant ownership, control, or similar interest in, or relationship with, the other employer (though not enough to cause the two employers to be treated as a single employer under section 414); whether the two employers share interrelated business operations; whether the employers maintain the same multiple-employer plan; whether the employers share similar attributes, such as operation in the same industry or the same geographic area; and whether the employees are an acquired group of employees or the employees became employed by the other employer in a transaction between the two employers that was a stock or asset acquisition, merger, or other similar transaction involving a change in the employer of the employees of a trade or business. Other factors may also be relevant for this purpose, such as the plan's treatment of service with other employers with which the employer has a similar relationship and the type of service being credited (e.g., vesting service as compared to benefit service or accrual service). A legitimate business reason is deemed to exist for a plan to credit military service as service with the employer.

(*3*) *Examples.* The following examples illustrate the rules in this paragraph (d)(3)(iii)(B):

Example 1. Twenty unrelated employers jointly sponsor a multiple-employer plan that covers all employees of the employers. From time to time, employees transfer employment among the employers. There is a legitimate business reason for a disaggregated portion of the plan that benefits the employees of one of the employers to treat service with any of the other employers as service with the employer.

Example 2. Employer X owns 20 percent of the outstanding stock of Employer Y. From time to time, employees transfer from Employer X to Employer Y at the request of Employer X. Employer X maintains defined benefit Plan A. Plan A provides that years of service include an employee's years of service with Employer Y. There is a legitimate business reason for Plan A to credit service with Employer Y because Employer X, through its 20-percent ownership interest, benefits from the service that the transferred employees provide to Employer Y.

Example 3. Employer Z manufactures widgets and belongs to the National Widget Manufacturers' Association. From time to time, Employer Z hires employees from other widget manufacturers. Employer Z maintains a defined benefit plan, Plan B, which credits pre-participation service for periods of service with all other members of the Association located in the western half of the United States as service with Employer Z. There is a legitimate business reason for Plan B to treat service with other members of the Association as service with Employer Z.

(C) *No significant discrimination*—(*1*) *General rule.* Based on all of the relevant facts and circumstances, a plan provision crediting pre-participation or imputed service must not by design or in operation discriminate significantly in favor of HCEs.

(*2*) *Relevant facts and circumstances.* The following are examples of relevant facts and circumstances for determining whether a plan provision crediting pre-participation service or imputed service discriminates significantly in favor of HCEs: whether the service credit does not duplicate benefits but merely makes an employee whole (i.e., prevents the employee from being disadvantaged with respect to benefits by a change in job or employer or provides the employee with benefits comparable to those of other employees); the degree of business ties between the current employer and the prior employer, such as the degree of ownership interest or other affiliation; the degree of excess coverage under section 410(b) of NHCEs for the plan crediting the service, taking into account employees who are credited with pre-participation service; whether the other employer maintains a qualified plan for its employees; the existence of reciprocal service credit under other plans of the employer or the prior employer; the circumstances underlying the employee's transfer into the group of employees covered by the plan; the type of service being credited; and the relative number of employees other than five-percent owners or the most highly-paid HCEs of the employer (determined without regard to the one officer rule of section 414(q)(5)(B)) who are being credited with pre-participation service or imputed service. The relative number referred to in the last factor is determined taking into account all employees who have been over time, or are reasonably expected to be in the future, credited with such service.

(*3*) *Examples.* The following examples illustrate the rules in this paragraph (d)(3)(iii)(C). It is assumed that facts not described in an example do not, in the aggregate, suggest that the relevant plan provision either does or does not discriminate significantly in favor of HCEs.

Example 1. (a) Employer U maintains defined benefit Plans A and B. Plan A covers all employees who work at the headquarters of Employer U. Plan B covers all employees of Division M of Employer U. Plan A provides that, whenever an employee transfers from Division M to the headquarters, the employee's service credited under Plan B is credited under Plan A, and the employee's benefit under Plan A is offset by the employee's benefit under Plan B. Employees, including a meaningful number of NHCEs, are periodically transferred from Division M to the headquarters of Employer U for bona fide business reasons.

(b) The Plan A provision crediting service under Plan B does not discriminate significantly in favor of HCEs. The provision is designed only to prevent employees from being disadvantaged by being transferred from Division M to the headquarters, and a meaningful number of NHCEs can be expected to benefit from it.

Example 2. (a) The facts are the same as in *Example 1*, except that the only employees transferred from Division M to the headquarters of Employer U are HCEs (but not the most highly-paid HCEs of Employer U).

(b) Employer U determines that Plan A would have satisfied sections 401(a)(4) and 410(b) for the period for which the transferred employees are being credited with pre-participation service had the employees participated in Plan A during that period. This determination is based on test results under sections 401(a)(4) and 410(b) for the current year, taking into account significant demographic changes over this period.

(c) The Plan A provision crediting service under Plan B does not significantly discriminate in favor of HCEs in the current year. This conclusion is based on the fact that the circumstances underlying the transfers indicate that they were made for bona fide business reasons, that Plan A would have satisfied sections 401(a)(4) and 410(b) had the transferred employees participated in Plan A during the period for which the pre-participation service is credited, and that the transferred employees are not the most highly-paid HCEs of Employer U.

Example 3. (a) The facts are the same as in *Example 1*, except that the only employee who is transferred from Division M to the headquarters of Employer U is Employee P, who is among the most highly-paid HCEs of Employer U. Plan A provides an unreduced early retirement benefit at age 55 for employees with 20 years of service, but Plan B's early retirement benefits are not subsidized. Employee P is transferred to the headquarters with 20 years of service credited under Plan B and shortly before attainment of age 55. Employee P is expected to retire upon reaching age 55.

(b) The Plan A provision crediting service under Plan B discriminates significantly in favor of HCEs in the year of the transfer. This is because the circumstances underlying this transfer (i.e., its occurrence shortly before Employee P's expected retirement and the fact that the transfer significantly increased Employee P's early retirement benefits) indicate that Employee P was transferred to the headquarters primarily to obtain the higher pension benefits provided under Plan A.

(c) Because of this conclusion, the pre-participation service credited to Employee P

cannot be taken into account in determining whether Plan A satisfies § 1.401(a)(4)–1 (b)(2) and (b)(3). Thus, if Plan A credits the service, it cannot be a safe harbor plan because the benefit formula will take into account service that may not be taken into account under this paragraph (d)(3). In addition, Employee P's accrual rates under the general test in § 1.401(a)(4)–3(c) are likely to be higher than those of other employees because, while the pre-participation service may be used to determine Employee P's benefits under Plan A, the service must be disregarded in determining Employee P's testing service. Also, if Employee P's pre-participation service is used in determining Employee P's entitlement to a benefit, right, or feature under Plan A, the fact that the service must be disregarded in determining Employee P's entitlement service for purposes of § 1.401(a)(4)–4 may cause the benefit, right, or feature to be treated as a separate benefit, right, or feature that is currently available only to Employee P.

Example 4. (a) Employer V manufactures widgets and belongs to the National Widget Manufacturers' Association. Each member of the Association maintains a defined benefit plan that credits pre-participation service for periods of service with other members and offsets benefits under the plan by benefits under the plans of the other members. Employer V maintains defined benefit Plan C. Employer V periodically hires employees from other widget manufacturers who are not among its most highly-paid HCEs. In 1997, however, the only employee hired by Employer V from another member of the Association is Employee Q, who is among Employer V's most highly-paid HCEs. Employee Q receives pre-participation service credit in accordance with the terms of Plan C. Some of the plans maintained by other members of the Association credited pre-participation service to NHCEs for the same period for which the pre-participation service is credited to Employee Q.

(b) The provision of Plan C crediting pre-participation service with other members of the Association does not discriminate significantly in 1997, despite the fact that the only employee who received pre-participation service credit under the provision in that year was among the most highly-paid HCEs of Employer V. This conclusion is based on the relative number of employees other than Employer V's most highly-paid HCEs who have been credited in the past, or are reasonably expected to be credited in the future, with pre-participation service for periods of service with other members of the Association, and the fact that other employees who are NHCEs are being credited with pre-participation service under a reciprocal agreement.

Example 5. Employer W owns 79 percent of the outstanding stock of Employer X. From time to time, employees transfer from Employer W to Employer X at the request of Employer W. The only employees who have ever been transferred are HCEs. Employer W maintains a defined benefit plan, Plan D, which credits employees transferred to Employer X with imputed benefit and accrual service while employed by Employer X. Employer X maintains no qualified plan. Plan D would fail either section 401(a)(4) or section 410(b) in the current plan year if the individuals employed by Employer X were treated as employed by Employer W. In addition, Plan D would fail either section 401(a)(4) or section 410(b) in the current plan year if the portion of Plan D covering the transferred employees were treated as maintained by Employer X. The Plan D provision crediting imputed benefit and accrual service to employees transferred to Employer X significantly discriminates in favor of HCEs in the current plan year.

Example 6. The facts are the same as in Example 5, except that Plan D credits the individuals who transfer to Employer X only with imputed vesting and entitlement service. The Plan D provision crediting imputed vesting and entitlement service to individuals transferred to Employer X does not significantly discriminate in favor of HCEs in the current plan year, because there is less potential for discrimination when the only types of service being imputed are vesting and entitlement service.

(iv) *Additional rules for imputed service*—(A) *Legitimate business reasons for crediting imputed service*—(1) *General rule.* A legitimate business reason does not exist for a plan to impute service after an individual has permanently ceased to perform services as an employee (within the meaning of § 1.410(b)–9) for the employer maintaining the plan, i.e., is not expected to resume performing services as an employee for the employer. The preceding sentence does not apply in the case of an individual who is not performing services for the employer because of disability or is performing services for another employer under an arrangement (such as a transfer of the employee to another employer) that provides some ongoing business benefit to the original employer. The first sentence in this paragraph (d)(3)(iv)(A)(*1*) also does not apply in the case of vesting and entitlement service if the employee is performing services for another employer that is being treated under the plan as actual service with the original employer.

(*2*) *Certain presumptions applicable.* Whether an individual has permanently ceased to perform services as an employee for an employer is determined taking into account all of the relevant facts and circumstances. There is a rebuttable presumption for a period of up to two years that an individual who has ceased to perform services as an employee for an employer is nonetheless expected to resume performing services as an employee for the employer, if the employer continues to treat the individual as an employee for significant purposes unrelated to the plan. After two years, there is a rebuttable presumption that an individual who has ceased to perform services as an employee for the employer is not expected to resume performing services as an employee for the employer. The fact that an individual is absent to perform jury duty or military service automatically rebuts the latter presumption. Other evidence, such as the employer's layoff policy, the terms of an employment contract, or specific leave to pursue a degree requiring more than two years of study, may also rebut this presumption.

(*3*) *Imputed service for part-time employees.* Rules similar to the rules in paragraph (d)(3)(iv)(A) (*1*) and (*2*) of this section apply in the case of an employee whose work hours are temporarily reduced and who therefore would normally be credited with service at a reduced rate, but who continues to be credited with service at the same rate as before the reduction (e.g., an employee who continues to be credited with service as if the employee were a full-time employee during a temporary change from a full-time to a part-time work schedule).

(B) *Additional factors for determining whether a provision crediting imputed service discriminates significantly.* In addition to the factors described in paragraph (d)(3)(iii)(C)(*2*) of this section, relevant facts and circumstances for determining whether a plan provision crediting imputed service during a leave of absence or a period of reduced services discriminates significantly include any employer policies or practices that restrict the ability of employees to take leaves of absence or work temporarily on a part-time basis, respectively.

(v) *Satisfaction of other service-crediting rules.* A plan does not fail to satisfy this paragraph (d)(3) merely because it credits service to the extent necessary to satisfy the service-crediting rules in section 410(a), 411(a), 413, or 414(a), § 1.410(a)–7 (elapsed-time method of service-crediting) or 29 CFR 2530.200b–2 (regarding hours of service to be credited), whichever is applicable, or 29 CFR § 2530.204–2(d) (regarding double proration of service and compensation).

(e) *Family aggregation rules.* [Reserved]

(f) *Governmental plans.* [Reserved]

(g) *Corrective amendments*—(1) *In general.* A corrective amendment that satisfies the rules of this paragraph (g) is taken into account for purposes of satisfying certain section 401(a) requirements for a plan year, by treating the corrective amendment as if it were adopted and effective as of the first day of the plan year. These rules apply in addition to the rules of section 401(b). Paragraph (g)(2) of this section describes

the scope of the corrective amendments that are permitted to be made. Paragraph (g)(3) of this section specifies the conditions under which a corrective amendment may be made. Paragraph (g)(4) of this section provides a rule prohibiting a corrective amendment from being taken into account to the extent that it does not have substance. Paragraph (g)(5) of this section discusses the effect of the corrective amendments permitted under this paragraph (g) under provisions other than section 401(a).

(2) *Scope of corrective amendments.* For purposes of satisfying the minimum coverage requirements of section 410(b), the nondiscriminatory amount requirement of § 1.401(a)(4)–1(b)(2), or the nondiscriminatory plan amendment requirement of § 1.401(a)(4)–1(b)(4), a corrective amendment may retroactively increase accruals or allocations for employees who benefited under the plan during the plan year being corrected, or may grant accruals or allocations to individuals who did not benefit under the plan during the plan year being corrected. In addition, for purposes of satisfying the nondiscriminatory current availability requirement of § 1.401(a)(4)–4(b) for benefits, rights, or features, a corrective amendment may make a benefit, right, or feature available to employees to whom it was previously not available. A corrective amendment may not, however, correct for a failure to incorporate the pre-termination restrictions of § 1.401(a)(4)–5(b).

(3) *Conditions for corrective amendments*—(i) *In general.* A corrective amendment is not taken into account prior to its adoption under this paragraph (g) unless it satisfies each of the requirements of paragraph (g)(3) (ii) through (vii) of this section, whichever are applicable. Thus, for example, if any of the applicable requirements are not satisfied, any additional accruals arising from an amendment adopted after the end of a plan year are not given retroactive effect and, thus, are tested in the plan year in which the amendment is adopted.

(ii) *Benefits not reduced.* Except as permitted under paragraph (g)(3)(vi)(C)(*2*) of this section, the corrective amendment may not result in a reduction of an employee's benefits (including any benefit, right, or feature), determined based on the terms of the plan in effect immediately before the amendment.

(iii) *Amendment effective for all purposes.* For purposes of determining an employee's rights and benefits under the plan, the corrective amendment must generally be effective as if the amendment had been made on the first day of the plan year being corrected. Thus, if the corrective amendment is made after the close of the plan year being corrected, an employee's allocations or accruals, along with the associated benefits, rights, and features, must be increased to the level at which they would have been had the amendment been in effect for the entire preceding plan year. Accordingly, such increases are taken into account for testing purposes as if the increases had actually occurred in the prior plan year. However, to the extent that an amendment makes a benefit, right, or feature available to a group of employees, the amendment does not fail to satisfy this paragraph (g)(3)(iii) merely because it is not effective prior to the date of adoption and, therefore, the benefit, right, or feature is not made currently available to those employees before that date.

(iv) *Time when amendment must be adopted and put into effect*—(A) *General rule.* Any corrective amendment intended to apply to the preceding plan year must be adopted and implemented on or before the 15th day of the 10th month after the close of the plan year in order to be taken into account for the preceding plan year.

(B) *Determination letter requested by employer or plan administrator.* If, on or before the end of the period set forth in paragraph (g)(3)(iv)(A) of this section, the employer or plan administrator files a request pursuant to § 601.201(o) of this chapter (Statement of Procedural Rules) for a determination letter on the amendment, the initial or continuing qualification of the plan, or the trust that is part of the plan, the period set forth in paragraph (g)(3)(iv)(A) of this section is extended in the same manner as provided for an extension of the remedial amendment period under § 1.401(b)–1(d)(3).

(v) *Corrective amendment for coverage or amounts testing*—(A) *Retroactive benefits must be provided to nondiscriminatory group.* Except as provided in paragraph (g)(3)(v)(B) of this section, if the corrective amendment is adopted after the close of the plan year, the additional allocations or accruals for the preceding year resulting from the corrective amendment must separately satisfy section 401(a)(4) for the preceding plan year and must benefit a group of employees that separately satisfies section 410(b) (determined by applying the same rules as are applied in determining whether a component plan separately satisfies section 410(b) under § 1.401(a)(4)–9(c)(4)). Thus, for example, in applying the rules of this paragraph (g)(3)(v), an employer may not aggregate the additional accruals or allocations for the preceding plan year resulting from the corrective amendment with the other accruals or allocations already provided under the terms of the plan as in effect during the preceding plan year without regard to the corrective amendment.

(B) *Corrective amendment to conform to safe harbor.* The requirements of paragraph (g)(3)(v)(A) of this section need not be met if the corrective amendment is for purposes of conforming the plan to one of the safe harbors in § 1.401(a)(4)–2(b) or § 1.401(a)(4)–3(b) (including for purposes of applying the requirements of those safe harbors under the optional testing methods in § 1.401(a)(4)–8 (b)(3) or (c)(3)), or ensuring that the plan continues to meet one of those safe harbors.

(vi) *Conditions for corrective amendment of the availability of benefits, rights, and features.* A corrective amendment may not be taken into account under this paragraph (g) for purposes of satisfying § 1.401(a)(4)–4(b) for a given plan year unless—

(A) The corrective amendment is not part of a pattern of amendments being used to correct repeated failures with respect to a particular benefit, right, or feature;

(B) The relevant provisions of the plan immediately after the corrective amendment with respect to the benefit, right, or feature (including a corrective amendment eliminating the benefit, right, or feature) remain in effect until the end of the first plan year beginning after the date of the amendment; and

(C) The corrective amendment either—

(*1*) Expands the group of employees to whom the benefit, right, or feature is currently available so that for each plan year in which the corrective amendment is taken into account in determining whether the plan satisfies § 1.401(a)(4)–4(b), the group of employees to whom the benefit, right, or feature is currently available, after taking into account the amendment, satisfies the nondiscriminatory classification requirement of § 1.410(b)–4 (and thus the current availability requirement of § 1.401(a)(4)–4(b)) with a ratio percentage greater than or equal to the lesser of—

(*i*) The safe harbor percentage applicable to the plan; and

(*ii*) The ratio percentage of the plan; or

(*2*) Eliminates the benefit, right, or feature (to the extent permitted under section 411(d)(6)) on or before the last day of the plan year for which the

corrective amendment is taken into account.

(vii) *Special rules for section 401(k) plans and section 401(m) plans*—(A) *Minimum coverage requirements.* In the case of a section 401(k) plan, a corrective amendment may only be taken into account for purposes of satisfying § 1.410(b)–3(a)(2)(i) under this paragraph (g) for a given plan year to the extent that the corrective amendment grants qualified nonelective contributions within the meaning of § 1.401(k)–1(g)(13)(ii) (QNECs) to nonhighly compensated nonexcludable employees who were not eligible employees within the meaning of § 1.401(k)–1(g)(4) for the given plan year, and the amount of the QNECs granted to each nonhighly compensated nonexcludable employee equals the product of the nonhighly compensated nonexcludable employee's plan year compensation and the actual deferral percentage (within the meaning of section 401(k)(3)(B)) for the given plan year for the group of NHCEs who are eligible employees. Similarly, in the case of a section 401(m) plan, a corrective amendment may only be taken into account for purposes of satisfying § 1.410(b)–3(a)(2)(i) under this paragraph (g) for a given plan year to the extent that the corrective amendment grants qualified nonelective contributions (QNECs) to nonhighly compensated nonexcludable employees who were not eligible employees within the meaning of § 1.401(m)–1(f)(4) for the given plan year, and the amount of the QNECs granted to each nonhighly compensated nonexcludable employee equals the product of the nonhighly compensated nonexcludable employee's plan year compensation and the actual contribution percentage (within the meaning of section 401(m)(3)) for the given plan year for the group of NHCEs who are eligible employees.

(B) *Correction of rate of match.* In the case of a section 401(m) plan, allocations for a given plan year granted under a corrective amendment to NHCEs who made contributions for the plan year eligible for a matching contribution may be treated as matching contributions. These allocations treated as matching contributions may be taken into account for purposes of satisfying the current availability requirement of § 1.401(a)(4)–4(b) with respect to the right to a rate of match, but may not be taken into account for satisfying other amounts testing.

(4) *Corrective amendments must have substance.* A corrective amendment is not taken into account in determining whether a plan satisfies section 401(a)(4) or 410(b) to the extent the amendment affects nonvested employees whose employment with the employer terminated on or before the close of the preceding year, and who therefore would not have received any economic benefit from the amendment if it had been made in the prior year. Similarly, in determining whether the requirements of paragraph (g)(3)(vi)(C)(*1*) of this section are satisfied, a corrective amendment making a benefit, right, or feature available to employees is not taken into account to the extent the benefit, right, or feature is not currently available to any of those employees immediately after the amendment. However, a plan will not fail to satisfy the requirements of paragraph (g)(3)(vi)(C)(*1*) of this section by operation of the provisions in this paragraph (g)(4) if the benefit, right, or feature is made available to all employees in the plan as of the date of the amendment.

(5) *Effect under other statutory requirements.* A corrective amendment under this paragraph (g) is treated as if it were adopted and effective as of the first day of the plan year only for the specific purposes described in this paragraph (g). Thus, for example, the corrective amendment is taken into account not only for purposes of sections 401(a)(4) and 410(b), but also for purposes of determining whether the plan satisfies sections 401(l). By contrast, the amendment is not given retroactive effect for purposes of section 404 (deductions for employer contributions) or section 412 (minimum funding standards), unless otherwise provided for in rules applicable to those sections.

(6) *Examples.* The following examples illustrate the rules in this paragraph (g):

Example 1. Employer U maintains a calendar year defined benefit plan that in 1994 is tested using the safe harbor for flat benefit plans in § 1.401(a)(4)–3(b)(4). In 1996, Employer U is concerned that the plan will not satisfy the demographic requirement in § 1.401(a)(4)–3(b)(4)(i)(C)(*3*) for the 1995 plan year because the average of the normal accrual rates for all NHCEs is less than 70 percent of the average of the normal accrual rates for all HCEs. Provided the corrective amendment would otherwise satisfy this paragraph (g), Employer U may make a corrective amendment to the plan to increase the number of NHCEs so that the amended plan satisfies the safe harbor for the 1995 plan year. The corrective amendment need not satisfy paragraph (g)(3)(v)(A) of this section because Employer U is retroactively amending the plan to conform to a safe harbor in § 1.401(a)(4)–3(b). See paragraph (g)(3)(v)(B) of this section.

Example 2. (a) Employer V maintains a calendar year defined contribution plan covering all the employees in Division M and Division N. Under the plan, only employees in Division M have the right to direct the investments in their account. For plan years prior to 1996, the plan met the current availability requirement of § 1.401(a)(4)–4(b) because the employees in Division M were a group of employees that satisfied the nondiscriminatory classification test of § 1.410(b)–4. Because of attrition in the employee population in Division M in 1996, the group of employees to whom the right to direct investments is available during that plan year no longer meets the nondiscriminatory classification test of § 1.410(b)–4. Thus, the right to direct investments under the plan does not meet the current availability requirement of § 1.401(a)(4)–4(b) during the 1996 plan year.

(b) Employer V may amend the plan in 1997 (but on or before October 15) to make the right to direct investments available from the date of the corrective amendment to a larger group of employees and the corrective amendment may be taken into account for purposes of satisfying the current availability requirement of § 1.401(a)(4)–4(b) for 1996 if the amendment satisfies this paragraph (g). Thus, for example, the group of employees to whom the right to direct investments is currently available, after taking into account the corrective amendment, must satisfy the nondiscriminatory classification test of § 1.410(b)–4 for 1996 using a safe harbor percentage (or if lower, the ratio percentage of the plan for 1996). In addition, the corrective amendment making the right to direct investments available to a larger group of employees must remain in effect through the end of the 1998 plan year.

(c) In order for Employer V to take the corrective amendment into account for purposes of satisfying the current availability requirement of § 1.401(a)(4)–4(b) for the portion of the 1997 plan year before the amendment, the group of employees to whom the right to direct investments is currently available, taking into account the amendment, must satisfy the nondiscriminatory classification test of § 1.410(b)–4 for 1997 using a safe harbor percentage (or if lower, the ratio percentage of the plan for 1997).

(d) Alternatively, if Employer V adopts the corrective amendment before the end of the 1996 plan year, the corrective amendment need only remain in force through the end of the 1997 plan year, or the corrective amendment may eliminate the right to direct investments (provided that the elimination remains in effect through the end of the 1997 plan year).

Example 3. The facts are the same as in *Example 2.* In 1997, Employer V makes a corrective amendment to extend the plan to employees of Division O as well as Divisions M and N. Assume that the corrective amendment satisfies paragraph (g)(3)(v)(A) of this section, and thus, may be taken into account for purposes of satisfying the nondiscriminatory amounts requirement of § 1.401(a)(4)–1(b)(2) or the minimum coverage requirements of section 410(b). However, the employees in Division O will not be taken into account in determining whether the right to direct investments meets the current availability requirements of § 1.401(a)(4)–4(b) unless the corrective

amendment meets the requirements of paragraph (g)(3)(vi) of this section. Thus, for example, the group of employees to whom the right to direct investments is made available as a result of the expansion of coverage, after taking into account the corrective amendment, must satisfy the nondiscriminatory clarification test of § 1.410(b)–4 for 1996 using a safe harbor percentage (or if lower, the ratio percentage of the plan for 1996). In addition, the amendment making the right to direct investments available to a larger group of employees must remain in effect though the end of the 1998 plan year.

Example 4. Employer W maintains a defined benefit plan that covers all employees and that offsets an employee's benefit by the employee's projected primary insurance amount. The plan is not eligible to use the safe harbors under § 1.401(a)(4)–3(b) because the plan does not satisfy section 401(l). Under the plan, the accrual rates for all HCEs (determined under the general test of § 1.401(a)(4)–3(c)) for 1998 are less than 1.5 percent of average annual compensation, and the accrual rates for all NHCEs (determined under the general test of § 1.401(a)(4)–3(c)) for 1998 are two percent of average annual compensation. If Employer W adopts a corrective amendment adopted in 1999 that retroactively increases HCEs' benefits under the plan so that their accrual rates equal those of the NHCEs, the corrective amendment may not be taken into account in testing the 1998 plan year (i.e., the accruals that result from the corrective amendment are treated as 1999 accruals), because the accruals for the 1998 plan year resulting from the corrective amendment would not separately satisfy sections 410(b) and 401(a)(4). This is the case even if, after taking the amendment into account, the plan would satisfy sections 410(b) and 401(a)(4) for the 1998 plan year.

Example 5. Employer X maintains two plans—Plan A and Plan B. Plan A satisfies the ratio percentage test of § 1.410(b)–2(b)(2), but Plan B does not. Thus, in order to satisfy section 410(b), Plan B must satisfy the average benefits test of § 1.410(b)–2(b)(3). The average benefit percentage of Plan B is 60 percent. Employer X may take into account a corrective amendment that increases the accruals under either Plan A or Plan B so that the average benefit percentage meets the 70 percent requirement of the average benefits test, if the amendment satisfies paragraph (g)(3)(v) of this section.

Example 6. Employer Y maintains Plan C, which does not satisfy section 401(a)(4) in a plan year. Under the terms of paragraph (g)(2) of this section, Employer Y amends Plan C to increase the benefits of certain employees retroactively. In designing the amendment, Employer Y identifies those employees who have terminated without vested benefits during the period after the end of the prior plan year and before the adoption date of the amendment, and the amendment provides increases in benefits primarily to those employees. It would be inconsistent with the purpose of preventing discrimination in favor of HCEs for Plan C to treat the amendment as retroactively effective under this paragraph (g). See § 1.401(a)(4)–1(c)(2).

Example 7. Employer Z maintains both a section 401(k) plan and a section 401(m) plan that provides matching contributions at a rate of 50 percent with respect to elective contributions under the section 401(k) plan. In plan year 1995, the section 401(k) plan fails to satisfy the actual deferral percentage test of section 401(k)(3). In order to satisfy section 401(k)(3), Employer Z makes corrective distributions to HCEs H1 through H10 of their excess contributions as provided under § 1.401(k)–1(f). The matching contributions that H1 through H10 had received on account of their excess contributions are not forfeited, however. Thus, the effective rate of matching contributions provided to H1 through H10 is increased as a result of the corrective distributions. See § 1.401(a)(4)–4(e)(3)(iii)(G). Since no NHCE in the section 401(m) plan is provided with an equivalent rate of matching contributions, the rate of matching contributions provided to H1 through H10 does not satisfy the nondiscriminatory availability requirement of § 1.401(a)(4)–4 in plan year 1995. Employer Z makes a corrective amendment by October 15, 1996, that grants allocations to NHCEs who made contributions for the 1995 plan year eligible for a matching contribution. Employer Z may treat the allocations granted under the corrective amendment to those NHCEs as matching contributions for the 1995 plan year and, as a result, take them into account in determining whether the availability of the rate of matching contributions provided to H1 through H10 satisfies the current availability requirement of § 1.401(a)(4)–4(b) for the 1995 plan year.

§ 1.401(a)(4)–12 Definitions.

Unless otherwise provided, the definitions in this section govern in applying the provisions of §§ 1.401(a)(4)–1 through 1.401(a)(4)–13.

Accumulation plan. Accumulation plan means a defined benefit plan under which the benefit of every employee for each plan year is separately determined, using plan year compensation (if benefits are determined as a percentage of compensation rather as than a dollar amount) separately calculated for the plan year, and each employee's total accrued benefit as of the end of a plan year is the sum of the separately determined benefit for that plan year and the total accrued benefit as of the end of the preceding plan year.

Acquired group of employees. Acquired group of employees means employees of a prior employer who become employed by the employer in a transaction between the employer and the prior employer that is a stock or asset acquisition, merger, or other similar transaction involving a change in the employer of the employees of a trade or business, plus employees hired by or transferred into the acquired trade or business on or before a date selected by the employer that is within the transition period defined in section 410(b)(6)(C)(ii). In addition, in the case of a transaction prior to the effective date of these regulations, the date by which employees must be hired by or transferred into the acquired trade or business in order to be included in the acquired group of employees may be any date prior to February 11, 1993, without regard to whether it is later than the end of the transition period defined in section 410(b)(6)(C)(ii).

Actuarial equivalent. An amount or benefit is the actuarial equivalent of, or is actuarially equivalent to, another amount or benefit at a given time if the actuarial present value of the two amounts or benefits (calculated using the same actuarial assumptions) at that time is the same.

Actuarial present value. Actuarial present value means the value as of a specified date of an amount or series of amounts due thereafter, where each amount is—

(1) Multiplied by the probability that the condition or conditions on which payment of the amount is contingent will be satisfied; and

(2) Discounted according to an assumed rate of interest to reflect the time value of money.

Ancillary benefit. Ancillary benefit is defined in § 1.401(a)(4)–4(e)(2).

Average annual compensation. Average annual compensation is defined in § 1.401(a)(4)–3(e)(2).

Base benefit percentage. Base benefit percentage is defined in § 1.401(l)–1(c)(3).

Benefit formula. Benefit formula means the formula a defined benefit plan applies to determine the accrued benefit (within the meaning of section 411(a)(7)(A)(i)) in the form of an annual benefit commencing at normal retirement age of an employee who continues in service until normal retirement age. Thus, for example, the benefit formula does not include the accrual method the plan applies (in conjunction with the benefit formula) to determine the accrued benefit of an employee who terminates employment before normal retirement age. For purposes of this definition, a change in plan provisions that applies only to certain employees who terminate within a limited period of time (e.g., an early retirement window benefit) is treated as a change in the plan's benefit formula for the employees to whom the change is potentially applicable during the period that the change is potentially applicable to them. The preceding sentence applies only to the extent that the change in plan provisions would result in a change in the benefit formula if it were permanent and applied

without regard to when the employees' employment was terminated.

Benefit, right, or feature. Benefit, right, or feature means an optional form of benefit, an ancillary benefit, or an other right or feature within the meaning of § 1.401(a)(4)–4(e).

Contributory DB plan. Contributory DB plan means a defined benefit plan that includes employee contributions not allocated to separate accounts.

Defined benefit excess plan. Defined benefit excess plan is defined in § 1.401(l)–1(c)(16)(i).

Defined benefit plan. Defined benefit plan is defined in § 1.410(b)–9.

Defined contribution plan. Defined contribution plan is defined in § 1.410(b)–9.

Determination date. Determination date is defined in § 1.401(a)(4)–8(b)(3)(iv)(A).

Employee. With respect to a plan for a given plan year, employee means an employee (within the meaning of § 1.410(b)–9) who benefits as an employee under the plan for the plan year (within the meaning of § 1.410(b)–3).

Employer. Employer is defined in § 1.410(b)–9.

ESOP. ESOP is defined in § 1.410(b)–9.

Excess benefit percentage. Excess benefit percentage is defined in § 1.401(l)–1(c)(14).

Former employee. With respect to a plan for a given plan year, former employee means a former employee (within the meaning of § 1.410(b)–9).

Former HCE. Former HCE means a highly compensated former employee as defined in § 1.410(b)–9.

Former NHCE. Former NHCE means a former employee who is not a former HCE.

Fresh-start date. Fresh-start date is defined in § 1.401(a)(4)–13(c)(5)(iii).

Fresh-start group. Fresh-start group is defined in § 1.401(a)(4)–13(c)(5)(ii).

Gross benefit percentage. Gross benefit percentage is defined in § 1.401(l)–1(c)(18).

HCE. HCE means a highly compensated employee as defined in § 1.410(b)–9 who benefits under the plan for the plan year (within the meaning of § 1.410(b)–3).

Integration level. Integration level is defined in § 1.401(l)–1(c)(20).

Measurement period. Measurement period is defined in § 1.401(a)(4)–3(d)(1)(iii).

Multiemployer plan. Multiemployer plan is defined in § 1.410(b)–9.

NHCE. NHCE means an employee who is not a HCE.

Nonexcludable employee. Nonexcludable employee means an employee within the meaning of § 1.410(b)–9, other than an excludable employee with respect to the plan as determined under § 1.410(b)–6. A nonexcludable employee may be either a highly or nonhighly compensated nonexcludable employee, depending on the nonexcludable employee's status under section 414(q).

Normalize. With respect to a benefit payable to an employee in a particular form, normalize means to convert the benefit to an actuarially equivalent straight life annuity commencing at the employee's testing age. The actuarial assumptions used in normalizing a benefit must be reasonable and must be applied on a gender-neutral basis. A standard interest rate and a standard mortality table are among the assumptions considered reasonable for this purpose.

Offset plan. Offset plan is defined in § 1.401(l)–1(c)(24).

Optional form of benefit. Optional form of benefit is defined in § 1.401(a)(4)–4(e)(1).

Other right or feature. Other right or feature is defined in § 1.401(a)(4)–4(e)(3).

Plan. Plan means a plan within the meaning of § 1.410(b)–7 (a) and (b), after application of the mandatory disaggregation rules of § 1.410(b)–7(c) and the permissive aggregation rules of § 1.410(b)–7(d).

Plan year. Plan year is defined in § 1.410(b)–9.

Plan year compensation—(1) *In general.* Plan year compensation means section 414(s) compensation for the plan year determined by measuring section 414(s) compensation during one of the periods described in paragraphs (2) through (4) of this definition. Whichever period is selected must be applied uniformly to determine the plan year compensation of every employee.

(2) *Plan year.* This period consists of the plan year.

(3) *Twelve-month period ending in the plan year.* This period consists of a specified 12-month period ending with or within the plan year, such as the calendar year or the period for determining benefit accruals described in § 1.401(a)(4)–3(f)(6).

(4) *Period of plan participation during the plan year.* This period consists of the portion of the plan year during which the employee is a participant in the plan. This period may be used to determine plan year compensation for the plan year in which participation begins, the plan year in which participation ends, or both. This period may be used to determine plan year compensation when substituted for average annual compensation in § 1.401(a)(4)–3(e)(2)(ii)(A) only if the plan year is also the period for determining benefit accruals under the plan rather than another period as permitted under § 1.401(a)(4)–3(f)(6). Further, selection of this period must be made on a reasonably consistent basis from plan year to plan year in a manner that does not discriminate in favor of HCEs.

(5) *Special rule for new employees.* Notwithstanding the uniformity requirement of paragraph (1) of this definition, if employees' plan year compensation for a plan year is determined based on a 12-month period ending within the plan year under paragraph (3) of this definition, then the plan year compensation of any employees whose date of hire was less than 12 months before the end of that 12-month period must be determined uniformly based either on the plan year or on the employees' periods of participation during the plan year, as provided in paragraphs (2) and (4), respectively, of this definition.

QJSA. QJSA means a qualified joint and survivor annuity as defined in section 417(b).

QSUPP—(1) *In general.* QSUPP or qualified social security supplement means a social security supplement that meets each of the requirements in paragraphs (2) through (6) of this definition.

(2) *Accrual*—(i) *General rule.* The amount of the social security supplement payable at any age for which the employee is eligible for the social security supplement must be equal to the lesser of—

(A) The employee's old-age insurance benefit, unreduced on account of age, under title II of the Social Security Act; and

(B) The accrued social security supplement, determined under one of the methods in paragraph (2) (ii) through (iv) of this definition.

(ii) *Section 401(l) plans.* In the case of a section 401(l) plan that is a defined benefit excess plan, each employee's accrued social security supplement equals the employee's average annual compensation up to the integration level, multiplied by the disparity provided by the plan for the employee's years of service used in determining the employee's accrued benefit under the plan. In the case of a section 401(l) plan that is an offset plan, each employee's accrued social security supplement equals the dollar amount of the offset accrued for the employee under the plan.

(iii) *PIA offset plan.* In the case of a PIA offset plan, each employee's accrued social security supplement

equals the dollar amount of the offset accrued for the employee under the plan. For this purpose, a PIA offset plan is a plan that reduces an employee's benefit by an offset based on a stated percentage of the employee's primary insurance amount under the Social Security Act.

(iv) *Other plans.* In the case of any other plan, each employee's social security supplement accrues ratably over the period beginning with the later of the employee's commencement of participation in the plan or the effective date of the social security supplement and ending with the earliest age at which the social security supplement is payable to the employee. The effective date of the social security supplement is the later of the effective date of the amendment adding the social security supplement or the effective date of the amendment modifying an existing social security supplement to comply with the requirements of this definition. If, by the end of the first plan year to which these regulations apply, as set forth in § 1.401(a)(4)–13 (a) and (b), an amendment is made to a social security supplement in existence on September 19, 1991, the employer may treat the accrued portion of the social security supplement, as determined under the plan without regard to amendments made after September 19, 1991, as included in the employee's accrued social security supplement, provided that the remainder of the social security supplement is accrued under the otherwise-applicable method.

(3) *Vesting.* The plan must provide that an employee's right to the accrued social security supplement becomes nonforfeitable within the meaning of section 411 as if it were an early retirement benefit.

(4) *Eligibility.* The plan must impose the same eligibility conditions on receipt of the social security supplement as on receipt of the early retirement benefit in conjunction with which the social security supplement is payable. Furthermore, if the service required for an employee to become eligible for the social security supplement exceeds 15 years, then the ratio percentage of the group of employees who actually satisfy the eligibility conditions on receipt of the QSUPP in the current plan year must equal or exceed the unsafe harbor percentage applicable to the plan under § 1.410(b)–4(c)(4)(ii).

(5) *QJSA.* At each age, the most valuable QSUPP commencing at that age must be payable in conjunction with the QJSA commencing at that age. In addition, the plan must provide that, in the case of a social security supplement payable in conjunction with a QJSA, the social security supplement will be paid after the employee's death on the same terms as the QJSA, but in no event for a period longer than the period for which the social security supplement would have been paid to the employee had the employee not died. For example, if the QJSA is in the form of a joint annuity with a 50-percent survivor's benefit, the social security supplement must provide a 50-percent survivor's benefit. When section 417(c) requires the determination of a QJSA for purposes of determining a qualified pre-retirement survivor's annuity as defined in section 417(c) (QPSA), the social security supplement payable in conjunction with that QJSA must be paid in conjunction with the QPSA.

(6) *Protection.* The plan must specifically provide that the social security supplement is treated as an early retirement benefit that is protected under section 411(d)(6) (other than for purposes of sections 401(a)(11) and 417). Thus, the accrued social security supplement must continue to be payable notwithstanding subsequent amendment of the plan (including the plan's termination), and an employee may meet the eligibility requirements for the social security supplement after plan termination.

Qualified plan. Qualified plan means a plan that satisfies section 401(a). For this purpose, a qualified plan includes an annuity plan described in section 403(a).

Rate group. Rate group is defined in § 1.401(a)(4)–2(c)(1) or is defined in § 1.401(a)(4)–3(c)(1).

Ratio percentage. Ratio percentage is defined in § 1.410(b)–9.

Section 401(a)(17) employee. Section 401(a)(17) employee is defined in § 1.401(a)(17)–1(e)(2)(ii).

Section 401(k) plan. Section 401(k) plan is defined in § 1.410(b)–9.

Section 401(l) plan. Section 401(l) plan is defined in § 1.410(b)–9.

Section 401(m) plan. Section 401(m) plan is defined in § 1.410(b)–9.

Section 414(s) compensation—(1) *General rule.* When used with reference to compensation for a plan year, 12-month period, or other specified period, section 414(s) compensation means compensation measured using an underlying definition that satisfies section 414(s) for the applicable plan year. Whether an underlying definition of compensation satisfies section 414(s) is determined on a year-by-year basis, based on the provisions of section 414(s) in effect for the applicable plan year and, if relevant, the employer's HCEs and NHCEs for that plan year. See § 1.414(s)–1(i) for transition rules for plan years beginning before the effective date applicable to the plan under § 1.401(a)(4)–13 (a) or (b). For a plan year or 12-month period beginning before January 1, 1988, any underlying definition of compensation may be used to measure the amount of employees' compensation for purposes of this definition, provided that the definition was nondiscriminatory based on the facts and circumstances in existence for that plan year or for the plan year in which that 12-month period ends.

(2) *Determination period for section 414(s) nondiscrimination requirement*—(i) *General rule.* If an underlying definition of compensation must satisfy the nondiscrimination requirement in § 1.414(s)–1(d)(3) in order to satisfy section 414(s) for a plan year, any one of the following determination periods may be used to satisfy the nondiscrimination requirement—

(A) The plan year;

(B) The calendar year ending in the plan year; or

(C) The 12-month period ending in the plan year that is used to determine the underlying definition of compensation.

(ii) *Exception for partial plan year compensation.* Notwithstanding the general rule in paragraph (2)(i) of this definition, if the period for measuring the underlying compensation is the portion of the plan year during which each employee is a participant in the plan (as provided in paragraph (4) of the definition of plan year compensation in this section), that period must be used as the determination period.

(3) *Plans using permitted disparity.* In the case of a section 401(l) plan or a plan that imputes permitted disparity in accordance with § 1.401(a)(4)–7, an underlying definition of compensation is not section 414(s) compensation if the definition results in significant under-inclusion of compensation for employees.

(4) *Double proration of service and compensation.* If a defined benefit plan prorates benefit accruals as permitted under section 411(b)(4)(B) by crediting less than full years of participation, then compensation for a plan year, 12-month period, or other specified period that is used to determine the amount of an employee's benefits under the plan will not fail to be section 414(s) compensation, merely because the amount of compensation for that period is adjusted to reflect the equivalent of full-time compensation to the extent necessary to satisfy the requirements of 29 CFR 2530.204–2(d) (regarding double proration of service and compensation). This adjustment is disregarded in determining whether the underlying definition of compensation used

satisfies the requirements of section 414(s). Thus, for example, if the underlying definition of compensation is an alternative definition that must satisfy the nondiscrimination requirement of § 1.414(s)–1(d)(3), in determining whether that requirement is satisfied with regard to the underlying definition, the compensation included for any employee is determined without any adjustment to reflect the equivalent of full-time compensation required by 29 CFR 2530.204–2(d).

Social security supplement. Social security supplement is defined in § 1.411(a)–7(c)(4)(ii).

Standard interest rate. Standard interest rate means an interest rate that is neither less than 7.5 percent nor greater than 8.5 percent, compounded annually. The Commissioner may, in revenue rulings, notices, and other guidance of general applicability, change the definition of standard interest rate.

Standard mortality table. Standard mortality table means one of the following tables: the UP–1984 Mortality Table (Unisex); the 1983 Group Annuity Mortality Table (1983 GAM) (Female); the 1983 Group Annuity Mortality Table (1983 GAM) (Male); the 1983 Individual Annuity Mortality Table (1983 IAM) (Female); the 1983 Individual Annuity Mortality Table (1983 IAM) (Male); the 1971 Group Annuity Mortality Table (1971 GAM) (Female); the 1971 Group Annuity Mortality Table (1971 GAM) (Male); the 1971 Individual Annuity Mortality Table (1971 IAM) (Female); or the 1971 Individual Annuity Mortality Table (1971 IAM) (Male). These standard mortality tables are available from the Society of Actuaries, 475 N. Martingale Road, Suite 800, Schaumberg, Illinois 60173. The Commissioner may, in revenue rulings, notices, and other guidance of general applicability, change the definition of standard mortality table. See § 601.601(d)(2)(ii)(*b*) of this Chapter.

Straight life annuity. Straight life annuity means an annuity payable in equal installments for the life of the employee that terminates upon the employee's death.

Testing age. With respect to an employee, testing age means the age determined for the employee under the following rules:

(1) If the plan provides the same uniform normal retirement age for all employees, the employee's testing age is the employee's normal retirement age under the plan.

(2) If a plan provides different uniform normal retirement ages for different employees or different groups of employees, the employee's testing age is the employee's latest normal retirement age under any uniform normal retirement age under the plan, regardless of whether that particular uniform normal retirement age actually applies to the employee under the plan.

(3) If the plan does not provide a uniform normal retirement age, the employee's testing age is 65.

(4) If an employee is beyond the testing age otherwise determined for the employee under paragraphs (1) through (3) of this definition, the employee's testing age is the employee's current age. The rule in the preceding sentence does not apply in the case of a defined benefit plan that fails to satisfy the requirements of § 1.401(a)(4)–3(f)(3)(i) (permitting certain increases in benefits that commence after normal retirement age to be disregarded).

Testing service. Testing service is defined in § 1.401(a)(4)–3(d)(1)(iv).

Uniform normal retirement age—(1) *General rule.* Uniform normal retirement age means a single normal retirement age under the plan that does not exceed the maximum age in paragraph (2) of this definition and that is the same for all of the employees in a given group. A group of employees does not fail to have a uniform normal retirement age merely because the plan contains provisions described in paragraphs (3) and (4) of this definition.

(2) *Maximum age.* The maximum age is generally 65. However, if all employees have the same social security retirement age (within the meaning of section 415(b)(8)), the maximum age is the employees' social security retirement age. Thus, for example, a component plan has a uniform normal retirement age of 67 if it defines normal retirement age as social security retirement age and all employees in the component plan have a social security retirement age of 67.

(3) *Stated anniversary date*—(i) *General rule.* A group of employees does not fail to have a uniform normal retirement age merely because the plan provides that the normal retirement age of all employees in the group is the later of a stated age (not exceeding the maximum age in paragraph (2) of this definition) or a stated anniversary no later than the fifth anniversary of the time each employee commenced participation in the plan. For employees who commenced participation in the plan before the first plan year beginning on or after January 1, 1988, the stated anniversary date may be later than the anniversary described in the preceding sentence if it is no later than the earlier of the tenth anniversary of the date the employee commenced participation in the plan (or such earlier anniversary selected by the employer, if less than 10) or the fifth anniversary of the first day of the first plan year beginning on or after January 1, 1988.

(ii) *Use of service other than anniversary of commencement of participation.* In lieu of using a stated anniversary date as permitted under paragraph (3)(i) of this definition, a plan may use a stated number of years of service measured on another basis, provided that the determination is made on a basis that satisfies section 411(a)(8) and that the stated number of years of service does not exceed the number of anniversaries permitted under paragraph (3)(i) of this definition. For example, a uniform normal retirement age could be based on the earlier of the fifth anniversary of the commencement of participation and the completion of five years of vesting service.

(4) *Conversion of normal retirement age to normal retirement date.* A group of employees does not fail to have a uniform normal retirement age merely because a defined benefit plan provides for the commencement of normal retirement benefits on different retirement dates for different employees if each employee's normal retirement date is determined on a reasonable basis with reference to an otherwise uniform normal retirement age and the difference between the normal retirement date and the uniform normal retirement age cannot exceed six months for any employee. Thus, for example, benefits under a plan do not fail to commence at a uniform normal retirement age of age 62 for purposes of § 1.401(a)(4)–3(b)(2)(i), merely because the plan's normal retirement date is defined as the last day of the plan year nearest attainment of age 62.

Year of service. Year of service means a year of service as defined in the plan for a specific purpose, including the method of crediting service for that purpose under the plan.

§ 1.401(a)(4)–13 Effective dates and fresh-start rules.

(a) *General effective dates*—(1) *In general.* Except as otherwise provided in this section, §§ 1.401(a)(4)–1 through 1.401(a)(4)–13 apply to plan years beginning on or after January 1, 1994.

(2) *Plans of tax-exempt organizations.* In the case of plans maintained by organizations exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), §§ 1.401(a)(4)–1 through 1.401(a)(4)–13 apply to plan years beginning on or after January 1, 1996.

(3) *Compliance during transition period.* For plan years beginning before

the effective date of these regulations, as set forth in paragraph (a)(1) and (2) of this section, and on or after the first day of the first plan year to which the amendments made to section 410(b) by section 1112(a) of the Tax Reform Act of 1986 (TRA '86) apply, a plan must be operated in accordance with a reasonable, good faith interpretation of section 401(a)(4), taking into account pre-existing guidance and the amendments made by TRA '86 to related provisions of the Code (including, for example, sections 401(l), 401(a)(17), and 410(b)). Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 401(a)(4) will generally be determined on the basis of all the relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 401(a)(4) if it is operated in accordance with the terms of §§ 1.401(a)(4)–1 through 1.401(a)(4)–13.

(b) *Effective date for governmental plans.* In the case of governmental plans described in section 414(d), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), §§ 1.401(a)(4)–1 through 1.401(a)(4)–13 apply to plan years beginning on or after the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously. Such plans are deemed to satisfy section 401(a)(4) for plan years before that effective date. For purposes of this paragraph (b), the governing body with authority to amend the plan is the legislature, board, commission, council, or other governing body with authority to amend the plan.

(c) *Fresh-start rules for defined benefit plans*—(1) *Introduction.* This paragraph (c) provides rules that must be satisfied in order to use the fresh-start testing options for defined benefit plans in § 1.401(a)(4)–3(b)(6)(vii) and (d)(3)(iii), relating to the safe harbors and the general test, respectively. Those fresh-start options are designed to allow a plan to be tested without regard to benefits accrued before a selected fresh-start date. To the extent provided in paragraph (d) of this section, those options also may be used to disregard certain increases in benefits attributable to compensation increases after a fresh-start date. Although this paragraph (c) generally requires a plan to be amended to freeze employees' accrued benefits as of a fresh-start date and to provide any additional accrued benefits after the fresh-start date solely in accordance with certain specified formulas, certain of these requirements do not apply to a plan that is tested under the general test of § 1.401(a)(4)–3(c). See § 1.401(a)(4)–3(b)(6)(vii) and (d)(3)(iii).

(2) *General rule.* A defined benefit plan satisfies this paragraph (c) if—

(i) Accrued benefits of employees in the fresh-start group are frozen as of the fresh-start date in accordance with paragraph (c)(3) of this section;

(ii) Accrued benefits after the fresh-start date for employees in the fresh-start group are determined under one of the fresh-start formulas in paragraph (c)(4) of this section; and

(iii) Paragraph (c)(5) of this section is satisfied.

(3) *Definition of frozen*—(i) *General rule.* An employee's accrued benefit under a plan is frozen as of the fresh-start date if it is determined as if the employee terminated employment with the employer as of the fresh-start date (or the date the employee actually terminated employment with the employer, if earlier), and without regard to any amendment to the plan adopted after that date, other than amendments recognized as effective as of or before that date under section 401(b) or § 1.401(a)(4)–11(g). The assumption that an employee has terminated employment applies solely for purposes of this paragraph (c)(3). Thus, for example, the fresh start has no effect on the service taken into account for purposes of determining vesting and eligibility for benefits, rights, and features under the plan.

(ii) *Permitted compensation adjustments.* An employee's accrued benefit under a plan that satisfies paragraph (d) of this section does not fail to be frozen as of the fresh-start date merely because the plan makes the adjustments described in paragraph (d)(7) and (8) of this section with regard to the fresh-start date. In addition, if the frozen accrued benefit of an employee under the plan includes top-heavy minimum benefits, an employee's accrued benefit under a plan does not fail to be frozen as of the fresh-start date merely because the plan increases the frozen accrued benefit of each employee in the fresh-start group solely to the extent necessary to comply with the average compensation requirement of section 416(c)(1)(D)(i).

(iii) *Permitted changes in optional forms.* An employee's accrued benefit under a plan does not fail to be frozen as of the fresh-start date merely because the plan provides a new optional form of benefit with respect to the frozen accrued benefit, if—

(A) The optional form is provided with respect to each employee's entire accrued benefit (i.e., accrued both before and after the fresh-start date);

(B) The plan provided meaningful coverage as of the fresh-start date, as described in paragraph (d)(4) of this section; and

(C) The plan provides meaningful current benefit accruals as described in paragraph (d)(6) of this section.

(iv) *Floor-offset plans.* In the case of a plan that was a floor-offset plan described in § 1.401(a)(4)–8(d) prior to the fresh-start date, an employee's accrued benefit as of the fresh-start date does not fail to be frozen merely because the actuarial equivalent of the account balance in the defined contribution plan that is offset against the defined benefit plan varies as a result of investment return that is different from the assumed interest rate used to determine the actuarial equivalent of the account balance.

(4) *Fresh-start formulas*—(i) *Formula without wear-away.* An employee's accrued benefit under the plan is equal to the sum of—

(A) The employee's frozen accrued benefit; and

(B) The employee's accrued benefit determined under the formula applicable to benefit accruals in the current plan year (current formula) as applied to the employee's years of service after the fresh-start date.

(ii) *Formula with wear-away.* An employee's accrued benefit under the plan is equal to the greater of—

(A) The employee's frozen accrued benefit; or

(B) The employee's accrued benefit determined under the current formula as applied to the employee's total years of service (before and after the fresh-start date) taken into account under the current formula.

(iii) *Formula with extended wear-away.* An employee's accrued benefit under the plan is equal to the greater of—

(A) The amount determined under paragraph (c)(4)(i) of this section; or

(B) The amount determined under paragraph (c)(4)(ii)(B) of this section.

(5) *Rules of application*—(i) *Consistency requirement.* This paragraph (c)(5) is not satisfied unless the fresh-start rules in this paragraph (c) (and paragraph (d) of this section, if applicable) are applied consistently to all employees in the fresh-start group. Thus, for example, the same fresh-start date and fresh-start formula (within the meaning of paragraph (c)(4) of this section) must apply to all employees in the fresh-start group. Similarly, if a plan makes a fresh start for all employees

with accrued benefits on the fresh-start date and, for a later plan year, is aggregated for purposes of section 401(a)(4) with another plan that did not make the same fresh start, the aggregated plan must make a new fresh start in order to use the fresh-start rules for that later plan year or any subsequent plan year.

(ii) *Definition of fresh-start group.* Generally, the fresh-start group with respect to a fresh start consists of all employees who have accrued benefits as of the fresh-start date and have at least one hour of service with the employer after that date. However, a fresh-start group with respect to a fresh start may consist exclusively of all employees who have accrued benefits as of the fresh-start date, have at least one hour of service with the employer after that date, and are—

(A) Section 401(a)(17) employees;

(B) Members of an acquired group of employees (provided the fresh-start date is the date determined under paragraph (c)(5)(iii)(B) of this section); or

(C) Employees with a frozen accrued benefit that is attributable to assets and liabilities transferred to the plan as of a fresh-start date in connection with the transfer (provided the fresh-start date is the date determined under paragraph (c)(5)(iii)(C) of this section) and for whom the current formula is different from the formula used to determine the frozen accrued benefit.

(iii) *Definition of fresh-start date.* Generally, the fresh-start date is the last day of a plan year. However, a plan may use a fresh-start date other than the last day of the plan year if—

(A) The plan satisfied the safe harbor rules of § 1.401(a)(4)–3(b) for the period from the beginning of the plan year through the fresh-start date;

(B) The fresh-start group is an acquired group of employees, and the fresh-start date is the latest date of hire or transfer into an acquired trade or business selected by the employer for any employees to be included in the acquired group of employees; or

(C) The fresh-start group is the group of employees with a frozen accrued benefit that is attributable to assets and liabilities transferred to the plan and the fresh-start date is the date as of which the employees begin accruing benefits under the plan.

(6) *Examples.* The following examples illustrate the rules in this paragraph (c):

Example 1. (a) Employer X maintains a defined benefit plan with a calendar plan year. The plan formula provides an employee with a normal retirement benefit at age 65 of one percent of average annual compensation up to covered compensation multiplied by the employee's years of service for Employer X, plus 1.5 percent of average annual compensation in excess of covered compensation, multiplied by the employee's years of service for Employer X up to 40.

(b) For plan years beginning after 1994, Employer X amends the plan formula to provide a normal retirement benefit of 0.75 percent of average annual compensation up to covered compensation multiplied by the employee's total years of service for Employer X up to 35, plus 1.4 percent of average annual compensation in excess of covered compensation multiplied by the employee's years of service for Employer X up to 35. For plan years after 1994, each employee's accrued benefit is determined under the fresh-start formula in paragraph (c)(4)(iii) of this section (formula with extended wear-away), using December 31, 1994, as the fresh-start date.

(c) As of December 31, 1994, Employee M has 10 years of service for Employer X, has average annual compensation of $38,000, and has covered compensation of $30,000. Employee M's accrued benefit as of December 31, 1994, is therefore $4,200 ((1 percent×$30,000×10 years)+(1.5 percent×$8,000×10 years)). As of December 31, 1995, Employee M has 11 years of service for Employer X, has average annual compensation of $40,000 (determined by taking into account compensation before and after the fresh-start date), and has covered compensation of $32,000. Employee M's accrued benefit as of December 31, 1995, is $4,552, the greater of—

(1) $4,552, the sum of Employee M's accrued benefit frozen as of December 31, 1994, ($4,200) and the amended formula applied to Employee M's years of service after 1994 ((0.75 percent×$32,000×1 year)+(1.4 percent×$8,000×1 year), or $352); or

(2) $3,872, the amended formula applied to Employee M's total years of service ((0.75 percent×$32,000×11 years)+(1.4 percent×$8,000×11 years)).

Example 2. (a) Employer Y maintains a defined benefit plan, Plan A, that has a calendar plan year. For the 1995 plan year, Plan A satisfies the requirements for a safe harbor plan in § 1.401(a)(4)–3(b). Employer Y selects a date in 1995 for all the employees, freezes the employees' accrued benefits as of that date under the rules of paragraph (c)(3) of this section, and, in accordance with the rules of this paragraph (c), amends Plan A to determine benefits for all employees after that date using the formula with wear-away described in paragraph (c)(4)(ii) of this section. The new benefit formula would satisfy the requirements for a safe harbor plan in § 1.401(a)(4)–3(b) if all accrued benefits were determined under it.

(b) Because Plan A satisfied the requirements for a safe harbor plan for the period from the beginning of the plan year through the selected date, paragraph (c)(5)(iii)(A) of this section permits the selected date to be a fresh-start date, even if it is not the last day of the plan year. Thus, Plan A satisfies the requirements in this paragraph (c) for a fresh start as of the fresh-start date.

(c) Under § 1.401(a)(4)–3(b)(6)(vii), a plan does not fail to satisfy the requirements of § 1.401(a)(4)–3(b), merely because of benefits accrued under a different formula prior to a fresh-start date. Thus, Plan A still satisfies the safe harbor requirements of § 1.401(a)(4)–3(b) after the amendment to the benefit formula. Because Plan A satisfied the requirements for a safe harbor plan for the period from the beginning of the plan year, taking the amendment into account, Employer Y may select any date within the plan year (which may be the same date as the first fresh-start date) and apply the fresh-start rules in this paragraph (c) a second time as of that date.

(d) *Compensation adjustments to frozen accrued benefits*—(1) *Introduction.* In addition to the fresh-start rules in paragraph (c) of this section, this paragraph (d) sets forth requirements that must be satisfied in order for a plan to disregard increases in benefits accrued as of a fresh-start date that are attributable to increases in employees' compensation after the fresh-start date.

(2) *In general.* In the case of a defined benefit plan that is tested under the safe harbors in § 1.401(a)(4)–3(b) or § 1.401(a)(4)–8(c)(3), an employee's adjusted accrued benefit (determined under the rules in paragraph (d)(8) of this section) may be substituted for the employee's frozen accrued benefit in applying the formulas in paragraph (c)(4) of this section (or paragraph (f)(2) of this section, if applicable) if paragraphs (d)(3) through (d)(7) of this section are satisfied. Thus, for example, in determining whether such a plan satisfies § 1.401(a)(4)–3(b), any compensation adjustments to the employee's frozen accrued benefit described in paragraph (d)(8) of this section are disregarded. Similarly, in the case of a defined benefit plan tested under the general test in § 1.401(a)(4)–3(c), the compensation adjustments described in paragraph (d)(8) of this section may be disregarded under the rules of § 1.401(a)(4)–3(d)(3)(iii) if paragraphs (d)(3) through (d)(7) of this section are satisfied. Of course, any increases in accrued benefits exceeding these adjustments must be taken into account under the general test, and a plan providing such excess increases generally will fail to satisfy the safe harbor requirements of § 1.401(a)(4)–3(b). Where paragraphs (d)(3) through (d)(7) of this section are satisfied with respect to a plan as of the fresh-start date, but one or more of those paragraphs fail to be satisfied for a later plan year, further compensation adjustments described in paragraph (d)(8) of this section may not be disregarded in testing the plan under § 1.401(a)(4)–3.

(3) *Plan requirements*—(i) *Pre-fresh-start date.* As of the fresh-start date, the

plan must have contained a benefit formula under which benefits of each employee in the fresh-start group that are accrued as of the fresh-start date and are attributable to service before the fresh-start date would be affected by the employee's compensation after the fresh-start date. A plan satisfies this requirement, for example, if it based benefits on an employee's highest average pay over a fixed period of years or on an employee's average pay over the employee's entire career with the employer. A plan does not satisfy this paragraph (d)(3)(i) if the Commissioner determines, based on all of the relevant facts and circumstances, that the plan provision described in the first sentence of this paragraph (d)(3) was added primarily in order to provide additional benefits to HCEs that are disregarded under the special testing rules described in this paragraph (d).

(ii) *Post-fresh-start date.* The plan by its terms must provide that the accrued benefits of each employee in the fresh-start group after the fresh-start date be at least equal to the employee's adjusted accrued benefit (i.e., the frozen accrued benefit as of the fresh-start date, adjusted as provided under paragraph (d)(7) of this section, plus the compensation adjustments described in paragraph (d)(8) of this section).

(4) *Meaningful coverage as of fresh-start date.* The plan must have provided meaningful coverage as of the fresh-start date. A plan provided meaningful coverage as of the fresh-start date if the group of employees with accrued benefits under the plan as of the fresh-start date satisfied the minimum coverage requirements of section 410(b) as in effect on that date (determined without regard to section 410(b)(6)(C)). In order to satisfy the requirement in the preceding sentence, an employer may amend the plan to grant past service credit under the formula in effect as of the fresh-start date to NHCEs, if the amount of past service granted them is reasonably comparable, on average, to the amount of past service HCEs have under the plan. Any benefit increase that results from the grant of past service credit to a NHCE under this paragraph (d)(4) is included in the employee's frozen accrued benefit.

(5) *Meaningful ongoing coverage*—(i) *General rule.* The fresh-start group must have satisfied the minimum coverage requirements of section 410(b) for all plan years from the first plan year beginning after the fresh-start date through the current plan year. Thus, if a fresh-start group fails to satisfy the minimum coverage requirements of section 410(b) for any plan year, this paragraph (d)(5) is not satisfied for that plan year or any subsequent plan year; however, such a failure is not taken into account in determining whether this paragraph (d)(5) is satisfied for any previous plan year.

(ii) *Alternative rules.* Notwithstanding paragraph (d)(5)(i) of this section, a fresh-start group is deemed to satisfy this paragraph (d)(5) for all plan years following the fresh-start date if any one of the following requirements is satisfied:

(A) *Section 410(b) coverage for first five years.* The fresh-start group must have satisfied the minimum coverage requirements of section 410(b) for the first five plan years beginning after the fresh-start date.

(B) *Ratio percentage coverage as of fresh-start date.* The fresh-start group must have satisfied the ratio percentage test of § 1.410(b)–2(b)(2) as of the fresh-start date.

(C) *Fresh start for acquired group of employees.* The fresh-start group must consist of an acquired group of employees that satisfied the minimum coverage requirements of section 410(b) (determined without regard to section 410(b)(6)(C)) as of the fresh-start date.

(D) *Fresh start before applicable effective date.* The fresh-start date with respect to the fresh-start group must have been on or before the effective date applicable to the plan under paragraph (a) or (b) of this section.

(6) *Meaningful current benefit accruals.* The benefit formula and accrual method under the plan that applies to the fresh-start group in the aggregate must provide benefit accruals in the current plan year (other than increases in benefits accrued as of the fresh-start date) at a rate that is meaningful in comparison to the rate at which benefits accrued for the fresh-start group in plan years beginning before the fresh-start date. Whether this requirement is satisfied with respect to a fresh-start group that does not include all employees in the plan with an hour of service after the fresh-start date may be determined taking into account the rate at which benefits are provided to other employees in the plan.

(7) *Minimum benefit adjustment*—(i) *In general.* In the case of a section 401(l) plan or a plan that imputes disparity under § 1.401(a)(4)–7, the plan must make the minimum benefit adjustment described in paragraph (d)(7)(ii) or (iii) of this section.

(ii) *Excess or offset plans.* In the case of a plan that is a defined benefit excess plan as of the fresh-start date, each employee's frozen accrued benefit is adjusted so that the base benefit percentage is not less than 50 percent of the excess benefit percentage. In the case of a plan that is a PIA offset plan (as defined in paragraph (2)(iii) of the definition of QSUPP in § 1.401(a)(4)–12) as of the fresh-start date, each employee's offset as applied to determine the frozen accrued benefit is adjusted so that it does not exceed 50 percent of the benefit determined without applying the offset.

(iii) *Other plans.* In the case of a plan that is not described in paragraph (d)(7)(ii) of this section, each employee's frozen accrued benefit is adjusted in a manner that is economically equivalent to the adjustment required under that paragraph, taking into account the plan's benefit formula, accrual rate, and relevant employee factors, such as period of service.

(8) *Adjusted accrued benefit*—(i) *General rule.* The term adjusted accrued benefit means an employee's frozen accrued benefit that is adjusted as provided in paragraph (d)(7) of this section and then multiplied by a fraction (not less than one), the numerator of which is the employee's compensation for the current plan year and the denominator of which is the employee's compensation as of the fresh-start date determined under the same definition. For purposes of this adjustment, the compensation definition must be either the same compensation definition and formula used to determine the frozen accrued benefit or average annual compensation (determined without regard to § 1.401(a)(4)–3(e)(2)(ii)(A) (use of plan year compensation)).

(ii) *Alternative formula for pre-effective-date fresh starts.* In the case of a fresh-start date before the effective date that applies to the plan under paragraph (a) or (b) of this section, the adjusted accrued benefit may be determined by multiplying the frozen accrued benefit by a fraction (not less than one) determined under this paragraph (d)(8)(ii). The numerator of the fraction is the employee's average annual compensation for the current plan year. The denominator of the fraction is the employee's reconstructed average annual compensation as of the fresh-start date. An employee's reconstructed average annual compensation is determined by—

(A) Selecting a single plan year beginning after the fresh-start date but beginning not later than the last day of the first plan year to which these regulations apply under paragraph (a) or (b) of this section;

(B) Determining the employee's average annual compensation for the selected plan year under the same method used to determine the employee's average annual

compensation for the current plan year under this paragraph (d)(8)(ii); and

(C) Multiplying the employee's average annual compensation for the selected plan year by a fraction, the numerator of which is the employee's compensation as of the fresh-start date determined under the same compensation definition and formula used to determine the employee's frozen accrued benefit and the denominator of which is the employee's compensation for the selected plan year determined under the compensation definition and formula used to determine the employee's frozen accrued benefit.

(iii) *Effect of section 401(a)(17).* In determining the numerators and the denominators of the fractions described in this paragraph (d)(8), the annual compensation limit under section 401(a)(17) generally applies. See, however, § 1.401(a)(17)–1(e)(4) for special rules applicable to section 401(a)(17) employees.

(iv) *Option to make less than the full permitted adjustment.* A plan may limit the increase in an employee's frozen accrued benefit for the current and all future years to a percentage (not more than 100 percent) of the increase otherwise provided under this paragraph (d)(8). Furthermore, the plan may, at any time, terminate all future adjustments permitted under this paragraph (d).

(v) *Alternative determination of adjusted accrued benefit.* In lieu of applying the fractions in paragraph (d)(8)(i) or (ii) of this section, a plan may determine an employee's adjusted accrued benefit by substituting the employee's compensation for the current plan year (determined under the same compensation formula and underlying definition of compensation used to determine the employee's frozen accrued benefit) in the benefit formula used to determine the frozen accrued benefit. For this purpose, insignificant changes in the underlying definition of compensation to reflect current compensation practices will not be treated as a change in the definition of compensation. A plan may apply the alternative in this paragraph (d)(8)(v), only if it is reasonable to expect as of the fresh-start date that, over time, the use of this method instead of the general rule of paragraph (d)(8)(i) will not discriminate significantly in favor of HCEs.

(9) *Examples.* The following examples illustrate the rules of this paragraph (d).

Example 1. (a) Employer X maintains a defined benefit plan that is an excess plan with a calendar plan year. For plan years before 1989, the plan is integrated with benefits provided under the Social Security Act, providing each employee with a normal retirement benefit equal to one percent of the employee's average annual compensation in excess of the employee's covered compensation, multiplied by the employee's years of service for Employer X. The benefit formula thus provides no benefit with respect to average annual compensation up to covered compensation.

(b) As of December 31, 1988, Employee M has 10 years of service for Employer X and has covered compensation of $25,000 and average annual compensation of $20,000. Employee M's average annual compensation has never exceeded $20,000. Therefore, as of December 31, 1988, Employee M's accrued benefit under the plan is zero.

(c) Effective with the 1989 plan year, the plan is amended to provide each employee with a normal retirement benefit of 0.6 percent of average annual compensation up to covered compensation plus 1.2 percent of average annual compensation in excess of covered compensation, multiplied by the employee's years of service up to 35. The plan also provides that, for plan years after 1988, each employee's accrued benefit is determined under the formula in paragraph (c)(4)(i) of this section (formula without wear-away) and, in applying the fresh-start formula, each employee's frozen accrued benefit under paragraph (c)(4)(i) of this section will be adjusted under this paragraph (d), using the same compensation definition and formula used to determine the frozen accrued benefit under paragraph (d)(8)(i) of this section.

(d) The plan uses the permitted disparity of section 401(l) and thus must also make the minimum benefit adjustment under paragraph (d)(7) of this section. Because the excess benefit percentage under the plan for years before 1989 was one percent, the plan must provide a base benefit percentage for those years of at least 0.5 percent. After the minimum benefit adjustment, Employee M's accrued benefit as of December 31, 1988, is $1,000 (0.5 percent×$20,000×10 years).

(e) As of December 31, 1992, Employee M has 14 years of service and has covered compensation of $30,000 and average annual compensation of $35,000. Employee M's adjusted accrued benefit as of December 31, 1992, is $1,750 ($1,000×$35,000/$20,000), and Employee M's accrued benefit as of December 31, 1992, is $2,710 (the sum of $1,750 plus $960 ((0.6 percent×$30,000×4 years) plus (1.2 percent×$5,000×4 years))).

Example 2. (a) The facts are the same as in *Example 1*, except that in determining adjusted accrued benefits, the plan specifies the alternative method of paragraph (d)(8)(v) of this section. This method may be used because it is reasonable to expect as of the fresh-start date that, over time, the use of this method instead of the general rule of paragraph (d)(8)(i) will not discriminate significantly in favor of HCEs.

(b) As of December 31, 1992, Employee M's adjusted accrued benefit is $2,000 (10 years of service prior to the fresh-start date×(0.5 percent of $30,000+1.0 percent of the excess of $35,000 over $30,000)).

(c) Alternatively, Employer X may choose to use the method of paragraph (d)(8)(v) of this section but freezes the covered compensation level at the dollar level in place as of the fresh-start date. In such case, Employee M's adjusted accrued benefit as of December 31, 1992, would have been $2,250 (10 years of service prior to the fresh-start date×(0.5 percent of $25,000+1.0 percent of the excess of $35,000 over $25,000)). This method may be used because it is reasonable to expect as of the fresh-start date that, over time, the use of this method instead of the general rule of paragraph (d)(8)(i) will not discriminate significantly in favor of HCEs.

Example 3. (a) The facts are the same as in *Example 1*, except that for plan years before 1989, the plan provided a minimum benefit to certain employees equal to $120 per year of service. Employee M is entitled to the minimum benefit, and thus, Employee M's frozen accrued benefit as of December 31, 1988 was $1,200 (the greater of 10 years of service×$120 and $1,000, Employee M's benefit under the underlying formula, after the minimum benefit adjustment of paragraph (d)(7) of this section).

(b) Employer X's plan specifies instead the alternative method of adjusting accrued benefits described in paragraph (d)(8)(v) of this section. (The fact that a minimum benefit applying to certain employees is not adjusted under the alternative method of paragraph (d)(8)(v) of this section, but would be adjusted under the general rule of paragraph (d)(8)(i) of this section does not change the conclusion in *Example 2*, that the plan may apply the alternative method).

(e) *Determination of initial theoretical reserve for target benefit plans*—(1) *General rule.* In the case of a target benefit plan the stated benefit formula under which takes into account service for years in which the plan did not satisfy § 1.401(a)(4)–8(b)(3), as permitted under § 1.401(a)(4)–8(b)(3)(vii), the theoretical reserve as of the determination date for the last plan year beginning before the first day of the first plan year in which the plan satisfies § 1.401(a)(4)–8(b)(3) of an employee who was a participant in the plan on that determination date, is determined as follows:

(i) Determine the actuarial present value, as of that determination date, of the stated benefit that the employee is projected to have at the employee's normal retirement age, using the actuarial assumptions, the provisions of the plan, and the employee's compensation as of that determination date. For an employee whose attained age equals or exceeds the employee's normal retirement age, determine the actuarial present value of the employee's stated benefit at the employee's current age, but using an immediate straight life annuity factor for an employee whose attained age equals the employee's normal retirement age.

(ii) Calculate the actuarial present value of future required employer contributions (without regard to limitations under section 415 or

additional contributions described in § 1.401(a)(4)–8(b)(3)(v)) as of that determination date (i.e., the actuarial present value of the level contributions due for each plan year through the end of the plan year in which the employee attains normal retirement age). This calculation is made assuming that the required contribution in each future year will be equal to the required contribution for the plan year that includes that determination date, and applying the interest rate that was used in determining that required contribution.

(iii) Determine the excess, if any, of the amount determined in paragraph (e)(1)(i) of this section over the amount determined in paragraph (e)(1)(ii) of this section. This excess is the employee's theoretical reserve on that determination date.

(2) *Example.* The following example illustrates the determination of an employee's theoretical reserve.

Example. (a) A target benefit plan was adopted and in effect before September 19, 1991, and satisfied the requirements of Rev. Rul. 76–464, 1976–2 C.B. 115, with respect to all years credited under the stated benefit formula through 1993. The plan provides a stated benefit equal to 40 percent of compensation, payable annually as a straight life annuity beginning at normal retirement age. Normal retirement age under the plan is 65. The stated interest rate under the plan is six percent. The determination date for required contributions under the plan is the last day of the plan year. Employee M is 38 years old on the determination date for the 1993 plan year, has participated in the plan for five years, and has compensation equal to $60,000 in 1993. The amount of employer contribution to Employee M's account for 1993 was $2,468.

(b) Under these facts, Employee M's theoretical reserve is equal to $13,909, calculated as follows:

(1) The actuarial present value of Employee M's stated benefit is calculated using the actuarial assumptions, provisions of the plan and Employee M's compensation as of the determination date for the 1993 plan year. This amount is equal to $46,512, Employee M's stated benefit of $24,000 ($60,000 multiplied by 40 percent), multiplied by 1.938, the actuarial present value factor applicable to a participant who is 38 years old using a stated interest rate of six percent.

(2) The actuarial present value of future employer contributions is calculated assuming that the required contribution in each future year will be equal to the required contribution for the 1993 plan year and assuming the same interest rate as was used in determining that contribution. This amount is equal to $32,603, which is equal to the amount of the level annual employer contribution ($2,468) multiplied by a factor of 13.2105 (the temporary annuity factor for a period of 27 years, assuming the six percent interest rate that was used to determine the required employer contribution).

(3) Employee M's theoretical reserve is $13,909, the excess of the amount determined in paragraph (b)(1) of this *Example* over the amount determined in paragraph (b)(2) of this *Example.*

* * * * *

Par. 5. Section 1.411(d)–4 is amended by revising the sentence at the end of paragraph A–1(b)(1) to read as follows:

§ 1.411(d)–4 Section 411(d)(6) protected benefits.

* * * * *

A–1: * * *

(b) * * * (1) * * * See § 1.401(a)(4)–4(d) for the definition of an optional form of benefit for plan years beginning on or after January 1, 1994 (or January 1, 1996, in the case of plans maintained by organizations exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans)).

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: August 23, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

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26 CFR Part 1

[T.D. 8486]

RIN 1545–AR53

Permitted Disparity With Respect to Benefits and Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to the final regulations under section 401(l) of the Internal Revenue Code of 1986, which provides for permitted disparity in employer contributions to, and employer-provided benefits under, qualified plans. The regulations reflect changes made by the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. The regulations provide guidance necessary to comply with the law and affect sponsors of, and participants in, tax-qualified retirement plans.

DATES: These regulations are effective January 1, 1994, and apply to plan years beginning on or after January 1, 1994, except as provided in the transition rules of § 1.401(l)–6.

FOR FURTHER INFORMATION CONTACT: Patricia McDermott at (202) 622–4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 19, 1991, final regulations under sections 401(a)(5) and 401(l) (T.D. 8359) were published in the **Federal Register** (56 FR 47610). In the **Federal Register** of August 10, 1992, (57 FR 35536), the Internal Revenue Service published proposed regulations to extend the effective date of the final regulations under section 401(a)(4), section 401(a)(5), section 401(l), and related regulations generally to plan years beginning on or after January 1, 1994.

On April 21, 1993, proposed regulations amending the final regulations were published in the **Federal Register** (58 FR 21426). Written comments were received from the public on the proposed regulations, and a public hearing was held on June 7, 1993. After consideration of all of the written comments received and the statements made at the public hearing, these regulations are adopted as modified by this Treasury decision.

Explanation of Provisions

1. Overview

Section 401(a)(4) requires that contributions or benefits not discriminate in favor of highly compensated employees. Section 401(a)(5) provides that a plan does not discriminate merely because the contributions or benefits under the plan bear a uniform relationship to compensation, taking into account the permitted disparity under section 401(l). The regulations under section 401(a)(4) provide certain safe harbor plan designs that use the permitted disparity under section 401(l).

The April 1993 proposed regulations amend the September 1991 regulations generally to address issues raised since the publication of the 1991 regulations. In addition, the proposed regulations make coordinating amendments to the September 1991 regulations under section 401(l) to take into account the changes proposed in the January 1993 proposed section 401(a)(4) regulations. Major changes in the proposed regulations include the following:

- Allowing a defined benefit plan that offsets an employee's benefit by a percentage of the employee's primary insurance amount (PIA offset plan) to satisfy section 401(l) if the offset is limited to the maximum offset permitted under section 401(l).
- Allowing application of the cumulative disparity limit on a formula-by-formula basis in the case of a defined benefit plan providing the greater of the

benefits under two formulas and allowing similar treatment in plan offset arrangements.

• Expanding the exception for optional forms of benefit subject to section 417(e) to allow the employer to use the same interest rates for all such forms.

• Allowing a plan to provide a qualified disability benefit within the meaning of section 411(a)(9) without having to use a reduced disparity rate.

In general, comments received on the changes contained in the proposed regulations were favorable. Accordingly, these final regulations incorporate those changes. In addition, in response to comments, certain modifications and clarifications have been made to the regulations. The more significant changes made in these final regulations are discussed below.

2. Overall Disparity

a. Background

Section 401(l) of the Code limits the disparity permitted with respect to any year of service and with respect to all years of service. The September 1991 regulations provide annual and cumulative overall permitted disparity limits, that is, limits on the disparity that can be provided to an employee for one year under more than one plan and for the employee's total years of service. For purposes of the overall disparity limits, all plans of the employer are taken into account. In addition, plans of another employer are taken into account for years of service with the other employer which are also credited by the current employer. The reason for taking the other employer's plan into account is to assure that the current employer does not duplicate the disparity provided for years of service with the other employer, thus exceeding the disparity limits.

The overall disparity limits are applied by determining an annual disparity fraction for the employee for each year of service under a plan, reflecting the portion of the disparity maximum used under the plan for that year. The cumulative disparity limit prohibits the sum of the employee's annual disparity fractions from exceeding 35. Generally, if a defined benefit plan provides a benefit equal to the greater of the benefits under two formulas, or if the benefits under the plan are offset by benefits under another defined benefit plan (offset arrangement), the annual disparity fraction for a given year is the larger of the fractions determined separately under each formula or under each plan in an offset arrangement. In addition, because of the difficulty in measuring the amount of disparity used prior to the 1989 effective date of section 401(l), the September 1991 regulations set the disparity fraction equal to one for any year of service before 1989.

b. Greater of Two Formulas

The proposed regulations provide a special rule under which a defined benefit plan providing the greater of the benefits under two or more formulas is deemed to satisfy the cumulative disparity limit if each formula separately satisfies the cumulative limit. In order to avoid the complexity of coordinating the annual disparity fractions under each formula with disparity provided under another plan, the special rule applies only if an employee never benefited under another plan using permitted disparity.

Commentators asked that the special rule be expanded to apply in the case where an employee has benefited under another plan using permitted disparity, but where neither plan provides service credit for the period of service credited under the other plan. (In the case of plans covering nonoverlapping years of service, the annual disparity fractions under each plan are determined without regard to the disparity provided under the other plan.) The final regulations expand the special rule to cover that case, provided that certain conditions are satisfied.

c. Mergers and Acquisitions

Commentators requested certain changes to the overall disparity rules when an employer acquires a business and gives the employees of that business credit under the employer's defined benefit plan for years of service with the business. Under the regulations, if the employees were credited with the same service under a plan of the previous owner of the business (previous owner's plan), that plan must be taken into account in applying the overall disparity limits.

Commentators asked that the provisions for applying the overall disparity limits in an offset arrangement be available when the new employer credits past service with the business and offsets benefits under its plan by the benefits accrued under the previous owner's plan. Commentators also asked that the overall disparity limits be applied to the current employer's plan without regard to any plan maintained by a previous owner because in many cases the current employer does not know the level of disparity provided in a previous owner's plan or even whether such a plan exists.

The final regulations change the rule for offset arrangements to apply to an offset by benefits under a previous owner's plan. However, the regulations do not allow a previous owner's plan to be disregarded in applying the overall disparity limits. The Treasury and the Service recognize that information on a previous owner's plan is not always available to the current employer. However, allowing the current plan to provide disparity for years of service with the previous owner, without regard to whether the previous owner's plan also provided disparity for those years, would be inconsistent with the statutory disparity limits. Moreover, as a result of the change noted above, the current employer can comply with the overall disparity limits by offsetting benefits under its plan by benefits under the previous owner's plan, thus avoiding in most cases the need to determine disparity fractions under the previous owner's plan, or by limiting the service taken into account under its plan to service after the date of acquisition.

d. Disparity Fraction for Pre-1989 Years

Commentators have stated that application of a disparity fraction of one for an employee's years of service before 1989 is inappropriate in the case of a new plan that applies a formula satisfying section 401(l) to all years of service because no other disparity has been provided for those years. The regulations clarify that the deemed one rule applies to plans in existence as of the end of the 1988 plan year. Thus, if, before the first plan year beginning on or after January 1, 1989, an employee never participated in or benefited under any other plan of the employer, the employee's total annual disparity fractions are determined under the generally applicable overall permitted disparity rules (and without regard to the deemed one rule).

3. Relationship to Other Requirements

The regulations provide that compliance with section 401(l) does not allow a plan to decrease any employee's accrued benefit in violation of section 411(d)(6) and section 411(b)(1)(G). Commentators requested removal of the reference in the proposed regulations to an increase in covered compensation as an example of a decrease in accrued benefit. They believe section 411 does not prohibit a decrease in accrued benefit resulting solely from an increase in covered compensation.

After considering the comments, the Treasury and the Service have determined that the regulations under section 401(l) are not the proper vehicle for addressing the correct application of

section 411 to this situation. Accordingly, the reference to an increase in covered compensation has been removed from the regulations, but no inference should be drawn from this revision as to the correct interpretation of section 411.

4. PIA Offset Safe Harbor

These regulations implement the PIA offset safe harbor described in Notice 92–32, 1992–2 C.B. 362. The regulations allow a PIA offset plan to satisfy section 401(l) (and thus to satisfy the nondiscriminatory amount requirement under section 401(a)(4) on a safe harbor basis) if the plan limits the offset to the maximum offset permitted under section 401(l) (the section 401(l) overlay), which is determined as a percentage of covered compensation rather than PIA.

Commentators asked that certain PIA offset plan designs be allowed to satisfy section 401(a)(4) on a safe harbor basis without having to apply the section 401(l) overlay. They stated that these plans (i.e., those with low offset percentages relative to the gross benefit) easily satisfy the general test for defined benefit plans under section 401(a)(4) and should be spared the necessity of actually performing the test.

The Treasury and the Service have carefully considered these comments regarding PIA offset plans, but believe that application of the section 401(l) overlay is essential to carrying out the statutory purpose of section 401(l) in a safe harbor context. In addition, the fact that such a plan passes the general test today does not ensure that it will pass in the future. Future changes in the relationship between covered compensation and PIA may change the results of the general test. Finally, the section 401(l) overlay eliminates the need to limit the PIA offset percentage to take into account early retirement benefits and other distribution alternatives under the plan, thus permitting the obsolescence of many revenue rulings issued under prior law. However, Rev. Rul. 84–45, 1984–1 C.B. 115, continues to apply in determining the compensation history on which an employee's PIA can be based.

Effective Dates

The regulations generally are effective for plan years beginning on or after January 1, 1994, or, in the case of plans maintained by tax-exempt organizations, for plan years beginning on or after January 1, 1996. For plan years beginning on or after January 1989, and before the applicable regulatory effective date, § 1.401(l)–6(c) provides that a plan must be operated in accordance with a reasonable, good faith interpretation of section 401(l). Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 401(l) will generally be determined based on all of the relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 401(l) if it is operated in accordance with these final regulations, the April 1993 proposed regulations, the September 1991 regulations, the May 1990 proposed section 401(l) regulations, or the November 1988 proposed section 401(l) regulations.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is Patricia McDermott of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.401(a)(5)–1 is amended by:

1. Removing paragraph (e)(7);

2. Redesignating paragraph (e)(8) as (e)(7);

3. Adding paragraph (h) to read as follows:

§ 1.401(a)(5)–1 Special rules relating to nondiscrimination requirements.

* * * * *

(h) *Effective date*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, this section is effective for plan years beginning on or after January 1, 1994.

(2) *Plans of tax-exempt organizations.* In the case of plans maintained by organizations exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), this section is effective for plan years beginning on or after January 1, 1996.

(3) *Compliance during transition period.* For plan years beginning before the effective date of these regulations, as set forth in paragraphs (h)(1) and (h)(2) of this section, and on or after the first day of the first plan year to which the amendments made to section 401(a)(5) by section 1111(b) of the Tax Reform Act of 1986 (TRA '86) apply, a plan must be operated in accordance with a reasonable, good faith interpretation of section 401(a)(5), taking into account pre-existing guidance and the amendments made by TRA '86 to related provisions of the Code. Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 401(a)(5) will generally be determined based on all of the relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 401(a)(5) if it is operated in accordance with the terms of this section.

§ 1.401(l)–0 [Amended]

Par. 3. Section 1.401(l)–0 is amended by:

1. Removing the entries for § 1.401(l)–1, paragraphs (b) (1) and (2).

2. Revising the entry for § 1.401(l)–1, paragraph (c)(6).

3. Redesignating the entries for § 1.401(l)–1, paragraphs (c)(22) through (c)(24) and paragraphs (c)(25) through (c)(33), as § 1.401(l)–1, paragraphs (c)(23) through (c)(25) and (c)(27) through (c)(35) respectively.

4. Adding entries for § 1.401(l)–1, new paragraphs (c)(22) and (c)(26).

5. Adding entries for § 1.401(l)–3, paragraphs (c)(2)(vi) (A), (B) and (C), (c)(2)(ix), and (d)(8)(iii)(D).

6. Removing the entry for § 1.401(l)–3, paragraph (e)(4), and redesignating

the entries for § 1.401(l)–3, paragraphs (e)(5) and (e)(6), as § 1.401(l)–3, paragraphs (e)(4) and (e)(5), respectively.

7. Revising the entry for § 1.401(l)–3, paragraph (g).

8. Adding entries for § 1.401(l)–5, paragraphs (b)(5) (i) and (ii), (b)(8)(v), and (c)(1) (v) and (vi).

9. Removing the entries for § 1.401(l)–5, paragraphs (c)(3) (i) and (ii).

10. Redesignating the entry for § 1.401(l)–5, paragraph (c)(4), as § 1.401(l)–5, paragraph (c)(5).

11. Adding entries for § 1.401(l)–5, new paragraphs (c)(4), (c)(4)(i), (c)(4)(i)(A), (c)(4)(i)(B), (c)(4)(i)(C), (c)(4)(ii), (c)(4)(ii)(A), (c)(4)(ii)(B), and (c)(4)(ii)(C).

12. Revising the entries for § 1.401(l)–6, paragraphs (a) through (c).

13. Removing the entry for § 1.401(l)–6, paragraph (d).

14. The added and revised entries read as follows:

§ 1.401(l)–0 Table of contents.

* * * * *

§ 1.401(l)–1 Permitted disparity with respect to employer-provided contributions or benefits.

* * * * *

(c) * * *

(6) Benefit, right, or feature.

* * * * *

(22) Nonhighly compensated employee.

* * * * *

(26) PIA.

* * * * *

§ 1.401(l)–3 Permitted disparity for defined benefit plans.

* * * * *

(c) * * *

(2) * * *

(vi) * * *

(A) In general.

(B) Unit credit plans.

(C) Fractional accrual plans.

* * * * *

(ix) PIA offsets.

* * * * *

(d) * * *

(8) * * *

(iii) * * *

(D) Individual disparity reductions.

* * * * *

(g) No reductions in 0.75-percent factor for ancillary benefits.

* * * * *

§ 1.401(l)–5 Overall permitted disparity limits.

* * * * *

(b) * * *

(5) * * *

(i) In general.

(ii) PIA offset plans.

* * * * *

(8) * * *

(v) Fractional accrual plans.

* * * * *

(c) * * *

(1) * * *

(v) Applicable plan years.

(vi) Transition rule for defined contribution plans.

* * * * *

(4) Special rules for greater of formulas and offset arrangements.

(i) Greater of formulas.

(A) In general.

(B) Separate satisfaction by formulas.

(C) Single plan.

(ii) Offset arrangements.

(A) In general.

(B) Separate satisfaction by plans.

(C) No other plan.

* * * * *

§ 1.401(l)–6 Effective dates and transition rules.

(a) Statutory effective date.

(1) In general.

(2) Collectively bargained plans.

(b) Regulatory effective date.

(1) In general.

(2) Plans of tax-exempt organizations.

(3) Defined contribution plans.

(4) Defined benefit plans.

(c) Compliance during transition period.

§ 1.401(l)–1 [Amended].

Par. 4. Section 1.401(l)–1 is amended as follows:

1. The fourth sentence of paragraph (a)(1) is amended by removing the reference "1.401(a)(4)–2(b)(3)" and adding "1.401(a)(4)–2(b)(2)" in its place.

2. The last sentence of paragraph (a)(3) is removed.

3. Paragraph (b) is revised.

4. Paragraphs (c)(2), (c)(6), (c)(9), (c)(17)(i), (c)(19), and (c)(21) are revised.

5. Paragraphs (c)(22) through (c)(24) and paragraphs (c)(25) through (c)(33) are redesignated as (c)(23) through (c)(25) and (c)(27) through (c)(35) respectively, and new paragraphs (c)(22) and (c)(26) are added.

6. Newly designated paragraph (c)(35) is revised.

7. The additions and revisions read as follows:

§ 1.401(l)–1 Permitted disparity in employer-provided contributions or benefits.

* * * * *

(b) *Relationship to other requirements.* Unless explicitly provided otherwise, section 401(l) does not provide an exception to any other requirement under section 401(a). Thus, for example, even if the plan complies with section 401(l), the plan may not provide a benefit lower than the minimum benefit required under section 416. Moreover, a plan may not adjust benefits in any manner that results in a decrease in any employee's accrued benefit in violation of section 411(d)(6) and section 411(b)(1)(G). However, a plan does not fail to satisfy section 401(l) merely because, in order to ensure compliance with section 411, an employee's accrued benefit under the plan is defined as the greater of the employee's previously accrued benefit and the benefit determined under a strict application of the plan's benefit formula and accrual method. See section 401(a)(15) for additional rules relating to circumstances under which plan benefits may not be decreased because of increases in social security benefits.

(c) * * *

(2) *Average annual compensation. Average annual compensation* means average annual compensation within the meaning of § 1.401(a)(4)–3(e)(2).

* * * * *

(6) *Benefit, right, or feature. Benefit, right, or feature* means a benefit, right, or feature within the meaning of § 1.401(a)(4)–12. * * * * *

(9) *Defined contribution plan. Defined contribution plan* means a defined contribution plan within the meaning of § 1.410(b)–9. In addition, for purposes of §§ 1.401(l)–1 through 1.401(l)–6, a defined contribution plan includes a simplified employee pension as defined in section 408(k) (SEP), other than a SEP (or portion or a SEP) that is a salary reduction arrangement described in section 408(k)(6) (SARSEP).

* * * * *

(17) *Final average compensation*—(i) *In general. Final average compensation* for an employee means the average of the employee's annual section 414(s) compensation for the 3-consecutive-year period ending with or within the plan year or for the employee's period of employment if shorter. The year in which an employee terminates employment may be disregarded in determining final average compensation. The definition of final average compensation used in the plan must be applied consistently with respect to all employees. For example, if the plan provides that the year in which the employee terminates employment is disregarded in determining final average compensation, the year must be disregarded for all employees who terminate employment in that year. The plan may specify any 3-consecutive-year period ending in the plan year, provided the period is determined consistently for all employees. See § 1.401(a)(4)–11(d)(3)(iii) and § 1.414(s)–1(f) for rules permitting service and compensation with another employer to be taken into account for purposes of

nondiscrimination testing, including satisfying section 401(l).

* * * * *

(19) *Highly compensated employee. Highly compensated employee* means HCE within the meaning of § 1.401(a)(4)–12.

* * * * *

(21) *Nonexcludable employee. Nonexcludable employee* means nonexcludable employee within the meaning of § 1.401(a)(4)–12.

(22) *Nonhighly compensated employee. Nonhighly compensated employee* means NHCE within the meaning of § 1.401(a)(4)–12.

* * * * *

(26) *PIA. PIA* or *primary insurance amount* means the old-age insurance benefit under section 202 of the Social Security Act (42 U.S.C. 402) payable to each employee at a single age that is not earlier than age 62 and not later than age 65. PIA must be determined under the Social Security Act as in effect at the time the employee's offset is determined. Thus, it is determined without assuming any future increases in compensation, any future increases in the taxable wage base, any changes in the formulas used under the Social Security Act to determine PIA (for example, changes in the breakpoints), or any future increases in the consumer price index. However, it may be assumed that the employee will continue to receive compensation at the same rate as that received at the time the offset is being determined, until reaching the single age described in the first sentence of this paragraph (c)(26). PIA must be determined in a consistent manner for all employees and in accordance with revenue rulings or other guidance provided by the Commissioner.

* * * * *

(35) *Year of service. Year of service* means a year of service as defined in the plan for purposes of the benefit formula and the accrual method under the plan, unless the context clearly indicates otherwise. See § 1.401(a)(4)–11(d)(3) for rules on years of service that may be taken into account for purposes of nondiscrimination testing, including satisfying section 401(l).

§ 1.401(l)–2 [Amended]

Par. 5. Section 1.401(l)–2 is amended as follows:

1. The second sentence of paragraph (a)(1) is amended by removing the reference "1.401(a)(4)–2(b)(5)" and adding "1.401(a)(4)–2(b)(4)" in its place.

2. The third sentence of paragraph (a)(1) is amended by removing the reference "1.401(a)(4)–8(b)(3)(i)(E)" and adding "1.401(a)(4)–8(b)(3)(i)(C)" in its place.

§ 1.401(l)–3 [Amended]

Par. 6. Section 1.401(l)–3 is amended as follows:

1. The second sentence of paragraph (a)(1) is amended by removing the reference "1.401(a)(4)–3(b)(8)" and adding "1.401(a)(4)–3(b)(6)" in its place.

2. The third sentence of paragraph (a)(1) is amended by removing the reference "1.401(a)(4)–3(b)(7)(viii)" and adding "1.401(a)(4)–3(b)(5)(viii)" in its place.

3. The first sentence of paragraph (b)(4)(iii)(C) is amended by removing the reference "1.401(a)(4)–3(d)(5)(iv)" and adding "1.401(a)(4)–12" in its place.

4. Paragraph (b)(4)(iii)(E) is revised.

5. *Example 9* in paragraph (b)(5) is revised.

6. Paragraph (c)(2)(i) is amended by removing the reference "paragraphs (c)(2) (ii) through (viii)" and adding "paragraphs (c)(2) (ii) through (ix)" in its place.

7. Paragraph (c)(2)(ii) is amended by removing the reference "or 1.401(a)(4)–3(b)(5)(i)(B)".

8. Paragraph (c)(2)(iii) is amended by removing the reference "or 1.401(a)(4)–3(b)(5)(i)(B)".

9. Paragraph (c)(2)(vi) is revised.

10. Paragraph (c)(2)(ix) is added.

11. *Example 2* in paragraph (c)(3) is amended by removing the reference "1.401(a)(4)–3(b)(5)(i)(B)" and adding "1.401(a)(4)–3(b)(4)(i)(B)" in its place.

12. Paragraph (d)(8)(iii) introductory text is revised.

13. Paragraph (d)(8)(iii)(D) is added.

14. Paragraph (e)(1) is amended by removing the reference "(e)(4)" from the second sentence and adding "(g)" in its place and by removing the reference "(e)(5)" from the fourth sentence and adding "(e)(4)" in its place.

15. Paragraph (e)(4) is removed and paragraphs (e)(5) and (e)(6) are redesignated as paragraphs (e)(4) and (e)(5) respectively.

16. Newly designated paragraph (e)(4)(i) is amended by removing the reference "(e)(5)(ii)" and adding "(e)(4)(ii)" in its place.

17. Newly designated paragraph (e)(4)(ii) is amended by removing the reference "(e)(5)(ii)" and adding "(e)(4)(ii)" in its place.

18. *Example 6* in newly designated paragraph (e)(5) is amended by removing the phrase "(other than a temporary disability benefit)" from the seventh sentence.

19. Paragraphs (g) and (h) are revised.

20. The added and revised provisions read as follows:

§ 1.401(l)–3 Permitted disparity for defined benefit plans.

* * * * *

(b) * * *

(4) * * *

(iii) * * *

(E) *Section 417(e) exception.* A plan will not fail to satisfy this paragraph (b) merely because the disparity in a benefit that is subject to the interest rate restrictions of sections 401(a)(11) and 417(e) exceeds the maximum disparity that would otherwise be allowed under this paragraph (b) if the increase in disparity is required to satisfy § 1.417(e)–1(d). In applying the exception in this paragraph (b)(4)(iii)(E), for purposes of determining what is required under § 1.417(e)–1(d), a plan may use the rate described in § 1.417(e)–1(d)(2)(i) for all employees, without regard to whether the present value of an employee's vested benefit exceeds $25,000.

(5) * * *

Example 9. Plan U is a defined benefit excess plan that provides a normal retirement benefit of 1.0 percent of average annual compensation up to the integration level, plus 1.7 percent of average annual compensation in excess of the integration level, for each year of service up to 35, payable in the form of a straight life annuity. Plan U provides a single sum optional form of benefit at normal retirement age equal to 100 times the monthly annuity payable at that age. Thus, if an employee elects the single sum optional form of benefit, the base portion of the single sum benefit is 8.33 percent (100 times 1.0 percent/12) of average annual compensation up to the integration level per year of service, and the excess portion of the single sum benefit is 14.17 percent (100 times 1.7 percent/12) of average annual compensation in excess of the integration level per year of service. Each respective portion of the single sum option is normalized to a straight life annuity commencing at normal retirement age, using 8-percent interest and the UP–84 mortality table. After normalization, the base portion of the benefit is 1.02 percent of average annual compensation up to the integration level, and the excess portion of the benefit is 1.73 percent of average annual compensation in excess of the integration level. The single sum optional form of benefit satisfies this paragraph (b) because the disparity provided in the optional form of benefit does not exceed the maximum excess allowance.

(c) * * *

(2) * * *

(vi) *Overall permitted disparity*—(A) *In general.* The benefit formula provides that, with respect to each employee's years of service after reaching the cumulative permitted disparity limit applicable to the employee under § 1.401(l)–5(c), employer-provided benefits are determined with respect to the employee's total average annual

compensation at a rate equal to the nondisparate percentage. For purposes of this paragraph (c)(2)(vi), the nondisparate percentage is generally the excess benefit percentage or gross benefit percentage otherwise applicable under the benefit formula to an employee with the same number of years of service.

(B) *Unit credit plans.* In the case of a unit credit plan described in § 1.401(a)(4)–3(b)(3), if the 411(b)(1)(B) limit percentage is less than the nondisparate percentage, the 411(b)(1)(B) limit percentage must be substituted for the nondisparate percentage. For this purpose, the 411(b)(1)(B) limit percentage is 133⅓ percent of the smallest base benefit percentage, or 133⅓ percent of the smallest difference between the gross benefit percentage and the offset percentage, whichever is applicable, where the smallest base benefit percentage or difference is determined by reference to the benefit formula as applied to employees with no more years of service than the employee.

(C) *Fractional accrual plans.* In the case of a fractional accrual plan described in § 1.401(a)(4)–3(b)(4), the benefit formula must provide for the nondisparate percentage with respect to years of service after the employee would reach the cumulative permitted disparity limit applicable to the employee under § 1.401(l)–5(c) as modified by this paragraph (c)(2)(vi)(C). Solely for purposes of this paragraph (c)(2)(vi)(C), the employee's annual disparity fractions (and thus the year in which the employee would reach the cumulative permitted disparity limit) are determined using the disparity provided under the benefit formula (rather than the special rule for fractional accrual plans in § 1.401(l)–5(b)(8)(v)).

* * * * *

(ix) *PIA offsets.* In the case of an offset plan, the plan provides that the offset applied to each employee's benefit is the lesser of a specified percentage of the employee's PIA and an offset that otherwise satisfies the requirements of this section (the "section 401(l) overlay"). The specified percentage of PIA must be the same for all employees with the same number of years of service. In the case of a plan that determines each employee's accrued benefit under the fractional accrual method of section 411(b)(1)(C), the specified percentage of PIA is deemed to be the same for all employees with the same number of years of service if the plan satisfies either of the deemed uniformity rules in paragraph (c)(2)(ii) or (iii) of this section, substituting "offset, expressed as a percentage of PIA, per year of service" for the term "offset percentage" (in addition to satisfying either of those rules with respect to the section 401(l) overlay).

* * * * *

(d) * * *

(8) * * *

(iii) *Nondiscrimination requirement.* The requirement of this paragraph (d)(8)(iii) is satisfied only if at least one of the following tests in paragraphs (d)(8)(iii) (A) through (D) of this section is satisfied.

* * * * *

(D) *Individual disparity reductions.* This test is satisfied only if the plan is an offset plan that uses an offset level of each employee's final average compensation and makes individual disparity reductions as permitted under paragraph (d)(9)(iii)(B) of this section.

* * * * *

(g) *No reductions in 0.75-percent factor for ancillary benefits.* For purposes of applying the maximum excess allowance or the maximum offset allowance under paragraph (b)(2) or (3) of this section, no reduction is made to the 0.75-percent factor merely because the plan provides disparity in qualified disability benefits (within the meaning of section 411(a)(9)) or preretirement death benefits and the relevant benefits are payable before an employee's social security retirement age.

(h) *Benefits attributable to employee contributions not taken into account.* Benefits attributable to employee contributions to a defined benefit plan are not taken into account in determining whether the disparity provided under a defined benefit excess plan or an offset plan exceeds the maximum permitted disparity described in paragraph (b) of this section. See § 1.401(a)(4)–6(b) for methods of determining the employer-provided benefit under a plan that includes employee contributions not allocated to separate accounts (i.e., a contributory DB plan), including § 1.401(a)(4)–6(b)(2)(iii)(B) for adjustments to the base and excess benefit percentages or the gross benefit percentage under a section 401(l) plan. If, after adjustment, the employee's base benefit percentage or gross benefit percentage (whichever is applicable) is less than zero, such percentage is deemed to be zero for purposes of the maximum excess allowance or maximum offset allowance under paragraph (b)(2) or (3) of this section.

* * * * *

§ 1.401(l)–5 [Amended]

Par. 7. Section 1.401(l)–5 is amended as follows:

1. Paragraph (b)(5) is revised.
2. Paragraph (b)(8)(iii)(A) is revised by removing the words "of the employer" and adding "taken into account under paragraph (a)(3) of this section as" in their place.
3. Paragraph (b)(8)(v) is added.
4. Paragraphs (c)(1) (i) through (iii) are revised and new paragraphs (c)(1) (v) and (vi) are added.
5. Paragraph (c)(2) is amended by removing the reference "(b)(3)" and adding "(b)(2)" in its place.
6. Paragraph (c)(3) is revised.
7. Paragraph (c)(4) is redesignated as paragraph (c)(5) and a new paragraph (c)(4) is added.
8. Newly designated paragraph (c)(5) is amended by removing the language "paragraph (b)(2) or (b)(3) of this section" from the third sentence and adding "§ 1.401(l)–3(b) (2) or (3)" in its place and by adding a new *Example 5.*
9. The added and revised provisions read as follows:

§ 1.401(l)–5 Overall permitted disparity limits.

* * * * *

(b) * * *

(5) *Annual offset plan disparity fraction*—(i) *In general.* For a plan year, the annual offset plan disparity fraction for an employee benefiting under an offset plan that is a section 401(l) plan is a fraction—

(A) The numerator of which is the disparity provided under the plan for the plan year; and

(B) The denominator of which is the maximum offset allowance under § 1.401(l)–3(b)(3) for the plan year.

(ii) *PIA offset plans.* In the case of an offset plan that applies an offset of a specified percentage of the employee's PIA, as permitted under § 1.401(l)–3(c)(2)(ix), the numerator of the annual offset plan disparity fraction is the offset percentage used in the section 401(l) overlay under the plan.

* * * * *

(8) * * *

(v) *Fractional accrual plans.* If a section 401(l) plan determines each employee's accrued benefit under the fractional accrual method of section 411(b)(1)(C), the numerator of an employee's annual disparity fraction is based on the disparity provided in the benefit accrued for the employee for the plan year.

* * * * *

(c) *Cumulative permitted disparity limit*—(1) *In general*—(i) *Employees who benefit under defined benefit plans.* In

the case of an employee who has benefited under one or more defined benefit plans for a plan year described in paragraph (c)(1)(v) of this section, the cumulative permitted disparity limit is satisfied if the employee's cumulative disparity fraction, as defined in paragraph (c)(2) of this section, does not exceed 35.

(ii) *Employees who do not benefit under defined benefit plans.* In the case of an employee who has not benefited under a defined benefit plan for any plan year described in paragraph (c)(1)(v) of this section, the cumulative permitted disparity limit is satisfied.

(iii) *Certain plan years disregarded.* For purposes of this paragraph (c), an employee is not treated as benefiting under a defined benefit plan for a plan year described in paragraph (c)(1)(v) of this section if the employer can establish that for that plan year the defined benefit plan was not a section 401(l) plan and did not impute permitted disparity under § 1.401(a)(4)–7.

* * * * *

(v) *Applicable plan years.* In applying paragraphs (c)(1) (i), (ii), and (iii) of this section, for purposes of determining whether an employee benefits under a defined benefit plan, the applicable plan years are all plan years that begin on or after the regulatory effective date, as set forth in § 1.401(l)–6(b), or, in the case of governmental plans, as set forth in § 1.401(a)(4)–13(b).

(vi) *Transition rule for defined contribution plans.* A defined contribution plan is deemed to satisfy the cumulative permitted disparity limit for the first plan year to which these regulations apply, as set forth in § 1.401(l)–6(b), or, in the case of governmental plans, as set forth in § 1.401(a)(4)–13(b).

* * * * *

(3) *Determination of total annual disparity fractions for prior years.* For each of the employee's years of service credited as of the end of the last plan year beginning before January 1, 1989, not to exceed 35, under all plans as of that time that are taken into account under paragraph (a)(3) of this section (whether or not terminated), the employee's total annual disparity fraction is one. Therefore, if, before the first plan year beginning on or after January 1, 1989, an employee never participated in or benefited under any plan taken into account under paragraph (a)(3) of this section, the employee's total annual disparity fractions are determined without regard to this paragraph (c)(3). An employer may apply the rule in this paragraph (c)(3) with respect to all employees, using a year (including the current year) that is chosen by the employer and is later than 1989. Thus, for example, in lieu of calculating annual disparity fractions for all plan years, the employer may assume that the full disparity limit has been used in each prior plan year for which an employee has been credited with a year of service.

(4) *Special rules for greater of formulas and offset arrangements*—(i) *Greater of formulas*—(A) *In general.* A defined benefit plan that is a section 401(l) plan and that provides a benefit equal to the greater of the benefits determined under two or more formulas is deemed to satisfy the cumulative permitted disparity limit with respect to an employee if each of the requirements in paragraphs (c)(4)(i) (B) and (C) of this section is satisfied. For this purpose, a plan that uses a fresh-start formula that determines the accrued benefit as the greater of two amounts under § 1.401(a)(4)–13(c)(4) (ii) or (iii) provides a benefit equal to the greater of the benefits determined under two or more formulas.

(B) *Separate satisfaction by formulas.* Each formula under the plan would satisfy the cumulative permitted disparity limit if it were the only formula under the plan. In the case of a current formula that applies to the employee's total years of service (as, for example, under § 1.401(a)(4)–13(c)(4)(ii)(B) or (iii)(B)), for purposes of determining whether that formula would satisfy the cumulative permitted disparity limit if it were the only formula under the plan, the special rule for prior years under paragraph (c)(3) of this section may be disregarded.

(C) *Single plan.* The employee has never benefited under another plan taken into account under paragraph (a)(3) of this section that is a section 401(l) plan or that satisfies section 401(a)(4) by relying on § 1.401(a)(4)–7. For this purpose, if the benefit under the plan is offset in an offset arrangement described in paragraph (b)(8)(iii)(B) of this section, the other plan is disregarded. In addition, a plan does not fail the requirements of this paragraph (c)(4)(i)(C) merely because the employee benefits under another defined benefit plan, provided that—

(*1*) With respect to each benefit formula under the plan, no years of service taken into account under that benefit formula are taken into account under a benefit formula of the other plan; and

(*2*) Paragraph (c)(4)(i)(B) of this section would be satisfied if the plans were treated as a single plan that provided a benefit equal to the greater of the benefits provided under two or more formulas. For this purpose, a formula consists of the sum of a formula for the years of service taken into account under one plan and a formula for the years of service taken into account under the other plan. Thus, each possible combination of the formulas under the plans must satisfy paragraph (c)(4)(i)(B) of this section.

(ii) *Offset arrangements*—(A) *In general.* If a defined benefit plan is a section 401(l) plan and the benefit under the plan (the gross benefit plan) is offset by the benefit under another plan (the offsetting plan) in an offset arrangement described in paragraph (b)(8)(iii)(B) of this section, the gross benefit plan is deemed to satisfy the cumulative permitted disparity limit with respect to an employee if each of the requirements in paragraphs (c)(4)(ii) (B) and (C) of this section is satisfied.

(B) *Separate satisfaction by plans.* This requirement is satisfied if the gross benefit plan would satisfy the cumulative disparity limit if no offset applied, and the offsetting plan satisfies the cumulative permitted disparity limit, not taking into account the gross benefit plan.

(C) *No other plan.* Except for the plans in the offset arrangement, the employee has never benefited under another plan taken into account under paragraph (a)(3) of this section that is a section 401(l) plan or that satisfies section 401(a)(4) by relying on § 1.401(a)(4)–7. An offset arrangement does not fail the requirements of this paragraph (c)(4)(ii)(C) merely because the employee benefits under another defined benefit plan, provided no years of service taken into account under a benefit formula of any plan in the offset arrangement are also taken into account under a benefit formula of the other plan.

(5) * * *

Example 5. (a) Plan O is a noncontributory defined benefit excess plan. Plan O provides an employee whose social security retirement age is 65 with the greater of the benefits determined under two formulas. The first formula provides a benefit of 1 percent of average annual compensation up to covered compensation, plus 1.75 percent of average annual compensation above covered compensation, for each year of service up to 35. The second formula provides a benefit of 1 percent of average annual compensation up to covered compensation, plus 1.6 percent of average annual compensation above covered compensation, for each year of service up to 40.

(b) Under paragraph (b)(4) of this section, an employee's annual defined benefit excess plan fraction for each of the 35 years under the first formula is 0.75/0.75 or one, and an employee's annual defined benefit excess

plan fraction for each of the 40 years under the second formula is 0.6/0.75 or 0.8. Under paragraph (b)(8)(ii) of this section, an employee's annual defined benefit excess plan fraction (and total annual disparity fraction because the employee benefits only under Plan O) for the plan year is the larger fraction under the two formulas or one. Therefore, after 35 years, the employee has a cumulative disparity fraction of 35. The disparity provided under the second formula for years of service after 35 thus exceeds the cumulative permitted disparity limit unless the plan qualifies for the special rule in paragraph (c)(4)(i) of this section.

(c) Assume the condition in paragraph (c)(4)(i)(C) of this section is satisfied because no employee has benefited under another plan taken into account under paragraph (a)(3) of this section. In addition, the largest cumulative disparity fraction possible under the first formula is 35 times one or 35, and the largest cumulative disparity fraction possible under the second formula is 40 times 0.8 or 32. Thus, the requirement of paragraph (c)(4)(i)(B) of this section is also satisfied because each formula would satisfy the cumulative permitted disparity limit if it were the only formula under the plan. Under paragraph (c)(4)(i) of this section, the plan is deemed to satisfy the cumulative permitted disparity limit with respect to an employee whose social security retirement age is 65.

* * * * *

Par. 8. Section 1.401(l)–6 is revised to read as follows:

§ 1.401(l)–6 Effective dates and transition rules.

(a) *Statutory effective date*—(1) *In general.* Except as otherwise provided in paragraph (a)(2) of this section, section 401(a)(5)(C) is effective for plan years beginning on or after January 1, 1989, and section 401(l) is effective with respect to plan years, and benefits attributable to plan years, beginning on or after January 1, 1989. The preceding sentence is applicable to a plan without regard to whether the plan was in existence as of a particular date.

(2) *Collectively bargained plans.* (i) In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, sections 401(a)(5) and 401(l) are applicable for plan years beginning on or after the later of—

(A) January 1, 1989; or

(B) The date on which the last of such collective bargaining agreements terminates (determined without regard to any extension of any such agreement occurring on or after March 1, 1986). However, notwithstanding the preceding sentence, sections 401(a)(5) and 401(l) apply to plans described in this paragraph (a)(2) no later than the first plan year beginning after January 1, 1991.

(ii) For purposes of paragraph (a)(2)(i)(B) of this section, a change made after October 22, 1986, in the terms or conditions of a collectively bargained plan, pursuant to a collective bargaining agreement ratified before March 1, 1986, is not treated as a change in the terms and conditions of the plan.

(iii) In the case of a collectively bargained plan described in paragraph (a)(2)(i) of this section, if the date in paragraph (a)(2)(i)(B) of this section precedes November 15, 1988, then the date in this paragraph (a)(2) is replaced with the date on which the last of any collective bargaining agreements in effect on November 15, 1988, terminates, provided that the plan complies during this period with a reasonable good faith interpretation of section 401(l).

(iv) Whether a plan is maintained pursuant to a collective bargaining agreement is determined under the principles applied under section 1017(c) of the Employee Retirement Income Security Act of 1974. See H.R. Rep. No. 1280, 93d Cong., 2d Sess. 266 (1974). In addition, a plan is not treated as maintained under a collective bargaining agreement unless the employee representatives satisfy section 7701(a)(46) of the Internal Revenue Code after March 31, 1984. See § 301.7701–17T of this chapter for other requirements for a plan to be considered to be collectively bargained.

(b) *Regulatory effective date*—(1) *In general.* Except as otherwise provided in paragraph (b)(2) of this section, §§ 1.401(l)–1 through 1.401(l)–6 apply to plan years beginning on or after January 1, 1994.

(2) *Plans of tax-exempt organizations.* In the case of plans maintained by an organization exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), §§ 1.401(l)–1 through 1.401(l)–6 apply to plan years beginning on or after January 1, 1996.

(3) *Defined contribution plans.* A defined contribution plan satisfies section 401(l) with respect to a plan year beginning on or after the effective date of these regulations, as set forth in paragraphs (b)(1) and (b)(2) of this section, if it satisfies the applicable requirements of §§ 1.401(l)–1 through 1.401(l)–5 for the plan year.

(4) *Defined benefit plans.* A defined benefit excess plan or offset plan satisfies section 401(l) with respect to all plan years, and benefits attributable to all plan years, beginning on or after the effective date of these regulations, as set forth in paragraphs (b)(1) and (b)(2) of this section, by satisfying the applicable requirements of §§ 1.401(l)–1 through 1.401(l)–5 and the requirements of § 1.401(a)(4)–13(c) (and § 1.401(a)(4)–13(d), if applicable), using a fresh-start date that is on or after December 31, 1988, and before the effective date of these regulations. A defined benefit excess plan or offset plan that does not satisfy section 401(l) with respect to all plan years beginning on or after the effective date of these regulations may, under the rules of § 1.401(a)(4)–13(c) (and § 1.401(a)(4)–13(d), if applicable), satisfy section 401(l) for plan years beginning after a fresh-start date by satisfying the applicable requirements of §§ 1.401(l)–1 through 1.401(l)–5 after the fresh-start date.

(c) *Compliance during transition period.* For plan years beginning on or after January 1, 1989, and before the effective date of these regulations, as set forth in paragraph (b) of this section, a plan must be operated in accordance with a reasonable, good faith interpretation of section 401(l). Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 401(l) will generally be determined based on all of the relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 401(*l*) if it is operated in accordance with the terms of §§ 1.401(*l*)–1 through 1.401(*l*)–5.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: August 23, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–21378 Filed 8–31–93; 4:02 pm]

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26 CFR Part 1

[T.D. 8487]

RIN 1545–AR51

Minimum Coverage Requirements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to the final regulations under section 410(b), which provides minimum coverage requirements. The regulations reflect changes made by the Tax Reform Act of 1986 and by the Technical and Miscellaneous Revenue Act of 1988. The regulations provide guidance necessary to comply with the law and affect sponsors of, and participants in, tax-qualified retirement

plans and certain other employee benefit plans.

DATES: These regulations are effective January 1, 1994, and apply to plan years beginning on or after January 1, 1994, except as provided in the transition rules of § 1.410(b)–10.

FOR FURTHER INFORMATION CONTACT: Dave Munroe at (202) 622–4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 19, 1991, final regulations under section 410(b) (T.D. 8363) were published in the **Federal Register** (56 FR 47638). Amendments to those regulations were published in the **Federal Register** on December 4, 1991 (56 FR 63420), in connection with finalizing the separate line of business regulations (T.D. 8376) under section 414(r) of the Code. In the **Federal Register** of August 10, 1992 (57 FR 35536), the Internal Revenue Service published proposed regulations to extend the effective date of the final regulations under section 410(b) and related regulations generally to plan years beginning on or after January 1, 1994.

On April 21, 1993, proposed regulations amending the final regulations were published in the **Federal Register** (58 FR 21417). Written comments were received from the public on the proposed regulations, and a public hearing was held on June 7, 1993. After consideration of all of the written comments received and the statements made at the public hearing, these regulations are adopted as modified by this Treasury decision.

Explanation of Provisions

1. Overview

Section 410(b) provides a minimum coverage requirement that a plan must meet in order to be tax qualified. In addition, the minimum coverage requirement is also relevant under the related section 401(a)(4) regulations in determining whether certain requirements of those regulations are satisfied.

The September 1991 final regulations under section 410(b) provide that a plan can meet the section 410(b) minimum coverage requirement by satisfying one of two tests, the section 410(b)(1) (A) and (B) ratio percentage test or the section 410(b)(2) average benefit test. To satisfy the ratio percentage test for a plan year, a plan must have a ratio percentage of at least 70 percent. A plan's ratio percentage is the percentage of the employer's nonhighly compensated employees who benefit under the plan divided by the percentage of the employer's highly compensated employees who benefit under the plan.

To satisfy the average benefit test, two requirements must be met—the nondiscriminatory classification test of section 410(b)(2)(A)(i) and the average benefit percentage test of section 410(b)(2)(A)(ii). The nondiscriminatory classification test requires a plan to benefit employees who qualify under a reasonable employer-determined classification that does not discriminate in favor of highly compensated employees. The average benefit percentage test requires that the average of the employee benefit percentages for nonhighly compensated employees be at least 70 percent of the average of the employee benefit percentages for highly compensated employees, generally taking into account all the plans of the employer.

The April 1993 regulations proposed to amend the September 1991 regulations generally to simplify them and to address other issues raised since the publication of those regulations. In addition, the proposed regulations make coordinating amendments to the September 1991 regulations under section 410(b) to take into account the changes proposed in the January 1993 proposed section 401(a)(4) regulations. Major changes in the April 1993 proposed regulations include the following:

- Replacing the rules for the average benefit percentage test in their entirety with less detailed rules that coordinate the determination of these percentages with the determination of accrual rates under the section 401(a)(4) regulations.
- Replacing objective testing of coverage of former employees with a flexible facts-and-circumstances analysis.
- Expanding the situations where employees in a multiemployer plan may continue to be treated as collectively bargained employees after they have switched from collectively bargained to noncollectively bargained status.
- Providing that the portion of a plan benefiting employees who have not satisfied the greatest permissible minimum age and service conditions may be disaggregated for purposes of the average benefit percentage test.

In general, comments received on the changes in the proposed regulations were favorable. Accordingly, these final regulations incorporate those changes. In addition, in response to comments, certain modifications have been made to further simplify and increase flexibility in compliance alternatives. The more significant changes made in these final regulations are discussed below.

2. Special Multiemployer Plan Rules

The September 1991 regulations provide that a plan benefiting both collectively bargained employees (as defined in the regulations) and noncollectively bargained employees is treated as two separate plans for section 410(b) purposes. The portion of the plan benefiting collectively bargained employees is deemed to satisfy the section 401(a)(4) and section 410(b) requirements automatically. In testing the portion of the plan benefiting noncollectively bargained employees, all collectively bargained employees are treated as excludable.

The April 1993 proposed regulations contain several special rules that allow noncollectively bargained employees in a multiemployer plan who were formerly collectively bargained employees to continue to be treated as collectively bargained employees. These rules represent an exception to the general requirement that benefits provided to noncollectively bargained employees be tested under sections 401(a)(4) and 410(b).

In view of the practical problems for plan trustees in identifying and accounting for noncollectively bargained employees of different employers, one of the special rules in the proposed regulations permits formerly collectively bargained employees to continue to be treated as collectively bargained employees indefinitely. This exception applies only if no more than two percent of the employees covered under the multiemployer plan are in this category and the terms of the plan providing for benefit accruals treat those employees in the same manner as similarly situated employees who are collectively bargained. In addition, in order to use this special alumni rule, the employees treated as collectively bargained must be performing services for one or more employers that are parties to the collective bargaining agreement.

The Treasury and the Service believe that this exception for alumni is appropriate only if those noncollectively bargained employees represent a limited percentage of the multiemployer plan's population. However, commentators on the April 1993 regulations requested that the two-percent limit for the alumni rule be expanded to make this exception available to additional multiemployer plans. After weighing both the practical concerns expressed by the commentators and the importance of limiting this exemption from

nondiscrimination testing (which could apply for an indefinite period of time), the Treasury and the Service have increased the percentage from two percent to five percent. In addition, it is anticipated that guidance on data collection and testing will be provided for multiemployer plans in the revenue procedure on substantiating compliance (proposed in Announcement 92–81, 1992–22 I.R.B. 56) when that document is finalized shortly.

In response to comments, these regulations also liberalize and clarify the special multiemployer plan rules in a number of respects. For example, certain of the rules are conditioned on the noncollectively bargained employees being treated under the plan in the same manner as similarly situated collectively bargained employees. These regulations require only that the noncollectively bargained employees be treated in a manner that is generally no more favorable than similarly situated collectively bargained employees and clarify that only the terms of the plan providing for benefit accruals must treat the noncollectively bargained employees in this manner. Thus, for example, differences in vesting that may arise because the noncollectively bargained employees are subject to different statutory vesting schedules than collectively bargained employees will not prevent a multiemployer plan from using the special rules. These regulations also make clear that these special rules apply if the employee performs services for the plan or for the employee representative. In addition, among other clarifications, these regulations provide that the term "collective bargaining agreement" as used in these rules includes any successor agreement.

3. Employees Benefiting Under a Plan

The regulations generally provide that an employee is treated as benefiting under a defined benefit plan for a plan year only if there is an increase in the employee's accrued benefit. In response to comments, a revision has been made to these regulations that is intended to clarify that increases in the dollar amount of the accrued benefit merely because of the passage time or because of a change in indices affecting the accrued benefit do not cause an employee to be treated as benefiting.

The regulations provide that in certain situations, however, an employee in a defined benefit plan will be treated as benefiting for a plan year even though the employee does not receive an accrual for the plan year. One of these situations is where an employee's accrued benefit would have increased if a previously accrued benefit were disregarded, such as where the plan utilizes a "wear-away" formula. The regulations include an increase in covered compensation or a decrease in the employee's compensation for the plan year as further examples of situations where this might occur. These examples have been eliminated in order to remove any possible inference concerning the proper interpretation of section 411(d)(6) or section 411(b)(1)(G) in these situations, but no inference should be drawn from this revision as to the correct interpretation of section 411.

4. Employees Transferring Between Plans That Are Mandatorily Disaggregated

The regulations require that certain plans be mandatorily disaggregated and treated as separate plans for purposes of section 410(b). Among the situations in which a plan must be disaggregated are those in which a plan benefits employees of different qualified separate lines of business, employees of more than one employer, or both collectively bargained and noncollectively bargained employees. Questions have arisen regarding the treatment of employees who change from being tested under one portion of a disaggregated plan to another portion of the disaggregated plan due to a change in status. To address these questions, proposed amendments to the mandatory disaggregation rules will be published in the proposed qualified separate line of business regulations, rather than in these final regulations.

5. Governmental Plans

Under the regulations, a plan that benefits employees of more than one employer (treating all members of a controlled group of employers under section 414 as a single employer) is treated as consisting of separate plans, each of which is maintained by a separate employer. Each of these plans must satisfy coverage and test for nondiscrimination with reference only to the applicable employer's employees.

Some commentators have requested, in the absence of specific controlled group rules applicable to governmental entities, that they be permitted to treat all federal instrumentalities as a single employer and, thus, test a plan benefiting employees of more than one federal instrumentality on a plan-wide basis. The commentators note that such plan-wide testing would simplify compliance and reduce additional administrative costs for plans sponsored by federal instrumentalities.

Under a special transition rule, governmental plans described in section 414(d) are deemed to satisfy the regulations under section 401(a)(4), section 410(b) and related nondiscrimination requirements generally for plan years beginning before 1996. A principal purpose of the transition rule is to provide the Treasury and the Service additional time to receive comments from governmental employers regarding appropriate modifications to the regulations to take into account the special circumstances of governmental plans. Consequently, treating federal instrumentalities as members of a controlled group will be considered, together with other comments received on the unique features of governmental plans, in developing future appropriate modifications to the regulations for governmental plans.

6. Changes to Minimum Participation Requirements

These regulations finalize the effective date change for governmental plans and certain 403(b) annuities under § 1.401(a)(26)–9(b)(1) that was proposed in August, 1992. In addition, they conform the language in the special testing rule in § 1.401(a)(26)–1(b)(4) for section 401(k) plans maintained by certain governmental or tax-exempt entities to the corresponding language used for such plans under the excludable employee rules in § 1.410(b)–6(g) of the regulations.

Effective Dates

The regulations generally are effective for plan years beginning on or after January 1, 1994, or, in the case of governmental plans and plans maintained by tax-exempt organizations, for plan years beginning on or after January 1, 1996. For plan years beginning on or after the first day of the first plan year to which the amendments made by section 1112(a) of the Tax Reform Act of 1986 (TRA '86) apply and before the applicable regulatory effective date, § 1.410(b)–10 provides that a plan must be operated in accordance with a reasonable, good faith interpretation of the requirements of section 410(b). Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 410(b) generally will be determined based on all of the relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 410(b) if it is operated in accordance with these final

regulations, the April 1993 proposed regulations, the September 1991 regulations, the May 1990 proposed section 410(b) regulations, or the May 1989 proposed section 410(b) regulations.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Dave Munroe of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.401(a)(26)–1(b)(4) is revised to read as follows:

§ 1.401(a)(26)–1 Minimum participation requirements.

* * * * *

(b) * * *

(4) *Section 401(k) plan maintained by employers that include certain governmental or tax-exempt entities.* Section 401(k)(4)(B) prevents certain State and local governments and tax-exempt organizations from maintaining a qualified cash or deferred arrangement. A plan (or portion of a plan) that is either a section 401(k) plan or a section 401(m) plan that is provided under the same general arrangement as a section 401(k) plan may be treated as a separate plan that satisfies section 401(a)(26) for a plan year if the following requirements are satisfied:

(i) The section 401(k) plan is maintained by an employer who has employees precluded from being eligible employees under the arrangement by reason of section 401(k)(4)(B), and

(ii) More than 95 percent of the employees of the employer who are not precluded from being eligible employees under a section 401(k) plan by reason of section 401(k)(4)(B) benefit under the section 401(k) plan.

Par. 3. Section 1.401(a)(26)–9(b)(1) is revised to read as follows:

§ 1.401(a)(26)–9 Effective dates and transition rules.

* * * * *

(b) * * *

(1) *Governmental plans and certain section 403(b) annuities.* Section 401(a)(26) is treated as satisfied for plan years beginning before the later of January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously, in the case of governmental plans described in section 414(d), including plans subject to section 403(b)(12)(A)(i) (nonelective plans). For purposes of this paragraph (b)(1), the term "governing body with authority to amend the plan" means the legislature, board, commission, council, or other governing body with authority to amend the plan.

* * * * *

§ 1.410(b)–0 [Amended]

Par. 4. Section 1.410(b)–0 is amended by:

1. Revising the introductory text and the section headings for §§ 1.410(b)–1 and 1.410(b)–2.

2. Removing the entries for § 1.410(b)–2(c)(2) (i) and (ii).

3. Amending the entries for § 1.410(b)–3 by:

a. Revising the entries for paragraphs (a)(2)(iii) and (a)(2)(iv).

b. Removing the entry for paragraph (a)(2)(v).

4. Revising the entries for § 1.410(b)–5, paragraphs (d) and (e).

5. Amending the entries for § 1.410(b)–6 by:

a. Revising the entry for paragraph (d)(2)(ii).

b. Correctly designating the entry for paragraph (i), *Previously excludable employees*, as the entry for paragraph (h)(3) and adding a new entry for paragraph (i).

6. Amending the entries for § 1.410(b)–9 by removing the following: Defined benefit excess plan, Excess benefit percentage, Gross benefit percentage, and Offset plan;

7. Revising the entries for § 1.410(b)–10.

8. The revisions and addition read as follows:

§ 1.410(b)–0 Table of contents.

This section contains a listing of the major headings of §§ 1.410(b)–1 through 1.410(b)–10.

§ 1.410(b)–1 Minimum coverage requirements (before 1994).

* * * * *

§ 1.410(b)–2 Minimum coverage requirements (after 1993).

* * * * *

§ 1.410(b)–3 Employees and former employees who benefit under a plan.

(a) * * *

(2) * * *

(iii) Certain employees treated as benefiting.

(iv) Section 412(i) plans.

* * * * *

§ 1.410(b)–5 Average benefit percentage test.

* * * * *

(d) Determination of employee benefit percentages.

(1) Overview.

(2) Employee contributions and employee-provided benefits disregarded.

(3) Plans and plan years taken into account.

(i) Testing group.

(ii) Testing period.

(4) Contributions or benefits basis.

(5) Determination of employee benefit percentage.

(i) General rule.

(ii) Plans with differing plan years.

(iii) Options and consistency requirements.

(6) Permitted disparity.

(i) In general.

(ii) Plans which may not use permitted disparity

(7) Requirements for certain plans providing early retirement benefits.

(i) General rule.

(ii) Exception.

(e) Additional optional rules.

(1) Overview.

(2) Determination of employee benefit percentages as the sum of separately determined rates.

(i) In general.

(ii) Exception from consistency requirement.

(iii) Permitted inconsistencies.

(3) Determination of employee benefit percentages without regard to plans of another type.

(i) General rule.

(ii) Restriction on use of separate testing group determination method.

(iii) Treatment of permitted disparity

(iv) Example.

(4) Simplified method for determining employee benefit percentages for certain defined benefit plans.
(i) In general.
(ii) Simplified method.
(5) Three-year averaging period.
(6) Alternative methods of determining compensation.
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§ 1.410(b)–6 Excludable employees.
* * * * *
(d) * * *
(2) * * *
(ii) Special rules for certain employees in multiemployer plans.
* * * * *
(i) Former employees treated as employees.
* * * * *

§ 1.410(b)–10 Effective dates and transition rules.
(a) Statutory effective dates.
(1) In general.
(2) Special statutory effective date for collective bargaining agreements.
(i) In general.
(ii) Example.
(iii) Plan maintained pursuant to a collective bargaining agreement.
(b) Regulatory effective dates.
(1) In general.
(2) Plans of tax-exempt organizations.
(c) Compliance during transition period.
(d) Effective date for governmental plans.

Par. 5. Section 1.410(b)–1 is amended by revising the section heading to read as follows:

§ 1.410(b)–1 Minimum coverage requirements (before 1994).

Par. 6. Section 1.410(b)–2 is amended by:
1. Revising the section heading.
2. Revising paragraph (c)(2);
3. Revising the last sentence of paragraph (d).
4. Revising the last sentence of paragraph (e) and adding a sentence at the end of paragraph (e).;
5. Revising paragraph (f).
6. The revisions and addition read as follows:

§ 1.410(b)–2 Minimum coverage requirements (after 1993).
* * * * *
(c) * * *
(2) *Testing former employees.* A plan satisfies section 410(b) with respect to former employees if and only if, under all of the relevant facts and circumstances (including the group of nonexcludable former employees not benefiting under the plan), the group of former employees benefiting under the plan does not discriminate significantly in favor of highly compensated former employees.
* * * * *
(d) * * * For plan years beginning before the effective date set forth in § 1.410(b)–10(d), any plan described in section 410(c)(1)(A) (regarding governmental plans) satisfies the requirements of this section.
(e) * * * For plan years beginning before the effective date set forth in § 1.410(b)–10(d), any plan described in section 410(c)(1)(A) (regarding governmental plans) satisfies the requirements of this section and is thus treated as satisfying the requirements of section 401(a)(3) as in effect on September 1, 1974. See § 1.410(b)–10(b)(2) for a special rule for plans of tax-exempt organizations.
(f) *Certain acquisitions or dispositions.* Section 410(b)(6)(C) (relating to certain acquisitions or dispositions) provides a special rule whereby a plan may be treated as satisfying section 410(b) for a limited period of time after an acquisition or disposition if it satisfies section 410(b) (without regard to the special rule) immediately before the acquisition or disposition and there is no significant change in the plan or in the coverage of the plan other than the acquisition or disposition. For purposes of section 410(b)(6)(C) and this paragraph (f), the terms "acquisition" and "disposition" refer to an asset or stock acquisition, merger, or other similar transaction involving a change in employer of the employees of a trade or business.
* * * * *

Par. 7. Section 1.410(b)–3 is amended by:
1. Revising paragraphs (a)(1), and (a)(2)(ii) through (a)(2)(iv) as set forth below.
2. Removing paragraph (a)(2)(v).

§ 1.410(b)–3 Employees and former employees who benefit under a plan.

(a) * * * (1) *In general.* Except as provided in paragraph (a)(2) of this section, an employee is treated as benefiting under a plan for a plan year if and only if for that plan year, in the case of a defined contribution plan, the employer receives an allocation taken into account under § 1.401(a)(4)–2(c)(2)(ii), or in the case of a defined benefit plan, the employee has an increase in a benefit accrued or treated as an accrued benefit under section 411(d)(6).
(2) * * *
(ii) *Section 415 limits*—(A) *General rule for defined benefit plans.* In determining whether an employee is treated as benefiting under a defined benefit plan for a plan year, plan provisions that implement the limits of section 415 are disregarded. Any plan provision that provides for increases in an employee's accrued benefit under the plan due solely to adjustments under section 415(d)(1), additional years of participation or service under section 415(b)(5), or changes in the defined contribution fraction under section 415(e) is also disregarded, but only if such provision applies uniformly to all employees in the plan.
(B) *Defined benefit plans taking section 415 limits into account under section 401(a)(4) testing.* Paragraph (a)(2)(ii)(A) of this section does not apply in the case of a defined benefit plan that uses the option in § 1.401(a)(4)–3(d)(2)(ii)(B) to take into account plan provisions implementing the provisions of section 415 in determining accrual rates under the section 401(a)(4) general test.
(C) *Defined contribution plans.* A defined contribution plan is permitted to apply the rule in the first sentence of paragraph (a)(2)(ii)(A) of this section in determining whether an employee is treated as benefiting under the plan, provided it applies the rule on a consistent basis for all employees in the plan.
(iii) *Certain employees treated as benefiting*—(A) *In general.* An employee is treated as benefiting under a plan for a plan year if the employee satisfies all of the applicable conditions for accruing a benefit or receiving an allocation for the plan year but fails to have an increase in accrued benefit or to receive an allocation solely because of one or more of the conditions set forth in paragraphs (a)(2)(iii) (B) through (F) of this section.
(B) *Certain plan limits.* The employee's benefit would otherwise exceed a limit that is applicable on a uniform basis to all employees in the plan. Thus, for example, if the formula under a defined benefit plan takes into account only the first 30 years of service for accrual purposes, an employee who has completed more than 30 years of service is still treated as benefiting under the plan.
(C) *Benefits previously accrued.* The benefit previously accrued by the employee is greater than the benefit that would be determined under the plan if the benefit previously accrued were disregarded. This could happen, for example, when the plan is applying the wear-away formula of § 1.401(a)(4)–13(c)(4)(ii) and the employee's frozen accrued benefit exceeds the benefit determined under the current formula.
(D) *Benefit offset arrangements.* The plan offsets the employee's current benefit accrual under an offset arrangement described in § 1.401(a)(4)–3(f)(9) (without regard to whether the offset is attributable to pre-participation service or past service).

(E) *Target benefit plans.* In the case of a target benefit plan that satisfies the nondiscriminatory amount requirement of § 1.401(a)(4)–1(b)(2) by satisfying the safe harbor in § 1.401(a)(4)–8(b)(3), the employee's theoretical reserve is greater than or equal to the actuarial present value of the fractional rule benefit.

(F) *Post-normal retirement age adjustments.* The employee has attained normal retirement age under a defined benefit plan and fails to accrue a benefit because of the provisions of section 411(b)(1)(H)(iii) regarding adjustments for delayed retirement.

(iv) *Section 412(i) plans*—(A) *General rule.* Notwithstanding paragraph (a)(1) of this section, an employee is treated as benefiting under an insurance contract plan within the meaning of section 412(i) for a plan year if and only if a premium is paid on behalf of the employee for the plan year.

(B) *Exceptions.* Notwithstanding paragraph (a)(2)(iv)(A) of this section, an employee is treated as benefiting under an insurance contract plan within the meaning of section 412(i) for a plan year if the sole reason that a premium is not paid on behalf of the employee is one of the reasons described in paragraph (a)(2)(iii) of this section. In addition, an employee is treated as benefiting under an insurance contract plan, within the meaning of section 412(i), that is a defined benefit plan if a premium is not paid on behalf of the employee solely because the insurance contracts that have previously been purchased on behalf of the employee guarantee to provide for the employee's projected normal retirement benefit without regard to future premium payments.

* * * * *

Par. 8. Section 1.410(b)–5 is amended by revising paragraphs (d) and (e) to read as follows:

§ 1.410(b)–5 Average benefit percentage test.

* * * * *

(d) *Determination of employee benefit percentages*—(1) *Overview.* This paragraph (d) provides rules for determining employee benefit percentages. See paragraph (e) of this section for alternative methods for determining employee benefit percentages.

(2) *Employee contributions and employee-provided benefits disregarded.* Only employer-provided contributions and benefits are taken into account in determining employee benefit percentages. Therefore, employee contributions (including both employee contributions allocated to separate accounts and employee contributions not allocated to separate accounts), and benefits derived from such contributions, are not taken into account in determining employee benefit percentages.

(3) *Plans and plan years taken into account*—(i) *Testing group.* All plans included in the testing group under § 1.410(b)–7(e)(1), and only those plans, are taken into account in determining an employee's employee benefit percentage.

(ii) *Testing period.* An employee's employee benefit percentage is determined on the basis of plan years ending with or within the same calendar year. These plan years are referred to in this section as the relevant plan years or, in the aggregate, as the testing period.

(4) *Contributions or benefits basis.* Employee benefit percentages may be determined on either a contributions or a benefits basis. Employee benefit percentages for any testing period must be determined on the same basis (contributions or benefits) for all plans in the testing group.

(5) *Determination of employee benefit percentage*—(i) *General rule.* The employee benefit percentage for an employee for a testing period is the rate that would be determined for that employee for purposes of applying the general test for nondiscrimination in §§ 1.401(a)(4)–2, 1.401(a)(4)–3, 1.401(a)(4)–8 or 1.401(a)(4)–9, if all the plans in the testing group were aggregated for purposes of section 410(b). Thus, if employee benefit percentages are determined on a contributions basis, each employee's employee benefit percentage is the aggregate normal allocation rate that would be determined for the employee under § 1.401(a)(4)–9(b)(2)(ii)(A) (if the plans in the testing group include both defined benefit and defined contribution plans), the allocation rate that would be determined for the employee under § 1.401(a)(4)–2(c)(2) (if the plans in the testing group include only defined contribution plans), or the equivalent normal allocation rate that would be determined for the employee under § 1.401(a)(4)–8(c)(2) (if the plans in the testing group include only defined benefit plans). Similarly, if employee benefit percentages are determined on a benefits basis, each employee's employee benefit percentage is the aggregate normal accrual rate that would be determined for the employee under § 1.401(a)(4)–9(b)(2)(ii)(B), the normal accrual rate that would be determined for the employee under § 1.401(a)(4)–3(d), or the equivalent accrual rate that would be determined for the employee under § 1.401(a)(4)–8(b)(2), depending on whether the plans in the testing group include both defined benefit and defined contribution plans, only defined benefit plans, or only defined contribution plans.

(ii) *Plans with differing plan years.* If not all the plans in the testing group share the same plan year, § 1.410(b)–7(d)(5) would ordinarily prohibit them from being aggregated for purposes of section 410(b). In such a case, employee benefit percentages are determined by applying the rules of paragraph (d)(5)(i) of this section separately to each subset of plans in the testing group that share the same plan year (or the same accrual computation period) and aggregating the results for all plans in the testing group. Thus, an employee's employee benefit percentage is determined as the sum of these separate employee benefit percentages that are determined consistently for all the plans in the testing group (except for differences attributable solely to the differences in plan years).

(iii) *Options and consistency requirements.* In determining employee benefit percentages under this paragraph (d)(5), any optional or alternative methods or rules available for determining rates in §§ 1.401(a)(4)–2, 1.401(a)(4)–3, 1.401(a)(4)–8, or 1.401(a)(4)–9, whichever is applicable, may be applied. Thus, for example, employee benefit percentages may generally be calculated using any of the alternative methods of determining average annual compensation or plan year compensation under § 1.401(a)(4)–12, and using any underlying definition of compensation that satisfies section 414(s). Except as otherwise specifically permitted, the determination of employee benefit percentages must be made on a consistent basis for all employees and for all plans in the testing group as required by §§ 1.401(a)(4)–2(c)(2)(vi), 1.401(a)(4)–3(d)(2)(i), 1.401(a)(4)–8(b)(2)(iv), 1.401(a)(4)–8(c)(2)(iv) or 1.401(a)(4)–9(b)(2)(iv).

(6) *Permitted disparity*—(i) *In general.* Permitted disparity may be imputed in determining employee benefit percentages as provided in §§ 1.401(a)(4)–2, 1.401(a)(4)–3, 1.401(a)(4)–8, or 1.401(a)(4)–9, whichever is applicable. When separate employee benefit percentages are determined for individual plans under paragraph (e)(2) of this section (or for subsets of plans that have the same plan year as described in paragraph (d)(5)(ii) of this section), permitted disparity may be imputed for an employee only in one individual plan (or subset of plans) and may not be imputed for the same employee in another individual plan (or

subset of plans). However, if the same average annual compensation or plan year compensation is used to determine employee benefit percentages in more than one plan, the employee's employee benefit percentages for those plans may be summed prior to imputing permitted disparity.

(ii) *Plans which may not use permitted disparity.* Permitted disparity may be reflected in the determination of rates only to the extent that the plans for which rates are being determined are plans for which the permitted disparity of section 401(l) is available. Thus, for example, if a section 401(k) plan is included in the testing group and permitted disparity is imputed under § 1.401(a)(4)–2(c)(iv), then employee benefit percentages are determined by first calculating an adjusted allocation rate (within the meaning of § 1.401(a)(4)–7(b)(1)) without regard to the amount of allocations under the section 401(k) plan and adding to it the allocation rate for the section 401(k) plan. See § 1.401(l)–1(a)(4) for a list of types of plans for which permitted disparity is not available.

(7) *Requirements for certain plans providing early retirement benefits*—(i) *General rule.* If any defined benefit plan in the testing group provides for early retirement benefits in addition to normal retirement benefits to any highly compensated employee, and the average actuarial reduction for any one of these benefits commencing in the five years prior to the plan's normal retirement age is less than four percent per year, then the aggregate most valuable allocation rate, equivalent most valuable allocation rate, aggregate most valuable accrual rate, or most valuable accrual rate must be substituted for the related normal rates in paragraph (d)(5) of this section.

(ii) *Exception.* Paragraph (d)(7)(i) of this section does not apply if early retirement benefits with average actuarial reductions described in that paragraph are currently available, within the meaning of § 1.401(a)(4)–4(b), under plans in the testing group to a percentage of nonhighly compensated employees that is at least 70 percent of the percentage of highly compensated employees to whom these benefits are currently available.

(e) *Additional optional rules*—(1) *Overview.* This paragraph (e) contains various alternative methods for determining employee benefit percentages for a testing period.

(2) *Determination of employee benefit percentages as the sum of separately determined rates*—(i) *In general.* Employee benefit percentages may be determined as the sum of separately determined employee benefit percentages for each of the plans in the testing group that are aggregated under paragraphs (d)(5) (i) or (ii) of this section, provided that these employee benefit percentages are determined on a consistent basis for all of these plans pursuant to paragraph (d)(5)(iii) of this section.

(ii) *Exception from consistency requirement.* The consistency requirement of paragraph (e)(2)(i) of this section is not violated merely because employee benefit percentages are not determined in a consistent manner for all of the plans in the testing group and the inconsistencies in determination of rates among plans are described in paragraph (e)(2)(iii) of this section. The exception in this paragraph (e)(2)(ii) applies only if it is reasonable to believe that the inconsistencies do not result in an average benefit percentage that is significantly higher than the average benefit percentage that would be determined had employee benefit percentages been determined on a consistent basis pursuant to paragraph (d)(5)(iii) of this section.

(iii) *Permitted inconsistencies.* The following inconsistencies between plans are permitted under this paragraph (e)(2)—

(A) Use of different underlying definitions of section 414(s) compensation in the determination of rates;

(B) Use of different definitions of average annual compensation;

(C) Use of different testing ages;

(D) Use of different fresh-start dates;

(E) Use of different actuarial assumptions for normalization; or

(F) Disregard of actuarial increases after normal retirement age and QPSA charges without regard to any requirement for uniformity in the actuarial increases or QPSA charges.

(3) *Determination of employee benefit percentages without regard to plans of another type*—(i) *General rule.* Employee benefit percentages may be determined under plans of one type (i.e., defined benefit plans or defined contribution plans) by treating all plans of the other type (i.e., defined contribution plans or defined benefit plans, respectively) as if they were not part of the testing group, using the method provided in this paragraph (e)(3). If this method is used to determine whether a defined contribution plan satisfies the average benefit percentage test, employee benefit percentages under all defined contribution plans in the testing group must be determined on a contributions basis, and benefits under any defined benefit plans may not be included in the employee benefit percentage. Similarly, if this method is used to determine whether a defined benefit plan satisfies the average benefit percentage test, employee benefit percentages under all defined benefit plans in the testing group must be determined on a benefits basis, and allocations under any defined contribution plans may not be included in the employee benefit percentage.

(ii) *Restriction on use of separate testing group determination method.* A plan does not satisfy the average benefit percentage test using the method provided in this paragraph (e)(3) unless each of the plans in the testing group of the other type (i.e., defined benefit plan or defined contribution plan) than the plan being tested satisfies the average benefit test of § 1.410(b)–2(b)(3) using the method in this paragraph (e)(3) or satisfies the ratio percentage test of § 1.410(b)–2(b)(2).

(iii) *Treatment of permitted disparity.* Although under the general rule of this paragraph (e)(3) plans of another type are disregarded in determining employee benefit percentages, the permitted disparity used by those plans (including any permitted disparity that is used by those plans to satisfy § 1.401(a)(4)–1(b)(2)) is nonetheless taken into account in determining the extent to which permitted disparity may be used in determining employee benefit percentages.

(iv) *Example.* The following example illustrates the rules of this paragraph (e)(3):

Example. Employer A maintains two defined benefit plans, neither of which covers a group of employees that satisfies the ratio percentage test of § 1.410(b)–2(b)(2), and a profit-sharing plan and a section 401(k) plan, each of which benefits a group of employees that satisfies the ratio percentage test of § 1.410(b)–2(b)(2). The defined benefit plans will satisfy the average benefit percentage test if the actual benefit percentage of all nonexcludable nonhighly compensated employees, computed on a benefits basis without regard to contributions under the profit-sharing plan or the section 401(k) plan, is at least 70 percent of the actual benefit percentage of all nonexcludable highly compensated employees, computed on a benefits basis without regard to contributions under the profit-sharing plan or the section 401(k) plan.

(4) *Simplified method for determining employee benefit percentages for certain defined benefit plans*—(i) *In general.* An employee's employee benefit percentage with respect to a plan may be determined under the simplified method of paragraph (e)(4)(ii) of this section, provided the following conditions are satisfied:

(A) The only plans included in the testing group are defined benefit plans, and employee benefit percentages under

these plans are determined on a benefits basis.

(B) Employee benefit percentages under the plans in the testing group are not required to be determined by taking into account early retirement benefits under paragraph (d)(7) of this section.

(C) The plan is a safe harbor defined benefit plan described in § 1.401(a)(4)–3(b).

(ii) *Simplified method*—(A) *Section 401(l) plans.* Under the simplified method of this paragraph (e)(4)(ii), an employee's employee benefit percentage with respect to a section 401(l) plan described in § 1.401(a)(4)–3(b)(3) (i.e., a unit credit plan) may be deemed equal to the employee's excess benefit percentage or gross benefit percentage (as defined in § 1.401(*l*)–1(c) (14) or (18), respectively), whichever is applicable under the plan's benefit formula in the plan year. In the case of a section 401(l) plan described in § 1.401(a)(4)–3(b)(4) (i.e., a fractional accrual plan), an employee's employee benefit percentage with respect to that plan may be deemed equal to the rate at which the excess or gross benefit, whichever is applicable, accrues for the employee in the plan year, taking into account the plan's benefit formula and the employee's projected service at normal retirement age. The use of this simplified method will be treated as an imputation of permitted disparity. See paragraph (d)(6) of this section for a restriction on multiple use of permitted disparity.

(B) *Other plans.* Under the simplified method of this paragraph (e)(4)(ii), an employee's employee benefit percentage with respect to a plan described in § 1.401(a)(4)–3(b)(3) that is not a section 401(*l*) plan and that is not imputing permitted disparity may be deemed equal to the employee's benefit rate in the plan year under the plan's benefit formula. In the case of a plan described in § 1.401(a)(4)–3(b)(4) that is not a section 401(*l*) plan and that is not imputing permitted disparity, an employee's employee benefit percentage with respect to that plan may be deemed equal to the rate at which the benefit accrues for the employee in the plan year, taking into account the plan's benefit formula and an employee's projected service at normal retirement age.

(5) *Three-year averaging period.* An employee's employee benefit percentage may be determined for a testing period as the average of the employee's employee benefit percentages determined separately for the testing period and for the immediately preceding one or two testing periods (referred to in this section as an averaging period). Employee benefit percentages of a particular employee that are averaged together within an averaging period must be determined on a consistent basis for all testing periods within the averaging period.

(6) *Alternative methods of determining compensation.* Employee benefit percentages may be determined on the basis of any definition of compensation that satisfies § 1.414(s)–1(d) (without regard to whether the definition satisfies § 1.414(s)–1(d)(3)), provided that the same definition is used for all employees and it is reasonable to believe that the definition does not result in an average benefit percentage that is significantly higher than the average benefit percentage that would be determined had employee benefit percentages been determined using a definition of compensation that also satisfies § 1.414(s)–1(d)(3).

* * * * *

Par. 9. Section 1.410(b)–6 is amended by:

1. Removing the reference "(b) through (h)" and adding "(b) through (i)" in its place in the first sentence of paragraph (a)(1) and in the second and third sentence of paragraph (a)(2).

2. Revising paragraphs (b)(1), (b)(2), (d)(2), and (g) as set forth below.

3. Adding paragraph (i) as set forth below.

§ 1.410(b)–6 Excludable employees.

* * * * *

(b) *Minimum age and service exclusions*—(1) *In general.* If a plan applies minimum age and service eligibility conditions permissible under section 410(a)(1) and excludes all employees who do not meet those conditions from benefiting under the plan, then all employees who fail to satisfy those conditions are excludable employees with respect to that plan. An employee is treated as meeting the age and service requirements on the date that any employee with the same age and service (including service permitted to be taken into account for purposes of nondiscrimination testing under § 1.401(a)(4)–11(d)(3)) would be eligible to commence participation in the plan, as provided in section 410(b)(4)(C).

(2) *Multiple age and service conditions.* If a plan, including a plan for which an employer chooses the treatment under paragraph (b)(3) of this section, has two or more different sets of minimum age and service eligibility conditions, those employees who fail to satisfy all of the different sets of age and service conditions are excludable employees with respect to the plan. Except as provided in paragraph (b)(3) of this section, an employee who satisfies any one of the different sets of conditions is not an excludable employee with respect to the plan. Differences in the manner in which service is credited (e.g., hours of service calculated in accordance with 29 CFR 2530.200b–2 for hourly employees and elapsed time calculated in accordance with § 1.410(a)–7 for salaried employees) for purposes of applying a service condition are not taken into account in determining whether multiple age and service eligibility conditions exist.

* * * * *

(d) * * *

(2) *Definition of collectively bargained employee*—(i) *In general.* A collectively bargained employee is an employee who is included in a unit of employees covered by an agreement that the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, provided that there is evidence that retirement benefits were the subject of good faith bargaining between employee representatives and the employer or employers. An employee is a collectively bargained employee regardless of whether the employee benefits under any plan of the employer. See section 7701(a)(46) and § 301.7701–17T of this chapter for additional requirements applicable to the collective bargaining agreement. An employee who performs hours of service during the plan year as both a collectively bargained employee and a noncollectively bargained employee is treated as a collectively bargained employee with respect to the hours of service performed as a collectively bargained employee and a noncollectively bargained employee with respect to the hours of service performed as a noncollectively bargained employee. See § 1.410(b)–7(c) for disaggregation rules for plans benefiting collectively bargained and noncollectively bargained employees.

(ii) *Special rules for certain employees in multiemployer plans*—(A) *In general.* For purposes of this paragraph (d), in testing the disaggregated portion of a multiemployer plan benefiting noncollectively bargained employees, a noncollectively bargained employee who benefits under the plan may be treated as a collectively bargained employee with respect to all of the employee's hours of service under the rules of paragraphs (d)(2)(ii) (B) through (E) of this section, if the employee is or was a member of a unit of employees covered by a collective bargaining agreement and that agreement or a successor agreement provides for the

employee to benefit under the plan in the current plan year. For this purpose, provisions of a participation agreement or similar document are taken into account in determining whether a collective bargaining agreement provides for an employee to benefit under a multiemployer plan.

(B) *Employees who were collectively bargained employees during a portion of the current plan year.* An employee described in paragraph (d)(2)(ii)(A) of this section who performs services for one or more employers that are parties to the collective bargaining agreement, for the plan, or for the employee representative both as a collectively bargained employee and as a noncollectively bargained employee during a plan year may be treated as a collectively bargained employee for the plan year, provided that at least half of the employee's hours of service during the plan year are performed as a collectively bargained employee.

(C) *Employees who were collectively bargained employees during the collective bargaining agreement.* An employee described in paragraph (d)(2)(ii)(A) of this section who was a collectively bargained employee with respect to all of the employee's hours of service during a plan year (including employees who are treated as collectively bargained employees with respect to all of their hours of service during a plan year under paragraph (d)(2)(ii) (B) or (E) of this section) may be treated as a collectively bargained employee with respect to all of the employee's hours of service for the duration of the collective bargaining agreement applicable for such plan year or, if later, until the end of the following plan year. For this purpose, a collective bargaining agreement is applicable for a plan year if it provided for the employee to benefit in the plan and was effective for any portion of that plan year. This paragraph (d)(2)(ii)(C) does not apply unless the terms of the plan providing for benefit accruals treat the employee in a manner that is generally no more favorable than similarly-situated employees who are collectively bargained employees.

(D) *Employees who previously were collectively bargained employees.* An employee who was treated as a collectively bargained employee pursuant to paragraph (d)(2)(ii)(C) of this section may be treated as a collectively bargained employee with respect to all of the employee's hours of service after the end of the period described in paragraph (d)(2)(ii)(C) of this section, provided that the employee is performing services for one or more employers that are parties to the collective bargaining agreement, for the plan, or for the employee representative. This paragraph (d)(2)(ii)(D) does not apply unless the terms of the plan providing for benefit accruals treat the employee in a manner that is generally no more favorable than similarly-situated employees who are collectively bargained employees, and no more than five percent of the employees covered under the multiemployer plan are noncollectively bargained employees (determined without regard to this paragraph (d)(2)(ii)(D)). In determining whether more than five percent of the employees covered under the multiemployer plan are noncollectively bargained employees, those employees who are described in paragraphs (d)(2)(ii) (B) and (C) of this section are treated as collectively bargained employees.

(E) *Transition rule.* For a plan year beginning before the applicable effective date of these regulations as set forth in § 1.410(b)–10 (b) or (d), any employee described in paragraph (d)(2)(ii)(A) of this section may be treated as a collectively bargained employee with respect to all of the employee's hours of service for that plan year.

(F) *Consistency requirement.* The rules in paragraphs (d)(2) (i) and (ii) of this section must be applied to all employees on a reasonable and consistent basis for the plan year.

* * * * *

(g) *Employees of certain governmental or tax-exempt entities precluded from maintaining a section 401(k) plan.* For purposes of testing either a section 401(k) plan or a section 401(m) plan that is provided under the same general arrangement as a section 401(k) plan, an employer may treat as excludable those employees of governmental or tax-exempt entities who are precluded from being eligible employees under a section 401(k) plan by reason of section 401(k)(4)(B), if more than 95 percent of the employees of the employer who are not precluded from being eligible employees by section 401(k)(4)(B) benefit under the plan for the plan year.

* * * * *

(i) *Former employees treated as employees.* An employer may treat as excludable employees all formerly nonhighly compensated employees who are treated as employees of the employer under § 1.410(b)–9 solely because they have increases in accrued benefits under a defined benefit plan that are based on ongoing service or compensation credits (including imputed service or compensation) after they cease to perform services for the employer.

* * * * *

§ 1.410(b)–7 [Amended]

Par. 10. Section 1.410(b)–7 is amended by:

1. Removing the last sentence in paragraph (d)(5).

2. Removing the reference "(c)(1) through (c)(3)" and adding "(c)(1) and (c)(2)" in its place in the last sentence of paragraph (e)(1).

Par. 11. Section 1.410(b)–9 is amended by:

1. Removing the definitions *Defined benefit excess plan* and *Excess benefit percentage.*

2. Revising the definitions *Employee* and *Former employee* as set forth below.

3. Removing the definition *Gross benefit percentage.*

4. Revising the definitions *Highly compensated employee* and *Highly compensated former employee* as set forth below.

5. Removing the definition *Offset plan.*

6. Removing the reference "§ 1.401(a)(4)–2(b)(3)" and adding "§ 1.401(a)(4)–2(b)(2)" in its place in paragraph (2) of the definition *Section 401(l) plan.*

7. Removing the word "engineer" from the definition *Professional employee.*

§ 1.410(b)–9 Definitions.

* * * * *

Employee. Employee means an individual who performs services for the employer who is either a common law employee of the employer, a self-employed individual who is treated as an employee pursuant to section 401(c)(1), or a leased employee (not excluded under section 414(n)(5)) who is treated as an employee of the employer-recipient under section 414(n)(2) or 414(o)(2). Individuals that an employer treats as employees under section 414(n) pursuant to the requirements of section 414(o) are considered to be leased employees for purposes of this rule. In addition, an individual must be treated as an employee with respect to allocations under a defined contribution plan taken into account under § 1.401(a)(4)–2(c)(ii) and with respect to increases in accrued benefits (within the meaning of 411(a)(7)) under a defined benefit plan that are based on ongoing service or compensation (including imputed service or compensation) credits.

* * * * *

Former employee. Former employee means an individual who was, but has ceased to be, an employee of the

employer (i.e., the individual has ceased performing services as an employee for the employer). An individual is treated as a former employee beginning on the day after the day on which the individual ceases performing services as an employee for the employer. Thus, an individual who ceases performing services as an employee for an employer during a plan year is both an employee and a former employee for the plan year. Notwithstanding the foregoing, an individual is an employee (and not a former employee) to the extent that the individual is treated as an employee with respect to the plan for the plan year under the definition of employee in this section.

* * * * *

Highly compensated employee. *Highly compensated employee* means an employee who is a highly compensated employee within the meaning of section 414(q) or a former employee treated as an employee under the definition of employee in this section who is a highly compensated former employee within the meaning of section 414(q).

Highly compensated former employee. *Highly compensated former employee* means a former employee who is a highly compensated former employee within the meaning of section 414(q).

* * * * *

Par. 12. Section 1.410(b)–10 is revised to read as follows:

§ 1.410(b)–10 Effective dates and transition rules.

(a) *Statutory effective dates*—(1) *In general.* Except as set forth in paragraph (a)(2) of this section, the minimum coverage rules of section 410(b) as amended by section 1112 of the Tax Reform Act of 1986 apply to plan years beginning on or after January 1, 1989.

(2) *Special statutory effective date for collective bargaining agreements*—(i) *In general.* As provided for by section 1112(e)(2) of the Tax Reform Act of 1986, in the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before March 1, 1986, the minimum coverage rules of section 410(b) as amended by section 1112 of the Tax Reform Act of 1986 do not apply to employees covered by any such agreement in plan years beginning before the earlier of—

(A) January 1, 1991; or

(B) The later of January 1, 1989, or the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986). For purposes of this paragraph (a)(2), any extension or renegotiation of a collective bargaining agreement, which extension or renegotiation is ratified after February 28, 1986, is to be disregarded in determining the date on which the agreement terminates.

(ii) *Example.* The following example illustrates this paragraph (a)(2).

Example. Employer A maintains Plan 1 pursuant to a collective bargaining agreement. Plan 1 covers 100 of Employer A's noncollectively bargained employees and 900 of Employer A's collectively bargained employees. Employer A also maintains Plan 2, which covers Employer A's other 400 noncollectively bargained employees. The collective bargaining agreement under which Plan 1 is maintained was entered into on January 1, 1986, and expires December 31, 1992. Because Plan 1 is a plan maintained pursuant to a collective bargaining agreement, section 410(b) applies to the first plan year beginning on or after January 1, 1991. In applying section 410(b) to Plan 2, the 100 noncollectively bargained employees in Plan 1 must be taken into account. The deferred effective date for plans maintained pursuant to a collective bargaining agreement is not applicable in determining how section 410(b) is applied to a plan that is not maintained pursuant to a collective bargaining agreement.

(iii) *Plan maintained pursuant to a collective bargaining agreement.* For purposes of this paragraph (a)(2), a plan is maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers, if one or more of the agreements were ratified before March 1, 1986. Only plans maintained pursuant to agreements that the Secretary of Labor finds to be collective bargaining agreements and that satisfy section 7701(a)(46) are eligible for the deferred effective date under this paragraph (a)(2). A plan will not be treated as a plan maintained pursuant to one or more collective bargaining agreements eligible for the deferred effective date under this paragraph (a)(2) unless the plan would be a plan maintained pursuant to one or more collective bargaining agreements under the principles applied under section 1017(c) of the Employee Retirement Income Security Act of 1974. See H.R. Rep. No. 1280, 93rd Cong. 2d Sess. 266 (1974).

(b) *Regulatory effective dates*—(1) *In general.* Except as otherwise provided in this section, §§ 1.410(b)–2 through 1.410(b)–9 apply to plan years beginning on or after January 1, 1994.

(2) *Plans of tax-exempt organizations.* In the case of plans maintained by organizations exempt from income taxation under section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), §§ 1.410(b)–2 through 1.410(b)–9 apply to plan years beginning on or after January 1, 1996, to the extent such plans are subject to section 410(b).

(c) *Compliance during transition period.* For plan years beginning before the effective date of these regulations, as set forth in paragraph (b) of this section, and on or after the statutory effective date as set forth in paragraph (a) of this section, a plan must be operated in accordance with a reasonable, good faith interpretation of section 410(b). Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 410(b) will generally be determined based on all of the relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. If a plan's classification has been determined by the Commissioner to be nondiscriminatory and there have been no significant changes in or omissions of a material fact, the classification will be treated as nondiscriminatory for the relevant plan year. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 410(b) if it is operated in accordance with the terms of §§ 1.410(b)–2 through 1.410(b)–9.

(d) *Effective date for governmental plans.* In the case of governmental plans described in section 414(d), including plans subject to section 403(b)(12)(A)(i) (nonelective plans) § 1.410(b)–2 through § 1.410(b)–10 apply to plan years beginning on or after January 1, 1996, or 90 days after the opening of the first legislative session beginning on or after January 1, 1996, of the governing body with authority to amend the plan, if that body does not meet continuously. Such plans are deemed to satisfy section 410(b) (and in the case of such plans that are not subject to section 403(b)(12)(A)(i), section 401(a)(3) as in effect on September 1, 1974) for plan years before that effective date. For purposes of this section, the governing body with authority to amend the plan is the legislature, board, commission, council, or other governing body with authority to amend the plan. See § 1.410(b)–2(d) and (e).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: August 23, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–21379 Filed 8–31–93; 4:02 pm]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with certain exceptions, of a proposed amendment to the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment concerns changes to the Illinois Administrative Code (IAC), Title 62, Mining, Chapter I. The amendment is intended to make the requirements of the Illinois program no less effective than the Federal program, to enhance the clarity of Illinois' regulations, and to meet State codification rules and guidelines.

EFFECTIVE DATE: September 3, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement, 511 West Capitol Avenue, suite 202, Springfield, Illinois 62704, Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program.
II. Submission of Amendments.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Information pertinent to the general background of the Illinois program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.15, 913.16, and 913.17.

II. Submission of Amendments

OSM notified Illinois of deficiencies in its program regulations which were determined to be less effective than the Federal regulation requirements for surface mining and reclamation operations in a **Federal Register** decision notice dated December 13, 1991 (56 FR 64986). Illinois identified additional regulations that required revisions for clarity and consistency with their Federal counterparts. Illinois is also taking this opportunity to reorganize its hearing regulations to more effectively carry out its responsibilities under the State Act. The amendment also contains nonsubstantive revisions to correct editorial and typographical errors and to accomplish necessary recodification.

In response to OSM's notification and its own initiatives, Illinois submitted proposed changes to its program by letter dated June 22, 1992 (Administrative Record No. IL–1192). The program amendment modifies the following rules of Title 62 of the IAC: 1701.Appendix A, 1702, 1705, 1761, 1764, 1772, 1773, 1774, 1775, 1777, 1778, 1779, 1780, 1783, 1784, 1785, 1800, 1816, 1817, 1827, 1843, 1845, 1846, and adds 62 IAC 1847 and 1848.

OSM announced receipt of the proposed amendment in the August 18, 1992, **Federal Register** (57 FR 37127) and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on September 17, 1992.

By letter dated April 27, 1993, (Administrative Record No. IL–1207), Illinois submitted revisions to its proposed amendment in response to issue letters prepared by OSM on September 2, and October 2, 1992, and in response to comments received from other agencies and individuals.

Illinois proposed modifications to its revisions of Title 62 of the IAC: 1701.Appendix A, 1702, 1761, 1773, 1774, 1777, 1778, 1780, 1784, 1800, 1816, 1817, 1827, 1843, 1845, 1847, and 1848.

OSM announces receipt of the proposed amendment in the May 17, 1993 **Federal Register** (58 FR 28804) and, in the same notice, reopened the comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The comment period closed on June 16, 1993.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17 are the Director's findings concerning the proposed amendment to the Illinois program submitted on June 22, 1992, and revised by submittal dated April 27, 1993. Revisions not addressed below either concern cross-references and paragraph notations that have been updated to reflect organizational or nomenclature changes or involve nonsubstantive wording changes.

REVISIONS TO ILLINOIS' REGULATIONS THAT ARE SUBSTANTIVELY IDENTICAL TO THE CORRESPONDING FEDERAL REGULATIONS

State regulation	Subject	Federal counterpart
62 IAC 1701.APP.A	Definitions "Office"	30 CFR 700.5.
62 IAC 1701.APP.A	Definitions "Public Park"	30 CFR 761.5.
62 IAC 1702.11(a)(2)	Incidental extraction	30 CFR 702.11(a)(2).
62 IAC 1702.11(f) (1), (2)	Incidental extraction	30 CFR 702.11(f) (1), (2).
62 IAC 1702.17(c) (1)–(3)	Incidental extraction	30 CFR 702.17(c) (1)–(3).
62 IAC 1705.21	Financial Interests	30 CFR 705.21.
62 IAC 1761.11(g)	Designated areas	30 CFR 761.11(g).
62 IAC 1761.12(b)(2)	Designated areas	30 CFR 761.12(b)(2).
62 IAC 1761.12(c)	Designated areas	30 CFR 761.12(d).
62 IAC 1761.12(d)(1)	Designated areas	30 CFR 761.12(e)(1).
62 IAC 1761.12(g)	Designated areas	30 CFR 761.12(h).
62 IAC 1764.19(d)	Areas unsuitable	30 CFR 764.19(c).
62 IAC 1772.12(e)(2)	Coal exploration	30 CFR 772.12(e)(2).
62 IAC 1773.13(a)(1) (E)	Permits	30 CFR 773.13(a)(1)(v).
62 IAC 1773.15(b)(1) (B)	Permits	30 CFR 773.15(b)(1)(ii).
62 IAC 1773.15(b)(3)	Permits	30 CFR 773.15(b)(3).
62 IAC 1773.15(c)(12)	Permits	30 CFR 773.15(c)(11).

REVISIONS TO ILLINOIS' REGULATIONS THAT ARE SUBSTANTIVELY IDENTICAL TO THE CORRESPONDING FEDERAL REGULATIONS—Continued

State regulation	Subject	Federal counterpart
62 IAC 1773.20(b)(2) (B)	Permits	30 CFR 773.20(b)(2)(ii).
62 IAC 1773.21(c)	Permits	30 CFR 773.21(c).
62 IAC 1774.11(c)	Permit revisions	30 CFR 774.11(c).
62 IAC 1774.15(f)	Permit renewals	30 CFR 774.15(f).
62 IAC 1779.19(b)	Permit applications	30 CFR 779.19(b).
62 IAC 1783.19(b)	Permit applications	30 CFR 783.19(b).
62 IAC 1785.13 (a), (g)	Permits for special categories	30 CFR 785.13 (a), (g).
62 IAC 1800.40(a)(3)	Bonding	30 CFR 800.40(a)(3).
62 IAC 1800.40(e)	Bonding	30 CFR 800.40(f).
62 IAC 1816.84(b)(2)	Performance standards	30 CFR 816.84(b)(2).
62 IAC 1817.84(b)(2)	Performance standards	30 CFR 817.84(b)(2).
62 IAC 1827.12(b)	Coal preparation plants	30 CFR 827.12(h).
62 IAC 1843.12(i)	State enforcement	30 CFR 843.12(i).
62 IAC 1843.13(c)	State enforcement	30 CFR 843.13(d).
62 IAC 1843.13(e)	State enforcement	43 CFR 4.1191.
62 IAC 1843.14(a)(2)	State enforcement	30 CFR 843.14(a)(2).
62 IAC 1843.15(a)	State enforcement	30 CFR 843.15(a).
62 IAC 1845.13(b)(4) (B), (C)	Civil penalties	30 CFR 845.13(b)(4)(ii) (A), (B).
62 IAC 1845.17(b)	Civil penalties	30 CFR 845.17(b).
62 IAC 1845.17(b)(2)(B)	Civil penalties	30 CFR 845.17(b)(2)(ii).
62 IAC 1845.17(c)	Civil penalties	30 CFR 845.17(c).
62 IAC 1845.18(a)(2)	Civil penalties	30 CFR 845.19(a).
62 IAC 1845.20(a)	Civil penalties	30 CFR 845.20(a).
62 IAC 1846.17(b)(1)	Individual civil penalties	30 CFR 846.17(b)(1).
62 IAC 1846.18(b)	Individual civil penalties	30 CFR 846.18(b).
62 IAC 1847.2	Administrative and judicial review	43 CFR 4.1102.
62 IAC 1847.3(b)	Administrative and judicial review	43 CFR 4.1363(a) (1)–(5).
62 IAC 1847.3(d)(e)	Administrative and judicial review	43 CFR 4.1364, 30 CFR 775.11(b)(1).
62 IAC 1847.3(g)	Administrative and judicial review	30 CFR 775.11(b)(5).
62 IAC 1847.3(h)	Administrative and judicial review	30 CFR 775.11(b)(4).
62 IAC 1847.3(k)	Administrative and judicial review	43 CFR 4.1367.
62 IAC 1847.4(a)	Administrative and judicial review	43 CFR 4.1161, 4.1162.
62 IAC 1847.4(b)	Administrative and judicial review	43 CFR 4.1163.
62 IAC 1847.4(d)	Administrative and judicial review	43 CFR 4.1164.
62 IAC 1847.4(f)	Administrative and judicial review	43 CFR 4.1167.
62 IAC 1847.4(h)	Administrative and judicial review	43 CFR 4.1171.
62 IAC 1847.4(l)	Administrative and judicial review	30 CFR 843.16(b).
62 IAC 1847.4(m)	Administrative and judicial review	30 CFR 845.18(d).
62 IAC 1847.4(o) (1), (2)	Administrative and judicial review	43 CFR 4.1260–1262.
62 IAC 1847.4(o)(3)	Administrative and judicial review	43 CFR 4.1263.
62 IAC 1847.4(o)(4)	Administrative and judicial review	43 CFR 4.1264(a).
62 IAC 1847.4(o)(5)	Administrative and judicial review	43 CFR 4.1266.
62 IAC 1847.4(o)(6)	Administrative and judicial review	30 U.S.C. 1275(c) (1)–(3).
62 IAC 1847.4(p)	Administrative and judicial review	30 U.S.C. 1276(a)(2).
62 IAC 1847.5(a)	Administrative and judicial review	30 CFR 845.19(a).
62 IAC 1847.5(b)	Administrative and judicial review	43 CFR 4.1152(a) (1), (3), (4).
62 IAC 1847.5(c)	Administrative and judicial review	43 CFR 4.1152(b) (1), (2).
62 IAC 1847.5(d)	Administrative and judicial review	43 CFR 4.1152(c).
62 IAC 1847.5(e)	Administrative and judicial review	43 CFR 4.1152(d).
62 IAC 1847.5(g)	Administrative and judicial review	43 CFR 4.1123(a).
62 IAC 1847.5(h)	Administrative and judicial review	30 CFR 845.18(d).
62 IAC 1847.5(k)	Administrative and judicial review	43 CFR 4.1155.
62 IAC 1847.5(l)(1)	Administrative and judicial review	43 CFR 4.1157 (b)(1), (b)(2).
62 IAC 1847.5(l)(2)	Administrative and judicial review	43 CFR 4.1157(c).
62 IAC 1847.5(l)(3)	Administrative and judicial review	43 CFR 4.1157(d).
62 IAC 1847.5(o)	Administrative and judicial review	30 U.S.C. 1276(a)(2).
62 IAC 1847.6(a)	Administrative and judicial review	43 CFR 4.1191.
62 IAC 1847.6(b)	Administrative and judicial review	43 CFR 4.1192.
62 IAC 1847.6(e)	Administrative and judicial review	43 CFR 4.1123(a).
62 IAC 1847.6(g)	Administrative and judicial review	43 CFR 4.1195(a).
62 IAC 1847.6(h)	Administrative and judicial review	43 CFR 4.1193.
62 IAC 1847.6(n)	Administrative and judicial review	30 U.S.C. 1276(a)(2).
62 IAC 1847.8(a)	Administrative and judicial review	43 CFR 4.1300–1301.
62 IAC 1847.8(b)	Administrative and judicial review	43 CFR 4.1302.
62 IAC 1847.8(c)	Administrative and judicial review	43 CFR 4.1303(a)(1).
62 IAC 1847.8(e)	Administrative and judicial review	43 CFR 4.1306.
62 IAC 1847.8(i)(1)	Administrative and judicial review	43 CFR 4.1307(a) (1)–(3).
62 IAC 1847.8(i)(2)	Administrative and judicial review	43 CFR 4.1307(b).
62 IAC 1847.8(j)	Administrative and judicial review	43 CFR 4.1308(a).
62 IAC 1847.8(m)	Administrative and judicial review	30 U.S.C. 1276(a)(2).

REVISIONS TO ILLINOIS' REGULATIONS THAT ARE SUBSTANTIVELY IDENTICAL TO THE CORRESPONDING FEDERAL REGULATIONS—Continued

State regulation	Subject	Federal counterpart
62 IAC 1847.9 (a), (b), (d)	Administrative and judicial review	30 CFR 800.40(f).
62 IAC 1847.9(i)	Administrative and judicial review	30 CFR 800.40(h).
62 IAC 1847.9(l)	Administrative and judicial review	30 U.S.C. 1276(a)(2).
62 IAC 1848.2 (a)–(f)	Procedure and practice	43 CFR 4.22 (a)–(f).
62 IAC 1848.3	Procedure and practice	43 CFR 4.23.
62 IAC 1848.5	Procedure and practice	43 CFR 4.1123.
62 IAC 1848.6	Procedure and practice	43 CFR 4.27(b)(1).
62 IAC 1848.8	Procedure and practice	43 CFR 4.1110.
62 IAC 1848.9(a)	Procedure and practice	43 CFR 4.1130.
62 IAC 1848.9(b)	Procedure and practice	43 CFR 4.1131.
62 IAC 1848.9(c)(1)	Procedure and practice	43 CFR 4.1132(a).
62 IAC 1848.9(c)(2)	Procedure and practice	43 CFR 4.1132(d).
62 IAC 1848.9(d)	Procedure and practice	43 CFR 4.1133.
62 IAC 1848.9(e)	Procedure and practice	43 CFR 4.1134.
62 IAC 1848.9(i)(1)	Procedure and practice	43 CFR 4.1137(a).
62 IAC 1848.9(i)(2)	Procedure and practice	43 CFR 4.1137(b).
62 IAC 1848.9(i)(4)	Procedure and practice	43 CFR 4.1137(c).
62 IAC 1848.9(i)(5)	Procedure and practice	43 CFR 4.1137(d).
62 IAC 1848.9(i)(6)	Procedure and practice	43 CFR 4.1137(g).
62 IAC 1848.9(i)(7)	Procedure and practice	43 CFR 4.1137(e).
62 IAC 1848.9(i)((8)(A)	Procedure and practice	43 CFR 4.1138(b).
62 IAC 1848.9(i)(8)(B)	Procedure and practice	43 CFR 4.1138(c).
62 IAC 1848.9(i)(8)(C)	Procedure and practice	43 CFR 4.1137(f).
62 IAC 1848.9(j)(1)	Procedure and practice	43 CFR 4.1139(a).
62 IAC 1848.9(j)(3)	Procedure and practice	43 CFR 4.1139 (a), (b).
62 IAC 1848.9(j)(4)	Procedure and practice	43 CFR 4.1139(c).
62 IAC 1848.9(k)	Procedure and practice	43 CFR 4.1140.
62 IAC 1848.9(l)	Procedure and practice	43 CFR 4.1141.
62 IAC 1848.9(m)	Procedure and practice	43 CFR 4.1135.
62 IAC 1848.9(n)	Procedure and practice	43 CFR 4.1136.
62 IAC 1848.20 (a), (b)	Procedure and practice	43 CFR 4.1125 (a), (b).
62 IAC 1848.20 (h), (i)	Procedure and practice	43 CFR 4.1125 (c), (d).
62 IAC 1848.21	Procedure and practice	43 CFR 4.1126.

Because the above proposed revisions are identical in meaning to the corresponding Federal rules, the Director finds that Illinois' proposed rules are no less effective than the Federal rules and he is removing the required amendments at 30 CFR 913.16(l), (m), and (n).

Revisions to Illinois' Regulations That Are not Substantively Identical to the Corresponding Federal Regulations

1. 62 IAC 1701.Appendix A—General Definitions

At 62 IAC 1701.Appendix A, Illinois is proposing to revise the definition of "land use" to specify allowable support facilities for the subcategories of "cropland," "pastureland," "forestry," "recreation," and "fish and wildlife habitat."

The Federal definition of "land use" at 30 CFR 701.5 does not include comparable provisions. Illinois clarified in the April 27, 1993, modifications to this proposed regulation change that applicants would still be required to indicate the type and extent of support facilities and that the State would evaluate the size of support facilities relative to the size of the areas being supported (Administrative Record No. IL–1207). Therefore, the Director finds the proposed revisions to the State definition of "land use" described herein no less effective than the Federal definition at 30 CFR 701.5.

Illinois is also proposing to revise the subcategory definitions of "developed water resources" and "undeveloped land or no current use or land management." Where appropriate, developed water resources are to be considered a joint or seasonal use with cropland, pastureland, forestry, recreation and fish and wildlife habitat. A post-mining designation of undeveloped land shall not be allowed for any land which is proposed to be affected by the mining operation.

The Federal definition of "land use" at 30 CFR 701.5 does not include comparable provisions. However, the Director finds the proposed revisions to the State definition of "land use" described herein do not render that definition no less effective than the Federal definition at 30 CFR 701.5.

2. 62 IAC Part 1761—Designated Areas

In Illinois, the regulatory authority does not make any determinations on whether a road may be relocated or closed if the applicant does not have valid existing rights (VER) and the public road authority does not make any determinations for mining activity within 100 feet of a road. To clarify this situation, Illinois is proposing to revise 62 IAC 1761.12(c)(4) by deleting the requirement that a determination be made by the Department of Mines and Minerals (DMM) and the public road authority that the interests of the affected public and landowners will be protected if a road is relocated or closed. Further, Illinois is proposing to delete the requirement that the public road authority (in conjunction with the DMM) determine that the interests of the affected public and landowners will be protected if mining is allowed within 100 feet of the outside right-of-way line of a road.

Illinois' regulation at 62 IAC 1761.12(c)(1) requires an applicant without VER to obtain necessary approvals of the public road authority for relocation or closure of a road. Illinois' regulation at 62 IAC 1761.12(c)(4) still requires the DMM to make a finding as to whether the interests of the affected public and landowners will be protected from the

proposed mining operations and to make a determination that the interests of the affected public and landowners will be protected if mining is allowed within 100 feet of the outside right-of-way line of a road. Therefore, the Director finds the proposed regulation at 62 IAC 1761.12(c)(4) no less effective than the Federal regulation at 30 CFR 761.12(d)(4) which prohibits or limits mining in public road areas.

3. 62 IAC Part 1773—Requirements for Permits and Permit Processing

At 62 IAC 1773.15(d), Illinois is proposing to delete its existing provision for performance bond submittal and add a provision for the expiration of written findings approving a permit application. Illinois' requirements for filing performance bonds appear in 62 IAC 1800.11(a). Illinois is stipulating that written findings issued by the State approving a permit application will expire within one year from the date of issuance if the permit has not been issued based upon the applicant's failure to submit permit fees or a performance bond. If written findings expire, no further action will be taken on the permit application and a new permit application must be submitted if the applicant chooses to resume permitting activity for the area in question.

Illinois clarified in the April 27, 1993, modifications to this proposed regulation change that a permit will not be issued unless fee and bond is paid in accordance with the regulations (Administrative Record No. IL–1207).

Although there is no precise Federal counterpart, the Director finds the proposed regulation at 62 IAC 1773.15(d) consistent with the Federal regulations at 30 CFR 773.15(d) and 777.17 which require that the permit applicant file a performance bond and pay permit fees before the permit is issued by the regulatory authority.

4. 62 IAC Part 1774—Revision, Renewal, and Transfer, Assignment, or Sale of Permit Rights

(a) At 62 IAC 1774.13(b)(2)(E), Illinois is proposing to allow that insignificant changes in land use be approved through its insignificant permit revision process on a case-by-case basis. Changes would be limited to 5 percent of the original total permit acreage, and the 5 percent limitation would be a cumulative total from permit issuance until final bond release.

In response to OSM's concern that alternative land use changes approved through the insignificant permit revision process would not require consultation with the landowner or the land management agency with jurisdiction over the lands, Illinois clarified in the April 27, 1993, modifications to this proposed regulation change that "the proposed regulation language clearly indicates that consultation with the landowner or the land management agency is required for approval" (Administrative Record No. IL–1207).

Since Illinois clarified that consultation with the landowner or land management agency is required for approval of alternative land use changes through both significant and insignificant permit revisions, the Director finds the proposed regulation at 62 IAC 1774.13(b)(2)(E) to be consistent with the Federal regulation at 30 CFR 774.13(b)(2).

(b) At 62 IAC 1774.13(d) (2), (4) and (5), Illinois is proposing to revise its definition of "incidental boundary revisions (IBRs)" to include those areas contiguous with shadow area acreage, with certain exceptions for isolated long-term support facilities. Non-contiguous IBRs are subject to Illinois' performance standards at 62 IAC 1817.182. The maximum size for acreage additions to approved non-contiguous IBR areas are based on the original boundary revision acreage, not the original permit acreage.

Illinois clarified in the April 27, 1993, modifications to this proposed regulation change that non-contiguous IBRs would be used as an alternative to minor underground facilities on a case-by-case basis and that it would require application of applicable performance standards if such minor facilities significantly impacted land, air, or water resources (Administrative Record No. IL–1207).

The Director finds the proposed regulation at 62 IAC 1774.13(d) (2), (4), and (5) to be consistent with the Federal regulation at 30 CFR 774.13(d) which requires that any extensions to the area covered by the permit, except incidental boundary revisions, be made by application for a new permit.

5. 62 IAC Part 1775—Administrative and Judicial Review of Decisions

Illinois is proposing to repeal 62 IAC part 1775. The regulations for the administrative and judicial review of decisions are consolidated into new 62 IAC Part 1847—Administrative and Judicial Review. The Director finds that the repeal of 62 IAC part 1775 does not render the State program less effective than the Federal regulations.

6. 62 IAC Part 1777—General Requirements for Permit Applications

At 62 IAC 1777.17, Illinois is proposing to revise its permit fee regulations to require that: (a) Permit fees are payable at the time of permit issuance and on the anniversary date of the permit; (b) permit fees submitted within 180 days of the date of the State's findings approving the application may be paid in accordance with 62 IAC 1777.17(b), and those fees not submitted within 180 days must be paid as a lump sum; and (c) failure to submit permit fees within one year of the issuance of the State's written findings approving the application will result in the expiration of the findings.

The Federal regulation at 30 CFR 777.17 requires that a permit application be accompanied by a fee, with the amount and method of payment to be determined by the regulatory authority. The Director finds the proposed regulation at 62 IAC 1777.17 to be consistent with the Federal regulation at 30 CFR 777.17.

7. 62 IAC Part 1778—Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information

(a) At 62 IAC 1778.15(a), Illinois is proposing to revise its requirements for permit application right-of-entry information to prohibit the submission of the actual documents upon which the applicant bases his or her legal right to enter and begin mining operations, in lieu of a description of said documents. The applicant may, however, be required to provide such information during the permitting process:

The Federal regulation at 30 CFR 778.15(a) requires that a permit application contain a description of the documents described above. The Director finds the proposed regulation at 30 CFR 1778.15(a) no less effective than the Federal regulation at 30 CFR 778.15(a).

(b) At 1778.15(e), Illinois is adding a provision requiring that an application in which the applicant claims to have valid existing rights to conduct mining operations within an area where mining is prohibited or limited, contain the necessary information and meet the requirements of 62 IAC 1778.16 (Areas Designated Unsuitable for Mining) and 62 IAC 1761.12 (Procedures).

The Federal regulations at 30 CFR 778.15 pertaining to right of entry information contain no comparable provision. However, the Director finds the proposed revision at 62 IAC 1778.15(e) to be consistent with the Federal regulations at 30 CFR 778.15 and 761.12.

8. 62 IAC Part 1780—Minimum Requirements for Reclamation and Operation Plan for Surface Mining Permit Application

(a) At 62 IAC 1780.21(b)(1)(B), Illinois is proposing to revise its requirements for ground water descriptions in permit applications by deleting the word "approximate" as a modifier of "rates of discharge or usage." Permit applicants will be required to provide actual rates of discharge or usage.

The Federal regulations at 30 CFR 780.21(b)(1) permit the submission of approximate rates of discharge or usage. The Director finds the proposed revision at 62 IAC 1780.21(b)(1)(B) no less effective than the Federal regulation at 30 CFR 780.21(b)(1).

(b) At 62 IAC 1780.38, Illinois is proposing to repeal its requirement that each permit application contain a detailed rehabilitation design plan for each siltation structure, diversion, impoundment, and treatment facility to be implemented and completed prior to abandoning the permit area.

The Federal regulations at 30 CFR part 780 pertaining to surface mining permit applications contain no comparable requirement. Therefore, the Director finds that the proposed deletion at 62 IAC 1780.38 does not render the State program less effective than the Federal regulations.

9. 62 IAC Part 1784—Minimum Requirements for Reclamation and Operation Plan for Underground Mining Permit Applications

(a) At 62 IAC 1784.14(b)(1)(B), Illinois is proposing to revise its requirements for ground water descriptions in permit applications by deleting the word "approximate" as a modifier of "rates of discharge or usage." Permit applicants will be required to provide actual rates of discharge or usage.

The Federal regulations at 30 CFR 784.14(b)(1) permit the submission of approximate rates of discharge or usage. The Director finds the proposed revision at 62 IAC 1784.14(b)(1)(B) no less effective than the Federal regulation at 30 CFR 784.14(b)(1).

(b) At 62 IAC 1784.27, Illinois is proposing to repeal its requirement that each permit application contain a detailed rehabilitation design plan for each siltation structure, diversion, impoundment, and treatment facility to be implemented and completed prior to abandoning the permit area.

The Federal regulations at 30 CFR part 784 pertaining to underground mining permit applications contain no comparable requirement. Therefore, the Director finds that the proposed deletion at 62 IAC 1784.27 does not render the State program less effective than the Federal regulations.

10. 62 IAC Part 1800—Bonding and Insurance Requirements

(a) At 62 IAC 1800.11(a), Illinois is proposing to require that failure to file a performance bond or other equivalent guarantee within one year of the issuance of written findings approving a permit application shall result in expiration of the written findings.

Illinois clarified in the April 27, 1993, modifications to this proposed regulation change that when the written findings expire, a permit will not be issued and a new application will be required to permit the area involved (Administrative Record No. IL–1207).

Although the Federal regulation at 30 CFR 800.11(a) does not include this provision, the Director finds that the proposed revision at 62 IAC 1800.11(a) does not render the State regulation less effective than the Federal regulation.

(b) At 62 IAC 1800.40 (e), (f), (g), and (h), Illinois is proposing to delete its existing provisions for bond release hearing procedures and judicial review. Illinois' regulations for bond release hearings and review are consolidated into new 62 IAC part 1847—Administrative and Judicial Review. Therefore, the Director finds that the proposed deletions at 62 IAC 1800.40 (e), (f), (g), and (h) do not render the State program less effective than the Federal regulations.

(c) At 62 IAC 1800.50(c) (2), (3), (4), and (5), Illinois is proposing to delete its existing provisions for bond forfeiture hearings and appeals and is adding a reference to the consolidated hearings and appeals regulations for bond forfeitures at new 62 IAC 1847.7. The Director finds that the proposed deletions at 62 IAC 1800.50(c) (2), (3), (4), and (5) do not render the State program less effective than the Federal regulations.

11. 62 IAC Part 1816—Performance Standards—Surface Mining Activities; 62 IAC Part 1817—Performance Standards—Underground Mining Activities

(a) At 62 IAC 1816.49(a)(9)(B) and 1817.49(a)(9)(B), Illinois is proposing to require that all impoundments be inspected at least quarterly during construction, provided at least one inspection is conducted for impoundments completed in less than one quarter.

The Director finds that the proposed revisions at 62 IAC 1816.49(a)(9)(B) and 1817.49(a)(9)(B) are no less effective than the Federal regulations at 30 CFR 816.49(a)(10)(i) and 817.49(a)(10)(i) which require regular inspections during construction.

(b) At 62 IAC 1816.49(c)(2) and 1817.49(c)(2), Illinois is proposing to revise its temporary impoundment regulations to allow an impoundment to have either: (a) A single spillway meeting a certain prescribed configuration; or (b) sufficient spillway capacity to safely pass or contain, or a combination of storage and spillway capacity, to safely control the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer that certain requirements will be met. Impounding structures relying on the second method shall be located where failure would not be expected to cause loss of life or serious property damage, with certain exceptions.

The Federal regulations at 30 CFR 816.49(a)(8)(i) and 817.49(a)(8)(i) allow single open-channel spillways under identical conditions and according to identical specifications. The Federal regulations at 30 CFR 816.49(c)(2) and 817.49(c)(2) permit the regulatory authority to approve an impoundment that relies primarily on storage to control the runoff from the design precipitation event under certain conditions. Therefore, the Director finds the proposed revisions at 62 IAC 1816.49(c)(2) and 1817.49(c)(2) are no less effective than the Federal regulations at 30 CFR 816.49(c)(2) and 817.49(c)(2).

(c) At 62 IAC 1816.116(a)(2)(C) and 1817.116(a)(2)(C), Illinois is proposing to revise its revegetation standards by specifying normal husbandry practices for the State. These include approved agricultural practices described in the Illinois Agronomy Handbook (Administrative Record No. IL–1192A), and those practices which are a part of an approved conservation plan subject to the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 1421 *et seq.*). Illinois clarified in the April 27, 1993, modifications to this proposed regulation that it will assess whether site specific activities are outside of normal husbandry practices which will require restarting the responsibility period (Administrative Record No. IL–1207). Illinois clarified that it will consider limited reseeding and associated fertilization and liming as non-augmentative on agricultural and non-agricultural lands where the area is small in relation to the watershed of the area. These will include areas where the surrounding vegetation has been established and temporary features such as sediment ponds, roads, and small

diversions were removed and revegetated under approved plans.

The Federal regulations at 30 CFR 816.116 (c)(2) and (c)(4) and 817.116 (c)(2) and (c)(4) permit the performance of normal husbandry practices during the period of responsibility without restarting the responsibility period if the State regulatory authority and OSM approves such practices. In the May 8, 1984, **Federal Register** (49 FR 19472), OSM considered a State program amendment from Missouri which would have clarified that roads, sediment ponds, diversions, and small stockpiles of soil and overburden would not be subject to a revegetation responsibility period distinct from that applicable to the permit area as a whole. OSM did not approve this amendment because it believed the proposal was inconsistent with the intent and purpose of sections 509, 519, and 520 of SMCRA. In addition to the Illinois proposed rule, OSM is considering State program amendments on this subject from Kentucky (58 FR 32283, June 9, 1993), Oklahoma (57 FR 12784, April 13, 1992) and Ohio (58 FR 17173, April 1, 1993). Oklahoma and Ohio presented additional information in support of their proposals that OSM had not considered when rendering its May 8, 1984, Missouri decision. In order to consider this information and its effect on OSM's interpretation of SMCRA and the Federal rules, OSM is deferring action on Illinois' proposed revisions at 62 IAC 1816.116(a)(2)(C) and 1817.116(a)(2)(C) to the extent that the proposed regulations, as clarified by Illinois' policy statement, consider the limited reseeding and fertilization of small areas including temporary structures such as sediment ponds, roads, and small diversions as non-augmentative and therefore not subject to a revegetation responsibility distinct from the rest of the area. In a separate **Federal Register** notice, OSM will request public comment on how SMCRA and the Federal rules should be interpreted regarding this issue.

(d) At 62 IAC 1816.116(a)(3) (A) and (B) and 1817.116(a)(3) (A) and (B), Illinois is proposing to revise its revegetation standards to require that the vegetative ground cover for areas previously disturbed by mining operations that were not reclaimed to State requirements or were otherwise redisturbed by mining operations shall be no less than the greater of 70 percent or the percentage of cover existing before redisturbance and shall be adequate to control erosion during the last year of the responsibility period. For areas to be developed for industrial, commercial, or residential uses less than 2 years after regrading, the ground cover shall not be less than 70 percent.

The Federal regulations at 30 CFR 816.116(b) (4) and (5) and 817.116(b) (4) and (5) require that vegetative ground cover for these categories not be less than that required to control erosion and, for previously mined areas, the ground cover shall also not be less than that which existed before redisturbance. 30 CFR 816.116(c)(2) and 817.116(c)(2) provide that the success standards for previously mined areas must be met during the last year of the responsibility period. The Director finds that the proposed regulations at 62 IAC 1816.116(a)(3) (A) and (B) and 1817.116(a)(3) (A) and (B) are no less effective than the Federal regulations at 30 CFR 816.116(b) (4) and (5) and 817.116(b) (4) and (5).

(e) At 62 IAC 1816.116(a)(3) (C) and (E), and 62 IAC 1817.116(a)(3) (C) and (E), Illinois is proposing to add additional requirements regarding revegetation standards. In subsection (a)(3)(C), Illinois is requiring that all cropland be maintained using proper management practices as specified in subsection (a)(2)(C) until the end of the responsibility period. In subsection (a)(3)(E), Illinois is requiring that all pasture, hayland, and grazing land be maintained using proper management practices as specified in subsection (a)(2)(C) until the end of the responsibility period.

Illinois clarified in the April 27, 1993, modifications to this proposed regulation change that the proposed revisions are intended to ensure that proper management (erosion control and vegetation maintenance) is continued during the responsibility period even if the production requirements have been met early in this period (Administrative Record No. IL–1207).

The Director finds the proposed regulations at 62 IAC 1816.116(a)(3)(C) and 62 IAC 1817.116(a)(3)(C) not inconsistent with the Federal regulations pertaining to revegetation success standards at 30 CFR 816.116(b) and 30 CFR 817.116(b). However, the Federal regulations at 30 CFR 816.116(b)(1) and 817.116(b)(1) require that for areas developed for use as grazing land or pasture land, ground cover and production of living plants on the revegetated area meet certain success standards approved by the regulatory authority. Illinois does not include ground cover success standards in its proposed regulations. By letter dated July 29, 1993 (Administrative Record No. IL–1218), Illinois stated that its ground cover standards for pasture and hayland which have not been previously disturbed by mining is intended to mean a minimum 90 percent ground cover for any 2 years, except the first year, of the responsibility period. Illinois also stated it will clarify the ground cover requirement in its next rulemaking.

The Director finds the proposed State regulations at 62 IAC 1816.116(a)(3)(E) and 1817.116(a)(3)(E) less effective than the Federal regulations at 30 CFR 816.116(b)(1) and 817.116(b)(1) and is requiring that Illinois amend its program to include success standards for ground cover for pasture and grazing land.

(f) At 62 IAC 1816.116(b)(2) and 1817.116(b)(2), Illinois is proposing to revise its regulations to require that a permittee report reclamation activities that initiate or alter the responsibility period or are specifically required by the State to evaluate a normal husbandry practice.

The Federal regulations contain no comparable requirement. However, the Director finds that the proposed revisions at 62 IAC 1816.116(b)(2) and 1817.116(b)(2) are consistent with the requirements of the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4).

(g) At 62 IAC 1816.117(a) (1) and (2) and 1817.117(a) (1) and (2), Illinois is proposing to revise its tree and shrub revegetation regulations to clarify that vegetation success standards are measured during the fifth year of the responsibility period or later in the responsibility period. Vegetative ground cover shall not be less than 70 percent during the last year of the responsibility period.

The Federal regulations at 30 CFR 816.116(b)(3)(iii) and 817.116(b)(3)(iii) require vegetative ground cover to be not less than that required to achieve the postmining land use. Both 62 IAC 1816.116(a)(2) and 1817.117(a)(2) already contain this requirement, which will not be compromised by the revisions proposed herein. The Director finds the proposed regulations at 62 IAC 1816.117(a) (1) and (2) and 1817.117(a) (1) and (2) to be no less effective than the Federal regulations at 30 CFR 816.116(b)(3) (ii) and (iii) and 30 CFR 817.116(b)(3) (ii) and (iii), and he is removing the required amendment at 30 CFR 913.16(p) because Illinois has revised its rules to clearly state that tree and shrub success must be achieved during the responsibility period.

(h) At 62 IAC 1816.117(a)(5) and 1817.117(a)(5), Illinois is proposing to revise its tree and shrub revegetation requirements to clarify that the repair of rills and gullies shall be limited to those approved as a normal conservation

practice under 62 IAC 1816.116(a)(2)(C), (D), and (E) and 62 IAC 1817.116(a)(2)(C), (D), and (E).

The Federal regulations contain no comparable provision. However, the Director finds that the proposed revisions at 62 IAC 1816.117(a)(5) and 1817.117(a)(5) are consistent with the requirements of the Federal regulations at 30 CFR 1816.116(c)(4) and 1817.116(c)(4) pertaining to selective husbandry practices.

(i) At 62 IAC 1816.117(d)(6) and 1817.117(d)(6), Illinois is proposing to delete its 70 percent vegetative ground cover success standard. This provision is included in the proposed revisions to 62 IAC 1816.117(a)(3)(A) and (B) and 1817.117(a)(3)(A) and (B) as discussed in Finding 11(d) and in the proposed revisions to 62 IAC 1816.117(a)(2) and 1817.117(a)(2) as discussed in Finding 11(g).

The Director finds that the proposed deletion does not render the State program less effective than the Federal regulations and he is removing the required amendment at 30 CFR 913.16(q) since, by deleting 62 IAC 1816.117(d)(6) and 1817.116(d)(6), Illinois has made it clear that the 70% ground cover success standard does not apply to previously unmined pasture and/or hayland or grazing land.

(j) At 62 IAC 1816.151(b) and 1817.151(b), Illinois is proposing to revise its requirements for primary roads. Each primary road embankment shall be shown to have a minimum static factor of safety of 1.3, or shall be designed in compliance with certain specified design factors.

The Federal regulations at 30 CFR 816.151(b) and 817.151(b) require compliance with the minimum static factor of 1.3. The Federal regulations at 30 CFR 780.37(c) and 784.24(c) allow regulatory authorities to establish engineering design standards for primary roads in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3. OSM conducted a technical review of Illinois' proposed design standards for primary roads and found them to be acceptable (Administrative Record No. IL–1202A). The Director finds the proposed regulations at 1816.151(b) and 1817.1151(b) to be no less effective than the Federal regulations at 30 CFR 816.151(b) and 1817.151(b) and he is removing the required amendment at 30 CFR 913.16(r).

(k) At 62 IAC 1817.182(d), Illinois is revising its regulations for minor underground mine facilities to require compliance with its regulations for primary roads at 62 IAC 1817.151.

There is no comparable Federal regulation. However, the Director finds that the proposed revisions at 62 IAC 1817.182(d) are not inconsistent with SMCRA and the Federal regulations.

12. 62 IAC Part 1843—State Enforcement

(a) At 62 IAC 1843.13(e)–(k), Illinois is proposing to delete its existing regulations for show cause hearings and judicial review.

Illinois' regulations for show cause hearings and review are consolidated in new 62 IAC part 1847—Administrative and Judicial Review. The Director finds that the deletions at 62 IAC 1843.13(e)–(k), with the exception of subsection (j) which is recodified as subsection (f), do not render the State program less effective than the Federal regulations.

(b) Illinois is proposing to repeal the following regulations: 62 IAC 1843.16—Formal Review of Citations, 62 IAC 1843.17—Temporary Injunctive Relief, 62 IAC 1843.20—Intervention, and 62 IAC 1843.21—Discovery. Illinois' regulations for citation hearings and temporary relief are consolidated in new 62 IAC part 1847—Administrative and Judicial Review. Illinois' regulations for intervention and discovery are consolidated in new 62 IAC part 1848—Procedure and Practice. The Director finds that the deletions of 62 IAC 1843.16, 1843.17, 1843.20 and 1843.21 do not render the State program less effective than the Federal regulations.

13. 62 IAC Part 1845—Civil Penalties

(a) At 62 IAC 1845.12(c), Illinois is proposing to revise its penalty assessment regulations to require that a penalty not be assessed for a notice of violation if an assessment of less than $1,100 is derived in accordance with section 1845.13, unless 62 IAC 1845.12(d) applies. At 62 IAC 1845.12(d), Illinois is proposing to revise its regulations to require that if the assessment is below $1,100, the penalty shall be assessed if it is the permittee's second or more related violation within a 12-month period.

The Federal regulations at 30 CFR 845.12(c) permit OSM to assess a penalty after considering the following factors: history of previous violations, seriousness, negligence, and good faith in attempting to achieve compliance. The Director finds the proposed revision at 62 IAC 1845.12(c) no less effective than the Federal regulation at 30 CFR 845.12(c). However, because Illinois must consider all civil penalty criteria, not just history of previous violations, in determining whether to require payment of a penalty of less than $1,100, the Director finds the proposed revision at 62 IAC 1845.12(d) less effective than the Federal regulation at 30 CFR 845.12(c). He is, therefore, requiring that the State amend its program to consider the factors listed in 62 IAC 1845.13(b) in determining whether to assess a penalty.

(b) At 62 IAC 1845.13(b)(4) (A) and (D), Illinois is proposing to revise its civil penalty assessment regulations to require the reduction of the proposed penalty by up to $500 based upon the degree of good faith in attempting to achieve rapid compliance. Good faith credit will not be given for violations administrative in nature.

The Federal regulations at 30 CFR 845.13(b)(4) pertaining to civil penalties contain no comparable provisions. However, the Director finds the proposed revisions at 62 IAC 1845.13(b)(4) (A) and (D) to be consistent with the Federal regulations at 30 CFR 845.13(b)(4).

(c) At 62 IAC 1845.18(c), Illinois is proposing to delete its penalty assessment hearing provisions. Illinois' regulations for civil penalty assessment hearings are consolidated in new 62 IAC part 1847—Administrative and Judicial Review. The Director finds that the deletions at 62 IAC 1845.18(c) do not render the State program less effective than the Federal regulations.

(d) At 62 IAC 1845.19, Illinois is proposing to repeal its procedures for hearings and judicial review pertaining to citations and civil penalty assessments. Illinois' regulations for citation and civil penalty assessment hearings and judicial review are consolidated in new 62 IAC part 1847—Administrative and Judicial Review, and in 62 IAC 1848.7—Pre-Hearing Conferences. The Director finds that the deletions at 62 IAC 1845.19 do not render the State program less effective than the Federal regulations.

14. 62 IAC Part 1847—Administrative and Judicial Review

(a) At new 62 IAC part 1847, Illinois is proposing to consolidate its regulations for administrative and judicial reviews. At 62 IAC 1847.1, Illinois is proposing to define the scope of the regulations. The Federal regulations at 43 CFR part 4 pertaining to hearings and appeals contain no comparable provisions. The Director finds the proposed regulation at 62 IAC 1847.1 not inconsistent with the general Federal provisions.

(b) At 62 IAC 1847.3(a), Illinois is proposing to establish procedures for permit hearings. The procedures also apply to conflict of interest hearings, review of valid existing rights determinations, review of incidental

coal extraction exemption determinations, and hearings related to rescission of improvidently issued permits.

The Federal regulations provide for administrative hearings at 43 CFR 4.1360–1369 for permitting issues, at 30 CFR 705.21 for conflict of interest issues, at 30 CFR 775.11 for valid existing rights issues, at 30 CFR 702.11(f) for exemption determinations, and at 43 CFR 4.1280–1286 for rescission of improvidently issued permits. The Illinois counterpart to 30 CFR part 775 is being repealed herein and replaced by 62 IAC 1847.3, which, as explained below, is being approved by the Director in this final rule. Therefore, the Director finds that the use by Illinois of its proposed 62 IAC 1847.3 for hearings on valid existing rights issues is no less effective than the Federal regulations at 30 CFR 775.11. The use of 62 IAC 1847.3 for hearings on incidental coal extraction exemptions and conflict of interest determinations is consistent with 30 CFR 702.11(f) and 705.21, respectively, both of which allow the states to use their own hearings procedures for these determinations. The Director finds the proposed regulation at 62 IAC 1847.3 to be consistent with 43 CFR 4.1280–1286 for purposes of hearings on rescissions of improvidently issued permits. Finally, for hearings on mining permit decisions generally, the Director finds that 62 IAC 1847.3(a) is substantively identical to 43 CFR 4.1362(a).

(c) At IAC 1847.3(c), Illinois is proposing to allow for a pre-hearing conference. The Federal regulations at 43 CFR 4.1360–4.1369 contain no comparable provisions. However, the Director finds that the proposed regulation at 62 IAC 1847.3(c) adds clarity and specificity to the State program and is not inconsistent with SMCRA or the Federal regulations.

(d) At 62 IAC 1847.3(f), Illinois is proposing to require that a stenographic recording be made of all formal hearings reviewing permitting decisions. These provisions also require that the record of the hearing be maintained and made available to the public for at least 60 days after the issuance of the Director's decision.

Under the Illinois Administrative Review Law, 735 ILCS 5/3–101 through 5/3–112, a party seeking judicial review of an agency decision has 35 days from the date of service of the decision to appeal. Since the hearing record will be maintained for a period which exceeds the appeal period, the Director finds that these provisions are reasonable. Therefore, the Director finds that they are consistent with 30 CFR 775.11(b)(3)(ii) which requires that a verbatim record be made of each public hearing on decisions on permits and are approved to the extent that they require retention and public availability of the hearing record for a period at least as long as the time allowed for filing appeals of agency decisions.

(e) At 62 IAC 1847.3 (i) and (j), Illinois is proposing to establish procedures for the filing of written exceptions to a hearing officer's decision, time limits for responses to exceptions, and time limits for issuance by the Department of Mines and Minerals (DMM) of a final administrative decision.

The Federal regulations contain no comparable provisions. However, the Director finds that the proposed regulations at 62 IAC 1847.3 (i) and (j) add clarity and specificity to the State program and are not inconsistent with SMCRA or the Federal regulations.

(f) At 62 IAC 1847.3(l) (1) and (2), Illinois is proposing to establish procedures for the judicial review of permit decisions. If the hearing officer fails to act within certain prescribed time limits, a person may request judicial review of the Department's final administrative decision.

The Federal regulations at 30 CFR 775.13(a)(2) also grant judicial review if the regulatory authority, not just the hearing officer, fails to act within the applicable time limits. The Director finds the proposed regulations at 62 IAC 1847.3(l) (1) and (2) less effective than the Federal regulations at 30 CFR 775.13(a)(2) and is requiring that Illinois amend its program to grant judicial review if the regulatory authority fails to act within applicable time limits.

(g) At 62 IAC 1847.3(l)(3), Illinois is clarifying that the judicial review of permit decisions does not limit rights established in Section 8.05 of the State Act. The Director finds the proposed regulation at 62 IAC 1847.3(l)(3) no less effective than the Federal regulation at 30 CFR 775.13(b) which states that the availability of judicial review does not limit the operation of rights established in section 520 of SMCRA.

(h) At 62 IAC 1847.4(c), Illinois is proposing to require that a civil penalty subsequently assessed for a notice of violation or a cessation order for which a hearing was requested be forwarded for placement in escrow in order to continue the review proceedings.

Illinois clarified in the April 27, 1993, modifications to this proposed regulation change that the rule is intended to clarify that in those situations where a notice of violation or cessation order is contested prior to a penalty being assessed, pre-payment of the subsequently assessed penalty is a prerequisite to continuation of the review procedures (Administrative Record No. IL–1207).

Although the special rules applicable to surface coal mining citation hearings and appeals at 43 CFR 4.1160–1171 do not contain this requirement, the Director finds the proposed State regulation at 62 IAC 1847.4(c) not inconsistent with section 518(c) of SMCRA, which requires waiver of all legal rights to contest the violation or the amount of the penalty for failure to make timely payment of the proposed assessment in full.

(i) At 62 IAC 1847.4 (e) and (n), Illinois is proposing to impose certain procedures pertaining to pre-hearing conferences. Illinois is also clarifying the terms of summary dispositions. The Federal regulations contain no comparable provisions. However, the Director finds that the proposed regulations at 62 IAC 1847.4 (e) and (n) add clarity and specificity to the State program and are not inconsistent with SMCRA or the Federal regulations.

(j) At 62 IAC 1847.4(g), Illinois is proposing to require that a stenographic recording be made of all formal citation hearings. These provisions also require that the record of the hearing be maintained and made available to the public for at least 60 days after the issuance of the Director's decision.

Under the Illinois Administrative Review Law, 735 ILCS 5/3–101 through 5/3–112, a party seeking judicial review of an agency decision has 35 days from the date of service of the decision to appeal. Since the hearing record will be maintained for a period which exceeds the appeal period, the Director finds that these provisions are reasonable. Therefore, although there is no Federal counterpart to the proposed regulations at 62 IAC 1847.4(g), the Director finds that they are consistent with 30 CFR 840.13(c) and is approving the regulations to the extent that they require retention and public availability of the hearing record for a period at least as long as the time allowed for filing appeals of agency decisions.

(k) At 62 IAC 1847.4(i), (j), and (k), Illinois is proposing to establish procedures for the filing of written exceptions to a hearing officer's decision, time limits for a hearing officer's decision, time limits for responses to exceptions, and time limits for issuance by the DMM of a final administrative decision.

The Federal regulations contain no comparable provisions. However, the Director finds that the proposed regulations at 62 IAC 1847.4(i), (j), and (k) add clarity and specificity to the

State program and are not inconsistent with SMCRA or the Federal regulations.

(l) At 62 IAC 1847.5(f) and (l) Illinois is proposing to allow for a pre-hearing conference and to impose certain time restrictions for procedures pertaining to hearing officer decisions after civil penalty assessment hearings. The Federal regulations contain no comparable provisions.

However, the Director finds that the proposed regulations at 62 IAC 1847.5 (f) and (l) add clarity and specificity to the State program and are not inconsistent with SMCRA or the Federal regulations.

(m) At 62 IAC 1847.5(i), Illinois is proposing to establish procedures for summary dispositions when a person against whom a proposed civil penalty is assessed fails to appear at a hearing.

While the proposed language is substantively identical to the Federal regulation at 43 CFR 4.1156(c), Illinois does not have counterparts to 43 CFR 4.1156 (a) and (b) which provide for the referral of a case to an assessment officer upon a person's failure to comply with any prehearing order. The Director finds that while the Illinois program does not contain provisions for referral back to the assessment officer, Illinois does provide recourse for failure to comply with a hearing officer's order at 62 IAC 1848.12, 1848.19, and 1848.22. Therefore, the Director finds the proposed regulation at 62 IAC 1847.5(i) to be no less effective than the Federal regulation at 43 CFR 4.1156.

(n) At 62 IAC 1847.5(j), Illinois is proposing to require that a stenographic record be made of all formal hearings reviewing civil penalty assessments. These provisions also require that the record of the hearing be maintained and made available to the public for at least 60 days after the issuance of the Director's decision.

Under the Illinois Administrative Review Law, 735 ILCS 5/3–101 through 5/3–112, a party seeking judicial review of an agency decision has 35 days from the date of service of the decision to appeal. Since the hearing record will be maintained for a period which exceeds the appeal period, the Director finds that these provisions are reasonable.

Therefore, although there are no Federal counterparts to the proposed regulations at 62 IAC 1847.5(j), the Director finds that they are consistent with 30 CFR 840.13(c) and are approved to the extent that they require retention and public availability of the hearing record for a period of at least as long as the time allowed for filing appeals of agency decisions.

(o) At 62 IAC 1847.5 (m) and (n), Illinois is proposing to establish procedures for the filing of written exceptions to a hearing officer's decision, time limits for a hearing officer's decision, time limits for responses to exceptions, and time limits for issuance by the DMM of a final administrative decision.

The Federal regulations contain no comparable provision. However, the Director finds that the proposed regulations at 62 IAC 1847.5 (m) and (n) add clarity and specificity to the State program and are not inconsistent with SMCRA or the Federal regulations.

(p) At 62 IAC 1847.6 (c), (d), (e), and (m), Illinois is proposing to establish procedures for show cause hearings and pre-hearing conferences and to impose certain time restrictions for filing answers or requests for hearings. The Federal regulations contain no comparable provisions. However, the Director finds that the proposed regulations at 62 IAC 1847.6 (c),(d),(e), and (m) add clarity and specificity to the State program and are not inconsistent with the SMCRA or the Federal regulations.

(q) At 62 IAC 1847.6(f), Illinois is proposing to establish settlement agreement provisions for permit suspension or termination proceedings. The language of subsection (f) is substantively identical to 30 CFR 845.18(d)(1), except that the Federal rule pertains to civil penalty assessment proceedings.

While there is no Federal counterpart provision pertaining to settlement of permit suspension or revocation proceedings, the Director finds that the proposed regulation at 62 IAC 1847.6(f) will not compromise the public's right to participate in enforcement proceedings in accordance with 30 CFR 840.15, so long as any intervenors to the suspension or revocation proceedings are permitted to participate in settlement negotiations. Therefore, to the extent discussed herein, the Director finds that the proposed regulation at 62 IAC 1847.6(f) is consistent with the Federal regulations at 30 CFR 840.13(c).

(r) At 62 IAC 1847.6(i), Illinois is proposing to require that a stenographic recording be made of all formal hearings reviewing show cause orders. These provisions also require that the record of the hearing be maintained and made available to the public for at least 60 days after the issuance of the Director's decision.

Under the Illinois Administrative Review Law, 735 ILCS 5/3–101 through 5/3–112, a party seeking judicial review of an agency decision has 35 days from the date of service of the decision to appeal. Since the hearing record will be maintained for a period which exceeds the appeal period, the Director finds that these provisions are reasonable. Therefore, although there are no Federal counterparts to the proposed regulations at 62 IAC 1847.6(i), the Director finds that they are consistent with 30 CFR 840.13(c) and are approved to the extent that they require retention and public availability of the hearing record for a period at least as long as the time allowed for filing appeals of agency decisions.

(s) At 62 IAC 1847.6(j), Illinois is proposing to establish time limits and procedures for a hearing officer's issuance and service of a proposed decision after a hearing reviewing show cause orders. The proposed decision will consist of proposed written findings of fact, conclusions of law, an order adjudicating the hearing request, and a determination as to whether a pattern of violations exists.

The Federal regulations at 43 CFR 4.1194(c) set forth the provisions for the administrative review of suspensions or revocations of permits. Although the Federal regulations do not contain the specific requirements proposed at 62 IAC 1847.6(j), the Director finds the proposed regulations add clarity and specificity to the State program and are not inconsistent with SMCRA or the Federal regulations.

(t) At 62 IAC 1847.6 (k) and (l), Illinois is proposing to establish procedures for the filing of written exceptions to a hearing officer's decision, time limits for a hearing officer's decision, time limits for responses to exceptions, and time limits for issuance by the DMM of a final administrative decision.

The Federal regulations contain no comparable provisions, However, the Director finds that the proposed regulations at 62 IAC 1847.6 (k) and (l) add clarity and specificity to the State's program and are not inconsistent with SMCRA or the Federal regulations.

(u) At 62 IAC 1847.7, Illinois sets forth proceedings for bond forfeiture hearings and includes provisions pertaining to deadlines for requesting a hearing, hearing location, pre-hearing conferences, notice of hearing, settlement agreements, summary dispositions, burden of proof, record of hearing, hearing officer's proposed decision, exceptions to proposed decision, final administrative decision, and judicial review.

The Federal regulations contain no comparable provisions. However, the Director finds that the proposed regulations at 62 IAC 1847.7 satisfy the public participation requirements of 30 CFR 840.15 and are, therefore, consistent with 30 CFR 800.50.

(v) At 62 IAC 1847.8(d), Illinois is proposing to permit any party to an individual civil penalty hearing to request a pre-hearing conference.

The Federal regulations contain no comparable provision. However, the Director finds that the proposed regulation at 62 IAC 1847.8(d) adds clarity and specificity to the State program and is not inconsistent with SMCRA or the Federal regulations.

(w) At 62 IAC 1847.8(f), Illinois is proposing to establish settlement agreement provisions for the individual civil penalty assessment proceedings. The language of subsection (f) is substantively identical to 30 CFR 845.18(d)(1), except the Federal rule pertains to civil penalty assessment proceedings rather than individual civil penalty assessment proceedings.

While there is no Federal counterpart provision pertaining to individual civil penalty assessment proceedings, the Director finds that the proposed regulation at 62 IAC 1847.8(f) will not compromise the public's right to participate in enforcement proceedings in accordance with 30 CFR 840.15, so long as any intervenors to the assessment proceedings are permitted to participate in settlement negotiations. Therefore, to the extent discussed herein, the Director finds that the proposed regulation at 62 IAC 1847.8(f) is consistent with 30 CFR 840.13(c).

(x) At 62 IAC 1847.8(g), Illinois is proposing to establish procedures for summary disposition of individual civil penalty (ICP) hearings where the person assessed the ICP fails to appear at the hearing. The Federal regulations contain no precisely comparable provisions for ICP hearings but do contain comparable summary disposition procedures for civil penalty assessment hearings at 43 CFR 4.1156 and permit suspension and revocation hearings at 43 CFR 4.1195. Illinois' decision to allow summary dispositions of ICP hearings will not render its program inconsistent with SMCRA or the Federal regulations. The Director finds that the proposed regulations at 62 IAC 1847.8(g) can be approved.

(y) At 62 IAC 1847.8(h), Illinois is proposing to require that a stenographic recording be made of all formal hearings reviewing individual civil penalty assessments. These provisions also require that the record of the hearing be maintained and made available to the public for at least 60 days after the issuance of the Director's decision.

Under the Illinois Administrative Review Law, 735 ILCS 5/3–101 through 5/3–112, a party seeking judicial review of an agency decision has 35 days from the date of service of the decision to appeal. Since the hearing record will be maintained for a period which exceeds the appeal period, the Director finds that these provisions are reasonable. Therefore, although there are no Federal counterparts to the proposed regulations at 62 IAC 1847.8(h), the Director finds that they are consistent with 30 CFR 840.13(c) and is approving them to the extent that they require retention and public availability of the hearing record for a period of at least as long as the time allowed for filing appeals of agency decisions.

(z) At 62 IAC 1847.8 (k) and (l), Illinois is proposing to establish procedures for filing written exceptions to a hearing officer's decision, time limits for a hearing officer's decision, time limits for responses to exceptions, and time limits for issuance by the DMM of a final administrative decision.

The Federal regulations contain no comparable provisions. However, the Director finds that the proposed regulations at 62 IAC 1847.8 (k) and (l) add clarity and specificity to the State program and are not inconsistent with SMCRA or the Federal regulations.

(aa) At 62 IAC 1847.9(c), Illinois is proposing to establish procedures for pre-hearing conferences prior to bond release hearings. The Federal regulations contain no comparable provision. However, the Director finds that the proposed regulation at 62 IAC 1847.9(c) adds clarity and specificity to the State program and is not inconsistent with SMCRA or the Federal regulations.

(bb) At 62 IAC 1847.9(e), Illinois is proposing to establish settlement agreement provisions for bond release proceedings. The language of subsection (e) is substantively identical to 30 CFR 845.18(d)(1), except the Federal rule pertains to civil penalty assessment proceedings.

While there is no Federal counterpart provision pertaining to settlement of bond release proceedings, the Director finds that the proposed regulation at 62 IAC 1847.9(e) is not inconsistent with SMCRA or the Federal regulations.

(cc) At 62 IAC 1847.9(f), Illinois proposes that a person who fails to appear at a bond release hearing will be deemed to have waived his right to a hearing.

The Federal regulations contain no comparable provision. However, the Director finds that the proposed regulation at 62 IAC 1847.9(f) is not inconsistent with any provision of SMCRA or the Federal regulations.

(dd) At 62 IAC 1847.9(g), Illinois proposes that any person seeking to reverse the DMM's proposed decision to release a bond shall have the burden of proving that the DMM's decision was clearly erroneous.

The Federal regulations contain no explicit burden of proof counterpart for bond release proceedings. However, the generally accepted standard of proof in administrative proceedings is proof by a preponderance of the evidence. So long as the Illinois proposed rule does not alter this standard, it is acceptable. Therefore, the Director finds the proposed regulation at 62 IAC 1847.9(g) to be no less effective than the Federal regulations at 30 CFR 800.40(f) to the extent that it requires proof by a preponderance of the evidence, that the DMM's decision was clearly erroneous.

(ee) At 62 IAC 1847.9(h), Illinois is proposing to require that a stenographic recording be made of all formal hearings reviewing bond releases. These provisions also require that the record of the hearing be maintained and made available to the public for at least 60 days after the issuance of the Director's decision.

Under the Illinois Administrative Review Law, 735 ILCS 5/3–101 through 5/3–112, a party seeking judicial review of an agency decision has 35 days from the date of service of the decision to appeal. Since the hearing record will be maintained for a period which exceeds the appeal period, the Director finds that these provisions are reasonable. Therefore, the Director finds that they are consistent with 30 CFR 800.40(g) which requires that a verbatim record be made of each public hearing on bond release decisions and are approved to the extent that they require retention and public availability of the hearing record for a period at least as long as the time allowed for filing appeals of agency decisions.

(ff) At 62 IAC 1847.9 (j) and (k), Illinois is proposing to establish procedures for filing written exceptions to a hearing officer's decision, time limits for a hearing officer's decision, time limits for responses to exceptions, and time limits for issuance by the DMM of a final administrative decision.

The Federal regulations contain no comparable provisions. However, the Director finds that the proposed regulations at 62 IAC 1847.9 (j) and (k) add clarity and specificity to the State program and are not inconsistent with SMCRA or the Federal regulations.

15. 62 IAC Part 1848—Procedure and Practice

(a) At new 62 IAC part 1848, Illinois is proposing to consolidate its regulations pertaining to procedure and practice. At 1848.1, Illinois is proposing to define the scope and purpose of the regulations.

The Federal regulations at 43 CFR part 4 pertaining to procedure and practice contain no comparable provisions. However, the Director finds the proposed regulations at 62 IAC 1848.1 have no substantive impact on the Illinois program and are, therefore, not inconsistent with SMCRA or the Federal regulations.

(b) At 62 IAC 1848.2(g), Illinois is proposing to establish the address for filing petitions for review and requests for hearing. The Federal regulations at 43 CFR 4.22 pertaining to documents contain no comparable provision. However, the Director finds the proposed regulation at 62 IAC 1848.2(g) not inconsistent with SMCRA or the Federal regulations.

(c) At 62 IAC 1848.7, Illinois is proposing to establish procedures for pre-hearing conferences. A pre-hearing conference may be requested for any type of proceeding under 62 IAC part 1847. The Federal regulations at 43 CFR 4.1121(b) contain similar provisions for pre-hearing conferences. Therefore, the Director finds the proposed regulations at 62 IAC 1848.7 consistent with the Federal regulations at 30 CFR 840.13(c).

(d) At 62 IAC 1848.9(f), (g), and (h), Illinois is proposing to establish discovery procedures with regard to: Stipulations, effect of disclosure, and attempts to resolve discovery differences. The Federal regulations at 43 CFR 4.1130–4.1141 contain no comparable provisions. However, the Director finds the proposed regulations at 62 IAC 1848.9 (f), (g), and (h) to be consistent with the general Federal provisions at 43 CFR 4.1130–4.1141.

(e) At 62 IAC 1848.9(i)(3), Illinois is proposing to establish procedures for discovery and evidentiary depositions. The Federal regulations at 43 CFR 4.1137 and 4.1138 pertaining to depositions contain no comparable provisions. However, the Director finds the proposed regulations at 62 IAC 1848.9(i) to be not inconsistent with SMCRA or the Federal regulations at 43 CFR 4.1137 and 4.1138.

(f) At 62 IAC 1848.9(j)(2), (5), and (6), Illinois sets forth certain requirements with regard to written interrogatories. These requirements include: the duty of an attorney directing interrogatories, the option to produce documents as answers to interrogatories, and the use of interrogatory answers. While these provisions have no precise Federal counterparts, the Director finds them to be consistent with 43 CFR 4.1139.

(g) At 62 IAC 1848.11, Illinois is proposing to establish procedures for expert witnesses. The Federal regulations at 43 CFR part 4 pertaining to procedure and practice contain no comparable provisions. However, the Director finds the proposed regulations at 62 IAC 1848.11 to be not inconsistent with SMCRA or the Federal regulations.

(h) At 62 IAC 1848.12, Illinois is proposing to establish procedures for motions. The Federal regulations at 43 CFR part 4 pertaining to procedure and practice contain no comparable provisions. However, the Director finds the proposed regulations at 62 IAC 1848.12 to be not inconsistent with SMCRA or the Federal regulations.

(i) At 62 IAC 1848.13, Illinois is proposing to establish procedures for the consolidation of proceedings. The Federal regulations at 43 CFR part 4 pertaining to procedure and practice contain no comparable provisions. However, the Director finds the proposed regulations at 62 IAC 1848.13 to be not inconsistent with SMCRA or the Federal regulations.

(j) At 62 IAC 1848.15, Illinois is proposing to establish procedures for rules of evidence and official notice. The Federal regulations at 43 CFR part 4 pertaining to procedure and practice contain no comparable provisions. However, the Director finds the proposed regulations at 62 IAC 1848.15 to be not inconsistent with SMCRA or the Federal regulations.

(k) At 62 IAC 1848.16, Illinois is proposing to establish regulations for the powers of hearing officers. The Federal regulations at 43 CFR 4.1120(a) set forth the powers of the administrative law judges, who are the Federal counterparts to the Illinois hearing officers. The Director finds the proposed regulations at 62 IAC 1848.16 contain substantively the same provisions as and are therefore no less effective than the Federal regulations at 43 CFR 4.1121.

(l) At 62 IAC 1848.17, Illinois is proposing to establish regulations for the disqualification of a hearing officer. The Federal regulations at 43 CFR part 4 pertaining to procedure and practice contain no comparable provisions. However, the Director finds the proposed regulations at 62 IAC 1848.17 to be not inconsistent with SMCRA or the Federal regulations.

(m) At 62 IAC 1848.18, Illinois is proposing to establish regulations for the postponement or continuance of a hearing.

The Federal regulations at 43 CFR part 4 pertaining to procedure and practice contain no comparable provisions. However, the Director finds the proposed regulations at 62 IAC 1848.18 to be not inconsistent with SMCRA or the Federal regulations.

(n) At 62 IAC 1848.19, Illinois is proposing to establish regulations for failure to state a claim. The Federal regulations at 43 CFR part 4 pertaining to procedure and practice contain no comparable provisions. However, the Director finds the proposed regulations at 62 IAC 1848.19 to be not inconsistent with SMCRA or the Federal regulations.

(o) At 62 IAC 1848.20 (c), (d), (e), (f), and (g), Illinois is proposing to establish regulations for summary decisions. The Federal regulations at 43 CFR 4.1125 pertaining to summary decisions contain no comparable provisions. However, the Director finds the proposed regulations at 62 IAC 1848.20 (c), (d), (e), (f), and (g) to be not inconsistent with SMCRA or the Federal regulations.

(p) At 62 IAC 1848.22, Illinois is proposing to establish regulations for default. The Federal regulations at 43 CFR part 4 pertaining to procedure and practice contain no comparable provisions. However, the Director finds the proposed regulations at 62 IAC 1848.22 to be not inconsistent with SMCRA or the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the August 18, 1992, **Federal Register** (57 FR 37127) ended on September 17, 1992. No comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

The public comment period and opportunity to request a public hearing announced in the May 17, 1993, **Federal Register** (58 FR 28804) ended on June 16, 1993. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

One commenter encouraged the development of provisions for and a new process to implement, administer, and enforce portions of a new groundwater program. The Director notes that Illinois withdrew its proposed provisions to the underground mining hydrologic regulations for groundwater analyses at 62 IAC 1780.21 and 1784.14 and may modify and resubmit these regulations at a later date.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Illinois program. No comments were received on either submission.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories.

V. Director's Decision

Based on the above findings, the Director is approving the amendment to the Illinois regulatory program submitted on June 22, 1992, with the exception of the provisions found not to be in accordance with SMCRA or not consistent with the Federal regulations. Those provisions not approved and requiring further amendment are addressed in Findings 11(e), 13(a), and 14(f). In addition, the Director is deferring action on 62 IAC 1816.116(a)(2)(C) and 1817.116(a)(2)(C) as discussed in Finding 11(c). Finally, the Director is removing required amendments at 30 CFR 913.16 (l), (m), (n), (p), (q), and (r) because of changes submitted by Illinois to 62 IAC 1702.17(c)(1), 1773.15(b)(1)(B), 1816/1817.84(b)(2), 1816/1817.117(a)(1), 1816/1817.117(d)(6), and 1816/1817.151(b), respectively, which satisfy those required amendments.

The Federal rules at 30 CFR part 913 concerning the Illinois program are being amended to implement the Director's decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of the Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In his oversight of the Illinois program, the Director will recognize only the statutes, regulations, and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Illinois of only such provisions.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 27, 1993.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 913.15, a new paragraph (o) is added to read as follows:

§ 913.15 Approval of Regulatory Program Amendments.

* * * * * *

(o) The following amendment, as submitted to OSM on June 22, 1992, and revised on April 27, 1993, is approved effective September 3, 1993, with the exceptions identified herein. The amendment consists of the following modifications to the Illinois program:

1. Revisions of the following regulations of Chapter I of Title 62 of the Illinois Administrative Code:

62 IAC 1701.APP.A—Definitions
62 IAC 1702.11(a)(2)—Incidental Extraction
62 IAC 1702.11(f)(1), (2)—Incidental Extraction
62 IAC 1702.17(c)(1)–(3)—Incidental Extraction
62 IAC 1705.21—Financial Interests
62 IAC 1761.11(g)—Designated Areas
62 IAC 1761.12(b)(2), (c), (c)(4), (d)(1), (g)—Designated Areas
62 IAC 1764.19(d)—Areas Unsuitable
62 IAC 1772.12(e)(2)—Coal Exploration
62 IAC 1773.13(a)(1)(E)—Permits
62 IAC 1773.15(b)(1)(B), (b)(3), (c)(12), (d)—Permits
62 IAC 1773.20(b)(2)(B)—Permits
62 IAC 1773.21(c)—Permits
62 IAC 1774.11(c)—Permit Revisions
62 IAC 1774.13(b)(2)(E), (d)(2), (4), (5)—Permit Revisions

62 IAC 1774.15(f)—Permit Renewals
62 IAC 1777.17(a)–(d)—Permit Applications
62 IAC 1778.15(a), (e)—Permit Applications
62 IAC 1779.19(b)—Permit Applications
62 IAC 1780.21(b)(1)(B)—Permit Applications
62 IAC 1783.19(b)—Permit Applications
62 IAC 1784.14(b)(1)(B)—Permit Applications
62 IAC 1785.13(a), (g)—Permits for Special Categories
62 IAC 1800.11(a)—Bonding
62 IAC 1800.40(a)(3), (e)—Bonding
62 IAC 1800.50 (c)(2)—Bonding
62 IAC 1816.49(a)(9)(B), (c)(2)—Performance Standards
62 IAC 1816.84(b)(2)—Performance Standards
62 IAC 1816.116(a)(3), (A), (B), (C), (E)—Performance Standards
62 IAC 1816.116(b)(2)—Performance Standards
62 IAC 1816.117(a)(1), (2), (5)—Performance Standards
62 IAC 1816.151(b)—Performance Standards
62 IAC 1817.49(a)(9)(B), (c)(2)—Performance Standards
62 IAC 1817.84(b)(2)—Performance Standards
62 IAC 1817.116(a)(3), (A), (B), (C), (E)—Performance Standards
62 IAC 1817.116(b)(2)—Performance Standards
62 IAC 1817.117(a)(1), (2), (5)—Performance Standards
62 IAC 1817.151(b)—Performance Standards
62 IAC 1817.182(d)—Performance Standards
62 IAC 1827.12(b)—Coal Preparation Plants
62 IAC 1843.12(i)—State Enforcement
62 IAC 1843.13(c), (e)—State Enforcement
62 IAC 1843.14(a)(2)—State Enforcement
62 IAC 1843.15(a)—State Enforcement
62 IAC 1845.12(c), (d)—Civil Penalties
62 IAC 1845.13(b)(4)(A), (B), (C), (D)—Civil Penalties
62 IAC 1845.17(b), (b)(2)(B), (c)—Civil Penalties
62 IAC 1845.18(a)(2)—Civil Penalties
62 IAC 1845.20(a)—Civil Penalties
62 IAC 1846.17(b)(1)—Individual Civil Penalties
62 IAC 1846.18(b)—Individual Civil Penalties

2. Addition of the following regulations to Chapter I of Title 62 of the Illinois Administrative Code:

62 IAC 1847.1—Administrative and Judicial Review
62 IAC 1847.2—Administrative and Judicial Review
62 IAC 1847.3—Administrative and Judicial Review
62 IAC 1847.4—Administrative and Judicial Review
62 IAC 1847.5—Administrative and Judicial Review
62 IAC 1847.6—Administrative and Judicial Review
62 IAC 1847.7—Administrative and Judicial Review
62 IAC 1847.8—Administrative and Judicial Review
62 IAC 1847.9—Administrative and Judicial Review
62 IAC 1848.1—Procedure and Practice
62 IAC 1848.2—Procedure and Practice
62 IAC 1848.3—Procedure and Practice
62 IAC 1848.5—Procedure and Practice
62 IAC 1848.6—Procedure and Practice
62 IAC 1848.7—Procedure and Practice
62 IAC 1848.8—Procedure and Practice
62 IAC 1848.9—Procedure and Practice
62 IAC 1848.11—Procedure and Practice
62 IAC 1848.12—Procedure and Practice
62 IAC 1848.13—Procedure and Practice
62 IAC 1848.15—Procedure and Practice
62 IAC 1848.16—Procedure and Practice
62 IAC 1848.17—Procedure and Practice
62 IAC 1848.18—Procedure and Practice
62 IAC 1848.19—Procedure and Practice
62 IAC 1848.20—Procedure and Practice
62 IAC 1848.21—Procedure and Practice
62 IAC 1848.22—Procedure and Practice

3. Repeal of the following regulations of Chapter I of Title 62 of the Illinois Administrative Code:

62 IAC 1775—Administrative and Judicial Review
62 IAC 1780.38—Permit Applications
62 IAC 1784.27—Permit Applications
62 IAC 1800.40(f)–(h)—Bonding
62 IAC 1800.50(c)(3)–(5)—Bonding
62 IAC 1816.117(d)(6)—Performance Standards
62 IAC 1817.117(d)(6)—Performance Standards
62 IAC 1843.13(f)–(k)—State Enforcement
62 IAC 1843.16—State Enforcement
62 IAC 1843.17—State Enforcement
62 IAC 1843.20—State Enforcement
62 IAC 1843.21—State Enforcement
62 IAC 1845.18(c)—Civil Penalties
62 IAC 1845.19—Civil Penalties

4. Deferral of the following regulations of Chapter I of Title 62 of the Illinois Administrative Code:

62 IAC 1816.116(a)(2)(C)—Performance Standards
62 IAC 1817.116(a)(2)(C)—Performance Standards

3. In § 913.16, paragraphs (1), (m), (n), (p), (q), and (r) are removed and reserved and new paragraphs (s), (t), and (u) are added to read as follows:

§ 913.16 Required program amendments.

* * * * *

(s) By *November 2, 1993, Illinois shall submit a revision to 62 IAC 1816.116(a)(3)(E) and 1817.116(a)(3)(E) to include ground cover success standards for pasture and grazing lands.*

(t) By *November 2, 1993, Illinois shall submit a revision to 62 IAC 1845.12(d) to require consideration of all civil penalty criteria in determining whether to require payment of a penalty of less than $1,100.*

(u) By *November 2, 1993, Illinois shall submit a revision to 62 IAC 1847.3(l) (1) and (2) to grant judicial review if the regulatory authority fails to act within applicable time limits.*

[FR Doc. 93–21542 Filed 9–2–93; 8:45 am]
BILLING CODE 4310–05–M

30 CFR Part 914

Indiana Permanent Regulatory Authority

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with an exception, of a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment 92–4) consists of changes to the Indiana Surface Mining Rules concerning coal extraction incidental to extraction of other minerals. The amendment is intended to establish criteria and procedures for use in determining whether an operation qualifies initially, and on a continuing basis, for an exemption from permitting.

EFFECTIVE DATE: September 3, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program
II Submission of the Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32071). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.15 and 914.16.

II. Submission of the Amendment

By letter dated February 7, 1990 (Administrative Record No. IND–0756), OSM informed Indiana of changes to the Federal regulations concerning coal extraction incidental to extraction of

other minerals which may necessitate changes in the Indiana program.

By letter dated July 24, 1992 (Administrative Record No. IND–1116), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at 310 Indiana Administrative Code (IAC) 12–0.5 and 12–1. By a second letter dated August 8, 1992 (Administrative Record No. IND–1126), the IDNR submitted a replacement proposed amendment addressing the same topics.

OSM announced receipt of the proposed amendment in the October 28, 1992, **Federal Register** (57 FR 48759), and in the same notice, opened the public comment period on the adequacy of the proposed amendment. The public comment period ended on November 27, 1992. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

By letter dated November 10, 1992 (Administrative Record No. IND–1165), OSM responded to Indiana's proposed rules by requesting clarification of specific concerns. Indiana responded by letter dated February 23, 1993 (Administrative Record Number IND–1242).

OSM addressed a second set of comments to Indiana by letter dated June 4, 1993. Indiana responded by letter dated July 16, 1993 (Administrative Record Number IND–1283). OSM reopened the public comment period on July 19, 1993. The comment period ended on August 3, 1993. No additional comments were received.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program.

A. Revisions to Indiana's Regulations that are Substantively Identical to the Corresponding Federal Regulations

State regulation	Subject	Federal counterpart
310 IAC 12–0.5–32.6	Cumulative measurement period	30 CFR 702.5(a).
310 IAC 12–0.5–32.7	Cumulative production	30 CFR 702.5(b).
310 IAC 12–0.5–32.8	Cumulative revenue	30 CFR 702.5(c).
310 IAC 12–0.5–72.5	Mining area	30 CFR 702.5(d).
310 IAC 12–0.5–78.5	Other minerals	30 CFR 702.5(e).
310 IAC 12–1–6(b) through (d)	Application requirement	30 CFR 702.11 (b) through (d).
310 IAC 12–1–8	Requirements for exemption	30 CFR 702.14.
310 IAC 12–1–10	Stockpiling of minerals	30 CFR 702.16.
310 IAC 12–1–12	Reporting requirements	30 CFR 702.18.

B. Revisions to Indiana's Regulations that are not Substantively Identical to the Corresponding Federal Regulations

1. 310 IAC 12–0.5–5.5 Definition: Administratively Complete Application

This definition is added to clarify a term used in the proposed rules which was not previously defined in the Indiana program. The proposed language is substantively identical to the counterpart Federal definition of this term at 30 CFR 701.5 with one exception. In the proposed definition, the term also applies to applications for approval of exemptions for coal extraction incidental to the extraction of other minerals. While there is no direct Federal counterpart to this language, the Director finds that it is not inconsistent with SMCRA, and the proposed definition is no less effective than the Federal regulations.

2. 310 IAC 12–1–5 Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

This new provision provides that sections 310 IAC 12–1–2 through 12–1–12 implement the exemption contained in IC 13–4.1–1–4(2) concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale. The Director finds the proposed language to be substantively identical to the counterpart Federal regulations at 30 CFR 702.1 with one exception. The proposed language cites IC 13–4.1–1–4(2) as the statutory authority for the implementation of the 16⅔ percent exemption. The citation is incorrect and should be IC 13–4.1–1–3(12). In its letter to OSM dated July 16, 1993 (Administrative Record Number IND–1283), Indiana stated that the citation will be corrected at its next rulemaking opportunity. The Director is approving the proposed language except the citation of IC 13–4.1–1–4(2) which is incorrect and should be IC 13–4.1–1–3(12). In addition, the Director is requiring that Indiana further amend 310 IAC 12–1–5 to change the citation "IC 12–4.1–1–4(2) to read "IC 13–4.1–1–3(12)."

3. 310 IAC 12–1–6 Application Requirements

a. Subsection 6(a) is substantively identical to the counterpart Federal regulation at 30 CFR 702.11(a)(1) except that the Federal regulation makes it clear that a complete application must be submitted for each mining area for which an incidental mining exemption is claimed. That is, the proposed provision cannot be interpreted so as to allow an individual to make application for an incidental mining exemption on a company-wide rather than a site-specific basis. In its letter dated July 16, 1993, Indiana confirmed that 310 IAC 12–1–6(a) may only be interpreted as is the Federal counterpart at 30 CFR 702.11(a)(1). That is, 310 IAC 12–1–6(a) can only be interpreted to provide that a complete application must be filed for each mining area for which an exemption is sought. Therefore, the Director is approving the proposed language with the understanding that Indiana interprets the provision to require a complete application for each mining area for which an incidental mining exemption is claimed.

b. Subsection 6(e) is substantively identical to the counterpart Federal regulation at 30 CFR 702.11(e). In the original submittal, subsection 6(e) lacked a counterpart to 30 CFR 702.11(e)(3) which provides that if the regulatory authority fails to make a determination, then the applicant may mine coal pending a determination. Indiana subsequently amended subsection 6(e) to add new subsection 6(e)(3) as a counterpart to 30 CFR 702.11(e)(3). The Director finds subsection 6(e) to be no less effective than the Federal regulations at 30 CFR 702.11(e).

c. Subsection 6(f) is substantively identical to the counterpart Federal regulation at 30 CFR 702.11(f). In the original submittal, subsection 6(f) lacked a counterpart to 30 CFR 702.11(f)(2) which provides that a petition for review does not suspend the

permit decision. Indiana subsequently amended subsection 6(f) to add new subsection 6(f)(2) as a counterpart to 30 CFR 702.11(f)(2). In addition, Indiana corrected an erroneous citation in subsection 6(f)(1): "310 IAC 0.5–1–3(a)" was changed to read "310 IAC 0.6–1–4." The Director finds subsection 6(f) to be no less effective than the Federal regulations at 30 CFR 702.11(f).

4. 310 IAC 12–1–7 Contents of Application for Exemption

Section 7 is substantively identical to the counterpart Federal regulations at 30 CFR 702.12. Subsequent to the original submittal, Indiana amended section 7 in two ways. In the introductory sentence the words "but is not limited to" have been added to clarify that the list of items presented in section 7 represents the minimum information needed in the application and more information may be required. In addition, Indiana added a new subsection 7(17) to emphasize the public nature of the application. Specifically, the new language at 310 IAC 12–1–7(17) provides that the public availability of information requirements in 310 IAC 12–3–17 shall apply to 310 IAC 12–1–7.

This new language is consistent with the Federal requirements at 30 CFR 772.15 concerning public availability of information with the following exception. The Federal regulation at 30 CFR 702.13(a) provides that information submitted shall be immediately available for public inspection and copying at the regulatory authority offices having jurisdiction over the mining operations claiming exemption until at least 3 years after expiration of the period during which the subject mining area is active. The public availability provisions of 310 IAC 12–3–17 do not clearly provide that the required information be available until at least 3 years after expiration of the period during which the subject mining area is active as does 30 CFR 702.13(a). In its letter dated July 16, 1993, Indiana stated that its Division of Reclamation maintains the records for three years at the Jasonville Field Office, which is the local office having jurisdiction over all mining areas. The Field Office then transfers them to the State Records Center for retention an additional 12 years. Therefore, the Director is approving 310 IAC 12–1–7 with the understanding that the information submitted under 310 IAC 12–1–7 will be held until at least 3 years after expiration of the period during which the subject mining area is active. In addition, the Director is requiring that Indiana further amend 310 IAC 12–1–7 to make it clear that information submitted under 310 IAC 12–1–7 must be held until at least 3 years after expiration of the period during which the subject mining area is active.

5. 310 IAC 12–1–9 Conditions of Exemption and Right of Inspection and Entry

Section 9 is substantively identical to the counterpart Federal regulations at 30 CFR 702.15. Subsequent to the original submittal, Indiana amended section 9 in two ways. At subsection 9(a), Indiana added the words "but not limited to" to clarify that the information the director IDNR can require is not restricted. At subsection 9(c), Indiana added "or 6(e)(3)" as a counterpart to the Federal citation of 30 CFR 702.11(e)(3) as cited at 30 CFR 702.15(c). The Director finds 310 IAC 12–1–9 to be no less effective than the Federal regulations at 30 CFR 702.15.

6. 310 IAC 12–1–11 Revocation and Enforcement

Section 11 is substantively identical to the counterpart Federal regulations at 30 CFR 702.17 with one exception. Subsection 11 lacks a counterpart to 30 CFR 702.17(c)(3). 30 CFR 702.17(c)(3) provides that a petition for administrative review filed under 43 CFR 4.1280 or under corresponding State procedures shall not suspend the effect of a decision whether to revoke an exemption. In response to OSM's comment, Indiana stated that the counterpart to 30 CFR 702.17(c)(3) is located at 310 IAC 12–1–6(f)(2). 310 IAC 12–1–6(f)(2), however, pertains specifically to 310 IAC 12–1–6(e) concerning application requirements and procedures. Therefore, 310 IAC 12–1–11 continues to lack a counterpart to 30 CFR 702.17(c)(3). Subsequent to the original submittal, Indiana amended section 11 at subsection 11(d) by changing the citation of "310 IAC 0.6–1–3(a)" to read "310 IAC 0.6–1–3." The Director finds the proposed language at 310 IAC 12–1–11 to be substantively identical to and no less effective than the Federal counterpart regulations at 30 CFR 702.17 (a) through (c)(2) and (d). The Director also finds that 310 IAC 12–1–11 lacks a counterpart to 30 CFR 702.17(c)(3) and is requiring that Indiana amend 310 IAC 12–1–11 to add a counterpart to 30 CFR 702.17(c)(3).

IV. Summary and Disposition of Comments

Public Comments

The public comment period announced in the October 28, 1992, **Federal Register** (57 FR 48759) ended on November 27, 1992. No public comments were received and a public hearing was not held as no one requested an opportunity to provide testimony. The public comment period announced in the July 19, 1993, **Federal Register** (58 FR 38545) ended on August 4, 1993. No public comments were received.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Indiana program. The U.S. Fish and Wildlife Service (FWS) stated that SMCRA "stipulates that certain other laws, including the Endangered Species Act and the Fish and Wildlife Coordination Act be addressed by coal mining regulations." The FWS recommended that exemptions for incidental extraction not be granted unless it can be demonstrated that the project will not adversely affect a federally-endangered or threatened species or critical habitat, pursuant to section 7 of the Endangered Species Act, as amended. The Director acknowledges that its regulations protect fish, wildlife and related environmental values. See 816/817.97. However, SMCRA at section 701(28) in its definition of "surface coal mining operations," specifically excludes coal incidental to the extraction of other minerals where coal does not exceed 16⅔ per centum of the tonnage of minerals removed for purposes of commercial use or sale, or coal explorations subject to section 512 of SMCRA. That is, operations which qualify for the exemption are not surface coal mining operations and as such are not subject to the standards of SMCRA nor are they subject to the performance standards in the implementing regulations. The FWS also recommended that, pursuant to the Fish and Wildlife Coordination Act, incidental extraction projects which will affect wetlands or other water resources be reviewed by FWS and by the Indiana Division of Fish and Wildlife. As stated above, incidental coal extraction operations are exempt from SMCRA. Even if SMCRA would apply, SMCRA at section 702(a)(7) prohibits SMCRA from being construed as superseding or modifying the Fish and Wildlife Coordination Act. Thus, if any law or regulation under the Fish and Wildlife Coordination Act would apply to operations under the 16⅔ exemption, SMCRA would not prohibit those agencies with jurisdiction under the Fish and Wildlife Coordination Act from implementing those applicable laws or regulations.

The U.S. Bureau of Mines commented that in the definition of "Other minerals" at 310 IAC 12–0.5–78.5, the term "waste" is used, but the term "waste" is not defined in the Indiana program. The commenter stated that this raises a question as to how this regulation will be enforced. In response, the Director notes that the term "waste" is also not defined in the Federal regulations which implement SMCRA. Therefore, as noted in the Director's Findings, the definition of "other minerals" is substantively identical and no less effective than its Federal counterpart.

The U.S. Forest Service responded that it had no comments.

V. Director's Decision

Based on the above findings, the Director is approving the program amendment submitted by Indiana on August 8, 1992, and amended by letters dated February 23, 1993, and July 16, 1993, with the following exceptions. As discussed in Finding 2, above, 310 IAC 12–1–5 is approved except for the citation to "IC 13–4.1–1–4(2)" which is incorrect, and should be "IC 13–4.1–1–3(12)." In addition, the Director is requiring that Indiana further amend 310 IAC 12–1–5 to change the citation "IC 13–4.1–1–4(2)" to read "IC 13–4.1–1–3(12)."

As discussed in Finding 3 above, 310 IAC 12–1–6(a) is approved with the understanding that Indiana interprets the provision to require a complete application for each mining area for which an incidental mining exemption is claimed.

As discussed above in Finding 4, 310 IAC 12–1–7 is approved with the understanding that the information submitted under 310 IAC 12–1–7 will be held until at least 3 years after expiration of the period during which the subject mining area is active. In addition, the Director is requiring that Indiana further amend 310 IAC 12–1–7 to make it clear that information submitted under 310 IAC 12–1–7 must be held until at least 3 years after expiration of the period during which the subject mining area is active.

As discussed in Finding 6 above, the Director is requiring that Indiana amend 310 IAC 12–1–11 to add a counterpart to 30 CFR 702.17(c)(3).

The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to conform their programs with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required. However, by letter dated September 22, 1992 (Administrative Record Number IND–1152), the EPA concurred without comment.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 23, 1993.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended by adding a new paragraph (ww) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(ww) The following amendment (Program Amendment Number 92–4) to the Indiana program as submitted to

OSM on August 8, 1992, and amended on February 23, 1993, and July 16, 1993, is approved effective September 3, 1993. 310 IAC 12–0.5–5.5, definition of "administratively complete application;" 310 IAC 12–0.5–32.6, definition of "cumulative measurement period;" 310 IAC 12–0.5–32.7, definition of "cumulative production;" 310 IAC 12–0.5–32.8, definition of "cumulative revenue;" 310 IAC 12–0.5–72.5, definition of "mining area;" 310 IAC 12–0.5–78.5, definition of "other minerals;" 310 IAC 12–1–5 except for the citation to "IC 13–4.1–1–4(2)," which is incorrect and should be IC 13–1.4–1–3(12);" 310 IAC 12–1–6 concerning application requirements and procedures with the understanding that 310 IAC 12–1–6(a) will be interpreted to require a complete application for each mining area for which an incidental mining exemption is claimed; 310 IAC 12–1–7 concerning contents of application for exemption with the understanding that the information submitted under 310 IAC 12–1–7 will be held until at least 3 years after expiration of the period during which the subject mining area is active; 310 IAC 12–1–8 concerning requirements for exemption; 310 IAC 12–1–9 concerning conditions of exemption and right of inspection and entry; 310 IAC 12–1–10 concerning stockpiling of minerals; 310 IAC 12–1–11 concerning revocation and enforcement; and 310 IAC 12–1–12 concerning reporting requirements.

3. In § 914.16 paragraphs (bb) through (dd) are added to read as follows:

§ 914.16 Required program amendments.

* * * * *

(bb) By March 1, 1994, Indiana shall amend 310 IAC 12–1–5 to change the citation "IC 13–4.1–1–4(2)" to read "IC 13–4.1–1–3(12)."

(cc) By March 1, 1994, Indiana shall amend 310 IAC 12–1–7 to make it clear that information submitted under 310 IAC 12–1–7 must be held until at least 3 years after expiration of the period during which the subject mining area is active.

(dd) By March 1, 1994, Indiana shall amend 310 IAC 12–1–11 to add a counterpart to 30 CFR 702.17(c)(3).

[FR Doc. 93–21214 Filed 9–2–93; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of proposed Revised Program Amendment Number 60 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to make the Ohio program no less effective than the corresponding Federal regulations. The amendment concerns the extraction of more than 250 tons of coal under an exploration permit and the commercial use or sale of coal extracted during exploration.

EFFECTIVE DATE: September 3, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232; (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

By letter dated January 15, 1993 (Administrative Record No. OH–1826), the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted proposed Program Amendment Number 60. In this amendment, Ohio proposed to revise Ohio Administrative Code (OAC) rule 1501:13–4–02 to make the rule no less effective than the corresponding Federal rules in 30 CFR 772 concerning coal exploration. Ohio is making numerous minor revisions to clarify and reorganize the rule and to renumber and reletter rule paragraphs.

OSM announced receipt of proposed Program Amendment Number 60 in the March 26, 1993, **Federal Register** (58 FR 16388), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on April 26, 1993. The public hearing scheduled for April 20, 1993, was not held as no one requested an opportunity to testify.

On April 30, 1993, representatives of OSM and Ohio met informally to discuss OSM's initial questions and comments about the proposed amendment. In response to that meeting, Ohio submitted Revised Program Amendment Number 60 by letter dated May 27, 1993 (Administrative Record No. OH–1887). In this revised amendment, Ohio is proposing further revisions to OAC 1501:13–4–02.

OSM announced receipt of proposed Revised Program Amendment Number 60 in the June 17, 1993, **Federal Register** (58 FR 33416), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on July 2, 1993. The public hearing scheduled for June 28, 1993, was not held as no one requested an opportunity to testify.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment. Revisions which are not discussed below concern minor nonsubstantive language changes to improve clarity of the rule or revise cross-references and paragraph letter notations to reflect organizational changes resulting from this amendment.

1. OAC 1501:13–4–02(C)(2)

Ohio is revising this paragraph to clarify that, if the Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief) finds that the proposed exploration operation will substantially disturb the natural land surface, the person seeking to explore must submit an application for and be issued an exploration permit before beginning exploration. The Chief shall issue or deny the exploration permit within a reasonable period of time. Ohio is adding the phrase "a

reasonable period of time" to replace existing language that would have required the issuance or denial of a coal exploration permit within sixty days after the Chief's receipt of a notice of intent to explore. Although there is no direct Federal counterpart to the proposed rule, the Director finds that it is not inconsistent with the Federal regulations at 30 CFR 772.12(d)(1) concerning review and approval by the regulatory authority of an administratively complete exploration permit application within a reasonable period of time. Therefore, the Director finds that the revision does not render the proposed rule less effective than or inconsistent with the requirements of SMCRA and the Federal regulations.

2. OAC 1501:13–4–02(D) and (D)(1) Through (D)(13)

Ohio is deleting the existing provision that persons who intend to extract more than 250 tons of coal during an exploration operation must obtain a coal mining and reclamation permit as required under Ohio Revised Code § 1513.07. Ohio is adding a new requirement at paragraph (D) that any person who intends to remove more than 250 tons of coal during exploration operations or whose exploration operation will substantially disturb the land surface, including lands designated as unsuitable for mining, must first submit an application for and obtain an exploration permit. Ohio is also revising the paragraph to provide that any exploration under an exploration permit shall be subject to the requirements of paragraphs (E) to (L) of this rule. New paragraphs (D)(1) through (D)(13) specify the minimum required information which those persons must include in applications for exploration permits. The proposed provisions are substantively identical to and are no less effective than the Federal regulations at 30 CFR 772.12 (b), (b)(1), and (b)(3) through (b)(13) except for the proposed language at paragraphs (D) and (D)(2).

Both the proposed new requirement at paragraph (D) and the counterpart Federal rule at 30 CFR 772.12(a) require that any person who intends to conduct coal exploration outside a permit area during which more than 250 tons of coal will be removed or which will take place on lands designated as unsuitable for surface mining shall submit an application for and receive an exploration permit. The State rule also includes exploration operations that will substantially disturb the land surface. The Director finds that the proposed State rule is no less effective than the Federal regulations at 30 CFR 772.12(a) and that the added language will not render the Ohio program less effective than the Federal regulations.

Proposed paragraph (D)(2) requires that each exploration notice include the name, address, and telephone number of the individual who will be present at "or" (rather than "and" as in the language of the Federal regulation) responsible for the exploration activities. A requirement at paragraph (B)(2) (formerly (B)(1)(b)) which contains similar wording was approved by OSM on January 30, 1989 (54 FR 4276, 4277) as part of Program Amendment Number 33. The preamble to the Federal rule, originally promulgated as 30 CFR 776.11(b), indicates that its intent was to require information identifying the specific individual, e.g., foreman, corporate agent, or other representative of the applicant, whom the inspector or other representative of the regulatory authority could contact directly for inspection, enforcement and other purposes (See 44 FR 14902, 15018, March 13, 1979). In Administrative Record information submitted by Ohio with Program Amendment Number 33, Ohio explained that this responsible individual is often not the same person (usually the driller) who is actually present at the exploration site on a continuous basis. There is nothing in the preamble to the Federal rule to indicate that OSM intended to require that the designated contact person (responsible individual) actually be present on site at all times. In fact, given the limited nature of much exploration activity, good management practices would often dictate otherwise. Furthermore, like 30 CFR 772.12(b)(1), OAC 1501:13–4–02–(D)(1) requires the same identifying information of the applicant, who is ultimately responsible for the exploration operation. It was, therefore, decided at the April 30, 1993, informal meeting that the same interpretation as was used for Program Amendment Number 33 would be applied under these circumstances to Revised Program Amendment Number 60 since Ohio's proposed language at (D)(2) mirrors former (B)(1)(b). Therefore, the Director finds that, provided the designated responsible individual is readily accessible and can be easily contacted by the person who is actually present on site, the proposed provision at paragraph (D)(2) is no less effective than its Federal counterpart at 30 CFR 772.12(b)(2).

New paragraphs (D) and (D)(1) through (D)(13) also replace the provisions in paragraphs (B)(2), (B)(2)(a), and (B)(2)(b) concerning the written notice required for coal exploration operations that substantially disturb the natural land surface, including exploration on lands designated as unsuitable for coal mining operations. Ohio is deleting existing paragraphs (B)(2) through (B)(2)(b) because they are being replaced by the provisions in new paragraphs (D) and (D)(1) through (D)(13). Therefore, the Director finds that the deletion of former paragraphs (B)(2) through (B)(2)(b) will not render the Ohio rule less effective than the Federal regulations.

3. OAC 1501:13–4–02(E), (E)(1), (E)(2) and (E)(3)

Ohio is adding a new paragraph (E) which provides that applicants for exploration permits shall place an advertisement providing public notice of the filing of the application in a newspaper of general circulation in the county of the proposed exploration area. The applicant shall place the advertisement upon submittal to the Chief of an administratively complete applicant. The proposed State rule is substantively identical to the Federal rule at 30 CFR 772.12(c)(1). Therefore, the Director finds the proposed State rule to be no less than effective than its Federal counterpart.

Ohio is adding a new paragraph (E)(1) which requires the public notice to include the name and address of the applicant, filing date of the application, address of the Ohio Division of Reclamation, closing date of the comment period, and a description of the proposed exploration area. The proposed State rule is substantively identical to the corresponding Federal rule at 30 CFR 772.12(c)(2). Therefore, the Director finds it to be no less effective than its Federal counterpart.

Ohio is proposing a new paragraph (E)(2) to provide that any person having an interest which is or may be adversely affected shall have the right to file written comment on the application with Ohio within ten day after the date the notice is published. The Federal rule at 30 CFR 772.12(c)(3) states that written comments may be filed "within reasonable time limits." The Director finds that the proposed filing period of ten days at proposed (E)(2) will not adversely affect the public notice and comment process nor discourage or inhibit public participation in that process. Therefore, the Director finds the ten-day limit is reasonable and that the proposed State rule is no less effective than its Federal counterpart at 30 CFR 772.12(c)(3).

Ohio is adding a new paragraph (E)(3) which requires that a copy of the newspaper advertisement shall be filed with the Chief and shall be made a part

of the complete application. Proof of publication of the advertisement shall be filed with the Chief before the Chief can approve the application. Neither SMCRA nor the Federal regulations at 30 CFR 772.12(c) require proof of publication to be filed with the regulatory authority. The Director finds the revised State rule is not inconsistent with any Federal requirements nor less effective than the corresponding Federal rules pertaining to public notice.

4. OAC 1501:13–4–02(F)(1), (F)(2), (F)(3)

Ohio is adding new paragraphs (F)(1), (F)(2), and (F)(3) which establish the review procedures and approval criteria which Ohio will use in processing exploration applications. Because the proposed State rules are substantively identical to the corresponding Federal rules at 30 CFR 772.12(d) (1), (2) and (3), the Director finds the revised State rules no less effective than their Federal counterparts.

5. OAC 1501:13–4–02(G)

Ohio is adding a new paragraph (G) which establishes the procedures by which Ohio will notify applicants and publicly display its decisions on exploration applications. Ohio is proposing that the Chief notify the applicant, the appropriate local government officials, and other commenters on the application, in writing, of his decision on the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. The Chief shall post his decision of each application at the Division of Reclamation District office responsible for inspection of the proposed exploration operations. Proposed paragraph (G) is substantively identical to the counterpart Federal rule at 30 CFR 772.12(e)(1). Therefore, the proposed rule is no less effective than the corresponding Federal rule at 30 CFR 772.12(e)(1).

6. OAC 1501:13–4–02(H)(1)

Ohio is revising this paragraph to provide that any person who conducts coal exploration operations that substantially disturb the natural ground surface shall comply with OAC 1501:13–4–02, OAC 1501:13–8–01, Ohio Revised Code Chapter 1513, OAC Section 1501, and any exploration permit terms or conditions imposed by the Chief. The proposed additions to the State rule are substantively identical to the Federal rule at 30 CFR 772.13(a). Therefore, the Director finds the proposed amendment to be no less effective than the Federal counterpart.

7. OAC 1501:13–4–02(H)(3)

Ohio is adding this new paragraph to provide that any person who conducts coal exploration operations in violation of OAC 1501:13–4–02 or of the other laws, rules, terms, or conditions referenced in paragraph (H)(1) shall be subject to the provisions of Ohio Revised Code Section 1513.99 (penalties) and OAC 1501:13–14–01 to 13–14–06 (inspections, enforcement, civil penalties, formal review, and informal conferences). The proposed State rule is substantively identical to the Federal rule at 30 CFR 772.13(b). The Director therefore finds the proposed State rule to be no less effective than its Federal counterpart.

8. OAC 1501:13–4–02 (K)(1) and (K)(2)

Ohio is deleting the existing provision that persons who intend to extract coal during an exploration operation for commercial sale must obtain a coal mining and reclamation permit as required under section 1513.07 of the ORC. Ohio is adding the provision in new paragraph (K)(1) that, except as provided under paragraph (K)(2) of this rule or 43 CFR Parts 3480 to 3487, any person who intends to commercially use or sell coal extracted during coal exploration operations under an exploration permit, shall first obtain a permit to conduct surface coal mining operations for those operations from the Chief under OAC 1501:13–4. Ohio is adding the provision in new paragraph (K)(2) that, if such commercial sale or use is for coal testing purposes only, those persons need not obtain a coal mining and reclamation permit. Rather, those persons must apply for and receive an exploration permit. New paragraphs (K)(2)(a) through (K)(2)(d) specify the required information on the coal testing, remaining coal reserves; and method of exploration which those persons must provide in the exploration application to justify the commercial sale or use of the extracted coal. Because the revision makes the proposed State rule substantively identical to the corresponding Federal rules at 30 CFR 772.14(a) through (b)(4), the Director finds it no less effective than the counterpart Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing in the March 26, 1993, **Federal Register** closed on April 26, 1993. In the June 17, 1993, **Federal Register** the public comment period was reopened until July 2, 1993. No comments from the public were received and the scheduled public hearings were not held as no one requested an opportunity to testify at the scheduled public hearings.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program.

Comments were received from the Ohio Historic Preservation Office (OHPO). The OHPO stated that under the provisions of the Ohio program the Chief may require an archeological or historical survey for a coal mining permit application prior to the issuance of the permit. The OHPO further stated that the current interpretation of the Ohio program is that this authority does not extend to coal exploration activities, even when these activities have surface effects which can cause damage or destruction of historic properties. The Director agrees that the State rule does not provide absolute protection for historic properties that may be affected by coal exploration activities; however, this is also true under the Federal regulations. The Ohio regulations will provide the same protection as the Federal regulations and as such are no less effective than the Federal regulations. The Ohio regulations at OAC 1501:13–4–02(D)(8), as well as the Federal regulations at 30 CFR 772.12(b)(8), require a coal exploration applicant to describe the following: cultural or historical resources listed on the National Register of Historic Places (NRHP), cultural or historical resources eligible for listing on the NRHP, known archeological resources located within the proposed exploration area and any other information which the regulatory authority, the Chief in this case, may require regarding known or unknown historic or archeological resources. In addition, the Chief under OAC 1501:13–4–02(F)(2)(c) cannot approve a coal exploration permit if the exploration will adversely affect any cultural or historical resource listed on the NRHP, unless the ODNR and the agency with jurisdiction over the matter (OHPO), approves of such activity. See also 30 CFR 772.12(d)(2)(iii).

Further, the OHPO's position is that surface effectments from coal exploration should be included under the Section 106 review process (36 CFR part 800) since coal exploration activities are a Federal undertaking. The Director agrees that State program amendment projects and activities, including coal exploration activities, are considered a Federal undertaking

because of the October 30, 1992, legislation which amended the definition of "undertakings" which is found in the National Historic Preservation Act (NHPA). OSM is currently working with the Advisory Council on Historic Preservation on OSM's compliance with the NHPA. It is expected that in the future such cooperative effort will be extended to a State level.

The U.S. Department of Agriculture, Soil Conservation Service, and the U.S. Department of Labor, Mine Safety and Health Administration, had no comments. The comments submitted by the Environmental Protection Agency (EPA) are discussed below under "EPA Concurrence."

V. Director's Decision

Based on the above findings, the Director is approving Ohio Revised Program Amendment Number 60, as submitted by Ohio on January 15, 1993, and revised and resubmitted by letter dated May 27, 1993. The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore, unnecessary. However, by letter dated April 20, 1993, (Administrative Record No. OH–1867), the EPA submitted its concurrence with the following comment. The EPA noted that a variety of activities associated with the extraction of coal conducted pursuant to an exploration permit (i.e. waste disposal, wastewater discharges, or locating a mining activity in or near waters of the United States) may require a National Pollutant Discharge Elimination System permit and may have to conform to other Clean Water Act (CWA) requirements. The Director acknowledges the EPA's comments but notes that neither the cited Ohio regulation nor the Federal counterpart can be construed as superseding, amending or repealing the CWA because such activities are prohibited by section 702 of SMCRA. Furthermore, the Director is approving Ohio's proposed amendment to the extent that it does not supersede applicable CWA requirements.

VI. Procedural Determinations

Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 830, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 27, 1993.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (ppp) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(ppp) The following amendment to the Ohio regulatory program, as submitted to OSM on January 15, 1993, and revised and submitted on May 27, 1993, is approved, effective September 3, 1993. Revised Amendment Number 60 which consists of revisions to the Ohio Administrative Code (OAC) at 1501:13–4–02(C)(2) through (K) concerning the extraction of more than 250 tons of coal under an exploration permit and the commercial use or sale of coal extracted during exploration.

[FR Doc. 93–21541 Filed 9–2–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

Adjudication; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the regulations of the Department of Veterans Affairs (VA) that govern the continuance of total disability ratings and the failure to report for VA examination. This correction is required in order to amend cross-references in the regulations. No substantive change to the content of 38 CFR part 3 is being made by this correcting amendment.

EFFECTIVE DATE: This correcting amendment is effective August 14, 1991, the date provided by Public Law 102–86.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a final rule in the **Federal Register** on March 26, 1992 (See 57 FR 10424–26) to implement section 103 of the Veterans' Benefits Programs Improvement Act of 1991, Public Law 102–86, which amended 38 U.S.C. 1155 to provide that a modification to the Schedule for Rating Disabilities (38 CFR part 4) occurring after August 14, 1991, will not result in a reduction of any disability evaluation unless that disability has actually improved. Accordingly, VA amended 38 CFR 3.951. However, VA neglected to amend the references to the amended § 3.951 that appear at §§ 3.343 and 3.655(c)(1). This document corrects that omission.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health Care, Pensions, Veterans.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.343 [Corrected]

2. In the cross reference following § 3.343, remove the words "See § 3.951." and insert, in their place, the words "See § 3.951(b)."

§ 3.655 [Corrected]

3. In § 3.655(c)(1), the first sentence, remove the words "§ 3.951" and insert, in their place, the words "§ 3.951(b)".

Approved: August 27, 1993.

Marjorie M. Leandri,

Chief, Records, Reports, and Regulation Division.

[FR Doc. 93–21487 Filed 9–2–93; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

DEPARTMENT OF DEFENSE

38 CFR Part 21

RIN 2900–AF59

Veterans Education; Change of Program for Post-Vietnam Era Veterans

AGENCY: Department of Veterans Affairs and Department of Defense.

ACTION: Final regulation.

SUMMARY: The Department of Veterans Affairs Nurse Pay Act of 1990 contains a section which affects most of the educational programs VA (Department of Veterans Affairs) administers. The section revises the rules for determining whether an individual can change programs of education. The regulation governing changes of programs of education for veterans receiving benefits under VEAP (Post-Vietnam Era Veterans Educational Assistance Program) must be changed in order to bring it into agreement with the law. This amended regulation effects this change.

EFFECTIVE DATE: The amended regulation, like the provision of law it implements, is retroactively effective on June 1, 1991.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 38458 through 38459 of the **Federal Register** of August 25, 1992, there was published a Notice of Intent to amend 38 CFR part 21 in order to implement a provision of the Department of Veterans Affairs Nurse Pay Act (Pub. L. 101–366). Interested people were given 30 days to submit comments, suggestions or objections. VA and the Department of Defense received no comments, suggestions or objections. Accordingly, the departments are making the proposal final without change.

The Department of Veterans Affairs and the Department of Defense have determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that this amended regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulation directly affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Department of Veterans Affairs and the Department of Defense find that good cause exists for making the amendment to § 21.5232, like the provision of law it implements, retroactively effective on June 1, 1991.

It is necessary to implement this provision of law as soon as possible. This provision is intended to achieve a benefit for the individual. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a delayed effective date would be contrary to statutory design, would complicate administration of these provisions of law; and might result in the denial of a benefit to someone who is entitled to it.

The Catalog of Federal Domestic Assistance number for the program affected by this proposal is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-

education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 9, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

Approved: July 16, 1993.

Nicolai Timenes, Jr.,

Principal Director, Military Manpower and Personnel Policy, Department of Defense.

For the reasons set out in the preamble, 38 CFR part 21, subpart G is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

1. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. Section 21.5232 and its authority citation are revised to read as follows:

§ 21.5232 Change of program.

In determining whether a change of program of education may be approved for the payments of educational assistance, VA will apply § 21.4234 of this part.

(Authority: 38 U.S.C. 3241, 3691; Pub. L. 94-502, Pub. L. 101-366) (June 1, 1991)

[FR Doc. 93-21485 Filed 9-2-93; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 21

RIN 2900-AE84

Veterans Education; Nonduplication of Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Final rules.

SUMMARY: The law prohibits the payment of educational assistance to a person who would otherwise be eligible for benefits under the Montgomery GI Bill—Active Duty when he or she is on active duty with the Armed Forces and the Armed Forces are paying for the course in which he or she is enrolled. Since this provision occurs in the law, but not in the regulations, users of the regulations have occasionally been confused. In order to eliminate that confusion, this final regulation includes that prohibition, and repeats the statutory language which provides that a beneficiary may not receive educational assistance for pursuit of a course if the course is being paid for under the Government Employees' Training Act.

EFFECTIVE DATE: October 4, 1993.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 9081 and 9082 of the **Federal Register** of March 16, 1992, there was published a Notice of Intent to amend 38 CFR part 21 in order to state more clearly the prohibition against a duplication of certain benefits. Interested people were given 30 days to submit comments, suggestions or objections. VA received no comments, suggestions or objections.

Since no comments were received concerning the original proposed changes to § 21.7142 (c)(1) and (c)(2), they are adopted.

While VA was considering whether to make the proposed regulations final, the Veterans' Benefits Act of 1992 (Pub. L. 102-568) was enacted. Section 315 of that Act contains language which requires VA to change § § 21.4025 and 21.7142(c)(3) as originally proposed.

As proposed, 38 CFR 21.4025 would have been amended to show that a duplication of benefits exists with respect to Dependents' Educational Assistance and the Government Employees' Training Act only when the eligible person is being paid a full salary; the course is being paid for under the Act; and the eligible person is pursuing the course during normal duty hours. This proposal was based upon language which appeared in 38 U.S.C. 3681(a). However, section 315 of the Veterans' Benefits Act of 1992 struck the language upon which the proposal was based. Consequently, the final amendment to 38 CFR 21.4025 does not reflect the proposed amendment, but rather reflects the language in 38 U.S.C. 3681(a) as amended by the Veterans' Benefits Act of 1992.

Similarly, as proposed, 38 CFR 21.7142 would have been amended to clarify that the prohibition against duplication of benefits also applies to a potential duplication between benefits paid under the Montgomery GI Bill—Active Duty and the Government Employees' Training Act. As proposed this amended regulation would have contained language similar to that in the proposed amendment to 38 CFR 21.4025. Hence, the final amendment to 38 CFR 21.7142 contains language which is not the same as the proposed regulation, but instead reflects the language in 38 U.S.C. 3681(a) as amended by the Veterans' Benefits Act of 1992.

Since the amendments to § 21.4025(a)(2) and the additional paragraph § 21.7142(c)(3), simply conform to the law, they are made effective on Oct. 29, 1992, the effective date of the statutory provisions which they implement.

VA carefully considered whether or not to republish these revisions to the original proposal for additional comment. However, the department believes that the language in the Veterans' Benefits Act of 1992 is quite specific. VA has no authority to deviate from the Act. Hence, no useful purpose would be served by publishing these revisions for additional comment. Accordingly, the department is making the revisions to § 21.4025(a)(2) and § 21.7142(c)(3) final.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance numbers for the programs affected by these regulations are 64.117 and 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 30, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subparts D and K are amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36

1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. Section 21.4025 is amended by revising paragraph (a)(2) and adding an authority citation to read as follows:

§ 21.4025 Nonduplication: Federal program.

(a) *Chapter 35.* * * *

(2) For a unit course or courses which are being paid for entirely or partly by the United States under the Government Employees' Training Act.

(Authority: 38 U.S.C. 3681)

* * * * *

Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)

3. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. chapter 30, Pub. L. 98–525; 38 U.S.C. 501(a).

4. Section 21.7142 is amended by adding paragraph (c) and its authority citation to read as follows:

§ 21.7142 Nonduplication of educational assistance.

* * * * *

(c) *Nonduplication—Federal program.* Payment of educational assistance is prohibited to an otherwise eligible veteran or servicemember—

(1) For a unit course or courses which are being paid for entirely or partly by the Armed Forces during any period he or she is on active duty;

(2) For a unit course or courses which are being paid for entirely or partly by the Department of Health and Human Services during any period that he or she is on active duty with the Public Health Service; or

(3) For a unit course or courses which are being paid for entirely or partly by the United States under the Government Employees' Training Act.

(Authority: 38 U.S.C. 3034, 3681)

[FR Doc. 93–21486 Filed 9–2–93; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH14–1–5176; FRL–4703–8]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving revisions to the federally promulgated State Implementation Plan (SIP) for Cuyahoga County, Ohio. The revisions affect sulfur dioxide (SO_2) emission limitations for LTV Steel-Cleveland District, E.I. DuPont, the Medical Center, Reilly Industries, Inc., and numerous sources, which have been shut down, contained in the SIP for Cuyahoga County, Ohio. The revisions were originally proposed at the request of the State of Ohio.

EFFECTIVE DATE: This action will be effective on October 4, 1993.

ADDRESSES: Copies of the SIP revision request, public comments, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Randy Robinson at 312/353–6713 before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air Enforcement Branch (AE–17J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of today's revision to the Ohio SIP is available for inspection at: U.S. Environmental Protection Agency, Jerry Kurtzweg (ANR–443), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Randy Robinson, Regulation Development Section (AE–17J), Air Enforcement Branch, U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, 312/353–6713.

SUPPLEMENTARY INFORMATION: The analysis is discussed in four sections.

I. Proposed Rule Summary, II. Modeling Analysis and Control Strategy Analysis for LTV, III. **Federal Register** Comments and Responses, and IV. Final Action.

I. Proposed Rule Summary

On June 11, 1990, at the request of the Ohio Environmental Protection Agency (OEPA), the USEPA proposed to revise the SIP SO_2 emission limitations for LTV Steel Company, Inc.—Cleveland District, E.I. DuPont de Nemours and Company, the Medical Center Company, Reilly Industries, Inc., and numerous sources which have been shut down in Cuyahoga County, Ohio (55 FR 23556). The revisions represent: (1) An alternative State-developed strategy for LTV Steel, (2) revised emission limits reflecting the fuel types currently burned at DuPont, the Medical Center, and Reilly Tar and Chemical, and (3) revised emission limits reflecting the shut down status of numerous sources throughout the county.

II. Modeling Analysis and Control Strategy Analysis for LTV

Three of the comments received by the OEPA on the Proposed Rulemaking Notice prompted additional modeling. The OEPA conducted supplemental modeling to investigate the contribution made to existing hotspot concentrations of SO_2 by Reilly Industries and Master Metals near LTV. These were sources earlier believed not to be contributing to the detected hot spots. USEPA conducted additional modeling to confirm OEPA's findings and evaluate the contribution from Lincoln Electric. The results of the modeling analysis conducted by USEPA is discussed in more detail later in this notice and in the Technical Support Document (TSD). It is similar to the modeling performed in support of the proposed rulemaking except for the consideration of emissions from Reilly Industries, Master Metals, and Lincoln Electric Company.

A reassessment of the proposed Rule identified an error in evaluating the impacts of LTV's emissions. This error was identified in the calculation of the impacts of LTV's boiler house emission caps. A letter providing details of the reassessment of the proposed rules was sent from George Czerniak, Chief, Air Enforcement Branch, to William West of LTV on April 9, 1992. William West responded by sending a letter to Tom Tucker of OEPA on June 25, 1992, recommending revisions to the LTV control strategy so as to address the issues raised by USEPA's reassessment and to provide for attainment of the National Ambient Air Quality Standards (NAAQS) for SO_2. In turn, Tom Tucker, OEPA, sent a letter to George Czerniak on July 9, 1992, analyzing the impacts of the strategy as revised to reflect LTV's recommendations.

The revised strategy, recommended by OEPA and LTV, continues to limit the amount of high-sulfur coke oven gas (COG) that can be produced by LTV to 1,129,300 cubic feet per hour (ft^3/hr) on a daily average. In OEPA's analysis of the impacts of the revised strategy, 178,970 ft^3/hr of coke oven gas is first allocated to batteries #6 and #7. The remaining COG is then conservatively allocated to the sources having the

highest concentration to emission rate ratio until the production limit of 1,129,300 ft^3/hr is reached. Secondly, combined SO_2 emissions from boilers A through D at powerhouse #1 are limited to 1258 lb/hr on a daily average basis. In addition, the consumption of sulfur-bearing fuels at #1 powerhouse boilers A, B, and C, is limited to 828 lbs of SO_2/hour from all three boilers. The third part of the fuel allocation/emission reduction strategy limits the boiler emissions from powerhouses #1 and #3 to 1958 lbs of SO_2/hr. Finally, emissions at the 84 inch hot slab mill are limited to 1,365 lbs of SO_2 per hour from all furnaces. OEPA analyzed multiple scenarios for complying with the revised limits. OEPA concluded that this revised strategy resulted in a maximum predicted 24-hour concentration at the north receptor of 360.8 $\mu g/m^3$, and a maximum predicted 24-hour concentration at the south receptor was 360.4 $\mu g/m^3$.

USEPA supplemented OEPA's analysis with further analysis of impacts under the revised control strategy. USEPA addressed additional compliance scenarios beyond those analyzed by OEPA. USEPA's analysis did not apply OEPA's set aside of 178,970 ft^3/hr of coke oven gas, but rather allocated all of the allowable quantity of coke oven gas to the source having the greatest impact per pound of emissions. Seven different reallocation scenarios were investigated for the north and south receptors. The highest predicted 24-hour concentration of all the scenarios was 364.7 $\mu g/m^3$, occurring at the north receptor. Details of the analyses are provided in the TSD.

Given the information above, we conclude that the revised LTV strategy, including the specific limits on the powerhouse #1 boilers, the 84 inch mill furnaces, and powerhouse #1 and #3 combined, provides for attainment of the SO_2 NAAQS. It is also concluded that the addition of emissions from three additional sources, Reilly Industries, Inc., Master Metals, Inc., and Lincoln Electric Company, does not have a significant effect on the areas of maximum SO_2 concentrations in Cuyahoga County, and does not threaten the primary or secondary NAAQS for sulfur dioxide.

III. Federal Register Notice Comments and Responses

Reilly Industries, Inc., objected that the proposed Rule, cited above, limiting operations of its stills, numbered 3 through 7, to the burning of only natural gas, would eliminate the possibility of using No. 2 fuel oil or its equivalent in cases of gas supply curtailment. USEPA concurs that Reilly Industries, Inc., should be allowed to operate stills 3 through 7 on No. 2 fuel oil or its equivalent, if the need arises.

Master Metals, Inc., commented that it continues to operate a "reverb furnace process" in its secondary lead smelting operations and, therefore, USEPA's proposed deletion of a sulfur dioxide emission rate in 40 CFR 52.1881(B)(23)(v) is inappropriate. The company stated that USEPA should acknowledge that Master Metals has not been shut down and that a limit of 10.0 pounds of sulfur dioxide per ton of metal charged, as provided by OEPA Regulations, O.A.C. 3745–18–24(E)(2), should be continued for Master Metals' reverb furnaces.

Lincoln Electric Company commented that the cited proposed Rule indicates that Lincoln Electric's boilers have been decommissioned, but that in fact, these boilers are operational. USEPA acknowledges the operational status of the boilers at Lincoln Electric Company and Addressograph Multigraph. In addition, the proposed amendment indicates the Addressograph Multigraph boilers have been decommissioned. Lincoln Electric indicates that it purchased a portion of that facility and has since demolished the boiler house and all boilers. USEPA concurs.

LTV Steel Company, Inc., commented that the six month compliance schedule mentioned in the proposal would result in the company being required to purchase low sulfur fuels to operate a powerhouse for 6 months from promulgation until compliance equipment is installed. The company maintains that this is inconsistent with the intent of the parties and with the comparable proposal by the State of Ohio. Rules which have now been adopted by Ohio provide 124 weeks from the rule effective date of October 31, 1991, to install feeder lines to supply boilers A–D with low sulfur blast furnace gas, and to establish contracts for the supply of low sulfur backup fuel. In response, USEPA is setting a compliance schedule identical to the Ohio State rules which went into effect October 31, 1991.

LTV commented that a group of paragraphs in the regulation were misreferenced from another paragraph. USEPA agrees that the paragraphs were misreferenced and the document has been corrected.

Reilly Industries, Inc., commented that as of January 1, 1989, Reilly Tar and Chemical Corporation changed its name to Reilly Industries, Inc. USEPA acknowledges the change.

Reilly Industries, Inc., commented that it was not informed, prior to the publication of the **Federal Register** notice, of the proposed amendment. It further claims that this limited its ability to obtain, evaluate and make substantive comment on modeling or other data used by USEPA to support the proposed rule. In response, USEPA staff regrets that Reilly Industries, Inc., was unaware of the proposed action, and USEPA will cooperate as much as possible with requests to supply pertinent information used to support the proposed rule. Nevertheless, the notice of proposed rulemaking provided a suitable and sufficient opportunity for comment, and USEPA is proceeding with final rulemaking.

IV. Final Action

USEPA is approving revisions to the Federally promulgated State Implementation Plan for Cuyahoga County, Ohio. The revisions affect sulfur dioxide (SO_2) emission limitations for LTV Steel-Cleveland District, E.I. DuPont, the Medical Center, Reilly Industries, Inc., and numerous shut down sources within the federally promulgated State Implementation Plan (SIP) for Cuyahoga County, Ohio.

An emission limit of 0.00 lbs/MMBTU (effective upon promulgation) will be established for the sources listed below.

Addressograph Multigraph
Lear Seigler, Incorporated
Metal Blast, Incorporated
Standard Ohio Company, Cleveland Asphalt Plant
United States Steel Corporation, Lorain-Cuyahoga Works
Forest City Foundries (W. 27th St. and Maywood Ave.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United State Court of Appeals for the appropriate circuit by November 2, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Sulfur oxides.

Dated: August 26, 1993.

Carol M. Browner,

Administrator.

Title 40 of the Code of Federal Regulations, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart KK—Ohio

2. Section 52.1881 is amended by revising paragraph (b)(23) to read as follows:

§ 52.1881 Control strategy: Sulfur oxides (sulfur dioxide).

* * * * *

(b) * * *

(23) In Cuyahoga County, no owner or operator, unless otherwise specified in this subparagraph, shall cause or permit emission of sulfur dioxide from any stack in excess of the rates specified in paragraphs (b)(23) (i) and (ii) of this section.

(i) For fossil fuel-fired steam generating units between 10.0 MMBTU's per hour and 350 MMBTU's per hour total rated capacity of heat input, the emission rate in pounds of sulfur dioxide per million BTU of actual heat input shall be calculated by the following equation:

$$EL = 7.014\ Q_m^{-0.3014}$$

where Q_m is the total rated capacity of heat input in million BTU per hour and EL is the allowable emission rate in pounds of sulfur dioxide per million BTU actual heat input.

(ii) For fossil fuel-fired units equal to or greater than 350 MMBTU per hour total rated capacity, the emission shall not exceed a rate of 1.20 pounds of sulfur dioxide per MMBTU of actual heat input.

(iii) The "E.I. DuPont de Nemours and Company" or any subsequent owner or operator of the "E.I. DuPont de Nemours and Company" facility located at 2981 Independence Road, Cleveland, Ohio, shall not cause or permit the following source to violate the limitation indicated:

(A) Sulfur burning contact process a maximum of 0.00 pounds of sulfur dioxide per ton of one hundred percent acid produced.

(B) (Reserved)

(iv) Master Metals Incorporated or any subsequent owner or operator of the "Master Metals Incorporated" facility located at 2850 West Third, Cleveland, Ohio, shall not cause or permit the emission of sulfur dioxide from the following sources to exceed the amounts indicated:

(A) Blast furnace process; a maximum of 0.00 pounds of sulfur dioxide per ton of metal charged.

(B) Reverb furnace process; a maximum of 10.00 pounds of sulfur dioxide per ton of metal charged.

(v) Centerior Energy Corporation, or any subsequent owner or operator of the "Centerior Energy Corporation, Steam Heating Plant" facility located at 2274 Canal Road, Cleveland, Ohio, shall not cause or permit the emission of sulfur dioxide from Boiler Numbers 34 through 38 to exceed a maximum of 1.38 pounds of sulfur dioxide per MMBTU actual heat input from each boiler.

(vi) Centerior Energy Corporation, or any subsequent owner or operator of the "Centerior Energy Corporation, Steam Heating Plant" facility located at 1901 Hamilton Avenue, Cleveland, Ohio, shall not cause or permit the emission of sulfur dioxide from Boiler Number 1 through 6 to exceed a maximum of 1.00 pounds of sulfur dioxide per MMBTU actual heat input from each boiler.

(vii) Forest City Foundries, or any subsequent owner or operator of the "Forest City Foundries" facility located at 9401 Maywood Avenue, Cleveland, Ohio, shall not cause or permit the emission of sulfur dioxide from the following sources to exceed the amounts indicated:

(A) Number 1 Cupola-North; a maximum of 0.00 pounds of sulfur dioxide per ton of metal charged.

(B) Number 2 Cupola-South a maximum of 0.00 pounds of sulfur dioxide per ton of metal charged.

(viii) Forest City Foundries, or any subsequent owner or operator of the "Forest City Foundries" facility located at 2500 West 27th Street, Cleveland, Ohio, shall not cause or permit the emission of sulfur dioxide from the following sources to exceed the amounts indicated:

(A) Number 1 Cupola: a maximum of 0.00 pounds of sulfur dioxide per ton of metal charged.

(B) Number 2 Cupola: a maximum of 0.00 pounds of sulfur dioxide per ton of metal charged.

(ix) Harshaw Chemical Company, or any subsequent owner or operator of the "Harshaw Chemical Company" facility located at 1000 Harvard Avenue, Cleveland, Ohio, shall not cause or permit the emission of sulfur dioxide from the following sources to exceed the amounts indicated:

(A) Process Buss System; a maximum of 19.00 pounds of sulfur dioxide per ton of acid produced.

(B) (Reserved)

(x) Metal Blast, Incorporated, or any subsequent owner or operator of "Metal Blast, Incorporated" facility located at 871 East 67th Street, Cleveland, Ohio, shall not cause or permit the emission of sulfur dioxide from the Whiting Model Number 7 Cupola to exceed a maximum of 0.00 pounds of sulfur dioxide per ton of metal charged.

(xi) LTV Steel Company, Inc., or any subsequent owner or operator of the "LTV Steel Company, Inc." facility located at 3100 East 45th Street, Cleveland, Ohio, shall not cause or permit the emission of sulfur dioxide from the following sources to exceed the limitations indicated below and/or shall be restricted to specified fuel usages as indicated below:

(A) Boiler 234; Boiler 26, Boiler 27; Boiler 28; Boiler 29; Boiler 30; Boiler 31; Boiler 32; Boiler 33; Boiler 34; Stoves for Blast Furnaces C–1, C–2, C–3, C–4; 80" Hot Strip Mill Furnace 1, 2, 3; 84" Anneal Furnaces North and South; P Anneal Furnaces 1–4; and Coke Plant No. 2 Car Thaw: A maximum of 0.024 pounds of sulfur dioxide per MMBTU actual heat input from each stack, and each boiler is restricted to only burn natural gas and/or blast furnace gas.

(B) Boilers A, B and C: A maximum of 0.99 pounds of sulfur dioxide per MMBTU actual heat input from each boiler, and a maximum total emissions from the three boilers combined of 828 pounds of sulfur dioxide per hour (daily average).

(C) Boiler D: A maximum of 2.45 pounds of sulfur dioxide per MMBTU actual heat input and 1056 pounds of sulfur dioxide per hour (daily average).

(D) Boilers A–D: A maximum total emissions from the four boilers combined of 1258 pounds of sulfur dioxide per hour (daily average).

(E) Boiler 1 and 2: A maximum of 1.64 pounds of sulfur dioxide per MMBTU of actual heat input, and a maximum total emissions from the two boilers combined of 315 pounds of sulfur dioxide per hour (daily average).

(F) Boiler 3: A maximum of 2.39 pounds of sulfur dioxide per MMBTU of actual heat and 686 pounds of sulfur dioxide per hour (daily average).

(G) Boilers A–D, 1–3: A maximum total emissions from the seven boilers combined of 1958 pounds of sulfur dioxide per hour (daily average).

(H) 84" Hot Strip Mill Furnaces 1, 2, and 3: A maximum of 1.26 pounds of sulfur dioxide per MMBTU of actual heat input from each furnace, and a maximum total emissions from the three

furnaces combined of 1365 pounds of sulfur dioxide per hour (daily average).

(I) Stoves of Blast Furnaces C–5 and C–6: A maximum of 0.15 pounds of sulfur dioxide per MMBTU of actual heat input.

(J) Coke Batteries 1, 2, 3 and 4 Underfiring: 44" Soaking Pits 2–6; 45" Soaking Pits 11–15; No. 2 BOF; Foundry; and Coke Plant No. 1 Car Thaw: A maximum of 0.10 pounds of sulfur dioxide per MMBTU actual heat input (20 grains or less of hydrogen sulfide per 100 cubic feet of coke oven gas at standard conditions) from each stack.

(K) Coke Batteries 6 and 7 Underfiring: A maximum of 1.98 pounds of sulfur dioxide per MMBTU of actual heat input (390 grains of hydrogen sulfide per 100 cubic feet of coke oven gas at standard conditions) from each stack.

(L) No. 2 Coke Plant: Coke oven gas produced by the Coke Batteries Numbers 6 and 7 shall have a maximum of 390 grains of hydrogen sulfide per hundred dry standard cubic feet, and the total production of hydrogen sulfide in coke oven gas from the two batteries combined shall be a maximum of 470 pounds of hydrogen sulfide per hour (daily average).

(M) Fuel Oil Quality: Fuel oil combusted at the facility shall have a maximum of 0.525 pounds of sulfur per MMBTU heat content.

(N) Claus Desulfurization Plant: A maximum of 78 pounds of sulfur dioxide per hour.

(O) 10" Bar Mill; 12" Bar Mill; Open Hearth Plant; 96" Slab Mill, Units 1–5; Sinter Plant: A maximum of 0.00 pounds of sulfur dioxide per MMBTU actual heat input.

(P) LTV Steel Company, Inc., shall collect and record the following information:

(*1*) Amounts of individual coke oven gas from the No. 1 Coke Plant, coke oven gas from the No. 2 Coke Plant, blast furnace gas, fuel oil, coal, and natural gas used for each day at each facility listed in paragraphs (b)(23)(xiv)(B) through (b)(23)(xiv)(H) of this section, and total production of coke oven gas from Number 2 Coke Plant.

(*2*) Daily average sulfur content and heating value for coal and oil used each day during each calendar quarter, as determined in accordance with 40 CFR part 60, Appendix A, Method 19, section 2, or equivalent methods approved by the Administrator.

(*3*) Daily average hydrogen sulfide content for coke oven gas used each day during each calendar quarter, as determined in accordance with 40 CFR part 60, appendix A, Method 11, or equivalent methods approved by the Administrator.

(*4*) Daily average sulfur content and heating value of blast furnace gas and natural gas shall be based upon testing performed once during each calendar quarter.

(*5*) Calculated sulfur dioxide emissions in pounds per MMBTU and pounds per hour using the information in paragraphs (b)(23)(xiv)(P)(*1*) through (b)(23)(xiv)(P)(*4*) at the facilities listed in paragraphs (b)(23)(xiv)(B) through (b)(23)(xiv)(H) of this section for each day.

(*6*) Calculated total hydrogen sulfide content of coke oven gas supplied by Number 2 Coke Plant.

(Q) Compliance with the provisions of paragraphs (b)(23)(xiv)(B) through (b)(23)(xiv)(H), (b)(23)(xiv)(L), and (b)(23)(xiv)(M) of this section shall be determined based on:

(*1*) Stack gas sampling, as specified in 40 CFR 60.46 (See § 52.1881 (b)(2)); or

(*2*) Information developed pursuant to paragraph (b)(23)(xiv)(P) of this section.

A finding of noncompliance by one of these methods cannot be refuted by a showing of compliance by the other method.

(R) Compliance with the provisions of all other paragraphs shall be determined based on stack gas sampling, as specified in 40 CFR 60.46 (See § 52.1881(b)(2)).

(S) LTV Steel Company, Inc. shall submit a written report to the U.S. Environmental Protection Agency, Region 5, within 30 days after the end of each calendar quarter which contains a description of each day during which the recorded sulfur dioxide, hydrogen sulfide, or fuel exceeded the pounds of sulfur dioxide per MMBTU, pounds of sulfur dioxide per hour, grains of hydrogen sulfide per 100 cubic feet, or total hydrogen sulfide production limits listed in paragraphs (b)(23)(xiv)(B) through (b)(23)(xiv)(H) and (b)(23)(xiv)(L) of this section. For each instance in which the applicable limit was exceeded, the report shall provide:

(*1*) The date of each excursion;

(*2*) The magnitude of the excursion;

(*3*) A statement identifying the probable cause or causes of the excursion; and

(*4*) A description of any corrective actions taken to prevent or mitigate the excursion.

The report shall also address any periods of measurement (or recording) system malfunction and, if appropriate, shall state that there are no instances of any excursion during the reporting period.

(xii) Aluminum Company of America, or any subsequent owner or operator of the "Aluminum Company of America" facility located at 1600 Harvard Avenue, Cuyahoga Heights, Ohio, shall not cause or permit the emission of sulfur dioxide from Boiler Numbers 1 through 5 to exceed a maximum of 5.2 pounds of sulfur dioxide per MMBTU actual heat input from each boiler.

(xiii) Standard Oil Company (Ohio), or any subsequent owner or operator of the "Standard Oil Company (Ohio), Cleveland Asphalt Plant" facility located at 2635 Broadway Avenue, Cleveland, Ohio, shall not cause or permit the emission of sulfur dioxide from Boiler Numbers 7, 9, and 10 to exceed 0.00 pounds of sulfur dioxide per MMBTU actual heat input from each boiler.

(xiv) Medical Center Company, or any subsequent owner or operator of the "Medical Center Company" facility located at 2250 Circle Drive, Cleveland, Ohio, shall not cause or permit the following sources to violate the limitations indicated:

(A) Boiler Numbers 1 and 2 shall only burn natural gas.

(B) Boiler Numbers 3, 4, 7 and 8 are limited to a maximum of 4.6 pounds of sulfur dioxide per MMBTU actual heat input from each boiler.

(xv) Hupp, Incorporated, or any subsequent owner or operator of the "Hupp, Incorporated" facility located at 1135 Ivanhoe Road, Cleveland, Ohio, shall not cause or permit the emission of sulfur dioxide from Boiler Numbers 1 through 3 to exceed a maximum of 3.50 pounds of sulfur dioxide per MMBTU actual heat input from each boiler.

(xvi) The Cleveland Water Department, or any subsequent owner or operator of the "Cleveland Water Department, Division Pumping Station" facility located at 1245 West 45th Street, Cleveland, Ohio, shall not cause or permit the emission of sulfur dioxide from Boiler Numbers 1 through 6 to exceed 4.20 pounds of sulfur dioxide per MMBTU actual heat input from each boiler.

(xvii) Ford Motor Company, or any subsequent owner or operator of the "Ford Motor Company, Cleveland Engine Plant Number 2" facility located at 18300 Five Points Road, Brookpark, Ohio, shall not cause or permit the emission of sulfur dioxide from Boilers Numbers 1 through 5 to exceed a maximum of 4.2 pounds of sulfur dioxide per MMBTU actual heat input from each boiler.

(xviii) Ford Motor Company, or any subsequent owner or operator of the "Ford Motor Company, Cleveland

Casting Plant" facility located at 5600 Engle Road, Brookpark, Ohio, shall not cause or permit the emission of sulfur dioxide from each of Numbers 1 through 7 Cupola to exceed a maximum of 6.00 pounds of sulfur dioxide per ton of actual process weight input.

(xix) Chase Bag Company, or any subsequent owner or operator of the "Chase Bag Company" located at 218 Cleveland Street, Chagrin Falls, Ohio, shall not cause or permit the emission of sulfur dioxide from Boiler Numbers 1 and 2 to exceed a maximum of 4.20 pounds of sulfur dioxide per MMBTU actual heat input from each boiler.

(xx) General Electric Company or any subsequent owner or operator of the "General Electric Power Plant" facility located at Nela Park, East Cleveland, Ohio, shall not cause or permit the emission of sulfur dioxide from Boiler Numbers 1 and 4 to exceed a maximum of 1.60 pounds of sulfur dioxide per MMBTU actual heat input from each boiler.

(xxi) General Electric Company, or any subsequent owner or operator of the "General Electric Company" facility located at 21800 Tungsten Road, Euclid, Ohio, shall not cause or permit the emission of sulfur dioxide from the following sources to exceed the amounts indicated:

(A) Boiler Number 1; a maximum of 1.00 pounds of sulfur dioxide per MMBTU actual heat input from each boiler.

(B) Boiler Number 4; a maximum of 1.60 pounds of sulfur dioxide per MMBTU actual heat input from each boiler.

(xxii) Addressograph Multigraph or any subsequent owner or operator of the "Addressograph Multigraph" facility located at 1200 Babbitt Road, Euclid, Ohio, shall not cause or permit the emission of sulfur dioxide from Boiler Numbers 1 through 3 to exceed a maximum of 0.00 pounds of sulfur dioxide per MMBTU actual heat input from each boiler.

(xxiii) Allied Chemical Corporation, or any subsequent owner or operator of the "Allied Chemical Corporation" facility located at 5000 Warner Road, Garfield Heights, Ohio, shall not cause or permit the emission of sulfur dioxide from the following sources to exceed the amounts indicated.

(A) Number 5 Unit Sulfuric Acid; a maximum of 4.80 pounds of sulfur dioxide per ton of one hundred percent acid produced.

(B) Number 6 Unit Sulfuric Acid; a maximum of 4.80 pounds of sulfur dioxide per ton of one hundred percent acid produced.

(xxiv) Lear Siegler, Incorporated, or any subsequent owner or operator of the "Lear Siegler, Incorporated" facility located at 17600 Broadway, Maple Heights, Ohio, shall not cause or permit the emission of sulfur dioxide from Boiler Number 1 to exceed a maximum of 0.00 pounds of sulfur dioxide per MMBTU actual heat input.

(xxv) Chevrolet Motor Division, or any subsequent owner or operator of the "Chevrolet Motor Division" facility located at Stumph Road and Brookpark, Parma, Ohio, shall not cause or permit the emission of sulfur dioxide from the following sources to exceed the amounts indicated:

(A) Boiler Numbers 1 and 2; a maximum of 1.53 pounds of sulfur dioxide per MMBTU actual heat input from each boiler.

(B) Boiler Numbers 3 and 4; a maximum of 1.8 pounds of sulfur dioxide per MMBTU actual heat input from each boiler.

(xxvi) Ford Motor Company, or any subsequent owner or operator of the "Ford Motor Company, Cleveland Stamping Plant" facility located at 7845 Northfield Road, Walton Hills, Ohio, shall not cause or permit the emission of sulfur dioxide from Boilers Numbers 1 through 3 to exceed a maximum of 1.2 MMBTU actual heat input from each boiler.

(xxvii) Highland View Cuyahgoa County Hospital, or any subsequent owner or operator of the "Highland View Cuyahoga County Hospital" facility located at 3901 Ireland Drive, Warrensville Township, Ohio, shall not cause or permit the emission of sources to exceed the amounts indicated:

(A) Boiler Numbers 1 and 2; a maximum of 1.50 pounds of sulfur dioxide per MMBTU actual heat input from each boiler.

(B) Boiler Numbers 3 and 4; a maximum of 2.90 pounds of sulfur dioxide per MMBTU actual heat input from each boiler.

(xxviii) Centerior Energy Corporation, or any subsequent owner or operator of the "Centerior Energy Corporation, Lake Shore Plant" facility located at 6800 South Marginal Drive, Cleveland, Ohio, shall not cause or permit the emission of sulfur dioxide from the following sources to exceed the amounts indicated:

(A) Boiler Numbers 91 through 94; a maximum of 1.90 pounds of sulfur dioxide per MMBTU actual heat input from each boiler.

(B) Boiler Number 18; a maximum of 1.30 pounds of sulfur dioxide per MMBTU actual heat input.

(xxix) United States Steel Corporation, or any subsequent owner or operator of the "United States Steel Corporation, Cuyhoga Works" facility located at 4300 East 49th Street, Cuyhoga Heights, Ohio, shall not cause or permit the emission of sulfur dioxide from the following sources to exceed the amounts indicated:

(A) Boiler Numbers 1 and 2; a maximum of 0.5 pounds of sulfur dioxide per MMBTU actual heat input from each boiler.

(B) Boiler Numbers 3 through 7; a maximum of 1.30 pounds of sulfur dioxide per MMBTU actual heat input from each boiler.

(xxx) United States Steel Corporation, or any subsequent owner or operator of the "United States Steel Corporation, Lorain-Cuyahoga Works" facility located at 2650 Broadway Avenue, Cleveland, Ohio, shall not cause or permit the emission of sulfur dioxide from the following sources to exceed the amounts indicated:

(A) Boiler Numbers 1 through 6; a maximum of 0.00 pounds of sulfur dioxide per MMBTU actual heat input from each boiler.

(B) Blast Furnace Numbers D–6 and A; a maximum of 0.00 pounds of sulfur dioxide per ton of iron produced.

(xxxi) Reilly Industries, Inc., or any subsequent owner or operator of the "Reilly Industries, Inc." facility located at 3201 Independence Road, Cleveland, Ohio shall not cause or permit the emission of sulfur dioxide from the following sources to exceed the amounts indicated:

(A) Still Numbers 3 through 7; a maximum of 2.7 pounds of sulfur dioxide per ton of coal tar processed.

(B) (Reserved.)

(xxxii) No owner or operator of any process equipment, unless otherwise specified in this paragraph, shall cause or permit the emission of sulfur dioxide from any stack in excess of 6.00 pounds of sulfur dioxide per ton of actual process weight input.

3. Section 52.1882 is amended by adding new paragraph (l) to read as follows:

§ 52.1882 Compliance schedules.

* * * * *

(l) The Federal compliance schedule for the LTV Steel Company, Inc., in Cuyahoga County is as follows:

(1) 6 months from the date of promulgation—Achieve final compliance with § 52.1881(b) for all sources except Boilers 26–34, Boilers A through D, and Coke Plant No. 2 Car Thaw.

(2) Achieve final compliance with § 52.1881(b) for Boilers 26–34, Boilers A

through D, and Coke Plant No. 2 Car Thaw by March 17, 1994.

[FR Doc. 93-21580 Filed 9-2-93; 8:45 am]
BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 107

[Docket No. HM-183D; Amendment No. 107-28]

RIN 2137-AC37

Cargo Tanks; Registration of Registered Inspectors and Design Certifying Engineers; Grandfather Provision

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule amends requirements concerning the registration of Registered Inspectors and Design Certifying Engineers for certification of cargo tank motor vehicles. Affected persons are those meeting the prescribed experience qualification before September 1, 1991, but not the education qualification. This action, to reopen the registration period which closed on December 31, 1991, is in response to a petition for rulemaking. The intended effect of this action is to provide another opportunity for persons meeting the specified criteria to register under the grandfather provision.

DATES: The effective date of this interim final rule is September 3, 1993. Comments must be received by October 13, 1993.

ADDRESSES: Address comments to the Dockets Unit (DHM-30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Comments should identify the docket number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped post card. The Dockets Unit is located in room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jennifer Karim, (202) 366-4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: On March 3, 1993, RSPA published a notice of proposed rulemaking (NPRM) in the **Federal Register** under Docket HM-183C, Notice No. 93-7 [58 FR 12316]. The NPRM proposed to make various miscellaneous changes to the regulations pertaining to cargo tank motor vehicles. Most of the proposed changes were based on petitions for rulemaking received by RSPA. However, a petition for rulemaking [P-1167] filed by the National Tank Truck Carriers, Inc. (NTTC) was not included. NTTC requested that § 107.502(f) be amended by removing the date by which registration statements must be submitted. Section 107.502(f) allowed persons who had at least three years of experience in performing the functions of a Registered Inspector or a Design Certifying Engineer by September 1, 1991, but who did not meet the minimum education requirement, to register with DOT. The registration statements had to be submitted to DOT before December 31, 1991.

NTTC stated that RSPA has presented no reason to justify denying qualified persons who may have successfully performed a job for over 20 years from doing that job because they did not graduate from high school or because an employer failed to register such employees by some arbitrarily selected date. NTTC requested that should DOT deny the request to remove the date, the date should be changed to a future date, such as, December 31, 1995.

RSPA also has received telephone calls from persons stating that they had failed to register because they were unaware of the requirement to register under the grandfather provision. Some employers cited instances where they were unable to hire new employees because they were not registered. RSPA agrees with NTTC that there is a need to provide another opportunity for those persons who performed the specified functions before December 31, 1991, to register. NTTC requested the extension only for Registered Inspectors; however, RSPA believes an extension should also be provided for Design Certifying Engineers. Therefore, RSPA is reopening and extending the registration period for such persons to December 31, 1995. This extension applies only to persons who met the three year work experience requirement no later than September 1, 1991.

NTTC requested clarification concerning whether a person who is not a Registered Inspector can perform the tests and inspections prescribed in § 180.407(c), under the supervision of a person who is a Registered Inspector, provided the Registered Inspector signs the test or inspection forms. RSPA allows persons not meeting the education or experience qualification to work under the supervision of a Register Inspector. The Registered Inspector would ensure that the tests or inspections are performed according to applicable requirements and certify the applicable reports.

RSPA has determined that good cause exists for finding that notice and public procedure are unnecessary. RSPA believes that any further delay in issuing these regulations would create further hardship on those persons who were not registered before December 31, 1991, and on their employers. This rule provides regulatory relief without adversely affecting safety. For these same reasons, these amendments are being made effective without the customary 30-day delay following publication.

Although an opportunity for public comment has not been provided prior to the issuance of this interim final rule, RSPA is seeking public comment to this action. All comments submitted to this interim final rule will be addressed in a **Federal Register** publication along with comments received to the NPRM under Docket HM-183C.

Rulemaking Analyses and Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

This interim final rule does not meet the criteria specified in section 1(b) of Executive Order 12291 and, therefore, is not a major rule. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979). This Interim final rule does not impose additional requirements and, in fact, will provide regulatory and economic relief in some areas. A supplement to the draft regulatory evaluation for Docket HM-183C has been placed in the docket.

B. Executive Order 12612

This rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism").

The Hazardous Materials Transportation Act (49 App. U.S.C. 1801-1819) contains express preemption provisions (49 App. U.S.C. 1811) that preempt a non-Federal requirement if (1) compliance with both the non-Federal and the Federal requirement is not possible; (2) the non-Federal requirement creates an obstacle

to accomplishment of the Federal law or regulations; or (3) it is preempted under section 105(a)(4), concerning certain covered subjects, or section 105(b), concerning highway routing. Covered subjects include:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of unintentional release in transportation of hazardous material; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials. (49 App. U.S.C. 1804(a)(4)(A) and (B)).

This interim final rule concerns design, manufacturing, repairing, and other requirements for packages represented as qualified for use in the transportation of hazardous materials. This interim final rule preempts State, local, or Indian tribe requirements in accordance with the standards set forth above. The HMTA (49 App. U.S.C. 1804(a)(5)) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption of these requirements will be 90 days after issuance of the final rule. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

I certify this rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

D. Paperwork Reduction Act

This rule will have no changes to the information collection and recordkeeping requirements contained in the June 12, 1989 final rule, which were approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and assigned control number 2137–0014.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

F. National Environmental Policy Act

RSPA has concluded that this interim final rule will have no significant impact on the environment and does not require the preparation of an environmental impact statement under the National Environmental Policy Act.

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 107 is amended as follows:

PART 107–HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 App. U.S.C. 1421(c); 1802, 1804, 1805, 1806, 1808–1811, 1815; Public Law 89–670, 80 Stat. 933 [49 App. U.S.C. 1653(d), 1655]; 49 CFR 1.45 and 1.53 and app. A of 49 CFR part 1.

§ 107.502 [Amended]

2. In § 107.502, in paragraph (f)(2), the date "December 31, 1991" is revised to read "December 31, 1995".

Issued in Washington, DC, on August 30, 1993, under authority delegated in 49 CFR Part 1.

George W. Tenley, Jr.,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 93–21544 Filed 9–2–93; 8:45 am]

BILLING CODE 4910–60–P

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 90–05; Notice 5]

RIN 2127–AD51

Federal Motor Vehicle Safety Standards; School Bus Passenger Seating and Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; technical amendment and denial of petitions for reconsideration.

SUMMARY: This notice announces the denial of two petitions for reconsideration of a January 15, 1993 final rule amending Standard No. 222, School Bus Passenger Seating and Crash Protection. The final rule established requirements for wheelchair securement devices in school buses. The first petition requested reconsideration of the requirements for wheelchair securement devices incorporating webbing or straps because the requirements require use of safety belt type webbing. This petition is denied because the agency disagrees that the requirements are design restrictive.

The second petition requested the addition of requirements regulating the performance of wheelchairs as items of equipment and mandating that only wheelchairs complying with those requirements can be used in school buses. In addition, the second petition requested requirements mandating the use of the wheelchair securements/occupant restraints by wheelchair occupants when riding on school buses. As explained in the final rule, this petition is denied because the agency does not have the authority to adopt such requirements.

This notice also clarifies that the January 15, 1993 final rule applies to all school buses.

DATES: The amendments made in this rule are effective January 17, 1994.

Any petitions for reconsideration of the technical amendment must be received by NHTSA no later than October 4, 1993.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT:

Charles R. Hott, NRM–15, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–0247.

SUPPLEMENTARY INFORMATION: On January 15, 1993, NHTSA published a final rule amending Standard No. 222, School Bus Passenger Seating and Crash Protection, to require school buses designed to transport persons in wheelchairs to be equipped with wheelchair securement devices and occupant restraint systems meeting specified performance requirements (58 FR 4586). Since this agency does not require that school buses be designed to transport persons in wheelchairs, the buses subject to the final rule will be those so designed on a voluntary basis or pursuant to a legal requirement other than one issued by this agency. Among the performance requirements in the final rule are ones regarding location and minimum strength for the anchorages of those devices and systems and ones regarding minimum strength of the devices and systems themselves.

The agency received two petitions for reconsideration of the January 15 final rule. As explained below, these petitions are denied.

Performance Criteria for Wheelchair Securement Devices

Kinedyne petitioned for reconsideration of the requirements for wheelchair securement devices in S5.4.2. Section S5.4.2 requires wheelchair securement devices incorporating webbing or straps to comply with the requirements for Type 1 safety belt systems in S4.2, S4.3, and S4.4(a) of Standard No. 209, Seat Belt Assemblies. Section S4.2 specifies webbing performance requirements such as breaking strength, elongation, colorfastness, and resistance to light, abrasion, and micro-organisms. Section S4.3 specifies hardware performance requirements such as corrosion and temperature resistance. Finally, S4.4(a) specifies performance requirements when the safety belt is assembled.

Kinedyne believes that the requirement in S5.4.2 is design restrictive because "it limits the design of the webbing and associated hardware to seat belt type products." Kinedyne requested replacement of these requirements with a requirement that webbing for wheelchair securement anchorages "be capable of meeting a minimum ultimate tensile strength rating of 6,000 lbs."

NHTSA disagrees that the requirements of S5.4.2 are design restrictive. Section S5.4.2(b) makes it clear that the means of wheelchair restraint do not have to include webbing or straps. In addition, S5.4.2(a) does not require the use of safety belt webbing or straps; however, any webbing or straps used for wheelchair restraints must comply with the same strength and performance requirements that apply to safety belts. The strength requirement suggested by Kinedyne (6,000 pounds) is the same as that specified for Type 1 safety belt systems in S4.2(b) of Standard No. 209. Therefore, the webbing currently used by Kinedyne should comply.

Kinedyne did not elaborate on any specific sections of the referenced requirements in Standard No. 209 which it believes will restrict manufacturers to the use of safety belt webbing. Kinedyne's apparent confusion may be the result of requirements specified for certain components that are found in safety belt assemblies, but may not be found in a particular wheelchair securement device (i.e., retractors). These requirements would only be applicable if the wheelchair securement device incorporated those components.

Wheelchair Crashworthiness

Lyle L. Stephens, C.E.O. of Dean Transportation, Inc., petitioned the agency to "(e)stablish mandatory performance standards for the use of mobile seating on school buses comparable to that for bench seating on school buses." Mr. Stephens argued that the wheelchair securement/occupant restraint requirements do not provide safety benefits comparable to those provided for students using bench seats because the performance of the wheelchair is not regulated.

The agency did not include performance requirements for wheelchairs in the January 15, 1993 final rule, despite a number of comments requesting such requirements, because the agency does not have authority to regulate wheelchairs as such, since they are not "motor vehicle equipment" within the meaning of section 102(4) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1391(4)).

Mr. Stephens made two arguments for treating wheelchairs as motor vehicle equipment. The first is that a wheelchair should be regarded as a removable vehicle seating system, and thus the same as any other vehicle seat. The second is that a wheelchair should be regarded as a child restraint system.

With regard to Mr. Stephens' first argument, NHTSA is authorized under the Safety Act to issue motor vehicle safety standards that apply to the manufacture and sale of new motor vehicles and new items of motor vehicle equipment. Section § 102(4) of the Safety Act, defines the term "motor vehicle equipment," in relevant part, as:

> any system, part, or component of a motor vehicle as originally manufactured or any similar part or component manufactured or sold for replacement or improvement of such system, part, or component or as any accessory, or addition to the motor vehicle
> * * *

Wheelchairs fail to meet the principal criteria of the definition, since they are neither part of a motor vehicle as originally manufactured, nor a part sold for replacement of an existing part in a motor vehicle. A wheelchair could arguably be considered "motor vehicle equipment" if it were an accessory. In determining whether an item of equipment is considered an accessory, NHTSA applies two criteria. The first criterion is whether a substantial portion of the expected use of the item is related to the operation or maintenance of motor vehicles. The agency determines a product's expected use by considering product advertising, product labeling, and the type of store that retails the product, as well as available information about the actual use of the product. The second criterion is whether the product is intended to be used principally by ordinary users of motor vehicles (e.g., items normally used by professional vehicle repair or maintenance personnel would not qualify). If the product satisfies both criteria, then the product is considered to be an "accessory" and thus subject to the provisions of the Safety Act.

In general, wheelchairs are not advertised or labeled as equipment for use in motor vehicles. (NHTSA is aware of two exceptions to this general rule which are discussed below.) In addition, available information does not indicate that a substantial portion of the expected use of the average wheelchair is as seating in motor vehicles. Under these criteria, the types of wheelchairs known to the agency are not accessories and thus would not be items of motor vehicle equipment.

With regard to Mr. Stephens' second argument, if the wheelchair was designed for children 50 pound or less, the wheelchair might be considered a "child restraint system" and be required to comply with the requirements of Federal Motor Vehicle Safety Standard No. 213, Child Restraint Systems (49 CFR 571.213). Standard No. 213 defines a "child restraint system" as

> any device * * * designed for use in a motor vehicle * * * to restrain, seat, or position children who weigh 50 pounds or less.

On September 6, 1988, the agency stated in a letter to Mr. Robert Daugherty of Safety Rehab Systems, Inc., that portions of two wheelchairs (the "Safety Plus Model 501" and the "900 Series Transporter") were "child restraint systems" within the meaning of S3 of Standard No. 213. The advertisements for these wheelchairs indicate that they were designed so that a portion could be separated and used as a child seat in a vehicle. This advertising indicates that a substantial portion of the expected use of the separable portion of these wheelchairs is related to the operation of motor vehicles, and therefore, "motor vehicle equipment." In addition, because the separable portion of the wheelchairs were designed to restrain children weighing 50 pounds or less, they were "child restraint systems" subject to the requirements of Standard No. 213.

Use Requirement

Mr. Stephens also petitioned the agency to

(m)ake the use of approved wheelchair securement equipment, occupant protection equipment, and forward-facing seating for all seated passengers on a school bus mandatory.

As stated previously, NHTSA has the authority under the Safety Act to issue motor vehicle safety standards that apply to the manufacture and sale of new motor vehicles and new motor vehicle equipment. However, the agency lacks authority under the Safety Act to issue requirements governing the circumstances and manner in which motor vehicles and motor equipment are used by the public. The individual States, not the Federal government, have authority over the use of vehicles and equipment. Therefore, while NHTSA agrees that wheelchair securements/occupant restraints should be used, it must deny Mr. Stephens' petition to make their use mandatory.

Applicability

In the final rule, the agency added regulatory language to Standard No. 222 stating that each school bus designed to carry a person in a wheelchair was required to comply with those requirements. However, the regulatory text of the final rule failed to amend S5(b), which limits the applicability of the S5 requirements to school buses with a GVWR of 10,000 pounds or less by providing that those buses are subject to only those provisions of S5 that are expressly listed in S5(b). The final rule should have amended S5(b) to expressly add the wheelchair securement/occupant restraint requirements to the list of requirements applicable to school buses with a GVWR of 10,000 pounds or less.

NHTSA discussed its intention to apply the wheelchair securement/occupant restraints requirements in S5.4 to all school buses in the preambles to both the notice of proposed rulemaking (NPRM) and the final rule, including those with a GVWR of 10,000 pounds or less. In section 6 of the NPRM preamble, Safety belt implications, the agency discussed the justification for requiring safety belts for children with disabilities in school buses with a GVWR of 10,000 pounds or less. NHTSA noted its belief that a significant number of children with disabilities are transported in those school buses and stated that since the designated seating positions in those school buses are currently required to be equipped with lap belts, there would be regulatory symmetry in requiring those buses to be equipped with occupant restraints for children in wheelchairs:

With regard to providing safety belts for children in wheelchairs on school buses, the agency believes that a significant number of school buses used to transport children with disabilities have gross vehicle weight ratings of 10,000 pounds or less, and are, therefore, required under Standard No. 222 to be equipped with lap belts at all passenger seating positions * * *. Thus, there is regulatory symmetry for school buses with gross vehicle weight ratings of 10,000 pounds or less. (56 FR 48140, 48144, September 24, 1991.)

Comments on the NPRM indicate that the public understood from that document that the agency intended to require school buses with a GVWR of 10,000 pounds or less to comply with the wheelchair securement/occupant restraints requirements. Some commenters suggested that it would be inconsistent to require safety belts for children with disabilities in all school buses and to require lap belts for designated seating positions in school buses with a GVWR of 10,000 pounds or less, but not require lap belts for designated seating positions in school buses with a higher GVWR (58 FR 4586, 4590).

The agency's intention was also reflected in the Final Regulatory Evaluation, and in the discussion of that document in the final rule (58 FR 4586, 4593). The estimates of the costs of complying with the final rule were based on all school buses, not just school buses with a GVWR of more than 10,000 pounds.

Therefore, the agency finds for good cause that notice and opportunity to comment are not required. This final rule extends the wheelchair securement/occupant restraint requirements published in the January 15, 1993 final rule to school buses with a GVWR of 10,000 pounds or less.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that, it is not "major" within the meaning of E.O. 12291. However, it is "significant" within the meaning of the Department of Transportation's regulatory policies and procedures because of the public interest associated with this rulemaking. As explained in the January 15, 1993 final rule, NHTSA estimated that 2,545–2,561 new school buses will be affected, at a cost of $822–$1,035 per vehicle, for a total annual consumer cost of $2,104,820–$2,633,670. This cost estimate included school buses with a GVWR of 10,000 pounds or less. The Final Regulatory Evaluation (FRE) for that final rule is in docket 90–05, Notice 4. A copy of the FRE may be obtained by writing to: Docket Section, NHTSA, room 5109, 400 Seventh Street, SW., Washington, DC 20590.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained in the January 15, 1993 final rule, the cost of a new school bus is expected to increase only nominally. This final rule does not add to those costs. Therefore, NHTSA does not anticipate either a negative impact on sales from this final rule, or a significant

increase in the amount States currently spend on transporting students.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

Finally, NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 of Title 49 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50.

2. Section 571.222 is amended by revising the first sentence of S5(b)(2) to read as follows:

§ 571.222 Standard No. 222; School bus passenger seating and crash protection.

* * * * *

S5. *Requirements.* (a)

* * * * *

(b)

* * * * *

(2) The requirements of S5.1.2, S5.1.3, S5.1.4, S5.1.5, S5.3, and S5.4 of this standard. * * *

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Issued on August 30, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–21481 Filed 9–2–93; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 58, No. 170
Friday, September 3, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1160

[DA–92–29–B]

RIN 0581–AA44

Fluid Milk Promotion Program; Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and notice of referendum.

SUMMARY: This proposed rule would establish an order implementing a national program for fluid milk promotion and consumer education. The program will be funded by a mandatory assessment on all fluid milk products processed and marketed commercially in consumer-type packages by fluid milk processors in the 48 contiguous States. The order is authorized by the Fluid Milk Promotion Act of 1990, as amended by the Fluid Milk Promotion Act Amendments of 1993. A proposal to establish a fluid milk promotion order was submitted to the Secretary on behalf of fluid milk processors marketing at least 30 percent of the volume of fluid milk products marketed by all processors, as required by the statute.

Notice is also given of a referendum to be held to determine the approval of the order by affected fluid milk processors.

DATES: A referendum will be conducted during the period of October 12 through October 21, 1993.

FOR FURTHER INFORMATION CONTACT: Bonnie O. Tanner, Head, Promotion and Research Staff, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6909.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Invitation to Submit Comments and Notice of Public Meeting: Issued April 16, 1993; published April 21, 1993 (58 FR 21512).

This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as a "non-major" rule under the criteria contained therein.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Fluid Milk Promotion Act of 1990 (Title XIX, subtitle H, of the Food, Agriculture, Conservation, and Trade Act of 1990) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1999K of the Act, any person subject to a fluid milk promotion order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. A person subject to an order is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The most current information available indicates that there currently are about 620 fluid milk processors in the 48 contiguous States. This proposed rule for the fluid milk promotion program exempts about 40 percent of these processors on the basis that they process and distribute no more than 500,000 pounds of fluid milk products per month. Small businesses in the fluid milk processing industry have been defined by the Small Business Administration (13 CFR 121.601) as those employing fewer than 500 employees. Most of the fluid milk processors subject to the provisions of the fluid milk promotion order would be classified as small entities.

The order requires each fluid milk processor who processes and markets commercially over 500,000 pounds of fluid milk products per month to remit 20 cents per hundredweight of such products for six months during the first year the order is effective. This collection is expected to total about $55 million. Because the 20-cent rate would amount to less than 2 percent of the cost of raw milk to affected processors, the economic impact of the assessment would not be significant.

While this order imposes certain recordkeeping requirements on the affected fluid milk processors, the information required under the order could be compiled from records currently maintained by all processors. Thus, any added burden resulting from increased recordkeeping would be insignificant when compared to the benefits that are expected to accrue to such processors. The order's provisions minimize any unnecessary costs or requirements.

Although the order imposes some additional costs and requirements on the affected fluid milk processors, the program administered under this order is expected to maintain and expand the markets for fluid milk products. Therefore, any additional costs should be offset by the benefits to fluid milk processors derived from expanded markets and sales.

Based on the above, the Administrator of AMS has determined that the issuance of this proposed rule would not have a significant economic effect on a substantial number of small entities.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are included in this proposed rule have been approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581–0093, except for Board member nominee information sheets that were previously assigned OMB No. 0505–0001. This action sets forth the provisions of an order which establishes a national program for fluid milk promotion to be

funded by fluid milk processors. Information collection requirements that are included in this proposed rule include:

(1) A periodic report by each fluid milk processor. The estimated maximum number of respondents who would be subject to monthly reporting requirements is 365. They would submit one report for each of the second through seventh months of the first 30 months of the program, and then report monthly if the program is continued. Since fluid milk processors who process and distribute not more than 500,000 pounds of fluid milk products per month are exempted from the order, an estimated additional 255 exempt processors would submit only one response for each fiscal period (no more frequently than once per year). The estimated average reporting burden is 30 minutes per response.

(2) A nominee background statement form for Board member nominees. The estimated number of respondents for this form is 60 during the first year of the program and approximately 20 annually thereafter. Each respondent would submit one response per year, with an estimated average reporting burden of 60 minutes per response.

(3) A requirement to maintain records sufficient to verify reports submitted under the order. The estimated maximum number of recordkeepers necessary to comply with this requirement is 620, each of whom will have an estimated average annual burden of 6 hours.

It should be noted that under the law the promotion program expires at the end of 1996.

Preliminary Statement

The Fluid Milk Promotion Act of 1990 (Title XIX, subtitle H, of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub L. 101–624), which was enacted on November 28, 1990, and amended on August 11, 1993 (Pub. L. 103–72), authorizes the establishment of a national program for fluid milk promotion. The program is to be funded by a mandatory assessment on all fluid milk products processed and marketed commercially in consumer-type packages by fluid milk processors within the 48 contiguous States. A proposed order was submitted by the Milk Industry Foundation, which represents fluid milk processors marketing at least 30 percent of all fluid milk products being marketed in the 48 contiguous States. The Secretary published the proposed order on April 21, 1993, and a public meeting was held April 29, 1993, to provide an opportunity for interested persons to question proponents regarding the proposal. In addition, written comments were invited, to be submitted no later than May 21, 1993. Under the Act, the Secretary must issue a fluid milk promotion order if approved by fluid milk processors.

In addition to this proposed rule, other rules are also necessary to implement the program. A final rule establishing the rules for conducting referenda on a fluid milk promotion program and for proceedings on petitions to modify or be exempted from the order is being issued concurrently with this document, to be effective immediately.

Notice is also given that a referendum will be conducted during the period of October 12, through October 21, 1993, to determine approval of the fluid milk promotion order by affected fluid milk processors.

Findings

Comments regarding the proposed order were received from 19 interested persons. Five of the comments supported adoption of the fluid milk promotion program, with some suggested modifications. Thirteen comments opposed the program, although several opposing comments indicated that some of the opposition is based on being subject to the assessment rather than to the merits of the program.

Comments favoring adoption of the program were received from the Milk Industry Foundation (MIF), proponent of the program; Southern Foods Group, Inc., a fluid milk processor operating five plants in Texas and Louisiana; National Milk Producers Federation; the American Farm Bureau Federation; two Cornell University researchers, the Dairy Institute of California; and Santee Dairies, Inc., of California. MIF's comments stated that the organization represents approximately 200 fluid milk processors processing approximately 80 percent of the nation's fluid milk products. MIF asserted its belief that a fluid milk promotion order will be very beneficial to the nation's fluid milk processors, dairy farmers and consumers.

The American Farm Bureau Federation's comments favored seeing the processor promotion program implemented, and strongly supported maintaining the right of those directly impacted by assessments associated with promotion orders to determine the implementation and continuation of such programs.

A spokesman for the National Milk Producers Federation (NMPF) stated that dairy producers welcome the fluid milk processors' effort to expand fluid milk markets. He described the processor-funded promotion program as complementing the ongoing producer-financed dairy product promotion, research and nutrition education programs carried out by the National Dairy Promotion and Research Board. NMPF is a national organization representing a substantial majority of U.S. dairy farmers and the dairy cooperative marketing associations they own and operate.

The Dairy Institute of California and Santee Dairies, Inc., supported establishment of the proposed program, expressing a belief that it will allow cooperative action between existing state and regional programs to achieve common goals.

Cornell University Professor Olan D. Forker and Research Associate John Lenz submitted comments describing the fluid milk processor promotion program as a responsible approach to the development of a comprehensive collective marketing strategy for the fluid milk industry. They noted that all economic analyses of the generic fluid milk advertising and promotion program indicate that marginal returns from such a program exceed marginal costs, and that processors as a group share in the benefits generated by the current producer-funded program. The researchers concluded that processors will benefit from increases in the advertising and promotion efforts beyond current levels. The Cornell University commentors appended to their comments two research reports documenting the success of fluid milk advertising in increasing fluid milk sales.

A number of small fluid milk processors, producer-handlers, a dairy farmer, a consumer and the food service director of a school district in Pennsylvania submitted comments opposing implementation of the proposed order. Most of the comments objected to the proposed assessments, with some commentors arguing that the level of distribution at which a processor becomes subject to the assessment should be increased, or that all producer-handlers should be exempt from assessment. Other comments asserted that the monies collected would be wasted on administrative costs and cause more paperwork, and that the promotion of fluid milk is not an area that should be subject to government activity.

Several processors indicated that they cannot afford to pay a 20-cent per hundredweight assessment, and expressed concern that the fluid milk promotion program can be expected to benefit only large processors at the

expense of smaller processors, causing local advertising and sponsorship of charitable community activities to be curtailed.

One processor stated that it sells fluid milk only to food service companies, with no store sales, and that consequently the program would result only in costs, with no benefit. A dairy farmer-owned cooperative fluid milk processor argued that 15 cents per hundredweight is already being deducted from dairy farmers' returns to cover the cost of the producer-funded advertising and promotion program, and that an additional 20-cent deduction from their fluid business would create an excessive burden for dairy farmers.

The dairy farmer commentor opposed any further assessments on dairy farmers, stating the assumption that any assessment would ultimately come out of farmers' pockets. The school food service director argued that schools are required to offer milk with all lunches, and will receive no benefit from the added cost that would be passed on in increased costs for milk from processors.

A consumer objected to the fluid milk promotion program, characterizing the assessment as one the government should be reducing rather than implementing. The consumer raised the question of why consumers should pay more for milk so other consumers can be encouraged to drink more of it.

Under the provisions of the Fluid Milk Promotion Act of 1990 (the Act), the Secretary is required to issue a promotion order that complies with the authorizing legislation. The Act provides that if the Secretary receives a proposed order from processors representing not less than 30 percent of the volume of fluid milk products marketed by all processors, he must publish the proposal for public comment. The Secretary is then required to issue a promotion order, taking into consideration the comments received and including in the order the provisions necessary to ensure that the order is in conformity with the requirements and declared policy of the Act.

A proposed order was received from processors representing the required share of the nation's marketings of fluid milk products. The proposal was published and comments have been received, including those that were received at a public meeting held to discuss the proposal. Accordingly, it is now incumbent upon the Secretary to issue a new promotion order and submit it to fluid milk processors for their approval.

Some modifications of the order as published in the notice asking for comments should be made in response to comments filed and for the purpose of making the order more effective and to facilitate the administration of it.

MIF requested that the proposed representative month for determining approval of the order for the first fiscal period, July 1992, be changed to a later month to reflect on a more current basis the status of participants in the market at the time of the initial referendum. MIF stated that the representative month should be the month for which the most recent audited sales data are available, and suggested May or June 1993.

It cannot be assumed that audited sales data would be available for all fluid milk processors within three or four months of the referendum. However, experience under the Federal order program, which covers about 80 percent of the Grade A milk supply available for fluid use, demonstrates that in total there is little difference between audited and unaudited data. It is desirable, then, to use as current a representative period as is practicable in terms of being able to verify sales data if necessary. Therefore, the representative period for the initial referendum is changed to May 1993.

In comments filed by the American Farm Bureau Federation questions were raised about the possibility of conflict of interest arising from the definition of an "eligible organization" and the ability of such an organization to nominate Board members and be contracted with by the Board to administer the program. The Farm Bureau asked if other organizations other than "eligible organizations" would be considered interested parties for purposes of nominating Board members, and whether the term "interested party" should be defined in the order.

It should not be necessary to define "interested parties" in the order. The Secretary should be able to determine which organizations that may wish to nominate Fluid Milk Promotion Board members are in fact "interested parties." No problem of conflict of interest is foreseen in the provisions dealing with "eligible organizations." Any such organization would be subject to audit, and its actions in administering the fluid milk promotion program, if it assumed that responsibility under a contract with the Board, would be subject to review by the Secretary.

In response to a question raised at the public meeting about the appropriate Region for the District of Columbia, MIF stated that the District should be included in Region 3 with Delaware, Maryland, Pennsylvania, and Virginia. Since the District is surrounded by Maryland and Virginia, Region 3 is its logical placement. The order is changed accordingly.

MIF also indicated, in response to a question, that it is important that the program be implemented as quickly as possible because of time constraints imposed by the authorizing legislation and the industry's need for the program. To this end, MIF would have no objection to allowing the solicitation of nominations for the Board in advance of the effective date of the order. Accordingly, the order is changed to allow the solicitation of Board member nominations before the order becomes effective.

At the public meeting, Southern Foods Group, Inc. (SFG), a processor operating 5 plants in Texas and Louisiana, supported the non-brand aspect of the promotion activities authorized by the order. However, the SFG representative expressed concern about the possibility of a handler buying advertising space in close proximity to generic advertising placed by the Board, resulting in the impression that the combined advertising refers to the specific handler's brand. MIF stated in written comments following the public meeting that it would recommend to the Board that it require any publication receiving Board advertising to avoid placing branded advertising in close proximity to Board advertising.

SFG's written comments included suggested language to add to the provisions of the order specifying duties of the Board that would prohibit such advertising practices. SFG's recommendation has merit, and it is supported in principle by MIF. Accordingly, the suggested language proposed by SFG should be added to the section specifying duties of the Board.

Comments filed by the Dairy Institute of California and Santee Dairies, Inc., asserted that the order should require the grant of 80 percent of assessments collected from California processors to the California state advertising program, rather than "up to" 80 percent. The California processor interests also stated that the order should require that such funds be remitted within 30 days, and that the California Fluid Milk Processor Advisory Board be provided documentation that the amount of assessments paid by California processors that are not granted back to the California promotion program are spent in California.

The California processor promotion program is funded by a level of assessments higher than the assessments required under the national program.

The level of funding has been carefully considered to assure California processors a strong return on their assessment for promotion over the planned 3-year program. According to the terms of the California program, California assessments will be reduced by the amount of the Federal program assessment with the understanding that 80 percent of the Federal assessment will be returned to the California program. The success of the California program is dependent upon receiving all of its planned funding in a timely manner. Therefore, this order should incorporate the language requested by the California commentors.

Comments filed by the American Farm Bureau Federation and Oak Tree Dairy, Inc., questioned the disposition of funds that presumably would be collected from regulated processors as a result of the 20-cent assessment being added to the Federal order Class I price when in fact the processors may be exempt from the assessment because of the size of their operations. There is no provision in the order for refunding such assessments because there is no intention that they would ever be collected in such a situation.

The Farm Bureau and MIF both commented on the need to change the language of the proposed order in the section dealing with the required continuation referendum. A producer-handler representative argued that the order should have to be approved by at least 80 percent of the processors voting who marketed at least 80 percent of the total volume of milk marketed during the representative period. The changes requested by the Farm Bureau and MIF are made for the purpose of clarifying the intent of the proposed order. The level of approval required to implement the provisions of the order is set forth in the Act, and is not subject to change.

Comments relating to exemptions from the assessment required by the order were received from a number of affected persons. The school food service director of the Tredyffin/Easttown School District in Berwyn, PA, proposed that if the order is implemented, milk sold to schools be exempted from the assessment. The operator of West Dairies, a processor selling directly to food service companies, suggested an exemption for processors with less than 10 percent store business. Ellen Spear, a consultant representing producer-handler interests, argued that all producer-handlers should be exempt from the assessment because they are already subject to the 15-cent producer promotion program overseen by the National Dairy Board.

A comment from Brown Dairy, of Coalville, Utah, stated that the proposed exemption level of 300,000 pounds of fluid milk products per month should be changed to 500,000 pounds. A similar comment from Schoenberg Farms of Arvada, Colorado, suggested an exemption level of 1,000,000 pounds, with processors marketing more than that paying the assessment on only that portion of their marketings over 1,000,000 pounds per month. MIF's comments agreed with Brown Dairy's that an exemption level of 500,000 pounds per month instead of 300,000 would not harm the effectiveness of the program or change the situation of a large number of processors with a very small share of the total milk volume.

Comments filed on behalf of Heartland Dairy Limited Partnership (Heartland), a fluid milk processor operating in the Central Arizona marketing area, argued that the Fluid Milk Promotion Act of 1990 did not authorize the exemption of any fluid milk products processed and sold within the 48 contiguous States from the promotion program assessment.

Heartland's comments, and all others that referred to the proposed exemption on the basis of the volume of a processor's disposition, became moot with the passage of the "Fluid Milk Promotion Act Amendments of 1993." The amendments specify that the definition of a "fluid milk processor" who is to be subject to the 20-cent assessment be limited to those who process and market commercially more than 500,000 pounds of fluid milk products in consumer-type packages per month.

Order

Included herein is an order establishing a Fluid Milk Promotion Program, which has been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire document be published in the **Federal Register**.

Referendum Order to Determine Approval; Determination of Representative Period; and Designation of Referendum Agent.

It is hereby directed that a referendum be conducted during the period of October 12 through October 21, 1993, in accordance with the procedure for the conduct of referenda being issued concurrently with this document to determine whether the following order is approved by fluid milk processors, as defined under the terms of the order, who during the following representative period were engaged in the distribution of fluid milk products within the 48 contiguous United States.

The representative period for the conduct of such referendum is hereby determined to be May 1993.

The agent of the Secretary to conduct such referendum is hereby designated to be Patrick S. Clark.

List of Subjects in 7 CFR Part 1160

Fluid milk products, Milk, Promotion.

It is hereby proposed that Title 7 of the Code of Federal Regulations be amended by adding a new Subpart consisting of §§ 1160.101–1160.508 to Part 1160 to read as follows:

PART 1160—FLUID MILK PROMOTION PROGRAM

Subpart—Fluid Milk Promotion Order

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1160.501 Continuation Referenda
1160.502 Proceedings after suspension or termination.

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1160.504 Personal liability.
1160.505 Patents, copyrights, inventions and publications.
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Authority: 7 U.S.C. 6401–6417.

Subpart—Fluid Milk Promotion Order

Definitions

§ 1160.101 Act.

Act means the Fluid Milk Promotion Act of 1990, Subtitle H of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, 7 U.S.C. 6401–6417, and any amendments thereto.

§ 1160.102 Department.

Department means the United States Department of Agriculture.

§ 1160.103 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1160.104 United States.

United States means the 48 contiguous states in the continental United States and the District of Columbia, *except that* United States means the 50 states of the United States of America and the District of Columbia under the following provisions: The petition and review under Section 1999K of the Act, enforcement under Section 1999L of the Act, and investigations and power to subpoena under Section 1999M of the Act.

§ 1160.105 Board.

Board means the National Processor Advertising and Promotion Board established pursuant to 7 U.S.C. § 6407(b)(1) and this subpart (hereinafter known as the National Fluid Milk Processor Promotion Board or Board).

§ 1160.106 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative or other entity.

§ 1160.107 Fluid milk product.

(a) *Fluid milk product* means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) *Fluid milk product* does not include evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas specifically prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent milk solids, and whey.

§ 1160.108 Fluid milk processor.

(a) *Fluid milk processor* means any person who processes and markets commercially fluid milk products in consumer-type packages in the United States, except that the term fluid milk processor shall not include in each of the respective fiscal periods those persons who process and market not more than 500,000 pounds of such fluid milk products during the representative month set forth below:

(1) For the first fiscal period, the representative month shall be May 1993;

(2) For the second fiscal period, the representative month shall be the month that the Secretary uses as the representative month in the conduct of the continuation referendum; and

(3) For each additional fiscal period, the representative month shall be the first month of the fiscal period.

(b) Any person who did not qualify as a fluid milk processor for a fiscal period because of the 500,000-pound limitation shall not later qualify as a fluid milk processor during that fiscal period even though the monthly volume limitation is later exceeded during that period.

(c) Any person who qualified as a fluid milk processor for a fiscal period and whose monthly marketings of fluid milk products later become 500,000 pounds or less shall no longer qualify as a fluid milk processor during that fiscal period beginning with the month in which the marketings first dropped below the volume limitation.

(d) For the purpose of determining qualification as a fluid milk processor, each processor of fluid milk products shall report for the representative month of each fiscal period the hundredweight of fluid milk products processed and marketed by the processor.

§ 1160.109 Milk.

Milk means any class of cow's milk produced in the United States.

§ 1160.110 Class I price.

Class I price is the price that is established for Class I milk in each marketing area under milk marketing orders authorized by the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601–674.

§ 1160.111 Promotion.

Promotion means the following activities:

(a) *Consumer Education*, which means any program utilizing public relations, advertising or other means devoted to educating consumers about the desirable characteristics of fluid milk products and directed toward increasing the general demand for fluid milk products.

(b) *Advertising*, which means any advertising or promotion program involving only fluid milk products and directed toward educating consumers about the positive attributes of fluid milk and increasing the general demand for fluid milk products.

§ 1160.112 Research.

(a) *Research* means market research limited to the support of promotion and consumer education efforts.

(b) *Research* does not include research directed to product characteristics such as nutrients; product development including new products; improved technology in production, manufacturing or processing; or any other efforts not directly applicable to measuring or increasing the effectiveness of promotion and consumer education activities in expanding sales of fluid milk products.

§ 1160.113 Fiscal period.

Fiscal period means prior to a continuation referendum, the initial period of up to 30 months that this subpart is effective. Thereafter, the fiscal period shall be such annual period as the Board may determine, except that the Board may provide for a lesser or greater period as it may find appropriate for the period immediately after the initial fiscal period to assure continuity of fiscal periods until the beginning of the first annual fiscal period.

§ 1160.114 Eligible organization.

Eligible organization means an organization eligible to nominate members of the Board and which meets the following criteria:

(a) Is a nonprofit organization pursuant to Section 501(c) (3), (5), or (6) of the Internal Revenue Code (26 U.S.C. 501 (c) (3), (5), or (6));

(b) Is governed by a board comprised of a majority of fluid milk processors; and

(c) Represents fluid milk processors on a national basis whose members process more than 50 percent of the

fluid milk products processed and marketed within the United States.

§ 1160.115 Milk marketing area.

Milk marketing area means each area within which milk being marketed is subject to a milk marketing order issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601–674, or applicable state laws.

§ 1160.116 Initial referendum.

Initial referendum means the referendum among fluid milk processors that the Secretary conducted prior to the effective date of this subpart.

§ 1160.117 Continuation referendum.

Continuation referendum means that referendum among fluid milk processors that the Secretary shall conduct as provided in § 1160.501.

National Fluid Milk Processor Promotion Board

§ 1160.200 Establishment and membership.

(a) There is hereby established a National Fluid Milk Processor Promotion Board of 20 members, 15 of whom shall represent geographic regions and five of whom shall be at-large members of the Board. To the extent practicable, members representing geographic regions shall represent fluid milk processing operations of differing sizes. No fluid milk processor shall be represented on the Board by more than one member. The at-large members shall include at least three fluid milk processors and at least one member from the general public. Except for the member or members from the general public, nominees appointed to the Board must be active owners or employees of a fluid milk processor. The failure of such a member to own or work for the fluid milk processor with whom the member was associated at the time of his or her appointment to the Board shall disqualify that member for membership on the Board for the remainder of that term.

(b) In selecting the 15 Board members who represent geographic regions, one member shall be selected from each of the following regions:

Region 1. Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
Region 2. New York and New Jersey.
Region 3. Delaware, Maryland, Pennsylvania, Virginia, and the District of Columbia.
Region 4. Georgia, North Carolina and South Carolina.
Region 5. Florida.
Region 6. Ohio and West Virginia.
Region 7. Michigan, Minnesota, North Dakota, South Dakota and Wisconsin.
Region 8. Illinois and Indiana.
Region 9. Alabama, Kentucky, Louisiana, Mississippi and Tennessee.
Region 10. Texas.
Region 11. Arkansas, Iowa, Kansas, Missouri, Nebraska and Oklahoma.
Region 12. Arizona, Colorado, New Mexico, Nevada, and Utah.
Region 13. Idaho, Montana, Oregon, Washington and Wyoming.
Region 14. Northern California which shall be composed of the Northern California Marketing Area and the South Valley Marketing Area as defined by the Stabilization and Marketing Plan, as amended, issued by the California Department of Food and Agriculture pursuant to the provisions of Chapter 2, Part 3, Division 21, of the California Food and Agriculture Code, effective February 3, 1992.
Region 15. Southern California which shall be composed of the Southern California Marketing Area as defined by the Stabilization and Marketing Plan, as amended, issued by the California Department of Food and Agriculture pursuant to the provisions of Chapter 2, Part 3, Division 21, of the California Food and Agriculture Code, effective February 3, 1992.

§ 1160.201 Term of office.

(a) The members of the Board shall serve for terms of three years, except that the members appointed to the initial Board shall serve proportionately, for terms of one year, two years, and three years, as determined by the Secretary. The terms of all Board members shall expire upon the suspension or termination of the order except as provided in § 1160.502.

(b) No member shall serve more than two consecutive terms, except that any member who is appointed to serve for an initial term of one or two years shall be eligible to be reappointed for a 3-year term.

§ 1160.202 Nominations.

Nominations for members of the Board shall be made in the following manner:

(a) The Secretary shall solicit nominations for the initial Board from individual fluid milk processors and other interested parties, including eligible organizations. Fluid milk processors and other interested parties may submit nominations for positions on the Board for regions in which they are located or market fluid milk, and for at-large members. Eligible organizations may submit a slate of nominees for seats in all regions and for at-large members.

(b) After the appointment of the initial Board, the Secretary shall announce at least 180 days in advance of the expiration of members' terms that such terms are expiring, and shall solicit nominations for such positions in the manner described in paragraph (a) of this section. Nominations for such positions should be submitted to the Secretary not less than 120 days prior to the expiration of members' terms.

§ 1160.203 Nominee's agreement to serve.

Each nominee for Board membership must file with the Secretary at the time of nomination a written agreement to serve on the Board if appointed.

§ 1160.204 Appointment.

From the nominations made pursuant to § 1160.202, the Secretary shall appoint the members of the Board on the basis of representation provided for in §§ 1160.200 and 1160.201.

§ 1160.205 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor from the most recent list of nominations made by individual fluid milk processors and other interested parties, including eligible organizations, for the Board, or from nominations made by the Board.

§ 1160.206 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Board. Any action of the Board shall require the concurring votes of at least a majority of those present and voting. The Board shall establish rules concerning timely notice of meetings.

(b) The Board may take action upon the concurring votes of a majority of members by mail, telephone, telegraph, or other means of electronic communication when, in the opinion of the chairperson of the Board, such action must be taken before a meeting can be called. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board.

§ 1160.207 Compensation and reimbursement.

The members of the Board and trustees, if any, named under § 1160.502, shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their duties under this subpart.

§ 1160.208 Powers of the Board.

The Board shall have the following powers:

(a) To receive and evaluate, or on its own initiative develop, and budget for plans or projects to educate consumers and promote the use of fluid milk products and to make recommendations to the Secretary regarding such proposals;

(b) To administer the provisions of this subpart in accordance with its terms and provisions;

(c) To make rules and regulations to effectuate the terms and provisions of this subpart;

(d) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(e) To employ such persons as the Board deems necessary and determine the duties and compensation of such persons;

(f) To contract with eligible organizations or other persons to conduct activities authorized pursuant to this subpart;

(g) To select committees and subcommittees of the Board members, to adopt bylaws, and to adopt such rules for the conduct of its business as it may deem advisable;

(h) To recommend to the Secretary amendments to this subpart; and

(i) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1160.211 in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

§ 1160.209 Duties of the Board.

The Board shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson, who may serve for a term of one year and not more than two consecutive terms, and to select such other officers as may be necessary;

(b) To prepare and submit to the Secretary for approval a budget for each fiscal period of the anticipated expenses and disbursements in the administration of this subpart, including a description of and the probable costs of consumer education, promotion and research projects. However, for the initial fiscal period, the budget shall be such sum as may be collected from assessments paid during that period;

(c) To develop and submit to the Secretary for approval promotion and consumer education, and research plans or projects;

(d) To the extent practicable, carry out consumer education and promotion programs under § 1160.301 in such a manner as to ensure that advertising coverage in each of the regions defined in § 1160.200 is proportionate to funds collected from each such region;

(e) To disseminate information to fluid milk processors or eligible organizations;

(f) To maintain minutes, books and records that accurately reflect all of the acts and transactions of the Board, which shall be available to the Secretary for inspection and audit, and prepare and promptly report minutes of each Board meeting to the Secretary and submit such reports from time to time to the Secretary as the Secretary may prescribe, and to account with respect to the receipt and disbursement of all funds entrusted to it;

(g) To enter into contracts or agreements, with the approval of the Secretary, with such persons and organizations as the Board may approve for the development and conduct of activities authorized under this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to § 1160.211 and income from such assessments. Any such contract or agreement shall provide that:

(1) The contractors shall develop and submit to the Board a plan or project together with a budget(s) showing the estimated cost of such plan or project;

(2) Any such plan or project shall be adopted upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its transactions and make periodic reports to the Board of all activities conducted pursuant to the contract or agreement, and provide accounts of all funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board periodically may audit the records of the contracting parties;

(h) For the initial fiscal period, the Board shall contract, to the extent practicable and subject to the approval of the Secretary, with an eligible organization to carry out the provisions of this subpart;

(i) To prepare and make public, at least annually, a report of its activities and an accounting for funds received and expended;

(j) To have an audit of its financial statements conducted by a certified public accountant in accordance with generally accepted auditing standards, at the end of the first 15 months of the initial fiscal period, at the end of the initial fiscal period, and at least once each fiscal period thereafter as well as at such other times as the Secretary may request, and to submit a copy of each such audit report to the Secretary;

(k) To give the Secretary the same notice of meetings of the Board and committees of the Board, including actions conducted under § 1160.206(b), as is given to such Board or committee members in order that the Secretary, or a representative of the Secretary, may attend such meetings;

(l) To submit to the Secretary such information pursuant to this subpart as may be requested;

(m) The Board shall take reasonable steps to coordinate the collection of assessments, and promotion, education, and research activities of the Board, with the National Dairy Promotion and Research Board established under section 113(b) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(b)); and

(n) The Board shall conduct advertising using third parties only through contracts which shall prohibit the third party from selling, offering for sale, or otherwise making available advertising time or space to private industry members conducting brand-name advertising which immediately precedes, follows, appears in juxtaposition, or appears in the midst of Board-sponsored advertising.

§ 1160.210 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve) as the Secretary finds are reasonable and likely to be incurred by the Board for its administration, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart; except that, after the Board's first year, it shall not spend on its administration more than 5 percent of the assessments collected during any fiscal period subsequent to the initial fiscal period. Such administrative expenses shall be paid from assessments collected pursuant to § 1160.211.

(b) The Board shall reimburse the Secretary for administrative costs incurred by the Department from assessments collected pursuant to § 1160.211.

(c) Within 30 days after funds are remitted from Regions 14 and 15, the Board shall provide a grant of 80% of such funds to the entity authorized by the laws of the State of California to conduct an advertising program for fluid milk products in that State for the purpose of implementing a coordinated

advertising program in the markets within those regions. Such grant shall be provided with the approval of the Secretary on the following conditions:

(1) The granted funds shall be utilized to implement a fluid milk promotion campaign within the markets within those regions. Verification of the implementation of this program shall be provided to the Board.

(2) The Board shall ensure that the recipients of these funds implement a research and evaluation program to determine the effect of such program on consumption of fluid milk within the region.

(3) The recipient of these funds must provide to the Board data from the research and evaluation programs so that the Board can determine the effect of the program on consumption of fluid milk.

§ 1160.211 Assessments.

(a) (1) Each fluid milk processor shall pay to the Board or its designated agent an assessment of $.20 per hundredweight of fluid milk products processed and marketed commercially in consumer-type packages in the United States by such fluid milk processor: Provided, however, that for the initial fiscal period the assessment due pursuant to this section shall be paid only on fluid milk products marketed during the second through the seventh months of that fiscal period. Producer-handlers required to pay assessments under section 113(g) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(g)), and not exempt under § 1160.108, shall also pay the assessment under this subpart. No assessments are required on fluid milk products exported from the United States. If the Board is not in place by the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments on behalf of the Board, and shall remit such assessments to the Board when it is convened.

(2) Within 30 days after the effective date of this subpart, the Secretary shall announce the establishment of the assessment each month in the Class I price announcement in each milk marketing area by adding it to the Class I price for the following month. In the event the assessment is suspended for a given month, the Secretary shall inform all fluid milk processors of the suspension in the Class I price announcement for that month. The Secretary shall also inform fluid milk processors marketing fluid milk products in areas not subject to milk marketing orders administered by the Secretary of the establishment or suspension of the assessment.

(3) Each processor responsible for remitting an assessment shall remit it to the Board not later than the last day of the month following the month that the assessed milk was marketed.

(b) Such assessments shall not:

(1) Reduce the prices paid under the Federal milk marketing orders issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937;

(2) Otherwise be deducted from the amounts that handlers must pay to producers for fluid milk products sold to a processor; or

(3) Otherwise be deducted from the price of milk paid to a producer by a handler, as determined by the Secretary.

(c) Money remitted to the Board or the Board's designated agent shall be in the form of a negotiable instrument made payable to the Board or its agent, as the case may be. Processors must mail remittances and reports specified in §§ 1160.108, 1160.211(a)(1), 1160.213, 1160.214, and 1160.401 to the location designated by the Board or its agent.

§ 1160.212 Influencing governmental action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action, except to recommend to the Secretary amendments to this subpart.

§ 1160.213 Adjustment of accounts.

Whenever the Board or the Secretary determines through an audit of a processor's reports, records, books or accounts or through some other means that additional money is due the Board or to such processor from the Board, the Board shall notify that person of the amount due or overpaid. If the processor owes money to the Board, it shall remit that amount by the next date for remitting assessments as provided in § 1160.211. If the processor has overpaid, that amount shall be credited to its account and applied against amounts due in succeeding months.

§ 1160.214 Charges and penalties.

(a) *Late-payment charge.* Any unpaid assessments shall be increased 1.5 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment determined at a date later than prescribed by this subpart because of the failure of a processor to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The receipt of a payment by the Board will be based on the earlier of the postmark date or the actual date of receipt.

(b) *Penalties.* The Secretary may assess any person who violates any provision of this subpart a civil penalty of not less than $500 nor more than $5,000 for each such violation. In the case of a willful failure to pay an assessment as required by this subpart, in addition to the amount due, the Secretary may assess an additional penalty of not less than $10,000 nor more than $100,000 for each such violation. The amount of any such penalty shall accrue to the United States, which may recover such amount in a civil suit. The remedies provided in this section are in addition to, and not exclusive of, other remedies that may be available by law or in equity.

Promotion, Consumer Education and Research

§ 1160.301 Promotion, consumer education and research.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any plans or projects authorized in §§ 1160.208 and 1160.209. Such plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of consumer education, promotion and research activities with respect to fluid milk products; and

(2) The evaluation of consumer education, promotion and research activities implemented under the direction of the Board, and the communication of such evaluation to fluid milk processors and the public.

(b) The Board shall periodically review or evaluate each plan or project authorized under § 1160.301(a) to ensure that it contributes to an effective program of promotion, consumer education and research. If the Board finds that any such plan or project does not further the purposes of the Act, the Board shall terminate that plan or project.

(c) No plan or project authorized under § 1160.301(a) may employ unfair or deceptive acts or practices with respect to the quality, value or use of any competing product.

(d) No plan or project authorized under § 1160.301(a) may make use of a

brand or trade name of a fluid milk product, except that this paragraph does not preclude the Board from offering program material to commercial parties to use under such terms and conditions as the Board may prescribe, subject to approval by the Secretary.

Reports, Books and Records

§ 1160.401 Reports.

Each fluid milk processor marketing milk and paying an assessment under § 1160.211 shall be required to report upon the remittance of such assessments such information as the Board or the Secretary may require. Such information shall include but not be limited to the following:

(a) The quantity of fluid milk products marketed that is subject to the collection of the assessment;

(b) The amount of assessment remitted;

(c) The reason, if necessary, why the remittance is less than the number of hundredweights of milk multiplied by 20 cents; and

(d) The date any assessment was paid.

§ 1160.402 Books and records.

Each person subject to this subpart shall maintain and make available for inspection by agents of the Board and the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued hereunder, including such records as are necessary to verify any reports required. Such books and records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1160.403 Confidential treatment.

(a) All persons, including agents and former agents of the Board, all officers and employees and all former officers and employees of the Department, and all officers and all employees and all former officers and employees of contracting agencies having access to commercial or financial information obtained from such books, records or reports under the Act and this subpart shall keep such information confidential, and not make it available to Board members. Only those persons, as determined by the Secretary, who have a specific need for such information in order to effectively administer the provisions of this subpart shall have access to such information. In addition, they shall disclose only that information the Secretary deems relevant, and then only in a suit or administrative hearing brought at the discretion, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section, however, shall be deemed to prohibit:

(1) The issuance of general statements based upon the reports of the number of processors, individuals, groups of individuals, partnerships, corporations, associations, cooperatives, or other entities subject to this subpart or statistical data collected from such sources, which statements do not identify the information furnished by any such parties, and

(2) The publication, at the direction of the Secretary, of the name of any processor, individuals, group of individuals, partnership, corporation, association, cooperative, or other entity that has been adjudged to have violated this subpart, together with a statement of the particular provisions of the subpart so violated.

(b) Except as otherwise provided in this subpart, information obtained under this subpart may be made available to another agency of the Federal Government for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency has made a written request to the Secretary specifying the particular information desired and the law enforcement activity for which the information is sought.

(c) Any person violating this section, on conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or both, and if such person is an agent of the Board or an officer or employee of the Department shall be removed from office.

(d) Nothing in this subsection authorizes the Secretary to withhold information from a duly authorized committee or subcommittee of Congress.

Miscellaneous

§ 1160.501 Continuation referenda.

(a) At the request of the Board, but not later than one month after the initial fiscal period, the Secretary shall conduct a referendum among those persons who the Secretary determines were fluid milk processors during a representative period, as determined by the Secretary, to determine whether the order should be suspended or terminated.

(b) The Secretary at any time may conduct a referendum among those persons who the Secretary determines were fluid milk processors during a representative period, as determined by the Secretary, on whether to suspend or terminate the order. The Secretary shall hold such a referendum at the request of the Board or of any group of such processors that among them marketed during a representative period, as determined by the Secretary, 10 percent or more of the volume of fluid milk products marketed in the United States by all fluid milk processors.

(c) Any suspension or termination of the order on the basis of a referendum conducted pursuant to this section must be favored:

(1) By at least 50 percent of the fluid milk processors voting in the referendum; and

(2) By fluid milk processors voting in the referendum that marketed during a representative period, as determined by the Secretary, 40 percent or more of the volume of fluid milk products marketed in the United States by all processors of fluid milk.

(d) If the Secretary determines that the suspension or termination of the order is favored in the manner set forth in § 1160.501(c), the Secretary shall take such action within 6 months of such determination.

§ 1160.502 Proceedings after suspension or termination.

(a) Upon the suspension or termination of this subpart, the Board shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board. Once the Secretary has designated such members as trustees, they shall become trustees of all the funds and property that the Board owns, possesses, or controls, including unpaid and undelivered property or any other unpaid claim existing at the time of such termination. The actions of such trustees shall be subject to approval by the Secretary.

(b) The said trustees shall:

(1) Serve as trustees until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreements that it entered pursuant to §§ 1160.208 and 1160.209;

(3) Account for all receipts and disbursements and deliver to any person designated by the Secretary all property on hand, together with all books and records of the Board and the trustees; and

(4) At the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in the Secretary's designee full title and right to all of the funds, property, and claims of the Board or the trustees.

(c) The Secretary's designee shall be subject to the same obligations with respect to funds, property or claims transferred or delivered pursuant to this subpart as the Board and the trustees.

(d) The Board, the trustees or the Secretary's designee shall deliver to the

Secretary any residual funds not required to pay liquidation expenses, which funds may be used, to the extent practicable, to continue one or more of the promotion, research or nutrition education plans or projects authorized pursuant to this subpart.

§ 1160.503 Effect of suspension, termination or amendment.

Unless otherwise expressly provided by the Secretary, the suspension or termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability of the Board or its trustees which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person, with respect to any such violation.

§ 1160.504 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly, in any way whatsoever to any person for errors in judgment, mistakes, or other acts of either commission or omission by such member or employee, except for acts of dishonesty or willful misconduct.

§ 1160.505 Patents, copyrights, inventions and publications.

Any patents, copyrights, trademarks, inventions or publications developed through the use of funds collected under the provisions of this subpart are the property of the United States Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Board. Section 1160.502 governs the disposition of all such property upon suspension or termination of this subpart.

§ 1160.506 Amendments.

The Secretary may from time to time amend provisions of this subpart. Any interested person or organization affected by the provisions of the Act may propose amendments to the Secretary.

§ 1160.507 Report.

The Secretary shall provide annually for an independent evaluation of the effectiveness of the fluid milk promotion program carried out under this subtitle during the previous fiscal year, in conjunction with the evaluation of the National Dairy Promotion and Research Board established under section 113(b) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(b)).

§ 1160.508 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or any circumstances is held invalid, such declaration or holding shall not offset the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances.

Dated: August 30, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-21523 Filed 9-2-93; 8:45 am]

BILLING CODE 3410-02-P

Commodity Credit Corporation

7 CFR Parts 1405 and 1413

RIN 0560-AC74

Common Provisions for the 1994 Wheat, Feed Grains, Cotton, and Rice Programs, and Cost Reduction Options

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Act of 1949, as amended (1949 Act), sets forth numerous discretionary provisions that may be implemented by the Commodity Credit Corporation (CCC) with respect to the 1994 crops of wheat, feed grains, upland and extra long staple (ELS) cotton, and rice. The Food Security Act of 1985, as amended (1985 Act), permits the Secretary of Agriculture to take certain actions related to nonrecourse loans and acreage reduction programs if it is determined that they will reduce total direct and indirect commodity program costs without adversely affecting incomes of small- and medium-sized producers. CCC proposes to make the following program determinations with respect to the price support and production adjustment programs: The percentage of the estimated deficiency payments that should be made available in advance to producers of the 1994 crop of wheat, feed grains, cotton, and rice; the types of crops that may not be planted on "flexible acreage"; whether to permit targeted option payments (TOP); whether to allow the planting of designated crops on up to one-half of the reduced acreage; whether to allow the planting of oats on wheat and feed grains acreage conservation reserve (ACR); whether to allow planting of conserving crops on ACR; whether to allow alternative crops on conserving use acreage for payment; and whether to implement cost reduction options. This proposed rule sets forth CCC's proposed action regarding these determinations.

DATES: Comments must be received on or before October 4, 1993 in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments to Acting Deputy Administrator, Policy Analysis, P.O. Box 2415, Washington, DC 20013-2415, telephone 202-720-7583.

FOR FURTHER INFORMATION CONTACT: James A. Langley, Senior Policy Analyst, Office of the Deputy Administrator, Policy Analysis, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), room 3090-S, P.O. Box 2415, Washington, DC 20013-2415 or call 202-690-0445.

SUPPLEMENTARY INFORMATION:

Executive Order 12991 and Departmental Regulation 1512-1

This proposed rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as "major". It has been determined that these program provisions, if implemented, will result in an annual effect on the economy of $100 million or more.

Preliminary Regulatory Impact Analysis

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed determination and the impact of the implementation of each option is available on request from the above-named individual.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of the proposed rule are not retroactive and preempt State laws only to the extent such provisions are inconsistent with State laws. Before any judicial action may be brought concerning these provisions, the administrative appeal remedies at 7 CFR part 780 must be exhausted.

Federal Assistance Programs

The titles and numbers of the Federal Assistance Programs, as found in the catalog of Federal Domestic Assistance, to which this rule applies are as follows:

Titles	Numbers
Commodity Loans and Purchases	10.051
Cotton Production Stabilization	10.052
Feed Grains Production Stabilization	10.055
Wheat Production Stabilization	10.058
Rice Production Stabilization	10.065

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

If the discretionary provisions set forth in this proposed rule are implemented, there will not be any increase in the burden associated with completing the program participation forms. The impact of these provisions, if implemented, provide the producer with new or revised options concerning the crops the producer decides to plant or is authorized to plant, but the provisions do not require additional paperwork. The information collection requirements of 7 CFR part 1413 have been cleared under OMB No. 0560–0092 through June 30, 1993. ASCS has resubmitted the information collection requirements to the Office of Management and Budget (OMB) to request an extension of the clearance period. Public reporting burden for these collections is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing the burden, to the Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project, (OMB No. 0560–0092) Washington, DC 20503.

Background

This proposed rule would amend 7 CFR part 1413 to set forth the determination of whether certain discretionary cost reduction options of the 1985 Act will be implemented. Accordingly, the Secretary may take the following actions if it is determined that they will reduce total direct and indirect commodity program costs without adversely affecting incomes of small- and medium-sized producers: (a) Enter into the commercial market to purchase commodities covered by nonrecourse loans if the cost would be less than later acquiring the commodity through loan defaults; (b) provide for settlement of nonrecourse loans (including nonrecourse loans to producers under the Farmer-Owned Reserve Program) at less than full principal plus interest; or (c) reopen signup to allow producers to bid for conversion of planted acreage to diverted acreage with payment in kind from commodity stocks.

If, after the comment period, no cost reduction options are implemented under the final rule, the Secretary still reserves the right to initiate at a later date any action authorized by section 1009 of the 1985 Act, including the right to reopen and change a contract entered into by a producer under the program if the producer voluntarily agrees to the change.

This proposed rule would also amend 7 CFR part 1413 to set forth the determination of whether certain discretionary provisions of the 1949 Act will be implemented and, if implemented, the manner in which implementation would be made. Accordingly, the following program determinations are proposed to be made with respect to the provisions that are applicable to the 1994 crops of wheat, feed grains, upland and ELS cotton, and rice:

A. The Percentage of the Estimated Deficiency Payments That Should Be Made Available in Advance to Producers of the 1994 Crop of Wheat, Feed Grains, Cotton and Rice

Section 114 of the 1949 Act requires that advance deficiency payments be made available to producers of wheat, feed grains, upland cotton, and rice if an acreage limitation is in effect. Section 103 of the 1949 Act provides discretionary authority to provide such payments for ELS cotton. Producers who participate in farm programs have the option to request advance deficiency payments. Advance payments must be between 40 and 50 percent of the projected payments for wheat and feed grains and between 30 and 50 percent for upland cotton and rice. Advance payment for ELS cotton, if offered, cannot exceed 50 percent of the projected payment rate.

CCC intends to make available advance deficiency payments of 40 percent of the projected payments for the 1994 crop of wheat, feed grains, rice, upland cotton and, if applicable, ELS cotton.

B. The Types of Crops That May Not Be Planted on Flexible Acres

Section 504 of the 1949 Act states that producers may plant crops other than the program crop on up to 25 percent of any participating crop acreage base. This acreage is known as "flexible" acreage.

Crops that may be planted on flexible acreage are: (a) any program crop; (b) any oilseed crop; (c) any other crop, except any fruit or vegetable crop (including dry edible beans, lentils, peas, and potatoes); and (d) mung beans. The planting of certain fruits or vegetables may be permitted if such crop is an industrial or experimental crop, or if no substantial domestic production or market exists for the crop. The planting of any crop on flexible acres may also be prohibited.

CCC intends to permit the same crops to be grown on flexible acreage in 1994 as were allowed in 1993. However, CCC will consider adding or removing crops to the list of prohibited crops that is set forth at 7 CFR part 1413.11(b)(4).

C. Whether To Implement the TOP Program

Sections 107B(e)(3), 105B(e)(3), 103B(e)(3), and 101B(e)(3) of the 1949 Act, with respect to wheat, feed grains, upland cotton, or rice, provide that if an acreage limitation program is in effect, the Secretary may offer producers the option of increasing or decreasing the acreage reduction level, within certain restrictions, with a corresponding increase or decrease in the target price. The target price may be increased or decreased by not less than 0.5 percent nor more than 1 percent for each percentage point change in the acreage reduction level. The acreage limitation requirement cannot be increased by more than 15 percentage points or above

25 percent total for wheat; by more than 10 percentage points or above 20 percent of the total for feed grains; by more than 10 percentage points or above 25 percent of the total for cotton; nor by more than 5 percentage points or above 25 percent of the total for rice. The decrease in the acreage limitation requirement for all crops cannot be more than one-half of the announced acreage limitation percentage.

The Secretary shall, to the extent practicable, ensure that the TOP does not have a significant effect on program participation or total production and shall offer TOP in such a manner that will result in no additional budget outlays.

Comments on whether this provision should be implemented for the 1994 crops are requested.

D. Whether To Permit the Planting of Designated Crops on up to Half of the Announced Acreage Reduction

Sections 107B(e)(2)(F)(i), 105B(e)(2)(F)(i), 103B(e)(2)(F)(i), and 101B(e)(2)(F)(i) of the 1949 Act, with respect to wheat, feed grains, upland cotton, and rice, provide that the Secretary may permit producers to plant a designated crop on not more than one-half of the reduced acreage on the farm.

The designated crops may be: (a) Any oilseed crop; (b) any industrial or experimental crop designated by CCC; and (c) any other crop, except any fruit or vegetable (including dry edible beans, lentils, peas, and potatoes), not designated by the Secretary as (i) an industrial or experimental crop, or (ii) a crop for which no substantial domestic production or market exist. Program crops may not be planted on the reduced acreage on the farm.

If producers on a farm elect to plant a designated crop, the amount of deficiency payments that the producers are otherwise eligible to receive shall be reduced, for each acre that is planted to the designated crop, by an amount equal to the deficiency payment that would be made with respect to a number of acres of the crop that the Secretary considers appropriate. Such reductions in deficiency payments must be sufficient to ensure that this provision does not increase CCC outlays.

Comments on whether this provision should be implemented for the 1994 crops and, if implemented, which crops the Secretary should designate for planting under this provision are requested.

E. Whether To Permit the Planting of Oats on Wheat and Feed Grain ACR

In any crop year that it is determined that projected domestic production of oats will not fulfill the projected domestic demand for oats, CCC: (a) May provide that acreage designated as ACR under the wheat and feed grains programs may be planted to oats for harvest under sections 107B(e)(8) and 105B(e)(8) of the 1949 Act; (b) may make program benefits (including loans, purchases, and payments) available under the annual program for oats under section 105B of the 1949 Act for oats planted on ACR; and (c) shall not make program benefits other than the benefits specified in (b) available to producers with respect to acreage planted to oats under this provision.

It is proposed that the planting of oats on wheat and feed grains ACR for harvest not be permitted for the 1994 crops.

F. Whether To Permit Conserving Crops To Be Planted on ACR

Under sections 107B(e)(4)(B)(iii), 105B(e)(4)(B)(iii), 103B(e)(4)(B)(iii), and 101B(e)(4)(B)(iii) of the 1949 Act, with respect to wheat, feed grains, upland cotton, and rice, producers may be authorized to plant all or any part of the ACR to castor beans, crambe, guar, milkweed, mung beans, plantago ovato, sesame, sweet sorghum, rye, triticale, or other commodity, if the Secretary determines that the production is needed to provide an adequate supply of the commodities, is not likely to increase the cost of the price support program, and will not adversely affect farm income.

Comments on whether this provision should be implemented for the 1994 crops and, if implemented, which conserving use crops the Secretary should allow to be planted under this provision are requested.

G. Whether To Permit Alternative Crops on Conserving Use Acres

Under sections 107B(c)(1)(F)(i), 105B(c)(1)(F)(i), 103B(c)(1)(E)(i), and 101B(c)(1)(E)(i) of the 1949 Act, with respect to wheat, feed grains, upland cotton, and rice, producers may be authorized to plant all or any part of acreage otherwise required to be devoted to conserving uses as a condition of qualifying for payment under the 0/92 or 50/92 provisions to castor beans, guar, millet, mung beans, plantago ovato, sweet sorghum, rye, triticale, commodities for which no substantial domestic production or market exists but that could yield industrial raw material being imported, or likely to be imported, or commodities grown for experimental purposes (including kenaf and milkweed). The Secretary may permit these crops to be planted on conserving use acres only if the Secretary determines that the production is not likely to increase the cost of the price support program, is needed to provide an adequate supply of the commodities, or is needed to encourage domestic manufacture of industrial raw materials derived from these crops.

Comments on whether this provision should be implemented for the 1994 crops and, if implemented, which alternative crops the Secretary should allow to be planted under this provision are requested.

Accordingly, comments are requested with respect to these foregoing issues.

List of Subjects

7 CFR Part 1405

Loan programs/agriculture, Price support programs.

7 CFR Part 1413

Cotton, Feed grains, Price support programs, Rice, Wheat.

Accordingly, it is proposed that 7 CFR parts 1405 and 1413 be amended as follows:

PART 1405—LOANS, PURCHASES AND OTHER OPERATIONS

1. The authority citation for 7 CFR part 1405 is revised to read as follows:

Authority: 15 U.S.C. 714b and 714c; 7 U.S.C. 1308a.

2. Part 1405 is amended by reserving § 1405.6 and adding a new § 1405.7 to read as follows:

§ 1405.7 Cost reduction options.

With respect to the 1994 crop, no cost reduction options specified in section 1009 (c), (d), or (e) of the Food Security Act of 1985, as amended (the 1985 Act), will be initially included in the program. However, the Secretary reserves the right to initiate at a later date any action not previously included but authorized by section 1009 of the 1985 Act, including the right to reopen and change a contract entered into by a producer under the program if the producer voluntarily agrees to the change.

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

3. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

4. In § 1413.11, paragraph (b)(4)(iv) is added to read as follows:

§ 1413.11 Planting flexibility.

* * * * *

(b) * * *

(4) * * *

(iv) For 1994, any other crop with the exception of those crops listed in paragraphs (b)(4)(i) and (b)(4)(ii) of this section.

* * * * *

Signed August 30, 1993 at Washington, DC.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93-21561 Filed 9-2-93; 8:45 am]

BILLING CODE 3410-05-P

Farmers Home Administration

7 CFR Part 1980

RIN 0575-AB15

Rural Housing Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its Guaranteed Rural Housing Loans regulation. This action is taken to address issues which arose during the Agency's first year of implementation of the program. The intended effect of this action is to improve the acceptability of the program to lenders and the secondary market for mortgage loans, to remove FmHA internal administrative procedures from the Code of Federal Regulations, and to make minor adjustments and corrections as a result of the Agency's experience in the first year of implementation of the program.

DATES: Comments must be received on or before November 2, 1993.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, 14th and Independence, SW., Washington, DC 20250. All written comments will be available for public inspection at the above address during regular working hours.

FOR FURTHER INFORMATION CONTACT: Michael S. Feinberg, Senior Loan Specialist, Farmers Home Administration, USDA, room 5334-S, South Agriculture Building, 14th and Independence SW, Washington, DC 20250, Telephone (202) 720-1474.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be nonmajor because there is no substantial change from practices under existing rules that would have an annual effect on the economy of $100 million or more. There is no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions or significant adverse effects on competition, employment, productivity, innovation or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

Bob Nash, Under Secretary, Small Community and Rural Development, has determined that this action will not have a significant economic impact on a substantial number of small entities because the regulatory changes affect FmHA processing and servicing of guaranteed rural housing loans.

Paperwork Reduction Act

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504 (h) of the Paperwork Reduction Act of 1980. They will not be effective until approved by OMB. Public reporting burden for this collection of information is estimated to vary from 10 minutes to 1 hour per response, with an average of .26 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the date needed, and completing and reviewing the collection of information.

Additional reporting and recordkeeping burden contained in this proposed rule has been previously approved by OMB under control number 0575-0078.

Send comments regarding this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal Action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Intergovernmental Consultation

For the reason set forth in the final rule related Notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Civil Justice Reform

This document has been reviewed in accordance with Executive Order (EO) 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court Systems in that it meets all applicable standards provided in section 2 of the EO.

Regulatory Reform: Less Burdensome or More Efficient Alternatives

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize the net benefits to society and minimize costs imposed by those regulations.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this Notice.

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under 10.429, Guaranteed Rural Housing Loans—Demonstration Program.

Discussion

On April 17, 1991, FmHA published a final rule implementing the Guaranteed Rural Housing program. The program was authorized under the Cranston-Gonzalez National Affordable Housing Act.

FmHA implemented the program in 20 pilot states on May 17, 1991. Implementation of the program on a pilot basis enabled FmHA to identify areas where the program could be fine tuned to broaden its acceptability.

On April 28, 1992, FmHA published an Advance Notice of Proposed Rulemaking. Comments were solicited to assist the Agency in making the program more user-friendly and improving the acceptability of the program to lenders and the secondary market. Comments were accepted until May 28, 1992. FmHA received eight comments, six were from lenders and the secondary market. Many of the comments were incorporated in the proposed rule.

FmHA recognizes the need to make its program even more compatible with the existing structure of the mortgage lending community. FmHA proposes to structure its program in a manner more similar to that of the Department of Housing and Urban Development's Federal Housing Administration single family mortgage program. One of the more significant changes proposed is the method of lender reporting to FmHA. Another significant change is in the relationship between FmHA and the lender with regard to loan servicing actions. These are more fully discussed below.

This proposed regulation omits the detailed internal agency administrative instruction used by the field offices to administer the program. In the past, FmHA program regulations and FmHA Instructions have been identical. The Agency has adopted a policy of publishing regulations which set forth anything which confers a benefit or imposes an obligation on the public or which is necessary for the public to understand their responsibilities. This action is not intended as a means for the Agency to avoid issues which are subject to public comment or would be of interest to the public. Any substantive changes in the regulation will continue to be published in the **Federal Register**. Each FmHA field office has a copy of the FmHA Instruction and a copy is available upon request to FmHA.

In previous publications of this regulation, FmHA incorporated the forms used in the program into the **Federal Register**. The forms have been removed from this proposed rule. However, all substantive materials that were in the forms have been incorporated into the body of the regulation.

Other significant changes are discussed below in general order of appearance in the regulation, not necessarily based on order of importance. Discussion on a topic that appears in several places is consolidated the first time the subject is brought up.

Several new definitions are added to help clarify certain issues. Some of the more salient ones are discussed here. A definition was added for the "Fannie Mae" rate to clarify that this rate is not the same as the Federal National Mortgage Association (Fannie Mae) yield. A definition was also added for "Liquidation" and "Protective Advance" as these terms have a slightly different meaning in some of the Agency's other programs. Definitions for "Minimum Adequate Site," "Existing Dwelling," and "Packager" are removed. The first two are removed based on other changes that will be discussed below. The term "Packager" is removed since it is not used elsewhere and serves no purpose. All of the definitions that applied to individual forms have been made generic. This will allow FmHA to make administrative changes such as the name or number of the form. Other definitions had minor editorial revision but are not substantially changed.

Interest accrual is discussed several places in the regulation. A revision was made to provide for better consistency within the regulation on how interest can accrue on the loan when liquidation occurs. The loan may accrue interest until the date of settlement on the Guarantee when liquidation is conducted in an expeditious manner. The FmHA regulation sets forth a general course of action for the lender on loan servicing issues. When the loan reaches 90 days delinquent, the lender must obtain FmHA concurrence if liquidation is not started. The requirement for concurrence is added to reduce the possibility that liquidation will be delayed merely to accrue interest.

The section on lender approval is revised to allow any State Housing Agency to participate in the program. Lenders approved by the Department of Veterans Affairs are added as lenders eligible to participate. A clarification is made regarding lenders who are eligible to purchase FmHA guaranteed loans that any lender approved as a Government National Mortgage Association (Ginnie Mae) issuer is eligible.

Although forms will no longer be published in the **Federal Register**, one of the more significant changes involves the Lender Agreement. The Lender Agreement sets forth the requirements for participation in the program. FmHA is cooperating with other Federal agencies as reflected in this proposed rule. Changes include adding a requirement for submission of the lender's quality control plan for monitoring production and servicing activities. The quality control plan is something that mortgage lenders typically have available for other agencies. There are some additional requirements regarding loan production and servicing issues that will make FmHA participation requirements more similar to those of the Department of Housing and Urban Development. Finally, the Lender Agreement shall be valid for the life of the relationship between the Agency and the lender. This eliminates the need to renew the Lender Agreement every two years.

FmHA proposes to eliminate the "Assignment and Assumption Agreement" form. This form is currently used to assign the loan guarantee between lenders. This form will be replaced with a "Lender Record Change" form so that FmHA is able to keep track of the loan. Submission of the record change form is the responsibility of the purchasing lender.

The loan purposes section is revised to simplify its provisions. The provision for refinancing was removed since this program is a housing acquisition program. A clarification was added to provide that loans to "take out" interim construction financing and loans to refinance land purchase contracts are permitted when the principal purpose of the loan is to provide for a newly constructed dwelling.

The section on loan limits has been revised to prohibit a loan on a dwelling with an in-ground swimming pool since FmHA believes that this type of feature is not appropriate for a guaranteed lending program. "Selling price" is removed as a limiting factor to the maximum amount of the loan. Using "selling price" as a limit leaves the impression that other authorized loan purposes, such as essential repairs for example, could not be included in the loan even though there is sufficient value to cover the loan. That was not the intent of FmHA.

FmHA added a provision to allow financing a property where the streets and roads are maintained by a Homeowner Association under certain circumstances. This change will also expand FmHA's ability to guarantee loans on individual condominium units.

Due to the risks involved in new condominium projects, FmHA proposes to limit its participation to units in projects approved by HUD, VA, Fannie Mae, or Freddie Mac in which at least 70 percent of the units have been sold to purchasers and the HOA has been transferred to the individual property owners. The provision regarding privately owned water and water/waste disposal systems are clarified.

A modest dwelling is now clearly defined as a dwelling that can be purchased with a loan not exceeding the maximum dollar limitation of Section 203(b)(2) of the National Housing Act (12 U.S.C. 1782). FmHA has a restriction that the size of the site cannot exceed 1 acre unless the additional land is necessary for an adequate water or waste disposal system. In addition, FmHA does not intend to use its housing programs to finance either working or hobby farm properties. The Agency finds, however, that the 1 acre limit unduly eliminates many otherwise eligible properties from being financed. In these cases, the excess land typically cannot be used for other purposes. FmHA proposed to replace the 1 acre limit by adopting a requirement that the value of the site cannot exceed 30 percent of the total value of the property.

The language regarding the maximum term of the loan has been revised to recognize currently accepted industry practice wherein the term of the loan is thirty (30) years from the date of the first payment rather than thirty years from the date of loan closing.

Language is added to clarify that the amount of the Loan Note Guarantee is always 90 percent of the loan. The maximum loss payment continues to be determined in the same manner.

A number of revisions are proposed to the section on appraisals in an effort to conform to current industry practices to the extent practicable. One significant change in the appraisal process is an added requirement for the appraiser to complete an environmental checklist. The intent of this is to help FmHA redetermine the need for further investigation of the site for environmental reasons. FmHA is particularly interested in comments from persons knowledgeable in the appraisal industry as to how this might impact the cost and timing of the appraisal. The environmental checklist FmHA proposes to use is the same as HUD Form 54891, "Appraiser/Review Appraiser Checklist." Additionally, FmHA removes the requirement for the use of a cost handbook in determining replacement cost value. Replacement cost will no longer be required for existing dwellings, those dwellings which are more than a year old. New construction appraisals will be required to consider replacement cost. FmHA removes the requirement for attachment of all supporting calculations.

The loan processing procedure is revised to facilitate loan processing for lenders. FmHA expects that lenders will have completed the loan underwriting process when the loan is submitted for a commitment for guarantee. The documentation required with an initial submission is substantially streamlined to provide FmHA with the basic information from which to make an eligibility determination. FmHA will base its determination on the information provided by the lender and will rely upon post reviews of the completed loan package to assure lender performance.

The section on required inspections has been revised to consolidate the provisions for existing and newly constructed dwellings. Previously, these were found in separate places. A provision has been added which allows the Agency to accept approved 10 year warranty plans in lieu of performing the first two required inspections.

A revision is made to monthly obligation to income ratio (MOTI) to state that any long term obligation, not limited to debts, must be considered. A provision to allow for the consideration of compensating factors when the applicant's principal, interest, taxes, and insurance to income (PITI) ratio or MOTI ratio exceeds the allowable limit is added. This brings FmHA into conformance with most of the mortgage industry in how this ratio is defined.

FmHA has removed the provision that allowed the lender to accept a co-signer. The Agency believes that the provision for co-signer is inappropriate in the guaranteed loan program. The Housing Act of 1949, as amended, prohibits the release of the borrower from liability for the guaranteed rural housing loan. The Agency does not believe it is appropriate to tie a co-signer to a long term obligation under these circumstances.

The section on credit history is revised to require the applicant to provide documentation if the applicant asserts that unacceptable credit history reflected in the credit report was beyond his or her control. An applicant who is delinquent on another federal debt may be considered for a loan when satisfactory arrangements have been made with the appropriate agency for repayment of the debt.

Lenders and borrowers must put a certain amount of time and energy into application requests. In order to submit the application to FmHA, the lender and borrower must incur at a minimum, the expenses of a credit report and an appraisal. The loan making process can range from a period of several weeks to several months. FmHA does not become aware of an application until the Lender submits a request for a loan guarantee. Since FmHA's funding authority is based on appropriations, it is possible to have loans in process that cannot be funded. FmHA will accept applications for loan guarantees without regard to fund availability. The Agency will review these requests and advise the lender whether the proposal meets the eligibility requirements. FmHA proposes a provision which would allow the Administrator to authorize issuance of a conditional commitment subject to the availability of funds. The lender could then proceed with the loan at its own risk.

The sections on loan servicing, liquidation, loss payment, and several others are renumbered.

Servicing and reporting requirements have been revised to conform with industry standards in loan servicing systems. This will allow lenders to use their existing software to service FmHA guaranteed loans. These changes remove the lender reporting on individual loan cases unless there is a default. FmHA will emphasize aggregate reporting and overall lender performance. Lenders are expected to perform certain account servicing steps as prudent lenders. FmHA still expects lender to work with borrowers to minimize the need for foreclosure. Lenders will be required, however, to make decisions on liquidating accounts at the time the loan becomes 90 days delinquent.

The procedure for making loss payments is revised. Previously, FmHA determined the loss at the time the lender acquired the security. The amount of the loss was based on an appraisal. This change will allow lenders a period of up to 6 months to sell the property. In order to assure that the government's interest is adequately protected, the lender must prepare and submit a property liquidation plan for FmHA review and concurrence. When the property is not sold within the 6 month period, FmHA will use an appraisal to determine the loss.

The sections on interest assistance and interest assistance recapture are moved from §§ 1980.356 and 1980.357 to 1980.390 and 1980.391. This was done because there was some confusion that all Guaranteed RH loans may be eligible for interest assistance. The term "interest assistance recapture" is replaced by the term "equity sharing" as this better describes the process.

FmHA is authorized to assist low-income borrowers in obtaining guaranteed rural housing loans through the interest assistance program. When interest assistance funding is authorized, the Agency enters into an agreement with the lender and the borrower in which FmHA makes a portion of the borrower's mortgage payment. The intent of the interest assistance program is to reduce the effective interest rate paid by the borrower to an affordable level.

Interest assistance is based on the borrower's income level in relation to the area median income. The borrower's portion of the payment is determined by calculating the payment that would be due if the note interest rate was at a level corresponding the rate the Agency deems appropriate for the borrower's income range. This rate is established by a table of interest rates and is available in any FmHA office.

FmHA policy has been to limit interest assistance to the amount needed to bring the borrower's payment to 20 percent of income. Thus, even though the established formula may permit additional assistance, the amount is limited by the 20 percent factor. When the 20 percent limitation is effective, the borrower's portion of the payment is no longer directly related to the amount of the loan. The result is that the borrower's portion of the payment is the same over a wide range of loan amounts. This encourages the borrower to purchase the highest priced dwelling within the range. These dwellings often have higher upkeep and maintenance costs. Removing the 20 percent limit would give the borrower a financial incentive to purchase the most cost effective housing. This should strengthen the borrower's ability to repay the loan and reduce delinquencies and foreclosures.

FmHA removes the limitation on interest assistance that holds the amount of interest assistance to that necessary to bring the borrower's share of the payment to 20 percent of the borrower's income. FmHA believes that this limitation reduces the borrower's incentive to obtain the most cost effective housing.

FmHA added a provision that Lenders must return any overpayment to the borrower when the borrower paid more than the required amount because an error resulted in too little interest assistance being granted. The provision that the borrower could no longer receive interest assistance when the borrower's income exceeds the low-income limit was removed to make this program more consistent with the direct program and to reduce the possibility of the borrower going delinquent due to a sudden drastic increase in their mortgage payment.

The provisions for granting additional interest assistance in high cost areas has been revised. Previously, FmHA provided an additional 1 percent of interest assistance in high cost areas. FmHA found that in many areas, low income borrowers could demonstrate adequate repayment ability without the additional assistance. This resulted in unnecessary cost to the government. A revision was made to allow the additional assistance for high cost areas only when the relationship between income and housing cost for the area resulted in a need for the additional assistance. The FmHA State Director may request designation of these areas by the Administrator.

FmHA replaces the previous table used for figuring shared equity and substitutes a simplified formula. The borrower will no longer be permitted to defer equity sharing. A provision is added that allows consideration of other methods of recapture when the loan is made under an "affordable housing program."

A section is added to provide guidance in working with Mortgage Credit Certificates and funded buy-down accounts.

FmHA has removed the provision for the Agency to conduct liquidation at its option. FmHA believes that based on the structure of the guarantee, there are no circumstances under which the Agency would or should conduct the liquidation of the loan.

A section is added which addresses handling of unauthorized assistance.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. with respect to such rules.

List of Subjects in 7 CFR Part 1980

Home improvement, Loan Programs—Housing and community development, Mortgage insurance, Mortgages, Rural areas.

Therefore, as proposed, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart D—Rural Housing Loans

2. Subpart D of part 1980 consisting of §§ 1980.301 through 1980.400 is revised to read as follows:

PART 1980—GENERAL

Subpart D—Rural Housing Loans

Sec.

1980.301 Introduction.
1980.302 Definitions.
1980.303–1980.307 [Reserved]
1980.308 Full faith and credit.
1980.309 Lender participation in guaranteed RH loans.
1980.310 Loan purposes.
1980.311 Loan limitations and special provisions.
1980.312 Rural area designation.
1980.313 Site and building requirements.
1980.314 Loans on leasehold interests.
1980.315 [Reserved]
1980.316 Environmental requirements.
1980.317 Equal opportunity and nondiscrimination requirements in use, occupancy, rental, or sale of housing.
1980.318 Flood and mudslide hazard area precautions.
1980.319 Other Federal, State, and local requirements.
1980.320 Interest rate.
1980.321 Terms of loan repayment.
1980.322 Loan guarantee limits.
1980.323 Guarantee fee.
1980.324 Charges and fees by Lender.
1980.325 Transactions which will not be guaranteed.
1980.326–1980.329 [Reserved]
1980.330 Applicant equity requirements.
1980.331 Collateral.
1980.332 [Reserved]
1980.333 Promissory notes and security instruments.
1980.334 Appraisal of property serving as collateral.
1980.335–1980.339 [Reserved]
1980.340 Acquisition, construction, and development.
1980.341 Inspections of construction and compliance reviews.
1980.342–1980.344 [Reserved]
1980.345 Applicant eligibility requirements for a guaranteed loan.
1980.346 Other eligibility criteria.
1980.347–1980.350 [Reserved]
1980.351 Annual income.
1980.352 Adjusted annual income.
1980.353 Filing and processing applications.
1980.354 FmHA review of applications.
1980.355 Review of requirements.
1980.356–1980.359 [Reserved]
1980.360 Conditions precedent to issuance of the loan note guarantee.
1980.361 Issuance of loan note guarantee.
1980.362 [Reserved]
1980.363 Review of loan closing.
1980.364 [Reserved]
1980.365 Additional loans or advances.
1980.366 Transfer and assumption.
1980.367–1980.369 [Reserved]
1980.370 Loan servicing.
1980.371 Defaults by the borrower.
1980.372 Protective advances.
1980.373 [Reserved]

Sec.
1980.374 Liquidation.
1980.375 Reinstatement of the borrower's account.
1980.376 Loss payments.
1980.377 Future recovery.
1980.378–1980.389 [Reserved]
1980.390 Interest assistance.
1980.391 Equity sharing.
1980.392 Interest assistance from other sources.
1980.393–1980.396 [Reserved]
1980.397 Exception authority.
1980.398 Unauthorized assistance and other deficiencies.
1980.399 Appeals.
1980.400 [Reserved]

Exhibits to Subpart D

Exhibit A—List of Forms Used in the FmHA RH Guaranteed Loan Instruction 1980–D.
Exhibit B—[Reserved].
Exhibit C—Income Limits.
Exhibits D through G—[Reserved].
Exhibit H—Fee Schedules for Guaranteed Housing Loan Processing and Servicing Activities.
Exhibits I through K—[Reserved].
Exhibit L—Lenders Guaranteed Rural Housing List of FmHA Instructions and Exhibits.
Exhibit M—List of funds excluded by Federal Statute for use in denying or reducing Federal benefits.

Subpart D—Rural Housing Loans

§ 1980.301 Introduction.

(a) *Policy.* This subpart contains regulations for single family Rural Housing (RH) loan guarantees by the Farmers Home Administration (FmHA) and applies to lenders, borrowers, and other parties involved in making, guaranteeing, servicing, holding or liquidating such loans. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee.

(b) *Program objective.* The basic objective of the guaranteed RH loan program is to assist eligible households in obtaining adequate but modest, decent, safe, and sanitary dwellings and related facilities for their own use in rural areas by guaranteeing sound RH loans which otherwise would not be made without a guarantee. Guarantees issued under this subpart are limited to loans to applicants with incomes that do not exceed income limits as provided in Exhibit C of this subpart (available in any FmHA office).

(c) [Reserved]

(d) *Nondiscrimination.* Loan guarantees and services provided under this subpart are subject to various civil rights statutes. Assistance shall not be denied to any person or applicant based on race, sex, national origin, color, familial status, religion, age, or physical or mental handicap (the applicant must possess the capacity to enter into a legal contract for services). The Consumer Protection Act provides that the applicant may not be denied assistance based on receipt of income from public assistance or because the applicant has, in good faith, exercised any right provided under the Act.

§ 1980.302 Definitions.

The following definitions are applicable to RH loans:

Applicant. The party applying to a Lender for a loan.

Approval official. An FmHA employee with delegated loan approval authority under subpart A of part 1901 of this chapter consistent with the amount and type of loan considered.

Borrower. All parties who applied for and received a guaranteed loan from an eligible Lender.

Conditional commitment. FmHA's notice to the Lender that the material it has submitted is approved subject to the completion of all conditions and requirements set forth in the conditional commitment.

Development standard. The current edition of any of the model building, plumbing, mechanical, and electrical codes listed in Exhibit E to subpart A of part 1924 of this chapter applicable to single family residential construction or other similar codes adopted by FmHA for use in the State.

Disabled person. A person who is unable to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment expected to result in death or which has lasted or is expected to last for a continuous period of not less than 12 months. In the case of an individual who has attained the age of 55 and is blind, disability is defined as inability by reason of such blindness to engage in substantially gainful activity requiring skills or abilities comparable to those of any gainful activity in which the individual has previously engaged with some regularity over a substantial period of time. A disabled person also includes a person with a developmental disability. A developmental disability means a severe, chronic disability of a person which:

(1) Is attributable to a mental or physical impairment or a combination of mental and physical impairments;

(2) Is manifested before the person attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in one or more of the following areas of major life activity:

(i) Self-care,

(ii) Receptive and expressive language,

(iii) Learning,

(iv) Mobility,

(v) Self-direction,

(vi) Capacity for independent living, and

(vii) Economic self-sufficiency; and

(5) Reflects the person's need for a combination and sequence of special care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

Displaced homemaker. An individual who is an adult; has not worked full-time full year (2,080 hours) in the labor force for a number of years but has during such years worked primarily without remuneration to care for the home and family; and is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

Elderly family. An elderly family consists of one of the following:

(1) A person who is the head, spouse, or sole member of a household and who is 62 years of age or older, or who is handicapped or disabled and is the applicant/borrower or the co-applicant/co-borrower; or

(2) Two or more unrelated elderly (age 62 or older), disabled, or handicapped persons who are living together, at least one of whom is the applicant/borrower or co-applicant/co-borrower; or

(3) In the case of a family where the borrower/co-borrower or spouse, was at least 62 years old, handicapped, or disabled, the surviving household member(s) shall continue to be classified as an "elderly family" for the purpose of determining adjusted income even though the surviving member(s) may not meet the definition of elderly family on their own, provided:

(i) They occupied the dwelling with the deceased family member at the time of his/her death; and

(ii) If one of the surviving members is the spouse of the deceased family member, the surviving family shall be classified as an elderly family only until the remarriage of the surviving spouse; and

(iii) At the time of death, the dwelling of the deceased family member was financed under Title V of the Housing Act of 1949, as amended.

Eligible lender. A Lender meeting the criteria outlined in § 1980.309 of this

subpart who has requested and received FmHA approval for participation in the program.

Existing dwelling. A dwelling which has been occupied for more than 1 year as a primary residence.

Extended family. A family unit comprised of adult relatives who live together with the other members of the household, for reasons of physical dependency, economics, and/or social custom, who, under other circumstances, could maintain separate households. A typical example is parents living with their adult children.

Federal National Mortgage Association (Fannie Mae) rate. The rate authorized in Exhibit B of subpart A of part 1810 of this chapter (FmHA Instruction 440.1, available in any FmHA office).

Finance Office. The office which maintains FmHA's financial records.

First-time homebuyer. Any individual who (and whose spouse) has had no present ownership in a principal residence during the 3 year period ending on the date of purchase of the property acquired with a guaranteed loan under this subpart. A first-time homebuyer includes displaced homemakers and single parents even though they might have owned, or resided in, a dwelling with a spouse.

Guaranteed loan. A loan made, held, and serviced by a Lender for which FmHA has entered into an agreement with the Lender in accordance with this subpart.

Handicapped person. A person having a physical or mental impairment which:

(1) Is expected to be of long or indefinite duration;

(2) Substantially impedes his or her ability to live independently; and

(3) Is of such a nature that the person's ability to live independently could be improved by more suitable living conditions. FmHA will supply the form to be used to verify handicap in cases where State Review Board or Social Security records are not available.

Household or family. The applicant, co-applicant, and all other persons who will make the applicant's dwelling their primary residence for all or part of the next 12 months. The temporary absence of a child from the home due to placement in foster care shall not be taken into account in considering family composition and size. Foster children placed in the borrower's home and live-in aides shall not be counted as members of the household.

Interest assistance. Loan assistance payments made by FmHA to the Lender on behalf of the borrower.

Lender. The organization making, holding, and/or servicing the loan which is guaranteed under the provisions of this subpart. The Lender is also the party requesting the guarantee. The Lender includes an entity purchasing an FmHA guaranteed loan. A purchasing Lender acquires all the privileges, duties, and responsibilities of the originating Lender. The Lender is primarily responsible for originating, underwriting, servicing, and, where necessary, liquidating the loan and disposing of the property in a manner consistent with maximizing the Government's interest.

Lender agreement. The signed master agreement between FmHA and the Lender setting forth the Lender's loan responsibilities for loan processing and servicing guaranteed RH loans.

Lender record change. The Lender's notice to FmHA of a change of Lender or a change of servicer.

Liquidation. Liquidation of the loan occurs when the Lender acquires title to the security, a third party buys the property at the foreclosure sale, or the borrower sells the property to a third party with the prior approval of the Lender and FmHA. In States providing a redemption period, the Lender does not typically acquire title until after expiration of the redemption period.

Liquidation expense. The Lender's cost of liquidation including those costs that do not qualify as a protective advance.

Loan note guarantee. The signed commitment issued by FmHA setting forth the terms and conditions of the guarantee.

Manufactured home. A structure built to the Federal Manufactured Home Construction and Safety Standards and FmHA thermal requirements.

Master interest assistance agreement. The agreement between FmHA, the borrower, and the Lender which provides the basis for payment of interest assistance and shared equity.

Minor. A person under 18 years of age. Neither the applicant, co-applicant, or spouse may be counted as a minor. Foster children placed in the borrower's home are not counted as minors for the purpose of determination of annual or adjusted income.

Net family assets. Include:

(1) The value of equity in real property, savings, individual retirement account's (IRA), demand deposits, and the market value of stocks, bonds, and other forms of capital investments, but exclude:

(i) Interests in Indian Trust land,

(ii) The value of the dwelling and a minimum adequate site,

(iii) Cash on hand which will be used to reduce the amount of the loan,

(iv) The value of necessary items of personal property such as furniture and automobile(s), and the debts against them,

(v) The assets that are a part of the business, trade, or farming operation in the case of any member of the household who is actively engaged in such operation, and

(vi) The value of a trust fund that has been established and the trust is not revocable by, or under the control of, any member of the household, so long as the funds continue to be held in trust.

(2) The value of any business or household assets disposed of by a member of the household for less than fair market value (including disposition in trust, but not in a foreclosure or bankruptcy sale) during the 2 years preceding the date of application, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition shall not be considered to be less than fair market value if the household member receives important consideration not measurable in dollar terms.

Protective advance. Advances made by the Lender when the borrower is in liquidation or otherwise in default to protect or preserve the security itself from loss or destruction.

Rural area. An area meeting the requirements of § 1980.312 of this subpart. Rural areas are designated on maps available in the FmHA office servicing that area.

Single parent. An individual who is unmarried or legally separated from a spouse and has custody or joint custody of one or more minor children or is pregnant.

State Director. Director of FmHA programs within a State Office area.

Veteran. A veteran is a person who has been discharged or released from the active forces of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard under conditions other than dishonorable discharge including "clemency discharges" and who served on active duty in such forces: (1) from April 6, 1917, through March 31, 1921; (2) from December 7, 1941, through December 31, 1946; (3) from June 27, 1950, through January 31, 1955; or (4) for more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975.

§§ 1980.303–1980.307 [Reserved]

§ 1980.308 Full faith and credit.

The loan note guarantee constitutes an obligation supported by the full faith

and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it becomes such Lender or which the Lender participates in or condones. A note which provides for the payment of interest on interest shall not be guaranteed. Any guarantee or assignment of a guarantee attached to or relating to a note which provides for the payment of interest on interest is void. Notwithstanding the prohibition of interest on interest, interest may be capitalized in connection with reamortization over the remaining term with written concurrence of FmHA. The loan note guarantee will be unenforceable to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Negligent servicing is defined as servicing that is inconsistent with this subpart and includes the failure to perform those services which a reasonably prudent Lender would perform in servicing its own loan portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner, or acting contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those authorized in this subpart. When the Lender conducts liquidation in an expeditious manner, in accordance with an FmHA approved liquidation plan, the loan note guarantee shall cover interest until the claim is paid within the limit of the guarantee.

§ 1980.309 Lender participation in guaranteed RH loans.

(a) *Qualification.* The following Lenders are eligible to participate in the FmHA guaranteed RH loan program upon presentation of evidence of said approval and execution of the FmHA Lender Agreement.

(1) Any State Housing Agency;

(2) Any Lender approved by the Department of Housing and Urban Development (HUD) as a supervised or nonsupervised mortgagee for submission of one to four family housing applications for Federal Housing Mortgage Insurance or as an issuer of Government National Mortgage Association (Ginnie Mae) mortgage backed securities;

(3) Any Lender approved as a supervised or nonsupervised mortgagee for the Department of Veterans Affairs (VA);

(4) Any Lender approved by the Fannie Mae for participation in one to four family mortgage loans;

(5) Any Lender approved by the Federal Home Loan Mortgage Corporation (Freddie Mac) for participation in one to four family mortgage loans;

(6) A Farm Credit System (FCS) institution with direct lending authority; and

(7) Any Lender participating in other FmHA guaranteed loan programs.

(b) *Lender approval.* A Lender listed in paragraph (a) of this section must request a determination of eligibility in order to participate as an originating Lender in the program. Requests may be made to the State Office serving the State jurisdiction or to the National Office when multiple State jurisdictions are involved.

(1) The Lender must provide the following information to FmHA:

(i) Evidence of approval, as appropriate, for the criteria under paragraph (a) of this section, which the Lender meets.

(ii) The Lender's Tax Identification Number.

(iii) The name of an official of the Lender who will serve as a contact for FmHA regarding the Lender's guaranteed loans.

(iv) A list of names, titles, and responsibilities of the Lender's principal officers.

(v) An outline of the Lender's internal loan criteria for issues of credit history and repayment ability and a copy of the Lender's quality control plan for monitoring production and servicing activities.

(vi) An executed certification regarding debarment, suspension, or other matters—primarily covered transactions. The certification will be obtained using a form prescribed by FmHA.

(2) The Lender must agree to:

(i) Obtain and keep itself informed of all program regulations and guidelines including all amendments and revisions of program requirements and policies.

(ii) Process and service FmHA guaranteed loans in accordance with FmHA regulations.

(iii) Permit FmHA employees or its designated representatives to examine or audit all records and accounts related to any FmHA loan guarantee.

(iv) Be responsible for the servicing of the loan, or if the loan is to be sold, sell only to an entity which meets the provisions of paragraph (a) of this section.

(v) Use forms which have been approved by the Federal Housing Administration (FHA), Fannie Mae, Freddie Mac, or, for FCS Lenders, use the appropriate FCS forms.

(vi) Maintain its approval if qualification as an FmHA Lender was based on approval by HUD, VA, Fannie Mae, or Freddie Mac including maintaining the minimum allowable net capital, acceptable levels of liquidity, and any required fidelity bonding and/or mortgage servicing errors and omissions policies required by HUD, VA, Fannie Mae, or Freddie Mac, as appropriate.

(vii) Operate its facilities in a prudent and businesslike manner.

(viii) Assure that its staff is well trained and experienced in loan origination and/or loan servicing functions, as necessary, to assure the capability of performing all of the necessary origination and servicing functions.

(ix) Notify FmHA in writing if the Lender:

(A) Ceases to meet any financial requirements of the entity under which the Lender qualified for FmHA eligibility;

(B) Becomes insolvent;

(C) Has filed for bankruptcy protection, has been forced into involuntary bankruptcy, or has requested an assignment for the benefit of creditors;

(D) Has taken any action to cease operations or discontinue servicing or liquidating any or all of its portfolio of FmHA guaranteed loans;

(E) Has any change in the Lender name, location, address, or corporate structure;

(F) Has become delinquent on any Federal debt, has been debarred, suspended, or sanctioned by any Federal agency or in accordance with any applicable State licensing or certification requirements.

(c) *FmHA review for Lender eligibility.* FmHA will assure that the Lender's request for eligibility to originate loans is complete, that neither the Lender nor any of its principal officers have been debarred from doing business with the Government, and notify the Lender within 15 calendar days of the receipt of a request of the decision or the need for additional information.

(d) *Handling applications for Lender eligibility.* Upon determination of a Lender's eligibility to originate loans, FmHA and the Lender will execute the FmHA Lender Agreement. The application material will be retained by FmHA for all eligible Lenders. The Lender Agreement establishes the Lender's authorization for participation in the program as an originator, servicer, or holder of FmHA single-family

mortgage loans. The Lender Agreement shall be valid unless terminated by either the Agency or the Lender in accordance with the terms of the Lender Agreement and this subpart. The FmHA approval official will provide newly approved Lenders with forms needed by the Lender as outlined in Exhibit A of this subpart (available in any FmHA office) and the materials in Exhibit L of this subpart (available in any FmHA office).

(e) *Lender sale of guaranteed loans.* Loans guaranteed under this subpart may be sold only to entities which meet the qualifications in paragraphs (a) and (b) of this section. Such entities are referred to as a Lender and are to be treated as a Lender for all purposes under this subpart. The selling Lender shall provide the original loan note guarantee to the purchasing Lender. The purchasing Lender must execute a Lender Agreement or have a valid Lender Agreement on file with FmHA. The purchasing Lender shall succeed to all rights, title, and interest of the Lender under the loan note guarantee. Any necessary or convenient assignments or other instruments relating to the loan and any other actions necessary or convenient to perfect or record such transaction are the responsibility of the purchasing Lender. The purchasing Lender assumes the obligations of and will be bound by and will comply with, all covenants, agreements, terms, and conditions contained in any note, security instrument(s), loan note guarantee, and of any outstanding agreements in connection with such loan purchased. The purchasing Lender shall be subject to any defenses, claims, or setoffs that FmHA would have against the Lender if the Lender had continued to hold the loan. The purchasing Lender will report any loan(s) purchased and from where purchased using a reporting form provided by FmHA.

(f) *Lender responsibility.* The Lender will be responsible for the processing, servicing, and liquidation (if necessary) of the loan. The Lender may use agents, correspondents, branches, financial experts, or other institutions in carrying out its responsibilities. Lenders are fully responsible for their own actions and the actions of those acting on the Lender's behalf.

(1) *Processing.* The Lender must abide by limitations on loan purposes, loan limitations, interest rates, and terms set forth in this subpart. The Lender will obtain, complete, and submit to FmHA the items required in § 1980.353(c) of this subpart. The Lender may utilize the services of a non-FmHA approved lender for originating residential loans. The FmHA approved lender is responsible for the loan underwriting and for obtaining the FmHA conditional commitment. The agent may close the loan in its name provided the loan is immediately transferred to the approved lender to whom the guarantee will be issued.

(2) *Servicing.* Lenders are fully responsible for servicing and protecting the security for all guaranteed loans.

(3) *Liquidation.* The Lender will complete any liquidation of loans guaranteed under the provisions of the Lender Agreement. Loss claims will be submitted on the FmHA Loss Report form. The loss report will be accompanied by supporting information to outline disposition of all security pledged to secure the loan. The Lender shall also effect collection of the debt from other assets of the borrower to the extent possible.

(4) *Counseling.* Lenders are encouraged to offer or provide for home ownership counseling. Lenders may require first-time homebuyers to undergo such counseling if it is reasonably available in the local area.

(g) *Monitoring a Lender's servicing of loans.* FmHA will conduct certain reviews of the Lender's operations as provided below. If FmHA determines that the Lender is not fulfilling the obligations of the Lender Agreement, or that the Lender fails to maintain the required criteria, the Lender will be notified in writing of the deficiencies and allowed a maximum of 30 days to correct them. If the Lender fails to make the required corrections, FmHA will proceed as provided in paragraph (h) of this section.

(1) *Loan processing review for new Lenders.* FmHA will make a complete review of the first five loans developed by a newly eligible Lender to assure compliance with, and understanding of, FmHA regulations and will also do a review of a random sampling of not less than 5 percent of the Lender's loans annually for the next 3 years. Thereafter, the Lender will be subject to the review provided in paragraph (g)(2) of this section.

(2) *Spot check review.* FmHA will review at least 10 percent of the outstanding loans serviced by each Lender every 2 years, or more often if necessary. The review will include an examination of the Lender's loan processing and servicing as follows:

(i) The incidence of first-year delinquency on loans made by the Lender;

(ii) Any reviews conducted of the Lender's portfolio of FmHA guaranteed loans;

(iii) Loan servicing actions taken by the Lender;

(iv) Any other information regarding the Lender.

(3) *Other reviews.* FmHA may conduct other reviews of the Lender's operations, as related to the FmHA guaranteed RH loan program, when the Administrator or State Director determines that a review is needed based on factors such as loan delinquencies, loan losses, failure to submit required reports, or other such reasons related to assuring that the Government's interest is adequately protected.

(h) *Termination of Lender eligibility.* The Lender remains eligible as long as the Lender meets the criteria in paragraph (a) of this section unless that Lender's status is revoked by FmHA or by another Federal agency. FmHA shall revoke the eligible Lender status of any Lender who fails to comply with requirements of paragraphs (b) or (e) of this section. Status may also be revoked if the Lender violates the terms of the Lender Agreement, fails to properly service any guaranteed loan, or fails to adequately protect the interests of the Lender and the Government. If the eligible Lender status of a Lender lapses, the Lender will continue to service any outstanding loans guaranteed under this subpart which are held by said Lender. FmHA may require the Lender to transfer the servicing of the loan. In addition to revocation of eligible Lender status, the Lender may be debarred by FmHA. In seeking to debar the Lender, FmHA will comply with the provisions of FmHA Instruction 1940–M (available in any FmHA office). A Lender that has been debarred must obtain the services of another Lender that meets the provisions of this subpart to service any outstanding loans guaranteed under this subpart which are held by said Lender.

§ 1980.310 Loan purposes.

The purpose of a loan guaranteed under this subpart must be to acquire a completed dwelling and related facilities to be used by the applicant as a primary residence. The loan may be to purchase a new dwelling or an existing dwelling. The guaranteed loan may be for "take out" financing for a loan advanced by the Lender to construct a new dwelling or improve an existing dwelling. Eligible loan purposes also include:

(a) Necessary related facilities such as a garage, storage shed, walks, driveway, and water and/or sewerage facilities including reasonable connection fees for utilities which the buyer is required to pay.

(b) Special design features or equipment necessary to accommodate a physically handicapped or disabled member of the household.

(c) The cost of establishing an escrow account(s) for real estate taxes and/or insurance premiums.

(d) Title clearance, title insurance, and loan closing; stock in a cooperative lending agency necessary to obtain the loan; and, for low-income applicants only, points not exceeding the amount typical for the area.

(e) Provide funds for seller equity and/or essential repairs when an existing guaranteed loan is to be assumed simultaneously.

§ 1980.311 Loan limitations and special provisions.

(a) *Prohibited loan purposes.* Conditional commitments will not be issued if loan funds are to be used for:

(1) Payment of construction draws.

(2) The purchase of furniture or other personal property except for essential equipment and materials authorized in accordance with § 1980.310 of this subpart.

(3) Refinancing FmHA debts, debts owed the Lender (other than construction/development, financing incurred in conjunction with the proposed loan), or debts on a manufactured home.

(4) Purchase or improvement of income-producing land, or buildings to be used principally for income-producing purposes, or buildings not essential for RH purposes, or to buy or build buildings which are largely or in part specifically designed to accommodate a business or income-producing enterprise.

(5) Payment of fees, charges, or commissions, such as finder's fees for packaging the applications or placement fees for the referral of a prospective applicant to FmHA.

(6) Improving the entry of a homestead entryman or desert entryman prior to receipt of patent.

(7) Purchase a dwelling with an in-ground swimming pool.

(b) *Limitations.* The amount of the loan may not exceed the maximum dollar limitation of Section 203(b)(2) of the National Housing Act (12 U.S.C. 1702).

(1) A loan for the acquisition of a newly constructed dwelling that meets the requirements of § 1980.341 (b) of this subpart may be made for up to 100 percent of the appraised value, or the cost of acquisition and any necessary development including those purposes in § 1980.310 of this subpart, whichever is less.

(2) A loan for the acquisition of an existing dwelling and development in conjunction with the acquisition of an existing dwelling may be made for up to 100 percent of the appraised value, or the cost of acquisition and necessary development including those purposes in § 1980.310 of this subpart whichever is less.

(c) *Subdivisions.* Housing units may be financed in existing subdivisions approved by local, regional, State, or Federal government agencies before issuance of a conditional commitment. The subdivision must meet the requirements of § 1901.203 of subpart E of part 1901 of this chapter. An existing subdivision is one in which the local government has accepted the subdivision plan, its principal developments, and right-of-ways, the construction of streets, water, and water/waste disposal systems, and utilities is at a point which precludes any major changes, and provisions are in place for continuous maintenance of the streets, and the water and water/waste disposal systems.

§ 1980.312 Rural area designation.

A rural area is an area which is identified as rural by FmHA in accordance with § 1944.10 of subpart A of part 1944 of this chapter. Current county maps showing ineligible areas are available in FmHA District and County Offices.

§ 1980.313 Site and building requirements.

(a) *Rural area.* The property on which the loan is made must be located in a designated rural area as identified in § 1980.312 of this subpart. A nonfarm tract to be purchased or improved with loan funds must not be closely associated with farm service buildings.

(b) *Access.* The property must be contiguous to and have direct access from a street, road, or driveway. Streets and roads must be dedicated to and accepted by a public body which shall be responsible for continuous maintenance. Generally, streets and roads must be hard surfaced. When local ordinances and codes do not require hard surface streets, an all-weather surface, approved and maintained by a public body, may be accepted. Streets and roads maintained by a homeowners association (HOA) may be accepted when the streets and roads have direct access to a public maintained street or road, control of the HOA has been in the hands of the purchasers of the dwelling units, and the purchasers have been in control for over a year, all units have been developed and 70 percent of the units have been sold to purchasers and are occupied as residences (i.e. the units are no longer held by the developer or builder), and the project has been approved by HUD, VA, Fannie Mae, or Freddie Mac.

(c) *Water and water/waste disposal system.* A nonfarm tract on which a loan is to be made must have an adequate water and/or water/waste disposal system, and other related facilities. Water and water/waste disposal systems serving the site must be approved by a State or local government agency. When the site is served by a privately owned and centrally operated water and water/waste disposal system(s), the system(s) must meet the design requirements of the State Department of Health or comparable reviewing and regulatory agency. Written verification must be obtained from the regulatory agency that the private water and/or water/waste system complies with the Safe Drinking Water Act (42 U.S.C. 300F et seq.) and the Clean Water Act (33 U.S.C. 1251 et. seq.) respectively. A system owned and/or operated by a private party must have a legally binding agreement which allows interested third parties, such as the Lender, to enforce the obligation of the operator to provide satisfactory service at reasonable rates.

(d) [Reserved]

(e) *Modest house.* Dwellings financed must provide decent, safe, and sanitary housing and be modest in cost. A dwelling that can be purchased with a loan not exceeding the maximum dollar limitation of Section 203(b)(2) of the National Housing Act (12 U.S.C. 1702) is considered modest. Generally, the value of the site must not exceed 30 percent of the total value of the property. When the value of the site is typical for the area, as evidenced by the appraisal, and the site cannot be subdivided into two or more sites the 30 percent limitation need not be applied. Loans shall not be guaranteed on dwellings with an in-ground swimming pool.

(f) *Thermal standards.* Dwellings financed shall meet the standards outlined in Exhibit D of subpart A of part 1924 of this chapter (available in any FmHA office) except in the case of an existing dwelling, if documentation is provided to establish that the actual cost of heating and cooling is not significantly greater than those costs for a dwelling that does meet FmHA's thermal standards. In these cases, basement insulation may not be economically feasible based on cost and only the perimeter of the house at the band beam and the heat ducts in unheated basements or crawlspace must be insulated.

(g) *Existing dwelling.* An existing dwelling financed should be cost effective to the applicant including

reasonable costs of utilities and maintenance for the area. Loan guarantees may be made on an existing manufactured home when it meets the provisions of paragraph (i)(2)(i) of this section.

(h) *Repairs.* Any dwelling financed with an FmHA guarantee must be structurally sound, functionally adequate, and placed in good repair at the time the property is acquired by the borrower.

(i) *Manufactured homes.* New units that meet the requirements of Exhibit J of subpart A of part 1924 of this chapter, and purchased through FmHA approved dealer-contractors, may be considered for a guaranteed loan under this subpart. The Lender may obtain a list of FmHA approved models and dealer-contractors from any FmHA office in the area served.

(1) Loans may be guaranteed for the following purposes when the security covers both the unit and the lot:

(i) A new unit and related site development work on a site owned or purchased by the applicant which meets the requirements and limitations of this section or a leasehold meeting the provisions of § 1980.314 of this subpart.

(ii) Transportation and set-up costs for a new unit.

(2) Loans may not be guaranteed for:

(i) An existing unit and site unless it is already financed with a section 502 RH insured or guaranteed loan, it is being sold from FmHA inventory, or it is being sold from the Lender's inventory provided the Lender acquired possession of the unit through a loan guaranteed under this subpart.

(ii) The purchase of a site without also financing the unit.

(iii) Existing debts owed by the applicant/borrower.

(iv) A unit without an affixed certification label indicating the unit was constructed in accordance with the Federal Manufactured Home Construction and Safety Standards.

(v) Alteration or remodeling of the unit when the initial loan is made.

(vi) Furniture, including movable articles of personal property such as drapes, beds, bedding, chairs, sofas, lamps, tables, televisions, radios, stereo sets, and similar items. This does not include items such as wall-to-wall carpeting, refrigerators, ovens, ranges, clothes washers or dryers, heating or cooling equipment, or similar items.

(vii) Any unit not constructed to the FmHA thermal standards as identified by an affixed label for the winter degree day zone where the unit will be located.

§ 1980.314 Loans on leasehold interests.

A loan may be guaranteed if made on a leasehold owned or being acquired by the applicant when the Lender determines that long-term leasing of homesites is a well established practice and such leaseholds are freely marketable in the area provided the Lender determines and certifies to FmHA that:

(a) *Unable to obtain fee title.* The applicant is unable to obtain fee title to the property.

(b) *Unexpired term.* The lease has an unexpired term of at least 40 years from the date of approval. A lease for 25 years with an option to the lessee to renew for an additional 15 years would be considered a 40-year lease.

§ 1980.315 [Reserved]

§ 1980.316 Environmental requirements.

The requirements of subpart G of part 1940 of this chapter apply to loan guarantees made under this subpart. Lenders and applicants must cooperate with FmHA in the completion of these requirements. Lenders must become familiar with these requirements so that they can advise applicants and reduce the probability of unacceptable applications being submitted to FmHA. FmHA may require that Lenders and/or applicants obtain information for completing environmental assessments when necessary. The FmHA approval official will utilize the State Natural Resource Management Guide (available in any FmHA office) to assist in the completion of the environmental review.

§ 1980.317 Equal opportunity and nondiscrimination requirements in use, occupancy, rental, or sale of housing.

(a) *Compliance.* Loans guaranteed under this subpart are subject to the provisions of various civil rights statutes. FmHA and the Lender may not discriminate against any person in making guaranteed housing loans available, or impose different terms and conditions for the availability of these loans based on a person's race, color, familial status, religion, sex, age, physical or mental handicap, or national origin, provided the applicant possesses the capacity to enter into a legal contract for services. These requirements will be discussed with the applicant, builder, developer, and other parties involved as early in the negotiations as possible.

(b) *Reporting.* If there is indication of noncompliance with these requirements, such facts will be reported by the borrower, Lender, or FmHA personnel to the Administrator or the Director, Equal Opportunity Staff. Complaints and compliance will be handled by FmHA in accordance with subpart E of part 1901 of this chapter.

(c) *Forms and requirements.* In accordance with Executive Order 11246, the following equal opportunity and nondiscrimination forms and requirements are applicable when the loan guarantee involves a construction contract between the borrower and the contractor that is more than $10,000. The Lender is responsible for seeing that the requirements of paragraphs (c)(1) through (c)(5) of this section are met:

(1) *Equal Opportunity Agreement.* Before loan closing, each borrower whose loan involves a construction contract of more than $10,000 must execute the FmHA Equal Opportunity Agreement or the equivalent HUD form.

(2) *Construction Contract or subcontract in excess of $10,000.* If the contract or a subcontract exceeds $10,000:

(i) The contractor or subcontractor must submit the FmHA Compliance Statement before or as a part of the bid or negotiation.

(ii) An Equal Opportunity Clause must be part of each contract and subcontract.

(iii) With notification of the contract award, the contractor must receive the FmHA Notice to Contractors and Applicants signed by FmHA, with an attached Equal Employment Opportunity poster. Posters in Spanish must be provided and displayed where a significant portion of the population is Spanish speaking.

(iv) Under Executive Order 11246 and Executive Order 11375, the contractor or subcontractor, subject to the requirements of paragraph (c)(5) of this section, is prohibited from discriminating because of race, color, religion, sex, or national origin to ensure equality of opportunity in all aspects of employment.

(3) *One hundred or more employees and construction contract or subcontract exceeds $10,000.* If the contractor or subcontractor has 100 or more employees and the contract or subcontract is for more than $10,000, an annual report must be filed on or before March 31, as long as the contractor or subcontractor holds a contract equal to $10,000 or more which is financed with a guaranteed loan. Failure to file timely, complete and accurate reports constitutes noncompliance with the Equal Opportunity Clause. Report forms are distributed by the Joint Reporting Committee and any questions on this form should be addressed by the contractor or subcontractor to the Joint Reporting Committee, 1800 G Street, NW., Washington, D.C. 20006.

(4) *Fifty or more employees and construction contract or subcontract exceeds $50,000.* If the contract or

subcontract is more than $50,000 and the contractor or subcontractor has 50 or more employees, in addition to the requirements of paragraph (c)(3) of this section, each such contractor or subcontractor must be informed that he must develop a written affirmative action compliance program for each of his establishments and put it on file in each of his personnel offices within 120 days of the commencement of the contract or subcontract.

(5) *Compliance reviews.* Compliance reviews must be made during construction inspections to determine whether the required posters are displayed, the facilities are not segregated, and there is no evidence of discrimination in employment. Findings of the borrower or Lender (when inspections are made) will be documented in writing. If there is any evidence of noncompliance, the borrower or Lender will be made to achieve voluntary compliance. If the effort fails, the Compliance Review Officer will report all the facts in writing to the Administrator, ATTN: Equal Opportunity Officer.

(6) *Employee complaints.* Any employee of or applicant for employment with such contractors or subcontractors may file a written complaint of discrimination with FmHA.

(i) A written complaint of alleged discrimination must be signed by the complainant and should include the following information:

(A) The name and address (including telephone number, if any) of the complainant.

(B) The name and address of the person committing the alleged discrimination.

(C) A description of the acts considered to be discriminatory.

(D) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(ii) Such complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by FmHA for good cause shown by the complainant.

§ 1980.318 Flood or mudslide hazard area precautions.

(a) *Dwelling location.* Dwellings located in special flood or mudslide hazard areas, as designated by the Federal Emergency Management Agency (FEMA) may be financed under this subpart only if:

(1) The community, as a result of such designation by FEMA as a special flood or mudslide prone area, has an approved flood plain area management plan.

(2) The dwelling location and construction plans and specifications for new buildings or improvements to existing buildings comply with an approved flood plain area management plan as mentioned in paragraph (a)(1) of this section.

(3) Potential environmental impacts and feasible alternatives have been fully considered by FmHA in accordance with the requirements of subpart G of part 1940 of this chapter.

(b) *Flood insurance.* If the dwelling is located in a special flood or mudslide hazard area, flood insurance must be purchased by the borrower prior to loan closing and maintained thereafter. (See subpart B of part 1806 of this chapter (FmHA Instruction 426.2).

§ 1980.319 Other Federal, State, and local requirements.

In addition to the specific requirements of this subpart, on all proposals financed with an FmHA guarantee, Lenders and/or applicants must coordinate with all appropriate Federal, State, and local agencies. Applicants and/or Lenders will be required to comply with any Federal, State, or local laws, regulatory commission rules, ordinances, and regulations which exist at the time the loan guarantee is issued which affect the dwelling including, but not limited to:

(a) Borrowing money and giving security therefore;

(b) Land use zoning;

(c) Health, safety, and sanitation standards; and

(d) Protection of the environment and consumer affairs.

§ 1980.320 Interest rate.

The interest rate must not exceed any established usury rate. Loans guaranteed under this subpart must bear a fixed interest rate over the life of the loan. The rate shall be agreed upon by the borrower and the Lender and must not be more than the rate being authorized by VA or the current Fannie Mae rate as defined in § 1980.302 of this subpart, whichever is higher.

§ 1980.321 Terms of loan repayment.

(a) *Note.* Principal and interest shall be due and payable monthly as provided in the promissory note.

(b) *Term.* The term for final maturity shall be not less than 30 years from the date of the note, and not more than 30 years from the date of the first scheduled payment.

§ 1980.322 Loan guarantee limits.

The amount of the loan note guarantee is 90 percent of the principal amount of the loan.

(a) The maximum loss payment under the guarantee of Single Family Housing loans will be the lesser of:

(1) Any loss of an amount equal to 90 percent of the principal amount actually advanced to the borrower, or

(2) Any loss sustained by the Lender of an amount up to 35 percent of the principal amount actually advanced to the borrower, plus any additional loss sustained by the Lender of an amount up 85 percent of the remaining 65 percent of the principal amount actually advanced to the borrower.

(b) Loss includes only:

(1) Principal and interest evidenced by the guaranteed loan note;

(2) Any loan subsidy due and owing; and

(3) Any principal and interest indebtedness on FmHA approved protective advances for protection and preservation of security.

(c) Interest (including any subsidy) shall be covered by the loan note guarantee to the date of the final loss settlement when the Lender conducts liquidation of collateral in an expeditious manner. In addition, FmHA's payment will include interest accruing from the date the claim is filed until the date it is paid within the limits of the guarantee. Net proceeds received from liquidation of the collateral will be used in calculating the amount of loss sustained by the Lender. If the Lender acquires the collateral, the net proceeds from collateral for calculating loss shall be determined by FmHA as follows:

(1) The collateral will be appraised at its liquidation value as of the date of acquisition by the Lender; and then

(ii) Deduct from such appraised value an estimate of liquidation costs which will include an allowance for disposition of the property when it will be held by the Lender in accordance with § 1980.376(a)(1)(ii) of this subpart.

§ 1980.323 Guarantee fee.

The Lender will pay a nonrefundable fee which may be passed on to the borrower. The fee is calculated by multiplying the figure in Exhibit K of subpart A of part 1810 of this chapter (FmHA Instruction 440.1, available in any FmHA office) times 90 percent of the principal amount of the loan.

§ 1980.324 Charges and fees by Lender.

(a) *Routine charges and fees.* The Lender may establish the charges and fees for the loan, provided they are the same as those charged other applicants for similar types of transactions.

(b) *Late payment charges.* Late payment charges will not be covered by the guarantee. Such charges may not be added to the principal and interest due

under any guaranteed note. Late charges may be made only if:

(1) *Maximum amount.* The maximum amount does not exceed the percentage of the payment due as prescribed in Exhibit H of this subpart (available in any FmHA office).

(2) *Routine.* They are routinely made by the Lender in similar types of loan transactions.

(3) *Payments received.* Payments have not been received within the customary time frame allowed by the Lender. The term "payment received" means that the payment in cash, check, money order, or similar medium has been received by the Lender at its main office, branch office, or other designated place of payment.

(4) *Calculating charges.* The Lender does not change the rate or method of calculating the late payment charges to increase charges while the loan note guarantee is in effect.

(5) *Interest-assisted loans.* The Lender does not penalize or charge any fee to the borrower when the only delinquency is a loan subsidy payment(s), which the Lender is entitled to but has not received.

§ 1980.325 Transactions which will not be guaranteed.

(a) *Lease payments.* Payments made on a lease will not be guaranteed.

(b) *Loans made by other Federal agencies.* Loans made by other Federal agencies will not be guaranteed. This does not preclude guarantees of loans made by an FCS institution with direct lending authority. This also does not preclude loans made by State or local government agencies assisted by a Federal agency.

§§ 1980.326–1980.329 [Reserved]

§ 1980.330 Applicant equity requirements.

A loan to purchase a new or existing dwelling may be made up to the appraised market value of the security.

§ 1980.331 Collateral.

(a) *General.* The entire loan must be secured by a first lien on the housing being financed and the Lender will maintain this lien priority. The Lender is responsible for assurance that proper and adequate security is obtained, maintained in existence, and of record to protect the interests of the Lender and FmHA.

(b) *Third party liens, suits pending, etc.* Among other things in obtaining the required security, it is necessary to ascertain that there are no claims or liens against the security or the borrower, and that there are no suits pending or anticipated that would affect the security or the borrower.

(c) *All collateral must secure the entire loan.* The Lender will not take separate collateral, including but not limited to mortgage insurance, to secure that portion of the loss not covered by the guarantee.

§ 1980.332 [Reserved]

§ 1980.333 Promissory notes and security instruments.

(a) *Loan instruments.* The Lender may use its own forms for promissory notes, real estate mortgages, including deeds of trust and similar instruments, and security agreements provided there are no provisions that are in conflict or otherwise inconsistent with the provisions of § 1980.309(b)(2)(v) of this subpart. The Lender is responsible for determining that the security instruments are adequate and are properly maintained of record.

(b) *Interest assistance instruments.* When the loan guarantee is authorized from interest assisted funds, FmHA will provide the Lender with the necessary forms and security instruments related to the interest assistance. The Lender will complete the Master Interest Assistance Agreement, assure that the closing agent properly records a junior mortgage or deed of trust which grants FmHA a lien on the security in order to protect FmHA's equity share subject only to the first mortgage or deed of trust to the Lender or other authorized prior lien(s), and forward the agreements and recorded instruments to FmHA.

§ 1980.334 Appraisal of property serving as collateral.

An appraisal of all property serving as security for the proposed loan will be completed. A copy of the appraisal will be submitted to FmHA for review with the request for loan guarantee. The Lender may pass the cost of the appraisal on to the borrower. The appraisal must have been completed within 3 months of the date the application is submitted to FmHA.

(a) *Qualified appraiser.* The Lender will use an appraiser that is properly licensed or authorized, as appropriate, to make residential real estate appraisals in accordance with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331–3351) regardless of the amount of the loan. Appraisers may not discriminate against any person in making or performing appraisal services because of race, color, familial status, religion, sex, age, handicap, or national origin.

(b) *Appraisal report.* Residential appraisals will be completed using the sales comparison (market) and cost approach to market value. Factors such as race, color, familial status, religion, sex, age, handicap, or national origin are not valid considerations for appraisals and shall not be used.

(1) *Uniform Residential Appraisal Report (URAR).* The appraiser will complete the URAR.

(i) The "Estimated Reproduction Cost-New of Improvements" section of the form must be completed when the dwelling is less than 1 year old.

(ii) Not less than three comparable sales, which are not more than 12 months old will be used unless the appraiser provides documentation that such comparables are not available in the area. Comparable sales should be located as close as possible to the subject dwelling. When the need arises to use a comparable sale that is a considerable distance from the subject, the appraiser must use his or her knowledge of the area, and apply good judgment in selecting comparable sales that are the best indicators of value for the subject property.

(2) *Supporting documentation.* A narrative explanation supporting unusual adjustments must be attached to the appraisal.

(3) *Photographs.* The appraisal report must include photographs which provide front, rear, and street scene views of the subject property, and a front view for each comparable sale used in the completion of the appraisal.

(4) *Site analysis form.* The appraiser will complete a checklist provided by FmHA to provide site information for FmHA use. The FmHA approval official will utilize this information in determining whether it is necessary to visit the property for environmental purposes.

(c) *FmHA review.* A desk review of the appraisal will be done by the FmHA approval official prior to issuance of a conditional commitment to assure the value is reasonably supported. FmHA will perform a desk review on each appraisal, and a field review on at least one appraisal submitted by each appraiser completing 5 or more appraisals each year.

(1) Appraisals which are determined to be deficient and/or unacceptable will be returned to the Lender for corrective action.

(2) The Lender is responsible for communicating and initiating corrective action with the appraiser. The corrected appraisal will be subject to the same review process described in this section.

(3) If FmHA determines a specific appraiser is not meeting the requirements of this section, FmHA will notify the Lender that appraisals

performed by that appraiser will no longer be accepted.

§§ 1980.335–1980.339 [Reserved]

§ 1980.340 Acquisition, construction, and development.

(a) *Acquisition of property.* The Lender is responsible for seeing that the property to be acquired with loan funds is acquired as planned and that the required security interest is obtained.

(b) *New construction.* A new dwelling financed with a guaranteed loan must:

(1) Have been built in accordance with building plans and specifications that contain approved building code certifications (eligible certifiers are listed in § 1924.5(f)(1)(iii) of subpart A of part 1924 of this chapter).

(2) Conform to FmHA thermal standards (exhibit D of subpart A of part 1924 of this chapter).

(i) The builder may certify conformance with FmHA thermal standards contained in paragraph IV A of exhibit D of subpart A of part 1924 of this chapter.

(ii) A qualified, registered architect or a qualified, registered engineer must certify conformance with FmHA thermal standards contained in paragraph IV C of exhibit D of subpart A of part 1924 of this chapter.

(c) *Development.* The Lender and borrower are responsible for seeing that the loan purposes are accomplished and loan funds are properly utilized. This includes, but is not limited to, seeing that:

(1) The applicable development standards are adhered to.

(2) Drawings and specifications are certified.

(3) Adequate water, electric, heating, waste disposal, and other necessary utilities and facilities are obtained.

(4) Equal opportunity and nondiscrimination requirements are met. (See § 1980.317 of this subpart.)

(5) A builder's warranty is issued when new construction, repair, or rehabilitation is involved, which provides for at least 1 year's warranty from the date of completion or acceptance of the work.

§ 1980.341 Inspections of construction and compliance reviews.

(a) *Qualified inspectors* Inspections will be made during construction by a construction inspector deemed qualified and approved by the Lender.

(b) *Inspections.* Inspections shall be done by a party the Lender determines to be qualified, such as a HUD approved fee inspector. The sale agreement shall identify which party (i.e., purchaser or seller) is responsible to obtain and pay for required inspections and certifications. In connection with inspections involving construction contracts, equal opportunity and nondiscrimination compliance reviews must be made as required by § 1980.317 of this subpart.

(1) For existing dwellings, inspections must be made to determine that the dwelling:

(i) Is structurally sound, functionally adequate, in good repair, or will be placed in good repair with loan funds, and meets the "General" requirements in Guide 2 of subpart A of part 1924 of this chapter (available in any FmHA office).

(ii) Meets the thermal standards per § 1980.313(f) of this subpart.

(iii) Has adequate electrical, plumbing, heat, water, and water/waste disposal systems, and is free of wood destroying insects.

(2) For a newly constructed dwelling, when construction is planned, the Lender must see that the following inspections are made in addition to any additional inspections the Lender deems appropriate:

(i) When footings and foundations are ready to be poured but prior to back-filling.

(ii) When shell is closed in, but plumbing, electrical, and mechanical work are still exposed.

(iii) When construction is completed prior to occupancy.

(iv) Inspections under paragraphs (b)(2) (i) and (ii) of this section are not required when the building supplies an insured 10 year warranty plan acceptable under the requirements of Exhibit L of subpart A of part 1924 of this chapter.

(c) *Water and water/waste disposal.* The Lender will see that the water and water/waste disposal systems have been approved by a State or local government agency.

§§ 1980.342–1980.344 [Reserved]

§ 1980.345 Applicant eligibility requirements for a guaranteed loan.

Applicants who meet the requirements below are eligible for a loan guaranteed under this subpart. Applicants desiring loan assistance as provided in this subpart must file loan applications with a Lender that meets the requirements set forth in § 1980.309 of this subpart. The Lender may accept applications filed through its agents, correspondents, branches, or other institutions. The Lender must have at least one personal interview with the applicant to verify the information on the application and to obtain a complete picture of the applicant's financial situation. The interview may take place by telephone or by face-to-face interview.

(a) *Eligible income.* The applicant's adjusted annual income determined in accordance with § 1980.352 of this subpart may not exceed the applicable income limit in Exhibit C of this subpart (available in any FmHA office) at time of loan approval.

(b) *Adequate and dependable income.* The applicant (and co-applicant, if applicable) has adequate and dependably available income. The applicant's history of income and the history of the typical annual income of others in the area with similar types of employment will be considered in determining whether the applicant's income is adequate and dependable.

(1) A farm or nonfarm business loss must be considered in determining repayment ability.

(2) A loss may not be used to offset other income in order to qualify for or increase the amount of FmHA assistance.

(c) *Determining repayment ability.* In considering whether the applicant has adequate repayment ability, the Lender must calculate a Monthly Obligation to Income (MOTI) ratio. The applicant's MOTI should be calculated by dividing the applicant's monthly obligations by monthly income.

(1) Monthly obligation consists of the principal, interest, taxes, and insurance (PITI) for the proposed loan (less any interest assistance under this program or any other assistance from a State or county sponsored program when such payments are made directly to the Lender on the applicant's behalf), home owner and other assessments, and the applicant's long term obligations. Long term obligations include those obligations with a remaining repayment period of more than 6 months and other shorter term debts that are considered to have a significant impact on repayment ability. The cost of job related expenses such as child care is included as a long term obligation.

(2) Income, for the purpose of determining the MOTI ratio, includes the total gross income of the applicant, co-applicant, and any other member of the household who will be a party to the note

(3) The applicant meets FmHA requirements for repayment ability when the applicant's MOTI ratio is less than or equal to 41 percent and the ratio of the proposed PITI to income does not exceed 29 percent.

(4) *Additional co-applicant.* Applicants who do not meet the requirements of this section will be considered ineligible unless another adult(s) in the household has adequate

income and wishes to join in the application as a co-applicant. The combined incomes then may be considered in determining repayment ability.

(5) If the applicant's MOTI and/or PITI ratio exceed the maximum authorized ratio, the Lender may waive the ratio requirement when the Lender determines and documents that there are compensating factors. Examples of compensating factors include things such as the applicant having a history over the previous 12 month period of devoting a similar percentage of income to housing expense to that of the proposed loan, or accumulating savings which, together with the applicant's housing expense is similar to that of the proposed loan.

(d) *Credit history.* The applicant must have a credit history which indicates a reasonable ability and willingness to meet obligations as they become due.

(1) Any or all of the following are indicators of an unacceptable credit history unless the cause of the problem was beyond the applicant's control, and the criteria in paragraph (d)(3) of this section are met:

(i) Incidents of more than one secured or unsecured debt payments being more than 30 days late if the incidents have occurred within the last 12 months. This includes more than one late payment on a single account.

(ii) Loss of security due to a foreclosure if the foreclosure has occurred within the last 36 months.

(iii) Outstanding tax liens or delinquent Government debts with no satisfactory arrangements for payments, no matter what their age as long as they are currently delinquent and/or due and payable.

(iv) A court-created or affirmed obligation (judgment) caused by non-payment that is currently outstanding or has been outstanding within the last 12 months.

(v) Two or more rent payments paid 30 days or more past due that have occurred within the last 3 years.

(vi) Accounts which have been converted to collections within the last 12 months (utility bills, hospital bills, etc.).

(vii) Collection accounts outstanding, with no satisfactory arrangements for payments, no matter what their age as long as they are currently delinquent and/or due and payable.

(viii) Any debts written off within the last 36 months.

(2) The following will not indicate an unacceptable credit history:

(i) "No history" of credit transactions by the applicant.

(ii) A bankruptcy which was discharged more than 36 months before application.

(iii) A satisfied judgment or foreclosure with no loss of security which was completed 12 months before the date of application.

(3) Instances of unacceptable credit history may be waived by the Lender when the applicant provides documentation that:

(i) The circumstances were of a temporary nature, were beyond the applicant's control, and have been removed (e.g., loss of job; delay or reduction in government benefits, or other loss of income; increased expenses due to illness, death, etc.); or

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services, or as a result of some other justifiable dispute relating to the goods or services purchased or contracted for.

(e) *Previous FmHA loan.* FmHA shall determine whether the applicant has had a previous FmHA debt which was settled, or is subject to settlement, or whether FmHA otherwise suffered a loss on a loan to the applicant. If FmHA suffered any loss related to a previous loan, a loan guarantee shall not be issued unless FmHA determines the FmHA loss was beyond the applicant's control, and any identifiable reasons for the loss no longer exist.

(f) *Other Federal debts.* The applicant is not delinquent on any tax and non-tax debts and there are no judgment liens against the applicant's property for a debt owed to the Federal Government unless satisfactory arrangements have been made for repayment, the arrangements have been in place for at least 6 months, and the applicant is current on those arrangements. The Lender will use credit reports and any other credit history data available from a federal database to determine whether the applicant is listed as delinquent on a Federal debt. The Lender will document the results of its review and any provisions for satisfactory arrangements as described in this paragraph.

§ 1980.346 Other eligibility criteria.

The applicant must:

(a) Be a person who does not own a dwelling or owns a dwelling which is not structurally sound, functionally adequate, or large enough to accommodate the needs of the applicant; or

(b) Be without sufficient resources to provide the necessary housing and be unable to secure the necessary credit without an FmHA guarantee upon terms and conditions which the applicant could reasonably be expected to fulfill.

(c) Be a natural person (individual) who resides as a citizen in any of the 50 States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, Federated States of Micronesia, and the Republics of the Marshall Islands and Palau, or a noncitizen who resides in one of the foregoing areas after being legally admitted to the U.S. for permanent residence or on indefinite parole.

(d) Possess legal capacity to incur the loan obligation, and have reached the legal age of majority in the State, or have had the disability of minority removed by court action.

(e) Have the potential ability to personally occupy the home on a permanent basis, if the loan is to provide housing for the applicant's own use. Because of the probability of their being transferred or moving after graduation, military personnel on active duty and full-time students will not be granted loans unless:

(1) The applicant, if military personnel, will be discharged at an early date (usually within 1 year). The family must continue to occupy the home in case the borrower is transferred to another duty station before discharge, and

(2) The applicant intends to make the home a permanent residence and there are reasonable prospects that employment will be available in the area after graduation or discharge, and

(3) An adult member of the household will be available to make inspections if the home is being constructed.

§§ 1980.347–1980.350 [Reserved]

§ 1980.351 Annual income.

Annual income determinations will be thoroughly documented in the Lender's case file. Historical data based on the past 12 months or previous fiscal year may be used if a determination cannot logically be made. Annual income to be considered includes:

(a) Current verified income, either part-time or full-time, received by the applicant/borrower and all adult members of the household, including the co-applicant/co-borrower.

(b) If any other adult member of the household is not presently employed but there is a recent history of such employment, that person's income will be considered unless the applicant/borrower and the person(s) involved sign a statement that the person(s) is not presently employed and does not intend to resume employment in the foreseeable future, or if interest

assistance is involved, during the term of the Interest Assistance Agreement. The statement will be filed in the applicant/borrower's loan file.

(c) Income from such sources as seasonal type work of less than 12 months duration, commissions, overtime, bonuses, and unemployment compensation must be computed as the estimated annual amount of such income for the upcoming 12 months. Consideration should be given to whether the income is dependable based on verification by the employer and the applicant's history of such income over the previous 24 months.

(d) The following are included in annual income:

(1) The gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services of all adult members of the household.

(2) The net income from operation of a farm, business, or profession. Consider the following:

(i) Expenditures for business or farm expansion and payments of principal on capital indebtedness shall not be used as deductions in determining income. A deduction is allowed in the manner prescribed by Internal Revenue Service (IRS) regulations only for interest paid in amortizing capital indebtedness.

(ii) Farm and nonfarm business losses are considered "0" in determining annual income.

(iii) A deduction, based on straight line depreciation, is allowed in the manner prescribed by IRS regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the operation of a trade, farm or business by a member of the household. The deduction must be based on an itemized schedule showing the amount of straight line depreciation that could be claimed for Federal income tax purposes.

(iv) Any withdrawal of cash or assets from the operation of a farm, business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by a member of the household.

(v) A deduction for verified business expenses, such as for lodging, meals and/or fuel, for overnight business trips made by salaried employees, such as long-distance truck drivers, who must meet these expenses without reimbursement.

(3) Interest, dividends, and other net income of any kind from real or personal property, including:

(i) The share received by adult members of the household from income distributed from a trust fund.

(ii) Any withdrawal of cash or assets from an investment except to the extent the withdrawal is reimbursement of cash or assets invested by a member of the household.

(iii) Where the household has net family assets, as defined in § 1980.302 of this subpart, in excess of $5,000, the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate.

(4) The full amount of periodic payments received from social security (including social security received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts.

(5) Payments in lieu of earnings; such as unemployment, disability and worker's compensation, and severance pay.

(6) Public assistance except as indicated in paragraph (e)(2) of this section.

(7) Periodic allowances, such as:

(i) Alimony and/or child support awarded in a divorce decree or separation agreement, unless the payments are not received and a reasonable effort has been made to collect them through the official entity responsible for enforcing such payments and they are not received as ordered; or

(ii) Recurring monetary gifts or contributions from someone who is not a member of the household.

(8) Any amount of educational grants or scholarships or VA benefits available for subsistence after deducting expenses for tuition, fees, books, and equipment.

(9) All regular pay, special pay (except for persons exposed to hostile fire), and allowances of a member of the armed forces who is the applicant/borrower or co-applicant/co-borrower, whether or not that family member lives in the unit.

(10) The income of an applicant's spouse, unless the spouse has been living apart from the applicant for at least 3 months (for reasons other than military or work assignment), or court proceedings for divorce or legal separation have been commenced.

(e) The following are not included in annual income but will be considered in determining repayment ability:

(1) Income from employment of minors (including foster children) under 18 years of age. The applicant and spouse may never be considered minors.

(2) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.

(3) Payments received for the care of foster children.

(4) Casual, sporadic, or irregular cash gifts.

(5) Lump-sum additions to family assets such as inheritances; capital gains; insurance payments included under health, accident, hazard, or worker's compensation policies; and settlements for personal or property losses (except as provided in paragraph (d)(5) of this section).

(6) Amounts which are granted specifically for, or in reimbursement of, the cost of medical expenses.

(7) Amounts of education scholarships paid directly to the student or to the educational institution and amounts paid by the Government to a veteran for use in meeting the costs of tuition, fees, books, and equipment. Any amounts of such scholarships or veteran's payments, which are not used for above purposes and are available for subsistence, are considered to be income. Student loans are not considered income.

(8) The hazardous duty pay to a service person applicant/borrower or spouse away from home and exposed to hostile fire.

(9) Any funds that a Federal statute specifies must not be used as the basis for denying or reducing Federal financial assistance or benefits. (Listed in Exhibit M of this subpart, available in any FmHA office.)

(f) Income of live-in aides who are not relatives of the applicant or members of the household will not be counted in calculating annual income and will not be considered in determination of repayment ability.

§ 1980.352 Adjusted annual income.

Adjusted annual income is annual income as determined in § 1980.351 of this subpart less the following:

(a) A deduction of $480 for each member of the family residing in the household, other than the applicant, spouse, or co-applicant, who is:

(1) Under 18 years of age; or

(2) Eighteen years of age or older and is disabled or handicapped as defined in § 1980.302 of this subpart; or

(3) A full-time student aged 18 or older.

(b) A deduction of $400 for any elderly family as defined in § 1980.302 of this subpart.

(c) A deduction for the care of minors 12 years of age or under, to the extent necessary to enable a member of the applicant/borrower's family to be gainfully employed or to further his or

her education. The deduction will be based only on monies reasonably anticipated to be paid for care services and, if caused by employment, must not exceed the amount of income received from such employment. Payments for these services may not be made to persons whom the applicant/borrower is entitled to claim as dependents for income tax purposes. Full justification for such deduction must be recorded in detail in the loan docket.

(d) A deduction of the amount by which the aggregate of the following expenses of the household exceeds 3 percent of gross annual income:

(1) Medical expenses for any elderly family (as defined in § 1980.302 of this subpart). This includes medical expenses for any household member the applicant/borrower anticipates incurring over the ensuing 12 months and which are not covered by insurance. (e.g., dental expenses, prescription medicines, medical insurance premiums, eyeglasses, hearing aids and batteries, the cost of home nursing care, monthly payments on accumulated major medical bills, and cost of full-time nursing or institutional care which cannot be provided in the home for a member of the household); and

(2) Reasonable attendant care and auxiliary apparatus expenses for each handicapped disabled member of any household to the extent necessary to enable any member of such household (including such handicapped/disabled member) to be employed.

§ 1980.353 Filing and processing applications.

(a) *Loan priorities.* Complete applications will be considered by FmHA in the order received from Lenders authorized to participate in the program except as provided in paragraph (b) of this section.

(b) *Preference.* Applications for guarantees on loans to first-time homebuyers or veterans, their spouses, or children of deceased servicemen who died during one of the periods described in the definition of "Veteran" in § 1980.302 of this subpart will be given preference by FmHA. Displaced homemakers and single parents are also first-time homebuyers even though they previously owned, or resided in a dwelling with a spouse.

(c) *Applications.* If upon review of an application the Lender concludes that the application can be considered for an FmHA guarantee, the Lender will provide written documentation addressing each of the loan eligibility requirements of this subpart and the basis for the conclusion in the applicant's file. The Lender will submit a request for the guarantee using a form supplied by FmHA including all of the following information:

(1) Name, address, telephone number, social security number, age, number of persons in the household, and citizenship status of the applicant.

(2) Amount of loan request and proposed use of loan funds.

(3) Name, address, contact person, and telephone number of the proposed Lender.

(4) Anticipated loan rates and terms, the date and amount of the Fannie Mae rate used to determine the interest rate, and the Lender's certification that the proposed rate is in compliance with § 1980.320 of this subpart.

(5) Statement from the Lender that it will not make the loan as requested by the applicant without the proposed guarantee and that the applicant has been advised in writing that the applicant is subject to criminal action if he or she knowingly and willfully gives false information to obtain a federally guaranteed loan.

(6) If the applicant is not a United States citizen, evidence of being legally admitted for permanent residence or indefinite parole.

(7) The applicant's sex, race, and veteran status, and whether applicant is a first-time homebuyer.

(8) An appraisal report including information about the dwelling location with respect to neighborhood and community services and facilities, business and industrial enterprises, and streets or roads serving the housing.

(9) Credit report obtained by the Lender.

(10) An equal opportunity agreement supplied by FmHA for construction costing more than $10,000.

(11) Evidence of compliance with the Privacy Act of 1974.

(12) Lender's analysis of loan feasibility (repayment ability, credit worthiness, and security value).

(13) A certification from the borrower regarding debarment, suspension, ineligibility, and voluntary exclusion from Federal programs using a form supplied by FmHA.

(14) A statement signed by the borrower acknowledging that the borrower understands that FmHA approval of the guarantee is required and is subject to the availability of funds.

(d) *Filing applications.* The requirements of the Right to Financial Privacy Act of 1978 must be met as follows:

(1) Within 3 days of the receipt of a complete application from a Lender for a guarantee for a loan, FmHA will notify the loan applicant of the intent to use information from financial institution.

(2) FmHA will notify Lenders and other financial institutions to which FmHA makes a direct request for financial records of the Agency's compliance with the applicable provisions of Title XI, Public Law 95–630, in seeking financial information regarding the applicant.

(3) [Reserved]

(e) *Verifying information provided.* Written documentation from third parties is the preferred method of verifying information. Verifications must pass directly from the source of information to the Lender and shall not pass through the hands of a third party or applicant.

(1) *Income verification.* Employment verifications and other income verifications obtained in accordance with this paragraph are valid for 120 days, 180 days for proposed new construction.

(i) An FmHA approved form or the equivalent HUD/FHA/VA or Fannie Mae form will be used to verify employment income of the loan applicant except when the applicant is self employed. The form will be signed by the applicant or borrower and sent directly to the employer by the Lender.

(ii) Income information that cannot be obtained by use of this form will be obtained in writing from third parties to the extent possible.

(iii) Alimony and/or child support payments will be verified by obtaining a copy of the divorce decree or other legal document indicating the amount of the payments. When the applicant states that less than the amount awarded is received, the Lender will request documentation from the official entity through which payments are received, or other third party able to provide the verification when payment is not made through an official entity indicating the amounts and dates of payments to the applicant during the previous 12 months.

(iv) When it is not feasible to verify income through third parties, the Lender is authorized to accept a notarized statement or signed affidavit from the applicant stating the effort made to collect the amount awarded, and the amounts and dates of payments received during the previous 12 months.

(v) Applicants and borrowers deriving their income from a farming or business enterprise will provide current documentation of the income and expenses of the operation. In addition, historic information from the previous fiscal year must be presented.

(vi) Social Security, pension, and disability income may be verified by obtaining a copy of the most recent award or benefit letter prepared and

signed by the authorizing agency. This verification will be considered valid only for 1 year from the date of the award or benefit letter.

(2) *Verification of disability or handicap.* An FmHA supplied form will be used to verify disability or handicap in cases where State Review Board or Social Security records are not available. Receipt of veteran's benefits for disability, whether service-oriented or otherwise, does not automatically establish disability.

(3) *Verification of alien status.* Aliens are required to present documentation of their status. Section 1944.9 of subpart A of part 1944 of this chapter outlines the acceptable forms of documentation.

(4) *Verification of credit history and current debt.* The Lender shall determine all liabilities of all parties responsible for repayment of the proposed loan. Credit reporting information must pass directly between the Lender and the credit reporting agency or source.

(i) Mortgage credit reports shall be used to determine creditworthiness unless the applicant resides in a remote rural area and conclusive or sufficient information would not be available. Information relative to judgments, garnishments, foreclosures, and bankruptcies must be obtained when a credit report is not obtained.

(ii) The credit report must contain language that clearly states that the report meets the standards prescribed by Fannie Mae, Freddie Mac, HUD, or FmHA.

§ 1980.354 FmHA review of applications.

FmHA will review the application for completeness to determine whether the proposed loan is to an eligible applicant for an eligible loan purpose, for documentation that there is reasonable assurance of repayment ability and sufficient collateral, and that the environmental requirements of § 1980.316 of this subpart are met. FmHA will accept and process applications regardless of availability of funds.

(a) *Issuance of commitment.* If FmHA determines the application is eligible:

(1) *Funding authority is available.* The approval official will obligate the loan and issue a conditional commitment to the Lender;

(2) *Non-availability of funding authority.* The approval official will advise the lender that the application meets the agency's eligibility criteria but funds are not available; or

(3) *Administrator's authorization.* When the appropriated funds are fully utilized, the Administrator may authorize FmHA approval officials to approve the lender's request for a guarantee and issue a conditional commitment subject to the availability of funds. This authority may be invoked when the Administrator determines that the Agency is likely to receive funds in the near future. When this authority is utilized, the Administrator will determine the aggregate conditional commitment authority for each State. Conditional commitments issued under this authority must contain the following condition:

"This conditional commitment is subject to the availability of funds. If the lender closes the loan prior to notification of fund availability, it does so at its own risk. This commitment is valid for a period not to exceed 6 months from the date of issuance of this commitment. If funds do not become available within 6 months, this commitment is void. After that time the lender may resubmit the application for reconsideration with current information. If funds become available, all other conditions in this commitment are met, and the loan is in good standing, FmHA will issue a Loan Note Guarantee to the lender or the lender's assigns or successors (provided the assigns or successors hold a valid FmHA Lender Agreement)."

(b) *Incomplete applications.* FmHA will contact the Lender by telephone if the request for Loan Note guarantee is incomplete. Incomplete applications will be returned to the Lender if the package will not or cannot be made complete within 3-working days.

(c) *Denial.* If FmHA determines it is unable to guarantee the loan, the Lender will be informed in writing. Such notification will include the reasons for denial of the guarantee and appropriate appeal or review rights. Appeals will be handled as provided in § 1980.399 of this subpart.

§ 1980.355 Review of requirements.

Upon the Lender's review of the conditional commitment, the Lender may determine whether to accept the conditions outlined in it.

(a) *Accepting conditions.* Immediately after reviewing the conditions and requirements in the conditional commitment, and the options listed on the back of the form, the Lender may proceed with loan closing. If the conditions cannot be met, the Lender and borrower may propose alternate conditions to FmHA. The FmHA approval official may negotiate any revisions consistent with this subpart. These alternatives will be considered and the Lender will be advised of FmHA's decision. If altered conditions are accepted by FmHA, the conditional commitment will be revised as appropriate.

(b) *Cancelling commitment.* If the Lender indicates in the acceptance or rejection of conditions that it desires to obtain a loan note guarantee and subsequently decides prior to loan closing that it no longer wants a loan note guarantee, the Lender should immediately advise the FmHA approval official.

§§ 1980.356–1980.359 [Reserved]

§ 1980.360 Conditions precedent to issuance of the loan note guarantee.

(a) *Lender certification.* The Lender must certify to FmHA that:

(1) No major changes have been made in the Lender's loan conditions and requirements since the issuance of the conditional commitment, except those approved in writing by FmHA. In the event the borrower has not fixed the interest rate at the time the conditional commitment is issued, and the interest rate increases between the time of issuance of the conditional commitment and loan closing, the Lender should note the change when submitting the package to FmHA for loan guarantee. If either or both of the underwriting ratios are exceeded as a result of the interest rate increase, the Lender should list the compensating factors that demonstrate that sufficient repayment ability still exists.

(2) All planned property acquisition has been completed and all development has been completed.

(3) Required insurance coverage is in effect.

(4) Truth-in-lending requirements have been met.

(5) All equal employment opportunity and nondiscrimination requirements have been met.

(6) The loan has been properly closed by a party skilled and experienced in conducting loan closings, and the required security instruments, including any required shared equity instruments, have been obtained and recorded in the appropriate office in a timely and accurate manner.

(7) The borrower has a marketable (clean and defensible) title to the property then owned by the borrower, subject to the instrument securing the loan to be guaranteed, and any other exceptions approved in writing by FmHA.

(8) Lien priorities are consistent with the requirements of the conditional commitment.

(9) The loan proceeds have been disbursed for purposes and in amounts consistent with the conditional commitment.

(10) There has been no adverse change in the borrower's financial condition or other adverse change in the borrower's situation since the conditional commitment was issued by FmHA.

(11) All other requirements of the conditional commitment have been met.

(b) *Inspections.* The Lender will certify to FmHA that inspections in accordance with § 1980.341 of this subpart have been completed.

(c) *Lender agreement.* There must be a valid lender agreement on file.

(d) *Lender file.* The Lender will maintain a file for each guaranteed RH loan containing originals or copies, as appropriate, of all documents pertaining to that loan.

§ 1980.361 Issuance of loan note guarantee.

(a) *Loan note guarantee.* After the Lender has certified that all requirements have been met, the FmHA approval official will execute the loan note guarantee. The original will be provided to the Lender and attached to the note. A conformed copy with a copy of the note will be retained by FmHA.

(b) *Refusal to execute contract.* If FmHA determines that it cannot execute the loan note guarantee because all requirements have not been met, it will promptly inform the Lender of the reasons using a denial letter form and give the Lender a reasonable period to satisfy the objections. FmHA may grant additional time as it considers necessary and reasonable under the circumstances if the Lender makes a request within the above period. If the objections are satisfied within the time allowed, FmHA will issue the guarantee. Otherwise, the Lender will be informed of the appropriate appeal or review rights in accordance with § 1980.399 of this subpart and subpart B of part 1900 of this chapter.

(c) *Cancellation of obligations.* If the conditions for the guarantee cannot be met after allowance for the completion of the appeal process, FmHA will cancel the obligation.

(d) *Reporting loan closing.* The Lender will prepare the FmHA Loan Closing Report for each loan to be guaranteed and will deliver the guarantee fee, if any, to the FmHA approval official who concurrently delivers the loan note guarantee after a review to assure completeness.

§ 1980.362 [Reserved]

§ 1980.363 Review of loan closing.

The Lender must provide FmHA with a complete copy of its loan docket within 10 days of issuance of the loan note guarantee. FmHA will conduct a review of the Lender's loan docket within 10 days of receipt of the copy. The purpose of this review is to determine that the loan was processed and closed in accordance with this subpart. FmHA will notify the Lender of any deficiencies noted during the review and that the guarantee may be jeopardized if the deficiencies are not corrected. This information will be considered by FmHA when considering renewal of the Lender Agreement. The Lender is responsible for deficiencies whether FmHA discovers them in the loan closing review and/or notifies the Lender at that time. FmHA reviews do not constitute any waiver of fraud, misrepresentation, or failure of judgment by the Lender.

§ 1980.364 [Reserved]

§ 1980.365 Additional loans or advances.

The Lender will not make additional loans for authorized purposes to the borrower without prior FmHA written consent even though such loans will not be guaranteed. FmHA may consent in writing to additional loans or advances provided the approval official determines that there will be no adverse changes in the borrower's ability to repay the loan, and that the loan or advance is not likely to adversely affect the collateral of the guaranteed loan. This does not preclude extension of credit for purposes other than those authorized in this subpart.

§ 1980.366 Transfer and assumption.

(a) *General.* Lenders may, but are not required to, permit a transfer to an eligible applicant. A transfer and assumption must be approved by FmHA in writing.

(b) *Eligible transferee.* An eligible transferee is one who meets the eligibility requirements of this subpart and includes situations involving transfers of housing in an area that has ceased to be rural. Loans made and guaranteed under this subpart prior to March 29, 1989, may be transferred to an applicant meeting all eligibility requirements of this subpart except the applicant's adjusted annual income may exceed the maximum income for the area by not more than 10 percent.

(c) *Determinations by the Lender.* Before the transfer and assumption can be approved with the guarantee remaining in force, the Lender must determine that all of the following conditions can be met:

(1) The transferee is an eligible applicant.

(2) The transferee will assume the total remaining debt and acquire all of the property securing the guaranteed loan balance.

(3) The transfer and assumption would not be made without the continuation of the loan guarantee.

(4) The market value of the security being acquired by the transferee is at least equal to the secured indebtedness against it.

(5) The priority of the existing lien securing the guaranteed loan will be maintained or improved.

(6) Proper hazard insurance will be obtained.

(7) The transfer and assumption can be properly closed and the conveyance instruments will be filed, registered, or recorded, as appropriate and legally permissible.

(8) The transferor acknowledges continued liability for the debt in writing.

(d) *Changes in the promissory note or security instrument.* If the assumption will result in changes in the repayment schedule or the interest rate, the changes must be approved by the present debtors since they will remain liable for the debt. Any changes in rates and terms must not exceed rates and terms allowed for new loans under this subpart and cannot exceed the interest rate on the initial loan. The debt must not exceed the amount remaining due on the original loan. The term of the loan may cover a period of up to 30 years from the date of transfer and assumption. The Lender's request for approval to FmHA will be accompanied by:

(1) An explanation of the reasons for the proposed change in the rates and terms.

(2) A statement that the Lender's determinations required by paragraph (c) of this section can be made.

(e) *Release of liability.* The Lender may not release the transferor of liability.

(f) *Forms and case numbers.* The assumption may be made on the Lender's assumption agreement form. The assumption agreement must contain the FmHA case numbers of the transferor and the transferee.

(g) *Lender's application to FmHA.* The Lender must submit the items outlined in § 1980.353(e) of this subpart to FmHA, in addition to items required in this section.

(h) *Notations and notices.* The Lender must notify FmHA whether the loan and security can be properly assumed and transferred. The Lender shall assure that the conveyance instruments are properly filed, registered, or recorded, as appropriate. Upon completion of the transfer and assumption, the Lender must provide FmHA a copy of the transfer and assumption agreement. The Lender is responsible for presenting the

loan note guarantee to FmHA so that FmHA can note the transfer and assumption on the loan note guarantee. If a new note is obtained, it will also be attached to the loan note guarantee.

(i) *Interest assistance.* The original borrower's Master Interest Assistance Agreement may be transferred to an eligible transferee. Equity sharing, if any, owed by the transferor must be determined and collected at the time the loan is assumed and title to the property is transferred.

(j) *Closing the transfer and assumption.* As soon as the Lender has obtained FmHA approval, the Lender may proceed with closing the transaction. The closing must include, but need not be limited to, the proper execution and delivery of the conveyance and assumption documents, compliance with any legal requirements, and actions necessary to perfect the transfer and the required lien priority.

(k) *Loan Note guarantee.* The existing Loan Note guarantee will continue to be in effect. FmHA will note the transfer and assumption on the original Loan Note guarantee by completing the Assumption Agreement block and inserting the name of the assuming party.

(l) *Material furnished to FmHA after closing.* Immediately after closing, the Lender must furnish to FmHA:

(1) A conformed copy of the executed assumption agreement.

(2) A statement showing:

(i) Any changes made in the provisions of the promissory note or security instruments.

(ii) That all conditions and requirements of paragraph (b) of this section have been met.

(iii) That the required insertions have been made per paragraph (h) of this section.

(m) *FmHA responsibility.* The FmHA approval official may consent to any transfer and assumption consistent with this subpart. The FmHA approval official shall notify in writing the Lender of the decision. If disapproved, the appropriate appeal rights will be given to the Lender. A copy of the assumption agreement and a copy of any new promissory note will be maintained in the FmHA loan file.

(1) *Notification of Lender.* The FmHA approval official will review the proposed transfer and assumption and notify the Lender of the decision in writing. The request for transfer and assumption will be treated as an application for guaranteed loan assistance and will be handled in accordance with § 1980.353 of this subpart. The Lender may proceed with the transfer and assumption upon obtaining FmHA approval.

(2) [Reserved]

§§ 1980.367–1980.369 [Reserved]

§ 1980.370 Loan servicing.

FmHA encourages Lenders to provide borrowers with the maximum opportunity to become successful homeowners. Lenders should provide sufficient servicing and counseling to meet the objectives of the loan. Loan servicing should be approached as a preventive action rather than a curative action. Prompt follow-up by the Lender on delinquent payments and early recognition and solution of problems are keys to resolving many delinquent loan cases. The Lender shall perform those services which a reasonable and prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed.

(a) *Normal loan servicing.* The Lender is responsible for servicing the loan under the Lender Agreement and this subpart even though the Lender has engaged a third party to service the loan on its behalf. Normal servicing includes:

(1) Receiving all payments as they fall due, proper application to principal and interest, and escrow accounts of taxes (including special assessments) and insurance.

(2) Establishment and maintenance of an escrow account to pay real estate taxes and assessments and required hazard and flood insurance on the security. All escrow accounts must be fully insured by the Federal Deposit Insurance Corporation (FDIC). The Lender is responsible for maintaining escrow funds in a reasonable and prudent manner and for assuring that real estate taxes and assessments and required hazard and flood insurance are paid in a timely manner even if it requires advancing the Lender's own funds. The monthly payment may be adjusted when it is not adequate to meet established charges of the escrow account for the coming year. Escrow funds may be used only for the purpose for which they were collected.

(3) Obtaining compliance with the covenants, loan agreement, security instruments, and any supplemental agreements and notifying the borrower in writing of any violations.

(b) *Other servicing requirements.* Other servicing requirements include taking actions to offset the effects of liens, probate proceedings, and other legal actions. The Lender's responsibility includes assuring that:

(1) Insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuild or otherwise acquire needed replacement collateral.

(2) The borrower complies with laws and ordinances applicable to the loan and the collateral.

(3) The borrower is not released of liability for the loan except as provided in FmHA regulations.

(c) *Servicing options.* The Lender should make every effort to assist borrowers who are cooperative and willing to make a good faith effort to cure the delinquency. The Lender should consider the borrower's financial condition in attempting to work out repayment agreements. The Lender may revise the payment schedule of the loan on a temporary basis with the written concurrence of the borrower. Changes in the loan repayment such as reamortization of the unpaid balance within the remaining term of the loan may be done with prior written FmHA concurrence.

(d) *Lender reporting to FmHA.* Reports on Lender servicing case loads and performance are required as follows:

(1) *Monthly report.* The Lender must prepare and submit a report in a manner prescribed by FmHA identifying each borrower with a loan that is more than 90 days delinquent.

(2) *Quarterly report.* The Lender must prepare and submit a report in a manner prescribed by FmHA indicating the number of loans serviced and the number of loans that are 31 through 60 days, 61 through 90 days, and over 91 days delinquent.

§ 1980.371 Defaults by the borrower.

Default occurs when the borrower fails to perform under any covenant of the mortgage or Deed of Trust and the failure continues for 30 days.

The Lender will negotiate in good faith in an attempt to resolve any problem. The borrower must be given a reasonable opportunity to bring the account current before any foreclosure proceedings are started.

(a) The Lender must make a reasonable attempt to contact the borrower if the payment is not received by the 20th day after it is due.

(b) The Lender must make a reasonable attempt to arrange and hold an interview with the borrower for the purpose of resolving the delinquent account before the loan becomes 60 days delinquent. The interview may be conducted by either a face-to-face meeting or by telephone. Reasonable effort consists of not less than one letter sent to the borrower at the property address via certified mail or similar

method which the borrower refuses to accept or fails to respond.

(c) The Lender must determine whether the property has been abandoned before the account becomes two payments delinquent if the Lender is unable to make contact with the borrower or the Lender has reason to believe that the borrower has vacated the property or that the value of the security may be in jeopardy.

(d) When the loan becomes three payments delinquent, the Lender must report borrower delinquencies to credit repositories and make a decision with regard to liquidation of the account. The Lender may proceed with liquidation of the account unless there are extenuating circumstances. The Lender will report to FmHA by the 110th day of delinquency on the reasons and planned actions when the Lender has not proceeded with liquidation.

§ 1980.372 Protective advances.

Protective advances must constitute an indebtedness of the borrower to the Lender and be secured by the security instrument(s). FmHA prior written authorization is required for each protective advance that exceeds $500. Protective advances are advances made for expenses of an emergency nature necessary to preserve or protect the physical security. Attorney fees are not a protective advance. The Lender will not make protective advances in lieu of an additional loan.

§ 1980.373 [Reserved]

§ 1980.374 Liquidation.

If the Lender concludes the liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, the Lender will notify FmHA of the decision to liquidate. Initiation of foreclosure begins with the first public action required by law such as filing a complaint or petition, recording a notice of default, or publication of a notice of sale. Foreclosure must be initiated within 90 days of the date the decision to liquidate is made unless the foreclosure has been delayed by law. When there is a legal delay (such as bankruptcy), foreclosure must be started within 60 days after it becomes possible to do so.

(a) *Expeditious liquidation.* Once the decision to liquidate has been made, the Lender must proceed in an expeditious manner. Lenders must exercise due diligence in completing the foreclosure process. Lenders are expected to complete foreclosure within the time frames that are reasonable for the State in which the property is located.

(b) *Maximum collection.* The Lender is expected to make the maximum collection possible on the indebtedness. The Lender will consider the possibility of recovery of any deficiency apart from the acquisition or sale of collateral. The Lender will submit a recommendation on such recovery considering the borrower's assets and ability to pay, prospects of future recovery, the costs of pursuing such recovery, recommendation for obtaining a judgment, and the collectability of a judgment in view of the borrower's assets.

(c) *Allowable liquidation costs.* Certain reasonable liquidation costs (costs similar to those charged for like sources in the area) will be allowed during the liquidation process. No in-house expenses of the Lender will be allowed including, but not limited to, employee salaries, staff lawyers, travel, and overhead. Liquidation costs are deducted from the gross sales proceeds of the collateral when the Lender has conducted the liquidation. Therefore, if liquidation never occurs or is conducted by someone other than the Lender, liquidation costs may not be paid from the proceeds to the Lender.

(d) *Servicing plan.* The Lender must submit a servicing plan to FmHA when the account is 90 days delinquent and a method other than foreclosure is recommended to resolve delinquency.

(1) *Continuation with the borrower.* FmHA may accept the Lender's recommendation to continue with the borrower when a clear and realistic plan to eliminate the delinquency is presented. The Lender must fully document the borrower's prospects of success. The Lender must agree to send monthly reports on the borrower's progress. The borrower's failure to meet the terms of the plan, once accepted by FmHA, will void the plan.

(2) *Voluntary liquidation.* FmHA encourages Lenders and delinquent borrowers to explore an acceptable alternative to foreclosure to reduce loss and expenses of foreclosure. FmHA may accept the Lender's plan to use voluntary liquidation when the plan clearly addresses the responsibilities of the parties, the Lender maintains oversight of the progress of the sale, the property is listed for sale at a price in line with its market value (if there is not already a bona-fide purchaser for the dwelling), and the expected cost to the Government is the same as or less than the cost of foreclosure.

(3) *Deed-in-lieu of foreclosure.* FmHA may accept the Lender's plan for the Lender to take a deed-in-lieu of foreclosure from the borrower when it will not result in a cost in excess of that expected for foreclosure.

(4) *Other methods.* FmHA may accept a proposal submitted by the Lender that is not specifically addressed in but consistent with the provisions of this subpart if the Lender fully documents how the proposal will result in a savings to the Government.

(5) *Deficiency judgment.* Lenders must make a recommendation on the feasibility and likelihood of collection of a deficiency judgment whenever liquidation is recommended. A deficiency judgment will be taken by the Lender when there are assets from which to collect, or there is a reasonable expectation that there are likely to be such assets in the future.

(e) *Handling shared equity.* Interest assistance payments made under § 1980.390 of this subpart will not be subject to shared equity if the loan is liquidated in accordance with the Lender Agreement unless:

(1) The collateral is sold for an amount exceeding the Lender's unpaid balance and costs of foreclosure, or

(2) A junior lienholder takes over the Lender's loan.

§ 1980.375 Reinstatement of the borrower's account.

The Lender may reinstate an account when all delinquent payments and any funds that were advanced to pay authorized expenses are paid or as required under State law. When the Lender wishes to consider other offers by the borrower to bring the account current, the Lender must obtain FmHA concurrence.

§ 1980.376 Loss payments.

Settlement of the guarantee will be made upon liquidation of the loan as defined in § 1980.302 of this subpart.

(a) *Loss payment.* Loss payments will be made within 60 days of liquidation of the loan. The Lender must submit its loss claim within 10-working days of loan liquidation. The claim may include interest accrued to the date of the claim. FmHA will pay interest within the limits of the guarantee to the date the claim is paid when the Lender promptly and properly files the claim.

(1) *Determination of loss payment.* To calculate the loss payment, first determine the unpaid debt by adding the unpaid principal and interest on the loan and the unpaid balance for principal and interest on authorized protective advances. The net proceeds from the security will be first applied to the unpaid debt. Any other proceeds recovered by the Lender from other sources shall also be applied to the total

unpaid debt. Determination of net proceeds will be different depending on which of the following circumstances are involved.

(i) If, at liquidation, title to the security is conveyed to a bona fide third-party purchaser, then final loss payment will be based on the net sales proceeds received for the property.

(ii) If, at liquidation, title to the security is conveyed to the Lender, then the Lender must prepare and submit a liquidation plan to FmHA for FmHA concurrence. The plan will address the Lender's proposed method for sale of the property, the estimated value and minimum sale price, itemized estimated costs of the sale, and any other information that could impact the amount of loss on the loan. The Lender is allowed up to 6 months to sell the property plus a period not to exceed 30 days to close the sale from the date a purchase offer is accepted. Net proceeds will be based on the net proceeds received for the property when the sale is conducted in accordance with the plan as approved by FmHA. If no sale occurs within the 6-month period, then the FmHA approval official will obtain and use a liquidation value appraisal of the property. When an appraisal is obtained, the amount of the net proceeds from the security is then determined by subtracting a cost factor, which is found in Exhibit H of this subpart (available in any FmHA office), from the current market value.

(iii) If a deficiency judgment is obtained, the Lender must enforce the judgment against the borrower before loss settlement if the current situation provides a reasonable prospect of recovery. A loss payment may be made when the Lender holds a deficiency judgment but there are no current prospects of collection, but there may be in the future.

(2) *Payment procedure.* FmHA will pay losses on the loan according to the terms of the loan note guarantee unless FmHA has determined there is cause for reduction of the loss amount. See § 1980.377 of this subpart for future recovery by the Lender.

(i) If there is no dispute between FmHA and the Lender regarding the amount of the loss and the Lender's eligibility for payment of loss, FmHA will pay the loss within the limits of the guarantee.

(ii) If FmHA and the Lender do not agree on the amount of the loss, or FmHA has determined that part of the loss is not payable to the Lender under the terms of the loan note guarantee, FmHA will pay the undisputed portion. The disputed portion of the claim will be treated as an adverse decision and appeal rights extended.

(iii) When FmHA has cause to believe that fraud or other actions negating the guarantee exist, no loss payment may be made unless the situation is resolved.

(3) The FmHA approval official will conduct an audit of the account and review the loan in its entirety to determine why the loan failed and whether any reason exists for reducing or denying the loss claim. This information will be documented in the FmHA case file.

(4) If a Lender's loss claim is denied or reduced, the FmHA approval official will notify the Lender of all of the reasons for the action within 10 days of the decision and its opportunity to appeal the decision as set forth in § 1980.399 of this subpart and subpart B of part 1900 of this chapter.

(5) The FmHA approval official is authorized to approve loss payments in amounts of up to 50 percent of his/her delegated loan approval authority in accordance with Exhibit D of subpart A of part 1901 of this chapter (available in any FmHA office).

(b) *Denial or reduction of loss claims.* The FmHA approval official will fully document any loss claim which is denied or reduced including an analysis of how the amount of the reduction was determined. A connection must be made between the Lender's action or failure to act and the loss amount on the loan. The amount of loss occasioned by such action will be established. A Lender's loss claim may be denied or reduced by FmHA when:

(1) The Lender has committed fraud. (Denial of claim.)

(2) The Lender claims items not authorized under FmHA regulations. (Reduced by amount of unauthorized claim.)

(3) The Lender violated usury laws. (Reduction for amount of loss caused by the violation.)

(4) The Lender failed to obtain required security and/or maintain the security position. (Reduction for loss attributed to failure.)

(5) Loan funds were used for unauthorized purposes. (Reduction by unauthorized amount.)

(6) The Lender was negligent in loan servicing. Negligent servicing is a failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes a failure to act, a failure to act in a timely manner, or acting in a manner contrary to that in which a reasonably prudent Lender would act. (Reduction for loss amount attributable to Lender negligence.) Examples of negligent servicing include:

(i) A failure to contact the borrower in a timely manner when the borrower's account goes into default.

(ii) A failure to pay real estate taxes or hazard insurance when due.

(iii) A failure to notify FmHA within required time limits when the borrower defaults on the loan.

(iv) A failure to request loan subsidy when the borrower was eligible for loan subsidy and loan subsidy was available (subsidized loans only).

(v) A failure to protect security during the liquidation phase.

(7) The Lender delayed filing the loss claim. (Reduction in claim for interest accrued because the claim was not filed.)

§ 1980.377 Future recovery.

The proceeds of any amounts recovered shall be shared in proportion to the amount of loss borne between FmHA and the Lender. Although the Lender's actual loss may be different than the amount on which loss settlement was based, the proportion of recovery sharing must be based on the loss percentage upon which the loss payment calculation was based.

§§ 1980.378–1980.389 [Reserved]

§ 1980.390 Interest assistance.

In order to assist low-income borrowers in the repayment of the loan, FmHA is authorized to provide interest assistance payments subject to the availability of funds. Regardless of what date a borrower's loan payment is due each month, interest assistance payments will be made by FmHA directly to the Lender on or before the 15th day of the month for which the borrower's payment is due.

(a) *Policy.* It is the policy of FmHA to grant interest assistance on guaranteed loans to low-income borrowers to assist them in obtaining and retaining decent, safe, and sanitary dwellings and related facilities as long as the borrower remains eligible for payments when funds are available for interest assistance. Interest assistance must be established for the borrower at the time the loan guarantee is authorized.

(b) *Processing interest assistance agreements.* The Lender will process the interest assistance agreement and submit it to FmHA for approval.

(1) FmHA will reimburse the Lender in the amounts authorized in Exhibit H of this subpart (available in any FmHA office) for the cost of processing the agreement. The fee will be paid upon receipt of a valid agreement which has been coded as requiring a processing fee

payment. The processing fee is payable when:

(i) A new agreement is made with the borrower except at the time of loan closing.

(ii) The borrower had an agreement for the previous year and a new agreement is made for the current year.

(iii) The borrower is eligible for but not presently on interest assistance and enters into a new interest assistance agreement.

(iv) The borrower has a change in circumstances which requires a revision to the current agreement. When the change in circumstances results in an agreement with less than 90 days remaining, the agreement for the subsequent year will be prepared at the same time. This action is considered one agreement.

(2) A processing fee will not be paid when the revision to an existing agreement is required due to an error on the part of the Lender or the borrower.

(c) *Amount of interest assistance.* (1) The amount of interest assistance granted will be the difference between the monthly installment due on the promissory note eligible for interest assistance and the amount the borrower would pay if the note were amortized at the rate corresponding to the borrower's income range as outlined in the master interest assistance agreement.

(2) The basis for the amount of interest assistance for each loan is determined by the amount of interest assistance authorized to the Agency as shown in Exhibit H of this subpart (available in any FmHA office) and the note interest rate.

(3) A borrower receiving a loan in a high cost area will be granted an additional 1 percent interest assistance in order to assist the borrower up to the maximum rate in Exhibit H of this subpart (available in any FmHA office).

(i) The Administrator may designate an area as a high cost area for interest assistance purposes. Such designation may be granted when the State Director makes a written request for it and provides documentation that low-income borrowers in the area could not afford to purchase a dwelling under the interest assistance table in Exhibit H of this subpart (available in any FmHA office). The area must also be designated by HUD as a high cost area. The amount of additional interest assistance for high cost areas is 1 percent; however, in no case will more interest assistance be granted than the amount necessary to reach the lowest floor rate in Exhibit H of this subpart (available in any FmHA office). The change in a designation to (or from) a high cost area will not affect existing loans. The eligibility of an individual loan for high cost designation is determined at the time of issuance of the conditional commitment for loan guarantee.

(ii) The change in a designation to (or from) a high cost area will not affect existing loans. An individual's loan eligibility for high cost designation is determined at the time of issuance of the conditional commitment for loan guarantee.

(d) *Shared equity.* Prior to loan closing, the Lender will advise the applicant that interest assistance is subject to equity sharing.

(e) *Eligibility.* To be eligible for interest assistance, a borrower must personally occupy the dwelling, and must meet the following additional requirements:

(1) *Initial loans.* Interest assistance may be granted at the time the loan note guarantee is issued, or an assumption is processed in accordance with § 1980.366 of this subpart, when:

(i) The borrower's adjusted income at the time of loan guarantee approval did not exceed the applicable low-income limit, the loan guarantee was funded from interest assisted guaranteed loan funds, and a master interest assistance agreement was completed at closing if the borrower is ever to receive interest assistance.

(ii) The borrower's net family assets do not exceed the maximum allowable amount as per Exhibit H of this subpart (available in any FmHA office) unless an exception is authorized. The calculation of net family assets will exclude the value of the dwelling and a minimum adequate dwelling site, cash on hand which will be used to reduce the amount of the loan, and household goods and personal automobile(s) and the debts against them. The Lender may request an exception at the time the initial application is submitted to FmHA for a loan guarantee. For the purpose of determining whether an exception is justified, consideration will be given to the nature of the assets upon which a borrower is currently dependent for a livelihood or which could be used to reduce or eliminate the need for interest assistance.

(iii) The loan was approved as a subsidized guaranteed loan on or after April 17, 1991.

(iv) The amount of interest assistance will be $20 or more per month in accordance with the provisions of paragraph (c)(1) of this section. Interest assistance in amounts of less than $20 per month will not be granted.

(2) *Existing loans.* Interest assistance may be granted at any time after loan closing if:

(i) The requirements of paragraphs (e)(1)(i), (e)(1)(iii), and (e)(1)(iv) of this section are met.

(ii) The borrower's adjusted annual income does not exceed the low-income limit.

(iii) The borrower requests interest assistance through the Lender or the Lender determines that interest assistance is needed to enable the borrower to repay the loan.

(iv) The Lender processes the interest assistance agreement, and submits it to FmHA for approval.

(f) *Processing interest assistance.* The Lender will process interest assistance agreements in accordance with this section. The interest assistance agreement will be executed by the Lender and borrower and forwarded to FmHA for approval.

(1) *Amount of interest assistance.* The amount of interest assistance for which a borrower is eligible will be determined by use of the interest assistance agreement as outlined in paragraph (c) of this section.

(i) *Determination of income.* The Lender is responsible for determining the borrower's annual and adjusted annual income as outlined in §§ 1980.351 and 1980.352 of this subpart. Income of all persons occupying the dwelling will be verified in accordance with § 1980.351 of this subpart.

(ii) *Effective period.* Annual interest assistance agreements will be for a 12-month period.

(2) *Interest assistance agreements.* The master interest assistance agreement will be executed for each qualifying loan at loan closing provided funds are available for interest assistance at the time the guarantee is issued. This agreement establishes the conditions and maximum amounts of interest assistance for the life of the loan. Each year, an annual interest assistance agreement will be used to determine the amount of interest assistance for the coming 12 months.

(i) The Lender will determine the borrower's adjusted annual income, document the calculations, and complete the interest assistance agreement form.

(ii) The borrower will review the interest assistance agreement form and sign the form signifying that all information is correct as shown.

(iii) FmHA will review the interest assistance agreement to determine if the information contained on it appears correct. If so, FmHA will then approve the agreement and make monthly payments to the Lender on behalf of the borrower.

(iv) When the borrower's income is within the low-income limits but the provisions of paragraphs (e)(1)(ii) or (e)(1)(iv) of this section preclude granting interest assistance, the master interest assistance agreement must be executed if the borrower desires to be considered for interest assistance at a later date due to a change in circumstances.

(g) *Interest assistance modification.* A change in the borrower's circumstances after the effective date of the Annual Interest Assistance Agreement will be handled as follows:

(1) *FmHA required modifications before expiration.* The borrower is responsible for reporting any increases in income exceeding $100 per month to the Lender. The Lender is not responsible for monitoring the borrower's income. The Lender must process a revised interest assistance agreement when a reported increase in the borrower's income results in the need for less interest assistance in accordance with formula in this section.

(2) *Additional interest assistance before expiration.* The borrower may request and the Lender may process a modification of the interest assistance agreement and submit the modified agreement to FmHA when:

(i) The borrower's adjusted annual income decreases by more than $100 per month;

(ii) The interest assistance calculation formula indicates that the borrower is eligible for an additional $20 interest assistance per month; and

(iii) There are interest assistance funds available if the amount needed by the borrower exceeds the initial floor rate established at the time the loan was closed per paragraph (c) of this section.

(3) *Other changes in the borrower's circumstances.* When one co-borrower has left the dwelling, interest assistance based on the remaining co-borrower's income may be extended if:

(i) The remaining co-borrower is occupying the dwelling, owns a legal interest in the property, and is liable for the debt;

(ii) The remaining co-borrower certifies as to who lives in the house;

(iii) Separation is not due only to work assignment or military orders; and

(iv) The remaining co-borrower is informed and agrees that should the co-borrower begin to live in the dwelling, that co-borrower's income will then be counted toward annual income and interest assistance may be reduced or cancelled.

(4) *Effect of modification.* An interest assistance agreement modified as per paragraph (g) (1), (2), or (3) of this section is valid for the remainder of the agreement period.

(5) *Correction of interest assistance agreement.* When an error by FmHA or the Lender results in too little interest assistance being granted, a corrected agreement will be prepared effective the date of the error if the error results in granting $20 or more per month less interest assistance than the borrower was eligible to receive. The Lender must return any overpayment made by the borrower unless an agreement is reached to apply the funds to the loan as an extra payment.

(h) *Eligibility review.* Borrowers receiving interest assistance will be reviewed annually within 30 to 60 days prior to the anniversary date of the loan. All existing agreements must be reviewed and processed for the upcoming 12 months during the review period. Interest assistance will not be renewed if the amount that the borrower qualifies for is less than $20 per month.

(1) *Initiation of renewal action.* At least 15 but not more than 30 days prior to the beginning of the annual review period, FmHA will mail a list of borrowers whose interest assistance agreements are to be reviewed, to the Lender. The Lender will obtain written verification of the income of each borrower and all adult members of the borrower's household, and conduct the review.

(i) *Borrower responsibility.* The borrower will:

(A) Report the income of each adult member of the household to the Lender;

(B) Assure that each household member has provided sufficient information on that person's income for the Lender to conduct the review; and

(C) Cooperate in the Lender's efforts to verify income.

(ii) *FmHA actions.* FmHA will review and approve interest assistance agreements submitted by the Lender.

(2) *Processing interest assistance renewals not reviewed during the review period.* The Lender may process interest assistance renewals not completed during the review period as follows:

(i) The amount of interest assistance will be based on the borrower's current annual income.

(ii) The effective date will be:

(A) The expiration period of the previous interest assistance agreement if the FmHA approval official determines failure to renew was the fault of FmHA or the Lender.

(B) The next payment due date following approval in all other cases.

(3) *Interest assistance form.* Interest assistance payments will not be made after the expiration date unless FmHA receives a new interest assistance agreement form.

(i) *Cancellation of interest assistance.* (1) An existing interest assistance agreement will be cancelled under the following circumstances:

(i) When the borrower has never occupied the dwelling, the interest assistance will be cancelled as of the date of issuance of the guarantee. The Lender will refund all interest assistance payments to FmHA.

(ii) The cancellation will be effective on the date on which the earliest action occurs which causes the cancellation or the date the Lender became aware of the situation if the date cannot be determined when:

(A) The borrower ceases to occupy, sells, or conveys title to the dwelling.

(B) The borrower has received improper interest assistance and a corrected agreement will not be submitted.

(C) The borrower has had an increase in income and is no longer eligible for interest assistance.

(D) The security is acquired by the Lender.

(E) The Lender formally declares the loan to be in default and accelerates the loan.

(2) [Reserved]

(j) *Overpayment.* When the Lender becomes aware of circumstances that have resulted in an overpayment of interest assistance for any reason, except as provided in paragraph (k) of this section, the following actions will be taken:

(1) The Lender will immediately notify FmHA.

(2) The borrower will be notified and the interest assistance agreement will be corrected.

(3) A repayment agreement acceptable to FmHA will be reached.

(k) *Unauthorized use of loan funds.* When FmHA becomes aware that the Lender allowed loan funds to be used for unauthorized purposes, interest assistance paid on said amounts will be collected from the Lender. The Lender shall promptly repay such interest assistance. The Lender may work out a repayment agreement with the borrower but is expected to make every effort to minimize the adverse impact on the borrower's repayment ability.

(l) *Appeals.* All applicants/borrowers and Lenders will be notified of their appeal rights in accordance with § 1980.399 of this subpart when FmHA denies, reduces, cancels, or refuses to renew interest assistance.

(m) *Reinstatement of interest assistance.* The FmHA approval official may authorize reinstatement of the borrower's interest assistance if it was

cancelled because the loan was accelerated, and if the acceleration was withdrawn with FmHA approval.

§ 1980.391 Equity sharing.

The policy of FmHA is to collect all or a portion of interest assistance granted on a guaranteed RH loan when any equity exists in the security.

(a) *Determining the amount of shared equity.* The FmHA approval official will calculate shared equity when a borrower's account is settled by payment-in-full (including refinancing) of the outstanding indebtedness, the transfer of title, or when the borrower ceases to occupy the property. The calculation of shared equity when the account is in liquidation will be handled in accordance with § 1980.374(e) of this subpart.

(1) *How to calculate.* The amount of shared equity will be based on the amount of interest assistance granted on the loan, the appreciation in property value between the closing date of the loan and the date the account is satisfied or acquired by the Lender via liquidation action, the period of time the loan is outstanding, the amount of original equity the borrower has in the property, and the value of capital improvements to the property, as defined in this section. Shared equity will be the lesser of the interest assistance granted or the amount of value appreciation available for shared equity. Value appreciation available for shared equity means the market value of the property less all debts secured by prior liens, sales expenses, any original borrower equity, and value added by any capital improvements.

(i) *Market value.* Market value of the property as of the date the loan is to be paid in full and will be documented by one of the following:

(A) A sales contract which reasonably represents the fair market value based on the Lender's and FmHA approval official's knowledge of the property and the area.

(B) Lender's appraisal when the loan will be refinanced provided the appraisal reasonably represents the fair market value.

(C) If the items listed in either paragraph (a)(1)(i) (A) or (B) of this section are not available, another current appraisal when the appraiser meets the qualifications of § 1980.334 of this subpart.

(D) When the account is being paid off from insurance proceeds, the most recent appraisal available if the Lender or FmHA can document that it represents an accurate indication of the value at the time the dwelling was damaged or destroyed. If not, the best information available will be used to determine the market value. The FmHA approval official will interview the borrower to determine the extent of improvements, if any, and the general condition of the property at the time of loss. The amount of the insurance payment is generally a good indication of value; however, tax records or comparable sales will be considered.

(E) FmHA appraisal, with prior approval of the State Director.

(ii) *Prior liens.* Prior liens refers to the amount of liens that are prior to the Lender's liens and include, but may not be limited to, prior mortgages, and real estate taxes and assessments levied against the property.

(iii) *Sale/refinancing expenses.* Sale/refinancing expenses include expenses commonly associated with the sale or refinancing of real estate that are not reimbursed, such as sales commissions, advertising costs, recording fees, pro rata taxes, points based on the current interest rate, appraisal fees, transfer tax, deed preparation fee, loan origination fee, etc. In refinancing situations, only those expenses necessary to finance the amount of the current FmHA debt are allowed. Shared equity may be calculated using estimated expenses if actual expenses cannot be obtained and the FmHA approval official is satisfied with the estimated amount and the prorating of the expenses are accurate for this transaction.

(iv) *Original borrower equity.* Original equity consists of a contribution by the borrower that reduces the amount of the loan below the market value. The contribution may be in the form of cash and/or value of the lot if the home was constructed on the borrower's property.

(v) *Capital improvements.* Capital improvements will be considered to the extent that they do not exceed market value contribution as indicated by a sales comparison analysis. Generally, the value added by improvements will be the difference in market value at the time of sale and market value without capital improvements. Cost of the improvement will not be considered, only contribution to value. Maintenance cost and replacement of short-lived depreciable items are normal expenses associated with home ownership and are not considered capital improvements.

(2) *Other considerations.*

(i) *Overpayments of interest assistance.* When FmHA has overpaid interest assistance and the overpaid amounts remain uncollected at the time shared equity is calculated, the overpaid amount will be added to shared equity.

(ii) *Multiple loans.* When a borrower has more than one loan and elects to pay only some of the loans, shared equity will not be calculated unless the remaining loan(s) is not subject to shared equity. Shared equity will be calculated when the account is paid in full taking into consideration all of the interest assistance granted on the account.

(b) *Miscellaneous provisions.*

(1) *Changes in terms.* Shared equity will not be calculated when an account is reamortized.

(2) *Junior liens.* Junior liens are not considered in the shared equity calculation. In the event a junior lienholder forecloses, the FmHA approval official will calculate shared equity before providing the lienholder with a pay-off figure, which is in addition to any amounts still due the Lender on the loan in the same manner as paragraph (a) of this section.

(c) *Affordable housing proposals.* Shared equity under an affordable housing innovation (such as limited equity or a State or county sponsored shared equity) will be calculated in accordance with this subpart unless prior written approval is obtained from FmHA. Proposals that deviate from this subpart must be reviewed and approved in the National Office prior to issuance of the loan note guarantee.

§ 1980.392 Interest assistance from other sources.

The fact that a loan is covered by an interest assistance payment will not result in an increased promissory note rate above the rate authorized in § 1980.320 of this subpart.

(a) *Mortgage Credit Certificates (MCCs).* MCCs are authorized under the Tax Reform Act of 1986 and allow the borrower to receive as Federal tax credit for a percentage of their mortgage interest payment. They may be used by FmHA guaranteed RH borrowers to improve their repayment ability for the loan. MCCs impact on the borrower's tax liability. MCCs may be used with interest assisted loans when the amount of the tax credit is based on the amount of interest actually paid by the borrower. MCCs are subject to shared equity of a portion of any "gain" realized on the property when sold within 10 years after purchase. If the loan is also an FmHA interest assisted loan, FmHA shall receive priority for shared equity repayment. Income taxes are complex issues; FmHA employees and Lenders are not expected to be able to identify all issues impacting the borrower's taxes. Lenders should encourage borrowers to consult with a tax advisor.

(1) When the Lender is participating in a MCC program the amount of the tax

credit is considered as an additional resource available for repayment of the loan when the credit is taken on a monthly basis from withholding.

(2) The Lender will submit a copy of the MCC and a copy of the applicant's Form IRS W–4, "Withholding Allowance Certificate," along with the other materials for the loan guarantee request. The amount of tax credit is limited to the applicant's maximum tax liability.

(i) The MCC must show the rate of credit allowed.

(ii) The Form IRS W–4 must reflect that the borrower is taking the tax credit on a monthly basis.

(iii) The Lender will certify that the borrower has completed and processed all of the necessary documents to obtain the tax credit in accordance with this section.

(b) *Funded buydown accounts.* A funded buydown account typically consists of a prepaid arrangement between a builder or a seller and a Lender that is designed to improve applicant's repayment ability. Funded buydown accounts are permitted in accordance with this paragraph when an agreement is executed in which the seller, Lender or other third party places funds in an escrow account with monthly releases scheduled to be made to the Lender which serve to reduce the borrower's monthly payment during the early years of the loan. The maximum reduction which may be considered is 2 percent below the note rate, even though the actual buydown may be for more. Reductions in buydown assistance may not result in an increase in the interest rate paid by the borrower of more than 1 percent per year. The borrower shall not be required to repay escrowed buydown funds. Funds must be escrowed with a State or Federally supervised Lender. Funded buydown accounts must be fully funded for the buydown period. Buydown periods must be at least 24 months.

§§ 1980.393—1980.396 [Reserved]

§ 1980.397 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement, or provision, or failure to take action in the case of an omission would adversely affect the Government's interest. The Administrator will exercise this authority upon request of the State Director with the recommendation of the Assistant Administrator for Housing. Request for exception must be made in writing accompanied by the borrower's case file in cases involving specific borrowers and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1980.398 Unauthorized assistance and other deficiencies.

This section prescribes the policies and procedures for servicing loan guarantees issued under this subpart when the borrower was not eligible for all or part of the financial assistance received in the form of a loan guarantee or other improper processing or servicing actions taken by the Lender. Unauthorized assistance in the form of interest assistance is discussed in § 1980.390 of this subpart.

(a) *Categories of unauthorized assistance.* Unauthorized assistance includes, but is not limited to, issuance of a Loan Note guarantee when the borrower was not eligible for the loan or the borrower was eligible but the loan was not made for authorized purposes.

(b) *Initial determination of unauthorized assistance.* Unauthorized assistance may be identified through audits conducted by the Office of the Inspector General (OIG), USDA, through reviews conducted by FmHA or its agents, or through other means. The reason(s) for the unauthorized assistance being received by the lender must be well documented in the FmHA case file and will identify whether it was due to:

(1) Submission of inaccurate information by the Lender;

(2) Submission of inaccurate information by the borrower;

(3) Submission of false information by the Lender;

(4) Submission of false information by the borrower;

(5) Error by FmHA personnel; or

(6) Error by the Lender.

(c) *Notification to Lender.* FmHA will notify the Lender of unauthorized assistance by "Certified Mail, Return Receipt Requested." The letter will specify in detail the reason(s) the assistance is determined to be unauthorized.

(d) *Lender noncompliance.* The FmHA approval official will consider the seriousness of the deficiency.

(1) *Minor deficiency.* A minor deficiency is one that does not change the eligibility of the borrower, the eligibility of the property, or amount of the loan. Such incidents should be brought to the Lender's attention in writing. Examples of minor deficiencies include improperly completed builder certifications, use of an outdated credit report, or use of an outdated income verification. Minor deficiencies also include those more serious deficiencies when the Lender is willing and able to correct the problem such as obtaining flood insurance for a dwelling located in a flood hazard area and assuring the escrow amount is sufficient.

(2) *Significant deficiency.* A significant deficiency is one that creates a significant risk of loss to the Government, or involves acceptance of a borrower or property not permitted by FmHA regulations. Such cases should result in probation or withdrawal of the Lender's approval for program participation. Examples of significant deficiencies include gross miscalculation of income, acceptance of property that is severely deficient of the required standards, missing builder certifications, and construction changes that materially affect value without proper change orders.

(3) *Fraud or misrepresentation.* A deficiency that involves an action by the Lender to misrepresent either the financial capacity of the borrower or the condition of the property being financed could result in referral to the Regional Office of the Inspector General (OIG), a withdrawal of FmHA approval, or debarment proceedings. Examples of this type of deficiency include falsified Verifications of Employment, false certifications, reporting a delinquent loan as being current, omitting conditions relating to the health and safety of a property.

(e) Borrower noncompliance—(1) *Error or oversight.* When the borrower receives unauthorized assistance due to an error or oversight, the Lender may continue with the guaranteed loan.

(2) *Fraud or misrepresentation.* In all cases where the borrower noncompliance was based on fraud or misrepresentation, the case will be referred to the OIG and the National Office with a recommendation on disposition of the case.

(f) *FmHA error oversight.* When the borrower receives unauthorized assistance due to an error or oversight by FmHA, the Lender may continue with the guaranteed loan.

§ 1980.399 Appeals.

The borrower and the Lender can appeal an FmHA administrative decision that directly and adversely impacts them. Decisions made by the Lender are not covered by this paragraph even if FmHA concurrence is required before the Lender can proceed. Appeals will be conducted in

accordance with subpart B of part 1900 of this chapter.

(a) *Appealable decisions.*

(1) The borrower and the Lender must jointly execute the written request for an alleged adverse decision made by FmHA. The Lender need not be an active participant in the appeal process.

(2) The Lender only may appeal cases where FmHA has denied or reduced the amount of a loss payment to the Lender.

(b) *Nonappealable decisions.*

(1) The Lender's decision as to whether to make a loan is not subject to FmHA appeal procedures.

(2) The Lender's decision to deny servicing relief is not subject to FmHA appeal procedures.

(3) The Lender's decision to accelerate the account is not subject to FmHA appeal procedures.

§ 1980.400 [Reserved]

Exhibit A—List of Forms Used in the FmHA RH Guaranteed Loan Instruction 1980–D

(Note: This Exhibit is not published in the Code of Federal Regulations. It is available in any FmHA Office).

Exhibit B—[Reserved]

Exhibit C—Income Limits

(Note: This Exhibit is not published in the Code of Federal Regulations. It is available in any FmHA Office).

Exhibits D through G—[Reserved]

Exhibit H—Fee Schedules for Guaranteed Housing Loan Processing and Servicing Activities

(Note: This Exhibit is not published in the Code of Federal Regulations. It is available in any FmHA Office).

Exhibits I through K—[Reserved]

Exhibit L—Lenders Guaranteed Rural Housing List of FmHA Instructions and Exhibits

(Note: This Exhibit is not published in the Code of Federal Regulations. It is available in any FmHA Office).

Exhibit M—List of Funds Excluded by Federal Statute for Use in Denying or Reducing Federal Benefits

(Note: This Exhibit is not published in the Code of Federal Regulations. It is available in any FmHA Office).

Dated: August 9, 1993.

Bob Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93–21275 Filed 9–2–93; 8:45 am]

BILLING CODE 3410–07–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–55–AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, that currently requires repetitive inspections of the aft bulkhead to detect cracks, and repair, if necessary. This action would expand the inspection area and would require a terminating modification (of the aft pressure bulkhead). This proposal is prompted by a tear down inspection conducted by the manufacturer, which revealed fatigue cracking in additional areas of the aft pressure bulkhead. The actions specified by the proposed AD are intended to prevent potential loss of cabin pressurization.

DATES: Comments must be received by November 1, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–55–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–55–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–55–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 10, 1984, the FAA issued AD 84–08–03, Amendment 39–4848 (49 FR 16762, April 20, 1984), to require repetitive inspections of areas 1 and 2 of the aft bulkhead to detect cracks, and repair, if necessary. That action also requires a modification of the aft pressure bulkhead; this modification entails reinforcing the bulkhead by attaching six doublers. That action also provides for an optional terminating modification, which entails increasing the strength of the aft pressure bulkhead by attaching additional stiffeners. That action was prompted by fatigue testing, which revealed that cracks developed in the aft bulkhead after the equivalent of 50,000 total landings. The requirements of that AD are intended to ensure the integrity of the bulkhead and prevent potential loss of cabin pressurization.

Since the issuance of that AD, the manufacturer has conducted a tear down inspection of the aft pressure bulkhead installed on a Model A300 series airplane. This inspection revealed fatigue cracking in areas 3 and 4 of the aft pressure bulkhead. (Areas 3 and 4

are the radial stiffener attachment fittings 1, 5 LH, 5 RH, 9 LH, 9 RH, and 13.) Fatigue cracking, if not corrected, could result in loss of cabin pressurization.

Airbus Industrie has issued Service Bulletin A300–53–152, Revision 4, dated March 13, 1992, that describes procedures for inspecting the aft pressure bulkhead in areas 1, 2, 3, and 4, to detect fatigue cracking, and repair of cracks, if necessary. The Direction Générale de l'Aviation Civile (DGAC) classified this service bulletin as mandatory and issued French Airworthiness Directive 80–218–028(B)R2, dated May 27, 1992, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 84–08–03 to expand the inspection area to include areas 3 and 4 of the aft pressure bulkhead, and repair, if necessary. The inspections and repair would be required to be accomplished in accordance with the service bulletin described previously.

This action would also require modification of the aft pressure bulkhead, which would terminate the inspection requirements of this AD. This modification entails increasing the strength of the aft pressure bulkhead by attaching additional stiffeners. (This modification was optional in AD 84–08–03, Amendment 39–4848.) The modification would be required to be accomplished in accordance with Airbus Industrie Service Bulletin A300–53–121, Revision 3, dated January 30, 1981. (This service bulletin was referenced in AD 84–08–03, Amendment 39–4848.)

The FAA estimates that 6 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 738 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $4,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $267,540, or $44,590 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–4848 (49 FR 16762, April 20, 1984), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 93–NM–55–AD. Supersedes AD 84–08–03, Amendment 39–4848.

Applicability: Model A300 B2–1A, B2–1C, B2–203, B2K–3C, B4–2C, B4–103, and B4–203 series airplanes, on which Airbus Modification 2476/D1842 and Airbus Modification 2476/D1869 have not been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of cabin pressurization, accomplish the following:

Note 1: Paragraph (a) of this AD restates the requirement for initial and repetitive inspections contained in paragraph A. of AD 84–08–03. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 84–08–03, paragraph (a) of this AD requires that the next scheduled inspection be performed within the 6,000 flight cycles after the last inspection performed in accordance with paragraph A. of AD 84–08–03.

(a) Prior to the accumulation of 12,000 total flight cycles, or within 180 days after June 11, 1984 (the effective date of AD 84–08–03, Amendment 39–4848), whichever occurs later, inspect the aft bulkhead in areas 1 and 2 to detect fatigue cracking, in accordance with Airbus Industrie Service Bulletin A300–53–152, Revision 1, dated January 30, 1981; or Revision 4, dated March 13, 1992.

(1) If no crack is detected, repeat the inspection thereafter at intervals not to exceed 6,000 flight cycles.

(2) If any crack is detected as a result of any inspection required by paragraph (a) of this AD, prior to further flight, repair the crack, in accordance with Airbus Industrie Service Bulletin A300–53–152, Revision 1, dated January 30, 1981; or Revision 4, dated March 13, 1992. Subsequent to repair, repeat the inspection thereafter at intervals not to exceed 6,000 flight cycles.

(b) Prior to the accumulation of 17,000 total flight cycles, or within 1 year after June 11, 1984 (the effective date of AD 84–08–03, Amendment 39–4848), whichever occurs later, accomplish Airbus Industrie Modification 2476/D1869, in accordance with Airbus Industrie Service Bulletin A300–53–122, Revision 2, dated January 30, 1981.

(c) Prior to the accumulation of 32,000 total flight cycles, or within 1 year after the effective date of this AD, whichever occurs later, inspect the aft pressure bulkhead in areas 3 and 4 to detect fatigue cracking, in accordance with Airbus Industrie Service Bulletin A300–53–152, Revision 4, dated March 13, 1992.

(1) If no crack is detected, repeat the inspection at intervals not to exceed 9,000 flight cycles.

(2) If any crack is detected as a result of any inspection required by paragraph (b) of this AD, prior to further flight, repair the crack in accordance with Airbus Industrie Structural Repair Manual 51–41–30. Subsequent to repair, repeat the inspection thereafter at intervals not to exceed 9,000 flight cycles.

(d) Within 6 years after the effective date of this AD, accomplish Airbus Industrie Modification 2476/D1842, in accordance with Airbus Industrie Service Bulletin A300–53–121, Revision 3, dated January 30, 1981. Accomplishment of this modification constitutes terminating action for the inspections required by this AD.

(e) Accomplishment of Airbus Industrie Modification 2476/D1842, in accordance with Airbus Industrie Service Bulletin A300–53–121, Revision 3, dated January 30, 1981, constitutes terminating action for the inspection requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 30, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21533 Filed 9–2–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–98–AD]

Airworthiness Directives; British Aerospace (Commercial Aircraft) Limited Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model ATP airplanes. This proposal would require revising the Airplane Flight Manual (AFM) to prohibit the flight in certain freezing precipitation conditions. This proposal is prompted by reports of engine power rollback (loss of engine power) that occurred in environmental conditions involving freezing precipitation. The actions specified by the proposed AD are intended to prevent loss of multiple engine power during flight in freezing precipitation.

DATES: Comments must be received by November 1, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–98–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–98–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–98–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that it has received reports of engine power rollback (loss of engine power) occurring in environmental conditions involving freezing precipitation on in-service British Aerospace (Commercial Aircraft) Limited Model ATP airplanes. Three of the five reports involve power rollbacks on both engines at or near the same time. Two of the reports involve power rollback on one engine. Preliminary indications reveal that a possible link exists between ingestion of ice or slush into the engine and the cause of this type of engine power rollback. Engine power rollbacks can cause unplanned landings. This condition, if not corrected, could result in loss of multiple engine power during flight in freezing precipitation.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary.

Since an unsafe condition has been identified that may exist or develop on other airplanes of this same type design, the proposed AD would require revising the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to prohibit flight in certain freezing precipitation conditions.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

The FAA estimates that 9 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost of required parts is expected to be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $495, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this

proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace (Commercial Aircraft) Limited: Docket 93–NM–98–AD.

Applicability: All Model ATP airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of multiple engine power during flight in freezing precipitation, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Flight is prohibited into forecast or reported freezing precipitation conditions where the outside air temperature is between +5° C and −5° C."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 30, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21534 Filed 9–2–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–110–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 series airplanes and Model MD–88 airplanes, that currently requires an inspection to detect damage of the auxiliary power unit (APU) power feeder cable installation, repair of damaged cables, and modification of the cable installation. That AD was prompted by reports of generator power feeder cables electrically shorting to the airplane structure. This action would require an inspection of previously modified airplanes to determine whether a spacer or "stand off" has been installed, and installation of a spacer or "stand off," if necessary. The actions specified by the proposed AD are intended to prevent the APU power feeder cable from chafing against adjacent structures, which could result in electrical shorting and arcing, and a fire below the cabin floor.

DATES: Comments must be received by November 1, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–110–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–132L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5344; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–110–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate,

ANM–103, Attention: Rules Docket No. 93–NM–110–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 12, 1988, the FAA issued AD 88–20–05, Amendment 39–6022 (53 FR 36436, September 20, 1988), applicable to McDonnell Douglas Model DC–9 series airplanes, to require a one-time visual inspection to detect damage of the auxiliary power unit (APU) power feeder cable support clamp installation, repair of damaged cables, and modification of the APU power feeder cable installation. That action was prompted by reports of generator power feeder cables electrically shorting to the airplane structure. The requirements of that AD are intended to prevent a fire below the cabin floor.

Recently, during a routine maintenance check on a Model DC–9–81 series airplane, an operator reported that the APU power feeder cable at station 229 had chafed through an attachment screw on a support clamp. This clamp secures the potable water for the forward lavatory. The operator had accomplished the modification requirements of AD 88–20–05, which referenced McDonnell Douglas MD–80 Service Bulletin 24–94, Revision 1, dated May 28, 1987, as the appropriate source of service information. That revision of the service bulletin describes procedures for discarding old attachment parts when installing new support clamps during modification of the APU power feeder cable. Revision 1 inadvertently omitted instructions for reinstallation of a spacer or "stand off" between the clamp and the bracket. Consequently, the APU power feeder cable chafed against the forward lavatory potable water line attachments. This condition, if not corrected, could result in the APU power feeder cable chafing against adjacent structures, which potentially could result in electrical shorting and arcing, and a fire below the cabin floor.

Since the issuance of that AD, the FAA has reviewed and approved McDonnell Douglas MD–80 Service Bulletin 24–94, Revision 4, dated June 7, 1993, that describes procedures for performing a visual inspection to detect damage of the APU power feeder cable support clamp installation, repairing damaged cables, and modifying the APU power feeder cable installation. This revision of the service bulletin is essentially identical to Revision 1, but includes instructions for reinstallation of the spacer or "stand off" between the clamp and the bracket.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 88–20–05 to continue to require a one-time visual inspection to detect damage of the APU power feeder cable support clamp installation, repair of damaged cables, and modification of the APU power feeder cable installation. The proposed AD would revise the existing requirements by requiring a general visual inspection of previously modified airplanes to determine whether a spacer or "stand off" has been installed between the clamp and the bracket, and installation of a spacer or "stand off," if necessary. The installation would be required to be accomplished in accordance with the revised service bulletin described previously.

There are approximately 390 Model DC–9 series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 241 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 34 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $450,670, or $1,870 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6022 (53 FR 36436, September 20, 1988), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 93–NM–110–AD. Supersedes AD 88–20–05, Amendment 39–6022.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes, and Model MD–88 airplanes; as listed in McDonnell Douglas MD–80 Service Bulletin 24–94, Revision 1, dated May 28, 1987, and McDonnell Douglas Model MD–80 Service Bulletin 24–100, dated March 30, 1988; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the APU power feeder cable from chafing against adjacent structures, which could result in electrical shorting and arcing, and a fire below the cabin floor, accomplish the following:

(a) For airplanes listed in McDonnell Douglas MD–80 Service Bulletin 24–94, Revision 1, dated May 28, 1987: Within 12 months after October 31, 1988 (the effective date of AD 88–20–05, Amendment 39–6022), perform a visual inspection to detect damage of the auxiliary power unit (APU) power feeder cable support clamp installation; and prior to further flight, repair the damaged cable, and modify the APU power feeder cable installation; in accordance with McDonnell Douglas MD–80 Service Bulletin 24–94, Revision 1, dated May 28, 1987.

(b) For airplanes listed in McDonnell Douglas MD–80 Service Bulletin 24–100, dated March 30, 1988: Within 12 months after October 31, 1988 (the effective date of AD 88–20–05, Amendment 93–6022), modify the APU power feeder cable support clamp installation in accordance with McDonnell Douglas MD–80 Service Bulletin 24–100, dated March 30, 1988.

(c) For airplanes on which the inspection and modification requirements of paragraphs (a) and (b) of this AD have been accomplished prior to the effective date of this AD, and which have not been inspected

in accordance with McDonnell Douglas MD–80 Service Bulletin 24–94, Revision 4, dated June 7, 1993: Within 12 months after the effective date of this AD, perform a general visual inspection of the APU power feeder cable support clamp installation to determine whether a spacer or "stand off" has been installed between the clamp and the bracket.

(1) If a spacer or "stand off" has been installed, no further action is required by this AD.

(2) If a spacer or "stand off" has not been installed, prior to further flight, install a new or serviceable spacer or "stand off," part number (P/N) NAS43DD3–32, in accordance with McDonnell Douglas MD–80 Service Bulletin 24–94, Revision 4, dated June 7, 1993.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 30, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21535 Filed 9–2–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 295

[Docket No. 930242–3042]

RIN 0693–AA83

Advanced Technology Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the comments period for the request for comments on the proposed revisions to the regulations which implement the Advanced Technology Program (ATP) which was announced in the **Federal Register** on August 2, 1993 (58 FR 41069). The comment period is extended at the request of commenters needing more time to prepare comments.

DATES: Comments on this proposed revisions to the regulations which implement the ATP must be received on or before September 16, 1993.

ADDRESSES: Written comments concerning the proposed revision to the regulations should be sent to: Advanced Technology Program Rule Comments, National Institute of Standards and Technology, U.S. Department of Commerce, A402 Administration Building, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: To receive additional program information, contact George A. Uriano at (301) 975–5187. For additional information on revisions to the intellectual property provisions of the regulations, contact Michael R. Rubin at (301) 975–2803.

Dated: August 30, 1993.

Arati Prabhakar,

Director.

[FR Doc. 93–21550 Filed 9–2–93; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. 93M–0150]

Cardiovascular Devices; Effective Date of Requirement for Premarket Approval of Nonroller-Type Cardiopulmonary Bypass Blood Pump; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; opportunity to request a change in classification; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 7, 1993, the comment period on the proposed rule to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the nonroller-type cardiopulmonary bypass (CPB) blood pump, a medical device. FDA is taking this action in response to a request for an extension of the comment period.

DATES: Written comments must be submitted by October 7, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Bette L. Lemperle, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2205.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 6, 1993 (58 FR 36290), FDA issued a proposed rule to require the filing of a PMA or a notice of completion of a PDP for the nonroller-type CPB blood pump. Interested persons were given until September 7, 1993, to submit written comments on the proposed rule. FDA received a request for an extension of the comment period for 60 days. The request stated that additional time was needed to enable industry, consumer groups, physicians, patient groups, and professional associations to respond with meaningful comments in light of the complexity of the issues involved.

FDA agrees in part with the request for an extension and is granting an additional 30 days for the preparation of comments. Considering the public health significance of the regulation, FDA believes that an extension of 60 days would not be justified.

Interested persons may, on or before October 7, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 30, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–21547 Filed 9–2–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG51

Returned and Canceled Checks

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulations concerning returned and canceled checks. The amendment will assure that the regulations clearly reflect the requirements of the governing statutes as interpreted in a precedent

opinion of VA's General Counsel. The intended effect of the amendment is to ensure that the amount represented by a benefit check received but unnegotiated prior to a beneficiary's death is properly distributed.

DATES: Comments must be received on or before October 4, 1993. Comments will be available for public inspection until October 13, 1993. This amendment is proposed to be effective 30 days after date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this amendment to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 170, at the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until October 13, 1993.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 233–3005.

SUPPLEMENTARY INFORMATION: Section 5121(a) of title 38, United States Code, authorizes VA to pay an accrued amount of certain periodic monetary benefits which are due and unpaid at the time of a beneficiary's or claimant's death. The law requires that payment be made to the living persons designated in a specific order of precedence, namely, the surviving spouse, surviving child(ren), dependent parent(s), or the person who bore the expenses of the beneficiary's last illness and burial. The amount of accrued benefits payable under this section is limited to a period not exceeding one year prior to the date of last entitlement, and a claim for accrued benefits must be filed within one year after the date of death.

Section 5122 of title 38, United States Code, provides that the amount represented by a benefit check received but unnegotiated prior to a beneficiary's death shall be payable in the same order of precedence provided as in section 5121(a), but that there is no time limit for filing a claim for the proceeds of an unnegotiated check. Any amount not paid in the manner provided in section 5121 will be paid following settlement by the General Accounting Office to the estate of the deceased payee unless the estate will escheat.

In a precedent opinion (O.G.C. Prec. 22–92), VA's General Counsel (GC) held that the development of the relevant statutes reflects a distinction between payment of an unnegotiated benefit check (38 U.S.C. 5122) from payment of accrued benefits (section 5121). Section 5122 addresses cancellation of and payment upon a negotiable instrument (a returned check), whereas section 5121 governs benefits to which a deceased person has been determined to be entitled, but which VA had not awarded prior to the person's death. The GC affirmed that although payment of the amount represented by an unnegotiated check is to be made according to the order of precedence specified in section 5121(a), it is not limited to the one-year retroactive period. The amount payable is, however, subject to the provisions of 38 U.S.C. 5112(b)(1), which precludes payment of benefits for any part of the month in which a beneficiary dies.

After reviewing the General Counsel's opinion, we propose to revise 38 CFR 3.1003 to ensure that the regulation clearly and correctly expresses the requirements of 38 U.S.C. 5122. We are proposing to:

(1) Restate for clarity much of the current material in 38 CFR 3.1003;

(2) Add introductory text concerning the return and cancellation of unnegotiated checks;

(3) Add a paragraph concerning settlement by GAO and payment to the deceased beneficiary's estate; and

(4) Remove unnecessary references to 38 CFR 3.1000 and 3.1008.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more;

(2) They will not cause a major increase in costs or prices;

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There is no affected Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: July 29, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is proposed to be amended to read as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.1003 is revised to read as follows:

§ 3.1003 Returned and canceled checks.

Where the payee of a check for benefits has died prior to negotiating the check, the check shall be returned to the issuing office and canceled.

(a) The amount represented by the returned check, or any amount recovered following improper negotiation of the check, shall be payable to the living person or persons in the order of precedence listed in § 3.1000(a)(1)–(4), except that the total amount payable shall not include any payment for the month in which the payee died (see § 3.500(g)).

(1) There is no limit on the retroactive period for which payment of the amount represented by the check may be made, and no time limit for filing a claim to obtain the proceeds of the check or for furnishing evidence to perfect a claim.

(2) Nothing in this section will preclude payment to an otherwise entitled claimant having a lower order of precedence under § 3.1000(a)(1)–(4), if it is shown that the person or persons having a higher order of precedence are deceased at the time the claim is adjudicated.

(b) Subject to the limitations in § 3.500(g) of this part, any amount not paid in the manner provided in paragraph (a) of this section shall be paid upon settlement by the General Accounting Office to the estate of the deceased payee, provided that the estate, including the amount paid under this paragraph, will not escheat.

(c) The provisions of this section do not apply to checks for lump sums

representing amounts withheld under § 3.551(b) or § 3.557. These amounts are subject to the provisions of § 3.1001 and § 3.1007, as applicable.

(Authority: 38 U.S.C. 501(a), 5122)

[FR Doc. 93–21484 Filed 9–2–93; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50607A; FRL–4641–7]

Aluminum Cross-Linked Sodium Carboxymethylcellulose; Extension of Comment Period for a Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: EPA is extending the comment period for a proposed significant new use rule (SNUR) for aluminum cross-linked sodium carboxymethylcellulose. As initially published in the **Federal Register** of June 11, 1993 (58 FR 32628), the comments were to be received on or before July 12, 1993. The Chemical Manufacturers Association (CMA) has requested additional time to prepare its response. EPA is therefore extending the comment period in order to give all interested persons the opportunity to comment fully.

DATES: Written comments must be submitted to EPA by October 4, 1993.

ADDRESSES: All comments should be sent in triplicate to: U.S. Environmental Protection Agency, ATTN: OPPT Document Receipt Officer (TS–790), 401 M St. SW., Rm. E–G99, Washington, DC 20460. All comments which are claimed confidential must be clearly marked as such. Three additional sanitized copies of any comments containing confidential business information (CBI) must also be submitted. Nonconfidential versions of comments on the rule will be placed in the rulemaking record and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–3949, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This extension of the comment will allow interested parties who may comment on the proposed rule additional time to prepare their response.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: August 26, 1993

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93–21407 Filed 9–2–93; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 745

[OPPTS–211033; FRL–4637–3]

Batteries; Response to Citizens' Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition.

SUMMARY: EPA received a petition under section 21 of the Toxic Substances Control Act (TSCA) on May 27, 1993, from a citizen requesting the Agency to promulgate a regulation under TSCA that would require a deposit on the purchase of household and commercial batteries containing lead, cadmium, or mercury. The petition claims that a deposit would aid in the recycling of these batteries, and is necessary because the disposal of lead-, cadmium-, or mercury-containing batteries poses a risk to human health. EPA has evaluated the petition, and upon further investigation, has decided to deny it. However, EPA requests comments regarding the desirability and feasibility of labeling lead-, cadmium-, and mercury-containing batteries to facilitate the collection and sorting of these batteries. Based on the comments received by the Agency, EPA may decide to hold a public meeting to further discuss battery labeling. If EPA decides to hold a public meeting, a notice will be placed in the **Federal Register** to announce the time and place.

DATES: Written comments on the desirability and feasibility of labeling must be received on or before November 2, 1993.

ADDRESSES: Comments should be submitted in triplicate to: TSCA Docket Receipt (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460, Attention: Docket No. 211033. For further information regarding the submission of comments containing confidential business information, see Unit IV. of this document.

FOR FURTHER INFORMATION CONTACT: For general comments: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Rm. E–545, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: 202–554–0551. For technical comments: Nancy Laurson, Office of Pollution Prevention and Toxics, Chemical Management Division (TS–798), Rm. E–511, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–1866.

SUPPLEMENTARY INFORMATION:

I. Background

A. TSCA Section 21

Any person may petition EPA under section 21(a) of TSCA to initiate proceedings for the issuance, amendment, or repeal of a rule or order under section 4, 5, 6, or 8 of TSCA. As required by section 21(b), the petition must set forth the facts that the petitioner claims establish the need for the Agency to issue, amend, or repeal a rule or order under those sections of TSCA. Section 21(b) also directs EPA to decide either to grant or deny the petition within 90 days after a petition is filed. If EPA denies a petition, the Agency must publish the reason(s) for the denial in the **Federal Register**. If the Agency grants the petition, EPA must promptly commence an appropriate proceeding in accordance with section 4, 5, 6, or 8 of TSCA.

B. Petition Claims and Request

The petition states that a deposit on all batteries containing lead, cadmium, and mercury is necessary because lead, cadmium, and mercury are toxic, and pose a risk to humans (Ref. 6). EPA could impose a regulation to require a deposit on the purchase of these batteries under TSCA section 6. Literature is cited which briefly discusses the health effects of lead, cadmium, and mercury. This information points out that lead and mercury are neurotoxins which adversely affect the brain, and that cadmium has been associated with birth defects, cancer, liver and kidney damage, and emphysema.

The petition also states that the number of batteries used in the United States will increase over time, and most of those batteries will be placed in municipal solid waste. The petition maintains that disposal methods such as placing batteries in municipal landfills and incinerators, are inadequate to protect human health. The petitioner is concerned that heavy metals such as lead, cadmium, and mercury may: (1) Reach groundwater supplies or enter the

food chain if municipal solid waste landfill liners are compromised, (2) be emitted into the atmosphere from municipal waste incinerators, or (3) become trapped and concentrated in fly ash after incineration and then disposed of in municipal solid waste landfills.

The petitioner claims that there is a need to recycle the lead, cadmium, and mercury contained in the batteries, and that an economic incentive such as a deposit would aid in that effort.

The petitioner also mentions that, although there are recycling programs for household batteries, such programs are not available to the majority of battery consumers in the United States. In addition, the petitioner states that many consumers do not consider batteries to be a hazard due to their small size, and therefore do not recycle them.

C. Types of Batteries

The types of batteries containing lead, mercury, and cadmium include those that are primary or nonrechargeable and those that are secondary or rechargeable. Nonrechargeable batteries primarily contain mercury and include: (1) Mercuric-oxide batteries (used in items such as hearing aids, heart monitors, cameras, communication devices, watches, calculators, radios and strobe lights, and for military uses), which contain approximately 35 to 50 percent mercury by weight, (2) zinc-air batteries (used in hearing aids, watches, cameras, paging devices, and calculators), which contain approximately 2 percent mercury by weight, (3) silver-oxide batteries (used in hearing aids, watches, cameras, paging devices, and calculators), which contain approximately 1 percent mercury by weight, and (4) alkaline and carbon-zinc batteries (used in cassette recorders, radios, flashlights, toys, and cordless appliances), which contain approximately 0.025 percent mercury by weight.

Rechargeable batteries primarily contain cadmium or lead. Nickel-cadmium batteries are used in small appliances, power tools, emergency lighting, portable communication devices, and medical equipment, and contain approximately 17 percent cadmium by weight. Lead-acid batteries (approximately 65 percent lead by weight) are used in camcorders, computers, portable radios, cellular phones, emergency lighting, portable communication devices, medical equipment, automobiles, and for military uses.

II. EPA's Response

A. Summary of Response

EPA believes that battery recycling has merit, and the Agency is concerned about any potential adverse human health or environmental effects resulting from improper battery disposal. However, the Agency does not believe that the imposition of a Federally-mandated deposit is necessary at this time. EPA based its decision on the following factors: (1) The Agency did not find an unreasonable risk under section 6 of TSCA, especially considering the effects of other EPA regulations, (2) the lack of an adequate recycling system infrastructure, (3) the promulgation of State laws furthering recycling, and (4) current and anticipated reductions in heavy metal content of batteries entering the municipal waste stream. EPA is therefore denying the petition.

1. *Unreasonable risk.* If EPA determines that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance, or that any combination of such activities, presents or will present an unreasonable risk of injury to human health or the environment, section 6(a) of TSCA, 15 U.S.C. 2605(a), authorizes EPA to apply one or more of the following requirements to such substance, to the extent necessary to protect against the risk: (1) Prohibit or limit the amount of a chemical substance or mixture manufactured, processed, or distributed in commerce; (2) prohibit or limit the amount of chemical substance or mixture manufactured, processed, or distributed in commerce for particular uses or at particular concentration levels; (3) require labeling or warning rules; (4) require manufacturers and processors to make and retain records of the process used to manufacture or process a chemical substance or mixture, and to conduct tests to monitor compliance with regulatory requirements; (5) prohibit or otherwise regulate any manner or method of commercial use; (6) prohibit or otherwise regulate any manner or method of disposal of such substance or mixture or articles containing such substance or mixture; and (7) require that manufacturers notify the public of unreasonable risk associated with a chemical substance, and to replace or repurchase the product. TSCA section 6 requires EPA to apply the least burdensome requirements to protect adequately against the risk. The finding of unreasonable risk under this section is a judgement by EPA that the risk of health or environmental injury from a chemical substance or mixture outweighs the burden to society of potential regulation. The probability of harm is considered against the impacts of regulation.

While EPA recognizes that there may be risks associated with exposure to lead, cadmium, or mercury from battery disposal in municipal incinerators or landfills, EPA did not find that these risks are unreasonable under TSCA section 6, and therefore would not support a TSCA section 6 rulemaking. EPA bases this conclusion in part on a previous investigation involving lead-acid batteries where the Agency tried to develop a regulation (through the negotiated rulemaking process) under TSCA section 6 with the goal of increasing the lead-acid battery recycling rate in order to reduce the amount of lead entering the environment (Ref. 13). A number of options were considered including a mandatory take-back requirement with and without a deposit, and economic incentives, including placing a fee on lead used for battery manufacture.

The Agency examined the risk posed by disposal and recycling of used lead-acid batteries, and determined that while there are benefits to recycling lead-acid batteries, little additional risk reduction would be achieved (after taking existing State battery programs into account) if the Agency promulgated a rule to encourage lead-acid battery recycling, largely due to high levels of recycling. Although the risk assessment did find benefits in mandatory recycling of lead-acid batteries (e.g. reducing emissions into the environment, decrease in blood lead levels in workers handling municipal waste combustor ash), the assessment also found that mandatory recycling may serve to increase exposure and risk to children living near secondary lead smelters (Ref. 14). EPA did not find that the benefits of a TSCA section 6 regulation to recycle lead-acid batteries outweighed the cost of regulation, and concluded the regulatory negotiation without pursuing a recycling regulation under TSCA.

EPA's evaluation did not find that mercury- and cadmium-containing batteries pose an unreasonable risk for purposes of TSCA section 6 for the following reasons: (1) The amount of cadmium and mercury contained in each battery is much lower than that of lead in lead-acid batteries, (2) many States have laws which prevent disposal or sale, or require collection of certain mercury-, and cadmium-containing batteries, and (3) the consequences of reclaiming mercury or cadmium may be

similar to that of lead-acid batteries, causing a trade-off, or even increase in potential risk, such that the benefits of a TSCA section 6 regulation to recycle mercury- and cadmium-containing batteries would not outweigh the costs of regulation.

EPA agrees with the petitioner that numerous batteries are entering the municipal solid waste stream (Refs. 11, 16, and 18). However, the Agency has regulations in place concerning the management of waste that protect against the risk posed by disposal of lead, cadmium, or mercury batteries. These regulations include those under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*, and the Clean Air Act, 42 U.S.C. 7401 *et seq.* Controls imposed under these programs strengthen EPA's belief that battery waste management practices would not pose an unreasonable risk under TSCA.

Solid wastes are managed under two RCRA programs, Subtitle D, which governs the management of non-hazardous solid waste (including municipal waste), and Subtitle C, which governs the management of wastes that are identified as hazardous. The Subtitle C program controls the risks posed during transport, storage, treatment, and recycling or disposal of hazardous wastes, which include regulated hazardous waste batteries (those waste batteries not generated by households or conditionally exempt small quantity generators). Under Subtitle D of RCRA, EPA has established criteria for municipal solid waste landfills, including location restrictions, design and operating criteria, groundwater monitoring, and quality and protection standards. These regulations under Subtitle D ensure that municipal solid waste landfills are operated and designed to safely manage household hazardous waste and conditionally exempt small quantity generator waste, which would include those batteries not subject to Subtitle C controls.

In addition, EPA has proposed modifications to Subtitle C requirements for hazardous wastes such as batteries (Ref. 19). This proposal, called the Universal Waste Rule, would make compliance with Subtitle C regulations more practical, and thus increase the number of regulated batteries properly disposed of or recycled. The rule would also facilitate collection programs required by State legislation, or sponsored by localities or manufacturers. EPA believes that the proposal would assist in expanding battery collection programs nation-wide, and would make it easier to recycle batteries by facilitating the steady supply of batteries to recyclers.

Under the Clean Air Act, lead, cadmium, and mercury emission limits, are established in New Source Performance Standards, industry-specific emission limits on pollutants set at municipal solid waste incinerators or combustors. These limits will control the amount of lead, cadmium, and mercury emitted into the atmosphere in order to protect human health and the environment.

2. *Lack of recycling infrastructure.* Notwithstanding EPA's decision to deny the petition, the Agency supports battery collection and recycling. The benefits of recycling include resource conservation and pollution prevention, particularly of heavy metals. However, for battery recycling to be effective, sufficient collection systems and available recycling facilities must be in place. Ideally, recycling facilities should operate in such a way as to present less risk than battery disposal, and production of raw materials. EPA does not believe that a Federally-mandated deposit, by itself, would be an effective solution because the recycling infrastructure is not adequate to handle nation-wide recycling of some types of batteries.

While the recycling infrastructure for lead-acid batteries is well established, an adequate infrastructure does not presently exist for mercury-, and cadmium-containing batteries. Numerous collection systems, and approximately 23 secondary smelters exist in the United States to recycle lead-acid batteries (Ref. 17). However, as explained above, the lead-acid recycling facilities do not necessarily present less risk. Currently, mercury-oxide and silver-oxide batteries are recycled at one facility, and nickel-cadmium batteries at another facility that the Agency is aware of in the United States (Refs. 12 and 16). There are no facilities that recycle other types of batteries such as alkaline, carbon-zinc, or zinc-air.

However, EPA is aware that the mercury-, and cadmium-containing battery infrastructure is being developed, and that mercury-oxide, silver-oxide, and nickel-cadmium batteries are currently being collected and recycled to a small extent in some parts of the country (Refs. 5, 7, 12, and 16). Mercury- and cadmium-containing batteries are being collected by way of household hazardous waste collection days, permanent household hazardous waste drop-off sites, and curbside collection programs offered by municipalities and communities throughout the United States. In addition, some battery manufacturers have established collection programs at retail stores that sell batteries in some States, and in some cases, have reverse distribution programs for consumers to mail back used batteries to manufacturers.

3. *State laws.* As was the case when the Agency attempted to regulate lead-acid batteries, numerous State laws exist which address not only lead-acid batteries, but cadmium- and mercury-containing battery disposal, sale, labeling, and collection (Refs. 2, 8, 10, 16, and 17). Six States prohibit disposal of either nickel-cadmium, mercuric-oxide, or silver-oxide batteries in municipal solid waste. In addition, some States require mercuric-oxide (8 States), nickel-cadmium (12 States), and silver-oxide (3 States) batteries to be collected, or a collection program must be developed. This would ensure that batteries do not enter municipal solid waste, but rather are disposed of in a hazardous waste facility or recycled.

In addition, 12 States require nickel-cadmium batteries to be labeled indicating that they are recyclable, contain cadmium, and should be disposed of properly, thus helping to keep these batteries out of municipal solid waste landfills and incinerators. A number of States have placed further restrictions on mercuric-oxide, carbon-zinc, and alkaline batteries. Several States have banned the sale of those alkaline (six States) and carbon-zinc (four States) batteries that contain more than 0.025 percent mercury by weight. Seven States also have banned the sale of mercuric-oxide batteries.

Thirty-five States prohibit the disposal of lead-acid batteries in municipal solid waste, and require mandatory take back of the batteries by retailers and other facilities. The 1991 recycling rate for lead-acid batteries was over 95 percent (Ref. 4).

The actions taken by various States regarding lead-, cadmium-, and mercury-containing batteries, are indicative of rapidly growing State collection and recycling programs, even in the absence of a Federal deposit system. The development of these State programs also encourages the recycling infrastructure to grow and expand.

4. *Reduction in battery mercury content.* The nature of the batteries entering the municipal waste stream is also changing. Battery manufacturers have reduced the amount of mercury contained in primary batteries by over 75 percent between 1984 and 1989 (Ref. 15). The mercury content of alkaline and carbon-zinc batteries, the batteries found in the greatest quantity in the municipal waste stream, has been reduced by approximately 95 percent.

These types of batteries now contain approximately 0.025 percent mercury by weight (Refs. 1 and 16). In addition, according to battery manufacturers, mercuric-oxide batteries, which contain the greatest amount of mercury, are being phased-out of the market. Battery manufacturers will likely stop selling small mercuric-oxide batteries by the mid-1990s (Ref. 1). These actions taken by battery manufacturers will contribute to a decrease in the amount of mercury entering municipal solid waste.

III. Issues for Comment

Although the Agency did not find that a deposit on lead-, mercury-, or cadmium-containing batteries is necessary at this time, EPA is interested in receiving comments on whether battery labeling would aid in the development of the battery recycling system. While many State laws currently require various types of batteries to be labeled, EPA requests comments on whether a national battery labeling requirement would further facilitate the collection and recycling of these batteries. Two industry groups, the Battery Council International and the Portable Rechargeable Battery Association, have already developed a uniform voluntary industry labeling standard for lead- and cadmium-containing batteries respectively (Refs. 3 and 9).

It appears that an impediment to battery recycling may be the difficulty of identifying and sorting recyclable batteries. The Agency is seeking information on whether labeling batteries with a recycling symbol, or color-coding, would aid consumers in recognizing those batteries which are recyclable, and facilities that collect batteries for disposal in distinguishing the different types of batteries which require different recycling technologies. This may assist in preventing batteries from entering the municipal waste stream. At the same time, EPA recognizes that some uses of the term "recyclable" on labels (or other aspects of product marketing) may be considered misleading, especially if there are no convenient collection opportunities for the product in some geographic areas. EPA requests comment on the circumstances under which it would be appropriate for use of the term "recyclable," and on whether the goal of distinguishing battery types could be better served by a numerical or color-coding scheme, rather than by use of the term "recyclable" or generic recycling symbols.

Based on the information and comments received by the Agency, EPA may hold a public meeting within the next year to discuss this issue further. Such a public meeting would be announced in the **Federal Register**.

IV. Confidentiality

A person may assert a claim of business confidentiality for any information, including public comments, submitted to EPA in connection with this notice. Any person who submits a comment for which a claim of business confidentiality is made, must also submit a nonconfidential version that can be made available to the public. Any claim of confidentiality must accompany the information when it is submitted to EPA. Persons may claim information business confidential by circling, bracketing, or underlining it, and marking it with "CONFIDENTIAL" or some other appropriate designation. EPA will disclose information subject to a claim of business confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, the Agency may make the information public without further notice to that person.

V. Administrative Record

EPA has established a record under Docket Control Number OPPTS–211033 to support this decision which consists of the petition and other documents listed below under Unit VI of this document. A public version of the record which does not contain confidential business information is available in the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office, from 8 a.m. until noon and 1 p.m. until 4 p.m., Monday through Friday except legal holidays. TSCA NCIC is located in Rm. E–G102, 401 M St., SW., Washington, DC 20460.

VI. References

1. Balfour, Raymond L. National Electrical Manufacturers Association. Mercury, Batteries and MSW. For Presentation at the 86th Annual Meeting and Exhibition, Denver, Colorado. June 13–18, 1993.
2. Battery Council International. Summary of Lead-acid Battery Laws.
3. Battery Council International. News Bulletin. April 1990.
4. Battery Council International. 1991 National Recycling Rate Study. Prepared by Smith, Bucklin and Associates Inc. April 1993.
5. Cohan, Susan. Recycling Nickel-cadmium Batteries. Resource Recycling. April 1993.
6. Emmons, John. Petition to EPA Administrator Carol Browner for the Implementation of a Mandatory Deposit on Batteries Pursuant to the Toxic Substances Control Act. May 27, 1993.
7. Johnson, Randy, and Carl Hirth. Collecting Household Batteries. Waste Age. June 1990.
8. National Electrical Manufacturers Association. Consumer Mercury Button Cell Batteries. May 25, 1993.
9. Portable Rechargeable Battery Association. Labeling Committee. Voluntary Uniform Industry Standards for Small Sealed Lead-acid and Nickel-cadmium Rechargeable Batteries.
10. Portable Rechargeable Battery Association. Small Sealed Rechargeable Battery Collection Programs, and Summary of State Nickel-cadmium and Small Sealed Lead-acid Battery Labeling Regulations. June 10, 1993.
11. United States Environmental Protection Agency, Office of Solid Waste. Characterization of Products Containing Lead and Cadmium in Municipal Solid Waste in the United States, 1970 to 2000. Executive Summary and Chapter 1, Lead and Cadmium in Municipal Solid Waste: Overview and Summary. January 1989. EPA/530–SW–89–015B.
12. United States Environmental Protection Agency, Office of Air Quality Planning and Standards. Municipal Waste Combustion: Background Information for Materials Separation. January 1991. EPA–450/3–90–021.
13. United States Environmental Protection Agency, Office of Toxic Substances. Establishment and Open Meeting of the Negotiated Rulemaking Advisory Committee for Lead Acid Battery Recycling Rule. 58 FR 2885. January 25, 1991.
14. United States Environmental Protection Agency, Office of Pesticides and Toxic Substances. Draft Lead Acid Battery Recycling Risk Assessment. September 1991.
15. United States Environmental Protection Agency, Office of Research and Development. Achievements in Source Reduction and Recycling for Ten Industries in the United States. September 1991. EPA/600/2–91–051.
16. United States Environmental Protection Agency, Office of Solid Waste and Emergency Response. Used Dry Cell Batteries. Is a Collection Program Right for Your Community? December 1992. EPA/530–K–92–006.
17. United States Environmental Protection Agency, Office of Solid Waste and Emergency Response, Office of Policy Planning and Evaluation. States' Efforts to Promote Lead-Acid Battery Recycling. January 1992. EPA/530–SW–91–029.

18. United States Environmental Protection Agency, Office of Solid Waste and Emergency Response. Characterization of Products Containing Mercury in Municipal Solid Waste in the United States, 1970 to 2000. April 1992. EPA/530–R–92–013.

19. United States Environmental Protection Agency, Office of Solid Waste and Emergency Response. Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program. 58 FR 8102. February 11, 1993.

Dated: August 26, 1993.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 93–21406 Filed 9–2–93; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[OCC–19–CN]

RIN 0938–AE25

Health Maintenance Organizations: Organizational Structure and Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: This document corrects regulatory citations in the preamble of a notice of proposed rulemaking that we issued in the **Federal Register** on July 15, 1993 (56 FR 38170). The notice proposed to amend the HCFA regulations governing requirements for health maintenance organizations that are Federally qualified (FQHMOs) to incorporate changes made by the Health Maintenance Organization Amendments of 1988 pertaining to the definition of an FQHMO, requirements for providing physician services as basic health services, and requirements for fiscal soundness and insolvency protection.

FOR FURTHER INFORMATION CONTACT: Mary Robinson, (410) 966–4672.

SUPPLEMENTARY INFORMATION: In FR Document No. 93–15607, issued in the **Federal Register** on July 15, 1993 (58 FR 38170–38184), we inadvertently included in several sections of the preamble erroneous citations to regulation sections that we proposed to amend. In these several sections, we did not recognize redesignations included in organizational changes made to 42 CFR part 417 and contained in another final document with comment period published on the same date in the **Federal Register** (OCC–15–FC, 58 FR 38062). These errors were confined to the preamble; the proposed regulation text contained the correct redesignated regulation citations.

I. Corrections to Section II of the Preamble

We are correcting the language of section II of the preamble (Reorganization of the Regulations) which appears in the first and second columns on page 38171 to refer to the publication of the reorganization changes made in OCC–15–FC. The corrected section is changed to read as follows:

"On October 17, 1991, we published a final rule in the **Federal Register** (56 FR 51984) which amended 42 CFR part 417 of the HCFA rules. Specifically, this final rule—

- Removed certain subpart headings, undesignated centered headings, and most obsolete provisions;
- Redesignated several sections to make room for adding new rules in logical order; and
- Designated the remaining content under 15 new subpart headings.

The publication of the October 17, 1991, final rule was the first step in a HCFA project to simplify, clarify, and update the regulations on prepaid health care. Elsewhere in this issue of the **Federal Register** (58 FR 38062, OCC–15–FC, Medicare Program; Health Maintenance Organization: Technical Amendments), we have made further reorganization and redesignation changes to part 417. References in this NPRM are based on the changes made by the October 1991 final rule and changes made by OCC–15–FC.

II. Corrections to Section III of the Preamble

We are making the following corrections to section III, FQHMO Organizational Structures, of the preamble. For the benefit of the reader, we include, following the explanation of individual corrections, the entire corrected language of Section III of the preamble.

On page 38172, column one, lines 58 and 59, "Additional requirements to § 417.107 (redesignated as proposed § 417.120)," is corrected to read "additional requirements to § 417.126,".

On page 38172, column two, line four, the citation "§ 417.120(q)" is corrected to read "§ 417.126(f)".

On page 38172, column three—

- Lines 10–12, the citation "§ 417.107(a)(1)(i) through (iii) (redesignated as proposed § 417.120(a)(1) through (3)" is corrected to read "§ 417.120(a)(1)(i) through (iii)".
- Lines 37 and 38, the phrase "specified in proposed redesignated § 417.120(a)(1) through (3)" is corrected to read "specified in § 417.120(a)(1)(i) through (iii)".

On page 38173, column one—

- Line 3, the citation "redesignated § 417.120(m)" is corrected to read "§ 417.126".
- Lines 59–60, the citation "§ 417.107(a)(3) (redesignated as proposed § 417.120(c))" is corrected to read "§ 417.122".

On page 38173, column two—

- Lines 17–18, the citation "proposed redesignated § 417.120(c)" is corrected to read "§ 417.122".
- Lines 49–52, the phrase "through a proposed revision to § 417.107(a)(2) (redesignated as proposed § 417.120(d)(3))," is corrected to read "through a proposed revision to § 417.124(a)(3),".

On page 38173, column three—

- Lines 13 and 14, the citation "§ 417.107(c) (redesignated as proposed § 417.120(g))," is corrected to read "§ 417.124(b)".
- Under the heading "D. Additional Proposed Changes to the Regulations," the second bullet paragraph is removed in its entirety. This change was made by OCC–15–FC.

CORRECTED LANGUAGE OF SECTION III OF PREAMBLE

III. FQHMO Organizational Structures

A. Program Description

Section 1301(a) of the HMO Act contains the requirements for the organizational structure of an FQHMO. Prior to the enactment of Public Law 100–517, an FQHMO was required to be organized as a separate "legal entity" that met specific requirements, including that it provided all its enrollees with a prescribed package of health benefits, known as basic health services. (Basic health services are defined in section 1302(1) of the HMO Act and 42 CFR 417.1 of our regulations.) If the HMO desired to offer other health benefit packages that did not meet the requirements for basic health services, it was required to establish a separate legal entity through which to offer the other packages. Likewise, the separate legal entity requirement precluded a corporation or other legal entity from offering an FQHMO in addition to its non-qualified business health plans or "products."

B. Legislative Changes

Section 2 of Public Law 100–517 amended section 1301(a) of the HMO

Act by redefining an FQHMO as a "public or private entity that is organized under the laws of any State" instead of a "legal entity." In Congressional reports that accompanied the legislation, the House and Senate committees indicated that FQHMOs and insurance companies could compete more effectively if allowed to offer a range of health benefit packages or products. (Sen. Rept. No. 304, 100th Cong., 2nd Sess. 5 (1988), and H.R. Rept. No. 417, 100th Cong., 1st Sess. 6 (1987).) The reports indicate that these entities should be able to offer such options without the burden of establishing a separate corporation for each health benefit package or product.

While the legislative history of the statutory amendments indicates that Congress intended to provide entities more flexibility to operate an FQHMO in conjunction with other health benefit products without being separately incorporated, the legislation made only a narrow change in the definition of an FQHMO. It left most of the specific requirements in title XIII of the HMO Act unchanged. This indicates that Congress also wanted to preserve all of the protections afforded by the statute to FQHMO enrollees. Therefore, while we are proposing to provide FQHMOs with the increased organizational flexibility we believe was intended by the statutory changes, we have also included provisions designed to assure that FQHMOs continue to comply with all title XIII requirements for Federal qualification.

C. Proposed Changes to the Regulations

The amendments made by Public Law 100–517 concerning the organizational structures of FQHMOs will affect several areas of our regulations. This is due, in part, to the fact that although FQHMOs will be allowed to organize under various organizational structures, our regulations must ensure that the FQHMOs continue to meet all Federal qualification requirements specified in section 1301 of the HMO Act and 42 CFR part 417, regardless of how the FQHMO is organized.

If an FQHMO is organized as a component of a legal entity, rather than as a separate legal entity, a number of legal and enforcement issues arise. These issues include: (1) Keeping the FQHMO distinct from the entity's other components; (2) determining the responsibilities of the legal entity and the FQHMO in meeting financial and other requirements for Federal qualification; and (3) assuring that the financial status of other components of a legal entity does not have an adverse impact on the enrollees of the FQHMO.

To conform our regulations to the amendments made by Public Law 100–517, while addressing the legal and enforcement issues raised by the amendments we propose to—

- Modify the definition of an FQHMO and make other technical changes in order to incorporate the additional organizational structures now permissible;
- Add requirements that would distinguish the FQHMO that is a component of a legal entity from other health benefit packages that the legal entity may offer;
- Add clarifications delineating the responsibilities of the legal entity and the FQHMO that is a component of a legal entity for meeting the financial requirements of the FQHMO component (for example, fiscal soundness, insolvency protection, and disclosure requirements); and
- Add provisions that will require the FQHMO to have authority to contract with providers and subscribers when the FQHMO is a component of a legal entity.

Definition of an FQHMO—We propose to revise 42 CFR 417.1 to redefine the term "HMO" to include the FQHMO that is a separate legal entity as traditionally permitted, the FQHMO that is a component of a legal entity, and the FQHMO that is a legal entity with organizational components that offer other health benefit packages. In addition, where appropriate, we propose to modify references to the FQHMO to include legal entities that have an FQHMO component. We are also proposing to delete the existing provision in § 417.101 (e) that prohibits FQHMOs from offering non- Federally-qualified health benefits packages.

Unless otherwise specified, any reference in the proposed regulations to an "HMO or legal entity of which the HMO is a component" means that the HMO is responsible in the first instance for meeting the requirement. However, if, as a practical or legal matter, it is impossible for the HMO to do so when it is a component of a legal entity, then the legal entity will be held responsible. It is not otherwise discretionary with the HMO whether it or the legal entity will meet any given requirement.

Distinguishing the FQHMO Product—In part, the FQHMO can be distinguished from non-Federally-qualified HMOs by a particular set of operational characteristics, including a clearly defined delivery system that ensures care is available and accessible in a specific service area, separate marketing materials, community rated premiums, profit and loss statements, and plan-specific operational data.

Because the statutory amendments allow an FQHMO to be a component of a legal entity, we are proposing to add additional requirements to § 417.126, which deals with the organization and operation of an FQHMO. These requirements are needed to distinguish the FQHMO from non-Federally-qualified components of the legal entity that may offer health benefits. These proposed requirements allow us to recognize the new organizational structures for FQHMOs while assuring compliance with all other requirements for Federal qualification.

Specifically, we propose to—

Add a new § 417.126(f), which requires that if the FQHMO offers or is part of a legal entity that offers other health benefit plans, the FQHMO must—

- Be a distinct component that is clearly differentiated from the other health benefit plans;
- Have processes and records in place that allow the entity to separately identify the enrollees of the FQHMO at all times; and
- Have a distinct name that differentiates it from other health benefit packages offered by the legal entity in the FQHMO service area.

We believe these additional requirements are necessary to maintain the integrity of the Federal qualification program, to ensure that FQHMOs are in compliance with statutory and regulatory requirements, and to enable Federal regulators to monitor and enforce program requirements. For example, we are proposing that the enrollment of the FQHMO must be separately identifiable because the statute requires the FQHMO to provide basic and supplemental health services to "its enrollees." Further, these enrollees are assured of certain protections that the entity might not extend to enrollees in other health benefit packages. If the legal entity does not separate the enrollees of its qualified and non-qualified health benefits components—by its own choice or as a result of State law—then the organizational structure is legally impermissible for Federal qualification.

The distinct name requirement is intended to differentiate the benefits offered by the FQHMO from other health benefit packages or products offered by the entity in the service area. The distinct name also will promote consumer and employer recognition of the FQHMO as a discrete component. It will help eliminate consumer and employer confusion between the benefits offered by the component that is Federally qualified and the other benefit packages offered by the legal

entity. In addition, it will aid employers to determine which entities or components of entities will enable them to comply with section 1310 of the HMO Act, which requires certain employers to offer Federally-qualified HMOs under an employer-sponsored health benefits plan.

In seeking clarity for the consumer and the employer, we do not propose prohibiting the use of the name of the legal entity in the FQHMO's name, or use of the FQHMO's name in the name of the non-qualified component. In fact, use of the legal entity's name may help the consumer to differentiate among FQHMOs, and between FQHMOs and other health benefit packages being offered in the service area marketplace by various companies.

Meeting Financial Requirements—We believe the current regulations at § 417.120(a)(1)(i) through (iii) generally are adequate for demonstrating the fiscal soundness of organizations that offer an FQHMO line of business and FQHMOs that diversify and offer non-qualified health benefits packages. These regulations currently require that each FQHMO have a fiscally sound operation as demonstrated by (1) total assets being greater than total unsubordinated liabilities; (2) sufficient cash flow and adequate liquidity to meet obligations as they become due; and (3) a net operating surplus.

Under this rule, we are not changing the nature of these fiscal soundness requirements, but rather we are specifying the entities that are responsible in situations where the FQHMO is not a separate legal entity. Where a legal entity operates an FQHMO as one component of its business, we propose to require that the legal entity, rather than the FQHMO, meet the financial requirements specified in § 417.120(a)(1)(i) through (iii) for the FQHMO. An FQHMO that develops and operates non-qualified health benefit packages will be treated as a legal entity with an FQHMO component. By permitting the legal entity to meet the financial requirements for Federal qualification, while leaving responsibility for the programmatic requirements to the FQHMO component, the proposed rules are consistent with the statutory language and legislative history of Public Law 100–517.

We must look to the legal entity for meeting the fiscal soundness requirements in this situation because the financial viability of the FQHMO is sustained by the financial health of the legal entity. Overall, it is the assets, profits, and net operating surplus of the legal entity that ensures the FQHMO's ability to continue operation. Therefore, we are interested in the fiscal soundness of the legal entity. In general, we propose to require the same financial reporting as specified in current regulations, except that the information will be about the legal entity. The only additional reporting requirement we anticipate is a profit and loss statement for the FQHMO component. We would request this information under the existing reporting authority in § 417.126, but on an annual basis rather than quarterly.

For FQHMOs that are organized as a legal entity and then develop non-qualified benefit packages, the new requirements will apply. That is, the legal entity that includes both the FQHMO and its other business must meet the fiscal soundness requirements. We anticipate requiring an annual profit and loss statement of the FQHMO business in addition to the financial reports routinely submitted by the legal entity.

We propose to require that, if the legal entity that operates an FQHMO component has not earned a cumulative net operating surplus during the three most recent fiscal years, did not earn a net operating surplus during the most recent fiscal year, or does not have a positive net worth, it must submit a business plan satisfactory to HCFA. The plan must include a statement of projected revenues and expenses for the operations of the legal entity and must demonstrate the legal entity's ability to achieve net operating surpluses. Where an HMO component is applying for Federal qualification, we propose to require profit and loss statements on the applicant HMO in addition to the legal entity. We believe these requirements are necessary to assure the Secretary that the FQHMO is financially sound, even though the FQHMO may have been determined to have adequate cash flow. The financial performance of either the legal entity or the FQHMO component may be an indicator of emerging quality of care problems in the Federally-qualified health plan.

The FQHMO that is itself a legal entity, or the legal entity of which the FQHMO is a component, must comply not only with the fiscal soundness requirements but also with the following requirements of the HMO Act:

- Have adequate provision against the risk of insolvency; and
- Comply with financial disclosure requirements included in section 1318 of the HMO Act.

Where a legal entity operates an FQHMO component, the legal entity will be required to meet the current requirements in § 417.122 concerning protection of enrollees. If the FQHMO is separately incorporated, as required in some States, there is no problem anticipated. That is because if a separately incorporated FQHMO became insolvent, only one set of enrollees has claims. However, we are concerned that, under the newly permissible organizational structures, the FQHMO may not be able to protect its enrollees in the event of insolvency if it is not separately incorporated. If the legal entity offers other health benefit packages, or operates unrelated businesses, there is no guarantee, under existing regulations, that the enrollees of the FQHMO will be given special protection or priority. For example, bankruptcy court does not distinguish among the financial obligations of unrelated businesses.

Because section 1301(c) of the HMO Act currently requires that special protections for enrollees of FQHMOs must be secured, we are proposing to revise § 417.122 to impose a more stringent insolvency protection requirement when the FQHMO is a separate line of business and is not separately incorporated. Under the new requirement the legal entity will be required to establish a special reserve for FQHMO expenses not covered under other insolvency protection arrangements.

We have also clarified existing regulations to state that trust agreements requiring approval of State officials are acceptable arrangements for uncovered liabilities. Such trust agreements have been accepted by HCFA in the past and we believe that our regulations should clarify this position.

Additional Obligations of the FQHMO—The various organizational structures that will now be available to FQHMOs make it necessary to clarify certain obligations of the FQHMO, particularly when the FQHMO is a component of a legal entity. One such obligation concerns contracting responsibility for purposes of provider and subscriber contracts in the situation where a legal entity both operates an FQHMO component and offers other non-qualified health benefits as well. We have clarified, through a proposed revision to § 417.124(a)(3), that if the FQHMO is not itself a legal entity, it must be managed by an executive who has the authority to bind the legal entity in contracts. The effect of this new requirement is that the obligation to fulfill the terms of the contract will be with the FQHMO, even though the legal entity is accountable if the FQHMO fails to perform.

Specifically, there must be at least one official of the FQHMO component who

has the delegated authority to bind the legal entity with respect to the following existing requirements and actions:

- Assumption of full financial risk on a prospective basis;
- Arrangements for health care services that are necessary to meet the requirements of title XIII of the HMO Act as they pertain to the benefits package and the delivery system;
- Establishment of subscriber contracts; and
- Arrangements to protect enrollees in the event of insolvency.

D. Additional Proposed Changes to the Regulations

In addition to the above changes, we are also proposing the following conforming changes:

- We propose to modify § 417.124(b), full and fair disclosure, to assure that, where applicable, all interested parties, including current or prospective enrollees of the FQHMO, are aware that the FQHMO (1) offers non-qualified health benefit packages through a separate component, or (2) is a component of a legal entity and that other health benefit packages are offered by the legal entity. This is a mechanism for assuring that there is no confusion regarding which health benefit package is offered by the FQHMO.
- We propose to modify § 417.143 to reflect that a component of a legal entity may now apply for qualification.
- We propose to modify § 417.152 to reflect the new organizational structures permitted the FQHMO. We believe that an FQHMO that is a component of a legal entity should inform employers of the nature of the legal entity of which it is a component at the time that the dual choice mandate is submitted.

IV. Corrections to Sections IV, V, and VII of the Preamble

On page 38176, column one—

- Line 5, the citation "§ 417.107(g)" is corrected to read "§ 417.124(g)".
- Lines 45 through 47 under the heading "D. Additional Proposed Changes to the Regulations," the phrase "proposed redesignated § 417.120 (Organization and operation)," is corrected to read "subpart C—Qualified Health Maintenance Organizations: Organization and operation,".

On page 38176, column two, lines 35 and 36, the citation "(redesignated as proposed § 417.120(d))" is corrected to read "(now in § 417.122(a)(1)(iv))".

On page 38176, column three, under the heading "C. Proposed Changes to the Regulations"—

- Lines 16 and 17, the phrase "a new paragraph (e) to § 417.107 (redesignated as proposed § 417.120)" is corrected to read "a new § 417.123".
- Lines 26 and 27, the phrase "changes in proposed redesignated § 417.120(e)" is corrected to read "provisions of § 417.123".

On page 38177, column one—

- Lines 16 through 17, the citation "proposed redesignated § 417.120(e)" is corrected to read "§ 417.123(c)".
- Line 61, under section "VII. Collection of Information Requirements", the citations "417.120(b), 417.120(e), 417.120(q)," are corrected to read "417.120(a)(2), 417.123(c), 417.126".

On page 38177, column two, lines 3 through 4, the citations "417.120(b), 417.120(e) (3), (7), and (8), 417.120(q)", are corrected to read "417.120(a)(2), 417.123(c), 417.126,"

On page 38178, column three, line 41, the citation "§ 417.107(a)(3)(i)(d)" is corrected to read "proposed revised § 417.122(a)(1)(iv)".

Dated: August 23, 1993.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 93–21548 Filed 9–2–93; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–09; Notice 33]

RIN 2127–AE39

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The National Highway Traffic Safety Administration Authorization Act of 1991 directed this agency to initiate rulemaking on child booster seat safety. NHTSA responded to this statutory mandate by publishing an advance notice of proposed rulemaking in May 1992 and requesting comments on several issues regarding improved booster seat safety.

Today's document is the first of two NPRM's regarding issues discussed in the ANPRM. This notice makes specific proposals for addressing issues about belt-positioning child seats, including proposals for promoting the proper use of the seats. Issues relating to the need for a greater array of test dummies for use in Standard 213 compliance tests will be addressed in a subsequent NPRM that NHTSA expects to publish shortly.

DATES: Comments on this document must be received by the agency no later than November 2, 1993. The proposed effective date is 30 days after the date of publication of a final rule.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–5267. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590 (telephone 202–366–4919).

SUPPLEMENTARY INFORMATION:

Background

This notice follows an advance notice of proposed rulemaking (ANPRM) published on May 29, 1992 about child booster seat safety (57 FR 22682). The ANPRM was issued in response to the National Highway Traffic Safety Administration Authorization Act of 1991 (sections 2500–2509 of the "Intermodal Surface Transportation Efficiency Act of 1991"). That Act directed the agency to initiate rulemaking on a number of safety matters, including the safety of child booster seats (section 2503(3)). After analyzing the comments received on the ANPRM and other issues, NHTSA has decided to issue a notice of proposed rulemaking on child booster seat safety.

Booster Seats

Booster seats are currently regulated by Federal Motor Vehicle Safety Standard No. 213, Child Restraint Systems. Standard 213 applies to any device, except Type I or Type II seat belts, designed for use in a motor vehicle or aircraft to restrain, seat, or position children who weigh 50 pounds or less. The standard defines a "booster seat" as "a child restraint which consists of only a seating platform that does not extend up to provide a cushion for the child's back or head." See S4. Booster seats are generally designed to be used by children who are old and large enough to have outgrown a child seat. Generally, these children are three to eight years old and weigh 30 to 70 pounds.

Standard 213 evaluates the performance of booster seats and other child restraint systems in dynamic tests

under conditions simulating a frontal crash of an automobile at 30 miles per hour (mph). The standard specifies that most restraints are to be anchored with only a lap belt during agency compliance testing. The standard provides that a booster seat designed with a top anchorage strap (tether strap) is to be tested at 30 mph with the tether attached. However, the agency believes all booster seats are currently manufactured without the tether.

The dynamic tests of booster seats under the standard are conducted using a test dummy representing a three-year-old child weighing 33 pounds (S7.2 of Standard 213). The dummy is instrumented with accelerometers for measuring accelerations in the head and chest during impacts (see 49 CFR part 572, subpart C).

The requirements to be met in the dynamic testing of booster seats include maintaining the structural integrity of the seat, retaining the head and knees of the dummy within specified excursion limits (limits on how far those portions of the body may move forward), and limiting the forces which the head and chest of the dummy may experience during the test. Compliance with these requirements reduces the likelihood that the child using a booster seat will be injured by the collapse or disintegration of the seat, or by contact with the interior of the vehicle, or by experiencing intolerable forces.

The ANPRM

The ANPRM addressed the possibility of improving booster seat safety by: (1) Changing the test procedures in Standard 213 for boosters, such as by increasing the variety in the sizes of test dummies used to test boosters and by using a lap/shoulder belt to restrain belt-positioning seats (boosters designed to be used with a vehicle's lap/shoulder belt system) in place on the test apparatus (all boosters currently must pass the compliance tests when restrained by a lap belt only); (2) changing the injury and performance criteria of the standard, such as by establishing requirements for belt-positioning seats; and (3) increasing the likelihood that consumers will follow the manufacturer's recommendations for restraint use.

As explained in the ANPRM, belt-positioning seats generally cannot meet the performance criteria of Standard 213 when tested according to the standard's test procedure. Standard 213 currently requires child restraints to provide the required protection when attached to the test apparatus (a representative vehicle bench seat) using only a vehicle lap belt. (A few types of restraints, including boosters, may use a top tether, although no such booster is currently manufactured for sale in this country.) The lap-belt only requirement originated from two considerations. The first consideration was real world representation. The seat assembly used to test child restraints was developed to represent the typical vehicle bench seat, to avoid the cost of testing child restraints on numerous vehicle seats. Vehicle bench seats at the time of the development of Standard 213's dynamic test typically had only a lap belt, and not a lap/shoulder belt system.

The second consideration was misuse. The lap belt-only requirement ensured that the restraint will provide adequate safety even if a supplemental restraint (e.g., a top tether or the shoulder portion of the lap/shoulder combination) is not used.

Since belt-positioning seats must use the vehicle's shoulder belt for upper torso restraint, they generally cannot meet the standard's dummy head excursion and acceleration limits when tested with only a lap belt. Yet the belt-positioning seats appear to perform well within the performance criteria of the standard when tested with the lap/shoulder belt.

NHTSA issued the ANPRM to reevaluate the lap belt-only requirement in Standard 213 in light of changing circumstances. Federal Motor Vehicle Safety Standard No. 208, Occupant Crash Protection, has recently been amended to require lap/shoulder belts in all rear outboard seat positions in passenger cars, light trucks, sport utility vehicles and vans. Thus, the representativeness of the standard seat bench used in compliance tests needs to be reassessed.

Second, belt-positioning seats have become increasingly available in Australia and Europe for older children. In light of this increasing availability, the University of Michigan Child Protection Program (UM–CPP) petitioned NHTSA in 1990 to "allow the manufacture and sale of lap/shoulder belt-positioning [booster seats]." See, NHTSA docket PRM–213–019. UM–CPP believes these boosters are "simple, inexpensive, but effective." NHTSA granted the petition in November 1990.

UM–CPP's high regard for belt-positioning seats is shared by others. Comments on NHTSA's planning documents unanimously endorsed these child seats.

Undertaking rulemaking to permit the manufacture and sale of belt-positioning seats is consistent with the direction in the National Highway Traffic Safety Administration Authorization Act to address possible ways to improve booster seat safety. The agency has tentatively determined that belt-positioning seats appear to be superior to currently manufactured boosters in that belt-positioning seats are capable of accommodating a wider range of child sizes than currently manufactured shield-type boosters. As discussed at length in the ANPRM, shield boosters generally work well with the three-year-old dummy, but not when tested with the nine-month-old or the six-year-old dummies. Ejections and excessive head excursions can occur with these latter dummies due in large part to the shield's relatively simple "barrier" design to compartmentalize a child in a crash and which does not use harnesses or webbing for restraining the child. In contrast, NHTSA's tests of belt-positioning seats show them to adequately restrain both the three-year-old and the six-year-old dummies in dynamic tests.

The agency summarized its findings on this issue in two reports. The first report, titled "Evaluation of Booster Seat Suitability for Children of Different Ages and Comparison of Standard and modified SA103C and SA106C Child Dummies," VRTC–89–0074, stated that nine different shield-type booster seats were tested using three dummies. The report states that these seats passed all the applicable FMVSS No. 213 criteria when tested with the three-year-old dummy. The seats generally did not provide adequate restraint for a six-year-old occupant and proved to be generally unsuitable for preventing ejection of a nine-month-old occupant.

The second report resulted from project VRTC–82–0236 "Child Restraint Testing (Rulemaking Support)," which tested four belt-positioning seats. The report states that none of these seats exceeded the FMVSS No. 213 dummy injury criteria and excursion limits when tested with three- and six-year-old dummies restrained with a three-point lap/shoulder belt system. Two shield-type booster seats were tested with the six-year-old dummy restrained with a lap-only belt system. One of these exceeded the FMVSS No. 213 head excursion limit.

Moreover, the agency believes that belt-positioning seats in general might be more acceptable to some children than shield boosters. Some manufacturers of belt-positioning seats have told NHTSA that some older children prefer belt-positioning seats to shield boosters. This preference could be based on the child's comfort, since the child could feel less constrained by the vehicle's lap/shoulder belt system than when restrained in a shield booster. This preference could also be

based on the child's perception that he or she has outgrown a child seat. At least one manufacturer is marketing a "bucket style" booster seat for the child who "still needs a car seat, but * * * won't sit in one." One advertisement for such a seat begins with "She's Not a Baby Anymore." A belt-positioning seat could properly restrain the child who resists using a shield booster.

Using a booster or other seating device to ensure the proper performance of a vehicle's belts is crucial to the child's safety. Children who are belted in only a lap belt may be at risk of abdominal injuries in a crash, if the belts are used incorrectly or they move off the pelvis during a crash. During the February 1993 American Academy of Orthopaedic Surgeons 60th Annual Meeting, a paper was presented on a review of pediatric and adolescent patients who were involved in motor vehicle accidents while restrained by a lap belt only. The paper states:

> A two-year study of 18 children ages 2 to 18 showed in a crash all suffered "seat belt syndrome," which includes bruising across the abdomen, internal injuries and lower spine fractures and which has been well documented in adults.

The physician who headed the study stated that:

> The belts tend to rise up and lay across the lower abdomen of the child. During rapid deceleration, the child tends to "submarine" under the belt and the torso flexes around an axis anterior to the lumbar spine with forces being converted about a narrow axis at the mid to lower abdomen.

Shield-type boosters do not appear to be causing abdominal injuries when used with vehicle lap belts. Ms. Weber of UM–CPP commented that "accident/injury data have not shown [abdominal loading from shield boosters] to be a problem for children." However, the agency is interested in data on whether properly positioned vehicle lap/shoulder belts would be less likely to cause abdominal injuries than shield boosters used with the lap belt. On the one hand, the lap/shoulder belt system would provide better upper torso restraint and, in many cases, could distribute crash forces over a larger area than a shield. However, Cosco stated in its comment on the ANPRM that it does not know of any "real world evidence that shows any difference in crash injury outcome to children with shield versus belt positioning auto booster seats."

NHTSA also believes there is a possibility that belt-positioning seats (with lap/shoulder belts) would perform better than shield booster seats (with lap/shoulder belts). Test data obtained under project VRTC–82–0236 indicate that none of the belt-positioning seats exceeded the FMVSS No. 213 criteria when tested with a three-point lap/shoulder belt system. On the other hand, all tests of a three-year-old dummy restrained in a shield-type booster seat with a lap/shoulder belt system yielded Head Injury Criterion (HIC) values that exceeded the 1000 limit specified in FMVSS 213. The head excursion limit of FMVSS 213 was exceeded in one of the tests of a six-year-old dummy restrained in a shield-type booster seat with a lap belt.

NHTSA received 26 comments on the ANPRM, from child seat and vehicle manufacturers, consumer and community groups, and interested individuals. The commenters were overwhelmingly supportive of the agency's efforts to permit belt-positioning child seats. The agency considered each of these comments in formulating this NPRM; the most significant ones are addressed below.

Highlights of the Proposal

Today's notice proposes amending Standard 213 to permit the manufacture and sale of belt-positioning seats by removing the impediments in the standard to the production of those seats. A definition of "belt-positioning seat" would be added, and the definition of "booster" would be amended to include belt-positioning seats. Standard 213's compliance test procedures would be amended to specify that belt-positioning seats would be dynamically tested when restrained to the test apparatus with a lap/shoulder belt. NHTSA also proposes labeling and informational requirements to decrease the likelihood that booster seats would be misused.

Today's notice does not address the issue raised in the ANPRM of testing child restraints with an increased array of test dummies. That issue will be addressed in a separate NPRM to be issued shortly. Also, as explained in the "Other Issues" section below, NHTSA has decided not to propose at this time: To amend the definition of "child restraint system" to include devices for children who weigh more than 50 pounds; to require booster seats to be tested on a rear-facing seat assembly or, for boosters certified for aircraft, an assembly with a "seat back breakover" feature (which allows the seat back to rotate forward when pushed from behind); or new injury criteria for dummy neck and abdominal loads.

Specific Proposals

The most prominent impediment in Standard 213 to the manufacture of belt-positioning seats is the present requirements in S6.1.2.1.1 that boosters must be tested when restrained to the standard seat assembly with only a lap belt. The agency is proposing to amend S6.1.2.1.1 to specify the testing of belt-positioning seats using a lap/shoulder belt. NHTSA is also proposing to amend S5.3.2 of Standard 213, which now requires boosters to be capable of being restrained against forward movement solely by means of a lap belt system. S5.3.2 would be amended to specify a lap/shoulder belt system for restraining belt-positioning seats to the test apparatus.

NHTSA is not proposing any change to how child restraints other than belt-positioning seats are tested. Restraints other than belt-positioning seats would continue to be tested with only a lap belt if they are only recommended for use with a lap belt. Lap belt-only restraints would be appropriate for the many vehicles that will be on the road equipped with only lap belts for child seats. Further, lap belt-only restraints would be appropriate for use in the center position of rear seats of vehicles, which is only required to be equipped with a lap belt. Moreover, NHTSA is not proposing changing the manner in which shield-type boosters are tested. Because these boosters are intended for use with a lap belt, they would be tested with a lap belt.

Some commenters suggested that shield-type boosters be tested with a lap belt and lap/shoulder belt. Advocates for Highway and Auto Safety stated that these boosters will need to be tested with both systems because lap/shoulder belts will eventually become universal in the rear seat outboard positions. The Insurance Institute for Highway Safety (IIHS) said that shield-type boosters should be tested with both lap belts and lap/shoulder belts because the restraints are likely to remain in widespread use for some time.

Similarly, some commenters wanted to require testing of belt-positioning seats with a lap belt. IIHS stated that belt-positioning seats should be required to meet some minimal protective standard when used with only a lap belt, since these seats are likely to be misused by placing them in seating positions equipped with only a lap belt. IIHS and Chrysler believe that belt-positioning seats improve the fit of a vehicle's lap belt on the child's abdomen even when used with only a lap belt. However, Ford believes that a belt-positioning seat should not be used with only a lap belt since the seat raises the child off the vehicle seat and thereby increases the child's potential head excursion in a crash.

The agency has decided not to propose testing shield boosters with a lap/shoulder system and belt-positioning seats with a lap system. Standard 213's approach is to require child restraint systems to be tested in configurations they were designed for. For example, infant restraints are tested rear-facing since they are designed to be and are used rear-facing. The reason for this approach is that child seat manufacturers must design many safety features into their child restraint systems to protect a restrained child. To do this, the manufacturers must anticipate how the restraint will be used and design safety into their system bearing in mind their assumptions about such use. The manufacturer's assumptions about the expected use of the restraint are reflected in the use instructions to the consumer. If the manufacturer's assumptions are reasonable, consumers use the restraints as recommended.

In the past, there have been occasions where manufacturers' assumptions about the expected use of child restraints were incorrect. In the case of tethered child seats, results of surveys showed that contrary to expectations, consumers did not attach the top tether of the seat. (In one study, data indicated that nearly 85 percent of child restraints with tether straps were used without properly attaching the tether). In those cases, NHTSA acted to correct the problem. For instance, the agency adopted a misuse test for tethered child seats to require the child seat to meet Standard 213's performance criteria without attaching the tether in the 30-mph test. (51 FR 5335, February 13, 1986.)

However, with regard to booster seat use, NHTSA does not have information showing that misuse of the different booster seats is likely. Absent this information, it appears premature to require a misuse test.

Further, the likelihood of a restraint being misused is reduced by proper labeling and instructions. For example, consumers are following labeling and instructions on positioning infants rear-facing in motor vehicles. Several comments received on the ANPRM for this notice relate to educational programs and misuse issues of child restraints. The agency believes that incorporation of such issues into the agency's traffic safety educational and other programs would decrease the degree of possible misuse of belt-positioning and shield-type restraints.

NHTSA tentatively concludes that definitional changes in the standard would be necessary as part of the effort to amend the standard to allow belt-positioning seats. The present definition of "booster seat" would have to be amended. Standard 213 includes a definition of "booster seat" because, unlike other child restraints with top tethers, boosters with tethers are permitted to be tested in the 30 mph dynamic test with the tether attached. Thus, the definition distinguishes boosters from other child restraints.

NHTSA is proposing to amend the booster seat definition by adding "or a belt-positioning seat" to the end of the present definition. "Booster seat" is presently defined as "a child restraint which consists of only a seating platform that does not extend up to provide a cushion for the child's back or head." (S4 of 49 CFR 571.213) The present definition currently excludes belt-positioning seats that have seat backs. The agency has tentatively concluded that belt-positioning seats should be considered a type of "booster seat" because belt-positioning seats are designed for the same child age group as present boosters (three to eight years old, weighing 30 to 70 pounds). It is also advantageous to consider as "boosters" both the shield-type and belt-positioning-type of restraints, because both types appear to pose similar potential misuse problems. That is, both could be inappropriately used by children who are too small to be adequately restrained by the child seat.

A definition for "belt-positioning seat" would be added. "Belt-positioning seat" would be defined as

> a child restraint system that positions a child on a vehicle seat to improve the fit of a vehicle Type II belt system on the child and that lacks any component, such as a belt system or a structural element, designed to restrain forward movement of the child's torso in a forward impact.

This proposed definition is similar to that suggested by Ford, Century and others in comments on the ANPRM. The agency has tentatively concluded that the definition sufficiently distinguishes belt-positioning seats from other types of child restraint systems, including other types of boosters. Also, NHTSA has decided that a more detailed, descriptive definition should be avoided because such a definition could be design restrictive. For example, a definition that described a belt-positioning seat as one that had molded arm rests would raise questions whether arm rests are required, and whether they must be molded.

NHTSA is proposing performance requirements for belt-positioning seats. Belt-positioning seats would be subjected to the structural integrity, excursion, and injury criteria requirements applicable to those child restraints which meet the current definition of "booster seat." Ford suggested that simple static tests for cushion surface deflection and booster seat width should be adopted. NHTSA has tentatively concluded that Standard 213's existing dynamic test would better ensure that belt-positioning seats provide a sufficient level of safety than static tests because it simulates a frontal crash.

Several commenters suggested additional performance requirements. For example, Ford said that there should be limits on booster cushion height and total booster weight. The agency is interested in comments on the issue, especially concerning any adverse effects that may result from heavy seat backs on belt-positioning seats. Would such systems impose dangerous loads on the back of a child occupant? If they would, what limits, if any, should be imposed on those loads and how would they be measured? Comments are requested on means to directly measure the load exerted by the seat back on the back of the dummy. Comments are also requested on ways to indirectly measure these loads, such as by determining the displacement of a target point on the back of the dummy relative to the surface of the back of the test seat assembly.

NHTSA's proposed amendments to the labeling requirements are intended to decrease the likelihood that booster seats would be misused. NHTSA proposes a labeling requirement to address the problem of booster seats being used for children too small for the restraints. In labeling booster seats with their recommendations for the maximum and minimum weight and height of children who can safely occupy the seats (S5.5.2(f) and S5.5.5(f)), manufacturers would not be able to recommend an add-on or built-in booster seat for children who weigh less than 30 pounds. (Because NHTSA is converting the FMVSS's to the metric system, the 30 pounds limit would be expressed as children of masses of less than 13.6 kilograms (kg). The agency is also proposing that the height and weight recommendations include metric units.) The agency seeks comment on the feasibility of developing a booster seat that would safely restrain children weighing less than 30 pounds. NHTSA also proposes a labeling requirement for boosters, warning consumers only to use the booster with the appropriate vehicle belt system (lap or lap/shoulder belt system, depending on the design of the booster).

NHTSA is also proposing labeling requirements addressing potential misuse involving routing of the vehicle

lap or lap/shoulder belt with the booster seat. This particularly concerns dual-purpose boosters that can be used with either a lap or a lap/shoulder belt in the shield mode, but only with a lap/shoulder belt in the belt-positioning mode. These seats also typically require different belt routing for the two modes. To increase the probability that booster seats are correctly used, the agency proposes that a label be required to inform consumers of the correct installation method for each of the available modes of use and for both lap-only and lap/shoulder belts. The agency seeks comment as to whether such a labeling requirement, if adopted, should be part of the current requirement for installation diagrams in S5.5.2(l), or be in the form of a separate text warning (see, S5.5.2(i)).

NHTSA proposes that belt-positioning seats also be labeled with a statement that they are not certified for use on aircraft. The Federal Aviation Administration (FAA) was opposed to manufacturers certifying belt-positioning seats for use on aircraft, because aircraft passenger seats typically do not have shoulder belts. The FAA suggested that a belt-positioning seat could be certified for aircraft use if the seat met Standard 213's dynamic requirements using only a lap belt. Since belt-positioning seats are unlikely to meet those requirements with only a lap belt, this notice proposes to require their manufacturers to label those restraints with the statement that the restraints are not certified for aircraft use.

The agency proposes to adopt test specifications appropriate for testing belt-positioning seats. For example, the standard seat assembly used to test child restraint systems would be changed to depict added anchorages for the shoulder belt system. Today's notice proposes some differences between the test procedures for the different types of boosters. For example, a belt-positioning seat with a top tether would be tested in the 30 mph test with the tether unattached. The agency tentatively concludes that there is no safety reason for attaching the tether in the test.

Other Issues

NHTSA has decided not to propose rulemaking at this time for several issues raised in the ANPRM. The agency has decided against proposing to amend the definition of "child restraint system" in Standard 213 to include devices for children who weigh more than 50 pounds. (Child restraint systems are currently defined as devices, except vehicle lap or lap/shoulder belts, that are designed to restrain, seat or position children who weigh 50 pounds or less in a motor vehicle or aircraft. A device that does not meet the definition need not meet Standard 213's requirements.) The majority of the commenters addressing this issue believed that consideration should be given to raising the 50 pound weight limit only if a test dummy representing a child weighing more than 50 pounds is developed. (The six-year-old child dummy NHTSA recently developed for possible specification for Standard 213 testing weights 48 pounds.) Ms. Weber of UM-CPP also added that if belt-positioning seats are permitted, it is unlikely that child restraints designed solely for children over 50 pounds would be developed. NHTSA concurs that a proposal to increase the 50 pound limit in the "child restraint system" definition would be premature in the absence of a suitable test dummy or other device to test the performance of the restraint and of any indication that booster seat manufacturers contemplate producing seats exclusively for children over 50 pounds. With a view toward possibly testing booster seats for older children with dummies representative of older children, NHTSA has initiated a research project to determine the need for and feasibility of developing a child test dummy representing a child weighing over 60 pounds. The results of that project will not be known before the completion of this statutorily-required rulemaking proceeding.

NHTSA has also decided against proposing to require booster seats to be tested on a rear-facing seat assembly. Several concerns were expressed by the commenters on this issue. Volvo believed that a rear-facing test is unnecessary because a child restraint that is tested forward-facing is subject to a more severe test than when tested rear-facing. Some commenters (e.g., Century Products, Gerry, and Ms. Field) believed that the small number of vehicles that have rear-facing seats does not justify testing boosters in a rear-facing position. Ford said the market trend appears to be away from vehicles with rear-facing seats (i.e., the third seats in some station wagons), and toward minivans and other vehicles that lack such seats. Chrysler also said that it does not anticipate using rear-facing passenger seats in the near future.

Following the ANPRM, NHTSA performed exploratory dynamic tests on booster seats to see how the performance of the restraints would vary when the boosters were rearward-facing as compared to forward-facing. Six shield-boosters and six belt-positioning seats were tested with a three-year-old and a six-year-old test dummy. The preliminary test data indicated that the restraints could adequately restrain the three-year-old dummy while rear-facing, but not the six-year-old dummy. However, the inability of the restraints to perform well rear-facing with the six-year-old dummy appeared to be caused by the design of the standard seat assembly used to test the boosters, instead of the design of the boosters themselves or the rear-facing orientation. The agency summarized its findings on this issue in a report titled "Booster Seat Evaluation: Belt Anchorage Location Effect and Performance in Rear-Facing Seats," VRTC-82-0236. The report states that the booster seats tested with the six-year-old dummy had head injury criterion (HIC) and chest acceleration values much greater than the limits specified in the standard. The report states that many of these values are questionable because the data exceeded the set limit for the accelerometer test device. It also states that:

> The nature of the sled tests makes these data somewhat artificial. Because the FMVSS No. 213 buck was not designed to be tested in the rear-facing mode, it did not appear to be a realistic evaluation. The soft seat back foam allowed the dummy and booster seat to translate directly backward into the seat until the dummies' heads hit the beam to which the shoulder belt anchors are attached. The rise in head acceleration (and HIC) caused by this impact would not be found in a real vehicle. This impact is also probably responsible for the high chest clips in the six-year-old. Although both dummies hit the rear beam, the six-year-old dummy hit it with greater force because of its larger sitting height.

In view of the questions about the suitability of the standard seat assembly to test boosters in a rear-facing orientation, NHTSA has decided not to propose a rear-facing test at this time Moreover, given the relatively few vehicles with rear-facing passenger seats, the agency does not believe that there is a safety need at this time to propose requiring that boosters be tested in a rear-facing orientation.

NHTSA has decided not to propose at this time that child seats intended for aircraft use be tested on a seat assembly with a "seat back breakover" feature. A breakover feature allows the back to rotate forward when pushed from behind. A child seated in a shield-type booster seat without a back may be compressed between the booster's shield and the seat back of the aircraft seat, potentially exposing the child to injury. However, NHTSA is aware that the FAA is undertaking an extensive testing program of booster seats on aircraft seats that have a breakover feature. NHTSA will review the results

of that testing to determine whether the present seat assembly used for certifying child seats on aircraft sufficiently represents an aircraft passenger seat.

NHTSA has decided not to propose new injury criteria for neck and abdominal loads for booster seats. At this time, there is not enough information about the suitability of an instrument for measuring neck loads to support proposing an amendment to specify injury criteria for the neck. There is also insufficient information about the tolerances of children of various age groups regarding particular levels of force levels on the neck. However, in its dummy development effort, the SAE has been evaluating possible instruments and criteria to measure neck loads, the results of which the agency will be closely following.

With regard to abdominal loads, NHTSA is not proposing criteria for such loads for the same reasons provided above for neck loads. There does not appear to be an available instrument that reliably measures abdominal loads. Further, the tolerances are not yet known. Moreover, Ms. Weber of UM–CPP commented that she does not believe the measurement of abdominal loading is a high priority at this time.

> Although we first raised the issue of abdominal loading from shield boosters, I believe that accident/injury data have not shown this to be a problem for children. This is probably due to the difference between a plastic shield and a lap belt, in that the latter is narrower and has definite edges. Although I am still not pleased with the performance of most shield boosters, I am hopeful that market demand for belt-positioning boosters will soon eliminate them. * * *

The safety need for injury criteria for abdominal loading, the availability and reliability of abdominal load measuring devices, and the appropriate injury criteria for abdominal loads for children are issues that NHTSA will address in considering future rulemaking.

Proposed Effective Date

NHTSA proposes that, in the event these proposed amendments are adopted, the effective date rule for the amendments would be 30 days after publication of the rule. The shorter than usual effective date is based on the effect of the amendments to relieve design restrictions.

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has prepared a preliminary regulatory evaluation (PRE) for this notice which discusses issues relating to the potential costs, benefits and other impacts of this regulatory action. While the agency tentatively believes that belt-positioning seats would improve safety, the magnitude of that improvement is not known. The agency believes the costs, if any, to manufacturers would be minor. The costs would result from testing and certifying belt-positioning seats.

A copy of this PRE has been placed in the docket for this rulemaking action. Interested persons may obtain copies of this PRE by writing to the docket section at the address provided at the beginning of this notice.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Of the eleven current child restraint manufacturers known to the agency (not counting factory-installed built-in restraints), employment data were found on nine of them. Of these nine, three qualify as small business, and one is on the borderline of being a small business. The two companies with no employment data are believed to be small businesses. These businesses do not comprise a substantial number of small entities that are affected by this rule.

Regardless of the number of small businesses, this proposed rule would not have a significant economic impact on these entities. The proposed rule would affect manufacturers only if they choose to manufacture a new type of booster seat. The proposed amendment could benefit manufacturers by allowing them to manufacture and sell a new product. However, the agency does not know how interested manufacturers are in belt-positioning child seats, and even if they were interested, the extent to which consumers would purchase the product.

Small organizations and governmental jurisdictions procure child restraint systems for programs such as loaner programs. However, only a small percentage of loaner programs carry booster seats. In any event, NHTSA believes that any small impact on price, either positive or negative, will not have a substantial impact on these loaner programs. Thus, these entities would not be significantly affected by this proposed rule.

Executive Order 12612

The proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency had determined that implementation of this action would not have significant impact on the quality of the human environment.

Comments on the Proposal

Interested persons are invited to submit comments on the proposal. It is requested, but not required, that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21.) Necessary attachments may be appended to these submission without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A

request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as set forth below.

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.213 would be amended by:

a. Revising the definition of "booster seat" in S4 and adding to S4, in alphabetical order, a definition of "belt-positioning seat";

b. Revising S5.3.2, S5.5.2(f), S5.5.2(n), S5.5.4, the introductory paragraph of S5.5.5 and the entire S5.5.5(f);

c. Adding S5.5.2(i), S5.5.5(l), S5.6.1.9 (a), (b) and (c);

d. Revising S5.6.4, S6.1.1.3, S6.1.2.1.1(a), and S7.3(a)(1).

The revised and added paragraphs would read as follows:

§ 571.213 Standard No. 213, Child Restraint System.

* * * * *

Belt-positioning seat means a child restraint system that positions a child on a vehicle seat to improve the fit of a vehicle Type II belt system on the child and that lacks any component, such as a belt system or a structural element, designed to restrain forward movement of the child's torso in forward impact.

* * * * *

Boster seat means either:

(1) A child restraint that consists of only a seating platform that does not extend up to provide a cushion for the child's back or head, or

(2) A belt-positioning seat.

* * * * *

S5.3.2 When installed on a vehicle seat, each add-on child restraint system, other than child harnesses and belt-positioning seats, shall be capable of being restrained against forward movement solely by means of a Type I seat belt assembly (defined in § 571.209) that meets Standard No. 208 (§ 571.208), or by means of a Type I seat belt assembly plus one additional anchorage strap that is supplied with the system and conforms to S5.4. Each belt-positioning seat shall be capable of being restrained solely by means of a Type II seat belt assembly (defined in § 571.209) that meets Standard No. 208 (§ 571.208).

* * * * *

S5.5.2 * * *

* * * * *

(f) One of the following statements, inserting the manufacturer's recommendations for the maximum mass, weight and height of children who can safely occupy this system, except that booster seats shall not be recommended for children of masses of less than 13.6 kg:

(i) This infant restraint is designed for use by children whose mass is ____kg (weight ____pounds) or less and whose height is ____mm (____inches) or less and who are capable of sitting upright alone; or

(ii) This child restraint is designed for use only by children whose mass is between ____and ____kg (weight ____and ____pounds) and whose height is ____mm (____inches) or less and who are capable of sitting upright alone; or

(iii) This child restraint is designed for use only by children whose mass is between ____and ____kg (weight ____and ____pounds) and are between ____and ____mm (____and ____inches) in height.

* * * * *

(i) Except for a booster seat which is recommended for use with both a vehicle's Type I and Type II seat belt assembly, one of the following statements, as appropriate:

(1) WARNING! USE ONLY THE VEHICLE'S LAP AND SHOULDER BELT SYSTEM WHEN RESTRAINING THE CHILD IN THIS BOOSTER SEAT; or,

(2) WARNING! USE ONLY THE VEHICLE'S LAP BELT SYSTEM, OR THE LAP BELT PART OF A LAP/SHOULDER BELT SYSTEM WITH THE SHOULDER BELT PLACED BEHIND THE CHILD, WHEN RESTRAINING THE CHILD IN THIS SEAT.

(ii) For a booster seat which is recommended for use with both a vehicle's Type I and Type II seat belt assemblies, the following statement:

WARNING! USE ONLY THE VEHICLE'S LAP BELT SYSTEM, OR THE LAP BELT PART OF A LAP/SHOULDER BELT SYSTEM WITH THE SHOULDER BELT PLACED BEHIND THE CHILD, WHEN RESTRAINING THE CHILD WITH THE [*insert description of the system element provided to restrain forward movement of the child's torso when used with a lap belt (e.g., shield)*], AND ONLY THE VEHICLE'S LAP AND SHOULDER BELT SYSTEM WHEN USING THIS BOOSTER WITHOUT THE [*insert above description*].

* * * * *

(n) Child restraint systems, other than belt-positioning seats, that are certified as complying with the provisions of section S8 shall be labeled with the statement "This Restraint is Certified for Use in Motor Vehicles and Aircraft." Belt-positioning seats shall be labeled with the statement "This Restraint is Not Certified for Use in Aircraft." This statement shall be in red lettering and shall be placed after the certification statement required by paragraph (e) of this section.

* * * * *

S5.5.4(a) Each built-in child restraint system other than a factory-installed built-in restraint shall be permanently labeled with the information specified in S5.5.5 (a) through (l). The information specified in S5.5.5 (a) through (j) and in S5.5.5(l) shall be visible when the system is activated for use.

(b) Each factory-installed built-in child restraint shall be permanently labeled with the information specified in S5.5.5 (f) through (j) and S5.5.5(l), so that the information is visible when the restraint is activated for use. The information shall also be included in the vehicle owner's manual.

S5.5.5 The information specified in paragraphs (a) through (l) of this section that is required by S5.5.4 shall be in English and lettered in letters and numbers that are not smaller than 10-point type and are on a contrasting background.

* * * * *

(f) One of the following statements, inserting the manufacturer's recommendations for the maximum mass, weight and height of children

who can safely occupy the system, except that booster seats shall not be recommended for children whose masses are less than 13.6 kg:

(i) This infant restraint is designed for use by children whose mass is ____kg (weight ____pounds) or less and whose height is ____mm (____inches) or less and who are capable of sitting upright alone; or

(ii) This child restraint is designed for use only by children whose mass is between ____and ____kg (weight ____and ____pounds) and whose height is ____mm (____inches) or less and who are capable of sitting upright alone; or

(iii) This child restraint is designed for use only by children whose mass is between ____and ____kg (weight ____and ____pounds) and are between ____and ____mm (____and ____inches) in height.

* * * * *

(l) In the case of a built-in booster that uses either the vehicle's Type I or Type II belt systems, a statement describing the manufacturer's recommendation for the maximum height and weight and mass of children who can safely occupy the system and how the booster should be used (e.g., with or without shield) with the different vehicle belt systems.

* * * * *

S5.6.1.9(a) Except for instructions for a booster seat that is recommended for use with both a vehicle's Type I and Type II seat belt assembly, the instructions shall include one of the following statements, as appropriate, and the reasons for them:

(i) WARNING! USE ONLY THE VEHICLE'S LAP AND SHOULDER BELT SYSTEM WHEN RESTRAINING THE CHILD IN THIS BOOSTER SEAT; or,

(ii) WARNING! USE ONLY THE VEHICLE'S LAP BELT SYSTEM, OR THE LAP BELT PART OF A LAP/SHOULDER BELT SYSTEM WITH THE SHOULDER BELT PLACED BEHIND THE CHILD, WHEN RESTRAINING THE CHILD IN THIS SEAT.

(b) The instructions for a booster seat which is recommended for use with both a vehicle's Type I and Type II seat belt assemblies shall include the following statement and the reasons therefor:

WARNING! USE ONLY THE VEHICLE'S LAP BELT SYSTEM, OR THE LAP BELT PART OF A LAP/SHOULDER BELT SYSTEM WITH THE SHOULDER BELT PLACED BEHIND THE CHILD, WHEN RESTRAINING THE CHILD WITH THE [*insert description of the system element provided to restrain forward movement of the child's torso when used with a lap belt (e.g., shield)*], AND ONLY THE VEHICLE'S LAP AND SHOULDER BELT SYSTEM WHEN USING THIS BOOSTER WITHOUT THE [*insert above description*].

(c) The instructions for belt-positioning seats shall include the statement, "This restraint is not certified for aircraft use," and the reasons for this statement.

* * * * *

S5.6.4 In the case of a built-in booster that uses either the vehicle's Type I or Type II belt systems, a statement describing the manufacturer's recommendations for the maximum height and weight and mass of children who can safely occupy the system and how the booster should be used (e.g., with or without shield) with the different vehicle belt systems.

* * * * *

S6.1.1.3 Attached to the seat belt anchorage points provided on the standard seat assembly (illustrated in Figures 1A and 1B) are Type 1 seat belt assemblies in the case of add-on child restraint systems other than belt-positioning seats, or Type 2 seat belt assemblies in the case of belt-positioning seats. These seat belt assemblies meet the requirements of Standard No. 209 (§ 571.209) and have webbing with a width of not more than 2 inches, and are attached to the anchorage points without the use of retractors or reels of any kind.

* * * * *

S6.1.2.1.1. *Test configuration I.*

(a) In the case of each add-on child restraint system other than a belt-positioning seat, a child harness, a booster seat with a top anchorage strap, or a restraint designed for use by physically handicapped children, install a new add-on child restraint system at the center seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1, except that the add-on restraint shall be secured to the standard vehicle seat using only the standard vehicle lap belt. A child harness, a booster seat (other than a belt-positioning seat) with a top anchorage strap, or a restraint designed for use by physically handicapped children shall be installed at the center seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1. A belt-positioning seat shall be installed at either outboard seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1, except that the belt-positioning seat shall be secured to the standard vehicle seat using only the standard vehicle lap and shoulder belt.

* * * * *

S7.3 *Standard test devices.*

(a) * * *

(1) For testing for motor vehicle use, a standard seat assembly consisting of a simulated vehicle bench seat, with three seating positions, which is described in Drawing Package SAS–100–1000 (consisting of drawings and a bill of materials) with addendum A (dated July 1, 1993).

(2) * * *

3. Figures 1A and 1B at the end of § 571.213 would be revised to read as follows:

BILLING CODE 4910-59-M

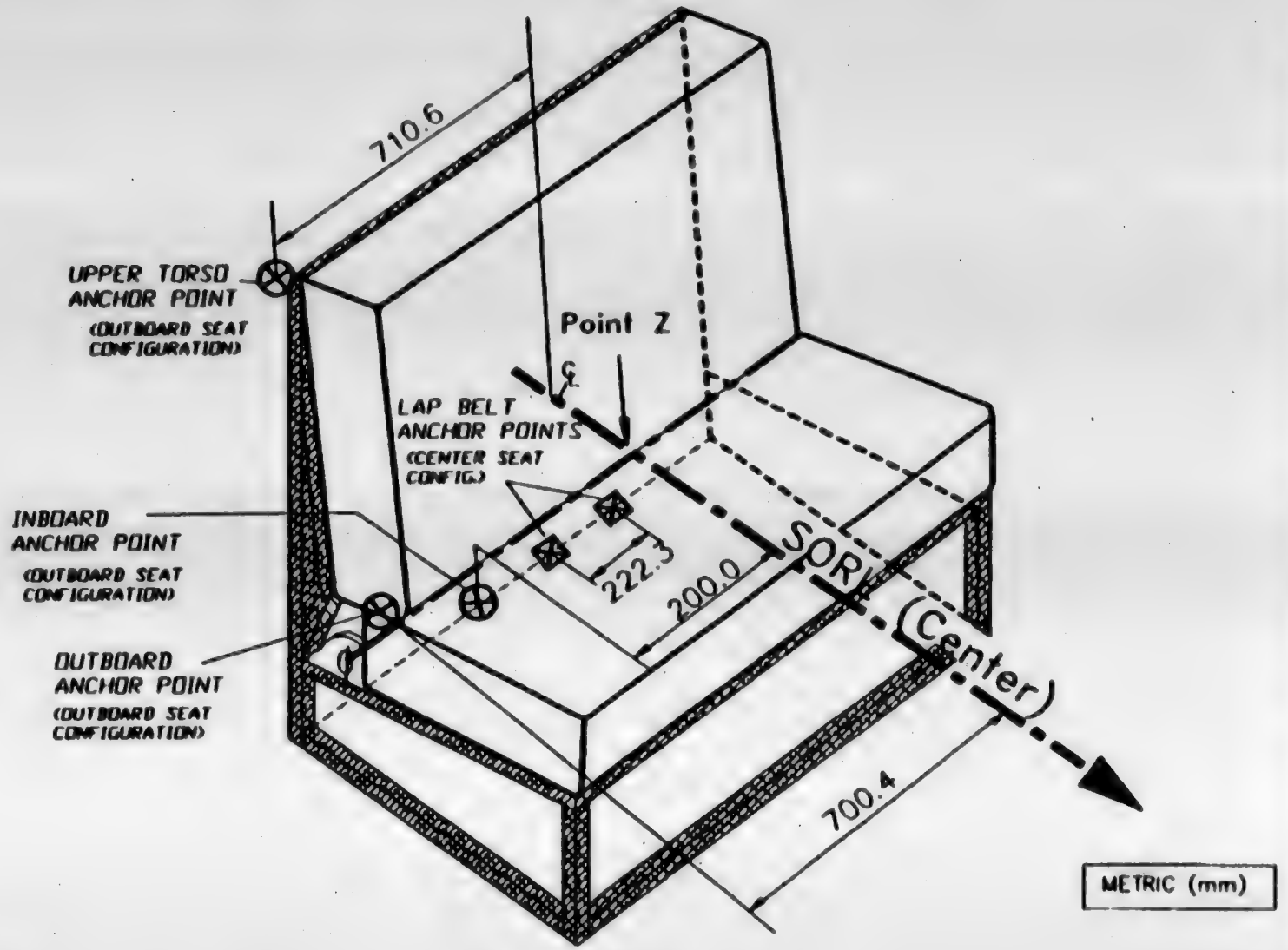

NOTES:
(1) Outboard Anchor Point Located 700.4 mm from the Center SORL
(2) Lap Belt Anchor Points are Symmetrically Located with Respect to the Center SORL

SEAT ORIENTATION REFERENCE LINE AND BELT ANCHORAGE POINTS LOCATIONS ON THE STANDARD SEAT ASSEMBLY

Figure 1A

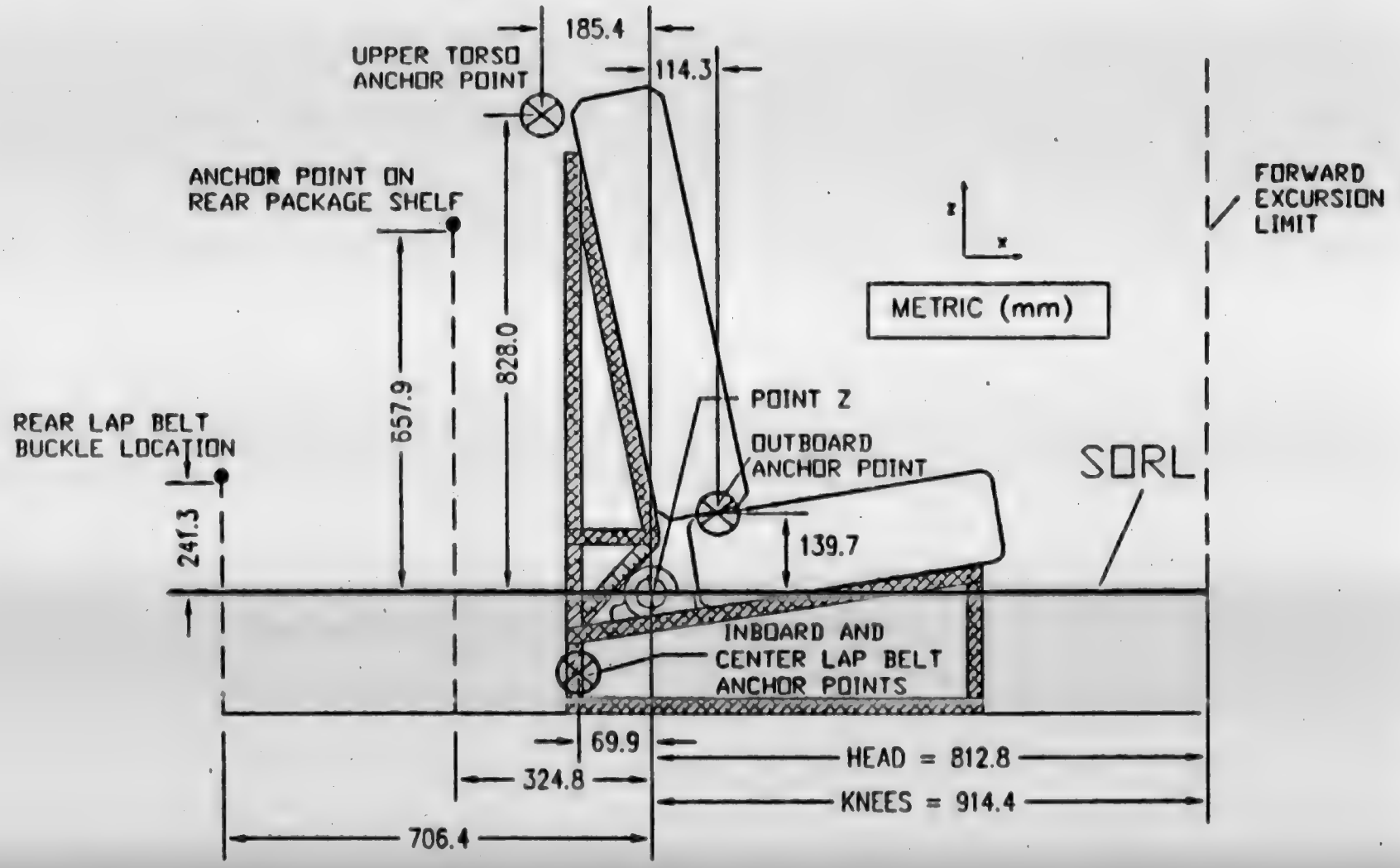

NOTES:
(1) Anchor Point on Rear Package Shelf Located 543.6 mm Right or Left of the Center SORL as shown in Fig. 1A

(2) Rear Lap Belt Buckle Located 177.8 mm Right or Left of the Center SORL as shown in Fig. 1A

LOCATIONS OF BELT ANCHORAGE POINTS AND FORWARD EXCURSION LIMIT ON THE STANDARD SEAT ASSEMBLY

Figure 1B

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Issued on August 27, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–21331 Filed 9–2–93; 8:45 am]

BILLING CODE 4910–59–M

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49 CFR Part 571

[Docket No. 93–58, Notice 01]

RIN 2127–AE74

Federal Motor Vehicle Safety Standards; Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to implement the agency's granting of a petition filed by Alloy Wheels International, Ltd., by amending Federal Motor Vehicle Safety Standard (FMVSS or Standard) No. 120, *Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars*, to allow manufacturers the choice of expressing the date of manufacture on wheel rims either numerically or by means of symbols. This proposal would allow manufacturers greater flexibility in meeting the requirements of the standard.

DATES: Comment closing date: Comments on this notice must be received on or before October 18, 1993.

Proposed Effective Date: If adopted, the amendment proposed in this notice would become effective 180 days after publication of the final rule.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., room 5109, Washington, DC 20590. Docket room hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., room 5307, Washington, DC 20590. Telephone: (202) 366–4803.

SUPPLEMENTARY INFORMATION: Paragraph S5.2 *Rim Marking*, FMVSS No. 120, *Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars*, currently requires each rim or, at the option of the manufacturer in the case of a singlepiece wheel, each wheel disc to be impressed with a designation indicating the source of the rim's published nominal dimensions, a rim size designation, the symbol "DOT," a designation identifying the manufacturer, and the date of manufacture.

Paragraph S5.2(e) of the standard requires that the date of manufacture be shown as the month, day, and year or as the month and year, at the option of the manufacturer. Whichever option is chosen, the date must be expressed in numerals. Thus, "May 10, 1993", may be expressed as:

$$51093, \frac{510}{93} \text{ or } \frac{93}{510}.$$

"May 1993" may be expressed as:

$$593, \frac{5}{93} \text{ or } \frac{93}{5}.$$

Alloy Wheels International, Ltd (AWI) petitioned this agency suggesting that S5.2(e) be amended to allow the date of manufacturer to be shown in the form of a symbol rather than a numerical sequence. AWI stated that they are a major supplier of alloy road wheels for both on and off-road vehicles, and that it is their practice to use a particular symbol to indicate the date of manufacture on the majority of the wheels they produce for a variety of customers in other countries.

Specifically, AWI suggested that S5.2(e) be amended to allow manufacturers the option of expressing the date of manufacture by means of a symbol resembling the face of a clock, approximately 19 millimeters (mm) (¾ inch) in diameter. The clock would be divided into 12 sections corresponding to the hour segments of a clock, except that the 12 sections would represent the months of the year. The section between the 12 o'clock and 1 o'clock positions would represent January, the section between 1 o'clock and 2 o'clock would represent February, and so on around the face of the symbol, in a clockwise direction. The month of manufacture would be shown by a dot in the center of the applicable section. The year would be shown by two numerals. For example, 1993 would shown as 93, in the center of the symbol. The day, if applicable, would be stamped in under the heading "Day." AWI asserted that this symbol would show the complete date of manufacture, in compliance with Standard 120, in a clear, understandable, and practical form.

After reviewing the AWI petition, the agency has decided to grant it and to issue this notice of proposed rulemaking to amend Standard 120 as suggested. NHTSA tentatively concludes that the date of manufacture shown on wheel rims can be clearly expressed in a format other than that currently specified in the standard. Accordingly, NHTSA proposes to amend S5.2(e) of Standard 120 to allow the date of manufacture impressed into rims or wheel discs to be expressed either by numerals or symbols, at the option of the manufacturers.

NHTSA recognizes that allowing the use of symbols to express the date of manufacture without specifying the particular symbol or symbols to be used could result in a proliferation of symbols. Therefore, to maintain a record of the various symbols likely to be used, the proposal would require any manufacturer that elects to use a symbol to notify NHTSA in writing of the symbol to be used, describe in detail how that symbol expresses the date of manufacture, provide an actual-size depiction of the symbol, and specify where the symbol will appear on the wheel. This one-time notification would have to be filed with NHTSA not less than 60 days before first use of the symbol and must include the name and address of each manufacturer utilizing that symbol and the name and address of the trademark owner of the symbol, if any. NHTSA would place all such notifications in the public docket, but manufacturers would nevertheless be required to provide their date code information to any person upon request.

This proposed rule would not have any retroactive effect. Under section 103(d), National Traffic and Motor Vehicle Safety Act (Act), 15 U.S.C. 1392(d), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act, 15 U.S.C. 1394, sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is neither "major" within the meaning of Executive Order 12291, nor "significant" within the meaning of the

Department of Transportation's regulatory policies and procedures. NHTSA has concluded that the effect of this action would be so minimal as not to warrant preparation of a full regulatory evaluation. NHTSA has evaluated this proposal and believes that it would impose no mandatory costs on manufacturers. This proposed amendment would merely permit manufacturers of wheel rims to express the date of manufacture of their rims in a manner other than that currently prescribed in S5.2(e), Standard 120. This amendment would not have an impact on the economy in excess of $100 million. Similarly, it would not result in a major change in costs or prices for consumers, individuals, industries, government, or any geographic region, nor would it significantly affect competition.

Regulatory Flexibility Act

NHTSA has considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

The agency believes that few, if any, wheel and/or rim manufacturers qualify as small businesses. Small businesses, small organizations and small governmental units would be affected by the proposed amendment only to the extent that they purchase rims and singlewheel discs marked as permitted by this amendment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act and has determined that implementation of this action would have no significant impact on the quality of the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The procedures in this proposed rule requiring manufacturers to notify NHTSA in writing of the symbols they propose to use, and describing those symbols, are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) is 5 CFR part 1320. The information collection requirements for 49 CFR 571.120 have been submitted to and approved by the OMB pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501, et seq.). This collection of information has been assigned OMB Control No. 2127–0503, *Consolidated Labeling Requirements for Motor Vehicle Tires and Rims*, and has been approved for use through December 31, 1995.

Request for Comments

Interested persons are invited to submit comments on this proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including the purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in 49 CFR part 512, the agency's confidential business information regulation.

All comments received on or before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.120 would be amended by revising S5.2(e) to read as follows:

§ 571.120 Standard No. 120, Tire selection and rims for motor vehicles other than passenger cars.

* * * * *

S5.2 * * *

(e) The month, day, and year or the month and year of manufacture, expressed either in numerals or by use of a symbol, at the option of the manufacturer. For example:

"September 4, 1976" may be expressed as:

$$90476, \frac{904}{76}, \text{ or } \frac{76}{904}.$$

"September 1976" may be expressed as:

$$976, \frac{9}{76}, \text{ or } \frac{76}{9}.$$

(1) Any manufacturer that elects to reflect the date of manufacture by means of a symbol shall notify NHTSA in writing, in duplicate, of the full names and addresses of all manufacturers and brand name owners utilizing that symbol and the trademark owner of that symbol, if any. The notification shall describe in narrative form and in detail how the month, day, and year or the month and year are depicted by the symbol. Such description shall include an actual-size graphic depiction of the symbol, showing and/or explaining the interrelationship of the component parts of the symbol as they will appear on the rim or singlewheel disc, including dimensional specifications, and where the symbol will be located on the rim or singlewheel disc. The notification shall be received by NHTSA at least 60 calendar days prior to first use of the symbol. The notification shall be mailed to the Office of Vehicle Safety Standards, Crash Avoidance Division, National Highway Traffic Safety

Administration, 400 Seventh Street, SW., Washington, DC 20590. All information provided this agency in accordance with this section will be placed in the public docket.

(2) Each manufacturer of wheels shall provide an explanation of its date of manufacture symbol to any person upon request.

* * * * *

Issued on August 27, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93-21332 Filed 9-2-93; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB97

Endangered and Threatened Wildlife and Plants; Proposal To List the Appalachian Elktoe as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the Appalachian elktoe (*Alasmidonta raveneliana*) as an endangered species under the Endangered Species Act of 1973, as amended (Act). The Appalachian elktoe is a freshwater mussel that is endemic to the upper Tennessee River system in the mountains of western North Carolina and eastern Tennessee. It was once fairly widely distributed in western North Carolina but has been eliminated from the majority of its historic range and reduced to short reaches of the Little Tennessee River, Nolichucky River, North Toe River, and Cane River. In Tennessee, the species is known only from its present distribution in the Nolichucky River. The species' range has been seriously reduced by impoundments and the general deterioration of habitat and water quality resulting from siltation and other pollutants contributed by poor land use practices and toxic discharges. Due to the species' limited distribution, any factors that adversely modify habitat or water quality in the stream reaches it now inhabits could further threaten the species. Comments and information pertaining to this proposal are sought from the public.

DATES: Comments from all interested parties must be received by November 2, 1993. Public hearing requests must be received by October 18, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. John Fridell at the above address (telephone 704/665-1195, Ext. 225).

SUPPLEMENTARY INFORMATION:

Background

The Appalachian elktoe (*Alasmidonta raveneliana*) was originally described by Lea (1834). This freshwater species has a thin but not fragile, subovate or kidney-shaped shell, reaching up to about 80 mm in length, 35 mm in height, and 25 mm in width (Clarke 1981). Juveniles of the species generally have a yellowish-brown periostracum (outer shell surface) while the periostracum of the adults is usually dark brown in color. Although rays are prominent on some shells, particularly in the posterior portion of the shell, many individuals have only obscure greenish rays. The shell nacre (inside shell surface) is shiny, often white to bluish-white, changing to a salmon, pinkish, or brownish color in the central and beak cavity portions of the shell; some specimens may be marked with irregular brownish blotches (adapted from Clarke 1981). A detailed description of the species' shell, with illustrations, is contained in Clarke (1981). Soft parts are discussed in Ortmann (1921).

Because of its rarity, little is known about the specifics of the biology, habitat requirements, and life history of the Appalachian elktoe. The species has been reported from relatively shallow, medium-sized creeks and rivers with cool, moderate- to fast-flowing water. It has been observed in gravelly substrates often mixed with cobble and boulders, in cracks in bedrock (Gordon 1991), and occasionally in relatively silt-free, coarse, sandy substrates (J. Alderman, North Carolina Wildlife Resources Commission, personal communication, 1992; personal observations, 1989 and 1991). Like other freshwater mussels, the Appalachian elktoe feeds by filtering food particles from the water column. The specific food habits of the species are unknown, but other freshwater mussels have been documented to feed on detritus, diatoms, phytoplankton, and zooplankton (Churchill and Lewis 1924). The reproductive cycle of the Appalachian elktoe is similar to that of other native freshwater mussels. Males release sperm into the water column; the sperm are then taken in by the females through their siphons during feeding and respiration. The females retain the fertilized eggs in their gills until the larvae (glochidia) fully develop. The mussel glochidia are released into the water, and within a few days they must attach to the appropriate species of fish, which they then parasitize for a short time while they develop into juvenile mussels. They then detach from their "fish host" and sink to the stream bottom where they continue to develop, provided they land in a suitable substrate with the correct water conditions. The mussel's life span, fish species its larvae parasitize, and many other aspects of its life history are unknown.

The Appalachian elktoe is known to be endemic to the upper Tennessee River system in western North Carolina and eastern Tennessee. Historical records for the species in North Carolina exist for the Nolichucky River system (Nolichucky River, county unknown); the Little Tennessee River system (Tulula Creek, Graham County); and the French Broad River system, including the Little River (Transylvania County), Swannanoa River (county unknown), Pigeon River (Haywood County), and French Broad River (Buncombe County and an unknown county) (Clarke 1981). An additional historical record of the Appalachian elktoe in the North Fork Holston River, Tennessee (S.S. Haldeman collection) is believed to represent a mislabeled locality (Gordon 1991).

From 1986 through the spring of 1992, biologists with the Service, Tennessee Valley Authority, North Carolina Wildlife Resources Commission, and Tennessee Technological University surveyed both historic and potential habitat of the species. Surveys of the French Broad River and its tributaries in North Carolina failed to locate any specimens of the Appalachian elktoe (R. Biggins, U.S. Fish and Wildlife Service, personal communications, 1989 and 1991; Alderman, North Carolina Wildlife Resources Commission, personal communication, 1990; M. Gordon, Tennessee Technological University, personal communications, 1991 and 1992; personal observations, 1986 through 1991). The species has also been extirpated from Tulula Creek in the Little Tennessee River system (personal observations, 1987 and 1992) and could not be found in any of the other major tributaries to the Little Tennessee River (Gordon, personal communication, 1991; S. Ahlstedt,

Tennessee Valley Authority, personal communication, 1992).

Only two populations of the species are known to survive. One population, discovered in 1987 by Tennessee Valley Authority biologists (Steven Ahlstedt and Charles Saylor), exists in the main stem of the Little Tennessee River in Swain and Macon Counties, North Carolina (Tennessee Valley Authority 1987; J. Widlak, U.S. Fish and Wildlife Service, personal communication, 1988; Biggins 1990; Gordon 1991; personal observations, 1988, 1991, and 1992). In the Nolichucky River system, the species is restricted to scattered locations along a short reach of the North Toe River in Yancey and Mitchell Counties in North Carolina (personal observations, 1991 and 1992) and the main stem of the Nolichucky River, Yancey and Mitchell Counties, North Carolina (Alderman, personal communication, 1991; personal observation, 1992), extending downriver into Unicoi County, Tennessee (personal observation, 1992). A single specimen of the Appalachian elktoe was also found in the Cane River in Yancey County, North Carolina (C. McGrath, North Carolina Wildlife Resources Commission, personal communication, 1992).

Habitat and water quality degradation/alteration resulting from impoundments, stream channelization, dredging, industrial and sewage effluent, and the runoff of silt and other pollutants from poorly implemented mining, construction/development, agricultural and past logging activities are believed to be the primary factors resulting in the elimination of the species from the majority of its historic range. Many of these factors threaten the only two remaining populations of the species.

The Appalachian elktoe was recognized by the Service in the May 22, 1984, **Federal Register** (49 FR 21675) and again in the January 6, 1989, **Federal Register** (54 FR 579) as a species being reviewed for potential addition to the Federal List of Endangered and Threatened Wildlife and Plants. This mussel was designated as a category 2 candidate for Federal listing on these candidate lists. Category 2 represents those species for which the Service has some information indicating that the taxa may be under threat, but sufficient information is lacking to prepare a proposed rule. Since that time, both historic and potential habitat of the species has been surveyed. Only two populations of the Appalachian elktoe are known to survive, and both of these populations are threatened by many of the same factors believed to have resulted in the extirpation of the species elsewhere within its historic range. Accordingly, on June 10, 1992, the Service reclassified the Appalachian elktoe as a category 1 candidate. Category 1 represents those species for which the Service has enough substantial information on biological vulnerability and threats to support proposals to list them as endangered or threatened species.

The Service has met and been in contact with various Federal and State agency personnel and private individuals knowledgeable about the species concerning the species' status and the need for protection provided by the Act. On April 20, 1992, and again on August 21, 1992, the Service notified appropriate Federal, State, and local government agencies in writing that a status review was being conducted and that the species might be proposed for Federal listing. A total of six written comments were received on these two notices. The North Carolina Wildlife Resources Commission (two written comments), the North Carolina Natural Heritage Program (two written comments), and an interested biologist expressed their support for the species' being proposed for protection under the Act; the U.S. Soil Conservation Service stated that they did not have any additional information on this species. No negative comments were received.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Appalachian elktoe (*Alasmidonta raveneliana*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Historic and recent collection records for the Appalachian elktoe indicate that the species was once fairly widely distributed throughout the upper Tennessee River system in North Carolina, including the French Broad River system, the Little Tennessee River system, and the Nolichucky River system (Clarke 1981, Biggins 1990, and Gordon 1991). In Tennessee, the species is known only from its present distribution in the Nolichucky River. The species apparently no longer exists in the French Broad River system, where it was once fairly widely distributed; and, with the exception of one small population each in the Nolichucky River system and the main stem of the Little Tennessee River, the species has been eliminated from these river systems as well. This decline in the species throughout its range has been attributed to several factors, including siltation resulting from mining, logging, agricultural, and construction activities; runoff and discharge of organic and inorganic pollutants from industrial, municipal, agricultural, and other point and nonpoint sources; habitat alterations associated with impoundments, channelization, and dredging; and other natural and human-related factors that adversely modify the aquatic environment. Many of these same factors threaten the two remaining populations of the species.

The Little Tennessee River population, the healthiest of the two remaining populations, inhabits a relatively short stretch of the river located between Emory Lake at Franklin, Macon County, North Carolina, and Fontana Reservoir in Swain County, North Carolina. This population was likely reduced in size by the impoundment of these two reservoirs and is presently being threatened by industrial and sewage effluent (primarily from the town of Franklin but also originating elsewhere within the river's watershed) and heavy silt loads and other pollutants (e.g., fertilizers, pesticides, heavy metals, oil, salts, organic wastes, etc.) from residential and industrial developments, road and highway construction/improvement projects, crop and livestock farming activities, and other land disturbance activities occurring throughout the river's watershed.

The Nolichucky River population appears to be restricted to scattered pockets along short reaches of the main stems of the Nolichucky, North Toe, and Cane Rivers. The primary threats to this population appear to be associated with the runoff or discharge of silt and other pollutants from surface-mining operations, construction projects, and a variety of agricultural activities occurring at numerous locations in the river's watershed. Much of the Nolichucky River in North Carolina contains heavy loads of sediments from past and ongoing land disturbance activities within its watershed, and suitable habitat for the Appalachian elktoe appears to be limited in this river.

Also, because both extant populations of the Appalachian elktoe are restricted

to short river reaches, each is extremely vulnerable to extirpation from a single catastrophic event, such as a toxic chemical spill or an activity resulting in a major river channel/habitat modification.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

This freshwater mussel species is not commercially valuable, but because it is extremely rare it could be sought by collectors. While collecting or other intentional take is not presently identified as a factor contributing to the species' decline, because the Appalachian elktoe is extremely restricted in range, such take could pose a significant threat to the species' continued existence if it should occur. Federal listing would help control any indiscriminate taking of individuals.

C. Disease or Predation

Since 1982, biologists and commercial mussel fishermen have reported extensive mussel die-offs in rivers and lakes throughout the United States. The cause(s) of many of these die-offs is unknown, but disease has been suggested as a possible factor.

Shells of the Appalachian elktoe are often found in muskrat middens along the reach of the Little Tennessee River where the species still exists and occasionally in middens along the Nolichucky River. The species also is presumably consumed by other mammals, such as racoons and mink. While predation is not thought to be a significant threat to a healthy mussel population, it could, as suggested by Neves and Odum (1989), limit the recovery of endangered mussel species or contribute to the local extirpation of mussel populations already depleted by other factors. Predation would be of primary concern to the Nolichucky River population of the Appalachian elktoe, which appears to be existing only in low numbers.

D. The Inadequacy of Existing Regulatory Mechanisms

The States of North Carolina and Tennessee prohibit taking of fish and wildlife, including freshwater mussels, for scientific purposes without a State collecting permit. However, State regulations do not generally protect the species from other threats. The Little Tennessee River population of the species is indirectly provided some Federal protection from Federal actions and activities through the Endangered Species Act, due to the fact that at least a portion of this population inhabits the same stretch of river as the federally threatened spotfin chub (*Cyprinella (=Hybopsis) monacha*) and the federally endangered little-wing pearly mussel (*Pegias fabula*). However, the Nolichucky River population of the species is not afforded this protection. Federal listing would provide additional protection for the Appalachian elktoe throughout its range by requiring Federal permits in order to take the species and by requiring Federal agencies to consult with the Service when activities they fund, authorize, or carry out may affect the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Only two populations of this species are known to still exist. Both are relatively small, particularly the Nolichucky River population, and they are geographically isolated from one another. This isolation prohibits the natural interchange of genetic material between populations, and the small population size reduces the reservoir of genetic variability within the populations. It is possible that both the remaining populations of the Appalachian elktoe may already be below the level required to maintain long-term genetic viability. Because they are isolated from one another, natural repopulation of an extirpated population would be impossible without human intervention.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Appalachian elktoe (*Alasmidonta raveneliana*) as an endangered species. The species has been eliminated from the French Broad River system, and its range has been greatly reduced in the other two river systems (the Little Tennessee River and the Nolichucky River systems) in which the species historically occurred. Presently, only two small isolated populations are known to survive. These populations are threatened by a variety of factors, including road construction activities, residential and commercial development, mining activities, farming and logging activities, sewage and industrial effluent, and other manmade and natural factors adversely affecting the aquatic environment. Due to the species' history of population losses and the extreme vulnerability of the two surviving populations, endangered status appears to be appropriate for this species (see "Critical Habitat" section for a discussion of why critical habitat is not being proposed for the Appalachian elktoe).

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service's regulations [50 CFR 424.12(a)(1)] state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for this species. Such a determination would result in no known benefit to the Appalachian elktoe, and designation of critical habitat could further threaten the species.

Section 7(a)(2) and regulations codified at 50 CFR Part 402 require Federal agencies to ensure, in consultation with and with the assistance of the Service, that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat, if designated. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. (See "Available Conservation Measures" section for a further discussion of Section 7.) As part of the development of this proposed rule, Federal and State agencies were notified of the Appalachian elktoe's general distribution, and they were requested to provide data on proposed Federal actions that might adversely affect the species. No specific projects were identified. Should any future projects be proposed in areas inhabited by this mussel, the involved Federal agency will already have the general distributional data needed to determine if the species may be affected by their action; and if needed, more specific distributional information would be provided.

Regulations promulgated for the implementation of Section 7 of the Act provide for both a "jeopardy" standard and a "destruction or adverse modification" of critical habitat standard. Due to the highly precarious status of the Appalachian elktoe, any

significant adverse modification or destruction of the species' habitat would also likely jeopardize the species' continued existence, thereby triggering both standards. Therefore, no additional protection for the mussel would accrue from critical habitat designation that would not also accrue from listing of the species. If the species is listed, habitat protection for the Appalachian elktoe will be accomplished through the Section 7 "jeopardy" standard and Section 9 prohibitions against take.

In addition, Appalachian elktoe is very rare, and taking for scientific purposes and private collection could pose a threat if specific site information were released. The publication of critical habitat maps in the **Federal Register** and local newspapers and other publicity accompanying critical habitat designation could increase the collection threat and increase the potential for vandalism during the often controversial critical habitat designation process. The locations of populations of this species have consequently been described only in general terms in this proposed rule. Any existing precise locality data would be available to appropriate Federal, State, and local government agencies from the Service office described in the "Addresses" section; from the Service's Raleigh Field Office, P.O. Box 33726, Raleigh, North Carolina 27636–3726; the Service's Cookeville Field Office, 446 Neal Street, Cookeville, Tennessee 38501, and from the North Carolina Wildlife Resources Commission, North Carolina Natural Heritage Program, Tennessee Wildlife Resources Agency, and Tennessee Department of Conservation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

The Service has notified Federal agencies that may have programs which could affect the species. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or issuance of permits for reservoir construction, hydroelectric facilities construction and operation, river channel maintenance, stream alterations, mining activities, wastewater discharges, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations have been resolved so that species have been protected and the project objectives have been met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes to enhance the propagation or survival of the species and/or for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Biggins, R. G. 1990. Alasmidonta raveneliana (Lea 1834) Appalachian elktoe. In: A report on the conservation status of North Carolina's freshwater and terrestrial molluscan faunas. Prepared by North Carolina Scientific Council on Freshwater and Terrestrial Mollusks. 246 pp.

Churchill, E. P., Jr., and S. I. Lewis. 1924. Food and Feeding in freshwater mussels. Bull. U.S. Bur. Fish. 39:439–471.

Clarke, A. H. 1981. The Tribe Alasmidontini (Unionidae: Anodontinae), Part 1: *Pegias, Alasmidonta*, and *Arcidens*. Smithsonian Contributions to Zoology, 326:1–101.

Gordon, M. E. 1991. Species account for the Appalachian elktoe (*Alasmidonta raveneliana*). Unpublished report to The Nature Conservancy. 5 pp.

Lea, I. 1834. Observations on Naiades (etc.). Transactions of the American Philosophical Society, new series, 51:135–229, plates 1–19.

Neves, R. J., and M. C. Odum. 1989. Muskrat predation on endangered freshwater mussels in Virginia. Jour. Wildl. Manage. 53(4):939–940

Ortmann, A. E. 1921. The Anatomy of Certain Mussels from the Upper Tennessee. Nautilus, 34(3):81–91.

Tennessee Valley Authority. 1987. Fish Collection Report to the North Carolina Wildlife Resources Commission.

Author

The primary author of this proposed rule is John A. Fridell, U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806 (704/665–1195, Ext. 225).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order, under CLAMS, to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•	•	•
Clams							
•	•	•	•	•	•	•	•
Elktoe, Appalachian	*Alasmidonta raveneliana.*	U.S.A. (NC, TN)	NA	E	.....	NA	NA
•	•	•	•	•	•	•	•

Dated: August 12, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–21559 Filed 9–2–93; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083093A]

50 CFR Part 227

Listing Endangered and Threatened Species and Designating Critical Habitat: Petition To List Mid-Columbia River Summer Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of petition and request for information.

SUMMARY: NMFS has received a petition to list mid-Columbia River summer chinook salmon (*Oncorhynchus tshawytscha*) and to designate critical habitat under the Endangered Species Act of 1973 (ESA). In accordance with section 4 of the ESA, NMFS has determined that the petition presents substantial scientific information indicating that the action may be warranted. Therefore, NMFS is initiating a status review to determine if the petitioned action is warranted. To ensure that the review is comprehensive, NMFS is soliciting information and data regarding this action.

DATES: Comments and information must be received by November 2, 1993.

ADDRESSES: Copies of the petition are available from, and comments should be submitted to Merritt Tuttle, Chief, Environmental and Technical Services Division, NMFS, 911 NE 11th Avenue, Room 620, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT:

Garth Griffin, NMFS, Northwest Region, (503) 230–5430 or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the ESA contains provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce to add a species to or remove a species from the List of Endangered and Threatened Wildlife. Section 4(b)(3)(A) of the ESA requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary shall determine whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted.

Petition Received

On June 3, 1993, the Secretary of Commerce received a petition from American Rivers, Northwest Environmental Defense Center, Sierra Club, Northwest Resource Information Center, Friends of the Earth, Inland Empire Public Lands Council, Washington Wilderness Coalition, North Central Washington Chapter Audubon Society, Trout Unlimited, Washington Trout, and the Federation of Flyfishers

to list mid-Columbia River summer chinook salmon, and to designate critical habitat under the ESA. As required for a petition to list a Pacific salmon stock (see May 18, 1992, 57 FR 21056), the petition presents information on and discusses whether the petitioned population qualifies as a "species" under the NMFS' "Policy on Applying the Definition of Species under the Endangered Species Act to Pacific Salmon" (November 20, 1991, 56 FR 58612). The Assistant Administrator for Fisheries, NOAA, has determined that the petition presents substantial scientific information indicating that the petitioned action may be warranted. Under section 4(b)(3)(B) of the ESA, this determination requires that a review of the status of the mid-Columbia River summer chinook salmon be conducted to determine if the petitioned action is warranted.

Species Determination

The first determination in the status review will be to determine whether or not the petitioned stock qualifies as a "species" under the ESA, in accordance with NMFS' "Policy on Applying the Definition of Species under the Endangered Species Act to Pacific Salmon." While the petitioner presented information in this regard, the evidence presented on reproductive isolation is equivocal. Therefore, accurate and complete information on this criterion is essential to conduct a thorough review.

Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA, a species can be determined to be endangered or threatened for any of the following reasons: (1) present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the best scientific and commercial data available after taking into account any efforts made by any state or foreign nation to protect the species.

Biological Information Solicited

To ensure that the review is complete and is based on the best available scientific and commercial data, NMFS is soliciting information and comments concerning (1) whether or not this stock qualifies as a "species" under the ESA and (2) whether or not the stock is endangered or threatened based on the above listing criteria. Specifically, NMFS is soliciting information on the reproductive isolation and significance of the mid-Columbia summer chinook salmon compared to mid-Columbia River fall chinook salmon and concerning the present and historic status of the mid-Columbia River summer and fall chinook salmon. Copies of the petition are available (see **ADDRESSES**).

It is important to note that the determination to list a species is based solely on the basis of the best available scientific and commercial information regarding a species' status without reference to possible economic or other impacts of such a determination (50 CFR 424.11(b)).

Critical Habitat

NMFS is also requesting information on areas that may qualify as critical habitat for the mid-Columbia River summer chinook salmon (see also October 15, 1991, 56 FR 51684). Areas that include the physical and biological features essential to the recovery of the species should be identified. Areas outside the present distribution should be also be identified if such areas are essential to the recovery of the species. Essential features should include but are not limited to, (1) space for individual and population growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring; and generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

For areas potentially qualifying as critical habitat, NMFS is requesting information describing (1) the activities that affect the area or could be affected by the designation and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation.

The economic cost to be considered in the critical habitat designations under the ESA is the probable economic impact "of the (critical habitat) designation upon proposed or ongoing activities" (50 CFR 424.19). NMFS must consider the incremental costs specifically resulting from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

Data, information, and comments should include (1) supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the commenter's name, address, and association, institution, or business.

Dated: August 31, 1993.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources.

[FR Doc. 93–21579 Filed 8–31–93; 1:55 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 170
Friday, September 3, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Exemption of Compartment 10 Salvage Timber Sale Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project designed to recover insect-killed, infested, and at-risk timber is exempt from appeal under provisions of 36 CFR part 217.

SUMMARY: Mountain pine beetle activity has caused mortality of lodgepole pine trees in the Little North Fork of Big Creek area on the Rexford Ranger District, Kootenai National Forest. The Rexford District Ranger proposed a salvage timber sale to recover stands of dead, dying, and at-risk lodgepole pine in the affected area. The District Ranger has determined, through the Environmental Assessment (EA) and supporting information, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. The salvage harvest must be accomplished quickly to obtain adequate timber growth and improve long-term productivity, to reduce the risk of uncontrolled wildfire, and to contribute to a continuing supply of timber products by salvaging merchantable material before it deteriorates in value.

EFFECTIVE DATE: Effective on September 3, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Thompson; Rexford District Deputy Ranger; Kootenai National Forest; 1299 HWY. 93 North; Eureka, MT 59917. Telephone: 406–296–2536.

SUPPLEMENTARY INFORMATION: Mountain pine beetle activity has killed lodgepole pine trees on 202 acres of the Little North Fork of Big Creek Area. The identified dead, dying, and at-risk timber is located within lands designated as suitable for timber management and assigned to Management Area 12 (Kootenai Forest Plan, September 1987). The Rexford Deputy District Ranger proposed a salvage timber harvest of the affected area. The proposal is designed to meet the following needs: (1) Obtain adequate timber growth and improve long-term productivity; (2) reduce the risk of an uncontrolled wildfire; and (3) contribute to a continuing supply of timber products by salvaging merchantable timber products before they deteriorate in value.

An interdisciplinary team of Forest Service specialists was formed to develop and analyze management options. The Compartment 10 Salvage Project EA is the result of the team's efforts during 1992 and 1993. Four alternatives (three action and one no action) were analyzed in detail. The selected alternative would salvage approximately 2 million board feet of timber from 202 acres. Access would be from existing roads; no new road construction would occur.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible to recover merchantable timber, to improve big-game habitat, and to reduce the accumulation of dead fuel. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

> "Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part."

Based upon the information presented in the EA for the Compartment 10 Salvage Sale Project and District Ranger's Decision Notice, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: August 30, 1993.

Christopher D. Risbrudt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93–21539 Filed 9–2–93; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee will be held on Wednesday, September 29, 1993, from 6 p.m. until 8 p.m. at the Edison Walthall Hotel, 225 East Capitol Street, Jackson, Mississippi 39201. The purpose of the meeting is to plan for future SAC activities and orientation of new members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 25, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–21477 Filed 9–2–93; 8:45 am]

BILLING CODE 6335–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase from People who are Blind or Severely Disabled.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 4, 1993.

ADDRESS: Committee for Purchase from People who are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 23, 1993, the Committee for Purchase from People who are Blind or Severely Disabled published notice (58 FR 21706) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning the capability of qualified nonprofit agencies to provide the service, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial (excluding Commissary and Base Exchange), Grand Forks Air Force Base, North Dakota

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 93–21584 Filed 9–2–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 4, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 2, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following commodities have been proposed for addition to the Procurement List for production by the nonprofit agency listed:

Rubber Stamp, Self-Inking

7520–00–NSH–0062 ½" x ½"
7520–00–NSH–0063 1½" x 2⅜"
7520–00–NSH–0064 2" x 2⅝"
7520–00–NSH–0065 1" x 1¾"
7520–00–NSH–0066 1" x 2"
7520–00–NSH–0067 1" x 2½"
7520–00–NSH–0068 1" x 3"
7520–00–NSH–0069 1" x 4"
7520–00–NSH–0070 1⅜" x 2⅛"
7520–00–NSH–0071 1⅜" x 2¼"
7520–00–NSH–0072 1" x 1⅜"
7520–00–NSH–0073 ½"
7520–00–NSH–0074 ¾"
7520–00–NSH–0075 ½"
7520–00–NSH–0076 ¾"
7520–00–NSH–0077 ⅜" x 1½"
7520–00–NSH–0078 ¾" x 2"
7520–00–NSH–0079 ⅞" x 2¼"
7520–00–NSH–0080 1¼" x 2½"
7520–00–NSH–0081 1⅛"
7520–00–NSH–0082 1⅞"

(Requirements for Travis Air Force Base, California)

Nonprofit Agency: Pride Industries, Roseville, California.

Hat, Man's, Service
8405–01–190–0028 thru –0036

Nonprofit Agency: ORC Industries, Inc., LaCrosse, Wisconsin.

E. R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 93–21585 Filed 9–2–93; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Information Systems Agency Scientific Advisory Group; Meeting

AGENCY: Defense Information Systems Agency (DISA), DOD.

ACTION: Notice of closed meeting.

SUMMARY: The DISA Scientific Advisory Group will hold a closed meeting on September 8–9, 1993, at Four Skyline Place, suite 400, 5113 Leesburg Pike, Falls Church, Virginia. The purpose of the meeting is to address technology and management planning issues relating to DoD's information management initiatives and DISA's roles and missions. This is a closed meeting due to the discussion of classified information that requires protection in the interest of National Defense. (5 U.S.C. 552(c)(1)).

FOR FURTHER INFORMATION CONTACT:

Associate Director, Defense Information Systems Agency, 701 South Courthouse Road, Arlington, Virginia 22204–2199 at (703) 746–3643.

Dated: August 30, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–21514 Filed 9–2–93; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0103]

Clearance Request for Procurement Integrity

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0103).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Procurement Integrity.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Public Law 100–679, the Office of Federal Procurement Policy Act Amendments of 1988, as amended by section 814 of Public Law 101–189, requires that contractors certify, prior to execution of each contract, modification or extension in excess of $100,000 with respect to conduct prohibited by the Act.

The information obtained in the certification will be used by the contracting officer to ensure that prohibited conduct specified in the Act is identified and in determining the responsibility of the firm for contract award.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows:

Respondents, 20,000; *responses per respondent,* 20; *total annual responses,* 400,000; *preparation hours per response,* 5 minutes; and *total response burden hours,* 33,333.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows:

Recordkeepers, 20,000; *hours per recordkeeper,* 40 minutes; and *total recordkeeping burden hours,* 13,333.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0103, Procurement Integrity, in all correspondence.

Dated: August 23, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 93–21468 Filed 9–2–93; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.015]

National Resource Centers Program for Foreign Language and Area Studies or Foreign Language and International Studies and Foreign Language and Area Studies Fellowships Program; Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: These programs make awards to institutions of higher education for general assistance in strengthening nationally recognized centers of excellence in foreign language and area or international studies and for fellowship assistance to meritorious students undergoing advanced training in modern foreign languages and related area or international studies.

Deadline for Transmittal of Applications: November 3, 1993.

Deadline for Intergovernmental Review: January 2, 1994.

Applications Available: September 3, 1993.

Available Funds: For FY 1994 the Administration has requested $17,575,000 for new awards under the National Resource Centers Program and $12,767,000 for the Foreign Language and Area Studies Fellowships Program. However, the actual level of funding is contingent on final congressional action.

For the National Resource Centers Program, it is anticipated that the funds requested could support approximately 105 awards to centers at an average level of approximately $167,000 per award. The range of awards is estimated to be $87,000 to $235,000. While a significant number of awards available for FY 1994 may be used for international affairs or topic-oriented centers, most of the funds will help insure the maintenance of a minimal national capability in modern foreign languages and area studies for every major region of the world. Awards may be used for undergraduate centers or for comprehensive centers, which include undergraduate, graduate, and professional school components.

For the Foreign Language and Area Studies Fellowships Program, it is anticipated that approximately $12,767,000 will be available for institutional awards for fellowships for foreign language study on the major regions of the world, as well as area and international studies. Approximately 1,050 individual awards (625 academic year and 425 summer) could be allocated by grantee institutions with FY 1994 funds at this level of funding. The Secretary would include, in institutional grants, funds for tuition and fees as well as subsistence, and, in some cases, travel allowances for each fellowship award.

For FY 1994, subsistence allowance levels will be at least $8,000 for an academic year fellowship and $1,500 for a summer intensive language fellowship. In the event that increased funding becomes available, subsistence allowance levels may be increased; Fellowship program applicants therefore may wish to propose budgets with subsistence allowances of $9,000 for an academic year fellowship and $1,750 for a summer intensive language fellowship. Budgets for fellows who travel to summer language programs on other campuses or abroad may also include up to $1,000 each in travel funds. The amount of the award will not include allowances for dependents. Budgetary adjustments will be made, as necessary, during the grant negotiation process.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months, beginning August 15, 1994.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in

34 CFR Parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for these programs in 34 CFR Parts 655, 656, and 657.

Priorities for National Resource Centers:

Absolute Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 656.23(a)(1), (a)(2), and (a)(4), the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds only applications that meet both of these absolute priorities.

Absolute Priority 1: Projects that include the initiation or expansion of training activities for teachers and curriculum coordinators in elementary and secondary schools and in institutions of higher education on the language(s), area studies, or general topic of the center.

Absolute Priority 2: (a) Projects that focus on a specific area or country; or

(b) Projects that focus on international studies or topics or issues of global importance or both.

Invitational Priority: The Secretary is also interested in applications that meet the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets these invitational priorities does not receive competitive or absolute preference over other applications.

(1) Projects that focus substantively on specific countries or world areas, particularly:

(a) Africa.
(b) Canada.
(c) East Asia.
(d) Eastern Europe, Russia, and Eurasia.
(e) Inner Asia.
(f) Latin America.
(g) Middle East.
(h) Pacific Islands.
(i) South Asia.
(j) Southeast Asia.
(k) Western Europe.

(2) Projects that include the following activities:

(a) Development and implementation of plans for evaluating and improving foreign language programs in ways compatible with developing national standards.

(b) Summer intensive language programs that are conducted in cooperation with other institutions of higher education and offer instruction providing the equivalent of a full academic year's work in language training.

(c) Special library projects for acquiring or cataloging unique collections carried out in cooperation with other institutions of higher education or both.

(d) Initiation or strengthening of linkages between language and area studies programs and professional disciplines, including education.

(e) Developing new courses or curriculum in disciplines and current issues that are currently underrepresented in the center's basic program. Current issues might include topics such as:

(i) Environmental or health issues or both.

(ii) Political, cultural, legal, and economic aspects of transition to democracy.

(iii) Nationalism and ethnic identity issues.

Applicants should be aware that, in addition to any proposed priority activities, every application must describe all activities related to the selection criteria in 34 CFR 656.21 or 34 CFR 656.22.

Priorities for Foreign Language and Area Studies Fellowships:

Competitive Priorities: Under 34 CFR 75.105(c)(2)(i) and 34 CFR 657.22 the Secretary gives preference to applications that meet the following competitive priorities. The Secretary awards up to 20 points to an application that meets these competitive priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

(1) Applicants that propose to make fellowship awards to students in a variety of humanities and social science disciplines, as well as professional fields.

(2) Applicants that assign lowest consideration, in the selection of fellows, to—

(a) Students who already possess language fluency equivalent to educated native speakers in the language for which the award is sought; and

(b) Students who are taking the first 12 semester hours or the equivalent in Chinese, French, German, Italian, Japanese, Russian, and Spanish language instruction.

For Applications or Information Contact: Dr. Ann I. Schneider, Ms. Michelle D. LeSourd, or Ms. Jane L. Jordan, U.S. Department of Education, 400 Maryland Avenue, SW., room 3053, ROB–3, Washington, DC 20202–5331. Telephone (202) 708–7283. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1122.

Dated: August 27, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93–21437 Filed 9–2–93; 8:45 am]

BILLING CODE 4000–01–P

National Assessment Governing Board; Hearings

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of hearings.

SUMMARY: The Council of Chief State School Officers, under contract to the National Assessment Governing Board (NAGB), U.S. Department of Education, is announcing three public hearings. These hearings will be conducted as part of the Council's contract for NAGB for the purpose of developing an assessment framework and specifications for the 1996 National Assessment of Education Progress (NAEP) Arts Education Consensus Project. Public and private parties and organizations with an interest in arts education and assessment are invited to present written and oral testimony to the Council.

Each hearing will focus on the first draft of a framework for the national assessment of arts education for NAEP which will be given to a national sample of students in grades 4, 8, and 12. The results of the hearings are particularly important because they will provide broad public input in developing the arts education assessment framework to be used in the planned national NAEP examination in 1996. This assessment will measure American students' progress in arts education. These hearings are being conducted pursuant to Public Law 100–297, Section 6(E), which states that "Each learning area assessment shall have goal statements devised through a national consensus approach, providing for active participation of teachers, curriculum specialists, local school administrators, parents and concerned members of the general public."

DATES: The dates of the three public hearings have been set as follows:

- October 1, 1993 in Seattle, Washington.
- October 5, 1993 in Chicago, Illinois.
- October 7, 1993 in Washington, DC.

The first hearing is scheduled from 2 p.m. to 6 p.m. and will be hosted by the Seattle Art Museum in Seattle, Washington. The second hearing is sponsored by the Chicago Art Institute, Chicago, Illinois from 1 p.m. to 5 p.m. The third and final hearing will be held from 1 p.m. to 5 p.m. at the Kennedy

Center for the Performing Arts in Washington, DC. Persons desiring to present oral statements at any of these hearings shall submit a notice of intent to appear, postmarked no fewer than ten (10) days prior to the scheduled meeting date. The scheduling of oral presentations cannot be guaranteed for notices of intent received less than 10 days prior to the hearing.

Notices of Intent to present oral statements shall be mailed to: Council of Chief State School Officers, One Massachusetts Avenue NW., suite 700, Washington, DC, Attn: Bonnie Verrico—Public Hearings.

Individuals may also request a copy of the draft framework, prepared by the 1996 NAEP Arts Education Consensus Project committees and staff. This document represents the project's first attempt at outlining the national arts education assessment for 1996, and will serve as the springboard for public comment and review. Requests for the draft framework may be made to the Council (address above), or by phone to the numbers listed below.

LOCATIONS: For detailed information on the exact locations of all public hearings, please contact Council offices at (202) 336–7021.

WRITTEN STATEMENTS: Written Statements may be submitted for the public record in lieu of oral testimony up to 30 days after each hearing. These statements should be sent directly to the Council (see aforementioned address) in the following format:

I. Issues and Questions Addressed:

Testimony should respond to the content and layout of the draft arts education assessment framework, and the following questions:

1. Does the 1996 Arts Education Assessment combine feasibility and vision?
2. Does the framework contain appropriate assessment content for students in grades 4, 8, and 12?
3. Does the framework address what counts as learning in the arts?
4. Is the form of the arts education assessment appropriate for a large-scale national assessment?
5. Will this assessment contribute to the creation of a resonant system of curriculum, instruction, and assessment?

II. Summary:

Briefly summarize the major points and recommendations presented in the testimony.

III. Discussion:

The narrative should provide information, points of view and recommendations that will enable the Council to consider all factors relevant to the question(s) the testimony addresses. Respondents are encouraged to limit this section of their written statements to five (5) pages. The discussions may be appended with documents of any length providing further explanation.

Written statements presented at each hearing will be accepted and incorporated into the public record. All written statements should follow the above format, as much as it is possible.

HEARINGS OBJECTIVES AND PROCEDURES: The Council seeks participation in the hearings from a broad spectrum of individuals and organizations in the sharing of opinions and recommendations regarding arts education proficiencies, knowledge, and those skills and strategies to be assessed at grade levels 4, 8, and 12. The list of speakers shall, on the one hand, provide a wide range of viewpoints and interests, but also be organized to respect the time constraints of the hearing schedule.

The goal of the hearings is to provide a medium for maximum input and guidance from teachers, curriculum specialists, local school administrators, artists, parents and concerned members of the general public. Following a brief introduction to the project by the Council of Chief State School Officers, the majority of the session will be devoted to presentations by scheduled speakers.

As listed in the "Dates" section above, speakers wishing to present statements shall file notices of intent. To assist the Council in appropriately scheduling speakers, the written notice of intent to present oral testimony should include the following information:

(1) Name, address and telephone number of each person to appear;

(2) Affiliation (if any);

(3) A brief statement of the issues and/or concerns that will be addressed; and

(4) Whether a written statement will be submitted for the record.

Individuals who do not register in advance will be permitted to register and speak at the meeting in order of registration, if time permits. Speakers should plan to limit their total remarks to no more than five (5) minutes. While it is anticipated that all persons will have an opportunity to speak, time limits may not allow this to occur. The Council will make the final determination on selection and scheduling of speakers.

All written statements presented at the hearings will be accepted and incorporated into the public record. Written statements submitted in lieu of oral testimony should be received no later than 30 days after each hearing in order to be included in the public record. However, while written statements received after this date will be accepted, inclusion in the public record cannot be guaranteed.

A staff member from the Council of Chief State School Officers will preside at each of the hearings. The proceedings will be audiotaped. The hearings can also be signed for the hearing-impaired, upon advance request.

ADDITIONAL INFORMATION: Additional information is available from the Council offices for anyone wishing to obtain more specifics on the assessment project. A brochure and informational paper have been developed by the Council and its subcontractors. A draft assessment framework document will be made available to interested parties prior to the hearings in October. Individuals desiring additional information on a specific hearing should contact Council offices at (202) 336–7021.

STEPS AFTER HEARING: The Council will review and analyze all comments and options received in response to this announcement. A report of the outcomes of these hearings will be made available to the public upon request after December 1993.

The results of this public testimony, along with the Council's Arts Education Consensus committee work, will be used to formulate recommendations for the 1996 NAEP Arts Education Assessment for the National Assessment Governing Board. The Board, charged with developing the assessment framework and specifications, will take final action on the Council's recommendations in the spring of 1994.

A record of all Council proceedings will be kept at the Council of Chief State School Officers until March 1994 at which time all records will be transferred to the National Assessment Government Board, and will be available for public inspection.

Dated: August 31, 1993.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 93–21560 Filed 9–2–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Opportunity for Additional Public Comment, Environmental Impact Statement on Environmental Restoration and Waste Management Activities at the Idaho National Engineering Laboratory

AGENCY: Department of Energy—Idaho Operations Office.

ACTION: Notice of Opportunity for public comment on expanding the scope of analysis of spent nuclear fuel in the Environmental Impact Statement on Environmental Restoration and Waste Management Activities at the Idaho National Engineering Laboratory (INEL ER&WM EIS) in response to the Order of the U.S. District Court for the District of Idaho (June 28, 1993) and public comments.

SUMMARY: The Department of Energy (DOE) invites public comment on the proposed expansion of the scope of analyses of the transportation, receipt, processing, and storage of spent nuclear fuel to be included in the Environmental Impact Statement (EIS) on Environmental Restoration and Waste Management (ER&WM) activities at the Idaho National Engineering Laboratory (INEL). As more fully described below, DOE proposes to expand the scope of this EIS to include those elements specified in the Court's Order, including the alternative of transporting, receiving, processing, and storing spent nuclear fuel (SNF) at sites other than the INEL. The SNF to be considered includes that from: (1) The Fort St. Vrain nuclear power station in Colorado; (2) Naval reactors (Naval warships and ship prototypes); (3) domestic university research reactors; (4) other DOE facilities; and (5) foreign research reactors. The alternative sites would include at least the DOE sites at Hanford and Savannah River, as well as a number of naval facilities (identified below in **SUPPLEMENTARY INFORMATION**) at which naval reactor fuel is currently handled.

The Notice of Intent (NOI) to prepare this EIS was issued on October 5, 1992 (57 FR 45773) and proposed a scope which included the analysis of waste and SNF management and technology development, as well as of other ER&WM activities at the INEL. The proposed scope did not include analysis of the potential impacts of transporting, receiving, processing, and storing SNF at sites other than the INEL. Two alternatives, the "proposed action" and "no-action" were initially proposed in that NOI. Written comments and suggestions on the proposed scope were invited, and DOE conducted five public scoping hearings in Idaho during the scoping period which ended December 4, 1992.

On June 28, 1993, as an outgrowth of civil lawsuits involving the DOE, Public Service Company of Colorado (owner of the Fort St. Vrain power station), and the State of Idaho, the U.S. District Court for the District of Idaho ordered the DOE to prepare a comprehensive, site-wide environmental impact statement on the direct and indirect environmental effects of all major federal actions involving the transportation, receipt, processing, and storage of spent nuclear fuel at the INEL. The scope ordered by the Court includes evaluating the alternative of transporting, receiving, processing, and storing spent nuclear fuel, including spent fuel from Naval vessels, at sites other than the INEL. DOE intends to comply with the Court Order for a comprehensive EIS by expanding the scope of the INEL ER&WM EIS which was previously noticed and is currently in preparation, with respect to its analyses of SNF.

On August 9, 1993, the Secretaries of Energy and the Navy, and the Governor of Idaho reached an agreement (Idaho Agreement) which, among other elements, requires DOE to issue an Implementation Plan for the EIS ordered by the Court not later than November 1, 1993. DOE proposes to complete the Implementation Plan currently being prepared by expanding its scope to include both those elements specified in the Court's Order, including the alternative of transporting, receiving, processing, and storing spent nuclear fuel at sites other than the INEL, as well as those elements resulting from the earlier public scoping process.

Since the proposed scope of the INEL ER&WM EIS is being expanded in response to prior public comments and in compliance with the order of the Court, and will involve analyses of transporting, receiving, processing and storing SNF at sites other than INEL, this notice advises the public and interested parties of an opportunity to comment orally or in writing on the DOE proposal to expand the scope of that EIS, as described above.

To ensure that the Implementation Plan and the INEL ER&WM EIS address the full range of issues, DOE invites comments from interested agencies, organizations and the general public on the Court-ordered expansion of scope to include potential alternative sites for transport, receipt, processing and storage of SNF. Potential alternative sites to be considered in response to the Court Order were identified based on criteria outlined below under **SUPPLEMENTARY INFORMATION**.

DOE wishes to provide the opportunity for public input to the expanded scope of this EIS at all the potentially affected sites and to include, to the extent feasible, consideration of that input in the initial issuance of the Implementation Plan to be issued by November 1, 1993. Accordingly, in addition to accepting written comments by mail, DOE is establishing a toll-free telephone number which may be called by interested parties to provide comments by recording of spoken comments, or by sending written comments by facsimile.

Interested persons calling the toll-free number (1–800–682–5583) will be asked by the operator to register for the record by providing their names and addresses. Callers will then receive instructions on how to submit oral or facsimile comments. Oral comments, which will be recorded electronically and transcribed, should be limited to five minutes. While the comment line will be available 24 hours per day, seven days per week, operators will be available only from 8 a.m. to 10 p.m. Eastern time, Monday through Friday. Persons calling after these hours or on weekends will be asked electronically to register and record comments. Comments may also be submitted by facsimile, 24 hours per day, seven days per week. Written comments will also be accepted by mail (see **ADDRESSES** below).

Transcripts of the recorded spoken comments and copies of the facsimile and written comments will be made available for inspection at the following locations during regular business hours, Monday through Friday:

1. INEL Public Reading Room, University Place, 1776 Science Center Drive, Idaho Falls, ID
2. Idaho Falls Public Library, 457 Broadway, Idaho Falls, ID
3. Pocatello Public Library, 812 East Clark, Pocatello, ID
4. Twin Falls Public Library, 434 2nd Street East, Twin Falls, ID
5. Boise Public Library, 715 South Capitol Boulevard, Boise, ID
6. University of Idaho Library, Government Document Department, Rayburn Street, Moscow, ID
7. US DOE Reading Room, University of SC, Aiken Campus, University Library, 2nd Floor, University Parkway, Aiken, SC
8. US DOE Public Reading Room, Federal Building, room 157, 825 Jadwin Avenue, Richland, WA
9. Freedom of Information Reading Room, room 1E–190, Forrestal

Building, 1000 Independence Avenue SW., Washington, DC.

Copies of this material will also be made available to public libraries in communities near the Naval shipyards and Naval prototype sites identified in this Notice.

DATES: The public comment period on the expanded scope of the EIS will extend until October 4, 1993. All comments received by the end of the public comment period will be considered. Comments received after the end of the comment period will be considered to the extent practicable. However, time may not permit those comments received after September 30 to be considered in the Implementation Plan due to be issued no later than November 1. Should comments received after September 30 require an amended Implementation Plan, one will be issued no later than January 14, 1994.

ADDRESSES: Written comments should be addressed to: Mr. Rob S. Rothman, ER&WM EIS Project Manager, U.S. Department of Energy, Idaho Operations Office, P.O. Box 1625, Idaho Falls, Idaho, 83415–1570. Envelopes should be marked "Attention: INEL ER&WM EIS".

FOR FURTHER INFORMATION: Those not desiring to submit comments at this time, but who would like to receive a copy of the Implementation Plan and/or the Draft EIS (DEIS) when they are issued, should notify Rob Rothman (see **ADDRESSES** above) or call the toll-free information number (1–800–682–5583). When the DEIS is complete, its availability will be announced in the **Federal Register** and in the local news media, and comments will be solicited on its contents.

General information on the DOE NEPA process can be obtained from the Office of the Assistant Secretary for Environment, Safety and Health, Ms. Carol Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Ms. Borgstrom may be reached by phone at (202) 586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION: In November 1989, the Secretary of Energy established the DOE Office of Environmental Restoration and Waste Management (ER&WM) to establish and implement a systematic, integrated DOE-wide approach to site cleanup activities and waste management practices, including the management of spent nuclear fuel (SNF). In January of 1990, the Secretary determined that a Programmatic Environmental Impact Statement (PEIS) on the DOE ER&WM activities would be prepared, and a NOI to prepare the ER&WM PEIS was published on October 22, 1990 (55 FR 42633). The public scoping process for the PEIS extended to February 19, 1991 and included a total of 23 public hearings held nationwide. Over 1,200 people provided approximately 7,000 comments during that process. Comments relevant to SNF received during those hearings will be considered in the development of the Implementation Plan for the ER&WM Environmental Impact Statement (EIS) for the Idaho National Engineering Laboratory (INEL).

The PEIS will assess the potential environmental consequences of alternative programmatic approaches to implementing future waste management activities, and the cleanup of contamination from past operations. The Draft Implementation Plan for the PEIS was issued for public comment in January 1992 and noted that "even though SNF is not considered a waste, the PEIS will assume the need for and evaluate the impacts of interim storage and treatment for disposal of DOE owned SNF." [In this Notice, "interim storage" and "storage" have the same meaning; i.e., retention in a safe and secure manner pending final disposal offsite.]

The NOI to prepare an EIS on Environmental Restoration and Waste Management Activities at the Idaho National Engineering Laboratory was issued on October 5, 1992 (57 FR 45773) and proposed a scope which included the continuation of existing ER&WM activities at INEL as well as planned near-term projects and new activities that could be initiated within a 5 to 10 year time frame following the issuance of a Record of Decision (ROD). The activities to be analyzed included decontamination and decommissioning of existing facilities, environmental cleanup and restoration, waste and SNF management and technology development, as well as other ER&WM support activities at INEL.

The NOI indicated that there was a need to increase existing SNF storage capacity for ongoing and proposed new receipts, while new technologies to prepare SNF for ultimate disposal are investigated and tested. It was proposed that the increased storage capacity would be obtained by modifying existing facilities. The receipt of SNF at INEL's Idaho Chemical Processing Plant (ICPP) from the Naval Reactors Facility (NRF) at INEL and its storage at ICPP were to be analyzed in the INEL ER&WM EIS, but alternatives to examination of SNF at NRF were not to be analyzed as part of the ER&WM activities included in the proposed action.

The scoping period of 60 days ended December 4, 1992, during which public scoping meetings were held in 5 cities in Idaho. DOE received a total of 1022 oral and written comments in the form of 194 statements during the comment period.

On June 28, 1993, as an outgrowth of civil lawsuits involving the DOE, Public Service Company of Colorado, and the State of Idaho, the U.S. District Court for the District of Idaho ordered the DOE to "prepare a comprehensive, site-wide environmental impact statement—that discloses and evaluates the following:

"A. The direct and indirect environmental effects of all major federal actions involving the transportation, receipt, processing, and storage of spent nuclear fuel at the INEL;

"B. How each major federal action involving the transportation, receipt, processing, and storage of spent nuclear fuel at the INEL, in conjunction with all related or connected actions, as well as past, present and reasonably foreseeable future actions, cumulatively and synergistically impact the quality of the human environment;

"C. A reasonable range of alternatives to each major federal action involving the transportation, receipt, processing, and storage of spent nuclear fuel at the INEL—including the abandoning of these actions (i.e. the "no-action" alternative) and the alternative of transporting, receiving, processing, and storing spent nuclear fuel at sites other than the INEL."

The Order issued by the Court applies to SNF from Naval reactors as well as other SNF which DOE has committed in the past or may propose in the future to accept at INEL. The other SNF includes, for example, that from the Fort St. Vrain, Three Mile Island Unit 2 and Peachbottom Unit 1 nuclear power reactors, and SNF from other power reactors currently at the West Valley, NY, site, as well as from DOE and domestic research and test reactors and U.S. origin SNF from foreign research reactors (FRR). Some of that power reactor and FRR SNF is currently stored at INEL. Naval SNF is being held at Naval facilities where ships are being refueled or defueled. Both DOE and the Department of the Navy, as a cooperating agency under NEPA, are proceeding expeditiously to satisfy the requirements imposed by the Court.

On August 9, 1993, the Secretaries of Energy and the Navy, and the Governor of Idaho reached an agreement (Idaho Agreement) which, among other things, requires DOE to issue an Implementation Plan for the EIS ordered

by the Court not later than November 1, 1993. DOE proposes to complete the Implementation Plan currently being prepared for the INEL ER&WM EIS by expanding its scope to include all the elements specified in the Court's Order, including the alternative of transporting, receiving, processing, and storing spent nuclear fuel at sites other than the INEL, in addition to the changes in alternatives for ER&WM activities already planned to be included which resulted from the earlier public scoping process. In view of the requirements of the Court's Order with respect to the analysis of SNF, the INEL ER&WM EIS will include the programmatic analysis of SNF alternatives that was being prepared for the PEIS.

This notice of opportunity for comment is an invitation to all interested individuals, agencies, and organizations to submit their views on the expanded scope of the INEL ER&WM EIS ordered by the Court, including views on issues related to the impacts of transporting, receiving, processing, and storing spent nuclear fuel, including Naval SNF, at sites other than the INEL. Because of the variety of potential origins and destinations of SNF to be evaluated, the alternative locations to be considered include not only the DOE sites for SNF storage, but also Naval facilities for storage and examination of Naval SNF, and potential ports at which FRR SNF may be received for transshipment.

The DOE sites, other than INEL, which are proposed to be evaluated as alternative locations for transporting, receiving, processing and storing of non-Naval reactor SNF, were identified on the basis of their existing facilities and prior experience with handling and storage of large quantities and varied types of SNF. They include:

Savannah River Site, Aiken, SC
Hanford Reservation, Richland, WA

The Naval and DOE facilities (other than INEL) at which storage and examination of Naval SNF will be assessed include:

Norfolk Naval Shipyard, Portsmouth, VA
Portsmouth Naval Shipyard, Kittery, ME
Pearl Harbor Naval Shipyard, Honolulu, HI
Puget Sound Naval Shipyard, Bremerton, WA
Kesselring Site, West Milton, NY
Hanford Reservation, Richland, WA
Savannah River Site, Aiken, SC

Neither Charleston Naval Shipyard, Charleston, SC, nor Mare Island Naval Shipyard, Vallejo, CA, are being considered since they are planned to be closed and returned to the local community for their use and thus would be unavailable for extended federal use.

At this time, DOE proposes to include consideration of the potential impacts of accepting U.S. origin SNF from FRR in evaluating the cumulative impacts of transportation, receipt, processing, and storage of SNF. The pending proposal to accept such SNF in support of U.S. non-proliferation policy, however, would be the subject of a separate NEPA evaluation, and decisions on the import of such SNF, its port(s) of entry, and the transportation, receipt, processing and storage of FRR SNF within the United States would be made on the basis of that separate EIS. DOE invites comments on this proposed scoping decision, further details of which are provided below.

In analyzing the potential impacts of SNF from FRR in this EIS, the maximum potential impacts of the proposal to accept such SNF, no matter what port of entry or storage site may eventually be chosen, will be determined. Thus, for example, although the separate FRR NEPA documentation will consider several different ports of entry, including low population density ports, this EIS will analyze only high population density ports to disclose the maximum potential impacts in the highly improbable case of a very severe accident in port. Similarly, although the separate FRR NEPA documentation will consider a variety of potential distances travelled overland between a port and a DOE receiving site, this EIS will consider the longest potential distances travelled overland in order to disclose the maximum potential impacts that could result from the transportation of SNF from FRR. Thus, for analytical purposes only, the following locations are proposed for evaluation of potential impacts in port and in transit:

Atlantic Coast: New York, NY. Hampton Roads, VA
Gulf of Mexico: Houston, TX, New Orleans, LA
Pacific Coast: Long Beach, CA. Seattle, WA

As indicated by the preceding discussion of the different types and origins of SNF to be analyzed, the locations of facilities potentially to be considered in the alternative expanded scope of the INEL ER&WM EIS in response to the Order by the Court include places that were not previously identified in the public scoping processes conducted in support of the INEL ER&WM EIS and the PEIS. To enhance public awareness of the existence and nature of this opportunity for comment, advertisements will be placed in local news media at the following locations:

Kittery, ME
Buffalo, NY
Norfolk, VA
Columbia, SC
Savannah, GA
Houston, TX
Idaho Falls, ID
Twin Falls, ID
Bremerton, WA
Honolulu, HI
Spokane, WA
Richmond, VA
New York, NY
Windsor, CT
Aiken, SC
Atlanta, GA
Oak Ridge, TN
Denver, CO
Moscow, ID
Richland, WA
Long Beach, CA
Washington, DC
Hood River, OR
Olympia, WA
Albany, NY
Newport News, VA
Charleston, SC
Augusta, GA
New Orleans, LA
Boise, ID
Pocatello, ID
Seattle, WA
Vallejo, CA
Portland, OR
Nashville, TN
Sacramento, CA

Issued in Washington, DC this 1st day of September 1993.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 93–21702 Filed 9–2–93; 8:45 am]

BILLING CODE 6450–01–P

Bonneville Power Administration

Notice of Floodplain Involvement for the Hot Springs-Garrision Tap Line Project

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Floodplain Involvement.

SUMMARY: BPA is proposing to relocate approximately (1.6 kilometers) 1 mile of the Hot Springs-Garrision 230-kV line to provide a tap for Montana Power Company's (MPC) Rattlesnake Substation located in Missoula County, Missoula, Montana. The tap will provide a solution for MPC's need to upgrade service to the Missoula area. The section of the Hot Springs-Garrision 230-kV line from tower 59/2 to 60/2 will

be removed and the right-of-way abandoned. The line would be relocated to an existing right-of-way for which MPC has a transmission line easement and where two MPC 161-kV lines are located. The relocated BPA line would cross the floodplain of Rattlesnake Creek. In a connected action, MPC will be expanding their substation to accommodate several additional bays for the 230-kV tap line.

In accordance with 10 CFR part 1022, BPA will prepare a floodplain assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain.

DATE: Comments are due to the address below no later than September 20, 1993.

FOR FURTHER INFORMATION ON THIS PROPOSED ACTION CONTACT: Comments and requests for further information should be addressed to: John Taves—EFBG, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–4995, fax number 503–230–3984.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–4600 or 800–472–2756.

SUPPLEMENTARY INFORMATION: The floodplain that would be crossed by this project is located in Township 13 North, Range 19 West, sections 2, 3, 10, and 11. The towers would be located on high enough ground to span the floodplain, though some clearing of riparian vegetation would be needed. The existing creek crossing would be abandoned and allowed to revert back to its natural state. There appear to be no feasible alternatives to crossing the floodplain as the line is located on the east side of Rattlesnake Creek and the substation is located on the west side. In order for the line to be tapped at the substation, the creek must be crossed.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), DOE will prepare a floodplain assessment for this proposed DOE action. After BPA issues the assessment, a floodplain statement of findings will be published in the **Federal Register**. Maps and further information are available from BPA at the address shown above.

Issued in Portland, Oregon, on August 24, 1993.

Randall W. Hardy,

Administrator, Bonneville Power Administration.

[FR Doc. 93–21583 Filed 9–2–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 2541–004 North Carolina]

Cascade Power Co.; Availability of Draft Environmental Assessment

August 30, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new minor license for the existing Cascade Project, located on the Little River in Transylvania County, North Carolina, near the city of Brevard, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 2541–004 to all comments. For further information, please contact Mr. Carl Keller, Environmental Assessment Coordinator, at (202) 219–2831.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21498 Filed 9–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2446–001 Illinois]

Commonwealth Edison Co.; Availability of Draft Environmental Assessment

August 30, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new major license for the existing Dixon Hydroelectric Project, located on the Rock River, in the town of Dixon, in Lee County, Illinois, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that approval of the project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please reference Project No. 2446–001 to the comments. For further information, please contact Michael Strzelecki, Environmental Assessment Coordinator, at (202) 219–2827.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21499 Filed 9–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2360–022, et al.]

Hydroelectric Applications [Minnesota Power & Light Co., et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* New Major License.

b. *Project No.:* 2360–022.

c. *Date filed:* December 27, 1991.

d. *Applicant:* Minnesota Power & Light Company.

e. *Name of Project:* St. Louis River Hydroelectric Project.

f. *Location:* On the St. Louis, Cloquet, Whiteface, Skunk, Beaver, and Otter Rivers in Carlton and St. Louis Counties, Minnesota.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Stephen A. Kopish, Hydro Operations Manager, Minnesota Power & Light Company, 30 West Superior Street, Duluth, Minnesota 55802, (218) 722–2641.

. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* October 4, 1993.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* This project includes nine developments. Four of these developments—Fond du Lac, Thomson, Scanlon, and Knife Falls—include power generating facilities.

The Fond du Lac development consists of: (1) an 80-foot-high concrete gravity arch dam; (2) a 160-acre, 1,280-acre-foot reservoir; (3) an 18-foot-diameter, 268-foot-long penstock; (4) a powerhouse containing one generating unit with a total installed capacity of 12 MW; and (5) appurtenant facilities.

The Thomson development consists of: (1) 25 individual dam segments with heights ranging from 6 feet to 50 feet; (2) a 375-acre, 2,400-acre-foot reservoir; (3) a 2.5-mile-long, 36-foot-wide power canal; (4) six 400-foot-long, 8-foot-diameter penstocks; (5) a powerhouse containing six generating units with a total installed capacity of 72.6 MW; and (6) appurtenant facilities.

The Scanlon development consists of: (1) 4 individual dam segments with heights ranging from 9 feet to 24 feet; (2) a 74-acre, 876-acre-foot reservoir; (3) a powerhouse containing four generating units with a total installed capacity of 1,600 kW; and (4) appurtenant facilities.

The Knife Falls development consists of: (1) 6 individual dam segments with heights ranging from 8 feet to 20 feet; (2) a 235-acre, 1,763 acre-foot reservoir; (3) a powerhouse containing three generating units with a total installed capacity of 2,400 kW; and (4) appurtenant facilities.

The remaining five developments—Fish Lake, Rice Lake, Island Lake, Boulder Lake, and Whiteface—include only dams and storage reservoirs. Project features for those developments are presented in the following table:

Development	No. of dams	Maximum dam height (ft)	Reservoir surface area (acres)	Reservoir storage capacity (acre-ft)
1. Fish Lake	1	25	5,000	38,000
2. Rice Lake	2	12	3,107	16,000
3. Island Lake	3	57	11,200	171,520
4. Boulder Lake	4	26	4,100	30,300
5. Whiteface	5	39	4,800	46,900

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the average annual generation from this project to be 390 GWh.

m. *Purpose of Project:* All project energy generated would be put into the applicant's electrical grid and distributed to its customers.

n. *This notice also consists of the following standard paragraph:* A4 and D9.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the Minnesota Power & Light Company, located at 30 West Superior Street, Duluth, Minnesota 55802, or by calling Mr. Stephen A. Kopish at (218) 722–2641.

2 a. *Type of Application:* Minor License.

b. *Project No.:* 11351–000.

c. *Date filed:* October 7, 1992.

d. *Applicant:* Old Columbia Dam Electric Facility.

e. *Name of Project:* Old Columbia Dam Project.

f. *Location:* On the Duck River, Columbia Township, Maury County, Tennessee.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Debra Whitehead, 841 McCord Hollow Road, Hohenwald, TN 38462, (615) 796–4139.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Deadline Date:* See paragraph D10. (October 4, 1993).

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

1. *Description of Project:* The proposed project consists of the following features: (1) an existing dam 22 feet high and 572 feet long; (2) an existing reservoir with a surface area of 80 acres; (3) an existing powerhouse containing two turbine-generating units at a total rated capacity of 800 kilowatts; (4) an existing 0.1-mile, 46-kilovolt transmission line; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 4 megawatthours. The dam is owned by the City of Columbia Water and Power Department.

m. *Purpose of the Project:* All project energy generated would be utilized by the applicant for sale.

n. *This notice also consists of the following standard paragraphs: A4 and D10.*

0. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Ms. Debra Whitehead, 841 McCord Hollow Road, Hohenwald, TN 38462 (615) 796–4139.

3 a. *Type of Application:* Request for Acceleration of License Expiration Date.

b. *Project No.:* 2777–004.

c. *Date Filed:* December 22, 1992.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Upper Salmon Falls.

f. *Location:* On the Snake River in Twin Falls and Gooding Counties, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert W. Stahman, Idaho Power Company, 1221 West Idaho Street, P.O. Box 70, Boise, ID 83707, (208) 383–2676.

i. *FERC Contact:* Donald Wilt, (202) 219–2676.

j. *Comment Date:* October 12, 1993.

k. *Description of Project:* Idaho Power Company (licensee) has requested that the Commission accelerate the expiration date of its license for the Upper Salmon Falls Project from May 31, 1999, to February 28, 1998. The licensee's Upper Salmon Falls Project No. 2777 is located just upstream from its Lower Salmon Falls Project No. 2061 and the Bliss Project No. 1975. Environmental studies now underway for the three-project reach are expected to be completed in 1995. The filing of

license applications or one application for these three projects and the preparation of an environmental assessment for the entire reach will be facilitated by acceleration of the Upper Salmon Falls expiration date.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

4 a. *Type of Application:* Amendment of Exemption.

b. *Project No.:* 4413–006.

c. *Date Filed:* March 11, 1993.

d. *Applicant:* Kennebago Hydro Corporation.

e. *Name of Project:* Kennebago Project.

f. *Location:* On the Kennebago River and Kennebago Lake, in Franklin County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Lewis W. Stuart, General Contractor, P.O. Box 2395, Cundy's Harbor, ME 04011, (207) 729–9798.

i. *FERC Contact:* Paul Shannon, (202) 291–2866.

j. *Comment Date:* October 12, 1993.

k. *Description of Amendment:* Kennebago Power Corporation proposes to amend its exemption to show the correct installed capacity of the Kennebago Project. The project contains a single 200–Kw unit at the Mahaney Dam Development. This unit is different from the rebuilt 100–Kw unit that was authorized in the exemption. Also, the project contains a single 700–Kw generating unit at the Kennebago Falls Dam Development. This is different than the two options for the development which were authorized in the exemption. Option (1) consisted of two units with rated capacities of 180 Kw and 588 Kw. Option (2) consisted of three units with rated capacities of 100 Kw, 180 Kw, and 504 Kw.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

5 a. *Type of Application:* New License for Major Project.

b. *Project No.:* 2069–003.

c. *Date Filed:* December 18, 1992.

d. *Applicant:* Arizona Public Service Company.

e. *Name of Project:* Childs-Irving Hydroelectric Project.

f. *Location:* Entirely within the Coconino and Tonto National Forests, on Fossil Creek, in Yavapai and Gila Counties, Arizona. T11N, R6E, T11N, R7E; T12N, R6E; T12N, R7E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Fearl M. Parker, Environmental Licensing, Arizona Public Service Company, P.O. Box 53999, Station 9364, Phoenix, Arizona 85072–3999.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 291–2827.

j. *Deadline date for interventions and protests:* October 29, 1993.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The project as licensed includes two existing developments. The Irving development consists of: (1) A 5-foot-high concrete diversion structure on Fossil Creek; (2) a 16,578-foot-long flume; (3) a 3,278-foot-long penstock; (4) a powerhouse containing one generating unit with a total installed capacity of 1,600 Kw; (5) a tailrace returning water to the flume of the Childs development; (6) a 6.31-mile-long transmission line leading to the powerhouse of the Childs development; and (7) appurtenant facilities.

The Childs development consists of: (1) A 5-foot-high diversion structure on Fossil Creek located 350 feet upstream of the Irving powerhouse; (2) a 23,190-foot-long conduit discharging into the licensee's Stehr Lake; (3) the 23-acre lake created by a 12-foot-high dam and a 20-foot-high dam; (4) a 6,281-foot-long pressure tunnel connecting the lake with a penstock; (5) the 4,800-foot-long penstock; (6) a powerhouse containing three generating units with a total installed capacity of 5,400 Kw; (7) a tailrace discharging water into the Verde River; (8) two 200-foot-long transmission lines interconnecting with the Arizona Public Service Company transmission grid; and (9) appurtenant facilities.

m. *Purpose of Project:* All project energy would be distributed to the applicant's customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the Arizona Public Service Company referenced above.

6 a. *Type of Application:* Minor License.

b. *Project No.:* 10925–001.

c. *Date Filed:* July 30, 1993.

d. *Applicant.* R.M. Poulin, LTD.

e. *Name of Project:* Wynantskill.

f. *Location:* On Wynantskill Creek in the City of Troy, Rensselaer County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact.* Rory M. Poulin, 432 5th Avenue, Troy, NY 12182, (518) 235–8610.

i. *FERC Contact:* Charles T. Raabe (tag) (202) 219–2811.

j. *Comment Date:* Within 60 days of the date filed shown in paragraph (c). (September 28, 1993).

k. *Description of Project:* The proposed project would consist of: (1) An existing 15-foot-high, 200-foot-long concrete gravity dam; (2) a reservoir, Burden Pond, with a 15-acre surface area and a 48-acre-foot storage capacity at normal water surface elevation 177.0 feet MSL; (3) a new concrete intake structure at the left abutment; (4) a new 42-inch diameter, 2,800-foot-long steel penstock; (5) a new concrete powerhouse containing one generating unit with a capacity of 255-Kw and one generating unit with a capacity of 475-Kw for a total installed capacity of 730-Kw; (6) a new tailrace; (7) a new switchyard; (8) a new 13.2-Kv transmission line; and (9) appurtenant facilities.

The applicant estimates that the average annual generation would be 2.3 million kilowatt-hours. Project power would be sold to Niagara Mohawk Power Corporation. The dam is owned by the City of Troy, New York.

l. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at section 8004.

m. Pursuant to Section 432(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, the resource agency, SHPO, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

7 a. *Type of Application:* Minor License.

b. *Project No.:* 11428–000.

c. *Date Filed:* August 5, 1993.

d. *Applicant.* The City of St. Louis, Michigan.

e. *Name of Project:* Municipal Dam.

f. *Location:* On the Pine River, in the City of St. Lewis, Gratiot County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Larry A. Wernette, 108 West Saginaw Street, St. Louis, Michigan 48880, (517) 681–2137.

i. *FERC Contact:* Charles T. Raabe (dt) (202) 219–2811.

j. *Comment Date:* Within 60 days of the date filed shown in paragraph (c). (October 4, 1993).

k. *Description of Project:* The existing project would consist of: (1) A 21-foot-high, 126-foot-long reinforced-concrete dam surmounted by six 19-foot-wide, 8-foot-high radial gates; (2) a 60-foot-long left embankment, A 55-foot-long center embankment, and a 250-foot-long right embankment; (3) a reservoir with a 205-acre surface area and a 1,575-acre-foot storage capacity at normal water surface elevation 719 feet MSL; (4) a gated 18-foot-wide, 12-foot-deep intake flume; (5) a powerhouse containing two generating units each rated at 225-kW for a total installed capacity of 450-kW; (6) a tailrace; (7) a short 2400-volt transmission line; and (8) appurtenant facilities.

l. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at section 8004.

m. Pursuant to Section 432(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, the resource agency, SHPO, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (October 4, 1993 for Project No. 2360–022). All reply comments must be filed with the Commission within 105 days from the date of this notice. (November 18, 1993 for Project No. 2360–022).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All findings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (October 4, 1993 for Project No. 11351–000). All

reply comments must be filed with the Commission within 105 days from the date of this notice. (November 17, 1993 for Project No. 11351–000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS" "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will notify all persons on the service list and affected resource agencies and Indian tribes. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE." (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular applications.

Dated: August 30, 1993, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21488 Filed 9–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 11392–000 et al.]

Hydroelectric Applications [J & T Hydro Company, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Minor License.

b. *Project No.:* 11392–000.

c. *Date Filed:* March 11, 1993.

d. *Applicant:* J & T Hydro Company.

e. *Name of Project:* Ramseur Hydro Project.

f. *Location:* On Deep River in Randolph County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas J. Hill, Ms. Jo Ann Hill, P.O. Box 447, Ramseur, NC 27316, (919) 824–8268.

i. *FERC Contact:* Charles T. Raabe (tag), (202) 219–2811.

j. *Deadline Date:* October 12, 1993.

k. *Status of Environmental Analysis:* This application is accepted for filing and ready for environmental analysis at this time—see attached paragraph D4.

l. *Description of Project:* The proposed project would consist of: (1) An existing stone-masonry dam with an overall length of 434 feet and a height of about 10 feet, and which is comprised of (a) a 390-foot-long uncontrolled overflow spillway with 12-inch-high flashboards mounted on its crest, and (b) a 44-foot-long head gate structure containing seven 3.5 by 7-foot gates; (2) a reservoir with a surface area of about 33 acres and a normal water surface elevation of 440.96 feet mean sea level (msl); (3) a 1,300-foot-long power canal varying in width from about 44 feet to 27.75 feet, which would pass beneath Brooklyn Avenue via three 96-inch-diameter concrete culverts; (4) a second gated control structure extending across the power canal about 100 feet upstream of the powerhouse; (5) an existing two-story brick masonry powerhouse measuring 37.5 feet by 20 feet in plan and containing two vertical turbines, each with a hydraulic capacity of 156 cfs at head of 15 feet, directly connected to two generators rated at 150 kilowatts (kW) each for a total installed capacity of 300 kW; (6) a 226-foot-long tailrace; (7) a switchyard; (8) a 100-foot-long, 2.4 kilovolt (kV) transmission line; and (9) appurtenant equipment and facilities.

m. *This notice also consists of the following standard paragraphs:* A2, A9, B1, and D4.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at J & T Hydro Company, P.O. Box 447, Ramseur, NC 27316, (919) 824–8268.

2 a. *Type of Application:* New Major License.

b. *Project No.:* 2363–007.

c. *Date filed:* December 26, 1991.

d. *Applicant:* Potlatch Corporation.

e. *Name of Project:* Cloquet Hydroelectric Project.

f. *Location:* On the St. Louis River in the City of Cloquet in Carlton County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Glenn R. Koepp, Mead & Hunt, Inc., 6501 Watts Road, suite 101, Madison, Wisconsin 53719, (608) 273–6380.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* Sixty days from the date of issuance of this notice. (October 12, 1993).

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* This run-of-river project consists of: (1) A 47-foot-high, 530-foot-long concrete gravity dam; (2) a 64-acre, 900-acre-foot impoundment; (3) seven 10.5-foot-long, 8.5-foot-diameter penstocks; (4) a powerhouse containing four generating units with a total installed capacity of 6,504 kW; (5) a 500-foot-long transmission line leading to the applicant's paper mill; and (6) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the average annual generation from this project to be 32,157 MWh.

m. *Purpose of Project:* All project energy generated would be utilized by the applicant's paper mill.

n. *This notice also consists of the following standard paragraphs:* A4 and D9.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the Potlatch Corporation, located at 207 Avenue C, Cloquet, Minnesota 55720, or by calling Mr. Charles Pottenger at (218) 879–1055.

3 a. *Type of Application:* New Major License.

b. *Project No.:* 2527–002.

c. *Date Filed:* December 17, 1991.

d. *Applicant:* Central Maine Power Company

e. *Name of Project:* Skelton Project.

f. *Location:* On the Saco River, York County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gerald C. Poulin, Central Maine Power Company, Edison Drive, Augusta, ME 04336, (207) 623–3521.

i. *FERC Contact:* Robert Bell (dt) (202) 219–2806.

j. *Comment Date:* See Paragraph D9 (October 12, 1993).

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9.

l. *Description of Project:* The existing project consists of: (1) A concrete gravity and earth embankment dam, totaling about 1,695 feet long, topped with a roadway, consisting of: (a) An earthen embankment section, 1,200 feet long by 59 feet high, with a crest elevation of 143.0 feet (USGS); (b) a west bulkhead and spillway gate section, about 170 feet long by 75 feet high, surmounted with four Taintor gates, each 32.5 feet wide by 20 feet high, with a sill elevation of 108.0 feet (USGS); (c) an intake structure, 107 feet long by 146 feet wide, has two inflow openings, protected by trashracks of ⅝-inch steel bars at 3-inch openings; (d) a fishway and sluice section, about 30 feet long; (e) an east bulkhead and spillway gate section, about 188 feet long by 75 feet high, surmounted with four Taintor gates, each 32.5 feet wide by 20 feet high, with a sill elevation of 108.0 feet (USGS); and (f) a concrete retaining wall, traversing along the western embankment about 763 feet long, with a crest elevation of 143.0 feet (USGS);

(2) A concrete and brick powerhouse, about 77 feet high by 70 feet wide by 107 feet long, topped with an entrance tower, about 10.5 feet wide by 21 feet long by 89 feet high, equipped with (a) two 8,400-kilowatt (kW) General Electric generators driven by 13,350 horsepower (hp) vertical Kaplan turbines, totaling (b) a rated capacity of 16,800 kW; (c) a hydraulic capacity of 3,800 cubic feet per second (cfs); (d) an average annual generation of about 107,400 MWh; and (e) each having a rated head of 76 feet;

(3) an impoundment of about 2.8 miles long, having (a) a surface area of about 488 AC; (b) a gross storage capacity of 25,250 acre-feet (AF); (c) a usable storage capacity of 1,720 AF; (d) a normal pool headwater elevation of 127.5 feet (USGS);

(4) an excavated tailrace about 150 feet long, with a tailwater elevation of 51.5 feet (USGS);

(5) and appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant owns all the existing project facilities.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A4, D9.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Central Maine Power Company, 34 Anthony Avenue, Augusta, ME 04330, (207) 623–3521.

4 a. *Type of Application:* New Major License.

b. *Project No.: 2529–005.*

c. *Date Filed:* December 18, 1991.

d. *Applicant:* Central Maine Power Company.

e. *Name of Project:* Bonny Eagle Project.

f. *Location:* On the Saco River, York and Cumberland Counties, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gerald C. Poulin, Central Maine Power Company, Edison Drive, Augusta, ME 04336, (207) 623–3521.

i. *FERC Contact:* Robert Bell (dt) (202) 219–2806.

j. *Comment Date:* See Paragraph D9 (October 12, 1993).

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9.

l. *Description of Project:* The existing project consists of: 2 dams and 2 earthened dikes: (1) the existing 67-foot-high, 784-foot-long earth and concrete Main River Dam, the existing 13-foot-high, 350-foot-long concrete gravity New River Dam, the existing 12-foot-high, 320-foot-long east earth dike, and the existing 12-foot-high, 250-foot-long west earth dike; (2) an impoundment having a surface area of 347-acres with a storage capacity of 1,150 acre-feet and a normal water surface elevation of 216.3 feet msl; (3) the existing intake structure; (4) 8 existing steel penstocks 54 feet long, 6 are 13 feet in diameter and 2 are 4.5 feet in diameter; (5) the existing 144-foot by 77-foot powerhouse containing 6 turbine-generator units with a total installed capacity of 7,200–kW; (6) the existing tailrace; (7) the existing transmission line; and (7) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant owns all the existing project facilities.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A4, D9.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also

available for inspection and reproduction at Central Maine Power Company, 34 Anthony Avenue, Augusta, ME 04330, (207) 623–3521.

5 a. *Type of Application:* New License.

b. *Project No.: 2671–002.*

c. *Date Filed:* December 24, 1991.

d. *Applicant:* Kennebec Water Power Company.

e. *Name of Project:* Moosehead Lake Project.

f. *Location:* On the Kennebec River, Somerset and Piscataquis Counties, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gerald C. Poulin, Kennebec Water Power Company, c/o Central Maine Power Company, Edison Drive, Augusta, ME 04336, (207) 623–3521.

i. *FERC Contact:* Robert Bell (dt) (202) 219–2806.

j. *Comment Date:* See Paragraph D9 (October 12, 1993).

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9.

l. *Description of Project:* The existing project consists of: (1) The two existing dams: (a) The 1,004-foot-long earth and concrete East Outlet Dam ranging in height from 15 to 20 feet; and (b) the 830-foot-long, 14-foot-high earth and concrete West outlet Dam; (2) a reservoir having a surface area of 74,200 acres, with a storage capacity of 544,880 acre-feet, and normal water surface elevation of 1,029 feet msl; and appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant owns all the existing project facilities.

m. *This notice also consists of the following standard paragraphs:* A4, D9.

n. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Central Maine Power Company, 34 Anthony Avenue, Augusta, ME 04330, (207) 623–3521.

6 a. *Type of Application:* Conduit Exemption.

b. *Project No:* 11412–000.

c. *Date Filed:* May 3, 1993.

d. *Applicant:* Massachusetts Water Resource Authority.

e. *Name of Project:* Deer Island Hydro Project.

f. *Location:* On Deer Island in the Boston Harbor, Suffolk, near Boston, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Walter Armstrong, Massachusetts Water Resource Authority, Program Management Division, Charleston Navy Yard, 100 First Avenue, Boston, MA 02129, (617) 242–6000.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* October 18, 1993.

k. *Status of Environmental Analysis:* This application is accepted for filing and is categorically excluded from the preparation of an environmental assessment.

l. *Description of Project:* The proposed project consists of the following: (1) An electrical building; (2) a substation; (3) a powerhouse containing two 1,000-kW generators for a total installed capacity of 2,000 kW; (4) an intake conduit which conveys the wastewater from the disinfection facilities to the hydropower chute; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 12,400 megawatthours.

m. *Purpose of Project:* Project power would be utilized by the applicant in its water treatment facilities.

n. *This notice also consists of the following standard paragraphs:* A2, A9, and B1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NW., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Massachusetts Water Resource Authority, Charleston Navy Yard, 100 First Avenue, Boston, MA 02129 or by calling (617) 242–6000.

7 a. *Type of Application:* Preliminary Permit.

b. *Project No:* 11420–000.

c. *Date Filed:* June 14, 1993.

d. *Applicant:* County of Wood.

e. *Name of Project:* Lake Wazeecha.

f. *Location:* On Fourmile Creek in the Town of Grand Rapids, Wood and Portage Counties, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Peter Kastenholz, 400 Market Street, Wisconsin Rapids, WI 54495, (715) 421–8465.

i. *FERC Contact:* Charles T. Raabe (tag) (202) 219–2811.

j. *Comment Date:* October 22, 1993.

k. *Competing Application:* Project No. 11383–000. Date Filed: February 11, 1993. Due Date: July 14, 1993.

l. *Description of Project:* This proposed project would consist of: (1) An existing 23-foot-high, 1,821-foot-long dam; (2) a reservoir having a 148-acre surface area and a 1,200-acre-foot storage capacity at normal water surface elevation 1,014.4 MSL; (3) a new powerhouse containing one 250-Kw generating unit; (4) a 3,000-foot-long, 13.2-Kv transmission line; and (5) appurtenant facilities.

The dam is owned by Wood County. Applicant estimates that the average annual generation would be 1,000,000 Kwh and that the cost of the studies under the permit would $50,000. Power would be sold to the Wisconsin Rapids Water Works & Lighting Commission.

m. *This notice also consists of the following standard paragraphs:* A8, A10, B, C, and D2.

8 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11424–000.

c. *Date filed:* July 14, 1993.

d. *Applicant:* Naturale USA Corporation.

e. *Name of Project:* Stayton Project.

f. *Location:* On the North Santiam Power Canal in Stayton, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Aaron Michael McGinnis, President, Naturale USA Corporation, 2000 S.E. Regner Rd., Greshman, OR 97080, 503–666–8666.

i. *FERC Contact:* Mr. Hector M. Perez, (202) 219–2843.

j. *Comment Date:* October 28, 1993.

k. *Description of Project:* The existing (not operating) unlicensed project consists of: (1) The 5-foot-high, 300-foot-long Lower Bennett dam; (2) an impoundment with a storage capacity of about 4.6 acre-feet; (3) the North Santiam Power Canal which is about 2 miles long; (4) a powerhouse containing one generating unit with an installed capacity of 600 Kw; (5) a 100-foot-long transmission line; and (6) appurtenant facilities. The powerhouse and pertinent equipment are owned by Pacificorp and the dam and canal are owned and operated by the Santiam Water Control District.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

9 a. *Type of Application:* Amendment of Preliminary Permit.

b. *Project No.:* 11181–001.

c. *Date filed:* April 8, 1993.

d. *Applicant:* Energy Storage Partners.

e. *Name of Project:* Lorella Pumped Storage Project.

f. *Location:* In the Bryant Mountain Upland area in Klamath County, Oregon, near the town of Lorella. T39S, R11E, sections 34, 35, 36, 27, 26, 25, 22, 23 and 24. T39S, R12E, sections 31, 32, 33, 34, 30, 29, 28, and 19. T40S, R12E, sections 3, 2, 1, 10, 11, 12, 15, 14, 13, 22, 23, 17, and 28. T40S, R13E, sections 6, 5, 4, 7, 8, 9, 18, 17, and 16. Willamette Base and Meridian.

The project would occupy lands administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. Douglas A. Spaulding, Energy Storage Partners, 5402 Parkdale Drive, suite 104, Minneapolis, MN 55426, ((612) 525–1445

David B. Ward, Flood & Ward, 1000 Potomac Street NW., suite 402, Washington, DC 20007, (202) 298–6910.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Comment Date:* October 28, 1993.

k. *Competing Application:* Competing applications will only be accepted for project proposals that are not in conflict with the issued permit for this project.

l. *Proposed Amendment of Preliminary Permit:* The permittee has filed an application to amend its preliminary permit issued December 31, 1991, for this project to expand the project boundary for the following reasons:

- To include lands necessary to review alternative transmission line corridors,
- To include lands necessary for access roads to project facilities, and
- To include lands which may be necessary to provide mitigation for project related impacts.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

10 a. *Type of application:* Preliminary Permit.

b. *Project No.:* 11417–000.

c. *Date filed:* May 17, 1993.

d. *Applicant:* David Ausman & Associates.

e. *Name of Project:* Snyder Falls Creek Power Project.

f. *Location.* On Snyder Falls Creek in the Third Judicial District, Alaska, near the town of Cordova. T14S, R2W, sections 16, 17, 18 and 19, T14S, R3W, sections 24, 25, 26, 35 and 36. T15S, R3W, sections 2, 3, 10 and 11. Cooper River Meridian.

The project would occupy lands administered by the Chugach National Forest, the Chugach Alaska Native Corporation, the Eyak Regional Native Corporation, the City of Cordova, and the state of Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David Ausman, David Ausman & Associates, 1503 West 33rd Avenue, suite 310, Anchorage, AK 99503, (907) 258–2420.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Comment Date:* October 28, 1993.

k. *Description of Project:* The proposed project would consist of: (1) A 30-foot-high, concrete arch dam at elevation 1,357 feet, msl; creating (2) a reservoir with a storage capacity of 100 acre-feet with a surface elevation of 1,357 feet, msl; (3) a 22-foot-diameter, 3,600-foot-long penstock; (4) a powerhouse containing a single generating unit with an installed capacity of 1,450 Kw, producing approximately 8 million Kwh of energy annually; (5) a 7.2–Kv, 6.8-mile-long underwater cable tying into an existing system.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $40,000. No new roads will be needed for the purpose of conducting these studies.

l. *Purpose of Project:* Project power would be sold to a local utility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

11 a. *Type of Application:* Minor License.

b. *Project No.:* 10856–002.

c. *Date filed:* April 30, 1993.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* Au Train Hydroelectric Project.

f. *Location:* on the Au Train River, near the Town of Au Train, Alger County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Clarence R. Fisher, Upper Peninsula Power Company, P.O. Box 130, 600 Lakeshore Drive, Houghton, MI 49931–0130, (906) 487–5000.

i. *FERC Contact:* Mary C. Golato, (202) 219–2804.

j. *Deadline for Interventions and Protests:* October 29, 1993.

k. *Status of Environmental Analysis:* This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph D8.

Description of Project: The proposed project consists of the following features: (1) An existing dam 38 feet high and 1,500 feet long; (2) an existing reservoir with a storage capacity of 12,342 acre-feet and a surface area of approximately 1,557 acres; (3) an existing 2,516-foot-long, 5-foot, 6-inch-diameter penstock; (4) an existing powerhouse containing two turbine-generating units having a total generating capacity of 1,440 kilowatts; (5) an existing 2,300-volt, 2,500-foot-long transmission line; and (6) appurtenant facilities. The applicant estimates that the total average annual net generation would be 5,778 megawatthours. The owner of the dam is the Upper Peninsula Power Company.

m. *Purpose of the Project* All project energy generated would be utilized by the applicant for sale.

n. *This notice also consists of the following standard paragraphs:* A2, A9, B1, and D8.

o. *Available Locations of Application:* A copy of the Application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. Clarence R. Fisher, P.O. Box 130, 600 Lakeshore Drive, Houghton, MI 49931–0130, at (906) 487–5000.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application

for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) (1) and (9) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit with be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211 and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

c. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of nay notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D4. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (October 12, 1993 for Project No. 11392–000). All reply comments must be filed with the Commission within 105 days from the date of this notice (November 24, 1993 for Project No. 11392–000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An

additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" OR "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (October 12, 1993 for Project Nos. 2363–007, 2527–002, 2529–005, and 2671–002). All reply comments must be filed with the Commission within 105 days from the date of this notice. (November 26, 1993 for Project Nos. 2363–007, 2527–002, 2529–005, and 2671–002).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: August 30, 1993, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21489 Filed 9–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP88–546–005]

Equitrans, Inc.; Sale of Natural Gas

August 30, 1993.

Take notice that on October 16, 1989, Equitrans, Inc., 4955 Steubenville Pike, Pittsburgh, PA, submitted the following information regarding the sale of natural gas to be made to an affiliate under Equitrans' Rate Schedule ISS, pursuant to the authorization granted by an order issued February 1, 1989, in Docket No. CP88–546–000 (46 FERC ¶61,124).

1. Sale to EREC

(a) Name of Buyer: Equitable Resources Energy Company.

(b) Location of Buyer: Pittsburgh, Pennsylvania.

(c) Affiliation between Equitrans and Buyer: Equitrans and EREC are subsidiaries of Equitable Resources, Inc.

(d) Nature of the involvement of affiliate: Purchase of gas in storage for ultimate resale.

(e) Term of Sale: One-time sale to be completed August 31, 1993 (the date Equitrans anticipates restructuring).

(f) Estimated Total Quantity: 12,805 Mcf.

(g) Maximum: The effective Rate Schedule ISS maximum rate as shown on Thirty First Revised Sheet No. 34 of Original Volume 1 of Equitrans' FERC Gas Tariff (currently $2.5313/Dth).

(h) Minimum: The effective Rate Schedule ISS minimum rate as shown on Thirty First Revised Sheet No. 34 of Original Volume 1 of Equitrans' FERC Gas Tariff (currently $2.3206/Dth).

Rate to be charged: The maximum ISS rate as may be adjusted by Commission order prior to sale.

2. Sale to ERMC

(a) Name of Buyer: Equitable Resources Marketing Company.

(b) Location of Buyer: Pittsburgh, Pennsylvania.

(c) Affiliation between Equitrans and Buyer: Equitrans and ERMC are subsidiaries of Equitable Resources, Inc.

(d) Nature of the involvement of affiliate: Purchase of gas in storage for ultimate resale.

(e) Term of Sale: One-time sale to be completed August 31, 1993 (the date Equitrans anticipates restructuring).

(f) Estimated Total Quantity: 12,805 Mcf.

(g) Maximum: The effective Rate Schedule ISS maximum rate as shown on Thirty First Revised Sheet No. 34 of Original Volume 1 of Equitrans' FERC Gas Tariff (currently $2.5313/Dth).

(h) Minimum: The effective Rate Schedule ISS minimum rate as shown on Thirty First Revised Sheet No. 34 of Original Volume 1 of Equitrans' FERC Gas Tariff (currently $2.3206/Dth).

Rate to be charged: The maximum ISS rate as may be adjusted by Commission order prior to sale.

3. Sale to ERSC

(a) Name of Buyer: Equitable Resources Storage Company.

(b) Location of Buyer: Houston, Texas.

(c) Affiliation between Equitrans and Buyer: Equitrans and ERSC are subsidiaries of Equitable Resources, Inc.

(d) Nature of the involvement of affiliate: Purchase of gas in storage for ultimate resale.

(e) Term of Sale: One-time sale to be completed August 31, 1993 (the date Equitrans anticipates restructuring).

(f) Estimated Total Quantity: 12,805 Mcf.

(g) Maximum: The effective Rate Schedule ISS maximum rate as shown on Thirty First Revised Sheet No. 34 of Original Volume 1 of Equitrans' FERC Gas Tariff (currently $2.5313/Dth).

(h) Minimum: The effective Rate Schedule ISS minimum rate as shown on Thirty First Revised Sheet No. 34 of Original Volume 1 of Equitrans' FERC Gas Tariff (currently $2.3206/Dth).

Rate to be charged: The maximum ISS rate as may be adjusted by Commission order prior to sale.

4. Sale to Equitable Gas

(a) Name of Buyer: Equitable Gas Company.

(b) Location of Buyer: Pittsburgh, Pennsylvania.

(c) Affiliation between Equitrans and Buyer: Equitrans is a subsidiary of Equitable Resources, Inc., Equitable Gas Company is a division of Equitable Resources, Inc.

(d) Nature of the involvement of affiliate: Purchase of gas in storage for ultimate resale.

(e) Term of Sale: One-time sale to be completed August 31, 1993 (the date Equitrans anticipates restructuring).

(f) Estimated Total Quantity: 4,517,513 Mcf.

(g) Maximum: The effective Rate Schedule ISS maximum rate as shown on Thirty First Revised Sheet No. 34 of Original Volume 1 of Equitrans' FERC Gas Tariff (currently $2.5313/Dth).

(h) Minimum: The effective Rate Schedule ISS minimum rate as shown on Thirty First Revised Sheet No. 34 of Original Volume 1 of Equitrans' FERC Gas Tariff (currently $2.3206/Dth).

Rate: The maximum ISS rate as may be adjusted by Commission order prior to sale.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of February 1, 1989. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest if filed, Equitrans may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21500 Filed 9-2-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EG93-69-000]

DLS Energy, Inc.; Application for Determination of Exempt Wholesale Generator Status

August 30, 1993.

On August 25, 1993, DLS Energy, Inc. ("DLS"), a New York corporation with its principal place of business at 24 Mary Avenue, Denville, New Jersey 07834, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

DLS intends to own a natural gas-fired electric generating facility with a maximum net power production capacity of approximately 530 MW. All of the facility's electric power net of the facility's operating electric power will be purchased at wholesale by one or more public utilities.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 20, 1993 and must be served on DLS. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21493 Filed 9-2-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-221-024]

Frontier Gas Storage Co.; Compliance Filing

August 30, 1993.

Take notice that on August 19, 1993, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Avenue NW., Washington, DC 20004, in compliance with the provisions of the Commission's February 13, 1985 Order in Docket No. CP82-487-000 *et al*, submitted an executed Service Agreement under Rate Schedule LVS-1 providing for the possible sale of up to 2 Bcf of Frontier's gas storage inventory on an "as metered" basis to Western Gas Resources, Inc. The Service Agreement, dated August 17, 1993, contemplates the possible sale to commerce September 2, 1993.

Under subpart (b) of Ordering Paragraph (f) of the Commission's February 13, 1985 Order, Frontier is "authorized to commence this sale of its inventory under such an executed service agreement fourteen days after the filing of the agreement with the Commission and may continue making such sales unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter".

Any person desiring to be heard or to make a protest with reference to said tariff sheet filing should, on or before September 20, 1993, file with the Federal Energy Regulatory Commission (825 North Capitol Street NE., Washington, DC 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21502 Filed 9-2-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES93-46-000 and ES93-46-001]

Illinois Power Co.; Application

August 30, 1993.

Take notice that on August 17, 1993, Illinois Power Company filed an application and on August 24, 1993,

filed an amendment to its application under section 204 of the Federal Power Act requesting authorization to issue not more than $500 million of short-term notes on or before December 31, 1995, with a final maturity date no later than December 31, 1996.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 16, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21501 Filed 9–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–68–000]

Indiana Generating Company, L.P.; Application for Determination of Exempt Wholesale Generator Status

August 30, 1993.

On August 25, 1993, Indiana Generating Company, L.P. ("Indiana"), a Delaware limited partnership with its principal place of business at 7475 Wisconsin Avenue, Bethesda, Maryland filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Indiana intends to own a natural gas-fired electric generating facility with a maximum net power production capacity of between approximately 400 MW and 415 MW. All of the facility's electric power net of the facility's operating electric power will be purchased at wholesale by one or more public utilities.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 20, 1993 and must be served on Indiana. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21496 Filed 9–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–682–000]

Northwest Pipeline Corp.; Request Under Blanket Authorization

August 30, 1993.

Take notice that on August 26, 1993, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP93–682–000 a request pursuant to §§ 157.205, 157.211, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.212, 157.216) for authorization to construct and operate certain facilities, to abandon certain facilities, to reallocate certain services, and to effect other related changes, under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes the following to reflect changes in service requested by Cascade Natural Gas Corporation (Cascade).

(1) Northwest would reallocate firm service for Cascade among the delivery points under Rate Schedule ODL–1 and SGS–1 Service Agreements dated November 1, 1992, and April 6, 1993, respectively.

(2) Northwest would add one delivery point and remove two delivery points under the Rate Schedule ODL–1 Service Agreement.

(3) Northwest would add one delivery point under the Rate Schedule SGS–1 Service Agreement.

(4) Northwest would change delivery pressures for various delivery points under the Rate Schedule ODL–1 and SGS–1 Service Agreements.

(5) Northwest would abandon in part its existing facilities at the Arlington Meter Station in Snohomish County, at the Sandvik Meter Station in Benton County, and at the Woodland Meter Station in Cowlitz County, all in Washington.

(6) Northwest would construct and operate upgraded replacement facilities at those stations mentioned in (5) above, to more effectively accommodate its existing and reallocated firm delivery obligations to Cascade, pursuant to a Facilities Agreement dated July 30, 1993.

Northwest states that it would replace the 3-inch turbine meter, two 1-inch regulators and appurtenances at the Arlington Meter Station with a 4-inch turbine meter, two upgraded 1-inch regulators and associated appurtenances. Northwest explains that these replacements would result in an increase in the maximum design delivery capacity of the station from 1,117 Dth equivalent per day to approximately 2,635 Dth per day at 200 psig.

Northwest states that it would replace the 2-inch positive displacement meter, two 1-inch regulators and associated appurtenances at the Sandvik Meter Station with a 2-inch turbine meter, two upgraded 1-inch regulators and associated appurtenances. Northwest states that these replacements would result in an increase in the maximum design delivery capacity of this station from 317 Dth per day to 550 Dth per day at 200 psig.

Northwest states that it would replace the two and one-half inch positive displacement meter and appurtenances at the Woodland Meter Station with a three-inch turbine meter and associated appurtenances. Northwest states that the replacement of the meter would result in an increase in the maximum design delivery capacity of this station from 183 Dth per day to 1,867 Dth per day at 150 psig.

Northwest estimates that the total cost of replacing the metering facilities at the Arlington, Sandvik and Woodland Meter Stations would be approximately $62,500, $54,300 and $40,700, respectively, which includes the cost of removing retired facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21497 Filed 9–2–93; 8.45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–895–000]

Philadelphia Electric Co.; Filing

August 30, 1993.

Take notice that on August 25, 1993, Philadelphia Electric Company (PE) tendered for filing an Agreement between PE and Public Service Electric and Gas Company (PS) dated August 23, 1993.

PE states that the Agreement sets forth the terms and conditions for the sale of system energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to PS. This Agreement supersedes an agreement between PE and PS dated April 8, 1991, which is on file with the Commission as PE's Rate Schedule FERC No. 58. In order to optimize the economic advantage to both PE and PS, PE requests that the Commission waive its customary notice period and permit the agreement to become effective on August 30, 1993.

PE states that a copy of this filing has been sent to PS and will be furnished to the Pennsylvania Public Utility Commission and the New Jersey Board of Regulatory Commissioners.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a part must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21491 Filed 9–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–892–000]

Public Service Company of Colorado; Filing

August 30, 1993.

Take notice that on August 25, 1993, Public Service Company of Colorado tendered for filing an amendment to its FERC Electric Service Rate Schedule, FERC No. 47. Under the proposed amendment Public Service is seeking to revise the points of delivery and levels of power and energy delivered for the Western Area Power Administration. This amendment will have no impact on the rates for service under this agreement.

Public Service requests an effective date of October 1, 1993 for the proposed amendment.

Copies of the filing were served upon the Western Area Power Administration Loveland Area Office, and state jurisdictional regulators which include the Public Utilities Commission of the State of Colorado and the State of Colorado Office of Consumer Counsel.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21492 Filed 9–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–894–000]

Puget Sound Power & Light Co.; Filing

August 30, 1993.

Take notice that on August 25, 1993, Puget Sound Power & Light Company (Puget) tendered for filing the agreement for Purchase and Sale of Power (the Agreement), dated as of August 1, 1993, between Puget and Public Utility District No. 1 of Douglas County (the District).

Puget states that the Agreement relates to the sale and purchase of on-peak capacity and associated energy and the off-peak return of energy. A copy of the filing was served upon the District.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21490 Filed 9–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–71–000]

Red Lake Energy Partners; Application for Determination of Exempt Wholesale Generator Status

August 30, 1993.

On August 25, 1993 Red Lake Energy Partners ("Red Lake" or "Applicant"), a partnership with its business office at c/o Polsky Energy Corporation, 650 Dundee Road, suite 170, Northbrook, Illinois 60062, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Red Lake is an Illinois general partnership formed to own and operate an electric generating facility near Red Lake, Arizona and sell electric power exclusively at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 20, 1993 and must be served on Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this

filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21495 Filed 9–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–72–000]

Tenaska Washington Partners II, L.P.; Application for Determination of Exempt Wholesale Generator Status

August 30, 1993.

On August 26, 1993, Tenaska Washington Partners II, L.P., a limited partnership formed under the laws of the State of Washington with offices at 407 North 117 Street, Omaha, Nebraska 68154 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Applicant is proposing to construct, own and operate an independent power production facility in the Frederickson Industrial Area in Pierce County near Tacoma, Washington. Major plant equipment will consist of one combustion turbine-generator, one heat recovery steam generator with supplemental firing capability, and one steam turbine-generator with a nominal net plant output of 248 MW. The initial fuel supply for the facility will be natural gas. No. 2 fuel oil will be used as a back-up fuel supply. Net electric energy will be sold to the Bonneville Power Administration.

According to the applicant, upon completion of construction, Applicant will be engaged directly and exclusively in the business of owning and operating the facility and selling electric energy at wholesale. No rate or charge for, or in connection with, the construction of the Facility or for electric energy produced by the Facility was in effect under the laws of any state as of the date of enactment of Section 32 of the Public Utility Holding Company Act.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 20, 1993 and must be served on Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21494 Filed 9–2–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–63–NG]

Conoco, Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Mexico, and To Export Liquefied Natural Gas to Any Foreign Country

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting blanket authorization to Conoco, Inc. (Conoco) to import and export natural gas from and to Mexico, and to export liquefied natural gas (LNG) to any foreign country. The volume imported and exported would not exceed a combined total of 50 Bcf over a two-year period beginning on the date of the first delivery of either imports or exports.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on August 27, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–21582 Filed 9–2–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4703–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1642.01; Special Data Call-In Notice to Certain Pesticide Registrants Requiring Replacement of Craven Laboratory Generated Data Previously Submitted in Support of Existing Tolerances or Registrations; was approved 07/08/93; OMB No. 2070–0130; expires 07/31/96.

EPA ICR No. 0277.06; Incentives for Development and Registration of Reduced Risk Pesticides—FIFRA Section 3–(Amendment to the Registration Program); was approved 07/12/93; OMB No. 2070–0060; expires 11/30/93.

EPA ICR No. 0783.15; Regulations for Cold Temperature Carbon Monoxide Emissions from Gasoline-Fueled Light-Duty Vehicles and Light-Duty Trucks; was approved 07/20/93; OMB No. 2060–0104; expires 06/30/95.

EPA ICR No. 0818.05; Hazardous Waste Industry Studies; was approved 07/21/93; OMB No. 2050–0042; expires 07/31/96.

EPA ICR No. 1081.04; NESHAP for Inorganic Arsenic Emissions from Glass Manufacturing Plants—Part 61 Subpart N; was approved 07/21/93; OMB No. 2060–0043; expires 07/31/96.

EPA ICR No. 1241.05; Suspended and Cancelled Pesticide Products: Claim for Indemnification; was approved 07/26/93; OMB No. 2070–0071; expires 07/31/96.

EPA ICR No. 0232.06; Lead Additive Report for Refineries and Importers Lead Additive Report for Manufacturing Facility or Site; was approved 07/27/93; OMB No. 2060–0066; expires 07/31/96.

EPA ICR No. 0163.05; TSCA Inspection-Related Forms; was approved 07/26/93; OMB No. 2070–0007; expires 07/31/96.

EPA ICR No. 0601.04; Annual Report on Conditional Registrations, Federal insecticide, Fungicide, and Rodenticide Act (FIFRA)—Section 29; was approved 07/28/93; OMB No. 2070–0026; expires 07/31/96.

EPA ICR No. 1644.01; 1993 Waste Treatment Industry Phase II: Landfills Screener Survey, 1993 Waste Treatment Industry Phase II: Incinerators Screener Survey; was approved 08/03/93; OMB No. 2040–0162; expires 08/31/96.

EPA ICR No. 0994.05; Beach Closing Survey Report on the Great Lakes; was approved 08/04/93; OMB No. 2090–0003; expires 08/31/96.

EPA ICR No. 0998.04; NSPS for SOCMI Air Oxidation and Distillation

Processes, Subparts III and NNN, Reporting and Recordkeeping; was approved 08/05/93; OMB No. 2060–0197; expires 08/31/96.

EPA ICR No. 1442.05; Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes whose Treatment Standards were Vacated; was approved 08/09/93; OMB No. 2050–0085; expires 11/30/95.

EPA ICR No. 1131.04; NSPS for New Stationary Sources, Glass Manufacturing Plants—Subpart CC; was approved 08/11/93; OMB No. 2060–0054; expires 08/31/96.

EPA ICR No. 0983.04; NSPS for Equipment Leaks of VOC in Petroleum Refineries Information Requirements—Subpart GGG; was approved 08/11/93; OMB No. 2060–0067; expires 08/31/96.

EPA ICR No. 1645.01; EPA Former Employee Survey; was approved 08/11/93; OMB No. 2030–0032; expires 08/31/96.

EPA ICR No. 1595.02; Response Action Contractor Indemnification Final Guidelines; was approved 08/18/93; OMB No. 2050–0129; expires 04/30/96.

EPA ICR No. 1139.04; Consent Orders and Test Rule Exemptions, TSCA Section 4 Test Rules; was approved 08/13/93; OMB No. 2070–0033; expires 08/31/96.

EPA ICR No. 1541.04; National Emission Standards for Hazardous Air Pollutants (NESHAP), Benzene Waste Operations—Subpart FF of Part 61; was approved 08/10/93; OMB No. 2060–0183; expires 08/31/96.

EPA ICR No. 0011.07; Selective Enforcement Auditing Reporting and Recordkeeping Requirements (Large Non-Road Compression Ignition Engine Proposal); was approved 07/21/93; OMB No. 2060–0064; expires 03/31/96.

EPA ICR No. 0010.05; Information Requirements for Importation of Nonconforming Vehicles (Non-Engine Trading & Banking Proposal) was approved 07/21/93; OMB No. 2060–0095; expires 03/31/94.

EPA ICR No. 0783.18; Light Duty Certification Short Test and Revised Emission Performance Warranty Test Procedures; was approved 08/02/93; OMB No. 2060–0104; expires 06/30/95.

EPA ICR No. 0095.05; Pre-Certification and Testing Exemption, Reporting and Recordkeeping Requirements (Non-Road Engine Proposal); OMB No. 2060–0007; expires 03/31/96.

OMB Extension of Expiration Dates

EPA ICR No. 1039; Monthly Progress Reports; OMB No. 2030–0005; expiration date was extended to 03/31/94.

EPA ICR No. 0277; Incentives for Development and Registration of Reduced Risk Pesticides; OMB No. 2070–0060; expiration date extended to 02/28/94.

Dated: August 30, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–21556 Filed 9–2–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4725–3]

Clean Air Act; Acid Rain Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permits.

SUMMARY: The U.S. Environmental Protection Agency [EPA] is issuing five-year Acid Rain permits, according to the Acid Rain Program regulations (40 CFR part 72), to the following 10 utility plants: Crist in Florida; Bailly, Clifty Creek, F B Culley, Frank E Ratts, Michigan City, and Warrick in Indiana; Jack Watson in Mississippi; and Kyger Creek and Walter C Beckjord in Ohio.

FOR FURTHER INFORMATION CONTACT: For plants in Florida and Mississippi: Brian Beals at (404) 347–5014. Air Pesticides and Toxics Management Division, EPA Region 4, 345 Courtland Ave. NE., Atlanta, GA 30365.

For plants in Indiana: Patrick Gimino at (312) 353–8651. Air and Radiation Division, EPA Region 5, 77 West Jackson Blvd. (A–18J), Chicago, IL 60604.

For plants in Ohio: Franklin Echevarria at (312) 886–9653, at the EPA Region 5 address above.

Dated: August 30, 1993.

Renee M. Rico,

Acting Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 93–21557 Filed 9–2–93; 8:45 am]

BILLING CODE 6560–50–M

(ER–FRL–4624–3)

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 16, 1993 through August 20, 1993 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–AFS–F65019–MN Rating LO1, Superior National Forest Land and Resource Management Plan, Adoption of Boundary Waters Canoe Area (BWCA) Wilderness Management Plan, Implementation, Cook, Lake and St. Louis Counties, MN.

Summary: EPA had no objections to implementation of the preferred alternative.

ERP No. D–AFS–L01008–OR Rating EC2, Bornite Underground Copper Mine Project, Construction and Operation, Approval of Plan of Operation, Special-Use-Permit, NPDES Permit and COE Section 404 Permit, Willamette National Forest, Detroit Ranger District, Marion County, OR.

Summary: EPA expressed environmental concerns based on the potential for adverse effects on surface water quality, and wetlands. Additional information and clarification is requested on water quality mitigation measures and potential ground water impacts.

ERP No. D–AFS–L65197–AK Rating EO2, Campbell Timber Sale, Implementation, Tongass National Forest, Stikine Area, AK.

Summary: EPA expressed environmental objections with the sale's impact on water quality from construction and operation of log transfer facilties. EPA also expressed concerns about the process to ensure that the Alaska Water Quality Standards will be met. Additional information is needed on effectiveness monitoring from the water quality effects of timber harvest on road construction. Information on the effects of alternative log transfer facilities is also needed.

ERP No. D–FHW–D50011–WV Rating EC2, Harpers Ferry Statewide Bridge Replacement and Upgrading Project, Improvements, US 340 over the Shenandoah River in the vicinity of Harpers Ferry National Historical Park, Funding and COE Section 404 Permit, Jefferson County, WV.

Summary: EPA expressed environmental concerns regarding the potential new impacts to streams and adjacent riparian areas and potential water quality impacts.

ERP No. D–FHW–L40185–WA Rating EC2, WA–520 Corridor Improvements, Construction and Reconstruction, between 104th Avenue N.E. and West Lake Sammamish Parkway (Formerly WA–901), Funding and COE Section

404 Permit, the Cities of Bellevue and Redmond, King County, WA.

Summary: EPA expressed environmental concerns regarding the proposed project's potential impacts to sites containing hazardous waste and to surface water quality and project TIP conformity analysis. Accordingly, EPA requested that the final EIS provide additional information to address these issues.

ERP No. D–FRC–B05182–NH Rating EC2, Upper Androscoggin River Basin Hydroelectric Projects, Issuance of New Licenses/Relicensing for Operation of Seven Hydroelectric Projects, Coos County, NH.

Summary: EPA recommended that in the FEIS that the Federal Energy Regulatory Commission expand the scope of environmental analysis to include upstream regulating reservoirs, evaluation of energy conservation as an alternative to the proposed action, a river basin-wide evaluation of cumulative impacts and an analysis of environmental impacts from all the alternatives presented. EPA also commented on the possible violation of water quality standards and the potential for adverse impacts to wetlands and other aquatic resources from the proposed action.

ERP No. D–USN–D11020–MD Rating EC2, Naval Air Warfare Center Aircraft Division Base Realignment, Naval Air Station Patuxent River, St. Mary's, Calvert and Charles Counties, MD.

Summary: EPA requested that the final EIS include more detail on electromagnetic fields, farmland and wetlands.

Final EISs

ERP No. F–AFS–L65146–OR Spirit Fire Recovery Project, Harvest Timber and Road Construction, High Spirit Fire Area, Willamette National Forest, Oakridge Ranger District, Lane County, OR.

Summary: EPA had no environmental objections to the preferred alternative as it is described in the final EIS. No formal letter was sent to the preparing agency.

ERP No. F–UAF–L11017–AK Ionospheric Research Facility for the High Frequency Active Auroral Research Program, Construction and Operation, Site Selection, COE Section 404 Permit and NPDES Permit, AK.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the preparing agency.

ERP No. FR–AFS–D65010–00 George Washington National Forest, Oil and Gas Land/Resource Management Plan Revised, Alleghany Front Lease Area, several Counties, WV and VA.

Summary: EPA generally agreed with the preferred alternative however we remain concerned regarding cumulative impacts assessment, nonpoint source pollution controls to habitat fragmentation and/or degradation.

ERP No. FS–AFS–L65147–AK Bohemia Mountain Timber Sales, Implementation, Updated Information to Limit Alternatives to those that would not impact Potential Recommendation of Duncan Salt Chuck Creek for Inclusion in the National Wild and Scenic River System and COE Permit Issuance, Tongass National Forest, Stikine Area, AK.

Summary: EPA continued to have concerns with the effect of the action alternatives on water quality and fisheries. EPA believes that the lack of a detailed water quality monitoring plan may make it difficult to ensure that Alaska Water Quality Standards will be met and demonstrate that beneficial uses are protected.

Dated: August 31, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–21587 Filed 9–2–93; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4624–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed August 23, 1993 Through August 27, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930298, DRAFT EIS, FHW, TX, US 82 Highway (East-West Freeway in the City of Lubbock) Transportation Improvements from Southwest of Loop 289 to East of I–27 and Relocation of the Seagraves, Whiteface and Lubbock Railroad, Funding and Right-of-Way Grant, Lubbock County, TX, Due: October 18, 1993, Contact: John E. Inabinet (512) 482–5988.

EIS No. 930299, DRAFT EIS, GSA, CA, Ronald Reagan Federal Building—United States Courthouse, Site Selection and Construction in the Central Business Area and Approval of Permits, City of Santa Ana, Orange County, CA, Due: October 18, 1993, Contact: Mitra K. Nejad (415) 744–5061.

EIS No. 930300, FINAL EIS, AFS, OR, Santiam Pass Demo Project, Harvesting Timber and Road Construction, Willamette National Forest, McKenzie Ranger District, Linn County, OR, Due: October 04, 1993, Contact: Joe Zook (503) 822–3381.

EIS No. 930301, FINAL EIS, NOA, MA, Stellwagen Bank National Marine Sanctuary, Implementation, Designation and Management Plan, Boston, MA, Due: October 04, 1993, Contact: Randall Schneider (301) 713–3132.

EIS No. 930302, FINAL SUPPLEMENT, DOE, CA, Petroleum Production at Maximum Efficient Rate, Naval Petroleum Reserve No. 1, Continued Operation, Updated Information, Elk Hills, Kern County, CA, Due: October 18, 1993, Contact: James C. Killen (805) 763–6038.

EIS No. 930303, FINAL EIS, AFS, ID, Salmon River Road Improvement Project, Development Road No. 30 from North Fork to Corn Creek, Salmon National Forest, North Fork Ranger District, Custer and Lemhi Counties, ID, Due: October 04, 1993, Contact: Rogers Thomas (208) 865–2393.

EIS No. 930304, FINAL EIS, FRC, FL, MS, AL, LA, Florida Gas Transmission Phase III Expansion Project, Construction and Operation, Special Use Permits, Section 10 and 404 Permits and NPDES Permit, extending through FL, AL, MS and LA, Due: October 04, 1993, Contact: Mark Jensen (202) 208–1121.

Amended Notices

EIS No. 910304, DRAFT EIS, BOP, DC, Washington, DC Metropolitan Detention Center (MDC), Construction/Operation, City of Washington, DC, Due: October 21, 1991, Contact: Patricia K. Sledge (202) 514–6470. Published FR 08–29–91—Officially Canceled by Preparing Agency.

Dated: August 31, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–21588 Filed 9–2–93; 8:45 am]

BILLING CODE 6560–50–U

[FRL–4725–2]

Open Scientific Meeting on Carpet Emissions, Part I: Animal Testing

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: EPA is convening an open meeting of scientists, including four independent scientific peer reviewers, to help the Agency gain a better

understanding of existing and new data that pertain to the use of a laboratory procedure for testing the effects of carpet emissions on laboratory mice. This meeting is part of an ongoing effort to gather data and information that will assist EPA in determining steps necessary to understand concerns about carpet.

DATES: The meeting has been scheduled for September 15, 1993. The meeting will start at 9 a.m. and end at approximately 5 p.m. It will be open to the public, subject to availability of space.

ADDRESSES: The meeting will be held at the Ritz Carlton Pentagon City, 1250 S. Hayes Street, Arlington, VA 22202, Tel. (703) 415–5000.

FOR FURTHER INFORMATION CONTACT: Robert Dyer, Health Effects Research Laboratory (MD 51A), Office of Research and Development, Environmental Protection Agency, 86 Alexander Drive, Research Triangle Park, North Carolina, 27711.

SUPPLEMENTARY INFORMATION: The public and the scientific community are becoming increasingly aware of concerns over potential health effects caused by exposure to indoor sources of pollutants. EPA has statutory authority under title IV of the Superfund Amendments and Reauthorization Act to conduct research on this and other indoor air issues.

In 1992, an independent testing laboratory, Anderson Laboratories, Inc. (AL), reported test results indicating that pulmonary irritation, neurotoxicity, and in some cases death were seen in laboratory mice exposed to carpet emissions. To better understand these findings, EPA conducted a formal study to replicate, in parallel testing with AL, the reported findings. The results of the EPA tests were reported in May of 1993. They indicate that EPA did not replicate the AL findings. The caliber of EPA's scientific effort was affirmed to adhere to good laboratory practices and to be of the highest scientific quality as determined by independent peer reviewers who evaluated the study design, resulting data, and conclusions.

In the interim, several other laboratories in academia and industry have independently conducted studies to replicate the AL findings. In addition, both EPA and AL have gained additional experience in using the procedure.

At the September 15 meeting, scientists with working knowledge in using this laboratory procedure will present data and summarize their experience related to carpet emissions before four invited scientific peers. These scientists will be asked to join in subsequent discussions about this laboratory procedure, the resulting data, and their implication for future research. The meeting will provide a period for public questions. A second meeting is planned for an as-yet-undetermined date to discuss carpet-related health complaints reported by affected individuals. This meeting will include participation by government scientists, physicians involved in the diagnosis and treatment of these reported health complaints, scientists from other disciplines, and representatives from the carpet industry. The goal of this second meeting will be to identify future research that is needed to gain a better understanding of the nature and causes of reported health complaints from exposure to carpet. Once a date and location are determined, EPA will announce this meeting in the **Federal Register**.

EPA has invited four independent peer reviewers and other scientists with hands-on experience with this laboratory procedure to participate in discussions. The meeting will be open and provide a period for public questions. Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the workshop. For further information on technical issues, contact the Health Effects Research Laboratory as noted above. For further information on the meeting, or to register to attend, contact Elaine Brenner, Eastern Research Group, Inc., 110 Hartwell Avenue, Lexington, MA 02173, Telephone: (617) 674–7334.

Dated: August 27, 1993.

Gary J. Foley,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93–21558 Filed 9–2–93; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–80016A; FRL–4645–3]

TSCA Section 8(e); Notice of Clarification and Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of clarification; extension of comment period.

SUMMARY: This Notice extends by 45 days the solicitation of public comment on certain refinements to EPA's policy concerning the mandatory reporting of information under section 8(e), the "substantial risk" information reporting provision of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 et seq, (July 13, 1993, 58 FR 37735). Specifically, comments are sought on EPA's section 8(e) policy refinements concerning mandatory reporting of information on the release of chemical substances to, and the detection of chemical substances in, environmental media. Comments are also sought on specific refinements made to EPA's policy concerning the reporting deadline for written "substantial risk" information and the circumstances under which certain information need not be reported to EPA under section 8(e) of TSCA. EPA is extending the comment period because it has received request from several commenters asking that additional time be given for the formulation and submission of comments.

DATES: Written comments on the reporting guidance must be received by EPA no later than October 28, 1993.

ADDRESSES: All comments should reference the docket number "OPPTS–80016" and must be transmitted in triplicate to: U.S. Environmental Protection Agency, OPPT Document Control Officer, Attn: TSCA Document Receipts (TS–790), ET G-99, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

Dated: August 27, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 93–21555 Filed 9–2–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following has been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Club Med Sales, Inc., Services et Transports Cruise Lines and G.I.E. Mediterranee Bail, 40 West 57th Street, New York, NY 10019.

Vessel: CLUB MED I

Dated: August 31, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93-21554 Filed 9-2-93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Banc One Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 20, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio; to engage *de novo* through its subsidiary, Banc One Capital Corporation, Columbus, Ohio, in investment and financial advisory activities pursuant to § 225.25(b)(4) of the Board's Regulation Y.

2. First Citizens Banc Corp, Sandusky, Ohio; to engage *de novo* through its subsidiary, R.A. Reynolds Appraisal Service, Inc., Sandusky, Ohio, in performing real estate appraisal services pursuant to § 225.25(b)(13) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mid-America Bancorp, Louisville, Kentucky; to engage *de novo* through its subsidiary, Mid-America Bank, Federal Savings Bank, Pewee Valley, Kentucky, in operating a savings association pursuant to § 225.25(b)(9); and in the sale, as agent, of credit-related life and health insurance in connection with loans made by Mid-America Bank, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in the State of Kentucky.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. The Sumitomo Bank, Limited, Osaka, Japan; to engage *de novo* through its subsidiary, Sumitomo Bank Capital Markets, Inc., New York, New York, in certain bank-office services related to swaps, swap transactions, including without limitation interest rate and currency swaps, and swap derivative products such as caps, floors and collars, for third parties on SBCM's premises, and will include funds transfers and other payment agency functions, rate settings, payment notification, cash reconciliation and risk reporting. These activities will be conducted Worldwide.

Board of Governors of the Federal Reserve System, August 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-21528 Filed 9-2-93; 8:45 am]

BILLING CODE 6210-01-F

Corporacion Bancaria de Espana, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 24, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Corporacion Bancaria de Espana, Madrid, Spain; to become a bank holding company by acquiring 69.2 percent of the voting shares of Banco Exterior de Espana, S.A., Madrid, Spain, and thereby indirectly acquire Extebank, Stony Brook, New York.

2. Fonds de Participation Industries Diverses, Algiers, Algeria; Fonds de Participation Services, Algiers, Algeria; Fonds de Participation Chimie, Algiers, Algeria; and Fonds de Participation des Industries Agro-Alimentaires, Algiers, Algeria; to acquire 44.06 percent of the voting shares of Arab American Bank, New York, New York, formerly known as UBAF Arab American Bank.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Exchange Bancshares, Inc., Luckey, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Exchange Bank, Luckey, Ohio.

C. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. BB&T Financial Corporation, Wilson, North Carolina; to acquire 100 percent of the voting shares of Home Savings Bank of Albemarle, SSB, Albemarle, North Carolina.

D. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Covington Capital Corporation, Collins, Mississippi; to become a bank holding company by acquiring at least 80 percent of the voting shares of Covington County Bank, Collins, Mississippi.

E. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Associated Banc-Corp, Green Bay, Wisconsin; to acquire 6.26 percent of the voting shares of Bay Lake Banc-Corp, Inc., Kewaunee, Wisconsin, and thereby indirectly acquire Union State Bank, Kewaunee, Wisconsin.

2. Associated Banc-Corp, Green Bay, Wisconsin; to acquire 12.93 percent of the voting shares of Community State Bank of Algoma, Algoma, Wisconsin.

3. Associated Banc-Corp, Green Bay, Wisconsin; to acquire 7.05 percent of the voting shares of First Manitowoc Bancorp, Inc., Manitowoc, Wisconsin, and thereby indirectly acquire First National Bank in Manitowoc, Manitowoc, Wisconsin.

4. Associated Banc-Corp, Green Bay, Wisconsin; to acquire 6.10 percent of the voting shares of First Oak Brook Bancshares, Inc., Oak Brook, Illinois, and thereby indirectly acquire 1st Oak Brook Bank, Glenview, Illinois, and Oak Brook Bank, Oak Brook, Illinois.

F. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Capital Banshares, Inc., Green Bay, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Capital Bank, Green Bay, Wisconsin, a *de novo* bank.

G. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Worthen Banking Corporation, Little Rock, Arkansas; to merge with FirstBank Group, Inc., Brinkley, Arkansas, and thereby indirectly acquire FirstBank of Arkansas, Brinkley, Arkansas, and FirstBank of Arkansas, Kensett, Arkansas.

H. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Klein Bancorporation, Inc., Chaska, Minnesota; to acquire 100 percent of the voting shares of R.O.M. Financial Services, Inc., Chanhassen, Minnesota, and thereby indirectly acquire State Bank of Chanhassen, Chanhassen, Minnesota.

2. Northern Plains Investment, Inc., Jamestown, North Dakota; and North Star Holding Company, Inc., Jamestown, North Dakota; to acquire 100 percent of the voting shares of Farmers State Bank, Ypsilanti, North Dakota.

3. Northern Plains Investment, Inc., Jamestown, North Dakota; to acquire 6.3 percent of the voting shares of Stutsman County State Bank, Jamestown, North Dakota.

I. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. 1889 Bancshares, Inc., Nevada, Missouri; to become a bank holding company by acquiring 99.63 percent of the voting shares of First National Bank of Nevada, Nevada, Missouri.

2. First State Bancorporation, Taos, New Mexico; to acquire 94.5 percent of the voting shares of FirstBank Santa Fe, Santa Fe, New Mexico.

3. Fourth Financial Corporation, Wichita, Kansas; to merge with Ponca Bancshares, Inc., Ponca City, Oklahoma, and thereby indirectly acquire Security Bank and Trust Company of Ponca City, Ponca City, Oklahoma.

J. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Shady Oaks Bancshares, Fort Worth, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Shady Oaks National Bank, Fort Worth, Texas.

2. South Central Texas Bancshares, Inc., Flatonia, Texas; to acquire 65.64 percent of the voting shares of Gonzales Bank, Gonzales, Texas.

3. South Central Texas Bancshares-Delaware, Inc., Wilmington, Delaware; to acquire 65.64 percent of the voting shares of Gonzales Bank, Gonzales, Texas.

K. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Latah Bancorporation, Inc., Latah, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Latah, Latah, Washington.

Board of Governors of the Federal Reserve System, August 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-21529 Filed 9-2-93; 8:45 am]

BILLING CODE 6210-01-F

First Alabama Bancshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 24, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Alabama Bancshares, Inc., Birmingham, Alabama; to acquire Secor Bank, FSB, Birmingham, Alabama, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; and its subsidiary, Norwest Mortgage, Inc., to acquire a 50 percent partnership interest in Prosperity Mortgage Company, Fairfax, Virginia, and thereby indirectly engage in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-21531 Filed 9-2-93; 8:45 am]

BILLING CODE 6210-01-F

Melvyn J. & Suellen G. Estrin, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 20, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Melvyn J. & Suellen G. Estrin, Bethesda, Maryland; to acquire an additional 17.05 percent of the voting shares of FWB Bancorporation, Rockville, Maryland, for a total of 19.67 percent, and thereby indirectly acquire FWB Bank, Rockville, Maryland.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Employee Stock Ownership Plan and Trust of First Citizens Bank of Polson, Polson, Montana; to acquire an additional 0.23 percent of the voting shares of Flathead Lake Bancorporation, Inc., Polson, Montana, for a total of 21.24 percent, and thereby indirectly acquire First Citizens Bank of Polson, Polson, Montana.

2. David Huisman, Ellsworth, Minnesota; to acquire an additional 23.29 percent of the voting shares of Ellsworth Bancshares, Inc., Ellsworth, Minnesota, for a total of 50.12 percent.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Jerry M. Smetana, Co-Trustee, Barrett Harman Van Dyke No. 1, Plainville, Kansas; to acquire 25.15 percent of the voting shares of Plainville Bancshares, Inc., Plainville, Kansas, and thereby indirectly acquire The Plainville State Bank, Plainville, Kansas.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Joseph Hetrick, San Juan, Texas; to acquire an additional 7.4 percent of the voting shares of San Juan Bancshares, Inc., San Juan, Texas, for a total of 18.5 percent, and thereby indirectly acquire San Juan State Bank, San Juan, Texas.

Board of Governors of the Federal Reserve System, August 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-21530 Filed 9-2-93; 8:45 am]

BILLING CODE 6210-01-F

PNC Banc Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 24, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. PNC Banc Corp., Pittsburgh, Pennsylvania; to acquire 100 percent of the voting shares of PNC Mortgage Bank, National Association, Pittsburgh, Pennsylvania.

In connection with this application, Applicant also proposes to acquire Sears Savings Bank, FSB, Glendale, California, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Gordon Management Co., Chicago, Illinois; to become a bank holding company by acquiring 26.42 percent of the voting shares of CNBC Bancorp, Inc., Chicago, Illinois, and thereby indirectly acquire Columbia National Bank of Chicago, Chicago, Illinois.

In connection with this application, Applicant and Gordon Family Investment Limited Partnership, Chicago, Illinois, have applied to acquire CNBC Development Corporation, Chicago, Illinois; CNBC Leasing Corporation, Chicago, Illinois; and CNBC Investment Corporation, Chicago, Illinois; and thereby engage in real estate lending pursuant to § 225.25(b)(1)(iii); finance leasing of personal property pursuant to § 225.25(b)(5); and commercial lending pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–21532 Filed 9–2–93; 8:45 am]

BILLING CODE 6210-01-F-M

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR); Cancellation of Medical Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of low usage the following Standard Form is cancelled: SF 525, Medical Record—Radiation Therapy.

DATES: Effective on September 3, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Freed, GSA Standard and Optional Forms Liaison Officer, (202) 501–0492.

Dated: August 17, 1993.

Johnny T. Young,

Director, Reproduction Services Division.

[FR Doc. 93–21469 Filed 9–2–93; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Fiscal Year 1994 Program Announcement; Availability of Funds and Request for Applications: Request for Applications To Establish and Conduct National Resource Centers for Older Indians, Native Alaskans, and Native Hawaiians

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications to establish and conduct national resource centers for older Indians, Native Alaskans, and Native Hawaiians under the Administration on Aging's Discretionary Funds Program for fiscal year 1994.

SUMMARY: The Administration on Aging (AoA) announces that it will hold a recompetition for Cooperative Agreement Awards, among revised as well as new applications, to establish and conduct National Resource Centers for Older Indians, Native Alaskans, and Native Hawaiians under the Administration on Aging's Discretionary Funds Program for Fiscal Year 1994.

The deadline date for the submission of applications is November 1, 1993. Eligible applicants for Resource Center awards are institutions of higher education with experience in conducting research and assessment on the needs of older individuals. Preference will be given to those institutions of higher education that provide evidence of relevant expertise and experience in conducting research on, and assessment of, the characteristics and needs of individuals who are older Native Americans.

Application kits are available by phoning 202/619–0441 or by writing to: Department of Health and Human Services, Administration on Aging, Office of Program Development, 330 Independence Avenue SW., room 4278, Washington, DC 20201.

Fernando Torres-Gil,

Assistant Secretary for Aging.

[FR Doc. 93–21510 Filed 9–2–93; 8:45 am]

BILLING CODE 4130–02–M

Centers for Disease Control and Prevention

[Program Announcement Number 403]

Cooperative Agreements for National Programs To Strengthen Comprehensive School Health Programs and Prevent Health Problems Among Youth

Introduction

The Centers for Disease Control and Prevention (CDC), anticipates the availability of fiscal year (FY) 1994 funds for cooperative agreements that establish national programs, including national minority programs, to assist the nation's schools, institutions of higher education, and youth-serving agencies in efforts to prevent behaviors that place elementary through college-age youth at risk for human immunodeficiency virus (HIV) infection, sexually transmitted diseases (STDs), and other important health problems. (A cooperative agreement is a legal agreement in which CDC provides financial assistance and substantial Federal programmatic involvement to the recipient during the project.)

National non-governmental health, education, and human service organizations have unique organizational capacities, experience, and constituencies, and they often have affiliates at the state and local levels. These national organizations and their affiliates could work closely with national, state, and local governmental agencies, and with each other, to collaboratively help schools and other agencies that serve youth to prevent and address health problems among youth. CDC expects to award cooperative agreements to national organizations that can become an integral part of a broad national strategy to prevent and reduce (1) Sexual behaviors that result in HIV infection, STDs, and unintended pregnancy; (2) alcohol and other drug use; (3) tobacco use; (4) dietary patterns that result in disease; (5) behaviors that result in intentional and unintentional injury; and (6) sedentary lifestyles among youth. Activities that might be implemented with this award will focus on the following:

- Strengthening national, state, and local efforts to improve school health programs;
- Strengthening the capacity of colleges and universities (a) To prevent and address such health problems among their students, and (b) to provide national, state, and local leadership and technical assistance to improve school health programs; and/or
- Strengthening the capacity of appropriate state and local agencies and community organizations to develop and implement activities designed to prevent HIV infection, STDs, and other important health problems among youth in high-risk situations.

The Public Health Service (PHS) is committed to achieving the objectives of the CDC HIV Strategic Plan and the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This program announcement is related to the Health Promotion and Preventive Services priority areas, with a particular focus on the Education and Community-Based Programs. The PHS also is committed to help attain the National Education Goals related to the health and educational outcomes of American students and improving the health of adolescents. (To order a copy of the CDC HIV Strategic Plan, Healthy People 2000, the National Education Goals Report, and Adolescent Health see the section Where To Obtain Additional Information.)

Authority

This program is authorized under sections 301(a), 311 (b) and (c), and 317(k) of the Public Health Service Act, (42 U.S.C. 241(a), 243 (b) and (c), and 247b(k)), as amended.

Eligible Applicants

Eligible applicants are national organizations and national minority organizations that are health, education, and social service agencies that are private, nonprofit, professional, or voluntary. Eligible applicants must have organizational capacities and experience to assist state and local education agencies, institutions of higher education, and/or other relevant agencies in preventing behaviors that place young people at risk for HIV infection, STDs, and other important

health problems. Eligible organizations must also have affiliate offices or organizations in a minimum of 10 states and territories.

In addition, to be considered a national minority organization, eligible applicants must meet the following criteria:

1. At least 51 percent of persons on the governing board must be members of racial or ethnic minority populations; and

2. The organization must possess a documented history of serving racial/ethnic minority populations through its offices, affiliates, or participating minority organizations at the national level for at least 12 months prior to the submission of the application to CDC.

Limited competition is justified under this program announcement because of the need for directed and concentrated focus in the effective dissemination of programs and information. The coordination and implementation of a national health education program strategy requires organizations with the capacity and experience to influence the professional actions of their constituency; and to have the capacity to identify, assess, and advocate for research-based school health materials and programs.

Availability of Funds

It is anticipated that $6 million will be available in FY 1994 to fund an estimated 25 awards under this announcement. This is the amount requested in the President's FY 1994 budget.

Funds must be used for categorical activities to prevent HIV infection among youth, and can be used to integrate such categorical activities as part of broader programs to improve the health of youth (e.g., adolescent health programs, comprehensive school health programs, college health programs).

(a) The average award will be approximately $240,000 ranging from $100,000 to $300,000. These figures are estimates and might change based on availability of funds and quality of applications.

(b) Approximately $500,000 of the total $6 million, will be available to fund national minority organizations. The average award will be approximately $240,000 ranging from $100,000 to $300,000.

Awards are expected to begin on or about March 15, 1994, and will be for a 12-month budget period within a project period of 5 years. (Budget Period is the interval of time into which the project period is divided for funding and reporting purposes. Project Period is the total time for which a project is programmatically approved.) Funding estimates may vary and are subject to change. Continuation awards for new budget periods within an approved project period will be based on satisfactory performance, receipt of an acceptable continuation application, and the availability of funds.

Purpose

The purpose of this program is for national organizations to assist the nation's education agencies, institutions of higher education, and/or youth-serving agencies in efforts to prevent behaviors that place young people at risk of HIV infection, STDs, and other important health problems.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under section A., and CDC will be responsible for conducting activities under section B. as listed below:

A. Recipient Activities

1. Collaborate with constituents, state and local education and health agencies, and CDC to develop a national strategy to achieve the purposes of this program.

2. Establish specific, measurable, and realistic goals and objectives.

3. Establish an operational plan, including, but not limited to:

(a) Placing comprehensive school health programs, health promotion programs at institutions of higher education, and/or community health programs for youth, especially minority youth and youth in high-risk situations, high on their own agenda and high on the public agenda.

(b) Supporting the development of national, state, and local policies and programs.

(c) Collaborating with other national organizations to support programs designed to prevent the development of high-risk behaviors among youth.

(d) Mobilizing national, state, and local alliances, networks, coalitions, and support systems to improve such programs.

(e) Educating and empowering policy and decision making members of national organizations to act individually and collectively to support locally determined programs that are consistent with community values and appropriate to community needs.

4. Evaluate program's effectiveness in achieving goals and objectives.

5. Disseminate programmatic information to CDC and other interested recipients through appropriate methods, including:

(a) Identifying and submitting pertinent programmatic information for incorporation into a computerized database of health information and health promotion resources, such as the Combined Health Information Database (CHID).

(b) Sharing information through electronic bulletin boards, such as the Comprehensive Health Education Network (CHEN).

6. Collaborate with CDC and other appropriate agencies in planning and participating in an annual conference and at least one workshop during the budget period. Budget requests should include the cost of a four-day trip to Atlanta for two individuals.

B. CDC Activities

1. Provide and periodically update information related to the purposes or activities of this program announcement.

2. Coordinate with national, state, and local education and health agencies and other relevant organizations in planning and conducting national strategies designed to strengthen programs for preventing HIV infection, STDs, and other important health risks and health problems among youth.

3. Provide programmatic consultation and guidance related to program planning, implementation, and evaluation; assessment of program objectives; and dissemination of successful strategies, experiences, and evaluation reports.

4. Plan meetings of national, state, and local education agencies and other appropriate agencies to address issues and program activities related to improving comprehensive school health programs; and strengthen the capacity of institutions of higher education and youth-serving agencies to prevent HIV infection, STDs, and other important health problems among youth.

5. Assist in the evaluation of program activities.

6. Monitor the recipient's performance of program activities.

Review and Evaluation Criteria

Each application will be allocated a total of 100 points, and will be reviewed and evaluated according to the following criteria:

A. Background/Need (5 points)

The extent to which the applicant justifies need for the program.

B. Capacity (20 points)

The extent to which the applicant demonstrates the capacity and ability of the organization to address the identified needs and develop and conduct program activities.

C. Goals and Objectives (10 points)

1. *Goals.* The extent to which the applicant has submitted specific and realistic goals for the projected five-year project period and are consistent with program requirements.

2. *Objectives.* The extent to which the applicant has submitted objectives for the one-year budget period that are specific, measurable, and feasible and that are directly related to the program's goals.

D. Operational Plan (20 points).

The extent to which the applicant:

1. Proposes activities that are likely to achieve each objective for the budget period.

2. Addresses each recipient activity for the relevant priority area.

3. Provides a reasonable timeline for conducting those activities.

E. Project Management and Staffing (20 points)

The extent to which the applicant identifies staff and other agencies that have the responsibility and authority to carry out each activity, as evidenced by job descriptions, curriculum vitae, organizational charts, and letters of support from collaborating agencies.

F. Sharing Experiences and Resources (5 points)

The extent to which the applicant indicates how it will share effective materials and activities.

G. Collaborating (10 points)

The extent to which the applicant describes how it will collaborate with CDC and other CDC-funded agencies such as state and local health and education agencies, institutions of higher education, and other national organizations.

H. Evaluation (10 points)

The extent to which the applicant identifies data that will measure progress in meeting objectives and program effectiveness, and presents a reasonable plan for obtaining data, reporting the results, and using the results for programmatic decisions.

I. Budget and Accompanying Justification (Not scored)

The extent to which the applicant provides a detailed and clear budget narrative consistent with the stated objectives and planned activities of the project.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, entitled Intergovernmental Review of Federal Programs (Ref: 45 CFR part 100).

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.938, Cooperative Agreements to Support School Health Education to Prevent the Spread of Acquired Immunodeficiency Syndrome.

Other Requirements

HIV/AIDS Requirements

Recipients must comply with the document entitled: "Interim Revision of Requirements of the Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control and Prevention Assistance Programs" (June 15, 1992), a copy of which is included in the application kit. The names of the review panel members must be listed on the Assurance of Compliance Form CDC 0.1113, which is also included in the application kit. In progress reports, the recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 must be submitted to: Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–18, Atlanta, Georgia 30305 on or before November 15, 1993. Fax copies will not be accepted.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, at 4:30 p.m. (EST), or;

(b) Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial mail carrier or the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.

2. *Late Applications:* Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, application package, and business management technical assistance may be obtained from Albertha Carey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–18, Atlanta, GA 30305, telephone (404) 842–6508.

Programmatic technical assistance may be obtained from Elizabeth Majestic, Acting Chief, Special Populations Section, Program Development and Services Branch, Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Mailstop K–31, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Atlanta, GA 30341–3724, telephone (404) 488–5356.

Announcement number 403, "National Programs To Strengthen Comprehensive School Health Programs and Prevent Problems Among Youth" must be referenced in all requests for information pertaining to this project.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock number 017–001–00474–0), Healthy People 2000 (Summary Report; Stock Number 017–001–00473–1), and Adolescent Health (Volume 1, Stock No. 052–00301234–1; Volume 2, Stock No. 052–003–01235–9; Volume 3, Stock No. 052–003–01236–7), referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (202) 783–3238. Potential applicants may obtain copies of the CDC HIV Strategic Plan from the National AIDS Information Clearinghouse, P.O. Box 6003, Rockville, MD 20850, (800) 458–5231.

A copy of The National Education Goals Report and its Executive Summary (Full Report, Order No. 065–000–00467–4; Executive Summary, Order No. 065–000–0466–6) can be ordered from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

Special Guidelines for Technical Assistance Workshop

One-day technical assistance workshops will be available for potential applicants in the following locations: Los Angeles—October 12, 1993; Chicago—October 14, 1993;

Washington, DC—October 15, 1993. The purpose of this meeting is to help potential applicants to:

1. Understand the scope and intent of the National Programs to Strengthen Comprehensive School Health Programs and Prevent Health Problems Among Youth;

2. Understand the scope and intent of the State and Local Comprehensive School Health Programs to Prevent Important Health Problems and Improve Educational Outcomes;

3. Understand the scope and intent of the University Programs for Health Education to Prevent Human Immunodeficiency Virus Infection and Other Important Health Problems;

4. Understand the scope and intent of the Local Programs to Prevent Human Immunodeficiency Virus Infection and related Priority Health Problems;

5. Plan coordinated, complimentary approaches to assist the nation's education agencies, institutions of higher education, and youth-serving agencies in efforts to prevent behaviors that place youth at risk of HIV infection, STDs, and other important health problems; and

6. Be familiar with the Public Health Service grants policies, applications, and review procedures.

Attendance at this workshop is not mandatory. Applicants who are currently funded by CDC may not use project funds to attend this workshop. However, attendees who compete successfully may be reimbursed for their expenses through the new award. Workshops will be held only if 10 or more persons sign-up for each workshop.

Each potential applicant may send not more than two representatives to this meeting. Please provide the names of the persons who are planning to attend this meeting to Elizabeth Majestic, Acting-Chief, Special Populations Section, Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), telephone (404) 488–5356, within two weeks after the publication date of the program announcement in the **Federal Register**.

Dated: August 30, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–21540 Filed 9–2–93; 8:45 am]

BILLING CODE 4160–18–P

National Center for Environmental Health Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) will convene the following meeting cosponsored by the American Association for Clinical Chemistry and the American Heart Association.

Name: Frontiers in Lipid and Lipoprotein Research: Basic Science, Analytical, Clinical, and Public Health Applications.

Times and Dates: 1 p.m.–4:30 p.m., Sunday, September 19, 1993. 8 a.m.–5 p.m., Monday, September 20, 1993. 8 a.m.–5 p.m., Tuesday, September 21, 1993.

Place: Hotel NIKKO Atlanta, 3300 Peachtree Road, NE, Atlanta, Georgia 30305.

Status: Open to the public, limited only by available space.

Matters to be Discussed: The meeting will present significant advances in lipid and lipoprotein research and new observations that are of critical importance to clinical practice and public health. An integrated review of relevant recent advances in basic science, measurement technology, epidemiological and clinical research, and public health practice will be presented to better define the state of the art for understanding and preventing morbidity and mortality due to heart disease.

Contact Person for Further Information: Gary L. Myers, Ph.D., Chief, Special Activities Branch (F25), Division of Environmental Health Laboratory Sciences, NCEH, CDC, 4770 Buford Hwy, NE, Atlanta, Georgia 30341–3724, telephone 404/488–4126.

Dated: August 27, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–21538 Filed 9–2–93; 8:45 am]

BILLING CODE 4160–18–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, August 27, 1993. (Call PHS Reports Clearance Officer on 202–690–7100 for copies of request).

1. Health Professions Student Loan and Nursing Student Loan Programs —Forms—0915–0044—The application form provides the Terms of Agreement. The deferment and postponement forms allow the school to suspend loan payments. The school grants partial cancellation of a loan when it receives the completed cancellation form. The Department uses the Annual Operating Report to monitor the financial activities of the school. Respondents: Individuals or households, non-profit institutions.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hours)
HPSL/NSL Application (HRSA–514)	750 schools	1	.5
HPSL/NSL Deferment Form (HRSA–519)	10,375 borrowers	1	.167
Postponement of Installment Payment (HRSA–518)	50 borrowers	1	.083
NSL Cancellation (HRSA–520)	50 borrowers	1	.25
HPSL/NSL Annual Operating Report	1,645 schools	1	.5

Estimate Total Annual Burden—10,346 hours.

2. Premarket Approval of Medical Devices—0910–0231—The PMA regulation describes the contents of a premarket approval application (PMA) for a medical device. The Food and Drug Administration requires this information from medical device manufacturers in order to approve for marketing, devices shown to be safe and effective, or to disapprove devices not shown to be so. *Respondents:* Businesses or other for-profit; small businesses or organizations:

Title	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Premarket Approval of Medical Devices—21 CFR 814.15, 20, 37, 39, 82, and 84—Reporting	660	1	810.606
Premarket Approval of Medical Devices—21 CFR 814.82—Recordkeeping	500	1	16.8

Estimate Total Annual Burden—543,400 hours.

3. Medical Device Innovation Survey—New—To assess the impact of the Food and Drug Administration regulations required by the Safe Medical Devices Act, the current status of device innovations is needed. A survey of innovative device establishments will allow FDA to assess the impact of proposed rules by employment size, sales, and corporate structure, pursuant to E.O. 12291. *Respondents:* Businesses or other for-profit, small businesses or organizations; *Number of Respondents:* 274; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .484 hour; *Estimated Annual Burden:* 133 hours.

4. Evaluation of the Long-term Impact of Worker Notification and Development of an Evaluation Instrument for Routine Monitoring of Current Notifications Conducted by NIOSH—New—Worker notification is the process of notifying subjects of epidemiologic studies about the study results and implication of the study. The overall purpose of the project is to improve the quality and usefulness of the process, impact and effectiveness of the National Institute for Occupational Safety & Health worker notification. There are two tasks. Task I is an evaluation of the long-term impact of worker notification. Task II is the development of an instrument to determine the short-term impact and effectiveness of current and future notifications conducted by NIOSH. *Respondents:* Individuals or households; *Number of Respondents:* 345; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .814 hour; *Estimated Annual Burden:* 281 hours.

5. Faculty Loan Repayment Program (FLRP) and Minority Faculty Fellowship Program (MFFP)—Applications—0915–0150—Health professions schools applying to FLRP identify disadvantaged health professions graduates who have a contract to serve as full-time faculty and have creditable loans. MFFP schools identify individuals from underrepresented minorities in health professions who meet program criteria and provide assurance for matched dollars for fellowship contracts. *Respondents:* Individuals or households; businesses or other for-profit; small businesses or organizations.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Faculty Loan Repayment Program (FLRP) previously approved)	280	1	.70
Minority Faculty Fellowship Program (MFFP) (new program)	200	1	.5

Estimate Total Annual Burden—290 hours

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: August 31, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93–21562 Filed 9–2–93; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Agreement on Social Security Between the United States and Ireland; Entry Into Force

The Principal Deputy Commissioner of Social Security gives notice that an agreement coordinating the United States (U.S.) and Irish social security programs entered into force on September 1, 1993. The agreement with Ireland, which was signed on April 14, 1992, is similar to U.S. social security agreements already in force with fourteen other countries—Austria, Belgium, Canada, Finland, France, Germany, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Agreements of this type are authorized by section 233 of the Social Security Act.

Like the other agreements, the U.S.-Irish agreement eliminates dual social security coverage—the situation that exists when a worker from one country works in the other country and is covered under the social security systems of both countries for the same work. When dual coverage occurs, the worker or the worker's employer or both may be required to pay social security contributions to the two countries simultaneously. Under the U.S.-Irish agreement, a worker who is sent by an employer in the U.S. to work in Ireland for 5 years or less remains covered only by the U.S. system. The agreement includes additional rules that eliminate dual U.S. and Irish coverage in other work situations.

The agreement also helps eliminate situations where workers suffer a loss of benefit rights because they have divided their careers between the two countries. Under the agreement, workers may qualify for partial U.S. or partial Irish benefits based on combined (totalized) work credits from both countries.

Individuals who wish to obtain copies of the agreement or want more information about its provisions may write to the Social Security Administration, Office of International Policy, Post Office Box 17741, Baltimore, MD 21235.

Dated: August 27, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

[FR Doc. 93–21549 Filed 9–2–93; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–47]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Army Corps of Engineers:* Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave., NW, Room 4133, Washington, DC 20314–1000; (202) 272–0520; (This is not a toll-free number).

Dated: August 27, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 9/03/93

California—Fort Ord

Fort Ord is located 7 miles north of the City of Monterey and 120 miles southeast of San Francisco, California 93941–5000. The installation is scheduled for closure on or about September 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation consists of approximately 26,720 acres and 14 million square feet of permanent facilities that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance and storage facilities; and other more specialized structures.

For specific information concerning Fort Ord, please contact Commander, 7th ID, ATTN: AFZW–RM (LTC Anderson), Fort Ord, California 93941–5000.

Suitable/Available Properties

Property Number: 329210039
Type Facility: Housing—1215 family houses; majority are 2-story.

Property Number: 329210040
Type Facility: Temporary Living Quarters—254 buildings; wood, concrete and concrete block structures including barracks.

Property Number: 329210041
Type Facility: Office/Administration—304 buildings; wood, concrete, concrete block and steel structures including personnel bldgs. and general purpose bldgs.

Property Number: 329210042
Type Facility: Recreation—52 facilities including bowling center, guest houses, community and youth centers, library, gym and recreation bldgs.

Property Number: 329210043
Type Facility: Aircraft/Airport Facilities—18 facilities including hangars, runway, taxiways, aprons, fire station, maintenance bldgs. and control tower.

Property Number: 329210044
Type Facility: Maintenance/Engineering Facilities—24 buildings; wood, concrete block and steel structures.
Property Number: 329210045
Type Facility: Mess/Dining Halls—95 buildings; wood, concrete and concrete block dining facilities.
Property Number: 329210046
Type Facility: Child Care—6 buildings; wood and concrete child care centers.
Property Number: 329210047
Type Facility: Stores and Services—22 buildings; wood, concrete, concrete block and steel structures including stores, snack bars, commissary and service station exchange.
Property Number: 329210048
Type Facility: Hospital Facilities—10 buildings; wood, concrete and concrete block structures including a hospital, clinics and vet. facilities.
Property Number: 329210049
Type Facility: Chapels—10 buildings; wood, concrete, concrete block chapels and chapel center facilities.
Property Number: 329210050
Type Facility: Fire Facilities—2 fire stations.
Property Number: 329210051
Type Facility: Audio Visual Facilities—8 buildings; wood, concrete and steel structures including photo labs and training centers.
Property Number: 329210052
Type Facility: Communications/Electronics Facilities—6 buildings; concrete, concrete block and steel structures including a communication center and radio bldgs.
Property Number: 329210053
Type Facility: Warehouses—216 buildings; wood, concrete, concrete block and steel structures including storage bldgs. and sheds.
Property Number: 329210054
Type Facility: Vehicle Shops—82 buildings; wood, concrete, concrete block and steel structures including maintenance shops and oil storage bldgs.
Property Number: 329210055
Type Facility: Miscellaneous Facilities—438 facilities including hdqts. bldgs., reserve centers, classrooms, day rooms, roads, vehicle parks and training areas.
Property Number: 329210056
Type Facility: Multi-Purpose Facilities—27 facilities.
Property Number: 329210057
Type Facility: Fuel Facilities—31 buildings; concrete, concrete block and steel structures including gas station bldgs.
Property Number: 329210058
Type Facility: Hazardous Storage Facilities—6 buildings; concrete, concrete block and steel structures.
Property Number: 329210059
Type Facility: Explosives/Munitions Facilities—31 buildings; concrete and steel structures including igloo storages and magazine storages.

California—Sacramento Army Depot

Sacramento Army Depot is located within the city limits of Sacramento, California 95813–5053. Three major highways (California 99, Interstate 80 and U.S. Route 50) are in the immediate vicinity. The Depot is in an area zoned as industrial. The installation is scheduled to be closed on or about September 1997, however complete mission cessation will accelerate reuse of facilities and real property on or about October 1994.

The installation consists of approximately 485 acres and 3.2 million square feet of facilities. The Army will retain a 50 acre enclave on the installation to support the Reserve Component mission. The properties that HUD has determined suitable and which are available for use to assist the homeless include housing; office and administrative buildings; recreation, maintenance and storage facilities; and other more specialized structures.

For specific information concerning Sacramento Army Depot, please contact Commander, Sacramento Army Depot, ATTN: SDSSA–LS (Mr. Guy Brown), Sacramento, California 95813–5053.

Suitable/Available Properties

Property Number: 329320004
Type Facility: Housing—3 buildings; ranging in size from 1320 sq. ft. to 2343 sq. ft. including garages.
Property Number: 329320005
Type Facility: Office/Administration—7 buildings; ranging in size from 192 sq. ft. to 109,655 sq. ft.
Property Number: 329320006
Type Facility: Recreation/Stores/Services—20 buildings; ranging in size from 100 sq. ft. to 9871 sq. ft. including community and fitness centers, snack bars, etc.
Property Number: 329320007
Type Facility: Warehouses/Storage Facilities—23 buildings; ranging in size from 119 sq. ft. to 261,360 sq. ft.
Property Number: 329320008
Type Facility: Communication/Electronic—13 buildings; electronic maintenance shops and equipment facilities ranging in size from 756 sq. ft. to 163,961 sq. ft.
Property Number: 329320009
Type Facility: Hospital—1 building; 6622 sq. ft. clinic without beds.
Property Number: 329320010
Type Facility: Dining Hall—1 building; 12,550 sq. ft. post restaurant.
Property Number: 329320011
Type Facility: Miscellaneous Buildings—14 buildings; ranging in size from 120 sq. ft. to 5612 sq. ft. including sentry stations, gen. inst. bldgs. and waste treatment facilities.
Property Number: 329320012
Type Facility: Maintenance/Engineering—6 buildings; ranging in size from 437 sq. ft. to 8707 sq. ft.
Property Number: 329320013
Type Facility: Vehicle Shop Buildings—2 buildings; ranging in size from 600 sq. ft. to 48,363 sq. ft.
Property Number: 329320014
Type Facility: Hazardous Storage Buildings—18 buildings; flammable material storehouses ranging in size from 72 sq. ft. to 4100 sq. ft.
Property Number: 329320015
Type Facility: Land—approximately 485 acres including swimming pools, tennis courts, baseball and softball fields, golf course, roads, open areas etc.

California—Land

Suitable/Available Properties

Land—2.5 acres
Hamilton Army Airfield
Novato Co: Marin CA 94945
Landholding Agency: COE–BC
Property Number: 329310001
Status: Excess
Base closure Number of Units: 1
Comment: 2.5 acres, potential utilities, access restriction, subject to flooding, wetlands and storm water runoff, potential for contamination from adjoining areas

Connecticut

Suitable/Unavailable Properties

15 Family Houses
Portlant CT 36
Portland Co: Middlesex CT 06484
Landholding Agency: COE–BC
Property Numbers: 319011218–319011232
Status: Excess
Base Closure
Comment: 1000–1300 sq. ft., 1 story wood frame residences

Florida—Land

Unsuitable Properties

Cape St. George Reservation
Fort Rucker, AL Installation #12050
Apalachicola Co: Franklin G C FL 32320
Landholding Agency: COE–BC
Property Number: 329140001
Status: Unutilized
Base Closure Number of Units: 1

Reason: Floodway, Inaccessible

Illinois

Suitable/Unavailable Properties

12 Worth Family Houses
Fort Sheridan
Worth Co: Cook IL 60482
Landholding Agency: COE–BC
Property Number: 329210002
Status: Excess
Base closure
Comment: 1-story residences, possible asbestos, off-site use only, scheduled to be vacated 05/93.

12 Addison Family Houses
Fort Sheridan
Addison Co: DuPage IL 60101
Landholding Agency: COE–BC
Property Number: 329210001
Status: Excess
Base Closure
Comment: 1-story residences, possible asbestos, scheduled to be vacated 05/93.

Unsuitable Properties

Bldg. 117, Hangar
Fort Sheridan Co: Lake IL 60037–5000
Landholding Agency: COE–BC
Property Number: 329230001
Status: Excess
Base closure Number of Units: 1
Reason: Within airport runway clear zone

Indiana—Fort Benjamin Harrison

Fort Benjamin Harrison is located northeast of Indianapolis in the City of Lawrence 46216–5000. All the properties will be excess to the needs of the Army Corps of Engineers on or about September 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers 2501 acres and has 4.7 million square feet of facilities. The properties that HUD has determined suitable and which are available include family housing residences, temporary living quarters, office/administration buildings, various types of recreational facilities, child care centers and chapels, dining halls, a hospital, warehouses, miscellaneous and other specialized structures. More specific information concerning properties at the base can be obtained by contacting LTC Gregory Miller, US Army Soldier Support Center, Attn: ATZI–IS, Fort Benjamin Harrison, Indiana 46216–5000; (317) 542–5382.

Suitable/Available Properties

Property Numbers: 329210068–329210069
Type Facility: Housing—90 family residences, 1 and 2 story brick frame; 29 temporary living quarters (barracks), brick or concrete frame.
Property Number: 329210070
Type Facility: Office/Administration—26 buildings; wood, brick, concrete or concrete block frame; includes personnel and general purpose buildings.
Property Number: 329210071
Type Facility: Recreational Facilities—28; wood, brick, concrete or concrete block frame; includes gym, canteen, golf course, swimming pool, riding stable, tennis court, bowling center, recreation buildings, basketball and handball courts, baseball fields, track, and playgrounds.
Property Number: 329210072
Type Facility: Child Care Centers—2 buildings; brick frame; 5,818 & 14,457 sq. ft.
Property Number: 329210073
Type Facility: Dining Halls—4; brick frame; 11,075 to 31,439 sq. ft.
Property Number: 329210074
Type Facility: Stores/Services—12 buildings; 140 to 68,899 sq. ft.; brick, wood, concrete or concrete block frame; includes restaurant, commissary, sales stores, exhcange branchs, and service outlet.
Property Number: 329210075
Type Facility: Hospital, brick frame.
Property Number: 329210076
Type Facility: 2 Chapels; 3,747 & 16,587 sq. ft., brick and aluminum frame.
Property Number: 329210078
Type Facility: 2 Fire Facilities; 2,243 & 3,835 sq. ft.; includes fire station and hose house.
Property Numbers: 329210079, 329210083
Type Facility: 2 Vehicle Shops and Fuel Facility; concrete/asbestos frame; 1 gas station building, 327 sq. ft.
Property Number: 329210080
Type Facility: Maintenance Engineering—6 buildings; 168 to 14,074 sq. ft.; wood, brick or concrete block frame.
Property Number: 329210081, 329210082
Type Facility: Explosives/Munitions and Hazardous Storage— 10 buildings; 103 to 1,138 sq. ft.; brick, steel, concrete or wood frame; includes ammo magazines and flammable materials storage.
Property Number: 329210084
Type Facility: 23 Warehouses; 960 to 56,650 sq. ft.; brick, concrete or steel frame.
Property Number: 329210085
Type Facility: 150 Miscellaneous Buildings; 31 to 211,364 sq. ft.; includes headquarters & general instruction buildings; training centers and detached garages.
Property Number: 329210086
Type Facility: 5 Multipurpose Buildings.

Land

Property Number: 329210077
Type Facility: 2 Aircraft/Airport Facilities; 938 sq. yds.

Unsuitable Properties

Property Number: 329210087
Type Facility: 1 Recreational Facility; within a floodway.

Indiana—Land

Suitable/Available Properties

Land—Plant II
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Landholding Agency: COE–BC
Property Number: 329220004
Status: Excess
Base closure Number of Units: 1
Comment: 858.63 acres, 34 acres subj. to flooding, access over private property by easement of roadway, manufac. facility on site not operative for 20 yrs.

Kentucky—Lexington-Blue Grass Army Depot

Lexington-Blue Grass Army Depot is located in Fayette and Bourbon Counties in Central Kentucky. The installation is scheduled for closure on or about September 1994. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers had advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation consists of approximately 780 acres and 113 permanent facilities that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable which are available include housing, office and administrative buildings, industrial/warehouse facilities, other more specialized structures and recreational areas.

Suitable/Available Properties

Property Number: 329330001
Type Facility: Housing—17 family units; ranging in size from approximately 2500 sq. ft. to 9000 sq. ft., brick or aluminum frame.
Property Number: 329330002
Type Facility: Office/Administration—8 buildings; ranging in size from approximately 570 sq. ft. to 11,000 sq. ft., concrete or aluminum frame.

Property Number: 329330003
Type Facility: Recreation—6 facilities; including a 9-hole golf course, swimming pool, clubhouse, tennis courts, softball field and playground.
Property Number: 329330004
Type Facility: School/Child Care—2 facilities.
Property Number: 329330005
Type Facility: Hospital
Property Number: 329330006
Type Facility: Mess/Dining Halls—3 facilities.
Property Number: 329330007
Type Facility: Communications/ Electronics—2 facilities; concrete frame.
Property Number: 329330008
Type Facility: Warehouses—41 facilities; various sizes, concrete or brick frame.
Property Number: 329330009
Type Facility: Miscellaneous Facilities—40 facilities including fire department, restaurant, gas station, motor pool, stores/services, heating and sewer plants.
Property Number: 329330010
Type Facility: Hazardous Storage—1 facility.

Massachusetts—Fort Devens

Fort Devens military base is located at Fort Devens, Massachusetts 01433–5000. It is approximately 45 miles west of Boston. All the properties will be excess to the needs of the Army Corps of Engineers on or about October 31, 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation covers 9,283 acres and has approximately 7.4 million square feet of facilities. The properties that HUD has determined suitable and which are available include single family and multifamily housing units; office and administration buildings, indoor and outdoor recreational facilities; warehouses and multi-use buildings; hospital facilities; stores and service facilities; dining facilities; a child care facility; and other miscellaneous and specialized structures.

For specific information concerning Fort Devens, please contact Commander, Fort Devens, Attn: AFZD–T (Mr. Carter Hunt), Fort Devens, Massachusetts 01433–5000.

Suitable/Available Properties

Property Number: 329210012
Type Facility: 54 Office/Administration Buildings; 1,174 to 71,781 sq. ft.; wood, brick or concrete block frame including personnel bldgs., general purpose and support services bldgs.
Property Number: 329210029
Type Facility: 259 Housing units; 1,200 to 4,380 sq. ft.; wood or brick frame; single and duplex residences, multifamily residences—up to 14 units per bldg.
Property Number: 329210015
Type Facility: 150 Temporary Living Quarters; 1,028 to 19,120 sq. ft.; wood, brick or concrete block structures including barracks.
Property Number: 329210013
Type Facility: 25 Recreational Facilities; 155 to 30,000 sq. ft.; wood, brick, steel or concrete block construction including a gym, library, swimming pool, golf clubhouse, and bowling center.
Property Numbers: 329210016, 329210025
Type Facility: Aircraft/Fuel Facilities—5; gas station bldgs. and pump stations; wood, steel or concrete block structures.
Property Numbers: 329210017, 329210021
Type Facility: Maintenance Engineering/Vehicle Shops—31 buildings; 120 to 20,310 sq. ft.; wood, brick, steel or concrete block frame including maintenance shops, entomology facility, vehicle maintenance bldgs., oil storage bldgs.
Property Number: 329210018
Type Facility: 11 Stores/Service Buildings; 271 to 107,208 sq. ft.; wood, concrete block or brick frame including commissary, sales store, exchange service station, exchange retail stores.
Property Number: 329210019
Type Facility: 4 Hospital Facilities; 493 to 126,835 sq. ft.; wood, concrete, concrete block or brick frame including clinics, hospital, veterinarian facility, and dental clinic.
Property Number: 329210022
Type Facility: 4 Audio Visual/Photo Labs; 480 to 10,612 sq. ft.; wood or concrete block construction.
Property Number: 329210027
Type Facility: 24 Mess/Dining Halls; 2,403 to 2,717 sq. ft.; wood frame.
Property Number: 329210024
Type Facility: 2 Communication Buildings; 1,322 to 1,749 sq. ft.; concrete block or brick frame; communication centers.
Property Number: 329210026
Type Facility: 86 Warehouses; 49 to 85,790 sq. ft.; wood, concrete, concrete block or steel construction including sheds, storehouse, medical supply, vehicle storage, general purpose bldgs.
Property Number: 329210014
Type Facility: Child Care Facility; 6,012 sq. ft.; wood frame.
Property Number: 329210023
Type Facility: 8 Hazardous Storage Buildings; 64 to 6,000 sq. ft.; concrete, steel or concrete block structures including oxygen storage facilities and flammable materials storage.
Property Number: 329210028
Type Facility: 168 Miscellaneous Facilities; 320 to 114,000 sq. ft.; wood, concrete block, brick or steel construction including general purpose bldgs., training facilities, RG houses, reserve centers, garages.
Property Number: 329210030
Type Facility: 4 Multi-purpose buildings.

Unsuitable Properties

Property Number: 329210032
Type Facility: 3 Recreation Facilities; within 2,000 feet from flammable or explosive material.
Property Numbers: 329210033, 329210038
Type Facility: One Temporary Living Quarters and 2 housing residences; within 2,000 feet from flammable or explosive material.
Property Number: 329210031
Type Facility: One Office/ Administration Building; within 2,000 feet from flammable or explosive material.
Property Numbers: 329210034, 329210037
Type Facility: 6 Miscellaneous Buildings—including stores, service facilities, etc.
Property Number: 329210035
Type Facility: One Vehicle Shop; within 2,000 feet from flammable explosive material.
Property Number: 329210036
Type Facility: One Warehouse; within 2,000 feet from flammable explosive material.

Massachusetts

Suitable/Available Properties

12 Bldgs., Burlington Housing
South Bedford
Burlington Co: Middlesex MA 01803
Landholding Agency: COE–BC
Property Number: 329240005
Status: Surplus
Base closure Number of Units: 12
Comment: 1100 sq. ft. each, 1-story wood frame residences.

Michigan

Suitable/Unavailable Properties

Pontiac Storage Facility
871 East South Boulevard
Pontiac Co: Oakland MI 48054
Landholding Agency: COE–BC
Property Number: 329240001
Status: Excess
Base closure Number of Units: 5
Comment: 607,202 sq. ft. warehouse w/ steel frame, 4 other structures inc. well house, sentry station, heating plant and water tower located on 31.24 acres.

New Jersey—Fort Dix

Fort Dix is located in the eastern edge of Burlington County, and part of the western edge of Ocean County, New Jersey. It is approximately 17 miles southeast of Trenton, New Jersey. The installation is scheduled for realignment on or about October 1, 1993. The majority of the base is being retained for Federal use.

The Sheridanville Family Housing complex is located on Sailors Pond Road, approx. 1 mile east of State Highway 68. The Kennedy Courts Family Housing complex is located at the corner of Pemberton-Pointville and Juliustown Roads, approx. 1 mile southeast of County Route 616. Both complexes contain various types of housing, service stores, maintenance buildings, miscellaneous buildings and other more specialized structures.

For specific information concerning Fort Dix, please contact U.S. Army Training Center, Attn: ATZD–EHP, Jean M. Johnson, Fort Dix, NJ 08640–5506.

Suitable/Unavailable Properties

Sheridanville Family Housing Complex

Property Number: 329220014
Type Facility: Housing—25, 6-unit buildings; 1, 2 or 3 bedrooms, wood frame w/brick veneer facing
Property Number: 329220015
Type Facility: Housing—one, 8-unit building, 2 story, 1, 2 or 3 bedrooms, wood frame w/brick veneer facing
Property Number: 329220016
Type Facility: Housing—one, 10-unit building; 2 story, 1, 2 or 3 bedrooms, wood frame w/brick veneer facing
Property Number: 329220017
Type Facility: Housing—11, 12-unit buildings; 2 story, 1, 2 or 3 bedrooms, wood frame w/brick veneer facing
Property Number: 329220018
Type Facility: 33 detached sheds; 1 story, wood frame
Property Number: 329220020
Type Facility: Maintenance Engineering—3 buildings
Property Number: 329220021
Type Facility: Service Store—1 building, most recent use—PX, wood frame
Property Number: 329220022
Type Facility: Miscellaneous—3 buildings; waiting shelters
Property Number: 329220019
Type Facility: Recreational/land—basketball court and softball field

Kennedy Courts Family Housing Complex

Property Number: 329220023, 329220035, 329220043
Type Facility: Office/Administration—42 buildings; concrete or cinderblock w/brick veneer facing, 1, 2 or 3 story, includes classrooms, instructional bldgs., administration & supplies, regimental headquarters, personnel-supply services
Property Numbers: 329220024, 329220036, 329220044
Type Facility: Recreational—12 facilities; includes gym, theater, tennis court, recreation center, museums, community centers
Property Numbers: 329220025, 329220045
Type Facility: Maintenance Engineering—5 buildings; wood, concrete or cinderblock, 1 or 2 story, includes generator and gas meter house
Property Numbers: 329220026, 329220037, 329220046
Type Facility: Service Stores—3 PXs
Property Numbers: 329220027, 329220038
Type Facility: Hospitals—2 buildings; 1 story, concrete or cinderblock w/brick veneer facing
Property Numbers: 329220028, 329220039
Type Facility: Chapels—2; 1 story
Property Numbers: 329220029–329220030, 329220047, 329220050
Type Facility: Vehicle/Fuel—10 facilities; includes gas stations, oil storage bldgs., vehicle greaser, automotive shop
Property Numbers: 329220031, 329220040
Type Facility: Dining Halls—8 facilities; includes enlisted personnel dining, 1 story, concrete or cinder-block w/ brick veneer facing
Property Numbers: 329220032, 329220041
Type Facility: Housing—22 buildings; enlisted barracks, 3 story
Property Number: 329220048
Type Facility: Hazardous storage—3 buildings; 1 story
Property Number: 329220049
Type Facility: Communications/Electronics—2; 1 & 2 story
Property Numbers: 329220013, 329220033, 329220042, 329220051–329220052
Type Facility: Miscellaneous—29 buildings; includes waiting shelters, warehouses, and other specialized structures
Property Number: 329220053
Type Facility: Area Confinement Facility; 109,668 sq. ft., 2 story concrete & block frame
Property Number: 329220011
Type Facility: Recreational/land—2; basketball courts

Unsuitable Properties

Property Number: 329220034
Type Facility: Sewage Pump
Property Number: 329220005–329220009
Type Facility: Housing (Kennedy Courts Family Housing Complex)
Reason: Extensive deterioration
Property Number: 329220010
Type Facility: 48 Detached Sheds (Kennedy Courts Family Housing Complex)
Reason: Extensive deterioration
Property Number: 329220012
Type Facility: Heat Plant (Kennedy Courts Family Housing Complex)
Reason: Extensive deterioration
Property Number: 329320016
Type Facility: Bldg. S06893 (Kennedy Courts Family Housing Complex)
Reason: Extensive deterioration

New Jersey

Suitable/Unavailable Properties

Bldg. P05605, Fort Dix
8th Street
Ft. Dix Co: Burlington NJ 08640
Landholding Agency: COE–BC
Property Number: 329210064
Status: Unutilized
Base Closure Number of Units: 1
Comment: 6137 sq. ft., 1-story, possible asbestos, most recent use— admin/ classroom.

Bldgs. P05602, P05603 Fort Dix
8th Street
Ft. Dix Co: Burlington NJ 08640
Landholding Agency: COE–BC
Property Number: 329210065–329210066
Status: Excess
Base Closure Number of Units: 2
Comment: 40653 sq. ft. each, 3-story, not handicapped accessible, no sprinkler/fire escape doors on 2nd/ 3rd floors, most recent use—trainee barracks.

Bldg. P05604, Fort Dix
8th Street
Ft. Dix Co: Burlington NJ 08640

Landholding Agency: COE–BC
Property Number: 329210067
Status: Excess
Base Closure Number of Units: 1
Comment: 12194 sq. ft., 1-story, presence of asbestos, most recent use—admin/supply building.
24 Family Houses
Franklin Lakes
Patrick Brems Court
Mahwah Co: Bergen NJ 07430
Landholding Agency: COE–BC
Property Numbers: 319010734–319010757
Status: Excess
Base Closure
Comment: 1196 sq. ft., 1 story wood frame residences.
32 Family Houses
Livingston Family Housing
Hornung Court
East Hanover Co: Morris NJ 07936
Landholding Agency: COE–BC
Property Numbers: 319010758–3190107789
Status: Surplus
Base Closure
Comment: 1196 sq. ft., 1 story wood frame residences, possible asbestos in floor tiles.

New York

Suitable/Unavailable

37 Nike Houses
New York 01
Tappan Co: Rockland NY
Landholding Agency: COE–BC
Property Numbers: 319011049, 319011070–319011105
Status: Excess
Base Closure
Comment: 897 sq. ft., 1 story wood frame residences on concrete slab.
27 Dry Hill Family Housing
Route 3
Watertown Co: Jefferson NY 13601
Landholding Agency: COE–BC
Property Numbers: 319030015–319030041
Status: Excess
Base Closure
Comment: 816–1300 sq. ft., 1 story wood frame residences.

Pennsylvania

Suitable/Available Properties

3 Supply Facilities
Tacony Warehouse
Located at 7071 Wissonoming St. & Milnor St.
Philadelphia Co: Philadelphia PA
Landholding Agency: COE–BC
Property Number: 329320001
Status: Excess
Base closure Number of Units: 3
Comment: ranging in size from 31,723 sq. ft. to 162,074 sq. ft. steel, framed masonry structures, need roof replacement
Bldg. C—Admin. Facility
Tacony Warehouse
Located at 7071 Wissonoming St. & Milnor St.
Philadelphia Co: Philadelphia Pa
Landholding Agency: COE–BC
Property Number: 329320002
Status: Excess
Base closure Number of Units: 1
Comment: 17,843 sq. ft. wood frame structure, needs major rehab
7 Utility Facilities
Tacony Warehouse
Located at 7071 Wissonoming St. & Milnor St.
Philadelphia Co: Philadelphia PA
Landholding Agency: COE–BC
Property Number: 329320003
Status: Excess
Base closure Number of Units: 7
Comment: auxillary bldgs. ranging in size from 53 sq. ft. to 13,308 sq. ft. including a heat plant

Suitable/Unavailable Properties

12 Family Houses
C.E. Kelly Support Facility
Finleyville Area Site 52, S–101–Q
Finleyville Co: Washington PA 15332
Location: Route 88 to Mineral Beach and turn left
Landholding Agency: COE–BC
Property Numbers: 319011407, 319011409–319011419
Status: Excess
Base Closure
Comment: 1 story frame residences, possible asbestos
12 Family Houses
Monroeville Area Site 25
C.E. Kelly Support Facility
Lindsey Lane R.D. #2
Monroeville Co: Allegheny PA 15239
Landholding Agency: COE–BC
Property Numbers: 319030051–319030062
Status: Excess
Base Closure
Comment: 1 story frame residences with playground area, possible asbestos
Land
C.E. Kelly Support Facility
Finleyville Area Site 52
Finleyville Co: Washington PA 15332
Landholding Agency: COE–BC
Property Number: 319011408
Status: Excess
Base Closure
Comment: 11.63 acres, potential utilities, most recent use—playground area.

Rhode Island

Suitable/Available Properties

16 Bldgs., Slaterville Housing
Pound Hill Street
N. Smithfield Co: Providence RI 02895
Landholding Agency: COE–BC
Property Number: 329240004
Status: Surplus
Base closure Number of Units: 16
Comment: 1100 sq. ft. each, 1-story wood frame residences.

Suitable/Unavailable Properties

62 Bldgs., Davisville Housing
Navy Drive
Davisville Co: Kingston RI 02852
Landholding Agency: COE–BC
Property Number: 329240003
Status: Surplus
Base closure: Number of Units: 62
Comment: sq. ft. varies, 2-story wood frame residences.

Virginia—Harry Diamond Laboratories

Harry Diamond Laboratories, Woodbridge Facility is located in Prince William County, Virginia, 22191. The installation is scheduled for closure on or about September 1994.

The installation consists of approximately 76,000 square feet of facilities that have been reviewed by HUD for suitability for use to assist the homeless.

For specific information concerning Harry Diamond Laboratories, please contact Commander, U.S. Army Laboratory Command, ATTN: AMSLC–MC (Ms. Ann Barnett), 2800 Powder Mill Road, Adelphi, Maryland 20783–1145.

Suitable/Unavailable Properties

Property Number: 329210060
Type Facility: Communications/Electronic Facilities—3 brick structures.
Property Number: 329210061
Type Facility: Warehouse—1 brick storehouse.
Property Number: 329210062
Type Facility: Miscellaneous Facilities—3 facilities including roads and a vehicle park.
Property Number: 329210063
Type Facility: Multi-Purpose Facilities—2 brick structures including an administrative building.

Suitable/Available Properties

Bldg. 4, DMA Herndon
925 Springvale Rd.
Great Falls VA 22066
Landholding Agency: COE–BC
Property Number: 329240002
Status: Excess
Base Closure Number of Units: 1
Comment: 4195 sq. ft., 1-story concrete masonary structure, most recent use—admin., scheduled to be vacated 01/94.

Washington

Suitable/Available Properties

28 Bldgs., Youngslake Housing
Near 116th St., SE & 192nd St.
Renton Co: King WA
Landholding Agency: COE–BC
Property Number: 329240006
Status: Excess
Base closure Number of Units: 28
Comment: 1184–1392 sq. ft., 3-bedroom residences, scheduled to be vacated 6/95.

[FR Doc. 93–21294 Filed 9–2–93; 8:45am]

Billing Code 4210–29–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–4350–01]

Area Closure; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure to off-road vehicle use on 3760 acres of BLM lands to protect human life and natural resource values.

SUMMARY: Notice is hereby given in accordance with 43 CFR 8341.2(a) that, the following public lands have been closed to off-road vehicle travel: the area south of Monte Vista, Colorado and west of the Monte Vista National Wildlife Refuge and east of BLM Road 5100 in T.38N., R.7E., Sections 34 & 35 and T.37N., R7E., Sections 2,3,10,11,14 and 15.

DATES: Closure to become effective September 1, 1993 and continue until May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Monica Weimer at (719) 589–4975.

ADDRESSES: Comments can be directed to Area Manger, 1921 State Street, Alamosa, CO 81101 (719) 589–4975 or Canon City District Manager, Bureau of Land Management, P.O. Box 2200, Canon City, Colorado 81215–2200 (719) 275–0631.

SUPPLEMENTARY INFORMATION: This area closure will eliminate an extremely dangerous situation where a considerable number of hunters shoot elk as they leave the Wildlife Refuge in the early morning. The closure will also protect the fragile vegetation and highly erodible soils from the adverse effects of vehicle travel during the wet months of the year.

This action does not effect hunting use in the area, but is intended to make the area safer for hunters and the general public, and protect the natural resource from damage during the fall/winter months when soils are often wet. Exclusions to this closure are listed in 43 CFR 8340.0–5(a).

Stuart L. Freer,

Associate District Manager.

[FR Doc. 93–21482 Filed 9–2–93; 8:45 am]

BILLING CODE 4310–JB–M

[CA–940–93–4111–15; CACA 14101]

California: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease CACA 14101 for lands in Kern County, California, was timely filed and was accompanied by all required rentals and royalties accruing from May 1, 1993, the date of termination.

No valid lease has been affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre and 16⅔ percent, respectively. Payment of a $500.00 administrative fee and reimbursement of the cost of the publication of this notice have been made.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective May 1, 1993. The lease is subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and an extension for two years from the date the lease is reinstated pursuant to 43 CFR 3108.2–3(e).

Dated: August 27, 1993.

Fred O'Ferrall,

Chief, Leasable Minerals Section.

[FR Doc. 93–21470 Filed 9–2–93; 8:45 am]

BILLING CODE 4310–JB–M

[CA–940–4210–05; CAS 077652]

Order Providing for Opening of Land; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: On August 18, 1965, the Bureau of Land Management issued patent 04–66–0015 to the Markleeville Public Utility District pursuant to the Recreation and Public Purposes Act of June 14, 1926 (43 U.S.C. 869, 869–1 to 869–4), for 2.50 acres of public land to be used for sanitary sewage disposal site purposes only. A compliance inspection revealed that not all the land was being used for the purpose for which it was patented. The Markleeville Public Utility District voluntarily relinquished the land not being used for disposal site purposes, title to the land has been accepted by the Bureau of Land Management, and the land has regained its public land status. This action will open 1.25 acres to the operation of the public land laws and to mining. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: October 4, 1993.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, Federal Office Building, room E–2845, 2800 Cottage Way, Sacramento, California, 95825.

1. By deed dated March 3, 1992, the Markleeville Public Utility District quitclaimed to the United States of America all its right, title, and interest in the following described land:

Mount Diablo Meridian

T. 10 N., R. 20 E.,
Sec. 22, S½NW¼NW¼SW¼SW¼.

The area described contains 1.25 acres in Alpine County.

2. At 10 a.m. on October 4, 1993, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on October 4, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on October 4, 1993, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: August 24, 1993.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 93-21479 Filed 9-2-93; 8:45 am]

BILLING CODE 4310-46-M

[OR-943-2300-02; GP3-357; OR-44583]

Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 4,684.04 acres of acquired lands to surface entry and mining, and 5,528.67 acres to mineral leasing. The 844.63-acre balance is within the Hart Mountain National Antelope Refuge withdrawal boundary and remains closed to surface entry and mining.

EFFECTIVE DATE: October 11, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/ Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION:

1. Under the authority of Section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described lands were acquired by the United States to be administered as public lands under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 35 S., R. 24 E.,
- Sec. 12, lots 3 and 4;
- Sec. 13, lots 1, 2, 3, and 4, and W½W½;
- Sec. 14, SE¼
- Sec. 23, E½ and E½SW¼;
- Sec. 24, lots 1, 2, 3, and 4, and NW¼SW¼;
- Sec. 25, lots 1 to 5, inclusive, and W½SW¼, EXCEPTING THEREFROM the following described parcel: Beginning at a point which is north 26°17'51" west a distance of 5,409.08 feet from the southwest corner of Sec. 31, T. 35 S., R. 25 E.; Thence north 20°37'26" east a distance of 1,297.98 feet; Thence north a distance of 150 feet; Thence west a distance of 457.19 feet; Thence south a distance of 1,364.59 feet to the point of beginning;
- Sec. 26, that portion of the E½ and the E½W½ lying north of the following: Beginning at a point which is north 21°13'39" west a distance of 6,618.54 feet from the southwest corner of Sec. 31, T. 35 S., R. 25 E.; Thence north 82°07'06" west a distance of 4,000.52 feet, more or less, to the west line of the E½NW¼;
- Sec. 36, lots 1, 2, 3, and 4, and W½W½.

T. 35 S., R. 25 E.,
- Sec. 7, lots 6, 7, 8, 11, and 12;
- Sec. 8, lots 1 and 2, and SW¼SW¼;
- Sec. 17, lots NW¼NW¼;
- Sec. 18, lots 1 to 10, inclusive, SE¼NE¼, SE¼NW¼, and NE¼SE¼;
- Sec. 19, lot 1;
- Sec. 30, lot 4;
- Sec. 31, lots 1 to 5, inclusive, and SE¼SW¼.

T. 36 S., R. 24 E.,
- Sec. 1, lots 1 to 5, inclusive, SW¼NW¼, and W½SW¼ expecting therefrom: Beginning at a point that is north a distance of 7,755.48 feet from the southwest corner of Sec. 12, T. 36 S., R. 24 E.; Thence east a distance of 712.77 feet; Thence north a distance of 1,320.00 feet; Thence west a distance of 737.46 feet; Thence south 1°13'27" east a distance of 1,155.74 feet; Thence south a distance of 164.53 feet to the point of beginning, as the same is shown on Record of Survey No. 4948, filed in the Lake County Surveyors Office;
- Sec. 12, lots 1, 2, 3, and 4, and W½NW¼;
- Sec. 13, lots 1, 4, and 5.

T. 36 S., R. 25 E.,
- Sec. 6, lots 1 to 13, inclusive, SE¼NE¼, SE¼NW¼, E½SW¼, and E½SE¼;
- Sec. 7, lots 1 to 12, inclusive, SW¼NE¼, E½W½, and W½SE¼;
- Sec. 8, NW¼;
- Sec. 18, lots 1 to 12, inclusive, W½NE¼, E½W½, and NW¼SE¼;
- Sec. 19, lots 8, 9, and 10.

The areas described aggregate 5,528.67 acres in Lake County.

2. The following described lands are included in the Hart Mountain National Antelope Refuge and will not be opened to surface entry and mining:

Willamette Meridian

T. 36 S., R. 25 E.,
- Sec. 8, lots NW¼;
- Sec. 18, lots 1 to 12, inclusive, W½NE¼, E½W½, and NW¼SE¼;
- Sec. 19, lots 8, 9, and 10.

The areas described aggregate 844.63 acres in Lake County.

3. At 8:30 a.m., on October 11, 1993, the lands described in paragraph 1, except as provided in paragraph 2, will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on October 11, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on October 11, 1993, the lands described in paragraph 1, except as provided in paragraph 2, will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. At 8:30 a.m., on October 11, 1993, the lands described in paragraph 1 will be opened to applications and offers under the mineral leasing laws.

Dated: August 25, 1993.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-21474 Filed 9-2-93; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-2300-02; GP3-344; OR-45118]

Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 6,425.80 acres of acquired lands to surface entry, 4,103.92 acres to mining, and 3,233.32 acres to mineral leasing. The mineral estate in 714.40 acres is not in Federal ownership, 1,607.48 acres are already open to mining and mineral leasing, and 870.60 acres are within the boundary of the High Steens Wilderness Study Area and remain closed to mineral leasing.

EFFECTIVE DATE: October 11, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/ Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: 1. Under the authority of Section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described lands were acquired by the United States to be administered as public lands under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 34 S., R. 33 E.,
- Sec. 22, S½NE¼ and SE¼;
- Sec. 27, E½;
- Sec. 32, NW¼ and W½SW¼;
- Sec. 33, SE¼;
- Sec. 34, N½NE¼, SW¼, and S½SE¼.

T. 35 S., R. 33 E.,
- Sec. 1, SE¼SW¼ and S½SE¼;
- Sec. 2, lot 4;
- Sec. 3, lots 1, 2, 3, and 4, S½N½, and S½;
- Sec. 5, lots 1, 2, 3, and 4, and S½NE¼;
- Sec. 10, N½ and NE¼SE¼;
- Sec. 12;
- Sec. 13, S½SE¼SW¼, S½N½SE¼SW¼, S½SW¼SE¼, S½N½SW¼SE¼, S½N½SE¼SE¼, and N½S½SE¼SE¼.

Sec. 14, W½ and SE¼;
Sec. 15, S½NE¼SW¼, SE¼SW¼, S½N½SE¼, and S½SE¼;
Sec. 23, N½NE¼, SW¼NE¼, N½SE¼NE¼, N½S½SE¼NE¼, W½, N½NE¼SE¼, N½S½NE¼SE¼, NW¼SE¼, N½SW¼SE¼, and SE¼SE¼, SAVE AND EXCEPT county road right-of-way, as same as disclosed in County Court Order dated April 28, 1965, recorded April 28, 1965, in Book 77, Page 222, Deed Records;
Sec. 26, NW¼;
Sec. 27, NE¼NE¼, N½NW¼NE¼, S½NE¼, N½N½NW¼, SE¼NW¼, N½SE¼NW¼, N½SW¼, SW¼SW¼, N½SE¼SW¼, N½SE¼, N½SW¼SE¼, and SE¼SE¼;
Sec. 34, NE¼NE¼, NE¼NW¼NE¼, S9/10NW¼NW¼NE¼, S½NW¼NE¼, S½NE¼, and SE¼, EXCEPTING that portion of the NW¼NE¼, which is described as follows: Beginning at a point which is south 59° 49′ east 569 feet from the north quarter section corner of said Sec. 34; Thence south 150 feet; Thence east 150 feet; Thence north 150 feet; Thence west 150 feet to the point of beginning;
Sec. 35, S½N½SW¼NW¼, S½SW¼NW¼, W½SW¼, and those portions of the NW¼NW¼ and N½N½SW¼NW¼ lying west of a diagonal line from the northwest corner of said Sec. 35, to the southeast corner of the N½N½SW¼NW¼ of said Sec. 35.
T. 35 S., R. 34 E.,
Sec. 19, lots 1, 2, 3, and 4, E½, and E½W½.

The areas described aggregate 6,425.80 acres in Harney County.

2. The following described lands are included in the High Steens Wilderness Study Area and will not be opened to mineral leasing:

Willamette Meridian

T. 34 S., R. 33 E.,
Sec. 22, S½NE¼ and SE¼;
Sec. 27, E½;
Sec. 34, N½NE¼.
T. 35 S., R. 33 E.,
Sec. 5, lots 1, 2, 3, and 4, and S½NE¼.

The areas described aggregate 870.60 acres in Harney County.

3. At 8:30 a.m., on October 11, 1993, the lands described in paragraph 1 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on October 11, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on October 11, 1993, the following described lands will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts:

Willamette Meridian

T. 34 S., R. 33 E.,
Sec. 22, S½NE¼ and SE¼;
Sec. 27, E½;
Sec. 34, N½NE¼.
T. 35 S., R. 33 E.,
Sec. 1, SE¼SW¼ and S½SE¼;
Sec. 2, lot 4;
Sec. 5, lots 1, 2, 3, and 4, and S½ NE¼;
Sec. 10, NE¼SE¼;
Sec. 12;
Sec. 14, W½ and SE¼;
Sec. 15, S½NE¼SW¼, SE¼SW¼, S½N½SE¼, and S½SE¼;
Sec. 23, N½NE¼, SW¼NE¼, N½SE¼NE¼, N½S½SE¼NE¼, W½, N½NE¼SE¼, N½S½NE¼SE¼, NW¼SE¼, N½SW¼SE¼, and SE¼SE¼, SAVE AND EXCEPT county road right-of-way, as same is disclosed in County Court Order dated April 28, 1965, recorded April 28, 1965, in Book 77, Page 222, Deed Records;
Sec. 26, NW¼;
Sec. 27, NE¼NE¼, N½NW¼NE¼, S½NE¼, N½N½NW¼, SW¼NW¼, N½SE¼NW¼, N½SW¼, SW¼SW¼, N½SE¼SW¼, N½SE¼, N½SW¼SE¼, and SE¼SE¼;
Sec. 34, NE¼NE¼, NE¼NW¼NE¼, S9/10NW¼NW¼NE¼, S½NW¼NE¼, S½NE¼, and SE¼. EXCEPTING that portion of the NW¼NE¼, which is described as follows: Beginning at a point which is south 59° 49′ east 569 feet from the north quarter section corner of said Sec. 34; Thence south 150 feet; Thence east 150 feet; Thence north 150 feet; Thence west 150 feet to the point of beginning;
Sec. 35, S½N½SW¼NW¼, S½SW¼NW¼, W½SW¼, and that portion of the NW¼NW¼ and N½N½SW¼NW¼ lying west of a diagonal line from the northwest corner of said Sec. 35, to the southeast corner of the N½N½SW¼NW¼ of said Sec. 35.

The areas described aggregate 4,103.92 acres in Harney County.

5. At 8:30 a.m., on October 11, 1993, the lands described in paragraph 4, except as provided in paragraph 2, will be opened to applications and offers under the mineral leasing laws.

Dated: August 26, 1993.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-21476 Filed 9-2-93; 8:45 am]

BILLING CODE 4310-33-M

[NM-070-(5101-09-G002) G 910 G3-0061; NMNM 90030]

Right-of-Way Application; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: An application, serialized as NMNM 90030, was received for a 17 mile right-of-way for a 30 inch diameter pipeline.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973, (37 Stat. 576), El Paso Natural Gas Company has applied for a right-of-way serialized as NM NM 90030 to construct 17 miles of 30 inch diameter natural gas pipeline across public land in San Juan County, New Mexico. This is part of a project that will loop existing lines most of route (90–95%) to help alleviate current natural gas flow, which is now to capacity in the existing line and also help in handling projected volumes. The proposed line crosses the following lands in San Juan County.

New Mexico Principal Meridian

T. 29 N., R. 11 W.,
Sec. 11, S½SE¼;
Sec. 13, N½NE¼;
T. 29 N., R. 10 W.,
Sec. 7, Lots 17, 18, 19, 20;
Sec. 8, Lot 13;
Sec. 16, Lots 11, 12, 13;
Sec. 17, Lots 2, 3, 4, 7, 8, 9;
Sec. 21, N½NE¼,NE¼N½;
Sec. 22, S½NW¼, NE¼SW¼;N½SE¼;
Sec. 23, SE¼NE¼;
Sec. 24, SW¼SW¼;
T. 29 N., R. 9 W.,
Sec. 11, S½SW¼, N½SE¼, SW¼SE¼;
Sec. 12, S½N½, NW¼SW¼;
Sec. 14, NW¼NW¼;
Sec. 15, Lots 1, 2, 3, 4;
T. 29 N., R. 8 W.,
Sec. 7, Lots 7, 8, NE¼NE¼, S½NE¼, NE¼SE¼;
Sec. 8, Lots 2, 3, 4, 7, 8, NE¼SE¼;
Sec. 9, W½NE¼, S½NW¼, NW¼SE¼;

The purpose of this notice is to inform the public that the Bureau will be deciding whether the right-of-way should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management,

1235 La Plata Highway, Farmington, New Mexico 87401.

Dated: August 26, 1993.

Mike Pool,

District Manager.

[FR Doc. 93–21656 Filed 9–2–93; 8:45 am]

BILLING CODE 4310–FB–M

[NV–930–4210–05; N–51824]

Notice of Realty Action: Lease/Purchase for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Modifying R&PP NORA to change the lessee name and purpose.

SUMMARY: The following described public lands in Las Vegas, Clark County, Nevada are being considered for disposal by lease/purchase for Recreation and Public Purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq). The City of Las Vegas proposes to lease/purchase these lands for expansion of their R&PP lease. They plan to construct a Metro Police Northwest Substation.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E.,
Sec. 22: W½W½NE¼NW¼SE¼.
Aggregating 2.500 acres.

Publication of this NORA in the **Federal Register** will modify Recreation and Public Purposes classification, N–51400, to allow the City of Las Vegas to develop the above described lands. Final determination on lease/purchase will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2741.5, subject to valid and existing rights, publication of this notice in the **Federal Register**, will segregate the public lands, as described in this Notice, from all forms of appropriation under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws and from any subsequent Recreation and Public Purposes Act proposals filed by any other proponent other than the City of Las Vegas.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

Dated: August 24, 1993.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 93–21471 Filed 9–2–93; 8:45 am]

BILLING CODE 4310–HC–M

Seasonal Hunting Access Restrictions

AGENCY: Bureau of Land Management, Miles City District, Big Dry Resource Area, Interior.

ACTION: Seasonal restrictions of certain public land to hunting access in Prairie and Custer Counties; Montana.

SUMMARY: The Bureau of Land Management is cooperating with the Montana Department of Fish, Wildlife and Parks; the Grue Ranch; and Harding Land and Livestock to manage access to public and private lands within the Grue and Harding ranches during the big game hunting season. Under cooperative agreements, certain public lands will be closed to vehicle and/or public access. The purpose of this program is to improve the quality of big game hunting opportunities for the general public. This will be accomplished through increasing the land base, controlling vehicle access and reducing the number of people contacting the private land owner for permission to hunt. The following rules will be in effect during the big game seasons established by the Montana Department of Fish, Wildlife and Parks:

Grue Ranch: The Grue Ranch is being managed as a walk in hunting area as follows: (1) All public and private lands within the ranch, except for the safe zone around the ranch headquarters, are available for public hunting by written permission only; and (2) vehicle travel is restricted to designated roads and parking areas.

Public lands in the Grue Ranch are described as:

Principle Meridian, Montana

T. 13 N., R. 49 E.,
Sec. 2 Lands lying east of Highway 253;
Sec. 12 Lands lying east of Highway 253.
T. 13 N., R. 50 E.,
Sec. 6 Lands lying east of Highway 253.
T. 14 N., R. 49 E.,
Sec. 3 NW¼, S½;
Sec. 4 Lands lying east of a diagonal line from the NW corner to the SE corner;
Sec. 10 All lands;
Sec. 12 All lands;
Sec. 13 All lands
Sec. 14 W½;
Sec. 24 S½;
Sec. 26 Lands lying east of Highway 253.
T. 14 N., R. 50 E.,
Sec. 30 NE¼NE¼, S½NE¼, SE¼, SE¼SW¼.

T. 15 N., R. 49 E.,
Sec. 9 All lands;
Sec. 15 Lands west of a diagonal line from the NW Corner to the SE corner;
Sec. 20 All lands;
Sec. 32 N½;
Sec. 34 NW¼NW¼, NE¼, E½SE¼.

Harding Ranch: The Harding Ranch is being for big game hunting as follows: (1) Public access to public and private lands is by written permission only; (2) certain public lands will be closed to public access. The specific public lands closed will vary annually and may vary within a particular season depending upon the pasture in which livestock are grazing; and (3) all vehicle travel is restricted to designated roads except that one trip is allowed to retrieve a downed big game animal. Public lands in the Harding Ranch are described as:

Principle Meridian, Montana

T. 7 N., R. 52 E.,
Sec. 2 Lots 1,2,3,4, and S½N½;
Sec. 3 All lands;
Sec. 4 Lots 2,3,4, S½NW¼, SW¼, W½SE¼;
Sec. 6 Lots 1,2,3,4;
Sec. 8 All lands.
T. 8 N., R. 51 E.,
Sec. 14 Lots 1,4,5,8, and W½E½.
T. 8 N., R. 52 E.,
Sec. 10 SE¼NW¼, SW¼NE¼, SW¼, W½SE¼;
Sec. 12 All lands;
Sec. 14 W½;
Sec. 26 S½S½;
Sec. 28 All lands;
Sec. 34 All lands.
T. 8 N., R. 53 E.,
Sec. 8 All lands;
Sec. 9 All lands;
Sec. 17 All lands;
Sec. 18 NW¼, W½NE¼, NE¼NE¼, SW¼, and SW¼SE¼;
Sec. 20 S½NW¼, SW¼, W½SE¼.
T. 9 N., R. 52 E.,
Sec. 7 All lands;
Sec. 8 NW¼;
Sec. 17 NE¼NW¼, S½NW¼, NE¼, SW¼, SE¼;
Sec. 18 All lands;
Sec. 19 All lands;
Sec. 20 All lands;
Sec. 29 All lands;
Sec. 30 NE¼, E½SE¼;
Sec. 31 All lands;
Sec. 32 All lands.

EFFECTIVE DATE: These restrictions remain in effect annually during the big game hunting season established by the Montana Department of Fish, Wildlife and Parks until rescinded by a subsequent notice in the **Federal Register** or the existing cooperative agreements are terminated.

FOR FURTHER INFORMATION CONTACT: David Swogger, Area Manager, Big Dry Resource Area, Miles City Plaza, Miles City, MT 59301.

SUPPLEMENTARY INFORMATION: These rules have been established in

accordance with Regulation 43 CFR 8364.1.

Janet L. Edmonds,

Acting District Manager.

[FR Doc. 93–21472 Filed 9–2–93; 8:45 am]

BILLING CODE 4310–DN–M

[CA–942–5700–10]

Filing of Plats of Survey; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested state and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATES: At 10 a.m. October 18, 1993 the following described plats of survey will be officially filed in the Bureau of Land Management, California State Office, Public Room.

FOR FURTHER INFORMATION CONTACT: Clifford A. Robinson, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, Room E–2845, Sacramento, CA 95825, 916–978–4775.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below will be officially filed at the California State Office, Sacramento, CA.

San Bernardino Meridian, California

T. 13 S., R. 19 E.,—Dependent resurvey of the Third Standard Parallel South along a portion of the north boundary, a portion of the south, and west boundaries, a portion of Tract 38, and a portion of the subdivisional lines, and the survey of sections 2, 3, 4, 9, 10, 11, 15, 21, 22, 27, 28, 33, and 34, totaling 7,528.65 acres, (Group 1138) accepted August 18, 1993, to meet certain administrative needs of the BLM, California Desert District, El Centro Resource Area. Upon filing the above listed survey plats will be the basic record for describing the lands for all authorized purposes. The survey plats will be placed in the open files in the BLM, California State Office, and will be available to the public as a matter of information. Copies of the survey plats and related field notes will be furnished to the public upon payment of the appropriate fee.

Dated: August 26, 1993.

Clifford A. Robinson,

Chief, Branch of Cadastral Survey.

[FR Doc. 93–21467 Filed 9–2–93; 8:45 am]

BILLING CODE 4310–40–M

[MT–940–03–4730–02]

Land Resource Management

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plat of survey.

SUMMARY: This document amends plat distribution and filing instructions dated August 20, 1993, for Group No. 781. Plats of survey for the following described land accepted July 13, 1993, will be officially filed in the Montana State Office, Billings, Montana, effective 30 days after publication.

Principal Meridian, Montana

T. 2 S., R. 33 E.

The plat, in five sheets, representing the dependent resurvey of a portion of the Crow Indian Reservation Boundary, portions of the north boundary, subdivisional lines, the subdivision of certain sections, and the adjusted original meanders of portions of the right and left banks of the Big Horn River, the subdivision of sections 1, 2, 3, 10, 15, 22, 23, 26, 27, and 28, and the Survey of Tracts 37 and 38, certain new meanders of the right and left banks of the Big Horn River, and certain division of accretion lines, Township 2 South, Range 33 East, Principal Meridian, Montana.

The triplicate original of the preceding described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on the plat, is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. The protested plat of survey will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

This survey was executed at the request of the Bureau of Indian Affairs, Billings Area Office.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P O Box 36800, Billings, Montana 59107–6800.

Dated: August 27, 1993.

Robert H. Lawton,

State Director.

[FR Doc. 93–21473 Filed 9–2–93; 8:45 am]

BILLING CODE 4310–DN–M

[NV–940–02–4212–22]

Filing of Plats of Survey; Nevada

August 25, 1993.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing was effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: John S. Parrish, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P O. Box 12000, Reno, Nevada 89520–0006, 702–785–6543.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on March 18, 1993:

Mount Diablo Meridian, Nevada

T. 22 S., R. 58 E.—Dependent Resurvey and Subdivision of Sections.

2. The survey was accepted March 16, 1993, and was executed to meet certain administrative needs of the Bureau of Land Management.

3. The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada on April 20, 1993:

Mount Diablo Meridian, Nevada

T. 18 S., R. 63 E —Dependent Resurvey.
T. 18 S., R. 64 E.—Dependent Resurvey.

4. These surveys were accepted April 15, 1993, and were executed to meet certain needs of Clark County, Nevada, and the Bureau of Land Management.

5 The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on May 19, 1993 and was also filed in the California State Office on March 11, 1993:

Mount Diablo Meridian, Nevada

T. 16 N., R. 18 E.—Retracement, Dependent Resurvey and Subdivision.

Mount Diablo Meridian, California

T. 16 N., R. 17 E.—Retracement, Dependent Resurvey.
T. 17 N., R. 17 E.—Retracement, Dependent Resurvey.

6. This survey was accepted March 9, 1993, and was executed to meet the needs of the USDA, Forest Service and the states of Nevada and California.

7. The Plat of Survey of lands described below was officially filed at

the Nevada State Office, Reno, Nevada on May 19, 1993 and was filed in the California State Office on May 19, 1993:

Mount Diablo Meridian, Nevada

T. 12 N., R. 19 E.—Supplemental Plat.

8. This survey was accepted May 7, 1993, and was executed to meet certain needs of the Bureau of Land Management in the states of Nevada and California.

9. The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on May 20, 1993:

Mount Diablo Meridian, Nevada

T. 37 N., R. 62 E.—Supplemental Plat.

10. This supplemental plat was accepted May 17, 1993, and was executed to meet certain administrative needs of the Bureau of Land Management.

11. The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on June 9, 1993:

Mount Diablo Meridian, Nevada

T. 36 N., R. 49 E.—Supplemental Plat.

12. This survey was accepted June 7, 1993 and was prepared at the request of Barrick Goldstrike Mines, Incorporated.

13. The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on July 21, 1993:

Mount Diablo Meridian, Nevada

T. 20 S., R. 57 E.—Dependent Resurvey.

14. This survey was accepted July 19, 1993, and was executed at the request of William A. Crane and Marilyn F. Crane and to meet certain administrative needs of the Bureau of Land Management.

15 The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on August 24, 1993:

Mount Diablo Meridian, Nevada

T. 15 N., R. 20 E.—Supplemental Plat.

16. This survey was accepted August 18, 1993 and was prepared to meet certain administrative needs of the Bureau of Land Management.

17. The Plat of Survey of lands described below will be officially filed at the Nevada State Office, Reno, Nevada on October 22, 1993:

Mount Diablo Meridian, Nevada

T. 4 N., R. 51 E.—Dependent Resurvey.
T. 3 N., R. 52 E.—Dependent Resurvey.
T. 4 N., R. 52 E.—Subdivision of Section 19.

18. This survey was accepted August 23, 1993, and was executed to meet certain needs of the Bureau of Land Management.

19. Subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable land laws, the lands described in paragraph 17 are hereby open to application, petition, and disposal. All such valid applications received on or prior to October 22, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

20. All the lands have been and continue to be open under the mining law.

21. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 93–21480 Filed 9–2–93; 8:45 am]

BILLING CODE 4310–HC–M

Fish and Wildlife Service

Availability Draft Agreement Regarding Section 7 Consultation, Sufficient Progress and Historic Projects, Recovery Implementation Program for the Endangered Fish Species in the Upper Colorado River Basin, and the Draft Recovery Implementation Program Recovery Action Plan; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Correction

SUMMARY: This document contains corrections to a notice document 93–20082, beginning on page 44188 in the issue of Thursday, August 19, 1993. In this notice the Service announced the availability of the Draft Agreement Regarding Section 7 Consultation, Sufficient Progress and Historic Projects, Recovery Implementation Program for the Endangered Fish Species in the Upper Colorado River Basin (Agreement) and the draft Recovery Implementation Program Recovery Action Plan (RIPRAP). Due to technical problems, these documents will not be available until September 3, 1993

DATES: The comment period on the draft Agreement and the RIPRAP will be extended to October 4, 1993.

ADDRESSES: Persons wishing to review the draft Agreement and RIPRAP may obtain copies by contacting the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225; facsimile (303) 236–0027. Written comments should be sent to the address given above. Comments received are available upon request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Jacobsen (see above address), telephone (303) 236–8189.

Dated: August 30, 1993.

Ralph O. Morgenweck,

Regional Director, Region 6, Fish and Wildlife Service.

[FR Doc. 93–21537 Filed 9–2–93; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–5750 or (202) 927–6212.

Comments on the following assessment are due 15 days after the date of availability:

AB–33 (Sub-No. 81X), Union Pacific Railroad Company—Abandonment Exemption—In Saunders and Butler Counties, Nebraska. EA available 8/25/93.

AB–3 (Sub-No. 111X), Missouri Pacific Railroad Co.—Abandonment Exemption—In Osage, Lyon, and Morris Counties, Kansas. EA 8/27/93.

Comments on the following assessment are due 30 days after the date of availability:

AB–167 (Sub-No. 1117X), Consolidated Rail Corporation—Abandonment—In Elizabeth, Union County, New Jersey. EA available 8/25/93.

AB–55 (Sub-No. 464X), CSX Transportation, Inc.—Abandonment

in Vermillion and Vigo Counties, Indiana. EA available 8/27/93.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-21553 Filed 9-2-93; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil Action No. 2-93CV77 (FIP) D. Vt]

United States v. Canstar Sports USA, Inc.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States publishes below the comments received on the proposed Final Judgment in *United States* v. *Canstar Sports USA, Inc.*, Civil Action No. 2–93CV77 (FIP), United States District Court for the District of Vermont, together with the response of the United States to the comments.

Copies of the response and the public comments are available on request for inspection and copying in room 3233 of the Antitrust Division, U.S. Department of Justice, Tenth Street and Pennsylvania Avenue NW., Washington, DC 20530, and for inspection at the Office of the Clerk of the United States District Court for the District of Vermont, United States Courthouse, 11 Elmwood Avenue, Burlington, Vermont 05401.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Comments of Consumers Union to the United States Department of Justice on the Proposed Final Judgment in United States v. Canstar Sports USA, Inc.

May 19, 1993.

Consumers Union [1] (CU) appreciates the opportunity to comment on the proposed settlement in *United States* v. *Canstar Sports USA, Inc* Consumers Union has long advocated aggressive enforcement of the laws prohibiting resale price maintenance. CU is also a strong proponent of federal legislation to strengthen the vertical price-fixing laws.

On March 17, 1993 the United States Department of Justice (DOJ) filed a civil antitrust suit against Canstar Sports Inc. of Swanton Vermont. The complaint alleged that Canstar had conspired with its dealers to fix the price of certain hockey skates. At the same time that the complaint was filed, a proposed settlement was filed.

Canstar is the first vertical price-fixing case filed by the Department of Justice in over a decade. As a policy matter. CU encourages the aggressive pursuit of vertical price-fixing cases by the Department. Resale price maintenance conspiracies inevitably restrict competition and result in higher prices and fewer choices for consumers. However, for the past twelve years, federal authorities have been at best reluctant to pursue such cases and consumers have suffered as a consequence. We hope that the *Canstar* case represents a renewed commitment on the part of DOJ to vigorously prosecute those engaged in resale price maintenance conspiracies.

The evidence is persuasive that resale price maintenance schemes like that presented by *Canstar* are common in today's market place. Lackluster enforcement by federal antitrust officials over the last twelve years has contributed to an environment in which price-fixers assume that they are free to operate with impunity. Therefore, each case that the Department of Justice now pursues will send a strong and important signal to the market place—this type of anti-competitive behavior will no longer be tolerated, but will be sought out and prosecuted. The deterrence value of each new case should not be underestimated.

CU recommends one change to the proposed judgment related to restrictive cooperative advertising programs. The Canstar pricing policy announced a suggested retail price and a discount price for V2 skates and warned retailers that those who advertised the skates below the minimum allowable retail price would have supplies disrupted for increasing time periods for each violation of the policy. After announcement of the policy, Canstar succeeded in obtaining agreements from some retailers to maintain the minimum suggested retail price.

The proposed final judgment would prohibit any "direct or indirect continuation or renewal of the type of conspiracy alleged in the complaint." More specifically, the judgment would enjoin Canstar from "entering into, adhering to, maintaining, furthering, or enforcing any contract, agreement, understanding, plan or program with any retail dealer to fix or maintain the resale prices at which hockey skates sold or distributed by the defendant may be sold or offered for sale in the United States by any retail dealer."

The judgment would explicitly prohibit the defendant from instituting a plan that would maintain the price at which Canstar's skates are offered for sale. A fair reading of the language of the judgment would prohibit cooperative advertising programs in which only those retailers who agree to advertise at least a suggested minimum price are eligible CU urges, however, that the final judgment make it clear that restraints on the availability of cooperative advertising funds based on the prices advertised are prohibited.

The withholding of cooperative advertising funds can be utilized as a subtle yet very effective tool to enforce resale price maintenance schemes. Many retailers simply cannot afford to advertise specific products without the support of cooperative advertising funds. If discount prices are not advertised, consumers are far less likely to be made aware of the savings available, creating a competitive advantage for higher priced, advertised goods. Moreover, consumers are denied the convenience of comparison price shopping through advertisements.

In addition, constraints on price advertising may dilute consumers' ability to take advantage of "lowest price available" guarantees. Such guarantees, which typically promise to reimburse consumers for the difference between the purchase price and a lower price offered by another merchant, are usually offered only on advertised prices. From a consumer's perspective, cooperative advertising policies that reduce the advertising of available discounts often have the same effect as manufacturers dictating retail prices.

Therefore, CU urges that the proposed judgment be amended to include language that would clearly prohibit Canstar from conditioning the availability of cooperative advertising funds to retailers on the advertisement of a minimum resale price.

Thank you for considering our views.

Respectfully submitted,

M. Kristen Rand,

Counsel.

M. Kristen Rand, Esq.,

Counsel, Consumers Union, Suite 520, 2001 S Street Northwest, Washington, D.C. 20009

August 20, 1993.

RE: *U.S.* v. *Canstar Sports USA, Inc. (2:93CV77(D.VT 1993))*

Dear Ms. Rand: This letter responds to the comments of the Consumers Union dated May 19, 1993, regarding the proposed final judgment in *U.S.* v. *Canstar Sports USA, Inc.*, (Civil Action No. 2–93CV77, D.VT).

Your comments assert that a fair reading of the proposed final judgment would prohibit cooperative advertising programs in which only those retailers who agree to advertise at least at a suggested minimum price are eligible. The comments urge that the final judgment make it clear that restraints on the availability of cooperative advertising funds based on the prices advertised are prohibited.

The Government believes that it would be inappropriate to clarify the proposed final judgment to include language which would prohibit such conduct. The activities involved in the offense alleged in the complaint in this case were unrelated to any cooperative advertising program. Moreover, depending on the circumstances, it may not be unlawful for a manufacturer to restrict participation in its cooperative advertising program to retailers who agree with the manufacturer to advertise at a specific price level Thus, it would not be appropriate to either read the proposed final judgment in

[1] Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance; and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of Consumer Reports, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, Consumer Reports with approximately 5 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

the manner you suggest or to modify it to prohibit the defendant from conditioning the availability of cooperative advertising funds based on prices advertised.

Be assured, however, that if the defendant were to use any cooperative advertising program as an enforcement mechanism for a resale price maintenance scheme, such conduct would be subject to challenge under the final judgment as well as the Sherman Act.

In accordance with the requirements of the Antitrust Procedure and Penalty Act (15 U.S.C. 16(d)) your comments and this response will be published in the **Federal Register** and filed with the District Court in the District of Vermont.

Sincerely,

Philip F. Cody,

Assistant Chief.

[FR Doc. 93–21478 Filed 9–2–93; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 93–22]

Carlyle Balgobin, D.D.S.; Revocation of Registration

On December 10, 1992, The Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Carlyle Balgobin, D.D.S. (Respondent), of 13 Duval Street, Citrus Heights, California 95671, proposing to revoke his DEA Certificate of Registration, AB5710656, and deny any pending applications for renewal of such registration. The statutory basis for the Order to Show Cause was that Respondent's continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

The Order to Show Cause alleged that on or about December 31, 1988, Respondent's California State Dental license expired, and as a result, he was no longer authorized by state law to handle controlled substances; that between August 1990 and December 1991, Respondent prescribed controlled substances for himself and family members when he knew, or should have known that his California State Dental license had expired; that on April 3, 1992, a 40-count accusation was filed against the Respondent by the California State Board of Dental Examiners charging him with issuing prescriptions for controlled substances for family members with an expired dental license while not treating them for dental purposes.

Respondent filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On February 3, 1993, the Government filed a motion for summary disposition based upon the expiration of Respondent's California State Dental license on December 31, 1988, and his lack of state authorization to handle controlled substances. Upon consideration of the Government's motion, the administrative law judge ordered that Respondent file a response to the motion by February 24, 1993.

The Respondent never directly responded to the Government's motion. On February 5, 1993, however, the Respondent advised the administrative law judge that the California Board of Dental Examiners had commenced an action against him on some of the same grounds alleged in the Order to Show Cause. Respondent also advised the administrative law judge of the continuance date of his state proceeding. On April 6, 1993, in her opinion and recommended decision, the administrative law judge granted the Government's motion for summary disposition and recommended that Respondent's DEA Certificate of Registration be revoked.

On May 10, 1993, the administrative law judge transmitted the record to the Administrator. The Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that on or about December 31, 1988, Respondent's California State Dental license expired, and as a result, he is no longer authorized by state law to handle controlled substances. The Drug Enforcement Administration cannot register or maintain the registration of a practitioner who is not duly authorized to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See, James H. Nickens, M.D., 57 FR 59847 (1992); Elliott Monroe, M.D., 57 FR 23246 (1992); Bobby Watts, M.D., 53 FR 11919 (1988),

The administrative law judge properly granted the Government's motion for summary disposition. It is well-settled that when no question of fact is involved, or when the facts are agreed upon, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. The rationale is that Congress does not intend administrative agencies to perform meaningless tasks. Philip E. Kirk, M.D., 48 FR 32887 (1993), *aff'd sub nom Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984); Alfred Tennyson Smurthwaite, M.D., 43 FR 11873 (1978); see also, *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971).

The Administrator, having considered the entire record, adopts the administrative law judge's opinion and recommended decision in its entirety. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AB5710656, previously issued to Carlyle Balgobin, D.D.S., be, and it hereby is, revoked and that any pending applications for renewal of such registration be, and they hereby are, denied.

This order is effective September 3, 1993.

Dated: August 27, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–21505 Filed 9–2–93; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 93–33]

Robert H. Cullen, M.D.; Revocation of Registration

On February 9, 1993, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert H. Cullen, M.D. (Respondent), P.O. Box 1620, Wise, Virginia 24293. The Order to Show Cause proposed to revoke Respondent's DEA Certificate of Registration, AC8923410, and deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the Order to Show Cause was Respondent's controlled substance-related felony conviction and his lack of authorization to handle controlled substances in the Commonwealth of Virginia. 21 U.S.C. 824(a)(2) and 21 U.S.C. 824(a)(3).

On March 29, 1993, counsel for Respondent requested a "reasonable extension" of time in which to respond to the Order to Show Cause. Administrative Law Judge Mary Ellen Bittner granted Respondent an extension until April 19, 1993, to file a request for a hearing. On May 3, 1993, having not received a request for a hearing from counsel for Respondent, the Administrative Law Judge issued an Order Terminating Proceedings. By that Order, Respondent was deemed to have

waived his right to a hearing pursuant to 21 CFR 1301.54. Pursuant to 21 CFR 1301.57, the Administrator hereby issues his final order in this matter based upon the investigative file.

The Administrator finds that in January 1989, Respondent was indicted in the United States District Court for the Western District of Virginia on thirty-one counts of unlawful distribution of a controlled substance in violation of 21 U.S.C. 841(a)(1). On July 17, 1990, Respondent pled *nolo contendere* to and was convicted of one felony count of unlawful distribution of a controlled substance. Respondent was placed on supervised probation for a period of three years, fined $8,000.00 and ordered to pay $15,000.00 in restitution to Blue Cross/Blue Shield. On July 24, 1990, the Virginia Board of Medicine (Board) revoked Respondent's license to practice medicine in the Commonwealth of Virginia.

The Administrator further finds that on October 2, 1992, the Board held a formal administrative hearing to receive and act upon the application of Respondent for reinstatement of his license to practice medicine in the Commonwealth of Virginia. The Board found that Respondent's license to practice medicine in the Commonwealth of Kentucky was permanently surrendered in lieu of revocation on November 21, 1991. In addition, the Board found that between January 1984 and September 1986, Respondent indiscriminately and excessively prescribed a variety of controlled substances to at least seven patients. Respondent also failed to maintain any inventories or records of thousands of dosage units of controlled substances purchased between February 1984 and May 1986. The Board concluded that Respondent had not demonstrated competence to resume the practice of medicine in the Commonwealth of Virginia and denied his petition for reinstatement. Consequently, Respondent is without authority to handle controlled substances in the Commonwealth of Virginia.

It is well settled that the Drug Enforcement Administration cannot register a practitioner who is not duly authorized to handle controlled substances in the state in which he does business. See 21 U.S.C. 823(f). This Administrator, along with his predecessors, has consistently held that practitioners who lack state authorization to handle controlled substances cannot be registered with the Drug Enforcement Administration. See Ramon Pla, MD., 51 FR 41168 (1986); George S. Heath, M.D., 51 FR 26610 (1986); Dale D. Shahan, D.D.S., 51 FR 23481 (1986). Consequently, Respondent's DEA Certificate of Registration should be revoked based on lack of state authorization.

The Administrator further finds that additional information contained in Respondent's investigative file independently supports a decision to revoke Respondent's DEA Certificate of Registration. In fact, the investigative file contains information which satisfies four of the five separate bases for revocation provided for in 21 U.S.C. 824(a). Respondent has been convicted of a felony related to a controlled substance, a basis for revocation pursuant to 21 U.S.C. 824(a)(2). At least two state boards (Virginia and Kentucky) have either revoked or accepted permanent surrender of Respondent's medical license, a basis for revocation pursuant to 21 U.S.C. 824(a)(3). Findings of fact made by the Virginia Medical Board indicate that Respondent has engaged in a pattern of prescribing controlled substances in an excessive and indiscriminate manner, rendering his registration inconsistent with the public interest, a basis for revocation pursuant to 21 U.S.C. 824(a)(4). Finally, the investigative file indicates that Respondent has been excluded for three years from participation in Medicare, a basis for revocation pursuant to 21 U.S.C. 824(a)(5). In light of this information, the Administrator concludes that Respondent can no longer be entrusted with a DEA Certificate of Registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AC8923410, issued to Robert H. Cullen, M.D., be, and it hereby is, revoked, and that any pending applications for registration be, and they hereby are, denied.

This order is effective September 3, 1993.

Dated: August 27, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93-21508 Filed 9-2-93; 8:45 am]

BILLING CODE 4410-09-M

Louis Grasso, D.V.M.; Revocation of Registration

On April 16, 1993, the Director, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Louis Grasso, D.V.M., (Respondent) of South Salem, New York, proposing to revoke his DEA Certificate of Registration, BG1477860, and deny any pending applications for registration as a practitioner. The statutory basis for the Order to Show Cause was that Dr. Grasso had been convicted of a felony related to controlled substances and that his continued registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 824(a)(2) and 824(a)(4).

The Order to Show Cause was served on Dr. Grasso on April 22, 1993. On July 6, 1993, the Respondent submitted, through counsel, a written statement in which he waived his right to a hearing in this matter.

The Administrator has carefully considered the Respondent's letter and the investigative file in this case. Accordingly, under the provision of 21 CFR 1301.54(e), the Administrator enters his final order in this matter, based on findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that during the period December 11, 1991 through January 3, 1992, Respondent sold, without any legitimate medical need, anabolic steroids including nandrolone, boldenone, testosterone, and stanzolol, all Schedule III controlled substances, to undercover agents. One illegal sale was for $53,000.00 worth of steroids. Respondent also represented to undercover agents that he could supply large quantities of steroids on a weekly basis. Additionally, during the execution of a search warrant at the Respondent's residence in January 1992, agents seized in excess of 30,000 dosage units of anabolic steroids for which Respondent failed to maintain or produce proper records required by 21 U.S.C. 827 and 21 CFR part 1304.

Subsequently, on July 27, 1992, before the United States District Court for the Southern District of New York, Respondent was convicted, upon a plea of guilty, of three felony counts of possession and distribution of anabolic steroids in violation of 21 U.S.C. 841(a)(1). He was sentenced to three years probation.

Respondent, in his written statement, explained that as a youth, he was an excellent student and athlete and became enamored with harness racing. As a teenager, he became a licensed trainer and harness driver and determined that he would become a veterinarian. He excelled in undergraduate studies and went to Italy to study veterinary medicine and ultimately graduated first in his class at Ross University. After clinical work in the United States, he received his veterinary license in 1987. Respondent's practice consisted of treating harness

horses at Yonkers and Meadowlands Raceway. The Respondent maintains that in 1989, things changed for him and his family. His daughter became ill. He began selling steroids for animal use to an individual who held himself out as a horse trainer. This individual failed to pay his due accounts to the Respondent. The horse trainer introduced the Respondent to an undercover agent, posing as a Connecticut gym owner, who, by happenstance, was a former high school teammate of the Respondent. The sale of steroids to the undercover agent was arranged on the apparent theory that any profit would retire the horse trainer's debt to Respondent. The Respondent claims that he is now prevented from entering racetracks and can no longer earn a living in the United States. He asserts that his life has changed, and his wife, marriage, children, and family have suffered.

Respondent claims that he has paid dearly for his poor judgment and has been punished by virtue of a forfeiture proceeding against his residence for which he paid $53,800.00 in settlement, and the surrender of his license to the New York State Racing and Wagering Board. The Respondent maintains that none of the steroids sold to the operative were actually improperly used by the public. Further, in mitigation of his recordkeeping violations, Respondent claims that part of his computer records indicating legitimate transactions in steroids were destroyed at the time they were seized by Government agents. The Respondent maintains that his transactions with the undercover agent constituted his entire involvement in the illegal sale of steroids, which he characterized as an indiscretion.

The Administrator may revoke or suspend a DEA Certificate of Registration under 21 U.S.C. 824(a), upon a finding that the registrant:

(1) has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State relating to any substance defined in this subchapter as a controlled substance;

(3) has had his State license or registration suspended, revoked, or denied by competent state authority and is no longer authorized by state law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of registration recommended by competent state authority;

(4) has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section;

(5) has been excluded (or directed to be excluded) from participation in a program pursuant to Section 1320A–7(a) of Title 42.

Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. Henry J Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

The Administrator finds that the Respondent has been convicted of a felony related to controlled substances, has violated Federal law and regulation due to his lack of proper recordkeeping with respect to controlled substances, has dispensed controlled substances without a valid medical purpose, and that his conduct, insofar as he engaged in the distribution of steroids for monetary gain, poses a threat to the public health and safety. The Administrator further finds that the Respondent's remorse for his criminal acts appears to be limited to their adverse effects on his life.

Based on these facts, the Administrator concludes that the Respondent's registration is inconsistent with the public interest and that his registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the DEA Certificate of Registration, BG1477860, previously issued to Louis Grasso, D.M.V., be, and it hereby is, revoked. This order is effective October 4, 1993.

Dated: August 27, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–21504 Filed 9–2–93; 8:45 am]

BILLING CODE 4410–09–M

Thuong Vo, M.D.; Revocation of Registration

On February 9, 1993, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Thuong Vo, M.D., 3839 West First Street, Suite B8, Santa Ana, California 92701. The Order to Show Cause proposed to revoke Thuong Vo's DEA Certificate of Registration, AV9495121, and deny any pending applications for registration. The Order to Show Cause alleged that Thuong Vo's Physician and Surgeon Certificate was revoked by the Medical Board of California, Division of Medical Quality, effective September 19, 1991, and that Thuong Vo was no longer authorized by the State of California to handle controlled substances.

A registered mail receipt indicates that the Order to Show Cause was received February 19, 1993, at the Santa Ana address and forwarded to Thuong Vo at a different address. In April, the Order to Show Cause was sent directly to Thuong Vo's forwarding address, 19932 Rothert Lande, Huntington Beach, California 92646. According to the second registered mail receipt, the Order to Show Cause was delivered to this address on February 23, 1993. More than thirty days have passed since the Order to Show Cause was received by Thuong Vo and the DEA has had no response. Pursuant to 21 CFR 1301.54(d), Thuong Vo is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter based on the investigative file. 21 CFR 1301.57.

The Administrator finds that on September 19, 1991, the Medical Board of California, Division of Medical Quality, revoked Thuong Vo's California Physician and Surgeon Certificate, effective October 28, 1991. Consequently, Thuong Vo is not authorized by the State of California to handle controlled substances. The DEA cannot register a practitioner to handle controlled substances if that practitioner is not duly authorized to handle controlled substances in the state in which he does business. 21 U.S.C. 823(f). This Administrator, along with his predecessors, has consistently held that practitioners who lack state authorization to handle controlled

substances cannot be registered with the DEA. See Ramon Pla, M.D., 51 FR 41168 (1986); George S. Heath, M.D., 51 FR 26610 (1986); Dale D. Shahan, D.D.S., 51 FR 23481 (1986).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that Thuong Vo's DEA Certificate of Registration, AV9495121, be, and it hereby is, revoked. The Administrator further orders that any pending applications for the renewal of such registration be, and they hereby are, denied. This order is effective on September 3, 1993.

Dated: August 27, 1993

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–21507 Filed 9–2–93; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 92–69]

Bobby Watts, M.D.; Revocation of Registration

On July 7, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Bobby Watts, M.D. (Respondent) of Atlanta, Georgia, seeking to revoke his DEA Certificate of Registration, BW1551666, and deny any pending applications for renewal of such registration as a practitioner. The statutory basis for the Order to Show Cause was that Respondent's continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent filed a request for a hearing on the issues raised in the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held on February 17, 1993, in Nashville, Tennessee. On April 5, 1993, Judge Tenney issued his findings of fact, conclusions of law, and recommended ruling, recommending that the Administrator revoke Respondent's DEA Certificate of Registration. No exceptions were filed, and on May 7, 1993, the administrative law judge transmitted the record in this proceeding to the Administrator. The Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that on April 22, 1986, Respondent was indicted in the United States District Court for the Western District of Tennessee, Eastern Division, on 94 counts of unlawful distribution of controlled substances and conspiracy to distribute controlled substances. The Respondent was acquitted on all counts.

On May 7, 1987, the Tennessee Board of Medical Examiners found that Respondent had abused his controlled substance privileges, and ordered the Respondent to surrender his DEA Certificate of Registration indefinitely. The Tennessee Medical Board further ordered the suspension of Respondent's medical license for a minimum period of six months. Based on his lack of authorization to handle controlled substances in the State of Tennessee, Respondent's previous DEA Certificate of Registration was revoked. See 53 FR 11920 (April 11, 1988).

On April 6, 1988, following a second hearing involving the Respondent, the Tennessee Board of Medical Examiners (Board) found that the Respondent had prescribed controlled substances in violation of its 1987 order. As a result of this finding, on May 2, 1988, the Board ordered that the Respondent's DEA registration again be surrendered for a period of one year, and placed his state medical license on probation for six months.

The Administrator further finds that Respondent filed a DEA application for registration, dated August 18, 1988, and indicated that he never had a Federal controlled substance registration revoked and never had a state professional license revoked, suspended, denied, restricted or placed on probation. In fact, Respondent knew that the Tennessee Board of Medical Examiners had suspended his medical license on May 7, 1987, and had placed his state medical license on probation on May 2, 1988. Additionally, the Respondent knew, or should have known, that his DEA registration had been revoked on April 11, 1988. Since DEA must rely on the truthfulness of information supplied by applicants in registering them to handle controlled substances, falsification cannot be tolerated. Any material falsification of an application for registration is an independent statutory basis for the revocation of a registration. 21 U.S.C. 824(a)(1); see also, *Jess B. Caderao, M.D.*, 48 FR 38560 (1983); *Ronald H. Futch, M.D.*, 53 FR 38990 (1988). The Administrator further finds that the Respondent also falsified his medical license renewal form for the State of Georgia, dated November 20, 1989.

At the DEA administrative hearing, Respondent testified on his own behalf, and discussed his skill as an emergency room physician. Respondent's testimony was corroborated by letters from his colleagues who attested to his character and skill as a physician. Respondent also admitted to the falsification of the above-referenced applications.

In his findings of fact, conclusions of law, and recommended ruling, the administrative law judge concluded that the Respondent had clearly falsified his DEA applications for registration, and that the Respondent's continued registration was not in the public interest without some sanctions for falsification. The administrative law judge recommended the revocation of Respondent's registration and further recommended that the Administrator look favorably upon any application for registration filed by the Respondent after the passage of one year from the final disposition of this case. The Administrator adopts the findings of fact, conclusions of law, and recommended ruling of the administrative law judge.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, BW1551666, previously issued to Bobby Watts, M.D., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied. This order is effective October 4, 1993

Dated: August 27, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement

[FR Doc. 93–21506 Filed 9–2–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Commission on the Future of Worker-Management Relations; Notice of Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of public meeting.

SUMMARY: The Commission on the Future of Worker-Management Relations was established in accordance with the Federal Advisory Committee Act (FACA) Public Law 92–463. Pursuant to Section 10(a) of FACA, this is to announce that the Commission will meet at the time and place shown below:

TIME AND PLACE: The meeting will be held on Wednesday, September 15, 1993 from 10 a.m. to 5 p.m. in

Conference Room N–3437 A–D in the Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

AGENDA: The agenda for the meeting is as follows:

—Five presentations of workplace committees and other forms of participation drawn from:

• Large and small establishments; minority-owned businesses;

• Manufacturing and service industries; and

• Workplaces under collective bargaining agreements and workplaces with no collective bargaining agreements.

—A general discussion by Commission Members of the lessons to be learned from workplace committees and other forms of employee participation including a review of the presentations made at the July and September meetings.

PUBLIC PARTICIPATION: The Commission will be in session from 10 a.m. to 12 noon when it will recess for lunch and will return at 1 p.m. Seating will be available to the public on a first-come, first-served basis. Handicapped individuals wishing to attend should contact the Commission to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 11 copies to Mrs. June M. Robinson, Designated Federal Official, Commission on the Future of Worker-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–9148. We regret that due to a misunderstanding of scheduling, we are unable to provide the full 15 days of advance notice of this meeting.

Signed at Washington, DC, this 30th day of August, 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93–21628 Filed 9–2–93; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

[TA–W–28,832]

Chuska Energy Company, Denver, CO, et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice for petitions TA–W–28,832; TA–W–28,833; and TA–W–28,834 which was published in the **Federal Register** on July 16, 1993 (58 FR 38442) in FR Document 93–16934.

A printing error concerning the name of Harken Energy Co. (TA–W–28,834) appears in the 31st line of the first column on the appendix table on page 38442. The name should read "Harken Energy/Exploration Corporation" (wkrs) instead of Harken Energy Corp (wkrs). Also, the name of Chuska Energy Co. (TA–W–28,833) in the 30th line of the first column is incorrect and should read "Sunfield Energy Company".

Printing errors concerning the locations of the facilities appears on page 38442 in the second column of the 29th through the 31st lines of the Appendix Table. All locations are in Denver, Colorado. Accordingly, the lines should read "Denver, Colorado" instead of "San Antonio, TX; Walnut Creek, CA. and Grand Prairie, TX".

Signed in Washington, DC, this August 25, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–21568 Filed 9–2–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,834]

Harken Energy Corporation (Harken Exploration Corporation) Denver, CO; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 28, 1993 in response to a worker petition which was filed on June 28, 1993 on behalf of workers at Harken Energy Corporation, Denver, Colorado.

An active certification covering the petitioning group of workers (Harken Energy Corporation's operating arm entitled Harken Exploration Corporation) remains in effect (TA–W–28,485B). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 24th day of August, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–21569 Filed 9–2–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,744]

Jockey International Sewing Plant; Carlisle, KY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 30, 1993, applicable to all workers of the subject firm.

At the request of the company, the Department reviewed the certification for workers of Jockey International in Carlisle, Kentucky. The company has two plants in Carlisle, Kentucky—a sewing plant and a knitting plant. Data was submitted only for the sewing plant. Accordingly, the Department is amending the certification to show the proper worker group

The amended notice applicable to TA–W–28,744 is hereby issued as follows:

All workers of Jockey International Sewing Plant in Carlisle, Kentucky who became totally or partially separated from employment on or after May 17, 1992 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 24th day of August 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance

[FR Doc. 93–21570 Filed 9–2–93, 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,835]

Jockey International Sewing Plant; Kenosha, WI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 30, 1993, applicable to all workers of the subject firm

At the request of the company, the Department reviewed the certification for workers of Jockey International in Kenosha, Wisconsin. The company has a distribution center and corporate office in Kenosha, Wisconsin as well as a sewing plant Data was submitted only for the sewing plant. Accordingly, the Department is amending the certification to show the proper worker group

The amended notice applicable to TA–W–28,835 is hereby issued as follows:

All workers of Jockey International Sewing Plant in Kenosha, Wisconsin who became totally or partially separated from employment on or after June 27, 1992 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of August 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-21571 Filed 9-2-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-28,544A]

Nerco Minerals Company, Delamar Mine and Kinross Delamar Mining Company Located in Southwest Idaho 20 Miles From the Oregon Border, Jordan Valley, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 29, 1993, applicable to all workers of NERCO Minerals Company, Delamar Mine, Jordan Valley, Oregon. The notice was published in the **Federal Register** on July 9, 1993 (58 FR 37028).

At the request of the State Agency, the Department reviewed the subject certification. The investigation findings show that on August 1, 1993, Kinross Mining Company, a subsidiary of Kinross Gold, USA Inc., replaced Nerco Minerals Company, Delamar Mine as the employer of the former Nerco Workers. Kinross Mining Company produces the same products as Nerco Minerals Company, Delamar Mine did before.

Accordingly, the Department is amending the certification to show that Kinross Mining Company is the successor-in-interest firm.

The amended notice applicable to TA-W-28,544A is hereby issued as follows:

All workers of Kinross Mining Company, Jordan Valley, Oregon, the successor-in-interest firm of Nerco Minerals Company, Delamar Mine, Jordan Valley, Oregon related to the production of gold who became totally or partially separated from employment on or after March 30, 1992 are eligible to apply for trade adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of August 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-21572 Filed 9-2-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-28,916]

Nestle Beverage Co.; Sunbury, OH; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 2, 1993 in response to a worker petition which was filed on behalf of workers and former workers at Nestle Beverage Company, Sunbury, Ohio.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 27th day of August 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-21573 Filed 9-2-93; 8:45 am]

BILLING CODE 4510-30-M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of August 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,537; Pierce Corp., Eugene, OR
TA-W-28,803; Suburban Sportswear, Inc., Orange, NJ
TA-W-28,896; Norris/O'Bannon Products, Tulsa, OK
TA-W-28,508; Glacier Vandervell, Inc., Bellefontaine, OH
TA-W-28,829; Allied Signal, Inc., St. Joseph, MI
TA-W-28,712; Eddy Potash, Inc., Carlsbad, NM
TA-W-28,784; Highland, Odessa, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA-W-28,832; Chuska Energy Co., Denver, CO

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,901; Amoco Corp., Legal Dept., Chicago, IL

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,833; Sunfield Energy Co., Denver, CO

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,895; Keller Supply, Inc., Morenci, MI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,822; Leslie Fay, Inc., Laflin, PA

The Workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,549; Conner Fence, Inc., Odessa, TX

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and to the absolute decline in sales or production.

TA-W-28,810; Hubbell-Bell, Inc., Fogelsville, PA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,636; Ots International, Inc., Shawnee, OK

U.S. imports of oil and gas field machinery were negligible in 1991 and 1992. U.S. exports significantly

exceeded U.S. imports of oil and gas field machinery in 1991 and in 1992.

TA-W-28,680; Western Gas Resources, Inc., Teddy Roosevelt Plant, Fairfield, ND

U.S. imports of natural gas liquids and liquid refinery gases declined absolutely and relative to domestic shipments in 1992 compared to 1991 and in the first quarter of 1993 compared to the same period in 1992.

Affirmative Determinations

TA-W-28,800; Iwatsu America, Inc., Carlstadt, NJ

A certification was issued covering all workers separated on or after June 8, 1992.

TA-W-28,716; Babco Textron, Danvers, MA

A certification was issued covering all workers separated on or after May 14, 1992.

TA-W-28,731; Cleveland Pneumatic, Co., Cleveland, OH

A certification was issued covering all workers separated on or after May 21, 1992.

TA-W-28,732; Cleveland Plating Co., Cleveland, OH

A certification was issued covering all workers separated on or after May 21, 1992.

TA-W-28,570; IRI International Corp., Specialty Steel Div., Pampa, TX

A certification was issued covering all workers separated on or after April 6, 1992.

TA-W-28,813; Tejas Resources, Inc., Terrell, TX

A certification was issued covering all workers separated on or after June 16, 1982.

TA-W-28,870; Great Land Directional Drilling, Inc., Houston, TX

A certification was issued covering all workers separated on or after July 9, 1992.

TA-W-28,786; McDonnell Douglas Corp., Douglas Aircraft Co., Torrance, CA

A certification was issued covering all workers separated on or after June 15, 1992.

TA-W-28,789 and TA-W-28,790; Quality Mfg., Inc., Saxton, PA and Martinsburg, PA

A certification was issued covering all workers separated on or after June 9, 1992.

TA-W-28,828 and TA-W-28,828A; Buffalo Forge Co., Buffalo, NY and Cheektowaga, NY

A certification was issued covering all workers separated on or after June 9, 1992.

TA-W-28,757; Target Sportswear, Inc., Hyde, PA

A certification was issued covering all workers separated on or after May 24, 1992.

I hereby certify that the aforementioned determinations were issued during the month of August 1993. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 26, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-21574 Filed 9-2-93; 8:45 am]

BILLING CODE 4510-30-M

Smith Energy Services; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA-W-28,554, Farmington, New Mexico, TA-W-28,555, Midland, Texas, TA-W-28,556, Longmont, Colorado, TA-W-28,557, Vernal, Utah, TA-W-28,558, Casper, Wyoming, TA-W-28,559, Denver, Colorado, TA-W-28, 560, Houston, Texas.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 4, 1993, applicable to all worker of Smith Energy Services in the above mentioned locations. The certification notice was published in the **Federal Register** on July 2, 1993 (58 FR 35981).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that the claimants' wages for Smith Energy Services are being reported under the parent company—Allied Products Company, Chicago, Illinois.

Accordingly, the Department is amending the certification to properly reflect the correct worker groups.

The intent of the Department's certification is to include all workers of Smith Energy Services, a division of Allied Products Company irrespective to which account their unemployment insurance (UI) taxes are paid.

The amended notice applicable to TA-W-38,554 through TA-W-28,560 is hereby published as follows:

All workers of Smith Energy Services, a/k/a Allied Product Company, in Farmington, New Mexico; Midland and Houston, Texas; Longmont and Denver, Colorado; Vernal, Utah and Casper, Wyoming engaged in activities related to the exploration and drilling of crude oil and natural gas, who became totally or partially separated from employment on or after March 31, 1992, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC., this 27th day of August 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-21575 Filed 9-2-93; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that

section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

Kentucky:
KY930036 (Sept. 3, 1993)
KY930037 (Sept. 3, 1993)
KY930038 (Sept. 3, 1993)
KY930039 (Sept. 3, 1993)
KY930040 (Sept. 3, 1993)
KY930041 (Sept. 3, 1993)
KY930042 (Sept. 3, 1993)
KY930043 (Sept. 3, 1993)
KY930044 (Sept. 3, 1993)
KY930045 (Sept. 3, 1993)
KY930046 (Sept. 3, 1993)
KY930047 (Sept. 3, 1993)
KY930048 (Sept. 3, 1993)
KY930049 (Sept. 3, 1993)
KY930050 (Sept. 3, 1993)
KY930051 (Sept. 3, 1993)
KY930052 (Sept. 3, 1993)
KY930053 (Sept. 3, 1993)
Massachusetts:
MA930012 (Sept. 3, 1993)
MA930013 (Sept. 3, 1993)
MA930014 (Sept. 3, 1993)
MA930015 (Sept. 3, 1993)
New York:
NY930039 (Sept. 3, 1993)
NY930040 (Sept. 3, 1993)
NY930041 (Sept. 3, 1993)
NY930042 (Sept. 3, 1993)

Volume II

Louisiana:
LA930032 (Sept. 3, 1993)
LA930033 (Sept. 3, 1993)
LA930034 (Sept. 3, 1993)
LA930035 (Sept. 3, 1993)
LA930036 (Sept. 3, 1993)
LA930037 (Sept. 3, 1993)
LA930038 (Sept. 3, 1993)
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LA930041 (Sept. 3, 1993)
LA930042 (Sept. 3, 1993)
LA930043 (Sept. 3, 1993)
LA930044 (Sept. 3, 1993)
LA930045 (Sept. 3, 1993)
LA930046 (Sept. 3, 1993)
LA930047 (Sept. 3, 1993)
LA930048 (Sept. 3, 1993)

Volume III

Arizona:
AZ930007 (Sept. 3, 1993)
AZ930008 (Sept. 3, 1993)
AZ930009 (Sept. 3, 1993)
AZ930010 (Sept. 3, 1993)
AZ930011 (Sept. 3, 1993)
AZ930012 (Sept. 3, 1993)
AZ930013 (Sept. 3, 1993)
Idaho:
ID930007 (Sept. 3, 1993)
ID930008 (Sept. 3, 1993)
ID930009 (Sept. 3, 1993)
ID930010 (Sept. 3, 1993)
ID930011 (Sept. 3, 1993)
ID930012 (Sept. 3, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

District of Columbia:
DC930001 (Feb. 19, 1993)
Massachusetts:
MA930001 (Feb. 19, 1993)
MA930002 (Feb. 19, 1993)
MA930003 (Feb. 19, 1993)
MA930005 (Feb. 19, 1993)
MA930006 (Feb. 19, 1993)
MA930007 (Feb. 19, 1993)
MA930008 (Feb. 19, 1993)
MA930009 (Feb. 19, 1993)
MA930010 (Feb. 19, 1993)
Maryland:
MD930034 (Feb. 19, 1993)
MD930036 (Feb. 19, 1993)
New York:
NY930002 (Feb. 19, 1993)
NY930003 (Feb. 19, 1993)
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NY930026 (Feb. 19, 1993)
NY930031 (Feb. 19, 1993)
NY930032 (Feb. 19, 1993)
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NY930034 (Feb. 19, 1993)
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KS930013 (Feb. 19, 1993)
KS930015 (Feb. 19, 1993)
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KS930019 (Feb. 29, 1993)
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KS930028 (Aug. 06, 1993)
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WA930011 (Feb. 19, 1993)
WA930013 (Feb. 19, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 27th day of August 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–21271 Filed 9–2–93; 8:45 am]

BILLING CODE 4510–27–M

Occupational Safety and Health Administration

[Docket No. NRTL–2–89]

American Gas Association Laboratories

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of request for expansion of recognition as a nationally recognized testing laboratory.

SUMMARY: This notice announces the application of the American Gas Association Laboratories for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is November 2, 1993.

ADDRESS: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., room N3653, Washington, DC 20210.

Notice of Application

SUPPLEMENTARY INFORMATION: Notice is hereby given that the American Gas Association Laboratories (AGA), which previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory (see 54 FR 43166, 11/21/89), and which was so recognized (see 55 FR 6/7/90), has made application for an expansion of its current recognition, for the equipment or materials listed below.

The addresses of the facilities that would be covered by the expansion of recognition are:

American Gas Association Laboratories, Cleveland Laboratory, 8501 East Pleasant Valley Road, Independence (Cleveland), Ohio 44131.
American Gas Association Laboratories, Los Angeles Branch Laboratory, 1425 Grande Vista Avenue, Los Angeles, California 90023.

Expansion of Recognition

The American Gas Association Laboratories, on April 11, 1991, submitted an application for expansion of its current recognition (see Exhibit 5. A.) to include the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c).

UL 125—Valves for Anhydrous Ammonia and LP-Gas (Other Than Safety Relief)
UL 132—Safety Relief Valves for Anhydrous Ammonia and LP-Gas
ANSI/UL 144—Pressure Regulating Valves for LP-Gas
ANSI/UL 147—LP- and MPS-Gas Torches
ANSI/UL 174—Household Electric Storage-Tank Water Heaters
ANSI/UL 197—Commercial Electric Cooking Appliances
ANSI/UL 244A—Solid-State Controls for Appliances
ANSI/UL 296—Oil Burners
ANSI/UL 353—Limit Controls
ANSI/UL 372—Primary Safety Controls for Gas- and Oil-Fired Appliances
UL 378—Draft Equipment
ANSI/UL 429—Electrically Operated Valves
ANSI/UL 465—Central Cooling Air Conditioners
ANSI/UL 484—Room Air Conditioners
ANSI/UL 560—Electric Home-Laundry Equipment
ANSI/UL 726—Oil-Fired Boiler Assemblies
ANSI/UL 727—Oil-Fired Central Furnaces
ANSI/UL 729—Oil-Fired Floor Furnaces
ANSI/UL 730—Oil-Fired Wall Furnaces
ANSI/UL 731—Oil-Fired Unit Heaters
UL 732—Oil-Fired Water Heaters
UL 733—Oil-Fired Air Heaters and Direct-Fired Heaters
UL 795—Commercial-Industrial Gas-Heating Equipment
ANSI/UL 834—Heating, Water Supply, and Power Boilers—Electric
ANSI/UL 858—Household Electric Ranges
UL 858A—Safety-Related Solid-State Controls for Household Electric Ranges
ANSI/UL 873—Temperature-Indicating and -Regulating Equipment
UL 991—Tests of Safety-Related Controls Employing Solid-State Devices
ANSI/UL 1020—Thermal Cutoffs for Use in Electrical Appliances and Components
ANSI/UL 1025—Electric Air Heaters
ANSI/UL 1042—Electric Baseboard Heating Equipment
ANSI/UL 1054—Special-Use Switches
ANSI/UL 1096—Electric Central Air-Heating Equipment
UL 1240—Electric Commercial Clothes-Drying Equipment
ANSI/UL 1261—Electric Water Heaters for Pools and Tubs
ANSI/UL 1453—Electric Booster and Commercial Storage Tank Water Heaters
ANSI/UL 1484—Residential Gas Detectors
ANSI/UL 1556—Electric Coin-Operated Clothes-Drying Equipment

Note.—Testing and certification of gas operated equipment is limited to equipment for use with "liquefied petroleum gas" ("LPG" or "LP-Gas").

The NRTL Recognition Program staff made an in-depth study of the details of the AGA's application and supplementary material, and its original application, and determined that an additional on-site visit to the Cleveland facility was warranted. This visit was made on May 23, 1991, and a on-site review report was prepared (see Exhibit 5. B.).

Preliminary Finding

Based upon a review of the details of the AGA's recognition, an evaluation of its present application including details of necessary test equipment, procedures, and special apparatus or facilities needed, and the NRTL staff's on-site review report, the Assistant Secretary has made a preliminary finding that the

equipment and expertise required to certify products using the aforementioned test standards are within the capabilities of the laboratory, and that the proposed additional test standards can be added to the AGA's recognition.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the expansion of the current recognition of the American Gas Association Laboratories as required by 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than November 2, 1993, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, DC 20210.

Copies of all pertinent documents (Docket No. NRTL–2–89), are available for inspection and duplication at the Docket Office, room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

Signed at Washington, DC, this 30th day of August 1993.

David C. Zeigler,

Acting Assistant Secretary.

[FR Doc. 93–21576 Filed 9–2–93; 8:45 am]

BILLING CODE 4510–26–M

[Docket No. NRTL–1–89]

ETL Testing Laboratories, Inc.

AGENCY: Occupational Safety and Health Administration; Department of Labor.

ACTION: Notice of expansion of current recognition as a nationally recognized testing laboratory; correction.

SUMMARY: This notice announces the Agency's correction of the final decision on the ETL Testing Laboratories, Inc. application for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

CORRECTION: In notice document 93–16550 appearing on page 37750 in the issue of Tuesday, July 13, 1993, make the following correction: In the second column, the following paragraph should be deleted.

Note: The use of ANSI/UL 913—*'Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous Locations'*, for which ETL has previously received recognition for the testing and certification of products, is hereby also limited to Class I, Division I locations.

Signed at Washington, DC this 30th day of August 1993.

David C. Zeigler,

Acting Assistant Secretary.

[FR Doc. 93–21577 Filed 9–2–93; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–010]

Commonwealth Edison Co., Dresden Nuclear Power Station, Unit 1; Notice of Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing an order authorizing the decommissioning of the Dresden Nuclear Power Station, Unit 1 (Dresden 1) that is licensed to the Commonwealth Edison Company (CECo). The proposed Decommissioning Plan involves safe storage (SAFSTOR) of Dresden 1 until after Dresden 2 and 3 are permanently shut down, at which time all three units would be decontaminated and dismantled. The licensee also requested that the Dresden 1 license (DPR–2) be renewed to April 10, 2029 to be consistent with the proposed SAFSTOR period.

Description of Proposed Action

Dresden 1 has been shut down since October 31, 1978, and all spent fuel has been removed from the reactor and transferred to the Dresden 1 spent fuel storage pool. Approval of the Decommissioning Plan will allow CECo to retain Dresden 1 in a SAFSTOR status in accordance with an approved Decommissioning Plan.

Placing Dresden 1 in SAFSTOR will allow continued use of the site for electric power production by Dresden 2 and 3 until final shutdown and decommissioning (decontamination/dismantlement) of all three units.

Finding of No Significant Impact

The staff has reviewed the proposed decommissioning against the requirements in 10 CFR part 51. Upon conducting an Environmental Assessment, the staff concluded that no significant environmental impacts are associated with the proposed SAFSTOR decommissioning and that the proposed decommissioning will not significantly affect the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed decommissioning of Dresden 1.

The following documents contain further details on this action: (1) The application from the licensee of January 7, 1986, as revised December 22, 1987; April 29, September 2, and November 21, 1988; March 27, April 10, May 16, and November 1, 1989; June 7, 1991; February 7 and October 30, 1992; and June 8 and July 2, 1993; (2) the Commission's related Safety Evaluation; and (3) the Commission's Environmental Assessment and Finding of No Significant Impact.

Dated at Rockville, Maryland, this 30th day of August 1993.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–21563 Filed 9–2–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–424 and 50–425]

Georgia Power Company, et al.; Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the Georgia Power Company, et al. (the licensee) for amendments to Facility Operating License Nos. NPF–68 and NPF–81 issued to the licensee for operation of the Vogtle Electric Generating Plant, Units 1 and 2, located in Burke County, Georgia. A Notice of Consideration of Issuance of this amendment request was published in the **Federal Register** on November 12, 1992 (57 FR 53785).

The proposed amendment request was to revise Technical Specification 4.5.2.b to decrease the frequency for verifying that the emergency core cooling system piping is full of water from once every 31 days to once every 6 months. The licensee stated that this change would reduce radiation exposure to personnel performing these surveillances.

The NRC staff has concluded that the licensee's request is premature based on experiences at Vogtle and other nuclear power plants, and that the request cannot be granted. The licensee was notified of the Commission's denial of

the proposed change by letter dated August 26, 1993.

By October 4, 1993, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 by the above date.

A copy of any petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, suite 5200, 600 Peachtree Street NE., Atlanta, Georgia 30308–2210, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated September 17, 1992, and (2) the Commission's letter to the licensee dated August 26, 1993.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 26th day of August 1993.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–21564 Filed 9–2–93; 8:45 am]

BILLING CODE 7590–01–M

Atomic Safety and Licensing Board; Gulf States Utilities Company, et al. (River Bend Station, Unit 1)

[Docket No. 50–458–OLA, ASLBP No. 93–680–04–OLA]

August 27, 1993.

Before Administrative Judges: B. Paul Cotter, Jr., Chairman, Dr. Richard F. Cole, Dr. Peter S. Lam.

Order

Upon consideration of the two notices of opportunity for hearing on license amendments issued to reflect the change in ownership of Gulf States Utilities and to include Entergy Operations, Inc. as a licensee authorized to act "* * * as agent for the owners to use and operate the River Bend Station and to possess and use related licensed nuclear materials." 58 FR 36423, 36435 and 36436 (1993); Cajun Electric Power Cooperative's August 6, 1993 Petition to Intervene and August 17, 1993 amendment thereto; the August 23, 1993 opposition of Gulf States Utilities Company; the August 26 NRC Staff's response; and the entire record in this matter, it is, this 26th day of August, 1993.

Ordered

That a prehearing conference will be held Wednesday, September 15, 1993, at 9 a.m. in the Licensing Board's Fifth Floor Hearing Room, 4350 East West Highway, Bethesda, Maryland, for the following purposes:

1. To hear argument on the petition to intervene, as amended, and responsive pleadings;
2. To schedule any additional actions that may be appropriate; and
3. To consider any other matters relevant to the expeditious resolution of disputes in this proceeding.

Dated: August 27, 1993.

For the Atomic Safety and Licensing Board.

B. Paul Cotter, Jr.,

Chairman, Administrative Judge.

[FR Doc. 93–21565 Filed 9–2–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–32240–CivP; ASLBP No. 93–681–01–CivP]

Twin Falls Clinic & Hospital; Byproduct Material License No. 11–27085–01; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1992, published in the **Federal Register**, 37 FR 28710 (1972), AND §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

Twin Falls Clinic & Hospital, Byproduct Material License No. 11–27085–01, EA 93–082

This Board is being established pursuant to the request of the Licensee for an enforcement hearing regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, dated August 6, 1993, entitled "Order Imposing Civil Monetary Penalty" (58 FR 43390, August 16, 1993.

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Judge Robert M. Lazo, Board Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Judge Jerry R. Kline, Board Member, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Judge Frederick J. Shon, Board Member, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 27th day of August 1993.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 93–21566 Filed 9–2–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act System Notice

AGENCY: Office of Personnel Management.

ACTION: Establishment of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Office of Personnel Management (OPM) proposes to establish a new system of records. The system, entitled "OPM/Internal-12, Telephone Call Detail Records," will be administered by the Office of Information Resources Management.

DATES: The proposed system of records will take effect, without further notice, on November 2, 1993, unless comments are received that cause a contrary decision. If OPM receives comments that necessitate a change in the proposed system of records, OPM will publish a new final notice.

ADDRESSES: Send comments on this proposed system of records to the Chief, Information Policy Branch, Office of Information Resources Management, Administration Group, Office of

Personnel Management, 1900 E Street, NW., Room CHP 500, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: For further information on this proposed system of records, contact the Chief, Information Policy Branch, Office of Information Resources Management, Administration Group, Office of Personnel Management, 1900 E Street, NW., Room CHP 500, Washington, DC 20415.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management uses call detail records to verify usage of its telephones, to distribute the costs of telephone service within the agency, and to detect and deter possible abuse of telephones and telephone services. The establishment of "OPM/Internal-12, Telephone Call Detail Records," as a new system of records is necessary because OPM may retrieve information about individuals from the system through the use of an individual identifier. As required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, OPM has sent notice of this proposed system of records to the Office of Management and Budget, the Committee on Government Operations of the House of Representatives, and the Committee on Governmental Affairs of the Senate. The notice is published in its entirety below.

Patricia W. Lattimore,
Acting Deputy Director.

OPM/INTERNAL-12

SYSTEM NAME:

OPM/Internal-12, Telephone Call Detail Records.

SYSTEM LOCATION:

Office of Information Resources Management, Administration Group, Office of Personnel Management, 1900 E Street, NW., CHP 500, Washington, DC 20415.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are assigned OPM telephone numbers or are authorized to use OPM telephone services and persons who receive calls billed to OPM.

CATEGORIES OF RECORDS IN THE SYSTEM:

Call detail records of telephone calls placed from OPM telephones or otherwise billed to OPM (including the originating and destination telephone numbers, cities, and states; date; time; cost; and duration of each call); records indicating the assignment of telephone numbers to organizations and individuals; and the organizational location of telephones.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 31 U.S.C. 1348, 44 U.S.C. 3101, and 41 CFR part 201.

PURPOSE(S):

OPM uses call detail records (CDR) to verify telephone usage and to resolve billing discrepancies so that telephone bills can be paid. OPM may also use these records to allocate the costs of telephone services to OPM organizational units, to identify unofficial telephone calls, to seek reimbursement for unofficial calls, and as a basis for taking action when Agency employees or other persons misuse or abuse OPM telephone services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. By OPM employees or other persons to determine their individual responsibility for telephone calls.

b. By another Federal agency or a telecommunications company providing telephone services to permit servicing the account.

c. By appropriate OPM employees to assist in the planning and effective management of OPM telephone services, and to determine that OPM telephone services are being used in an efficient and economical manner.

d. By auditors, investigators, and other employees authorized by the Inspector General, pursuant to sections 4 and 6 of the Inspector General Act of 1978.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. By the National Archives and Records Administration for records management inspections.

g. By another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding. In those cases where the Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

h. By the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

i. By another Federal agency, in response to its requests, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

j. By the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear, when:

1. The Agency, or any component thereof; or

2. Any employee of the Agency is his or her official capacity; or

3. Any employee of the Agency in his or her individual capacity where the Department of Justice or the Agency has agreed to represent the employee; or

4. The United States, when the Agency determines that litigation is likely to affect the Agency or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is deemed by the Agency to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which records were collected.

k. By the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

l. By contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal government.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), OPM may disclose records from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

OPM stores records on magnetic media (tape or disk) and on paper.

RETRIEVABILITY:

Records are retrieved by employee name; OPM organization; or originating telephone number, destination telephone number, location code, date, time, cost, or duration of call.

SAFEGUARDS:

Records are stored in secure areas and are available only to those persons whose official duties require access.

RETENTION AND DISPOSAL:

These records are maintained for varying periods of time, from six months to three years, in accordance with NARA General Records Schedule 12, items 2 and 3. Disposal of manual records is by shredding or burning; magnetic media are erased.

SYSTEM MANAGER AND ADDRESS:

Chief, Telecommunications Policy Staff, Office of Information Resources Management, Administration Group, Office of Personnel Management, 1900 E Street, NW., CHP 500, Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name;

b. OPM-assigned telephone number or telephone service authorization number, and:

c. Description of information being sought, including the time frame of information being sought.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to records about themselves should contact the system manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name;

b. OPM-assigned telephone number or telephone service authorization number, and;

c. Description of information being sought, including the time frame of information being sought.

Individuals requesting access must also follow OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of records about themselves should contact the system manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name;

b. OPM-assigned telephone number or telephone service authorization number, and;

c. Description of information being sought, including the time frame of the information being sought. Individuals requesting amendment must also follow OPM's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from:

a. Local OPM telephone directories and other telephone assignment records,

b. Call detail reports provided by suppliers of telephone services, and

c. The individual on whom the record is maintained.

[FR Doc. 93–21503 Filed 9–2–93; 8:45 am]

BILLING CODE 6325–01–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, September 23 and Friday, September 24, 1993 at the Washington Marriott, 1221 22nd Street NW., Washington, DC in the Dupont Ballroom. The meetings are expected to begin at 9 a.m. each day. Among the issues that will be on the Commission's agenda are a discussion of health care reform proposals including a briefing on the President's proposal, quality assurance under health care reform, structure of health alliances, extensions of the Commission's recommendations on financing graduate medical education, assessment of the experience with bonus payments for services in health professional shortage areas (HPSAs), and maintaining budget-neutrality when changes are made in the Medicare Fee Schedule.

ADDRESSES: The Commission is located at 2120 L Street, NW., in Suite 510, Washington, DC. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT:

Lauren LeRoy, Deputy Director, or Annette Hennessey, Executive Assistant at 202/653–7220.

SUPPLEMENTARY INFORMATION: Agendas for the meeting will be available on Friday, September 17, 1993 and will be mailed out at that time. To receive an agenda, please direct all requests to the receptionist at 202/653–7220.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 93–21483 Filed 9–2–93; 8:45 am]

BILLING CODE 6820–SE–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Pension Plan Reports
(2) *Form(s) submitted:* G–88p, G–88r and G–88r.1
(3) *OMB Number:* 3220–0089
(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval
(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
(6) *Frequency of response:* On occasion
(7) *Respondents:* Businesses or other for-profit
(8) *Estimated annual number of respondents:* 500
(9) *Total annual responses:* 2,440
(10) *Average time per response:* .1340 hours
(11) *Total annual reporting hours:* 327
(12) *Collection description:* The RRA provides for payment of a supplemental annuity to a qualified retirement annuitant. The collection obtains information from the annuitant's employer to determine (a) the existence of a railroad employer pension plan and whether such plans, if they exist, require a reduction to RRB supplemental annuities paid to the employer's former employees and (b) the amount of supplemental annuities due railroad employees.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer

(312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93–21475 Filed 9–2–93; 8:45 am]

BILLING CODE 7905–01–M

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning October 1, 1993, shall be at the rate of 31 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning October 1, 1993, 31.2 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 68.8 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: August 25, 1993.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 93–21466 Filed 9–2–93; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–25872]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 27, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 20, 1993, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Appalachian Power Company (70–5885)

Appalachian Power Company ("Appalachian"), 40 Franklin Road, SW., Roanoke, Virginia 24011, an electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment to its application under Sections 9(a) and 10.

By order dated September 30, 1976 (HCAR No. 19698), Appalachian was authorized to enter into an agreement of sale ("Agreement") with Putnam County, West Virginia ("County") concerning the construction, installation, financing and sale of pollution control facilities ("Facilities") at Appalachian's John E. Amos Plant. Under the Agreement, the County may issue and sell its pollution control revenue bonds ("Revenue Bonds") or pollution control refunding bonds ("Refunding Bonds"), in one or more series, and deposit the proceeds with the trustee ("Trustee") under an indenture ("Indenture") entered into between the County and the Trustee. The proceeds are applied by the Trustee to the payment of the costs of construction of the Facilities, or in the case of proceeds from the sale of Refunding Bonds, to the payment of the principal, premium (if any) and/or interest on Revenue Bonds to be refunded.

Appalachian was also authorized to convey an undivided interest in a portion of the Facilities to the County, and to reacquire that interest under an installment sales arrangement requiring Appalachian to pay as the purchase price semi-annual installments in such an amount, together with other monies held by the Trustee under the Indenture for that purpose, as to enable the County to pay, when due, the interest and principal on the Revenue Bonds. The County has issued and sold three series of bonds in connection with the financing of the Facilities.

It is now proposed that the County issue and sell its Series D Refunding Bonds in the aggregate principal amount of up to $40 million, the proceeds of which will be used to provide for the early redemption at par of the entire $40 million aggregate principal amount of outstanding Series B Revenue Bonds, 6¾%, October 1, 2007 (HCAR No. 20205, October 11, 1977). The Series D Refunding Bonds will be issued under and secured by the Indenture and a third supplemental indenture, will bear interest semi-annually at a rate of interest not exceeding 6¾% per annum and will mature at a date not more than thirty years from the date of issuance. Any discount from the initial public offering price of the Series D Refunding Bonds shall not exceed 5% of their principal amount and the initial public offering price shall not be less than 95% of such amount. Appalachian will not enter into the proposed refunding transactions unless the estimated present value savings derived from the net difference between interest payments on a new issue of comparable securities and on the securities to be refunded is, on an after-tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate. The discount rate used shall be the estimated after-tax interest rate on the Series D Refunding Bonds to be issued. Appalachian may pay fees to provide some form of credit enhancement in connection with the issuance and sale of the Series D Refunding Bonds.

Ohio Power Company (70–6070)

Ohio Power Company ("OPC"), 301 Cleveland Avenue, SW., Canton, Ohio 44702, an electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment to its application-declaration under Sections 9(a) and 10.

By order dated December 6, 1977 (HCAR No. 20297), OPC was authorized to enter into an agreement of sale

("Agreement") with Marshall County, West Virginia ("County") concerning the financing of pollution control facilities ("Facilities") at OPC's Kammer Generating Station. Under the Agreement, the County may issue and sell its pollution control revenue bonds ("Revenue Bonds") or pollution control refunding bonds, in one or more series, and deposit the proceeds with the trustee ("Trustee") under an indenture ("Indenture") entered into between the County and the Trustee. The proceeds are applied by the Trustee to the payment of the costs of construction of the Facilities, or in the case of proceeds from the sale of refunding bonds, to the payment of the principal, premium (if any) and/or interest on Revenue Bonds to be refunded.

OPC was also authorized to convey the Facilities to the County, and to reacquire that interest under an installment sales arrangement requiring OPC to pay as the purchase price semi-annual installments in such an amount, together with other monies held by the Trustee under the Indenture for that purpose, as to enable the County to pay, when due, the interest and principal on the Revenue Bonds.

It is now proposed that the County issue and sell its Series B Refunding Bonds in the aggregate principal amount of up to $50 million ("Refunding Bonds"), the proceeds of which will be used to provide for the early redemption of the outstanding $50 million aggregate principal amount of Series A Bonds, bearing interest at 6.95% and maturing on December 1, 2007. The Refunding Bonds will be issued under and secured by the Indenture and a first supplemental indenture, will bear interest semiannually at a rate of interest not exceeding 6¾% per annum and will mature at a date not more than thirty years from the date of issuance. Any discount from the initial public offering price of the Refunding Bonds shall not exceed 5% of their principal amount and the initial public offering price shall not be less than 95% of such amount.

OPC will not enter into the proposed refunding transactions unless the estimated present value savings derived from the net difference between interest payments on a new issue of comparable securities and on the securities to be refunded is, on an after-tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate. The discount rate used shall be the estimated after-tax interest rate on the Refunding Bonds to be issued. OPC may pay fees to provide some form of credit enhancement in connection with the issuance and sale of the Refunding Bonds.

American Electric Power Company, Inc., et al. (70–7622)

American Electric Power Company, Inc. ("AEP"), a registered holding company, and its nonutility subsidiary company, AEP Resources, Inc. ("Resources"), both located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment to the application-declaration filed pursuant to Sections 6(a), 7, 9(a), 10, 12(b), and 13(b) of the Act and Rules 43, 45, 50(a)(5), 87, 90, and 91 thereunder.

By order dated June 6, 1989 (HCAR No. 24898) ("1989 Order"), the Commission authorized AEP to organize Resources in order to invest in qualifying cogeneration and small power production facilities as defined by the Public Utility Regulatory Policies Act of 1978 and regulations thereunder. The 1989 Order also authorized AEP to invest up to $7.5 million per year through December 31, 1992 in Resources in order to finance preliminary project development activities and administrative costs. Although Resources has been inactive since it was organized and AEP has not made any investments under the 1989 Order, AEP now seeks new authority to engage in the same transactions as in the 1989 Order.

AEP therefore proposes to invest up to $7.5 million per year through December 31, 1996 in Resources in order to finance preliminary project development activities and administrative costs. The investments would take the form of acquisitions of common stock of Resources and/or capital contributions or debt financing from unaffiliated third parties consisting of banks, insurance companies or other institutional investors ("Debt Financing"). AEP also requests authorization to guarantee any Debt Financing by Resources. Any Debt Financing obtained by Resources or guaranteed by AEP will not exceed a term of ten years or bear interest at a rate in excess of 115% of the prime rate in effect at the time of issuance. Resources also requests an exception from the competitive bidding requirements of rule 50 under subsection (a)(5) thereunder in connection with any Debt Financing.

Allegheny Power System, Inc., et al. (70–7888)

Allegheny Power System, Inc. ("Allegheny"), 12 East 49th Street, New York, New York, 10017, a registered public utility holding company; three public utility subsidiary companies of Allegheny—(i) Monongahela Power Company ("Monongahela"), 1310 Fairmont Avenue, Fairmont, West Virginia, 26544; (ii) Potomac Edison Company ("Potomac Edison"), 10435 Downsville Pike, Hagerstown, Maryland, 21740; and (iii) West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania, 15601; Allegheny Generating Company ("Allegheny Generating"), 12 East 49th Street, New York, New York, 10017, an electric public utility subsidiary of Monongahela, Potomac Edison, and West Penn; and Allegheny Power Service Corporation ("Allegheny Service"), 800 Cabin Hill Drive, Greensburg, Pennsylvania, 15601, a service company subsidiary of Allegheny (collectively "the Applicants"), have filed a post-effective amendment to their application-declaration under Sections 6(a), 6(b), 7, 9(a), 10 and 12(b) of the Act and under Rules 43, 45 and 50(a)(5) promulgated thereunder.

By order dated January 29, 1992 (HCAR No. 25462) ("January 1992 Order"), the Commission authorized the issuance on the part of Monongahela of short-term bank notes and of commercial paper through December 31, 1993. The authorization was for an aggregate principal amount of up to $86 million.

By order dated February 28, 1992 (HCAR No. 25481) ("February 1992 Order"), the Commission authorized (i) the issuance of short-term bank notes on the part of Allegheny, Potomac Edison and West Penn; (ii) the issuance and sale of commercial paper on the part of Allegheny, Potomac Edison, West Penn and Allegheny Generating; (iii) a revolving credit agreement for Allegheny Generating; and (iv) the establishment of a money pool for the Allegheny system. The authorization extended through December 31, 1993. It limited the aggregate principal amount of short-term financing to $165 million for Allegheny, $94 million for Potomac Edison, $147 million for West Penn, and $150 million for Allegheny Generating.

The commercial paper issued by Allegheny Generating was to be backed by a $150 million revolving credit agreement between Allegheny Generating and a group of banks. The revolving credit agreement was approved by the Commission by order dated May 31, 1991 (HCAR No. 25323). The Commission also authorized Monongahela, Potomac Edison and West Penn to guarantee, through June 30, 1993, the amounts that Allegheny Generating borrowed under the revolving credit agreement. By order

dated July 14, 1992 (HCAR No. 25581), the Commission authorized Monongahela, Potomac Edison and West Penn to guarantee the amounts that Allegheny Generating borrowed under the revolving credit agreement through December 31, 1993.

The Applicants request an authorization for the continuation of short-term financing for the Allegheny system from December 31, 1993 through December 31, 1995. The short-term financing of the Allegheny system would include (i) bank notes to be issued under lines of credit and commercial paper for Allegheny, Monongahela, Potomac Edison, and West Penn; (ii) commercial paper and promissory notes under a revolving credit agreement for Allegheny Generating; and (iii) a money pool among Allegheny, Monongahela, Potomac Edison, West Penn, Allegheny Generating, and Allegheny Service.

In particular, the Applicants request an authorization for the continued exemption, under the first sentence of Section 6(b) of the Act, for the short-term financing from the requirements of Section 6(a) of the Act. Allegheny, Monongahela, Potomac Edison, and West Penn propose to incur short-term debt in aggregate principal amounts not to exceed $165 for Allegheny, $100 million for Monongahela, $115 million for Potomac Edison, and $170 million for West Penn. This amount reflects an increase of $14 million for Monongahela, $21 million for Potomac Edison, and $23 million for West Penn, from the amounts of short-term debt authorized in the January 1992 Order and the February 1992 Order. In addition, Allegheny Generating proposes to incur short-term debt in aggregate principal amounts not to exceed $75 million. This amount reflects a decrease of $75 million from the amount of short-term debt authorized in the February 1992 Order.

It is proposed that the bank notes and commercial paper issued for short-term debt will be issued from time-to-time prior to December 31, 1995 but will mature by June 30, 1996. The bank notes to be issued by Allegheny, Monongahela, Potomac Edison, and West Penn will mature within 270 days after issuance or renewal thereof. Each bank note will bear a mutually agreed upon interest rate—provided that the effective rate for a thirty-day period on an annualized basis will not exceed prime plus two percentage points. In addition, it is stated that the bank notes might or might not include prepayment privileges.

The Applicants state that in other respects the bank notes will be issued in accordance with terms and conditions set forth in the January 1992 Order and the February 1992 Order. Bank lines of credit have been established by Allegheny, Monongahela, Potomac Edison and West Penn at twelve different banks. The lines of credit are for between $10 million and $40 million. Allegheny, Monongahela, Potomac Edison and West Penn have agreed to pay for the lines of credit for such bank notes by paying an annual cash fee of up to fifteen basis points on all or the balance of the lines of credit.

The Applicants indicate that the commercial paper to be issued and sold by Allegheny, Monongahela, Potomac Edison, and West Penn will be in the form of promissory notes and will mature within 270 days after issuance. The commercial paper shall be issued and sold in accordance with other terms and conditions set forth in the January 1992 Order and the February 1992 Order. The Applicants propose that the issuance and sale of the commercial paper be excepted from the competitive bidding requirements of Rule 50 under subsection (a)(5).

Allegheny Generating seeks to extend its authority through December 31, 1995 to issue and sell commercial paper under the revolving credit agreement approved by the Commission in the February 1992 Order. In particular, it requests an authorization for the continued exemption, under the first sentence of Section 6(b) of the Act, for this short-term financing from the requirements of Section 6(a) of the Act. The terms and conditions of the revolving credit agreement are identical to those that were approved in the February 1992 Order except for the decrease in the amount of the agreement to $75 million. The revolving credit agreement provides for issuance of up to $75 million in promissory notes that are allowed to be renewed for one-year periods but that will in all instances mature by December 31, 1996.

Monongahela, Potomac Edison and West Penn propose to continue to guarantee severally and not jointly, through December 31, 1995, 27%, 28%, and 45%, respectively, of the amount that Allegheny Generating borrows—up to $75 million—pursuant to the revolving credit agreement. Allegheny Generating also proposes that the issuance and sale of the commercial paper under the revolving credit agreement be excepted from the competitive bidding requirements of Rule 50 under subsection (a)(5).

The Applicants also propose to continue the money pool that the Commission authorized in the February 1992 Order. In particular, Allegheny, Monongahela, Potomac Edison, and West Penn request Commission authorization, through December 31, 1995, to lend their surplus funds to the money pool on a short-term basis—from one to 270 days. In addition, Monongahela, Potomac Edison, West Penn and Allegheny Generating request Commission authorization, through December 31, 1995, to borrow from the money pool.

Allegheny will participate in the money pool to the extent that it has funds available to lend through the money pool. Allegheny Generating will be allowed to borrow from, but not invest in, the money pool. Allegheny Service will administer the money pool and will invest surplus funds in the money pool. The money pool otherwise will be managed in accordance with other terms and conditions set forth in the February 1992 Order.

The Applicants state that Allegheny will use the proceeds of its short-term financing for (i) capital contributions to its direct, and advances to its indirect, subsidiaries; (ii) notes or stock of such subsidiaries; and (iii) other general corporate purposes, which include construction and property acquisitions. In addition, Allegheny might use the proceeds of its short-term financing to repurchase shares of Allegheny common stock in order to fund its Dividend and Stock Purchase Plan in lieu of additional new shares of common stock pursuant to such dividend plan.

The Applicants also state that Monongahela, Potomac Edison, West Penn and Allegheny Generating will use the proceeds of their short-term financing to operate their respective electric public utility businesses companies and for general corporate purposes, which include construction and property acquisitions.

Central and South West Corporation, et al. (70–8157)

Central and South West Corporation ("CSW"), a registered holding company, its service company subsidiary, Central and South West Services, Inc., both located at 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, and five of CSW's subsidiary companies, Central Power and Light Company, 539 North Carancahua Street, Corpus Christi, Texas 78401–2802, Public Service Company of Oklahoma, 212 East Sixth Street, Tulsa, Oklahoma 74119–1212, Southwestern Electric Power Company, 428 Travis Street, Shreveport, Louisiana 71156–0001, West Texas Utilities Company, 301 Cypress Street, Abilene, Texas 79601–5820, Transok, Inc. ("Transok"), 2 West Sixth Street, Tulsa, Oklahoma 74119 (collectively,

"Subsidiaries") have filed a post-effective amendment to their application-declaration under Sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

By prior order, dated March 31, 1993 (HCAR No. 25777) ("Order"), CSW and its Subsidiaries were authorized to continue, through March 31, 1995, their short-term borrowing program, which includes: (1) The sale of commercial paper by CSW to commercial paper dealers and financial institutions; (2) the sale of short-term notes to banks and their trust departments by CSW and the Subsidiaries; and (3) the CSW System Money Pool ("Money Pool"), as previously authorized by orders dated April 5, 1989, October 10, 1989, May 15, 1990 and March 29, 1991 (HCAR Nos. 24855, 24966, 25090 and 25288, respectively). The aggregate principal amount of outstanding borrowings for CSW and its Subsidiaries together may not exceed $800 million.

The Order provided for aggregate principal amounts of short-term borrowing outstanding at any one time for Transok of $120 million. Transok now proposes to increase that amount to $200 million, on the same terms and conditions as provided in the Order. In all other respects the authority will remain as previously ordered. Transok will use the proceeds of any such borrowings to: (1) Maintain its current transmission and gathering system; (2) provide natural gas supplies for PSO; and (3) finance the working capital needs of Transok, which have increased because of its acquisition of the assets of TEX/CON Oil and Gas Company (HCAR No. 25385, September 26, 1991).

Gulf Power Company (70–8229)

Gulf Power Company ("Gulf Power"), 500 Bayfront Parkway, Pensacola, Florida 32501, a wholly owned electric public-utility subsidiary company of The Southern Company, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(c) and 12(d) of the Act and Rules 42, 44, 50 and 50(a)(5) thereunder.

Gulf Power proposes to enter into one or more loan agreements or installment sales agreements at any time on or before December 31, 1996 in connection with the issuance and sale by public instrumentalities of one or more series of pollution control revenue bonds ("Revenue Bonds") in an aggregate principal amount of up to $200 million. If a loan agreement is entered into, Gulf Power proposes to issue a related note ("Note") under an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5).

The Revenue Bonds will be issued for the financing or refinancing of the costs of certain air and water pollution control facilities and sewage and solid waste disposal facilities at one or more of Gulf Power's electric generating plants or other facilities located in various counties. It is proposed that each such county or its appropriate instrumentality ("County") will issue its Revenue Bonds to finance or refinance the costs of the acquisition, construction, installation and equipping of said facilities at the plant or other facility located in its county ("Project").

It is proposed that the Revenue Bonds will mature in no more than 40 years from the first day of the month in which they are initially issued and may, if it is deemed advisable for purposes of the marketability of the Revenue Bonds, be entitled to the benefit of a mandatory redemption sinking fund calculated to retire a portion of the aggregate principal amount of the Revenue Bonds prior to maturity.

Gulf Power proposes to enter into a Loan or Installment Sale Agreement with a County ("Agreement") pursuant to each issue of the Revenue Bonds, and Gulf Power may issue a Note therefor, or that County will undertake to purchase from and sell the related Project back to Gulf Power. The interest rate to be borne by the Revenue Bonds will be either a fixed rate, which fixed rate may be convertible to a rate which will fluctuate in accordance with a specified prime or base rate or rates or may be determined pursuant to certain remarketing or auction procedures, or a fluctuating rate, which fluctuating rate may be convertible to a fixed rate.

The proceeds from the sale of such Revenue Bonds will be deposited with a trustee ("Trustee") under an indenture to be entered into between that County and such Trustee ("Trust Indenture"), pursuant to which such Revenue Bonds are to be issued and secured, and will be applied by Gulf Power to payment of the Cost of Construction (as defined in the Agreement) of the related Project or to refund outstanding pollution control revenue obligations.

The Trust Indenture and the Agreement related to a Project may give the holders of the Revenue Bonds for that Project the right, during such time as such Revenue Bonds bear interest at a fluctuating rate, to require Gulf Power to purchase such Revenue Bonds from time-to-time, and arrangements may be made for the remarketing of any such Revenue Bonds through a remarketing agent. Gulf Power also may be required to purchase any of the Revenue Bonds, or any of the Revenue Bonds may be subject to mandatory redemption, at any time if the interest thereon is determined to be subject to federal income tax. Also in the event of taxability, interest on those Revenue Bonds may be effectively converted to a higher variable or fixed rate, and Gulf Power also may be required to indemnify the bondholders against any other additions to interest, penalties and additions to tax.

In order to obtain the benefit of ratings for the Revenue Bonds for a Project equivalent to the rating of Gulf Power's first mortgage bonds outstanding under the indenture dated as of September 1, 1941 between Gulf Power, The Chase Manhattan Bank (National Association) and The Citizens and Peoples National Bank of Pensacola, as trustees, as supplemented and amended ("Mortgage"), Gulf Power may determine to secure its obligations under the related Note and/or Agreement by delivering to the Trustee, to be held as collateral, a series of its first mortgage bonds ("Collateral Bonds") issued under an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder. The aggregate principal amount of such Collateral Bonds would be equal to either: (1) The principal amount of those Revenue Bonds; or (2) the sum of such principal amount of those Revenue Bonds plus interest payments thereon for a specified period. The Collateral Bonds would mature on the maturity date of the Revenue Bonds.

As a further alternative to, or in conjunction with, securing its obligations through the issuance of the Collateral Bonds for a Project, Gulf Power may: (1) Cause an irrevocable letter of credit ("Letter of Credit") to be delivered to the Trustee; and/or (2) cause an insurance company to issue a policy ("Policy") guaranteeing the payment of the related Revenue Bonds. In the event that either a Letter of Credit issued in connection with a Project is delivered to the Trustee or a Policy is issued, Gulf Power may also convey to the County issuing Revenue Bonds for that Project a subordinated security interest in the Project or other property of Gulf Power as further security for Gulf Power's obligations under the related Agreement. However, in the event that Gulf Power is unable or determines not to issue Collateral Bonds, deliver a Letter of Credit to the Trustee or cause a Policy to be issued in connection with a Project, it proposes to (1) convey to the County issuing Revenue Bonds for that Project a subordinated security interest in the Project or other property of Gulf Power

as further security for Gulf Power's obligations under the related Agreement and/or (2) guarantee the payment of the principal of, premium, if any, and interest on those Revenue Bonds ("Guaranty"). Gulf Power requests an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereof for the Collateral Bonds, Letter of Credit, Policy and any Guaranty.

Gulf Power also proposes to issue and sell, at any time on or before December 31, 1996: (1) One or more series of its first mortgage bonds ("Bonds"), having a maturity of up to 40 years and/or (2) preferred stock ("Preferred"), in an aggregate principal amount (or par value, as the case may be) of up to $400 million. The Bonds will be issued pursuant to the Mortgage, as to be further supplemented, and sold for the best price obtainable, but for a price to Gulf Power of not less than 98% nor more than 101¾% of the principal amount thereof, plus accrued interest (if any), which may be an adjustable interest rate determined on a periodic basis, or a fixed interest rate. The Bonds may be subject to a mandatory or optional cash sinking fund.

Gulf Power may choose to enhance the marketability of the Bonds by purchasing an insurance policy to guarantee the payment when due of the Bonds. It also may be desirable that the terms of the Bonds, or any series thereof, provide for an adjustable interest rate thereon to be determined on a periodic basis, rather than a fixed interest rate. In such event, it is proposed that the rate of interest on such Bonds for an initial period would be a fixed rate per annum. Periodically thereafter, the interest rate would be adjusted by periodic auction or remarketing procedures, or in accordance with a formula or formulae based upon certain reference rates, or by other predetermined methods.

Gulf Power seeks authority to deviate from the redemption and dividend limitation provisions contained in the Commission's Statement of Policy Regarding First Mortgage Bonds (HCAR No. 13105, February 16, 1956, as amended by HCAR No. 16369, May 8, 1969) ("Statement") with respect to the issuance of the Bonds. Specifically, Gulf Power requests authority to deviate from the provisions of the Statement with respect to (i) redemptions and refunding provisions by, for example, providing refunding limitations for periods of more than five years or prohibiting redemptions for specified periods of time (including as long as the life of any series of the Bonds), and (ii) limitations on payment of common stock dividends by, for example, including a less restrictive provision or no such provision in the supplemental indenture relating to a particular series, all as determined in light of market conditions and other relevant considerations at the time of issuance.

The Preferred would be issued at a par value ranging from $10 per share to $100 per share and sold for a price to Gulf Power of not less than 100% of par value. The Preferred would carry either a fixed or adjustable dividend rate and could be subject to a mandatory or optional sinking fund. The dividend rate on any share of the Preferred carrying an adjustable dividend rate would be fixed for an initial period of time. Periodically thereafter, the rate would be adjusted by periodic auction or remarketing procedures, or in accordance with a formula or formulae based upon certain reference rates, or by predetermined methods.

Gulf Power seeks authority to deviate from the redemption provisions contained in the Commission's Statement of Policy Regarding Preferred Stock (HCAR No. 13105, February 16, 1956, as amended by HCAR No. 16758, June 22, 1970) ("Statement") with respect to the issuances of the Preferred. Specifically, Gulf Power requests authority to deviate from the provisions of the Statement with respect to redemptions and refunding provisions by, for example, providing refunding limitations for periods of more than five years or prohibiting redemptions for specified periods of time, as to be determined in light of market conditions and other relevant considerations at the time of issuance.

Gulf Power proposes to issue and sell the Bonds and the Preferred under an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder, should circumstances develop which make such exception in the best interest of Gulf Power, its investors and consumers. Otherwise, Gulf Power proposes to issue and sell the Bonds and Preferred under the competitive bidding procedures of Rule 50 of the Act as modified by the Commission's Statement of Policy dated September 2, 1982 (HCAR No. 22623). Gulf Power has requested authority to begin negotiations with prospective underwriters or purchasers of the Bonds and the Preferred. It may do so.

Gulf Power may use the proceeds from the sale of the Bonds, Revenue Bonds and the Preferred to redeem or otherwise retire its outstanding first mortgage bonds, pollution control bonds and/or preferred stock. Such outstanding securities retired or redeemed by Gulf Power may be purchased on the open market or by tender offer as authorized by HCAR No. 25751 (February 26, 1993). To the extent that the redemption or other retirement of outstanding preferred stock using the proceeds from securities sales as proposed herein require further authorization, Gulf Power requests such authorization. Gulf Power also proposes that it may use the proceeds from the sale of the Bonds and the Preferred, along with other funds, to pay a portion of its cash requirements to carry on its electric utility business, including payment of its costs of construction, repayment of interim short term debt incurred for such purposes and other internal cash requirements.

The Columbia Gas System, Inc., et al. (70-8235)

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and its wholly owned nonutility subsidiary company, TriStar Ventures Corporation ("TVC"), both located at 20 Montchanin Road, Wilmington, Delaware 19807, have filed an application-declaration under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rules 42, 43, and 45 thereunder.

TVC is engaged in activities related to electric generation, including making investments in qualifying cogeneration facilities ("QFs") as defined in the Public Utility Regulatory Policies Act of 1978 and rules and regulations issued thereunder. Columbia and TVC seek Commission approval to recapitalize TVC in order to establish a capital structure more appropriate for TVC's current business and economic environment. Therefore, Columbia proposes to make a capital contribution to TVC of up to $31 million. Installment promissory notes previously issued by TVC to Columbia will be cancelled. The amount of installment notes acquired and capital contributions made would include accrued interest on the effective date of the recapitalization. After the recapitalization, TVC's capital structure would be 100% equity.

TVC and Columbia propose that from January 1, 1994 through December 31, 1994, TVC issue, and Columbia purchase, shares of TVC common stock, $25 par value, in an aggregate amount of up to $12 million for administrative activities of TVC and for preliminary development by TVC in additional QFs and other eligible projects related to electrical power generation, such as exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs")

Preliminary development and administrative activities would be conducted by TVC directly, indirectly through wholly-owned TVC subsidiaries or through Cogeneration Partners of America ("CPA"), a New Jersey partnership in which TVC owns a 50% interest. CPA develops, manages and provides administrative services relating to such projects. Preliminary development activities would include, but not be limited to, the investigation of sites, preliminary engineering and licensing activities, acquiring options and rights, contract drafting and negotiating, preparation of proposals and the other activities necessary to identify and analyze investment opportunities and to initiate the commercialization of a project. Administration would include the ongoing personnel, accounting, engineering, legal, financial and other support activities necessary for TVC to manage its investments.

The issuance of common stock by TVC requires the approval of the commercial lenders which are parties to Columbia's Secured Revolving Credit Agreement dated September 23, 1991, as amended. TVC is currently soliciting this approval.

Columbia is currently operating under Chapter 11 of the United States Bankruptcy Code. As a result, Columbia requires the approval of the United States Bankruptcy Court for the District of Delaware prior to implementing the proposed recapitalization of TVC as described above. Columbia states it expects to file shortly a motion for Bankruptcy Court approval of such recapitalization. Columbia represents that Bankruptcy Court approval is not required for any of the other transactions described above.

Appalachian Power Co., et al. (70–8241)

Appalachian Power Company ("Appalachian"), 40 Franklin Road, Roanoke, Virginia 24022, Indiana Michigan Power Company ("Indiana"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, and Ohio Power Company ("Ohio Power"), 301 Cleveland Avenue, SW., Canton, Ohio 44702, (collectively, "the Companies") each of which is an electric public-utility subsidiary company of American Electric Power Company, Inc., a registered holding company, have filed a declaration under sections 9(a), 10, and 12(c) of the Act and Rule 42 thereunder.

Appalachian plans to issue and sell shares of its cumulative preferred stock (no par value)—in one or more transactions from time to time through June 30, 1994—with an aggregate involuntary liquidation price of up to $110 million. Indiana plans to issue and sell up to $105 million aggregate par value of one or more new series of its cumulative preferred stock (par value $25 and/or $100) in one or more transactions from time to time through June 30, 1994. Finally, Ohio Power plans to issue and sell up to $100 million aggregate par value—in one or more transactions from time to time through June 30, 1994—of one or more new series of its cumulative preferred stock (par value $25 and/or $100).

The Companies, under Rule 52, are exempt from section 6(a) of the Act with respect to the issuance and sale of their cumulative preferred stock. However, because market conditions may require the sale of the cumulative preferred stock to include sinking funds or redemption provisions, the Companies request authorization to acquire or redeem such cumulative preferred stock through such funds or provisions. It is proposed that the Companies will decide on the need for sinking funds (and pricing terms thereof) and the redemption terms, if any, when each series of cumulative preferred stock is issued.

The cumulative preferred stock of Appalachian, Indiana, and Ohio Power will be issued pursuant to, respectively, an Amendment to the Restated Articles of Incorporation of Appalachian adopted by its Board of Directors, a Certificate of Resolutions of Indiana adopted by its Board of Directors, and an Amendment to the Amended Articles of Incorporation of Ohio Power adopted by its Board of Directors. It is stated that the amendments and certificate will set forth the designations and relative rights, preferences, qualifications, limitations or restrictions of each series of cumulative preferred stock.

The Connecticut Light and Power Co., et al. (70–8249)

The Connecticut Light & Power Company ("CL&P"), 107 Selden Street, Berlin, Connecticut 06037, Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, and Public Service Company of New Hampshire ("PSNH") and North Atlantic Energy Corporation ("North Atlantic"), both of 1000 Elm Street, Manchester, New Hampshire 03105 (collectively, "Operating Companies"), each an electric public-utility subsidiary company of Northeast Utilities, a registered holding company, have filed an application-declaration under sections 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

CL&P is authorized, pursuant to an order from the Department of Public Utility Control of the State of Connecticut ("DPUC") and Rule 52 under the Act, to issue and sell, through December 31, 1994, up to $170 million aggregate par value of preferred stock, $50 par value, or Class A preferred stock, $25 par value, per share in each case, or a combination of both, in one or more series (both, "New CL&P Preferred"). According to the DPUC order, the proceeds from the sale of the New CL&P Preferred are to be used only for economic refundings of up to $160 million of outstanding shares of CL&P's previously issued preferred stock and associated issuance costs.

In addition, CL&P is authorized by the DPUC order to issue the New CL&P Preferred with a mandatory sinking fund requiring, no earlier than five years from the date of initial issuance, the redemption from legally available sources at the initial offering price (plus accrued dividends) of 5% to 20% annually of the number of shares initially issued with credit, at CL&P's option, for shares acquired and retired by CL&P in the preceding 12-month period.

WMECO is authorized, pursuant to an order from the Massachusetts Department of Public Utilities ("MDPU") and Rule 52 under the Act, to issue and sell, through June 30, 1995, up to $25 million aggregate par value of Class A preferred stock, $25 par value per share in one or more series ("New WMECO Preferred"). The proceeds from the sale of the New WMECO Preferred are to be used only for economic refundings of outstanding shares of WMECO's previously issued preferred stock and associated issuance costs.

CL&P and WMECO now propose to determine the mandatory and optional redemption terms of the New CL&P Preferred and the New WMECO Preferred, respectively, in accordance with the terms of the DPUC order and the MDPU order, respectively, and to effect each redemption without further Commission authorization.

In addition, the Operating Companies propose, from time to time through June 30, 1998, to acquire and retire their outstanding first mortgage bonds ("Bonds"), notes and preferred stock ("Preferred") (collectively, "Outstanding Securities") up to the following aggregate principal amounts: CL&P—$690 million ($520 million of Bonds and $170 million of Preferred); WMECO—$160 million ($135 million of Bonds and $25 million of Preferred); PSNH—$84 million ($34 million of Bonds and $50 of Preferred); and, North

Atlantic—$100 million ($80 million of Bonds and $20 million of notes).

The Operating Companies seek to be in a position to purchase or otherwise acquire their Outstanding Securities in order to (i) continue to reduce their overall cost of capital and administrative costs associated with the Outstanding Securities or (ii) reduce the proportion of preferred stock in their capital structures. The Operating Companies state that they may use internal funds, short-term debt, proceeds from the issuance of long-term debt or preferred stock, capital contributions from their parent or some combination thereof to acquire their Outstanding Securities, as proposed.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21509 Filed 9–2–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License # 09/09–5231]

Equitable Capital Corp.; License Surrender

Notice is hereby given that Equitable Capital Corporation ("ECC"), 855 Sansome Street, San Francisco, CA 94111, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). ECC was licensed by the Small Business Administration on March 8, 1979.

Under the Authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on July 9, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 26, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–21552 Filed 9–2–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 27, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49095.

Date filed: August 25, 1993.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 22, 1993.

Description: Application of Executive Flight Management/Trans American Charter Ltd., pursuant to section 401(d)(3) of the Act and Subpart Q of the Regulations, for a certificate of public convenience and necessity to engage in foreign charter air transportation.

Docket Number: 49098.

Date filed: August 26, 1993.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 23, 1993.

Description: Application of Funworld International Airways, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing scheduled interstate and overseas air transportation of passenger, property and mail (Ft. Lauderdale, Florida-San Juan, Puerto Rico).

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–21578 Filed 9–2–93; 8:45 am]

BILLING CODE 4910–62–P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 170
Friday, September 3, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 2 p.m., Thursday, September 9, 1993.

PLACE: Board Room, 7th Floor, room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428 (703) 518–6300.

STATUS: Open.

BOARD BRIEFING:

1. Long Range Planning.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Final Rule: Part 707, NCUA's Rules and Regulations, Truth In Savings.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600 or Effective September 7, 1993—Telephone (703) 518–6300.

Betty Baker,
Secretary of the Board.
[FR Doc. 93–21688 Filed 9–1–93; 12:57 pm]
BILLING CODE 7535–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Meeting of the Board of Directors

TIME AND DATE: 2 p.m., Friday, September 17, 1993.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW., 8th Floor Board Room, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary (202) 376–2441.

Agenda

I. Call to Order
II. Approval of Minutes, June 4, 1993, Annual Meeting
III. Resolution of Appreciation
IV. Budget Committee Report:
  a. Proposed FY '93 Revisions
  b. Proposed FY '94 Budget
  c. Proposed FY '95 OMB Submission
V. Treasurer's Report
VI. Executive Director's Quarterly Management Report
VII. Adjourn

Jeffrey T. Bryson,
General Counsel/Secretary.
[FR Doc. 93–21659 Filed 9–1–93; 11:10 am]
BILLING CODE 7570–01–M

STATE JUSTICE INSTITUTE

TIME AND DATE:

9 a.m. to 5 p.m., September 10, 1993
9 a.m. to 3 p.m., September 11, 1993

PLACE: Kiawah Island Resort, P.O. Box 12357, Charleston, South Caroline 29422–2357.

MATTERS TO BE CONSIDERED: Grant applications, a public forum, and internal Institute business.

PORTIONS OPEN TO THE PUBLIC: Grant application reviews, public forum, and portions of the business meetings.

PORTIONS CLOSED TO THE PUBLIC: Internal personnel matters (including the election of officers of the Board of Directors).

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314, (703) 684–6100.

David I. Tevelin,
Executive Director.
[FR Doc. 93–21660 Filed 9–1–93; 11:16 am]
BILLING CODE 6820–SC–M

Corrections

Federal Register
Vol. 58, No. 170
Friday, September 3, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 39-93]

Foreign-Trade Zone 61—San Juan, Puerto Rico, Application for Subzone Merck Sharp & Dohme Pharmaceutical Plant, Arecibo, Puerto Rico

Correction

In notice document 93-20317 beginning on page 44492 in the issue of Monday, August 23, 1993, on page 44493, in the first column, in the fourth full paragraph, beginning in the sixth line, "[60 days from date of publication]" should read "October 22, 1993".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-050-03-4380-03]

Arizona: Long-Term Visitor Area Program for 1993-1994 and Subsequent Use Seasons; Revision to Existing Supplementary Rules, Yuma District, AZ, and California District, CA

Correction

In notice document 93-15055 beginning on page 34586 in the issue of Monday, June 28, 1993, make the following correction:

On page 34587, in the first column, under **FOR FURTHER INFORMATION CONTACT**, in the fourth line, "(606) 726-6300" should read "(602) 726-6300".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 93-052]

Review of the Coast Guard Regulatory Development Process

Correction

In notice document 93-20447 appearing on page 44731 in the issue of Tuesday, August 24, 1993, in the second column, in the second full paragraph, in the sixth line, "September 30, 1993" should read "September 20, 1993".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-64-91]

RIN 1545-AQ88

Capitalization and Inclusion in Inventory of Certain Costs

Correction

In proposed rule document 93-18131 beginning on page 42263 in the issue of Monday, August 9, 1993, make the following corrections:

§ 1.263A-3 [Corrected]

On page 42266, in the first column, in § 1.263A-3(c)(4)(vi)(*A*)(*1*), in the first line, "In general." should read "*In general.*".; and in paragraph (c)(4)(vi)(*A*)(*2*), beginning in the first line, "Costs incurred transporting goods to a related person." should read "*Costs incurred transporting goods to a related person.*"

BILLING CODE 1505-01-D

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Federal Register

Vol. 58, No. 170

Friday, September 3, 1993

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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Public Laws

103d Congress, 1st Session, 1993

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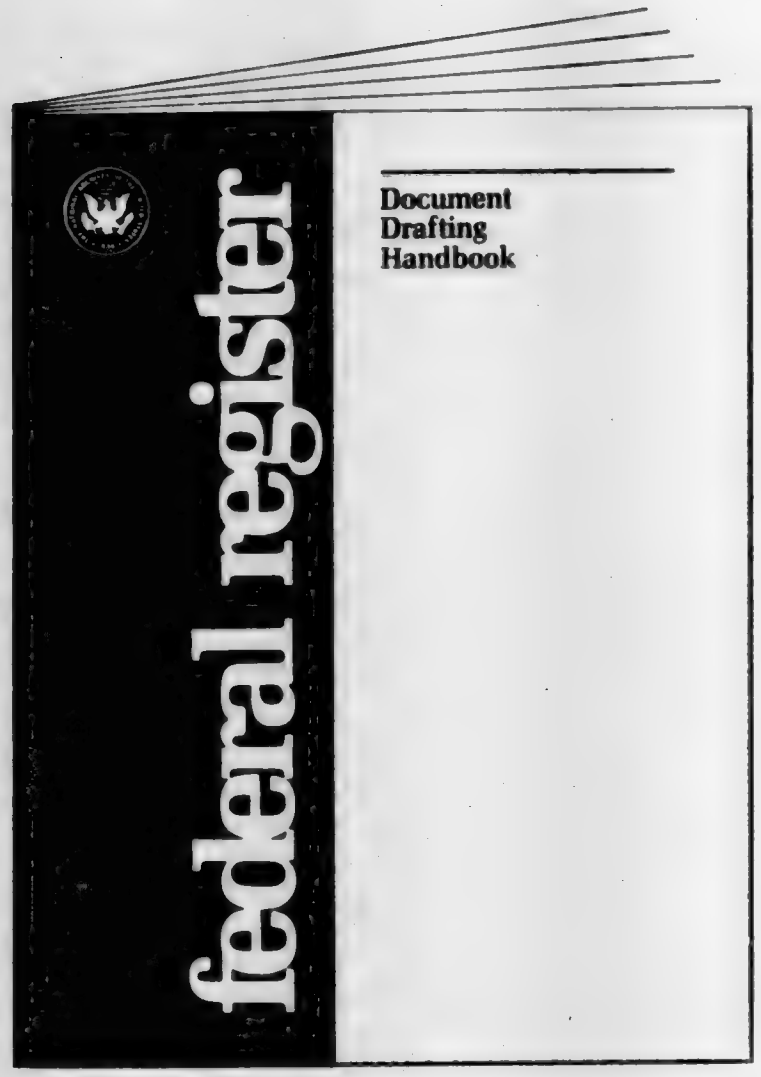

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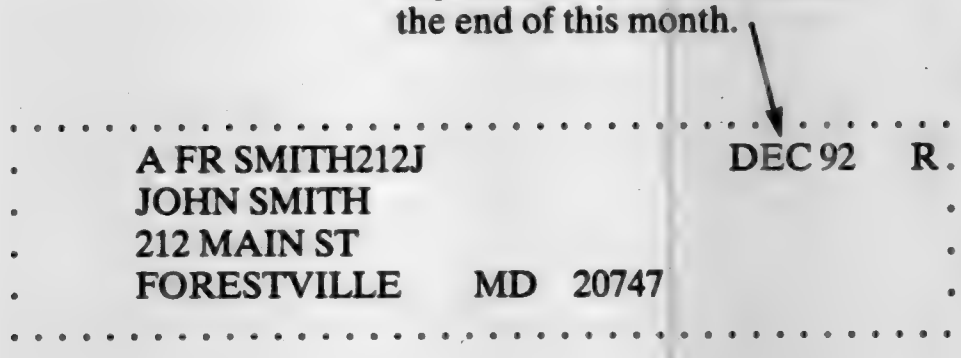

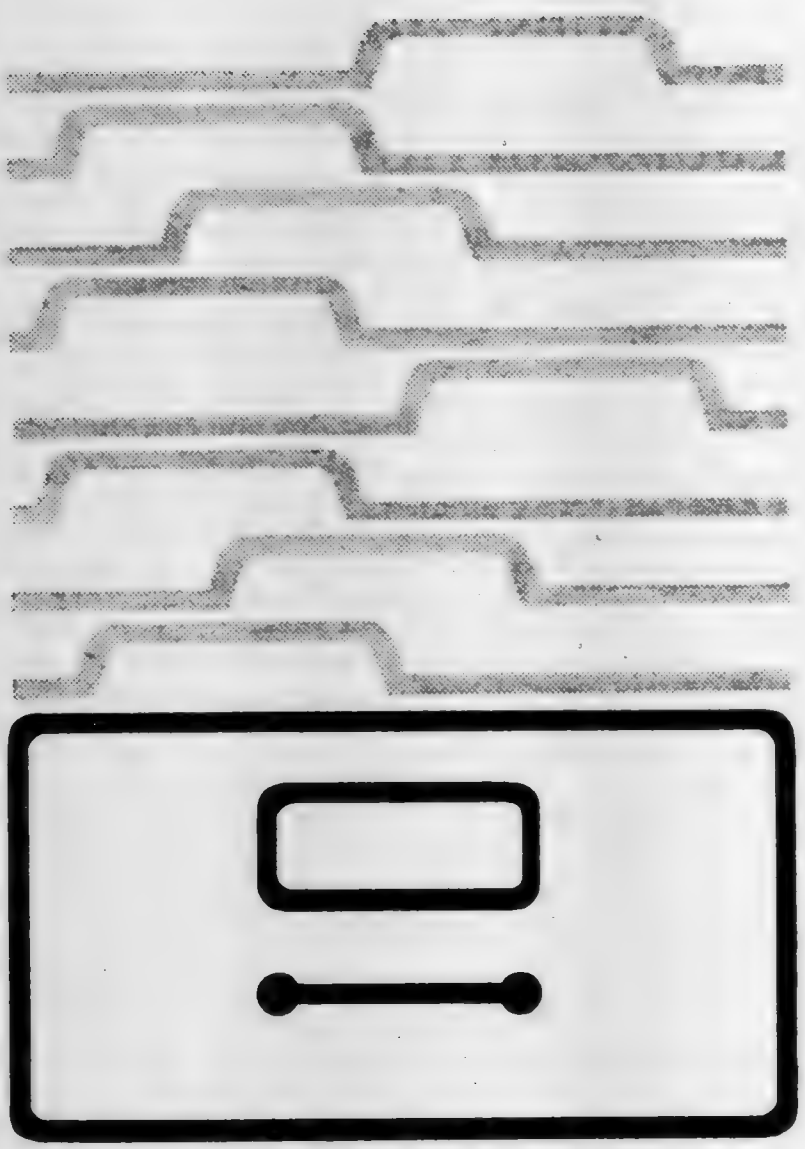

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

SUPPLEMENT: Revised January 1, 1993

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

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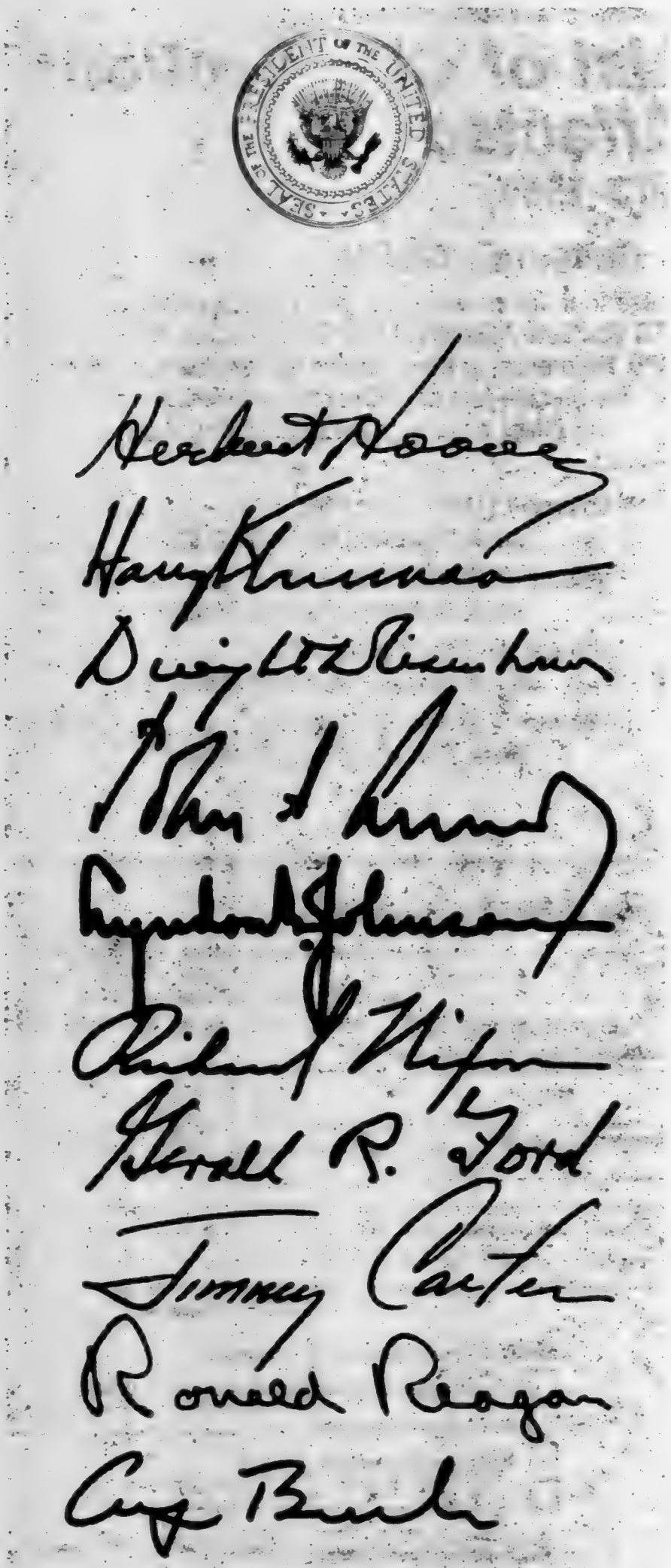

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children (WIC): National Bid Solicitation and Selection for Infant Formula Cost Containment Contracts

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule implements many of the mandates of the WIC Infant Formula Procurement Act of 1992, title II of the Children's National Assistance Act of 1992. The purpose of this regulation is to implement changes provided under the Act to enhance competition among infant formula manufacturers and to reduce the per unit costs of infant formula for the Special Supplemental Food Program for Women, Infants and Children (WIC), and for other purposes.

Under this interim rule, at least once every 12 months, the Food and Nutrition Service (FNS) will conduct bid solicitation and selection for infant formula cost containment contracts when requested by 2 or more interested State agencies.

DATES: This interim rule is effective September 7, 1993. To be assured of consideration, comments on this rule must be received on or before January 5, 1994.

ADDRESSES: Comments may be mailed to Alberta C. Frost, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 540, Alexandria, Virginia 22302, (703) 305–2710. All written comments will be available for public inspection during regular business hours (8:30 a.m.–5 p.m., Monday through Friday) at the above-stated address.

FOR FURTHER INFORMATION CONTACT: Deborah A. McIntosh or Patricia Cunningham, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 540, Alexandria, Virginia 22302, (703) 305–2710.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This interim rule has been reviewed under Executive Order 12291 and the Secretary of Agriculture's Memorandum No. 1512–1 and has been classified as non-major because it does not meet any of the three criteria identified under the Executive Order. The interim rule will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, this interim rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the WIC Program, the administrative procedures are as follows: (1) Local agencies and vendors—State agency hearing procedures issued pursuant to 7 CFR 246.18; (2) applicants and participants—State agency hearing procedures issued pursuant to 7 CFR 246.9; and (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 246.19—administrative appeal in accordance with 7 CFR 246.22; and (4) procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

Regulatory Flexibility Act

The Department has also reviewed this rule in relation to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 through 612). The FNS Administrator has certified that this interim rule does not have a significant economic impact on a substantial number of small entities because there are no small entities that manufacture infant formula. There will be no impact on retail vendors or local agencies which is where most of the small entities exist in the WIC Program.

Paperwork Reduction Act

No new data collection or recordkeeping requiring Office of Management and Budget (OMB) approval under the Paper Reduction Act of 1980 (44 U.S.C. 3501 through 3502) are included in this interim rule.

Solicitation of Public Comment

The FNS Administrator has determined that good cause exists pursuant to 5 U.S.C. 553(b) for not taking prior notice and comment on this interim rule because such notice and comment is impracticable and contrary to public interest. First, publication of this interim rule without prior public comment is necessary to implement these provisions as soon as possible, in keeping with the April 24, 1993 deadline for publishing regulations. Second, the legislation's aim to enhance competition among infant formula manufacturers and to reduce the per unit costs of infant formula for the Program may be hastened by publishing this rule as soon as possible. However, comments will be taken on this rule following publication. This arrangement will allow for public comment before the final rule is published and will

permit public comment based upon operating experience.

Background

In response to rising food the costs and the desire to use their food grants more efficiently to serve more participants, WIC State agencies have become increasingly active in the cost containment area. The most popular cost containment measure has been infant formula rebate systems. In infant formula rebate systems, the State agency receives rebate payments from one or more infant formula manufacturers based on the number of units of the manufacturer's infant formula purchased with Program funds.

Infant formula rebate systems fall into 3 categories: competitive single-supplier, competitive multi-source and open market. In a competitive single-supplier system, the manufacturer offering the winning bid becomes the sole provider of infant formula for Program participants in that State agency's jurisdiction. In the competitive multi-source system, the infant formula manufacturer offering the winning bid and any other bidders within a specified percentage or amount may provide infant formula for that State agency. In the open market system, the State agency negotiates rebates independently with each manufacturer on a non-competitive basis, and all manufacturers may provide infant formula for that State agency.

Current Legislation and Regulations

State-initiated cost containment measures were so successful that in 1989, section 645 of the Rural Development, Agriculture, and Related Agencies Appropriations Act of 1989, Public Law 100–460, was enacted. This section required every WIC State agency, including State agencies that are Indian Tribal Organizations (ITOs), to explore the feasibility of implementing cost containment procedures for acquiring infant formula rebates, direct distribution, or home delivery and to implement such a system where feasible by August 30, 1989 as a condition of the receipt of Fiscal Year 1989 Program funds.

This requirement was made permanent with modification by Public Law 101–147. Public Law 101–147, the Child Nutrition and WIC Reauthorization Act of 1989, enacted in November 1989, required States to implement a competitive bidding system for procurement of infant formula or an alternative method of cost containment that yields savings equal to or greater than a competitive bidding system. Under Public Law 101–147, competitive bidding was defined as a process under which the State agency selects a single bidder offering the lowest price, as determined by the submission of sealed bids, for the products for which bids are sought.

To implement the cost containment mandates of section 123(a)(6) of Public Law 101–147, which amended sections 17(h)(8) (A) and (B) of the Child Nutrition Act of 1966 (CNA), the Department issued an interim regulation on March 15, 1990 (55 FR 9709), amending 7 CFR part 246. These regulatory provisions require State agencies using retail food delivery systems to implement the most cost effective cost containment measure for all types and forms of infant formula prescribed for the majority of participants. Section 246.16(m) of the Program regulations requires State agencies to solicit bids through one of 2 methods—the competitive method or a comparative method. State agencies are required to award a contract to the bidder offering the lowest net wholesale cost or highest rebate per unit of infant formula, or with FNS approval, the bidder under an alternative system which offers greater or comparable savings. Pursuant to Public Law 101–147, § 246.12(m)(2) established specific factors to be considered in comparing the relative savings of the systems under review. State agencies are required to implement a competitive single-supplier system, unless FNS approves the State agency's request to use an alternative system offering equal or greater savings, or FNS grants a waiver based on a determination that the difference in savings was less than certain threshold amounts or that using a single supplier would not be consistent with efficient and effective operation of the Program.

Since 1988, substantial changes have occurred in infant formula rebate contracts. Initially, State agencies used either open market or competitive single-supplier systems. With implementation of the provisions of Public Law 101–147 requiring States to implement a competitive bidding system for procurement of infant formula, 75 of 85 WIC State agencies have implemented infant formula cost containment contracts—the majority of which are competitive single-supplier contracts. Further, many State agencies are participating in contracts involving 2 or more State agencies.

Under multi-State contracts, 2 or more State agencies join together to solicit bids for infant formula. These multi-State arrangements are acknowledged in section 17(h)(8)(E)(ii) of the CNA (as added by Public Law 101–147 and amended by Public Law 102–512). That section requires the Secretary to provide technical assistance upon request to State agencies that desire to consider a cost containment system that covers more than one State agency.

Recent Legislation

Section 202(b) of the WIC Infant Formula Procurement Act of 1992 (Title II of Pub. L. 102–512) states that its purpose is to enhance competition among infant formula manufacturers and to reduce the per unit costs of infant formula for the Program. The major provisions of this Act (1) require the Secretary to conduct bid solicitation and selection for infant formula cost containment contracts when requested by 2 or more interested State agencies; (2) establish civil penalties of up to $100 million for infant formula manufacturers that engage in certain anti-competitive activities in connection with bids to supply infant formula to carry out the WIC Program; (3) disqualify infant formula manufacturers from bidding to supply infant formula to the Program for up to 2 years for those same anti-competitive activities; and (4) authorize the Secretary to provide financial assistance to States to defray costs associated with innovations in cost containment or enhancing competition.

By requiring the Secretary to conduct bid solicitation and selection on behalf of interested State agencies, this Act may expand multi-State bidding so that even greater savings accrue to the WIC Program. In a 1991 study, "Cost-Effectiveness of Infant Formula Rebate Systems in the WIC Program," the Department noted the importance of high volume buying power. For purposes of analysis, the Department divided State agencies into 3 categories based on WIC caseload size—small (less than 50,000 participants), mid-sized (50,000 to 150,000) and large (over 150,000). The average rebate per unit for the large State agencies was 44 percent higher than for the small State agencies ($1.58 versus $1.10). Therefore, the study concluded that a key factor in achieving higher rebates appears to be the size of the WIC caseload. Current multi-State contracts appear to be advantageous for all of the participating State agencies. The most recent example of a successful multi-State purchasing group is the Western States Contracting Alliance, which is a cooperative contracting consortium consisting of 11 State agencies. Some of the smaller State agencies participating in this group realized an increase of as much as 80 percent over their previous per unit rebate amount.

1. Definitions

Section 203 of Public Law 102–512 amends section 17(b) of the CNA by amending the definition of "competitive bidding," and by adding definitions of "discount," "net price," and "rebate." Those definitions are added to Program regulations in § 246.2, Definitions, in alphabetical order. FNS has added interpretive language to the definition of rebate in an effort to achieve greater clarity. The rule states that rebates shall be payments made subsequent to the exchange of a food instrument for food. As discussed below, FNS will address national bid solicitation and selection for discounts in a future rule should the need arise.

2. National Cost Containment Bid Solicitation and Selection

Section (17)(h)(8)(G) of the CNA, as added by section 204 of Public Law 102–512, requires the Secretary to solicit and select bids on behalf of interested State agencies regarding infant formula cost containment contracts which will be entered into by the State agencies and the infant formula manufacturers. This legislation is intended to increase the buying power of interested State agencies by encouraging the formation of buying groups for infant formula cost containment contracts. Also, section 17(h)(8)(H) of the CNA, as added by section 204 of Public Law 102–512, requires that separate bids be solicited for soy-based and milk-based infant formulas, except where the Secretary determines that such solicitation procedures would not be in the best interest of the Program. The separate bidding approach has been effective in reducing the cost of infant formula and increasing competition in those State agencies that currently utilize separate bids.

a. Scope

Section 17(h)(8)(G) requires the Secretary to conduct bid solicitation and selection both for rebates and discounts. As noted above, definitions of "rebate" and "discount" were added to section 17(b) by Public Law 102–512. "Rebate" is defined as the amount of money refunded under cost containment procedures to any State agency from the manufacturer of the particular food product as the result of the purchase of the supplemental food with a voucher or other purchase instrument by a participant. A rebate is a payment which is made after the food instrument is exchanged for supplemental foods. The manufacturer of the particular food product pays the rebate to the State agency. Rebates are currently used in retail food delivery systems.

"Discount" is defined to apply only in State agencies that provide Program foods to participants without the use of retail grocery stores (such as home delivery or direct distribution). The term means the amount of the price reduction or other price concession provided to any State agency by the manufacturer or other supplier of the particular food product as the result of the purchase of the particular food product by the State agency or its representative from the supplier.

This rule establishes the national bid solicitation and selection procedures only for infant formula manufacturers that provide rebates on infant formula to State agencies that use retail food delivery systems. Under section 17 (h)(8)(B)(i) of the CNA and section 246.16(m) of the current regulations, only State agencies with retail food delivery systems are required to implement the most cost effective cost containment measure for all types and forms of infant formula prescribed for the majority of participants. Direct distribution and home delivery systems are defined as cost containment measures in and of themselves under section 17(h)(9) of the CNA and § 246.2 of the current regulations. Furthermore, the focus of cost containment measures undertaken by State agencies with retail food delivery systems has been rebates obtained from infant formula manufacturers (rather that other suppliers of infant formula). Given FNS' lack of experience with rebates and discounts in other context, this rule is limited to infant formula manufacturers that provide rebates on infant formula to State agencies that use retail food delivery systems. Thus, this rule specifically excludes situations involving (1) discounts, regardless whether offered by a manufacturer or supplier, and regardless of the type of food delivery system the State agency uses, and (2) rebates, when offered by either manufacturers or suppliers in either home delivery or direct delivery systems, or when offered by suppliers in retail food delivery systems. Furthermore, limiting the rule in this manner should have little or no impact on cost reduction because there are only a small number of State agencies that do not use retail food delivery systems. However, FNS welcomes comments to determine whether there is a need for a further rulemaking to address national bid solicitation and selection for these other situations and suggestions on how such systems would work.

Accordingly, § 246.16(r) requires FNS to offer to conduct bid solicitation and selection only for rebates on behalf of State agencies with retail food delivery systems. Section 246.16(r)(5)(v) requires FNS to solicit bids only from infant formula manufacturers. Readers should note that the benefit of the high volume buying power of the Department is already available for infant formula (milk-based and soy-based) to State agencies with direct distribution food delivery systems pursuant to § 246.10(d) of Program regulations, which permits State agencies to request that FNS purchase supplemental foods on their behalf under a Federal contract.

Among the requirements for the national bid solicitation and selection, section 17(h)(8)(G)(iv) provides that the Secretary shall comply with section 17(h)(8)(B) of the CNA. Section 17(h)(8)(B)(i) states that any State that provides for the purchase of foods under the Program at retail grocery stores shall, with respect to the procurement of infant formula, use a competitive bidding system, or any other cost containment measure that yields savings equal to or greater than savings generated by a competitive bidding system. Thus, this provision gives FNS the option to conduct the bid solicitation in accordance with competitive bidding requirements, or to solicit bids under an alternative system as well. Given the overriding interest in maximizing cost savings and the requirement to use the competitive bidding system as a standard, FNS has decided not to exercise the option to solicit bids under alternative cost containment measures. As a result, § 246.16(r)(1) provides that the national bid solicitation and selection will be conducted pursuant to competitive bidding.

Section 17(h)(8)(G)(i) requires the Secretary to conduct bid solicitation and selection only if 2 or more State agencies so request. In addition, that section provides that the infant formula cost containment contracts will be entered into by infant formula manufacturers and State agencies. Section 17(h)(8)(G)(iii) requires the State agencies to obtain the rebates from the infant formula manufacturers participating in the contract(s).

Accordingly, § 246.16(r)(1) of this interim rule states that FNS shall conduct the bid solicitation and selection process only if 2 or more State agencies with retail food delivery systems so request, and that FNS shall conduct the bid solicitation and selection process only, and shall not award or enter into any infant formula cost containment contract on behalf of the individual State agencies. Section 246.16(r)(1) further specifies that each

State agency will individually award the infant formula cost containment contract(s) to the winning bidder(s) and that State agencies shall obtain the rebates directly from the infant formula manufacturer(s). Finally, the rule makes clear that any bid protests and contractual disputes are the responsibility of the individual State agencies.

b. Procedural Requirements

Section 17(h)(8)(G)(viii) provides that the bid solicitation and selection process on behalf of the State agencies shall be conducted in accordance with any procedures the Secretary deems necessary for the effective and efficient administration of the bid solicitation and selection process and the further requirements of that subparagraph. Section 17(h)(8)(G)(vii) further states that the procedures established by the Secretary shall ensure that (1) the bid solicitation and selection process is conducted in a manner providing full and open competition; and (2) the bid solicitation and selection process is free of any real or apparent conflict of interest.

Rather than develop a new procedure under which to conduct the national bid solicitation, FNS has decided to rely on the State agency procedures already in place for such activities. Reliance on State agency procurement procedures is consistent with the legislative concept that the State agencies themselves award the infant formula cost containment contracts. This reliance is also consistent with the practices of at least one of the already existing rebate consortia.

Accordingly, § 246.16(r)(1) requires FNS to conduct the bid solicitation in accordance with the other requirements in paragraph (r) and the competitive bidding procurement procedures of the State agency in the bid group with the highest infant participation on whose behalf bids are being solicited. This will ensure compliance with the mandates of the legislation and avoid the creation of a duplicative procedure. As the State agency with the highest infant participation will be the dominant market force in the solicitation, it is a logical choice for the prevailing procurement procedure. Additionally, choosing the State agency of the highest infant participation provides a clear standard which will expedite the bid solicitation process.

In order to provide FNS the information necessary to choose the applicable procurement procedures, § 246.16(r)(2)(ii) of this interim rule requires each interested State agency to submit to FNS a statement of the State agency's minimum procurement procedures applicable to competitive bidding for infant formula cost containment contracts and supporting documentation. Section 203 of Public Law 102–512 amended the definition of "competitive bidding" in section 17(b)(17) to mean a procurement process under which the Secretary or a State agency selects a single source (a single infant formula manufacturer) offering the lowest price, as determined by the submission of sealed bids, for a product for which bids are sought. As discussed above, this definition is included in § 246.2 of this interim rule. Since State agencies with retail food delivery systems are currently required, (except for small Indian State agencies with 1,000 or fewer participants and State agencies where contracts entered into prior to the enactment of Public Law 101–147 have not yet expired), to have entered into infant formula cost containment contracts pursuant to competitive bidding, identification of the applicable procurement procedures should not be difficult.

This approach also complies with the requirement in section 17(h)(8)(G)(viii)(I) that the procedures established by the Secretary shall ensure the bid solicitation and selection process is conducted in a manner providing full and open competition. The requirements for State agency procurement procedures with Program funds are already set out in 7 CFR 3016.36. Section 3016.36(a) recognizes the adequacy of the procedures of geographic states by allowing them to use their own procedures for procurement purposes. Indian State agencies may use their own procedures as long as they are consistent with minimum standards set forth in § 3016.36(b).

In recognition of the possibility that a State agency may have legal impediments to awarding a contract entered into pursuant to bid solicitation and selection procedures other than its own, § 246.16(r)(4) provides that once FNS has identified the State agency with the highest infant participation within a bid group, FNS shall notify each State agency in the group of the choice and provide them each a copy of the procurement procedures of that State agency. Section 246.16(r)(4) then requires each State agency to determine whether that State agency is legally authorized to award an infant formula cost containment contract pursuant to that set of procedures. If the State agency determines it is not legally authorized to do so, the State agency may not continue in that round of the procurement.

Finally, FNS has determined that no additional regulatory requirements are necessary to implement the requirement that the national bid solicitation and selection procedures ensure that the process is free of any real or apparent conflict of interest. Federal employees are already subject to a wide range of statutes and regulations governing conduct, including 5 CFR part 2635 and others. Among other prohibitions, these provisions specify impermissible financial arrangements or transactions for Federal employees. Additional regulations would be duplicative and therefore, no change to Program regulations is necessary.

c. Contractual Requirements

As required by section 17(h)(8)(G)(i), FNS will not be a party to the infant formula cost containment contracts. However, Public Law 102–512 does dictate a number of conditions relative to the bid solicitation and selection process which will have bearing on the contracts. These requirements are set forth in more detail below. Aside from these requirements, FNS will not develop model contracts to be used by the State agencies. Instead, the FNS-developed Request for Rebates will detail the mandatory contractual provisions and append the pertinent contractual provisions which each State agency requires in its individual infant formula cost containment contract(s). Section 246.16(r)(2) requires FNS to send State agencies the draft Request for Rebates when FNS makes the offer to the State agencies.

In order to facilitate this process, § 246.16(r)(2)(iv) requires each State agency to provide FNS with a statement of any contractual provisions which will be required to be included in any infant formula cost containment contract which it will award after the bid solicitation and selection by FNS. It will be the responsibility of the State agency, not FNS, to determine what each State agency's contract requirements are. Consistent with this, § 246.16(r)(1) makes clear that it will be the State agency's responsibility to resolve any contractual disputes. Once the State agency makes the necessary interpretive determinations and sends the information requested under paragraph (r)(2) of this rule, FNS will use the information to finalize the draft Request for Rebates.

Section 17(h)(8)(H) provides that in soliciting bids for infant formula cost containment contracts for the Program, the Secretary shall solicit bids from infant formula manufacturers under procedures in which bids for rebates are solicited for milk-based and soy-based

infant formula, separately, except where the Secretary determines that such solicitation procedures are not in the best interest of the Program. This method of solicitation increases the likelihood those infant formula manufacturers that market only one type of infant formula will be able to compete with infant formula manufacturers that market both soy-based and milk-based infant formulas. This approach has been effective in reducing the cost of infant formula in those State agencies that currently use separate bids. Accordingly, § 246.16(r)(5)(i) of this interim rule incorporates this requirement.

Section 17(h)(8)(G)(vi) provides that the Secretary shall ensure that the infant formula cost containment contracts to be entered into by the State agencies and the infant formula manufacturers must provide for a constant net price for infant formula products for the full term of the contracts and must provide for rebates for all units of infant formula sold through the Program that are produced by the manufacturer awarded the infant formula cost containment contract. As discussed above, § 246.2 of this rule includes the definition of "net price," added to section 17(b)(19) of the CNA by Public Law 102–512. "Net price" means the difference between the manufacturer's wholesale price for infant formula and the rebate level offered or provided by the manufacturer under an infant formula cost containment contract entered into with the pertinent State agency. This means that if an infant formula manufacturer changes the wholesale price of its infant formula, the rebate must change proportionately throughout the contract period. Section 246.16(r)(5)(ii) incorporates the constant net price requirement.

Section 17(h)(8)(G)(vi) further provides that the Secretary shall ensure that infant formula cost containment contracts shall cover all types of infant formula products normally covered under cost containment contracts entered into by State agencies. Section 246.16(m) of the current Program regulations requires infant formula cost containment contracts entered into by State agencies to cover each of the types and forms of infant formulas prescribed to the majority of Program participants by the State agency. Infant formulas for participants with special dietary needs are not covered by this requirement. Accordingly, § 246.16(r)(5)(ii) of this interim rule requires infant formula cost containment contracts to cover the types and forms of infant formula products normally provided to the majority of participants by the State agencies, with the exception of infant formula products for participants with special dietary needs. This means the only types of infant formula to be included will be milk-based and soy-based. FNS will not solicit bids for infant formula products for participants with special dietary needs. However, FNS welcomes comments regarding this topic.

Section 17(h)(8)(G)(v) provides that the term of contracts for which bids are to be solicited shall be announced by the Secretary in consultation with the affected State agencies and shall be not less than 2 years. That section further provides that if State law regarding the duration of contracts is inconsistent with this provision, the Secretary shall permit a 1-year contract with the option provided to the State to extend the contract for additional years. These requirements are reflected in § 246.16(r)(5)(iii) of this interim rule which requires the term of the infant formula cost containment contracts to be determined by FNS in consultation with the State agencies. Paragraph (r)(5)(iii) further provides that the term shall be for a period of not less than 2 years, unless the law applicable to a State agency regarding the duration of infant formula cost containment contracts is more restrictive. In such cases, the term of the contract for only that State agency shall be for 1 year, with the option provided to the State agency to extend the contract for a specified number of additional years (to be determined by FNS in consultation with the State agency).

Within a group of State agencies there are likely to be varying termination dates for the individual State agencies' current infant formula contracts. Therefore, the infant formula cost containment contracts of the State agencies within a group may begin on different dates. These dates will be available to the infant formula manufacturers before they make their bids, as the dates will be included in the Request for Rebates.

Section 17(h)(8)(G)(iv) provides that in soliciting bids and determining the winning bidder, the Secretary shall comply with section 17(h)(8)(F) of the CNA. Section 17(h)(8)(F) provides that no State may enter into an infant formula cost containment contract that prescribes conditions that would void, reduce the savings under, or otherwise limit the original contract if the State solicited or secured bids for, or entered into, a subsequent infant formula cost containment contract to take effect after the expiration of the original contract. This requirement, as it applies to State agencies, is reflected in § 246.16(q)(1) of the current Program regulations. Paragraph (r)(5)(iv) of this interim rule implements this requirement by stating that FNS shall not prescribe conditions that are prohibited under paragraph (q)(1) of § 246.16.

As discussed above, paragraph (r)(5)(iv) of this interim rule states that FNS shall solicit bids for rebates from infant formula manufacturers. Paragraph (r)(5)(iv) further provides that FNS may limit advertising for bids to contacting in writing each infant formula manufacturer which has registered with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act. Restricting advertising to registered infant formula manufacturers is consistent with current Program requirements. In order to be eligible to participate in the Program, section 17(f)(16) of the CNA already requires infant formula manufacturers to register with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act before bidding for a State contract to supply infant formula for the Program and to certify with the State health department that the infant formula complies with that Act and regulations issued pursuant to such Act. These requirements are reflected in § 246.16(q)(2) of the current regulations which prohibits State agencies from excluding from consideration in infant formula bid evaluation any infant formula manufacturer in compliance with the Federal Food, Drug, and Cosmetic Act. Since infant formula manufacturers are the only entities which are affected by infant formula rebate solicitations, permitting FNS to restrict advertisements to this forum saves time and resources while ensuring that all potential bidders receive notice.

d. Process Overview

Under § 246.16(r)(2) of this interim rule, FNS shall make a written offer to State agencies at least once every 12 months. This reflects the requirement in section 17(h)(8)(G)(i) that requires the Secretary to make such an offer once every 12 months. At present, however, FNS intends to make the offer only once every 12 months, but reserves the option of offering to do so more often if circumstances warrant.

Section 246.16(r)(2) of this interim rule makes clear that only State agencies that provide certain information within 15 days of the receipt of the offer will be included in the national bid solicitation and selection process. Both in this instance and throughout new § 246.16(r), information required to be submitted by State agencies must be submitted in writing, signed by a responsible State agency official, by

certified mail, return receipt requested or by hand delivery with evidence of receipt. These methods of delivery are necessary to minimize any disputes concerning the receipt of the required information within the strict time frames. Upon signing a statement that the State agency requests FNS to conduct bid solicitation and selection on its behalf as provided in paragraph (r)(2)(i) of this rule, the State agency is agreeing (1) to accept responsibility for any bid protests and contractual disputes as provided in paragraph (r)(1) of this rule; and (2) to abide by all competitive bidding procurement procedures of the State agency chosen under paragraph (r)(4) of this rule, unless the State agency determines it is not legally authorized to award an infant formula cost containment contract pursuant to those procedures, and therefore may not continue in that round of the national bid solicitation and selection.

New § 246.16(r)(2) (ii)–(iv) require a statement of the State agency's minimum procurement procedures applicable to competitive bidding for infant formula cost containment contracts and supporting documentation, a statement of any limitation on the duration of infant formula cost containment contracts and supporting documentation, and a statement of any contractual provisions required to be included in infant formula cost containment contracts by the State agency. Each State agency will be responsible for determining which of its own procurement and contract requirements apply. FNS can then more readily compare the requirements for similarities for State agency grouping purposes in accordance with paragraph (r)(3) of this rule.

In paragraphs (r)(2) (v) and (vi) of this interim rule each State agency is required to provide both the State agency's infant participation estimate for the term to be covered by the infant formula cost containment contract and supporting documentation, and the State agency's infant formula usage rates by type (i.e., milk-based or soy-based), form (e.g., concentrated, ready-to-feed, etc.), and container size and supporting documentation. The figures will form the basis of the Request for Rebates and resulting bids so State agencies must exercise diligence in providing the most accurate estimates possible. In paragraph (r)(2)(vii) of this rule each State agency is required to provide a statement of the termination date of the State agency's current infant formula cost containment contract. Because the date on which the State agencies' current infant formula cost containment contracts terminate may vary, a statement of the termination date is needed so that the finalized Request for Rebates may give notice to bidders that the infant formula cost containment contracts to be awarded by the individual State agencies may each begin on different dates. Pursuant to paragraph (r)(2)(viii) of this interim rule, FNS may request any other related information.

Section 17(h)(8)(G)(ii) provides that if the Secretary determines that the number of State agencies so warrants, the Secretary may, in consultation with such State agencies, divide such State agencies into more than one group (referred to as "bid group" in this rule) and solicit bids for each bid group. In determining the size and composition of the bid groups, the law further requires the Secretary to take into account the need to maximize the number of potential bidders so as to increase competition among infant formula manufacturers, to the extent practicable. Section 246.16(r)(3) reflects this requirement and further adds that FNS shall also take into account the similarities in the State agencies' procurement and contract requirements (as provided by the State agencies in accordance with paragraphs (r)(2) (ii), (iii), and (iv)). FNS reserves the right to exclude a State agency from the national bid solicitation and selection process if FNS determines that the State agency's procurement requirements or contractual requirements are so dissimilar from those of the other State agencies in any bid group that the State agency's inclusion in the bid group could adversely affect the bids.

Section 17(h)(8)(G)(i) provides that the Secretary shall select the winning bidder for an infant formula cost containment contract to be entered into by State agencies and infant formula manufacturers. Paragraph (r)(6) of this interim rule sets forth the criteria for selecting the winning bidder(s). The regulation specifies that the winning bidder(s) is the responsive and responsible bidder(s) meeting the specifications and all bid terms and conditions which offers the lowest net price weighted to take into account infant formula usage rates and infant participation. By making clear that the winning bidder(s) will be selected based on the lowest net price, the regulation complies with the new definition of competitive bidding in section 17(b)(17) as added by section 203 of Public Law 102–512 (and incorporated in § 246.2 of this rule), which is defined as a procurement process under which a single source offers the lowest price. To break a tie between 2 equally low bids, FNS shall select the bidder to be awarded the infant formula cost containment contract by a drawing by lot limited to the bidders which submitted those bids.

Since the overriding interest promoted in the legislation is to reduce the per unit costs of infant formula, FNS has decided that price is the only proper basis for evaluation of bids. Accordingly, even though State agencies often request samples and other items as conditions for bidding for their infant formula cost containment contracts, neither the Request for Rebates nor this rule will provide State agencies the option to request any additional "free samples" of infant formula, related products, or printed materials. Infant formula manufacturers may provide these products if they wish. FNS welcomes comments regarding this topic.

As noted above, FNS will be required to solicit bids both for milk-based and soy-based infant formulas as separate items, except where FNS determines that doing so would not be in the best interest of the program. Therefore, it is possible that there may be more than one winning bid or bidder for each solicitation. For example, if the greatest savings is achieved by selecting manufacturer A's bid for soy-based infant formula and manufacturer B's bid for milk-based infant formula, these manufacturers would be the winning bidders. In this case, the State agency would enter into 2 infant formula cost containment contracts. In all instances, the bid(s) will be evaluated based on the net price weighted to take into account the infant formula usage rates and infant participation for State agencies in the bid group.

Section 17(h)(8)(G)(vii)(II) requires the Secretary to develop procedures to permit a State agency that has authorized the Secretary to undertake bid solicitation on its behalf to decline to enter into the infant formula cost containment contract to be negotiated if the agency promptly determines after the bids are opened that participation would not be in the best interest of its Program. Consistent with the goal of maximizing savings and the requirement in section 17(h)(8)(G)(vii)(II) that the Secretary develop procedures to assure infant formula manufacturers that a contract awarded pursuant to the bid will cover State agencies serving no fewer than a number of infants to be specified in the bid solicitation, paragraph (r)(7) of this interim rule limits the instances in which a State agency may decline to award a contract once bids are opened. Under § 246.16(r)(7) of this rule, once

FNS has conducted bid selection, a State agency may decline to award the infant formula cost containment contract(s) only if the State agency determines that to award the contract(s) would not be in the best interests of its Program, taking into account whether the national bid solicitation and selection would achieve a lower aggregate savings.

Section 246.16(r)(8) provides that as soon as practicable after selecting the winning bidder(s), FNS will notify the affected State agencies in writing of the bid results, including the name(s) of the winning bidder(s). If a State agency chooses to decline to award the infant formula cost containment contract(s) in accordance with paragraph (r)(7), the State agency must notify FNS in writing, together with supporting documentation, within 10 days of the State agency's receipt of this notification of bid results.

As discussed above, section 17(h)(8)(G)(vii)(II) provides that the Secretary shall develop procedures for assuring infant formula manufacturers submitting a bid that an infant formula cost containment contract awarded pursuant to the bid will cover State agencies serving no fewer than a number of infants to be specified in the bid solicitation. In response, paragraph (r)(9) of this interim rule permits bidders to withdraw or modify their bids if a State agency has declined to award the contract(s). If a State agency declines to award the infant formula cost containment contract(s) in accordance with paragraphs (r) (7) and (8) of this interim rule, FNS shall notify the bidders of the decision. If 2 or more State agencies remain in the group, FNS shall require the bidders to indicate in writing whether they wish to withdraw or modify their bids within 5 days of receipt of this notification. After receiving this information, FNS shall again permit State agencies to decline to award the infant formula cost containment contract(s) in accordance with paragraphs (r) (7) and (8) of this interim rule. If any additional State agencies decline, FNS may conduct a resolicitation of bids in accordance with paragraph (r)(9) of this interim rule. Readers should note that this resolicitation would be at the option of FNS.

3. Need for Continuous Cost Containment Contracts

State agencies are reminded that section 246.16(o) of the current regulations requires all State agencies to continuously operate a cost containment system (unless determined to be infeasible). If FNS determines a State agency to be in noncompliance, it may not draw down on or obligate Program funds as specified in § 246.16(p) of the current Program regulations. Therefore, if an interested State agency's current cost containment contract expires prior to the effective date of the contract(s) to be awarded pursuant to the national bid solicitation and selection, such State agency will be required either to have an alternative contract in place for the interim period or to extend its current contract. Similarly, State agencies must be prepared to ensure continuous cost containment contracts remain in effect (1) if the State agency does not continue in the national bid solicitation and selection because it does not have the legal authority to award a contract pursuant to the chosen procurement procedures (section 246.16(r)(4)); (2) if the contract would not be in the best interests of the State agency's Program, taking into account whether the national bid solicitation and selection would achieve a lower aggregate savings (sections 246.16(r) (7) and (8)); or (3) if there is a lack of responsive and responsible bidders for an infant formula cost containment contract pursuant to the national bid selection.

4. Report

Section 208 of Public Law 102–512 requires the Secretary to report to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate not later than April 1, 1994 regarding (1) State agencies that request the Secretary to conduct bid solicitations for infant formula under section 17(h)(8)(G)(i) of the CNA; (2) cost reductions achieved by the solicitations; and (3) other matters the Secretary determines to be appropriate regarding title II of Public Law 102–512 and the amendments it made. The provisions of Public Law 102–512 and the amendments it made will terminate on September 30, 1994, except with regard to section 17(h)(8)(J) of the CNA (as amended by section 204 of Public Law 102–512). That provision addresses fines and disqualifications, the last topic discussed in this preamble.

5. Financial Assistance

Section 204 of Public Law 102–512 adds a new section 17(h)(8)(I)(v) of the CNA to authorize the Secretary to make available additional funds to State agencies out of funds available for nutrition services and administration (NSA) costs in an amount not to exceed one half of 1 percent of the NSA funds to help defray reasonable anticipated costs associated with innovations in cost containment or associated with procedures which tend to enhance competition. In addition, section 206 of Public Law 102–512 adds a new section 17(h)(2)(A)(iv) to authorize the Secretary to provide in the NSA funding formula additional NSA funds to be used for this same purpose. However, these types of costs are already a permissible use of NSA funds. In addition, State agencies may request additional funds for these purposes as part of the discretionary funds allocation. Under § 246.16(c)(3)(iii) of current Program regulations, a discretionary fund is formed by reducing by 10 percent each State agency's final administrative and program services (NSA) grant. The discretionary funds are distributed annually by FNS regional offices according to national guidelines. Beginning with Fiscal Year 1993, these guidelines expressly include costs associated with innovations in cost containment and procedures which tend to enhance competition among the permissible bases for requesting discretionary funds.

Therefore, since State agencies already have the authority to use their NSA funds for these purposes and may also request discretionary funds for such use, no regulatory changes are necessary to implement these provisions.

6. Fines and Disqualifications

Section 204 of Public Law 102–512 adds a new section 17(h)(8)(J) to the CNA which (1) establishes civil penalties of up to $100 million for infant formula manufacturers that engage in certain anti-competitive activities in connection with bids to supply infant formula to carry out the Program, and (2) disqualify infant formula manufacturers from bidding to supply infant formula to the Program for up to 2 years for those same anti-competitive activities. Section 17(h)(8)(J) further requires the Secretary to issue regulations concerning administrative appeals and the factors for determining the length of disqualifications. Since the implementation of this provision will require the formulation of extensive procedures involving considerable discretion, and since this is a permanent provision of law that is not related to the national bid solicitation and selection process, FNS has decided to publish a separate proposed rule concerning fines and disqualifications.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, infants and children, Maternal and child health, Nutrition

education, Public assistance programs, WIC, Women.

For reasons set forth in the Preamble, 7 CFR part 246 is amended as follows:

Part 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 is revised to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.2, the definitions of "competitive bidding," "discount," "net price," and "rebate" are added in alphabetical order to read as follows:

§ 246.2 Definitions

* * * * *

Competitive bidding means a procurement process under which FNS or the State agency selects a single source (such as a single infant formula manufacturer offering the lowest price), as determined by the submission of sealed bids, for a product for which bids are sought for use in the Program.

* * * * *

Discount means, with respect to a State agency that provides Program foods to participants without the use of retail grocery stores (such as a State agency that provides for the home delivery or direct distribution of supplemental food), the amount of the price reduction or other price concession provided to any State agency by the manufacturer or supplier of the particular food product as the result of the purchase of Program food by each such State agency, or its representative, from the manufacturer or supplier.

* * * * *

Net price means the difference between the manufacturer's wholesale price for infant formula and the rebate level offered or provided by the manufacturer under an infant formula cost containment contract entered into with the pertinent State agency.

* * * * *

Rebate means the amount of money refunded under cost containment procedures to any State agency from the manufacturer of the particular food product as the result of the purchase of the supplemental food with a voucher or other purchase instrument by a participant in each State agency's program. Such rebates shall be payments made subsequent to the exchange of a food instrument for food.

* * * * *

3. In § 246.16, new paragraph (r) is added to read as follows:

§ 246.16 Distribution of Funds.

* * * * *

(r) *National Cost Containment Bid Solicitation and Selection.* FNS shall solicit and select bids for infant formula rebates on behalf of State agencies with retail food delivery systems based on the following guidelines:

(1) FNS shall solicit bids and select the winning bidder(s) for infant formula cost containment contracts only if 2 or more State agencies with retail food delivery systems request FNS to conduct bid solicitation and selection on their behalf. FNS shall conduct the bid solicitation and selection process only and shall not award or enter into any infant formula cost containment contract on behalf of the individual State agencies. Each State agency will individually award and enter into infant formula cost containment contract(s) with the winning bidder(s). State agencies shall obtain the rebates directly from the infant formula manufacturer(s). FNS shall conduct the bid solicitation in accordance with this paragraph and the competitive bidding procurement procedures of the State agency with the highest infant participation in the bid group on whose behalf bids are being solicited. Any bid protests and contractual disputes are the responsibility of the State agencies individually.

(2) FNS shall make a written offer to all State agencies to conduct bid solicitation and selection on their behalf at least once every 12 months. FNS shall send State agencies a copy of the draft Request for Rebates when making the offer to State agencies. Only State agencies that provide the information required by this subparagraph in writing, signed by a responsible State agency official, by certified mail, return receipt requested or by hand delivery with evidence of receipt within 15 days of receipt of the offer will be included in the national bid solicitation and selection process. Each interested State agency must provide:

(i) A statement that the State agency requests FNS to conduct bid solicitation and selection on its behalf;

(ii) A statement of the State agency's minimum procurement procedures applicable to competitive bidding (as defined in Section 246.2) for infant formula cost containment contracts and supporting documentation;

(iii) A statement of any limitation on the duration of infant formula cost containment contracts and supporting documentation;

(iv) A statement of any contractual provisions required to be included in infant formula cost containment contracts by the State agency;

(v) An infant participation estimate for the term to be covered by the infant formula cost containment contract and supporting documentation;

(vi) Infant formula usage rates by type (i.e. milk-based or soy-based), form (e.g., concentrated, ready-to-feed, etc.), and container size and supporting documentation;

(vii) A statement of the termination date of the State agency's current infant formula cost containment contract; and

(viii) Any other related information that FNS may request.

(3) If FNS determines that the number of State agencies making the request provided for in paragraph (r)(2) of this section so warrants, FNS may, in consultation with such State agencies, divide such State agencies into more than one group and solicit bids for each group. These groups of State agencies are referred to as "bid groups" in this rule. In determining the size and composition of the bid groups, FNS shall, to the extent practicable, take into account the need to maximize the number of potential bidders so as to increase competition among infant formula manufacturers and the similarities in the State agencies' procurement and contract requirements (as provided by the State agencies in accordance with paragraphs (r)(2) (ii), (iii), and (iv) of this section). FNS reserves the right to exclude a State agency from the national bid solicitation and selection process if FNS determines that the State agency's procurement requirements or contractual requirements are so dissimilar from those of the other State agencies in any bid group that the State agency's inclusion in the bid group could adversely affect the bids.

(4) For each bid group formed pursuant to paragraphs (r) (2) and (3) of this section, FNS shall choose the competitive bidding procurement procedures of the State agency in the group with the highest infant participation to be used in soliciting the bids for that bid group. To the extent not inconsistent with the requirements of this paragraph, FNS shall use that set of procedures in soliciting the bids for that bid group of State agencies. FNS shall notify each State agency in the bid group of the choice and provide them each a copy of the procurement procedures of the chosen State agency. Each State agency shall provide FNS a written statement, signed by a responsible State agency official, by certified mail, return receipt requested or by hand delivery with evidence of receipt stating whether that State agency is legally authorized to award an infant formula cost containment contract pursuant to that set of procedures within 10 days of the receipt of the

notification. If the State agency determines it is not legally authorized to award an infant formula cost containment contract pursuant to those procedures, that State agency may not continue in that round of the national bid solicitation and selection.

(5) At a minimum, in soliciting bids FNS shall address the following:

(i) Unless FNS determines that doing so would not be in the best interest of the Program, bids shall be solicited from infant formula manufacturers both for milk-based and soy-based infant formula separately.

(ii) Infant formula cost containment contracts to be entered into by the State agencies and infant formula manufacturers must provide for a constant net price for infant formula for the full term of the infant formula cost containment contracts and provide rebates for all units of infant formula sold through the Program that are produced by the manufacturer awarded the infant formula cost containment contract. The infant formula cost containment contracts shall cover all types and forms of infant formula products normally provided to the majority of participants by the State agencies, with the exception of infant formulas for participants with special dietary needs.

(iii) The duration of the infant formula cost containment contracts for each bid group shall be determined by FNS in consultation with the State agencies. The term shall be for a period of not less than 2 years, unless the law applicable to a State agency regarding the duration of infant formula cost containment contracts is more restrictive than this paragraph. In such cases, the term of the contract for only that State agency shall be for one year, with the option provided to the State agency to extend the contract for a specified number of additional years (to be determined by FNS in consultation with the State agency). The date on which the individual State agencies' current infant formula cost containment contracts terminate may vary, so the infant formula cost containment contracts awarded by the State agencies within a bid group may begin on different dates.

(iv) FNS shall not prescribe conditions that are prohibited under paragraph (q)(1) of this section.

(v) FNS shall solicit bids for rebates only from infant formula manufacturers. FNS may limit advertising to contacting in writing each infant formula manufacturer which has registered with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.).

(6) FNS shall select the winning bidder(s). The winning bidder(s) shall be the responsive and responsible bidder(s) meeting the specifications and all bid terms and conditions which offers the lowest net price weighted to take into account infant formula usage rates and infant participation. In all instances the winning bidder(s) will be those which singly or in combination yield the greatest aggregate savings based on the net price weighted to take into account the infant formula usage rates. To break a tie between 2 equally low bids, FNS shall select the bidder to be awarded the infant formula cost containment contract by a drawing by lot limited to the bidders which submitted those bids.

(7) Once FNS has conducted bid selection, a State agency may decline to award the infant formula cost containment contract(s) only if the State agency determines that to award the contract(s) would not be in the best interests of its Program, taking into account whether the national bid solicitation and selection would achieve a lower aggregate savings.

(8) As soon as practicable after selecting the winning bid(s), FNS will notify the affected State agencies in writing of the bid results, including the name(s) of the winning bidder(s). If a State agency chooses to request approval to decline to award the infant formula cost containment contract(s) in accordance with paragraph (r)(7) of this section, it must notify FNS in writing, signed by a responsible State agency official, together with supporting documentation, by certified mail, return receipt requested or by hand delivery with evidence of receipt within 10 days of the State agency's receipt of this notification of bid results.

(9) If FNS approves any State agency's request to decline to award the infant formula cost containment contract(s) in accordance with paragraphs (r) (7) and (8) of this section, FNS shall notify the bidders of the decision. If two or more State agencies remain in the group, FNS shall require the bidders to indicate in writing whether they wish to withdraw or modify their bids within 5 days of receipt of this notification. After receiving this information, FNS shall again permit State agencies to decline to award the infant formula cost containment contract(s) in accordance with paragraphs (r) (7) and (8) of this section. If FNS approves these additional State agency requests to decline, FNS may conduct a resolicitation of bids in accordance with this paragraph.

Dated: August 30, 1993.

Christopher Martin,

Acting Administrator.

[FR Doc. 93–21631 Filed 9–3–93; 8:45 am]

BILLING CODE 3410–30–U

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV93–955–1IFR]

Vidalia Onions Grown in Georgia; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 955 for the 1993–94 fiscal period. Authorization of this budget enables the Vidalia Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective September 16, 1993, through September 15, 1994. Comments received by October 7, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: John R. Toth, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770, or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955 [7 CFR part 955], regulating the handling of Vidalia onions grown in Georgia. The marketing agreement and order are effective under the Agricultural Marketing Agreement

Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Vidalia onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1993–94 fiscal period, beginning September 16, 1993, through September 15, 1994. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 250 producers of Georgia Vidalia onions under this marketing order, and approximately 145 handlers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Vidalia onion producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 fiscal period was prepared by the Vidalia Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of Vidalia onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met July 22, 1993, and unanimously recommended a 1993–94 budget of $262,950, $17,278 more than the previous year. Increases include $1,000 for auto expenses, $500 for dues and subscriptions, $300 for office supplies, $700 for printing, $500 for postage/courier, $10,000 for contract management, and $29,610 for marketing, plus the addition of $4,500 for equipment purchases, for which no funding was recommended last year. These increases will be partially offset by decreases of $500 for travel, $1,200 for liability insurance and bond, $150 for interest, $4,450 for furniture/equipment maintenance, $32 for office overhead, $1,000 for committee member expense, and $22,500 for research.

The Committee also unanimously recommended an assessment rate of $0.10 per 50-pound bag, the same as last year. This rate, when applied to anticipated shipments of 2,667,500 50-pound bags, will yield $266,750 in assessment income. This will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve at the beginning of the 1993–94 fiscal period, estimated at $138,274, will be within the maximum permitted by the order of three fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period begins on September 16, 1993, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR part 955 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 955.206 is added to read as follows:

This section will not appear in the Code of Federal Regulations.

§ 955.206 Expenses and assessment rate.

Expenses of $262,950 by the Vidalia Onion Committee are authorized, and

an assessment rate of $0.10 per 50-pound bag of Vidalia onions is established for the fiscal period ending September 15, 1994. Unexpended funds may be carried over as a reserve.

Dated: August 31, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93-21695 Filed 9-3-93; 8:45 am]

BILLING CODE 3410-02-P

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7 CFR Parts 946, 947, 948, 953, 958, and 982

[Docket No. FV93-946-1FIR, FV93-947-3FIR, FV93-948-1FIR, FV93-948-2FIR, FV93-953-1FIR, FV93-958-1FIR, FV93-982-1FIR]

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of seven interim final rules that authorized expenditures and established assessment rates under Marketing Orders 946, 947, 948, 953, 958, and 982 for the 1993-94 fiscal period. Authorization of these budgets enables the State of Washington Potato Committee, the Oregon-California Potato Committee, the Colorado Potato Administrative Committee, San Luis Valley Office (Area II), the Colorado Potato Administrative Committee, Northern Colorado Office (Area III), the Southeastern Potato Committee, the Idaho-Eastern Oregon Onion Committee, and the Filbert/Hazelnut Marketing Board (Committees and Board) to incur expenses that are reasonable and necessary to administer the programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATE: June 1, 1993, through May 31, 1994 (§ 953.250), July 1, 1993, through June 30, 1994 (§ 946.246, § 947.244, § 948.209, § 958.237, and § 982.338), and September 1, 1993, through August 31, 1994 (§ 948.210).

FOR FURTHER INFORMATION CONTACT: Dennis L. West (M.O.'s 946 and 948), Robert J. Curry (M.O. 958), and Teresa L. Hutchinson (M.O.'s 947 and 982), Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503-326-2724; or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 113 and Order No. 946, both as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington; Marketing Agreement No. 114 and Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Oregon-California; Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado; Marketing Agreement No. 104 and Order No. 953, both as amended (7 CFR part 953), regulating the handling of Irish potatoes grown in Southeastern States (Virginia and North Carolina); Marketing Agreement No. 130 and Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in designated counties of Idaho and Malheur County, Oregon; and Marketing Agreement and Order No. 982, both as amended (7 CFR part 982), regulating the handling of filberts/hazelnuts grown in Oregon and Washington. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Irish potatoes, onions, and filberts/hazelnuts are subject to assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable Southeastern potatoes handled during the 1993-94 fiscal period, which began June 1, 1993, through May 31, 1994, all assessable Washington, Oregon-California, and Colorado Area III potatoes, assessable onions, and all assessable filberts/hazelnuts handled during the 1993-94 fiscal period, which began July 1, 1993, through June 30, 1994, and all assessable Colorado Area II potatoes handled during the 1993-94 fiscal period, which begins September 1, 1993, through August 31, 1994. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 450 producers of Washington potatoes under Marketing Order No. 946, and approximately 35 handlers. There are approximately 550 producers of Oregon-California potatoes under Marketing Order No. 947, and approximately 40 handlers. There are approximately 285 producers of Colorado Area II potatoes under Marketing Order No. 948, and approximately 118 handlers. There are approximately 85 producers of Colorado Area III potatoes under Marketing Order No. 948, and approximately 15 handlers. There are approximately 150 producers of Southeastern potatoes under Marketing Order No. 953, and approximately 60 handlers. There are approximately 450 producers of Idaho-Eastern Oregon onions under Marketing Order No. 958, and approximately 35 handlers. Also, there are approximately 950 producers of Oregon and Washington filberts/hazelnuts under Marketing Order No. 982, and approximately 20 handlers. Small agricultural producers have been defined by the Small Business

Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the producers and handlers may be classified as small entities.

The budgets of expenses for the 1993–94 fiscal period were prepared by the State of Washington Potato Committee, the Oregon-California Potato Committee, the Colorado Potato Administrative Committee, San Luis Valley Office (Area II), the Colorado Potato Administrative Committee, Northern Colorado Office (Area III), the Southeastern Potato Committee, the Idaho-Eastern Oregon Onion Committee, and the Filbert/Hazelnut Marketing Board, the agencies responsible for local administration of the orders, and submitted to the Department for approval. The members of these Committees and Board are producers and handlers of Washington potatoes, Oregon-California potatoes, Colorado Area II and Area III potatoes, Southeastern potatoes, Idaho-Eastern Oregon onions, and Oregon-Washington filberts/hazelnuts. They are familiar with the Committees' and Board's needs and with the costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets. The budgets were formulated and discussed in public meetings and a mail ballot. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rates recommended by the Committees and Board were derived by dividing anticipated expenses by expected shipments of Irish potatoes, onions, and filberts/hazelnuts. Because these rates will be applied to actual shipments, they must be established at rates that will provide sufficient income to pay the Committees' and Board's expenses.

The State of Washington Potato Committee met February 4, 1993, and unanimously recommended a 1993–94 budget of $38,100, the same as the previous year. The Committee also unanimously recommended an assessment rate of $0.005 per hundredweight, the same as last season. This rate, when applied to anticipated shipments of 6 million hundredweight, will yield $30,000 in assessment income. This, along with $8,100 from the Committee's authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1993–94 fiscal period, estimated at $25,667, were within the maximum permitted by the order of two fiscal periods' expenses.

An increase in the 1993–94 budget of $500 for salary expense (manager's retirement and health benefits) will be offset by a decrease of $500 in the Committee member expense category (Committee member travel and lodging). Other major expense items include manager's salary, compliance audits, Committee member compensation for meeting attendance, Washington Potato Commission contract fees, postage, surveillance inspection, and office supplies. The Commission provides certain services to the Committee as specified in a memorandum of understanding.

The Oregon-California Potato Committee met March 10, 1993, and unanimously recommended a 1993–94 budget of $43,600, $1,150 less than the previous year. Major expense items include Oregon Potato Commission contract agreement, annual report, Committee compensation, Committee expense, inspection fees, investigation and compliance, staff travel, office supplies, postage, and telephone. The Commission provides certain services to the Committee as specified in a memorandum of understanding.

The Committee also unanimously recommended an assessment rate of $0.005 per hundredweight, the same as last season. This rate, when applied to anticipated shipments of 7,425,000 hundredweight, will yield $37,125 in assessment income. This, along with $6,475 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1993–94 fiscal period, estimated at $10,500, were within the maximum permitted by the order of one fiscal period's expenses.

The Colorado Potato Administrative Committee, San Luis Valley Office (Area II) met on May 20, 1993, and unanimously recommended a 1993–94 budget of $59,106, which is $1,866 more than the previous year. This increase of $1,866 is for staff salaries, and is the only change from the 1992–93 approved budget.

The Committee also unanimously recommended an assessment rate of $0.0036 per hundredweight, the same as last season. This rate, when applied to anticipated potato shipments of 12,250,000 hundredweight, will yield $47,700 in assessment income. This, along with $11,406 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds of $83,437 in the Committee's authorized reserve at the beginning of the 1992–93 fiscal period were within the maximum permitted by the order of two fiscal periods' expenses.

The Colorado Potato Administrative Committee, Northern Colorado Office (Area III) met on April 9, 1993, and unanimously recommended a 1993–94 budget of $16,851, $1,717 more than the previous year. Increases in the Federal portion of the administrative budget include $1,200 for salary expenses, $150 for office equipment, $125 for Committee expenses, $150 for utilities and telephone, and $92 in additional payroll taxes.

The Committee also unanimously recommended an assessment rate of $0.02 per hundredweight, the same as last season. This rate, when applied to anticipated potato shipments of 1,086,000 hundredweight, will yield $21,720 in assessment income, which is adequate to cover budgeted expenses. Funds in the reserve at the end of the 1993–94 fiscal period, estimated at $20,126, will be within the maximum permitted by the order of two fiscal periods' expenses.

In Colorado, both a State and a Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. All expenses in this category are financed under the State order. The jointly operated programs consume about equal administrative time and the two orders continue to split administrative costs equally.

The Southeastern Potato Committee met April 21, 1993, and unanimously recommended a 1993–94 budget of $11,000, the same as last year. Major expense items include Committee staff salaries and travel expenses.

The Committee also recommended an assessment rate of $0.01 per hundredweight, $0.0050 more than last season's rate. As planting for the 1993–94 crop season had not been completed, the Committee based its estimate of production on the 1993–94 crop season, 1,488,000 hundredweight. The $12,426 reserve will be adequate to cover the expenses incurred. Funds remaining at the end of the 1992–93 fiscal period were within the maximum permitted by the order of one fiscal period's expenses.

The Idaho-Eastern Oregon Onion Committee met on March 23, 1993, and unanimously recommended a 1993–94 budget of $1,030,200, $75,888 more than the previous year. Increases include $1,000 for Committee expenses, $31,433 for salary expenses, $18,455 for travel and office expenses, $1,000 for research, $19,000 for promotion and advertising, and $5,000 for contingency.

The Committee also unanimously recommended an assessment rate of $0.10 per hundredweight, $0.01 less than last season. This rate, when applied to anticipated shipments of 8,000,000 hundredweight, will yield

$800,000 in assessment income. This, along with $40,000 in interest income and $190,200 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1993–94 fiscal period, estimated at $850,000, will be within the maximum permitted by the order of one fiscal period's expenses.

In a mail vote conducted the week of March 15, 1993, the Filbert/Hazelnut Marketing Board unanimously recommended a 1993–94 budget of $409,795, $22,190 more than the previous year. The major budget item is $220,000 for the Board's promotion program to maintain and expand markets for filberts/hazelnuts. This is $20,000 more than budgeted last year. Other increases include $1,900 for personal services, $20 for printing and publishing, $70 for rent, $500 for auditing, $150 for office supplies, and $1,400 for equipment. These increases will be partially offset by decreases of $250 for postage, $100 for office maintenance, $500 for computer services, and $1,000 for research.

The Board also unanimously recommended an assessment rate of $14.00 per ton, the same as last year. This rate, when applied to anticipated shipments of 27,000 tons, will yield $378,000 in assessment income. This, along with $7,000 in interest income and $24,795 from the Board's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1993–94 marketing year, estimated at $264,665, were within the maximum permitted by the order of one marketing year's expenses.

The interim final rules were published in the **Federal Register** on June 11, 1993, for 7 CFR part 946 (58 FR 32592); 7 CFR part 958 (58 FR 32594); and 7 CFR part 982 (58 FR 32595); on June 15, 1993, for 7 CFR part 948 (Area III) (58 FR 33019); and on June 21, 1993, for 7 CFR part 947 (58 FR 33760); and 7 CFR part 948 (Area II) (58 FR 33762), and on June 29, 1993, for 7 CFR part 953 (58 FR 34692). Those rules added § 946.246, § 947.244, § 948.210, § 948.209, § 953.250, § 958.237, and § 982.338, authorized expenses, and established assessment rates for the Committees and Board. Those rules provided that interested persons could file comments through July 12, 1993, for 7 CFR parts 946, 958, and 982, through July 15, 1993, for 7 CFR part 948 (Area III), through July 21, 1993, for 7 CFR parts 947 and 948 (Area II), and through July 29, 1993, for 7 CFR part 953. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses for the marketing orders covered in this rulemaking are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committees and Board need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1993–94 fiscal periods began on June 1, 1993, for Southeastern potatoes, July 1, 1993, for Washington potatoes, Oregon-California potatoes, Colorado Area III potatoes, Idaho-Eastern Oregon onions, and Oregon and Washington filberts/hazelnuts, and on September 1, 1993, for Colorado Area II potatoes. The marketing orders require that the rates of assessment for the fiscal periods apply to all assessable Irish potatoes, onions, and filberts/hazelnuts handled during the fiscal periods. In addition, handlers are aware of these actions which were recommended by the Committees at public meetings and by the Filbert/Hazelnut Marketing Board in a mail vote and published in the **Federal Register** as interim final rules. No comments were received concerning the seven interim final rules that are adopted in this action as a final rule without change.

List of Subjects

7 CFR Parts 946, 947, 948, and 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 946, 947, 948, 953, 958, and 982 are amended as follows:

1. The authority citation for 7 CFR parts 946, 947, 948, 953, 958, and 982 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

Note: These sections will not appear in the annual Code of Federal Regulations.

PART 946—IRISH POTATOES GROWN IN WASHINGTON

2. For the reasons set forth in the preamble, the interim final rule adding § 946.246 which was published in the **Federal Register** (58 FR 32592, June 11, 1993), is adopted as a final rule without change.

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

3. For the reasons set forth in the preamble, the interim final rule adding § 947.244 which was published in the **Federal Register** (58 FR 33760, June 21, 1993), is adopted as a final rule without change.

PART 948—IRISH POTATOES GROWN IN COLORADO

4. For the reasons set forth in the preamble, the interim final rule adding § 948.209 which was published in the **Federal Register** (58 FR 33019, June 15, 1993), is adopted as a final rule without change.

5. For the reasons set forth in the preamble, the interim final rule adding § 948.210 which was published in the **Federal Register** (58 FR 33762, June 21, 1993), is adopted as a final rule without change.

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

6. For the reasons set forth in the preamble, the interim final rule adding § 953.250 which was published in the **Federal Register** (58 FR 34692, June 29, 1993), is adopted as a final rule without change.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OR

7. For the reasons set forth in the preamble, the interim final rule adding § 958.237 which was published in the **Federal Register** (58 FR 32594, June 11, 1993), is adopted as a final rule without change.

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

8. For the reasons set forth in the preamble, the interim final rule adding § 982.338 which was published in the **Federal Register** (58 FR 32595, June 11, 1993), is adopted as a final rule without change.

Dated: August 31, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–21697 Filed 9–3–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 989

[FV93–989–1FR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for the 1992–93 Crop Year for Natural (Sun-Dried) Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without modification, the provisions of an interim final rule which established final free and reserve percentages for Natural (sun-dried) Seedless (NS) raisins from California's 1992–93 raisin crop. The percentages are 71 percent free and 29 percent reserve. The 1992–93 crop year began August 1, 1992. These percentages helped stabilize supplies and prices and helped counter the destabilizing effects of the burdensome oversupply situation facing the raisin industry. This action was unanimously recommended by the Raisin Administrative Committee (Committee), which is responsible for local administration of the Federal marketing order regulating the handling of raisins produced from grapes grown in California.

EFFECTIVE DATE: October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Richard Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901, or FAX: (209) 487–5906; or Richard Lower, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2020, or FAX: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This action finalizes final free and reserve percentages for NS raisins for the 1992–93 crop year, beginning August 1, 1992, through July 31, 1993. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural service firms are defined as those whose annual receipts are less than $3,500,000, and small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000. A minority of handlers of California raisins and a majority of producers may be classified as small entities.

The interim final rule was issued on June 3, 1993, and published in the **Federal Register** (58 FR 32591, June 11, 1993), with an effective date of June 11, 1993. That rule added section 989.245 to the rules and regulations in effect under the marketing order. That rule provided a 30-day comment period which ended July 12, 1993. No comments were received.

The order prescribes procedures for computing trade demands and preliminary and final percentages that establish the amount of raisins that can be marketed throughout the season. The regulations apply to all handlers of California raisins. Raisins in the free percentage category may be shipped immediately to any market, while reserve raisins must be held by handlers in a reserve pool for the account of the Committee, which is responsible for local administration of the order. Under the order, reserve raisins may be: Sold at a later date by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; or disposed of in other outlets noncompetitive with those for free tonnage raisins.

While this action restricted the amount of Natural (sun-dried) Seedless raisins that entered domestic markets, final free and reserve percentages lessened the impact of the oversupply situation facing the industry (caused by substantial shifts of raisin grapes from winery use to NS raisin production), and promoted stronger marketing conditions, thus stabilizing prices and supplies and improving grower returns. In addition to the quantity of raisins released under the preliminary percentages and the final percentages, the order specifies methods to make available additional raisins to handlers by requiring sales of reserve pool raisins for use as free tonnage raisins under "10

plus 10" offers, and authorizing sales of reserve raisins under certain conditions.

The Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specifies that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal is met by the establishment of a final percentage which releases 100 percent of the computed trade demand and the additional release of reserve raisins to handlers under "10 plus 10" offers. The "10 plus 10" offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use.

Pursuant to section 989.54(a) of the order, the Committee which is responsible for local administration of the order, met on August 14, 1992, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. The trade demand is 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type into all market outlets, adjusted by subtracting the carryin of each varietal type on August 1 of the current crop year and by adding to the trade demand the desirable carryout for each varietal type at the end of that crop year. As specified in section 989.154, the desirable carryout for each varietal type shall be equal to the shipments of free tonnage raisins of the prior crop year during the months of August, September, and one half of October. If the prior year's shipments are limited because of crop condition, the total shipments during that period of time during one of the three years preceding the prior crop year may be used.

In accordance with these provisions, the Committee computed and announced a 1992–93 trade demand of 263,434 tons for Natural (sun-dried) Seedless raisins.

As required under section 989.54(b) of the order, the Committee met on September 25, 1992, and computed and announced a preliminary crop estimate and preliminary free and reserve percentages for Natural (sun-dried) Seedless raisins which released 85 percent of the trade demand since field prices had been established. The preliminary crop estimates and preliminary free and reserve percentages were as follows: 350,528 tons, and 64 percent free and 36 percent reserve. Also at the meeting, the Committee determined that its preliminary crop estimates for Dipped Seedless, Oleate and Related Seedless, Golden Seedless, Zante Currant, Sultana, Muscat, Monukka, and Other Seedless raisins based on early receipts were less than or near enough to the computed trade demands for each of these varietal types and therefore, volume controls were not warranted.

Pursuant to section 989.54(c), the Committee may adopt interim free and reserve percentages. Interim percentages may release less than the computed trade demand for each varietal type. Interim percentages for Natural (sun-dried) Seedless raisins of 70.75 percent free and 29.25 percent reserve were computed and announced on January 4, 1993. That action released 99.88 percent of the computed trade demand for Natural (sun-dried) Seedless raisins.

Under section 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type.

The Committee's final estimate of 1992–93 production of Natural (sun-dried) Seedless raisins was 371,905 tons. Dividing the computed trade demand of 263,434 tons by the final estimate of production resulted in a final free percentage of 71 percent and a final reserve percentage of 29 percent.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the Committee's recommendations and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (58 FR 32598, June 11, 1993) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Accordingly, the interim final rule adding section 989.245, which was published at 58 FR 32598 on June 11, 1993, is adopted as a final rule without change.

Note: This section will not appear in the Code of Federal Regulations.

Dated: August 31, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–21698 Filed 09–3–93; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 96

[Docket No. 92–133–1]

Animal Casings From Countries Where African Swine Fever or Bovine Spongiform Encephalopathy Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the foreign animal casings regulations by prohibiting the importation of ruminant casings from countries where bovine spongiform encephalopathy exists, and by prohibiting the importation of swine casings from countries where African swine fever exists. This action is necessary to prevent imported casings from introducing these diseases into the United States.

DATES: Interim rule effective September 7, 1993. Consideration will be given only to comments received on or before November 8, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–133–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Gray, Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7885.

SUPPLEMENTARY INFORMATION:

Background

Animal casings are intestines, stomachs, esophagi, and urinary bladders from cattle, sheep, swine, or goats that are used to encase processed meats, such as sausage. The regulations in 9 CFR part 96 (referred to below as "the regulations") govern the importation of animal casings into the United States to prevent the introduction of contagious livestock diseases.

Among the most destructive communicable diseases of ruminants and swine, respectively, are bovine spongiform encephalopathy (BSE) and African swine fever (ASF). BSE, a neurological disease first identified in 1986, appears to be caused by the same agent as scrapie, a destructive disease of sheep and goats. ASF, a hemorrhagic disease, is caused by a virus.

ASF virus may be present in, and spread by, swine, pork, and pork products; BSE may be present in, and spread by, ruminant products used for animal feed and veterinary biologic products containing BSE-infected ruminant byproducts. ASF or BSE could become established in the United States if materials carrying the ASF virus or BSE agent, such as certain meat, animal products, and animal byproducts from swine or ruminants in countries where the respective diseases exist, were imported and fed to or injected into swine or ruminants in the United States. Because the importation of those materials would pose a risk of introducing ASF and BSE into the United States, we prohibit or restrict the importation of animal products and byproducts into the United States from countries where these diseases exist (see 9 CFR parts 94 and 95).

The current regulations require that animal casings imported into the United States be accompanied by a Foreign Official Certificate for Animal Casings. On each such certificate, the issuing veterinarian certifies, among other things, that the animals from which the casings were derived had received antemortem and postmortem veterinary inspections at the time of slaughter, and were found to be healthy. However, veterinary inspection cannot detect ASF in its early stages, nor can it detect signs of BSE infection. As a result of these inadequacies, the veterinary inspection required by the regulations cannot be relied on to determine the health of swine or ruminants in a country where, respectively, ASF or BSE exists. Therefore, to remove the possibility that ASF- or BSE-contaminated casings derived from apparently healthy animals meet the criteria for certification in § 96.2(c) and, after importation into the United States, spread those diseases to U.S. livestock, we are prohibiting the importation of swine casings collected in a country where ASF exists, and of ruminant casings collected or processed in a country where BSE exists.

Swine casings from a country free of ASF but processed in a country where ASF exists continue to be eligible for importation into the United States, provided the establishment where the casings are processed meets the criteria for pork product processing in a country where ASF exists, which are set forth in 9 CFR 94.8(a)(3)(iv). Comparable criteria for establishments processing ruminant products in countries where BSE exists have not been developed. Therefore, the importation of ruminant casings from a country free of BSE but processed in a country where BSE exists is prohibited.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent imported casings from introducing ASF or BSE into the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Currently, between 20 and 30 entities import casings into the United States. It does not appear that any would be considered small entities. Regardless of whether these importers are small entities, none will be affected by this rule because none, in recent years, has imported swine casings from a country where ASF exists or ruminant casings from a country where BSE exists. For this reason, the rule will have no affect on domestic producers or importers of casings.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 96

Imports, Livestock, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 96 is amended to read as follows:

PART 96—RESTRICTION OF IMPORTATIONS OF FOREIGN ANIMAL CASINGS OFFERED FOR ENTRY INTO THE UNITED STATES

1. The authority citation for part 96 is revised to read as follows:

Authority: 21 U.S.C. 111, 136, 136a; 7 CFR 2.17, 2.51, and 371.2(d).

§§ 96.2 through 96.15 [Redesignated as §§ 96.3 through 96.16]

2. Sections 96.2 through 96.15 are redesignated as §§ 96.3 through 96.16, respectively, and a new § 96.2 is added to read as follows:

§ 96.2 Casings from countries where African swine fever or bovine spongiform encephalopathy exists.

(a) The importation of swine casings that originated in or were processed in a country where African swine fever exists, as listed in § 94.8 of this subchapter, is prohibited, with the following exception: Swine casings that originated in a country free of African swine fever may be processed in a country where African swine fever exists, if processed in an establishment that meets the criteria set forth in § 94.8(a)(3)(iv) of this subchapter.

(b) The importation of ruminant casings that originated in or were processed in any country where bovine spongiform encephalopathy exists, as listed in § 94.18(a) of this subchapter, is prohibited.

§ 96.4 [Amended]

3. Newly redesignated § 96.4 is amended by removing the reference "§§ 96.4 through 96.15" and adding the reference "§§ 96.5 through 96.16" in its place.

§ 96.10 [Amended]

4. Newly redesignated § 96.10, paragraph (c)(1) is amended by removing the reference "§ 96.12" and adding the reference "96.13" in its place.

§ 96.12 [Amended]

5. Newly redesignated § 96.12 is amended by removing the reference "§ 96.12" and adding the reference "§ 96.13" in its place.

Done in Washington, DC, this 31st day of August 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–21699 Filed 9–3–93; 8:45 am]

BILLING CODE 3410–34–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies; Auditing Standards

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: On August 23, 1990, the Small Business Administration (SBA) published a proposed rule (55 FR 34650) which would have required that audits of small business investment companies (SBICs) be performed in accordance with government auditing standards for financial audits issued by the Comptroller General of the United States (GAS). The proposed rule also included certain technical changes and clarifications to SBA regulations. For the reasons described below, SBA has determined not to adopt GAS, at this time, as the standard to be followed in making independent financial audits of SBICs. Such audits should continue to be performed in accordance with generally accepted auditing standards (GAAS). However, SBA believes that the SBIC's independent public accountant has a responsibility to report to SBA errors or irregularities, internal control weaknesses, or items of regulatory noncompliance that are observed during the course of the audit of the SBIC's financial statements and operations. SBA hereby withdraws the proposal to adopt GAS but clarifies the independent public accountant's reporting responsibility regarding internal control deficiencies, noncompliance with laws and government regulations, and irregularities. Also, SBA hereby finalizes other provisions of the proposed rule that were unrelated to the proposal to adopt GAS.

DATES: This Final Rule is effective September 7, 1993, for fiscal years ending after December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Marvin D. Klapp, Acting Director, Office of Program Development, U.S. Small Business Administration, suite 6300, 409 Third Street, SW., Washington, DC 20416, (202) 205–6512.

SUPPLEMENTARY INFORMATION: The Small Business Administration published a proposed rule on August 23, 1990, which if adopted in final form would have required, *inter alia*, that audits of SBICs by independent public accountants (IPAs) be conducted in accordance with GAS. Comments received by the Agency indicated that the SBIC industry was not able to fully evaluate the implications of the adoption of GAS without the benefit of more detailed audit guidelines. In response, SBA deferred final action on the proposed rule until such time as an audit guide containing the Agency's audit guidelines could be published and an opportunity for review and comment afforded the public. (See Notice of Proposed Rule, 55 FR 51912 (December 18, 1990).) On January 11, 1991, SBA published a Notice of Intent to Adopt Audit Guide and Reopen Comment Period (56 FR 1334), presenting for review and comment the Agency's proposed audit guide as developed by SBA's Office of Inspector General.

Comments on the audit guide and on the proposed GAS rule have since been received and reviewed by the Agency. Many of the commenters argued that even with the benefit of an audit guide, IPAs are not qualified to perform regulatory compliance audits on SBICs. SBA does not agree with this position. Many IPAs have the capacity to determine regulatory compliance as a result of years of experience in performing Federal program audits and audits under the Single Audit Act of 1984 and OMB Circular A–133, "Audits of Non-Profit Institutions." GAS and GAAS both require that audit procedures be designed to provide reasonable assurance of detecting instances of noncompliance that could have a material effect on the financial statements. Since both sets of standards require IPAs to assess potential noncompliance in the same manner, the issue raised by commenters is not relevant to the choice of a standard.

However, neither GAS nor GAAS are intended to provide the type of examinations of SBICs performed by SBA's examiners. These examinations provide a comprehensive evaluation of compliance with applicable laws and regulations. Such examinations are conducted by SBA staff with specific training in regulatory compliance issues, and are performed annually for SBICs which have received Federal financial assistance.

Rather than adopting Government Auditing Standards at this time, SBA has decided to adopt revisions that clarify the responsibility of IPAs to report to SBA errors or irregularities, internal control weaknesses, or items of regulatory noncompliance. This will incorporate the most important feature of SBA's proposal into the existing regulations without the need to adopt GAS verbatim. SBA believes that this action should allay the concerns of commenters who misunderstood the extent to which IPAs would have to address issues of noncompliance under the proposed rule. The final regulations require auditors to report all irregularities and matters of noncompliance that affect SBA programs, whether or not they are considered material to the SBIC's financial statements.

Although IPAs are currently required to perform audit procedures which provide reasonable assurance of detecting instances of noncompliance with applicable laws and regulations that could have a material effect on SBIC financial statements, SBA has not issued specific guidelines to assist IPAs

in developing appropriate procedures. SBA plans to include such guidance in a comprehensive revision of the "Accounting Standards and Financial Reporting Requirements for Small Business Investment Companies", Appendix I, 13 CFR part 107. SBA expects to complete this revision no later than March 31, 1994.

SBA is also hereby finalizing other provisions of the proposed rule that were unrelated to the adoption of GAS. More specifically, the provisions made final under this rule substitute the word "audit" for the word "examination" where it appears in Appendix I, since the procedures are, in fact, audits. The final rule also clarifies that an accountant who performs bookkeeping services for an SBIC is not considered by SBA to be "independent" for purposes of audit preparation, and corrects miscellaneous inaccuracies more fully described in the proposed rule.

Compliance With the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), Executive Orders 12291, 12612, and 12778 and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

Regulatory Flexibility Act

SBA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The changes hereby adopted are of a non-substantive nature only.

Executive Order 12291

SBA certifies that this final rule will be a nonmajor rule for purposes of E.O. 12291, for the following reasons:

1. It will not result in an annual economic effect of $100 million or more;
2. It will not result in a major increase in costs for consumers, the investment company industry, Federal, State, or local government agencies, or geographic regions;
3. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based businesses to compete with foreign-based businesses in the domestic or export markets.

Executive Order 12612

SBA certifies that this final rule does not have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

Paperwork Reduction Act of 1980

These regulations contain no new reporting or recordkeeping requirements and are therefore not subject to the review and clearance provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* However, before SBA issues its audit guidance on detecting instances of noncompliance with applicable laws and regulations that could have a material effect on SBIC financial statements, it will submit such guidance to OMB for review under the Paperwork Reduction Act.

Executive Order 12778

SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of E.O. 12778.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs/business, Small Business Administration, Small businesses.

For the reasons set out in the preamble, title 13, part 107 of the Code of Federal Regulations is amended as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The Authority citation for part 107 is revised to read as follows:

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 681 *et seq.*; 15 U.S.C. 687c; 15 U.S.C. 683; 15 U.S.C. 687d; 15 U.S.C. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Pub. L. 102–366.

2. Paragraph (e) of § 107.1002 is revised to read as follows:

§ 107.1002 Records and reports.

* * * * *

(e) *Filing of SBA Form 468.* Each Licensee shall submit to SBA, at the end of each fiscal year, a report containing financial statements for the fiscal year (SBA Form 468). When requested by SBA, interim reports may be required, i.e., financial reports and/or management information. The reports are to be prepared in accordance with Appendix I—Guide to Accounting Standards and Financial Reporting Requirements for SBICs and Appendix II—Chart of Accounts for SBICs, which are equally applicable to interim reports, and shall be filed on the prescribed form, in triplicate, with the Investment Division, SBA, on or before the last day of the month immediately following the end of the reporting period (in the case of interim reports), and on or before the last day of the third month following the end of the reporting period (in the case of the annual report). These reporting requirements are approved under OMB No. 3245–0063. The financial statements contained in the annual report will be audited by the Licensee's independent public accountant in accordance with generally accepted auditing standards and Appendix I, Guide to Accounting Standards and Financial Reporting Requirements for SBICs. The 1940 and 1980 Act Companies should refer to the rules of the Securities and Exchange Commission (SEC) for the reports to be filed with the SEC.

* * * * *

3. Appendix I is amended by revising the heading to read as follows:

Appendix I to Part 107—Guide to Accounting Standards and Financial Reporting Requirements for SBIC

4. Appendix I, Section I. *Introduction,* A. "Purpose of the Guide", is amended by revising the first paragraph to read as follows:

APPENDIX I TO PART 107—AUDIT GUIDE FOR SBIC'S AND PREPARATION OF THE ANNUAL REPORT

* * * * *

I. Introduction

A. Purpose of the Guide

The Small Business Administration (SBA) Guide has been written primarily to (1) inform the licensee and (2) assist the auditors of Small Business Investment Companies (SBICs) in performing their financial audit by focusing on matters that are unique to the SBIC program and the venture capital industry. It should be noted that this Guide is not intended to be a substitute for the accountant's judgment as to the work required to satisfy generally accepted auditing standards.

* * * * *

5. Appendix I, Section II. *Selection and Qualification of the Auditor,* "IPA Certification", is amended by designating "IPA Certification" as "D. IPA Certification"; by removing the word "examination" from the first full sentence of the first paragraph of the certification and inserting the word "audit" in lieu thereof; and by revising the last sentence in the footnote in newly redesignated "D. IPA Certification" to read as follows:

* * * * *

II. Selection and Qualification of the Auditor

* * * * *

D. IPA Certification

* * * * *

* * * For example, an accountant will be considered not independent with respect to any small business investment company with which he has or had during the period covered by the audit (financial examination), any direct financial interest or any material indirect financial interest; or with which he is, or was during such period, connected as a promoter, underwriter, voting trustee, investment adviser, director, officer,

employee, or provider of bookkeeping services.

6. Appendix I, Section II. *Selection and Qualification of the Auditor,* "Accountants Opinion", is removed.

7. Appendix I, Section III. *Scope of Audit,* is amended by revising the first paragraph to read as follows:

* * * * *

III. Scope of Audit

The independent public accountant's audit of the licensee's financial statements is to be performed in accordance with generally accepted auditing standards, as promulgated by the American Institute of Certified Public Accountants. The audit provides the basis for the auditor's opinion as to whether the financial statements present fairly, in all material respects, the Licensee's financial position, results of operations, and cash flows in accordance with generally accepted accounting principles.

* * * * *

8. Appendix I, Section V. *Reporting Requirements—General,* B. "Reporting Irregularities", is revised to read as follows:

* * * * *

V. Reporting Requirements—General

* * * * *

B. Reporting of Irregularities, Illegal Acts, and Internal Control Weaknesses

This section addresses the auditor's responsibility to report irregularities and illegal acts that may have a material effect on the financial statements, including noncompliance with laws and Federal regulations, in an auditor's report on compliance.

1. *Reporting Irregularities and Illegal Acts to SBA.* An independent public accountant that detects irregularities or illegal acts individually or collectively material to the financial statements, or irregularities or illegal acts relative to SBA programs whether or not material, shall advise management in writing. Management, in turn, shall immediately advise, in writing, the Associate Administrator for Investment, Investment Division, Small Business Administration, 409 Third Street SW, Washington, DC 20416. Management, in advising SBA, shall, to the extent practicable, describe the irregularities or illegal acts and their effects on the financial statements and SBA programs. Auditors shall determine whether management reported the irregularities or illegal acts and, if management fails to report, the auditor shall report to SBA at the address listed above.

2. *Reporting Internal Control Structure Reportable Conditions.* Reportable conditions in an SBIC's internal control structure shall be reported to SBIC management in writing and SBIC management shall immediately transmit this auditor's report to SBA. Reportable conditions and the manner of reporting such conditions are addressed in AU Section 325, *Codification of Statements on Auditing Standards,* issued by the American Institute of Certified Public Accountants.

* * * * *

9. Appendix I, Section V. *Reporting Requirements—General,* J. "Audit Procedures", is amended by revising the first paragraph to read as follows:

* * * * *

V. Reporting Requirements—General

* * * * *

J. Audit Procedures

The auditing procedures relating to the investment accounts of investment companies require greater attention than those of a commercial enterprise because of the relative significance of such assets. The auditing procedures outlined in the AICPA's Audit Guide, "Audits of Investment Companies", should be followed to the extent appropriate. Concerning valuation of securities:

* * * * *

Dated: June 3, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93-21551 Filed 9-3-93; 8:45 am]

BILLING CODE 6025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-218-AD; Amendment 39-8658; AD 93-16-01]

Airworthiness Directives; Aerospatiale Model ATR72-100 and -200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR72-100 and -200 series airplanes, that requires replacement of certain main landing gear (MLG) side braces. This amendment is prompted by reports of corrosion on the MLG side braces on Aerospatiale Model ATR42 series airplanes; these MLG side braces are similar in design to those installed on Model ATR72 series airplanes. The actions specified by this AD are intended to prevent collapse of the landing gear.

DATES: Effective October 7, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 7, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1112; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72-100 and -200 series airplanes was published in the Federal Register on May 3, 1993 (58 FR 21959). That action proposed to require replacement of certain main landing gear (MLG) side braces.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposal.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts would be provided at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,200, or $220 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major

rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-16-01 Aerospatiale: Amendment 39-8658. Docket 92-NM-218-AD.

Applicability: Model ATR72-100 and -200 series airplanes, equipped with main landing gear (MLG) side braces having part number (P/N) D23207000 or D23207000-1, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent collapse of the landing gear, accomplish the following:

(a) Prior to the accumulation of 7,500 landings on the MLG side brace or within the next 100 landings after the effective date of this AD, whichever occurs later, replace any side brace having P/N D23207000 or D23207000-1 with a repaired or modified side brace having P/N D23207000-2, in accordance with Aerospatiale Service Bulletin ATR72-32-1011, dated August 7, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement shall be done in accordance with Aerospatiale Service Bulletin ATR72-32-1011, dated August 7, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 7, 1993.

Issued in Renton, Washington, on August 10, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-21638 Filed 9-3-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-NM-35-AD; Amendment 39-8676; AD 93-17-05]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that requires modification of the web installation between frames 1 and 2. This amendment is prompted by a report indicating that damage was found on the web and fitting on frame 2 during inspection of fatigue test airplanes. The actions specified by this AD are intended to prevent reduced structural integrity of the fuselage.

DATES: Effective October 7, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 7, 1993

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes was published in the **Federal Register** on May 18, 1993 (58 FR 28938). That action proposed to require modification of the web installation between frames 1 and 2.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposal.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Currently, no airplanes of U.S. registry will be affected by this proposed AD. However, should one of the affected airplanes be imported and placed on the U.S. register, it will take approximately 67 work hours per airplane to accomplish the proposed actions, at an average labor rate of $55 per work hour. Required parts will cost approximately $2,431 per airplane. Based on these figures, the total cost impact of the requirements of this AD is estimated to be $6,116 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a

substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-17-05 Airbus Industrie: Amendment 39-8676. Docket 93-NM-35-AD.

Applicability: Model A320 series airplanes; manufacturer's serial number (MSN) 005 through 012 inclusive, and MSN's 013 through 024 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage, accomplish the following:

(a) Modify the web installation between frames 1 and 2 in accordance with Airbus Industrie Service Bulletin No. A320-53-1002, Revision 1, dated November 30, 1992, at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes having MSN's 005 through 012, inclusive: Within 12,000 landings after the effective date of this AD.

(2) For airplanes having MSN's 013 through 024, inclusive: Within 15,000 landings after the effective date of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Airbus Industrie Service Bulletin No. A320-53-1002, Revision 1, dated November 30, 1992, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 5-6, 10-12, 14, 20, 25-26.	1	November 30, 1992.
2-4, 7-9, 13, 15-19, 21-24.	Original	January 17, 1992.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 7, 1993.

Issued in Renton, Washington, on August 23, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-21640 Filed 9-3-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-NM-27-AD; Amendment 39-8673; AD 93-17-03]

Airworthiness Directives; Boeing Model 737-200, -300, -400, and -500 Series Airplanes Equipped with BFGoodrich Evacuation Slides

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737-200, -300, -400, and -500 series airplanes, that requires modification of the evacuation slide valise. This amendment is prompted by three reports indicating that inflation pressure of the evacuation slides was lost due to failure of the aspirator to close and seal after ingesting the battery test lead, disabling the evacuation slide and making it unusable. The actions specified by this AD are intended to prevent passengers from being unable to exit the airplane in the event of an emergency evacuation.

DATES: Effective October 7, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 7, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from BFGoodrich Aircraft Evacuation Systems, 3414 South 5th Street, Phoenix, Arizona 85040. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM-131L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5338; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737-200, -300, -400, and -500 series airplanes was published in the **Federal Register** on April 29, 1993 (58 FR 25956). That action proposed to require modification of the evacuation slide valise.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposed rule.

One commenter requests that the AD be made applicable to BFGoodrich evacuation slides, rather than Boeing airplanes, because the modification is described in a BFGoodrich service bulletin. The FAA does not concur. When an unsafe condition exists in an article that is installed on a particular group of airplanes, the FAA's normal practice is to make the AD applicable to the basic type-certificated product (airplane) and to make that AD applicable only to those products that incorporate the affected article.

One commenter requests that the proposed 3-year compliance time for

modification of the evacuation slide valise be shortened to 6 months based on the degree of urgency of the unsafe condition. The FAA does not concur with the need for a shorter compliance time. In developing an appropriate compliance time for this action, the FAA considered the safety implications, parts availability, the average utilization rate of the affected fleet, and normal maintenance schedules for timely and orderly accomplishment of the modification. In consideration of these items, the FAA has determined that three years represents the appropriate interval of time allowable wherein the modifications can reasonably be accomplished and an acceptable level of safety can be maintained.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 600 BFGoodrich evacuation slides installed on Boeing Model 737–200, –300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The actual number of Model 737–200, –300, –400, and –500 series airplanes on which these evacuation slides are installed is unknown. However, the FAA has confirmed that none of the affected slides are installed on Model 737–200, –300, –400, or –500 series airplanes of U.S. registry; therefore, no airplanes of U.S. registry will be affected by this AD. If an affected airplane were to be placed on the U.S. Register in the future, the FAA estimates that it will take approximately 1 work hour per slide to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided to operators by the evacuation slide manufacturer at no charge. Based on these figures, the total cost impact of the AD is estimated to be $55 per slide.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–17–03 Boeing: Amendment 39–8673. Docket 93–NM–27–AD.

Applicability: Model 737–200, –300, –400, and –500 series airplanes equipped with BFGoodrich evacuation slides, as listed in BFGoodrich Service Bulletin 101658/659/660–25–257, dated November 20, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent passengers from being unable to exit the airplane in the event of an emergency evacuation, accomplish the following:

(a) Within 3 years after the effective date of this AD, modify the evacuation slide valise in accordance with BFGoodrich Service Bulletin 101658/659/660–25–257, dated November 20, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with BFGoodrich Service Bulletin 101658/659/660–25–257, dated November 20, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from BFGoodrich Aircraft Evacuation Systems, 3414 South 5th Street, Phoenix, Arizona 85040. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 7, 1993.

Issued in Renton, Washington, on August 23, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21639 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–42–AD; Amendment 39–8674; AD 93–17–04]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all British Aerospace Model BAe 146 series airplanes, that currently requires an inspection to detect cracking of the upper main fitting of the nose landing gear (NLG), and replacement or repair of cracked parts. This amendment requires repetitive inspections to detect cracking of the upper main fitting of the NLG, and replacement or repair of cracked parts. This amendment is prompted by reports of cracking in the main fittings of the NLG. The actions specified by this AD are intended to prevent failure of the main fitting, which could lead to collapse of the NLG during landing.

DATES: Effective October 7, 1993.

The incorporation by reference of British Aerospace BAe 146 Inspection Service Bulletin S.B. 32–131, Revision 1, dated November 12, 1992, as listed in the regulations, is approved by the Director of the Federal Register as of October 7, 1993.

The incorporation by reference of British Aerospace BAe 146 Inspection Service Bulletin S.B. 32–131, dated December 6, 1991, as listed in the

regulations, was approved previously by the Director of the Federal Register as of January 12, 1993 (57 FR 57883, December 8, 1992).

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, Inc., Avro Division, 22070 Broderick Drive, Sterling, Virginia 20166. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 92–25–08, Amendment 39–8423 (57 FR 57883, December 8, 1992), which is applicable to all British Aerospace Model BAe 146 series airplanes, was published in the Federal Register on May 25, 1993 (58 FR 30000). The action proposed to require repetitive inspections to detect cracking of the upper main fitting of the nose landing gear (NLG), and replacement or repair of cracked parts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 45 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,188, or $138 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8423 (57 FR 57883, December 8, 1992), and by adding a new airworthiness directive (AD), amendment 39–8674, to read as follows:

93–17–04 British Aerospace: Amendment 39–8674. Docket 93–NM–42–AD. Supersedes AD 92–25–08, Amendment 39–8423.

Applicability: All Model BAe 146 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraphs (a)(1) and (b)(1) of this AD restate the requirements of AD 92–25–08, paragraphs (a) and (b). As allowed by the phrase, "unless accomplished previously," if the requirements of AD 92–25–08 have been accomplished previously, paragraphs (a)(1) and (b)(1) of this AD do not require that initial inspection to be repeated.

To prevent failure of the main fitting, which could lead to collapse of the nose landing gear (NLG) during, accomplish the following:

(a) For airplanes on which NLG part numbers 200876001 or 200876003 have been installed:

(1) Prior to the accumulation of 4,000 total landings or within 30 days after January 12, 1993 (the effective date of AD 92–25–08, Amendment 39–8423), whichever occurs later, conduct an eddy current or ultra high sensitivity penetrant inspection of the NLG, in accordance with British Aerospace BAe 146 Inspection Service Bulletin S.B. 32–131, dated December 6, 1991; or Revision 1, dated November 12, 1992.

(2) Within 4,000 landings after accomplishing the inspection required by paragraph (a)(1) or within 30 days after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 4,000 landings, repeat the inspection.

(3) If cracking is detected, prior to further flight, replace the currently installed NLG with a new or serviceable unit, or repair the crack in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Thereafter, repeat the inspection required by paragraph (a)(1) at intervals not to exceed 4,000 landings.

(b) For airplanes on which NLG part numbers 200876002, 200876004, or 201138002 have been installed: (1) Prior to the accumulation of 16,000 total landings or within 30 days after January 12, 1993 (the effective date of AD 92–25–08, Amendment 39–8423), whichever occurs later, conduct an eddy current or ultra sensitivity penetrant inspection of the NLG, in accordance with British Aerospace BAe 146 Inspection Service Bulletin S.B. 32–131, dated December 6, 1991; or Revision 1, dated November 12, 1992.

(2) Within 8,000 landings after accomplishing the inspection required by paragraph (b)(1) or within 30 days after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 8,000 landings, repeat the inspection.

(3) If cracking is detected, prior to further flight, replace the currently installed NLG with a new or serviceable unit, or repair the crack in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Thereafter, repeat the inspection required by paragraph (b)(1) at intervals not to exceed 8,000 landings.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections shall be done in accordance with British Aerospace BAe 146 Inspection Service Bulletin S.B. 32–131, dated December 6, 1991; or British Aerospace BAe 146 Inspection Service Bulletin S.B. 32–131, Revision 1, dated November 12, 1992, which includes Appendix A1 to Service Bulletin S.B. 32–131, dated December 6, 1991. The incorporation by reference of British Aerospace BAe 146 Inspection Service Bulletin S.B. 32–131, Revision 1, dated November 12, 1992, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of British Aerospace BAe 146 Inspection Service Bulletin S.B. 32–131, dated December 6, 1991, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of January 12, 1993 (57 FR 57883, December 18, 1992). Copies may be obtained from British Aerospace, Inc., Avro Division, 22070 Broderick Drive, Sterling, Virginia 20166. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 7, 1993.

Issued in Renton, Washington, on August 23, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21636 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 91–ANE–46; Amendment 39–8624; AD 93–13–11]

Airworthiness Directives; Textron Lycoming LTS 101 Series Turboshaft Engines and LTP 101 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Textron Lycoming LTS 101 series turboshaft and LTP 101 series turboprop engines, that reduces low cycle fatigue (LCF) retirement life limits for certain gas generator turbine rotor disks, and provides a removal schedule for those affected disks with reduced LCF retirement lives. This amendment is prompted by recent life analyses that have revealed calculated minimum lives significantly lower than original limits. The actions specified by this AD are intended to prevent gas generator turbine rotor disk failure, uncontained engine failure, and possible damage to the aircraft.

DATES: Effective November 8, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 8, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Textron Lycoming, 550 Main Street, Stratford, CT 06497. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7131; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Textron Lycoming LTS 101 series turboshaft engines and LTP 101 series turboprop engines was published in the **Federal Register** on March 15, 1993 (58 FR 13713). That action proposed to require establishing a reduced low cycle fatigue (LCF) life limit for gas generator turbine rotor disks and replacement of disks which exceed the new LCF life limit with serviceable disks in accordance with Textron Lycoming Service Bulletin (SB) No. LT 101–71–00–0002, Revision 12, dated May 31, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 1,500 Textron Lycoming LTS 101 turboshaft series engines and LTP 101 series turboprop engines of the affected design in the worldwide fleet. The FAA estimates that 100 engines installed on aircraft of U.S. registry contain disks that currently exceed the reduced LCF life limit proposed by this AD, and that it will take an average of approximately 8 hours to remove and replace the engine from the aircraft, and 16 work hours per engine to replace the gas generator turbine rotor disks and that the average labor rate is $55 per work hour. Required parts will cost approximately $40,000 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,132,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–13–11 Textron Lycoming: Amendment 39–8624. Docket 91–ANE–46.

Applicability: Textron Lycoming LTS 101 series turboshaft engines and LTP 101 series turboprop engines installed on but not limited to Aerospatiale AS 350 and SA366G, Bell 222, and Messerschmitt-Bolkow-Blohm (MBB) BK117 helicopters; or Piaggio P166–DL3 and Airtractor AT302 airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent gas generator turbine rotor disk failure, uncontained engine failure, and possible damage to the aircraft, accomplish the following:

(a) Remove from service and replace with a serviceable part, gas generator turbine rotor disks in accordance with the following schedule based on disk cycles since new (CSN) on the effective date of this AD, but not to exceed the total operating hour service life limits established in Textron Lycoming Service Bulletin (SB) No. LT 101–71–00–0002, Revision 12, dated May 31, 1991:

(1) For Model LTS 101 series turboshaft engines with gas generator turbine rotor disks identified by Part Numbers (P/N) 4–111–015–04 or 4–111–015–09:

(i) Replace disks with 6,800 or more CSN within 100 cycles in service (CIS) or 1 month after the effective date of this AD, whichever occurs first, but not to exceed 7,500 CSN.

(ii) Replace disks with 6,500 or more CSN but less than 6,800 CSN within 200 CIS, or 3 months after the effective date of this AD, whichever occurs first.

(iii) Replace disks with 6,000 or more CSN but less than 6,500 CSN, within 400 CIS, or 6 months after the effective date of this AD, whichever occurs first.

(iv) Replace disks with 5,500 or more CSN but less than 6,000 CSN, within 600 CIS, or 9 months after the effective date of this AD, whichever occurs first.

(v) Replace disks with 5,000 or more CSN but less than 5,500 CSN, within 800 CIS, or 12 months after the effective date of this AD, whichever occurs first.

(vi) Replace disks with 4,000 or more CSN but less than 5,000 CSN, within 1,000 CIS, or 15 months after the effective date of this AD, whichever occurs first.

(vii) Replace disks with less than 4,000 CSN before exceeding 5,000 CSN.

(2) For Textron Lycoming Model LTP 101 series turboprop engines with gas generator turbine rotor disks identified by P/N 4–111–015–04 or P/N 4–111–015–09:

(i) Replace disks with 5,000 or more CSN within 100 CIS, or 3 months after the effective date of this AD, whichever occurs first, but not to exceed 5,500 CIS.

(ii) Replace disks with 4,000 or more CSN but less than 5,000 CSN, within 200 CIS, or 6 months after the effective date of this AD, whichever occurs first.

(iii) Replace disks with 3,400 or more CSN but less than 4,000 CSN, within 300 CIS, or 9 months after the effective date of this AD, whichever occurs first.

(iv) Replace disks with 3,000 or more CSN but less than 3,400 CSN, within 400 CIS, or 12 months after the effective date of this AD, whichever occurs first.

(v) Replace disks with less than 3,000 CSN before exceeding 3,400 CSN.

(3) For Textron Lycoming Model LTS 101 series turboshaft engines with gas generator turbine rotor disks identified by P/N 4–111–015–14, replace disks before exceeding 6,300 CSN.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety, may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) The total operating hour service life limit shall be established in accordance with the following Textron Lycoming service bulletin:

Document No.	Pages	Revision	Date
LT 101–71–00–0002	1–16	12	May 31, 1991.

Total Pages: 16.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Textron Lycoming, 550 Main Street, Stratford, CT 06497. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 8, 1993.

Issued in Burlington, Massachusetts, on July 7, 1993.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–21637 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 92–ANE–25]

Alteration of VOR Federal Airway A–123; NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Federal Airway V–123 by realigning the airway from the TRESA Intersection to the CASSH Intersection located in New York. Realigning V–123 will simplify the flow of traffic and reduce controller workload.

EFFECTIVE DATE: 0901 UTC, November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On March 19, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify V–123 by realigning the airway from the TRESA Intersection to the CASSH Intersection located in New York (58 FR 15118). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The airway listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies V–123 by realigning the airway from the TRESA Intersection to the CASSH Intersection located in New York. Realigning V–123 will eliminate the dogleg to simplify the flow of traffic and reduce the air traffic controller's workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR , 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–123 [Revised]

From INT Washington, DC, 065° and Baltimore, MD, 197° radials, via INT Washington, DC, 065° and Woodstown, NJ, 230° radials; Woodstown; Robbinsville, NJ; INT Robbinsville 044° and LaGuardia, NY, 213° radials; LaGuardia; INT LaGuardia 032° and Carmel, NY, 157° radials; Carmel; INT Carmel 344° and Albany, NY, 181° radials; Albany; Cambridge, NY; to Glens Falls, NY.

* * * * *

Issued in Washington, DC, on August 26, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–21684 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 92–AGL–10]

Alteration of VOR Federal Airway V–413

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Federal Airway V–413 by extending the airway from the Ironwood, MI, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) to the Eau Claire, WI, VORTAC. This action will expedite the flow of air traffic and reduce the controller's workload.

EFFECTIVE DATE: 0901 UTC, November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On May 18, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify V–413 by extending the airway from the Ironwood, MI, VORTAC to the Eau Claire, WI, VORTAC (58 FR 28941). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The airway listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies V–413 by extending the airway from the Ironwood, MI, VORTAC to the Eau Claire, WI, VORTAC. This action will expedite the flow of air traffic and reduce the controller's workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–413 [Revised]

From Ironwood, MI; Eau Claire, WI; INT Eau Claire 269° and Gopher, MN, 109° radials; Gopher; INT Gopher 321° and Brainerd, MN, 174° radials; Brainerd.

* * * * *

Issued in Washington, DC, on August 26, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–21685 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ANM–1]

Amendment of Class D Airspace; Broomfield, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Jefferson County Airport, Broomfield, Colorado, Class D airspace. It is necessary to amend this airspace description concurrent with amendment and relocation of the new Denver Airport Class B airspace. Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the terms "airport traffic area and control zone," replacing them with the designation "Class D airspace." The Class D airspace will be depicted on aeronautical charts for pilot reference when the new Denver International Airport opens.

EFFECTIVE DATE: 0701 U.T.C., December 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 92–ANM–1, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

On June 3, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D airspace at Jefferson County Airport, Broomfield, Colorado (58 FR 31483). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received.

Establishment of a new International Airport at Denver, Colorado, requires relocation and amendment of the Denver Class B airspace to center it on the new airport location. There is a simultaneous requirement to amend all airspace adjacent to the Class B airspace, including the Jefferson County Airport Class D airspace.

Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the terms "airport traffic area and control zone" and replaced them with the designation "Class D airspace" for airspace extending upward from ground level. Other than that change in terminology, and a minor change in the airport geographical coordinates with an attending change in the Class D radius, this amendment is the same as that proposed in the notice. The coordinates in this final rule are in North American Datum 83.

Class D airspace designations for airspace extending upward from ground level are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298, July 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends Class D airspace at Broomfield, Colorado, to adjust with the amendment and relocation of the Denver Class B airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ANM CO D Broomfield, CO [Revised]

Jefferson County Airport, CO
(lat. 39°53'09" N, long. 105°07'02" W)

That airspace extending upward from the surface to but not including 8,000 feet MSL within a 5.0-mile radius of the Jefferson County Airport. This Class D airspace is effective during the specific dates and times established in advance by Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on August 24, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93–21677 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–AGL–1]

Alteration of Class E Airspace; Grand Marais, MN

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action alters the existing Grand Marais, MN, Class E airspace to accommodate a new Nondirectional Beacon (NDB) runway 27 Standard Instrument Approach Procedure (SIAP) to Grand Marais/Cook County Airport, Grand Marais, MN. This airspace action also changes the airport name from Devils Track Municipal Airport to Grand Marais/Cook County Airport. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. Controlled airspace extending from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: 0901 UTC, November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On February 12, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the existing Grand Marais, MN, transition area airspace (58

FR 8244). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area" and has replaced it with the designation "Class E airspace". Except for editorial changes and this change in terminology, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the existing Grand Marais, MN, Class E airspace to accommodate a new NDB runway 27 SIAP to Grand Marais/Cook County Airport, Grand Marais, MN. This action also changes the airport name from Devils Track Municipal Airport to Grand Marais/Cook County Airport.

Controlled airspace extending from 700 to 1200 feet AGL is needed to contain aircraft executing the approach.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Grand Marais, MN [Revised]

Grand Marais/Cook County Airport, MN
(lat. 47°50'18" N., long. 90°22'59" W.)
Cook County NDB
(lat. 47°50'24" N., long. 90°23'08" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Grand Marais/Cook County Airport and within 2.2 miles each side of the 104° bearing from the Cook County NDB extending from the 6.4-mile radius to 7 miles east of the airport, excluding that airspace which overlies P204.

* * * * *

Issued in Des Plaines, Illinois on August 19, 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–21676 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AGL–4]

Establishment of Class E Airspace; Moose Lake, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace near Moose Lake, MN, to accommodate a new Nondirectional Beacon (NDB) runway 04 Standard Instrument Approach Procedure (SIAP) to Moose Lake Carlton County Airport, Moose Lake, MN. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. Controlled airspace extending from 700 to 1200 feet above ground level (AGL) is needed to contain airspace executing the approach. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: 0901 UTC, November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On March 15, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area near Moose Lake, MN, (58 FR 13715). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area" and has replaced it with the designation "Class E airspace". Other than that change in terminology, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace near Moose Lake, MN, to accommodate a new NDB runway 04 SIAP to Moose Lake Carlton County Airport, Moose Lake, MN.

Controlled airspace extending from 700 to 1200 feet AGL is needed to contain aircraft executing the approach.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Moose Lake, MN [New]

Moose Lake Carlton County Airport, MN
(lat. 46°25'08" N., long. 92°48'17" W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Moose Lake Carlton County Airport, MN.

* * * * *

Issued in Des Plaines, Illinois on August 19, 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–21673 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–AGL–5]

Establishment of Class E Airspace; Fort Atkinson, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace near Fort Atkinson, WI, to accommodate a new Very High Frequency Omnidirectional Range-A (VOR–A) instrument approach procedure to Fort Atkinson Municipal Airport, Fort Atkinson, WI. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. Controlled airspace extending from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: 0901 UTC, November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On April 7, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area near Fort Atkinson, WI, (58 FR 18055). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area" and has replaced it with the designation "Class E airspace". Except for editorial changes and this change in terminology, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace near Fort Atkinson, WI, to accommodate a new VOR–A instrument approach procedure to Fort Atkinson Municipal Airport, Fort Atkinson, WI.

Controlled airspace extending from 700 to 1200 feet AGL is needed to contain aircraft executing the approach.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Fort Atkinson, WI [New]

Fort Atkinson Municipal Airport, WI
(lat. 42°57'48" N., long. 88°49'03" W.)

That airspace extending upward from 700 feet above the surface within a 6.3 mile radius of Fort Atkinson Municipal Airport, excluding that airspace within the Watertown, WI, Class E airspace area.

* * * * *

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–21672 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AGL–3]

Establishment of Class E Airspace; Necedah, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace near Necedah, WI, to accommodate a new Nondirectional Beacon (NDB) runway 36 Standard Instrument Approach Procedure (SIAP) to Necedah Airport, Necedah, WI. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. Controlled airspace extending from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: 0901 UTC, November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On March 1, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area near Necedah, WI, (58 FR 11802). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area" and has replaced it with the designation "Class E airspace". Except for editorial changes and this change in terminology, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace near Necedah, WI, to accommodate a new NDB runway 36 SIAP to Necedah Airport, Necedah, WI.

Controlled airspace extending from 700 to 1200 feet AGL is needed to contain aircraft executing the approach.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Necedah, WI [New]

Necedah Airport, WI
(lat. 44°02'01" N., long. 90°05'07" W.)
Necedah NDB
(lat. 44°02'03" N., long. 90°04'58" W.)

That airspace extending upward from 700 feet above the surface within a 6.3 mile radius of Necedah Airport, and within 2.5 miles each side of the 181° bearing from the Necedah NDB extending from the 6.3 mile radius area to 7 miles south of the airport, excluding that airspace which overlies the Camp Douglas, WI, Class D and E airspace, during the specific dates and times Class D airspace is effective.

* * * * *

Issued in Des Plaines, Illinois on August 19, 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–21674 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AGL–11]

Modification of Class D and Class E Airspace; Youngstown/Warren, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies airspace descriptions associated with Youngstown/Warren, OH, Class D and Class E airspace. The reason for these modifications is to correct the reference to Youngstown Municipal Airport which was renamed Youngstown-Warren Regional Airport and to correct the reference to Berlin Airpark which was renamed Barber Airport. These name changes require modification of certain airspace descriptions so that the airspace is accurately identified. The correct names will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: 0901 UTC, November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300

East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7568.

SUPPLEMENTARY INFORMATION:

History

The modifications made by this rule are editorial in nature and do not require any specific airspace charting design changes, therefore, a Notice of Proposed Rulemaking (NPRM) was not issued. Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the terms "control zone" and "transition area" and replace them with "Class D airspace" for control zones with towers" and "Class E airspace" for transition area airspace extending upward from 700 feet or more above ground level. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 and Class E airspace designations for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993 and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 in effect as of September 16, 1993. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies certain Class D and Class E airspace descriptions due to a change in airport name from Youngstown Municipal Airport to Youngstown-Warren Regional Airport. The modified descriptions will provide accurate reference for aircraft navigating these areas.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 29, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 in effect as of September 16,1 993, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designation and Reporting Points dated June 17, 1993 and effective September 16, 1993, is amended as follows:

Paragraph 5000 Control zones with air traffic control towers

* * * * *

AGL OH D Youngstown/Warren, OH [Revised]

Youngstown-Warren Regional Airport, OH
(lat. 41°15'32" N., long. 80°40'34" W.)

That airspace extending upward from the surface to and including 3,700 feet MSL within a 4.4-mile radius of the Youngstown-Warren Regional Airport.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AGL OH E5 Alliance, OH [Revised]

Alliance, Barber Airport, OH
(lat. 40°58'54" N., long. 81°02'31" W.)
Sebring, Tri-City Airport, OH
(lat. 40°54'21" N. long, 81°00'00" W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of Barber Airport and within a 6.2-mile radius of the Tri-City Airport, excluding that airspace within the Youngstown/Warren, OH Class E airspace area.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AGL OH E5 Salem, OH [Revised]

Salem Airpark Incorporated Airport, OH
(lat. 40°56'53" N., long. 80°51'43" W.)

That airspace extending from 700 feet above the surface within a 6.3-mile radius of the Salem Airpark, Inc. Airport, excluding that airspace within the Youngstown/Warren, OH; Alliance, OH; North Lima, OH, and Sebring, OH, Class E airspace areas.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Youngstown Elser Metro Airport, OH [Revised]

Youngstown Elser Metro Airport, OH
(lat. 40°57'37" N., long. 80°40'35" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Youngstown Elser Metro Airport, excluding that airspace within the Youngstown/Warren, OH, Class E airspace area.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Youngstown-Warren Regional Airport, OH [Revised]

Youngstown-Warren Regional Airport, OH
(lat. 41°15'32" N., long. 80°40'34" W.)
Youngstown Executive Airport, OH
(lat. 41°03'33" N., long. 80°49'54" W.)
Youngstown, Lansdowne Airport, OH
(lat. 41°07'50" N., long. 80°37'10" W.)
Youngstown VORTAC
(lat. 41°19'52" N., long. 80°40'29" W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Youngstown-Warren Regional Airport and within 3.1 miles each side of the Youngstown VORTAC 358° radial extending from the 6.9-mile radius to 10 miles north of the VORTAC, and within a 6.3-mile radius of the Youngstown Executive Airport, and within 3.9-miles each side of the Youngstown VORTAC 203° radial, extending from the 6.3-mile radius of the Youngstown Executive Airport to 9.7 miles northeast of the airport, and within the 6.2-mile radius of the Lansdowne Airport.

* * * * *

Issued in Des Plaines, Illinois on, August 23, 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–21671 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AGL–10]

Modifications to Class E Airspace; Wausau, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies existing Class E airspace areas; specifically, Class E2 (Class E airspace areas designated as a surface area for an airport) and Class E5 (Class E airspace areas extending upward from 700 feet or more above the surface of the earth) near

Wausau, WI, to accommodate a new Nondirectional Beacon-B (NDB–B) Standard Instrument Approach Procedure (SIAP) to Wausau Municipal Airport, Wausau, WI. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On June 15, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the control zone and transition area near Wausau, WI, (58 FR 33054). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the terms "control zone" and "transition area" and has replaced them with the designation "Class E airspace". Class E2 airspace areas will be designated as a surface area for an airport. Class E5 airspace areas will be airspace extending upward from 700 feet or more above the surface of the earth. Except for editorial changes and the change in terminology this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class E2 and E5 airspace designations respectively are published in Paragraphs 6002 and 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298: July 6, 1993). The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies Class E airspace at Wausau, WI, to accommodate a new NDB–B SIAP to Wausau Municipal Airport, Wausau WI.

The development of a new SIAP requires that the FAA modifies the designated airspace to ensure that the procedure will be contained within controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL WI E2 Wausau, WI [Revised]

Wausau Municipal Airport, WI
(lat. 44°55'43" N, long. 89°37'36" W)

Within a 4.4-mile radius of Wausau Municipal Airport, WI, and within 2.5 miles each side of the 129° bearing from the airport extending from the 4.4-mile radius to 7 miles southeast of the airport.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Wausau, WI [Revised]

Wausau Municipal Airport, WI
(lat. 44°55'43" N, long. 89°37'36" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Wausau Municipal Airport, WI, and within 2.5 miles each side of the 129° bearing from the airport extending from the 6.5-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on August 18, 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–21675 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27425; Amdt. No. 1561]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective*: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office that originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Weather.

Issued in Washington, DC on August 27, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23, VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective November 11, 1993*

Galena, AK, Galena, RADAR–1, Amdt. 8, CANCELLED

Las Cruces, NM, Las Cruces International, NDB RWY 8, Orig., CANCELLED

Arlington, TX, Arlington Muni, VOR/DME RWY 34, Amdt. 5

Arlington, TX, Arlington Muni, VOR/DME RNAV RWY 34, Amdt. 5

Mount Pleasant, TX, Mount Pleasant Muni, VOR/DME–A, Amdt. 4

Mount Pleasant, TX, Mount Pleasant Muni, NDB RWY 35, Amdt. 3

* * * *Effective October 14, 1993*

Clarion, IA, Clarion Muni, NDB RWY 14, Amdt. 3

Sheldon, IA, Sheldon Muni, VOR RWY 33, Amdt. 1

Sheldon, IA, Sheldon Muni, NDB RWY 33, Amdt. 6

Ashland, OH, Ashland County, VOR–A, Amdt. 6

Ashland, OH, Ashland County, NDB RWY 18, Amdt. 8

Cincinnati, OH, Cincinnati-Blue Ash, VOR RWY 24, Amdt. 4

Sulphur Springs, TX, Sulphur Springs Muni, VOR–A, Amdt. 4

Sulphur Springs, TX, Sulphur Springs Muni, VOR/DME–B, Amdt. 5

Sulphur Springs, TX, Sulphur Springs Muni, NDB RWY 18, Amdt. 4

* * * *Effective September 16, 1993*

Brooksville, FL, Hernando County, ILS RWY 9, Orig.

* * * *Effective August 23, 1993*

Tallahassee, FL, Tallahassee Muni, RADAR–1, Amdt. 4

* * * *Effective August 18, 1993*

Crossville, TN, Crossville Memorial, ILS RWY 26, Amdt. 11

[FR Doc. 93–21682 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27426; Amdt. No. 1562]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office that originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Weather.

Issued in Washington, DC on August 27, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective	State	City	Airport	FDC No.	SIAP
07/28/93	AK	Juneau	Juneau Intl	FDC 3/4170	NDB–1 Rwy 8 Amdt 10.
08/03/93	OK	Sand Springs	William R. Pogue Muni	FDC 3/4639	VOR–A Amdt 1.
08/13/93	AZ	Prescott	Ernest A. Love Field	FDC 3/4551	ILS/DME Rwy 21 Amdt 2.
08/13/93	AZ	Prescott	Ernest A. Love Field	FDC 3/4552	RNAV Rwy 21 Amdt 2.
08/18/93	ND	Fargo	Hector Intl	FDC 3/4655	ILS Rwy 35 Amdt 32.
08/20/93	OK	Medford	Medford Muni	FDC 3/4707	NDB Rwy 17 Amdt 1A.
08/20/93	TX	Dallas-Fort Worth	Dallas-Fort Worth International	FDC 3/4708	NDB Rwy 17R Amdt 6.
08/23/93	TX	Fort Worth	Fort Worth Spinks	FDC 3/4741	RNAV Rwy 35 Amdt 1.
08/23/93	TX	Fort Worth	Fort Worth Spinks	FDC 3/4742	ILS Rwy 35 Orig.
08/23/93	WA	Kelso	Kelso-Longview	FDC 3/4713	NDB–A Amdt 5.

[FR Doc. 93–21683 Filed 9–3–93; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771, 777, 778, 779, and 799

[Docket No. 930654–3154]

Exports of Certain Petroleum and Petroleum Products Produced From the Naval Petroleum Reserves; Other Revisions and Clarifications to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the Export Administration Regulations (EAR) in several ways. This rule adds an exclusion to General License GIT that prohibits export of controlled chemical weapons precursors under this general license, removes the affidavit requirement for shipments under General License G–NNR of petroleum products produced from a Naval Petroleum Reserve, and adds New Zealand to the list of countries eligible to receive crime control and detection instruments under General License GCG.

This rule also clarifies that publicly available information is exempt from the validated license requirement for the export, reexport, or transfer of any commodities, software, or technical data when a U.S. person knows that the item will be used in certain proliferation activities. In addition, this rule adds Hong Kong and New Zealand to the list of countries that do not require specific authorization for the reexport of software to the People's Republic of China.

EFFECTIVE DATE: This rule is effective September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202)482–2440.

SUPPLEMENTARY INFORMATION:

Background

This final rule makes several corrections, clarifications, and additions to the Export Administration Regulations (EAR). First, in support of U.S. foreign policy opposing the proliferation and illegal use of chemical weapons, this rule adds an exclusion to General License GIT that prohibits export of controlled chemical weapons precursors under this general license.

This rule also removes the affidavit requirement for shipments under General License G–NNR of petroleum products produced from a Naval Petroleum Reserve to correctly reflect a change in license policy effective March 19, 1990 (55 FR 10051). However, exporters are advised that the EAR continues to prohibit the export of commodities produced from a Naval Petroleum Reserve.

This final rule also amends the EAR to correctly reflect current licensing procedures by adding New Zealand to the list of countries eligible to receive crime control and detection instruments under General License GCG. General License GCG authorizes shipments to agencies of certain cooperating governments. This rule also conforms § 778.9, regarding validated license requirements for activities of a U.S. person, to § 778.7, paragraph (c)(1), and § 778.8, paragraph (c)(1), which provide an exception for exports covered by General License GTDA or by ECCN 0A09I.

This final rule also adds Hong Kong and New Zealand to the list of countries that do not require specific authorization for the reexport of software to the People's Republic of China. This change reflects current licensing benefits granted these countries on May 5, 1992 (57 FR 19334) as part of the Department of Commerce initiative to streamline export license requirements for exports to trading partners that demonstrate the ability to safeguard reexports of U.S.-origin strategic goods and technology.

Finally, this rule amends the Commerce Control List by revising the requirements sections of ECCNs 5A20 and 9A18. For ECCN 5A20, the "Unit" paragraph is revised because the entry does not include parts and accessories. ECCN 9A18 is revised by removing eligibility for General License GCT, to

correct for an omission in a rule published in 57 FR 18817 on May 1, 1992.

Saving Clause

Shipments of items removed from general license authorizations as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before September 21, 1993 may be exported under the previous general license provisions up to and including October 5, 1993. Any such items not actually exported before midnight October 5, 1993, require a validated export license in accordance with this regulation.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0007, 0694–0010, and 0694–0026.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Parts 771 and 799

Exports, Reporting and recordkeeping requirements.

15 CFR Part 777

Administrative practice and procedure, Exports, Forests and forest products, Petroleum, Reporting and recordkeeping requirements.

15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements.

15 CFR Part 779

Computer technology, Exports, Reporting and recordkeeping requirements, Science and technology.

Accordingly, parts 771, 777, 778, 779, and 799 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR parts 771 and 799 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

2. The authority citation for 15 CFR part 777 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

3. The authority citation for 15 CFR parts 778 and 779 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

PART 771—[AMENDED]

4. Section 771.4 is amended:

(a) By revising the phrase "exported or reexported" in paragraph (b) (introductory text) to read "exported"; and

(b) By adding paragraph (b)(2) to read as follows:

§ 771.4 General License GIT; intransit shipments.

* * * * *

(b) * * *

(2) Chemicals controlled under ECCN 1C60;

* * * * *

§ 771.14 [Amended]

5. Section 771.14 is amended by revising the phrase "COCOM participating countries" in paragraph (d)(3) to read "COCOM participating countries and New Zealand".

6. Section 771.16 is amended by revising paragraph (b) to read as follows:

§ 771.16 General License G–NNR; shipments of certain non-naval reserve petroleum commodities.

* * * * *

(b) The commodity proposed for export was not produced or derived from the Naval Petroleum Reserves or became available for export as a result of an exchange of a Naval Petroleum Reserves-produced or derived

commodity. Any commodity listed in Petroleum Commodity Groups B, C, D, E, F, G, K, L, M, N, or Q, that does not meet the conditions for export under General Licenses G–NNR, GLV, SHIP STORES, PLANE STORES, RCS, GLR, or GUS, may be exported only under a validated license issued pursuant to § 777.6(d)(3).

* * * * *

PART 777—[AMENDED]

§ 777.6 [Amended]

7. Section 777.6 is amended by revising the phrase "§ 777.6(e) (4) and (5)" in paragraph (d)(3)(ii) to read "§ 777.6(e) (3) and (4)".

PART 778—[AMENDED]

8. Section 778.9 is amended by revising paragraph (a) to read as follows:

§ 778.9 Activities of U.S. persons.

(a) A validated license or reexport authorization is required for the export, reexport, or transfer of any commodities, software, or technical data (except for items classified under ECCN 0A98 as listed in Supplement No. 1 to section 799.1 of this subchapter (the Commerce Control List) and technical data eligible for general license GTDA as described in Section 779.3 of this subchapter), by a U.S. person (defined in paragraph (f) of this section) where that person knows that such commodities, software, or technical data:

* * * * *

PART 779—[AMENDED]

§ 779.8 [Amended]

9. Section 779.8 is amended by revising the phrase "Austria, Finland, Sweden, Ireland, or Switzerland" in paragraph (b)(4) to read "Austria, Finland, Hong Kong, Ireland, New Zealand, Sweden, or Switzerland".

PART 799—[AMENDED]

10. In Supplement No. 1 to Section 799.1, Category 5, Part III, ECCN 5A20B is amended by revising the "Requirements" section to read as follows:

5A20B Telemetering and telecontrol equipment usable for unmanned air vehicles or rocket systems.

Requirements

Validated License Required: QSTVWYZ
Unit: Number
Reason for Control: MT
GLV: $5,000
GCT: No
GFW: No

* * * * *

11. In Supplement No. 1 to Section 799.1, Category 9, ECCN 9A18A is amended by revising the "Requirements" section to read as follows:

9A18A Commodities on the International Munitions List.

Requirements

Validated License Required: QSTVWYZ. (See *Notes*)
Unit: Equipment in number; parts and accessories in $ Value
Reason for Control: NS, FP (See *Notes*)
GLV: $1,500
GCT: No
GFW: No

Note 1. Foreign policy controls apply to aircraft for country groups S and Z, Iran, Syria, and South African police and military entities.

Note 2: Foreign policy controls apply to military vehicles for all destinations except NATO, Australia, Japan and New Zealand (See §§ 776.16 and 785.4(c)).

Note 3: Foreign policy controls apply to 9A18.b, c, and e for South Africa.

* * * * *

Dated: August 30, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93–21633 Filed 9–3–93; 8:45 am]

BILLING CODE 3510–DT–P

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15 CFR Parts 771, 775, and 785

[Docket No. 930660–3160]

Revisions to the Export Administration Regulations; Clarifications

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is amending the Export Administration Regulations (EAR), to make certain editorial clarifications and corrections and, in some cases, insert material inadvertently omitted from earlier regulatory amendments.

EFFECTIVE DATE: This rule is effective September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, U.S. Department of Commerce, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION: Specifically, this rule makes the following editorial corrections and clarifications:

(1) Revises § 771.3 to clarify the eligibility requirements for General License G-DEST;

(2) Revises § 775.6 to clarify that license applications for temporary exports to the People's Republic of China, filed in accordance with § 772.8(c), do not require supporting documentation; and

(3) Revises § 785.6(b) to clarify that certain non-Naval Petroleum Reserve commodities may be exported to Canada under General License G–NNR.

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule does involve a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), which has been approved by the Office of Management and Budget (OMB) under control number 0694–0005.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, this rule does not impose a new control. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is issued in final form. However, comments from the public are always welcome. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Parts 771 and 775

Exports, Reporting and recordkeeping requirements.

15 CFR Part 785

Communist countries, Exports.

Accordingly, parts 771, 775, and 785 of the Export Administration Regulations are amended as follows:

1. The authority citation for 15 CFR part 771 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

2. The authority citations for 15 CFR parts 775 and 785 continue to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

PART 771—[AMENDED]

3. Section 771.3 is revised to read as follows:

§ 771.3 General license G–DEST; shipments of commodities to destinations not requiring a validated license.

A general license designated G-DEST is established, subject to the provisions of this section 771.3, authorizing the export of any commodity listed on the Commerce Control List to any destination for which a validated license is not required by the information set forth in the paragraph titled *"Validated License Required"*. A validated export license is required and General License G–DEST is not available for a proposed export if the *"Validated License Required"* paragraph lists any of the following: the country of destination; an entity in a country of destination; the letter symbol for the country group that includes the destination; or a supplementary list of countries that includes the destination. Shipments under General License G–DEST are subject to the prohibitions contained in § 771.2(c).

PART 775—[AMENDED]

4. Section 775.6 is amended by removing paragraph (c)(2) and redesignating paragraphs (c)(3) and (c)(4) as paragraphs (c)(2) and (c)(3) respectively and revising them, and by adding a new paragraph (d) to read as follows:

§ 775.6 People's Republic of China End-User Certificate.

* * * * *

(c) * * *

(2) The commodity to be exported (i.e., replacement parts or sub-assemblies, not tools of trade or test instruments) is for servicing previously exported equipment and is valued at $75,000 or less; or

(3) The Chinese do not issue an End-Use Certificate because the end-user is not a Chinese entity.

(d) *Exemptions for temporary export.* License applications for temporary export, e.g., exhibition, demonstration, etc., in the People's Republic of China must be filed in accordance with the procedures outlined in section 772.8(c) of this subchapter; no supporting documentation is required.

PART 785—[AMENDED]

5. Section 785.6 is amended by revising paragraph (b) to read as follows:

§ 785.6 Canada.

* * * * *

(b) The Commerce Control List indicates that a validated license is required for export to Canada. Shipments of certain non-naval reserve petroleum commodities may be exported to Canada under General License G–NNR provided the criteria set forth under § 771.16 (a) and (b) of this subchapter are met.

Dated: August 30, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93–21634 Filed 9–3–93; 8:45 am]

BILLING CODE 3510–DT–P

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15 CFR Part 770, 771, 774, 775, 776, 779, and 785

[Docket No. 930780–3180]

Revisions to the Export Administration Regulations: New General License for Vietnam; Name Change to Reflect the Creation of the Czech Republic and the Slovak Republic

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is amending the Export Administration Regulations (EAR) by revising the references to "Czechoslovakia" to read "Czech Republic" and "Slovak Republic" to reflect Czechoslovakia's separation into two countries, which was effective January 1, 1993. This rule also amends the EAR by establishing a new General License GVN to permit certain exports and reexports to support activities in Vietnam licensed by the Department of the Treasury's Office of Foreign Assets Control, related to obtaining and preparing to perform executory contracts with Vietnam or Vietnamese nationals.

EFFECTIVE DATE: This rule is effective September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Rod Joseph, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 482–4171.

SUPPLEMENTARY INFORMATION:

Background

On January 1, 1993, Czechoslovakia separated into two countries—the Czech Republic and the Slovak Republic. The Bureau of Export Administration (BXA) is revising all references to "Czechoslovakia" in the Export Administration Regulations (EAR) to correctly reflect the names of the new countries.

On December 30, 1992, the Department of the Treasury's Office of Foreign Assets Control (OFAC) published a final rule authorizing persons subject to U.S. jurisdiction to enter into contracts with Vietnam or Vietnamese nationals (57 FR 62230). The performance of such contracts may not begin until the embargo on Vietnam

is lifted or modified. However, OFAC may issue specific licenses authorizing commercial and financial transactions necessary to obtain, or to prepare to perform, contracts. These activities include the opening of offices in Vietnam, hiring staff, writing and designing plans, carrying out feasibility studies and engineering and technical surveys, and trade and service transactions related to the foregoing.

This rule creates a new general license, designated GVN, which allows export and reexport to Vietnam of eligible items required by parties who have been licensed by the Treasury Department to engage in activities necessary to obtain, or to prepare to perform, contracts. The items exported must remain under the effective control of the parties who hold licenses under § 500.574 of the Foreign Assets Control Regulations (31 CFR 500.574), and may not be transferred to any other party in Vietnam or to any Vietnamese entity or national. Only items listed as eligible for General License GVN may be exported, and must be of the type and minimum quantity required to perform activities authorized by OFAC. Any other items needed to perform activities authorized by an OFAC license will continue to require a validated export license from the Department of Commerce.

This rule also amends the Special Country Policies section of the EAR to authorize the issuance of individual validated licenses to permit the export or reexport of items not eligible for General License GVN needed to support activities licensed by OFAC. Those wishing to export or reexport items that are not eligible for General License GVN must first comply with the licensing requirements set forth in 31 CFR 500.574. License applications submitted to the Bureau of Export Administration's Office of Export Licensing should include a copy of the OFAC license or a copy of the license application submitted to OFAC.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0008, 0694–0010, and 1505–0096.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 603(b)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Parts 771, 774, 775, and 776

Exports, Reporting and recordkeeping requirements.

15 CFR Part 779

Computer technology, Export, Reporting and recordkeeping requirements, Science and technology.

15 CFR Part 785

Exports.

Accordingly, parts 770, 771, 774, 775, 776, 779, and 785 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citations for 15 CFR parts 770, 771, and 774 continue to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

2. The authority citations for 15 CFR parts 775, 779 and 785 continue to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

3. The authority citation for 15 CFR part 776 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

PART 770—[AMENDED]

4. Supplement No. 1 to part 770 is amended by revising the text under the heading "Country Group W" to read as follows:

Supplement No. 1—Country Groups

* * * * *

Country Group W

Czech Republic
Poland
Slovak Republic
* * * * *

PART 771—[AMENDED]

5. A new § 771.28 is added to read as follows:

§ 771.28 General License GVN: Shipments to Vietnam in support of executory contracts.

(a) *Scope.* A general license GVN is established, subject to the provisions of this § 771.28, authorizing parties who hold a license from the Department of the Treasury's Office of Foreign Assets Control (OFAC) under 31 CFR 500.574, to export eligible items of the type and minimum quantity required to engage in activities covered by the Treasury license. OFAC issues specific licenses on a case-by-case basis authorizing activities necessary to obtain, or to prepare to perform, contracts in Vietnam.

(b) *Eligible items.* The items eligible for export under this general license are limited to those described under ECCNs on the CCL that have a final character of F, G, H, or I, except ECCNs 2B85F, 2B91F, 2B92F, 2B93F, 2B94F, 3B91F, 3D91F, 3E91F, 5E91F, 5E92F, 5E93F, 5E94F, 5E95F,6A90F, 7A94F, 7B94F, 7D94F, 7E94F, 8E92F, 8E93F, 9A91F, 9A94F, 9D91F, 9E90F, and 9E91F.

(c) *Special conditions.* (1) To use this general license, an exporter must have a license issued by the Office of Foreign Assets Control, Department of the Treasury, under 31 CFR 500.574;

(2) Items shipped must be the minimum quantities and types reasonably required to engage in OFAC-authorized activities, e.g., to furnish and equip offices, write and design plans, or carry out feasibility studies and engineering or technical surveys; and

(3) All items must be retained under the effective control of the exporting party, and may not be sold or otherwise retransferred within Vietnam or to any Vietnamese entity or national.

(d) *Reporting and Recordkeeping.* Records of shipments made under this general license must be kept in accordance with § 787.13 of this subchapter.

PART 774—[AMENDED]

§ 774.2 [Amended]

6. Section 774.2 is amended by revising the phrase "GUS or BAGGAGE" is paragraph (a)(1) to read "GUS, GVN, or BAGGAGE".

PART 775—[AMENDED]

§ 775.1 [Amended]

7. In § 775.1, in the table in paragraph (b), revise the words "Czechoslovakia Hungary, or Poland" in the second column for entry 6 to read "Czech Republic, Hungary, Poland, or Slovak Republic" and revise the words "Czechoslovakia, Hungary, or Poland" in footnote 1 to the table to read "Czech Republic, Hungary, Poland, or Slovak Republic".

§ 775.2 [Amended]

8. Section 775.2 is amended by revising the phrase "Polish, Hungarian, or Czechoslovak" in paragraph (b)(1) to read "Czech Republic, Hungarian, Polish, or Slovak Republic".

9. Section 775.8 is amended by revising the heading, paragraph (a), paragraph (b)(2), and the first sentence of paragraph (d) to read as follows:

§ 775.8 Czech, Hungarian, Polish, or Slovak Import Certificate.

(a) *Requirements.* License applications to export or reexport items identified by the code letter "A" on the Commerce Control List to the Czech Republic, Hungary, Poland, or the Slovak Republic must be accompanied by the original Import Certificate issued by the appropriate ministry listed in Supplement No. 1 of this part 775. These ministries certify that all items described in the Import Certificate are for use only as authorized and will not be reexported to a third country without prior authorization.

(b) * * *

(2) *Temporary export.* An Import Certificate need not be submitted to support a license application to export commodities or software for temporary exhibition, demonstration, or testing purposes in the Czech Republic, Hungary, Poland, or the Slovak Republic.

* * * * *

(d) *Delivery Verification.* The Office of Export Licensing will, on a selective basis, require Delivery Verification documents for shipments to the Czech Republic, Hungary, Poland, and the Slovak Republic that are subject to the Import Certificate procedure. * * *

§ 775.10 [Amended]

10. Section 775.10 is amended:

a. By revising the phrase "Polish, Hungarian, or Czechoslovak Import Certificates" in the introductory text and in paragraph (a) to read "Czech, Hungarian, Polish, or Slovak Import Certificates";

b. By revising the phrase "Polish, Hungarian, or Czechoslovak Import Certificate" in paragraph (b)(2) heading and introductory text, paragraph (c), paragraph (e), paragraph (f)(1) introductory text, paragraph (f)(2)(i) introductory text, and paragraph (g)(1) introductory text, to read "Czech, Hungarian, Polish, or Slovak Import Certificate"; and

c. By revising the phrase "or Indian Import Certificate number" in the second certification in paragraph (f)(2)(ii)(A) to read "Indian Import Certificate, or Czech, Hungarian, Polish, or Slovak Import Certificate number".

11. Supplement No. 1 to part 775 is amended:

a. By revising the term "Czechoslovakia" to read "Czech Republic"; and

b. By adding a new entry for "Slovak Republic" immediately after the entry for "Singapore", to read as follows:

SUPPLEMENT NO. 1.—AUTHORITIES ADMINISTERING IMPORT CERTIFICATE/DELIVERY VERIFICATION SYSTEM IN FOREIGN COUNTRIES [1]

Country	IC/DV authorities	System administered [2]
* * * * * * *		
Slovak Republic	Ministry of Foreign Affairs, Licensing-Registration Department, Spitalska 8, 813 15 Bratislava, Slovak Republic.	IC
	Central Customs Administration, Bratislava, Slovak Republic	DV

SUPPLEMENT NO. 1.—AUTHORITIES ADMINISTERING IMPORT CERTIFICATE/DELIVERY VERIFICATION SYSTEM IN FOREIGN COUNTRIES [1]—Continued

Country	IC/DV authorities	System administered [2]
•	•	•

[1] Facsimiles of Import Certificates and Delivery Verifications issued by each of these countries may be inspected at the Bureau of Export Administration Western Regional Office, 3300 Irvine Avenue, suite 345, Newport Beach, California 92660–3198 or at any U.S. Department of Commerce District Office (see listing in Commerce Office Addresses section of these regulations) or at the Office of Export Licensing, room 1099D, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.
[2] IC—Import Certificate and/or DV—Delivery Verification.

PART 776—[AMENDED]

12. Section 776.11 is amended by revising paragraph (f)(6)(i)(D) and paragraph (f)(6)(ii)(A) to read as follows:

§ 776.11 Supercomputers.

* * * * *

(f) * * *

(6) * * *

(i) * * *

(D) Czech Republic, Hungarian, Polish, or Slovak Republic Import Certificates—see § 775.8(a) of this subchapter.

(ii) * * *

(A) *Czech Republic, Hungary, Poland, and Slovak Republic.* Reproduced copies of the Czech, Hungarian, Polish, and Slovak Import Certificates;

* * * * *

PART 779—[AMENDED]

13. Section 779.4 is amended by revising paragraph (f)(1)(i) to read as follows:

§ 779.4 General license GTDR: Technical data under restriction.

* * * * *

(f) * * *

(1) * * *

(i) Reexport, directly or indirectly, to Country Group Q, S, W,[10] Y, or Z, or the People's Republic of China any technical data relating to commodities controlled to Country Group W as described in the paragraph titled "Validated License Required" of any entry of the Commerce Control List;

* * * * *

[10] Effective April 26, 1971, Country Group W no longer included Romania. Assurances executed prior to April 26, 1971, that refer to Country Group W continue to apply to Romania as well as Poland. Effective April 25, 1991, Czechoslovakia was added to Country Group W. Assurances executed on or after April 25, 1991, that refer to Country Group W apply to Czechoslovakia as well as Poland. On May 6, 1992, Hungary was removed from Country Group W. Assurances are no longer applicable to Hungary. On January 1, 1993, Czechoslovakia became two separate countries called the Czech Republic and the Slovak Republic. Assurances executed prior to January 1, 1993, that refer to Czechoslovakia continue to apply to the Czech Republic and the Slovak Republic.

§ 779.5 [Amended]

14. Section 779.5 is amended by revising the phrase "Poland, Hungary, and Czechoslovakia," in paragraph (a)(3) to read "the Czech Republic, Hungary, Poland, and the Slovak Republic,".

PART 785—[AMENDED]

15. Section 785.1 is amended by revising paragraph (a) to read as follows:

§ 785.1 Country group Z:[1] North Korea, Vietnam, and Cuba.

(a) As authorized by section 6 of the Export Administration Act of 1979 and by the Trading with the Enemy Act of 1917 as amended by Public Law 95–223, a validated license is required for foreign policy purposes for the export and reexport of virtually all U.S.-origin commodities and technical data to destinations in Country Group Z.

(1) The general policy is to deny all applications or requests to export or reexport U.S.-origin commodities and technical data to destinations in Country Group Z. Exceptions are contained in parts 771 and 779 of the EAR, and in ECCN 0A98 on the Commerce Control list. Other exceptions to the general policy of denial are as follows:

(i) Exports to Vietnam of donations to meet basic human needs by non-governmental, non-profit organizations may be authorized under General License G–NGO, as described in § 771.27 of this subchapter.

(ii) Exports to Vietnam of donations to meet basic human needs that do not qualify for general license G–NGO may be authorized under a Humanitarian License, as described in § 773.5 of this subchapter. Such exports may also be authorized for single transactions under an individual validated license.

(iii) Exports of commercially-supplied goods to meet basic human needs may be authorized under an individual validated license on a case-by-case basis for destinations in North Korea and Vietnam. The types of commodities that may be supplied commercially to meet basic human needs are the same as those types of commodities described in Supplement No. 7 to Part 773, but are not restricted solely to small scale projects at the local level.

(2) The Department of the Treasury's Office of Foreign Assets Control (OFAC), under 31 CFR 500.574, authorizes persons subject to U.S. jurisdiction to engage in activities related to obtaining and preparing to perform executory contracts with Vietnam or Vietnamese nationals. Such activities include opening offices in Vietnam, hiring staff, writing and designing plans, carrying out preliminary feasibility studies and engineering and technical surveys, and import, export, and service transactions incident to these activities.

(i) Exports and reexports to Vietnam of certain items required for activities licensed under 31 CFR 500.574 may be made under General License GVN, as described in § 771.28 of this subchapter.

(ii) Parties wishing to export or reexport items not eligible for General License GVN that are needed to support OFAC-authorized activities must obtain an individual validated license from the Office of Export Licensing (OEL). License applications submitted to OEL must include a copy of the OFAC license or a copy of the license application submitted to OFAC. Applications for licenses should describe the items to be exported or reexported and explain how they will be used in the authorized activity. Applications to export or reexport items in support of OFAC-authorized activities will be considered on a case-by-case basis to determine whether such shipments are consistent with the objectives of a specific export control program as set forth in the Export Administration Regulations.

* * * * *

[1] See Supplement No. 1 to part 770 for listing of Country Groups.

§ 785.2 [Amended]

16. Section 785.2 is amended:

a. By revising the phrase "Czechoslovakia, Estonia, Latvia, Lithuania, Mongolian People's Republic, Poland, and Romania" in paragraph (a)(1) to read "the Czech

Republic, Estonia, Latvia, Lithuania, Mongolia, Poland, Romania, and the Slovak Republic";

b. By revising the first reference to the phrase "Czechoslovakia and Poland" in paragraph (c) to read "the Czech Republic, Poland, and the Slovak Republic"; and

c. By revising the phrase the second reference to the phrase "Czechoslovakia and Poland" in paragraph (c) to read "destinations in Country Group W".

Dated: August 30, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93-21635 Filed 9-3-93; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for nine new animal drug applications (NADA's) from A. H. Robins Co., to Agri-Bio Corp.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Benjamin Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1646.

SUPPLEMENTARY INFORMATION: A. H. Robins Co., 1407 Cummings Dr., P.O. Box 26609, Richmond, VA 23261-6609, has informed FDA that it has transferred ownership of, and all rights and interests in, the following approved NADA's to Agri-Bio Corp., P.O. Box 897, Gainesville, GA 30503:

NADA Number	Ingredient	Trade Name
128-686	Salinomycin	Bio-Cox
132-447	Salinomycin + Roxarsone	Bio-Cox + 3-Nitro
134-284	Salinomycin + Bamber mycins	Bio-Cox + Flavomycin
134-185	Salinomycin + Roxarsone/and Bamber mycins	Bio-Cox + 3-Nitro + Flavomycin
135-746	Salinomycin + Bacitracin-MD	Bio-Cox + BMD
135-321	Salinomycin + Roxarsone + Bacitracin-MD	Bio-Cox + 3-Nitro + BMD
137-537	Salinomycin + Lincomycin	Bio-Cox + Lincomix
137-536	Salinomycin + Roxarsone + ZN Bacitracin	Bio-Cox + 3-Nitro + Albac
140-581	Salinomycin + Roxarsone + Lincomycin	Bio + 3-Nitro + Lincomix

Accordingly, FDA is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2), 558.95(b)(1)(xi)(*b*) and (b)(1)(xii)(*b*) and 558.550(a) to reflect the change of sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379(e)).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Agri-Bio Corp." and in the table in paragraph (c)(2) by numerically adding a new entry for "042835" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
• • • • •	
Agri-Bio Corp., P.O. Box 897, Gainesville, GA 30503	042835
• • • • •	

(2) * * *

Drug labeler code	Firm name and address
• • • • •	
042835	Agri-Bio Corp., P.O. Box 897, Gainesville, GA 30503
• • • • •	

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.95 [Amended]

4. Section 558.95 *Bambermycins* is amended in paragraphs (b)(1)(xi)(*b*) and (b)(1)(xii)(*b*) by removing the number "000031" and adding in its place "042835".

§ 558.550 [Amended]

5. Section 558.550 *Salinomycin* is amended in paragraph (a) by removing the number "000031" and adding in its place "042835".

Dated: August 30, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93-21668 Filed 9-3-93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 86

[Docket No. R-93-1683; FR-3386-F-01]

RIN 2501-AB54

Requirements Governing the Lobbying of HUD Personnel; Housing and Community Development Act of 1992 Amendment

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule complies with the Housing and Community Development

Act of 1992 by amending the regulations on lobbying of HUD personnel to exclude from coverage a State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government.

EFFECTIVE DATE: October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Garry Phillips, Acting Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20419. Telephone: (202) 708–3815; TDD/Voice: (202) 708–1112. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 112 of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101–235, approved December 15, 1989, (the "Reform Act"), added a new section 13 to the Department of Housing and Urban Development Act, 42 U.S.C. 3531, *et seq.* (the "HUD Act"). Section 13 contains two principal features. The first establishes the standards under which:

—Persons that make expenditures to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must keep records, and report to HUD, on the expenditures; and

—Persons that are engaged to influence a HUD officer or employee in the award of financial assistance or the taking of a management action by the Department must register with HUD, and report to HUD on their lobbying activities.

The second feature imposes limitations on the fees that may be paid to consultants who are engaged to influence the award or allocation of the Department's financial assistance.

A notice of proposed rulemaking to implement section 13 of the HUD Act was published on June 1, 1990, at 55 FR 22722. The notice gave the public 60 days in which to submit comments, and 39 comments were received. A final rule was published on May 17, 1991, at 56 FR 22912, establishing the section 13 requirements as a new part 86 of title 24 of the Code of Federal Regulations.

Based on the statutory definition of "person" as set forth in the Reform Act, coverage of 24 CFR part 86 was established through the definition of "person" at 24 CFR 86.15. Under 24 CFR 86.15, "person" means

an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority (including an Indian Housing Authority); firm; partnership; society; State, unit of general local government, or other governmental entity (including a public housing agency); and any other organization or group of people. The term does not include an Indian tribe.

Because of significant public comments received on the proposed part 86 rule from municipal and State organizations, the Department acknowledged the burdens associated with subjecting mayors and other State and local government officials to the requirements of 24 CFR part 86, and therefore, the May 17, 1991 final rule contains an exception from all part 86 requirements for the following categories of State and local government officials:

—All elected officials of State and local government.

—The political appointees who serve on the personal staffs of State and local elected officials, such as Executive Assistants and Special Assistants.

—All full-time, appointed officials—political appointees or otherwise—of State and local government who serve in policy-level positions.[1]

This Rule

Section 926 of the Housing and Community Development Act of 1992, Public Law 102–550, approved October 28, 1992, (the "1992 Act"), amended the definition of "person" in section 13 of the HUD Act to exclude from coverage

a State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government.

The effect of this amendment is to broaden the exclusion for State and local government officials that was contained in the May 17, 1991 final rule. Accordingly, this rule amends the definition of "person" in § 86.15 to set out the expanded exception and removes §§ 86.20(f) and 86.25(f) which contained the more limited exception that existed before the 1992 Act. An amendment is made to one of the examples in paragraph IV.1 of the appendix A (which sets out the standards to be used to determine the intent to influence) to remove the characterization of actions taken by a State official. Amendments are also made to paragraph VI.4. of the appendix A (which sets out the standards to be used to determine the types of activities that constitute "influence" subject to part 86). The chart included in the final rule as appendix B is also amended to reflect the broadened exclusion for State and local government officials.

In connection with the broadened exclusion for State and local government officials, section 926 also removed the terms "authority," "State," and "local government" from the statutory definition of "person." Therefore, the definition of "person" in the May 17, 1991 final rule, as codified at 24 CFR 86.15, is revised to delete those references, as well as references to "Indian Housing Authority" and "public housing agency."

Other Matters

1. Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

2. Regulatory Impact Analysis

This rule does not constitute a "major rule" as that is defined in section 1(d) of the Executive Order on Federal Regulations issued on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

3. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule

[1] These individuals include State and local cabinet officials, Community Development and Housing Directors, and Public Housing Authority Directors. To qualify for the exception, the individual must occupy a position that is responsible for setting policy for the organization, or for participating in the development of that policy with the organization head. The exception does not include positions in which the incumbents execute policy set by others.

pertains only to certain State and local government officials and, in fact, reduces the registration, record keeping, and reporting burdens for this very limited group.

4. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not preempt a State law or involve proposed legislation that would have that impact, or have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. Inasmuch as this rule relaxes a requirement regarding lobbying of HUD personnel by State or local government officials in certain capacities, the implications are positive and not sufficiently significant to warrant preparation of a Federalism Assessment.

5. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being. It only imposes record keeping, disclosure, and registration requirements on those seeking to influence the Department's decision making process.

6. Semi-Annual Agenda of Regulations

This rule was listed as item number 1389 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24397) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

7. Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance Program numbers assigned to this rule.

List of Subjects in 24 CFR Part 86

Lobbying (Government agencies), Administrative practice and procedure, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR part 86 as follows:

PART 86—REQUIREMENTS GOVERNING THE LOBBYING OF HUD PERSONNEL—SECTION 112 OF THE REFORM ACT

1. The authority for part 86 is revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 3537(g).

2. The definition of "person" in section 86.15 is revised to read as follows:

§ 86.15 Definitions.

* * * * *

Person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; firm; partnership; society; and any other organization or group of people. The term does not include an Indian tribe, nor does it include a State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government.

* * * * *

§ 86.20 [Amended]

3. Section 86.20 is amended by removing paragraph (f), redesignating paragraph (g) as paragraph (f), and redesignating paragraph (1) as paragraph (g).

§ 86.25 [Amended]

4. Section 86.25 is amended by removing paragraph (f) and redesignating paragraphs (g) and (h) as (f) and (g), respectively.

5. Paragraph IV. 1. of appendix A is revised to read as follows:

Appendix A to Part 86—Standards With Regulatory Effect

* * * * *

IV. Influencing the Decision of the Department Through Direct Communication With an Officer or Employee of the Department

* * * * *

1. Intent to Influence

General rule

"Influence" is to be given the broadest possible reading. It includes (but is not limited to) any effort to affect any aspect, including (but not limited to) the outcome, of the award of any financial assistance or the taking of any management action by the Department.

An "intent to influence" may be shown in two ways: If the agreement or expenditure was *actually* intended to have the requisite influence (*actual* intent), or should *reasonably have been expected* to have the effect of having the requisite influence (*constructive intent*). In determining an intent to influence, the Department will take into account all the circumstances involved, including (but not limited to) oral and documentary evidence, and the actions of the parties involved.

The expenditure or communication must be designed (actually or constructively) to influence the officer or employee. Communications of another nature need not be reported, even if they are made during an otherwise covered lobbying venture.

Note: For the rule test, see the definition of "influence" in § 86.15 and §§ 86.20 and 86.25, generally.

* * * * *

Examples

—A writes a check to B pursuant to a written contract specifying that B is to lobby HUD. B endorses the check. The cancelled check and the contract are documentary evidence of an intent to lobby the Department.

—A makes an oral promise to pay B to lobby the Department. The intent to lobby may be established by all the circumstances involved, including the actions of A and B and the record of any payment actually made.

—A pays B to "look into" a HUD management action involving A. B makes a communication to influence the Department on A's behalf. A may not claim that it is not subject to Part 86, since it did not give B specific directions to lobby the Department. A reasonable person would conclude that A in fact intended B to attempt to influence the Department.

—B was a senior HUD official over 10 years ago. He is representing A, whose funding application is pending before the Department. B personally delivers A's application to C, the HUD official designated to receive applications for the assistance involved. When C asks B for his name, B also mentions his title while at HUD.

B's reference to his former position is not covered. Simple reference to B's former title does not in and of itself invoke part 86.

Assume further, however, that after delivering the application, B stops by the office of D. D is a HUD employee in the decision making process for the assistance involved, and was a Special Assistant to B while he was at HUD.

B knows that D has an official role in considering A's application. Although he hasn't seen D since he left HUD, B considers it advantageous to A's cause to "press the flesh" with D. In the course of the conversation, B tells D that he is representing an application in the funding competition.

B's conduct would invoke part 86. Unlike his remarks to C, B's approach was intended to "cash in" on an old relationship—and could reasonably have been expected to have that result.

—A contacts HUD to ask when final selections will be made on A's application for a grant that is pending before the Department. A's communication with HUD does not trigger the requirements of the rule for two reasons: Purely informational inquiries are permitted; and coverage does not apply to a person that attempts to influence the Department on its own behalf, without being retained by another person.

—B, a law firm representing a mortgages with an FHA-insured mortgage, writes to HUD to point out that HUD mistakenly endorsed an insurance document with the wrong section of the National Housing Act. This request involves a purely ministerial change occasioned by a HUD mistake, and is not covered by the rule.

—If, however, the law firm alleges that the "mistake" involved an erroneous interpretation of the law, the communication would be covered. Legal interpretations involve an analysis of the facts and the law of a specific case, and do not constitute purely ministerial acts. Efforts to change the interpretation involve an intent to influence.

* * * * *

6. Paragraph VI.4. of Appendix A is revised to read as follows:

Appendix A to Part 86—Standards With Regulatory Effect

* * * * *

VI. Additional Examples of Actions Subject to Part 86 [13]

* * * * *

4. Officials of State and local government

—A is the mayor of a small city. He asks his special assistant and his director of community development to call HUD officials in support of a grant application that the city has pending with HUD. The mayor calls the Department as well.

The mayor, the special assistant, and the CD director are not covered by part 86. Officers or employees of a State and local government who are engaged in the official business of the State or local government are not subject to the rule.

—A is the mayor of a small city. B is the elected head of a water and sewer district within the city. They both contact HUD for a specific award of assistance.

Neither A nor B is subject to the rule. The officer or employee of a State or local government who is engaged in the official business of the State or local government is excluded from coverage.

—B is county executive. A is the county executive of a neighboring county. A pays B a small stipend to lobby HUD on behalf of A's application for a grant for the county. B make the appropriate contacts.

Only B is subject to part 86. The exclusion for State and local officials is limited to actions taken in the official business of the local government that the officials serve.

—A is a private supplier of equipment who stands to gain if the city wins a HUD contract. A pays B, a city official not connected to the contract, to contact HUD in support of the contract.

B may not claim the exception for State and local officials. B is not contacting the Department in his official capacity with the city.

—A is the director of a community development agency. A asks B, an employee with line responsibility for administering a demonstration program, to contact HUD to influence a grant award for the program.

A and B are not covered by part 86. Officers or employees of a State and local government who are engaged in the official business of the State or local government are not subject to the rule, irrespective of their rank or title or the nature of their duties.

* * * * *

6. Appendix B is revised to read as follows:

Appendix B to Part 86—Chart

Persons covered	Requirements	Exception
Persons making expenditures to influence		
—A person that makes, or that enters into an agreement to make, a covered expenditure to a person. —A person that makes, or that enters into an agreement to make, a covered expenditure to a person on behalf of another person. —A person on whose behalf a covered expenditure is made to a person, or an agreement to make an covered expenditure to a person is entered into. (§ 86.20(a)(1)).	1. *Record keeping:* Keep records on all agreements and expenditures for a two-year period. (§ 86.20(b)).	1. *Record keeping:* —Compliance with HUD requirements. (§ 86.20(e)). —Litigation. (§ 86.20(e)). —State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government. (§ 86.15—definition of "person"). —Expenditures made by an entity, that has been retained to provide lobbying services, to certain of its partners, associates, and other officers and employees. (§ 86.15—definition of "expenditure").
	2. *Reporting:* Between January 1 and 10 of each year, report on all agreements and expenditures made during the preceding calendar year. (§ 86.20(c)).	2. *Reporting:* —Payment of reasonable compensation to a regularly employed officer or employee of the person that requests or receives financial assistance. (§ 86.20(c)(3)). —Sum of the amounts of all reportable expenditures and agreements during the reporting year is less than $10,000. (§ 86.20(c)(4)). —Compliance with HUD requirements. (§ 86.20(d)). —Litigation. (§ 86.20(e)). —State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government. (§ 86.15—definition of "person"). —Expenditures made by an entity, that has been retained to provide lobbying services, to certain of its partners, associates, and other officers and employees. (§ 86.15—definition of "expenditure").

[13] Unless otherwise indicated, the examples assume that the applicable dollar thresholds have been reached.

Persons covered	Requirements	Exception
Persons engaged to influence		
—A person engaged pursuant to an agreement to make an expenditure. (§ 86.25(a)).	1. *Registration:* Register with the Department within 14 days of being engaged. (§ 86.25(b)).	1. *Registration:* —Employees of entities retained. (§ 86.15—definition of "retained"). —Compliance with HUD requirements. (§ 86.25(d)). —Litigation. (§ 86.25(e). —State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government. (§ 86.15—definition of "person").
	2. *Reporting:* Between January 1 and 10 of each year, report on all monies and other things of value expended or received during the preceding calendar year. (§ 86.25(c)).	2. *Reporting:* —Certain partners, associates, and other officers and employees assigned to perform lobbying services by an entity that has been retained for that purpose. (§ 86.15—definition of "retained"). —Receipt of reasonable compensation by a regularly employed officer or employee of that person that requests or receives financial assistance. (§ 86.25(c)(3)). —Sum of the amounts of all reportable receipts during the reporting year is less than $10,000. (§ 86.25(c)(2)). —Compliance with HUD requirements. (§ 86.25(d)). —Litigation. (§ 86.25(e)). —State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government. (§ 86.15—definition of "person").

Dated: August 25, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–21211 Filed 9–3–93; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8484]

RIN 1545–AR75

Computation of Equity Base

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance to life insurance companies in determining the equity base for purposes of computing the differential earnings amount and recomputed differential earnings amount. Section 809 of the Internal Revenue Code, enacted as part of the Tax Reform Act of 1984, provides that these amounts are used in determining the deduction for policyholder dividends of a mutual life insurance company.

In response to certain changes in state regulatory requirements, the temporary regulations provide that the equity base includes the amount of any asset valuation reserve and the amount of any interest maintenance reserve reported on the annual statement prescribed by the National Association of Insurance Commissioners (NAIC) for filing with the insurance regulatory authorities of a state. The text of the temporary regulations set forth in this document also serves as the text of proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These temporary regulations are effective on September 7, 1993.

For dates of applicability of these temporary regulations, see § 1.809–10T(b) of these regulations.

FOR FURTHER INFORMATION CONTACT: Katherine Ann Hossofsky, (202) 622–3477 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) to provide guidance relating to the determination of the equity base under section 809 of the Internal Revenue Code (Code). Section 809 was added to the Code by section 211(a) of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 733).

Need for Temporary Regulations

Immediate guidance is necessary for life insurance companies that file 1992 Form 1120L, U.S. Life Insurance Company Income Tax Return, and 1992 Form 8390, Information Return for Determination of Life Insurance Company Earnings Rate Under Section 809. Therefore, good cause is found to dispense with the public notice requirement of 5 U.S.C. 553(b) and the delayed effective date requirement of 5 U.S.C. 553(d).

Explanation of Provision

Section 809(a) of the Code provides that, in the case of any mutual life insurance company, the amount of the deduction allowable under section 808

for policyholder dividends is reduced (but not below zero) by the differential earnings amount. For purposes of the computations under section 809, a life insurance company must determine its equity base. The equity base of a life insurance company includes the capital and surplus of the company as well as the reserves specified in section 809(b)(5).

The first reserve listed in section 809(b)(5) is the mandatory securities valuation reserve. From the time section 809 was enacted through 1991, the mandatory securities valuation reserve was required to be reported on the NAIC annual statement filed by all life insurance companies. During these years, the NAIC annual statement required insurers to allocate surplus from capital gains on securities (stocks and bonds) to fund the mandatory securities valuation reserve. Thus, the mandatory securities valuation reserve was not a true actuarial reserve; rather, it represented a fund of allocated surplus, earmarked as a contingency reserve against particular types of unexpected catastrophic losses, or expected capital losses on securities owned by an insurer.

For NAIC annual statements covering 1992 and later years, the NAIC replaced the mandatory securities valuation reserve with the asset valuation reserve and interest maintenance reserve. This change reflected the recognition by the NAIC that it was necessary to protect against fluctuations in value in mortgages, real estate, and other investments as well as fluctuations in value in stocks and bonds and that interest-related changes in asset values might appropriately be differentiated from other changes. Accordingly, these new reserves cover an expanded class of assets and differentiate between (1) equity and credit-related capital gains and losses, and (2) interest-related capital gains and losses.

The asset valuation reserve reflects changes in the value of equity investments and also changes in the value of debt investments where the changes are credit-related. Both realized and unrealized capital gains and losses are reflected in the asset valuation reserve.

The interest maintenance reserve reflects realized capital gains and losses from bonds, mortgages, and other fixed-income obligations to the extent that they are interest-related. Because the value of U.S. Government securities, together with the value of securities of agencies backed by the full faith and credit of the U.S. Government, are safe from credit-related risks and are only subject to interest-related risks, the capital gains and losses on those securities are allocated solely to the interest maintenance reserve.

To carry out Congressional intent in enacting section 809, it is essential to preserve the integrity of the equity base computation under that provision. Because the NAIC annual statement no longer includes the mandatory securities valuation reserve, it is necessary to compute the equity base with reference to the reserves set forth in the current NAIC annual statement. Thus, the temporary regulations provide that, for section 809 purposes, the equity base includes both the amount of any asset valuation reserve and the amount of any interest maintenance reserve.

In connection with the publication of the temporary regulations, the Service is publishing Announcement 93–117, 1993–29 I.R.B., to provide guidance regarding filing of 1992 Form 1120L, U.S. Life Insurance Company Income Tax Return.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these proposed regulations is Katherine Ann Hossofsky of the Office of the Assistant Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.809–10T is added to read as follows:

§ 1.809–10T Computation of equity base (temporary).

(a) *In general.* For purposes of section 809, the equity base of a life insurance company includes the amount of any asset valuation reserve and the amount of any interest maintenance reserve.

(b) *Effective date.* This section is effective for taxable years ending after December 31, 1991.

Phil Brand

Acting Commissioner of Internal Revenue.

Approved: August 6, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–21526 Filed 9–3–93; 8:45 am]

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26 CFR Part 1

[T.D. 8488]

RIN 1545–AR55

Definition of Compensation for Qualified Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to the final regulations under section 414(s) of the Internal Revenue Code of 1986, which concerns the definition of compensation for qualified plans. The regulations reflect changes made by the Tax Reform Act of 1986 and the Technical and Miscellaneous Revenue Act of 1988. The regulations provide guidance necessary to comply with the law and affect sponsors of, and participants in, tax-qualified retirement plans.

DATES: These regulations are effective January 1, 1994, and apply to plan years beginning on or after January 1, 1994, except as provided in the transition rules of § 1.414(s)–1(j).

FOR FURTHER INFORMATION CONTACT: Marjorie Hoffman at (202) 622–4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 19, 1991, final regulations under section 414(s) were published in the **Federal Register** (56 FR 47659). In the **Federal Register** of August 10, 1992, (57 FR 35536), the Internal Revenue Service published proposed regulations to extend the effective date of the final regulations under section 414(s) and related

regulations generally to plan years beginning on or after January 1, 1994.

On April 21, 1993, proposed regulations amending the final regulations were published in the **Federal Register** (58 FR 21412). Written comments were received from the public on the proposed regulations, and a public hearing was held on June 7, 1993. After consideration of all of the written comments received and the statements made at the public hearing, the proposed regulations are adopted as modified by this Treasury Decision.

Explanation of Provisions

1. Overview of Regulations

Section 414(s) provides rules for defining compensation for purposes of applying any provision that specifically refers to section 414(s). For example, section 414(s) is explicitly referred to in many of the nondiscrimination provisions applicable to pension, profit-sharing, and stock bonus plans qualified under section 401(a). The amount of plan benefits or contributions, expressed as a percentage of compensation within the meaning of section 414(s), is generally one of the key factors in determining whether these nondiscrimination provisions are satisfied.

In general, these regulations retain the structure of the September 1991 regulations. The September 1991 regulations implemented section 414(s) by providing design-based safe harbor definitions of compensation and by providing that any other definition of compensation will satisfy section 414(s) if the definition is reasonable (as determined under the regulations), does not by design favor highly compensated employees, and satisfies a nondiscrimination test.

The proposed regulations issued in April 1993, make a number of significant changes to the September 1991 regulations that increase the flexibility of the regulatory requirements. Major changes in the proposed regulations include the following:

- Allowing defined benefit plans to credit compensation with another employer (both for the periods before and after employment with the employer maintaining the plan) or during a leave of absence in a wide range of circumstances.
- Allowing a safe harbor definition of compensation to be modified to exclude any portion of the compensation of some or all of the employer's highly compensated employees.
- Making rate of pay definitions of compensation more flexible to accommodate certain common practices.

In general, comments received on changes contained in the proposed regulations were favorable. Accordingly, these final regulations incorporate those changes and make additional minor revisions.

2. Pre-participation and Imputed Compensation

These regulations permit a defined benefit plan to credit compensation with another employer (both for the periods before and after employment with the employer maintaining the plan) or during a leave of absence, provided certain facts-and-circumstances standards are met. If imputed compensation is credited to an employee under an alternative definition of compensation subject to the nondiscrimination test in the regulations, the regulations generally require that the imputed compensation be taken into account under that test. However, in order to avoid distorting the results of the nondiscrimination test, the regulations limit the employee's plan compensation taken into account in applying that test to 100 percent of the employee's actual compensation for the period. In response to comments, the description of this special rule has been rewritten in order to clarify how it is applied in the nondiscrimination test.

3. Exclusions From Compensation Only Applicable to Highly Compensated Employees

The regulations allow safe harbor definitions of compensation to be modified to exclude any portion of the compensation of some or all of the employer's highly compensated employees. An alternative definition of compensation also may exclude any portion of the compensation of some or all of the employer's highly compensated employees without violating the consistency requirement in the regulations. These regulations expand the rules permitting exclusions from some or all highly compensated employees to apply also in determining the section 414(s) compensation of self-employed individuals.

For purposes of calculating the average compensation percentages used in the nondiscrimination test for an alternative definition of compensation, the regulations require that amounts excluded from compensation under a provision in an alternative definition of compensation that does not apply consistently to all highly compensated employees also be excluded from each employee's total compensation. Although this rule was criticized by certain commentators as being inconsistent with the general principle that discrimination among highly compensated employees is disregarded, the Service and the Treasury believe that this rule is appropriate because of the averaging nature of the section 414(s) nondiscrimination test.

4. Use of Rate-of-Pay Definition for Purposes of Section 414(s)

These regulations retain the requirements for rate-of-pay definitions of compensation contained in the proposed regulations, including the restriction that compensation based on an employee's rate of pay generally may not be credited for more than 31 days after an employee terminates employment. Some commentators requested that the regulations allow compensation based on an employee's rate of pay to be credited to the end of the year in which an employee's employment terminates, or otherwise allow, even for plans not using a rate of pay definition, annualization of the employee's compensation for that year, subject to an anti-abuse rule. They assert that annualization would prevent employees from being penalized for retiring or terminating employment mid-year, and that a facts and circumstances anti-abuse rule could be included in the regulations to prevent annualization from causing significant discrimination. The Service and the Treasury believe that Congress intended section 414(s) compensation to be actual compensation and that any departures from actual compensation should be limited. Appropriate departures from actual compensation already have been provided for in these regulations to address significant practical difficulties arising both under the imputed compensation provisions and in the provisions of the section 401(a)(4) regulations that accommodate the prohibition against double proration of service and compensation. Any other annualization of partial year compensation is not allowed under the regulations because it would give undue weight to the partial year compensation while the suggested facts and circumstances anti-abuse rule needed to prevent annualization of unrepresentative compensation would require a type of subjective analysis that presents significant administrative difficulties.

Effective Dates

The regulations generally are effective for years beginning on or after January 1, 1994, or, in the case of plans maintained by tax-exempt organizations, for plan years beginning

on or after January 1, 1996. However, section 414(s) is effective for years beginning on or after January 1, 1987. For plan years beginning before the effective date of these regulations and on or after the statutory effective date, a plan must be operated in accordance with a reasonable, good faith interpretation of section 414(s). Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 414(s) generally will be determined based on all relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 414(s) (1) and (2) if it is operated in accordance with these regulations, the September 1991 regulations, the May 1990 temporary regulations, or the February 1988 temporary regulations. In addition, for these transition years, a definition of compensation is deemed to satisfy section 414(s) as an alternative method of determining compensation under section 414(s)(3) if, based on all the relevant facts and circumstances in effect for the year, use of the definition does not cause discrimination in favor of highly compensated employees.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Marjorie Hoffman of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * * § 1.414(s)–1 also issued under 26 U.S.C. 414(s). * * *

Par. 2. Section 1.414(s)–1 is amended by:

1. Revising the fourth sentence of paragraph (a)(3).
2. Removing the reference "(f)" in the fifth sentence of paragraph (a)(3) and adding "(g)" in its place.
3. Removing the reference "(g)" in the sixth sentence of paragraph (a)(3) and adding "(h)" in its place.
4. Designating the text of paragraph (b)(2) as paragraph (b)(2)(i) and adding a paragraph heading for paragraph (b)(2)(i).
5. Adding paragraph (b)(2)(ii).
6. Revising the first sentence of paragraph (b)(3), removing reference "paragraph (c)(3), (d), or (e)" in the third and fourth sentences of paragraph (b)(3) and adding "paragraph (c)(3), (d), (e), or (f)" in their places, and removing the reference "(f)" in the fourth sentence of paragraph (b)(3) and adding "(g)" in its place.
7. Removing the reference "402(a)(8)" in paragraph (c)(4)(i) and adding "402(e)(3)" in its place.
8. Revising paragraphs (c)(5), (d)(2)(i), (d)(2)(ii), (d)(3)(ii), (d)(3)(iii)(A), and adding (d)(3)(iii)(C).
9. Removing "the applicable" from the first sentence of paragraph (d)(3)(v) and adding "all the relevant" in its place.
10. Adding paragraph (d)(3)(vi).
11. Revising paragraph (e).
12. Redesignating paragraphs (f) through (i) as (g) through (j) respectively.
13. Adding new paragraph (f).
14. Removing reference "paragraph (c)(3), (d), or (e)" in the first sentence of newly designated paragraph (g)(1)(i) and adding "paragraph (c)(3), (d), (e), or (f)" in its place.
15. Removing the reference "(e)(4)(ii)" in the second sentence of newly designated paragraph (g)(1)(i) and adding "(d)(3)(vi)" in its place.
16. Adding new paragraph (g)(1)(iii).
17. Revising newly designated paragraph (h).
18. Revising newly designated paragraph (j).
19. The revisions and additions read as follow:

§ 1.414(s)–1 Definition of compensation.

(a) * * *

(3) *Overview.* * * * Paragraphs (e) and (f) of this section provide special rules permitting the use of rate of compensation, or prior-employer compensation or imputed compensation, rather than actual compensation, under a definition of compensation that satisfies section 414(s). * * *

(b) * * *

(2) *Consistency rule*—(i) *General rule.* * * *

(ii) *Scope of consistency rule.* Compensation will not fail to be defined consistently for a group of employees merely because some employees do not receive one or more of the types of compensation included in the definition. For example, a definition of compensation that includes salary, regular or scheduled pay, overtime, and specified types of bonuses will not fail to define compensation consistently merely because only salaried employees receive salary and these specified types of bonuses and only hourly employees receive regular or scheduled pay and overtime.

(3) *Self-employed individuals.* Notwithstanding paragraph (b)(1) of this section, self-employed individuals' compensation can only be determined under paragraph (c)(2) of this section (with or without the modification permitted by paragraph (c)(4) of this section or a modification permitted by paragraph (c)(5) of this section) or by using an equivalent alternative compensation amount determined in accordance with paragraph (g)(1) of this section. * * *

(c) * * *

(5) *Exclusions applicable solely to highly compensated employees.* Any definition of compensation that satisfies paragraph (c)(2) or (c)(3) of this section, with or without the modification permitted by paragraph (c)(4) of this section, may be modified to exclude any portion of the compensation of some or all of the employer's highly compensated employees (including, for example, any one or more of the types of elective contributions or deferred compensation described in paragraph (c)(4) of this section).

(d) * * *

(2) *Reasonable definition of compensation*—(i) *General rule.* An alternative definition of compensation under this paragraph (d) is reasonable under section 414(s) if it is a definition of compensation provided in paragraph (c) of this section, modified to exclude all or any portion of one or more of the types of compensation described in paragraph (d)(2)(ii) of this section. See

paragraph (e) of this section, however, for special rules that permit definitions of compensation based on employees' rates of compensation and paragraph (f) of this section for special rules that permit definitions of compensation that include prior-employer compensation or imputed compensation.

(ii) *Items that may be excluded.* A reasonable definition of compensation is permitted to exclude, on a consistent basis, all or any portion of irregular or additional compensation, including (but not limited to) one or more of the following: Any type of additional compensation for employees working outside their regularly scheduled tour of duty (such as overtime pay, premiums for shift differential, and call-in premiums), bonuses, or any one or more of the types of compensation excluded under the safe harbor alternative definition in paragraph (c)(3) of this section. Whether a type of compensation is irregular or additional is determined based on all the relevant facts and circumstances. A reasonable definition is also permitted to include, on a consistent basis, all or any portion of the types of elective contributions or deferred compensation described in paragraph (c)(4) of this section and, thus, need not include all those types of elective contributions or deferred compensation as otherwise required under paragraph (c)(4) of this section.

* * * * *

(3) * * *

(ii) *Total compensation*—(A) *General rule.* For purposes of this paragraph (d)(3), total compensation must be determined using a definition of compensation provided in paragraph (c)(2) of this section, either with or without the modification permitted by paragraph (c)(4) of this section. Thus, total compensation does not include prior-employer compensation or imputed compensation described in paragraph (f)(1) of this section (including imputed compensation for a period during which an employee performs services for another employer). Total compensation taken into account for each employee (including, if added, the elective contributions and deferred compensation described in paragraph (c)(4) of this section) may not exceed the annual compensation limit of section 401(a)(17).

(B) *Alternative definitions with exclusions applicable solely to highly compensated employees.* If an alternative definition of compensation contains a provision that excludes amounts from compensation and, as described in paragraph (c)(5) of this section, the provision only applies in defining the compensation of some highly compensated employees, then, for purposes of this paragraph (d)(3), the total compensation of any highly compensated employee subject to the provision must be reduced by any amount excluded from the employee's compensation as a result of the provision. However, if the provision applies consistently in defining the compensation of all highly compensated employees, this adjustment to total compensation is not required.

(iii) *Employees taken into account*—(A) *General rule.* In applying the requirement of this paragraph (d)(3), the employees taken into account are the same employees taken into account in satisfying the requirements of the applicable provision for the determination period. For example, in determining whether a plan satisfies section 401(a)(4), an alternative definition must satisfy this paragraph (d)(3) taking into account all employees who benefit under the plan for the plan year (within the meaning of § 1.410(b)–3(a)). If an employer is using the same alternative definition of compensation to determine whether more than one separate plan satisfies section 401(a)(4), the employer is permitted to take into account all the employees who benefit under all of those plans for the plan year in determining whether the alternative definition of compensation being used satisfies this paragraph (d)(3).

* * * * *

(C) *Certain employees disregarded.* If an employee's total compensation for the determination period, determined under paragraph (d)(3)(ii) and (d)(3)(vi)(B) of this section, is zero, the employee is disregarded in determining whether the nondiscrimination requirement of paragraph (d)(3) of this section is satisfied for that determination period. For example, an employee who does not receive any actual compensation during a determination period because the employee is on unpaid leave of absence for the entire period, but who is credited with imputed compensation described in paragraph (f)(1) of this section, is disregarded in determining whether the nondiscrimination requirement of this paragraph (d)(3) is satisfied for that determination period.

* * * * *

(vi) *Special rules for definitions of compensation based on rate of compensation or that include prior-employer or imputed compensation*—(A) *Special rule for determining compensation included under an alternative definition.* If an alternative definition uses rate of compensation or includes prior-employer compensation or imputed compensation, the amount of each employee's compensation for a determination period that is treated as included under the alternative definition for purposes of determining the average percentages for the nondiscrimination requirement (i.e. the amount used in the numerator) must not be more than 100 percent of the employee's total compensation for that period, determined under paragraph (d)(3)(ii) and (d)(3)(vi)(B) of this section. This limit on the amount of compensation treated as included under the alternative definition applies even if the amount of compensation actually credited to the employee for the determination period under the definition and, thus, used as compensation within the meaning of section 414(s), exceeds the employee's total compensation for the period.

(B) *Special rule for determining total compensation.* If an alternative definition uses rate of compensation or includes prior-employer compensation or imputed compensation, each employee's total compensation for purposes of determining the average percentages for the nondiscrimination requirement (i.e. the amount used in the denominator) must include all the types of elective contributions and deferred compensation described in paragraph (c)(4) of this section.

(e) *Rate of compensation*—(1) *General rule.* A definition of compensation satisfies section 414(s) as a reasonable definition of compensation even though it defines the amount of each employee's basic or regular compensation using the employee's basic or regular rate of compensation rather than using the employee's actual basic or regular compensation from the employer if the definition satisfies the requirements specified in paragraph (e)(3) of this section and otherwise satisfies the requirements of paragraph (d) of this section, including the nondiscrimination test in paragraph (d)(3) of this section. For this purpose, the employee's rate of compensation must be determined using an hourly pay scale, weekly salary, or similar unit of basic or regular compensation applicable to the employee. A definition will not fail to satisfy the requirements of this paragraph (e) merely because it defines compensation as including each employee's basic or regular compensation, the amount of which is determined using each employee's basic or regular rate of compensation, plus actual amounts of irregular or additional compensation, such as overtime or bonuses. In addition, a definition of compensation will not fail to satisfy

section 414(s) merely because it defines compensation for each employee as the greater of the employee's actual compensation, the amount of which is determined using a definition that would otherwise satisfy paragraph (c) or (d)(2) of this section, or the employee's basic or regular compensation, the amount of which is determined using the employee's basic or regular rate of compensation.

(2) *Not applicable to certain contributions.* This paragraph (e) does not apply to a definition of compensation used in determining whether elective deferrals (as defined in section 402(g)(3)), matching contributions (as defined in section 401(m)(4)), or employee contributions subject to section 401(m) satisfy any applicable provision. Thus, for example, a definition of compensation that defines compensation based on each employee's basic or regular rate of compensation may not be used to measure compensation for purposes of determining if a qualified cash or deferred arrangement satisfies the actual deferral percentage test in section 401(k)(3).

(3) *Requirements for definitions of compensation based on rate of compensation*—(i) *Benefit determination.* The definition of compensation must actually be used to calculate the benefits, contributions, or other amounts, that are subject to the applicable provision. For example, a definition of compensation that defines compensation based on each employee's basic or regular rate of compensation may not be used to determine whether a plan satisfies section 401(a)(4) unless the benefits, contributions, or other amounts for each employee in the plan are determined using that definition of compensation.

(ii) *Period for determining compensation.* The amount of each employee's basic or regular compensation for the determination period must be determined using the employee's basic or regular rate of compensation as of a designated date in the determination period. For example, if the determination period is a calendar year, this requirement would be satisfied if the amount of each employee's basic or regular compensation for the calendar year is determined using the employee's basic or regular rate of compensation as of January 1 of the calendar year. Alternatively, the amount of each employee's basic or regular compensation for a determination period can be the sum of the amounts separately determined for shorter specified periods (e.g., weeks or months) within the determination period provided the amount of each employee's basic or regular compensation for each specified period is determined using the employee's basic or regular rate of compensation as of a designated date within the specified period.

(iii) *Dates for determining rate of compensation.* One or more dates may be used to determine employees' rates of compensation for a determination period or specified period provided that, if the same date is not used for all employees, the dates selected are designed to determine the rates of compensation for that period on a consistent basis for all employees taken into account for the determination period. For example, if annual compensation increases are provided to different groups of employees on different dates during the year, it would be consistent to choose a different date for each group in order to include the annual increase in the employees' rates of compensation for the determination period. In addition, the date or dates selected, by themselves, must not cause the portion of total compensation included to vary significantly among employees.

(iv) *Periods without compensation or with reduced compensation.* An employee's compensation may generally only be determined using the employee's rate of compensation for employment periods during which the employer actually compensates the employee. However, if an employee terminates employment or otherwise stops performing services (such as for a leave of absence, layoff or similar event) either without compensation or with reduced compensation during a determination period, the employer may continue to credit the employee with compensation based on the employee's rate of compensation for a period of up to 31 days after the event, but not beyond the end of the determination period. Paragraph (f) of this section contains special rules for crediting imputed compensation for periods extending beyond 31 days during which an employee is not compensated or an employee's compensation is reduced. See also the definition of *Section 414(s) compensation* in § 1.401(a)(4)–12 that, for purposes of satisfying section 401(a)(4), permits adjustments to compensation to reflect the equivalent of full-time compensation to the extent necessary to satisfy the requirements of 29 CFR 2530.204–2(d) (regarding double proration of service and compensation).

(f) *Prior-employer compensation and imputed compensation*—(1) *General rule.* Solely for purposes of determining whether a defined benefit plan, as defined in § 1.410(b)–9, satisfies section 401(a)(4) or 410(b), an alternative definition that includes prior-employer compensation or imputed compensation satisfies section 414(s) as a reasonable alternative definition if the definition satisfies the requirements specified in paragraphs (f) (2) and (3) of this section. For this purpose, prior-employer compensation is compensation from an employer other than the employer (determined at the time that the compensation is paid) maintaining the plan that is credited for periods prior to the employee's employment with the employer maintaining the plan and during which the employee performed services for the other employer. For this purpose, imputed compensation is compensation credited for periods after an employee has commenced or recommenced participation in a plan while the employee is not compensated by the employer maintaining the plan or is compensated at a reduced rate by that employer because the employee is not performing services as an employee for the employer (including a period in which the employee performs services for another employer, e.g., a joint venture) or because the employee has a reduced work schedule.

(2) *Requirements for definitions of compensation crediting prior-employer compensation or imputed compensation*—(i) *General requirement.* The definition must otherwise be described in paragraph (c) of this section or must otherwise satisfy the requirements of paragraph (d) or (e) of this section for alternative definitions of compensation, including the nondiscrimination requirement in paragraph (d)(3) of this section.

(ii) *Benefit determination.* A definition of compensation that credits prior-employer compensation or imputed compensation must actually be used to calculate the benefits under the plan. For example, the definition may not be used to determine whether a defined benefit plan satisfies section 401(a)(4) unless the benefits for each employee in the plan are determined using that definition of compensation.

(iii) *Provision applied to all similarly-situated employees.* A provision in a plan's definition of compensation crediting prior-employer compensation or imputed compensation must apply on the same terms to all similarly-situated employees in the plan. The criteria for determining whether employees are similarly situated for this purpose are the same as the criteria for determining whether a plan provision crediting pre-participation or imputed

service satisfies the requirements of § 1.401(a)(4)–11(d)(3)(iii)(A).

(iv) *Legitimate business purpose.* There must be a legitimate business purpose, based on all of the relevant facts and circumstances, for crediting prior-employer compensation or imputed compensation to an employee for the period being credited. The standard for determining whether crediting prior-employer compensation or imputed compensation satisfies this requirement is the same as the standard for determining whether crediting pre-participation or imputed service under a plan satisfies the requirements of § 1.401(a)(4)–11(d)(3)(iii)(B) and whether crediting imputed service satisfies the additional requirements of § 1.401(a)(4)–11(d)(3)(iv)(A). However, if the legitimate business reason for crediting imputed compensation relates to the services the employee is performing for another employer and the reason satisfies the standard in § 1.401(a)(4)–11(d)(3)(iii)(B), the additional requirements of § 1.401(a)(4)–11(d)(3)(iv)(A) are deemed to be satisfied. For example, if an employee becomes employed by another employer as a result of a merger, acquisition or similar transaction with the other employer and imputed compensation is credited to the employee while the employee is performing services for the other employer, the crediting of imputed compensation to the employee satisfies the standard in § 1.401(a)(4)–11(d)(3)(iii)(B). Thus, under that example, crediting the imputed compensation to the employee is deemed to satisfy the additional requirements of § 1.401(a)(4)–11(d)(3)(iv)(A), even if the employee is not performing those services under an arrangement that provides an ongoing business benefit to the employer maintaining the plan.

(v) *No significant discrimination.* Based on all of the relevant facts and circumstances, crediting prior-employer compensation or imputed compensation must not by design or in operation discriminate significantly in favor of highly compensated employees. The standard for determining whether crediting prior-employer compensation or imputed compensation satisfies this requirement is the same as the standard for determining whether crediting pre-participation or imputed service satisfies the requirement in § 1.401(a)(4)–11(d)(3)(iii)(C) and whether crediting imputed service satisfies the additional requirement of § 1.401(a)(4)–11(d)(3)(iv)(B).

(3) *Reasonable method*—(i) *General rule.* Any reasonable method may be used to determine the amount of prior-employer compensation or imputed compensation provided that the requirements of paragraph (f)(3) (ii) or (iii) of this section are satisfied, whichever is applicable.

(ii) *Requirements for prior-employer compensation.* Prior-employer compensation credited to an employee for a period that an employee is performing services for another employer must be compensation for the employee from the other employer (or be based on the employee's basic or regular rate of compensation from the other employer) for that period. In addition, prior employer compensation credited to an employee must not exceed the amount of compensation from the other employer that would have been included under the definition of compensation in effect for that period for compensation from the employer maintaining the plan. Reasonable assumptions may be made in determining the amount of compensation received from another employer for a period that would have been included under the definition of compensation in effect for that period for compensation from the employer maintaining the plan.

(iii) *Requirements for imputed compensation*—(A) *General rule.* The amount of imputed compensation credited to an employee during any period, when combined with the amount of any actual compensation being included, must not exceed an amount that, based on all of the relevant facts and circumstances, is reasonably representative of the amount of compensation that the employee would have received and that would have been included under the definition of compensation in effect for the period if the employee had continued to perform services for the employer during that period at the same level as the employee was performing before the employee stopped performing services or changed to a reduced work schedule. The relevant facts and circumstances include the compensation that the employee was receiving immediately before the employee stopped performing services or changed to a reduced work schedule, and, if applicable, the rate of compensation in effect while the employee is not performing services or has a reduced work schedule that is applicable to the employee's specific job grade immediately before the change occurred.

(B) *Imputed compensation from another employer.* Imputed compensation credited for a period that an employee is performing services for another employer is deemed to satisfy paragraph (f)(3)(iii)(A) of this section if the amount of compensation credited satisfies the requirements of paragraph (f)(3)(ii) of this section for prior-employer compensation. Thus, for example, the amount of imputed compensation credited to an employee for a period that the employee is performing services for another employer is deemed to satisfy paragraph (f)(3)(iii)(A) of this section if the amount credited is compensation for the employee from the other employer (or is based on the employee's basic or regular rate of compensation from the other employer) for that period, and the amount credited does not exceed the compensation from the other employer that would be included for the employee under the definition of compensation in effect for that period for compensation from the employer maintaining the plan.

(4) *Special nondiscrimination rule for safe harbor definitions.* If a definition of compensation crediting prior-employer or imputed compensation is otherwise described in paragraph (c) of this section, and the prior-employer compensation or imputed compensation credited satisfies the requirements of paragraphs (f) (1), (2), and (3) of this section, then the definition is deemed to satisfy paragraph (d) of this section (i.e., it is deemed to be nondiscriminatory).

(g) * * * (1) * * *

(iii) *Reductions in equivalent alternative compensation amount applicable only to highly compensated employees.* An alternative definition of compensation may provide that compensation under the alternative definition for some or all self-employed individuals who are highly compensated employees is a specified portion of, rather than equal to, the equivalent compensation amount determined under paragraph (g)(1)(i).

* * * * *

(h) *Definitions.* The following definitions apply for purposes of this section:

(1) *Applicable provision.* Applicable provision means a provision that specifically refers to section 414(s) or this section.

(2) *Determination period.* Determination period means a period during which the amount of compensation is measured for use in determining whether the requirements of an applicable provision are satisfied. If no period is provided under the applicable provision for measuring compensation, the determination period is the period for which the applicable provision must be satisfied. The applicable provision may provide additional rules concerning the

determination period to be used for satisfying the nondiscrimination requirement in paragraph (d) of this section.

(3) *Employee.* Employee means employee within the meaning of § 1.410(b)–9.

(4) *Highly compensated employee.* Highly compensated employee means highly compensated employee within the meaning of § 1.410(b)–9.

(5) *Nonhighly compensated employee.* Nonhighly compensated employee means nonhighly compensated employee within the meaning of § 1.410(b)–9.

(6) *Self-employed individual.* Self-employed individual means self-employed individual within the meaning of section 401(c)(1).

* * * * *

(j) *Effective date and transition rules*—(1) *Statutory effective date.* Section 414(s) applies to years beginning on or after January 1, 1987.

(2) *Regulatory effective date*—(i) *In general.* Except as otherwise provided in paragraph (j)(2)(ii) of this section, § 1.414(s)–1 (a) through (i) apply to years beginning on or after January 1, 1994.

(ii) *Plans of tax-exempt organizations.* In the case of a plan maintained by an organization that is exempt from income taxation pursuant to section 501(a), including plans subject to section 403(b)(12)(A)(i) (nonelective plans), § 1.414(s)–1 (a) through (i) apply to plan years beginning on or after January 1, 1996.

(3) *Compliance during transition period.* For plan years beginning before the effective date of these regulations, as set forth in paragraph (j)(2) of this section, and on or after the statutory effective date as set forth in paragraph (j)(1) of this section, a plan must be operated in accordance with a reasonable, good faith interpretation of section 414(s). Whether a plan is operated in accordance with a reasonable, good faith interpretation of section 414(s) will generally be determined based on all relevant facts and circumstances, including the extent to which an employer has resolved unclear issues in its favor. A plan will be deemed to be operated in accordance with a reasonable, good faith interpretation of section 414(s)(1) and (2) if it is operated in accordance with the terms of § 1.414(s)–1 (a) through (i). For years beginning on or after the statutory effective date and before the effective date of these regulations, a definition of compensation is also deemed to satisfy section 414(s) as an alternative method of determining compensation under section 414(s)(3) if the definition satisfies the requirements of § 1.414(s)–1 (a) through (i) or if the definition satisfies the prior regulation provisions of § 1.414(s)–1 T. (See § 1.414(s)–1 T as contained in the CFR edition revised as of April 1, 1991.) In addition, for those transition years, a definition of compensation is deemed to satisfy section 414(s) as an alternative method of determining compensation under section 414(s)(3) if, based on all the relevant facts and circumstances in effect for the year, use of the definition does not cause discrimination in favor of highly compensated employees.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: August 23, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–21380 Filed 9–1–93; 4:15 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–93–122]

Drawbridge Operation Regulations; Apponagansett River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard is providing notice that the Town of Dartmouth, Massachusetts, has been granted permission to temporarily deviate for thirty two (32) days from the regulations governing the Padanaram Bridge over the Apponagansett River at mile 1.0 in Dartmouth, Massachusetts. The deviation permits scheduled openings on the hour and the half hour from 5 a.m. to 9 a.m. and from 8 p.m. to 9 p.m. and permits openings only on the hour from 9 a.m. to 8 p.m. daily from August 30, 1993, through September 30, 1993. This temporary deviation is being implemented to evaluate the effects of alternative changes to the regulations governing the Padanaram Bridge between Dartmouth and South Dartmouth, Massachusetts.

DATES:

(1) The deviation is effective for 32 days from August 30, 1993 through September 30, 1993.

(2) Comments on the deviation must be received on or before November 15, 1993.

ADDRESSES: Comments may be mailed to Commander (obr), First Coast Guard District, room 628 at the John Foster Williams Building, 408 Atlantic Avenue, Boston, Massachusetts. The comments and other materials referenced in this notice will be available for inspection and copying by appointment at the above address. Normal office hours are between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to the above address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in evaluation of possible changes to the regulations governing the Padanaram Bridge over the Apponagansett River by submitting written data, or arguments for or against the deviation. Persons submitting comments should include their name, address, identify this notice (CGD01–93–122) and give the reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period. If it appears appropriate to propose a permanent change to the regulations, the Coast Guard plans to publish a notice of proposed rulemaking which will request comments during an additional comment period announced by a later notice in the **Federal Register**. Persons may submit comments by writing to the Commander (obr), First Coast Guard District listed under **ADDRESSES.**

Background and Purpose

The Padanaram Bridge over the Apponagansett River between Dartmouth and South Dartmouth has a vertical clearance of 9′ above mean high water (MHW) and 12′ above mean low water (MLW).

The Town of Dartmouth requested a change from the present operating regulations in 33 CFR 117.587 which permitted the Padanaram Bridge to open on the hour and half hour. The town selectmen felt that the traffic congestion during peak summer months was a result of the bridge opening every 30 minutes and was causing village commerce to suffer. The selectmen also considered the 30 minute opening schedule a serious risk to public safety because emergency vehicles could not travel to and from South Dartmouth

during the traffic delays created when the bridge opened every half hour. The Town of Dartmouth requested that the bridge be required to open only on the hour for a test period of 60 days to evaluate the effects on vehicular and marine traffic. On July 15, 1993, the Coast Guard published a Notice of Temporary Deviation in the **Federal Register** (58 FR 38056), which permitted the requested deviation from July 1, 1993, through August 29, 1993. This provided an opportunity to evaluate the effects of the deviation on marine and vehicular traffic. The Coast Guard is implementing an additional deviation to the regulations to evaluate alternative opening time periods for the Padanaram Bridge. This second deviation is necessary because the automatic traffic gates, which were scheduled to be installed by the end of June, were not completed in time to fully evaluate the previous deviation. This second temporary deviation will permit the bridge to open on the hour and half hour from 5 a.m. to 9 a.m. and from 11 p.m. to 9 p.m. to facilitate marine traffic when vehicular traffic is lighter, and to open on the hour only from 9 a.m. to 8 p.m. during periods of high vehicular traffic. This temporary deviation retains the requirement for the bridge to open on signal as soon as possible for vessels of the United States, state and local vessels used for public safety and vessels in distress.

Notice

Notice is hearby given that:

(1) The Coast Guard has granted the Town of Dartmouth, Massachusetts, a temporary deviation from the operating requirements listed in 33 CFR 117.587 paragraph (b) governing the Padanaram Bridge over the Apponagansett River.

(2) This deviation from normal operating regulations is authorized in accordance with the provisions of 33 CFR 117.43 for the purpose of evaluating possible changes to the permanent regulations. Under this temporary deviation, the Padanaram Bridge operated by the Town of Dartmouth shall open on signal from August 30, 1993 through September 30, 1993 from 5 a.m. to 9 a.m. and from 8 p.m. to 9 p.m. on the hour and half hour. The bridge shall open on signal from 9 a.m. to 8 p.m. on the hour only.

(3) At all other times, the bridge shall open on signal if at least 6 hours advance notice is given.

(4) The period of deviation is effective August 30, 1993 to September 30, 1993.

Dated: August 17, 1993.

Kent H. Williams,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 93-21724 Filed 9-3-93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD05-92-099]

RIN 2115-AE31

Drawbridge Operation Regulations; Potomac River, District of Columbia

AGENCY: Coast Guard, DOT.

ACTION: Notice of results of solicitation of comments.

SUMMARY: Pursuant to a provision in the Coast Guard Authorization Act of 1992, the Coast Guard issued an Advanced Notice of Proposed Rulemaking (ANPRM) soliciting comments concerning practical ways to encourage owners and operators of commercial vessels to notify the bridge tender of the time a vessel would need the drawspan of the Woodrow Wilson Memorial Bridge raised by as much as 24 hours before its arrival. This notice was published in the **Federal Register** (58 FR 6766) on February 2, 1993. Comments were accepted through April 5, 1993. As a result of comments received, the Coast Guard has determined that the current regulations for the Woodrow Wilson Memorial Bridge will remain unchanged.

DATES: This notice is effective October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, or telephone (804) 398-6222.

SUPPLEMENTARY INFORMATION:

Background

From August of 1990 until November 17, 1992, the Woodrow Wilson Bridge operated under several temporary deviations from the existing permanent regulations, and an interim final rule.

During this period a notice of proposed rulemaking (NPRM) to establish new permanent operating regulations was published in the **Federal Register** (December 20, 1991, 56 FR 66326). The Coast Guard Authorization Act of 1992 (Public Law 102-587, 106 Stat. 5039) imposed operating schedule regulations for the bridge, removing the need to complete the notice and comment rulemaking (NPRM) and it was withdrawn by a notice published in the **Federal Register** on November 17, 1992 (57 FR 54202). Furthermore, a final rule amending § 117.255 (57 FR 54178), published the same date, replaced the interim final rule which was in effect at the time.

Under the existing operating schedule, commercial vessels are not allowed passage through the bridge during rush hours and other peak schedule traffic hours, but may arrange passage at other times by providing at least 12 hours estimated advance notice, with a 4-hour confirmation. Pursuant to a provision in the Act cited above, the Coast Guard published an ANPRM to solicit public comment on whether there are practical ways to encourage owners and operators of commercial vessels to make every reasonable effort to notify the bridge tender of the time a vessel will arrive at the Woodrow Wilson Memorial Bridge by at least 24 hours before that arrival.

Drafting Information

The drafters of this notice are Ann B. Deaton, Project Officer, and Capt. M.K. Cain, Project Attorney.

Discussion of Comments

Eleven comments were received in response to the ANPRM published in the **Federal Register** on February 2, 1993. Of these, nine were opposed to the 24-hour advance notice requirement, one saw no need to pursue it, and one was neutral. Of the nine comments opposed, six represented commercial marine interests, two represented city and regional chambers of commerce, and one represented the city government. The theme of the opposition of all nine of these comments was the same: (1) Varying and unpredictable conditions inherent in commercial vessel operations make a 24-hour advance notice impractical; (2) a longer advance notice will make arrival information less accurate, thereby creating additional frustration for motorists rather than helping them; (3) the current advance notification requirement is accurate and effective in alerting motorists of scheduled openings. The comment that saw no need to pursue this proposal was from an organization representing thousands of motorists in the Metropolitan Washington, DC area. This organization concluded the 12-hour estimated advance notice with the 4-hour advance followup notice of arrival time seems to be working very well for all concerned. The neutral comments came from a state agency representing motorist interests. They stated that although a 24-hour advance notice would be beneficial to motorists, they recognize that many factors influence the actual arrival time

of commercial vessels at the bridge and, therefore, the 24-hour advance arrival time would only be approximate.

In view of these comments, the Coast Guard has determined there is no public support for a 24-hour advance notice requirement for commercial vessels. It has further determined that it will seek no change in the current statutory opening schedule for the Woodrow Wilson Memorial Bridge.

Dated: June 21, 1993.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93–21725 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Jacksonville, FL 93–087]

Safety Zone; Sister's Creek, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone at the Heckscher Drive drawbridge on Sister's Creek for all single skinned tank barges and vessels over 40 feet wide. The zone prohibits single skinned tank barges and vessels over 40 feet wide from transiting through the Heckscher Drive drawbridge during single span operations while the bridge is undergoing repairs.

EFFECTIVE DATE: This regulation becomes effective at 6 a.m. Eastern Daylight Time (EDT) on Monday, August 23, 1993. It terminates at 6 p.m. (EDT) on Friday, November 19, 1993.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W.H. Daughdrill, Tel: (904) 232–2648.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent injury to the public and provide a clear work area for workers.

Drafting Information

The drafters of this regulation are Lieutenant Junior Grade Theodore J. Ferring, project officer for the Captain of the Port, and Lieutenant Henry M. Bobotek, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The Coast Guard has authorized a temporary change in the operating regulations of the Heckscher Drive Drawbridge to allow the Department of Transportation to complete structural repairs. The Heckscher Drive drawbridge will operate on a single leaf operation from 6 a.m. to 6 p.m. during the effective dates. Single skinned tank barges and vessels over 40 feet wide must transit the span from 6 p.m. to 6 a.m. during the effective dates when the drawbridge will be able to open with both leaves in operation. One leaf will open fully 60 degrees while the leaf under repair will open 45 degrees from 6 p.m. to 6 a.m. This will allow for a 60 foot horizontal clearance. Due to the adverse cross currents in the area, this operating restriction is necessary to insure single skinned tank barges and vessels over 40 feet wide have the proper clearance to safely navigate the span. This restriction will also minimize the risk of environmental damage which could result if a restricted vessel collided with the bridge's fender system.

This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T0787 is added to read as follows:

§ 65.T0787 Safety Zone: Sister's Creek, Jacksonville, Florida.

(a) *Location.* The following area is a safety zone: Heckscher Drive drawbridge on Sister's Creek, Mile 739.2 on the Atlantic Intracoastal Waterway.

(b) *Effective date.* This regulation becomes effective at 6 a.m. Eastern Daylight Time (EDT) on Monday, August 23, 1993. It terminates at 6 p.m. (EDT) on Friday, November 19, 1993.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, each person in this zone who has notice of a lawful order or direction shall obey the order or direction of the Captain of the Port. Specifically this zone applies to all single skinned tank barges and vessels over 40 feet wide. Due to operating restrictions on the span, these vessels must transit between the hours of 6 p.m. and 6 a.m. during the effective dates. Operators of these vessels shall request the bridge tender open both leaves at least one hour prior to transiting the span. The bridge tender can be reached on Channel 13 VHF or at (904) 251–3212.

(2) This regulation does not apply to authorized law enforcement agencies operating within the Safety Zone.

Dated: August 13, 1993.

A. Regalbuto,

Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, Florida.

[FR Doc. 93–21723 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

34 CFR Part 649

RIN 1840–AB67

Patricia Roberts Harris Fellowship Program

AGENCY: Department of Education.

ACTION: Final regulations; correction.

SUMMARY: On August 12, 1993, final regulations for the Patricia Roberts Harris Fellowship Program were published in the **Federal Register** (58 FR 42860). The purpose of this notice is to change the contact person and to provide a correct telephone number for the contact person. The telephone number published in the final regulations is not a working number.

FOR FURTHER INFORMATION CONTACT: Ms. Cosette Ryan, U.S. Department of Education, 400 Maryland Avenue SW., room 3022, ROB–3, Washington, DC 20202–5251. Telephone : (202) 708–7127.

(Catalog of Federal Domestic Assistance Number 84.094: Patricia Roberts Harris Fellowship Program)

Dated: September 1, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93-21729 Filed 9-3-93; 8:45 am]

BILLING CODE 4000-01-M

Proposed Rules

Federal Register
Vol. 58, No. 171
Tuesday, September 7, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

RIN 0581-AA99

[FV-92-326]

United States Standards for Grades of Tomato Sauce

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: In compliance with the requirements for periodic review of existing regulations and in response to petitions from the Indiana Food Processors Association, Incorporated (IFPA), Escalon Packers, Incorporated, and Heinz, U.S.A., the Agricultural Marketing Service (AMS) proposes to revise the United States Standards for Grades of Tomato Sauce. The proposed rule would change the U.S. grade standards for tomato sauce by: Changing the product description; redesignating the quality level for "U.S. Grade C" as "U.S. Grade B," defining consistency in U.S. Grade A and U.S. Grade B; replacing dual grade nomenclature with single letter grade designations; providing for the use of USDA-approved methods or devices to determine color; defining the quality factor for "defects" more objectively; revising the section on "Product description" and the section on "Fill of container"; removing Section 52.2381, Score sheet for tomato sauce; and making minor editorial changes.

DATES: Comments must be received on or before November 8, 1993.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 0709, South Building, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Branch Chief during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Rodeheaver, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 0709, South Building, P.O. Box 96456, Washington, DC 20090-6456, Telephone (202) 720-6247.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers; individual industries, Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Agencies are required to review existing regulations periodically. The regulatory review ensures that the grade standards are serving their intended purpose, that the language is clear, and that the standards are consistent with AMS policy and authority.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The AMS Administrator has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Public Law 96-354 (5 U.S.C. 601 *et seq.*), because it reflects current marketing practices. In addition, these standards are voluntary. A small entity may avoid incurring any additional economic impact by not employing the standards.

The United States Department of Agriculture (USDA) received a petition from the Indiana Food Processors Association, Incorporated (IFPA), now part of Mid-America Food Processors Association, requesting that the U.S. grade standards for tomato sauce be revised. IFPA wanted the grade standards to reflect newer tomato varieties, harvesting and processing techniques, and procedures leading to improvements in the quality of tomato sauce. Escalon Packers, Incorporated (Escalon, California), and Heinz, U.S.A. (Pittsburgh, Pennsylvania), requested similar changes in the grade standards.

Large core tomato varieties were used for processing when the current U.S. grade standards were last amended in October 1960. These tomatoes were slightly higher in natural tomato solids, i.e. soluble sugars, fruit acids, and mineral salts, but lacked the consistency found in recently developed coreless tomatoes.

Since these grade standards were last revised, the manufacturing of tomato sauce from tomato paste has become a common practice, as well as manufacturing tomato sauce directly from tomatoes. USDA proposes to change the product description for tomato sauce to also include this processing practice.

The quality levels in the current grade standards are designated as "U.S. Grade A" and "U.S. Grade C." Most other U.S. grade standards with two quality levels, such as tomato juice, are designated as "U.S. Grade A" and "U.S. Grade B." This proposal would change the grade designation of "U.S. Grade C" to "U.S. Grade B" in the grade standards for tomato sauce.

IFPA stated in their petition that over the last ten years, new manufacturing techniques and procedures and new hybrid tomato varieties have provided processors the ability to produce tomato sauce with a higher consistency (resistance of a fluid to deformation i.e., apparent viscosity). In the marketplace, consumers have indicated a purchasing preference for higher consistency tomato sauce. IFPA believes that U.S. Grade A should include the higher consistency requirements that consumers prefer. In its petition, IFPA specified what those requirements for consistency should be.

Although the consistency of tomato sauce is affected by the mix of ingredients in the product, it is known that texture and consistency of the tomatoes have improved the quality characteristics of tomato sauce.

Presently, tomato sauce consistency is based on Bostwick consistometer readings which measure the distance a specific volume of tomato sauce flows on the level plane of the consistometer in a specific period of time and the tendency of the liquid portion to separate from the insoluble solids portion. Score points are assigned to the tomato sauce according to the consistometer readings.

In the current grade standards, the minimum requirements (maximum flow limits) for consistency in U.S. Grade A and U.S. Grade C are 14.0 centimeters and 18.0 centimeters respectively, measured by the Bostwick consistometer. USDA believes that tomato sauce quality would be more accurately represented if higher consistency or "thicker" sauce were assigned a higher score and lower consistency or "thinner" sauce were assigned a lower score when consumer preference for thicker sauce prevails in the marketplace.

USDA proposes a consistency range of 4.0 centimeters to 12.0 centimeters for U.S. Grade A tomato sauce. The high consistency or low centimeter value tomato sauce will receive high score points.

In addition to the factor of consistency, this proposed rule would replace dual grade nomenclature with single letter designations. Under this proposal, "U.S. Grade A" (or "U.S. Fancy") and "U.S. Grade C" (or "U.S. Standard") would become "U.S. Grade A" and "U.S. Grade B," respectively. This proposal also provides for the use of methods or devices other than Munsell color discs to determine color. These methods or devices must be approved by USDA and must give results equivalent to the assigned combinations of Munsell color discs for the respective grades.

Some members of the tomato sauce industry recommended that USDA provide a more objective method to evaluate "defects" in tomato sauce. USDA proposes to set specific tolerances for peel, dark brown and black specks, and whole seeds based on a sample of 100 grams (3.5 oz) spread over a specified area of at least 968 square centimeters (150 sq in). USDA proposes to revise the product description (§ 52.2371) by allowing preservation by refrigeration and freezing as FDA has done in the Standard of Identity for tomato concentrates. Also, USDA proposes to incorporate FDA's requirements for fill of container for single serving sizes 56.7 grams (2 oz) or less in § 52.2373, Fill of container.

Also, this proposed rule would remove Section 52.2381, "Score sheet for tomato sauce", from the U.S. grade standards. Reformatting or amending the tomato sauce score sheet can be more efficiently facilitated by editing the score sheet as a document not incorporated in the grade standards. This change is consistent with recently revised U.S. grade standards in which score sheets are no longer incorporated.

Finally, the proposal includes minor editorial changes and provides a uniform format consistent with recent revisions of other U.S. grade standards. The proposed format has been designed to provide users with simpler and more comprehensive standards.

Definitions of terms and easy-to-read tables have been incorporated to assure better understanding and uniform application of the standards.

USDA has determined that this proposed rule would facilitate trade between processors and buyers and improve the marketing of tomato sauce.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

For the reasons set forth in the preamble, the U.S. Department of Agriculture proposes to amend 7 CFR part 52 as follows:

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

1. The authority citation for part 52 is amended to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624).

2. In Subpart—United States Standards for Grades of Tomato Sauce, §§ 52.2371 through 52.2377 are revised to read as follows:

Subpart—United States Standards for Grades of Tomato Sauce

Sec.

52.2371 Product description.
52.2372 Definitions of terms.
52.2373 Fill of container.
52.2374 Ascertaining the grade and factors of quality.
52.2375 Allowance for defects.
52.2376 Sample unit sizes.
52.2377 Determining the grade of a lot.

§ 52.2371 Product description.

Tomato sauce is the concentrated product prepared from the liquid extracted from mature, sound, whole tomatoes; the sound residue from preparing such tomatoes for canning; or the residue from partial extraction of juice or reconstituted or remanufactured tomato paste; or any combination of these ingredients to which is added salt and spices. One or more nutritive sweetening ingredients, a vinegar or vinegars, onion, garlic, or other vegetable flavoring ingredients may be added. The food is preserved by heat sterilization (canning), refrigeration, or freezing. When sealed in a container to be held at ambient temperatures, it is so processed by heat, before or after sealing, as to prevent spoilage. The refractive index of the tomato sauce at 20 degrees Celsius is not less than 1.3455.

§ 52.2372 Definitions of terms.

(a) *Color* means the amount of red in the tomato sauce as determined by comparing the color of the product with that produced by spinning a combination of the following Munsell color discs:

Disc 1–Red (5R 2.6/13) (glossy finish);
Disc 2–Yellow (2.5YR 5/12) (glossy finish);
Disc 3–Black (N1) (glossy finish); and
Disc 4–Gray (N4) (mat finish).

Any other method or device approved by USDA which gives equivalent results may be used to determine color.

(1) *Good color* means the color typical of tomato sauce that contains as much or more red than that produced by spinning the specified Munsell color discs in the following combinations or an equivalent of such composite color:

65 percent of the area of Disc 1;
21 percent of the area of Disc 2; and
14 percent of the area of Disc 3 or Disc 4, or 7 percent of the area of Disc 3 and 7 percent of the area of Disc 4, whichever most nearly matches the reflectance of the tomato sauce.

(2) *Reasonably good color* means the color typical of tomato sauce that contains as much or more red than that produced by spinning the specified Munsell color discs in the following combinations or an equivalent of such composite color:

53 percent of the area of Disc 1;
28 percent of the area of Disc 2; and
19 percent of the area of either Disc 3 or 4, or 9½ percent of the area of Disc 3 and 9½ percent of the area of Disc 4, whichever most nearly matches the reflectance of the tomato sauce.

(b) *Consistency* means the resistance of the tomato sauce to deformation or resistance to flow, i.e., apparent viscosity and the tendency to hold its liquid portion in suspension.

(1) *Good consistency* means that the tomato sauce is not excessively stiff, and that it flows not less than 4.0 centimeters nor more than 12.0 centimeters in 30 seconds at 20 degrees Celsius in the Bostwick consistometer. After placing a tablespoon of tomato sauce on a shallow tray for 2 minutes, there shall be no more than 5 mm (3/16 in) of free liquid evident in separation. The high consistency tomato sauce will receive the high score points.

(2) *Reasonably good consistency* means that the tomato sauce is not excessively stiff, and that it flows less than 4.0 centimeters but not less than 3.0 centimeters or flows more than 12.0 centimeters but not more than 15.0 centimeters in 30 seconds at 20 degrees Celsius in the Bostwick consistometer. After placing a tablespoon of tomato sauce on a shallow tray for 2 minutes, there shall be no more than 10 mm (3/8 in) of free liquid evident in separation. Within these two ranges, tomato sauce approaching "good consistency" would receive the higher score points.

(c) *Defects* mean the degree of freedom from defects such as dark brown or black specks, whole seeds, tomato peel, core material, or other similar substances. The specific requirements for defects are included in Table I. This factor is evaluated by observing a layer of 100 grams (3.5 oz) of product which is spread over a smooth white surface area of at least 968 square centimeters (150 sq in).

(1) *Practically free* of defects means that any defects present in the sauce do not exceed the requirements for "practically free" in Table I.

(2) *Reasonably free* of defects means that any defects present in the sauce do not exceed the requirements for "reasonably free" in Table I.

(d) *Finish.*

(1) *Good finish* means that the product is evenly comminuted, has uniform, smooth texture, and is free from lumps.

(2) *Poor finish* means that the product fails to meet the definition of "good finish."

(e) *Flavor and odor* mean the flavor and odor characteristic of tomato sauce produced from good quality ingredients that have been properly processed.

(1) *Good flavor and odor* mean a distinct tomato flavor and odor. Such flavor and odor is free from scorching or any other objectionable flavor or odor.

(2) *Reasonably good flavor and odor* mean a flavor and odor in which there may be slight traces of undesirable flavor, such as scorched, bitter, or astringent flavor, but is free from objectionable off-flavors and odors.

§ 52.2373 Fill of container.

Except for frozen tomato sauce and tomato sauce packaged in individual serving-size packages containing 56.7 grams (2 ounces) or less, each container of tomato sauce shall be filled as full as practicable without impairment of quality, and shall occupy not less than 90 percent of the capacity of the container.

§ 52.2374 Ascertaining the grade and factors of quality.

(a) The grade of tomato sauce is ascertained by considering the factor of finish, which is not scored, and the ratings for the factors of color, consistency, defects, and flavor and odor, which are scored. The relative importance of each factor which is scored is expressed numerically on the scale of 100. The maximum number of points that may be given for each factor is:

Factors	Points
Color	25
Consistency	25
Defects	25
Flavor and odor	25
Total score	100

§ 52.2375 Allowances for defects.

TABLE I

Factors	U.S. Grade A	U.S. Grade B
Finish	Good[1]	Good.[1]
Color	Good	Reasonably good.
Score	21–25 points	17–20 points.
Consistency	Good	Reasonably good.
Centimeters (Bostwick)	4.0–12.0	3.0 to less than 4.0 or more than 12.0 but less than 15.0
Separation of free liquid	Equal to or less than 5 mm (3/16 in)	More than 5 mm but equal to or less than 10 mm (3/8 in).
Score	22–25 points	18–21 points.
Defects[2]	Practically free	Reasonably free.
Pieces of peel[3] exceeding 5 mm/100g (3.5 oz) and Dark specks exceeding 1.0 mm (1/32 in) per 100 g.	Combinted total of 15 pieces of peel and dark brown or black specks: no dark brown or black specks exceed 3.2 mm (1/8 in).	Combined total of 36 pieces of peel and dark brown or black specks; not more than 2 dark brown or black specks exceed 3.2 mm, no dark brown or black specks exceed 6.5 mm (1/4 in).
Whole seeds/2.835 kg (100 oz)	1	5.
Overall appearance	Not materially affected	Not seriously affected.
Score	21–25 points	18–20 points.
Flavor and odor	Good	Reasonably good.
Score	21–25 points	17–20 points.
Total minimum score	85 points	70 points.[4]

[1] Evenly comminuted; smooth uniform texture.
[2] Except for whole seeds, based on 100 grams (3.5 oz) of product at 8.0 to 9.0 percent natural tomato soluble solids (NTSS). Whole seeds, based on 2.835 kg (100 oz) of product at 8.0 to 9.0 NTSS.
[3] Measured without unrolling.
[4] Tomato sauce which fails to meet the quality of U.S. Grade B shall be classified as "Substandard."

§ 52.2376 Sample unit sizes.

(a) The sample unit size is the amount of product specified to be used for inspection in 7 CFR 52.38, Table III.

(b) For Number 10 can size or larger, an optional sample unit size of 900 grams (approximately 32 ounces) per container is permitted.

§ 52.2377 Determining the grade of a lot.

The grade of a lot of tomato sauce covered by these standards is determined by the procedures found in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products" (7 CFR 52.1 through 52.83).

§§ 52.2378–52.2381 [Removed]

3. Sections 52.2378 through 52.2381 are removed and reserved.

Dated: August 31, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–21601 Filed 9–3–93; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 89–154–1]

RIN 0579–AA21

Importation of Plants Established in Growing Media

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and notice of public hearing.

SUMMARY: We propose to amend "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" to allow the importation of five additional genera of plants established in growing media. These genera are *Alstroemeria, Ananas, Anthurium, Nidularium,* and *Rhododendron.* We believe these genera may be imported under conditions proposed for the regulations without introducing or disseminating dangerous plant pests. This change would affect persons interested in importing these genera, and domestic growers of the genera.

DATES: Consideration will be given only to comments received on or before December 6, 1993. We also will consider comments made at a public hearing to be held on October 26, 1993, in Washington, DC.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 89–154–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Peter Grosser or Frank Cooper, Senior Operations Officers, Port Operations, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8295.

SUPPLEMENTARY INFORMATION:

Public Hearing

The public hearing will be held on Tuesday, October 26, 1993, in the Jefferson Auditorium, United States Department of Agriculture, South Building, 14th Street and Independence Avenue SW., Washington, DC. Persons wishing to speak at the public hearing are requested to contact Richard Kelly no later than October 11, at (301) 436–5455, or by writing to him at APHIS, PPD, RAD, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

A representative of the Animal and Plant Health Inspection Service (APHIS) will preside at the public hearing. Any interested person may appear and be heard in person, by attorney, or by other representative.

The public hearing will begin at 10 a.m. and is scheduled to end at 5 p.m. local time. However, the hearing may be terminated at any time after it begins if all persons desiring to speak have been heard. We request that all persons who wish to speak at the public hearing contact us as requested above, and provide their name, organization, and the approximate length of their presentation. This will allow us to determine whether we need to schedule additional time for the hearing. Speakers who register in advance will be informed prior to the hearing of the time they are scheduled to speak. Attendees who do not register in advance will be allowed to speak after all scheduled speakers have been heard. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing.

If the number of speakers at the hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

The purpose of the hearing is to give interested persons an opportunity for oral presentation of data, views, and arguments. Questions about the content of the proposed rule may be part of the commenters' oral presentations. However, neither the presiding officer nor any other representative of APHIS will respond to comments at the hearing, except to clarify or explain provisions of the proposed rule.

Future Rulemaking Actions

APHIS intends to propose several more amendments concerning plants established in growing media during the next several years. APHIS has received requests to allow more than 60 additional genera and families of plants established in growing media to be imported into the United States.

Generally, APHIS permits the entry of specified plant genera and families after APHIS determines that the entry would not introduce plant pests harmful to United States agriculture. The decision on whether to allow entry of each plant genus is time-consuming, and includes detailed analysis of pest risks associated with the genus. These pest risk analyses must be scientifically sound, thorough, and up to date. Pest risk analyses have been performed in the past for most of the plant genera and families that are under consideration for entry established in growing media. However, most of the analyses were completed more than a year ago, and some are up to 10 years old. APHIS is concerned that some of the analyses may now be outdated. In addition, the methods used in performing the analyses varied, because they were not conducted in accordance with a uniform pest risk analysis methodology. Therefore, APHIS intends to conduct new pest risk analyses for these 60 plant genera and families, using a uniform pest risk analysis methodology and up-to-date information.

To prevent unnecessary delay in the publication of regulations, APHIS has decided to publish proposed revisions to § 319.37–8 in several phases. Each time APHIS completes the pest risk analysis and decision-making process for 5–15 genera, we intend to publish a proposed rule proposing to permit entry of those genera we believe can be safely imported.

Therefore, revisions to the regulations will be proposed in phases. We have completed pest risk analyses for five genera based on proposed standards for risk analysis. The current proposed rule proposes to add these five groups of plants to the list of plants approved for entry established in growing media contained in § 319.37–8. Over the next several years, we expect to propose several more rules, each listing plant

genera APHIS proposes to add to the list in § 319.37–8.

Background

The Plant Quarantine Act (7 U.S.C. 151 *et seq.*) and the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*) authorize us to prohibit or restrict the importation into the United States of any plants, roots, bulbs, seeds, or other plant products in order to prevent the introduction into the United States of plant pests.

Regulations promulgated under this authority, among others, include 7 CFR 319.37 through 319.37–14, "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (the regulations). These regulations govern the importation of living plants, plant parts, and seeds for or capable of propagation, and related articles. Other sections of part 319 deal with articles such as cut flowers, or fruits and vegetables intended for consumption.

The regulations restrict or prohibit the importation of most nursery stock, plants, roots, bulbs, seeds, and other plant products. These articles are classified as either "prohibited articles" or "restricted articles."

A prohibited article is an article that the Deputy Administrator for Plant Protection and Quarantine (PPQ) has determined cannot feasibly be inspected, treated, or handled to prevent it from introducing plant pests new to or not widely prevalent or distributed within and throughout the United States, if imported into the United States. Prohibited articles may not be imported into the United States, unless imported by the United States Department of Agriculture (USDA) for experimental or scientific purposes under specified safeguards.

A restricted article is an article that the Deputy Administrator for PPQ has determined can be inspected, treated, or handled to essentially eliminate the risk of its spreading plant pests if imported into the United States. Restricted articles may be imported into the United States if they are imported in compliance with restrictions that may include permit and phytosanitary certificate requirements, inspection, treatment, or postentry quarantine.

Section 319.37–8, "Growing Media," allows importation of certain restricted articles established in growing media (potted plants), if the plants were potted in an approved growing medium and were grown in a greenhouse in accordance with safeguard conditions specified in the regulations. We propose to add *Ananas*, *Astroemeria*, *Anthurium*, *Nidularium*, and *Rhododendron* to this list.

We also propose to add several new growing media to the list of approved growing media. The new media are baked expanded clay pellets, perlite, polymer stabilized starch, cork, volcanic rock, and rock wool. The current regulations allow use of peat, sphagnum moss, vermiculite, and various synthetic growing media, and require that the medium be new (unused). Based on scientific studies of pests associated with growing media, we believe the media we propose to add present a very low risk of spreading pests, similar to the currently approved media. We also propose to allow the importation of regulated articles established in a mixture of approved media, as well as in a single medium. Some growers may wish to employ mixtures of media for economic reasons or to achieve particular levels of aeration or water retention. We believe that using mixtures of approved media does not increase pest risk.

Potted plants that currently may be imported under the regulations include Polypodiophyta (ferns), African violet, gloxinia, begonia, and peperomia (under § 319.37–8(e)), and hyacinth (under § 319.37–8(f)). Approved growing media currently include unused peat, sphagnum moss, or vermiculite, and synthetic media, i.e., plastic particles, glass wool, organic and inorganic fibers, polyurethane, polystyrene, polyethylene, phenol formaldehyde, and ureaformaldehyde.

"Standards for Pest Risk Analysis" Document

As announced by an earlier proposed rule (56 FR 6297–315, Docket 87–005, published February 15, 1991) and an advance notice of proposed rulemaking (the ANPRM, 56 FR 50523–50524, Docket No. 91–036, published October 7, 1991), APHIS developed a draft document, "Standards for Pest Risk Analyses: Plants in Growing Media" (the "Draft Standards" document) to assist in analyzing the pest risks associated with this proposed rule. The ANPRM described the "Draft Standards" document as "draft standards describing possible methodologies for this type of pest risk assessment" (56 FR 50524).

The "Draft Standards" document discussed in the ANPRM attempted to establish a framework for assigning quantitative values to biological and ecological data associated with importing plants established in growing media. The central features of the "Draft Standards" document were two forms: (1) a Plant-Commodity Assessment Form; and (2) a Pest Assessment Form, which plant science experts could use to assign values to a number of factors describing characteristics of individual plant types and individual pests associated with them. These factors address characteristics of pests and commodities that are relevant to pest risk analysis, and the information organized by the completed forms could be used by APHIS risk analysts to assess risks. Each factor on the forms could be assigned a value between 0 (no potential for the characteristic) and 10 (highest potential). The forms anticipated that plant scientists could assign values as follows:

Potential	Evidence	Rating No.
High	High potential known and documented	9–10
Moderate to high	Moderate to high potential known and documented, or Probably high potential but data lacking and/or questionable.	7–8
Moderate	Moderate potential known and documented, or Probably moderate to high potential but data lacking and/or questionable.	5–6
Moderate to low	Moderate to low potential known and documented or Probably moderate potential but data lacking and/or questionable.	3–4
Low	Low potential known and documented, or Probably moderate to low potential but data lacking and/or questionable, or. Probably low potential but data lacking and/or questionable.	1–2
None		0

The Plant-Commodity Assessment Form allowed a value in this 0–10 range to be assigned for the plant under review for each of the following factors:

Probability that the plant will be propagated. If the plant is propagated, any pests associated with the plant may spread to the descendants and be moved to additional locations, which increases the chance of spreading plant pests.

Plant is an annual [1], biennial [5], or perennial [10]. A longer plant lifetime means longer survival for any pests that may be associated with it, and more opportunities for spread of pests from the plant.

Number of propagative units being imported: few [1], moderate number [5], large number [10]. Since all imports present some level of risk, the cumulative risk rises as the total volume of imports rises.

Number of propagative units projected for importation in the near future: none [0], same as now [5], large increase [10]. Any sudden large increase in the number of units could strain APHIS program resources devoted to enforcing regulations regarding the articles, particularly port operations, and would increase the potential for introducing pests.

Unfamiliarity with imported plant by inspecting official. The chance that an inspector could fail to find pests on an inspected article increases if the inspector is not accustomed to inspecting the article.

Economic importance of the imported plant species in the United States. This factor addresses the economic impacts of introducing pests of particular species. Introduction of pests of an economically important species has more weight than introduction of pests of species of negligible economic importance under this factor.

Distribution in the United States: limited [1] to widespread [10]. The larger the distribution, the larger the potential range for pests of the plant.

Probability of plant coming in contact with U.S. crops. This factor addresses the possibility that pests from an imported plant could spread directly to crops.

Susceptibility of U.S. crop to foreign pests. This factor addresses the gravity of the impact if the imported article should spread pests to U.S. crops.

The Pest Assessment Form allowed a value in the 0–10 range to be assigned for the following factors relevant to each pest associated with a plant under consideration for importation into the United States:

Likelihood that pest may vector another pest organism. Some pests are relatively harmless, but facilitate the spread of more serious pests.

If the pest requires a vector, likelihood of pest encountering a domestic vector. If suitable domestic vectors are scarce or unavailable, the pest is less likely to become established.

Likelihood that U.S. pest species has foreign strain or subspecies that could increase host damage. Greater risk is presented by pests that have related strains already established in the United States. The more harmful strains could readily move into the ecological niches currently filled by less harmful strains.

Ability to readily develop races or strains. This trait complicates identification and tracking of pest strains.

Ability for natural dispersal. Obviously, as this trait increases, so does the pest potential.

Ability to use human activity for dispersal in the United States. Pests that readily spread in this manner (e.g., the gypsy moth) have a greater opportunity for spread.

Ability to obtain high population densities in a short time. Ability to reproduce sexually in the United States. Ability to reproduce asexually in the United States. Ability to survive adversity for long periods. Ability to survive without host. Absence of domestic predators or parasites. There are obvious increases in pest potential associated with pests that demonstrate these abilities.

Worldwide distribution of pest: restricted [0] to ubiquitous [10]. If a pest is found in many places, it shows a talent for becoming established in new areas, which would affect its likelihood of spreading if introduced into the United States.

Inability to be detected by inspection. Part of the protection the regulations provide is based on inspection for pests. Pests that are relatively immune to discovery through inspection, therefore, are more likely to be introduced into the United States.

Inability to be identified to a level that would allow its quarantine significance to be known. Some pests may be disclosed by inspection, but not readily separated from closely allied genera already present in the United States. The life stage of a pest associated with an article may affect the ability of inspectors to identify it; e.g., immature insects often lack morphological characteristics that allow mature stages to be distinguished from similar species or strains.

Hitchhiking ability in commerce. Pests that can readily move with articles that are not their natural hosts readily move and disperse with such articles.

Interception frequency at ports of entry. Host range: host specific [1] to polyphagous [10]. Likelihood that susceptible host(s) are present in the United States at the time of likely pest introduction. Percentage of host range that pest occupies in exporting country: 10% [1] to 100% [10]. Percentage of expected U.S. ecological range for pest: 10% [1] to 100% [10]. These factors evaluate data on how many of the pests succeed in bypassing initial controls and make it to U.S. ports of entry, and assess how successful the pest is in utilizing potential hosts, in the country of origin and in the United States.

Potential economic cost (domestic and exports) if pest becomes established and widespread in the United States. Inability to economically control the pest if established. A high cost resulting from pest establishment, or a high cost to control the pest after establishment, indicate possible consequences of introduction that must be considered when risk assessment and risk management is attempted.

Ability to attack roots or other plant structures hidden by the growing media. If the damage is hidden, inspectors are less likely to detect its presence. Therefore, such pests are harder to exclude through means such as inspection.

Ability to use the growing media independent of the plant. Pests that can survive without the usual plant host are more likely to survive introduction and dispersal.

Potential of increased risk due to a greenhouse environment. Because the regulations require greenhouse growth, pests that thrive in greenhouse environments are more likely to be associated with the regulated articles than pests that do not.

Potential to cause environmental and/or aesthetic damage. Obviously, as this factor increases, so do the possible consequences of introduction of the pest.

The "Draft Standards" document anticipated using these forms to organize scientific knowledge and opinion about particular plants, and about pests that were identified as associated with these plants. In developing pest lists for the purposes of this proposed rule, the approach described in the "Draft Standards" document was used. Pest lists were developed by identifying reports of pests associated with the plants proposed for importation, in the geographic areas where the plants for import are grown. This data was collected from the scientific literature using databases with a scope of approximately the past 20 years of reports (AGRICOLA, CAB Abstracts, BIOSIS Previews). The data were supplemented with any reports of pest interceptions present in APHIS databases (PINET, PPQ Pest Interception database) and pest interception reports from foreign plant protection services.

In collecting the scientific data for the Plant-Commodity Assessment Form and the Pest Assessment Form, APHIS employed a group of both USDA experts and outside scientists, as discussed below. This group was used solely to obtain the best available scientific knowledge about pest and host plant characteristics. Members of the group contributed data about pests and host plants both individually and in group work sessions. APHIS analyzed this data through pest risk assessment and generated the proposed regulatory requirements discussed below.

While this expert group was identifying relevant pest and commodity characteristics, APHIS officials became aware, through comments discussed below, that the highly quantitative orientation of the forms in the "Draft Standards" document was a barrier to generating consistent and reliable information on the relevant characteristics of pests and commodities. In addition, members of the group perceived a problem with assigning a numerical value to each factor on the forms, to be "averaged" by

APHIS to arrive at an overall value for the plant or pest. Several participants pointed out that a high or low value for some factors should reduce the relevance of other factors when the time came for APHIS to assess risks. For example, a 0 for "percentage of expected U.S. ecological range for pest" could mean that even if higher values were assigned to other factors for the same pest (e.g., "inability to be detected by inspection"), the real risk potential for the pest would be low, even though numerical averaging of all the factors could yield a medium or high value.

In working with the concepts contained in the Plant-Commodity Assessment Form and the Pest Assessment Form, APHIS decided to set aside the strictly quantitative features of the forms. The same factors listed on each form were applied to each plant and pest, but the group did not attempt to describe the presence or absence of characteristics in terms of a 0–10 value for each factor. Instead, participants discussed each factor and its relationship to other factors. In the end, participants determined whether each factor was present or absent, and if present, they provided a nonquantitative description of the strength of its presence.

The problem with overquantification in the Plant-Commodity Assessment and Pest Assessment forms was also identified by comments on the "Draft Standards" document submitted in response to the ANPRM. We received comments in response to the ANPRM from four State agricultural agencies: California, Florida, Hawaii, and Maryland.

One comment noted that "While the [APHIS] analyst's perceived risk of the pest or plant commodity may be reflected by the number, attempts to define it rigidly via a computer program could result in a very distorted picture of reality and a false sense of security in the final risk assessment. A subjective evaluation by an experienced analyst might more effectively deal with an 'oddball' pest than a computer program with rigidly defined parameters."

A second comment noted that numerical values assigned to factors on the forms could be unreliable if the value is based on limited or inadequate data, and suggested that the reliability of the data used to assign values also be rated on each form. This commenter suggested that in addition to assigning a 0–10 value to each pest risk factor, the form should also record a value of 0–10 for the reliability of the data used to assign the pest risk value, so that the final assessment could be adjusted for high or low values of limited reliability.

A third comment noted, with regard to the assessment forms, that "The list of factors to consider is very complete, but the ability to answer these questions accurately will be very difficult, especially when considering organisms on a worldwide basis."

A fourth comment expressed concern about the assessment form factors that address the host range and harm caused by pests in the exporting country. The commenter believed that low values assigned to these factors could result in an overall average of low risk for a pest that could, in fact, cause substantial harm if introduced into a new set of environmental conditions in the United States.

Based on these comments and on the experience of the group of USDA experts and outside scientists assembled to identify relevant pest and plant characteristics, we did not attempt to use the strict quantitative features of the forms presented in the "Draft Standards" document. The group did use the factors identified in the forms to collect information APHIS then used in our risk assessments, but did not employ numeric values or averages. Instead, as discussed above, participants in the group determined the presence or absence of each characteristic described by a factor on the form, and if the characteristic was present, gave a nonquantitative description of the strength of the characteristic.

We believe that the fundamental questions asked by the Plant-Commodity Assessment Form and the Pest Assessment Form will be of continuing use in evaluating the risk of importing plants established in growing media. For each pest risk assessment for an article considered for import, we need to collect and assess information regarding the probability that pests will accompany the article, and the probability that any pests that may accompany the article could become established in the United States, as pests of either the type of article imported or of other types of plants in the United States. We also need to consider information about the biological characteristics of such pests, their distribution in the area of origin of the imported article and in the United States, and the type of damage the pests cause. We also need to consider information about the potential range of such pests in the United States, and the availability and effectiveness of mitigation methods to prevent the introduction, establishment, and spread of such pests.

Therefore, we propose to add to the regulations a list of fundamental pest risk evaluation standards drawn from the types of data the Plant-Commodity Assessment Form and the Pest Assessment Form were designed to collect. These standards describe the type of pest risk information that must be collected and evaluated in the course of our pest risk assessments for determining whether to allow importation of plants established in growing media. The Plant-Commodity Assessment Form and the Pest Assessment Form described in the "Standards" document would not be used in the future to capture information about relevant biological information regarding pests and host plants, because their strictly numerical format proved unworkable. Instead, the type of information about pest and host plant characteristics to be collected and considered during pest risk assessment would be described by proposed §§ 319.37–8(g) (1) and (2). The standards for evaluating this information and estimating pest risk would be available in proposed §§ 319.37–8(g) (3), (4) and (5). All of the concepts that the two discarded forms contained about information relevant to pest risk assessment are captured in these proposed sections. The regulations do not propose any specific form or matrix for recording this information, because we believe that such rigidity would unnecessarily limit opportunities to creatively organize the information in ways suited to the particular pest or commodity under assessment.

These fundamental pest risk evaluation standards are contained in proposed § 319.37–8(g), "Pest risk evaluation standards for plants established in growing media." This new paragraph does not provide an exact formula for how we would determine whether or not to admit an additional type of plant established in growing media, because we have found it impossible to date to develop an exact formula for such decisionmaking. As discussed above, such a determination must be based on a subjective evaluation of the factors listed in the proposed new paragraph as applied to the type of plant being evaluated, and any biological, physical, or other considerations for particular plants or pests that could make individual factors more or less important than other factors. Although the proposed new section would not provide the public with an exact formula for calculating whether particular plant genera should be admitted, it would provide a substantial amount of information, not currently contained in the regulations, about APHIS decisionmaking in this area. Allowing Importation of *Ananas*,

Alstroemeria, Anthurium, Nidularium, and *Rhododendron* Established in Growing Media.

In making the decision to propose to add these five genera to § 319.37–8(e), APHIS engaged in an extensive analytical process involving USDA program experts and outside scientists. The primary goal of this process was to determine whether the genera could be imported, either under the conditions currently contained in § 319.37–8(e) or under feasible alternative conditions, without introducing or disseminating injurious plant pests.

APHIS established a work group to develop and analyze data in support of this goal. The work group included entomologists, plant pathologists, mycologists, and nematologists from USDA, universities, and State plant protection agencies.

The process of studying the five genera and associated pests involved several stages, described below: developing lists of potential pests of concern; evaluating the risks associated with the pests; and evaluating mitigation measures to control pest risk.

1. Developing Lists of Potential Pests of Concern

Reports in the scientific literature concerning pests of each of the five genera were collected and evaluated. An initial collection of reports was retrieved using the DIALOG database system. The reports retrieved through DIALOG were supplemented by reports from the work group members' files and contacts, and updates from plant protection services of countries interested in exporting articles of the five genera.

Reports of pests associated with each genus were then evaluated to identify pests that the reports indicated are not present or widely disseminated in the United States, and that could cause damage to plants in the United States if introduced.

2. Evaluating the Risks Associated With the Pests

Each of the five genera, and the pests identified as associated with them, was evaluated using the concepts embodied in the risk factors listed in the Plant-Commodity Assessment Form and the Pest Assessment Form. Each pest was evaluated to determine the probability that it could enter the United States with articles of the associated genera, and the probability that it could become established and spread after entry. The potential harm each pest could cause if it entered and spread was also estimated.

A number of pests were determined to present a risk of entry, establishment, and spread, and a risk of substantial harmful consequences if established. These risk evaluations reflect an assumption that no mitigation measures or safeguards are in effect except inspection of a sample of the imported articles at the port of entry. The effectiveness of regulatory requirements in mitigating risks associated with importing these articles is addressed in the next section of this document.

3. Mitigation Measures to Control Pest Risk

To determine whether there is a feasible way to allow the importation of articles associated with pests that have a substantial probability of establishment, we evaluated the effectiveness of mitigation measures for controlling these risks. Mitigation measures considered included both the existing entry requirements of § 319.37–8(e), and other measures.

Current § 319.37–8(e) allows importation of listed articles under the following conditions:

(1) If there is a written agreement between the Plant Protection and Quarantine Programs and the plant protection service of the country where the article is grown in which the plant protection service of the country where the article is grown agrees to implement a program in compliance with the provisions of this section;

(2) If there is a written agreement between the grower of the article and the plant protection service of the country where the article is grown wherein the grower agrees to comply with the provisions of this section, wherein the grower agrees to allow an inspector access to the growing facility as necessary to monitor compliance with the provisions of this section, and wherein the grower agrees to allow representatives of the plant protection service of the country in which the article is grown access to the growing facility as necessary to make determinations concerning compliance with the provisions of this section;

(3) If:

(i) Grown throughout its growing period only in a greenhouse with insect-proof screening (a minimum of 16 mesh per inch) on all vents and with all entryways equipped with automatic closing doors;

(ii) Grown only in a greenhouse unit solely used for articles grown under all the criteria specified in this paragraph (e);

(iii) Grown only on a raised bench supported by legs and raised at least 460 millimeters (approximately 18 inches) off the floor;

(iv) Grown only in unused peat, sphagnum moss, or vermiculite growing media; or grown only in synthetic growing media or synthetic horticultural foams, i.e., plastic particles, glass wool, organic and inorganic fibers, polyurethane, polystyrene, polyethylene, phenol formaldehyde, ureaformaldehyde;

(v) Watered only with clean rainwater that has been pasteurized, with clean well water, or with potable water;

(vi) Grown in a greenhouse clean of sand, soil, or earth;

(vii) Grown only in a greenhouse where strict sanitary procedures are always practiced, i.e., cleaning and disinfection of floors, benches, and tools, the application of measures to protect against any injurious plant diseases, injurious insect pests, and other plant pests; and

(viii) Stored only in areas found free of sand, soil, earth, injurious plant diseases, injurious insect pests, and other plant pests.

(4) If appropriate measures have been taken to assure that the article is to be stored, packaged, and shipped free of injurious plant diseases, injurious insect pests, and other plant pests;

(5) If accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration from the plant protection service of the country in which grown that the article meets conditions of growing, storing, and shipping in compliance with 7 CFR 319.37–8(e); and

(6) If the accompanying phytosanitary certificate of inspection is endorsed by a Plant Protection and Quarantine Programs inspector in the country of origin or at the time of offer for importation, representing a finding based on monitoring inspections that the conditions listed above are being met.

These requirements control pest risk by requiring that the articles be grown in greenhouses and be protected from pests by a variety of physical and procedural barriers. The articles are grown in media that are very unlikely to harbor pests, are grown on benches raised above the floor to present a barrier to pests, are watered only with clean water unlikely to contain pests, and are grown in a greenhouse with screens and automatically closing doors that present barriers to entry of pests. The greenhouses must employ sanitary practices to destroy any pests that gain access to it, and the articles must be stored and shipped using measures to ensure their freedom from pests.

These requirements are an effective barrier to contamination of the articles by many pests, especially insects. We believe, based on years of experience enforcing these requirements and studies of the growing facilities that apply them, that greenhouses meeting these requirements are highly effective in excluding injurious plant pests. Studies also show that unused growing media of the types allowed by the requirements are free from injurious plant pests. If the plants that are brought into these greenhouses and established in unused growing media are also free from injurious plant pests, there is a high probability that the plants will remain free from pests and diseases during their growing period in the greenhouse.

Plants of these five genera (*Alstroemeria, Ananas, Anthurium, Nidularium,* and *Rhododendron*) are already allowed entry into the United States from all countries if not established in growing media, and if otherwise in accord with the provisions of the regulations. There have been no reports of plant pests associated with the importation of bare-rooted plants of these genera becoming established or spreading in the United States. Therefore, we are using the risks associated with importing bare-rooted plants as a benchmark for our proposal regarding importation of plants in growing media. Under the proposed pest risk assessment methodology in § 319.37–8(g) of the regulations, we would propose to allow an article in growing media to be imported only if the risks associated with the importation are equal to or less than the risks associated with importing the article with bare roots. In evaluating the risks, we would take into account all factors associated with the importation that would reduce or mitigate risks. The major factors that would reduce risks associated with growing media are the current and proposed requirements of § 319.37–8(e), which act to ensure that plants are free from dangerous pests at the time they are introduced into a greenhouse, throughout the period they are grown in the greenhouse, and at the time they are exported to the United States.

We propose to retain the current regulations' approach of using written agreements to aid enforcement of the regulatory requirements. Both the current and proposed regulations employ: (1) A written agreement between APHIS and the plant protection service of the country where the article is grown, and (2) a written agreement between the grower and the plant protection service of the country where the article is grown. Through the first of these agreements, the foreign plant protection service agrees to implement a program for enforcement of the regulatory requirements. APHIS relies on foreign plant protection services to aid the enforcement of the regulations by providing information on growers and pest situations, and inspection, certification, and other services. This written agreement assures APHIS that such services will be made available.

The second written agreement provides assurance that the grower will comply with regulatory requirements and cooperate with inspection and monitoring activities of the foreign plant protection service.

While we propose to retain the basic orientation of the current regulations, including the use of written agreements, we also propose to add requirements addressing the following areas:

—Size of screen openings for screens on greenhouses;
—Visual inspection for plant diseases of the parent stock of certain plants;
—The minimum time plants must be grown in greenhouses meeting the requirements of the regulations;
—Requirements for plants descended from mother plants imported into a foreign country from a third country; and
—Monitoring of plants growing in greenhouses for signs of disease.

In particular, we are adding requirements to ensure that *Rhododendron* spp. grown in accordance with the regulations are free from pests and diseases at the time they are imported into the United States. Of the five genera evaluated, uncontrolled *Rhododendron* imports would have the greatest potential for introducing pests that could become established and cause significant economic damage in the United States. This is because *Rhododendron* has several pests associated with it that are not found in the United States and that are capable of becoming established here.

The requirements we propose to add for all plants imported in accordance with § 319.37–8(e) (i.e., *Alstroemeria, Ananas, Anthurium, Begonia, Gloxinia* (=*Sinningia*), *Nidularium, Peperomia,* Polypodiophyta (=Filicales) (ferns), *Rhododendron,* and *Saintpaulia*), and the extra requirements for *Rhododendron,* are discussed below.

The current regulations require a greenhouse screen size of 16 mesh per inch, which results in screen openings of approximately 1.1 mm. We propose to allow screen openings of no more than 0.2 mm for *Rhododendron,* and of no more than 0.6 mm for all other genera. This is necessary because a number of pests of concern could enter greenhouses through openings greater than 0.6 mm, and we have identified 10 significant pests of *Rhododendron* that could enter greenhouses through openings greater than 0.2 mm. These *Rhododendron* pests are geometrid and tortricid moths of the genera *Acleris, Arichanna, Cacoecimorpha,* and *Olethreutes,* the mites *Tarsonemus* and *Phyllocoptes,* the whitefly *Dialeurodes chittendenu,* the leafhopper *Phiogotettis cyclops,* the lace bug *Stephanitis caucasia,* and the scale insect *Eulecanium.*

The change in the screen size requirement for articles other than *Rhododendron,* from 16 mesh to a 0.6 mm opening, will have no real effect because the screen size currently employed by facilities growing restricted articles in accordance with § 319.37–8(e) is 27 mesh, which creates a 0.6 mm opening. Apparently, an earlier revision to the regulations specified an erroneously large screen size, but the screen size in actual use as confirmed by inspectors has a 0.6 mm opening. This opening is small enough to prevent entry of pests of concern, and the change in the regulations from 16 mesh to a 0.6 mm opening essentially corrects a mistake in the regulations without causing an actual change to facility operations. However, the requirement of a 0.2 mm screen opening for *Rhododendron* would require growers of this article to install screening with smaller openings than used by growing facilities for other restricted articles under § 319.37–8(e).

With regard to plant diseases, the current regulations require that greenhouse procedures must include "the application of measures to protect against any injurious plant diseases," and that "appropriate measures" must be taken to ensure the freedom of the articles from injurious plant diseases. These requirements must be confirmed by inspectors from APHIS and the foreign plant protection service, by "a finding based on monitoring inspections that the conditions listed above are being met."

While monitoring inspections and good greenhouse practices are usually effective in preventing or detecting plant diseases, we believe the regulations should provide more specific requirements to ensure that articles imported in accordance with § 319.37–8(e) are free from plant diseases. In particular, we propose to address the freedom from disease of the mother stock of all plants grown and imported in accordance with § 319.37–8(e). We propose to require that mother stock be inspected for signs of disease or pests, by an APHIS or foreign plant protection service inspector, within 60 days prior to the time propagules from the mother stock are established in the greenhouse for growing in accordance with the regulations. Such inspection has in fact occurred for many of the restricted articles grown in accordance with § 319.37–8(e) in recent years, and we believe these inspections have contributed to the success of the program to date. Therefore, we propose to specifically require such inspection, both for articles currently allowed importation under § 319.37–8(e) and the five additional articles we propose to allow importation.

In addition, we propose to require that the mother stock of *Rhododendron*

spp. grown in accordance with the regulations be visually inspected for signs of specified diseases that could cause substantial damage if introduced into the United States. Visual inspection of *Rhododendron* would be required for evidence of diseases caused by *Chrysomyxa ledi* var. *rhododendri*, *Erysiphe cruciferarum*, *Erysiphe rhododendri*, *Exobasidium vaccinum* and *E. vaccinum* var. *japonicum*, and *Phomopsis theae*.

We also propose that *Rhododendron* species must be introduced into the greenhouse as tissue cultures or as rootless stem cuttings from mother plants that have received a pesticide dip prescribed by the plant protection service of the exporting country for mites, scale insects, and whitefly and that have been grown for at least the previous six months in a greenhouse that meets the requirements of § 319.37–8(e)(2)(ii). Treating the mother plants for these pests and growing them in a controlled greenhouse for six months makes it very unlikely the mother plants will harbor pests. Allowing the mother plants to be propagated only through tissue culture or rootless stem cuttings makes it probable that even if the mother plant somehow became infested with these pests, they would not be included in the tissue used to establish new plants for export to the United States.

We propose that all plants to be imported in accordance with § 319.37–8(e) must be grown in an active state of foliar growth for at least four months in a greenhouse meeting the requirements of the regulations. Requiring growth in the greenhouse for at least four months will allow evidence of infestation or infection with pests or diseases to become apparent to the inspectors inspecting the greenhouse in accordance with the regulations.

Regarding inspections, the current regulations require that the grower allow inspectors access to the greenhouse, but do not specify that such inspections must be done at any particular time. We propose to require that articles grown in compliance with the regulations must be inspected in the greenhouse and found free from evidence of plant pests and diseases by an APHIS inspector or an inspector of the plant protection service of the exporting country, no more than 30 days prior to the date of export to the United States. This inspection schedule is consistent with the schedule inspectors have found to be effective in enforcing the current regulations. We believe that requiring such an inspection during the last 30 days of growing maximizes the opportunity for the inspection to detect any evidence of pests or disease.

The current regulations do not fully address pest risks associated with articles that are imported into a country, grown and propagated in that country in accordance with the regulations, and then exported to the United States. Recently imported articles may be more likely to be infested or infected with pests or diseases than domestic stock that has been cultivated and observed over several generations. We believe that imported articles should be grown in the importing country for a reasonable period of time before their progeny could be exported to the United States, to allow time for evidence of any pests that may be associated with the imported plants to become apparent. We believe it is generally a good idea to grow these imported plants for a full year before allowing their export to the United States, to allow time for the manifestation of evidence of pests throughout all the seasons experienced by the exporting country. We believe it is reasonable to require that imported articles must be derived from mother plants grown in the exporting country for 12 months prior to export to the United States, or grown in the exporting country for a lesser period of at least 9 months if the articles are also subjected to a treatment prescribed by the plant protection service of the exporting country to destroy pests associated with the plant.

Therefore, in proposed § 319.37–8(e)(2)(iv), we propose that articles to be imported must be "descended from a mother plant that was grown for at least 9 months in the exporting country prior to importation into the United States of the descendent plants, *provided* that if the mother plant was imported into the exporting country from another country, it must be: (A) Grown for at least 12 months in the exporting country prior to importation of the descendent plants into the United States, or (B) treated at the time of importation into the exporting country with a treatment prescribed for pests of that plant by the plant protection service of the exporting country and then grown for at least 9 months in the exporting country prior to importation of the descendent plants into the United States."

The pest risk analysis process for the five genera covered by this proposal concluded that the five genera could be safely imported if they are grown and imported in accordance with the current and proposed requirements in 7 CFR part 319. Therefore, we propose to amend § 319.37–8(e) to add the five genera and the additional requirements discussed above.

New Definitions

We propose to add two new definitions to aid understanding of the regulatory requirements. Proposed § 319.37–8(e)(2)(vii) would require that plants grown in accordance with the regulations must be watered "only with rainwater that has been boiled or pasteurized, with clean well water, or with potable water." The common English meanings of "boiled" and "pasteurized" apply to the use of these terms in the regulations. However, we propose to add the following definitions to clarify what we mean by "clean well water" and "potable water."

Clean well water. Well water that does not contain plant pathogens or other plant pests.

Potable water. Water which is approved for drinking purposes by the national or local health authority having jurisdiction.

Allowing Mixing of Packing Materials

Section 319.37–9 contains requirements for the packing materials that may be used in containers of regulated articles imported into the United States. This section currently does not allow mixing of approved packing materials. However, we do not believe that allowing mixing of approved packing materials would increase the plant pest risk associated with importing regulated articles, and several importers have requested that they be allowed to use mixtures of approved packing materials. Therefore, we propose to amend § 319.37–9 by removing the phrase that prohibits mixing of approved packing materials.

Executive Order 12291 and Regulatory Flexibility Act

We are proposing this proposed rule in conformance with Executive Order 12291, and we have determined that this proposed rule, in combination with a previous proposal (56 FR 6297–6315, Docket No. 87–005) and future proposals that will concern additions to the list of plants allowed entry established in growing media, constitute a "major rule" within the broad intent of the Executive Order. Based on information compiled by the Department, we have determined that the amendments proposed in this document would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment,

productivity, or innovation. If adopted, the proposed amendments could have an adverse effect on the ability of United States-based enterprises to compete with foreign-based enterprises in the domestic market for potted plants of the genera *Alstroemeria, Ananas, Anthurium, Nidularium,* and *Rhododendron.* A comparison of current production costs and efficiencies suggests that foreign producers of these plants could deliver them to U.S. markets at prices very competitive with domestic production. In addition, the composite effect of this rulemaking and several related rulemakings over the next several years, which could result in allowing importation of over 60 genera of plants in growing media that are currently prohibited, could have effects on U.S.-foreign competition that are within the scope of the definition of a "major rule."

We have prepared a preliminary Regulatory Impact Analysis (RIA) and a preliminary Regulatory Flexibility Analysis (RFA) concerning the current proposal and future proposals that will concern additions to the list of plants allowed entry established in growing media. The exact content of future rules to be proposed in this area, including the final list of plants to be allowed entry established in growing media, will not be known until APHIS completes pest risk analysis and decision-making processes necessary for the development of these proposed rules. Therefore, the preliminary RIA and RFA take a broad approach and make certain necessary assumptions in order to form a preliminary estimate of economic effects. The RIA and RFA assume that APHIS will propose to allow entry of all plants in growing media for which we have received requests for entry, and make generic assumptions about safeguards and precautionary procedures that may be required for entry of some genera. However, it is unlikely that APHIS, after conducting pest risk analyses, will propose to allow entry of all requested plants. In addition, the safeguards and precautionary procedures necessary for safe entry of some genera will be developed and refined later in the rule development process. Therefore, the RIA and RFA will be continually updated and refined as choices are made and rulemaking advances, to incorporate more precise information on the costs, benefits, and other economic effects associated with rulemaking decisions.

The current version of the RIA and RFA addresses potential impacts of possible future actions in general terms, and addresses the impacts of adding the genera and requirements discussed by this proposed rule more specifically. Copies of the RIA and RFA may be obtained by sending a written request to the Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

This proposed rule, if adopted, would allow importation of articles of the genera *Alstroemeria, Ananas, Anthurium, Nidularium,* and *Rhododendron* that meet the requirements of the regulations. We anticipate that this change would have the following economic implications. Allowing entry of additional genera would enhance consumer purchasing power (consumer surplus). Foreign producers would be able to market their plants in the U.S. market. This would likely decrease domestic prices for the five genera, and would enable United States consumers to purchase a wider variety of potted plants at lower prices.

Given prevailing price discrepancies between domestic and foreign plant markets, revenue for domestic producers will likely decrease slightly as a result of freer trade in the five genera affected by this proposal. The exact amount of decrease will be determined by demand elasticities for potted plants. The net impact to society would be positive since consumer gains will more than offset losses incurred by domestic producers.

Based on florist and nursery sales, the estimated value of potted *Alstroemeria, Ananas, Anthurium, Nidularium,* and *Rhododendron* spp. production in the United States totals about $145 million annually. This represents approximately two percent of the total annual value of the domestic nursery and floriculture industry, estimated at about $6 billion. Allowing imports of these potted plant genera could cause some domestic producers to switch to growing other plant genera.

Imports of plants in media would increase supply and establish a new market equilibrium with a larger quantity of plants available at a lower price. Without measurements of supply and demand elasticities for the five genera, the Agency could not quantify the economic impact of the proposed changes. However, consumers will readily enhance their purchasing power by substituting imported plant genera whenever economically feasible. Since the five genera can be readily substituted for other plant genera, APHIS expects consumers to be significantly responsive to reduced prices. This indicates that consumer demand for the five genera would likely be relatively elastic. Mathematically, an elastic demand is represented by a numerical value greater than one in absolute terms. For example, a demand elasticity of −1.5 (1.5 in absolute value) indicates a strong consumer responsiveness to price fluctuations. This implies that for a 1 percent decrease in plant prices, consumer demand will increase by 1.5 percent or one and one-half percent higher than the price change. Therefore, if prices decrease, the quantity of the five genera purchased would increase by an amount proportionally greater than that of the price reduction. For plant vendors, an elastic demand would mean that lower prices would be more than offset by increased sales. This would increase total revenue for plant wholesalers and retailers.

Low and high impact scenarios were developed to estimate the welfare impact of the proposed rule change. The low impact scenario assumed that this rule would result in a domestic price decrease of 10 percent for the five genera. Prices for the five genera are assumed to drop by 30 percent in the high impact scenario. A unitary supply elasticity was used for both scenarios. Three demand elasticities (−0.4, −0.6, and −1.0) were used to create a range for both scenarios. These demand elasticities broadly reflect various unpublished elasticity estimates for nursery stock.

Under the low impact scenario, net welfare for U.S. society would increase by between $4.91 and $5.62 million. The high impact scenario estimates that net welfare for U.S. society would increase by between $15.75 and $17.89 million. Therefore, the net welfare gain incurred by U.S. society as a result of this rule would likely range between $4.91 and $17.89 million.

Information from the Census of Horticultural Specialties (1988) was used to segment domestic nurseries by annual value of sales. Annual sales were used as a guide in determining which nurseries would qualify as a "small" business. Additionally, the Small Business Administration (SBA) has established guidelines for determining which economic entities meet the definition of a "small" business. SBA criteria are used to determine which economic entities (other than nurseries) are "small."

The five genera are produced by 2,212 domestic producers. Nurseries with annual sales of $1 million or less are considered "small" for purposes of this analysis. About 93 percent (2,057 nurseries) of the 2,212 commercial nurseries are small according to the

above criteria.[1] These nurseries are diversified operations that produce many varieties of potted plants and other greenhouse products. The nature of their business requires nurseries to make frequent adjustments to the types of plants they grow and sell, as new types become popular and public taste changes. If producing the five genera becomes unprofitable, these nurseries should be able to defray losses by shifting to other, more profitable product lines. Therefore, the Agency anticipates that although the proposed rule change would affect a substantial number of small producers, these producers should be able to avoid significant economic impacts by making changes to their product lines.

The SBA definition of a small business engaged in the import/export business is one that employs no more than 100 employees. The number of firms that may be qualified as a small business under this definition cannot be determined. Small importers will likely benefit from the proposed rule change. The regulatory revisions will enable some small importers to enhance their income through imports of the five genera in growing media.

Small retailers will benefit from importation of *Alstroemeria, Ananas, Anthurium, Nidularium,* and *Rhododendron* spp. in growing media. The proposed rule would enhance the availability and quality of potted plants in the United States market. Plant retailers would benefit from lower wholesale prices and would likely pass these savings on to their customers. This would increase annual sales volume and revenue.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule would allow *Alstroemeria, Ananas, Anthurium, Nidularium,* and *Rhododendron* established in growing media to be imported into the United States from any country that meets the requirements of § 319.37–8(e). If this proposed rule is adopted, State and local laws and regulations regarding articles imported under this rule would be preempted while the articles are in foreign commerce. Some nursery stock articles are imported for immediate distribution and sale to the public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect would be given to this rule, and this rule would not require administrative proceedings before parties may file suit in court.

Paperwork Reduction Act

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, 7 CFR part 319 would be amended to read as follows:

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 21 U.S.C. 136a; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

2. In § 319.37–1, the following definitions would be added in alphabetical order:

§ 319.37–1 Definitions.

* * * * *

Clean well water. Well water that does not contain plant pathogens or other plant pests.

* * * * *

Potable water. Water which is approved for drinking purposes by the national or local health authority having jurisdiction.

* * * * *

3. In § 319.37–8, paragraph (e) would be revised and paragraph (g) would be added to read as follows:

§ 319.37–8 Growing media.

* * * * *

(e) A restricted article of any of the following groups of plants may be imported established in an approved growing medium listed in this paragraph, if the article meets the conditions of this paragraph, and is accompanied by a phytosanitary certificate issued by the plant protection service of the country in which the article was grown that declares that the article meets the conditions of this paragraph: *Alstroemeria, Ananas,*[11] *Anthurium, Begonia, Gloxinia (= Sinningia), Nidularium,*[11] *Peperomia,* Polypodiophyta (=Filicales) (ferns), *Rhododendron,* and *Saintpaulia.*

(1) Approved growing media are baked expanded clay pellets, cork, glass wool, organic and inorganic fibers, peat, perlite, polymer stabilized starch, plastic particles, phenol formaldehyde, polyethylene, polystyrene, polyurethane, rock wool, sphagnum moss, ureaformaldehyde, vermiculite, or volcanic rock, or any combination of these media. Growing media must not have been previously used.

(2) Articles imported under this paragraph must be grown in compliance with a written agreement for enforcement of this section signed by the plant protection service of the country where grown and Plant Protection and Quarantine, must be developed from mother stock that was inspected and found free from evidence of disease and pests by an APHIS inspector or foreign plant protection service inspector no more than 60 days prior to the time the article is established in the greenhouse (except for articles developed from seeds germinated in the greenhouse), and must be:

(i) Grown in compliance with a written agreement between the grower and the plant protection service of the country where the article is grown, in which the grower agrees to comply with the provisions of this section and to allow inspectors, and representatives of the plant protection service of the country where the article is grown, access to the growing facility as necessary to monitor compliance with the provisions of this section;

(ii) Grown solely in a greenhouse in which sanitary procedures adequate to exclude plant pests and diseases are always employed, including cleaning and disinfection of floors, benches and tools, and the application of measures to protect against any injurious plant diseases, injurious insect pests, and other plant pests. The greenhouse must be free from sand and soil and must have screening with openings of not more than 0.6 mm (0.2 mm for greenhouses growing *Rhododendron* spp.) on all vents and openings except entryways. All entryways must be equipped with automatic closing doors;

(iii) Rooted and grown in an active state of foliar growth for at least four consecutive months immediately prior

[1] U.S. Department of Commerce: "Census of Horticultural Specialties (1988)"; Washington, DC. Complete information was not available for *Alstroemeria, Ananas,* and *Nidularium* due to proprietary concerns.

[11] These articles are bromeliads, and if imported into Hawaii, bromeliads are subject to postentry quarantine in accordance with § 319.37–7.

to importation into the United States, in a greenhouse unit that is used solely for articles grown in compliance with this paragraph;

(iv) Grown from seeds germinated in the greenhouse unit; or descended from a mother plant that was grown for at least 9 months in the exporting country prior to importation into the United States of the descendent plants, *provided* that if the mother plant was imported into the exporting country from another country, it must be:

(A) grown for at least 12 months in the exporting country prior to importation of the descendent plants into the United States, or

(B) treated at the time of importation into the exporting country with a treatment prescribed for pests of that plant by the plant protection service of the exporting country and then grown for at least 9 months in the exporting country prior to importation of the descendent plants into the United States;

(v) If *Rhododendron* species, propagated from mother plants that have been visually inspected by an APHIS inspector or an inspector of the plant protection service of the exporting country, and found free of evidence of diseases caused by the following pathogens; *Chrysomyxa ledi* var. *rhododendri, Erysiphe cruciferarum, Erysiphe rhododendri, Exobasidium vaccinum* and *E. vaccinum* var. *japonicum*, and *Phomopsis theae;*

(vi) If *Rhododendron* species, introduced into the greenhouse as tissue cultures or as rootless stem cuttings from mother plants that:

(A) have received a pesticide dip prescribed by the plant protection service of the exporting country for mites, scale insects, and whitefly, and

(B) have been grown for at least the previous six months in a greenhouse that meets the requirements of § 319.37–8(e)(2)(ii);

(vii) Watered only with rainwater that has been boiled or pasteurized, with clean well water, or with potable water;

(viii) Rooted and grown in approved growing media listed in § 319.37–8(e)(1) on benches supported by legs and raised at least 46 cm above the floor;

(ix) Stored and packaged only in areas free of sand, soil, earth, and plant pests; and,

(x) Inspected in the greenhouse and found free from evidence of plant pests and diseases by an APHIS inspector or an inspector of the plant protection service of the exporting country, no more than 30 days prior to the date of export to the United States.

* * * * *

(g) *Pest risk evaluation standards for plants established in growing media.* When evaluating a request to allow importation of additional taxa of plants established in growing media, the Animal and Plant Health Inspection Service will conduct the following analysis in determining the pest risks associated with each requested plant article and in determining whether or not to propose allowing importation into the United States of the requested plant article.

(1) *Collect commodity information.* (i) Determine the kind of growing medium, origin and taxon of the regulated article.

(ii) Collect information on the method of preparing the regulated article for importation.

(iii) Evaluate history of past plant pest interceptions or introductions (including data from plant protection services of foreign countries) associated with each regulated article.

(2) *Catalog quarantine pests.* For the regulated article specified in an application, determine what plant pests or potential plant pests are associated with the type of plant from which the regulated article was derived, in the country and locality of origin. A plant pest that meets one of the following criteria is a quarantine pest and will be further evaluated in accordance with paragraph (g)(3) of this section:

(i) Non-indigenous plant pest not present in the United States;

(ii) Non-indigenous plant pest, present in the United States and capable of further dissemination in the United States;

(iii) Non-indigenous plant pest that is present in the United States and has reached probable limits of its ecological range, but differs genetically from the plant pest in the United States in a way that demonstrates a potential for greater damage potential in the United States;

(iv) Native species of the United States that has reached probable limits of its ecological range, but differs genetically from the plant pest in the United States in a way that demonstrates a potential for greater damage potential in the United States; or

(v) Non-indigenous or native plant pest that may be able to vector another plant pest that meets one of the criteria in paragraph (g)(2) (i) through (iv) of this section.

(3) *Conduct individual pest risk assessments:* Each of the quarantine pests identified by application of the criteria in paragraph (g)(2)(ii) of this section will be evaluated based on the following estimates:

(i) Estimate the probability the quarantine pest will be on, with, or in the regulated article at the time of importation;

(ii) Estimate the probability the quarantine pest will survive in transit on the regulated article and enter the United States undetected;

(iii) Estimate the probability of the quarantine pest colonizing once entered into the United States;

(iv) Estimate the probability of the quarantine pest spreading beyond the colonized area; and,

(v) Estimate the actual and perceived economic, environmental and social damage that would occur if the quarantine pest is introduced, colonizes, and spreads.

(4) *Determine overall estimation of risk based on compilation of component estimates.* This step will evaluate whether the pest risk of importing a regulated article established in growing media, as developed through the estimates of paragraph (g)(3) of this section, is greater than the pest risk of importing the regulated article with bare roots as allowed by § 319.37–8(a). If the pest risk is determined to be the same or less, the regulated article established in growing media will be allowed importation under the same conditions as the same regulated article with bare roots. If the pest risk is determined to be greater for the regulated article established in growing media, APHIS will:

(5) *Evaluate available mitigation measures to determine whether they would allow safe importation of the regulated article.* Mitigation measures currently in use as requirements of this subsection, and any other mitigation methods relevant to the regulated article and plant pests involved, will be compared with the individual pest risk assessments in order to determine whether requiring particular mitigation measures in connection with importation of the regulated article would reduce the pest risk to a level equal to or less than the risk associated with importing the regulated article with bare roots as allowed by § 319.37–8(a). If APHIS determines that use of particular mitigation measures could reduce the pest risk to this level, and determines that sufficient APHIS resources are available to implement or ensure implementation of the appropriate mitigation measures, APHIS will propose to allow importation into the United States of the requested regulated article if the appropriate mitigation measures are employed.

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§ 319.37–9 [Amended]

4. In § 319.37–9, the phrase "is not intermixed with other approved packing material;" would be removed.

§ 319.37–13 [Amended]

5. In § 319.37–13, footnote 11 would be redesignated as footnote 12.

Done in Washington, DC, this 31st day of August 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–21589 Filed 9–3–93; 8:45 am]

BILLING CODE: 3410–34–P

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9 CFR Part 92

[Docket No. 93–063–1]

Importation of Cattle From Mexico; Identification Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the animal importation regulations to require that all cattle imported from Mexico be individually identified with a numbered, blue metal eartag issued by the Mexican Government. Currently, the regulations require all cattle imported from Mexico to be individually identified with numbered metal tags, but the source of the eartags is not specified. This action appears to be necessary in light of the increasing numbers of tuberculosis-infected animals disclosed at slaughter among cattle imported into the United States from Mexico. Requiring cattle imported from Mexico to be identified with eartags issued by the Mexican government would ensure that we have a uniform means of tracing an animal back to its herd of origin in Mexico, if necessary, following its importation into the United States. This proposed requirement would facilitate the disease surveillance and traceback activities that are carried out under the National Cooperative State-Federal Bovine Tuberculosis Eradication Program.

DATES: Consideration will be given only to comments received on or before October 7, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-063-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Whiting, Chief Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 759, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8590.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as "the regulations") prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D—Ruminants, §§ 92.400 through 92.435 of 9 CFR part 92, pertains to the importation of ruminants into the United States. Sections 92.424 through 92.429 of the regulations contain specific provisions regarding the importation of ruminants from Mexico.

Each year, an average of 1 million cattle are imported into the United States from Mexico. The vast majority of those cattle—about 99 percent—are young steers that are consigned to feedlots for finishing prior to slaughter. The remaining 1 percent consists of spayed heifers, which are most often consigned to feedlots along with steers for finishing prior to slaughter, and bulls and female cattle that are, with few exceptions, integrated into domestic cattle herds for breeding purposes.

In recent years, the incidence of tuberculosis disclosed in cattle at slaughter has risen dramatically, from 78 in 1982 to 613 in 1992, with Mexican-origin cattle accounting for 81 percent of all investigations completed in 1992. Because cattle imported from Mexico have been involved to such a large extent in the increase in tuberculous animals disclosed at slaughter, we feel that it is necessary to place additional restrictions on the importation and interstate movement of cattle from Mexico.

In this document, we are proposing to amend the regulations in § 92.427(d), which require, among other things, that all cattle offered for importation into the United States from Mexico be individually identified with a numbered metal tag. While the regulations require a numbered metal tag, the origin of the tag is not specified. We would require that only numbered, blue metal eartags issued by the Mexican Government be used to meet the individual identification requirement of § 92.427(d). Because the Mexican Government maintains records on the cattle for which it issues eartags, the government-issued eartags are preferable over eartags obtained from other sources by cattle owners or exporters who may or may not maintain such records. By requiring cattle imported from Mexico to be identified with eartags issued by the Mexican government, we would ensure that we have a uniform means of tracing an animal back to its herd of origin in Mexico, if necessary, following its importation into the United States. This would facilitate the disease surveillance and traceback activities that are carried out under the National Cooperative State-Federal Bovine Tuberculosis Eradication Program.

Miscellaneous

In addition to the proposed changes discussed above, we are proposing to make several minor changes to rectify omissions or errors that occurred during previous rulemaking.

Currently, the definition of "Permitted dip" in § 92.400 reads, in part, "A dip permitted by the Division . . .", which is a reference to the Animal Health Division of the Agricultural Research Service. When the regulatory responsibilities of the Animal Health Division shifted to the Animal and Plant Health Inspection Service (APHIS) in 1972, that reference should have been changed, but it was overlooked. We would remove the word "Division" and replace it with the word "Administrator" so that the definition accurately reflects APHIS' responsibility for this regulatory program.

In § 92.406(a) there is a reference to § 92.427 (b) and (c) that we would correct to read § 92.427 (c) and (d). That reference should have been changed when those paragraphs were redesignated in a final rule published in the **Federal Register** on March 4, 1980. (45 FR 14017–14018).

The remaining errors occurred in a final rule published in the **Federal Register** on August 2, 1990 (55 FR 31484–31562).

In § 92.427, paragraph (c)(1), the words "except cattle" were inadvertently omitted from the first sentence after the words "all cattle from Mexico," and the words "this subparagraph" in the fifth sentence were changed to "the subparagraph" when the final rule was published. We would restore the missing words in the first sentence and correct the fifth sentence so that the two sentences regain their intended meanings.

In § 92.427(c)(1), the third sentence incorrectly references § 92.430 when it should reference § 92.429. We would correct that reference.

Finally, there are references in § 92.427(e)(2) to brucellosis testing requirements in §§ 92.423(b) and 92.426(d). We would correct those references to read § 92.424(b) and § 92.427(d), respectively.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Cattle imported from Mexico account for about 1 percent of the total U.S. cattle population, which in 1991 stood at 99.4 million head. The average price per head for cattle from Mexico in 1991 was $349.06, with the total value of imported Mexican cattle exceeding $361 million for the year. During 1991, approximately 1 million live cattle were imported into the United States from Mexico.

We are proposing to require all cattle imported into the United States from Mexico to be individually identified with a numbered, blue metal eartag issued by the Mexican Government. Currently, all cattle imported into the United States from Mexico must be identified with a numbered metal tag; this proposed rule would merely require that the eartag be obtained from a specific source, i.e. the Mexican Government. We anticipate that this proposed requirement would have no economic effect on any U.S. businesses, large or small, because it would not increase or decrease their cost of doing business. We expect that any unanticipated additional costs that may be incurred would be borne by the exporter of the cattle.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Accordingly, 9 CFR part 92 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.400 [Amended]

2. In § 92.400, in the definition of *Permitted dip*, the word "Division" would be removed and the word "Administrator" added in its place.

§ 92.406 [Amended]

3. In § 92.406(a), in the first sentence, the reference "(b) and (c)" would be removed and the reference "(c) and (d)" added in its place.

§ 92.427 [Amended]

4. Section 92.427 would be amended as follows:

a. In paragraph (c)(1), in the first sentence, the words ", except cattle" would be added immediately after the word "Mexico".

b. In paragraph (c)(1), the third sentence would be amended by removing the reference "§ 92.430" and adding the reference "§ 92.429" in its place.

c. In paragraph (c)(1), the fourth sentence would be amended by removing the words "or ear tag number" and adding the words "and official Mexican Government blue eartag numbers" in their place.

d. In paragraph (c)(1), the fifth sentence would be amended by removing the words "the subparagraph" and adding the words "this paragraph" in their place and by removing the words "eartag or" and adding the words "official Mexican Government blue eartag and" in their place.

e. In paragraph (d), the introductory text would be amended by removing the words "a numbered metal tag;" and adding the words "a numbered, blue metal eartag issued by the Mexican Government;" in their place.

f. In paragraph (d)(2), in the third proviso, the words "a numbered metal tag" would be removed and the words "a numbered, blue metal eartag issued by the Mexican Government" added in their place.

g. In paragraph (e)(2), the reference "§ 92.423(b)" would be removed and the reference "§ 92.424(b)" added in its place, and the reference "§ 92.426(d)" would be removed and the reference "§ 92.427(d)" added in its place.

Done in Washington, DC, this 31st day of August 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–21700 Filed 9–3–93; 8:45 am]

BILLING CODE 3410–34–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–82–AD]

Airworthiness Directives; Boeing Model 707 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 707 series airplanes. This proposal would require incorporation of a certain structural modification of the wing front spar lower chord. This proposal is prompted by an evaluation by the Model 707 Structures Working Group, comprised of aircraft operators, manufacturers, and

the FAA. This Working Group evaluated Boeing service bulletins that must be included as part of the "Aging Airplane Structural Modification Program." The actions specified by the proposed AD are intended to prevent reduced structural integrity of the wing. The actions also reflect the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspections.

DATES: Comments must be received by November 1, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–82–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2771; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–82–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–82–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In April 1988, a high-cycle Boeing Model 737 suffered major structural damage in flight. Investigation revealed that the airplane had numerous fatigue cracks and a great deal of corrosion.

This incident prompted the FAA to sponsor a conference on aging airplanes, which was attended by members of the aviation industry, other regulatory authorities, and the general public. The conferees agreed that, because of the huge increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes, operators will continue to fly older airplanes rather than retire them. Because of the problems revealed by the accident described above, the consensus was that this aging fleet needed more attention and maintenance to ensure its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force, with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was established in August 1988. The objective of the Task Force was to sponsor "Working Groups" to:

1. Select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes,
2. Develop corrosion-directed inspections and prevention programs,
3. Review the adequacy of each operator's structural maintenance program,
4. Review and update the Supplemental Structural Inspection Documents (SSID), and
5. Assess repair quality.

The Working Group assigned to review the Boeing Model 707 series airplanes completed its work on Item (2) in July 1989 and developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the Boeing Model 707 fleet. This program is contained in Boeing Document Number D6–54928, "Aging Airplane Corrosion Prevention and Control Program, Model 707/720," dated July 28, 1989. The FAA issued AD 90–25–07, Amendment 39–6788 (55 FR 49252, November 27, 1990), which requires implementation of a corrosion prevention and control program.

The Working Group completed a portion of its work on Item (1), above, in June 1989. The Working Group's proposal is contained in Boeing Document Number D6–54996, "Aging Airplane Service Bulletin Structural Modification Program—Model 707–100/–200/–300/–300B/–300C/–400 and 720/720B." The FAA issued AD 91–07–19, Amendment 39–6926 (56 FR 13073, March 29, 1991), which requires the installation of the structural modifications identified in the document.

The action being proposed herein follows from the ongoing activities of the Working Group relative to Item (1). The Working Group has identified certain service difficulties that warrant additional mandatory modification of the airplane. The Working Group considers that this modification should be mandatory to assure continued operational safety of the Boeing Model 707 fleet. The Working Group's proposal is contained in Boeing Document Number D6–54996, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 707/720," Revision D, dated January 23, 1992.

The FAA has reviewed and approved this revision of the Boeing Document, which includes appendix A., section A.3., that references an additional modification described in a Boeing service bulletin. This service bulletin describes procedures for preventive modification for findings of cracking in the wing front spar lower chord at wing station 529.5. Cracking in this area, if not corrected, could reduce the structural integrity of the wing.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the front spar

lower chord, on Boeing Model 707 series airplanes prior to the airplane reaching the incorporation threshold specified in the Boeing service bulletin (20,000 landings), or 4 years after the effective date of the AD, whichever occurs later.

In the interim, safety will be provided by various means currently in place that are considered satisfactory to detect damage prior to the occurrence of an unsafe condition. These include operators' ongoing basic maintenance programs; continuing inspections required by numerous AD's issued previously; the Supplemental Structural Inspection Document (SSID) program, mandated by AD 85–12–01, Amendment 39–5073 (50 FR 26690, June 28, 1985); the FAA's increased emphasis on surveillance of operators' maintenance programs and procedures; and the FAA's participation in programs to physically inspect high-time airplanes during scheduled heavy maintenance. The actions would be required to be accomplished in accordance with the Boeing Document described previously.

There are approximately 374 Model 707 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 70 airplanes of U.S. registry would be affected by this proposed AD within the initial threshold of 4 years. Approximately 194 work hours would be required to accomplish the proposed modification, at $55 per work hour. This figure does not include downtime, planning, set up, familiarization, or tool acquisition costs. The cost of the required modification kit would be $3,500 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators within the initial threshold of 4 years is estimated to be $991,900, or $14,170 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 93–NM–82–AD.

Applicability: Model 707–300, –300B, –300C, and –400 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing, accomplish the following:

(a) Prior to the accumulation of 20,000 total flight cycles or within the next 4 years after the effective date of this AD, whichever occurs later, accomplish the structural modification specified in Appendix A., Section A.3., of Boeing Document Number D6–54996, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 707/720," Revision D, dated January 23, 1992.

Note 1: Appendix A., Section A.3., of Boeing Document Number D6–54996 references Boeing Service Bulletin 3475 for procedures to modify the wing front spar lower chord at wing station 529.5.

Note 2: The modification required by this paragraph does not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for the inspection requirements.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 31, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21646 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 93–AGL–9]

Proposed Establishment of VOR Federal Airway V–561

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish Federal Airway V–561 located in North Dakota and South Dakota. This action would improve operations from Grand Forks, ND, to Pierre, SD. Establishing a new airway would allow air traffic control to remove the flight restrictions that impede aircraft transiting through that area. This action would improve navigation and save fuel.

DATES: Comments must be received on or before October 22, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL–500, Docket No. 93–AGL–9, Federal Aviation Administration, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800

Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AGL–9." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposal rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish V–561 located in North Dakota and South Dakota. Currently, scheduled airline operations serving Grand Forks, ND, Jamestown, ND, and Pierre, SD, are often subjected to restrictions that force them to navigate around or above the uncontrolled airspace. Establishing a direct route between these points would remove the air traffic control restrictions and allow aircraft to operate efficiently and expeditiously along this airway. This action is necessary to improve navigation and save on fuel consumption. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The airway listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–561 [New]

From Grand Forks, ND; Jamestown, ND; to Pierre, SD.

* * * * *

Issued in Washington, DC, on August 27, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–21686 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 211, 314, and 514

[Docket No. 91N–0074]

Use of Aseptic Processing and Terminal Sterilization in the Preparation of Sterile Pharmaceuticals for Human Use; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of open meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing an open meeting on sterile drug manufacturing issues. The meeting will examine issues raised by comments on FDA's proposed rule to amend the current good manufacturing practice (CGMP) regulations to require manufacturers of sterile drug products to use a terminal sterilization process under certain circumstances.

DATES: The meeting will be held on October 12 and 13, 1993, 9:30 a.m. to 4 p.m. Interested persons must register by September 20, 1993, because space for the meeting is limited. Those interested in making a formal presentation at this meeting must notify the agency by September 27, 1993.

ADDRESSES: The meeting will be held at the Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: Regarding notification of participation in presentation: David B. Barr, Center for Drug Evaluation and Research (HFD–323), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–1089, FAX: 301–594–2202.

Regarding registration forms: Jeanne White, Office of Small Business, Scientific and Trade Affairs (HF–50),

Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6776, FAX: 301–443–5153.

Regarding information concerning the meeting: Erica L. Keys, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1046.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 11, 1991 (56 FR 51354), FDA published a proposed rule that would amend the CGMP regulations to require manufacturers of sterile drug products to use a terminal sterilization process unless such a process would adversely affect the drug product. If a manufacturer determined terminal sterilization to be inappropriate for a given human drug, antibiotic, or animal drug product, the proposed rule would require the master production record for the product to contain documentation to support that determination. The proposed rule would also amend the regulations governing new drug applications to require applicants to submit a written justification and supporting data if the applicant did not use a terminal sterilization process to prepare a sterile drug product. FDA believes the proposed rule would, if finalized, provide the highest possible assurance of sterility for drug products.

FDA received 43 comments on the proposed rule. The comments generally agreed that terminal sterilization provides a higher level of sterility assurance than aseptic processing. However, some of the comments claimed that the proposed rule: (1) Would adversely affect all sterile drug products; (2) was unclear as to whether a manufacturer would be required to consider all types of terminal sterilization processes (i.e., autoclaving, radiation, etc.), placing an undue burden on manufacturers to justify an aseptic sterilization process; (3) should not mandate sterile product manufacturing technologies because new aseptic sterilization processes may achieve sterility assurance levels (SAL's) exceeding $1x10^{-3}$ and approaching $1x10^{-6}$; and (4) raised multiple concerns regarding terminal sterilization's effects on products, including product degradation, decreased shelf life, particulation, and insults to container and closure systems.

The agency has reviewed the comments and will conduct an open meeting to explore the following issues:

1. The level of product degradation, due to heat sterilization, that would justify an exemption from the terminal sterilization requirements.

2. An exemption from the terminal sterilization requirement for sterile drug products processed in aseptic systems that exclude human exposure (i.e., barrier systems, robotics, or equivalent systems) and models for measuring the SAL's for these systems.

3. The cost factors for complying with any final rule, including costs of justification studies, equipment, validation and implementation studies.

4. Justification for exemptions of additional product classes, specific products, or dosage forms.

On October 12, 1993, participants will present formal presentations on the four issues listed above to panels of FDA personnel. Audience participation will be limited to clarifying or responding to questions from the panels. FDA invites persons who wish to make a formal presentation to notify David B. Barr (address above) by September 27, 1993. The notification should include the specific issue to be covered by the presentation and the approximate amount of time needed to make the presentation.

On October 13, 1993, there will be an open exchange of questions and views from the general audience, based on the previous day's presentations.

The administrative record will remain open for 15 days after the meeting to allow comment on matters discussed at the meeting. The agency will use the information obtained from this meeting and all comments submitted to the administrative record either in response to the proposed rule or in response to matters discussed at this meeting in making its final decisions on the issues described above.

Dated: August 31, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–21669 Filed 9–3–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–29–93]

RIN 1545–AR59

Computation of Equity Base

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the determination of the equity base for purposes of computing the differential earnings amount and recomputed differential earnings amount, which are used in determining the deduction for policyholder dividends of a mutual life insurance company. The temporary regulations provide that the equity base includes the amount of any asset valuation reserve and the amount of any interest maintenance reserve reported on the annual statement prescribed by the National Association of Insurance Commissioners (NAIC) for filing with the insurance regulatory authorities of a state. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments must be received by November 8, 1993. Requests to speak (with outlines of oral comments) at a public hearing scheduled for Friday, December 3, 1993, at 10 a.m. must be received by November 12, 1993.

ADDRESSES: Send all submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:DOM:CORP:T:R (FI–29–93), room 5228). In the alternative, all submissions may be hand delivered to: CC:DOM:CORP:T:R (FI–29–93), Internal Revenue Service, room 5228, 1111 Constitution Avenue NW., Washington, DC 20224. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Katherine Ann Hossofsky, (202) 622–3477 concerning the regulations; Carol Savage at (202) 622–8452 concerning the hearing (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

For the text of the temporary regulations adding § 1.809–10T 26 CFR part 1, see T.D. 8484, published in the Rules and Regulations section of this issue of the **Federal Register**. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to

these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying.

A public hearing will be held on Friday, December 3, 1993, at 10 a.m. in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC. The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply to the public hearing.

Any person who has submitted timely written comments, and who desires to present oral comments at the hearing on the proposed regulations, should submit, not later than November 12, 1993, a request to speak and an outline of the oral comments to be presented at the hearing stating the time the person wishes to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Service Building before 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after the outlines are received from persons testifying. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of the proposed regulations is Katherine Ann Hossofsky, Office of the Assistant Chief Counsel (Financial Institutions & Products), IRS. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.809–10 is added to read as follows:

§ 1.809–10 Computation of equity base.

[The text of this section, as proposed, is the same as the text of the temporary regulations published elsewhere in this issue of the **Federal Register**].

Phil Brand,

Acting Commissioner of Internal Revenue.

[FR Doc. 93–21527 Filed 9–3–93; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 1

[EE–40–93]

RIN 1545–AR61

Qualified Separate Lines of Business

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking and notice of hearing.

SUMMARY: This document contains proposed amendments to the final regulations under section 414(r) of the Internal Revenue Code, which provide that an employer may be treated as operating separate lines of business for purposes of applying the minimum coverage requirements of section 410(b) and the minimum participation requirements of section 401(a)(26). The regulations reflect the enactment of section 414(r) by the Tax Reform Act of 1986 and subsequent changes made by the Technical and Miscellaneous Revenue Act of 1988 and the Public Debt Limit Increase Act of 1989. The regulations provide guidance necessary to comply with the law and affect sponsors of and participants in tax-qualified retirement plans and certain other employee benefit plans.

DATES: Written comments must be received by November 8, 1993. Requests to speak (with outlines of oral comments) at a public hearing scheduled for Wednesday, November 10, 1993, at 10 a.m. must be received by Wednesday, October 20, 1993.

ADDRESSES: Please send submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (EE–40–93), Room 5228, Washington, DC 20044. The public hearing will be held in room 2615, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Mike Slaughter, Regulations Unit, Assistant Chief Counsel (Corporate), at (202) 622–7190 (not a toll-free number). Concerning the proposed regulations, Patricia McDermott at (202) 622–4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Proposed regulations under section 414(r) and related provisions of the Internal Revenue Code (Code) were published in the **Federal Register** on February 1, 1991 (56 FR 3988). Written comments were received from the public on the proposed regulations. In addition, a public hearing on the proposed regulations was held on May 16, 1991. After consideration of all the written comments received and the statements made at the public hearing, the proposed regulations under section 414(r) were adopted, as modified, by final regulations (T.D. 8376) published in the **Federal Register** on December 4, 1991 (56 FR 63420). On August 10, 1992, the Internal Revenue Service published in the **Federal Register** (57 FR 35536) regulations proposing to extend the effective date of the final regulations under section 414(r) (and related regulations), generally to plan years beginning on or after January 1, 1994.

Statutory Authority

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 414(r) of the Code. These amendments reflect the enactment of sections 414(r) and 410(b)(5) by sections 1112(a) and 1115(a) of the Tax Reform Act of 1986 (100 Stat. 2440, 2452), the enactment of section 401(a)(26)(G) by section 1011(h)(3) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) (102 Stat. 3464), and subsequent statutory changes made by section 3021(b)(2)(A) of TAMRA (102 Stat. 3632) and sections 203 and 204 of the Public Debt Limit Increase Act of 1989 (103 Stat. 830, 832). These regulations are to be issued under the authority of sections 414(r), 410(b)(6)(G), 401(a)(26)(G), and 7805 of the Code.

Explanation of Provisions

I. Development of Regulations

Since publication of the December 1991 regulations, significant comments have been made by employers, practitioners, and other interested parties. The Treasury and the Service have also reviewed the December 1991 regulations generally to identify the areas where the regulations could be modified to reduce administrative complexity. Accordingly, these proposed regulations contain a number of changes that increase flexibility and simplify compliance, while retaining the basic requirements for qualified separate lines of business.

II. Overview

In general, all employees of a single employer, determined under section 414 of the Code, are taken into account for purposes of applying the minimum coverage requirements of section 410(b) and the minimum participation requirements of section 401(a)(26) to a qualified plan. Section 410(b)(5) provides an exception if an employer operates qualified separate lines of business under section 414(r). If the employer is treated as operating qualified separate lines of business, section 410(b)(5) generally permits the employer to apply the minimum coverage requirements separately with respect to the employees of each qualified separate line of business. A similar exception is provided for purposes of applying the minimum participation requirements of section 401(a)(26) and the 55-percent average benefits test of section 129(d)(8).

An employer is treated as operating qualified separate lines of business if: (1) The employer designates its lines of business by reference to the property or services provided by each line, (2) each line of business is organized and operated separately from the remainder of the employer, and (3) each of these separate lines of business meets additional statutory requirements (including administrative scrutiny) and thus constitutes a qualified separate line of business. Each employee of an employer that operates separate lines of business is assigned to a particular line of business for purposes of nondiscrimination testing.

III. Summary of Modifications to the 1991 Regulations

A. Separate Workforce and Separate Management

In order for a line of business to be separately organized and operated, it must meet certain separateness requirements, including having its own separate workforce and separate management. The separate workforce test focuses on the percentage of the employees providing services to the line of business who provide a substantial level of services to that line of business (substantial-service employees). The parallel separate management test focuses on the top-paid employees of the line. As described below, the proposed regulations significantly revise and simplify the application of these separateness tests.

1. *Lower threshold for substantial-service employee.* The December 1991 regulations provide that an employee is a substantial-service employee with respect to a line of business if at least 75 percent of the employee's services are provided to that line. The regulatory provisions regarding the assignment of employees also contain an optional rule under which an employer may assign an employee to a line of business if at least 50 percent of the employee's services are provided to that line. Although this optional rule treats these employees like substantial-service employees for assignment purposes, the same optional treatment does not extend to the application of the separateness tests.

The proposed regulations would permit the optional 50-percent rule to apply also to the separateness tests by incorporating this option in the definition of substantial-service employee. Thus, in the case of employees who provide at least half but less than 75 percent of their services to a line, the employer could choose, on an employee-by-employee basis, whether to treat them as substantial-service employees of that line both for purposes of the separateness tests and for purposes of assignment.

By reducing the threshold for substantial-service employees, the proposed regulations would make it easier to satisfy the separateness tests. In addition, the broader range available for defining substantial-service employees, in combination with the ability to classify employees on a consistent basis for separateness and assignment purposes, would simplify data collection and analysis, thereby responding to the administrative concerns of many commentators.

2. *Disregard of substantial-service employees of other lines.* Under the December 1991 regulations, all employees who provide more than negligible services to a line of business are taken into account in determining the percentage for the separate workforce test and in identifying the top-paid employees under the separate management test. Thus, it is necessary to identify every employee who provides more than negligible services to a line of business, including employees who are substantial-service employees with respect to other lines.

In applying the separateness tests to a particular line of business, the proposed regulations would disregard employees who are substantial-service employees with respect to any other line. Thus, if an employee is a substantial-service employee with respect to one line of business, the employee is disregarded with respect to any other line, even if the employee is providing more than negligible services to the other line.

By reducing the number of employees who must be considered in applying the separateness tests to a line of business, the proposed regulations would make the tests easier to satisfy. Moreover, because this change permits the employer to disregard substantial-service employees of one line of business in making separateness determinations with respect to other lines, no additional analysis of their services would be required in applying the separateness tests to other lines of business.

3. *Exclusion of nonresident aliens.* Under the December 1991 regulations, in applying the separateness tests to a line of business, nonresident aliens described in section 410(b)(3)(C) may be excluded only if they are substantial-service employees with respect to the line. Many commentators expressed concern about having to include nonresident aliens in the test. The commentators noted that nonresident aliens with no U.S. source income are typically excluded from nondiscrimination testing. Commentators expressed significant concerns about data collection, particularly with respect to the services provided by non-U.S. employees of foreign affiliates. In response to those comments, the proposed amendments would exclude all nonresident aliens described in section 410(b)(3)(C) in applying the separate workforce and management tests. The proposed regulations would thus eliminate the need for information on services performed by nonresident aliens and, thus, give greater access to separate line of business treatment to employers with foreign affiliates.

4. *Optional rule for transfers and other changes of status.* Generally, the December 1991 regulations require employees to be assigned to a line of business based on the level of services performed during the testing year. However, the regulations also contain a special optional rule applicable to employees who have temporarily

transferred from one line of business to another. Under this special rule, the employer may continue to assign temporarily transferred employees to the prior line of business for a period of up to two years.

The proposed regulations would liberalize this optional rule in several respects. First, they would significantly expand the rule to cover any change in the level of services performed for a line of business, whether or not such change is the result of a temporary transfer. Second, the period for which an employer may apply this rule would be extended to three years. Third, the availability of this optional classification of employees would be extended to the determination of level of services for purposes of the separateness tests.

5. *Increased access for vertically integrated employers.* Employees of a line of business (the upstream line) that provides property or services to another line of business of the employer (the downstream line) generally are also considered to be providing services to the downstream line of business. Recognizing that this presents difficulties for vertically integrated employers desiring to satisfy the separateness tests, the December 1991 regulations provide an optional rule permitting employers to treat these employees as not necessarily providing services to the downstream line. This rule is available only if certain conditions are satisfied, including a requirement that the upstream line provide at least 25 percent of its total output to outside customers of the employer.

Commentators requested that the optional rule apply in the case of an upstream manufacturer that provides all of its product to a downstream line and has few, if any, outside customers. In response, the proposed regulations would provide an alternative to the outside customer requirement. Under the alternative, the vertical integration rule would apply if: (1) With respect to the downstream line, the business of the upstream line consists primarily of producing or manufacturing tangible property, and (2) the same type of tangible property is provided to unrelated customers by some entities engaged in a business similar to the upstream line. The alternative would apply also for purposes of satisfying the requirement that a line of business provide property to customers of the employer.

B. *Administrative Scrutiny—Individual Determinations*

Under section 414(r)(2)(C) of the Code, in order to qualify as a separate line of business, a line of business must meet guidelines prescribed by the Secretary or receive an individual determination. In implementing section 414(r)(2)(C), the December 1991 regulations provide various administrative scrutiny safe harbors (including the statutory safe harbor under section 414(r)(3)) and also allow an employer to request an individual determination in certain situations typically involving cases that come close to one of the safe harbors. Many comments asked for greater access to the individual determination process.

Under the proposed amendments, the restrictions on access to individual determinations would be removed from the regulations. The Service will shortly issue a revenue procedure that will provide broad access to individual determinations and that will provide guidance on factors taken into account in deciding whether to issue a favorable individual determination.

Some comments asserted a need for the expansion of the individual determination program to other aspects of the regulations, including the determination of separateness. The Treasury and the Service believe, however, that the suggested approach is not administratively feasible and that the proposed modifications to the other aspects of the regulations provide an adequately flexible objective standard that will permit employers to make these determinations in a reasonable manner without requiring an individual determination process.

C. *Other Changes*

The proposed regulations also would make other changes to simplify the regulations and to coordinate them with related regulations, including regulations under section 410(b). Among the other changes, the proposed regulations would—

- Apply the requirements of both the merger and acquisition safe harbor and the statutory safe harbor based on the preceding year, by looking solely at employees who move between separate lines of business, thereby disregarding terminated employees and recently hired employees; and
- Modify the definition of top-paid employee to make the 25-percent threshold optional, thus obviating the need to make level of service determinations at the 25-percent level.

IV. Issues Regarding Data

Commentators expressed concerns about the specificity and types of data necessary to determine whether the separate line of business requirements are satisfied. Similar issues as to data and frequency of testing under the nondiscrimination requirements were addressed in a proposed revenue procedure published in Announcement 92–81, 1992–22 I.R.B. 56. It is anticipated that this revenue procedure will be finalized shortly and, when finalized, also will be expanded to address these issues as they relate to the separate line of business requirements. Accordingly, the proposed regulations would remove § 1.414(r)–3(c)(5)(iii) of the December 1991 regulations regarding the manner in which employees' services are determined.

V. Section 410(b) Rules for Employees Transferring Between Mandatorily Disaggregated Portions of Certain Plans

The final regulations under section 410(b) require that, in certain situations, a single plan (within the meaning of section 414(l)) be mandatorily disaggregated and that the disaggregated portions of the plan be treated as separate plans for purposes of section 410(b). Among the situations in which a plan must be disaggregated are those in which a plan benefits employees of different qualified separate lines of business, employees of more than one employer, or both collectively bargained and noncollectively bargained employees. In these situations, questions have arisen regarding the treatment of employees who, because of a change of status, change from being tested under one portion of a disaggregated plan to another portion of the disaggregated plan. For example, employers have asked how sections 401(a)(4) and 410(b) apply in testing the benefits of an employee who changes from one qualified separate line of business to another.

In response to those comments, these proposed regulations would clarify the mandatory disaggregation rules in these situations to provide that, in general, the status of an employee at the time accruals or allocations are provided to the employee determines the portion of the plan under which those accruals or allocations are tested. Thus, for example, in the case of an employee who has transferred from one qualified separate line of business to another, accruals or allocations credited while the employee was an employee of the first qualified separate line of business would be treated as accrued or allocated under the portion of the plan maintained by that qualified separate line of business. In addition, if the plan continues to provide accruals and allocations after the employee has transferred to the second qualified separate line of business, the employee would be treated as currently benefiting

under the portion of the plan maintained by the second qualified separate line of business. In this case, the accruals or allocations credited while the employee was an employee of the second qualified separate line of business would be treated as accrued or allocated under the portion of the plan maintained by that qualified separate line of business.

Notwithstanding this general rule, the proposed regulations would provide a special rule applicable where an employee who was benefiting under a particular disaggregated portion of a plan has a change in status that results in the employee being treated as benefiting under a different disaggregated portion of the plan. This rule would apply, for example, where a plan benefiting collectively bargained employees continues to update benefits attributable to years of service previously credited while the employees were collectively bargained employees by taking into account higher compensation that is earned after they have become noncollectively bargained employees.

This special rule allows benefits accrued after the change in status that are attributable to years of service previously credited in the employees' prior status to be treated, on a consistent basis, as provided to employees in that prior status. Under this special rule, the accruals in the preceding example that result from taking higher compensation into account could be treated as provided to collectively bargained employees by the collectively bargained portion of the plan. The plan provision providing these additional benefits must apply to all similarly situated employees on the same terms, and the rule is available only if it is applied on a consistent basis and does not result in significant discrimination in favor of highly compensated employees.

In addition, as an alternative, the proposed regulations would provide a special rule allowing benefits accrued in employees' prior status to be treated as provided to the employees in their current status. Use of this rule might be helpful, for example, where the same benefit formula and accrual method apply to members of both disaggregated portions of a plan. In that case, bifurcation of each employee's accrued benefit between the disaggregated portions of the plan might create an anomalous result. This second special rule must be applied on a consistent basis and is available only if this treatment does not result in significant discrimination in favor of highly compensated employees.

Reliance on These Proposed Regulations

Taxpayers may rely on these proposed regulations for guidance pending issuance of final regulations. If future regulations are more restrictive, such guidance will be applied without retroactive effect.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. Comments must be received by November 8, 1993.

Because the Treasury Department and the Service expect to issue final regulations on this matter as soon as possible, a public hearing has been scheduled at 10 a.m. on Wednesday, November 10, 1993, room 2615, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC. The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply to the public hearing. Persons who desire to present oral comments at the hearing on the proposed regulations, should also submit, not later than Wednesday, October 20, 1993, a request to speak and an outline of the oral comments to be presented at the hearing stating the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building before 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Patricia McDermott of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry "§§ 1.414(r)–0 through 1.414(r)–7" and adding an entry to read as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.414(r)–1 through 1.414(r)–7 also issued under 26 U.S.C. 414(r). * * *

Par. 2. Section 1.410(b)–0 is amended by:

(1) Revising the entries for § 1.410(b)–7 (c)(4) and (c)(5) as set forth below; and

(2) Removing the entry for (c)(6).

§ 1.410(b)–0 Table of contents. * * *

* * * * *

§ 1.410(b)–7 Definition of plan and rules governing plan disaggregation and aggregation.

* * * * *

(c) * * *

(4) Plans benefiting certain disaggregated populations of employees.

(i) In general.

(ii) Definition of disaggregation population.

(5) Additional rules for plans benefiting employees of more than one qualified separate line of business.

Par. 3. § 1.410(b)–7 is amended as follows:

1. Revising paragraphs (c)(4) and (c)(5).

2. Removing paragraph (c)(6).

3. The revised provisions read as follows:

§ 1.410(b)–7 Definition of plan and rules governing plan disaggregation and aggregation.

* * * * *

(c) * * *

* * * * *

(4) *Plans benefiting certain disaggregation populations of employees*—(i) *In general*—(A) *Single plan must be treated as separate plans.* If a plan (i.e., a single plan within the meaning of section 414(l)) benefits employees of more than one disaggregation population, the plan must be disaggregated and treated as separate plans, each separate plan consisting of the portion of the plan benefiting the employees of each disaggregation population. See paragraph (c)(4)(ii) of this section for the definition of disaggregation population.

(B) *Benefit accruals or allocations attributable to current status.* Except as otherwise provided in paragraph (c)(4)(i)(C) of this section, in applying the rule of paragraph (c)(4)(i)(A) of this section, the portion of the plan benefiting employees of a disaggregation population consists of all benefits accrued by, or all allocations made to, employees while they were members of the disaggregation population.

(C) *Exceptions for certain benefit accruals*—*(1) Attribution of benefits to first disaggregation population.* If employees benefiting under a plan change from one disaggregation population to a second disaggregation population, benefits they accrue while members of the second disaggregation population that are attributable to years of service previously credited while the employees were members of the first disaggregation population may be treated as provided to them in their status as members of the first disaggregation population, and thus included in the portion of the plan benefiting employees of the first disaggregation population. This special treatment is available only if it is applied on a consistent basis, it does not result in significant discrimination in favor of highly compensated employees, and the plan provision providing the additional benefits applies on the same terms to all similarly situated employees. For example, if all formerly collectively bargained employees accrue additional benefits under a plan after becoming noncollectively bargained employees, then those benefit increases may be treated as included in the portion of the plan benefiting collectively bargained employees if they are attributable to years of service credited while the employees were collectively bargained (e.g., where the additional benefits result from compensation increases that occur while the employees are noncollectively bargained or from plan amendments affecting benefits earned while collectively bargained that are adopted while the employees are noncollectively bargained) and if such treatment does not result in significant discrimination in favor of highly compensated employees.

(2) Attribution of benefits to current disaggregation population. If employees benefiting under a plan change from one disaggregation population to another disaggregation population, benefits they accrue while members of the first disaggregation population may be treated as provided to them in their current status, and thus included in the portion of the plan benefiting employees of the disaggregation population of which they are currently members. This special treatment is available only if it is applied on a consistent basis and does not result in significant discrimination in favor of highly compensated employees.

(ii) *Definition of disaggregation population*—(A) *Plan benefiting employees of qualified separate lines of business.* If an employer is treated as operating qualified separate lines of business for purposes of section 410(b) in accordance with § 1.414(r)–1(b), and a plan benefits employees of more than one qualified separate line of business, the employees of each qualified separate line of business are separate disaggregation populations. In this case, the portion of the plan benefiting the employees of each qualified separate line of business is treated as a separate plan maintained by that qualified separate line of business. However, employees of different qualified separate lines of business who are benefiting under a plan that is tested under the special rule for employer-wide plans in § 1.414(r)–1(c)(2)(ii) for a plan year are not separate disaggregation populations merely because they are employees of different qualified separate lines of business.

(B) *Plan benefiting collectively bargained employees.* If a plan benefits both collectively bargained employees and noncollectively bargained employees, the collectively bargained employees are one disaggregation population and the noncollectively bargained employees are another disaggregation population. If the population of collectively bargained employees includes employees covered under different collective bargaining agreements, the population of employees covered under each collective bargaining agreement is also a separate disaggregation population.

(C) *Plan maintained by more than one employer.* If a plan benefits employees of more than one employer, the employees of each employer are separate disaggregation populations. In this case, the portion of the plan benefiting the employees of each employer is treated as a separate plan maintained by that employer, which must satisfy section 410(b) by reference only to that employer's employees. However, for purposes of this paragraph (c)(4)(ii)(C), if the plan of one employer (or, in the case of a plan maintained by more than one employer, the plan provisions applicable to the employees of one employer) treats compensation or service with another employer as compensation or service with the first employer, then the current accruals attributable to that compensation or service are treated as provided to an employee of the first employer under the plan of the first employer (or the portion of a plan maintained by more than one employer benefiting employees of the first employer), and the provisions of paragraph (c)(4)(i)(C) of this section do not apply to those accruals. Thus, for example, if Plan A maintained by Employer X imputes service or compensation for an employee of Employer Y, then Plan A is not treated as benefiting the employees of more than one employer as a result of this imputation.

(5) *Additional rules for plans benefiting employees of more than one qualified separate line of business.* If a plan satisfies the reasonable classification requirement of § 1.410(b)–4(b) before the application of paragraph (c)(4) of this section, then any portion of that plan that is treated as a separate plan as a result of the application of paragraph (c)(4) of this section is deemed to satisfy that requirement.

Par. 4. Section 1.414(r)–0 is amended as follows:

1. Adding entries for § 1.414(r)–2, paragraphs (b)(2) (i) and (ii).
2. Removing the entries for § 1.414(r)–3, paragraphs (c)(4)(i) and (c)(4)(ii).
3. Amending the entries for § 1.414(r)–3 by revising the entry for paragraph (c)(5)(iii) and adding entries for paragraphs (c)(5)(iii) (A) and (B).
4. Amending the entries for § 1.414(r)–6 as follows:
   a. Revising the entry for paragraph (b).
   b. Removing the entries for paragraphs (c) and (c) (1) through (12).
5. Amending the entries for § 1.414(r)–7 as follows:
   a. Removing the entries for paragraphs (c)(2);
   b. Redesignating the entries for paragraphs (c)(3) through (c)(5) as paragraphs (c)(2) through (c)(4);
   c. Removing the entries for paragraphs (d) and (d) (1) through (3).
6. Amending the entry for § 1.414(r)–8 as follows:
   a. Removing the entry for paragraph (d)(4).

b. Redesignating the entry for paragraph (d)(5) as paragraph (d)(4).

7. The added, revised, and redesignated entries read as follows:

§ 1.414(r)–0 Table of contents.

* * * * *

§ 1.414(r)–2 Line of business.

* * * * *

(b) * * *

(2) * * *

(i) In general.

(ii) Timing of provision of property or services.

* * * * *

§ 1.414(r)–3 Separate line of business

* * * * *

(c) * * *

(5) * * *

(iii) Optional rule for transferred employees.

(A) In general.

(B) Change in employee's status.

* * * * *

§ 1.414(r)–6 Qualified separate line of business—administrative scrutiny requirement—individual determinations.

* * * * *

(b) Authority to establish procedures.

* * * * *

§ 1.414(r)–1 [Amended]

Par. 5. Section 1.414(r)–1 is amended as follows:

1. The fourth and seventh sentences of the *Example* in paragraph (c)(2)(ii) are amended by adding the language "nonhighly compensated" immediately after "nonexcludable."

2. Paragraph (c)(3)(ii) is amended by removing the reference "1.401(a)(26)–2(d)(6)" and adding "1.401(a)(26)–2(d)(1)(iv)" in its place.

3. The last sentence of paragraph (d)(4) is amended by adding the language "scrutiny" immediately after "administrative."

4. The last sentence of paragraph (e) is amended by removing the language "and new conditions under which an individual determination may be requested under section § 1.414(r)–6".

Par. 6. Section 1.414(r)–2 is amended as follows:

1. Paragraph (b)(2) is revised.

2. *Example 1* and *Example 2* in paragraph (c)(3) are revised.

3. The revised provisions read as follows:

§ 1.414(r)–2 Line of business.

* * * * *

(b) * * *

(2) *Property and services provided to customers*—(i) *In general.* Property, whether real or personal, tangible or intangible, is provided by an employer to a customer if the employer provides the property to or on behalf of the customer for consideration. Similarly, services are provided by an employer to a customer if the employer renders the services to or on behalf of the customer for consideration. An individual item of property or service is taken into account under this paragraph (b)(2) only if the employer provides the item to a person other than the employer in the ordinary course of a trade or business conducted by the employer and the person to whom the employer provides the item is acting in the capacity as a customer of the employer. A type of tangible property is deemed to be provided to customers of the employer for purposes of this section if, with respect to a business that produces or manufactures that type of tangible property, the employer satisfies the special rule in § 1.414(r)-3(d)(2)(iii (B) for vertically integrated businesses.

(ii) *Timing of provision of property or services.* Generally an employer determines its lines of business on the basis of the property and services it provides to its customers for consideration during the testing year. However, it is not necessary both that property or services actually be provided, and that consideration for the property or services actually be paid, during the current testing year. For an employer to be considered to provide property or services to customers for consideration during a testing year under this paragraph (b)(2), it is sufficient that the property or services actually be provided to customers during the testing year, the consideration actually be paid during the testing year, or the employer actually incur significant costs during the testing year associated with the provision of the property or services to a specified customer or specified customers.

* * * * *

(c) * * *

(3) * * *

Example 1. Employer H operates several dairy farms and dairy processing plants. The dairy farms provide part of their output of milk and milk by-products to Employer H's dairy product processing plants and also sell part to retail distributors unrelated to Employer H. The dairy farms' provision of milk and milk by-products to Employer H's dairy product processing plants does not constitute the provision of property or services to customers of Employer H, because the milk and milk by-products are not provided to a person other than employer H. However, the dairy farms' provision of milk and milk by-products to independent retail distributors does constitute the provision of property or services to customers of Employer H under paragraph (b)(2) of this section.

Example 2. The facts are the same as in *Example 1*, except that the dairy farms provide their entire output of milk and milk by-products to Employer H's dairy product processing plants. The dairy farms' provision of milk and milk by-products to the dairy product processing plants generally does not constitute the provision of property or services to customers of Employer H because the milk and milk by-products are not provided to a person other than Employer H. However, paragraph (b)(2)(i) of this section provides a special rule for vertically integrated businesses that satisfy § 1.414(r)-3(d)(2)(iii)(B). If § 1.414(r)-3(d)(2)(iii)(B) is satisfied, then, under the special rule of paragraph (b)(2)(i) of this section, the milk and milk by-products are deemed to be provided to customers of Employer H.

* * * * *

Par. 7. Section 1.414(r)-3 is amended as follows:

1. The second sentence of paragraph (b)(4) is revised.

2. Paragraph (c)(2)(ii) is revised.

3. Paragraph (c)(4) is revised.

4. Paragraph (c)(5)(iii) is revised.

5. The last sentence of the introductory text of paragraph (c)(6) is revised.

6. A sentence is added to the end of *Example 2* of paragraph (c)(6).

7. In paragraph (c)(6), the phrase "(in accordance with paragraph (c)(5)(iii) of this section)" is removed from the seventh sentence of *Example 3*, the fifth sentence of *Example 4*, the fifth and sixth sentences of *Example 5*, and the fifth sentence of *Example 7*.

8. Two sentences are added to the end of *Example 5* of paragraph (c)(6).

9. A sentence is added to the end of the introductory text of paragraph (c)(7).

10. *Example 1* of paragraph (c)(7) is revised.

11. In *Example 2* of paragraph (c)(7), the phrase "(in accordance with paragraph (c)(5)(iii) of this section)" is removed from the third sentence.

12. *Examples 3* and *4* of paragraph (c)(7) are redesignated *Examples 4* and *5*, respectively, and a new *Example 3* is added.

13. The first sentence of newly designated *Example 5* in paragraph (c)(7) is amended by removing the reference "*Example 3*" and adding "*Example 4*" in its place.

14. Paragraph (d)(2) is revised.

15. *Example 1* of paragraph (d)(4) is revised.

16. The additions and revisions read as follows:

§ 1.414(r)–3 Separate line of business.

* * * * *

(b) * * *

(4) *Separate employee workforce.* * * * A line of business has its own separate workforce only if at least 90 percent of the employees who provide

services to the line of business, and who are not substantial-service employees with respect to any other line of business, are substantial-service employees with respect to the line of business. * * *

(c) * * *

(2) * * *

(ii) The denominator of which is the total number of employees who provide services to the line of business within the meaning of paragraph (c)(5) of this section and who are not substantial-service employees within the meaning of § 1.414(r)–11(b)(2) with respect to any other line of business.

* * * * *

(4) *Employees taken into account.* For purposes of applying this paragraph (c), only employees who are employees on the first testing day are taken into account. For this purpose, there are no excludable employees except nonresident aliens described in section 410(b)(3)(C). Consequently, all other employees who are employees on the first testing day are taken into account, including collectively bargained employees. For the definition of *First testing day*, see § 1.414(r)–11(b)(7).

(5) * * *

(iii) *Optional rule for employees who change status*—(A) *In general.* Solely for purposes of the separateness rules of this section, and for purposes of the assignment rules of § 1.414(r)–7, if an employee changes status as described in paragraph (c)(5)(iii)(B) of this section, an employer may, for up to three consecutive testing years after the base year (within the meaning of paragraph (c)(5)(iii)(B) (*1*) or (*2*) of this section), treat the employee as providing the same level of service to its lines of business as the employee provided in the base year.

(B) *Change in employee's status.* An employee changes status as described in this paragraph (c)(5)(iii)(B) if—

(*1*) For a testing year (the base year), the employee was a substantial-service employee with respect to a qualified separate line of business of the employer (prior line of business) and, for the immediately succeeding testing year, the employee is not a substantial-service employee with respect to that prior line of business; or

(*2*) For a testing year (the base year), the employee was a residual shared employee and, for the immediately succeeding testing year, the employee is a substantial-service employee with respect to a qualified separate line of business.

(c) * * *

(6) * * * Unless otherwise specified, it is assumed that the employees and their services described in these examples are taken into account under paragraphs (c) (4) and (5) of this section for the testing year and that the employer does not use the option under § 1.414(r)–11(b)(2) to treat employees who provide less than 75 percent of their services to a line of business as substantial-service employees with respect to the line of business.

* * * * *

Example 2. * * * Moreover, because Employees M and N provide at least 75 percent of their services to Employer A's tire and automotive products line of business and are substantial-service employees with respect to that line, they are disregarded in applying paragraph (b)(4) of this section to any other line of business, even if they provide services to the other line.

* * * * *

Example 5. * * * Under the definition of substantial- service employee in § 1.414(r)–11(b)(2), Employer A may treat Employee R as a substantial-service employee with respect to the tire and automotive products line of business because Employee R provides at least 50 percent of his services to that line. In that case, Employee R would be disregarded in applying paragraph (b)(4) of this section to the construction machinery and agricultural equipment lines of business.

* * * * *

(7) * * * Unless otherwise specified, it is assumed that employees who provide services to a line of business are not substantial-service employees with respect to any other line of business and that, in determining the top-paid employees with respect to a line of business, the employer is using the option under § 1.414(r)–11(b)(3) to disregard all employees who provide less than 25 percent of their services to that line of business.

Example 1. (a) Employer C operates three lines of business as determined under § 1.414(r)–2. One of its lines of business is the operation of a chain of athletic equipment and apparel stores. Of Employer C's total workforce, 12,000 employees provide more than a negligible amount of the services they provide to Employer C to the athletic equipment and apparel stores line of business, within the meaning of paragraph (c)(5) of this section. Of the 1,200 employees who constitute the top ten percent by compensation of those 12,000 employees, 930 are substantial-service employees with respect to that line of business. Because 930 is 77.5 percent of 1,200, less than 80 percent of the top-paid employees with respect to the line of business are substantial-service employees with respect to that line of business. Therefore, employer C's athletic equipment and apparel stores line of business does not have its own separate management under paragraph (b)(5) of this section.

(b) Assume that, in determining the top-paid employees with respect to the athletic equipment and apparel stores line of business, Employer C chooses to disregard all employees who provide less than 25 percent of their services to the line of business as permitted under the definition in § 1.414(r)–11(b)(3). Of the 12,000 employees who provide more than a negligible amount of their services to the athletic equipment and apparel stores line of business, 10,000 provide at least 25 percent of their services to that line. Of the 1,000 employees who constitute the top ten percent by compensation of those 10,000 employees, 930 are substantial-service employees with respect to the athletic equipment and apparel stores line of business. Because 930 is 93 percent of 1,000, at least 80 percent of the top-paid employees with respect to the line of business are substantial-service employees with respect to that line of business. Therefore, employer C's athletic equipment and apparel stores line of business has its own separate management and satisfies the requirement of paragraph (b)(5) of this section.

* * * * *

Example 3. The facts are the same as in *Example 2* except that Employee X provides 60 percent of his services to Employer C's second line of business, an athletic equipment factory, and 30 percent of his service to Employer C's third line of business, a fast-food chain. Because Employee X provides at least 50 percent of his services to the athletic equipment factory line of business, Employer C chooses to treat him as a substantial-service employee with respect to that line of business, as permitted under § 1.414(r)–11(b)(2). Thus, Employee X is taken into account as a substantial-service employee with respect to the athletic equipment factory line of business and is disregarded in applying the separate workforce and separate management requirements under paragraphs (b) (4) and (5) to the fast-food chain line of business.

* * * * *

(d) * * *

(2) *Requirements.* Two lines of business satisfy the requirements of this paragraph (d) with respect to a type of property or service only if—

(i) One of the lines of business (the upstream line of business) provides a type of property or service to the other line of business (the downstream line of business);

(ii) The downstream line of business either—

(A) Uses, consumes, or substantially modifies the property or service in the course of itself providing property or services to customers of the employer; or

(B) Provides the same property or service to customers of the employer at a different level in the chain of commercial distribution from the upstream line of business (e.g., retail versus wholesale); and

(iii) The upstream line of business either—

(A) Provides the same type of property or service to customers of the

employer, and at least 25 percent of the total number of units of the same type of property or service provided by the upstream line of business to all persons (including customers of the employer, the downstream line of business, and all other lines of business of the employer) are provided to customers of the employer by the upstream line of business, when measured on a uniform basis; or

(B) Provides to the downstream line of business property consisting primarily of a type of tangible property (i.e., goods, not services) that it produces or manufactures, and some entities that are engaged in a similar business as the upstream line of business provide the same type of tangible property to unrelated customers (i.e., customers outside the entities' controlled groups).

* * * * *

(4) * * *

Example 1. Employer E operates two lines of business as determined under § 1.414(r)–2, one engaged in upholstery textile manufacturing and the other in furniture manufacturing. During the testing year, the upholstery textile line of business provides its entire output of upholstery textiles to the furniture line of business. The furniture line of business uses the upholstery textiles in the manufacture of upholstered furniture for sale to customers of Employer E. The furniture line of business thus substantially modifies the upholstery textiles provided to it by the upholstery textile line of business in providing upholstered furniture products to customers of Employer E. In addition, although the upholstery textile line of business does not provide upholstery textiles to customers of Employer E, some entities engaged in upholstery textile manufacturing provide upholstery textiles to customers outside their controlled groups. Under these facts, Employer E's two lines of business satisfy the requirements of this paragraph (d) with respect to upholstery textiles for the testing year.

Par. 8. Section 1.414(r)–5 is amended as follows:

1. Paragraph (b)(5)(ii) is revised.
2. Paragraphs (d)(1)(ii)(B) and (C) are revised.
3. The concluding text of paragraph (d)(1) is removed.
4. Paragraph (d)(1)(iii) is added.
5. *Example 2* of paragraph (d)(4) is revised.
6. The last sentence of paragraph (g)(2)(iii)(A) is revised.
7. The last sentence of paragraph (g)(2)(iii)(D) is revised.
8. The last sentence of paragraph (g)(3)(iii)(B) is amended by:

a. Adding the word "qualified" immediately before "disability";

b. Removing the reference "§ 1.401(a)(4)–3(d)(6)(vi)" and adding "section 411(a)(9)" in its place.

9. The last sentence of paragraph (g)(3)(iii)(D) is revised.
10. Paragraph (g)(5) is revised.
11. The revised provisions read as follows:

§ 1.414(r)–5 Qualified separate line of business—administrative scrutiny requirement—safe harbors.

* * * * *

(b) * * *

(5) * * *

(ii) No more than five percent of the employees of the separate line of business for the current testing year were employees of a different separate line of business for the immediately preceding testing year, and no more than five percent of the employees of the separate line of business for the immediately preceding testing year are employees of a different separate line of business for the current testing year.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(B) No more than 10 percent of the employees who are substantial-service employees with respect to the acquired line of business were substantial-service employees with respect to a different separate line of business for the immediately preceding testing year; and

(C) No more than 10 percent of the employees who were substantial-service employees with respect to the acquired line of business for the immediately preceding testing year are substantial-service employees with respect to a different separate line of business in the respective testing year.

(iii) If the transaction described in paragraph (d)(1) of this section occurs after the first testing day in a testing year, the determinations required by paragraphs (d)(1)(ii) (B) and (C) of this section with respect to that testing year are made as of the date of the transaction.

* * * * *

(4) * * *

Example 2. The facts are the same as in *Example 1* except that, by the first testing day in 1997 (Transition Year 1), there are 300 additional substantial-service employees with respect to the pharmaceutical supplies line of business, increasing the total number to 4,300. Of those 300 employees, 250 were substantial-service employees with respect to a different separate line of business for testing year 1996 and 50 are new hires. Assume that, on the first testing day in Transition Year 1, the pharmaceutical supplies line of business satisfies the requirements of § 1.414(r)–3 (taking into account § 1.414(r)–1(d)(4)) and therefore constitutes a separate line of business. Because 250 is 6 percent of 4,300, no more than ten percent of the employees who are substantial-service employees with respect to the pharmaceutical supplies line of business were substantial-service employees with respect to a different separate line of business for the immediately preceding testing year. The 50 newly hired employees are disregarded in making this determination. Under these facts, the pharmaceutical supplies separate line of business satisfies the safe harbor in this paragraph (d) for Transition Year 1.

* * * * *

(g) * * *

(2) * * *

(iii) * * *

(A) * * * For purposes of this paragraph (g)(2)(iii), the normal accrual rate is the percentage (not less than 0) determined by subtracting the employee's normalized accrued benefit as of the end of the prior plan year (expressed as a percentage of average annual compensation as of the end of the prior plan year) from the employee's normalized accrued benefit as of the end of the plan year (expressed as a percentage of average annual compensation as of the end of the plan year). * * *

* * * * *

(D) * * * However, a plan may disregard in a reasonable and consistent manner: years before 1994, years more than 10 years preceding the current plan year, and years for which the employer does not use this paragraph (g)(2) to satisfy this safe harbor with respect to the separate line of business. * * *

* * * * *

(3) * * *

(iii) * * *

(D) * * * In the case of a plan with subsidized optional forms, the determination of accrual rate for the plan year under paragraph (g)(2)(iii)(A) of this section is the percentage (not less than 0) determined by subtracting the largest of the sums of the employee's normalized QJSAs and QSUPPs determined for each age under § 1.401(a)(4)–3(d)(1)(ii) as of the end of the prior plan year (expressed as a percentage of average annual compensation as of the end of the prior plan year) from the largest of the sums of the employee's normalized QJSAs and QSUPPs determined for each age under § 1.401(a)(4)–3(d)(1)(ii) as of the end of the plan year (expressed as a percentage of average annual compensation as of the end of the plan year).

* * * * *

(5) *Certain contingency provisions ignored.* For purposes of this paragraph (g), an employee's accrual or allocation rate is determined without regard to any minimum benefit or any maximum benefit limitation that is applicable to

the employee only if the separate line of business fails otherwise to satisfy the requirement of administrative scrutiny.

Par. 9. Section 1.414(r)–6 is amended as follows:

1. In paragraph (a), a new sentence is added after the second sentence, the next sentence is revised, and the last sentence is removed.
2. Paragraph (b) is revised.
3. Paragraph (c) is removed.
4. The addition and revisions read as follows:

§ 1.414(r)–6 Qualified separate line of business—administrative scrutiny requirement—individual determinations.

(a) * * * The Commissioner shall issue such an individual determination only when it is consistent with the purpose of section 414(r), taking into account the nondiscrimination requirements of sections 401(a)(4) and 410(b). Paragraph (b) of this section authorizes the Commissioner to establish procedures for requesting and granting individual determinations.

(b) *Authority to establish procedures.* The Commissioner may, in revenue rulings and procedures, notices, and other guidance of general applicability, prescribe procedures and additional rules for requesting and granting individual determinations under this section. For example, such guidance may specify the circumstances in which an employer may request an individual determination and factors to be taken into account in deciding whether to grant a favorable individual determination. In addition, such guidance may describe situations that automatically fail the administrative scrutiny requirement.

* * * * *

Par. 10. Section 1.414(r)–7 is amended as follows:

1. The last sentence of paragraph (a)(1) is revised.
2. Paragraph (b)(2)(ii) is amended by removing the language "with respect to a qualified separate line of business".
3. The last sentence of paragraph (b)(3) is amended by removing the language "(including whether the residual shared employee is eligible for assignment under paragraph (c)(2) of this section)".
4. Paragraph (c)(1) is revised.
5. Paragraph (c)(2) is removed.
6. Paragraphs (c)(3) through (c)(5) are redesignated (c)(2) through (c)(4), respectively.
7. Newly designated paragraphs (c)(2)(i), (c)(3)(i) and (c)(4)(i) are amended by removing the language "who are not assigned under paragraph (c)(2) of this section".
8. Newly designated paragraphs (c)(2)(i), (c)(2)(iv)(C), (c)(2)(v), and *Example 2* and *Example 4* of paragraph (c)(2)(v) are amended by removing the reference "paragraph (c)(3)" and adding "paragraph (c)(2)" in its place.
9. Newly designated paragraphs (c)(2)(i), (c)(2)(iv), and paragraph (ii) of *Example 1* of newly designated paragraph (c)(2)(v) are amended by removing the reference "paragraph (c)(3)(ii)" and adding "paragraph (c)(2)(ii)" in its place.
10. Newly designated paragraph (c)(2)(i) is amended by removing the reference "paragraph (c)(3)(iv)" and adding "paragraph (c)(2)(iv)" in its place.
11. Newly designated paragraph (c)(2)(iii)(A) is revised.
12. Redesignated paragraph (c)(2)(iv) is amended by:
a. Removing the word "or" from the end of paragraph (c)(2)(iv)(B);
b. Adding the word "or" to the end of paragraph (c)(2)(iv)(C);
c. Adding paragraph (c)(2)(iv)(D).
13. *Example 1* of redesignated paragraph (c)(2)(v) is amended by removing the third sentence.
14. The first sentence of newly designated paragraph (c)(2)(v), *Example 4*(ii) is amended by removing the reference "paragraph (c)(3)(iii)" and adding "paragraph (c)(2)(iii)" in its place.
15. The last sentence of newly designated paragraph (c)(2)(v), *Example 4*(ii) is amended by removing the reference "paragraph (c)(3)(iii)(B)" and adding "paragraph (c)(2)(iv)(B)" in its place.
16. Newly designated paragraphs (c)(3)(i), (c)(3)(ii), and the introductory language and third sentence of *Example 1* of redesignated paragraph (c)(3)(iii) are amended by removing the reference "paragraph (c)(4)" and adding "paragraph (c)(3)" in its place.
17. Newly designated paragraph (c)(3)(i) is amended by removing the reference "(c)(3)(iii)" and adding "(c)(2)(iii)" in its place.
18. Newly designated paragraphs (c)(3)(ii)(A) and (c)(3)(ii)(B) are amended by removing the reference "(c)(4)(i)" and adding "(c)(3)(i)" in its place.
19. The first sentence of *Example 1* of newly designated paragraph (c)(3)(iii) is amended by removing the reference "paragraph (c)(3)(iv)" and adding "paragraph (c)(2)(v)" in its place and by removing the word "and" and adding "except" in its place.
20. Newly designated paragraphs (c)(4)(i), (c)(4)(ii), and (c)(4)(iii) are amended by removing the reference "paragraph (c)(5)" and adding "paragraph (c)(4)" in its place.
21. Newly designated paragraph (c)(4)(iii)(E) is amended by removing the reference "(c)(5)(iii)" and adding "(c)(4)(iii)" in its place.
22. Paragraph (d) is removed.
23. The added and revised provisions read as follows:

§ 1.414(r)–7 Determination of the employees of an employer's qualified separate lines of business.

(a)–*–*–*

(1) *In general.* * * * Paragraph (c) of this section provides methods for allocating residual shared employees among qualified separate lines of business.

* * * * *

(c) * * *

(1) *In general.* All residual shared employees must be allocated among an employer's qualified separate lines of business under one of the allocation methods provided in paragraphs (c)(2) through (4) of this section. An employer is permitted to select which method of allocation to apply for the testing year to residual shared employees. However, the same allocation method must be used for all residual shared employees and for all purposes listed in paragraph (a)(2) of this section with respect to the testing year.

(2) * * *

(iii) * * *

(A) *Determination of percentage.* The employee assignment percentage of a qualified separate line of business is the fraction (expressed as a percentage)—

(*1*) The numerator of which is the number of substantial-service employees with respect to the qualified separate line of business who are assigned to that line of business under paragraph (b) of this section; and

(*2*) The denominator of which is the total number of substantial-service employees who are assigned to all qualified separate lines of business of the employer under paragraph (b) of this section.

(iv) * * *

(D) The employee assignment percentage is at least twice the employee assignment percentages of each of the employer's other qualified separate lines of business.

* * * * *

§ 1.414(r)-8 [Amended]

Par. 11. Section 1.414(r)-8 is amended as follows:

1. Removing paragraph (d)(4).
2. Redesignating paragraph (d)(5) as (d)(4).

Par. 12. Section 1.414(r)-11 is amended as follows:

1. Paragraph (b)(2) is revised.
2. The first sentence of paragraph (b)(3) is removed and two new sentences are added in its place.

3. Paragraph (b)(4) is revised.

4. Paragraph (c)(2)(v) is amended by removing the references "1.414(r)-7(c)(3)" and "1.414(r)-7(c)(4)" and adding "1.414(r)-7(c)(2)" and "1.414(r)-7(c)(3)" in their respective places.

5. The added and revised provisions read as follows:

§ 1.414(r)-11 Definitions and special rules.

* * * * *

(b) * * *

(2) *Substantial-service employee.* An employee is a substantial-service employee with respect to a line of business for a testing year if at least 75 percent of the employee's services are provided to that line of business for that testing year within the meaning of § 1.414(r)-3(c)(5). In addition, if an employee provides at least 50% and less than 75% of the employee's services to a line of business for the testing year within the meaning of § 1.414(r)-3(c)(5), the employer may treat that employee as a substantial-service employee with respect to that line of business provided the employee is so treated for all purposes of these regulations. The employer may choose such treatment separately with respect to each employee.

(3) *Top-paid employee.* Generally, an employee is a top-paid employee with respect to a line of business for a testing year if the employee is among the top 10 percent by compensation of those employees who provide services to that line of business for that testing year within the meaning of § 1.414(r)-3(c)(5) and who are not substantial-service employees within the meaning of § 1.414(r)-11(b)(2) with respect to any other line of business. In addition, in determining the group of top-paid employees, the employer may choose to disregard all employees who provide less than 25 percent of their services to the line of business. * * *

(4) *Residual shared employee.* An employee is a residual shared employee for a testing year if the employee is not a substantial-service employee with respect to any line of business for the testing year.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 93-21511 Filed 9-1-93; 4:15 am]

BILLING CODE 4830-01-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-93-055]

Special Local Regulations for Marine Events; Virginia Beach Offshore Grand Prix; Atlantic Ocean, Rudee Inlet, Lake Rudee, Virginia Beach, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish permanent special local regulations for the Virginia Beach Offshore Grand Prix held annually in the Atlantic Ocean off Virginia Beach. The effect of these regulations will be to restrict general navigation in the regulated area for the safety of spectators and participants. These regulations are needed to provide for the safety of life, limb, and property on the navigable waters during the event.

DATES: Comments must be received on or before October 22, 1993.

ADDRESSES: Comments should be mailed or hand carried to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments will be available for inspection and copying in room 209 of this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Request for Comments: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 05-93-055) and the specific section of the proposal to which their comments apply. Reasons should be given for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

Drafting Information: The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Fifth Coast Guard District, and LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Proposed Regulations: The Eastern Virginia Offshore Racing Association annually sponsors the Virginia Beach Offshore Grand Prix. Each year the Eastern Virginia Offshore Racing Association requests that the Coast Guard provide control of spectator and commercial traffic within the regulated area as part of their application. Since this is a regular, yearly event, the Coast Guard proposes to develop a special local regulation. Specifically the Coast Guard seeks to regulate the waterways surrounding the race course. The Virginia Beach Offshore Grand Prix race course has been marked and checked by Waterway Surveys & Engineering, Ltd. to insure accurate certification of race points and records. The course runs from Rudee Inlet at the southern end to approximately 75th Street at the northern end. The start/Finish line is at 20th Street. Race boats will be pitted in the Southside Marina and Owl's Creek area. The course measures 11.0 Nautical miles (12.7 Statute miles). Waterway closures include the beach front and Rudee Inlet at the start of and throughout the race. To provide for safety of participants, spectators, and vessels transiting the area, the Coast Guard will restrict vessel movement in the regulated area during the race.

Regulatory Evaluation: This proposed regulation is considered non-major under Executive Order 12291 and not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for several hours, one day a year, and the impact on routine navigation is expected to be minimal.

Small Entities: Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). It is anticipated that the impact of this proposal on non-participating small entities will actually benefit their business due to the increase in local

tourism. The Coast Guard will certify under 5 U.S.C. 605(b), that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information: This proposed rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment: This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it is anticipated that this proposed rulemaking will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment Assessment: This proposed rulemaking has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket, and is available for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is proposed to be amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.520 is added to read as follows:

§ 100.520 Rudee Inlet, Lake Rudee, Atlantic Ocean, Virginia Beach, VA.

(a) *Definitions:* (1) Regulated area. The waters of the Atlantic Ocean commencing at a point on the shoreline at latitude 36°54′23.0″ North, longitude 75°59′26.0″ West; thence east northeast to latitude 36°54′38″ North, longitude 75°56′55″ West; thence south southeast parallel to the Virginia Beach shoreline to latitude 36°49′06″ North, longitude 75°55′58″ West; thence west southwest to the shoreline at latitude 36°48′53″ North, longitude 75°57′58″ West, and the waters of Rudee Inlet and Lake Rudee including the Owl Creek Boat Ramp.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander will be a commissioned, warrant, or petty officer who will be designated by the Commander, Group Hampton Roads.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations but may not block a navigable channel.

(c) *Effective period.* This section is effective during, and one hour before any scheduled event starts. The Commander, Fifth Coast Guard District will publish a notice in the **Federal Register** and the Fifth Coast Guard District Local Notice to Mariners that announces the times and dates that this section is in effect.

Dated: August 19, 1993.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93–21722 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AG42

Rules of Practice; Attorneys' and Agents' Fees

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs is proposing a rule to cover an exception to the requirements for charging a fee in connection with a proceeding before the Department with respect to benefits administered by the Secretary. The exception, for proceedings before the Department in cases arising out of certain loans, was created by recent legislation. These fee agreements will be treated similarly to other fee agreements for administrative efficiency.

DATES: Comments must be submitted on or before October 7, 1993. Comments will be available for public inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until October 18, 1993. It is proposed to make these changes effective 30 days after the date of publication of the final rule in the **Federal Register**.

ADDRESSES: Send written comments to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 170 at the address above.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Counsel to the Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–233–2978).

SUPPLEMENTARY INFORMATION: Section 303 of Public Law 102–405 created an exception to the requirement, created by the Veterans' Judicial Review Act of 1988, that a fee may not be charged, allowed, or paid in connection with a proceeding before the Department with respect to benefits administered by the Secretary for services of agents or attorneys provided before the date on which the Board of Veterans' Appeals first makes a final decision in the case. A reasonable fee may be charged or paid in connection with any proceeding before the Department in a case arising out of a loan made, guaranteed, or insured under Chapter 37 of title 38, United States Code. The statute requires that a person who charges a fee under this exception enter into a written fee agreement and file a copy of the fee agreement with the Secretary at such time, and in such manner, as specified by the Secretary.

VA proposes to treat fee agreements under this exception as similarly as possible to other fee agreements. Fee agreements not covered by this exception must be filed with the Board of Veterans' Appeals. Therefore, for administrative efficiency, VA proposes that fee agreements under this exception should also be filed with the Board of Veterans' Appeals. This requires no change in the filing regulation, 38 CFR 20.609(g). Section 20.609(d) is amended to include this exception and § 20.609(e) is amended to delete the clause that limits permitted fees to those covered by § 20.609(c).

VA has determined that these proposed regulations do not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The proposed regulations will not have a $100 million annual

effect on the economy and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that the proposed regulation will have only a limited effect on individual VA claimants and their representative before the Board of Veterans' Appeals. Pursuant to 5 U.S.C. 605(b), these proposed regulations are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There are not Catalog of Federal Domestic Assistance numbers associated with these proposed regulatory amendments.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Lawyers, Legal Services, Veterans.

Approved: July 14, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is proposed to be amended as set forth below.

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In § 20.609 paragraph (d) is redesignated as paragraph (d)(2), and a new paragraph (d)(1) is added and in paragraph (e) introductory text, the first sentence, the words "under paragraph (c)" are removed to read as follows:

§ 20.609. Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

* * * * *

(d) *Exceptions*—(1) *Chapter 37 loans.* With respect to services of agents and attorneys provided after October 9, 1992, a reasonable fee may be charged or paid in connection with any proceeding in a case arising out of a loan made, guaranteed, or insured under chapter 37, United States Code, even though the conditions set forth in paragraph (c) of this section are not met.

* * * * *

(Authority: 38 U.S.C. 5902, 5904, 5905)

(Approved by the Office of Management and Budget under control number 2900–0085)

[FR Doc. 93–21726 Filed 9–3–93; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–46–2–5920; FRL–4725–4]

Approval and Promulgation of Implementation Plans, California State Implementation Plan Revision; Sacramento Metropolitan Air Quality Management District (SMAQMD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP) adopted by the Sacramento Metropolitan Air Quality Management District (SMAQMD) on February 23, 1993. The California Air Resources Board (CARB) submitted this revision to EPA on April 6, 1993. The revision concerns Rule 451, Surface Coating of Miscellaneous Metal Parts and Products, which controls the emission of volatile organic compounds (VOCs) from the application of coatings to miscellaneous metal parts and products. The intended effect of proposing limited approval and limited disapproval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate this rule into the federally approved SIP. EPA has evaluated the revision to Rule 451 and is proposing a limited approval under provisions of the CAA regarding EPA actions on SIP submittals and general rulemaking authority because this revision strengthens the SIP. At the same time, EPA is proposing a limited disapproval under the CAA provisions cited above because the rule does not meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments must be received on or before October 7, 1993

ADDRESSES: Written comments should be addressed to: Esther Hill, Rulemaking Section 1 (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the rule revisions and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Rd., Sacramento, CA 95826

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1195, Fax: (415) 744–1076.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the Sacramento Metropolitan Area. 43 FR 8964; 40 CFR 81.305. Because the SMAQMD was unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under pre-amended section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.222. SMAQMD did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that SMAQMD's portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and

classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. Sacramento is classified as serious[2]; therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.[3]

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on April 6, 1993, including the rule being acted on in this document. This document addresses EPA's proposed action for Rule 451, Surface Coating of Miscellaneous Metal Parts and Products. This submitted rule was found to be complete on April 28, 1993 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V[4] and is being proposed for limited approval and limited disapproval.

Rule 451 controls the emission of volatile organic compounds (VOCs) from miscellaneous metal parts and products operations. VOCs contribute to the production of ground level ozone and smog. SMAQMD's Rule 451 was originally adopted as part of SMAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and has been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for SMAQMD's Rule 451.

[1] Among other things, the pre-amended guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] SMAQMD retained its designation and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] On June 12, 1991, EPA Region 9 notified the State of California that the State had missed the May 15, 1991 deadline for a number of rules, including SMAQMD's Rule 451. On October 22, 1991, EPA issued a formal finding under section 179(a) that California had failed to submit the required revisions to Rule 451. 56 FR 54354. This finding triggered the section 179(a) 18-month clock for mandatory application of sanctions. The sanctions clock for this failure stopped on April 28, 1993, when EPA made a finding that the state's submittal of Rule 451 was complete.

[4] EPA adopted completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents which specify the minimum requirements that a rule must contain in order to be approved into the SIP. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 451, Surface Coating of Miscellaneous Metal Parts and Products, is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VI: Surface Coating of Miscellaneous Metal Parts and Products", EPA document EPA–450/2–78–015. Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SMAQMD's submitted Rule 451, Surface Coating of Miscellaneous Metal Parts and Products, includes the following revisions from the current SIP rule:

- Several new definitions were added to clarify references made with the rule;
- VOC limits were added for specialty coatings;
- Specification of application equipment requirement of 65% was deleted;
- Requirements were added for surface preparation and cleanup materials;
- Emission Control System requirements were added;
- Several new administrative requirements were added;
- Monitoring and recordkeeping requirements were added; and
- Testing procedures were added.

EPA has evaluated SMAQMD's submitted Rule 451 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions address and correct many deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules.

Although SMAQMD's Rule 451 will strengthen the SIP, this rule still contains a deficiency which was required to be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA. The deficiency in Rule 451 is the addition of several specialty coatings which exceed the CTG limit of 420 grams per liter air dried (expressed in grams of VOC per liter air dried): Aluminum Coating for Window & Door Frames—750; Electrical insulating—540; Extreme Performance—750; Maskant—850; Pretreatment Wash Primer—780; Silicone Release Coating—762; and Solid Film Lubricants—880. A detailed discussion of the rule deficiency can be found in the Technical Support Document for Rule 451 (4/29/93), which is available from the U.S. EPA, Region 9 office. Because of this deficiency, the rule is not approvable pursuant to section 182(a)(2)(A) of the CAA because it is not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiency, EPA cannot grant approval of this rule under section 110(k)(3) and Part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of SMAQMD's submitted Rule 451 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of this rule because it contains a deficiency that has not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rule does not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section

110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rule covered by this NPR has been adopted by the SMAQMD and is currently in effect in the local district. EPA's limited disapproval action in this NPR does not prevent a local agency or EPA from enforcing this rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

Limited approvals under sections 110 and 301 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

EPA's limited disapproval of the State request under sections 110 and 301 and subchapter I, Part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state enforceability. Moreover, EPA's limited disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this limited disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules or EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. §§ 7401–7671q.

Dated: August 25, 1993.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 93–21711 Filed 9–3–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[A–1–MA–5–1–5295; FRL–4725–6]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Withdrawal of Notice of Proposed Rulemaking Establishing RACT for the Dartmouth Finishing Corp. in New Bedford

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: EPA is withdrawing a Notice of Proposed Rulemaking (NPR) for a proposed State Implementation Plan (SIP) revision submitted by the State of Massachusetts under section 110 of the Clean Air Act. The NPR being withdrawn proposed to establish reasonably available control technology (RACT) for the Dartmouth Finishing Corporation in New Bedford. The Massachusetts submittal was initially processed by EPA as a direct final rulemaking. A **Federal Register** notice published on December 14, 1992, (57 FR 58991) stated that the action would become effective within 60 days unless notice was received within 30 days of the date of publication that adverse or critical comments would be submitted. On December 30, 1992, EPA received such notice, and therefore published a notice of proposed rulemaking on February 23, 1993, (58 FR 10998) establishing a 30 day time period for comments. The party that had notified EPA of its intention to submit adverse comments, however, chose not to submit comments, and no comments were received. EPA, therefore, is withdrawing the NPR to allow the original direct final rulemaking to stand.

FOR FURTHER INFORMATION CONTACT: Robert F. McConnell, (617) 565–3250.

SUPPLEMENTARY INFORMATION: On May 15, 1991, the Commonwealth of Massachusetts submitted a revision to its State Implementation Plan (SIP). The revision consisted of a plan approval issued by the Massachusetts Department of Environmental Protection (DEP) that imposed VOC control measures as RACT for Dartmouth Finishing Corporation located in New Bedford, Massachusetts. EPA published a direct final rulemaking notice on December 14, 1992, approving the revision to the state's SIP. Contained within the final rulemaking notice was language stating that EPA did not consider the revision controversial and therefore did not anticipate adverse comments. The December 14, 1992 final rulemaking notice stated that if notice of intent to submit adverse or critical comments were received within 30 days of the rule's publication in the **Federal Register**, EPA would withdraw the action within 60 days and begin a new rulemaking process by announcing a proposed rule and establishing a comment period.

On December 30, 1992, EPA received a notice of intent to submit adverse comments on the SIP revision establishing RACT for the Dartmouth Finishing Corporation. EPA was not able to publish a withdrawal notice within the 60 day time frame established within the direct final rulemaking, but did publish an NPR on February 23, 1993, (58 FR 10998) for the Massachusetts proposal with the intention of preparing a removal notice which would remove the language which had been added to the Code of

Federal Regulations when the effective date of the direct final rulemaking passed. No comments were received during the comment period following publication of the NPR. The party that had expressed an intention of submitting adverse comments was contacted prior to the closing date for comments and informed EPA that a decision had been made not to submit adverse comments. The NPR, therefore, is now being withdrawn to allow the original direct final rulemaking to remain in effect.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 5, 1993.

Patricia L. Meaney,

Acting Regional Administrator, Region I.

[FR Doc. 93-21712 Filed 9-3-93; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[No. 40888]

Reconsideration of Special Tariff Authorities Authorizing the Publication of Customer Account Codes in Tariffs

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The ICC is proposing a regulation which would permit tariffs to continue to identify traffic to which rates apply by undisclosed customer account (or shipper) codes provided such tariffs include appropriately specific commodity and origin/destination information. In response to the computerization of tariff filing and billing systems required to keep track of the multiplicity of tariff rates encouraged by the Motor Carrier Act of 1980, the Commission in 1986 issued a special tariff authority permitting the use of customer account codes in tariffs. The proposed rule would replace the special tariff authority with a regulation. The proposed regulation would continue to authorize the use of undisclosed account codes in tariffs and describe with particularity the information undisclosed shipper-coded tariffs must contain in order to comply with the rate disclosure requirements of the Interstate Commerce Act.

DATES: Comments are due on October 7, 1993.

ADDRESSES: Send comments (an original and 10 copies) referring to Docket No. 40888 to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: James W. Greene (202) 927-5597 or Ronald A. Hall (202) 927-5595; TDD for hearing impaired: (202) 927-5721.

SUPPLEMENTARY INFORMATION: In an Advance Notice of Proposed Rulemaking issued at 58 FR 3558 (January 11, 1993), the Commission requested public comment on its reconsideration of all outstanding Special Tariff Authorities that allow carriers to publish tariff rates for shippers identified only by means of undisclosed account codes listed in the tariffs. Questions had arisen as to whether the publication of rates in this manner complies with the rate disclosure requirements of the Interstate Commerce Act (ICA). The Commission has concluded that undisclosed customer account code tariffs are not per se unlawful and that their continued use should be permitted. However, because the use of customer account codes has become widespread, and because carriers seem to require guidance as to the information a tariff utilizing undisclosed account codes must contain to satisfy the rate disclosure requirement of the ICA, the Commission is proposing to replace the Special Tariff Authorities with a regulation. The proposed regulation would continue to authorize the use of undisclosed account codes in tariffs and describe with particularity the information undisclosed shipper-coded tariffs must contain in order to comply with the rate disclosure requirements. Carriers would also have the option, under existing regulations, to identify traffic to which rates apply by shipper name unaccompanied by additional information.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927-7428. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Regulatory Flexibility Certification

Pursuant to 5 U.S.C. 605(b), we conclude that our proposed action in this proceeding would not have a significant economic impact on a substantial number of small entities. Special Tariff Authority No. 86-639 (STA), which authorized the use of shipper account codes by all motor common carriers, stated that:

> Shipper account codes, however, could not be constructed or used in a manner that would subvert the fundamental purpose of common carrier tariffs, i.e., "Tariffs are for the information and the use of the general public. They shall be published in a manner that ensures that they are readable and that their terms and conditions are easy to understand and apply." 49 CFR 1312.1.

The purpose of the proposed rule is to codify and clarify the existing STA. The clarification is intended to assist carriers in complying with statutory rate disclosure requirements (as interpreted in *Regular Common Carrier Conference* v. *United States*, 793 F.2d 376 (DC Cir. 1986)), and imposes no new or additional requirements upon carriers that are not already imposed by statute. Finally, while the proposed rule would also require carriers to inform shippers in writing of their account numbers, we do not believe that this requirement by itself would have a significant economic impact on small entities.

Environmental Statement

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1312

Motor carriers, Moving of household goods, Pipelines, Tariffs.

For the reasons set forth in the preamble, the Commission proposes to amend Chapter X of Title 49 of the Code of Federal Regulations, Part 1312, as follows:

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

1. The authority citation for part 1312 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10762; 5 U.S.C. 553.

2. In § 1312.14, a new paragraph (a)(4) is added to read as follows:

§ 1312.14 Statement of rates and fares.

(a) * * *

(4) Rates may be limited in their application by use of shipper account codes. A shipper account code means the substitution of a numerical and/or

alphabetic code reference in tariffs, in lieu of the name of a specific shipper or receiver for which specified rates, charges, or other provisions are limited in their application. Shipper account codes must be unique; that is, any code reference once established by a carrier in a tariff for a particular shipper or receiver may never be used to represent another shipper or receiver in that carrier's tariffs, nor may any shipper or receiver be allowed the use of more than one account code within a carrier's tariffs. The carrier must inform each shipper, in writing, of the account code assigned to it. In order to comply with the statutory rate disclosure requirements, rates or other tariff provisions that are limited in their application by use of an undisclosed shipper code must describe with specificity the traffic and pertinent transportation conditions involved. The description must at a minimum include the specific commodity or commodities, and the actual pattern of movement (identified at a minimum by the city and state of origin or destination). As an alternative to providing commodity and origin/destination information, a carrier may file an alphabetized list of shipper/receiver names and their assigned codes.

* * * * *

Decided: August 30, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–21704 Filed 9–3–93; 8:45 am]

BILLING CODE 7035–01–P

Notices

Federal Register
Vol. 58, No. 171
Tuesday, September 7, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act; Systems of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of redesignation and revision of five systems of records, rescission of a system of records, proposed routine uses, and notice of a proposed new system of records under the Privacy Act of 1974.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the U.S. Department of Agriculture is revising five of its systems of records maintained by the National Agricultural Statistics Service (NASS) (formerly the Economics and Statistics Service (ESS)), USDA, to clarify language, reflect organizational changes as to responsibility for maintaining these records, make changes in categories of individuals covered and records maintained, and proposed new routine uses. One system of records maintained by the former ESS is being rescinded. In addition, one new system of records, USDA/NASS–5, List Sampling Frame, is being added.

EFFECTIVE DATE: This notice will be effective, without further notice, on November 8, 1993, unless comments dictate otherwise. Comments must be received by the contact person listed below on or before 30 days after publication in the **Federal Register** (October 7, 1993), to be assured of consideration.

ADDRESS: Comments should be addressed to: Keith W. Anderson, Management Analysis Branch, USDA, EMS, ASD, room 4310, South Building, 14th and Independence Avenue SW., Washington, DC 20250–3500, telephone (202) 720–7590.

FOR FURTHER INFORMATION CONTACT: Keith W. Anderson, Management Analysis Branch, USDA, EMS, ASD, room 4310, South Building, 14th and Independence Avenue SW., Washington, DC 20250–3500, telephone (202) 720–7590.

SUPPLEMENTARY INFORMATION: The National Agricultural Statistics Service (NASS) hereby revises the following systems of records:

(a) USDA/ESS–1, Administrative Records System, is being redesignated as USDA/NASS–1, Administrative Records System, and is being revised to: (1) Clarify language; (2) reflect organizational changes as to agency name and system manager and location; (3) add "Social Security Number" to the categories of records maintained; (4) clarify individuals covered by the system; and (5) add a new routine use concerning the disclosure of records or information to another Federal agency, a court, or a party to a proceeding before a court or adjudicative body; add a new routine use concerning the disclosure of records or information to contractors maintaining and servicing the records maintained in the system; and add a new routine use concerning the disclosure of records or information to State Statistical Office employees performing functions for NASS pursuant to agreements between NASS and their respective State governments.

(b) USDA/ESS–2, June Acreage and Livestock Enumerative Survey, is being redesignated as USDA/NASS–2, Agricultural Survey Program, and is being revised to: (1) Clarify language; (2) reflect organizational changes as to agency name and system manager and location; (3) reflect a change in the individuals covered by the system by deleting "non-farm residents living rent free in houses on farms in these same selected small land areas"; (4) change categories of records in the system to include "Farm Operator's Social Security Number/Employer Identification Number"; and (5) add a routine use concerning the disclosure of records or information to the Department of Commerce, Bureau of the Census, for mail list evaluation for periodic Census of Agriculture; add a new routine use concerning the disclosure of records or information to contractors maintaining and servicing the records maintained in the system; add a new routine use concerning the disclosure of records or information to State Statistical Office employees performing functions for NASS pursuant to agreements between NASS and their respective State governments; and add a new routine use concerning the disclosure of records or information to cooperators and grantees performing statistical research for NASS pursuant to cooperative agreements, cost-reimbursement agreements, or grants between NASS and the respective cooperators and grantees.

(c) USDA/ESS–3, Personnel Data Base, is being redesignated as USDA/NASS–3, Personnel Data Base, and is being revised to: (1) Change system location (2) reflect organizational changes as to agency name and system manager; (3) add "Social Security Number" to the categories of records maintained; and (4) add a new routine use concerning the disclosure of records or information to another Federal agency, a court, or a party to a proceeding before a court or adjudicative body; and add a new routine use concerning the disclosure of records or information to contractors maintaining and servicing the records maintained in the system.

(d) USDA/ESS–4, Quarterly Agricultural Labor Survey, is being redesignated as USDA/NASS–4, Agricultural Labor Survey, and is being revised to: (1) Clarify language; (2) reflect organizational changes as to agency name and system manager and location; (3) change categories of records in the system by deleting "number of paid family workers working in the survey week" and "wages paid to paid family workers;" (4) add "Farm operator's Social Security Number/ Employer Identification Number" to the categories of records maintained; and (5) add a new routine use concerning the disclosure of records or information to contractors maintaining and servicing the records maintained in the system; add a new routine use concerning the disclosure of records or information to State Statistical Office employees performing functions for NASS pursuant to agreements between NASS and their respective State governments; and add a new routine use concerning the disclosure of records or information to cooperators and grantees performing statistical research for NASS pursuant to cooperative agreements, cost-reimbursement agreements, or grants between NASS and the respective cooperators and grantees.

(e) USDA/NASS–5, List Sampling Frame, is being created. This system

contains farm and ranch operator names, addresses, Social Security numbers or employer identification numbers, and control data for purposes of the NASS statistical survey program. Proposed routine uses for this system are disclosure of records or information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual; disclosure of records or information to the Department of Commerce, Bureau of the Census, for mail list development for periodic Census of Agriculture; disclosure of records or information to contractors maintaining and servicing the records maintained in the system; disclosure of records or information to State Statistical Office employees performing functions for NASS pursuant to agreements between NASS and their respective State governments; and disclosure of records or information to cooperators and grantees performing statistical research for NASS pursuant to cooperative agreements, cost-reimbursement agreements, or grants between NASS and the respective cooperators and grantees.

(f) USDA/ESS–6, Farm Production Expenditures Survey, Family Living Expense Sections, is being redesignated as USDA/NASS–6, Farm Costs and Returns Survey, and is being revised to: (1) Clarify language; (2) reflect organizational changes as to agency name and system manager and location; (3) change categories of individuals covered from "A sample of farmers and ranchers residing in the continental United States" to "Farmers and ranchers selected from the Agency's List Sampling Frame or operating in selected land areas;" (4) change categories of records maintained to include, in addition to Social Security Number/ Employee Identification Number, the following personal characteristics of the farm operator and all persons residing with the operator: Age, sex, race or national origin, and level of education; and (5) add a new routine use concerning the disclosure of records or information to contractors maintaining and servicing the records maintained in the system; add a new routine use concerning the disclosure of records or information to State Statistical Office employees performing functions for NASS pursuant to agreements between NASS and their respective State governments; and add a new routine use concerning the disclosure of records or information to cooperators and grantees performing statistical research for NASS pursuant to cooperative agreements, cost-reimbursement agreements, or grants between NASS and the respective cooperators and grantees.

(g) USDA/ESS–5, State Farm Census, is hereby rescinded.

Signed at Washington, DC, this 26th day of August, 1993.

Mike Espy,

Secretary of Agriculture.

USDA/NASS–1

SYSTEM NAME:

Administrative Records Systems, USDA/NASS.

SYSTEM LOCATION:

Input records are located in Headquarters (Washington, DC) and State Statistical Offices at the following locations:

Montgomery, AL 36104
Palmer, AK 99645
Phoenix, AZ 85012
Little Rock, AR 72201
Sacramento, CA 95814
Lakewood, CO 80215
Dover, DE 19901
Orlando, FL 32803
Athens, GA 30613
Honolulu, HI 96814
Boise, ID 83712
Springfield, IL 62702
West Lafayette, IN 47907
Des Moines, IA 50309
Topeka, KS 66683
Louisville, KY 40202
Baton Rouge, LA 70806
Annapolis, MD 21401
Lansing, MI 48904
St. Paul, MN 55107
Jackson, MS 39204
Columbia, MO 65202
Helena, MT 59626
Lincoln, NE 68508
Reno, NV 89557
Concord, NH 03301
Trenton, NJ 08625
Las Cruces, NM 88001
Albany, NY 12235
Raleigh, NC 27611
Fargo, ND 58102
Columbus, OH 43215
Oklahoma City, OK 73105
Portland, OR 97204
Harrisburg, PA 17110
Columbia, SC 29201
Sioux Falls, SD 57117
Nashville, TN 37204
Austin, TX 78701
Salt Lake City, UT 84116
Richmond, VA 23219
Olympia, WA 98501
Charleston, WV 25312
Madison, WI 53713
Cheyenne, WY 82001

Addresses of each State Statistical Office are listed in the telephone directories of the respective cities, under the heading "United States Government, Department of Agriculture, National Agricultural Statistics Service (NASS)," or "(State) Agricultural Statistics Service." Magnetic tapes are located in the Martin Marietta Data System (MMDS) file, Orlando, Florida.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Federal and State employees of NASS and employees of the National Association of State Departments of Agriculture (NASDA) who work on NASS surveys.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, home address, telephone number, Social Security Number, salary rate, accumulated salary for the year, accumulated hours worked, and accumulated travel expenses which include per diem, travel, and total miles traveled.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 7 U.S.C. 2204.

PURPOSE(S):

To maintain a record of earnings for each NASS and NASDA employee who works on NASS surveys.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information in the system for NASDA employees is made available to the contractor chosen to process and disburse salary and travel checks.

(2) Disclosure may be made to the Department of Justice (DOJ), to a court, or other tribunal, or another party before such tribunal, when NASS, any component thereof, or any employee of NASS in his or her official capacity, any NASS employee in his or her individual capacity where DOJ (or NASS where it is authorized to do so) has agreed to represent the employee, or the United States where NASS determines that the litigation is likely to directly affect the operations of NASS or any of its components, is a party to litigation or has an interest in such litigation, and NASS determines that the use of such records by DOJ, the court or other tribunal, or the other party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, NASS determines that such disclosure is compatible with the purposes for which the records were collected.

(3) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(4) Disclosure may be made to a private firm for the purpose of collating, analyzing, aggregating, or otherwise maintaining or servicing the records in the system. Such contractor will be required to maintain Privacy Act safeguards with respect to the records.

(5) Disclosure may be made to State Statistical Office employees performing functions for NASS pursuant to agreements between NASS and their respective State governments.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Source documents (ADM–008, ADM–009, and NAS–011) are retained in the State Statistical Offices specified above. Machine readable data are located in MMDS file, Orlando, Florida. Each office is able to access only its own files.

RETRIEVABILITY:

The master employee file is indexed by employee number assigned by each Headquarters and State Statistical Office.

SAFEGUARDS:

Source documents are kept in file cabinets in the offices listed above. These offices are always locked when unoccupied. Magnetic tapes are stored in an area to which access is limited to authorized personnel of MMDS network. The NASS contract with MMDS contains provisions for (1) Network Data Integrity and Security, (2) Physical Security, and (3) Data Security.

RETENTION AND DISPOSAL:

Two files in this system are handled in the following manner:

(1) Biweekly data file—After initial usage, storage on tape and retained for 1 year.

(2) Master employee data file—Inactive employee records are deleted at the end of each fiscal year.

SYSTEM MANAGER(S) AND ADDRESSES:

Administrator, NASS, USDA, Washington, DC 20250–2000, or the State Statistician for each State Statistical Office at the address specified above.

NOTIFICATION PROCEDURE:

Any individual working in a NASS office or as a NASDA employee on a NASS survey since 1975 may request information as to whether this system contains records pertaining to him or her by contacting the system manager at the address specified above. The written request for information should contain: Name, address, name of system of records, and most recent dates of employment with NASS or NASDA.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Any individual may obtain information as to the procedures for contesting a record in this system which pertains to him or her by submitting a request to the system manager specified above.

RECORD SOURCE CATEGORIES:

Information in this system comes from time and mileage forms (ADM–008, ADM–009, and NAS–011), attendance forms, and employment forms (SF–171 and NAS–001).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

USDA/NASS–2

SYSTEM NAME:

Agricultural Survey Program, USDA/NASS.

SYSTEM LOCATION:

Completed survey questionnaire forms are located in State Statistical Offices at the following locations:

Montgomery, AL 36104
Phoenix, AZ 85012
Little Rock, AR 72201
Sacramento, CA 95814
Lakewood, CO 80215
Orlando, FL 32803
Athens, GA 30613
Honolulu, HI 96814
Boise, ID 83712
Springfield, IL 62702
West Lafayette, IN 47907
Des Moines, IA 50309
Topeka, KS 66683
Louisville, KY 40202
Baton Rouge, LA 70806
Annapolis, MD 21401
Lansing, MI 48904
St. Paul, MN 55107
Jackson, MS 39204
Columbia, MO 65202
Helena, MT 59626
Lincoln, NE 68508
Reno, NV 89557
Concord, NH 03301
Trenton, NJ 08625
Las Cruces, NM 88001
Albany, NY 12235
Raleigh, NC 27611
Fargo, ND 58102
Columbus, OH 43215
Oklahoma City, OK 73105
Portland, OR 97204
Harrisburg, PA 17110
Columbia, SC 29201
Sioux Falls, SD 57117
Nashville, TN 37204
Austin, TX 78701
Salt Lake City, UT 84116
Richmond, VA 23219
Olympia, WA 98501
Charleston, WV 25312
Madison, WI 53713
Cheyenne, WY 82001

Addresses of each State Statistical Office are listed in the telephone directories of the respective cities under the heading "United States Government, Department of Agriculture, National Agricultural Statistics Service (NASS)," or "(State) Agricultural Statistics Service." Magnetic tapes are located in the Martin Marietta Data System (MMDS) file, Orlando, Florida.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Farmers and ranchers operating in selected small land areas and a sample of farmers and ranchers selected from the Agency's List Sampling Frame.

CATEGORIES OF RECORDS IN THE SYSTEM:

Farm operator's Social Security Number/Employer Identification Number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 2204.

PURPOSE(S):

The Farm Operator's Social Security Number/Employer Identification Number is requested to assist in identifying duplication of names on the Agency's List Frame.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Data are provided to the Department of Commerce, Bureau of the Census, for mail list evaluation for periodic Census of Agriculture.

(2) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(3) Disclosure may be made to a private firm for the purpose of collating, analyzing, aggregating, or otherwise maintaining or servicing the records in this system. Such contractor will be required to maintain Privacy Act safeguards with respect to the records.

(4) Disclosure may be made to State Statistical Office employees performing functions for NASS pursuant to agreements between NASS and their respective State governments.

(5) Disclosure may be made to cooperators and grantees performing statistical research for NASS pursuant to cooperative agreements, cost-reimbursement agreements, or grants between NASS and the respective cooperators and grantees.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Questionnaires are retained in the State Statistical Offices specified above. Machine readable data are located in the MMDS file, Orlando, Florida. Each office is able to access only its own files.

RETRIEVABILITY:

Questionnaires and magnetic tapes are indexed by the location of the selected small land areas or by a List Sampling Frame record ID assigned by each office.

SAFEGUARDS:

Questionnaires are kept in locked file cabinets in the offices listed above. These offices are always locked when unoccupied. Magnetic tapes are stored in an area to which access is limited to authorized personnel of the MMDS network. The NASS contract with MMDS contains provisions for (1) Network Data Integrity and Security, (2) Physical Security, and (3) Data Security.

RETENTION AND DISPOSAL:

Questionnaires are kept for 30 days after the primary survey is summarized. Edited raw data input for summary programs are retained 14 months on the MMDS network and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS(ES):

The Deputy Administrator for operations, NASS, USDA, Washington, DC 20250–2000, or the State Statistician for each State Statistical Office at the address specified above.

NOTIFICATION PROCEDURE:

Any individual may request information as to whether the system contains records pertaining to him or her by contacting the system manager at the address specified above. The request for information should contain: Name, address, name of system of records, and year that the questionnaire was completed.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Any individual may obtain information as to the procedures for contesting a record in this system which pertains to him or her by submitting a request to the system manager specified above.

RECORD SOURCE CATEGORIES:

Information in this system comes solely from farmers and ranchers who responded to NASS's Agricultural Survey Program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

USDA/NASS–3

SYSTEM NAME:

Personnel Data Base, USDA/NASS.

SYSTEM LOCATION:

Input coding sheets and output listings are stored in the Personnel Division, Economics Management Staff, USDA, Washington, DC 20250–3500. Magnetic tapes are located in the Martin Marietta Data System (MMDS file, Orlando, Florida.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees in the following position classification series: 334, 1529, and 1530.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's Social Security Number, job series, grade, age, service computation date, beginning date of work for National Agricultural Statistics Service (NASS), work experience, training, and awards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To maintain an employment record on each employee of NASS in the classification series listed above.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Disclosure may be made to the Department of Justice (DOJ), to a court, or other tribunal, or another party before such tribunal, when NASS, any component thereof, or any employee of NASS in his or her official capacity, any NASS employee in his or her individual capacity where DOJ (or NASS where it is authorized to do so) has agreed to represent the employee, or the United States where NASS determines that the litigation is likely to directly affect the operations of NASS or any of its components, is a party to litigation or has an interest in such litigation, and NASS determines that the use of such records by DOJ, the court or other tribunal, or the other party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, NASS determines that such disclosure is compatible with the purposes for which the records were collected.

(2) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(3) Disclosure may be made to a private firm for the purpose of collating, analyzing, aggregating, or otherwise maintaining or servicing the records of this system. Such contractor will be required to maintain Privacy Act safeguards with respect to the records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Input coding sheets and output listings are stored in the office specified above. Machine readable data are located in the MMDS file, Orlando, Florida.

RETRIEVABILITY:

Records are indexed by Social Security Number.

SAFEGUARDS:

Source documents are kept in locked file cabinets in the offices listed above. Magnetic tapes are stored in an area to which access is limited to authorized personnel of the MMDS network. The NASS contract with MMDS contains provisions for (1) Network Data Integrity and Security, (2) Physical Security, and (3) Data Security.

RETENTION AND DISPOSAL:

A review is made each quarter. Records which are no longer needed are destroyed.

SYSTEM MANAGER AND ADDRESS:

Administrator, NASS, USDA, Washington, DC. 20250–2000.

NOTIFICATION PROCEDURE:

Any individual may request information as to whether the system contains records pertaining to him or her by contacting the system manager at the address specified above. A written request for information should contain: Name, address, name of system of records, and any other pertinent information that will help identify the file.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Any individual may obtain information as to the procedures for contesting a record in this system which pertains to him or her by submitting a request to the system manager specified above.

RECORD SOURCE CATEGORIES:

Information in this system comes from SF–52, Request for Personnel Action; SF–182, Request, Authorization, Agreement and Certification of Training; and AD–287–2, Recommendation and Approval of Cash Award or Quality Increase.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

USDA/NASS–4

SYSTEM NAME:

Agricultural Labor Survey, USDA/NASS

SYSTEM LOCATION:

Survey questionnaires are located in State Statistical Offices at the following locations:

Montgomery, AL 36104
Palmer, AK 99645
Phoenix, AZ 85012
Little Rock, AR 72201
Sacramento, CA 95814
Lakewood, CO 80215
Orlando, FL 32803
Athens, GA 30613
Honolulu, HI 96814
Boise, ID 83712
Springfield, IL 62702
West Lafayette, IN 47907
Des Moines, IA 50309
Topeka, KS 66683
Louisville, KY 40202
Baton Rouge, LA 70806
Annapolis, MD 21401
Lansing, MI 48904
St. Paul, MN 55107
Jackson, MS 39204
Columbia, MO 65202
Helena, MT 59626
Lincoln, NE 68508
Reno, NV 89557
Concord, NH 03301
Trenton, NJ 08625
Las Cruces, NM 88001
Albany, NY 12235
Raleigh, NC 27611
Fargo, ND 58102
Columbus, OH 43215
Oklahoma City, OK 73105
Portland, OR 97204
Harrisburg, PA 17110
Columbia, SC 29201
Sioux Falls, SD 57117
Nashville, TN 37204
Austin, TX 78701
Salt Lake City, UT 84116
Richmond, VA 23219
Olympia, WA 98501
Charleston, WV 25312
Madison, WI 53713
Cheyenne, WY 82001

Addresses of each State Statistical Office are listed in the telephone directories of the respective cities under the heading "United States Government, Department of Agriculture, National Agricultural Statistics Service (NASS)," or "(State) Agricultural Statistics Service." Magnetic tapes are located in the Martin Marietta Data System (MMDS) file, Orlando, Florida.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A sample of farmers and ranchers selected from the Agency's List and Area Sampling Frames.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Number of hours worked in the survey week by the farm operator and any partners, (2) number of unpaid family members working during survey week, (3) hours worked by unpaid family members, and (4) farm operator's Social Security Number/Employer Identification Number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 2204.

PURPOSE(S):

Hours worked by farm operator and unpaid family members provide a meaningful comparison of employment with non-agricultural sector. The farm operator's Social Security Number/Employer Identification Number is requested to assist in identifying duplication of names on the Agency's List Frame.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(2) Disclosure may be made to a private firm for the purpose of collating, analyzing, aggregating, or otherwise maintaining or servicing the records in this system. Such contractor will be required to maintain Privacy Act safeguards with respect to the records.

(3) Disclosure may be made to State Statistical Office employees performing functions for NASS pursuant to agreements between NASS and their respective State governments.

(4) Disclosure may be made to cooperators and grantees performing statistical research for NASS pursuant to cooperative agreements, cost-reimbursement agreements, or grants between NASS and the respective cooperators and grantees.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Questionnaires are retained in the State Statistical Offices specified above. Machine readable data are locked in the MMDS file, Orlando, Florida. Each office is able to access only its own files.

RETRIEVABILITY:

Questionnaires are indexed by a List Sampling Frame record ID assigned by each office or the location of the selected land areas.

SAFEGUARDS:

Questionnaires are kept in locked file cabinets in the offices listed above. These offices are always locked when unoccupied. Magnetic tapes are stored in an area to which access is limited to authorized personnel of the MMDS network. The NASS contract with MMDS contains provisions for (1) Network Data Integrity and Security, (2) Physical Security, and (3) Data Security.

RETENTION AND DISPOSAL:

Questionnaires are kept for a minimum of 30 days after the primary survey is summarized. Edited raw data input for summary programs are retained a minimum of 14 months on the MMDS network and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS(ES):

The Deputy Administrator for Operations, NASS, USDA, Washington, DC 20250–2000, or the State Statistician for each State Statistical Office at the address specified above.

NOTIFICATION PROCEDURE:

Any individual may request information as to whether the system contains records pertaining to him or her by contacting the system manager at the address specified above. The request for information should contain: Name, address, name of system of records, and year that the questionnaire was completed.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Any individual may obtain information as to the procedures for contesting a record in this system which pertains to him or her by submitting a request to the system manager specified above.

RECORD SOURCE CATEGORIES:

Information in this system comes solely from farmers and ranchers who responded to NASS's Agricultural Labor Surveys.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

USDA/NASS–5

SYSTEM NAME:

List Sampling Frame, USDA/NASS.

SYSTEM LOCATION:

Input and output files are located in Headquarters (Washington, DC) and State Statistical Offices at the following locations:

Montgomery, AL 36104
Palmer, AK 99645
Phoenix, AZ 85012
Little Rock, AR 72201
Sacramento, CA 95814
Lakewood, CO 80215
Dover, DE 19901
Orlando, FL 32803

Athens, GA 30613
Honolulu, HI 96814
Boise, ID 83712
Springfield, IL 62702
West Lafayette, IN 47907
Des Moines, IA 50309
Topeka, KS 66683
Louisville, KY 40202
Baton Rouge, LA 70806
Annapolis, MD 21401
Lansing, MI 48904
St. Paul, MN 55107
Jackson, MS 39204
Columbia, MO 65202
Helena, MT 59626
Lincoln, NE 68508
Reno, NV 89557
Concord, NH 03301
Trenton, NJ 08625
Las Cruces, NM 88001
Albany, NY 12235
Raleigh, NC 27611
Fargo, ND 58102
Columbus, OH 43215
Oklahoma City, OK 73105
Portland, OR 97204
Harrisburg, PA 17110
Columbia, SC 29201
Sious Falls, SD 57117
Nashville, TN 37204
Austin, TX 78701
Salt Lake City, UT 84116
Richmond, VA 23219
Olympia, WA 98501
Charleston, WV 25312
Madison, WI 53713
Cheyenne, WY 82001

Addresses of each State Statistical Office are listed in the telephone directories of the respective cities under the heading "United States Government, Department of Agriculture, National Agricultural Statistics Service (NASS)," or "(State) Agricultural Statistics Service." Magnetic tapes are located in the Martin Marietta Data System (MMDS) file, Orlando, Florida.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Farmers and ranchers operating farms and ranches.

CATEGORIES OF RECORDS IN THE SYSTEM:

Farm operator's Social Security Number/Employer Identification Number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 2204.

PURPOSE(S):

The farm operator's Social Security Number/Employer Identification Number is maintained to assist in identifying duplication of names between various probability list samples and NASS's area frame surveys. Social Security Numbers are also used when matching names currently on NASS's list sampling frame with lists maintained by other governmental agencies as part of the NASS list building and maintenance process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(2) Data are provided to the Department of Commerce, Bureau of the Census, for mail list development for periodic Census of Agriculture.

(3) Disclosure may be made to a private firm for the purpose of collating, analyzing, aggregating, or otherwise maintaining or servicing the records in this system. Such contractor will be required to maintain Privacy Act safeguards with respect to the records.

(4) Disclosure may be made to State Statistical Office employees performing functions for NASS pursuant to agreements between NASS and their respective State governments.

(5) Disclosure may be made to cooperators and grantees performing statistical research for NASS pursuant to cooperative agreements, cost-reimbursement agreements, or grants between NASS and the respective cooperators and grantees.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage:

Input documents and output listings are retained in the State Statistical Offices specified above. Machine readable name, address and control data are located in the MMDS file, Orlando, Florida. Each office is able to access only its own files.

RETRIEVABILITY:

List Sampling Frame names are indexed by a List Sampling Frame record ID assigned by each office. Each name also can be accessed by its Social Security Number.

SAFEGUARDS:

Output listings of the List Sampling Frame names are kept in locked file cabinets in the offices listed above. These offices are always locked when unoccupied. Magnetic tapes are stored in an area to which access is limited to authorized personnel of the MMDS network. The NASS contract with MMDS contains provisions for (1) Network Data Integrity and Security, (2) Physical Security, and (3) Data Security.

RETENTION AND DISPOSAL:

Source documents are kept for a minimum of 30 days after the primary survey is summarized. The goal is to obtain information about each List Frame unit at least once every 5 years. If not obtained within this period, the unit may be removed from the active frame.

SYSTEM MANAGER(S) AND ADDRESS(ES):

The Deputy Administrator for Operations, NASS, USDA, Washington, DC 20250–2000, or the State Statistician for each State Statistical Office at the address specified above.

NOTIFICATION PROCEDURE:

Any individual may request information as to whether the system contains records pertaining to him or her by contacting the system manager at the address specified above. The request for information should contain: Name, address, name of system of records, and year that the questionnaire was completed.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Any individual may obtain information as to the procedures for contesting a record in this system which pertains to him or her by submitting a request to the system manager specified above.

RECORD SOURCE CATEGORIES:

Names to update the List Frame are assembled from a variety of sources. Annually, data from the County Estimates Survey, Agricultural Survey Program, and other crop and livestock surveys are major sources. A Criteria questionnaire is used when Social Security Numbers/Employer Identification Numbers are missing or control data are out of date.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

USDA/NASS–6

SYSTEM NAME:

Farm Costs and Returns Survey, USDA/NASS.

SYSTEM LOCATION:

Survey questionnaires are located in State Statistical Offices at the following locations:

Montgomery, AL 36104
Phoenix, AZ 85012
Little Rock, AR 72201
Sacramento, CA 95814
Lakewood, CO 80215
Orlando, FL 32803
Athens, GA 30613
Boise, ID 83712
Springfield, IL 62702
West Lafayette, IN 47907
Des Moines, IA 50309
Topeka, KS 66683

Louisville, KY 40202
Baton Rouge, LA 70806
Annapolis, MD 21401
Lansing, MI 48904
St. Paul, MN 55107
Jackson, MS 39204
Columbia, MO 65202
Helena, MT 59626
Lincoln, NE 68508
Reno, NV 89557
Concord, NH 03301
Trenton, NJ 08625
Las Cruces, NM 88001
Albany, NY 12235
Raleigh, NC 27611
Fargo, ND 58102
Columbus, OH 43215
Oklahoma City, OK 73105
Portland, OR 97204
Harrisburg, PA 17110
Columbia, SC 29201
Sioux Falls, SD 57117
Nashville, TN 37204
Austin, TX 78701
Salt Lake City, UT 84116
Richmond, VA 23219
Olympia, WA 98501
Charleston, WV 25312
Madison, WI 53713
Cheyenne, WY 82001

Addresses of each State Statistical Office are listed in the telephone directories of the respective cities under the heading "United States Government, Department of Agriculture, National Agricultural Statistics Service (NASS)," or "(State) Agricultural Statistics Service." Magnetic tapes are located in the Martin Marietta Data System (MMDS) file, Orlando, Florida.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Farmers and ranchers selected from the Agency's List Sampling Frame or operating in selected land areas.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information on farm operator characteristics includes: (1) Age, (2) sex, (3) race or national origin, and (4) level of education of the operator and all persons living in the operator's house. The farm operator's Social Security Number/Employer Identification Number is requested. In the Labor and Wage section, the following information is reported: (1) Average number of hours worked per week by the operator; and (2) average number of hours worked per week by partners and unpaid family workers. Information is also reported on the following non-farm items: (1) Expenses such as food and household supplies, housing and transportation, medical expenses, and other family living expenses; (2) all non-farm related assets; (3) all other debts, and (4) off-farm income by the operator and all members of the operator's household.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 2204.

PURPOSE(S):

Farm operator characteristics are part of the statistical analysis of the survey. The farm operator's Social Security Number/Employer Identification Number is used to identify duplication of names on the Agency's List Frame. Agricultural labor and wage data, and non-farm expenses, assets, debts, and income are part of the farm budget system which measures the economic well-being of farmers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(2) Disclosure may be made to a private firm for the purpose of collating, analyzing, aggregating, or otherwise maintaining or servicing the records in this system. Such contractor will be required to maintain Privacy Act safeguards with respect to the records.

(3) Disclosure may be made to State Statistical Office employees performing functions for NASS pursuant to agreements between NASS and their respective State governments.

(4) Disclosure may be made to cooperators and grantees performing statistical research for NASS pursuant to cooperative agreements, cost-reimbursement agreements, or grants between NASS and the respective cooperators and grantees.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Storage: Questionnaires are retained in the State Statistical Offices specified above. Machine readable data are located in the MMDS file, Orlando, Florida. Each office is able to access only its own files.

RETRIEVABILITY:

List questionnaires are indexed by a List Frame record ID assigned by each office. Area frame questionnaires are identified by location of the selected land areas.

SAFEGUARDS:

Questionnaires are kept in locked file cabinets in the offices listed above. These offices are always locked when unoccupied. Magnetic tapes are stored in an area to which access is limited to authorized personnel of the MMDS network. The NASS contract with MMDS contains provisions for (1) Network Date Integrity and Security, (2) Physical Security, and (3) Data Security.

RETENTION AND DISPOSAL:

Questionnaires are kept for 30 days after the primary survey is summarized. Edited raw data input for summary program are retained 14 months on the MMDS network and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS(ES):

The Deputy Administrator for Operations, NASS, USDA, Washington, DC 20250–2000, or the State Statistician for each State Statistical Office at the address specified above.

NOTIFICATION PROCEDURE:

Any individual may request information as to whether the system contains records pertaining to him or her by contacting the system manager at the address specified above. The request for information should contain: Name, address, name of system of records, and year that the questionnaire was completed.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Any individual may obtain information as to the procedures for contesting a record in this system which pertains to him or her by submitting a request to the system manager specified above.

RECORD SOURCE CATEGORIES:

Information in this system comes solely from farmers and ranchers who responded to NASS's Farm Costs and Returns Survey.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 93–21694 Filed 9–3–93; 8:45 am]
BILLING CODE 3410–20–M

Agricultural Marketing Service

[TMD–93–00–1]

National Organic Standards Board (NOSB); Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92–463), as amended, the Agricultural Marketing Service (AMS) announces a forthcoming meeting of NOSB.

DATES AND TIME: September 26–29, 1993, 8 a.m. to 7 p.m.

ADDRESSES: Arkansas Land and Farm Development Corporation, Route 49

North, Fargo, Arkansas. All meetings of NOSB for the week will be held at that address.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, Staff Director, NOSB, room 4006 South Building, USDA, AMS, Transportation and Marketing Division, P.O. Box 96456, Washington, DC 20090–6456. Phone (202) 720–2704.

SUPPLEMENTARY INFORMATION: Section 2119, (7 U.S.C. 6518), of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act), as amended (7 U.S.C. Section 6501 *et seq.*), requires establishment of a NOSB. The purpose of the Board is to assist the Secretary of Agriculture in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of title XXI of the FACT Act. The NOSB met for the first time in Washington, DC, in March 1992 and formed six committees to work on various aspects of the program. The committees are: Crops Standards; Processing, Labeling and Packaging; Livestock Standards; Accreditation; National Materials List; and International Issues.

Purpose and Agenda

The main focus of this meeting is to provide opportunities for full Board discussion of issues being considered by working committees. The last meeting of NOSB in July 1993 provided considerable time for the committees to meet and work on their position papers. At the September meeting the committees will present their positions to the full Board for discussion and possible concurrence.

Topics to be covered include recommendations concerning: (1) Processing standards and processing materials needed for the National List of approved and prohibited substances; (2) accreditation requirements for certifying agents and criteria for a peer review panel for certifying agents; (3) standards for irrigation water, and other material inputs for organic crop production developed by the Crops Committee; (4) livestock production practices including health care standards, by the Livestock Committee; and (5) import requirements for organic products.

A final agenda will be available on September 10, 1993. Persons requesting copies should contact Ms. Faith Ashton at the above address or phone number.

Type of Meeting

All meetings will be open to the public. Individuals and organizations wishing to provide written comments on these issues or to express public comment on any organic issues should forward the request to Dr. Harold S. Ricker at the above address or FAX the request to (202) 690–0338 by September 10, 1993, in order to be scheduled. The NOSB has scheduled time for public input on Monday, September 27, 1993, beginning at 1 p.m. and continuing until 5 p.m. While people may sign up to speak at the door, advance scheduling assures an opportunity in the time allowed and helps the NOSB plan its activities.

Each individual or organization will be allocated 10 minutes for presenting orally the key issues of concern, and should provide copies of written material elaborating on these issues for the Committees.

Dated: August 31, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–21696 Filed 9–3–93; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 2108–01]

Decision and Order on Default in the Matter of: Gunnar Wedell, Respondent

ACTION: Notice.

EFFECTIVE DATE: September 1, 1993.

SUMMARY: Pursuant to the August 2, 1993, recommended Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is attached hereto and affirmed by me, Gunnar Wedell and all successors, assignees, officers, partners, representatives, agents and employees are hereby denied for a period of fifteen (15) years from and after April 20, 1987, all privileges of participating directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Export Administration Regulations (15 CFR parts 768–799).

ORDER: On August 2, 1993, the ALJ entered his Recommended Decision and Order in the above-referenced matter. The Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Decision and Order of the ALJ.

This constitutes final agency action in this matter.

Dated: August 30, 1993.

Robert F. Kugelman,

Acting Under Secretary for Export Administration.

Preliminary Statement

Appearance for Respondent: Mr. Gunnar Wedell, appearing *pro se*. Skyttevagen 63, S–181 46 Lindingo, Sweden.

Appearance for Agency: Thomas C. Barbour, Esq., U.S. Department of Commerce, Office of Chief Counsel for Export Administration, Room H–3839, 14th & Constitution Avenue, NW., Washington, DC 20230.

A. The Facts

Counsel for the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department or Agency Counsel), on May 5, 1993, has moved upon the pleadings in the above-captioned case that I recommend to the Acting Under Secretary for Export Administration that, pursuant to section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 [1991, supp. 1993, and Pub. L. 103–10, March 27, 1993]) (the Act), and part 788 of the Export Administration Regulations (currently codified at 15 CFR parts 768–799 [1991]) (the Regulations), he enter an Order finding that Gunnar Wedell, the Respondent herein, committed the violations alleged in the April 29, 1992 charging letter. The Respondent's answer, filed June 12, 1992, admits allegations in the charging letter that the Respondent has failed to pay any part of the $17,000 civil penalty due and payable under the terms of the April 20, 1987, Decision and Order issued against him by the then-Assistant Secretary for Trade Administration, Paul Freedenberg.[1] Assistant Secretary Freedenberg, in his 1987 Order, to remedy the violations,[2] imposed a civil

[1] 52 FR 13736 (April 24, 1987). The Assistant Secretary's Decision and Order also approved the original terms of Consent Agreements that had been entered into by Agency Counsel and two other individuals who had been joined as co-Respondents with Wedell, thereby leaving Wedell as the only remaining Respondent in this proceeding.

[2] The Assistant Secretary's 1987 Decision and Order, in effect, adopted the findings of fact and conclusions of law, but not the remedy, or proposed sanctions, in Administrative Law Judge Hugh J. Dolan's recommended Decision and Order, dated March 17, 1987. There, Judge Dolan found that, as alleged in the July 25, 1984, charging letter, as amended on September 13, 1984, Wedell, in his capacity as General Manager of Datasaab, A.B., formerly Stansaab Electtronik, A.B., between November 1977 and February 1981, violated then-Sections 387.2, 387.4 and 387.10 of the Regulations by providing to the then-Union of Soviet Socialist Republics (U.S.S.R.) an air traffic control system having capabilities and components that were contrary to restrictions contained in the relevant

Continued

penalty against Wedell in the amount of $17,000 and denied him export privileges for a period of 10 years from April 20, 1987, the date of the Under Secretary's Decision and Order. Payment of the monetary civil penalty was due within 30 days of the service of the Under Secretary's Order on Wedell. In seeking judgment on the pleadings, Agency Counsel charges that not only is it undisputed that Wedell has not paid the $17,000 civil penalty, in whole or in part, but that this Respondent had concluded his answer with the following refusal to comply:

> * * * I have no intentions (sic) to pay the civil penalty on the grounds that I think it being unjust. I would not pay even if I could afford it.[3]

Accordingly, Agency Counsel, noting the Respondent's recalcitrant position, contends that the Respondent should be denied export privileges for an additional period of 5 years beyond that originally imposed, for a total denial period of 15 years.

On June 14, 1993 I issued an Order where, while recognizing from the then-existing record that it might be warranted to impose an additional denial term of unspecified duration against the Respondent in lieu of civil penalty,[4] I granted until July 6, 1993, for the parties to submit written arguments with respect to the appropriateness in this case, where the originally-ordered denial period for the violations found was 10 years, of imposing upon Wedell an additional denial period of 5 years. It was noted that such a restriction would increase Wedells' previously-found denial term by 50 percent. Agency Counsel, by July 6 Response, alone replied to the June 14 Order.

B. Agency Counsel's Position

Agency Counsel, in his May 5 Submission on the Record and July 6 Response, asserts that the Department's position is "straightforward." The Assistant Secretary's April 20, 1987, Order found that Wedell had violated the Act and the Regulations as indicated above and, in remedy, was required to undergo a ten year denial of export privileges and to pay a $17,000 civil penalty. Agency Counsel, citing the case of *Daniel J. O'Hara*,[5] contends that the Respondent's refusal to pay a duly-ordered civil penalty violated the terms of an Order issued under the Act and Regulations; constituted an independent violation of § 787.1(b) of the Regulations as alleged in the April 1992 charging letter; and mandated issuance of a Decision and Order finding such violation and imposing a denial of export privileges against this Respondent for a period of five years beyond the ten year denial period commenced under the Assistant Secretary's 1987 ruling.

In his July 6 Response to my June 14 Order, Agency Counsel argues that the Respondent's attitude toward the law in expressly refusing to pay the civil penalty establishes a rationale for imposing the requested additional five year denial period, regardless of the amount involved. By the Respondent's "demonstrated disdain" for the requirements of the Act and Regulations, Agency Counsel, inter alia, asserts that the Respondent's conduct compounded the violations originally found and that there is reason to believe that he would show the same disregard for complying with other requirements of the Act and Regulations. Therefore, it is argued, a significant denial period should be imposed for the essentially undisputed violation alleged in the April 29, 1992, charging letter.

C. Discussion and Conclusions

In the June 14 Order to which Agency Counsel has responded, as noted, I recognized that, consistent with *O'Hara, supra*, the Respondent's failure to pay the imposed civil penalty could warrant finding the violation alleged in the April 1992 charging letter and, therefore, imposing an additional denial period to that previously ordered. However, since in both *O'Hara* and here, although the respective circumstances were quite different, Agency Counsel sought the same five year penalty,[6] my concern in issuing the June 14 Order permitting argument regarding the appropriateness of affixing a period of that duration in the present case was, and is, that an automatically applicable standard penalty for unpaid civil penalties not be established. Accordingly, what I would avoid in situations such as this, where there is little adjudicated authority, is the establishment of a precedent whereby an additional denial period of five years in lieu of payment becomes rigidly applied without regard to the duration of the initially-ordered denial term and/or the amount of the civil penalty left unpaid. In this regard, since an originally-ordered denial period is particularly indicative of the seriousness with which a respondent's underlying violations is regarded while, at the same time, potentially may position that respondent to lose more in earned income during a single year of denial than the amount of the total civil monetary penalty, I deemed it appropriate in the June 14 Order to seek a specifically-stated rationale as to why, in the present case where the initial denial was for ten years, a failure to pay the civil penalty should be punished by imposing further denial period of five years. Seeking such rationale is particularly applicable since that same penalty was affixed in the cited *O'Hara* case where the original denial was for 20 years. It is relevant again to note that, in *O'Hara*, the five-year further denial period was but 25 percent of the initial longer prohibition, while here, if granted, the additional ban would extend the previously adjudicated

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Department-issued export license, and that Wedell violated Section 387.5 of the Regulations, on January 20 and October 21, 1981, by making false statements to and concealing material facts from the Department concerning components supplied to the U.S.S.R. as part of the above air traffic control system. Sections 387.2, 387.4, 387.5 and 387.10 have continued in effect as §§ 787.2, 787.4, 787.5, and 787.10, respectively, of the Regulations.

[3] Although, as noted, Wedell filed an answer to the April 1992 charging letter, he did not request a hearing. Accordingly, pursuant to § 788.14 of the Regulations, this matter may be decided on the existing record.

[4] The Respondent, in his above June 12 answer and his December 28, 1992, correspondence, did communicate at length with the Department in efforts to revisit the merits of the underlying case. However, since the Respondent's previous violations already have been determined in the Assistant Secretary's 1987 Decision and Order, they may not be relitigated in this proceeding. The present matter, which was initiated by the April 29, 1992, charging letter, solely involves whether an additional violation and sanction should be found because of the Respondent's failure to comply with the originally-imposed monetary civil penalty. Accordingly, since the Respondent's answer, as noted, not only admitted the allegation in the charging letter concerning non-payment of the civil penalty, but proclaimed that the non-payment was deliberate, I have no alternative but to grant Agency Counsel judgment on the pleadings and impose an additional denial period to that originally ordered by the Assistant Secretary. For reasons stated herein, the only remaining issue is the term of the further denial.

[5] 58 FR 11024 (February 23, 1993).

[6] As noted in the June 14 Order, in *O'Hara*, the Respondent, for violations there determined, was ordered to pay a $5,000 civil penalty and to undergo denial of export privileges for 20 years. When that Respondent, as here, did not pay the monetary civil penalty, a new charging letter was issued alleging the non-payment as violative. In the Decision and Order that thereafter issued, noting the Respondent's default and the unlikelihood that the civil penalty or any possibly-imposed additional monetary sanction would be paid, the Acting Under Secretary for Export Administration added a five-year denial period, in lieu of civil penalty, to the previously-ordered 20-year denial period. Although the unpaid $17,000 civil penalty assessed in the present case, of course, is larger than the $5,000 penalty in *O'Hara*, I interpret the overall original penalty in *O'Hara* with its 20-year denial period, as being appreciably more severe in terms of income that potentially could be lost to a respondent active in the export industry during even a single year of effectively-denied export privileges. Since in this context, $17,000 might not be a particularly large sum, it should be recognized that a multi-year additional denial period for non-payment of same might constitute a disproportionately large penalty in relation to the offense to be remedied.

denial period, although shorter than in *O'Hara*, by 50 percent.

Although Agency Counsel's May 5 Submission on the Record in general terms, simply by citing *O'Hara*, supplied a rationale for imposing a further denial period of some duration, contrary to assertions in the July 6 Response, it was not until that later date that Agency Counsel stated a specific rationale as to why, in the here-applicable circumstances, the additional restraint should be for as long as five years. In this regard, I now am persuaded by Agency Counsel's argument, at 4, where he notes that it is appropriate to deny the Respondent's export privileges for a significant period in order to limit his ability to engage in transactions contrary to the provisions of the Act and the Regulations. As Agency Counsel argues, "Since this respondent has demonstrated outright disregard for the requirements of the Act and the Regulations by refusing to pay a previously-imposed civil penalty, there is reason to believe that he would show the same disregard for complying with other requirements of the Act and the Regulations, such as licensing requirements or conditions prohibiting the reexport of controlled items." In accepting the logic of the above argument, I find that the valid doubt raised by Agency Counsel as to the Respondent's overall readiness to comply with the Act and the Regulations should here be resolved in the national interest by imposing a significant further denial period of five years.[7]

[7] I do not subscribe to Agency Counsel's broader argument in his July 6 Response, at 3, that since, in this proceeding, which essentially is supplementary in nature, the Department has considered "each matter on the merits before recommending an administrative sanction for an alleged violation(s)," I am limited to weighing only the violation alleged in the most recent charging letter with no latitude to take into account the facts and circumstances of the initial action, including the amount of the unpaid civil penalty. This view creates a barrier that is contrary to § 787.1(b)(3) of the Regulations. That rule, in providing for an alternative proceeding in the courts for recovery of unpaid civil penalties, specifies that the courts "shall determine de novo all issues necessary to establish liability." Accordingly, when such proceedings are brought, the courts, in determining recovery of unpaid civil penalties, are compelled to consider all factors from the beginning without regard to prior administrative actions and with none of the intra-case segmentation argued by Agency Counsel. While in this administrative proceeding, I, of course, would not venture beyond the Assistant Secretary's 1987 Decision and Order to revisit the Respondent's there-determined liability, in considering the applicable remedy, I deem it appropriate to take into account the nature and extent of the violations that were found in the earlier action. This is because such violations define the degree to which the public interest was served in the first instance by the original denial of export privileges and, accordingly, such factors may assist in determining the duration of any applicable further denial period. Also, reasons differ as to why various respondents may have failed to pay adjudicated civil penalties, some being less egregious than others. The violation of § 787.1(b) of the Regulations alleged here is to vindicate the Department's right to enforce by alternative means penalties previously decided and does not describe further substantive violations of the Act and Regulations in terms of additional unlawful export activities by the Respondent. Accordingly, although the current charging letter alleges a separate violation, it is premised upon the findings in the earlier case and, in terms of the national purpose to be served in further excluding a respondent from export privileges, the line between the earlier and present cases may not be readily drawn. Equity is hard to achieve without proportion which can best be gained by considering all germane factors, including those relating to background. Accordingly, for the above reasons, it is appropriate to require that in future cases such as this, where an additional period of denial is sought in lieu of unpaid civil penalty, Agency Counsel state a distinct rationale justifying the duration of the requested further prohibition.

Conclusion

From the evidence and for the above reasons presented by Agency Counsel, I conclude that Gunnar Wedell, the Respondent herein, has violated the Act and the Regulations promulgated thereunder, as charged. In light of the seriousness of this Respondent's conduct as established, and upon the entire record, noting the unlikelihood that further action to obtain payment of the civil penalty would be successful, I find that Wedell should be denied export privileges for a period of five years in addition to the ten year denial period previously determined in the April 20, 1987, Order, with an effect that he would be denied export privileges for a total of 15 years, commencing on April 20, 1987.

Pursuant to the authority delegated to me under part 788 of the Regulations, I issue the following recommended

Order

It is ordered that:

1. For a period of fifteen (15) years, commencing on April 20, 1987, the Respondent, Gunnar Wedell, his successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

I. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

II. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

III. All outstanding individual validated export licenses in which the Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of the Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

IV. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the Respondent or any related person, or whereby the Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any

Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion or any commodity or technical data exported or to be exported from the United States.

V. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2421(c)(1)).

Dated: August 2, 1993.

Robert M. Schwarzbart,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Acting Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., room 3898B, Washington, DC 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Acting Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 93–21720 Filed 9–3–93; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 41–93]

Proposed Foreign-Trade Zone—Ventura County, CA; Rescheduled Public Hearing and Extension of Comment Period

The public hearing for the above case (58 FR 44490, 8/23/93), involving a proposed foreign-trade zone in Ventura County, California, that was scheduled for September 14, 1993, has been rescheduled to October 5, 1993, beginning at 10 a.m., in the Port Hueneme City Council Chambers, 250 North Ventura Road, Port Hueneme, California.

Also, the period for public comment is extended to November 5, 1993. Written comments may be submitted to the Executive Secretary at the address below.

As noted in the earlier **Federal Register** notice, the application is available for public inspection at:

Administrative Offices, Port of Hueneme/Oxnard Harbor District, 105 Port Hueneme Road, Port Hueneme, California 93041

Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: August 30, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–21734 Filed 9–3–93; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 42–93]

Proposed Foreign-Trade Zone—Los Angeles, CA; Rescheduled Public Hearing and Extension of Comment Period

The public hearing for the above case (58 FR 44491, 8/23/93), involving a proposed foreign-trade zone in Los Angeles, California, that was scheduled for September 15, 1993, has been rescheduled to October 6, 1993, beginning at 9 a.m., in the Hearing Room of the Board of Harbor Commissioners of the City of Los Angeles, 425 South Palos Verdes Street, San Pedro, California.

Also, the period for public comment is extended to November 5, 1993. Written comments may be submitted to the Executive Secretary at the address below.

As noted in the earlier **Federal Register** notice, the application is available for public inspection at:

Office of the District Director, U.S. Customs Service, 300 South Ferry Street, room 1001, Terminal Island, San Pedro, CA 90731

Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: August 30, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–21735 Filed 9–3–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than September 30, 1993, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

	Period
ANTIDUMPING DUTY PROCEEDINGS	
ARGENTINA: Silicon Metal (A–357–804)	09/01/92–08/31/93
CANADA: Replacement Parts for Self-Propelled Bituminous Paving Equipment (A–122–057)	09/01/92–08/31/93
CANADA: Steel Jacks (A–122–006)	09/01/92–08/31/93
CANADA: Steel Rail (A–122–804)	09/01/92–08/31/93
GERMANY: Certain Forged Steel Crankshafts (A–428–604)	09/01/92–08/31/93
HONG KONG: Sweaters of Man-Made Fibers	09/01/92–08/31/93

	Period
(A–582–802)	
ITALY: Pads for Woodwind Instruments Keys	09/01/92–08/31/93
(A–475–017)	
JAPAN: Electroluminescent FPDs	09/01/92–08/31/93
(A–588–817)	
JAPAN: Filament Fabric	09/01/92–08/31/93
(A–588–607)	
KOREA: Sweaters of Man-Made Fibers	09/01/92–08/31/93
(A–580–806)	
TAIWAN: Chrome-Plated Lug Nuts	09/01/92–08/31/93
(A–583–810)	
TAIWAN: Sweaters of Man-Made Fibers	09/01/92–08/31/93
(A–583–808)	
THE PEOPLE'S REPUBLIC OF CHINA: Chrome-Plated Lug Nuts	09/01/92–08/31/93
(A–570–808)	
THE PEOPLE'S REPUBLIC OF CHINA: Greige Polyester/Cotton Printcloth	09/01/92–08/31/93
(A–570–101)	
THE UNITED KINGDOM: Certain Forged Steel Crankshafts	09/01/92–08/31/93
(A–412–602)	
COUNTERVAILING DUTY PROCEEDINGS	
ARGENTINA: Certain Welded Carbon Steel Pipe and Tube Products	01/01/92–12/31/92
(C–357–801)	
CANADA: New Steel Rail, Except Light Rail	01/01/92–12/31/92
(C–122–805)	
ISRAEL: Fresh Cut Roses	10/01/91–09/30/92
(C–508–064)	
NEW ZEALAND: Lamb Meat	04/01/92–03/31/93
(C–614–503)	
NEW ZEALAND: Steel Wire	07/01/92–06/30/93
(C–614–601)	
THAILAND: Steel Wire Rope	01/01/92–12/31/92
(C–549–806)	
VENEZUELA: Circular Welded Nonalloy Steel Pipe	09/17/92–12/31/92
(C–307–806)	

In accordance with §§ 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Pamela Woods, in room 3069–A of the main Commerce building. Further, in accordance with § 353.31 or 355.31 of the Commerce regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review" for requests received by September 30, 1993. If the Department does not receive, by September 30, 1993, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: August 30, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–21740 Filed 9–3–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–820]

Antidumping Duty Order: Certain Compact Ductile Iron Waterworks (CDIW) Fittings and Glands From the People's Republic of China (PRC)

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Kate Johnson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4929.

Scope of Order

The products subject to this antidumping duty order are (1) certain compact ductile iron waterworks (CDIW) fittings of 3 to 16 inches nominal diameter regardless of shape,

including bends, tees, crosses, wyes, reducers, adapters, and other shapes, whether or not cement line, and whether or not covered with bitumen or similar substance, conforming to American Water Works Association/ American National Standards Institute (AWWA/ANSI) specification C153/ A21.53, and rated for water working pressure of 350 PSI; and (2) certain CDIW standard ductile iron glands for fittings in sizes 3 to 16 inches, conforming to AWWA/ANSI specification C111/A21.11, and rated for water working pressure of 350 PSI. All accessory packs (including accessory packs containing glands), are excluded from the scope of this order.

The types of CDIW fittings covered by this order are compact ductile iron mechanical joint waterworks fittings and compact ductile iron push-on joint waterworks fittings, both of which are used for the same applications. CDIW fittings are used to join water main pressure pipes, valves, or hydrants in straight lines, and change, divert, divide, or direct the flow of raw and/or treated water in piping systems. CDIW fittings attach to the pipe, valve, or hydrant at a joint and are used principally for municipal water distribution systems. CDIW glands are used to join mechanical joint CDIW fittings to pipes.

CDIW fittings with nominal diameters greater than 16 inches, are specifically excluded from the scope of the order. Nonmalleable cast iron fittings (also called gray iron fittings) and full-bodied ductile fittings are also specifically excluded from the scope of this order. Nonmalleable cast iron fittings have little ductility and are generally rated only 150 to 250 PSI. Full-bodied ductile fittings have a longer body design than a compact fitting because in the compact design the straight section of the body is omitted to provide a more compact and less heavy fitting without reducing strength or flow characteristics. In addition, the full-bodied ductile fittings are thicker walled than the compact fittings. Full-bodied fittings are made of either gray iron or ductile iron, in sizes of 3 to 48 inches, conform to AWWA/ANSI specification C110/C21.10, and are rated to a maximum of only 250 PSI. In addition, compact ductile iron flanged fittings are excluded from the scope of this order, as they have significantly different characteristics and uses than CDIW fittings.

CDIW fittings are classifiable under subheading 7307.19.30.00, of the Harmonized Tariff Schedule of the United States (HTSUS). Standard ductile iron glands are classifiable under HTSUS subheading 7325.99.10.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on July 6, 1993, the Department made its final determination that certain CDIW fittings and certain CDIW fittings accessories, which typically consist of a standard ductile iron gland, a styrene butadiene rubber (SBR) gasket, the requisite number of Cor-Ten steel or ductile iron T-head bolts, and hexagonal nuts, are being sold at less than fair value (58 FR 37908, July 14, 1993). The Department specified that gaskets, bolts and nuts are only included if they are imported as an accessory pack with a gland. However, the Department reiterated that glands imported separately were included in the scope of investigation.

On August 11, 1993, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department of its final determination in this investigation. In its determination, the ITC found three like products: (1) Iron waterworks fittings; (2) iron glands; and (3) accessory packs. In its analysis of whether accessory packs constitute a separate like product, the ITC determined that accessory packs are a separate like product from either glands or CDIW fittings. The ITC stated that accessory packs are packages containing all of the items needed to attach the CDIW fitting to a water line. The ITC further noted that accessory packs and glands share certain physical characteristics because the accessory packs include a gland. However, the ITC determined that the individual items in accessory packs have additional physical characteristics and different functions from glands, thus it concluded that, although accessory packs may contain a gland, glands and accessory packs are not interchangeable. Thus, despite the fact that accessory packs contain iron glands (a designated like product), the ITC determined that accessory packs constitute a separate like product for the purposes of its injury determination.

Regarding iron waterworks fittings, the ITC determined that an industry in the United States is threatened with material injury by reason of imports of certain merchandise from the PRC. However, the ITC stated that it would not have found material injury but for the suspension of liquidation of entries of the merchandise under investigation. When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 736(b)(2) applies. Therefore, all unliquidated entries of certain CDIW fittings from the PRC entered or withdrawn from warehouse, for consumption on or after August 25, 1993, the date on which the ITC published its notice of final determination of threat of material injury, will be liable for the assessment of antidumping duties. In addition, the Department will direct U.S. Customs officers to terminate the suspension of liquidation for entries of fittings imported from the PRC and entered, or withdrawn from warehouse, for consumption before August 25, 1993, the date on which the ITC published its notice of final determination of threat of material injury, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

Regarding iron glands, the ITC determined that imports of such merchandise are materially injuring a United States industry, but critical circumstances do not exist with regard to such imports; thus retroactive imposition of antidumping duties is not necessary. All unliquidated entries of certain CDIW glands from the PRC entered, or withdrawn from warehouse, for consumption on or after February 18, 1993, the date on which the Department published its preliminary determination (58 FR 8930), will be liable for the assessment of antidumping duties. The Department will direct U.S. Customs officers to terminate the suspension of liquidation for entries of glands imported from the PRC and entered, or withdrawn from warehouse, for consumption before February 18, 1993 and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

Regarding imports from the PRC of CDIW accessory packs, the ITC determined that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded by reason of such imports, for which separate components are provided for in subheadings 4016.93.00, 7318.15.20, and 7325.99.10 of the HTS, that have been found by the Department to be sold in the United States at less than fair value. Although the ITC recognized that glands, a like product which the ITC determined materially injured a U.S.

industry, may comprise between 50 and 70 percent of the price of an accessory pack, CDIW accessory packs nonetheless are not subject to antidumping duties as a result of the ITC's negative determination with regard to accessory packs. See 19 USC 1673d(c)(3). Therefore, pursuant to section 735(c)(3) of the Act, we shall order Customs to terminate the suspension of liquidation, release any bond or other security and refund any cash deposit required under section 733(d)(2) with respect to entries of such merchandise, and liquidate all entries of accessory packs without the assessment of antidumping duties.

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for entries of CDIW fittings and glands not included in accessory packs from the PRC. These antidumping duties will be assessed on all unliquidated entries of CDIW fittings from the PRC entered, or withdrawn from warehouse, for consumption on or after August 25, 1993, the date on which the ITC published its notice of final determination of threat of material injury and on all unliquidated entries of CDIW glands not included in accessory packs from the PRC entered, or withdrawn from warehouse, for consumption on or after February 18, 1993. U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposit for the subject merchandise:

Manufacturer/producer/exporter	Margin percentage
All manufacturers/producers/exporters	127.38

This notice constitutes the antidumping duty order with respect to CDIW fittings and glands from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: August 30, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–21731 Filed 9–3–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–607]

Filament Fabric From Japan; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on filament fabric from Japan. Domestic interested parties who object to this revocation must submit their comments in writing no later than September 30, 1993.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On September 23, 1987, the Department of Commerce (the Department) published an antidumping duty order on filament fabric from Japan (52 FR 35750). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity To Object

No later than September 30, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by September 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by September 30, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: August 30, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–21733 Filed 9–3–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–006]

Steel Jacks From Canada; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on steel jacks from Canada. Domestic interested parties who object to this revocation must submit their comments in writing no later than September 30, 1993.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Maureen Shields or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–3601.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 1966, the Treasury Department published an antidumping finding on steel jacks from Canada (31 FR 11974). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

No later than September 30, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by September 30, 1993, or domestic interested parties do not object to the Department's intent to revoke by September 30, 1993, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: August 30, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–21732 Filed 9–3–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–557–807]

Preliminary Determination of Sales at Less Than Fair Value: Welded Stainless Steel Pipe From Malaysia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1776.

Preliminary Determination

We preliminarily determine that welded stainless steel pipe from Malaysia is being, or likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on March 8, 1993 (58 FR 13742, March 15, 1993), the following events have occurred.

On April 2, 1993, the International Trade Commission (ITC) issued an affirmative preliminary determination.

On April 16, 1993, the Department presented its questionnaire to Kanzen Tetsu Sdn. Bhd. (KT), the Malaysian producer who accounted for at least 60 percent of known sales to the United States during the period of investigation (POI), in accordance with 19 CFR 353.42(b).

KT submitted a response to section A of the questionnaire on May 3, 1993, and a response to sections B and C of the questionnaire on June 3, 1993. On May 18, June 10, and July 9, 1993, we issued supplemental questionnaires to KT. We received the responses to these questionnaires on June 3, July 1, and July 23, 1993, respectively.

On June 21, 1993, petitioners submitted a timely allegation that KT had made sales in the home market below the cost of production (COP). On June 30, 1993, we rejected this allegation because it was not based on the cost data submitted by KT in its response to the Department's questionnaire. (See memorandum from Richard W. Moreland, Director, Office of Antidumping Investigations, to Barbara R. Stafford, Deputy Assistant Secretary for Investigations, dated June 30, 1993.)

On July 1, 1993, petitioners requested a postponement of the preliminary determination. We granted this request, and on July 6, 1993, we postponed the preliminary determination until no later than August 30, 1993.

On July 13, 1993, petitioners resubmitted their allegation that KT made home market sales below its COP. Petitioners amended this allegation on July 22, 1993, to respond to specific concerns identified by the Department. On July 28, 1993, we initiated a COP investigation and on July 29, 1993, we issued a COP questionnaire to KT. Because the response to this questionnaire is not due until September 13, 1993, we will not receive the information in time to use it for purposes of the preliminary determination. However, we will consider this information for the final determination.

On August 9, 1993, petitioners alleged that critical circumstances exist with respect to imports of subject merchandise from Malaysia. Accordingly, on August 12, 1993, we requested that KT provide monthly shipment data for the period January 1, 1991, through July 31, 1993. We received this information on August 23, 1993. For further discussion, see the "Critical Circumstances" section of this notice.

Scope of Investigation

The product covered by this investigation is welded austenitic stainless steel pipe of circular cross section (WSSP). WSSP is produced according to standards and specifications set forth by the American Society for Testing and Materials (ASTM). The designations for this product include, but are not limited to, ASTM A–312, ASTM A–358, ASTM A–409, and ASTM A–778. Welded pipes are generally used as conduits to transmit liquids or gases. The major applications for WSSP are: Digester lines; blow lines; pharmaceutical lines; petrochemical lines; brewery process and transport lines; general food processing lines; automotive lines; and paper processing machines.

This product is classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.40.1000, 7306.40.5005, 7306.40.5015, 7306.40.5045, 7306.40.5060, and 7306.40.5075. These subheadings are defined to encompass welded stainless steel tube as well as WSSP; however, the only product subject to this investigation is WSSP. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is September 1, 1992, through February 28, 1993.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the product covered by this investigation comprises a single category of "such or similar" merchandise. We made similar merchandise comparisons on the basis of: (1) Specification, (2) grade of steel, (3) nominal size, (4) hot or cold finish, (5) wall thickness schedule, and (6) end finish, as described in Appendix V of the questionnaire. We made adjustments for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of WSSP from Malaysia to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sales price methodology was not otherwise indicated.

We calculated purchase price based on packed F.O.B. prices to unrelated

customers. In accordance with section 772(d)(2)(A) of the Act, we made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, and containerization expenses.

Foreign Market Value

In order to determine whether there were sufficient sales of WSSP in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of WSSP to the volume of third country sales of the same product, in accordance with section 773(a)(1)(B) of the Act. KT had a viable home market with respect to sales of WSSP during the POI.

For purposes of the preliminary determination, we disregarded home market sales of odd-length merchandise because we determined that these sales were made outside the ordinary course of trade. In accordance with 19 CFR 353.58, we compared U.S. sales to home market sales made at the same level of trade, where possible.

We calculated FMV based on packed F.O.B. prices charged to unrelated customers in the home market. We made deductions, where appropriate, for discounts and rebates. We also made deductions, where appropriate, for inland freight. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Pursuant to 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses and bank charges. Regarding credit expenses, KT calculated both home market and U.S. credit expenses using its average short-term interest rate during the POI, without regard to the currency of the borrowings on which the rate was based. We recalculated home market credit expenses using the consolidated short-term interest rate of KT and its parent company, which was based upon these companies' borrowings denominated in Malaysian ringgits. In addition, KT failed to deduct discounts from the gross unit price in its home market credit calculation; we made the appropriate deductions in our recalculation.

Regarding U.S. credit expenses, we recalculated these expenses using KT's reported short-term interest rate based on its U.S. dollar-denominated borrowings. Moreover, respondent calculated U.S. credit expenses using the period between shipment from the Malaysian port and payment by the U.S. customer. However, the Department's practice is to calculate credit expenses using the period between shipment of the merchandise from the factory and payment. Because KT failed to report the appropriate credit period, we used best information available (BIA) to determine it. As BIA, we computed the period between the earlier of the date of invoicing to the customer or shipment from the port and payment. We used this revised period in our recalculation.

Currency Conversion

Because certified exchange rates from the Federal Reserve were unavailable, we made currency conversions based on the official monthly exchange rates in effect on the dates of the U.S. sales as certified by the International Monetary Fund.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of WSSP from Malaysia. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In determining history of dumping, we normally consider whether there have been antidumping orders in the United States or other countries on imports of subject merchandise from Malaysia. In this investigation, petitioners have argued that the existence of U.S. antidumping orders on WSSP from Taiwan and Korea is sufficient for the Department to find a history of dumping here. However, the Department's practice in this area is to consider only orders on subject merchandise from the country under investigation sufficient to find a history of dumping. Consequently, because there have been no antidumping orders on WSSP from Malaysia, we find no history of dumping.

In determining importer knowledge of dumping, we normally consider margins of 25 percent or more sufficient to impute knowledge of dumping under section 733(e)(1)(A) of the Act when USP is based on purchase price. Because the preliminarily-determined dumping margin for KT and all other exporters is less than 25 percent, we cannot impute knowledge under section 733(e)(1)(A)(ii) of the Act.

Since the criteria necessary to find the existence of critical circumstances under section 733(e)(1)(A) are not present, we do not need to determine whether imports of subject merchandise have been massive over a relatively short period, in accordance with section 733(e)(1)(B) of the Act.

Therefore, in accordance with section 733(e)(1) of the Act, we preliminarily determine that critical circumstances do not exist with respect to imports of subject merchandise from Malaysia.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of WSSP from Malaysia that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Kanzen Tetsu Sdn. Bhd	6.60
All others	6.60

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments with at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than October 4, 1993, and rebuttal briefs no later than October 12, 1993. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested by an interested party, to give interested

parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on October 14, 1993, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In addition, an executive summary of no more than two pages on the major issues to be addressed should be submitted with the case briefs. Briefs should contain a table of authorities. Citations to the Department's determinations and court decisions should include the page number where the cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15(a)(4).

Dated: August 30, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–21739 Filed 9–3–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–559–802]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Singapore; Final Results of Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On June 16, 1993, the Department of Commerce published the preliminary results of its administrative reviews of the countervailing duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore for the period January 1, 1991 through December 31, 1991 (58 FR 33251). We have now completed those reviews and determine the total bounty or grant to be as follows: 9.11 percent *ad valorem* for Sundstrand Pacific (Pte.) Ltd. (Sundstrand); zero for the Minebea companies (Pelmec Industries (Pte.) Ltd., NMB Singapore Ltd. and Minebea Co., Ltd. Singapore Branch); and 2.01 percent *ad valorem* for all other companies for the period January 1, 1991 through December 31, 1991.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Anna T. Milone, Stephanie Moore, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC. 20230; telephone: (202) 482–4406.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 33251) the preliminary results of its administrative reviews of the countervailing duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore (54 FR 19125; May 3, 1989). The Department has now completed these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Reviews

Imports covered by these reviews are shipments of antifriction bearings (other than tapered roller bearings) and parts thereof. The subject merchandise covers five separate classes or kinds of merchandise and is described in detail in Appendix A to this notice. The Harmonized Tariff Schedule item numbers listed in Appendix A are provided for convenience and Customs purposes. The written descriptions remain dispositive.

The reviews cover the period January 1, 1991 through December 31, 1991, four companies, and twelve programs. The Minebea group of companies, comprised of three related companies, Pelmec Industries (Pte.) Ltd., NMB Singapore Ltd. and Minebea Co., Ltd. Singapore Branch, responded to the Department's questionnaire. Sundstrand, a known exporter of the subject merchandise to the United States, did not respond to the questionnaire.

Analysis of Comments

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our reviews, we determine the total bounty or grant to be as follows: 9.11 percent *ad valorem* for Sundstrand; zero for the Minebea companies; and 2.01 percent *ad valorem* for all other companies for the period January 1, 1991, through December 31, 1991.

In this review the Government of Singapore and the responding companies did not report the relevant export data on a class or kind basis. Therefore, as in previous reviews, the rate determination applies to all classes or kinds listed in Appendix A.

The Department will instruct the Customs Service to assess countervailing duties as follows for subject merchandise exported on or after January 1, 1991, and on or before December 31, 1991: 9.11 percent of the f.o.b. invoice price on shipments from Sundstrand; zero on shipments from the Minebea companies; and 2.01 percent of the f.o.b. invoice price on shipments from all other companies.

Further, the Department will also instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Act, as follows: 9.11 percent of the f.o.b. invoice price on shipments from Sundstrand; zero on shipments from the Minebea companies; and 2.01 percent of the f.o.b. invoice price on shipments from all other companies from Singapore entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: August 27, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix A

Scope of The Reviews

The products covered by these reviews, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof, constitute the following separate "classes or kinds" of merchandise as outlined below.

(1) Ball Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ balls as the rolling element. Such merchandise is classifiable under the following Harmonized Tariff Schedule (HTS) item

numbers: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, and 8708.99.50.

(2) Spherical Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ spherical rollers as the rolling element. Such merchandise is classifiable under the following HTS item numbers: 8482.30.00, 8482.80.00, 8482.91.00, 8482.99.50, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, and 8708.99.50.

(3) Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ cylindrical rollers as the rolling element. Such merchandise is classifiable under the following HTS item numbers: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, and 8708.99.50.

(4) Needle Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all antifriction bearings which employ needle rollers as the rolling element. Such merchandise is classifiable under the following HTS item numbers: 8482.40.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, and 8708.99.50.

(5) Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof: These products include all spherical plain bearings which do not employ rolling elements and include spherical plain rod ends. Such merchandise is classifiable under the following HTS item numbers: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, and 8708.99.50.

These reviews cover all of the subject bearings and parts thereof outlined above with certain limitations. With regard to finished parts (inner race, outer race, cage, rollers, balls, seals, shields, etc.), all such parts are included in the scope of this review. For unfinished parts (inner race, outer race, rollers, balls, etc.), such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by this review are those where the part will be subject to heat treatment importation.

[FR Doc. 93-21737 Filed 9-3-93; 8:45 am]

BILLING CODE 3510-DS-P

[C-122-404]

Live Swine From Canada; Amended Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Amended final results of countervailing duty administrative review.

SUMMARY: On June 25, 1993, in accordance with the U.S.-Canada Free Trade Agreement Binational Panel's June 11, 1993 remand, the Department of Commerce (the Department) submitted its final results of redetermination to the Panel for the fifth administrative review covering the period April 1, 1989 through March 31, 1990. The Panel affirmed this redetermination on July 16, 1993. Pursuant to this conclusive decision, we are therefore amending, for purposes of this review, the countervailing duty rate on live swine from Canada for the above period.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Stephanie Moore, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1991 (56 FR 50560), the Department published the final results of its fifth administrative review of the countervailing duty order on live swine from Canada covering the period April 1, 1989 through March 31, 1990. These results were challenged by the Government of Canada and other Canadian parties before a Binational Panel pursuant to Article 1904 of the U.S.-Canada Free Trade Agreement (FTA) and 19 U.S.C. 1516(g) (1988). The Panel issued its decision on August 26, 1992, and therein remanded certain issues to the Department for reconsideration. Live Swine from Canada, USA-91-1904-04 (August 26, 1992).

Pursuant to this remand order, on October 30, 1992, the Department submitted to the Panel its final results of redetermination. In its redetermination, the Department did the following: Recalculated the benefits attributable to the Alberta Crow Benefit Offset Program; provided further argument in support of its determination that the National Tripartite Stabilization Scheme for Hogs (Tripartite) and Quebec's Farm Income Stabilization Insurance program (FISI) were *de facto* specific in accordance with 19 U.S.C. 1677(5); provided additional explanation of why there was insufficient evidence on the record to calculate a separate rate for weanling pigs. The Government of Canada and other Canadian parties challenged the Department's basis for its specificity determination on remand as well as the Department's assertion that there was insufficient record evidence to calculate a separate rate for weanling pigs.

On June 11, 1993, the Panel affirmed the Department's redetermination on all but one point, on which it held that the Department was to remove FISI benefits from the duty calculation for the review period. Live Swine from Canada, USA-91-1904-04 (June 11, 1993). The Department complied with the Panel's instructions on June 25, 1993, and on July 11, 1993, the Panel issued an order affirming the second redetermination on remand.

Based upon the Panel's order affirming the redetermination on remand, for purposes of this review only, the Department has removed the FISI benefits paid to producers of live swine in Quebec from the calculation of the subsidy rate.

The subsidy rates which follow are those determined by the Department in its June 25, 1993 second redetermination. They are: CAN$0.0045 per pound for slaughter sows and boars, and CAN$0.0927 per pound for all other live swine.

Amended Final Results of Review

The Department will instruct the Customs Service to assess countervailing duties of CAN$0.0045 per pound for slaughter sows and boars, and CAN$0.0927 per pound for all other live swine exported on or after April 1, 1989 and on or before March 31, 1990.

The Department will also instruct the Customs Service to collect a cash deposit of estimated countervailing duties of CAN$0.0045 per pound for slaughter sows and boars, and CAN$0.0927 per pound for all other live swine exported on or after the date of this notice. These rates were established in these amended final results, and will remain in effect until the next publication of a notice of final results of administrative review.

This notice of amended final results is published in accordance with 19 U.S.C.

1675(a)(1), 19 U.S.C. 1516a(g)(5)(B), 19 CFR 355.22 (1992) and 19 CFR 356.8(e).

Dated: August 27, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–21738 Filed 9–3–93; 8:45 am]

BILLING CODE 3510–DS–P

Scope Rulings

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of scope rulings and anticircumvention inquiries.

SUMMARY: The Department of Commerce (Department) hereby publishes a list of scope rulings and anticircumvention inquiries completed between April 1, and June 30, 1993. In conjunction with this list, the Department is also publishing a list of pending requests for scope clarifications and anticircumvention inquiries. The Department intends to publish future lists within 30 days of the end of each quarter.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Wendy Frankel or Sandra Yacura, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0989.

BACKGROUND: Sections 353.29(d)(8) and 355.29(d)(8) of the Commerce Department's regulations (19 CFR 353.29(d)(8) and 355.29(d)(8) (1993)) provide that on a quarterly basis the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months.

This notice lists scope rulings and anticircumvention inquiries completed between April 1, and June 30, 1993, and pending scope clarification and anticircumvention inquiry requests. The Department intends to publish in October 1993 a notice of scope rulings and anticircumvention inquiries completed between July 1, 1993, and September 30, 1993, as well as pending scope clarification and anticircumvention inquiry requests.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

Scope Rulings Completed Between April 1, 1993 and June 30, 1993

Country: United Kingdom

A–412–801: Antifriction Bearings, and Parts Thereof

Sinclair International—The SAR series of ball bearings are outside the scope of the order—05/17/93

Country: Federal Republic of Germany

A–428–801: Antifriction Bearings

INA Walzlager Schaeffler KG and INA Bearing Company, Inc.—Certain series of bearings, Series NRB, K, RNA49, HK and AXK, are within the scope of the order—05/21/93

Country: People's Republic of China

A–570–504: Petroleum Wax Candles

Trade Advisory Group—Terra-cotta candle with engraved symbols is within the scope of the order—04/09/93

San Francisco Candle Company—Certain ball, oval and mushroom-shaped candle models are outside the scope of the order—6/10/93

Garrett-Hewitt, International—"Giorgio" model candle is within the scope of the order—04/09/93

Primark International—Two candle tin models with Santa Claus designs are outside the scope; two candle tin models with floral designs are within the scope of the order—06/10/93

Country: Japan

A–588–405: Cellular Mobile Telephones and Subassemblies

Sanyo North America Corporation—Certain hand-held portable cellular telephones, models CMP350 and ANTEL brand model STR2000, and the hands-free cradle for use thereof, are outside the scope of the order—05/17/93

Mitsubushi Electric Corporation—Certain hand-held portable cellular telephones, models MT896FOR6A and MT892FOR6A, are outside the scope of the order—04/19/93

Mitsubushi Electric Corporation, Mitsubushi Electronics Incorporated, Mitsubushi Consumer Electronic America, Inc.—Certain hand-held portable cellular telephones, models MT1116FOR6A and MT1112FOR6A are outside the scope of the order—06/10/93

NEC America, Inc.—P110/P120/TalkTime 180 Series of hand-held portable cellular telephones, models MP5A1B1–1A, MP5A1B2–1A, MP5A1B3–1A, and MP5A1B4–1A, are outside the scope of the order—06/02/93

A–588–804: Antifriction Bearings

Nippon Pillow Block Sales Co., Ltd.—All eccentric locking collars are outside the scope of the order—05/08/93

A–588–807: Industrial Belts and Components

Tower Group International, Inc. and Epson America, Inc.—Closed loop synthetic timing belt used in the Epson LX–800 desktop personal computer printer is within the scope of the order—04/09/93

A–588–817: Flat Panel Displays

Honeywell, Inc.—The FPD used in the "B–777 Display Unit" is outside the scope of the order—05/17/93

Rockwell International Corporation, Collins Air Transport Division—Certain FPDs used in avionics products, models "AD" and "DD," are outside the scope of the order—06/10/93

Anticircumvention Rulings Completed Between April 1, 1993 and June 30, 1993

Country: Canada

A–122–601: Brass Sheet and Strip

Hussey Copper Ltd., The Miller Company, Olin Corp. (Brass Group), Outokumpu American Brass, Revere Copper Products, the International Association of Machinists & Aerospace Workers, the International Union, Allied Industrial Workers of America (AFL–CIO), the Mechanics Educational Society of America (Local 56), and the United Steelworkers of America (AFL–CIO/CLC)—Anticircumvention inquiry to determine whether a producer of brass in Canada and a U.S. importer of brass are circumventing the antidumping order by importing Canadian brass plate, a product not included within the antidumping duty order, into the United States where it is rolled down slightly into brass sheet and strip—Affirmative ruling—06/11/93

Country: Italy

A–475–703: Granular Polytetrafluoroethylene (PTFE) Resin

E.I. DuPont de Nemours & Company, Inc.—Anticircumvention inquiry to determine whether imports of granular PTFE raw polymer are circumventing the order—Affirmative ruling—04/20/93

Scope Inquiries Terminated Between April 1, 1993 and June 30, 1993

Country: Japan

A–588–405: Cellular Mobile Telephones and Subassemblies

Matsushita Communication Industrial Co. of America (Matsushita)—Parts imported for use in all Matsushita portable cellular telephones—Request withdrawn—06/01/93

A–588–817: Flat Panel Displays

Tektronix, Inc.—Plasma-address liquid crystal display FPD—Revocation of order—06/21/93

Envisio Inc.—Active matrix FPD in the "Color Frame" display unit—Revocation of order—06/21/93
Hewlett-Packard—Active matrix FPD used in the "Manta" monitor—Revocation of order—06/21/93

Anticircumvention Inquiries Terminated Between April 1, 1993 and June 30, 1993

None

Pending Scope Clarification Requests as of June 30, 1993

Country: Mexico
A–201–805: Circular Welded Non-Alloy Steel Pipe
Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order
Country: Brazil
A–351–809: Circular Welded Non-Alloy Steel Pipe
Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order
Country: People's Republic of China
A–570–501: Paint Brushes
Stanley Works—Clarification to determine whether paint brushes with a blend of 60% synthetic and 40% natural fibers are within the scope of the order
A–570–504: Petroleum Wax Candles
Hallmark Cards Inc.—Clarification to determine whether certain wedding and party candles, models WCD3013, WCD3093, WCD4000, and 149PCL9345, are within the scope of the order.
Cherrydale Farms Confections—Clarification to determine if two Currier & Ives holiday candles are within the scope of the order
A–570–803: Heavy Forged Hand Tools
Forrest Tool Company—Clarification to determine whether the MAX Multipurpose Tool is within the scope of the orders
Country: Korea
A–580–809 Circular Welded Non-Alloy Steel Pipe
Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order
Country: Japan
A–588–014: Tuners
Alpine Electronics—Clarification to determine whether certain car radio/stereo and/or replacement parts, comprised of four subassemblies and their components are within the scope of the order
Fujitsu Ten Corporation of America—Clarification to determine whether certain "front end" components of car tuners are within the scope of the order
A–588–015: Televisions
AGIV (USA) Inc.—Clarification to determine whether AIWA Model VX–T1000MK3KEI color TV–VCR combination is within the scope of the order
A–588–055: Acrylic Sheet
Sekisui America Corp.—Clarification to determine whether ESLON DC PLATE manufactured by Sekisui Chemical Co., Ltd. is within the scope of the order
A–588–087 Portable Electric Typewriters
Swintec Corporation—Clarification to determine whether six typewriters, models 4000, 4040. 7000, 7001, 7003, and 7040 are within the scope of the order
A–588–405: Cellular Mobile Telephones and Subassemblies
Matsushita Communication Industrial Co., Ltd. and its related entities—Clarification to determine whether certain portable cellular telephones, Panasonic models EB–3530 and EB–3531, comprised of eight kits and numerous accessories, subassemblies and/or components thereof, are within the scope of the order
Fujitsu, Inc.—Clarification to determine whether certain hand-held portable cellular telephone, model F8OP–172, are within the scope of the order
A–588–807: Industrial Belts and Components
Nitta Industries Corp. and Nitta International Inc.—Clarification to determine whether "conveyor belts," five series comprised of 30 models are within the scope of the order
A–588–810: Mechanical Transfer Presses
Aida Engineering, Ltd.—Clarification to determine whether the FMX cold forging press is within the scope of the order
A–588–817 Flat Panel Displays
International Digital Electronics—Clarification to determine whether certain electroluminescent FPDs used in the Graphic Control Panels, models GP–410 and GP–430 are within the scope of the order; models GP–511T, GP–530T and GP–530VM withdrawn (active-matrix FPDs under revocation)

Pending Anticircumvention Inquiry Requests as of June 30, 1993

Country: Mexico
A–201–806: Steel Wire Rope
Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers—Anticircumvention inquiry to determine whether a producer of steel wire rope in Mexico is circumventing the antidumping order by importing steel wire strand into the United States where it is wound into steel wire rope [filed June 2, 1993; for initiation]
Country: Japan
A–588–807 Industrial Belts and Components
BRECOFLEX Corp.—Anticircumvention inquiry to determine whether the order is being circumvented by the processing of belting into belts in Mexico before importation into the United States
Country: Japan
A–588–818: Personal Word Processors
Smith Corona Corporation—Anticircumvention inquiry to determine whether the order is being circumvented by the importation, completion and

assembly of personal word processor parts and components by Brother Industries (USA), Inc. in the United States

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: August 11, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93-21736 Filed 9-3-93; 8:45 am]

BILLING CODE 3510-DS-P

National Oceanic and Atmospheric Administration

[I.D. 083193C]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 81st meeting on September 14–16, 1993, at the Hale Koa Hotel, 2055 Kalia Road, Honolulu, HI. The meeting will begin at 8 a.m. on each day. The Council's Standing Committees will meet on September 14 and the full Council will meet on September 15–16, 1993.

The Council will hear reports from islanders and fishery agencies on the status of fisheries throughout the region. The Council will also discuss and possibly take action on the following issues:

(1) Preferred alternatives contained in proposed Amendment #7 to the pelagics fishery management plan (Hawaii longline limited entry program);

(2) The possible requirement of an electronic vessel monitoring system on Hawaii longliners;

(3) The 1992 annual reports for the pelagics and the bottomfish fishery management plans;

(4) The status of the Pacific Pelagic Fisheries Research Program;

(5) The need for comprehensive data collection in all fisheries;

(6) Including the need for data collection from fishermen who catch pelagic management unit species in the Pacific Ocean and land their catch elsewhere in the United States of America.

(7) An economic review of the Northwestern Hawaiian Islands bottomfish fishery;

(8) An evaluation of the need to maintain the precious corals fishery management plan;

(9) Ecosystems and habitat issues; (a) preferential rights for native fishermen;

(10) Program planning for 1994–1996;

(11) Changes to the Statement of Organization, Practices, and Procedures; and

(12) Other business as required.

FOR FURTHER INFORMATION, INCLUDING INFORMATION ON THE SCHEDULE OF STANDING COMMITTEE MEETINGS, CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 541-1974; or fax: (808) 526-0824.

Dated: August 31, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-21641 Filed 9-3-93; 8:45 am]

BILLING CODE 3510-22-P

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification of scientific research permit No. 841 (P129J).

SUMMARY: Notice is hereby given that on August 31, 1993, Permit No. 841, issued to Dr. Bruce R. Mate, Oregon State University, Newport, Oregon 97365–5296, on June 24, 1993 (58 FR 35433), was modified to increase the number of blue whales (*Balaenoptera musculus*), which were authorized to be tagged with satellite-monitored radio transmitters and biopsy sampled, from 15 to 22 whales in 1993. This modification requires authorization to be requested if the applicant proposes to tag more than 15 whales of any species (blue (*B. musculus*), fin (*B. phylus*), humpback (*Megaptera novaeangliae*), or gray whales (*Eschrichtius robustus*)) authorized under this permit. This will not increase the total number of 50 whales of each of the species authorized for tagging and biopsy sampling over the 5-year period of the permit.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–6150);

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4015); and

Director, Alaska Region, NMFS, NOAA, Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802 (907/586–7221).

SUPPLEMENTARY INFORMATION: The subject modification was issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Dated: August 31, 1993.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93-21647 Filed 9-3-93; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

August 30, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: August 31, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53887, published on November 13, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 30, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 6, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on August 31, 1993, you are directed to amend further the directive dated November 6, 1992 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the United Arab Emirates:

Category	Adjusted twelve-month limit [1]
334/634	189,420 dozen.
336/636	171,864 dozen.
342/642	211,525 dozen.
352	223,277 dozen.
363	8,640,093 numbers.
638/639	179,967 dozen.
647/648	258,599 dozen.
847	178,474 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-21721 Filed 9-3-93; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, October 5, 1993; Tuesday, October 12, 1993; Tuesday, October 19, 1993; and Tuesday, October 26, 1993, at 2 p.m. in room 800, Hoffman Building #1, Alexandria, Virginia.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Personnel and Readiness) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b. (c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b. (c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b. (c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20310.

Dated: August 31, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-21605 Filed 9-3-93; 8:45 am]

BILLING CODE 5000-04-M

Defense Logistics Agency

Privacy Act of 1974; Internal Computer Matching Program Between the Washington Headquarters Services and the Defense Manpower Data Center of the Department of Defense.

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of an internal Department of Defense computer matching program between the Washington Headquarters Services (a field activity of the Office of the Secretary of Defense) and the Defense Manpower Data Center (a field activity of the Defense Logistics Agency).

SUMMARY: The Defense Manpower Data Center (DMDC), as the matching agency under the Privacy Act of 1974, as amended, (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between the Washington Headquarters Services (WHS) and the DMDC that their records are being matched by computer. The record subjects are delinquent debtors who are current or former Federal employees or military members receiving Federal salary or benefit payments and indebted and delinquent in their repayment of debts owed to the United States Government under certain programs administered by Defense agencies so as to permit DoD creditor agencies to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective October 7, 1993, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment

must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the WHS and DMDC has concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to disclose personal data between the agencies for debt collection from defaulters of obligations held by various Defense agencies under the Debt Collection Act of 1982. The match will yield the identity and location of the debtors within the Federal government so that Defense agencies can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching memorandum of understanding between WHS and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Systems Accountant, WHS Directorate for Budget and Finance, Room 3B287, The Pentagon, Washington, DC 20301–1155.

Set forth below is a public notice of the establishment of a computer matching program required by subsection (e)(12) of the Privacy Act and paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on August 23, 1993, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130 (Revised), "Federal Agency Responsibilities for Maintaining Records about Individuals," dated June 25, 1993 (58 FR 36075, July 2, 1993). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: August 31, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Internal Computer Matching Program Between Washington Headquarters Services and the Defense Manpower Data Center of the Department of Defense

A. *Participating agencies:* Participants in this internal Defense computer matching program are the WHS Directorate for Budget and Finance of the Department of Defense and the Defense Manpower Data Center of the Department of Defense. The WHS is the source agency, i.e., the agency disclosing the records for the purpose of the match. The DMDC is the specific recipient agency or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of the match is to identify and locate DoD delinquent debtors who are current or former Federal employees or military members receiving any Federal salary or benefit payments that are indebted and delinquent in their repayment of debts to the United States Government under certain programs administered by the various Defense agencies so as to permit those agencies to pursue and collect the debt by voluntary repayments or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716–3718 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (salary offset); 10 U.S.C. 136, Assistant Secretaries of Defense, Appointment Powers and Duties; Section 206 of Executive Order 11222; 4 CFR Chapter II, Federal Claims Collection Standards (General Accounting Office - Department of Justice); 5 CFR 550.1101 - 550.1108 Collection by Offset from Indebted Government Employees (OPM); 32 CFR part 90 Collection of Indebtedness Due the United States (DoD).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. WHS will use the record system identified as DWHS B46.0, entitled "DoD Creditor Agency Accounts Receivable System", last published in the **Federal Register** at 58 FR 10281, February 22, 1993.

2. DMDC will use the record systems identified as S322.10 DMDC, entitled "Defense Manpower Data Center Data Base", last published in the **Federal Register** at 58 FR 10872, February 22, 1993, and S322.11 DMDC, entitled "Federal Creditor Agency Debt Collection Data Base", last published in the **Federal Register** at 58 FR 10875, February 22, 1993.

The category of records in the WHS system is delinquent debtors. The categories of records in the DMDC system consists of active and retired military members, including the Reserve and Guard, OPM government-wide Federal active and retired civilian records, postal service employees, non-appropriated fund employees and Social Security death records.

This computer match is internal within the DoD. The DoD is considered a single agency for routine use disclosure purposes under the Privacy Act. All routine uses published in DoD record system notices are for disclosure of records outside the DoD for a use that is compatible with the purpose for which the information was collected and maintained by the DoD. The exchange of records for this match between WHS and DMDC is permitted under the exception of subsection (b)(1) of the Privacy Act, i.e., to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties. Therefore, there is no requirement that either record system notice have a routine use for the match. Nevertheless, the exchange of the records is compatible with the purposes for which the information was collected and maintained in both systems.

E. *Description of the computer matching program:* WHS will supply DMDC with delinquent debt records in floppy disk format. Upon receipt of the floppy disk file of debtor accounts, DMDC as the recipient matching agency, will perform a computer match using name and all nine digits of the social security number of the WHS file against a DMDC computer data base. DMDC will match debt records consisting of

SSN, name, and debt amount with records of DoD active duty, retired and reserve military, and active and retired civil service employees, postal service employees, non-appropriated fund employees, and Social Security death records.

The WHS DoD Creditor Agency Accounts Receivable System contains approximately 1,000 records of former agency personnel who are indebted for various reasons. The data base contains name, SSN, address, debt amount and reason, and a history of debt collection activity for each individual. This information is in turn made available for transmission to DMDC. The DMDC computer data base consists of ten million records of Federal employees and military members. Information on "hits" provided to WHS consists of social security number, name, date of birth, employing agency, pay grade, salary, sex, and home or work addresses as available.

F. *Individual notice and opportunity to contest:* Due process procedures will be provided by the affected DoD creditor agency to those individuals matched (hits) consisting of the creditor agency's verification of debt; 35–day written notice to the debtor explaining the debtor's rights; provision for the debtor to examine and copy the agency's documentation of the debt; provision for debtor to seek the agency's review of the debt (or in the case of the salary offset provision, opportunity for a hearing before an individual who is not under the supervision or control of the agency); and opportunity for the individual to enter into a written agreement satisfactory to the creditor agency for repayment. Only when all of the steps have been taken will the creditor agency disclose pursuant to a routine use to effect an administrative or salary offset. Unless the individual notifies the creditor agency otherwise within 35 days from the date of the notice, the agency will conclude that the data provided to the individual is correct and will take the next necessary action to recoup the debt.

G. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then the computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated on an as-required basis. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between WHS and DMDC, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

H. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 93–21657 Filed 09–3–93; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

Financial Assistance: American Foundrymen's Society

AGENCY: Idaho Field Office, Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.7(b)(2)(i) it plans a non-competitive award of a Cooperative Agreement No. DE–FC07–93ID13240 to the American Foundrymen's Society (AFS).

FOR FURTHER INFORMATION CONTACT: Marshall C. Garr, Contract Specialist, (208) 526–1536; U.S. Department of Energy, 785 DOE Place, MS 1221, Idaho Falls, ID 83401–1562.

SUPPLEMENTARY INFORMATION: The objective of the cooperative agreement with AFS is to provide funds to continue development of a comprehensive mathematical model of a cupola furnace for process control and optimization in order to improve the competitiveness of the U.S. metals casting industries. The proposed project will focus on developing and demonstrating a cupola furnace process model and transferring the knowledge to the foundry industry. The proposed project is an 18 month effort at a total estimated cost of $293,000 of which approximately 70% will be cost-shared by industry through AFS. The research is a continuation of an earlier financial assistance agreement, Number DE–FC07–89ID12869 with AFS. In the earlier project, a one-dimensional, finite difference model was developed that describes the important chemical and physical processes that take place within the cupola. The model still requires further refinement and testing in a production environment. Statutory authority for this award is provided by Public Law 101–425.

Procurement Request Number: 07–93ID13240.000

Dated: August 21, 1993.

Dolores J. Ferri,

Director, Contracts Management Division.

[FR Doc. 93–21717 Filed 9–3–93; 8:45 am]
BILLING CODE 6450–01–M

Noncompetitive Financial Assistance Award; National Academy of Sciences

AGENCY: Pittsburgh Energy Technology Center, Department of Energy.

ACTION: Determination of noncompetitive financial assistance (grant) award with the National Academy of Sciences, Energy Engineering Board.

SUMMARY: The U.S. Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC), announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (D), it intends to award a Grant to the Energy Engineering Board of the National Academy of Sciences for a "Strategic Assessment of the U.S. Department of Energy's Coal Program".

ADDRESSES: Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236.

FOR FURTHER INFORMATION CONTACT: Keith R. Miles, Contract Specialist, (412) 892–5894.

SUPPLEMENTARY INFORMATION:

Grant No.

DE–FG22–93PC93035

Title of Research Effort

"Strategic Assessment of the U.S. Department of Energy's Coal Program"

Awardee

National Academy of Sciences, Energy Engineering Board

Term of Assistance Effort

Twelve (12) months

Cost of Assistance Effort

The total estimated value is $400,000.00.

Objective

The objective of this proposed study would focus on DOE's current coal

program, and selected sections of The Energy Policy Act of 1992 (EPACT) relating to coal, and develop recommendations to update the "Coal Strategic Plan." This study will provide independent scientific and technical advice consistent with the strategic assessment requested by the DOE targeted at the planning cycle beginning in FY 96. Expertise will be sought in areas such as coal science, conversion of coal to gaseous and liquid fuels, coal-based electricity generation, chemical engineering, energy engineering, environmental control technologies, energy economics, and strategic planning for research and development.

The proposed project is envisioned to include activities related to: (1) Review of the DOE Coal Program, including the current "Coal Strategic Plan" and the Administration's budget requests for FY 94 and 95; (2) Review the pertinent sections of the EPACT, especially Section 1301; (3) Recommend objectives (e.g., performance and schedule) for those areas in EPACT that are not presently included in the DOE coal program; and (4) Identify priorities for DOE's future coal program areas based upon the foregoing reviews.

In accordance with 10 CFR 600.7(b)(2)(i) criteria (D), a noncompetitive Financial Assistance Award (Grant) to the National Academy of Sciences, Energy Engineering Board has been justified.

Consistent with 41 U.S.C. 253, the National Academy of Sciences is a uniquely qualified (external) organization chartered by Congress in 1863 to conduct studies in the science and art when called upon by any Department of the Federal government.

Dale A. Siciliano,

Contracting Officer.

[FR Doc. 93–21715 Filed 9–3–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Efficiency and Renewable Energy

[Case No. CW–002]

Energy Conservation Program for Consumer Products; Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Clothes Washer Test Procedures of ASKO Inc.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to ASKO Inc. (ASKO) from the existing Department of Energy (DOE or Department) clothes washer test procedure for its washing machines, models 10504, 12004, and 20004. The design features that differ from those covered by the existing clothes washer test procedure are: An internal electrical heater for heating wash water; a continuously variable wash temperature control; 208/240 volt electrical power supply; and machine-controlled water fill capability.

Today's notice also publishes a "Petition for Waiver" from ASKO. ASKO's Petition for Waiver requests DOE to grant relief from the DOE clothes washer test procedure relating to its washing machines, models 10504, 12004, and 20004.

ASKO seeks to test by internally heating the inlet cold water instead of using externally heated water; to test by using a continuously variable wash temperature control instead of the three temperature requirements (i.e., hot (140°F/60°C) warm (100°F/38°C), and cold (60°F/16°C)); to test by using an electrical power supply of 208/240 volts instead of 120± 2 volts; and to test using machine-controlled instead of a manual water fill switch. DOE is soliciting comments and information regarding the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than October 7, 1993.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. CW–002, Mail Stop EE–90, room 6B–025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586–0561.

FOR FURTHER INFORMATION CONTACT:

William Hui, U.S. Department of Energy, Appliance Standards Division, Office of Codes and Standards, Office of Building Technologies, Energy Efficiency and Renewable Energy, Mail Stop EE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7140.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Stop GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992, Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including clothes washers. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedure by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to temporarily waive the test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On April 8, 1993, ASKO filed a Petition for Waiver regarding its washing machines, models 10504, 12004, and 20004, with the following design features that differ from those covered by the existing clothes washer test procedure: An internal water heating source; a continuously variable wash temperature control; an alternate electrical power supply; and a machine-controlled water fill capability. ASKO's Petition seeks a waiver from the DOE provisions that require an externally heated water supply, three specified temperature settings (i.e, hot (140°F/60°C), warm (100°F/38°C), and cold (60°F/16°C)), 120±2 volts electrical power supply, and a manual water-fill control. Instead, ASKO requests that it be allowed to test its machines, models 10504, 12004, and 20004 with: A cold water supply that is heated internally for washing; continuously variable settings in water temperature; manufactured specified voltage of 208/240; and machine-controlled water fill capability.

On April 26, 1993, ASKO filed an Application for Interim Waiver and on May 11, 1993, ASKO subsequently submitted an amendment to the Application for Interim Waiver (hereafter referred to as the amendment) upon DOE's request for additional information to allow the Department to make its determination of the economic hardship and/or competitive disadvantage likely to result if DOE fails to grant the Application for Interim Waiver.

ASKO states in its amendment that clothes washers, together with clothes dryers and dishwashers, are an important part of its marketing program for its approximate 250 nationwide sale distributors. ASKO also states that it will suffer economic hardship if its Application for Interim Waiver is denied since it would affect over 500 independent retailers, 400 privately owned service agencies, 25 independent distributors, and the ASKO USA office.

Therefore, based on the potential economic hardship which may result if ASKO is unable to sell its products during the time required by DOE to process the Petition for Waiver, the Department grants ASKO's Application for an Interim Waiver from the DOE test procedure for its clothes washers, models 10504, 12004, and 20004. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to ASKO was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE would appreciate comments, data, and other information regarding the petition discussed above.

Issued in Washington, DC, August 27, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

August 27, 1993.

Mr. Michael P. Wasson, National Service Manager, ASKO Inc., 903 North Bowser, Suite 200, Richardson, TX 75081.

Dear Mr. Wasson: This is in response to your Application for Interim Waiver of April 26, 1993, and amendment thereto of May 11, 1993, (hereafter referred to as the "amendment") regarding ASKO Inc. (ASKO) clothes washers, models 10504, 12004, and 20004, with the following design features: an internal electrical heater for heating wash water, a continuously variable wash temperature control, 208/240 volt electrical power supply, and machine-controlled water fill capability.

ASKO states in its amendment to the Department that clothes washers, together with clothes dryers and dishwashers, are an important part of its marketing program for the approximate 250 nationwide sale distributors. ASKO also states that it will suffer economic hardship if its Application for Interim Waiver is denied since it would affect over 500 independent retailers, 400 privately owned service agencies, 25 independent distributors, and the ASKO USA office. Therefore, based on the potential economic hardship which may result if ASKO is unable to sell its products during the time required by DOE to process the Petition for Waiver, the Department grants ASKO's Application for an Interim Waiver for its clothes washers, models 10504, 12004, and 20004.

ASKO shall be permitted to test its clothes washing machines on the basis of the test procedures specified in 10 CFR part 430, subpart B, appendix J, with the modifications set forth below:

(i) Add new sections, 1.19 and 1.20 in Appendix J to read as follows:

1.19 "*Water-heating clothes washer*" means a clothes washer that has an internal electrical heater which provides all the energy needed to heat water for washing.

1.20 "*Non water-heating clothes washer*" means a clothes washer that does not have an internal electrical heater which provides the energy needed to heat water for washing.

(ii) Sections 2.2 and 2.3 in Appendix J are amended to read as follows:

2.2 *Electrical energy supply.* Maintain the electrical supply to the clothes washer terminal block within 1 percent of 120/208Y, or 120/240 volts as manufacturer. If the clothes washer has a dual voltage conversion capability, conduct the test at the highest voltage recommended by the manufacturer.

2.3 *Water temperature.*

2.3.1 *Non water-heating clothes washers.* The temperature of the water supply shall be maintained at 100°F±5°F (38°C±2.8°C) for all clothes washers not equipped with thermostatically controlled inlet water valves. For clothes washers equipped with thermostatically controlled inlet valves, the temperature of the hot water supply shall be maintained at 140°F±5°F (60°C±2.8°C), and the cold water supply shall be maintained at 60°F±5°F (16°C±2.8°C). Water meters shall be installed in both the hot and cold water lines to measure water consumption.

2.3.2 *Water-heating clothes washers.* The temperature of the water supply shall be maintained at 60° F±5°F (16°C±2.8°C). Install a water meter in the cold water line to measure water consumption.

(iii) Section 2.8.2.1 in Appendix J is amended to read as follows:

2.8.2.1 *Standard size front-loader clothes washer.* Use the test load requirement specified in section 2.7.1 for maximum fill and 2.7.2 for minimum water fill at all time when possible. If automatic water-fill capability is available and the specified test load does not activate maximum or minimum water fill in the machine, adjust the load(s) accordingly to achieve maximum or minimum water fill in the machine. Adjustment to the test load to achieve the proper weight can be made by the use of energy stuffer cloths, if appropriate.

(iv) Sections 3.1.2 in Appendix J is amended to read as follows:

3.1.2 *Front-loader Clothes Washer.* Position the machine such that access to the inner drum is in the vertical, upward direction. Line the inner drum and/or ribs with 2 mil plastic sheet or use some other method to prevent the water from entering the outer drum. Fill the clothes container with water to its uppermost edge. (This filling procedure may require overriding of the automatic water-fill control, or manually completing the fill to the top of the container after the fill sensor terminates the fill at maximum level.) Record the weight of the machine before filling it with water and then after filling with water. The clothes container capacity is calculated as follows:

$C=W/\rho$

C=Capacity in cubic feet (liters)
W=Mass of water in pounds (kilograms)
ρ=Density of water at the measured temperature in pounds per cubic foot (kilograms per liter)

(v) Renumber existing sections 3.2.1 through 3.2.4 as 3.2.1.1 through 3.2.1.4.

(vi) Add new section 3.2.1 in Appendix J to read as follows:

3.2.1 *Non water-heating clothes washers.*

(vii) Add new sections 3.2.2 through 3.2.2.2.3 to read as follows:

3.2.2 *Water-heating clothes washers.*

3.2.2.1 *Per-cycle electrical energy consumption at maximum fill.*

3.2.2.1.1 *Hot wash at maximum fill.* Insert a water temperature sensing device inside the inner drum prior to testing. Activate the machine and insert the appropriate test load as specified in section 2.8.2.1. Select the normal or an equivalent wash cycle. Where spin speed selection is available, set the control to its maximum setting. Set the water temperature selector to the hot setting (140°F/60°C) and activate the wash cycle. Verify the wash water temperature, which must be at 140°F±5°F (60°C±2.8°C). If the measured water temperature is not within the specified range,

stop testing, adjust the temperature selector accordingly and repeat the procedure. Otherwise, proceed and complete testing, and record the kilowatt-hours (megajoules) of electrical energy consumed for the complete cycle as $E_{e,max}$.

3.2.2.1.2 *Warm wash at maximum fill.* Repeat section 3.2.2.1.1 for warm wash setting at 100°F±5°F (38°C±2.8°C) and record the kilowatt-hours (megajoules) of electrical energy consumed for the complete cycle as $E_{w,max}$.

3.2.2.1.3 *Cold wash at maximum fill.* Repeat section 3.2.2.1.1 for cold water setting at 60°F±5°F (16°C±2.8°C) and record the kilowatt-hours (megajoules) of electrical energy consumed for the complete cycle as $E_{c,max}$.

3.2.2.2 *Per-cycle electrical energy consumption at minimum fill.*

3.2.2.2.1 *Hot wash at minimum fill.* Repeat section 3.2.2.1.1 for a test load as specified in section 2.8.2.1. The hot wash setting shall be at 140°F±5°F (60°C±2.8°C). Record the kilowatt-hours (megajoules) of electrical energy consumed for the complete cycle as $E_{h,min}$.

3.2.2.2.2 *Warm wash at minimum fill.* Repeat section 3.2.2.2.1 for warm wash setting at 100°F±5°F (38°C±2.8°C), and record the kilowatt-hours (megajoules) of electrical energy consumed for the complete cycle as $E_{w,min}$.

3.2.2.2.3 *Cold wash at minimum fill.* Repeat section 3.2.2.2.1 for cold wash setting at 60°F±5°F (16°C±2.8°C), and record the kilowatt-hours (megajoules) of electrical energy consumed for the complete cycle as $E_{c,min}$.

(viii) Renumber existing sections 4.1 through 4.6 as 4.1.1.1 through 4.1.1.6.

(ix) Sections 4.1 and 4.1.1 are added in Appendix J to read as follows:

4.1 *Energy consumption.*

4.1.1 *Nonwater-heating clothes washers.*

(x) Add new sections, 4.1.2 through 4.1.2.2 in Appendix J to read as follows:

4.1.2 *Water-heating clothes washers.*

4.1.2.1 *Per-cycle temperature-weighted machine electrical energy consumption for maximum and minimum water fill levels.* Calculate the per-cycle temperature-weighted electrical energy consumption for the maximum water fill level, E_{max}, and for the minimum water fill level, E_{min}, expressed in kilowatt-hours per cycle (megajoules per cycle) and defined as:

$E_{max}=(0.30\times E_{h,max})+(0.55\times E_{w,max})+(0.15\times E_{c,max})$

$E_{min}=(0.30\times E_{h,min})+(0.55\times E_{w,min})+(0.15\times E_{c,min})$

where:

$E_{h,max}$=as defined in section 3.2.2.1.1
$E_{w,max}$=as defined in section 3.2.2.1.2
$E_{c,max}$=as defined in section 3.2.2.1.3
$E_{h,min}$=as defined in section 3.2.2.2.1
$E_{w,min}$=as defined in section 3.2.2.2.2
$E_{c,min}$=as defined in section 3.2.2.2.3

4.1.2.2 *Total per-cycle machine electrical energy consumption.* Calculate the total per-cycle energy consumption, E_{TE}, expressed in kilowatt-hours per cycle (megajoules per cycle) and defined as:

$E_{TE}=(0.72\times E_{max})+(0.28\times E_{min})$

where:

E_{max}, E_{min}=as defined in section 4.1.2.1

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by ASKO Inc. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until the Department acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 93–21714 Filed 9–3–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 7664]

East Bench Irrigation District; Application for Transfer of License and Opportunity to File Competing Applications

September 1, 1993.

Take notice that East Bench Irrigation District (EBID) has filed an application to transfer the license for the Clark Canyon Dam Project No. 7664 to Island Power Company, Inc. (Island). The project is to be built at the Bureau of Reclamation's Clark Canyon Dam on the Beaverhead River in Beaverhead County, Montana.[1]

Because EBID is a municipality under the Federal Power Act (FPA), while Island is not, the Commission has determined that approval of the transfer without entertaining competition would conflict with the Commission's policy regarding abuse of the municipal preference provisions of the FPA. Therefore a competitive transfer proceeding, similar to that use in City of Vidalia, Louisiana,[2] will be employed.

The Commission by this notice offers to qualified license applicants the opportunity to compete for the license for this project. Any such applicant must file, by the end of the comment period set out below, a notice of its intent to compete for the license. No later than 45 days after the close of the comment period, the applicant shall file its license application.

All applications filed must contain: (a) A clear statement of the applicant's willingness to accept the license as now in effect; (b) a showing of the applicant's ability to proceed with development of the project in a timely manner;[3] (c) identification of the applicant's prospective power purchaser and evidence of the purchaser's interest; (d) project financing plans; and (e) any other information the applicant believes would be helpful in making a decision on the application. Applicants shall describe their qualifications to hold the license and operate the project, in accordance with 18 CFR 9.2. Applications shall be subscribed and verified according to 18 CFR 385.2005.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date.

Any filings must bear in all capital letters the title "NOTICE OF INTENT TO COMPETE FOR LICENSE," "COMMENTS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the project number. Filings must be made by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All filings in response to this notice must be served on:

East Bench Irrigation District, Jay Chamberlin, 1100 Highway 41, Dillon, MT 59725, (406) 683–2307.

Island Power Company, Inc., Jay and Lance Bingham, 5160 Wiley Post Way, suite 220, Salt Lake City, UT 84116, (801) 532–2520.

The comment period for this notice closes on September 13, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21772 Filed 9–2–93; 8:45 am]

BILLING CODE 6717–01–M

[1] The license was issued on June 24, 1988 (43 FERC ¶ 62,349) and stayed by the Commission on June 4, 1992; the stay was extended on September 21, 1992.

[2] 28 FERC ¶ 61,328 (1984).

[3] The single extension to commence construction allowed under section 13 of the FPA has been granted. Construction must commence by September 16, 1993.

[Docket Nos. ER93–760–001, et al.]

Niagara Mohawk Power Corp., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Niagara Mohawk Power Corp.

[Docket No. ER93–760–001]

August 25, 1993.

Take notice that on August 20, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an amendment to its filing in Docket No. ER93–760–000, which affects Niagara Mohawk Rate Schedule No. 165, an agreement between Niagara Mohawk and the New York State Electric & Gas Corporation.

Rate Schedule No. 165 provides for the wheeling of certain loads by Niagara Mohawk to NYSEG. The proposed amendment is based on a letter agreement between Niagara Mohawk and NYSEG that settles certain disputed issues associated with Niagara Mohawk's original July 2, 1993 filing. Niagara Mohawk proposes an effective date of September 1, 1993. In support thereof, Niagara Mohawk states that NYSEG has consented to this proposed effective date.

Copies of this filing were served upon the following: the Public Service Commission of the State of New York and the New York State Electric & Gas Corporation.

Comment date: September 8, 1993, in accordance with Standard Paragraph E end of this notice.

Black Hills Power and Light Co.

[Docket No. ER93–864–000]

August 25, 1993.

Take notice that on August 13, 1993, Black Hills Power and Light Company (Black Hills) tendered for filing a letter agreement (Rate Schedule No. FERC 36) with Tri-State Generation and Transmission Association, Inc. to extend purchases through December 31, 1993, with Tri-State Generation and Transmission Associates, Inc.

Comment date: September 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

West Penn Power Co.

[Docket No. ER93–728–000]

August 26, 1993.

Take notice that on August 18, 1993, West Penn Power Company further supplemented its earlier filing in this docket with material clarifying its calculation of losses for new delivery points for Pennsylvania Power and Light Company.

Comment date: September 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

Great Bay Power Corp.

[Docket No. ER93–880–000]

August 26, 1993.

Take notice that on August 19, 1993, UNITIL Resources, Inc., on behalf of Great Bay Power Corporation, tendered for filing a Notice of Termination for Great Bay Power Rate Schedule FERC No. 2.

Comment date: September 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

El Paso Electric Co.

[Docket No. ES83–71–001]

August 26, 1993.

Take notice that on August 18, 1993, El Paso Electric Company (El Paso) filed a request for authorization under section 204 of the Federal Power Act to extend or replace an existing letter of credit for the remaining term of certain bond obligations previously entered into by El Paso and authorized by the Commission in this docket. Also, El Paso requests an exemption from the Commission's competitive bidding requirements. El Paso further requests waiver of notice and expedited consideration so that an order can be issued no later than September 24, 1993.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

Washington Water Power Co.

[Docket No. ER93–833–000]

August 26, 1993.

Take notice that on August 20, 1993, Washington Water Power Company, on behalf of itself and Puget Sound Power & Light Company, tendered for filing an executed copy of an agreement between the two companies earlier filed in this docket in draft form.

Comment date: September 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

Northeast Utilities Services Co.

[Docket No. ER93–883–000]

August 26, 1993.

Take notice that on August 23, 1993, Northeast Utilities Service Company tendered for filing amendments to a Firm and a Non-Firm Service Agreement between Western Massachusetts Electric Company and New England Power Company to provide for an extension in service and a new delivery point.

Comment date: September 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

United States Department of Energy

[Docket No. QF93–149–000]

August 26, 1993.

On August 17, 1993, United States Department of Energy (DOE) (Applicant), of P.O. Box 11, Tupman, California 93276 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to section 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located in Bakersfield, California, and will consist of two combustion turbine generators and two heat recovery boilers equipped with supplementary duct burning. Steam recovered from the facility will be used to provide process heat for three natural gas processing plants. The primary energy source will be natural gas. The maximum net electric power production capacity of the facility will be 47 MW. Installation is scheduled to begin in January, 1994.

Comment date: October 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

Northeast Utilities Service Co.

[Docket No. ER93–884–000]

August 26, 1993.

Take notice that on August 23, 1993, Northeast Utilities Service Company tendered for filing a System Power Sales Agreement between the NU System Companies and Georgetown Municipal Electric Light Department.

Comment date: September 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

Entergy Power, Inc.

[Docket No. ER93–888–000]

August 26, 1993.

Take notice that Entergy Power, Inc. (Entergy Power), on August 23, 1993, filed an amendment to its October 11, 1990 letter agreement with Oglethorpe Power Corporation (Oglethorpe). As Entergy Power states in its filing, the purpose of the amendment is to allow Entergy Power to obtain and sell replacement energy to Oglethorpe during the current emergency outages of Entergy Power's two generating units. The amendment is to remain effective until Entergy Power can bring one of those units, Ritchie 2, back on line, which is expected to occur in early September, 1993. Entergy Power has requested that this amendment be made effective on August 25, 1993.

Comment date: September 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

Duke Power Co.

[Docket No. ER93–885–000]

August 26, 1993.

Take notice that on August 23, 1993, Duke Power Company (Duke) filed revised FERC Rate Schedule No. 10, which incorporates a Power Sale Adjustment Clause decrement of .0648¢ per kWh, including gross receipts tax. This filing is made to reflect the Schedule J capacity revenue pursuant to Section 2.D of the Settlement Agreement among Duke, its Municipal Wholesale Customers, and Lockhart Power Company, accepted for filing in FERC Docket No. ER91–649–000.

Comment date: September 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

Wisconsin Power and Light Co.

[Docket No. ER93–887–000]

August 26, 1993.

Take notice that on August 23, 1993, Wisconsin Power and Light Company (WPL) tendered for filing an amendment dated July 2, 1993, between the Wisconsin Public Power, Inc. System and WPL. WPL states that this amendment supplements the previous agreement first signed on June 5, 1989 between the two parties which was last amended May 27, 1993, and on file under Rate Schedule No. 132 by the Commission.

The purpose of this amendment is to provide for a new delivery point under construction by the Columbus Water & Light Department. Terms of service will be in accordance with standard WPL Rate Schedule W–1.

WPL requests that an effective date concurrent with the construction completion date on or about October 1, 1993 be assigned. WPL states that copies of the agreement and the filing have been provided to the Wisconsin Public Power, Inc. System, the Columbus Water & Light Department, and the Wisconsin Public Service Commission.

Comment date: September 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21614 Filed 9–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–680–000]

CNG Transmission Corp.; Request Under Blanket Authorization

August 31, 1993.

Take notice that on August 25, 1993, CNG Transmission Corporation (CNGT), 445 West Main Street, Clarksburg, West Virginia 26301, filed a prior notice request with the Commission in Docket No. CP93–680–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a sales tap and appurtenant pipe for the delivery of natural gas to Kamine/Besicorp Allegany, L.P. (Kamine Allegany), under CNGT's blanket certificate issued in Docket No. CP82–537–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

CNGT proposes to construct and operate a metering and regulating station and approximately 600 feet of 6-inch pipe to provide natural gas service to Kamine Allegany's 55 Megawatt gas-fired cogeneration plant in the town of Hume, New York. CNGT would deliver up to 11,100 dekatherms of natural gas per day to Kamine Allegany's congeneration plant. CNGT states that Kamine Allegany's plant would generate steam for use by an adjacent greenhouse and electricity for purchasing by Rochester Gas and Electric company. CNGT also states that Kamine Allegany would reimburse CNGT for approximately $400,000 of the total $600,000 estimated construction cost for the proposed metering and regulating facilities and 100 percent of the cost for the piping.

CNGT further states that it has sufficient capacity to deliver existing contract quantities without disadvantage or detriment to either its existing sales or transportation customers.

Any person or the Commission's staff may within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21619 Filed 9–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–7–21–000 and TM93–11–21–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 31, 1993.

Take notice that on August 27, 1993, Columbia Gas Transmission Corporation (Columbia), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with a proposed effective date of September 1, 1993:

Forty-first Revised Sheet No. 26
Thirty-fifth Revised Sheet No. 26.1
Thirty-ninth Revised Sheet No. 26A
Thirty-fifth Revised Sheet No. 26A.1
Twenty-ninth Revised Sheet No. 26B
Twenty-eighth Revised Sheet No. 26B.1
Thirty-third Revised Sheet No. 26C
Twenty-second Revised Sheet No. 26C.1
Thirtieth Revised Sheet No. 26D
Thirty-sixth Revised Sheet No. 163

Columbia states the sales and transportation rates set forth on the revised tariff sheets reflect an out-of-cycle PGA and a revised Transportation Cost Recovery Adjustment resulting from adjusting Columbia's rates to reflect the impact of current market and pipeline rates.

Columbia states that copies of the filing were served upon the Columbia's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such

motions or protests should be filed on or before September 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21627 Filed 9–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–74–000]

CRSS Capital Cogeneration, Inc.; Application for Determination of Exempt Wholesale Generator Status

August 31, 1993.

On August 27, 1993, CRSS Capital Cogeneration, Inc. ("Company"), a corporation organized and existing under the laws of the State of Delaware, whose address is 1177 West Loop South, suite 900, Houston, Texas, 77027, filed with the Federal Energy Regulatory Commission an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Commission's regulations.

According to Company, it is exclusively engaged in the business of owning and operating certain electric generating facilities to be constructed in Goodsprings, Clark County, Nevada (the "Facility"). The Facility, when completed, will be a 280 MW (net output) gas-fired electric generating facility located in Goodsprings, Clark County, Nevada. Construction is anticipated to begin on the Facility in December, 1995, and the Facility is expected to be substantially complete in 1998. Company will sell electricity generated at the Facility exclusively at wholesale, to Nevada Power Company ("NPC") pursuant to a 25-year agreement to be entered into between Company and NPC. When the Facility is in operation, its revenues will come exclusively from the sale of electricity to NPC.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 21, 1993 and must be served on Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21621 Filed 9–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–64–000]

CSW Nevada, Inc.; Application for Commission Determination of Exempt Wholesale Generator Status

August 26, 1993.

Take notice that on August 20, 1993, CSW Nevada, Inc., a corporation organized under the laws of Delaware (the "Applicant") whose address is 500 North Akard Street, suite 2550, P.O. Box 660164, Dallas, Texas 75266, filed with the Federal Energy Regulatory Commission an application for determination of wholesale exempt generator status pursuant to Part 365 of the Commission's regulations.

The Applicant states that it will be engaged directly and exclusively in the business of owning and operating a proposed electric generating facility (the "Facility") and selling all electric energy generated by the Facility exclusively at wholesale to Nevada Power Corporation ("NPC"). The Facility will be located in Clark County, Nevada, and will have an approximate net electrical capability of 160 megawatts. The Facility will include a substation and related equipment that are necessary to interconnect the Facility with the transmission facilities of NPC. The Applicant requests a determination that the Facility will be an exempt wholesale generator under section 32(a)(1) of the Public Utility Holding Company Act of 1935.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of the comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 14, 1993 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21618 Filed 9–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–23–000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 31, 1993.

Take notice that on August 26, 1993 Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective October 1, 1993.

ESNG states that the purpose of the instant filing is to reflect an increase of $0.0002 per dt in the Annual Charge Adjustment (ACA) Charge in the commodity portion of ESNG's sales and transportation rates. Pursuant to Order 472, the Commission assessed ESNG its annual ACA charge based on $0.0026/Mcf for the annual period commencing October 1, 1993. In accordance with Section 25 of the General Terms and Conditions of ESNG's First Revised Volume No. 1 Tariff, ESNG's proposed tariff sheets track the Commission approved ACA unit rate of $0.0026/Mcf ($0.0025/dt on ESNG's system) commencing October 1, 1993.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21625 Filed 9–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93-8-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 31, 1993.

Take notice that on August 26, 1993 Eastern Shore Natural Gas Company (ESNG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets included in appendix A attached to the filing. Such sheets are proposed to be effective September 1, 1993.

ESNG states that the above referenced tariff sheets are being filed pursuant to Section 154.308 of the Commission's regulations and Sections 21, 23 and 24 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. ESNG also states that the sales rates set forth thereon reflect an increase of $0.2641 per dt in the Commodity Charge and an increase of $0.0425 per dt in the Demand Charge as measured against ESNG's Quarterly PGA Filing in Docket No. TQ93-8-23-000 as filed on July 1, 1993 and proposed to be effective on August 1, 1993.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21630 Filed 9-3-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EG93-76-000]

Muddy River Limited Partnership; Application for Determination of Exempt Wholesale Generator Status

August 31, 1993.

On August 27, 1993, Muddy River Limited Partnership of Fairlane Plaza South, 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126, filed with the Federal Energy Regulatory Commission an application for determination of Exempt Wholesale Generator status pursuant to part 365 of the Commission's regulations.

According to the applicant, Muddy River Limited Partnership is in the exclusive business of owning and operating a 135 MW (net) electric generating facility located in Moapa, Nevada. The electric energy generated by this facility will be sold at wholesale to Nevada Power Company and may also be sold to other non-retail parties.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 21, 1993 and must be served on Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21623 Filed 9-3-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EG93-75-000]

Naheola Power, Inc.; Application for Determination of Exempt Wholesale Generator Status

August 31, 1993.

On August 27, 1993, Naheola Power, Inc. ("Company"), a corporation organized and existing under the laws of the State of Delaware, whose address is 1177 West Loop South, suite 900, Houston, Texas, 77027, filed with the Federal Energy Regulatory Commission an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Commission's regulations.

According to Company, it is exclusively engaged in the business of owning and operating certain electric generating facilities to be constructed in Goodsprings, Clark County, Nevada (the "Facility"). The Facility, when completed, will be a 280 MW (net output) gas-fired electric generating facility located in Goodsprings, Clark County, Nevada. Construction is anticipated to begin on the Facility in December, 1997, and the Facility is expected to be substantially complete in 2000. Company will sell electricity generated at the Facility exclusively at wholesale, to Nevada Power Company ("NPC") pursuant to a 25-year agreement to be entered into between Company and NPC. When the Facility is in operation, its revenues will come exclusively from the sale of electricity to NPC.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 21, 1993 and must be served on Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21622 Filed 9-3-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-6-86-001]

Pacific Gas Transmission Co.; Change in Sales Rates Pursuant to Purchased Gas Adjustment

August 31, 1993.

Take notice that on August 26, 1993, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to part 154 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act, a proposed change in rates applicable to service rendered under Rate Schedule PL-1 in accordance with Paragraph 21 of its FERC Gas Tariff, Second Revised Volume No. 1.

PGT states that this filing corrects a tariff sheet pagination error in the original proposed change made at Docket No. TQ93-5-86-000 and also corrects the Docket Number to Docket No. TQ93-6-86-000. No changes in the tariff or the effective date are being proposed in this filing.

PGT states that a copy of this filing has been served on PGT's jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before September 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21629 Filed 9–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–683–000]

Transcontinental Gas Pipe Line Corp.; Application

August 31, 1993.

Take notice that on August 26, 1993, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP93–683–000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon a certificated transportation service for Florida Gas Transmission Company (FGT), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that it has provided a transportation service from FGT under Rate Schedule X–232 which was authorized by order issued May 4, 1981, in Docket No. CP80–383. It is indicated that under Rate Schedule X–232 Transco transports for FGT on a firm basis up to 5,000 Mcf of natural gas per day, and, on an interruptible basis, up to 18,400 Mcf per day. It is also stated that the agreement provides for Transco to receive the quantities of gas at Ship Shoal Block 68 and South Pelto Blocks 9 and 10, offshore Louisiana, and to redeliver equivalent quantities to the existing interconnections between the systems of Transco and FGT in St. Helena and Vermilion Parishes.

Transco states that Article 2 of the rate schedule provides that the agreement shall remain in effect for a term of eight years from the date of initial delivery of gas (May 4, 1981) and thereafter until terminated by either party by giving 180 days prior written notice to the other party. It is indicated that, by letter dated August 14, 1992, FGT advised that it wished to have the transportation service terminated effective February 10, 1993. Transco also states that deliveries terminated on January 31, 1993. Transco requests that the abandonment authorization be made effective retroactive to February 10, 1993. No abandonment of facilities is requested.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 21, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21620 Filed 9–3–93; 8:45am]

BILLING CODE 6717–01–M

[Docket No. RP–93–175–000]

Williston Basin Interstate Pipeline Co.; Proposed Changes in FERC Gas Tariff

August 31, 1993.

Take notice that on August 26, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, certain revised tariff sheets to First Revised Volume No. 1, Original Volume No. 1–A, Original Volume No. 1–B and Original Volume No. 2.

Williston Basin states that the revised tariff sheets are being filed pursuant to § 2.104 of the Commission's Regulations and the Commission's Order No. 528 issued November 1, 1990 in Docket Nos. RM91–2–000, *et al.*, to implement the partial recovery of $28,702,928 or buyout/buydown costs. Under the filing, Williston Basin is proposing to absorb twenty-five percent of such costs, recover twenty-five percent of the costs through a fixed monthly surcharge and recover a fifty percent of such costs through a throughput surcharge rate of 8.861¢ per dkt.

Williston Basin states that it determined its individual customer fixed monthly surcharge amounts using an allocation based on sales Maximum Daily Quantities (MDQ) in accordance with Section 33 of the General Terms and Conditions of Volume No. 1 of its FERC Gas Tariff.

Williston Basin has requested that the Commission accept this filing to become effective October 1, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21624 Filed 9–3–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of

the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the following retransfer: RTD/SD(EU)–67, for the transfer of 10,000 coated uranium dioxide particles containing 6 grams of uranium enriched to 16.7 percent in the isotope uranium-235 for measurements at the Paul-Scherrer Institute in Switzerland.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on August 31, 1993.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy, Office of Arms Control and Nonproliferation.

[FR Doc. 93–21716 Filed 9–3–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00142; FRL–4645–1]

Toxics Data Reporting Subcommittee of the Environmental Information and Assessments Committee National Advisory Council for Environmental Policy and Technology; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, EPA gives notice of a 2–day meeting of the Toxics Data Reporting subcommittee of the National Advisory Council for Environmental Policy and Technology. This will be the third meeting of the Toxics Data Reporting subcommittee, whose mission is to provide advice to EPA regarding the Agency's Toxics Release Inventory (TRI) Program.

DATES: The public meeting will take place on Monday, September 20, 1993, from 9 a.m. to 4:30 p.m., and Tuesday, September 21, 1993, from 8:30 a.m. to 3 p.m. Members of the public wishing to make comments at this meeting should submit their comments, in writing, by September 13, 1993.

ADDRESSES: The public meeting will be held at: The National Governors' Association's Hall of the States Building, Rm. 283, 444 North Capitol St., Washington, DC 20001, Telephone: 202–624–5370. Written comments must be submitted to: Sam Sasnett, Environmental Assistance Division (TS–799), TS–799, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John Harman, Environmental Assistance Division (TS–799), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–6395.

SUPPLEMENTARY INFORMATION: EPA is proposing that the subcommittee review the following issue areas: TRI data management, TRI program directions, and Form R elements and reporting policy (Form R is the EPA form used to report information required under section 313 of the Emergency Planning and Community Right-to-Know Act). The agenda for the 2 days will focus on discussion of Form R elements and reporting policy. Meeting participants will discuss specific definition issues associated with elements added to Form R as a result of the Pollution Prevention Act of 1990.

Dated: August 30, 1993.

Abby J. Pirnie,

Director, Office of Cooperative Environmental Management, Office of the Administrator.

[FR Doc. 93–21719 Filed 9–3–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

August 27, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0222
Title: Section 97.213, Remote control of a station
Action: Extension of a currently approved collection
Respondents: Individuals or households
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 500 recordkeepers; 0.2 hours average burden per recordkeeper; 100 hours total annual burden
Needs and Uses: The recordkeeping requirement contained in § 97.213 consists of posting a photocopy of the station license, a label with the name, address, and telephone number of the station licensee, and the name of at least one authorized control operator. This requirement is necessary so that quick resolution of any harmful interference problems can be achieved and to ensure that the station is operating in accordance with the Communications Act of 1934, as amended. The information is used by FCC staff during inspections and investigations to assure that remotely controlled amateur radio stations are licensed in accordance with applicable rules, statutes and treaties. In the absence of this recordkeeping requirement, field inspections and investigations related to harmful interference could be severely hampered and needlessly prolonged due to inability to quickly obtain vital information about a remotely controlled station.

OMB Number: 3060–0249
Title: Section 74.781, Station records
Action: Extension of a currently approved collection
Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses)
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 6,253 recordkeepers; 0.92 hours average burden per recordkeeper; 5,753 hours total annual burden
Needs and Uses: Section 74.781 requires licensees of low power television, TV translator and TV booster stations to maintain adequate station records. These records shall include the current instrument of authorization, official correspondence with the FCC, maintenance records, contracts, permission for rebroadcasts, and other

pertinent documents. They should also include any observed or otherwise known extinguishment or improper functioning of a tower light. The records are used by FCC staff in field investigations to assure that reasonable measures are taken to maintain proper station operation and to ensure compliance with the Commission's rules.

OMB Number: 3060–0250

Title: Section 74.784, Rebroadcasts

Action: Extension of a currently approved collection

Respondents: State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 2,084 responses; 1 hour average burden per response; 2,084 hours total annual burden per response

Needs and Uses: Secton 74.784(b) requires that a licensee of a low power television or TV translator station shall not rebroadcast the programs of any other TV broadcast station without obtaining prior consent of the station whose signals or programs are proposed to be retransmitted. Section 74.784(b) also requires licensees of low power television and TV translator stations to notify the Commission when rebroadcasting programs or signals of another station. This notification shall include the call letters of each station rebroadcast. The licensee of the low power television or TV translator station shall certify that written consent has been obtained from the licensee of the station whose programs are retransmitted. The data is used by FCC staff to ensure compliance with Section 325(a) of the Communications Act of 1934, as amended, which states that no broadcasting station shall rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station.

William F. Caton,

Acting Secretary.

[FR Doc. 93–21599 Filed 9–3–93; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM docket No.
A. Darrell Bryan; Tusculum, TN.	BPH–920109MA	93–421
B. SBH Properties, Inc.; Tusculum, TN.	BPH–920123MD	

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative—A & B
2. Ultimate—A & B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., suite 140, Washington, DC 20037 (telephone 202–857–3800).

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–21597 Filed 9–3–93; 8:45 am]

BILLING CODE 6712–01–M

Licensee Order To Show Cause

The Chief, Audio Services Division, has before him the following matter:

Applicant, city and state	MM docket No.
David and Sherry Pike, Licensees of KRAN (AM); Morton, TX	93–242

(Regarding the silent status of Station KRAN (AM))

Pursuant to Section 312(a) (3) and (4) of the Communications Act of 1934, as amended, David and Sherry Pike have been directed to show cause why the license for Station KRAN (AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether David and Sherry Pike have the capability and intent to expeditiously resume broadcast operations of KRAN (AM) consistent with the Commission's Rules.

2. To determine whether David and Sherry Pike have violated §§ 73.1740 and/or 73.1750 of the Commission's Rules.

3. To determine, in light of the evidence adduced pursuant to the forgoing issues whether David and Sherry Pike are qualified to be and remain the licensees of Station KRAN (AM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 320), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., suite 140, Washington, DC 20037 (telephone 202–857–3800).

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–21598 Filed 9–3–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–993–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–993–DR), dated June 11, 1993, and related determinations.

EFFECTIVE DATE: August 27, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota dated July 11, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 11, 1993:

Wright County for Individual Assistance and Public Assistance

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–21742 Filed 9–3–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1000–DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: August 30, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

Mitchell County for Public Assistance and Individual Assistance

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–21741 Filed 9–3–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–936–DR]

New Jersey; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Jersey (FEMA–936–DR), dated March 3, 1992, and related determinations.

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ihor W. Husar of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Stephen Kempf as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–21744 Filed 9–3–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–974–DR]

New York; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York (FEMA–974–DR), dated December 21, 1992, and related determinations.

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ihor W. Husar of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Stephen Kempf as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–21743 Filed 9–3–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Petitions for Temporary Exemption From Electronic Tariff Filing Requirements

Petition No. P59–93—Pacific Coast Tariff Bureau on Behalf of Various Carriers

Petition No. P60–93—Transax Data on Behalf of Various Carriers

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from ATFI filing deadlines.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than September 10, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on the following:

P59–93—Mr. James C. Olsson, President, Pacific Coast Tariff Bureau, 221 Main Street, Suite 530, San Francisco, CA 94105–1915

P60–93—Mr. Steve Baker, Manager, Regulatory, Transax Data, 721 Route 202/206, Bridgewater, NJ 08807

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–21626 Filed 9–3–93; 8:45am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

[Dkt. C–3456]

DeMert & Dougherty, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an Illinois-based corporation, that manufactures and sells consumer hair-care products, from making unsubstantiated environmental representations about any product it markets, whether under its own name or a private label.

DATES: Complaint and Order issued August 17, 1993.[1]

FOR FURTHER INFORMATION CONTACT: C. Steven Baker or John Hallerud, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., suite 1437, Chicago, IL 60603. (312) 353–8156.

SUPPLEMENTARY INFORMATION: On Friday, April 9, 1993, there was published in the **Federal Register**, 58 FR 18402, a proposed consent agreement with analysis In the Matter of Health Management Resources Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 93–21662 Filed 9–3–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3455]

Health Management Resources Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Massachusetts-based marketer of very-low-calorie diet programs (rapid weight loss, modified fasting diets of 800 or fewer calories per day) from making false or unsubstantiated claims about health risks, weight loss, weight loss maintenance, acceptance of its program by the medical profession, or low success rates of other diet programs; and requires certain disclosures in conjunction with safety and weight loss maintenance claims in the future, and scientific evidence to back up comparison studies or claims of acceptance by the medical profession.

DATES: Complaint and Order issued August 17, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Renate Kinscheck, FTC/H–200, Washington, DC 20580, (202) 326–3283.

SUPPLEMENTARY INFORMATION: On Friday, April 9, 1993, there was published in the **Federal Register**, 58 FR 18402, a proposed consent agreement with analysis in the Matter of Health Management Resources Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 93–21663 Filed 9–3–93; 8:45 am]

BILLING CODE 6750–01–M

[File No. 922 3238]

OSRAM SYLVANIA Inc; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition. this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Massachusetts-based corporation from misrepresenting the light output, wattage, and energy cost savings of any of its light bulbs. The respondent would be required to disclose, whenever there are claims of electricity cost savings or any environmental benefits for its bulbs, that the bulbs produce less light than the bulbs to which they are compared. In addition, the respondent would be required to comply to certain provisions of the Commission's trade regulation rule regarding light bulbs.

DATES: Comments must be received on or before November 8, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston, FTC/S–4002, Washington, DC 20580. (202) 326–3153 or Phoebe Morse, Boston Regional Office, Federal Trade Commission, 10 Causeway St., room 1184, Boston, MA. 02222–1073. (617) 565–7240.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

File No. 922–3238.

In the matter of OSRAM SYLVANIA Inc., a corporation.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of OSRAM SYLVANIA Inc., a corporation, and it now appearing the OSRAM SYLVANIA Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between OSRAM SYLVANIA Inc., by its duly authorized officers and its attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent OSRAM SYLVANIA Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its offices and principal place of business located at 100 Endicott Street, Danvers, MA 01923.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint attached hereto.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

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statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access of Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint, or that the facts alleged in the attached draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definition

For purposes of this Order, the following definition shall apply:

"Light bulb" means any incandescent, halogen, fluorescent, par, or ellipsoidal lamp marketed to consumers, excluding lamps designed and promoted primarily for decorative applications, appliances, traffic signals, showcases, projectors, airport equipment, trains, and lamps such as color, rough service, and vibration service.

I

It is ordered that respondent OSRAM SYLVANIA Inc., its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any light bulb in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication:

A. That any such light bulb will provide the same amount of light as the light bulb to which it is compared;

B. The wattage of any such light bulb; and

C. The energy cost savings consumers can realize through the use of any such light bulb.

II

It is further ordered that respondent OSRAM SYLVANIA Inc., its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any light bulb in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such bulb will save energy, will lower consumers' energy costs, will conserve natural resources, or has some other benefit or advantage regarding its impact on the environment relative to any other bulb(s), when that benefit or advantage is attributable, in whole or in part, to the fact that such bulb provides fewer lumens than the bulb(s) to which it is compared, unless respondent discloses, clearly and prominently and in close proximity to the representation that such bulb provides less light than the light bulb(s) to which it is compared.

III

It is further ordered that with respect to claims covered by 16 CFR 409.1(d), compliance with said provision shall constitute compliance with this Order.

IV

It is further ordered that, if the Commission makes any changes in its Trade Regulation Rule relating to incandescent lamps, 16 CFR 409.1 *et seq.*, or issues any new regulation with respect to the labelling or marketing of light bulbs (as defined herein) that is in actual conflict with any requirement imposed by Paragraphs I and II of this Order, compliance by respondent with such regulation will not constitute a violation of any provision of this Order. As used herein, "actual conflict" shall mean that it is impossible for respondent to comply with both the regulations(s) and all or any part of Paragraph I or II of this Order. This paragraph shall not be deemed to limit respondent's right to petition for modification pursuant to any applicable statute or regulation.

V

It is further ordered that the provisions of this Order shall not apply to any label or labeling printed prior to the date of service of this order and shipped by respondent to distributors or retailers prior to one hundred twenty (120) days after the date of service of this Order.

VI

It is further ordered that respondent shall distribute a copy of this Order within sixty (60) days after service of this Order upon it to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation of labeling or the preparation or placement of advertisements or other such sales or promotional materials covered by this Order.

VII

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a

successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VIII

It is further ordered that respondent shall, within one hundred eighty (180) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent OSRAM SYLVANIA Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns the product labeling and advertising of OSRAM SYLVANIA's "Energy Saver" light bulbs, lower-wattage bulbs sold as energy and cost-saving replacements for "ordinary" light bulbs. According to the Commission's complaint, OSRAM SYLVANIA's labelling for its "Energy Saver" incandescent and ellipsoidal reflector light bulbs have falsely represented that these bulbs provide the same light output (measured in "lumens") as the higher wattage bulbs they are designed to replace. The complaint also alleges that the "Energy Saver" bulbs will help save energy, lower consumers' electricity costs, and conserve natural resources, but failed adequately to disclose that the "Energy Saver" bulbs provide less light. This failure to disclose is alleged to be deceptive.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires the respondent to cease misrepresenting: (1) That any of its light bulbs (with the exception of certain specialized and decorator bulbs) provide the same amount of light as other light bulbs to which they are compared; (2) the wattage of any such light bulbs; and (3) the energy cost savings consumers can realize through the use of any such light bulbs.

Part II of the order requires OSRM SYLVANIA to affirmatively disclose the lower light output of any bulb for which it claims cost or energy savings or environmental benefits or advantages compared to other bulbs if these benefits or advantages are the result of such lower light output.

Part III of the Order provides that, with respect to claims made for OSRAM SYLVANIA's "long life" bulbs that are subject to certain provisions of the Commission's trade regulation rule regarding light bulbs, compliance with the rule will be deemed to be compliance with the order.

Part IV of the order provides that, if the Commission makes any changes in its trade regulation rule regarding light bulbs or issues any new regulations with regard to the labelling or marketing of light bulbs that create a conflict with Parts I and II of the order such that respondent cannot comply with both the regulations and the order, compliance with the regulations will not be deemed a violation of the order.

Part V provides that OSRAM SYLVANIA may deplete its existing stock of old "Energy Saver" packages within 120 days after service of the order.

Parts VI–VIII of the order are standard provisions requiring OSRAM SYLVANIA to distribute copies of the order to company personnel, notify the Commission of changes in corporate structure, and file reports setting forth its compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 93–21664 Filed 9–3–93; 8:45 am]

BILLING CODE 6750–01

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that The Public Health Service's Office of Research Integrity (ORI) has issued final findings of scientific misconduct and has implemented administrative actions in the following case:

Fumihiko Sugata, M.D., National Institute of Allergy and Infectious Diseases (NIAID), National Institutes of Health (NIH). An inquiry conducted by NIAID and a subsequent investigation conducted by the Office of Research Integrity (ORI) found that Dr. Sugata, a Fogarty Visiting Scientist in the Laboratory of Infectious Diseases at the NIAID, had fabricated data in molecular biological research on the hepatitis virus. The inquiry and investigation found that there was no scintillation counter printout to support quantitative scintillation count data for one experiment recorded in Dr. Sugata's notebook. Dr. Sugata admitted that he had constructed the data from rough estimates based on autoradiograms, rather than from an actual scintillation counter run. He explained that he was under pressure from his professor in Japan to publish scientific papers, and that when he ran out of scintillation fluid he did not want to delay his project for the two or three weeks necessary to replenish the stock of fluid. The ORI conducted that the fabrication of data constituted scientific misconduct. Dr. Sugata has signed an agreement with the ORI that he will exclude himself for a two-year period beginning September 1, 1993 from any Federal grants or contracts, and from serving on any Public Health Service advisory committees for a three-year period beginning on that date. Dr. Sugata also agreed that any applications for PHS support that he submits from September 1, 1995 to August 31, 1996 will be certified as to accuracy and reliability. The fabricated data did not appear in any scientific publications.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 301 443–5330.

Lyle W. Bivens,

Acting Director, Office of Research Integrity.

[FR Doc. 93–21667 Filed 9–3–93; 8:45 am]

BILLING CODE 4160–17–M

Centers for Disease Control and Prevention

[Program Announcement 343]

Evaluation of Human Immunodeficiency Virus (HIV) Infection Reporting Systems

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for a competitive cooperative

agreement program to evaluate the uses of HIV infection reporting systems for epidemiologic monitoring and to evaluate their public health impact on programs that provide HIV prevention, medical, and social services for HIV infected children, adolescents, and adults.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (For ordering a copy of Healthy People 2000, see the section **Where To Obtain Additional Information**.)

Authority

These cooperative agreements are authorized under Sections 301(a) and 311 of the Public Health Service Act [42 U.S.C. 241(a) and 243], as amended. Applicable program regulations are found in 42 CFR part 52, Grants for Research Projects.

Eligible Applicants

Assistance will be provided only to official public health agencies of states and their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and the following cities and county only: the cities of Chicago, Houston, Philadelphia, New York, San Francisco, and the County of Los Angeles.

Availability of Funds

Approximately $1,300,000 is available in FY 1993 to fund four to six awards. It is expected that the average award will be $250,000, ranging from $100,000 to $300,000. It is expected that the awards will begin on or about September 30, 1993, and will be for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within a project period will be based on satisfactory progress and the availability of funds.

Purpose

The purpose of these awards is to assist state/local health departments in evaluating HIV infection reporting systems (named, anonymous, or other alternatives) for (1) their usefulness in epidemiologic Monitoring, (2) their ability to link HIV-infected individuals to prevention, medical, and social support services, and (3) the impact of HIV testing and reporting policies and options on the willingness of persons to seek testing services. Named reporting systems are those which require HIV infection reporting by name. Anonymous reporting does not require a name or unique identifier which would allow the elimination of duplicate reports. Other alternatives to named or anonymous reporting use a unique identifier or other system to eliminate duplicate reports.

Program Requirements

In conducting activities to achieve the purpose of this program, recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Implement methods for evaluating the three aspects of HIV infection reporting systems listed above. This evaluation should include the impact of the surveillance system on persons in all demographic (age, race/ethnicity and sex) and transmission categories. Applicants may evaluate either named or alternative systems alone or may compare named and alternative systems. Examples of activities for each aspect include:

Epidemiologic Monitoring

- Assess the completeness and timeliness of reporting, the system's ability to eliminate duplicate reports, the validity of HIV infection report information, the system's ability to facilitate follow-up investigations, and the impact of the reporting system on AIDS surveillance (e.g., does HIV reporting affect the timeliness and completeness of AIDS case reporting?).
- Assess the epidemiologic usefulness of HIV infection reporting data relative to data obtained through other locally available surveillance systems (e.g., AIDS surveillance and HIV seroprevalence surveys).

Referrals to Therapy and Preventive Services

- Determine the proportion of persons who were referred and received care as a result of health department follow-up initiated by a positive HIV infection report, by source of report (e.g., physician, counseling and testing site, laboratory, community-based organization).
- Evaluate persons and families (in the case of HIV infected children) to determine if family members and other close contacts have been offered counseling and testing and medical/social support services.
- Describe ways that HIV-infected persons are linked to early intervention services following a diagnosis of HIV infection and how HIV infection reporting affects this process. This information will be used to compare the uses of HIV infection reporting in different sites.

Impact on Persons' Willingness To Access Testing and Other Services

- Assess perceptions and attitudes of health care providers and persons seeking HIV testing and related medical services concerning testing options (e.g. named, anonymous, or other alternatives) and reporting requirements.
- Evaluate trends in HIV counseling and testing and reporting by type (named, anonymous, or other alternative) and by test site, (e.g., public, private, out-of-state testing services,), in relation to changes in policy, especially in areas that have recently adopted named HIV infection reporting.

2. Involve established community groups that have the trust of the affected populations in developing the study protocol and in implementing and evaluating the study. Their participation can improve study planning and implementation, and increase community acceptance of the study outcomes.

3. Participate in CDC-sponsored national planning and implementation meetings to develop a core standardized protocol to be used by all participants for the evaluation of HIV surveillance. In addition, sites may identify additional evaluation priorities related to HIV infection surveillance. Participation will be supported through travel funds awarded in the cooperative agreement.

4. Participants using named HIV infection reporting will be required to report HIV infection cases (without identifiers) to CDC using the CDC software and HIV/AIDS report forms (or facsimiles that include all data elements in the CDC standardized report form). Those with alternatives to named reporting systems are encouraged to use the CDC software and forms whenever possible. Otherwise, data should be submitted to CDC in a compatible form. However, any data submitted to CDC should not have any personal identifier information. Additional data collection procedures and forms may be developed to supplement data collected by the HIV/AIDS surveillance report form. In addition, participants may collect information specific to local needs.

5. Develop and share with CDC a data base tailored to the individual project. In order to protect the confidentiality of persons with HIV infection or AIDS included within it, the recipient must have policies that permit disclosure of identifiable information from the database only to those who have need for it in conducting the evaluation and the underlying program activities. This data base must be protected from involuntary disclosure by state law or regulation.

6. Analyze data and present results.

B. CDC Activities

1. Assist in designing and conducting the projects, including providing technical guidance in developing study protocols and data collection forms, training and pretesting as necessary, and designing of data management systems.

2. Identify a co-collaborator from a private, academic, or other non-governmental organization to assist with protocol development and oversight of the project, especially with activities related to evaluating the impact of HIV testing policies and reporting systems on persons' willingness to access testing and other services.

3. Compile and analyze data from recipients and present aggregate results.

Evaluation Criteria

Applications will be reviewed and evaluated on the following criteria:

A. The quality of plans to develop and implement the evaluation project, including how potential surveillance data (e.g., HIV test results, clinical and demographic information) will be identified, accessed, and used, and how the confidentiality of all surveillance data will be protected. The applicant should demonstrate the ability to examine the impact of the reporting system on all demographic and transmission categories. (15 points)

B. Evidence of the applicant's ability to use the HIV infection reporting system for epidemiologic monitoring, including plans to evaluate completeness of reporting, validity of data, and impact on AIDS surveillance. (15 points)

C. Evidence of the applicant's ability to evaluate the use of the HIV infection reporting system to link HIV-infected persons with prevention, medical, and support services, including a source of client-level data (e.g. HRSA's Uniform Reporting System) describing people who are receiving health and social support services and a plan to provide such referrals. (15 points)

D. Evidence of the applicant's ability to evaluate the impact of perceptions and attitudes about testing, confidentiality, and discrimination on the effectiveness of the reporting system for public health monitoring, including how the applicant will avoid biases in sampling persons when assessing perceptions and attitudes about testing options and reporting requirements. (15 points)

E. The quality of plans to involve affected communities in planning and implementing the evaluation project objectives. Letters of support from community organizations are encouraged. (10 points)

F. The applicant's understanding of the objectives of the evaluation and the applicant's ability, willingness, and/or need to cooperate in a study with CDC and other participants, including willingness to use a core standardized study protocol developed collaboratively by participating institutions. (10 points)

G. The applicant's current activities in HIV reporting and AIDS surveillance and how they will be applied to achieving the objectives of the evaluation study. Applicant must demonstrate adequate sample size to carry out the activities described above in B, C, and D and provide examples of hypotheses to be tested. (10 points)

H. How the project will be administered, including the size, qualifications, and time allocation of the proposed staff; and the facilities to be used during the evaluation study and a schedule for accomplishing the activities of the evaluation study. (10 points)

I. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of the funds. (not scored)

Funding Priorities

Sites that reported more than 500 AIDS cases in 1992 (as reported in the CDC HIV/AIDS Surveillance Report, Year-End Edition, published in February 1992) will be given priority for funding. In addition, priority will be given to sites that, as a group, represent at least two of the following categories: (1) sites that implemented a named HIV infection reporting system prior to January 1, 1993 by law or regulation; (2) sites that have recently (since January 1, 1993) implemented named HIV infection reporting by law or regulation; and (3) sites that have implemented or proposed an anonymous or alternative reporting system (which may be in addition to a named reporting system) that can be evaluated for its ability to eliminate duplicate reports.

Public comments are not being solicited regarding Funding Priority as time does not permit solicitation and review prior to the funding date.

Executive Order 12372

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Mail Stop E–18, Atlanta, Georgia 30305, no later than 60 days after the application deadline. All correspondence should reference this Announcement by title or number. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.944.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review

committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

HIV/AIDS Requirements

Recipients must comply with the document entitled "Content of HIV/AIDS-related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions," June 1992, a copy of which is included in the application kit.

In complying with the requirements for a program review panel, recipients are encouraged to use an existing program review panel, such as the one created by the state health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a governmental health department consistent with the Content guidelines. The names of the review panel members must be listed on the Assurance of Compliance Form CDC 0.1113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

Application Submission and Deadline

The program announcement and application kit were sent to all eligible applicants in June 1993.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Nealean K. Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Mail Stop E–18, Atlanta, Georgia 30305, (404) 842–6508. Programmatic technical assistance may be obtained from Dale Hu, M.D., M.P.H., Division of HIV/AIDS, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mail Stop E–47, Atlanta, Georgia 30333, (404) 639–2050.

Please refer to Announcement Number 343 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the **Introduction** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (202) 783–3238.

Dated: August 30, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–21643 Filed 9–3–93; 8:45 am]

BILLING CODE 4160–18–P

Board of Scientific Counselors, National Institute for Occupational Safety and Health: Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 1 p.m.–5p.m., September 22, 1993; 8:30 a.m.–5 p.m., September 23, 1993.

Place: Robert A. Taft Laboratories, Taft Auditorium, 4674 Columbia Parkway, Cincinnati, Ohio 45226.

Status: Open to the public, limited only by the space available.

Purpose: The board reviews research activities to provide guidance on the quality, timeliness, and efficacy of the Institute's programs.

Matters to be Discussed: The agenda will include the NIOSH Acting Director's report; legislative and budget update; discussion of recent reviews of research activities, and the NIOSH Quality Improvement Program. Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Roy M. Fleming, Sc.D., Executive Secretary, Office of the Director, NIOSH, CDC, 1600 Clifton Road, NE., Mailstop D–30, Atlanta, Georgia 30333, telephone 404/639–3343.

Dated: August 31, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination; Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–21644 Filed 9–3–93; 8:45 am]

BILLING CODE 4160–19–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Division of Workplace Programs, room 9–A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800–541–4931/205–263–5745
Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257
American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703–802–6900
Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, suite 250, Las Vegas, NV 89119–5412, 702–733–7866
Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787
Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)
Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016
Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900
Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810
Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020
Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412–488–7500
Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917
CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984
CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263
Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800–876–3652/417–836–3093
CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137–3054, 800–338–0166 (outside OH)/800–362–8913 (inside OH) (name changed: formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.)
Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800–638–1100 (name changed: formerly Chem-Bio Corporation; CBC Clinilab)
Damon Clinical Laboratories, 8300 Esters Blvd., suite 900, Irving, TX 75063, 214–929–0535
Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171
Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511–2597, 804–444–8089 ext. 317
Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Drive, Valdosta, Georgia 31604, 912–244–4468
Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006
Drug Labs of Texas, 15201 I–10 East, suite 125, Channelview, TX 77530, 713–457–3784
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310
ElSohly Laboratories, Inc., 1215–1/2 Jackson Ave., Oxford, MS 38655, 601–236–2609
Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800–627–8200 (name change: formerly Alpha Medical Laboratory, Inc.)
General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267
Harrison & Associates Forensic Laboratories, 606 N. Weatherford, P.O. Box 2788, Midland, TX 79702, 800–725–3784/915–687–6877
HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800–328–4142 (inside MI)/800–225–9414 (outside MI)
Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, suite 354, Houston, TX 77030 713–793–6080,
IHC Laboratory Services Forensic Toxicology, 930 North 500 West, suite E, Provo, UT 84604, 800–967–9766
Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, Ohio 45229, 513–569–2051
Laboratory of Pathology of Seattle, Inc., 1229 Madison St., suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672
Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961
Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715–389–3734/800–222–5835
Mayo Medical Laboratories, 200 SW First Street, Rochester, MN 55905, 507–284–3631
Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200
MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515
Medical Science Laboratories, 11020 W. Plank Court, Wauwatosa, WI 53226, 414–476–3400
MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 6160 Variel Avenue, Woodland Hills, CA 91367, 818–226–4373 (name changed: formerly Laboratory Specialists, Inc.; Abused Drug Laboratories; moved 12/21/92)
MEDTOX Bio-Analytical, 8600 West Catalpa Avenue, Chicago, IL 60656, 800–872–5221/312–714–9191 (address, phone, and name changed on 5/17/93: formerly MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.; Bio-Analytical Technologies)
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800–832–3244/612–636–7466
Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317–929–3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199
MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888
MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000
MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191
National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410–536–1485 (name changed: formerly Maryland Medical Laboratory, Inc.)
National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (name changed: formerly Med Arts Lab)
National Health Laboratories Incorporated, 5601 Oberlin Drive, suite 100, San Diego, CA 92121, 619–455–1221
National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, 919–760–4620/800–334–8627 (outside NC)/800–642–0894 (inside NC)
National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016–2843, 908–272–2511
National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522
National Health Laboratories Incorporated, 13900 Park Center

Road, Herndon, VA 22071, 703–742–3100
National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250
Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Road, San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (name changed: formerly Nichols Institute)
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Occupational Toxicology Laboratories, Inc., 2002 20th Street, suite 204A, Kenner, LA 70062, 504–465–0751
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134
Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708–480–4680
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352
PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294 (Formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070/800–821–3627, (Formerly: Physicians Reference Laboratory Toxicology Laboratory)
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600/800–882–7272
Precision Analytical Laboratories, Inc., 13300 Blanco Road, suite #150, San Antonio, TX 78216, 210–493–3211
Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400
Resource One, Inc., Seven Pointe Circle, Greenville, SC 29615, 803–233–5639
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–4170
Roche Biomedical Laboratories, 1957 Lakeside Parkway, suite 542, Tucker, GA 30084, 404–939–4811
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986
Saint Joseph Hospital Toxicology Laboratory, 601 N. 30th Street, Omaha, NE 68131–2197, 402–449–4940
Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, suite 500, Albuquerque, NM 87102, 505–848–8800
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010 (name changed: formerly International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314–567–3905
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (name changed: formerly SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Road, suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260

No laboratories withdrew from the National Laboratory Certification Program during August 1993.

Patricia S. Bransford,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–21546 Filed 9–3–93; 8:45 am]

BILLING CODE 4160–20–U

Centers for Disease Control and Prevention

[Announcement Number 336]

Developing Prostate Cancer Early Detection Programs

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for cooperative agreements to initiate projects to document, describe, and define current practices and perceptions regarding prostate cancer screening in the United States and to design and plan for effective early detection programs. Priority target populations are men aged 50–75 years, particularly black men.

Because of the nature and scope of activities, CDC envisions collaboration with appropriate prostate cancer service providers, service agencies, and relevant organizations as an integral part of, and essential to, the development of quality prostate cancer screening programs.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and to improve the quality of life. This announcement is related to the priority area of Cancer. (For ordering a copy of Healthy People 2000, see the section **Where to Obtain Additional Information.**)

Authority

This program is authorized under sections 301(a) and 317(k)(3) of the Public Health Service Act, as amended [42 U.S.C. 241(a), 247b(k)(3)]. Applicable program regulations are found in 42 CFR Part 51b—Project Grants for Preventive Health Services.

Eligible Applicants

Assistance will be provided only to the official health departments of states or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the

Marshall Islands, the Republic of Palau, and federally-recognized Indian tribal governments.

This announcement is limited to states because FY 1993 Congressional appropriations language mandated that CDC "initiate planning grants to up to four states to design screening projects for prostate cancer * * *."

Availability of Funds

Approximately $500,000 is available in FY 1993 to fund approximately 2 awards. It is expected that the average award will be $250,000 ranging from $200,000 to $300,000. It is expected that the awards will begin on or about September 30, 1993, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds. There are no matching or cost participation requirements for the first budget period. If future funding is allocated under new authorizing legislation, matching and cost participation requirements may be necessary.

Purpose

The purpose of these awards is to obtain critical information that may be used to design prostate cancer early detection programs. It is not the purpose of these awards to recruit additional men for prostate cancer screening, but to assess groups of men, some who are screened and some who are not, as part of their usual, routine medical care.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Document, describe, and define current practices and perceptions regarding the early detection and treatment of prostate cancer in projects that will lead to the design of a screening program.

2. Coordinate with appropriate community-based health providers and minority organizations that deliver services and interventions to the target populations, for example, community health centers and the Department of Veterans Affairs.

3. Collaborate with Health Promotion and Disease Prevention Research Centers, American Cancer Society, NCI-designated Comprehensive Cancer Centers, and/or academic institutions in the design and evaluation of project activities so that findings can be used to improve and facilitate national efforts.

4. Collaborate with CDC in the design, analysis, and evaluation of the project and the dissemination of the findings and recommendations.

5. Use funds to support personnel and purchase supplies and services directly related to planning, organizing, and conducting evaluation projects. Supported activities and procedures must be directly related to the purpose of this program. Funds may not be used to pay for screening tests or to support the evaluation of existing prostate cancer early detection prevention activities, except under the terms and activities defined by the Program Announcement in Item H, the Application Content section.

B. CDC Activities

1. Provide consultation on the design of survey and data collection instruments, protocols, evaluation and management of the project.

2. Coordinate activities among the major partners (e.g., the recipients, Health Promotion and Disease Prevention Research Centers, American Cancer Society, and the NCI-designated Comprehensive Cancer Centers).

3. Collaborate in data collection, analysis, and evaluation of project activities.

4. Collaborate with the National Cancer Institute to provide up-to-date scientific information regarding prostate cancer early detection.

5. Collaborate in the transfer and dissemination of information, methods, and findings developed in these projects to other prevention programs and efforts.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria: (Maximum 100 points).

A. *Experience and Background:* The extent to which the applicant demonstrates the ability to collect and analyze quantitative and qualitative data, use evaluation methodology, and perform behavioral science research related to prostate cancer or other cancers. (15 points)

B. *Target Populations and Communities:* The adequacy of the quantitative and demographic description of the geographic areas, communities, and targeted populations, and the degree to which the applicant demonstrates relevant experience and ability to work with the targeted populations and communities. (10 points)

C. *Proposed Objectives:* The appropriateness of the proposed activities that include specific, measurable, time-phased, realistic outcome and process objectives, and of the evaluation plan for years 1, 2, and 3. (10 points)

D. *Project Management and Staffing Plan:* The extent to which proposed staffing, organizational structure, staff experience and background, and job descriptions and curricula vitae for proposed and current staff indicate ability to carry-out the purposes of the program. (10 points)

E. *Proposed Implementation Schedule:* The extent to which the major steps required for project implementation are described and the project timetable displays dates for the accomplishment of specific project activities. (10 points)

F. *Collaboration:* The extent to which the applicant describes past, current, and proposed collaboration with organizations relevant to the selected targeted population, to include Health Promotion and Disease Prevention Research Centers, the American Cancer Society and other voluntary organizations, NCI-designated Comprehensive Cancer Centers, and/or academic research institutions. (20 points)

G. *Methodology:* The extent to which the proposed methodology for years 1, 2, and 3 is described and incorporates components cited in Item H, Application Content, of the Program Announcement. (25 points)

H. *Budget:* The extent to which the applicant provides a detailed budget and justification consistent with the stated objectives and program activities. (Not Scored)

Funding Priorities

Priority will be given to applications that target black men or men aged 50–75 years. Public comment regarding funding priorities is not being solicited due to time constraints.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state

process. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305. The due date for state process recommendations is 30 days after the application deadline date for new awards (the appropriations for these awards were received late in the fiscal year and would not allow for an application receipt date which would accommodate the 60 day state recommendation process within FY 1993). CDC does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Public Health Systems Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.945, Assistance Program for Chronic Disease Prevention and Control.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadline

The program announcement and application kit were sent to all eligible applicants in June 1993.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–18, Atlanta, Georgia 30305, (404) 842–6595.

Programmatic technical assistance may be obtained from Daniel S. Miller, M.D., M.P.H., Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Hwy., NE., Mailstop K–55, Atlanta, Georgia 30341–3724, telephone (404) 488–4227.

Please refer to Announcement Number 336 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: August 30, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–21642 Filed 9–3–93; 8:45 am]

BILLING CODE 4160–18–P

National Institutes of Health

National Cancer Institute; Meetings of the National Cancer Advisory Board and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, and its Subcommittees on September 20–21, 1993. The full Board will meet in Conference Room 10, 6th Floor, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. Except as noted below, the meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

A portion of the board meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and roster of the Board members, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Carole Frank, Committee Management Specialist, at 301/496–5708 in advance of the meeting.

Name of Committee: National Cancer Advisory Board

Executive Secretary: Mrs. Barbara Bynum, Executive Plaza North, room 600A, Bethesda, MD 20892; (301) 496–5147

Dates of Meeting: September 20–21, 1993

Place of Meeting: Building 31C, Conference Room 10

Open: September 20—8 a.m. to approximately 12 noon

Agenda: Report on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; and Scientific Presentations.

Closed: September 20, 1993—3 p.m. to recess

Agenda: For review and discussion of individual grant applications.

Open: September 21—8 a.m. to adjournment

Agenda: Policy and Scientific Presentations, Subcommittee Reports; and New Business.

Name of Committee: Subcommittee on Planning and Budget

Executive Secretary: Ms. Cherie Nichols, Building 31, room 11A19, Bethesda, MD 20892; (301) 496–5515

Date of Meeting: September 20, 1993

Place of Meeting: Building 31C, Conference Room 7

Open: 12 noon to 1 p.m.

Agenda: To discuss the By-Pass budget.

Name of Committee: Subcommittee on Minority Health, Research and Training

Executive Secretary:

Dr. Lemuel Evans, Executive Plaza North, room 620C, Bethesda, MD 20892; (301) 496–7344

Dr. Vincent Cairoli, Executive Plaza North, room 520, Bethesda, MD 20892; (301) 496–8580

Date of Meeting: September 20, 1993

Place of Meeting: Building 31C, Conference Room 2C15

Open: 12 noon to 1 p.m.

Agenda: To discuss issues related to minority research and training.

Name of Committee: Subcommittee on Program Project Task Force

Executive Secretary: Mrs. Barbara Bynum, Executive Plaza North, 600A, Bethesda, MD 20892; (301) 496–5147

Date of Meeting: September 20, 1993

Place of Meeting: Building 31C, Conference Room 7

Open: 1 p.m. to 2 p.m.

Agenda: To discuss the PO1 Charter, possible ranking paradigms, site visit policy and other issues.

Name of Committee: Subcommittee on Women's Health and Cancer

Executive Secretary: Ms. Iris Schneider, Building 31, room 11A48, Bethesda, MD 20892; (301) 496–5534

Date of Meeting: September 20, 1993

Place of Meeting: Building 31C, Conference Room 7

Open: 2 p.m. to 3 p.m.

Agenda: To discuss NCI research plans for women with cancer.

Name of Committee: Subcommittee on Information and Cancer Control

Executive Secretary: Mr. Paul Van Nevel, Building 31, room 10A31, Bethesda, MD 20892; (301) 496–6631

Date of Meeting: September 20, 1993

Place of Meeting: Building 31C, Conference Room 8

Open: 12 noon to 2 p.m.

Agenda: To discuss cancer control issues.

Name of Committee: Subcommittee on Interactions with Voluntary Organizations

Executive Secretary: Mr. Paul Van Nevel, Building 31, room 10A31, Bethesda, MD 20892; (301) 496–6631

Date of Meeting: September 20, 1993

Place of Meeting: Building 31C, Conference Room 7

Open: Immediately following the recess of the NCAB meeting.

Agenda: To discuss issues related to outside organizations.

Name of Committee: Subcommittee on Environmental Carcinogenesis

Executive Secretary: Dr. Richard Adamson, Building 31, room 11A03, Bethesda, MD 20892; (301) 496–6618

Date of Meeting: September 20, 1993

Place of Meeting: Building 31C, Conference Room 8

Open: 5 p.m. to 6 p.m.

Agenda: To discuss issues related to environmental carcinogenesis.

Name of Committee: Subcommittee on Cancer Centers

Executive Secretary: Dr. Brian Kimes, Executive Plaza North, room 300, Bethesda, MD 20892; (301) 496–8537

Date of Meeting: September 20, 1993

Place of Meeting: Building 31C, Conference Room 8

Open: 2 p.m. to 3 p.m.

Agenda: To discuss informational items.

Name of Committee: Subcommittee on Clinical Investigations

Executive Secretary: Dr. Bruce Chabner, Building 31, room 3A44, Bethesda, MD 20892; (301) 496–4291

Date of Meeting: September 20, 1993

Place of Meeting: Building 31C, Conference Room 10

Open: Immediately following the recess of the NCAB meeting.

Agenda: To discuss issues related to clinical trials.

Catalog of Federal Domestic Assistance Program Numbers: (93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: August 30, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–21648 Filed 9–3–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for November 1993.

These meetings will be open to the public to discuss administrative details relating to committee business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed thereafter in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, room 4A52, Bethesda, Maryland 20892, Telephone: 301–496–7301, FAX: 301–402–0224, will provide a summary of the meeting and a roster of committee members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations should contact Mrs. Ann Dieffenbach.

Substantive program information may be obtained from each scientific review administrator whose name, room number, and telephone number are listed below each committee.

Name of Committee: Cellular and Molecular Basis of Disease Review Committee

Scientific Review Administrator: Dr. Carole Latker, room 9A10, Westwood Building, Telephone: 301–594–7758

Dates of Meeting: November 4, 1993

Place of Meeting: Embassy Suites, 4300 Military Road, NW., Washington, D.C. 20015

Open: November 4, 8:30 a.m.–9:30 a.m.

Closed: November 4, 9:30 a.m.–adjournment.

Name of Committee: Genetic Basis of Disease Review Committee

Scientific Review Administrator: Dr. Arthur Zachary, room 9A14, Westwood Building, Telephone: 301–594–7758

Dates of Meeting: November 8, 1993

Place of Meeting: Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20892

Open: November 8, 8:30 a.m.–9:30 a.m.

Closed: November 8, 9:30 a.m.–adjournment.

Name of Committee: Minority Access to Research Careers Review Subcommittee

Scientific Review Administrator: Dr. Richard Martinez, room 9A18, Westwood Building, Telephone: 301–594–7803

Dates of Meeting: November 8–9, 1993

Place of Meeting: Building 31C, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892

Open: November 8, 8:30 a.m.–9:30 a.m.

Closed: November 8, 9:30 a.m.–5 p.m. November 9, 8:30 a.m.–adjournment.

Name of Committee: Pharmacological Sciences Review Committee

Scientific Review Administrator: Dr. Irene Glowinski, room 9A18, Westwood Building, Telephone: 301–594–7741

Dates of Meeting: November 12, 1993

Place of Meeting: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815

Open: November 12, 8:30 a.m.–9:30 a.m.

Closed: November 12, 9:30 a.m.–adjournment.

Name of Committee: Minority Biomedical Research Support Review Subcommittee

Scientific Review Administrator: Dr. Ernest Marquez, room 9A13, Westwood Building, Telephone: 301–594–7708

Dates of Meeting: November 18–19, 1993

Place of Meeting: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815

Open: November 18, 8:30 a.m.–9:30 a.m.

Closed: November 18, 9:30 a.m.–5 p.m. November 19, 8:30 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.859, 93.862, 93.863, 93.880.

National Institute of General Medical Sciences, National Institutes of Health)

Dated: August 30, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–21649 Filed 9–3–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the review committees of the National Institute of Mental Health for October 1993.

These meetings will be open to the public as indicated below for the discussion of NIMH policy issues and will include current administrative, legislative, and program developments.

All meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Area Code 301, 443–4333, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the contact person indicated.

Committee Name: Mental Disorders of Aging Review Committee.

Contact: Phyllis L. Zusman, room 9C–02, Parklawn Building, Telephone: 301, 443–1340.

Meeting Date: October 6–8, 1993.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Open: October 6, 1993, 9 a.m.–10 a.m.

Closed: October 6, 1993, 10 a.m.–5 p.m.; October 7, 1993, 9 a.m.–5 p.m.; October 8, 1993, 9 a.m.–adjournment.

Committee Name: Psychobiology and Behavior Review Committee.

Contact: William H. Radcliffe, III, room 9C–18, Parklawn Building, Telephone: 301, 443–3944.

Meeting Date: October 7–8, 1993.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Open: October 7, 1993, 8:30 a.m.–9:30 a.m.

Closed: October 7, 1993, 9:30 a.m.–5 p.m.; October 8, 1993, 8:30 a.m.–adjournment.

Committee Name: Behavioral Neuroscience Review Committee.

Contact: Wm. Gregory Zimmerman, room 9C–18, Parklawn Building, Telephone: 301, 443–3936.

Meeting Date: October 7–8, 1993.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Open: October 7, 1993, 8:30 a.m.–9:30 a.m.

Closed: October 7, 1993, 9:30 a.m.–5 p.m.; October 8, 1993, 8:30 a.m.–adjournment.

Committee Name: Perception and Cognition Review Committee.

Contact: Phyllis D. Artis, room 9C–15, Parklawn Building, Telephone: 301, 443–6470.

Meeting Date: October 7–9, 1993.

Place: The Hampshire Hotel, 1310 New Hampshire Avenue NW., Washington, DC 20036.

Open: October 7, 1993, 9 a.m.–10 a.m.

Closed: October 7, 1993, 10 a.m.–5 p.m.; October 8, 1993, 9 a.m.–5 p.m.; October 9, 1993, 9 a.m.–adjournment.

Committee Name: Clinical Psychopathology Review Committee.

Contact: Gwen Artis, room 9C–02, Parklawn Building, Telephone: 301, 443–4868.

Meeting Date: October 13–15, 1993.

Place: Omni Georgetown Hotel, 2121 P Street NW., Washington, DC 20037.

Open: October 13, 1993, 9 a.m.–10 a.m.

Closed: October 13, 1993, 10 a.m.–5 p.m.; October 14, 1993, 9 a.m.–5 p.m.; October 15, 1993, 9 a.m.–adjournment.

Committee Name: Clinical Subcommittee, Mental Health Special Projects Review Committee.

Contact: Phyllis L. Zusman, room 9C–02, Parklawn Building, Telephone: 301, 443–1340.

Meeting Date: October 13–15, 1993.

Place: Chesapeake Room, 5600 Fishers Lane, Rockville, MD 20857.

Open: October 13, 1993, 9 a.m.–10 a.m.

Closed: October 13, 1993, 10 a.m.–5 p.m.; October 14, 1993, 9 a.m.–5 p.m.; October 15, 1993, 9 a.m.–adjournment.

Committee Name: Services Research Review Committee.

Contact: Francis Smith, room 9C–02, Parklawn Building, Telephone: 301, 443–4846.

Meeting Date: October 13–15, 1993.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Open: October 13, 1993, 9 a.m.–10 a.m.

Closed: October 13, 1993, 10 a.m.–5 p.m.; October 14, 1993, 9 a.m.–5 p.m.; October 15, 1993, 9 a.m.–adjournment.

Committee Name: Violence and Traumatic Stress Review Committee.

Contact: Phyllis D. Artis, room 9C–15, Parklawn Building, Telephone: 301, 443–6470.

Meeting Date: October 13–15, 1993.

Place: The Hampshire Hotel, 1310 New Hampshire Avenue, NW., Washington, DC 20036.

Open: October 13, 1993, 9 a.m.–10 a.m.

Closed: October 13, 1993, 10 a.m.–5 p.m.; October 14, 1993, 9 a.m.–5 p.m.; October 15, 1993, 9 a.m.–adjournment.

Committee Name: Cognitive Functional Neuroscience Review Committee.

Contact: William H. Radcliffe, room 9C–18, Parklawn Building, Telephone: 301, 443–3857.

Meeting Date: October 14–15, 1993.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Open: October 14, 1993, 8:30 a.m.–9:30 a.m.

Closed: October 14, 1993, 9:30 a.m.–5 p.m.; October 15, 1993, 8:30 a.m.–adjournment.

Committee Name: Molecular, Cellular, and Developmental Neurobiology Review Committee.

Contact: Katie O'Donnell, room 9C–18, Parklawn Building, Telephone: 301, 443–3936.

Meeting Date: October 18–19, 1993.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Open: October 18, 1993, 8 a.m.–9 a.m.

Closed: October 18, 1993, 9 a.m.–5 p.m.; October 19, 1993, 8 a.m.–adjournment.

Committee Name: Health Behavior and Prevention Review Committee.

Contact: Monica F. Woodfork, room 9C–05, Parklawn Building, Telephone: 301, 443–4843.

Meeting Date: October 18–20, 1993.

Place: The Hampshire Hotel, 1310 New Hampshire Avenue, NW., Washington, DC 20036.

Open: October 18, 1993, 9 a.m.–10 a.m.

Closed: October 18, 1993, 10 a.m.–5 p.m.; October 19, 1993, 9 a.m.–5 p.m.; October 20, 1993, 9 a.m.–adjournment.

Committee Name: Clinical Subcommittee, Mental Health Special Projects Review Committee.

Contact: Phyllis L. Zusman, room 9C–02, Parklawn Building, Telephone: 301, 443–1340.

Meeting Date: October 19–21, 1993.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Open: October 19, 1993, 9 a.m.–10 a.m.

Closed: October 19, 1993, 10 a.m.–5 p.m.; October 20, 1993, 9 a.m.–5 p.m.; October 21, 1993, 9 a.m.–adjournment.

Committee Name: Biological Psychopathology Review Committee.

Contact: Shirley H. Maltz, room 9C–18, Parklawn Building, Telephone: 301, 443–3936.

Meeting Date: October 20–21, 1993.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Open: October 20, 1993, 9 a.m.–10 a.m.

Closed: October 20, 1993, 10 a.m.–5 p.m.; October 21, 1993, 9 a.m.–adjournment.

Committee Name: Child/Adolescent Risk and Prevention Review Committee.

Contact: Phyllis D. Artis, room 9C–15, Parklawn Building, Telephone: 301, 443–6470.

Meeting Date: October 21-23, 1993.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Open: October 21, 1993, 8:30 a.m.–9:30 a.m.

Closed: October 21, 1993, 9:30 a.m.–5 p.m.; October 22, 1993, 8:30 a.m.–5 p.m.; October 23, 1993, 8:30 a.m.–adjournment.

Committee Name: Extramural Science Advisory Board.

Meeting Date: October 25–26, 1993.
Place: Conference Room 6, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Open: October 25, 8:30–5; October 26, 8:30–adjournment.
Contact: Andrea Baruchin, Ph.D., room 17C–26, Parklawn Building, Telephone (301) 443–4335.

Committee Name: Mental Health Small Business Research Review Committee.
Contact: Frances H. Smith, room 9C–02, Parklawn Building, Telephone: 301, 443–4868.
Meeting Date: October 25–26, 1993.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Open: October 25, 1993, 9 a.m.–10 a.m.
Closed: October 25, 1993, 10 a.m.–5 p.m.; October 26, 1993, 9 a.m.–adjournment.

Committee Name: Behavioral Subcommittee, Mental Health Special Projects Review Committee.
Contact: Monica F. Woodfork, room 9C–05, Parklawn Building, Telephone : 301, 443–4843.
Meeting Date: October 25–26, 1993.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Open: October 25, 1993, 9 a.m.–10 a.m.
Closed: October 25, 1993, 10 a.m.–5 p.m.; October 26, 1993, 9 a.m.–adjournment.

Committee Name: Clinical Subcommittee, Mental Health Special Projects Review Committee.
Contact: Phyllis L. Zusman, room 9C–02, Parklawn Building, Telephone: 301, 443–1340.
Meeting Date: October 27–29, 1993.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Open: October 27, 1993, 9 a.m.–10 a.m.
Closed: October 27, 1993, 10 a.m.–5 p.m.; October 28, 1993, 9 a.m.–5 p.m.; October 29, 1993, 9 a.m.–adjournment.

Committee Name: Emotion and Personality Review Committee.
Contact: Sheri L. Schwartzback, room 9C–05, Parklawn Building, Telephone: 301, 443–4843.
Meeting Date: October 28–29, 1993.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Open: October 28, 1993, 8:30 a.m.–9 a.m.
Closed: October 28, 1993, 9 a.m.–5 p.m.; October 29, 1993, 8:30 a.m.–adjournment.

Committee Name: Treatment Assessment Review Committee.
Contact: Gwen Artis, room 9C–02, Parklawn Building, Telephone: 301, 443–4868.
Meeting Date: October 28–29, 1993.
Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.
Open: October 28, 1993, 8:30 a.m.–9:30 a.m.
Closed: October 28, 1993, 9:30 a.m.–5 p.m.; October 29, 1993, 8:30 a.m.–adjournment.

Committee Name: Social and Group Processes Review Committee.
Contact: Bernice R. Cherry, room 9C–15, Parklawn Building, Telephone: 301, 443–6470.
Meeting Date: October 28–30, 1993.
Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.
Open: October 28, 1993, 9 a.m.–10 a.m.
Closed: October 28, 1993, 10 a.m.–5 p.m.; October 29, 1993, 9 a.m.–5 p.m.; October 30, 1993, 9 a.m.–adjournment.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award)

Dated: August 30, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–21650 Filed 9–3–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke; Meeting

Pursuant to Public Law 92–463, notice is hereby given of meetings of committees of the National Institute of Neurological Disorders and Stroke (NINDS).

These meetings will be open to the public to discuss program planning, program accomplishments and special reports or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commerical property such as patentable materials, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary or the Scientific Review Administrator indicated. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary or the Scientific Review Administrator listed for the meeting.

Name of Committee: The Planning Subcommittee of the National Advisory Neurological Disorders and Stroke Council.
Date: September 22, 1993.
Place: National Institutes of Health, Bldg. 31, Conference Room 8A28, 9000 Rockville Pike, Bethesda, MD 20892.
Open: 1 p.m.–3 p.m.
Agenda: To discuss program planning and fiscal matters.
Closed: 3 p.m.–recess.
Agenda: To discuss specific grant applications.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.
Dates: September 23–24, 1993.
Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.
Open: September 23, 9 a.m.–1 p.m.
Agenda: A report by the Acting Director, NINDS, a report by the Special Assistant for Extramural Activities, NINDS, and a scientific presentation by a NINDS grantee.
Closed: September 23, 1 p.m.–recess; September 24, 8:30–adjournment.
Agenda: To review grant applications.
Executive Secretary: Constance W. Atwell, Ph.D., Special Assistant for Extramural Activities, NINDS, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–9248.

Name of Committee: Neurological Disorders Program Project Review A Committee.
Dates: October 27–29, 1993.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Open: October 27, 7:30 p.m.–8 p.m.
Agenda: Reports by the Scientific Review Administrator on Committee concerns.
Closed: October 27, 8 p.m.–recess; October 28, 8:30 a.m.–recess; October 29, 8:30 a.m.–adjournment.
Agenda: To review grant applications.
Scientific Review Administrator: Dr. Katherine Woodbury, Federal Building, room 9C–14, National Institutes of Health, Bethesda, MD 20892. Telephone: (301) 496–9223.

Name of Committee: Training Grant and Career Development Review Committee.
Dates: November 4–6, 1993.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Bethesda, MD 20814.
Open: November 4, 8 a.m.–8:30 a.m.
Agenda: Reports by the Scientific Review Administrator on Committee concerns.
Closed: November 4, 8:30 a.m.–recess; November 5, 8:30 a.m.–recess; November 6, 8 a.m.–adjournment.
Agenda: To review grant applications.
Scientific Review Administrator: Dr. Herbert Yellin, Federal Building, room 9C–14, National Institutes of Health, Bethesda, MD 20892. Telephone: (301) 496–9223.

Name of Committee: Neurological Disorders Program Project Review B Committee.
Dates: November 4–6, 1993.

Place: Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

Open: November 4, 7 p.m.–7:30 p.m.

Agenda: Reports by the Scientific Review Administrator on Committee concerns.

Closed: November 4, 7:30 p.m.–recess; November 5, 8:30 a.m.–recess; November 6, 8:30 a.m.–adjournment.

Agenda: To review grant applications.

Scientific Review Administrator: Dr. Paul Sheehy, Federal Building, room 9C–10, National Institutes of Health, Bethesda, MD 20892. Telephone: (301) 496–9223.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: August 30, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–21651 Filed 9–3–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Drug Abuse: Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council on Drug Abuse, National Institute on Drug Abuse on September 21–22, 1993, at the National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on September 21 from 9 a.m. to 1 p.m. and on September 22 from 9 a.m. to 5 p.m. for announcements and reports of administrative, legislative, and program developments in the drug abuse field.

In accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on September 21 from 1 p.m. to 5 p.m. for the review, discussion, and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A summary of the meeting and a roster of committee members may be obtained from Ms. Camilla L. Holland, NIDA Committee Management Officer, National Institute of Health, Parklawn Building, room 10–42, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443–2755).

Substantive program information may be obtained from Ms. Eleanor C. Friedenberg, room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301/443–2755).

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs)

Dated: August 30, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–21652 Filed 9–3–93; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine on September 28–29, 1993, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 9 a.m. to approximately 5 p.m. on September 28, and from 9 a.m. to adjournment on September 29. The Subcommittee will analyze the possible programs and activities of the NLM, of individuals, of professional associations, and of other institutions that might be undertaken over the next 10 years to assure that our society benefits from the skills of medical librarians. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Susan Buyer at 301–496–8834.

Ms. Susan P. Buyer, Deputy Assistant Director for Planning and Evaluation of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, telephone 301–496–8834, will provide a summary of the meeting, a roster of subcommittee members, and substantive program information upon request.

Dated: August 30, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–21653 Filed 9–3–93; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Meetings

Pursuant to Public law 92–463, notice is hereby given of the meetings of the following study sections for October through November 1993, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public for approximately one half hour at the beginning of the first session of the first day of the meeting during the discussion of administrative details relating to study section business. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each scientific review administrator, whose telephone number is provided. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the scientific review administrator to confirm the exact date, time and location. All times are a.m. unless otherwise specified.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the scientific review administrator at least two weeks in advance of the meeting.

Study section	October–November 1993 meetings	Time	Location
AIDS and Related Research 1, Dr. Sami Mayyasi, Tel. 301–594–7073.	November 4–5	7:00 p.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
AIDS and Related Research 2, Dr. Gilbert Meier, Tel. 301–594–7118	October 29	8	Ramada Hotel, Bethesda, MD.
AIDS and Related Research 3, Dr. Marcel Pons, Tel. 301–594–7210	October 27–29	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
AIDS and Related Research 4, Dr. Mohindar Poonian, Tel. 301–594–7112.	November 1–2	8:30	Hyatt Regency, Bethesda, MD.
AIDS and Related Research 5, Dr. Mohindar Poonian, Tel. 301–594–7112.	November 5	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
AIDS and Related Research 6, Dr. Gilbert Meier, Tel. 301–594–7118	November 5	8	Holiday Inn, Chevy Chase, MD.
AIDS and Related Research 7, Dr. Gilbert Meier, Tel. 301–594–7118	November 19	8	Holiday Inn, Chevy Chase, MD.
Behavioral and Neurosciences-1, Dr. Luigi Giacometti, Tel. 301–594–7122.	November 4–6	8:30	The River Inn, Washington, DC.
Behavioral and Neurosciences-2, Dr. Luigi Giacometti, Tel. 301–594–7122.	October 22	8:30	St. James Hotel, Washington, DC.
Biological Sciences-1, Dr. James R. King, Tel. 301–594–7097	October 26–29	8:30 p.m.	St. James Hotel, Washington, DC.
Biological Sciences-2, Dr. Camilla Day, Tel. 301–594–7389	November 4–6	8:30	Holiday Inn, Georgetown, DC.
Biological Sciences-3, Dr. Nancy Pearson, Tel. 301–594–7388	October 13–15	8:30	St. James Hotel, Washington, DC.
Biomedical Sciences, Dr. Charles Baker, Tel. 301–594–7170	October 25–27	8:30	Holiday Inn, Bethesda, MD.
Clinical Sciences-1, Mrs. Jo Pelham, Tel. 301–594–7254	October 21–22	8:30	Holiday Inn, Bethesda, MD.
Clinical Sciences-2, Mrs. Jo Pelham, Tel. 301–594–7254	October 28–29	8	Holiday Inn Crowne Plaza, Rockville, MD.
Immunology, Virology & Pathology, Dr. Lynwood Jones, Tel. 301–594–7262.	October 13–15	8:30	Holiday Inn, Bethesda, MD.
International & Cooperative Projects, Dr. G.B. Warren, Tel. 301–594–7289.	October 27–29	8	Residence Inn Marriott, Bethesda, MD.
Physiological Sciences, Dr. Nicholas Mazarella, Tel. 301–594–7098	October 28–29	8:30	Holiday Inn Crowne Plaza, Rockville, MD.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 30, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–21654 Filed 9–3–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–660–00–4120–02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0025), Washington, DC 20503, telephone (202) 395–6880.

Abstract: The Mining Law of 1872 (30 U.S.C. 21–54) requires the issuance of a patent where the requirements of law have been met and a mineral patent application has been filed. A mineral survey of the mining claims must be submitted as part of the mineral patent application. Form 3860–5 is an application for the surveying by an authorized U.S. mineral surveyor.

Bureau Form Number: 3860–5

Frequency: Once.

Description of respondents: Respondents may range from an individual to multi-national corporations.

Estimated completion time: 4 hours

Annual responses: 85

Annual burden hours: 340

Bureau Clearance Officer (Alternate): Marsha A. Harley (202 653–6105)

Title: Application for Survey of Mining Claims, 43 CFR 3861.1–1

OMB approval number: 1004–0025

Dated: June 28, 1993.

Hillary A. Oden,

Assistant Director, Energy and Mineral Resources.

[FR Doc. 93–21609 Filed 9–3–93; 8:45 am]

BILLING CODE 4130–84–M

[CA–060–5440–B021; CA–28403]

Cancellation of Notice of Realty Action and Initiation of Notice of Realty Action for Proposed Exchange Public and Private Land, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action CACA 28403, proposed exchange of public and private lands.

SUMMARY: On September 9, 1991, a Notice of Realty Action (NORA) for a proposed exchange was published in the **Federal Register.** Since that NORA, an added 640 acres of private land is being offered as part of the proposed exchange. The prior NORA is hereby canceled. The following described public lands in San Bernardino County are being considered for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976; 43 U.S.C. 1716:

San Bernardino Meridian, California

T.5 N., R. 13E.,
Section 8: All;
Section 15: All;
Section 22: W½.

The selected public lands aggregate 1600.00 acres.

In exchange for these lands, the United States will acquire the following described offered private lands located

within the Cadiz Dunes, Piute Valley and Fenner Valley areas from Rail-Cycle, L.P., a partnership of Waste Management of North America and Atchison, Topeka and Santa Fe Railroad Company:

San Bernardino Meridian, California

T. 4N., R. 15E.,
Sec. 33: All.
T. 13N., R. 19E.,
Sec. 29: All.
T. 9N., R. 17E.,
Sec. 13, All.

The offered non-Federal lands aggregate 1920 acres.

The purpose of this proposed exchange is to transfer public lands in the southern part of the Needles Resource Area near the AT&SF railroad tracks in the vicinity of Bristol Lake for land owned by AT&SF in the Cadiz Dunes, Piute Valley and Fenner Valley areas. Rail-Cycle proposes intensive development of the land to dispose of nonhazardous material resulting from a recycling program for Southern California.

The exchange will be complete on an equal value basis. Full equalization of values will be achieved through acreage adjustment. The exchange will not be completed until all necessary field inventories, environmental assessments and mineral reports are completed. The public lands to be conveyed will be subject to the following terms and conditions:

A. Reservations to the United States.

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Those rights encompassed by railroad grant patent 5090 issued July 27, 1908 and which affects lands in a portion of the S½S½ Section 8 and a portion of the N½N½ of Section 15 within T. 5N., R. 13E., SBM.

3. All minerals will be conveyed unless following the completion of mineral reports, the authorized officer determines whether reservation of all, or part of the minerals or the exchange, is in the public interest.

B. Third Party Rights. The public lands would be patented subject to:

1. Those rights for construction, operation and maintenance of an underground natural oil pipeline and related equipment granted to the All American Pipeline Company by right-of-way Serial No. CACA 14013 under the Act of February 25, 1920, as amended (30 U.S.C. 185).

2. Mining Claim Serial Nos. 33345PL and 33346PL located by National Chloride Co. on December 21, 1957 within F. 5N., R. 13E., SBM, Section 22: W½. The exchange will not be completed until these claims are relinquished, or transferred to the proponent.

As provided in 43 CFR 2201.1(b), the publication of this notice in the **Federal Register** shall segregate, subject to existing valid rights, the public lands described herein from all other forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws. The segregative effect will terminate upon issuance of a conveyance document, upon publication in the **Federal Register** of a termination of the segregation, or two years from the date of this publication which ever occurs first.

For detailed information concerning this exchange contact Douglas Romoli, California Desert District Office, at (909) 697–5230. For a period of 45 days after publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 6221 Box Springs Blvd., Riverside, CA 92507. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: August 31, 1993.

Henri R. Bisson,

[FR Doc. 93–21645 Filed 9–3–93; 8:45 am]

BILLING CODE 4310–40–M

[AA–660–4143–02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explantory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0121), Washington, DC 20503, telephone (202) 395–7340.

Title: 43 CFR Parts 3500, 3510, 3520, 3540, 3550, 3560, 3570, and 3580 Leasing of Solid Minerals other than Coal and Oil Shale.

OMB Approval Number: (1004–0121).

Abstract: Respondents supply information relevant to the identification location and quality of the specific non-energy mineral under application for prospecting, leasing or exploration and their qualifications for holding Federal mineral permits, leases and exploration licenses. This information allows the Bureau to determine the availability of the lands under application and to assure that prospective permittees, lessees and licensees are in compliance with applicable statutory and regulatory requirements.

Bureau Form Numbers: 3104–3, 3104–5, 3504–1, 3504–3, 3504–4 and 3510–2.

Estimated completion times:

Competitive lease bid: 1 hr.

Preference right lease application: 10 hrs.

Fringe acreage/lease modification: 2 hrs.

Assignment/sublease: 2 hrs.

Lease renewal/adjustment: 2 hrs.

Exploration license: 3 hrs.

Development contract: 3 hrs.

Prospecting permit extension: 1 hr.

Exploration plan for prospecting permit: 10 hrs.

Prospecting permit application: ⅚ hrs.

Use permit application: 2 hrs. (Bureau Form 3510–2)

Bonding requirements: ⅚ hrs. (Bureau Form Nos. 3504–1, 3504–3, 3504–4, 3104–3 and 3104–5).

Additional Information: This proposal would extend the information approval, without change, through May 1996.

Description of Respondents: Prospective holders of Federal non-energy prospecting permits, leases, use permits and exploration licenses.

Annual Responses: 1,246.

Annual Burden Hours: 3,722.

Bureau clearance officer (Alternate): Marsha A. Harley (202) 653–6105.

Dated: June 28, 1993.

Hillary A. Oden,

Assistant Director, Energy and Mineral Resources.

[FR Doc. 93–21610 Filed 9–3–93; 8:45 am]

BILLING CODE 4310–84–M

[WY–010–5101–10–K012]

Environmental Impact Statement; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement and to conduct public scoping.

SUMMARY: The action is proposed to prepare an environmental impact statement (EIS) and conduct public scoping on the construction and operation of a 24-inch crude oil pipeline, proposed by Express Pipeline, Inc. (a subsidiary of Alberta Energy Company [AEC Pipelines, Ltd]) from Hardisty, Alberta, Canada to Casper, Wyoming. The pipeline would cross Hill, Choteau, Fergus, Judith Basin, Wheatland, Golden Valley, Stillwater, and Carbon counties in Montana and Big Horn, Washakie, Hot Springs, Fremont, and Natrona counties in Wyoming.

DATES: Public scoping meetings will be held at: Billings, Montana, Sheridan Billings Hotel, 27 North 27th, October 4 at 7 p.m.; Lewistown, Montana, Lewistown BLM District Office, Airport Road, October 5 at 7 p.m.; Havre, Montana, Northern Montana College, Thirteenth Street, October 6 at 7 p.m.; Worland, Wyoming, Worland BLM District Office, 101 South 23rd Street, October 7 at 7 p.m.; and Casper, Wyoming, Hilton Inn, 800 Poplar, October 8 at 7 p.m.

ADDRESSES: Information and scoping packets can be obtained by writing or visiting the Bureau of Land Management, Worland District Office, 101 South 23rd Street, P.O. Box 119, Worland, Wyoming 82401–0119.

Scoping comments should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Don Ogaard, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401–0119.

SUPPLEMENTARY INFORMATION: The EIS will analyze the impacts of constructing and operating a 24-inch crude oil pipeline. The U.S. section of the route would begin at the border crossing near Wild Horse, Alberta, Canada, traverse the state of Montana for 305 miles, enter Wyoming near the town of Frannie, and continue south and eastward 210 miles to its terminus at Casper, Wyoming. Eight pump stations are proposed and nine major stream/river crossings would be required.

The USDI-Bureau of Reclamation and the State of Montana Department of Natural Resources and Conservation have been identified as cooperating agencies in the EIS. Other agencies having an interest in the project are invited as cooperators.

The issues and (or) concerns identified to date are: (1) The potential impacts of the oil pipeline at river crossings (both from construction and as a result of an accident; and (2) the incremental and cumulative impacts of a second pipeline paralleling existing and proposed routes.

The public is encouraged to present their ideas and views on these and other issues and concerns. All issues and concerns identified during scoping will be considered in the EIS.

Dated: August 30, 1993.

Darrell Barnes,

Worland District Manager.

[FR Doc. 93–21612 Filed 9–3–93; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 28, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by September 22, 1993.

Beth M. Boland,

Acting Chief of Registration, National Register.

DELAWARE

New Castle County

Justis, Thomas, House, 1001 Milltown Rd., Mill Creek Hundred, Wilmington vicinity, 93000989

FLORIDA

St. Johns County

Zorayda, Villa, 83 King St., St. Augustine, 93001002

Volusia County

Olds Hall, 340 S. Ridgewood Ave., Daytona Beach, 93001003

GEORGIA

Fulton County

Brittain, Dr. Marion Luther, Sr., House, 1109 W. Peachtree St., Atlanta, 93000999

IDAHO

Bannock County

Idaho State University Administration Building, 919 S. 8th St., Bldg. No. 10, Idaho State University, Pocatello, 93000994

Twin Falls County

Duquesne, Achille, House, 710 W. Midway, Filer, 93000990

Morse, Burton, House, 136 Tenth Ave. N., Twin Falls, 93000992

Peck, D. H., House, 207 E. 8th Ave., Twin Falls, 93000993

Priebe, Walter, House, 155 7th Ave. E., Twin Falls, 93000991

KENTUCKY

Clay County

Sullen Possum Site, Address Restricted, Oneida vicinity, 93000996

MARYLAND

Howard County

Lawyers Hill Historic District, Area surrounding Lawyers Hill and Old Lawyers Hill Rds. and Elibank Dr., Elkridge vicinity, 93001000

MONTANA

Lewis and Clark County

Eagle's Site (Archeological Resources of the Upper Missouri River Corridor MPS), Address Restricted, Helena vicinity, 93000995

Helena Historic District (Boundary Increase), Bounded by E. Sixth, N. Davis, Broadway and N. Rodney Sts., Helena, 93001001

NORTH CAROLINA

Dare County

Salvo Post Office, NC 12 W side, 0.1 mi. S of jct. with Park Rd., Salvo, 93000997

Wake County

DuBois, W. E. B., School (Wake County MPS), 536 Franklin St., Wake Forest, 93000998

VERMONT

Rutland County

Wells Village School (Educational resources of Vermont MPS), N side of Main St. (VT Rt. 30), Wells, 93001004

[FR Doc. 93–21661 Filed 9–3–93; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *Arnold B. Charpiot*, Civil Action No. G–90–277 (S.D. Tex.), was lodged with the United States District Court of the Southern District of Texas on August 13, 1993.

The proposed Consent Decree concerns alleged violations of section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), against the Defendant for unlawfully filling and/or controlling and directing the unlawful filling of waters of the United States at four locations owned by the Defendant in Crystal Beach, Texas. The proposed Consent Decree requires Defendant to take all necessary action to conduct and complete a program of wetlands restoration and creation of the Site in accordance with the activities and schedule detailed in the wetland Remediation Plan. The Defendant shall

complete the Remediation within ninety (90) days of the approval of this Consent Decree. The Defendant has also agreed to pay a civil penalty of $7,500.00.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: John A. Sheehan, Esquire, P.O. Box 23986, Washington, DC 20026–3986 and should refer to *United States* v. *Arnold B. Charpiot*, Civil Action No. G–90–277 (S.D. Tex.), DJ Reference No. 90–5–1–1–4000.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court, Southern District of Texas, 601 Rosenberg, room 411, Galveston Texas 77553.

Myles E. Flint,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 93–21607 Filed 9–3–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Council; Meetings and Agenda

The regular fall meetings of the Board and Committees of the Business Research Advisory Council will be held on September 22 and 23, 1993. All of the meetings will be held in the Conference Center of the Postal Square Building, 2 Massachusetts Avenue NE., Washington, DC.

The Business Research Advisory Board and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday, September 22, 1993

10–11:30 a.m.—Committee on Compensation and Working Conditions
1. Preview of summary of Fast Food Restaurant Surveys
2. Summary of report on Occupational Compensation Survey Program
3. Factors affecting retirement income
4. Employer-provided parental leave
5. Election of new chair

1–2:30 p.m.—Committee on Productivity and Foreign Labor Statistics
1. Report on BLS international technical assistance
2. Discussion of the uses made of BLS productivity and international comparisons data

3–4:30 p.m.—Committee on Employment and Unemployment Statistics
1. Overview
2. Briefing: Wage Record Database project
3. Briefing: Skills-oriented adjustment assistance research
4. Election of vice chair
5. Other business

Thursday, September 23, 1993

9–10:30 a.m.—Committee on Price Indexes
1. Status reports
a. Consumer Price Index
b. Producer Price Index
c. International Price Index
2. Other business

11–12:30 p.m.—Committee on Economic Growth
1. Status of on-going work
a. Projections
b. Supply-demand of college graduates
2. Preparation of special alternatives
3. Delphi Technique—applicability to future projections
4. Evaluation of errors in input-output updating—implication for future projection work

12:30–1:30 p.m.—Board Meeting—business session

2–3:30 p.m.—Council Meeting
1. Chairperson's opening remarks
2. Discussion: The Current Population Survey redesign
3. Chairperson's closing remarks

The meetings are open to the public. Persons with disabilities wishing to attend should contact Constance B. DiCesare, Liaison, Business Research Advisory Council, at (202) 606–5886, for appropriate accommodations.

Signed at Washington, DC the 1st day of September 1993.

William G. Barron, Jr.,

Deputy Commissioner.

[FR Doc. 93–21670 Filed 9–3–93; 8:45 am]

BILLING CODE 4510–24–M

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewals

The Assistant Directors having responsibility for the Advisory Committees listed below have determined that renewing these groups for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Advisory Committee for Biological Sciences
Advisory Committee for Education & Human Resources
Advisory Committee for Engineering
Advisory Committee for Industrial Innovation Interface
Advisory Committee for Polar Programs
Advisory Panel for Biochemistry & Molecular Structure & Function
Advisory Panel for Cell Biology
Advisory Panel for Developmental Mechanisms
Advisory Panel for Genetics & Nucleic Acids
Advisory Panel for Instrumentation & Instrument Development
Advisory Panel for Neuroscience
Advisory Panel for Physiology and Behavior
Alan T. Waterman Award Committee
DOE/NSF Nuclear Science Advisory Committee (renewal period to 9/23/95)
Earth Sciences Proposal Review Panel
Federal Network Council Advisory Committee
Special Emphasis Panel in Science Resources Studies
Special Emphasis Panel in Science & Technology Infrastructure

Authority for these Committees will expire on June 30, 1995, unless they are renewed.

Additionally, charters for the committees listed below have been amended to reflect the name of the organization to which they report.

—Special Emphasis Panel in Systemic Reform (renamed from Special Emphasis Panel in Experimental Programs to Stimulate Competitive Research)
—Special Emphasis Panel in Social, Behavioral & Economic Research (renamed from Special Emphasis Panel in Social and Economic Sciences)

Dated: September 1, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–21710 Filed 9–3–93; 8:45 am]

BILLING CODE 7555–01–M

Committee Management; Establishments

The Assistant Directors of the directorates noted below have determined that establishing the following committees is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

1. Biological Sciences Directorate

Names:

Advisory Panel for Ecological Studies
Advisory Panel for Long-Term Projects in Environmental Biology
Advisory Panel for Systematic & Population Biology

Purpose: To advise the Division of Environmental Biology on the merit of the research proposals and research-related activities submitted to the Division for financial support. The Panels will also provide general advice and policy guidance to the Division.

Name: Special Emphasis Panel in Biological Sciences

Purpose: To advise on the merit of special initiative proposals or applications submitted to the Biological Sciences Directorate for financial support.

2. Geosciences Directorate

Name: Advisory Committee for Geosciences

Purpose: To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

Name: Special Emphasis Panel in Geosciences

Purpose: To provide advice on the merit of proposals or applications submitted to the Geosciences Divisions for financial support.

3. Social, Behavioral & Economic Sciences Directorate

Names:

Advisory Panel for Anthropological & Geographic Sciences
Advisory Panel for Cognitive, Psychological & Language Sciences
Advisory Panel for Economic, Decision & Management Sciences
Advisory Panel for Science, Technology & Society
Advisory Panel for Social & Political Sciences

Purpose: To advise on the merit of proposals for research and research-related purposes submitted to the Division of Social, Behavioral, and Economic Research for financial support. The Panels will also provide the Division general advice and policy guidance.

Authority for these Advisory Committees will expire on June 30, 1995, unless they are renewed.

Dated: September 1, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–21709 Filed 9–3–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Regulatory Analysis Guidelines; Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The Nuclear Regulatory Commission is making available for public comment its draft "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," NUREG/BR–0058, Revision 2 (Guidelines). This document, last issued in 1984, is the Commission's policy-setting document with respect to regulatory analyses and has applicability for regulatory actions affecting all NRC licensees. The objectives of revising the Guidelines are to incorporate:

(1) The NRC's accumulated experience with implementing the previous Guidelines;

(2) Changes in NRC regulations and procedures since 1984, especially the backfit rule (10 CFR 50.109) and the Policy Statement on Safety Goals for the Operation of Nuclear Power Plants (51 FR 30028, August 21, 1986);

(3) Advances and refinements in regulatory analysis techniques;

(4) Regulatory guidance for Federal agencies issued by the Administrative Conference of the United States and the Office of Management and Budget (OMB); and

(5) Procedural changes designed to enhance NRC's regulatory effectiveness.

DATES: The comment period expires on December 6, 1993. Comments received after this time will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: To receive a copy of the draft "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," NUREG/BR–0058, Revision 2, requests should be in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. A copy is also available for inspection or copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Mail written comments to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Brian Richter, Office of Nuclear Regulatory Research, Mail Stop NLS–129, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–3763.

SUPPLEMENTARY INFORMATION:

Background

The Guidelines are being reissued to fulfill the objectives identified above. The NRC plans to publish the Guidelines in both draft and final form, in many respects employing a process consistent with the development of a rule or policy statement. Since this is the NRC's policy-setting document with respect to regulatory analyses, it contains a number of policy decisions that have broad implications. As a result, issuance of this draft will allow the Commission an opportunity to hear from the public on these implications and issues.

Discussion

Some of the positions taken in the draft Guidelines represent departures from current practice, have never been formalized, or differ from positions industry has taken. In recognition of this, the NRC has identified the following issues for specific attention and would welcome public comment on each of these issues:

(1) *Guidance for addressing safety goal considerations in the regulatory analysis.* The position taken in the draft Guidelines is consistent with the approach described in SECY–91–270, "Interim Guidance on Staff Implementation of the Commission's Safety Goal Policy," of August 27, 1991. The proposed procedure is based on the use of a change in core damage probability rather than an absolute number and involves certain criteria for staff action.

(2) *The treatment of voluntary actions in NRC regulatory analyses.* Voluntary licensee actions or programs may already be in place that, to some degree, already achieve some of the objectives sought by the proposed change. The approach taken in the draft Guidelines is to encourage industry voluntary initiatives, but also to recognize that there may be cases where good cause exists to consider codification of such safety practices.

For the purpose of performing the regulatory analysis weighing of values and impacts for such actions, the draft Guidelines include the position that, with certain exceptions, no credit should be given for the voluntary actions taken by licensees. The intent of this position is that the regulatory policy should not inhibit regulatory requirements to be established when

voluntary programs are non-uniform across all licensees or when such programs could easily dissipate by licensee action alone, perhaps without NRC's knowledge. Furthermore, if credit is provided for voluntary initiatives and thus values and impacts associated with the proposed regulatory action are reduced, meaningful health and safety improvements could remain uncodified and voluntary in nature. Absent a serious safety concern, these initiatives would not be subject to enforcement on the part of the NRC. However, when voluntary actions are known to exist which are not reflected in the base case value-impact results, a sensitivity analysis is to be performed and value-impact results also displayed with credit for voluntary actions. It is recognized that voluntary actions that are a part of an overall industry commitment with appropriate follow-up evaluations could be subject to special treatment on a case by case basis.

(3) *The interest rate (or discount rate) to be used in present worth calculations.* The position taken in the draft Guidelines is that under most circumstances the discount rate specified in the latest version of OMB Circular A–94 should be used in NRC regulatory analyses. This circular was most recently updated on November 10, 1992, and specifies the use of a 7 percent real (i.e., adjusted to eliminate the effect of expected inflation) discount rate, although the use of a 3 percent real rate for sensitivity analysis purposes is also proposed. Finally, in unique circumstances when the regulatory analysis considers consequences that occur over a timeframe in excess of 100 years, the draft Guidelines indicate that a 7 percent interest rate should not be used. In these instances, the regulatory analysis should display results to the decision maker in two ways. First, on a present worth basis using a 3 percent real rate, and second, by displaying the values and impacts at the time in which they are incurred with no present worth conversion.

(4) *Analyses and information necessary to satisfy the backfit rule and/or CRGR review.* The position taken in the draft Guidelines is that preparation of a regulatory analysis in conformance with the Guidelines meets the backfit rule and the provisions of the CRGR charter without a need to prepare separate submissions.

(5) *The treatment of averted onsite costs in NRC regulatory analyses.* In the past, industry has challenged the inclusion of averted onsite costs and has argued that it can distort the meaning of the value-impact ratio. The position taken in the draft Guidelines is that averted onsite costs should be included in the value-impact analysis as a positive attribute in a net value formulation (value minus impact), or as a cost offset when results are displayed as a ratio.

(6) *The present worth valuation of future health and safety effects in NRC regulatory analyses.* The position taken in the draft Guidelines is that future health and safety effects should be subject to present worth considerations in the same manner and at the same rate as impacts. The objective is to determine the amount of money needed today that is equivalent (taking account of return on investment) to the dollar value of future health and safety effects such that all such effects, regardless of when they occur, are equally valued throughout the regulatory analysis.

(7) *The dollar/person-rem value to be used in NRC regulatory analyses.* A recommendation on the dollar/person-rem value has not yet been developed and further review and analysis is necessary. In the interim, the position taken in the draft Guidelines is that continued use of $1000/person-rem (1993 dollars) is acceptable as a conversion factor for all offsite consequences of severe power reactor accidents, and as a reference point or baseline in applications when offsite consequences are not involved, such as for occupational exposure, non-power reactor accidents, and in ALARA determinations associated with cleanup of contaminated sites. The document also permits the use of alternative values to portray the range of values that reasonably could be selected as the dollar/person-rem conversion factor.

(8) *The value impact results to be displayed in NRC regulatory analyses.* The position taken in the draft Guidelines is that the value impact result should be computed and displayed in the regulatory analysis as a net value (summation of positive and negative attributes). This will provide an absolute measure of the proposed action, and selection of the alternative with the largest net value will ensure the largest societal gain from among the alternatives analyzed. The use of the net value measure is prescribed by OMB in its regulatory analysis guidance.

NRC regulatory analyses may also include results displayed as a ratio in recognition that, in certain circumstances, relative measures such as ratios may also be useful to the decision maker. This is particularly true when prioritizing a large collection of proposed actions in the presence of a cost constraint. However, OMB cautions that the use of ratios is problematic because selecting an alternative with a higher ratio of values to impacts will not necessarily ensure a higher net value. Further, the ratio needs to be developed with greater care than the net value measure because its numerical value can be statistically biased and vary widely depending on the calculational approach employed. For these reasons, if the ratio is used, it is to be viewed as supplemental and not as a replacement for the net value method.

Public Comment

The NRC is interested in receiving public comments on any aspect of the draft Guidelines. Given the applicability of the Guidelines to decisions affecting all NRC licensees, comments from all categories of licensees are requested. To facilitate the public comment process, the staff has also prepared two supplemental documents that will be provided along with copies of the draft Guidelines. The first is a paper that discusses the various arguments for the treatment of averted onsite costs and the second discusses the present worth valuation of health and safety effects.

A draft of the "Regulatory Analysis Technical Evaluation Handbook," NUREG/BR–0184 (Handbook), a replacement for "A Handbook for Value-Impact Assessment," NUREG/CR–3568, also is available upon request. The Handbook provides detailed guidance on performing regulatory analyses and should be useful in better understanding how NRC policy will be applied in regulatory analyses. The Handbook, which will reflect positions established in the draft Guidelines, is in an earlier developmental stage and will be finalized upon receiving public comments on the draft Guidelines.

Dated at Rockville, Maryland, this 31st day of August, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–21708 Filed 9–3–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–278]

Philadelphia Electric Co., Public Service Electric and Gas Co., Delmarva Power and Light Co., Atlantic City Electric Co.—Peach Bottom Atomic Power Station, Unit 3; Exemption

I

The Philadelphia Electric Company, et al. (PECo, the licensee), is the holder of Operating License No. DPR–56, which authorizes operation of the Peach Bottom Atomic Power Station, Unit 3, at steady state reactor core power levels not in excess of 3293 megawatts

thermal. The license provides, among other things, that the licensee is subject to the rules, regulations and orders of the Commission now or hereafter in effect.

The plant is a boiling water reactor located at the licensee's site in York County, Pennsylvania.

II

Section 50.54(o) of 10 CFR part 50 requires that primary reactor containments for water cooled power reactors be subject to the requirements of Appendix J to 10 CFR part 50. Appendix J contains the leakage test requirements, schedules, and acceptance criteria for tests of the leak tight integrity of the primary reactor containment and systems and components which penetrate the containment.

Section III.D.2(a) of Appendix J to 10 CFR part 50 requires that Type B leak rate tests, except for air locks, be performed during reactor shutdown for refueling, or other convenient intervals, but in no case at intervals greater than 2 years. Type B tests are intended to detect local leaks and to measure leakage across each pressure-containing or leakage-limiting boundary for certain reactor containment penetrations.

Section III.D.3 of Appendix J to 10 CFR part 50 requires that Type C leak rate tests be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. Type C tests are intended to measure containment isolation valve leakage rates for certain containment isolation valves.

III

By letter dated June 11, 1993, and supplemented by letter dated July 26, 1993, the licensee requested a one-time exemption from the requirements of Appendix J, Sections III.D.2(a) and III.D.3 for a period of 60 days for the isolation valves or leakage boundaries for 46 penetrations. In their request, the licensee provided a list of the affected penetrations and associated plant-specific leak test procedures, the date when the leak tests had last been performed and the date when the current leak test will expire.

The licensee has implemented a 24-month operating cycle schedule at the Peach Bottom facility. The last refueling outage for Unit 3, 3R08, commenced in September 1991 and ended in December 1991 and the next refueling outage, 3R09 is scheduled to commence no later than September 18, 1993. The leak tests for which the licensee has requested schedular exemption were last conducted during refueling outage 3R08, based on the information provided in the licensee's application. The licensee has stated that the affected leak tests require either that safety systems be isolated or require access to the drywell, either of which would require the reactor to be shutdown.

The licensee has divided the affected leak tests into two categories: (1) those that require shutdown reactor conditions but fall due prior to the scheduled commencement of 3R09 on September 18, 1993, and (2) those that require reactor shutdown conditions and fall due after the scheduled commencement of 3R09. There are 11 leak test surveillance procedures affecting 12 penetrations in the first category. These tests and penetrations are listed in Table 1 of the licensee's June 11, 1993 request. The earliest of these tests falls due on September 15, 1993, 4 days prior to the scheduled shutdown. The licensee has requested an exemption for 60 days which will allow the unit to operate until the beginning of the planned outage without shutting down to perform leak tests and which will allow for flexibility in planning the leak tests during the outage.

There are 28 leak test surveillance procedures affecting 36 penetrations in the second category described previously. These tests are listed in Table 2 of the licensee's June 11, 1993, submittal, and supplemented by the July 26, 1993, letter. The licensee has requested an exemption of 60 days to allow for flexibility in planning these leak tests during the outage. The licensee stated that all of the affected penetrations will be leak tested prior to restart from 3R09.

IV

The licensee presented information in support of their request for a 60-day extension of the Type B and C test intervals. The maximum allowable leakage rate for maintaining primary containment (L_a—minimum pathway leakage) is 125,417 cc/min. The as-found total Type B and C minimum pathway leakage rate observed during Unit 3 refueling outage 3R08 during the fall of 1991 was 35,197 cc/min. The as-left leak rate for that same outrage was 24,453 cc/min.

PECo stated that an extension of the leak test interval to allow for 4 days of operation is not likely to decrease the margin between as-found leak rates and L_a.

PECo also stated that the remainder of the total 60-day extension, requested for outrage planning flexibility, will have minimal safety significance since the unit will be in cold shutdown. Primary containment integrity is not required during cold shutdown.

V

Based on the above, the staff finds there is reasonable assurance that the containment leakage-limiting function will be maintained and that a forced outage to perform Type B and C tests is not necessary. Therefore, the staff finds the requested temporary exemption, to allow the Type B and C test intervals for the penetrations listed in the licensee's June 11, 1993 request, and supplemented by letter dated July 26, 1993, to be extended for 60 days from their current expiration date, to be acceptable. The exemption request has been evaluated in a safety evaluation dated August 30, 1993.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the requested exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. The Commission finds that the special circumstances as required by 10 CFR 50.12(a)(2) are present. As specified in § 50.12(a)(2)(ii), special circumstances are present whenever the application of the regulation in the particular circumstance would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The underlying purpose of the rule is to ensure that the components comprising the primary containment boundary are maintained and leak tested at periodic and appropriate intervals. The 24-month maximum interval was originally expected to bound the typical operating cycle, including a limited amount of mid-cycle outage time. The advent of advanced fuel types has made it possible to operate the facility for 24-months with minimal, if any, mid-cycle outage time. Strict adherence to the 24-month maximum interval is not necessary to meet the underlying purpose of the rule in that, taking into consideration the sixty day extension, the components that comprise the primary containment boundary will still be tested at a frequency that is appropriate to those components and their application. In addition, the 60-day extension represents a minimal increase in the existing 24-month interval required by the rule. Therefore, the staff finds the requested temporary exemption, to allow the Type B and C test intervals for penetrations described in the licensee's June 11, 1993 and July 26, 1993 letters, to be extended for 60 days, to be accepted.

An exemption is hereby granted from the requirements of Sections III.D.2(a) and III.D.3 of Appendix J to 10 CFR part 50, which requires that Type B and C tests be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years, for a period of 60 days from the expiration of the current leak test for the affected penetrations.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the quality of the human environment (58 FR 45536).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of August, 1993.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–21706 Filed 9–3–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–333]

Power Authority of the State of New York, (James A. FitzPatrick Nuclear Power Plant); Exemption

I

The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR–59, which authorizes operation of the James A. FitzPatrick Nuclear Power Plant (the facility). The license provides, among other things, that the facility is subject to all the rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor located at the licensee's site in Oswego County, New York.

II

Section IV.A. of Appendix J to 10 CFR part 50, requires that a Type A, B, or C leak rate test (as applicable) be performed following any major modification or replacement of a component which is part of the primary containment boundary.

Augmented erosion/corrosion inspections conducted by the licensee during the 1992 refueling outage revealed the presence of pipe wall thinning in the two Core Spray system minimum flow lines (3"–W23–152–7A, B). As a result of these inspections, the licensee plans to replace approximately 5 feet of piping in each of these lines during the fall 1993 maintenance outage. This 3-week outage is scheduled for September 1993. The planned repairs constitute a replacement of a component that is part of the primary containment boundary and will be performed in accordance with the requirements of American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), Section XI, and American National Standards Institute (ANSI) B–31.1–1967 (the construction code for the facility).

The licensee has determined that Section IV.A. of Appendix J to 10 CFR part 50 requires that a Type A, B, or C leak rate test, as applicable, be performed following the completion of repairs to the Core Spray system minimum flow lines. However, because of the locations of the repairs, a Type B or C test cannot be performed. Also, because of the setup and testing time involved and the significant delay it would have on plant startup, a Type A primary containment integrated leak rate test is not feasible. The licensee estimates that performance of a Type A test would extend the planned 3-week outage by a minimum of 3 to 4 weeks.

By letter dated June 28, 1993, the licensee requested a one-time exemption from the Appendix J criteria and submitted an alternate testing program. This testing program consists of 100 percent radiography of the new welds, surface examination on new welds that form a portion of the primary containment boundary, and a system leakage test (in accordance with ASME Code Section XI, 1980 Edition through Winter 1981 Addenda, paragraph IWA–5213).

The staff has reviewed the licensee's exemption request and prepared a safety evaluation (SE). This SE determined that the licensee's alternate testing program provides a comparable level of safety to that provided by Section IV.A. of Appendix J to 10 CFR part 50.

The staff's SE supporting this exemption is dated August 30, 1993.

III

The Commission's regulations at 10 CFR 50.12(2) specify that special circumstances must be present in order for an exemption to be granted. According to 10 CFR 50.12(a)(2)(ii), special circumstances are present whenever the application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of the requirements of Section IV.A. of Appendix J to 10 CFR part 50, is to ensure that the primary containment integrity is not compromised or that repairs do not result in unacceptable leakage when components which form part of the boundary are replaced. In the case of the planned repairs of the Core Spray system minimum flow lines, this will be achieved and served by the nondestructive tests that will be performed.

In this case, the 100 percent radiography of the new welds, surface examinations on new welds that form a portion of the primary containment boundary, and a system leakage test will provide the equivalent of protection as that provided by a Type A, B, or C leak rate test. Therefore, application of the rule in these circumstances is not necessary to achieve the underlying purpose of the rule and the Commission's staff finds that there are special circumstances in this case which satisfy the standards of 10 CFR 50.12(a)(2)(ii).

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), this exemption as described in Section III, is authorized by law, and will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and special circumstances, are present for the exemption, in that application of the regulation in this particular circumstances is not necessary to achieve the underlying purposes of Section IV.A. of Appendix J to 10 CFR part 50. Therefore, the Commission hereby grants the exemption from Section IV.A. to allow the nondestructive testing on the repaired sections of the Core Spray system minimum flow lines to fulfill the requirement for a Type A, B, or C test.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (58 FR 41812).

For further details with respect to this action, see the licensee's request dated June 28, 1993, which is available for inspection at the Commission's Public Document Room 2120 L Street NW., Washington, DC 20555 and at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York.

Dated at Rockville, Maryland, this 30th day of August 1993.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–21705 Filed 9–3–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of a change in membership of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Violet R. Parker, Personnel Operations Division, Office of Personnel, Administration Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, (202) 606–2420.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Office of Personnel Management.

James B. King,

Director.

The following new members are announced as follows:

Chair, Performance Review Board

Lorraine A. Green, Deputy Director, OPM

Member

Carol J. Okin, Director, Human Resources Development Group

Ms. Okin's membership succeeds that of Ms. Dona Wolf.

Mr. Jeremiah J. Barrett's tenure as an acting member terminates as of this notice.

[FR Doc. 93–21608 Filed 9–3–93; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32818; File No. SR–MCC–93–3]

Self-Regulatory Organizations; Midwest Clearing Corp., Filing of a Proposed Rule Change Relating to the Processing of Basket Trades

August 27, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 18, 1993, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by MCC. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MCC proposes to amend its rules to enable it to process basket trades. Approval of the proposal will enable MCC to process trades in a new basket product to be traded on the floor of the Chicago Stock Exchange ("CHX").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MCC included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. MCC has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to amend MCC's rules to provide for the processing of basket trades.[2] Specifically, MCC proposes to process trades in CHX's new basket product, the Chicago Basket ("CXM"). The CXM will be comprised of twenty-five shares of each of the stocks included in the Chicago Mercantile Exchange's ("Merc") new stock index futures contract [3] and will offer a highly correlative hedge to that contract.[4]

Under the proposal, MCC will accept locked-in basket trade data (*i.e.*, trades that are already compared) from an exchange or other market place SRO on the day of the trade. ("T").[5] MCC will aggregate the trade data to arrive at an aggregate basket purchase figure and an aggregate basket sales figure for each participant. MCC then will "burst" the aggregated basket purchase transactions and the aggregated basket sales transactions into their component securities. The component securities will be entered into MCC's Continuous Net Settlement ("CNS") system for netting with each participant's other purchase and sell transactions in the same security with the same settlement date.[6]

To process baskets, including the settlement of component securities, MCC will have to provide participants with appropriate values for the component securities. To do so, MCC will calculate a settlement price for each component security based on an algorithm that uses each component security's closing price on its primary market.[7]

Processing basket trades will not affect MCC's operations because MCC currently processes trades in the underlying component securities. MCC will apply its current, standard trade recording fees based on transactions in the individual component stocks.

The proposed rule change is consistent with the requirements of Section 17A of the Securities Exchange Act of 1934, as amended, because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Under MCC's amended rules, basket trades will be defined as trades in a group of securities that an exchange or other market place self-regulatory organization ("SRO") has designated as eligible for execution in a single trade.

[3] The new Merc futures contract is a stock index futures contract which, pending the approval of the Commodity Futures Trading Commission, will be based on the American Stock Exchange's Major Market Index ("MMI"). The MMI is a broad-based, price-weighted index currently based on twenty stocks listed on the New York Stock Exchange. The new Merc futures contract will replace the stock index futures contract based on the MMI that currently trades on the Chicago Board of Trade.

[4] A detailed description of the CXM is contained in CHX's proposal seeking approval to trade the basket. Securities Exchange Act Release No. 32731 (August 10, 1993), 58 FR 43664 [File No. SR–CHX–93–18] (notice of filing of proposed rule change).

[5] On the day following the basket trade ("T+1"), MCC will report to each participant its locked-in basket trade data in a basket purchase and sales report.

[6] After the component securities are entered into the CNS system for netting, they will be reflected in MCC's regular CNS purchase and sales report.

[7] The algorithm for calculating the settlement value of each component security for the CXM basket uses the following information:

(1) The market value of each component derived by multiplying the primary market closing price by the number of shares of each component;

(2) The total market value of the basket calculated by summing the market value of each component security;

(3) The percent value of each component security derived by dividing the total market value of the basket by the market value of each component security; and

(4) The settlement value of each component security calculated by multiplying the actual market value of the basket by the percent value of each component security.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC believes that no burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of MCC. All submissions should refer to File No. SR–MCC–93–3 and should be submitted by September 28, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21689 Filed 9–3–93; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–32823; International Series Release No. 578; File No. SR–NYSE–92–31]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to Proposed Rule Change Relating to Organizations Controlled or Guaranteed by Members or Member Organizations

August 31, 1993.

I. Introduction

On October 16, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules relating to organizations controlled or guaranteed by members or member organizations. On February 23, 1993, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change.[3] On August 27, 1993, the NYSE submitted to the Commission Amendment No. 2 to the proposed rule change.[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 31688 (January 5, 1993), 58 FR 3579 (January 11, 1993). No comments were received on the proposal. This order approves the proposed rule change, including Amendment Nos. 1 and 2.

II. Description of the Proposal

The NYSE's proposal consists of amendments to Rule 321 ("Formation of Corporate Affiliates"), rescission of Rules 322 ("Guaranteed Corporate Subsidiaries") and 324 ("Formation of Associated Partnerships"), adoption of new Rule 322 ("Guarantees by, or Flow Through Benefits for Members or Member Organizations") and amendments to Rules 113 ("Specialists' Public Customers"), 122 ("Orders With More Than One Broker"), 342 ("Offices—Approval, Supervision and Control"), 346 ("Limitations—Employment and Association with Members and Member Organizations"), 416 ("Questionnaires and Reports") and 476 ("Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Allied Members, Approved Persons, or Employees").

Current NYSE Rules 321, 322 and 324 prescribe the requirements which must be followed by a member or member organization in order to obtain Exchange approval to form and operate any entity which they will control and which is engaged in a securities or kindred business.[5] NYSE Rule 321 specifies that a member, or a firm comprised of two or more general partners of a member corporation, may, with the prior written approval of the Exchange, form an affiliated company. NYSE Rule 321 currently requires, among other things, that a member or member organization own 40 percent of the total capitalization and all the voting stock of a corporate affiliate (except as otherwise approved by the Exchange). Furthermore, members and member organizations are prohibited from guaranteeing the liabilities and obligations of an affiliate. In addition, Rule 321 currently requires that the directors and the President and Executive Vice President of the entity be members or allied members in the member organization and, together with registered representatives, must be approved by the Exchange.

The proposal would amend Rule 321 to permit a member or member organization to form or acquire an affiliated company. As amended, Rule 321 would define an affiliate as an entity engaged in a securities or kindred business that is controlled by a member or member organization within the meaning of NYSE Rule 2.[6] Amended Rule 321 would require prior written approval by the Exchange prior to the acquisition or formation of an affiliated company and would specify that the member or member organization must require its affiliate to comply with the provisions of the Rule. The NYSE also proposes to delete requirements of the current Rule relating to, among other

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from Mary Anne Purlong, Director, Rules and Interpretive Standards, NYSE, to Diana Luka-Hopson, Branch Chief, Commission, dated February 22, 1993. Amendment No. 1 made certain clarifying changes to Rules 321.13, 322, 322(b) and deleted Rule 321.33.

[4] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Diana Luka-Hopson, Branch Chief, Commission, dated August 26, 1993. Amendment No. 2 made certain clarifying changes to Rule 322.15.

[5] "Engaged in a securities or kindred business" is defined as transacting business generally as a broker or dealer in securities, including but not limited to, servicing customer accounts or introducing them to another person. *See* NYSE Rule 2.

[6] NYSE Rule 2 defines "control," in pertinent part, as the power to direct or cause direction of the management or policies of a person. There is a presumption of control where a person has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the net profits.

things, capitalization,[7] structure[8] and content and submission of documents by affiliates.[9] The proposal also would permit an affiliate to be formed to do an agency, as well as underwriting or dealer business. In addition, although the proposed rule change would delete Rule 321's provisions requiring Exchange approval of directors and officers of a corporate affiliate, Rule 321 would specify that an employee associated with a non-U.S. registered foreign affiliate whose duties correspond to those of a registered representative in the solicitation of accounts or orders for the purchase or sale of U.S. securities may not be employed by the affiliate unless the person has been, and is continued to be, approved by the Exchange as a registered representative of the member or member organization.[10]

The NYSE proposes to rescind current Rule 322, and adopt new Rule 322. Existing Rule 322 permits a member firm comprised of two or more general partners or a member corporation having two or more voting stockholders who are also directors, to form a guaranteed corporate subsidiary, with the prior written approval of the Exchange. Such entities are subject to the Constitution and Rules of the Exchange to the same extent as are member organizations. Currently, these entities may be formed for whatever purpose approved by the Exchange, but are not permitted to do any business not specifically approved by the Exchange. A subsidiary is required to introduce customer accounts on a disclosed basis to its associated member organization or that organization's clearing member organization and may not carry accounts, hold customer orders, funds or securities, or deal with customers as principals. Current rule 322 also specifies that subsidiaries formed under the Rule are required to meet the requirements of rule 325 (Capital Requirements), except that the minimum net capital requirement for each subsidiary shall not be less than $10,000. If the subsidiary is a broker or dealer, the minimum capital requirements of rule 325 apply. Finally, the Rule specifies that obligations and liabilities of a corporate subsidiary formed under the Rule shall be assumed or guaranteed by the member organization.

Proposed new rule 322 would require prior written notice to the Exchange whenever a member or member organization guarantees or assumes or endorses, directly or indirectly, the obligations or liabilities of another person. Prior written notice to the Exchange also would be required whenever a member or member organization receives flow through capital benefits from another person in accordance with Appendix C of Rule 15c3–1 under the Act.[11] The proposed Rule would require written notice to the Exchange at least 10 business days prior to entering the arrangement or relationship. The notice would include a statement regarding the address and general nature of business conducted by such person, a description of the relationship or arrangement between the parties, details regarding the capitalization of such person, as well as the actual and potential effect of the arrangement on the member or member organization's capital and operations. Furthermore, members and member organizations would be prohibited from entering into an arrangement under this Rule unless it has authority to make available promptly books and records of such person for inspection by the Exchange in the U.S. Moreover, the Rule would require that books and records be kept separate from those of the member or member organization. Broker-dealers subject to Rule 322 would be required to file FOCUS Reports[12] and nonbroker-dealers would submit other financial and operational statements as specified by the Exchange. Finally, revised Rule 322 would specify that the Exchange, at any time, may require that the member or member organization and the partners or stockholders thereof sever all connections with a person referred to in the Rule, including the disposition of securities and other interests therein.[13]

The proposal also would delete current Rule 324, which allows a member organization, with prior written approval of the Exchange, to form an associated partnership. Entities currently formed under existing rule 324 would be made subject to similar provisions under new rule 322.[14]

The Exchange proposes amendments to NYSE rules 113, 122 and 416 to effect the proposed rule changes and to provide for consistency in its rules.[15]

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[7] The current capitalization requirement states that not less than 25 percent of the total capital of the corporate affiliate shall be in the form of capital stock. In addition, the Rule states that the members and allied members in the member organization or the member organization itself shall at all times own beneficially at least 40 percent of the total capitalization of the corporate affiliate, except where the member organization is a member corporation having outstanding any freely transferable security, such ownership shall be by the member corporation itself.

[8] The current rule requires, among other things, that holders of non-voting stock, debentures and/or notes, who are not members or allied members of the Exchange, may not receive in the aggregate in excess of 45% of the direct or indirect profits of the corporate affiliate. In addition, the current rule provides that a corporate affiliate shall have only one class of voting stock and one or more classes of capital stock.

[9] The current rule requires the submission to the Exchange of the affiliate's charter or certificate of incorporation, by-laws, forms of stock certificates issued by the corporate affiliate or to be issued by the corporate affiliate and all agreements or other documents and amendments between a member organization, its partners or stockholders and the proposed corporate affiliate, its stockholders or employees. The Rule states that such corporate documents must be submitted and be acceptable to the Exchange prior to becoming effective.

[10] The Exchange intends to issue an Information Memorandum to its members and member organizations describing the amendments to its rules concerning organizations controlled or guaranteed by members and member organizations. According to the NYSE, members and member organizations would be required to notify and made application to the Exchange within 90 days of the date of the Information Memorandum if they currently have foreign affiliates (as defined in amended Rule 321) whose employees require Exchange approval as registered representatives under the amended rule.

In addition, within 30 days of the date of the Information Memorandum, members and member organizations would be required to submit a list to the Exchange which identifies each existing affiliate, as defined to amended Rule 321.

[11] Appendix C of Rule 15c3–1 states that every broker or dealer in computing its net capital and aggregate indebtedness shall, consolidate in a single computation, the assets and liabilities of any subsidiary or affiliate for which it guarantees, endorses or assumes directly or indirectly the obligations or liabilities.

[12] The term "FOCUS report" is an acronym for Financial and Operational Combined Uniform Single Report, a uniform report required of broker-dealers with regard to financial and operational matters.

[13] The NYSE's Information Memorandum, *supra* note 10, would require members and member organizations to identify, within 30 days of the date of the Memorandum, each entity with which it has an arrangement or relationship (*i.e.*, that it guarantees or from which it receives flow-through benefits) within the terms of new Rule 322.

[14] Proposed Rule 322 would apply to affiliates that are either an incorporated company or partnership.

Rule 122 states that no member, member organization, allied member or corporate subsidiary of such organization within the meaning of Rule 321, shall maintain with more than one broker, for execution on the Exchange, market orders or order at the same price for the purchase or sale of the same security with knowledge that such orders are for the account of the same principal, unless specific permission has been obtained for the Floor Official. The proposed amendments would delete the reference to corporate subsidiary and extend the prohibition of the rule to affiliates of a member organization.

Rule 416 states, in part, that member organizations may be required to provide financial and operational reports as required by paragraph (a) of the Rule for affiliated and subsidiary organizations. The proposed amendment would delete the reference to a subsidiary and clarify that the rule includes, but is not limited to, persons referred to in Rules 321 and 322.

[15] NYSE Rule 113 states that no specialist, his member organization or corporate subsidiary of such organization shall accept an order for the purchase or sale of any stock in which it is registered as a specialist directly (1) from the company issuing such stock; (2) from any officer, director or 10 percent stockholder of that company;

Continued

The Exchange also proposes amendments to rules 342, 346 and 476. Specifically, the proposal would amend rule 342 to define the term "foreign branch office" as any independently organized foreign location from which the services of the member or member organization are being made available or whose financial resources are being utilized in the operation of the office or as to which either of the above is held on, respectively, as available or being utilized. Rule 342 would specify that all foreign branch office personnel are subject to the Exchange Constitution and Rules to the same extent as personnel of member organizations. Rule 342 also would provide that all obligations and liabilities of a foreign branch office must be assumed or guaranteed by its parent member or member organization and that such member or member organization shall be fully responsibility for all acts of such foreign branch office.[16] Amended rule 346 would provide a reference to amended rule 321, and rule 476 would be amended to clarify and codify the Exchange's authority to impose sanctions against all persons subject to Exchange jurisdiction upon a finding of guilt in a proceeding pursuant to rule 476.

The NYSE states that it proposes to amend rule 321, adopt new rule 322, and delete rule 324, in order to modernize their member organization requirements and allow member organizations the flexibility to structure their affiliates in a manner that would permit diversification and keep pace with the competitive environment within the industry.

The NYSE also states that rules 321, 322 and 324 were originally adopted in the late 1960s in a very different environment. According to the NYSE, the rules were adopted before public ownership of securities firms and the advent of sophisticated corporate structures, diversification of product and business lines and the internationalization of the securities business. The NYSE states that rule 321 was intended to protect member organizations' capital by segregating out what were then deemed more risky or speculative activities such as underwriting, advisory, and securities brokerage dealings on a principal basis.

The NYSE believes the original concept of these rules and many of their restrictive requirements are outdated and no longer serve a valid regulatory purpose. The NYSE argues that the rules' requirements inhibit member organizations' management of their assets, organizational structure and business activities and impose significant impediments to their pursuit of legitimate business activities. In addition, the NYSE believes that the existing rules, by their terms, apply only to direct subsidiaries. According to the NYSE, member organizations having a holding company structure have been able to avoid the rules' restrictions. The NYSE argues that member organizations should not be forced to choose between forming a holding company and incurring the attendant expenses or refraining from engaging in legitimate business activities.

The NYSE states that the proposed rule changes are consistent with section 6(b)(1) of the Act in that they are designed to enhance the Exchange's capacity to carry out the purposes of the Act and to compel and enforce compliance by its members and member organizations and their associated persons with the provisions of the Act, the rules and regulations thereunder and the rules of the Exchange.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes the proposal is consistent with sections 6(b) (1) and (5) of the Act.[17] Section 6(b)(1) requires that an exchange have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the rules of the exchange. Section 6(b)(5) requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. For the reasons set forth below, the Commission believes that the NYSE's proposal to amend its rules governing organizations controlled or guaranteed by its members furthers the objectives of sections 6(b) (1) and (5) of the Act.

The Commission believes that the proposed amendments to rule 321, governing the formation or acquisition of affiliates, reasonably balance the Exchange's interest in providing flexibility to its members in the structuring of its affiliates with regulatory interests in protecting the financial and structural integrity of a member or member organization as potentially affected by its relationship with its affiliates. For example, although the proposal will delete provisions of the rule relating to, among other things, capitalization and Exchange approval of an affiliate's directors and officers, amended rule 321 would require prior written Exchange approval whenever a member or member organization controls another person, within the meaning of NYSE rule 2,[18] who is engaged as a broker or dealer in securities. The rule will also continue to impose certain requirements relating to, among other things, the form of an affiliate, its name, the submission of financial statements, banking commitments, functions, offices, books and records, advertising, and disclosure. Moreover, rule 321 would continue to authorize the Exchange to, at any time, require that the member or member organization and the partners or stockholders thereof sever all connections with an affiliate and dispose of all stock or other interests therein. The Commission believes that these requirements should ensure that the NYSE continues to scrutinize carefully the terms of a member or member organization's proposed formation or acquisition of an affiliate and its operation while allowing flexibility in the terms of such a relationship.[19]

The Commission believes that the NYSE's proposal to delete existing rule 322 and to adopt revised rule 322 should increase opportunities for members and member organizations to guarantee, endorse or assume its affiliate obligations while protecting the

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(3) from any pension or profit-sharing fund; (4) from any institution, such as a bank, trust company, insurance company, or investment company. The proposed amendment would delete the reference to corporate subsidiary and extend the prohibition of the Rule to member organizations with which it is associated and affiliates of a member organization.

[16] As amended, rule 342 also would provide that each office of a member organization, including any foreign branch office, other than the main office of the member organization, shall be subject to a registration fee as determined by the Exchange for each calendar year or portion thereof, unless specifically exempt by the Exchange. The NYSE has stated that any change in its annual branch office fee imposed under rule 342.10 would be filed with the Commission in accordance with Rule 19b–4 of the Act. See letter from Donald van Weezel, Managing Director, Regulatory Affairs, NYSE, to Diana Luka-Hopson, Branch Chief, Commission, dated July 23, 1993.

[17] 15 U.S.C. 78f(b) (1) and (5) (1988).

[18] See *supra* note 6.

[19] The Commission notes that where there is no requirement under rule 321 or 322 to provide notice to or receive approval from the Exchange of a relationship with another entity, Exchange rule 346(c) (Limitations—Employment and Association With Members and Member Organizations) which requires that the Exchange receive notification of any control relationship may be applicable.

regulatory and financial integrity of members and member organizations. Revised rule 322 eliminates restrictions which may impede the business activities of an affiliate. For example, although current rule 322 permits members or member organizations to form a guaranteed corporate subsidiary, these entities are not permitted to do any business not specifically approved by the Exchange. In fact, the current rule prohibits a subsidiary from carrying accounts, holding customer funds or securities, or dealing with customers as principals. Revised rule 322 would remove this prohibition. As a result, a guaranteed subsidiary would be able to engage in such functions so long as the member or member organization complies with the regulatory requirements of the revised rule, which require, among other things, the submission of a financial and operational impact notice to the Exchange, access to the books and records of the guaranteed subsidiary, and the submission of FOCUS reports or other financial statements of the guaranteed subsidiary. In this regard, revised rule 322 would require prior written notice to the Exchange whenever any member not associated with a member organization or any member organization guarantees, endorses or assumes, directly or indirectly, the obligations or liabilities of another person or whenever any member or member organization receives flow-through capital benefits in accordance with appendix C of rule 15c3–1 under the Act.[20] Moreover, the Exchange would be able to order the severance of any guarantee relationship at any time. The Commission believes that the requirement of prior written notice to the Exchange coupled with the remaining requirements of the rule should enable the Exchange to review and monitor the activities of members or member organizations in their relationship with guaranteed affiliates or persons.[21]

The Commission also believes that revised rule 322 should provide the Exchange with a mechanism to monitor the financial condition of an affiliate through FOCUS reporting or the submission of financial and operational statements. This, in turn, should enable the Exchange to identify and assess potential risks to a member or member organization and take appropriate steps, including severance of the relationship, if necessary.

The Commission believes that the proposed deletion of rule 324, relating to formation of associated partnerships, is appropriate in view of the NYSE's amendments to rule 321. Current rule 324 authorizes a member organization to form an associated partnership with the prior written approval of the Exchange and sets forth certain requirements for the associated partnership. Because the Exchange is proposing to amend rule 321 to include partnerships as affiliates, and, therefore, all the requirements of rule 321 will apply to partnerships, current rule 324 is repetitive and should be deleted.

The Commission believes that the proposed amendments of rule 342, governing foreign branch offices, should increase Exchange oversight of members' and member organizations' foreign branch offices.[22] As amended, rule 342 would specify that foreign branch offices and their personnel are fully subject to the Constitution and Rules of the Exchange to the same degree and extent as are members and member organizations and their personnel. In addition, the proposal specifies that all obligations and liabilities of a foreign branch office shall be assumed or guaranteed by its parent member or member organization and such member or member organization shall be fully responsible for all acts of such foreign branch office. As a result of this amendment, all foreign branch offices of members or member organizations would be subject to the regulatory requirements of revised rule 322, discussed above. In addition, revised rule 342 would permit members or member organizations to establish a foreign branch office in partnership form, as well as the corporate form, so long as the partnership is wholly owned by the member or member organization. The amendments to rule 342, together with revised rule 322, will ensure, among other things, Exchange access to foreign branch office books and records, financial reports, and financial and operational impact notices prior to entering into the relationship. The Exchange would also have the authority to require a severance of the relationship, pursuant to rule 322.16. The Commission believes that these requirements are appropriate and should enhance the Exchange's efforts to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the rules of the exchange.

Similarly, the Commission believes that the proposed amendments to rule 476, governing the Exchange's disciplinary proceedings, should extend appropriately the Exchange's authority to initiate disciplinary proceedings and impose sanctions against persons, including affiliates, who are subject to the jurisdiction of the Exchange. The amendments should enhance the Exchange's compliance efforts in accordance with Section 6(b)(1) of the Act while providing fair procedures for the disciplining of members or persons associated with members in accordance with sections 6(b)(6) and 6(b)(7) of the Act.

Finally, the Commission believes that the remaining amendments to rules 113, 122, 346 and 416 are necessary and appropriate for the Exchange to effectuate its proposed amendments to rules 321 and 322.

The Commission finds good cause for accelerated approval of Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after publication of notice of filing thereof. The NYSE's original proposal was published in the **Federal Register** for the full statutory period and no comments were received.[23] Amendment Nos. 1 and 2 modify the proposal to make certain technical and clarifying adjustments to the proposed rules but leave its overall structure unchanged.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

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[20] See *supra* note 11.

[21] The written notice must be given at least 10 days prior to entering into a relationship covered by rule 322. According to the NYSE's draft Information Memorandum, see *supra* note 10, the advance notice period, however, does not commence unless or until the member or member organization complies with appendix C of rule 15c3–1 with respect to receipt of flow-through capital benefits. The Commission believes the advance notice should provide the NYSE time to review the impact of the relationship on the member organization and to take any necessary action to address concerns.

[22] The NYSE proposal would define the term "foreign branch office" to include any such independently organized foreign location from which the services of the member or member organization are being made available or whose financial resources are being utilized in the operation of the office or as to which either of the above is held out, respectively, as available or being utilized.

[23] See Securities Exchange Act Release No. 31688 (January 5, 1993), 58 FR 3579 (January 11, 1993).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection for copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–92–31 and should be submitted by September 28, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[24] that the proposed rule change, including Amendment Nos. 1 and 2 on an accelerated basis, (SR–NYSE–92–31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21690 Filed 9–3–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19664; 812–8460]

The Union Central Life Insurance Co.; et al.

August 31, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: The Union Central Life Insurance Company (the "Company") and Carillon Account.

RELEVANT 1940 ACT SECTIONS: Order requested under Section 26(b) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order approving the proposed substitution of shares of the Money Market Portfolio of Scudder Variable Life Investment Fund ("Scudder Fund") for shares of the Money Market Portfolio of Carillon Fund, Inc. ("Carillon Fund").

FILING DATE: The application was filed on June 18, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 27, 1993 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. The Company and Carillon Account, 1876 Waycross Road, Cincinnati, Ohio 45240.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, or Michael V. Wible, Special Counsel, at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Company is a mutual insurance company that was organized in 1867 under the laws of Ohio. The Company is primarily engaged in the sale of life and disability insurance and annuities and is currently licensed to operate in all 50 states and the District of Columbia.

2. Carillon Account is a separate account of the Company that is registered with the Commission as a unit investment trust under the Act. Carillon Account has been divided into six subaccounts (the "Subaccounts"), each of which invests in a different Portfolio of either Scudder Fund or Carillon Fund.

3. Carillon Fund and Scudder Fund are both registered under the Act as open-end management investment companies. Applicants seek an order permitting the Subaccount that currently invests in shares of the Money Market Portfolio of Carillon Fund (the "Carillon Portfolio") to invest instead in shares of the Money Market Portfolio of Scudder Fund (the "Scudder Portfolio").

4. The Contracts are individual variable annuity contracts that are sold subject to a contingent deferred sales charge that declines as a percentage of the amount surrendered from 7% to 0% over an eight-year period. Contract Owners may allocate their premiums in whole or in part to one or more Subaccounts and to the Guaranteed Account (a general account funding option).

5. Transfers of at least $300 are permitted among the Subaccounts or between Subaccounts and the Guaranteed Account as frequently as desired prior to the date on which annuity payments begin. The first six transfers in a Contract year are free; additional transfers are subject to a charge (currently $10).

6. Under the Contracts, the Company has the right, subject to applicable law, to make substitutions for the shares held by any of the Subaccounts if, in the Company's judgment, investment in any Portfolio would become inappropriate in view of the purposes of Carillon Account. Any such substitution is not to be made until affected Contract Owners have been notified and any necessary Commission approval of the substitution has been obtained. In the case of such a substitution, affected Contract Owners have the right, within 30 days after notification, to surrender their Contracts without the imposition of any withdrawal charge.

7. Both the Scudder Portfolio and the Carillon Portfolio are money market funds that invest in a variety of short-term, high quality money market instruments and maintain dollar-weighted average portfolio maturities of 90 days or less. Each Portfolio attempts to maintain a stable net asset value by valuing its portfolio securities at amortized cost, in reliance upon Rule 2a–7 under the Act. The Scudder Portfolio attempts to maintain a stable net asset value of $1 per share, the Carillon Portfolio $10 per share.

8. All of the investment securities held by each Portfolio as of December 31, 1992 were "first tier securities" as defined in Rule 2a–7. As of that date, both Portfolios were primarily invested in domestic commercial paper (Scudder Portfolio 78.4% and Carillon Portfolio 65.6%) and United States Government obligations (Scudder Portfolio 13.3% and Carillon Portfolio 29.7%) and had comparable dollar-weighted average portfolio maturities (60 days for the Scudder Portfolio and 39 days for the Carillon Portfolio).

9. The Carillon Portfolio had total net assets of approximately $18.9 million as of December 31, 1992, and approximately $18.8 million as of December 31, 1991. The total annual expenses of Carillon Portfolio for 1992 were 0.67% and for 1991 were 0.69% per annum of its average daily net assets, comprised of an investment advisory fee of 0.35% and other expenses of 0.32% for 1992 and 0.34% for 1991. The Carillon Portfolio's ratio of investment income to its average daily net assets was 3.19% in 1992 and 5.43% in 1991.

10. The Scudder Portfolio had total net assets of approximately $33.7 million as of December 31, 1992 and

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[24] 15 U.S.C. 78s(b)(12) (1988).

[25] 17 CFR 200.30–3(a)(12) (1991).

approximately $28 million as of December 31, 1991. The total annual expenses of the Scudder Portfolio were 0.64% per annum of its average daily net assets in 1992 and 0.67% in 1991, comprised of an investment advisory fee of 0.37% and other expenses of 0.27% in 1992 and other expenses of 0.30% in 1991. The Scudder Portfolio's ratio of investment income to its average daily net assets was 3.26% in 1992 and 5.67% in 1991.

11. The Company proposes to cause the Subaccount that invests in shares of the Carillon Portfolio to redeem those shares and, with the proceeds of that redemption, purchase shares of the Scudder Portfolio. The value of each Contract Owner's allocation to the Carillon Portfolio would be identical immediately before and immediately after that substitution. All administrative or other costs of the substitution will be borne by the Company. There would be no tax consequences to Contract Owners, Carillon Account or the Company because of the substitution.

12. During a period of 30 days after the date of the mailing to affected Contract Owners of the notice of substitution, affected Contract Owners will have the right (1) to surrender their Contracts without the imposition of any withdrawal charge and (2) to transfer Contract values from the Money Market subaccount to another Subaccount or to the Guaranteed Account without charge and without the transfer counting as one of the six free transfers permitted during the Contract Year.

Applicants' Legal Analysis

1. Section 26(b) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved that substitution based upon a finding that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Section 26(b) was intended to provide for Commission scrutiny of proposed substitutions which could, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the proceeds of redemption, or both.

3. Applicants assert that the Scudder Portfolio offers greater potential for future investment performance than the Carillon Portfolio. For the past two completed fiscal years, the Scudder Portfolio has earned more income per share and incurred lower expenses per share than the Carillon Portfolio. The Scudder Fund Portfolio is significantly larger than the Carillon Portfolio and the disparity in size is likely to increase in the future, in part because the Company has determined to move the Carillon Portfolio assets not related to the Contracts (approximately $17.1 million as of December 31, 1992) to the Scudder Portfolio.

4. According to the Applicants, the Carillon Portfolio is too small to be operated efficiently, even with the assets not related to the Contracts. Without those assets, the Carillon Portfolio's expenses likely would increase and its investment income decrease on a per-share basis. In effect, the proposed substitution permits the Money Market Subaccount assets to be invested in a Portfolio expected to have over $50 million of assets as compared to one expected to have less than $2 million.

5. Although the substitution would permit a contract Owner who prefers a money market investment objective to maintain his or her allocation of Contract values to a money market portfolio, the Contract Owner could transfer Contract values to another Subaccount or surrender his or her Contract without cost.

Applicants represent that the notice of the substitution provided to Contract Owners will inform them of these transfer rights and surrender rights that exist for 30 days following the mailing of the notice. Accordingly, Applicants submit that the terms of the proposed substitution are consistent with the purpose underlying section 26(b) of preventing investors from being forced to forfeit a sales load already paid or perhaps to incur additional loads upon redemption and purchase of another investment company security.

Conclusion

For the reasons and upon the facts set forth above, Applicants assert that the order requested is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21691 Filed 9–3–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32821; File No. SR–PSE–93–15]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Amendments to Its Equity Transaction Charges

August 30, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 27, 1993, as subsequently amended on August 5, 1993,[1] August 10, 1993,[2] and August 17, 1993,[3] the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend its Schedule of Rates for Exchange Services. The Exchange proposes the following amendments to its Schedule of Rates for Exchange Services:[4]

I. PSE Equity Transaction Charges

A. Exchange Transactions per Month

Note: Transaction fees *for trades of 5,000 shares or more* are capped at *$100 per transaction side* [50,000 shares per trade side and at an $80 price per share] *and are subject to a minimum fee of $15 per side.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received

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[1] See letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Diana Luka-Hopson, Branch Chief, Commission, dated July 29, 1993. Amendment No. 1 made certain clarifying amendments to the proposal.

[2] See letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Louis A. Randazzo, Attorney, Commission, dated August 5, 1993. Amendment No. 2 made further clarifying amendments to the proposed Schedule of Rates.

[3] See letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Louis A. Randazzo, Attorney, Commission, dated August 9, 1993. Amendment No. 3 clarified certain language in the Exchange's statement of purpose of the proposed rule change.

[4] With respect to the following schedule, italicizing indicates new material and brackets indicate material to be deleted.

of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to make certain changes to its Schedule of Rates for Exchange Services. These changes are as follows: First, the Exchange is proposing to establish a $100 cap on its transaction charge for block trades (*i.e.*, any trade of 5,000 shares or more). Accordingly, the total maximum transaction cost per block trade on the PSE would be $100 per side (plus any applicable clearing fee). Second, for purposes of determining a member's cumulative value of trades per month (on which the member's incremental charge per trade is based), if a $100 cap applies to a given trade, then only the portion of the trade value covered by the $100 charge[5] will be credited towards the member's cumulative value of trades for that month. Finally, the Exchange is proposing to establish a minimum transaction charge of $15 per side for block trades (*i.e.*, any trade of 5,000 shares or more).

The Exchange believes that the proposed changes will make the cost of executing larger sized trades or trades with high priced stocks more competitive with other exchanges.

2. Statutory Basis

The proposed filing is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable charges among its members and persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

[5] The portion covered by the $100 charge is calculated by multiplying the applicable trade value charge by the trade value of the transaction.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–93–15 and should be submitted by September 28, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21613 Filed 9–3–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice No. 1860]

Secretary of State's Advisory Committee on Private International Law; Request for Public Comment on a Proposed Organization of American States (O.A.S.) Convention on the Law Applicable to International Contractual Arrangements

The Office of the Legal Adviser of the Department of State provides for participation by the United States in the work of international organizations which promote harmonization of private law at the international level. We are soliciting public comments on the above-referenced draft convention, which will be considered for adoption at the O.A.S.-sponsored Fifth Inter-American Specialized Conference on Private International Law (CIDIP–V) to be held in March 1994.

The O.A.S. through its Specialized Conferences on Private International Law prepares conventions (multilateral treaties) on various law unification topics. The United States presently is a party to two such conventions, the Inter-American Convention on Letters Rogatory (service of process) and its Protocol, and the Inter-American Convention on International Commercial Arbitration. The O.A.S. efforts in this field may be increasingly important as the advantages of private law harmonization in commercial and other areas of law in the Americas become more apparent in relation to economic and trade relationships and other hemispheric initiatives.

The above-referenced draft convention will be reviewed at an O.A.S. Preparatory meeting in November in Tucson, Arizona, hosted by the O.A.S. and the National Law Center for Inter-American Free Trade (CIFT). It will then be the subject of final intergovernmental negotiations in March 1994 at CIDIP–V, hosted by the Government of Mexico. If approved by CIDIP–V, it will be up to individual countries whether to consider ratification.

Differences in national conflicts of law standards and uncertainty as to their results may complicate transactions, impede trade, and is often a point of litigation. An "applicable law" convention can provide more certainty in international transactions by setting out rules for the treatment of choice of law agreements and for determining the applicable law when in dispute. Such an effort requires taking into account different national practices in arriving at mutually acceptable solutions to reducing barriers.

We recommend that those reviewing the draft convention, focus on whether such a convention, however modified, can reduce disputes as to applicable law and make more predictable the transborder contacts involved. This does not require resolution of all outstanding issues, but rather a consensus on enough issues and types of contracts to be covered to materially increase predictability at the international level. The test should be whether, on balance, the transborder contracts covered are sufficiently facilitated with the convention.

The draft O.A.S. convention covers scope of application, existence and validity of contracts, types of contracts excluded, rules to determine applicable law. There are additional articles on reservations, a general rule of interpretation to promote harmonization of decisions, and other matters.

Copies of the draft convention may be obtained from the Legal Advisers Office, together with an explanatory report and a side-by-side copy of two other Conventions on applicable law which have already been—the 1980 European Economic Community's "Rome" Convention on the Law Applicable to Contractual Obligations and the 1986 Hague Convention on the Law Applicable to Contracts for the International Sale of Goods (the texts of the latter two Conventions have been rearranged to parallel the O.A.S. draft).

In considering the proposed O.A.S. convention, it should be taken into account that the process of balancing national legal traditions will be different when it involves contract and conflicts law traditions of the Americas, as compared to the Hague Convention which is limited to one type of contract—sales of goods, or the Rome Convention which is limited to EC Member States and which assumes other common EC legal positions.

An additional matter on which recommendations are sought is what other international private law unification topics might be proposed by the United States for future work by the O.A.S. during the four year period after conclusion of CIDIP–V in March 1994.

Copies of the draft convention and other relevant information may be requested from the Legal Adviser's Office by contacting Miss Gonzales by fax at (202) 653–9854 or in writing at the Office of the Legal Adviser (L/PIL), suite 501, 2100 "K" Street, NW., Washington, DC 20037. Written comments, evaluations of the treaty, and recommendations should be submitted to the above address by October 22, 1993. We will circulate the results of the preparatory meeting to persons indicating an interest therein. Further comments can be made before final U.S. positions are formulated for the March O.A.S. conference. For additional information about the proposed convention or the O.A.S. process, contact Harold S. Burman at the above address or call (202) 653–9852.

Dated: September 1, 1993.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law, Vice-Chair, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 93–21604 Filed 9–3–93; 8:45 am]

BILLING CODE 4710–08–M

[Public Notice No. 1861]

Secretary of State's Advisory Committee on Private International Law; Study Group on Intercountry Adoption; Meeting

The fourth meeting of the Study Group on Intercountry Adoption of the Secretary of State's Advisory Committee on Private International Law will take place on Monday, October 4, 1993 from 9:30 a.m. to approximately 4:30 p.m. in the Loy Henderson Conference Room of the Department of State in Washington, DC.

The meeting will have two parts. It will begin with a short initial discussion to clarify the structure and requirements of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, the final text of which was approved at the conclusion of the 17th session of the Hague Conference on Private International (intergovernmental diplomatic conference) in May 1993. This will be followed by the main subject of the meeting: Various issues that need to be addressed, and on which guidance of the U.S. adoption community and the general public is being sought, in connection with the future preparation of federal implementing legislation for the Convention. The purpose of the federal legislation will be to ensure the full and uniform implementation throughout the United States of the Intercountry Adoption Convention.

Copies of the final Convention text and a briefing paper have already been mailed by the Department to persons and organizations who have participated in previous Study Group meetings or who have otherwise expressed interest in the Convention. Persons wishing to participate at the meeting or wishing to comment in writing on the Convention who do not have these documents may request copies of the Convention, briefing paper, and a preliminary list of issues related to the implementing legislation by contacting Miss Gonzales by fax at (202) 653–9854 or by writing to the Office of the Legal Adviser (L/PIL), 2100 K Street, NW., suite 501, Washington, DC 20037–7180.

Members of the general public may attend up to the capacity of the meeting room and participate in the discussions subject to the direction of the Chair. Please note that participants are to use only the conference entrance to the Department of State on 23rd Street between C and D Streets NW., to gain access to the meeting room. As access to the building is controlled, Miss Gonzales, in the Office indicated above (telephone: (202) 653–9853) must be notified not later than Wednesday, September 29 by phone, fax or letter of the name, affiliation, address, phone number, date of birth and social security number of all persons wishing to attend. Persons and organizations unable to attend the meeting are welcome to submit comments or proposals to the address indicated above.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law, Vice-Chair, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 93–21603 Filed 9–3–93; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Savannah International Airport, Savannah, GA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Savannah Airport Commission for Savannah International Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Catherine M. Nelmes, FAA/Atlanta Airports District Office, suite 101, 1680 Phoenix Parkway, College Park, Georgia 30349 (404) 994–5306.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds

that the noise exposure maps submitted for Savannah International Airport are in compliance with applicable requirements of part 150, effective August 23, 1993.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Savannah Airport Commission. The specific maps under consideration are exhibit 8–1, "1992 Noise Exposure Map," and exhibit 8–2, "1997 Noise Exposure Map" in the submission. The FAA has determined that these maps for Savannah International Airport are in compliance with applicable requirements. This determination is effective on August 23, 1993. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, suite 101, 1680 Phoenix Parkway, College Park, Georgia 30349

Mr. Patrick S. Graham, Executive Director, Savannah International Airport, Savannah, Georgia 31402

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Atlanta, Georgia, August 23, 1993.

Samuel F. Austin,

Manager, Atlanta Airports District Office.

[FR Doc. 93–21680 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Part 103 (Ultralight Vehicles) Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Part 103 (Ultralight Vehicles) Working Group.

SUMMARY: Notice is given of the establishment of the Part 103 (Ultralight Vehicles) Working Group of the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC on general aviation operations issues.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Myres, Assistant Executive Director for General Aviation Operations Issues, Flight Standards Service (AFS–850), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–8150; FAX: (202) 267–5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230, February 19, 1993). One area the ARAC deals with is general aviation operations issues. These issues involve the operation of general aviation aircraft and certification of airmen. The Part 103 (Ultralight Vehicles) Working Group is being formed to review part 103 of the Federal Aviation Regulations (FAR). The Part 103 (Ultralight Vehicles) Working Group will forward recommendations to the ARAC, which will determine whether to forward them to the FAA.

Specifically, the Working Group's task is the following: The Part 103 (Ultralight Vehicles) Working Group is charged with reviewing part 103 of the FAR and making a recommendation to the ARAC concerning whether new or revised standards are appropriate. In reviewing part 103, the working group should consider:

(a) United States Ultralight Association's petition to amend part 103 (Docket No. 25591) and all comments submitted regarding the petition; and

(b) Adding definitions and operating rules to apply to rotorcraft.

If the ARAC determines that a Notice of Proposed Rulemaking or Advisory Circular would be appropriate, those documents are to be submitted in the format prescribed by the FAA.

Reports

A. The Working Group should recommend time line(s) for completion of the task, including the rationale, for consideration at the meeting of the ARAC to consider general aviation operations issues held following publication of this notice.

B. The Working Group will give a status report on the task at each meeting of the ARAC held to consider general aviation operations issues.

The Part 103 (Ultralight Vehicles) Working Group will be comprised of experts from those organizations having an interest in the tasks assigned. A Working Group member need not necessarily be a representative of one of the member organizations of the ARAC. An individual who has expertise in the subject matter and wishes to become a member of the Working Group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the Working Group. The request will

be reviewed with the ARAC Assistant Chair for General Aviation Operations Issues and the Chair of the Part 103 (Ultralight Vehicles) Working Group, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the ARAC are necessary in the public interest in connection with the performance of duties of the FAA by law. Meetings of the ARAC to consider general aviation operations issues will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Part 103 (Ultralight Vehicles) Working Group will not be open to the public except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of Working Group meetings will be made.

Issued in Washington, DC, on August 30, 1993.

Ron Myres,

Assistant Executive Director for General Aviation Operations Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–21681 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Charlottesville-Albermarle Airport, Charlottesville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Charlottesville-Albermarle Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 7, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Washington Airports District Office, 101 West Broad Street, suite 300, Falls Church, Virginia 22046.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bryan O. Elliot, Director of Aviation of the Charlottesville-Albermarle Airport Authority, at the following address: 201 Bowen Loop, Charlottesville, Virginia 22901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Charlottesville-Albermarle Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Robert Mendez, Manager, Washington Airports District Office, 101 West Broad Street, suite 300, Falls Church, Virginia 22046. The application may be reviewed in person at the same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application use the revenue from a PFC at Charlottesville-Albermarle Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 16, 1993, the FAA determined that the application to use the revenue from a PFC submitted by Charlottesville-Albermarle Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, on later than October 20, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $2.00

Proposed charge effective date: September 1, 1992

Proposed charge expiration date: November 1, 1993

Total estimated PFC revenue: $2[illegible]5,559

Brief description of proposed project(s):

—Purchase 22 ft. Snow Displacement Equipment

—Construction Snow Equipment Storage Building

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/commercial operators filing FAA Form 1800–31 and foreign air carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Charlottesville-Albermarle Airport Authority.

Issued in Jamaica, New York, on August 20, 1993.

Louis P. DeRose,

Manager, Airports Division, Eastern Region.

[FR Doc. 93–21678 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at North Bend Municipal Airport, North Bend, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at North Bend Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 7, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager, Seattle Airports District Office, SEA–ADO, Federal Aviation Administration, 1601 Lind Avenue SW., suite 250, Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ron Stillmaker, Airport Manager, at the following address: P.O. Box "B", North Bend, Oregon 97459.

Air carriers and foreign air carriers may submit copies of written comments previously provided to North Bend Municipal Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (206) 227–2654; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., suite 250, Renton, Washington 98055–4656. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at North Bend Municipal Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 30, 1993, the FAA determined that the application to impose and use a PFC submitted by the City of North Bend was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 26, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: November 1, 1993
Proposed charge expiration date: October 31, 1997
Total estimated PFC revenue: $182,044.00
Brief description of proposed projects (Impose and Use): South apron, taxiway lighting, guidance signs and PAPI construction; Master Plan update; installation of directional signs; obstruction removal. Aircraft Rescue and Fire Fighting (ARFF) truck (Impose Only).
Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-Scheduled Air taxi/commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the North Bend Municipal Airport.

Issued in Renton, Washington, on August 30, 1993.

David A. Field,

Manager, Planning, Programming, and Capacity Branch, Northwest Mountain Region.

[FR Doc. 93–21679 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Port Columbus International and Bolton Field Airports, Columbus, OH

AGENCY: Federal Aviation Administration (FAA). DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Port Columbus International and Bolton Field Airports under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES. Comments must be received on or before October 7, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Larry Hedrick, Executive Director of the Columbus Municipal Airport Authority at the following address: Port Columbus International Airport, 4600 International Gateway, Columbus, Ohio 43219.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Columbus Municipal Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Dean C. Nitz, Manager, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487–7300. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Port Columbus International and Bolton Field Airports under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 20, 1993, the FAA determined that the application to use the revenue from a PFC submitted by Columbus Municipal Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 29, 1993.

The following is a brief overview of the application.

Level of the PFC: $3.00
Actual charge effective date: October 1, 1992
Estimated charge expiration date: February 1, 1994
Total approved net PFC revenue: $7,341.707
Brief description of proposed project(s):
School Soundproofing
Automated ID System (Phase III)
Security Vehicles
Boundary Survey
Noise Monitoring
Residential Soundproofing
Escalators Construction
Crack Seal and Seal Coat, Terminal Apron
Electronic Monitoring of Airfield, Lighting and Vault Work (Engineering)
Snow Removal Equipment
North Concourse Expansion (Engineering)
Bolton Field
Snow Removal Equipment Building
Overlay Alpha Ramp
Snow Removal Truck
Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Columbus Municipal Airport Authority.

Issued in Des Plaines, Illinois, on August 25, 1993.

Larry H. Ladendorf,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 93–21687 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. NCI 3287]

Motorcycle Helmets Manufactured by Fla's Choice Lite Lids Inc.; Public Proceeding Scheduled

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public meeting.

SUMMARY: NHTSA will hold a pubic meeting on September 30, 1993 regarding an initial determination that certain motorcycle helmets manufactured by Fla's Choice Lite Lids Inc. fail to comply with Federal Motor Vehicle Safety Standard No. 218.

FOR FURTHER INFORMATION CONTACT: John Lee, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; 202–366–5299.

SUPPLEMENTARY INFORMATION: Pursuant to section 152(a) of the National Traffic

and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1412(a), NHTSA's Associate Administrator for Enforcement has made an initial determination that "LBL Winner" motorcycle helmets manufactured by Fla's Choice Lite Lids Inc. (Fla's Choice) do not comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 218, "Motorcycle Helmets," 49 CFR 571.218. Compliance tests performed for NHTSA indicate that the "LBL Winner" model helmets do not meet the impact attenuation, penetration, and retention system requirements of FMVSS No. 218 and therefore would not provide adequate protection to users in the event of a crash. In Addition, the "LBL Winner" helmets fail to comply with one of the labelling requirements of the Standard.

A public proceeding will be held at 10 a.m., on September 30, 1993 in room 2230, Department of Transportation Building, 400 Seventh Street, SW., Washington, DC, at which time the manufacturer will be afforded an opportunity to present data, views, and arguments to establish that the helmets covered by this initial determination comply with FMVSS No. 218. That proceeding will be held in conjunction with another proceeding previously scheduled in connection with an initial determination that "LBL" motorcycle helmets manufactured by Chico of Ft. Lauderdale, Inc. fail to comply with FMVSS No. 218.

Interested persons are invited to participate through written or oral presentations. Persons wishing to make oral presentations are requested to notify Ms. Elaine Beale, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, room 6111, 400 Seventh Street, SW., Washington, DC 20590, 202–366–2832, before the close of business on September 24, 1993. Written comments must be submitted to the same address on or before September 30, 1993.

The agency's investigative file in this matter is available for public inspection during working hours (9:30 a.m. to 4 p.m.) in its Technical Reference Library, room 5108, 400 Seventh Street, SW., Washington, DC 20590.

Authority: 15 U.S.C. 1412; delegation of authority at 49 CFR 1.50(a) and 49 CFR 501.8.

Issued on: August 30, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–21591 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–62; Notice 1]

Receipt of Petition for Determination that Nonconforming 1972 Alfa Romeo Spider Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1972 Alfa Romeo Spider passenger cars are eligible for importation.

SUMMARY: This notice requests comments on a petition submitted to the National Highway Traffic Safety Administration (NHTSA) for a determination that a 1972 Alfa Romeo Spider passenger car that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is October 7, 1993.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.].

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer No. R–90–009) has petitioned NHTSA to determine whether 1972 Alfa Romeo Spider passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1972 Alfa Romeo Spider that was manufactured for importation into and sale in the United States, and certified by its original manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner states that it carefully compared the non-U.S.-certified 1972 Alfa Romeo Spider to its U.S.-certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S.-certified 1972 Alfa Romeo Spider, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S.-certified counterpart, or is capable of being readily modified to conform to these standards.

Specifically, the petitioner claims that the non-U.S. certified 1972 Alfa Romeo Spider is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 Transmission Shift Lever Sequence. * * *, 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 111 Rearview Mirrors, 113 Hood Latch Systems, 116 Brake Fluid, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 206 Door Locks and Door Retention Components, 207

Seating Systems, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, and 302 Flammability of Interior Materials.

Petitioner also contends that the 1972 Alfa Romeo Spider is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the seat belt symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S.-model headlamp assemblies with sealed beam headlamps and front side markers; (b) installation of U.S.-model tail lamp assemblies with rear side markers.

Standard No. 110 Tire Selection and Rims: Installation of a tire information placard.

Standard No. 114 Theft Protection: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 Vehicle Identification Number: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 Occupant Crash Protection: (a) Installation of either a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 301 Fuel System Integrity: Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the non-U.S.-certified 1972 Alfa Romeo Spider must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below:

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 30, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–21592 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–61; Notice 1]

Receipt of Petition for Determination that Nonconforming 1991 Mercedes-Benz 190E Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1991 Mercedes-Benz 190E passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1991 Mercedes-Benz 190E that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is October 7, 1993.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m].

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

G&K Automotive Conversion, Inc. (G&K) of Santa Ana, California (Registered Importer No. R–90–007) has petitioned NHTSA to determine whether 1991 Mercedes-Benz 190E (Model ID 201.124) passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1991 Mercedes-Benz 190E that Daimler Benz AG manufactured for importation into and sale in the United States, and certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner stated that it has carefully compared the non-U.S.-certified 1991 Mercedes-Benz 190E to its U.S.-certified counterpart, and found the two vehicles to be substantially similar with respect to most applicable Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S.-certified Mercedes-Benz 190E, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S.-certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S.-certified 1991 Mercedes-Benz 190E is identical to its U.S.-

certified counterpart with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence.* * *, 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 113 Hood Latch Systems, 116 Brake Fluid, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 207 Seating Systems, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, and 302 Flammability of Interior Materials.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: installation of a tire information placard.

Standard No. 111 Rearview Mirrors: replacement of the passenger side rearview mirror, which is convex but does not bear the required warning statement.

Standard No. 114 Theft Protection: installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 Vehicle Identification Number: installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 Power Window Systems: rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 Door Locks and Door Retention Components: replacement of rear door locks with U.S.-model parts.

Standard No. 208 Occupant Crash Protection: (a) installation of an ignition switch-actuated seat belt warning buzzer; (b) replacement of rear seat belts with U.S.-model belts equipped with retractors.

Standard No. 214 Side Impact Protection: installation of reinforcing beams in doors.

Standard No. 301 Fuel System Integrity: installation of a rol over valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Standard No. 302 Flammability of Interior Materials: treatment of interior materials with a fire retardant spray.

Additionally, the petitioner states that the bumpers on the non-U.S.-certified 1991 Mercedes-Benz 190E must be reinforced to comply with the Bumper Standard found at 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 30, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93-21893 Filed 9-3-93; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 93-60; Notice 1]

Receipt of Petition for Determination that Nonconforming 1992 Range Rover Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1992 Range Rover multi-purpose passenger vehicles are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1992 Range Rover that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is October 7, 1993.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is

eligible for importation. The agency then publishes this determination in the **Federal Register**.

G&K Automotive Conversion, Inc. (G&K) of Santa Ana, California (Registered Importer No. R–90–007) has petitioned NHTSA to determine whether 1992 Range Rover multi-purpose passenger vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1992 Range Rover that Land Rover Ltd. manufactured for importation into and sale in the United States, and certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner stated that it has carefully compared the non-U.S.-certified 1992 Range Rover to its U.S.-certified counterpart, and found the two vehicles to be substantially similar with respect to most applicable Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S.-certified 1992 Range Rover, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S.-certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S.-certified 1992 Range Rover is identical to its U.S.-certified counterpart with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence. * * *, 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 113 Hood Latch Systems, 116 Brake Fluid, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 206 Door Locks and Door Retention Components, 207 Seating Systems, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, and 302 Flammability of Interior Materials.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate real sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: Installation of a tire information placard.

Standard No. 111 Rearview Mirrors: Replacement of the passenger side rearview mirror, which is convex but does not bear the required warning statement.

Standard No. 114 Theft Protection: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 Vehicle Identification Number: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 Power Window Systems: Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 Occupant Crash Protection: (a) Installation of a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 301 Fuel System Integrity: Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 30, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–21594 Filed 9–3–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 30, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510–0056
Form Number: SF 3881
Type of Review: Extension
Title: ACH Vendor/Miscellaneous Payment Enrollment Form
Description: Payment data will be collected from vendors doing business with the Federal government. Treasury/Financial Management Service (FMS) will use the information to electronically transmit payments to vendors' financial institutions. The affected public includes (but is not limited to) businesses, State/local governments, corporations, educational institutions, and other organizations.
Respondents: State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations
Estimated Number of Respondents: 200,000
Estimated Burden Hours Per Response: 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 50,000 hours
Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial

Management Service, 3361–L 75th Avenue, Landover, MD 20785

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–21615 Filed 9–3–93; 8:45 am]

BILLING CODE 4810–35–M

Public Information Collection Requirements Submitted to OMB for Review

August 30, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1031

Form Number: IRS Form 8697

Type of Review: Extension

Title: Interest Computation Under the Look-Back Method for Completed Long-Term Contracts

Description: Taxpayers required to account for all or part of any long-term contract entered into after February 28, 1986, under the percentage of completion method must use Form 8697 to compute and report interest due or to be refunded under IRC section 460(b)(3). The IRS uses Form 8697 to determine if the interest has been figured correctly. Taxpayers may compute interest using the actual method (Part I) or the Simplified Marginal Impact Method (Part II).

Respondents: Individuals or households, businesses or other for-profit

Estimated Number of Respondents/ Recordkeepers: 5,000

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8697—Part I	Form 8697—Part II
Recordkeeping	8 hr., 22 min	9 hr., 5 min.
Learning about the law or the form	2 hr., 5 min	1 hr., 35 min.
Preparing, copying, assembling, and sending the form to the IRS	2 hr., 19 min	1 hr., 49 min.

Frequency of Response: Annually

Estimated Total Reporting/ Recordkeeping Burden: 63,270 hours

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–21617 Filed 9–3–93; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

August 30, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0975

Form Number: IRS Form 1120–W

Type of Review: Revision

Title: Corporation Estimated Tax

Description: Form 1120–W is used by corporations to figure estimated tax liability and the amount of each installment payment. Form 1120–W is a worksheet only. It is not to be filed with the Internal Revenue Service.

Respondents: Businesses or other for-profit, small businesses or organizations

Estimated Number of Respondents/ Recordkeepers: 900,000

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form
1120–W	7 hr., 39 min	1 hr., 23 min	1 hr., 34 min.
1120–W, Sch. A (Pt. I)	11 hr., 14 min	6 min	17 min.
1120–W, Sch. A (Pt. II)	23 hr., 26 min		23 min.
1120–W, Sch. A (Pt. III)	5 hr., 16 min		5 min.

Frequency of Response: Annually

Estimated Total Reporting/ Recordkeeping Burden: 9,600,628 hours

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–21616 Filed 9–3–93; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 171
Tuesday, September 7, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-93-25]

TIME AND DATE: September 13, 1993 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731-TA-658 (Preliminary) (Class 150 stainless steel threaded pipe fittings from Taiwan)—briefing and vote.
5. Inv. No. 731-TA-627 (Final) (Pads for woodwind instruments from Italy)—briefing and vote.
6. Outstanding action jackets
   1. GC-93-095, Violation of 24-hour rule in an investigation under title VII of the Tariff Act of 1930.
   2. GC-93-097, Initial determination in Inv. No. 337-TA-348 (Certain In-Line Roller Skates).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205-2000.

Issued: August 31, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-21856 Filed 9-2-93; 2:33 pm]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 9:00 a.m., Tuesday, September 14, 1993.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Ex Parte No. 346 (Sub-No. 29), *Rail General Exemption Authority—Petition of AAR to Exempt Rail Transportation of Selected Commodity Groups.*

Ex Parte No. 394 (Sub-No. 12), *Petition to Exempt from Regulation the Rail Transportation of Scrap Paper.*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Public Affairs, telephone: (202) 927-5350, TDD: (202) 927-5721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-21821 Filed 9-2-93; 2:32 pm]

BILLING CODE 7503-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Monday, September 13, 1993.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6151—Brief of Aviation Accident: Public Use Aircraft With Governor of Kentucky Aboard.

6097—Aviation Accident Report: Midair Collision Involving Mitsubishi MU-2B-60, Piper PA-32, Greenwood, Indiana, September 11, 1992.

5589A—Railroad Accident Report: Derailment and Collision of Amtrak Train 82 with Rail Cars on Dupont Siding of CSX Transportation, Inc., Lugoff, South Caroline, July 31, 1991.

NEWS MEDIA CONTACT: Telephone (202) 382-0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525,

Dated: September 2, 1993.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 93-21857 Filed 9-2-93; 2:34 pm]

BILLING CODE 7533-01-M

Corrections

Federal Register
Vol. 58, No. 171
Tuesday, September 7, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 931, 932 and 933

[No. 93-59]

Members of the Federal Home Loan Banks

Correction

In rule document 93-18981 beginning on page 43522, in the issue of Tuesday, August 17, 1993, make the following corrections:

1. On page 43523, in the 3d column, in the 1st full paragraph, in the 11th line, "1424(A)(1)" should read "1424(a)(1)".

2. On the same page, in the same column, in the 10th line from the end, "Makes" and "Home" should be lowercased.

3. On page 43524, in the 1st column, in the 11th line, "933.1(1)" should read "933.1(l)".

4. On the same page, in the second column, in the seventh paragraph, in the third line, "for" should read "four".

5. On the same page, in the third column, in the fourth line from the top, after "multifamily" insert "building".

6. On page 43525, in the third column, in paragraph (5), in the third line, "§ 933.1(e)(2)" should read "§ 933.1(i)(2)".

7. On page 43526, in the first column, in the third full paragraph, in the fourth line, "loans" should read "loan".

8. On page 43530, in the first column, in paragraph (1), in the eighth line from the end, after "above" insert a period.

9. On page 43531, in the third column, in paragraph d., in the seventh line from the end, "12 U.S.C. 14249(a)(2)(C)" should read "12 U.S.C. 1424(a)(2)(C)".

10. On page 43535, in the second column, in the ninth line, "an" should read "a".

11. On the same page in the same column, beginning in the fifth line from the end, "60-day-calendar-day" should read "60-calendar-day".

12. On the same page, in the 3d column, in the 3d full paragraph, in the 17th line, "section" should read "sections".

13. On page 43539, in the second column, in the last paragraph, in the first line, "§ 993.15(c)" should read "§ 933.15(c)".

14. On the same page, in the third column, in the fourth paragraph, in the fourth line, "of" should read "on".

15. On page 43540, in the first column, in the second paragraph, in the fifth line, "require" should read "reacquire".

§ 933.7 [Corrected]

16. On page 43545, in the first column, in § 933.7(d), in the third line from the end, "it is wants" should read "if it wants".

§ 933.14 [Corrected]

17. On page 43546, in the third column, in § 933.14(b)(2), in the second line, "it its assets" should read "if its assets".

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Surety Bond Guarantee Program

Correction

In proposed rule document 93-20837 beginning on page 45300, in the issue of Friday, August 27, 1993, on page 45302, in the second column, in the second line from the end, "not" should read "now".

BILLING CODE 1505-01-D

federal register

Tuesday
September 7, 1993

Part II

Department of Agriculture

Cooperative State Research Service

National Competitive Research Initiative Grants; Solicitation for Applications; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

National Competitive Research Initiative Grants Program (Competitive Research Grants Program); Fiscal Year 1994: Solicitation for Applications

Applications are invited for competitive grant awards in agricultural, forest, and related environmental sciences under the National Competitive Research Initiative Grants Program (NCRIGP) administered by the Office of Grants and Program Systems, Cooperative State Research Service (CSRS), for fiscal year 1994.

Authority

The authority for this program is contained in section 2(b) of the Act of August 4, 1965, as amended by Section 1615 of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act) (7 U.S.C. 450i(b)) (1965 Act, as amended). Under this program, subject to the availability of funds, the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the Department of Agriculture (USDA). Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual. Proposals from scientists at non-United States organizations will not be considered for support.

It is expected that Congress, in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1994, will prohibit CSRS from using the funds available for the NCRIGP for fiscal year 1994 to pay indirect costs exceeding 14 per centum of the total Federal funds provided under each award on competitively-awarded research grants.

Applicable Regulations and Statutory Guidance

Regulations applicable to this program include, but are not limited to, the following: (a) The regulations governing the NCRIGP, 7 CFR part 3200, which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; (b) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015; (c) the USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016; (d) section 1402 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by section 1602 of the FACT Act, which sets forth purposes that research supported by the NCRIGP should address; and (e) section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by section 1603 of the FACT Act, which defines "sustainable agriculture."

Project Types

The project types for which proposals are solicited include:

I. Conventional Projects

(a) Standard Research Grants: Research will be supported that is fundamental or mission-linked conducted by individual investigators, co-investigators within the same discipline, or multidisciplinary teams. Any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual may apply.

(b) Conferences: Scientific meetings that bring together scientists to identify research needs, update information, or advance an area of research are recognized as integral parts of research efforts. Any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual is an eligible applicant in this area.

II. Agricultural Research Enhancement Awards

In order to contribute to the enhancement of research capabilities in the research program areas described herein, applications are solicited for competitive grants to be awarded in the following categories:

(a) Postdoctoral Fellowships: In accordance with section 2(b)(3)(D) of the 1965 Act, as amended, for individuals who have received their doctoral degree after January 1, 1991, and no later than June 15, 1994.

(b) New Investigator Awards: Pursuant to section 2(b)(3)(E) of the 1965 Act, as amended, for investigators or co-investigators who have completed graduate or post-doctoral training, and are beginning their independent research careers.

(c) Strengthening Awards: Pursuant to sections 2(b)(3)(D) and (F) of the 1965 Act, as amended, proposals are solicited that request funds for Research Career Enhancement Awards, Equipment Grants, Seed Grants, or Strengthening Standard Research Project Awards.

Specific Research Divisions To Be Supported and Their Funding for Fiscal Year 1994

CSRS is soliciting proposals, subject to the availability of funds, for support of high priority research of importance to agriculture, forestry, and related environmental sciences, in the following Research Divisions (anticipated FY 1994 funding follows in parentheses):

Natural Resources and Environment ($17.039 M)

Plant Responses to the Environment
Forest/Range/Crop/Aquatic Ecosystems
Improved Utilization of Wood and Wood Fiber
Soils and Soil Biology

Nutrition, Food Safety, and Health ($7.573 M)

Improving Human Nutrition for Optimal Health
Ensuring Food Safety

Animals ($23.666 M)

Improving Reproductive Efficiency
Improving Animal Growth and Development
Identifying Genetic Mechanisms and Gene Mapping
Sustaining Animal Health and Well-Being

Plants ($37.866 M)

Pathology
Entomology
Nematology
Weed Science
Plant Genome
Plant Genetic Mechanisms
Plant Growth and Development
Photosynthesis and Respiration
Nitrogen Fixation/Nitrogen Metabolism
Alcohol Fuels Research

Markets, Trade, and Rural Development ($3.787 M)

Markets and Trade
Rural Development

Processing for Adding Value or Developing New Products ($7.101 M)

Food Characterization/Process/Product Research
Non-Food Characterization/Process/Product Research

It is anticipated that programs in addition to those described above will be detailed in a supplemental release.

Pursuant to the provisions of section 2(b)(10) of the Act of August 4, 1965, as amended by section 1615 of the FACT Act no less than 10 percent (anticipated FY 1994 funding, $9.703 M) of the

available funds listed above will be made available for Agricultural Research Enhancement Awards (excluding New Investigator Awards), and no more than 2 percent (anticipated FY 1994 funding, $1.940 M) of the available funds listed above will be made available for equipment grants. Further, no less than 30 (anticipated FY 1994 funding, $29.109 M) percent of the funds listed above shall be made available for grants for research to be conducted by multidisciplinary teams, and no less than 20 percent (anticipated FY 1994 funding, $19.406 M) of the funds listed above shall be made available for grants for mission-linked research.

The solicitation, which contains research topic descriptions and detailed instructions on how to apply, may be obtained by writing or calling the office indicated below. Please note that applicants who submitted NCRIGP proposals for fiscal year 1993 or who have recently requested placement on the list for fiscal year 1994 will automatically receive a copy of the fiscal year 1994 solicitation and any supplements.

Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, Ag Box 2245, Washington, DC 20250–2245, Telephone: (202) 401–5048.

To be considered for funding during FY 1994, proposals must be postmarked by the following dates:

Postmarked dates	Program areas	Contacts (202)
Nov. 15, 1993	Improving human nutrition for optimal health	205–0250
Nov. 22, 1993	Plant Genome	401–5114
	Plant Genetic Mechanisms	401–5042
Dec. 6, 1993	Forest/range/crop/aquatic ecosystems	401–4082
	Pathology	401–4310
	Weed science	401–4310
Dec. 13, 1993	Plant responses to the environment	401–4871
	Improving reproductive efficiency	401–6234
Dec. 20, 1993	Photosynthesis and respiration	401–6030
Jan. 10, 1994	Entomology	401–5114
	Nematology	401–5114
	Alcohol fuels	401–4310
Jan. 18, 1994	Sustaining animal health and well-being	401–6303
Jan. 24, 1994	Soils and soil biology	401–4082
	Food characterization/process/product research	401–1952
	Non-food characterization/process/product research	401–1952
Jan. 31, 1994	Plant growth and development	401–5042
Feb. 7, 1994	Markets and trade	401–4772
	Rural development	401–4425
Feb. 14, 1994	Improved utilization of wood and wood fiber	401–1952
	Nitrogen fixation/nitrogen metabolism	401–6030
	Ensuring food safety	401–4399
Feb. 22, 1994	Research career enhancement awards	401–6234
	Equipment grants	401–6234
	Seed grants	401–6234
Mar. 6, 1994	Improving animal growth and development	205–0250
	Identifying genetic mechanisms and gene mapping (animal)	401–4399

Done at Washington, DC, this 30th day of August 1993.

William D. Carlson,

Associate Administrator, Cooperative State Research Service.

[FR Doc. 93–21701 Filed 9–3–93; 8:45 am]

BILLING CODE 3410–22–M

federal register

Tuesday
September 7, 1993

Part III

Department of Education

Rehabilitation Short-Term Training; Notice

DEPARTMENT OF EDUCATION

Rehabilitation Short-Term Training

AGENCY: Department of Education.

ACTION: Notice of proposed priorities for fiscal year 1994.

SUMMARY: The Secretary proposes priorities for fiscal year (FY) 1994 under the Rehabilitation Short-Term Training program. The Secretary takes this action to focus Federal financial assistance on areas of identified national need. These priorities are intended to maintain and upgrade the basic skills and knowledge of trained rehabilitation professionals. The following two priorities are proposed: (1) Training Rehabilitation Practitioners and Educators on Provisions of titles II and XVI of the Social Security Act. (2) Training Rehabilitation Practitioners and Educators on Student Financial Aid and Student Support Services for Individuals with Disabilities in Postsecondary Education Settings.

DATES: Comments must be received on or before October 7, 1993.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Ann Queen, U.S. Department of Education, 400 Maryland Avenue, SW., room 3038 Switzer Building, Washington, DC 20202–2649.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Werner, U.S. Department of Education, 400 Maryland Avenue, SW., room 3322 Switzer Building, Washington, DC 20202–2649. Telephone: (202) 205–8291. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Rehabilitation Short-Term Training program is authorized by section 302 of title III of the Rehabilitation Act of 1973, as amended. The purpose of this discretionary grant program is to provide Federal support for the development and conduct of special seminars, institutes, workshops, and other short-term courses in technical matters relating to the delivery of vocational, medical, social, and psychological rehabilitation services.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

These proposed priorities support National Education Goal 5 for preparing all adult Americans for literacy and productive employment in our modern economy. The Department supports a variety of training activities for vocational rehabilitation personnel so that they may assist individuals with disabilities in gaining the knowledge and skills to obtain employment and compete in a global economy.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under these competitions only applications that meet one of these absolute priorities:

Proposed Priority 1—Training Rehabilitation Practitioners and Educators on Provisions of Titles II and XVI of the Social Security Act

Background

The Rehabilitation Act Amendments of 1992 (Pub. L. 102–569), direct the Secretary to furnish training to rehabilitation counselors and other rehabilitation personnel regarding the provisions of titles II and XVI of the Social Security Act that are related to work incentives for individuals with disabilities. Title II of the Social Security Act authorizes the Social Security Disability Insurance (SSDI) program to provide benefits for workers who have contributed to the Social Security trust funds and become disabled before retirement age. SSDI also provides benefits for family members. In addition, an individual receiving SSDI payments for two years is eligible for Medicare benefits. Title XVI of the Social Security Act authorizes the Supplemental Security Income (SSI) program, a federally administered cash assistance program designed to provide a minimum income to aged, blind, and other disabled individuals. In most States, individuals who qualify for SSI payments also qualify for Medicaid, the Federal-State health insurance program for people with low income. Since the SSDI program was established in 1954 and the SSI program was established in 1972, Congress has established various referral arrangements for rehabilitation services to be provided to persons eligible for benefits under SSDI or SSI. In addition, Social Security legislation over the years has created work incentives to assist individuals with disabilities in their transition to employment.

A wide range of work incentives is available for SSI and SSDI recipients. Some incentives, such as income exclusions, continued Medicaid coverage, Plans for Achieving Self-Support, and student earned income exclusions, are available only for recipients of SSI. Other incentives, such as a trial work period, extended period of eligibility, continuation of Medicare, job coach subsidy, and employer subsidy, are available only to beneficiaries of SSDI. People on both SSI and SSDI are eligible for Impairment Related Work Expenses through which monthly out-of-pocket costs for disability-related services and items needed in order to work are deducted from gross monthly earnings to determine countable income.

Educators who are preparing individuals for careers in rehabilitation and trainers of personnel working in or with State vocational rehabilitation (VR) agencies need to become familiar with Social Security rehabilitation provisions and their related incentives to improve existing curricula on these provisions.

The Rehabilitation Services Administration of the U.S. Department of Education will coordinate the oversight of this project with the Social Security Administration (SSA) to ensure that the training provided is consistent with the regulations and related guidance and policy materials developed by SSA for implementation of the various incentive provisions.

Priority

Projects must develop training on (1) the incentive provisions of titles II and XVI of the Social Security Act; and (2) the relationship and impact of these incentives on the provision of vocational rehabilitation services to individuals with disabilities. The training must focus on the skills necessary for VR personnel to develop and modify Individualized Written Rehabilitation Porgrams (IWRPs) for persons receiving SSI and SSDI and focus on the importance of collaboration between VR counselors and SSA staff in assisting individuals with disabilities to move from receiving SSI and SSDI to being employed.

Projects must use existing informational materials developed by the SSA on the subject of work incentives, including the SSA's materials on its approaches to and strategies for implementing these incentive provisions.

Projects must (1) provide training through seminars or workshops for both pre-service educators and State VR in-service training agency personnel to prepare them to be trainers of present and future rehabilitation counselors on incentive provisions under titles II and XVI of the Social Security Act; and (2) be national in scope and demonstrate potential for replication based on project outcomes through the dissemination of training materials and protocols. Projects also must provide for coordination with Social Security Administration central, regional, or local offices to use existing training materials, build on them, and to facilitate working relationships.

Proposed Priority 2—Training Rehabilitation Counselors, Practitioners, and Educators on Student Financial Aid and Student Support Services for Individuals With Disabilities in Postsecondary Education Settings

Background

In recent years eligibility requirements for student financial assistance in the form of fellowships, scholarships, stipends, discretionary grants, and loans have changed significantly as a result of new laws and regulations. In providing rehabilitation services to individuals with disabilities, rehabilitation practitioners must be aware of related services and benefits provided pursuant to any Federal, State, or local program that will enhance the capacity of the individual to achieve his or her vocational objectives. Rehabilitation counselors, other rehabilitation personnel, and trainers of personnel working in or with State VR agencies require up-to-date information on the provisions and administration of postsecondary student aid programs.

In addition to financial assistance, students with disabilities often require educational support services to participate fully in postsecondary education programs. School-based services are often provided by student service programs in postsecondary institutions. Frequently, arranging supports for an individual with a severe disability involves ensuring that collaboration occurs between postsecondary support programs and the rehabilitation, mental health, and independent living service systems. Informational materials are needed that will prepare rehabilitation counselors and other rehabilitation practitioners to collaborate effectively in assisting individuals with disabilities through student support services programs. Informational materials are needed for use by rehabilitation educators for use in their educational programs where rehabilitation personnel are being prepared for roles in rehabilitation services delivery.

Priority

Projects must develop training on (1) student financial assistance programs and student support service programs for students with disabilities in postsecondary education; and (2) the relationship and impact of these financial and support services on the provision of vocational rehabilitation services to individuals with disabilities. For rehabilitation counselors, practitioners, and administrators, the training must focus on increasing their knowledge and skills, developing and modifying Individualized Written Rehabilitation Programs (IWRPs) for individuals with disabilities, and the importance of collaboration between VR staff and postsecondary education staff in assisting individuals with disabilities to benefit from higher education.

Projects must provide training through seminars or workshops for rehabilitation counselors, rehabilitation educators, and other personnel, including recipients of rehabilitation training program grant awards, on student financial assistance and student support services available in postsecondary education settings for students with disabilities.

Projects must be national in scope and demonstrate potential for replication based on project outcomes through the dissemination of training materials and protocols.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3324 Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Federal Regulations

34 CFR parts 385 and 390.

Program Authority: 29 U.S.C. 774.

(Catalog of Federal Domestic Assistance Number 84.246, Rehabilitation Short-Term Training)

Dated: August 30, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–21730 Filed 9–3–93; 8:45 am]

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federal register

Tuesday
September 7, 1993

Part IV

Department of Education

34 CFR Part 21
Equal Access to Justice; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 21

RIN 1801–AA01

Equal Access to Justice

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary amends the regulations that implement the Equal Access to Justice Act. These final regulations are needed to implement amendments to the Equal Access to Justice Act and to incorporate a change necessitated by section 3501 of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Hawkins-Stafford).

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: David A. Berthiaume, U.S. Department of Education, 400 Maryland Avenue SW., room 5129, Washington, DC 20202–2110. Telephone: (202) 401–3690. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Equal Access to Justice Act (EAJA), 5 U.S.C. 504, requires Federal agencies to pay attorneys' fees and other litigation expenses to a prevailing party, other than the United States, in an adversary adjudication covered by the Act. This Act was amended in 1985 by the Equal Access to Justice Act, Extension and Amendment, Public Law 99–80, 99 Stat. 183, 5 U.S.C. 504. These regulations implement these statutory changes. In addition, the regulations are needed because of the revisions to Part E of the General Education Provisions Act (GEPA), 20 U.S.C. 1234 et seq., by Hawkins-Stafford.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, one party submitted a comment on the proposed regulations. An analysis of this comment and of the change in the regulations resulting from this comment follows.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comments: The Secretary received one oral comment on the NPRM. The commenter stated that, as written, § 21.54 of the regulations provides that the Secretary may review decisions of the General Services Administration Board of Contract Appeals (GSBCA) under the Contract Disputes Act (CDA). The commenter noted that the CDA removed all residual decisional authority from agency heads. Under the CDA, the authority of an agency head is limited to establishing an agency board to decide appeals or arranging for the agency's appeals to be decided by another agency's board. The commenter suggested that § 21.54 be amended to preclude the Secretary from reviewing decisions of the GSBCA.

Discussion: Under the CDA, the Secretary lacks authority to conduct any review of a decision found in a GSBCA decision. As a result, any EAJA review by the Secretary would be extremely limited. The Secretary has decided to make the changes suggested by the commenter in order to comply with the CDA.

Changes: The Secretary has amended § 21.54, and removed the Secretary's ability to review decisions of the GSBCA in adversary adjudications arising under the CDA.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 21

Administrative practice and procedure, Attorney fees, Equal Access to Justice Act, Reporting and recordkeeping requirements.

Dated: September 1, 1993.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number is not applicable)

The Secretary amends Title 34 of the Code of Federal Regulations by revising part 21 to read as follows:

PART 21—EQUAL ACCESS TO JUSTICE

Subpart A—General

Sec.
21.1 Equal Access to Justice Act.
21.2 Time period when the Act applies.
21.3 Definitions.

Subpart B—Which Adversary Adjudications Are Covered?

21.10 Adversary adjudications covered by the Act.
21.11 Effect of judicial review of adversary adjudication.

Subpart C—How Is Eligibility Determined?

21.20 Types of eligible applicants.
21.21 Determination of net worth and number of employees.
21.22 Applicants representing others.

Subpart D—How Does One Apply for an Award?

21.30 Time for filing application.
21.31 Contents of application.
21.32 Confidentiality of information about net worth.
21.33 Allowable fees and expenses.

Subpart E—What Procedures Are Used in Considering Applications?

21.40 Filing and service of documents.
21.41 Answer to application.
21.42 Reply.
21.43 Comments by other parties.
21.44 Further proceedings.

Subpart F—How Are Awards Determined?

21.50 Standards for awards.
21.51 Initial decision in applications not subject to the CRRA.
21.52 Initial decision by an adjudicative officer in applications subject to CRRA jurisdiction.
21.53 Final decision of the CRRA.
21.54 Review by the Secretary.
21.55 Final decision if the Secretary does not review.
21.56 Judicial review.

Subpart G—How Are Awards Paid?

21.60 Payment of awards.
21.61 Release.

Authority: 5 U.S.C. 504, unless otherwise noted.

Subpart A—General

§ 21.1 Equal Access to Justice Act.

(a) The Equal Access to Justice Act (the Act) provides for the award of fees and other expenses to applicants that—

(1) Are prevailing parties in adversary adjudications before the Department of Education; and

(2) Meet all other conditions of eligibility contained in this part.

(b) An eligible applicant, as described in paragraph (a) of this section, is entitled to receive an award unless—

(1) The adjudicative officer, the Civil Rights Reviewing Authority (CRRA), or the Secretary on review, determines that—

(i) The Department's position was substantially justified; or

(ii) Special circumstances make an award unjust; or

(2) The adversary adjudication is under judicial review, in which case the applicant may receive an award only as described in § 21.11.

(c) The determination under paragraph (b)(1)(i) of this section is based on the administrative record, as a whole, made during the adversary adjudication for which fees and other expenses are sought.

(Authority: 5 U.S.C. 504(a)(1) and (c)(1))

§ 21.2 Time period when the Act applies.

The Act applies to any adversary adjudication covered under this part pending or commenced before the Department on or after August 5, 1985.

(Authority: 5 U.S.C. 504(note))

§ 21.3 Definitions.

The following definitions apply to this part:

Act means the Equal Access to Justice Act.

Adjudicative officer means the Administrative Law Judge, hearing examiner, or other deciding official who presided at the underlying adversary adjudication.

(Authority: 5 U.S.C. 504(b)(1)(D))

Adversary adjudication means a proceeding—

(1) Conducted by the Department for the formulation of an order or decision arising from a hearing on the record under the Administrative Procedure Act (5 U.S.C. 554);

(2) Listed in § 21.10; and

(3) In which the position of the Department was represented by counsel or other representative who entered an appearance and participated in the proceeding.

(Authority: 5 U.S.C. 504(b)(1)(C))

Application subject to the jurisdiction of the CRRA means an application for fees and expenses based on an underlying proceeding conducted under 34 CFR parts 100, 101, 104, 106, or 110.

(Authority: 5 U.S.C. 504(b)(1)(C); 20 U.S.C. 1681; 29 U.S.C. 794; 42 U.S.C. 2000d–1 *et seq.* and 6101 *et seq.*)

CRRA means the Civil Rights Reviewing Authority, the reviewing authority established by the Secretary to consider applications under 34 CFR parts 100, 101, 104, 106, and 110.

(Authority: 5 U.S.C. 504(b)(1)(C); 20 U.S.C. 1681; 29 U.S.C. 794; 42 U.S.C. 2000d–1 *et seq.* and 6101 *et seq.*)

Department means the U.S. Department of Education.

Department's counsel means counsel for the Department of Education or another Federal agency.

Employee means:

(1) A person who regularly performs services for an applicant—

(i) For remuneration; and

(ii) Under the applicant's direction and control.

(2) A part-time or seasonal employee who performs services for an applicant—

(i) For remuneration; and

(ii) Under the applicant's direction and control.

(Authority: 5 U.S.C. 504(c)(1))

Fees and other expenses means an eligible applicant's reasonable fees and expenses—

(1) Related to the issues on which it was the prevailing party in the adversary adjudication; and

(2) Further described in §§ 21.33 and 21.50.

(Authority: 5 U.S.C. 504 (a)(1), (b)(1)(A), and (c)(1))

Party means a "person" or a "party" as those terms are defined in the Administrative Procedure Act (5 U.S.C. 551(3)), including an individual, partnership, corporation, association, unit of local government, or public or private organization that meets the requirements in § 21.20. The term does not include an agency of the Federal Government.

(Authority: 5 U.S.C. 504(b)(1)(B))

Position of the Department means, in addition to the position taken by the Department in the adversary adjudication, the action or failure to act by the Department upon which the adversary adjudication is based.

(Authority: 5 U.S.C. 504 (a)(1) and (b)(1)(E))

Secretary means the Secretary of the U.S. Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

(Authority: 5 U.S.C. 504 (b)(2) and (c)(1))

Subpart B—Which Adversary Adjudications Are Covered?

§ 21.10 Adversary adjudications covered by the Act.

The Act covers adversary adjudications under section 554 of Title 5 of the United States Code. These include the following:

(a) Compliance proceedings under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(b) Compliance and enforcement proceedings under the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*).

(c) Compliance proceedings under Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*).

(d) Compliance proceedings under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(e) Withholding proceedings under section 1001 of Pub. L. 100–297 (Hawkins-Stafford) (20 U.S.C. 2833).

(f) Proceedings under any of the following:

(1) Section 5(g) of Pub. L. 81–874 (Financial Assistance for Local Educational Agencies in Areas Affected by Federal Activity) (20 U.S.C. 240(g)).

(2) Sections 6(c) or 11(a) of Pub. L. 81–815 (an act relating to the construction of school facilities in areas affected by Federal activities and for other purposes) (20 U.S.C. 636(c) or 641(a)).

(3) Section 6 of Pub. L. 95–563 (Contract Disputes Act of 1978) (41 U.S.C. 605).

(4) Part E of the General Education Provisions Act (20 U.S.C. 1234 *et seq.*).

(g) Other adversary adjudications that fall within the coverage of the Act.

(Authority: 5 U.S.C. 504(c) and 554; 20 U.S.C. 1234(f)(2))

§ 21.11 Effect of judicial review of adversary adjudication.

If a court reviews the underlying decision of an adversary adjudication covered under this part, an award of fees and other expenses may be made only under 28 U.S.C. 2412 (awards in certain judicial proceedings).

(Authority: 5 U.S.C. 504(c)(1); 28 U.S.C. 2412(d)(3))

Subpart C—How Is Eligibility Determined?

§ 21.20 Types of eligible applicants.

The following types of parties that prevail in adversary adjudications are eligible to apply under the Act for an award of fees and other expenses:

(a) An individual who has a net worth of not more than $2 million.

(b) Any owner of an unincorporated business who has—

(1) A net worth of not more than $7 million, including both personal and business interests; and

(2) Not more than 500 employees.

(c) A charitable or other tax-exempt organization—

(1) As described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)); and

(2) Having not more than 500 employees.

(d) A cooperative association—

(1) As defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141(a)); and

(2) Having not more than 500 employees.

(e) Any other partnership, corporation, association, unit of local government, or organization that has—

(1) A net worth of not more than $7 million; and

(2) Not more than 500 employees.

(Authority: 5 U.S.C. 504(b)(1)(B))

§ 21.21 Determination of net worth and number of employees.

(a) The adjudicative officer shall determine an applicant's net worth and number of employees as of the date the adversary adjudication was initiated.

(b) In determining eligibility, the adjudicative officer shall include the net worth and number of employees of the applicant and all of the affiliates of the applicant.

(c) For the purposes of paragraph (b) of this section, the adjudicative officer shall consider the following as an affiliate:

(1) Any individual, corporation, or other entity that directly or indirectly owns or controls a majority of the voting shares or other interest of the applicant;

(2) Any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest; and

(3) Any entity with a financial relationship to the applicant that, in the determination of the adjudicative officer, constitutes an affiliation for the purposes of paragraph (b) of this section.

(d) In determining the number of employees of an applicant and its affiliates, the adjudicative officer shall count part-time employees on a proportional basis.

(Authority: 5 U.S.C. 504(c)(1))

§ 21.22 Applicants representing others.

If an applicant is a party in an adversary adjudication primarily on behalf of one or more persons or entities that are ineligible under this part, then the applicant is not eligible for an award.

(Authority: 5 U.S.C. 504 (b)(1)(B) and (c)(1))

Subpart D—How Does One Apply for an Award?

§ 21.30 Time for filing application.

(a) In order to be considered for an award under this part, an applicant may file its application when it prevails in an adversary adjudication—or in a significant and discrete substantive portion of an adversary adjudication—but no later than 30 days after the Department's final disposition of the adversary adjudication.

(b) In the case of a review or reconsideration of a decision in which an applicant has prevailed or believes it has prevailed, the adjudicative officer shall stay the proceedings on the application pending final disposition of the underlying issue.

(c) For purposes of this part, final disposition of the adversary adjudication means the latest of—

(1) The date on which an initial decision or other recommended disposition of the merits of the proceeding by an adjudicative officer becomes administratively final;

(2) The date of an order disposing of any petitions for reconsideration of the final order in the adversary adjudication;

(3) If no petition for reconsideration is filed, the last date on which that type of petition could have been filed; or

(4) The date of a final order or any other final resolution of a proceeding—such as a settlement or voluntary dismissal—that is not subject to a petition for reconsideration.

(Authority: 5 U.S.C. 504 (a)(2) and (c)(1))

§ 21.31 Contents of application.

(a) In its application for an award of fees and other expenses, an applicant shall include the following:

(1) Information adequate to show that the applicant is a prevailing party in an adversary adjudication or in a significant and discrete substantive portion of an adversary adjudication.

(2) A statement that the adversary adjudication is covered by the Act according to § 21.10.

(3) An allegation that the position of the Department was not substantially justified, including a description of the specific position.

(4) Unless the applicant is a qualified tax-exempt organization or a qualified agricultural cooperative association, information adequate to show that the applicant qualifies under the requirements of §§ 21.20 and 21.21 regarding net worth. The information, if applicable, shall include a detailed exhibit of the net worth of the applicant—and its affiliates as described in § 21.21—as of the date the proceeding was initiated.

(5)(i) The total amount of fees and expenses sought in the award; and

(ii) An itemized statement of—

(A) Each expense; and

(B) Each fee, including the actual time expended for this fee and the rate at which the fee was computed.

(6) A written verification under oath or affirmation or under penalty of perjury from each attorney representing the applicant stating—

(i) The rate at which the fee submitted by the attorney was computed; and

(ii) The actual time expended for the fee.

(7) A written verification under oath, affirmation, or under penalty of perjury that the information contained in the application and any accompanying material is true and complete to the best of the applicant's information and belief.

(b) The adjudicative officer may require the applicant to submit additional information.

(Authority: 5 U.S.C. 504 (a)(2) and (c)(1))

§ 21.32 Confidentiality of information about net worth.

(a) In a proceeding on an application, the public record ordinarily includes the information showing the net worth of the applicant.

(b) However, if an applicant objects to public disclosure of any portion of the information and believes there are legal grounds for withholding it from disclosure, the applicant may submit directly to the adjudicative officer—

(1) The information the applicant wishes withheld in a sealed envelope labeled "Confidential Financial Information;" and

(2) A motion to withhold the information from public disclosure.

(c) The motion must—

(1) Describe the information the applicant is requesting be withheld; and

(2) Explain in detail—

(i) Why that information falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act;

(ii) Why public disclosure of the information would adversely affect the applicant; and

(iii) Why disclosure is not required in the public interest.

(d)(1) The applicant shall serve on Department's counsel a copy of the material referred to in paragraph (c) of this section.

(2) The applicant is not required to give a copy of that material to any other party to the proceeding.

(e)(1) If the adjudicative officer finds that the information should not be

withheld from public disclosure, the information is placed in the public record of the proceeding.

(2) If the adjudicative officer finds that the information should be withheld from public disclosure, any request to inspect or copy the information is treated in accordance with the Department's established procedures under the Freedom of Information Act (34 CFR part 5).

(Authority: 5 U.S.C. 504(c)(1))

§ 21.33 Allowable fees and expenses.

(a) A prevailing party may apply for an award of fees and other expenses incurred by the party in connection with—

(1) An adversary adjudication; or

(2) A significant and discrete substantive portion of an adversary adjudication.

(b) If a proceeding includes issues covered by the Act and issues excluded from coverage, the applicant may apply only for an award of fees and other expenses related to covered issues.

(c) Allowable fees and expenses include the following, as applicable:

(1) An award of fees based on rates customarily charged by attorneys, agents, and expert witnesses.

(2) An award for the reasonable expenses of the attorney, agent, or expert witness as a separate item if the attorney, agent, or expert witness ordinarily charges clients separately for those expenses.

(3) The cost of any study, analysis, engineering report, test, or project related to the preparation of the applicant's case in the adversary adjudication.

(d) The calculation of fees and expenses as provided for under paragraph (c) of this section shall be in accordance with the standards for awards as described in § 21.50(a) through (c).

(Authority: 5 U.S.C. 504(a)(1), (b)(1)(A) and (c)(1))

Subpart E—What Procedures Are Used in Considering Applications?

§ 21.40 Filing and service of documents.

(a) Except as provided in § 21.32 and in applications subject to the jurisdiction of the CRRA, an applicant shall—

(1) File with the adjudicative officer its application and any related documents; and

(2) Serve on all parties to the adversary adjudication copies of its application and any related documents.

(b)(1) In an application subject to the jurisdiction of the CRRA, the applicant shall—

(i) File with the CRRA its application and any other related documents; and

(ii) Serve on all parties to the adversary adjudication copies of its application and any related documents.

(2) In applications subject to § 21.40(b)(1), the CRRA shall direct the adjudicative officer to issue an initial decision within 30 days of the completion of the proceedings on the application. The adjudicative officer shall conduct proceedings under the procedures of §§ 21.41–21.44.

(Authority: 5 U.S.C. 504(a)(2) and (c)(1); 20 U.S.C. 1681; 29 U.S.C. 794; 42 U.S.C. 2000d–1 *et seq.* and 6101 *et seq.*)

§ 21.41 Answer to application.

(a)(1) Within 30 days after receiving an application for an award under this part, the Department's counsel may file an answer to the application.

(2) The Department's counsel may request an extension of time for filing the Department's answer.

(3) The adjudicative officer shall grant the request for an extension if the Department's counsel shows good cause for the request.

(b)(1) The Department's answer must—

(i) Explain any objections to the award requested; and

(ii) Identify the facts relied on in support of the position of the Department.

(2) If the answer is based on any alleged facts not in the record of the adversary adjudication, the Department's counsel shall include with the answer either—

(i) Supporting affidavits; or

(ii) A request for further proceedings under § 21.44.

(c)(1) If the Department's counsel and the applicant believe that the issues in the application can be settled, they may jointly file a statement of their intent to negotiate a settlement.

(2)(i) The filing of a statement of an intent to negotiate extends the time for filing an answer for 30 days.

(ii) The adjudicative officer shall grant further extensions if the Department's counsel and the applicant jointly request those extensions.

(Authority: 5 U.S.C. 504(c)(1))

§ 21.42 Reply.

(a) Within 15 days after receiving an answer, an applicant may file a reply.

(b) If the applicant's reply is based on any alleged facts not in the record of the adversary adjudication, the applicant shall include with the reply either—

(1) Supporting affidavits; or

(2) A request for further proceedings under § 21.44.

(Authority: 5 U.S.C. 504(c)(1))

§ 21.43 Comments by other parties.

(a) Any party to a proceeding, other than an applicant or the Department's counsel, may file comments on—

(1) The application within 30 days after the applicant files the application;

(2) The answer within 30 days after the counsel files the answer; or

(3) Both, if the comments are filed within the time period specified in paragraphs (a)(1) and (a)(2) of this section.

(b) The commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that further participation is necessary to permit full exploration of matters raised in the comments.

(Authority: 5 U.S.C. 504(c)(1))

§ 21.44 Further proceedings.

(a) The adjudicative officer shall make the determination of an award on the basis of the written record.

(b)(1) However, the adjudicative officer may order further proceedings on his or her own initiative or at the request of the applicant or the Department's counsel.

(2) The adjudicative officer may order further proceedings only if he or she determines that those proceedings are necessary for full and fair resolution of issues arising from the application.

(3) If further proceedings are ordered, the adjudicative officer shall determine the scope of those proceedings, which may include such proceedings as informal conferences, oral arguments, additional written submissions, discovery, or an evidentiary hearing.

(4) An adjudicative officer may not order discovery or an evidentiary hearing for the issue of whether or not the Department's position was substantially justified.

(c) If the applicant or the Department's counsel requests the adjudicative officer to order further proceedings, the request must—

(1) Specify the information sought or the disputed issues; and

(2) Explain why the additional proceedings are necessary to obtain that information or resolve those issues.

(Authority: 5 U.S.C. 504(a)(3) and (c)(1))

Subpart F—How Are Awards Determined?

§ 21.50 Standards for awards.

(a) In determining the reasonableness of the amount sought as an award of fees and expenses for an attorney, agent, or expert witness, the adjudicative officer shall consider one or more of the following:

(1)(i) If the attorney, agent, or expert witness is in private practice, his or her customary fee for similar services; or

(ii) If the attorney, agent, or expert witness is an employee of the applicant, the fully allocated cost of the services.

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services.

(3) The time the attorney, agent, or expert witness actually spent on the applicant's behalf with respect to the adversary adjudication.

(4) The time the attorney, agent, or expert witness reasonably spent in light of the difficulty or complexity of the covered issues in the adversary adjudication.

(5) Any other factors that may bear on the value of the services provided by the attorney, agent, or expert witness.

(b) The adjudicative officer may not grant—

(1) An award for the fee of an attorney or agent in excess of $75.00 per hour; or

(2) An award to compensate an expert witness in excess of the highest rate at which the Department pays expert witnesses.

(c) The adjudicative officer may also determine whether—

(1) Any study, analysis, engineering report, text, or project for which the applicant seeks an award was necessary for the preparation of the applicant's case in the adversary adjudication; and

(2) The costs claimed by the applicant for this item or items are reasonable.

(d) The adjudicative officer may not make an award to an eligible party if the adjudicative officer, the CRRA, or the Secretary on review finds that, based on a review of the administrative record as a whole—

(1) The position of the Department, as defined in § 21.3, was substantially justified; or

(2) Special circumstances make an award unjust.

(e) The adjudicative officer may reduce or deny an award to the extent that the applicant engaged in conduct that unduly or unreasonably protracted the adversary adjudication.

(f) If an applicant is entitled to an award because the applicant prevailed over another agency of the United States that participated in a proceeding before the Department and that agency's position was not substantially justified, the adjudicative officer shall determine whether to make the award, or an appropriate portion of the award, against that agency. For the purpose of this determination, the requirements of this subpart apply.

(Authority: 5 U.S.C. 504(a), (b)(1)(A), and (b)(1)(E))

§ 21.51 Initial decision in applications not subject to the CRRA.

(a) In applications not subject to the jurisdiction of the CRRA, the adjudicative officer shall issue an initial decision on an application within 30 days after completion of proceedings on the application.

(b) The initial decision must include the following:

(1) Written findings, including sufficient supporting explanation, on—

(i) The applicant's status as a prevailing party;

(ii) The applicant's eligibility;

(iii) Whether the position of the Department was substantially justified;

(iv) Whether special circumstances make an award unjust;

(v) If applicable, whether the applicant engaged in conduct that unduly or unreasonably protracted the adversary adjudication; and

(vi) Other factual issues raised in the adversary adjudication.

(2) A statement of the amount awarded, including an explanation—with supporting information—for any difference between the amount requested by the applicant and the amount awarded.

(3) A statement of the applicant's right to request review by the Secretary under § 21.54.

(4) A statement of the applicant's right under § 21.56 to seek judicial review of the final award determination.

(c) The explanation referred to in paragraph (b)(2) of this section may include—

(1) Whether the amount requested was reasonable; and

(2) The extent to which the applicant unduly or unreasonably protracted the adversary adjudication.

(Authority: 5 U.S.C. 504 (a)(3) and (c))

§ 21.52 Initial decision by an adjudicative officer in applications subject to CRRA jurisdiction.

(a) If the application is subject to the jurisdiction of the CRRA, the adjudicative officer shall issue the initial decision within 30 days after completion of the proceedings.

(b) The initial decision must include the information required under § 21.51(b). However, instead of the information required under § 21.51(b)(3), the initial decision must inform the applicant of—

(1) Its right to request review by the CRRA; and

(2) Its right to request review by the Secretary of the CRRA's final decision.

(c) If the applicant or the Department's counsel appeals the adjudicative officer's initial decision, the appeal must be submitted to the CRRA, in writing, within 30 days after the initial decision is issued.

(d) If the applicant or the Department's counsel does not appeal the adjudicative officer's initial decision to the CRRA and the Secretary does not decide to review the initial decision under § 21.54(a), the initial decision becomes the Department's final decision 60 days after it is issued by the officer.

(Authority: 5 U.S.C. 504(b)(1)(C); 20 U.S.C. 1681; 29 U.S.C. 794; 42 U.S.C. 2000d–1 *et seq.* and 6101 *et seq.*)

§ 21.53 Final decision of the CRRA.

(a) In an application subject to the jurisdiction of the CRRA, the CRRA shall, within 30 days after receipt of the written appeal—

(1) Issue a final decision on the appeal of the adjudicative officer's initial decision; or

(2) Remand the application to the adjudicative officer for further proceedings.

(b) The CRRA shall review the initial decision on the basis of the written record of the proceedings on the application. This includes but is not limited to—

(1) The written request; and

(2) The adjudicative officer's findings as described in § 21.51(b).

(c) The CRRA shall act on the review by either—

(1) Issuing a final decision on the application; or

(2) Remanding the application to the adjudicative officer for further proceedings.

(d) If the CRRA issues a final decision, the CRRA's decision must include—

(1) Written findings, including supporting explanation, on—

(i) The applicant's status as a prevailing party;

(ii) The applicant's eligibility;

(iii) Whether the position of the Department was substantially justified;

(iv) Whether special circumstances make an award unjust;

(v) Whether the applicant engaged in conduct that unduly or unreasonably protracted the adversary adjudication; and

(vi) Other factual issues raised in the adversary adjudication.

(2) A statement of the amount awarded, including an explanation—with supporting information—for any difference between the amount requested by the applicant and the amount awarded.

(3) A statement of the applicant's right to request review by the Secretary under § 21.54.

(4) A statement of the applicant's right under § 21.56 to seek judicial review of the final award determination.

(e) The explanation referred to in paragraph (d)(2) of this section may include—

(1) Whether the amount requested was reasonable; and

(2) The extent to which the applicant unduly or unreasonably protracted the adversary adjudication.

(Authority: 5 U.S.C. 301, 557 (b) and (c); 20 U.S.C. 1681 and 3401 *et seq.*; 29 U.S.C. 794; 42 U.S.C. 2000d–1 et seq. and 6101 *et seq.*)

§ 21.54 Review by the Secretary.

(a) The Secretary may decide to review—

(1) An initial decision made by an adjudicative officer in a proceeding not subject to CRRA review;

(2) An initial decision made by an adjudicative officer in a proceeding subject to CRRA review that was not appealed to the CRRA; or

(3) A final decision made by the CRRA under § 21.53.

(b)(1) The Secretary does not review a final decision made by an adjudicative officer of the General Services Administration Board of Contract Appeals.

(2) The Secretary or a party to the proceedings may seek reconsideration of the final decision by an adjudicative officer of the General Services Administration Board of Contract Appeals on the fee application in accordance with 48 CFR 6101.32.

(c) The Secretary decides to review a decision under § 21.54(a) either—

(1) Upon receipt of a written request for review by an applicant or Department's counsel; or

(2) Upon the Secretary's own motion.

(d) If the applicant or the Department's counsel seeks a review, the request must be submitted to the Secretary, in writing, within 30 days of—

(1) An initial decision in a proceeding not subject to CRRA review; or

(2) A final decision of the CRRA.

(e) The Secretary decides whether to accept or reject a request for review of an initial decision made by the adjudicative officer in a proceeding not subject to CRRA review or a final decision of the CRRA within 30 days after receipt of a request for review.

(f) The Secretary may decide on his own motion to review a decision made under § 21.54(a) within 60 days of the initial decision by the adjudicative officer or a final decision of the CRRA.

(g) If the Secretary decides to review the adjudicative officer's initial decision or the CRRA's final decision—

(1) The Secretary reviews the adjudicative officer's initial decision or the CRRA's final decision on the basis of the written record of the proceedings on the application. This includes, but is not restricted to—

(i) The written request for review;

(ii) The adjudicative officer's findings as described in § 21.51(b); and

(iii) If applicable, the final decision of the CRRA, if any; and

(2) The Secretary either—

(i) Issues a final decision; or

(ii) Remands the application to the adjudicative officer or the CRRA for further proceedings.

(h) If the Secretary issues a final decision, the Secretary's decision—

(1) Is in writing;

(2) States the reasons for the decision; and

(3) If the decision is adverse to the applicant, advises the applicant of its right to petition for judicial review under § 21.56.

(Authority: 5 U.S.C. 557 (b) and (c))

§ 21.55 Final decision if the Secretary does not review.

If the Secretary takes no action under § 21.54—

(a) The adjudicative officer's initial decision on the application becomes the Department's final decision 60 days after it is issued by the adjudicative officer; or

(b) The CRRA's decision on the application becomes the Department's final decision 60 days after it is issued by the CRRA.

(Authority: 5 U.S.C. 301)

§ 21.56 Judicial review.

If an applicant is dissatisfied with the award determination in the final decision under §§ 21.52–21.55, the applicant may seek judicial review of that determination under 5 U.S.C. 504(c)(2) within 30 days after that determination was made.

(Authority: 5 U.S.C. 504(c)(2))

Subpart G—How Are Awards Paid?

§ 21.60 Payment of awards.

To receive payment, an applicant granted an award under the Act must submit to the Financial Management Service of the Department—

(a) A request for payment signed by the applicant or its duly authorized agent;

(b) A copy of the final decision granting the award; and

(c) A statement that—

(1) The applicant will not seek review of the decision in the United States courts; or

(2) The process for seeking review of the award has been completed.

(Authority: 5 U.S.C. 504(c)(1) and (d))

§ 21.61 Release.

If an applicant, its agent, or its attorney accepts payment of any award or settlement in conjunction with an application under this part, that acceptance—

(a) Is final and conclusive with respect to that application; and

(b) Constitutes a complete release of any further claim against the United States with respect to that application.

(Authority: 5 U.S.C. 504(c)(1))

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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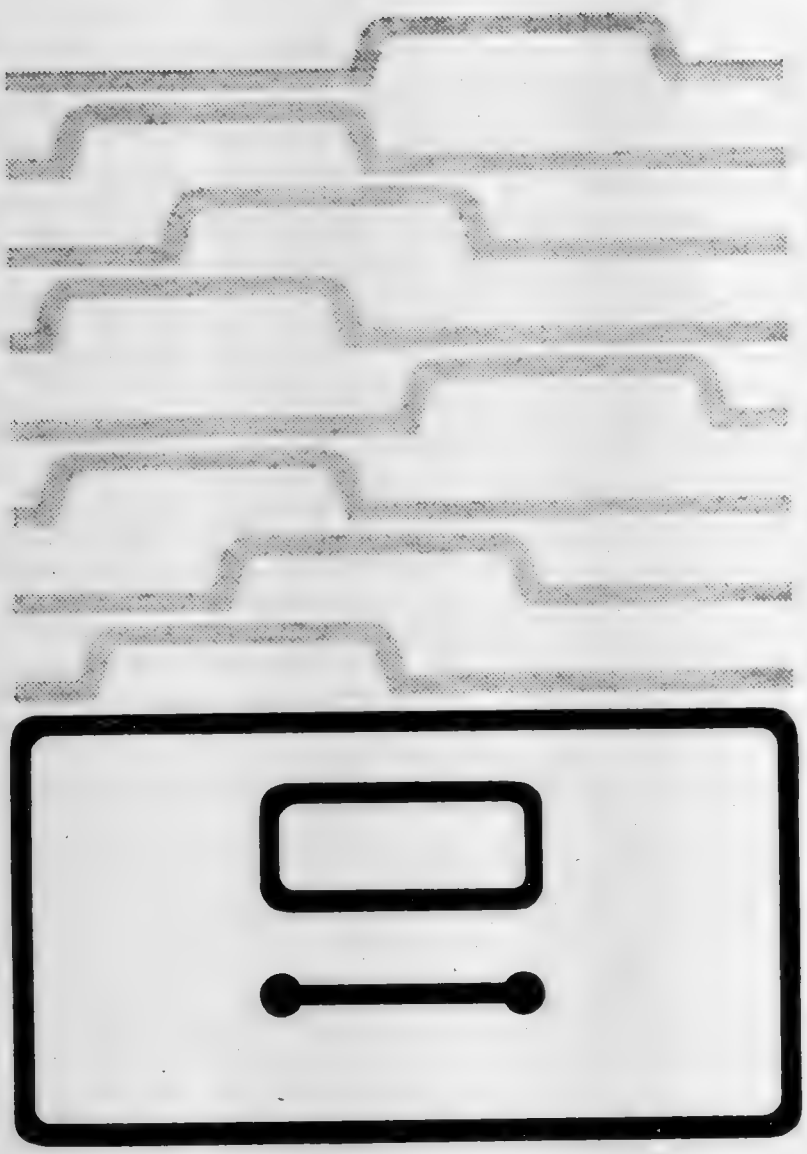

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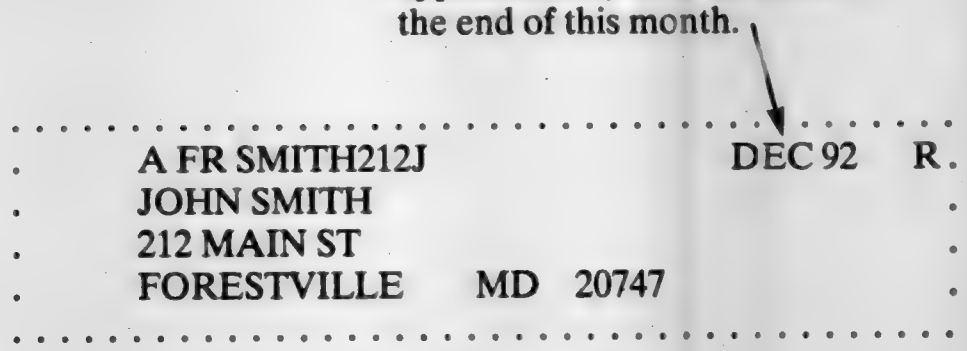

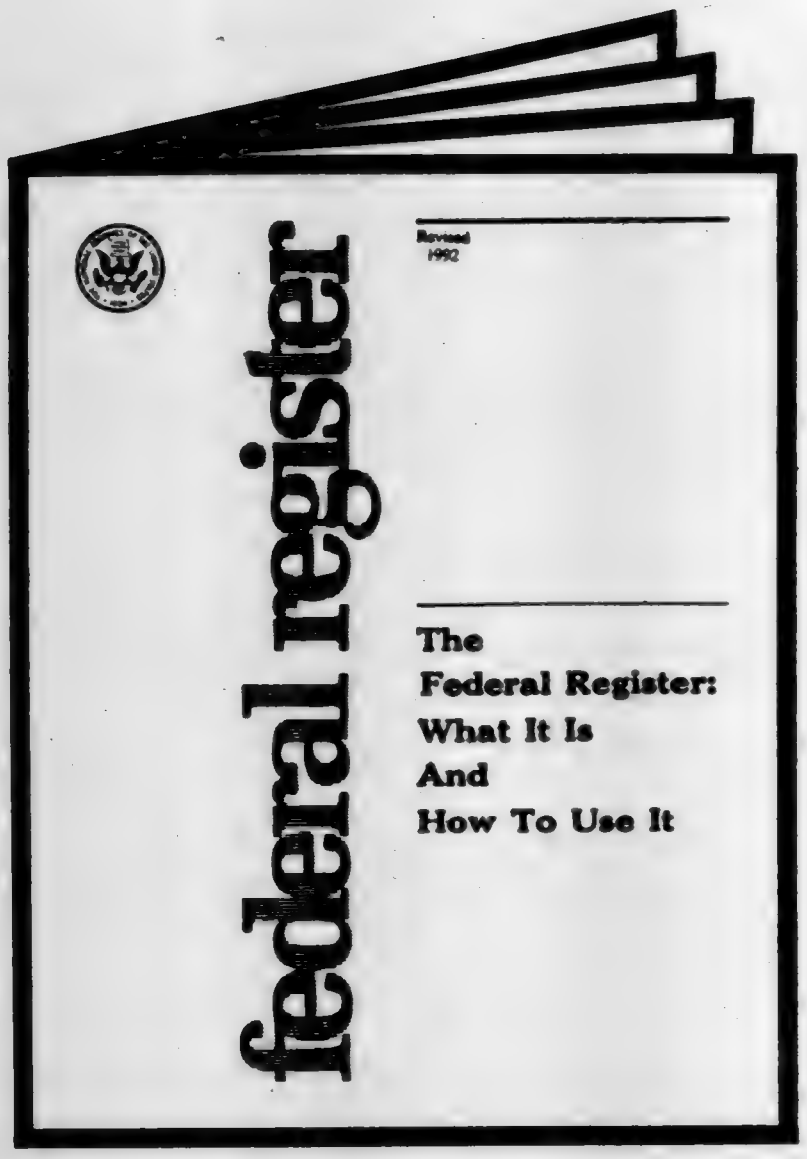

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Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

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Federal Register
Vol. 58, No. 172
Wednesday, September 8, 1993

Presidential Documents

Title 3—

The President

Proclamation 6587 of September 3, 1993

National POW/MIA Recognition Day, 1993

By the President of the United States of America

A Proclamation

This year we have witnessed major changes in the global political landscape. Although democracy is taking root in many new areas, the forces of repression pose continuing challenges around the world. Throughout this dynamic period, one theme rings true to all Americans: Our Nation owes a lasting debt of gratitude to all those selfless members of our Armed Forces who have risked their own freedom and safety to defend the lives and liberty of others. As a measure of our thanks and as an expression of our determination to keep faith with those who faithfully serve and defend us, we take this occasion to remember those special Americans for whom an accounting has not yet been made.

In honor of these Americans, on September 10, 1993, the flag of the National League of POW/MIA families will be flown over the White House; the U.S. Departments of State, Defense, and Veterans Affairs; the Selective Service System headquarters; and the Vietnam Veterans Memorial. This black and white banner—emblematic of America's missing—flies as a stark reminder to the world of our Nation's resolve.

We acknowledge a continuing obligation to these casualties of war, America's missing service members and civilians. Our Nation remains committed to this cause, a matter of highest national priority. We renew our pledge to obtain the answers that the family members of these heroes deserve, recognizing the profound loss they have endured and their steadfast resolve to gain the peace of certainty.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 10, 1993, as National POW/MIA Recognition Day. I urge all Americans to join in honoring former American POWs as well as those Americans still unaccounted for as a result of their service to our great Nation. I also encourage the American people to express their gratitude to the families of these missing Americans for their dedication to seeking the truth and their determination to persevere through the many years of waiting. Finally, I ask State and local officials and private organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of September, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-22042
Filed 9-3-93; 2:58 pm]
Billing code 3195-01-P

Presidential Documents

Executive Order 12860 of September 3, 1993

Adding Members to the Committee on Foreign Investment in the United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100–418; 102 Stat. 1107), section 301 of title 3, United States Code, and in accordance with the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2315), to designate additional members to the Committee on Foreign Investment in the United States, it is hereby ordered as follows:

Section 1. Executive Order No. 11858, as amended, is further amended by inserting in Section 1(a), after the title "Director of the Office of Management and Budget," the following additional titles: "(9) the Director of the Office of Science and Technology Policy."; "(10) the Assistant to the President for National Security Affairs."; and "(11) the Assistant to the President for Economic Policy.".

Sec. 2. This order shall take effect immediately.

William J. Clinton

THE WHITE HOUSE,
September 3, 1993.

[FR Doc. 93–22106
Filed 9–3–93; 4:35 pm]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 58, No. 172
Wednesday, September 8, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the regulations governing the collection of Social Security Numbers (SSN) and Employer Identification Numbers (EIN). The intended effect of this rule is to clarify which entities and individuals are authorized to collect SSNs and EINs on behalf of FCIC.

EFFECTIVE DATE: September 8, 1993.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 1997.

Kathleen Connelly, Acting Manager, FCIC, has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, federal, state, or local governments, or a geographical region; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Acting Manager also certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons. The action will not have a significant economic effect on a substantial number of small entities. This program is strictly voluntary. This regulation does not require or impose any requirement on the delivery agent or company that is not already required by the Privacy Act of 1974 (5 U.S.C. 552a). Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Acting Manager, FCIC, has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule are not retroactive and will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 1, subpart H must be exhausted before judicial action may be brought for actions taken under proceedings for the imposition of civil penalties or under the Program Fraud Civil Remedies sections of these regulations.

This amendment does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, the Paperwork Reduction Act.

The Office of General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this proposed rule will not have an increased substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Section 506 of the Federal Crop Insurance Act (7 U.S.C. 1506), as amended (FCI Act), directs the FCIC to require submission of an SSN or EIN as a condition of eligibility for participation in the multiple peril crop insurance program.

This amendment clarifies that reinsured companies, agencies, agents and employees thereof are authorized to collect SSN and EIN on behalf of FCIC.

On Thursday, October 8, 1992, FCIC published a final rule in the **Federal Register** at 57 FR 46295, promulgating rules affecting how the FCIC, direct insurance and reinsured companies will collect, use, and store documents containing SSNs and EINs (Subpart Q). However, the rule failed to identify agencies and agents of reinsured companies as those who are authorized to have access to those identifying numbers for FCIC. This interim rule serves to correct this deficiency by identifying those individuals and entities in the "Definitions" section and in the "Required System of Records" section of Subpart Q.

Because this amendment serves only to clarify terms, and those terms are immediately required to allow the access of SSNs and EINs to authorized individuals and entities, FCIC determines that notice and public procedure is unnecessary, impracticable, and contrary to the public interest. This rule is effective upon publication.

List of Subjects in 7 CFR Part 400

Crop Insurance, General Administrative Regulations, Collection and Storage of Social Security Account Numbers and Employer Identification Numbers.

Interim Final Rule

Accordingly, the Federal Crop Insurance Corporation amends part 400 (7 CFR part 400) as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

1. The authority citation for part 400 continues to read as follows:

Authority: 7 U.S.C. 1506, 1508.

2. Section 400.402 is amended by revising paragraphs (e) and (k) to read as follows:

§ 400.402 Definitions.

* * * * *

(e) *Authorized person*—An officer, employee, general or special agent, or loss adjuster of the FCIC, insurance company, reinsured company, or ASCS whose duties require access in the administration of the FCI Act.

* * * * *

(k) *Government contract employees*—authorized persons employed by a direct insurance or reinsured company, former officers or employees of such company, and general or special agents and loss adjusters.

* * * * *

3. Section 400.406 is revised to read as follows:

§ 400.406 Restricted access.

The Manager, other officer, or employee of the FCIC or authorized person (as defined in § 400.402(e)) may have access to the EINs and SSNs obtained pursuant to § 400.404 only for the purpose of establishing and maintaining a system of records necessary for the effective administration of the FCI Act in accordance with § 400.404 of this part. These numbers may be used in administering the FCI Act.

Done in Washington, DC, on September 1, 1993.

Robert Fenton,

Assistant Manager, Federal Crop Insurance Corporation.

[FR Doc. 93–21745 Filed 9–7–93; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Part 1230

[No. LS–93–002]

RIN 0581–AA92

Pork Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 and the Order issued thereunder, this final rule decreases the amount of the assessment per pound due on imported pork and pork products to reflect a decrease in the 1992 six market average price for domestic barrows and gilts and to bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals.

EFFECTIVE DATE: October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION: This final rule was reviewed in accordance with Executive Order No. 12291 and Departmental Regulation 1512–1 and is hereby classified as a nonmajor rule because it does not meet the criteria contained therein for a major rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule is not intended to have retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1625 of the Act, a person subject to an order may file a petition with the Secretary stating that such order, a provision of such order, or an obligation imposed in connection with such order is not in accordance with law; and requesting a modification of the order or an exemption from the order. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in the district in which such person resides or does business has jurisdiction to review the Secretary's determination, if a complaint is filed not later than 20 days after the date such person receives notice of such determination.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The effect of the Order upon small entities was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898), and it was determined that the Order would not have a significant effect upon a substantial number of small entities. Many importers may be classified as small entities. This final rule decreases the amount of assessments on imported pork and pork products subject to assessment by three- to five-hundredths of a cent per pound, or as expressed in cents per kilogram, seven- to eleven-hundredths of a cent per kilogram. Adjusting the assessments on imported pork and pork products will result in an estimated decrease in assessments of $200,000 over a 12-month period. Accordingly, the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. However, that rate was increased to 0.35 percent effective December 1, 1991 (56 FR 51635). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, and 56 FR 51635) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay to the U.S. Customs Service (USCS), upon importation, the assessment of 0.35 percent of the animal's declared value and importers of pork and pork products to pay to the USCS, upon importation, the assessment of 0.35 percent of the market value of the live porcine animals from which such pork and pork products were produced. This final rule decreases the assessments on all of the imported pork and pork products subject to assessment listed in 7 CFR 1230.110 (October 30, 1992; 57 FR 49135). This decrease is consistent with the decrease in the annual average price of domestic barrows and gilts for calendar year 1992 as reported by the USDA, AMS, Livestock and Grain Market News (LGMN) Branch. This decrease in assessments will make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent decrease in the market value of domestic porcine animals, thereby promoting

comparability between importer and domestic assessments. This final rule will not change the current assessment rate of 0.35 percent of the market value.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average market price for barrows and gilts as reported by the USDA, AMS, LGMN Branch. The annual average price, which was based on price data from seven major markets, is now based on only six markets. One of the seven markets—Kansas City—closed in 1991; and the 1992 annual average price is based on price data from only six markets. This average price is published on a yearly basis during the month of January in the LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment rate of 0.35 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and Order, the cents-per-pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The formula in the preamble for the Order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

The average annual market price decreased from $48.46 in 1991 to $42.11 in 1992, a decrease of about 13 percent. This decrease will result in a corresponding decrease in assessments for all the Harmonized Tariff Systems (HTS) numbers listed in the table in § 1230.110 of an amount equal to three- to five-hundredths of a cent per pound, or as expressed in cents per kilogram, seven- to eleven-hundredths of a cent per kilogram. Based on the most recent available Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products the decrease in assessment amounts will result in an estimated $200,000 decrease in assessments over a 12-month period.

On June 10, 1993, AMS published in the **Federal Register** (58 FR 32468) a proposed rule which would decrease the per pound assessment on imported pork and pork products consistent with decreases in the 1992 average prices of domestic barrows and gilts to provide comparability between importer and domestic assessments. The proposal was published with a request for comments by July 12, 1993. No comments were received. However, a review of calculations used to convert the cents-per-pound assessments to cents-per-kilogram for the HTS numbers listed in § 1230.110 of the proposed rule revealed that the cents-per-kilogram assessments for all HTS numbers were incorrect because the cents-per-pound assessments were not rounded correctly prior to the conversion calculations. The cents-per-pound assessments for all of the HTS numbers shown in § 1230.110 of the proposed rule are correct. Accordingly, this final rule establishes the per-pound and per-kilogram assessments on imported pork and pork products as proposed and corrected herein.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, 7 CFR part 1230 is amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

Subpart B—[Amended]

2. Subpart B—Rules and Regulations by revising § 1230.110 to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.00004	0.35 percent Customs Entered Value.
0103.91.00006	0.35 percent Customs Entered Value.
0103.92.00005	0.35 percent Customs Entered Value.

The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	Cents/lb	Cents/kg
0203.11.00002	.21	.462966
0203.12.10107	.21	.462966
0203.12.10205	.21	.462966
0203.12.90100	.21	.462966
0203.12.90208	.21	.462966
0203.19.20108	.24	.529104
0203.19.20901	.24	.529104
0203.19.40104	.21	.462966
0203.19.40907	.21	.462966
0203.21.00000	.21	.462966
0203.22.10007	.21	.462966
0203.22.90000	.21	.462966
0203.29.20008	.24	.529104
0203.29.40004	.21	.462966
0206.30.00006	.21	.462966
0206.41.00003	.21	.462966
0206.49.00005	.21	.462966
0210.11.00101	.21	.462966
0210.11.00209	.21	.462966
0210.12.00208	.21	.462966
0210.12.00404	.21	.462966
0210.19.00103	.24	.529104
0210.19.00906	.24	.529104
1601.00.20105	.29	.639334
1601.00.20908	.29	.639334
1602.41.20203	.32	.705472
1602.41.20409	.32	.705472
1602.41.90002	.21	.462966
1602.42.20202	.32	.705472
1602.42.20408	.32	.705472
1602.42.40002	.21	.462966
1602.49.20009	.29	.639334
1602.49.40005	.24	.529104

Dated: September 1, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–21859 Filed 9–7–93; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

7 CFR Chapter III

9 CFR Chapter I

[Docket No. 93–105–1]

Use of Direct Final Rulemaking

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Policy statement.

SUMMARY: The Animal and Plant Health Inspection Service is implementing a new rulemaking procedure to expedite making noncontroversial changes to regulations. Rules that the agency judges to be noncontroversial and unlikely to result in adverse comments will be published as "direct final" rules. ("Adverse comments" are comments that suggest that a rule should not be adopted or suggest that a change should be made to the rule.) Such direct final rules will advise the public that no adverse comments are anticipated, and that unless written adverse comments or written notice of intent to submit adverse comments are received within 30 days, the revision made by the rule will be effective 60 days from the date the direct final rule is published in the **Federal Register**. This new policy should expedite the promulgation of routine or otherwise noncontroversial rules by reducing the time that would be required to develop, review, clear, and publish separate proposed and final rules.

ADDRESSES: If you wish to submit comments on this notice, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 93–105–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Nancy Chamberlain, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8682.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) is committed to improving the efficiency of its regulatory processes to fulfill agency missions in a manner that imposes the least necessary burden. In pursuit of this goal, APHIS plans to employ the rulemaking technique known as "direct final rulemaking" to promulgate some of its rules.

The Direct Final Rule Process

Rules that the agency judges to be noncontroversial and unlikely to result in adverse comments will be published as direct final rules. Such direct final rules will advise the public that no adverse comments are anticipated, and that unless written adverse comments or written notice of intent to submit adverse comments are received within 30 days, the revision made by the rule will be effective 60 days from the date the direct final rule is published in the **Federal Register**.

By "adverse comments" we mean comments that suggest that the rule should not be adopted, or that suggest that a change should be made to the rule. A comment expressing support for the rule as published would obviously not be considered adverse. Neither would a comment suggesting that requirements in the rule should, or should not, be employed by APHIS in other programs or situations outside the scope of the direct final rule.

In accordance with the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), this procedure gives the public general notice of APHIS' intent to adopt a rule, and gives interested persons an opportunity to participate in the rulemaking through submission of comments. The major feature of direct final rulemaking is that if APHIS receives no written adverse comments within 30 days of the publication of a direct final rule, nor any written notice of intent to submit adverse comments, the rule will become effective without the need to publish a separate final rule.

If APHIS receives written adverse comments or written notice of intent to submit adverse comments within 30 days of the publication of a direct final rule, a notice of withdrawal of the direct final rule will be published in the **Federal Register** and a proposed rule will be published establishing a comment period for the rulemaking action. Following the close of the comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if APHIS receives no written adverse comments within 30 days of the publication of a direct final rule, nor any written notice of intent to submit adverse comments, the direct final rule will become effective 60 days following its publication. However, APHIS will publish a notice in the **Federal Register** indicating that no adverse comments were received on the direct final rule, and confirming that it is effective on the date indicated in the direct final rule.

Determining When To Use Direct Final Rulemaking

Not all APHIS rules are good candidates for direct final rulemaking. Many APHIS rules address complex animal and plant health situations where the public may have a variety of opinions to offer on the need for the rule, or possible alternative methods for achieving the purpose of the rule. In these cases, APHIS plans to continue to publish a proposed rule and establish a comment period to allow submission of comments, followed by a final rule addressing the comments.

APHIS plans to use direct final rulemaking on a case-by-case basis when we do not anticipate adverse comments. The decision to use direct final rulemaking for a rule would be based on our experience with similar rules. If similar rules were published in the past as proposals that did not elicit adverse comments, we would consider publishing such rules in the future as direct final rules.

Done in Washington, DC, this 20th day of August 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–21862 Filed 9–7–93; 8:45 am]

BILLING CODE 3410-34-P

FEDERAL RESERVE SYSTEM

12 CFR Parts 208, 211, and 225

[Regulations H, K and Y; Docket No. R-0792]

Membership of State Banking Institutions in the Federal Reserve System; International Banking Operations; Bank Holding Companies and Change in Bank Control; Criminal Referral Report

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: An interagency task force has designed a uniform multi-agency criminal referral form in order to facilitate compliance with financial institutions' criminal activity reporting requirements, to enhance law enforcement agencies' ability to investigate and prosecute the matters reported in the criminal referrals, and to develop and maintain a new interagency database. This uniform criminal referral form will replace the various criminal

referral forms that are currently being used by Federal bank, thrift and credit union regulatory agencies and by the banking organizations they supervise. The purpose of the regulation is to create a uniform criminal referral reporting requirement for all domestic and foreign financial institutions operating in the United States.

EFFECTIVE DATE: October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Herbert A. Biern, Deputy Associate Director, (202/452-2620), Richard A. Small, Special Counsel, (202/452-5235), or Mark Leemon, Senior Attorney, (202/452-5206), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf, Dorothea Thompson, (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

The Federal financial institutions regulatory agencies are the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA). These agencies are charged with safeguarding the safety and soundness of financial institutions with operations in the United States, including national banks, credit unions, savings associations, state-chartered banks, bank and thrift holding companies and their nonbank subsidiaries, Edge and Agreement corporations, and all U.S. offices of foreign banks. Pursuant to their respective enabling statutes, these agencies are responsible for ensuring that financial institutions apprise federal law enforcement authorities of any violation or suspected violation of a criminal statute. Fraud, abusive insider transactions, check kiting schemes, money laundering and other crimes can cause significant financial losses, pose serious threats to a financial institution's continued viability and, if unchecked, may undermine the public confidence in the financial services industry. The law enforcement community needs to receive timely information regarding criminal and suspected criminal activity that is sufficiently detailed to determine whether investigations and prosecutions are warranted.

The Interagency Bank Fraud Working Group (Working Group) was formed in 1984 to promote interagency cooperation toward the goal of improving the federal government's response to white collar crime in financial institutions. The Working Group now consists of representatives from twelve Federal agencies, including the Board, the other federal financial institutions regulators, the Federal Bureau of Investigation, the U.S. Secret Service, the Department of Justice and the U.S. Department of the Treasury. A subcommittee of the Working Group studied the criminal referral process and developed a new uniform criminal referral form (the Form). The purpose of the Form is to standardize criminal referral data and to facilitate its automation. Because the Form is machine readable, it is anticipated that the resulting interagency criminal referral database will be fully functional in a relatively short period of time. The database will provide information, *inter alia* to the OCC, Board, FDIC, OTS, NCUA, and U.S. Department of the Treasury. In order to promote use of the Form, each of the Federal financial institutions regulatory agencies has decided to adopt similar regulations relating to the filing of criminal referral reports in specific situations and the use of the same Form in the making of such criminal referral reports. The new regulations would replace requirements mandating the filing of criminal referrals and designating separate agency forms for such referrals.

Comments Received

On January 8, 1993, a proposed regulation was published in the **Federal Register** (58 FR 3235). Thirty-four comments were received on the proposed regulation. Fourteen comments were from holding companies, eighteen comments were from commercial banks or Federal Reserve Banks, and two comments were from attorneys representing financial institutions. Twenty-five of the comments expressed general support for the regulation. Four of the comments were critical of any reporting requirement whatsoever, a view that we must reject in light of the responsibility of financial institutions to assist law enforcement authorities in the performance of their duties. Ten of the comments suggested raising the dollar thresholds for required reporting. Five of the comments suggested computer software be made available to simplify the reporting requirement. One comment expresses concern for possible liability to financial institutions that might arise under various privacy laws.

With respect to potential civil liability that might arise in connection with the submission of a criminal referral, Congress has enacted a statute that provides protection from civil liability for the reporting of criminal acts to appropriate authorities. Amendments to the Bank Secrecy Act made by the Housing and Community Development Act of 1992 (31 U.S.C. 5314(g)(3)) provide that financial institutions, and their directors, officers, employees and agents, that disclose, in good faith, possible violations of law in connection with the preparation of criminal referral forms shall not be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure. This law also requires that financial institutions, and their directors, officers, employees and agents, refrain from communicating that a criminal referral has been made and the information reported in a criminal referral to any person involved in the suspicious transaction.[1]

Several commenters recommended that the dollar minimums on reportable offenses be raised. Although these comments raise a valid concern, particularly for financial institutions that may file numerous criminal referrals, the appropriate law enforcement authorities have advised the staff of the Board and the other bank and thrift regulatory agencies that the present limits are necessary for their law enforcement functions. Additionally, with the advent of the new banking and law enforcement agency databases, patterns of crime throughout the financial community should become more easily detectable. Especially in the cases of credit card fraud, money laundering, and check kiting, seemingly minor individual reports often are analyzed to detect major fraud schemes.

Several commenters queried whether the requirement to notify the boards of directors of financial institutions of the filing of criminal referrals should be viewed as mandating a communication to the board every time a criminal referral is filed or whether the notification requirement could be satisfied by a periodic or summary report. Consistent with current practice, the requirements of the regulation will be satisfied by a summary or periodic report to the board of directors, unless a criminal referral relates to a material event that necessitates a more prompt notification to the board of directors.

[1] The new criminal referral form prominently provides a description of this new law on the front page of the form's instructions.

Several commenters recommended that a computerized model be developed to facilitate the task of completing the forms. The use of a computer shell was contemplated from the inception of the interagency database; and, as a result, a computer shell will be made available contemporaneously with the distribution of the new form, at no, or a very minimal, cost to financial institutions. The computer shell will enable the completion of the form using a personal computer and a laser printer. The computer shell should reduce the costs and burdens associated with the preparation of the Form.

It is important to note that the regulation requires that financial institutions use only the Form or the computer shell that has been authorized by the Federal regulators. Use of another form, a facsimile of the Form, or any computer software shell of the Form other than the shell distributed by the regulators is not permitted and could result in a determination that a financial institution or an institution-affiliated party has not complied with this regulation.

Regulatory Flexibility Act Analysis

The Board certifies that this proposed regulation will not have a significant financial impact on a substantial number of small banks or other small entities.

Executive Order 12291

The Board has determined that this proposed regulation is not a "major rule" and therefore does not require a regulatory impact analysis.

Paperwork Reduction Act

In accordance with Section 3507 of the Paperwork Reduction Act of 1980, the criminal referral report regulation was approved under authority delegated to the Board by the Office of Management and Budget. The Board has determined that the regulation does not significantly increase the burden of the reporting institutions. The estimated average burden associated with the collection of information contained in a criminal referral report is approximately .6 hour per respondent. The burden per respondent will vary depending on the nature of the criminal activity being reported.

Comments concerning the accuracy of this burden estimate should be directed to the Herbert A. Biern, Deputy Associate Director, Division of Banking Supervision and Regulation, Mail Stop 175, Federal Reserve Board, 20th and C Streets, NW., Washington, DC 20551.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Currency, Reporting and recordkeeping requirements, Securities.

12 CFR Part 211

Exports, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, parts 208, 211, and 225 of chapter II of title 12 of the Code of Federal Regulations are amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for 12 CFR part 208 is revised to read as follows:

Authority: 12 U.S.C. 248(a) and (c), 321-328, 461, 481-486, 601, 611, 814, 1818, 1823(j) and 1831o.

2. Section 208.20 is added to read as follows:

§ 208.20 Reports of crimes and suspected crimes.

(a) *Purpose.* This section applies to known or suspected crimes involving state member banks. This section ensures that law enforcement agencies are notified by means of criminal referral reports when unexplained losses or known or suspected criminal acts are discovered. Based on these reports, the Federal government will take appropriate measures and will maintain an interagency database that is derived from these reports.

(b) *Institution-affiliated party. Institution-affiliated party* means any institution-affiliated party as that term is defined in sections 3(u) and 8(b)(3) and (4) of the FDIA (12 U.S.C. 1813(u) and 1818(b)(3) and (4)).

(c) *Reports required.* A state member bank shall file a criminal referral report using a standardized form (Form),[13] in accordance with instructions for the Form, in every situation where:

(1) The State member bank suspects one of its directors, officers, employees, agents, or other institution-affiliated parties of having committed or aided in the commission of a crime;

(2) There is an actual or potential loss to the state member bank (before reimbursement or recovery) of more than $1,000 where the State member bank has a substantial basis for identifying a possible suspect or group of suspects and the suspect(s) is not an director, officer, employee, agent, or institution-affiliated party of the State member bank;

(3) There is an actual or potential loss to the state member bank (before reimbursement or recovery) of $5,000 or more and where the State member bank has no substantial basis for identifying a possible suspect or group of suspects; or

(4) The State member bank suspects that it is being used as a conduit for criminal activity, such as money laundering or structuring transactions to evade the Bank Secrecy Act reporting requirements.

(d) *Time for reporting.* (1) A state member bank shall file the report required by paragraph (c) of this section no later than 30 calendar days after the date of detection of the loss or the known or suspected criminal violation or activity. If no suspect has been identified within 30 calendar days after the date of the detection of the loss or the known, attempted or suspected criminal violation or activity, reporting may be delayed an additional 30 calendar days or until a suspect has been identified; but in no case shall reporting of known or suspected crimes be delayed more than 60 calendar days after the date of the detection of the loss or the known, attempted or suspected criminal violation or activity. When a report requirement is triggered by the identification of a suspect or group of suspects, the reporting period commences with the identification of each suspect or group of suspects.

(2) When a State member bank detects a pattern of crimes committed by an identifiable individual, the State member bank shall file a report no later than 30 calendar days after the aggregated amount of the crimes exceeds $1,000.

(3) In situations involving violations requiring immediate attention or where a reportable violation is ongoing, the State member bank shall immediately notify by telephone the appropriate law enforcement agency and the appropriate Federal Reserve Bank in addition to filing a timely written report.

(e) *Reporting to state and local authorities.* State member banks are encouraged to file copies of the Form with State and local authorities where appropriate.

[13] Copies of the Form (FR 2230) are available from the Federal Reserve Banks. The Form may be prepared using a computer shell that is distributed by the Board.

(f) *Exceptions.* A State member bank need not file the Form:

(1) For those robberies and burglaries that are reported to local law enforcement authorities; and

(2) For lost, missing, counterfeit or stolen securities if a report is filed pursuant to the reporting requirements of 17 CFR 240.17f-1.

(g) *Retention of records.* A State member bank shall maintain copies of any Form that it filed and the originals of all related documents for a period of 10 years from the date of the report.

(h) *Notification to board of directors.* The management of a State member bank shall promptly notify its board of directors of any report filed pursuant to this section.

(i) *Penalty.* Failure to file a report in accordance with the instructions on the Form and this regulation may subject the State member bank, its directors, officers, employees, agents, or other institution-affiliated parties to supervisory action.

PART 211—INTERNATIONAL BANKING OPERATIONS

1. The authority citation for 12 CFR part 211 is revised to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1841 *et seq.*, 3101 *et seq.*, 3901 *et seq.*, and Pub. L. 100-418, 102 Stat. 1384 (1988).

2. Section 211.8 is added to read as follows:

§ 211.8 Reports of crimes and suspected crimes.

An Edge corporation or any branch or subsidiary thereof or an Agreement corporation or branch or any subsidiary thereof shall file a criminal referral form in accordance with the provisions of § 208.20 of the Board's Regulation H, 12 CFR 208.20.

3. Section 211.24 is amended by adding a new paragraph (f) to read as follows:

§ 211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative office activities and standards for approval; preservation of existing authority.

* * * * *

(f) *Reports of crimes and suspected crimes.* Except for a federal branch or a federal agency or a state branch that is insured by the Federal Deposit Insurance Corporation, a branch or agency or a representative office of a foreign bank operating in the United States shall file a criminal referral form in accordance with the provisions of § 208.20 of the Board's Regulation H, 12 CFR 208.20.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for 12 CFR part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13); 1818(b); 1844(b); 3106 and 3108; and Pub. L. 98-181, title IX.

2. Section 225.4 is amended by adding a new paragraph (g) to read as follows:

§ 225.4 Corporate practices.

* * * * *

(g) *Criminal referral report.* A bank holding company or any nonbank subsidiary thereof, or a foreign bank that is subject to the BHC Act or any nonbank subsidiary of such foreign bank operating in the United States, shall file a criminal referral form in accordance with the provisions of § 208.20 of the Board's Regulation H, 12 CFR 208.20.

Board of Governors of the Federal Reserve System, August 31, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-21658 Filed 9-7-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-41-AD; Amendment 39-8682; AD 93-17-11]

Airworthiness Directives; de Havilland, Inc., Model DHC-8-100 and -300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC-8-100 and -300 series airplanes, that requires an inspection of the horizontal stabilizer midspar attachment bolts to detect cracks at the radius transition between the bolt head and shank, and replacement of cracked bolts. This amendment is prompted by reports of defects found on several bolts that attach the horizontal stabilizer midspar to the top of the vertical fin. The actions specified by this AD are intended to prevent reduced strength and fail-safe capability of the structural attachment of the horizontal stabilizer to the airplane.

DATES: Effective October 8, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 8, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE-172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6220; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain de Havilland Model DHC-8-100 and -300 series airplanes was published in the **Federal Register** on May 14, 1993 (58 FR 28526). That action proposed to require a one-time magnetic particle inspection of the horizontal stabilizer midspar attachment bolts to detect cracks at the radius transition between the bolt head and shank, and replacement of cracked bolts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposal.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 133 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $60 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $44,555, or $335 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–17–11 De Havilland, Inc.: Amendment 39–8682. Docket 93–NM–41–AD.

Applicability: Model DHC–8–100 series airplanes, serial numbers 003 through 315 inclusive, 317 through 334, inclusive, and 346 through 349 inclusive; and Model DHC–8–300 series airplanes, serial numbers 100 through 319 inclusive, 321 through 337 inclusive, 339, 341, and 342; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced strength and fail-safe capability of the structural attachment of the horizontal stabilizer to the airplane, accomplish the following:

(a) Within 250 landings after the effective date of this AD, perform a one-time magnetic particle inspection of the horizontal stabilizer midspar attachment bolts to detect cracks at the radius transition between the bolt head and shank in accordance with de Havilland Alert Service Bulletin S.B. A8–55–18, dated February 5, 1993.

(b) If any crack is found in a bolt, prior to further flight, replace both midspar attachment bolts with serviceable bolts in accordance with de Havilland Alert Service Bulletin S.B. A8–55–18, dated February 5, 1993.

(c) As of the effective date of this AD, no person shall install a midspar attachment bolt, part number MS21250–10070, on any airplane unless, prior to installation, the bolt has been inspected using magnetic particle techniques to detect cracks in accordance with de Havilland Alert Service Bulletin S.B. A8–55–18, dated February 5, 1993.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection and replacement shall be done in accordance with de Havilland Alert Service Bulletin S.B. A8–55–18, dated February 5, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 8, 1993.

Issued in Renton, Washington, on August 31, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21748 Filed 9–7–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 556

Animal Drugs, Feeds, and Related Products; Streptomycin Oral Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Veterinary Service, Inc., that provide for use of Strep Sol® Solution 25 percent (25 percent streptomycin sulfate oral solution) in drinking water of chickens, swine, and calves for treatment of enteritis. One supplement reflects compliance with the results of the National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study Implementation (DESI) evaluation of the drug's effectiveness and FDA's conclusions concerning that evaluation. The other supplement provides for revising the tolerance for residues of streptomycin in edible tissues of chickens, swine, and calves to 2.0 parts per million (ppm) in kidney and 0.5 ppm in all other tissues.

EFFECTIVE DATE: September 8, 1993.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: Veterinary Service, Inc., 416 N. Jefferson St., P.O. Box 2467, Modesto, CA 95354, is sponsor of NADA 65–252. The NADA provides for use of Strep Sol® Solution 25 percent (25 percent streptomycin sulfate oral solution) in drinking water of chickens for treatment of nonspecific infectious enteritis caused by organisms susceptible to streptomycin, and swine and calves for treatment of bacterial enteritis caused by *Escherichia coli* and *Salmonella* spp. susceptible to streptomycin. The product was originally approved on February 18, 1954.

The product was the subject of a NAS/NRC DESI report published in the **Federal Register** of November 21, 1969 (34 FR 18560) (DESI 2–0136 NV) and found to be probably effective for treatment of bacterial diseases involving the gastrointestinal tract in poultry, swine, and calves. The report stated that:

1. Each disease claim should be qualified as "appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug)," or if not so qualified, dropped.

2. Label claims must be restricted to diseases involving the gastrointestinal tract.

3. The label should warn that treated animals must consume sufficient medicated water to constitute a therapeutic dose under the conditions that prevail.

4. Label claims "for prevention of" or "to prevent" should be replaced with "as an aid in the control of" or, "to aid in the control of."

5. Labeling should carry a warning pertaining to the development of resistant organisms.

6. Dosage levels recommended in the labeling are low.

FDA concurs with the NAS/NRC DESI evaluation.

The NAS/NRC evaluation concerns the drug's safety and effectiveness to the treated animal. It does not concern the safety for food use of treated animals.

Veterinary Service, Inc., filed a supplement which reflected compliance with the results of the NAS/NRC DESI review and FDA's conclusions based on that review.

Veterinary Service, Inc., filed an additional supplement to revise the tolerances for residues of streptomycin in the uncooked, edible tissues of chickens, swine, and calves to 2.0 ppm in kidney and 0.5 ppm in all other tissues. The current tolerance of zero is an outmoded expression of an intent to regulate residues at the sensitivity of the existing analytical method. The revised tolerances are supported by available toxicological data relating to streptomycin.

The supplements are approved as of August 5, 1993, and the regulations are amended in 21 CFR 520.2158a and 21 CFR 556.610 to reflect the approvals. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these approvals do not qualify for an exclusivity period because the supplements do not contain reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) essential to approval of the supplements and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 556 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.2158a is amended by removing paragraph (d)(3), and by revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 520.2158a Streptomycin sulfate oral solution.

* * * * *

(d) * * *

(1) *Calves and swine*—(i) *Amount.* 10 to 15 milligrams per pound (mg/pound) of body weight (1.0 to 1.5 grams per gallon).

(ii) *Indications for use.* Treatment of bacterial enteritis caused by *Escherichia coli* and *Salmonella* spp. susceptible to streptomycin.

(iii) *Limitations.* Calves: Do not administer for more than 5 days. Swine: Do not administer for more than 4 days. Prepare fresh solution daily. Calves: Withdraw 2 days before slaughter. As sole source of streptomycin. Warning: Certain strains of bacteria may develop a tolerance for streptomycin. Consult a veterinarian or animal pathologist for diagnosis.

(2) *Chickens*—(i) *Amount.* 10 to 15 mg/pound of body weight (0.6 to 0.9 grams per gallon).

(ii) *Indications for use.* Treatment of nonspecific infectious enteritis caused by organisms susceptible to streptomycin.

(iii) *Limitations.* Chickens: Do not administer for more than 5 days. Withdraw 4 days before slaughter. Do not administer to chickens producing eggs for human consumption. Prepare fresh solution daily. As sole source of streptomycin. Warning: Certain strains of bacteria may develop a tolerance for streptomycin. Consult a veterinarian or animal pathologist for diagnosis.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

4. Section 556.610 is revised to read as follows:

§ 556.610 Streptomycin.

Tolerances are established for residues of streptomycin in uncooked, edible tissues of chickens, swine, and calves of 2.0 parts per million (ppm) in kidney and 0.5 ppm in other tissues.

Dated: August 31, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93–21797 Filed 9–7–93; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH4–1–5062; FRL–4701–2]

Approval and Promulgation of Air Quality Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Final rulemaking.

SUMMARY: U.S. EPA is today announcing limited approval of a revision to the Ohio New Source Review (NSR) State Implementation Plan (SIP). This approval relates to the State's revised NSR regulations, which were developed to satisfy U.S. EPA's earlier conditional approval of Ohio's Part D NSR Program.

U.S. EPA's action is based upon a revision request which was submitted to satisfy the requirements of Part D of the Clean Air Act (CAA). As a result of this action, the original condition of approval of the State's NSR program at 40 CFR 52.1879(e) is removed.

U.S. EPA has evaluated the proposed revision to the plan and is granting limited approval under Sections 110(k)(3) and 301(a) of the Clean Air Act, as amended in 1990. Even though there are two new deficiencies relating to offsets requirements in the plan, U.S.

EPA is approving the plan because it is substantially better than the underlying October 31, 1980, Ohio NSR plan.

EFFECTIVE DATES: This action will be effective November 8, 1993, unless notice is received by October 8, 1993, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the SIP revision, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Maggie Greene, at (312) 886–6088, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Air Enforcement Branch, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

Copies of this revision to the Ohio SIP are available for inspection at: U.S. Environmental Protection Agency, Jerry Kurtzweg (ANR–443), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION: In 1977 the Clean Air Act was amended to address, *inter alia*, the continued nonattainment of the National Ambient Air Quality Standards (NAAQS) found in certain areas of the United States. Part D of the Act set forth the SIP requirements for nonattainment areas. Part D includes Section 173, which governs the review and issuance of construction permits for new and modified sources in nonattainment areas. The Clean Air Act Amendments of 1990 also require the States to revise their SIPs to provide approvable nonattainment area New Source Review plans. Requirements for approvable Part D SIPs are described in a "General Preamble for Part D rulemakings published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979). The requirements for SIP revisions mandated by the Clean Air Act Amendments of 1990 are set forth in the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992), Appendix D.

On July 25, 1980, and September 25, 1980, Ohio submitted its NSR plan designed to meet the requirements of Part D. After review and public comment, U.S. EPA conditionally approved this plan on October 31, 1980 (codification corrected on December 17, 1980 at 45 FR 82927). (For more detail on "conditional approvals" see 44 FR 38583 (July 2, 1979) and 44 FR 67182 (November 23, 1979).) The conditional approval (40 CFR 52.1879(e)) required the State to submit a Part D NSR plan which refined the criteria under which permits were to be issued and assured that the requirements of Section 172 (b)(11) (Section 173(a)(5) of the 1990 Amendments enacted on November 15, 1990) and Section 173 were met.

On October 4, 1982, and January 24, 1983, the Ohio Environmental Protection Agency (OEPA) submitted revisions to the Ohio Administrative Code (OAC), Rules 3745–31–01 through 3745–31–08, to satisfy the October 31, 1980, conditional approval of Ohio's Part D NSR plan. Additional clarification was submitted on June 30, 1987, and October 28, 1987. Ohio's revised NSR rule essentially incorporates the Federal NSR provisions at 40 CFR Part 51, Appendix S, as the Ohio NSR plan. The Ohio Rule meets the requirements of U.S. EPA's conditional approval of Ohio's earlier Part D NSR plan for all source categories in Ohio, except for temporary emission sources and resource recovery facilities.

Two provisions of Ohio's NSR plan (OAC Rule 3745–31–01 (H)(1)(b) and (M)) are not required by U.S. EPA's NSR rules, and they are not included as part of this SIP revision. Also, the current Appendix S differs from Ohio's original Part D NSR plan in that it uses a "plantwide" definition of source which U.S. EPA approves without restriction.[1]

Prior to the passage of the Clean Air Act, U.S. EPA imposed certain restrictions on the adoption of a plant-wide definition of source for nonattainment areas with an inadequate SIP. See J. Potter, "Plantwide Definition of Major Stationary Sources for Air Pollution" (February 27, 1987). However, with passage of the Clean Air Act Amendments of 1990, Congress has mandated a new set of attainment strategies and given areas new deadlines to eliminate NAAQS violations. In addition, while the existence of U.S. EPA's plantwide definition was well known by 1990, nothing in the Clean Air Act Amendments overturns U.S. EPA's position on this issue. To the contrary, several new nonattainment provisions employ a plantwide source definition. See, *e.g.*, CAA section 182(c)(6). For this reason, U.S. EPA finds that the Ohio plantwide source definition may be approved without any restrictions.

U.S. EPA evaluated Ohio's revised plan with respect to the Agency's Part D NSR policy applicable at that time and found that the plan was approvable. Since the State had yet to submit and receive approval of an attainment demonstration for the relevant areas, U.S. EPA did not rely on any reductions from the operation of the new NSR program in an approved attainment demonstration[2]. This rulemaking includes approval of a plantwide definition of source for Ohio in accordance with U.S. EPA's 1981 action, inasmuch as the State has shown that it is making and will continue to make

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[1] On October 14, 1981, the U.S. EPA revised the NSR regulations in 40 CFR part 51 to give States the option of adopting the "plantwide" definition of stationary source in nonattainment areas (46 FR 50766). This definition provides that only physical or operational changes that result in a net increase in emissions at the entire plant require a NSR permit. For example, if a plant increased emissions at one piece of process equipment but reduced emissions by the same amount at another piece of process equipment at the plant, then there would be no net increase in emissions at the plant and therefore no "modification" to the "source." The plantwide definition is in contrast to the so-called "dual" definition (or a definitional construction like that in the 1979 offset ruling (44 FR 3274) which has much the same effect as the dual definition); under the dual definition, the emissions increases from physical or operational changes at an individual piece of process equipment are gauged without regard to offsetting reductions elsewhere at the plant.

In the October 14, 1981, **Federal Register** notice, U.S. EPA set forth its rationale for allowing use of the plantwide definition (46 FR 50766–69). In the Agency's view, allowing use of the plantwide definition was a reasonable accommodation of the conflicting goals of Part D of the Act; reasonable further progress (RFP) and timely attainment of the NAAQS versus maximum State flexibility and economic growth.

In 1984, the Supreme Court upheld U.S. EPA's position as a reasonable accommodation of the conflicting purposes of Part D of the Act within U.S EPA's broad discretion. *Chevron U.S.A., Inc.* v. *NRDC, Inc.*, 467 U.S. 837. Specifically, the Court agreed that the plantwide definition is fully consistent with the Act's goal of maximizing State flexibility and allowing reasonable economic growth. Likewise, the Court recognized that U.S. EPA had advanced a reasonable explanation for its conclusion that the plantwide definition serves the Act's environmental objectives as well. 467 U.S. at 863.

[2] U.S. EPA ruled that a State wishing to adopt a plantwide definition generally has complete discretion to do so, and it set only one restriction on that discretion. If a State had specifically projected emission reductions from its NSR program as a result of a dual or similar definition and had relied on those reductions in an attainment strategy that U.S. EPA later approved, then the State needed to revise its attainment strategy as necessary to accommodate reduced NSR permitting under the plantwide definition (46 FR 50767 Col. 2, 50709 Col. 1).

reasonable efforts to adopt and submit the necessary additional SIP revisions.

U.S. EPA reevaluated Ohio's rule in relationship to the current 40 CFR part 51 Subpart I (formerly 40 CFR 51.18). As stated before, Ohio's NSR rule essentially incorporates the Federal NSR provisions in 40 CFR part 51, Appendix S. However, U.S. EPA has determined that Appendix S as incorporated by Ohio is deficient with respect to certain of the requirements in Subpart I and the current requirements of the Clean Air Act. U.S. EPA's review of the Ohio NSR regulation's effectiveness identified the following regulation deficiencies:

1. Appendix S exempts for resource recovery facilities from offset requirements, whereas Section 173 of the Clean Air Act and 40 CFR 51.165 do not provide for such exemption.

2. Appendix S exempts temporary sources from obtaining offsets, whereas Section 173 of the Clean Air Act and 40 CFR 51.165 do not provide for such an exemption.

In addition, it should be pointed out that Appendix S as proposed by Ohio is not as explicit as the current regulations in Subpart I (or the underlying statutory provisions of Part D of the Clean Air Act) in requiring that emissions offsets meet Reasonable Further Progress (RFP) requirements by providing actual emissions reductions. Section IV.C. of Appendix S, as amended in 1979 (44 FR 3274), explicitly requires offsets only on a short-term (i.e., pounds per hour) basis, although it also provides for annual offsets (expressed, e.g., in tons per year) "if necessary to carry out the intent of this Ruling."

However, the current U.S. EPA regulations governing approval of NSR programs, which were adopted in 1980, require that emission offsets necessary to demonstrate RFP be based in all cases on "actual emissions." See 40 CFR 51.165 (a)(3)(i)((A), 51.165 (a)(xii)(B) (45 FR 52676). Accordingly, it is U.S. EPA's position that in those areas which have still not attained the NAAQS despite the passage of the statutory deadline, the overall intent of Appendix S, to insure that major new sources and major modifications result in RFP, cannot be satisfactorily met unless all such sources obtain federally enforceable actual offsets as necessary to provide annual emission reductions as required by current U.S. EPA regulations. Thus, U.S. EPA interprets Appendix S, Section IV.B. to require, in all instances, that federally enforceable actual emissions offsets be obtained as a condition of any permit purporting to satisfy the requirements of Part D of the Act. This interpretation is hereby made an express part of today's approval of Ohio's NSR SIP, which must be met by all permits issued by Ohio pursuant to U.S. EPA's approval of the State's NSR program.

The Clean Air Act Amendments of 1990 impose additional NSR requirements for certain types of nonattainment areas. These changes include for example, in ozone nonattainment areas, decreased source thresholds and increased offset ratios and the extension of NSR requirements to certain Nitrogen Oxides sources. See Sections 182(a)-(f). The SIP changes submitted by Ohio and approved today were submitted prior to the passage of the Clean Air Act Amendments of 1990 and were not intended to satisfy the Amendments' new NSR requirements. For this reason, today's approval of Ohio's NSR SIP does not relieve Ohio of its responsibility to submit additional nonattainment NSR SIP revisions in accordance with the deadlines Congress established in Title I of the Act.

Final Action: U.S. EPA is today granting limited approval of the revision to Ohio's NSR SIP. U.S. EPA is approving the revision to the regulations in the SIP because the revised regulations are a substantial enhancement of the existing SIP. However, the approval is "limited" in the sense that U.S. EPA is not granting full approval of the NSR SIP as meeting Part D requirements. Ohio's NSR regulations are deficient, in that they exempt resource recovery facilities and temporary sources from offset requirements. Nevertheless, U.S. EPA is not today taking action to disapprove Ohio's NSR SIP. Ohio has made a submittal with respect to NSR regulations to meet the requirements of the Clean Air Act Amendments of 1990 (CAAA). That submittal is under review. U.S. EPA will require that any regulations intended to satisfy those CAAA requirements shall also address the deficiencies identified here. Therefore, U.S. EPA intends to complete action on the approvability of Ohio's NSR SIP when it takes action on the NSR regulations submitted to satisfy the 1990 CAAA requirements.

Because U.S. EPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on November 8, 1993. However, if we receive notice by October 8, 1993, that someone wishes to submit critical comments, then U.S. EPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et. seq., U.S. EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, U.S. EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Sections 110 and 103, and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of a State action. The CAA forbids U.S. EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

U.S. EPA has reviewed this request for revision of the SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. These Amendments require extensive changes to nonattainment SIPs for new source permitting. The Agency has set forth the new NSR requirements in the General Preamble to Title I and is preparing a rulemaking incorporating these requirements into Federal regulations. As has been discussed, U.S. EPA's actions today do not in any way relieve Ohio of the new requirements for NSR SIP submittals imposed by the 1990 Amendments.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial

review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Note: Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 24, 1993.

Carol M. Browner,

Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1870 is amended by adding paragraph (c)(83) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(83) On October 4, 1982, and January 24, 1983, the Ohio Environmental Protection Agency (OEPA) submitted revisions to the Ohio Administrative Code (OAC) Chapter 3745–31–01 through 3745–31–08 to satisfy the New Source Review conditional approval of October 31, 1980 (45 FR 72119). U.S. EPA is granting limited approval of the revision to Ohio's New Source Review State Implementation Plan (SIP) because the revised regulations strengthen the SIP.

(i) Incorporation by reference.

(A) OAC Rule 3745–31 through 3745–31–03—Permits to Install New Sources of Pollution (Adopted June 30, 1982, effective August 15, 1982), as found in the State of Ohio Environmental Protection Agency Laws and Regulations.

(ii) Additional material.

(A) A June 30, 1987, letter from OEPA certified that the State did not rely upon additional reductions through the offset policy to attain or maintain the National Ambient Air Quality Standards.

§ 52.1879 [Amended]

3. Section 52.1879 is amended by removing paragraph (e).

[FR Doc. 93–21783 Filed 9–7–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[OPP–300252A; FRL–4628–8]

RIN No. 2070–AB78

Acetic Acid and Sodium Diacetate; Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the exemptions from the requirement of a tolerance for residues resulting from postharvest use as a fungicide, as follows: (1) all raw agricultural commodities (RACs) listed in 40 CFR 180.1029 for residues of acetic acid; and (2) certain RACs listed in 40 CFR 180.1058 for residues of sodium diacetate. EPA is initiating this action because all registered uses of acetic acid and sodium diacetate on these commodities have been canceled.

EFFECTIVE DATE: This regulation becomes effective September 8, 1993.

ADDRESSES: Written objections, identified by document control number, [OPP-300252A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Downing, Registration Division (H-7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8319.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule in the **Federal Register** of August 12, 1992 (57 FR 36046), which proposed revoking exemptions from the requirement of a tolerance established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of acetic acid and sodium diacetate resulting from postharvest use of these chemicals as fungicides, as follows: (1) acetic acid in or on the RACs alfalfa, barley grain, Bermuda grass, bluegrass, brome grass, clover, corn grain, cowpea hay, fescue hay, lespedeza, lupines, oat grain, orchard grass, peanut hay, peavine hay, rye grass, sorghum grain, soybean hay, sudan grass, timothy, vetch hay, and wheat grain listed in 40 CFR 180.1029; and (2) sodium diacetate in or on the RACs barley grain, cowpea hay, fescue hay, lespedeza hay, lupines, peanut hay, peavine hay, soybean hay, vetch hay, and wheat grain listed in 40 CFR 180.1058.

EPA's decision to revoke these exemptions from the requirement of a tolerance for acetic acid and sodium diacetate was based on the fact that before February 1991, all registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) of pesticide products ingredients that were registered for these uses on food or animal feed commodities were canceled. In the case of acetic acid these registrations were canceled for failure by affected registrants to respond to a January 1987 generic data call-in, and also for nonpayment of required annual pesticide registration maintenance fees. In the case of sodium diacetate, these registrations were canceled for nonpayment of required annual pesticide registration maintenance fees.

No significant comments or requests for referral to an advisory committee were received in response to the proposed rule.

Therefore, based on the information considered by EPA and discussed in detail in the August 12, 1992 proposal and in this final rule, EPA is hereby revoking the exemptions from the requirement of a tolerance listed in 40 CFR 180.1029 for acetic acid since acetic acid is no longer registered in the U.S. as a pesticide-active ingredient for use on any food or animal feed commodities. EPA is hereby revoking the exemptions from the requirement of a tolerance listed in 40 CFR 180.1058 for sodium diacetate since sodium diacetate also is no longer registered as an active ingredient for use on any food or animal feed commodities, except alfalfa, clover, field corn, grasses, oats sorghum, and timothy.

The registered postharvest applications of acetic acid and sodium diacetate to livestock feed crops were primarily within farm facilities so there was limited environmental exposure. Exposure to aquatic environments from runoff would have resulted only in short-term pH changes that would have been counteracted by the natural buffering capacity of the water. Thus, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels will be recommended to replace the acetic acid and sodium diacetate exemptions upon their revocation.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections

and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Executive Order 12291

As explained in the proposal published in the **Federal Register** of August 12, 1992, EPA has determined, pursuant to the requirements of Executive Order 12291, that the removal of these exemptions from the requirement of a tolerance will not cause adverse economic impact on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the August 12, 1992 proposal.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 26, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.1029 [Removed]

2. Section 180.1029 *Acetic acid; exemption from the requirement of a tolerance* is removed.

3. Section 180.1058 is revised, to read as follows:

§ 180.1058 Sodium diacetate; exemption from the requirement of a tolerance.

Sodium diacetate, when used postharvest as a fungicide, is exempt from the requirement of a tolerance for residues in or on alfalfa hay, Bermuda grass hay, blue grass hay, brome grass hay, clover hay, corn grain, oat grain, orchard grass hay, sorghum grain, sudan grass hay, rye grass hay, and timothy hay.

[FR Doc. 93-21819 Filed 9-7-93; 8:45 am]
BILLING CODE 6560-50-F

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40 CFR Part 180

[OPP-300261A; FRL-4630-1]

RIN 2070-AB78

Dinoseb; Revocation of Tolerances

AGENCY: Environmental Protection Agency

ACTION: Final rule.

SUMMARY: This document revokes the tolerances in 40 CFR 180.281 for residues of the herbicide, insecticide, and fungicide dinoseb (2-sec-butyl-4,6-dinitrophenol) from application of its phenol or its readily hydrolyzable salts (alkanolamine salts, ammonium salt, or sodium salt) in or on various raw agricultural commodities. EPA initiated this action because all registered uses of dinoseb have been canceled.

EFFECTIVE DATE: This regulation becomes effective September 8, 1993.

ADDRESSES: Written objections, identified by document control number, [OPP-300261], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Melissa Chun, Registration Division (H-7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8318.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of November 12, 1992 (57 FR 53676), which proposed revoking the tolerances for residues of the herbicide, insecticide, and fungicide dinoseb (2-sec-butyl-4,6 dinitrophenol) from application of its phenol or its readily hydrolyzable salts (alkanolamine salts, ammonium salts, or sodium salt) in or on various raw agricultural commodities in food or animal feed commodities established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, listed in 40 CFR 180.281.

No public comments or requests for referral to an advisory committee were received in response to the proposed rule.

Therefore, based on the information considered by EPA and discussed in detail in the November 12, 1992 proposal and in this final rule, the Agency is hereby revoking the tolerances listed in 40 CFR 180.281 for residues of dinoseb in or on the following raw agricultural commodities: alfalfa, alfalfa hay, almonds, almond hulls, apples, apricots, barley forage, barley grain, barley straw, beans, bean forage, bean hay, birdsfoot trefoil, birdsfoot trefoil hay, blackberries, blueberries, boysenberries, cherries, citrus, clover, clover hay, corn fodder, corn forage, fresh corn (including sweet corn and corn kernels plus cob with husk removed (K+CWHR)), corn grain (including popcorn), cotton forage, cottonseed, cottonseed hulls, cucurbits, currants, dates, figs, filberts, garlic, gooseberries, grapes, hops, lentils, loganberries, nectarines, oat forage, oat grain, oat straw, olives, onions, peaches, peanuts, peanut forage, peanut hay, peanut hulls, pears, peas, pea forage, pea hay, pecans, plums (prunes), potatoes, raspberries, rye forage, rye grain, rye straw, soybeans, soybean forage, soybean hay, strawberries, vetch, vetch hay, walnuts, wheat forage, wheat grain, wheat straw, pasture grass, and pasture grass hay.

Since the sale, distribution, and shipment of existing stocks of dinoseb for use on caneberries in Washington and Oregon was prohibited after the 1989 use season, the existing stocks of those remaining products should be depleted. EPA believes there has been adequate time for legally treated agricultural commodities to have gone through channels of trade. Surveillance and compliance monitoring data on domestic commodities have shown no detectable residues of dinoseb for the past 3 years. Further, since dinoseb is not a persistent chemical, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels will be

recommended to replace these tolerances upon their revocation.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which the hearing is requested, the requestor's contentions must include a statement of factual contentions on each issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and the resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

This document has been reviewed by the Office of Management and Budget as required by section 3 of Executive Order 12291.

Executive Order 12291

As explained in the proposal published in the **Federal Register** of November 12, 1992, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the removal of these tolerances will not cause adverse economic impact on significant portions of U.S. enterprises.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the November 12, 1992 proposal.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 18, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.281 [Removed]

2. By removing § 180.281 *Dinoseb; tolerances for residues.*

[FR Doc. 93-21404 Filed 9-7-93; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 271

[FRL-4725-9]

South Dakota; Final Authorizationof State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of South Dakota has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed South Dakota's application and has made a decision, subject to public review and comment, that South Dakota's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve South Dakota's hazardous waste program revisions. South Dakota's application for program revision is available for public review and comment.

DATES: Final authorization for South Dakota shall be effective November 8, 1993 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on South Dakota's program revision application must be received by the close of business October 8, 1993.

ADDRESSES: Copies of South Dakota's program revision application are available during regular business hours at the following addresses for inspection and copying: Division of Environmental Regulation, Department of Water and Natural Resources, Office of Waste Management, 319 S. Coteau, Pierre, South Dakota 57501, phone: 605/773-3153 and U.S. EPA Region VIII Library, 999 18th Street, Suite 500, Denver, CO 80204-2466, Phone 303/293-1444. Written comments should be sent to: Marcella DeVargas (HWM-WM), U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202-2466, Phone 303/293-1670.

FOR FURTHER INFORMATION CONTACT: Marcella DeVargas, Waste Management Branch, U.S.EPA, 999 18th Street, Suite 500, Denver, CO 80202-2466, Phone: 303/293-1670.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or the "the Act"), 42 U.S.C. 6929 (b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, section 3006(f) of RCRA requires state hazardous waste programs to provide for the public availability of information. Such a program must provide for the public availability of information obtained by the State regarding facilities and sites for the treatment, storage, and disposal of hazardous waste; and such information must be available to the public in substantially the same manner and to the same degree, as would be the case if the Administrator was carrying out the provisions of subtitle C of RCRA in such State.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 268 and 270.

B. South Dakota

South Dakota initially received final authorization in November 1984. South Dakota received authorization for revisions to its program on June 17, 1991. On June 29, 1992, South Dakota submitted a draft program revision application for additional program approvals. Today, South Dakota is seeking approval for public availability of information requirements (RCRA 3006(f)), pursuant to 40 CFR 271.21.

EPA has reviewed South Dakota's, 3006(f) application, and has made an immediate final decision that South Dakota's hazardous waste program revision satisfies all of the requirements necessary to qualify for final

authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to South Dakota. The public may submit written comments on EPA's immediate final decision up until October 8, 1993. Copies of South Dakota's application for program revision are available for inspection and copying at the locations indicated in the ADDRESSES section of this notice.

Approval of South Dakota's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either: (1) A withdrawal of the immediate final decision; or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

In June 1992, South Dakota submitted a draft application for EPA review. EPA's comments on the draft application were adequately addressed in the final application. Thus, the South Dakota program is granted immediate final authorization for Availability of Information (RCRA 3006(f)).

South Dakota has not requested hazardous waste program authority on Indian Country. The Environmental Protection Agency retains all hazardous waste authority under RCRA which applies to Indian Country in South Dakota.

C. Decision

I conclude that South Dakota's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, South Dakota is granted final authorization to operate its hazardous waste program as revised.

South Dakota now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. South Dakota also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to issue orders under sections 3008, 3013, and 7003 of RCRA.

In addition, South Dakota has submitted a draft application for non-HSWA clusters 3, 4, 5, and 6; and HSWA cluster 1, and 2, excluding land disposal restriction and Toxicity Characteristics (TC) rules. The State has agreed to submit a final application from South Dakota for the above clusters by September 30, 1993. In addition, a draft application for RCRA cluster 1 and land disposal restriction rules by December 31, 1993, a draft application for RCRA cluster 2 by December 31, 1994. Final applications will be submitted within 60 working days of receipt of EPA's comments on the draft application. The State has agreed to submit a final application for the TC rules within six months of EPA's decision on the proposed rule (December 24, 1992) to suspend the Toxicity Characteristics rule (Hazardous Waste Codes D018 through D043).

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of South Dakota's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous materials transportation, Hazardous waste Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912 (a), 6926, 6974(b).

Dated: August 30, 1993.

Jack W. McGraw,

Acting Regional Administrator,

[FR Doc. 93–21802 Filed 9–7–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 281

[FRL–4725–7]

Washington; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Washington's application for final approval.

SUMMARY: The State of Washington has applied for final approval of its underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Washington's application and has reached a final determination that Washington's underground storage tank program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the State of Washington to operate its program.

EFFECTIVE DATE: Final approval for Washington shall be effective October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Joan Cabreza, Chief, Underground Storage Tank Section, EPA Region 10, WD–133, 1200 Sixth Ave., Seattle, WA 98101. Phone: (206) 553–1643.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve State underground storage tank (UST) programs to operate in the State in lieu of the Federal UST program. To qualify for final authorization, a state's program must: (1) Be "no less stringent" than the Federal program; and (2) provide for adequate enforcement of compliance with UST standards (Sections 9004(a) and 9004(b) of RCRA, 42 U.S.C. 6991c(a) and 6991c(b)).

On December 2, 1992, Washington submitted an official application for final program approval. On April 19, 1993, EPA published a tentative decision announcing its intent to grant Washington final approval of its program. Further background on the tentative decision to grant approval appears at 58 FR 21135 (April 19, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment. Also, EPA provided notice that a public hearing would be provided only if significant public interest on substantive issues was shown. EPA received no comments, and, therefore, a public hearing was not scheduled regarding EPA's approval of Washington's UST program.

B. Decision

I conclude that the State of Washington's application for final approval meets all the statutory and

regulatory requirements established by Subtitle I of RCRA. Accordingly, Washington is granted final approval to operate its UST program. The State of Washington now has the responsibility for managing all regulated UST facilities within its borders and carrying out all aspects of the Federal UST program except with regard to Indian lands, where EPA will retain and otherwise exercise regulatory authority. Washington also has primary enforcement responsibility, although EPA retains the right to conduct inspections under Section 9005 of RCRA, 42 U.S.C. 6991d, and to take enforcement actions under Section 9006 of RCRA, 42 U.S.C. 6991e.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. This approval effectively suspends the applicability of certain Federal regulations in favor of Washington's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 281

Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This notice is issued under the authority of sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6974(b), and 6991(c).

Dated: August 6, 1993.

Randall F. Smith,

Acting Regional Administrator.

[FR Doc. 93–21713 Filed 9–7–93; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 3

RIN 3067–AC19

Removal of Standards of Conduct

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule removes 44 CFR part 3, Standards of Conduct, which is superseded by governmentwide standards of conduct, and reserves part 3.

EFFECTIVE DATE: April 22, 1993.

FOR FURTHER INFORMATION CONTACT: William R. Cumming, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4103.

SUPPLEMENTARY INFORMATION: On August 7, 1992, the Office of Government Ethics (OGE) published revised Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, 57 FR 35006. Those standards became effective February 3, 1993. They supersede existing agency standards of ethical conduct. FEMA's agency standards of conduct are published in 44 CFR part 3.

FEMA's rules on Conduct and Responsibilities of Employees include provisions relating to the filing and review of financial disclosure reports. Those rules were superseded by OGE's revised rules on financial disclosure published on April 7, 1992, 5 CFR parts 2633 and 2634, 47 FR 11800.

By memorandum of April 22, 1993 FEMA's Designated Agency Ethics Officer (DAEO) and Deputy DAEOs revoked 44 CFR part 3, and determined that no supplemental FEMA regulations concerning ethics were required at that time. Subsequently, FEMA Instruction 1100.1, Standards of Conduct, dated April 27, 1993, adopting OGE regulations relating to standards of conduct, was published and distributed to FEMA employees.

National Environmental Policy Act

This rule is excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Director of FEMA certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule relates to the responsibilities of employees of FEMA, and will have no direct effect on small business or governmental entities. Accordingly, no regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule as defined under Executive Order 12291, Federal Regulation, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 3

Conflict of interests.

PART 3—[REMOVED]

Accordingly, under the authority of 5 U.S.C. App. 402, and Executive Order 12674 of April 12, 1989, as modified by Executive Order 12731, 44 CFR part 3 is removed and reserved in its entirety.

Dated: September 1, 1993.

James L. Witt,

Director.

[FR Doc. 93–21799 Filed 9–7–93; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 92–136; FCC 93–352]

Relaxing Restrictions on the Scope of Permissible Communications in the Amateur Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule, which was published Friday, August 13, 1993 (58 FR 43071). The rule lessened restrictions on the scope of the

permissible communications that amateur stations may transmit.

EFFECTIVE DATE: September 13, 1993.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Federal Communications Commission, Private Radio Bureau, Personal Radio Branch, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of this correction revises § 97.113 on the effective date and effects the scope of the permissible communications that amateur stations may transmit.

Need for Correction

As published, the final rule inadvertently omitted paragraph (f) of § 97.113. This paragraph permits certain amateur stations to automatically retransmit the radio signals of other amateur stations.

Correction of Publication

Accordingly, the publication on August 13, 1993, of the final rule amending § 97.113, which was the subject of FR Doc. 93–19313, is corrected as follows:

§ 97.113 [Corrected]

On page 43072, in the third column, in § 97.113, paragraph (f) is added to read as follows:

* * * * *

(f) No amateur station, except an auxiliary, repeater, or space station, may automatically retransmit the radio signals of other amateur station.

William F. Caton,

Acting Secretary.

[FR Doc. 93–21727 Filed 9–7–93; 8:45 am]

BILLING CODE 6712–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1808 and 1852

Interim Changes to the NASA FAR Supplement Pertaining to Restrictions on Printing and Duplication by Contractors

AGENCY: National Aeronautics and Space Administration.

ACTION: Interim rule with request for comments.

SUMMARY: The NASA FAR Supplement (NFS) clause on restrictions on printing and duplicating is revised to clarify the terms used and specific restrictions. This is being done in response to section 207 of the Legislative Branch Appropriation Act of 1993.

DATES: *Effective Date:* This interim rule is effective September 8, 1993.

Comments: Comments must be received by October 8, 1993.

ADDRESSES: Comments should be addressed to Mr. Thomas L. Deback, Chief, Policy Development Branch B, Procurement Policy Division (Code HP), NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas L. Deback, Telephone: (202) 358–0431.

SUPPLEMENTARY INFORMATION:

Background

FAR subpart 8.8 sets forth the requirement that Government printing must be done by or through the Government Printing Office (GPO). The agency head of the GPO is called the Public Printer. Government agencies and their contractors are bound by the provisions of the Government Printing and Binding Regulations, published by Joint Committee on Printing, Congress of the United States. Audits performed by the Office of the Inspector General revealed that some contractors were performing printing services for the Government, as opposed to limited duplicating/copying of contract reports. Subsequently Public Law 102–392, section 207, Legislative Branch Appropriation Act of 1993, expanded the definition of "printing" to include silkscreen processes and microform, and forbade the use of appropriated funds for the procurement of any printing related to the production of Government publications (including printed forms) unless by or through the GPO.

The revised clause makes clear the prohibition is not only on any printing, but also on substantial duplicating/copying. Costs associated with these items are unallowable if the contractor does not receive prior written approval from the contracting officer. The contracting officer processes deviation requests in accordance with NFS 1808.802 and the Government Printing and Binding Regulations. Acceptable deviations are narrowly defined.

Regulatory Flexibility Act

This interim rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. It is impossible to accurately estimate the number of small entities that will be impacted. It is anticipated that few, if any, entities doing business with NASA are involved.

Paperwork Reduction Act

This interim rule does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 1808 and 1852

Government procurement.

Thomas S. Luedtke,

Acting Deputy Associate Administrator for Procurement.

1. The authority citation for 48 CFR parts 1808 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Subpart 1808.8 is revised to read as follows:

1808.802 Policy.

Acquisition of printing or duplicating/copying is governed by the provisions of the Government Printing and Binding Regulations, No. 26, S. Pub. 101–9, U.S. Government Printing Office, published by the Joint Committee on Printing, U.S. Congress. Approval of printing supplies or services in contracts shall be in accordance with NMI 1490.1, NASA Printing Management Program. Regulations prohibit the use of appropriated funds for the acquisition of any printing and substantial duplicating/copying outside of the Government Printing Office (GPO). An exception to the restriction exists if the requirement meets all of the following: an individual order is under $1,000, not of a continuing or repetitive nature, and the Public Printer certifies if cannot be provided more economically through the GPO. A request for an exception would be processed by the contracting officer, through NASA Headquarters Code JTT, to the Public Printer of the GPO; however, circumstances under which approval would be granted are rare.

1808.870 Contract clause.

The contracting officer shall insert the clause at 1852.208–81, Restrictions on Printing and Duplicating, in solicitations and contracts where there is a requirement for any printing, and/or any duplicating/copying in excess of that described in paragraph (c) of the clause.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.208–81 [Amended]

3. Section 1852.208–81 is revised to read as follows:

1852.208–81 Restrictions on printing and duplicating.

As prescribed in 1808.870, insert the following clause:

Restrictions on Printing and Duplicating (August 1993)

(a) The Contractor shall reproduce any documentation required by this contract in accordance with the provisions of the Government Printing and Binding Regulations, No. 26, S. Pub. 101–9, U.S. Government Printing Office, Washington, DC 20402, published by the Joint Committee on Printing, U.S. Congress.

(b) The Contractor shall not perform, or procure from any commercial source, any printing in connection with the performance of work under this contract. The term "printing" includes the processes of composition, platemaking, presswork, silk screen processes, binding, microform, and the end items of such processes and equipment.

(c) "Duplicating/copying" is not considered to be printing. It is material produced by duplicating equipment employing the lithographic process and automatic copy-processing or copier-duplicating machines employing electrostatic, thermal, or other copying processes not requiring the use of negatives or metal plates. The Contractor is authorized to duplicate production units provided the requirement does not exceed 5,000 production units of any one page or 25,000 units in the aggregate of multiple pages. Such plates may not exceed a maximum image size of 10¾ by 14¼ inches.A "production unit" is one sheet, size 8½ x 11 inches (215 x 280 mm), one side only, and one color ink.

(d) This clause does not preclude writing, editing, preparation of manuscript copy, or preparation of related illustrative material as a part of this contract, or administrative duplicating/copying (for example, necessary forms and instructional materials used by the Contractor to respond to the terms of the contract).

(e) Costs associated with printing or duplicating/copying in excess of the limits set forth above are unallowable without prior written approval of the Contracting Officer. If the Contractor has reason to believe that any activity required in fulfillment of the contract will necessitate any printing or substantial duplicating/copying, it immediately shall provide written notice to the Contracting Officer and request approval prior to proceeding with the activity. Requests will be processed by the Contracting Officer in accordance with the provisions of the Government Printing and Binding Regulations and NFS 1808.802.

(f) The Contractor shall include in each subcontract which may involve a requirement for any printing and/or any duplicating/copying in excess of the limits specified in paragraph (c) of this clause, a provision substantially the same as this clause, including this paragraph (f).

(End of clause)

[FR Doc. 93–21692 Filed 9–7–93; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

48 CFR Parts 2017 and 2052

RIN 3150–AE78

Nuclear Regulatory Commission Acquisition Regulation; Minor Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: This final rule makes a number of minor corrective and conforming amendments to the NRC's acquisition regulation. The final rule is necessary to correct the errors and inform the public of the corrections.

EFFECTIVE DATE: September 8, 1993.

FOR FURTHER INFORMATION CONTACT: Edward L. Halman, Director, Division of Contracts and Property Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–4347.

SUPPLEMENTARY INFORMATION: On December 23, 1992 (57 FR 61152), the Nuclear Regulatory Commission (NRC) published a final rule which expanded the existing Nuclear Regulatory Commission Acquisition Regulation (NRCAR) to implement and supplement the government-wide Federal Acquisition Regulation. The final rule established requirements for the procurement of goods and services within the NRC that were necessary to satisfy the particular needs of the agency. This document makes minor corrections and conforming changes to the NRCAR. The necessary changes are as follows:

Section 2017.204 is amended to revise the duration of contract extensions that the Head of the Contracting Activity may approve.

In part 2052, the "Security" clause is revised to identify the Changes Clause as the authority under which changes to the Commission's security regulations and requirements will be incorporated into a contract.

Administrative Procedure Act: Waiver

Because these amendments make minor corrections to an existing regulation pertaining to the acquisition of goods and services by contract, the NRC has determined pursuant to 5 U.S.C. 553(a)(2), that the rulemaking provisions of the Administrative Procedure Act do not apply.

Environmental Impact: Categorical Exclusion

The NRC has determined that this rule is the type of action described in the categorical exclusion set forth in 10 CFR 51.22(c) (5) and (6). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0169.

Regulatory Analysis

This final rule is administrative in that it corrects and conforms the text of an existing regulation. These amendments will not have a significant impact. Therefore, the NRC has not prepared a regulatory analysis for this final rule. The regulatory analysis for the NRCAR was contained in the final rule published December 23, 1992 (57 FR 61152).

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule because these amendments do not involve any provision which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

48 CFR Part 2017

Government procurement, Nuclear Regulatory Commission Acquisition Regulation.

48 CFR Part 2052

Government procurement, Nuclear Regulatory Commission Acquisition Regulation, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following corrective amendments to 48 CFR parts 2017 and 2052.

PART 2017—SPECIAL CONTRACTING METHODS

1. The authority citation for part 2017 continues to read as follows:

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

2017.204 [Amended]

2. In 2017.204(b), the phrase "one year" is revised to read "five years."

PART 2052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for part 2052 continues to read as follows:

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

4. In 2052.204–70 paragraph (d) is revised to read as follows:

2052.204–70 Security.

* * * * *

(d) Regulations. The contractor agrees to conform to all security regulations and requirements of the Commission which are subject to change as directed by the NRC Division of Security and the Contracting Officer. These changes will be under the authority of the changes clause.

* * * * *

Dated at Rockville, Maryland, this 31st day of August, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–21707 Filed 9–7–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 921185–3021; I.D. 083193A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Atka mackerel in the Eastern Aleutian District (statistical area 541) and the Bering Sea (BS) subarea of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that incidental catches of Atka mackerel be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the Atka mackerel total allowable catch (TAC) specified for these areas has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), September 3, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The Atka mackerel TAC specified for the combined Eastern Aleutian District and BS subarea (Eastern AI District/BS) was established by a revision to the final 1993 initial specifications (58 FR 37660, July 13, 1993) as 3,520 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.20(a)(9), that the Atka mackerel TAC specified for the combined Eastern AI District/BS has been reached. Therefore, NMFS is requiring that further catches of Atka mackerel in the Eastern AI District/BS be treated as prohibited species in accordance with § 675.20(c)(3), effective 12 noon, A.l.t., September 3, 1993, through 12 midnight, A.l.t., December 31, 1993.

Classification

This action is taken under § 675.20 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 2, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–21800 Filed 9–2–93; 3:57 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 172
Wednesday, September 8, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 92-044-2]

Brucellosis; Interstate Movement of Swine; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: We are correcting an editorial error in a proposed rule to revise the swine brucellosis regulations. The proposed rule was published in the **Federal Register** on July 23, 1993 (58 FR 39458–39462, Docket No. 92–044–1).

FOR FURTHER INFORMATION CONTACT: Dr. Delorias Lenard, Senior Staff Veterinarian, Swine Health Staff, VS, APHIS, USDA, room 736, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7767.

In Docket No. 92–044–1, pages 39458–39462, the following correction is made:

On page 39458, the third column, in the Summary, and on page 39459, the second column, in the Background, in the fourth line from the top, the words "validated brucellosis-free herds must be tested to maintain" are removed and the words "breeding swine must be tested to qualify States for" are added in their place.

Done in Washington, DC, this 1st day of September 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–21863 Filed 9–7–93; 8:45 am]

BILLING CODE 3410-34-P

9 CFR Part 113

[Docket No. 92–112–2]

In Vitro Tests in Place of Animal Tests for Immunogenicity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: We are withdrawing a proposed rule to amend the regulations regarding the use of in vitro tests in place of animal tests for immunogenicity. The proposed amendment would have provided for the use of a parallel line assay for determining the relative antigenic content (potency) of a serial of product derived from an approved Master Seed. Based on comments received, the Agency believes that the subject should be further explored, and the rule should be reproposed. It also appears that there was some confusion concerning the proposed rule. For example, it may not have been clear that the rule, if adopted, would have been to standardize all in vitro immunoassay test methods used in place of animal tests to determine the antigenic content of inactivated products, and to require that all such tests involve the use of a parallel line assay. Therefore, we are withdrawing the proposed rule and will postpone further rulemaking until we gather additional information.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245, fax (301) 436–8669.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 113 pertain to the use of in vitro tests in place of animal tests for determining the relative potency of veterinary biological products. On March 3, 1993, we published a document in the **Federal Register** (58 FR 12187–12188, Docket No. 92–112–1) proposing to amend the regulations in 9 CFR 113.8 to provide for the use of a parallel line assay in determining the relative antigenic content (potency) of a serial of product derived from an approved Master Seed which has been tested for immunogenicity in a manner acceptable to the Animal and Plant Health Inspection Service (APHIS). In addition, the proposed rule provided that all immunoassay potency tests used in place of animal tests to determine relative potency be conducted with an unexpired reference.

APHIS solicited comments on the proposed rule for a 60-day period ending May 3, 1993. Six comments were received for the proposed rule. APHIS carefully considered all of the comments that were received. While generally supportive of the rule as proposed, the commenters raised issues that suggest that some confusion exists concerning certain provisions and areas such as the scope of the rule and the procedures that may be used for requalification of references in order to extend the period of time that the references may be used.

In order to provide a more complete notice including more information regarding procedures for the requalification of references, APHIS is withdrawing its proposed rule and postponing rulemaking until we have gathered additional information. In this issue of the **Federal Register**, we are publishing a separate notice ("Public Meeting; In Vitro Potency Testing," Docket No. 92–112–3) in which we announce our intention to hold a public meeting on this subject.

Accordingly, the proposed amendments to 9 CFR 113.8, published at 58 FR 12187–12188, March 3, 1993, are withdrawn.

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 2nd day of September 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–21861 Filed 9–7–93; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[Docket No. PRM–72–1]

Maryland Safe Energy Coalition; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking dated June 23, 1993, which was filed with the Commission by Maryland Safe Energy Coalition. The petition was docketed by the NRC on June 30, 1993, and has been assigned Docket No. PRM–72–1. The petitioner requests that the NRC amend its regulations regarding generic issues related to dry cask storage.

DATES: Submit comments by November 22, 1993. Comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

For a copy of the petition, write the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7758 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission's regulations contained in 10 CFR part 72 provide licensing requirements for the independent storage of spent nuclear fuel and high-level radioactive waste. In particular, subpart K to part 72 provides a general license for storage of spent fuel to nuclear power reactor licensees, and subpart L sets forth procedures and criteria for approval of storage casks for the storage of spent fuel under the general license provided in subpart K.

The Petitioner

On June 30, 1993, the Maryland Safe Energy Coalition filed a request for action under 10 CFR 2.802 with the Nuclear Regulatory Commission (NRC). The petitioner is an environmental consumer organization that is interested in the minimization and safe storage of nuclear waste, including spent fuel at nuclear power plants in general and at the Calvert Cliffs Nuclear Power Plant in particular. The petitioner represents the interests of more than a hundred signers, most of whom reside in the vicinity of the Calvert Cliffs plant. The petitioner also supports the efforts of similar organizations in several states where dry cask storage of spent fuel is an issue.

Reasons for the Petition

According to the petitioner, the purpose of the petition is to change the rules regarding dry cask storage of spent fuel at nuclear power plant sites. The petitioner is particularly concerned about spent fuel storage at the Calvert Cliffs Nuclear Power Plant, which is operated by Baltimore Gas and Electric Company (BG&E). (The petitioner believes that even though the spent fuel at the Calvert Cliffs plant is stored under a specific part 72 license, many of the generic requirements proposed by the petitioner would be the same or similar to the specific requirements applicable to independent spent fuel storage at Calvert Cliffs).

Discussion

The petitioner recommends that 10 CFR 72.22(e)(2) be amended to require an application for a license to store spent fuel to specify the planned life of the independent spent fuel storage installation (ISFSI). The petitioner asserts that if the storage of spent fuel is temporary, it follows that the planned life has a definite duration. The petitioner further states that licensees should be required to state the length of time that each storage canister and/or cask will be used. The petitioner also believes that, in the absence of a stated lifetime, it should not be assumed that the storage is temporary. The petitioner indicates that any storage which might become either permanent or indefinite would require additional regulatory control.

The petitioner suggests a change to § 72.22(e)(3) because the petitioner believes that the NRC should not assume that removal of nuclear waste, including spent fuel from a reactor site, is the safest policy. The petitioner further states that the lack of a national waste repository or monitored retrievable storage installation (MRS) and the hazards of transporting high-level nuclear waste may make a prolonged or indefinite on-site storage the only option or the safest policy.

The petitioner recommends a change to § 72.42 to require a period of 90 days between the final safety evaluation report (SER) and the issuing of a license to allow potential petitioners time to intervene based on issues in the final SER. The petitioner also requests a change to § 72.44(c)(3)(ii) that would require the dry storage casks to be monitored continuously at the exit cooling vents, since according to the petitioners, the exit vents are the most likely location of radioactive venting.

The petitioners request that § 72.46(d) be amended to prescribe a period for a notice of opportunity for a hearing or petition for leave to intervene until 90 days after the final SER is published. In support of this suggested amendment, the petitioner states that "If a notice of opportunity for a hearing or intervention is limited to a short period after the license application, interested parties may be prevented from obtaining a hearing based on the second or final SER. Information in the latter safety reports may impact on the advisability of issuing a license. The public should have the right and opportunity to comment of the final safety analysis report (SAR) and SER before a license is issued."

The petitioner suggests a change to § 72.72(a) to require that licensees document the history and condition of all spent fuel because defective fuel can cause problems for safe storage.

In § 72.104(a), the petitioner believes that the radiation limit should be based on a dose to a maximally exposed individual at the perimeter of the controlled area and that the possibility of a pregnant person working and/or living at the perimeter should be a safety assumption for setting radiation limits. According to the petitioner, recent studies have shown that women, children, and fetuses are especially sensitive to radiation damage. The petitioner also states that the National Academy of Science's Committee on the Biological Effects of Ionizing Radiation cited a report in 1990 by Dr. Alice Steward that established a direct correlation of childhood cancers and leukemias with background levels of gamma radiation from natural and man-made sources in England, Wales, and Scotland. The cumulative outdoor doses due to this source during fetal life varied between only 10 and 40 millirads, with an average of 22 millirads. According to the petitioners, this study indicates that the standards set for exposure of adults to low-level radiation are too high for the developing fetus.

The Suggested Amendments

The petitioner requests that the NRC amend 10 CFR Part 72 to read as follows:

1. In § 72.22(e)(2), add "Specify the planned life of the ISFSI."

2. In § 72.22(e)(3), change "after the removal of spent fuel and/or high-level radioactive waste" to "if the spent fuel and/or the high-level radioactive waste is removed."

3. In § 72.42, add a new paragraph (d) to read "No license will be issued before 90 days after the final safety evaluation report (SER) is published."

4. In § 72.44(c)(3), add paragraph (v) to read "dry storage casks must be monitored continuously for radioactivity at the exit cooling vents."

5. In § 72.46(d), add "The time prescribed for a notice of opportunity for a hearing or petition for leave to intervene will extend from the notice of proposed action through 90 days after the final SER is published."

6. In § 72.72(a), add after the first sentence "The records must include the history and condition of all spent fuel assemblies including a description of any defective fuel, such as fuel that is cracked, swollen, blistered, pinholed, or offgassing."

7. In § 72.104(a) in place of "real" put "maximally exposed"; after "individual" add "or fetus"; change "25 mrem" to "5 mrem"; change "75 mrem" to "15 mrem"; and change "25 mrem" to "5 mrem". The sentence will then read, ". . . dose equivalent to any maximally exposed individual or fetus who is located beyond the controlled area must not exceed 5 mrem to the whole body, 15 mrem to the thyroid and 5 mrem to any other organ. . . ."

Dated at Rockville, Maryland, this 1st day of September, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93-21822 Filed 9-7-93; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-106-AD]

Airworthiness Directives; Boeing Model 747-100, -200, -300, and -400 Series Airplanes Equipped With BFGoodrich Evacuation Ramp/Slides

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747-100, -200, -300, and -400 series airplanes. This proposal would require various modifications of certain evacuation ramp/slides. This proposal is prompted by reports of several evacuation ramp/slide malfunctions. The actions specified by the proposed AD are intended to prevent delayed inflation of evacuation ramp/slides, which could delay or impede the evacuation of passengers during an emergency.

DATES: Comments must be received by November 2, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-106-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from the BFGoodrich Company, Aircraft Evacuation Systems, Sustaining Engineering, D/7916, Phoenix, AZ 85040. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM-131L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5338; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-106-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-106-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The FAA has received reports that the door 3 evacuation ramp/slide installed on certain Boeing Model 747-100, -200, -300, and -400 series airplanes failed to inflate automatically when the door was opened. In other instances, the door 3 ramp/slide deployed into (or on top of) the door 4 slide/raft. Other reports indicate that the ramp/slide deployment indicator tube caught under the door 4 slide/raft, preventing the indicator tube from being visible from the door 3 exit. These conditions, if not corrected, could result in delayed inflation of evacuation ramp/slides, which could delay or impede the evacuation of passengers during an emergency.

The FAA has reviewed and approved BFGoodrich Service Bulletin 7A1418-25-253, dated April 28, 1993, that describes procedures for various modifications of certain evacuation ramp/slides. Those modifications are described as follows:

1. Modifying certain reservoir assemblies to another configuration by replacing the currently-installed actuator. Accomplishment of this modification will prevent the door 3 evacuation ramp/slide from failing to inflate automatically when the door is opened.

2. Modifying the inflatable assembly by installing a picture frame pre-form between the toe support bag and the inflatable bottom ply; adding a velcro hook patch and a velcro pile patch to the toe support bag; adding a deployment indicator tube support strap; modifying the bottle bag; and

removing the restraint pad from the bottom of the inflatable assembly. Accomplishment of this modification will prevent the door 3 ramp/slide from failing to inflate automatically when the door is opened; will prevent the door 3 ramp/slide from deploying into (or on top of) the door 4 slide/raft; and will correct the indicator tube visibility problem discussed previously.

3. Adding a force-increasing lever to the firing lanyard. Accomplishment of this modification will also prevent the door 3 ramp/slide from failing to inflate automatically when the door is opened.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require various modifications of certain evacuation ramp/slides. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 1,100 BFGoodrich ramp/slides of the affected design installed on Boeing Model 747–100, –200, –300, and –400 series airplanes in the worldwide fleet. The FAA estimates that 300 of these subject ramp/slides are installed on Boeing Model 747–100, –200, –300, and –400 series airplanes of U.S. registry, and would be affected by this proposed AD. It would take approximately 22 work hours per ramp/slide to accomplish the proposed actions, and the average labor rate is $55 per work hour. Required parts would be provided by the ramp/slide manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $363,000, or $1,210 per ramp/slide. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 93–NM–106–AD.

Applicability: Model 747–100, –200, –300, and –400 series airplanes equipped with BFGoodrich evacuation ramp/slides, as listed in BFGoodrich Service Bulletin 7A1418–25–253, dated April 28, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent delayed inflation of evacuation ramp/slides, which could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 24 months after the effective date of this AD, modify the reservoir assembly, modify the inflatable assembly and the bottle bag, and add a lever to the firing lanyard, as applicable, in accordance with paragraphs 2.D.(2), 2.E., and 2.F. of the Accomplishment Instructions of BFGoodrich Service Bulletin 7A1418–25–253, dated April 28, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 1, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21784 Filed 9–7–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–111–AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped With Rolls Royce RB211–535E4/E4B Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes. This proposal would require tests of the thrust reverser system, and repair, if necessary; installation of a modification that would terminate those tests; and repetitive operational checks of that installation, and repair, if necessary. This proposal is prompted by results of a safety review, which revealed that in-flight deployment of a thrust reverser could result in a significant reduction in the controllability of the airplane. The actions specified by the proposed AD are intended to prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

DATES: Comments must be received by November 2, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–111–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jeffrey Duven, Aerospace Engineer,

Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2688; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-111-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-111-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The FAA has conducted a safety review of the thrust reverser system installed on Boeing Model 757 series airplanes equipped with Rolls Royce RB211-535E4/E4B engines. The results of that review revealed that in-flight deployment of a thrust reverser could result in a significant reduction in the controllability of the airplane.

Consequently, Boeing has developed a modification for these airplanes, which, when accomplished, will ensure that the level of safety inherent in the original type design of the thrust reverser system is further enhanced. The FAA has determined that the installation of these additional features will further reduce the likelihood of an in-flight thrust reverser deployment.

The FAA has reviewed and approved Boeing Service Bulletin 757-78-0032, Revision 1, dated April 8, 1993, that describes procedures for installation of an additional thrust reverser system locking feature (denoted as a "sync-lock"), which will reduce the possibility of an uncommanded in-flight deployment of the thrust reversers. The sync-lock is controlled independently of the existing electro-mechanical safety features of the thrust reverser system. This additional locking feature has been certified by the FAA and is installed on new-production Model 757 series airplanes equipped with Rolls Royce RB211-535E4/E4B engines. The FAA has determined that installation of the sync-lock is necessary in order to positively address the identified unsafe condition with regard to these airplanes.

The FAA has determined that, prior to installation of the sync-lock, interim tests of the thrust reverser system must be accomplished to ensure that the safety features of the existing thrust reverser system are functioning properly and are being checked at regular intervals. Two interim tests must be accomplished: a "restow test" is necessary to verify proper operation of the auto restow system, including checks of the system sensors, indicators, and system components; and an "integrity test" is necessary to ensure the mechanical integrity of the existing thrust reverser actuator locks and the connecting crossover shaft.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require restow and integrity tests to verify proper operation of the thrust reverser system on certain airplanes, and repair, if necessary. Those tests would be required to be accomplished in accordance with certain procedures described in the Boeing 757 Maintenance Manual.

This AD would also require the installation of an additional thrust reverser system locking feature (sync-lock). Installation of the sync-lock would terminate the requirement for the restow and integrity tests discussed previously. The sync-lock installation would be required to be accomplished in accordance with the service bulletin described previously.

In addition, this AD would require that the integrity of the sync-lock installation be verified by periodic operational tests of the installation, and repair of any discrepancies. These tests are necessary in order to ensure that the sync-lock has not failed in the unlocked state. These test procedures and any necessary repairs would be required to be accomplished in accordance with certain procedures described in the Boeing 757 Maintenance Manual.

There are approximately 250 Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 95 airplanes of U.S. registry would be required to accomplish the restow and integrity tests required by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish those tests, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators to accomplish those tests is estimated to be $5,225, or $55 per airplane.

The FAA estimates that 95 airplanes of U.S. registry would be required to accomplish the modification required by this proposed AD, that it would take approximately 506 work hours per airplane to accomplish that proposed modification, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators to accomplish the proposed modification is estimated to be $2,643,850, or $27,830 per airplane.

The FAA also estimates that 113 airplanes of U.S. registry would be required to accomplish the periodic operational tests of the sync-lock installation required by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish each test, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators to accomplish each functional test is estimated to be $6,215, or $55 per airplane.

Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,655,290. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The FAA recognizes that the proposed modification would require a large number of work hours to accomplish. However, the 5-year compliance time specified in paragraph (b) of this proposed AD should allow ample time for the sync-lock installation to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby

minimizing the costs associated with special airplane scheduling.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 93–NM–111–AD.

Applicability: All Model 757 series airplanes equipped with Rolls Royce RB211–535E4/E4B engines; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane, accomplish the following:

(a) For airplanes on which the sync-lock feature was not installed during production or as a modification in accordance with Boeing Service Bulletin 757–78–0032: Within 4,000 hours time-in-service after the effective date of this AD; and thereafter at intervals not to exceed 4,000 hours time-in-service until the modification required by paragraph (b) of this AD is accomplished; accomplish paragraphs (a)(1) and (a)(2) of this AD to verify proper operation of the thrust reverser system. Prior to further flight, repair any discrepancy found, in accordance with the procedures described in the Boeing 757 Maintenance Manual.

(1) Perform a thrust reverser-auto restow test in accordance with Section 78–31–00, pages 513–517, dated December 20, 1992, of the Boeing 757 Maintenance Manual.

(2) Perform an actuator lock and crossover shaft integrity test in accordance with Section 78–31–00, page 517, dated December 20, 1992, and pages 518–519, dated March 20, 1993, of the Boeing 757 Maintenance Manual.

(b) For airplanes on which the sync-lock feature was not installed during production or as a modification in accordance with Boeing Service Bulletin 757–78–0032: Within 5 years after the effective date of this AD, install an additional thrust reverser system locking feature (sync-lock installation), in accordance with Boeing Service Bulletin 757–78–0032, Revision 1, dated April 8, 1993. Installation of this additional locking feature constitutes terminating action for the tests required by paragraph (a) of this AD.

(c) Within 1,000 hours time-in-service after accomplishing the modification required by paragraph (b) of this AD, or within 1,000 hours time-in-service after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 1,000 hours time-in-service: Accomplish paragraphs (c)(1) and (c)(2) of this AD to verify that the sync-locks have not failed in the "unlocked" state. Prior to further flight, repair any discrepancy found, in accordance with procedures described in the Boeing 757 Maintenance Manual.

(1) Perform a thrust reverser-auto restow test in accordance with Section 78–31–00, pages 534–538, dated December 20, 1992, of the Boeing 757 Maintenance Manual.

(2) Perform an actuator lock, crossover shaft, and sync-lock integrity test in accordance with Section 78–31–00, page 538, dated December 20, 1992, and pages 539–540, dated March 20, 1993, of the Boeing 757 Maintenance Manual.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 1, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–21786 Filed 9–7–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–CE–63–AD]

Airworthiness Directives: Piper Aircraft Corporation PA–25 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Piper Aircraft Corporation (Piper) PA–25 series airplanes. The proposed action would require repetitively inspecting the wing forward spar fuselage attachment assembly for cracks or corrosion, and replacing or repairing any cracked or corroded part. This action is a result of an accident investigation where corrosion and cracks in the wing forward spar fuselage attach fittings were found on a Piper Model PA–25–235 airplane. The actions specified by the proposed AD are intended to prevent possible in-flight separation of the wing from the airplane caused by a cracked or corroded wing forward spar fuselage attachment assembly.

DATES: Comments must be received on or before November 12, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–63–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Information that relates to the proposed AD may be inspected at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Perry, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–2910; Facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–CE–63–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–63–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A Piper Model PA–25–235 airplane was involved in a recent accident where the left wing separated from the airplane. Investigation of the referenced accident revealed corrosion and cracks in the wing forward spar fuselage attachment fittings.

The two clevis ears on the wing forward spar fuselage attach fitting assembly of the Piper PA–25 series airplanes are formed by welding a front spar fitting, part number (P/N) 64003–0, to a front spar fitting assembly, P/N 64412–0. The forward clevis ear of the left wing forward spar fuselage attach fitting assembly of the referenced airplane fractured at the base of the clevis ear and contained extensive corrosion. Some of the fractures were along flat transverse planes, indicating progressive cracking. A strong oxidation layer between the sections of the fitting assembly indicates that the corrosion occurred over a long period of time.

The aft clevis ear of the left wing forward spar fuselage attach fitting assembly was extensively deformed and had broken through at the wing attachment bolt hole. The fracture of the forward clevis ear caused severe stress upon the aft clevis ear, which resulted in the left wing separating from the airplane.

After examining the circumstances and reviewing all available information related to the accident described above, the FAA has determined that AD action should be taken to prevent possible in-flight separation of the wing from the airplane caused by a cracked or corroded wing forward spar fuselage attachment assembly.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA–25 series airplanes of the same type design, the proposed AD would require repetitively inspecting the wing forward spar fuselage attach fittings for cracks or corrosion, and replacing or repairing any cracked or corroded part.

The compliance time for the proposed AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time for compliance is the most desirable method because the unsafe condition described by the proposed AD is caused by corrosion. Corrosion can occur on airplanes regardless of whether the airplane is in service or in storage. Therefore, to ensure that corrosion is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours TIS is proposed.

The FAA estimates that 1,272 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $139,920.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Piper Aircraft Corporation: Docket No. 92–CE–63–AD.

Applicability: Models PA–25–150, PA–25–235, and PA–25–260 airplanes (all serial numbers), certificated in any category.

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 12 calendar months.

To prevent possible in-flight separation of the wing from the airplane caused by a cracked or corroded wing forward spar fuselage attachment assembly, accomplish the following:

Note 1: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.

Level 2: (1), (2), (3), etc.

Level 2 structures are designations of the Level 1 paragraph they immediately follow.

(a) Gain access to the left and right wing forward spar fuselage attach fittings by removing the screws retaining the wing fairing. On later models, dismantle the wing fillet by removing the screws on the aft edge top and bottom and removing the wing fairing (see FIGURE 1 of this AD).

BILLING CODE 4910-13-U

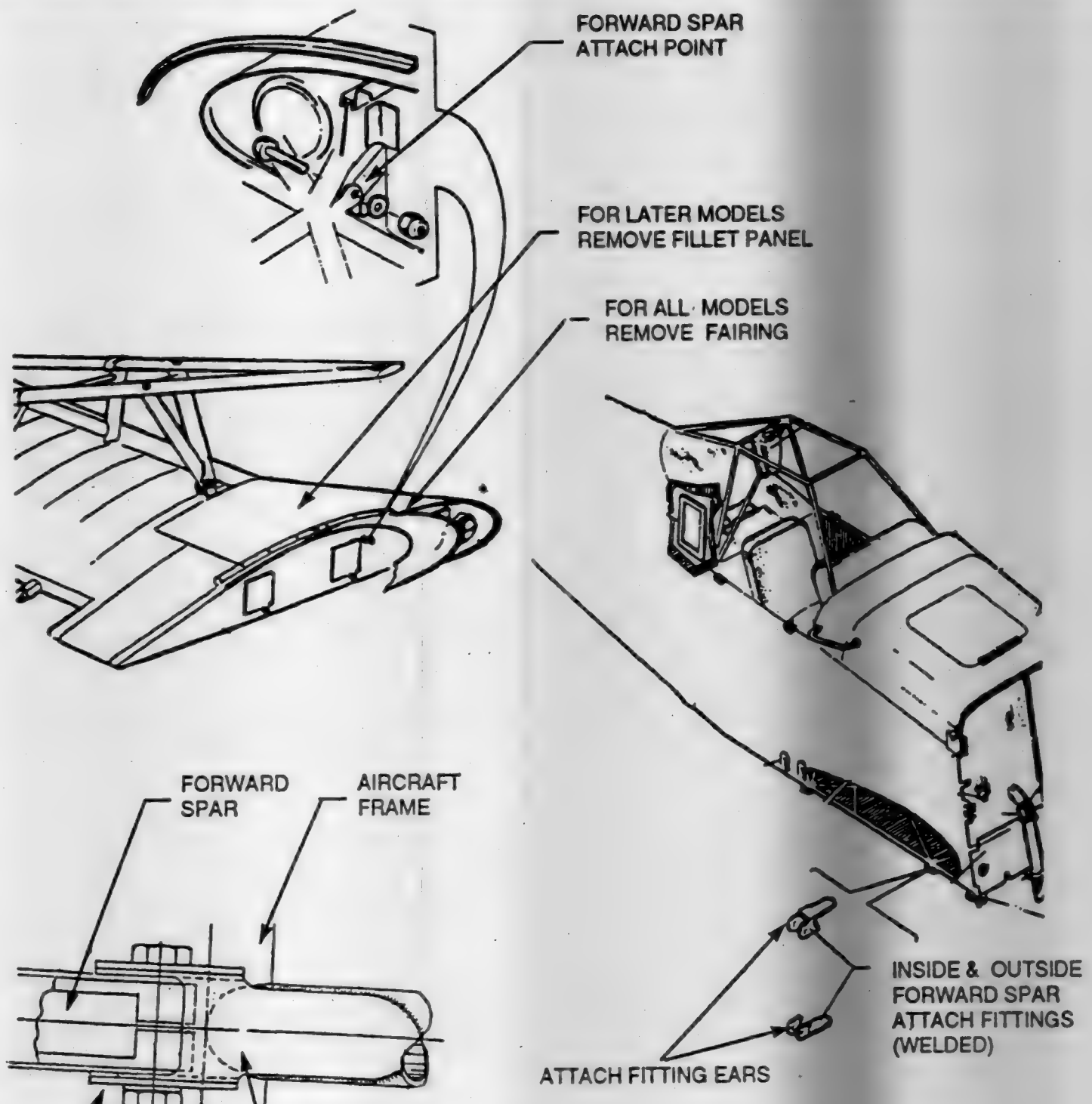

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NOTE: AFTER CLEANING THOROUGHLY, INSPECT THE ENTIRE AREA FOR CORROSION AND RELATED DAMAGE WITH SPECIAL CARE TO INSPECT THE EARS OF THE ATTACH FITTING. NO EXFOLIATION ALLOWED. FLAKING OR BUBBLED PAINT MUST BE REMOVED TO FACILITATE INSPECTION. DISASSEMBLY WILL BE AS REQUIRED BASED ON CONDITION. RETURN TO SERVICE INCLUDES PRIME, PAINT AND RUST INHIBITOR.

FIGURE 1

(b) Thoroughly clean around the wing forward spar fuselage attachment fittings with water (only), and then air dry this area. Do not use solvents as they may react negatively with spray chemical residue.

Note 2: All personal and environmental precautions should be taken when dealing with chemical waste and residue.

(c) Remove the wing attach bolts and inspect the wing forward spar tubular fuselage attach cluster for damage (cracks, corrosion, rust, or gouges). Remove bubbled or flaking paint. Prior to further flight, repair or replace any damaged tubular member with equivalent material in accordance with FAA Advisory Circular (AC) No. 43.13–1A, Acceptable Methods, Techniques, Practices—Aircraft Inspection and Repair.

(d) Inspect the wing forward spar fuselage attach fitting assembly, part numbers (P/N) 61005–0 (front spar fitting assembly) and 61006–0 (front spar fitting) for Model PA–25–150; and P/N 64412–0 (front spar fitting assembly) and 64003–0 (front spar fitting) for Models PA–25–235 and PA–25–260, for corrosion. If corrosion is found, prior to further flight, replace the forward spar fuselage tubular attach cluster with serviceable parts in accordance with FAA AC No. 43.13–1A, Acceptable Methods, Techniques, Practices—Aircraft Inspection and Repair. This procedure requires the following:

(1) Provide for the alignment of the airframe with an appropriate alignment fixture in accordance with FAA AC No. 43.13–1A, Acceptable Methods, Techniques, Practices—Aircraft Inspection and Repair.

(2) Cut the tubular members as referenced and specified in Figure 2 and either Figures 3a and 3b; Figures 4a and 4b; or Figures 5a and 5b, as applicable.

(3) Fabricate a cluster using all applicable part numbers referenced in Figures 3b, 4b, or 5b, as applicable; and

(4) Splice the new cluster into the fuselage frame.

Note 3: The inner and outer fitting areas are very susceptible to corrosion and extreme care should be given in inspecting these areas.

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PA-25
Side View of the Front Wing Fitting
and Landing Gear Fittings

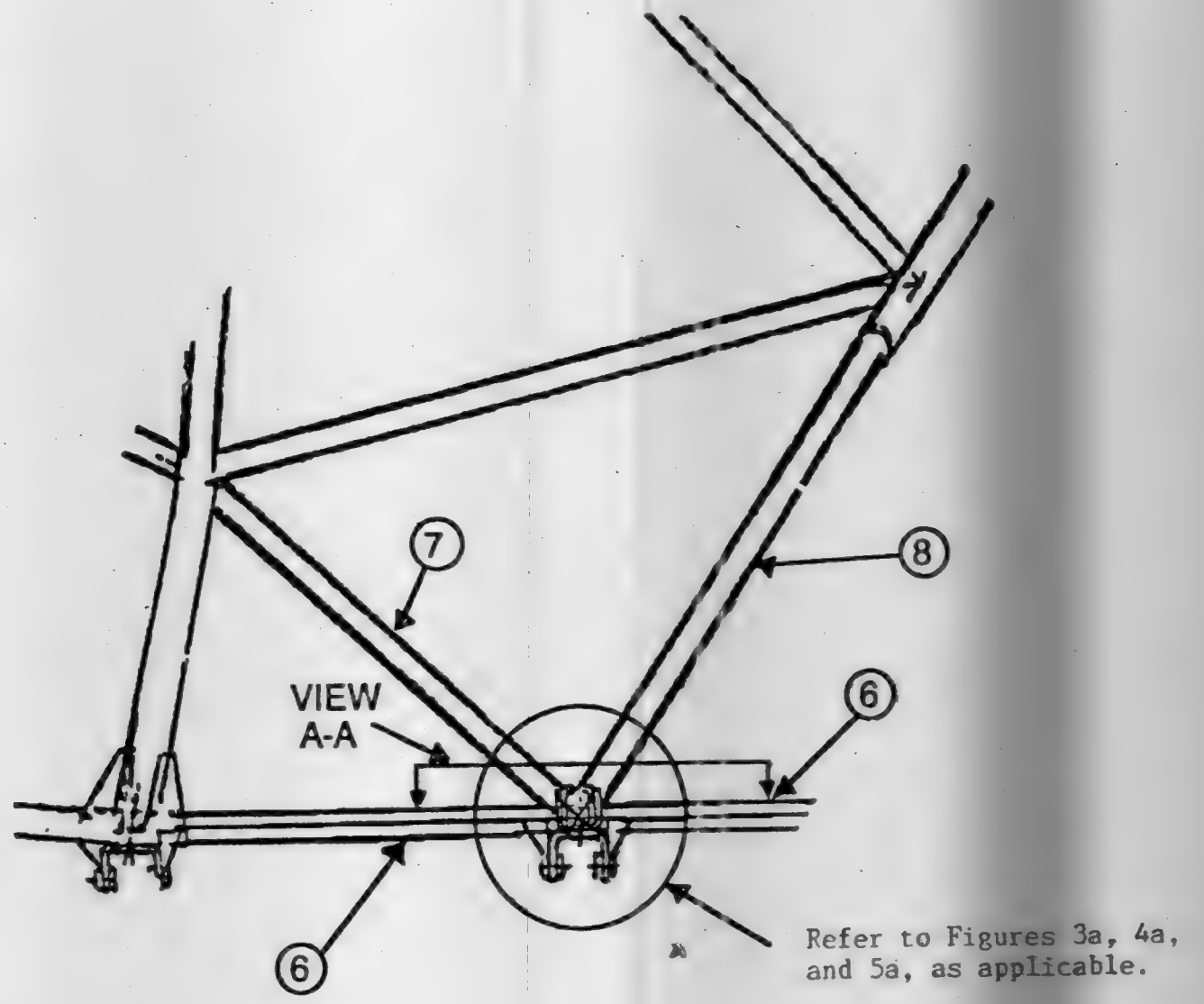

Figure 2

PA-25-150
S/N - ALL

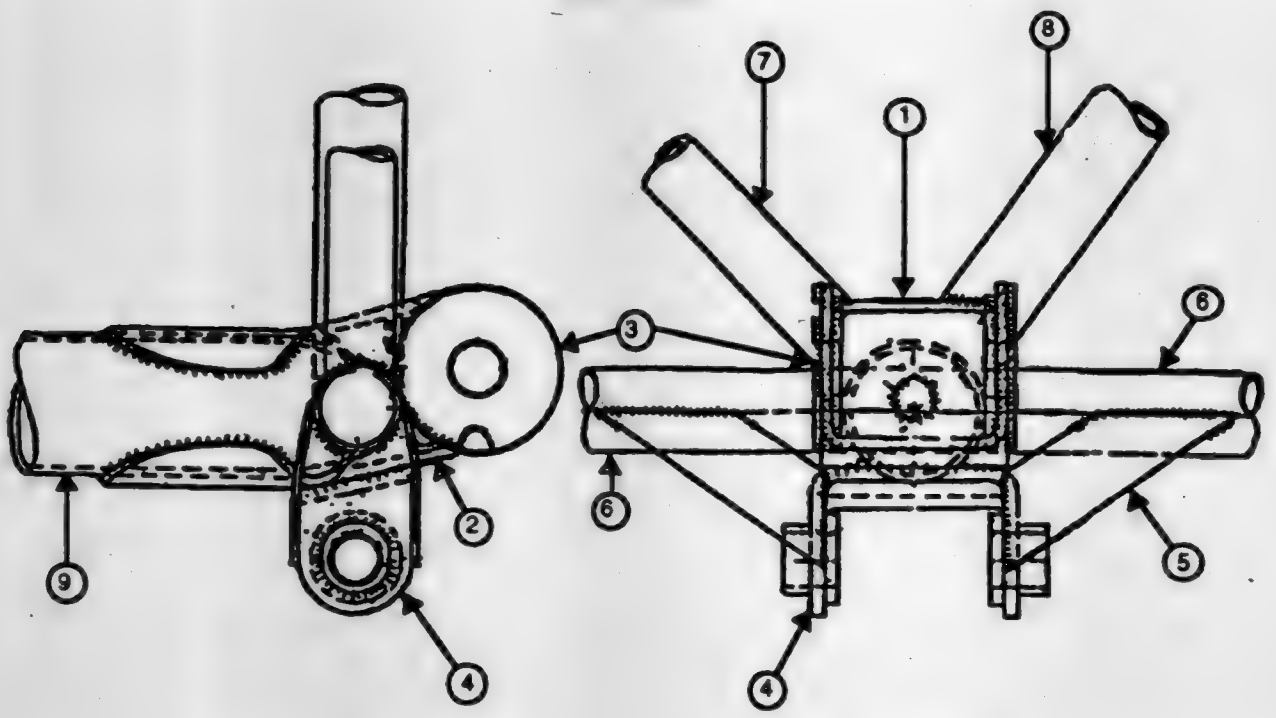

View Looking Aft

Side View

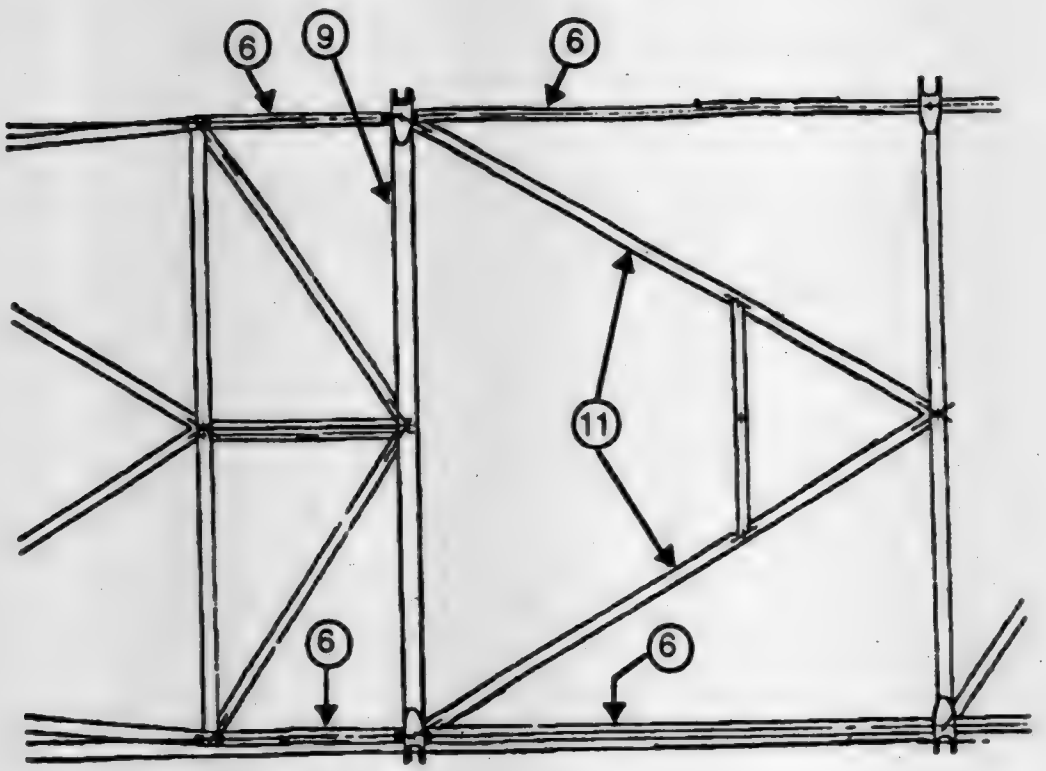

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Bottom View (View A-A)
(Both Sides)

Figure 3a

PA–25–150, S/N–ALL, FRONT WING SPAR ATTACHMENT–FITTINGS AND TUBES

No.	Description	Part No./tube dimensions
1	Front Spar Fitting	61006–0
2	Channel	61007–0
3	Fitting Assy-Front Spar	61005–0
4	Fitting Assy-Landing Gear	21242–2
5	Brace-Bracket	11994–28
6	Tube	.75x.035 (4130)[N1]
7	Tube	.625x.035 (4130)[N1]
8	Tube	.75x.035 (4130)[N1]
9	Tube	1.25x.058 (4130)[N1]
11	Tube	.625x.028 (1025)

[1] MIL–T–6736 Type 1.

BILLING CODE 4910–13–U

PA-25-235
(S/N - 25-2000 To 25-2985)

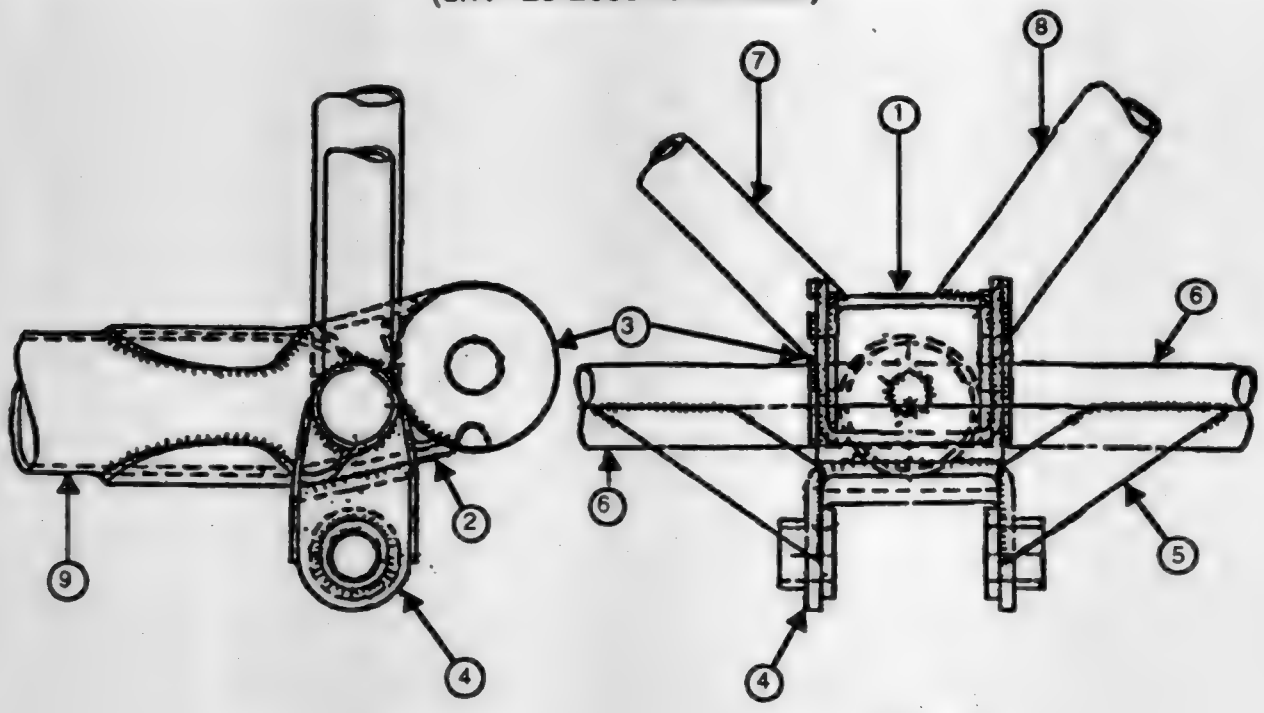

View Looking Aft

Side View

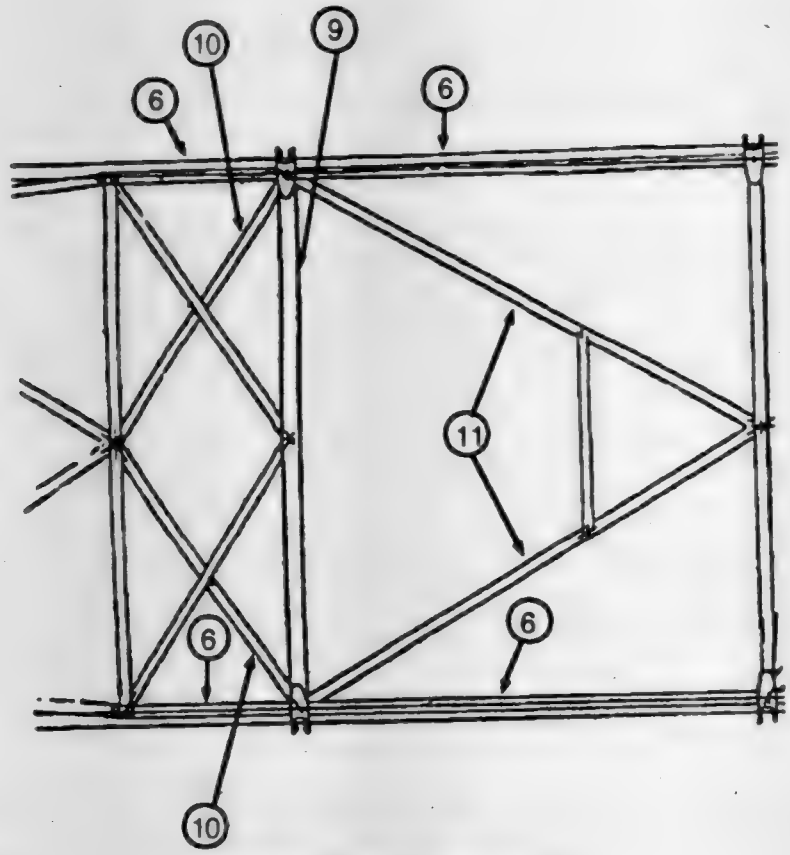

Bottom View (View A-A)
(Both Sides)

BILLING CODE 4910-13-C

Figure 4a

PA-25-235, S/N-25-2000 TO 25-2985, FRONT WING SPAR ATTACHMENT—FITTINGS AND TUBES

No.	Description	Part No./tube dimensions
1	Front Spar Fitting	64003-0
2	Channel	64175-0
3	Fitting Assy—Front Spar	64412-0
4	Fitting Assy—Landing Gear	64005-0 (L) 64005-1 (R)
5	Brace—Bracket	11994-28
6	Tube	.75x.049 (4130) N1
7	Tube	.625x.049 (4130) N1
8	Tube	.875x.065 (4130) N1
9	Tube	1.25x.095 (4130) N1
10	Tube	.75x.049 (4130) N1
11	Tube	.625x.028 (1025)

[1] MIL-T-6736 Type 1.

BILLING CODE 4910-13-U

PA-25-235, PA-25-260
S/N - 25-2986 and Up

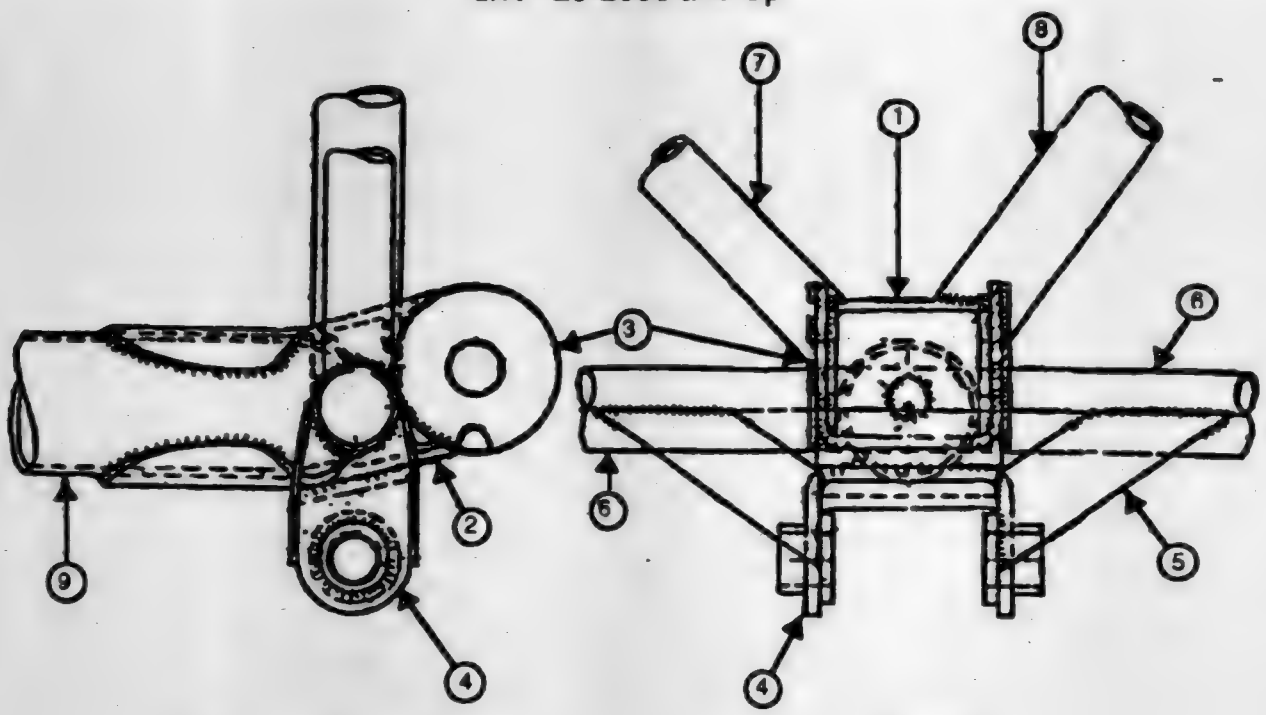

View Looking Aft

Side View

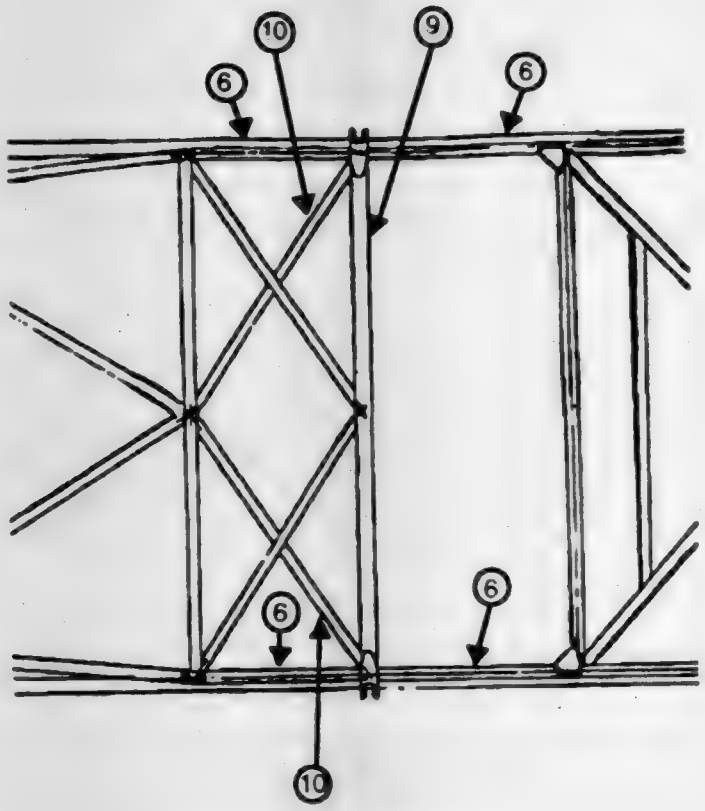

Bottom View (View A-A)
(Both Sides)

BILLING CODE 4910-13-C

Figure 5a

PA-25-235,-260, S/N-25-2986 AND UP, FRONT WING SPAR ATTACHMENT—FITTINGS AND TUBES

No.	Description	Part No./tube dimensions
1	Front Spar Fitting	64003-0
2	Channel	64175-0
3	fitting Assy—Front Spar	64412-0
4	Fitting Assy—Landing Gear	64005-0 (L) 64005-1 (R)
5	Brace—Bracket	11994-28
6	Tube	.75x.049 (4130) [1]
7	Tube	.625x.049 (4130) [1]
8	Tube	.875x.065 (4130) [1]
9	Tube	1.25x.095 (4130) [1]
10	Tube	.75x.049 (4130) [1]

[1] MIL-T-6736 Type 1.

(e) Inspect the wing forward spar fuselage attach fitting assembly for cracks using FAA-approved dye penetrant methods. If any cracks are found, prior to further flight, replace the forward spar fuselage tubular attach cluster with serviceable parts in accordance with FAA AC No. 43.13-1A, Acceptable Methods, Techniques, Practices-Aircraft Inspection and Repair. This procedure requires the following:

(1) Provide for the alignment of the airframe with an appropriate alignment fixture in accordance with FAA AC No. 43.13-1A, Acceptable Methods, Techniques, Practices—Aircraft Inspection and Repair.

(2) Cut the tubular members as referenced in Figure 2 and either Figures 3a and 3b; Figures 4a and 4b; or Figures 5a and 5b, as applicable.

(3) Fabricate a cluster using all applicable part numbers referenced in Figures 3b, 4b, or 5b, as applicable; and

(4) Splice the new cluster into the fuselage frame.

(f) Replacement parts required by this AD shall be of those referenced and specified in either Figures 3a and 3b, 4a and 4b, or 5a and 5b, as applicable.

(g) Prime and paint all areas where parts were replaced or where paint is bubbled or gone. Use epoxy paint and primer, and, after paint has cured, rust inhibit the entire area.

(h) Reinstall all items that were removed.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(j) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(k) Information that relates to this AD may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri.

Issued in Kansas City, Missouri, on August 31, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-21789 Filed 9-7-93; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment was initiated by Illinois to revise the Illinois program to address statutory changes to the Surface Coal Mining Land Conservation and Reclamation Act (State Act) which were signed into law on July 7, 1993, and August 4, 1993, by the Governor of Illinois.

This document sets forth the times and locations that the Illinois program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on October 8, 1993. If requested, a public hearing on the proposed amendment will be held at 1 p.m. on October 4, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on September 23, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to: Mr. James F. Fulton, Director, Springfield Field Office, at the address listed below. Copies of the Illinois program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting OSM's Springfield Office.

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 511 West Capitol, suite 202, Springfield, Illinois 62704, Telephone: (217) 492-4495 Illinois Department of Mines and Minerals, 300 West Jefferson Street, Suite 300, Springfield, Illinois 62791, Telephone: (217) 782-4970.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office; (217) 492-4495.

SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Information pertinent to the general background of the Illinois program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.15, 913.16, and 913.17.

II. Discussion of Proposed Amendment

Pursuant to 30 CFR 732.17(b)(3), the Illinois regulatory authority notified the Director by letter dated August 17, 1993 (Administrative Record No. IL–1500), of a proposed amendment to the Illinois program to incorporate statutory changes to the Surface Coal Mining Land Conservation and Reclamation Act (State Act) at 225 ILCS 720/2.11 and 6.01. The statutory changes were enacted through Public Act 88–63 (HB 2183) and Public Act 88–185 (SB 632), and they were signed into law by the Governor of Illinois on July 7, 1993, and August 4, 1993, respectively.

1. 225 ILCS 720/2.11 (Formerly Ch. 96½, par. 7902.11)—Procedures for Approval

The change to section 2.11(c), enacted through HB 2183, concerns requirements for notices of permit decision hearings. The new provision reads as follows: The notice shall be published in a newspaper of general circulation published in each county in which any part of the area of the affected land is located. The notice shall appear no more than 14 days nor less than 7 days prior to the date of the hearing. The notice shall be no less than one eighth page in size, and the smallest type used shall be twelve point and shall be enclosed in a black border no less than ¼ inch wide. The notice shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear.

The changes to sections 2.11(a), (b), all but the last sentence of (c), and (g), enacted through SB 632, are stylistic changes only which do not affect the provisions within the sections. The new last sentence of section 2.11(c) concerns judicial review of a permit decision. The new provision reads as follows: No party to a formal adjudicatory hearing under this subsection may seek judicial review of the Department's final decision on the permit application until after the issuance of the hearing officer's written decision granting or denying the permit.

2. 225 ILCS 720/6.01 (Formerly Ch. 96½, par. 7906.01)—Requirement of a Bond

The change to section 6.01, enacted through SB 632, allows Illinois to implement a self-bonding program. New subsection (b) was added and reads as follows: (b) the Department may accept the bond of the applicant, without separate surety, when the applicant demonstrates to the Department's satisfaction the existence of a suitable agent to receive service of process, a history of financial solvency and continuous operation, and a current financial soundness sufficient for authorization to self-insure or bond the required amount.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15.

If the amendment is deemed adequate, it will become part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the OSM Springfield Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by September 23, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**". All such meetings will be open to the public, and, if possible, notices of meetings will be posted at the locations under "**ADDRESSES**". A written summary of each meeting will be made a part of the Administrative Record.

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on

proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 31, 1993.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 93–21792 Filed 9–7–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI16–01–5760; FRL–4725–8]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The USEPA proposes approval of revisions to the State Implementation Plan (SIP) for ozone submitted by the State of Michigan. This portion of the implementation plan was submitted by the State to satisfy Clean Air Act (Act) requirements for adoption of rules for application of reasonably available control technology (RACT) for oxides of nitrogen (NO_x) in the Detroit-Ann Arbor, Grand Rapids, and Muskegon ozone nonattainment areas in Michigan. Under the Act, USEPA must approve or disapprove SIPs or portions of SIPs within time frames specified in the Act; failure to do so would render USEPA liable to citizen suits to rulemake on those SIPs and would delay making approvable rules federally enforceable. In this document, USEPA is proposing action, not on the rules themselves, but on a commitment by the State to submit the NO_x RACT rules at a later date.

DATES: Comments on this proposed action must be received in writing by October 8, 1993.

ADDRESSES: Comments should be addressed to: Douglas Aburano, U.S. Environmental Protection Agency (AT–18J), 77 W. Jackson Boulevard, Chicago, Illinois 60604–3590.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 5 Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano at (312) 353–6960.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for the reduction of oxides of nitrogen (NO_x) emissions through RACT are set out in section 182(f) of the Act. Section 182(f) requirements are described by USEPA in guidance titled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990." (NO_x Supplement to the General Preamble) published November 25, 1992 (57 FR 55620). The November 25, 1992, guidance should be referred to for further information on the NO_x requirements and is incorporated into this proposal by reference.

Section 182(f) of the Act requires States with ozone nonattainment areas at moderate or above classifications, or within the ozone transport region, to apply the same requirements to major stationary sources of NO_x ("major" as defined in sections 302 and 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs). For more information on what constitutes a major source, see section 2 of the NO_x Supplement to the General Preamble (57 FR 55620, 55622).

Section 182(b)(2) requires submittal of RACT rules for the following sources: (A) Each category of VOC sources in the area covered by a control technologies guidelines (CTG) document issued by the Administrator between November 15, 1990, and the date of attainment; (B) all VOC sources in the area covered by any CTG issued before November 15, 1990; and (C) all other major stationary sources of VOC emissions located in the area. The sources described in (A), above, must submit RACT rules by the date specified by the Administrator in issuing the relevant CTG document. The sources described in (B) and (C) must submit RACT rules by November 15, 1992.

Section 182(f) of the Act provides that the plan provisions required under this subpart shall also apply to major stationary sources (as defined at sections 302 and 182(c), (d), and (e)) of nitrogen oxides. Because no CTG documents have been issued for NO_x sources, section 182(b)(2) is applicable to all major stationary sources of nitrogen oxides and requires RACT rules for such sources by November 15, 1992. In these RACT rules, States are expected to require final installation of the actual NO_x controls by May 31, 1995, from those sources for which installation by that date is practicable. (See 57 FR 55623)

Under section 110(k)(4) of the Act, the Administrator may approve a plan revision based on a commitment from the State to adopt specific enforceable measures by a specified date, but not later than 1 year after the date of USEPA approval of the plan revision that incorporated that commitment. Refer to the NO_x Supplement to the General Preamble (57 FR 55620, 55622–55623) for details of this conditional approval with respect to the NOx requirements.

Three memoranda also outline general requirements for conditional approval actions. These are:

(1) July 22, 1992, "Guidance for State Implementation Plan (SIP) Submittals Due November 15, 1992," from Michael H. Shapiro, Deputy Assistant for Air and Radiation, to the Air Division Directors of Regions I-X;

(2) September 1, 1992, "Correction of State Implementation Plan Submittals Table," from Michael H. Shapiro, Deputy Assistant for Air and Radiation, to the Air Division Directors of Regions I-X; and

(3) February 2, 1993, "Questions and Answers on Nitrogen Oxides (NO_x)

Emissions Policy," from G.T. Helms, Chief of the Ozone/Carbon Monoxide Programs Branch to the Air Branch Chiefs of Regions I-X.

II. Today's Action–Analysis of State Submission

As noted above, section 110(k)(4) of the Act allows USEPA to accept a commitment from States to adopt portions of SIPs rather than the SIP itself. For example, USEPA may, in certain cases, accept a commitment from States to adopt NO_x RACT rules rather than the NO_x RACT rule itself. The NO_x Supplement to the General Preamble (57 FR 55620, 55623), the memoranda of July 22, 1992, and September 16, 1992, from Deputy Assistant Administrator Michael Shapiro concerning the SIP submittals due November 15, 1992, and the February 2, 1993, memorandum from G.T. Helms, Chief of the Ozone/Carbon Monoxide Programs Branch, outline USEPA's criteria for acceptability of committal SIPs for the NO_x RACT rules. These criteria are:

1. A description of the reason for the committal SIP versus a full SIP submittal.

2. Documentation that credible photochemical grid modeling is not available or did not consider the effects of NO_x reductions (The NO_x Supplement to the General Preamble requires States to include such modeling analyses that consider control strategies with and without NO_x reductions. 57 FR 55620, 55623)

3. Identification of resources to complete such modeling.

4. A schedule outlining the milestones that have been and will be achieved toward completion of NO_x RACT rules. The schedule must include a date for final submittal of rules to USEPA. The date for submitting the final rules to USEPA must be no later than 12 months after USEPA's final approval of the committal SIP.

The USEPA is proposing to approve a commitment to adopt NO_x RACT rules for the Detroit-Ann Arbor, Grand Rapids, and Muskegon areas in Michigan because it meets the requirements of section 110(k)(4) of the Act and conforms to the policy in the NO_x Supplement to the General Preamble (cited above) and the memoranda from Deputy Assistant Administrator Michael Shapiro of July 22, 1992, and September 16, 1992, concerning the SIP submittals due November 15, 1992, and the February 2, 1993, memorandum from G.T. Helms, Chief of the Ozone/Carbon Monoxide Branch, concerning nitrogen oxides emissions policy. A detailed analysis of the submittal can be found in an April 28, 1993, Region 5 technical support document.

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to USEPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. The State of Michigan held a public hearing on November 10, 1992, on the commitment to adopt NO_x RACT rules for the Detroit-Ann Arbor, Grand Rapids, and Muskegon ozone nonattainment areas. Following the public hearing, the commitment was adopted by the State and signed by the Governor's Designee, Roland Harmes, Director of the Michigan Department of Natural Resources, on November 13, 1992, and submitted to USEPA on November 13, 1992, as a proposed revision to the SIP.

2. RACT Determination and Implementation

States—including those for which USEPA approves a commitment to adopt a NO_x RACT rule—are expected to require final installation of the actual NO_x controls by May 31, 1995, from sources for which installation by that date is practicable. The NO_x Supplement to the General Preamble (57 FR 55620, 55623) contains a detailed discussion of USEPA's interpretation of the RACT requirement.

By this notice, USEPA is proposing to approve the State's commitment to adopt NO_x RACT rules.

III. Implications of Today's Action

The USEPA is proposing to approve the commitment for adoption of NO_x RACT rule(s) as a SIP revision submitted to USEPA for the Detroit-Ann Arbor, Grand Rapids, and Muskegon ozone nonattainment areas in Michigan on November 13, 1992. Section 110(k)(4) of the Act provides that where USEPA takes final action to approve a commitment to submit a SIP or portion of a SIP, the State must fulfill that commitment (i.e., submit the required SIP or portion thereof) within 1 year following USEPA approval. If the State does not fulfill its commitment by submitting the SIP or revision to USEPA within that year, section 110(k)(4) of the Act requires that the SIP be disapproved. If USEPA disapproves the SIP for failing to meet the commitment, there are several additional consequences. As provided at section 179(a) of the Act, the State of Michigan would have up to 18 months after a final SIP disapproval to correct the deficiency(ies) that is(are) the subject of the disapproval before USEPA is required to impose either the highway funding sanction or the requirement to provide 2 to 1 new source review offsets. If the State has not corrected its deficiency(ies) within 6 months thereafter, USEPA must impose the second sanction. Any sanction USEPA imposes must remain in place until USEPA determines that the State has come into compliance. If USEPA ultimately disapproves all or part of the SIP submittal for the Ann-Arbor, Grand Rapids, and Muskegon nonattainment areas and the State of Michigan fails to correct the deficiency within 18 months of such disapproval, USEPA anticipates that the first sanction it would impose would be the two-to-one offset requirement. Note also that any final disapproval would trigger the requirement for USEPA to impose a Federal implementation plan as provided at section 110(c)(1) of the Act.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Request for Public Comments

The USEPA is requesting comments on all aspects of today's proposal.

V. Executive Order (EO) 12291

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214, 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2214, 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

[1] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities; 5 U.S.C. sections 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals at section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on affected small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *United States Environmental Protection Agency*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410 (a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 18, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–21801 Filed 9–7–93; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 5450

[WO–230–6310–02–24 1A]

RIN 1004–AB83

Sales of Forest Products

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend provisions of the existing regulations on the Award of Contract, to reduce the risk of default on timber sale contracts. The potential exists for purchasers of timber sales from the Forest Service to default on such sales and then purchase timber sales from the Bureau of Land Management (BLM) under the same conditions as purchasers who have been responsible and performed satisfactorily on their contracts. BLM believes that such default on Forest Service timber sale contracts indicates some lack of responsibility and that the Government takes a greater risk to deal with such entities. Defaults on timber sale contracts create forest management problems and reduce timber revenues to the Federal Treasury and local governments. This rule would require that a purchaser provide additional security if he/she has defaulted on Forest Service contracts and has not paid or provided a bond for damages associated with these defaults. Under this rule, defaults on past timber sale contracts would be treated the same whether they were on BLM or Forest Service contracts.

DATES: Comments should be submitted by November 8, 1993. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ed Shepard, (202) 653–8864.

SUPPLEMENTARY INFORMATION: Current regulations at 43 CFR 5450.1(b) authorize the authorized officer to require additional security from persons submitting the highest bids who have defaulted on past BLM timber sale contracts and have not paid or bonded for damages resulting from such defaults. Default on one or more past contracts indicates that a purchaser may not be able to meet, or may willfully disregard, his contractual obligations. Regardless of the cause, a likelihood of failure to perform new contractual obligations is unacceptable to the United States, and presents the need for additional security against such failure in appropriate circumstances.

Failure to perform or a default on Federal timber sale contracts impairs the land management ability of the Federal Government and reduces local and Federal Government revenue. Furthermore, participation in bidding by defaulters may distort bidding patterns or contract prices, and thereby affect other timber purchasing companies. This rule would tend to discourage defaulters from bidding at all. Reoffering defaulted timber sales interrupts the orderly offering of timber sales in the same vicinity by requiring the adjustment and repetition of actions already completed. Efficient reforestation is complicated by the uncertain timing associated with potential default and resale. The complications associated with the determination of cumulative environmental impacts are increased because of the passage of time. The collection of receipts shared by the United States and local government is delayed and actual amounts collected may be reduced.

Default on past timber sale contract(s) indicates that a purchaser may not be responsible whether the timber sale contract is issued by the BLM or Forest Service, and the Government needs some additional security to offset the risks of doing business with such purchasers.

The proposed rule would authorize the authorized officer to require that persons submitting the highest bids who have defaulted on past Forest Service timber sale contract(s), and have not paid or bonded for the damages resulting from such default(s), establish responsibility in the same manner as bidders who have defaulted on BLM timber sale contracts.

The principal author of this proposed rule is Richard Bird of the Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, Washington, DC.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The Bureau of Land Management has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the proposal would not significantly affect the ten criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human

environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. Few timber companies are expected to default and thereby become affected by the rule, and all members of the timber harvest community are treated equally.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. No private property would be taken under the rule, and no rights would be curtailed without due process. Accordingly, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR Part 5450

Administrative practice and procedure, Forest and forest products, Government contracts, Public lands.

For the reasons stated in the Preamble, under the authority of section 5 of the Act of August 28, 1937 (43 U.S.C. 1181a), and the Act of July 31, 1947, as amended (30 U.S.C. 601 et seq.), part 5450, group 5400, subchapter E, chapter II, subtitle B of title 43 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 5450—AWARD OF CONTRACT; GENERAL

1. The authority citation for part 5450 is revised to read as follows:

Authority: 30 U.S.C. 601 et seq., 43 U.S.C. 1181e.

2. Section 5450.1 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 5450.1 Pre-award qualifications of high bidder.

* * * * *

(b) A purchaser who has defaulted on a timber sale contract, whether such contract was issued by the BLM or the Forest Service, by failing to complete payment of its total purchase price by the expiration date of the contract, is considered a risk for the purposes of being awarded future timber sale contracts.

Dated: July 28, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93-21829 Filed 9-7-93; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF DEFENSE

48 CFR Part 215

Defense Federal Acquisition Regulation Supplement; Adequate Price Competition

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for public comments.

SUMMARY: Based on a recommendation from the DoD Inspector General, the Defense Acquisition Regulations Council is proposing changes to the Defense FAR Supplement to clarify guidance on adequate price competition in dual source acquisitions.

DATES: Comments on the proposed DFARS rule should be submitted in writing to the address shown below on or before October 8, 1993 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to The Defense Acquisition Regulations Council, ATTN: IMD 3D139, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301-3062. FAX (703) 697-9845. Please cite DFARS Case 92-D011 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule originated based on a recommendation in the DoD Inspector General's Report on the Cost-Effectiveness of Dual Sourcing Major Components of the Aegis Weapon System (OAE-5005/Report No. 92-009). That report recommended that the DFARS be revised to improve internal controls in dual source acquisitions. The proposed rule modifies 215.804-3 to clarify the need for contracting officers to perform price analyses for dual source acquisitions. Further, the proposed rule advises contracting officers that if price reasonableness cannot be determined on the basis of price analysis, the exemption from submission of certified cost or pricing data based on adequate price competition on dual source programs does not apply.

B. Regulatory Flexibility Act

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it clarifies current guidance on pricing of dual source acquisitions. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 93-610 in correspondence.

C. Paperwork Reduction Act

The proposed rules does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 49 CFR Part 215

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR part 215 be amended as follows:

1. The authority citation for 48 CFR part 215 continues to read as follows:

Authority: 41 U.S.C. 421 and FAR Subpart 1.3.

PART 215—CONTRACTING NEGOTIATION

2. Section 215.804-3 is amended by revising paragraph (b)(3)(B)(*2*) and

adding paragraph (b)(3)(B)(*3*) to read as follows:

215.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

* * * * *

(b)(3)(B)(*2*) Adequate price competition normally exists when—

(*i*) prices are solicited across a full range of step quantities, normally including a 0–100 percent split, from at least two offerors who are individually capable of producing the full quantity; and

(*ii*) the price reasonableness of all prices awarded is clearly established on the basis of price analysis (see FAR 15.805–2).

(*3*) If price reasonableness cannot be determined on the basis of price analysis, including the results of negotiations, the exemption at FAR 15.804–3(a)(1) from submission of certified cost of pricing data shall not apply.

* * * * *

[FR Doc. 93–21665 Filed 9–7–93; 8:45 am]
BILLING CODE 3810–01–M

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48 CFR Parts 225 and 252

Defense Federal Acquisition Regulation Supplement; Restriction on Machine Tools and Powered and Non-Powered Valves

AGENCY: Department of Defense (DOD).

ACTION: Proposed rule with request for public comments.

SUMMARY: Based on an analysis of public comments on an interim rule, the Defense Acquisition Regulations Council is proposing changes to the Defense FAR Supplement to clarify the machine tool acquisition restriction and to add a contract provision for identification of machine tool accessories.

DATES: Comments on the proposed DFARS rule should be submitted in writing to the address shown below on or before (insert 30 days after publication) to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to the Defense Acquisition Regulations Council, ATTN: IMD 3D139, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301–3062. FAX (703) 697–9845. Please cite DFARS Case 91–320 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Backgound

This proposed rule would revise the interim rule published in Defense Acquisition Circular 91–2 (Item VIII) (57 FR 14988). Based on the analysis of public comments on the interim rule, revisions to the interim rule are proposed to clarify DFARS 225.7004–3, Evaluating offers. A new provision, 252.225–70XX, Machine Tool List, is proposed that requires offeror identification of machine tool accessories which are not listed in the schedule as separate line items.

B. Regulatory Flexibility Act

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it imposes restrictions on the acquisition of foreign products. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 93–610 in correspondence.

C. Paperwork Reduction Act

The proposed rule imposes reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.* The proposed provision requires offerors to provide information as to the place of manufacture and cost when certain machine tool accessories are not of U.S. or Canadian origin. Accordingly, a request for clearance was forwarded to OMB and was approved April 20, 1993, through April 30, 1996, under OMB Control Number 0704–0350.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR parts 225 and 252 be amended as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and FAR Subpart 1.3.

PART 225—FOREIGN ACQUISITION

2. Section 225.7004–1 is amended by revising paragraph (b) to read as follows:

225.7004–1 Applicability.

* * * * *

(b) Machine tool accessories classified under FSC 3460 or 3461 are not components under 225.7004–4. Where a solicitation for machine tools includes machine tool accessories, list known machine tool accessories which are not separate line items in the provision at 252.225–70XX, Machine Tool List. Identify accessories which are separate line items in the schedule. The contracting activity must exercise judgment in determining whether an item is an accessory or a component. This determination should be based on the use of the item in the machine tool being purchased.

* * * * *

3. Section 225.7004–2 is amended by revising paragraph (b) (3) to read as follows:

225.7004–2 Restrictions.

* * * * *

(b)* * *

(3)The contracting officer shall waive the restriction in paragraph (a) of this section when it would result in unreasonable costs. The cost of a machine tool, machine tool accessory, or valve of U.S. or Canadian origin is unreasonable where it is not the low evaluated offer when evaluated under 225.7004–3.

4. Section 225.7004–3 is revised to read as follows:

225.7004–3 Evaluating offers.

Unless the restriction is waived under 225.7004–2(b) (1) or (2), evaluate offers for cost reasonableness by adding 50 percent of the offered price, inclusive of duty, to offers of machine tools, machine tool accessories, or valves which are not of U.S. or Canadian origin.

(a) If the solicitation specifies award on a group basis, add the evaluation factor to individual line items and add together the line items in the group to determine if the unreasonable cost waiver applies.

(b) If a line item contains machine tool accessories in the list at 252.225–70XX, add 50 percent of the cost, inclusive of duty, of the accessories not of U.S. or Canadian origin to the offered price for the line item.

5. Section 225.7004–5 is revised to read as follows:

225.7004–5 Contract provision and clauses.

(a) Unless a waiver has been granted, use the clause at 252.225–7017, Preference for United States and Canadian Valves and Machine Tools, in all solicitations and contracts for valves

and machine tools. When the restrictions of the fiscal year 1987–1989 appropriations acts apply, delete paragraph (c) of the clause.

(b) Consider using the clause at 252.225–7001, Buy American Act and Balance of Payments Program, and, if applicable, the clause at 252.225–7007, Trade Agreements Act, whenever an exception or waiver is anticipated. Where these clauses are used, state in the solicitation that offers which do not conform to the restrictions of the more restrictive clause will only be considered if an exception applies or a waiver is granted.

(c) Use the provision at 252.225–70XX, Machine Tool List, in all solicitations for machine tools which contain the clause at 252.225–7017 except where—

(1) All machine tool accessories are listed as separate line items; and

(2) The solicitation does not allow offerors to provide accessories which are not specifically required by the specifications.

PART 252— SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.225–7017 is amended by adding a new sentence at the end of paragraph (a)(2) to read as follows:

252.225–7017 Preference for United States and Canadian valves and machine tools.

* * * * *

Preference for United States and Canadian valves and machine tools

* * * * *

(a)(2) * * * It does not include costs associated with manufacturing the end item.

* * * * *

7. A new provision, 252.225–70XX, is added to read as follows:

252.225–70XX Machine tool list.

As prescribed in 225.7004–5(c), use the following provision:

Machine Tool List (XXX 199X)

The Government has identified those items listed as machine tool accessories which are not listed in the schedule as separate line items. The Offeror must also list any accessories to be provided which are not specifically required by the specifications. Where the machine tool accessory is not of U.S. or Canadian Origin, as defined in the Preference for United States and Canadian Valves and Machine Tools clause of this solicitation, indicate the country in which the accessory was manufactured and the cost of the accessory.

Line item No.	Accessory	Country of manufacture	Cost

(End of Provision)

[FR Doc. 93–21668 Filed 9–7–93; 8:45 am]
BILLING CODE 3810–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815, 1831 and 1852

Addition of Coverage to the NASA FAR Supplement on the Review of Contractor and Subcontractor Compensation for Reasonableness

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the NASA Federal Acquisition Regulation Supplement (NFS). This rule sets forth the policies for reviewing the reasonableness of contractor and subcontractor compensation for support service contracts, as well as the solicitation provision for obtaining such information. It also sets forth the requirement for the prenegotiation position memorandum to discuss excessive wages, if any are found.

DATES: Comments must be received on or before November 8, 1993.

ADDRESSES: Submit comments to Mr. Joseph Le Cren, NASA, Code HC, Washington, DC 20546. Comments regarding paperwork reduction, in addition to being forwarded to NASA, may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Jonas Neihardt, Desk Officer for NASA, Telephone (202) 395–4814, 3235 NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, Telephone: (202) 358–0003.

SUPPLEMENTARY INFORMATION:

Background

A recent Office of the Inspector General (OIG) audit report criticized the agency for paying excessive wages under some of its support service contracts. According to the OIG, this situation was due to contractor compensation not being monitored during contract performance, and contractors not using survey data in establishing their proposed wage rates.

The Federal Acquisition Regulation 31.205–6 already discusses the factors for determining the reasonableness of contractor compensation, which includes wage surveys. However, it does not provide guidance as to when contractor compensation is to be reviewed for reasonableness. The purpose of this proposed change is to provide such guidance with respect to the agency's support service contracts.

Impact

NASA certifies that this proposed regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). NASA will request OMB approval on reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1815, 1831 and 1852

Government procurement.

Thomas S. Luedtke,

Acting Deputy Associate Administrator for Procurement.

Accordingly, NASA proposes to amend 48 CFR parts 1815, 1831, and 1852 as follows:

1. The authority citation for 48 CFR parts 1815, 1831 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2743(c)(1).

PART 1815—CONTRACTING BY NEGOTIATION

2. In section 1815.807–70, paragraph (d)(1) is revised to read as follows:

1815.807–70 Content of the prenegotiation position memorandum.

* * * * *

(d) *Cost analysis.* (1) Include a parallel tabulation, by element of cost and profit/fee, of the contractor's proposal, the Government's negotiation objective, and the Government's maximum position, if applicable. For each element of cost, compare the contractor's proposal and each Government position, explain the differences and how the Government position(s) were developed, including the estimating assumptions and projection techniques employed, and how the positions differ in approach. Include a discussion of excessive wages found (if applicable) and their planned resolution (see 1831.205–670). Explain how historical costs, including costs incurred under a letter contract (if

applicable), were used in developing the negotiation objective.

* * * * *

PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

3. Sections 1831.205–670 and 1831.205–671 are added to read as follows:

1831.205–670 Evaluation of contractor and subcontractor compensation for support service contracts.

(a) The contracting officer shall evaluate the reasonableness of compensation for support service contracts:

(1) Prior to the award of a cost reimbursement or non-competitive fixed-price type contract which has a total potential value in excess of $500,000; and

(2) Periodically after award for cost reimbursement contracts, but at least every three years.

(b) The contracting officer shall ensure the reasonableness of compensation is evaluated for cost reimbursement or non-competitive fixed-price type support service subcontracts under a prime contract meeting the criteria in paragraph (a)(1) of this section where:

(1) The subcontract has a total potential value in excess of $500,000; and

(2) The cumulative value of all of a subcontractor's support service subcontracts under the prime contract is in excess of 10 percent of the prime contract's total potential value.

(c)(1) Offerors shall be required to submit as part of their proposals a compensation plan addressing all proposed labor categories. Offerors also shall demonstrate in writing that their proposed compensation is reasonable.

(2) Subcontractors meeting the criteria in paragraph (b) of this section shall be required to comply with paragraph (c)(1).

(d) The contracting officer's preaward evaluation of each offeror's and their subcontractors' compensation should be done as part of, or in addition to DCAA audits, price analyses, or any other means deemed to be necessary.

(e) The results of the contracting officer's evaluation, including any excessive compensation found and its planned resolution, shall be addressed in the prenegotiation position memorandum, with the final resolution discussed in the price negotiation memorandum.

(f) The contracting officer shall ensure that the reasonableness of compensation for cost reimbursement subcontracts meeting the criteria in paragraphs (b)(1) and (2) of this section is periodically reviewed after award, but at least every three years.

(g) The results of the periodic evaluations of contractor and subcontractor compensation after contract award shall be documented in the contract file.

1831.205–671 Solicitation provision.

The contracting officer shall insert a provision substantially the same as the provision at 1852.231–71, Determination of Compensation, in solicitations for support services which contemplate the award of a cost reimbursement or non-competitive fixed-price type contract having a total potential value in excess of $500,000.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 1852.231–71 is added to read as follows:

1852.231–71 Determination of Compensation Reasonableness.

As prescribed at 1831.205–671, insert the following provision.

Determination of Compensation Reasonableness (XXX 199X)

(a) The proposal shall include a total compensation plan. This plan shall address all proposed labor categories, including those personnel subject to union agreements, the Service Contract Act, and those exempt from both of the above. The total compensation plan shall include the salaries/wages, fringe benefits and leave programs proposed for each of these categories of labor. The plan also shall include a discussion of the consistency of the plan among the categories of labor being proposed. Differences between benefits offered professional and non-professional employees shall be highlighted. The requirements of this plan may be combined with that required by the clause at FAR 52.222–46, "Evaluation of Compensation for Professional Employees."

(b) The offeror shall provide written support to demonstrate that its proposed compensation is reasonable.

(c) The offeror shall include the rationale for any conformance procedures used for those Service Contract Act employees proposed that do not fall within the scope of any classification listed in the applicable wage determination.

(d) The offeror shall require all support service subcontractors (1) with proposed cost reimbursement or non-competitive fixed-price type subcontracts having a total potential value in excess of $500,000 and (2) the cumulative value of all their support service subcontracts under the proposed prime contract is in excess of 10 percent of the prime contract's total potential value, provide as part of their proposals the information identified in paragraphs (a) through (c) of this provision.

(End of provision)

[FR Doc. 93–21693 Filed 9–7–93; 8:45 am]
BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 930932–3232 I.D. #081693C]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement the conservation and management measures prescribed in Amendment 5 to the Fishery Management Plan for the Summer Flounder Fishery (FMP). This rule proposes to allow two or more states, under mutual agreement and with the concurrence of the Regional Director, to transfer or combine their summer flounder commercial quota. The intent of Amendment 5 is to provide a mechanism within the overall coastwide quota to give the states flexibility in quota management in order to respond to changes in landing patterns or emergency situations. An emergency interim rule that is effective from August 23, 1993, through November 24, 1993, with a possible 90-day extension, would be superseded by this amendment, if implemented.

DATES: Comments on the proposed rule must be received on or before October 25, 1993.

ADDRESSES: Comments on the proposed rule, the FMP, or supporting documents should be sent to Richard Roe, Director, Northeast Region, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope "Comments on Summer Flounder Plan".

Copies of Amendment 5, the environmental assessment (EA), and the regulatory impact review (RIR) are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 S. New Street, Dover, DE.

Copies regarding the burden-hour estimates or any other aspect of the collection-of-information requirements contained in this proposed rule should

be sent to the Director, Northeast Region, NMFS (see ADDRESSES) and the Office of Management and Budget (Attention: NOAA Desk Officer), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, Fishery Policy Analyst, 508–281–9101.

SUPPLEMENTARY INFORMATION: The summer flounder fishery is managed under the FMP, which was developed jointly by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for the FMP is summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the Canadian border. The objectives of the FMP are to: (1) Reduce fishing mortality in the summer flounder fishery to assure that overfishing does not occur; (2) reduce fishing mortality on immature summer flounder to increase spawning stock biomass; (3) improve the yield from the fishery; (4) promote compatible management regulations between state and Federal jurisdictions; (5) promote uniform and effective enforcement of regulations; and (6) minimize regulations to achieve the management objectives stated above.

Implementing regulations for the summer flounder fishery are issued under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are found at 50 CFR part 625. The regulations were amended on December 4, 1992 (57 FR 57358), by the final rule to implement Amendment 2 to the FMP, and on July 27, 1993 (58 FR 40072), by the final rule to implement Amendment 3. These regulations imposed several management measures, including an annual commercial quota allocated on a percentage basis to the Atlantic coast states from North Carolina to Maine. The total annual coastwide quota is divided among eleven coastal states on a percentage basis, with the percentages based on state shares of commercial landings for the period 1980–1989. State percentage shares of the quota are based on these historic landings so that each state receives an initial allocation in the same proportion as past landings to overall landings for the period 1980–89.

In recent years, however, vessel landing patterns have changed, in some cases significantly, from the period of time used to establish the state allocations. In response to this, state fisheries agencies have requested a regulatory change to enable them to transfer or combine quota with NMFS approval. At its July 1993 meeting, the Council voted to adopt Amendment 5 to the Summer Flounder FMP to enact this regulatory change. The Council also voted to request emergency implementation of Amendment 5 in order to allow the State of Virginia the opportunity to seek to transfer of 1993 quota. A notice of availability for the proposed Amendment 5 was published in the Federal Register on August 20, 1993, 58 FR 44318.

The intent of Amendment 5 is to provide states with flexibility to manage their commercial quota. The ability to transfer or combine quotas provides a mechanism to respond to changes in landing patterns which may result from changes in stock availability or fishing behavior, navigational problems, vessel emergencies, or hazardous weather. The ability to transfer or combine quota would enable the states to offset the increased usage of one state's ports by another state's fishermen, and address situations that might otherwise mean that a vessel would be forced to dump a catch of summer flounder or pay a fine if it was forced to dock during an emergency in a state with a closed fishery.

A separate application would be required for each quota transfer or combination. One or more states would agree to transfer or combine a certain amount of quota to or with one or more other states who in return would agree to accept or share the amount. The application would have to be in writing to the Director, Northeast Region, NMFS (Regional Director), and be signed by an appropriate official from each state involved. Each application would have to identify each state involved and the amount of quota to be transferred or combined. The Regional Director would consider each application under the criteria outlined in § 625.20(f) and would notify the states submitting the application of his/her disposition of it within 10 working days of the written submission.

If the Regional Director approves the application, NMFS would publish a notice to that effect in the Federal Register. NMFS law enforcement agents would be notified of quota transfers or combinations before any landings could be made under the adjusted quota. For these reasons, only one application from a state for a quota transfer or combination could be in process at any given time from that state.

The transfer or combination of quota would not revise the coastwide commercial quota or alter the handling of quota overages specified in § 625.20 (d)(2) and (d)(3). Transfers and combinations would remain in effect only for the calendar year for which the application was made. As a result, authorizing quota transfers and combinations among states would not be expected to impact negatively other states because there would be no overall adjustment in the total allowable quota and no permanent redistribution of quota shares.

In the case of quota transfer, the recipient state would be responsible for a quota overage, which would be deducted from the following year's quota for that state. In the case of a quota combination, an overage would be deducted in the following year from the quotas of all participant states, with the deduction made in the same proportion as their contribution to the combined quota. For example, states A and B combine quota, with state A contributing 70 percent and state B contributing 30 percent of the combined quota amount. If there is a quota overage, 70 percent of the overage would be deducted from the following year's quota for state A and 30 percent would be deducted from the following year's quota for state B.

Technical Changes

This proposed rule also includes two technical changes proposed by NMFS to the FMP implementing regulations. The first is in response to a request from NMFS law enforcement agents to add a clear definition of "land" to the regulations. NMFS proposes to adopt the definition that is currently used in the FMP for Atlantic Sea Scallops, "Land means to begin offloading fish, to offload fish, or to enter port with fish." This change is being proposed to enhance enforcement of landing prohibitions and restrictions.

The second technical change would modify the size of the container required in § 625.25, to be consistent with similar requirement proposed by the New England Fishery Management Council as part of Amendment 5 to the Fishery Management Plan for the Northeast Multispecies Fishery. Because many vessels participate in both of these fisheries, NMFS proposes to use the same definition in the summer flounder regulations as in the Multispecies regulations to prevent confusion to the industry and improve enforcement efforts.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of the receipt of

the Amendment and proposed regulations. At this time the Secretary has not determined that the Amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the draft Regulatory Impact Review (RIR), that demonstrates that there would be no adverse impact to fishermen in the affected states. It is unknown what transfers and combinations of quotas would be mutually agreed upon by the directors of the state fisheries agencies, if this rule is implemented; therefore, specific effects of a given action could not be assessed until requests are submitted by respective state fisheries directors. Quota transfers or combinations will be made to address circumstances which arise on an annual basis and will have no permanent effect on the distribution of commercial quota among the states. Fishermen in states which are not involved in the quota transfer or combination should not be negatively impacted because the transfer or combination does not alter either the overall coastwide quota or the quota in their state. A copy of the RIR may be obtained from the Council (see **ADDRESSES**).

This proposed rule is exempt from the procedure of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because of the reasons set forth in the RIR prepared by the Council, a copy of which may be obtained from the Council (see **ADDRESSES**). As a result, a regulatory flexibility analysis was not prepared.

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget (OMB) for approval under OMB Control Number 0648–0202. The public's reporting burden for this requirement is 15 minutes for each written submission for request for quota transfers or combinations. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: September 2, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 625 is proposed to be amended as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. The following definition is added to § 625.2:

§ 625.2 Definitions.

* * * * *

Land means to begin offloading fish, to offload fish, or to enter port with fish.

* * * * *

3. Section 625.20 is amended by adding a new paragraph (f):

§ 625.20 Catch quotas and other restrictions.

* * * * *

(f) *Quota transfers and combinations.* Any state implementing a state commercial quota for summer flounder may apply to the Regional Director to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for summer flounder may apply to the Regional Director to combine their quotas, or part of their quotas, into an overall regional quota. Applications for transfer or combination of commercial quotas for summer flounder must be in writing and signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The application must certify that all pertinent state requirements have been met. Each application must identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following receipt of an application, the Regional Director shall notify the appropriate state officials of the disposition of the request. The Regional Director shall consider the following criteria in the evaluation of requests to transfer or combine quota.

(i) The transfer or combination will not preclude the overall annual quota from being fully harvested;

(ii) The transfer addresses an unforeseen variation or contingency in the fishery; and

(iii) The transfer is consistent with the objectives of the FMP and Magnuson Act.

(2) The transfer or combination of quota shall be valid only for the calendar year for which the application was made and will be effective upon the filing by NMFS of a notification of the approval of the transfer or combination with the Office of the Federal Register.

(3) A state may not submit a request to transfer or combine quota if a request to which it is party is pending before the Regional Director. A state may submit a new request when it receives notice that the Regional Director has disapproved the previous request or when notification of the transfer or combination of quota has been filed at the **Federal Register**.

(4) If there is a quota overage among states involved in the combination of quota at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer or combination of quota does not alter any state's percentage share of the overall quota specified in paragraph (d) of this section.

* * * * *

4. Section 625.25, paragraph (d) is revised to read as follows:

§ 625.25 Possession limit.

* * * * *

(d) Neither owners nor operators of otter trawlers issued a permit under § 625.4 and fishing with, or possessing on board, nets or pieces of net that do not meet the minimum mesh-size requirements (except pieces of netting no larger than 3 feet square (0.9 m square) that may be necessary to repair smaller mesh sections of the net forward of the terminal portion of the net to which the minimum mesh-size requirement applies) may possess 100 pounds (45.4 kg) or more of summer flounder May 1 through October 31 or 200 pounds (90.8 kg) or more of summer flounder November 1 through April 30. Summer flounder on board these vessels shall be stored in a separate box with a liquid capacity of 18.2 gallons (70

liters), which is readily available for inspection.

* * * * *

[FR Doc. 93-21855 Filed 9-2-93; 3:57 pm]
BILLING CODE 3510-33-M

Notices

Federal Register
Vol. 58, No. 172
Wednesday, September 8, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 93-116-1]

Calgene, Inc.; Receipt of Petition for Determination of Nonregulated Status of Genetically Engineered Cotton Lines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) has received a petition from Calgene, Inc., seeking a determination regarding the regulatory status of its BXN™ cotton. In accordance with our regulations, we are soliciting public comments on whether such cotton presents a plant pest risk. This action is necessary to enable interested persons to advise APHIS on any plant pest issues raised by this petition.

DATES: Written comments must be received on or before November 8, 1993.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-116-1. A copy of the Calgene petition and any written comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, or at USDA, suite 7 (first floor) Federal Building, 6505 Belcrest Road, Hyattsville MD 20782 between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays. To facilitate entry at either location or to obtain a copy of the Calgene petition, contact Ms. Kay Peterson at 301-436-7601.

FOR FURTHER INFORMATION CONTACT: Mr. Michael G. Schechtman, Senior Staff Microbiologist, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7601.

SUPPLEMENTARY INFORMATION: On July 15, 1993, the Animal and Plant Health Inspection Service (APHIS) received a "Petition for Determination of Nonregulated Status under 7 CFR Part 340" from Calgene, Inc. (Calgene), of Davis, CA. The Calgene petition seeks a determination that its BXN) cotton is not a "regulated article" under regulations at 7 CFR part 340 (the regulations).

The Calgene petition states that BXN™ cotton should not be regulated by APHIS because it does not present a plant pest risk. BXN™ cotton has been described by Calgene as any previously field tested cotton cultivar containing the BXN gene, a gene isolated from the bacterium *Klebsiella pneumoniae* subsp. *ozaenae* that encodes an enzyme (nitrilase) that degrades the herbicide bromoxynil, thus conferring tolerance to the herbicide. In the BXN™ cotton lines subject to this petition, the regulatory sequences associated with the nitrilase gene are the 35s promoter sequence from cauliflower mosaic virus and the tml 3' terminator sequence derived from *Agrobacterium tumefaciens*.

BXN™ cotton is currently considered a regulated article under the regulations because it contains gene sequences (vectors, promoters and terminators) derived from plant pathogenic sources. In the process of reviewing 15 field trials with BXN™ cotton, APHIS determined that the vectors and other elements were disarmed, and that the trials did not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "as any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The United States Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 U.S.C. 135 *et seq.*). FIFRA requires that pesticides, including herbicides, be registered prior to distribution and sale unless exempt by regulation. Plants which have been genetically modified to confer herbicide tolerance or resistance to the plants are not regulated under this act since they are not themselves considered pesticides.

In cases where the genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, EPA must approve the new or different use. In conducting such an approval, EPA considers the possibility of adverse effects to human health and the environment from the use of the herbicide.

When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 201 *et seq.*). The Food and Drug Administration (FDA) enforces tolerances set by the EPA under the FFDCA. FDA's policy statement concerning regulation of plants derived from new plant varieties was published in the Federal Register on May 29, 1992, and appears at 57 FR 22984-23005.

Under § 340.6 of the regulations, any person may submit a petition to seek a determination that a particular regulated article should not be regulated by APHIS. In accordance with the regulations, this notice establishes that comments on the petition will be accepted for a period of 60 days from the date of this notice. After reviewing the data submitted by the petitioner,

written comments received during the comment period, and other relevant information, APHIS will prepare a decision document on the regulatory status of BXN™ cotton.

Authority: 7 U.S.C. 150aa–150jj, 151–167, 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 1st day of September 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–21867 Filed 9–7–93; 8:45 am]

BILLING CODE 3410-34-P

[Docket No. 93–108–1]

Availability of Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of genetically engineered organisms. The environmental assessment provides a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impact associated with conducting the field tests.

The environmental assessment and finding of no significant impact have been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
93–203–01R, renewal of permit 92–156–01, issued on 09–23–92.	Calgene, Incorporated ...	06–05–93	Rapeseed plants genetically engineered to express sense or anti-sense desaturase genes, a thioesterase gene, and a reductase gene for oil modification.	Georgia.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 1st day of September 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–21866 Filed 9–7–93; 8:45 am]

BILLING CODE 3410-34-P

[Docket No. 93–091–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that seven environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the interstate movement and release into the environment of biological control agents. The environmental assessments provide a basis for our conclusion that the interstate movement and release into the environment of the biological control agents will not present a risk of introducing into or disseminating within the United States a plant pest and will not have a significant impact on the quality of the human

environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Matthew H. Royer, Chief Operations Officer, Biological Assessment and Taxonomic Support, Operational Support, PPQ, APHIS, USDA, room 626, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8896. For copies of the environmental assessments and findings of no significant impact, write to Ms. Deborah Knott at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: Under the Federal Plant Pest Act as amended (7 U.S.C. 150aa *et seq.*) and the Plant Quarantine Act as amended (7 U.S.C. 151 *et seq.*) (the Acts), the U.S. Department of Agriculture (USDA) has broad authority to regulate the importation, interstate movement, and release into the environment of organisms in order to prevent the dissemination of plant pests into the United States or interstate. The Animal and Plant Health Inspection Service (APHIS) regulates biological control agents that are plant pests under regulations promulgated pursuant to the Acts and contained in 7 CFR part 330 (referred to below as the regulations). The regulations require, among other things, that a permit be obtained for the movement of a plant pest into or through the United States or interstate. The regulations and Acts also allow the Department to include in the permit conditions to prevent the dissemination of plant pests. Under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), APHIS is required to prepare an environmental assessment before issuing a permit for the movement of a plant pest into or through the United States or interstate.

In accordance with applicable regulations, APHIS has received seven applications for permits for the interstate movement and release into the environment of biological control agents. In the course of reviewing each permit application, APHIS assessed the impact on the environment of releasing the organisms under the conditions described in the permit application. APHIS has issued permits for the interstate movement and release into the environment of the organisms listed below after concluding that their movement and release will not present a risk of the introduction into or dissemination within the United States of plant pests and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impact associated with releasing the biological control agents into the environment.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits for the interstate movement and release into the environment of the following biological control agents:

Permit No.	Permittee	Date permit issued	Organisms	Field test location
932449	Neal Spencer, USDA–ARS.	5–3–93	*Aphthona lacertosa*, a beetle for the control of leafy spurge.	Montana.
932451	Neal Spencer, USDA–ARS.	5–3–93	*Chamaesphecia hungarica*, a root-boring moth for the control of leafy spurge.	Montana.
939277	James Wagner, ZENECA Ag Products.	6–2–93	*Heliothis armigera* NPV, a baculovirus for the control of *Heliothis* spp.	Louisiana.
939461	James Wagner, ZENECA Ag Products.	7–19–93	*Heliothis armigera* NPV, a baculovirus for the control of *Heliothis* spp.	Arkansas.
939522	James Wagner, ZENECA Ag Products.	6–18–93	*Heliothis armigera* NPV, a baculovirus for the control of *Heliothis* spp.	Arizona.
939685	Donald Dahlsten, University of California, Albany.	7–16–93	*Bassus rufipes*, a parasitoid for the control of *Cydia pomonella*.	California.
939686	Donald Dahlsten, University of California, Albany.	7–16–93	*Pristomerus, vulnerator*, a parasitoid for the control of *Cydia pomonella*.	California.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) NEPA, (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 1st day of September 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–21864 Filed 9–7–93; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 93–107–1]

Receipt of a Permit Application for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant

Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
93–214–01	PanAmerican Seed	08–02–93	Carrot plants genetically engineered to express modified nutritional value.	Illinois.

Done in Washington, DC, this 1st day of September 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–21865 Filed 9–7–93; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 92–112–3]

Public Meeting; In Vitro Potency Testing

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This document provides notice to producers of veterinary biologics and other interested persons that the Animal and Plant Health Inspection Service will be conducting a public meeting in Baltimore, MD, on September 28, 1993, to discuss issues related to in vitro potency testing.

PLACE, DATE, AND TIME OF MEETING: The meeting will be held at the Sheraton International Hotel, Baltimore-Washington International Airport, 7032 Elm Road, Baltimore, MD 21240, (410) 859–3300, on Tuesday, September 28, 1993, from 8:30 a.m. to 11 a.m.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245, fax (301) 436–8669.

SUPPLEMENTARY INFORMATION: On March 3, 1993, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (58 FR 12187–12188, Docket No. 92–112–1) a proposed rule to amend 9 CFR 113.8 on in vitro tests in place of animal tests for immunogenicity. We are publishing a separate notice in this issue of the **Federal Register** ("In Vitro Tests in Place of Animal Tests for Immunogenicity," Docket No. 92–112–2) in which we explain that APHIS is withdrawing the proposed rule with the intent to seek additional public input.

APHIS is conducting a public meeting specifically to discuss in vitro potency testing on September 28, 1993, in the Sheraton International Hotel, at the Baltimore-Washington International Airport in Baltimore, MD.

The agenda for the public meeting will be limited to issues related to in vitro potency testing. The purpose of the meeting is to have an open discussion of this topic by all interested persons.

Persons wishing to attend the meeting should notify the person listed under **FOR FURTHER INFORMATION CONTACT.** Please indicate whether you wish to make a prepared statement at the public meeting, the subject of your remarks, and the approximate time you would like to speak. APHIS welcomes and encourages the presentation of comments at the meeting.

Done in Washington, DC, this 2nd day of September 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–21860 Filed 9–7–93; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Southern Region; Exemption From Appeal of Three Decisions To Control Southern Pine Beetle Infestations on the Poteau and Womble Ranger District of the Quachita National Forest, Arkansas

AGENCY: Forest Service, USDA.

ACTION: Notice; exemption of decision from administrative appeal.

SUMMARY: Pursuant to 36 CFR 217.4(a)(11), the Regional Forester for the Southern Region has determined that good cause exists and notice is hereby given to exempt from administrative appeal three decisions to control infestations of southern pine beetle on the Poteau and Womble Ranger Districts of the Quachita National Forest. Infested trees and a small buffer strip immediately around them will be cut, and where appropriate removed by commercial sale. A total of approximately 75 areas of active infestation have been identified on the two ranger districts; further outbreaks are occurring in these areas on a daily basis. Most "spots" average about ¼ acre in size (20–30 trees), but a few are up to 2–3 acres, and almost all grow rapidly. If uncontrolled, this activity could reach outbreak proportions, and many more trees could be killed. In addition, the salvage value of beetle-killed pine trees declines rapidly with the spread of blue stain fungi.

EFFECTIVE DATE: September 8, 1993.

FOR FURTHER INFORMATION CONTACT: Questions about the exemption should be directed to Jean P. Kruglewicz, Appeals and Litigation Group Leader, Southern Region, Forest Service-USDA, 1720 Peachtree Road, NW., Atlanta, GA 30367 (404) 347–4867.

SUPPLEMENTARY INFORMATION: Southern pine beetle activity on the Poteau and Womble Ranger Districts has reached epidemic levels this summer, following a succession of warm and mild winters and a hot, dry summer. District personnel and logging contractors have been hard-pressed to control active infestations early. The Womble Ranger District has identified twenty-five sites on the east part of the district with active infestations. The Poteau Ranger District foresees the development of an additional 20 sites of activity on the east half of the district and another 30 on the west half of the district. We expect the bulk of the activity to be in management areas 14, 16, 17, and 18 on suitable land. A few trees may also be cut from unsuitable land in management areas 3, 9, 11, 12, 13, 16, 17, 18, and/or 20. Within the vicinity of each active infestation, additional outbreaks of beetle activity are common.

If treated quickly by cutting infested trees, most pine beetle "spots" can be limited to less than an acre in size, and very few will exceed 3 acres. This will prevent the creation of large gaps in the forest canopy, and protect soil and water quality, and habitat for some species of wildlife.

The district rangers propose to cut infested pine trees and a small buffer strip around them to halt the spread of the beetle. Within the areas described in the three decision documents, existing infestations and future associated outbreaks will be treated as they occur. Where appropriate and consistent with Forest Plan guidelines, cut trees will be removed by commercial timber sale. Blue-stain fungi spread rapidly in beetle-killed timber, and dramatically decrease its value as lumber—rapid salvage will avoid the loss of this raw material.

None of the areas to be treated involve Wilderness or other Congressionally designated areas. Altogether, less than 100 acres will be directly affected by the three decisions, and less than one million board feet of timber will be salvaged. The infestations larger than one acre in size may be planted with shortleaf pine to replace the trees killed by the beetle.

Interdisciplinary teams on the Womble and Poteau Ranger districts are currently completing environmental analyses of these three proposals to control southern pine beetle infestations, and preparing appropriate documentation of these decisions. Given the present high level of beetle activity, the rapid growth of infestations as they occur, and the rapid spread of blue-stain fungi in beetle-killed trees, the need for action is critical. Any delay will result in the growth of these infestations to unmanageable proportions, the destruction of valuable timber, and the loss of much larger areas of mature forest to the beetle.

Dated: September 1, 1993.

Ralph F. Mumme,

Acting Regional Forester.

[FR Doc. 93–21788 Filed 9–7–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On June 15, 1993, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers two manufacturers/exporters of the subject merchandise, CEMEX, S.A., and Apasco, S.A. de C.V.; and the period August 1, 1991, through July 31, 1992.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received and on the correction of certain clerical errors, we have revised the preliminary rates. The final dumping margins range from 42.74 percent to 53.26 percent.

EFFECTIVE DATE: September 8, 1993.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler or Tom Prosser, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5505.

SUPPLEMENTARY INFORMATION:

Background

On June 15, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 33071) the preliminary results of its administrative review of the antidumping duty order on gray portland cement and clinker from Mexico (55 FR 35371, August 29, 1990). From June 28, 1993, to July 2, 1993, the Department conducted verification of respondent CEMEX, S.A.'s (CEMEX's submissions with respect to the fictitious markets and cost-of-production (COP) issues. The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29, and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and U.S. Customs Service purposes only; our written description of the scope of the proceeding is dispositive.

This review covers two manufacturers/exporters of the subject merchandise to the United States, CEMEX and Apasco, S.A. de C.V. (Apasco). Apasco made no shipments of subject merchandise to the United States during the period of review (POR). As a result, the cash deposit for Apasco remains the margin percentage from the last administrative review.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from the Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement and the National Cement Company of California (petitioners), and respondent CEMEX on July 29, 1993. We received written rebuttal comments from petitioners and CEMEX on August 5, 1993. On August 10, 1993, we held a public hearing.

Comment 1: Petitioners allege that through different movements in the home market prices of Type I, Type II, and Type V cement, CEMEX has established a fictitious market within the meaning of section 773(a)(5) of the Tariff Act. Petitioners allege that sharply different movements in net, ex-factory prices for these types of cement are in themselves dispositive of a fictitious market, and that the Department should not consider CEMEX's stated business reasons for these price movements.

Petitioners further argue that CEMEX's business reasons are "pretextual." According to petitioners, CEMEX, in the aftermath of the antidumping duty order, consolidated production of Type II and Type V cement at the Hermosillo plant in the northwest of Mexico with the clear intent of lowering the antidumping duty margins by increasing freight costs to customers of these types of cement in central Mexico. According to petitioners, the increased freight costs result in a larger deduction from gross prices, which in turn lowers the foreign market value (FMV). Petitioners point to the findings of the Department's team at verification as evidence of numerous misrepresentations by CEMEX, and argue that CEMEX failed to supply critical documents requested by the Department. Petitioners note that the Department in the final results of the first review accepted CEMEX's business reasons for the price movements at issue "in the absence of information to rebut them" (*Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review*, 58 FR 25803, 25806, (April 28, 1993)). Petitioners argue that the record of this review is much more extensive and revealing than that of the first review, and that CEMEX's sales volumes of and prices for different types of cement in the home market in the period of this review show a continued pattern consistent with the establishment of a fictitious market. Petitioners therefore contend that CEMEX's home market sales of Type II and Type V cement should not be used as the basis for the calculation of FMV.

Petitioners, in the alternative, argue that CEMEX's home market sales of Type II and Type V cement are not in the ordinary course of trade, and therefore should not be used as the basis for FMV, as stipulated in section 773(a)(1)(A) of the Tariff Act.

In making this assertion, petitioners emphasize that the Department's approach to the ordinary-course-of-trade provision of the statute "does not rely on one factor taken in isolation but rather considers all the circumstances particular to the sales in question" (*Certain Welded Carbon Steel Standard Pipes and Tubes from India, Final Results of Antidumping Duty Administrative Review*, 56 FR 64753, 64755 (December 12, 1991)).

Petitioners point to cases wherein the Department considered the following factors to be pertinent: (a) The frequency and volume of sales of the product type under investigation, (b) the number of buyers of the product, (c) disparities in the price of the product type under investigation and the predominant product type sold in the home market, (d) differences in the profit margins for the product type under investigation and for the predominant product type sold in the home market, (e) changes in selling patterns after issuance of the antidumping duty order, and (f) special shipping arrangements. Petitioners argue that examination of each of these factors in the instant review leads to the conclusion that home market sales of Type II and Type V cement were not made in the ordinary course of trade.

In response to petitioners' fictitious market allegations, CEMEX argues that the Department, both in the final results of the first administrative review and the preliminary results in the instant administrative review, found that CEMEX had not established a fictitious market after the issuance of the order. CEMEX argues that no hard evidence to the contrary has been offered that would lead the Department to reverse its previous decisions.

CEMEX maintains that gross prices are the correct yardstick for gauging the movements in prices as addressed by the statute. CEMEX argues that petitioners' "net prices" are a hybrid concept that reflect neither gross prices nor FMV.

CEMEX further argues that any movements in net prices since the issuance of the order were incidental effects of legitimate business strategies. According to CEMEX, its production strategies after issuance of the order reflected (a) a capacity glut in the northwest of Mexico, arising from the acquisition of another Mexican cement producer in July of 1989; (b) a natural abundance of raw materials required for Type II production in Hermosillo; (c) a large market for Type II cement in the southwest United States; (d) the cessation of Type I exports to the eastern United States in reaction to the issuance of the order; (e) a comparatively small home market for Type II and Type V cement; and (f) an increasing demand for CEMEX's primary products in Mexico, Type I and Pozzolanic cement, resulting in capacity problems at numerous plants. CEMEX emphasizes that the decision to supply Mexican customers of Type II cement from Hermosillo was driven by the decision regarding the much larger U.S. market, and by system-wide production considerations. According to CEMEX, it makes no sense to look at the Hermosillo domestic-supply decision in isolation.

In response to petitioners' ordinary-course-of-trade argument, CEMEX contends that home market sales of Type II and Type V cement are and have always been within the ordinary course of trade. CEMEX contends that Type II cement was sold by CEMEX, Apasco, and other cement producers prior to and during the investigation of sales at less than fair value (LTFV), and that there is no evidence that any of these producers has ceased selling Type II cement in Mexico. CEMEX similarly argues that Type V cement was sold in Mexico by Tolteca (and by CEMEX after the acquisition of Tolteca), prior to the LTFV investigation, and CEMEX continues to sell Type V cement in Mexico to the present day.

CEMEX further claims that Type II cement is distributed through the same channels of distribution as Type I and pozzolanic cement. According to CEMEX, all three types were and still are either sold directly to end-users from the manufacturing plants or sent to regional distribution centers for subsequent sale to end-users. CEMEX argues that the Department has verified that there is a real and historical demand for both Type II and Type V cement among CEMEX's customers in Mexico.

CEMEX finally contends that petitioners do not relate the Department's analysis in the cases cited in their brief to the facts in the record of the instant review. CEMEX argues that the circumstances in the cited cases are not applicable to the instant review, and in some instances support CEMEX's contention that Type II and Type V cement sales are in the ordinary course of trade.

Department's Position: We note that petitioners' allegations with respect to the creation of a fictitious market and sales outside the ordinary course of trade in this case are based upon the same fact pattern. Ultimately, both allegations point to the unique nature of CEMEX's domestic market for Type II and Type V cement, including the special shipping arrangements for sales of these types of cement that were instituted after issuance of the antidumping duty order.

At verification, we thoroughly investigated the nature of CEMEX's home market sales of Type I, Type II,

and Type V cement. Our findings are contained in a detailed verification report, issued on July 21, 1993, which is on file in room B–099 of the Department's main building.

Based on the fact pattern made evident at verification (and discussed below), and on consideration of the extensive evidence submitted in this review, we have determined that CEMEX's home market sales of Type II and Type V cement in the home market are outside the ordinary course of trade.

Section 773(a)(1)(A) of the Tariff Act and section 353.46(a) of the Department's regulations provide that FMV shall be based on the price at which "such or similar merchandise" is sold in the exporting country in the "ordinary course of trade for home consumption". Section 771(15) of the Tariff Act defines "ordinary course of trade" as "the conditions and practices which, for a reasonable time prior to the exportation of the merchandise which is the subject of an investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind" (see also 19 CFR 353.46(b)).

Petitioners are correct in arguing that the Department, in determining whether home market sales are in the ordinary course of trade, does not rely on one factor taken in isolation but rather considers all of the circumstances particular to these sales (see *Murata Mfg. Co.* v. *United States*, Slip Op. 93–53 (Court of International Trade (CIT) April 20, 1993); *Certain Welded Carbon Steel Standard Pipes and Tubes from India; Final Results of Antidumping Duty Administrative Review*, 57 FR 54362 (November 18, 1992)).

We have considered the totality of circumstances surrounding CEMEX's Type II and Type V sales. These criteria included those listed in petitioner's brief. We also considered whether CEMEX sold Type II and type V cement in Mexico prior to exporting this merchandise, and whether there was a promotional element to these sales.

A full discussion of our conclusions, necessitating reference to proprietary information, is contained in a Departmental memorandum in the official file for this case (a public version of this memorandum is on file in room B–099 of the Department's main building). Generally, however, we have observed the following:

(a) In Mexico, Type II and type V cement are specialty cements sold to a "niche" market. These sales represent a minuscule percentage of CEMEX's total sales of cement.

(b) CEMEX did not sell Type II or Type V cement in the home market until it began production for export in the mid-eighties, despite the fact that a small domestic demand for such cement existed prior to that time.

(c) Shipping arrangements for home market sales of Type II and Type V cement are not ordinary. More than 95 percent of cement shipments in Mexico are within a radius of 150 miles, yet during the POR CEMEX shipped types II and V cement for the domestic market over considerably greater distances and absorbed much of the freight costs for these longer shipments.

(d) CEMEX's profit on Type II and Type V cement sales in the POR is not ordinary, in comparison to the company's profits on sales of all types of cement.

(e) According to CEMEX officials at verification, CEMEX is interested in retaining customers of Type II and Type V cement in the home market because: (1) these customers may also purchase other types of cement in large quantities, and (2) sales of Type II and Type V cement promote CEMEX's corporate image. There is thus a promotional quality to these sales that is not evidenced in CEMEX's ordinary sales of cement.

These observations lead us to conclude that CEMEX's home market sales of Type II and Type V cement are not in the ordinary course of trade, and thus should not be used for purposes of calculating FMV. CEMEX's argument that there is a legitimate demand for Type II and Type V cement in the home market, and that this demand is supplied by a number of Mexican cement firms, is correct but is not relevant to the issue of whether these sales of cement are within CEMEX's ordinary course of trade in the home market.

We note that petitioners and respondents have made a number of comments on the issue of fictitious markets. The statute stipulates that in the ascertainment of FMV "no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account" (section 773(a)(1)(B) of the Tariff Act). Since the sales called into question by the fictitious markets allegation have been found to be outside the ordinary course of trade, and accordingly will not be used in the calculation of FMV, it is not necessary for us to address this issue.

In situations where identical product types cannot be matched, the statute expresses a preference for basing FMV on similar merchandise (see section 773(a)(1)(A) of the Tariff Act and section 353.46(a) of the Department's regulations). Normally, we would base FMV on sales of Type I cement, since they are representative of CEMEX's sales of similar merchandise. However, in this review we have not specifically requested, and CEMEX has not provided, "difference in merchandise" (difmer) information that would permit an accurate comparison of home market sales of Type I cement to U.S. sales of Type II and Type V cement.

In instances where we determine that FMV of imported merchandise cannot be based on such or similar merchandise, the statute permits us to directly base FMV on the constructed value (CV) of such merchandise (section 773(a)(2) of the Tariff Act). We have therefore based FMV on the CV of Type II and Type V cement, in accordance with section 773(e) of the Tariff Act.

Comment 2: Petitioners and CEMEX have commented on several issues relating to home market sales of Type II and Type V cement: (1) the validity of CEMEX's reported inland freight expense, (2) the Department's rejection of home market sales of Type II cement to related parties, (3) the adjustment for uncollected taxes in the home market, (4) the possible recovery of costs on sales found to be below the cost of production, (5) an error in the reported freight expense for one sale of Type II cement, and (6) exclusion of rebates and discounts from the COP for purposes of determining the percentage of home market sales below cost.

Department's Position: For the final results, these issues are moot, given our finding that sales of Type II and Type V cement are outside the ordinary course of trade, and our subsequent use of CV for purposes of calculating FMV (see our response to Comment 1). Thus, it is not necessary for us to address these points.

Comment 3: Petitioners argue that cement production costs for this review should be based upon the cost information for calendar year 1992. Petitioners state that the Department's questionnaire requests that "the COP and the CV should be calculated on a weight average basis for the costs incurred during the fiscal year that most closely corresponds to the POR." Petitioners state that, because there are only five months of the POR in 1991 (August–December) and seven months of the POR in 1992 (January–July), and because CEMEX has a calendar fiscal year, 1992 is CEMEX's "fiscal year that most closely corresponds to the POR."

CEMEX argues that, in conformity with the Department's questionnaire instructions, it reported cost information for the fiscal quarters that most closely correspond to the POR (*i.e.*, quarterly data for 1991 and three

quarters of 1992). CEMEX further argues that petitioners' suggestion of including information from the fourth quarter of 1993 ignores the Department's intent to determine the COP during a specific time period associated with the sales of subject merchandise. CEMEX also argues that the methodology used by the Department covers one full year and incorporates the entire cycle of seasonal fluctuations.

Department's Position: In accordance with our normal practice, we have calculated CV for the time period most closely associated with sales to which CV is being compared. More specifically, the POR was from August 1, 1992, through July 31, 1992. For the final results of review, the Department based its calculations on the quarterly information from July 1, 1991, through June 30, 1992.

Using information from the fourth quarter of 1992 would distort the U.S. and FMV comparisons as costs incurred during this quarter do not relate to sales which occurred during the POR. Moreover, the annual period used for calculating CV reflects any seasonal fluctuation which may occur, because it accounts for a full operating cycle.

Comment 4: Petitioners maintain that the cost of raw materials purchased from a related party should be based upon best information available (BIA), because CEMEX reported these costs in an inappropriate manner in its questionnaire response.

CEMEX argues that petitioners' argument is premised on a fundamental error of fact and misinterpretation of the Department's verification report. CEMEX asserts that the correct information, concerning the transactions in question, was reviewed at verification and that the Department should use the actual cost of materials supplied by the related party, as reported in the questionnaire response and substantiated at verification.

Department's Position: We agree with respondent. The related party from which CEMEX purchased the raw materials is a 100-percent-owned subsidiary. Accordingly, we accepted CEMEX's submitted methodology which valued these raw materials based upon the COP of the related party.

Comment 5: Petitioners argue that the Department should not include CEMEX's monetary position gain in calculating interest expense. Petitioners state that adjustments for monetary gains in non-inflationary-economy cases greatly distort the actual COP during the POR. In the alternative, petitioners argue that if the Department allows CEMEX's monetary position gain to offset interest expense it should do so only to the extent that the monetary position gain on debt is specifically related to the production of the subject merchandise.

CEMEX claims that petitioners' position on the issue of monetary gains was rejected in the first administrative review of this case. CEMEX further notes that the Department followed the methodology used in the first administrative review in the preliminary results of the instant review, and that there is no reason to depart from this in the final results.

Department's Positions: Consistent with the approach outlined in *Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review*, 58 FR 25803, 25806, (April 28, 1993) we have included the effect of the monetary gain in our calculation of the financing costs of CEMEX.

Comment 6: Petitioners argue that the proper methodology for calculating profit to be used in CV is to use CEMEX's overall profit margin on the class or kind of merchandise sold in the home market. Petitioners believe that the CV used in the preliminary results incorrectly based profit upon sales of each specific type of cement (*i.e.*, Type II and Type V cement).

Petitioners also argue that the Department's profit calculation incorrectly relies on profit earned by CEMEX on home market and U.S. cement sales, rather than only on home market sales.

CEMEX contends that petitioners have misread the Department's computer program. CEMEX contends that the Department's program calculates profit on Type II and Type V cement, and that the profit calculation is based only on home market sales.

Department's Position: We agree with CEMEX that the Department's computer program for the preliminary results bases profit calculations only on home market sales.

However, for the preliminary results we incorrectly relied on calculated profits for Type II and Type V cement. We agree with petitioners that the proper profit figure for the calculation of CV is the reported average home market profit for the general class or kind of merchandise. Therefore, in accordance with the Department's practice, we have relied on this figure as reported by CEMEX in our calculations of CV.

Comment 7: CEMEX argues that in calculating COP the Department should use the general and administrative (G&A) expenses reported by CEMEX. CEMEX states that since the submitted methodology, which reclassified certain plant administrative expense, was fully examined by the Department at verification it should be relied upon in reaching the final results.

Department's Position: We agree with CEMEX. Since we have verified that the reclassified expenses were related to factory overhead, we have relied on the submitted information for these final results.

Comment 8: CEMEX believes that its adjustment to factory overhead for excess capacity related to all production facilities is correct and should be relied upon for the final results. CEMEX notes that companies routinely revise their accounting procedures and that this change to their prior accounting methodology should not be rejected simply because it represents a change. CEMEX further emphasizes that this change in methodology is reflected in CEMEX's internal cost accounting reports and records.

Petitioners argue that the Department's standard practice is to base COP on the fully-absorbed cost to produce each specific model. Petitioners believe that CEMEX's submitted excess capacity calculation is designed to distort COP by transferring costs to products not under review, and therefore should be rejected.

Department's Position: In this case, calculating excess capacity at the company-wide level would not reflect the costs incurred to manufacture the products under review. Pooling excess capacity costs incurred by specific plants and allocating these costs to all plants would result in shifting these costs to products which did not incur these costs. We have therefore rejected CEMEX's calculation of company-wide excess capacity costs and have relied on the weighted-average results of the actual costs incurred at each of the plants producing the subject merchandise.

Comment 9: CEMEX asserts that in the final results the Department should continue to apply the financial expense methodology used in the first review. In particular, CEMEX argues that interest income identified as relating to current assets should be included. CEMEX also argues that if income earned on certain financial investment is excluded then monetary expenses created by the same instruments must also be excluded.

Department's Position: We agree with CEMEX. In calculating financial income and expenses, we have followed the Department's normal practice of including all interest expense offset by short-term interest income. In addition, consistent with our past practice in cases where the country under review is experiencing significant inflation (but not hyperinflation) which is reflected

through a monetary correction to the financial statements, we have included the monetary correction in our calculation of financial expenses (see *Gray Portland Cement and Clinker from Mexico*, 58 FR 25803, 25806 (April 28, 1993)).

Comment 10: CEMEX argues that the Department should not calculate, as part of its COP analysis, a figure for mine depletion expenses incurred by CEMEX. CEMEX contends that its policy of not recording any mine depletion expense is reasonable and in accordance with Mexican generally accepted accounting practices (GAAP). CEMEX further argues that even the most unrealistic and adverse assumptions result in only an immaterial amount of depletion expenses.

Petitioners believe that the Department must impute depletion expenses in accordance with standard cost accounting practice.

Department's Position: In general, the Department adheres to a country's GAAP in determining the relevant costs on a fully absorbed basis. However, in this case following Mexican GAAP would result in an inaccurate measurement of cost since the mine depletion expenses would not be included as part of COP, yet all costs incurred must be reflected in COP. For the depletion expenses we have used the depletion cost calculated by CEMEX from the company's records.

Comment 11: Petitioners argue that the indirect selling expenses incurred by C.L. Pharris (Pharris), a U.S. concrete producer affiliated with CEMEX, must be deducted from U.S. price (USP) for sales subject to further manufacturing in the United States.

Department's Position: In our preliminary results, we inadvertently failed to deduct indirect selling expenses incurred by Pharris for the calculation of net USP for sales subject to further manufacturing. We have made the necessary deduction for these final results.

Comment 12: Petitioners argue that a transaction tax incurred by a U.S. subsidiary of CEMEX on sales of cement in Texas, and reported by CEMEX as a direct selling expense, should be deducted accordingly from USP.

Petitioners note that in the preliminary results of review the Department did not adjust for this tax since the Department considered that there is no provision in the Tariff Act for such an adjustment. Petitioners argue that section 772(e) of the Tariff Act provides for deductions to USP for expenses incurred by or for the account of exporters in the United States. Petitioners contend that the Department has relied on this provision of the Tariff Act in prior reviews for the deduction of special state transaction taxes, Citing *Final Determination of Sales at Less than Fair Value: New Minivans from Japan*, 57 FR 21,937, 21,938 (May 26, 1992) (*Minivans*), petitioners contend that the Department made an adjustment to a respondent's USP (based on exporter's sale price (ESP)) for the payment of a wholesale tax on vehicles sold to Hawaiian dealers.

Department's Position: We agree with petitioners. In *Minivans*, the Department made an adjustment to a respondent's USP for the payment of a state-levied wholesale tax on vehicles sold to unrelated dealers. In accordance with section 772(e)(2) of the Tariff Act, we have made a similar adjustment to USP in this administrative review for the transaction tax incurred by a U.S. subsidiary of CEMEX on sales of cement in Texas.

Comment 13: CEMEX argues that the Department should use transfer prices between related parties, rather than the cost of imported merchandise, as the basis for its U.S. further manufacturing value-added calculations. During the instant POR, CEMEX purchased a concrete ready-mix operation in California, Pharris. Until the acquisition, Pharris was a customer of CEMEX's related California cement distributor, Pacific Coast Cement (PCC). Thus, sales from PCC to Pharris were sales of cement to an unrelated party and were reported as such on the sales tape. CEMEX has further reported to the Department all post-acquisition sales from PCC to Pharris, and claims that these sales are demonstrably arm's-length transactions. According to CEMEX, the Department should calculate the value added in the United States using Pharris's selling price for the further-manufactured product (concrete), less Pharris's movement charges and selling expenses, less the purchase price of the cement (the transfer price between PCC and Pharris), to arrive at the cost plus the profit on just the concrete production. CEMEX contends that the Department's usual methodology (*i.e.*, to calculate the value added in the United States based on the cost of the imported merchandise, the cost added in the United States, the profit on each sale, and the profit allocated across costs to the U.S. manufacturing), yields an incorrect figure and is therefore inappropriate. CEMEX argues that the Department normally relies on costs rather than transfer price in value-added calculations because usually there is no way of testing the validity of transfer prices; in this instance, CEMEX argues, the Department can test the existence of arm's-length prices for the imported product.

Petitioners argue that CEMEX has not shown how the application of the Department's standard methodology for the calculation of value added is flawed in this case. Petitioners argue that the Department's methodology more accurately determines the correct amount of profit/loss on the concrete based on the actual cost of the imported cement and the further manufacturing into concrete in the United States. Petitioners further contend that the Department's methodology also more accurately allocates profit/loss based on relative cost, without the inclusion of discretionary profit/loss contained in an arbitrarily established transfer price between related parties.

Department's Position: CEMEX first suggested that we calculate value added using post-acquisition PCC sales prices to Pharris in its December 18, 1993, response to our antidumping questionnaire (see p. VII–23). However, at not time during this review (prior to the submission of the case briefs) has CEMEX claimed that its related party sales are at arm's length, or provided analysis to this effect. Furthermore, although CEMEX has alleged that the Department's calculation methodology leads to an incorrect result, CEMEX has provided no evidence on the record to support its claim that sales prices to related parties represent a more appropriate value for use in this calculation. Therefore, we have not revised our methodology for the calculation of value added in the final results.

Comment 14: CEMEX argues that the Department should include inventory carrying expenses in the calculation of the ESP offset. CEMEX also argues that for concrete sales the ESP offset should reflect the indirect selling expenses incurred by the U.S. subsidiary for sales of concrete.

Department's Position: In our preliminary results of review, we inadvertently failed to include inventory carrying expenses, which are indirect selling expenses, in the calculation of the ESP offset. We similarly failed to include in the ESP offset the indirect selling expenses incurred by the U.S. subsidiary. We have made the necessary correction to the computer program for the final results.

Comment 15: CEMEX points out that for concrete sales, the adjustment for post-sale credit and debit notes (CRDDEB) is incorrect by a factor of 100, leading to a distortion of the results for a large number of concrete transactions.

CEMEX suggests that the same problem may apply to the adjustments for revenue from sales of mix additives and color in conjunction with sales of concrete (OTHREV), revenue from minimum load charges (OTHREV2), and billing reconciliation for PCC sales (BILLADJ).

Department's Position: Due to an error in the Department's reading of the computer tapes submitted by CEMEX, the values for CRDDEB, OTHREV, and OTHREV2 were inadvertently inflated by a factor of 100 in the database used by the Department in the margin calculations for the preliminary results. These values have been corrected through an appropriate statement in the computer program for the final results. We have not found any discrepancy between the values for BILLADJ reported by CEMEX and those used in our database, and therefore have made no changes to this item in our computer program.

Comment 16: CEMEX argues that the Department's calculations did not include as additions to USP the reported adjustments for "other revenue" on concrete sales. CEMEX requests that the Department include these adjustments in the net price calculations for concrete.

Department's Position: In our preliminary results we inadvertently failed to adjust USP for "other revenue" on concrete sales. We have made the necessary adjustment in the computer program for the final results.

Comment 17: CEMEX claims that two changes in its U.S. data, regarding bad debt expenses and interest revenue on transactions, provided to the Department by CEMEX in a letter dated June 4, 1993, should be implemented in the final results.

Petitioners argue that CEMEX's letter of June 4, 1993, was unsolicited and submitted to the Department well after the applicable time limit imposed by the Department's regulations. Petitioners request that the Department return the June 4, 1993, submission to CEMEX, and that the Department not rely on untimely, new factual information in reaching the final results of review.

Department's Position: The Department's regulations stipulate that factual information must be submitted to the Department by "* * * the earlier of the date of notice of preliminary results of review or 180 days after the date of publication of the notice of initiation of review" (19 CFR 353.31 (a)(1)(ii)). CEMEX's letter of June 4, 1993, sought to introduce new factual information after the regulatory time window; we have thus disregarded it for purposes of the final results of review.

Comment 18: CEMEX argues that the Department included in the margin calculations those sales from PCC to Pharris which took place after CEMEX's acquisition of Pharris. According to CEMEX, these sales were included on the sales tape only in the event that the Department might want to use the data for the calculation of value added for further-manufactured sales.

Department's Position: The Department inadvertently included the post-acquisition PCC to Pharris sales in the margin calculations for the preliminary results. These sales have been excluded from the database used in the calculations for the final results.

Final Results of Review

As a result of our review, we determine the weighted-average dumping margins for the period August 1, 1991, through July 31, 1992, to be:

Company	Margin percentage
CEMEX, S.A	42.74
Apasco, S.A. de C.V	*53.26

*For the period August 1, 1991, to July 31, 1992, Apasco made no shipments. In the last administrative review, the Department determined a margin percentage of 53.26 percent for Apasco.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service. Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be the rates listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise. The cash deposit rate for all other manufacturers or exporters will be 58.05 percent. On May 25, 1993, the CIT in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, determined that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews.

In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical error or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 58.05 percent, the "all others" rate established in the final notice of LTFV investigation by the Department (55 FR 29244, July 18, 1990).

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751 of

the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 31, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–21854 Filed 9–7–93; 8:45 am]

BILLING CODE 3510–DS–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of Panel.

SUMMARY: On August 27, 1993, a Binational Panel issued its decision in the consolidated reviews of the Final Affirmative Material Injury Determination in both the Antidumping Duty Investigation and the Countervailing Duty Investigation respecting Magnesium from Canada made by the U.S. International Trade Commission. These determinations were reviewed by the same panel under Secretariat File No. USA–92–1904–05/06 and the decision affected both determinations. The Binational Panel remanded the final determinations to the International Trade Commission for further action on two issues and affirmed the determination in all other respects. A copy of the complete panel decision is available from the Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedures for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter was conducted in accordance with these Rules.

Background

On August 26, 1992 the U.S. International Trade Commission published the Final Affirmative Material Injury Determinations in the Antidumping Duty and Countervailing Duty Investigations respecting Magnesium from Canada.

On September 25, 1992, Norsk Hydro Canada, Inc. filed Requests for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Separate Requests for Panel Review were filed for both the antidumping and countervailing duty injury determinations. In addition, the Government of Quebec filed Requests for Panel Review in this matter.

Panel Decision

On August 27, 1993, the Binational Panel remanded the final determinations to the U.S. International Trade Commission for detailed explanation as to:

(1) Whether the U.S. industry producing pure magnesium is materially injured or threatened with material injury by reason of dumped and subsidized imports of pure magnesium from Canada; and

(2) Whether the U.S. industry producing alloy magnesium is materially injured or threatened with material injury by reason of dumped and subsidized imports of pure magnesium from Canada.

The Commission was instructed to provide a complete analysis of all factors it considers relevant to its determination and may also analyze injury with respect to more than two domestic industries, as long as its determinations of additional like products is supported by the evidence of record and adequately explained.

The Binational Panel instructed the Commission to provide its determination on remand within 60 days of the panel decision (by October 25, 1993).

Dated: September 1, 1993.

James R. Holbein,

U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 93–21858 Filed 9–7–93; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of modification to permit (P545).

SUMMARY: Notice is hereby given that Permit No. 858 issued to Dr. James R. Gilbert, Professor, Wildlife Department, University of Maine, Orono, ME 04469–5755, on July 6, 1993 (58 FR 37715), has been modified. The modification becomes effective upon publication in the **Federal Register**.

ADDRESSES: The Permit, as modified, and associated documents are available upon written request or by appointment in the Permits Division, Office of Protected Resources, NMFS, 1335 East-West Hwy., Suite 7324, Silver Spring, MD 20901 (301/713–2289); and Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281–9200).

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the subject Scientific Research Permit was issued to conduct population census on an unspecified number of harbor seals (*Phoca* vitulina) on coastal ledges in New England from Isle of Shoals north to the Canadian border, and is modified to include incidental harassment of an unspecified number of gray seals (*Halichoerus grypus*) that might be located in the same area(s).

Dated: August 31, 1993.

Herbert W. Kaufman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–21787 Filed 9–7–93; 8:45 am]

BILLING CODE 3510–22–M

Patent and Trademark Office

Meeting of the Public Advisory Committee for Trademark Affairs

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory

Committee Act (Pub. L. 92–463), announcement is made of the open meeting of the Public Advisory Committee for Trademark Affairs.

DATES: The Public Advisory Committee for Trademark Affairs will meet from 10 a.m. until 4 p.m. on October 5, 1993.

PLACE: U.S. Patent and Trademark Office, 2121 Crystal Drive, Crystal Park 2, room 912, Arlington, Virginia.

STATUS: The meeting will be open to public observation, seating will be available for the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request.

MATTERS TO BE CONSIDERED: The agenda for the meeting is as follows:

(1) Finance
(2) Automation
(3) Strategic Planning
(4) Current Trademark Office Practice Issues
(5) International Trademark Law

CONTACT PERSON FOR MORE INFORMATION: For further information, contact Lynne Beresford, Office of the Assistant Commissioner for Trademarks, Building CPK2, room 910, Patent and Trademark Office, Washington, DC 20231. Telephone: (703) 305–9464.

Dated: August 30, 1993.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 93–21746 Filed 9–7–93; 8:45 am]

BILLING CODE 3510–16–M

COMMISSION ON IMMIGRATION REFORM

Hearing

AGENCY: U.S. Commission on Immigration Reform.

ACTION: Announcement of meeting.

SUMMARY: This notice announces a public hearing of the Commission on Immigration Reform. The Commission was established by the Immigration Act of 1990 under section 141. The Commission will be hearing from a panel of immigration policy experts on "Immigration and Community Relations." The focus of the hearing will be relations between recent immigrants and native-born populations and longer-resident immigrants. The Commission will be seeking to assess the impact of immigration on communities, discussing tensions which arise, the potential for future problems, and model programs and strategies for promoting improved relations. The Commission also seeks information about the benefits to communities that derive from increased ethnic diversity.

DATES: 2 p.m.–5 p.m., October 1, 1993.

ADDRESSES: Hall of States, room 333, 444 North Capitol Street, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Beth Malks or Brett Endres, Telephone: (202) 673–5348.

Dated: September 1, 1993.

Susan Forbes Martin,

Executive Director.

[FR Doc. 93–21785 Filed 9–7–93; 8:45 am]

BILLING CODE 9820–97–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 171. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 171 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: September 1, 1993.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective 1 June 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

BILLING CODE 5000–04–M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE = (C)	EFFECTIVE DATE
ALASKA:				
ADAK 5/	$ 10	$ 34	$ 44	10-01-91
ANAKTUVUK PASS	83	57	140	12-01-90
ANCHORAGE				
05-15--09-15	174	71	245	05-15-93
09-16--05-14	81	66	147	12-01-92
ANIAK	73	36	109	07-01-91
ATQASUK	129	86	215	12-01-90
BARROW	86	73	159	06-01-91
BETHEL	82	64	146	01-01-93
BETTLES	65	45	110	12-01-90
COLD BAY	110	54	164	07-01-93
COLDFOOT	95	59	154	10-01-92
CORDOVA	66	77	143	12-01-92
CRAIG	67	35	102	07-01-91
DILLINGHAM	76	38	114	12-01-90
DUTCH HARBOR-UNALASKA	113	67	180	05-01-92
EIELSON AFB				
05-15--09-15	100	66	166	05-15-93
09-16--05-14	65	67	132	12-01-92
ELMENDORF AFB				
05-15--09-15	174	71	245	05-15-93
09-16--05-14	81	66	147	12-01-92
EMMONAK	72	54	126	06-01-93
FAIRBANKS				
05-15--09-15	100	66	166	05-15-93
09-16--05-14	65	67	132	12-01-92
FALSE PASS	80	37	117	06-01-91
FT. RICHARDSON				
05-15--09-15	174	71	245	05-15-93
09-16--05-14	81	66	147	12-01-92
FT. WAINWRIGHT				
05-15--09-15	100	66	166	05-15-93
09-16--05-14	65	67	132	12-01-92
HOMER				
05-01--09-30	71	60	131	05-01-93
10-01--04-30	53	62	115	12-01-92
JUNEAU				
05-01--10-01	88	74	162	05-01-92
10-02--04-30	75	73	148	01-01-92
KATMAI NATIONAL PARK	89	59	148	12-01-90

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE - (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
KENAI-SOLDOTNA				
04-02--09-30	$ 94	$ 68	$162	04-02-93
10-01--04-01	57	66	123	12-01-92
KETCHIKAN				
05-14--10-14	90	77	167	06-01-93
10-15--05-13	68	75	143	10-15-93
KING SALMON 3/	75	59	134	12-01-90
KLAWOCK	75	36	111	07-01-91
KODIAK	71	61	132	01-01-92
KOTZEBUE	133	87	220	05-01-93
KUPARUK OILFIELD	75	52	127	12-01-90
METLAKATLA	79	44	123	07-01-91
MURPHY DOME				
05-15--09-15	100	66	166	05-15-93
09-16--05-14	65	67	132	12-01-92
NELSON LAGOON	102	39	141	06-01-91
NOATAK	133	87	220	05-01-93
NOME	71	58	129	01-01-93
NOORVIK	133	87	220	05-01-93
PETERSBURG	72	64	136	05-01-92
POINT HOPE	99	61	160	12-01-90
POINT LAY 6/	106	73	179	12-01-90
PRUDHOE BAY-DEADHORSE	64	57	121	12-01-90
SAND POINT	75	36	111	07-01-91
SEWARD				
05-01--09-30	107	53	160	05-01-92
10-01--04-30	61	48	109	01-01-92
SHUNGNAK	133	87	220	05-01-93
SITKA-MT. EDGECOMBE	72	69	141	01-01-92
SKAGWAY				
05-14--10-14	90	77	167	06-01-93
10-15--05-13	68	75	143	10-15-93
SPRUCE CAPE	71	61	132	01-01-92
ST. GEORGE	100	39	139	06-01-91
ST. MARY'S	77	59	136	06-01-93
ST. PAUL ISLAND	81	34	115	12-01-90
TANANA	71	58	129	01-01-93
TOK				
04-21--10-31	60	58	118	06-01-93
11-01--04-20	48	57	105	11-01-93

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE = (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
UMIAT	$ 97	$ 63	$160	12-01-90
VALDEZ				
05-01--09-01	98	53	151	05-01-93
09-02--04-30	82	70	152	12-01-92
WAINWRIGHT	90	75	165	12-01-90
WALKER LAKE	82	54	136	12-01-90
WRANGELL				
05-14--10-14	90	77	167	06-01-93
10-15--05-13	68	75	143	10-15-93
YAKUTAT	70	40	110	12-01-90
OTHER 3, 4, 6/	63	48	111	01-01-93
AMERICAN SAMOA	85	47	132	12-01-91
GUAM	155	75	230	05-01-93
HAWAII:				
ISLAND OF HAWAII: HILO	73	61	134	06-01-93
ISLAND OF HAWAII: OTHER	80	71	151	06-01-93
ISLAND OF KAUAI				
04-01--11-30	110	75	185	06-01-93
12-01--03-31	122	76	198	12-01-93
ISLAND OF KURE 1/		13	13	12-01-90
ISLAND OF MAUI				
04-01--11-30	79	71	150	06-01-93
12-01--03-31	96	73	169	12-01-93
ISLAND OF OAHU	105	62	167	06-01-93
OTHER	79	62	141	06-01-93
JOHNSTON ATOLL 2/	20	20	40	10-01-92
MIDWAY ISLANDS 1/		13	13	12-01-90
NORTHERN MARIANA ISLANDS:				
ROTA	68	55	123	01-01-93
SAIPAN	100	69	169	01-01-93
TINIAN	50	55	105	01-01-93
OTHER	20	13	33	12-01-90
PUERTO RICO:				
BAYAMON				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
CAROLINA				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
FAJARDO (INCL CEIBA, LUQUILLO AND HUMACAO)	65	52	117	09-01-93

BILLING CODE 5000-04-C

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	= MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PUERTO RICO: (CONT'D)				
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)				
05-01--12-14	$ 93	$ 73	$166	09-01-93
12-15--04-30	116	76	192	12-15-93
MAYAGUEZ	85	65	150	08-01-92
PONCE	96	75	171	09-01-93
ROOSEVELT ROADS	65	52	117	09-01-93
SABANA SECA				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
OTHER	63	52	115	08-01-92
VIRGIN ISLANDS OF THE U.S.				
06-02--12-19	180	112	292	09-01-93
12-20--06-01	255	120	375	12-20-93
WAKE ISLAND 2/	4	17	21	12-01-90
ALL OTHER LOCALITIES	20	13	33	12-01-90

[1] Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $19.65 is prescribed to cover meals and incidental expenses at Shemya AFB, Clear AFS, Galena APT and King Salmon APT. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[5] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. Government or contractor quarters.

[6] The meal rates listed below are prescribed for the following locations in Alaska: Cape Lisburne RRL, Cape Newenham RRL, Cape Romanzof APT, Fort Yukon RRL, Indian Mtn RRL, Sparrevohn RRL, Tatalina RRL, Tin City RRL, Barter Island AFS, Point Barrow AFS, Point Lay AFS and Oliktok AFS. The amount to be added to the cost of government quarters in determining the per diem will be $3.50 plus the following amount:

	Daily rate
DOD Personnel	$13
Non-DOD Personnel	30

Dated: September 1, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–21747 Filed 9–7–93; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

National Education Commission on Time and Learning; Hearing

AGENCY: National Education Commission on Time and Learning, Education.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming public Hearing of the National Education Commission on Time and Learning. This notice also describes the functions of the Commission. Notice of this Hearing is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE, TIME AND LOCATION:

September 22, 1993 from 1 p.m. to 3 p.m., Public Hearing, The University of Maine, Conference & Institute Division, Wells Commons—Main Dining Room, Orono, Maine

September 23, 1993 from 9 a.m. to 4 p.m., Public Hearing

(If Necessary) 4 p.m. to 4:30 p.m., Business Meeting

September 24, 1993 from 8:30 a.m. to 12:45 p.m., Public Hearing, Harvard University—Gutman Library, Cambridge, MA, Telephone: Laura Burns (617) 495–7875

FOR FURTHER INFORMATION CONTACT:

Julia Anna Anderson, Deputy Executive Director, or (202) 653–5063.

SUPPLEMENTARY INFORMATION: The National Education Commission on Time and Learning is established under section 102 of the Education Council Act of 1991 (20 U.S.C. 1221–1). The Commission is established to examine the quality and adequacy of the study and learning time of elementary and secondary students in the United States, including issues regarding the length of the school day and year, how time is being used for academic subjects, the use of incentives, how time is used outside of school, the extent and role of homework, year-round professional opportunities for teachers, the use of school facilities for extended learning programs, if appropriate a model for adopting a longer day or year, suggested changes for state laws and regulations, and an analysis and estimate of the additional costs.

The Hearings of the Commission are open to the public. The proposed agenda for September 22 includes: A site visit to the Piscataquis Community High School/Project 2000 and a discussion focusing on the development and initial strategies to implement Maine's Common Core of Learning. The proposed agenda for September 23 and 24 includes: Discussions with luminaries in American education regarding their views on time use in and out of school and the other mandates as outlined in Public Law 102–62. Records are kept of all Commission proceedings, and are available for public inspection at the Office of the Commission at 1255 22nd Street, NW., Suite 502, Washington, DC 20202–7591 from the hours of 9 a.m. to 5:30 p.m.

Dated: September 1, 1993.

John Hodge Jones,

Chairman, National Education Commission on Time and Learning.

[FR Doc. 93–21793 Filed 9–7–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to Durability, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Durability, Inc. under Grant No. DE–FG01–93CE15589. The proposed grant will provide Government funding in the estimated amount of $99,995 for Durability, Inc. to develop a system to monitor the accumulation of fatigue damage in composite material during mechanical testing. The grant is being awarded to Durability, Inc. on an unsolicited basis, because it is a unique patented technology. Dr. Ahmad Razvan will be the principal investigator. He holds the patent on this technology and has spent twenty-five years in the field developing the technology.

FOR FURTHER INFORMATION CONTACT:

Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: John Windish, PR–322.2, 1000 Independence Avenue, SW. Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined that in accordance with 10 CFR 600.14(f) the application submitted by Durability, Inc., is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the project represents a unique idea, that would not be eligible for financial assistance under a recent, current, or planned solicitation. The Energy Related Inventions Program (ERIP) has been structured, since its beginning in 1975, to operate without competitive solicitations since Energy Related Inventions may be submitted to the National Institute of Standards and Technology for evaluation and subsequently to The Department of Energy for consideration for funding at any time. The program has never issued and has no plans to issue a competitive solicitation. The proposed technology has a strong possibility of adding to the Nation's Energy Resources by enabling small scale testing where previously only full scale testing was possible.

The anticipated term of the proposed grant is 18 months from the effective date of award.

Scott Sheffield,

Director, Division "B", Office of Placement and Administration.

[FR Doc. 93–21835 Filed 9–7–93; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent to Award Grant to Southeastern Consortium for Minorities in Engineering (SECME)

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criteria set forth at 10 CFR 600.7(b)(2)(i)(B) and (D) to SECME, Atlanta, GA., under Grant Number DE–FG01–93MI10270. The DOE intends to make a noncompetitive financial assistance award to develop an educational and training program for middle and high school students, teachers and school administrators in the District of Columbia public schools. The projects goal is to increase the number of minority students who are academically prepared to enter college and complete studies in engineering, mathematics and science. The period of performance contemplated is for one (1) year October 1, 1993—September 30, 1994. The total estimated cost of this effort is $160,010 which will be provided by DOE—there is no cost sharing.

FOR FURTHER INFORMATION CONTACT:

Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rosemarie Marshall, PR–321.1, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The proposed grant will provide funding to SECME, which is a pre-college program designed to increase the number of minority students who are academically prepared to enter and complete studies in engineering, mathematics, and science. SECME is a nonprofit organization organized in 1975 by the engineering deans of six Southeastern universities. SECME is proposing to expand its consortium network by establishing the SECME school systems model in the District of Columbia, with the development of 16 school programs in four schools systems in DC covering the northwest, northeast, southwest and southeast areas. The University of the District of Columbia's College of Engineering will serve as SECME's 33rd

member university and work with SECME school programs throughout the targeted region. The University's role is vital to the success of the program. The University's support to the schools will be through Saturday School Engineering Workshops and school visits from engineering faculty consultants who provide information on additions to school curricula, on-going curriculum enrichment, and university-level preparatory courses.

The program is meritorious because by increasing the pool of minority students who are prepared to enter and complete studies in the scientific technical fields, the competitiveness and prosperity of the American workforce will be significantly enhanced in the years ahead. The project will assist teachers in formulating ways to enrich their instructional programs through the use of curriculum materials and computer applications and help them develop motivational guidance for their students. The DOE knows of no other entity which is conducting or is planning to conduct such an activity.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the application represents a beneficial method to ensure precollege students' success in courses which are prerequisite to technical education and careers. Through this project, students will be better prepared to enroll in and succeed in university-level engineering, mathematics, and science programs.

Jeffrey Rubenstein,

Director, Operations Division "A", Office of Placement and Administration.

[FR Doc. 93-21836 Filed 9-7-93; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance; Low-Level Radioactive Waste Forum

AGENCY: Department of Energy, Idaho Operations Office.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.7(a)(1) it plans a non-competitive renewal of funding and support under Grant DE-FG07-90ID13039 to the State of Washington (Washington) for technical assistance to the Low-Level Radioactive Waste Forum (Forum). The technical assistance proposed is the result of an unsolicited request from Washington for continued support of the Forum in maintaining an independent self-directed organization to promote an effective and efficient national system for the management and disposal of commercially generated low-level radioactive waste.

FOR FURTHER INFORMATION CONTACT: Dallas L. Hoffer, Contract Specialist, (208) 526-0014; U.S. Department of Energy, 785 DOE Place, MS 1221, Idaho Falls, ID 83401-1562.

SUPPLEMENTARY INFORMATION: The objective of the grant is (1) to provide technical assistance to the Low-Level Radioactive Waste Forum for the continuing operation of a self-directed organization through which states and compact commission representatives can promote an effective and efficient national system for the management and disposal of commercially generated low-level radioactive waste; (2) to satisfy a 1990 Congressional recommendation that the Department of Energy assist states and compacts in forming an independent self-directed organization, and provide funding until states and compacts can develop a means for independent funding; and (3) to allow the state of Washington to oversee expenditures of grant funds needed for such technical assistance and coordination of Forum activities. The grant award will be for three years with an estimated total cost of $1,900,000. No cost-sharing is included in this grant. Statutory authority for this award can be found in Section 7(a)(1) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Pub. L. 99-240). In the law, Congress directed DOE to provide continuing technical assistance to states and compact commissions.

PROCUREMENT REQUEST NUMBER: 07-94ID13039.002.

Dated: August 21, 1993.

Dolores J. Ferri,

Director, Contracts Management Division.

[FR Doc. 93-21837 Filed 9-7-93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF93-148-000]

Dixie Valley, Ltd., L.P.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 1, 1993.

On August 18, 1993, Dixie Valley, Ltd., L.P., of 1114 Avenue of the Americas, New York, New York 10036-7790, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to Section 292.207 (b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the 22 megawatt small power production facility will be located at Dixie Valley, Nevada, in township 24 North, Range 36 East. The facility will use double flash cycle technology to generate electrical power from geothermal fluids. The primary energy source is a liquid-dominated geothermal resource heated to approximately 450° Fahrenheit.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 835 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21762 Filed 9-7-93; 8:45 am]

BILLING CODE 6717-01-M

[P-2643-001 Bend Hydro Project]

PacifiCorp Electric Operations; Availability of Draft Environmental Assessment

September 1, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR, part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for subsequent minor license for the existing Bend Hydroelectric Project, located on the Deschutes River, in the city of Bend, Deschutes County, Oregon, and has prepared a draft environmental assessment (DEA) for the relicense proposal. In the DEA, the Commission staff analyzes the potential environmental impacts of the project and concludes that either approval of the project, with appropriate environmental measures, or project retirement, would not constitute a major

federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 2643–001 to all comments. For further information, please contact Joe Davis, DEA Coordinator, at (202) 219–2865.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21761 Filed 9–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–126–003]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 1, 1993.

Take notice that on August 27, 1993, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet:

Sub Original Sheet No. 94

The proposed effective date of Sheet No. 94 is July 1, 1993.

Algonquin states that the purpose of this filing is to reflect a true-up of the Account No. 191 and Account No. 186 costs in compliance with ordering paragraph (B) of the Commission's June 30, 1993 order in this proceeding. Algonquin requests that the Commission waive § 154.22 of the Commission's regulations to the extent necessary in order to permit this application to take effect as requested.

Algonquin states that copies of this tariff filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before September 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21763 Filed 9–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–681–000]

Arkla Energy Resources Co., Request Under Blanket Authorization

September 1, 1993.

Take notice that on August 26, 1993, Arkla Energy Resources Company (AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP93–681–000, a request pursuant to §§ 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate certain facilities in Louisiana under the blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

AER states that it proposes to upgrade one existing meter station for increased deliveries to Arkansas Louisiana Gas Company's (ALG) new rural extension to serve customers in Union Parish, Louisiana. The volume of gas that will be delivered through this tap is approximately 54,000 Mcf annually and 325 Mcf on a peak day. the facilities will be constructed at an estimated cost of $29,600.00, and ALG will reimburse AER for all construction costs.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21754 Filed 9–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–678–000]

Black Marlin Pipeline Co.; Application

September 1, 1993.

Take notice that on August 24, 1993, Black Marlin Pipeline Company (Black Marlin), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP93–678–000 a request under section 7(b) of the Commission's Regulations under the Natural Gas Act for a certificate permitting and approving abandonment of Rate Schedule T–4 included in Black Marlin's FERC Gas Tariff, First Revised Volume No. 1, Original Sheet Nos. 96 through 99, and the underlying service agreements originally authorized to Cities Service Oil and Gas Corporation and Shell Offshore and/or Shell Gas Trading Company, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 22, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Black Marlin to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21753 Filed 9–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–773–000]

Cambridge Electric Light Co.; Notice of Filing

September 1, 1993.

Take notice that on August 13, 1993, Cambridge Electric Light Company tendered for filing an amendment to its original filing filed in this docket on July 7, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21757 Filed 9–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–7–22–000]

CNG Transmission Corp., Proposed Changes in FERC Gas Tariff

September 1, 1993.

Take notice that on August 27, 1993, CNG Transmission Corporation (CNG), pursuant to section 4 of the Natural Gas Act, Part 154 of the Commission's Regulations, and section 12 of the General Terms and Conditions of CNG's tariff, tendered for filling as part of its FERC Gas Tariff, First Revised Volume No. 1, Eleventh Revised Sheet No. 44, with proposed effective date of September 29, 1993.

CNG states that the purpose of this filing is to flow through to CNG's customers changes in take-or-pay costs allocated to CNG by Tennessee Gas Pipeline Company (Tennessee). On May 28, 1993, Tennessee filed tariff sheets in Docket No. RP93–132–000, in part to recover fifty percent of an additional $3.27 million in take-or-pay settlement costs, including interest. By order issued June 30, 1993, as clarified by order dated August 11, 1993, the Commission approved Tennessee's tariff sheets, subject to refund and conditions, effective July 1, 1993.

CNG states that copies of this filing have been mailed to CNG's customers and interested state commissions. Also, copies of this filing are available during regular business hours at CNG's main offices in Clarksburg, West Virginia.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21765 Filed 9–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–689–000]

Colorado Interstate Gas Co.; Request Under Blanket Authorization

September 1, 1993.

Take notice that on August 30, 1993, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP93–689–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate delivery point facilities under CIG's blanket certificate issued in Docket No. CP83–21–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG proposes to install taps, valves and measurement facilities for the receipt and delivery of natural gas on CIG's line in Beaver County, Oklahoma. It is explained that the new facilities would be used for a processing plant to be owned jointly by Continental Natural Gas, Inc., and Interstate Resource Management Company. It is stated that the facilities would have a capacity of 50,000 Mcf per day and would be used for processing volumes of gas transported under CIG's blanket certificate in Docket No. CP86–589–000. It is asserted that the deliveries would have no impact on CIG's peak day and annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21755 Filed 9–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA94–1–23–000, TM94–2–23–000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 1, 1993.

Take notice that on August 30, 1993 Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing certain revised tariff sheets included in appendix A attached to the filing. Such sheets are proposed to be effective November 1, 1993.

Eastern Shore states the above referenced tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and sections 21, 23 and 24 of the General Terms and Conditions of Eastern Shore's FERC Gas Tariff to reflect changes in Eastern Shore's jurisdictional rates.

Eastern Shore states the subject filing is its annual PGA filing as required by section 21 of its tariff. Such filing consists of the calculation of current adjustments for the Demand and Commodity purchased gas component of Eastern Shore's sales rates in addition to the calculation of new annual Demand and Commodity surcharges to amortize the Account No. 191—Unrecovered Purchased Gas Cost balances as of June 30, 1993.

Eastern Shore further states that pursuant to Section 23 of its FERC Gas

Tariff it has also calculated current adjustments for the Demand and Commodity transportation cost component of its sales rates.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211 and § 385.214). All such motions or protests should be filed on or before September 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21764 Filed 9–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–113–000]

Gasdel Pipeline System, Inc.; Change In Annual Charge Adjustment

September 1, 1993.

Take notice that on August 26, 1993, Gasdel Pipeline System, Inc. (Gasdel) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheet, with a proposed effective date of October 1, 1993:

First Revised Sheet No. 5.

Gasdel states that the purpose of said filing is to revise its Annual Charge Adjustment surcharge in order to recover the Commission's annual charges for the 1993 fiscal year. Gasdel has requested that the Commission accept its tariff sheet to become effective on October 1, 1993.

Gasdel states that copies of the filing have been mailed to all jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). Such motions or protests should be filed on or before September 9, 1993. Such motions or protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person desiring to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21770 Filed 9–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES93–47–000]

Gulf States Utilities Co.; Application

September 1, 1993.

Take notice that on August 26, 1993, Gulf States Utilities Company (Gulf States) filed an application under section 204 of the Federal Power Act requesting authorization to issue not more than 1,500,000 shares of new preferred stock, $100 par value or 6,000,000 shares of new preference stock, without par value or a combination thereof, in one or more series over a two-year period. Also, Gulf States requests exemption from the Commission's competitive bidding regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 24, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21760 Filed 9–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–70–000]

Haralson Generating Co., L.P.; Application for Commission Determination of Exempt Wholesale Generator Status

September 1, 1993.

On August 25, 1993, Haralson Generating Company, L.P. ("Haralson"), a Delaware limited partnership with its principal place of business at 7475 Wisconsin Avenue, Bethesda, Maryland, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Haralson intends to own a natural gas-fired electric generating facility with a maximum net power production capacity of between approximately 305 MW and 315 MW. All of the facility's electric power net of the facility's operating electric power will be purchased at wholesale by one or more public utilities.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 20, 1993 and must be served on Haralson. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21771 Filed 9–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–672–000]

Natural Gas Pipeline Company of America; Application

September 1, 1993.

Take notice that on August 18, 1993, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP93–672–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for permission authorizing the abandonment of facilities constructed in the 1930's and 1960's, and partial replacement of these facilities, all as more fully set forth in

the request which is on file with the Commission and open to public inspection.

Natural states that the proposed abandonment and construction project is the next phase of Natural's ongoing Amarillo Upgrade Program, which commenced in 1982. Natural further states that the purpose of the Amarillo Upgrade Program is to increase the reliability of Natural's services and reduce operating costs by eliminating or replacing parts of the system that are obsolete and require high operation and maintenance costs. Natural indicates that since 1982 it has replaced approximately 400 miles of its original 24-inch line constructed in the 1930's with approximately 159 miles of new 36-inch pipeline and 38 miles of new 42-inch line. Natural states, also, that a total of ninety-one compressor engines have been removed and replaced with sixteen more efficient compressor engines.

Specifically, Natural is hereby requesting authority for the abandonment of approximately 490 miles of the original 24" Amarillo No. 1 mainline and one 12,000 HP engine at intermediate Compressor Station 195 (CS 195) located in Washington County, Kansas. Natural is also requesting the issuance of a Certificate of Public Convenience and Necessity authorizing it to construct and operate: (1) approximately 9.41 miles of 30" loop and three separate segments of 36" loop totaling approximately 18.66 miles in Hutchinson County, Texas; Ford County, Kansas; Lincoln County, Kansas; and Otoe County, Nebraska, respectively, at an aggregate estimated cost of $19,020,000; and, (2) one 14,500 HP compressor engine, by means of retrofitting one existing 12,000 HP engine to 14,500 HP, at Compressor Station 195 located in Washington County, Kansas, at an estimated cost of $5,925,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 22, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21752 Filed 9-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EG93-77-000]

Nevada Cogeneration Associates #5; Application for Determination of Exempt Wholesale Generator Status

September 1, 1993.

On August 30, 1993, Texaco Nevada Cogeneration Company, located at 10 Universal City Plaza, Universal City, CA 91608, on behalf of Nevada Cogeneration Associates #5 (NCA #5), a partnership to be formed between Texaco Nevada Cogeneration Company and Texaco Black Mountain Inc., filed with the Federal Energy Regulatory Commission an Application for Determination of Status as an Exempt Wholesale Generator pursuant to Part 365 of the Commission's regulations.

NCA #5 is a partnership to be formed between Texaco Nevada Cogeneration Company and Texaco Black Mountain Inc. that will be engaged directly and exclusively in the business of (a) owning and operating a natural gas fired 67MW electric generating facility to be located in the Sunrise Mountain area of Clark County, Nevada, and (b) selling electric power at wholesale. Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 24, 1993 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21756 Filed 9-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EG93-79-000]

Nevada Cogeneration Associates #4; Application for Determination of Exempt Wholesale Generator Status

September 1, 1993.

On August 30, 1993, Texaco Clark County Cogeneration Company, located at 10 Universal City Plaza, Universal City, California 91608, on behalf of Nevada Cogeneration Associates #4 (NCA #4), a partnership to be formed between Texaco Clark County Cogeneration Company and Bonneville Nevada Corporation, filed with the Federal Energy Regulatory Commission an Application for Determination of Status as an Exempt Wholesale Generator pursuant to Part 365 of the Commission's regulations.

NCA #4 is a partnership to be formed between Texaco Clark County Cogeneration Company and Bonneville Nevada Corporation that will be engaged directly and exclusively in the business of (a) owning and operating a natural gas fired 56 MW electric generating facility to be located in the Apex area of Clark County, Nevada, and (b) selling electric power at wholesale. Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 24, 1993 and must be served on the applicant. Any

person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21759 Filed 9–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–642–000]

Nora Transmission Co.; Application

September 1, 1993.

Take notice that on August 13, 1993, Nora Transmission Company (Nora) 3500 Park Lane, Pittsburgh, Pennsylvania 15275–1102, filed in Docket No. CP93–642–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon transportation services for Equitable Resources Exploration Company (EREX) and Pine Mountain Oil and Gas, Inc. (Pine Mountain), all as more fully set forth in the application on file with the Commission and open to public inspection.

Nora proposes to abandon transportation services for EREX under special Rate Schedules FTS–1, ITS–1 and ITS–2 and for Pine Mountain under special Rate Schedule ITS–3. It is stated that the transportation services were authorized under Commission authorization in Docket No. CP88–28–000, *et al.* It is asserted that Nora would replace these transportation services with firm and interruptible transportation services under Nora's new Rate Schedules FTS and ITS pursuant to Nora's pending Part 284 blanket certificate application filed in Docket No. CP93–568–000. It is further asserted that the replacement services would be at the same level as the existing ones. Nora requests that the authorization requested herein be contingent on prior issuance of the blanket certificate.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 22, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Nora to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21751 Filed 9–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–79–000]

Sabine Pipe Line Co.; Proposed Changes in FERC Gas Tariff

September 1, 1993.

Take notice that on August 30, 1993, Sabine Pipe Line Company (Sabine) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following proposed tariff sheet, to be effective October 1, 1993:

First Revised Sheet No. 20

Sabine states that the Commission has specified the Annual Charge Adjustment (ACA) unit charge of $.0026/Mcf to be applied to rates in 1994 for recovery of 1993 annual charges. The ACA unit rate of $.0026/Mcf converts to $.0025/MMBTU under Sabine's basis for billing.

Sabine states that copies of the filing were served upon Sabine's customers, the State of Louisiana, Department of Natural Resources, Office of Conservation and the Railroad Commission of Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR, §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21768 Filed 9–7–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–8–000]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

September 1, 1993.

Take notice that on August 30, 1993, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised sheet tariff sheet, with a proposed effective date of October 1, 1993:

Eighth Revised Sheet No. 34A

South Georgia states that the aforesaid tariff sheet implements the Federal Energy Regulatory Commission's (Commission) revised Annual Charge Adjustment (ACA) of .25¢ per MMBtu. This represents an increase of .02¢ per MMBtu in the ACA charge from the current level of .23¢ per MMBtu.

South Georgia states that copies of South Georgia's filing will be served upon all of South Georgia's customers, interested state commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (Sections 385.214 and 385.211). All such motions or protests should be filed on or before September 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21766 Filed 9-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-80-000]

Tarpon Transmission Co.; Change In Annual Charge Adjustment

September 1, 1993.

Take notice that on August 26, 1993, Tarpon Transmission Company (Tarpon) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with a proposed effective date of October 1, 1993:

Eleventh Revised Sheet No. 2A
First Revised Sheet No. 2E
Fourth Revised Sheet No. 86A
Sixth Revised Sheet No. 96A

Tarpon states that the purpose of said filing is to revise its Annual Charge Adjustment surcharge in order to recover the Commission's annual charges for the 1993 fiscal year. Tarpon has requested that the Commission accept its tariff sheets to become effective on October 1, 1993.

Tarpon states that copies of the filing have been mailed to all jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). Such motions or protests should be filed on or before September 9, 1993. Such motions or protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person desiring to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21769 Filed 9-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EG93-78-000]

Texaco Cortez Energy Co.; Application for Determination of Exempt Wholesale Generator Status

September 1, 1993.

On August 30, 1993, Texaco Cortez Energy Company (Applicant), located at 10 Universal City Plaza, Universal City, California 91608, filed with the Federal Energy Regulatory Commission an Application for Determination of Status as an Exempt Wholesale Generator pursuant to Part 365 of the Commission's regulations.

The Applicant is a Delaware Corporation that will be engaged directly and exclusively in the business of (a) owning and operating a natural gas fired 95.5 MW electric generating facility to be located in the Daggett area of San Bernardino County, California, and (b) selling electric power at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 24, 1993 and must be served on the Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21758 Filed 9-7-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 1, 1993.

Take notice that on August 27, 1993, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets, with a proposed effective date of October 1, 1993:

Fifth Revised Volume No. 1

Second Revised Sheet No. 26
Second Revised Sheet No. 31
Second Revised Sheet No. 36
Second Revised Sheet No. 37
Third Revised Sheet No. 41
Third Revised Sheet No. 42
Second Revised Sheet No. 43
First Revised Sheet No. 46
First Revised Sheet No. 49
Second Revised Sheet No. 50
Second Revised Sheet No. 51
Second Revised Sheet No. 52

Original Volume No. 2

Fifteenth Revised Sheet No. 1J
Fifteenth Revised Sheet No. 1K
Eleventh Revised Sheet No. 1L

Texas Eastern states that the purpose of this filing is to permit the tracking of the ACA unit surcharge authorized by the Commission for fiscal year 1994. The ACA Unit Surcharge authorized by the Commission for fiscal year 1994 is $0.0026 per Mcf, $0.0025 per dth converted to Texas Eastern's measurement basis.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions and all current Rate Schedule FT-1 and IT-1 Shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21767 Filed 9-7-93; 8:45 am]

BILLING CODE 6717-01-M

Southeastern Power Administration

Proposed Rate Adjustment, Rate Extension, Public Hearing, and Opportunities for Public Review and Comment

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Notice.

SUMMARY: Southeastern proposed a new Wholesale Power Rate Schedule JW-1-D to replace the existing Rate Schedule JW-1-C. The new rate schedule will be applicable to Southeastern power sold to existing

preference customers in the Florida Power Corporation Service area.

Opportunities will be available for interested persons to review the present rates, the proposed new rate, the supporting studies, and to submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before October 22, 1993. A public information and public comment forum will be held in Tallahassee, Florida, on October 7, 1993. Persons desiring to speak at the forum must notify Southeastern at least 7 days before the forum is scheduled so that a list of forum participants can be prepared. Others present may speak if time permits. Persons desiring to attend the forum should notify Southeastern at least 7 days before the forum is scheduled. If Southeastern has not been notified by close of business on September 30, 1993, that at least one person intends to be present at the forum, the forum will be automatically canceled with no further notice.

ADDRESSES: Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635. The public comment forum will begin at 10 a.m. on October 12, 1993, in the Sheraton Hotel, 101 South Adams Street, Tallahassee, Florida 32101.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Director, Power Marketing, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by Order issued July 16, 1993, in Docket No. EF91–3031–000, confirmed and approved Wholesale Power Rate Schedule JW–1–C and JW–2–B applicable to Jim Woodruff Project's power for a period ending September 20, 1995.

Discussion

Existing rate schedules are supported by a January 1991 repayment study and other supporting data contained in FERC Docket ER91–3031–000. A repayment study prepared in August of 1993 shows that the existing rates recover the costs of the project within the repayment period and generate a large surplus. Existing rates require a step rate increase from $5.40 per kilowatt per month and 16.0 mills per kilowatt hour to $5.94 per kilowatt per month and 17.6 mills per kilowatt hour on September 20, 1994. A revised repayment study prepared in August of 1993 shows that Southeastern can forego this rate increase and still meet its repayment requirements. Southeastern is proposing to replace Rate Schedule JW–1–C with JW–1–D to forego this rate increase. The increase is not required because Corps Operation & Maintenance expense has been less than forecast in the January 1991 repayment study and major replacements that were expected to be made have been deferred. The rate increase foregone will reduce revenue for years 1995 through 2007 by $525,000 each year.

In developing the rate adjustment, Southeastern considered revenue requirements as determined by the August 1993 system Repayment studies. The studies are available for examination at the Samuel Elbert Building, Elberton, Georgia 30635, as is the 1991 repayment study and the proposed rate schedule.

Issued in Elberton, Georgia, August 25, 1993.

John A. McAllister, Jr.,

Administrator.

[FR Doc. 93–21839 Filed 9–7–93; 8:45 am]

BILLING CODE 6450–01–M

Intent To Formulate Revised Power Marketing Policy Georgia-Alabama-South Carolina System of Projects

AGENCY: Southeastern Power Administration, Department of Energy.

ACTION: Notice.

SUMMARY: Pursuant to its Procedure for Public Participation in the Formulation of Marketing Policy published in the Federal Register of July 6, 1978, 43 FR 29186, Southeastern intends to revise its marketing policy for future disposition of power from its Georgia-Alabama-South Carolina System of Projects.

The current power marketing policy published on October 1, 1980, 45 FR 65140, for Southeastern's Georgia-Alabama-South Carolina System is reflected in contracts for the sale of system power which are maintained in Southeastern's headquarter's offices. Proposals and recommendations for consideration in formulating the proposed revised marketing policy are solicited, as are requests for further information or consultation.

DATES: All submissions or requests should be made as soon as possible but not later than October 15, 1993.

ADDRESSES: Five copies of written proposals or recommendations should be submitted to the Administrator, Southeastern Power Administration, Elberton, Georgia 30635. (706) 283–9911.

SUPPLEMENTARY INFORMATION: A "Final Power Marketing Policy for Georgia-Alabama System of Projects" was developed and published in the **Federal Register** on October 1, 1980, 45 FR 65140 by Southeastern. Contracts under the policy were negotiated for the area west of the Savannah River effective February 1, 1985, and terminating May 31, 1994. The contracts negotiated for the eastern portion of the area were executed as of January 13, 1986, and terminate September 30, 1995. A new marketing policy is necessary in order to negotiate new contracts to supersede existing contracts when the contracts expire.

The Georgia-Alabama-South Carolina System consists of the Allatoona, Buford, Carters, Water F. George, Hartwell, Robert F. Henry, Millers Ferry, Richard B. Russell, J. Strom Thurmond, and West Point projects. The projects are currently integrated through the four operating companies of the Southern Company with the combined output of the system sold throughout the Southern Company area and in the area served by the South Carolina Public Service Authority, South Carolina Electric & Gas Company, and in the Duke Power Company area within a radius of 150 miles of the Thurmond and Hartwell projects. The policy establishes the marketing area for the system power and deals with the allocation of power among area customers. It involves the handling of energy at pumped storage projects and the utilization of area utility systems for essential purposes such as transmission and support. The policy deals with wholesale rates, resale rates, and energy and economic efficiency measures. The Carters Project has operating pumped storage units, and the Richard B. Russell Project has units designated for pumped storage when they are declared commercially available.

FOR FURTHER INFORMATION CONTACT: Administrator, Southeastern Power Administration, Elberton, Georgia 30635, (706) 283–9911.

Issued in Elberton, Georgia, August 25, 1993.

John A. McAllister,

Administrator.

[FR Doc. 93–21840 Filed 9–7–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4726-1]

Open Meeting on September 28-29, 1993: Life Cycle Assessment Review Panel of the National Advisory Council for Environmental Policy and Technology (NACEPT)

Under Public Law 92463 (The Federal Advisory Committee Act), EPA gives notice of a meeting of the Life Cycle Assessment (LCA) Review Panel. The LCA Review Panel is a standing subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory committee to the Administrator of the EPA. The LCA Review Panel is working to develop voluntary guidelines for practitioners of LCA, which is the cradle-to-grave assessment of the environmental and human health impacts of consumer products and industrial processes. The meeting will convene September 28 from 9 am to 5 pm and September 29 from 8 am to 3:30 pm at the Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 22314.

The LCA Review Panel will examine the following three EPA reports over the two day period:

Public Sources of Data for LCAs

The purpose of this report is to provide LCA practitioners with potentially useful public data sources for preparing LCAs. This report identifies and describes major types of public data sources that exist for potential use in LCAs and, in the case of non-bibliographic sources of data, presents data base profiles which contain a brief assessment of the relevance of the data base to LCA, a description of the information contained in the data base, and data base system information. Other sources of data identified in the report include bibliographic data bases, data base clearinghouses, foreign data bases, and ongoing studies.

Life Cycle Assessment: Guidelines for Assessing Data Quality

LCAs require the acquisition and synthesis of significant amounts of disparate data. While LCA practitioners usually undertake some level of data quality assessment, the rigor with which that evaluation is applied—and the extent to which LCA reports discuss data quality—varies significantly. This report provides LCA practitioners with guidelines for assessing and communicating LCA data quality in a systematic manner.

Life Cycle Impact Assessment Methods

Once a life cycle inventory is developed, the next step in LCA is to conduct a life cycle impact assessment: the assessment of potential environmental and human health impacts associated with a given product or process, based on the energy and raw material inputs and waste outputs compiled in the life cycle inventory phase of LCA. This report discusses a number of different methods at varying levels of complexity that are potentially applicable in life cycle impact assessment. Methods described in this report range from simple inventory data aggregation techniques to site-specific risk assessment.

The September 28-29, 1993 meetings will be open to the public. The September 28 meeting will focus on the LCA data sources and data quality assessment guidelines. The September 29 meeting will focus on the life cycle impact assessment methods report. Written comments will be reviewed by the Panel if received by September 24, 1993. Those interested in attending, sending written comments, or requiring additional information should contact Eugene Lee, OS-301, U.S. EPA, 401 M Street, SW, Washington, DC 20460 (202-260-7564) or Chuck French, MD-13, U.S. EPA, Research Triangle Park, NC 27711 (919-541-0467).

Terry Grogan,

Acting Director, Municipal & Industrial Solid Waste Division.

[FR Doc. 93-21803 Filed 9-7-93; 8:45 am]

BILLING CODE 6560-50-P

[OPP-30352; FRL-4641-5]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by October 8, 1993.

ADDRESSES: By mail submit comments identified by the document control number [OPP-30352] and the file symbol/registration number to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Attention PM 10, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: PM 10, Rita Kumar (Acting), Rm. 212, CM #2, (703-305-6502).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 7969-RRN. Applicant: BASF Corporation, Agricultural Products. PO Box 13528, Research Triangle Park, NC 27709-3528. Product name: Pyridaben Manufacturing Use Product. Insecticide/Miticide. Active ingredient: Pyridaben 2-*tert*-butyl-5-(4-*tert*-butylbenzylthio)-4-chloropyridazin-3-(2*H*)-one at 98 percent. Proposed classification/Use: None. A technical product use on non-food greenhouse crops. (PM 10)

2. File Symbol: 7969-RNA. Applicant: BASF Corporation. Product name: BAS 300 75WP. Insecticide/Miticide. Active ingredient: Pyridaben 2-*tert*-butyl-5-(4-*tert*-butylbenzylthio)-4-chloropyridazin-3-(2*H*)-one at 75 percent. Proposed classification/Use: Restricted . For use to control mites and whiteflies in greenhouses on ornamental plants, flowers, and foliage crops. (PM 10)

3. File Symbol: 62719-EUU. Applicant: DowElanco, 9002 Purdue Road, Indianapolis, IN 46268-1189. Product name: DE-473 Insecticide Concentrate. Insecticide/Termiticide.

Active ingredient: Hexaflumuron *N*((3,5-dichloro-4-(1,1,2,2-tetrafluoroethoxy)phenyl)amino) carbonyl)-2,6-difluoro benzamide at 97 percent. Proposed classification/Use: None. Manufacturing use only, for formulation into an insecticide, and uses for the termite baiting systems. (PM 10)

4. File Symbol: 62719–EUG. Applicant: DowElanco Co. Product name: NAF-46. Insecticide/Termiticide. Active ingredient: Hexaflumuron *N*((3,5-dichloro-4-(1,1,2,2-tetrafluoroethoxy)phenyl)amino) carbonyl)-2,6-difluoro benzamide at 0.1 percent. Proposed classification/Use: None. Used as an integrated monitoring and baiting system for control of subterranean termites. (PM 10)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operation Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: August 18, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–21408 Filed 9–7–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00363; FRL–4642–2]

Pesticide Reregistration Eligibility Document; Availability for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of final reregistration eligibility document; opening of public comment period.

SUMMARY: This Notice announces the availability of the final Reregistration Eligibility Document (RED) for 10,10'-Oxybisphenoxarsine (OBPA) and opens a public comment period. The RED is the Agency's formal regulatory assessment of the health and environmental data base for OBPA and presents the Agency's determination regarding which uses of OBPA are eligible for reregistration.

DATES: Written comments on the OBPA RED must be submitted by November 8, 1993.

ADDRESSES: Three copies of comments identified with the docket number (OPP–00363) should be submitted by mail to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket and docket index will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Cynthia Giles-Parker for questions concerning product-specific data requirements and labeling at (703) 305–5540. Questions on the generic database should be directed to Venus Eagle at (703) 308–8045. To request a copy of the RED or a RED Fact Sheet for OBPA, contact the Public Response and Program Resources Branch in Rm. 1128, CM #2 at the address given above (703) 305–5805.

SUPPLEMENTARY INFORMATION: The Agency has issued a final Reregistration Eligibility Document for OBPA. Under the provisions of the Federal Insecticide, Fungicide and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate most existing pesticides to make sure they meet current scientific and regulatory standards. The Agency has determined that the registered uses do not cause unreasonable adverse effects to people or the environment. EPA has determined that all products containing OBPA as an active ingredient are eligible for reregistration. All registrants of OBPA have been sent the RED and must respond to the labeling requirements and product specific data requirements (if applicable) within 8 months of receipt.

EPA is issuing the OBPA RED as a final document with a 60–day comment period. The reregistration program is being conducted under Congressionally mandated timeframes, and EPA is mindful of the need to make both timely reregistration decisions and involve the public. Although it does not affect the registrants' response due date, the 60–day public comment period provides an opportunity for public input and a mechanism for initiating any necessary amendments to the RED.

Dated: August 26, 1993.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 93–21718 Filed 9–7–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4726–4]

Superfund Program; New Policy on Performance of Risk Assessments During Remedial Investigation/Feasibility Studies (RI/FSs) Conducted by Potentially Responsible Parties (PRPs); Response to Public Comments on EPA's Current and Former Risk Assessment Policies and Response to Public Comments on EPA's Risk Assessment Evaluation Report—Notice of Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of the new risk assessment policy for risk assessments during PRP-lead RI/FSs and responses to public comments.

SUMMARY: This notice is the final of several notices resulting from the settlement of litigation between EPA and the Chemical Manufacturers' Association et al. (CMA), involving EPA's June 21, 1990 risk assessment policy which provided that all risk assessments under CERCLA would henceforth be conducted by EPA rather than by PRPs.

On February 20, 1992, EPA published a notice (57 FR 6616) which requested comments on the 1990 risk assessment policy, announced EPA's intent to conduct an evaluation of the 1990 policy, and requested comments on the methodology for such an evaluation. On March 15, 1993, EPA announced the

availability of its response to public comments on the evaluation methodology and the availability of its Risk Assessment Evaluation Report (58 FR 13757).

This notice announces the availability of EPA's new policy on PRP risk assessments at Superfund sites, which is contained in OSWER Directive No. 9835.15b (September 1, 1993). This notice also announces the availability of EPA's responses to public comments on the merits of the June 21, 1990 and pre-June 21, 1990 policies and to public comments on EPA's Risk Assessment Evaluation Report.

EPA considered the results of its evaluation, public comments on the 1990 policy, results of a 1993 Regional survey, and public comments on the risk assessment evaluation in developing its new risk assessment policy. In summary, the new policy states that it is generally more appropriate for the risk assessment to be conducted by EPA rather than by PRPs. However, EPA may, under certain circumstances, find it appropriate to allow PRPs to conduct the baseline risk assessment portion of the RI/FS. To determine whether this is appropriate in a particular case, the Agency will consider a variety of criteria based on the Agency's confidence in the PRP's ability to generate an accurate and timely risk assessment report.

EPA's responses to public comments are presented in "EPA's Response to Public Comments on the Merits of the Old and New Risk Assessment Policies" (August 31, 1993) and "EPA's Response to Public Comments on the Results of the Risk Assessment Evaluation Report" (August 31, 1993).

FOR FURTHER INFORMATION CONTACT: Matthew Charsky, U.S. Environmental Protection Agency, Office of Waste Programs Enforcement, Guidance and Evaluation Branch (5502–G), 401 M Street, SW., Washington, DC 20460, (703) 603–8931. EPA staff will be able to obtain copies of OSWER Directive 9835.15b, which implements this new policy, and EPA's responses to public comments from the Superfund Document Center by calling (202) 260–3046. Other parties may obtain copies of EPA's responses to public comments by calling the Superfund Document Center and may order Directive 9835.15b from the National Technical Information Service (NTIS) by calling (703) 487–4600.

SUPPLEMENTARY INFORMATION: EPA's new policy supersedes the portion of the August 28, 1990 guidance, "Performance of Risk Assessments in RI/FSs Conducted by PRPs," OSWER Directive No. 9835.15, that entirely precluded PRPs from conducting the risk assessment activities of the RI/FS. All remaining portions of this Directive and the appropriate portions of the supplemental guidance, OSWER Directive No. 9835.15a (July 2, 1991) will still remain in effect under EPA's new policy.

Dated: September 1, 1993.

Richard J. Guimond,

Assistant Surgeon General, USPHS, Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 93–21804 Filed 9–7–93; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–59969; FRL–4632–3]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 9 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 93–155, June 17, 1993.

Y 93–156, June 22, 1993.

Y 93–157, 93–158, June 21, 1993.

Y 93–159, 93–160, 93–161, 93–162, June 22, 1993.

Y 93–163, June 28, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, ETG–099 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 93–155

Importer. Elf Atochem North America.

Chemical. (S) Ethylene; butyl acrylate; glycidyl methacrylate.

Use/Production. (S) Coatings, vehicle formulation chemical intermediate. Prod. range: Confidential.

Y 93–156

Manufacturer. Confidential.

Chemical. (G) Methacrylic copolymer.

Y 93–157

Manufacturer. Confidential.

Chemical. (G) Polyol ester.

Use/Production. (G) Dehydration agent. Prod. range: Confidential.

Y 93–158

Manufacturer. Essex Specialty Products.

Chemical. (G) Hydroxyl functional polycarbomoyl (polyalkylene oxide) oligomer.

Use/Production. (G) Polymer used in sealant manufacture. Prod. range: Confidential.

Y 93–159

Manufacturer. Confidential.

Chemical. (G) Medium oil alkyd resin.

Use/Production. (S) Industrial air-dry and baking finishes. Prod. range: Confidential.

Y 93–160

Manufacturer. Confidential.

Chemical. (G) Medium oil alkyd resin.

Use/Production. (S) Industrial air-dry and baking finishes. Prod. range: Confidential.

Y 93–161

Manufacturer. Confidential.

Chemical. (G) Water reducible polyester.

Use/Production. (S) Water reduced baking enamels modified by melamines on epoxys. Prod. range: Confidential.

Y 93–162

Manufacturer. Hitac Adhesives and Coatings, Inc.

Chemical. (G) Siloxane modified polyurethane dispersion in water.

Use/Production. (G) Adhesive tape component, coating additive, water repellent coating on structures. Prod. range: Confidential.

Y 93–163

Manufacturer. Eastman Kodak Company.

Chemical. (G) Conensation product of a urethane dimer and a substituted phenylacrylate ester.

Dated: August 31, 1993.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–21818 Filed 9–7–93; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Establishment of Review Committee

Pursuant to the Federal Advisory Committee Act, Public Law 92–463 (5 U.S.C. appendix 2), the Administrator, Agency for Health Care Policy and Research (AHCPR), announces the establishment of the following review committee.

Designation: Health Care Policy and Research Special Emphasis Panel, HHS.

Purpose: The purpose of the Panel is to provide peer review of grant applications and contract proposals submitted to the AHCPR that require a unique combination of reviewer expertise, e.g., for complex multidisciplinary projects and new areas of study, or that require standards of review different from those ordinarily applied by standing peer review committees because of project size or that require expedited review.

Function: The Panel shall make recommendations to the Administrator, AHCPR, concerning the scientific and technical merit of health services research grant applications and contract proposals submitted to AHCPR.

Structure: The Panel has fluid membership, with members designated to serve for individual meetings rather than formally appointed for fixed terms of service. Members will be selected on an "as needed" basis in response to specific applications or proposals to be reviewed. Up to approximately 300 members will be designated each year. Members will be selected from outstanding authorities in the various fields of health services research, including, but not limited to, basic biomedical and clinical disciplines, health care technology development and assessment, clinical, social, organizational, and information sciences.

Termination: Notwithstanding section 14(a) of the Federal Advisory Committee Act, the Panel shall continue in existence until otherwise provided by law.

Dated: August 26, 1993.

J. Jarrett Clinton,

Administrator.

[FR Doc. 93–21596 Filed 9–7–93; 8:45 am]

BILLING CODE 4160–90–U

Food and Drug Administration

[Docket No. 93D–0237]

Process Validation Requirements for Drug Products Subject to Pre-Market Approval (for Human and Animal Use); Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guides (CPG's) 7132c.08 and 7125.38 entitled "Process Validation Requirements for Drug Products Subject to Pre-Market Approval." The CPG's provide guidance to FDA district offices concerning the availability of and evaluation of available process validation data during preapproval inspections of manufacturers of bulk pharmaceutical chemicals and dosage form drugs for human and animal use.

ADDRESSES: CPG's 7132c.08 and 7125.38 may be ordered as a single set from National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB93–203370 and include payment of $12.00 (includes $3.00 shipping and handling charges) for each set of the documents. Payment may be made by check, money order, charge card (American Express, VISA, or Mastercard), or billing arrangements made with NTIS. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703–487–4650. CPG's 7132c.08 and 7125.38 are available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William C. Crabbs, Center for Drug Evaluation and Research (HFD–323), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8089, or Edward J. Ballitch, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20853, 301–295–8726.

SUPPLEMENTARY INFORMATION: FDA is issuing the CPG's 7132c.08 and 7125.38 to provide internal guidance to FDA district offices concerning the availability and evaluation of available process validation data during preapproval inspections of manufacturers of bulk pharmaceutical chemicals and dosage form drugs for human and animal use. Validation of manufacturing processes is a requirement of the current good manufacturing practice regulations for finished pharmaceuticals (21 CFR part 211). Validated manufacturing processes help to ensure the safety, efficacy, and quality of drug products. Validation is based on the documented successful evaluation of multiple full scale batches to provide assurance that the processes will reliably meet predetermined specifications.

The statements made herein are not intended to create or confer any rights, privileges, or benefits on or for any private person, but are intended merely for internal FDA guidance.

Dated: August 30, 1993.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 93–21795 Filed 9–7–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93D–0204]

Silicone Devices Affected by Withdrawal of Dow Corning Silastic Materials; Alternative Review Procedure Guidance; Extension of Comment Period and Filing Deadline

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period and filing deadline.

SUMMARY: The Food and Drug Administration (FDA) is extending to December 5, 1993, the comment period on the notice of availability of the guidance entitled "Guidance for Manufacturers of Silicone Devices Affected by Withdrawal of Dow Corning Silastic Materials" that published in the **Federal Register** of July 6, 1993 (58 FR 36207). The guidance describes the procedures to be followed by manufacturers in determining when to make a submission pursuant to an alternative review process. The deadline for filing the submissions pursuant to the alternative review process is also extended to December 5, 1993. FDA is taking this action in response to a request for an extension of the filing deadline.

DATES: Written comments by December 5, 1993. The deadline for filing submissions is also December 5, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donald E. Marlowe, Center for Devices and Radiological Health (HFZ–150), Food and Drug Administration, 12200 Wilkins Ave., Rockville, MD 20852, 301–443–7003.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 6, 1993 (58 FR 36207), FDA issued a notice of availability of a guidance entitled "Guidance for Manufacturers of Silicone Devices Affected by Withdrawal of Dow Corning Silastic Materials." The guidance describes the procedures to be followed by manufacturers in determining when to make a submission pursuant to an alternative review process. Interested persons were given until September 7, 1993, to submit written comments on the established procedures. Affected manufacturers were also given until September 7, 1993, to file the submissions described in the guidance and required for entry to the alternative review process.

FDA received a request for an extension of the comment period for an additional 90 days. The request stated that additional time was needed to enable manufacturers to collect the necessary data and to make arrangements for an alternative silicone supply.

FDA agrees with the request for an extension and is granting a 90-day extension for the preparation of comments and for the filing of submissions.

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding the proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 1, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–21796 Filed 9–7–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–93–3628; FR–3353–C–02]

HOPE for Homeownership of Multifamily Units (HOPE 2); Notice of Fund Availability for Fiscal Year 1993; Correction

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability; Correction.

SUMMARY: On July 16, 1993 (58 FR 38466), the Department published in the **Federal Register**, a notice that announced the availability of up to $102.2 million in funds for applications for implementing grants under the HOPE for Homeownership of Multifamily Units program (HOPE 2). Since the publication of that notice, it has been noted that some of the Field Office addresses and telephone number contain errors. Therefore, in order to avoid further confusion, the purpose of this document is to publish a corrected listing of all Field Office addresses and telephone numbers.

Also, for the convenience of the applicants, the "**DATES**" section is being republished with this correction notice.

DATES: Applications must be physically received by the Field Office (FO) having jurisdiction over the proposed project on or before 3 p.m. (FO local time) on October 15, 1993. This application deadline is firm as to location, date, and hour. In the interest of fairness to all competing applicants, the Department shall treat as ineligible for consideration any application that is received after the deadline.

FOR FURTHER INFORMATION CONTACT: Prospective applicants may contact the Resident Initiatives Specialist (RIS) in the appropriate HUD Field Office listed at the end of this document.

SUPPLEMENTARY INFORMATION: Accordingly, in FR Doc. 93–16782, a Notice of Fund Availability for HOPE for Homeownership of Multifamily Units (HOPE 2); published in the **Federal Register** on July 16, 1993 (58 FR 38466), the Field Office addresses beginning on page 38471, in the first column, are corrected by republishing the list in its entirety, to read as follows:

HUD Field Offices

Alabama	Birmingham Office, Beacon Ridge Tower, 600 Beacon Pkwy. West, suite 300, Birmingham, AL 35209; (205) 290–7617, (TDD) (205) 290–7624.
Alaska	Anchorage Office, 949 East 36th Avenue, suite 401, Anchorage, AK 99508; (907) 271–4170, (TDD) (907) 271–4328.
Arizona	Phoenix Office, 400 N. 5th St., suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379–4434, (TDD) (602) 379–4461.
Arkansas	Little Rock Office, suite 900, 425 West Capitol Ave., Little Rock, AR 72201; (501) 324–5931, (TDD) (501) 324–5405.
California	Los Angeles Office, 1615 W. Olympic Blvd., Los Angeles, CA 90015; (213) 251–7122, (TDD) (213) 251–7038.
	San Francisco Regional Office, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102; (415) 556–4752, (TDD) (415) 556–8357.
	Sacramento Office, 777 12th St., suite 200, Sacramento, CA 95871; (916) 551–1351, (TTD) (916) 551–5971.
Colorado	Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; (303) 844–4513.
Connecticut	Hartford Office, 330 Main street, First Floor, Hartford, CT 06106; (203) 240–4523, (TDD) (203) 240–4522.
Delaware	Philadelphia Regional Office, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2560, (TDD) (215) 597–5564.
District of Columbia	Washington, DC Office, 820 First St., NE, Washington, DC 20002; (202) 275–9206, (TDD) (202) 275–0967.
Florida	Jacksonville Office, 325 W. Adams St., Jacksonville, FL 32202; (904) 791–2626, (TDD) (904) 791–1241.
Georgia	Atlanta Regional Office, Richard B. Russell Fed. Bldg., 75 Spring St., SW, Atlanta, GA 30303; (404) 331–5136, (TDD) (404) 731–2654.
Hawaii	Honolulu Office, 7 Waterfront Plaza, suite 500, 500 Ala Moana Blvd., Honolulu, HI 96813–4918; (808) 541–1327 (TDD) (808) 551–1356.
Idaho	Portland Office, 520 SW 6th Ave., Portland, OR 97204 (503) 326–2561.
Illinois	Chicago Regional Office, 77 W. Jackson Blvd., 26th Floor, Chicago, Il 60604–3507; (312) 353–5680.
Indiana	Indianapolis Office, 151 N. Delaware St., Indianapolis, IN 46204; (317) 226–7739, (TDD) 1 (800) 743–3333.

Iowa	Des Moines Office, Fed. Bldg., 210 Walnut St., room 239, Des Moines, IA 50309; (515) 284–4512, (TDD) (515) 284–4728.
Kansas	Kansas City Regional Office, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101; (913) 551–5464, (TDD) (913) 551–6972.
Kentucky	Louisville Office, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201; (502) 582–5251, (TDD) (502) 582–5139.
Louisiana	New Orleans Office, Fisk Fed. Bldg., 1661 Canal St., New Orleans, LA 70112; (504) 589–7200.
Maine	Manchester Office, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101; (603) 666–7681, (TDD) (603) 666–7518.
Maryland	Baltimore Office, City Crescent Building, 5th Floor, 105 Howard Street, Baltimore, MD 21201; (410) 962–3047, (TDD) (410) 962–0106.
Massachusetts	Boston Regional Office, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., room 375, Boston, MA 02222; (617) 565–5234, (TDD) (617) 565–5453.
Michigan	Detroit Office, Patrick V. McNamara Fed. Bldg., 477 Michigan Ave., Detroit, MI 48226; (313) 226–7900. Grand Rapids Office, 2922 Fuller Ave., NE. Grand Rapids, MI 49505; (616) 456–2100.
Minnesota	Minneapolis-St. Paul Office, 220 2nd St., South Minneapolis, MN 55401; (612) 370–3000.
Mississippi	Jackson Office, Dr. A.H. McCoy Fed. Bldg., 100 W. Capitol St., room 910, Jackson, MS 39269; (601) 965–4702, (TDD) (601) 965–4171.
Missouri:	
(Eastern)	St. Louis Office, 1222, Spruce St., St. Louis, MO 63103; (314) 539–6560, (TDD) (314) 539–6331.
(Western)	Kansas City Regional Office, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101; (913) 236–2162, (TDD) (913) 236–3972.
Montana	Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; 303 (844) 4513.
Nebraska	Omaha Office, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154; (402) 492–3101, (TDD) (402) 492–3183.
Nevada	San Francisco Regional Office, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102; (415) 556–4752, (TDD) (415) 556–8357.
New Hampshire	Manchester Office, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101; (603) 666–7681, (TDD) (603) 666–7518.
New Jersey	Newark Office, Military Park Bldg., 60 Park Pl., Newark, NJ 07102; (201) 877–1662, (TDD) (201) 877–6649.
New Mexico	Fort Worth Regional Office, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113; (817) 885–5401, (TDD) (817) 728–5447.
New York:	
(Upstate)	Buffalo Office, Lafayette Ct., 465 Main St., Buffalo, NY 14203; (716) 846–5755, (TDD) (716) 846–5787.
(Downstate)	New York Regional Office, 26 Federal Plaza, New York, NY 10278; (212) 264–6500, (TDD) (212) 264–0927.
North Carolina	Greensboro Office, 415 N. Edgeworth St., Greensboro, NC 27401; (919) 333–5361, (TDD) (919) 333–5518.
North Dakota	Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; (303) 844–4513.
Ohio	Cincinnati Office, Fed. Office Bldg., room 9002, 550 Main Street, Cincinnati, OH 45202; (513) 684–2884. Cleveland Office, One Playhouse Sq., 1375 Euclid Ave., room 420, Cleveland, OH 44114; (216) 522–4058. Columbus Office, 200 N. High St., Columbus, OH 43215; (614) 469–5737.
Oklahoma	Oklahoma City Office, Murrah Fed. Bldg., 200 NW 5th St., Oklahoma City, OK 73102; (405) 231–4891, (TDD) (405) 231–4891.
Oregon	Portland Office, 520 SW 6th Ave., Portland, OR 97204; (503) 326–2561.
Pennsylvania:	
(Western)	Pittsburgh Office, 412 Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219; (412) 644–6428, (TDD) (412) 644–5747.
(Eastern)	Philadelphia Regional Office, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106; (215) 597–2560, (TDD) (215) 597–5564.
Puerto Rico	Caribbean Office, 159 Carlos Chardon Ave., San Juan, PR 00918; (809) 766–6121.
Rhode Island	Providence Office, 2 Exchange Terrace, 330 John O. Pastore, Federal Building & U.S. Post Office—Kennedy Plaza,, Providence, RI 02903; (401) 528–5351, (TDD) (401) 528–5364.
South Carolina	Columbia Office, Strom Thurmond Fed. Bldg., 1835 Assembly St., Columbia, SC 29201; (803) 765–5592.
South Dakota	Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; (303) 844–4513.
Tennessee	Knoxville Office, 710 Locust St., Third Floor, Knoxville, TN 37902; (615) 549–9384, (TDD) (615) 549–9372. Nashville Office, 251 Cumberland Bend Dr., suite 200, Nashville, TN 37228; (615) 763–5213.
Texas	Fort Worth Regional Office, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113; (817) 885–5401, (TDD) (817) 728–5447. Houston Office, Norfolk Tower, 2211 Norfolk, suite 200, Houston, TX 77098; (713) 653–3274. San Antonio Office, Washington Sq., 800 Dolorosa, San Antonio, TX 78207; (512) 229–6800, (TDD) (512) 229–6885.
Utah	Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; (303) 844–4513.
Vermont	Manchester Office, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101; (603) 666–7681, (TDD) (603) 666–7518.
Virginia	Richmond Office, 3600 Centre, 3600 Broad Street, P.O. Box 90331, Richmond, VA 23220; (804) 278–4507, (TDD) (804) 278–4501.
Washington	Seattle Regional Office, Federal Office Bldg., 909 1st Avenue, suite 200, Seattle, WA 98104; (206) 220–5101, (TDD) 1 (800) 800–5029.
West Virginia	Charleston Office, 405 Capitol St., suite 708, , Charleston, WV 25301; (304) 347–7000, (TDD) (304) 347–7044.
Wisconsin	Milwaukee Office, Henry Reuss Fed. Plaza, 310 W. Wisconsin Ave., Milwaukee, WI 53203; (414) 297–3214.
Wyoming	Denver Regional; Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; (303) 844–4513.

Dated: September 1, 1993.

Myra L. Ransick,

Assistant General Counsel for Regulations.

[FR Doc. 93-21749 Filed 9-7-93; 8:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Policy Development and Research

[Docket No. N-93-3309; FR-3080-N-01]

Metric Policy and Metrication Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Metric Policy and Metrication Program.

SUMMARY: Section 5164 of the Omnibus Trade and Competitiveness Act of 1988 amended section 3 of the Metric Conversion Act of 1975 to designate the metric system of measurement as the preferred measurement system for U.S. trade and commerce, and requires each agency of the Federal Government to establish guidelines and plans to carry out the policy set forth in the law. This notice is issued in compliance with that law, and informs the public of the policies and procedures for use of the metric system of measurement within the Department of Housing and Urban Development.

DATES: Effective Date: November 8, 1993. Comments or suggestions may be submitted in writing on or before November 8, 1993.

ADDRESSES: The purpose of this notice is not to solicit comments regarding the Department's metric policy; however, the Department will consider written comments or suggestions that may facilitate implementation of section 3 of the Metric Conversion Act, as amended by section 5164 of the Omnibus Trade and Competitiveness Act of 1988. Comments or suggestions regarding this notice should be addressed to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. All comments received will be available for public inspection and copying, weekdays, between 7:30 a.m. to 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Edwin Stromberg, Office of Policy Development and Research, room 8134, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1520 (voice) or (202) 708-0770 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 5164 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, approved August 23, 1988) (OTCA), amended section 3 of the Metric Conversion Act of 1975 (15 U.S.C. 205b) (MCA), to designate the metric system of measurement as the preferred system of weights and measures for United States trade and commerce. The MCA, as amended by the OTCA, requires Federal agencies to use the metric system in procurement, grants, and other business-related activities by a date certain and, to the extent economically feasible, by the end of Federal Fiscal Year 1992. The MCA also requires Federal agencies to establish guidelines to implement the metric system of measurement.

The purpose of this notice is to inform the public of the Department's intent to use the metric system of measurement in its procurement, grants and other business activities. As noted earlier in this preamble, although the purpose of this document is not to solicit comments regarding the Department's metric policy and program, the Department will consider comments and suggestions that may facilitate implementation of section 3 of the MCA with respect to HUD's programs and activities.

Other Matters

Impact on the Economy

This notice is exempt from the requirements of Executive Order 12291 because it relates to agency organization and management under section 1(a)(3) of the Order.

Impact on Small Entities

This notice is exempt from the analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 605(b)) because notice and opportunity for comment are not required for these policy statements by section 553 of the Administrative Procedure Act or any other law.

Environmental Impact

An environmental finding under the National Environmental Policy Act of 1969 (42 U.S.C. 4332) is not necessary because this policy, which concerns internal administrative procedures, is categorically excluded under HUD regulations at 24 CFR 50.20(k).

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice do not have federalism implications and, thus, are not subject to review under the Order. No programmatic or policy changes result from issuance of this notice which would affect existing relationships between the Federal government and State and local governments.

Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice does not have a potential significant impact on family formation, maintenance and general well-being, thus, is not subject to review under the Order. No programmatic or policy changes result from issuance of this notice which would affect family formation, maintenance, and general well-being.

Accordingly, the Department's Metric Policy and Metrication Program are as follows:

A. Purpose

This Notice establishes policies and procedures for the use of the Metric System of Measurement in all program, procurement, and assistance (i.e., grant and cooperative agreement) activities of the Department of Housing and Urban Development (the Department of HUD), except where such use will significantly affect program operations or the activities of the HUD program participants in an adverse manner.

B. Applicability

This Notice applies to all programs and program offices of HUD.

C. Definition

The "Metric System of Measurement" is defined as the International System of Units (or SI, from the French "Le Systeme International d'Unites"), as established by the General Conference on Weights and Measures in 1960. Metric units used within the Department of Housing and Urban Development shall be as described in Federal Standard 376A, "Preferred Metric Units for General Use by the Federal Government," 1985. In this Notice, the terms metric, metric system, and metric units are used interchangeably with the term SI.

D. Policy

1. It is HUD policy to use the metric system in those program, procurement, and assistance activities where its use is cost-effective, and is in accordance with current practices in the industries and State and local governmental operations which are involved with programs of the Department.

2. The Department's procurement activities will use metric system standards to the extent that these are established in the Federal Acquisition Regulation.

3. The Departmental offices awarding assistance agreements will use metric system standards to the extent that these have been established by the Office of Management and Budget (OMB) in its applicable circulars governing grants management.

4. Recognizing that the home building industry currently utilizes the customary system of measurements, HUD expects to develop or identify appropriate standards and reference materials which can be adopted over time to provide the basis for the use of metric system of measurements in home building and other HUD-associated construction.

5. HUD expects to work with the model code organizations, both directly and through the Legislation and Regulations Subcommittee of the Interagency Metrication Operating Committee, to assure that appropriate metric standards are developed and adopted in the Nation's building codes.

E. Responsibilities

1. Metric Policy Committee

A Metric Policy Committee, chaired by the Assistant Secretary for Policy Development and Research, shall be established to review and direct overall Department metric activities, including the formulation of a Metric Transition Plan for the Department, which shall incorporate the requirements of the Metric Conversion Act. The Metric Policy Committee shall consist of the Assistant Secretaries for Administration, Community Planning and Development, Housing, Policy Development and Research, and Public and Indian Housing, and the General Counsel, or their designees at the level of Deputy Assistant Secretary. The Deputy Assistant Secretary for Research shall serve as the HUD member of the Interagency Council on Metric Policy.

2. Metric Coordinating Committee

A Metric Coordinating Committee shall be established to provide day-to-day coordination and communication on metric issues within the Department. The Metric Coordinating Committee shall consist of one senior career official appointed by each member of the Policy Committee; the Deputy Assistant Secretary for Research shall designate the chair of the Coordinating Committee, who will also serve as the HUD Metric Coordinator and member of the Interagency Metrication Operating Committee.

3. Metric Work Group

A Metric Work Group may be established in any major component of HUD, at the discretion of the Metric Policy Committee representative from that component, to coordinate metric implementation or training programs within the component. Such Work Groups shall be chaired by the appropriate Metric Coordinating Committee members.

F. Procedures

1. Program Offices shall review their existing Guidelines, Standards, Notices, and other requirements to determine whether metric measurements should be added to or substituted for existing measurement requirements, and develop a plan to make these changes.

2. Program Offices, in developing procurement requests, contract/assistance/interagency agreement specifications, work statements, notices of fund availability (NOFAs), and application kits, shall assess each requirement which involves measurement standards in terms of its applicability for metric system use.

3. HUD contracting officers shall review all procurement requests, contract specifications, grant announcements, and Interagency Agreements for compliance with any Federal Acquisition Regulation measurement system requirements.

4. Each HUD program office is responsible for reviewing the applicability of its assistance programs for metric system implementation, and shall prepare its NOFAs and application kits accordingly, i.e., to the extent required by the appropriate OMB grants management circulars.

5. Existing procurement contracts and assistance agreements which use the customary system need not be converted to metric units. Modification of existing programs to the metric system shall be avoided unless determined by the Metric Policy Committee that such modification is necessary or advantageous to the Government and to the participating governmental or private sector entity.

6. Technical reports, studies, position papers, and other documents shall, where appropriate, provide measurements in both the metric and customary systems. Principal emphasis shall be given to that system primarily used by the constituent group audience for the document. The use of dual measurement systems in such documents shall be reviewed annually by the Metric Policy Committee to determine whether a change in the policy is appropriate.

7. The Metric Coordinating Committee shall identify and publish conversion information and standards for uniform use throughout the Department, and recommend to the Metric Policy Committee a process for analyzing future actions to determine the measurement system to be used and for analyzing when such conversion would be considered cost-beneficial.

G. Reports

The Metric Coordinating Committee shall develop an annual report of metric activities during the preceding Fiscal Year, to be provided to the Deputy Assistant Secretary for Research by January 15 of the ensuring year. This report shall cover the metric activities by each element of HUD, and shall describe major accomplishments, recommendations, metric standards developed or adopted, and examples of metric use in significant procurement or program activities. This report shall be used as the basis of the annual report included in the Department's annual budget submission, as required by Section 12(a) of the Metric Conversion Act, as amended.

H. Statutory and Regulatory References

1. Metric Conversion Act (15 U.S.C. 205a–205k) as amended by section 5164 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, approved August 28, 1988).

2. 15 CFR part 1170—Metric Conversion Policy for Federal Agencies. (The Department of Commerce is the lead agency for metric conversion and has promulgated its guidance on metric conversion for Federal agencies at 15 CFR part 1170.)

3. Federal Standard 376A, "Preferred Metric Units for General Use by the Federal Government," 1985.

Dated: September 1, 1993.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

[FR Doc. 93–21834 Filed 9–7–93; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–020–03–4370–03: GP3–394]

Temporary Closure of Public Lands; Harney County, OR

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice.

SUMMARY: The Three Rivers Resource Area Manager announces the temporary closure of selected public lands under his administration. This action is being taken due to increased interest in wild horse gatherings, to prevent disruption of wild horse gathering operations, and to provide for public safety, safety of the wild horses, and for the safety of Bureau of Land Management (BLM) personnel conducting these operations.

EFFECTIVE DATE: The effective dates of the temporary restriction are September 13 to September 17, 1993.

FOR FURTHER INFORMATION CONTACT: Craig (Cody) Hansen, Three Rivers Resource Area Manager, Burns District, Bureau of Land Management, HC 74–12533 Hwy 20 West, Hines, Oregon 97738, telephone (503) 573–5241.

SUPPLEMENTARY INFORMATION: This closure applies to all individuals, whether on foot, horseback or in vehicles. The public lands and trails affected by this closure are described and located as follows:

Willamette Meridian

T. 30 S., R. 33 E., Section 13.
T. 29 S., R. 36 E., Section 19.
T. 29 S., R. 35 E., Section 13.

Aggregating approximately 1,920 acres.

The above restrictions do not apply to BLM personnel associated with the wild horse gathering operations, and to individuals granted written authorization by the Three Rivers Resource Area Manager. The Manager of the Three Rivers Resource Area will only consider requests for exceptions to this closure that are submitted in writing to him with a statement of reasons for the request. The authority for this closure is 43 CFR 8364.1. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months.

A map of the closed areas is posted in the Burns District Office of the BLM and on the main access roads that lead to the closed areas.

Dated: August 31, 1993.

Craig M. Hansen,

Three Rivers Resource Area Manager.

[FR Doc. 93–21791 Filed 9–7–93; 8:45 am]

BILLING CODE 4310-33-M

[UT–942–03–5700–11; UTU–70128]

Realty Action; Noncompetitive (Direct) Sale of Public Land in Emery County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, UTU-70128, noncompetitive (direct) sale of public land in Emery County, Utah.

SUMMARY: Notice is given that the following described parcel of public land has been examined, and through the development of local land-use planning decisions, based upon public input, resource considerations, regulations, and Bureau policies, the parcel has been found suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713) using noncompetitive (direct) sale procedures (43 CFR 2711.3–3):.

Salt Lake Meridian, Utah
T. 16 S., R. 10 E.,
Section 33, NW¼NW¼.

The described land aggregates 40.00 acres more or less.

The subject parcel of land has been leased to the Emery County School District since 1983 for the purpose of a school building site, through the provisions of the Recreation and Public Purposes Act (43 U.S.C. 869). The school district has not developed the site as required under the provisions of the lease, however future plans are to construct a school on the property.

The parcel is difficult and uneconomic to manage as part of the public lands, is not needed for any resource programs, and is not suitable for management by the Bureau or any other Federal department or agency. The parcel (UTU–70128) is being offered as a noncompetitive (direct) sale in accordance with 43 CFR 2711.3–3 to the Emery County School District. The land will not be offered for sale until at least sixty (60) days after publication of this notice in the **Federal Register**. The sale will be at no less than the appraised fair market value of $8,000.

Publication of this notice in the **Federal Register** segregates the public land from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent, or two hundred seventy (270) days from the date of the publication, whichever occurs first.

THE TERMS AND CONDITIONS APPLICABLE TO THE SALE ARE:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat, 391; 43 U.S.C. 945).

3. The sale of land will be subject to all valid existing rights, reservations, and privileges of record. Existing rights, reservations, and privileges of record include, but are not limited to:

A right-of-way, Serial No. UTU-54677, to the City of Elmo, its successors or assignees, for a culinary pipeline located in SLM, T. 16 S., R. 10 E., Section 33, SW¼NW¼NW¼, under the authority of the Act of October 21, 1976 (90 Stat. 2776, 43 U.S.C. 1761).

Sale Procedures: The buyer will be required to submit the fair market value of the property on the date of the sale. The land will be offered for sale at the Price River Resource Area Office.

Bidder Qualifications: Bidder must be U.S. citizens 18 years of age or over, a State or State instrumentality authorized to hold property, a corporation authorized to hold property; or a corporation authorized to own real estate in the State of Utah.

Bid Standards: The BLM reserves the right to accept or reject any and all offers or withdraw the land from sale if, in the opinion of the Authorized officer, consummation of the sale would not be fully consistent with section 203(g) of FLPMA or other applicable laws.

Comments: For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the Utah State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning the lands and the terms and conditions of the sale may be obtained from Mark Mackiewicz, Area Realty Specialist, Price River Resource Area, 900 North 700 East, Price, Utah 84501, (801) 637–4584, or from Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood Drive, P.O. Box 970, Moab, Utah 84532, (801) 259–6111.

Dated: September 1, 1993.

Roger Zortman,

District Manager.

[FR Doc. 93–21831 Filed 9–7–93; 8:45 am]

BILLING CODE 4310-DQ-M

National Park Service

General Management Plan, Tumacácori National Historical Park; Availability of Draft General Management Plan/ Environmental Impact Statement

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy

Act of 1969 (Pub. L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a draft environmental impact statement (DEIS) assessing the potential impacts of the proposed General Management Plan for Tumacácori National Historical Park, Santa Cruz County, Arizona.

The draft plan proposes a trail (the mission trail) linking the three sites that comprise the National Historical Park-Tumacácori, Calabazas, and Guevavi. Administrative facilities over known archeological remains at Tumacácori would be removed and relocated elsewhere on the site. Further, visitor facilities and an employee residence would be developed at Calabazas, while Guevavi would be accessed by guided tour and by the mission trail. Boundary changes are also suggested for Tumacácori and Guevavi, along with acquisition of approximately ½ acre of non-federal lands within the park. The alternatives under consideration, in addition to the proposal, include minimum requirements and no action alternatives. Under minimum requirements, administrative facilities would be removed and relocated at Tumacácori, and Calabazas and Guevavi would be accessed by guided tour and by the mission trail. Boundary changes would be suggested for Tumacácori. Under the no action alternative, no new visitor or administrative facilities, boundary changes, or trail linkages would be recommended.

SUPPLEMENTARY INFORMATION: A public meeting will be held on Thursday, September 23 from 7 p.m. to 9 p.m. at the Tubac Center for the Arts, Plaza Road, Tubac, AZ. Written comments on the DEIS will be accepted until November 26, 1993 and should be directed to Regional Director, Western Region, National Park Service, 600 Harrison Street, suite 600, San Francisco, California 94107. Requests for additional information and/or copies of the DEIS should be directed to this address or telephone 415/744–3968. Inquiries may also be directed to the Superintendent, Tumacácori National Historical Park at telephone 602/398–2341.

Copies of the DEIS area available at the Tumacácori National Historical Park Visitor Center, Tumacácori, Arizona. Copies are also available for inspection at libraries located in the park's vicinity.

Dated: August 24, 1993.

Lewis Albert,

Acting Regional Director, Western Region.

[FR Doc. 93–21794 Filed 9–7–93; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATES: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that the time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: *OPIC Agency Submitting Officer:* Lena Paulsen, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8565.

OMB Reviewer: Jeff Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, room 3201, Washington, DC 20503; 202/395–7340.

SUMMARY OF FORM UNDER REVIEW: *Type of Request:* Form renewal.

Title: Investment Mission Application.

Form Number: OPIC 78.

Frequency of Use: Once per investment mission.

Type of Respondents: Business or other institutions.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. Companies wanting to participate in investment missions.

Reporting Hours: 1 hour per application.

Number of Responses: 375 per year.

Federal Cost: $5,733.75 per year.

Authority for Information Collection: Section 234(d) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The Investment Mission Application Form is completed by U.S. companies interested in participating in an OPIC sponsored investment mission. The form provides the necessary information for internal evaluation of a U.S. firm's capability and resources to undertake an overseas project.

Dated: September 1, 1993.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 93–21790 Filed 9–7–93; 8:45 am]

BILLING CODE 3210-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–345]

Certain Anisotropically Etched One Megabit and Greater Drams, Components Thereof, and Products Containing Such Drams; Determination To Grant Application for Interlocutory Review; Disposition Upon Interlocutory Review

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to grant an application for interlocutory appeal of the presiding administrative law judge's (ALJ's) Order No. 9, finding that complainant Micron Semiconductor, Inc. ("Micron") was not entitled to withhold certain documents from discovery based on an assertion of attorney-client privilege. On interlocutory review, the Commission has determined to remand the privilege question to the ALJ with instructions that the claims of Micron with respect to the attorney-client privilege be examined and determined with reference to the standard established in *Knogo Corp.* v. *United States*, 213 U.S.P.Q. 936 (Ct.Cl. 1980).

FOR FURTHER INFORMATION CONTACT: James M. Lyons, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202) 205–3094. Copies of the Commission's order, its opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are, or will be, available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the

Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202) 205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810.

SUPPLEMENTARY INFORMATION: On May 17, 1993, the presiding ALJ issued Order No. 9, ruling on claims of privilege for documents withheld by Micron in response to a discovery request. The ALJ found that Micron was not entitled to withhold certain documents based on its assertion of attorney-client privilege because the materials in question consisted of technical information not provided to counsel in connection with the provision of legal services or as a part of a request for a legal opinion.

On June 4, 1993, in response to a motion from Micron, the ALJ granted leave to Micron to file an application for interlocutory review of Order No. 9 pursuant to Commission interim rule 210.70. On June 11, 1993, Micron filed its application for interlocutory review of Order No. 9. On June 29 and 30, 1993, respondent Hyundai Electronics Industries Co., Ltd. and the Commission investigative attorney filed their respective responses to Micron's application.

After considering all written submissions, the Commission determined to accept the application for interlocutory appeal. As a result of its interlocutory review, the Commission has remanded Order No. 9 to the ALJ to reconsider the attorney-client privilege claims made by Micron. On remand, the Commission directed the ALJ to re-evaluate Micron's privilege claims with reference to the standard established in *Knogo Corp.* v. *United States*, 213 U.S.P.Q. 936 (Ct.Cl. 1980).

This action was taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.70(b) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.70(b) (1992)).

By order of the Commission.

Issued: August 30, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–21847 Filed 9–7–93; 8:45 am]

BILLING CODE 7020–02–P–M

[Investigation No. 337–TA–345]

Certain Anisotropically Etched One Megabit and Greater Drams, Components Thereof, and Products Containing Such Drams; Commission Determination Not To Review Initial Determination Granting Joint Motion To Terminate Investigation With Respect to Two Respondents on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) (Order No. 14) in the above-captioned investigation granting a joint motion to terminate the investigation with respect to respondents GoldStar Electron Co., Ltd. and GoldStar Electron America, Inc. on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3093. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 14, 1992, based on a complaint alleging violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation into the United States, and the sale within the United States after importation of certain anisotropically etched one megabit and greater DRAMs, components thereof, and products containing such DRAMs, allegedly manufactured abroad by a process covered by claims 1, 2, 5, and 6 of U.S. Letters Patent 4,436,584.

On July 16, 1993, complainant Micron Semiconductor, Inc. and respondents GoldStar Electron Co., Ltd. and GoldStar Electron America, Inc. (the "GoldStar respondents") filed a joint motion to terminate the investigation with prejudice with respect to the GoldStar respondents on the basis of a settlement and license agreement. On July 27, 1993, complainant and the GoldStar respondents filed a letter clarifying certain matters in connection with the agreement. On July 30, 1993, the Commission investigative attorney filed a response in support of the joint motion.

On August 3, 1993, the presiding ALJ granted the motion, issuing an ID terminating the investigation as to the GoldStar respondents. No petitions for review or agency or public comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53 (19 CFR 210.53, as amended).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

By order of the Commission.

Issued: August 30, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–21848 Filed 9–7–93; 8:45 am]

BILLING CODE 7020–02–P–M

[Investigation No. 337–TA–334]

Certain Condensers, Parts Thereof and Products Containing Same, Including Air Conditioners for Automobiles; Commission Decision To Deny Application for Interlocutory Review of Administrative Protective Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to deny an application filed by the Office of Unfair Import Investigations ("OUII") for interlocutory review of the administrative protective order ("APO") issued in the above-captioned investigation on February 10, 1992.

ADDRESSES: Copies of the application, the Commission's Order, and all other nonconfidential documents filed in this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3061. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the

Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The APO in this investigation permits outside counsel for the complainant and the respondents to retain the evidentiary record, including materials containing confidential business information ("CBI"), until the expiration of any remedial order issued by the Commission.[1] The APO also allows counsel to retain for an indefinite period documents (including briefs and working papers) containing CBI that were created by the Commission, the presiding administrative law judge ("ALJ"), or counsel for a party.

With leave from the ALJ, OUII applied for interlocutory Commission review of the APO. OUII pointed out that the APO is inconsistent with Commission's longstanding practice of (1) defining "final termination" of an investigation as the exhaustion of the appeals process, and (2) requiring parties to return or destroy all documents containing CBI upon such termination. OUII argued, nevertheless, that there was good cause for not adhering to the customary practice and that the APO should be affirmed.

A special hearing was conducted on December 17, 1992. (See 57 FR 54418, Nov. 18, 1992.) The participants were: (1) Complainant Modine Manufacturing Company; (2) respondents Mitsubishi Motors Corporation and Mitsubishi Motor Sales of America (collectively, "Mitsubishi")[2]; (3) OUII; and (4) the ITC Trial Lawyers Association, which appeared as an *amicus curiae*.

After considering OUII's application for interlocutory review, all other written submissions, and the testimony at the hearing, the Commission determined, by a 4–2 vote (Commissioners Rohr and Nuzum dissenting), to deny the application and take no action on the APO.

This disposition was taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.70(b)(1) (19 CFR 210.70(b)(1) (1993)).

By order of the Commission.

[1] No remedial order has been issued. The Commission determined that there was no violation of section 337 of the Tariff Act (19 U.S.C. 1337). *See* 58 FR 36701 (July 8, 1993); 58 FR 40833 (July 30, 1993).

[2] At the hearing, counsel for Mitsubishi stated that he was appearing on behalf of all respondents in the Condensers investigation. See Transcript of Proceedings (Dec. 17, 1992) at 14.

Issued: September 2, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–21852 Filed 9–7–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–348]

Certain In-Line Roller Skates With Ventilated Boots and In-Line Roller Skates With Axle Aperture Plugs and Component Parts Thereof; Commission Determination To Review an Initial Determination Granting a Motion To Amend the Notice of Investigation To Allow Discovery on Public Interest and Remedy

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined on its own motion to review the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation amending the notice of investigation to authorize discovery, motions to compel, and orders compelling information on the public interest issues while the case is before the ALJ.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Anjali K. Singh, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3117. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: On February 18, 1993, Rollerblade, Inc. filed a complaint with the Commission alleging unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The unfair acts alleged in the complaint are the unauthorized importation into the United States, the sale for importation, and the sale within the United States after importation of certain in-line roller skates with ventilated boots, and in-line roller skates with axle aperture plugs and component parts thereof, that allegedly infringe claims 1, 2, 3, 4, 5, 6, 7 or 8 of U.S. Letters Patent 5,171,033, and/or claim 5 of U.S. Letters Patent 5,048,848. On March 18, 1993, the Commission voted to institute an investigation of the complaint and published notice of its investigation in the **Federal Register** (58 FR 16204 (March 25, 1993)).

On July 23, 1993, respondent Roces SRL filed a motion to amend the notice of investigation to authorize discovery and evidence to be taken relating to the issues of public interest and remedy (Motion No. 348–29). The Commission investigative attorney supported the motion. Complainant Rollerblade filed a response in opposition to the motion to amend the notice of investigation. On July 28, 1993, the ALJ issued an initial determination (ID) amending the notice of investigation. No petitions for review or agency comments have been filed, and no public comments are expected.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.55 (19 CFR 210.55).

By order of the Commission.

Issued: August 31, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–21849 Filed 9–7–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 337–TA–348]

Certain In-Line Roller Skates With Ventilated Boots and In-Line Roller Skates With Axle Aperture Plugs and Component Parts Thereof; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: Brookfield Athletic Company, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on August 30, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: August 27, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–21845 Filed 9–7–93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337–TA–348]

Certain In-Line Roller Skates With Ventilated Boots and In-Line Roller Skates With Axle Aperture Plugs and Component Parts Thereof; Commission Determination To Review and Remand an Initial Determination Granting a Motion for Partial Summary Determination on the Issue of Domestic Industry

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and remand the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation granting complainant Rollerblade, Inc.'s motion for partial summary determination on the issue of domestic industry.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC. 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Anjali K. Singh, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC. 20436, telephone 202–205–3117. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: On February 18, 1993, Rollerblade, Inc. filed a complaint with the Commission alleging unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The unfair acts alleged in the complaint are the unauthorized importation into the United States, the sale for importation, and the sale within the United States after importation of certain in-line roller skates with ventilated boots, and in-line roller skates with axle aperture plugs and component parts thereof, that allegedly infringe claims 1, 2, 3, 4, 5, 6, 7 or 8 of U.S. Letters Patent 5,171,033, and/or claim 5 of U.S. Letters Patent 5,048,848. On March 18, 1993, the Commission voted to institute an investigation of the complaint and published notice of its investigation in the **Federal Register** (58 FR 16204 (March 25, 1993)).

On May 27, 1993, complainant Rollerblade, Inc. filed a motion (Motion No. 348–9) for partial summary determination on the issue of domestic industry. On July 13, 1993, respondents Roces SRL, Exel Marketing Inc., Koflach Sport G.m.b.H., Variflex, Inc., and Yuh Jou Co. Ltd. filed an 3 opposition to complainant's motion. The Commission investigative attorney (IA) supported the motion. On July 30, 1993, the ALJ issued an ID granting Motion No. 348–9. On August 10, 1993, the IA filed a petition for review of the ID on the basis that it was without governing Commission precedent and has significant implications for future investigations. On August 13, 1993, respondents Roces SRL, Exel Marketing Inc. and Variflex Inc. filed a petition for review on the basis that the issues affect Commission policy and the ID contains erroneous findings of material fact and erroneous legal conclusions. On August 17, 1993, complainant filed a response to the petitions for review.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53(h) (19 CFR 210.53(h)).

Issued: August 31, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–21850 Filed 9–7–93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337–TA–331]

Certain Microcomputer Memory Controllers, Components Thereof, and Products Containing Same; Commission Decision To Deny Application for Interlocutory Review of Administrative Protective Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to deny an application filed by the Office of Unfair Import Investigations ("OUII") for interlocutory review of the administrative protective order ("APO") issued in the above-captioned investigation on October 23, 1991.

ADDRESSES: Copies of the application, the Commission's Order, and all other nonconfidential documents filed in this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3061. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The APO in this investigation permits outside counsel for each party to retain all confidential materials from the investigation until the expiration of any remedial order issued in the investigation.[1] The APO also allows counsel to retain for an indefinite period

[1] No remedial order was issued. See *infra*. n.2.

documents (including briefs and working papers) containing confidential business information ("CBI") that were created by the Commission, the presiding administrative law judge ("ALJ"), or counsel for a party.

With leave from the ALJ, OUII applied for interlocutory Commission review of the APO. OUII pointed out that the APO is inconsistent with Commission's longstanding practice of (1) defining "final termination" of an investigation as the exhaustion of the appeals process, and (2) requiring parties to return or destroy all documents containing CBI upon such termination. OUII argued, nevertheless, that there was good cause for not following the customary practice and that the APO should be affirmed.

A special hearing was conducted on December 17, 1992. (See 57 FR 54418 (Nov. 18, 1992).) OUII and the ITC Trial Lawyers Association (who appeared as an *amicus curiae*) were the only participants in connection with OUII's application for interlocutory review of the APO in the subject investigation. The complainant and the respondents did not appear at the hearing or file written submissions.[2]

After considering OUII's application for interlocutory review, all other written submissions, and the testimony at the hearing, the Commission determined, by a 4–2 vote (Commissioners Rohr and Nuzum dissenting), to deny the application and take no action on the APO.

This disposition was taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.70(b)(1) (19 CFR 210.70(b)(1) (1993)).

Because the investigation was terminated without a remedial order and there have been no judicial appeals, the Commission Order states that all counsel who have not previously done so must promptly comply with the APO provisions requiring the return or destruction of certain materials containing CBI. The Order also directs them to file written certification of such compliance with the Secretary, within 30 days after service of the Commission Order.

Issued: September 2, 1993.

[2] On the day of the hearing, the Commission terminated the investigation on the basis of complainant's settlement with two respondents and its withdrawal of the complaint as to the remaining respondent. The notice of termination stated, however, that the Commission was retaining jurisdiction over the APO while it considered the of post-termination document retention issues set forth in OUII's petition for interlocutory review. See 57 FR 61097 (Dec. 23, 1992).

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–21851 Filed 9–7–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 337–TA–341]

Certain Static Random Access Memories, Components Thereof, and Products Containing Same; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: United Microelectronics Corporation and Micro-Comp Industries.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on August 30, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: August 27, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–21846 Filed 9–7–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 332–345]

Annual Reports on U.S. Trade Shifts in Selected Commodity Areas

AGENCY: International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: The Commission on its own motion has instituted investigation No. 332–345, Annual Reports on U.S. Trade Shifts in Selected Commodity Areas, under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) for the purpose of preparing annual trade shifts reports for a period of three years (covering trade in 1993–1995). Each annual report will summarize and provide brief analyses of the major trade developments which occurred in the preceding year, and is expected to be published in July of each year. The reports will also provide summary trade information and basic statistical profiles of nearly 300 industry/commodity groups.

FOR FURTHER INFORMATION CONTACT: Carl Seastrum (202–205–3493), Minerals, Metals, and Miscellaneous Manufactures Division, Office of Industries, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION: The Commission has published such reports on a quarterly, semiannual, or annual basis since 1981. Previously, such reports were not part of an investigative authority numbering series. Copies of the 1992 Trade Shifts report (September 1993) will be available from the Secretary to the Commission in mid-September 1993. Comments from the public concerning how these reports can be made more useful are welcome and should be addressed to the Secretary to the Commission, U.S. International

Trade Commission, 500 E Street SW., Washington, DC 20436.

Issued: August 27, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-21844 Filed 9-7-93; 8:45 am]

BILLING CODE 7035-01-P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55; Sub-No. 473X]

CSX Transportation, Inc.; Abandonment Exemption in Lake County, IN

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon approximately 0.18 miles of rail line between milepost LQ-25.58 near Airline Junction and milepost LQ-25.76 near Maynard, in Lake County, IN.

Applicant has certified that:

(1) No local traffic has moved over the line for at least 2 years;

(2) There is no overhead traffic on the line;

(3) No formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and

(4) The requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 8, 1993 (unless stayed). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by September 20, 1993.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 28, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water St., J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void ab initio.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by September 13, 1993. Interested parties may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 27, 1993.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-21832 Filed 9-7-93; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay of the abandonment exemption on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements as long as it retains jurisdiction to do so.

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 93-58; Exemption Application No. D-9312, et al.]

Grant of Individual Exemptions; Federal Paper Board Salaried Employees' Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Federal Paper Board Salaried Employees' Pension Plan (the Plan) Located in Montvale, New Jersey

[Prohibited Transaction Exemption 93–58; Application No. D–8312]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The proposed contribution to the Plan of approximately 11,051 acres of growing timber (the Timber) by the Federal Paper Board Company, Inc. (the Employer), the Plan's sponsor and as such a party in interest with respect to the Plan, in partial satisfaction of the Employer's obligation to make certain cash contributions to the Plan by September 15, 1993; and (2) the proposed sale of the Timber by the Plan to the Employer when the Timber is harvested by the Employer at a later date; provided that the following conditions are met:

(a) The Timber is valued at an amount which is no greater than its fair market value at the time of contribution, as established by an independent, qualified appraiser;

(b) The terms and conditions of the contribution are at least as favorable to the Plan as terms and conditions which the Plan could obtain in a purchase of similar timber by the Plan from an unrelated party;

(c) The fair market value of the Timber does not exceed 10% of the Plan's total assets at the time of the contribution and at any time during which the Timber is held as an asset for the Plan's portfolio;

(d) In any sale of the Timber by the Plan to the Employer at a later date, the Plan receives an amount which is no less than the greater of either: (i) The fair market value of such Timber at the time of the transaction as established by an independent, qualified appraiser; or (ii) the fair market value of the Timber at the time of the contribution as established by the independent appraisal which was used for valuing the Timber when the contribution was made by the Employer;

(e) With respect to the contribution of the Timber to the Plan and any sale of the Timber by the Plan to the Employer, the Plan does not pay any commissions or other expenses with respect to such transactions;

(f) AmSouth Bank, N.A. (AmSouth), as an independent, qualified fiduciary for the Plan, determines that the proposed contribution of the Timber to the Plan is in the best interests of the Plan as an investment for the Plan's portfolio at the time of the transaction, and protective of the Plan and its participants and beneficiaries;

(g) AmSouth determines that upon any sale of the Timber by the Plan to the Employer, the sale would be in the best interests and protective of the Plan and its participants and beneficiaries;

(h) AmSouth monitors the performance of the Timber as an investment for the Plan and takes whatever action is necessary to safeguard the interests of the Plan and its participants and beneficiaries; and

(i) AmSouth monitors the compliance by all parties with the terms and conditions of the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 12, 1993 at 58 FR 37525.

Written Comments and Modifications: The Department received four written comments with respect to the transactions described in the notice of proposed exemption (the Proposal).

The comments were from participants of the Plan who are currently employed by the Employer or an affiliate. The commenters were concerned about the prudence of the Plan's acquisition of the Timber as an investment for the Plan's portfolio. The commenters generally believed that the Timber would be a speculative investment in terms of its potential appreciation in value, would involve excessive cost to manage, and would expose the Plan to unnecessary risk of loss due to damage from fire, disease or other natural causes. The commenters believed that the Plan should consider other investment alternatives which will yield a more secure rate of return. In this regard, the commenters stated that the Plan's investment in the Timber involves too much uncertainty because there is no way to predict future demand for the Timber or whether the Timber will be in good condition at harvest time. In addition, one commenter noted that for the Plan to receive the Timber in lieu of a cash contribution would not be in the Plan's best interest because the Timber would be a less liquid asset than cash or other investments, such as stocks and bonds. Finally, one commenter stated that the notice procedures used for the Proposal did not provide interested persons adequate time to study the Proposal and comment thereon.

AmSouth responded to the issues raised by the comments as the Plan's independent fiduciary for the proposed transactions.

With respect to the comments regarding the prudence of the Timber as a Plan investment, AmSouth states that the investment of approximately 7% of the Plan's assets in the Timber is an excellent investment which complies with the Plan's investment objectives and will not adversely affect the liquidity needs of the Plan. AmSouth represents that it manages over $250 million worth of timberland assets in a fiduciary capacity and maintains a natural resources department which manages over 500,000 acres of timber held in investment portfolios. Thus, AmSouth believes that it is well-suited for judging the prudence of the Timber as an investment for the Plan.

With respect to the comments regarding the Timber being a "speculative" Plan investment, AmSouth states that the Timber has excellent potential for value appreciation and can be expected to yield a very favorable rate of return. In addition, AmSouth emphasizes that because the Employer has agreed to purchase the Timber at any time the Plan proposes to sell the Timber at a purchase price equal to the greater of its fair market value at the time of sale or at the time of its contribution to the Plan, the Plan is protected against loss of principal (see Paragraph 3 of the Proposal). AmSouth believes that the combination of expected return and protection of principal renders the Timber a "better than arm's-length" investment for the Plan. Therefore, AmSouth does not agree that the Timber should be characterized as a "speculative" investment.

With respect to the comments regarding the Timber as an "illiquid" investment, AmSouth represents that there should be sufficient need for the Timber in the future for an available market of purchasers to be expected. AmSouth states that the above-described agreement of the Employer to purchase the Timber actually guarantees a willing purchaser, thereby negating any "illiquidity" problem.

With respect to the comments regarding the excessive management expenses for the Timber, AmSouth states that the Employer has agreed to provide forestry management services to the Plan for the Timber under an arrangement whereby the fees charged will only reflect the Employer's direct expenses for such services (see Paragraph 2 of the Proposal). AmSouth

is obligated to ensure that the Plan only repay the Employer for direct expenses which are reasonable in connection with the services provided. AmSouth considers this to be a "better than arm's-length" arrangement for the Plan because if the Plan were to receive a cash contribution from the Employer and use the cash to purchase similar timber on the open market, the Plan may have to retain a third party service-provider to perform such management services at a significantly greater cost than under the arrangement with the Employer.

With respect to the comments regarding the Timber investment exposing the Plan to unnecessary risk of loss, AmSouth states that unlike many typical investments in stocks and bonds where the movement of interest rates or the stock market can result in loss of principal, the above-described agreement with the Employer to purchase the Timber at the greater of its fair market value at the time of sale or at the time of contribution protects the Plan against risk of loss. In addition, AmSouth notes that although fire, flood or insect infestation would reduce the value of the Timber, such events would not, except in the most unlikely "worst case" scenario, eliminate the Timber's value because any such affected timber could typically be sold for certain commercial uses. AmSouth states that the Employer specifically selected geographically dispersed tracts of timber in order to limit the likelihood of any one occurrence impacting the remaining non-contiguous tracts.

In summary, AmSouth, as a large institutional fiduciary with significant employee benefit plan investment and timberland expertise, believes that the Timber is an excellent investment for the Plan which is protective of the Plan's interests as a result of the above-discussed agreements with the Employer and the implementation of various safeguards required by the Department as conditions for the proposed exemption. AmSouth represents that it will monitor compliance by the parties with such conditions and will take any action necessary to safeguard the interests of the Plan and its participants and beneficiaries.

With respect to the comment regarding the notice procedures used for the Proposal, the Employer represents that notice of the Proposal with a copy of the Proposal as published in the **Federal Register** on July 12, 1993 was sent by first class mail to all interested persons, including all participants of the Plan, on July 13, 1993 and was received by such persons by the deadline for notice to interested persons on July 27, 1993. Interested persons were informed that the deadline for submitting comments in writing to the Department was August 26, 1993. An authoritized representative of the Employer has provided the Department with a declaration under penalty of perjury attesting to the truth of the information regarding the Employer's notice to interested persons as required by the Department's regulations (see 29 CFR 2570.43). In this regard, the Department notes that the Employer has complied with the Department's exemption procedures regarding notification of interested persons.

Finally, with respect to the conditions of the Proposal, the Department on its own initiative has determined to modify the Proposal by adding an additional condition which requires that for the contribution of the Timber to the Plan and any sale of the Timber by the Plan to the Employer the Plan will not pay any commissions or other expenses with respect to such transactions (see condition (e) above). The Employer has agreed to this condition and AmSouth states that it will enforce the condition along with the other conditions of the Proposal.

Accordingly, after consideration of the entire record, the Department has determined to grant the exemption as modified.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Prudential Mutual Fund Management, Inc. (PMF) Located in New York, NY

[Prohibited Transaction Exemption 93–59; Exemption Application No. D–9217]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the purchase or redemption of shares by an employee benefit plan, an individual retirement account (the IRA) or a retirement plan for a self-employed individual (the Keogh Plan; collectively, the Plans) in the Target Portfolio Trust (the Trust) established in connection with such Plans' participation in the Target Personal Investment Advisory Service (the Target Program). In addition, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (E) and (F) of the Code, shall not apply to the provision, by Prudential Securities Incorporated (Prudential Securities), of investment advisory services to an independent fiduciary of a participating Plan (the Independent Plan Fiduciary) which may result in such fiduciary's selection of portfolios of the Trust (the Portfolios) in the Target Program for the investment of Plan assets.

This exemption is subject to the following conditions that are set forth below in Section II.

Section II. General Conditions

(1) The participation of Plans in the Target Program is approved by an Independent Plan Fiduciary. For purposes of this requirement, an employee, officer or director of Prudential Securities and/or its affiliates covered by an IRA not subject to title I of the Act will be considered an Independent Plan Fiduciary with respect to such IRA.

(2) The total fees paid to Prudential Securities and its affiliates constitute no more than reasonable compensation.

(3) No Plan pays a fee or commission by reason of the acquisition or redemption of shares in the Trust.

(4) The terms of each purchase or redemption of Trust shares remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(5) Prudential Securities provides written documentation to an Independent Plan Fiduciary of its recommendations or evaluations based upon objective criteria.

(6) Any recommendation or evaluation made by Prudential Securities to an Independent Plan Fiduciary are implemented only at the express direction of such independent fiduciary.

(7) Prudential Securities provides investment advice in writing to an Independent Plan Fiduciary with respect to all available Portfolios.

(8) Any sub-adviser (the Sub-Adviser) that acts for the Trust to exercise investment discretion over a Portfolio is independent of Prudential Securities and its affiliates.

(9) The quarterly investment advisory fee that is paid by a Plan to Prudential Securities for investment advisory services rendered to such Plan is offset by such amount as is necessary to assure that PMF retains no more than 20 basis points from any Portfolio (with the exception of the U.S. Government Money Market Portfolio for which PMF retains an investment management fee of 12.5 basis points) containing investments attributable to the Plan investor.

(10) With respect to its participation in the Target Program prior to purchasing Trust shares,

(a) Each Plan receives the following written or oral disclosures or questionnaires from Prudential Securities or the Trust:

(1) A copy of the prospectus (the Prospectus) for the Trust discussing the investment objectives of the Portfolios comprising the Trust, the policies employed to achieve these objectives, the corporate affiliation existing between Prudential Securities, PMF and its subsidiaries, the compensation paid to such entities and additional information explaining the risks attendant to investing in the Trust.

(2) Upon written or oral request to Prudential Securities, the Independent Plan Fiduciary will be given a Statement of Additional Information supplementing the Prospectus which describes the types of securities and other instruments in which the Portfolios may invest, the investment policies and strategies that the Portfolios may utilize, including a description of the risks.

(3) As applicable, an Investor Profile Questionnaire given to the Independent Plan Fiduciary or eligible participant of a Plan providing for participant-directed investments (the section 404(c) Plan).

(4) As applicable, a written analysis of Prudential Securities' asset allocation decision and recommendation of specific Portfolios given to the Independent Plan Fiduciary or the participant in a section 404(c) Plan.

(5) A copy of the investment advisory agreement between Prudential Securities and such Plan relating to participation in the Target Program.

(6) Upon written request to the Trust, a copy of the respective investment advisory agreement between Prudential Securities and the Sub-Advisers.

(7) As applicable, an explanation by a Prudential Securities Financial Advisor (the Financial Advisor) to section 404(c) Plan participants or the Independent Plan Fiduciary of the services offered under the Target Program and the operation and objectives of the Portfolios.

(8) Copies of the proposed exemption and grant notice describing the exemptive relief provided herein.

(b) If accepted as an investor in the Target Program, an Independent Plan Fiduciary of an IRA or Keogh Plan, is required to acknowledge, in writing to Prudential Securities, prior to purchasing Trust shares that such fiduciary has received copies of the documents described in subparagraph 10(a) of this section.

(c) With respect to a section 404(c) Plan, written acknowledgement of the receipt of such documents is provided by the Independent Plan Fiduciary (i.e., the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares, or, in some instances, the Plan participant). Such Independent Plan Fiduciary will be required to represent in writing to PMF that such fiduciary is (1) Independent of PMF and its affiliates and (2) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the Target Program.

(d) With respect to a Plan that is covered under title I of the Act, where investment decisions are made by a trustee, investment manager or a named fiduciary, such Independent Plan Fiduciary is required to acknowledge, in writing, receipt of such documents and represent to PMF that such fiduciary is (1) Independent of PMF and its affiliates, (2) capable of making an independent decision regarding the investment of Plan assets, and (3) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the Target Program.

(11) Subsequent to its participation in the Target Program, each Plan receives the following written or oral disclosures with respect to its ongoing participation:

(a) Written confirmations of each purchase or redemption transaction by the Plan with respect to a Portfolio.

(b) Telephone quotations from Prudential Securities of such Plan's account balance.

(c) A monthly statement of account from Prudential Securities specifying the net asset value of the Plan's investment in such account to the extent there are transactions by the Plan.

(d) The Trust's semi-annual and annual report which will include financial statements for the Trust and investment management fees paid by each Portfolio.

(e) A written quarterly monitoring report (the Quarterly Account Monitor) containing a record of the performance of the Plan's assets invested in the Target Program, the rates of return received by the Plan with respect to such investments, the Plan's actual portfolio with a breakdown of investments made in each Portfolio, year to date and cumulative realized gains and losses and income received from each Portfolio, a summary of purchase, sale and exchange activity, dividends and interest received or reinvested and market commentary. The Quarterly Account Monitor will also contain an analysis and an evaluation of a Plan investor's account to assist the Independent Plan Fiduciary or section 404(c) Plan participant in ascertaining whether the investment objectives for a Plan or an individual account have been met and recommending, if required, changes in Portfolio allocations.

(1) In the case of a section 404(c) Plan where the Independent Plan Fiduciary has established an omnibus account in the name of the Plan with Prudential Securities, the Quarterly Account Monitor will be provided to the Independent Plan Fiduciary.

(2) In the case of a section 404(c) Plan where the Independent Plan Fiduciary opens an account for each Plan participant, the Quarterly Account Monitor will be furnished to each participant and will set forth information pertaining to the participant's individual account.

(f) Written disclosures to the Independent Plan Fiduciary, on a quarterly and annual basis, of the (1) Percentage of each Portfolio's brokerage commissions that are paid to Prudential Securities and (2) the average brokerage commission per share paid by each Portfolio to Prudential Securities, as compared to the average brokerage commission per share paid by the Trust to brokers other than Prudential Securities, both expressed as cents per share.

(g) Notification that periodic meetings will be held, upon the request of Plan investors, with Financial Advisors, Independent Plan Fiduciaries or, if applicable, participants of section 404(c) Plans, to discuss the Quarterly Account Monitor or other questions that may arise.

(12) PMF maintains, for a period of six years, the records necessary to enable the persons described in paragraph (13) of this section to determine whether the conditions of this exemption have been met, except that (a) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of PMF and/or its affiliates, the records are lost or destroyed prior to the end of the six-year period, and (b) no party in interest other than PMF shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (13) below.

(13)(a) Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504

of the Act, the records referred to in paragraph (14) of this section are unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service (the Service);

(2) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(3) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(4) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(b) None of the persons described above in subparagraphs (2)–(4) of this paragraph (13) are authorized to examine the trade secrets of PMF or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption:

(1) An "affiliate" of Prudential Securities includes—

(a) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Prudential Securities. (For purposes of this subsection, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(b) Any officer, director or partner in such person, and

(c) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(2) An "Independent Plan Fiduciary" is a Plan fiduciary which is independent of Prudential Securities and its affiliates and is either:

(a) A Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares of a section 404(c) Plan,

(b) A participant in a Keogh Plan,

(c) An individual covered under a self-directed IRA which invests in Trust shares, or

(d) A trustee, investment manager or named fiduciary responsible for investment decisions in the case of a title I Plan that does not permit individual direction as contemplated by section 404(c) of the Act.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on July 12, 1993 at 58 FR 37514.

EFFECTIVE DATE: This exemption is effective March 15, 1993.

Written Comments

The Department received one written comment with respect to the Notice and no requests for a public hearing. The comment letter was submitted by PMF, Prudential Securities and their affiliates (hereinafter, the Applicants) and it suggested certain clarifications to the General Conditions and the Summary of Facts and Representations of the Notice. Discussed below are the changes suggested by the Applicants and the Department's responses to these amendments.

With respect to the General Conditions of the Notice that are set forth in Section II, the Applicants suggest that the last sentence of paragraph (e) be clarified to read as follows:

The Quarterly Account Monitor will also contain an evaluation of a Plan investor's account to assist the Plan ascertaining whether its investment objectives have been met and recommending, if required, changes in Portfolio allocations.

However, after considering this comment, the Department has decided that further revisions of Condition 11(e) are warranted to reflect the fact that it is the Independent Plan Fiduciary or section 404(c) Plan participant rather than the Plan who makes determinations about the prudence of continuing a Plan or account investment in the Target Program. Therefore, the Department has modified the last sentence of Condition 11(e) as follows:

The Quarterly Account Monitor will also contain an analysis and an evaluation of a Plan investor's account to assist the Independent Plan Fiduciary or section 404(c) Plan participant in ascertaining whether the investment objectives for a Plan or an individual account have been met and recommending, if required, changes in Portfolio allocations.

The Applicants also suggest that Condition 11(g) of the Notice, which addresses ongoing oral and written disclosures that will be provided by Prudential Securities to Plan investors, be modified to read as follows:

(g) Periodic meetings will be held at the request of Plan investors with Financial Advisors, Independent Plan Fiduciaries or, if applicable, participants of section 404(c) Plans, to discuss the Quarterly Account Monitor or other questions that may arise.

Although generally agreeing with this comment, the Department believes it would be more comprehensible if the words "Notification that" were inserted at the beginning of this clause to emphasize the fact that Prudential Securities will inform Plan investors of meetings with its Financial Advisors. Therefore, the Department has modified Condition 11(g) as follows:

(g) Notification that periodic meetings will be held, upon the request of Plan investors, with Financial Advisors, Independent Plan Fiduciaries or, if applicable, participants of section 404(c) Plans, to discuss the Quarterly Account Monitor or other questions that may arise.

With respect to modifications to the Summary of Facts and Representations of the Notice, the Applicants suggest that the last sentence of the second paragraph of Representation 8 be revised to reflect the fact that, in certain circumstances, the quarterly investment allocation fee can be lower than 1.35 percent. In response to this comment, the Department has revised Representation 8 to read as follows:

The quarterly allocation fee of 1.35 percent per annum may be lowered in connection with (a) investments of $100,000 or more in the Target Program or (b) the fee offset described in Representation 20.

The Applicants also request that the Department revise the first sentence of Footnote 9 in which Prudential Securities states that a Plan administrator, trustee or named fiduciary, as the recordholder of Trust share, will make available the Trust Prospectus to section 404(c) Plan participants. The Applicants explain that Prudential Securities is not in a position to make any statements with respect to actions undertaken by Plan administrators, trustees or named fiduciaries. Therefore, they recommend that the first sentence of Footnote 9 be deleted.

The Department does not concur entirely with the suggested modification. Rather than deleting the first sentence of the footnote, the Department believes the sentence can be clarified to read as follows:

In the case of a section 404(c) Plan, Prudential Securities represents that the Plan administrator, trustee or named fiduciary, as the recordholder of Trust shares, has agreed to make the Trust Prospectus available to section 404(c) Plan participants.

With respect to Representation 17 of the Notice, the Applicants state that it is possible that the outside fee can be negotiated to a level below .50 percent. However, the Applicants anticipate that this fee will generally be no lower than .50 percent. Therefore, they suggest that the Department revise the third sentence of Representation 17 to reflect that the fee will generally range from .50 percent to a maximum of 1.35 percent. The Department concurs with this change

and has revised sentence three of Representation 17 as follows:

The "outside fee," which is computed quarterly, generally ranges on an annual basis from .50 percent up to a maximum of 1.35 percent of the average annual net assets held in a Target Program account invested by the Plans in the Equity and Income Portfolios.

The Applicants note that a Plan may be given the option of being separately invoiced for the outside fee and paying such fee by check or having the outside fee deducted from the Plan's account with Prudential Securities. In the event the Plan elects to be invoiced separately for the outside fee, the Applicants state that the fee is payable 45 days after the end of each calendar quarter or, for additional investments, after such investments aggregate $10,000. Therefore, the Applicants suggest that relevant portions of Representations 17, 18 and 20 of the Notice be revised as well as Footnote 18.

In response to this change, the Department has revised Representation 17 of the Notice by changing the initial clause of the second paragraph to read "For some Plan investors" instead of "For Plan investors" and adding a new third paragraph which should be inserted at the end of the text of this representation. The new paragraph would read as follows:

Plan investors will be given the option of either being separately invoiced for the outside fee and paying such fee by check or having the outside fee deducted from their Prudential Securities account. In the event the Plan elects to be invoiced separately for the outside fee, the fee is payable 45 calendar days after the end of the quarter. However, if the Plan elects to have the outside fee deducted from its Plan account with Prudential Securities, such outside fee would be payable within 6 business days of the trade date for an initial investment or within 6 business days of the current calendar quarter.

The Department also wishes to clarify that the term "applicable fee" referred to in the initial sentence of Representation 18 means the "outside fee" which will be paid after a Plan's additional investments in the Trust total $10,000 or more. Therefore, the Department has revised this sentence by placing the term outside fee in parentheticals. The revised sentence reads as follows:

Each time that additional funds aggregating $10,000 or more are invested in the Portfolios during any one quarter, the applicable fee (i.e., the outside fee), pro-rated for the number of calendar days then remaining in the quarter and covering the amount of such additional funds, shall be charged and be payable 6 business days later.

To reflect the dual billing procedure that Prudential Securities has established for Plans investing in the Trust, the Department has revised paragraph 5 of the hypothetical example contained in Representation 20 of the Notice. The amended paragraph now reads as follows:

The account of the Plan investor (as with other investors) would be debited on or about April 8, 1993 (i.e., the sixth business day of the calendar quarter) for the amount of the net quarterly outside fee (pursuant to the authorization contained in the Target Program investment advisory agreement, and as described in the Target Program description attached to the cover of the Trust's Prospectus. However, if the Plan investor is separately invoiced by Prudential Securities, the outside fee would be payable 45 calendar days after the end of the calendar quarter.

The Department has also amended Footnote 18 by adding new language to that contained in the parenthetical so as to reflect the two payment schedules for the outside fee:

* * * I.e., on or about the sixth business day of the first month of the calendar quarter or within 45 calendar days after the end of the calendar quarter.

Finally, with respect to the example contained in Representation 20, the Applicants point out that in Clause (1) of the first paragraph of the example (id at 37520) inadvertently includes the word "not" prior to the word "retain." The Department concurs with this change and has deleted the word "not" so that Clause (1) will read as follows:

* * * (1) U.S. Government Money Market Portfolio in which the Plan made a $50 investment and from which PMF would retain, after payment of the subadvisory fee to the Sub-Adviser, an inside fee of .125 percent;

Upon a review of the entire record, including the written comment received, the Department has determined to grant the exemption subject to the modifications described above.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Peoples Heritage Financial Group, Inc. Thrift Incentive Plan (the Thrift Plan); and Peoples Heritage Financial Group, Inc. Profit Sharing and Employee Stock Ownership Plan (the ESOP; Together, the Plans) Located in Portland, ME

[Prohibited Transaction Exemption 93–60; Exemption Application Nos. D–9242 and D–9243]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) The past receipt of certain stock rights (the Rights) by the Plans, which are sponsored by Peoples Heritage Financial Group, Inc. (Peoples) and its affiliates, pursuant to a stock rights offering (the Offering) by Peoples to shareholders of record of Peoples common stock (the Stock) as of December 3, 1992; (2) the holding of the Rights by the Plans during the Offering Period; and (3) the disposition or exercise of the Rights by the Plans, provided:

(a) The Plans' acquisition and holding of the Rights resulted from an independent act of Peoples as a corporate entity, and all holders of the Stock were treated in a like manner, including the Plans;

(b) With respect to the Thrift Plan, the Rights were acquired, held and controlled by individual Plan participant accounts pursuant to plan provisions for individually directed investment of such accounts; and

(c) With respect to the ESOP, the authority for all decisions regarding the acquisition, holding and control of the Rights was exercised by an independent fiduciary which made determinations as to whether and how the ESOP should exercise or sell the Rights acquired through the Offering.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 12, 1993 at 58 FR 37522.

EFFECTIVE DATE: This exemption is effective December 3, 1992.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Penn Central Corporation Master Trust (the PCC Trust) Located in New York NY; and The General Cable Corporation Master Trust (the GCC Trust) Located in Cincinnati, OH

[Prohibited Transaction Exemption 93–61; Exemption Application Nos. D–8835 through D–8842]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A)

through (E) of the Code, shall not apply to: (1) The continued holding of shares of common stock (the PCC Stock) of The Penn Central Corporation (PCC) by the PCC Trust on behalf of plans (the PCC Plans) sponsored by PCC and its affiliates; (2) the acquisition, holding and exercise by the PCC Plans of an irrevocable put option (the PCC Put Option) which permits the PCC Plans to sell the PCC Stock to PCC (a) at a price per share equal to the then current fair market value of the PCC Stock or, if greater, $23.79 and, (b) for shares of PCC Stock acquired after October 1, 1991, at a price per share equal to the then current fair market value of the PCC Stock, or if greater, the acquisition price of such shares; (3) the continued holding of shares of common stock (the GCC Stock) of General Cable Corporation (GCC) by the GCC Trust on behalf of plans (the GCC Plans) sponsored by GCC and its affiliates; (4) the acquisition, holding and exercise by the GCC Plans of an irrevocable Put Option (the GCC Put Option) which permits the GCC Plans to sell the GCC Stock to GCC (a) at a price per share equal to the then current fair market value per share of GCC Stock, or, if greater, $8.34 and, (b) for shares of GCC Stock acquired after July 1, 1992, at a price per share equal to its then current fair market value, or, if greater, the acquisition price of such shares; and (5) the possible future acquisition by the PCC Plans of additional PCC Stock, and by the GCC Plans of additional GCC Stock, provided the following conditions are satisfied: (a) At the time of acquisition by the PCC Plans, the PCC Stock and any other qualifying employer securities (QES) as defined in section 407(e) of the Act will represent no more than 10% of the assets of any of the PCC Plans; (b) at the time of acquisition by the GCC Plans, the GCC Stock and any other QES as defined in section 407(e) of the Act will represent no more than 10% of the assets of any of the GCC Plans; (c) the independent fiduciary of the PCC Plans and the GCC Plans (together, the Plans) will monitor the holding of the PCC and GCC Stock by the respective Plans and take whatever action is necessary to protect the Plans' rights, including, but not limited to, the exercising of the Put Options if the independent fiduciary, in its sole discretion, determines that such exercise is appropriate; (d) no further acquisitions of PCC Stock will be made by the PCC Plans, and no further acquisitions of GCC Stock will be made by the GCC Plans, unless such acquisitions are first approved by the Plans' independent fiduciary, who must make a determination that such acquisitions are appropriate and in the best interests of the respective Plans; (e) the Plans will pay no more than current fair market value with respect to all further acquisitions of PCC and GCC Stock; and (f) a bond, letter of credit, or escrow agreement, as described herein, is maintained for (1) The PCC Plans as long as the PCC Plans continue to hold any shares of PCC Stock, and (2) the GCC Plans as long as the GCC Plans continue to hold any shares of GCC Stock.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 12, 1993 at 58 FR 28044.

EFFECTIVE DATE: This exemption is effective December 17, 1991.

NOTICE TO INTERESTED PERSONS: The applicants represent that they were unable to comply with the notice to interested persons requirement within the time frame stated in the exemption application. However, the applicants represent that all interested persons were notified, in the manner agreed upon between the applicants and the Department, by June 25, 1993. All interested persons were informed that they had 30 days from the receipt of notification in which to file comments or requests for a public hearing with the Department. The comment period ended on July 25, 1993.

WRITTEN COMMENTS: The Department received seven comments and no hearing requests with respect to the proposed exemption. The commentators all expressed concern that the proposed exemption would not be in the best interest of the Plans and their participants. The applicants responded to this comment by citing the safeguards that are in place for the subject transactions. As a condition of the exemption, PCC must guarantee that if the PCC Stock is sold, the price cannot be less than it was in 1991 when American Financial Corporation first became a 50% owner of PCC Stock. A similar guarantee is in place for the GCC Stock. This legally binding commitment is enforceable by an independent bank and must be secured by a letter of credit, bond or escrow account. This guarantees that the Plans will receive a minimum price in the event the PCC or GCC Stock is sold. Such a right is virtually unobtainable for other equity investments available to the Trusts.

Another commentator raised the question of why the exemption had been proposed to permit the continued holding by the PCC Plans of PCC Stock when PCC had been losing money. The applicants responded that PCC's audited financial records show that its net income from continuing operations (before income taxes and without the cumulative effect of an accounting change relating to income taxes) was $103 million for 1992, $99.1 million for 1991, and $114.6 million for 1990. The applicants further point out that the PCC Stock has proved to be an excellent investment for the PCC Plans as it has increased in value from about $23 per share in 1991 to $35 per share as of July 28, 1993. Absent the proposed exemption, this investment would have been unavailable to the Plans.

The Department has considered the entire record, including the comments received and the applicants' response to the comments, and has determined to grant the exemption as it was proposed.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

New Emory University Health Plan (the Emory Plan) and The Emory Clinic Health Plan (the Clinic Plan; Together, the Plans) Located in Atlanta, GA

[Prohibited Transaction Exemption 93–62; Exemption Application Nos. D–9098 and D–9099]

Exemption

Section I. Covered Transactions

The restrictions of section 406 (b)(1) and (b)(2) of the Act shall not apply to: (1) The selection by the Plans of health care service providers affiliated with Emory University (Emory) and the Emory Clinic (the Clinic) who are participating in a preferred provider network of physicians, hospitals and other health care providers (the Network), which may provide services to the Plans; (2) and the direct or indirect payment of fees charged by physicians, hospitals and other health care providers affiliated with Emory and the Clinic, who are parties in interest with respect to the Plans,[1] in connection with health care services rendered to participants and beneficiaries of the Plans, provided the conditions set forth in Section II below are satisfied.

Section II. Conditions

A. At least 50% of the physicians and 50% of the hospitals included in the

[1] The Department believes that any relief from section 406(a) of the Act that may be necessary in connection with this transaction is provided by the statutory exemption for the provision of services to a plan by a party in interest contained in section 408(b)(2) of the Act, and it is inappropriate to provide any relief herein from section 406(a) beyond that provided by the statutory exemption.

Network are not affiliated with Emory or the Clinic;

B. All fees charged by health care providers within the Network, whether or not they are affiliated with Emory and/or the Clinic, have been negotiated on behalf of the Plans by their independent fiduciary;

C. The Plans' independent fiduciary selects the health care providers who participate in the Network;

D. Emory and the Clinic will engage a qualified, independent organization to conduct a thorough audit of the processing of benefit claims by The Prudential Insurance Company of America (Prudential) at the close of the first year of operation of the managed care arrangement described herein, and at least every two years thereafter (if Prudential continues to perform the claims processing function);

E. All dealings between the Plans and the health care providers affiliated with Emory and/or the Clinic included within the Network are on a basis no less favorable to the Plans than such dealings with unaffiliated health care providers who are included within the Network; and

F. Participants and beneficiaries of the Plans are permitted to select any health care provider that they desire, whether that provider participates in the Network or not, and regardless of whether the provider is affiliated with Emory and/or the Clinic.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 9, 1993 at 58 FR 32369.

EFFECTIVE DATE: This exemption is effective January 1, 1993.

WRITTEN COMMENTS AND HEARING REQUESTS: The Department received one written comment and no hearing requests with respect to the proposed exemption. The comment letter, which was submitted on behalf of several Emory Plan participants who live and work outside the immediate Atlanta area, raised two objections to the proposed exemption.

The commentator objected to the representation that "Coinsurance and deductibles for out-of-Network health care will be roughly comparable to those applicable under the Prior Plans." The commentator remarked that going from 80% coinsurance to 70% coinsurance, and having deductibles raised from 200–300% (depending on the number of dependents), is not "roughly comparable". The commentator also stated that the participants in question, since they live in Oxford, Georgia, a small town 40 miles from Atlanta, are limited in choice for pharmaceutical services by the Emory Plan to Eckerd Pharmacies, although many of these participants would prefer the services of a different local pharmacy.

The applicant responded to the two points raised by the commentator. The applicant stated while the comment correctly pointed out the reduction in coinsurance payments and increase in deductibles for out-of-Network health care, benefits have been expanded to include preventive care, including routine physical examinations, well baby care, routine mammograms and vision and hearing care, whether performed by EmoryCare Network or out-of-Network providers. Under the Prior Plans, these items were not covered at all. Moreover, monthly health insurance premiums payable by participants through payroll deductions have decreased. Taking all this into account, the applicant reiterated its belief that out-of-Network benefits under the Plans are indeed roughly comparable to benefits provided under the Prior Plans.

With regard to prescription drugs; the applicant acknowledged that the only pharmacy in the Oxford area that is a Network member is an Eckerd Pharmacy. The applicant stated that this is because Prudential, the Plans' independent fiduciary, has entered into contractual arrangements with Eckerd under which Eckerd provides drugs to EmoryCare participants at discount rates. Under these contractual arrangements, Eckerd is entitled to exclusivity within the Network. The Oxford participants have discussed with Prudential their desire to include another Oxford area pharmacy in the Network, but Prudential has determined that it is more beneficial to the Plans to retain the single exclusive agreement with Eckerd rather than to negotiate several agreements with individual Atlanta-area drug stores.

In summary, the applicant responded by stating that the comment raised concerns about the benefit structure of the Plans, rather than the essence of the proposed exemption, namely the inclusion in the Network of health care providers affiliated with Emory and the Clinic. The applicant believes that the benefits under the Plans are significantly better than those under the Prior Plans from the perspective of the vast majority of Plan participants, and Emory has gone to great lengths in attempting to accommodate the needs of the Oxford-area participants as well.

The Department has considered the entire record, including the comment submitted and the applicant's response to the comment, and has determined to grant the exemption as it was proposed.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of September, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–21820 Filed 9–7–93; 8.45 am]

BILLING CODE 4510–29–P

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) notice is

hereby given of a public meeting to be held in Baltimore, Maryland, on Thursday and Friday, September 23 and 24, 1993, at the Vista International Hotel, 1400 M Street, NW., Washington, DC, in Ballroom A, located on the Ballroom Level.

DATES: Thursday September 23, 1993, 9 a.m.–5 p.m.

Friday September 24, 1993, 9 a.m.–12 p.m.

STATUS: The meeting is to be open to the public.

MATTERS TO BE DISCUSSED: The purpose of this public meeting is to enable the Commission members to discuss progress on the research agenda, future research, and budget and administrative matters.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., suite 300, Washington, DC 20005, (202) 724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to title IV–F of the Job Training Partnership Act (Pub. L. 97–300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues.

The meeting will be open to the public. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made.

Anyone wishing to submit comments prior to the meeting, should do so by C.O.B. September 20, and they will be included in the record. Minutes of the meeting will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., suite 300, Washington, DC 20005.

Signed at Washington, DC, this 1st day of September 1993.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 93–21853 Filed 9–7–93; 8:45 am]

BILLING CODE 4510-23-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts in Education Advisory Council; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Advisory Council on Arts Education (Ad Hoc Steering Group) will be held on September 20, 1993, from 10 a.m. to 5 p.m., in room M07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC.

This meeting will be open to the public on a space available basis to discuss draft planning objectives and possible strategies for arts education within the Endowment.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: September 1, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–21775 Filed 9–7–93; 8:45 am]

BILLING CODE 7537–01–M

Challenge and Advancement Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Theater Challenge Section) to the National Council on the Arts will be held on September 23–24, 1993, from 9:30 a.m. to 5:30 p.m., on September 23, 1993 and from 9:30 a.m. to 3 p.m. on September 24, 1993. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9:30 a.m. to 10 a.m. on September 23, 1993 and from 2:30 p.m. to 3 p.m. on September 24, 1993 for introductions and a discussion of guidelines and policy.

The remaining portions of this meeting from 10 a.m. to 5:30 p.m. on September 23, 1993 from 9:30 a.m. to 3 p.m. on September 24, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the descretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: September 1, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–21776 Filed 9–7–93; 8:45 am]

BILLING CODE 7537–01–M

Challenge and Advancement Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Presenting and Commissioning Challenge Section) to the National Council on the Arts will be held on September 28, 1993 from 9 a.m. to 5:30 p.m. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

A portion of this meeting will be open to the public from 9 a.m. to 10 a.m. for introductions.

The remaining portion of this meeting from 10 a.m. to 5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the

determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: September 1, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–21778 Filed 9–7–93; 8:45 am]

BILLING CODE 7537–01–M

Dance Advisory Panel; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that meeting of the Dance Advisory Panel (Overview Section) to the National Council on the Arts will be held on September 22, 1993 from 9 a.m. to 6 p.m. This meeting will be held in room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

This meeting will be open to the public on a space available basis. Topics of discussion will include the activities of the Dance Program and issues facing the Dance field.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW, Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Office, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: September 1, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–21777 Filed 9–7–93; 8:45 am]

BILLING CODE 7537–01–M

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated September 9, 1991, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of title 5, United States Code.

1. Date: September 16, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Library and Archival Preservation and Access Projects, submitted to the Division of Preservation and Access, for projects beginning after January 1, 1994.

2. Date: September 17, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Library and Archival Preservation and Access Projects, submitted to the Division of Preservation and Access, for projects beginning after January 1, 1994.

3. Date: September 20, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Library and Archival Preservation and Access Projects, submitted to the Division of Preservation and Access, for projects beginning after January 1, 1994.

4. Date: September 24, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Library and Archival Preservation and Access Projects, submitted to the Division of Preservation and Access, for projects beginning after January 1, 1994.

5. Date: September 27, 1993.
Time: 9 a.m. to 5 p.m.
Room: 526.
Program: This meeting will exchange views on ways by which the Public Humanities Projects Program can more fully meet the mission of the Division of Public Programs—to engage all Americans in the study of human history and culture through the humanities. Interested members of the public are welcome to attend.

Thomas Kingston,

Advisory Committee Management Officer (Alternate).

[FR Doc. 93–21779 Filed 9–7–93; 8:45 am]

BILLING CODE 7536–01–M

International Exhibitions Federal Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions will be held on September 23, 1993 from 9 a.m. to 5:30 p.m. This meeting will be held in room 820, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m. to 9:30 p.m. for introductions.

The remaining portion of this meeting from 9:30 a.m. to 5:30 p.m. is for the purpose of Panel review, discussion, elevation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given

in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: September 1, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–21774 Filed 9–7–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Division of Computer and Computation Research; Special Emphasis Panel, Notice of Meeting

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Division of Computer & Computation Research.

Date: September 30, 1993.

Time: 8:30 a.m.–5 p.m.

Place: 1110 Vermont Avenue, 15th St., NW, Washington, DC.

Type of Meeting: Closed.

Agenda: Review and evaluate Small Business Innovative proposals.

Contact: Dr. Bruce H. Barnes, Acting Division Director, Computer and Computation Research, National Science Foundation, Rm. 304, Washington, DC 20550 (202) 357–9747.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–21841 Filed 9–7–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

NRC Workshop Digital Systems Reliability and Nuclear Safety

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Digital Systems Reliability and Nuclear Safety Workshop final agenda; open to public.

SUMMARY: FRN 58 FR 37034 No. 130 07/09/93 contained preliminary notice and agenda for a workshop on September 13–14, 1993. This notice provides the final agenda for this workshop. The purpose of the workshop is to (1) provide feedback to the NRC from outside experts regarding proposed safety issues and proposed regulatory positions and research associated with the application of digital systems in nuclear power plants; and (2) to continue the in-depth exposure of the NRC staff to digital systems design issues related to nuclear safety by discussions with experts in the state of the art and practice of digital systems. The National Institute of Standards and Technology (NIST) is assisting the Nuclear Regulatory Commission (NRC) in hosting this workshop.

DATES: September 13–14, 1993, from 8:30 a.m. to 6 p.m. each day.

ADDRESSES: Holiday Inn Crowne Plaza, Rockville, Maryland.

PARTICIPATION: Nuclear Regulatory Commission Staff, Nuclear Industry Professionals, Digital Software Professionals, and others.

AGENDA: *September 13, 1993.*

8:00 Registration
Opening Session
Chair: Mr. Leo Beltracchi, USNRC
8:30 Welcome
Commissioner Kenneth C. Rogers
U.S. Nuclear Regulatory Commission
8:45 Welcome and Opening Statement
Mr. Eric Beckjord, Director
Office of Nuclear Regulatory Research
U.S. Nuclear Regulatory Commission
9:00 Welcome and ACRS Perspective
Dr. J. Ernest Wilkins, Chairman
Advisory Committee on Reactor Safeguards
U.S. Nuclear Regulatory Commission
Issue Session: Perspective for Nuclear Power Plants
Chair: Mr. Joel Kramer, USNRC
9:15 Presentation on NRC Regulatory Positions and Guidelines
Mr. William Russell
Associate Director for Inspection and Technical Assessment
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
9:45 NRC Research Activities
Mr. Leo Beltracchi
Senior Project Manager
Office of Nuclear Regulatory Research
U.S. Nuclear Regulatory Commission
10:15 Industry Perspective
Mr. Richard Blauw
Commonwealth Edison Company
10:45 Break
11:00 Experiences from Application of Digital Systems in a NPP
Mr. Paul Joannou
Ontario Hydro
Technical Session: Digital Safety Systems for Nuclear Power Plants
Chair: Mr. Joseph Joyce, USNRC
11:30 Hardware Aspects for Safety-Critical Systems
Mr. Al Sudduth
Duke Power Company
11:50 Software Aspects for Safety-Critical Systems
Dr. John Cherniavsky
National Science Foundation
12:10 Human Aspects for Safety-Critical Systems
Dr. Lewis Haines
Nuclear Industry Independent Consultant
12:30 Questions and Discussion
1:00 Lunch
Technical Session: Software Engineering for High Integrity Systems
Chair: Ms. Dolores Wallace, NIST
2:30 System and Software Hazard Analysis for Nuclear Applications
Dr. Nancy Leveson
University of Washington
2:55 Formal Methods for Requirements and Specifications
Dr. John McHugh
Portland State University
3:20 Software Test Cases Derived from Formal Requirements
Mr. Robert Poston
Interactive Development Environments
3:45 Break
4:00 Object Oriented Design for Safety-Critical Systems
Dr. Barbara Cuthill
National Institute of Standards and Technology
4:25 Questions and Discussions on Technical Session

September 14, 1993

8:00 Registration
Technical Session: Methods for Reducing Risks in Software Systems
Chair: Dr. John Rushby, SRI International
8:30 Automated Tools for Safety-Critical Software
Ms. Anne-Marie Lapassant

Commissariate a L'Energie Atomique
8:55 Risks of Safety-Critical Software
Dr. Winston Royce
TRW, Incorporated
9:20 Software Metrics for Safety-Critical Applications
Mr. Kyle Rone
IBM Houston, Texas
9:45 Software Reliability for Safety-Critical Applications
Dr. William Everett and Mr. John Musa
AT&T Bell Laboratories
10:10 Questions and Discussion
10:35 Break
10:50 Software Configuration Management for Safety-Critical Applications
Mr. Ron Berlack
Configuration Management International
11:15 How Much Software Verification and Validation is Adequate for Nuclear Safety?
Mr. Roger Fujii
Logicon, Incorporated
11:40 Software Verification and Validation for New Technology in Nuclear Settings
Dr. Lance Miller
Science Applications International Corporation
12:05 Certification of Software for Reuse into Safety-Critical Applications
Ms. Charlotte Scheper
Research Triangle Institute
12:30 Questions and Discussions
1:00 Lunch
2:30 Panel: Application of Workshop to NRC activities Moderators:
Mr. Franklin D. Coffman, Jr.
Office of Nuclear Regulatory Research
Mr. John Gallagher
Office of Nuclear Reactor Regulation
Panel Members:
Dr. John McHugh
Portland State University
Dr. Joseph Naser
Electric Power Research Institute
Dr. Winston Royce
TRW Incorporated
Dr. John Rushby
SRI International
Panel Issues:
—Are the proper issues being addressed?
—What other issues need to be addressed?
—Are proposed NRC regulatory positions complete and correct?
—What are the considerations for further research?
4:30 Questions and Discussion
5:00 Prepared Statements
5:30 NRC Closing Remarks
Mr. Franklin D. Coffman, Jr., Chief, Human Factors Branch, Office of Nuclear Regulatory Research.
Dr. Cecil Thomas, Deputy Director, Division of Reactor Controls and Human Factors, Office of Nuclear Reactor Regulation.

SUPPLEMENTARY INFORMATION: The following documents relevant to the workshop are now in the NRC Public Document Room; located at 2120 L Street, NW., (Lower Level), Washington, DC:

1. Draft, "Operating Reactors Digital Retrofits, Digital Systems Review Procedures," Version 1

2. Draft, "Branch Technical Position (HICB), Digital Instrumentation and Control Systems in Advanced Plants."

Two additional documents relevant to the workshop which participants may wish to review are:

1. International Electrotechnical Commission Standard 880, "Software for Computers in the Safety Systems of Nuclear Power Plants," 1986.

2. P–7–4.3.2, Draft 8, American National Standard, "Standard Criteria for Digital Computers in Safety Systems of Nuclear Power Generating Station."

TECHNICAL CONTACTS:

Leo Beltracchi, USNRC, Telephone: 301/492–3549, Email: 1xb@nrc.gov
Dolores Wallace, NIST, Telephone 301/975–3340, Email: wallace@swe.ncsl.nist.gov

Dated: August 31, 1993.

For the U.S. Nuclear Regulatory Commission.

Brian W. Sheron,

Director, Division of Systems Research, Office of Nuclear Regulatory Research.

[FR Doc. 93–21824 Filed 9–7–93; 8:45 am]

BILLING CODE 7590–01–M

Whistleblower Protection; Announcement of Public Meetings

AGENCY: Nuclear Regulatory Commission.

ACTION: Announcement of public meetings.

SUMMARY: The Nuclear Regulatory Commission (NRC) intends to hold public meetings at four locations to discuss current whistleblower protection activities. The NRC invites participation in these meetings by any interested persons, including individuals who have made safety allegations, other NRC licensee employees, licensee and contractor representatives, and the public. This action is intended to assist the NRC in evaluating current whistleblower protection activities and in recommending improvements in the regulatory process.

MEETING PARTICULARS: The meetings will be held at the following locations, dates, and times:

1. Matagorda Hotel, 407 7th St., Bay City, Texas: September 20, 1993, 6 p.m.–9 p.m., and September 21, 1993, 9 a.m.–12 noon;
2. Embassy Suites, 3210 NW Grand Avenue, Phoenix, Arizona: September 28, 1993, 6 p.m.–9 p.m., and September 29, 1993, 9 a.m.–12 noon;
3. Radisson Hotel, 35 Governor Winthrop Blvd., New London, Connecticut: October 7, 1993, 6 p.m.–9 p.m., and October 8, 1993, 9 a.m.–12 noon; and
4. Cleveland State Community College, Student Center, Foundation Room, Adkisson Drive, Cleveland, Tennessee: October 13, 1993, 6 p.m.–9 p.m., and October 14, 1993, 9 a.m.–12 noon.

FOR FURTHER INFORMATION CONTACT: Laban Coblentz, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504–3553.

SUPPLEMENTARY INFORMATION: On July 6, 1993, the NRC Executive Director for Operations established a Review Team for reassessment of the NRC program for protecting whistleblowers against retaliation. The Review Team is to determine whether the Commission has taken sufficient steps within its authority to create an atmosphere, within the regulated community, in which individuals with safety concerns feel free to engage in protected activities without fear of retaliation. By **Federal Register** Notice, 58 FR 41108, published August 2, 1993, the Review Team requested public comment on whistleblower protection issues, and provided a list of questions to aid in focusing discussion on these issues. The public meetings will serve as an additional forum in which interested individuals may express their views on the whistleblower protection process.

The meeting locations were chosen for their proximity to several nuclear facilities from which the NRC has received a number of whistleblower complaints in the past. One morning and one evening meeting will be held in each location, to permit participation by interested individuals regardless of their work schedules. Several NRC licensees have been specifically requested to make short presentations at the morning meetings. The Review Team welcomes participation in either the morning or evening sessions by other reactor and materials licensees, their employees, and other concerned individuals.

Individuals who wish to participate in these meetings are not required to give advance notice of attendance. However, in order to make the meetings more efficient, individuals are encouraged to prepare their comments in advance. A sign-in sheet will be provided at each meeting (both morning and evening sessions) for those who wish to make a presentation. The amount of time available for individual comments will be a function of the number of interested participants at a given meeting.

Each meeting will be attended by some or all members of the NRC Review Team. The Review Team does not intend to offer NRC positions on specific cases; rather, it seeks to invite comments that will increase the NRC's understanding of what past or future

approaches have been or will be effective in fostering work environments in which individuals can raise safety concerns without fear of retaliation.

In accordance with its charter, the Review Team is considering:

(a) Whether the NRC has taken sufficient action through regulations, policy statements, and inspections to ensure that NRC licensees encourage employees and contractors to raise safety concerns without fear of reprisal;

(b) Whether the current NRC process for handling allegations is appropriate from the perspective of allegers' feeling free to bring safety concerns to the NRC;

(c) Where discrimination may have occurred—

(1) Whether there are NRC actions that can assist in a speedier resolution of issues within the DOL process;

(2) Whether NRC should be more proactive in conducting investigations while DOL proceedings are pending;

(3) Whether the NRC takes sufficient followup action to determine if the licensee's actions have successfully removed any chilling effect resulting from the discrimination;

(4) Whether the NRC can and should use civil penalties and orders more vigorously, to emphasize the need for licensees to actively encourage employees to raise safety concerns without fear of discrimination; and

(5) Whether the NRC can and should use orders and demands for information more vigorously, where individuals are found to have caused discrimination; and

(d) Whether the NRC is sufficiently proactive in cases where employees raise safety concerns to the NRC and express fear that they may be subject to retaliation for raising those concerns.

In addition to these specific issues, interested individuals are invited to provide any other views on: (1) NRC activities that would prevent discrimination from occurring and, where it does occur, that would remove any related chilling effect; and (2) whether NRC actions have provided the desired deterrent effect and achieved their remedial purposes.

Dated at Rockville, Maryland, this 31st day of August 1993.

For the Nuclear Regulatory Commission.

Joseph Gray,

Deputy Director, Office of Enforcement.

[FR Doc. 93–21823 Filed 9–7–93; 8:45 am]

BILLING CODE 7590–01–P

Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the U.S. Department of Health and Human Services, Food and Drug Administration

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission and the U.S. Department of Health and Human Services, Food and Drug Administration.

SUMMARY: The U.S. Nuclear Regulatory Commission and the U.S. Department of Health and Human Services, Food and Drug Administration (FDA) signed a Memorandum of Understanding (MOU) on August 26, 1993 which describes the roles of the FDA and NRC, and the coordination between the two agencies. The text of the MOU is set forth below.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Office of Nuclear Material Safety and Safeguards, MS 6–H–3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–504–3417.

Dated: September 1, 1993.

John E. Glenn,

Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the U.S. Department of Health and Human Services, Food and Drug Administration

The Nuclear Regulatory Commission (NRC) and the Food and Drug Administration (FDA), Department of Health and Human Services (DHHS) have regulatory responsibilities concerning medical devices, drugs, and biological products utilizing byproduct, source, or special nuclear material. The organizations in FDA that are principally responsible for regulating these products are the Center for Devices and Radiological Health (CDRH), the Center for Drug Evaluation and Research (CDER), and the Center for Biological Evaluation and Research (CBER). The organizations in NRC that are principally responsible for regulating these products are the Office of Nuclear Materials Safety and Safeguards (NMSS), the Office of Nuclear Reactor Regulation (NRR), and the Office of the State Programs (OSP). For their respective authorities, the agencies hereby agree as follows:

I. Purpose and Scope

A. The purpose of this Memorandum of Understanding (MOU) is to coordinate existing NRC and FDA regulatory programs for medical devices, drugs, and biological products utilizing byproduct, source, or special nuclear material. These regulatory programs include activities for evaluating and authorizing the manufacture, sale, distribution, licensing, and labeled intended use of such products.

B. This MOU covers only those medical devices (including utilization facilities used for medical therapy), drugs and biological products utilizing byproduct, source, or special nuclear material regulated under the Atomic Energy Act of 1954, as amended. The terms "drug" and "device" are defined in the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 321 (g) and (h)), and "biologic" is used in the Public Health Service Act (42 U.S.C. 262). A biological product is either a drug or a device and is described in Part II, FDA, of this MOU. The terms "byproduct material," "source material," and "special nuclear material" are defined in Section 11 (e), (z), and (aa) of the Atomic Energy Act of 1954, as amended, and described in Part II, NRC, of this MOU.

Medical devices affected by this MOU include, but are not limited to: in vitro diagnostic kits (radioimmunoassay); utilization facilities licensed to perform medical therapy; and teletherapy and brachytherapy sources, systems, and accessory devices. Biologics affected by this MOU include, but are not limited to: licensed in vitro diagnostic kits (radioimmunoassay), and certain radiolabeled biologics for in-vivo use. Drugs affected by this MOU include all those that contain byproduct, source, or special nuclear material.

II. Authority and Regulatory Program

A. FDA

FDA is responsible for assuring the safety, effectiveness, and proper labeling of medical products, i.e., drugs, devices, and biologics.

1. FDA/CDRH

The principal statute under which FDA/CDRH regulates devices is the Federal Food, Drug, and Cosmetic Act, as amended by the Medical Device Amendments of 1976, the Safe Medical Devices Act of 1990 and the Medical Devices Act of 1992.

Section 201(h) of the Federal Food, Drug, and Cosmetic Act, as amended, defines "device" as follows:

"The term 'device' * * * means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is—

(1) Recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them,

(2) Intended for use in the diagnosis of disease or other conditions, or in the

cure, mitigation, treatment, or prevention of disease, in man or other animals, or

(3) Intended to affect the structure or any function of the body of man or other animals, and

which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes."

FDA/CDRH programs intended to ensure the safety and effectiveness of devices include, but are not limited to, the following:

(1) Review of investigational device exemptions (IDE), premarket notification (510(k)), premarket approval (PMA);

(2) Review of voluntary and mandatory medical device reports; and

(3) Enforcement activities such as routine and directed inspections, product removals, recalls, warning letters, and case actions such as seizure, injunction, prosecution, and civil penalties.

2. FDA/CDER

The principal statute under which FDA/CDER regulates drugs for human use is the Federal Food, Drug, and Cosmetic Act, as amended.

Section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act, as amended, defines "drug" as follows:

The term "drug" means (A) articles recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (C) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (D) articles intended for use as a component of any articles specified in class (A), (B), or (C).

FDA/CDER functions intended to ensure the effectiveness, safety, and quality of drugs for human use include, but are not limited to, the following:

(1) Review of clinical and bioavailability studies, manufacturing processes, and testing methods;

(2) Review of voluntary and mandatory adverse reaction reports and drug product defect reports;

(3) Enforcement activities such as routine and directed inspections, product removals, recalls, warning letters, and case actions such as seizure, injunction, prosecution, and civil penalties.

3. FDA/CBER

The principle statute under which FDA/CBER regulates biological products is the Public Health Service Act.

However, all biological products have also been defined as either drugs or devices under the Federal Food, Drug, and Cosmetic Act, as amended.

As provided in Section 351(a) of the Public Health Service Act, 21 CFR 600.3(h) defines biological products as follows:

"* * * any virus, therapeutic serum, toxin, or antitoxin, or analogous product applicable to the prevention, treatment or cure of diseases or injuries of man * * *"

FDA/CBER functions intended to ensure the effectiveness, safety, and quality of biological products for human use include, but are not limited to, the following:

(1) Review of clinical and bioavailability studies, manufacturing processes, and testing methods;

(2) Review of voluntary and mandatory adverse reaction reports and biological products defect reports;

(3) Enforcement activities such as routine and directed inspections, product removals, recalls, warning letters, and case actions such as seizure, injunction, prosecution, and civil penalties.

B. NRC

NRC is responsible for licensing and regulating nuclear facilities and material and for conducting research in support of the licensing and regulatory process, as mandated by the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and in accordance with the National Environmental Policy Act of 1969, as amended, and other applicable statutes. NRC responsibilities include protecting public health and safety, protecting the environment, and safeguarding materials in the interest of national security.

1. NRC/NMSS

NMSS's responsibilities for the medical use of byproduct, source, or special nuclear material include, but are not limited to:

(1) Licensing and inspection of medical, industrial, academic and commercial uses of byproduct, source, or special nuclear material;

(2) Development and implementation of NRC policy for the regulation of activities involving safety, quality, approval, and inspection and enforcement regarding the use and handling of byproduct, source, or special nuclear material;

(3) Reviewing of sealed sources or devices to provide reasonable assurances that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property; and

(4) Monitoring and investigation, as necessary, of misadministrations as defined in 10 CFR 35.2, which occur during the intentional internal or external administration of byproduct, source, or special nuclear material, or radiation therefrom, to human beings in the practice of medicine.

2. NRC/OSP

OSP's responsibilities for the medical use of byproduct, source, or special nuclear material include, but are not limited to:

(1) Negotiation of Agreements with States under section 274 of the atomic Energy Act of 1954, as amended;

(2) Evaluation of the program of a new Agreement State to determine if it is adequate to protect the public health and safety, and if it is compatible with the NRC program;

(3) Periodic evaluation of the Agreement State programs to determine continued adequacy and compatibility; and

(4) Training of, and consultation with, Agreement States on radiological public health and safety issues.

3. NRC/NRR

NRR's responsibilities for the medical use of utilization facilities, include, but are not limited to:

(1) Licensing and inspection of utilization facilities for medical therapy, pursuant to 10 CFR 50.21 and 10 CFR 50.41; and

(2) Development and implementation of NRC policy for the regulation of activities involving safety, quality, approval, and inspection and enforcement regarding the use of utilization facilities for medical therapy.

4. Agreement States

Under section 274 of the Atomic Energy Act of 1954, as amended, the Commission is authorized to discontinue its regulatory authority for certain radioactive materials if a State has a program that is adequate to protect the public health and safety and compatible with NRC's program. The transfer of this regulatory authority is executed through an Agreement between the Chairman of NRC and the Governor of a State. Agreement States use their own authority to regulate these materials.

III. Elements of Coordination

A. Notification of Product Complaints, Misadministrations, or Emergency Situations

Both agencies agree to promptly inform each other whenever they receive a report or otherwise become aware of a potential public health problem such as a malfunction, failure, reportable event, or a misadministration involving products of mutual regulatory concern. Each agency will assign one or more contact persons in order to ensure that such information is promptly exchanged and that appropriate FDA and/or NRC actions are initiated on the basis of any necessary compliance or follow-up objectives. Each organization will promptly notify the other when there is a change in an assigned contact person.

B. Coordination of Investigations

Upon request, FDA and NRC will assist each other, to the fullest extent possible, in the investigation of incidents or complaints involving products of mutual regulatory concern. For the purposes of this MOU, investigations will be considered to include inspections in response to incidents or events, as well as, formal investigations initiated in accordance with each agency's internal procedures. (Agreement States will be involved as appropriate to the specific situation.) During the term of this agreement, joint inspections or observer invitations can be requested or extended by either agency, when deemed necessary, to ensure that information obtained from an investigation is collected, shared and acted upon in a timely and coordinated manner. Both agencies will make every reasonable effort to accommodate joint inspection or observer requests depending upon availability of personnel and current FDA or NRC priorities. Each agency will assign one or more persons to assure that investigations are coordinated in a manner that maximizes regulatory efficiency and minimizes duplication of effort. Each agency will promptly notify the other when there is a change in an assigned contact person.

1. Investigation Information Exchange

Both agencies agree to an exchange of information with respect to investigations. The purpose of these exchanges is to provide expert technical assistance to either agency and to assist either agency by reducing or eliminating any duplication of effort. The sharing of information between FDA and NRC (and Agreement States as appropriate) will be exercised to the extent authorized by law, and by NRC and FDA directives, statutes, and regulations, and will be consistent with the respective agency's mission.

Both agencies recognize the need to protect from public disclosure, data and information that are exchanged between the agencies and that fall within the definition of trade secret, or confidential commercial or financial information. Both agencies agree to exchange proprietary information in accordance with applicable regulations. If FDA provides NRC with trade secret information, there shall be an additional written agreement in the form of an exchange of letters between the appropriate liaison officers in accordance with 21 CFR 20.90. If a request calls for a disclosure determination regarding proprietary information such as a Freedom of Information Act request, response to a Congressional inquiry, or in cases where either agency must comply with various regulatory or public information responsibilities, for any such information obtained from the other agency, that agency will be notified of the request. The notified agency will be responsible for making any needed contact with the submitter of the protected information and accept the responsibility for evaluating the submitter's comments prior to rendering the disclosure determination.

To reserve the right of maximum control over actual disclosure of its own records, each agency shall retain legal authority and the commensurate responsibility over disclosure of those documents provided to the other agency.

Upon request, FDA and NRC will:

(a) provide copies of Establishment or User Site Inspection Reports;

(b) provide copies of all analytical data and correspondence of significance related to investigations or activities associated with an area of mutual regulatory concern;

(c) provide copies of official legal or compliance actions taken against firms or licensees of mutual interest; and

(d) participate in meetings with regulated industry covering issues of mutual regulatory concern.

2. NRC Licensee and Agreement State Notifications

Upon request, NRC will promptly notify NRC licensees and Agreement State Program Directors of any public health issues or other important user communications initiated by FDA as the result of joint investigations or other activities involving products of mutual regulatory concern.

C. Product Premarketing and Prelicensing Information Exchange

To the extent practicable the two agencies will share information concerning new technology or methods under development or review, including devices, drugs, or biologics, for which regulations have not yet been developed, or is related to the mission of the other agency. Both agencies agree to exchange proprietary information in accordance with applicable regulations. If FDA provides NRC with trade secret information, there shall be an additional written agreement in the form of an exchange of letters between the appropriate liaison officers in accordance with 21 CFR 20.90.

This information may include, but is not limited to:

(i) design, chemical and physical form of the material or the device;
(ii) manufacture/preparation;
(iii) prototype testing;
(iv) quality assurance and control;
(v) labeling per regulatory requirements;
(vi) intended use;
(vii) safety analysis;
(viii) installation;
(ix) servicing;
(x) leak testing;
(xi) operating instructions; and
(xii) emergency/safety instructions.

D. Sharing of Other Information

FDA and NRC will offer each other the opportunity to comment on special notifications to manufacturers, operators, licensees, or patients. FDA and NRC will also offer each other the opportunity to comment on regulations, regulatory guides or other communications that refer to activities, policies, or regulations of the other agency. If practicable, the documents will be provided prior to issuance.

Either agency may request additional information when deemed necessary to complete its mission.

E. Advisory Committees

NRC and FDA will make the other agency aware of and, to the extent possible, allow participation by a representative from the other agency in any Advisory Committee which advises on issues related to this MOU.

IV. Name and Address of Participating Agencies

Food and Drug Administrator, 5600 Fishers Lane, Rockville, MD 20857; and the
Nuclear Regulatory Commission, Washington, D.C. 20555

V. Liaison Officers

Each liaison officer will establish and maintain a call list of responsible

persons within his or her organization. These call lists will designate specific persons for day-to-day contact on matters related to this MOU. These lists with current work and home phone numbers will be exchanged among the liaison officers. The lists will be updated every six months or whenever a liaison officer's or day-to-day contact person's phone number changes.

Liaison officers are as follow:

A. For the Food and Drug Administration

1. Center for Devices and Radiological Health, Director, Office of Compliance and Surveillance, (currently: Mr. Ronald M. Johnson), 1390 Piccard Drive, Rockville, MD 20850, Telephone: 301–594–2100.
2. Center for Drug Evaluation and Research, Director, Office of Compliance, (currently: Charma A. Konnor), 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–594–0054.
3. Center for Biologic Evaluation and Research, Deputy Director, Office of Compliance, (currently: P. Michael Dubinsky), 1401 Rockville Pike, Rockville, MD 20850, Telephone: 301–594–2066.

B. For the Nuclear Regulatory Commission

Director, Office of Nuclear Material Safety and Safeguards, (currently: Robert M. Bernero), OWFN MS–6E–6, 11555 Rockville Pike, Rockville, MD 20852, Telephone: 301–504–3352.

VI. Annual Inter-Agency Meeting

The liaison officers shall meet at least annually to evaluate the activities related to this MOU and make recommendations to agency heads on its effectiveness. FDA and NRC will host the meeting on alternating years.

VII. Other Laws and Matters

Nothing in this Memorandum of Understanding shall be deemed to restrict, modify, or otherwise limit the application or enforcement of any laws of the United States with respect to matters specified herein, nor shall anything in the Memorandum be construed as modifying the existing authority of either agency.

VIII. Effective Date, Modification and Termination of MOU

This MOU will take effect when it has been signed by the authorized representatives of FDA and NRC. It may be modified by mutual written consent or terminated by either agency upon a sixty (60) day advance written notice to the other agency. The agencies agree to evaluate the agreement every three (3) years, at which time either agency would have the option of renewing, modifying or canceling the MOU

Approved and accepted for the Nuclear Regulatory Commission.

Ivan Selin,

Chairman, USNRC.

Dated: August 26, 1993.

Approved and accepted for the Food and Drug Administration.

David A. Kessler,

Commission of Food and Drugs.

Dated: August 26, 1993.

[FR Doc. 93–21825 Filed 9–7–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–334]

Duquesne Light Co., et al.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–66 issued to Duquesne Light Company (the licensee) for operation of the Beaver Valley Power Station, Unit 1 located in Shippingport, Pennsylvania.

The original proposed amendment, dated November 2, 1992, would modify the Appendix A Technical Specifications (TSs) to allow for increasing the number of spent fuel assemblies that may be stored in the spent fuel pool. A proposed determination of no significant hazards was published in the **Federal Register** (58 FR 7161) on February 4, 1993. However, changes to the proposed amendment were made in supplements dated February 23 and June 28, 1993. This notice addresses the changes proposed in the supplements.

Three other supplements to the amendment have been submitted. These supplements, dated July 9, August 16, and August 16, 1993, provided clarifying information only and did not change the amendment request. Therefore, an evaluation of no significant hazards for those supplements was not made.

The original proposal would have allowed a separate calculation to establish the admissibility of storing low burnup fuel in Region 2 peripheral cells on a case-by-case basis. However, in the two supplements proposing changes, the licensee has proposed to divide the spent fuel pool into three regions instead of two. The third region would consist of certain peripheral cells of former Region 2 requiring a separate qualification for fuel storage. A table of qualifications (Table 3.9–2) has been added to the TS instead of performing a case-by-case criticality calculation at a later time. The table specifies fuel burnup and initial U235 enrichment which qualifies for storage in Region 3. The licensee has also proposed clarifications in the TS Bases to reflect the third storage region, and to clarify the uncertainty in Boron concentration in the pool.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The licensee's analysis are provided below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

This proposed change revises portions of our original submittal dated November 2, 1992 based on the NRC recommended changes issued by letter dated January 25, 1993. The NRC stated that they did not agree with our proposed changes to Specification 3.9.14.c, Surveillance Requirement 4.9.14.1 and Bases 3/4.9.14 that would have allowed a separate calculation to establish the admissibility of storing low burnup fuel in a Region 2 peripheral cell on a case-by-case basis. The NRC feels these calculations should be done now to develop a separate initial enrichment versus burnup table that would be included in the technical specifications for the peripheral cells.

The vendor has performed the required calculations and developed enrichment versus burnup data for a new Table 3.9–2 that provides the limitations necessary for storing fuel in the Region 2 peripheral cells, to be called Region 3. The results of the calculations performed with the KENO–5a code for Region 3, using a conservative 30 centimeter water reflector, show that those cells can safely accommodate fuel with an initial enrichment of 5.0 w/o which have a burnup of 25,000 MWD/MTU. The KENO–5a

calculations were made with the Region 3 cells containing fuel enriched to 2.348 w/o (equivalent to 5.0 w/o enriched fuel with a burnup of 25,000 MWD/MTU) and the remainder of the rack filled with the maximum permissible enrichment for Region 2 fuel (1.694 w/o enriched, which is equivalent to 5.0 w/o enriched fuel with a burnup of 40,000 MWD/MTU). For this condition, the calculated reactivity was 0.9119 ± 0.0010 (with a 95%/95% probability/confidance level, bias corrected), and with uncertainties and the temperature correction to 4°C added, the maximum K_{eff} is 0.946. Therefore, as a result of the neutron leakage from fuel in the Region 3 cells, these cells can safely accommodate fuel with an initial enrichment of 5.0 which have a burnup of 25,000 MWD/MTU. The KENO–5a code was the principal method of analysis along the periphery of the storage racks, assuming a 30 cm water reflector. The CASMO–3 code (with the restart option) was used to define the equivalent enrichment for fuel with an initial enrichment of 5 w/o burned to 25,000 MWD/MTU evaluated in the storage rack cell configuration at a reference temperature of 4°C. Once the reactivity for 5.0 w/o enriched fuel at 25,000 MWD/MTU has been established, CASMO burnup and restart calculations at other enrichments were made and interpolated for the same reactivity. This data is tabulated in Table 3.9–2 and defines the acceptable initial enrichment versus burnup limits for storing fuel in the Region 2 peripheral cells. The maximum effective multiplication factor for fuel corresponding to the limits defined in Table 3.9–2 is less than the reference multiplication factor of 0.946 including uncertainties and allowances. Fuel assemblies that satisfy the criteria provided in Table 3.9–2 may be safely stored in the Region 3 cells with assurance that the effective multiplication factor will be maintained within the regulatory limit of 0.95. Therefore, this proposed revision is safe and will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The NRC also recommended that we reword Bases 3/4.9.14 concerning our proposed change describing the spent fuel pool boron concentration uncertainty. The proposed change stated that the 1050 ppm boron concentration includes a 650 ppm uncertainty whereas it is actually composed of 400 ppm for the accident analysis, 50 ppm for uncertainty and 600 ppm for margin. As a result, this portion of the Bases has been revised to clarify the uncertainty discussion. This revision provides an editorial clarification which does not change the intent of the Bases discussion, therefore, this revision will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The NRC further recommended that we also reword Bases 3/4.9.14 by changing the position in the sentence where "of 5.0 w/o" is added. Moving "of 5.0 w/o" to follow "nominal region average enrichment" is an editorial change and is consistent with the intent of the sentence, therefore, this revision will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Additional changes also consolidate the first two paragraphs on page B 3/4 9–4 and modify the last two paragraphs to incorporate a description of Region 3 including the linear equation for qualification of fuel for storage in this region. Applicable calculations were performed using the same methodology used in the high density rack design to ensure no criticality concerns exist for fuel storage in Region 3. Therefore, this proposed revision is safe and will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed revisions do not affect the other portions of the original change request. Table 3.9–2 was developed to provide an alternate means of qualifying fuel assemblies for storage in the Region 3 cells. The methodology used to develop Table 3.9–2 was similar to that used for Table 3.9–1 and previously derived for a number of comparable plants. Table 3.9–1 and 3.9–2 ensure the required guidance and limitations are available to provide for the safe storage of fuel in both Region 2 and Region 3 of the spent fuel pool. These revisions are based on NRC review of our original submittal and will improve the technical specification requirements in accordance with NRC policy while maintaining the intent of the changes. Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Incorporating Table 3.9–2 provides an alternate means of qualifying fuel assemblies for storage in Region 2 peripheral cells. The maximum effective multiplication factor for these cells is maintained less than the reference effective multiplication factor including uncertainties and allowances. This change does not affect the margin of safety since these changes adequately control storage of fuel assemblies in the spent fuel pool and do not affect any other system or component that might degrade the safety of the plant. The editorial changes to the Bases are in accordance with the NRC recommendations and are provided to improve the clarity of the Bases discussion. Therefore, the changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on our review of the licensee's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 8, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board,

designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Dr. Walter R. Butler: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and at the local public document room located at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001, and to Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, proceeded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41670, October 15, 1985) to 10 CFR 2.1101 *et seq.* Under those rules, any part to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within 10 days of an order granting a request for a hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR part 2, subpart G, and § 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the

hybrid hearing procedures. In essence, these procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in adjudicatory hearing. If no party to the proceedings requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G, apply.

For further details with respect to this action, see the application for amendment dated November 2, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, this 1st day of September 1993.

For the Nuclear Regulatory Commission.

Gordon E. Edison,

Senior Project Manager, Project Directorate I–3, Division of Nuclear Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–21826 Filed 9–7–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–312–DCOM (Decommissioning Plan) ASLBP No. 92–663–02–DCOM]

In the Matter of Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station, Facility Operating License No. DRP–54).

Before Administrative Judges:
Charles Bechhoefer, Chairman
Dr. Richard F. Cole
Thomas D. Murphy

August 31, 1993.

Prehearing Conference

This proceeding concerns the proposed decommissioning of the Rancho Seco Nuclear Generating Station, located in Sacramento County, California. Notice is hereby given that a prehearing conference is scheduled for Tuesday, September 21, 1993, beginning at 9:30 a.m., in the Commission's Public Hearing Room, 5th floor, 4350 East West Highway, Bethesda, Maryland. The conference will continue, to the extent necessary, on Wednesday, September 22, 1993, beginning at 9 a.m., at the same location.

At this conference, the Atomic Safety and Licensing Board will consider contentions filed by the Environmental and Resources Conservation Organization (ECO) in response to the Commission's Order in CLI–93–3, 37 NRC 135 (March 3, 1993), as explained in CLI–93–12, 37 NRC ____(May 26, 1993), denying the Licensee's motion to reconsider CLI–93–3. The contentions are those filed by ECO on March 22, 1993 (decommissioning fund plan), April 1, 1993 (loss of offsite power) and July 12, 1993 (environmental assessment and safety evaluation). The Licensing Board will also consider schedules for additional activities in this proceeding.

Among other matters, the Board requests the parties to address whether or not the Commission's orders in CLI–93–03 and CLI–93–12 admitted, without qualification, a contention on loss of offsite power (LOOP). See, e.g., CLI–93–3, 37 NRC at 146; CLI–93–12, 37 NRC at ____(slip op., at 3, 4, 5–7). If so, are we authorized to reject all aspects of the LOOP contention, as sought by the Licensee and NRC Staff, respectively, or must we admit at least a portion of that contention, subject to resolution either after an evidentiary hearing or, as appropriate, through summary disposition procedures (10 CFR 2.749)?

For the Atomic Safety and Licensing Board.

Bethesda, Maryland, August 31, 1993.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 93–21827 Filed 9–7–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 2, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following security:

Ford Holding Inc.
Depositary Shares Each Representing 1.400 of a Share of Series C $1.00 Par Value (File No. 7–11234)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 23, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–21842 Filed 9–7–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32825; File No. SR–MSRB–93–9]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to an Extension of the CDI Pilot System Through April 6, 1995

September 1, 1993.

On August 17, 1993, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–93–9), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested people. The Board has requested accelerated approval of the proposed rule change in order to permit the Pilot system to continue to operate without interruption.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a proposed rule change to request an 18-month extension, through April 6, 1995, of its Continuing Disclosure Information ("CDI") Pilot system.[1]

[1] The CDI Pilot system was approved in Securities Exchange Act Release No. 30556 (April 6, 1992), 57 FR 12534. A full description of the system is contained in that approval order.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On April 6, 1992, the Commission approved the CDI Pilot system for an 18-month period.[2] The Pilot system began operating on January 23, 1993, and functions as part of the Board's Municipal Securities Information Library ™ (MSIL ™) system.[3] The Pilot system accepts and disseminates voluntary submissions of official disclosure notices relating to outstanding issues of municipal securities, *i.e.*, continuing disclosure information. During its first phase of operation, the system accepted disclosure notices only from trustees. On May 17, 1993, the Pilot system also began accepting disclosure notices from issuers.[4]

Currently, the system accepts only short submissions (one to three pages in length, or the equivalent in electronic form) by mail, facsimile, and electronically by computer modem, using specific Pilot system submission procedures. The system uses two methods of dissemination to subscribers: (1) CDI that has been submitted to the system by mail or facsimile is disseminated by facsimile transmission; and (2) CDI that has been submitted to the system electronically by computer modem is disseminated electronically. In addition, after the Board processes and transmits the disclosure notices to subscribers, it makes these documents available at its Public Access Facility ("PAF") in Alexandria, Virginia where any interested person may review the documents, free of charge, and copy the documents at $.20 per page (plus sales tax).

As the Commission noted in its order approving the CDI Pilot system:

> Currently, a number of municipal securities issuers are experiencing financial difficulties. In such an environment, disclosure mechanisms become especially important to investors and potential investors in these securities. . . . [G]reater availability of CDI will reduce the risk of sales practice fraud and manipulation in the municipal market by making investors more informed and better able to detect such practices.[5]

During the proposed extension of the Pilot period, the Board is hopeful that more issuers and trustees will recognize the overall benefit to the market in voluntarily providing continuing disclosure information via the CDI pilot system. In order to facilitate such information dissemination, the Board, working in conjunction with industry groups, will continue to explore the feasibility of accepting and disseminating longer documents through the CDI Pilot system.

(b) The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Securities Exchange Act of 1934 ("Act"), which provides that the Board's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSIL system is designed to increase the integrity and efficiency of the municipal securities market by, among other things, helping to ensure that the price charged for an issue in the secondary market reflects all available official information about that issue. The Board will continue to operate the output side of the CDI Pilot system to ensure that the information is available to any party who wishes to subscribe to the service. As with all MSIL system services, this service is available, on equal terms, to any party requesting the service.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Board has requested that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing in the **Federal Register**. The Board believes that accelerated approval would permit the Pilot system to continue to operate without interruption. The Board further believes that the CDI Pilot system will increase the integrity and efficiency of the municipal securities market by helping to ensure that the price charged for an issue in the secondary market reflects all available official information about that issue.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board, and, in particular, the requirements of section 15B and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing in the **Federal Register**, in that accelerated approval is appropriate to provide for uninterrupted operation of the CDI Pilot system.

IV. Solicitation of Comments

Interested people are invited to submit written data, views, and arguments concerning the foregoing. People making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

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[2] Securities Exchange Act Release No. 30556. A complete description of the CDI Pilot system is contained in File No. SR–MSRB–90–4, Amendment No. 1.

[3] The MUNICIPAL SECURITIES INFORMATION LIBRARY system and the MSIL system are trademarks of the Board. The MSIL system, which was approved in Securities Exchange Act Release No. 29296 (June 13, 1991), 56 FR 28194, is a central facility through which information about municipal securities is collected, stored and disseminated.

[4] At the end of each phase of the Pilot, the Board was required to evaluate and address any technical, policy and cost issues which arose during that phase, prior to committing the Pilot system to greater capacity. The first such report was provided to the Commission on May 17, 1993. In addition, the Board will report to the Commission at the end of the pilot period, and any changes or requests for permanent approval will be filed under SEC Rule 19b–4. *See* File No. SR–MSRB–90–4 Amendment No. 1 (Oct. 7, 1991), and Securities Exchange Act Release No. 30556 (April 6, 1992).

[5] Securities Exchange Act Release No. 30556 at 25–26 (April 6, 1992).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–93–9 and should be submitted by [insert date 21 days from the date of publication].

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change be, and hereby is, approved for an 18-month period ending on April 6, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 U.S.C. 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21781 Filed 9–7–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Application for Unlisted Trading Privileges in Two Over-The-Counter Issues and To Withdraw Unlisted Privileges in Two Over-the-Counter Issues

September 1, 1993.

On August 23, 1993, the Chicago Stock Exchange, Inc. ("CHX"), submitted an application for unlisted trading privileges ("UTP") pursuant to Section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7–11212 .	CALL	Nextel Communications Class A Common Stock $.001 par value.
7–11213 .	VLSI	VLSI Technology, Inc. Common Stock $.01 par value.

The above-referenced issues are being applied for as replacements for the following securities, which form a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

[6] 15 U.S.C. 78s(b)(2).

The CHX also applied to withdraw UTP pursuant to section 12(f)(4) of the Act for the following issues:

File No.	Symbol	Issuer
7–11214 .	MTCEF	MTC Electronic Technologies Co. LTD. Common Stock No par value.
7–11215 .	MCAWA	McCaw Cellular Communications Inc. Class A Common Stock. $.01 par value.

Replacement issues are being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before September 22, 1993, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP as well as the withdrawal of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21780 Filed 9–7–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–19668; 811–7928]

The Franklin Corporation SBIC; Notice of Application

September 1, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Franklin Corporation SBIC.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the Act.

FILING DATE: The application was filed on July 29, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 27, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issue contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 767 Fifth Avenue, New York, NY 10153.

FOR FURTHER INFORMATION CONTACT: Fran M. Pollack-Matz, Senior Attorney, at (202) 504–2801, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Delaware corporation organized on March 31, 1987 as a wholly-owned subsidiary of The Franklin Holding Corporation (Delaware) ("Franklin Holding"). Franklin Holding is a non-diversified, closed-end investment company registered under the Act.

2. Applicant was incorporated under the name The Franklin Corporation (Delaware), but its name was changed following a merger on October 1, 1987 with The Franklin Corporation, a New York corporation ("Franklin New York"). Franklin New York was registered under the Act as a diversified, closed-end investment company and licensed as a small business investment company under the Small Business Investment Act. Pursuant to the merger, each outstanding share of Franklin New York's common stock was exchanged for one share of Franklin Holding's common stock, and applicant succeeded to all of the business and operations of

Franklin New York, including its registration as an investment company.

3. On October 28, 1992, applicant's board of directors approved a proposal to distribute substantially all of its assets to its sole stockholder, Franklin Holding, in complete liquidation of applicant, and to dissolve applicant as a Delaware corporation. Franklin Holding approved the proposal to liquidate and dissolve applicant on October 28, 1992.

4. All of applicant's portfolio assets were transferred at net asset value to Franklin Holding. Applicant transferred its cash to Franklin Holding on November 1, 1992 and all of its other assets and liabilities by journal entry to Franklin Holding effective November 1, 1992.

5. As of October 28, 1992, there were 100 outstanding shares of applicant's common stock, its only authorized class of securities. The aggregate net asset value as of September 30, 1992 was $3,523,147 or $3,523 per share, and, as of June 30, 1993, the net asset value was $0.

6. Applicant's expenses in connection with the liquidation were approximately $977, including $750 for legal services, $162 in filing fees, and $65 for publishing expenses.

7. As of the date of filing of the application, applicant had no securityholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities and has completed the winding-up of its affairs.

8. Applicant has filed a certificate of dissolution pursuant to the General Corporation Law of the State of Delaware.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21782 Filed 9–7–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–19659; 811–5587]

Tyler Cabot Mortgage Securities Fund, Inc.; Notice of Application

September 1, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Tyler Cabot Mortgage Securities Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the Act.

FILING DATE: The application was filed on June 3, 1993, and amended on August 12, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 27, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issue contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 2001 Bryan Tower, Suite 3300, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Fran M. Pollack-Matz, Senior Attorney, at (202) 504–2801, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end diversified management investment company that was organized as a corporation under the laws of Maryland. On August 16, 1988, applicant filed a notification of registration on Form N–8A and a registration statement on Form N–2. The registration statement became effective on November 23, 1988, and applicant's initial public offering commenced on December 1, 1988.

2. On July 8, 1992, applicant's board of directors, upon the recommendation of the special committee of independent directors, approved the merger of applicant with and into Capstead Mortgage Corporation ("Capstead") pursuant to an agreement and plan of merger (the "Merger Agreement"). Under the Merger Agreement, Capstead, a real estate investment trust, is the surviving entity.

3. Tyler Cabot Advisers, formerly Lomas Securities Advisers, Inc., is the investment adviser to applicant. Capstead Advisers is the investment adviser to Capstead. Both Tyler Cabot Advisers and Capstead Advisers are wholly-owned subsidiaries of Lomas USA, which is a wholly-owned subsidiary of Lomas Financial Corporation. As a result, applicant filed an exemptive application (File No. 812–7984) on July 10, 1992 and amendments thereto on September 22, 1992, October 14, 1992 and October 26, 1992, requesting an order under section 17(b) of the Act that would grant an exemption from section 17(a) thereof.[1] A notice of the filing of the application was issued on November 2, 1992 Investment Company Act Release No. 19072), and an order was issued on December 1, 1992 (Investment Company Act Release No. 19134).

4. On or about November 2, 1992, the notice of proxy was mailed to all of applicant's and Capstead's stockholders as of the record date of October 26, 1992. Applicant's stockholders approved the merger at a special meeting on December 1, 1992.

5. Pursuant to the Merger Agreement and the Articles of Merger, on December 2, 1992 (the "Merger Date"), applicant transferred all of its portfolio securities, other assets, and liabilities to Capstead. Each share of applicant's common stock has been converted into the right to receive one share of Capstead's series B preferred stock, which has a liquidation preference of $11.38 per share and is convertible, at the option of the holder into .3196 shares of Capstead common stock. On December 23, 1992, stockholders of applicant as of the record date of December 4, 1992, received a final dividend of 3½ cents per share of applicant's common stock.

6. On the Merger Date, applicant had 29,429,815 shares outstanding, having an aggregate net asset value of $320,490,685.30 and a per share net asset value of $10.89. As of the date of the filing of this application, all of the stockholders of applicant have received the requisite notification in connection with the surrender of their certificates representing the series B preferred stock. Although most of applicant's stockholders have submitted the requisite transmittal letters to the exchange agent, holders of 79,051 shares of applicant's common stock (amounting to .2648% of applicant's common stock on the Merger Date) have

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[1] Applicant and Capstead could not rely on rule 17a–8 under the Act, an exemption from section 17(a), because the rule only applies to mergers of certain affiliated registered investment companies. Capstead claims an exclusion from the definition of investment company under sections 3(c)(5)(C) and 3(c)(6) of the Act.

not exchanged their certificates representing applicant's common stock. These certificates now represent only the right to receive the series B preferred stock and any cash in lieu of fractional shares (the "Merger Consideration"). Any portion of the Merger Consideration that remains unclaimed by holders of these certificates six months after the Merger Date will be returned to Capstead. Any certificate holder who has not exchanged a certificate for the Merger Consideration before the consideration is returned to Capstead, shall look only to Capstead for payment thereof.

7. Total expenses incurred in connection with the merger totalled $5,472,979. Applicant paid approximately $2,825,535 and Capstead paid the balance. Capstead will bear any expenses incurred in connection with the deregistration and dissolution of applicant.

8. As of the date of the application, applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

9. On December 2, 1992, the Articles of Merger between the applicant and Capstead were filed with the State Department of Assessments and Taxation of the State of Maryland.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21843 Filed 9–7–93; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Participation in the Intelligent Vehicle-Highway Systems (IVHS) Field Operational Test Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for participation.

SUMMARY: The U.S. Department of Transportation (DOT) seeks offers from the public and private sectors to form partnerships to conduct operational tests in support of the national Intelligent Vehicle-Highway Systems (IVHS) program. This notice solicits offers to participate in operational tests that concentrate on evaluating the benefits of the following IVHS user service areas:

1. Emergency Notification and Personal Security,
2. Automated Roadside Safety Inspections and Commercial Vehicle Administrative Processes,
3. Travel Demand Management,
4. En-route Driver Advisory and Traveler Services Information, and
5. Personalized Public Transit and Public Travel Security.

Each of these user service areas is discussed below under the section titled "Proposed Operational Tests." National laboratories are encouraged to participate or collaborate with others in offers for user service areas that may use their available technologies for new applications in transportation. Such areas could include emergency notification and personal security (driver and personal security), travel demand management (air emissions detection), and others.

The selection criteria contained in this notice will be used to assess an operational test's potential for contributing to the advancement of the national IVHS program, evaluate the proposed technical and management approaches for the test, and determine the appropriateness of the proposed Federal role in the project. The selection criteria set forth in today's notice supersede the criteria presented in the previous operational test notices dated May 8, 1992 (57 FR 19959), and July 20, 1992 (57 FR 32047).

DATES: Operational test offers must be received on or before January 6, 1994.

ADDRESSES: Offers to participate in the IVHS operational test program should be submitted directly to the Federal Highway Administration, Office of Traffic Management and IVHS, Operational Test Division, (HTV–20), 400 Seventh St. SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. George Schoene, FHWA Office of Traffic Management and IVHS, IVHS Operational Test Division, HTV–20, (202) 366–6726; Mr. August Burgett, NHTSA Office of Crash Avoidance Research, NRD–50, (202) 366–5672; Mr. Denis Symes, FTA Office of Technical Assistance and Safety, TTS–30, (202) 366–0232; or Ms. Julie Dingle, FHWA Office of the Chief Counsel, HCC–32, (202) 366–0780, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Intelligent Vehicle-Highway Systems (IVHS) program assembles a range of advanced technologies and system concepts that, when used in combination, can improve mobility and transportation productivity, enhance safety, maximize the use of existing transportation facilities, conserve energy resources, and reduce adverse environmental effects. The "Department of Transportation's IVHS Strategic Plan" (Department of Transportation Publication No. FHWA–SA–93–009) describes DOT's program delivery of research and development, operational testing, deployment, and long-term IVHS development under the Automated Highway System program.

Operational tests serve as the transition between research and development (R&D) and full scale deployment of IVHS technologies. An operational test integrates existing technology, R&D products, institutional, and perhaps regulatory arrangements to test one, and usually more, new technological, institutional or financial elements in a real world test. The tests permit an evaluation of how well newly developed IVHS technologies work under real operating conditions and assess the benefits and public support for the product or system. Operational tests are conducted in a "real world" operational highway environment under "live" transportation conditions. This distinguishes operational tests from research projects or other kinds of testing, for example simulation testing, test tracks, or tests on facilities that are temporarily closed to the public.

IVHS operational tests are conducted as cooperative ventures between the Department of Transportation and a variety of public and private partners, including State and local governments, private companies, and universities. Potential private sector partners in IVHS operational tests are encouraged, when appropriate, to work with appropriate State and local transportation agencies or other public sector organizations in the preparation of proposed cooperative ventures. An IVHS operational test will typically involve a carefully crafted partnership that is negotiated among Federal, State, local, private, and other institutions. Funding for the technical and administrative responsibilities is shared among the partners in the operational test.

The "Department of Transportation's IVHS Strategic Plan" summarizes the roles of each participant in the National IVHS Program and operational tests. The general Federal role is to act as a leader and a catalyst, and to ensure adequate emphasis on public benefits. The Department of Transportation also guides the design and conduct of the project evaluation to ensure that the project is independently evaluated on a national program scale. The participating DOT administrations, the FHWA, the National Highway Traffic Safety Administration (NHTSA), the

Federal Transit Administration (FTA), and the Research and Special Programs Administration (RSPA) are involved in IVHS and their specific IVHS program needs will tailor the particular arrangements of the operational tests.

The Department of Transportation is also developing a National IVHS Program Plan which will build on and expand the "Department of Transportation's IVHS Strategic Plan," providing the detailed "road map" required to both plan and track progress toward deploying systems and technologies that support user services of the IVHS program.

The Program Plan will include estimated milestones for each user service which will form the basis for selecting an area for operational tests.

The Program Plan will consist of the following IVHS User Services.

1. Pre-Trip Travel Information (transit, driver, and ridesharing).
2. En-route Driver Advisory.
(a) Driver Information.
(b) In-Vehicle Signing.
3. En-route Transit Advisory.
4. Traveler Services Information (e.g., Yellow Pages).
5. Route Guidance (includes general service plus commercial vehicle and HAZMAT-specific guidance; does not include emergency vehicle-specific guidance).
6. Ride Matching and Reservation (e.g., car and vanpool, HOV control).
7. Incident Management (excludes Emergency Vehicle Management service).
8. Travel Demand Management (e.g., regulatory, mode change, parking control, emissions detection).
9. Traffic Control (includes transit priority and HOV priority).
10. Electronic Payment Services (e.g., parking, transit fares, toll collection, congestion, highway pricing).
11. Commercial Vehicle Pre-clearance (includes roadside access to carrier, vehicle, and driver records).
12. Automated Roadside Safety Inspections (automated inspection facilities).
13. Commercial Vehicle Administrative Processes.
(a) Electronic Purchase of Credentials.
(b) Automated Mileage and Fuel Reporting and Auditing.
(c) International Border Preclearance.
14. On-Board Safety Monitoring (includes driver, vehicle, and cargo).
15. Commercial Fleet Management (includes motor carrier and intermodal terminal operations).
16. Public Transportation Management.
(a) Operation of Vehicles and Facilities.
(b) Planning and Scheduling Services.
(c) Personnel Management
17. Personalized Public Transportation (e.g., para-transit, route deviations).
18. Emergency Notification and Personal Security.
(a) Driver and Personal Security.
(b) Automated Collision Notification.
(c) HAZMAT Incident Notification.
19. Public Travel Security.
20. Emergency Vehicle Management.
(a) Fleet Management.
(b) Route Guidance.
(c) Signal Priority.
21. Longitudinal Collision Avoidance.
(a) Rear-end Crash Warning and Control.
(b) Autonomous Intelligent Cruise Control.
(c) Cooperative Intelligent Cruise Control.
(d) Head-on Crash Warning and Control.
(e) Passing Warning (on two-lane roads).
(f) Backing Crash Warning.
22. Lateral Collision Avoidance.
(a) Lane Change and Blind Spot Crash Warning andControl.
(b) Lane Keeping Warning and Control.
23. Intersection Crash Warning and Control.
24. Vision Enhancement for Crash Avoidance (inclement weather and at night).
25. Impairment Alert.
(a) Impaired Driver Warning and Control Override.
(b) Vehicle Condition Warning.
(c) In-vehicle Infrastructure Condition Warning (infrastructure-based warning in En-route Travel Advisory service).
(d) Integrated Warning Systems.
26. Pre-crash Restraint Deployment.
27. Fully Automated Vehicle Operation (AHS).

Several notices may be issued during the year to solicit specific operational tests based on milestones established for each user service, as will be outlined in the National IVHS Program Plan, when completed.

This notice of solicitation centers on the following user service areas.

Emergency Notification and Personal Security (driver and personal security), No. 18.

Automated Roadside Safety Inspections (automated inspection facilities), No. 12.

Commercial Vehicle Administrative Processes, No. 13.

Travel Demand Management (emissions detection), No. 8.

En Route Driver Advisory, No. 2.

Personalized Public Transit (route deviations), No. 17.

Public Travel Security, No. 19.

Proposed Operational Tests

Operational tests are needed to advance the national IVHS program in the following user service areas.

1. Emergency Notification and Personal Security (Driver and Personal Security)

An operational test is needed to evaluate the benefits of driver and personal security systems that allow travelers to notify traveler assistance centers of the need for assistance. A two-way communications capability may also be included to allow the assistance provider to respond to the traveler, acknowledging the assistance request and informing the traveler that help is on the way. This IVHS user service area is intended to speed the detection of and response to non-injury incidents on the highway.

This solicitation seeks offers for testing and evaluating various low-cost system approaches for providing these capabilities. Key aspects of such systems would include the ability to locate the requestor. For example, this may be either through systems that enable the requestor to send the requestor's location with the call for help, or by use of a beacon that permits the assistance provider to determine location through triangulation or to pinpoint the location of the beacon. Provisions must be made for the easy operation of the device by a conscious and uninjured traveler. In addition, protection against either malicious or accidental use of the system must be addressed.

The system should also support the capability to transmit the nature of the request for help, e.g., disabled vehicle, flat tire or out of gas. This would permit the assistance coordinator to ensure that the proper level of response is made for each request. The system should also support "third party" assistance requests, so another motorist can call in the incident. In this case, the caller may be a motorist who is either stopped or just passing by the disabled vehicle, without having specific knowledge of the problems of the disabled vehicle. Operating procedures must be developed to ensure various situations can be responded to without expending excessive resources, due to these types of unknowns.

The response coordinator may be either a public or private sector entity. Based on the nature of the assistance request, the coordinator would inform the appropriate response organization and would subsequently confirm the fact that help is on the way to the requestor.

This test is intended to validate that a response network can be developed to meet the stated objectives of the solicitation and to further evaluate whether the approach is successful in rapidly responding to the calls for help, thereby providing timely support for the stranded motorist.

The evaluation plan should address how the safety impact of the in-vehicle units will be evaluated, the data that will be collected, the measures of effectiveness, and the analysis techniques that will be used to improve traveler safety and reduce related levels of congestion.

2. Automated Roadside Safety Inspections and Commercial Vehicle Administrative Processes

Operational tests are needed to evaluate commercial vehicle operations in the following user service areas. While an offer that responds to combinations of these areas is allowable, we anticipate that separate offers will be made for each area.

(a) Automated Commercial Vehicle Safety Inspection Facilities

An operational test in this area would evaluate the speed and accuracy of advanced systems which assist the safety inspector in conducting a vehicle safety inspection. The current process of conducting safety inspections of commercial vehicles is time consuming and inefficient for both carriers and inspectors. Some portions of the inspection rely on visual inspection of complex systems, which can produce inconsistent results. Technologies are being conceived, developed, and marketed to improve the inspection process through automation and other electronic means. Automated inspection facilities, both fixed and mobile, would combine a number of these technologies and would serve as a test bed for determining how effective these various concepts are both in terms of accurately identifying potential problems and improving the overall efficiency of the inspection process. The system should be in accordance with current acceptable standards being used for inspection of commercial vehicles.

(b) Out-of-Service Verification

An operational test in this area will evaluate the safety benefits of advanced systems which improve the monitoring of vehicles and drivers that have been placed out-of-service. Once a vehicle or driver has been placed out-of-service, it is important to ensure the violations are corrected before they return to the highway. Monitoring these violators is difficult for inspectors because there usually is no way to physically impound the vehicle. During the day, inspectors are unable to stay with the vehicle because of other duties to perform. At night, inspection facilities are closed and most do not have gates to lock up the vehicle. Out-of-service verification could be approached in different ways, and this solicitation seeks offers that would evaluate various methods and technologies. One concept would include technologies that would monitor vehicles within the inspection facility and either notify the inspector if the driver and vehicle attempted to leave or prevent the driver and vehicle from leaving before the violation was corrected. Another concept would use technologies to detect a vehicle that had been placed out-of-service but was continuing to operate. This method would provide information about the vehicle or driver infraction, either through on-board information or on a shared database, so that inspection officers at the next location or in the traffic stream could verify that the violation had been rectified. If this second concept is pursued, it may require multiple monitoring capabilities, both fixed and mobile, either in a single state or through a multi-state effort.

(c) One-Stop Electronic Purchase of Credentials

Operational tests in this area would evaluate improvements in productivity by streamlining the process for carriers to purchase motor carrier credentials. They would also evaluate methods for state agencies to make the handling of credential purchasing more cost effective. The current process for purchasing motor carrier credentials requires several trips to various agencies in each State to obtain the proper credentials. This process is very cumbersome for motor carriers. The major focus of one-stop electronic purchase of credentials is to make it possible for a motor carrier to apply for, pay for, and receive all of the necessary credentials or permits electronically from either the base State or the necessary individual States. The envisioned system would allow an applicant to apply for and obtain annual or temporary credentials through a computer hook-up to the necessary State(s). User software would provide detailed instructions for individual credential or permit forms. The ability to obtain multiple credentials or permits in one single transaction would be essential. The State(s) must have the ability to ensure accuracy and calculate charges. Payment for the credentials could be implemented through electronic fund transfer. Multi-state tests are preferred. These would most likely expand the commercial vehicle institutional studies now being undertaken by most States. However, a test by an individual State will be considered (provided the system design is compatible with a multi-state operation).

3. Travel Demand Management (Emissions Detection)

An operational test is needed to evaluate improvements in air quality by measuring emissions of moving vehicles. From a broad air quality improvement perspective, specific vehicles that emit large quantities of carbon monoxide, oxides of nitrogen, and volatile organic compounds need to be identified. Preliminary assessments indicate that a relatively small percentage of passenger vehicles contributes disproportionately to noxious emissions (i.e., as few as 10 percent of cars may contribute as much as 50 to 60 percent of pollutants). Other recent studies indicate that trucks, including delivery vehicles, also contribute disproportionally to overall emissions levels. With proper instrumentation, high emitters can be identified and corrective action taken.

There may be a number of strategies for minimizing the emissions of these high emitting vehicles. One is to elicit remedial actions by vehicle operators and owners. A variety of informational and remedial options may exist, once vehicle operators and owners are alerted to the high pollutant levels produced by their vehicles. Immediate feedback could be provided by using variable message "emissions violations" signs. Informational mailings may also be sent to owners of extremely high polluting vehicles. Incentives, such as "free" or subsidized tune-ups, may be made available to the owners of these vehicles. In jurisdictions which have a legal basis for citing owners of polluting vehicles, more stringent measures might be considered. Most strategies will require the efforts of private and public sector organizations. The evaluation should document the cost of remedial action and its effect on the emissions of the vehicle.

A second strategy would be to modify traffic control strategies to minimize emissions at freeway ramps, signalized intersections, and other locations of concern. For example, where ramp merging controls have been instituted, the roadway configuration may allow a direct sampling of vehicle tailpipe emissions. This emissions data would allow operating authorities to fine-tune ramp metering controls so that

emissions hot spots (carbon monoxide concentrations) on ramps can be avoided or minimized. Emission monitoring could be integrated with ramp metering operations by changing both vehicle release tactics on entrance ramps and inducing vehicle movement on the freeway mainline (e.g., using overhead speed signing). The integration of mainline upstream surveillance may also be incorporated in control strategies for individual and coordinated metering.

The offer should address instrumentation to be installed, including equipment to be used to quantify emissions. It should also specify both the particular emissions to be measured and the means for estimating their local and area-wide diffusion.

4. En-Route Driver Advisory and Traveler Services Information

Operational tests are needed to evaluate the benefits of en-route driver advisory and traveler services information using FM Subcarrier wide area communications systems and applications of FHWA's 220 MHz Frequency pairs. The benefits may include reduction in congestion and improvements in safety and traveler performance. Such a system would (1) disseminate a variety of traveler information and traffic (link time) data, including en-route driver and transit advisories (e.g., road conditions and incidents), and traveler services information (e.g., special events, parking availability), (2) receive this information through in-vehicle or portable communications devices, and (3) decode and display this information to the traveler in the form of text or voice messages.

The Department of Transportation is interested in evaluating the FM Subcarrier as communications medium and application of the FHWA's 220 MHz frequency pairs for these purposes. These communication technologies can be evaluated in conjunction with each other on a single operational test or independently. The evaluations should include, in addition to the FM Subcarrier and 220 MHz receiving and display technology, user's interface aspects of the proposed systems.

The FHWA has funded limited prototypes and tests of an "FM Subcarrier Traffic Information Channel" receiver with generally very favorable results, and proposed operational tests could utilize this technology. The proposed communications channel should provide a relatively high information transmission rate (8000 bps. useful data with error rates of less than 1 in 10,000) of communications for areas within 30–40 miles of the transmitting station. Offers for testing of AM Subcarrier systems will be considered.

The FHWA has developed guidelines for the use of the 220 MHz frequencies in support of IVHS operational tests and is currently examining the operational concepts for providing a nation-wide mobile IVHS communication capability. It is anticipated that the frequency pairs will be utilized to implement a coordinated national communications capability serving the motoring public, through the provision of traffic-related information. Two-way communications services such as requesting of roadside assistance and the reporting of traffic (link time) information to an area Traffic Management Center could be supported by the envisioned communications system. Areas of interest include the use of a nation-wide "Hailing" frequency (or frequencies) that would inform the motorist of the set of available user services in the coverage area and would identify the specific radio channels/frequencies allocated to support these services in the specific areas. If an area or regions had an FM subcarrier traffic channel, the frequency for receiving this service would also be identified.

Tests of both urban and rural applications of this capability are solicited. Test areas may be metropolitan areas, resort areas, tourist attractions, or regions having unique travel-related problems, including severe weather and rough terrain. The proposed test area(s) should already have a traffic information collection infrastructure in place as it is not the intent of the Department of Transportation to fund any substantial infrastructure enhancements to support this test. The transmitted data should be a mixture of live traffic information as well as pre-defined test messages to help evaluate the communications channel performance. It is intended that an evaluation would be performed in two phases to permit the technical evaluation of the communications channel and test of user devices independently before performing the complete test of the traveler information system.

Test areas and candidate transmission stations should be identified to provide a range of different station operating characteristics, (e.g., power, format, antenna height, processing, the presence of other subcarriers). Suggested coverage would include major portions of metropolitan areas (including areas in which "urban canyon" multi-path transmission effects are experienced) as well as the highway networks surrounding major tourist areas, such as Yellowstone Park, WY, Branson, MO, or Williamsburg, VA. The mixture of transmitted information types would be different for metropolitan areas than for tourist attractions in rural or small urban areas. The ability of this communications channel to serve either type of area must be evaluated by the proposed tests.

The proposed operational test should support the evaluation of how well a range of devices receive, decode, and display this information to travelers. These devices could include: (1) Portable communications devices with simple displays or voice output, (2) notebook computers with communications modems and special software for decoding the received data, and (3) in-vehicle navigation devices with associated communications equipment, GPS receivers, and graphics display. One of the key issues to be examined by this test will be the ability of a common traveler information channel to support terminal devices of significantly different capability levels. Issues such as information coding and decoding and display methods must be evaluated to determine the viability of this approach to traveler information dissemination. It is anticipated that the more sophisticated devices will provide selection of information based upon the traveler location (geo-filtering) and specified destination or upon other preferences. In the low-end systems, user selectivity will be very limited and the system may only be an analog voice version. The evaluation should help determine the potential utility of the low-end devices and also identify a minimum set of capabilities that make the devices viable from the traveler's viewpoint.

5. Personalized Public Transit and Public Travel Security

Operational tests are needed to evaluate advanced public transit systems in the following user service areas.

(a) Personalized Public Transit

An operational test in this area would evaluate the effectiveness of systems to increase transit ridership on flexibly routed transit vehicles. The system strategies would involve fixed route transit operations that permit short off-route deviation in less densely populated areas to pick up or discharge passengers. For example, a prospective passenger may request information on travel alternatives. One alternative is fixed route bus service. The passenger can be told to walk to the bus stop to meet the bus, or, if there is enough

flexibility in the bus' schedule, the bus can be detoured a few blocks off its route to pick up the passenger at his home. It is conceivable that this service could be offered as a premium service for an additional fee ("Value Added Service").

(b) Public Travel Security

An operational test in this area would evaluate the effectiveness of providing public travel security throughout the regional transportation network to improve safety and security aboard transit vehicles. This includes security at transit boarding points (e.g., bus stops), on the vehicle, and in parking lots. The fear of crime is one major deterrent to additional transit use; the public's perception of crime and its fear of becoming a victim must be overcome for transit use to grow.

Evaluation

Evaluation is an integral part of each operational test and critical to the success of the National IVHS Program. In all tests, an independent and comprehensive test evaluation must be undertaken. The evaluation guidelines, that shall apply to all operational tests funded in whole or part with Federal IVHS funds, are as follows.

1. Individual operational tests will be structured within and have objectives which are consistent with the Department of Transportation's Program Plan for IVHS. This will guide the development of the evaluation goals of each operational test.

2. The Department of Transportation will perform the role of evaluation coordinator for all operational tests. As evaluation coordinator, the Department of Transportation or its agent will work with the other partners in establishing individual test objectives, including the national, as well as local, goals and objectives that must be addressed during the evaluation; in developing the overall evaluation plan and the detailed experimental design; and in conducting the actual evaluation.

3. The Department of Transportation will conduct the evaluation or require that it be conducted by an independent party who is not a member of the partnership that is responsible for the operational test. The Department of Transportation reserves the right to conduct any additional evaluation deemed necessary to satisfy the national objectives of the IVHS Program. Where the evaluation is conducted by a party retained by the non-Federal partners, the Department of Transportation shall retain approval authority to ensure the evaluation is acceptable and unbiased.

4. The IVHS Partnership Agreement or other documents used to establish the operational test and funding arrangements between the Department of Transportation and the other partners will include language to require that an evaluation plan be prepared in the early phases of the operational test. There will also be language in all the agreements that incorporates the provisions of these guidelines.

5. The operational test funding plan shall separately account for the evaluation phase. Funds identified for the test evaluation shall not be spent for other portions of the operational tests. The Department of Transportation shall negotiate with the other partners during the initial operational test definition to ensure an adequate estimate of the funding necessary to meet the national evaluation objectives.

6. Funding to proceed with detailed systems design and implementation for the operational test shall not normally be provided until an evaluation plan has been approved by the Department of Transportation. Subsequent approval stages will be specified in the IVHS Partnership Agreement to ensure adequate development of the test and its evaluation. Funding for each test may be provided incrementally to allow for the adequate completion of each of the defined milestones.

7. Nothing in these guidelines shall preclude the non-Federal partners from conducting additional evaluations for their specific needs. The non-Federal partners are expected to be involved in specific phases of the evaluation. At a minimum, the non-Federal partners are expected to be part of the process to develop the goals and objectives of the test and the overall evaluation plan. These partners will also be involved in much of the technical, legal, and institutional data collection, archiving, and reporting.

8. The Department of Transportation reserves the right to require that additional data be collected and made available to allow the Department of Transportation to make comparative analyses with similar functions or features associated with other national operational tests.

Funding

By statute (Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102–240 Section 6058, 105 Stat. 1914, 2194), the maximum share of an operational test funded from Federal funds, including IVHS funds, cannot exceed 80 percent. The remaining 20 percent must be from non-federally derived funding sources and must consist of either cash, substantial equipment contributions which are wholly utilized as an integral part of the project, or personnel services dedicated full-time to operational test purposes for a substantial period, as long as these staff are not otherwise supported with Federal funds. The non-federally derived funding may come from State, local government, or private sector partners. In an IVHS partnership, as with other Department of Transportation cost-share contracts, it is inappropriate for a fee or profit to be included in the proposed budget. This prohibition on the inclusion of a fee or profit applies to all partners to the proposed operational test. A partner is an entity that participates directly in the preparation of the operational test offer and plays a substantial role in defining the scope of the operational test, technologies included, and financial participation. This does not prohibit appropriate fee or profit payments to vendors or others which may provide goods or services to the partnership. For example, equipment vendors, software providers, and entities retained for comprehensive operational test evaluation purposes would not be subject to this prohibition.

The Department of Transportation, the Comptroller General of the U.S., and, if appropriate, the States have the right to access all documents pertaining to the use of Federal IVHS funds and non-Federal contributions. Non-federal partners must submit sufficient documentation during final negotiations and on a regular basis during the life of the operational test to substantiate these costs. This includes items such as direct labor, fringe benefits, material costs, consultant costs, subcontractor costs, and travel costs.

In order to maximize available Federal IVHS dollars and be consistent with agency policy, prospective partners are encouraged to increase their share to 50 percent. Additional funds provided over the required 20 percent minimum may come from a variety of funding sources and may include the value of federally-supported projects directly associated with the IVHS operational test.

Operational Test Offer Preparation

An offer to participate in the operational test program should contain sufficient information to enable an evaluation of the offer based on the selection criteria below. Additionally, the offer should contain details regarding the operational test schedule and budget. The schedule should show major milestone events including evaluation phases. The budget should

show both public and private funding contributions (see table below).

Activities	FY 1994 amount		Total amount		Description of contribution	
	Federal IVHS funds	Matching funds	Federal IVHS funds	Matching funds	Public	Private
Design. Development. Implementation. Operation/Maintenance. Evaluation. Project Management.						
Total.						

In addition, the budget should include the following.

1. Detailed costs for the major operational test components such as operational test management, hardware and software design, technical development and integration of project elements, installation and start up, operation and maintenance for the duration of the evaluation, data collection, analysis and evaluation, and reporting.

2. Summarized costs which show the value of the resources needed for fiscal year (FY) 1994 as well as future years under the following three categories: Federal IVHS funds, other public funds, and private funds.

The offer shall not exceed 50 pages in length including title, index, tables, maps, appendices, abstracts, and other supporting materials. A page is defined as one side of an 8½ by 11 inch paper, with a type font no smaller than 12 point. Offers greater than 50 pages will not be accepted. Ten copies plus an unbound reproducible copy of the offer shall be submitted. The cover sheet or front page of the offer should include the name, address, and phone number of an individual to whom correspondence and questions about the offer may be directed.

Review Process

A formal review process has been established to evaluate responses to this notice soliciting participation in the IVHS operational test program. The Office of Traffic Management and IVHS, IVHS Operational Test Division, of the FHWA is responsible for coordinating the formal review and selection with representatives from the FHWA, FTA, NHTSA, and the Office of the Secretary of Transportation of the U.S. Department of Transportation. Representatives from the Department of Transportation modal administrations with expertise in key technological or program areas will serve on a technical review team(s). The technical review team(s) will perform a detailed review of the offer based on requirements of this solicitation and the selection criteria below.

Selection Criteria

1. Relationship to National Program

The Operational Test offer of participation shall:

(a) Directly support the national goals and milestones of the user service areas described in this solicitation;

(b) Advance the development and eventual implementation of the proposed technology or system. Demonstrate that there is an acceptable basis for believing that the technologies being tested will ultimately be successfully deployed or implemented;

(c) Have meaningful, distinguishable features involving technical, institutional, market, or other important characteristics which have not been addressed in operational tests to date. Operational tests should not replicate past or current tests unless such replication provides a significant contribution to advancing the IVHS program;

(d) Fit within a logical evolution of the IVHS program and supporting technology; and

(e) Provide an approach that is technically feasible and responsive to the requirements of the user service area.

2. Evaluation

In concert with the evaluation guidelines stated earlier, the Operational Test offer of participation shall:

(a) Identify initial evaluation goals and objectives at the national and local level. These goals and objectives should reflect those activities required to move toward the national goals and milestones outlined in the "Department of Transportation's IVHS Strategic Plan." The evalaution goals and objectives should address, as a minimum, institutional issues, user acceptance, system benefits, costs, performance of the system, and impacts on the transportation system, including air quality;

(b) Provide a general evaluation work plan that outlines the scope and method of evaluation of each goal and objective and an assessment of the opportunity to collect the necessary data that can answer questions of both local and national significance;

(c) Provide for selection of an independent evaluator to ensure an unbiased evaluation of the operational test. The evaluator's responsibilities should be identified and the evaluator should be brought into the process just before or, at the latest, during the development of the detailed evaluation work plan; and

(d) Provide estimated overall costs for conducting the evaluation. The costs of data collection and evaluation should be identified as separate items.

3. Project Management and Proposed Partnership

The Operational Test offer of participation shall:

(a) Provide an overall level of confidence that the test will be successfully completed by:

(1) Demonstrating an acceptable level of commitment, management capability, and business reliability of the partners.

(2) Demonstrating that there is a commitment by all partners to a national technology sharing effort and a willingness to dedicate the time and effort required to share the technical and institutional results of the test with others.

(3) Clearly defining the roles and responsibilities of the principal partners and staff and demonstrating that they have the ability to perform their assigned responsibilities. For large or complex tests, an experienced systems manager to support the project is desirable;

(b) Provide sufficient background to validate the accuracy of the cost and schedule estimates for the operational test;

(c) Minimize any potential negative effects of the test and demonstrate an awareness of and approach for dealing with complicating technical or institutional factors which might adversely affect the test. Innovative or technically challenging ways for dealing with these factors will be of particular interest;

(d) Identify the proposed agreements for sharing of technology developed under this operational test; and

(e) Identify long range plans for full scale deployment of the technologies when the operational test has been successfully completed.

4. Suitability of the Test Site, Vehicle Fleet, and Infrastructure

The Operational Test offer of participation shall:

(a) Demonstrate that the operational test is part of a continuing, ongoing transportation management program or that there is a good opportunity for components of the operational test to evolve into operational systems after the testing is completed;

(b) Demonstrate that the size and characteristics of the test and site are adequate for meaningful evaluation of the proposed system or technology and that the test and site have the operational or environmental characteristics to challenge the performance, reliability, and durability of the product or prototype being evaluated;

(c) Ensure that local public transportation services are in place to provide a valid market test of the operational test technology and that the local public transportation providers are interested in the adoption of new technologies;

(d) Provide the opportunity to evaluate the safety and air quality benefits of systems or operations where such issues are important considerations; and

(e) Ensure adequate records to support the project evaluation with regard to operation, reliability, costs, institutional issues, and maintenance of the device or system being tested.

5. Non-Federal Partners' Role

The Operational Test offer of participation shall:

(a) Clearly state who will be the principal staff dedicated to the operational test by partner and indicate the amount of time each staff member is expected to devote to the test; and

(b) Ensure non-Federal contributions shown are allowable costs according to the cost principles in OMB circulars A–21, A–87 or A–122 or 48 CFR part 31, as applicable to the organization incurring the costs. Cost share arrangements should show enough detail to determine whether the resources being committed to the potential project are sufficient to ensure successful completion. Letters from all participants committing themselves to the project and specifically stating their financial commitment should be included with the offer.

6. Federal Role

The Operational Test offer of participation shall:

(a) Demonstrate that the Federal government role in the operational test is consistent with the Department's statutory role and responsibilities;

(b) Provide for Federal participation in the design and conduct of the project evaluation to ensure that the project is independently evaluated on a national program scale;

(c) Show that the proposed Federal IVHS contribution to the operational test is consistent with the agency's IVHS operational test funding policy and appropriate to the type and scope of the test;

(d) Demonstrate that Federal IVHS funds are not being used when regular Federal-aid, State, or private funds can and should be used or where the primary benefit of the operational test is in areas of private sector responsibility; and

(e) Demonstrate that Federal participation in the proposed test is an appropriate use of the Federal government's resources.

Negotiation and Approval Process

Final approval and announcement of the selected offers are expected to take at least three months from the date the offers are received. For those offers selected, the lead Department of Transportation agency will begin negotiations with the project partners to reach mutually agreeable terms for an IVHS operational test, including financial and technical issues. The negotiations will result in a funding agreement that documents project tasks, roles of partners, a budget, and a schedule for project execution and evaluation.

It should be noted that negotiations among the parties leading to development of the final agreement may be extensive and lengthy. Based on previous experiences, execution of the agreement may occur six to nine months after announcement of selected offers. Only upon successful completion of these negotiations would a partnership be formed.

Authority: Secs. 6051 through 6059, Pub. L. 102–240, 105 Stat. 1914, 2189–2195; 23 U.S.C. 315; 49 CFR 1.48.

Issued on: August 30, 1993.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 93–21833 Filed 9–7–93; 8:45 am]

BILLING CODE 4910–22–P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 172
Wednesday, September 8, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES COMMISSION ON CIVIL RIGHTS

DATE AND TIME: Friday, September 17, 1993, 9 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., room 520, Washington, DC 20425.

STATUS: Open to the Public.

September 17, 1993

Agenda

I. Approval of Agenda
II. Approval of Minutes of July 23, 1993 Meeting
III. Announcements
IV. Followup to Previous Meeting Draft Letters to:
  * The President re Chinese Immigrants
  * Secretary Aspin re Bruce Yamashita
  * Attorney General Reno re Crown Heights, New York
V. Approval of Proposed Hearing Dates for New York City—March 1, 1994
VI. Appointments to the California, Massachusetts, Nebraska, New Hampshire, North Dakota (interim), and Virginia (interim) Advisory Committees
VII. Government, Industry, and the People . . . The Battle for Environmental Justice
VIII. Equal Opportunity in Professional and Collegiate Sports
IX. Discussion of USCCR Draft Reauthorization Bill
X. Staff Director's Report
XI. Future Agenda Items

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376–8105 (TDD 202–376–8116) at least five (5) working days before the scheduled date of the hearing.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Dated September 2, 1993.

Emma Monroig,

Solicitor.

[FR Doc. 93–21939 Filed 9–3–93; 10:16 am]

BILLING CODE 6335–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m. September 15, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Application for designation as a contract market in Options on the French Franc Futures Contract; Chicago Mercantile Exchange
—Applications for designation as a contract market in the Rolling Spot French Franc Futures Contract and Options on that futures contract/Chicago Mercantile Exchange

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 93–21956 Filed 9–3–93; 11:27 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Tuesday, September 21, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 93–21960 Filed 9–3–93; 11:27 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND PLACE: 10 a.m., Tuesday, September 28, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Reviews.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 93–21962 Filed 9–3–93; 11:27 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Tuesday, September 28, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 93–21962 Filed 9–3–93; 11:27 am]

BILLING CODE 6351–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, September 13, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 3, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–22056 Filed 9–3–93; 3:26 pm]

BILLING CODE 6210–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 6, 13, 20, and 27, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 6

Thursday, September 9

2:00 p.m.
  Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
  (Contact: John Larkins, 301–492–4516)
3:30 p.m.
  Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 10

9:00 a.m.

Briefing on Proposal to Realign NRC Regions IV and V (Public Meeting)
(Contact: James Turdici, 301–504–1728)
10:30 a.m.
Briefing by Advanced Reactor Corporation (Public Meeting)
2:00 p.m.
Briefing on Management Plan for Regulating Medical Use of Byproduct Material (Public Meeting)
(Contact: Carl Paperiello, 301–504–2659)

Week of September 13—Tentative

Thursday, September 16

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 17

1:30 p.m.
Briefing on Status of Form and Content for Design Certification Rule (Public Meeting)
(Contact: Dennis Crutchfield, 301–504–1199)

Week of September 20—Tentative

Monday, September 20

10:00 a.m.
Briefing on Results of 2.206 Workshop (Public Meeting)
(Contact: Chip Cameron, 301–504–1642)
1:30 p.m.
Briefing on Status of AP600 and SBWR Thermal/Hydraulic Testing (Public Meeting)
(Contact: Brian Sheron, 301–492–3500)
3:00 p.m.
Briefing on NRC Reactor Inspection Program Assessment and Planned Improvements (Public Meeting)
(Contact: Anthony Cody, Sr., 301–492–1257)

Tuesday, September 21

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 27—Tentative

Thursday, September 30

2:00 p.m.
Briefing on Requirements for Storage and Transportation Casks (Public Meeting)
(Contact: Guy Arlotto, 301–504–3326)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION:

By a vote of 4–0 on August 26, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Briefing on Results of Agreement State Compatibility Workshop" (Public Meeting) be held on August 30, and on less than one week's notice to the public.

By a vote of 4–0 on August 26, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Briefing on NRC Research on Aging" (Public Meeting) be held on August 30, and on less than one week's notice to the public.

By a vote of 4–0 on August 30, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Management-Organization and Internal Personnel Matters" (Closed—Ex. 2 and 6) be held on August 30, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: September 2, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–21941 Filed 9–3–93; 11:02 am]

BILLING CODE 7590–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote To Close Meeting

At its meeting on August 30, 1993, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for October 4, 1993, in Washington, DC. The members will consider the August 25, 1993, Postal Rate Commission Opinion and Recommended Decision in Docket No. MC93–1, Bulk Small Parcel Service, 1992.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Mackie, Nevin, Pace, Setrakian and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(3) of Title 5, United States Code, and section 7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information in connection with proceedings under Chapter 36 of Title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States Code.

The Board has determined further that pursuant to section 552b(c)(10) of Title 5, United States Code, and section 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of Title 5, United States Code; section 410(c)(4) of Title 39 United States Code; and section 7.3(c) and (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 93–21998 Filed 9–3–93; 12:56 pm]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 58, No. 172
Wednesday, September 8, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4697-9]

Arkansas; Adequacy Determination of State Municipal Solid Waste Permit Program

Correction

In notice document 93-20598 beginning on page 44819 in the issue of Wednesday, August 25, 1993, make the following correction:

On page 44820, in the first column, in DATES:, in the sixth line, "October 12, 1994" should read "October 12, 1993".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N-93-3656; FR-3552-N-01]

Loan and Mortgage Insurance; Changes to the Maximum Loan and Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

Correction

In rule document 93-20442 beginning on page 44760 in the issue of Wednesday, August 25, 1993, make the following corrections:

1. On page 44761, in the table, in the first column, insert the heading "REGION I" in the line above "HUD Regional Office—Boston:".

2. On page 44762, in the table, in REGION V, after the entry "Sherburne County, MN" insert the following:

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
REGION VII				
HUD Field Office—Des Moines:				
Johnson County, IA	79,800	89,850	109,200	126,000
REGION VIII				
HUD Regional Office—Denver:				
Routt County, CO	137,750	155,150	188,500	217,500
LaPlata County, CO	91,650	103,250	125,450	144,750
Eagle County, CO	151,725	194,100	234,800	291,600
HUD Field Office—Fargo:				
Burleigh County, ND	74,100	83,450	101,400	117,000

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-2300-02; GP3-294; OR-44990]

Order Providing for Opening of Lands; Oregon

Correction

In notice document 93-17388 appearing on page 39224, in the issue of Thursday, July 22, 1993, make the following corrections:

1. On page 39224, in the second column, in the land description, **Willamette Meridian**, in T.35 S., R. 25 E., in the sixth line, "Sec. 3, lots 1 to 15, inclusive" should read "Sec. 3, lots 1 to 5, inclusive,".

2. In the same column, in the third line from the bottom of the page, "1,190.172" should read "1,190.72".

BILLING CODE 1505-01-D

Federal Register

Wednesday
September 8, 1993

Part II

Department of Commerce

Bureau of Export Administration
15 CFR Part 799

Commercial Communications Satellites; Revisions to the Commerce Control List; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 930813-3213]

Commercial Communication Satellites; Revisions to the Commerce Control List

AGENCY: Bureau of Export Administration, Commerce

ACTION: Final rule.

SUMMARY: This rule amends the Commerce Control List (CCL) of the Export Administration Regulations by revising ECCN 9A04 to include controls on components, parts, accessories, attachments, and equipment associated with commercial communication satellites also controlled under that entry. Previously Commerce controlled only commercial communication satellites under ECCN 9A04. Passive remote sensing ground stations and specially designed components, parts, accessories, attachments, and associated equipment that do not meet the parameters described in Category XV on the U.S. Munitions List (USML) are now controlled under Category 5 of the CCL. Radiation hardened microelectronic circuits that do not meet the parameters of Category XV of the USML are now controlled by Category 3 of the CCL.

This transfer of jurisdiction implements part of the Presidential directive of November 16, 1990, which mandated the removal from the USML of all items contained in the COCOM dual-use list (the International Industrial List) unless significant U.S. national security interests would be jeopardized. This rule makes the USML and the Commerce Control List more consistent with the Industrial List maintained by COCOM.

EFFECTIVE DATE: This rule is effective September 8, 1993.

FOR FURTHER INFORMATION CONTACT: Jerry Beiter, Office of Technology and Policy Analysis, Bureau of Export Administration. Telephone: (202) 482-1642.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation, and directed various other export control measures including the removal from the USML of all items contained on the COCOM dual-use list unless significant U.S. national security interests would be jeopardized. To implement this part of the directive, a space technical working group was established. The group consists of representatives from the Departments of State, Commerce and Defense, as well as other U.S. government agencies. The result of the working group's recommendation was a final rule published on October 23, 1992, in the **Federal Register** by the Bureau of Politico-Military Affairs, Department of State (57 FR 48315). That rule removed certain commercial communication satellites from the International Traffic in Arms Regulations (ITAR) to the jurisdiction of the Department of Commerce, contingent upon publication of a Commerce rule establishing national security controls on commercial communication satellites. Commerce published that rule on October 23, 1992, adding these satellites to the Commerce Control List. At that time, all detailed design, development, manufacturing and production technical data, and all specially designed or modified components, parts, accessories, attachments, and associated equipment for satellites, including those covered by the CCL, remained controlled under subparagraph (d)(2) of Category XV on the USML.

On December 28, 1992, the Bureau of Politico-Military Affairs, Department of State published a rule in the **Federal Register** (57 FR 61589) that proposed to remove components, parts, accessories, attachments, and equipment associated with commercial communication satellites and passive remote sensing satellite ground stations from the USML to the CCL. Only those components that are specifically designed or modified for satellites or other equipment controlled by Category XV of the USML will continue to be controlled under this Category. All other components of satellites not specifically designed for satellites controlled in Category XV will be controlled under the CCL.

A final rule is being published in the **Federal Register** by the Bureau of Politico-Military Affairs, Department of State simultaneously with this rule. That rule implements the changes first proposed in the December 28, 1992 **Federal Register** Notice, contingent upon publication of a Commerce rule establishing national security controls on components for commercial communication satellites.

All detailed design, development, manufacturing and production technical data still remains controlled under Category XV of the USML. However, Commerce does control other technical data, such as that level of technical data (including marketing data) necessary and reasonable for a purchaser to have assurance that a U.S.-built item controlled under ECCN 9A04 intended to operate in space has been designed, manufactured, and tested in conformance with specified contract requirements (e.g., operational performance, reliability, lifetime, product quality, delivery expectations). Commerce also controls technical data necessary to launch, operate and maintain satellites controlled by ECCN 9A04 and associated ground equipment.

This final rule also removes certain ground control stations and radiation hardened microelectronic circuits from the USML. This does not include technical data for launch vehicle/satellite compatibility, integration, or processing. Passive remote sensing ground stations and specially designed components, parts, accessories, attachments, and associated equipment that do not meet the parameters described in Category XV on the USML are now on the CCL under Category 5. Radiation hardened microelectronic circuits that do not meet the parameters of Category XV of the USML, and specially designed components, parts, accessories, attachments, and associated equipment therefore, are on the CCL under Category 3.

This rule amends the CCL by revising ECCN 9A04 to include controls on components, parts, accessories, attachments, and equipment specially designed for commercial communication satellites also controlled under that entry.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005, 0694-0007, and 0694-0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 603(b)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public

participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 799 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

2. Supplement No. 1 to § 799.1, Category 9, is amended by revising ECCN 9A04A to read as follows:

9A04A "Spacecraft" (not including their payloads) and specially designed components therefor.

Note 1: (For the control status of products contained in "spacecraft" payloads, see the appropriate category.)

Note 2: For items other than those specified in this ECCN, exporters requesting a validated license from the Department of Commerce must provide a statement from the Department of State, Office of Defense Trade Controls, verifying that the item intended for export is under the licensing jurisdiction of the Department of Commerce.

Requirements

Validated License Required: QSTVWYZ.
Unit: Equipment in number; parts and accessories in $ Value.
Reason for Control: NS.
GLV: $0.
GCT: No.
GFW: No.

List of Items Controlled

a. Commercial Communication Satellites, except those with the following characteristics:

a.1. Anti-jam capability: Antennas and/or antenna systems with the ability to respond to incoming interference by adaptively reducing antenna gain in the direction of the interference;

a.2. Antennas:

a.2.a. With aperture (overall dimension of the radiating portions(s) of the antenna) greater than 30 feet; or

a.2.b. With sidelobes less than or equal to −35db; or

a.2.c. Designed, modified or configured to provide coverage area on the surface of the earth less than 200 nm in diameter, where "coverage area" is defined as that area on the surface of the earth that is illuminated by the main beam width of the antenna (which is the angular distance between half power points of the beam);

a.3. Designed, modified or configured for intersatellite data relay links that do not involve a ground relay terminal ("cross-links");

a.4. Spaceborne baseband processing equipment that uses any technique other than frequency translation which can be changed on a channel by channel basis among previously assigned fixed frequencies several times a day;

a.5. Employing any of the cryptographic items controlled under Category XIII (b) of the U.S. Munitions List;

a.6. Employing radiation-hardened devices controlled elsewhere in § 121.1 of the ITAR that are not "embedded" in the satellite in such a way as to deny physical access. (Here "embedded" means that the device cannot feasibly either be removed from the satellite or used for other purposes);

a.7. Having propulsion systems that permit acceleration of the satellite on-orbit (i.e., after mission orbit injection) at rates greater than 0.1 g;

a.8. Having attitude control and determination systems designed to provide spacecraft pointing determination and control better than 0.02 degrees per axis; or

a.9. Having orbit transfer engines ("kick motors") that remain permanently with the spacecraft and are capable of being restarted after achievement of mission orbit and providing acceleration greater than 1 g. (Orbit transfer engines that are not designed, built, and shipped as an integral part of the satellite are controlled under Category IV of the USML.)

b. [Reserved]

Note 1: Transferring registration or operational control to any foreign person of any satellite controlled by this entry must be authorized by an individual validated license. This requirement applies whether the satellite is physically located in the United States or abroad.

Note 2: All communication satellites identified in paragraphs a.1. through a.9. of this ECCN, and specially designed components, parts, accessories, attachments, associated equipment, and ground support equipment therefore, require a license from the Department of State, Office of Defense Trade Controls (see Category XV of the USML).

Dated: August 30, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

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Part III

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Advance Notice of Proposed Rulemaking Regarding Conservation Standards for Three Types of Consumer Products; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–93–801]

Energy Conservation Program for Consumer Products: Advance Notice of Proposed Rulemaking Regarding Energy Conservation Standards for Three Types of Consumer Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act, and the National Appliance Energy Conservation Amendments of 1988, prescribes energy conservation standards for certain major household appliances and requires the Department of Energy (DOE) to administer an energy conservation program for these products. Among other things, the Energy Policy and Conservation Act, as amended, requires DOE to consider amending the energy conservation standards for central air conditioners and central air conditioning heat pumps; furnaces; and refrigerators, refrigerator-freezers, and freezers. By means of this rulemaking proceeding, DOE announces its intention to meet its statutory responsibilities. Additionally, the requirements of the Energy Policy and Conservation Act, as amended, have been reflected in the National Energy Strategy that supports improving the efficiency of residential appliances by using existing authority to update residential appliance efficiency standards to keep pace with new technology.

The purposes of this Advance Notice of Proposed Rulemaking are to: (1) Present for comment the product classes that DOE is planning to analyze; (2) present a detailed discussion of the analytical methodology and analytical models that DOE expects to use in performing analyses in connection with the proposed rule; and (3) facilitate the gathering of information and comments prior to publishing a subsequent notice of proposed rulemaking.

DATES: Written comments in response to this Advance Notice of Proposed Rulemaking must be received by DOE by December 7, 1993.

Oral views, data, and arguments may be presented at the public hearing to be held in Washington, DC, on November 16 and 17, 1993. Requests to speak at the hearing must be received by the Department no later than 4 p.m., November 4, 1993. Copies of statements to be given at the public hearing must be received by the Department no later than 4 p.m., November 10, 1993.

The length of each presentation is limited to 20 minutes.

ADDRESSES: Written comments, oral statements, requests to speak at the hearing, and requests for speaker lists are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of Hearings and Dockets, "Energy Efficiency Standards for Consumer Products" (Docket No. EE–RM–93–801), room 6B–025, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–0561.

The hearing will begin at 9:30 a.m., on November 16 and 17, 1993, and will be held at the U.S. Department of Energy, Forrestal Building, room 1E–245, 1000 Independence Avenue SW., Washington, DC.

Copies of the transcript of the public hearing and public comments received may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, room 1E–190, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6020 between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

For more information concerning public participation in this rulemaking proceeding, see section IV, "Public Comment Procedures," of this notice.

FOR FURTHER INFORMATION CONTACT:

Carl Adams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–41, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–9507.

U.S. Department of Energy, EE–90, Docket No. EE–RM–93–801, Forrestal Building, room 6B–025, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–0561.

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I. Introduction

a. Authority

Part B of Title III of the Energy Policy and Conservation Act, Public Law 94–163, as amended by the National Energy Conservation Policy Act, Public Law 95–619, the National Appliance Energy Conservation Act, Public Law 100–12, and the National Appliance Energy Conservation Amendments of 1988, Public Law 100–357,[1] created the Energy Conservation Program for Consumer Products other than Automobiles (Program). The consumer

[1] Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Cconservation Act, and the National Appliance Energy Conservation Amendments of 1988, is referred to in this Advanced Notice of Proposed Rulemaking as the "Act." Part B of Title III is codified at 42 U.S.C. 6291 et seq. Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act only, is referred to as the National Energy Conservation Policy Act.

products subject to the Program (often referred to hereafter as "covered products") are: Refrigerators, refrigerator-freezers, and freezers; dishwashers; clothes washers; clothes dryers; water heaters; central air conditioners and central air-conditioning heat pumps; furnaces; direct heating equipment; television sets; kitchen ranges and ovens; room air conditioners; fluorescent lamp ballasts; and pool heaters; as well as any other consumer products classified by the Secretary of Energy (Secretary) (section 322). To date, the Secretary has not so classified any additional products.

Under the Act, the Program consists essentially of three parts: testing, labeling, and mandatory energy conservation standards. DOE, in consultation with the National Institute of Standards and Technology, is required to amend or establish new test procedures as appropriate for each of the covered products (section 323). The purpose of the test procedures is to provide for test results that reflect the energy efficiency, energy use, or estimated annual operating costs of each of the covered products (section 323(b)(3)).

The Federal Trade Commission is required by the Act to prescribe rules governing the labeling of covered products for which test procedures have been prescribed by DOE (section 324(a)). These rules are to require that each particular model of a covered product bear a label that indicates its annual operating cost and the range of estimated annual operating costs for other models of that product class (section 324(c)(1)). At the present time, there are Federal Trade Commission rules requiring labels for the following products: room air conditioners, furnaces, clothes washers, dishwashers, water heaters, freezers, refrigerators and refrigerator-freezers, central air conditioners and central air-conditioning heat pumps, and fluorescent lamp ballasts. 44 FR 66475, November 19, 1979; 52 FR 46888, December 10, 1987; and 54 FR 28031, July 5, 1989.

For each of the 12 covered products, the Act prescribes an initial Federal energy conservation standard (section 325(b)–(h)). The Act establishes effective dates for the standards in 1988, 1990, 1992 or 1993, depending on the product, and specifies that the standards are to be reviewed by DOE within three to ten years, also depending on the product (*Ibid.*). After the specified three- to ten-year period, DOE may promulgate new standards for each product; however, the Secretary may not prescribe any amended standard that increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product (section 325(l)(1)).

With regard to television sets, the Act allows DOE to prescribe an applicable standard (section 325(i)(3)).

Three products (central air conditioners and central air-conditioning heat pumps; furnaces; and refrigerators, refrigerator-freezers and freezers) are the subject of this rulemaking proceeding. For central air conditioners and central air-conditioning heat pumps, the Act directs DOE to review each legislated standard for possible amendment and to issue final rules as follows: for the seasonal energy efficiency ratio, no later than January 1, 1994, for units manufactured after January 1, 1999; and for the heating seasonal performance factor, no later than January 1, 1994, for units manufactured after January 1, 2002. For furnaces, the Act directs DOE to review the previously established standard for small gas furnaces (54 FR 47916, November 17, 1989), the pending standard for mobile home furnaces, and the legislated standards for all other covered furnaces for possible amendment and to issue final rules no later than January 1, 1994, for units manufactured after January 1, 2002. For refrigerators, refrigerator-freezers, and freezers, the Act directs DOE to review the previous final rule, published November 17, 1989, for possible amendment and to issue final rules no later than November 17, 1994, for units manufactured after January 1, 1998.

Any new or amended standard is required to be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified (section 325(l)(2)(A)).

Section 325(l)(2)(B)(i) provides that before DOE determines whether an energy conservation standard is economically justified, it must first solicit comments on the proposed standard. After reviewing comments on the proposal, DOE must then determine that the benefits of the standard exceed its burdens based, to the greatest extent practicable, on a weighing of the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result directly from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State laws or regulations concerning such matters. Generally, all such State laws or regulations are superseded by the Act (section 327(a)–(c)). Exceptions to this general rule include the following: (1) State standards prescribed or enacted before January 8, 1987, and applicable to appliances produced before January 3, 1988, may remain in effect until the applicable energy conservation standard begins (section 327(b)(1)); (2) State procurement standards which are more stringent than the applicable Federal standard (section 327(b)(2) and (e)) and certain building code requirements for new construction, if certain criteria are met, are exempt from Federal preemption (sections 327(b)(3) and (f)(1)–f(4)); (3) State regulations banning constant burning pilot lights in pool heaters; and (4) State standards for television sets effective on or after January 1, 1992, may remain in effect in the absence of a Federal standard for such products (sections 327(b)(6) and (c)).

The Act directs DOE to publish an Advance Notice of Proposed Rulemaking in advance of DOE consideration of prescribing a new or amended standard.

b. Background

In a previous advance notice on energy conservation standards for nine products (55 FR 39624, 39632, September 28, 1990), the Department stated its position regarding proposed measures of impact on manufacturers. This same position is restated in section IIIc of this notice. However, in comments received after the close of the comment period for the previous notice, the Association of Home Appliance Manufacturers submitted a report by Arthur D. Little, Inc., regarding clothes washers that, among other things, addressed the subject of appropriate

measures of financial impact on manufacturers. The Association of Home Appliance Manufacturers stated that the economic impact of proposed standards on manufacturers should be determined by estimating the cash flows associated with meeting the standards and calculating a value for those cash flows. It further stated that this value could be expressed as a value for the industry based on a specific market rate of return. The Department believes that the cash flow concept could be applicable in evaluating the impact of standards on any appliance, and the cash flow concept will be discussed in this rulemaking. It is primarily for this reason that the Department has decided to conduct a public hearing in conjunction with this Advance Notice. On November 17, 1989, DOE published a final rule that, *inter alia*, established an energy conservation standard of 78 percent annual fuel utilization efficiency for small gas furnaces and amended the legislated standards for refrigerators, refrigerator-freezers, and freezers. (Hereafter this is referred to as the November 1989 Final Rule.)

II. Methodology

This section provides a brief description of the analyses to be used to determine the impacts of the standards. It offers an overview of the analytic methodology and discusses the major components of the analyses: the Engineering Analysis, the Manufacturer Analysis, the Consumer Analysis, and the Utility Analysis.

This section also discusses the interrelationships among the components that ensure consistency throughout the analyses.

The next section, Models, Data and Assumptions, describes the computer models used in the analyses. The models predict the anticipated response of consumers, manufacturers, and utilities to future changes in the economy, including the imposition of energy conservation standards. Quantitative estimates of the impacts of standards will be calculated from the outputs from the models. The models that will be utilized in the analyses are:

- Engineering Performance Models;
- Consumer Impact Models;
- Manufacturer Impact Models; and
- Utility Impact Model.

The function, data sources, assumptions and validity of the results for each model are discussed below.

The overall impact of appliance conservation standards on energy use, consumers, manufacturers, and other factors will be determined by comparing projections under the base case[2] with the projections under the proposed standards. These projections will be made for the base case by use of the analytic models described below. The calculations will then be repeated imposing the proposed standard levels. The net impacts compared to the base case of each standard level under consideration will be calculated.

The differences between the projections of the energy consumption and economic variables in the base and standards cases, respectively, provide one perspective on the likely impacts of the standards. The differences between different standard levels provide another perspective. The Department recognizes that the text of the Act and the relevant legislative history clearly direct the Department to consider the net impacts of proposed standards compared to the base case. The Department also recognizes that the basic statutory direction to set standards is to achieve the "maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified" (section 325(l)(2)(A)). The Department specifically solicits comment on whether the incremental perspective will be useful and valid in the determination as to whether a particular standard level is "economically justified." To evaluate the significance of the total and incremental impacts that are identified, a sensitivity analysis will be performed on the key parameters and assumptions.

The Economic Analysis that will be performed is made up of the following items:

- An Engineering Analysis that establishes the technical feasibility and product attributes, including costs of design options, to improve appliance efficiency.
- A Manufacturer Analysis that provides an estimate of manufacturers' responses to the proposed standards. Their responses are quantified by changes in several financial performance measures.
- A Consumer Analysis that forecasts appliance sales, efficiencies, energy use, consumer expenditures, and the national net benefits and costs and a separate Life Cycle Cost Analysis to evaluate the purchaser's savings in operating expenses relative to increases in purchase price.
- A Utility Analysis that measures the projected impacts of the altered energy-consumption patterns on electric utilities.

Each analysis area will be performed for each of the three products under consideration. The results of the Engineering Analysis will be reviewed by DOE to determine whether standards for each product could yield measurable energy savings. If standards would not yield energy savings, for example, if there is no combination of design options that would result in improved product efficiency, the analysis will be terminated. If energy savings are possible, then a detailed analysis is performed.

There is interaction among the Engineering, Consumer, Utility, and Manufacturer Analyses. The Engineering Analysis examines appliance designs and related attributes such as efficiency and costs. Based on the relationships between the prices and efficiencies of design options, the Consumer Analysis forecasts sales and efficiencies of new and replacement appliances. These data are used as inputs to the Manufacturer Analysis to determine the financial impacts on prototypical firms within the industry. The Consumer Analysis forecasts national aggregate energy savings and consumer expenditures associated with the purchase and operation of the appliances. Consumer expenditures (both purchase and operation) are employed in the Life-Cycle Cost Analysis to determine consumer impacts. Changes in sales, revenues, investments, and marginal costs of utilities are calculated from the energy savings in the Utility Analysis.

Three periods of time are used in the analyses. First, the Engineering Analysis examines the technical feasibility of improving the efficiency of the covered products by analyzing design options available today to improve product efficiency, whether they are commercially available or prototypes. Second, the Manufacturer Analysis is performed for a typical year after the standards are assumed to have been imposed. The typical year selected is the fifth, by that time all major impacts of a standard would have occurred.

Third, the Consumer Analysis examines impacts over a time period at least as long as the average lifetimes of the products.

III. Models, Data, and Assumptions

a. Engineering Performance Models and Costing Analysis

The Engineering Analysis addresses two statutory requirements. The first

[2] The base case assumes implementation of the conservation standards that were set by the Act for central air conditioners and central air conditioning heat pumps and furnaces and by Department of Energy rulemaking in the case of refrigerators-freezers and freezers and small gas furnaces.

requirement is that DOE considers only improvements in energy efficiency that are technologically feasible. The second is that DOE consider any lessening of utility to the consumer due to the imposition of standards. In addition, the Engineering Analysis provides information on efficiencies, energy consumption, manufacturing costs, and maintenance and installation costs for use in the other analyses.

The features of appliances that provide utility to the consumer are reflected in the analysis through the creation of appliance classes. Classes are a subset of appliance types. For example, freezers comprise an appliance type, while upright freezers with manual defrost comprise an appliance class. The Engineering Analysis develops cost and efficiency data for a set of design options within each appliance class. These data are the output of the engineering performance models and costing analysis discussed in subsections 5–9, below.

1. *Appliance classes.* The first step in the Engineering Analysis is to segregate product types into separate classes to which different energy conservation standards apply. Classes are differentiated by the type of energy use (oil, natural gas, or electricity) or capacity or performance-related features that provide utility to the consumer and affect efficiency. Classes are differentiated in order to ensure that consumer products having different capacities or other performance-related features affecting efficiency and utility remain available to consumers.

For each of the three appliances, the following are the classes that DOE proposes to consider. The Department welcomes comments on the classes proposed.

(i) Central Air Conditioners and Central Air-conditioning Heat Pumps

Ducted split system central air conditioners
Ducted split system central heat pumps
Ductless (multi-zone) split system air conditioners
Ductless (multi-zone) split system heat pumps
Ductless (multi-zone) split system limited temperature range heat pumps
Single package system air conditioners
Single package system heat pumps
Combination space conditioning/water heating appliances

(ii) Furnaces

Non-weatherized gas furnaces
Weatherized gas furnaces
Mobile home gas furnaces
Non-weatherized oil furnaces
Weatherized oil furnaces
Mobile home oil furnaces
Hot water gas boilers
Steam gas boilers
Hot water oil boilers
Steam oil boilers
Combination gas space/water heating appliances
Combination oil space/water heating appliances

(iii) Refrigerators, Refrigerator-freezers, and Freezers

Refrigerators and refrigerator-freezers with manual defrost
Refrigerator-freezers—partial automatic defrost
Refrigerator-freezers—semi-automatic defrost
Refrigerator-freezers—automatic defrost with top-mounted freezer without through-the-door ice service
Refrigerator-freezers—automatic defrost with side-mounted freezer without through-the-door ice service
Refrigerator-freezers—automatic defrost with bottom-mounted freezer without through-the-door ice service
Refrigerator-freezers—automatic defrost with top-mounted freezer with through-the-door ice service
Refrigerator-freezers—automatic defrost with side-mounted freezer with through-the-door ice service
Upright freezers with manual defrost
Upright freezers with automatic defrost
Chest freezers and all other freezers

2. *Baseline units.* For the purpose of generating a cost/efficiency relationship, the Engineering Analysis needs to define a starting point or baseline. The assumed baseline unit is to represent a typical model within an appliance class sold during the initial year of the analysis, e.g., a unit that marginally complies with the existing standard. Once identified, each baseline unit is characterized by its efficiency-related design options. The Engineering Analysis uses information gathered from trade organizations, manufacturers, and consultants with expertise in specific product types to determine the engineering characteristics of the baseline unit. The Department requests data on specific units and combinations of design options to be considered as a baseline unit. In addition, DOE requests comments on any other factors to be considered in selecting baseline units.

3. *Design options.* The Engineering Analysis will identify an individual design option or combinations of design options with a potential for improving energy efficiency. Design options that are currently on the market, that are being developed, or that may be on the market by the time standards are effective will be considered. Furthermore, DOE requests comments on whether the existing test procedures are appropriate for measuring product energy use and efficiency and whether the test procedure can evaluate a particular design option's contribution to the product's energy consumption. For example, the current furnace test procedure, which evaluates the energy efficiency of the combustible fuel only, would not provide credit for design options such as increased fan or motor efficiency since both of these designs improve only the unit's electrical consumption. The Department plans to issue a Notice of Proposed Rulemaking that would propose modifications to the existing furnace test procedures that, in addition to providing for the resolution of past waivers given on the test procedure, will address testing so that the design options listed in this section could be evaluated.

The Department requests comments on both the DOE design options listed below and the applicability of the extant or proposed test procedure. The following is a list of design options that will be examined:

(i) Central Air Conditioners and Central Air-conditioning Heat Pumps

(A) Increased Condenser and Evaporator Heat Exchanger Performance including:

Increased heat exchanger frontal area
Increased tube rows
Increased fin density
Enhanced fins
Grooved tubes
Hydrophilic-type film coating on fins

(B) Decreased Compressor Size
(C) Increased Combined Fan and Motor Efficiency
(D) High Efficiency Compressors including Scroll Compressors
(E) Two-Speed Compressors
(F) Variable Speed Compressors
(G) Two-Speed and Variable Speed Fan Motors
(H) Thermostatic and Electronic Expansion Valves
(I) New and Mixed Refrigerants
(J) Demand Defrost Control Systems (heat pumps only)
(K) Other Refrigeration Cycles, including the Stirling Cycle
(L) Electrohydrodynamic Enhancement of Heat Exchangers
(M) For Combination Appliances, Water-Source Defrost

(ii) Furnaces

(A) Improved Heat Exchanger Effectiveness
(B) Electronic Ignition
(C) Increased Fan Efficiency
(D) Increased Motor Efficiency
(E) Induced or Forced Draft
(F) Infrared Burner
(G) Two-Stage Modulation
(H) Continuous Modulation
(I) Condensing Flue Gases
(J) Pulse Combustion
(K) Burner Box or Flue Damper
(L) Stack Damper
(M) Improved or Increased Insulation

(N) Self-Generation of Electric Power
(O) Gas Driven Heat Pumps
(P) Alternatives to Multi-Tap Fan Motor Speed Control for Single-Speed Fans
(Q) Electrohydrodynamic Enhancement of Heat Exchangers
(R) Delayed Action Oil Pump Solenoid Valve
(S) Flue Gas Recirculation
(T) Direct Vent with Combustion Air Preheat
(U) Direct Vent without Preheat

(iii) Refrigerators, Refrigerator-Freezers, and Freezers

(A) Increased Cabinet Insulation Thickness
(B) Increased Door Insulation Thickness
(C) Improved Foam Insulation for Cabinet or Door, e.g., microcell
(D) Evacuated Insulation Panels
(E) Gas Filled Panels
(F) Improved Gaskets
(G) Double Door Gaskets
(H) Reduced Heat Load for Through-the-Door Features
(I) Reduction in Energy Used for Anti-Sweat Heaters
(J) Substitution of Condenser Hot Gas for Electric Anti-Sweat Heat
(K) Reduction in Energy Used for Auto-Defrost Heater
(L) Substitution of Condenser Hot Gas for Electric Auto Defrost Heat
(M) Adaptive Defrost Systems
(N) Improved Compressor Efficiency
(O) Two Compressor System
(P) Variable Speed Compressor
(Q) Improved Fan Motor Efficiency
(R) Improved Fan Efficiency
(S) Variable Speed Fans
(T) Two Stage Two Evaporator System
(U) Hybrid Evaporator
(V) Other Refrigeration Cycles Including:
Lorenz
Stirling
Gas Absorption
Thermoacoustic
(W) Improved Heat Exchangers Including:
Increased Area
Enhanced Heat Transfer Surfaces
High Thermal Mass
Integrated Surfaces
(X) Alternative Refrigerants
(Y) Improved Expansion Valve
(Z) Fluid Control Valves
(AA) Location of Compressor, Condenser and Evaporator Fan Motor
(BB) Use of Natural Convection
(CC) Electrohydrodynamic Enhancement of Heat Exchangers
(DD) Voltage Control Devices

4. *Maximum technologically feasible designs.* The Act requires that, in considering any new or amended standards, DOE must consider those that "shall be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified" (section 325(l)(2)(A)). As a first step, the maximum technologically feasible level will be identified. The maximum technologically feasible level is one that can be carried out by the addition of design options, both commercially feasible and prototypical, to the baseline units without affecting the product's utility. The Department believes that the design options comprising the maximum technologically feasible level must have been physically demonstrated in at least a prototype form to be considered maximum technologically feasible.

5. *Performance models.* In the Engineering Analysis, the Department's estimate of the efficiency of various design options and combination of design options will be based on either calculation (e.g., computer simulation models) or experimental data based on the DOE test procedures. The Department requests test data on the efficiency of the various design options and information on possible simulation models for use in this rulemaking. In addition, with respect to refrigerators, refrigerator-freezers, freezers, central air conditioners and central air conditioning heat pumps, the Department requests data on the impact on efficiency of the phaseout of chlorofluorocarbon refrigerants and insulation blowing agents.

6. *Costing analysis.* Manufacturer cost data for baseline units and incremental costs for design improvements are requested. The cost data requested include, for each design option, incremental cost data disaggregated into labor, purchased parts, materials, shipping/packaging, and tooling. Also requested are any additional consumer installation or maintenance costs resulting from the design improvements.

7. *Price-efficiency relationships.* The results of the Engineering Analysis are summarized in the cost-efficiency relationships that show the efficiency, unit energy consumption, and manufacturer cost of each design option and combination of design options for each appliance class. Manufacturer and dealer markups are applied to the manufacturing costs to determine the purchase price of the appliance. The price-efficiency relationships are a fundamental input to the Consumer Analysis.

8. *Data sources.* Shipments data, costs of purchased materials and parts, and engineering and labor cost data will be based on available information, including information received in comments on this Advance Notice of Proposed Rulemaking and collected from industry sources.

9. *Outputs from the Engineering Analysis.* For each combination of design options considered, the models and data provide:

- Energy efficiency (expressed as the DOE energy factor);[3]
- Annual energy consumption per unit (based on DOE test procedures);
- Increased material, purchased parts, labor, and investment costs for medium[4] and large manufacturers by product class;
- The relationship between cost and efficiency level by product class; and
- Other information on product characteristics, such as maintenance and installation costs, lifetimes, and venting configurations.

b. Lawrence Berkeley Laboratory Residential Energy Model

Early energy demand modeling focused on engineering estimates or on the relationship between energy consumption and economic growth. In the 1970s, Oak Ridge National Laboratory developed a model to integrate these two important aspects, the Engineering-Economic Model of Residential Energy Use. That model was brought to Lawrence Berkeley Laboratory in 1979 and adapted to the analysis of Federal appliance efficiency standards. The Oak Ridge National Laboratory Model has been updated by Lawrence Berkeley Laboratory resulting in the Lawrence Berkeley Laboratory Residential Energy Model which is summarized below.

The Lawrence Berkeley Laboratory Residential Energy Model forecasts the appliance purchase choices that households make as well as their subsequent appliance usage behavior and energy consumption. The model uses engineering estimates of the characteristics of particular designs of appliances and calculates the national impacts of a technology-specific policy on the populations of appliances used in the households. Alternative designs, available for purchase, are characterized by price and efficiency. The output from the Lawrence Berkeley Laboratory

[3] The energy factor is a measurement of energy efficiency derived from the Department of Energy test procedure for that product.

[4] As was the case with previous analyses, small manufacturers will not be analyzed separately. No general manufacturing approach could be identified for these firms because of the wide variability in their approach to manufacturing. Therefore, small manufacturers' costs have been assumed to equal those of medium manufacturers. The Department encourages small manufacturers to submit data.

Residential Energy Model provides estimates of national energy savings and consumer economic impacts (including equipment and operating expenses).

Engineering, economic, and demographic data are used in the Lawrence Berkeley Laboratory Residential Energy Model. The engineering data for appliances include the price-efficiency relationships described above. Additional data include information regarding alternative building shell construction measures and costs, unit energy consumption and efficiency of existing appliances, age distribution of existing appliance stock, and retirement functions. Economic data include projected energy prices [5] and household income, models of energy investment, appliance purchase and usage behavior, including fuel and technology choice for each end use. Demographic data include number of households by type, projected housing starts and demolitions, and initial appliance holdings.

1. *Structure of the model.* The Lawrence Berkeley Laboratory Residential Energy Model segments annual energy consumption into house types, end uses, and fuel types. The house types are single-family, multifamily, and mobile homes. Calculations are performed separately for existing and new housing construction each year over the period 1980–2030. The end uses are space heating (including room and central), air conditioning (room, central conventional, and heat pump), water heating, refrigeration, cooking, clothes drying, lighting, clothes washing, dishwashing, pool heating, televisions and miscellaneous. Up to four fuels are considered, as appropriate to each end use: Electricity, natural gas, heating oil, and liquid petroleum gas. The model exists in two versions: national (one region) and regional (10 Federal regions). For those appliances whose usage is not likely to differ by geographic location, e.g., refrigerators, refrigerator-freezers and freezers, the national version will be utilized in this analysis. For central air conditioners, central air-conditioning heat pumps and furnaces, DOE will use the regional model (as data allow). The Department requests comments on regional usage on each of the appliances considered in this Advance Notice of Proposed Rulemaking.

The model projects five types of activities: Technology/fuel choice; building shell thermal integrity choice; appliance efficiency choice; usage behavior; and turnover of buildings and appliances.

2. *Housing stock submodel.* This submodel generates data about housing stock projections for the Lawrence Berkeley Laboratory Residential Energy Model. The number of occupied households, by type, is taken from the 1990 Census of Population and Housing. An exogenous projection for housing starts is obtained, and estimates of projected demolition rates by house type are calculated, assuming an exponential function. The housing submodel determines the projected housing stock each year, 1981–2030, by subtracting demolitions from existing stock, then adding starts. The annual demolition rates by house type will be calculated for single-family, multifamily, and mobile homes, respectively.

3. *Efficiency choice algorithm.* Historical efficiency data are available primarily from trade associations for selected years for each class of appliance through at least 1987. The Federal energy conservation standards for new units of these appliances are expected to be met by the effective date of the standard. After that date, future efficiency improvements are assumed to be a function of designs available (according to the engineering analysis) and of relevant energy prices. The forecasting algorithm is designed to allow annual average efficiency or shipment-weighted efficiency factors to increase if either more efficient designs become available at lower prices or energy prices increase. Conversely, if energy prices decrease, the shipment-weighted efficiency factors may decline, but would have a lower bound at the existing standard level, i.e., the legislated standard for furnaces and central air conditioners and central air-conditioning heat pumps and the 1993 standard prescribed by DOE for refrigerators, refrigerator-freezers, and freezers.

4. *Thermal integrity.* The projection of the level of investment in thermal integrity measures in new houses is based on a life-cycle cost calculation, analogous to that done for equipment efficiencies.[6] Estimates of the incremental costs of thermal integrity measures are used in conjunction with current fuel prices and a discount rate. Building codes might or might not impact the above projection, but the Department is not proposing to consider them explicitly since the Department does not have sufficient data on the adoption, enforcement, and effectiveness of building codes nationwide. However, since the recently enacted Energy Policy Act of 1992 (Pub. L. 102–486) requires states to consider meeting or exceeding the Council of American Building Officials' Model Energy Code, the Department welcomes comments as to whether the explicit consideration of building codes will lead to a different outcome for this portion of the analysis and, if so, requests data to allow the effects of building codes to be factored into the analysis. Estimates of investments in thermal integrity retrofits of existing houses are projected as a function of income and household energy expenditures.[7]

5. *Modeling efficiency standards.* The Lawrence Berkeley Laboratory Residential Energy Model projects the average efficiency of new products; for example, furnaces purchased each year in the absence of additional Federal regulations. A distribution of efficiencies is constructed around the average based on efficiency distributions observed in the marketplace. This information includes information from industry sources and published data from the industry trade associations. A new Federal standard level eliminates part of the distribution; therefore, a new distribution is constructed. The new shipment-weighted average efficiency then characterizes the efficiency of new units in that year. The same process is applied to all years after implementation of the standard. The model is then run again for the standards case with the adjusted average efficiencies to calculate any changes in market shares, usage behavior, or investment in building shell thermal improvements that may occur as a result of standards and to calculate the net energy savings.

6. *Turnover of appliance stocks.* The initial age distribution of appliances in stock is based on industry data about historical annual shipments. The fraction of each product that retires each year is based on the number of years since purchase of the product. For each year's purchase, the model associates an average efficiency, so that when older appliances are retired, they are also

[5] The projections of energy prices will be taken from the most recent Annual Energy Outlook, a publication of the Department's Energy Information Administration.

[6] The equipment efficiency and thermal integrity decisions are not solved simultaneously, but recursively. For each year analyzed, equipment efficiency is projected and then these results are used to calculate investments in thermal integrity.

[7] Based on E. Hirst, R. Goeltz, and H. Manning, Analysis of Household Retrofit Expenditures, Energy Systems and Policy, Vol. 7, No. 4, pages 303–322 (1983).

recognized as less efficient.[8] All appliance replacements are included in the retirement function, including those resulting for reasons other than product failure. However, the analysis does not explicitly consider the effect of increased purchase price on the turnover rate. The Department requests data and comments on how to consider this factor.

The number of potential purchasers of an appliance in new homes is equal to the number of new homes constructed each year. The number of potential purchasers of appliances in existing houses is equal to the number of retiring appliances plus (if applicable) a fraction of those households that did not previously own the product.

7. *Calculation of market shares.* Potential purchasers may purchase any competing technology within an end use or none. For each end use, long-term market share elasticities are estimated with respect to equipment price, operating expense, and income, respectively. The effect of standards is expected to be lower operating expense and increased equipment price. The percentage changes in these quantities are used, together with market share elasticities, to determine changes in market share resulting from standards. The model assumes that higher equipment prices will decrease sales volumes while lower operating expenses will increase them. The net result (predicted market share) depends on the standard level selected with its associated equipment prices and operating expenses.

8. *Usage behavior.* For some products, e.g., furnaces and central air conditioners and central air-conditioning heat pumps, changing the operating expense can result in changes in usage behavior. These changes are modeled based on usage elasticities in operating expense and income. For refrigerators, refrigerator-freezers, and freezers, these elasticities are expected to be at or near zero; usage behavior is not influenced by the expense of operating the appliance. The Department requests comments on this assumption.

9. *Energy consumption calculations.* The total energy consumption per house for each end use and fuel by house type and vintage (existing or new) is the product of the unit energy consumption (accounting for efficiency and capacity changes) and usage factor, e.g., relative hours of operation for furnaces. The corresponding annual energy consumption for all households is the annual consumption per household, times the number of households of that type and vintage, times the fraction of those households owning that appliance.

Aggregate energy consumption is obtained by summing intermediate results. For example, national electricity consumption for central air conditioners in a particular year is the sum across house types and house vintages of electricity used by central air conditioners. National residential electricity consumption in that year is the sum of all end uses of electricity consumption in the residential sector.

10. *Model outputs.* The principal outputs from the Lawrence Berkeley Laboratory Residential Energy Model for each year are:

- Energy consumption by end use and fuel;
- Total residential energy consumption by fuel;
- Per-unit equipment price and operating expense by product;
- Projected annual shipments of residential appliances; and
- Differences in these quantities between a base and a standards case.

These outputs are provided annually (or for selected years) and cumulatively over a period of time, e.g., 1995–2030. Energy savings are provided annually from implementation of standards to the end of the period. Net present value of standards is evaluated for each regulated product and for the end use(s) comprising the regulated and competing products.

Energy savings are calculated as the difference in energy consumption between the base case and standards case. Energy consumption in both the base case and standards case includes building shell improvements, changes in fuel choice, or changes in usage behavior. Therefore, the energy savings capture the net energy savings due to regulation, including the effects induced by shifts in market share or changes in usage behavior.

Net present value, on the other hand, excludes these types of effects.[9] Net present value is calculated from per-unit changes in equipment and operating expenses, multiplied by standards case shipments. If the net present value were calculated without normalizing with regard to shipments, erroneous results would be obtained. If standards caused decreased purchases of a product, this would appear as an economic benefit; namely, less money spent on purchasing and using appliances.[10] If standards resulted in increased purchases, this would be incorrectly counted as a cost when it reflects consumers' preference for the post-standards product.

Base case usage is assumed in calculating the net present value since any "rebound effect" [11] reflects the consumer's judgment that increased usage is worth more than the direct energy savings associated with keeping usage constant. Therefore, deduction of any foregone energy savings resulting from a possible "rebound effect," prior to calculating the net present value, would result in an underestimate of the true net present value associated with a given efficiency improvement.

11. *Other consumer impacts.* In determining economic justification, the Act directs the Department to consider a number of different factors. Among these factors are requirements that DOE consider the economic impact of the standard on consumers. In this regard, the Act establishes a rebuttable presumption that a standard is economically justified if the additional product costs attributable to the standard are less than three times the value of the first year energy cost savings. Also, DOE is required to consider changes in the life-cycle costs resulting from the standard.

Taking into consideration these various requirements, the Department calculates:

- The estimated simple payback of additional product costs (based on estimated changes in product purchase prices) by the energy cost savings projected to result from the proposed standard;

[8] See Consumer Products Efficiency Standards Economic Analysis Document, DOE/CE–0029, March 1982, pp. 412–13.

[9] Present value is the discounted total value of energy consumption during the appliances' lifetimes, plus the discounted equipment costs for those appliances that are purchased during those periods at alternative standards levels. The difference between a standards case and a base case is the net present value attributable to amended standards. A positive net present value for an appliance at a given standard level indicates that, if that standard were adopted, consumers of that appliance as a whole would save that much more money in fuel costs, discounted to the present, than they would pay in increased initial price for a more efficient appliance, discounted to the present, compared to the base case.

[10] Without normalization, the greatest economic benefit would be obtained by a standard level that resulted in no future purchases of the product. Then no money would be spent on purchasing the product or on operating expenses, and the value of the savings would equal the amount of money that would have been spent without the standard. This would clearly be a misrepresentation of the net present value of standards.

[11] The "rebound effect" is the projected energy savings, depending on the appliance, (from an efficiency improvement) that does not occur. This results when purchasers of more energy efficient appliances use them more intensively, thereby saving less energy than the engineering estimates would have indicated. In some instances, the rebound is zero.

• The estimated changes in life-cycle costs to the consumer likely to result from the proposed standard; and

• The net present value of estimated savings to the Nation of the proposed standard.

The calculation of both consumer life-cycle costs and national net present costs/benefits require the use of appropriate discount rates. The discount rate used in such calculations is intended to approximate the time value of money of those who would bear the additional product prices resulting from a proposed standard and who would also, presumably, benefit from the resulting savings in energy expenses. Consequently, the most appropriate discount rate depends on the characteristics of the individual consumers, businesses, or other persons affected by a proposed standard.

In calculating consumer life-cycle costs, the Department has previously used a discount rate that was based on the method of financing available to consumers for the purchase of home appliances and other consumer products. This was one method of estimating consumer discount rates that the Court of Appeals decision in *NRDC v. Herrington*, 768 F.2d 1355 (DC Cir. 1985) indicated might be acceptable, although the Court did not preclude consideration of other reasonable methods. In previous rulemakings, the Department has used this same consumer discount rate in calculating the estimated net present value of proposed standards for the Nation as a whole. However, neither the method previously used by the Department to estimate the consumer discount rate nor the use of this same rate in the calculation of national net present values was entirely satisfactory. Consequently, in the development of the proposed standards for the three product categories covered by this notice, the Department intends to propose alternative methods for deriving and applying discount rates.

One of the reasons for investigating the discount rate previously used by the Department under this program is the long-standing debate between those who believe such a discount rate should reflect the perspective of society as a whole and those who believe the discount rate should try to reflect the perspective of individual consumers. Past commentators seeking a higher discount rate have often emphasized the consumer perspective, while those advocating a lower rate have generally argued in the societal context.

Many of the comments in support of lower discount rates have advocated reducing the discount rate to society because of the environmental and other externalized benefits of appliance standards. The Department has previously rejected, and continues to reject, adjustments to individual consumer discount rates based on external benefits such as reductions in emissions or oil imports.

The Department recognizes, however, that there are external societal benefits (and possibly costs) that are generated from appliance standards. These are principally the value of reductions in oil imports and the reduction in projected emissions of SO_2, NO_x and CO_2. In previous rulemakings, the Department identified benefits resulting from national energy savings and emissions reductions, but did not attach any monetary value to these benefits because of the considerable uncertainty of such estimates. However, in order more explicitly to consider such externalized benefits (or costs), the Department will attempt in this rulemaking to establish values for these benefits, if a sound analytical basis can be found. The Department believes that any values should be based on the estimated external cost to the Nation of oil imports or the cost of damage caused by the emissions (or reduction control costs). Because of the uncertainties of such values, ranges consisting of high and low estimates of the external costs associated with the use of fossil fuels are likely to be used to gauge the monetary value to the U.S. of reducing the amount of imports or emissions produced by both power plant and in-home combustion sources. For example, the monetary value of reduced emissions resulting from increased appliance efficiency would be determined by multiplying the reductions in emissions (tons) by their associated externalized costs (dollars/ton). However, in the case of SO_2, the Department believes appliance standards are not likely to result in net emission reductions because of the cap on SO_2 emissions established by the Clean Air Act Amendments of 1990 (Pub. L. 101–548). However, even without an actual reduction in SO_2 emissions, there are likely to be economic benefits from the emission credits provided for by the Clean Air Act Amendments of 1990. The Department is soliciting data regarding the value of these emissions or, in the case of SO_2, the economic benefits likely to result from appliance standards.

Even if external environmental and other benefits are quantified, there remain differences in consumer and societal perspectives that may warrant the use of multiple discount rates depending on the type of economic analysis being performed. A consumer discount rate could be used to calculate life-cycle costs for individual purchasers of residential products. A social discount rate could be used to calculate the total net present value of proposed efficiency standards to the Nation as a whole.

Individuals and the Nation experience different costs, benefits and risks as a consequence of appliance energy efficiency standards. For example, individuals experience the direct costs (and benefits) of increased appliance efficiency such as increased purchase prices for appliances that are purchased through increased credit card debt, reduced savings, reduced personal consumption, or by other means. For the Nation as a whole, however, the effects are more diffuse such as increased investment in appliance manufacturing and reduced investment in other sectors of the economy (such as energy production). There may also be some important differences in the risks experienced by individuals and the Nation. For example, an individual might sell his or her home soon after the purchase of an energy efficient refrigerator and not be able to recover the additional price of the refrigerator through either reduced energy usage or the sale price of the home. However, the Nation would still obtain the remaining benefits of the reduced energy usage through subsequent owners.

As a consequence of these and other concerns, the Department intends to re-examine the method used to derive the consumer discount rate and to propose the use of a different discount rate for the analysis of national net present values. There follows a more detailed discussion of DOE intentions with respect to the derivation and use of discount rates in the economic analyses of proposed efficiency standards.

Consumer Discount Rates

In determining consumer life-cycle costs, it is necessary to develop an appropriate rate for discounting the future costs and benefits associated with standard levels. Broadly speaking, there are two alternative approaches to consumer discount rates: the rates at which consumers borrow to finance appliance purchases and the rates of return consumers require on investments in appliance efficiency. The required return approach has some conceptual advantages over borrowing/financing rates. However, as explained below, the Department has, in past standards analyses used a 7 percent discount rate based on consumer financing rates.

Consumer borrowing rates. The Department acknowledges that the establishment of a discount rate is difficult and imprecise. This rate has attracted considerable comment in the past with many of the comments expressing concern that a 7 percent rate is unjustifiably high, while other comments have stated that a higher discount rate would be appropriate for various analyses.

In the November 1989 Final Rule for refrigerators, refrigerator-freezers, freezers, and small gas furnaces (54 FR 47916, 47921, November 17, 1989), DOE selected a consumer discount rate of 7 percent based on a methodology referenced in the Court of Appeals decision in *NRDC* v. *Herrington*, 768 F.2d 1355 (DC Cir. 1985). As DOE discussed in the November 1989 Final Rule, the method cited in the Court decision required some modification following the passage of the Tax Reform Act of 1986 (Pub. L. 99–514). The Tax Reform Act phased out the deductibility of interest paid on most consumer loans. Based on the revised methodology, DOE calculated that consumers experienced real borrowing rates that ranged from slightly less than 1 percent to slightly more than 15 percent. As explained in the November 1989 Final Rule, DOE selected 7 percent for the analysis in support of that rulemaking proceeding because it was near the mid-point of the potential consumer finance rates.

In a subsequent advance notice of proposed rulemaking on Energy Conservation Standards for Nine Products (55 FR 39624, 39631, September 28, 1990), the Department again proposed a 7 percent consumer discount rate based on the methodology and data of the November 1989 Final Rule. It was further stated that if the Department could obtain data on the methods that consumers use to purchase appliances, it might consider using a weighted-average, real, after-tax finance rate as the consumer discount rate.

In its comments on that September 1990 advance notice of proposed rulemaking, Whirlpool offered estimates of consumer financing of purchases of its equipment: 40 percent of retail sales are paid in cash; 35 percent use credit cards; 25 percent use retailer loans. These figures excluded new home construction that accounts for approximately 25 percent of Whirlpool's total sales.[12]

While Whirlpool represents only one source of data, the Department has no reason to believe that Whirlpool's customers differ substantially from those of other manufacturers and, therefore, accepts Whirlpool's estimates as representative.

If the Department were to use the same discount rate methodology for this rulemaking as has been used in past rulemakings for this program, these weightings could be applied to the real, after-tax finance rates that are incurred by consumers as reported in the refrigerator final rule (54 FR 47916, 47923). Those rates were estimated to be just over 3 percent for appliances purchased as part of a new home (whose finance rate is a tax-deductible mortgage interest rate), to slightly under 1 percent for cash purchases, to more than 15 percent for credit card purchases. If these rates are applied to Whirlpool's estimates, the resulting weighted-average, real, after-tax rate incurred by consumers in appliance purchases would be approximately 6 percent.

The Department recognizes, however, that there are problems with basing the estimate of an average consumer discount rate on consumer financing methods. For example, there are weaknesses in the available consumer cost of financing data. The method of purchase data from Whirlpool does not indicate how these purchases actually affected consumer debt, savings, and consumption. A credit card purchase could be paid in full within the customary billing grace period, thereby being exempt from finance charges and, in effect, resembling a cash purchase. On the other hand, a cash purchase may actually be financed, indirectly, by an increase in credit card debt.

Required rates of return. While financing rates may indicate the direct financial cost to consumers of an investment in increased efficiency, they do not reflect other types of investments available to them or varying consumer perceptions of the value of reducing current consumption in favor of longer-term financial gains. For example, what level of cost savings does a consumer need to receive from an investment in an energy efficient refrigerator in order to justify reducing their savings, increasing their debt, or delaying the purchase of other consumer goods?

Considering only the costs of consumer financing does not indicate whether there are other similar investment opportunities available to most consumers that produce higher rates of return. For example, are there home improvements or other investments that could be made by most consumers that would have higher rates of return than an investment in an energy efficient appliance? Also, a consumer discount rate based on consumer financing expenses does not fully account for the risks of individual consumer investments in improved appliance efficiency. For example, the actual rates of return experienced by individual consumers may vary widely depending on energy prices, appliance usage, and useful life.

Some have argued that implicit discount rates estimated through an examination of actual consumer purchases of appliances and related consumer equipment would be a better basis for the consumer discount rate used under this program. Various studies have indicated that these implicit discount rates range from 3 percent to as high as 100 percent (or more) for certain appliances. However, because implicit discount rates are based on actual consumer purchase behavior, they also reflect the extent to which the numerous potential market failures in energy efficiency investments occur such as inadequate information, conflicting owner/renter incentives, and second party (builder/contractor) purchases. One of the major reasons why Federal appliance efficiency standards were originally established was to overcome these market failures regarding investment in energy efficiency. Consequently, DOE does not believe unadjusted (i.e., not corrected for potential biases) discount rates derived from actual consumer behavior should be used in evaluating the economic impact of proposed standards on consumers.

This conclusion appears to be supported by court rulings affecting the program. In *NRDC* v. *Herrington*, 768 F. 2d 1406 (DC Cir. 1985), the court stated that "the entire point of a mandatory program was to change consumer behavior" and "the fact that consumers demand short payback periods was itself a major cause of the market failure that Congress hoped to correct." The Department believes that the intent of the legislation that established the appliance standards program is to achieve energy savings that are being foregone because of market failures that distort consumer decision-making (and behavior).

However, if information were available on the implicit discount rates revealed by consumer decision-making in the absence of any significant market failure biases, it might provide a better basis for the discount rates to be used in assessing the impacts on consumers of proposed appliance efficiency standards. Another approach might be to examine the rate of return consumers would require from other fixed investments of comparable risk and liquidity. The Department solicits information on the results of any analyses that could support the

[12] Whirlpool, No. 31 at 1–2 and Appendix 1.

derivation of discount rates using either of these approaches.

On the other hand, the nature of the appliance standards program may imply that a household average required rate of return, whether based on actual appliance purchase decisions (in the absence of potential market failure distortions) or on comparable investments, may understate the appropriate rate. Because the Act requires minimum standards, their effect is generally greater on the low-efficiency, low purchase-price end of the market, sometimes eliminating the lowest-priced models. To the extent that low-income households purchase a disproportionate share of these low-efficiency/low-price appliances, they will be disproportionately represented among the affected consumers.

At the same time, limited empirical research [13] suggests that these households exhibit higher-than-average discount rates (i.e., required rates of return) across all of their time-sensitive decisions including (but not limited to) their appliance purchases. If, indeed, these households are disproportionately affected by standards, their discount rates would need to be given greater weight in determining the effects of alternative standard levels on consumers. The Department seeks comment on this issue.

Based on the information now available, it appears that the average consumer discount rate lies in the range of 4 to 10 percent. The Department will conduct sensitivity analyses using this range but will continue to solicit data and comments that would provide a better basis for the derivation of consumer discount rates.

Societal Benefits and Discount Rate

In identifying a discount rate that is appropriate for use in calculating benefits to the Nation as a whole, consideration must be given to the opportunity costs of devoting more economic resources to the production and purchase of more energy-efficient appliances and fewer national resources to other alternative types of investment. It is not necessary, however, to determine the characteristics of specific classes of consumers or businesses directly impacted by the proposed standard. For these reasons, a broad measure of the average rates of return earned by economic investment throughout the United States is the most useful basis for a social discount rate.

[13] Train, Kenneth, Discount Rates in Consumers' Energy-Related Decisions: A Review of the Literature; Energy, December 1985.

Using this approach, the Office of Management and Budget (OMB) recently completed an analysis of the average annual real rate of return earned on investments made since 1960 in nonfinancial corporations, non-corporate farm and non-farm proprietorships, and owner-occupied housing in the United States. The results of this analysis indicated that since 1980 the annual real rate of return for these categories of investments averaged slightly more than 7 percent, ranging from a low of about 4 percent for owner-occupied housing (which represented about 43 percent of total capital assets in 1991 of about $15 trillion) to a high of about 9 percent on non-corporate farm and non-farm capital (which represented about 23 percent of the total). Between 1960 and 1980, the average real rate of return on capital was higher, averaging about 8.4 percent in the 1970s and about 11.2 percent in the 1960s. As a result of this analysis, the Office of Management and Budget chose to designate 7 percent as the social discount rate specified in revisions to Office of Management and Budget Circular A–94 issued on November 10, 1992 (57 FR 53519). In that revised circular, the Office of Management and Budget established, inter alia, discount rate guidance for benefit-cost analyses of regulatory programs that provide benefits and costs to the general public.

An alternative method for deriving such a social discount rate might be broad measures of the costs of financing capital investments in the United States. One such measure is the Federal Government's cost of borrowing or the interest rate that is payable on long-term Government securities. Another might be the prime interest rate available to major corporate borrowers. In order to derive a real discount rate from either of these measures, the relevant interest rate would be adjusted for inflation.

Using long term Government securities as an example, the nominal rates during June 1991 on Government securities maturing between the years 2000 and 2015 averaged 8.55 percent. Adjusted by long term forecasts of inflation, the rate would be approximately 4 percent. Because the Government borrowing rate most accurately reflects the direct cost to the Government of added investment, the Office of Management and Budget has used this approach as the basis for discount rates used in evaluating Federal investments which directly affect Federal costs (such as energy efficiency investments in Federal facilities). Using the prime interest rate or some combination of rates to reflect non-Federal financing costs would result in somewhat higher rates.

As indicated above, because the cost of financing additional capital investments does not reflect the full opportunity cost of shifting private investment from one area to another, it is not considered to be a good basis for deriving discount rates. For this reason, DOE now intends to propose the use of a 7 percent social discount rate in national net present value calculations although it will also perform sensitivity analyses at 4 percent and 10 percent. The Department seeks comment on appropriate discount rates for the analysis.

c. Manufacturer Impact Models

1. *Conceptual approach.* The manufacturer impact analysis estimates the overall impact of new or amended standards on an industry's profitability and scale of operation.

2. *Measures of impact.* The analysis examines three types of long-run impact: profitability, growth, and competitiveness. Consequently, five measures of impact are reported. They are: shipments, prices, revenues, net incomes, and returns on equity.

Return on equity is the primary measure of profitability although gross margin and return on assets are also reported. Assets and income provide the primary measures of growth, and the impact on competitiveness is analyzed by looking at the relative changes in growth and profitability.

Two short-run impacts are also analyzed. First, the ability of the industry as a whole and of specific segments of the industry to provide the one-time investments required to meet the new standard is examined. Second, if standards result in decreased sales for the particular industry being analyzed, the analysis examines the possibility of price-cutting while the industry is adjusting to a lower sales volume.

3. *Lawrence Berkeley Laboratory Manufacturer Impact Model.* In order to estimate the impacts of energy efficiency standards, a computer spreadsheet model, the Lawrence Berkeley Laboratory Manufacturer Impact Model, was developed.

The Lawrence Berkeley Laboratory Manufacturer Impact Model models a "typical year" for the industry both in the base case and in the new standards case. The year chosen for the model is the fifth year after the imposition of standards. A five-year period is thought to be long enough to capture any major impacts from the standard such as profitability changes or firm entry into or exit from the industry.

Ideally, a manufacturer analysis should look at the impact of a proposed regulation on every firm that does business in the industry under question. However, because the industries being analyzed have many manufacturers making a particular product, a firm-by-firm analysis is not feasible. In addition, the engineering and financial data for most manufacturing firms are proprietary and are not routinely available for public analysis. Because of these limitations on data and resources, Lawrence Berkeley Laboratory Manufacturer Impact Model models a prototypical firm. In many cases, this firm represents a division of a larger firm. Therefore, a prototypical firm is a hypothetical firm representative of a portion of the industry. Prototypical firms are defined by parameters that are important for determining the impacts of standards and are consistent with data for the portion of the industry they represent. Important parameters used in the model include the cost structure of the firms, profitability ratios, relative costs of complying with the new standard, and marketing strategies.

A change in standards affects the analysis in three distinct ways. Increased levels of standards will require additional investment, will raise production costs, and will affect revenue both through higher prices and, therefore, lower quantities demanded.

The most obvious investment induced by standards is the purchase of new plant and equipment. This cost is first evaluated from engineering data and then averaged by taking into account the life of the investment, the date on which it is made, tax laws, and the appropriate costs of funds. An additional, and sometimes larger, investment takes place as the old inventory is replaced with more expensive new units. The model assumes previous inventory ratios are maintained. A third form of investment tracked by the model is the change in the transactions demand for cash that accompanies a change in revenues.

Increased costs of production are modeled by coupling engineering data on changes in unit costs caused by standards with data from Lawrence Berkeley Laboratory Residential Energy Model on the marketplace demand for the product.

Revenue is affected by both price and shipments. Price is determined by computing the markup over long-term marginal costs and then using the markup to determine an optimal price. Demand is determined by price and operating expense elasticities, coupled with the changes in price and operating expenses resulting from the standards.

The Lawrence Berkeley Laboratory Manufacturer Impact Model produces several outputs used in analyzing the impact of standards on manufacturers. A simplified pro forma income statement is prepared for each prototypical firm. In addition to the income statement, five main variables—shipments, prices, revenues, net incomes, and returns on equity—are reported. The results are presented for the without-standards (or without amended standards) case and the with-standards (or with amended standards) case, and the relative differences between the two are also given.

4. *Data sources.* The Lawrence Berkeley Laboratory Manufacturer Impact Model needs data that characterize both a particular industry and prototypical firms within that industry. Estimates of data are based on information from five general sources: Lawrence Berkeley Laboratory business consultation groups; the Engineering Analysis; the Consumer Analysis; public financial data; and industry profiles.

d. Utility Impact Model

The utility analysis serves several purposes within the overall assessment of the impact of the proposed standards. It contributes to quantifying the energy savings by determining the reduction in fossil fuels used for electricity generation. The reduction in fossil fuel consumption is also an input to the Environmental Assessment. By calculating utility avoided costs, this area of the analysis provides marginal electricity costs. Finally, it examines the impacts on the electric utility industry in terms of changes in investment, revenue requirements, the need for new generating capacity, and residential load factors.

The utility analysis adopts the standard convention that the value of electricity savings can be broken down into energy (or marginal cost) savings and capacity (or reliability) savings. The energy impact measures the production costs avoided by reduced electrical demands valued at the marginal energy costs of the utility. The capacity impact measures the reliability value of reduced loads during system peak periods, which is, by convention, valued at the cost of a combustion turbine that would have been needed to meet the load. The analysis characterizes these avoided costs per kWh of heating, cooling, and baseload energy saved.[14] These values are used to calculate societal benefits from reduced electricity consumption.

The Utility Impact Model calculates avoided energy costs based on a disaggregation of the generation fuel mix to the National Electric Reliability Council regions and a simplified load duration curve for each region. First, the model allocates national electricity savings that are forecasted by the Lawrence Berkeley Laboratory Residential Energy Model to National Electric Reliability Council regions in proportion to their current consumption of heating, cooling, and baseload energy. The regional proportions are derived from data on regional appliance saturations, efficiencies, and hours of use. The fraction of the electricity that would have to be generated at the margin from oil and gas is calculated from the total regional oil and gas fraction and the simplified load duration curve. Projected utility natural gas and coal prices, weighted by the oil and gas fraction and the non-oil and gas fraction, respectively are used to calculate utility marginal costs over the forecast period. The marginal costs are adjusted to account for seasonal differences.

The avoided capacity cost calculation in the model is based on conservation load factors for the energy savings attributable to the standards as well as the capacity value of a combustion turbine. A conservation load factor is defined as the average hourly energy savings of a conservation measure divided by its peak load savings. The conservation load factors are a way of characterizing the peak demand savings of a conservation measure. They are used to convert the capacity value of the standards into the per-kWh values described above. The National Electric Reliability Council forecasts of capacity requirements for each region are used to account for regional variations in reserve margin. If the National Electric Reliability Council forecasts an adequate reserve margin in a region for a given year, no reliability value is given to the capacity savings in the region.

The inputs needed for the Utility Impact Model are conservation load factors, state-level utility fuel prices, appliance saturations, efficiencies, and hours of use as well as electricity generation by fuel type and capacity need by National Electric Reliability Council region. The outputs of the analysis are fuel savings, reduction in the need for new generating capacity, and avoided energy and capacity costs

[14] For the purposes of calculating utility avoided costs, electric heating appliances are defined as electric heat pumps and electric resistance heat; cooling appliances are defined as room and central air conditioners plus heat pumps; and baseload appliances are defined as all other appliances.

for heating, cooling, and baseload appliances per million Btu's of resource energy.

e. Sensitivity Analyses

Sensitivity studies are performed to determine how changes in technical and operational parameters affect key engineering and economic indicators used in evaluation of appliance standards. This makes it possible to place limits on the overall results of the analysis and to gain an understanding of which variables are most important in producing these results. Sensitivity analyses are developed in a series of distinct steps. For each component analysis in the overall analysis, critical input parameters are identified and reasonable ranges of variation determined. The sensitivity of the model to changes in the value of each important parameter is then estimated by running the model for both the base case and the standards cases. The results of the sensitivity analyses are examined to determine the sensitivity of the forecasts to exogenous variables and assumptions and the sensitivity of the differences between the base and standards cases (impacts of alternative standards).

The above sensitivities have been developed at the national level, and no effort has been made to link them with any specific population groups. The standards analysis assumes that nationwide average appliance usage rates, energy prices, and efficiency apply to all consumers in all areas of the nation, although DOE recognizes that there exist large variations in each of these factors. The Department seeks information concerning the extent to which any proposed national efficiency standard is likely to affect identifiable groups of consumers disproportionally and how best to consider such impacts in the selection of efficiency standard levels. The Department is also seeking additional data to help it better assess the disproportionate impacts on such groups. The Department requests comments on this issue.

The Department requests data on the effects of energy prices and usage rates on consumer energy efficiency choice other than the Carrier study submitted in 1983 in response to an earlier rulemaking. The Department also requests data on the effect of energy efficiency and energy prices on usage rates.

IV. Public Comment Procedures

a. Participation in Rulemaking

The Department encourages the maximum level of public participation possible in this rulemaking. Individual consumers, representatives of consumer groups, manufacturers, associations, States or other governmental entities, utilities, retailers, distributors, manufacturers, and others are urged to submit written statements on the proposal. The Department also encourages interested persons to participate in the public hearing to be held in Washington, DC, at the time and place indicated at the beginning of this notice.

The DOE has established a period of 90 days following publication of this notice for persons to comment on this proposal. All public comments received and the transcript of the public hearing will be available for review in the DOE Freedom of Information Reading Room.

b. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views, or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth at the beginning of this notice and below.

Comments should be labeled both on the envelope and on the documents, "Three Products Rulemaking (Docket No. EE-RM–93–801)," and must be received by the date specified at the beginning of this notice. Ten copies are requested to be submitted. Additionally, the Department would appreciate an electronic copy of the comments to the extent possible. The Department is currently using WordPerfect™ 5.1. All comments received by the date specified at the beginning of this notice and other relevant information will be considered by DOE in the proposed rule.

All written comments received on the Advance Notice of Proposed Rulemaking will be available for public inspection at the Freedom of Information Reading Room, as provided at the beginning of this notice.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to DOE, when evaluating requests to treat information as confidential, include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

c. Public Hearing

1. *Procedure for Submitting Requests to Speak.* The time and place of the public hearing are indicated at the beginning of this notice. The Department invites any person who has an interest in these proceedings, or who is a representative of a group or class of persons having an interest, to make a written request for an opportunity to make an oral presentation at the public hearing. Such requests should be labeled both on the letter and the envelope, "Three Products Rulemaking (Docket No. EE-RM–93–801)," and should be sent to the address and must be received by the time specified at the beginning of this notice. Requests may be hand-delivered or telephoned to such address between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of the group or class of persons that has such an interest, and give a telephone number where he or she may be contacted. Persons selected to be heard will be notified by DOE as to the time they will be speaking.

Each person selected to be heard is requested to submit ten (10) copies of the statement at the beginning of the hearing. In the event any person wishing to testify cannot meet this requirement, that person may make alternative arrangements with the Office of Hearings and Dockets in advance by so indicating in the letter requesting to make an oral presentation.

2. *Conduct of hearing.* The Department reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures

governing the conduct of the hearing. The length of each presentation is limited to 20 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 533 and section 336 of the Act. At the conclusion of all initial oral statements at each day of the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statement will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit to the presiding official written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant and whether time limitations permit it to be presented for answer.

Further questioning of speakers will be permitted by DOE. The presiding official will afford any interested person an opportunity to question, with respect to disputed issues of material fact, other interested persons who made oral presentations as well as employees of the United States Government who have made written or oral presentations relating to the proposed rule. This opportunity will be afforded after any rebuttal statements to the extent that the presiding official determines that such questioning is likely to result in a more timely and effective resolution of disputed issues of material fact. If the time provided is insufficient or inconvenient, DOE will consider affording an additional opportunity for questioning at a mutually convenient time. Persons interested in making use of this opportunity must submit their request to the presiding official no later than shortly after the completion of any rebuttal statements and be prepared to state specific justification, including why the issue is one of disputed fact and how the proposed questions would expedite their resolution.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made and the entire record of this rulemaking, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any person may purchase a copy of the transcript from the transcribing reporter.

d. Issues for Public Comment

The Department is interested in receiving comments and data concerning the accuracy and workability of this methodology. Also, DOE welcomes discussion on improvements or alternatives to this approach. In particular, DOE is interested in gathering data on the following:

- The relevance of the data inputs and outputs of the Lawrence Berkeley Laboratory Residential Energy Model and Lawrence Berkeley Laboratory Manufacturer Impact Model models, whether these models could or should capture the cumulative effects of Federal energy conservation standards on multi-product appliance manufacturers and whether or not there are acceptable alternative models that could be used;
- Descriptive and performance characteristics for baseline models of each product class that are the subject of this rulemaking. These models should be those satisfying the appropriate standards;
- Proposed product classes for products in this rulemaking;
- Costs of baseline units and incremental costs of designs improving the energy efficiency of the products that are the subject of this rulemaking;
- Appropriateness of existing and proposed test procedures to the proposed design options;
- Methods of calculating the dollar value of reduced atmospheric emissions of SO_2, NO_x, and CO_2 from reduced energy consumption;
- Data on consumer financing of appliances useful for obtaining a weighted-average discount rate;
- Data on lifetimes of the appliances;
- Data on the distributions of locations of heating and cooling equipment relative to conditioned space and venting and air intake configurations for heating equipment; and
- Data on the possible adverse affects of standards on identifiable groups of consumers that experience below-average utility or usage rates.

The Department has been unable to identify the financial characteristics of small manufacturers. Nevertheless, for purposes of this analysis, small manufacturers' costs are assumed to equal those of medium manufacturers. The Department is especially interested in learning of the existence of small manufacturers and in obtaining costing data from such manufacturers of the products under consideration.

For the Lawrence Berkeley Laboratory Residential Energy Model, DOE requests interested parties to provide historical data on shipments and average efficiencies by class for the products subject to the proposed rulemaking. Data on consumer prices and on the installation and maintenance expenses of these appliances are also requested.

The manufacturer analysis needs financial data from the product division level. All of these data are available at the firm level; but since firms are typically much larger than the relevant division, the firm data may give a misleading indication of the division's finances.

An income statement and balance sheet at the division level would be most helpful. If this is not available, then data on the following variables are considered most essential: Net income, revenue, selling and general and administrative costs, engineering costs, costs of goods sold, interest, taxes, debt-to-equity ratio, net depreciable assets, net assets, capital investment, and long-term debt.

The Department also welcomes current data on unit sales and revenues for the industries as a whole.

Issued in Washington, DC., on August 30, 1993.

Frank M. Stewart, Jr.,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 93–21838 Filed 9–7–93; 8:45 am]

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federal register

Wednesday
September 8, 1993

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 314
New Drug and Abbreviated New Drug Applications; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 314

[Docket No. 90N-0238]

New Drug and Abbreviated New Drug Applications; Preapproval Inspection Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to revise its regulations governing the approval for marketing of new drugs and antibiotic drugs for human use to require the submission by applicants of new drug and antibiotic applications (for the purposes of this document, new drug and antibiotic applications will be referred to as NDA's), abbreviated new drug and antibiotic applications (for the purposes of this document, abbreviated new drug and abbreviated antibiotic applications will be referred to as ANDA's), and supplemental applications of an additional copy of the chemistry, manufacturing, and controls (chemistry) section of their NDA's and ANDA's and of certain supplemental applications. The additional copy will be used by FDA investigators during a preapproval inspection to audit application commitments and statements against actual manufacturing practices used by applicants. FDA is also requiring the submission in the chemistry section of an NDA or ANDA, if not ordinarily included, certain information concerning the batches used to perform bioavailability, bioequivalence, and stability tests and the proposed or actual master production record for a commercial lot. This rule is intended to improve FDA's surveillance and enforcement activities with respect to NDA's, ANDA's, and supplemental applications consistent with the agency's efforts to address certain fraudulent practices found during recent investigations of the generic drug industry.

EFFECTIVE DATE: October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Watson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1038.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of January 28, 1991 (56 FR 3180), FDA published a proposed rule to require the submission by applicants of NDA's, ANDA's, and supplemental applications of an additional review copy of the chemistry and human pharmacokinetics and bioavailability (biopharmaceutics) sections of their applications and of certain supplemental applications and an additional copy of the applicant's draft labeling. FDA also proposed to require the submission in the chemistry section of an NDA and ANDA, if not ordinarily included, certain information concerning the batches used to perform bioavailability, bioequivalence, and stability tests and the master production record for a commercial lot. The proposed new requirements would: (1) Provide to FDA field investigators information to be used during a preapproval inspection to audit application commitments and statements against actual manufacturing practices used by applicants and (2) provide to FDA headquarters reviewers additional information to be used in FDA's determination whether new drug products meet the statutory requirements for approval. FDA provided 60 days for public comment. The agency has revised portions of the final regulations in response to comments received on the proposal.

Highlights of the final rule are summarized below, followed by a summary and discussion of the comments.

II. Highlights of the Final Rule

A. Requirements

This final rule has been significantly revised to reduce the amount of information that an applicant would submit for a preapproval inspection and to permit a U.S. applicant to send the information directly to the appropriate FDA district office. Accordingly, the final rule requires U.S. applicants of NDA's and ANDA's to submit to the applicants' home FDA district office, at the time of submission of their application to FDA headquarters, a certified copy of the chemistry section of their NDA's and ANDA's, all amendments to that section, and certain supplemental applications. FDA has designated this copy as the field copy. Foreign applicants would submit the field copy to the FDA headquarters address specified under § 314.440 (21 CFR 314.440) for submission of original NDA's, ANDA's, amendments, and supplements. The field copy of an NDA and ANDA will be used by FDA's field investigators in conducting a preapproval inspection. Unlike the proposed rule, the final rule does not require the submission of an additional copy of the biopharmaceutics section of an NDA and an ANDA and an applicant's draft labeling.

The final rule, like the proposed rule, provides that an applicant include in the chemistry section of its application certain information about the batches of the drug product used to conduct a bioavailability, bioequivalence, or stability study as follows: (1) The batch production record; (2) the specifications and test procedures for each component and for the drug product; (3) the names and addresses of the sources of the container and closure system for the drug product; (4) the name and address of each contract facility that performs an operation in the manufacture, processing, packaging, or testing of the drug product and identification of the operation performed by each contract facility; and (5) the components and drug product test results obtained under §§ 211.84 and 211.165 (21 CFR 211.84 and 211.165) (see § 314.50(d)(1)(ii)(*b*)). In response to comments, the final rule clarifies that these requirements apply only to the pivotal bioavailability and bioequivalence studies and to the primary stability studies, and that, for the components of the drug product used to conduct bioavailability, bioequivalence, and stability studies, an applicant is only required to submit the names and addresses of the sources of the active and noncompendial inactive components of the drug product rather than all components of the drug product.

In response to comments, the final rule modifies the proposed provision concerning submission of the master production record. For an ANDA and an application submitted under § 314.54, the final rule requires the applicant to provide the proposed or actual master production record to be used for manufacture of a commercial lot of the drug product (§ 314.94(a)(9)) (21 CFR 314.94(a)(9)) (§ 314.55(e)(2)(i) in the proposed rule) and § 314.54 (a)(1)(i) and (a)(2) (21 CFR 314.54 (a)(1)(i) and (a)(2)). However, for an NDA, the applicant may provide, in lieu of the proposed or actual master production record, a detailed description of the production process for a representative batch of its proposed product (§ 314.50(d)(1)(ii)(*c*)).

The final rule expands the proposed provision concerning supplemental applications. The final rule requires the submission by the applicant to the applicant's home FDA district office, or if a foreign applicant, to FDA headquarters, a field copy of all supplements to the chemistry section of an NDA and ANDA except labeling supplements (§ 314.71(b)).

In the **Federal Register** of April 28, 1992 (57 FR 17950), FDA issued final regulations on certain requirements that apply to ANDA's. These regulations implement title I of the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417). That final rule, among other things, reorganized and revised 21 CFR part 314 to incorporate the new requirements. The revisions, in part, added new § 314.54 to subpart B and new §§ 314.92 through 314.99 to new subpart C. The agency is now conforming this rule to the new part 314 structure.

B. Relationship to FDA's Computer-Assisted New Drug Application (CANDA) Program

In the **Federal Register** of September 15, 1988 (53 FR 35912), the agency published a notice to give guidance to applicants interested in submitting CANDA's, including ANDA's and investigational new drug applications (IND's). The notice encouraged applicants to explore the use of CANDA's. The agency views computer technology as a promising means of making the new drug review process more efficient. FDA's long-range plans commit FDA's Center for Drug Evaluation and Research (CDER) to continue to explore the use of computer technology to enhance the timeliness, effectiveness, and efficiency of the new drug review process and reduce burdensome, nonessential hard-copy handling. Currently, the submission of a CANDA will generally not affect the required submission of an application in hard copy. Over time, there may be instances where no hard copy need be submitted. By fiscal year 1995, FDA expects that virtually all application submissions to CDER will either be full CANDA's or have major automated components.

Development and operation of an acceptable CANDA system require the acquisition and installation of appropriate computer hardware and software and orientation and training of employees in the use of the computer hardware, data file content and structure, and retrieval routines. Filing of a CANDA is also conditional on the reviewing divisions willingness to accept an application in the CANDA format used by the applicant. To date the agency has directed its efforts toward policies and procedures for CANDA submissions to headquarters. The agency's long-term goal is to extend the CANDA concept to its district offices. However, initiation of this goal will not occur before fiscal year 1995, and its completion will be conditioned on the availability of adequate budgetary resources. Therefore, for a preapproval inspection, unless otherwise instructed by the agency, applicants will submit the additional copy of the chemistry section of an application, all amendments to that section, and certain supplemental applications in hard copy.

III. Responses to Comments

FDA received 16 comments on the proposal. The comments came from pharmaceutical manufacturers and trade associations.

A. General Comments

1. One comment asked that the regulations define the respective roles in the new drug approval process of the FDA district offices and the reviewing divisions within CDER. Two comments expressed concern that inspectors in the districts will use the additional copy of the application to duplicate the review of an application already conducted by headquarters reviewers, and that this second, unnecessary review will not be limited to current good manufacturing practice (CGMP) issues but rather will overstep the intent of the rule and impinge on headquarters' role.

FDA advises that the roles of headquarters' personnel and FDA's district offices in the new drug approval process are necessarily distinct and different. The role of the reviewing divisions in FDA's CDER is to review the data submitted by an applicant in an NDA and ANDA to determine whether, for the drug product for which an applicant seeks approval, the NDA applicant has shown by adequate scientific evidence that the drug product is safe and by substantial evidence that the drug product is effective for the conditions prescribed, recommended, or suggested in the product's proposed labeling, and that the drug product will be manufactured properly; and the ANDA applicant has shown that the drug product is bioequivalent to its brand name counterpart, and that the drug product will be manufactured properly.

Under section 505(d)(3) and (j)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(d)(3) and (j)(3)(A)), the agency must deny approval of an NDA or ANDA if the methods used in, and the facilities and controls used for, the manufacture, processing, and packaging of the drug product for which the applicant seeks approval are inadequate to preserve the drug's identity, strength, quality, and purity. Therefore, before approval of an NDA or ANDA, FDA's reviewing chemists and microbiologists must determine that the data in an application about the composition, manufacturing methods, and specifications and test methods used for the drug substance and drug product are adequate to assure their identity, strength, quality, and purity.

The role of FDA's district offices is to determine whether all establishments that will participate in the manufacture, packaging, or testing of the drug substance or drug product are in compliance with CGMP regulations and with application commitments and statements. These determinations are made by inspections by field personnel. An FDA investigator evaluates a manufacturer's compliance with the requirements of the agency's CGMP regulations (21 CFR parts 210 and 211) that set forth comprehensive standards for drug manufacturing; determines whether the manufacturer has adequate facilities, equipment, procedures, and controls to manufacture the drug product for which an applicant seeks approval in conformance with application commitments and statements; and audits the accuracy of the manufacturing and testing data for the batches used to conduct bioavailability, bioequivalence, and stability studies submitted in an application. In short, an FDA headquarters' reviewer determines if the data in an application support the safety and effectiveness or bioequivalence of the applicant's proposed product, and if the manufacturing process described in an application can produce a consistent product; whereas an FDA field investigator determines if the data are accurate and authentic and support the commitments and statements made in the application, and if the manufacturing facilities are capable of manufacturing, packaging, controlling, and testing the applicant's proposed product as described in the application.

2. Two comments discussed the economic impact of the proposed rule on NDA applicants. One comment noted that FDA's assessment of the economic impact was based solely on copying costs and such assessment was inadequate. Both comments expressed concern that experience during the initiation of FDA's new preapproval program demonstrated that there were delays in NDA approvals attributed to the preapproval plant inspections. One of the comments stated that an industry estimate conducted at the end of 1990 revealed that at least 14 NDA's were delayed 1 to 3 months resulting in an estimated economic impact of $280 million. The comments argued that the increased burden of the new requirements, the potential economic

loss from material delays in NDA approval, and the potential losses from the unavailability of new medicines should be accounted for in assessing the impact of the proposed rule. Another comment disagreed with FDA that submission of the additional copy would be a minimal burden on applicants because, if applicants are required to submit the copy to FDA, much time will have to be spent by applicants to track information to assure its proper and timely disposition to the applicable district.

FDA acknowledges that there were delays in application approvals during implementation of the expanded preapproval inspection program. New procedures, however, have been instituted to alleviate unnecessary delays in application approvals. Under the new procedures, inspections will be conducted earlier in the review process. By doing so, the inspection should be completed well before the application reaches the approvable stage based on review by CDER's scientists. Also, if the inspection identifies significant deficiencies that the firm is willing to correct promptly, there should be adequate time for the applicant to make the corrections before the scientific review is completed. In the past year, FDA has increased the number of its field investigators, which will provide more timely preapproval inspections and help alleviate unnecessary delays in inspections. Also, FDA's Office of Regulatory Affairs (ORA) has established a premarket approval management plan to ensure uniform implementation and efficiency of operations. Finally, FDA has conducted a series of Commissioner's exchange meetings on the preapproval inspection program to illicit suggestions and recommendations from the industry to further enhance the efficiency and effectiveness of these inspections. These meetings were held in Cherry Hill, NJ; San Francisco, CA; Chicago, IL; and San Juan, PR.

3. In the preamble to the proposed rule (56 FR 3180), FDA stated that an applicant's history of noncompliance with CGMP's may trigger a preapproval inspection. One comment asked how FDA determines that an applicant has a history of noncompliance and if the firm is advised of this.

The agency believes that responsible corporate officials in any firm know when they have a history of noncompliance with CGMP's. This is evidenced by FDA's numerous administrative and regulatory actions against a firm for failing to adhere to CGMP requirements. These actions may have included repeated failure to correct deficiencies reflected in a list of inspectional observations (Form FDA–483) left at the firm following an inspection, frequency of FDA inspections of a firm, numerous repetitive violations of CGMP regulations as evidenced by followup inspections by FDA, number of recalls, injunction proceedings, content and frequency of correspondence and meetings between FDA and the firm, settlement agreements, and consent decrees.

4. One comment asked that FDA clarify the effective date of this final rule. The comment argued that the final rule should not be applied to cover NDA's and ANDA's submitted before the effective date.

The requirements established in this final rule apply only to NDA's and ANDA's and their amendments and to supplemental applications submitted on or after the effective date of this rule.

B. Preapproval Inspections

5. One comment asked that FDA clarify whether preapproval inspections are mandatory or discretionary. The comment expressed the opinion that there is a potential that the standard for preapproval inspections contemplated by FDA's proposed rule is materially different from FDA's Compliance Program (CP) 7346.832.[1] The comment stated that the CP appears to make inspection mandatory for the listed categories of drug approvals, as assigned by CDER. For categories of drug approvals not assigned by CDER, the CP provides that CDER and the District will consult so that Districts may "exercise judgment as to whether preapproval inspections should be conducted * * *." If preapproval inspections are mandatory, the comment asserted that clear and identified criteria FDA will use in deciding when an inspection is warranted are essential, and that without such criteria the risks of favoritism, significant differences between and within districts, and unpredictability exist.

FDA does not agree that the proposed rule and CP 7346.832 contemplate different standards for preapproval inspections. Under section 505 (d)(3) and (j)(3)(A) of the act, FDA must deny approval of an NDA or an ANDA if the methods used in, or the facilities and controls used for, the manufacture, processing, and packaging of the drug product are inadequate to assure and preserve the product's identity, strength, quality, and purity. Therefore, before approval of an NDA or an ANDA, FDA must determine that the facilities involved in the manufacturing, testing, or other manipulation of the applicant's proposed drug product have been inspected and found to be in compliance with CGMP regulations. This determination is made by FDA's inspecting the involved facilities before approval of an NDA or an ANDA, or by relying upon results of recent on-site inspections of the applicant's facilities, which covered the same class of dosage form as the applicant's proposed product. Section 510(h) of the act (21 U.S.C. 360(h)) mandates on-site inspections for every registered drug establishment every 2 years. Because of certain fraudulent practices found during investigations of the generic drug industry, FDA expanded its preapproval inspection program beyond the statutorily required biennial on-site inspection to include additional criteria for triggering a preapproval inspection which is product and site specific and to include as part of a preapproval inspection an audit of the manufacturing and controls records concerning the batches used to conduct bioavailability, bioequivalence, and stability studies. The additional criteria cited by FDA in the proposed rule and in CP 7346.832 represent those situations most likely to trigger a preapproval inspection. For example, FDA must be assured that a manufacturer has adequate facilities, equipment, procedures, and controls to manufacture a new chemical entity or a new dosage form.

FDA's preapproval inspections are discretionary in that they are not statutorily mandated. Preapproval inspections may be requested by agency headquarters staff or conducted at the district offices' discretion. Factors considered by FDA and its district offices in determining whether a preapproval inspection is necessary include the date of the firm's last biennial inspection; the firm's CGMP inspection history; results of recent inspections that covered the same class of drug product, i.e., tablet, capsule; regulatory actions against the firm; recalls; and complaints against the firm. Because of the number and significance of the problems the agency is finding with both NDA's and ANDA's during preapproval inspections, the intensity of FDA's preapproval inspections will continue for both NDA's and ANDA's, and the inspections will be conducted for products meeting criteria such as those listed in the preamble and the CP.

6. One comment expressed concern that, if applicants are required to submit

[1] Compliance Program 7346.832 is available at cost from the Freedom of Information Staff (HFI–35), Food and Drug Administration, rm. 12A–30, 5600 Fishers Lane, Rockville, MD 20857.

review copies of each NDA, ANDA, amendment, and appropriate supplement, as well as the additional information that would be required in the chemistry section, FDA's reviewing chemists involved with the preapproval inspections will be burdened with tracking and compiling a complete record of the submission and all subsequent amendments and supplements. The comment argued that this would seriously detract from the FDA reviewers' ability to focus his or her efforts on the NDA/ANDA review and therefore interfere with FDA's current mandate to shorten NDA and ANDA review time. The comment suggested that FDA consider modeling the preapproval inspection requirements on a procedure used for methods validation packages in which the chemistry section and all related amendments would be sent, when the reviewing chemist requests an inspection, to the reviewing chemist for distribution, or, under appropriate circumstances, directly to the district office.

FDA believes that this comment misunderstood the process by which the agency would provide the additional copy to the district offices. FDA had envisioned a process that would impose minimal burdens on its reviewing personnel. Therefore, under the proposed rule, the additional copy of original submissions, amendments, and appropriate supplements submitted to FDA by applicants would be provided to the home FDA district office of the applicant by CDER's central document room. CDER's reviewing personnel would only be involved in the event it was necessary for them to assist in identifying whether an amendment or supplement did, in fact, affect either the chemistry or biopharmaceutics section of an NDA or ANDA. The concern expressed by the comment is now moot because, under the final rule, a U.S. applicant will send the additional copy of the chemistry section, amendments, and supplements directly to the appropriate district office.

7. One comment asked that FDA clarify what constitutes a drug with a narrow therapeutic range. The preamble to the proposal included as one of the grounds that may trigger a preapproval inspection those drug products that have a narrow therapeutic range, such as drugs used to treat epilepsy, asthma, high blood pressure, and heart diseases (56 FR 3180). The comment argued that this language suggests that all cardiovascular drugs, for example, have a narrow therapeutic range, and are subject to preapproval inspection.

FDA agrees that its description of narrow therapeutic range drugs may imply that all cardiovascular drugs have a narrow therapeutic range. This implication was not intended. The preamble language was intended only to give examples of the types of therapeutic classes to which the specific drug products belong. FDA has developed an informal list of drugs it believes may have a narrow therapeutic range. This list is used for various internal purposes only such as selecting drug products for preapproval inspection. FDA does not formally designate narrow therapeutic range drugs.

8. One comment noted that the preamble identified broad categories of drug products such as new chemical entities, new dosage forms for an applicant, and drugs that are difficult to manufacture and thus difficult to replicate that would be subject to the final rule. The comment asserted that it would be excessive for FDA to require preapproval inspections for all NDA's within these categories. The comment argued that, in the absence of a concern by the review divisions about the drug product, and in the absence of a concern by FDA's compliance officials about the manufacturer, a preapproval inspection should not be conducted and an NDA applicant should not have to submit the additional data that would be required by the proposed rule. Another comment noted that the criteria "are difficult to manufacture and thus difficult to replicate" and "generic versions of the top 200 most prescribed drugs" are obviously applicable to generic drugs and questioned their application to innovator companies.

The objective of FDA's preapproval inspection program is to evaluate a manufacturer's compliance with CGMP requirements, audit the manufacturing and control records for the batches used to conduct bioavailability, bioequivalence, and stability studies, and audit application commitments against actual manufacturing practices. This is intended to improve FDA's surveillance and enforcement activities with respect to NDA's and ANDA's consistent with the agency's efforts to address certain fraudulent practices found during recent investigations of the generic drug industry. FDA believes it is appropriate to apply this rule and its preapproval inspection program both to NDA's and ANDA's. As noted in section III.C.13., FDA cannot assure that NDA's are not susceptible to fraud. In addition, the agency is finding significant problems with both NDA's and ANDA's during preapproval inspections. Because of this, the intensity of FDA's preapproval inspections will continue for both NDA's and ANDA's. An important goal of FDA's preapproval inspection program is ensuring the integrity of the data submitted to FDA by an applicant. FDA intends to continue to conduct preapproval inspections of NDA's and ANDA's for products meeting criteria such as those set forth in FDA's proposed rule and in CP 7346.832.

FDA agrees that the criteria "are difficult to manufacture and thus difficult to replicate" and "generic versions of the top 200 most prescribed drugs" are applicable to generic drugs and would not apply to innovator companies.

9. One comment noted that FDA cited five criteria that may trigger a preapproval inspection but did not address the situation in which FDA requests, by force of habit, preapproval inspection of a firm submitting an application for a drug product that does not fall within one of the enumerated criteria. To prevent this situation from occurring, the comment asked that the final rule be amended to allow a firm to satisfy such an FDA preapproval inspection request by providing a written statement that its application does not fall within one of the five enumerated criteria.

FDA declines to make the change requested. The five enumerated criteria discussed in the preamble to the proposed rule were not intended to be all-inclusive. A preapproval inspection may be triggered by other events. As discussed in the preamble (56 FR 3180), FDA may also inspect applicants who have a history of noncompliance with CGMP's and new applicants, i.e., those applicants who have not previously submitted an NDA or an ANDA or who currently are manufacturers of over-the-counter drug products and are seeking approval of their first prescription drug product. In addition, for drug products not falling within one of the enumerated categories, an unsatisfactory inspection within the past 2 years will also trigger a preapproval inspection as will discrepancies warranting an investigation resulting from headquarters review of an application.

10. One comment asked that FDA amend the regulation to provide that the additional copy of the chemistry and biopharmaceutics sections be forwarded to the field investigative teams within 30 days following the decision by FDA to begin review of the chemistry section.

Under this final rule, a U.S. applicant will send the additional copy of the chemistry section directly to the home FDA district office of the applicant at the time of submission of an NDA or

ANDA to FDA. The final rule does not require submission of an additional copy of the biopharmaceutics section. Therefore, the comment's request is now moot.

11. One comment stated that the proposed rule provides that information contained in the drug master file (DMF) must be provided to FDA which will, in turn, provide the information to its field investigators. The comment asked that FDA clarify whether FDA is referring only to the applicant's facility DMF and not DMF's from companies other than the applicant, i.e., closure manufacturers, active ingredient suppliers, etc. The comment also asked that the final rule include a 30-day timeframe following the decision by FDA to begin its chemistry review within which FDA must provide this information to its field investigators.

In the preamble to the proposed rule (56 FR 3180 at 3181), FDA noted that the regulations at 21 CFR 314.420 permit certain information to be provided to FDA in a DMF and incorporated into an NDA or ANDA by reference to the DMF. If an applicant incorporates information in an NDA or ANDA by reference to its own DMF or to another person's DMF and that information or part of the information is relevant to a preapproval inspection, FDA will provide the information to its investigators.

FDA declines to impose a time period within which it must submit information in a DMF to its investigators. Contacts between appropriate headquarters reviewing personnel and FDA's district offices before and during a preapproval inspection will ensure that the field investigators have relevant information from a DMF in a timely manner.

12. One comment asked that the rule include a provision specifying that "field inspections must be initiated at least 30 days after receipt of information from headquarters and the field investigators must report back to headquarters within 10 days of receipt of the information. A failure to do so constitutes an agency waiver of the preapproval inspection need."

FDA declines to revise the rule to include the timeframes suggested by the comment. The scheduling of inspections is left to the discretion of the district offices. District preapproval activities are an inherent part of the agency's overall review process; therefore, districts are responsible for timely responses to headquarters assignments so as not to unduly delay recommendations concerning an application approval. As discussed in section III.A.2., FDA is streamlining its inspection scheduling and reporting procedures to allow for inspections to be conducted earlier in the review process and to avoid bottlenecks at clearance time, and is targeting increased resources for its preapproval inspection program.

C. Scope of Requirements

13. Some comments objected to imposing new requirements on NDA applicants because of instances of misrepresentation and fraud by some ANDA applicants. The comments argued that FDA's remedy for detection of fraud should not be extended to NDA's because of differences in the development sequences for original new chemical entity drug products and generic drug products and the very significant differences in the review of NDA's and ANDA's by FDA, and that the problems identified by FDA with respect to generic firms could be addressed without imposing additional burdens on NDA applicants. One comment viewed the new requirements as another tax on innovation. Another comment believed that there has been integrity in the approval process for NDA's and asserted that there is not an adequate basis for concluding that the new submission requirements by research companies will alleviate or prevent any problem.

The agency does not agree that the rule should apply only to ANDA applicants. FDA cannot assure that NDA's are not susceptible to fraud. This rule would allow FDA to prevent and remedy fraud wherever it occurs in the new drug product approval process.

14. A few comments requested clarification of the types of bioavailability and bioequivalence studies that are subject to § 314.50(d)(1)(ii)(*b*) of this rule. One comment asked whether the many types of clinical pharmacology, pharmacokinetic, and pharmacodynamic studies in which blood samples are routinely collected for analysis during clinical development of a dosage form would be considered within the scope of the regulation. The comment suggested that the regulation apply only to pivotal bioavailability and bioequivalence studies, i.e., those studies that define the absolute or relative bioavailability of a new drug and studies necessary to demonstrate the bioequivalence of a new formulation to that which was previously studied in clinical trials. One comment suggested that the scope of the submission requirements for NDA's be limited to records of "a batch representative of the batches used in studies of the bioequivalence or bioavailability of the drug product."

FDA agrees that clarification of the rule is necessary and has revised § 314.50(d)(1)(ii)(*b*) to clarify the bioavailability and bioequivalence studies to which this final rule applies.

In the **Federal Register** of April 28, 1993 (58 FR 25918), FDA published a final rule to amend its current bioavailability/bioequivalence regulations to require the retention for a specified period of reserve samples of the drug products used to conduct certain bioavailability or bioequivalence studies, and, when specifically requested, to release the reserve samples to FDA. In response to comments on the interim rule published in the **Federal Register** of November 8, 1990 (55 FR 47034), FDA revised § 320.38 (§ 320.32 in the interim rule) and § 320.63 to clarify the bioavailability and bioequivalence studies from which reserve samples are to be retained. Therefore, like the final rule on sample retention, for an NDA, this rule applies to those studies comparing the applicant's proposed product with that formulation studied during pivotal clinical trials to establish their equivalence; and for an ANDA, this rule applies to a bioequivalence study comparing the applicant's proposed drug product to the approved drug product upon which the applicant relies for approval of its product.

15. Three comments argued that submission of the biopharmaceutics section of an application is unnecessary because that section includes data such as statistical and raw laboratory data that would be of no use to the field investigator for a preapproval inspection. One comment suggested that the only portions of this section that are relevant to the field investigator's mission are: (1) Information about the drug product used to conduct a bioavailability or bioequivalence study such as composition of the test drug product, certificates of analysis for the test and reference products, and comparative dissolution profile for the test and reference products; and (2) the synopsis or summary of the bioequivalence study results. Another comment suggested that data identifying the lots used to conduct bioavailability or bioequivalence studies and the manufacturing site for the lots would be information needed for a preapproval inspection. The comments argued that a revision of the rule to provide for the submission of an additional copy of only these portions of the biopharmaceutics section would result in a saving of time and photocopy resources for applicants as well as

greater convenience and efficiency for FDA investigators in discharging their preapproval inspection duties. One comment expressed concern that, if the entire biopharmaceutics section was provided to the district offices, overzealous inspectors may attempt to conduct a pharmacokinetic review.

The agency has carefully considered these comments in light of the objectives of its preapproval inspection program and the regulatory requirements most appropriate to achieve these objectives. Based on this review, the agency has modified the final rule to remove the proposed provision requiring submission of an additional copy of the biopharmaceutics section of an application.

FDA considers an applicant's comparative in vitro dissolution data a critical component of FDA's approval of new drug products, especially generic drug products. For an ANDA, comparative dissolution data for solid oral dosage form drug products are necessary to show comparability of the applicant's proposed drug product to its brand name counterpart. For an NDA, comparative dissolution data for solid oral dosage form drug products are necessary to show comparability of the applicant's proposed drug product to the formulation used in conducting the pivotal clinical, bioavailability, and stability studies. Where comparative in vitro dissolution data are required in addition to an in vivo bioequivalence or bioavailability study or as the sole bioequivalence requirement, the data are included in the biopharmaceutics section of an NDA and an ANDA. During preapproval inspection, FDA investigators will audit an applicant's comparative dissolution data at the facility where the testing was conducted. If either FDA's headquarters reviewing personnel or FDA's field investigators question the integrity of the comparative dissolution data submitted to FDA by an applicant, FDA will arrange with its field investigators for additional audits. If, based on FDA's inspectional experience and headquarters reviews of applications, the agency believes additional requirements are needed to ensure the integrity of the data submitted in the biopharmaceutics section of an NDA or ANDA or to facilitate its preapproval inspections, it will again consider the issue and propose appropriate revisions to this rule.

16. A few comments asked that FDA clarify the types of stability studies that are subject to § 314.50(d)(1)(ii)(*b*) of this rule.

This requirement is limited to primary stability studies, i.e., those stability studies conducted with the proposed drug product in the container closure system proposed for marketing and under storage conditions that support the proposed expiration dating period. For an ANDA, generally the stability studies are conducted with the same batch of the drug product used to conduct bioequivalence studies.

17. Four comments argued that the explanation provided in the proposed rule describing the need for an additional copy of the applicant's draft labeling was inadequate because it did not define the role that the district office will have in label review, especially the package insert which is included in "labeling." The comments requested that the requirement for submission of a copy of the applicant's draft labeling be deleted.

FDA has reevaluated FDA's field investigators need for a copy of the applicant's draft labeling during a preapproval inspection and has concluded that its field investigators do not need to have access to draft labeling for every preapproval inspection. The agency is not finalizing the proposed revision of § 314.50(e)(2)(ii) that would have added the requirement for the submission of an additional copy of an applicant's draft labeling. The agency advises, however, that its field investigators may ask an applicant for a copy of its draft labeling to confirm consistency with application commitments. For example, an investigator may need to confirm that an applicant can meet the storage conditions contained in the labeling of its proposed drug product.

D. Number of Copies of an Application

18. Two comments asked that FDA clarify in the introductory paragraph of § 314.50 that extra copies are needed for only certain sections of a submission because the language of that paragraph implies that three copies of the entire application are required.

The agency does not believe that the language of the introductory paragraph of § 314.50 has the implication attributed to it by the comment. As proposed, an applicant would submit three copies of an application: An archival copy and two review copies. The content of the archival copy and of the two review copies is set forth at § 314.50 (h)(1) and (h)(2), respectively. The final rule, however, retains the current requirement for one review copy and requires an additional copy of the chemistry section of an NDA and ANDA, each amendment to that section, and each chemistry supplement, which is the field copy. FDA has added new § 314.50(h)(3) to describe the content of the field copy.

19. Several comments questioned whether one additional copy of the chemistry section of an NDA would be adequate in some instances to facilitate a preapproval inspection. The comments argued that, for new chemical entities, as many as 10 or more sites may be specified in an NDA, including those for the manufacture of bulk drug, drug product formulation, and packaging operations. Frequently, these sites and operations are located in geographically diverse areas covered by different FDA regional offices and may be separated from the company's research facility where stability data were generated and where the bioavailability study was conducted. As an alternative proposal, the comments suggested that the reviewing chemist determine the number of additional copies of the chemistry section and all amendments based on the number of inspections requested by the reviewing chemist. The additional copies could be checked for accuracy by the reviewing chemist before issuance to the field. Other comments suggested that, if the intent is to provide the district investigators with the additional information, the information could be provided by the applicant to the field investigator or the district office at the time of an inspection (or earlier, if requested). The comments argued that this would result in reduced need for storage space of documents at FDA, less possibility or probability of document loss or mismanagement at FDA, and reduced dollar cost to the agency. The investigator would be able to see the actual data and accompanying supporting data on site and be directed to the scientists involved with such data, resulting in a better evaluation. Another comment suggested submission to FDA at a time designated by the reviewing chemist of an updated final field copy or copies which would incorporate amended information and technical section revisions. This would reduce the volume of data requiring field review by eliminating superseded or obsolete references and permit the submission of an additional copy if more than one district will be conducting inspections. Still another comment, arguing for submission of the additional copy by the applicant to the applicable local district directly, asserted that FDA neither has the resources, manpower, nor systems in place in its review and documentation areas to comply with the proposal in an efficient and timely manner, and that experience indicates applications and

other submissions inevitably get lost, misplaced, or misfiled. The comment stated that verification of submission directly to the district could be made in cover letters with an applicant's NDA, ANDA, amendment, and supplemental application submission to FDA.

FDA acknowledges that a preapproval inspection may involve more than one facility per NDA or ANDA. The purpose of the requirement for the submission of an additional copy of the chemistry section is to provide FDA's field investigators with the information to audit application commitments and statements against actual manufacturing practices and to assure early detection of fraudulent practices by an applicant. FDA's objective is to achieve this purpose without imposing unnecessary burdens on the industry and FDA. In light of this objective and FDA's consideration of the comments, FDA concludes that it is appropriate to permit U.S. applicants to provide the additional copy of the chemistry section and all amendments to that section directly to the applicant's home FDA district office who will then provide the FDA district offices that cover the inspection site(s) with the information needed to conduct a preapproval inspection. The procedure set forth in the proposed rule was based on FDA's concern that if the additional copy was provided by the applicant directly to the district, there was a possibility that the copy provided to the district would differ from that submitted to FDA headquarters. To alleviate this concern under the revised procedure in this final rule, FDA's ORA will conduct periodic evaluations, with the cooperation of FDA's CDER, to assess whether the copies sent to the home district by the applicant are identical to the copies sent to FDA headquarters. ORA will prepare specific criteria for these evaluations. In the case of a foreign applicant, the final rule provides that the additional copy be sent with the applicant's original submission to the appropriate address designated under § 314.440. In addition, the final rule provides that this additional copy shall be a certified copy, i.e., a responsible corporate official must certify that the copy is a true copy of that submitted to FDA headquarters. The final rule also provides that a U.S. applicant include in its submission to FDA headquarters a statement certifying that the applicant has provided to its home FDA district office the required information.

FDA now furnishes colored binders to applicants free of charge for organizing their applications. FDA intends to use a specific color binder for the field copy of an application. Applicants may request supplies of the field copy binder (FDA Form 2626h) from Consolidated Forms and Publications Distribution Center, Washington Commerce Center, 3222 Hubbard Rd., Landover, MD 20785.

E. Batch Production Record

20. Three comments asked FDA to clarify what is intended to be included in the batch production record.

A batch production record is that record described under § 211.188 of the CGMP regulations.

21. Two comments argued that the information contained in the batch production records is directly related to CGMP requirements and that FDA would be able to verify the manufacturing procedures, batch size, and formulations used in bioavailability, bioequivalence, and stability studies during a preapproval inspection. Therefore, FDA should not burden the applicant by requiring that batch production records be submitted in an application.

FDA does not agree with these comments. The batch production records are significant to an FDA headquarters reviewer because they characterize the methods used in, and the facilities and controls used for, the manufacture, processing, and packaging of the product used to conduct the bioavailability, bioequivalence, and stability studies. FDA reviewers must be assured that the specific manufacturing process used to manufacture and control the batches used to perform the pivotal bioavailability and bioequivalence studies and the primary stability studies necessary for approval of an NDA or ANDA are comparable to those represented in the applicant's NDA or ANDA for production of the commercial batches. (Also, see discussion under section III.E.24. and III.I.33.)

22. Existing regulations at § 314.50(d)(1)(ii) require, in part, a description of the manufacturing procedures for the drug product for which the applicant is seeking approval. One comment asked whether the description of the manufacturing procedure required under § 314.50(d)(1)(ii) or the batch record will be considered the "official manufacturing procedure," asserting that, if the batch record, which is more detailed and may not reflect ranges established during the development of a product, is binding, it may be necessary to file supplements for variations within the description required by existing regulations.

The description of the manufacturing procedures required under § 314.50(d)(1)(ii) represents an applicant's proposed procedures for commercial production of the applicant's product and permits FDA to determine whether or not the procedures can produce the proposed drug product and whether the procedures are adequate to determine and preserve the product's identity, strength, quality, and purity. The level of detail required in this description will vary according to the nature of the drug product and FDA's familiarity with the product. This final rule requires an applicant to include in the chemistry section of an NDA either the proposed or actual master production record or a comparably detailed description of the applicant's production process for a representative batch, and for an ANDA, the proposed or actual master production record to be used for the manufacture of a commercial lot. (See section III.I.33.) The contents of a master production record are described at § 211.186 of FDA's CGMP regulations. On the other hand, a batch production record characterizes the precise methods used in, and the facilities and controls used for, the manufacture, processing, and packing of each batch of an applicant's proposed product. For ANDA's, except for changes that are necessary to accommodate the difference in size between the test and production batches, these same methods, facilities, and controls must be applied to the manufacture of production batches of the applicant's drug product to provide assurance that the applicant's product remains bioequivalent to its brand name counterpart. For NDA's, the specific manufacturing process used to manufacture and control the clinical batches and the batches used to conduct bioavailability and stability studies must be comparable with the manufacturing processes used for future commercial production to assure safety and effectiveness of the applicant's marketed product.

Under the CGMP regulations, a batch production record is required to include an accurate reproduction of the master production record for the size of batch, strength, and dosage form to be manufactured. FDA fully expects applicants to amend a pending application or submit a supplement to an approved application providing for significant changes to the manufacturing procedures described by an applicant in a master production record or, in the case of an NDA, in its detailed description of its manufacturing process if submitted in lieu of a proposed or actual master production record. Although neither the CGMP regulations

nor the regulations under § 314.50 use the term "official manufacturing procedure," FDA considers the master production record as representing the applicant's manufacturing process for a commercial lot.

23. One comment asked for clarification of a statement in the preamble which indicated that batches used for bioequivalence studies and those represented in the application differed; for example, in some instances batches were smaller. The comment read this passage in the preamble to imply that full commercial scale batches were needed for such studies and asked FDA to clarify the statement.

FDA believes the comment misunderstood the preamble statement. The preamble discussion described actual situations where information submitted in an ANDA about the batches of a drug product used to conduct a bioequivalence study (test batches) differed from the information at the manufacturing facility about those same batches. For example, the batch production record at the manufacturing facility showed manufacture of a smaller size batch than the batch production record for that batch submitted in the applicant's ANDA. The batch production record at the manufacturing facility for a test batch must be identical to that submitted to FDA in an application. This preamble discussion in no way implies that full commercial size batches are required as test batches.

24. One comment referred to a statement in the preamble that "FDA must also be assured that the batches used to perform bioavailability, bioequivalence, and stability tests necessary for approval do not differ from batches of the drug product represented in the applicant's NDA or ANDA and subsequently marketed" and asked FDA to define "do not differ."

The language "do not differ" means that the methods, facilities, and controls described in the batch production records for the batches used to conduct the pivotal bioavailability and bioequivalence studies and the primary stability studies must be comparable to those described in the NDA or ANDA for production of a commercial lot of the applicant's proposed drug product. For example, the equipment should be of the same design and operating principles, but may differ with respect to capacity because of the difference in size between a test batch and production batch. The standard operating procedures should be the same for the test batch and production batch except for changes necessary to accommodate the larger size of the production batch. (Also, see discussion under section III.I.33.)

F. Specifications and Test Procedures

25. Three comments contended that, for NDA's, specifications and test methods employed for the components and drug product evolve during the development of the dosage form. This information is routinely submitted to FDA as part of the IND process during development studies. The comments argued that the need to resubmit this information in the NDA is not warranted from a regulatory perspective and not adequately justified by the agency in the proposal.

The agency did not intend that an applicant resubmit information about the specifications and test procedures for each component and for the drug product used to conduct a bioavailability, bioequivalence, or stability study if the information was previously submitted in an IND. Section 314.50(g)(1) provides that an applicant may incorporate information submitted previously by reference. A reference to such information in accordance with § 314.50(g)(1) would satisfy the reporting requirement at § 314.50(d)(1)(ii)(*b*) of this rule.

26. One comment contended that the requirement for specifications and test procedures was too broad and unrealistic, and suggested that the requirement be limited by definition to the components of the product to be marketed (not including developmental forms of the product), and that there be no additional submission of specifications and test procedures for nonactive compendial items, when standardized procedures are used. The comment argued that the suggested limitation would avoid burdening the review process with the minutiae of the documentation which supports the manufacturing process.

As discussed previously in this preamble, the requirements of § 314.50(d)(1)(ii)(*b*) apply only to the components and the drug product used to conduct the pivotal bioavailability and bioequivalence studies and to the primary stability studies, and thus do not apply to developmental forms of the drug product. Reference to the current edition of the U.S. Pharmacopeia (U.S.P.) and the National Formulary (N.F.) may be made for compendial components to satisfy relevant requirements under § 314.50(d)(1)(ii)(*b*) of this final rule, and, as discussed above, an applicant may incorporate information submitted previously to FDA by reference.

G. Names and Addresses of Sources of Components and of the Container and Closure System for the Drug Product

27. Several comments addressed the requirement at § 314.50(d)(1)(ii)(*b*) to provide the names and addresses of the sources of the components and of the container and closure system for the drug product. The comments expressed concern that the requirement could be interpreted as restricting the source of excipients to those used in the bioavailability/bioequivalence batches or of the market container used for stability lots for the commercial product without the approval of a supplement. This would prevent the applicant from using components of equivalent quality from a new supplier until such approval is obtained. One comment argued that this is not current practice with NDA products and is totally inconsistent with the development of U.S.P. and N.F. specifications for inactive ingredients, which the agency has endorsed in the past. The comments asserted that, except for the drug substance, it is unnecessary to submit the name and address of each source of the raw materials or components. One comment suggested that the requirement apply only to suppliers of noncompendial inactive ingredients. The suppliers of compendial inactive components used to manufacture the drug product may change depending on the availability and price of the component. Thus, it is not economically feasible to restrict the source of these components to those suppliers identified in the application. For inactive components that comply with compendial specifications, the comment argued that it is sufficient for a sponsor to accept these materials based upon each supplier's certificate of analysis, and to periodically test representative material from each supplier to ensure compliance with compendial standards and CGMP principles.

The provision at § 314.50(d)(1)(ii)(*b*) has been revised to require that the applicant provide the names and addresses of the sources of only the active ingredient and noncompendial inactive ingredient components as suggested by the comments. The provision is not intended to require that an applicant submit a supplemental application for a change in the supplier of an inactive component. Because specifications for noncompendial components may differ among suppliers, FDA concludes that the information about the sources of noncompendial inactive ingredients is necessary to ensure that these components are properly controlled.

The final rule retains the proposed provision to provide the name and address of the source of the container and closure system.

H. Test Results for Components and Drug Product

28. On its own initiative, the agency has removed proposed § 314.50(d)(1)(ii)(*d*) and incorporated the requirement under § 314.50(d)(1)(ii)(*b*). The requirement for the submission of components and drug product test results was intended to apply only to the batches used to conduct the pivotal bioavailability and bioequivalence studies and primary stability studies. This corrects an inadvertent misplacement of the requirement in the proposed rule.

29. One comment asked that the FDA clarify the regulation at proposed § 314.50(d)(1)(ii)(*d*), which would require an applicant to include in its NDA or ANDA submission the components and drug product test results obtained under §§ 211.84 and 211.165, respectively, for the batches used to conduct bioavailability, bioequivalence, and stability studies. The comment argued that the language pertaining to § 211.84 appears to require testing of all inactive ingredients used to manufacture the bioavailability, bioequivalence, and stability batches; however, for inactive ingredients in particular, FDA reviewers have always accepted manufacturers' certificates of analysis provided that the manufacturer of the drug product has fully validated the data contained in a certificate of analysis.

FDA does not agree with the comment's interpretation of the language of proposed § 314.50(d)(1)(ii)(*d*) about component testing. The requirement in the proposed rule and in this final rule is consistent with the requirements at § 211.84. Final § 314.50(d)(1)(ii)(*b*) (proposed § 314.50(d)(1)(ii)(*d*)) only requires component test results as required by § 211.84(d). Section 211.84(d)(2) permits acceptance of, in lieu of component testing by the manufacturer, "a report of analysis * * * from the supplier of a component, provided that at least one specific identity test is conducted on such component by the manufacturer, and provided that the manufacturer establishes the reliability of the supplier's analysis through appropriate validation of the supplier's test results at appropriate intervals." Therefore, this final rule, consistent with § 211.84(d)(2), permits applicants to submit a supplier's report of analysis (certificate of analysis) provided the identity testing and validation as required by that provision have been performed by the manufacturer.

30. One comment argued that the requirement for component test results be limited to components of the product to be marketed (not including developmental forms of the product), and there be no additional submission of test results for nonactive compendial components, when standardized procedures are used. Another comment requested that the final rule be modified so that this requirement apply only to drug products used for pivotal bioavailability and bioequivalence studies and for primary stability study lots for the proposed drug product in the proposed market containers.

As discussed in sections III.C.14. and III.H.28., the requirement for the submission of components and drug product test results applies only to the drug products used to conduct pivotal bioavailability and bioequivalence studies and primary stability studies. The final rule has been revised accordingly. FDA does not agree that test results should not be submitted for inactive compendial components. These test results are critical to FDA's determination that the batches of the drug product used for conducting the pivotal bioavailability and bioequivalence studies and the primary stability studies were manufactured with components that meet compendial specifications.

31. One comment suggested that component testing information be required at the time of the preapproval inspection rather than at the time of an original NDA submission. Although the comment understood the agency's desire to obtain accurate information to detect fraudulent submissions, the comment believed that the proposed requirement to include results of component testing in an NDA would add considerably to the size of an NDA, but it would add little value. Two comments argued that the test results for the components and drug product for the batches used in the bioavailability, bioequivalence, and stability studies are already subject to CGMP requirements and are available for FDA's review when conducting preapproval inspections. The comments asserted that including such data in an application would unnecessarily increase the volume of information submitted without any benefit in value, and would likely contribute to confusion and lengthier reviews.

FDA does not agree with the comments. The requirement for the submission of component test results applies only to testing of the components of the drug product from the batches used to conduct pivotal bioavailability and bioequivalence studies and the batches used to conduct primary stability studies. (See discussion in sections III.C.14. and III.H.28.) This testing information is critical to FDA's determination that the bioavailability, bioequivalence, and stability batches were manufactured with components that met the applicant's specifications or compendial standards for identity, quality, strength, and purity. Thus, FDA does not agree that component test results are of little value and would likely contribute to confusion and lengthier reviews.

32. Two comments asked that FDA define the term "component" as used in proposed § 314.50(d)(1)(ii)(*d*).

The term "component" in proposed § 314.50(d)(1)(ii)(*d*) and § 314.50(d)(1)(ii)(*b*) of this final rule is used as FDA has defined the term in § 210.3(b)(3) of FDA's CGMP regulations (21 CFR 210.3(b)(3)). The agency notes that the term is used in existing § 314.50(d)(1)(ii) (redesignated in this final rule as § 314.50(d)(1)(ii)(*a*)), and that use is consistent with the definition of the term in § 210.3(b)(3).

I. Master Production Record

33. Several comments addressed the proposed provision in § 314.50(d)(1)(ii)(*c*), which would require an NDA and an ANDA to include the master production record to be used for the manufacture of a commercial lot of the drug product for which the applicant is seeking approval. The comments argued that the application of this proposed provision as part of the preapproval inspection program does not recognize the distinction between an NDA and an ANDA. Typically, an NDA is submitted at an earlier development stage than an ANDA. The comments asserted that, in the development of a new drug, the batches of the drug product used in the bioavailability, bioequivalence, and stability studies will not necessarily have been manufactured using a fully validated process. Only after full validation is completed is the final master production record generated. Some comments expressed concern that submission of the master production record with the NDA submission would constitute a firm commitment for the final manufacturing process which could not be modified as a result of final scaleup and validation. The comments argued that to wait for final scaleup and validation to be completed before submission of an NDA is impractical and would result in significant submission delays and would result in

the loss of opportunity to continue process development and achieve process improvement. Some comments suggested that the regulation require the development of master production records for NDA's coincident with the creation of validation protocols that can be reviewed just prior to NDA approval. Any differences between these initial master production records and the documents describing the manufacturing of the drug product for bioavailability, bioequivalence, and stability studies would be fully justified and recorded in the respective batch record file under the CGMP regulations. A few comments suggested that the information in an NDA about the applicant's manufacturing process should conform to the current FDA "Guideline for Submitting Documentation for the Manufacture of and Controls for Drug Products," which allows for manufacturing process information to be provided as a suitably detailed description together with a schematic diagram.

FDA recognizes the differences between NDA's and ANDA's with respect to the drug approval process as discussed by the comments. Given these differences, FDA has reevaluated the objectives of the preapproval inspection program and the regulatory requirements most appropriate to implement them. The ANDA approval process necessarily focuses on the applicant's ability to manufacture a product of acceptable quality that will be bioequivalent to the drug product it is copying, whose safety and effectiveness are established. Ordinarily, at the time of submission of an ANDA, a generic applicant will have manufactured a single batch of its proposed drug product for conducting the required bioequivalence and stability studies. Thus, the applicant has little experience in manufacturing its proposed drug product. This test batch must be produced using equipment appropriate for production of a commercial lot. In addition, the same standard operating procedures and controls for the manufacture of the test and commercial lots and the formulation must be the same except for changes necessary to accommodate the difference in size between a test batch and commercial batch. FDA's interim policy on batch size and production conditions for test batches for nonantibiotic, solid oral dosage form drug products is set forth in CDER's Office of Generic Drugs' (OGD) Policy and Procedure Guide 22–90 (Revised) dated September 13, 1990.[2] In reviewing an ANDA, FDA needs to be assured that the bioequivalence batches and the production batches are made by comparable procedures and equipment. A change in the applicant's manufacturing procedure and/or equipment for the production batches may affect the bioequivalence of the applicant's proposed product.

On the other hand, an NDA applicant has from 1 to 5 years experience manufacturing a series of pilot plant production batches during the IND phases for clinical, bioavailability, and stability studies. Pilot plant production simulates full scale production. FDA recognizes that as the clinical trials proceed, manufacturing procedures, specifications, and test methods may need to be modified or refined. It is appropriate that the processes by which a drug product is manufactured in the development stage be well documented and controlled in order to assure the reproducibility of the product for further testing and for ultimate commercial production. When drug development reaches the stage where a drug product is produced for clinical trials, compliance with the CGMP regulations is required. Thus, compliance with CGMP regulations mandates that applicants document the specific manufacturing process used to manufacture and control the clinical batches as well as the pivotal bioavailability and primary stability batches. This is necessary to ensure that a product's performance characteristics that influence its safety and efficacy are maintained throughout the manufacture of the clinical, bioavailability, and stability study batches. Such data in an NDA will be used to demonstrate the comparability of the manufacturing processes used for the clinical, bioavailability, and stability batches with manufacturing processes to be used for future commercial production. At the time of submission of an NDA, FDA would expect that enough would be known about the proposed product's physical and chemical properties, stability, and product performance characteristics that any subsequent changes, if necessary, in the manufacturing process, specifications, and test methods for production of the commercial lot would be minimal.

Because of the differences in manufacturing experience between NDA and ANDA applicants, as discussed above, FDA concludes that it is appropriate to permit the submission of different information by NDA applicants than by ANDA applicants with respect to the type of information needed by FDA to ensure that an applicant has demonstrated comparability of its manufacturing processes used for the bioavailability, bioequivalence, and stability studies with manufacturing processes to be used for a commercial lot. Therefore, for an NDA, § 314.50(d)(1)(ii)(*c*) of this final rule requires the submission of either a proposed or actual master production record or a comparably detailed description of the production process for a representative batch. This continues the current practice set forth in FDA's "Guideline for Submitting Documentation for the Manufacture of and Controls for Drug Products" as suggested by one comment. For ANDA's, § 314.94(a)(9) of this final rule (proposed § 314.55(e)(2)(i)) and for applications submitted under § 314.54, § 314.54(a)(1)(i) and (a)(2) require the submission of either a proposed or actual master production record. A detailed description of the production process for a representative batch, in lieu of a proposed or actual master production record, would not be acceptable. This is because, as noted above, at the time of submission of an ANDA, most generic applicants have little experience in manufacturing its proposed product. Therefore, at the time of submission of an ANDA, an applicant must document in either a proposed or actual master production record that scaleup will not result in a product quality difference between the batch used for bioequivalence and stability testing and the production batch. For both NDA's and ANDA's, the final rule requires that a proposed or actual master production record include a description of the equipment to be used in the manufacture of the commercial lot. Process validation, except sterilization process validation, need not be completed at the time of submission of an NDA and ANDA in those cases where a proposed master production record is submitted or in the case of an NDA where a detailed description of the production process is submitted in lieu of a proposed or actual master production record. In any event, an applicant is expected to amend a pending NDA or ANDA or submit a supplement to an approved NDA or ANDA to provide for changes in its manufacturing process. The types of changes requiring a supplement are described under § 314.70(b) and (c). These are the types of changes that may affect adversely the agency's previous

[2] OGD Policy and Procedure Guide 22–90 (Revised) is available from CDER's Executive Secretariat Staff (HFD–8), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

conclusions about the safety and effectiveness or bioequivalence of a drug product. For ANDA's, applicants may refer to OGD Policy and Procedure Guide 22–90 (Revised) for further guidance. Applicants may also consult with the appropriate reviewing chemist if further guidance is needed about the types of changes that would require submission of an amendment or supplement.

J. Supplements

34. In the preamble to the proposed rule (56 FR 3180 at 3182), FDA noted certain types of changes requiring a supplemental NDA or ANDA under § 314.70(b) that may require a preapproval inspection of the applicant's facilities. One comment noted that FDA requires that manufacturers of active ingredients rather than suppliers or distributors be included in NDA's and ANDA's, and suggested that in FDA's list of changes that may require a preapproval inspection, the wording "supplier of bulk active ingredient" be changed to "manufacturer of bulk active ingredient."

FDA agrees with the comment's noted discrepancy; however, no revision of the final rule is necessary.

35. Two comments addressed the proposed amendment to § 314.71(b), which would require the submission of an additional copy of those supplements described in § 314.70(b)(1) or (b)(2). One comment noted that there are numerous grounds for filing supplements and a range of different regulatory questions triggered by these supplements, and questioned what the inspection process is designed to find, for example, in a supplement to add a new packaging component or to change the ink in the printing on a drug product. Both comments suggested that FDA either request certain data and conduct inspections as needed when supplements are submitted or enumerate in the rule the types of supplements which FDA believes raise questions sufficient to warrant application of this rule.

As with an NDA and an ANDA, before approval of a supplemental application, FDA must determine that the facilities involved in the manufacturing, testing, or other manipulation of the applicant's approved drug product have been inspected and are in compliance with CGMP. This is so whether the supplemental application provides for a change that requires preapproval under § 314.70 (b)(1) and (b)(2), a change that may be made before FDA approval under § 314.70(c), or whether the supplement provides for a change of the type that would trigger a preapproval inspection. Therefore, FDA concludes that its investigators must have a copy of all supplements providing for changes to the chemistry section of an NDA and ANDA. This would not include supplements providing for labeling changes. Therefore, on its own initiative, FDA is revising § 314.71 to require an applicant to submit a certified copy of all supplements (field copy) providing for changes to the chemistry section of its NDA described under § 314.70 (b)(1), (b)(2), and (c). Section 314.97 applies this requirement to ANDA's by reference to § 314.71. As with the field copy of original submissions, a U.S. applicant would provide these supplements to its home FDA district office at the same time the supplements are submitted to FDA headquarters and would include in its submission to FDA headquarters a statement certifying that the applicant has provided to its home FDA district office the required information. Foreign applicants would provide the field copy of these supplements to FDA headquarters at the same time the archival and review copies of the supplements are submitted to FDA.

The agency notes that the regulations at § 314.70(d) and § 314.97 by reference provide that certain types of changes in the conditions in an approved NDA and ANDA may be described only in an annual report. FDA's investigators currently review, as necessary, the applicant's copy of its annual reports. FDA intends to continue this practice and not require an applicant to submit to its home FDA district office an additional copy of each annual report. If, based on FDA's inspectional experience, the agency believes additional requirements are necessary to ensure the integrity of the data submitted in an annual report, it will propose appropriate revisions to this rule.

IV. Economic Impact

FDA has examined the economic effects of this final rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). This final rule significantly reduces the amount of information that an applicant would submit for a preapproval inspection. Unlike the proposed rule, the final rule does not require the submission of an additional copy of the biopharmaceutics section of an NDA and an ANDA and of the applicant's draft labeling. The final rule also more clearly defines the types of bioavailability, bioequivalence, and stability studies to which the rule applies. The types of studies perceived by some comments as being within the scope of the proposed rule have been greatly reduced in this final rule.

The final rule, however, expands the proposed provision concerning supplemental applications by requiring an applicant to submit an additional copy of all chemistry supplements. This revision should have a minimal impact on the firms involved.

FDA estimates the nationwide annual copying cost of this regulation to be $93,660 for all of the applicants submitting NDA's and ANDA's. The 90 applicants submitting ANDA's would be expected to incur $33,960 in costs for an average annual cost per firm of $380. The 80 applicants submitting NDA's would be expected to incur $59,700 in costs for an average annual cost per firm of $750. These costs should have a negligible impact on the applicants involved.

These new requirements are intended to benefit preapproval inspections and should not themselves delay application approvals, as suggested by one comment. The purpose of this rule is to provide to FDA's district offices information they need in advance of a preapproval inspection thereby facilitating the inspection process. Compliance with this rule should result in more efficient and effective inspections.

Accordingly, the agency concludes that this final rule is not a major rule as defined by Executive Order 12291, and certifies that the final rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1980

The information requirements contained in this final rule will collect information from persons who must obtain FDA approval prior to marketing a new drug. These persons must submit certain manufacturing and controls information and information about the batches of a drug product used to conduct bioavailability, bioequivalence, and stability studies. FDA will use the information during a preapproval inspection to audit application commitments and statements against actual manufacturing practices.

This final rule amends 21 CFR part 314, which pertains to applications for FDA approval to market a new drug. The information collection requirements of the regulations in part 314 are subject to a separate Office of Management and Budget (OMB) approval request (OMB No. 0910–0001). This OMB approval request is currently being revised. FDA will include these amendments to part 314 in its revision of that information collection approval request.

Therefore, the estimated annual reporting and recordkeeping burden for this final rule that was published as a proposal in the **Federal Register** of January 28, 1991 (56 FR 3180 at 3182), is withdrawn.

List of Subjects in 21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

efore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 314 is amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

1. The authority citation for 21 CFR part 314 is revised to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 704, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 374, 376).

2. Section 314.50 is amended by revising the introductory text; by redesignating existing paragraph (d)(1)(ii) as paragraph (d)(1)(ii)(*a*); by adding new paragraphs (d)(1)(ii)(*b*), (d)(1)(ii)(*c*), and (d)(1)(v); by revising paragraph (h)(2); and by adding new paragraphs (h)(3) and (h)(4) to read as follows:

§ 314.50 Content and format of an application.

Applications and supplements to approved applications are required to be submitted in the form and contain the information, as appropriate for the particular submission, required under this section. Three copies of the application are required: An archival copy, a review copy, and a field copy. An application for a new chemical entity will generally contain an application form, an index, a summary, five or six technical sections, case report tabulations of patient data, case report forms, drug samples, and labeling. Other applications will generally contain only some of those items, and information will be limited to that needed to support the particular submission. These include an application of the type described in section 505(b)(2) of the act, an amendment, and a supplement. The application is required to contain reports of all investigations of the drug product sponsored by the applicant, and all other information about the drug pertinent to an evaluation of the application that is received or otherwise obtained by the applicant from any source. FDA will maintain guidelines on the format and content of applications to assist applicants in their preparation.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(*b*) Unless provided by paragraph (d)(1)(ii)(*a*) of this section, for each batch of the drug product used to conduct a bioavailability or bioequivalence study described in § 320.38 or § 320.63 of this chapter or used to conduct a primary stability study: The batch production record; the specifications and test procedures for each component and for the drug product; the names and addresses of the sources of the active and noncompendial inactive components and of the container and closure system for the drug product; the name and address of each contract facility involved in the manufacture, processing, packaging, or testing of the drug product and identification of the operation performed by each contract facility; and the results of any test performed on the components used in the manufacture of the drug product as required by § 211.84(d) of this chapter and on the drug product as required by § 211.165 of this chapter.

(*c*) The proposed or actual master production record, including a description of the equipment, to be used for the manufacture of a commercial lot of the drug product or a comparably detailed description of the production process for a representative batch of the drug product.

* * * * *

(v) Except for a foreign applicant, the applicant shall include a statement certifying that the field copy of the application has been provided to the applicant's home FDA district office.

* * * * *

(h) * * *

(2) The applicant shall submit a review copy of the application. Each of the technical sections, described in paragraphs (d)(1) through (d)(6) of this section, in the review copy is required to be separately bound with a copy of the application form required under paragraph (a) of this section and a copy of the summary required under paragraph (c) of this section.

(3) The applicant shall submit a field copy of the application that contains the technical section described in paragraph (d)(1) of this section, a copy of the application form required under paragraph (a) of this section, a copy of the summary required under paragraph (c) of this section, and a certification that the field copy is a true copy of the technical section described in paragraph (d)(1) of this section contained in the archival and review copies of the application.

(4) The applicant may obtain from FDA sufficient folders to bind the archival, the review, and the field copies of the application.

* * * * *

3. Section 314.54 is amended by revising paragraphs (a)(1)(i) and the first sentence of paragraph (a)(2) and by adding new paragraph (a)(4) to read as follows:

§ 314.54 Procedure for submission of an application requiring investigations for approval of a new indication for, or other change from, a listed drug.

(a) * * *

(1) * * *

(i) The information required under § 314.50(a), (b), (c), (d)(1), (d)(3), (e), and (g), except that § 314.50(d)(1)(ii)(*c*) shall contain the proposed or actual master production record, including a description of the equipment, to be used for the manufacture of a commercial lot of the drug product.

* * * * *

(2) The applicant shall submit a review copy that contains the technical sections described in § 314.50(d)(1), except that § 314.50(d)(1)(ii)(*c*) shall contain the proposed or actual master production record, including a description of the equipment, to be used for the manufacture of a commercial lot of the drug product, and paragraph (d)(3), and the technical sections described in paragraphs (d)(2), (d)(4), (d)(5), (d)(6), and (f) when needed to support the modification. * * *

(3) * * *

(4) The applicant shall submit a field copy of the application that contains the technical section described in § 314.50(d)(1), a copy of the information required under § 314.50(a) and (c), and certification that the field copy is a true copy of the technical section described in § 314.50(d)(1) contained in the archival and review copies of the application.

* * * * *

4. Section 314.60 is amended by adding new paragraph (c) to read as follows:

§ 314.60 Amendments to an unapproved application.

* * * * *

(c) The applicant shall submit a field copy of each amendment to § 314.50(d)(1). The applicant, other than a foreign applicant, shall include in its submission of each such amendment to FDA a statement certifying that a field copy of the amendment has been sent to the applicant's home FDA district office.

5. Section 314.70 is amended by revising paragraph (a) to read as follows:

§ 314.70 Supplements and other changes to an approved application.

(a) *Changes to an approved application.* The applicant shall notify FDA about each change in each condition established in an approved application beyond the variations already provided for in the application. The notice is required to describe the change fully. Depending on the type of change, the applicant shall notify FDA about it in a supplemental application under paragraph (b) or (c) of this section or by inclusion of the information in the annual report to the application under paragraph (d) of this section. Notwithstanding the requirements of paragraphs (b) and (c) of this section, an applicant shall make a change provided for in those paragraphs (for example, the deletion of an ingredient common to many drug products) in accordance with a guideline, notice, or regulation published in the **Federal Register** that provides for a less burdensome notification of the change (for example, by notification at the time a supplement is submitted or in the next annual report). Except for a supplemental application providing for a change in the labeling, the applicant, other than a foreign applicant, shall include in each supplemental application providing for a change under paragraph (b) or (c) of this section a statement certifying that a field copy of the supplement has been provided to the applicant's home FDA district office.

* * * * *

6. Section 314.71 is amended by revising paragraph (b) to read as follows:

§ 314.71 Procedures for submission of a supplement to an approved application.

* * * * *

(b) All procedures and actions that apply to an application under § 314.50 also apply to supplements, except that the information required in the supplement is limited to that needed to support the change. A supplement is required to contain an archival copy and a review copy that include an application form and appropriate technical sections, samples, and labeling; except that a supplement for a change other than a change in labeling is required also to contain a field copy.

* * * * *

7. Section 314.94 is amended by revising the first two sentences of the introductory text and paragraphs (a)(9)(i) and (d)(4) and by adding new paragraph (d)(5) to read as follows:

§ 314.94 Content and format of an abbreviated application.

Abbreviated applications are required to be submitted in the form and contain the information required under this section. Three copies of the application are required, an archival copy, a review copy, and a field copy. * * *

(a) * * *

(9) *Chemistry, manufacturing, and controls.* (i) The information required under § 314.50(d)(1), except that § 314.50(d)(1)(ii)(*c*) shall contain the proposed or actual master production record, including a description of the equipment, to be used for the manufacture of a commercial lot of the drug product.

* * * * *

(d) * * *

(4) The applicant may obtain from FDA sufficient folders to bind the archival, the review, and the field copies of the abbreviated application.

(5) The applicant shall submit a field copy of the abbreviated application that contains the technical section described in paragraph (a)(9) of this section, a copy of the application form required under paragraph (a)(1) of this section, and a certification that the field copy is a true copy of the technical section described in paragraph (a)(9) of this section contained in the archival and review copies of the abbreviated application.

8. Section 314.96 is amended by redesignating existing paragraph (b) as paragraph (c) and by adding new paragraph (b) to read as follows:

§ 314.96 Amendments to an unapproved abbreviated application.

* * * * *

(b) The applicant shall submit a field copy of each amendment to § 314.94(a)(9). The applicant, other than a foreign applicant, shall include in its submission of each such amendment to FDA a statement certifying that a field copy of the amendment has been sent to the applicant's home FDA district office.

* * * * *

9. Section 314.440 is amended by revising the first two sentences in paragraph (a)(1) and the first sentence in paragraph (a)(2) and by adding new paragraph (a)(4) to read as follows:

§ 314.440 Addresses for applications and abbreviated applications.

(a) * * *

(1) Except as provided in paragraph (a)(4) of this section, an application under § 314.50 or § 314.54 submitted for filing should be directed to the Document and Records Section, 12420 Parklawn Dr., Rockville, MD 20852. Applicants may obtain folders for binding applications from the Consolidated Forms and Publications Distribution Center, Washington Commerce Center, 3222 Hubbard Rd., Landover, MD 20785. * * *

(2) Except as provided in paragraph (a)(4) of this section, an abbreviated application under § 314.94, and amendments, supplements, and resubmissions should be directed to the Office of Generic Drugs (HFD–600), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. * * *

* * * * *

(4) The field copy of an application, an abbreviated application, amendments, supplements, resubmissions, requests for waivers, and other correspondence about an application and an abbreviated application shall be sent to the applicant's home FDA district office, except that a foreign applicant shall send the field copy to the appropriate address identified in paragraphs (a)(1) and (a)(2) of this section.

* * * * *

Dated: March 30, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–21798 Filed 9–7–93; 8:45 am]

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federal register

Wednesday
September 8, 1993

Part V

Department of the Interior

Bureau of Land Management

43 CFR Part 3160
Onshore Oil and Gas Operations; Federal and Indian Oil Gas Leases; Onshore Oil and Gas Order No. 7: Disposal of Produced Water; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

RIN 1004–AA66

[WO–610–4111–02–24 1A; Circular No. 2650]

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 7: Disposal of Produced Water

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule issues Onshore Oil and Gas Order No. 7 (the Order) in accordance with 43 CFR 3164.1. This Order supersedes the Notice to Lessees and Operators of Federal and Indian (except Osage Tribe) Oil and Gas Leases (NTL) 2B, Disposal of Produced Water. This Order addresses the uniform national standards of the Bureau of Land Management (BLM) for the minimum level of performance expected from lessees and operators in the disposal of produced water associated with the oil and gas operations. The Order also details enforcement actions and prescribes the manner in which variances from specific standards may be obtained.

EFFECTIVE DATE: October 8, 1993.

ADDRESSES: Suggestions or inquiries should be sent to: Director (610), Bureau of Land Management, room 601, Premier Building, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sie Ling Chiang, (202) 653–6610.

SUPPLEMENTARY INFORMATION: Section 3164.1 of title 43 of the Code of Federal Regulations provides for the issuance of Onshore Oil and Gas Orders when needed to implement and supplement the regulations in part 3160. All orders are promulgated through the rulemaking process and, when issued in final form, apply nationwide. This final rule, Onshore Oil and Gas Order No. 7, supersedes the Notice to Lessees and Operators of Federal and Indian (except Osage Tribe) Oil and Gas Leases (NTL)–2B, Disposal of Produced Water.

This Order specifies: (1) Procedural requirements for the submission of, and the information to be contained in, an application for approval of a proposed disposal of produced water; (2) the design, construction, and maintenance requirements for an acceptable disposal facility; (3) the minimum standards necessary to satisfy those requirements; and (4) the procedures for requesting variances from the minimum standards. The Order also identifies violations, corrective actions, normal abatement periods, and those enforcement actions that would result when violations of requirements are not abated in a timely manner. This Order should be followed in conjunction with Onshore Oil and Gas Order No. 1 for approval of operations and Order No. 2 for drilling of an injection well.

The BLM published the rule proposing Onshore Oil and Gas Order No. 7 in the **Federal Register** on January 19, 1990 (55 FR 1837), requesting comments on the proposed rule by March 20, 1990. During the 60-day comment period, comments were received from 25 sources: 12 from business entities, 7 from Federal agencies, 4 from State agencies, and 2 from individuals. The comments are discussed in the same sequence as the sections of the proposed Order. Many of the suggestions were adopted and are reflected in the final rule.

General Comments

Two comments questioned the basis for issuing the Order and argued that the rule is unnecessary. The primary basis for the issuance of this Order, and its predecessor NTL–2B, is the Mineral Leasing Act, not the Federal Oil and Gas Royalty Management Act (FOGRMA) as one of the comments stated. The NTL–2B was issued before FOGRMA. The implementing regulations at 43 CFR 3164.1 further authorize the Director, BLM, to issue Onshore Oil and Gas Orders when necessary to implement or supplement the operating regulations. There is a solid basis for the issuance of this Order. The Order is needed to protect surface and subsurface resources from contamination.

Several respondents expressed their concern over the jurisdictional overlap of multiple regulatory agencies involved, especially between the Environmental Protection Agency (EPA) or the primacy State and BLM. They are concerned that this rule would establish another layer of bureaucracy and create conflicts among agencies involved. They urged BLM to establish procedural memoranda of understanding (MOU) with other agencies to streamline the permit process and to resolve conflicts. The roles and responsibilities of EPA and BLM in administering the disposal of produced water on Federal and Indian lands are mutually complementary rather than overlapping. In approving an injection well proposal, the EPA or the primacy State exercises authority granted under the Clean Water Act to protect ground water through issuing an underground injection control (UIC) permit, while BLM's approval focuses on downhole integrity, protection of other mineral resources and protection of surface resources. In issuing a National Pollution Discharge Elimination System (NPDES) permit to allow surface discharge, the EPA or the primacy State ensures that the water quality at the discharge point meets the standards, while BLM ensures that the treatment facilities upstream from that discharge point are satisfactory. Thus, it is unavoidable that both agencies are involved in the approval of a given application. Both agencies will keep the paperwork to a minimum. A few BLM State Offices have existing MOU's with the EPA and/or State to facilitate coordination and cooperation between the agencies in this regard.

One comment was concerned that the EPA, the Interstate Oil Compact Commission (IOCC), and the BLM may establish separate regulations to be imposed on industry. The EPA reviewed the proposed rule and did not raise the issue of possible separate sets of regulations. On the contrary, the EPA stated that Order No. 7 as proposed "has the potential to ensure that disposal of produced water from onshore oil and gas operations for Federal and Indian oil and gas leases does not degrade water quality." The IOCC consists of members representing all oil producing States that may have established standards and requirements of their own. The policy of the Department of the Interior (the Department) has been that, wherever BLM standards differ from those of the States, the operator is required to comply with whichever standards are more stringent. There have been no unresolvable conflicts in this practice.

Another comment contended that BLM should convert to consolidated regulations for onshore Federal/Indian lands similar to those of the Minerals Management Service for oil and gas operations in the Outer Continental Shelf (OCS). The recent consolidation of OCS Orders into the regulations resulted in a more comprehensive but also more voluminous set of regulations. The BLM chooses to continue to use Orders under the authority of the regulations to supplement or implement the regulations, which remain simple and general. There are pros and cons for each approach. The BLM system has been working well.

Although one respondent argued that the proposed rule will have substantial economic impacts on independent operators, another comment stated that the proposed Order will have no adverse economic impacts if timely and reasonable approval is given to disposal requests. In the interest of timely

processing of the application, this Order imposes a new requirement for the BLM to respond to a request within 30 days.

Authority

One comment stated that this Order is a regulation that will "show how the Federal government will implement the National Environmental Protection (sic) Act of 1969, plus many other acts." It went on to argue that the Order should be limited to specific direction related to oil and gas, that the National Environmental Policy Act of 1969 (NEPA) should be administered only by the EPA, and, similarly, that only the resource management agency, as opposed to the EPA, should manage the resource itself. However, NEPA establishes environmental policies to be applied by all Federal agencies. Hence, all Federal agencies are required to incorporate the policy and objectives of NEPA in their regulations. This Order is intended to provide specific standards and requirements for disposal of produced water relative to the BLM's authority under various mineral laws and must also meet the objectives of several environmental laws including NEPA. The comment also stated that specific design details for such features as pits and fences should be left either for the agency directives or plans of operations. However, one objective of the Order is to provide specific design standards and establish uniform application of the Order throughout BLM. These comments were not adopted in the final rule.

Scope

Several comments requested clarification of the second sentence under "Scope," which states that the Order does not apply to disposal facilities on non-Federal leases committed to communitized or unitized areas. The BLM agrees that this seems confusing and has changed the language to clarify the scope.

Some of the same comments also requested that an exemption for secondary and tertiary recovery operations be added to the paragraph. However, because of the complexity of enhanced recovery projects and the varying situations that could occur, an exemption is not feasible. A separate approval under this Order is not required if the method of disposal has been approved as part of the enhanced recovery approved by the authorized officer.

Definitions

Two comments addressed the requirement for a leak detection system for lined pits in the definition of that term, and recommended that it be dropped from the definition. The leak detection system is only required for lined pits used in association with long-term use for disposal of produced water. It is therefore retained as part of the definition.

Several comments were received on the definition of "free-board". The comments have been adopted and the definition is revised to read as follows: "Free-board" means the vertical distances from the top of the fluid surface to the lowest point on the top of the dike surrounding the pit.

One comment suggested that the definition for Produced Water be clarified as follows: "Water containing dissolved and free hydrocarbons produced in conjunction with oil and gas production." This comment is not adopted because it was felt that the present definition is clear enough. The suggested definition would also be too restrictive: contaminants other than dissolved and free hydrocarbons may also be present and require control.

One comment suggested that the definition for lined pit be modified to state that the materials used in the construction of pit "substantially limit seepage." This comment has not been adopted because the intent of the Order is to prevent all leaks and seepage.

One comment requested that a definition for "fresh water" and "usable water" be added to the Order. Since these terms were not used in the Order, there is no reason to define them.

Several comments suggested that the definition for unlined pits be clarified. These comments have been adopted and the last sentence in the definition has been rewritten as follows: Any pit that is lined but does not have a leak detection system is still defined as an unlined pit.

One comment requested that a list of toxic substances, or a reference to where such a list can be found, be added as an appendix to the Order. Such listing can be found at 40 CFR part 116. The subject listing of toxic constituents is very comprehensive. It is not the intent of this Order to have the oil and gas operator test all the produced water for all of these constituents. The intent of the Order is to have the produced water tested only if the authorized officer has reason to believe a toxic constituent exists in a certain area.

One comment suggested that the word "waste" in the definition of "Underground Injection Control" be removed from the definition, because the word was thought to have a negative connotation. In cases where the water is used for enhanced recovery or beneficial use, the produced water is not considered waste water. We have therefore adopted this suggestion and have removed the word "waste" from the definition.

III.A. General Requirements

Several comments suggested that surface discharge under NPDES permit be added to this paragraph as a fourth method of disposal of produced water. This method of disposal was included in the proposed rule and Order under Section III.G. as one of the other disposal methods. In response to these comments, it was decided to identify NPDES disposal methods specifically under the third category, methods approved by the authorized officer, and provide more detailed guidance under Section III.G.

Several comments received suggested the statement "Injection is the preferred method of disposal" should be removed from the Order. However, in most instances, water disposal into a suitable formation is environmentally acceptable and preferred to surface disposal methods. Therefore, the wording will be changed to read "Injection is generally the preferred method of disposal."

With respect to the statement "Applications filed pursuant to NTL–2B and still pending approval shall be supplemented or resubmitted if they do not meet the requirements and standards of this Order", and the statement "However, upon written justification, the authorized officer may impose additional conditions * * *", some comments expressed concern that when the Order becomes effective the authorized officer might require changes to existing disposal operations approved under NTL–2B. Existing approvals will not be altered unless it is discovered that there is, or could be, environmental damage taking place and that without change the problem may worsen. This provision was always in place even under NTL–2B and this Order does not change that procedure. Applications still pending approval will require a supplement or resubmission only if they do not conform to the requirements of this Order. Most pending applications should already comply and resubmittal rates should be low. This provision of the proposed Order is not changed in the final rule.

One comment objected to the wording "or that an unlined pit should be lined," given as an example of a condition that could be imposed by the authorized officer. It is not the BLM's intent that unlined pits be routinely required to be lined. This is only an example of possible corrective measures that might be required should obvious environmental damage be taking place.

Other examples might include requiring protective flagging and/or netting for waterfowl protection, installation of skimmer pits or other similar equipment or other alterations necessary to protect the environment. Language has been added in the final rule that limits the application of such conditions to situations where changes in water quality or other environmental parameters warrant it.

Some respondents commented that the disposal method does not require applications for approval but is only a notification procedure. This is not correct. The authorized officer is responsible for ensuring proper disposal of produced water from oil and gas operations within his/her authority. The comment is not adopted in the final rule.

One comment stated that the 30-day processing time for the BLM was unreasonable because operators would have to shut in newly completed wells until such time as an application is approved. One comment suggested that the application turn-around time should be 2 days. However, the Order is clear that the operator has 90 days for temporary disposal into reserve pits if the pit was approved as part of an application for permit to drill. Extensions of disposal into reserve pits past 90 days may be granted by the authorized officer. No producing well will be shut in while the water disposal application is being processed. The comment is not adopted in the final rule.

For clarification, the following language has been added to General Requirements, at the end of III.A.: "If the approval for a disposal facility, e.g., commercial pit or class II injection well, is revoked or suspended by the permitting agency (EPA or a primary state), BLM's water disposal approval is immediately terminated and the operator shall propose an alternative disposal method."

III.B. Application and Approval Authority

Several comments addressed the structure of III.B. The comments stated that the structure in the proposed Order is confusing. Several formats were suggested. One format included a section for Natural Gas Dehydration Pits. The BLM agrees that the structure of the subsection is confusing and has reorganized it as shown below. However, the BLM believes that it is important to differentiate clearly between on-lease disposal and off-lease disposal on leased and unleased Federal/Indian Lands, because on-lease disposal is permitted as a lease right and off-lease disposal on other leased and unleased Federal/Indian lands is required to be approved through right-of-way authorizations. Third party ownership of facilities such as natural gas dehydration pits is considered by BLM as a right-of-way issue beyond the scope of this Order. The modified organizational structure is shown below:

B. Application and Approval Authority
1. On-lease Disposal
a. Disposal of Water in Injection Wells
b. Disposal of Water in Pits
2. Off-lease Disposal
a. Disposal of Water on leased or unleased Federal/Indian Lands
i. Disposal of Water in Injection Wells
ii. Disposal of Water in Pits
iii. Right-Of-Way Procedures
b. Disposal of Water on State and Privately-Owned Lands
i. Disposal of Water in Injection Wells
ii. Disposal of Water in Pits
iii. Right-of-Way Procedures

Several comments recommended that this subsection include specific approval procedures for surface discharge authorized by NPDES permits. This Order has been modified to include more specific procedures for such disposal methods in III.G. Other Disposal Methods.

Several comments expressed concern that the proposed Order would create an unwarranted amount of paperwork by requiring copies of permits and information to support obtaining UIC permits as well as information already furnished in conjunction with Orders No. 1 and 2. The following sentence has been added to III.B.1.a.: "If the authorized officer has on file a copy of the approval for the receiving facilities, he/she may determine that a reference to that document is sufficient." This statement is also found in III.B.2.a. The BLM believes these statements make it clear that if the authorized officer has copies of permits and supporting data, it would not be necessary to require such data to be submitted again.

One comment suggested that a sentence be added to indicate BLM's authority on split-estate lands, i.e., where minerals rights are held by the United States or Indian tribes and the surface is private or State land. The BLM believes that it is clearly understood that the Order is applicable to water produced from Federal/Indian lands, including private/State surface with Federal/Indian Minerals. This comment further points out that "Federal Lands" include private surface/Federal minerals and that no right-of-way can be issued on private surface. This point is clear in the right-of-way regulations; the use of the term "Federal Lands" in the Order should not be misunderstood.

Two comments questioned the approval of surface disturbing activities on National Forest System lands and the effect of the Leasing Reform Act of 1987 on this Order. A MOU will be written specifically to address this question.

One comment suggested that these provisions should provide for notification to the surface managing agency (SMA). Order No. 1 requires that the authorized officer, in consultation with any other involved SMA, may require a field inspection before approving surface disturbing activities subsequent to drilling. Therefore, the requirement does not need to be repeated in this Order.

Two comments questioned why provisions for disposal of produced water from non-Federal or non-Indian leases were not identified. This Order pertains only to water produced from Federal and Indian leases and not water produced on State and private lands and disposed of on Federal/Indian lands. The latter cases are strictly right-of-way issues.

III.B.1. Comments were received concerning the first sentence of this subsection and the reference to "* * * committed leases if in a unit or communitized area, * * *." Subsection I.C. Scope has been modified in this final rule to make it clear that the scope of this Order is disposal of produced water from completed wells of Federal and Indian oil and gas leases. The words "Federal/Indian" will be inserted after "committed" to make this subsection consistent with the defined scope.

B.2. Several comments concerned inconsistencies related to right-of-way and disposal facility authorizations. This subsection has been amended to consolidate and clarify the information concerning procedures for rights-of-way contained in B.2.a.1 and B.2.a.2 of the proposed Order. The revisions are included in subsection B. under B.2.a.iii and B.2.b.iii.

B.2.a.1. and B.2.a.2. Two comments suggested that the phrase in B.2.a.1 and B.2.a.2. "* * * authorization from the Bureau of Land Management for disposing of the water * * *" include the term "right-of-way" before the word "authorization." These sentences refer to Title V of FLPMA and 43 CFR part 2800 which is sufficient to make it clear that the disposals referred to are those made under right-of-way authority. No change is made in the final rule except as noted in the previous paragraph.

B.2.a., B.2.b. and B.3. (renumbered B.2.a., B.2.b., and B.2.b.iii.). One comment pointed out that authorization under a right-of-way could be required

for transportation even if surface disturbance would not occur. The BLM agrees and the references to surface disturbances have been removed.

B.2. and B.3. (renumbered as B.2. and B.2.b.iii.). One comment stated that it should be the responsibility of the operator generating the produced water to obtain necessary road and pipeline right-of-ways. The Order states "* * * or other responsible party." This provides flexibility for several situations.

III.B.2.b.1. and B.2.b.2. (renumbered B.2.b.i. and ii.). Some comments objected to the statement in B.2.b.1. that the permits "will be accepted by the authorized officer and approval will be granted for removal of the produced water unless the authorized officer states in writing that such approval will have adverse effects on the Federal/Indian lands or public health and safety." The authorized officer does have the authority and obligation to deny removal of produced water under such conditions. The key word in this sentence is "removal". The BLM is not suggesting approval/disapproval authority for such facilities but does maintain approval/disapproval authority for removal of produced water. In conjunction with other comments on this section and specifically on the last sentence of B.2.b.2., the sentence is revised to read: "If such a permit is not issued by the State or other regulatory agency, the requested removal of the produced water from leased Federal or Indian lands will be denied."

III.C. Informational Requirements for Injection Wells

One comment recommended that this Order should address the procedures relative to private and State lands. The BLM has issued policy with regard to its authority on wells on communitized or unitized private or State lands (43 CFR part 3161.1). Such authority does not extend to approval of the disposal of produced water.

One comment stated that the Order is unclear as to right-of-way requirements for off-lease disposal wells on public lands and procedures to be followed by third parties operating such facilities. These elements are appropriately addressed in the right-of-way regulations (43 CFR part 2800) and are beyond the scope of this Order.

One comment stated that the Order fails to require certain data on environmental impacts that had been required under NTL–2B, and argued that the BLM therefore cannot properly document its actions under NEPA. Information and data to support EPA or State approval under the UIC program are the responsibility of those agencies, and compliance with NEPA in connection with such approvals is no longer under the BLM's jurisdiction. Portions of the program outside of the scope of the UIC program are analyzed through Order No. 1 and NEPA is applied through that Order for those portions.

III.D. Informational Requirements for Pits

Several comments stated that the sentence concerning water analysis samples being taken at the discharge point was vague because the proposed discharge point may be different from the existing discharge point at the time an application was being considered. Since this is a point source sampling procedure, the word "current" was added before "discharge point."

Several respondents argued that it is unnecessary to include a reclamation plan at the time of application for a permit to dispose of produced water. Reclamation plans are more appropriate when a location or pit is being abandoned. The requirement was changed to require reclamation plans to be submitted prior to pit abandonment.

Another comment suggested that the reclamation plan should include plans for disposal of any precipitated or collected solids. As noted above, the requirement that a reclamation plan be submitted was changed to "prior to pit abandonment." If, at that time, precipitated or collected solids are a problem, the authorized officer may require them to be disposed of properly.

One respondent stated that this section was unclear as to who would take water samples, when, and how often. Normally only one sampling is required unless there is an indication of a major change in water quality over time. Where approval is based on a NPDES permit, the sampling schedule is determined by and under the jurisdiction of the EPA or State having primacy. Sampling procedures will also be covered for BLM field personnel in the Manual.

One comment recommended that anticipated emergency situations should be identified with the required content of a contingency plan. These types of conditions are site specific and will be prescribed by the authorized officer when a contingency plan is required.

Under III D.1. Lined Pits, one comment stated that reference to a topographic map would result in too small a scale to show the necessary information. The BLM agrees and has removed the word "topographic."

One comment stated that the informational requirements should apply to pits located off a Federal/Indian lease but on BLM-administered Federal surface. It is BLM policy to accept the requirements established in Onshore Order No. 7 for rights-of-way administration of such pits.

One comment stated that, at a minimum, tests should be carried out for toxic constituents as defined on page 1840 of the proposed rule. This has been addressed in the discussion under "Definitions."

Another comment stated that the authorized officer should receive copies of all other applicable permits including those for disposal of hazardous solid waste. As stated under the section on "Scope," this Order is limited to disposal of produced water from Federal and Indian oil and gas wells. Hazardous solid waste is outside the scope of this Order.

III. D.2. Several respondents urged that NPDES permits should be included in this section. Others stated that pits for NPDES permits should be under the permit authority of the EPA or the primacy State. Section III.G. has been expanded to clarify requirements relative to NPDES permits.

III.D.2.a.(i). Two comments stated that disposal of produced water into unlined pits could, in some circumstances, violate Section 101(a) of the Clean Water Act. They stated that the water going into these pits should be tested for toxic constituents as well as dissolved solids. The criteria applied to unlined pits have been designed to address this type of problem. If the authorized officer has reason to believe that toxic constituents exist in produced water to be disposed of in any pit, a water analysis for those constituents can be required. It is not economically feasible to require expensive analysis for the entire range of toxic chemicals if the authorized officer has no reasonable basis for expecting the presence of these toxins. Protection of surface and groundwater is the primary purpose of this Order. Disposal in unlined pits is only allowed in certain circumstances. The sections on disposal in unlined pits should be read in their entirety for a full understanding of the requirements. Each method of disposal is required to meet all other Federal and State standards. Guidance will be provided for BLM field personnel in the Manual for this Order. This will include the determination of the need for water analysis.

III.D.2.a.ii. Several comments expressed concerns about the term "beneficial use." Some felt it meant the same as beneficial use as identified in

State water quality standards. It does not. The water described as intended for beneficial use is not discharged into a stream. It should not be confused with the requirements of a NPDES permit. One purpose of the standards of the Order is to prevent degradation of existing fresh and usable aquifers and surface water from historical water quality standards (where this information is available), in compliance with the intent of Section 101(a) of the Clean Water Act.

Two comments stated that paragraph III.D.2.a.iii. was confusing and unclear. This part addresses the non-degradation of surface or subsurface waters in the area. It has been reorganized without changing its substance in order to clarify the meaning.

One comment outlined conditions under which paragraph III.D.2.a.iv., which would allow discharge of less than five barrels per day into an unlined pit, would not be acceptable, given the need to protect aquifers. The BLM agrees with the concerns expressed. Where shallow fresh water aquifers exist, they should be protected. A lined pit may be necessary in this type of situation. The authorized officer should consider existing conditions and act accordingly.

Paragraph III.D.2.b.i.(B) requires information on the daily quantity of water to be disposed of and a water analysis. One comment suggested that this should be required of facilities applying under paragraph III.D.2.a.iv. that do not exceed an average production of five barrels of produced water per day on a monthly basis. This suggestion was not adopted in the final rule and Order. The Order does not prohibit a water analysis, and the authorized officer can request one for this type of facility if it is necessary.

One comment recommended a change in the second sentence of paragraph III.D.2.b.i.(D), to clarify the term "certifiable percolation test". The BLM agrees that the language in the proposed rule was confusing, and the sentence has been changed to read, "In some cases the authorized officer may require percolation tests using accepted test procedures."

Another clarification recommended and accepted was in paragraph III.D.2.b.i.(E) of the proposed Order. The word "known" was added between "shallowest" and "aquifer" in order to enhance practicability. Order No. 1 requires the testing of all fresh water zones encountered while drilling, which will provide the information necessary for this requirement.

Paragraphs III.D.2.b.iii. (A) and (B) both address requirements in terms of a 2-mile radius. Several comments stated that this was an excessive distance. The requirements in Onshore Oil and Gas Order No. 1 call for a 1-mile radius. The distance requirements for this Order have been changed to 1 mile for consistency with Order No. 1.

One comment stated that paragraph III.D.2.b.iii.(C) was overly vague. The intent of the requirements of this standard is to leave the burden of proof up to the operator to show there will be no adverse effects on existing water quality. There is no need to change this provision for clarity.

Several comments were received seeking clarification as to the scope of section III.D.3. The section was restructured and limited to emergency pits for overall clarification. The temporary use of reserve pits has been moved to the Section III.A. General Requirements.

A suggestion to add the words "and fluids" after "produced water" in the second sentence of section III.D.3, which discusses reserve pits, was considered but rejected. This Order is concerned only with produced water. Other fluids are addressed in Orders Nos. 1 and 2 regarding drilling operations.

One comment stated that the Order should require any disposal of produced water into a reserve pit to be covered by a contingency plan. Order No. 1 does not require a contingency plan for construction and use of a reserve pit. If extenuating circumstances call for a contingency plan, the authorized officer can require one under 43 CFR 3162.5. The need for a contingency plan would be dependent on whether or not there were any surface or subsurface waters or other resources to be protected.

Another general comment concerned the use of bentonite or clay as liners for disposal pits. The experiences of the correspondent with bentonite-lined pits were described as unsatisfactory. We agree with the view that bentonite is unsatisfactory when the produced water contains high salt content. It is well known that potassium chloride is added to drilling fluid to prevent swelling when drilling through bentonite. Bentonite liners are effective under certain conditions other than those with high salt content.

Another comment urged that neither lined nor unlined pits should be allowed for temporary or emergency use. The correspondent wanted such uses restricted to metal containers. In some circumstances the use of tanks may be necessary or even preferred. However, the Order should remain sufficiently flexible to permit the use of pits in circumstances where they would be appropriate. The comment is not adopted in the final rule.

Two comments argued that reference to NTL–3A was inappropriate. They wanted the BLM to require a 48-hour notification on emergency pit use and to allow up to 7 days for disposal of the contents. The comment was not adopted in the final rule. The reference to NTL–3A is merely to provide guidance on how to report undesirable events. It requires an oral notification of major undesirable events within 24 hours, followed by a full written report within 15 days. The notice also provides for tracking volumes lost and recovered. We believe that 48 hours is a reasonable time within which to empty pits upon conclusion of an emergency. However, under this section the authorized officer can extend the 48 hours based on field conditions, if requested.

One comment asked why emergency pits were a part of Order No. 7, and stated that they could be authorized under the Application for Permit to Drill (APD) process. If the type of pit for disposal of produced water is known or anticipated, the construction of such pits can be requested in the APD. The requirements for construction and use of those pits remain in Onshore Order No. 7.

Two comments stated that there was some confusion as to the process of permitting a pit under the emergency use category and the use of the pit without some other approval. The suggestion was to change the wording to make it clearer. The suggestion was accepted and the first sentence now begins: "Application for a permanent pit (lined or unlined) to be used for anticipated emergency purposes * * * *."

Another comment stated that construction of an emergency pit normally would have to be done instantly in order to contain a sudden fluid flow, and suggested that the Order should provide for verbal approval to be given. The suggestion is not adopted in the final rule. As stated above, an emergency pit is a permanent pit to be used for anticipated emergency purposes. This would not be the same as necessary stop-gap construction measures to prevent or limit damage from an accident. Such temporary measures as were described in the comment would require immediate restoration as determined by the authorized officer.

One comment said the last sentence in the first paragraph should have the word "written" added between "requires" and "approval." Any extension of time, even if verbal, must

be documented, and the Order has been amended to make this clear.

One comment stated that blow-down/flare pits should have been covered under section III.D.3. Routine or regular use of a pit does not qualify for use as an emergency pit. Such use may qualify under the category of unlined pit for operations producing water at a rate of no more than five barrels per day per disposal facility.

Section E Design Requirements

General Comments

There were two comments suggesting that the design requirements of this section should not apply to drilling and workover pits. This is true. Any requirements for pits approved in conjunction with drilling or workover of wells will be addressed at the time of approval of these types of operations.

One comment requested that pits approved under a NPDES permit be exempt from paragraphs III.E.1.d. and e., as are pits approved under criterion III.D.2.a.iv Another comment argued that no pits should be exempt from any of the design requirements set forth in this section, and a third comment suggested that emergency pits be exempt from all of the design requirements. None of these suggestions has been adopted in the final rule for the following reasons:

1. Pits used in conjunction with NPDES permitted discharges are used to skim the oil off the water in order to condition the water for discharge in accordance with the approved NPDES permit. Generally, these types of pits are of large size and handle a large volume of liquids. For these reasons, the pits should be constructed to meet all the design standards in order to prevent spills due to erosion or any other type of pit failure.

2. Pits approved under criterion III.D.2.a.iv. are exempt from the requirements of paragraphs III.E.1.d. and e., because the volume of water that goes into these types of pits is so small that, in the majority of cases, there is no accumulation of fluid in the pit due to evaporation or percolation. Also the authorized officer may, when circumstances require, modify or condition the approval of these types of pits to include any other requirements or stipulations, under section A. General Requirements.

3. Emergency pits cannot be exempt from the requirement of section E. These pits are constructed to contain all liquids, whether oil or water, during emergency situations involving, in some cases, large volumes. Therefore, these pits have to be constructed to the design standards for safe containment of these liquids.

III.E.1.b. Two comments suggested that this subsection should not apply to pits approved under criterion III.D.2.a.iv. Although the volume of water going into pits approved under criterion III.D.2.a.iv. is small, and in most cases there is no accumulation of fluids in the pits, there are periods when evaporation rates are low and precipitation is high. The pits need to be designed using this standard to prevent overflow during these periods.

Several comments discussed the requirement that the pit be equipped to deter entry by birds. The comments suggested that the standard was too vague and requested that it specify a minimum pit size to require such deterrence. This suggestion is not adopted because there are different types of devices now in use to deter entry by birds, two examples of which are netting material and flags. No minimum size is specified: birds may be attracted by any body of water, regardless of the size of the pit containing it, and be killed or injured by contaminants. The only requirement the BLM will impose is that whatever material or device is used, it must serve its intended purpose.

One comment suggested that the fencing requirement be limited to the use of stock tight fence. The fencing requirements vary throughout the country, depending on the kind of livestock or wildlife deterrence to be accomplished. Accordingly, the requirement is best left to the operator and the authorized officer to work out at the time the application for pit approval is received. The comment is not adopted.

One comment suggested that emergency pits should be exempt from this subsection. Although emergency pits have to be emptied within 48 hours following their use, the deterrence of entry by birds, livestock, and wildlife during the emergency is still necessary; therefore, this suggestion is not adopted.

III.E.1.d. A comment concerning the slope of the pits suggested showing the ratios as the vertical rise to the horizontal distance, thus describing the inside grade of the levee as no steeper than 1:2 and the outside grade no steeper than 1:3. This suggestion is adopted, and the Order reflects the change.

One comment requested that the pit wall and levee grade requirements be relaxed to allow the use of levees at the natural angle of repose. The construction of levees at the natural angle of repose can be approved by requesting a variance from the authorized officer if the operator can furnish soil test information that would justify the use of steeper grades without compromising the integrity of the pit.

III.E.1.e. There were two comments concerning the levee width at the top. One suggested that the top width be limited to 6 inches, while the other wanted the top to be no less than 10 feet wide. Neither of the comments was accepted because the BLM considers 18 inches to be the minimum top width necessary to enable a person to safely stand on the levee and take a sample of the fluid, if needed, and yet sufficient to prevent failure as long as the pit is maintained to the design standards.

III.E.2. Several comments were received on this section concerning the types of materials used in the construction of lined pits. The comments requested that the Order specify the minimum thickness, burst, break, or tear strength, in pounds per square inch, of the materials to be used in the construction of the pits. It is not the intent of this Order to specify the type of liner or set the minimum strength for the materials used. The requirement imposed by the final Order remains that the installation be done according to the manufacturer's specifications. In all cases, the BLM will require that lined pits contain leak detection systems. If a pit fails and leaks are detected, the pit will be required to be emptied of its contents and repaired prior to any further use.

III.F. Construction and Maintenance

One comment expressed a concern that the title "Construction and Maintenance" was inappropriate and should be changed to "Incidences of Noncompliance." Although this section does address violations, corrective actions, and abatement periods, it is primarily a compilation of the BLM's standards for construction and maintenance of pits. The suggestion was rejected.

F.1. One comment requested that the language in III F.1. "whether existing prior to or after the effective date of this Order" be stricken from the Order as unnecessary. This suggestion was adopted and the phrase has been deleted accordingly.

F.3. One respondent suggested that, if a liner is installed and then covered with material (i.e., sand, gravel, etc.) to protect the liner, the authorized officer should be notified prior to the covering. It is not necessary to address this matter in the final Order, because its occurrence would be rare. It will be handled in the Manual Handbook and can be considered as a condition of approval when needed.

One comment stated that failure to notify under section III.F.3. should be a major violation. Another comment stated that section III.F.3. should apply only to lined pits. The intent of this standard is to apply to both lined and unlined pits. The purpose of the requirement is to verify whether pits were constructed in accordance with the approved plan. As the consequence of failure to notify is determined by the degree of failure to comply with the approved plan, the violation for failure to notify the authorized officer is considered minor. However, the violation for failure to comply with the approved plan may be minor or major. If as a result of substandard construction, the pit is causing or threatening immediate, substantial, and adverse impacts on public health, safety, or the environment, then the violation would be major by definition. The violation, corrective action, and abatement period provisions of section III.F.3. for failure to construct in accordance with the approved plan have been rewritten to clarify the matter.

F.5. One comment suggested that requirement III.F.5. appears contradictory in stating that a pit should be designed to prevent entrance of surface water by providing surface drainage. The requirement has been rewritten for clarification as follows. "The pit shall be maintained as designed to prevent entrance of surface water by providing adequate surface drainage away from the pit."

F.8. Many comments stated that the requirement in III.F.8. "that the pit shall be kept reasonably free from surface accumulations of liquid hydrocarbons" was ambiguous and in need of clarification. It is extremely difficult to specify that a pit must be kept free of hydrocarbons over a certain percent of the surface, during a particular season, or that the oil may be allowed to accumulate to a certain thickness. As is the practice under NTL–2B, the authorized officer must use experience and judgment to determine whether the amount of oil in a pit is out of compliance. He or she will weigh the requirement against the intent of the approval, the nature and type of pit, seasonal factors, and environmental sensitivity.

F.9. Several respondents stated that the 30-day operator self-inspection requirement in III.F.9. was too frequent. Other respondents stated it was too infrequent and suggested 7 days. The requirement remains as written. The 30-day period was chosen because it is within the range of inspection requirements imposed by other Orders and is a reasonable period of time.

III.G. Other Disposal Methods

One comment stated that the authorized officer may allow surface discharges in violation of effluent guidelines. Any surface discharge would either be under a NPDES permit or otherwise meet the requirements of State and Federal laws and regulations. Coordination with the EPA or the primacy State would be necessary.

In response to several comments on the 3 methods of disposal mentioned in III.A., and one comment urging the BLM to allow use of new technology, final III.G. now contains 3 subcategories. Additional guidance has been provided as to disposal under an NPDES permit.

One respondent asked whether a buried tank should meet all the requirements applied to a lined pit. A buried tank used in lieu of a lined pit is considered a lined pit and therefore should meet all applicable standards of this Order. The leak detection requirements for buried tanks could be met by a monitoring well system depending on an analysis of the subsurface conditions by the authorized officer.

III.H. Reporting Requirements for Disposal Facilities

One comment suggested that the annual report for well and/or surface water facilities should be required to track water quantity and quality. Such reports were required under NTL–2B but have been deleted from this Order because they created burdensome paperwork that was of limited usefulness to the authorized officer. The BLM now places the responsibility on the operator to amend the pit design when changes in quantity and/or quality of water cause the pit no longer to meet the unlined pit criteria.

IV. Variances From Requirements or Minimum Standards

One comment stated that Indian Tribes may obtain primacy for UIC programs, and therefore that Tribal authority should be included in the last sentence. The comment was correct and a reference to the Tribal authority has been made in the final Order.

Comments were received from two entities stating that the Order should allow the authorized officer orally to approve variances from minimum standards under unusual or emergency situations. The intent of this section of the Order is to accommodate special situations where an alternative means may meet or exceed the objectives. Temporary deviation from standards under an emergency situation may be granted orally by the authorized officer followed by written confirmation. Such temporary deviation is not considered as a variance under this section. Any variance must be pre-approved in writing.

Two comments expressed concern that the authorized officer has too much latitude in granting variances and suggested developing criteria or guidance for the authorized officer. A Manual and Handbook will be prepared for this Order to provide such guidance. One example of such criteria would be that if an applicant proposes to use a 1:2.5 slope for the levee, soil test data supporting the proposed slope shall be presented for approval. The authorized officer will take into account a proper factor of safety in addition to the test data.

Attachments

Two comments recommended that the words "minimum standards" be removed from the titles of Figures 1 through 3. The recommendation was adopted, because the figures were presented as examples of what could be acceptable under the standards established in this Order.

With respect to Figures 4 and 5, one respondent expressed a preference for the vertical riser over the sloped riser and the location of the riser to be on the transverse centerline of the pit, rather than at the end of the pit as indicated. The BLM agrees with the view expressed and affirms that the suggested location of the riser is equally acceptable.

In response to a comment that a low riser shown in Figure 5 may cause surface discharge if leakage occurs, the example now shows the riser to be even with the top of the levee.

Editorial corrections have been made as necessary.

The principal authors of this final rule are Sie Ling Chiang, Chief, Division of Minerals Policy Analysis and Economic Evaluation, Washington Office, Jamie Sparger, Vernal District Office, Utah; Armando Lopez, Roswell District Office, New Mexico; T.R. Beaven, Wyoming State Office; and Bob Schooler, Jackson District Office, Mississippi, assisted by the staff of the Division of Legislation and Regulatory Management, BLM.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this proposed rule is categorically excluded from further environmental

review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the proposal would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This order does not establish new requirements and therefore will not cause an increase in costs or prices. Reporting requirements have been reduced, which will ease the burden on industry. Further, for the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. No private property would be taken as a result of this rule, and no lawful activity would be impaired on private property. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0135.

List of Subjects in 43 CFR Part 3160

Government contracts, Indian lands-mineral resources, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

For the reasons cited in the Preamble, and under the authorities cited below, part 3160, group 3100, subchapter C, chapter II of title 43 of the Code of Federal Regulations is amended as set forth below:

Dated: July 16, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

PART 3160—[AMENDED]

1. The authority citation for part 3160 is revised to read:

Authority: 43 U.S.C. 1733; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 30 U.S.C. 301–306; 25 U.S.C. 396; 25 U.S.C. 396a-396g, 397, 398, 398a-398e, 399; 43 U.S.C. 1457; see also 40 Op. Atty. Gen. 41; 40 U.S.C. 471 *et seq.*; 42 U.S.C. 4321 *et seq.*; 43 U.S.C. 6508; 30 U.S.C. 1701 *et seq.*; and 25 U.S.C. 2101 *et seq.*

2. Section 3164.1(b) is amended by revising the table to read as follows:

§ 3164.1 Onshore Oil and Gas Orders.

* * * * *

(b) * * *

Order No.	Subject	Effective date	FEDERAL REGISTER reference	Supersedes
1.	Approval of operations	Nov. 21, 1983	48 FR 48916 and 48 FR 56226.	NTL–6.
2.	Drilling	Dec. 19, 1988	53 FR 46790	None.
3.	Site security	Mar. 27, 1989	54 FR 8056	NTL–7.
4.	Measurement of oil	Aug. 23, 1989	54 FR 8086	None.
5.	Measurement of gas	Mar. 27, 1989, new facilities greater than 200 MCF production; Aug. 23, 1989, existing facility greater than 200 MCF production; Feb. 26, 1990, existing facility less than 200 MCF production.	54 FR 8100	None.
6.	Hydrogen sulfide operations	Jan. 22, 1991	56 FR 48968	None.
7.	Disposal of produced water	October 8, 1993	NTL–2B.	

Note: Numbers to be assigned sequentially by the Washington Office as proposed Orders are prepared for publication.

The Appendix—Text of Oil and Gas Order reads as follows:

Appendix—Text of Oil and Gas Order

Note: This appendix will not appear in the Code of Federal Regulations.

Onshore Oil and Gas Order No. 7

Disposal of Produced Water

I. Introduction.
  A. Authority.
  B. Purpose.
  C. Scope.
II. Definitions.
III. Requirements.
  A. General Requirements.
  B. Application and Approval Authority.
  C. Informational Requirements for Injection Wells.
  D. Informational Requirements for Pits.
  E. Design Requirements for Pits.
  F. Construction and Maintenance Requirements for Pits.
  G. Other Disposal Methods.
  H. Reporting Requirements for Disposal Facilities.
IV. Variances from Requirements or Minimum Standards.
Attachment.
I. Figures.

Onshore Oil and Gas Order No. 7

Disposal of Produced Water

I. Introduction

A. *Authority.* This Order is established pursuant to the authority granted to the Secretary of the Interior by various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. Said authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR part 3160. Section 3164.1 thereof specifically authorizes the Director to issue Onshore Oil and Gas Orders when necessary to implement or supplement the operating regulations and provides that all such Orders shall be binding on the operators of Federal and restricted Indian oil and gas leases which have been, or may hereafter, be issued.

As directed by the Federal Onshore Oil and Gas Leasing Reform Act of 1987, for National Forest lands the Secretary of Agriculture shall regulate all surface-disturbing activities and shall determine reclamation and other

actions required in the interest of conservation of surface resources. Specific authority for the provisions contained in this Order is found at section 3162.3, Conduct of Operations; section 3162.5, Environment and Safety; and Subpart 3163, Noncompliance and Assessments.

B. *Purpose.* This Order supersedes Notice to Lessees and Operators of Federal and Indian Oil and Gas Leases (NTL–2B), Disposal of Produced Water. The purpose of this Order is to specify informational and procedural requirements for submittal of an application for the disposal of produced water, and the design, construction and maintenance requirements for pits as well as the minimum standards necessary to satisfy the requirements and procedures for seeking a variance from the minimum standards. Also set forth in this Order are certain specific acts of noncompliance, corrective actions required and the abatement period allowed for correction.

C. *Scope.* This Order is applicable to disposal of produced water from completed wells on Federal and Indian (except Osage) oil and gas leases. It does not apply to approval of disposal facilities on non-Federal leases. Separate approval under this Order is not required if the method of disposal has been covered under an enhanced recovery project approved by the authorized officer.

II. Definitions

The following definitions are used in conjunction with the issuance of this Order.

A. *Authorized officer* means any employee of the Bureau of Land Management authorized to perform duties described in 43 CFR Groups 3000 and 3100.

B. *Federal lands* means all lands and interests in lands owned by the United States which are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate.

C. *Free-board* means the vertical distance from the top of the fluid surface to the lowest point on the top of the dike surrounding the pit.

D. *Injection well* means a well used for the disposal of produced water or for enhanced recovery operations.

E. *Lease* means any contract, profit share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorized exploration for, extraction of, or removal of oil or gas (see 43 CFR 3160.0–5).

F. *Lessee* means a person or entity holding record title in a lease issued by the United States (see 43 CFR 3160.0–5).

G. *Lined pit* means an excavated and/or bermed area that is required to be lined with natural or manmade material that will prevent seepage. Such pit shall also include a leak detection system.

H. *Unlined pit* means an excavated and/or bermed area that is not required to be lined, or any pit that is lined but does not contain a leak detection system.

I. *Major violation* means noncompliance that causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income (see 43 CFR 3160.0–5).

J. *Minor violation* means noncompliance that does not rise to the level of a "major violation" (see 43 CFR 3160.0–5).

K. *National Pollutant Discharge Elimination System (NPDES)* means a program administered by the Environmental Protection Agency or primacy State that requires permits for the discharge of pollutants from any point source into navigable waters of the United States.

L. *Operator* means any person or entity, including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof (see 43 CFR 3610.0–5).

M. *Produced water* means water produced in conjunction with oil and gas production.

N. *Toxic constituents* means substances in produced water that when found in toxic concentration have harmful effects in plant or animal life. These substances include but are not limited to arsenic (As), barium (Ba), cadmium (Cd), hexavalent chromium (hCr), total chromium (tCr), lead (Pb), mercury (Hg), zinc (Zn), selenium (Se), benzene, toluene, ethylbenzene, and xylenes, as defined in 40 CFR 116.

O. *Underground Injection Control (UIC)* program means a program administered by the EPA, primacy State, or Indian Tribe under the Safe Drinking Water Act to ensure that subsurface waste injection does not endanger underground sources of drinking water.

III. Requirements

A. *General Requirements*

Operators of onshore Federal and Indian oil and gas leases shall comply with the requirements and standards of this Order for the protection of surface and subsurface resources. Except as provided under section III.D.3 of this Order, the operator may not dispose of produced water unless and until approval is obtained from the authorized officer. All produced water from Federal/Indian leases must be disposed of by (1) injection into the subsurface; (2) discharging into pits; or (3) other acceptable methods approved by the authorized officer, including surface discharge under NPDES permit. Injection is generally the preferred method of disposal. Operators are encouraged to contact the appropriate authorized officer before filing an application for disposal of produced water so that the operator may be apprised of any existing agreements outlining cooperative procedures between the Bureau of Land Management and either the State/Indian Tribe or the Environmental Protection Agency concerning Underground Injection Control permits for injection wells, and of any potentially significant adverse effects on surface and/or subsurface resources. The approval of the Environmental Protection Agency or a State/Tribe shall not be considered as granting approval to dispose of produced water from leased Federal or Indian lands until and unless BLM approval is obtained. Applications filed pursuant to NTL–2B and still pending approval shall be supplemented or resubmitted if they do not meet the requirements and standards of this Order. The disposal methods shall be approved in writing by the authorized officer regardless of the physical location of the disposal facility. Existing NTL–2B approvals will remain valid. However, upon written justification, the authorized officer may impose additional conditions or revoke any previously approved disposal permit, if the authorized officer, for example, finds that an existing facility is creating environmental problems, or that an unlined pit should be lined, because the quality of the produced water has changed so that it no longer meets the standards for unlined pits.

Unless prohibited by the authorized officer, produced water from newly completed wells may be temporarily disposed of into reserve pits for a period of up to 90 days, if the use of the pit was approved as a part of an application for permit to drill. Any extension of time beyond this period requires documented approval by the authorized officer.

Upon receipt of a completed application the authorized officer shall take one of the following actions within 30 days: (1) Approve the application as submitted or with appropriate modification or conditions; (2) return the application and advise the applicant in writing of the reasons for disapproval; or (3) advise the applicant in writing of the reasons for delay and the expected final action date.

If the approval for a disposal facility, e.g., commercial pit or Class II injection well, is revoked or suspended by the permitting agencies such as the Environmental Protection Agency or the primacy State, the BLM water disposal approval is immediately terminated and the operator is required to propose an alternative disposal method.

B. *Application and Approval Authority*

1. *On-lease Disposal.* For water produced from a Federal/Indian lease and disposed of on the same Federal/Indian lease, or on other committed Federal/Indian leases if in a unit or communitized area, the approval of the disposal method is usually granted in conjunction with the approval for the disposal facilities. An example would be the approval of a proposal to drill an injection well to be used for the disposal of produced water from a well or wells on the same lease.

a. *Disposal of water in injection wells.* When approval is requested for onlease disposal of produced water into an injection well, the operator shall submit a Sundry Notice, Form 3160–5. Information submitted in support of obtaining the Underground Injection Control permit shall be accepted by the authorized officer in approving the disposal method, provided the information submitted in support of obtaining such a permit satisfies all applicable Bureau of Land Management statutory responsibilities (including but not limited to drilling safety, down hole integrity, and protection of mineral and surface resources) and requirements. If the authorized officer has on file a copy of the approval for the receiving facilities, he/she may determine that a reference to that document is sufficient.

b. *Disposal of water in pits.* When approval is requested for disposal of produced water in a lined or unlined pit, the operator shall submit a Sundry Notice, Form 3160–5. The

operator shall comply with all the applicable Bureau of Land Management requirements and standards for pits established in this Order. On National Forest lands, where the proposed pit location creates new surface disturbance, the authorized officer shall not approve the proposal without Forest Service concurrence.

2. *Off-lease Disposal*

a. *On leased or unleased Federal/Indian lands.* The purpose of the off-lease disposal approval process is to ensure that the removal of the produced water from a Federal or Indian oil and gas lease is proper and that the water is disposed of in an authorized facility. Therefore, the operator shall submit a Sundry Notice, Form 3160–5, for removal of the water together with a copy of the authorization for the disposal facility. If the authorized officer has a copy of the approval for the receiving facilities on file, he/she may determine that a reference to that document is sufficient. Where an associated right-of-way authorization is required, the information for the right-of-way authorization may be incorporated in the Sundry Notice, and the Bureau of Land Management will process both authorizations simultaneously for Bureau lands.

i. *Disposal of water in injection wells.* When approval is requested for removing water that is produced from wells on leased Federal or Indian lands and that is to be injected into a well located on another lease or unleased Federal lands, the operator shall submit to the authorized officer a Sundry Notice, Form 3160–5, along with a copy of the Underground Injection Control permit issued to the operator of the injection well, unless the well is authorized by rule under 40 CFR part 144.

ii. *Disposal of water in pits.* When approval is requested for removing water that is produced from wells on leased Federal or Indian lands and is to be disposed of into a lined or unlined pit located on another lease or unleased Federal lands, the operator shall submit to the authorized officer a Sundry Notice, Form 3160–5.

iii. *Right-of-way procedures.* The operator of the injection well or pit is required to have an authorization from the Bureau of Land Management for disposing of the water into the pit or well, under Title V of FLPMA and 43 CFR Part 2800, or a similar authorization from the responsible surface management agency. In transporting the produced water from the lease to the pit or injection well, e.g., building a road or laying a pipeline, a right-of-way authorization under Title V of FLPMA and 43 CFR Part 2800 from the Bureau of Land Management or a similar permit from the responsible surface management agency also shall be obtained by the operator of the pit or any injection well or other responsible party.

b. *Disposal of water on State and privately-owned lands.*

i. *Disposal of water in injection wells.* When approval is requested for removing water that is produced from wells on leased Federal or Indian lands and that is to be injected into a well located on State or privately-owned lands, the operator shall submit to the authorized officer, in addition to a Sundry Notice, Form 3160–5, a copy of the Underground Injection Control permit issued for the injection well by the Environmental Protection Agency or the State where the State has achieved primacy. Submittal of the Underground Injection Control permit will be accepted by the authorized officer and approval will be granted for the removal of the produced water unless the authorized officer states in writing that such approval will have adverse effects on the Federal/Indian lands or public health and safety.

ii. *Disposal of water in pits.* When approval is requested for removing water that is produced from wells on leased Federal and/or Indian lands and is to be disposed of into a pit located on State or privately-owned lands, the operator shall submit to the authorized officer, in addition to a Sundry Notice, Form 3160–5, a copy of the permit issued for the pit by the State or any other regulatory agency, if required, for disposal in such pit. Submittal of the permit will be accepted by the authorized officer and approval will be granted for removal of the produced water unless the authorized officer states in writing that such approval will have adverse effects on the Federal/Indian lands or public health and safety. If such a permit is not issued by the State or other regulatory agency, the requested removal of the produced water from leased Federal or Indian lands will be denied.

iii. *Right-of-way procedures.* If the water produced from wells on leased Federal and/or Indian lands, and to be disposed of at a location on State or privately-owned lands, will be transported over off-lease Federal or Indian lands, the operator of the disposal facility or other responsible party shall have an authorization from the Bureau of Land Management under Title V of FLPMA and 43 CFR part 2800, or a similar authorization from the responsible surface management agency.

C. *Informational requirements for injection wells.*

For an injection well proposed on Federal or Indian leases, the operator shall obtain an Underground Injection Control (UIC) permit pursuant to 40 CFR parts 144 and 146 from the Environmental Protection Agency or the State/Tribe where the State/Tribe has achieved primacy. The operator shall also comply with the pertinent procedural and informational requirements for Application for Permit to Drill or Sundry Notice as set forth in Onshore Oil and Gas Order No. 1. The injection well shall be designed and drilled or conditioned in accordance with the requirements and standards described in Order No. 2 and pertinent NTLs, as well as the Underground Injection Control permit.

D. *Informational requirements for pits.*

Operators who request approval for disposal of produced water into a lined or unlined pit shall file an application on a Sundry Notice, Form 3160–5, and identify the operator's field representative by name, address and telephone number, and the source of the produced water. Sources of produced water shall be identified by facility, lease number, well number and name, and legal description of well location. A reclamation plan should be included as appropriate. If requested, a contingency plan as prescribed by the authorized officer shall be provided. All samples for water analysis shall be taken at the current discharge point. A reclamation plan detailing the procedures expected to be followed for closure of the pit and the contouring and revegetating of the site shall be submitted prior to pit abandonment. If requested by the authorized officer, a contingency plan to deal with specific anticipated emergency situations shall be submitted as provided for in 43 CFR 3162.5–1(d).

1. *Lined pits.* The authorized officer shall not consider for approval an application for disposal into lined pits on Federal/Indian leases unless the operator also provides the following information:

a. A map and drawings of the site on a suitable scale that show the pit dimension, cross section, side slopes, leak detection system, and location relative to other site facilities.

b. The daily quantity of water to be disposed of (maximum daily quantity shall be cited if major fluctuations are anticipated) and a water analysis (unless waived by the authorized officer as unnecessary) that includes the concentrations of chlorides, sulfates, pH, Total Dissolved Solids (TDS), and toxic constituents that the authorized officer reasonably believes to be present.

c. Criteria used to determine the pit size, which includes a minimum of 2 feet of freeboard.

d. The average monthly evaporation and the average monthly precipitation for the area.

e. The method and schedule for periodic disposal of precipitated solids.

f. The type, thickness, and life span of material to be used for lining the pit and the method of installation. The manufacturer's guidebook and information for the product shall be included, if available.

2. *Unlined pits.*

Application for disposal into unlined pits may be considered for approval by the authorized officer where the application of the operator shows that such disposal meets one or more of the following criteria:

i. The water to be disposed of has an annual average TDS concentration equal to or less than that of the existing water to be protected, provided that the level of any toxic constituents in the produced water does not exceed established State or Federal standards for protection of surface and/or ground water.

ii. All, or a substantial part, of the produced water is being used for beneficial purposes and meets minimum water quality standards for such uses. For example, usage of produced water for purposes such as irrigation and livestock or wildlife watering shall be considered as beneficial.

iii. (A) The water to be disposed of will not degrade the quality of surface or subsurface waters in the area;

(B) The surface and subsurface waters contain TDS above 10,000 ppm, or toxic constituents in high concentrations; or

(C) The surface and subsurface waters are of such poor quality or small quantity as to eliminate any practical use thereof.

iv. That the volume of water to be disposed of per disposal facility does not exceed an

average of 5 barrels per day on a monthly basis.

b. Operators applying for disposal into an unlined pit shall also submit the following information, as appropriate:

(i) Applications for disposal into unlined pits that meet the criteria in a., above, shall include:

(A) A map and drawings of the site on a suitable scale that show the pit dimension, cross section, side slopes, size, and location relative to other site facilities.

(B) The daily quantity of water to be disposed of and a water analysis that includes Total Dissolved Solids (in ppm), pH, oil and grease content, the concentrations of chlorides and sulfates, and other parameters or constituents toxic to animal or plant life as reasonably prescribed by the authorized officer. The applicant should also indicate any effect or interaction of produced water with any water resources present at or near the surface and other known mineral deposits. For applications submitted under criterion a.iv., above, the water quality analysis is not needed unless requested by the authorized officer.

(C) The average monthly evaporation and the average monthly precipitation for the area. For applications submitted under criterion a.iv., average annual data will be acceptable.

(D) The estimated percolation rate based on soil characteristics under and adjacent to the pit. In some cases the authorized officer may require percolation tests using accepted test procedures.

(E) Estimated depth and areal extent of the shallowest known aquifer with TDS less than 10,000 ppm, and the depth and extent of any known mineral deposits in the area.

ii. Where beneficial use (criterion a.ii., above) is the basis for the application, the justification submitted shall also contain written confirmation from the user(s).

iii. If the application is made on the basis that surface and subsurface waters will not be adversely affected by disposal in an unlined pit (criterion a.iii., above), the justification shall also include the following additional information:

(A) Map of the site showing the location of surface waters, water wells, and existing water disposal facilities within 1 mile of the proposed disposal facility.

(B) Average concentration of TDS (in ppm) of all surface and subsurface waters within the 1-mile radius that might be affected by the proposed disposal.

(C) Reasonable geologic and hydrologic evidence that shows the proposed disposal method will not adversely affect existing water quality or major uses of such waters, and identifies the presence of any impermeable barrier(s), as necessary.

(D) A copy of any State order or other authorization granted as a result of a public hearing that is pertinent to the authorized officer's consideration of the application.

3. *Emergency pits*

Application for a permanent pit (lined or unlined) to be used for anticipated emergency purposes shall be submitted by the operator on a Sundry Notice, Form 3160–5, for approval by the authorized officer, unless it has been approved in conjunction with a previously approved operational activity. Design criteria for an emergency pit will be established by the authorized officer on a case by case basis. Any emergency use of such pits shall be reported in accordance with NTL–3A or subsequent replacement Order procedures, and the pit shall be emptied and the liquids disposed of in accordance with applicable State and/or Federal regulations within 48 hours following its use, unless such time is extended by the authorized officer.

E. *Design requirements for pits*

1. Pits shall be designed to meet the following requirements and minimum standards. For unlined pits approved under criterion D.2.a.iv., requirements d. and e., below, do not apply.

a. As much as practical, the pit shall be located on level ground and away from established drainage patterns, including intermittent/ephemeral drainage ways, and unstable ground or depressions in the area.

b. The pit shall have adequate storage capacity for safe containment of all produced water, even in those periods when evaporation rates are at a minimum. The design shall provide for a minimum of 2 feet of free-board.

c. The pit shall be fenced or enclosed to prevent access by livestock, wildlife, and unauthorized personnel. If necessary, the pit shall be equipped to deter entry by birds. Fences shall not be constructed on the levees. Figure 1 shows an example of an acceptable fence design.

d. The pit levees are to be constructed so that the inside grade of the levee is no steeper than 1 (vertical):2 (horizontal), and the outside grade no steeper than 1:3.

e. The top of the levees shall be level and at least 18 inches wide.

f. The pit location shall be reclaimed pursuant to the requirements and standards of the surface management agency. On a split estate (private surface, Federal mineral) a surface owner's release statement or form is acceptable.

2. Lined pits shall be designed to meet the following requirements and minimum standards in addition to those specified above:

a. The material used in lining pits shall be impervious. It shall be resistant to weather, sunlight, hydrocarbons, aqueous acids, alkalies, salt, fungi, or other substances likely to be contained in the produced water.

b. If rigid materials are used, leak-proof expansion joints shall be provided, or the material shall be of sufficient thickness and strength to withstand expansion without cracking, contraction, and settling movements in the underlying earth. Semi-rigid liners such as compacted bentonite or clay may also be used provided that, considering the thickness of the lining material chosen and its degree of permeability, the liner is impervious for the expected period of use. Figure 2 shows examples of acceptable standards for concrete, asphalt, and bentonite/clay liners.

c. If flexible membrane materials are used, they shall have adequate resistance to tears or punctures. Figure 3 gives an example of acceptable standards for installation of the flexible membrane.

d. Lined pits shall have an underlying gravel-filled sump and lateral system or other suitable devices for the detection of leaks. Examples of the acceptable design of the leak detection system are shown in Figure 4 and Figure 5.

3. Failure to design the pit to meet the above requirements and minimum standards will result in disapproval of the proposal or a requirement that it be modified unless a request for variance is approved by the authorized officer.

F. *Construction and maintenance requirements for pits*

Inspections will be conducted according to the following requirements and minimum standards during the construction and operation of the pit. Failure to meet the requirements and standards may result in issuance of an Incident of Noncompliance (INC) for the violation. The gravity of the violation, corrective actions, and the normal abatement period allowed are specified for each of the requirements/standards.

1. Any disposal method that has not been approved shall be considered an incident of noncompliance and may result in the issuance of a shut-in order or assessment of penalties pursuant to 43 CFR part 3163 until an acceptable disposal method is provided and approved by the authorized officer.

Violation: Minor: If it causes no significant environmental damages or effects.

Major: If it causes or threatens immediate, substantial and adverse impacts on public health and safety, the environment, production accountability, or royalty income.

Corrective action: Minor: Submit acceptable application.

Major: Shut-in, take corrective action to repair or replace damages according to instructions of authorized officer.

Abatement periods: Minor: 1 to 20 days or as directed by authorized officer.

Major: Within 10 days.

2. The operator shall notify the authorized officer to inspect the leak detection system at least 2 business days prior to the installation of the pit liner.

Violation: Minor.

Corrective action: Require verification of its installation.

Abatement period: Prior to use of pit.

3. At least 2 business days prior to its use, the operator shall notify the authorized officer of completion of the pit construction, so that the authorized officer may verify that the pit has been constructed in accordance with the approved plan.

For failure to notify:

Violation: Minor.

Corrective action: Not applicable.

For failure to construct in accordance with the approved plan:

Violation: Minor, unless Major by definition.

Corrective action: The authorized officer may shut-in operations and require corrections to comply with the plan or require amendment of the plan.

Abatement period: 1 to 20 days depending on the severity of the violation and the degree of difficulty to correct, if the pit is in use.

4. Lined pit shall be maintained and operated to prevent unauthorized subsurface discharge of water.

Violation: Usually Minor, unless Major as result of discharge.

Corrective action: Repair/replace liner and possibly shut in operations.

Abatement period: 1 to 20 days depending on the onsite situation.

5. The pit shall be maintained as designed to prevent entrance of surface water by providing adequate surface drainage away from the pit.

Violation: Minor.

Corrective action: Provide surface drainage.

Abatement period: Within 20 days.

6. The pit shall be maintained and operated to prevent unauthorized surface discharge of water.

Violation: Usually Minor, unless discharge results in Major.

Corrective action: Clean up if spill occurs, and reduce the water level to maintain the 2 feet of free-board; shut-in operations, if required by authorized officer.

Abatement period: 1 to 20 days depending upon the onsite situation.

7. The outside walls of the pit levee shall be maintained as designed to minimize erosion.

Violation: Minor.

Corrective action: Necessary repair.

Abatement period: Within 20 days.

8. The pit shall be kept reasonably free from surface accumulation of liquid hydrocarbons that would retard evaporation.

Violation: Minor.

Corrective action: Clean-up, and may require skimmer pits, settling tanks, or other suitable equipment.

Abatement period: Within 20 days.

9. The operator shall inspect the leak detection system at least once a month. The record of inspection shall describe the result of the inspection by date and shall be kept and made available to the authorized officer upon request.

Violation: Minor.

Corrective action: Commence the required routine inspection and recordkeeping.

Abatement period: Within 30 days.

10. Prior to pit abandonment and reclamation, the operator shall submit a Sundry Notice for approval by the authorized officer, if not previously approved.

Violation: Minor.

Corrective action: Cease operations and file an application.

Abatement period: Within 10 days.

11. When change in the quantity and/or quality of the water disposed into an unlined pit causes the pit no longer to meet the unlined pit criteria listed under section D.2.a., the operator shall submit a Sundry Notice amending the pit design for approval by the authorized officer.

Violation: Minor unless the resulting damage is Major.

Corrective action: Submit the required amendment; shut-in operations if damage is determined by the authorized officer to be Major.

Abatement period: As specified by the authorized officer.

G. *Other disposal methods*

1. Surface discharge under NPDES permit. The person applying to use this disposal method shall furnish a copy of the NPDES permit issued by the EPA or the primacy State, a current water quality analysis and a Sundry Notice, Form 3160–5, describing site facilities (e.g., retention ponds, skimmer pits and equipment, tanks, and any additional surface disturbance). Operations from the point of origin to the point of discharge are under the jurisdiction of the BLM. Operations from the point of discharge downstream are under the jurisdiction of the EPA or the primacy State.

2. Use of existing commercial pits designed for containment of produced water or tanks in lieu of pits.

3. New technology or any other proposal meeting the objective of this Order that the authorized officer deems acceptable and that meets the requirements of State and Federal laws and regulations.

H. *Reporting requirements for disposal facilities*

All unauthorized discharges or spills from disposal facilities on Federal/Indian leases shall be reported to the authorized officer in accordance with the provisions of NTL–3A or subsequent replacement Order.

Violation: Minor unless resulting damage is major.

Corrective action: Submit the required report.

Abatement period: As specified by the authorized officer.

IV. Variances from Requirements or Minimum Standards

An operator may request that the authorized officer approve a variance from any of the requirements or minimum standards prescribed in Section III. of this Order. All such requests shall be submitted in writing to the appropriate authorized officer and provide information as to the circumstances that warrant approval of the variance(s) requested and the proposed alternative means by which the requirements or related minimum standard(s) will be satisfied. The authorized officer, after considering all relevant factors, will approve the requested variance(s) if it is determined that the proposed alternative(s) meet or exceed the objectives of the applicable minimum standard(s); or if the authorized officer determines that the exemption of the requirement is justified. Variances granted by BLM under this section shall be limited to proposals and requirements under BLM statutory and/or regulatory authority only, and shall not be construed as granting variances to regulations under EPA, State, or Tribal or State authority.

Attachments

BILLING CODE 4310-84-P

FENCE CONSTRUCTION

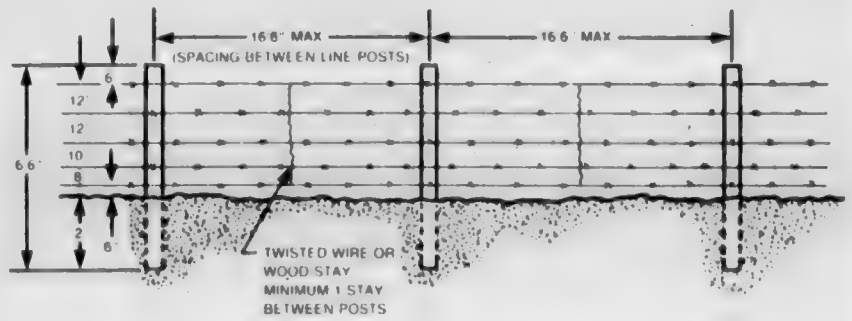

TYPICAL 5-WIRE BARB WIRE FENCE
using wood, pipe or steel "T" type posts

CORNER CONSTRUCTION
(applicable to barbed or net type wire)

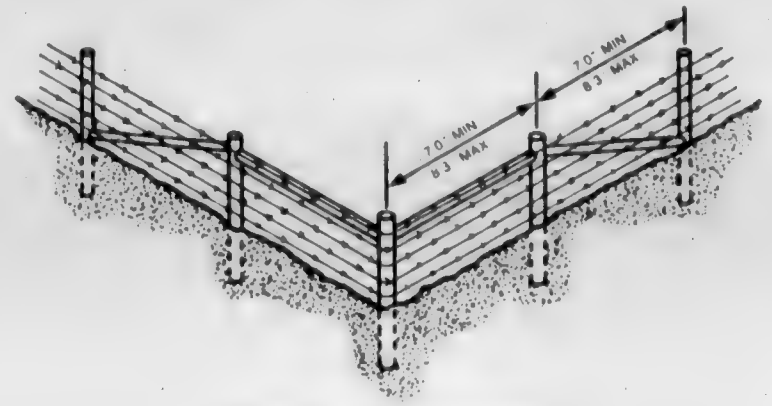

TYPICAL CORNER CONSTRUCTION
for buried corner posts

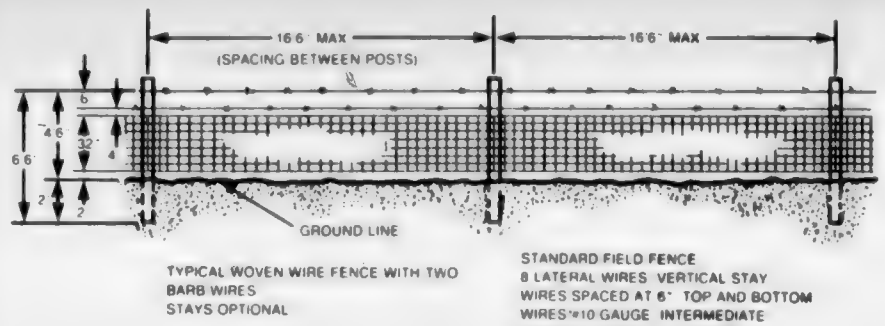

TYPICAL WOVEN WIRE FENCE WITH TWO
BARB WIRES
STAYS OPTIONAL

STANDARD FIELD FENCE
8 LATERAL WIRES VERTICAL STAY
WIRES SPACED AT 6" TOP AND BOTTOM
WIRES #10 GAUGE INTERMEDIATE
AND STAY WIRES #12½ GAUGE

TYPICAL "STOCK TIGHT" FENCE
using wood, pipe or steel "T" type posts

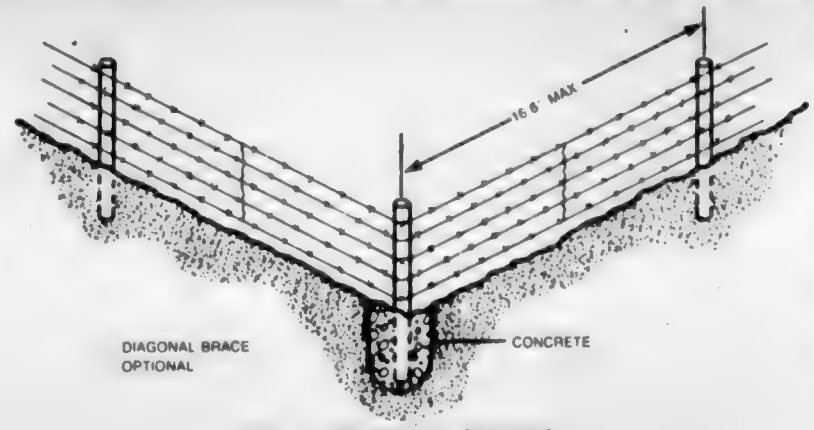

TYPICAL CORNER CONSTRUCTION
for corner post set in concrete

FIGURE 1. EXAMPLES FOR DESIGN AND CONSTRUCTION OF FENCES AND CORNER POSTS.

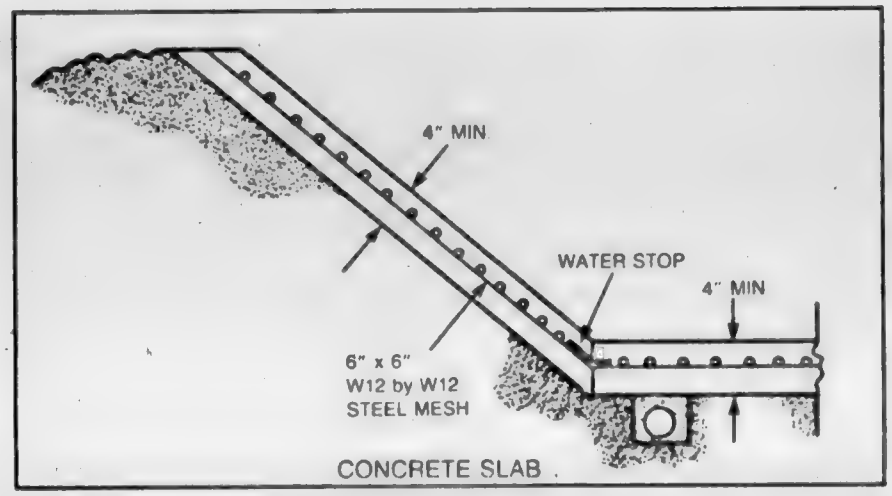

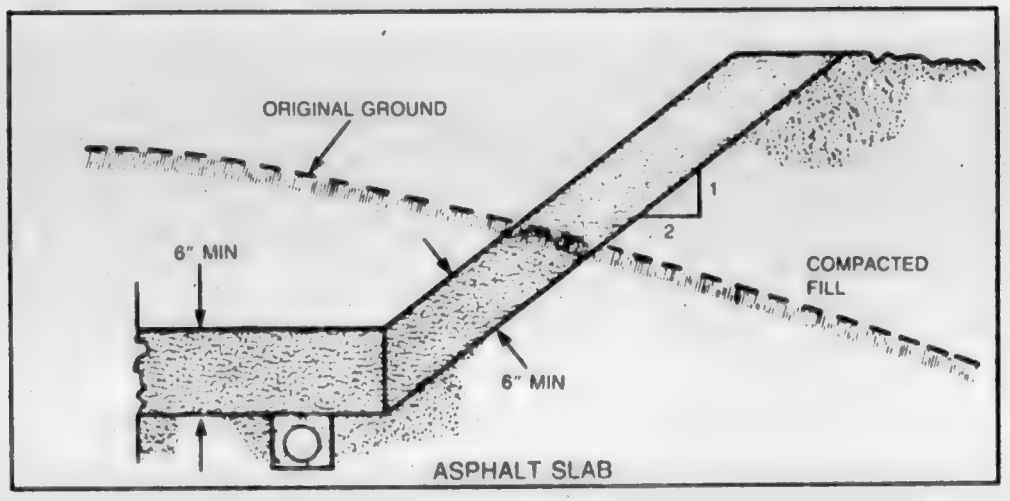

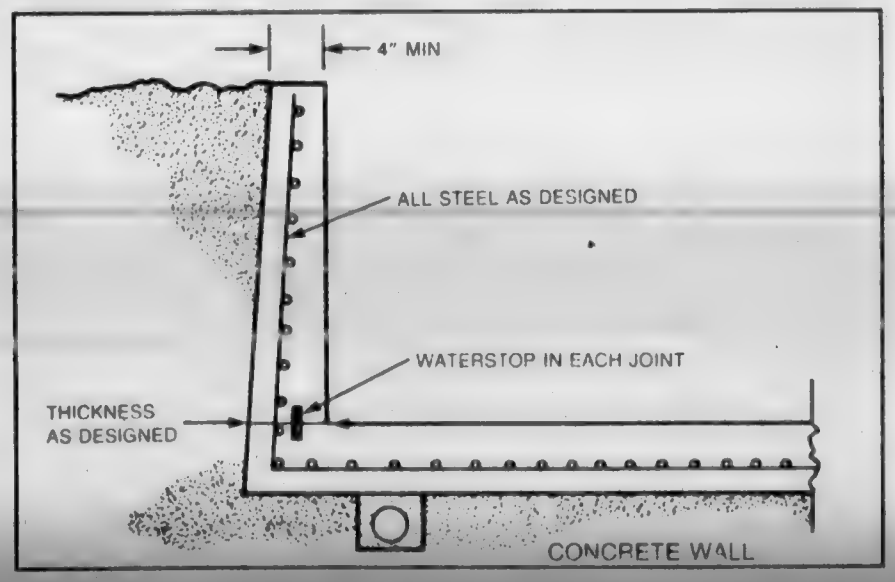

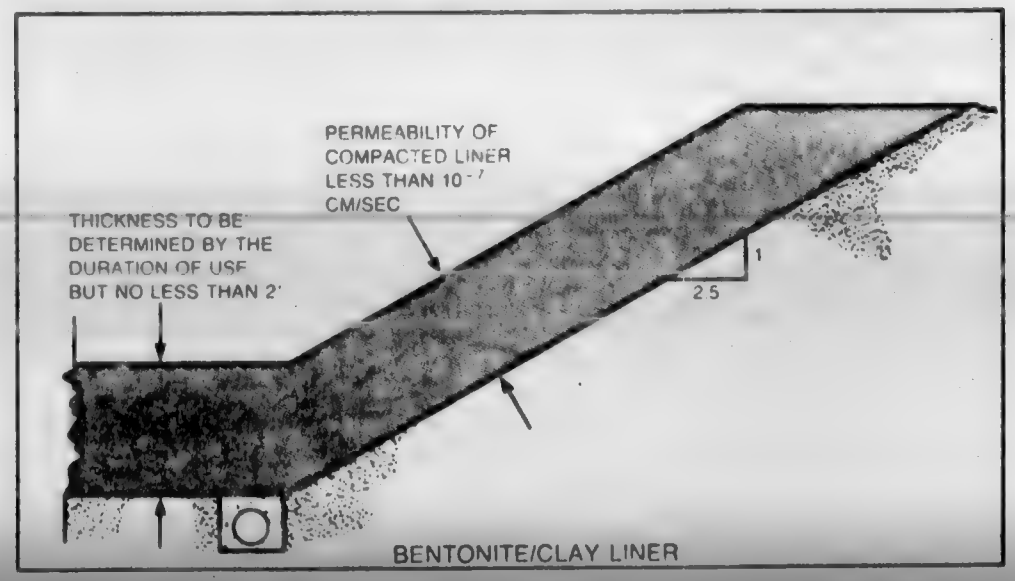

FIGURE 2. EXAMPLE OF ACCEPTABLE DESIGN FOR CONCRETE, ASPHALT AND BENTONITE/CLAY LINERS.

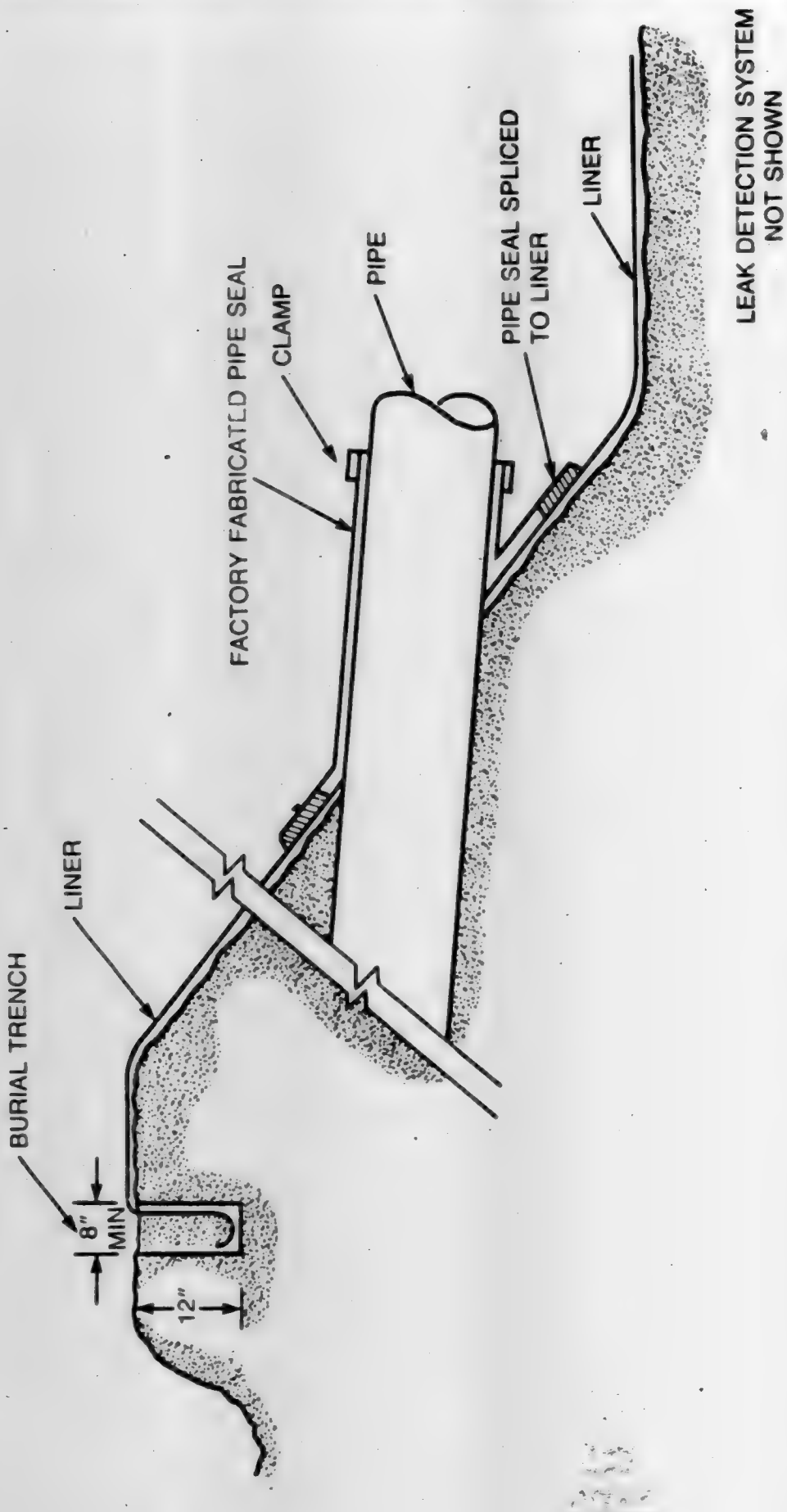

FIGURE 3. EXAMPLE OF ACCEPTABLE DESIGN FOR INSTALLATION OF A FLEXIBLE LINER.

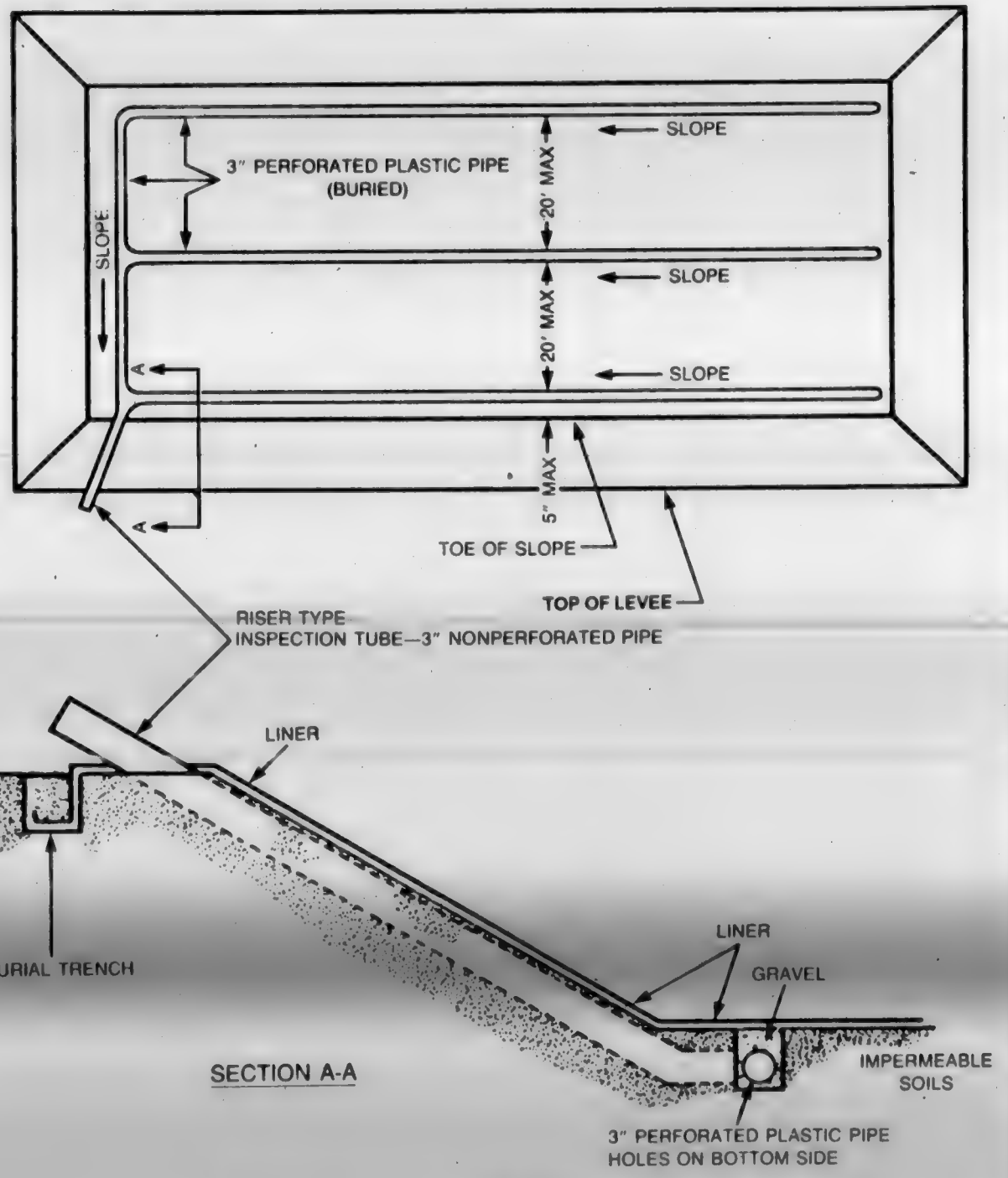

FIGURE 4. EXAMPLE OF A LEAK DETECTION SYSTEM FOR A LINED PIT CONSTRUCTED IN RELATIVELY IMPERMEABLE SOILS.

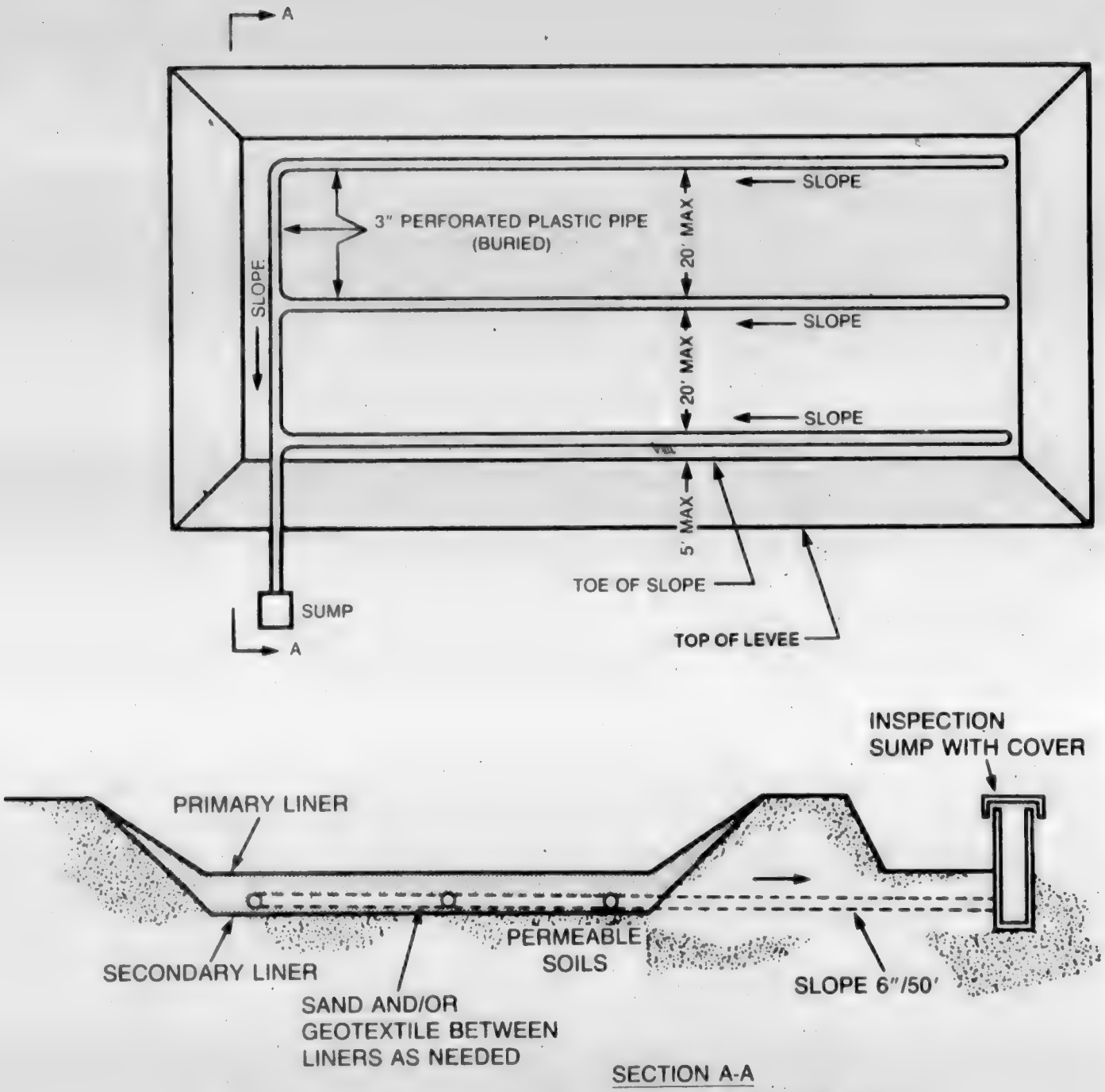

FIGURE 5. EXAMPLE OF A LEAK DETECTION SYSTEM FOR A LINED PIT CONSTRUCTED IN PERMEABLE SOILS.

[FR Doc. 93–21828 Filed 9–7–93; 8:45 am]
BILLING CODE 4310–84–C

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Federal Register

Vol. 58, No. 172

Wednesday, September 8, 1993

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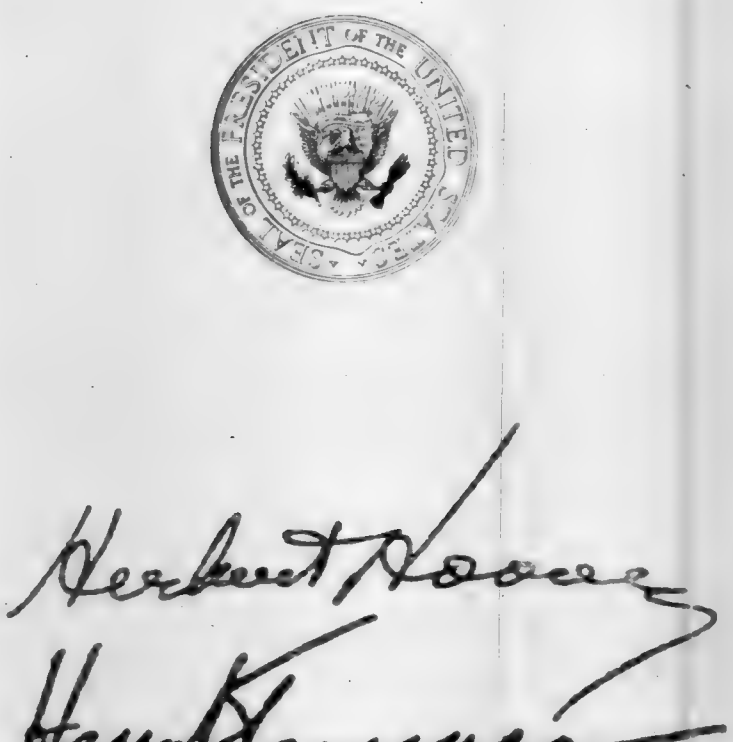

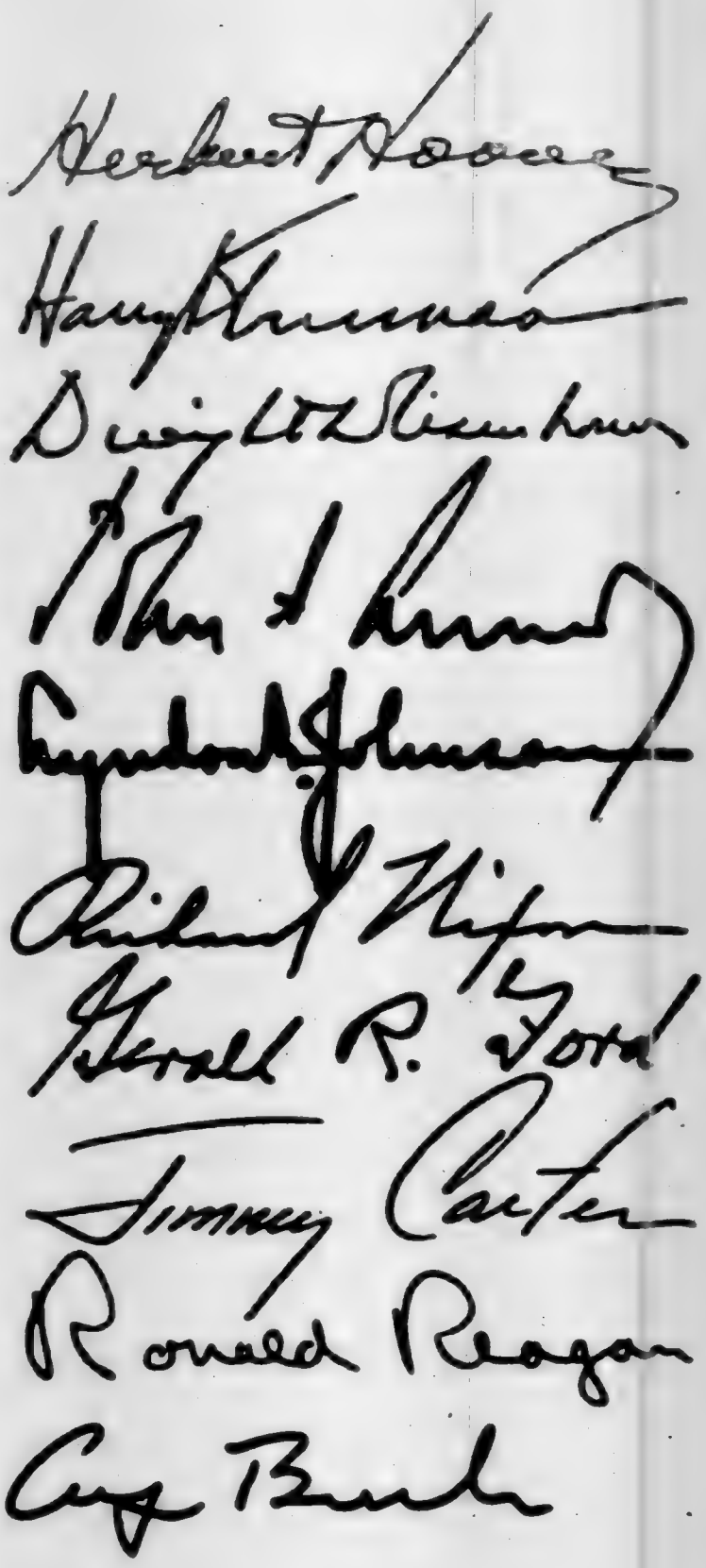

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Thursday
September 9, 1993

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 58, No. 173
Thursday, September 9, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) hereby amends its size regulations to provide that prime contractors may rely on the information contained in SBA's Procurement Automated Source System (PASS) as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list.

DATES: This rule is effective on September 9, 1993.

FOR FURTHER INFORMATION CONTACT: Catherine B. Thomas, Procurement Analyst, (202) 205–6460.

SUPPLEMENTARY INFORMATION: The SBA is amending its size regulations to make a general policy statement that prime contractors may rely on the information contained in SBA's Procurement Automated Source System (PASS) as an accurate representation of a concern's size and ownership characteristics for the purpose of maintaining a small business source list.

It is currently the practice of many prime contractors to maintain elaborate systems to get annual certifications from subcontractors that they are small business concerns. This information is already contained in SBA's PASS System, and SBA updates the information on an annual basis by obtaining a current small business certification from each company listed in the PASS System. SBA believes that reliance on the information contained in PASS to maintain small business source lists will save prime contractors a significant amount of time and money each year by eliminating the need for them to obtain annual certifications. At the same time, small businesses would be relieved of the burden of responding to such requests from their prime contractors.

This does not affect the existing requirement that a concern must self-certify as a small business at the time it submits its offer as a section 8(d) subcontractor.

SBA is publishing this rule setting forth a general statement of Agency policy without prior notice or an opportunity for public comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(A).

Compliance With Executive Orders 12291, 12612 and 12778, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Chap. 35)

For purposes of Executive Order 12291, SBA certifies that this final rule is not considered a major rule because it would not have an annual economic effect in excess of $100 million, it would not lead to a major increase in costs, and it would not have an adverse effect on competition. This rule effects no substantive change to SBA's regulations and does not affect the rights of any party. Rather, this rule is meant to provide contractors with an efficient, cost-effective means of undertaking a task they are presently doing. In fact, SBA believes that this rule will result in collective savings to prime contractors and small businesses of more than $6 million per year.

For purposes of the Regulatory Flexibility Act, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities for the same reason that it is not a major rule.

For purposes of Executive Order 12612, SBA certifies that this rule will not have federalism implications warranting the preparation of a Federalism Assessment.

For purposes of the Paperwork Reduction Act, SBA certifies that this rule will not have new or additional reporting or recordkeeping requirements.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted in accordance with the standards set forth in section 2 of that Order.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Small business.

For the reasons set forth above, part 121 of title 13, Code of Federal Regulations, is amended as follows.

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c).

§ 121.91 [Amended]

2. Section 121.911(a) is revised to read as follows:

(a) Prime contractors may rely on the information contained in SBA's Procurement Automated Source System (PASS) as an accurate representation of a concern's size for purposes of maintaining a small business source list. However, although a prime contractor may rely on the information contained in PASS for purposes of maintaining a small business source list, this does not remove the requirement that a concern must qualify and self-certify as a small business at the time it submits its offer as a section 8(d) subcontractor as set forth in § 121.905(a).

* * * * *

Dated: September 2, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–22014 Filed 9–8–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ANM–2]

Amendment of Class D Airspace and Establishment of Class E Airspace; Aurora, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Buckley Air National Guard Base (ANGB), Aurora, Colorado, Class D airspace and also establishes new Class E airspace. It is necessary to amend the airspace descriptions concurrent with

establishment of the new Denver Airport Class B airspace. Airspace Reclassification, in effect as of September 16, 1993, has discontinued use of the terms "airport traffic area," "control zone," and "control zone extension," replacing them with the designation "Class D" or "Class E airspace." The airspace will be depicted on aeronautical charges for pilot reference when the new Denver International Airport opens.

EFFECTIVE DATE: 0701 UTC, December 19, 1993.

FOR FURTHER INFORMATION CONTACT:

Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 93–ANM–2, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

Establishment of a new International Airport at Denver, Colorado, requires relocation and amendment of the Denver Class B airspace to center it on the new airport location. There is a simultaneous requirement to amend all airspace adjacent to the Class B airspace, including the Buckley ANG Base airspace.

On June 3, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the "control zone" for the Buckley ANG Base at Aurora, Colorado (58 FR 31486). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received.

Airspace reclassification, in effect as of September 16, 1993, discontinued use of the terms "airport traffic area," "control zone," and "control zone extension," replacing them with the designations "Class D and Class E airspace" for airspace extending upward from ground level. Other than that change in terminology, this amendment is the same as that proposed in the notice.

The coordinates are in North American Datum 83. Class D and Class E airspace designations are published in Paragraphs 5000 and 6004, respectively, of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 8, 1993). The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 of the Federal Aviation Regulations amends Class D airspace and establishes Class E airspace at The Buckley ANG Base at Aurora, Colorado, to adjust with the amendment and relocation of the Denver Class B airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows.

Paragraph 5000 General

* * * * *

ANM CO D Aurora, CO [Revised]

Buckley ANG Base, CO
(lat. 39°42'06" N, long. 104°45'07" W)

That airspace extending upward from the surface to but not including 7,500 feet MSL within a 4.4-mile radius of the Buckley ANG Base, excluding that airspace within the Denver International Airport Class B airspace Areas A and C.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D surface area

* * * * *

ANM CO E4 Aurora, CO [New]

Buckley ANG Base, CO
(lat. 39°42'06" N, long. 104°45'07" W)

That airspace extending upward from the surface to but not including 7,500 feet MSL within 2 miles each side of the Buckley Runway 32 ILS localizer southeast course extending from the 4.4-mile radius to 7.5 miles southeast of the airport.

* * * * *

Issued in Seattle, Washington, on August 26, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93–21977 Filed 9–8–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANM–3]

Amendment of Class D and Class E Airspace; Englewood, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Centennial Airport, Englewood, Colorado, Class D and Class E airspace. It is necessary to amend the airspace descriptions concurrent with amendment and relocation of the Denver Class B airspace to the new Denver International Airport location. Airspace reclassification, in effect as of September 16, 1993, has discontinued use of the terms "airport traffic area," "control zone," and "control zone extension," replacing them with the designations "Class D" and "Class E airspace." The Class D and Class E airspace will be depicted on aeronautical charts for pilot reference when the new Denver International Airport opens.

EFFECTIVE DATE: 0701 UTC, December 19, 1993.

FOR FURTHER INFORMATION CONTACT:

Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 93–ANM–3, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

On June 3, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the control zone at Centennial Airport, Englewood, Colorado (58 FR 31485). Interested parties were invited to

participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received.

Establishment of a new International Airport at Denver, Colorado, requires relocation and amendment of the Denver Class B airspace to center it on the new airport location. There is a simultaneous requirement to amend all airspace adjacent to the Class B airspace, including the Centennial Airport Class D and Class E airspace.

Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the terms "airport traffic area," "control zone," and "control zone extension," replacing them with Class D and Class E airspace extending upward from ground level. Other than those changes in terminology, this amendment is the same as that proposed in the notice. The coordinates in this final rule are in North American Datum 83.

Class D airspace designations for airspace extending upward from ground level are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order.

Class E airspace designations for airspace extending upward from ground level are published in Paragraph 6004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends Class D and Class E airspace at Centennial Airport, Englewood, Colorado, to adjust with the amendment and relocation of the Denver Class B airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General.

* * * * *

ANM CO D Englewood, CO [Revised]

Centennial Airport CO
(lat. 39°34'13" N, long. 104°50'58" W)

That airspace extending upward from the surface to but not including 8,000 feet MSL within a 4.4-mile radius of the Centennial Airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * * *

Paragraph 6004–Class E airspace areas designated as an extension to a Class D surface area.

* * * * * *

ANM CO E4 Englewood, CO [Revised]

Centennial Airport, CO
(lat. 39°34'13" N, long. 104°50'58" W)

That airspace extending upward from the surface within 2.5 miles each side of the 178° bearing from the Centennial Airport extending from the 4.4-mile radius to 14 miles south of the airport, and within 2 miles each side of the 111° bearing from the Centennial Airport extending from the 4.4-mile radius to 4.8 miles southeast of the airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on August 24, 1993.

Temple H. Johnson, Jr.,
Manager, Air Traffic Division.

[FR Doc. 93–21975 Filed 9–8–93; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANM–5]

Amendment of Class E Airspace; Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Denver, CO. This action is necessary to amend the airspace description concurrent with amendment and relocation of the Denver Class B airspace from the Stapleton Airport to the new Denver International Airport. The Class E airspace will be depicted on aeronautical charts for pilot reference when the new Denver International Airport opens.

EFFECTIVE DATE: 0701 UTC, December 19, 1993.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–536, Federal Aviation Administration, Docket No. 93–ANM–5, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

History

Establishment of a new International Airport at Denver, Colorado, requires relocation and amendment of the Denver Class B airspace to center it on the new airport location. There is a simultaneous requirement to amend all airspace adjacent to the Class B airspace, including the Denver Airport Class E airspace. The requirement for two other parcels of Class E airspace is thus nullified, and are removed in this action. On June 3, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Denver Transition Areas (58 FR 31484).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received.

Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above ground level is now Class E airspace. Other than that change in terminology, this amendment

is the same as that proposed in the notice. The coordinates in this final rule are in North American Datum 83. Class E airspace designations for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993.) The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends Class E airspace at Denver, Colorado, so as to concurrently adjust with the amendment and relocation of the Denver Class B airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANM CO E5 Denver Centennial Airport, CO [Removed]

ANM CO E5 Denver, CO [Revised]

Denver International Airport, CO
(lat. 39°51'38" N, long. 104°40'24" W)
Denver VOR (lat. 39°48'44" N., long. 104°39'36" W.)
Centennial Airport, CO (lat. 39°34'13" N., long. 104°50'58" W.)

That airspace extending upward from 700 feet above the surface within a 28-mile radius of the Denver VOR, and within 3.5 miles west and 8.8 miles east of the 178° bearing from the Centennial Airport extending from the 28-mile radius to 17.8 miles south of the Centennial Airport; and that airspace extending upward from 1,200 feet above the surface on the north beginning at lat. 40°30'00" N., long. 106°00'02" W., thence east along lat. 40°00'00" N., thence northeast along V–361, thence east along lat. 41°30'00" N., thence south along the Colorado-Nebraska State boundary, thence southwest along V–8, thence south along V–169, thence west along lat. 39°00'00" N., thence north along long. 106°00'02" W., to the point of beginning, excluding airspace within Federal Airways.

* * * * *

ANM CO E5 Erie, CO [Removed]

* * * * *

Issued in Seattle, Washington, on August 24, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 93–21976 Filed 9–8–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AGL–16]

Modification of Class E Airspace; Oscoda, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the airspace description associated with Oscoda, Michigan Class E airspace. The reason for this modification is to correct the reference to Wurtsmith Air Force Base (AFB) Airport which was renamed to Oscoda-Wurtsmith Airport. Air Force operations will no longer be conducted at Oscoda-Wurtsmith Airport. This name change requires modification of the airspace description so that the airspace is accurately identified. The correct airport name will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

EFFECTIVE DATE: 0901 UTC, November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7568.

SUPPLEMENTARY INFORMATION:

History

The modification made by this rule is editorial in nature and does not require any specific airspace charting design changes, therefore, a Notice of Proposed Rulemaking (NPRM) was not issued. Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and replace it with "Class E airspace" for transition area airspace extending upward from 700 feet or more above ground level. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9 dated June 17, 1993 and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 in effect as of September 16, 1993. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies a Class E airspace description due to a change in airport name from Wurtsmith AFB Airport to Oscoda-Wurtsmith Airport. The modified description will provide accurate reference for aircraft navigating these areas.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 29, 1979); and (3) does not warrant preparation of regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designation and Reporting Points, dated June 17, 1993 and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Oscoda, MI [Revised]

Oscoda-Wurtsmith Airport, MI
(lat. 44°27'05" N., long. 83°23'39" W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Oscoda-Wurtsmith Airport.

* * * * *

Issued in Des Plaines, Illinois, on September 3, 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–21978 Filed 9–8–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ASO–20]

Realignment of Jet Route J–89

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the description of Jet Route J–89 located in the vicinity of Valdosta, GA. A one degree error exists in the airway description and this action corrects that error.

EFFECTIVE DATE: 0901 UTC, November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On May 3, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of Jet Route J–89 located in Valdosta, GA (58 FR 26265. A one degree error exists in the airway description and this action corrects the error.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in Paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations corrects a one degree error discovered in the route alignment in the description of Jet Route J–89 located in Valdosta, GA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J–89 [Revised]

From INT of Taylor, FL, 176° and Valdosta, GA 156° radials; Valdosta; Atlanta, GA; Louisville, KY; Boiler, IN; Northbrook, IL; Badger, WI; Duluth, MN; to Winnipeg, MB, Canada. The portion within Canada is excluded.

* * * * *

Issued in Washington, DC, on August 30, 1993

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–21970 Filed 9–8–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–AEA–5]

Alteration of Jet Route J–162

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will modify Jet Route J–162 between Ohio and West Virginia by realigning the route between the Bellaire, OH, and the Morgantown, WV, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facilities. This action is necessary to simplify routing and make better use of the airspace in that area.

EFFECTIVE DATE: 0901 UTC, November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–204), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On June 10, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of J–162 in Ohio and West Virginia (56 FR 26627).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes and the incorporation by reference, this amendment is the same as that proposed in the notice. Jet routes are published in Paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters Jet Route J–162 located in Ohio and West Virginia. This action will realign J–162 between the Bellaire, OH, and the Morgantown, WV, VORTAC's. Realigning this jet route will enhance navigation by simplifying the routings and making better use of the airspace in that area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Jet Routes.

* * * * *

J–162 [Revised]

From DRYER, OH, via Bellaire, OH; Morgantown, WV; to Martinsburg, WV.

* * * * *

Issued in Washington, DC, on August 30, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–21972 Filed 9–8–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Animal Drugs, Feeds, and Related Products; Follicle Stimulating Hormone (FSH)

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Ausa International, Inc. The NADA provides for intramuscular use of Super–OV™ (follicle stimulating hormone (FSH)(lyophilized porcine pituitary gland)) for induction of superovulation of cows that are cycling normally.

EFFECTIVE DATE: September 9, 1993.

FOR FURTHER INFORMATION CONTACT: Jean E. Dobson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1697.

SUPPLEMENTARY INFORMATION: Ausa International, Inc., Rt. 8, P.O. Box 324–12, Tyler, TX 75703, filed NADA 141–014 which provides for the use of Super–OV™ (FSH) (lyophilized porcine pituitary gland) for intramuscular use for induction of superovulation in cows for procedures requiring the production of multiple ova at a single estrus. The NADA is approved as of August 13, 1993, and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary. The agency is also combining the existing regulation for another FSH product which is already codified at § 522.1822 *Follicle stimulating hormone-pituitary for injection.* Accordingly § 522.1822 (21 CFR 522.1822) is redesignated as § 522.1002 and revised editorially to reflect the current format.

In addition, Ausa International, Inc., had not previously been listed in as a sponsor of an approved application. Accordingly, § 510.600 (c)(1) and (c)(2) (21 CFR 510.600 (c)(1) and (c)(2) are amended to add entries for the firm.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning August 13, 1993, because the application contains reports of new clinical or field investigations (other than bioequivalence or residue studies) essential to approval and conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Ausa International, Inc.," and in the table in paragraph (c)(2) by numerically adding a new entry for "059521" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Ausa International, Inc., Rt. 8, P.O. Box 324–12, Tyler, TX 75703	059521
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
059521	Ausa International, Inc., Rt. 8, P.O. Box 324–12, Tyler, TX 75703
* * * * *	

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.1002 [Redesignated from § 522.1822]

4. Section 522.1822 is redesignated as § 522.1002 and revised to read as follows:

§ 522.1002 Follicle stimulating hormone.

(a)(1) *Specifications.* Each package contains 2 vials. One vial contains dry, powdered, porcine pituitary gland equivalent to 75 units (NIH–FSH–S1) of follicle stimulating hormone. The other vial contains 10 milliliters of aqueous diluent.

(2) *Sponsor.* See 059521 in § 510.600(c) of this chapter.

(3) *Conditions of use.* (i) *Dosage.* 12.5 units of follicle stimulating hormone twice a day for 3 days (a total of 75 units). To effect regression of the corpus luteum, prostaglandin should be given with the 5th dose.

(ii) *Indications for use.* For induction of superovulation in cows for procedures requiring the production of multiple ova at a single estrus.

(iii) *Limitations.* For intramuscular use in cows that are not pregnant and have a normal corpus luteum. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(b)(1) *Specifications.* The drug is a lyophilized pituitary extract material. Each 10-milliliter vial contains an amount equivalent to 50 milligrams of standard porcine follicle stimulating hormone and is reconstituted for use by addition of 10 milliliters of 0.9 percent aqueous sodium chloride solution.

(2) *Sponsor.* See 000061 in § 510.600(c) of this chapter.

(3) *Conditions of use.* (i) *Dosage.* Cattle and horses, 10–50 milligrams; sheep and swine, 5–25 milligrams; dogs, 5–15 milligrams.

(ii) *Indications for use.* The drug is used as a supplemental source of follicle stimulating hormone where there is a general deficiency in cattle, horses, sheep, swine, and dogs.

(iii) *Limitations.* Administer intramuscularly, subcutaneously, or intravenously. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: September 1, 1993.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 93–21883 Filed 9–8–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 25 and 201

[Docket No. R–93–1694; FR–3326–F–01]

RIN 2502–AF80

Title I Property Improvement and Manufactured Home Loans—Debt Collection Requirements; and Technical Amendment

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the Title I property improvement and manufactured loan program regulations by adding provisions relating to collection of debts owed to the Department under the Title I program by both lenders and defaulted borrowers. This rule also makes a technical amendment to the regulations to reflect the redesignation of certain report requirements that was inadvertently omitted from a previously published final rule.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Paulette Porché, Director, Title I Accounting and Servicing Division, room 3136, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 708–5949. Hearing or speech-impaired individuals may call HUD's TDD number, which is (202) 708–1112. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Title I Debt Collection Requirements—24 CFR Part 201, Subpart G

On January 29, 1991 (56 FR 3302), the Department published a proposed rule to amend 24 CFR parts 200, 201, and 202 with regard to the insurance of lenders against losses arising out of property improvement and manufactured home loans (Title I loans). The January 29, 1991 rule proposed to add a new subpart G for part 201, which would relate to the collection of debts owed to the Department under the Title I program by both lenders and defaulted borrowers. Public comments on the proposed rule were solicited, and the Department received comments from more than 200 respondents. However, none of the comments addressed subpart G.

On October 18, 1991 (56 FR 52414), the Department published its final rule amending parts 200, 201, and 202 with regard to Title I loans. New subpart G was not included in the final rule. As noted in the preamble to the final rule, publication of subpart G was deferred pending a ruling from the Comptroller General of the United States.

The Comptroller General was asked to rule on two major facets of the Title I debt collection process: (1) Whether it is proper for the Department to use the greater of the sale price or the appraised value of the repossessed manufactured home to calculate the initial debt owed by a borrower to the Department in connection with a defaulted manufactured home loan; and (2) whether it is proper for the Department of assess interest on Title I debt at the lesser of the note rate or the Treasury rate in effect when the underlying Title I insurance claim is paid to the lender. In an opinion issued on July 7, 1992 (71 Comp. Gen. 449), the Comptroller General concluded that the Department's methods of calculating debts and assessing interest are authorized by law.

Subpart G of part 201 consists of §§ 201.60 through 201.63. This new subpart codifies existing Title I debt collection practice and procedures and is applicable to debts owed to the Department by defaulted borrowers, as well as debts owed to the Department by Title I lenders arising from repurchase demands and unpaid insurance charges.

Section 201.60 is a statement of applicability of subpart G. Section 201.61 states how the principal amount of a debt owed by a defaulted borrower—usually referred to as the "legal debt"—is calculated. Section 201.62 relates to the assessment of interest, penalties, and administrative costs in connection with the debt. Section 201.63 relates to claims against Title I lenders for repurchases of claims and unpaid insurance premiums.

Except for minor editorial changes, subpart G is the same as set forth in the proposed rule.

24 CFR Part 25

On December 8, 1992 (57 FR 58326), the Department published a final rule which implemented a comprehensive revision of the Department's regulations that prescribe the standards by which mortgagees are approved to participate in the HUD mortgage insurance programs, and by which approved mortgagees maintain their approval status.

In this comprehensive revision, the mortgagee approval regulations that were contained in 24 CFR part 203 were transferred to new subpart B of part 202 and assigned a new regulatory designation (see the redesignation chart set forth in proposed rule at 56 FR 29105). One of the regulatory sections transferred from 24 CFR part 203 to 24 CFR part 202, subpart B was § 203.8 entitled "Report Requirements." Section 203.8 was redesignated new § 202.19.

In making a number of conforming amendments to reflect the new regulatory designations (see final rule at 57 FR 58334 and 58 FR 58337), the Department inadvertently failed to amend 24 CFR 25.9(x), which makes reference to § 203.8, to reflect the redesignation of § 203.8 to § 202.19. This final rule makes this amendment.

Other Matters

Environmental Impact

This rule is categorically excluded from the requirements of the National Environmental Policy Act of 1969 by 24 CFR 50.20(k) because it relates to internal administrative procedures involving fiscal functions.

Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individuals, industries, Federal, State or local government, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule merely codifies existing policies relating to the collection of debts owed to the Department under the Title I property improvement and manufactured home loan program by both lenders and defaulted borrowers, and makes a conforming amendment to 24 CFR part 25. Thus, with respect to 24 CFR part 201, the rule is limited to implementing debt collection activities where legal obligations already have been incurred. With respect to 24 CFR part 25, this rule simply makes a technical amendment.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, this rule relates to obligations of lenders and borrowers, and does not impinge upon the relationship between the Federal government and State and local governments. As a result, the rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, or general well-being, and thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as sequence number 1454 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24412) under Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are:

14.110 Manufactured Home Loan Insurance—Financing Purchase of Manufactured Homes as Principal Residences of Borrowers;

14.142 Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Nonresidential Structures;

14.162 Mortgage Insurance—Combination and Manufactured Home Lot Loans

List of Subjects

24 CFR Part 25

Administrative practice and procedure, Loan programs—housing and community development, Organization and functions (Government agencies).

24 CFR Part 201

Health facilities, Historic preservation, Home improvement,

Mobile homes, Manufactured homes and lots, Reporting and recordkeeping requirements.

Accordingly, title 24 of the Code of Federal Regulations is amended as follows:

PART 25—MORTGAGEE REVIEW BOARD

1. The authority section for part 25 continues to read as follows:

Authority: 12 U.S.C. 1715b; 42 U.S.C. 3535(d).

2. In § 25.9, paragraph (x) is revised to read as follows:

§ 25.9 Grounds for an administrative action.

* * * * *

(x) Failure to submit a report required under 24 CFR 202.19 within the time determined by the Commissioner, or to commence or complete a plan for corrective action under that section within the timeframe agreed upon by the Commissioner may result in initial sanctions under 24 CFR 25.5(a) through (c). Failure to take the action required under the initial sanction may result in an action under 24 CFR 25.5(d).

* * * * *

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

3. The authority citation for 24 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 1703; 42 U.S.C. 3535(d).

4. A new subpart G is added to part 201 to read as follows:

Subpart G—Debts Owed to the United States Under Title I

Sec.
201.60 General.
201.61 Claims against debtors—principal amount of debt.
201.62 Claims against debtors—interest, penalties, and administrative costs.
201.63 Claims against lenders.

Subpart G—Debts Owed to the United States Under Title I

§ 201.60 General.

(a) *Applicability.* The provisions in this subpart apply to the collection of debts owed to the United States arising out of the Title I program. These debts include, but are not limited to:

(1) Amounts owed on loans assigned to the United States by insured lenders as the result of defaults by borrowers;

(2) Unpaid insurance charges owed by lenders; and

(3) Unpaid obligations of lenders arising from repurchase demands.

(b) *Departmental debt collection regulations.* Except as modified by this subpart, collection of debts arising out of the Title I program is subject to the Department's debt collection regulations in subpart C of 24 CFR part 17.

§ 201.61 Claims against debtors—principal amount of debt.

(a) *Liability.* A debtor is liable to the Secretary for the principal amount of the debt, as described in paragraphs (b), (c), or (d) of this section, as appropriate.

(b) *Property improvement notes.* In the case of an assigned note for a property improvement loan, the principal amount of the debt is the unpaid amount of the loan obligation, as defined in § 201.55(a)(1) of this part, plus amounts described in §§ 201.55(a)(3), (4), (5).

(C) *Manufactured home notes.* In the case of an assigned note for a manufactured home loan, the principal amount of the debt is the unpaid amount of the loan obligation, as defined in § 201.55(b)(1) of this part, plus amounts described in §§ 201.55(b)(3) through (8).

(d) *Assigned judgments.* In the case of a judgment obtained by the lender on a property improvement loan or a manufactured home loan and assigned to the Secretary, the principal amount of the debt is the amount of the judgment.

§ 201.62 Claims against debtors—interest, penalties, and administrative costs.

(a) *Interest.* In addition to the principal amount of the debt, the debtor is liable for the payment of interest. Interest accrues on the principal amount of the debt as of the date of default, as defined in § 201.2(h) of this part, as follows:

(1) In the case of a debt based upon the assignment of a defaulted note, interest is assessed at the lesser of the rate specified in the note or the United States Treasury's current value of funds rate in effect on the date the Title I insurance claim was paid.

(2) In the case of a debt based upon the assignment of a judgment, interest is assessed at the lesser of the rate specified in the judgment or the United States Treasury's current value of funds rate in effect on the date the Title I insurance claim was paid.

(b) *Penalties and administrative costs.* The Secretary shall assess reasonable administrative costs and penalties as authorized in 31 U.S.C. 3717, unless there is no provision in the note providing for such charges and the debtor has not otherwise consented to liability for such charges.

§ 201.63 Claims against lenders.

Claims against lenders for money owed to the Department, including unpaid insurance charges and unpaid repurchase demands, shall be collected in accordance with 24 CFR part 17, subpart C.

Dated: August 23, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93–21750 Filed 9–8–93; 8:45 am]

BILLING CODE 4210–27–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL76–1–5908; FRL–4702–1]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: United States Environmental Protection Agency (U.S. EPA).

ACTION: Final rule.

SUMMARY: U.S. EPA is approving the State Implementation Plan (SIP) revision request submitted by the State of Illinois on June 2, 1993, for the purpose of implementing an emission statement program for stationary sources within the Chicago and St. Louis (Illinois' portion) ozone nonattainment areas. The implementation plan was submitted by the State to satisfy the Federal requirements for an emission statement program as part of the SIP for Illinois.

EFFECTIVE DATE: This action will be effective November 8, 1993 unless notice is received by October 12, 1993 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the requested SIP revision, technical support documents and public comments received are available at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604.

Comments on this rulemaking should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Hattie Gaisler, Regulation Development Section (AR–18), Regulation Development Branch, U.S. Environmental Protection Agency, 77

West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3199. Anyone wishing to come to Region 5 offices should contact Hattie Geisler first.

A copy of today's revision to the Illinois SIP is available for inspection at: Jerry Kurtzweg (ANR–443), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC. 20460.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On October 12, 1992, and June 2, 1993, the Illinois Environmental Protection Agency (IEPA) submitted to the U.S. EPA rules requiring emission statements (annual emission reports), codified as title 35 of the Illinois Administrative Code part 254 (35 IAC part 254). This submittal addresses the emission statement requirements which are found at section 182(a)(3)(B) of the Clean Air Act (Act), as amended (1990 Amendments).

Section 182(a)(3)(B) of the Act States that, within 2 years after the enactment of the 1990 amendments, by November 15, 1992, States with ozone nonattainment areas (classified as marginal or worse) must submit revisions to their SIPs to require the owners or operators of stationary sources of volatile organic compounds (VOC) or oxides of nitrogen (NOx) to provide the States with statements, in a form acceptable to the U.S. EPA, showing actual emissions of NOx and/or VOC from the sources. The first emission statements must be submitted to the States within 3 years of the enactment of the 1990 amendments by November 15, 1993. Subsequent statements are to be submitted annually thereafter. These statements must contain certifications of accuracy.

Section 182(a)(3)(B)(ii) of the Act specifies that the States may waive the emission statement requirements for any class or category of sources which emit less than 25 tons per year if the States, through the submission of base year emission inventories or periodic emission inventories (required to be submitted to the U.S. EPA every three years), provide for the reporting of the emissions from the exempted source classes or categories and if the reported emissions are determined using emission factors acceptable to the U.S. EPA.

II. Analysis of State Submittal

The criteria used to review the submitted SIP revisions are found in U.S. EPA's draft Guidance on the Implementation of an Emission Statement Program, (July 1992). It should be noted that this guideline has not been finalized, but does provide the best available guidance on the expected contents of emission statements and on the States' use of emission statements. Further revisions to this draft guidance were not available prior to final rulemaking on the Illinois SIP revision. Therefore, it is appropriate to use the July 1992 draft guidance in considering Illinois' current emission statement SIP revision submittals.

The July 1992 draft guidance describes the following requirements for emission statement SIP revisions:

1. Regardless of what minimum emission reporting level is established, if either VOC or NOx is emitted at or above the established minimum reporting level, the emissions of both VOC and NOx should be reported;

2. The emission statements should, at minimum, include the following information (specific data elements for each information category are discussed in the draft guidelines):

a. Certification of data accuracy;

b. Source identification information;

c. Source operating schedules;

d. Emissions information, including both annual and typical ozone season daily emissions;

e. Control equipment information; and,

f. Process data.

3. States must incorporate the emission statement data into an annual point source emissions report to be submitted to the U.S. EPA by July 1st of each year beginning in 1993;

4. In addition to the submittal of emission statements and the annual point source emissions report, the U.S. EPA is also requesting that States submit an Emissions Statement Status Report (ESSR) beginning by July 1, 1993. The ESSR is to be submitted quarterly each year until all applicable sources have submitted emission statements. The ESSR should individually list the source facilities that are delinquent in submitting emission statements. The ESSR should also include the total annual and typical ozone season day emissions from all source facilities submitting emission statements prior to the ESSR submittal;

5. States are required to use the data collected through the emission statement program to annually update the facility-specific data contained in the Aerometric Information Retrieval System (AIRS) by July 1st of each year;

6. States must commit to retain emission statement data and submittals for a period of at least 3 years; and,

7. Emission statement regulations developed by the States must be federally enforceable.

Illinois' submittal contains the adopted regulations that will establish the applicability of the regulations, the schedule for the submittal of emission statements, and the data to be included in emission statements. The submittal also includes evidence that at the time of the submittal, the State had held public hearings on the regulations.

As noted above, the emission statement regulations submitted on June 2, 1993, are codified at 35 IAC Part 254. The provisions of the regulations are outlined as follows:

Applicability

The applicability of the regulations is divided among three source subcategories. Subpart B of the regulations applies to the owner or operator of any source required to have an operating permit in accordance with 35 IAC Part 201 and that is permitted to emit 25 tons per year or more of any combination of regulated air pollutants. Subpart B of the regulations also applies to the owner or operator of any source required to have an operating permit in accordance with Section 39.5 of the Environmental Protection Act, the State's authorization of a permit program intended to satisfy the requirements of title V of the Act.

Subpart C of the regulations, which is meant to comply with U.S. EPA's emission statement guidelines, applies to the owner or operator of any source that has a potential to emit 25 tons per year or more of either VOC (defined to be Volatile Organic Material (VOM) in the State's regulations) or NO_x for all emission units at the source and which is located in any ozone nonattainment area in the State.

Subpart D of the regulations applies to the owner or operator of any source of regulated pollutants required to have an operating permit in accordance with 35 IAC Part 201 and which is not subject to Subpart B or C of the regulations.

Definitions

The emission statement regulations define a number of terms necessary to specify the applicability and requirements of the regulations. Some terms of special note are presented below.

Certifying individual is defined to be the individual responsible for the certification of the accuracy of the Annual Emissions Report (emissions statement) and who will take legal responsibility for the information reported in the emission statement.

Peak ozone season is defined to mean the months of June through August. "Typical ozone season day" is defined to mean any day, Monday through

Friday, representative of source operations during the peak ozone season.

Minimum Contents of Annual Emission Reports

At a minimum, regardless of which subpart of the regulations applies, the annual emission reports required from applicable sources must contain:

a. Source identification information including: (1) The source name, physical location, and mailing address; (2) the source's Standard Industrial Classification (SIC) code; (3) a source contact name; and (4) the telephone number of the source contact;

b. Source-wide totals of actual emissions for all regulated air pollutants emitted by the source; and,

c. A regulation specified data accuracy certification statement along with the full name, title, actual signature, date of signature, and telephone number of the certifying individual.

The minimum annual emission reports must be filed in paper form.

Failure to File Complete Emission Reports

Failure to file complete annual emission reports required by Subparts B, C, and D of the regulations shall be considered to be a violation of 35 IAC Part 201.302(a).

Additional Requirements Common to All Annual Emission Reports

a. If, after submitting an annual emissions report, the owner or operator of the source discovers an error in the data reported, the owner or operator must notify the IEPA of the error in writing. This error notification must be submitted to the IEPA within 30 days of the discovery of the error.

b. All records and calculations upon which the verified and reported data are based must be retained by the source for a minimum of 3 years following the filing of the annual emissions report.

c. The owner or operator of a source may submit additional data (beyond the data requirements of Subparts B, C, and D) on a voluntary basis. The State, however, may not require any additional monitoring which is not otherwise required by other applicable regulations or by permit conditions.

Requirements for Large Sources—Subpart B Requirements

a. At least 90 days prior to a source's deadline for filing an annual emissions report, the IEPA will provide the source with a Source Inventory Report and an Inventory Edit Summary. The Source Inventory Summary will contain all of the data fields required under the emission statement regulation. Where data have been previously provided, the IEPA will provide the data to the source for verification and update or correction. The information provided in the annual emissions report shall be based on the best information available to the owner or operator of the source.

b. Reporting Schedule

i. The first annual emissions report filed for all sources covered by Subpart B of the regulations shall be for the calendar year following the year in which the U.S. EPA approves the State's permit program pursuant to Title V of the Act. Once the State's permit program is approved, the annual emissions report must be filed with the IEPA each calendar year by May 1.

ii. Commencing with calendar year 1992, all sources subject to the applicability requirements of Subpart B of the regulations must file an annual emissions report pursuant to Subpart D of the regulation (discussed below). This must be done until such time as the source is required to file the first full annual emissions report required under i. above.

c. Contents of Subpart B Annual Emissions Reports

The information required in a Subpart B annual emissions report shall be requested by the IEPA and will include the information required in the applications for permits or permit renewals, including source identification, emissions information, operating data, control device information, and exhaust point information for each regulated air pollutant emitted by the source. This information must be provided for each emission unit or operation if such detail is required in the application for permits or permit renewals.

Requirements for VOC or NO_x Sources In Ozone Nonattainment Areas—Subpart C Requirements

a. Commencing with calendar year 1992, the owner or operator of any source subject to the Subpart C applicability requirements shall submit an annual emissions report to the IEPA including the information discussed below. If a source has a total potential to emit 25 tons per year or more of either VOC or NO_x for all emission units, the owner or operator of the source must provide the required information for both VOC and NO_x. For all regulated air pollutants emitted by the source except VOC and NO_x, the owner or operator must submit the minimum information discussed above.

b. At least 90 days prior to the source's deadline for filing the annual emissions report, the IEPA will provide the source with a Source Inventory Report containing all of the data fields for the information required. If the information requested in the data fields has been previously provided by the source, the IEPA will provide this data in the Source Inventory Report for verification and update by the owner or operator. The information on emissions shall be based on the best information available to the owner or operator.

Reporting Schedule

The filing deadline for calendar year 1992 is October 1, 1993. Annual emission reports will be due by May 1 of each subsequent year.

Contents of Subpart C Annual Emissions Reports

The annual emissions reports must contain the following information:

a. All information required for the minimum reporting requirements discussed above;

b. Emissions information for each emission unit producing or capable of producing either VOC or NO_x emissions including:

i. Annual actual emissions of VOC and/or NO_x;

ii. Actual VOC and/or NO_x emissions for the typical ozone season day;

iii. Startup, shutdown, and malfunction emissions of VOC and/or NO_x;

iv. Emission determination methods for each of the actual emission figures reported; and,

v. Emission factors;

c. Operating data for each emission unit including:

i. Percent annual throughput by season;

ii. Annual process rate;

iii. Peak ozone season daily process rate;

iv. Fuel usage data;

v. Physical characteristics of tanks;

vi. Tank data;

vii. Number of hours of operation per day for a normal operating schedule and for a typical ozone season day (if different from the normal operating schedule);

viii. Number of days of operation per week on the normal operating schedule and during the peak ozone season (if different from the normal operating schedule); and,

ix. Total actual hours of operation for the reporting year.

d. Control device information including:

i. Description of control methods;

ii. Percent capture efficiencies; and,

iii. Current control efficiencies in percent for VOC and/or NO_x; and,

e. Exhaust point parameters including:

i. Heights;

ii. Diameters;

iii. Flow rates; and,

iv. Exit temperatures.

Transition to Full Reporting by Subpart C Large Sources

Sources subject to Subpart C and which also satisfy the applicability requirements for Subpart B shall make the transition to full reporting for all regulated pollutants for Subpart B. The first annual emissions report for all regulated pollutants shall be for the calendar year following the year in which the U.S. EPA approves Illinois' permit program pursuant to title V of the Act.

Sources which are subject to Subpart C of the regulations, but which do not meet the applicability requirements of Subpart B shall not make the transition to full reporting, but shall continue to file annual emissions reports meeting the requirements of Subpart C of the regulations.

Reporting Requirements for Small Sources—Subpart D

At least 90 days prior to a source's deadline for filing an annual emissions report, the IEPA shall provide the source with a Source Inventory Report and an Inventory Edit Summary. The Source Inventory Report shall contain all data fields required under the emission statement regulation. If the information requested in the data fields has previously been provided by the source, the IEPA shall provide these data in the Source Inventory Report for verification and update by source owner or operator. The information provided by the source owner or operator must be based on the best information available.

Reporting Schedule

The first annual emissions report submitted pursuant to Subpart D shall be for the calendar year 1992 and shall be due by October 1, 1993. Thereafter, the annual emissions reports shall be filed with the IEPA by May 1 of subsequent years.

Contents

The annual emissions reports shall contain the information required for minimum reporting discussed above.

III. Rulemaking Action

IEPA's adopted annual emissions reporting regulations submitted on June 2, 1993, are acceptable under U.S. EPA's draft guidelines.

Because U.S. EPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on November 8, 1993. However, if we receive notice by October 12, 1993 that someone wishes to submit adverse comments, then U.S. EPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. U.S. EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This has been classified as a Table 2 action by the Regional Administrator under procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

U.S. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on U.S. EPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, U.S. EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, U.S. EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the U.S. EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA* 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Act, section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Volatile organic compounds.

Dated: August 20, 1993.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, chapter I, title I, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(7) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(97) On October 12, 1992, and June 2, 1993, the State of Illinois submitted a requested revision to the Illinois State Implementation Plan (SIP) intended to satisfy the requirements of section 182(a)(3)(B) of the Clean Air Act as amended in 1990. Included were State rules establishing procedures for the annual reporting of emissions of volatile organic material (VOM) and oxides of nitrogen (NO_x) as well as other regulated air pollutants by stationary sources in ozone nonattainment areas. Also included was a June 2, 1993, commitment letter from the Illinois Environmental Protection Agency (IEPA) to fulfill the reporting requirements of the United States Environmental Protection Agency by performing the following tasks:

(i) Update the AIRS Facility Subsystem using the annual emissions

report data. The 1992 data will be updated by December 31, 1993, and subsequent updates will be made by July 1st of each year.

(ii) Retain annual emissions reports for at least three (3) years.

(iii) Develop and submit Emissions Statement Status Reports (ESSR) on a quarterly basis each year until all applicable sources have submitted the required annual emissions reports. The report will show the total number of facilities from which emission statement data was requested, the number of facilities that met the provisions, and the number of facilities that failed to meet the provisions. Sources that are delinquent in submitting their emissions statements will be individually listed if they emit 500 tons per year or more of VOM or 2500 tons per year or more of NO_x. The report will also contain the emission data requested in Appendix F of the July 6, 1992 Draft Guidance on the Implementation of an Emission Statement Program.

(iv) All sources subject to the emission statement requirements must report, at a minimum, the information specified under subpart C of part 254 of chapter II of subtitle B of title 35 of the Illinois Administrative Code.

(A) Incorporation by reference. Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter II: Environmental Protection Agency, Part 254: Annual Emissions Report, adopted at 17 Illinois Register 7782, effective May 14, 1993.

(B) Other material. June 2, 1993, commitment letter.

[FR Doc. 93–21924 Filed 9–8–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[NM–12–1–5872; FRL–4700–6]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Revision to the State Implementation Plan; Addressing PM–10 for Anthony

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This action approves a revision to the New Mexico State Implementation Plan (SIP) addressing PM–10 for Anthony (a moderate nonattainment area for PM–10), including a request from the State, per section 188(f) of the amended Clean Air Act (CAA), for a waiver of the attainment date for Anthony. The EPA may grant such a waiver for a moderate PM–10 nonattainment area where the EPA determines that anthropogenic sources do not contribute significantly to violations of the PM–10 National Ambient Air Quality Standards (NAAQS) in the area. PM–10 is defined as particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

EFFECTIVE DATE: This action will become effective on October 12, 1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

Mr. Jerry Kurtzweg (ANR–443), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

New Mexico Environment Department, Air Quality Bureau, 1190 St. Francis Drive, room So. 2100, Santa Fe, New Mexico 87503.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T–AP), Air Programs Branch, U.S. Environmental Protection Agency (EPA) Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone (214) 655–7258.

SUPPLEMENTARY INFORMATION:

I. Background

Anthony, New Mexico (located in Dona Ana County, New Mexico), was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the CAA, upon enactment of the Clean Air Act Amendments (CAAA) of 1990.[1] Please reference 56 Federal Register (FR) 56694 (November 6, 1991) and 57 FR 13498, 13537 (April 16, 1992). The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts 1 and 4 of part D, title I of the CAA.

The EPA has issued a "General Preamble" describing the EPA's preliminary views on how the EPA intends to review SIPs and SIP revisions submitted under Title I of the CAA, including those State submittals containing moderate PM–10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)).

Those moderate PM–10 nonattainment areas designated nonattainment under section 107(d)(4) of the CAA were to submit SIPs to the EPA by November 15, 1991. The CAA outlined certain required items to be included in the SIPs. These required items, due November 15, 1991, unless otherwise noted, include: (1) A comprehensive, accurate, and current inventory of actual emissions from all sources of PM–10 in the nonattainment area (section 172(c)(3) of the CAA); (2) a permit program to be submitted by June 30, 1992, which meets the requirements of section 173 for the construction and operation of new and modified major stationary sources of PM–10 (section 189(a)(1)(A)); (3) a demonstration (including air quality modeling) that the plan provides for attainment of the PM–10 NAAQS as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable (section 189(a)(1)(B)); (4) provisions to assure that Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), for control of PM–10 will be implemented no later than December 10, 1993 (sections 172(c)(1) and 189(a)(1)(C)). For sources emitting insignificant (de minimis) quantities of PM–10, the EPA's policy is that it would be unreasonable and would not constitute RACM to require controls on the source (please reference 57 FR 13540). Also, when evaluating RACM and RACT, technological and economic feasibility determinations are to be conducted (57 FR 13540–44); (5) quantitative emission reduction milestones which are to be achieved every three years until the area is redesignated attainment and which demonstrate reasonable further progress (RFP) toward attaining the PM–10 NAAQS (section 189(c)); (6) contingency measures due November 15, 1993 (please reference 57 FR 13543), that are to be implemented if the EPA determines that the area has failed to make RFP or to attain the primary standards by the applicable date (section 172(c)(9)); and (7) control requirements for major stationary sources of PM–10 precursors, unless the EPA determines inappropriate. The

[1] The 1990 Amendments to the Clean Air Act made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the PM–10 National Ambient Air Quality Standards (see Pub. L. No. 101–549, 104 Stat. 2399). References herein are to the Clean Air Act, as amended, 42 U.S.C. sections 7401 *et seq.*

CAA, in section 189(e), states that control requirements applicable to major stationary sources of PM–10 will also be applicable to major stationary sources of PM–10 precursors, except where the Administrator determines that such sources do not significantly contribute to PM–10 levels that exceed the PM–10 ambient standards in the area.

II. Response to Comments

The EPA received no comments on its April 8, 1993 (58 FR 18190–18197), **Federal Register** proposal to approve the Anthony moderate nonattainment area PM–10 SIP, including the waiver request.

Final Action

Section 110(k) of the CAA sets out provisions governing the EPA's review of SIP submittals (see 57 FR 13565–66). In this final action, the EPA is granting approval of the Anthony, New Mexico, moderate nonattainment area PM–10 SIP, including the waiver of the moderate area attainment date for Anthony, because it meets all of the applicable requirements of the CAA.

This SIP revision was submitted to the EPA by cover letter from the Governor dated November 8, 1991. On April 8, 1993, the EPA announced its proposed approval of the moderate nonattainment area PM–10 SIP for Anthony, New Mexico, including the waiver of the attainment date for Anthony (58 FR 18190–18197). In that rulemaking action, the EPA described in detail its interpretations of Title I and its rationale for proposing to approve the Anthony PM–10 SIP, including the waiver request, taking into consideration the specific factual issues presented.

The EPA requested public comments on all aspects of the proposal (please reference 58 FR 18196), and no comments were received during the comment period, which ended on May 10, 1993. This final action on the Anthony PM–10 SIP, including the waiver request, is unchanged from the April 8, 1993, proposed approval action. The discussion herein provides only a broad overview of the proposed action the EPA is now finalizing. The public is referred to the April 8, 1993, proposed approval FR action for a full discussion of the action the EPA is now finalizing.

The EPA finds that the State of New Mexico's PM–10 SIP for the Anthony nonattainment area meets the RACM/RACT requirement. The EPA views the State's open burning regulation (Air Quality Control Regulation (AQCR) 301), previously approved by the EPA, as reasonable, enforceable, and responsible for maintaining the PM–10 emissions from trash burning at lower than de minimis levels. The EPA is approving the revised AQCR 301 to include the definition of "open burning" in order to strengthen the New Mexico SIP. Remaining anthropogenic sources as a whole are de minimis and RACM (including RACT) does not require the implementation of further controls. The EPA is also approving Dona Ana County's commitment to implementing and enforcing all Dona Ana County rules, regulations, policies and practices, including those identified in the PM–10 SIP which reduce airborne dust in the Anthony area (October 29, 1991, letter from the County to the State). These commitments regarding County control measures are being approved as measures beyond RACM which serve to strengthen the New Mexico (Anthony PM–10) SIP. The State of New Mexico also stated in the adopted Anthony PM–10 SIP (page 10) that it "remains committed to the dust control measures implemented by Dona Ana County," as well as to the "moderate area control strategies as agreed to in [the] SIP submittal and to the established air quality monitoring schedule." The State ratified its commitment in a November 21, 1991, letter from Cecilia Williams, Chief, Air Quality Bureau, to Gerald Pontenot, Chief, Air Programs Branch, EPA Region 6. The EPA is approving the State's commitment found in the Anthony SIP and in the November 21, 1991, letter. The overwhelmingly dominant sources of PM–10 concentrations in the Anthony area are nonanthropogenic emissions from the surrounding desert and residual nonanthropogenic emissions from surrounding rangelands which are not feasibly controllable.

Anthropogenic sources as a whole, after the implementation of reasonable controls, do not contribute significantly to violation of the PM–10 NAAQS in the Anthony nonattainment area. Therefore, the EPA is granting the State's request to waive the moderate area attainment date for Anthony pursuant to section 188(f) of the CAA. This final action on the State's attainment date waiver request is non-precedent setting, and the decision to grant a waiver is based on a current reading of the law and on facts specific to the Anthony, New Mexico nonattainment area. As the EPA refines its policy concerning waivers, areas may face different procedural and substantive showings under section 188(f).

The EPA is also granting the Anthony PM–10 nonattainment area the exclusion from PM–10 precursor control requirements authorized under section 189(e) of the CAA. Finally, to satisfy section 189(c) of the CAA (regarding quantitative milestones and RFP), the State of New Mexico must report to the EPA every three years, beginning on November 15, 1994, the following information regarding the Anthony nonattainment area:

(1) The status and effectiveness of the existing controls;

(2) Significant changes in the inventory due to new source growth or other activities; and

(3) An evaluation of any additional controls which may be feasible to reduce exposures and/or bring the area into attainment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

This action makes final the action proposed at 58 FR 18190. As noted elsewhere in this action, the EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 2 under the processing procedures established at 54 FR 2214, January 19, 1989.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v *U.S. E.P.A.*, 427

U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Executive Order 12291

This action has been classified as a table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for table 2 and 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on the EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Note: Incorporation by reference of the SIP for the State of New Mexico was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: August 23, 1993.

Joe D. Winkle,

Acting Regional Administrator (6A).

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

1. The Authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(50) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(50) A revision to the New Mexico State Implementation Plan (SIP) addressing moderate PM–10 nonattainment area requirements for Anthony was submitted by the Governor of New Mexico by letter dated November 8, 1991. The SIP revision included, as per section 188(f) of the Clean Air Act, a request for a waiver of the attainment date for Anthony.

(i) Incorporation by reference.

(A) Revision to New Mexico Air Quality Control Regulation 301—*Regulation to Control Open Burning,* section I (definition of "open burning"), as filed with the State Records and Archives Center on February 7, 1983.

(ii) Additional material.

(A) November 8, 1991, narrative plan addressing the Anthony moderate PM–10 nonattainment area, including emission inventory, modeling analyses, and control measures.

(B) A letter dated October 29, 1991, from Judith M. Price, Dona Ana County Planning Director and Assistant County Manager, to Judith M. Espinosa, Secretary of the New Mexico Environment Department, in which the County committed to implement and enforce all Dona Ana County rules, regulations, policies and practices, including those identified in the draft PM–10 SIP which reduce airborne dust in the Anthony area. The Dona Ana County rules, regulations, policies and practices identified in the draft Anthony PM–10 SIP are identical to those identified in the final Anthony PM–10 SIP.

(C) A letter dated November 21, 1991, from Cecilia Williams, Chief, New Mexico Air Quality Bureau, to Gerald Fontenot, Chief, Air Programs Branch, EPA Region 6, expressing satisfaction with the October 29, 1991, commitment letter from Judith Price to Judith Espinosa.

(D) Anthony PM–10 SIP narrative from page 10 that reads as follows: "The State remains committed to the dust control measures implemented by Dona Ana County, moderate area control strategies as agreed to in this SIP submittal and to the established air quality monitoring schedule."

[FR Doc. 93–21921 Filed 9–8–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[OR–22–1–5635; FRL–4150–2]

Approval and Promulgation of Implementation Plans; Oregon

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In this action, Environmental Protection Agency (EPA) approves numerous amendments to the Lane Regional Air Pollution Authority's (LRAPA) rules for the control of air pollution in Lane County, Oregon as revisions to the Oregon state implementation plan (SIP). These revisions were submitted by the Director of the Oregon Department of Environmental Quality (ODEQ) on May 30, 1986; December 5, 1986; May 8, 1987; March 3, 1989; March 12, 1990; June 8, 1990; and November 15, 1991 in accordance with the requirements of section 110 of the Clean Air Act (hereinafter the Act). In accordance with Oregon statutes, LRAPA rules must be at least as stringent as the ODEQ statewide rules.

EFFECTIVE DATE: This action will be effective on November 8, 1993 unless notice is received by October 12, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air Programs Branch, AT–082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW, Washington, DC. Copies of material submitted to EPA may be examined during normal business hours at the following locations: Air & Radiation Branch, Environmental Protection Agency, Docket #OR22–1–5635, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101, and Oregon Department of Environmental Quality, 811 S.W. Sixth, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, AT–082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–4253.

SUPPLEMENTARY INFORMATION:

I. Background

On May 30, 1986 the Director of the Oregon Department of Environmental Quality (ODEQ) submitted a completely revised and updated implementation plan for the State of Oregon. Included in this updated plan were then current rules for the Lane Regional Air Pollution Authority (LRAPA). Further revisions to the LRAPA rules were submitted by the Director of the ODEQ on December 5,

1986; May 8, 1987; March 3, 1989; March 12, 1990; June 8, 1990; and November 15, 1991. On July 30, 1991 (56 FR 36006), EPA approved most of the May 30, 1986 updated SIP. However, EPA did not take action on the LRAPA rules at that time, since there were subsequent revisions to the LRAPA rules which needed to be evaluated and acted upon. In this rulemaking, EPA is taking final action on all seven of the submitted revisions to the LRAPA rules.

II. Description of Plan Revisions

The LRAPA rules submitted on May 30, 1986 were essentially those rules in effect as of September 10, 1985. This rulemaking action includes revisions to the following Titles of the EPA-approved LRAPA rules: Title 11 Policy and General Provisions; Title 12 General Duties and Powers of Board and Director; Title 13 Enforcement Procedures; Title 31 Ambient Air Standards; Title 32 Emission Standards; and Title 33 Prohibited Practices and Control of Special Classes. It included the addition of the following new Titles: Title 14 Definitions; Title 34 Air Contaminant Discharge Permits; Title 38 New Source Review; and Title 47 Rules for Open Outdoor Burning. It also included the rescission of Title 21 Registration, Reports and Test Procedures; Title 22 Permits; and Title 36 Rules for Open Outdoor Burning. Finally, it requested the removal from the SIP of Title 20 Indirect Sources; Title 42 Rules of Practice and Procedure—Hearing Procedure; Title 44 Rules of Practice and Procedure—Evidence; and Title 45 Rules of Practice and Procedure—Decision and Appeal.

The December 5, 1986 submittal included revisions to Title 14 Definitions and Title 38 New Source Review to implement revised EPA regulations regarding creditable stack heights.

The May 8, 1987 submittal included revisions to Title 34 Air Contaminant Discharge Permits which updated the table of air contaminant sources and associated fee schedule.

The March 3, 1989 submittal included revisions to the following Titles: Title 14 Definitions; Title 34 Air Contaminant Discharge Permits; Title 38 New Source Review; and Title 51 Air Pollution Emergencies. It also revised and repromulgated Title 31 as Title 50 Ambient Air Standards. These revisions were made to implement EPA's revised ambient air quality standard for particulate matter and to update the table of air contaminant sources as associated fee schedule.

The March 12, 1990 submittal included further revisions to Title 34 Air Contaminant Discharge Permits.

The June 8, 1990 submittal revised and repromulgated Title 13 Enforcement Procedures as Title 15 Enforcement Procedure and Civil Penalties.

The November 15, 1991 submittal included a new Title 12 Definitions; further revisions to Title 34 Air Contaminant Discharge Permits and Title 38 New Source Review; and resubmittals of Title 50 Ambient Air Standards and Title 51 Air Pollution Emergencies (previously submitted on March 3, 1989). These rules were submitted as supporting provisions for the control strategy for the Eugene-Springfield PM_{10} nonattainment areas.

Under Oregon statutes, rules of any local air pollution control authority must be at least as stringent as the statewide rules of the Oregon Department of Environmental Quality. Since EPA has already approved the statewide rules as meeting the requirements of the Act (July 30, 1991 (56 FR 36006)), EPA is approving the LRAPA rules as well.

III. Summary of EPA Action

In this action, EPA approves numerous revisions to the LRAPA rules as revisions to the Oregon SIP. Specifically, EPA approves:

(1) Revisions to Title 11, Title 12, Title 32, and Title 33; the addition of Title 14, Title 34, Title 38, and Title 47; the rescission of Title 21, Title 22, and Title 36; and the removal from the SIP of Title 20, Title 42, Title 44, and Title 45 submitted on May 31, 1986;

(2) Revisions to Title 14 and Title 38 submitted on December 5, 1986;

(3) Revisions to Title 34 submitted on May 8, 1987;

(4) Revisions to Title 14, Title 34, Title 38, and Title 51 and the revised and repromulgated Title 50 (previously Title 31) submitted on March 3, 1989;

(5) Revisions to Title 34 submitted on March 12, 1990;

(6) The revised and repromulgated Title 15 (previously Title 13) submitted on June 8, 1990; and

(7) The new Title 12 and revisions to Title 34 and Title 38 submitted on November 15, 1991.

Note that EPA is approving two different provisions which are both titled "Title 12" as submitted—"Title 12 General Duties and Powers of Board and Director" submitted on May 31, 1986 and "Title 12 Definitions" submitted on November 15, 1991. EPA is also approving two different Titles that cover definitions—"Title 14 Definitions" submitted on May 31, 1986, December 5, 1986, and March 3, 1989, and "Title 12 Definitions" submitted on November 15, 1991 because there was no request to replace the previously submitted Title 14 with Title 12 nor any indication that Title 14 had been rescinded from the previously adopted and submitted SIP revisions.

IV. Administrative Review

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (46 FR 8709).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table

2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for permanent waiver for Table 2 and 3 revisions. OMB has agreed to continue to temporary waiver until such time as it rules on EPA's request.

The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on any or all of these revisions approved herein, the action on these revisions will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on those revisions and another will begin a new rulemaking by announcing a proposal of the action on these revisions and establish a comment period.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 42 U.S.C. 7607(b)(2))

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: August 25, 1993.

Gerald A. Emison,

Acting Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(96) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(96) On May 30, 1986, December 5, 1986, May 8, 1987, March 3, 1989, March 12, 1990, June 8, 1990, and November 15, 1991, the Director of the Department of Environmental Quality submitted revisions to the State of Oregon's Air Quality Control Plan Volume 2 (The Federal Clean Air State Implementation Plan and Other State Regulations). The revisions updated the Lane Regional Air Pollution Authority rules by adding new Titles 12, 14, 34, 38, and 47; revising existing Titles 11, 12, 15 (previously Title 13), 32, 33, 50 (previously Title 31), and 51; rescinding existing Titles 21, 22, and 36; and removing existing Titles 20, 42, 44, and 45 from the EPA-approved state implementation plan.

(i) Incorporation by reference.

(A) May 30, 1986 letter from the Director of the Oregon Department of Environmental Quality (ODEQ) to EPA Region 10 submitting amendments to the Oregon state implementation plan. Revisions were to: Title 11 (Policy and General Provisions), Title 12 (General Duties and Powers of Board and Director), Title 14 (Definitions), Title 32 (Emission Standards) and Title 33 (Prohibited Practices and Control of Special Classes), Title 34 (Air Contaminant Discharge Permits), Title 38 (New Source Review), and Title 47 (Rules for Open Outdoor Burning) as adopted by the Environmental Quality Commission on April 25, 1986 and state effective on May 8, 1986.

(B) December 5, 1986 letter from the Director of ODEQ to EPA Region 10 submitting amendments to the Oregon state implementation plan. Revisions were to: Title 14 (Definitions) and Title 38 (New Source Review) as adopted by the Environmental Quality Commission on October 24, 1986 and state effective on October 24, 1986.

(C) May 8, 1987 letter from the Director of ODEQ to EPA Region 10 submitting amendments to the Oregon state implementation plan. Revisions were to: Title 34 (Air Contaminant Discharge Permits) as adopted by the Environmental Quality Commission on April 17, 1987 and state effective on April 22, 1987.

(D) March 3, 1989 letter from the Director of ODEQ to EPA Region 10 submitting amendments to the Oregon state implementation plan. Revisions were to: Title 34 (Air Contaminant Discharge Permits), as adopted by the Environmental Quality Commission on November 4, 1988 and state effective on December 20, 1988.

(E) March 3, 1989 letter from the Director of ODEQ to EPA Region 10 submitting amendments to the Oregon state implementation plan. Revisions were to: Title 14 (Definitions), Title 31 which was revised and repromulgated as Title 50 (Ambient Air Standards), Title 38 (New Source Review), and Title 51 (Air Pollution Emergencies), as adopted by the Environmental Quality Commission on November 4, 1988 and state effective on December 20, 1988.

(F) March 12, 1990 letter from ODEQ to EPA Region 10 submitting amendments to the Oregon state implementation plan. Revisions were to: Title 34 (Air Contaminant Discharge Permits) as adopted by the Environmental Quality Commission on March 2, 1990 and state effective on February 14, 1991.

(G) June 8, 1990 letter from the Director of ODEQ to EPA Region 10 submitting amendments to the Oregon state implementation plan. Revisions were to: Title 13 (Enforcement Procedures) which was revised and repromulgated as Title 15 (Enforcement Procedures and Civil Penalties) as adopted by the Environmental Quality Commission on May 25, 1990 and state effective on February 14, 1991.

(H) November 15, 1991 letter from the Director of ODEQ to EPA Region 10 submitting amendment to the Oregon state implementation plan. Revisions were a new Title 12 (Definitions), and changes to Title 34 (Air Contaminant Discharge Permits) and Title 38 (New Source Review) as adopted by the Environmental Quality Commission on November 8, 1991 and state effective on November 13, 1991.

(I) August 26, 1993 supplemental information letter from ODEQ to EPA Region 10 assuring EPA that draft and proposed regulations submitted from Lane Regional Air Pollution Authority (LRAPA) as final versions of the rules were in fact made final with no change.

3. Section 52.1977 is revised to read as follows:

§ 52.1977 Content of approved State submitted implementation plan.

The following sections of the State air quality control plan (as amended on the dates indicated) have been approved and are part of the current state implementation plan.

State of Oregon Air Quality Control Program

Volume 2—The Federal Clean Air Act Implementation Plan (and Other State Regulations)

Section

1. Introduction (1–86)
2. General Administration (1–86)

2.1 Agency Organization (1–86)
2.2 Legal Authority (1–86)
2.3 Resources (1–86)
2.4 Intergovernmental Cooperation and Consultation (1–86)
2.5 Miscellaneous Provisions (1–86)
3. Statewide Regulatory Provisions
3.1 Oregon Administrative Rules—Chapter 340 (1–86)

Division 12—Civil Penalties

Sec. 030 Definitions (11–8–84)
Sec. 035 Consolidation of Proceedings (9–25–74)
Sec. 040 Notice of Violation (12–3–85)
Sec. 045 Mitigating and Aggravating Factors (11–8–84)
Sec. 050 Air Quality Schedule of Civil Penalties (11–8–84)
Sec. 070 Written Notice of Assessment of Civil Penalty; When Penalty Payable (9–25–74)
Sec. 075 Compromise or Settlement of Civil Penalty by Director (11–8–84)

Division 14—Procedures for Issuance, Denial, Modification, and Revocation of Permits (4–15–72)

Sec. 005 Purpose (4–15–72)
Sec. 007 Exceptions (6–10–88)
Sec. 010 Definitions (4–15–72), except (3) "Director" (6–10–88)
Sec. 015 Type, Duration, and Termination of Permits (12–16–76)
Sec. 020 Application for a Permit (4–15–72), except (1), (4)(b), (5) (6–10–88)
Sec. 025 Issuance of a Permit (4–15–72), except (2), (3), (4), (5), (6) (6–10–88)
Sec. 030 Renewal of a Permit (4–15–72)
Sec. 035 Denial of a Permit (4–15–72)
Sec. 040 Modification of a Permit (4–15–72)
Sec. 045 Suspension or Revocation of a Permit (4–15–72)
Sec. 050 Special Permits (4–15–72)

Division 20—General

Sec. 001 Highest and Best Practicable Treatment and Control Required (3–1–72)
Sec. 003 Exceptions (3–1–72)

Registration

Sec. 005 Registration in General (9–1–70)
Sec. 010 Registration requirements (9–1–70)
Sec. 015 Re-registration (9–1–70)

Notice of Construction and Approval of Plans

Sec. 020 Requirement (9–1–70)
Sec. 025 Scope (3–1–72)
Sec. 030 Procedure (9–1–72), except (4)(a) Order Prohibiting Construction (4–14–89)
Sec. 032 Compliance Schedules (3–1–72)

Sampling, Testing, and Measurement of Air Contaminant Emissions

Sec. 035 Program (9–1–70)
Sec. 037 Stack Heights & Dispersion Techniques (5–12–86)
Sec. 040 Methods (9–11–70)
Sec. 045 Department Testing (9–1–70)
Sec. 046 Records; Maintaining and Reporting (10–1–72)
Sec. 047 State of Oregon Clean Air Act, Implementation Plan (9–30–85)

Air Contaminant Discharge Permits

Sec. 140 Purpose (1–6–86)
Sec. 145 Definitions (1–6–76)
Sec. 150 Notice Policy (6–10–88)
Sec. 155 Permit Required (5–31–83)
Sec. 160 Multiple-Source Permit (1–6–76)
Sec. 165 Fees (3–14–86)
Sec. 170 Procedures For Obtaining Permits (1–11–74)
Sec. 175 Other Requirements (6–29–79)
Sec. 180 Registration Exemption (6–29–79)
Sec. 185 Permit Program For Regional Air Pollution Authority (1–6–76)

Conflict of Interest

Sec. 200 Purpose (10–13–78)
Sec. 205 Definitions (10–13–78)
Sec. 210 Public Interest Representation (10–13–78)
Sec. 215 Disclosure of Potential Conflicts of Interest (10–13–78)

New Source Review

Sec. 220 Applicability (9–8–81)
Sec. 225 Definitions (10–16–84)
Sec. 230 Procedural Requirements (10–16–84), except (3)(d) (6–10–88)
Sec. 235 Review of New Sources and Modifications for Compliance With Regulations (9–8–81)
Sec. 240 Requirements for Sources in Nonattainment Areas (4–18–83)
Sec. 245 Requirements for Sources in Attainment or Unclassified Areas (Prevention of Significant Deterioration) (10–16–85)
Sec. 250 Exemptions (9–8–81)
Sec. 255 Baseline for Determining Credit for Offsets (9–8–81)
Sec. 260 Requirements for Net Air Quality Benefit (4–18–83)
Sec. 265 Emission Reduction Credit Banking (4–18–83)
Sec. 270 Fugitive and Secondary Emissions (9–8–81)
Sec. 275 Repealed
Sec. 276 Visibility Impact (10–16–85)

Plant Site Emission Limits

Sec. 300 Policy (9–8–81)
Sec. 301 Requirement for Plant Site Emission Limits (9–8–81)
Sec. 305 Definitions (9–8–81)
Sec. 310 Criteria for Establishing Plant Site Emission Limits (9–8–81)
Sec. 315 Alternative Emission Controls (9–8–81)
Sec. 320 Temporary PSD Increment Allocation (9–8–81)

Stack Heights and Dispersion Techniques

Sec. 340 Definitions (4–18–83)
Sec. 345 Limitations (4–18–83)
Sec. 350 Purpose and Applicability (1–2–91)
Sec. 355 Definitions (1–2–91)
Sec. 360 Planned Startup and Shutdown (1–2–91)
Sec. 365 Scheduled Maintenance (1–2–91)
Sec. 370 Upsets and Breakdowns (1–2–91)
Sec. 375 Reporting Requirements (1–2–91)
Sec. 380 Enforcement Action Criteria (1–2–91)

Division 21—Industrial Contingency Requirements for PM–10 Nonattainment Areas

Sec. 200 Purpose (11–13–91)
Sec. 205 Relation to Other Rules (11–13–91)
Sec. 210 Applicability (11–13–91)
Sec. 215 Definitions (11–13–91)
Sec. 220 Compliance Schedule for Existing Sources (11–13–91)
Sec. 225 Wood-Waste Boilers (11–13–91)
Sec. 230 Wood Particulate Dryers at Particleboard Plants (11–13–91)
Sec. 235 Hardboard Manufacturing Plants (11–13–91)
Sec. 240 Air Conveying Systems (11–13–91)
Sec. 245 Fugitive Emissions (11–13–91)

Division 22—General Gaseous Emissions Sulfur Content of Fuels

Sec. 005 Definitions (3–1–72)
Sec. 010 Residual Fuel Oils (8–25–77)
Sec. 015 Distillate Fuel Oils (3–1–72)
Sec. 020 Coal (1–29–82)
Sec. 025 Exemptions (3–1–72)

General Emission Standards for Sulfur Dioxide

Sec. 050 Definitions (3–1–72)
Sec. 055 Fuel Burning Equipment (3–1–72)
Sec. 300 Reid Vapor Pressure for Gasoline, except that in Paragraph (6) only sampling procedures and test methods specified in 40 CFR Part 80 are approved (6–15–89)

Division 23—Rules for Open Burning

Sec. 022 How to Use These Open Burning Rules (9–8–81)
Sec. 025 Policy (9–8–81)
Sec. 030 Definitions (6–16–84) (15) "Disease and Pest Control" (11–13–91)
Sec. 035 Exemptions, Statewide (6–16–84)
Sec. 040 General Requirements Statewide (9–8–81)
Sec. 042 General Prohibitions Statewide (6–16–84)
Sec. 043 Open Burning Schedule (11–13–91)
Sec. 045 County Listing of Specific Open Burning Rules (9–8–81)
Sec. 090 Coos, Douglas, Jackson and Josephine Counties (11–13–91)

Open Burning Prohibitions

Sec. 055 Baker, Clatsop, Crook, Curry, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco and Wheeler Counties (9–8–81)
Sec. 060 Benton, Linn, Marion, Polk, and Yamhill Counties (6–16–84)
Sec. 065 Clackamas County (6–16–84)
Sec. 070 Multnomah County (6–16–84)
Sec. 075 Washington County (6–16–84)
Sec. 080 Columbia County (9–8–81)
Sec. 085 Lane County (6–16–84)

Sec. 090 Coos, Douglas, Jackson and Josephine Counties (9–8–81)
Sec. 100 Letter Permits (6–16–84)
Sec. 105 Forced Air Pit Incinerators (9–8–81)
Sec. 110 Records and Reports (9–8–81)
Sec. 115 Open Burning Control Areas (6–16–84)

Division 24—Motor Vehicles

Motor Vehicle Emission Control Inspection Test Criteria, Methods and Standards

Sec. 300 Scope (4–1–85)
Sec. 301 Boundary Designations (9–12–88)
Sec. 305 Definitions (4–1–85)
Sec. 306 Publicly Owned and Permanent Fleet Vehicle Testing Requirements (12–31–83)
Sec. 307 Motor Vehicle Inspection Program Fee Schedule (8–1–81)
Sec. 310 Light Duty Motor Vehicle Emission Control Test Method (9–12–88)
Sec. 315 Heavy Duty Gasoline Motor Vehicle Emission Control Test Method (12–31–83)
Sec. 320 Light Duty Motor vehicle Emission Control Test Criteria (9–12–88)
Sec. 325 Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria (9–12–88)
Sec. 330 Light Duty Motor Vehicle Emission Control Cutpoints or Standards (8–1–81) Subpart (3) (9–12–86)
Sec. 335 Heavy Duty Gasoline Motor Vehicle Emission Control Emission Standards (9–12–86)
Sec. 340 Criteria for Qualifications of Persons Eligible to Inspect Motor Vehicles and Motor Vehicle Pollution Control Systems and Execute Certificates (12–31–83)
Sec. 350 Gas Analytical System Licensing Criteria (9–12–88)

Division 25—Specific Industrial Standards

Construction and Operation of Wigwam Waste Burners

Sec. 005 Definitions (3–1–72)
Sec. 010 Statement of Policy (3–1–72)
Sec. 015 Authorization to Operate a Wigwam Burner (3–1–72)
Sec. 020 Repealed
Sec. 025 Monitoring and Reporting (3–1–72)

Hot Mix Asphalt Plants

Sec. 105 Definitions (3–1–73)
Sec. 110 Control Facilities Required (3–1–73)
Sec. 115 Other Established Air Quality Limitations (3–1–73)
Sec. 120 Portable Hot Mix Asphalt Plants (4–18–83)
Sec. 125 Ancillary Sources of Emission—Housekeeping of Plant Facilities (3–1–73)

Primary Aluminum Plants

Sec. 255 Statement of Purpose (6–18–82)
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4. Section 52.1987 is revised to read as follows:

§ 52.1987 Significant deterioration of air quality.

(a) The Oregon Department of Environmental Quality rules for prevention of significant deterioration of air quality (OAR 340–20–220 through 270; OAR 340–20–340 and 345; and OAR 340–31–100, 105 subsections (12), (15) and (16), 110, 115, 120 and 130) are approved as meeting the requirements of part C.

(b) The Lane Regional Air Pollution Authority rules for permitting new and modified major stationary sources (Title 38 New Source Review) are approved, in conjunction with the Oregon Department of Environmental Quality rules, in order for the Lane Regional Air Pollution Authority to issue prevention of significant deterioration permits within Lane County.

(c) The requirements of sections 160 through 165 of the Clean Air Act are not met for Indian reservations since the plan does not include approvable procedures for preventing the significant deterioration of air quality on Indian reservations and, therefore, the provisions of § 52.21 (b) through (w) are hereby incorporated and made part of the applicable plan for Indian reservations in the State of Oregon.

5. Section 52.1988(b) is revised to read as follows:

§ 52.1988 Air contaminant discharge permits.

(b) Emission limitations and other provisions contained in Air Contaminant Discharge Permits issued by the Lane Regional Air Pollution Authority in accordance with the provisions of the federally-approved Air Contaminant Discharge Permits rule (Title 34) and Plant Site Emission Limit rules (Title 32, Section 32–100 through 104) and in conjunction with the federally-approved Oregon Department of Environmental Quality rules, except alternative emission limits (bubbles) for sulfur dioxide or total suspended particulates which involve trades where the sum of the increases in emissions exceeds 100 tons per year, shall be the applicable requirements of the federally-approved Oregon SIP (in lieu of any other provisions) for the purposes of section 113 of the Clean Air Act and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP.

[FR Doc. 93–21922 Filed 9–8–93; 8:45 am]
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40 CFR Parts 52 and 81

[NC58–1–5989; FRL–4700–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of North Carolina

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On November 13, 1992, the State of North Carolina, through the North Carolina Department of Environment, Health, and Natural Resources (NCDEHNR), submitted a maintenance plan and a request to redesignate the Greensboro/Winston-Salem/High Point area (classified as a moderate nonattainment area) from nonattainment to attainment for ozone (O_3). The O_3 nonattainment area includes the following counties: Forsyth, Guilford, Davidson, and the portion of Davie bounded by the Yadkin River, Dutchman's Creek, North Carolina Highway 801, Fulton Creek, and back to the Yadkin River. Under the Clean Air Act, designations can be changed if sufficient data are available to warrant such changes. In this action, EPA is approving the State of North Carolina's submittal because it meets the maintenance plan and redesignation requirements. The approved maintenance plan will become a federally enforceable part of the SIP for

the Greensboro/Winston-Salem/High Point area.

On January 15, 1993, in a letter from Patrick Tobin to Governor James Hunt, the EPA notified the State of North Carolina that the EPA had made a finding of failure to submit required programs for the nonattainment area. The required submittals pertained to Emission Statements, New Source Review (NSR), VOC RACT catch-ups, Stage II Regulations, and the Inspection and Maintenance (I/M) Program. Furthermore, the letter stated that the sanctions and Federal Implementation Plan (FIP) process would stop upon final approval of submitted corrections to the SIP. The NCDEHNR submitted its request for the redesignation of the Greensboro/Winston-Salem/High Point area prior to the statutory due date for the programs mentioned above. Therefore, this redesignation request is considered to be a correction to the SIP and upon its final approval the sanctions and FIP processes will stop completely.

EFFECTIVE DATE: This action will be effective November 8, 1993, unless notice is received by October 12, 1993, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be sent to Bill Eckert at the EPA address in Atlanta, Georgia listed below. Copies of the redesignation request and the State of North Carolina's submittal are available for public review during normal business hours at the addresses listed below. EPA's technical support document (TSD) is available for public review during normal business hours at the EPA addresses listed below.

Public Information Reference Unit, Attn: Jerry Kurtzwig AN 443, Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE, Atlanta, GA, 30365.

North Carolina Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 North Salisbury Street, Raleigh, North Carolina, 27604.

Forsyth County Environmental Affairs Department, 537 North Spruce Street, Winston-Salem, North Carolina, 27101–1362.

FOR FURTHER INFORMATION CONTACT: Bill Eckert of the EPA Region IV Air Programs Branch at (404) 347–2864 and at the above address.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.) Under section 107(d)(1), in conjunction with the Governor of North Carolina, EPA designated the Greensboro/Winston-Salem/High Point area as nonattainment because the area violated the O_3 standard during the period from 1987 through 1989. Furthermore, upon designation, the Greensboro/Winston-Salem/High Point area was classified as moderate under section 181(a)(1). (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR Part 81 § 334.)

The Greensboro/Winston-Salem/High Point area more recently has ambient monitoring data that show no violations of the O_3 National Ambient Air Quality Standards (NAAQS), during the period from 1989 through 1992. In addition, there have been no violations reported for the 1993 O_3 season, to date. Therefore, in an effort to comply with the amended Act and to ensure continued attainment of the NAAQS, on November 13, 1992, the State of North Carolina submitted for parallel processing an O_3 maintenance SIP for the Greensboro/Winston-Salem/High Point area and requested redesignation of the area to attainment with respect to the O_3 NAAQS. On January 13, 1993, the NCDEHNR submitted evidence that a public hearing was held on the maintenance plan and on July 8, 1993, the maintenance plan became State effective.

On August 11, 1993, Region IV determined that the information received from the NCDEHNR constituted a complete redesignation request under the general completeness criteria of 40 CFR part 51, appendix V, sections 2.1 and 2.2. However, for purposes of determining what requirements are applicable for redesignation purposes, EPA believes it is necessary to identify when NCDEHNR first submitted a redesignation request that meets the completeness criteria. EPA noted in a previous policy memorandum that parallel processing requests for submittals under the amended Act, including redesignation submittals, would not be determined complete. See "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines" Memorandum from John Calcagni to Air Programs Division Directors, Regions I–X, dated October 28, 1992 (Memorandum). The rationale for this conclusion was that the parallel processing exception to the completeness criteria (40 CFR part 51, appendix V, section 2.3) was not intended to extend statutory due dates for mandatory submittals. (See Memorandum at 3–4). However, since requests for redesignation are not mandatory submittals under the CAA, EPA believes that it must change its policy with respect to redesignation submittals to conform to the existing completeness criteria. Therefore, EPA believes, the parallel processing exception to the completeness criteria may be applied to redesignation request submittals, at least until such time as the Agency decides to revise that exception. NCDEHNR submitted a redesignation request on November 13, 1992. In the November 13 submittal, NCDEHNR submitted the maintenance plan, thereby including the final element to make the November 13, 1992, request for parallel processing complete under the parallel processing exception to the completeness criteria. When the maintenance plan became state effective on July 8, 1993, the State of North Carolina no longer needed parallel processing for the redesignation request and maintenance plan. Therefore, the EPA informed the State of North Carolina on August 11, 1993, through a letter from Douglas Neeley to Preston Howard, that the redesignation request and maintenance plan submittals were complete under the general completeness criteria.

II. Review of State Submittal

The North Carolina redesignation request for the Greensboro/Winston-Salem/High Point area meets the five requirements of section 107(d)(3)(E) for redesignation to attainment. The following is a brief description of how the State of North Carolina has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

1. The Area Must Have Attained the O_3 NAAQS

The State of North Carolina's request is based on an analysis of quality assured ambient air quality monitoring data which is relevant to the maintenance plan and to the redesignation request. Most recent ambient air quality monitoring data for calendar year 1989 through calendar year 1992 show an expected exceedence rate of less than 1.0 per year of the O_3 NAAQS in the Greensboro/Winston-Salem/High Point area. (See 40 CFR 50.9 and appendix H.) Because the

Greensboro/Winston-Salem/High Point area has complete quality-assured data showing no violations of the standard over the most recent consecutive three calendar year period, the Greensboro/Winston-Salem/High Point area has met the first statutory criterion of attainment of the O_3 NAAQS. In addition, there have been no violations reported for the 1993 O_3 season, to date. The State of North Carolina has committed to continue monitoring in this area in accordance with 40 CFR part 58.

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D of the Act

On April 17, 1980, and on September 10, 1980, EPA fully approved North Carolina's SIP as meeting the requirements of section 110(a)(2) and Part D of the 1977 Act (45 FR 26038 and 45 FR 59578). The amended Act, however, revised section 110(a)(2) and, under Part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, to meet the requirement that the SIP contain all applicable requirements under the Act, EPA reviewed the North Carolina SIP and ensures that it contains all measures due under the amended Act prior to or at the time the State of North Carolina submitted its redesignation request.

A. Section 110 Requirements

Although Section 110 was amended by the CAA, the Greensboro/Winston-Salem/High Point area SIP meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. As to those requirements that were amended, *see* 57 FR 27936 and 57 FR 27939 (June 23, 1992), many are duplicative of other requirements of the Act. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2).

B. Part D Requirements

Before the Greensboro/Winston-Salem/High Point area may be redesignated to attainment, it also must have fulfilled the applicable requirements of Part D. Under Part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of Part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of Part D establishes additional requirements for O_3 nonattainment areas classified under table 1 of section 181(a). The Greensboro/Winston-Salem/High Point area is classified as moderate (See 56 FR 56694, codified at 40 CFR 81.334). The State of North Carolina submitted their request for redesignation of the Greensboro/Winston-Salem/High Point area prior to November 15, 1992. Therefore, in order to be redesignated to attainment, the State of North Carolina must meet the applicable requirements of Subpart 1 of Part D, specifically sections 172(c) and 176, but is not required to meet the applicable requirements of Subpart 2 of Part D, which became due on or after November 15, 1992.

B1. Subpart 1 of Part D—Under section 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than 3 years after an area has been designated to nonattainment. EPA has not determined that these requirements were applicable to O_3 nonattainment areas on or before November 13, 1992, the date that the State of North Carolina submitted a complete redesignation request for the Greensboro/Winston-Salem/High Point area. Therefore, the State of North Carolina was not required to meet these requirements for purposes of redesignation. Upon redesignation of this area to attainment, the Prevention of Significant Deterioration (PSD) provisions contained in Part C of Title I are applicable. On December 30, 1976, and on February 23, 1982, the EPA approved the State of North Carolina's PSD program (41 FR 56805 and 47 FR 78376).

B2. Subpart 1 of Part D—Section 176 Conformity Plan Provisions Section 176 of the Act requires States to develop transportation/air quality conformity procedures which are consistent with federal conformity regulations. Section 176 provides that EPA must develop federal conformity regulations, requiring states to submit these procedures as a SIP revision by November 15, 1992. EPA has not promulgated final conformity regulations; therefore, no regulatory submittal date has been established. However, the State of North Carolina has committed in their maintenance plan to revise the SIP to be consistent with the final federal regulations on conformity upon promulgation of these rules. In addition, the State Air Quality Section will work closely with the State Department of Transportation (DOT) and local transportation agencies to assure that Transportation Improvement Programs (TIPs) in the maintenance areas are consistent with and conform to the SIP and meet federal requirements on conformity. This review process is being extended to include all major projects regardless of source of funding, as well as all federally funded projects. A complete description of the conformity review process is included in the TSD accompanying this notice.

3. The Area Has a Fully Approved SIP Under Section 110(k) of the CAA

Based on the approval of provisions under the pre-amended Act and EPA's prior approval of SIP revisions under the amended Act, EPA has determined that the Greensboro/Winston-Salem/High Point area has a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and Part D as discussed above.

4. The Air Quality Improvement Must Be Permanent and Enforceable

Several control measures have come into place since the Greensboro/Winston-Salem/High Point area violated the O_3 NAAQS. Of these control measures, two control measures produced the most significant decreases in VOC and NO_x emissions. One control measure is a reduction of fuel volatility, as measured by the Reid Vapor Pressure (RVP), from 10.1 psi in 1988 to 9.0 psi in 1990 and then to 7.8 psi in the summer of 1992. As a result of the RVP reductions, there has been a reduction of emissions of VOCs of more than 25% from 1988 to 1992 from gasoline powered vehicles of all classes. The other control measure is the improvement in tailpipe emissions associated with the Federal Motor Vehicle Control Program (FMVCP). This program reduces VOC and NO_x emissions as newer, cleaner vehicles replace older, high emitting vehicles. VOC emissions reductions are 21.6% from 1988 to 1990 and NO_x emissions reductions are 3.7% from 1988 to 1990.

In association with its emission inventory discussed below, the State of North Carolina has demonstrated that actual enforceable emission reductions are responsible for the recent air quality improvement and that the VOC emissions in the base year are not artificially low due to local economic downturn.

5. The Area Must Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the Act

Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the

ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems.

In this notice, EPA is approving the State of North Carolina's maintenance plan for the Greensboro/Winston-Salem/High Point area because EPA finds that the State of North Carolina's submittal meets the requirements of section 175A.

A. Emissions Inventory—Base Year Inventory

On November 13, 1992, the State of North Carolina submitted comprehensive inventories of VOC, NO_x, and CO emissions from the Greensboro/Winston-Salem/High Point area. The inventories included biogenic, area, stationary, and mobile sources using 1990 as the base year for calculations to demonstrate maintenance. The 1990 inventory is considered representative of attainment conditions because the NAAQS was not violated during 1990. The 1990 Base Year Emission Inventory for the Greensboro/Winston-Salem/High Point area has been submitted to EPA in SIP Air Pollutant Inventory Management Subsystem (SAMS) format.

The State of North Carolina submittal contains the detailed inventory data and summaries by county and source category. This comprehensive base year emissions inventory was submitted in the SAMS format. Finally, this inventory was prepared in accordance with EPA guidance. A summary of the base year and projected maintenance year inventories are shown in the following three tables. Refer to the TSD accompanying this notice for more in-depth details regarding the base year inventory for the Greensboro/Winston-Salem/High Point area.

VOC Emission Inventory Summary

[Tons per day]

	1990	1993	1996	1999	2002	2004
Point	82.30	83.69	74.04	63.42	66.59	68.59
Area	180.76	178.25	179.54	180.67	183.16	184.68
Mobile	88.30	73.91	73.41	73.54	74.06	74.97
Total	351.36	335.85	326.99	317.63	323.81	328.24

NO_x Emission Inventory Summary

[Tons per day]

	1990	1993	1996	1999	2002	2004
Point	23.04	24.14	25.24	26.31	27.23	27.81
Area	0.29	0.29	0.29	0.29	0.29	0.29
Mobile	99.76	100.01	100.40	96.96	91.13	90.28
Total	123.09	124.44	125.93	123.56	118.65	118.38

CO Emission Inventory Summary

[Tons per day]

	1990	1993	1996	1999	2002	2004
Point	5.37	5.51	5.71	5.90	6.06	6.15
Area	40.98	41.00	41.01	41.02	41.03	41.04
Mobile	710.25	612.50	601.28	593.39	601.53	612.92
Total	756.60	659.01	648.00	640.31	648.62	660.11

B. Demonstration of Maintenance—Projected Inventories Total VOC, NO_x, and CO emissions were projected from the 1990 base year out to 2004. These projected inventories were prepared in accordance with EPA guidance. Refer to EPA's TSD accompanying this notice for more in-depth details regarding the projected inventory for the Greensboro/Winston-Salem/High Point area. The projections indicate that VOC and CO emissions decrease steadily from 1990 through 2004. However, the projections show an increase over the 1990 NO_x level of 1.10% in 1993, 2.31% in 1996, and 0.38% in 1999. To date, this level of increase in NO_x has not caused a violation of the NAAQS. EPA believes that the emissions projections demonstrate that the area will continue to maintain the O_3 NAAQS because this area achieved attainment through VOC controls and reductions. The projected emission inventories were submitted in the SAMS format.

C. Verification of Continued Attainment

Continued attainment of the O_3 NAAQS in the Greensboro/Winston-Salem/High Point area depends, in part, on the State of North Carolina's efforts toward tracking indicators of continued attainment during the maintenance period. The State of North Carolina's contingency plan is triggered by two indicators, an air quality violation or the periodic emissions inventory exceeds the baseline emission inventory by more than 10%. As stated in the maintenance plan, the NCDEHNR will be developing these periodic emissions inventories every three years beginning in 1996. These periodic inventories will help to verify continued attainment. Refer to the TSD accompanying this notice for a more complete discussion of the indicators the State is tracking and the contingency measures.

D. Contingency Plan

The level of VOC and NO_x or CO emissions in the Greensboro/Winston-Salem/High Point area will largely determine its ability to stay in compliance with the O_3 NAAQS in the future. Despite the State's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, the State of North Carolina has provided contingency measures with a schedule for implementation in the event of a future O_3 air quality problem. The plan contains a contingency to implement pre-adopted additional control measures such as Reasonable Available Control Technology (RACT) level control for not previously controlled VOC sources, Stage II vapor control for gasoline dispensing facilities, and new source permit requirements for VOC and NO_x emissions to include emission offsets, Lowest Achievable Emission Rate (LAER) level control, and permit applicability. These pre-adopted additional measures will be implemented within 45 days of the date the State certifies to EPA that the air quality data which demonstrates a violation of the O_3 NAAQS is quality assured. The plan also contains a secondary trigger that will apply where no actual violation of the NAAQS has occurred. On the occurrence of the secondary trigger, the State will commence, within 60 days of the trigger, regulation development and adoption of measures amending the State vehicle inspection and maintenance (I/M) program, extending coverage of the I/M program, extending and/or lowering vapor pressure limits for gasoline, extending geographic coverage of RACT controls, transportation control measures, and RACT level control for NO_x. A complete description of these contingency measures and their triggers can be found in the TSD accompanying this notice. EPA finds that the contingency measures provided in the State of North Carolina submittal meet the requirements of Section 175A(d) of the CAA.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the State of North Carolina has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

Final Action

In this final action, EPA is approving the Greensboro/Winston-Salem/High Point O_3 maintenance plan because it meets the requirements of Section 175A. In addition, the Agency is redesignating the Greensboro/Winston-Salem/High Point area to attainment for O_3 because the State of North Carolina has demonstrated compliance with the requirements of Section 107(d)(3)(E) for redesignation. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements. The O_3 SIP is designed to satisfy the requirements of Part D of the Clean Air Act and to provide for attainment and maintenance of the O_3 NAAQS. This final redesignation should not be interpreted as authorizing the State of North Carolina to delete, alter, or rescind any of the VOC or NO_x emission limitations and restrictions contained in the approved O_3 SIP. Changes to O_3 SIP VOC regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation [section 173(b) of the Clean Air Act] and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the Clean Air Act.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State of North Carolina is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have any economic impact on any small entities. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. Accordingly, I certify that the approval of the redesignation request will not have an impact on any small entities.

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective on November 8, 1993. If, however, notice is received by October 12, 1993 that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One will withdraw the final action and the other will begin a new rulemaking by announcing a comment period.

Under Section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects

40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, and Ozone.

40 CFR Part 81

Air pollution control, National parks, and Wilderness areas.

Dated: August 23, 1993.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1770 is amended by adding paragraph (c)(66) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(66) The maintenance plan and emission inventory for Greensboro/Winston-Salem/Highpoint Area which includes Davidson County, Davis County (part) the area bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek, and back to the Yadkin River, Forsyth County and Guilford County, submitted by the North Carolina Department of Environment, Health, and Natural Resources on November 13, 1992, and June 1, 1993, as part of the North Carolina SIP.

(i) Incorporation by reference.

(A) Supplement To the Redesignation Demonstration and Maintenance Plan For Raleigh/Durham and Greensboro/Winston-Salem/High Point Ozone Attainment Areas submitted June 1, 1993 and Prepared by the North Carolina Department of Environment, Health, and Natural Resources, Division of Environmental Management, Air Quality Section. The effective date is July 8, 1993.

(*1*) Section 2— Discussion of Attainment.

(*2*) Section 3—Maintenance Plan.

(*3*) Greensboro/Winston-Salem/High Point Nonattainment Area Emission Summary for 1990.

(*4*) Greensboro/Winston-Salem/High Point Nonattainment Area Emission Summary for 1993.

(*5*) Greensboro/Winston-Salem/High Point Nonattainment Area Emission Summary for 1996.

(*6*) Greensboro/Winston-Salem/High Point Nonattainment Area Emission Summary for 1999.

(*7*) Greensboro/Winston-Salem/High Point Nonattainment Area Emission Summary for 2002.

(*8*) Greensboro/Winston-Salem/High Point Nonattainment Area Emission Summary for 2004.

(ii) Other material. None

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

2. Section 81.334 is amended by revising the attainment status designation table for ozone to read as follows:

§ 81.334 North Carolina.

* * * * *

NORTH CAROLINA—OZONE

Designation area	Designation		Classification	
	Date[1]	Type	Date[1]	
Charlotte-Gastonia Area:				
Gaston County		Nonattainment		Moderate.
Mecklenburg County		Nonattainment		Moderate.
Raleigh-Durham Area:				
Durham County	1/6/92	Nonattainment	1/6/92	Moderate.
Granville County (part)	1/6/92	Nonattainment	1/6/92	Moderate.
Dutchville Township				
Wake County	1/6/92	Nonattainment	1/6/92	Moderate.
Rest of State		Unclassifiable/Attainment.		
Alamance County				
Alexander County				
Alleghany County				
Anson County				
Ashe County				
Avery County				
Beaufort County				
Bertie County				
Bladen County				
Brunswick County				
Buncombe County				
Burke County				
Cabarrus County				
Caldwell County				
Camden County				
Carteret County				
Caswell County				
Catawba County				
Chatham County				
Cherokee County				
Chowan County				
Clay County				
Cleveland County				
Columbus County				
Craven County				

NORTH CAROLINA—OZONE—Continued

Designation area	Designation		Classification	
	Date[1]	Type	Date[1]	
Cumberland County				
Currituck County				
Dare County				
Davidson County	September 9, 1993.			
Davie County	September 9, 1993.			
Duplin County				
Edgecombe County				
Forsyth County	September 9, 1993.			
Franklin County				
Gates County				
Graham County				
Granville County (part) Remainder of county				
Greene County				
Guilford County	September 9, 1993.			
Halifax County				
Harnett County				
Haywood County				
Henderson County				
Hertford County				
Hoke County				
Hyde County				
Iredell County				
Jackson County				
Johnston County				
Jones County				
Lee County				
Lenoir County				
Lincoln County				
McDowell County				
Macon County				
Madison County				
Martin County				
Mitchell County				
Montgomery County				
Moore County				
Nash County				
New Hanover County				
Northhampton County				
Onslow County				
Orange County				
Pamlico County				
Pasquotank County				
Pender County				
Perquimans County				
Person County				
Pitt County				
Polk County				
Randolph County				
Richmond County				
Robeson County				
Rockingham County				
Rowan County				
Rutherford County				
Sampson County				
Scotland County				
Stanly County				
Stokes County				
Surry County				
Swain County				
Transylvania County				
Tyrrell County				
Union County				
Vance County				
Warren County				
Washington County				
Watauga County				
Wayne County				
Wilkes County				
Wilson County				
Yadkin County				

NORTH CAROLINA—OZONE—Continued

Designation area	Designation		Classification	
	Date[1]	Type	Date[1]	
Yancey County				

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 93-21923 Filed 9-8-93; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Part 55

[FRL-4727-3]

Codification of Corresponding Onshore Area Designations and Notice of Convening Proceeding for Reconsideration of Certain Corresponding Onshore Area Designations; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction to codification and convening proceeding for reconsideration.

SUMMARY: This document contains a correction to the effective date of the document in 58 FR 14157 published Tuesday, March 16, 1993. The effective date pertains to the codification of the final action taken by the Administrator designating corresponding onshore areas ("COAs") for all existing OCS sources. This action was taken concurrent with the final rulemaking promulgating the Outer Continental Shelf ("OCS") Air Regulations, and was published in the preamble to that rule on September 4, 1992.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard (415) 744-1195, 75 Hawthorne Street, San Francisco, CA 94015.

SUPPLEMENTARY INFORMATION: As published, the effective date contains an error which may prove to be misleading and is in need of clarification. The effective date was printed as September 4, 1993 but should be September 4, 1992.

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, et seq.) as amended by Pub. L. 101-549.

List of Subjects in 40 CFR Part 55

Administrative practice and procedures, Air pollution control, Outer continental shelf, Ozone, Sulfur oxides, Nitrogen dioxides, Intergovernmental relations, Reporting and recordkeeping requirements, Permits.

Dated: September 2, 1993.

Carol M. Browner,

Administrator.

[FR Doc. 93-21983 Filed 9-8-93; 8:45 am]
BILLING CODE 6560-50-P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 522 and 552

[APD 2800.12A CHGE 46]

General Services Administration Acquisition Regulation; Price Adjustment Clause for Service Contracts

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: Pursuant to a court decision, the General Services Administration Acquisition Regulation (GSAR), (APD 2800.12A), is deleting the prescription for use of the Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) clause in lieu of the Federal Acquisition Regulation (FAR) clause. The change also deletes the text of the GSAR clause.

EFFECTIVE DATE: August 14, 1993. Solicitations issued on or after August 14, 1993, shall include the applicable FAR clause. Solicitations issued under sealed bidding procedures with bid opening scheduled on or after August 14, 1993, shall be amended to include the applicable FAR clause. Solicitations issued under negotiated procurement procedures shall be amended if the award has not been made. Contracts which contain the June 1992 clause at GSAR 552.222-43 or its predecessor GSAR clause shall be modified to replace that clause with the applicable FAR clause unless the contract is in the last year of a multiyear contract or the last option year of a contract with options to extend the period of performance. The recoupment provision of the 1992 GSAR clause will not be enforced by GSA contracting officers.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of GSA Acquisition Policy, (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Background

On August 13, 1993, the United States District Court for the District of Columbia issued a Declaratory Judgement in Civil Action No. 91-1628 (CRR), *Service Employees International Union, AFL-CIO* v. *General Services Administration et al.*, that the General Services Administration's regulation published at 57 FR 22664-68 (1992) is arbitrary, capricious, and contrary to law under the Administrative Procedures Act, 5 U.S.C. 701 et sequentia, and enjoined GSA from further use or enforcement of the regulation. This change deletes those provisions of the regulation that were found to be contrary to law.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Paperwork Reduction Act

This rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501).

List of Subjects in 48 CFR Parts 522 and 552.

Government procurement.

48 CFR parts 522 and 552 are amended to read as follows:

1. The authority citation for 48 CFR parts 522 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 522 [AMENDED]

Subpart 522.10 Service Contract Act of 1965

2. Section 522.1006 is revised to read as follows:

522.1006 Clauses for contracts over $2,500.

The clauses prescribed in FAR 22.1006 (a) and (b) may be repeated verbatim in solicitations and contracts or the GSA Form 2166, Service Contract Act of 1965 (As Amended) and

Statement of Equivalent Rates for Federal Hires, may be used.

PART 522—[AMENDED]

552.222–43 [Removed].

3. Section 552.222–43 is removed.

Dated: August 27, 1993.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 93–21513 Filed 9–8–93; 8:45 am]

BILLING CODE 6820–61–M

Proposed Rules

Federal Register
Vol. 58, No. 173
Thursday, September 9, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R-0809]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board is proposing to amend its Regulation O, which governs extensions of credit to insiders of banks. The proposal narrows the definition of "extension of credit", adopts exceptions to the general restrictions on lending to insiders and special restrictions on lending to executive officers, and permits banks to follow alternative recordkeeping procedures. These amendments are intended to increase the ability of banks to make extensions of credit that pose minimal risk of loss, to remove other transactions from the regulation's coverage, and to eliminate recordkeeping requirements that impose a paperwork burden but do not significantly aid compliance with the regulation. These amendments are expected to increase the availability of credit, particularly in communities served by small banks, and to reduce the cost of compliance with the regulation. Other minor revisions to the regulation clarifying certain exemptions and conforming certain provisions to the enabling statutes are included as well. The Board is requesting public comment on each of these proposed revisions.

DATES: Comments should be submitted on or before October 12, 1993.

ADDRESSES: Comments, which should refer to Docket No. R-0809, may be mailed to the Board of Governors of the Federal Reserve System, 20th & C Street, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary. Comments addressed to the attention of Mr. Wiles may be delivered to the Board's mail room between 8:45 am and 5:15 pm, and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room B-1122 between 9:00 am and 5:00 pm weekdays, except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Gordon Miller, Attorney (202/452-2534), or Stephen Van Meter, Attorney (202/452-3554), Legal Division; or Stephen M. Lovette, Manager of Policy Implementation (202/452-3622), or William G. Spaniel, Supervisory Financial Analyst (202/452-3469), Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th & C Street, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Consumer Installment Paper

Section 22(h) of the Federal Reserve Act (Act) governs extensions of credit by a bank to its executive officers, directors, and principal shareholders (insiders), and to companies controlled by its insiders (related interests), individually and as a class. *See* 12 U.S.C. 375b(4) and (5). In order to permit appropriate revisions of these restrictions, the Housing and Community Development Act of 1992 (HCDA), Pub. L. 102-550 § 955, 106 Stat. 3672 (1992), authorized the Board to adopt exceptions to the definition of "extension of credit" in section 22(h) for transactions that pose minimal risk to the lending bank. Pursuant to such authority, the Board previously has adopted three exceptions to the definition for purposes of calculating the aggregate lending limit. *See* 58 FR 26507 (1993).

The proposed rule would adopt an additional exception to the aggregate lending limit for the discount of consumer installment paper from an insider with recourse, so long as the bank is relying primarily upon the creditworthiness of the maker of the paper and not on any endorsement or guarantee of the insider.[1]

The legislative history of HCDA states that the Board should make a "zero-based review" of any exceptions it adopts. *See* 138 Cong. Rec. S17,914-15 (daily ed. October 8, 1992). The proposed exception is consistent with this directive. The Board believes that, where the bank is relying primarily upon the creditworthiness of the underlying maker, the accompanying extension of credit to an insider transferring the paper with recourse poses minimal risk of loss to the bank. In addition, like the previous three exceptions, the proposed exception is found in the National Bank Act, and is incorporated as an exception to the individual lending limit in Regulation O. *See* 12 U.S.C. 84(c)(8); 12 CFR 215.2(h) and 215.4(c).

Although extensions of credit made in conformity with the proposed exception would not count toward a bank's aggregate lending limit, such extensions of credit would continue to be extensions of credit under 12 CFR 215.3(a)(4) and would remain subject to the general requirements found at sections 215.4(a) and (b) of Regulation O, as a safeguard against abuse of this exception.

II. Definition of "Extension of Credit"

The Board is proposing three amendments to the definition of "extension of credit" in Regulation O concerning the "tangible economic benefit" rule, the discount by a bank of obligations sold by an insider without recourse, and the threshold for treating credit card debt as an extension of credit.

A. "Tangible Economic Benefit" Rule

Regulation O currently provides that an extension of credit is deemed to be made to an insider when the proceeds of the credit are used for the tangible economic benefit of, or are transferred to, the insider. 12 CFR 215.3(f). Following the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub.L. 102-242, section 306 (1991), which expanded the lending limit provision of section 22(h) to cover

[1] Such transactions would continue to constitute extensions of credit subject to the aggregate lending limit if the maker of the consumer installment paper was an insider or a related interest of an insider.

directors and their related interests, questions have been raised regarding the scope and proper application of the tangible economic benefit provision. If interpreted literally, the tangible economic benefit rule would apply whenever a bank extends credit to any person, including a member of the general public with no other relationship to the bank, and the proceeds of the extension of credit are transferred to or used for the benefit of an insider or an insider's related interest. For example, if a third party borrowed money from a bank in order to purchase a house owned by one of the bank's directors, the loan would be deemed an extension of credit to the director. Similarly, if a bank financed the purchase of consumer goods or services from a company controlled by one of its directors, the bank would be deemed under Regulation O to have extended credit to the director. The tangible economic benefit rule was not intended to reach arm's-length, bona fide transactions with the general public, and the proposed amendment would confirm that fact.

The tangible economic benefit rule is similar to a provision contained in section 23A of the Act, and was adopted at a time when the Board was required by section 22(h) to use the definition of "extension of credit" found in section 23A. *See* Pub. L. 95-630 § 104, 92 Stat. 3644 (1978). The definition of extension of credit in section 22(h), however, is no longer tied to section 23A, and the Board is authorized to adopt appropriate definitions of terms in the statute. *See* 12 U.S.C. 375b(9)(D) and 375b(10). The Board believes that the difficulties that have arisen with regard to the application of the tangible economic benefit rule can be remedied by providing explicitly that the rule does not apply to an arms-length[2] extension of credit by a bank to a third party where the proceeds of the credit are used to finance the bona fide acquisition of property, goods, or services from an insider or an insider's related interest.

Extensions of credit to an insider's nominee and transactions in which the proceeds of the credit are loaned to an insider would continue to be covered by the rule. The Board notes that other provisions in the definition of "extension of credit" would continue to reach transactions in which an insider actually becomes obligated to a bank, "whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever." 12 CFR 215.3(a)(8).

B. Discounting Obligations Without Recourse

Currently, Regulation O includes within the definition of "extension of credit" any "discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, *whether with or without recourse.*" 12 CFR 215.3(a)(5) (emphasis added). At the time this provision was adopted, the Board was required by section 22(h) to include such items in the regulatory definition of extension of credit.[3] However, the current statutory definition does not require the inclusion of such items where the transaction is made without recourse to the transferor.[4] The proposed rule would delete this provision so as to exclude non-recourse transactions. Transactions entered into with recourse to the transferor would continue to be covered under other provisions of the definition. *See* 12 CFR 215.3(a)(4) and (8).

The Board believes that the proposed modification would be consistent with the purposes of Regulation O and the Act. Neither the statute nor the regulation is designed or intended to cover all transactions between a bank and its insiders, but only to cover transactions involving an extension of credit to the insider from the bank. Non-recourse transactions resemble a purchase of assets more than an extension of credit, and adoption of the proposed change would conform the treatment of these transactions with the treatment of other asset purchases between a bank and its insiders. Moreover, these non-recourse transactions do not constitute "extensions of credit" to the transferor under the National Bank Act as interpreted by the Office of the Comptroller of the Currency. *See* 12 U.S.C. 84(b)(1); 12 CFR 32.2(a). These transactions would continue to be governed by general standards of safety and soundness, prohibitions against fraud and abuse, and corporate fiduciary duties.[5]

C. Credit Card Plan Indebtedness

Regulation O currently exempts from the definition of "extension of credit" indebtedness of $5,000 or less arising through any general arrangement by which a bank: (1) Acquires charge or time credit accounts; or (2) Makes payments to or on behalf of participants in a bank credit card plan or other open-end credit plan.

To qualify for the exemption, the indebtedness must be on market terms and must not involve prior individual clearance or approval by the bank other than for the purpose of determining the borrower's eligibility and compliance with any applicable dollar limit under the arrangement.

This credit card exemption, and the $5,000 limit, were enacted in 1979. Since 1979, inflation has reduced the purchasing power of this amount of credit, and credit card limits generally available to the public have increased. In 1979, a credit limit in excess of $5,000 would have been unusual. However, institutions now routinely extend credit to the holders of "premium" or "gold" cards in amounts considerably greater than $5,000. Accordingly, the Board is proposing to increase the limit from $5,000 to $15,000.[6] The requirements that the credit be granted on market terms and without prior individual approval (except to determine eligibility and compliance with the credit limit) would be retained, and would continue to protect against abuse.

III. Recordkeeping Procedures

Section 215.8 of Regulation O currently requires that each bank maintain records necessary for compliance with the insider lending restrictions of Regulation O. In particular, banks are required to maintain records identifying all insiders of the bank and its affiliates and all related interests of those insiders and records specifying the amount and terms of all credit extended to these persons. Section 215.8 further requires

[2] In order to satisfy this requirement, the extension of credit to the general public must be on terms that would satisfy the standard set forth in § 215.4(a) of Regulation O if the extension of credit was being made directly to an insider or an insider's related interest.

[3] The current definition of "extension of credit" in Regulation O was adopted in 1979, when the Board substantially amended the regulation in order to implement the Financial Institutions Regulatory Act of 1978 (FIRA), Pub. L. 95-630 § 104, 92 Stat. 3644 (1978). 44 FR 12963 (1979). FIRA added section 22(h) to the Act, which in turn incorporated the definition of "extension of credit" contained in section 23A. At that time, section 23A's definition included the above-referenced provision concerning the discount of paper acquired with or without recourse. *See* Pub. L. 89-485 § 12, 80 Stat. 241 (1966).

[4] The statutory cross-reference to section 23A was deleted from section 22(h) in 1982. *See* Pub. L. 97-230 § 410, 96 Stat. 1520 (1982). FDICIA added a new definition of "extension of credit" to section 22(h), which applies whenever a member bank makes or renews a loan, grants a line of credit, or enters into any similar transaction as a result of which a person becomes obligated to pay money or its equivalent to the bank. *See* 12 U.S.C. 375b(9)(D). This definition does not cover all transactions, such as the purchase of assets, covered by section 23A.

[5] In addition, sections 23A and 23B of the Act may be applicable to such transactions if the insider or the insider's related interest is an affiliate of the lending bank as defined in section 23A.

[6] The $5,000 limit would remain in effect for interest-bearing overdraft credit plans.

each bank to request its insiders to identify their related interests on an annual basis.

As bank holding companies have become increasingly large and diversified, and as commercial organizations have acquired credit card banks and limited purpose banks,[7] the recordkeeping burden imposed by Regulation O has become increasingly large and, in certain cases, unnecessary. The Board has received several requests for relief from the recordkeeping requirements and believes that the issues raised in those requests warrant regulatory treatment.

The proposed amendment to section 215.8 would retain the requirement that a bank maintain records necessary to ensure compliance with Regulation O, but would allow a bank to choose an appropriate method for doing so. The amendment would specify two methods for compliance that are presumptively sufficient, and would permit a bank to use any combination of those two methods or a method of its own that was appropriate given the particular circumstances of the bank.

The first method identified in the proposed regulation is the current system of maintaining a record of all insiders of the bank and its affiliates and all related interests of those insiders.[8] The list of insiders and related interests is then used by the bank to identify all existing or proposed extensions of credit covered by Regulation O, to monitor the amount thereof subject to the individual and aggregate lending limits, and to ensure that all appropriate approval procedures are followed.

Under the second method identified in the proposed regulation, the bank could require each borrower to state, at the time an application is made for an extension of credit, whether the borrower is an insider or a related interest of an insider of the bank or one of its affiliates. Any affirmative responses would be used to maintain a list of insider credits and to monitor compliance with lending limits and approval procedures.

The proposed amendment would eliminate the requirement that each bank conduct an annual survey to identify its insiders' related interests. Banks that continue to use the first method for compliance would still need to conduct a survey or some other appropriate information-gathering procedure, in order to identify insiders and their related interests and to monitor changes in this group. Banks using the second method for compliance, however, might not need to make any effort to identify related interests that do not actually borrow from the bank.

By allowing a bank to choose a method for ensuring compliance that is adapted to the particular circumstances of the bank, the proposed amendment would allow banks to minimize unnecessary recordkeeping. In certain cases, a combination of methods might be considered to be appropriate. For example, a bank that actively made personal loans but made very few commercial loans might choose to continue surveying insiders about their personal borrowing but, instead of asking its insiders about their related interests, might choose to ask all commercial borrowers when a loan was applied for or renewed whether they were related interests of insiders. By identifying all extensions of credit to related interests through the lending process, the bank would make a survey of related interests unnecessary.[9]

In some cases, a bank may not need to maintain any records concerning related interests of insiders. For example, under the Competitive Equality Banking Act of 1987 (CEBA), an institution qualifies as a credit card bank only if it "does not engage in the business of making commercial loans." 12 U.S.C. 1841(c)(2)(F)(v). Because any extension of credit to a company or political or campaign committee would constitute a commercial loan, CEBA credit card banks are effectively prohibited from extending credit to related interests of insiders. Therefore, no purpose is served by the current rule requiring CEBA credit card banks to identify related interests of their insiders. Other financial institutions, including certain trust companies, thrifts, and other institutions that may refrain from making commercial loans, also may determine that maintaining records on related interests of insiders is unnecessary.

The suitability of any procedure for monitoring lending to insiders and their related interests must be determined, of course, on the basis of the effectiveness of the procedure in preventing violations of law and insider abuse. Any alternative recordkeeping procedure must sufficiently identify extensions of credit covered by Regulation O to ensure that proper monitoring of and compliance with insider lending restrictions is maintained.

The Board seeks specific comment on whether any recordkeeping methods other than the two identified in the proposed regulation should be considered presumptively sufficient. The Board also seeks comment on whether the proposal on recordkeeping provides sufficient guidance to institutions and examiners regarding what constitutes adequate recordkeeping.

IV. Loans to Executive Officers

A. General Purpose Loans

Section 22(g) of the Act governs extensions of credit by a bank to its executive officers. Section 22(g) provides that a bank may make certain home mortgage loans and educational loans to its executive officers without any restriction as to amount. However, a bank may not make loans to its executive officers for other purposes in excess of an amount prescribed by the appropriate federal banking agency. *See* 12 U.S.C. 375a(4). Pursuant to this authority, the Board has authorized a bank to extend credit to its executive officers for general purposes in an amount equal to the greater of $25,000 or 2.5 percent of the bank's capital and unimpaired surplus, but not to exceed $100,000. 12 CFR 215.5(c)(3). Currently, there is no exception to the Board's regulatory lending limit on loans for other purposes. This is in contrast to other provisions of Regulation O that contain exceptions to lending limits based on the manner in which the extension of credit is collateralized. *See* 12 CFR 215.4(c) and (d)(3).

The Board is proposing, under its authority to prescribe by regulation the amount of credit that may be extended by a bank to its executive officers for a purpose not otherwise specifically authorized, to exempt an extension of credit by a bank to its executive officer from the lending limit set forth in 12 CFR 215.5(c)(3) when the loan is fully secured by:

(a) Obligations of the United States or other obligations fully guaranteed as to principal and interest by the United States;

(b) Commitments or guarantees of a department or agency of the United States; or

(c) A segregated deposit account with the lending bank.

The Board previously has determined that extensions of credit collateralized in the manner described above pose minimal risk of loss to a bank. *See* 58 FR 26507 (1993). In view of this determination, the Board believes that it

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[7] *See* 12 U.S.C. 1841(c)(2).

[8] Under the proposal, the list could be updated through an annual request to insiders to identify related interests, as required by the current regulation, or through some other appropriate mechanism.

[9] Similarly, a bank that extends credit only in the United States might be able to devise an adequate recordkeeping system that does not track insiders of its overseas affiliates or the related interests of such insiders.

is consistent with safe and sound banking practices to increase the amount of credit that a bank may extend to its executive officers when the credit is secured as described above. In view of the fact that such loans would continue to be subject to the prohibition against preferential lending, the Board also believes that the proposed exception would not lend itself to evasions of the law or any other abuse.

B. Refinancing of Home Mortgage Loans

Section 22(g) of the Act provides that a bank may make a loan to its executive officer, without restriction as to amount, if the loan is secured by a first lien on a dwelling that is owned by the executive officer and used by the executive officer as a residence after the loan is made. 12 U.S.C. 375a(2). Section 215.5(c)(2) of Regulation O implements this provision, and sets forth additional restrictions on such loans.

Questions have arisen as to whether the authority granted to a bank in Regulation O to finance the purchase, construction, maintenance, or improvement of a residence includes the authority to refinance an existing extension of credit that was made for such a purpose. The Board believes that such refinancings qualify as home mortgage loans not subject to the lending limit for other purpose loans to executive officers.

Under the proposal, the amount of a refinancing loan that may be included as a home mortgage loan, however, may not exceed the actual amount of the proceeds thereof that are used to repay the home mortgage loan that is refinanced or for the purposes enumerated in the regulation. Funds that are paid or made available to the executive officer in connection with a refinancing that may be used for unrestricted purposes would not be included within this category, and would be subject to the lending limit for general purpose loans.

C. Prior Approval of Home Mortgage Loans

Section 22(g) provides that the board of directors of a bank must specifically approve in advance a home mortgage loan to an executive officer. 12 U.S.C. 375a(2). Regulation O, however, does not set forth this requirement. The Board proposes to revise 12 CFR 215.5 to conform to the enabling statute.

V Conforming Definition of "Bank"

Subpart B of Regulation O implements the reporting requirements of title VIII of FIRA, as amended by the Garn-St. Germain Depository Institutions Act of 1982, Pub. L. 97-320 (1982) and FDICIA. 12 U.S.C. 1972(2)(G). Title VII requires disclosure of:

(1) Lending by a bank to executive officers and principal shareholders of another bank when there is a correspondent account relationship between the banks; and

(2) The opening of a correspondent account relationship between banks when there is an extension of credit by one of the banks to an executive officer or principal shareholder of the other bank.

Subpart B of Regulation O requires an executive officer or principal shareholder of a bank to report to the bank each year if the person or any related interest of the person borrowed during the prior calendar year from a correspondent bank of the bank. 12 CFR 215.22.

As originally enacted, a correspondent bank was defined in title VIII of FIRA to include a bank as defined in the Bank Holding Company Act. Title VIII was subsequently amended to include in the definition a mutual savings bank, a savings bank, and a savings association as defined in section 3 of the Federal Deposit Insurance Act. 12 U.S.C. 1971 and 1972(H). The Board proposes to amend the definition of bank in subpart B of Regulation O to conform the rule to the statutory amendments.

VI. Request for Comments

The Board requests public comment on all of the proposals described above. The Board also asks that commenters identify additional amendments to Regulation O that they believe would reduce the burden imposed by Regulation O without adversely affecting the safety and soundness of affected institutions.

In connection with previous rulemaking by the Board to adopt exceptions to the definition of extension of credit for purposes of the aggregate lending limit, the Board received three comments specifically favoring the proposal to adopt an exception to the aggregate insider lending limit for the purchase of certain consumer installment paper, two comments specifically favoring the proposal to limit the application of the tangible economic benefit rule, two comments specifically favoring the proposal to remove from the definition of extension of credit the discount of obligations sold by an insider or a related interest of an insider without recourse, and three comments specifically favoring the adoption of exceptions to the limit on lending to executive officers. The Board also received six comments favoring the proposal to adopt the exception for certain consumer installment paper described above as part of a broader incorporation of exceptions to the definition of extension of credit contained in the National Bank Act. *See* 58 FR 26507 (1993). Those comments will be considered in connection with the current proposals.

VII. Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to publish an initial regulatory flexibility analysis with any notice of proposed rulemaking. Two of the requirements of an initial regulatory flexibility analysis, a description of the reasons why the action by the agency is being considered, and a statement of the objectives of, and legal basis for, the proposed rule (5 U.S.C. 603(b)), are contained in the supplementary information above.

The Board's proposals impose little additional reporting or recordkeeping requirements, and there are no relevant federal rules that duplicate, overlap, or conflict with the proposed rule. The proposed exception to the aggregate insider lending limit, clarification of the tangible economic benefit rule, and exception to the definition of extension of credit would apply to all banks, regardless of size. These proposals should not have a negative economic impact on small institutions. Instead, they should reduce regulatory burden for banks, particularly in small communities and rural banking markets where local business people who originate consumer installment paper and other credit transactions with the general public are likely to serve as directors of a bank. In addition, the proposed exception to the aggregate lending limit should increase the ability of banks to make loans and other extensions of credit that pose little or no risk of loss, and to attract and retain outside directors. The proposed exception should also reduce the complications in maintaining dual systems for compliance with both the individual lending limit and the aggregate lending limit in Regulation O.

The proposed elimination of recordkeeping requirements for monitoring insider lending should also reduce the burden of maintaining records when those records are unnecessary or largely ineffective to ensure compliance with insider lending limits and other requirements under Regulation O. It is anticipated that the alternative recordkeeping that banks may choose to implement would be adapted to the particular circumstances

of the banks' lending practices, and therefore to be less burdensome to maintain. The amendment of the definition of bank in subpart B of Regulation O may require additional reporting by executive officers and principal shareholders of banks. These reports, however, are required by statute.

The proposed increase in the amount of pre-approved credit that may be extended under a credit card plan without constituting an extension of credit under Regulation O, and the proposed revisions to the restrictions on lending to executive officers, would apply to all banks, regardless of size. These proposals should not have a negative impact on small institutions. They should increase the ability of banks to make loans and other extensions of credit that pose little or no risk of loss, and to attract and retain executive officers. Conforming the requirements for home mortgage loans to executive officers to the enabling statute is required by such statute.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3507, and 5 CFR 1320.130, the proposed amendments to Regulation O will be reviewed by the Board under authority delegated by the Office of Management and Budget after consideration of the comments received during the public comment period. The Board has preliminarily determined that the revisions do not significantly increase the burden of the reporting institutions. The proposed changes are expected to reduce regulatory burden for some banks, particularly small community and rural banks, but the estimated effect on aggregate burden calculations is not deemed to be significant.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 22(h) of the Federal Reserve Act (12 U.S.C. 375b) and section 955 of HCDA, the Board is proposing to amend 12 CFR Part 215, subpart A, as follows:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS

1. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 248(i), 375a(10), 375b(10), 1817(k)(3) and 1972(2)(F)(ix), Pub. L. 102-550, 106 Stat. 3895 (1992).

Subpart A—Loans by Member Banks to Their Executive Officers, Directors, and Principal Shareholders

2. Section 215.3 is amended as follows:

a. By removing paragraph (a)(5) and redesignating paragraphs (a)(6) through (a)(8) as paragraphs (a)(5) through (a)(7);

b. By removing the word "or" at the end of paragraph (b)(4), amending paragraph (b)(5)(ii) introductory text by removing the phrase "interest-bearing overdraft credit plan of the type specified in section 215.4(e) of this part," removing the period at the end of paragraph (b)(5)(ii)(B) and adding in its place a semicolon followed by the word "or", and adding a new paragraph (b)(6), to read as follows; and

c. By revising paragraph (f), to read as follows:

§ 215.3 Extension of credit.

* * * * *

(b) * * *

(6) Indebtedness of $5,000 or less arising by reason of an interest-bearing overdraft credit plan of the type specified in § 215.4(e) of this part.

(f) (1) *In general.* An extension of credit is considered made to an insider to the extent that the proceeds of the extension of credit are used for the tangible economic benefit of, or are transferred to, the insider.

(2) *Exception.* An extension of credit is not considered made to an insider under paragraph (f)(1) when the credit is extended on terms that would satisfy the standard set forth in § 215.4(a) of this part for extensions of credit to insiders and the proceeds of the extension of credit are used in a bona fide transaction to acquire property, goods, or services from the insider.

3. Section 215.4 is amended by redesignating paragraph (d)(3)(iv) as paragraph (d)(3)(v), and adding a new paragraph (d)(3)(iv) to read as follows:

§ 215.4 General prohibitions.

* * * * *

(iv) Extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper that is acquired from an insider and carries a full or partial recourse endorsement or guarantee by the insider, if—

(A) The bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate;

(B) An officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of the obligation and not upon any endorsement or guarantee by the insider; and

(C) The maker of the instrument is not an insider.

4. Section 215.5 is amended by revising paragraph (c)(2), redesignating paragraph (c)(3) as paragraph (c)(4), adding a new paragraph (c)(3), and by revising paragraph (c)(4), to read as follows:

§ 215.5 Additional restrictions on loans to executive officers of member banks.

* * * * *

(c) * * *

(2) with the specific prior approval of the board of directors, in any amount to finance or refinance the purchase, construction, maintenance, or improvement of a residence of the executive officer, provided—

(i) the extension of credit is secured by a first lien on the residence and the residence is owned (or expected to be owned after the extension of credit) by the executive officer, and

(ii) in the case of a refinancing, the amount thereof does not exceed the actual amount of the proceeds thereof used to repay the original extension of credit made under this paragraph (c)(2) or for any of the purposes enumerated in this paragraph (c)(2);

(3) in any amount, if the extension of credit is secured in a manner described in paragraphs (d)(3)(i) through (iii) of § 215.4 of this part; and

(4) for any other purpose not specified in paragraphs (c)(1) through (c)(3) of this section, if the aggregate amount of extensions of credit to that executive officer under this paragraph does not exceed at any one time the higher of 2.5 percent of the bank's unimpaired capital and unimpaired surplus or $25,000, but in no event more than $100,000.

5. Section 215.8 is revised to read as follows:

§ 215.8 Records of member banks.

(a) *In general.* Each member bank shall maintain records necessary for compliance with the requirements of this part.

(b) *Methods of recordkeeping.* Acceptable methods of complying with paragraph (a) are:

(1) Maintaining records that identify—

(i) Each executive officer, director, or principal shareholder of the member bank and each related interest of such person; and

(ii) Tthe amount and terms of each extension of credit by the member bank

to such person and any related interests of that person; or

(2) As part of each extension of credit—

(i) Requiring that the borrower indicate whether the borrower is, or is a related interest of, an executive officer, director, or principal shareholder of the member bank; and

(ii) Maintaining records that identify the amount and terms of each extension of credit by the member bank to borrowers so identifying themselves; or

(3) Employing any other method that ensures compliance with the requirements of this part, given the particular circumstances of the member bank.

6. Section 215.21 is amended by replacing the word "1841(c)" in paragraph (a) with the words "1971 and 1972".

By order of the Board of Governors of the Federal Reserve System, September 3, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-21986 Filed 9-8-93; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-93-15]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking, this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received November 8, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on September 1, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 27064
Petitioner: North Central Airways, Inc.
Regulations Affected: 14 CFR 61.71(b)
Description of Rulechange Sought: To allow graduates to apply for a certificate within 180 days after graduation from an appropriate source given by a part 141 pilot school.
Petitioner's Reason for the Request: The petitioner feels that for operational and economical reasons, ground training at the part 141 flight school is frequently conducted separately from flight training; and results in students completing the ground training, with subsequent FAA written test, many months ahead of the flight training. The requested rule change will provide relief from financial and weather-related pressures for part 141 graduates.

Docket No.: 27399
Petitioner: Richardson, Berlin & Morcillo
Regulations Affected: 14 CFR 61.77, 63.23, 91.60, 129.13, and 129.15
Description of Rulechange Sought: To require that every aircraft listed on a carrier's operations specifications be for the exclusive use of that carrier and not be listed on the operations specifications of any other carrier; prohibit the practice of leasing flight crew members, except in the context of the wet leases (where a carrier leases both an aircraft and its flight crew members from another certified carrier) or require leasing agents who lease flight crew members to register with the FAA and to file appropriate documents reflecting such activities to provide a mechanism for the FAA to verify that the leasing agent has ensured the qualification and currency of all leased flight crew members; impose upon foreign air carriers directly a requirement that they only use duly licensed or certified flight crew members; and require that flight crew members seeking special purpose certificates may not simultaneously hold U.S. aviation licenses.
Petitioner's Reason for the Request: The petitioners feel that the disparate regulatory oversight, accorded some foreign air carriers serving U.S. markets under part 129, poses a serious threat to the lives and safety of citizens who live and work in southern Florida. Additionally, such unequal treatment also places the petitioners at a distinct competitive disadvantage, relative to those operators that function outside the regulatory framework of part 121.

[FR Doc. 93-21989 Filed 9-8-93; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 93-CE-46-AD]

Airworthiness Directives: Allied Signal Aerospace Company, Air Transport Avionics (Formerly Bendix/King Air Transport Avionics Division) Traffic Alert and Collision Avoidance System II Processors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Allied Signal Aerospace Company, Air Transport Avionics (Allied Signal) Traffic Alert and Collision Avoidance System (TCAS) II processors that are installed on aircraft. The proposed action would require replacing the existing TCAS II processor with a new processor that incorporates updated computer logic. The development of candidate enhancements to TCAS II logic that improves its utility and increases its overall operational acceptance prompted the proposed action. The actions specified by the proposed AD are intended to prevent

collisions or near misses caused by incompatibility between the TCAS II processors and the current air traffic control system.

DATES: Comments must be received on or before October 15, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–46–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Information that relates to the proposed AD may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. A.E. Clark, Manager, Systems and Equipment Branch, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–3020; Facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–46–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–46–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Traffic Alert and Collision Avoidance System (TCAS) is a system that was developed by the FAA and the aviation industry as a way of reducing the risks of mid-air collisions between aircraft. In particular, TCAS II provides traffic advisories (TA) and resolution advisories (RA). A TA depicts the position of the traffic relative to the TCAS equipped aircraft, which assists the pilot in visually acquiring intruding aircraft. An RA indicates the vertical rate that must be achieved or the recommended escape maneuver needed to maintain safe vertical separation from threatening aircraft.

Public Law (Pub. L.) 100–23 currently requires installing TCAS II on aircraft operated under part 121 of the Federal Aviation Regulations (FAR). In addition, Public Law 101–236 establishes a phased implementation schedule for installing TCAS II equipment on aircraft with more than 30 passenger seats. This law also requires that the FAA conduct, in cooperation with the airlines and industry, a TCAS Transition Program (TTP) when TCAS II implementation was under way.

The latest TTP report, which covers approximately 4,500 aircraft that incorporate TCAS II avionics with a total utilization of about 10,000 flight hours, indicates that the aviation community, for the most part, is very positive about the features and safety of TCAS II. The report also indicates that incompatibilities between TCAS and the existing air traffic control (ATC) system exist that prevents total acceptance of TCAS. The TTP report identifies enhancements to the TCAS logic that would improve its utility and increase its overall operational acceptance.

This new logic package, version 6.04A to the RTCA/DO–185, Minimum Operational Performance Standard (MOPS) and MITRE utter F046–L–0056, dated July 20, 1993 (hereon referred to as "Change 6.04A"), was developed to reduce the number of low altitude alerts, high vertical rate encounter alerts, and advisories.

The FAA has identified certain Allied Signal TCAS II processors as equipment that needs "Change 6.04A" incorporated in order to prevent collisions or near misses caused by incompatibility between the TCAS II processors and the current air traffic control system.

Since an unsafe condition has been identified that is likely to exist or develop in other Allied Signal TCAS II processors of the same type design that are installed on aircraft, the proposed AD would require (1) removing from service all processors that do not have computer logic "Change 6.04A" incorporated; and (2) mandatory incorporation of "Change 6.04A" into the TCAS II computer system.

The affected TCAS II processors are not designed for a specific aircraft type. These Allied Signal TCAS II processors are installed on, but not limited to the following airplanes:

Airbus Industries Models A300, B4–103, and B4–203 airplanes, and A310, 200, and 300 series airplanes;

Beech Model 65–A90 airplanes;

Boeing 727–100, 727–200, 737–200, 737–300, 737–400, 737–500, 747–100, 747–200, 747–300, 747SP, 757-200, 767–200, and 767–300 Series airplanes;

deHavilland Model DHC–8–100 airplanes;

Fokker Models F.28 Mark 1000 and Mark 4000 airplanes;

General Dynamics Models Convair 340 and 440 airplanes;

Gulfstream Models G–159 and G-IV airplanes;

Lockheed L1011 series airplanes; and

McDonnell Douglas DC–8–60, DC–9–31, DC–9–51, DC–10–30, MD–11, and MD–80 series airplanes.

The condition specified by the proposed AD is not caused by actual hours time-in-service (TIS) of the aircraft that the equipment is installed in. The need for the computer logic modification has no correlation to the number of times the equipment is utilized or the age of the equipment. For this reason, the compliance time of the proposed AD is presented in calendar time instead of hours TIS.

The FAA estimates that 3,000 TCAS II processors in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per processor to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $165,000. These figures take into account that none of the operators of the airplanes equipped with the affected TCAS II processors have accomplished the actions specified in this proposed AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new AD:

Allied Signal Aerospace Company, Air Transport Avionics (formerly Bendix/King Air Transport Avionics Division): Docket No. 93–CE–46–AD.

Applicability: Traffic Alert and Collision Avoidance System II processors that are installed on, but not limited to the following airplanes (all serial numbers), certificated in any category:

Beech Model 65–A90 airplanes;

Boeing 727–100, 727–200, 737–200, 737–300, 737–400, 737–500, 747–100, 747–200, 747–300, 747SP, 757–200, 767–200, and 767–300 Series airplanes;

deHavilland Model DHC–8–100 airplanes;

Fokker Models F.28 Mark 1000 and Mark 4000 airplanes;

General Dynamics Models Convair 340 and 440 airplanes;

Gulfstream Models G–159 and G–IV airplanes;

Lockheed L1011 series airplanes; and

McDonnell Douglas—DC–8–60, DC–9–31, DC–9–51, DC–10–30, MD–11, and MD–80 series airplanes.

Compliance: Prior to December 30, 1993, unless already accomplished.

To prevent collisions or near misses caused by incompatibility between the traffic alert and collision avoidance system (TCAS) II processors and the current air traffic control system, accomplish the following:

(a) Remove any TCAS II processor with a part number (P/N) suffix listed in the "Existing P/N Suffix" column of the table below, and install a corresponding TCAS II processor with a P/N listed in the "New P/N Suffix" column of the table below:

Existing P/N suffix	New P/N suffix
–0102 or –0107	–0108
–0203 or –0207	–0208
–0301, –0302, or –0307	–0308
–0402, –0405, or –0407	–0408
–0504 or –0507	–0508
–0606 or –0607	–0608
–8101	–0108

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(d) Information that relates to the proposed AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 2, 1993.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–22003 Filed 9–3–93; 4:23 pm]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–68–AD]

Airworthiness Directives; Honeywell Traffic Alert and Collision Avoidance System II Computer Units, as Installed on Various Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Honeywell Traffic Alert and Collision Avoidance System II (TCAS II) computer units installed on various transport category airplanes. This proposal would require replacing certain TCAS II computer units with new units that incorporate updated collision avoidance system (CAS) logic; and modifying the computer surveillance logic. This proposal is prompted by the development of candidate enhancements to TCAS II logic that will improve its utility and increase its overall operational acceptance. The actions specified by the proposed AD are intended to prevent reduced maneuverability of the airplane.

DATES: Comments must be received by October 15, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–68–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Honeywell Inc., Commercial Flight Systems Group, Air Transport Systems Division, P.O. Box 21111, Phoenix, AZ 85036, Attn: Customer Services. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Abby Malmir, Aerospace Engineer, Systems and Equipment Branch, ANM–132L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5351; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall

identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–68–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–68–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Traffic Alert and Collision Avoidance System (TCAS II) is a system that was developed by the FAA and members of aviation industry for the purpose of reducing the risks of mid-air collisions between aircraft equipped with that system. TCAS II has been operated for approximately 10 million flight hours in both U.S. and foreign airspace. In particular, TCAS II provides traffic advisories (TA) and resolution advisories (RA). A TA depicts the position of traffic relative to an aircraft equipped with TCAS II, which assists the pilot in visually locating intruding aircraft. An RA indicates the vertical rate that must be achieved or the recommended escape maneuver needed to maintain safe separation from threatening aircraft.

Public Law (Pub. L.) 100–23 currently requires that TCAS II systems be installed on aircraft operated under part 121 of the Federal Aviation Regulations (FAR). Additionally, Public Law 101–236 establishes a phased implementation schedule for installing TCAS II equipment on aircraft having more than 30 passenger seats. On April 3, 1990, the FAA issued a final rule amending parts 121, 125, and 129 of the FAR (Docket No. 25954; amendments 121–217, 125–14, and 129–21; 55 FR 13242, April 9, 1990) that requires implementation of TCAS II systems on 100 percent of all affected U.S.-operated airplanes by December 30, 1993.

Public Law 101–236 also requires that the FAA conduct, in conjunction with the airlines and aviation industry, a TCAS Transition Program (TTP) when TCAS II implementation is under way. The latest TTP report, which will be included in the Rules Docket, covers approximately 4,500 aircraft, including air carrier turbojets/turboprops and approximately 1,000 corporate aircraft, that operate TCAS II avionics. The TTP report indicates that the majority of the aviation community considers the features and safety of TCAS II to be a positive step in reducing the likelihood of mid-air collisions.

The TTP report also indicates that there are operational incompatibilities between certain TCAS II units and the existing air traffic control (ATC) system that have prevented the aviation community from totally accepting TCAS II. The TTP report includes analyses of many of these operational events and identifies candidate enhancements to TCAS II logic that would improve its utility and increase its overall operational acceptance.

A new collision avoidance system (CAS) logic package, written as version 6.04A to Radio Technical Commission for Aeronautics Document 185 [RTCA/DO–185, Minimum Operational Performance Standard (MOPS)], and MITRE letter F046–L–0056, dated July 20, 1993, has been developed to reduce the number of low altitude alerts, high vertical rate encounter alerts, and advisories issued as a result of corrupt sensor inputs.

In addition, the FAA has received a report that, during three of four recent aircraft altitude crossing maneuvers, Honeywell TCAS II computer units, part numbers 4066010–901 and -902, did not convert (round up/down) the 25-foot incremental Mode C output to the nearest 100-foot increment before processing it through the vertical tracker. Subsequent simulation of these events disclosed that with 25-foot input the vertical tracker was unable to properly track high vertical rates (i.e., at 1,500 to 3,000 feet per minute, the output of the vertical tracker varied ± 600 feet about the input rate). The TCAS II vertical tracker was designed to accommodate Mode C altitude input of 100-foot increments.

The FAA has also received results of a recent flight evaluation of the Honeywell TCAS II, which revealed that the system failed to be tracked and coordinated by an intruding aircraft when the Mode S transponder CA field was set at CA=7. Consequently, when an aircraft equipped with Honeywell TCAS II encounters another aircraft equipped with TCAS II avionics having a transponder reporting of CA=7, the system that detects the threat issues an RA and reports incorrectly that it is involved in a TCAS-to-TCAS coordinated encounter. This condition is specific to Honeywell TCAS II computer units, part numbers 4066010–901, –902, and –903.

The conditions described previously, if not corrected, could also result in reduced maneuverability of the airplane.

The FAA has determined that modification of the computer surveillance logic on all Honeywell TCAS II computer units is necessary to ensure that these units accommodate Mode C altitude input of 100-foot increments and that the system will be tracked and coordinated by intruding aircraft when the Mode S transponder CA field is set at CA=7.

Since an unsafe condition has been identified that is likely to exist on other products of this same type design, the proposed AD would require replacing all existing Honeywell TCAS II computer units with new units (identified as Version 6.04A) that incorporate updated CAS logic; and modification of the computer surveillance logic to ensure that these units accommodate Mode C altitude input of 100-foot increments and that the system will be tracked and coordinated by intruding aircraft when the Mode S transponder CA field is set at CA=7. The actions would be required to be accomplished in accordance with a method approved by the FAA.

The proposed actions would be required to be accomplished by December 30, 1993. This compliance time was established to coincide with amendments to parts 121, 125, and 129 of the FAR, described previously, which require implementation of TCAS II systems on 100% of affected airplanes by December 30, 1993.

The affected Honeywell TCAS II computer units are installed on, but not limited to, the following transport category airplanes:

1. Airbus Industrie Model A310–200, A310–300, A320–200, and A340 series airplanes;

2. Boeing Model 727–100 and –200; 737–100, –200, –300, –400 and –500; 747–100, –200, –300, –400 and 747SP; 757–200; and 767–200 and –300 series airplanes;

3. Cessna Citation Model C550 and C560 series airplanes, and Cessna Citation III series airplanes;

4. Canadair Challenger Model CL–600–2B16 and –2A12 series airplanes;

5. British Aerospace Model 125–800A;

6. Gulfstream Model GII, GIIB, GIII, and GIV series airplanes;

7. Lockheed Model L–1011 series airplanes; and

8. McDonnell Douglas Model DC–9–10, –30-, –40, and –50; DC–10–10, –30, and –40; and DC–9–80 series airplanes.

The FAA plans similar rulemaking actions to address affected Allied Signal Aerospace Company, Air Transport Avionics (formerly Bendix/King Air Transport Avionics Division), and Rockwell International, Collins Air Transport Division, TCAS II computer units.

There are approximately 2,700 transport category airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,150 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $189,750, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Honeywell: Docket 93–NM–68–AD.

Applicability: Traffic Alert and Collision Avoidance System (TCAS) II computer units; part numbers 4066010–901, –902, and –903; as installed on, but not limited to, the following airplanes, certificated in any category:

Airbus Industrie Model A310–200, A310–300, A320–200, and A340 series airplanes;

Boeing Model 727–100 and –200; 737–100, –200, –300, and –400; 747–100, –200, –300, –400 and 747SP; 757–200; and 767–200 and –300 series airplanes;

Cessna Citation Model C550 and C560 series airplanes, and Cessna Citation III series airplanes;

Canadair Challenger Model CL–600–2B16 and –2A12 series airplanes;

British Aerospace Model 125–800A;

Gulfstream Model GII, GIIB, GIII, and GIV series airplanes;

Lockheed Model L–1011 series airplanes; and

McDonnell Douglas Model DC–9–10, –30, –40, and –50; DC–10–10, –30, and –40; and DC–9–80 series airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced maneuverability of the airplane, accomplish the following:

(a) Before December 30, 1993, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(1) Remove existing Honeywell TCAS II computer units, part numbers 4066010–901, –902, and –903, and replace those units with new units that incorporate updated collision avoidance system (CAS) logic, identified as Version 6.04A to Radio Technical Commission for Aeronautics Document 185 [RTCA/DO–185, Minimum Operational Performance Standard (MOPS)], and MITRE letter F046–L–0056, dated July 20, 1993.

(2) Modify the computer surveillance logic on Honeywell TCAS II computer units, part numbers 4066010–901, –902, and –903, to ensure that these units accommodate Mode C altitude input of 100-foot increments and that the system will be tracked and coordinated by intruding aircraft when the Mode S transponder CA field is set at CA=7.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Avionics Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 2, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–22001 Filed 9–3–93; 4:23 pm]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–CE–47–AD]

Airworthiness Directives: Rockwell International, Collins Air Transport Division, Traffic Alert and Collision Avoidance System II Processors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Rockwell International, Collins Air Transport Division (Collins), Traffic Alert and Collision Avoidance System (TCAS) II processors that are installed on aircraft. The proposed action would require replacing the existing TCAS II processor with a new processor that incorporates updated computer logic. Reports of these TCAS II processors displaying low altitude alerts, high vertical rate encounter alerts, and advisories prompted the proposed action. The actions specified by the proposed AD are intended to prevent collisions or near misses caused by incompatibility between the TCAS II processors and the current air traffic control system.

DATES: Comments must be received on or before October 15, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–47–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Information that relates to the proposed AD may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roger A. Souter, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4134; Facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–47–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–47–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Traffic Alert and Collision Avoidance System (TCAS) is a system that was developed by the FAA and the aviation industry as a way of reducing the risks of mid-air collisions between aircraft. In particular, TCAS II provides traffic advisories (TA) and resolution advisories (RA). A TA depicts the position of another aircraft in the immediate vicinity of the TCAS equipped aircraft, which assists the pilot in visually acquiring intruding aircraft. An RA indicates the vertical flight path that must be corrected or the recommended escape maneuver needed to maintain safe vertical separation from threatening aircraft.

Public Law (Pub. L.) 100–23 currently requires installing TCAS II on aircraft operated under part 121 of the Federal Aviation Regulations (FAR). In addition, Public Law 101–236 establishes a phased implementation schedule for installing TCAS II equipment on aircraft with more than 30 passenger seats. This law also requires that the FAA conduct, in cooperation with the airlines and industry, a TCAS Transition Program (TTP) when TCAS II implementation was under way.

The latest TTP report, which covers approximately 4,500 aircraft that incorporate TCAS II avionics with a total utilization of about 10,000 flight hours, indicates that the aviation community, for the most part, is very positive about the features and safety of TCAS II. The report also indicates that incompatibilities between TCAS and the existing air traffic control (ATC) system exist that prevents total acceptance of TCAS. The TTP report identifies enhancements to the TCAS logic that would improve its utility and increase its overall operational acceptance.

This new logic package, version 6.04A to the RTCA/DO–185, Minimum Operational Performance Standard (MOPS) and MITRE letter F046–L–0056, dated July 20, 1993 (hereon referred to as "Change 6.04A"), was developed to reduce the number of low altitude alerts, high vertical rate encounter alerts, and advisories.

The FAA has identified certain Collins TCAS II processors as equipment that needs "Change 6.04A" incorporated in order to prevent the inability of the system's 100-foot vertical tracker to properly process an intruder's Mode C 25-foot increment altitude report. Recent FAA-investigation reveals that these systems may not convert (round up/down) the 25-foot incremental Mode C output to the nearest 100-foot increment before processing it through the vertical tracker. Simulating this situation shows that there is an inability of the vertical tracker, with the 25-foot input, to properly track high vertical rates, i.e., at 1,500 to 3,000 feet/minute—the output of the vertical tracker would vary +/− 600 feet about the input rate. The TCAS II vertical tracker was designed to accommodate MODE C altitude input of 100-foot increments.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that (1) TCAS manufacturers that use 25-foot altitude data in the non-linear vertical tracker should incorporate "Change 6.04A" to the existing TCAS II computer logic; and (2) AD action should be taken to prevent collisions or near misses caused by incompatibility between the TCAS II processors and the current air traffic control system.

Since an unsafe condition has been identified that is likely to exist or develop in other Collins TCAS II processors of the same type design that are installed on aircraft, the proposed AD would require (1) removing from service all processors that do not have computer logic "Change 6.04A" incorporated; and (2) mandatory incorporation of "Change 6.04A" into the TCAS II computer system.

The affected TCAS II processors are not designed for a specific aircraft type. The Collins TCAS II processors are installed on, but not limited to the following:

General Aviation Airplanes

Aerospatiale Models ATR–42 and ATR–72 airplanes;
Astra Model 1125 airplanes;
BAC Model 1–11 airplanes;
British Aerospace Model 125–800 airplanes;
Beech Models C90A, B200, 300, 350, and 400A airplanes;
Canadair Models CL–600, CL–600–2B16, CL–601, CL–601–1A, and CL–601–3A airplanes;
Learjet Models 31, 55, and 60 airplanes;
Falcon Models 20, 50, 200, and 900 airplanes
Gulfstream Models G2 and G3 airplanes;
British Aerospace Models HS–125–700 airplanes;
SAAB Model 340B airplanes; and
Sabreliner Model 60 airplanes.

Air Transport Airplanes

Airbus Industries Models A300B2, A–300B, and A–320 airplanes;
British Aerospace Models ATP and 146 airplanes;

Boeing Models 707, 727, 737, 747, 757, and 767 airplanes;

British Aerospace/Aerospatiale Model Concorde SST airplanes;

de Havilland DHC–7 and DHC–8 series airplanes;

McDonnell Douglas Models DC–8, DC–9, and DC–10, MD–80, and MD–11 airplanes;

Ilyushin Model IL–86 airplanes;

Lockheed Model L–1011 airplanes;

SAAB Models SF340A and SF340B airplanes; and

Shorts Models SD3–60–300 airplanes.

The condition specified by the proposed AD is not caused by actual hours time-in-service (TIS) of the aircraft that the equipment is installed in. The need for the computer logic modification has no correlation to the number of times the equipment is utilized or the age of the equipment. For this reason, the compliance time of the proposed AD is presented in calendar time instead of hours TIS.

The FAA estimates that 1,995 TCAS II processors in the U.S. registry would be affected by the proposed AD, that it would take approximately 5 workhours per processor (1 workhour for installation and 4 workhours for operational testing) to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $548,625. These figures take into account that none of the operators of the airplanes equipped with the affected TCAS II processors have accomplished the actions specified in this proposed AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Rockwell International, Collins Air Transport Division: Docket No. 93–CE–47–AD.

Applicability: Traffic Alert and Collision Avoidance System II processors that are installed on, but not limited to the following airplanes (all serial numbers), certificated in any category:

General Aviation Airplanes

Aerospatiale Models ATR–42 and ATR–72 airplanes;

Astra Model 1125 airplanes;

BAC Model 1–11 airplanes;

British Aerospace Model 125–800 airplanes;

Beech Models C90A, B200, 300, 350, and 400A airplanes;

Canadair Models CL–600, CL–600–2B16, CL–601, CL–601–1A, and CL–601–3A airplanes;

Learjet Models 31, 55, and 60 airplanes;

Falcon Models 20, 50, 200, and 900 airplanes

Gulfstream Models G2 and G3 airplanes;

British Aerospace Models HS–125–700 airplanes;

SAAB Model 340B airplanes; and

Sabreliner Model 60 airplanes.

Air Transport Airplanes

Airbus Industries Models A300B2, A–300B, and A–320 airplanes;

British Aerospace Models ATP and 146 airplanes;

Boeing Models 707, 727, 737, 747, 757, and 767 airplanes;

British Aerospace/Aerospatiale Model Concorde SST airplanes;

de Havilland DHC–7 and DHC–8 series airplanes;

McDonnell Douglas Models DC–8, DC–9, and DC–10, MD–80, and MD–11 airplanes;

Ilyushin Model IL–86 airplanes;

Lockheed Model L–1011 airplanes;

SAAB Models SF340A and SF340B airplanes; and

Shorts Models SD3–60–300 airplanes.

Compliance: Prior to December 30, 1993, unless already accomplished.

To prevent collisions or near misses caused by incompatibility between the traffic alert and collision avoidance system (TCAS) II processors and the current air traffic control system, accomplish the following:

(a) Remove any TCAS II processor with a part number (P/N) suffix listed in the "Existing P/N Suffix" column of the table below, and install a corresponding TCAS II processor with a P/N listed in the "New P/N Suffix" column of the table below:

Existing P/N suffix	New P/N suffix
–012	–020
–112	–120
–014	–320
–612	–620

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(d) Information that relates to the proposed AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 2, 1993.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–22002 Filed 9–3–93; 4:23 pm]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 93–ASO–10]

Proposed Establishment of Class E Airspace; Adel, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Adel, Georgia. A Standard Instrument Approach Procedure (SIAP) for Runway 23 at the Cook County Airport has

recently been developed and controlled airspace extending upward from 700 feet above the surface of the earth, is needed to contain instrument flight rules (IFR) operations at the airport. Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and in its place use the term "Class E airspace" for airspace extending upward from 700 feet or more above ground level. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the developed SIAP. If adopted, the operating status of the airport would change form VFR operations to include IFR operations concurrent with publication of the SIAP.

DATES: Comments must be received on or before: November 20, 1993.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration, Docket No. 93–ASO–10, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763–7204.

FOR FURTHER INFORMATION CONTACT: Robert L. Shipp, Jr., Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ASO–10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Adel, Georgia. A SIAP based on the Moultrie Very High Frequency Omnidirectional Range (VOR) has been established to serve the Cook County Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain IFR operations at the airport. Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and in its place use the term "Class E airspace". The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the VOR/DME–A SIAP at Cook County Airport.

The coordinates for this airspace docket are based on North American Datum 83. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 effective September 16, 1993. The Class E airspace designation listed in this document would be published subsequently in the Order. If adopted, the operating status of the airport would change from VFR operations to include IFR operations concurrent with publication of the SIAP.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 the Federal Aviation Administration Order 7400.9A, Air Space Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Para. 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO GA E5 Adel, GA [New]

Cook County Airport, GA
(lat. 31°08'26" N, long. 83°27'11" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Cook County Airport.

* * * * *

Issued in East Point, Georgia, on August 25, 1993.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 93–21971 Filed 9–8–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 92-ANM-21]

Proposed Alteration of Jet Route J-151; WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed Rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) that proposed to extend the route segment of Jet Route J-151 from Whitehall, MT, VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) direct to Spokane, WA, VORTAC. During a flight check of the proposed jet route, the measured signal strength did not satisfy the requirements of an expanded service volume between the navigational aids.

DATES: The withdrawal is effective September 9, 1993.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9230.

SUPPLEMENTARY INFORMATION: On January 4, 1993, a Notice of Proposed Rulemaking was published in the **Federal Register** to amend 14 CFR part 71 of the Federal Aviation Regulations to extend the route segment of Jet Route J-151 from Whitehall, MT, VORTAC direct to Spokane, WA, VORTAC (58 FR 34). This action was proposed to enhance traffic flow and reduce controller workload. During a recent flight check of the proposed jet route, the measured signal strength did not satisfy the requirements of an expended service volume between the two navigational aids. Therefore, the FAA has decided to withdraw this proposal.

List of Subject in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Withdrawal of the Proposed Rule

In consideration of the foregoing, the Notice of Proposed Rulemaking, Airspace Docket No. 92-ANM-21, as published in the **Federal Register** on January 4, 1993 (58 FE 34), is hereby withdrawn.

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Issued in Washington, DC, on August 30, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-21974 Filed 9-8-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

Receipt of Domestic Interested Party Petition Concerning Country of Origin Marking for Frozen Produce

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of Receipt of Domestic Interested Party Petition; Solicitation of Comments.

SUMMARY: Customs has received a petition filed on behalf of domestic interested parties concerning the country of origin marking requirements for retail packages containing imported frozen produce. Under current practice, such packages are considered to comply with the marking requirements if the marking appears on the back side of the package in close proximity to nutritional and dietary information. The petition requests Customs to adopt a new rule under which packages of imported frozen produce would be required to show country of origin marking on the front side of the package to be considered as marked in a conspicuous place. Public comment is solicited regarding the application of the marking requirements to imported frozen produce.

DATES: Comments must be received on or before November 8, 1993.

ADDRESSES: Comments (preferably in triplicate) may be submitted to the U.S. Customs Service, Regulations Branch, Office of Regulations and Rulings, 1301 Constitution Avenue NW. (Franklin Court), Washington, DC 20229. Comments may be viewed at the Office of Regulations and Rulings, Franklin Court, 1099 14th Street NW., suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Cascardo, Value and Marking Branch, Office of Regulations and Rulings, U.S. Customs Service, (202) 482-7010.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516) and part 175, Customs Regulations (19 CFR part 175), a domestic interested party may challenge certain decisions made by Customs regarding imported merchandise which is claimed to be similar to the class or kind of merchandise manufactured, produced or wholesaled by the domestic interested party. This document provides notice that domestic interested parties are challenging a marking decision made by Customs.

The petitioners are Norcal Crosetti Foods, Inc. and Patterson Frozen Foods, Inc., California packers of produce grown domestically. Their petition is supported by the International Brotherhood of Teamsters on behalf of its Local 912. All three entities are domestic interested parties within the meaning of section 516(a)(2), Tariff Act of 1930, as amended, (19 U.S.C. 1516(a)(2).

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin shall be marked in a conspicuous place with the English name of the country of origin. The country of origin marking requirements and exceptions of 19 U.S.C. 1304 are implemented by part 134, Customs Regulations (19 CFR part 134).

The petitioners contend that packages of imported frozen produce should be required to show country of origin marking on the front side of a package to be considered as marked in a conspicuous place.

Customs presently treats frozen produce as marked in a conspicuous place if the marking appears on the back side of the package in close proximity to nutritional and directional information. Also, marking which appears on the side panels of a box may be treated as appearing in a conspicuous place under appropriate circumstances.

Relatedly, the petitioners ask Customs to require that marking appear on these products in a size and type style or color of lettering which would make the marking conspicuous. At this time, there are no particular Customs requirements in this regard for packaged frozen produce beyond the general necessity to mark the article in a conspicuous place and as legibly, indelibly, and permanently as the nature of the article will permit. We invite comments from interested persons concerning the extent to which lettering of specified sizes, colors, and type styles is needed on packaged frozen produce to assure that its country of origin is indicated to the ultimate purchaser.

Counsel for the domestic packers first raised the question of whether [the front or] the back side of a produce package

was a conspicuous place for country of origin marking by seeking a ruling from Customs in 1988. A ruling was requested to the effect that packaged imported frozen produce was not marked in a conspicuous place unless the marking appeared on the front side of such packaging in prominent lettering. Customs responded by issuing a determination that the sample packages submitted by the domestic packers were legally marked by names and words which appeared on the back side of the packaging in close proximity to nutritional information required under regulations of the Food and Drug Administration (FDA). HRL 731830 (November 21, 1988).

The packers appealed this determination to the Court of International Trade. In *Norcal/Crosetti Foods, Inc. et al.* v. *U.S. Customs Service*, 758 F. Supp. 729 (1991), (Norcal I), the CIT ruled, based upon certain findings, that frozen produce is not marked in a conspicuous place unless marked on the front side of the package. At the direction of the Court of International Trade, Customs issued T.D. 91–48, 56 Fed. Reg. 24115 (May 28, 1991), requiring that packages of frozen produce be so marked.

On appeal by the government, the Court of Appeals for the Federal Circuit ruled in *Norcal*, 963 F.2d 356 (1992) (Norcal II), that the packers' claims were not properly before the Court of International Trade under the so-called "residual" jurisdiction provision, 28 U.S.C. 1581(i). Instead, the claim would properly have been before the CIT under 28 U.S.C. 1581(b) after exhaustion before Customs of the administrative domestic interested party petition procedures of 19 U.S.C. 1516. The Appeals Court's opinion affirmed that issues of proper country of origin marking under section 304 of the Tariff Act of 1930 are proper subjects to be addressed under section 516 of the Tariff Act of 1930.

In view of Norcal II and the subsequent action of the trial court in Norcal I to vacate its original ruling and remand to Customs, Customs has not enforced the marking requirement for imported frozen produce set forth in T.D. 91–48. Customs regards the findings of HRL 731830 as having been effectively reinstated, such that marking on the back panel of a package of frozen produce is an acceptable practice in the absence of any other factors which might require more extensive disclosure.

The instant petition requests that Customs reconsider and reject the position stated in HRL 731830, adopt the findings made by the trial court in Norcal I, and commence enforcement of the requirements for marking set forth in T.D. 91–48.

The stated basis for the petitioners' request to change the ruling is as follows: (1) Current marking of frozen produce is found "buried in a sea of cooking instructions"; (2) As displayed in retail frozen food display cases, only the front side of packaged frozen produce is visible, and it is not practical for the consumer to turn it over to ascertain the country of origin; (3) Large scale importation of frozen produce is a recent phenomenon, but there is inherent confusion in that the packaging has not changed; and (4) various products are sold in the U.S. whose packaging is marked confusingly or illegibly, or which implies domestic origin.

Comments

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties. The petition of the domestic interested party, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4 p.m. at the Regulations Branch, suite 4000, Franklin Court, 1099 14th Street, NW., Washington, DC.

Authority

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal drafter of this document was Robert Cascardo, Value and Marking Branch, U.S. Customs Service. Personnel from other Customs offices participated in its development.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: August 19, 1993.

Ronald K. Noble,

Assistant Secretary of the Treasury.

[FR Doc. 93–22004 Filed 9–8–93; 8:45 am]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–4726–5]

Public Meeting of the Proposed Small Non-Road Engine Negotiated Rulemaking Committee

AGENCY: Environmental Protection Agency.

ACTION: Public meeting.

SUMMARY: The Environmental Protection Agency is announcing a meeting of the proposed Small non-Road Engine Nogotiated Rulemaking committee. The meeting is open to the public without advance registration.

During this meeting the group will: Review and adopt organizational protocols for the functioning of the committee; finalize committee membership; participate in a presentation by the states on State Implementation Plans; identify and prioritize negotiation issues; identify and establish of workgroups to address issues; identify data needs; and schedule future meetings.

DATES: The meeting will be held on September 29, 1993, from 10 a.m. to 5 p.m., and on September 30, 1993 from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Ann Arbor Hilton Hotel, 610 Hilton Boulevard, Ann Arbor, MI 48108, (313) 761–7800.

FOR FURTHER INFORMATION CONTACT: Persons needing further information concerning this committee and the rule should contact Betsy McCabe, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Rd. Ann Arbor, MI 48015, (313) 668–4344. Persons needing further information on procedural or logistical matters should call the Committee's facilitator, Lucy Moore, Western Network, 616 Don Gaspar, Santa Fe, NM, 87501, (505) 982–9805.

Dated: September 1, 1993.

Deborah S. Dalton,

Deputy Director, EPA Consensus and Dispute Resolution Program, Office of Regulatory Management and Evaluation.

[FR Doc. 93–21982 Filed 9–8–93; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[IL15–6–6014; FRL–4727–4]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule; withdrawal.

SUMMARY: In a November 13, 1992 proposed rule, the United States Environmental Protection Agency (USEPA) proposed to approve a revision to Illinois' State Implementation Plan (SIP) for ozone. The purpose of this revision was to change the Volatile Organic Matter emission limits applicable to a facility in Richland County, Illinois operated by Roadmaster Corporation. The Illinois Environmental Protection Agency withdrew its underlying SIP revision request for the Roadmaster Corporation on June 29, 1993. Thus, USEPA's November 13, 1992, proposal is moot. USEPA is withdrawing this proposed rulemaking and will take no further action on the SIP revision because the State has formally withdrawn the request.

DATES: This withdrawal of proposed rulemaking becomes effective October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Fayette Bright, Regulation Development Section, Regulation Development Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6069.

List of Subjects in 40 CFR Part 51

Air pollution control, Hydrocarbons, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 9, 1993.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 93–21980 Filed 9–8–93; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[IN21–1–5723; FRL–4727–5]

Basic and Enhanced Vehicle Inspection and Maintenance Plan; Indiana

AGENCY: United States Environmental Protection Agency (U.S. EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to disapprove a revision to the Indiana State Implementation Plan (SIP) for the attainment of the National Ambient Air Quality Standard for ozone. This revision was intended to provide for the adoption and implementation of a vehicle inspection/maintenance (I/M) program meeting the requirements of U.S. EPA regulations, published in the **Federal Register** on November 5, 1992, concerning vehicle I/M programs (I/M Regulation) for the Lake, Porter, Clark, and Floyd Counties ozone nonattainment areas. The revision was submitted on December 2, 1992 and consisted of a commitment by the Governor's designee to the timely adoption and implementation of an I/M program meeting all the requirements of U.S. EPA's I/M regulations and a schedule for implementation of the required program. U.S. EPA is proposing to disapprove the submittal because important milestones have been missed pertaining to the development and adoption of necessary rulemaking for the I/M program and, therefore, U.S. EPA believes the State cannot meet its commitment to submit a full revised I/M SIP by November 15, 1993. However, this action also proposes to approve the submittal in the alternative if a full SIP revision is submitted by November 15, 1993.

DATES: Comments on this proposed action must be received in writing on or before October 12, 1993. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments on this rulemaking should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (5AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the requested SIP revision, technical support documents and public comments received are available at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Environmental Engineer, Regulation Development Section, Regulation Development Branch (5AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 (312) 886–6061.

Anyone wishing to come to Region 5 offices should first contact Francisco J. Acevedo.

SUPPLEMENTARY INFORMATION:

I. Clean Air Act Requirements

The Clean Air Act, as amended in 1990, (the Act) requires States to make changes to improve existing I/M programs or implement new ones. Section 182(a)(2)(B) required any ozone nonattainment area which has been classified as "marginal" (pursuant to section 181(a) of the Act) or worse with an existing I/M program that was part of a SIP, or any area that was required by the 1977 Amendments to the Act to have an I/M program, to immediately submit a SIP revision to bring the program up to the level required in past U.S. EPA guidance or to what had been committed to previously in the SIP, whichever was more stringent. All carbon monoxide nonattainment areas were also subject to this requirement to improve existing or previously required programs to this level. In addition, all ozone nonattainment areas classified as moderate or worse must implement a basic I/M program, regardless of previous requirements.

In addition, Congress directed U.S. EPA in section 182(a)(2)(B) to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. All areas required by the Act to have an I/M program were to incorporate this guidance into the SIP. Areas classified as "serious" or worse ozone nonattainment areas with populations of above 200,000 and CO nonattainment areas with design classifications above 12.7 ppm and populations of 200,000 or more, in addition to metropolitan statistical areas with populations of 100,000 or more in the northeast ozone transport region, were required to meet U.S. EPA guidance for "enhanced" I/M programs. These areas were required to submit a SIP revision to incorporate an enhanced I/M program by November 15, 1992.

In the State of Indiana a basic I/M program meeting all the requirements of the I/M rule is required in Clark and Floyd Counties. An enhanced I/M program is required in Lake and Porter Counties.

II. I/M Regulation Requirements

On November 5, 1992 (57 FR 52950) U.S. EPA published a final regulation establishing the I/M requirements, pursuant to section 182 of the Act. The I/M regulation was codified at 40 CFR part 51, subpart S, and requires, among other things, that each State that is required to implement an I/M program must submit by November 15, 1992, a SIP revision including two elements: (1) A commitment from the Governor or his/her designee to the timely adoption and implementation of an I/M program meeting all the requirements of the I/M regulation; and (2) a schedule of implementation. In addition, the commitment must provide interim milestones that the State must meet with regard to the timely implementation of any necessary legislation and regulations required to have full legal authority to implement the program. Failure by the State to

meet any of the above mentioned requirements is grounds for U.S. EPA to disapprove the commitment.

In cases were the committal SIPs are considered complete, U.S. EPA believes that conditional approval of I/M committal SIPs is appropriate because the States could not be expected to begin developing an I/M program meeting the requirements of the Act and the I/M regulation until the I/M regulation was adopted as a final rule, which occurred on November 5, 1992. U.S. EPA does believe that States can adopt revised I/M program plans within one year of U.S. EPA's final rule. As a condition of U.S. EPA's proposed approval of such committal SIPs, the I/M regulation requires that by November 15, 1993, a complete SIP revision be submitted which contains all of the elements in the implementation schedule, including authorizing legislation and implementing regulations. A proposed conditional approval should not be interpreted as an approval of the program design features as described in a State's commitment. In order to be considered complete and fully approvable, the November 15, 1993 submittal must include an analysis of the program using the most current U.S. EPA mobile source emission model demonstrating that the program meets the applicable performance standard, as well as other features identified in the statute and regulations.

III. State Submittal

The State of Indiana submitted a committal SIP on December 2, 1992. A public hearing on this submittal was held by the State on October 22, 1992, in Gary, Indiana. The submittal includes a commitment to the timely adoption and implementation of an I/M program in the Lake, Porter, Clark, and Floyd Counties ozone nonattainment areas meeting all the requirements of the I/M regulation and the Act by November 15, 1993, and a schedule of implementation. A more detailed analysis of the State's submittal is contained in U.S. EPA's technical support document dated May 4, 1993, which is available from the Region 5 office listed above.

IV. Statement of Disapproval

Under the authority of the Governor, the Commissioner of the Indiana Department of Environmental Management submitted a SIP revision to satisfy certain requirements of the I/M regulation to the United State Environmental Protection Agency on December 2, 1992. U.S. EPA has reviewed this submittal and proposes to disapprove the commitment based on the failure by the State to meet the commitment and schedule contained in the SIP submittal pertaining to the adoption of necessary authority to implement I/M requirements during the 1993 Indiana General Legislative session. On June 30, 1993, the Indiana legislature adjourned without taking necessary action to allow implementation of the I/M provisions mandated in the Clean Air Act and the I/M rule for Lake and Porter Counties. Failure to provide necessary authority prevents the State from submitting a complete SIP revision containing all the required elements of the program by November 15, 1993.

On August 17, 1993, U.S. EPA sent a letter to Governor Bayh of Indiana and to the Federal Highway Administration advising them that U.S. EPA has decided to exercise its discretionary authority under section 110(m) of the Act to impose sanctions at any time once a finding of SIP deficiency is made. Because of the failure of the Legislature to provide necessary authority to implement an enhanced I/M program in Lake and Porter Counties, it is U.S. EPA's intent to publish a proposed rule in the Federal Register in the near future proposing to limit certain Federal highway funding assistance statewide and to impose 2:1 emissions offset growth limitations for new and modified major stationary sources of volatile organic compounds and oxides of nitrogen in the ozone nonattainment counties of Lake, Porter, Clark, Floyd, Marion, St. Joseph, Elkhart, and Vanderburgh Counties. A public comment period of at least 30 days and an opportunity for public hearing(s) will be provided to solicit comments on the proposed imposition of sanctions.

If the State provides the necessary authority and meets the other applicable interim milestones in the December 2, 1992, commitment prior to U.S. EPA's final action on this proposal, U.S. EPA proposes in the alternative to conditionally approve the commitment as complying with section 110(k)(4). If the State adopts and submits the required legislation and rules to U.S. EPA within the applicable time frame, the conditionally approved commitment will remain part of the SIP until U.S. EPA takes final action approving or disapproving the new submittal. If U.S. EPA approves the subsequent submittal, those newly approved rules will become a part of the SIP.

When U.S. EPA issues a final disapproval, the sanctions process under section 179(a) begins. Under section 179(a), U.S. EPA would be required to impose one of the sanctions under section 179(b) after 18 months of the final disapproval. In addition, the final disapproval triggers the Federal implementation plan requirement under section 110(c). However, as stated above, U.S. EPA in an August 17, 1993, letter to Governor Bayh of Indiana has indicated its decision to exercise its discretionary authority under section 110(m) of the Act in this situation. Such discretionary authority allows U.S. EPA to impose sanctions at any time once a finding of SIP deficiency is made.

Public comment is solicited on the requested SIP submittal and on U.S. EPA's proposed actions. Comments received by the date listed above will be considered in the development of the final rule.

V. Regulatory Process

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on U.S. EPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, U.S. EPA must prepare a regulatory flexibility analysis assessing the impact of any proposedor final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, U.S. EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals under sections 110 and 301 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing or has committed to impose in the future. Therefore, because the Federal SIP approval does not impose any new requirements, it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids U.S. EPA to base its actions concerning SIPs on such grounds. See *Union Electric Co. v. U.S. EPA*, 427 U.S.

246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

If U.S. EPA issues a final disapproval, based upon the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its state enforceability. Moreover, U.S. EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, U.S. EPA certifies that in the event U.S. EPA disapproves the State submittal, this disapproval action would not have a significant impact on a substantial number of small entities because it would not remove existing state requirements nor would it substitute a new Federal requirement.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Nitrogen oxide, Particular matter, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 30, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–21981 Filed 9–8–93; 8:45 am]

BILLING CODE 6560-60-F

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40 CFR Part 123

[FRL–4727–6]

Water Pollution Control; Application by South Dakota to Administer the National Pollutant Discharge Elimination System (NPDES) Program; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction.

SUMMARY: This document contains corrections to the South Dakota NPDES program application published Wednesday, September 1, 1993 (58 FR 46145). The public hearing date previously published in the **Federal Register** was September 27, 1993; the hearing date is corrected to read October 14, 1993. On page 46145, in the second column under **DATES**, in the fourth line the date September 27, 1993 is corrected to read October 14, 1993. The date previously published in the **Federal Register** as the date by which public comments must be received was October 8, 1993. On page 46145, in the second column under **DATES**, in the second line the date is corrected to read October 22, 1993. On page 46147, in the first column under the heading "Public Hearing Procedures", in the second paragraph, in the sixth line the date October 8, 1993 is corrected to read October 22, 1993. On page 46147 under the heading "Public Hearing Procedures", in the second column, in the first full paragraph, in the third and fourth lines the date October 8, 1993 is corrected to read October 22, 1993.

For the convenience of the reader, it is noted that the times and location of the public hearing (3 p.m. to 5 p.m. (CDT) and 7 p.m. to 9 p.m. (CDT) at the Matthew Training Center, Joe Foss Building; 523 East Capitol; Pierre, South Dakota 57501) remain the same.

FOR FURTHER INFORMATION CONTACT: Janet LaCombe at (303) 293–1593.

Dated: September 2, 1993.

Kerrigan G. Clough,

Acting Regional Administer, Environmental Protection Agency, Region VIII.

[FR Doc. 93–21979 Filed 9–8–93; 8:45 am]

BILLING CODE 6560-60-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Child Support Enforcement

45 CFR Parts 301 and 305

RIN 0970–AA74

Child Support Enforcement Program; Revision of Child Support Enforcement Program and Audit Regulations

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: OCSE is proposing to amend the Child Support Enforcement program regulations governing the audit of State Child Support Enforcement (IV–D) programs and the imposition of financial penalties for failure to substantially comply with the requirements of title IV–D of the Social Security Act (the Act). This regulation would specify how audits will evaluate State compliance with the requirements set forth in title IV–D of the Act and Federal regulations, including requirements resulting from the Family Support Act of 1988 (Pub. L. 100–485). This proposal also redefines substantial compliance to place greater focus on performance and streamlines part 305 by removing unnecessary sections. This proposed regulation would be effective for audits conducted for periods beginning subsequent to publication of the final rule.

DATES: Consideration will be given to written comments and suggestions received by November 8, 1993.

ADDRESSES: Address comments to: Deputy Director, Office of Child Support Enforcement, Department of Health and Human Services, Mail Stop OCSE/PPD, 4th floor, 370 L'Enfant Promenade SW., Washington, DC 20447. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m. in the Department's office at the above address.

FOR FURTHER INFORMATION CONTACT: Lourdes Henry on (202) 401–5440 or FTS 8–441–5440.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This rule does not require any information collection activities and, therefore, no approvals are necessary under this Paperwork Reduction Act.

Background

As a result of the enactment of the Child Support Enforcement Amendments of 1984, (Pub. L. 98–378), OCSE published final audit regulations on October 1, 1985, which affected the audits of State IV–D programs beginning in FY 1984. Section 9 of Public Law 98–378 and the implementing regulations require that OCSE conduct an audit of the effectiveness of State Child Support Enforcement programs at least once every three years; specify that OCSE use a substantial compliance standard to determine whether each State has an effective IV–D program; provide that any State found not to have an effective IV–D program in substantial compliance with the requirements of title IV–D of the Act be given an opportunity to submit a corrective action plan and, upon approval by OCSE, to take the corrective action necessary to achieve substantial compliance with those requirements; provide for the use of graduated penalty of not less than 1 nor more than 5 percent of a State's Aid to Families with Dependent Children (AFDC) program funds if a State is not in substantial compliance; and specify the period of time during which a penalty is effective.

In order to be found to have an effective program in substantial compliance with the requirements of title IV–D of the Act, a State must meet the State plan requirements contained in 49 CFR part 302. Under current regulations, there are separate audit criteria in part 305 for each of the State plan requirements in part 302. Currently, 29 criteria are listed in § 305.20 (which include numerous related subcriteria) which encompass the requirements of part 302 which are procedural in nature. These procedural criteria must be met for a finding of

substantial compliance. In addition, the regulations list 23 criteria (which include numerous related subcriteria) which encompass the requirements in part 302 which are related to the provision of services. These criteria must be met in 75 percent of the cases reviewed for a finding of substantial compliance. Finally, to be found in substantial compliance, a State must pass performance indicators specified in § 305.98 with an aggregate score of at least 70.

On January 31, 1989, OCSE published a Notice of Proposed Rulemaking (54 FR 4841) (hereinafter referred to as the January 31 proposed rule) which would have consolidated the current audit criteria by grouping them by major program function. Thus, instead of auditing each criterion separately, we proposed that two or more criteria would be grouped under one performance standard for evaluation. In addition, because we stated in the audit regulations published October 1, 1985 (50 FR 40120), that additional performance indicator components measuring paternity establishment and cost avoidance would be added to the performance measurement portion of the audit, those indicator components were included in the January 31 proposed regulation. In conjunction with the additional indicator components, we proposed a revised scoring system for State performance on the performance indicator components.

We only finalized those aspects of the January 31 proposed rule which establish the time periods covered by audits or follow-up reviews. That final rule, published March 8, 1990 (55 FR 8465), responded to comments received on the particular portions of the proposed regulation which were finalized. It indicated that we would review the rest of the comments when a new proposed regulation was developed.

The March 8 final rule specifies that:

(1) The audit covers a period comprised of any 12 consecutive months;

(2) Follow-up reviews cover the first three-month period beginning after the corrective action period; and

(3) For States operating under corrective action with respect to performance indicators, follow-up reviews cover the first full four quarters following the corrective action period.

On August 4, 1989, another final rule, Standards for Program Operations, was published (54 FR 32284) which implements the requirements of sections 121 and 122 of Public Law 100–485. Specifically, the final rule revised 45 CFR parts 302 and 303 to specify standards for processing child support enforcement cases and timeframes for distributing child support collections under title IV–D of the Act. States were required to meet these standards by October 1, 1990.

With regard to other Family Support Act requirements, on May 15, 1991, a final rule was published which implemented the requirements of Public Law 100–485 governing $50 pass-through payments, mandatory support guidelines, mandatory genetic testing, paternity establishment and laboratory testing (56 FR 22335). The requirements of Public Law 100–485 governing immediate wage withholding, review and adjustment of support obligations and monthly notice of support collections were published on July 10, 1992 (57 FR 30658). Additional review and adjustment requirements were published December 38, 1992 (57 FR 61559).

As a result of the passage of time, the child support provisions of Public Law 100–485, and the necessary changes to program regulations, we have re-examined the audit process and regulations and have developed the current proposal. In developing this proposal, we considered the impact of the new requirements on States and our experience with the audit process to date. We also reviewed the comments on the January 31 proposal.

In addition, we considered the concerns that many States and other groups have expressed about the current audit process. First, there is a concern that the scope, complexity, and length of the audit is expanding. OCSE audits cover numerous criteria and sub-criteria. The child support provisions of the Family Support Act of 1988 add to the complexity of the support enforcement program, and hence the audit process, by significantly expanding the number of criteria to be reviewed. Party as a result of this growing scope and complexity, it takes an increasingly greater amount of time and effort to conduct audits. This may cause delays in obtaining results and in performing audits in other States. In addition, although service delivery is already the primary focus of the audit (i.e., the 75 percent case action standard), there is a concern that the audit should focus more on outcomes and results. Focusing more on outcomes and results, including the timeliness of providing services, would allow the audit to better measures State program performance.

In response to concerns about the expanding scope of the audit, we are proposing to redefine substantial compliance to focus on certain criteria: (1) Service-related criteria that a significant number of States have failed to comply with in the past; and, (2) new or newly revised criteria. By eliminating certain administrative or procedural criteria and focusing on service-related criteria to the extent possible, we believe we can move toward a more results-oriented audit. The audit process is not the sole means through which State program development and compliance is determined. OCSE uses program reviews, the State Plan approval process, the audit resolution and tracking system, as well as the established audit process, to review State compliance.

This proposed rule also: Specifies how audits would evaluate State compliance with the new standards for program operations as well as other new requirements mandated by Public Law 100–485 by setting forth new and revised audit criteria and processes; combines related requirements into groupings; and streamlines part 305 by removing unnecessary sections. The requirements in this proposed rule would be effective for audits conducted for periods beginning subsequent to publication of the final rule.

In response to the standards and timeframes set forth in the final rule, Standards for Program Operations, a number of commenters asked that States not be subject to a determination of substantial compliance with the program standards as a result of an audit until there has been a period of evaluation of State performance with respect to the standards. In addition, the preponderance of commenters indicated that they could not meet the timeframes without Statewide and comprehensive automated information management systems and asked that the requirements not be effective until October 1, 1995, when States are required by the Family Support Act of 1988 to have operational automated support enforcement systems in place. A number of commenters requested that we change the current audit standard of 75 percent compliance with program requirements to begin with a lower percentage of compliance for the new requirements which became effective October 1, 1990, and increase the percentage of cases which must be processed for substantial compliance determinations between fiscal years 1991 and 1995.

As stated in the preamble to the standards for program operations final rule, Congress intended, by requiring the Secretary to publish final regulations within 10 months of the effective date of Public Law 100–485, that the effective date of the regulation should not be inordinately delayed. We

believe that most States should have been able to meet the new standards and timeframes by October 1, 1990, and will evaluate State implementation of these standards. However, States will not be subject to findings of substantial noncompliance and penalties for failure to meet these requirements and timeframes until after final audit regulations are published. Since States will not be penalized for substantial noncompliance with the program standards requirements until after final audit regulations are published, adequate time will have passed to allow all States to meet program standards. Nevertheless, given the deficiencies in the delivery of support enforcement services that necessitated the setting of program standards in the first instance, States should already be focusing their efforts to meet these standards. In developing the Standards for Program Operations, OCSE consulted with a work group composed of representatives of organizations representing Governors, State welfare administrators and State child support enforcement directors prior to issuing the proposed regulation. We received comments from more than 150 commenters representing States, localities, advocacy groups and private individuals. These comments were taken into consideration in drafting the final regulation. In response to the comments suggesting that we lower the percentage rate of compliance, we believe that the 75 percent standard has proven to be a reasonable standard. We also believe it is essential to maintain the standard to ensure that States work all cases and provide all necessary services in accordance with the new program standards.

Statutory Authority

These proposed regulations are published under the authority of sections 1102, 402(a)(27), 452(a)(4), 452(g), and 403(h) of the Act. Section 1102 authorizes the Secretary of HHS to publish regulations not inconsistent with the Act which may be necessary to efficiently administer the Secretary's functions under the Act. Section 402(a)(27) requires each State to operate a child support program in substantial compliance with the title IV–D State plan. Section 452(a)(4) requires the audit of each State IV–D program to assure compliance with title IV–D requirements at least once every three years (or not less often than annually in the case of any State which is being penalized, or is operating under a corrective action plan). Section 452(g) of the Act, added by section 111(a) of Public Law 100–485, sets forth the requirements governing paternity establishment percentages which States must meet to be found to comply substantially with the requirements of title IV–D. Finally, section 403(h) provides for the imposition of an audit penalty of not less than one nor more than five percent of a State's AFDC funding for any State which fails to substantially comply wit title IV–D requirements within the period of time the Secretary determines to be appropriate for corrective action.

Regulatory Provisions

OCSE proposes to amend part 305 in several ways: By revising the evaluation criteria to reflect new requirements in 45 CFR parts 302 and 303, including those governing standards for program operations, mandatory guidelines, immediate wage withholding, review and adjustment of support orders, and other provisions of Public Law 100–485; by eliminating duplicative regulations from part 305; and by redefining criteria that States must meet to be determined to be in substantial compliance.

General Definitions—§ 301.1

For consistency with the changes to part 305, this proposed rule would move the definition of "procedures" in § 305.1(b) and place it in alphabetical order in § 301.1.

Scope of Part 305—§ 305.0

Current regulations at § 305.0 describe 45 CFR part 305 section by section: Sections 305.10 through 305.13 describe the audit; § 305.20 defines an effective program for purposes of an audit; §§ 305.21 through 305.57 and § 305.98 set forth the audit criteria used to determine program effectiveness including performance indicators; § 305.99 governs the notice and corrective action period; and § 305.100 governs the imposition of a penalty.

We believe §§ 305.21 through § 305.57 are unnecessary and serve no substantive purpose because these regulations merely cross-reference and/or restate the requirements in the corresponding State plan regulations in part 302 and related program requirements in part 303. Accordingly, we propose to delete §§ 305.21 through 305.57 and, revise § 305.20 which lists administrative criteria States must meet and service related criteria for which States must have and use procedures required in a specified percentage of the cases reviewed for each criterion. In addition, § 305.20 would cross reference relevant State plan and program regulations contained in parts 302 and 303 and make other changes described below.

Accordingly, § 305.0 would be revised to state: Sections 305.10 through 305.13 describe the audit; § 305.20 sets forth audit criteria and subcriteria the Office will use to determine program effectiveness and defines an effective program for purposes of an audit; § 305.97 sets forth the paternity establishment percentage requirements; § 305.98 sets forth the performance indicators OCSE will use to determine State IV–D program effectiveness; § 305.99 provides for the issuance of a notice and corrective action period if a State is found by the Secretary not to have an effective IV–D program; and § 305.100 provides for the imposition of a penalty if a State is found by the Secretary not to have had an effective program and has failed to take corrective action and achieve substantial compliance within the period prescribed by the Secretary.

Definitions—§ 305.1

As discussed above, the definition of "procedures" in § 305.1(b) would be moved to § 305.1. Section § 305.1 would continue to provide that the definitions found in § 301.1 apply to part 305.

Timing and Scope of the Audit—§ 305.10

For consistency with the changes proposed elsewhere in part 305, § 305.10(a) would be revised to state that the audit of each State's program will be a comprehensive review using the criteria prescribed in §§ 305.20, 305.97 and 305.98. As a technical change, the name "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" in paragraph (c)(2) would be changed to "Government Auditing Standards."

State Comments—§ 305.12

Current regulations at § 305.12(a) provide for informing the IV–D agency during the audit entrance conference of those political subdivisions of the State that will be audited and making preliminary arrangements for personnel and information to be made available. We propose to replace this provision with more general language indicating that any necessary arrangements for conducting the audit will be made at the audit entrance conference. States will be informed, either in the letter States receive from OCSE in the quarter preceding commencement of the audit or at the entrance conference, of all information necessary to prepare for the audit. No change in current practice, or information provided to the States, is intended or anticipated as a result of this proposed change.

Effective Support Enforcement—§ 305.20

Current § 305.20 sets forth the criteria which are used to measure State compliance with the requirements of title IV–D of the Act. Section 305.20(a) lists selected criteria and related subcriteria which must be met or under which the procedures involved must be used in at least 75 percent of the cases reviewed for audits conducted for fiscal year 1984. Additional criteria and related subcriteria as well as performance indicators incorporated into the audit of State child support programs for audit periods subsequent to FY 1984 because of changes in title IV–D of the Act and implementing program regulations are listed in §§ 305.20 (b), (c) and (d). In total, the regulations list 29 criteria which must be met and 23 criteria where the required procedures must be used in 75 percent of the cases reviewed.

1. Revised Definition of Substantial Compliance.

We are proposing to completely revise § 305.20 by redefining the criteria that States must meet to be determined to be in substantial compliance. As part of this revision, § 305.20 would be changed to address new regulatory requirements including non-AFDC Medicaid and former AFDC cases, program standards and timeframes requirements, and other new program requirements under Public Law 100–485 (i.e., mandatory guidelines, review and adjustment of support orders, monthly notice of support collections, mandatory genetic testing, and immediate wage withholding).

While program regulations specify how States must operate IV–D programs to be in compliance with State plan requirements and what program expenditures may qualify for Federal funding, audit regulations specify those requirements which must be met in order for a State to be determined to be in substantial compliance with the requirements of title IV–D of the Act and to avoid fiscal penalties. Our goal in revising the audit regulations is to redefine substantial compliance to focus on certain criteria: (1) Service-related criteria that a significant number of States have failed to comply with in the past; and, (2) new or newly revised criteria. Focusing on these criteria would eliminate many of the administrative or procedural criteria that are currently part of substantial compliance determinations and which are currently being met, thereby making the audit more results oriented. As previously stated, the audit process is not the sole means through which State program development and compliance is determined. OCSE uses program reviews, the State Plan approval process, that audit resolution and tracking system, as well as the established penalty process, to review State compliance.

a. Ten percent materiality test. First, we propose including in the determination of substantial compliance criteria that, based on past audits, many States have failed. Specifically, we looked at the results of FY 1984 through FY 1987 audits, and calculated the number of States that had failed each existing criterion compared to the number of audit reports issued since that criterion became effective. We propose including in the determination of substantial compliance those criteria which, in general, more than 10 percent of the States had failed during that period.

The 10 percent cutoff point is consistent with the auditing concept of "materiality." According to auditing theory, the audit should be able to detect errors and conditions that materially affect the ability of the child support program achieve desired results and benefits. Ten percent is commonly used as a benchmark for materiality. In this case, we believe that if less than 10 percent of States are failing a given criterion, we can omit that criterion from the determination of substantial compliance without materially affecting the audit's conclusions about the child support program in the State. However, if a specific criterion meets the other test for inclusion in substantial compliance (e.g., it is new or revised), it would not be deleted.

More than 10 percent of States failed the following criteria: Reports and maintenance of records; separation of cash handling and accounting functions; establishing paternity; distribution; individuals not otherwise eligible; State parent locator service; support obligations; notice of collection of assigned support; Federal tax refund offset; withholding of unemployment compensation; wage or income withholding; imposition of liens against real and personal property; posting security, bond or guarantee to secure payment of overdue support; and medical support enforcement.

b. New and newly revised criteria. After applying the 10 percent materiality test to existing audit criteria, we turned to new requirements (for the most part, based on the Family Support Act of 1988) that have not been audited in the past and therefore cannot be judged by the 10 percent materiality rule. We propose to consider all of these requirements in the determination of whether a State's IV–D program is in substantial compliance. Also, there have been regulatory revisions to several pre-existing requirements (e.g., interstate, non-AFDC, and medical support requirements), and we propose to retain these revised criteria in the determination of substantial compliance. Based on past experience with State implementation of new or significantly changed program requirements, we believe that States' activities related to requirements stemming from the Family Support Act and revised, pre-existing requirements must be audited to ensure State compliance. These criteria are: Collection and distribution of support payments by the IV–D agency, § 302.32; distribution of support collections, § 302.51; notice of collection of assigned support, § 302.54; guidelines for setting child support awards, § 302.56; establishment of cases and maintenance of case records, § 303.2; location of absent parents, § 303.3; establishment of support obligations, § 303.4; establishment of paternity, § 303.5; enforcement of support obligations, § 303.6; State income tax refund offset, § 303.6; provision of services in interstate IV–D cases, § 303.7; review and adjustment of support obligations, § 303.8 (as amended at 57 FR 61559 on December 28, 1992); case closure, § 303.11; securing medical support information, § 303.30; securing and enforcing medical support obligations, § 303,31; procedures for wage or income withholding, § 303.100, and expedited process under § 303.101.

We would like to emphasize that States are required to meet all Federal requirements contained in program regulations, whether or not the requirements are included under § 305.20. Auditors may still examine requirements that are not contained in § 305.20, but would issue management recommendations, instead of findings of substantial noncompliance, for failure to meet program requirements not included under § 305.20. Implementation of management recommendations should help States to improve their performance. In addition, compliance with all program requirements will continue to be monitored by OCSE Regional Offices through program and financial reviews and the State plan approval process.

In addition to narrowing the number of criteria contained in the determination of substantial compliance, we also propose streamlining the audit regulations by grouping related requirements under certain criteria (e.g., collection and

distribution of support payments, enforcement, etc). Grouping is merely a way to evaluate related requirements and will allow audit results to be reported in a more timely manner. States must still meet the requirements of each specific regulation cited.

2. Criteria States Must Meet To Be Determined To Be in Substantial Compliance

The proposed paragraph § 305.20(a) would require that, for audit periods beginning after publication of this regulation as a final rule, a State must meet the IV–D State plan requirements contained in part 302 of this chapter measured as set forth in paragraph (a).

a. Administrative criteria. Under § 305.20(a)(1), the State must meet the requirements under the following criteria:

(1) Statewide Operations, § 302.10;

(2) Reports and Maintenance of Records, § 302.15(a);

(3) Separation of cash handling and accounting functions, § 302.20; and

(4) Notice of Collection of Assigned Support, § 302.54.

b. Service-related criteria. i. 90 percent standard for case opening and closure. In response to the Notice of Proposed Rulemaking on Standards for Program Operations, commenters applauded the addition of new timeframes and requirements in the areas of case opening, the application process and case closure. Many commenters pointed out that because these areas are crucial to the success of the child support enforcement process, allowing States to fail to take appropriate action in up to 25 percent of the cases (through application of the 75 percent audit standard) reviewed was excessive. Alternative percentages of compliance suggested ranged from 90 to 98 percent of the cases reviewed.

We agree that unless applications are provided and accepted in timely manner and cases are opened and maintained appropriately, IV–D services cannot be provided. Furthermore, with regard to the new case closure criteria, it is essential that only those cases in which there is no reasonable expectation of establishing paternity, obtaining a support order, or collecting child support, either now or in the future, are closed. Therefore, we propose to require that, in order to be determined to be in substantial compliance, States must have and use the procedures for establishment of cases and maintenance of case records and case closure at §§ 303.2 and 303.11, which were effective October 1, 1990, in at least 90 percent of the cases reviewed for each criterion. We specifically request comments regarding this proposal.

To reflect the changes discussed above, proposed § 305.20(a)(2) would provide that, for audits conducted for any period beginning after publication of this regulation as a final rule, to be determined to be in substantial compliance, the State must have and use procedures required under the following criteria in at least 90 percent of the cases reviewed for each criterion:

(1) Establishment of Cases and Maintenance of Case Records, § 303.2; and

(2) Case Closure, § 303.11.

Under the case closure criteria, auditors would evaluate cases closed during the audit period to determine compliance with the requirements of § 303.11. States are not required to close cases, however, and should an unworkable case be left open, it would not count against the State during an audit.

ii. 75 percent standard for providing services. Proposed § 305.20(a)(3) would provide that, for audit periods beginning after publication of this regulation as a final rule, to be determined to be in substantial compliance, the State must have and use procedures required under the following criteria in at least 75 percent of the cases reviewed for each criterion:

(1) Collection and Distribution of Support Payments, including: Collection and distribution of support payments by the IV–D agency under § 302.32 (b) and (f); distribution of support collections under § 302.51; and distribution of support collected in title IV–E foster care maintenance cases under § 302.52;

(2) Services to Individuals not Receiving AFDC or Title IV–E Foster Care Assistance, § 302.33(a);

(3) Establishment of Support Orders, including: Location of absent parents under § 303.3; guidelines for setting child support awards under § 302.56; and establishment of support obligations under § 303.4 (d) and (e);

(4) Establishment of Paternity, including: Location of absent parents under § 303.3; and establishment of paternity under § 303.5(a);

(5) Enforcement of Support Obligations, including, in all appropriate cases: Location of absent parents under § 303.3; enforcement of support obligations under § 303.6, including submitting once a year all appropriate cases in accordance with § 303.6(c)(3) to State and Federal income tax refund offset; and wage withholding under § 303.100. In cases in which wage withholding cannot be implemented or is not available and the absent parent has been located, States must use or attempt to use at least one enforcement technique available under State law in addition to Federal and State tax refund offset, in accordance with State laws and procedures and applicable State guidelines developed under § 302.70(b) of this chapter;

(6) Provision of Services in Interstate IV–D Cases, including § 303.7 (a), (b), and (c);

(7) Review and Adjustment of Support Obligations, including: Location of absent parents under § 303.3; guidelines for setting child support awards under § 302.56; and review and adjustment of support obligations under § 303.8 (as amended at 57 FR 61559 on December 28, 1992); and

(8) Medical Support, including: Location of absent parents under § 303.3; securing medical support information under § 303.30; and securing and enforcing medical support obligations under § 303.31.

Under this proposal, location is not listed as a separate criterion but is included under the paternity establishment, support order establishment, review and adjustment, medical support, and enforcement criteria because the location function is not an end in itself and is often the initial step in providing these program services. We do not believe that this places less emphasis on the location function. On the contrary, it will emphasize the need to exhaust location sources in order to proceed with the necessary services in the case. Moreover, it is illustrative of the transition to a more results-oriented audit.

Thus, if a case requires support obligation services and the absent parent's whereabouts are unknown, the State must meet the applicable location requirements at § 303.3 and the requirements for support obligation establishment at §§ 303.4(d) and (e) and 302.56 in any case reviewed for purposes of the audit. If the State does not meet the location requirements in a case requiring support obligation establishment, it would be counted against the State in computing the efficiency rate for support obligation establishment and the audit findings would note that the State failed to substantially comply with the support obligation establishment requirements due, at least in part, to a failure to meet the location requirements. We would like specific comments regarding the potential effect of evaluating locate as a component of other services rather than as specific service.

If a support obligation cannot be established because the alleged father is not located, even though the State met all other location requirements (i.e., checked all sources and repeated location attempts) this would not be counted against the State. There is, currently, a perceived misunderstanding that States must obtain a successful outcome in a case in order to receive credit for having worked that case. We would like to clarify that if a State meets all Federal requirements, including timeframes, with respect to a particular case but cannot locate the absent or putative father, for example, the State would not be penalized for failure to provide the necessary service. Instead, we would credit the State with taking appropriate action.

We would also like to clarify that States must meet the medical support requirements in §§ 303.30 and 303.301, and are subject to an audit under part 305 of State performance with respect to those requirements, irrespective of any optional cooperative agreement with a State Medicaid agency under 45 CFR part 306.

Under current audit procedures, enforcement is evaluated in three ways: (1) An overall enforcement criterion under which a State must identify and contact a delinquent obligor and take any enforcement action; (2) a combined enforcement criterion under which a State, in accordance with State guidelines/criteria, must implement liens against real and personal property, withholding of unemployment compensation, State tax refund offset, and posting security, bond, or other guarantee to secure payment of overdue support; and, (3) individual criteria under which enforcement techniques (e.g., wage withholding, Federal Tax offset) are evaluated separately. According to the second way of evaluating enforcement, a State must use all appropriate enforcement techniques, in accordance with guidelines and procedures developed under § 302.70 or criteria established in § 302.65(c)(3), in order to get credit, for purposes of substantial compliance, in a case. The third way of evaluating enforcement considers whether a State is taking all appropriate actions in accordance with Federal regulations and State statutes and procedures. Thus, these different ways of evaluating enforcement may require concurrent application of several enforcement techniques.

We are proposing that, in order to get credit for enforcement in a case, a State must implement wage withholding and Federal and State income tax refund offset, if appropriate; and, if wage withholding is not available or appropriate, attempt to use at least one other enforcement technique. Under this proposal, use of some enforcement techniques would be mandatory in all appropriate cases in accordance with Federal requirements, i.e., wage withholding and submitting once a year all cases, in accordance with § 303.6(c)(3), to State and Federal income tax refund offset. States must take these actions in all appropriate cases, in accordance with § 303.6. Section 303.6(c)(3) requires annual submittal to tax offset of all cases which meet the certification requirements under § 303.12 and State guidelines developed under § 302.70(b) for State income tax refund offset, and which meet the certification requirements under § 303.72 for Federal income tax refund offset.

Cases exist in which wage withholding is not available or appropriate because, for example: The absent parent is self employed, unemployed, or does not have a source of income subject to withholding; or the employer/absent parent cannot be located. In these cases some other enforcement technique, in addition to Federal and State tax refund offset, must be used. States have discretion with respect to the use of other enforcement techniques (beside wage withholding and Federal and State tax refund offset) as long as there is compliance with Federal regulations, State procedures, and guidelines developed by the State under § 302.70(b) which outline when it is inappropriate to use an enforcement technique.

Under this proposal, in cases where wage withholding cannot be implemented or is unavailable, States will be given credit, for audit purposes, for taking or attempting an enforcement action if they do any one of the following in accordance with § 303.6: Impose a lien against real and personal property under § 303.103; require the obligor to post security, bond, or other guarantee to secure payment of overdue support under § 303.104; make information available to consumer credit reporting agencies under § 303.105; withhold unemployment compensation under § 302.65; or request full collection services by the Secretary of the Treasury under § 303.71. A State will also receive credit for enforcement if it takes an enforcement action that is not specifically listed above, if the action is consistent with State laws and procedures.

This proposal would emphasize the use of wage withholding and tax refund offset, which are often the most effective enforcement techniques while ensuring that more difficult cases, those where wage withholding and/or tax offset cannot be utilized, are not ignored. Furthermore, it should ensure that at least one enforcement action is taken in each case during the audit period, without penalizing States for failing to implement several enforcement techniques concurrently.

iii. Credit for providing services. Proposed paragraph (a)(4) would indicate that, with respect to meeting the 75 percent standard under § 305.20(a)(3), for any audit period beginning after the date the final regulation is published:

(1) Notwithstanding timeframes for location and paternity establishment contained in §§ 303.3(b)(3) and 303.5, if paternity establishment is needed in a particular case and paternity is established during the audit period, the State will be considered to have taken appropriate action to establish paternity in that case for audit purposes.

(2) Notwithstanding timeframes for location and support order establishment contained in §§ 303.3(b)(3) and 303.4, if a support order needs to be established and an order is established during the audit period in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action to establish an order in that case for audit purposes.

(3) Notwithstanding timeframes for location and review and adjustment of support orders contained in §§ 303.3(b)(3) and 303.8, if a particular case has been reviewed and meets the conditions for adjustment under State laws and procedures in § 303.8, and the order is adjusted during the audit period in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action for review and adjustment of orders in that case for audit purposes.

(4) Notwithstanding timeframes for location and wage withholding in §§ 303.3(b)(3) and 303.100, if wage withholding is appropriate and implemented in a particular case, and wages are withheld during the audit period, the State will be considered to have taken appropriate action in that case for audit purposes.

(5) Notwithstanding timeframes for location and enforcement of support obligations in §§ 303.3(b)(3) and 303.6, if wage withholding is not appropriate in a particular case, and the State uses at least one enforcement technique available under State law in addition to Federal and State tax refund offset, which results in a collection received

during the audit period, the State will be considered to have taken appropriate action in the case for audit purposes.

When a State is considered to have taken an appropriate action in a case for audit purposes, as stated above, the case would count towards meeting the 75 percent standard in proposed § 305.20(a)(3) for paternity establishment, support order establishment, support order adjustment, and enforcement of support obligations, as appropriate. Under proposed paragraph (a)(4) a State would receive credit in such an instance for taking an action in a case even if relevant timeframes are missed. These timeframes include the timeframe for location in § 303.3(b)(3) since, as mentioned earlier, we are proposing that location be evaluated as a part of other criteria.

These credits are another indication of the transition to a more results-oriented audit. We believe that, for audit purposes, a State should not be penalized when timeframes are missed in a case if a successful result is achieved (paternity or a support order is established, an order is adjusted, wages are withheld, or a collection is made), since these results are the main goals of the child support enforcement program. We further believe that this position is responsive to the concerns of States that missing an interim timeframe, when a successful result is achieved in a case, may create a disincentive to work the case.

However, under this proposal, if timeframes are not met in a case, States would only get credit for taking an appropriate action if the action is successfully completed, not simply attempted, within the audit period. For example, if timeframes are missed in a case, a State can get credit for: paternity establishment only if paternity is established; support order establishment only if an order is established; wage withholding only if withholding is implemented and wages are withheld as a result; and support order adjustment only if an order is adjusted.

We would like to emphasize that a State has to successfully complete an action in order to get credit in a case only if timeframes are not met in the case. If, in a case, a State complies with the requirements, including timeframes, in proposed § 305.20(a)(3), the State will get credit for taking an action in that case even if the action is not successful.

Enforcement is a major goal of the program. As a result, when enforcement timeframes are missed, we propose giving credits for wage withholding, or when wage withholding is not appropriate in a given case, the use of some other appropriate enforcement technique available under State law, in addition to the Federal and State tax refund offset, which results in a collection received during the audit period. Wage withholding is subject to specific timeframes in § 303.100. State and Federal income tax refund offset, although also highly efficient and effective procedures, are not subject to similar case processing timeframes. Other enforcement techniques are subject to the general timeframe in § 303.6.

Since some enforcement techniques, such as liens and consumer credit reporting, do not immediately result in collections and it is difficult to determine when these actions have been successful in enforcing an order, we propose only to give credit when a collection is received as a result of use of the technique. In successful wage withholding cases, collections occur almost immediately, so it is easy to determine when it has been successfully completed.

With respect to paternity establishment, we are considering an option that would allow States that meet the paternity establishment percentage standard in the proposed § 305.97 to be exempt from the proposed paternity establishment audit criteria at § 305.20(a) (3)(iv) and (4)(i). We believe this option is consistent with a more results-oriented audit approach. However, the paternity establishment percentage standard and related data need to be tested and validated before we could implement this approach. In addition, we are concerned that timeliness is not addressed by the paternity establishment percentage standard. We would like specific comments on this approach including suggestions for incorporating a timeliness measure in the paternity establishment percentage standard.

We emphasize that all timeframes, including those for paternity establishment, support order establishment, review and adjustment, and wage withholding, are still Federal requirements that States must meet. However, as described above, States may receive credit for taking an action under proposed § 305.20(a)(4) when the outcome is successful even if timeframes are missed in a case.

c. Expedited processes. Proposed paragraph (a)(5) would require that, for audit periods beginning after the date the final regulation is published, the State must meet the requirements for Expedited Processes under § 303.101(b) and (e) to be in substantial compliance. The compliance percentages contained in the expedited processes regulation necessitate separating it from the service-related category which is evaluated using a 75 percent standard.

d. Performance indicators. Proposed paragraph (a)(6) would continue to require that the State must meet the criteria referred to in § 305.98(c) of this part relating to the performance indicators prescribed in paragraph (a) of that section.

e. Paternity establishment standard. Proposed paragraph (b) would require that, for any fiscal year beginning on or after October 1, 1991, the State must meet the requirements for the paternity establishment percentage standards under § 305.97 of this part.

Paternity Establishment Percentage Standard—§ 305.97

Section III of the Family Support Act of 1988 amended section 452 of the Act by adding a new paternity establishment standard, section 452(g), that States must meet for any fiscal year beginning on or after October 1, 1991.

To implement this requirement, we propose to add a new § 305.97 titled, "Paternity Establishment Percentage Standard" which would set forth the requirements States must meet in order to be determined to be in substantial compliance with title IV–D of the Act.

Proposed § 305.97(a) would define, for purposes of this section, the terms: "Paternity establishment percentage", which means the number of children receiving services under title IV–A or IV–D of the Act who were born out of wedlock and for whom paternity has been established, divided by the total number of children receiving AFDC or IV–D services who were born out of wedlock; "Total number of children" to specify that it does not include any child who is a dependent child by reason of the death of a parent or any child with respect to whom an applicant or recipient is found to have good cause for refusing to cooperate under § 232.41 of this chapter; and "The applicable number of percentage points," which means three percentage points multiplied by the number of fiscal years between fiscal year 1989 and the fiscal year being evaluated.

As explained in program instructions OCSE–AT–88–20 (December 28, 1988), later amended by OCSE–AT–89–3 (March 6, 1989), each State was required to report the data necessary to calculate baseline data for the paternity establishment percentage as of December 31, 1988. This data will be used to measure State compliance with the requirements in § 305.97(b). Thus, for all children in IV–D cases that were open on December 31, 1988, regardless of whether such cases received any IV–

D services during 1988, or previously, the following information is required:

(1) The total number of children who were born out of wedlock; and

(2) The number of children who were born out of wedlock and for whom paternity has been established.

As noted in AT–90–12, it is permissible to count a child for whom paternity must be established even though the child was *not* born out of wedlock.

Failure of a State to report acceptable baseline data could result in a finding of non-compliance since appropriate information will not be available to determine whether the State met the statutory standard. As set forth in section 111 of Public Law 100–485, the Secretary will include in the existing annual report to the Congress this data and future data upon which the paternity establishment percentages for States for a given fiscal year are based.

Section 111 also specifies that the Secretary may modify the requirements to take into account such additional variables as the Secretary identifies that affect the ability of a State to meet the requirements. We did not do so in this proposal because we have insufficient experience and data to identify any variables. Should such variables be identified in the future, we would consider modifications to the requirements.

Proposed § 305.97(b) would set forth the paternity establishment percentage standard that States must meet for any fiscal year beginning on or after October 1, 1991. A State would be found not to have complied substantially unless its paternity establishment percentage for such fiscal year equals or exceeds, on the last day of the fiscal year:

(1) 50 percent;

(2) The paternity establishment percentage of the State for fiscal year 1988 (the baseline data calculated as of December 31, 1988), increased by the applicable number of percentage points; or

(3) The paternity establishment percentage determined with respect to all States for such fiscal year.

In order to determine the reliability of the data used to compute the performance indicators under § 305.98, OCSE auditors evaluate the States' expenditure and collection reporting systems, as well as the reporting systems for paternity data used to compute the paternity establishment standard. If the auditors determine that the system(s) is unreliable, it may result in a penalty under the administrative criterion Reports and Maintenance of Records, § 302.15(a).

Performance Indicators—§ 305.98

The performance indicators were developed in 1983 as a way to help evaluate State IV–D program performance. The indicators in current regulations evaluate the cost effectiveness of State IV–D programs and the reimbursement rate of assistance payments made to those receiving AFDC for reasons other than unemployment in two-parent families. Currently, an accounts receivable indicator is specified but not included in the scoring system. The performance indicators do not address IV–D functions such as paternity establishment and do not take into account the welfare cost avoidance value of the child support enforcement program.

We now believe it is necessary to delay any revisions to performance indicators until such time as more refined indicators can be devised and States have been given time to implement the requirements of Public Law 100–485, specifically, the new standards for program operations. Furthermore, given the fact that the standards for program operations will enable us to more effectively evaluate State IV–D program performance, we are committed to studying the entire subject of performance indicators to determine which output measures will be the most meaningful reflection of IV–D program performance.

The only change we propose to make to § 305.98 at this time is to revise § 305.98(d) to state that the performance indicator scoring system will be described and updated periodically by the Office (i.e., OCSE). We are deleting the current requirement which states that we will describe and update the scoring system every two years to allow for the flexibility and time necessary to thoroughly review the current system. We will publish any changes to the scoring system in the **Federal Register** for public comment in advance of their effective date.

Notice and Corrective Action Period—§ 305.99

Current paragraph (b)(2) provides that the notice of substantial noncompliance identify any audit criteria listed in § 305.20 (a)(2), (b)(2) or (c)(2) that the State met only marginally (that is, in 75 to 80 percent of the cases reviewed). Proposed paragraph (b)(2) would provide that the notice of substantial noncompliance identify any audit criteria listed in § 305.20(a)(3) of this part that the State met only marginally [that is, in 75 to 80 percent of cases reviewed for criteria in (a)(3)]. This change replaces the reference to § 305.20 (a)(2), (b)(2) or (c)(2) with § 305.20(a)(3). Also the definition of marginally-met is changed for consistency with the proposed changes to § 305.20.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments which are not considered small entities under the Act.

Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291 that this rule does not constitute a "major" rule. A major rule is one that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

This proposed rule will have little or no net economic effect, because it will not change the requirements of State Child Support Enforcement programs or the penalties which may be levied against programs which fail to substantially comply with the requirements. The net effect here is not on actual State program practices but rather, on how these practices will be evaluated.

List of Subjects

45 CFR Part 301

Child Support, Grant programs/social programs.

45 CFR Part 305

Accounting, Child support, Grant programs/social programs and Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 93–023, Child Support Enforcement Program)

Dated: June 9, 1993.

Laurence J. Love,

Acting Assistant Secretary for Children and Families.

Approved: July 23, 1993.

Donna E. Shalala,

Secretary.

For the reasons set out in the preamble, we propose to amend 45 CFR parts 301 and 305 as follows:

1. The authority citation for part 301 continues to read as set forth below:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1301, and 1302.

2. Section 301.1 is amended by adding in alphabetical order the definition of "Procedures."

§ 301.1 General definitions.

* * * * *

Procedures means a written set of instructions which describe in detail the step by step actions to be taken by child support enforcement personnel in the performance of a specific function under the State's IV–D plan. The IV–D agency may issue general instructions on one or more functions, and delegate responsibility for the detailed procedures to the office, agency, or political subdivision actually performing the function.

* * * * *

3. The authority citation for part 305 is revised to read as set forth below:

Authority: 42 U.S.C. 603(h), 604(d), 652(a)(1), (4) and (g), and 1302.

4. Section 305.0 is revised to read as follows:

§ 305.0 Scope.

This part implements the requirements in section 452(a)(4) and 403(h) of the Act for an audit, at least once every three years, of the effectiveness of State Child Support Enforcement programs under title IV–D and for a possible reduction in Federal reimbursement for a State's title IV–A program pursuant to sections 403(h) and 404(d) of the Act. Sections 305.10 through 305.13 describe the audit. Section 305.20 sets forth audit criteria and subcriteria the Office will use to determine program effectiveness and defines an effective program for purposes of an audit. Section 305.97 sets forth paternity establishment percentage requirements. Section 305.98 sets forth the performance indicators the Office will use to determine State IV–D program effectiveness. Section 305.99 provides for the issuance of a notice and corrective action period if a State is found by the Secretary not to have an effective IV–D program. Section 305.100 provides for the imposition of a penalty if a State is found by the Secretary not to have had an effective program and to have failed to take corrective action and achieve substantial compliance within the period prescribed by the Secretary.

5. Section 305.1 is revised to read as follows:

§ 305.1 Definitions.

The definitions found in § 301.1 of this chapter are also applicable to this part.

6. Section 305.10 is amended by revising the last sentence of paragraph (a) and paragraph (c)(2) to read as follows:

§ 305.10 Timing and scope of audit.

(a) * * * The audit of each State's program will be a comprehensive review using the criteria prescribed in §§ 305.20, 305.97 and 305.98 of this part.

* * * * *

(c) * * *

(2) Use the audit standards promulgated by the Comptroller General of the United States in "Government Auditing Standards."

* * * * *

7. Section 305.12 is amended by revising paragraph (a) to read as follows:

§ 305.12 State comments.

(a) Prior to the start of the actual audit, the Office will hold an audit entrance conference with the IV–D agency.

At that conference the Office will explain how the audit will be performed and make any necessary arrangements.

* * * * *

8. Section 305.20 is revised to read as follows:

§ 305.20 Effective support enforcement program.

For the purposes of this part and section 403(h) of the Act, in order to be found to have an effective program in substantial compliance with the requirements of title IV–D of the Act:

(a) For any audit period which begins after (INSERT DATE FINAL RULE IS PUBLISHED), a State must meet the IV–D State plan requirements contained in Part 302 of this chapter measured as follows:

(1) The State must meet the requirements under the following criteria:

(i) Statewide Operations, § 302.10;

(ii) Reports and Maintenance of Records, § 302.15(a);

(iii) Separation of cash handling and accounting functions, § 203.20; and

(iv) Notice of Collection of Assigned Support, § 302.54.

(2) The State must have and use procedures required under the following criteria in at least 90 percent of the cases reviewed for each criterion:

(i) Establishment of Cases and Maintenance of Case Records, § 303.2; and

(ii) Case Closure, § 303.11.

(3) The State must have and use procedures required under the following criteria in at least 75 percent of the cases reviewed for each criterion:

(i) Collection and Distribution of Support Payments, including: Collection and distribution of support payments by the IV–D agency under 302.32(b) and (f); distribution of support collections under § 302.51; and distribution of support collection in title IV–E foster care maintenance cases under § 302.52;

(ii) Services to Individuals not Receiving AFDC or Title IV–E Foster Care Assistance, § 302.33(a);

(iii) Establishment of Support Orders, including: Location of absent parents under § 303.3; guidelines for setting child support awards under § 302.56; and establishment of support obligations under § 303.4 (d) and (e);

(iv) Establishment of Paternity, including: Location of absent parents under § 303.3; and establishment of paternity under § 303.5(a);

(v) Enforcement of Support Obligations, including, in all appropriate cases: Location of absent parents under § 303.3; enforcement of support obligations under § 303.6, including submitting once a year all appropriate cases in accordance with § 303.6(c)(3) to State and Federal income tax refund offset; and wage withholding under § 303.100. In cases in which wage withholding cannot be implemented or is not available and the absent parent has been located, States must use or attempt to use at least one enforcement technique available under State law in addition to Federal and State tax refund offset, in accordance with State laws and procedures and applicable State guidelines developed under § 302.70(b) of this chapter;

(vi) Provision of Services in Interstate IV–D Cases, including § 303.7 (a), (b), and (c);

(vii) Review and Adjustment of Support Obligations, including: Location of absent parents under § 303.3; guidelines for setting child support awards under § 302.56; and review and adjustment of support obligations under § 303.8; and

(viii) Medical Support, including: Location of absent parents under § 303.3; securing medical support information under § 303.30; and securing and enforcing medical support obligations under § 303.31.

(4) With respect to the 75 percent standard in § 305.20(a)(3):

(i) Notwithstanding timeframes for location and paternity establishment contained in §§ 303.3(b)(3) and 303.5, if paternity establishment is needed in a particular case and paternity is established during the audit period, the State will be considered to have taken appropriate action in that case for audit purposes.

(ii) Notwithstanding timeframes for location and support order establishment contained in §§ 303.3(b)(3) and 303.4, if a support order needs to be established in a case and an order is established during that audit period in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case for audit purposes.

(iii) Notwithstanding timeframes for location and review and adjustment of support orders contained in §§ 303.3(b)(3) and 303.8, if a particular case has been reviewed and meets the conditions for adjustment under State laws and procedures and § 303.8, and the order is adjusted during the audit period in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case for audit purposes.

(iv) Notwithstanding timeframes for location and wage withholding in §§ 303.3(b)(3) and 303.100, if wage withholding is appropriate in a particular case and wage withholding is implemented and wages are withheld during the audit period, the State will be considered to have taken appropriate action in that case for audit purposes.

(v) Notwithstanding timeframes for location and enforcement of support obligations in §§ 303.3(b)(3) and 303.6, if wage withholding is not appropriate in a particular case, and the State uses at least one enforcement technique available under State law, in addition to Federal and State tax refund offset, which results in a collection received during the audit period, the State will be considered to have taken appropriate action in the case for audit purposes.

(5) The State must meet the requirements for Expedited Processes under § 303.101 (b) and (e).

(6) The State must meet the criteria referred to in § 305.98(c) of this part relating to the performance indicators prescribed in § 305.98(a).

(b) For any fiscal year beginning on or after October 1, 1991, the State must meet the requirements for the paternity establishment percentage standards under § 305.97 of this part.

§§ 305.21–305.57 [Removed and Reserved]

9. Sections 305.21 through 305.57 are removed and reserved.

10. A new § 305.97 is added to read as follows:

§ 305.97 Paternity establishment percentage standard.

(a) *Definition.* When used in this section:

Applicable number of percentage points means three percentage points multiplied by the number of fiscal years between fiscal year 1989 and the fiscal year being evaluated.

Paternity establishment percentage means the number of children receiving services under title IV–A or IV–D of the Act who were born out of wedlock and for whom paternity has been established, divided by the total number of children receiving services under title IV–A or IV–D of the Act who were born out of wedlock.

Total number of children does not include any child who is a dependent child by reason of the death of a parent or any child with respect to whom an applicant or recipient is found to have good cause for refusing to cooperate under § 232.41 of this chapter.

(b) For purposes of this part and section 403(h) of the Act, in order to be found to have an effective program in substantial compliance with the requirements of title IV–D of the Act, a State must, for any fiscal year beginning on or after October 1, 1991, have a paternity establishment percentage which equals or exceeds, on the last day of the fiscal year:

(1) 50 percent;

(2) The paternity establishment percentage of the State for fiscal year 1988 (baseline data calculated as of December 31, 1988), increased by the applicable number of percentage points; or

(3) The paternity establishment percentage determined with respect to all States for such fiscal year.

11. Section 305.98 is amended by revising paragraph (d) to read as follows:

§ 305.98 Performance indicators and audit criteria.

* * * * *

(d) The scoring system provided in paragraph (c) of this section will be described and updated periodically by the Office in instructions.

12. Section 305.99 is amended by revising paragraph (b)(2) to read as follows:

§ 305.99 Notice and corrective action period.

* * * * *

(b) * * *

(2) Identify any audit criteria listed in § 305.20(a)(3) of this part that the State met only marginally [that is, in 75 to 80 percent of cases reviewed for criteria in § 305.20(a)(3)];

* * * * *

[FR Doc. 93–21595 Filed 9–8–93; 8:45 am]
BILLING CODE 4150–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking proceeding.

SUMMARY: The purpose of this notice is to terminate rulemaking regarding petitions to amend Standard No. 208, *Occupant Crash Protection*, to prohibit certain types of automatic safety belts. The agency's evaluation has indicated that each type of automatic protection, including the particular automatic belts that were the subject of these petitions, has a positive "best estimate" of actual fatality reduction. Even if additional data or analysis ultimately indicated that there were any significant differences in the effectiveness of automatic belts in new vehicles, those differences may become moot as most automatic belts are replaced by air bags with manual lap/shoulder belts under the "Intermodal Surface Transportation Efficiency Act of 1991." That Act mandates that all passenger cars and light trucks comply with the automatic crash protection requirements solely by means of air bags, beginning in the mid to late 1990's.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, Chief, Frontal Crash Protection Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2264.

SUPPLEMENTARY INFORMATION: In 1989–1990, NHTSA received three petitions to amend Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection*, to prohibit several types of automatic belts. The petitioners alleged various shortcomings in the safety of these belts. On February 28, 1989, the Insurance Institute for Highway Safety (IIHS) submitted a petition for rulemaking to amend Federal Motor Vehicle Safety Standard No. 208,

Occupant Crash Protection, to prohibit the use of detachable automatic safety belts. The IIHS petition was granted on August 4, 1989.

On December 22, 1989, Dr. Alan Morris submitted a petition for rulemaking to amend Standard No. 208 to prohibit door-mounted automatic lap/shoulder belts. This petition was granted on February 14, 1990.

On February 20, 1990, Dr. Alan Morris submitted a second petition for rulemaking to amend Standard No. 208 to prohibit motorized automatic shoulder belts. This petition was granted on June 11, 1990.

NHTSA granted these three petitions, with the understanding that further agency action would await the completion of the planned evaluation of the various types of occupant protection systems. On June 25, 1992, the agency released the interim report "Evaluation of the Effectiveness of Occupant Protection." In the evaluation, the agency estimated the fatality reduction effectiveness of various types of automatic restraints compared to that of manual belts at 1983 usage rates. The agency's evaluation indicated that each type of automatic protection, including the particular automatic belts that were the subject of these petitions, has a positive "best estimate" of actual fatality reduction compared to manual belts at 1983 usage rates. The evaluation also compared the effectiveness of different types of belts in preventing ejection. The evaluation indicated that there is no evidence that automatic belts have increased the rate of ejection. Hence, the preliminary evidence does not support the petitioner's assertions of reduced effectiveness and other shortcomings in various types of automatic belts.

In addition, the "Intermodal Surface Transportation Efficiency Act of 1991" (Pub. L. 102–240) was signed into law on December 18, 1991. This law mandates that all passenger cars and light trucks comply with the automatic crash protection requirements solely by means of air bags, beginning in the mid to late 1990's. Hence, even if additional data ultimately indicated that there were any significant differences in the effectiveness of automatic belts in new vehicles, those differences could become moot as most automatic belts are replaced by air bags with manual lap/shoulder belts.

Therefore, the agency is terminating rulemaking on these three petitions.

Issued on September 2, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–21872 Filed 9–8–93; 8:45 am]

BILLING CODE 4910–59–M

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49 CFR Part 571

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Petition for Rulemaking; Denial

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Petition for rulemaking; denial.

SUMMARY: The purpose of this notice is to announce the denial of a rulemaking petition to amend Standard No. 208, *Occupant Crash Protection*, to require a warning light to indicate when lap belts in vehicles with automatic safety belts are not fastened. The Intermodal Surface Transportation Efficiency Act of 1991 mandates that all passenger cars and light trucks comply with the automatic crash protection requirements solely by means of air bags, beginning in the late 1990's. Hence, the agency expects any safety concerns with 2-point automatic belts to become moot as automatic belts are replaced by air bags with manual lap/shoulder belts. Therefore, this petition is denied.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, NRM–12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4911.

SUPPLEMENTARY INFORMATION: On October 29, 1992, Mr. Mark E. Goodson, of Denton, Texas, submitted a petition for rulemaking to amend Standard No. 208, *Occupant Crash Protection*, to require a warning light to indicate when lap belts in vehicles with 2-point automatic safety belts are not fastened. Mr. Goodson believes that "(i)f the user forgets, or intentionally does not engage the lap belt, the virtues of a 3 point restraint are lost, and the occupant risks serious personal injury should a collision occur." Mr. Goodson's petition acknowledges that a warning light would only address the issue of users who forget to engage the lap belt.

On July 17, 1984, Standard No. 208 was amended to require automatic crash protection in all passenger cars manufactured on or after September 1, 1989 (49 FR 28962). On March 26, 1991, Standard No. 208 was amended to require automatic crash protection in all trucks, multipurpose passenger vehicles, and buses with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less (56 FR 12472). The March 26, 1991 amendment provided for a phase-in of these requirements, with 100 percent compliance required for all vehicles manufactured on or after September 1, 1997.

Vehicles equipped with automatic crash protection protect their occupants by means that require no action by vehicle occupants. Compliance with the automatic crash protection requirements of Standard No. 208 is determined in a dynamic crash test. That is, a vehicle must comply with specific injury criteria, as measured on a test dummy, when tested by this agency in a 30 mph barrier crash test. At this time, manufacturers are not required to use a specific type of automatic crash protection to meet the requirements of Standard No. 208. There are several different types of automatic belts available, including systems which comply with the dynamic test requirement using only a 2-point automatic belt. Manual lap belts which are installed with these systems are not required by any Federal Motor Vehicle Safety Standard.

On December 18, 1991, the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240), was signed into law. This law mandates that all passenger cars and light trucks comply with the automatic crash protection requirements solely by means of air bags, beginning in the late 1990's. The current industry estimates indicate that at least 90 percent of all passenger cars will have driver and passenger side air bags in model year 1995, three years earlier than the date mandated by law. The agency expects any safety concerns with 2-point automatic belts to become moot as automatic belts are replaced by air bags with manual lap/shoulder belts. Given the limited time until automatic belts are replaced by air bags, NHTSA believes that any problems can be addressed by public education efforts. Indeed, the agency has already done so, by issuing a news release on October 5, 1992, stating that "drivers and passengers of cars equipped with front-seat automatic shoulder belts should also use the manual lap belt for maximum protection * * *" NHTSA will continue to periodically remind consumers of the need to wear the manual lap belt which accompanies some forms of automatic belts. Therefore, the agency is denying this petition.

Issued on September 2, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–21873 Filed 9–8–93; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB97

Endangered and Threatened Wildlife and Plants; Public Hearing and Extension of Public Comment Period on Proposed Endangered Status for the Arroyo Southwestern Toad (Bufo microscaphus californicus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and extension of public comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (Act), gives notice that a public hearing will be held on the proposed endangered status for the arroyo southwestern toad (*Bufo microscaphus californicus*) and that the comment period is extended. The Service will allow all interested parties to submit oral and written comments on the proposal during the hearing and comment period. A proposed rule for this species was published in the **Federal Register** on August 3, 1993 (58 FR 41231).

DATES: The comment period on the proposal is extended until October 15, 1993. The public hearing will be held from 6 to 8 p.m. on October 4, 1993, in Camarillo, California. Any comments received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: The public hearing will be held at the U.S. Minerals Management Service Building, 770 Paseo Camarillo, First Floor, Camarillo, California. Written comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2140 Eastman Avenue, suite 100, Ventura, California 93003 (telephone 805/644–1766). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Cathy R. Brown at the Ventura Field Office (see **ADDRESSES** Section).

SUPPLEMENTARY INFORMATION:

Background

The arroyo southwestern toad historically occurred in riparian wetlands of southern California, mainly west of the Mojave desert from San Luis Obispo County, California, to northwestern Baja California, Mexico. Habitat requirements include sandy stream terraces adjacent to shallow pools. Once widely distributed in coastal southern California rivers, the arroyo southwestern toad has been extirpated from an estimated 75 percent of its former range. This species is presently restricted to small, isolated populations in Santa Barbara, Ventura, Los Angeles, Orange, San Bernardino, Riverside, and San Diego Counties, and northwestern Baja California, Mexico. Only 2 of the 15 extant populations south of Ventura are known to contain more than a dozen adults. Factors contributing to the decline and local extinction of the arroyo southwestern toad include dam construction, artificial flow regulation, habitat inundation, suction dredging, off-highway vehicle activities, native and introduced predators, limited opportunities for recolonization when eliminated from a site by fire, and drought.

Subsection 4(b)(5)(E) of the Act requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to the proposed rule, the Service received one request for a public hearing. As a result, the Service has scheduled a public hearing on Monday, October 4, 1993, from 6 to 8 p.m., at the U.S. Minerals Management Service Building, 770 Paseo Camarillo, First Floor, Camarillo, California. Parties wishing to make statements for the record should bring a copy of their statements to the hearing. Oral statements may be limited in length, if the number of parties present at the hearing necessitates such a limitation. However, no limits exist for written comments or materials presented at the hearing or mailed to the Service. The comment period closes on October 15, 1993. Written comments should be submitted to the Service office identified in the **ADDRESSES** section.

Author

The primary author of this notice is Cathy R. Brown, Ventura Field Office (see **ADDRESSES** section).

Authority

The authority for this section is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: September 2, 1993.

William E. Martin,

Acting Regional Director, Fish and Wildlife Service.

[FR Doc. 93–21933 Filed 9–8–93; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 930819–3219; I.D. 081793B]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes changes in the management regime for the Gulf of Mexico migratory group of king mackerel in the eastern zone, in accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). Specifically, this rule proposes trip limits for Gulf group king mackerel in each of two sub-zones of the eastern zone, the Florida east coast and Florida west coast sub-zones, which are being created by a separate rulemaking. The intended effects of this rule are to reduce daily catches, thus preventing market gluts and extending the season, and to reduce the likelihood of exceeding the king mackerel quotas.

DATES: Written comments must be received on or before September 24, 1993.

ADDRESSES: Comments may be mailed to Mark F. Godcharles, Southeast Regional Office, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Requests for copies of the regulatory impact review/initial regulatory flexibility analysis/environmental assessment supporting this action, and of a minority report submitted by three members of the Gulf of Mexico Fishery

Management Council (Gulf Council) objecting to this action, should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609–2486, 813–228–2815.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3161.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic resources (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the FMP. The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and is implemented through regulations at 50 CFR part 642 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

During the last fishing year (July 1, 1992, through June 30, 1993), the commercial quota for king mackerel from the eastern zone of the Gulf of Mexico migratory group was reached, and the fishery was closed on January 13, 1993, before fishermen on the east coast of Florida could harvest an equitable share. (During the period November 1 through March 31 each fishing year, the eastern zone of Gulf migratory group king mackerel extends from a line directly south from the Alabama/Florida boundary (87°31′06″W. longitude) to a line directly east from the Volusia/Flagler County, Florida, boundary (29°25″N. latitude).) Disproportionate catches between Florida's east and west coast fisheries were caused, in part, by a Federal Court ruling that prevented Florida from enforcing its trip/landing limits and regional closures that would have divided equally the Federal eastern zone quota of Gulf group king mackerel between Florida's east and west coast commercial fisheries. The early fishery closure caused a record low catch of king mackerel in the east coast fishery. The record low catch was determined to constitute social and economic emergencies. The South Atlantic Fishery Management Council requested, and NMFS implemented, an emergency interim rule (58 FR 10990, February 23, 1993) to reopen the commercial king mackerel fishery in the EEZ off the east coast of Florida between the Volusia/Flagler and Dade/Monroe County boundaries from February 18, 1993, through March 26, 1993, under a possession limit of 25 fish per vessel per day.

The conditions that precipitated the social and economic emergencies during the last fishing year continue to exist. The Councils have initiated action to address these conditions. Specifically, the Councils have proposed trip limits applicable to the commercial harvest of king mackerel from the eastern zone and the establishment of separate, equal quotas for Florida's east coast and west coast fisheries. However, the equal-quotas measure requires an amendment to the FMP, which cannot be completed and implemented in time for the 1993/94 winter fishery beginning November 1, 1993, by means other than emergency rule. Accordingly, the Gulf Council requested, and NMFS is processing, an emergency interim rule to create sub-zones and implement quotas of 865,000 pounds (392,361 kg) for each of the Florida east coast and Florida west coast fisheries.

Under the FMP's framework procedure for amending certain management measures, the Gulf Council, with the concurrence of the South Atlantic Fishery Management Council, has proposed that vessel trip limits be established for the harvest of Gulf group king mackerel from each of the two sub-zones of the eastern zone. The Florida east coast sub-zone would encompass the waters off the east coast of Florida from a line extending directly east from the Dade/Monroe County, Florida boundary (25°20.4′N. latitude) to a line extending directly east from the Volusia/Flagler County, Florida boundary (29°25′N. latitude). The Florida west coast sub-zone would encompass the waters off the southeast, south, and west coasts of Florida from the Dade/Monroe County, Florida boundary (25°20.4′N. latitude) to a line extending directly south from the Alabama/Florida boundary (87°31′06″N. latitude).

In the Florida east coast sub-zone, the Gulf Council recommends daily vessel possession and landing limits of 50 king mackerel until 432,500 pounds (196,181 kg) of king mackerel (50 percent of the sub-zone quota that is expected to be implemented by emergency rule) have been harvested from the sub-zone, at which time the daily vessel possession and landing limit would be 25 king mackerel. The 25-fish limit would remain in place until 865,000 pounds (392,351 kg) of king mackerel (the sub-zone quota that is expected to be implemented by emergency rule) have been harvested from the sub-zone and the commercial king mackerel fishery in the sub-zone is closed.

Since 1985, Gulf migratory group king mackerel in the winter fishery off the Florida east coast have been harvested primarily by small hook-and-line troll vessels. Approximately 150 fishermen operate in this fishery and are dependent almost entirely on the winter king mackerel fishery, as they have few alternative fisheries available to them. The trip limits proposed in this rule would extend the fishing season and would maximize the economic benefits by preventing market gluts and the resulting lower prices. In addition, reduced daily trip limits would enhance quota monitoring so that the fishery could be closed in a timely manner when the Florida east coast sub-zone quota was reached.

In the Florida west coast sub-zone, the Gulf Council recommends unlimited daily vessel possession and landing limits of king mackerel until 648,750 pounds (294,271 kg) of king mackerel (75 percent of the sub-zone quota that is expected to be implemented by emergency rule) have been harvested from the sub-zone, at which time the daily vessel possession and landing limit would be 50 king mackerel. The 50-fish limit would remain in place until 865,000 pounds (392,351 kg) of king mackerel (the sub-zone quota that is expected to be implemented by emergency rule) have been harvested from the sub-zone and the commercial king mackerel fishery in the sub-zone is closed.

In recent years, Gulf migratory group king mackerel in the winter fishery off the Florida southeast, south, and west coasts have been harvested by both net boats and by small hook-and-line troll vessels. To maintain the approximate split between these two harvesting methods, the Florida west coast sub-zone would have no daily vessel trip limits until 75 percent of the sub-zone quota was reached. Both net boats and the small hook-and-line troll vessels would be able to operate effectively until the 50-fish trip limit was implemented. Because net boats cannot operate effectively at such trip limits, the remainder of the available harvest would be expected to be taken primarily by the small hook-and-line troll vessels. Under the 50-fish trip limit, the remainder of the fishing season would be extended, market gluts and resultant lower prices would be prevented, and the fishery could be closed in a timely manner when the Florida west coast sub-zone quota was reached.

The recommended changes are within the scope of the management measures that may be adjusted by the framework procedure, as specified at 50 CFR 642.29. The Director, Southeast Region, NMFS, initially concurs that the Councils' recommendations are necessary to protect Gulf group king mackerel and prevent overfishing and that they are consistent with the goals and objectives of the FMP. Accordingly,

the Council's recommended changes are published for comment.

The sub-zones and quotas to which the trip limits would apply are being implemented by the emergency rule procedure of section 305(c) of the Magnuson Act. The trip limits of this rule would apply when the eastern zone of Gulf group king mackerel is separated into Florida east coast and Florida west coast sub-zones and separate quotas are established in each. Under the emergency rule, the sub-zones and quotas will not be effective beyond March 31, 1994.

A minority report submitted by three members of the Gulf Council objected to this framework regulatory amendment. Specifically, the three members objected to the implementation of the 50-fish, early season trip limit in the Florida east coast zone because they contend that it provides an unfair economic allocation and prevents participation of net fishermen. NMFS will address the matters contained in the minority report, and comments received during the public comment period, in the final rule. Copies of the minority report are available (see **ADDRESSES**).

Classification

The Assistant Administrator for Fisheries, NOAA, determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291 because the total impact is well under the threshold level of $100 million used as a guideline for a "major rule."

The Councils prepared a regulatory impact review (RIR) on this action, the conclusions of which are summarized as follows. With the proposed trip limits in the Florida east coast sub-zone, (1) king mackerel would command higher prices; (2) the effects in terms of producer surplus are inconclusive; (3) the direction of the effects on total consumer benefits is unknown, but changes in consumer surplus would be small; (4) there would be relatively higher full-time equivalent employment; and (5) the cost of the management action, including the increased costs of enforcing the trip limits, would approximate $121,208. The analysis did not reach a conclusion as to the likely changes in overall net benefit. With the proposed trip limits in the Florida west coast sub-zone, (1) there would be relatively higher prices for king mackerel; (2) there would likely be no changes in producer or consumer surplus; and (3) there would likely be positive changes in overall net benefit. Copies of the RIR are available (see **ADDRESSES**).

The Councils prepared an initial regulatory flexibility analysis (IRFA), which concludes that this proposed rule, if adopted, will have significant effects on small entities. The proposed trip limits are expected to increase the benefits for some participants in the industry and decrease the benefits for other participants. Overall, benefits are expected to be increased. All participants in the industry are small entities. Copies of the IRFA are available (see **ADDRESSES**).

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 2, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 642.7, a new paragraph (u) is added to read as follows:

§ 642.7 Prohibitions.

* * * * *

(u) In the eastern zone, possess or land Gulf group king mackerel in or from the EEZ in excess of an applicable trip limit, as specified in § 642.31(a), or transfer at sea such king mackerel, as specified in § 642.31(e).

* * * * *

3. A new § 642.31 is added, to read as follows:

§ 642.31 Commercial trip limits for Gulf group king mackerel in the eastern zone.

The provisions of this section apply when the eastern zone of Gulf group king mackerel is separated into Florida east coast and Florida west coast zones and separate quotas are established in each. See § 642.25(a)(1) for such zones and quotas.

(a) *Trip limits.*

(1) *Florida east coast zone.* In the Florida east coast zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel for which a commercial permit has been issued for king and Spanish mackerel under § 642.4,

(i) From November 1, each fishing year, until 50 percent of the zone's fishing year quota of king mackerel has been harvested—in amounts not exceeding 50 king mackerel per day; and

(ii) From the date that 50 percent of the zone's fishing year quota of king mackerel has been harvested until a closure of the Florida east coast zone has been effected under § 642.26—in amounts not exceeding 25 king mackerel per day.

(2) *Florida west coast zone.* In the Florida west coast zone, king mackerel in or from the EEZ may be possessed aboard or landed from a vessel for which a commercial permit has been issued for king and Spanish mackerel under § 642.4,

(i) From July 1, 1993, until 75 percent of the zone's fishing year quota of king mackerel has been havested—in unlimited amounts of king mackerel; and

(ii) From the date that 75 percent of the zone's fishing year quota of king mackerel has been harvested until a closure of the Florida west coast zone has been effected under § 642.26—in amounts not exceeding 50 king mackerel per day.

(b) *Notice of trip limit changes.* The Assistant Administrator, by filing a notice with the Office of the Federal Register, will effect the trip limit changes specified in paragraphs (a)(1) and (a)(2) when the requisite harvest levels have been reached or are projected to be reached.

(c) *Closures.* A closure of the Florida east coast zone or the Florida west coast zone will be effected as specified in § 642.26(a). During the period of effectiveness of such a closure, the provisions of § 642.26(b) apply.

(d) *Combination of trip limits.* A person who fishes in the EEZ may not combine a trip limit of this section with any trip or possession limit applicable to state waters.

(e) *Transfer at sea.* A person for whom a trip limit specified in paragraph (a)(1) or (a)(2)(ii) of this section applies may not transfer at sea from one vessel to another a king mackerel—

(1) Taken in the EEZ, regardless of where such transfer takes place; or

(2) In the EEZ, regardless of where such king mackerel was taken.

[FR Doc. 93–21927 Filed 9–8–93; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 173
Thursday, September 9, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 3, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;
(2) Title of the information collection;
(3) Form number(s), if applicable;
(4) How often the information is requested;
(5) Who will be required or asked to report;
(6) An estimate of the number of responses;
(7) An estimate of the total number of hours needed to provide the information;
(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Food and Nutrition Service
  7 CFR Part 210—National School Lunch Program (Addendum)
  Recordkeeping; On occasion; Monthly; Semi-annually; Annually; Biennially
  State or local governments; Federal agencies or employees; Non-profit institutions; 2,163,078 responses; 22,221,961 hours
  Angella Love/Winnie McQueen (703) 305–2607

Extension

- Foreign Agricultural Service
  Declaration of Sale
  FAS–359
  On occasion
  Businesses or other for-profit; Small businesses or organizations; 200 responses; 50 hours
  James Chase (202) 720–5780

Larry K. Roberson,
Deputy Department Clearance Officer.
[FR Doc. 93–21997 Filed 9–8–93; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Exemption of South Fork Sullivan Blowdown Salvage Timber Sale From Appeal; Kootenai National Forest, MT

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber and rehabilitation project designed to recover blown-down timber is exempt from provisions of 36 CFR part 217.

SUMMARY: On October 16, 1991, unusually strong winds in localized areas across the Rexford Ranger District of the Kootenai National Forest produced areas of wind-thrown timber. The Rexford District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area. The District Ranger has determined, through the Decision Memo and environmental analysis in the supporting project file, that there is good cause to expedite these actions in order to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the area affected must be accomplished quickly to avoid further deterioration of sawtimber and to reduce the risk of wildfire.

EFFECTIVE DATE: Effective on September 9, 1993.

FOR FURTHER INFORMATION CONTACT: Drew Bellon, Rexford District Ranger; Kootenai National Forest; 1299 Hwy. 93 North; Eureka, MT 59917. Telephone: 406–296–2536.

SUPPLEMENTARY INFORMATION: Severe windstorms in the fall of 1991 damaged approximately 10 acres of timber in the South Fork Sullivan Creek area. The wind-thrown timber is located within lands designated as suitable for timber management and assigned to Management Area 12 (Kootenai Forest Plan, 1987). In the winter of 1991, the Rexford District Ranger proposed salvage of wind-damaged timber in the South Fork Sullivan Creek area. The proposal is designed to meet the following needs: (1) Recover dead and dying timber before it loses its commercial value, (2) rehabilitate the affected timber stands, and (3) reduce the potential for wildfire by reducing fuel loading.

An interdisciplinary team was convened, and scoping began in 1992. Two alternatives were analyzed; no treatment (no action) and a salvage and rehabilitation proposal (proposed action). The selected alternative will salvage approximately 50 MBF of dead and damaged timber from approximately 10 acres. All salvage areas are accessible from existing roads; no road construction or reconstruction will occur.

The salvage project is designed to accomplish the objectives as quickly as possible to reduce the fuel accumulations and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the information presented in the South Fork Sullivan Blowdown Salvage Decision Memo and project file, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: September 2, 1993.

Christopher D. Risbrudt,
Deputy Regional Forester, Northern Region.
[FR Doc. 93–21931 Filed 9–8–93; 8:45 am]
BILLING CODE 3410–11–M

Exempt Decision for Lower Montane Timber Sale From Appeal; Wallowa-Whitman National Forest, Baker County, OR

AGENCY: USDA, Forest Service.

ACTION: Notice to exempt a decision from administrative appeal.

SUMMARY: Notice is hereby given that the decision to implement the Lower Montane Timber Sale on the Baker Ranger District of the Wallowa-Whitman National Forest is exempt from appeal. This conforms with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: September 9, 1993.

FOR FURTHER INFORMATION CONTACT: Suzanne Rainville, Timber Staff, Wallowa-Whitman National Forest, 1550 Dewey Avenue, (P.O. Box 907), Baker City, Oregon, 97814, phone (503) 523–6391.

SUPPLEMENTARY INFORMATION: In the 1970's, the Lower Montane area experienced a high level of bark beetle activity in the overstocked young pine stands. This activity was effectively suppressed by precommercially thinning the stands susceptible to beetle invasion. Now, 20 years later, these same stands and some adjacent stands have grown enough to reach overstocked levels once again.

As early as 1989, a low level of beetle activity was noted in the overstocked stands within the Lower Montane area. Reconnaissance of potential beetle activity areas in the summer of 1992 noted an ever-increasing amount of beetle-killed trees. Some ponderosa pine stands were showing 20 percent and more of the trees killed.

An interdisciplinary team (IDT) was assigned in the fall of 1992 to examine the extent of the insect attack. Public comments were solicited. At the same time, the IDT analyzed the salvage potential and methods of stocking level control needed to reduce or contain beetle populations. It was recommended that stocking level work in pine stands with heavy mountain pine, western pine, and *Ips* beetle infections start as soon as possible.

It is imperative that portions of this project area, which are or have reached epidemic insect levels, be treated with "prevention" tactics. Integral parts of the project will be selective removal of green trees and introduction of prescribed fire to assist with ecosystem restoration.

This proposal includes commercial thinning, selective harvest, and precommercial thinning. Salvage will take dead and dying trees as well as green trees, if there is evidence of infestation or if needed to be removed for stocking control. The project was specifically designed to facilitate removal of infested ponderosa pine, utilize dead and dying trees, and improve overall timber stand health.

About 5 million board feet will be harvested from about 3,000 acres. Some of these acres will also be precommercially thinned (200 acres) and residual fuels burned (about 2,600 acres). In addition, precommercial thinning (about 2,500 acres) and ecosystem burning (about 900 acres) will take place outside the cutting units. No new roads will be constructed.

Speed of harvest is essential in order to salvage the timber while the logs remain merchantable and retain high quality value (before blue stain and checking set in). The average size of the insect-infested timber is about 12 inches. In general, the smaller the diameter of the tree, the more rapidly it will deteriorate.

Speed is also essential in controlling the insect infestation. The Zone Entomologist indicates that prompt action in removing beetle-infested trees and thinning residual stands are the only possibility of quelling this outbreak and preventing additional, resource losses. Zone Entomologist states further, "* * * unless these green-tree attacks are identified, marked, and removed before beetle flight next spring (should be removed before May 1), all the efforts to control this outbreak will essentially be ineffective * * * Priority for cutting should always first be to remove the 'green-infested' trees, then other trees that do not currently contain living beetle broods."

Biological evaluations have been completed for all proposed, endangered, threatened, and sensitive plant, wildlife, and fish species within the affected project area. This project is near a bald eagle management area and does not propose any activities at this time within the management area. Cultural resource surveys have been completed for the project. No known Cultural sites will be impacted by the project as planned. The project is not within a salmon habitat area and as such no consultation with the U.S. National Marine Fisheries Service is necessary. The project is not within a roadless area.

The project work is designed to accomplish the objectives as quickly as possible, protect area resources, minimize the amount of merchantable salvage volume lost, the amount of insect kill over time, and the amount of potential growth lost. This salvage is important to forest rehabilitation and recovery in the Lower Montane area and meeting Desired Future Conditions. The severity of damage to stands requires immediate action to initiate stand recovery. Based upon the analysis for this lower Montane Timber Sale, I have determined that good cause exist to exempt this timber sale from administrative appeal (36 CFR part 217). Under this regulation, the following is exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena such as wildfire * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, the Decision Notice for the Lower Montane Timber Sale may be signed by the Wallowa-Whitman Forest Supervisor. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: September 2, 1993.

Jerry L. Monesmith,

Acting Deputy Regional Forester.

[FR Doc. 93–21932 Filed 9–8–93; 8:45 am]

BILLING CODE 3410–11–M

Advisory Council Meetings; Allegheny Wild and Scenic River, Allegheny National Forest, Pa

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Southern Advisory Council for the Allegheny National Wild and Scenic River will meet at 7 p.m., Tuesday, September 21, 1993, at the Emlenton Civic Club, Emlenton, PA. The Council will continue to discuss recommendations for meeting draft management goals for the river between Franklin and Emlenton

The Northern Advisory Council will meet at 7 p.m., Wednesday, September 22, 1993, at the Holiday Inn, Oil City, PA. The Northern Council will continue its discussion of maintaining and enhancing scenic quality in the river corridor between Kinzua Dam and Oil City.

Meetings are open to the public. A sign language interpreter will be provided if requested by September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Lionel Lemery, Wild and Scenic River Coordinator, Allegheny National Forest, 222 Liberty Street, Warren, Pennsylvania 16365, 814/723–5150 or 814/726–2710 (TTY).

Dated: August 26, 1993.

Lionel A. Lemery,

Wild and Scenic River Coordinator.

[FR Doc. 93–21928 Filed 9–8–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered Species; Permits

AGENCY: National Marine Fisheries Service, (NMFS) NOAA, Commerce.

ACTION: Issuance of an amendment to Permit 871, Public Service Electric and Gas Company (P548).

SUMMARY: On July 28, 1993 (58 FR 41736), the Public Service Electric and Gas Company (P548) was issued Permit 871 to conduct scientific research on ten loggerhead (*Caretta caretta*), two Kemp's ridley (*Lepidochelys kempii*), and two green (*Chelonia mydas*) sea turtles, as authorized by the Endangered Species Act of 1973 (ESA) 16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife (50 CFR parts 217–222).

Notice is hereby given that on August 25, 1993, as authorized by the ESA, NMFS issued Amendment #1 to Permit 871, to include a reporting requirement and a general condition which should have been a part of the original permit, and to specify that the number of sea turtles authorized to be taken is on an annual basis.

Issuance of this amendment, as required by the ESA, was based on a finding that the permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of this permit; (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This amendment was also issued in accordance with and is subject to parts 217–222 of title 50 CFR, the NMFS regulations governing listed species permits.

The application, permit, amendment, and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 8268, Silver Spring, MD 20910 (301/713–2322); and

National Marine Fisheries Service, Northeast Region, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281–9250).

Dated: August 25, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–21926 Filed 9–8–93; 8:45 am]

BILLING CODE 3510–23–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Performance Review Boards; List of Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Air Staff

Ms. Judy Ann F. Miller
Mr. Donald J. Campbell
Brig Gen John A. Bradley

Others

Dr. George R. Abrahamson
Brig Gen Frank B. Campbell

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–21940 Filed 9–8–93; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Proposed Revision to the International Personal Property Rate Solicitation I–2, Item 441, and a Revision to the Personal Property Traffic Management Regulation, DOD 4500.34R, Appendix A, Tender of Service

AGENCY: Military Traffic Management Command, DoD.

ACTION: Notice.

SUMMARY: Beginning October 1, 1993, the MTMC will revise the International Personal Property Rate Solicitation I–2, Item 441, to require all household goods shipping containers used in Codes 4, 5, 6, and T international services between Germany and the Continental United States (CONUS) be sealed with metal seals at the origin pick-up point, unless permission to seal the containers at the warehouse is given by the origin personnel property shipping office.

MTMC will also revise the Personal Property traffic Management Regulation, DOD 4500.34R, Appendix A, TOS, to require carriers and their agents to report incidents of missing items, theft, pilferage, and vandalism of DOD-sponsored personal property shipments to civilian law enforcement authorities and to the origin and destination Personal Property Shipping Offices' (PPSOs). The destination PPSO will be afforded an opportunity to inspect the shipment and complete a DD Form 1841. In cases when apparent theft, pilferage, or vandalism which have not been reported to the PPSO are detected at the time of delivery, such incidents will be annotated on the DD Form 1840 and military or civilian police or investigation agencies will be notified as appropriate.

DATES: Comments must be submitted on or before October 12, 1993.

ADDRESSES: Comments on the proposed revision should be addressed to Headquarters, Military Traffic Management Command, ATTN: MTOP–QEC, 5611 Columbia Pike, room 629, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Betty Wells, MTOP–QEC, (703) 756–1598.

SUPPLEMENTARY INFORMATION: These actions are taken to increase the integrity and security of DOD-sponsored shipments and thereby reduce loss and damage to service members' personal effects. Loss and damage due to theft and vandalism have reached unacceptable levels and additional security measures are desired.

The revised item will read as follows: "Item 441. Sealing of Containers: All household goods (HHGs) containers used for movement between Germany and CONUS will be sealed at the origin pickup point with accountable metal seals secured by non-reversible nails or screws. Four seals, as a minimum, are required for each HHG container. These seals will secure the access overlap door and side panels. If only some seals out of a set are used, the unused seals will be destroyed at the time of sealing or placed on the container. They will not be used on any other container or shipment. Seal numbers will be recorded on the household goods inventory by the carrier representative, either beside the container number or annotated by individual container number on the last page of the inventory. Shipments other than Germany-CONUS will be sealed with accountable paper, vinyl or metal seals. External unaccompanied baggage shipping containers will be sealed with no less than two accountable paper or vinyl seals."

Since these changes will directly involve the carrier industry, MTMC requests public comment on the proposed revisions. MTMC is providing notice of these proposed revisions and offering a 30-day period for receiving and considering the views of all interested parties. Timely written

comments will be reviewed and considered for incorporation prior to publication of the final change.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–21935 Filed 9–8–93; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Record of Decision for Facilities Development and Relocation of Navy Activities to the Territory of Guam From the Republic of the Philippines

Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR part 1500–1508), the Department of the Navy announces its decision to develop facilities and to relocate Navy activities to the Territory of Guam from the Republic of the Philippines.

U.S. Navy facilities in the Philippines were closed in 1992 because of a decision by the U.S. and Philippines governments not to renew the lease of U.S. bases. As a result, certain operations and support functions will be permanently relocated to Guam to support the Navy's mission in the western Pacific. Actions included in this decision are in two categories: (1) Changes in military activities on Guam because of the relocation of various commands and (2) construction of permanent facilities required to accommodate the relocation. Approximately 1,380 Navy billets or positions have been relocated to Guam and an estimated 1,450 dependents will ultimately accompany personnel in those billets. Until permanent facilities can be built, most of the relocated military personnel are being temporarily accommodated in existing facilities. This use of temporary facilities was necessary because of the short time available for withdrawal from the Philippines.

Permanent changes in activities will include relocation of the Fleet Logistics Support Squadron to Andersen Air Force Base, increase in ship port calls to the Naval Station, relocation of the Military Sealift Command Subarea Commander for Southeast Asia to Guam, increase in volume of supplies handled by the Fleet Industrial Support Center, increase in work at the Ship Repair Facility, relocation of the Naval Special Warfare Unit One (NSWU–1) and Explosive Ordnance Disposal Mobile Unit Five (EODMU–5), expansion of existing activities at the Naval Magazine, relocation of the Naval Air Pacific Repair Activity, and augmentation of personnel at Naval Air Station Agana, Naval Hospital, and Naval Oceanography Command Center/ Joint Typhoon Warning Center.

Approximately 25 new facilities will be constructed, with 19 sited in the Apra Harbor area and the remainder at Andersen AFB, the Naval Magazine, and on Nimitz Hill. Facilities at Andersen include a hangar/apron/washrack complex and renovation of quarters for unaccompanied personnel. Projects in the Apra Harbor area include 300 units of family housing, expansion of the Orote Power Plant, modifications to the Sewage Treatment Plant, additions/ alterations to the child care center, NSWU/EODMU facilities, gantry crane and rails, and various administration, storage, and support facilities. Missile magazines and an inert materials storehouse will be constructed at the Naval Magazine and the Oceanography Building on Nimitz Hill will be renovated.

Draft and Final Environmental Impact Statements (DEIS/FEIS) were prepared by the Navy and distributed to federal and territorial agencies and elected officials, and to the interested public for review and comment. These documents described the potential environmental impacts associated with the actions described above and provided opportunity for comment. Two public hearings were conducted on 20 April 1993 and no oral comments were received. The FEIS responded to all written comments received on the DEIS and was distributed to the public for a 30-day review period that ended 30 August 1993. The Navy has decided to implement the actions that were presented as preferred environmental alternatives in the FEIS.

This action will not result in any unmitigatable significant environmental impacts. The community infrastructure, including roads, potable water, and sanitary sewer service, is projected to provide acceptable levels of service. Community services such as police, fire, and emergency medical will not be adversely impacted. School districts have adequate capacity, based on existing capacity and programmed improvements, to accommodate the projected level of students.

The Guam Environmental Protection Agency has granted a Part B permit under the Resource Conservation and Recovery Act for the Public Works Center and hazardous waste conforming storage facility. The Navy hereby commits to implementing the conditions of that permit, including the requirement for reporting hazardous waste minimization efforts. The Navy will also incorporate, as appropriate, the U.S. EPA interim guidance for waste minimization. The Navy has established a history of pollution prevention and is prepared to set in motion steps to implement the recently signed Executive Order 12856. Any asbestos-related work necessary for these projects will be performed in compliance with all appropriate federal and territorial regulations.

There is no dredging requirement to implement the actions covered by this decision. However, if a future dredging requirement for Guam facilities arises, the Navy will fully coordinate such an effort with resource/regulatory agencies and will prepare the appropriate NEPA documentation.

The Navy has conducted formal consultation with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) in compliance with the Endangered Species Act and has received biological opinions of "no jeopardy" and "incidental take statements" from both agencies. The Navy hereby commits to meeting the terms and conditions established by the NMFS and the USFWS as the basis for their decisions.

A Memorandum of Agreement (MOA) has been developed which ensures appropriate management and protection of historic resources listed, or eligible for listing, on the National Register of Historic Places under the criteria established by the National Historic Preservation Act of 1966, as amended, and its implementing regulations (36 CFR part 800). The MOA has been signed by the Navy, the Guam Historic Preservation Officer, and the Advisory Council on Historic Preservation and is now effective. The Navy hereby commits to implementing the stipulations contained in that MOA.

Questions regarding this Record of Decision may be directed to Pacific Division, Naval Facilities Engineering Command (Makalapa), Pearl Harbor, Hawaii 96860–7300 (Attn: Mr. Stan Uehara), telephone (808) 471–9338.

Dated: September 2, 1993.

Elsie L. Munsell,

Deputy Assistant Secretary of the Navy (Environment and Safety).

[FR Doc. 93–22006 Filed 9–8–93; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Golden Field Office; Federal Assistance Award to California Institute of Technology

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to the California Institute of Technology for continuing research efforts in support of the Biological and Chemical Technologies Research (BCTR) program at DOE. The BCTR program seeks to improve operations and decrease energy use in the chemical and petrochemical industries. This is not a notice for solicitation of proposals or financial assistance applications.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Mr. Matthew A. Barron, Contract Specialist.

SUPPLEMENTARY INFORMATION: For the past four years, the applicant has been conducting research to develop several general approaches to enhancing enzyme performance in nonnatural, but technologically useful, environments. This research targets three specific enzymes for initial engineering studies. Protein design and mutagenesis methods will be used to improve catalyst stability, alter substrate specificities, and enhance catalytic activity in nonnatural environments. Successful completion of this research would produce (1), a set of novel enzyme catalysts for chemical synthesis applications, and (2), the further development of generic engineering strategies that can be implemented in other industrially important enzymes.

The research conducted at the California Institute of Technology has led to the development of generally applicable and easy to implement strategies for improving enzyme performance in industrial environments. To date, the research has focused on the enzyme *Subtilisin*, a bacterial serine protease. This effort has been supported by the DOE Office of Industrial Processes. This recipient has been widely recognized for accomplishments achieved in enzyme stabilization and activation in unusual environments.

In accordance with 10 CFR 600.7, it has been determined that the activity to be funded is necessary to the satisfactory completion of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on completion of the activity. The applicant has exclusive domestic capability to perform the activity successfully, based upon unique technical experience. DOE knows of no other organization which is conducting or is planning to conduct research on enzyme stabilization and activation in unusual environments as proposed by the applicant.

Funding in the amount of $999,886 is to be provided by DOE. The anticipated term of the proposed grant shall be sixty months from the effective date of the award.

Issued in Chicago, Illinois on August 9, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93–22009 Filed 9–8–93; 8:45 am]

BILLING CODE 6450–01–M

Golden Field Office; Federal Assistance Award to Industra Inc.

AGENCY: Department of Energy.

ACTION: Notice of financial assistance award in response to an unsolicited financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14, is announcing its intention to enter into a cooperative agreement with Industra Inc. for an impartial comparison of new and emerging technologies with traditional black liquor combustion and chemical recovery as practiced in kraft pulping operations in the paper industry.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department on Energy, Golden, Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: M.A. Barron, Contract specialist. The Contracting Officer is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: A number of new technologies to modify or replace the traditional Tomlinson, furnace for recovery of chemicals and heat from black liquor in the kraft pulping process have been developed and many more are under development. The paper industry has great interest in these developments, but they are concerned as to whether the new technologies are safe and efficient. In response to this concern, Industra proposes to conduct an evaluation and analysis of pertinent technologies for kraft black liquor chemical recovery. This analysis and evaluation will include current and new recovery systems and projections regarding future systems that will become available to the industry. Industra has developed, and continues to maintain, a unique capital cost database that will be used to develop implementation cost estimates for each option.

The application has been found to be meritorious in a general evaluation in accordance with 10 CFR 600.14(d). The proposed project represents and utilizes a unique methodology and would not be eligible for financial assistance under a recent, current, or planned solicitation, and a competitive solicitation is inappropriate.

The project is estimated to cost $60,000 all of which will be provided by DOE. The duration of the project is estimated at 6 months.

Issued in Chicago, Illinois, on August 9, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93–22010 Filed 9–8–93; 8:45 am]

BILLING CODE 6450–01–M

Golden Field Office; Federal Assistance Award to Southwest Research Institute

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to the Southwest Research Institute for continuing research efforts to develop and demonstrate natural gas-fueled railway locomotives. This is a portion of DOE's Fuels Utilization Program of its Transportation Technologies Program, which seeks to improve fuel efficiency, reduce energy costs, and reduce air emissions in transportation operations. This is not a notice for solicitation of proposals or financial assistance applications.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Ms. Ruth E. Adams, Contract Specialist.

SUPPLEMENTARY INFORMATION: For the past twelve years, the applicant has been conducting engine research for the Association of American Railroads. The applicant is currently completing the development of a first generation gas-fueled freight locomotive engine, under contract with the Electro-Motive Division of General Motors (EMD). This engine technology will be available to this cooperative research program.

This cooperative research program is being funded by the DOE and five non-Federal entities. The DOE will be funding approximately 12% of the total project costs.

Three engine technologies will be investigated during this research program. With each technology, variables affecting engine performance (power, fuel economy, exhaust emissions, etc.) will be optimized to produce a freight engine with improved cost efficiency and a commuter passenger engine with low emissions.

In accordance with 10 CFR 600.7, it has been determined that DOE funding of this activity will enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity. In addition, DOE has determined that the applicant and its cost-sharing contractor, EMD, have exclusive domestic capability to perform this activity successfully, based upon unique equipment, proprietary data, technical expertise, and other unique qualifications.

DOE funding for this four-year effort is estimated to be $800,000. The anticipated term of the proposed grant shall be forty-eight months from the effective date of the award.

Issued in Chicago, Illinois, on August 9, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93–22007 Filed 9–8–93; 8:45 am]

BILLING CODE 6450–01–M

Chicago Operations Office; Acceptance of Unsolicited Proposal Structural Insulated Panel Association (SIPA)

AGENCY: Department of Energy.

ACTION: Notice of acceptance of an unsolicited proposal.

SUMMARY: Pursuant to 10 CFR 600.14, the U.S. Department of Energy, through the Chicago Operations Office, intends to award a grant to the Structural Insulated Panel Association (SIPA) to conduct a Design Competition for Energy Efficient Panelized Homes.

SUPPLEMENTARY INFORMATION: This project, based upon an unsolicited proposal that embodies a unique approach which will bring together for the first time in a sponsored conference those companies actively manufacturing structural insulated panels as well as those supplying material and services to manufacturers, is judged to be meritorious based upon the general evaluation factors of 10 CFR 600.14(e). The project represents a unique approach which would not be eligible for financial assistance under a recent, current or planned solicitation.

A proposed design competition will showcase the best in energy-efficient, affordable panelized houses. The results of the competition will be the honoring of buildings that demonstrate the energy conserving performance and architectural distinction of stress skin panel structures. This will encourage dissemination of information about unique, affordable buildings, and help promote stress skin panel construction through local home builder associations and utility companies through an array of outreach activities.

The project period of this award shall be 12 months and DOE support will be provided in the amount of $35,000,000.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Attn: Hugh Saussy, Jr., Boston Support Office, One Congress Street, Boston, MA 02114–2021, (617) 565–9700.

Issued at Chicago, Illinois on August 10, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93–22008 Filed 9–8–93; 8:45 am]

BILLING CODE 6450–01–M

Privacy Act of 1974; Establishment of a New Routine Use for an Existing System of Records and Elimination of a System of Records

AGENCY: Department of Energy (DOE).

ACTION: Elimination of one system of records and establishment of a new routine use for an existing system.

SUMMARY: Federal agencies are required by the Privacy Act of 1974 (Pub. L. 93–579, 5 U.S.C. 552a) to publish a notice in the **Federal Register** when an existing system of records has been significantly altered. DOE proposes to (1) eliminate a System of Records and consolidate those records into an existing System of Records; (2) establish a routine use for DOE–28; and (3) provide current information on system location and records storage. The new routine use for DOE–28 will allow the disclosure of technical training records of professional employees involved in the disposal of radioactive waste to federal and state regulatory agencies which require the records to successfully perform their functions. For example, this new routine use will allow the disclosure of technical training records to the U.S. Environmental Protection Agency (EPA) for the purpose of determining compliance with the Resources Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k, and other authorized state hazardous waste program requirements. In addition, DOE is proposing to maintain in DOE–28 records currently in DOE–80 "Quality Assurance Training and Qualification Records." DOE–28 will also include routine uses listed for DOE–80 and include machine readable media in the types of records maintained in the system. The revisions reflect this new method of storage.

DATES: The revised system of records will become effective without further notice 40 days after publication (October 19, 1993), unless comments are received on or before that date which would result in a contrary determination and a notice is published to that effect.

ADDRESSES: Comments should be directed to the following address: U.S. Department of Energy, Denise Diggin, Chief of FOI/PA, AD–621, 1000 Independence Avenue, SW., Washington, DC 20585. Any comments received will be available for public inspection and copying from 9–4 in the Freedom of Information Act Reading Room, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Charles R. Tierney, Director of Professional and Technical Training and Development, AD–70, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 275–6440 or Denise B. Diggin, Chief of FOI/PA, AD–621, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6025 or Abel Lopez, Office of General Counsel, GC–43, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8618.

SUPPLEMENTARY INFORMATION: The DOE proposes to revise a system of records, DOE–28, "General Training Records." The proposed revisions include establishing a new routine use and incorporating records currently maintained in DOE–80. The new routine use will allow disclosure of training records of professional and technical DOE and DOE contractor employees involved in the processing of radioactive waste to agencies that need the information to perform certain regulatory functions. For example, the technical training records will be made available to local and state governments, the Nuclear Regulatory Commission (NRC), the EPA, and other Federal agencies for purposes of audits conducted to satisfy the requirements of the Nuclear Waste Policy Act of 1982, title 10, Code of Federal Regulations, part 50, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," Appendix B; the NRC Review Plan for High-Level Waste Repository Quality Assurance Program

Description; the Resources Conservation and Recovery Act, 42 U.S.C. 6901–6992k; and authorized state hazardous waste program requirements. DOE–28 and DOE–80 will be consolidated to maintain training records in one system rather than in different systems.

The text of the system notice is set forth below. Issued in Washington, DC, on August 31, 1993.

Linda G. Sye,

Acting Principal Deputy Assistant, Secretary for Human Resources and Administration.

DOE–28

SYSTEM NAME:

General Training Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations listed as items 1 through 21 in Appendix A, as well as the following locations:

U.S. Department of Energy, Allied Bendix Corporation, Kansas City Division, P.O. Box 1159, Kansas City, MO 64141.

U.S. Department of Energy, Bettis Atomic Power Laboratory, P.O. Box 79, West Mifflin, PA 15122–0079.

U.S. Department of Energy, Dayton Area Office, P.O. Box 66, Miamisburg, OH 45342.

U.S. Department of Energy, Kansas City Area Office, Box 410202, Kansas City, MO 64141.

U.S. Department of Energy, Knolls Atomic Power Laboratory, P.O. Box 1072, Schenectady, NY 12301.

U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544.

U.S. Department of Energy, Naval Petroleum Reserves, P.O. Box 1, Tupman, CA 93276.

U.S. Department of Energy, Westinghouse Electric Corporation, Bettis Atomic Power Laboratory, Naval Reactors Facility, P.O. Box 2068, Idaho Falls, ID 83403–2068.

U.S. Department of Energy, West Valley Demonstration Project, P.O. Box 919, West Valley, New York 14171.

U.S. Department of Energy, Strategic Petroleum Reserve, 900 Commerce Road East, New Orleans, LA 70123.

U.S. Department of Energy, Yucca Mountain Project Office, 2753 South Highland Avenue, Las Vegas, NV 89109.

U.S. Department of Energy, Office of Civilian and Radioactive Waste Management, 1000 Independence Avenue, SW., Washington, DC 20585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have requested and/or participated in training programs administered by DOE, other agencies, or other training organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, resume, assigned number, occupational series, training requests and authorizations, grade, organization, date of birth, social security number, home address and telephone number and special interest area, education completed, course name, justification for attending the course, direct and indirect costs of training, coded information dealing with purpose, type, source of 170; training evaluations, course evaluation forms, training examinations, training attendance records, indoctrination and training matrix, reading assignment sheets, qualifications statement, verification records of employment and education, statement of performance, position descriptions, accounting records and central personnel data file quarterly training report.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Executive Order 12009; Nuclear Waste Policy Act of 1982 (Pub. L. 97–425); Nuclear Waste Policy Amendment Act of 1987 (Pub. L. 100–203); Government Employees Training Act of 1958; Federal Personnel Manual Bulletin 290–15; Federal Personnel Manual, Chapter 410 and Appendix A thereto.

PURPOSE:

This system of records is maintained to ensure that employees are receiving appropriate training and certification to perform successfully in their position. Appropriate local, state and federal agencies use certain records maintained in this system to ensure Departmental compliance with other regulatory requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in these records may be transmitted to Federal agencies, including the Office of Personnel Management, for purposes of determining eligibility for training and as source documents for training reports; to training institutions that personnel have requested to attend; and to other Federal agencies as necessary for payment of training.

Records may be provided to state and local governments, the Nuclear Regulatory Commission (NRC), and other Federal agencies that conduct audits to determine whether DOE and contractor personnel satisfy quality assurance requirements for activities necessary to obtain a license from the NRC for the construction, operation and closing of a nuclear waste repository and/or a Monitored Retrievable Storage (MRS) facility. These activities will also include research and development, site characterization, transportation, waste packaging, handling, design, maintenance, performance confirmation, inspection, fabrication, and development and production of repository waste forms.

A record from this system of records may be disclosed to researchers for the purpose of conducting an epidemiologic study of workers at a DOE facility if their proposed studies have been reviewed by the National Academy of Sciences or another independent organization, and deemed appropriate for such access. A researcher and all persons not employed by the U.S. Government granted access to this record shall be required to sign an agreement to protect the confidentiality of the data and be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act.

A record from this system of records may be disclosed to federal, state or local government officials where the regulatory program being implemented is applicable to the DOE or contractor program and requires that such access be provided for the conduct of the regulatory agencies activities. State and local officials who obtain access to this record shall be required to sign an agreement to protect the confidentiality of the data and be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act.

A record from this system of records may be disclosed to members of a DOE advisory committee for purposes of conducting a review of the DOE epidemiological program. Members of a DOE advisory committee who obtain access to the records shall be subject to the same restrictions applicable to DOE officers and employees under the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records; machine readable media or microform.

RETRIEVABILITY:

By name and social security number

SAFEGUARDS:

Records are maintained in secured file cabinets with access limited to those whose official duties require access. Access to computer maintained records is by password only.

RETENTION AND DISPOSAL:

Training requests and authorizations are retained for 3 years and then destroyed. Other training records are maintained at a facility pursuant to the appropriate provisions of an applicable statute or are incorporated in the individual's personnel folder. Records are destroyed by magnetic erasure, shredding, burning or burial in a sanitary landfill or incinerator as appropriate.

SYSTEM MANAGER(S) AND ADDRESSES:

Headquarters: U.S. Department of Energy, Director, Professional and Technical Training Development, AD–70, 1000 Independence Avenue, SW., Washington, DC 20585.

Field Offices: The managers, directors, or administrators of field locations 2 through 21 in Appendix A and those identified in this System of Records, are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him/her should be directed to the Director, Freedom of Information and Privacy Acts, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified as items 1 through 21 in Appendix A; in accordance with DOE's Privacy Act regulations (10 CFR part 1008 (45 FR 61576, September 16, 1980)).

b. Required identifying information: Complete name, the geographic location(s) and organization(s) where requester believes such record may be located, date of birth, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

The subject individuals and the individual's supervisors.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 93–22012 Filed 9–8–93; 8:45 am]

BILLING CODE 6450–01–P

DOE Response to Recommendation 93–5 of the Defense Nuclear Facilities Safety Board, DOE's Hanford Waste Tanks Characterization Studies

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315(b) of the Atomic Energy Act of 1954, as amended, 43 U.S.C. 2286d(b), the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 93–5 of the Defense Nuclear Facilities Safety Board, published in the **Federal Register** on July 28, 1993, (58 FR 40409) concerning DOE's Hanford waste tanks characterization studies.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before October 12, 1993.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Grumbly, Assistant Secretary for Environmental Restoration and Waste Management, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Issued in Washington, DC, on August 19, 1993.

Mark B. Whitaker,

Acting Departmental Representative to the Defense Nuclear Facilities Safety Board.

August 31, 1993.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

Dear Mr. Chairman: On July 19, 1993, the Defense Nuclear Facilities Safety Board forwarded to the Department of Energy their Recommendation 93–5 which deals with Hanford Waste Tanks Characterization Studies. Recommendation 93–5 is accepted by the Department.

The Department will undertake a comprehensive reexamination and restructuring of the tanks' characterization effort and integrate the characterization effort into the systems engineering effort for the Tank Waste Remediation System.

We are developing an Implementation Plan to address the Board's recommendations, including the recommended target dates for accomplishment of specific actions. This Plan will set forth a technically sound, integrated program, while incorporating the characterization needs of retrieval, treatment, waste storage, and the Department's legal and regulatory obligations. The Implementation Plan will provide specific milestones and dates for accomplishing the major tasks to achieve the Board's recommendations.

Sincerely,

Hazel R. O'Leary.

[FR Doc. 93–22013 Filed 9–8–93; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk OfficeR may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer,

Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–16AT
3. 1902–0139
4. Monitoring Program
5. Extension
6. Daily
7. Mandatory
8. Businesses or other for-profit
9. 1 respondent
10. 1 response
11. 1 hour per response
12. 1 hour
13. Stand-by authority for FERC to collect information from pipelines during natural gas supply emergencies to enable the planning of ameliorating actions.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980 (Pub. L. No. 96–511), which amended chapter 35 of Title 44 United States Code (See 44 U.S.C. 3506 (a) and (c)(1)).

Issued in Washington, DC, September 2, 1993.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 93–22011 Filed 9–8–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER93–907–000, et al.]

Pennsylvania Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 2, 1993.

Take notice that the following filings have been made with the Commission:

1. Pennsylvania Electric Co.

[Docket No. ER93–907–000]

Take notice that on August 30, 1993, Pennsylvania Electric Company (Penelec) tendered for filing pursuant to Rule 205 of the Commission's Rules of Practice and Procedure (18 CFR 385.205) a proposed Wheeling and Supplemental Power Agreement with the Borough of Pemberton, New Jersey. Under such Agreement, Penelec proposes to provide supplemental power service to Pemberton through a delivery point in New Jersey which is now being provided with supplemental power service by Penelec's affiliate, Jersey Central Power & Light Company (JCP&L).

The rates proposed to be charged by Penelec for such supplemental power service to such delivery point for Pemberton will be the same rates charged by Penelec to Allegheny Electric Cooperative, Inc. (Allegheny) for supplemental power service to the approximately 158 delivery points of Allegheny's member cooperatives now served by Penelec, after excluding from such Penelec rates the transmission component thereof. These rates are also those employed by Penelec, beginning July 30, 1993, for service to Allegheny's member cooperatives through 16 additional delivery points in Pennsylvania and one additional delivery point in New Jersey in accordance with a rate schedule that became effective July 29, 1993 (FERC Letter Order, dated July 23, 1993, Docket No. ER93–669–000).

The transmission service to deliver such Penelec supplemental power to Pemberton will be provided by JCP&L. After the adjustment necessary to reflect the difference between delivery at primary distribution voltage as opposed to delivery at transmission voltage, the rate charged by JCP&L to deliver such Penelec supplemental power to Pemberton will be comparable to the rate now charged by JCP&L to deliver Penelec supplemental power service to Allegheny's New Jersey member, Sussex Rural Electric Cooperative, Inc.

Copies of the filing have been served on Pemberton.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. San Diego Gas & Electric Co.

[Docket Nos. ER93–542–000] and ER 93–543–000]

Take notice that on August 27, 1993, San Diego Gas & Electric Company (SDG&E) tendered for filing an amendment to its original filing under Docket Nos. ER93–542–000 and ER93–543–000, requesting a change in rates for service under the Agreements with Southern California Edison for: (1) Short-Term Firm Transmission Service, FERC Rate Schedule 58; (2) Interruptible Transmission Service, FERC Rate Schedule 59; and (3) Firm Transmission Service, FERC Rate Schedule 60. SDG&E is withdrawing for filing the Interruptible Transmission Service Agreements with El Paso Electric Company, Imperial Irrigation District and the City of Burbank.

SDG&E respectfully requests, pursuant to § 35.11, waiver of prior notice requirements specified in § 35.3 of the Commission's regulations, and an effective date of January 1, 1993.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Edison.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Northeast Utilities Service Co.

[Docket No. ER93–902–000]

Take notice that on August 27, 1993, Northeast Utilities Service Company (NUSCO) on behalf of The Connecticut Light and Power Company (CL&P) tendered for filing a Sales Agreement for the purchase by UNITIL Power Corporation (UNITIL Power) of Unit entitlements in the Norwalk Harbor Units No. 1 and No. 2 from CL&P.

NUSCO states that copies of this rate schedule have been mailed or delivered to each of the parties.

NUSCO further states that the filing is in accordance with part 35 of the Commission's regulations.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Portland General Electric Co.

[Docket Nos. EL93–5–000 and EL93–133–000]

Take notice that on August 28, 1993, Portland General Electric Company (PGE) tendered for filing supplemental information to its original filing under Docket Nos. EL93–5–000 and EL93–133–000. The amendment includes supplemental information requested by the Commission staff and relates to Filing Nos. 17, 19, 72, 74, 75, 76, 81 and 84 as identified by PGE in its original November 9, 1992 filing.

Copies of the supplemental information have been served on parties of record and others, as shown in the distribution list included in the filing letter.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania Power & Light Co.

[Docket No. ER93–905–000]

Take notice that Pennsylvania Power & Light Company (PP&L) on August 27, 1993, tendered for filing a First Supplement, dated as of August 20, 1993, to the Transmission Service

Agreement (Agreement), dated January 28, 1992 between PP&L and Northampton Generating Company, L.P. (NGC), which is on file with the Commission as PP&L's Rate Schedule FERC No. 112. The First Supplement revises the Agreement to reflect a change in the amount of output to be wheeled to Met Ed from NGC's facility from 98 MW to 110 MW. The Agreement is unchanged in all other respects.

PP&L is not requesting any notice period waivers for the Supplement. PP&L states that a copy of its filing was served on NGC and the Pennsylvania Public Utility Commission.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. San Diego Gas & Electric Co.

[Docket No. ER93-906-000]

Take notice that on August 27, 1993, San Diego Gas & Electric Company (SEG&E) tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and the City of Glendale (Glendale).

SDG&E requests that the Commission allow the Agreement to become effective on October 1, 1993, or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Glendale.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. PacifiCorp

[Docket No. ER93-908-000]

Take notice that PacifiCorp on August 30, 1993, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, revisions to Exhibit B, D and H of the General Transfer Agreement, Contract No. DE-MS79-82BP90049, between PacifiCorp and Bonneville Power Administration (Bonneville), PacifiCorp's Rate Schedule FERC No. 237.

The Exhibits have been revised to add or delete points of delivery and the associated transfer charges, loss factors and power factors.

PacifiCorp requests an effective date not later than sixty days from the Commission's receipt of this filing.

Copies of this filing were supplied to Bonneville and the Public Utility Commission of Oregon.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Utilities Service Co.

[Docket No. ER93-901-000]

Take notice that on August 27, 1993, Northeast Utilities Service Company tendered for filing a System Power Sales Agreement between the NU System Companies and Middleton Municipal Electric Department.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Indiana Michigan Power Co.

[Docket No. ER93-897-000]

Take notice that on August 26, 1993, Indiana Michigan Power Company (I&M) tendered for filing a revision to the Index of Purchasers contained in its FERC Electric Tariff MRS to recognize the assignment of I&M's wholesale service agreement for electric service with the City of Columbia City, Indiana to the Indiana Municipal Power Agency.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Indiana Michigan Power Co.

[Docket No. ER93-898-000]

Take notice that on August 26, 1993, Indiana Michigan Power Company (I&M) tendered for filing a revision to the Index of Purchasers contained in its FERC Electric Tariff CO-OP 1 to recognize the assignment of I&M's wholesale service agreement for electric service with the Wayne County Rural Electric Membership Corporation to the Hoosier Energy Rural Electric Cooperative, Inc. I&M's filing also updates the Index of Purchasers to recognize the acceptance of a service agreement with the Wabash Valley Power Association.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Co. of Oklahoma

[Docket No. ER93-435-000]

Take notice that on August 24, 1993, Public Service Company of Oklahoma (PSO) tendered for filing an amendment to its original filing on March 8, 1993, in this docket.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Northern States Power Company (MN), Northern States Power Company (WI)

[Docket No. ER92-302-002]

Take notice that on August 18, 1993, Northern States Power Company (NSP) tendered for filing a proposed revised rate for Service Schedule B—Peaking Power for inclusion in the Eastern Interconnection and Interchange Agreement dated December 31, 1991, between Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin), and the Wisconsin Public Power Incorporated System (WPPI). This compliance filing is made pursuant to the Commission's August 3, 1993 order in Docket No. ER92-302-001.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Cambridge Electric Light Co.

[Docket No. ER93-896-000]

Take notice that on August 26, 1993, Cambridge Electric Light Company (Cambridge) tendered for filing, pursuant to § 35.15 of the Commission's Regulations, a notice of termination of FERC Electric Tariff for Partial Requirements Service, First Revised Volume No. 2 issued April 30, 1987, for effect July 1, 1985, and designated as Rate Schedule FERC No. 33. Cambridge requested waiver of the sixty day rule so that the termination would take effect immediately. In support of its request Cambridge stated that there are no customers currently taking service under this rate.

A copy of this filing has been served upon the Town of Belmont, Massachusetts and upon the Massachusetts Department of Public Utilities.

Comment date: September 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21949 Filed 9-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93–13995T New Mexico–49]

United States Department of the Interior, Bureau of Land Management; Corrected NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

September 2, 1993.

Take notice that on August 16, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Dakota Formation underlying certain lands in the Largo Gallup and Basin Dakota Fields in Rio Arriba County, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 2,560 acres, more or less, all of which are administered by the Bureau of Land Management. The recommended area is described as all of sections 3, 4, 9 and 10 of Township 26 North, Range 7 West.

The notice of determination also contains BLM's findings that the referenced portion of the Dakota Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21902 Filed 9–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–63–000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 2, 1993.

Take notice that on August 30, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No., 1, First Revised Sheet No. 7, with a proposed effective date of October 1, 1993.

Carnegie states that pursuant to § 154.38(d)(6) of the Commission's Regulations and Section 30.1 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1, Carnegie is amending its FERC-jurisdictional transportation rate schedules to reflect a revised Annual Charge Adjustment ("ACA") unit charge of $0.0025 per Dth.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21903 Filed 9–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–12–63–000 and TM93–12–63–000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 2, 1993.

Take notice that on August 30, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of September 1, 1993;

Forty-Sixth Revised Sheet No. 8
Forty-Sixth Revised Sheet No. 9

Carnegie states that pursuant to sections 23 and 26 of the General Terms and Conditions of its FERC Gas Tariff, it is filing a combined Out-of-Cycle Purchased Gas Adjustment ("PGA") and Transportation Cost Adjustment ("TCA") to reflect projected purchased gas costs and projected Account No. 858 costs for the month of September 1993.

Carnegie states that the revised tariff sheets reflect the following changes in its sales rates:

(i) An increase of $0.5882 per Dth in the commodity PGA rates under Carnegie's Rate Schedules CDS and LVWS, as well as to the maximum and minimum PGA rates under Rate Schedule SEGSS, as compared with Carnegie's last effective PGA filing in Docket No. TQ93–10–63–000;

(ii) The removal of the PGA Surcharge rates implemented pursuant to Carnegie's 1992 Annual PGA in Docket Nos. TA92–1–63–000, et al., and

(iii) A TCA commodity rate decrease of $0.0045 per Dth, as compared to Carnegie's last effective TCA filing in Docket No. TM93–10–63–000.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21904 Filed 9–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–63–005]

Great Lakes Gas Transmission Limited Partnership; Compliance Filing

September 2, 1993.

Take notice that on August 27, 1993, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed revised tariff sheets, pursuant to Commission staff's request, replacing the pro forma tariff sheets filed with Great Lakes' August 2, 1993, second revised compliance filing. Great Lakes filed the following revised tariff sheets:

Original Sheets Nos. 1 through 83 establishing Great Lakes' Second Revised Volume No. 1.
Thirty-Fourth Revised Sheet No. 1 canceling Great Lakes' First Revised Volume No. 1.
Various revised tariff sheets to Great Lakes' Original Volume No. 2 conforming that volume to the changes required by the cancellation of the First Revised Volume No. 1.
Second Revised Sheet No. 1 canceling Great Lakes' Original Volume No. 3.

Great Lakes states that the Second Revised Volume No. 1 tariff sheets are identical to the pro forma tariff sheets

filed with Great Lakes' August 2, 1993, second revised compliance filing. It further states that the tariff sheets related to Original Volume No. 2 and the sheets canceling First Revised Volume No. 1 and Original Volume No. 3 are identical to the pro forma tariff sheets filed with Great Lakes' April 15, 1993, revised compliance filing. Great Lakes states that because revisions to the First Revised Volume No. 1, Original Volume No. 2, and Original Volume No. 3 sheets were not necessitated by the Commission's July 2, 1993, order,[1] revised sheets had not been filed with the August 2 filing.

Comments on the revised tariff sheets, to the extent the revised tariff sheets differ in substance from the previously filed pro forma tariff sheets, should be filed on or before September 9, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21905 Filed 9–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR93–13–000]

Gulf States Pipeline Corp.; Petition for Rate Approval

September 2, 1993.

Take notice that on August 2, 1993, Gulf States Pipeline Corporation (Gulf States) filed a petition for rate approval pursuant to § 284.123(b)(2) of the Commission's regulations. Gulf States requests that the Commission approve as fair and equitable a reservation rate of $7.7827 per MMBtu and a commodity charge of $0.0121 per MMBtu for firm transportation service, and a rate of $0.268 per MMBtu for interruptible transportation service performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Gulf States affirms that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates an intrastate pipeline system in the State of Louisiana. Gulf State proposes an effective date of August 1, 1993.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation services. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before September 20, 1993. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21906 Filed 9–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–177–000]

High Island Offshore System; Proposed Interim Reduction in Rates

September 2, 1993.

Take notice that on August 30, 1993, High Island Offshore System (HIOS) filed, pursuant to section 4 of the Natural Gas Act, for an interim reduction in its transportation rates to be effective as of July 1, 1993.

HIOS states that copies of the filing are being served upon all parties to this proceeding and upon all shippers on HIOS' system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21907 Filed 9–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–16–25–000]

Mississippi River Transmission Corp.; Rate Change Filing

September 2, 1993.

Take notice that on August 30, 1993, Mississippi River Transmission Corporation (MRT) tendered for filing Ninety-Second Revised Sheet No. 4 and Fifty-First Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective September 1, 1993. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that Ninety-Second Revised Sheet No. 4 and Fifty-First Revised Sheet No. 4.1 reflect an increase of 32.26 cents per MMBtu in the commodity cost of purchased gas from PGA rates contained in the quarterly PGA filing to be effective September 1, 1993 in Docket No. TQ93–15–25–000. MRT also states that since the June 30, 1993 filing date, MRT has experienced changes in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of this filing has been served on all of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21908 Filed 9–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–73–000]

Nordic Power of Southpoint I Limited Partnership; Application for Commission Determination of Exempt Wholesale Generator Status

September 2, 1993.

On August 31, 1993, Nordic Power of Southpoint I Limited Partnership ("Applicant"), c/o Nordic Power of Southpoint, Inc., 2010 Hogback Road, Suit 4, Ann Arbor, Michigan 48105, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status.

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[1] Great Lakes Gas Transmission Limited Partnership, 64 FERC ¶ 61,017 (1993).

Applicant states that it is a Michigan limited partnership which is developing an electric generating facility and certain related interconnection facilities (the "Facility", as further defined herein) which will be located in the State of Arizona. Applicant will directly own and operate the Facility. When completed, the Facility will have a net electric output of between 200 MW and 450 MW. Applicant plans to sell the net electric output of the Facility to Nevada Power Company ("NPC"), Citizens Utilities ("CU"), and the City of Anaheim ("Anaheim") at wholesale. The Facility will include power generation equipment and ancillary equipment, voltage regulation equipment and a step-up transformer and related equipment used to deliver the electric output of the Facility to the Western Area Power Authority, with which the Facility will be connected through our own line or through the local utility.

Applicant states that (i) it will directly own and may operate the Facility; (ii) it will be engaged directly and exclusively in the business of owning and/or operating the Facility and selling electricity at wholesale; (iii) the Facility will be used for the generation of electric energy exclusively for sale at wholesale; (iv) there are no lease arrangements with respect to the facility with any public utility company; (v) Applicant is not an affiliate or associate company of an electric utility company; (vi) no electric utility company which is affiliate or associate company of the Applicant will own or operate the Facility; and (vii) no rate or charge for, or in connection with, the construction of the Facility, or for electric energy produced by the Facility, was in effect under the laws of any State on the date of enactment of the Energy Policy Act (October 24, 1992).

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with § 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 24, 1993 and must be served on the applicant. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21909 Filed 9–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–37–000]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

September 2, 1993.

Take notice that on August 30, 1993, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, with a proposed effective date of October 1, 1993:

Second Revised Volume No. 1

Twenty-Fourth Revised Sheet No. 10
Twenty-Third Revised Sheet No. 11
Eighteenth Revised Sheet No. 13

First Revised Volume No. 1–A

Nineteenth Revised Sheet No. 201

Original Volume No. 2

Thirty-Third Revised Sheet No. 2.3

Northwest states that the purpose of this filing is first to update its Commodity SSP Surcharge effective October 1, 1993, to reflect (1) interest applicable to July, August and September 1993, and (2) the amortization of principal and interest. The proposed Commodity SSP Charge contained in this instant filing is 3.97¢ per MMBtu for the three months commencing October 1, 1993. A further purpose of this filing is to update Northwest's tariff to reflect the Commission approved Annual Charge Adjustment factor to be effective for the twelve-month period beginning October 1, 1993.

Northwest states that a copy of this filing has been served upon all jurisdictional customers and state regulatory commissions in its market area.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21910 Filed 9–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–78–000]

Overthrust Pipeline Co.; Tariff Filing

September 2, 1993.

Take notice that on August 31, 1993, Overthrust Pipeline Company, (Overthrust) tendered for filing as part of its FERC Gas Tariff, Original Volume Nos. 1 and 1–A, Fourteenth Revised Sheet No. 6 and Third Revised Sheet No. 4, with a proposed effective date of October 1, 1993.

Overthrust states that this filing implements the annual charge unit rate of $0.0026 per Mcf in each of its transportation rate schedules.

Overthrust states that copies of the filing were served upon Overthrust's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21911 Filed 9–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–86–000]

Pacific Gas Transmission Co.; Annual Charge Adjustment

September 2, 1993.

Take notice that on August 31, 1993, Pacific Gas Transmission Company (PGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 1–A certain tariff sheets, with proposed effective date of October 1, 1993.

PGT states that the above tariff sheets have been revised to reflect a

modification to the Annual Charge Adjustment fee, in accordance with the Commission's most recent Annual Charge billing to PGT.

PGT states that copies of the filing are being served upon all affected jurisdictional customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21912 Filed 9–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ94–1–7–000 and TM94–1–7–000]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

September 2, 1993.

Take notice that on August 30, 1993, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of October 1, 1993:

One Hundred Thirty-Third Revised Sheet No. 4A
Forty-Sixth Revised Sheet No. 4B
Fifty-Second Revised Sheet No. 4J
Ninth Revised Sheet No. 45M

Southern states that the aforesaid tariff sheets reflect an increase of ¢30 per Mcf at 1,000 Btu in the commodity component of Southern's rates from its last scheduled PGA filing in Docket No. TQ93–1–4–000 as a result of projected changes in Southern's cost of purchased gas. The aforesaid tariff sheets also implement the Commission's revised annual charge adjustment of .25¢ per MMBtu of October 1, 1993.

Southern states that copies of Southern's filing were served upon all of Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure §§ 385.214, 385.211). All such petitions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestant parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21913 Filed 9–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–181–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 2, 1993.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on August 31, 1993, filed a limited application pursuant to section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988) and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder to recover gas supply realignment costs (GSR Costs) incurred as a consequence of Texas Eastern's implementation of Order No. 636.

Texas Eastern states it is filing to recover GSR Costs from customers in accordance with the procedures set forth in § 15.2(C) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, and in accordance with the Commission's order on April 22, 1993, in Docket Nos. RS92–11–000, RS92–11–003, RS92–11–004, RP88–67–000, et al., (Phase I/Rates), and RP92–234–001 (April 22 Order).

Texas Eastern states that Order No. 636 and the April 22 Order permit Texas Eastern to file this limited Section 4 filing to begin recovery of its GSR Costs.

Texas Eastern states that the filing includes known and measurable GSR costs incurred since the date of its previous quarterly filing, plus carrying charges through August 31, 1993, totalling $6,805,665. Additional interest of $155,393 at the current FERC annual rate of 6.00% is added for carrying charges from September 1, 1993 to the projected payment dates.

The proposed effective date of the filing is October 1, 1993.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21914 Filed 9–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–180–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 2, 1993.

Take notice that on August 31, 1993, Texas Eastern Transmission Corporation (Texas Eastern) filed a limited application pursuant to section 4 of the Natural Gas Act, 15 U.S.C. section 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder to recover Account No. 858 costs (Stranded Costs) incurred as a consequence of Texas Eastern's implementation of Order No. 636.

Texas Eastern states it is filing to recover Stranded Costs in accordance with the procedures set forth in Section 15.2(D) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, and in accordance with the Commission's order on April 22, 1993, in Docket Nos. RS92–11–000, RS92–11–003, RS92–11–004, RP88–67–000, et al., (Phase I/Rates), and RP92–234–001 (April 22 Order).

Texas Eastern states that Order No. 636 and the April 22, 1993, Order permits Texas Eastern to file this limited Section 4 filing to begin recovery of its Stranded Costs.

Texas Eastern states that the filing includes known and measurable

Stranded Costs incurred from the date of implementation of Order No. 636 on Texas Eastern's system, June 1, 1993, through July 31, 1993, totalling $2,428,347.12. Interest of $30,098 at the current FERC annual rate of 6.00% is added for carrying charges from the date of incurrence of the costs to the projected date of payment by the customers.

The proposed effective date of the filing is October 1, 1993.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21915 Filed 9-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-179-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 2, 1993.

Take notice that on August 30, 1993, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet, with a proposed effective date of September 1, 1993:

First Revised Sheet No. 223.

Texas Eastern states that on August 5, 1993, in Docket No. RP93-164-000, Hope Gas, Inc. (Hope) filed a complaint alleging Texas Eastern (1) failed to comply with its effective filed gas tariff and for undue discrimination in violation of Section 4 of the NGA, 15 U.S.C. 717c, (2) denied Hope the choice of services contemplated by Order Nos. 636, 636-A and 636-B, and (3) failed to perform in conformity with its legally binding service agreement for provision of firm transportation service to Hope under Rate Schedule SCT (Complaint).

Texas Eastern states that subsequent to the filing of the complaint, Texas Eastern and Hope entered into settlement negotiations which were successful. Texas Eastern has agreed to file to revise section 1(a) AVAILABILITY of Rate Schedule SCT as necessary in order to permit Hope to convert the 1,692 Dth/day of Rate Schedule FT-1 entitlements to Rate Schedule SCT and thereby provide Hope with Rate Schedule SCT service in the full amount of Hope's aggregate MDQ of 5,000 Dth/day. Hope has agreed, and is filing August 30, 1993 to withdraw its complaint. Approval by the Commission of this tariff revision to Rate Schedule SCT will resolve the complaint proceeding; however, the September 1, 1993 effective date is central to the resolution agreed upon by Hope and Texas Eastern.

Accordingly, section 1(a) AVAILABILITY of Rate Schedule SCT in Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1 has been revised to state that Rate Schedule SCT is also available to "former Customers who as of October 31, 1992 were (i) Customers under Rate Schedules CD-1, CD-2, DCQ and SGS or (ii) Customers under Rate Schedule FT-1 as a result of conversion from Rate Schedules CD-1, CD-2, DCQ and SGS".

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21916 Filed 9-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-7-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 2, 1993.

Take notice that on August 30, 1993, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the revised tariff sheets contained in Appendix A to the filing, with a proposed effective date of September 1, 1993.

Texas Gas states that the proposed tariff sheets reflect changes to its Base Tariff Rates pursuant to an out-of-cycle Transportation Cost Adjustment and are proposed to be effective September 1, 1993.

Texas Gas states that copies of the filing have been served upon Texas Gas's jurisdictional sales customers, all parties on the Commission's official restricted service list in the consolidated proceedings, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-21917 Filed 9-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-7-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 2, 1993.

Take notice that on August 30, 1993, Texas Gas Transmission Corporation (Texas Gas), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 the following revised tariff sheets, with a proposed effective date of September 1, 1993:

Seventh Revised Seventy-third Revised Sheet No. 10

Seventh Revised Seventy-second Revised Sheet No. 10A

Seventh Revised Fifty-fourth Revised Sheet No. 11
Seventh Revised Forty-fourth Revised Sheet No. 11A
Seventh Revised Forty-third Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in purchased gas costs pursuant to an Out-of-Cycle PGA Rate Adjustment and are proposed to be effective September 1, 1993. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of $.3916 per MMBtu and a Demand–1 rate increase of $.28 per MMBtu from the rates set forth in the Quarterly PGA filed July 1, 1993 (Docket No. TQ93–6–18).

Texas Gas states that copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21918 Filed 9–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–176–000]

U–T Offshore System; Proposed Interim Reduction in Rates

September 2, 1993.

Take notice that on August 30, 1993, U–T Offshore System (U–TOS) filed, pursuant to section 4 of the Natural Gas Act, for an interim reduction in its transportation rates to be effective as of July 1, 1993.

U–TOS is proposing an interim rate reduction in its maximum commodity rates (per McF transported) as follows:

	Currently effective	New Interim
T/FT Commodity Rate ..	$0.0151	0.0098
IT Rate	.0223	.0170
T/I/FT/IT Overrun Rate .	.0223	.0170

U–TOS notes that the Demand Rate under Rate Schedule T and the Reservation Charge under Rate Schedule FT remain unchanged at $0.2197 per month per Mcf of Contract Demand or Maximum Daily Quantity.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such notions or protests should be filed on or before September 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–21919 Filed 9–8–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4727–2]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for a Reference Method Determination

Notice is hereby given that on August 9, 1993, the Environment Protection Agency received an application from Advanced Pollution Instrumentation Inc., 8815 Production Avenue, San Diego, California 92121–2219, to determine if their Model 300 Gas Filter Correlation CO Analyzer should be designated by the Administrator of the EPA as a reference method under 40 CFR part 53. If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the **Federal Register.**

Gary J. Foley,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93–21984 Filed 9–8–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4726–6]

Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for comment.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.301(h) for authorization to disclose Superfund confidential business information ("CBI") which has been submitted to EPA Region 2, Emergency and Remedial Response Division to the following contractors; Camp, Dresser & McKee Federal Programs Corp. ("CDM") of Fairfax, Virginia and TRC Environmental Corp. ("TRC") of Lowell, Massachusetts (collectively referred to hereinafter as "Contractors"); and to the following subcontractors: Booz, Allen & Hamilton ("Booz Allen") of Bethesda, Maryland; and Techlaw, Inc. ("Techlaw") of Chantilly, Virginia (collectively referred to hereinafter as "Subcontractors"). CDM's principal offices are located at 13135 Lee Jackson Memorial Highway, Suite 200, Fairfax, Virginia 22033. TRC's principal offices are located at Boott Mills South, Foot of John Street, Lowell, Massachusetts 01852. Booz Allen's principal offices are located at 4330 East-West Highway, Bethesda, Maryland 20814. Techlaw's principal offices are located at 14500 Avion Parkway, Suite 300, Chantilly, Virginia 22021–1101.

FOR FURTHER INFORMATION CONTACT: Leslie Peterson, Program Support Branch, Emergency and Remedial Response Division, Environmental Protection Agency, Region 2, 26 Federal Plaza, New York, New York 10278. Telephone (212) 264–9251.

Notice of Required Determinations, Contract Provisions and Opportunity to Comment

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, (commonly known as "Superfund") requires the establishment of an administrative record upon which the President shall base the selection of a

response action. CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300, also require the maintenance of many other records, including those relevant to cost recovery. EPA, Region 2, has entered into Contract No. 68–W9–0002 with CDM and Contract No. 68–W9–0003 with TRC for management of these records. Pursuant to Contract No. 68–W9–0002, Booz Allen and Techlaw have entered into subcontracts with CDM under Work Assignment Nos. C02107 and C02010, respectively, pursuant to which Booz Allen and Techlaw provide information management support services to EPA, Region 2. Pursuant to Contract No. 68–W9–0003, Techlaw has entered into a subcontract with TRC under Work Assignment No. C02031, pursuant to which Techlaw provides support services in the compilation of administrative records. EPA, Region 2, has determined that disclosure of CBI to employees of the above Contractors and Subcontractors is necessary in order that the Contractors and Subcontractors may carry out the work required by the above contracts and subcontracts with EPA. The contracts and subcontracts comply with the requirements of 40 CFR 2.301(h)(ii). EPA, Region 2, requires that each employee of the Contractors and Subcontractors who will have access to CBI sign a written agreement that he or she (1) will use the information only for the purpose of carrying out the work required by the contract or subcontract, (2) shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office, and (3) shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information (and any abstracts or extracts therefrom) is no longer required by the Contractors or Subcontractors for performance of the work required by the contracts or subcontracts, or upon completion of the contracts or subcontracts. These non-disclosure statements shall be maintained on file with the EPA, Region 2, Regional Project Officer.

EPA hereby advises affected parties that they have ten working days to comment pursuant to 40 CFR 2.301(h)(2)(iii). Comments should be sent to: Environmental Protection Agency, Region 2, Attention: Leslie Peterson, 26 Federal Plaza, New York, New York 10278.

Dated: August 31, 1993.

George Pavlou,

Acting Director, Emergency and Remedial Response Division.

[FR Doc. 93–21988 Filed 9–8–93; 8:45 am]

BILLING CODE 6560–60–M

[FRL–4727–1]

Open Meeting of the Federal Facilities Environmental Restoration Dialogue Committee

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meeting—Federal Facilities Environmental Restoration Dialogue Committee.

SUMMARY: As required by Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), we are giving notice of the next meeting of the Federal Facilities Environmental Restoration Dialogue Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to discuss issues related to enhancing the Federal facilities environmental restoration process.

DATES: The meeting will be held on September 27, 1993, from 9 a.m. until 5 p.m. and on September 28, 1993 from 9 a.m. until 4 p.m.

ADDRESSES: The meeting will be held at the Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on any aspect of the Federal Facilities Environmental Restoration Dialogue Committee should contact Marilyn Null, Office of Federal Facilities Enforcement U.S. EPA (OE–2261), 401 M Street, SW., Washington, DC 20460, (202) 260–5686.

Dated: August 23, 1993.

Marilyn Null,

Designated Federal Official.

[FR Doc. 93–21985 Filed 9–8–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4726–8]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act; Elsinore Drum Removal Site

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), notice is hereby given that a proposed administrative cost recovery settlement under section 107 of CERCLA concerning the Elsinore Drum site located in Riverside County, California was entered into by EPA Region IX and Mr. Kin Adams ("the settling party"). The proposed settlement requires the settling party to pay $25,000, which is EPA's response costs for the site, plus interest over a one year period to the Hazardous Substances Superfund in past response costs. The response costs incurred by EPA for this site do not exceed $500,000. Therefore, EPA may settle this matter without the prior written approval of the Attorney General.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at: Moreno Valley Library, located at 25480 Alessandro Boulevard, Moreno, California; and at the U.S. Environmental Protection Agency, 75 Hawthorne Street, 16th Floor, San Francisco, CA 94105 (Attention: Steven Armsey, Regional Hearing Clerk, RC–1).

DATES: Comments must be submitted on or before October 12, 1993.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency at the address provided above. A copy of the proposed settlement may be obtained from Steven Armsey, U.S. EPA Regional Hearing Clerk (RC–1), 75 Hawthorne, San Francisco, CA 94105. Comments regarding the proposed settlement should be addressed to Steven Armsey at the address provided above, and should refer to the Elsinore Drum site located in Riverside County, California (EPA Docket No. 93–13).

FOR FURTHER INFORMATION CONTACT: David Silverman, Assistant Regional Counsel (RC–3–1), U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1377.

Dated: August 26, 1993.

Jeff Zelikson,

Director, Hazardous Waste Management Division.

[FR Doc. 93–21986 Filed 9–8–93; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS-51820; FRL-4631-2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 121 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 93-814, July 4, 1993.
P 93-815, July 21, 1993.
P 93-816, 93-817, 93-818, 93-819, 93-820, July 5, 1993.
P 93-821, 93-822, 93-823, 93-824, 93-825, 93-826, 93-827, 93-828, 93-829, 93-830, July 6, 1993.
P 93-831, July 7, 1993.
P 93-832, 93-833, July 10, 1993.
P 93-834, 93-835, 93-836, 93-837, 93-838, July 11, 1993.
P 93-839, July 5, 1993.
P 93-840, July 10, 1993.
P 93-841, 93-842, July 11, 1993.
P 93-843, 93-844, 93-845, 93-846, 93-847, 93-848, 93-849, July 12, 1993.
P 93-850, July 25, 1993.
P 93-851, 93-852, July 12, 1993.
P 93-853, 93-854, 93-855, 93-856, 93-857, 93-858, 93-859, July 14, 1993.
P 93-860, 93-861, July 17, 1993.
P 93-862, 93-863, 93-864, July 14, 1993.
P 93-865, 93-866, 93-867, July 18, 1993.
P 93-868, 93-869, 93-870, July 20, 1993.
P 93-871, July 27, 1993.
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Written comments by:

P 93-814, June 4, 1993.
P 93-815, June 21, 1993.
P 93-816, 93-817, 93-818, 93-819, 93-820, June 5, 1993.
P 93-821, 93-822, 93-823, 93-824, 93-825, 93-826, 93-827, 93-828, 93-829, 93-830, June 6, 1993.93-831, June 7, 1993.
P 93-832, 93-833, June 10, 1993.
P 93-834, 93-835, 93-836, 93-837, 93-838, June 11, 1993.
P 93-839, June 5, 1993.
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P 93-853, 93-854, 93-855, 93-856, 93-857, 93-858, 93-859, June 14, 1993.
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P 93-868, 93-869, 93-870, June 20, 1993.
P 93-871, June 27, 1993.
P 93-872, 93-873, 93-874, 93-875, 93-876, 93-877, 93-878, 93-879, 93-880, 93-881, 93-882, 93-883, June 20, 1993.
P 93-884, June 21, 1993.
P 93-885, 93-886, 93-887, 93-888, 93-889, June 20, 1993.
P 93-890, 93-891, June 21, 1993.
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P 93-896, July 1, 1993.
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P 93-900, 93-901, 93-902, 93-903, 93-904, 93-905, 93-906, 93-907, 93-908, 93-909, 93-910, 93-911, 93-912, 93-913, 93-914, 93-915, 93-916, June 25, 1993.
P 93-917, June 5, 1993.
P 93-918, 93-919, 93-920, 93-921, 93-922, 93-923, 93-924, 93-925, 93-926, 93-927, 93-928, 93-929, 93-930, 93-931, 93-932, 93-933, 93-934, June 25, 1993.

ADDRESSES: Written comments, identified by the document control number "[OPPTS-51820]" and the specific PMN number should be sent to: Document Control Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G-099 ET, Washington, DC 20460 (202) 260-3532.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), ETG-102 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 93-814

Manufacturer. Texaco Chemical Company.

Chemical. (G) Mannich condensation product of formaldehyde.

Use/Production. (S) Lube oil additive for marine heavy duty crankcase engine oils. Prod. range: 170,000-500,000 kg/yr.

P 93-815

Manufacturer. Minnesota Mining & Manufacturing Company.

Chemical. (G) Fluorinated siloxanes salt.

Use/Production. (G) Component of dispersively applied coating. Prod. range: 500-1,500 kg/yr.

P 93-816

Manufacturer. Confidential.

Chemical. (G) Polyurethane latex.

Use/Production. (G) Component of dispersively applied coating. Prod. range: 500-1,500 kg/yr.

P 93-817

Manufacturer. Confidential.

Chemical. (G) Polyurethane latex.

Use/Production. (G) Component of dispersively applied coating. Prod. range: 500-1,500 kg/yr.

P 93-818

Manufacturer. Confidential.

Chemical. (G) Polyurethane latex.

Use/Production. (G) Component of dispersively applied coating. Prod. range: 500-1,500 kg/yr.

P 93-819

Manufacturer. Confidential.

Chemical. (G) Polyurethane latex.

Use/Production. (G) Component of dispersively applied coating. Prod. range: 500-1,500 kg/yr.

P 93-820

Manufacturer. Confidential.

Chemical. (G) Polyurethane latex.
Use/Production. (G) Component of dispersively applied coating. Prod. range: 500–1,500 kg/yr.

P 93–821

Manufacturer. Confidential.
Chemical. (G) Mono substituted phenylazo-di substituted phenylazo-di substituted naphthalene sulfonic acid, ammonium salt.
Use/Production. (G) Dye. Prod. range: Confidential.

P 93–822

Manufacturer. Confidential.
Chemical. (G) Mono substituted phenyazo-di substituted benzene diazonium salt.
Use/Production. (G) Dye intermediate. Prod. range: Confidential.

P 93–823

Importer. BASF Corporation.
Chemical. (G) Polyester hydrofuran diether, unsaturated.
Use/Import. (G) Crosslinking monomer. Import range: Confidential.
Toxicity Data. Acute oral: LD50 > 2,000 mg/kg (rat).

P 93–824

Importer. BASF Corporation.
Chemical. (G) Polytetra hydrofuran diether, unsaturated.
Use/Import. (G) Crosslinking monomer. Import range: Confidential.
Toxicity Data. Acute oral: LD50 > 2,000 mg/kg (rat).

P 93–825

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93–826

Manufacturer. Confidential.
Chemical. (G) Acrylic polyester resin.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93–827

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93–828

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93–829

Manufacturer. Henkel Corporation.
Chemical. (G) Alkyd alkoxylate epoxide .
Use/Production. (S) Intermediate in formulation product for coatings applications. Prod. range: Confidential.

P 93–830

Manufacturer. Marubeni America Corporation.
Chemical. (G) Modified acrylic resin.
Use/Production. (G) Modifier. Prod. range: 12,000–30,000 kg/yr.

P 93–831

Importer. Hitachi Chemical Company America, Ltd.
Chemical. (G) Polypropylene glycol diacrylate.
Use/Import. (G) Photo resin for circuit boards. Import range: Confidential.

P 93–832

Manufacturer. Confidential.
Chemical. (G) Aromatic sulfonic acid, compound with amine.
Use/Production. (G) Latent catalyst for thermosetting coatings used on various substrates. Prod. range: Confidential.

P 93–833

Importer. ICI America Inc.
Chemical. (G) Substituted phenyl azo thiophene compound.
Use/Import. (S) Thermal transfer printing dye. Import range: Confidential.
Toxicity Data. Acute oral: LD50 > 2,000 mg/kg (rat). Eye irritation: Mild (rabbit). Skin irritation: Slight (rabbit). Mutagenicity: Positive. Skin sensitization: Positive (guinea pig).

P 93–834

Importer. Confidential.
Chemical. (S) Polyol ester.
Use/Import. (G) Lubricant. Import range: Confidential.
Toxicity Data. Acute oral: LD50 > 2,000 mg/kg (rat). Eye irritation: Slight (rabbit). Skin irritation: Slight (rabbit).

P 93–835

Manufacturer. The C. P. Hall Company.
Chemical. (G) Adipic acid polyester.
Use/Production. (G) Plasticizer. Prod. range: Confidential.

P 93–836

Manufacturer. The C. P. Hall Company.
Chemical. (G) Glycerides mixed acids, mono-di- and tri.
Use/Production. (G) Plasticizer. Prod. range: Confidential.

P 93–837

Manufacturer. Dover Chemical Corporation.
Chemical. (G) Ester of phosphorous.
Use/Production. (G) PVC stabilizer. Prod. range: Confidential.

P 93–838

Manufacturer. Ciba-Geigy Corporation.
Chemical. (G) Alkyl substituted carbomate.
Use/Production. (S) Intermediate in the manufature of a pesticide. Prod. range: Confidential.

P 93–839

Manufacturer. Confidential.
Chemical. (G) Polyurethane latex.
Use/Production. (G) Component of dispersively applied coating. Prod. range: Confidential.

P 93–840

Manufacturer. Fidelity Chemical Products Corporation.
Chemical. (S) Methanesulfonic acid, copper (2+) salt.
Use/Production. (S) Source of copper ions in metal finishing processes. Prod. range: Confidential.

P 93–841

Importer. Confidential.
Chemical. (G) Sulfated alkylphenolpolyethylene glycol ether, sodium salts.
Use/Import. (G) Metal plating additive. Import range: Confidential.

P 93–842

Manufacturer. BASF Corporation.
Chemical. (G) Methylimidazone substituted copper phthalocycanine.
Use/Production. (S) Dye intermediate. Prod. range: Confidential.
Toxicity Data. Acute static. > 2.20 mg/l 96h (blue gill).

P 93–843

Manufacturer. Pierce & Stevens Corporation.
Chemical. (G) Polyester polyurethane.
Use/Production. (S) Water-based coating. Prod. range: Confidential.

P 93–844

Manufacturer. Confidential.
Chemical. (G) Acrylic polymer.
Use/Production. (G) Highly dispersive use. Prod. range: Confidential.

P 93–845

Manufacturer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93–846

Manufacturer. BASF Corporation.
Chemical. (G) Trialkylalkylene-heterocyclazolium derivative of copper phthalocyanine, mixed salt.
Use/Production. (S) Dyestuff for paper. Prod. range: Confidential.

P 93–847

Manufacturer. Confidential.

Chemical. (G) Acrylic polymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93–848

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93–849

Manufacturer. H. B. Fuller Company.
Chemical. (G) Polyester isocyanate prepolymer.
Use/Production. (S) Adhesive (for all new chemical substances in PMN). Prod. range: Confidential.

P 93–850

Manufacturer. H. B. Fuller Company.
Chemical. (G) Polyester isocyanate prepolymer.
Use/Production. (G) Adhesive (for all new chemical substances in PMN). Prod. range: Confidential.

P 93–851

Manufacturer. H. B. Fuller Company.
Chemical. (G) Polyester isocyanate prepolymer.
Use/Production. (S) Adhesive (for all new chemical substances in PMN). Prod. range: Confidential.

P 93–852

Manufacturer. Toyo Ink America Incorporation.
Chemical. (G) Naphthanilide monoazo pigment.
Use/Production. (S) Printing ink. Prod. range: 5,000–10,000 kg/yr.

P 93–853

Manufacturer. The Dow Chemical Company.
Chemical. (G) Organotin catalyst.
Use/Production. (S) Catalyst for polyurethane reaction. Prod. range: Confidential.

P 93–854

Manufacturer. The Dow Chemical Company.
Chemical. (G) Organotin catalyst.
Use/Production. (S) Catalyst for polyurethane reaction. Prod. range: Confidential.

P 93–855

Manufacturer. The Dow Chemical Company.
Chemical. (G) Organotin catalyst.
Use/Production. (G) Catalyst for polyurethane reaction. Prod. range: Confidential.

P 93–856

Manufacturer. The Dow Chemical Company.
Chemical. (G) Organotin catalyst.
Use/Production. (S) Catalyst for polyurethane reaction. Prod. range: Confidential.

P 93–857

Manufacturer. The Dow Chemical Company.
Chemical. (G) Organotin catalyst.
Use/Production. (S) Catalyst for polyurethane reaction. Prod. range: Confidential.

P 93–858

Manufacturer. The Dow Chemical Company.
Chemical. (G) Organotin catalyst.
Use/Production. (S) Catalyst for polyurethane reaction. Prod. range: Confidential.

P 93–859

Manufacturer. Ciba-Geigy Corporation.
Chemical. (G) Naphthalenedisulfonic acid sulfamide disazo naphthol salt.
Use/Production. (G) Textile dye. Prod. range: Confidential.
Toxicity Data. Acute oral: > 2,000 mg/kg (rat). Acute dermal: > 2,000 mg/kg (rat). Acute static: LC50 79 mg/l 96h (zebra fish). Eye irritation: None (rabbit). Skin irritation: None (rabbit). Mutagenicity: Negative. Skin sensitization: Positive (guinea pig).

P 93–860

Manufacturer. Confidential.
Chemical. (G) Substituted alkylamide.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93–861

Manufacturer. Confidential.
Chemical. (G) Substituted alkylamide.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93–862

Manufacturer. Amoco Chemical Company.
Chemical. (G) Polyolefin-modified polyphthalamide.
Use/Production. (S) Engineering polymers for use in the manufacture of articles. Prod. range: Confidential.

P 93–863

Manufacturer. Amoco Chemical Company.
Chemical. (G) Polyolefin-modified polyphthalamide.
Use/Production. (S) Engineering polymers for use in the manufacture of articles. Prod. range: Confidential.

P 93–864

Manufacturer. Amoco Chemical Company.
Chemical. (G) Polyolefin-modified polyphthalamine.
Use/Production. (S) Engineering polymers for use in the manufacture of articles. Prod. range: Confidential.

P 93–865

Manufacturer. PCR Inc.
Chemical. (G) Trimethylsilylated amine.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 93–866

Manufacturer. PCR Inc.
Chemical. (G) Trimethylsilylated amine.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 93–867

Importer. Wacker Silicones Corporation.
Chemical. (S) Siloxanes and silicones, di-Me, hydroxy terminated; siloxanes and silicones, di-Me; cyclohexanamine, N(3-dimethoxy methylsilyl) propyl.
Use/Import. (S) Textile softener emulsion which is further formulated to textile treatment for fabric. Import range: Confidential.

P 93–868

Importer. BASF Corporation.
Chemical. (S) 2-Propenoic acid, 2-methyl-, methyl ester, polymer with ethenylbenzene and (1-methylethenyl) benzene.
Use/Import. (S) Raw material of expandable bead for lost foam casting. Import range: Confidential.

P 93–869

Importer. Unichema North America.
Chemical. (G) Polyol ester of branched and linear fatty acids.
Use/Import. (G) Dispersive use and open, nondispersive use. Import range: Confidential.
Toxicity Data. Acute oral: LD50 > 5,000 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/kg (rats). Skin irritation: None (rabbit).

P 93–870

Manufacturer. H. B. Fuller Company.
Chemical. (G) Polyester isocyanate prepolymer.
Use/Production. (S) Intermediate in the manufacture of the adhesive. Prod. range: Confidential.

P 93–871

Manufacturer. H. B. Fuller Company.
Chemical. (G) Polyester isocyanate prepolymer.
Use/Production. (S) Intermediate in the manufacture of the adhesive. Prod. range: Confidential.

P 93–872

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate prepolymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 93–873

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate prepolymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 93–874

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate prepolymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 93–875

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate prepolymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 93–876

Manufacturer. H. B. Fuller Company.

Chemical. (G) Polyester isocyanate prepolymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 93–877

Manufacturer. H. B. Fuller, Company.

Chemical. (G) Polyester isocyanate prepolymer.

Use/Production. (S) Adhesive. Prod. range: Confidential.

P 93–878

Manufacturer. Pi-Tech, Inc.

Chemical. (S) Zirconium IV tetrakis (mixed fatty C_7–C_{30}) alcoholato.

Use/Production. (S) Process aid for rigid PVC. Prod. range: Confidential.

P 93–879

Manufacturer. Pi-Tech, Inc.

Chemical. (S) Zirconium IV bis (mixed fatty C_{17}–C_{30}– alcoholato) cyclo diphosphato-*O,O*; adduct moles tris C_{12}–C_{15} alkyl phosphite.

Use/Production. (S) Process aid for rigid PVC. Prod. range: Confidential.

P 93–880

Manufacturer. Champion Technologist,Inc.

Chemical. (G) 2-Hydroxy-1,2,3-propane tricarboxylic acid salt of *N*-alkyltrimethylene diamine.

Use/Production. (S) Oilfield water clarifier. Prod. range: 10,000– 50,000 kg/yr.

P 93–881

Manufacturer. Champion Technologies, Inc.

Chemical. (G) 2-Hydroxy-1,2,3-propane tricarboxylic acid salt of *N*-alkyl tripropylenetetra amine.

Use/Production. (S) Oilfield water clarifier. Prod. range: 10,000– 50,000 kg/yr.

P 93–882

Manufacturer. Ciba-Geigy Corporation.

Chemical. (G) Dialkyl substituted carbonate.

Use/Production. (S) Intermediate in the manufacture of a pesticide. Prod. range: Confidential.

P 93–883

Manufacturer. Confidential.

Chemical. (G) Polyester resin.

Use/Production. (S) Intermediate for electrical insulation coating. Prod. range: Confidnetial.

P 93–884

Importer. Degussa Corporation.

Chemical. (S) Silane, hexadecyltrimethoxyl-.

Use/Import. (S) Surface modification such as fillers, glass, metal-oxide coupling agent in rubber, bituminous binder. Import range: Confidential.

Toxicity Data. Acute oral: LD50 > 5,002 mg/kg (rat). Acute static: LC50 1,000 mg/l 96hr (fresh-water fish). Eye irritation: None (rabbit). Skin irritation: Moderate (rabbit).

P 93–885

Importer. Confidential.

Chemical. (G) Substituted phenol.

Use/Import. (S) A component of the material for IC fabrication. Import range: Confidential.

P 93–886

Manufacturer. Confidential.

Chemical. (G) Substituted phenol.

Use/Production. (G) A component of the material for IC fabrication. Prod. range: Confidential.

P 93–887

Importer. Confidential.

Chemical. (G) Substituted phenol.

Use/Import. (S) A component of the material for IC fabrication. Import range: Confidential.

P 93–888

Importer. Confidential.

Chemical. (G) Substituted phenol.

Use/Import. (G) A component of the material for IC fabrication. Import range: Confidential.

P 93–889

Importer. Charkit Chemical Corporation.

Chemical. (G) Iron, diamine naphthalene disulfonate complexes.

Use/Import. (S) Photographic film dye. Import range: 150–600 kg/yr.

P 93–890

Manufacturer. ChemDesign Corporation.

Chemical. (G) Disubstituted diphenol oxide.

Use/Production. (S) Organic synthesis intermediate. Prod. range: 11,000–20,000 kg/yr.

P 93–891

Manufacturer. Niemann Associates.

Chemical. (G) Alkyd acrylic copolymer.

Use/Production. (S) Used as a binder in ink formulations. Prod. range: Confidential.

P 93–892

Manufacturer. Confidential.

Chemical. (G) Transition metal halide complex.

Use/Production. (G) Site-limited intermediate. Prod. range: Confidential.

P 93–893

Manufacturer. Confidential.

Chemical. (S) Transition metal halide complex.

Use/Production. (G) Site-limited intermediate. Prod. range: Confidential.

P 93–894

Manufacturer. Eastman Kodak Company.

Chemical. (G) Disubstituted amino azo heterocylic propanamide.

Use/Production. (G) Nondispersive use in an article. Prod. range: 1,000–5,000 kg/yr.

Toxicity Data. Acute oral: LD50 5,000 mg/kg (rat). Acute dermal: LD50 2 g/kg (rat). Eye irritation: Slight (rabbit). Skin irritation: Slight (rabbit). Skin sensitization: Positive (guinea pig).

P 93–895

Importer. Confidential.

Chemical. (G) Beta-alanediacetic acid.

Use/Import. (G) Complexing agent. Import range: Confidential.

Toxicity Data. Acute oral: LD50 > 2,200 mg/kg (rat). Acute static: EC50 70.7 mg/l 48h (daphnia magna). Mutagenicity: Negative.

P 93–896

Manufacturer. Confidential.

Chemical. (G) Polymeric quaternary ammonium chloride.

Use/Production. (G) Aliphatic polyester (protective and decorative). Prod. range: Confidential.

P 93–897

Manufacturer. Confidential.

Chemical. (G) Aliphatic diol polyester.

Use/Production. (S) Resin for coatings protective decorative Prod. range: Confidential.

P 93–898

Manufacturer. Confidential.

Chemical. (G) Dimer modified polyester resin aliphatic polyol and dicarboxylic acids.

Use/Production. (G) Swimming pool, recreational fountains, water freshners, surfactant and cooking tower. Prod. range: Confidential.

P 93–898

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–899

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–901

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–902

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–903

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–904

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–905

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–906

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–907

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–908

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–909

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–910

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–911

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–912

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–913

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–914

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–915

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–916

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–917

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–918

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–919

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–920

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–921

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–922

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–923

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–924

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–925

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–926

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–927

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–928

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–929

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–930

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–931

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–932

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–933

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

P 93–934

Manufacturer. Confidential.

Chemical. (G) Polyether functional acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 15,441–61,764 kg/yr.

Dated: August 31, 1993.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–21990 Filed 9–8–93; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–59968; FRL–4631–1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 16 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y93–139, 93–140, 93–141, May 31, 1993.

Y 93–142, June 9, 1993.

Y 93–143, June 8, 1993.

Y 93–144, 93–145, 93–146, 93–147, 93–148, 93–149, 93–150, June 10, 1993.

Y 93–151, 93–152, 93–153, 93–154, June 14, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available from the OPPT Document Control Officer (TS–790), Rm. ETG–099, at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 93–139

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Unsaturated polyester.

Use/Production. (S) General purpose laminating resin Prod. range: Confidential.

Y 93–140

Manufacturer. Polacryl, Inc.

Chemical. (G) Neutralized acrylic polymer.

Use/Production. (G) Used to control the viscosities of water based slurries of calcium carbonate, clays, and mineral pigments. Prod. range: Confidential.

Y 93–141

Manufacturer. Arnette Limited, Inc.

Chemical. (G) Esterified polyol; carboxylated polyol.

Use/Production. (G) Surfactant for water based coatings. Prod. range: Confidential.

Y 93–142

Manufacturer. Reichhold Chemicals, Inc..

Chemical. (G) Unsaturated polyester resin.

Use/Production. (S) Panel resin. Prod. range: Confidential.

Y 93–143

Importer. Elf Atochem North America.

Chemical. (S) Azacyclotridecan-z-one hexamethylene diamine; 1,9-nonanedoic acid.

Use/Import. (S) Hot melt adhesive. Import range: 25,000–50,000 kg/yr.

Y 93–144

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester.

Use/Import. (S)

Y 93–145

Manufacturer. Confidential.

Chemical. (G) Medium oil alkyd resin.

Use/Production. (S) Baking finishes for metals. Prod. range: Confidential.

Y 93–146

Manufacturer. Confidential.

Chemical. (G) Short oil alkyd.

Use/Production. (S) Baking finishes. Prod. range: Confidential.

Y 93–147

Manufacturer. Confidential.

Chemical. (G) Water-reducible alkyd resin.

Use/Production. (S) Water-thinned clear and pigmented coatings. Prod. range: Confidential.

Y 93–148

Manufacturer. Confidential.

Chemical. (G) Medium oil alkyd.

Use/Production. (S) Industrial baking finishes. Prod. range: Confidential.

Y 93–149

Manufacturer. Confidential.

Chemical. (G) Short oil soybean alkyd resin.

Use/Production. (S) Baking coatings for metal. Prod. range: Confidential.

Y 93–150

Manufacturer. Confidential.

Chemical. (G) Water reducible alkyd.

Use/Production. (S) Water-thinned clear and pigmented coatings. Prod. range: Confidential.

Y 93–151

Manufacturer. Confidential.

Chemical. (G) Solvent free, modified polysiloxane.

Use/Production. (G) Defoamer in coating agents for contained uses. Prod. range: Confidential.

Y 93–152

Manufacturer. Franklin International.

Chemical. (G) Acrylate-vinyl acetate copolymer dispersion.

Use/Production. (S) Permanent pressure sensitive adhesive. Prod. range: 74,000–98,000 kg/yr.

Y 93–153

Manufacturer. MSP Technology.

Chemical. (G) Condensate of fatty and hydroxylated fatty acids with epoxidized oil.

Use/Production. (S) Coatings, vehicle formulation chemical intermediate. Prod. range: Confidential.

Y 93–154

Manufacturer. MSP Technology.

Chemical. (G) Fatty acid-hydroxy acid condensate.

Dated: August 31, 1993.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–21991 Filed 9–8–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4726–9]

Proposed Assessment of Clean Water Act Class II Administrative Penalty to Hallmark Circuits, Inc., and Opportunity To Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMMARY: EPA is providing notice of proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue these orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the Procedures by which a Respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after publication of this notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of Hallmark Circuits, Inc., located at 5330 Eastgate Mall Road, San Diego, California; EPA Docket No. CWA–IX–FY93–44; filed on August 24, 1993, with Mr. Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1389; proposed penalty of $110,000 for failure to comply with the categorical pretreatment standards and requirements for new source metal finishers (40 CFR part 433).

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review of the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to thirty (30) days after the date of publication of this notice.

Dated: August 24, 1993.

William H. Pierce,

Acting Director, Water Management Division.

[FR Doc. 93–21987 Filed 9–8–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1963]

Application for Review of Action in Rulemaking Proceeding

September 2, 1993.

Application For Review has been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed September 24, 1993. See 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of 73.202(b) of the Commission's Rules, Table of Allotments FM Broadcast Stations (Prineville and Sisters, Oregon) (MM Docket No. 92–3, RM No. 7874 and 7958).

Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–21868 Filed 9–8–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of July 6-7, 1993

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on July 6-7, 1993.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that the economic expansion has picked up somewhat in recent months from the very slow pace of the first quarter. Total nonfarm payroll employment changed little in June after registering substantial gains in April and May, and the civilian unemployment rate edged up to 7.0 percent in June. Industrial production has changed little on balance over the last few months. Real consumer expenditures edged higher in May after a sizable rise in April but have increased only slightly thus far this year. Housing starts turned up in April from a depressed first-quarter pace and rose somewhat further in May. Incoming data suggest a continued brisk advance in outlays for business equipment, while nonresidential construction has remained soft. The nominal U.S. merchandise trade deficit was about unchanged in April but substantially larger than its average rate in the first quarter. Consumer and producer prices were about unchanged in May, but for the year to date inflation has been more rapid than in the second half of 1992.

Short-term interest rates have changed little since the Committee meeting on May 18 while bond yields have declined somewhat. In foreign exchange markets, the trade-

[1] Copies of the Minutes of the Federal Open Market Committee Meeting of July 6-7, 1993, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

weighted value of the dollar in terms of the other G-10 currencies increased on balance over the intermeeting period.

After contracting during the first quarter, M2 and M3 expanded appreciably over the second quarter. For the year through June, growth of the two aggregates was below the lower ends of the ranges established by the Committee for 1993. Total domestic nonfinancial debt expanded somewhat further through April.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at this meeting lowered the ranges it had established in February for growth of M2 and M3 to ranges of 1 to 5 percent and 0 to 4 percent respectively, measured from the fourth quarter of 1992 to the fourth quarter of 1993. The Committee anticipated that developments contributing to unusual velocity increases would persist over the balance of the year and that money growth within these lower ranges would be consistent with its broad policy objectives. The monitoring range for growth of total domestic nonfinancial debt also was lowered to 4 to 8 percent for the year. For 1994, the Committee agreed on tentative ranges for monetary growth, measured from the fourth quarter of 1993 to the fourth quarter of 1994, of 1 to 5 percent for M2 and 0 to 4 percent for M3. The Committee provisionally set the monitoring range for growth of total domestic nonfinancial debt at 4 to 8 percent for 1994. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint would or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with modest growth in the broader monetary aggregates over the third quarter.

By order of the Federal Open Market Committee, September 2, 1993.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 93-22030 Filed 9-8-93; 8:45 am]

BILLING CODE 6210-01-F

Warren E. and Gladys R. Bathke; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 29, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Warren E. and Gladys R. Bathke, Omaha, Nebraska; to acquire 25 percent of the voting shares of Stapleton Investment Co., Stapleton, Nebraska, and thereby indirectly acquire Bank of Stapleton, Stapleton, Nebraska.

Board of Governors of the Federal Reserve System, September 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-22032 Filed 9-8-93; 8:45 am]

BILLING CODE 6210-01-F

Bergen North Financial, M.H.C., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 1, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Bergen North Financial, M.H.C., Westwood, New Jersey; to become a bank holding company by acquiring between 57.9 and 63.2 percent of the voting shares of Westwood Savings Bank, Westwood, New Jersey.

2. GP Financial Corp., Flushing, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The Green Point Savings Bank, Brooklyn, New York.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. CoreStates Financial Corp., Philadelphia, Pennsylvania; to merge with Inter Community Bancorp, Springfield, New Jersey, and thereby indirectly acquire Inter Community Bank, Springfield, New Jersey.

C. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. F&A Financial Company, Kittanning, Pennsylvania; and Snyder Holding Corporation, Kittanning, Pennsylvania; to acquire an additional 3.5 percent of the voting shares of The Farmers National Bank of Kittanning, Kittanning, Pennsylvania, for a total of 45.5 percent.

D. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. The Peoples BancTrust Company, Inc., Selma, Alabama; to acquire 65.8 percent of the voting shares of CeeBee Corporation, Prattville, Alabama, and thereby indirectly acquire The Citizens Bank of Prattville, Prattville, Alabama.

2. SBT Bancshares, Inc., Golden Meadow, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank & Trust Company of Golden Meadow, Golden Meadow, Louisiana.

E. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Southeast Banking Limited Partnership, Las Vegas, Nevada; to become a bank holding company by acquiring 100 percent of the voting shares of First Southeast Banking Corporation, Lake Geneva, Wisconsin, and thereby indirectly acquire First Bank Southeast of Lake Geneva, N.A..

Lake Geneva, Wisconsin, and First Bank Southeast, N.A., Milwaukee, Wisconsin.

2. Heritage Bancshares Group, Inc., Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Geiger Corporation, Minneapolis, Minnesota, and thereby indirectly acquire Heritage Bank, N.A., Holstein, Iowa; and Heritage Bancshares Corporation, Willmar, Minnesota, and thereby indirectly acquire Heritage Bank, N.A., Willmar, Minnesota.

F. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Market Street Bancshares, Inc., McLeansboro, Illinois; to acquire at least 51 percent of the voting shares of Wayne County Bank and Trust Company, Fairfield, Illinois.

G. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. State Bank of Hawley Employee Stock Ownership Plan & Trust, Hawley, Minnesota; to become a bank holding company by acquiring an additional 13.44 percent of the voting shares of Bankshares of Hawley, Inc., Hawley, Minnesota, for a total of 30.02 percent, and thereby indirectly acquire State Bank of Hawley, Hawley, Minnesota.

H. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Centennial Bank Holdings, Inc., Eaton, Colorado; to acquire 100 percent of the voting shares of Farmers Industrial Bank, Eaton, Colorado.

I. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Farmersville Bancshares, Inc., Farmersville, Texas; to acquire 100 percent of the voting shares of First McKinney Bancshares, Inc., McKinney, Texas, and thereby indirectly acquire First Bank, McKinney, Texas.

Board of Governors of the Federal Reserve System, September 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-22033 Filed 9-8-93; 8:45 am]

BILLING CODE 6210-01-F

First Commerce Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 4, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Commerce Corporation, New Orleans, Louisiana; to acquire 100 percent of the voting shares of First Acadiana National Bancshares, Inc., Opelousas, Louisiana, and thereby indirectly acquire First Acadiana National Bank, Opelousas, Louisiana.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. National City Bancshares, Inc., Evansville, Indiana; to merge with Lincolnland Bancorp, Inc., Dale, Indiana, and thereby indirectly acquire Lincolnland Bank, Dale, Indiana.

2. National City Bancshares, Inc., Evansville, Indiana; to merge with Sure Financial Corporation, Washington, Indiana, and thereby indirectly acquire The Bank of Mitchell, Mitchell, Indiana; The Spurgeon State Bank, Spurgeon, Indiana; State Bank of Washington, Washington, Indiana; and The Pike County Bank, Petersburg, Indiana.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. UB, Inc., Unadilla, Nebraska; to become a bank holding company by acquiring 80 percent of the voting shares of The First National Bank, Unadilla, Nebraska.

Board of Governors of the Federal Reserve System, September 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-22034 Filed 9-8-93; 8:45 am]

BILLING CODE 6210-01-F

The Green Point Savings Bank Employee Stock Ownership Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 28, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. The Green Point Savings Bank Employee Stock Ownership Trust, Flushing, New York, to acquire 15 percent, and The Green Point Savings Bank Incentive Savings Trust, Flushing, New York, to acquire 1.7 percent of the voting shares of GP Financial Corp., Flushing, New York, and thereby indirectly acquire The Green Point Savings Bank, Brooklyn, New York.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. V.G. Schaffer, Children's Trust; V.G. Schaffer, Grandchildren's Trust; and Jack Bryan Schaffer, as trustee, St. Paul, Minnesota; to acquire an additional 57.6 percent of the voting shares of Balaton Agency, Inc., Balaton, Minnesota, and thereby indirectly acquire 21st Century Bank, Balaton, Minnesota.

Board of Governors of the Federal Reserve System, September 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-22035 Filed 9-8-93; 8:45 am]

BILLING CODE 6210-01-F

NationsBank Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 1, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. NationsBank Corporation, Charlotte, North Carolina; to acquire US WEST Financial Services, Inc., Stamford, Connecticut, and thereby engage in corporate financing, commercial real estate financing, special industries financing (financing secured by various types of industrial and transportation equipment), mortgage investments, consumer financing, project financing, loan and lease portfolio management, leasing personal or real property, and acting as principal, agent, or broker for credit insurance pursuant to §§ 225.25(b)(1), (b)(5), (b)(8)(i), and (b)(8)(ii) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Banks, Inc., St. Louis, Missouri; to acquire First Federal Savings Bank of Proviso Township, Hillside, Illinois (Thrift), and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. In connection with this application, Applicant also proposes to engage through Thrift's subsidiary, Westward Insurance Agency, Inc., Hillside, Illinois, in the sale of credit-related life and health insurance in connection with loans made by Thrift pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in the State of Illinois.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Lena Spitzer Limited Partnership, Streeter, North Dakota; and Streeter Insurance Agency, Inc., Streeter, North Dakota; to acquire Helmuth Spitzer Insurance, Streeter, North Dakota, and thereby engage in general insurance agency activities in Streeter, North Dakota, a town with a population not exceeding 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-22036 Filed 9-8-93; 8:45 am]

BILLING CODE 6210-01-F

PNC Bank Corp., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 28, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. PNC Bank Corp., Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, PNC Securities Corp., Pittsburgh, Pennsylvania, in acting as investment or financial advisor to the extent of providing advice, including rendering fairness opinions and providing valuation services, in connection with mergers, acquisitions, divestitures, joint ventures, leveraged buyouts, recapitalizations, capital structurings and financing transactions (including private and public financings and loan syndications); and conducting financial feasibility studies; and providing financial and transaction advice regarding the structuring and arranging of swaps, caps and similar transactions relating to interest rates, currency exchange rates or prices, and economic and financial indices, and similar transactions pursuant to § 225.25(b)(4)(vi) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Security Capital Corporation, Batesville, Mississippi; to engage *de novo* in making loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

These activities will be conducted in the State of Mississippi.

Board of Governors of the Federal Reserve System, September 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-22037 Filed 9-8-93; 8:45 am]

BILLING CODE 6210-01-F

The Toronto-Dominion Bank; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 28, 1993

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. The Toronto-Dominion Bank, Toronto, Canada; to engage *de novo* through its subsidiary, Toronto-Dominion Capital Markets USA, Inc., in acting as intermediary, principal, broker and advisor in respect of interest rate and currency swaps and derivative products based on interest rates and currencies. These activities were previously approved by Board Order. (*The Long-Term Credit Bank of Japan, Ltd.*, 79 Federal Reserve Bulletin 345 (1993))

Board of Governors of the Federal Reserve System, September 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-22038 Filed 9-8-93; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 931 0111]

Columbia Hospital Corp., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require the respondent corporations to divest Kissimmee Memorial Hospital. In addition, it would prohibit, among other things, the respondent corporations from acquiring any acute care hospital in Osceola County, Florida for 10 years without prior Commission approval. The prior approval requirement also would have to be met before respondents permitted any acute care hospital they operate in the county to be acquired by any entity that already operates a hospital there.

DATES: Comments must be received on or before November 8, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mark Horoschak, FTC/S–3115, Washington, DC 20580; (202) 326–2756.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

In the Matter of: Columbia Hospital Corporation, a corporation, and Galen Health Care, Inc., a corporation.

The Federal Trade Commission ("Commission"), having initiated an investigation into the proposed acquisition of Galen Health Care, Inc. ("Galen") by Columbia Hospital Corporation ("Columbia"), and it now appearing that Columbia and Galen, as well as Columbia Healthcare Corporation (a corporation into which Columbia is proposed to be merged immediately preceding its acquisition of Galen) ("Columbia Healthcare"), hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an order to divest certain assets and cease and desist from certain acts;

It is hereby agreed, By and between Columbia, Columbia Healthcare and Galen, by their duly authorized officers and attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Columbia Hospital Corporation is a corporation organized, existing and doing business under the laws of the State of Nevada, with its principal place of business at 777 Main Street, suite 2100, Fort Worth, Texas 76102. Proposed respondent Columbia Healthcare Corporation is a corporation organized, existing and doing business under the laws of the State of Delaware, with the same principal place of business as Columbia Hospital Corporation.

2. Proposed respondent Galen Health Care, Inc. is a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky 40202.

3. Proposed respondents admit all the jurisdiction facts set forth in the draft of complaint here attached.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the

proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondents: (1) Issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to divest and to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to divest and to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or this agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they may be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

For the purposes of this Order:

A. "Columbia" means Columbia Hospital Corporation, a corporation organized, existing and doing business under the laws of Nevada, with its principal place of business at 777 Main Street, suite 2100, Fort Worth, Texas 76102, as well as its officers, employees, agents, parents, divisions, subsidiaries, affiliates, successors and assigns (including specifically, but not limited to, Columbia Healthcare Corporation, the corporation into which Columbia Hospital Corporation is proposed to be merged), and the officers, employees, or agents of Columbia's divisions, subsidiaries, affiliates, successors and assigns.

B. "Galen" means Galen Health Care, Inc., a corporation organized, existing and doing business under the laws of Delaware, with its principal place of business at 201 West Main Street, Louisville, Kentucky 40202, as well as its officers, employees, agents, parents, divisions, subsidiaries, affiliates, successors and assigns, and the officers, employees, or agents of Galen's divisions, subsidiaries, affiliates, successors and assigns.

C. "Respondents" means Columbia and Galen, collectively and individually.

D. "Acute care hospital" means a health facility, other than a federally owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized medical staff, that provides 24-hour inpatient care, as well as outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities.

E. To "acquire an acute care hospital" means to directly or indirectly acquire the whole or any part of the assets of an acute care hospital; to acquire the whole or any part of the stock or share capital of, the right to designate directly or indirectly directors or trustees of, or any equity or other interest in, any person which operates an acute care hospital; or to enter into any other arrangement to obtain direct or indirect ownership, management or control of an acute care hospital or any part thereof, including but not limited to a lease of or management contract for an acute care hospital.

F. To "operate an acute care hospital" means to own, lease, manage, or otherwise control or direct the operations of an acute care hospital, directly or indirectly.

G. "Affiliate" means any entity whose management and policies are controlled in any way, directly, or indirectly, by the person with which it is affiliated.

H. "Person" means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

I. "Kissimmee Memorial Hospital" means the general acute care hospital currently owned and operated by Columbia in Osceola County, Florida at 200 Hilda Street, Kissimmee, Florida 34741, and all of its assets, title, properties, interests, rights and privileges, of whatever nature, tangible and intangible, including without limitation all buildings, machinery, equipment, and other property of whatever description, except for accounts receivable and cash.

J. "Commission" means the Federal Trade Commission.

II

It is ordered that: A. Within six (6) months after the date this Order becomes final, respondents shall divest, absolutely and in good faith, Kissimmee Memorial Hospital. Kissimmee Memorial Hospital shall be divested only (1) to Adventist Health System/ Sunbelt Health Care Corporation and/or its affiliates, pursuant to the acquisition agreement, or otherwise (2) to an acquirer or acquirers, and only in such manner, that receives the prior approval of the Commission. The purpose of the divestiture required by this Order is to ensure the continuation of Kissimmee Memorial Hospital as an ongoing, viable acute care hospital and to remedy the lessening of competition alleged in the Commission's complaint.

B. Respondents shall comply with all terms of the Agreement to Hold Separate, attached hereto and made a part hereof as Appendix I. Said Agreement shall continue in effect until such time as respondents have divested Kissimmee Memorial Hospital or until such other time provided in the Agreement to Hold Separate.

C. Pending divestiture, respondents shall take such action as is necessary to maintain the viability and marketability of Kissimmee Memorial Hospital and shall not cause or permit the destruction, removal or impairment of any assets or businesses of Kissimmee Memorial Hospital, except in the ordinary course of business and except for ordinary wear and tear.

III

It is further ordered that: A. If respondents have not divested Kissimmee Memorial Hospital as required by Paragraph II of this Order within six (6) months after the date this Order becomes final, respondents shall consent to the appointment of a trustee by the Commission to divest Kissimmee Memorial Hospital. In the event the Commission or the Attorney General brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, respondents shall similarly consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondents to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, respondents shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures of acute care hospitals.

2. The trustee shall have the exclusive power and authority, subject to the prior approval of the Commission, to divest Kissimmee Memorial Hospital.

3. The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or by the Court for a court-appointed trustee; provided, however, that the Commission or Court may only extend the divestiture period two (2) times.

4. The trustee shall have full and complete access to the personnel, books, records and facilities relating to Kissimmee Memorial Hospital, or any other relevant information, as the trustee may reasonably request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with any reasonable request of the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondents shall extend the time for divestiture under this Paragraph III in an amount equal to the delay, as determined by the Commission or the Court for a court-appointed trustee.

5. Subject to respondent's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Paragraph II of this Order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each acquiring entity for the divestiture of Kissimmee Memorial Hospital. The divestiture shall be made in the manner set out in Paragraph II of this Order; provided, however, that if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by respondents from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of respondents, on such reasonable and customary terms and conditions as the Commission or a Court may set. The trustee shall have authority to employ, at the cost and expense of respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, or other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the Court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondents and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting Kissimmee Memorial Hospital.

7. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order.

8. Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the Court, respondent shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.

10. The Commission or, in the case of a court-appointed trustee, the Court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain Kissimmee Memorial Hospital.

12. The trustee shall report in writing to respondents and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

IV

It is further ordered, That for a period of ten (10) years from the date this Order becomes final, no respondent shall, without the prior approval of the Federal Trade Commission:

A. Acquire any acute care hospital in Osceola County, Florida; or

B. Permit any acute care hospital it operates in Osceola County, Florida to be acquired by any person that operates, or will operate immediately following such acquisition, any other acute care hospital in Osceola County, Florida.

Provided, however, that no acquisition shall be subject to this Paragraph IV of this Order if the fair market value of (or, in case of a purchase acquisition, the consideration to be paid for) the acute care hospital or part thereof to be acquired does not exceed one million dollars ($1,000,000).

V

It is further ordered that, For a period of ten (10) years from the date this Order becomes final, respondents shall not permit all or any substantial part of any acute care hospital they operate in Osceola County, Florida to be acquired by any other person (except pursuant to the divestiture required by Paragraph II of this Order) unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this order, which agreement respondents shall require as a condition precedent to the acquisition.

VI

It is further ordered that, For the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to respondents made at their principal offices, respondents shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in respondents' possession or control relating to any matter contained in this Order; and

B. Upon five days' notice to respondents and without restraint or interference from respondents, to interview their officers or employees, who may have counsel present, regarding such matters.

VII

It is further ordered that: A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until respondents have fully satisfied the divestiture obligations of this Order, respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestitures required by this Order, including the identity of all parties contacted. Respondents also shall include in their compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning the required divestitures.

B. Annually beginning on the first anniversary of the date this Order becomes final and continuing for nine (9) years thereafter, respondents shall submit a verified report demonstrating the manner in which they have complied and are complying with this Order.

VIII

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change, such as dissolution, assignment, sale resulting in the emergence of a successor corporation or association, or the creation or dissolution of subsidiaries or affiliates, which may affect compliance obligations arising out of this Order.

Appendix I—Agreement to Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and among Columbia Hospital Corporation, a corporation organized, existing and doing business under the laws of the State of Nevada, and Columbia Healthcare Corporation, a corporation organized, existing and doing business under the laws of the State of Delaware, both with their principal place of business at 777 Main Street, suite 2100, Fort Worth, Texas 76102 (collectively referred to as "Columbia"); and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

Whereas, on or about June 10, 1993, Columbia entered into an agreement to acquire all of the voting stock of Galen Health Care, Inc. (hereinafter the "Acquisition"); and

Whereas, the Commission is now investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), which would require divestiture of Columbia's Kissimmee Memorial Hospital in Osceola County, Florida ("KMH"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of KMH's assets and businesses during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of KMH as described in Paragraph II of the Consent Order, and the Commission's right to seek to restore KMH as a viable competitor; and

Whereas, the purpose of this Agreement and the Consent Order is to:

(i) Preserve KMH as a viable independent acute care hospital pending its divestiture, and

(ii) Remedy any anticompetitive effects of the Acquisition; and

Whereas, Columbia's entering into this Agreement shall in no way be construed as an admission by Columbia that the Acquisition is illegal; and

Whereas, Columbia understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from Columbia with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the required divestiture is not accomplished, to seek divestiture of KMH as held separate pursuant to this Agreement, as follows:

1. Columbia agrees to execute and be bound by the attached Consent Order.

2. Columbia agrees that from the date of this Agreement is accepted until the earliest of the dates listed in subparagraphs 2.a–2.c, it will comply with the provisions of paragraph 3 of this Agreement:

a. Three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commission's rules;

b. 120 days after publication in the **Federal Register** of the Consent Order, unless by the date the Commission has finally accepted such Order; or

c. The day after the divestitures required by the Consent Order have been completed.

3. Columbia will hold KMH's assets and businesses as they are presently constituted separate and apart on the following terms and conditions:

a. KMH, as it is presently constituted, shall be held separate and apart and shall be operated independently of Columbia (meaning here and hereinafter, Columbia excluding KMH) except to the extent that Columbia must exercise direction and control over KMH to assure compliance with this Agreement.

b. Columbia shall not exercise direction or control over, or influence directly or indirectly, KMH or any of its operations or businesses; provided, however, that Columbia may exercise only such direction and control over KMH as is necessary to assure compliance with this Agreement.

c. Columbia shall maintain the viability and marketability of KMH and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair its marketability or viability.

d. Except for the single Columbia director, officer, employee, or agent serving on the "New Board" or "Management Committee" (as defined in subparagraph 3.h), Columbia shall not permit any director, officer, employee, or agent of Columbia to also be a director, officer or employee of KMH.

e. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, or negotiating agreements to dispose of assets, Columbia shall not receive or have access to, or use or continue to use, any of KMH's "material confidential information" not in the public domain. Any such information that is obtained pursuant to this subparagraph shall only be used for the purpose set out in this subparagraph. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known to Columbia from sources other than KMH, and includes but is not limited to customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets).

f. Columbia shall not change the composition of the management of KMH except that the KMH directors or members serving on the New Board or Management Committee (as defined in subparagraph 3.h) shall have the power to remove employees for cause.

g. All material transactions, out of the ordinary course of business and not precluded by subparagraphs 3.a–3.f hereof, shall be subject to a majority vote of the New Board of Management Committee (as defined in subparagraph 3.h).

h. Columbia shall either separately incorporate KMH and adopt new Articles of Incorporation and By-laws that are not inconsistent with other provisions of this Agreement or shall establish separate business venture with articles of agreement covering the conduct of KMH in accordance with this Agreement. Columbia shall also elect a new three person board of directors of KMH ("New Board") or Management Committee of KMH ("Management Committee"). Columbia may elect the directors to the New Board or select the members of the Management Committee; provided, however, that such New Board or Management Committee shall include no more than one Columbia director, officer, employee, or agent. Except as permitted by this Agreement, the director of the New Board or member of the Management Committee who is also a Columbia director, officer, employee or agent, shall not receive in his or her capacity as a New Board director or Management Committee member material confidential information and shall not disclose any such information received under this Agreement to Columbia or use it to obtain any advantage for Columbia. Said director of the New Board or member of the Management Committee who is also a Columbia director, officer, employee or agent, shall enter a confidentiality agreement prohibiting disclosure of material confidential information (as that term is defined in subpargraph 3.e.). Such New Board director or Management Committee member shall participate in matters which come before the New Board or Management Committee only for the limited purpose of considering a capital investment or other transactions exceeding $1,000,000 and carrying out Columbia's responsibility to assure that KMH is maintained in such manner as will permit its divestiture as an ongoing, viable acute care hospital. Except as permitted by this Agreement, such New Board director or Management Committee member shall not participate in any matter, or attempt to influence the votes of the other directors or Management Committee members with respect to matters that would involve a conflict of interest if Columbia and KMH were separate and independent entities. Meetings of the New Board or Management Committee during the term of this Agreement shall be stenographically transcribed and the transcripts retained for two (2) years after the termination of this Agreement.

i. All earnings and profits of KMH shall be retained separately in KMH. If necessary, Columbia shall provide KMH with sufficient working capital to operate at its current rate of operation, and to carry out any capital improvement plans for KMH which have already been approved by Columbia.

j. Should the Federal Trade Commission seek in any proceeding to compel Columbia (meaning here and hereinafter Columbia including KMH) to divest itself of KMH, or to seek any other injunctive or equitable relief, Columbia shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Columbia also waives all rights to contest the validity of this Agreement.

4. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Columbia made to its principal office, Columbia shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of Columbia and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Columbia relating to compliance with this Agreement;

b. Upon five (5) days notice to Columbia, and without restraint or interference from it, to interview officers or employees of Columbia, who may have counsel present, regarding any such matters.

5. This agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Columbia Hospital Corporation ("Columbia"), Galen Health Care, Inc. ("Galen"), and Columbia Healthcare Corporation, the proposed successor corporation to Columbia and Galen. The agreement would settle charges by the Federal Trade Commission that Columbia's proposed acquisition of 100 percent of the voting stock of Galen would have violated section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act if it had been carried out.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or issue and serve the agreement's proposed order.

Both Columbia and Galen (the "respondents") own and operate acute care hospitals in various states,

including acute care hospitals in Kissimmee, Florida, 17 miles south of Orlando in Osceola County. The complaint accompanying the proposed consent order concerns the proposed acquisition's impact upon competition for acute care hospital services in Kissimmee and elsewhere in Osceola County. According to the complaint, Columbia owns and operates Kissimmee Memorial Hospital in Kissimmee, and Galen owns and operates Osceola Regional Hospital, also in Kissimmee.

The agreement containing consent order would, if finally accepted by the Commission, settle charges that the acquisition may substantially lessen competition in the Osceola County hospital market. The complaint alleges that Columbia and Galen are competitors in the market for acute care hospital services in Osceola County. That market, according to the complaint, was already highly concentrated, and entry by new competitors would be difficult. The complaint alleges that the Commission has reason to believe that the acquisition would have an anticompetitive effect in the Osceola County hospital market, in violation of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates such anticompetitive effects.

The order accepted for public comment contains provisions requiring the divestiture of Kissimmee Memorial Hospital in Kissimmee. The purpose of the divestiture is to ensure the continuation of Kissimmee Memorial Hospital as an ongoing, viable acute care hospital independent of Osceola Regional Hospital, and to remedy the lessening of competition in the Osceola County hospital market resulting from the acquisition.

The proposed order allows the respondents to divest Kissimmee Memorial Hospital to either Adventist Health System/Sunbelt Health Care Corp., according to a Commission-approved acquisition agreement, or another acquirer with the prior approval of the Commission. On August 17, 1993, Columbia divested Kissimmee Memorial Hospital to Adventist Health System/ Sunbelt Health Care Corp. pursuant to the Commission-approved acquisition agreement.

Under the terms of the order, the required divestiture would be completed within six months of the date the order becomes final. If the required divestiture were not completed within the six-month period, the respondents would consent to the appointment of a trustee, who would have eighteen additional months to divest Kissimmee Memorial Hospital. The hold separate agreement executed as part of the consent order requires the respondents, until the completion of the divestiture or as otherwise specified, to hold separate and preserve all of the assets and businesses of Kissimmee Memorial Hospital.

The order would prohibit the respondents from acquiring any acute care hospital in Osceola County without the prior approval of the Federal Trade Commission. It would also prohibit the respondents from transferring, without prior Commission approval, any acute care hospital they operate in Osceola County to another person operating (or in the process of acquiring) an acute care hospital in the area. These provisions, in combination, would give the Commission authority to prohibit any substantial combination of the acute care hospital operations of the respondents with those of any other acute care hospital in Osceola County, unless the respondents convinced the Commission that a particular transaction would not endanger competition in the Osceola County hospital market. The provisions would not apply to acquisitions where the value of the acquired assets is $1 million or less, and the provisions would expire ten years after the order becomes final.

For ten years, the order would prohibit the respondents from transferring all or any substantial part of any Osceola County hospital to a non-respondent without first filing with the Commission an agreement by the transferee to be bound by the order.

The purpose of this analysis is to invite public comment concerning the proposed order, to assist the Commission in its determination whether to make the order final. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

The agreement is for settlement purposes only and does not constitute an admission by the respondents that their proposed acquisition would have violated the law, as alleged in the Commission's complaint.

Donald S. Clark,

Secretary.

[FR Doc. 93-21994 Filed 9-8-93; 8:45 am]

BILLING CODE 6750-01-M

[Docket 9231]

Revlon, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a New York-based corporation and its subsidiary to have scientific evidence to support any future claims regarding the effectiveness of cellulite treatments or sunscreen products. Respondents would also be required to disclose the sun protection factor value in any sunscreen advertisement in which it proclaims the ability of the product to protect against the sun's rays.

DATES: Comments must be received on or before November 8, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phoebe Morse, Boston Regional Office, Federal Trade Commission, 10 Causeway St., room 1184, Boston, MA 02222. (617) 565-7240 or Brinley Williams, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Ave., suite 520-A, Cleveland, OH 44114. (216) 522-4207.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's rules of practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

In the Matter of Revlon, Inc., and Charles Revson, Inc., corporations.

The agreement herein, by and between Revlon, Inc. and Charles Revson, Inc., corporations, hereinafter

referred to as respondents, by their duly authorized officers and their attorneys, and counsel for the Federal Trade Commission ("Commission"), is entered into in accordance with the Commission's rules governing Consent Order procedures. In accordance therewith the parties hereby agree:

1. Respondent Revlon, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 767 Fifth Avenue, New York, New York 10153.

Respondent Charles Revson, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 767 Fifth Avenue, New York, New York 10153.

2. Respondents have been served with a copy of a complaint issued on September 7, 1989, by the Federal Trade Commission in Docket No. 9231 charging Respondents with violations of Sections 5 and 12 of the Federal Trade Commission Act, as amended. Respondents have filed an answer to that complaint denying the charges. Respondents have also been the subject of a separate investigation conducted by the Cleveland Regional Office of the Federal Trade Commission in File No. 882–3110. The consent order contained herein is intended to resolve both the matters contained in the complaint issued on September 7, 1989, and the matters involved in the separate investigation in File No. 882–3110.

3. Respondents admit all the jurisdictional facts set forth in the proposed amended complaint attached hereto.

4. Respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise challenge or contest the validity of the Order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by this Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of the agreement and so notify respondents, in which event it will take such action as it may consider appropriate, or issue and serve its amended complaint (in such form as the circumstances may require) and decisions, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the proposed amendment complaint here attached.

7. This agreement contemplates that, if accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25 of the Commission's rules, the Commission may, without further notice to respondents, (1) issue its amended complaint corresponding in form and substance with the proposed amended complaint attached hereto and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the amended complaint and decision containing the agreed-to-order to respondents' address as stated in this agreement shall constitute service. Respondents waive any right they may have to any other manner of service. The amended complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Respondents have read the proposed amended complaint and order contemplated hereby. Respondents understand that once the order has been issued, respondents will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this order:

1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, consumer surveys, samples or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

2. "Sunscreen product" shall mean any chemical product which, pursuant to applicable federal standards, is entitled to display a Sun Protection Factor (SPF) of 2 or greater, and which is advertised or promoted to be used for prevention of skin damage caused by the sun's harmful rays including, but not limited to, sunburn, premature skin aging and skin cancer.

I

It is ordered that, Revlon, Inc., and Charles Revson, Inc., corporations (collectively preferred to as "respondents"), their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labeling, packaging, offering for sale, sale or distribution of Anti-cellulite body complex or any other product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication,

A. Regarding the product's ability to reduce or eliminate celluite;

B. Regarding the product's ability to reduce bumpy texture, ripples, or slackness of the skin caused by celluite;

C. Regarding the product's ability to disperse toxins or excess water from areas where celluite appears; or

D. Regarding the product's ability to reduce or eliminate celluite by increasing sub-skin tissue strength or tone, unless at the time of making such representation, they possess and rely upon competent and reliable scientific evidence that substantiates the representation.

II

It is further ordered, That Revlon, Inc., and Charles Revson, Inc., corporations, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division of other device, in connection with the advertising, labeling, packaging, offering for sale, sale or distribution of PhotoAging Shield or any other sunscreen product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and

desist from making any representation, directly or by implication, regarding the efficacy, other than identifying the SPF value, of such product in providing protection against all or a specific amount of the sun's harmful rays, unless:

A. At the time of making such representation, they possess and rely upon competent and reliable scientific evidence that substantiates the representation, *Provided that*, with respect to any representation covered by this part, any tentative final or final standard promulgated by the Food and Drug Administration (FDA) which establishes that such representation is supported by scientific evidence acceptable to the FDA, shall (as long as it remains in effect), also constitutes adequate substantiation for such representation; and

B. Respondents disclose, clearly and prominently, the SPF value of the product.

III

It is further ordered that, For a period of three (3) years from the date that any representation covered by this Order is last disseminated, respondents shall maintain and upon request make available to the Commission for inspection and copying,

A. All materials that were relied upon to substantiate such representation; and

B. All test reports, studies, surveys, demonstrations or other evidence in respondents' possession or control, that contradict, qualify, or call into question such representation or the basis upon which respondents relied for such representation.

IV

It is further ordered that, Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of successor corporations, the creation or dissolution of subsidiaries, or any other changes in the corporations which may affect compliance obligations arising out of this Order.

V

It is further ordered, That respondents shall distribute a copy of this Order to each of its current operating divisions, to each officer and other person responsible for the preparation or review of adverting or promotional material covered by this Order, and to all of respondent Charles Revson, Inc.'s Beauty Advisors.

VI

It is further ordered, That respondents shall, within sixty (60) days after service of this Order and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Amended Complaint

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority invested in it by said Act, the Federal Trade Commission, having reason to believe that Revlon, Inc., and Charles Revson, Inc., corporations (collectively referred to as "respondents"), have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

Paragraph One: Revlon, Inc., is a Delaware corporation, and Charles Revson, Inc., is a New York corporation, each having its office or principal place of business located at 767 Fifth Avenue, New York, NY 10153. Charles Revson, Inc., is a wholly-owned subsidiary of Revlon, Inc.

Paragraph Two: Respondents have advertised, offered for sale, sold and distributed (1) Ultima II ProCollagen Anti-cellulite body complex ("Anti-cellulite body complex"); and (2) PhotoAging Shield.

Paragraph Three: Anti-cellulite body complex and PhotoAging Shield are "drugs" or "cosmetics" within the meaning of section 12 of the Federal Trade Commission Act, 15 U.S.C. section 52.

Paragraph Four: The acts and practices alleged in this complaint constitute the maintenance of a substantial course of trade in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

Paragraph Five: Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for Anti-cellulite body complex and PhotoAging Shield. These advertisements and promotional materials contain the following statements:

a. "Now, thanks to Ultima II Research, no woman has to resign herself to unattractive ripples, bumpy texture, and slackness caused by cellulite."

b. "Massaging Anti-cellulite body complex into the skin attacks your cellulite problems two ways: First, it increases skin circulation to help disperse toxins and excess water that contribute to cellulite pockets, and second, it builds subskin tissue strength and tone for smoother support."

c. "You'll see results after just seven to ten days of daily use."

d. "While you can't prevent biological aging, you can prevent Photoaging. That's because now Ultima II Research Laboratories have developed a product designed to prevent Photoaging. This revolutionary product acts as a shield for your skin."

e. "It's called PhotoAging Shield and it's so protective it actually intercepts damaging light waves before they penetrate your skin."

Paragraph six: Through the use of the statements referred to in paragraph five, respondents have represented, directly or by implication, that:

a. Anti-cellulite body complex significantly reduces cellulite;

b. Anti-cellulite body complex reduces skin's bumpy texture, ripples or slackness caused by cellulite;

c. Anti-cellulite body complex helps disperse toxins and excess water from areas where cellulite appears;

d. Anti-cellulite body complex increases sub-skin tissue strength and tone;

e. PhotoAging Shield blocks all of the harmful rays which cause photoaging.

Paragraph Seven: Through the use of the statements referred to in Paragraph Five, respondents have represented, directly or by implication, that they possessed and relied upon a reasonable basis for the representations set forth in Paragraph Six at the time such representations were made.

Paragraph Eight: In truth and in fact, respondents did not possess and rely upon a reasonable basis for the representations set forth in Paragraph Six at the time such representations were made. Therefore, the representation set forth in Paragraph Seven was, and is, false and misleading.

Paragraph Nine: Respondents' dissemination of the false and misleading representations as alleged in this complaint, and the placement in the hands of others of the means and instrumentalities by and through which others may have used said false and misleading representations, constitute unfair or deceptive acts or practices in or affecting commerce, and false advertisements, in violation of section 5(a) and 12 of the Federal Trade Commission Act.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Revlon, Inc., and its wholly-owned subsidiary, Charles Revson, Inc,

("Respondents"). The Respondents are major manufacturers and marketers of cosmetic and beauty care products.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns advertising claims made in connection with sale of two of Respondent's products, Anti-cellulite body complex and PhotoAging Shield.

The Commission's amended complaint in this matter charges Respondents with making unsubstantiated claims in various advertisements and promotional materials regarding the performance capabilities of Anti-cellulite body complex and PhotoAging Shield. With regard to Anti-cellulite body complex, the compliant alleges that Respondents have represented, directly or by implication, that the product significantly reduces cellulite; reduces skin's bumpy texture, ripples or slackness caused by cellulite; helps disperse toxins and excess water from areas where cellulite appears; and increase sub-skin tissue strength and tone. Respondents also represented, directly or by implication, that PhotoAging Shield blocks all of the harmful rays which cause photoaging. The complaint charges that Respondents failed to possess and rely upon a reasonable basis for these representations.

The consent order contains provisions designed to remedy the alleged violations. Part I of the order requires respondents to cease from making any representations regarding the ability of any cosmetic product to reduce or eliminate cellulite, reduce bumpy texture, ripples or slackness caused by cellulite, disperse toxins or excess water from areas where cellulite appears, or reduce or eliminate cellulite by increasing sub-skin tissue strength or tone, unless they possess and rely upon competent and reliable scientific evidence for such representations.

Part II of the Order requires Respondents to possess competent and reliable scientific evidence for any representation that PhotoAging Shield or any other sunscreen product provides complete protection or a specified amount of protection against the sun's harmful rays. The order also requires Respondents to disclose SPF ratings in advertisements for sunscreen products that make such representations.

The order states that for any test, analysis, research, study, consumer survey, sample or other evidence to be "competent and reliable," the test, analysis, research, study consumer survey, sample or other evidence shall be conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession to yield accurate and reliable results. The order also states that for a sunscreen product, any representation that the Food & Drug Administration establishes as supported by scientific evidence in a tentative final or final standard, will be considered to be adequately substantiated.

Parts III, IV, V and VI of the order are standard order provisions requiring respondents to retain all records that would bear on respondents' compliance with the order; to notify the Commission of any changes in the structure of the corporation that may effect its compliance; to distribute copies of the order to its operating divisions, to those persons responsible for the preparation and review of advertising material covered by the order, and to Charles Revson's Beauty Advisors; and to report to the Commission its compliance with the terms of the order.

The purpose of this analysis is to facilitate public comment of the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 93–21995 Filed 9–8–93; 8:45 am]

BILLING CODE 6750–01–M

[Docket 9255]

Trans Union Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, an Illinois consumer reporting agency to cease and desist from failing to require, in its contracts, that those who obtain consumer reports from the company, in the form of lists developed through credit prescreening, make a firm offer of credit to each person on the list and take reasonable steps to enforce those contracts.

DATES: Comments must be received on or before November 8, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC. 20580.

FOR FURTHER INFORMATION CONTACT: Arthur Levin, FTC/S–4429, Washington, DC 20580. (202) 326–3040.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's rules of practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Trans Union Corporation, a corporation.

Agreement Containing Consent Order To Cease and Desist

This agreement herein, by and between Trans Union Corporation, by its duly authorized officer, hereafter sometimes referred to as respondent, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Trans Union Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 555 West Adams Street, Chicago, Illinois.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violations of sections 604 and 607 of the Fair Credit Reporting Act, and has filed answers to said complaint denying said charges. This agreement has application only with respect to the acts and practices alleged in paragraphs four and five of that Complaint.

3. Respondent admits all the jurisdictional facts set forth in the

Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as the Commission may consider appropriate, or issue and serve its decision, in disposition of this part of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the said copy of the complaint issued by the Commission, or that the facts alleged in the complaint other than the jurisdictional facts are true. While Trans Union Corporation believes that entry of this Order is in its interest, Trans Union Corporation specifically denies the allegations of the Complaint and denies that it has violated any law as alleged in the Complaint or otherwise.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.32 of the Commission's rules, the Commission may, without further notice to proposed respondent:

(a) Issue its Decision containing the following order to cease and desist in disposition of this part of the proceeding; and

(b) Make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to Order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

8. Respondent has read the proposed Order contemplated hereby. It understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

For purposes of this Order, the following definitions shall apply:

a. "Trans Union" means Trans Union Corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device.

b. The Fair Credit Reporting Act ("FCRA") refers to 15 U.S.C. 1681–1681t, as amended or as it may hereinafter be amended.

c. The terms, "Person," "Consumer," "Consumer Report," and "Consumer Reporting Agency," are defined as set forth in sections 603 (b), (c), (d), (f), respectively, of the FCRA, 15 U.S.C. 1681a(b), 1681a(c), 1681a(f).

d. "Credit Information" means the information Trans Union maintains bearing on any of the characteristics listed in section 603(d) of the FCRA with respect to any Consumer that Trans Union obtains from Subscribers, court records or any other source and from which Trans Union creates Consumer Reports.

e. "Credit Prescreening" means the process whereby Trans Union, utilizing Credit Information, compiles or edits for a client a list of Consumers who meet specific criteria and provides this list to the client or a third party (such as a mailing service) on behalf of the client for use in soliciting those Consumers for an offer of credit.

I

It is ordered that, Respondent Trans Union, in connection with the furnishing of consumer reports, does cease and desist from failing:

1. Within ninety (90) days of the date of this Order, to require in Trans Union's contracts that those who obtain Consumer Reports from Trans Union in the form of lists developed through Credit Prescreening make a firm offer of credit to each Person on the lists and take reasonable steps to enforce those contracts.

II

It is further ordered that, Respondent shall distribute a copy of this Order to all present and future management officials having supervisory responsibilities for administration, sales, advertising or policy with respect to the subject matter of this Order in each of its subsidiaries and operating divisions dealing with credit prescreening, and shall secure from each such individual a signed statement acknowledging receipt of this Order.

III

It is further ordered that, For the five (5) year period following entry of this Order, Respondent, its successors and assigns shall notify the Commission at least thirty (30) days prior to any proposed change in Respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation of dissolution of subsidiaries, or any other change in Respondent which may affect compliance obligations arising out of the Order.

IV

It is further ordered, That Respondent shall maintain and upon request make available to the Federal Trade Commission all records that will demonstrate compliance with the requirements of this Order.

V

It is further ordered, That Respondent shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, signed by the Respondent and setting forth in detail the manner and form of its compliance with this Order.

VI

If the FCRA is amended (or other similar federal legislation enacted) or the FTC issues any interpretation of the FCRA, relating to any obligation imposed on Trans Union herein, which creates any new requirement that directly conflicts with any obligation imposed on Trans Union by this Order, Trans Union may conform the manner in which it conducts its business as a Consumer Reporting Agency or its use of Credit Information to the requirements of such new statutory provision or interpretation; provided however that, Trans Union shall notify the Commission promptly if it intends to change its conduct as provided for in this section, and provided further that

nothing in this provision shall limit the right of the FTC to challenge Trans Union's actions hereunder and to seek enforcement of Trans Union's obligations under this order. For purposes of this Order, and by way of example only, a "direct conflict" between this Order and a new statutory amendment or interpretation shall include a requirement in any such amendment or interpretation that a Credit Reporting Agency complete a task or obligation addressed in this Order in a greater period of time than is specified in the Order.

VII

This Order does not address the current practice engaged in by Trans Union of compiling, for sale to clients, lists of consumers with certain credit-related characteristics, based in whole or in part on credit information, which lists are not developed through Credit Prescreening and it does not in any way limit the right of the Federal Trade Commission to take any appropriate action after entry of this Order pursuant to the FCRA relating to this practice, nor does it limit in any way Trans Union's defense of any such action.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent Trans Union Corporation.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed Order resolves the prescreening portions of the administrative complaint issued against Trans Union. In prescreening, a consumer reporting agency sells to a credit grantor, either directly or through a third party, a list of names and addresses of consumers from its consumer reporting database selected on the basis of the creditor's credit-granting criteria. In return, the list user must make a firm offer of credit to all consumers whose names appear on the prescreened list.

The Commission complaint charged that Trans Union violated sections 604 and 607 of the FCRA by providing consumer reports in the form of prescreened lists to credit grantors without adequately requiring or monitoring that said persons make offers of credit to all consumers on such lists. The proposed Order requires that Trans Union revise its sales contract to require that customers for its prescreened lists make offers of credit to all consumers on the lists and that the company take reasonable steps to enforce its contracts.

The attached settlement is nearly identical to the provision on prescreening contained in a broad-based agreement reached with TRW Inc. in 1991 resolving allegations that that company was engaged in numerous violations of the FCRA. The only difference in the orders concerning prescreening is the insertion of the word "credit" to modify the defined term "prescreening" in the Trans Union consent agreement. This was done to reflect the fact that the pre-complaint investigation and the complaint focused on prescreening for credit offers only.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 93–21996 Filed 9–8–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Development of Live Attenuated Vaccine Viruses for Human Respiratory Syncytial Virus (RSV) and Parainfluenza Virus Type 3 (PIV3)

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases (NIAID) of the National Institutes of Health is seeking capability statements from parties interested in entering into a Cooperative Research and Development Agreement (CRADA) on a project to develop live attenuated vaccine viruses for human respiratory syncytial virus (RSV) and parainfluenza virus type 3 (PIV3). This ongoing project is with the Laboratory of Infectious Diseases (LID). The goal is to (i) develop the methodology for producing replication-competent RSV and PIV3 from DNAs encoding complete copies of the viral genomic RNAs, (ii) introduce defined mutations to produce attenuated vaccine strains, and (iii) evaluate the attenuated viruses as live vaccines in animals and humans. Each of the viral genomic RNAs has been cloned and sequenced in its entirety and much of the work to construct a complete consensus sequence copy of each RNA has been completed. The feasibility of making virus from DNA is supported by studies in which short synthetic versions of each RNA (the largest one tested was 49% the size of the complete RSV genome) were introduced into infected cells and successfully "rescued" into infectious virus. The LID has extensive experience in evaluating the safety, antigenicity, immunogenicity and efficacy of RSV and PIV3 and vaccines thereof in experimental animals and human volunteers. The commercial collaborator would be asked to contribute and maintain approximately four to six scientists off-site to support the LID-directed project. Some additional funding would be requested to support activities in the LID, and a major funding commitment would be required for the vaccine safety and efficacy studies. Capability statements should include:

(1) Technical expertise of proposed Collaborator Principal Investigator and laboratory group in molecular virology and transfection technology,

(2) Ability of Collaborator to manufacture experimental lots of vaccine, and

(3) Ability to adequately contribute funding to support required vaccine safety and efficacy studies.

ADDRESSES: Capability statements shall be submitted to: Dr. Harold T. Safferstein, Technology Transfer Branch, National Institute of Allergy and Infectious Diseases, National Institutes of Health, Building 31, room 7A32, 9000 Rockville Pike, Bethesda, Maryland 20892; Tel: 301–496–2644.

DATES: October 12, 1993.

Dated: August 27, 1993.

Reid G. Adler,

Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 93–21965 Filed 9–8–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Scoping Meetings on the Uinta Basin Replacement Projects EIS (Uintah and Upalco Units)

AGENCY: Central Utah Water Conservancy District, Interior.

ACTION: Notice of public scoping meetings to invite public input for use in preparing the EIS for the Uinta Basin Replacement Projects (Uintah and Upalco Units).

SUMMARY: Public Law 102–575 section 201(c) provides for the termination of the authorization for the Uintah and Upalco Units five years after its enactment unless (1) the Secretary of the Interior has executed a cost sharing agreement with the District, and (2) the Secretary has requested, or Congress has appropriated, construction funds for these projects.

CUWCD will serve as the joint lead agency with the Department of the Interior for preparation of the EIS on the Uintah and Upalco Units pursuant to section 102(2)(c) of the NEPA of 1969 as amended and the Central Utah Project Completion Act.

Federal Register Notices (57 FR 62576, Uintah Unit) and (57 FR 62577, Upalco Unit), on December 31, 1992, announced the intent to prepare EIS's for the Uintah and Upalco Units. Initial scoping meetings were subsequently held on January 19, 1993 in Roosevelt, Utah, January 21, 1993 in Fort Duchesne, Utah, and January 26, 1993 in Salt Lake City, Utah for the Uintah Unit and on January 20, 1993 in Altamont, January 21, 1993 in Fort Duchesne, Utah, and January 28, 1993 in Salt Lake City, Utah for the Upalco Unit. Summary reports of these scoping meetings are available from the District on request.

The purpose of this second set of scoping meetings is to solicit public comment on the alternatives to be studied in detail and on the scope and content of the Uinta Basin Replacement Projects EIS (Uintah and Upalco Units). Information on alternatives selected for detailed investigation in the development of a combined EIS for both units is available from the District on request.

The EIS for the Uinta Basin Replacement Projects (Uintah and Upalco Units) will evaluate the environmental impacts of the proposed action and alternatives for providing water to irrigation users, the Ute Indian Tribe, municipal and industrial users and for instream flows within eastern Duchesne County and western Uinta County. The EIS will evaluate the environmental impacts of the No-Action alternative, and development alternatives in each unit, including gravity pressure irrigation systems, canal and diversion structure rehabilitations, storage reservoirs, stream restorations, environmental mitigation and enhancement, and other water development related features.

Types of issues include impacts of construction and operation of the improvements, impacts on wetlands and other habitat values in irrigation service areas of Duchesne and Uinta Counties, quality and quantity impacts of construction and operation on the Duchesne and Green Rivers, impacts on threatened and endangered species, and identification of mitigation and enhancement opportunities.

DATES: The CUWCD seeks participation in the Scoping Meetings from interested members of the public, including potentially affected landowners, public officials, agency representatives, special interest groups, and interested individuals. CUWCD will make every effort to make these meetings accessible to disabled attendees. Please contact CUWCD at (800)–226–7109 with any special needs or requests at least three days prior to the meeting. The times and locations for the meetings are as follows:

(1) 7 p.m. Tuesday, October 12, 1993, Roosevelt Jr. High School Auditorium, 265 N. 300 W., Roosevelt, Utah

(2) 7 p.m., Wednesday, October 13, 1993, Salt Lake County Commission Chambers, Governmental Center, 2001 S. State St., Salt Lake City, Utah

(3) 7 p.m. Thursday, October 14, 1993, Altamont High School Auditorium, Altamont, Utah.

FOR FURTHER INFORMATION CONTACT: An information packet on the project is available upon request from the CUWCD. Written comments or suggestions regarding the scope and or content of the DEIS are invited and should be submitted no later than November 15, 1993. In addition, interested parties can receive when completed, a copy of the DEIS for review and comment. All comments, suggestions, or requests should be addressed in writing to: R. Terry Holzworth, Uinta Basin Replacement Projects, Project Manager, Central Utah Water Conservancy District, 355 West 1300 South, Orem, Utah 84058–7303, (801)226–7127, (801)226–7150 (fax).

Dated: September 1, 1993.

Jonathan P. Deason,

Director, Office of Environmental Affairs, U.S. Department of the Interior.

[FR Doc. 93–21934 Filed 9–8–93; 8:45 am]

BILLING CODE 4310–RQ–M

Bureau of Land Management

[CA–058–4210–02]

Environmental Impact Statement; Modification

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of modification to the environmental impact statement (EIS) for an effluent pipeline from various Lake County communities to the Geysers Geothermal Field.

SUMMARY: The original proposal (Federal Register, Vol. 58, No. 46, pg 13499) included a back-up disposal option of using the existing Northern California Power Agency "M" well in the event that the steam field was unable to take the effluent. This is no longer the preferred option and, in it's place, a wetland disposal alternative has been proposed.

This treatment and disposal system alternative may involve a created wetland incorporating wetland vegetation and open water areas. As part of this alternative, the Southeast Regional Wastewater Plant would be upgraded to provide tertiary treatment of effluent. The tertiary effluent would then be discharged to the created wetland flow system for additional treatment prior to discharge to and through the existing Anderson marsh with eventual discharge to Clear Lake.

FOR FURTHER INFORMATION CONTACT: Rich Estabrook, Bureau of Land Management, (707) 462–3873; Mark Dellinger, Lake County Planning Dept., (707) 263–2273.

Renee Snyder,

Clear Lake Resource Area Manager.

[FR Doc. 93–21886 Filed 9–8–93; 8:45 am]

BILLING CODE 4310–40–M

[MT–060–02–4333–11]

Montana Off-Road Vehicle Designation

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice to limit off-road vehicle use on public lands.

SUMMARY: Notice is hereby given that effective immediately the use of off-road vehicles (ORVs) is limited on public lands within the Chain Buttes/Dunn Ridge area, in northern Petroleum County, Montana. This will be in effect during the bird and big game hunting season as established by the Montana Department of Fish, Wildlife and Parks in accordance with the authority and requirements of regulation 43 CFR 8364.1.

DATES: This designation will only be in effect during the bird and big game hunting season. The designation will terminate on December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Chuck Otto, Judith Resource Area Manager, Bureau of Land Management (BLM), Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The area includes 92,810 acres. Public land is

administered by the BLM, Judith Resource Area, Lewistown District. This designation is the result of a cooperative effort among BLM, private landowners, U.S. Fish and Wildlife Service, Montana Department of Fish, Wildlife and Parks and Montana Department of State Lands. The purpose of the designation is to prevent damage to soil, vegetative and scenic resources, to open additional private and state lands for hunting, and to reduce landowner/recreationist conflicts so as to provide a higher quality hunt.

The off-road vehicle limitation area is located in northern Petroleum County, Montana. It includes all public lands administered by the BLM north of the Crooked Creek and Dunn Ridge roads.

Hunting within the described block will be subject to the following restrictions:

1. All off-road vehicle travel is prohibited.
2. All roads not signed or otherwise designated as open, are closed to motorized vehicle use.
3. No motorized vehicle use is allowed on closed roads, with the exclusive exception of retrieving downed big game. Big game retrieval is allowed between 10 a.m. and 2 p.m. daily on open or closed roads. Prior to or after these hours, motorized vehicles are not permitted on closed roads or off roads. No off-road vehicle use will be allowed on any lands within this block management area.
4. All public land in this management area is open to walk in hunting.
5. The private land in this management area is open to walk in hunting, except around residential areas, shipping pastures and areas that are signed or otherwise designated as closed.
6. Camping on private land requires landowner permission.
7. Camping is prohibited on Montana Department of State Lands (DSL) property.
8. Camping is permitted on public land (14 day stay limit) within 100 yards of open roads. Direct access by motor vehicle is permitted to and from campsites using the most direct route to avoid damage to soils and vegetation. Such camping is also allowed within a reasonable distance down closed roads after obtaining a special use permit issued by the Judith Resource Area.
9. A DSL recreational use license is required to hunt or fish on state property.
10. Outfitters and other recreation users are required to use certified weed-free feed for their livestock within the management area.
11. Limitations and regulations as found in 43 CFR part 8340 apply.

Dated: August 30, 1993.

David L. Mari,

District Manager.

[FR Doc. 93-21805 Filed 9-8-93; 8:45 am]

BILLING CODE 4310-DN-M

[OR-943-2300-02; GP3-384; OR-44620]

Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 140 acres of acquired land to surface entry, mining and mineral leasing.

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/ Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described land was acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 38 S., R. 5 W.,
Sec. 24, E½SW¼, S½SW¼SW¼, and SW¼SE¼.

The area described contains 140 acres in Josephine County.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on October 14, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to applications and offers under the mineral leasing laws.

Dated: August 30, 1993.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-21889 Filed 9-8-93; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-2300-02; GP3-385; OR-46668]

Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 12.25 acres of acquired land to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/ Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described land was acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 4 S., R. 7 W.,
Sec. 6, those portions of the Nestucca River Access Road lying in lot 2, SW¼NE¼, and W½SE¼, as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office.

The area described contains 12.25 acres in Tillamook County.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on October 14, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is

unauthorized. Any such attempted appropriation, including attempted adverse possessions under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to applications and offers under the mineral leasing laws.

Dated: August 30, 1993.

Robert D. DeViney, Jr.,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–21890 Filed 9–8–93; 8:45 am]

BILLING CODE 4310–33–M

[OR–943–2300–02; GP3–386; OR–46787]

Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 64.70 acres of acquired land to surface entry, mining and mineral leasing.

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/ Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described land was acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 4 N., R. 38 E.,
Sec. 7, lots 2 and 3, excepting therefrom the easterly 165 feet.

The area described contains 64.70 acres in Umatilla County.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on October 14, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to applications and offers under the mineral leasing laws.

Dated: August 30, 1993.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–21891 Filed 9–8–93; 8:45 am]

BILLING CODE 4310–33–M

[OR–943–2300–02; GP3–388; OR–46645]

Order Providing for Opening of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 13.75 acres of acquired land to surface entry. The minerals are not in Federal ownership.

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/ Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described land was acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 25 S., R. 13 W.,
Sec. 8, lot 3 and the tidelands fronting and abutting thereon.

The area described contains 13.75 acres in Coos County.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on October 14, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

Dated: August 30, 1993.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–21892 Filed 9–8–93; 8:45 am]

BILLING CODE 4310–33–M

[OR–943–2300–02; GP3–387; OR–44380 (WASH)]

Order Providing for Opening of Land; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 306.60 acres of acquired land to surface entry, mining and mineral leasing.

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/ Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described land was acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 26 N., R. 32 E.,
Sec. 31, lots 1 and 2, NE¼, and E½NW¼.

The area described contains 306.60 acres in Lincoln County.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on October 14, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish

a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessor rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on October 14, 1993, the above described land will be opened to applications and offers under the mineral leasing laws.

Dated: August 30, 1993.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–21893 Filed 9–8–93; 8:45 am]

BILLING CODE 4310–33–M

[CA–010–4210–04, CACA 33050]

Realty Action; Exchange of Public Land in El Dorado and Amador Counties, CA

AGENCY: Bureau of Land Management, Department of the Interior.

SUMMARY: The following described public land (surface and mineral estate) is being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

Selected Public Land

El Dorado County

T. 9N., R. 10E., M.D.M.
Sec. 12: lots 1 and 7

Amador County

T. 7N., R. 9E., M.D.M.
Sec. 18: S½SE¼SE¼.

Containing 38.29 acres, more or less.

The selected public land described above is hereby segregated from settlement, location and entry under the public land laws and from the mining laws for a period of two years from the date of publication of this notice in the **Federal Register**.

The above land is being considered for possible transfer to a nonprofit conservation organization. In exchange, the public would receive private land located on either the North Fork or South Fork of the American River or the Merced River, or marshlands and waterfowl habitat located in the California Central Valley. This proposal is considered to be in the public interest and is consistent with current land use plans.

SUPPLEMENTARY INFORMATION: The above described Federal land would be transferred subject to a reservation to the United States for ditches and canals; also any rights-of-way of record would be identified as prior existing rights.

All necessary clearances including clearances for archaeology, and rare plants and animals would be completed prior to any conveyance of title by the United States.

FOR ADDITIONAL INFORMATION CONTACT: Mike Kelley at (916) 985–4474 or at the address listed below.

ADDRESSES: For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, c/o Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

D.K. Swickard,

Area Manager.

[FR Doc. 93–21888 Filed 9–8–93; 8:45 am]

BILLING CODE 4310–40–M

[NV–930–4210–04; N–57773]

Realty Action: Exchange of Public Lands in Clark County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action N–57773 for exchange of lands in Clark County, Nevada.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada, including the mineral estate, is being considered for disposal by exchange pursuant to Sections 206 and 209 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 5, lots 5–8.
Sec. 6, lots 1–5, 12–18, S½NE¼, SE¼NW¼, SE¼.
Sec. 7, lots 5, 6, 8–12, 14–16, 18–21.
Sec. 21, SW¼NW¼.
T. 20 S., R. 60 E.,
Sec. 5, lots 1, 7, 8, W½SW¼NW¼NE¼, W½NW¼SW¼NE¼, NW¼SW¼SW¼NE¼, E½NE¼SE¼NE¼, E½SE¼NE¼NW¼, E½NE¼SE¼NW¼, NE¼SE¼SE¼NW¼, SW¼NW¼NE¼SE¼, W½SW¼NE¼SE¼, SE¼SE¼NW¼SE¼, E½NE¼SW¼SE¼, NE¼SE¼SW¼SE¼, W½NW¼SE¼SE¼, NW¼SW¼SE¼SE¼.
T. 21 S., R. 60 E.,
Sec. 11, SW¼SW¼.
T. 22 S., R. 61 E.,
Sec. 14, NE¼NE¼NE¼NE¼, W½NW¼NE¼NE¼NE¼, SW¼NE¼NE¼NE¼, E½SE¼NE¼NE¼NE¼, E½SE¼NE¼NE¼, E½W½SE¼NE¼NE¼, N½NE¼SE¼NE¼, E½SE¼NE¼SE¼NE¼, E½SW¼NE¼SE¼NE¼, E½NW¼SE¼NE¼, SW¼NW¼SE¼NE¼, NE¼NE¼SW¼NE¼, E½SE¼SE¼NW¼NE¼, NE¼SE¼NW¼NE¼, SE¼NE¼NW¼NE¼, E½NE¼NE¼NW¼NE¼, S½NW¼NE¼NE¼, E½NW¼NW¼NE¼NE¼, E½NE¼NW¼NE¼NE¼, SW¼NE¼NE¼, Sec. 23, N½NE¼NE¼NE¼, SW¼NE¼NE¼NE¼, W½NE¼NE¼, SE¼NE¼NE¼, NE¼NE¼NW¼NE¼, SW¼NE¼NW¼NE¼, N½NW¼NW¼NE¼, SE¼NW¼NW¼NE¼, SW¼NW¼NE¼, E½SW¼NE¼, S½NW¼SW¼NE¼, N½SW¼SW¼NE¼, N½NE¼SE¼NE¼, SW¼NE¼SE¼NE¼, NW¼SE¼NE¼, N½S½SE¼NE¼, SW¼SW¼SE¼NE¼, SW¼SE¼SE¼NE¼, N½N½SE¼, E½SW¼NE¼SE¼, SE¼NE¼SE¼, SW¼NW¼SE¼, E½SE¼NW¼SE¼, W½NE¼SW¼SE¼, W½NW¼SW¼SE¼, S½SW¼SE¼, W½NE¼SE¼SE¼, NW¼SE¼SE¼, E½SE¼SE¼SE¼. Sec. 26, N½N½NE¼NE¼, S½NW¼NE¼NE¼, S½NE¼NE¼, S½SW¼NW¼NE¼, NE¼SW¼NE¼, S½SW¼SW¼NE¼, N½SE¼SW¼NE¼, S½NE¼SE¼NE¼, NW¼SE¼NE¼, S½SE¼NE¼, E½SE¼, N½NW¼SE¼, S½SW¼NW¼SE¼, N½SE¼NW¼SE¼, NE¼SW¼SE¼, N½S½SW¼SE¼. Sec. 34, S½NE¼NE¼NW¼, S½NE¼NW¼, S½NE¼NW¼NW¼, W½NW¼NW¼, SE¼NW¼NW¼, SW¼NW¼, NE¼SE¼NW¼, N½NW¼SE¼NW¼, S½SE¼NW¼, N½N½N½SW¼, S½NE¼NE¼SW¼, SW¼NE¼SW¼, N½SE¼NE¼SW¼, S½NE¼NW¼SW¼, S½NW¼SW¼, N½N½SW¼SW¼, S½SW¼SW¼, SE¼SW¼, S½N½NE¼SE¼,

S½S½NE¼SE¼,
N½NE¼NW¼SE¼,
W½NW¼SE¼,
SE¼NW¼SE¼,
N½N½SW¼SE¼,
S½SW¼SW¼SE¼,
SE¼SW¼SE¼,
N½SE¼SE¼,
S½SW¼SE¼SE¼,
SE¼SE¼SE¼.

Aggregating 2318.03 acres (gross).

The lands described herein have been considered but not utilized in previous exchange transactions. Any segregation remaining on the records by virtue of the previous exchange notices is hereby terminated.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), subject to valid and existing rights, publication of this notice in the **Federal Register**, will segregate the public lands, as described in this Notice, for all forms of appropriation under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws and from any subsequent exchange proposals filed by any other proponent other than Olympic Nevada Inc. or their nominee.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation, or the expiration of two years from the date of publication, whichever comes first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

Dated: September 2, 1993.

Ben F. Collins,

District Manager.

[FR Doc. 93–22015 Filed 9–8–93; 8:45 am]

BILLING CODE 4310–HC–M

[OR–943–4210–06; GP3–171; OR–20301, et al.]

Proposed Continuation of Withdrawals; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Reclamation, proposes that all of the five separate land withdrawals continue for an additional 100 years and requests that the lands involved remain closed to surface entry and mining.

DATES: Comments should be received by December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that the following identified land withdrawals be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988). The following identified lands within the Owyhee Project are involved:

1. OR–20301, Secretarial Order dated February 5, 1923, 6,764.44 acres located in Secs. 34 and 35, T. 22 S., R. 44 E., Secs. 2, 3, 4, 9, 10, 17, 20, 21, and 28 to 33, inclusive, T. 23 S., R. 44 E., Secs. 14, 23, and 34, T. 21 S., R. 45 E., Secs. 9, 17, 18, 20, 21, 28, 29, 30, and 31, T. 22 S., R. 45 E., W.M. in Malheur County, approximately 10 miles southwest of Adrian.

2. OR–20302, Secretarial Order dated March 28, 1925, 25,447.27 acres located in Secs. 13 and 24, T. 23 S., R. 43 E., Secs. 9, 10, 13, 14, 15, 20, 21, 23, 24, 28, 29, and 32, T. 26 S., R. 43 E., Secs. 2, 4, 7, 8, 9, 10, 17, 18, 19, 20, 28, 29, 31, 32, and 33, T. 23 S., R. 44 E., Secs. 4, 5, 8, 9, 17, 20, 21, 22, 27, 28, 29, 32, and 33, T. 24 S., R. 44 E., Secs. 3, 4, 5, 8, 9, 10, 14, 15, 22, 23, 26, 27, 34, and 35, T. 25 S., T. 44 E., Secs. 3, 4, 7, 8, 9, 10, 17, and 18, R. 26 S., R. 44 E., Secs. 10, 12, and 35, T. 20 S., R. 45 E., Secs. 13, 14, 23, 24, 26, and 35, T. 21 S., R. 45 E., Secs. 2, 3, 9, 10, and 28 to 33, inclusive, T. 22 S., R. 45 E., Secs. 25 and 26, T. 17 S., R. 46 E., Secs. 9 and 10, T. 18 S., R. 46 E., Secs. 2, 15, 32, and 33, T. 19 S., R. 46 E., Secs. 5 and 20, T. 20 S., R. 46 E., Secs. 7, 8, 16 to 20, inclusive, 22, 27, and 29, T. 21 S., R. 46 E., Secs. 9, 16, 21, 22, 26, and 27, T. 22 S., R. 46 E., Secs. 3, 10, 11, and 14, T. 23 S., R. 46 E., Secs. 18 and 29, T. 16 S., R. 47 E., Sec. 20, T. 17 S., R. 47 E., Sec. 18, T. 22 S., R. 47 E., Sec. 18, 23 S., R. 47 E., W.M. in Malheur County, approximately 16 miles north-northeast of Vale and between 12 and 55 miles south-southeast of Vale.

3. OR–20303, Secretarial Order dated March 17, 1916, 200 acres located in Secs. 34 and 35, T. 21 S., R. 45 E., in Malheur County, approximately 6 miles southwest of Adrian.

4. OR–20304, Secretarial Order dated February 18, 1937, 80 acres located in Sec. 10, T. 18 S., R. 45 E., in Malheur County, 4 miles northeast of Vale.

5. OR–20305, Secretarial Order dated April 30, 1945, 40 acres located in Sec. 14, T. 21 S., R. 45 E., Malheur County, 6 miles west of Adrian.

The withdrawals currently segregate the lands from operation of the public land laws generally, including the mining laws. The Bureau of Reclamation requests no changes in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objects in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: August 18, 1993.

Robert D. DeViney, Jr.,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–21887 Filed 9–8–93; 8:45 am]

BILLING CODE 4310–33–M

Geological Survey

National Environmental Policy Act; Proposed Implementing Procedures (516 DM 6, Appendix 2)

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of final revised instructions for the U.S. Geological Survey (USGS).

SUMMARY: The USGS has revised the appendix to the Department's National Environmental Policy Act (NEPA) procedures for the USGS. The revision primarily reflects changes in USGS organization and responsibilities and deletes references to functions that have been transferred to the Bureau of Land Management, and the Minerals Management Service. The Department's procedures were published in the **Federal Register** on April 23, 1980 (45 FR 27541) and revised on May 21, 1984 (49 FR 21437). Appendix 2 for the USGS was published on January 23, 1981 (46 FR 7485). The proposed revisions were published on March 22, 1993 (58 FR 15355).

EFFECTIVE DATE: September 9, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Clifford A. Haupt, Chief, Environmental Affairs Program, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 423, Reston, VA 22092.

RESPONSE TO PUBLIC COMMENTS: Comments were received from the U.S. Environmental Protection Agency, who suggested that standards and thresholds were needed regarding categorical exclusions, pertaining to well drilling, excavations, and access to scientific

stations. These comments have been addressed.

SUPPLEMENTARY INFORMATION: This revised appendix to the Departmental Manual (516 DM 6, Appendix 2) provides specific NEPA compliance instructions for the USGS. In particular, it updates information about the USGS's organizational responsibilities, deletes activities transferred to the Bureau of Land Management and the Minerals Management Service and makes other minor technical changes.

The Appendix must be taken in conjunction with the Department's procedures (516 DM 1–6) and the Council on Environmental Quality's regulations implementing the procedural provisions of NEPA (40 CFR 1500–1508)

Outline

Chapter 6 (516 DM 6) Managing the NEPA Process Appendix 2—U.S. Geological Survey

2.1 NEPA Responsibility
2.2 Guidance to Applicants
2.3 Major Actions Normally Requiring an EIS or EA
2.4 Categorical Exclusions

Dated: August 30, 1993.

James F. Devine,

Assistant Director for Engineering Geology.

2.1 NEPA Responsibility

A. The *Director* of the U.S. Geological Survey (USGS) is responsible for National Environmental Policy Act (NEPA) compliance for USGS activities.

B. *The Assistant Director for Engineering Geology* procedures policy guidance, direction and oversight for environmental activities including implementation of NEPA, and approves Environmental Impact Statements (EIS) prepared by the USGS. The Assistant Director is also responsible for approving USGS reviews of environmental documents, regulations or rules proposed by other agencies.

C. *The Chief, Environmental Affairs Program* (Reston, VA), is the focal point for NEPA matters and develops NEPA-related policy and guidance for the USGS. The Chief is responsible for: assuring the quality control of USGS environmental documents; monitoring USGS-wide activities to ensure NEPA compliance; reviewing and commenting on other bureaus' and agencies' environmental documents; managing the assignment of USGS personnel to assist other agencies in developing EISs; and assisting in the performance of specialized studies to support environmental analyses. Information about USGS environmental documents or the NEPA process can be obtained by contacting the Environmental Affairs Program.

D. *The Chiefs of the Divisions* or *Independent Offices* are responsible within their respective organizations for ensuring compliance with NEPA and applicable consultation requirements.

2.2 Guidance to Applicants

Because the USGS does not have any regulatory responsibilities in this area, the USGS has no applicable programs requiring guidance to applicants.

2.3 Actions Normally Requiring an EIS or Environmental Assessment (EA)

A. Approval of construction of major new USGS research centers or test facilities normally will require the preparation of an EIS.

B. An EA will be prepared to aid in deciding whether a finding of no significant impact is appropriate, or whether an EIS is required prior to implementing any action. The EA will be prepared in accordance with guidance provided in 516 DM 3.1. Specifically, an EA is required for all actions which are: (a) not categorically excluded; (b) listed as exceptions to the Departmental categorical exclusions in 516 DM 2 Appendix 2; (c) not being addressed by an EIS.

2.4 Categorical Exclusions

In addition to the actions listed in the Departmental categorical exclusions specified in Appendix 1 of 516 DM 2, many of which the USGS also performs, the following USGS actions are designated categorical exclusions unless the action qualifies as an exemption from the Department's categorical exclusions under Appendix 2 of 516 DM 2. The exclusions shall apply to internal program initiatives performed in the United States and its Trust Territories and Possessions, including Federal lands and the Outer Continental Shelf (OCS).

A. Topographic, land use and land cover, geological, mineralogic, resources evaluation, and hydrologic mapping activities, including aerial topographic surveying, photography, and geophysical surveying.

B. Collection of data and samples for geologic, paleontologic, hydrologic, mineralogic, geochemical and surface or subsurface geophysical investigations, and resource evaluation, including contracts therefor.

C. Acquisition of existing geological, hydrological or geophysical data from private exploration ventures.

D. Well logging, aquifer response testing, digital modeling, inventory of existing wells and water supplies, water-sample collection.

E. Operation, construction and installation of: (a) Water-level or water-quality recording devices in wells; (b) pumps in wells; (c) surface-water flow measuring equipment such as weirs and stream-gaging stations, and (d) telemetry systems, including contracts therefor.

F. Routine exploratory or observation groundwater well drilling operations which do not require a special access road, and which use portable tanks to recycle and remove drilling mud, and create no significant surface disturbance.

G. Test or exploration drilling and downhole testing, including contracts therefor.

H. Establishment of survey marks, placement and operation of field instruments, and installation of any research/monitoring devices.

I. Digging of exploratory trenches requiring less than 20 cubic yards of excavation.

J. Establishment of seasonal and temporary field camps.

K. Off-road travel to drilling, data collection or observation sites which does not impact ecologically sensitive areas such as wilderness areas, wetlands, or areas of critical habitat for listed endangered or threatened species.

L. Hydraulic fracturing of rock formations for the singular purpose of in situ stress measurements.

M. Reports to Surface Management Agencies, or any State, Territorial, Commonwealth or Federal Agencies concerning mineral and water resources appraisals.

N. Other actions where USGS has concurrence or coapproval with another Department of the Interior bureau and the action is a categorical exclusion for that bureau.

O. Minor, routine, or preventive maintenance activities at USGS facilities and lands, and geological, hydrological, or geophysical data collection stations.

P. Minor activities required to gain or prepare access to sites selected for completion of exploration drilling operations or construction of stations for hydrologic, geologic, or geophysical data collection.

[FR Doc. 93–21884 Filed 9–8–93; 8:45 am]

BILLING CODE 4310–31–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-661 and 662 (Preliminary)]

Color Negative Photographic Paper and Certain Chemical Components From Japan and the Netherlands

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-661 and 662 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan and the Netherlands of color negative photographic paper (CNPP) and certain chemical components[1] that are alleged to be sold in the United States at less than fair value. CNPP is provided for in subheadings 3703.10.30 and 3703.20.30 of the Harmonized Tariff Schedule of the United States (HTS); chemical components are provided for in chapters 29 and 37 of the HTS. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by October 15, 1993.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: August 31, 1993.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202-205-3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on August 31, 1993, by Eastman Kodak Company, Rochester, NY.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9 a.m. on September 22, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Debra Baker (202-205-3180) not later than September 17, 1993, to arrange for their appearance. Parties in support of the imposition of antidumping duties in the investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before September 27, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: September 3, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-22024 Filed 9-8-93; 8:45 am]

BILLING CODE 7020-02-P

[1] CNPP is sensitized, unexposed, silver-halide color negative photographic paper, whether in master rolls, smaller rolls, or sheets. CNPP includes any sensitized paper used for producing prints from color negative film; it may also be used to form color positives from color negative images created digitally (electronically) on a variety of display devices, including cathode ray tubes. Chemical components are those chemical mixtures and compounds (including their precursors for which there are no significant independent uses) used in making CNPP and for which there are no significant independent uses. Such chemical components include sensitized (whether chemically or spectrally) and unsensitized emulsions, couplers, dispersions, and their precursors.

[Investigation No. 337-TA-348]

Certain In-Line Roller Skates With Ventilated Boots and In-Line Roller Skates With Axle Aperture Plugs and Component Parts Thereof

Notice is hereby given that the prehearing conference in this proceeding scheduled for September 7, 1993, and the hearing scheduled to commence immediately thereafter (58 FR 45355) are cancelled.

The prehearing conference is rescheduled to commence at 9 a.m. on September 13, 1993, in Courtroom C (Room 217), U.S. International Trade Commission Buiilding, 500 E Street SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Issued: September 3, 1993.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 93–22025 Filed 9–8–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–343]

Certain Mechanical Gear Couplings and Components Thereof; Commission Determination Not To Review an Initial Determination Terminating the Investigation as to All Respondents on the Basis of Settlement Agreements and a Consent Order; Issuance of Consent Order; Termination of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) (Order No. 18) which terminated the above-captioned investigation on the basis of settlement agreements and a consent order.

FOR FURTHER INFORMATION CONTACT: Katherine M. Jones, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3097.

SUPPLEMENTARY INFORMATION: On April 15, 1993, complainant Kop-Flex, Inc. (Kop-Flex) and respondents K-Power Products, Inc. (K-Power) and A.R. Hutchings filed a joint motion to terminate the investigation as to Hutchings on the basis of a proposed consent order and consent order agreement and as to K-Power on the basis of settlement agreements. On June 25, 1993, the presiding ALJ issued an ID (Order No. 17) terminating the investigation on the basis of the proposed consent order and settlement agreements. On July 30, 1993, the Commission determined to review and remand the ID to the ALJ for further proceedings consistent with the Commission's Order. The basis for the Commission's review and remand of the ID was that the proposed consent order directed to Hutchings was ambiguous, and might be interpreted to be extraterritorial in scope, thus exceeding the Commission's jurisdiction.

The parties subsequently modified the proposed consent order and on August 13, 1993, filed a Modified Joint Motion to Terminate the investigation (Motion Docket No. 343–33). On August 18, 1993 the Commission investigative attorney filed a response in support of the Modified Joint Motion. On August 20, 1993, the ALJ issued an ID granting the modified joint motion to terminate (Order No. 18). No petitions for review or public or agency comments were filed.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53(h) (19 CFR 210.53(h)).

Copies of the nonconfidential version of the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–2648.

Issued: September 2, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–22027 Filed 9–8–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–653 [Preliminary]]

Sebacic Acid From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the People's Republic of China of sebacic acid,[2] provided for in subheading 2917.13.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On July 19, 1993, a petition was filed with the Commission and the Department of Commerce by Union Camp Corp., Wayne, NJ, alleging that an industry in the United States is materially injured by reason of LTFV imports of sebacic acid from the People's Republic of China. Accordingly, effective July 19, 1993, the Commission instituted antidumping investigation No. 731–TA–653 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 26, 1993 (58 FR 39835). The conference was held in Washington, DC, on August 9, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 2, 1993. The views of the Commission are contained in USITC Publication 2676 (September 1993), entitled "Sebacic Acid from The People's Republic of China: Investigation No. 731–TA–653 (Preliminary)."

Issued: September 3, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–22026 Filed 9–8–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–357]

Certain Sports Sandals and Components Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 9, 1993, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Deckers Corporation, 1140 Mark Avenue, Carpinteria, California 93013. A supplemental letter was filed on August 23, 1993. The complaint, as supplemented, alleges violations of

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] For purposes of this investigation, sebacic acid is defined as all grades of the dicarboxylic acid with the formula $(CH_2)_8(COOH)_2$. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C_{10} dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain sports sandals and components thereof, by reason of alleged infringement of claims 1 through 3 of U.S. Letters Patent No. 4,793,075, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Sarah C. Middleton, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2576.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of investigation: Having considered the complaint, the U.S. International Trade Commission, on September 1, 1993, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain sports sandals and components thereof, by reason of alleged infringement of claims 1 through 3 of U.S. Letters Patent No. 4,793,075, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Deckers Corporation Inc., 1140 Mark Avenue, Carpinteria, California 93013.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Sears Roebuck and Company, Inc., Sears Tower, Chicago, Illinois 60684.
Kinney Shoe Corporation, 233 Broadway Avenue, New York, New York 10279.
Cougar U.S.A., Inc., 2237 South James Road, Columbus, Ohio 43232.
G.H. Bass & Company, Inc., 360 U.S. Route 1, Portland, Maine 04105.
Brown Group Retail Inc., 8350 Maryland Avenue, Saint Louis, Missouri 63105.
Smith's Food & Drug Centers, Inc., 1550 S. Redwood Road, Salt Lake City, Utah 84130.
Burch's Fine Footwear, Inc., 223½ Valley River Court, Eugene, Oregon 97401.
Fang Chun Ind. Ltd. (Pan Yu), 1–2F 7A Building Lian Hua, Shan Bondeal Processing, Zone Pan Yu Guang Shou, Peoples Republic of China, 86 20 486 23669.

(c) Sarah C. Middleton, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401M, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against such respondent.

Issued: September 3, 1993.

By order of the Commission

Donna R. Koehnke,

Secretary.

[FR Doc. 93–22028 Filed 9–8–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–5750 or (202) 927–6212.

Comments on the following assessment are due 15 days after the date of availability:

AB–6 (Sub-No. 352X), Burlington Northern Railroad Company—Abandonment Exemption—In Emmons and McIntosh Counties, ND. Ea available 8/30/93.

AB–6 (Sub-No. 353X), Burlington Northern Railroad Company—Abandonment Exemption—In Grand Forks and Walsh Counties, ND. Ea available 8/30/93.

AB–6 (Sub-No. 354X), Burlington Northern Railroad Company—Abandonment Exemption—In McHenry and Bottineau Counties, ND. Ea available 8/30/93.

AB–6 (Sub-No. 355X), Burlington Northern Railroad Company—Abandonment Exemption—In Pembina County, ND. Ea available 8/30/93.

AB–6 (Sub-No. 356X), Burlington Northern Railroad Company—Abandonment Exemption—In Renville County, ND. Ea available 8/30/93.

Comments on the following assessment are due 30 days after the date of availability: None.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–21967 Filed 9–8–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Termination of Final Judgments

Notice is hereby given that defendant Bowling Proprietors' Association of America, Inc. (BPAA) has filed with the United States District Court for the Southern District of New York a motion to terminate the Final Judgments in *United States* v. *American Machine & Foundry Company, Inc., American Machine & Foundry Pinspotters, Inc., Brunswick Corporation, and Bowling Proprietors' Association of America, Inc.*, 62 Civ. 2650, and *United States* v. *Bowling Proprietors' Association of America, Inc.*, 64 Civ. 1922, and the Department of Justice (Department), in a stipulation also filed with the Court, has consented to termination of the Final Judgments, but has reserved the right to withdraw its consent based on public comments and for other reasons.

The complaint in *United States* v. *American Machine & Foundry Company, Inc., et al.*, filed on July 30, 1962, alleged that the defendants had conspired to restrain and monopolize, attempted to monopolize, and monopolized interstate trade and commerce in pinsetters and bowling equipment in violation of sections 1 and 2 of the Sherman Act. The BPAA was charged with having conspired with American Machine & Foundry Company, Inc. and American Machine & Foundry Pinspotters, Inc. (collectively AMF), and Brunswick Corporation (Brunswick) to restrict the number and size of bowling establishments in those areas of the country considered by the BPAA to be "overbuilt." The defendants were alleged to have effected their conspiracy through the use of maps and surveys made for the BPAA and a formula adopted by the defendant to prevent construction of new bowling establishments in those localities declared by the BPAA to be overbuilt. The government further alleged that, pursuant to the conspiracy, AMF and Brunswick refused to sell or lease bowling equipment to persons or firms wishing to build or enlarge bowling centers in such saturated areas. A final judgment terminating the action against Brunswick was entered on December 9, 1964. On March 7, 1968, the action against AMF was dismissed and the Brunswick decree was vacated.

The Final Judgment, entered on March 23, 1967, prohibits the BPAA from entering into any agreement, engaging in any conduct or utilizing any formulas, maps, surveys or criteria that would restrict the construction or expansion of bowling establishments. It further enjoins the defendant from inducing, urging or requiring manufacturers of bowling equipment or other persons to refuse to supply bowling equipment to any other person. It also prohibits the defendant from discriminating among similarly situated applicants for membership in the BPAA in the terms and conditions of such membership.

The complaint in *United States* v. *Bowling Proprietors' Association of America, Inc.*, filed on June 23, 1964, alleged that the defendant had conspired to restrain and monopolize interstate trade and commerce in the operation of bowling centers in violation of Sections 1 and 2 of the Sherman Act. The defendant was charged with having adopted and enforced tournament eligibility rules that prohibited bowlers from participating in BPAA-conducted or sponsored tournaments unless the bowlers confined their league bowling to BPAA establishments, and which restricted proprietors or employees of non-BPAA establishments from participating in BPAA-sponsored or conducted tournaments.

The Final Judgment, entered on May 19, 1967, ordered the defendant to revoke the offending tournament eligibility and other rules that restrict participation by bowlers and tournament sponsors to BPAA bowling establishments. It also prohibits the defendant from adopting any rules or other provisions that discriminate between BPAA and non-BPAA establishment patrons in determining eligibility to participate in BPAA tournaments; which fix or suggest the prices, terms or conditions imposed by any BPAA proprietor for use of his establishment or which interfere with any BPAA proprietor's solicitation of customers or manner of competing with any other BPAA proprietor; or requiring any affiliated association to do any of the things the defendant is prohibited from doing by the Judgment. The Judgment further required the defendant to include on all its tournament entry blanks and advertising, for a period of one year, a statement that its tournaments are open to bowlers who do their bowling in either BPAA or non-BPAA establishments, and to request that each BPAA member post the statement.

The government has filed with the court a memorandum setting forth the reasons why the government believes that termination of the Final Judgments would serve the public interest. Copies of the Complaints, Final Judgments, the Government's Memorandum, motion papers and all further papers filed with the court in connection with this motion will be available for inspection at room 3233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone 202–633–2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, United States Courthouse, Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Final Judgments to the government. Such comments must be received within the sixty-day period established by court order, and will be filed with the court by the government. Comments should be addressed to Ralph T. Giordano, Chief, New York Office, Antitrust Division, Department of Justice, New York, New York 10278 (telephone 212–264–0390).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–21894 Filed 9–8–93; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By Notice dated July 2, 1993, and published in the **Federal Register** on July 14, 1993 (58 FR 37970), Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methamphetamine (1105)	II
Phenylacetone (8501)	II

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: September 1, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–21964 Filed 9–8–93; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated February 24, 1993, and published in the **Federal Register** on March 8, 1993, (58 FR 12974), Mallinckrodt Specialty Chemicals Company, Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine Hydrochloride (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium, powdered (9639)	II
Opium, granulated (9640)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

A registered manufacturer did file written objections with respect to the registration of Mallinckrodt Specialty Chemicals Company. The firm subsequently withdrew its objection. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Director hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 30, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–21963 Filed 9–8–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council on Employee Welfare and Pension Benefit Plans; Extension of Announcement of Vacancies to October 18, 1993, Request for Nominations

The announcement of vacancies to the ERISA Advisory Council is being extended through October 18, 1993. Earlier candidates whose nominations have been acknowledge need not reapply.

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (The Council) which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployers plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). Not more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his functions under ERISA, and to submit to the Secretary, or their designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the council to the Secretary will be included in the Secretary's annual report to the Congress on ERISA.

The terms of five members of the Council expire on Sunday, November 14, 1993. The groups or fields represented are as follows: employee organizations, corporate trust, investment management, employers (multiemployer plans), and the general public.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to, Attention: William E. Morrow, Executive Secretary, ERISA Advisory Council, Frances Perking Building, U.S. Department of Labor, 200 Constitution Avenue, NW., suite N–5677, Washington, DC 20210. Recommendations must be delivered or mailed on or before October 18, 1993. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization. Each recommendation should identify the candidate by name, occupation or position, telephone number and address. It should also include a brief description of the candidate's qualifications, the group or field which he or she would represent for the purposes of Section 512 of ERISA, the candidates' political party affiliation, and whether the candidate is available and would accept.

Signed at Washington, DC, this 3rd day of September 1993.

Olena Berg,

Assistant Secretary of Labor for Pension and Welfare Benefit Programs.

[FR Doc. 93–21999 Filed 9–8–93; 8:45 am]

BILLING CODE 4510–29–M

MERIT SYSTEMS PROTECTION BOARD

Call for Riders for the U.S. Merit Systems Protection Board Publication, "Questions & Answers About Whistleblower Appeals"

AGENCY: U.S. Merit Systems Protection Board.

ACTION: Notice of call for riders for the Board's publication, "Questions & Answers About Whistleblower Appeals."

SUMMARY: The purpose of this notice is to inform Federal departments and agencies that the U.S. Merit Systems Protection Board's information publication, "Questions & Answers About Whistleblower Appeals," will be

available on a rider basis from the Government Printing Office. Departments and agencies may order this publication by riding the Board's requisition number 3–00203.

DATES: Agency requisitions must be received by the Government Printing Office on or before November 8, 1993.

ADDRESSES: Interested departments and agencies should send requisitions from their Washington, DC, headquarters office authorized to procure printing to the Government Printing Office, Requisition Section, room C–836, Washington, DC 20401. The estimated cost is approximately 50 cents per copy.

FOR FURTHER INFORMATION CONTACT: Duward Sumner, Office of Management Analysis, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419, 202–653–8892.

SUPPLEMENTARY INFORMATION: This publication contains information on the rights of Federal employees to appeal personnel actions allegedly based on whistleblowing to the Board and to request stays of such actions. It includes information on how to file whistleblower appeals and stay requests with the Board and other procedural information regarding the appeals process for whistleblower appeals. The publication is written in a question and answer format to enhance understanding.

In making this publication available, the Board intends to provide general information about whistleblower appeal rights and procedures in a convenient, readable format for Federal employees and others with an interest in the Board's activities. The publication is not all-inclusive, nor is it regulatory in nature. The availability of this publication does not relieve an agency of its obligation, under the Board's regulations at 5 CFR 1201.21, to provide an employee against whom an action appealable to the Board is taken with notice of the employee's appeal rights and the other information specified in the Board's regulations.

This requisition is for reprinting the latest edition of the publication, dated May 1992. Certain revisions may be made prior to printing, however, if legislation is enacted that affects information in the booklet. Currently, there are bills pending before the Congress that would make various changes in Federal whistleblower protections.

Because of budgetary constraints, the Board is unable to fill large volume orders for this publication; therefore, agencies are urged to take advantage of this opportunity to order copies directly from the Government Printing Office.

Dated: September 3, 1993.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 93–22031 Filed 9–8–93; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–075]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by October 12, 1993. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Ms. Eva L. Layne, Acting NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 358–1374.

Reports

Title: Origin-Destination Survey.
OMB Number: 2700–xxxx.
Type of Request: New.
Frequency of Report: On Occasion.
Type of Respondent: Individuals or households and Federal agencies or employees.
Number of Respondents: 10,000.
Responses per Respondents: 1.
Annual Responses: 10,000.
Hours per Response: .0625.
Annual Burden Hours: 625.
Abstract-Need/Uses: The origin and destination survey data will be used to provide management information to NASA in order to determine requirements for facility planning for the East Campus development.

Dated: September 1, 1993.

James D. Radosevich,

Acting Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 93–21936 Filed 9–8–93; 8:45 am]

BILLING CODE 7510–01–M

[Notice 93–074]

NASA Advisory Council (NAC) Task Force on National Facilities; Aeronautics R&D Facilities Task Group; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC Task Force on National Facilities, Aeronautics R&D Facilities Task Group.

DATES: September 21, 1993, 8:30 a.m. to 4:30 p.m.; and September 22, 1993, 8:30 a.m. to 4:30 p.m.

ADDRESSES: Figge International, Crystal Square 3, suite 705, 1735 Jefferson Davis Highway, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne McKinney, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681 (804/864–8686).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Facility Working Group Reports

—Facility Study Office Report

—Near Term Activities

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: September 2, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 92–21937 Filed 9–8–93; 8:45 am]

BILLING CODE 7510–01–M

[Notice 93-073]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Qvinta, Inc., Oxon Hill, Maryland, an exclusive, royalty-bearing, revocable license to practice the invention described and claimed in U.S. Patent No. 5,029,216, entitled "Visual Aid for the Hearing Impaired," filed on July 2, 1991. The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245, subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the partially exclusive license.

DATES: Comments to this notice must be received by November 8, 1993.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 358-2041.

Dated: August 31, 1993.

Edward A. Frankle,

General Counsel.

[FR Doc. 93-21938 Filed 9-8-93; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of change to an information collection that will affect the public. Interested persons are invited to submit comments by September 30, 1993. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357-7335. Copies of materials may be obtained at the above address or telephone. Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Grant Proposal Guide (Formerly Grants for Research and Education in Science and Engineering)

Affected Public: Individuals, State and Local Governments, businesses or other for profit, non-profit institutions, and small businesses or organizations

Respondents/Reporting Burden: 38,000 respondents; 120 hours per average response.

Abstract: The National Science Foundation supports research in most scientific disciplines, science education and research policy. This support is made through grants, contracts, and other agreements awarded to universities, university consortia, nonprofit, and other research organizations. These awards are based on proposals submitted to the Foundation.

Dated: September 2, 1993.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 93-21929 Filed 9-8-93; 8:45 a.m.]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-312]

Sacramento Municipal Utility District, Rancho Seco Nuclear Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering approving an exemption from 10 CFR 50.120. This exemption would be granted to the Sacramento Municipal Utility District, the licensee for the Rancho Seco Nuclear Generating Station located in Sacramento County, California.

Environmental Assessment

Identification of Proposed Action

The NRC, on its own motion, is considering granting a full exemption from the training program establishment, implementation, and maintenance requirements of 10 CFR 50.120. The licensee, in its letters dated July 19 and July 29, 1993, provided supplemental information supporting this action.

The Need for the Proposed Action

The Rancho Seco Nuclear Generating Station permanently ceased power operation in June 1989, fuel was moved from the reactor and placed into the spent fuel pool and a detailed plan to decommission the facility was developed. The proposed exemption would relieve the licensee from the requirements of 10 CFR 50.120. However, it would not relieve the licensee from previous requirements or commitments to train and qualify facility personnel.

Environmental Impacts of the Proposed Action

The proposed action does not have any effect on accident risk and the possibility of environmental impact is extremely remote.

Fuel handling accidents and complete loss of offsite power continue to be possible events at Rancho Seco Nuclear Generating Station. These events were addressed in Chapter 14 of the Rancho Seco Nuclear Generating Station Updated Safety Analysis Report and the licensee "Revision to Permanently Defueled Technical Specification Bases," dated September 23, 1992. The staff reviewed the licensee analysis and found the offsite radiological consequences acceptable. Additionally, the Sacramento Municipal Utility District is no longer required to conduct offsite emergency planning. Furthermore, the level of personnel activity at Rancho Seco Nuclear Generating Station is low compared to an operating reactor facility and the existing training programs are deemed acceptable, given the low level of activity at the site and the shutdown and defueled status of the plant.

Based on the staff review of the July 19 and July 29, 1993 submittals, the staff concludes that the environmental and safety consequences of accidents which may potentially result in a radiological release are greatly decreased given the permanently shutdown and defueled status of the Rancho Seco Nuclear Generating Station.

Therefore, the proposed action does not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure onsite.

Accordingly, the NRC staff concludes that the proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed

action does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the NRC staff concludes that there are no sigificant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the action. This would not reduce environmental impacts of plant operation and would not enhance the protection of the environment nor public health and safety.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in previous reviews for the Rancho Seco Nuclear Generating Station.

Agencies and Persons Consulted

The NRC staff consulted with the State of California regarding the environmental impacts of the proposed action.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the NRC staff concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC staff has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the licensee letters dated July 19, and July 29, 1993, which are available for public inspection at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room at the Central Library Government Documents, 828 I Street, Sacramento, California 95814.

Dated at Rockville, Maryland, this 2nd day of September 1993.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support Office of Nuclear Reactor Regulation.

[FR Doc. 93–21942 Filed 9–8–93; 8:45 am]

BILLING CODE 7590–01–M

Nuclear Safety Research Review Committee; Meeting of Advanced Reactor Subcommittee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The NSRRC Advanced Reactor Subcommittee will hold a meeting on October 15, 1993, in room 293, Building E–40, Massachusetts Institute of Technology, 1 Amherst Street, Cambridge, MA.

The entire meeting will be open to public attendance.

The Subcommittee will review accomplishments, status, and completion plans for research programs pursued in support of design certification review of advanced light-water-reactor systems—particularly the Westinghouse AP600 pressurized-water-reactor system and the General Electric SBWR boiling-water-reactor system. The agenda will be as follows:

8 a.m.—12 noon: Update on AP600 and SBWR testing (vendor and NRC sponsored) and thermal-hydraulic code selection, improvement, and assessment.

1 p.m.—6 p.m.: Containment code selection, validation, and maintenance; structural codes and recent updates of them; reliability of passive systems; prevention or minimization of generic failure mechanisms (notably erosion-corrosion and intergranular stress-corrosion cracking); positions regarding fatigue design criteria; qualification and reliability of values (notable motor-operated valves and check valves); and modular construction.

The Subcommittee will report to the full Committee on the facts and analyses discussed at the meeting.

A detailed agenda will be made available at the meeting.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Subcommittee. Questions may be asked only by members of the Committee and the staff. Persons desiring to make oral statements should notify the Nuclear Regulatory Commission staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to Mr. George Sege (telephone 301/492–3904) between 8 a.m. and 4:30 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: September 1, 1993.

George Sege,

Technical Assistant to the Director, Office of Nuclear Regulatory Research.

[FR Doc. 93–21943 Filed 9–8–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Initiation of a Review To Consider Designation of Ukraine as a Beneficiary Developing Country Under the Generalized System of Preferences; Solicitation of Public Comments Relating to the Designation Criteria

AGENCY: Office of the United States Trade Representative.

ACTION: Solicitation of public comment with respect to the eligibility of Ukraine for the Generalized System of Preferences (GSP) program.

SUMMARY: The purpose of this notice is to announce the initiation of a review to consider whether Ukraine satisfies criteria for designation as a beneficiary developing country under the GSP program, and to solicit public comment relating to the designation criteria.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395–6971. Public versions of all documents related to this review will be available for review by appointment with the USTR Public Reading Room shortly following filing deadlines. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395–6186.

SUPPLEMENTARY INFORMATION: The Trade Policy Staff Committee (TPSC) has initiated a review to determine if Ukraine meets the designation criteria of the GSP law and should be designated as a beneficiary. The GSP is provided

for in the Trade Act of 1974, as amended (19 U.S.C. 2461–2465). The designation criteria are listed in 19 U.S.C. 2462(a), 2462(b) and 2462(c). Interested parties are invited to submit comments regarding the eligibility of Ukraine for designation as a GSP beneficiary. The designation criteria mandate determinations related to participation in commodity cartels, preferential treatment provided by beneficiaries to other developed countries, expropriation without compensation, enforcement of arbitral awards, international terrorism, and internationally recognized worker rights. Other practices taken into account include market access for goods and services, investment practices and intellectual property rights.

An original and fourteen (14) copies of comments regarding Ukraine's eligibility may be submitted, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, 600 17th Street, NW., room 517, Washington, DC 20506. Comments must be received no later than 5 p.m. on October 1, 1993.

Information and comments submitted regarding this notice will be subject to public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6. If the document contains business confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and (14) copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version which does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "non-confidential").

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 93–21958 Filed 9–8–93, 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32836; File No. SR–NSCC–93–08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Filing and Order Granting Temporarily Approval on an Accelerated Basis of a Proposed Rule Change Concerning Book-Entry Money Settlements with Members

September 2, 1993.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 21, 1993, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–93–08) as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through August 31, 1994.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Changes

NSCC is asking for temporary renewal of its authority to allow book-entry money settlements with its members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 5, 1990, NSCC filed a proposed rule change with the Commission that was noticed in the **Federal Register**,[2] was subsequently thrice amended,[3] and on September 4, 1992, was approved on a temporary basis through August 31, 1993.[4] The current filing requests an extension of the temporary approval order through August 31, 1994.

As discussed in detail in the approval order of September 4, 1992, the rule change permits NSCC members to satisfy their settlement obligations to NSCC and NSCC to satisfy its settlement obligations to its members by means of electronic intra-bank funds transfers between members' accounts and NSCC's accounts at various settlement banks. Under the proposal, two types of intra-bank funds transfers are available. They include: (1) Electronic transfers whereby on settlement day NSCC pays members by check for next-day value and members pay NSCC by NSCC's directing the settlement banks to make irrevocable transfers from the members' accounts to NSCC's accounts for next-day availability or in reverse with members paying NSCC by check and NSCC effecting payment by electronic transfer ("one-way electronic transfers") and (2) electronic transfers whereby on settlement day both NSCC and members pay by NSCC's directing the settlement banks to make irrevocable transfers for next-day value without any netting ("two-way electronic transfers").

As a prerequisite to either NSCC or any of its members making a settlement payment by an electronic funds transfer, the proposed rule change imposes three requirements. First, any such payment must be effected on a "next-day funds availability basis."[5] Second, any such payment must be in conformity with an agreement, executed by NSCC and any bank that acts as a payment intermediary, which stipulates that any such funds transfer must be effected on an irrevocable and final basis. Third, any bank that acts as an intermediary for such funds transfers must meet NSCC's standards for letter of credit issuers.[6]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 28715 (December 12, 1990), 55 FR 715 (File No. SR–NSCC–90–21].

[3] Letters from: (1) Jeffrey F. Ingber, Associate General Counsel, NSCC, to Jonathan Kallman, Assistant Director, Division of Market Regulation ("Division"), Commission (August 14, 1991); (2) Peter J. Axilrod, Associate General Council, NSCC, to Jerry Carpenter, Branch Chief, Division, Commission (March 23, 1992); and (3) Peter J. Axilrod, Associate General Counsel, NSCC, to Thomas C. Etter, Jr., Attorney, Division, Commission (July 22, 1992).

[4] Securities Exchange Act Release No. 31157 (September 4, 1992), 57 FR 42602.

[5] The term "next-day funds" refers to funds paid today that will be available tomorrow. By contrast, "same-day funds" refers to funds that are immediately available.

[6] For a bank or trust company to be approved by NSCC to issue letters of credit on behalf of members for purposes of clearing fund requirements, the bank or trust company must meet specific standards in terms of: (1) Minimum levels of stockholders' equity and (2) certain credit ratings for its short term obligations as determined by Standard and Poor's Corporation or Moody's Investor Service, Inc. NSCC Rule 4, Section 1. Securities Exchange Act

Continued

NSCC believes that the proposed use of electronic funds transfers provides advantages to NSCC and to its members that include: (1) The elimination of labor and expenses associated with the physical movement of checks, (2) improved security due to reduced handling and movement of paper, and (3) earlier finality of payment. NSCC states in its filing that the proposal is consistent with Section 17A of the Act in that the proposal promotes the prompt and accurate clearance of securities transactions.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC believes that the proposed rule changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

NSCC has neither solicited nor received any comments.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Commission believes that the proposal is consistent with the Act and particularly with Section 17A of the Act.[8] Section 17A(a)(1) of the Act[9] encourages the use of efficient, effective, and safe procedures for securities clearance and settlement. Moreover, Section 17A(b)(3)(F) of the Act[10] requires that the rules of clearing agencies be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds in the custody or control of clearing agencies or for which they are responsible.

As set forth in its approval order of September 4, 1992, the Commission agrees with NSCC that substantial marketplace efficiencies can be achieved by authorizing NSCC and its members to effect electronic intra-bank funds transfers to satisfy their settlement obligations. The Commission recognizes that the exchange of checks is labor-intensive and that physical movement of checks can involve loss or delay. Intra-bank funds transfers should, therefore, enhance the proficiency of the transferring and the safeguarding of funds. Moreover, earlier finality of settlement provides certainty to the marketplace and serves to increase investor confidence in the markets.

NSCC has requested that the Commission find good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of the filings in the **Federal Register**. Accelerated approval will permit NSCC and its members to continue using intra-bank funds transfers without any disruption to this program. During the proposal's temporary approval period, the Commission and NSCC have continued to examine the procedures and safeguards applicable to intra-funds transfers and to date the existing program has functioned adequately. Therefore, the Commission believes there is good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing.

The Commission is temporarily approving this proposed rule change through August 31, 1994, in order that the Commission, NSCC, and other interested parties will be able to continue to assess prior to permanent Commission approval the effects intra-bank funds transfers have on money settlement payments at NSCC. Furthermore, the Commission notes that this order relates only to intra-bank funds transfers for next-day availability of funds. If and when NSCC desires to implement an inter-bank funds transfer program, NSCC will be required to submit for Commission approval a separate and comprehensive Rule 19b–4 filing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–93–08 and should be submitted by September 30, 1993.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[11] that the above-mentioned proposed rule change (File No. SR–NSCC–93–08) be, and hereby is, approved through August 31, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22019 Filed 9–8–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32822; File No. SR–NYSE–93–20]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Rescission of Exchange Rules 391 and 392 and an Amendment to Exchange Rule 393.10

August 31, 1993.

On April 7, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to rescind Rules 391 and 392 and to amend Rule 393.10 to delete any references to Rules 391 and 392. On May 27, 1993, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 32433 (June 8, 1993), 58 FR 33131 (June 15, 1993). No comments were received on the proposal.

In light of the Commission's rescission of Rule 10b–2, promulgated under the Act,[4] the Exchange is proposing to rescind its Rules 391 and 392. Rule 10b–2, adopted by the Commission in 1937, was part of a comprehensive package of anti-fraud

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Release No. 29444 (July 16, 1991), 56 FR 34081 [File No. SR–NSCC–91–03] (order * * *) approving NSCC's revised standards for approved issuers of letters of credit for clearing fund purposes).

[7] 15 U.S.C. 78q–1 (1988).

[8] 15 U.S.C. 78q–1 (1988).

[9] 15 U.S.C. 78q–1(a)(1) (1988).

[10] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Diana Luka-Hopson, Branch Chief, Commission, dated May 25, 1993, clarifying the statement of purpose section of the proposed rule change.

[4] See Securities Exchange Act Release No. 32100 (April 2, 1993), 58 18145 (April 8, 1993) (File No. S7–37–92).

provisions.[5] Its purpose was to prevent persons participating in the distribution of a security from stimulating the purchase of such, on an exchange, by paying compensation to any person for soliciting such purchases.

In 1942, the Commission amended Rule 10b–2 to permit an exemption for special offerings under a plan filed with the Commission by an exchange.[6] The NYSE's plan, contained in Rule 391, permits special offerings, at a fixed price and for a fixed period of time, on the Exchange where the quantity of stock involved cannot be absorbed in the regular auction market within a reasonable time and at a reasonable price. Rule 391 permits a person making a special offering to pay a special commission to a broker for a purchasing customer.

Rule 391 specifies a minimum share size of 1,000 shares, with a value of $25,000. The NYSE believes that, by today's standards, 1,000 shares of stock with a value of $25,000 is not a quantity of stock that cannot readily be absorbed in the regular auction market. Rule 391 predates special NYSE block trading rules, such as Rule 127, which defines a block of stock as 10,000 shares or a quantity of stock with a market value of $200,000 or more.

In 1953, the Commission amended Rule 10b–2 to expand the scope of its exemption by eliminating the requirement that the compensation paid be a "special commission."[7] NYSE Rule 392, which permits distributions of stock of the type addressed under Exchange Act Rule 10b–2, was also amended to require that compensation be paid in accordance with the terms of a Commission approved plan for an exchange distribution, and that the payer not know or have reasonable grounds to believe that transactions violating the terms of an approved plan were taking place.

In proposing the rescission of Rule 10b–2, the Commission stated that the significant changes that have take place in the securities markets since Rule 10b–2's adoption, and the coverage of other anti-fraud and anti-manipulation provisions of the federal securities laws, such as Rule 10b–5 and Rule 10b–6, made it appropriate to rescind Rule 10b–2.[8] The Exchange is now proposing to rescind Rules 391 and 392, its plans adopted in response to Rule 10b–2, because they are obsolete and have not been utilized in the past ten years. The Exchange is also proposing to amend Rule 393.10 (which pertains to secondary distributions) to delete a reference to the Exchange plans contained in Rules 391 and 392.

According to the Exchange, the basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange proposal to rescind Rules 391 and 392 and to amend Rule 393.10 is consistent with these objectives in that it deletes inefficient and unused Exchange plans.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b).[9] In particular, the Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[10] The Commission believes that the rescission of Exchange Rules 391 and 392, and the amendment to Exchange Rule 393.10 (which deletes any reference to Exchange Rules 391 and 392), is appropriate because these Exchange Rules were adopted in response to recently rescinded Rule 10b–2 under the Act. The Commission believes that the activities with which these Exchange rules are concerned are sufficiently addressed by the general anti-fraud and anti-manipulation provisions of the federal securities laws as discussed in the Commission's release rescinding Rule 10b–2 of the Act. Furthermore, the Commission believes that it is consistent with the Act to allow the Exchange to delete obsolete and redundant rules.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSE–93–20) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21896 Filed 9–8–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32840; International Series No. 579; File No. SR–NYSE–93–31]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Listing and Trading of Global Telecommunications Market Index Target-Term Securities

September 2, 1993.

I. Introduction

On July 19, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade Market Index Target-Term Securities ("MITTS"), the return of which is based upon a global portfolio of securities of telecommunications companies ("Global Telecommunications Portfolio").[3]

Notice of the proposed rule change was published for comment and appeared in the **Federal Register** on August 5, 1993.[4] No comments were received on the proposal. This order approves the proposal.[5]

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[5] See Securities Exchange Act Release No. 1330 (August 4, 1937).

[6] See Securities Exchange Act Release No. 3146 (February 6, 1942).

[7] See Securities Exchange Act Release No. 4922 (August 20, 1953).

[8] The Exchange supported the Commission proposal to rescind Rule 10b–2. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan Katz, Secretary, Commission, dated December 29, 1992.

[9] 15 U.S.C. 78f(b) (1988).

[10] 15 U.S.C. 78f(b) (5) (1988).

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 U.S.C. 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1991).

[3] The Global Telecommunications Portfolio is a static portfolio consisting of 22 equity securities, either listed as common shares in the United States, American Depositary Receipts ("ADRs"), or Global Depositary Receipts ("GDRs", which together with ADRs, are hereinafter collectively referred to as Depositary Receipts or "DRs"), with companies providing information services, basic telecommunications services, and specialized services within the telecommunications industry. A depositary Receipt is a negotiable receipt which is issued by a depositary, generally a bank, representing shares of a foreign issuer that have been deposited and are held, on behalf of holders of the DRs, at a custodian bank in the foreign issuer's home country. The securities which comprise the Global Telecommunications Portfolio are securities issued by corporations formed under the laws of the United States, United Kingdom, Canada, the Philippines, Chile, New Zealand, Hong Kong, Israel, Spain, Mexico, Brazil, Argentina, Sweden, and France.

[4] See Securities Exchange Act Release No. 32696 (July 29, 1993), 58 FR 41819.

[5] This order specifically approves a MITT based on the Global Telecommunications Portfolio. In the future, MITTS proposals based on non-approved

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II. Description of the Proposal

Under Section 703.19 of the NYSE's Listed Company Manual, the Exchange may approve for listing securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, and warrants.[6] The NYSE is now proposing under Section 703.19 of the Listed Company Manual to list for trading MITTS based on the Global Telecommunications Portfolio ("Global Telecommunications MITTS"). Global Telecommunications MITTS will conform to the listing guidelines under § 703.19 of the Listed Company Manual, which provide that (1) issues must have a minimum public distribution of one million securities; (2) a minimum of 400 shareholders; (3) a minimum duration of one year; (4) at least a $4 million market value; and (5) otherwise comply with the NYSE's initial listing criteria.[7] In addition, the Exchange will monitor each issue to verify that it complies with the Exchange's continued listing criteria.[8] MITTS are non-callable senior hybrid debt securities of Merrill Lynch & Co., Inc. ("Merrill Lynch") that provide for a single payment at maturity, and will bear no periodic payments of interest. At maturity, a holder of a MITT is entitled to receive from the issuer a minimum portion of the principal amount plus an amount based upon the change in the market value of a stock index or portfolio. Global Telecommunications MITTS are cash-settled in that they give the holder any right to receive any portfolio security or any other ownership right or interest in the portfolio securities, although the return on the investment is based on the aggregate portfolio value of the portfolio securities.

According to the NYSE proposal, Global Telecommunications MITTS will allow investors to combine the protection of a portion of the principal amount of the MITTS with potential additional payments based upon the performance of a portfolio of securities representing the global telecommunications industry. In particular, the proposed Global Telecommunications MITTS will provide 90 percent principal protection of the original issue price at maturity with the opportunity to participate in any upside appreciation of the underlying Global Telecommunications Portfolio. Global Telecommunications MITTS will have a term of five years.

The Global Telecommunications Portfolio consists of securities of 22 telecommunications companies that have significantly different levels of market capitalization, ranging from a high of approximately $86.8 billion (American Telephone & Telegraph) to a low of $1.7 billion (Telefonica de Argentina). The securities include the Exchange-listed common stock of seven U.S. telecommunications companies,[9] the common stock of four foreign issuers (which stock is listed or trading on, or traded over the facilities of, U.S. securities markets),[10] and DRs of 11 foreign issuers.[11] The average daily trading volume for the components of the Global Telecommunications Portfolio as of June 25, 1993, ranged from 1.9 million ADR shares for Telefonos de Mexico S.A. de C.V., to 11,177 ADR shares for Telefonica de Argentina.[12] In addition, the public float as of June 25, 1993 for the securities comprising the global portfolio ranged from a high of $83.6 billion for American Telephone & Telegraph to a low of $1.8 billion for Philippine Long Distance Telephone Company.[13]

At the outset, each of the securities in the Global Telecommunications Portfolio will have equal representation. Specifically, each security included in the portfolio will be assigned a multiplier on the date of issuance so that the security represents an equal percentage of the value of the entire portfolio on the date of issuance. The multiplier indicates the number of shares (or fraction of one share) of a security, given its market price, to be included in the calculation of the portfolio. Accordingly, each of the 22 companies included in the Global Telecommunications Portfolio will represent 4.545 percent of the total portfolio at the time of issuance.

The multiplier for each security of the Global Telecommunications Portfolio will generally remain unchanged except for limited adjustments that may be necessary as a result of stock splits or stock dividends.[14] There will be no adjustments to the multipliers to reflect cash dividends paid with respect to a portfolio security. In addition, no adjustments of any multiplier of a

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indexes or portfolios would require a separate Rule 19b–4 filing with the Commission.

[6] See Securities Exchange Act Release Nos. 29229 (May 23, 1991), 56 FR 24852 and 28217 (July 18, 1990), 55 FR 30056 ("Hybrid Approval Orders").

[7] The hybrid listing standards in Section 703.19 of the NYSE's Listed Company Manual are intended to accommodate listed companies in good standing, their subsidiaries and affiliates, and non-listed equities which meet the Exchange's original listing standards. Domestic issuers must also meet the earnings and net tangible assets criteria set forth in sections 102.01 and 102.02 of the NYSE's Listed Company Manual. Specifically, the minimum original listing criteria requires that issuers have: (1) 2,000 holders holding 100 shares or more or have 2,200 holders with an average monthly trading volume of 100,000 shares; (2) a public float of 1.1 million shares; (3) an aggregate public market value of $18 million or total net tangible assets of $18 million; and (4) earnings before taxes of $2.5 million in the latest fiscal year and earnings before taxes of $2 million in each of the preceding two fiscal years, or earnings before taxes of $6.5 million in the aggregate for the last three fiscal years with a $4.5 million minimum in the most recent fiscal year (all three years are required to be profitable).

[8] See section 802 of the NYSE's Listed Company Manual. The continued listing criteria for capital or common stock requires that: (1) The number of holders of 100 shares or more is equal to or greater than 1,200; (2) the number of publicly-held shares is equal to or greater than 600,000; (3) the aggregate market value of publicly-held shares is equal to or greater than $5 million; (4) the aggregate market value of shares outstanding (excluding treasury stock) is equal to or greater than $8 million and average net income after taxes for the past three years is equal to or greater than $600,000; and (5) net tangible assets available to common stock are equal to or greater than $8 million and average net income after taxes for the past three years is equal to or greater than $600,000. In addition, the continued listing standards for bonds require that outstanding publicly-held bonds have an aggregate market value or principal amount equal to or greater than $1 million.

[9] The U.S. telecommunication companies include: AT&T, Bell Atlantic Corporation, BellSouth Corporation, GTE Corporation, NYNEX Corporation, Pacific Telesis Group, and Southwestern Bell Corporation. All of these common stocks are listed and traded on the NYSE.

[10] The foreign common stock issuers include: Newbridge Networks (Canada), Philippine Long Distance Telephone (Philippines), Rogers Cantel (Canada), and Tadiran (Israel). Of these stocks, Newbridge Networks and Rogers Cantel are traded through the National Association of Securities Dealers, Inc. ("NASD") Automated Quotation ("NASDAQ") system's National Market System ("NMS"), while Philippine Long Distance Telephone is traded on the American Stock Exchange and Tadiran on the NYSE.

[11] The Depositary Receipts of the foreign issuers include: Alcatel Alsthsom Compagnie Generale d'Electricite (France), British Telecommunications (United Kingdom), Compania de Telefonos de Chile (Chile), L.M. Ericsson Telephone Company (Sweden), Hong Kong Telecommunications (Hong Kong), Telecom Corporation of New Zealand Limited (New Zealand), Telecomunicoes Brasileiras (Brazil), Telefonica de Argentina (Argentina), Telefonica de Espana (Spain), Telefonos de Mexico, S.A. de C.V. (Mexico), and Vodaphone Group (United Kingdom). Of the 11 DRs comprising the global portfolio, only Telefonica de Argentina and Telecomunicoes Brasileiras S.A., are not listed and traded by a U.S. securities exchange or quoted through the NASDAQ system. Telecomunicoes Brasileiras S.A. is an ADR traded OTC through the NASD's bulletin board, while Telefonica de Argentina is traded both over-the-counter ("OTC") and on the London Stock Exchange ("LSE").

[12] See letter from William R. Massey, Brown & Wood, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated June 28, 1993 ("June 28 Letter").

[13] *Id.*

[14] Merrill Lynch will adjust the multiplier of any portfolio security if the security is subject to a stock split or reverse split or similar adjustment in the case of a DR, to equal the product of the number of shares issued with respect to one share of the portfolio security, or the number of receipts issued with respect to a DR, and the prior multiplier. In the case of a stock dividend, the multiplier will be adjusted so that the new multiplier will equal the former multiplier plus the product of the number of shares of such portfolio security issued with respect to one share of the portfolio security and the prior mutiplier.

portfolio security will be done unless such adjustment would require a change of at least 1% in the multiplier then in effect.

If the issuer of a security included in the Global Telecommunications Portfolio no longer exists, whether for reason of a merger, acquisition or similar type of corporate control transaction, then Merrill Lynch will assign to that security a value equal to the security's final value for the purposes of calculating portfolio values. For example, if a company included in the portfolio is acquired by another company, Merrill Lynch shall thereafter assign a value to the shares of the acquired company's securities equal to the value per share at which time the acquisition takes place.

If the issuer of a portfolio security is in the process of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, such security will continue to be included in the Global Telecommunications Portfolio so long as a market price for such security is available. If a market price is no longer available for a portfolio security, including, but not limited to, liquidation, bankruptcy, insolvency, or any other similar proceeding, then the value of the portfolio security will be assigned a value of zero in connection with calculating the Global Telecommunications Portfolio Value and Closing Portfolio Value, for so long as no market price exists for that security.[15]

The value of the Global Telecommunications Portfolio will initially be calculated once a day by a Merrill Lynch affiliate, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS"). These values will be disseminated to investors once a day after 5 p.m. (New York time). The portfolio value, for any day, will equal the sum of the products of the most recently available market prices and the applicable multipliers for the portfolio securities.[16] In addition, the Securities Pricing Service ("SPS"), a division of MLPFS, will calculate and regularly publish the portfolio value during the term of the MITTS. Moreover, MLPFS and SPS have undertaken to implement certain surveillance and compliance procedures with respect to the dissemination of the portfolio value, requiring that the portfolio value be announced only through public dissemination and restricting the access of the MLPFS trading desk to the portfolio value determined by SPS.

Global Telecommunications MITTS will be denominated in U.S. dollars [17] and will entitle the owner at maturity [18] to receive an amount based upon the percentage change in the value of the Global Telecommunications Portfolio from the date of issuance to the "final calculation period," subject to a minimum repayment amount of 90% of the original principal amount. The "final calculation period" is a specified number of days prior to the maturity date.[19] The average value of the Global Telecommunications Portfolio during the final calculation period will be used in calculating the amount holders will receive upon maturity.[20]

If the market value of the portfolio has declined, the holder will receive not less than 90% of the original principal amount of the security. For example, if the market value of the portfolio used to calculate the amount payable at maturity has declined more than ten percent, the holders of the first issue of Global Telecommunications MITTS will receive 90 percent of the principal amount of the securities. The payment in addition to the minimum principal amount at maturity is based on changes in the value of the portfolio, but does not reflect the payment of dividends on the securities that comprise the portfolio.

Like other MITTS listed on the NYSE, Global Telecommunications MITTS may not be redeemed prior to maturity and are not callable by the issuer. Holders of MITTS will be able to cash-out of their investment by selling the security on the NYSE. The Exchange anticipates that the trading value of the security in this secondary trading market will depend in large part on the value of the securities comprising the Global Telecommunications Portfolio and also on such other factors as the level of interest rates, the volatility of the value of the Global Telecommunications Portfolio, the time remaining to maturity, dividend rates, and the creditworthiness of the issuer, Merrill Lynch.[21]

Because MITTS are linked to a portfolio of equity securities, the NYSE's existing equity floor trading rules will apply to the trading of MITTS. First, pursuant to NYSE Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading MITTS.[22] Second, consistent with NYSE Rule 405, the Exchange will further require that a member or member firm specifically approve a customer's account for trading MITTS prior to, or promptly after, the completion of the transaction. Third, MITTS will be

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[15] Merrill Lynch will not attempt to find a replacement stock or to compensate for the extinction of a security due to bankruptcy or a similar event.

[16] The market prices used for calculation of the portfolio value is the last reported sale price if the portfolio security is listed and traded on a national securities exchange, is a NASDAQ–NMS security, or is included in the OTC Bulletin Board Service operated by the NASD. If a portfolio security is issued by a U.S. company and is not listed on a national securities exchange, is not a NASDAQ–NMS security, or is not included in the OTC Bulletin Board Service operated by the NASD, then the market price is the average of the last available bid and offer prices of the three most active dealers, selected by the calculation agent, MLPFS, in the U.S. OTC market. If the portfolio security is a security of a foreign issuer or is a DR, that is not listed on a national securities exchange in the U.S. or is not a NASDAQ–NMS security or included in the OTC Bulletin Board Service operated by the NASD, then the market price is the last reported sale price on the securities exchange on which the portfolio security is listed having the greatest volume of trading for the preceding calendar month as determined by MLPFS, provided that if such last reported sale price is for a transaction that occurred more than 4 hours prior to the close of such exchange, then the market price is the average of the last available bid and offer price on such exchange. If a foreign-issued portfolio security is not listed or trading on any securities exchange or if the last reported sale price or bid and offer are not obtainable, then the market price is the last reported sale price on the OTC market with the greatest volume of trading as determined by MLPFS. However, if such last reported sale price is for a transaction which occurred more than 4 hours prior to when trading in such OTC market typically ends, then the market price is the average of the last available bid and offer price of the three most active dealers, as selected by MLPFS. If MLPFS is required to use the bid and offer price for a portfolio security to determine the market price of such portfolio security, then MLPFS will not use any bid or offer price announced by MLPFS or any other affiliate of Merrill Lynch. See July 9, 1993 Letter *infra* note 35.

[17] A number of portfolio securities have been issued by non-U.S. companies, and are quoted in currencies other than U.S. dollars. Therefore, investments in securities indexed to the value of non-U.S. securities may involve greater risks, subject to fluctuations of foreign exchange rates, future foreign political and economic developments, and the possible imposition of exchange controls or other foreign governmental laws or restrictions applicable to such investments.

[18] The maturity date for Global Telecommunications MITTS is five years from issuance.

[19] In particular, the final calculation period for Global Telecommunications MITTS will consist of the 60 business days prior to maturity of the security. Within this time period, Merrill Lynch will use for calculation purposes, the first 30 business days that occur without a market disruption event.

[20] The closing value for the Global Telecommunications Portfolio will be determined by an affiliate of Merrill Lynch, MLPFS, and will equal the sum of the products of the average market price and the applicable multiplier for each portfolio security over the final calculation period.

[21] Merrill Lynch will deposit registered global securities representing Global Telecommunications MITTS with its depository, The Depository Trust Company ("DTC"), so as to permit book-entry settlement of transactions by participants in DTC.

[22] NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

subject to the equity margin rules of the Exchange. Fourth, in accordance with the NYSE's Hybrid Approval Orders, the Exchange will prior to trading MITTS, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in MITTS and highlighting the special risks and characteristics of the Global Telecommunications MITT.[23]

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5). Specifically, the Commission believes that providing for exchange-trading of Global Telecommunication MITTS will offer a new and innovative means of participating in the global securities markets for telecommunication companies. In particular, the Commission believes that Global Telecommunications MITTS will permit investors to gain foreign and domestic market equity exposure in the telecommunications area, while at the same time, limiting the downside risk of the original investment.[24] Accordingly, the Commission has concluded that the NYSE listing standards for Global Telecommunication MITTS are consistent with the Act.

Although MITTS are not leveraged instruments, their payout at maturity will, in part, be derived based upon the underlying portfolio of common stocks and DRs. Specifically, Global Telecommunications MITTS, will allow investors to participate at maturity in the full upside appreciation, if any, of the underlying Global Portfolio, while guaranteeing that investors will receive no less than 90% of the investor's original principal investment regardless of the performance of the underlying Global Portfolio during the five-year term of the securities. In essence, the Commission believes that MITTS are hybrid securities whose rate of return is priced in relation to an underlying equity portfolio. Accordingly, the level of risk involved in the purchase or sale of a Global Telecommunications MITT is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, the Commission has several specific concerns regarding the trading of these securities.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to Global Telecommunications MITTS. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of MITTS. Moreover, the Exchange will distribute a circular to its membership calling attention to the specific risks associated with Global Telecommunications MITTS and, pursuant to the Exchange's listing criteria, only substantial companies capable of meeting their obligations will be eligible to issue the MITTS.

The Commission notes that MLPFS intends to publish the value of the Global Telecommunications Portfolio once each business day after 5 p.m. (New York time) for dissemination to electronic reporting services as well as newspapers and trade publications. Merrill Lynch asserts that the value of the MITT does not necessarily correlate with intra-day price moves related to the underlying component securities. For example, price movements in the existing Standard & Poor's ("S&P") 500 Index MITTS, according to Merrill Lynch, do not correlate with minute to minute changes in the value of the S&P 500 Index, largely as a result of the time value to maturity of the MITT. Further, Merrill Lynch claims the pricing of the MITT reflects to a greater extent the credit risk of the issuer, Merrill Lynch, in guaranteeing the payment of principal.

As a general matter, the Commission believes that for new derivative products, real-time dissemination of the value of the underlying instrument should be provided to all investors. Nevertheless, the Commission has determined to permit Global Telecommunications MITTS to trade without real-time dissemination at this time for several reasons. First, a MITT is not a leveraged product that has its value determined primarily from the underlying individual security or security index but rather guarantees recoupment of 90% of the principal amount. Second, in the case of a MITT, price movements in the underlying securities generally will not be the determining pricing factor for the MITT. Rather, other factors such as the credit-worthiness of the issuer will be germane. Third, the MITT should, at least prior to its expiration, trade more like a bond or debt security, based on the issuer's ability to perform rather than the value of the underlying portfolio. The Commission recognizes, however, that as the MITT approaches maturity, the price movements of the underlying portfolio securities may take on greater significance for investors. As a result, Merrill Lynch has agreed to monitor the volatility of the market price of the Global Telecommunications Portfolio MITTS in relation to the underlying Global Telecommunications Portfolio. In the event intra-day volatility due to changes in the Global Telecommunications Portfolio value becomes significant, Merrill Lynch will discuss with the Commission the need to implement more frequent portfolio value dissemination.[25] Accordingly, the Commission believes that real-time dissemination of the aggregate market value of the underlying Global Telecommunications Portfolio is not necessary at this time but would nevertheless expect Merrill Lynch, along with the NYSE, to monitor the product to determine if increased reporting is necessary especially as the product approaches maturity.[26]

The Commission realizes that MITTS do not contain a clearinghouse guarantee (as in the case with standardized options) but are instead dependent upon the individual credit of the issuer.[27] This heightens the possibility that a purchaser of Global Telecommunications MITTS may not be able to receive the promised payment of 90% of principal upon maturity. To some extent this risk is minimized by the Exchange's continued listing standards which require issuers to maintain an aggregate market value of

[23] The Commission expects, and the Exchange has agreed, to provide a draft of the MITTS information circular for Commission review prior to its dissemination to members.

[24] Pursuant to section 6(b)(5) of the Act the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[25] See letter from William R. Massey, Brown & Wood, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated September 1, 1993. Indeed, if the intra-day volatility changes were significant to the pricing of the MITT, we would expect real-time reporting.

[26] *Id.* Notwithstanding the above, the Commission still believes that it is useful and beneficial for all investors and market participants to have access to the value of the portfolio on a real-time basis and encourages the NYSE and Merrill Lynch to further explore the possibilities in this area.

[27] In this case, the issuer of the Global Telecommunications MITTS will be Merrill Lynch.

$5 million for its publicly-held shares.[28] In addition, the hybrid listing standards further require that an issue of MITT securities have at least $4 million in market value. In any event, financial information regarding the issuer of the Global Telecommunications MITT in addition to the information on the issuers of the underlying securities comprising the Global Portfolio will be publicly available.[29]

There is a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or broker-dealer subsidiary issuing MITTS or providing a hedge for the issue will incur position exposure. This position exposure, if left partially hedged or dynamically hedged, could not only create a risk of non-performance but add a systemic risk in that the broker-dealer will have to hedge the position to minimize losses should the market turn against it. However, the Global Telecommunications MITT issuance ($25 million in aggregate principal amount) is small in relation to Merrill Lynch's total net worth as not to raise significant concerns.[30] Nevertheless, the Exchange should continue to monitor this area.

The Commission believes that the listing and trading of MITTS should not unduly impact the market for the underlying securities comprising the Global Telecommunications Portfolio. First, the underlying securities comprising the portfolio are either well-capitalized stocks,[31] or in the case of DRs, represent in dollar terms substantial market value.[32] Second, the issuers of the underlying securities comprising the global portfolio, are subject to the reporting requirements under the Act, and the portfolio securities are either listed or traded on, or traded over the facilities of, U.S. securities markets.[33] Third, the Exchange has surveillance agreements in place for at least 86% of the securities in the portfolio for the sharing of market information.[34] This in addition to the NYSE's surveillance of MITTS will serve to deter as well as detect any potential manipulation. Fourth, Merrill Lynch, as a market-maker for the DRs not listed on an exchange or quoted through NASDAQ, will not include quotations made by or through Merrill Lynch or its affiliates, when calculating the value of the Global Telecommunications Portfolio.[35] Lastly, MLPFS has agreed to restrict information with respect to all calculations of portfolio securities so that individuals trading such securities at MLPFS will only be able to receive such information through public means and not prior to its release to the public.[36]

The Commission finds good cause for approving the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because Global Telecommunications Portfolio MITTS are similar to existing MITTS traded on the Exchange. In addition, the proposal was notice for the full 21 day comment period and received no comments. Therefore, the Commission believes it is consistent with section 6(b)(5) of the Act to approve the NYSE proposal on an accelerated basis.

IV. Conclusion

Based on the above, the Commission believes the trading of Global Telecommunications MITTS on the NYSE is appropriate.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[37] that the proposed rule change (SR–NYSE–93–31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22023 Filed 9–8–93; 8:45 am]

BILLING CODE 8010–01–M

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[28] See *supra* note 8. Issuers of MITTS (as well as other hybrid securities issued according to § 703.19) must either be a listed company in good standing or a non-listed company which meets the Exchange's original listing standards. Merrill Lynch, the issuer of the Global Telecommunications MITTS, is listed and registered under section 12 of the Act on the NYSE.

[29] The companies that comprise the underlying Global Telecommunications Portfolio are either reporting companies under the Act or subject to a limited exemption under Rule 12g3–2(b) of the Act. Specifically, all 7 U.S. companies are reporting companies that file reports on Form 10–K, 10–Q and 8–K (similarly 3 foreign issuers also file these reports with the Commission). In addition, 11 foreign issuers file public reports with the Commission through the foreign issuer reporting system on Forms 20–F and 6–K. Accordingly, only 2 issuers (Telecommunicoes Braseleiras S.A. and Telefonica de Argentina) are exempt from the filing requirements of section 12(g) of the Act as a result of Rule 12g3–2(b). This Rule, however, does require these issuers to provide the Commission with: (1) Information made public in their home country; (2) information that is required to be filed with a stock exchange on which its securities are traded and which is made public by such exchange; and (3) information distributed or required to be distributed to its security holders.

[30] As of June 25, 1993, Merrill Lynch had a net worth of $6.39 billion.

[31] The common stocks represented in the global portfolio have the following capitalizations: AT&T ($83.6 billion), Bell Atlantic Corporation ($24.9 billion), BellSouth Corporation ($27.2 billion), GTE Corporation ($34.2 billion), Newbridge Network Corporation ($2.8 billion), NYNEX Corporation ($18.1 billion), Pacific Telesis Group ($19.5 billion), Philippine Long Distance Telephone Company ($1.8 billion), Rogers Cantel Mobile Communications ($2.1 billion), Southwestern Bell Corporation ($22.4 billion), and Tadiran LTD ($2.7 billion).

[32] The market value capitalization in U.S. dollars for the respective ADR/GDRs issuers is as follows: Alcatel Alsthsom Compagnie Generale d'Electricite ($13.3 billion), British Telecommunications PLC ($39.3 billion), Compania de Telefonos de Chile S.A. ($3.3 billion), Hong Kong Telecommunications PLC ($15.2 billion), L.M. Ericsson Telephone Company ($8.8 billion), Telecom Corporation of New Zealand Limited ($3.9 billion), Telecomunicoes Braseleiras S.A. ($9.1 billion), Telefonica de Argentina ($3.8 billion), Telefonica de Espana ($10 billion), Telefonos de Mexico, S.A. de C.V. ($25 billion), and Vodaphone Group PLC ($8.7 billion).

[33] The Commission notes that Telecomunicoes Braseleiras S.A. is reported on the electronic bulletin board operated by the NASD, and Telefonica de Argentina, the global share, is traded on the London Stock Exchange and OTC in the U.S. The remaining 20 securities are traded on either the NYSE, Amex, or NASDAQ–NMS. 11 out of the 22 stocks in the portfolio have their common stock traded on the NYSE, Amex, or NASDAQ–NMS. All of these markets have information sharing agreements pursuant to the Intermarket Surveillance Group ("ISG"). In addition of the remaining 11 stocks on which DRs are traded, 10 are ADRs traded in U.S. markets based on stocks from foreign markets, while 1 is a GDR tranche traded on the LSE. The NYSE has surveillance sharing agreements in place with 9 out of these 11 foreign markets underlying the DRs.

[34] The NYSE is currently in discussions with the New Zealand Exchange in connection with the depositary receipt, Telecom Corporation of New Zealand Limited, and the Mexican Exchange for Telefonos de Mexico, S.A. de C.V. Market Information Agreements only require that the parties provide each other with market trading activity, and do not require the exchange of information about the identity of the ultimate purchasers of securities or clearing activity.

[35] As of July 9, 1993, Telecomunicoes Braseleiras S.A. and Telefonica de Argentina were the only two securities not listed on a U.S. securities exchange or quoted through the NASDAQ system. Telecomunicoes Braseleiras S.A. is an ADR traded OTC through the NASD's bulletin board, while Telefonica de Argentina is traded both OTC and on the LSE. Accordingly, Merrill Lynch, for purposes of calculating the Global Telecommunications Portfolio, would disregard quotations for these securities made by or through Merrill Lynch or any of its affiliates. See letter from William R. Massey, Brown & Wood, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated July 9, 1993 ("July 9 Letter").

[36] See June 28 Letter *supra* note 12.

[37] 15 U.S.C. 78s(b)(2) (1982).

[38] 17 CFR 200.30–3(a)(12) (1992).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

September 2, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Ahmanson (H.F.) & Co./DE

Depository Shares (rep. 1/10 sh. of 6% Cum. Conv. Pfd. Stk. $.01 Par Value) (File No. 7–11222)
Borg-Warner Automotive Inc.
Common Stock, $.01 Par Value (File No. 7–11223)
Crown America Realty Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11224)
MuniVest Pennsylvania Insured Fund
Shares of Beneficial Interest, $.10 Par Value (File No. 7–11225)
National Golf Properties Inc.
Common Stock, $.01 Par Value (File No. 7–11226)
ROC Communities Inc.
Common Stock, $.01 Par Value (File No. 7–11227)
Salomon Brothers 2008 Worldwide Dollar Government Term Trust Inc.
Common Stock, $.001 Par Value (File No. 7–11228)
Saul Centers Inc.
Common Stock, $.01 Par Value (File No. 7–11229)
Southern Pacific Rail Corp.
Common Stock, $.001 Par Value (File No. 7–11230)
Texas Utilities Electric Co.
Depository Shares, Ser. A (rep./ ¼ sh. of $7.50 Cum. Pfd. Stk., without Par Value (File No. 7–11231)
Town & Country Trust (The)
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11232)
Wolverine Tube Inc.
Common Stock, $.01 Par Value (File No. 7–11233)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 22, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–21897 Filed 9–8–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19679; 811–5317]

Colonial Government Trust; Notice of Application

September 2, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregulation under the Investment Company Act of 1940 (the "Act").

APPLICANT: Colonial Government Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 7, 1993 and amended on August 31, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 27, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW. Washington, DC 20549. Applicant, One Financial Center, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end management investment company that was organized as a business trust under the laws of Massachusetts. On September 4, 1987, applicant registered under the Act is an investment company, and filed a registration statement of register its shares under the Securities Act of 1993. The registration statement was declared effective on March 24, 1988. Immediately after the Trust's registration statement became effective, the Trust and its principal underwriter decided not to consummate the proposed public offering of its shares. The Trust has conducted no public offering or other operations since March 24, 1988.

2. On April 6, 1988, the Trust distributed all of its assets in complete liquidation to its sole shareholder—its investment adviser, Colonial Management Associates. These assets consisted of Colonial Management's capital contribution of $100,161 to the Trust. On June 19, 1992, the board of trustees of the Trust adopted a plan of liquidation for the Trust.

3. Applicant has not debts or other liabilities that remain outstanding. Applicant is not a party to any liquidation for the Trust.

3. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

4. Applicant will file certificates of dissolution with Massachusetts authorities after the requested order is obtained.

5. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21952 Filed 9–8–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19684; 811–3483]

The Guardian Cash Management Trust; Application for Deregistration

September 3, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Guardian Cash Management Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICANT: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on August 19, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's

Secretary and serving application with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 28, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 201 Park Avenue South, Mail Stop 9C, New York, New York 10003.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, (202) 272–3030, or Barry D. Miller, Senior Special Counsel, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified, management investment company formed as a Massachusetts business trust. On June 9, 1982, applicant registered as an investment company under the Act and filed a registration statement pursuant to section 8(b) of the Act. On that same date, applicant filed a registration statement pursuant to the Securities Act of 1933. Applicant's registration statement became effective, and applicant's initial public offering of its shares commenced, on September 13, 1982.

2. On October 8, 1992, applicant's board of trustees approved an Agreement and Plan of Reorganization (the "Reorganization") between applicant and The Park Avenue Portfolio (the "Portfolio"), a Massachusetts business trust that is registered as an open-end diversified management investment company and is authorized to issue its share of beneficial interest in separate series. Proxy materials relating to the Reorganization were distributed to applicant's shareholders on or about November 10, 1992. Applicant's shareholders approved the Reorganization at a special shareholders meeting on December 10, 1992.

3. Concurrently, the Portfolio's board of trustees, which is comprised of the same individuals as applicant's board of trustees, voted to create and designate a new series (the "New Series") of the Portfolio named "The Guardian Cash Management Fund," on behalf of which the Portfolio agreed to participate in the Reorganization.

4. By reason of their having a common investment adviser, and common directors and officers, applicant and the Portfolio have been "affiliated persons" as that term is defined in the Act. Applicant relied on the rule 17a–8 exemption to comply with section 17(a) of the Act. Each of the boards of trustees of applicant and the Portfolio unanimously determined that participation in the Reorganization by each of the applicant and the Portfolio was in the best interests of the applicant, the Portfolio, and their respective shareholders, and that the interests of the shareholders of the applicant and the Portfolio, respectively, would not be diluted as a result of the Reorganization. Each board's findings, and the basis upon which they were made, were recorded in the minutes of its meeting held on October 8, 1992.

5. Under the Reorganization, applicant transferred its business and assets and assigned its liabilities to the New Series of the Portfolio, and the New Series acquired all such business and assets, assumed all such liabilities and issued to applicant shares of beneficial interest of the New Series that was equivalent to and had an aggregate value equal to the shares of applicant that were outstanding immediately prior to such transactions (i.e., 37,095,939 shares, having an aggregate net asset value of $37,095,939 and a net asset value per share of $1.00). Applicant then distributed the shares of the New Series it received to its shareholders of record at that time *pro rata* in exchange for their shares of the applicant such that each shareholder received a number of shares of the New Series equal to the number of shares of the applicant then held by each such shareholder, and applicant was completely liquidated.

6. All expenses related to the reorganization, approximately $9,000, were borne by applicant's investment adviser, Guardian Investor Services Corporation.

7. Applicant has dissolved its existence under Massachusetts law by filing a Notice of Dissolution and Termination of Trust with the Office of the Massachusetts Secretary of State and the Clerk of the City of Boston.

8. As of the date of the application, applicant had no assets or liabilities. Applicant has no shareholders and is not a party to any litigation or administrative proceeding. Applicant is not engaged in, and does not propose to engage in, any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22018 Filed 9–8–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19683; 812–8328]

IDEX II Series Fund, et al.; Application

September 3, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: IDEX II Series Fund ("IDEX II"); IDEX Total Income Trust ("ITTT") (collectively, IDEX II and ITTT are the "Trusts"); InterSecurities, Inc. ("ISI"); and Idex Management, Inc. ("IMI").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Trusts and their series, if any, to (a) issue multiple classes of shares representing interests in the same portfolio of securities and (b) assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on redemptions of shares.

FILING DATE: The application was filed on March 30, 1993 and amended on July 14, 1993. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 28, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549.

Applicants, 201 Highland Avenue, Largo, Florida 34640.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each Trust is a Massachusetts business trust registered under the Act as an open-end management investment company. Each Trust is authorized to offer and sell its shares in separate series. Only IDEX II, however, currently offers its shares in separate series: IDEX II Growth Portfolio, IDEX II Global Portfolio, IDEX II Tax-Exempt Portfolio, and IDEX II High Yield Portfolio.

2. Applicants request that relief be extended to the Trusts, each present and future series thereof, and any other investment company, or series thereof, that (a) is or becomes part of the same "group of investment companies" as that term is defined in rule 11a–3 under the Act, (b) is distributed, as principal underwriter, by ISI or a person controlling, controlled by, or under common control with ISI, and (c) issues and sells classes of shares on a basis identical in all material respects to that described in the application. (The Trusts and their series, and other investment companies and their series are collectively referred to as "Funds.")

3. IMI and Janus Capital Corporation are the investment adviser and sub-adviser, respectively, to IDEX II Growth Portfolio, IDEX II Global Portfolio, and ITIT. ISI and AEGON USA Investment Management, Inc., are the investment adviser and subadviser, respectively, to IDEX II Tax-Exempt Portfolio and IDEX II High Yield Portfolio. ISI is the principal underwriter of each existing Fund.

4. Shares of each existing Fund are sold with a front-end sales charge and certain existing Funds have adopted a plan of distribution pursuant to rule 12b–1 under the Act ("12b–1 Plan").

A. The Multiple Class Distribution System

1. Applicants propose to establish a multiple class distribution system ("Multiple Class System") that would authorize each Fund to sell separate classes of its shares. Applicants propose that the currently issued and outstanding shares of each existing Fund be redesignated as Class A shares. In addition, each existing Fund could create additional classes of shares ("New Shares").

2. Each class of New Shares would be identical in all respects, except that:

(a) Each class of shares would have a different class designation;

(b) Certain classes may have different sales charges;

(c) Each class with a 12b–1 Plan would bear the expense of payments under the Plan;

(d) Each class could bear certain other expenses that are directly attributable only to that class ("Class Expenses");

(e) Only the holders of a class of shares with a 12b–1 Plan would be entitled to vote on matters pertaining to that Plan; and

(f) The exchange privileges could vary among the classes.

3. Each Fund would be permitted to create an unlimited number of different classes of New Shares in connection with a 12b–1 Plan ("12b–1 Classes"), or no 12b–1 Plan. In addition, the principal underwriter of each Fund may enter into dealer sales and/or servicing agreements ("12b–1 Plan Agreements") with broker-dealers, banks, or other financial institutions under which these organizations may provide distribution services and/or maintenance services ("Distribution" and "Maintenance Services," respectively) to their customers who own New Shares of that Fund. In establishing and implementing the 12b–1 Plans and the 12b–1 Plan Agreements, applicants will comply with subsection (d) of article III, section 26 of the Rules of Fair Practice of the National Association of Securities Dealers ("NASD") as it relates to the maximum amount of asset-based sales charges and service fees that may be imposed by an investment company.

4. Since payments under a 12b–1 Plan and other Class Expenses will be borne exclusively by the class to which they are attributable, the net income and net asset value per share of each class may be different than the net income and net asset value per share of other classes of shares in the same Fund.

5. Each class of shares may be exchanged for shares of a class with the same or different characteristics of another Fund within the same "group of investment companies" as that term is defined in rule 11a–3. If a Fund limits the exchange privilege only to classes of shares with the same characteristics, the privilege would apply irrespective of whether the shares are New Shares or existing shares with those characteristics. In addition, shares of each class may be exchanged for shares of the Cash Equivalent Fund,[1] a money market open-end investment company managed by Kemper Financial Services, Inc. Investors may redeem their shares of the Cash Equivalent Fund and use the proceeds to purchase shares of any Fund of the same class as the shares, if any, the shareholder previously held. Exchanges of Fund shares for shares of Cash Equivalent Fund and exchanges of shares of Cash Equivalent Fund for Fund shares are not subject to any sales charges (including front-end charges, CDSCs, and redemption fees, but excluding service fees if the exchange transaction is less than a particular dollar amount, currently $1000) and are made based upon the relative net asset values of the respective shares to be exchanged in accordance with section 11 of the Act.

B. The CDSC

1. Applicants also request an exemption to allow the Funds to impose a CDSC on redemptions of certain shares of the Funds ("CDSC Shares"), and to waive the CDSC under certain circumstances. The maximum CDSC is not expected to exceed 5% of the aggregate purchase payments, although it may be higher or lower. Applicants presently contemplate that no CDSC would be imposed on any redemptions of CDSC Shares that were purchased more than 5 years prior to the redemption. The amount of the CDSC would depend on the number of years since the investor purchased the CDSC Shares being redeemed. The CDSC would comply with the requirements of section 26(d) of the Rules of Fair Practice of NASD.

2. The amount of the CDSC would be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the CDSC Shares at the time of purchase, or the amount that represents such percentage of the net asset value of the CDSC shares at the time of redemption. As a result, no CDSC would be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for the CDSC Shares purchased. In determining the applicability and rate of any CDSC, it would be assumed that a redemption is made first of shares representing capital appreciation, next of shares representing reinvestment of dividends and capital

[1] Cash Equivalent Fund is not in the same "group of investment companies" as the Trusts. Exchanges of existing Fund shares for shares of Cash Equivalent Fund are not subject to any sales charges and are made based upon the relative net asset values of the respective shares to be exchanged in accordance with section 11 of the Act.

gain distributions, next of shares held by the shareholder for a period equal to or greater than the CDSC period, and finally of other shares held by the shareholder for the longest period of time.

3. The proposed CDSC would not be imposed on any shares issued by the Funds prior to the date of any order granting the requested exemptive relief. In accordance with rule 11a–3 under the Act, no CDSC would be imposed on any exchange by an investor of a particular class of a Fund for CDSC shares of the same class of another Fund.

4. Applicants request relief to permit each Fund to waive the CDSC in any one or more of the following circumstances:

(a) On redemptions following death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended;

(b) In connection with redemptions of CDSC Shares held by an individual retirement account ("IRA") or other qualified retirement plan and which redemptions:

(i) Result from the death or disability of the employee or the tax-free return of an excess contribution;

(ii) Are made to effect a lump-sum or partial distribution from a qualified retirement plan in the case of retirement; or

(iii) Are made to effect a distribution from an IRA, a Keogh Plan, or section 403(b)(7) custodial account that is required because the distributee has reached the age at which distributions are required to commence;

(c) In connection with redemptions of CDSC Shares of a Fund purchased by current or retired trustees of any Trust, or by current or retired officers or employees of any Trust, IMI, ISI, or their affiliated companies, registered representatives of ISI, and by the members of the immediate families of such persons;

(d) In connection with redemptions of CDSC Shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Fund;

(e) In part, in connection with redemptions by shareholders holding CDSC shares of a Fund worth more than $1 million (or other specified amount) immediately prior to redemption;

(f) In connection with redemptions of CDSC Shares effected by advisory accounts managed by IMI, ISI, or any affiliated company thereof or of CDSC Shares held by IMI, ISI, or any such affiliated company itself;

(g) In connection with redemptions of CDSC Shares by any tax-exempt employee benefit plan for which continuation of its investment in a Fund would be improper under applicable law or regulation;

(h) On redemptions of CDSC Shares effected pursuant to the Fund's right to liquidate a shareholder's account if the aggregate net asset value of shares held in the account is less than the applicable minimum account size;

(i) In connection with redemptions of CDSC Shares made by registered representatives of full-time employees of brokers or dealers which have entered into dealer sales agreements with ISI, or their children, siblings, or parents; and

(j) In connection with redemptions by banks, trust companies, and other financial institutions with trust powers, which use trust funds to purchase CDSC Shares pursuant to the exercise of discretionary investment authority, or with respect to registered investment advisers which purchase CDSC Shares of the Fund.

5. In addition, each Fund (or its principal underwriter, as applicable) may adopt a policy whereby it would provide a *pro rata* credit for any CDSC paid in connection with a redemption of CDSC Shares followed by a reinvestment effected within 30 days in shares of the same class of the same or a different Fund of all or part of the redemption proceeds. Such credit would be distributed by the principal underwriter of the Fund from its house account.

Applicant's Legal Analysis

1. Applicants seek relief from sections 18(f)(1), 18(g), and 18(i) to issue multiple classes of shares representing interests in the same portfolio of securities. Applicants believe that by implementing the Multiple Class System, the Funds may be able to achieve flexibility in meeting the service and investment needs of shareholders and future investors. If New Shares are created, the Funds may be able to address more precisely the needs of particular investors. Applicants also believe that the proposed allocation of expenses and voting rights in the manner described above is equitable and would not discriminate against any group of shareholders.

2. The proposed arrangement does not involve borrowings, and does not affect the Funds' existing assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares of a Fund, since all such shares will participate in all of the Fund's appreciation, income, and expenses in the manner described above.

3. Applicants also seek relief from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to assess and, under certain circumstances, waive a contingent deferred sales charge on redemptions of shares. Applicants believe that their request for exemptive relief to permit the CDSC arrangement would permit the holders of CDSC Shares to have the advantage of greater investment dollars working for them from the time of their purchase of CDSC Shares than if a sales load were imposed at the time of purchase.

Applicant's Conditions

A. The Multiple Class Distribution System

Applicants agree that the following conditions may be imposed in any order of the Commission granting the requested relief:

1. Each class of shares of a Fund will represent interests in the same portfolio of investments, and be identical in all respects, except as set forth below. The only differences between the classes of shares of a Fund will relate solely to one or more of the following:

(a) Expenses assessed to a class pursuant to a 12b–1 Plan, if any, with respect to such class;

(b) The impact of Class Expenses, which are limited to any or all of the following:

(i) Transfer agent fees identified as being attributable to a specific class of shares;

(ii) Stationery, printing, postage, and delivery expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements to current shareholders of a specific class;

(iii) Blue sky registration fees incurred by a class of shares;

(iv) Commission registration fees incurred by a class of shares;

(v) Expenses of administrative personnel and services as required to support the shareholders of a specific class;

(vi) Trustees' fees or expenses incurred as a result of issues relating to one class of shares;

(vii) Accounting expenses relating solely to one class of shares;

(viii) Auditors fees, litigation expenses, and legal fees and expenses relating to a class of shares;

(ix) Expenses incurred in connection with shareholders meetings as a result of issues relating to one class of shares; and

(x) Any other incremental expenses subsequently identified which should be properly allocated to a particular class of shares and which, as such, are approved by the Commission pursuant to an amended order or a subsequently adopted rule or interpretation;

(c) The fact that the classes will vote separately with respect to matters relating to the Funds 12b–1 Plan, if any, or any other matters appropriately limited to such class(es);

(d) The different exchange privileges of the classes of shares, if any; and

(e) The destination of each class of shares of a Fund.

2. The board of trustees of the applicable Fund, including a majority of the trustees who are not interested persons of the Fund ("Independent Trustees"), will have approved the Multiple Class System with respect to a particular Fund prior to the implementation of the system by that Fund. The minutes of the meetings of the board of trustees of the Fund regarding the deliberations of the trustees with respect to the approvals necessary to implement the Multiple Class System will reflect in detail the determination by the board of trustees that the proposed Multiple Class System is in the best interests of each Fund and its shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the applicable Fund, including a majority of the Independent Trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the applicable board of trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the board of trustees of each Fund, pursuant to its fiduciary responsibilities under the Act and otherwise, will monitor each Fund, as applicable, for the existence of any material conflicts among the interests of the classes of its shares, if there is more than one class. The board of trustees, including a majority of the Independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Each fund's principal underwriter and investment adviser will be responsible for reporting any potential or existing conflicts to the appropriate board of trustees. If a conflict arises, the Fund's principal underwriter and investment adviser, at their own expense, will take such actions as are necessary to remedy such conflict, including establishing a new registered management investment company, if necessary.

5. The principal underwriter of each Fund implementing a Multiple Class System will adopt compliance standards with respect to when each class of shares maybe appropriately sold to particular investors. Applicants and the other Funds will require all persons selling shares of the Funds to agree to conform to such standards.

6. The board of trustees will receive quarterly and annual statements concerning the amounts expended under the 12b–1 Plans and the related 12b–1 Plan Agreements complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any fee for Distribution or Maintenance Services charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the board of trustee to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Trustee in the exercise of their fiduciary duties.

7. Dividends and other distributions paid by the Fund with respect to each class of its shares, to the extent any dividends and other distributions are paid, will be declared and paid on the same day and at the same time, and will be determined in the same manner and will be in the same amount, except that the amount of dividends and other distributions declared and paid by a particular class may be different from that of another class because payments made by a class under a 12b–1 Plan and other Class Expenses will be borne exclusively by that class.

8. The methodology and procedures for calculating the net asset value and dividends and other distributions of the classes and the proper allocation of expenses among the classes has been reviewed by an expert ("Expert") who has rendered a report to applicants, which has been provided to the staff of the SEC, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds (which the Funds agree to provide), will be available for inspection by the Commission staff upon written request to the Funds for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" in accordance with Statement on Auditing Standards ("SAS") No. 44, "Special Purpose Reports on Internal Accounting Controls at Service Organizations," of the American Institute of Certified Public Accountants ("AICPA"). Ongoing reports (i.e., reports issued subsequent to March 31, 1993) will be "Special Purpose" reports on "policies and procedures placed in operation and tests of operating effectiveness" prepared in accordance with SAS No. 70, "Reports on the Processing of Transactions by Service Organizations," as it may be amended from time to time, or such other applicable auditing standards as may adopted by the AICPA.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and other distributions of the classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition (8) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (8) above. Applicants will take immediate corrective measures if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

10. The prospectuses of each class of shares will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing shares may receive different compensation with respect to one particular class of shares over another in the Funds.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the board of trustees of each Fund with respect to the Multiple Class System will be set forth in guidelines which will be furnished to the trustees.

12. Each Fund implementing a Multiple Class System will disclose the respective expenses, performance data.

distribution arrangements, services, fees, sales loads, and exchange privileges applicable to each class of its shares in every prospectus, regardless of whether all classes of its shares are offered pursuant to each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of its shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of its shares, each Fund will also disclose the respective expenses and/or performance data applicable to all classes of that Fund's shares. The information provided by an applicant or other Fund for publication in any newspaper or similar listing of a Fund's net asset value or public offering price will present each class of that Fund's shares separately.

13. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval of, authorization of, or acquiescence in any particular level of payments that any Fund may make pursuant to its rule 12b–1 Plan in reliance on the exemptive order.

B. The CDSC

1. The applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22016 Filed 9–8–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 19682; File No. 812–8426]

September 2, 1993.

John Hancock Mutual Variable Life Insurance Account UV, et al.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: John Hancock Mutual Variable Life Insurance Account UV (the "Account") and John Hancock Mutual Life Insurance Company ("John Hancock").

RELEVANT 1940 ACT SECTIONS AND RULES: Order requested under section 6(c) of the 1940 Act for exemptions from the following: Those provisions of the 1940 Act and those rules specified in paragraph (b) of Rule 6e–2 thereunder, other than sections 7 and 8(a); sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(a)(3), 27(c)(1), 27(c)(2), 27(d) and 27(f) of the 1940 Act; and Rules 6e–2(b)(1), (b)(12), (b)(13)(i), (b)(13)(ii), (b)(13)(iii), (b)(13)(iv), (b)(13(v), (b)(13)(vii), (c)(1) and (c)(4), 22c–1, and 27f–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting them to offer and sell certain multi-option variable life insurance policies (individually, the "Policy," collectively, the "Policies") that provide for the following: A death benefit which will not always vary based on investment performance; both a contingent deferred sales charge and a sales charge deducted from premiums, neither of which is subject to refunds; deduction of any remaining unpaid Policy issue charge on lapse or surrender; deduction from the Policy's account value of cost of insurance charges, charges for substandard mortality risks and incidental insurance benefits, and minimum death benefit guarantee risk charges; values and charges based on the 1980 Commissioners' Standard Ordinary Mortality Tables (the "1980 CSO Tables"); waiver of front-end sales charges in certain cases; the holding of mutual fund shares funding the Account without the use of a trustee in an open account arrangement and without a trust indenture; and a "free look" right which may provide for the return of amounts other than total premiums paid upon cancellation of a Policy.

FILING DATE: June 3, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing the Secretary of the Commission, and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 27, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, John Hancock Place, Boston, MA 02117.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, or Wendell M. Faria, Deputy Chief, Office of Insurance Products, Division of Investment Management, at (202) 272–2060.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. An application virtually identical to this application was filed by John Hancock Variable Account V, John Hancock Variable Life Insurance Company ("JHVLICO"), and John Hancock on August 18, 1987 (File No. 812–6835). An order was granted by the Commission on December 29, 1987.[1] Applicants are filing this new application to eliminate any concern that the prior order may be deemed inapplicable to the Policies.

2. John Hancock, a mutual life insurance company organized under Massachusetts law, has decided to issue certain variable life insurance policies (including the Policies) itself, rather than through its wholly owned subsidiary, JAVLICO.

3. The Board of Directors of John Hancock established the Account on May 10, 1993, pursuant to Massachusetts law. John Hancock will allocate assets to the Account, from time to time, to support benefits payable under John Hancock's variable life insurance policies, including the Policies.

4. The Account is a separate account registered under the 1940 Act as a unit investment trust. The Account consists of seven subaccounts (the "Subaccounts"), each of which will invest its assets in a different portfolio of John Hancock Variable Series Trust I (the "Fund"). Subaccounts may be added or deleted from time to time.

5. The Policy incorporates certain fundamental features characteristic of

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[1] The original application was amended on November 12, 1987. The notice of the filing of the application was issued on November 30, 1987 (Investment Company Act Release No. 16152); an order was granted on December 29, 1987 (Investment Company Act Release No. 16197).

scheduled premium variable life insurance policies contemplated by, and certain "hybrid" variable life insurance policies offered in reliance on, Rule 6e–2. In addition, Policy owners will have the options of: (i) Selecting a "modified" or "level" schedule of basic premiums; [2] (ii) applying any excess value under the Policy [3] to increase the amount of the guaranteed death benefit under the Policy, or to reduce the basic premium of a Policy operating with a "level" premium; and (iii) partially surrendering the basic death benefit, or reducing the amount of the extra death benefit.

6. John Hancock will deduct a premium expense charge of 7.5% of each premium paid. This deduction is for sales expenses (5%) and state premium taxes (2.5%).

7. John Hancock will waive a portion of the sales charge deducted from each premium paid on a Policy with an initial guaranteed death benefit of $250,000 or higher. The continuation of this waiver, however, is not contractually guaranteed, and the waiver may be withdrawn or modified by John Hancock at any time. Moreover, because the initial guaranteed death benefit may be reduced after issue, it is possible that the waiver could apply at some times with respect to a given Policy and not at a subsequent time with respect to the same Policy.

8. John Hancock also will deduct a contingent deferred sales charge ("CDSC") upon surrender or lapse of a Policy during the first eleven Policy years. The CDSC is a percentage of the lesser of (a) the total amount of premiums paid before the date of surrender or lapse or (b) the sum of the "modified" premiums due on or before the date of surrender or lapse. Excess Account Value may be withdrawn from the Policy without imposition of any CDSCs.

9. The maximum CDSC is an amount equal to 15% of the modified premium for the first through fifth Policy years, plus 10% of the modified premium for the sixth and seventh Policy years. The greatest CDSC will be applied to Policies that are surrendered or lapse at the end of Policy year six and through Policy year seven. In the eighth through eleventh Policy years, the CDSC decreases each Policy year until it is zero in and after the twelfth Policy year.

10. A portion of the CDSC will be charged on a partial surrender of the basic death benefit during the first twelve Policy years.

11. The total dollar amount of sales load under a Policy is no higher than that permitted by Rule 6e–2(b)(13) for a conventional scheduled premium variable life insurance policy, and a Policy owner who surrenders his or her policy or whose policy lapses prior to the twelfth policy year pays no more dollars in sales load than could be charged if the load were deducted entirely from premiums.

12. To help defray the costs of processing premium payments, John Hancock will assess a premium processing charge of not more than $2 per premium payment. This charge will not be designed to yield a profit to John Hancock.

13. John Hancock will assess an issue charge of $240 per Policy and $0.48 per $1,000 of initial guaranteed death benefit. This charge is for estimated administrative expenses and is deducted on a pro rata basis each month in 48 equal monthly installments. If a Policy is surrendered or lapses, any amount of the issue charge not yet deducted will be deducted from the proceeds. No unpaid issue charge will be deducted on any withdrawal of excess value, partial surrender of basic death benefit, reduction of extra death benefit, or any other transaction not involving a full surrender or lapse of the Policy. John Hancock does not anticipate making a profit on the issue charge.

14. The amount of the issue charge is the same as it would have been if it were designed as a front-end periodic charge. The charge does not take into account the "time value" of money.

15. John Hancock will deduct a maintenance charge from the Account Value (i.e., the amount of assets earning a return for the Policy) on each monthly anniversary at a monthly rate of $2.50 (which rate may not increase above $4.00) per Policy, and $.02 per $1000 of current basic death benefit. This charge is designed to defray the ongoing costs of administering a Policy, and is not designed to yield a profit to John Hancock. The aggregate maintenance charge will not exceed $5.25 per month.

16. The maximum aggregate maintenance charge currently is not contractually guaranteed, and may be changed or withdrawn at any time.

17. John Hancock shall deduct from Account Value a charge of no more than $5.00 for each transfer of assets among Subaccounts in excess of twelve made by a Policy owner within a single Policy year. Furthermore, upon withdrawals of excess value, John Hancock will deduct from Account Value the lesser of $25 or 2% of the amount withdrawn.

18. John Hancock will assess a daily mortality and expense risk charge at an effective rate of .6% per annum of the Account assets attributable to the Policy. This charge is designed to compensate John Hancock for assuming the risks that insurers may live for shorter periods of time than John Hancock estimated, and that costs of issuing and administering the Policies may be more than John Hancock estimated.

19. On each monthly anniversary of the Policy, John Hancock will deduct from Account Value a charge for the guaranteed death benefit. This charge currently is set at a monthly rate of $.01 per $1000 of basic death benefit. John Hancock represents that, in the future, this charge will not exceed $.03 per $1000 of basic death benefit.

20. John Hancock will deduct cost of insurance charges from Account Value on the first day of each Policy month. These charges shall be assessed at rates that do not exceed those prescribed in the 1980 CSO Tables.

21. Under certain circumstances, John Hancock will charge lower current cost of insurance rates under a Policy with a current basic death benefit of $250,000 or more. These lower cost of insurance rates are not contractually guaranteed, and may be changed or withdrawn at any time by John Hancock.

22. When excess value is applied to purchase extra death benefit or to reduce the amount of basic premium, a 1.5% deduction (which John Hancock represents will not exceed 3%) is made from the amount of excess value so applied. This charge is designed to compensate John Hancock for the risk it assumes in making the additional guarantee represented by the extra death benefit or the lower basic premium rate, as relevant.

23. John Hancock reserves the right to make charges for federal, state, and local taxes. Fund investment advisory expenses and certain other operating expenses of the Fund are indirectly borne by Policy owners.

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[2] The modified premiums are lower until the insured reaches age 72, at which time a "premium recalculation" is performed, if the Policy owner has not previously elected to have the premium recalculated. The premium recalculation may result in lower or higher subsequent required premiums.

In addition to the basic "level" or "modified" premiums under a Policy, the required premium for each Policy year includes an additional amount if the insured is in a substandard risk category of if optional fixed insurance benefits have been added to the Policy by rider. Part of this additional premium will be collected by John Hancock out of any premium payments which are paid during the year. The remaining additional premium will be deducted from cash value in equal monthly installments during the year.

[3] Excess Account Value may result from favorable investment performance, John Hancock's deduction of Policy charges at less than the maximum guaranteed rates, or the payment of premiums in excess of the required premiums.

24. John Hancock imposes three death benefit guarantee risk charges (collectively "Guarantee Risk Charges"): a monthly charge of up to $.03 per $1,000 of the amount of guaranteed death benefit which has not been purchased with excess Account Value; up to 3% of the amount of any excess Account Value applied to increase the guaranteed death benefit or, for a Policy operating on a level required premium schedule, to reduce the amount of such level premiums; and up to 3% of the amount applied on a premium recalculation for a modified premium Policy where the new level premium is less than what it would have been had the Policy originally been issued on a level premium basis. These charges compensate John Hancock for the risk that it assumes in guaranteeing death benefits under the Policies, including the risk that the Account Value will not be sufficient to support the guarantees.

25. Under the laws of some states, John Hancock may now or in the future may be required to credit investment losses and gains during the "free look" period to Policy owners who exercise their free "look" right. In such cases, and under the terms of the Policy, John Hancock will refund the sum of the Account Value as of the date John Hancock receives the return Policy, plus the sum of all charges deducted from premium payments and all other charges imposed on amounts allocated to the Account.

Applicants' Legal Analysis and Conclusions

Applicants request exemptions pursuant to section 6(c) of the 1940 Act from the following: Those provisions of the 1940 Act and those rules specified in paragraph (b) of the Rule 6e–2 thereunder, other than sections 7 and 8(a); sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(a)(3), 27(c)(1), 27(c)(2), 27(d) and 27(f) of the 1940 Act; and Rules 6e–2(b)(1), (b)(12), (b)(13)(i), (b)(13)(ii), (b)(13)(iii), (b)(13)(iv), (b)(13)(v), (b)(13)(viii) and (c)(4), 22c–1, and 27f–1 thereunder. Applicants seek these exemptions to the extent necessary to permit them to offer and sell the Policies.

A. Request for Exemptions Relating to Definition of "Variable Life Insurance Contract"

1. Rule 6c–3 grants exemptions from numerous provisions of the 1940 Act to separate accounts of life insurance companies that support available life insurance policies. The exemptions provided by Rule 6c–3 are available only to registered separate accounts whose assets are derived solely from the sale of "variable life insurance contracts" that meet the definition set froth in Rule 6e–2(c)(1) and from certain advances made by the insurer.

2. A "variable life insurance contract" is defined in Rule 6e–2(c)(1) to include only life insurance policies that provide both a death benefit and a cash surrender value which vary to reflect the investment experience of the separate account, and that guarantee that the death benefit will not be less than an amount stated in the policy. The required guaranteed minimum death benefit need be provided only so long as premiums are duly paid in accordance with the terms of the policy.

3. The death benefit under the Policies is the greater of (a) the guaranteed death benefit (plus all premiums received in a Policy month in which the insured dies) or (b) the Account Value multiplied by a factor sufficient to qualify the Policy as life insurance for Federal income tax purposes.

4. The death benefit under the Policies will vary based upon investment performance to the extent that favorable investment performance creates excess value that is applied to purchase extra death benefit, which in turn increases guaranteed death benefit. The death benefit under a Policy also may vary with investment performance when the Account Value is sufficiently large that, in order to qualify the Policy as life insurance for federal income tax purposes, the death benefit is greater than the guaranteed death benefit.

5. Applicants submit that the death benefit under the Policies varies to reflect investment experience within the meaning of Rule 6e–2(c)(1). Applicants concede, however, that the death benefit under the Policies is not precisely the type of variable death benefit contemplated when Rule 6e–2 was adopted, and that the Policies contain other provisions that are not specifically addressed in Rule 6e–2. Accordingly, Applicants request exemptions from the definition of "variable life insurance contract" in Rule 6e–2(c)(1) and from all sections of the 1940 Act and rules thereunder specified in Rule 6e–2(b) (other than sections 7 and 8(a)), under the same terms and conditions applicable to a separate account that satisfies the conditions set forth in Rule 6e–2(a), and to the extent necessary to permit the offer and sale of the Policy in reliance on Rule 6e–2, except as otherwise set forth herein.

6. Applicants submit that the definition of "variable life insurance contract" in Rule 6e–2(c)(1) was drafted at a time when all the variable life insurance policies then contemplated clearly met this definition, and that the considerations that led the Commission to grant the exemptions in Rule 6e–2 did not depend in any material way upon the fact that the death benefit, as well as cash values, varied with investment experience. Nor did such considerations depend on whether a scheduled premium policy also provided for substantial premium payment flexibility and other features so long as the scheduled premiums, if paid when due, provided for a minimum death benefit guaranteed to at least equal the initial face amount.

7. Applicants submit that, under the types of variable life insurance policies that have been issued in reliance on Rule 6e–2, the extent to which favorable investment experience is used to increase death benefits rather than cash values differs considerably among the policies offered by different issuers. Applicants further submit that, under all policy designs, the degree to which investment performance changes the death benefit necessarily has an impact on cash values under the policy.

8. Applicants represent that, generally speaking, higher death benefits require higher cost of insurance deductions, which in turn result in lower cash values. Applicants submit that it is desirable for purchasers to be free to choose a benefit structure which they believe suits their own needs with respect to the relationship of cash value, death benefit and investment performance.

9. Applicants represent that Policy owners can do this by, for example, deciding whether to apply excess value to purchase extra death benefit. Using excess value for this purpose will maximize the guaranteed death benefit in the event of favorable investment experience, but will cause Account Value to be less than it otherwise would be.

10. Applicants further submit that the considerations that led the Commission to adopt Rule 6c–3 and 6e–2 apply equally to the Account and the Policies, and that the exemptions provided by these rules should be granted to the Account and to John Hancock on the terms specified in those rules, except to the extent that further exemption from those terms is specifically requested herein.

11. Applicants note that proposed amendments to Rule 6e–2 would amend Rule 6e–2(c)(1) to require only that the death benefit may vary based on investment performance.

B. Request for Exemptions Relating to Sales Charges

1. Sections 26(a)(2) and 27(c)(2) may be construed to require that proceeds of all payments under a Policy be deposited in the Account and that no payment be made from the Account to John Hancock or any affiliated person of John Hancock, except for bookkeeping and other administrative services.

2. Section 2(a)(35) of Rules 6e–2(b)(1) and (c)(4) may be construed to contemplate that the sales charge for a variable life insurance policy will be deducted from premiums. Applicants submit, however, that Rule 6e–2(c)(4) can be construed to comprehend a sales charge imposed on other than premiums. This is because the definition is an intellectual construct rather than a reflection of the actual methodology of administering variable life insurance policies, referring, in paragraphs (i) and (ii), for example, to other amounts that are not deducted from premiums.

3. Section 27(a)(1) and Rule 6e–2(b)(13)(i) may be construed to contemplate that the sales charge under the Policy will be deducted from premiums.

4. Sections 2(a)(32), 27(c)(1), and 27(d), in pertinent part, prohibit Applicants from selling the Policy unless it is a "redeemable security."[4] Rules 6e–2 (b)(12), (b)(13)(iv), and (b)(13)(v) afford exemptions from section 27(c)(1), and Rules 6e–2 (b)(13)(iv) and (b)(13)(v) afford exemptions from section 27(d), to the extent necessary for cash value to be regarded as satisfying the redemption and sales charge refund requirements of the 1940 Act. However, the exemptions afforded by Rules 6e–2(b)(12), 6e–2 (b)(13)(iv), and (b)(13)(v) may not contemplate a contingent deferred sales charge. Moreover, John Hancock's deduction of the CDSC can be viewed as reducing the proceeds that the Policy owner would receive on surrender below the Policy owner's proportionate share of the Account's current net assets.

5. Rule 6e–2 was adopted at a time when less flexibility regarding premium payments and other policy features was offered than subsequently has been permitted. Because of these features, particularly premium flexibility, less than the full amount of required premiums may be paid on or before the relevant due dates. It is unclear how the technical sales load computation provisions in Rule 6e–2 apply under such circumstances, particularly with respect to a contingent deferred sales charge.

6. Applicants submit that the CDSC is similar to the "redemption" charge authorized in section 10(d)(4) of the 1940 Act, and that Congress obviously intended that such a redemption charge, which is expressly described as a "discount from net asset value," be deemed consistent with the concept of "proportionate share" under section 2(a)(32).

7. Applicants submit that there will be no restriction on, or impediment to, surrender that should cause the Policy to be considered other than a redeemable security within the meaning of the 1940 Act and the rules thereunder. The Policy provides for full or partial surrender of basic death benefit, withdrawals of excess value, and full or partial reductions in extra death benefit. The prospectus for the Policy will disclose the contingent deferred nature of part of the sales charge. Upon surrender or lapse, a Policy owner will receive his or her "proportionate share" of the Account—*i.e.*, the amount of net premiums paid, reduced by the amount of all charges and increased by the amount of all return credited to the Policy.

8. Rule 22c–1, adopted pursuant to section 22(c), prohibits Applicants from redeeming a Policy except at a price based on the current net asset value of the Policy that is next computed after receipt of the request for full or partial surrender of the Policy. Rule 6e–2(b)(12) affords exemptions from Rule 22c–1. Rules 22c–1 and 6e–2(b)(12), read together, impose requirements with respect to both the amount payable on surrender and the time as of which such amount is calculated.

9. John Hancock's CDSC may be deemed inconsistent with section 22(c) and Rule 22c–1 to the extent that the sales charge can be viewed as causing a Policy to be redeemed at a price based on less than the current net asset value that is next computed after full or partial surrender of the Policy.

10. Applicants submit that the CDSC will not have the dilutive effect which Rule 22c–1 is designed to prohibit because a surrendering Policy owner would "receive" no more than an amount equal to the cash surrender value determined pursuant to the formula set out in his Policy and after receipt of his request. Furthermore, variable life insurance policies, by nature, do not lend themselves to the kind of speculative short-term trading that Rule 22c–1 was aimed against, and, even if they could be so used, the CDSC would discourage, rather than encourage, any such trading.

11. Applicants submit that deduction of part of the sales charge as a deferred charge on surrender or lapse will be more favorable to Policy owners than deduction of the same amount of charge from premiums. First, the amount of the Policy owner's premium payment that will be allocated to the Account, and be available to earn a return for the Policy owner, will be greater than it would be if the sales charge were deducted from premiums. Second, the total dollar amount of sales load under a Policy is no higher than that permitted by Rule 6e–2(b)(13) for a conventional scheduled premium variable life insurance policy, and, for a Policy owner who does not lapse or surrender in the early Policy years, the dollar amount of sales load is lower than would be permitted if taken entirely as front-end deductions from a Policy's premium payments. Third, if John Hancock is not permitted to charge a sales load in the form of the CDSC, it would have to deduct the sales load entirely from the premiums, thereby charging persisting (*i.e.*, "long-term") Policy owners more than may otherwise be necessary to recover the distribution costs attributable to such Policy owners. For this reason, Applicants submit that the sales load structure provides greater equity among Policy owners than would a non-deferred sales load.

12. The cost of insurance charge imposed will be less than it otherwise would be if the same amount of sales charge were deducted from premium payments, because the allocation of a greater amount of the Policy owner's premium to the Account reduces the amount at risk (*i.e.*, the amount of death benefit less the Account Value) upon which the cost of insurance charge is based.

13. The CDSC, although imposed on other than the premium, will cover expenses associated with the offer and sale of the Policy, just as other forms of sales loads do. Applicants submit that the mere fact that the timing of the imposition of the CDSC may not fall neatly within the literal pattern of all provisions discussed briefly above, does not change its essential nature as a sales charge. Moreover, Applicants represent that proposed amendments to Rule 6e–2 would permit assessment of a sales charge on a contingent deferred basis, and that such charges also are authorized by Rule 6e–3(T) for insurance policies able to rely on that Rule.

[4] Section 2(a)(32) offers the following definition of "redeemable security": "Any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled * * * to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof."

14. Applicants represent that John Hancock's percentage of sales load will never exceed the sum of 30% of the premium payments paid for the first Policy year plus 10% of premium payments paid for the second Policy year, and will not exceed 9% of premium payments expected to be paid over the lesser of 20 years or the expected lifetime of the insured. For this reason, Applicants submit that the Policy is consistent with the principles and policies underlying the sales load limitations in section 27(a)(2), Rule 6e–2 (b)(13)(i) and (b)(13)(v).

15. Applicants submit that premium and other flexibility options under the Policy are a potential benefit to Policy owners.

C. Request for Exemptions Relating to Collection of Unpaid Issue Charge on Lapse or Surrender

1. John Hancock imposes an issue charge of $240 per Policy and $.48 per $1000 of initial basic death benefit; this charge will be deducted pro rata each month, in 48 equal monthly installments. If a Policy is surrendered or lapses, however, any amount of the issue charge not yet deducted will be deducted from the proceeds. This practice may be deemed to violate sections 2(a)(32), 22(c), 27(c)(1), 27(d), and Rule 22c–1, for essentially the same reasons as the CDSC might be deemed to violate those 1940 Act provisions and rules.

2. Applicants submit that imposition of the administrative charge for issuance expenses in 48 monthly installments is more favorable to Policy owners than a charge deducted entirely from premiums or from Account Value in the first Policy year. The reduction of the owner's investment in the Account is less than it would be were this charge taken in full in the first Policy year. This results in a larger Account Value initially earning a return for the Policy owner.

3. Applicants further submit that if John Hancock did not collect any uncollected issue charge upon surrender or lapse, the surrendering or lapsing Policy owner would effectively escape paying his or her fair share of issue expenses.

D. Request for Exemptions Relating to Deduction of Insurance Charges From Account Value

1. Sections 26(a)(2) and 27(c)(2) of the 1940 Act may be construed to prohibit John Hancock from deducting certain insurance charges from the Account Value.[8] Applicants request exemptions from those sections and from Rule 6e-2(b)(13)(iii) to the extent necessary to permit deduction of these insurance charges from Account Value, as described herein.

2. Applicants submit that deduction of cost of insurance charges from Account Value is fair and reasonable, and in accordance with the practice of most other variable life insurance policies.

3. Applicants further submit that deduction of a portion of the charges for substandard risks and incidental insurance benefits from Account Value is also reasonable and appropriate. If all such charges were required to be deducted solely from premiums, it would be necessary for John Hancock to (a) reduce the premium flexibility under the Policy and/or (b) further limit the classes of insureds for whom the Policy will be available and limit or eliminate the kinds of rider benefits John Hancock intends to make available.

4. John Hancock assesses three death benefit guarantee risk charges. These charges compensate John Hancock for the risk it assumes in guaranteeing death benefits under the Policies, including the risk that the Account Value will not be sufficient to support the guarantees. Because of the Policy owner's flexibility with respect to the payment of premiums, John Hancock's method of assessing the risk charges for the death benefit guarantees permits each Policy owner to pay charges more commensurate with the risks under his or her own Policy. Applicants submit that it is more appropriate and suitable to deduct those charges from the Account Value than from premiums, as deducting the charges from premiums would require Policy owners who pay more premiums to subsidize the guarantee risks assumed under the Policies of Policy owners who pay less premiums.

5. John Hancock represents that the level of the death benefit guaranteed risk charges is reasonable in relation to the risks assumed by John Hancock under the Policy. The methodology used to support this representation is an analysis of John Hancock's mortality risks, taking into account such factors as John Hancock's contractual right to increase insurance charges above current levels, the level of risk inherent in the various insurance benefits provided by the Policy and the possibility of "anti-selection" risks resulting from Policy owners' exercise of the various flexibility features under the Policy, all based on John Hancock's and its affiliates' experience with other insurance products. John Hancock undertakes to keep and make available to the Commission on request the documents or memoranda used to support this representation.

6. John Hancock further represents that there is a reasonable likelihood that the distribution financing arrangement of the Account will benefit the Account and Policy owners. John Hancock will keep and make available to the Commission on request a memorandum setting forth the basis of this representation.

7. Applicants agree that if the requested order is granted, such order will be expressly conditioned on Applicants' compliance with the following: the Account will invest only in management investment companies that have undertaken, in the event they should adopt any plan under Rule 12b–1 to finance distribution expenses, to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve such plan.

E. Request for Exemptions Relating to Use of 1980 CSO Tables

1. Rule 6e–2(b)(1) makes the definition of "sales load" in Rule 6e–2(c)(4) applicable to the Policy. Section 27(a)(1) of the 1940 Act prohibits an issuer of periodic payment plan certificates from imposing a sales load exceeding 9% of the payments to be made on such certificates. Rule 6e–2(b)(13)(i) provides an exemption from 27(a)(1) to the extent that "sales load," as defined Rule 6e–2(c)(4), does not exceed 9% of the payments to be made on the variable life insurance policy during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured based on the 1958 CSO Table.

2. Rule 6e–2(c)(4), in defining "sales load," contemplates the deduction of an amount for the cost of insurance based on the 1958 CSO Tables and the assumed investment return specified in the Policy. Subsequent to the adoption of Rule 6e–2, the National Association of Insurance Commissioners adopted the 1980 CSO Tables. The guaranteed cost of insurance rates under John Hancock's Policy are based on the 1980 CSO Tables. Accordingly, Applicants

[8] John Hancock seeks to deduct the following insurance charges from Account Value: Cost of insurance charges; charges assessed for incidental insurance benefits or for substandard risk classifications; the charge deducted for the risk of guaranteeing the basic death benefit; and the charges imposed for assuming the risk of the additional death benefit guarantees associated with any extra death benefit or reduction of basic premiums which is purchased with excess value or certain premium recalculations under a "level" premium Policy.

request exemptions from section 27(a)(1) and Rules 6e–2(b)(1), (b)(13)(i), and (c)(4) to the extent necessary to permit cost of insurance to be calculated for purposes of testing compliance with the rule based on the 1980 CSO Tables.

3. Applicants represent that proposed amendments to Rule 6e–2 would permit use of either the 1958 or the 1980 CSO Tables for purposes of Rule 6e–2(b)(13)(i) and (c)(4), depending on which relates to the insurance rates guaranteed under an insurance policy.[6]

4. Applicants represents that state insurance laws require that John Hancock use 1980 CSO Tables in establishing premium rates and determining reserve liabilities for the Policies.

5. Applicants further represent that cost of insurance charges based on the 1980 CSO Tables generally are lower than those based on the 1958 CSO Tables, and that, for the most part, this results in lower charges and higher Policy values than if the charges assert that the mortality rates reflected in the 1980 CSO Tables more nearly approach the mortality experience which will pertain to the policies.

F. Request for Exemptions Relating to "Stair-Step" Requirements

1. Applicants represent that section 27(a)(3) of the 1940 Act and Rule 6e–2(b)(13)(ii)—commonly referred to as the "stair-step" provisions—may be deemed inconsistent with deduction of a deferred sales charge. Moreover, Rule 6e–2 was adopted at a time when less flexibility regarding premium payments and other policy features was offered than has been permitted subsequently. Because of these "flexibility features," particularly premium flexibility, more or less than the full amount of the required premiums may be paid on or before the relevant due dates. For these reasons, Applicants request an exemption from section 27(a)(3) and Rule 6e–2(b)(13)(ii) to the extent necessary to permit deduction of the front-end sales charge as part of the premium expense charge, and deduction of the CDSC on surrender or lapse of a Policy or partial surrender of the basic death benefit.

2. John Hancock will waive a portion of the sales charge otherwise deducted from each premium paid on a Policy with a current basic death benefit of at least $250,000. The continuation of this waiver is not contractually guaranteed, however, and the waiver may be withdrawn or modified by John Hancock at any time. Because the waiver of the front-end sales charge applies only when the current basic death benefit is at least $250,000, it is possible that the waiver could apply at some times with respect to a given Policy and not at a subsequent time with respect to the same Policy. Because section 27(a)(3) and rule 6e–2(b)(13)(ii) appear to prohibit this condition, Applicants request an exemption from those provisions to the extent necessary to permit them to waive the sales charge deducted from premiums under the circumstances described herein.

3. Applicants do not believe that either section 27(a)(3) or Rule 6e–2(b)(13)(ii) apply to deferred sales loads. In this regard, Applicants assert that both the statutory provision and the rule apply by their terms only to "amounts deducted from payments," and a deferred sales load is not deducted from payments.

4. Applicants note that proposed amendments to Rule 6e–2 would modify the stair-step provisions to make them applicable to sales loads deducted other than from payments. Applicants assert that if a modification is necessary to apply these provisions to a deferred sales load, then without such modification the provisions should not apply.

5. Applicants assert that the stair-step requirements are designed to discourage unduly complicated sales load structures. Applicants submit that the sales charge design of the Policy is not unduly complicated and will be fully disclosed in the prospectus pertaining to the Policy. Applicants further submit that sales charges are not designed to generate more revenues from later payments than from earlier payments.

6. Applicants represent that the CDSC, if calculated as a percentage of "modified" premiums due to date, never increases from year to year; the total increases annually by 15% of one year's "modified" premium in the early years and is reduced in later years. In no case is the percentage increase in the CDSC (if calculated as a percentage of one year's "modified" premium) for any year greater than that for the previous year.

7. Applicants further represent that the precise amount of sales load assessed depends on, among other things, the degree to which a Policy owner exercises the premium and other flexibility features of the Policy. The exercise of these features is within the sole control of the Policy owner.

8. Applicants note that in amending Rule 6e–3(T), the Commission specifically indicated that sales charge policies underlying the stair-step requirement are not contravened by fluctuations in sales load which result from factors beyond the issuers' control. Applicants submit that this principle should be equally applicable in the present context.

G. Request for Exemptions Relating to Custodianship Arrangements

1. In pertinent part, sections 26(a)(1) and (a)(2) of the 1940 Act prohibit Applicants from selling the Policy unless it is issued pursuant to a trust indenture or other such instrument that designates one or more trustees or custodians, qualified as specified, to have possession of all securities in which John Hancock and the Account invest.

2. In pertinent part, section 27(c)(2) of the 1940 Act may be read to prohibit Applicants from selling the Policy unless the proceeds of all purchase payments are deposited with a trustee or custodian as specified.

3. Rule 6e–2(b)(13)(iii) under the 1940 Act affords an exemption from sections 26(a)(1), 26(a)(2), and 27(c)(2), provided that John Hancock complies, to the extent applicable, with all other provisions of section 26 as if it were a trustee or custodian for the Account, and assuming that John Hancock meets the other requirements set forth in the Rule.

4. Applicants represent that the holding of Fund shares by John Hancock and the Account under an open account arrangement, without having possession of share certificates and without a trust indenture or other such instrument, may be deemed inconsistent with the foregoing provisions. Accordingly, Applicants request exemptions from those provisions, to the extent necessary.

5. Applicants represent that current industry practice calls for unit investment trust separate accounts, such as the Account, to hold shares of management investment companies in uncertificated form. Applicants further represent that holding shares of underlying management investment companies in uncertificated form contributes to efficiency in the purchase and sale of such shares by separate accounts and generally saves costs.

6. Applicants note that, in contrast to the Policies (which are covered by Rule 6e–2), policies covered by Rule 6e–3(T) may rely on Rules 6e–3(T)(b)(13)(iii)(B) and (C) which, in effect, afford the exemptions requested here by the Applicants. The Commission has proposed amendments to Rule 6e–2(b)(13)(iii) to permit a life insurer (such as John Hancock) to hold the assets of a separate account without a trust

[6] In addition, Applicants note that Rule 6e–3(T) requires that the 1980 CSO Tables be used for all policies offered in reliance on that Rule.

indenture or other such instrument, and to permit a separate account organized as a unit investment trust (such as the Account) to hold the securities of any registered investment company (such as the Fund) that offers its shares to the separate account in uncertificated form. Applicants also note that the Commission has adopted Rule 26a–2 which affords exemptions essentially similar to those requested here. Accordingly, Applicants presume that the Commission adopted or proposed the foregoing exemptive rules based on a determination that safekeeping of separate account assets does not necessarily depend on the presence of a trustee, custodian or trust indenture, or the issuance of share certificates, where state insurance law protects separate account assets and open account arrangements foster administrative efficiency and cost savings.

7. John Hancock represents the following: It will comply with all other applicable provisions of section 26 as if it were a trustee or custodian for the Account (subject to the other exemptive relief requested in this application); it will file with the insurance regulatory authority of Massachusetts an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners—the most recent such statement indicated that John Hancock has a combined capital and surplus of at least $1,000,000; it is examined from time to time by the insurance regulatory authority of Massachusetts as to its financial condition and other affairs; and it is subject to supervision and inspection with respect to its separate account operations.

H. Request for Exemption Relating to "Free Look" Right

1. Section 27(f) of the 1940 Act provides that periodic payment plan certificate holders may, within a specified time period, surrender their certificates and receive the account value plus all deductions from gross purchase payments, and Rule 27f–1 provides for notices in connection therewith.

2. Rule 6e–2(b)(13)(viii) provides an exemption from section 27(f) and Rule 27f–1, provided that the Policy owner has the right to return the Policy no later than 45 days after execution of the application for the Policy or, if later, within 10 days after receipt of the Policy or the notice of right of withdrawal by the owner, and receive a refund of all payments made thereunder.

3. John Hancock intends generally to comply with Rule 6e–2(b)(13)(viii), but anticipates that under the laws of some states, it may now or in the future be required to credit investment losses and gains during the "free look" period to Policy owners who exercise their "free look" right.

4. Applicants assert that section 27(f) presumes that the security owner will bear any investment gains and losses during the "free look" period, and that Rule 6e–3(T)(b)(13)(viii) would permit John Hancock's proposed "free look" procedures for a policy relying on that Rule. For these reasons, Applicants do not regard as particularly significant the failure of Rule 6e–2(b)(13)(viii) to authorize "free look" procedures.

5. Applicants note that no state laws required "free look" procedures at the time Rule 6e–2 was adopted, and that under the policy designs prevalent at that time, the amount of investment depreciation or appreciation during the "free look" period was not likely to be great because premiums in excess of scheduled premiums were not permitted to be paid, and relatively large front-end charges reduced the amount initially allocated to the separate account.

Conclusion

Applicants assert that, for the reasons set forth above, the requested exemptions from (i) those provisions of the 1940 Act and those rules specified in paragraph (b) of Rule 6e–2 thereunder, other than section 7 and 8(a), as well as (ii) sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(a)(3), 27(c)(1), 27(c)(2), 27(d) and 27(f), and Rules 6e–2(b)(1), (b)(12), (b)(13)(i), (b)(13)(ii), (b)(13)(iii), (b)(13)(iv), (b)(13)(v), (b)(13)(viii) and (c)(4), 22c–1, and 27f–1, meet the standards of section 6(c) of the 1940 Act. The requested exemptions are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22021 Filed 9–8–93; 8:45 am]

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[Rel. No. IC–19680; File No. 812–8428]

John Hancock Mutual Variable Life Insurance Account UV

September 2, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: John Hancock Mutual Variable Life Insurance Account UV (the "Account") and John Hancock Mutual Life Insurance Company (the "Company"), collectively the "Applicants."

RELEVANT 1940 ACT SECTIONS AND RULES: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 22(d), 26(a)(2), 27(a)(1), 27(c)(1), and 27(c)(2) of the 1940 Act, and Rules 6e–2(b)(1), 6e–2(b)(12), 6e–2(b)(13), 6e–2(c)(4), and 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting them to deduct a contingent deferred sales load ("CDSL") provided for under the terms of certain single premium variable life insurance policies (the "Single Premium Policies"), to deduct cost of insurance charges from Account values under the Single Premium Policies and certain annual premium variable life insurance policies (the "Annual Premium Policies"), and to use the 1980 Commissioners' Standard Ordinary Mortality Tables (the "1980 CSO Tables") in determining compliance of the Annual Premium Policies with the 1940 Act and the rules thereunder.

FILING DATE: The Application was filed initially on June 4, 1993, and amended and restated on August 19, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 27, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Francis C. Cleary, Jr., Esq., John Hancock Place, P.O. Box 111, Boston, Massachusetts 02117.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, or Wendell M. Faria, Deputy Chief, Office of Insurance Products, Division of Investment Management, at (202) 272–2060.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Company, a mutual life insurance company organized under Massachusetts law, is authorized to transact life insurance and annuity business in Massachusetts and all other states. The Company is the depositor and principal underwriter of the Account.

2. The Company has decided to issue certain variable life insurance policies (including the Single Premium Policies and the Annual Premium Policies) itself, rather than through its wholly owned subsidiary, John Hancock Variable Life Insurance Company ("JHVLICO"). To facilitate the withdrawal of JHVLICO from its variable life insurance business in New York state, the Company must assume the Single Premium Policies and the Annual Premium Policies that currently are outstanding in New York state, except any Single Premium Policies and Annual Premium Policies whose owners object to such assumption.

3. For several years, no new offers and sales of the Single Premium Policies and the Annual Premium Policies have been made by JHVLICO or the Company in New York or any other state, and neither JHVLICO nor the Company intends to make offers or sales of the Single Premium Policies or the Annual Premium Policies in the near future. Under the Single Premium Policies, policy owners make no premium payments after the initial premium payment.

4. An application virtually identical to portions of this application was filed by JHVLICO, certain JHVLICO separate accounts, and the Company on October 10, 1984 (File No. 812–5959). An order was granted on February 11, 1985.[1] Applicants are filing this new application to eliminate any concern that the prior order may be deemed inapplicable to the Single Premium Policies, and to make certain updating changes (relating to both the Single Premium Policies and the Annual Premium Policies) to that prior application.

5. Applicants are mindful that more recent exemptive applications under the 1940 Act to authorize deduction of CDSLs in connection with variable life insurance policies have requested exemptive relief from certain provisions of the 1940 Act and rules thereunder that were not deemed necessary when such relief was obtained originally with respect to the Single Premium Policies.

6. The Company established the Account on May 10, 1993, pursuant to Massachusetts law, and also serves as principal underwriter of the Account. The Company will allocate assets to the Account, from time to time, to support benefits payable under the Company's variable life insurance policies, including the Single Premium Policies and the Annual Premium Policies. The offering of periodic payment variable life insurance policies funded through the Account will be covered by registration statements filed under the Securities Act of 1933.

7. The Account is a separate account registered under the 1940 Act as a unit investment trust. The Account consists of seven subaccounts (the "Subaccounts"), each of which will invest its assets in a different portfolio of John Hancock Variable Series Trust I (the "Fund"). Subaccounts may be added or deleted from time to time.

8. No "front-end" sales charge has been deducted from the premium payment for the Single Premium Policies. Rather, surrender values under the Single Premium Policies are structured to impose a CDSL.

9. The CDSL under the Single Premium Policies will apply only in the first nine Policy years. Surrender values under each Single Premium Policy will be adjusted to reflect a charge equal to 9% of the cash value of the Single Premium Policy in the first policy year, declining by 1% each year thereafter, until the charge is 1% in the ninth policy year and 0% in all succeeding policy years. Applicants represent that the CDSL will not exceed 9% of the single premium for a policy.

10. The CDSL will apply to full or partial surrender of a Single Premium Policy, and will be imposed only on the amount surrendered, and only in an amount reflecting the permissible percentage charge applicable to the year of surrender, based on the issue date of the policy originally purchased. When a Single Premium Policy is partially surrendered, there is a proportionate reduction in the initial sum insured, the current variable sum insured, the Account value, the surrender value, and the maximum CDSL. The aggregate CDSL charged on more than one partial surrender will not exceed 9% of the single premium for the policy originally purchased.

11. The CDSL under the Single Premium Policies will not apply to a transfer between portfolios of the Fund, or payment of a death benefit. The CDSL will not apply to a loan against a Single Premium Policy, but will limit the amount available for borrowing by the owner of a Single Premium Policy.

12. John Hancock will deduct a cost of insurance charge each month, in advance, over the life of the policy. The cost of insurance rates for the Single Premium Policies will not exceed the rates stated in the 1958 CSO Tables; the rates for the Annual-Premium Policies will not exceed the rates stated in the 1980 CSO Tables.

Applicants' Legal Analysis

A. Request for Exemptions Relating to the CDSL

1. Applicants request exemption from Section 2(a)(35) of the 1940 Act, and Rules 6e–2 (b)(1) and (c)(4) thereunder, to the extent necessary for the term "sales load" (as defined in provisions of the 1940 Act and the rules promulgated thereunder) to be deemed to contemplate the CDSL imposed under the Single Premium Policies.

2. Section 2(a)(35) defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer, less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities. The Section contemplates that a charge to cover sales and promotional expenses incurred in connection with the sale of investment company securities will be deducted at the time payment for those securities is made.

3. Rule 6e-2(b)(1) provides that, in the context of a variable life insurance, "sales load" shall have the meaning set forth in Rule 6e–2(c)(4). Rule 6e–2(c)(4) defines "sales load" as the excess of a premium payment (as defined in Rule 6e–2(c)(7)) over the sum of certain amounts, including, but not limited to: (i) the amount of surrender value for the first policy year; (ii) the amount of the increase in surrender value for each subsequent policy year that is attributable to payments made and not attributable to investment earnings; (iii) the cost of insurance for the period for which the payment is made, based on the 1958 CSO Tables and the assumed investment rate specified in the policy; (iv) administrative fees; (v) state premium taxes; and (vi) deduction for dividends.

[1] The original application was amended on January 7, 1985. The notice of the filing of the application was issued on January 14, 1985 (Investment Company Act Release No. 14320); an order was granted on February 11, 1985 (Investment Company Act Release No. 14365).

4. Rule 6e–2 may be read only to contemplate sales loads imposed upon a premium payment. Applicant's CDSL will be imposed, if at all, at the time a Single Premium Policy owner surrenders a policy. Consequently, a CDSL may be deemed excluded from the definition of "sales load" in Rule 6e–2, paragraphs (b)(1) and (c)(4).

5. Applicants submit that both the language and the history of Rule 6e–2 anticipated variable life insurance policies with sales charge provisions other than front-end deductions from premiums, and that the timing of the CDSL does not change its essential nature. The CDSL will cover expenses associated with the offer and sale of a Single Premium Policy, including sales commissions, and other sales related expenses, just as a "front-end" sales load does.

6. Applicants submit that construing Rule 6e–2(c)(4) to comprehend CDSLs aligns the language of the Rule with both the 1940 Act and the Commission's contemplation at the time it adopted the Rule. The definition of "sales load" under Rule 6e–2(c)(4) was a construct designed to fit variable life insurance within the framework of the 1940 Act. The artificiality of the definition is reflected, for example, by the fact that the "sales load" is deemed to be the amount remaining after the deduction of specified charges and amounts from the premium. Yet certain of those specified amounts, including the cash value and the cost of insurance are not deducted from a premium. Moreover, the remainder amounts, unlike mutual fund sales loads, vary with the age, sex and risk classification of the policy owner. Therefore, Applicants assert that the applicability of the definition of "sales load" need not be limited to any particular policy design.

7. Applicants submit that a policy providing for a CDSL is consistent with the definition of "redeemable security" within the meaning of section 2(a)(32) and 27(c)(1), as adapted for variable life insurance by Rules 6e–2(b)(12) and (13)(iv).

8. Section 2(a)(32) defines a "redeemable security" as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive "approximately his proportionate share" of the issuer's current net assets, or the cash equivalent thereof. Section 27(c)(1) provides that no issuer of a periodic payment plan certificate shall sell such certificate unless the certificate is a "redeemable security." Rules 6e–2 (b)(12) and (13)(iv) afford exemptions from section 27(c)(1), subject to certain conditions, to the extent necessary for the cash value provisions to be regarded as satisfying the redemption requirements of the 1940 Act.

9. Applicants submit that, although Section 2(a)(32) does not specifically contemplate the imposition of a sales charge at the time of redemption, such a charge is not necessarily inconsistent with the definition of a "redeemable security." Moreover, Applicants assert that the CDSL is indistinguishable from the "redemption" charge referred to in section 10(d)(4)—described as a "discount from net asset value"—which Congress intended to be deemed consistent with the concept of "proportionate share" under section 2(a)(32).

10. Applicants submit that subparagraphs (b)(12) and (13)(iv) of Rule 6e–2 adapt the concept of redeemable security in the 1940 Act in recognition of the insurance nature of variable life insurance. Moreover, Applicants assert that the record suggests that, in adopting Rules 6e–2(b)(12) and (13)(iv), the Commission determined that a policy providing for a cash surrender value would constitute a "redeemable security" for purposes of the 1940 Act.

11. Rule 22c–1 under the 1940 Act provides, in pertinent part, that a registered investment company which issues a redeemable security may not redeem such security except at a price based on the current net asset value of such security which is next computed after receipt of the tender of such security.

12. Rule 6e–2(b)(12) affords exemptive relief from Rule 22c–1. Applicants note that, when read in conjunction with the other provisions of Rule 6e–2, subparagraph (b)(12) may be construed as being premised on the absence of a CDSL.

13. Applicants submit that the CDSL would not have the dilutive effect that Rule 22c–1 is designed to prohibit because, after the insurance company has received the surrender or exchange request from a Single Premium Policy owner, the surrendering or exchanging Single Premium Policy owner would "receive" no more than an amount equal to the surrender value determined pursuant to the formula set out in his or her policy. Furthermore, variable life insurance policies do not lend themselves to the kind of speculative short-term trading that Rule 22c–1 was aimed against. Even if variable life insurance policies could be used for speculative short-term trading, a CDSL would discourage such trading.

14. Rule 6e–2(b)(12)(ii) grants exemption from the uniform offering price requirements of section 22(d) of the 1940 Act. Applicants assert, however, that the Rule may not contemplate situations such as theirs, where a variable life insurance separate account funds both policies with a front-end sales load and policies with a CDSL.

15. Applicants submit that any variation in the offering price of their Single Premium Policies falls within the category of a "variation" in the "premium rate structure" or the "particular benefit afforded by the contract" which are specifically exempted by Rule 6e–2(b)(12)(ii). Moreover, Applicants assert that any such "variation" is reasonable, fair and not discriminatory to the interest of any holder of Single Premium Policies of the same class or series.

16. Applicants submit that the CDSL under the Single Premium Policy benefits the public and is consistent with the essential purpose of variable life insurance. Applicants represent that a single premium policy is less expensive to distribute and administer than a periodic payment policy. Elimination of the front-end charge permits either a reduction in the gross premium payment needed to purchase an equivalent initial death benefit or an increase in the initial amount of the death benefit. The Single Premium Policies have been designed so that the same amount of premium that would be paid under an otherwise comparable front-end loaded policy results in a greater initial face amount of insurance.

17. Applicants submit that a CDSL will generally provide higher surrender values than a front-end sales charge, since more money is at work from the start of the policy.

18. Applicants submit that the CDSL would clearly be permitted without exemptive relief if the Single Premium Policies were eligible to rely on Rule 6e–3(T), rather than Rule 6e–2, under the 1940 Act, and that the Commission has proposed amendments to Rule 6e–2 which, if adopted, would make specific exemptive relief unnecessary.[2]

B. Request for Exemptions Relating to Deduction of Cost of Insurance Charges From Account Value

1. Section 26(a)(2) and 27(c)(2) of the 1940 Act may be construed to prohibit John Hancock from deducting cost of insurance charges from Account value.[3]

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[2] Investment Company Act Release No. 14421 (Mar. 15, 1985).

[3] Section 26(a)(2) provides, in pertinent part, that no principal underwriter for or depositor of a registered unit investment trust shall sell any security of which the trust is the issuer unless the instrument pursuant to which the security is issued

Continued

Applicants request exemptions from those Sections and from Rule 6e–2(b)(13)(iii),[4] to the extent necessary to permit deduction of these charges from Account value.

2. Applicants submit that Rule 6e–3(T) authorizes policies qualified to rely on that Rule to deduct cost of insurance charges from Account value, and that the Commission's proposed amendments to Rule 6e–2 would authorize similar deductions by the Single Premium Policies and the Annual Premium Policies.

3. Applicants submit that John Hancock's method of deducting cost of insurance charges is fair and reasonable.

C. Request for Exemptions Relating to Use of 1980 CSO Tables by the Annual Premium Policies

1. Rule 6e–2(b)(1) makes the definition of "sales load" in Rule 6e–2(c)(4) applicable to the Annual Premium Policies. Section 27(a)(1) of the 1940 Act prohibits an issuer of periodic payment plan certificates from imposing a sales load exceeding 9% of the payments to be made on such certificates. Rule 6e–2(b)(13)(i) provides an exemption from 27(a)(1) to the extent that "sales load," as defined in Rule 6e–2(c)(4), does not exceed 9% of the payments to be made on a variable life insurance policy during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured based on the 1958 CSO Tables. Rule 6e–2(c)(4), in defining "sales load," contemplates the deduction of an amount for the cost of insurance based on the 1958 CSO Tables and the assumed investment return specified in the policy.

2. Subsequent to the adoption of Rule 6e–2, the National Association of Insurance Commissioners adopted the 1980 CSO Tables. Applicants request exemptions from Section 27(a)(1) and Rules 6e–2 (b)(1), (b)(13)(i) and (c)(4), to the extent necessary to permit cost of insurance under the Annual Premium Policies to be calculated for purposes of testing compliance with the Rule based on the 1980 CSO Tables.

3. Applicants represent that state insurance laws require that John Hancock use 1980 CSO Tables in establishing premium rates and determining reserve liabilities for the affected Annual Premium Policies, and that it is appropriate, therefore, that in determining what is deemed to be sales load under the Annual Premium Policies, the deduction for the cost of insurance be based upon the 1980 CSO Tables rather than the 1958 CSO Tables.

4. Applicants further represent that, for the most part, deduction for the cost of insurance based upon the 1980 CSO Tables will result in lower charges and higher policy values than if such deductions were based upon the 1958 CSO Tables. Moreover, Applicants assert that the mortality rates reflected in the 1980 CSO Tables more nearly approach the mortality experience which will pertain to the Annual Premium Policies.

5. Applicants represent that for insureds at advanced ages, appropriate adjustments will be made in the sales charge structure to ensure that the 9% standard prescribed by Rule 6e–2(b)(13)(i) will be met over the expected lifetimes of such insureds, based on the 1980 CSO Tables.

Applicants' Conclusion

Applicants submit that, for the reasons and upon the facts set forth above, the requested exemptions from Sections 2(a)(32), 2(a)(35), 22(c), 22(d), 26(a)(2), 27(a)(1), 27(c)(1) and 27(c)(2) of the 1940 Act, and Rules 6e–2(b)(1), 6e–2(b)(12), 6e–2(b)(13), 6e–2(c)(4), and 22c–1 thereunder—to permit the deduction of a CDSL under the Single Premium Policies, the deduction of cost of insurance charges from Account values under the Single Premium Policies and the Annual Premium Policies, and the use of the 1980 CSO Tables in determining compliance of the Annual Premium Policies with the 1940 Act and the rules promulgated thereunder—meet the standards of Section 6(c) of the 1940 Act. In this regard, the Applicants assert that the exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22022 Filed 9–8–93; 8:45 am]

BILLING CODE 8010–01–M

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provides that no payment to the depositor of or the principal underwriter for such trust, or to any affiliated person of such depositor or underwriter, shall be allowed the trustee or custodian as an expense (except that provision may be made for the payment to any such person of a fee, not exceeding such reasonable amount as the Commission may prescribe as compensation for performing bookkeeping and other administrative services of a character normally performed by the trustee or custodian itself).

Section 27(c)(2) provides, in pertinent part, that it shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the proceeds of all payments on such certificates (except such amounts as are deducted for sales load) are deposited with a trustee or custodian having specified qualifications and are held by such trustee or custodian under an indenture or agreement containing specified provisions).

[4] Among other things, Rule 6e–2(b)(13)(iii) provides an exemption from Sections 26(a)(2) and 27(c)(2), subject to certain conditions which Applicants submit that they satisfy.

[Rel. No. IC–19677; File No. 812–8528]

Lincoln Benefit Life Company, et al.

September 2, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Lincoln Benefit Life Company ("Lincoln Benefit"), Lincoln Benefit Life Variable Annuity Account (the "Account") and Lincoln Benefit Financial Services, Inc. ("Lincoln Financial") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting them to deduct a daily charge from the assets of the Account for mortality and expenses risks in connection with the offering of certain variable annuity contracts.

FILING DATE: The application was filed on August 10, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 27, 1993 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Carol S. Watson, General Counsel, Lincoln Benefit Life Company, 134 South 13th Street, Lincoln, Nebraska 68505.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Attorney, or Wendell M. Faria, Deputy Chief, both at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application, the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. Lincoln Benefit, a stock life insurance company organized under the laws of Nebraska, is a wholly owned subsidiary of Allstate Life Insurance Company. Allstate Life Insurance Company is an Illinois corporation wholly owned indirectly by The Allstate Corporation. Approximately 80.1% of the common stock of The Allstate Corporation is indirectly owned by Sears, Roebuck & Co.

2. The Account, established by Lincoln Benefit on August 3, 1992 as a segregated asset account under Nebraska law, serves as a funding medium for certain flexible premium individual deferred variable annuity contracts (the "Contracts"). The application states that the Account meets the definition of a "separate account" under the federal securities laws. The Account is registered with the Commission under the 1940 Act as a unit investment trust. The application incorporates by reference the registration statement, currently on file with the Commission (File No. 33–66786), for the Account.

3. Purchase payments may be allocated to one or more subaccounts of the Account, as designated by the owner of a Contract. Each subaccount of the Account will invest in shares of a registered open-end management investment company.

4. Lincoln Financial, a wholly owned subsidiary of Lincoln Benefit, is the distributor of the Contracts. Lincoln Financial is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended. Applicants represent that Lincoln financial will also be a member of the National Association of Securities Dealers, Inc. prior to the offering and selling of any Contract.

5. The Contracts are available for retirement plans which qualify for federal tax advantages under the Internal Revenue Code and for those plans which do not qualify for advantageous treatment. The Contracts require a minimum initial premium payment of $1,200. Additional premium payments must be in amounts of at least $100.

6. If the owner of a Contract dies prior to the annuity date and the Contract is in force, Lincoln Benefit will, upon receipt of due proof of death, pay a death benefit. At a minimum, the death benefit is equal to the greater of: (a) All purchase payments less prior withdrawals, accumulated at 4% per year prior to attained age 80 of the owner of the Contract, and at 0% per year thereafter (the "Floor Value"); or (b) the Contract value less applicable premium tax. If the Contract value on the seventh Contract anniversary is greater than the Floor Value, the Floor Value will be increased to the level of the Contract value. If this increase occurs, Floor Value for the eighth Contract year and for subsequent years will then be calculated using the increased value. The Contract owner may select the form of annuity from four annuity options described in the registration statement for the Account.

7. One transfer among subaccounts is permitted monthly without charge. For each transfer among subaccounts in excess of once monthly, a transfer fee of $25 is assessed. Lincoln Benefit is currently waiving this fee.

8. Applicants impose an annual Contract maintenance charge of $25 per Contract year. Applicants guarantee that this charge will not increase and state that the charge reimburses Lincoln Benefit for expenses incurred in maintaining the Contracts. This charge will be deducted on each Contract anniversary prior to the annuity date, but is not imposed during the annuity period. If a Contract is surrendered, the charge is assessed as of the surrender date without proration.

9. Lincoln Benefit deducts an administrative expense charge equal to an annual effective rate of .15% of the net asset of the subaccount. The application states that this charge will compensate Lincoln Benefit for administering the Contracts and the Account. This charge is assessed during both the accumulation and the annuity periods.

10. A contingent deferred sales charge (the "Sales Charge") of up to 7% of the amount withdrawn is imposed on certain surrenders or withdrawals of Contract value. No Sales Charge is applied on annuitization or on the payment of a death benefit unless the settlement option chosen is payment over a period certain of less than five years. The Sales Charge is deducted from the Contract value remaining after withdrawal so that the reduction in Contract value as a result of a withdrawal will be greater than the withdrawal amount requested. Amounts obtained from imposition of the Sales Charge will be used to pay sales commissions and other promotional or distribution expenses associated with the marketing of the Contracts.

11. Lincoln Benefit will impose a daily charge equal to an annual effective rate of 1.25% of the value of the net assets of the Account to compensate Lincoln Benefit for bearing certain mortality and expense risks in connection with the Contracts. Approximately .85% of the 1.25% charge is attributable to mortality risk, and approximately .40% is attributable to expense risk. Applicants represent that the charge for mortality and expense risks will not increase. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risk, Lincoln Benefit will bear the loss. Conversely, if the charge exceeds costs, this excess will be profit to Lincoln Benefit. If Lincoln Benefit realizes a gain from the charge for mortality and expense risks, the amount of such gain may be used in the discretion of Lincoln Benefit.

12. Applicants state that the mortality risk borne by Lincoln Benefit consists of: (a) Bearing the risk that the life expectancy of an annuitant will be greater than that assumed in the guaranteed annuity purchase rates; (b) waiving the Sales Charge upon the death of a Contract owner; and (c) providing a death benefit prior to the annuity date. Applicants state that the expense risk assumed by Lincoln Benefit is the risk that the costs of administering the Contracts and the Account will exceed amounts received by Lincoln Benefit through imposition of the Contract administration charge and the administrative expense charge.

Applicants' Legal Analysis and Conditions

1. Applicants request that the Commission, pursuant to section 6(c) of the 1940 Act, grant the exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act in connection with Applicants' assessment of the daily charge for the mortality and expense risks. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

2. Applicants assert that the charge for mortality and expense risks is reasonable in relation to the risks assumed by Lincoln Benefit under the Contracts.

3. Applicants represent that the charge of 1.25% for the mortality and expense risks assumed by Lincoln Benefit is within the range of industry practice with respect to comparable annuity products. Applicants state that this representation is based upon their analysis of publicly available information about similar industry practices, taking into consideration such factors as: current charge levels; charge level guarantees; benefits provided; and guaranteed annuity rates. Applicants represent that Lincoln Benefit will maintain at its home office, available to the Commission, a memorandum setting forth in detail the methodology used in determining that the level of risk charges is within the range of industry practice.

4. Applicants represent that Lincoln Benefit has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Lincoln Benefit and will be made available to the Commission.

5. Lincoln Benefit also represents that the Account will invest only in management investment companies which undertake, in the event such company adopts a plan under Rule 12b–1 of the 1940 Act to finance distribution expenses, to have such plan formulated and approved by the company's board of directors, a majority of whom are not interested persons of such company within the meaning of the 1940 Act.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21951 Filed 9–8–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19681; File No. 812–8486]

Providentmutual Life and Annuity Company of America, et al.

September 2, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or Commission).

ACTION: Notice of application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Providentmutual Life and Annuity Company of America "(PLACA"), Providentmutual Variable Annuity Separate Account (the "PLACA Account") Provident Mutual Life Insurance Company of Philadelphia ("PMLIC"), Provident Mutual Variable Annuity Separate Account (the "PMLIC Account"), and PML Securities Company (together, the "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 26(a)(2) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of the Accounts under certain variable annuity contracts described below (the "Contracts").

FILING DATE:: The application was filed on July 2, 1993 and amended on August 27, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 27, 1993 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Providentmutual Life and Annuity Company of America, 1600 Market Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst, or Wendell M. Faria, Deputy Chief, on (202) 272–2060 Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. PLACA is a stock life insurance company chartered under Pennsylvania law in 1958 and authorized to transact life insurance and annuity business in the District of Columbia and all states other than New York and Maine. PLACA is a wholly owned subsidiary of PMLIC.

PMLIC is a mutual insurance company chartered under Pennsylvania law in 1865 and authorized to transact life and annuity business in all states and the District of Columbia.

PLACA is the depositor and sponsor of the PLACA Account, and PMLIC is the depositor and sponsor of the PMLIC Account.

2. The PLACA Account was established by PLACA as a separate investment account under Pennsylvania insurance law on May 9, 1991, as a funding medium for variable annuity contracts. The PMLIC Account was established by PMLIC as a separate investment account under Pennsylvania insurance law on October 19, 1992, as a funding vehicle for flexible premium variable annuity contracts.

3. PML Securities will serve as the distributor and principal underwriter for the Contracts. PML is a wholly owned indirect subsidiary of PMLIC, is registered with this Commission under the Securities Exchange Act of 1934 as a broker-dealer, and is a member of the National Association of Securities Dealers, Inc.

4. The Contracts are individual flexible premium deferred variable annuity contracts. The Contracts may be purchased on a non-tax qualified basis ("Nonqualified Contracts") or they may be purchased and used in connection with retirement plans, including retirement programs described in Section 401(a) or Section 403(b) of the Internal Revenue Code of 1986, as amended (the "Code") , or as individual retirement annuities that qualify for favorable federal income tax treatment under Section 408 of the Code ("Qualified Contracts"). The Contracts require a minimum initial premium payment of at least $2,000. Subsequent premium payments must be at least $100 for Nonqualified Contracts and $50 for Qualified Contracts.

5. The PLACA and PMLIC Accounts will each have 16 subaccounts. The Subaccounts of each of the PLACA and PMLIC Accounts will invest exclusively in the shares of a designated investment

portfolio (each a "Portfolio", of one of the following investment companies registered with the Commission as series management companies under the Act: (1) the Market Street Fund, Inc. (the "Market Street Fund"); (2) the Variable Insurance Products Fund (the "VIP Fund"); (3) the Variable Insurance Products Fund II (the "VIP Fund II"); (4) the Scudder Variable Life Investment Fund (the "Scudder VLI Fund"); (5) the Quest for Value Accumulation Trust (the "Quest for Value Trust"); and (6) the Dreyfus Variable Investment Fund (the "Dreyfus Variable Fund") (collectively the "Funds").

6. The Contract owner can allocate premium payments to one or more Subaccounts, each of which will invest in a corresponding Portfolio of the Funds. The Contract owner can also allocate premium payments to the PLACA Guaranteed Account or the PMLIC Guaranteed Account, depending upon which company issues the Contract, and such payments will be credited with interest as provided for in the Contracts. The Guaranteed Account for each company is part of that company's general account.

7. In the event that an annuitant dies prior to the end of the sixth Contract Year, a death benefit is payable upon receipt of due proof of death as well as proof that the annuitant died prior to the maturity date.

8. An annual contract maintenance fee of $30 will be deducted from the Contract account value on each Contract anniversary prior to and including the maturity date (and upon a full surrender or on the maturity date if other than a Contract anniversary) to compensate it for administrative services provided to Contract owners. This fee is guaranteed not to increase for the duration of the Contract and is only applicable prior to and including the maturity date.

9. A daily charge equal to an effective annual rate of .15% of the value of net assets in each Account will also be imposed by PLACA and PMLIC to compensate each of them for certain administrative services provided to Contract owners. This fee is guaranteed not to increase for the duration of the Contract and is only applicable prior to the maturity date.

10. A $25 charge under the Contracts will be imposed for the thirteenth and each subsequent transfer request made by the Contract owner during a single Contract year prior to the maturity date. Transfers made pursuant to the dollar cost averaging program do not count toward the twelve transfers permitted each Contract year without imposition of the transfer charge. This charge is guaranteed not to increase for the duration of the Contract.

11. Applicants represent that these administrative charges will be deducted in reliance on Rule 26a–1 under the Act and that each represents reimbursement only for administration costs expected to be incurred over the life of the Contract. PLACA and PMLIC neither anticipate nor intend to make any profit from the charges.

12. In order to permit investment of the entire premium payment (less any applicable premium taxes), neither PLACA nor PMLIC currently deducts sales charges at the time of investment. However, a contingent deferred sales charge of up to 6% of the amount withdrawn is imposed on certain full surrenders or partial withdrawals of Contract account value during the first six Contract years to cover expenses relating to the sales of the Contracts, including commissions to registered representatives and other promotional expenses. The aggregate contingent deferred sales charges are guaranteed never to exceed 8.5% of the premium payments.

During the first Contract year, any amounts surrendered or withdrawn are subject to the contingent deferred sales charge. After the first Contract year, the portion of the first and second withdrawals in a contract year equal to 10% or less of the Contract account value as of the beginning of the Contract year is not subject to the sales charge. Systematic withdrawals are also not subject to a contingent deferred sales charge, regardless of when such withdrawals are made. However, notwithstanding the rules ordinarily governing the imposition of the surrender charge, any other withdrawal in a year in which the systematic withdrawal plan is being utilized will be subject to a surrender charge.

13. Neither PLACA nor PMLIC anticipates that the contingent deferred sales charges will generate sufficient revenues to pay the cost of distributing the Contracts. If these charges are insufficient to cover PLACA's or PMLIC's expenses, the deficiency will be met from each company's general account assets, which may include amounts derived from the charge for mortality and expense risks discussed below.

14. A daily charge is imposed by each PLACA and PMLIC to compensate it for bearing certain mortality and expense risks in connection with the Contracts. This charge is equal to an effective annual rate of 1.25% of the value of the net assets in the Account and only applies prior to and including the maturity date. Of that amount, approximately .70% is attributable to mortality risk, and approximately .55% is attributable to expense risk. PLACA and PMLIC each guarantees that this charge will never exceed 1.25%. If the mortality and expense risk charge is insufficient to cover PLACA's or PMLIC's actual costs and assumed risks, the loss will fall on PLACA or PMLIC. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to either PLACA or PMLIC. PLACA and PMLIC each currently anticipates a profit from this charge.

15. The mortality risk borne by each of PLACA and PMLIC arises from its contractual obligation to make annuity payments (determined in accordance with the annuity tables and other provisions contained in the Contract) regardless of how long all annuitants or any individual annuitant may live.

16. The expense risk assumed by each of PLACA and PMLIC is the risk that PLACA's or PMLIC's actual administration costs will exceed the amount recovered through the Contract administrative charges.

17. PLACA and PMLIC each also incurs a risk in connection with the death benefit guarantee. Upon the annuitant's death before the end of the sixth Contract Year, PLACA or PMLIC will pay the greater of (a) the Contract account value, or (b) premium payments (net of withdrawals, including applicable surrender charges). Upon the annuitant's death after the end of the sixth Contract year but before the maturity date, PLACA or PMLIC will pay the greatest of (1) the Contract account value as of the end of the sixth Contract year less any subsequent partial withdrawals, (2) the Contract account value on the date of receipt of due proof of death, and (3) the premium payments (net of withdrawals, including any surrender charges). There is no extra charge for this guarantee.

18. PLACA will deduct the aggregate premium taxes paid on behalf of a particular Contract either (a) from premiums as they are received, or (b) from the Contract proceeds upon (i) a withdrawal from or full surrender of a Contract, or (ii) application of the proceeds to a payment option. Premium taxes currently range up to 3.5%.

Applicant's Legal Analysis and Conditions

1. Section 26(a)(2)(C) provides that no payment to the depositor of, or principal underwriter for, a registered unit investment trust shall be allowed the trustee or custodian as an expense except compensation, not exceeding such reasonable amount as the Commission may prescribe, for

performing bookkeeping and other administrative duties normally performed by the trustee or custodian. Section 27(c)(2) prohibits a registered investment company or depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments on such certificates, other than sales loads, are deposited with a trustee or custodian having the qualifications prescribed in section 26(a)(1), and are held by such trustee or custodian under an agreement containing substantially the provisions required by sections 26(a)(2) and 26(a)(3) of the Act. Applicants request exemptions from sections 26(a)(2) and 27(c)(2) to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Accounts.

2. Applicants submit that each of PLACA and PMLIC is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the charge of 1.25% under the Contracts made for mortality and expense risks is consistent with the protection of investors because it is a reasonable and proper insurance charge. As described above, in return for this amount each of PLACA and PMLIC guarantees certain risks in the Contracts. The mortality and expense risk charge is a reasonable charge to compensate PLACA and PMLIC for the risk that annuitants under the Contracts will live longer than has been anticipated in setting the annuity rates guaranteed in the Contracts, for the risk that the Contract account value will be less than the death benefit, and for the risk that administrative expenses will be greater than amounts derived from the Contract administrative charges.

3. PLACA and PMLIC each represents that the charge of 1.25% for mortality and expense risks assumed by PLACA and PMLIC is within the range of industry practice with respect to comparable annuity products. This representation is based upon PLACA's and PMLIC's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. PLACA and PMLIC will each maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

4. Applicants acknowledge that the proceeds of surrender charges may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed by the Commission as being offset by distribution expenses not reimbursed by the sales charge.

5. Each of PLACA and PMLIC has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the PLACA and PMLIC Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by each of PLACA and PMLIC at its administrative offices and will be available to the Commission.

6. Each of PLACA and PMLIC also represents that the PLACA and PMLIC Accounts will only invest in management investment companies which undertake, in the event such company adopts a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b-1.

7. For the reasons set forth above, Applicants believe that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-22020 Filed 9-8-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25875]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 3, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 27, 1993, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Southwestern Electric Power Company (70-8239)

Southwestern Electric Power Company ("SWEPCO"), 428 Travis Street, Shreveport, Louisiana 71101, a public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rules 50 and 50(a)(5) thereunder.

SWEPCO proposes to issue and sell in one or more series, from time to time through December 31, 1994, first mortgage bonds ("New Bonds") in an aggregate principal amount up to $125 million with maturities of not less than five nor more than forty years. SWEPCO estimates that the New Bonds will be issued at an interest rate between 4½% and 8½% depending on market conditions and maturity, and in no event will the interest rate on the New Bonds exceed 11%.

The New Bonds will be issued under SWEPCO's indenture dated February 1, 1940, as amended and supplemented ("Indenture") and secured by a first lien on substantially all of the properties now owned and hereafter acquired, except for properties specifically excepted from such liens.

The proceeds from the sale of the New Bonds will be used principally to repay outstanding short-term borrowings of SWEPCO. A portion of the proceeds from the sale of the New Bonds may also be used to redeem all or a portion of one or more series of SWEPCO's outstanding first mortgage bonds ("Old Bonds"). Any net proceeds not used for the repayment of outstanding short-term borrowings or for the redemption of the old Bonds will be used for other general corporate purposes, including

SWEPCO's ongoing general construction and maintenance program.

By order dated September 9, 1992 (HCAR No. 25624) ("Previous Order"), the Commission authorized SWEPCO to issue and sell first mortgage bonds in an aggregate principal amount of up to $320 million in one or more series from time to time through December 31, 1994. As of August 6, 1993, under authority of the Previous Order, SWEPCO had issued and sold first mortgage bonds in an aggregate principal amount of $230 million. The remaining $90 million of first mortgage bonds authorized to be issued under the Previous Order may be issued in connection with refunding transactions, including the repayment of all or a portion of SWEPCO's outstanding $50 million variable rate bank loan due June 15, 1997, and to repay outstanding short-term borrowing or for other general corporate purposes. The authority requested herein is in addition to the authority granted in the Previous Order.

SWEPCO requests authority to sell the New Bonds either pursuant to competitive bidding or in negotiated transactions with underwriters or agents. SWEPCO also seeks authorization from the Commission to issue the New Bonds with terms which deviate from the provisions contained in the Commission's Statement of Policy Regarding First Mortgage Bonds, as amended, (HCAR Nos. 13105 and 16369). The New Bonds may include terms which (i) limit SWEPCO's ability to redeem or refund the New Bonds for a period of up to fifteen years, (ii) do not include a sinking fund or retirement fund requirement, and/or (iii) do not restrict SWEPCO's ability to pay dividends on its common stock.

SWEPCO also requests authorization to enter into negotiations with potential underwriters to set the terms and conditions of the New Bonds, subject to the receipt of an order granting this declaration. It may do so.

The Columbia Gas System, Inc., et al. (70–8247)

The Columbia Gas System, Inc. ("Columbia"), a registered holding company and debtor in possession under Chapter 11 of the United States Bankruptcy Code,[1] and its nonutility subsidiary company Columbia LNG Corporation ("Columbia LNG"), both of 20 Montchanin Road, Wilmington, Delaware 19807, have filed a declaration under section 12(b) of the Act and Rule 45 thereunder.

Columbia LNG owns a liquefied natural gas ("LNG") receiving terminal and regasification facility located at Cove Point, Maryland ("Facility") and an 87 mile pipeline extending from the Facility to Loudoun County, Virginia. The pipeline is currently being used for gas transportation, but the Facility has been inactive since 1980. Columbia LNG is planning to reactivate the Facility to provide peak shaving services to interested companies, including affiliated and nonaffiliated retail gas distribution companies.

Columbia has proposed that it accept deferral of principal and interest payments on long and short-term debt owned to Columbia by Columbia LNG. The amount deferred would be up to $3.8 million for a five month period from September 30, 1993 to February 28, 1994.

Columbia also represents that if the deferral is authorized, Columbia LNG's current cash balance plus anticipated federal income tax benefits will permit Columbia LNG to fund, through February 28, 1994, maintenance expenses for the Facility, and expenses related to the implementation of Columbia LNG's new business plan.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22017 Filed 9–8–93; 8:45 am]

BILLING CODE 8010–01–M

[1] Columbia and its wholly owned subsidiary, Columbia Gas Transmission Corporation, filed for protection with the Bankruptcy Court for the District Court of Delaware on July 31, 1991, *In re The Columbia Gas System, Inc. and Columbia Gas Trans. Corp.*, No. 91–803. Columbia represents that the authorization of the bankruptcy court is not required to effect this transaction.

[Rel. No. IC–19670; File No. 812–8470]

The Quest for Value Accumulation Trust, et al.

September 1, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Quest for Value Accumulation Trust (the "Trust"), Quest for Value Advisors ("Quest Advisors") and certain life insurance companies and their separate accounts investing now or in the future in the Trust (collectively, the "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of any current or future series of the Trust to be sold to and held by separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies.

FILING DATE: The application was filed on June 22, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 27, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Quest for Value Accumulation Trust, One World Financial Center, New York, New York 10281 and Quest for Value Advisors, One World Financial Center, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Senior Attorney, at (202) 272–2058 or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is an open-end, management investment company organized as a Massachusetts business trust on March 2, 1988. The Trust currently consists of five portfolios: (1) The Equity Portfolio; (2) the Small Cap Portfolio; (3) the Managed Portfolio; (4) the Bond Portfolio; and (5) the Money Market Portfolio. The Board of Trustees may establish additional series at any time, each with its own investment objective or objectives and policies.

2. Shares of the Trust are currently offered only to variable accounts of life insurance company affiliates of the Mutual Life Insurance Company of New

York ("MONY") to serve as an investment vehicle for variable annuity contracts issued by MONY. Shares of the Trust and any future series of the Trust ("Other Funds") also will be offered to separate accounts of insurance companies that are affiliated and unaffiliated with MONY (together with MONY, the "Participating Insurance Companies"). Such shares will serve as investment vehicles for various types of variable insurance contracts, including variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts ("Variable Contracts").

3. Quest Advisors is a subsidiary of Oppenheimer Capital, a general partnership, which is registered as an investment adviser. Oppenheimer Financial Corp., a holding company, owns a 33% interest in Oppenheimer Capital and Oppenheimer Capital, L.P., a Delaware limited partnership of which Oppenheimer Financial Corp. is the sole general partner, owns the remaining interest. Quest Advisors serves as the investment adviser to each series of the Trust ("Fund").

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (the "Trust Account"), Rule 6e-2(b) provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The relief provided by Rule 6e-2 is also available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e-2(b)(15) are available only where the management investment company underlying the Trust Account ("underlying fund") offers its shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company." Therefore, the relief granted by Rule 6e-2(b)(15) is not available with respect to a scheduled premium life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or flexible premium variable life insurance separate account of the same company or any affiliated life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as "mixed funding."

2. In addition, the relief granted by Rule 6e-2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to herein as "shared funding."

3. In connection with the funding of flexible premium variable life insurance contracts issued through a Trust Account, Rule 6e-3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The relief provided by Rule 6e-3(T) is also available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by rule 6e-3(T) are available only where the Trust Account's underlying fund offers its shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Therefore, Rule 6e-3(T) permits mixed funding while not permitting shared funding.

4. Applicants therefore request that the Commission, under its authority in section 6(c) of the 1940 Act, grant relief from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder, for themselves and for variable life insurance separate accounts of Participating Life Insurance Companies, and the principal underwriters and depositors of such separate accounts, to the extent necessary to permit mixed funding and shared funding.

5. Section 9(a) of the 1940 Act makes it unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a) (1) and (2). Rule 6e-2(b)(15) (i) and (ii) and rule 6e-3(T)(b)(15) (i) and (ii) provide exemptions from section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. The relief provided by rules 6e-2(b)(15)(i) and 6e-3(T)(b)(15)(i) permits a person disqualified under section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by rules 6e-2(b)(15)(ii) and 6e-3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to section 9(a) is participating in the management or administration of the fund.

6. Applicants state that the partial relief granted in rules 6e-2(b)(15) and 6e-3(b)(15) from the requirements of section 9, in effect, limits the monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicants state that rules 6e-2 and 6e-3(T) recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. Applicants submit that there is no regulatory reason to apply the provisions of section 9(a) of the 1940 Act to the many individuals in various unaffiliated insurance companies (or affiliated companies of Participating Insurance Companies) that may utilize a Fund or any Other Fund as the funding medium for variable contracts.

7. Rules 6e-2(b)(15)(iii) and 6e-3(T)(b)(15)(iii) provide partial exemptions from sections 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed to require "pass-through" voting with respect to management investment company shares held by a separate account, to permit the insurance company to disregard the voting instructions of its contract owners in certain circumstances.

Rules 6e-2(b)(15)(iii)(A) and 6e-3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract holders in connection with the voting of shares of an underlying fund if such instructions would require such shares to be voted to cause such companies to make, or refrain from making, certain investments which would result in changes in the subclassification or

investment objectives of such companies or to approve or disapprove any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority, subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of such Rules.

Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard contract holders' voting instructions if the contract holders initiate any change in such company's investment policies or principal underwriter or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraph (b)(5)(ii) and (b)(7)(ii) (B) and (C) of each Rule.

8. Applicants submit that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. In this regard, Applicants state that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Accordingly, Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

9. Applicants state further that, under Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii), the right of the insurance company to disregard the voting instructions of its contract holders does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts, and that affiliation does not eliminate the potential, if any, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract holders. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations.

10. Applicants submit that mixed funding and shared funding should benefit variable contract holders by: (1) Eliminating a significant portion of the costs of establishing and administering separate funds; (2) allowing for a greater amount of assets available for investment by the Funds or Other Funds, thereby promoting economies of scale, permitting greater safety through greater diversification, and/or making the addition of new portfolios more feasible; and (3) encouraging more insurance companies to offer variable contracts, resulting in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Each Fund and Other Fund will be managed to attempt to achieve its investment objectives and not to favor or disfavor any particular participating insurer or type of insurance product.

11. Applicants believe that there is no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as unit investment trusts have historically been employed to accumulate shares of mutual funds which have not been affiliated with the depositor or sponsor of the separate account. Applicants also believe that mixed and shared funding will have no adverse federal income tax consequences.

Applicants' Conditions

The Applicants have consented to the following conditions:

1. A majority of the Board of Trustees of the Trust shall consist of persons who are not "interested persons" of the Trust as defined by Section 2(a)(19) of the 1940 Act and the Rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or trustees, then the operation of this condition shall be suspended: (i) For a period of 45 days, if the vacancy or vacancies may be filled by the Board of Trustees; (ii) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (iii) for such longer period as the Commission may prescribe by order upon application.

2. The Board of Trustees will monitor the Trust for the existence of any material irreconcilable conflict between the interests of the contract holders of all Separate Accounts investing in any Fund or Other Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (i) An action by any state insurance regulatory authority; (ii) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (iii) an administrative or judicial decision in any relevant proceeding; (iv) the manner in which the investments of a Fund or Other Fund are being managed; (v) a difference in voting instructions given by variable annuity contract holders and variable life insurance contract holders; or (vi) a decision by a Participating Insurance Company to disregard the voting instructions of contract holders.

3. Participating Insurance Companies and the investment adviser to the Trust will report any potential or existing conflicts to the Board of Trustees of the Trust. Participating Insurance Companies will be responsible for assisting the Board of Trustees of the Trust in carrying out its responsibilities under these conditions, by providing the Board with all information reasonably necessary for it to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board of Trustees of the Trust whenever contract holder voting instructions are disregarded. These responsibilities will be contractual obligations of all Participating Insurance Companies investing in a Fund or Other Fund under their agreements governing participation therein, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contract holders.

4. If a majority of the Board of Trustees of the Trust, or a majority of the disinterested trustees, determine that a material irreconcilable conflict exists, the relevant Participating Insurance Companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees) take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (i) Withdrawing the assets allocable to some or all of the separate accounts from a Fund or Other Fund and reinvesting such assets in a different investment medium (including another fund, if any) or submitting the question whether such segregation should be implemented to a vote of all affected contract holders and, as appropriate, segregating the assets of any appropriate group (i.e., annuity contract holders, life insurance contract holders, or variable contract holders of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract holders the option of making such a change; and (ii) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract holder voting instructions, and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may

be required, at the election of the Fund or Other Fund, to withdraw its separate account's investment therein, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in a Fund or Other Fund and these responsibilities will be carried out with a view only to the interests of the contract holders.

For the purposes of this condition (4), a majority of the disinterested members of the Board of Trustees of the Trust shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Trust or the investment adviser be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this condition (4) to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contract holders materially affected by the irreconcilable material conflict.

5. The determination by the Board of Trustees of the Trust of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to all Participating Insurance Companies.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract holders so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract holders. Accordingly, Participating Insurance Companies will vote shares of each Fund and Other Fund held in their separate accounts in a manner consistent with timely voting instructions received from contract holders. Each Participating Insurance Company will vote shares of each Fund and Other Fund held in its separate accounts for which no timely voting instructions from contract holders are received, as well as shares it owns, in the same proportion as those shares for which voting instructions are received. Each Participating Insurance Company shall be responsible for assuring that each of their separate accounts participating in a Fund or Other Fund calculates voting privileges in a manner consistent with the other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in a Fund or Other Fund shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund or Other Fund.

7. Each Fund and Other Fund will notify all Participating Insurance Companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund and Other Fund shall disclose in its Prospectus that (1) its shares may be offered to separate accounts that fund both annuity and life insurance contracts of affiliated and unaffiliated Participating Insurance Companies, (2) because of differences of tax treatment or other considerations, the interests of various contract holders participating in it might at some time be in conflict, and (3) the Board of Trustees will monitor the Trust for any material conflicts and determine what action, if any, should be taken.

8. All reports received by the Board of Trustees of the Trust regarding potential or existing conflicts, and all Board action with respect to determining the existence of a conflict, notifying Participating Insurance Companies of a conflict and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board of the Trust or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. If and to the extent rule 6e–2 and rule 6e–3(T) are amended, or rule 6e–3 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested, then each Fund and Other Fund, and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

10. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Trust), and in particular the Trust will either provide for annual meetings (except insofar as the Commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(c) of the 1940 Act (although the Trust is not one of the trusts described in this section) as well as with sections 16(a) and, if and when applicable, 16(b). Further, the Trust will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. The Participating Insurance Companies and/or the investment adviser, at least annually, shall submit to the Board of Trustees of the Trust such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by these stated conditions, and said reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies to provide these reports, materials, and data to the Board of Trustees of the Trust when it so reasonably requests, shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in each Fund or Other Fund.

Conclusion

For the reasons stated above, Applicants believe that the requested exemptions, in accordance with the standards of section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Department of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21898 Filed 9–8–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19678; 811–3314]

Security Action Fund; Notice of Application

September 2, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Security Action Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 8, 1993 and amended on August 31, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 27, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 700 Harrison Street, Topeka, Kansas 66636–0001.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a corporation under the laws of Kansas. On November 6, 1981, applicant registered under the Act as an investment company. On December 2, 1981, applicant filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective and applicant's initial public offering commenced on June 30, 1982. Applicant's shares were beneficially owned through Destiny Plans IIA (formerly, Security Action Plans). Destiny Plans IIA is a periodic payment plan organized as a unit investment trust. (The certificate holders of Destiny Plans IIA are "Planholders.")

2. On December 30, 1992, applicant's board of directors approved an agreement and plan of reorganization made with Destiny II, a separate series of Fidelity Destiny Portfolios (the "Agreement"). Destiny II shares are beneficially owned through a Fidelity periodic payment plan. On February 23, 1993, applicant furnished proxy materials to its shareholders. At a meeting held on March 23, 1993, applicant's shareholders approved the Agreement.

3. On March 26, 1993, applicant transferred all of its assets to Destiny II in exchange for shares of Destiny II with an equivalent net asset value. On the date of the reorganization, applicant had 35,372,591 shares outstanding, having an aggregate net asset value of $343,907,268 and a per share net asset value of $9.72. Each shareholder of applicant, including Destiny Plans IIA, became the owner of Destiny II shares having an aggregate net asset value equal to the aggregate net asset value of applicant's shares held by the shareholder. Consequently, the Planholders became beneficial owners of shares of Destiny II through their ownership of Destiny Plans IIA certificates.

4. Expenses incurred in connection with the reorganization, including legal fees, auditing fees, postage, and printing costs, totaled approximately $117,748.17. All expenses were allocated to Security Management Company, applicant's investment adviser, and Fidelity Management and Research Company, Destiny II's investment adviser.

5. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

6. Applicant has filed a certificate of dissolution on March 29, 1993 with the Secretary of State of Kansas and was dissolved.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21953 Filed 9–8–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19673; 812–8506]

Shearson Lehman Daily Dividend Inc.; Notice of Application

September 1, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Shearson Lehman Daily Dividend Inc., Shearson Government and Agencies Inc., Shearson Lehman Brothers Managed Municipals Fund Inc., Shearson Lehman Brothers of New York Municipals Fund Inc., Shearson Lehman Brothers California Municipals Fund Inc., Shearson Lehman Brothers Massachusetts Municipals Fund, Shearson Lehman Brothers Arizona Municipals Fund Inc., Shearson Lehman Brothers New Jersey Municipals Fund Inc., Shearson Lehman Brothers Florida Municipals Fund, Shearson Lehman Brothers Precious Metals and Minerals Fund Inc., American Express® New York Municipals Money Market Fund, American Express® California Municipals Money Market Fund, and Managed High Income Portfolio Inc. (the "Funds") and Smith Barney, Harris Upham & Co. Incorporated ("Smith Barney").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from section 2(a)(19) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to amend a previous order that exempted Judge James J. Crisona from the definition of "interested person" as defined in section 2(a)(19) of the Act to the extent he may be an "interested person" of the Funds because he is the father of Cynthia Crisona, an employee of the Funds' underwriter, Shearson Lehman Brothers Inc. ("Shearson"). The present order is necessary because of the sale of the assets of Shearson to Primerica Corporation and Primerica's subsidiary, Smith Barney.

FILING DATE: The application was filed on July 29, 1993. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 27, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, the Funds, Two World Trade Center, New York, New York

10048; Smith Barney, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. On March 12, 1993, Shearson entered into an asset purchase agreement with Primerica Corporation and Primerica's indirect wholly-owned subsidiary Smith Barney. The agreement provided for the sale to Smith Barney and its designated affiliates of substantially all the assets of Shearson and the SLB Asset Management Divisions of Shearson (the "Transaction"). Upon the closing of the Transaction, Smith Barney will become the sponsor and distributor or underwriter of the Funds, which have formerly been sponsored and distributed or underwritten by Shearson. In addition, the investment advisory services which had formerly been provided to the Funds by Shearson or its subsidiaries will be provided by Smith Barney or one of its investment advisory affiliates.

2. Since July 1, 1976 and until his retirement on December 31, 1992, Judge James J. Crisona was counsel to a New York law firm. From January 1, 1959 to July 1, 1976, Judge Crisona was a Justice of the Supreme Court of the State of New York. He has been a director or trustee of the Funds since their respective dates of inception. Cynthia Crisona is Judge Crisona's daughter and has been an employee of Shearson since the consummation of certain transactions relating to the combination of the business of Loeb Rhoades Hornblower & Co. and Shearson Hayden Stone Inc. (the "Combination"). For one year prior to the Combination, Ms. Crisona was employed as a registered representative of Loeb Rhoades Hornblower & Co. and remained employed in that capacity by Shearson immediately following the Combination. Prior to the Combination, Judge Crisona was a non-interested director of one of the Funds, and it was anticipated that he also would serve as a non-interested person on the board of directors of another Fund. However, as a result of the Combination and the continued employment of Shearson of Ms. Crisona, Judge Crisona was treated as an interested person of those investment companies. For this reason, applicants, except Smith Barney, sought and received an order under section 6(c) of the Act exempting Judge Crisona from the definition of "interested person" as defined in section 2(a)(19) of the Act (the "Prior Order").[1] The Prior Order exempted Judge Crisona to the extent he otherwise would have been considered an interested person of the Funds because he is the father of Ms. Crisona.

3. Applicants anticipate that Judge Crisona will continue to serve as a director, trustee, or general partner of the Funds after the Transaction, at which time all of the Funds will be sponsored, advised, and underwritten by Smith Barney or its subsidiaries. Also, Ms. Crisona will be employed in her present capacity by Smith Barney.

4. At the request of Shearson and Smith Barney, the Commission's Division of Investment Management informed Shearson and Smith Barney that the Division would not recommend that the Commission take any enforcement action against them if the Funds operate under the terms of the Prior Order until the earlier of (a) the date the Prior Order is renewed by the Commission pursuant to a renewal order specifying Smith Barney and its subsidiaries or affiliates as applicants or (b) June 8, 1994.[2] Accordingly, applicants in the present application request that the relief granted by the Prior Order be extended to Smith Barney or any of its subsidiaries or affiliates, or any future Funds as to which Smith Barney or any of its subsidiaries or affiliates may act as the investment adviser or principal underwriter.

Applicants' Legal Analysis

1. Section 2(a)(19) of the Act defines an "interested person" of an investment adviser or a principal underwriter to include any member of the immediate family of any natural person who is an "affiliated person" of such investment adviser or principal underwriter. The section defines member of the immediate family to include any parent. Furthermore, section 2(a)(19) defines an "interested person" of an investment company to include any interested person of any investment adviser of or principal underwriter for such company. Section 2(a)(3) of the Act defines "affiliated person" of any person as, among other things, "any officer, director, partner, co-partner, or employee of such other person."

2. Because Ms. Crisona will be an employee of Smith Barney after the Transaction, she will be an affiliated person of Smith Barney. Judge Crisona, absent the renewal and extension of the Prior Order may be, at the conclusion of the Transaction, an "interested person" of the Funds, Smith Barney, or any of its subsidiaries, because he is the father of an employee of the Funds' underwriter—Smith Barney.

3. Ms. Crisona has been employed for several years in positions completely independent of her father and is financially independent. Ms. Crisona is over 40 years of age, has been married, maintains a separate household from Judge Crisona, and is financially independent of Judge Crisona. Judge Crisona has received no direct or indirect benefit from Ms. Crisona's employment by Shearson nor is it expected that he will receive any direct or indirect benefit from Ms. Crisona's employment by Smith Barney after the Transaction. In addition, Ms. Crisona will be one of approximately 3,000 registered representatives employed by Smith Barney, and she receives no additional compensation benefits or preferential or other special treatment by virtue of her relationship to Judge Crisona.

4. The function of the provisions of the Act with respect to "interested persons" is to supply an independent check on the management of investment companies and to provide a means for the representation of shareholder interests in investment company affairs. The designation of an individual as an "interested person" implies the existence of a question of actual or potential conflict of interest that would impede the individual's capacity to perform those functions. The Funds' respective boards of directors or trustees or individual general partners have determined in good faith that Judge Crisona is in a position to continue to act independently on behalf of the Funds and their respective shareholders without any possible impairment arising out of his daughter's employment with a Smith Barney affiliate.

Applicants' Condition

As a condition of the requested relief, Judge Crisona will undertake not to vote, nor participate in any deliberations, as a director or trustee of any of the Funds with respect to allocation of brokerage to Smith Barney, or any affiliate thereof, as long as Ms. Crisona is employed as a registered representative of Smith Barney.

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[1] Investment Company Act Release Nos. 11671 (Mar. 6, 1981) (notice) and 11716 (Apr. 3, 1981) (Order).

[2] Shearson Lehman Brothers Inc. (pub. avail. June 8, 1993).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21899 Filed 9–8–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19674; 812–8508]

Shearson Lehman Daily Dividend Inc.; Notice of Application

September 1, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Shearson Lehman Daily Dividend Inc., Shearson Government and Agencies Inc., Shearson Lehman Brothers Managed Municipals Fund Inc., Shearson Lehman Brothers New York Municipals Fund Inc., Shearson Lehman Brothers California Municipals Fund Inc., Shearson Lehman Brothers Massachusetts Municipals Fund, Shearson Lehman Brothers Arizona Municipals Fund Inc., Shearson Lehman Brothers New Jersey Municipals Fund Inc., Shearson Lehman Brothers Florida Municipals Fund, Shearson Lehman Brothers Precious Metals and Minerals Fund Inc., Shearson Lehman Brothers Adjustable Rate Government Income Fund, American Express® New York Municipals Money Market Fund, American Express® California Municipals Money Market Fund, the Advisors Fund L.P., the Trust for Trak Investments, Zenix Income Fund Inc., Managed Municipals Portfolio Inc., Managed Municipals Portfolio II Inc., and Managed High Income Portfolio Inc. (the "Funds"), the Robinson-Humphrey Company, Inc. ("Robinson-Humphrey"), and Smith Barney, Harris Upham & Co. Incorporated ("Smith Barney").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from section 2(a)(19) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to amend a previous order that exempted Martin Brody from the definition of "interested person" as defined in section 2(a)(19) of the Act to the extent he may be an "interested person" of the Funds because he is the father of Renee Levow, an employee of an affiliate of the Funds' underwriter, Shearson Lehman Brothers Inc. ("Shearson"). The present order is necessary because of the sale of the assets of Shearson to Primerica Corporation and Primerica's subsidiary, Smith Barney.

FILING DATE: The application was filed on July 29, 1993. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 27, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, the Funds, Two World Trade Center, New York, New York 10048; Robinson-Humphrey, 3333 Peachtree Road, NE., Atlanta, Georgia 30326; Smith Barney, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. On March 12, 1993, Shearson entered into an asset purchase agreement with Primerica Corporation and Primerica's indirect wholly-owned subsidiary Smith Barney. The agreement provided for the sale to Smith Barney and its designated affiliates of substantially all the assets of Shearson and the SLB Asset Management Divisions of Shearson (the "Transaction"). Upon the closing of the Transaction, Smith Barney will become the sponsor and distributor or underwriter of the Funds, which have formerly been sponsored and distributed or underwritten by Shearson. In addition, the investment advisory services which had formerly been provided to the Funds by Shearson or its subsidiaries will be provided by Smith Barney or one of its investment advisory affiliates.

2. Robinson-Humphrey is a wholly-owned subsidiary of Shearson and is principally an investment banking and securities brokerage firm. Pursuant to the Transaction, Robinson-Humphrey will be sold to and become a wholly-owned subsidiary of Smith Barney.

3. Martin Brody is vice chairman of the board of directors of Restaurant Associates Industries, Inc., and Renee Levow is his daughter. Mr. Brody originally was elected as a director, trustee, or made a general partner of each of the Funds at their respective organizational meetings. Until April 1, 1983, he was deemed to be a non-interested person of the Funds and their advisers and principal underwriters. However, as a result of Mrs. Levow's employment as a registered representative with Robinson-Humphrey on or around April 1, 1983, Mr. Brody may have been characterized as an interested person of the Funds. For this reason, applicants, except Smith Barney, sought and received an order under section 6(c) of the Act exempting Mr. Brody from the definition of "interested person" as defined in section 2(a)(19) of the Act (the "Prior Order").[1] The Prior Order exempted Mr. Brody to the extent he otherwise would have been considered an interested person of the Funds because he is the father of Mrs. Levow.

4. Applicants anticipate that Mr. Brody will continue to serve as a director, trustee, or general partner of the Funds after the Transaction, at which time all of the Funds will be sponsored, advised, and underwritten by Smith Barney or its subsidiaries. Also, Mrs. Levow will remain employed in her present capacity by Robinson-Humphrey.

5. At the request of Shearson and Smith Barney, the Commission's Division of Investment Management informed Shearson and Smith Barney that the Division would not recommend that the Commission take any enforcement action against them if the Funds operate under the terms of the Prior Order until the earlier of (a) the date the Prior Order is renewed by the Commission pursuant to a renewal order specifying Smith Barney and its subsidiaries or affiliates as applicants or (b) June 8, 1994.[2] Accordingly, applicants in the present application

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[1] Investment Company Act Release Nos. 13316 (June 10, 1983) (notice) and 13382 (July 13, 1983) (order).

[2] Shearson Lehman Brothers Inc. (pub. avail. June 8, 1993).

request that the relief granted by the Prior Order be extended to Smith Barney or any of its subsidiaries or affiliates, or any future Funds to which Smith Barney or any of its subsidiaries or affiliates may act as the investment adviser or principal underwriter.

Applicants' Legal Analysis

1. Section 2(a)(19) of the Act defines an "interested person" of an investment adviser or a principal underwriter to include any member of the immediate family of any natural person who is an "affiliated person" of such investment adviser or principal underwriter. The section defines member of the immediate family to include any parent. Furthermore, section 2(a)(19) defines an "interested person" of an investment company to include any interested person of any investment adviser of or principal underwriter for such company.

2. Section 2(a)(3) of the Act defines "affiliated person" of any person as, among other things, any officer, director, partner, co-partner, or employee of such other person. Accordingly, Mrs. Levow is an affiliated person of Robinson-Humphrey because she is an employee of Robinson-Humphrey. "Affiliated person" is further defined to include any person directly or indirectly controlling, controlled by or under common control with, such other person. Therefore, Robinson-Humphrey will be an affiliated person of Smith Barney after the Transaction since Robinson-Humphrey will be a wholly-owned subsidiary of Smith Barney.

3. Although applicants' relief is characterized as a request for relief from section 2(a)(19), the provision of the Act that may be violated in the absence of relief is section 10(a), which requires that at least 40% of the directors of a registered investment company be non-interested persons. Section 10(a) is intended to provide for an independent check on management and for the representation of the shareholders' interests in investment company affairs. Because of this purpose, in interpreting section 2(a)(19), the Division of Investment Management generally treats related companies that are under common ownership and control as a single entity for the purpose of section 2(a)(19).[3] Accordingly, if Robinson-Humphrey and Smith Barney are treated as a single entity, Mr. Brody would be considered to be an interested person of the Funds because his daughter would be considered an affiliated person of the Funds' underwriter—Smith Barney.

4. Mrs. Levow has been employed for several years in positions completely independent of her father. She is over 40 years of age, is married, maintains a separate household, and is financially independent of her father. Mr. Brody has received no direct or indirect benefit from Mrs. Levow's employment by Robinson-Humphrey, and applicants do not expect that he will receive any direct or indirect benefit from Mrs. Levow's employment by Smith Barney or one of its affiliates after the Transaction. In addition, Mrs. Levow will be one of approximately 650 registered representatives employed by Robinson-Humphrey, and she receives no additional compensation benefits or preferential or other special treatment by virtue of her relationship to Mr. Brody.

5. The function of the provisions of the Act with respect to "interested persons" is to supply an independent check on the management of investment companies and to provide a means for the representation of shareholder interests in investment company affairs. The designation of an individual as an "interested person" implies the existence of a question of actual or potential conflict of interest that would impede the individual's capacity to perform those functions. The Funds' respective boards of directors or trustees or individual general partners have determined in good faith that Mr. Brody is in a position to continue to act independently on behalf of the Funds and their respective shareholders without any possible impairment arising out of his daughter's employment with a Smith Barney affiliate.

Applicants' Condition

As a condition of the requested relief, Mr. Brody will undertake not to vote, nor participate in any deliberations, as a director, trustee, or general partner of any of the Funds with respect to allocation of brokerage to Smith Barney, or any affiliate thereof, as long as Mrs. Levow is employed as a registered representative of Smith Barney or one of its subsidiaries or affiliates.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-21900 Filed 9-8-93; 8:45 am]

BILLING CODE 8010-01-M

[3] *See, e.g., Certain Persons Not Deemed Interested Persons; Definition of Regular Broker or Dealer,* Investment Company Act Release No. 13920 (May 2, 1984) (proposal to amend rule 2a-5 and renumber it as rule 2a-19).

[Rel. No. IC-19675; 812-8538]

Transamerica Occidental Life Insurance Company, et al.

September 1, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Transamerica Occidental Life Insurance Company ("Company"), Transamerica Separate Account VA-2L (the "Variable Account"), Transamerica Financial Resources, Inc. ("TFR") and Dreyfus Service Corporation ("Dreyfus").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Variable Account under certain flexible purchase payment multi-funded deferred individual annuity contracts (the "Contracts").

FILING DATE: The application was filed on August 18, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 27, 1993 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. The Transamerica Applicants, c/o James W. Dederer, Esq., Transamerica Occidental Life Insurance Company, 1150 South Olive, Los Angeles, CA 90015. Dreyfus Service Corporation, 200 Park Avenue, New York, NY 10166.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Senior Attorney, at (202) 272-2058 or Michael V. Wible, Special Counsel, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. The Company is a stock life insurance company which was originally incorporated under the laws of California in 1906. It is a wholly-owned subsidiary of Transamerica Insurance Corporation of California, which is in turn a wholly-owned subsidiary of Transamerica Corporation.

2. The Variable Account is registered with the Commission as a unit investment trust under the 1940 Act. The Variable Account is divided into sub-accounts that invest in shares of the Dreyfus Life and Annuity Index Fund, Inc. or one or more of the portfolios of the Dreyfus Variable Investment Fund. In the future, the Variable Account will invest in the Dreyfus Socially Responsible Growth Fund, Inc. In addition, other portfolios or funds managed or distributed by Dreyfus or an affiliate may be made available.

3. Dreyfus and TFR will serve as the distributors and principal underwriters of the Contracts.

4. The Contracts are flexible purchase payment multi-funded deferred individual annuity contracts which can be purchased on a non-tax qualified basis or used to fund rollovers to individual retirement annuities qualifying for favorable tax treatment under section 408(b) of the Internal Revenue Code of 1986. The initial purchase payment for a Contract is $5,000 and additional payments of at least $500 may be made at any time before the annuity date. Initially, payments may be allocated to one or more sub-accounts of the Variable Account. The Company anticipates that, in the future, payments may be allocated to the sub-accounts of the Variable Account, one or more Guarantee Periods of the Fixed Account (if and when made available), or to a combination of these investment accounts. Amounts allocated to the Fixed Account will be subject to a market value adjustment under certain circumstances.

5. The Contract offers a death benefit. Prior to the annuity date, the death benefit proceeds for each Contract are equal to the greatest of (a) the Contract Owner's account value (plus or minus any market value adjustment applicable to the Fixed Account), (b) the sum of all purchase payments less withdrawals and any premium taxes or, (c) the Contract Owner's account value after any market value adjustment on the most recent seven year certificate anniversary preceding the date of death adjusted for any payments and withdrawals since that seven year anniversary.

6. Subject to certain restrictions, Contract Owners may transfer all or part of their interest in a sub-account to another sub-account of the Variable Account or to the Fixed Account (if and when available). During the accumulation phase of the Contracts, transfers in excess of six per year may be subject to a transfer fee equal to the lesser of 2% of the amount transferred or $10. No transfer fee applies after the annuity date.

7. The Company will deduct an annual account fee for each Contract equal to the lesser of (a) 2% of a Contract Owner's account value or (b) $30. The fee may be increased but is guaranteed not to exceed an annual amount of $60. After the annuity date an annual fee of $30 will be deducted in equal installments from each annuity payment.

8. The Company will also deduct a daily administrative charge from the assets of each sub-account of the Variable Account currently at an effective annual rate of 0.15% of the average net assets of the Variable Account. This charge may be increased but will not exceed 0.25%.

9. The Company reserves the right to impose an annual fee not to exceed $25 for administrative expenses associated with processing monthly withdrawals under a Contract pursuant to a systematic withdrawal option offered under the Contract.

10. Applicants represent that the Company does not anticipate any profit from the charges described in paragraphs 7–9 above and that the Company will deduct the administrative charges in reliance upon and in compliance with Rule 26a–1 under the 1940 Act.

11. A contingent deferred sales charge of up to 6% of the amount withdrawn will be imposed on certain partial withdrawals from or surrender of a Contract Owner's account. The percentage of the charge varies according to the number of years between the year in which a payment was credited to the Contract and the Contract year in which the withdrawal is made. The charge is equal to 6% until the second certificate year after receipt of payment has been completed, 5% until 4 years are completed, 4% for the next two years, 2% after 6 complete years and 0% after 7 complete years. The amount of any withdrawal will be deemed to come first from purchase payments on a first in/first out basis until all purchase payments have been withdrawn. The Company guarantees that the aggregate contingent deferred sales charge will never exceed 6% of the total purchase payments. After the second Contract year, up to 10% of purchase payments held less than seven Contract years may be withdrawn without a charge. Also, the contingent deferred sales charge will not be applied to death benefits, withdrawals under the Contract's systematic withdrawal or automatic payment options, and upon certain annuities.

12. Premium taxes relating to a particular Contract will be deducted from premiums, upon receipt of purchase payments, withdrawal, surrender, payment of death benefits, or annuitization. No charges are currently made for federal, state, or local taxes other than premium taxes. However, the Company may deduct such taxes from the Fixed Account and the Variable Account in the future. The Applicants' acknowledge that the relief granted by rule 26a–2 under the 1940 Act does not apply to taxes other than premium taxes.

13. The Company will impose a daily charge to compensate it for bearing certain mortality and expense risks in connection with the Variable Account and the Contracts. The charge is set at an annual maximum rate of 1.25% of the net assets in the Variable Account. Of that amount, approximately 0.65% is estimated to be attributable to mortality risks, and approximately 0.60% is estimated to be attributable to expense risks. The Company currently anticipates a profit from this charge. The mortality risk borne by the Company arises from its contractual obligation to make annuity payments (determined in accordance with the annuity tables and other provisions contained in the Contract) regardless of how long all annuitants or any individual annuitant may live. The Company also assumes a risk in connection with the payment of death benefits. The expense risk assumed by the Company is the risk that actual administrative costs will exceed the amount recovered through the various administrative charges described above.

Applicants' Legal Analysis and Conditions

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the 1940 Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and

consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants request exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act pursuant to section 6(c) to the extent relief is necessary to permit the deduction from the Variable Account of the mortality and expense risk charge under the Contracts. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any deposition thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

3. Applicants submit that the Company is entitled to reasonable compensation for its assumption of mortality and expense risks and represent that the mortality and expense risk charge under the Contracts is consistent with the protection of investors because it is a reasonable and proper insurance charge. The Company also represents that the charge of 1.25% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. Applicants state that this representation is based upon the Company's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, death benefit guarantees, guaranteed annuity rates and other Contract options. The Company will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of its comparative survey.

4. Applicants acknowledge that the proceeds from the contingent deferred sales load may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses not reimbursed by the contingent deferred sales charge. The Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and the Contract Owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its administrative offices and will be available to the Commission.

5. The Company represents that the Variable Account will invest only in underlying management investment companies which undertake, in the event such company adopts any plan under rule 12b–1 under the 1940 Act to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under the Rule 12b–1.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts meet the standards in section 6(c) of the 1940 Act. In this regard, Applicants assert that the exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–21901 Filed 9–8–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before October 12, 1993. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer

Cleo Verbillis, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416. Telephone: (202) 205–6629.

OMB Reviewer

Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: License Application, Personal History and Qualification of Management
Form No.: SBA Form 415, 415A
Frequency: On Occasion
Description of Respondents: Applicants for Small Business Investment Company Licenses
Annual Responses: 80
Annual Burden: 3,280

Dated: September 2, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93–21882 Filed 9–8–93; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance officer

Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th

Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer

Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Survey of Commercialization Activities of SBIR Awardees
Form No.: N/A
Frequency: On Occasion
Description of Respondents: SBIR program participants
Annual Responses: 700
Annual Burden: 84

Dated: August 3, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93–21875 Filed 9–8–93; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments properly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer

Cleo Verbillis, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer

Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Governor's Request for Disaster Declaration
Form No.: N/A
Frequency: On Occasion
Description of Respondents: States Requesting a Presidential Disaster Declaration.
Annual Responses: 50
Annual Burden: 1,000.

Dated: August 3, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93–21876 Filed 9–8–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2662; Amendment #6

Illinois; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with Notices from the Federal Emergency Management Agency, dated August 26 and 27, 1993, to include Cook, Massac, Pope, and Pulaski Counties in the State of Illinois as a disaster area as a result of damages caused by severe storms and flooding beginning on April 13, 1993 and continuing. This Declaration is further amended to extend the deadline for filing applications for physical damage to November 15, 1993.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: DuPage, Gallatin, Hardin, Saline, and Will in Illinois; Ballard, Livingston, and McCracken in Kentucky; and Lake County in Indiana.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

The economic injury numbers are 793200 for Illinois; 801200 for Kentucky; and 803100 for Indiana.

The termination date for filing applications for economic injury is April 11, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 1, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–21954 Filed 9–8–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2664; Amendment #3]

Minnesota; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective August 18, 1993, to include the counties of Freeborn, Kittson, Marshall, Mower, Otter Tail, and Roseau in the State of Minnesota as a disaster area as a result of damages caused by severe storms, flooding, and tornadoes beginning on May 6, 1993 and continuing. This declaration is also amended to extend the deadline for filing applications for physical damage.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Beltrami, Lake of The Woods, and Todd in the State of Minnesota may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

The termination date for filing applications for physical damage is November 15, 1993 and for economic injury the deadline is April 11, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 26, 1993.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 93–21880 Filed 9–8–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2670; Amendment #4]

North Dakota; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended effective August 26, 1993 to include Divide and Williams Counties in the State of North Dakota as a disaster area as a result of damages caused by severe storms and flooding beginning on June 22, 1993 and continuing. This Declaration is further amended to extend the deadline for filing applications for physical damage to November 15, 1993.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: McKenzie County in North Dakota, and Richland, Roosevelt, and Sheridan Counties in Montana.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

The termination date for filing applications for economic injury is April 26, 1994.

The economic injury numbers are 795500 for North Dakota and 803200 for Montana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 1, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–21955 Filed 9–8–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2676]

Pennsylvania, and Contiguous Counties in New Jersey; Declaration of Disaster Loan Area

Bucks County and the contiguous counties of Lehigh, Montgomery, Northampton, and Philadelphia in Pennsylvania, and Burlington, Hunterdon, Mercer, and Warren Counties in New Jersey constitute a disaster area as a result of damages caused by heavy rains and flooding which occurred on August 16 and 17, 1993. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 29, 1993 and for economic injury until the close of business on May 31, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 267606 for Pennsylvania and 267706 for New Jersey. For economic injury the numbers are 801400 for Pennsylvania and 801500 for New Jersey.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 30, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–21957 Filed 9–8–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2668; Amendment #4]

South Dakota; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended effective August 20, 1993 to include Gregory County in the State of South Dakota as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on May 6, 1993 and continuing. This Declaration is further amended to extend the deadline for filing applications for physical damage to November 15, 1993.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Tripp, South Dakota may be filed until the specified data at the previously designated location.

Any counties contiguous to the above-named primary county and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

The termination date for filing applications for economic injury is April 19, 1994.

The economic injury number for South Dakota is 793800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 27, 1993.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 93–21879 Filed 9–8–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Economic Injury Disaster Loan Area #8013]

Texas; Declaration of Disaster Loan Area

Aransas, Brazoriza, Calhoun, Cameron, and Galveston Counties and the contiguous counties of Chambers, Fort Bend, Harris, Hidalgo, Jackson, Matagorda, Refugio, San Patricio, Victoria, Wharton, and Willacy in the State of Texas constitute an economic injury disaster area as a result of flooding from December 1991 through March 1992. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on May 31, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: August 30, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–21956 Filed 9–8–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2660; Amendment #5]

Wisconsin; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with Notices from the Federal Emergency Management Agency dated August 20 and 25, 1993 to include Menominee and Shawano Counties in the State of Wisconsin as a disaster area as a result of damages caused by severe storms and flooding, and to establish the incident period for this disaster as beginning on June 7, 1993 and continuing through August 25, 1993. This declaration is further amended to extend the deadline for filing applications for physical damage.

In addition, applications for economic injury loans for small businesses located in the contiguous county of Oconto, Wisconsin may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary countries and not listed herein have been previously declared.

The termination date for filing applications for physical damage is November 15, 1993 and for economic injury the deadline is April 4, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 26, 1993.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 93–21881 Filed 9–8–93; 8:45 am]

BILLING CODE 8025–01–M

[License #03/03–0146]

James River Capital Associates, L.P.; License Surrender

Notice is hereby given that James River Capital Associates, L.P. ("James River"), a Virginia limited partnership, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). James River was licensed by the Small

Business Administration on May 15, 1981.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on July 30, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 31, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–21878 Filed 9–8–93; 8:45 am]

BILLING CODE 8025–01–M

Newark District Advisory Council; Public Meeting

The U.S. Small Business Administration Newark District Advisory Council will hold a public meeting at 9:30 a.m. on Friday, October 1, 1993, at the U.S. Small Business Administration, 60 Park Place, 4th Floor, Newark, New Jersey, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Stanley H. Salt, District Director, U.S. Small Business Administration, 60 Park Place, Newark, New Jersey 07102, (201) 645–3580.

Dated: September 2, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–21877 Filed 9–8–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice No. 1859]

Shipping Coordinating Committee; Subcommittee on Standards of Training and Watchkeeping; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on October 14, 1993, in room 3442 in the Nassif Building, 400 7th Street SW., Washington, DC 20590. The purpose of the meeting is to review the actions taken by the first intersessional meeting of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW) working group on the comprehensive review of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW). Items on the agenda for the twenty-fifth session of STW scheduled for January 17–21, 1994, in London, will also be reviewed.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Christopher Young, U.S. Coast Guard (G–MVP–4), room 1210, 2100 Second Street SW., Washington, DC 20493–0001 or by calling: (202) 267–0229.

Dated: August 27, 1993.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 93–21895 Filed 9–8–93; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice 93–17]

Commercial Space Transportation Advisory Committee; Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 1), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Wednesday, September 29, 1993, from 8:30 a.m. to 5 p.m. in room 2230 of the Department of Transportation's headquarters building at 400 Seventh Street SW. in Washington, DC. This will be the eighteenth meeting of the COMSTAC. The meeting will cover such issues as the status of the DOD Infrastructure Grants Program, progress report on the NASA Facilities Study, report on the USAF Range Standardization and Automation project, as well as reports from the COMSTAC working groups.

The meeting is open to the interested public, but may be limited to the space available. Additional information may be obtained by contacting Ms. Linda H. Strine at (202) 366–5770.

Dated: September 2, 1993.

Linda H. Strine,

Executive Director, Commercial Space Transportation Advisory Committee.

[FR Doc. 93–22029 Filed 9–8–93; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Noise Exposure Map Notice, Receipt of Noise Compatibility Program and Request for Review; Wittman Regional Airport, Oshkosh, Wisconsin

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Winnebago County for Wittman Regional Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 and agency regulations are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Wittman Regional Airport under agency regulations in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before February 14, 1994.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is August 18, 1993. The public comment period ends October 18, 1993.

FOR FURTHER INFORMATION CONTACT: William J. Flanagan, Federal Aviation Administration, Airports District Office, room 102, 6020 28th Avenue South, Minneapolis, Minnesota 55450, (612) 725–4463. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Wittman Regional Airport are in compliance with applicable requirements of part 150, effective August 18, 1993. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before February 14, 1994. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The

Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Winnebago County submitted to the FAA on December 29, 1992, noise exposure maps, descriptions and other documentation which were produced during the FAR part 150 Noise Compatibility Study from April 1985 to December 1992. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Winnebago County. The specific maps under consideration are the 1992 existing Noise Exposure Map and the 1997 future Noise Exposure Map. The FAA has determined that these maps for Wittman Regional Airport are in compliance with applicable requirements. This determination is effective on August 18, 1993. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detail overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA formally received the noise compatibility program for Wittman Regional Airport, also effective on August 18, 1993. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before February 14, 1994.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Minneapolis Airports District Office, room 102, 6020 28th Avenue South, Minneapolis, MN 55450.

Wittman Regional Airport, Airport Administration, 525 West 20th Avenue, Oshkosh, Wisconsin 54901.

Winnebago County Court House, County Clerks Office, 415 Jackson Street, Oshkosh, Wisconsin 54901.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Minneapolis, Minnesota, August 18, 1993.

Franklin D. Benson,

Manager, Minneapolis Airports District Office, FAA Great Lakes Region.

[FR Doc. 93-21973 Filed 9-8-93; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-93-40]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 29, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591 .

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 1, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 26006
Petitioner: Beech Aircraft Corporation
Sections of the FAR Affected: 14 CFR 47.69(b)
Description of Relief Sought: To extend Exemption No. 5125 which allows operation of aircraft outside the United States for demonstration, testing, selling and marketing of aircraft, using a Dealer's Aircraft Registration Certificate.

Docket No.: 27381
Petitioner: Northwest Airlines
Sections of the FAR Affected: 14 CFR 108.17(a)(4)
Description of Relief Sought: To allow Northwest Airlines, Inc. and all certificate holders now operating X-ray systems for the inspection of carry-on or checked articles, relief from the requirement to provide each operator with an individual dosimeter.

Docket No.: 27402
Petitioner: Atlantic Coast Airlines
Sections of the FAR Affected: 14 CFR 61.57(e), 121.433(c)(1)(iii), 121.441(A)(1)(B)(1), and 121 appendix F
Description of Relief Sought: To allow Atlantic Coast Airlines to transition into a Single Visit Recurrent Training (SVRT) or Single Visit Training Program (SVTP), and eventually into the Advances Qualification Program (AQP) as described in AC 120–54.

Docket No.: 27432
Petitioner: Dornier Luftfahrt GmbH
Sections of the FAR Affected: 14 CFR 25.562(c)(5)
Description of Relief Sought: To allow the petitioner to temporarily operate the Dornier 328 aircraft with front row passenger seats that exceed the maximum Head Injury Criterium requirements of 1000 units.

Docket No.: 18114
Petitioner: Federal Express Corporation
Sections of the FAR Affected: 14 CFR 121.547 and 121.583
Description of Relief Sought/ Disposition: To permit Federal Express to carry reporters, photographers, or journalists aboard its aircraft without complying with the passenger carrying requirements of part 121. *Grant, August 24, 1993, Exemption No. 2600I*

Docket No.: 26898
Petitioner: America West Airlines
Sections of the FAR Affected: 14 CFR 121.343(c)
Description of Relief Sought/ Disposition: To allow the petitioner to exercise the privileges of Exemption No. 5593, as amended, which was issued to the Air Transport Association of America (ATA). Exemption No. 5593, as amended, permits member carriers of ATA to operate, after May 16, 1994, under an FAA approved Airplane Retirement Schedule until December 31, 1998, "certain" airplanes that do not have one or more of the digital flight data recorders (DFDR) required by § 121.343(c). The category of certain airplanes covered by the exemption are Stage 2 airplanes that air carriers plan to retire rather than retrofit with noise abatement equipment. This exemption may not be used to delay DFDR retrofit for Stage 3 airplanes. *Grant, August 18, 1993, Exemption No. 5593C*

Docket No.: 26893
Petitioner: Ryan International Airlines
Sections of the FAR Affected: 14 CFR 121.343(c)
Description of Relief Sought/ Disposition: To allow the petitioner to exercise the privileges of Exemption No. 5593, as amended, which was issued to the Air Transport Association of America (ATA). Exemption No. 5593, as amended, permits member carriers of ATA to operate, after May 16, 1994, under an FAA approved Airplane Retirement Schedule until December 31, 1998, "certain" airplanes that do not have one or more of the digital flight data recorders (DFDR) required by § 121.343(c). The category of certain airplanes covered by the exemption are Stage 2 airplanes that air carriers plan to retire rather than retrofit with noise abatement equipment. This exemption may not be used to delay DFDR retrofit for Stage 3 airplanes. *Grant, August 18, 1993, Exemption No. 5593D*

Docket No.: 26898
Petitioner: Zantop International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.343(c)
Description of Relief Sought/ Disposition: To allow the petitioner to exercise the privileges of Exemption No. 5593, as amended, which was issued to the Air Transport Association of America (ATA). Exemption No. 5593, as amended, permits member carriers of ATA to operate, after May 16, 1994, under an FAA approved Airplane Retirement Schedule until December 31, 1998, "certain" airplanes that do not have one or more of the digital flight data recorders (DFDR) required by § 121.343(c). The category of certain airplanes covered by the exemption are Stage 2 airplanes that air carriers plan to retire rather than retrofit with noise abatement equipment. This exemption may not be used to delay DFDR retrofit for Stage 3 airplanes. *Grant, August 27, 1993, Exemption No. 5593E*

Docket No.: 27140
Petitioner: Hi Line Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, August 10, 1993, Exemption No. 5715*

Docket No.: 27148
Petitioner: Heliflight, Inc.
Sections of the FAR Affected: 14 CFR 141.27
Description of Relief Sought/ Disposition: To allow the petitioner to reapply for a provisional pilot school certificate without waiting at least 180 days after the expiration date of its current provisional certificate. *Denial, August 26, 1993, Exemption No. 5730*

Docket No.: 27152
Petitioner: Reforestation Services, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought: To allow the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, August 10, 1993, Exemption No. 5716*

Docket No.: 27174
Petitioner: Summit Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought: To allow the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, August 20, 1993, Exemption No. 5723*

Docket No.: 27186
Petitioner: Mr. B.J. Schram
Sections of the FAR Affected: 14 CFR 103.1
Description of Relief Sought: To allow a 370-pound single seat, vertical takeoff helicopter with a fuel capacity of 12 gallons to operate as an ultralight vehicle. *Withdrawn, August 23, 1993*

Docket No.: 27194

Petitioner: Agrotors Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To allow the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, August 20, 1993, Exemption No. 5722*

Docket No.: 27202
Petitioner: Skydive Arizona, Inc.
Sections of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought/ Disposition: To allow non-student, foreign skydivers to participate in Skydive Arizona, Inc. sponsored events held at its facilities without having to comply with certain parachute equipment and packing requirements. *Grant, August 20, 1993, Exemption No. 5725*

Docket No.: 27220
Petitioner: Mountain Rotors, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To allow the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, August 20, 1993, Exemption No. 5724*

Docket No.: 27246
Petitioner: Deutscha Lufthansa AG
Sections of the FAR Affected: 14 CFR 129.18
Description of Relief Sought/ Disposition: To permit the petitioner to operate its aircraft to San Juan, Puerto Rico, without being equipped with a TCAS II traffic alert and collision avoidance system (TCAS II). *Grant, August 23, 1993, Exemption No. 5728*

Docket No.: 27251
Petitioner: American Bonanza Society/ Air Safety Foundation
Sections of the FAR Affected: 14 CFR 91.109(a) and (b)(3)
Description of Relief Sought: To allow American Bonanza Society/Air Safety Foundation (ABS/ASF) instructors to provide recurrent flight training and simulated instrument flight training in Beech Baron and Travel Air type aircraft, equipped with a functioning throw-over control wheel, for the purpose of meeting regency of experience requirements contained in §§ 61.56 (a), (b) and (f) and 61.57 (e) (1) and (2) of the FAR. *Grant, August 30, 1993, Exemption No. 5733*

Docket No.: 27254
Petitioner: Andrews University
Sections of the FAR Affected: 14 CFR 141 appendixes A, C, D, and H
Description of Relief Sought: To allow the petitioner to train its students to a performance standard in lieu of meeting minimum flight time requirements and to allow 20 of the required 40 hours of solo cross country flight time be pilot-in-command time, in which the student would be permitted to carry another pilot (not a flight instructor), assigned by the school to perform specific flight crew duties, and/or another person, who is not a pilot, to be carried on board the aircraft during a solo cross country training flight. *Partial Grant, August 23, 1993, Exemption No. 5729*

Docket No.: 27281
Petitioner: Airways, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To allow pilots employed by Airways, Inc. to remove and install aircraft seats as required for a particular flight. *Grant, August 26, 1993, Exemption No. 5732*

Docket No.: 27293
Petitioner: Darby Aviation
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To allow pilots employed by Darby Aviation to remove and install aircraft seats as required for a particular flight. *Grant, August 18, 1993, Exemption No. 5726*

Docket No.: 27295
Petitioner: Monument Valley Air Service
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To allow pilots employed by Monument Valley Air Service to remove and install aircraft seats as required for a particular flight. *Grant, August 18, 1993, Exemption No. 5727*

Docket No.: 27330
Petitioner: Crow Executive Air, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To allow pilots employed by Crow Executive Air, Inc. to remove and install aircraft seats as required for a particular flight. *Grant, August 26, 1993, Exemption No. 5731*

[FR Doc. 93–21968 Filed 9–8–93; 8:45 am]
BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 93–64; Notice 1]

Receipt of Petition for Determination that Nonconforming 1987 Jaguar XJ6 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for comments on petition for determination that nonconforming 1987 Jaguar XJ6 passenger cars are eligible for importation.

SUMMARY: This notice requests comments on a petition submitted to the National Highway Traffic Safety Administration (NHTSA) for a determination that a 1987 Jaguar XJ6 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is October 12, 1993.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all

applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) has petitioned NHTSA to determine whether 1987 Jaguar XJ6 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1987 Jaguar XJ6 that Jaguar Cars Ltd. manufactured for importation into and sale in the United States and certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner states that it has carefully compared the non-U.S.-certified 1987 Jaguar XJ6 with its U.S.-certified counterpart, and found that they are substantially similar with respect to most applicable Federal motor vehicle safety standards.

Specifically, the petitioner claims that the non-U.S. certified 1987 Jaguar XJ6 is identical to its U.S.-certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 116 *Brake Fluids*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver from the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:*

(a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp;

(b) Installation of a seat belt warning lamp;

(c) Recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 103 *Lamps, Reflective Devices and Associated Equipment:*

(a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers;

(b) Installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers;

(c) Installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Operated Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch in the retractor for that belt; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams in the doors.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the 1988 Jaguar XJ6 must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 ad 501.8.

Issued on: September 1, 1993

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–21870 Filed 9–8–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–63; Notice 1]

Receipt of Petition for Determination That Nonconforming 1991 BMW 518i Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1991 BMW 518i passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1991 BMW 518i that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is October 12, 1993.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT:

Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) has petitioned NHTSA to determine whether 1991 BMW 518i passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1991 BMW 525i. Champagne has submitted information indicating that Bayerische Motoren-Werke A.G., the company that manufactured the 1991 BMW 525i, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that the 518i is substantially similar to the 525i, and differs mainly in engine size and "minor options which go with it." In accounting for the differences between the two vehicles, the petitioner observed that manufacturers such as Bayerische Motoren-Werke A.G. "generally design only a few basic body shell designs which they then equip with a multitude of engine-size and cosmetic or comfort options." The petitioner further surmised that the 518i's absence from the United States market could be attributed to "salability considerations or legislative restrictions such as the strict emission control requirements in the United States."

Champagne submitted information with its petition intended to demonstrate that the 1991 model 518i, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1991 model 525i that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1991 model 518i is identical to the certified 1991 model 525i with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:*

(a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp;

(b) Installation of a seat belt warning lamp;

(c) Recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:*

(a) Installation of U.S.-model headlamp assemblies which incorporated sealed beam headlamps and front sidemarkers;

(b) Installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers;

(c) Installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of either a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer. The petitioner states that the 1991 model 518i is equipped with a passive restraint system, consisting of a driver side airbag, knee bolster, and control unit, and that those components have identical part numbers to the ones that are found on the 1991 model 525i.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the 1991 model 518i must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 1, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–21871 Filed 9–8–93; 8:45 am]

BILLING CODE 4910–58–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 93–71]

Country of Origin Marking for Eritrea

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: Eritrea, following a referendum on independence, announced on April 27, 1993, its independence from Ethiopia. After this announcement, the United States recognized Eritrea as an independent country. This document notifies the public of the name and the English spelling for this country that are to be used for country of origin marking on products of Eritrea imported into the United States. It also grants a grace period to permit the continued importation of merchandise marked "Ethiopia."

EFFECTIVE DATE: September 9, 1993.

FOR FURTHER INFORMATION CONTACT: Anthony A. Tonucci, Office of Regulations and Rulings (202–482–7040).

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Customs has authority pursuant to 19 U.S.C. 1304 to determine the character of the words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin and to require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of an article.

On April 27, 1993, the United States recognized Eritrea as an independent country. Accordingly, products of Eritrea are subject to marking with the English name of the independent country from which they originate. The United States Department of State has indicated that the English names and the correct spellings of this new independent country are:

Long form name	Short form name
(No current long form)	Eritrea.

Customs recognizes that manufacturers and importers may need time to adjust to this change and that an abrupt change in the marking requirements could cause undue hardship. Therefore, goods made in Eritrea will be accepted as properly marked if they are marked with either "Ethiopia"; or the new appropriate country designation: "Eritrea". Either name will be acceptable until May 1, 1994. All products of Eritrea imported into the U.S. on or after May 1, 1994, will be required to be marked "Eritrea".

Dated: September 1, 1993.

Karen J. Hiatt,

Deputy Assistant Commissioner, Office of Commercial Operations.

[FR Doc. 93–22005 Filed 9–8–93; 8:45 am]

BILLING CODE 4820–02–P

Fiscal Services

[Dept. Circ. 570, 1993 Rev., Supp. No. 1]

Surety Companies Acceptable on Federal Bonds; Correction; ACSTAR INSURANCE COMPANY

The phone number for ACSTAR INSURANCE COMPANY was listed in error in the Treasury Department Circular 570, July 1, 1993. The phone number is hereby corrected to read (203) 224–2000.

Federal bond-approving officers should annotate their reference copies of Treasury Circular 570, 1993 Revision, at 58 FR 35779 to reflect this correction.

Questions concerning this Notice may be directed to the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, Telephone (202) 874–6507.

Dated: September 2, 1993.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 93–21930 Filed 9–8–93; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Freedom Support Act—Secondary School Initiative For Short Term Exchange Projects

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural, and other not-for-profit institutions to conduct exchanges of youth between the ages of 15 and 18½ years of age with the twelve Newly Independent States (NIS) of the former Soviet Union. These exchanges represent part of the activities of the Secondary School Student Exchange Initiative as included in the Freedom Support Act of 1992 and are subject to the availability of funding for the Fiscal Year 1994 program.

This is a request for proposals for short term thematic exchanges. Requests for proposals in support of other programs under the aegis of the Freedom Support Act are being published separately.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington DC on Friday, November 5, 1993. Faxed documents will not be accepted, nor will documents postmarked on November 5 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. It is the responsibility of each grant applicant to ensure that its proposal is received by the above deadline. Subject to the availability of funds, grants will be awarded after March 15, 1994 for exchanges to begin after April 15, 1994.

ADDRESSES: The original, 4 fully tabbed copies and 10 copies (Tabs A—D) of the completed application, including required forms, should be submitted in the format described in the Bureau's application package and mailed to: U.S. Information Agency, Ref: F.S.A.—Secondary School Initiative Short-Term Exchange Projects, Office of Grants Management, E/XE, 301 4th Street SW, Rm 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact David Dallas, NIS Secondary School Division, E/PY, room 357, (202) 619–6299; FAX (202) 619–5311, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for

preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Overview—Grant funding is intended to promote the exchange of secondary school students, from 15 to 18½ years of age, between the U.S. and Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. The Agency's main objective is to foster interaction between American and foreign youth. Consequently, extensive interaction is a requirement. Proposals should demonstrate how American and foreign youth will interact in a way that encourages the exchange of ideas, values and information.

Four different program designs will be utilized for this program which include: (A) An academic year program, (B) A semester exchange program (C) A school-to-school linkage program, and (D) A short-term exchange program. This RFP describes the short-term program. Other RFP's will be published soliciting proposals for the other three programs.

Guidelines for Short-Term Exchanges

Grants will be awarded to support programs for a three to six week duration. Programs should have a thematic focus. Eligible foci may include, but are not limited to: the arts (theater, dance, music, fine arts, literature, folklore, and film/video); language and cultural; science, technology, and mathematics; civic education; leadership training; conservation and the environment; journalism; historic preservation; social, political, and economic issues; agriculture; business administration/ management (including enterprise promotion); and homestay programs under the title, "the American Community Experience," which should include local programming in such areas as state and municipal government, regional culture, etc.

One-for-one reciprocity is not a requirement, but is encouraged. A minimum of 10 students are to be exchanged with each grant. Proposals should provide detailed information on the activities in both the U.S. and the partner country. Proposals should provide written evidence that the U.S. organization has the commitment of a reliable counterpart organization in the partner country willing and able to engage in the proposed activities. Homestays are desirable. The minimum stay in country for all programs is three weeks.

Special consideration will be given to proposals that address the needs and interests of USIS posts and/or NIS ministries for projects on specific themes or with specific organizations or groups. A list of these will be provided with the application packet.

Projects requesting support for tours of performing arts groups or sports teams are eligible only if the primary purpose of the program is mutual education and there is extensive structured interaction between international participants and their hosts. Tours of performing arts groups or sports groups where the primary activity is performance or competition will not be eligible. Outdoor camping projects must have a thematic focus. They must include a plan for measuring performance/achievement of the participants. .

Unless there are extenuating circumstances, programs should maintain a ratio of not more than one adult per every ten youth. The exchange program may also include excursions, cultural activities, and opportunities to experience community life. It is very desirable for each group of NIS students to have a segment of their program in Washington, DC or a state capital.

Grantee organizations are responsible for developing a sustainable partnership with an organization or agency of government in the NIS; designing the components of the exchange; managing all travel arrangements, logistics, insurance coverage, passports, visas, etc.; training of adult escorts; disbursing and accounting for grant funds.

Budget

The organization must submit a comprehensive line item budget. Costs for US and NIS students should be listed separately. Details are available in the application packet. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Organizations should be familiar with grant regulations described in OMB circulars A110, A122 and A133.

Cost sharing is encouraged. Cost sharing may be in the form of allowable direct or indirect costs. The grant recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as cost to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E—Cost Sharing and Matching should be described in the proposal. In the event the recipient does not provide the minimum amount of cost sharing as stipulated in the recipient's budget, the Agency's contribution will be reduced in proportion to the recipient's contribution.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contract offices. Proposals may also be reviewed by the Agency's Office of the General Counsel. Funding decisions are at the discretion of the Associate Director of Education and Cultural Affairs. Final technical authority for grant awards resides with the Agency's Office of Contracts.

Review Criteria: Technically eligible applications will be competitively reviewed according to the following criteria:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, rigor and relevance to Agency mission and adherence to the criteria and conditions described above.

2. *Reasonable, Feasible, and Flexible Objectives:* Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Multiplier Effect/Impact:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual linkages.

4. *Value to U.S.-Partner Country Relations:* Assessments by USIA's geographic area desk, and overseas officers of the need, potential, impact and significance in the partner country(ies).

5. *Cost Effectiveness:* The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

6. *Institutional Capacity:* Proposed personnel and institutional resources

should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Track Record/Ability:* Proposals should demonstrate a track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. *Evaluation Plan:* Proposals should provide a plan for evaluation by the grantee institution.

10. *Selection Process:* Proposals should provide a specific plan to ensure a selection based on merit and should include detailed criteria for selecting all participants.

11. *Geographic Diversity:* The Agency will seek to provide geographic diversity within the NIS and the U.S. through this program.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about March 15, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: September 1, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–21874 Filed 9–8–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 58, No. 173

Thursday, September 9, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 14, 1993 at 10 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, September 16, 1993 at 10 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Americans for Robertson—Final Repayment Determination.

Advisory Opinion 1993–12: Phillip Martin on behalf of the Mississippi Band of Choctaw Indians.

Final Ex Parte Communications Rules, with Statement of Basis and Purpose.

Fiscal Year 1995 Budget Request.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 93–22215 Filed 9–7–93; 3:13 pm]

BILLING CODE 6715–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Wednesday, September 15, 1993.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Keystone Coal Mining Corp.*, Docket No. PENN 91–1480–R, etc. (Issues include whether the judge correctly found that the Secretary of Labor's respirable dust spot inspection program was procedurally invalid because the Secretary failed to engage in rulemaking before implementing the program.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Keystone Coal Mining Corp.*, Docket No. PENN 91–1480–R, etc. (See Oral Argument Listing.)

It was determined by unanimous vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/((202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 93–22146 Filed 9–7–93; 11:54 am]

BILLING CODE 6735–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9 a.m., September 20, 1993.

PLACE: 4th Floor, Conference Room, 1250 H Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the August 16, 1993, Board meeting.

2. Thrift Savings Plan activity report by the Executive Director.

3. Review of FY 1994–95 budgets.

4. Status of action on audit recommendations.

5. Review of KPMG Peat Marwick audit reports:

"Pension and Welfare Benefits Administration Review of Backup, Recovery, and Contingency Planning of the Thrift Savings Plan at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

"Pension and Welfare Benefits Administration Review of ADP Operations Management of the Thrift Savings Plan at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 93–22180 Filed 9–7–93; 2:00 pm]

BILLING CODE 6760–01–M

federal register

Thursday
September 9, 1993

Part II

Department of Health and Human Services

Social Security Administration

20 CFR Part 416
Supplemental Security Income; Determining Disability for a Child Under Age 18; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

RIN 0960–AD58

Supplemental Security Income; Determining Disability for a Child Under Age 18

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These amendments revise the disability evaluation and determination process for Supplemental Security Income (SSI) claims of children based on disability. The revisions amend the rules we published on February 11, 1991 (56 FR 5534), subsequent to the February 20, 1990, U.S. Supreme Court ruling in *Sullivan* v. *Zebley* 493 U.S. 521, 110 S.Ct. 885 (1990). In *Zebley*, the Court invalidated the use of a medical "listings-only" approach to the denial of children's claims for SSI benefits based on disability, and required the use of an individualized functional assessment of children whose impairments did not meet or equal the severity of listed medical impairments. As did our prior final rules, the changes made in these rules incorporate into the disability determination process for these children concepts and criteria reflecting current knowledge in the field of childhood disability and functioning.

DATES: This rule is effective September 9, 1993. The rules in §§ 416.924–416.924e, 416.926a, and 416.994a will no longer be effective September 9, 1997 unless extended by the Secretary, or revised and promulgated again.

FOR FURTHER INFORMATION CONTACT: Cassandra Bond, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (410) 965–1794.

SUPPLEMENTARY INFORMATION:

History

Provisions for SSI benefits for disabled children were part of the Social Security Amendments of 1972 establishing the SSI program, which became effective January 1, 1974. The Social Security Act (the Act) currently provides the same definition of disability for adults under the title XVI SSI program as it does for workers, widows or widowers of workers, and children of workers under the title II disability program.

The Act, at section 1614(a)(3)(A), defines disability for adults as the inability "to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." The Act further provides, at section 1614(a)(3)(B), that an adult will be considered disabled, "only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy * * *."

The definition of disability for children is contained in a parenthetical statement at the end of section 1614(a)(3)(A). The Act provides that a child under the age of 18 will be considered disabled for purposes of eligibility for SSI, "if he suffers from any medically determinable physical or mental impairment of comparable severity" to that which would make an adult disabled.

Under our regulations, the decision process we use to determine if an adult is disabled is different in concept and application from the process we used for children prior to the Supreme Court's decision in *Zebley*. Regulations §§ 404.1520 and 416.920 set out a five-step sequential evaluation process for determining disability in adults, which considers in turn:

1. Whether the adult is doing substantial gainful activity;

2. Whether, in the absence of substantial gainful activity, his or her medically determinable impairment or combination of impairments is severe;

3. Whether, if the impairment(s) is severe, it meets or is medically equivalent in severity to an impairment listed in appendix 1 of subpart P of the regulations in 20 CFR part 404 (hereinafter, "the listings");

4. Whether, in the presence of a severe impairment or combination of impairments, the individual retains the capacity to do his or her past relevant work, considering his or her residual functional capacity; and

5. Whether, if past relevant work is precluded, the individual retains the capacity to do any other work which exists in the national economy, considering the individual's residual functional capacity, age, education, and work experience.

Sullivan v. Zebley

On February 20, 1990, the Supreme Court, in *Zebley*, decided that the "listings-only" approach SSA had used prior to *Zebley* to deny claims for SSI benefits based on childhood disability did not carry out the "comparable severity" standard in title XVI of the Act. This was because the listings were set at a level of severity stricter than the level at which an adult worker can be found disabled, and the approach did not provide for an assessment of a child's overall functional impairment.

The Supreme Court held that children claiming SSI benefits based on disability are entitled to an "individualized functional assessment" as part of the disability determination process, comparable to adults who have impairments that do not meet or equal the listings and who receive such an individualized assessment. The Court found that, whereas adults who are not found to be disabled under the listings still have the opportunity to show that they are disabled at the last step of the sequential evaluation process, no similar opportunity existed for children under the regulations we used prior to *Zebley*. The Court concluded that, although the vocational analysis we use in claims filed by adults is inapplicable to claims filed by children for SSI benefits, this does not mean that a functional analysis cannot be applied to children's claims. As a result of the *Zebley* decision, we revised the rules we used to evaluate childhood disability claims. We published the revised rules as a final rule with a request for comments on February 11, 1991 (56 FR 5534).

Final Rule With Request for Comments

We first published these childhood disability rules in the **Federal Register** on February 11, 1991 (56 FR 5534). In this preamble, we will call the rules published on February 11, 1991, our "prior rules." Although our prior rules were published as a final rule, we asked for comments concerning the rules from members of the public. Interested persons, organizations, and groups were invited to submit comments pertaining to the prior rules within a period of 60 days from the date of publication of the rules. In response to a number of requests from the public asking us to extend the comment period, and in light of the unusual significance of the rules, we subsequently extended the comment period to July 8, 1991, for a total of 147 days (56 FR 21075, May 7, 1991). After carefully considering the comments contained in the 44 letters we received regarding the prior rules, we are

publishing these final rules. The specific revisions we have made in the final rules in response to the public comments are explained in the following sections of this preamble.

Explanation of the Final Rules

These final rules revise our prior rules for deciding disability in childhood cases under SSI that had been in effect since February 11, 1991. As we explain below in the summary of specific provisions, we have reorganized the rules into what we believe is a clearer and more logical presentation. The reorganization does not result in any substantive changes in policy or application of the prior rules. Also explained below are a number of other changes we made in response to the public comments. None of the changes or revisions made to the prior rules in these final rules results in any way in a change to, or revision of, the substantive standard for determining children's disability.

In accordance with the Supreme Court's ruling in *Zebley*, these final rules, like our prior rules, provide that each child whose impairment(s) does not medically meet or equal a listing will receive an individualized assessment of his or her functioning. As in the prior rules, the final rules provide three steps at which a child's functioning will be considered. First, they require consideration of each child's functioning at the second step of the sequential evaluation process to determine whether the child has any impairment or combination of impairments that is "severe." Second, they provide for the consideration of functioning at the listings equivalence step. Third, they ensure that disability evaluations of children seeking SSI benefits will include a process for evaluating the limitations caused by a child's impairment or combination of impairments that is not based solely on listing-level severity. Thus, they provide an additional step beyond the listings step at which we may determine that children with severe impairments that do not meet or (medically or functionally) equal a listing are disabled based on an individualized assessment of their functioning. As a result, the sequential evaluation process in these final rules, comparable to that for adults, is still:

1. Whether the child is engaging in substantial gainful activity;
2. Whether the child's impairment or combination of impairments is severe;
3. Whether the child has a medically determinable impairment(s) that meets or medically equals in severity a listing in appendix 1 of subpart P of part 404 or, if not, whether the functional consequences of the child's impairment or combination of impairments functionally equal a listing; and
4. Whether the child's severe impairment(s) so limits the child's ability to function in an age-appropriate manner that the limitations are comparable in severity to those that would disable an adult.

It is still possible under this process for children to have impairments equal in severity to a listed impairment based solely upon medical findings. Because our longstanding concepts of meeting or equaling a listing based upon medical findings permit us to find many claimants disabled, we have retained them in the final rules. We have also retained the expanded and clarified rules for making determinations of equivalence that were set out in § 416.926a of the prior rules.

These final rules also retain § 416.994a from the prior rules, to be used in determining whether childhood disability continues. Section 416.994a is modeled after the rules we use to determine if adults continue to be disabled and takes into account the final rules in §§ 416.924 and 416.924a through 416.924e.

Changes to Other Rules Related to These Rules

In the prior rules we made revisions to other rules in subpart I that are relevant to children (e.g., § 416.913). As we explained in the preamble to our prior rules, these revisions added language to the rules so that they would explicitly refer to children. We have retained those revisions in these final rules.

Summary of Changes

The most important change in these new rules is a reorganization of the rules themselves. Our intent in the reorganization is to be responsive to a variety of concerns expressed by many commenters who thought that such basic rules as the need to consider evidence from all relevant sources, the guidance about children's functioning in § 416.924c of the prior rules (final § 416.924b), and the need to consider the "other factors" in § 416.924d of the prior rules (final § 416.924c) applied only to the individualized functional assessment. This reorganization does not represent any change in policy or procedure in the evaluation of children's disability claims from the prior rules. Rather, it reflects both our original intent and actual current practice. At the same time, it is responsive to the concerns of many of the commenters and clarifies the regulatory provisions to reflect our intent more accurately.

In the organization of the prior rules, the rule on individualized functional assessment immediately followed the definition of disability and the sequential evaluation process for children. This organization suggested to many commenters that the subsequent rules on age, functioning in children, and other factors were applicable only to individualized functional assessments at the fourth step of the new sequential evaluation process. Because the comments indicated to us that we had not correctly conveyed our intent in the prior rules, we decided to reorganize and revise them to clarify our policy.

In the reorganization, § 416.924 is still "How we determine disability for children." Final § 416.924a is now "Age as a factor of evaluation in childhood disability"; final § 416.924b is now "Functioning in children"; and final § 416.924c is now "Other factors we will consider." Final § 416.924d is now "Individualized functional assessment for children"; and final § 416.924e is still "Guidelines for determining disability using the individualized functional assessment." As we explain below, we have also moved paragraphs from former sections to different sections for clarity; however, all of the sections from prior §§ 416.924 through 416.924e are in final §§ 416.924 through 416.924e, only redesignated.

To clarify that the guidance on age, functioning, and other factors is relevant to determinations made at steps 2, 3, and 4 of the sequential evaluation process, the rules that are appropriate to all steps of the sequential evaluation process for children are now together in final §§ 416.924 through 416.924c. We moved § 416.924a(c) of the prior rules, "Terms used to describe functioning," into final § 416.924b, "Functioning in children," where it more appropriately belongs, and revised it so that it no longer states that it applies only to the individualized functional assessment. We redesignated § 416.924a(b) of the prior rules, "Basic considerations," as § 416.924(g), thus moving it into the section, "How we determine disability in children." Our intent in moving this paragraph into § 416.924 is to state clearly that at each step of the sequence, we will consider all relevant evidence, and that this evidence can come from both medical and nonmedical sources.

Because we moved all of the paragraphs of § 416.924a of the prior rules into other sections, we redesignated the rules that followed, so that the sections on age, functioning, and other factors are now designated as

final §§ 416.924a, 416.924b, and 416.924c, respectively. These rules follow the rules on the sequential evaluation process and basic considerations.

We combined § 416.924a(a) of the prior rules (the general paragraph on the individualized functional assessment) and § 416.924c(a)(2) through (g) of the prior rules (the rules describing the domains of development and functioning and the specific behaviors) into final § 416.924d. In this way, all of the basic rules regarding the individualized functional assessment are together in the same section and are followed by the guidelines for using the individualized functional assessment in § 416.924e. We also deleted some references to the individualized functional assessment in final § 416.924b, "Functioning in children," and final § 416.924c, "Other factors we will consider," to make it clear that these rules apply when we assess functioning at steps 2, 3, and 4 of the sequential evaluation process.

Other changes made in response to public comments are explained in the discussion that follows, and in greater detail in the responses to comments. We made a few minor technical changes, which have no substantive effect on the rules, and which we also explain below.

In the preamble to the prior rules, we explained (in General Note on Style) why the regulations were written in the first and second persons, addressed to the children who claim to be disabled, rather than to their parents or other appropriate adults. Although we advised the public to comment on the terminology if anyone found it problematic, no one did so. Therefore, we have continued in these rules to address the children who are claiming benefits.

Section 416.902—General Definitions and Terms for This Subpart

We have added to this section, without change, definitions of the terms "adult" and "child" which were included in the prior rules published on February 11, 1991 (56 FR 5534). A subsequent final regulation pertaining to consultative examinations, published on August 1, 1991 (56 FR 36932), which also amended § 416.902, inadvertently omitted these two definitions.

Section 416.903—Who Makes Disability and Blindness Determinations; Section 416.1015—Making Disability Determinations

We have added a new paragraph (f) to § 416.903 and a new paragraph (e) to § 416.1015 to reflect section 5036 of Public Law (Pub. L.) 101–508, the Omnibus Budget Reconciliation Act of 1990, which is codified in the Act at section 1614(a)(3)(H) (42 U.S.C. 1382c(a)(3)(H)). This law requires that we make reasonable efforts to ensure that a qualified pediatrician or other appropriate medical specialist evaluates the claims of children filing for SSI benefits based on disability. This law, which was enacted November 5, 1990, and became effective with respect to determinations made 6 or more months after this date, was preceded by an initiative the Secretary of Health and Human Services announced in November of 1989, which directed that in adjudicating and reviewing all SSI childhood disability claims, we were to include pediatricians among the medical personnel we use to evaluate these cases. The Secretary also directed that other specialists would continue to be involved in appropriate childhood claims. Since the Secretary's initiative in 1989, we have made extensive efforts to recruit, hire, and train pediatricians to evaluate childhood disability claims in the State agencies in each State.

A commenter on the prior rules pointed out that we did not have a provision implementing section 5036 of Public Law 101–508. Therefore, we are making this addition to the rules not only to reflect the statutory provision, but also in response to that comment.

Adding new paragraph (e) to § 416.1015 required us to redesignate former paragraphs (e), (f), and (g) of this section, which are otherwise unchanged, as paragraphs (f), (g), and (h).

Section 416.913—Medical Evidence of Your Impairment

Paragraph (c)(3) was added to § 416.913 in the prior final rules published on February 11, 1991, "Supplemental Security Income; Determining Disability for a Child Under Age 18," 56 FR at 5553. However, the paragraph was inadvertently removed by final rules published on August 1, 1991, "Standards for Consultative Examinations and Existing Medical Evidence," 56 FR at 36964. Therefore, in these final rules we are restoring paragraph (c)(3) to § 416.913 and revising it as explained in the following paragraphs.

For reasons we explain in the public comments section of the preamble, we revised § 416.913(c)(3) in response to a comment by deleting the phrase, "and to perform age-appropriate daily activities." We also revised the cross-reference. We also revised § 416.913(e)(2) in these final rules in response to a comment. We replaced the phrase, "non-medical sources," with the phrase, "people who know you." We also added the phrase, "and other caregivers," after "parents." In a technical change, paragraph (e)(3) was revised to change the punctuation marks after "assistants" and "naturopaths" from semi-colons to commas.

Final paragraph (c) is now titled, "Statements about what you can still do," which refers to what we formerly called "medical assessments." We changed the term in final rules published on August 1, 1991, "Standards for Consultative Examinations and Existing Medical Evidence," 56 FR at 36964.

Section 416.916—If You Fail To Submit Medical and Other Evidence

In a technical correction, we are restoring to § 416.916 a sentence which states that failure to cooperate in obtaining evidence will result in our making a decision based on the available information. This sentence previously appeared in § 416.916 but was inadvertently deleted upon codification in the Code of Federal Regulations (CFR) of the final childhood disability rules published on February 11, 1991 (56 FR at 5554).

Section 416.924—How We Determine Disability for Children

This section provides the three-part definition of disability for children and describes the sequential evaluation process we use in children's claims. In the definition of comparable severity, paragraph (a), we made three changes. In response to comments, we deleted the clause, "or if you are an infant from birth to the attainment of age 1, be reasonably expected to substantially reduce * * *," for reasons we explain in the public comments section of the preamble. In response to a comment, we added to paragraph (a)(2) the phrase "community activities" to represent such things as after-school activities, church activities, and participation in the girl scouts and boy scouts. We also added in paragraph (a)(3) a cross-reference to final § 416.924b(b)(4), which discusses "work-related activities," as the term is used to describe functioning in older adolescents. None of these changes is a change in policy; as we explain in the public comments section of the preamble, the revisions are merely clarifications of the prior rules.

The policies in final § 416.924 (b) through (f) are unchanged from the prior rules. However, we did make minor text modifications in response to comments; the revisions are only for purposes of clarity and completeness. In final § 416.924(b), "Steps in evaluating

disability," we added after the third sentence, the following statement: "We will also evaluate any limitations in your ability to function that result from your symptoms, including pain (see § 416.929)." We also deleted the clause, "and consider it together with all other relevant evidence," in the next-to-last sentence of the paragraph. We made this technical change because the clause was redundant. Also, by stating that we would consider the individualized functional assessment—which already considers all of the relevant evidence—"together with all other relevant evidence," the sentence in the prior rule could have suggested that the individualized functional assessment does something other than consider all relevant evidence. In fact, our instructions make it clear that adjudicators will consider all relevant evidence when they perform the individualized functional assessment. In addition, in that same sentence, we made another technical correction, changing the phrase "to determine" to "and determine" in order to make clear that the disability determination is based upon the individualized functional assessment.

In final § 416.924(d), "You must have a severe impairment(s)," we have provided a more detailed definition of an impairment that is not severe in response to public comments. The final rule now states that a child's impairment(s) is not severe if it is a slight abnormality or a combination of abnormalities that causes no more than a minimal limitation in the child's ability to function independently, appropriately, and effectively in an age-appropriate manner. We took this language, in part, from Social Security Ruling 85–28, "Titles II and XVI: Medical Impairments That Are Not Severe". Therefore, the addition of this language is not a change, but a restatement of our policy interpretation. We also added the phrase "independently, appropriately, and effectively" from the regulatory definition of disability for children in order to describe the characteristics of a child's functioning that are salient to our evaluation. We explain our reasons for these revisions and our responses to all of the comments regarding step 2 in the public comments section of the preamble.

In final § 416.924(f), "Your impairment(s) must be of comparable severity to an impairment(s) that would disable an adult," we explain that at the fourth step of the sequential evaluation process we must determine whether a child who has a severe impairment(s) that does not meet or equal the severity of a listed impairment has an impairment of comparable severity to one that would disable an adult. We made identical changes in paragraphs (f)(1)(i) and (f)(2) of this section to emphasize what that determination means. In paragraph (f)(1)(i), we changed the statement, "so limits your physical or mental ability to function in an age-appropriate manner that your limitations are comparable to those which would disable an adult," to "substantially reduces your physical or mental ability to function independently, appropriately, and effectively in an age-appropriate manner * * *." In paragraph (f)(2), we made the same change to the statement, "is comparable in severity to an impairment(s) that would make an adult disabled." In addition, we made a technical change in paragraph (f)(2). We rephrased the opening of the paragraph to say, "If we find that your impairment(s) does not substantially reduce * * *." We made this change in order to state more precisely the nature of the determination being described and to parallel the concluding language in the paragraph," * * * or if your impairment(s) does not meet * * *."

Final § 416.924(g), "Basic considerations," was § 416.924a(b) in the prior rules. We deleted the phrase, "using an individualized functional assessment," from the final rule to clarify that when we assess functioning at steps 2, 3, and 4 of the childhood sequence, the assessment of functioning is to be based on all relevant evidence in the case record from both medical and nonmedical sources. We also reaffirm the important principle that evaluation of the evidence should result in an assessment of the child's functioning on a longitudinal basis—that is, over time. As we have explained above, we redesignated the paragraph as § 416.924(g) because it provides rules that are applicable to all steps of the sequential evaluation process.

Section 416.924a—Age as a Factor of Evaluation in Childhood Disability

Final § 416.924a(a), "General," provides general guidance concerning the significance of a child's age in the adjudication of a childhood disability claim. As part of our response to the comments about our policies on determining whether an impairment(s) is "severe," we revised the second sentence of the paragraph by adding a statement that refers to the importance of considering age in determining whether a child's impairment(s) is severe. We also added a cross-reference to § 416.924(d), the severity step of the sequence. For consistency, we also added a cross-reference to § 416.924(f), the individualized functional assessment step, at the end of the sentence.

Because the reorganization combines all of the general provisions regarding the individualized functional assessment into two sections (final §§ 416.924d and 416.924e), we deleted the reference to §§ 416.924a and 416.924c in the parenthetical sentence at the end of § 416.924a(a)(4), which describes the relevance of age at the last step of the sequence, and added a reference to final §§ 416.924d and 416.924e.

In response to the comments, we added a new paragraph (a)(5) for children who may be difficult to test because of their young age. The new paragraph says that in any determination we will consider a child's age and whether it affects the child's ability to be tested. Even when a child's impairment(s) is not amenable to formal testing because of age, we will consider all evidence that will help us decide whether the child is disabled. We explain our reasons for this addition in the public comments section of the preamble.

Final § 416.924a(b), "Age categories," identifies the age categories that we use to describe children's functioning. Using these categories helps us to sort out the kinds of evidence we would expect to need for children of different ages, and to organize guidelines for determining disability in children of different ages. In response to comments, we have deleted the clause after the semicolon, "however, we will not apply these age categories mechanically in borderline situations." We made this change because there is no danger that mechanical application of the age categories in childhood claims will result in any advantage or disadvantage (as there might be in adult claims when the vocational "grid" rules are applied). We explain our reasons for the deletion, and why it responds to the public comments, in greater detail in the public comments section of the preamble.

Final § 416.924a(c), "Correcting chronological age of premature infants," explains when and how we correct the chronological age of a premature infant when deciding whether, or the extent to which, a physical or mental impairment(s) affects a child's ability to function independently, appropriately, and effectively in an age-appropriate manner. We have substantially revised and reorganized the paragraph in response to public comments. The paragraph formerly discussed the evaluation of both premature and low birth weight infants. However, the text

pertaining to low birth weight infants merely repeated the examples of functional equivalence that appeared in § 416.926a(d) (10) and (11) of the prior rules (final § 416.926a(d) (8) and (9)), and provided no additional guidance. Moreover, as one commenter pointed out, there was a minor inconsistency between the definitions of "prematurity" in this paragraph and in § 416.926a(d)(10) of the final rules. Since it was redundant to repeat the criteria of two of the functional equivalence rules, we deleted the provisions.

With the deletion of the provisions on low birth weight infants, the rule now addresses the correction of chronological age for premature infants, which was always its primary focus. We revised, reorganized, and clarified the rule in response to public comments. Final § 416.924a(c) now explains that when a child was born prematurely (i.e., at less than 37 weeks' gestation), we may use a "corrected" chronological age to evaluate the child's development or linear growth. Final § 416.924a(c)(1) describes the two situations in which we apply a corrected chronological age, and final § 416.924a(c)(2) describes when and how we compute a corrected chronological age. Paragraph (c)(2) also explains that we will not correct a child's chronological age if we can determine from the evidence that a child's developmental delay is the result of a medically determinable impairment(s) and is not attributable to prematurity. Finally, final § 416.924a(c)(3) explains that we also will not compute a corrected chronological age if medical evidence shows that the treating source or other medical source has already taken a child's prematurity into consideration in assessing the child's development, or when we find a child disabled using the examples of functional equivalence based on low birth weight in final § 416.926a(d) (8) or (9).

We have revised § 416.924b(d) of the prior rules (final § 416.924a(d)) concerning age and the impact of severe impairments on younger children and older adolescents in response to a number of comments which demonstrated to us that the prior rule was not as clear as it could have been. In the opening of paragraph (d) and in new paragraph (d)(1), we clarify that impairments of similar severity may have different effects on children of different ages and that how a child adapts to an impairment depends on many factors. Thus, we consider in each case how a given child's impairment(s) affects him or her, irrespective of age. New paragraph (d)(1) also explains what we mean by a child's ability to "adapt" to an impairment(s).

In final paragraph (d)(2), we incorporate the provisions of § 416.924b(d)(3) of the prior rules with minor editorial clarifications. In final paragraph (d)(3), we combine into a more logical presentation the provisions beginning with the second sentence of § 416.924b(d)(1) (with minor editorial changes) through § 416.924b(d)(2) of the prior rules.

In new paragraph (d)(4), we state more clearly the principle from the prior rules that the age-appropriate functional abilities, skills, and behaviors of older adolescents (i.e., children aged 16 to 18) are the same as those that are appropriate for 18-year-olds. Therefore, the disability determination for an older adolescent must be consistent with the disability determination we would make for an 18-year-old having the same functional limitations.

We explain all of the foregoing changes and clarifications in the public comment section of the preamble.

Section 416.924b—Functioning in Children

Pursuant to the reorganization described above, this section emphasizes the important principles that we consider all of a child's impairment-related mental and physical limitations and the extent to which the child is able to engage in age-appropriate activities on a sustained basis when we assess functioning at steps 2, 3, or 4 of the sequential evaluation process. It also now provides definitions of the terms we use when we describe functioning in children. Final § 416.924b(a), "General," was moved from § 416.924c(a) of the prior rules. Similarly, final § 416.924b(b), "Terms used to describe functioning," was § 416.924a(c) of the prior rules. To make clear that the terms "age-appropriate activities," "developmental milestones," "activities of daily living," and "work-related activities" apply at every step of the sequential evaluation process, and how the terms "domains" and "behaviors" apply at the last step of the sequence, we added the clause, "which we use when we perform an individualized functional assessment," to the first sentence of final § 416.924b(b)(5), "Domains and Behaviors." We changed the heading of final paragraph (b)(5) to "Domains and Behaviors" to reflect all the functional areas in which we evaluate children. The "domains" pertain to a child's major spheres of activity (cognitive, communicative, physical, social/emotional, and personal/behavioral). The "behaviors" pertain to certain areas of behavior (responsiveness to stimuli; concentration, persistence, and pace). This change was needed to clarify language used later in final §§ 416.924d and 416.924e. Finally, in response to a comment, we deleted from the first sentence of final § 416.924b(b)(5) the phrase, "development or", and added a new fourth sentence which explains that the domains and behaviors include all of a child's functioning at any particular age, a new fifth sentence which explains that all effects of a child's impairment(s) on daily functioning will be considered within the domains and behaviors, and a new sixth sentence which explains that the presence of pain or other symptoms can adversely affect functioning in the domains or behaviors.

In final § 416.924b(b) (2) and (3), we have changed the age ranges we refer to when we use the terms "developmental milestones" and "activities of daily living." The final rules now state that the term "activities of daily living" refers to children aged 3 to 16 (instead of 6 to 18) and that the term "developmental milestones" refers to children from birth to age 3 (instead of birth to age 6). We also added a new paragraph (b)(4), "Work-related activities," for older adolescents, which we had inadvertently omitted from the prior rules, and revised the age references in final paragraph (b)(5) to be consistent with the foregoing revisions. We made these changes in response to a comment that pointed out inconsistencies between these sections and final § 416.924d, "Individualized functional assessment for children"; therefore, the corrections were necessary. They do not represent new policies, but merely make the rules consistent. The changes also respond to several comments that expressed concern about the terms we use to describe functioning in younger children. We explain this comment and provide more detail about our reasons for making the revisions in the public comments section of the preamble.

Section 416.924c—Other Factors We Will Consider

This section discusses factors that may be relevant to how an impaired child is able to function and, therefore, that may be relevant to the evaluation of functioning at any step of the sequence. Pursuant to the reorganization of the rules, and for reasons we have already discussed, we therefore revised the section heading and § 416.924d(a) of the prior rules (final § 416.924c(a)), "General," to delete references to the individualized functional assessment

and to make the applicability of the rules clearer.

In § 416.924d(b) of the prior rules (final § 416.924c(b)) "Chronic illness," we added a new first sentence and revised the prior first sentence (now the second sentence) and the prior second sentence (now the third sentence) in response to several comments. The revisions clarify our original intent that this section is intended to provide guidance for the evaluation of chronic, episodic impairments.

In a technical correction, we deleted the phrase, "for children with similar needs," from the second sentence of § 416.924d(d) of the prior rules (final § 416.924c(d)), "Effects of structured or highly supportive settings." We did this because some special classrooms may involve heterogeneous groupings, and not only accommodate children with similar needs.

In response to a number of public comments, we revised and reorganized § 416.924d(e) of the prior rules (final § 416.924c(e)), "Adaptations," to make our original intent clearer. The revisions provide that some adaptations may enable a child to function normally or almost normally, whereas other adaptations may increase the child's ability to function but the child will still have limitations. We deleted the reference to adaptations that may themselves impose limitations in response to a comment which pointed out that the statement was inaccurate. However, we retained all of the parenthetical examples except for the example of "sleep."

In § 416.924d(f) of the prior rules, (final § 416.924c(f)), we changed the heading of the paragraph from "Multidisciplinary therapy" to "Time spent in therapy", in response to a comment. In the first sentence, we changed the phrase, "more than one kind of health care professional" to "one or more kinds of health care professionals" to indicate that even one kind of therapy may be very time-consuming. In the second sentence, we deleted reference to "multidisciplinary therapy" and now state simply that therapy may include the various kinds of services mentioned in the sentence. In the last sentence, we replaced the clause, "you have an impairment(s) of comparable severity to an impairment(s) that would disable an adult," to "you can function independently, appropriately, and effectively in an age-appropriate manner," because the prior language suggested that the factor of multidisciplinary therapy would be considered only at the fourth step of the sequential evaluation process. We explain these changes in more detail in the public comments section of this preamble.

In § 416.924d(g) of the prior rules, (final § 416.924c(g)) "School attendance," we added the clause "when it is relevant and available to us" to the end of the second sentence. In the second sentence of final § 416.924c(g)(2), we added the word "regular" before the word "classroom," and the words "appropriately, and effectively" to the phrase, "to function independently." All of these revisions were responses to comments, and they ensure that the provisions more accurately describe our original intent and practice. In final § 416.924c(g)(3), we added the phrase, "independently, appropriately, and effectively" after "to function."

We explain all of the foregoing revisions in more detail in the public comments section of the preamble.

Section 416.924d—Individualized Functional Assessment for Children

This section discusses the fourth step of the sequence for children, at which we must do an individualized functional assessment to determine whether a child whose impairment(s) is severe, but which does not meet or equal in severity the requirements of a listed impairment, has an impairment(s) which is of comparable severity to one that would disable an adult.

Section 416.924a(a) of the prior rules, "General," (final § 416.924d(a)) remains unchanged except that we have updated the cross-references following the third sentence to reflect the reorganization of the rules.

We added a new § 416.924d(b), "Responsibility for individualized functional assessment," in response to a comment that pointed out that we had identified adjudicative responsibility for equivalence determinations (in § 416.926a(c)) but had omitted a similar provision for the individualized functional assessment; we also have a similar provision in § 416.946 describing responsibility for the adult residual functional capacity assessment. As we explain in more detail in the response to the comment, the omission of the provision was an oversight, and the language we have added is adopted from §§ 416.926a(c) and 416.946 and reflects our current policies. Therefore, the new paragraph is not a new rule; we are merely adding it to fill a gap in the rules and for consistency with other, similar provisions.

As already noted, we have redesignated § 416.924c(a) (2) through (g) of the prior rules, as final § 416.924d (c) through (j). We have also made minor heading changes and redesignations for clarity. Thus, we provided a heading, "Domains of development or functioning," to final § 416.924d(c) because § 416.924c(a)(2) of the prior rules, from which it was adopted, had no heading. We also renumbered subsections (i) through (vii) as (1) through (7). Section 416.924c(a)(3) of the prior rules, which also had no heading, is now (with minor text changes) final § 416.924d(d), "How we use the domains," and § 416.924c(a) (3), (4), and (5) of the prior rules is redesignated as final § 416.924d(d) (1), (2), and (3). Finally, we redesignated the remaining § 416.924c (b) through (g) of the prior rules as § 416.924d (e) through (j).

In § 416.924c(a)(5) of the prior rules (final § 416.924d(d)(3)), we have added a cross-reference to § 416.924a(a)(5) for the guidelines on age and a child's ability to be tested.

In § 416.924c (b) through (g) of the prior rules (final § 416.924d (e) through (j)), which are the paragraphs that describe the domains and behaviors for each of the age categories, we made some additions and revisions to the language of the general descriptors and examples of children's functioning in each age group. These additions were made in response to suggestions by experts in professional child development, health, and disability who submitted comments to us. None of the additions represents a substantive change in the descriptors; rather, they simply enhance the descriptors so that they are more detailed and inclusive. The specific improvements are discussed in detail in the public comments section of this preamble.

In addition to the changes to final § 416.924d made in response to public comments, we made a few technical corrections. In final § 416.924d(e)(5), we rephrased the descriptor for greater clarity. In final §§ 416.924d(f)(5) and 416.924(g)(5), we changed the word "or" to "and" in the sentences that constitute each of the provisions so that the example of personal/behavioral development reads, "* * * your ability to help yourself and to cooperate with others in taking care of your personal needs * * *." This change was needed because the disjunctive "or" suggested that a child's self-care behavior would be normal if he or she could cooperate with another person in meeting personal needs, even if the child could not help himself or herself to meet those needs.

In another technical correction, we deleted the term "self-control" from final § 416.924d(g)(4) because that behavior is more appropriately addressed under personal/behavioral functioning in a new phrase,

"responding to limits," which is explained in the response to comments below. We also deleted the phrase, "and self-care," in final §§ 416.924d(h)(3) and 416.924d(i)(3) because the activities involved in self-care were inappropriately placed under the motor domain and are already addressed explicitly under the domain of personal/behavioral functioning. In final § 416.924d(h)(5), we changed the statement, "to understand authority relationships and school rules," to "to respond appropriately to authority and school rules," in order to make this language the same as the language in final § 416.924d(i)(5). Moreover, the statement better focuses the descriptor on the child's observable behavior rather than his or her subjective understanding. Similarly, in final §§ 416.924d(h)(5) and 416.924d(i)(5), we changed the word "develop" in the prior statement, "develop a sense of responsibility for yourself and respect for others," to the word "manifest," again to focus on the child's observable behavior.

The final technical corrections were in final § 416.924d(j)(2). We replaced the phrase, "an indication of," in the fourth sentence, the phrase, "some indication of," in the fifth sentence, and the phrase, "as it relates to," in the eighth sentence, with the phrase, "as evidence of." This change makes the language of the three sentences consistent with the other sentences in the paragraph. The change is only editorial and not substantive; we were concerned that, without the change, our intent in using different language in the sentences might have been questioned, when in fact we had no special reason for using different words.

Section 416.924e—Guidelines for Determining Disability Using the Individualized Functional Assessment

This final section is substantively the same as the corresponding section in the prior rules. In final § 416.924e(a), "General," we revised the clause following the semicolon in the second sentence. We made the revision in response to comments that asked us to use the third part of the basic definition of disability for children contained in § 416.924(a) wherever possible in these rules because it refers specifically to children. Because we agreed with the commenters, we revised the clause to say that the guidelines illustrate an impairment or combination of impairments that "substantially reduces your ability to function independently, appropriately, and effectively in an age-appropriate manner." Inasmuch as this is our regulatory definition of disability, it is not a substantive change from the prior rules but a clarification.

In final § 416.924e(b), "How we describe functional limitations," we made a technical correction, changing the word "impairments" in the second sentence to "limitations." The change merely corrected an error: In context, the sentence plainly refers to moderate "limitations" resulting from impairments, not a person's medically determinable impairments. Moreover, we use the word "limitations" in the same context later in the sentence and in the third sentence of the paragraph. We added the phrase, "in a domain or behavior," to the end of the next-to-last sentence and after the word "functions" in the last sentence of paragraph (b) in response to a comment which said that the addition of this language from the preamble (56 FR at 5542) would make the sentences clearer. We made similar additions to the second and third sentences of paragraph (b)(1), and to paragraphs (c)(2)(i) and (ii) and (d)(2).

In paragraph (b)(3), we added cross-references to §§ 416.968 and 416.969a to the second sentence; the former reference was inadvertently omitted from the prior rules, while the latter reference was published subsequent to the prior rules (in the final rules on the evaluation of symptoms, including pain, 56 FR 57947, November 14, 1991). Finally, we revised cross-references throughout § 416.924e(b) to reflect the reorganization of the rules.

In response to many comments, we added to final § 416.924e(c)(1), "Young children (birth to the attainment of age 3)," and § 416.924e(c)(2), "Older children and young adolescents, age 3 to attainment of age 16," the same guidance we provide in § 416.924e(d)(1)(ii) for older adolescents; i.e., that the guidance in the examples is not a standard by which all cases must be judged, and that each case must be evaluated on its own merits using the principles and guidelines of all the childhood disability rules. We also revised cross-references throughout both sections to reflect the reorganization.

In final § 416.924e(d), "How we evaluate older adolescents, from age 16 to attainment of age 18," we deleted the words "severity for" from the former heading. This is a technical correction to make the heading of the paragraph consistent with the language in the headings of paragraphs (c)(1) and (c)(2) of the section. In response to a comment that we had not mentioned the domains of functioning in this section, we added clauses referring to the relevant domains to the opening sentences of paragraphs (d)(2), "Mental functions," and (d)(3), "Physical functions." In paragraph (d)(4), we added two provisions, designated (d)(4)(i) and (d)(4)(ii), in response to a comment that said we should define the term "substantial loss or deficit," which we use in paragraph (d)(4). The new provisions derive from the rules in final §§ 416.924(a)(3) and 416.924e(d)(1), and adopt language from our manual instructions. Finally, we revised the cross-references throughout this section to conform to the reorganization of the rules.

We explain the provisions in § 416.924e(d)(4) and all of the foregoing changes in more detail in the public comments section of this preamble.

Section 416.926a—Equivalence for Children

In response to public comments, we revised the final rules on functional equivalence to strengthen their concepts and make them clearer. Thus, we added clarifying language to § 416.926a(b)(3), the section that describes "functional equivalence." In this section, we restate the principles that we will consider the combined effects of all of a child's impairments and that, for purposes of the "functional equivalence" determination, the child's impairment(s) need not be medically related to the listing we choose for comparison. We also revised several of the sections in paragraph (d), "Examples of impairments of children that are functionally equivalent to the listings," to underscore the policy that the list of examples is not all-inclusive.

We also made three technical revisions. First, in paragraph (c), we added the phrase, "of the Secretary," after "other designee" in the first sentence in order to parallel the language in § 416.924d(b) regarding responsibility for the individualized functional assessment. Second, we added a statement in paragraph (d) that the statutory duration requirement must still be applied to the examples, and we deleted the statement, "lasting or expected to last 12 months," from former examples (3) and (9) (final examples (3) and (7)). Our inclusion of the phrase in these two examples in the prior rules could have suggested that the duration requirement applied only to those two examples. Since the duration requirement is a basic requirement of the statute, however, our intent and practice have always been to apply it to all of the examples. We conclude paragraph (d), therefore, with cross-references to §§ 416.909 and 416.924(a). Third, in final example 11 we have added the clause, "and the impairment is expected to be disabling (because of residual impairment following surgery,

or the recovery time required, or both)," after the words "surgical correction," to make the meaning of the example clear. The additional language is, again, designed to underscore the need to satisfy the statutory duration requirement.

In addition, we deleted three examples in response to comments (examples 4, 6, and 15 in the prior rules) either because they illustrated a severity level greater than is required to meet or equal the listings or could have been viewed as redundant of other examples. We also revised several of the examples to clarify that they apply to physical impairments or combinations of physical and mental impairments. We explain all of these revisions in detail in the public comments section of this preamble.

Section 416.928—Symptoms, Signs, and Laboratory Findings

In response to several comments that asked us to provide a specific provision to address the special problems some children have in articulating their symptoms, we have added a new second sentence to § 416.928(a), "Symptoms." The new sentence explains that we will accept a description from the person who is most familiar with the child as a statement of symptoms of a child who is unable to adequately describe his or her symptoms. We explain our reasons for this addition in greater detail in the public comments section of this preamble.

Section 416.994a—How We Will Decide Whether Your Disability Continues or Ends, Disabled Children

This section provides the medical improvement review standard rules for children. We retained the entire section as published in the prior rules, with one clarifying text revision, which we added in response to a comment. In § 416.994a(d)(2), "Previous decision based on an individualized functional assessment," we added language to the second sentence which clarifies that we will take into consideration any current medical findings or functional limitations related to the previously existing impairment when we do the new individualized functional assessment based on impairments that existed at the time of the most recent favorable decision. We explain the reasons for this additional language, and our responses to the other comments about this section, in the public comments section of this preamble.

We also revised all of the cross-references consistent with the reorganization of the rules.

Public Comments

Subsequent to the publication of the Final Rule with Request for Comments in the **Federal Register** (56 FR 5534) on February 11, 1991, we received 44 letters from 42 different sources commenting on the new childhood disability rules. In a number of cases, which we describe below, we received the same comment and recommendations from several commenters; in nearly every case in which this happened, the comments and recommendations used identical or nearly identical language.

Most of the comments came from advocacy and legal groups that represent children with disabilities. Other comments came from people and organizations representing children with specific diseases, disorders, or health problems, and from professional medical and health care organizations. Some of the commenters had specialized backgrounds in pediatrics, psychiatry, communication disorders, and other specialties involving child health and disabilities. We also received comments from several public agencies and professional organizations having an interest in these rules.

The comments on the rules were generally favorable. By far, most of the comments asked us to strengthen, expand, or clarify principles in the rules, or to add even more rules. These comments, which were submitted within the first few months after promulgation of the prior rules, were often expressed in terms of predictions and fears that the new rules would not be applied properly.

In a number of instances, we adopted the comments because we agreed with the commenters that the rules could be clarified or strengthened. However, in many instances we did not adopt the comments that predicted misapplication unless we revised the rules. This is because we now have more than two-and-one-half years' experience using the rules and closely monitoring their use. Based on our experience using the rules, and our monitoring of the implementation of the rules, we are able to state with confidence that the potential problems that concerned the commenters did not materialize or were dealt with swiftly through quality reviews, careful training and the instructions we provided to our adjudicators on the implementation of the rules. Therefore, even though many of the comments that we did not adopt were well thought out and earnestly presented, it transpired that there was no need to make the changes suggested.

Some of the comments did not pertain to the new childhood disability rules. We have not addressed those comments in this preamble, but have referred them to the appropriate components of SSA. Finally, because a number of the comments were quite long and detailed, we had to condense, summarize, or paraphrase them. However, we have tried to express everyone's views accurately and to respond to all of the relevant issues raised by the commenters.

Specific Comments

Section 416.903—Who Makes Disability and Blindness Determinations

Comment: One commenter pointed to the absence from the regulation of the provision of Public Law (Pub. L.) 101–508, section 5036, now codified at section 1614(a)(3)(H) of the Act (42 U.S.C. 1382c(a)(3)(H)). Section 1614(a)(3)(H) states, in pertinent part, that, "In making any determination under this title with respect to the disability of a child who has not attained the age of 18 years * * *, the Secretary shall make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to the disability of the child * * * evaluates the case of such child." The commenter noted that the requirement in the law obviously legitimizes the same policy position stated in our manual instructions; however, the absence of this provision in the regulation creates a serious discrepancy.

Response: We agree with the commenter and have addressed the requirements of section 1614(a)(3)(H) by incorporating the appropriate language of Public Law 101–508 in §§ 416.903(f) and 416.1015(e).

Section 416.913—Medical Evidence of Your Impairment

Comment: One commenter made suggestions for specific language changes in § 416.913(e). The commenter recommended that we add the phrase, "and to perform age-appropriate daily activities," at the end of the first sentence of § 416.913(e) so that it would be identical to the language in § 416.913(c)(3). The commenter also recommended that in § 416.913(e)(2) we change the phrase "non-medical sources" to "people who know you" to be more accurate, and add "other caregivers" at the end of that section to be more inclusive. Finally, the commenter recommended that in § 416.913(e)(3) we change the word "practitioners" to "medical sources."

Response: We adopted or accommodated some, but not all, of the recommendations. We agree that the language in the opening paragraph of § 416.913(e) should be consistent with § 416.913(c)(3). But instead of adding the phrase "and to perform age-appropriate daily activities" to the first sentence of § 416.913(e), we deleted it from § 416.913(c)(3), where it was redundant. The prior wording of § 416.913(c)(3) implied that we were making two separate determinations: One about the child's ability to function in an age-appropriate manner and another about the child's ability to perform age-appropriate daily activities. In fact, only one determination is made. We use information about how a child performs age-appropriate daily activities to evaluate whether the child can function independently, appropriately, and effectively in an age-appropriate manner.

We adopted both of the comments about § 416.913(e)(2) by replacing "non-medical sources" with the phrase, "people who know you," deleting the word "and" after "neighbors," and adding the phrase, "and other caregivers," after "parents." We did not adopt the recommended language change in § 416.913(e)(3). Under § 416.902 of our current rules (as revised in the "Standards for Consultative Examinations and Existing Medical Evidence," 56 FR 36932, which we published on August 1, 1991, after the close of the comment period for these rules), the term "medical source" is a term of art that has a different meaning than "practitioner." We are, therefore, unable to make the change.

Comment: One commenter suggested that if we intend to revise § 416.913(a) to include licensed or certified school psychologists as "acceptable medical sources," the revision should be made in these final regulations.

Response: We did not adopt the comment. We have decided that there is no need to revise § 416.913(a)(3) because it provides that we will recognize as acceptable medical sources any licensed or certified psychologists; this includes licensed or certified school psychologists, who are acceptable medical sources for the documentation of mental retardation or learning disabilities. However, because school psychologists are not acceptable medical sources for all mental impairments, we have retained the reference to "school psychologists who are not acceptable medical sources under paragraph (a)" in § 416.913(e)(5) of the final rules.

Comment: One commenter remarked that school-age children in New Jersey for whom a Child Study Team (CST) evaluation has been done in a local school district may enjoy some advantage in obtaining SSI benefits because that evaluation will provide the kinds of evidence needed to pursue a child's disability claim. On the other hand, the commenter noted, the parents of impaired preschool children, especially those between birth and age 2 who do not qualify for the CST evaluation, may need assistance in arranging the proper protocol of mental and physical examinations necessary to document the eligibility of their children under the proposed final rule. The commenter recommended that we develop specific guidelines to assist these parents in obtaining the diagnostic instruments that are acceptable to SSA in making such disability determinations.

Response: Such rules are unnecessary because we assist children in documenting their claims. Under § 416.912(d) of our rules, before we may make a determination that a child is not disabled, we are required to make every reasonable effort to develop the child's medical history for at least 12 months preceding the month in which the application is filed. This means that we may either assist the child and his or her parents or other caregivers in obtaining existing evidence or actually obtain the evidence for the child—provided, of course, that we have permission from the person who is pursuing the claim on behalf of the child or the person who has the authority to give us this permission. In addition, if the available evidence is not sufficient to support a decision on a claim, we may purchase the needed information—including, if necessary, the kinds of tests and evaluations to which the commenter referred—through the consultative examination process. Therefore, we do not believe that the children about whom the commenter was concerned will be disadvantaged.

Section 416.916—If You Fail To Submit Medical and Other Evidence

Comment: Several commenters believed that our revision of § 416.916 did not go far enough to address the particular problems that children may face in providing evidence. They described a number of problems and situations unique to child claimants, which they thought we should address in regulations. One commenter would have liked to see either modification of the regulations or clear guidelines, presumably in our manual instructions.

Other commenters noted that the March 14, 1991, Stipulation and Order of the United States District Court for the Eastern District of Pennsylvania (the court to which the case was remanded after the Supreme Court decided *Zebley*) requires SSA, in readjudicating the cases of *Zebley* class members, to "make special efforts to assist children in documenting eligibility and * * *, in cases of non-cooperation, (to) make special efforts to locate an adult person responsible for the child's care and * * * not terminate, deny, or disqualify the child until a personal contact with his family or custodian has been attempted." The commenters thought that we should accord all child applicants at least the same consideration that *Zebley* class members receive.

Response: We do not believe that there is good cause for publishing the recommended changes without first publishing a Notice of Proposed Rulemaking (NPRM). We are seriously considering whether to publish an NPRM on the subjects raised by the commenters. We believe that we would receive opinions on both sides of the issue, and that, therefore, publication of a final rule now would be contrary to the public interest. We will, however, consider all of the commenters' concerns and suggestions if we decide to publish an NPRM.

Comment: One commenter recommended that the regulations acknowledge that some of the responsibility for gathering school records be assigned to the Social Security District Offices. The commenter said that municipal budget cuts in school systems are affecting the support staffs in special education departments where school records for many child claimants are held. The staffs of these departments often do not have the capacity to respond to many requests and to send us the school records we need. The commenter also said that, for a number of reasons, parents may have difficulty in obtaining records from their children's schools and was concerned that we not consider this difficulty to be noncooperation.

Response: While we appreciate the difficulty some school districts may have in complying with our requests for records, we do not believe it is appropriate to instruct our Field Offices to secure this information in the manner suggested by the commenter. Each school district would have to agree to give SSA employees access to their records, which some may not be willing or able to do. Additionally, some Field Offices do not have sufficient staff to obtain these records in the manner the commenter suggested. Therefore, decisions about using Field Office or State agency personnel to develop

school or other evidence will have to be made on a local level, as they are now.

With regard to the last comment, we believe that we made clear in an earlier response that we do not generally require parents to obtain and bring evidence from other sources to us. We make every reasonable effort to assist children and their parents by trying to obtain evidence for them, provided that we have permission to do so. Therefore, we do not consider a parent's inability to obtain evidence to be noncooperation.

Section 416.924—How We Determine Disability for Children

Comment: We received two comments about our use of a standard of "comparable severity" to define disability in children in § 416.924(a). The commenters thought that the basic definition of "disability" in § 416.924 ("* * * an impairment or combination of impairments that is of comparable severity to an impairment or combination of impairments that would disable an adult") was a problem because an adult's disability should not serve as the standard for children. One commenter suggested that we strike the language in § 416.924(a), and throughout the remainder of the rules regarding comparable severity to that of an adult.

Response: We have accommodated the comments, even though we have not adopted the specific suggestions. As we explained in the preamble to the prior rules (see 56 FR at 5534 and 5537), the standard of "comparable severity" is derived from the language of section 1614(a)(3)(A) of the Act. For this reason, we have included it in our rules.

Nevertheless, we agree with the commenters that the adult standard of disability, based on the ability to work, should not serve as the standard for evaluating a child's disability without translation into terms that are meaningful for childhood claims. This is why the definition of disability in § 416.924 is divided into three parts, each progressively more detailed and progressively more specific to children. In the first part of the definition, we repeat the statutory definition because it is the benchmark set by the law and we are required to follow it. In the second part of the definition, however, we further define "comparable severity" in terms appropriate to children (i.e., the ability to function independently, appropriately, and effectively in an age-appropriate manner) although—as the second commenter noted—we ultimately return to the "comparable severity" language of the law. Finally, in the third part of the definition, we elaborate the first two parts in a more detailed explanation of what it means to be disabled as a child; that is, to experience a substantial reduction of ability to function age-appropriately. The three parts of the definition are not meant to be read separately, but together as a totality defining "comparable severity."

To emphasize that we have translated the principle of "comparable severity" into terms relevant to children, and in response to both comments, we have removed language in final § 416.924(f)(1) and (2), which referred to "comparable severity," and have substituted language from the second and third parts of the definition, which speaks of the substantial reduction of a child's ability to function independently, appropriately, and effectively in an age-appropriate manner. For the same reason, we made a similar change in the second sentence of final § 416.924a(a).

Comment: One of the foregoing commenters also believed that a number of the definitions of terms in the childhood disability regulations needed to be expanded or changed. The commenter thought that the definitions of "impairment," "disability," and "handicap" published in the American Medical Association's Guides to the Evaluation of Permanent Impairment could serve as a starting point, and offered to work with us in formulating definitions for the childhood disability regulations.

Response: Although we appreciate the commenter's offer of assistance in developing terms to describe our program concepts which would conform to usage by other programs, we did not adopt the comment. Many of our terms are terms in the statute and regulations that we adopted for consistency in the new regulations for children. For example, and as we explained above, the basic definition of "disability" for children in § 416.924 is taken from the statutory definition of the term. Similarly, the statute contains a specific definition of the term, "physical or mental impairment" in section 1614(a)(3)(C) of the Act. The term "handicap" would have no meaningful place in our program, inasmuch as the Act does not recognize degrees of disability. Thus, we do not believe that we would be able to make the kinds of changes in the definitions of our terms suggested by the commenter. Furthermore, any changes we could make to definitions of terms shared by the childhood and adult rules would require changes in the adult rules as well and would, therefore, be beyond the scope of these rules.

Comment: We received comments from 17 commenters, many with identical language, about the clause in § 416.924(a) of the prior rules, "or if you are an infant from birth to the attainment of age 1, be reasonably expected to substantially reduce * * *." Most of the commenters seemed to believe that the sole purpose of the provision was to provide guidance for the evaluation of the children who are too young for certain tests. Most commenters also seemed to understand that the language of the rules permitted adjudicators to make informed judgments of the likely effects of impairments and, hence, of the likelihood of disability.

All of the commenters thought that we should change the former reference to age 1 to a later age, saying that many children will be difficult to test even if older than 1 year. Several of the commenters stated, in identical language, that this limitation would "continue arbitrary denials to children over one who remain too young to test." They pointed to Listings 102.02 (for vision), 102.08 (for hearing), and 101.03 (for walking), as being especially difficult for small children to meet. Several of the commenters also said that, because of this, the clause either violated the Supreme Court's decision in *Zebley* or was not supported by the decision. One commenter noted that it was not only a child's very young age, but also the nature of the child's condition that might preclude formal testing.

Several commenters asserted that they were unaware of any medical basis for our choice of age 1. Another commenter observed that not every child will be developmentally affected by a particular disability by the attainment of age 1, and that not all severe physical disabilities will manifest themselves in developmental terms by age 1. In addition, several commenters offered comments to the effect that, in the case of some conditions, parents may not be given a diagnosis until their child is age 4 or 5, despite evidence of developmental delay. One commenter wanted us to extend the age limit of the provision to 6 years for several reasons. The commenter said that, given the rapid development of young children, childhood specialists find it difficult to assess adequately and accurately the functional limitations of children under 6 years of age. Often, a child may manifest symptoms and conditions in infancy or early childhood that may improve or deteriorate by a later age. Adjustment of the "reasonable expectation" standard to 6 years of age would allow children who appear to

suffer from limitations that cannot actually be tested with a "presumption" of disability that can be later reviewed at the continuing disability review stage. On the other hand, another commenter—discussing the physical impairment of cystic fibrosis—said that, if a child is given an individual functional assessment and not immediately denied benefits, the restriction to age 1 may be acceptable.

Response: We have deleted the entire clause in response to the comments. We also added a new provision to the rule that discusses age, § 416.924a.

Our original intent in the statement, "or if you are an infant from birth to the attainment of age 1, be reasonably expected to substantially reduce," was to provide a special consideration for the very youngest children, whose medical conditions might be difficult to diagnose, or whose specific functional problems might be difficult to ascertain, because their very young age precludes accurate medical or standardized testing. We reasoned that a judgment might be required on the basis of all available evidence whether a child's impairment(s), even though not diagnosable or not amenable to specific medical testing (such as central visual acuity), were demonstrated to be disabling and could be reasonably expected to remain disabling.

We did not choose age 1 arbitrarily or as a cutoff point, but for several reasons that seemed reasonable and valid:

1. First, and foremost, we thought that children under age 1 could be viewed as a special case with respect to the statutory duration requirement that an impairment "must have lasted or be expected to last for a continuous period of not less than 12 months."

2. Second, there was considerable interest on the part of the experts that we provide special considerations—the "benefit of the doubt"—for the youngest infants, particularly those under age 1. We believed that this provision would address those concerns.

3. Third, and as we have explained in the preamble to the publication of the final childhood mental listings (55 FR 51227, December 12, 1990), we do not entirely agree with the commenters who said that there is no medical basis for choosing age 1 in a rule for children who are not always amenable to testing. Even though we agree that the problems of testing can, and often do, persist beyond age 1, they become less and less of a factor for our program purposes, especially under these rules, as children get older, even by ages 2 or 3.

After more than one-and-one-half years of adjudicatory experience, however, we now realize that the clause could have been unclear (as shown by several of the comments). The reason it could have been unclear is that it seemed to state a principle that was somehow different from our normal policies; i.e., it seemed to say that, even though we do not ordinarily consider whether an impairment that has not yet lasted for 12 months will last for at least 12 months, we would make an exception for infants. This, of course, is not the law or our policy. We often make reasoned decisions predicting duration based on the available evidence, knowledge of the course of an impairment, and other informed judgments in both childhood and adult claims.

Consequently, we decided to delete the language from the rule. As a result, we did not adopt the first two of the three language revisions suggested by the commenters. The commenters first recommended that we delete the first part of the clause, "or if you are an infant from birth to the attainment of age 1," from the third sentence of § 416.924(a) of the prior rules leaving only the statement, "or * * * be reasonably expected to substantially reduce * * *." In our view, the lack of reference to any age category (even to the categories that include the children who are too young to be tested) would have made the statement seem contrary to the statute; as we have said, the reasonable and acceptable interpretation of the language (i.e., that it referred to a child who has already demonstrated a disability save for the duration requirement) is a fundamental part of disability evaluation for all people under the Act and regulations.

The second proposed change also had the same problems. The commenters proposed that we revise the second sentence of § 416.924a(a) of the prior rules (final § 416.924d(a)) to add the words "or potential" in the following context: "When we assess your functioning, we will consider all information in your case record that can help us determine the impact or potential impact of your impairment(s) * * *." We believe that this language is still sufficiently ambiguous that it could be misinterpreted. In any case, we believe that it does not provide any additional policy or substantive clarification to warrant its inclusion.

We therefore believe that deleting the passage is the best way to respond to the comment. Moreover, the deletion carries the advantage that it removes the reference to an upper age limit and permits the principles to be used with any child of any age who may be untestable.

Even with the deletion, there are still several, far more substantive, provisions that address the problems of children who are too young to test in these rules. In a more general way, the entire body of the rules protects such children. The comment about the physical impairment, cystic fibrosis, was on point: The fact that with these rules we can find a child disabled based on an individualized assessment of his or her functioning takes precedence over whether it is possible to diagnose exactly what is wrong with the child or the extent of loss of such functions as vision or hearing. We were frankly surprised at the number of commenters who submitted the comment that pointed out the importance of being able to test children in order to find out whether their impairments meet Listings 102.02, 102.08, and 101.03. The whole point of the *Zebley* decision and of these rules is to provide ways to establish disability in children whose impairments do not meet (or equal) any listing.

More specifically, the policy of functional equivalence provides a direct method for finding disabled infants and young children who have listing-level impairments manifested only by functional limitations; it is plainly a rule for children who, for any reason, cannot be appropriately tested. Beyond the listings step, the rules in final §§ 416.924d and 416.924e provide methods for establishing disability in such children based on an individualized assessment of their functioning. Again, it is not necessary to quantify the degree of visual or auditory functioning when there is poor bonding or lack of responsiveness to stimuli; or whether a child's failure to thrive and chronic cough are the result of cystic fibrosis; or whether a child's failure to thrive and poor social responsivity are the result of an emotional disorder of infancy. We need only know that there is a medically determinable impairment and how it affects the child's functioning—and, of course, that it has lasted or, based on our review of all the evidence and informed judgment, can be expected to last for at least 12 months.

More specifically still, final § 416.924d(a) (§ 416.924a(a) of the prior rules) explicitly states that we will consider a child's ability to be tested:

When we assess your functioning, we will consider all information in your case record that can help us determine the impact of your impairment(s) on your physical and mental functioning. We will consider the nature of your impairment(s), your age, your ability to be tested given your age, your ability to

perform age-appropriate daily activities, and other relevant factors.

Finally, one of the most important provisions in these rules, which we believe goes to the heart of the comparability standard, is the age provision in final § 416.924a(d) (§ 416.924b(d) of the prior rules). In this section, we provide detailed guidance for the kind of special consideration that must be given to the effects of impairments on small children.

We do find helpful, however, part of the third suggested revision submitted by the commenters, although we believe that it should be given an even broader application than the commenters suggested. The commenters recommended that we add two sentences to the section on the role of age in determining whether an impairment equals a listing, in § 416.924b(a)(2) of the prior rules (final § 416.924a(a)(2)): We will also consider your age and how it affects your ability to be tested. In cases where you are too young to test, we will make equivalence determinations of present disability based on available evidence, medical knowledge of the course and early signs of impairments and informed clinical judgments.

Aside from the obvious problem that discussions of equivalence and age may more properly belong under final § 416.924a(a)(3), we believe that the first of the proposed sentences has more general applicability. We, therefore, did not want to make the statement only in the context of a discussion of the listings step because it might obscure our intent. However, we also agree that this particular paragraph of the rule on age is an ideal location for stating plainly the policy we have been applying since we first published the prior rules: We consider a child's ability to be tested at every step of the sequential evaluation process. For this reason, we have added a new subparagraph (5) at the end of final § 416.924a(a) which states that in any determination we will consider a child's age and whether it affects the child's ability to be tested. Even when a child's impairment(s) is not amenable to formal testing because of age, we will consider all evidence that will help us decide whether a child is disabled.

For reasons which should be apparent from all of the foregoing discussions, we were unable to adopt the second proposed sentence. The proposed language, in fact, simply describes a good disability determination, one that considers all the available evidence, and that employs knowledge of the course and signs of impairments, and informed judgment. We believe that this new language offers the protection that the commenters sought, and that we originally intended, for children who are too young to be tested.

Section 416.924(c)—If You Are Working

Comment: One commenter noted that the first step of the sequential evaluation process for determining whether a child is disabled involves proof that the child is not engaging in substantial gainful activity (SGA). The commenter said that because children, unlike adults, do not engage in work activity, the adult rules should not be used to determine whether a child is engaging in SGA. The commenter said that we should ask whether the child is engaging in "substantial child-like activities." The commenter went on to say, "In the context of a child, substantial gainful childhood activity means the ability to engage in such activities as, but not limited to, rolling, sitting, or crawling, at a level comparable to the child's age group."

Response: The definition of disability in section 1614(1)(3)(A) of the Act applies to both adults and children. Although most children do not work, there are those who do, particularly among older adolescents. The determination at the first step of the sequential evaluation process does not consider a child's abilities; it asks whether the child is actually working. If a child is actually engaging in substantial gainful activity, then he or she is not disabled. However, we believe that the remainder of the sequential evaluation process is consistent with the commenter's recommendation: The degree of the child's ability or inability to function in an age-appropriate manner ("at a level comparable to the child's age group," in the commenter's terminology) is at the core of the childhood disability evaluation process.

Section 416.924(d)—You Must Have a Severe Impairment(s)

Comment: Some commenters said the *Zebley* decision provides no basis for a "severity" step in these rules, that it establishes a new barrier to eligibility, in violation of *Zebley*, and is enjoinable in district court. They said the Supreme Court's "limited approval" of the severity step for adults in *Bowen* v. *Yuckert*, 482 U.S. 137 (1987), did not approve application of the same step in child claims.

The commenters' overall concern was that the severity step would be used to deny children without an individualized functional assessment. There were particular concerns about children with multiple slight physical impairments, about children under age 5, and about children whose cases are difficult to evaluate.

There were various recommendations: that we eliminate the severity step altogether; that we eliminate it for a year and then evaluate implementation of the rules without it; and that we monitor implementation of the step and reevaluate its usefulness by some specified future date. There were also recommendations on revising the language in the severity step if it were to be retained, such as elimination of the phrase "more than minimal" or addition of the word "independently" after "function." Commenters also recommended that we adapt language from the preamble to the prior rules: "If the effect of your medically determinable impairment or combination of impairments is so minimal that it could not possibly be disabling, we will find that you do not have a severe impairment and are, therefore, not disabled."

Response: We did not adopt all the comments, but we have further clarified our rules, consistent with several of the commenters' proposed language changes. As we explained in the preamble to the prior rules (56 FR at 5538 and 5552), the severity step is consistent with the Act because it makes the whole childhood evaluation process more comparable to the adult process. Moreover, in *Zebley*, the Supreme Court noted that the "statutory standard for child disability is explicitly linked to (the) functional, individualized standard for adult disability." *Zebley*, 110 S Ct. at 890. The Supreme Court emphasized that the child and adult disability standards are to be read together so that "a child is entitled to benefits if his impairment is as severe as one that would prevent an adult from working." *Id.* Given the Supreme Court's recognition in *Zebley* that the childhood and adult disability standards are "explicitly linked" and the fact that the Supreme Court in *Yuckert* upheld the facial validity of the step for adult claims, we believe inclusion of a severity step is valid for children, who receive an evaluation process comparable to the one that adults receive.

We, of course, share the commenters' concerns that step 2 not be misused. Therefore, we have closely monitored its use over the more than one-and-one-half years since implementation of the prior rules. Our monitoring has shown that the step results in a denial of benefits in only a small percentage of cases, and that State agencies understand and apply the severity step correctly.

Although a formal individualized functional assessment is not required at step 2, we do consider each child's functioning at that step of the sequential evaluation process although not in precisely the same manner as we do at later steps in the sequential evaluation process. A denial based on a finding of nonseverity is proper only if it is clear that any impairment-related functional limitations are, at most, minimal or slight. We believe that the reorganization of the rules, which makes it clear that functioning is assessed at steps 2, 3, and 4 of the sequential evaluation process, and § 416.929(d)(1) of the current rules on the evaluation of pain and other symptoms (56 FR 57946, November 14, 1991) will help to underscore these principles.

To make this point even clearer, and to address the other concerns expressed by the commenters, we have now also revised final § 416.924(d) to reflect our longstanding interpretation in Social Security Ruling 85–28 ("Titles II and XVI: Medical Impairments That Are Not Severe"). That is, if a child's impairment is a slight abnormality or a combination of slight abnormalities that causes no more than a minimal limitation in the child's ability to function independently, appropriately, and effectively in an age-appropriate manner, we will find that the child's impairment(s) is not severe, and that the child is, therefore, not disabled. We believe that this revision will respond to the comments which asked us to clarify even further that "not severe" equates with "slight" or "minimal." The change also responds to concerns about our consideration of multiple impairments. It also responds to the comment that asked us to add the word "independently" before "age-appropriate activities"; we expanded the language to "independently, appropriately, and effectively" for consistency within the rules and because we think that comment speaks to all three aspects of functioning.

We have already explained why we believe the childhood disability rules will not disadvantage younger children. If the evidence shows that the child has more than a slight or minimal limitation in functioning as a result of his or her impairment(s), we will find that the child has a "severe" impairment(s). We do not need to know exactly how limited the child is in order for our evaluation to cross this threshold (as some commenters assumed); more precise assessments are needed only at the last step of the sequence.

We did not adopt the recommendations to delete the severity step or postpone its implementation during the first year after publication of the former rules, but we will, of course, continue to monitor its application and, if necessary, take corrective action. As noted above, we have made some of the recommended language changes so as to make the rules even clearer.

Comment: One commenter cited "error" rates through May 31, 1991 in six States as evidence of abuse of the severity step.

Response: The early rates cited by the commenter were not "error" rates; rather, they were cases returned to the State agencies following quality reviews, ordinarily to obtain additional evidence. These cases were considered to be "documentation returns," not "decisional errors." We have intentionally returned many cases for documentational deficiencies, including cases in which the adjudicator inadequately addressed an allegation in the rationale or did not properly explain a decision which was otherwise correct. Such errors do not represent cases in which it is likely that the decision itself is incorrect.

Thus, we strongly disagree with the assertion that these particular returns or any others represent "abuse" of the impairment severity step. As we stated in the prior response, we have carefully monitored the use of the step and at no time, even in the early months of implementation, have we found any patterns of misunderstanding or abuse. In fact, our quality reviews have shown that the rate of decisional errors in childhood cases using this step is very low. Notwithstanding the commenters' fears, we see no patterns that indicate adjudicators are misusing the severity step after more than a year-and-a-half of using the rules.

Comment: One commenter said the severity step appears to require a finding about the child's ability to function before a functional assessment is made.

Response: The commenter was partially correct. Functioning is considered at step 2, but in a less detailed way than at step 4, just as evaluations of the ability to do basic work activities at step 2 of the adult sequential evaluation process are less detailed than assessments of residual functional capacity. Such decisions do not require either consideration of whether the impairment(s) meets or equals in severity any listing, or the much more detailed individualized functional assessment that is required at step 4 of the sequential evaluation process.

Comment: One commenter said that the definition of "severe" in § 416.924(d) does not sufficiently allow for the effects of a disease like juvenile arthritis. For example, many children with juvenile arthritis are able to attend school and be in normal classes, but they arrive late every day because of acute joint inflammation. They have difficulty moving between classrooms and cannot participate in all activities. According to the commenter, studies have shown that children with juvenile arthritis have a higher than average absentee rate because of illness. As adults, they may be able to work but have difficulty finding an employer willing to accommodate their needs.

Response: We have not adopted this comment. Children who are frequently absent from school because of chronic impairments, who have difficulty walking (for instance, because of morning stiffness, even if it does resolve later in the day), and who cannot participate in all activities at school are limited in age-appropriate activities. Moreover, such children might well be disabled, depending upon the degree of their limitations. Based on our experience using the rules, we are confident that our adjudicators understand the severity step and are able to apply our rules to adjudicate claims involving impairments like juvenile arthritis.

Comment: Several commenters asserted that inclusion of the severity step without an NPRM violated the Administrative Procedure Act.

Response: We disagree, as we have already explained in the preamble to the prior rules (56 FR at 5549 and 5552). We believe that there was good cause for publishing the prior rules as final rules with a request for comments because publishing an NPRM was impracticable and contrary to the public interest. Moreover, even though we implemented the prior rules upon publication, we did solicit comments on the rules and provided the public an unusually long comment period of 147 days.

Comment: One commenter pointed out that we acknowledged there are no program benefit savings and only small administrative savings from the severity step. Several other commenters said that under the pre-*Zebley* disability rules, childhood claims involving not severe impairments were subsumed under the listings and effectively screened out by application of the listings. The commenters thought these claims could still be screened out just as effectively at the listings step and through an individualized functional assessment. The first commenter also asserted that the administrative savings we predicted may be unreal because we must still consider the impact of the impairment on the child's functioning at this step.

This commenter also said there were no reports or studies from the 9 months under the Interim Standard (the court-ordered standard we used during the period after the Supreme Court decided *Zebley* and before the date we published the prior rules) showing any need for this step.

Response: We disagree with the commenters that there are insufficient reasons to justify the inclusion of a severity step in these rules. As we noted in the preamble to the prior rules (56 FR at 5552), there are some savings for cases decided at step 2 because the functional analysis at step 2 is less detailed than the analysis required at step 4. More importantly, however, the step also helps us more quickly decide the cases that clearly do not have merit. As the Supreme Court noted in *Bowen* v. *Yuckert*, 482 U.S. at 153, the severity regulation increases the efficiency and reliability of the evaluation process by identifying at an early stage those claimants whose medical impairments are so slight that they would not be found eligible even if we were to proceed to the later steps of the evaluation process. Our experience using the severity regulation in the past two-and-one-half years has shown that this is true in childhood disability cases as well. Therefore, we believe there are valid reasons to include the severity step in the evaluation process for children.

The Interim Standard did not include a "not severe" step, and therefore could not show whether such a step would be useful. In any case, we now have more than two-and-one-half years of case reviews and experience demonstrating the efficacy and accuracy of the step.

Section 416.924(e)—When Your Impairment(s) Meets or Equals a Listed Impairment in Appendix 1

Comment: One commenter pointed out that the Supreme Court found the severity of the listings to be more restrictive than the statutory standard. The commenter recommended that, to emphasize that the listings no longer set the standard for children's disability, we should add specific language to § 416.924(e) and § 416.924b(a)(2) of the prior rules (final § 416.924a(a)(2)) to make it clear that the listings represent a more severe standard than is necessary to establish disability. The commenter also suggested we make it clearer that, unless the child is performing substantial gainful activity, a child's claim must always be approved if his or her impairment satisfies the duration requirement and the requirements of a listed impairment, but that failure to meet or equal a listing will never justify denial of a claim. Another commenter made the same comment without referring to the *Zebley* decision.

Response: We did not adopt the comment because it is unnecessary. The current rules clearly state this policy, and it is not necessary to restate it in other places. As we have explained above, each rule must be read in the context of all the rules in subpart I; no rule stands alone without reference to all of our other rules. Aside from the fact that we provide a sequential evaluation process with a step beyond the listings step—which in itself should be sufficient to establish that no child will be denied solely for failure to have an impairment(s) that meets or equals a listing—final § 416.924(e) states: "We will not deny your claim on the basis of a finding that your impairment(s) does not meet the requirements for any listed impairment or is not equal in severity to any of the impairments listed in appendix 1." Moreover, since the Supreme Court decided *Zebley* in February 1990 cases have not been denied on the basis that a child's impairment(s) did not meet or equal in severity any listed impairment.

Comment: Several commenters pointed out that the Supreme Court had found the listings to be inherently incomplete (by virtue of being a finite list) and always in danger of being out-of-date. Therefore, in order to comport with the Supreme Court's analysis, and to facilitate and encourage use of the functional equivalence principle, the commenters recommended that the regulations should more directly acknowledge the limited role and shortcomings of the listings.

Response: We did not adopt the comment. As we discuss below with regard to the comments on functional equivalence (final § 416.926a), the Supreme Court made these statements in the context of examining the propriety of a listings-only test of disability for children. The point of the analysis was to show why we could not establish a standard of comparable severity by confining our adjudication to the listings, and why we were required to devise another step beyond the listings in order to satisfy the comparable severity standard in the statute. The Court did not state or even imply that we should alter the method of adjudication at the listings step, or that we should be required to acknowledge any shortcomings of the listings. (As we explain later, we did improve our method of adjudication under the listings in an effort to improve our entire disability evaluation process for children even though this was not a requirement of the *Zebley* decision.)

Moreover, based on our operating experience since implementing the prior rules, we do not believe that it is necessary to "encourage" the use of the functional equivalence policy; our adjudicators are well aware of its existence and how to apply it.

Comment: Three commenters called on us to update the Listing of Impairments for children's disabilities, noting that the listings for some conditions are already out-of-date, that others are incomplete, and that others are lacking. One commenter stated that the current listings did not include fetal alcohol syndrome (FAS), acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV) infection that is not AIDS. Another commenter said that the listings did not include AIDS, Down syndrome, muscular dystrophy, infant drug dependency and FAS. One commenter pointed out that the Supreme Court had stated that the listings did not include spina bifida. 110 S.Ct. at 893, n.13. This commenter said that the rules should be amended to provide an expedited procedure for making additions to the listings. The commenter suggested that such a procedure might be established by providing in the preamble to the listings that "the Secretary, or the Secretary's delegate may, in his or her discretion, add to the listing in concert with a petition by interested public citizens or groups." Another commenter called for a formalized mechanism to review and modify listed impairments based on current medical knowledge, stating that such an approach would be consistent with the current rules, which say that the listings are not intended to be self-limiting.

Response: We have not adopted these comments. We are in the process of revising the listings for both children and adults; however, these revisions go far beyond the ambit of the present rules and will be proposed through normal Administrative Procedure Act (APA) rulemaking procedures. We have published final revisions of both the multiple body system listings, which includes Down syndrome, FAS, and other such disorders, and the childhood mental listings (55 FR 51204 and 51208, December 12, 1990). We have also published NPRMs proposing to update the listings for endocrine and multiple body system disorders and to add rules for the evaluation of immune system disorders, including human immunodeficiency virus (HIV) infection (56 FR 65702, December 18, 1991), adult mental disorders, which may be applicable to children in certain circumstances (56 FR 33130, July 18, 1991), the respiratory listings, including

the childhood asthma listing (56 FR 52231, October 18, 1991), and the cardiovascular listings, including the childhood listings (56 FR 31266, July 9, 1991). We have also published in the **Federal Register**, Social Security Ruling 91–8P, which addresses our procedure for the evaluation of HIV infection and specifically addresses the manifestations of the infection in children (56 FR 65498, December 17, 1991).

At the time we received the comments about Down syndrome and FAS, there were specific listings for both impairments, in Listing 110.06 (for Down syndrome) and Listing 110.07 (for FAS). The second paragraph of section 110.00A.2. of the listings explains that FAS is an example of an impairment that should be evaluated under Listing 110.07; by inference, we also include infant drug dependencies under that listing. (See 55 FR 51204, December 12, 1990.) Although the diagnosis of "muscular dystrophy" is not specifically stated in the listings, Listing 110.06, "Motor dysfunction due to any neurological disorder," describes the impairment. Similarly, our listings (though not using the exact name) actually have long included spina bifida at Listing 111.08, meningomyelocele, which is the technical, anatomical description of what can be a serious, listing-level result of spina bifida.

Finally, we do have a formal mechanism for updating the listings, and our mechanism is consistent with what the commenter recommended we do.

Comment: One commenter observed that "the individual condition listings carry some elements of physical functioning; however, they provide no generic view of physical disability nor are they consistent across condition groups. A person with less disability may be determined eligible because of the idiosyncracies of one specific disease compared to another." Another commenter recommended that, to facilitate functional equivalence determinations, all the childhood listings be revised to include both medical and appropriate functional considerations, as was done with the mental disorders listings in 112.00 of the Listing of Impairments.

Response: Although the first comment was not entirely clear, we believe that the commenter was saying that some listings have criteria that are less severe than the criteria in other listings, especially among the physical listings. Although it might be debated whether such comparisons are possible or even necessary, any differences are insignificant because a claimant may be found disabled using the policy of functional equivalence, and because there is another step beyond the listings step at which children whose impairments do not meet or equal listings can still establish that they are disabled. However, as we revise each of the listings sections, we will consider including appropriate functional considerations, as suggested by the second commenter.

Section 416.924(g)—Basic Considerations

Comment: One commenter wanted to know the meaning of statements in the preamble and in § 416.924a(b) of the prior rules (final § 416.924(g)) with regard to determining the validity and reliability of formal testing. The commenter quoted preamble language ("* * * the results of standardized testing should be consistent with the remainder of the record * * *" (56 FR at 5538)) and asked whether it means that if the child appears to be functioning at a level higher than the score would suggest, SSA will disregard the scores.

Response: We do not disregard any test scores that we receive in a child's claim. We believe the meaning of final § 416.924(g)—which is also nearly identical to language in 112.00D of the childhood mental listings—is clear. It says, in pertinent part, that "* * * any discrepancies between formal test results and your customary behavior and daily activities should be duly noted and resolved." We do not disregard any relevant medical or nonmedical evidence, including test scores, but neither do we disregard apparent conflicts in the record when we consider that evidence in conjunction with the rest of the evidence. We take whatever steps are necessary (e.g., recontact with the testing source for input on the validity of the test scores, or recontact with other medical or nonmedical sources to find out more about the child's actual ability to function) to determine whether there really is a conflict, and to resolve the issue.

Comment: Three commenters noted that although the proposed final rules show an appreciation of the importance of obtaining information about a child's functioning from nonmedical sources such as parents, teachers, and other caregivers, the regulations do not require us to obtain records from these sources. The commenters feared that unless we explicitly acknowledge this responsibility in regulations and give instructions for obtaining these records, we may not fully develop the child's claim. One of the commenters was particularly concerned that the regulation does not strongly recommend that adjudicators obtain details on the child's health from the child's personal physician; the commenter recommended that we include a provision requiring the use of this information. Amending language on these issues was suggested for § 416.924a(b)(2) of the prior rules (§ 416.924(g)(2) in these final rules).

Response: Final § 416.924(g) clearly states that we will consider nonmedical evidence in any case in which it is relevant. Because a significant number of children are found to be disabled based solely on medical evidence, it is not necessary to require the development of nonmedical evidence in all cases. We did not adopt the comment that we should add language to these rules requiring our adjudicators to obtain evidence from the child's treating physician because, shortly after the close of the comment period for these rules, we published final rules in the **Federal Register** which accomplish the same goal. Pursuant to § 416.912(d) of the final rules, "Standards for Consultative Examinations and Existing Medical Evidence," published on August 1, 1991 (56 FR 36932), we will make every reasonable effort to develop a complete medical history for at least the 12 months preceding the month in which the application is filed, before we make a determination that a child is not disabled.

Section 416.924a—Age as a Factor of Evaluation in Childhood Disability

Comment: Three commenters recommended that we replace the last clause of § 416.924b(b) of the prior rules (final § 416.924a(b))—"however, we will not apply these age categories mechanically in borderline situations"—with different language. One commenter suggested that we use language from the preamble which would remove the reference to "borderline situations" and emphasize that each case must be evaluated on its own merits. The other two commenters echoed these comments but suggested their own replacement language. One commenter thought that rigid application of the age categories carried the greatest risk of any provision in the childhood disability rules of being mechanically applied, which would work to the detriment of at least some children.

Response: We responded to the comments by deleting the statement and in the general reorganization of the rules.

The clause in § 416.924a(b) of the prior rules was almost identical to the

last sentence of § 416.963(a), the rule setting out the adult age categories, the language of which we had adopted for consistency. However, we emphasize in these rules that the age categories in the childhood rules have a different purpose than the age categories in the adult rules. In the adult rules, assignment to a particular age category can be dispositive of the issue of disability. This is because, under the medical/vocational rules and guidelines in appendix 2 to subpart P of part 404, it is possible for an adult who is in a lower age category (e.g., a "younger individual," aged 49) to be found not disabled, while another adult, with the same residual functional capacity, education, and work experience but who has reached the next age level (e.g., a person who is 50 years old and, therefore, "closely approaching advanced age") might be found disabled.

The childhood regulations, however, do not contain rules like those for adults in appendix 2. The childhood age categories function as descriptive devices; that is, they are a convenient way for us to describe functioning and the kinds of evidence we would expect to need for children of different ages (in § 416.924d), and to set down guidelines for determining disability (in § 416.924e). Moreover, all of the guidelines in final § 416.924e regarding what may constitute a disability in the different age categories are set at the same level of severity; they merely use different descriptors to describe age-appropriate assessments of disability. Therefore, there is no disadvantage (or advantage) to a child's being "assigned" to one age category or another.

We believe that the general reorganization of the final rules also makes this clear. By moving § 416.924a(c) of the prior rules, "Terms used to describe functioning," into final § 416.924b, "Functioning in children," we have incorporated into the basic rules on the assessment of functioning in children the principle that the various descriptors of functioning (activities of daily living, developmental milestones, etc.) can be used across age categories where appropriate. Thus, for example, the final rule at § 416.924b(b)(3) on the assessment of functioning provides that, "[o]rdinarily, activities of daily living are the most important indicators of functional limitations in children aged 3 to 16, although they may be used to evaluate children younger than age 3." This is also a basic principle in the listings that use age categories. For instance, in the preamble to the final publication of the childhood mental disorder listings, we stated:

> This is not to say that children who are older than 1 cannot be found to have an impairment which is equal to the severity of listing 112.12. As we emphasize throughout these responses, any child who does not have a listed impairment can still be found disabled if he or she has an impairment or combination of impairments that is equivalent to any listed impairment. Children older than 1 whose impairment manifestations are identical or sufficiently similar to the requirements of 112.12 could, in certain situations, be evaluated using the new listing (55 FR at 51227).

The reason we did not adopt the suggestion to incorporate our language from the preamble to the prior rules is that it still implies that assignment to a particular age category can somehow matter in the ultimate decision of disability. On balance, we think that the better course of action is to delete the idea and reorganize the rules, as discussed above.

Comment: Three commenters objected to the provision in § 416.924b(c) of the prior rules (final § 416.924a(c)). That section states that we compute a corrected chronological age for premature children until the prematurity is no longer considered a significant factor, generally around age 2. The commenters argued that the provision appears contrary to the statute. They said that, although a pediatrician may need to adjust a child's chronological age to determine whether a developmental delay is permanent, the law does not require that a child have a permanent impairment in order to establish disability. The commenters also thought that using an adjusted age could result in incorrect disability determinations. They gave an example of an 18-month-old child, born 10 weeks prematurely and with mild mental retardation, who would be found to have an impairment that meets the childhood mental disorder listings if she were found to be functioning at less than ⅔ of her chronological age in two of the paragraph B criteria of the childhood mental disorder listings (i.e., if she were functioning at a chronological age of 12 months). However, the commenters stated that if we were to adjust her chronological age to correct for her prematurity, her "adjusted" age would be 15½ months and she would not meet the listing criteria.

The commenters also thought that correcting a child's chronological age denies children who were premature an individualized assessment of their impairments, although they did not explain why they thought this.

Two of the commenters submitted identical recommendations for language changes to § 416.924b(c)(3)(i) of the prior rules (final § 416.924a(c)(2)(i)). The changes would have indicated that we correct chronological age: (1) Only when there is a question whether any delay was caused "solely" by prematurity that is expected to resolve; (2) only in the first year of life, and (3) only when we cannot separate out other causes for the delay. The suggested provision would also have provided for the payment of benefits retroactive to the date of application if it later developed that a disabling condition was present. In a similar vein, the third commenter recommended that if we were to use a corrected chronological age at all, we should limit it to the first year of life and only when we cannot identify specific medical or genetic causes for the delay.

Response: We partially adopted the comments. We believe the commenters misunderstood both our intent and how the rules function, but we believe that the prior rule can be made clearer. It is not our intention in adjusting a premature child's chronological age to determine whether a child has a "permanent impairment," nor is that the purpose of such an adjustment in pediatric practice. Pediatricians adjust a premature child's chronological age in order to make the results of their evaluations more valid and predictable. Such an adjustment is also more useful in planning treatment or intervention, and in the pediatricians' discussions with parents about a child's possible developmental delays. A pediatrician must be certain that a child is progressing physically and mentally according to an expected developmental channel.

In the case of a premature child, it is necessary to consider the child's gestational age at birth in order to know whether the child is progressing within a normal range of development given his or her gestational age at birth. If, given the child's adjusted chronological age (i.e., adjusted for gestational age at birth), the child's progress is not within a normal expected range, the pediatrician then must consider ongoing monitoring of the child's development and provision of intervention services. For example, infants usually are able to turn their bodies from a supine to a prone position by 3 or 4 months of age. If a child who was born 2 months prematurely cannot do that at a chronological age of 4 months, the adjustment of the child's chronological age to 2 months lets the physician and

parents know that there is no cause for concern at that time. If, on the other hand, the same child at a chronological age of 6 months could not turn her body to a prone position, there would be cause for concern because the child's adjusted chronological age would be 4 months, an age at which the infant would be expected to be able to perform that developmental skill.

Our reasons for adjusting a premature infant's chronological age are similar to those of pediatricians. We need to know if a child's functioning at the time of our evaluation is age-appropriate or whether the child is not functioning in the way we would expect, a sign of impairment-related limitation. In the case of a premature infant, the only way to ensure that our evaluation of the child's functioning is valid is to take into consideration the child's gestational age at birth, and to adjust accordingly our idea of what is age-appropriate for that infant.

We must also point out that in many instances we do not have to compute a child's adjusted chronological age and reinterpret the evidence in terms of that adjustment. This is because the adjustment is made by the treating physician or psychologist (or consulting physician or psychologist) when he or she evaluates test results for assessing a child's development. The medical source would record the child's chronological age, the date of testing, the child's adjusted age at the time of testing, and the child's performance within a range, or at a level of functioning in various areas (e.g., motor, social). If the treating or consultative source's report is not clear about whether the child's prematurity has been taken into consideration, we will recontact the source to ask that question, pursuant to § 416.912(e) of our regulations. (See, "Standards for Consultative Examinations and Existing Medical Evidence," 56 FR at 36963.)

However, we agree with the commenters to some extent that it is not always appropriate to adjust a child's age between the ages of 1 and 2. Within pediatric practice, there is general agreement that a premature child's age should be adjusted up to 12 months of age for the purpose of evaluating either development or linear growth, because it is very difficult in the first year of a child's life to differentiate the effects of prematurity from the effects of any possible underlying impairment. It is also generally agreed that for the purpose of evaluating development, a child's age need not be adjusted after 24 months of age because by that time a premature child should have "caught up" in terms of achieving developmental milestones. When a premature child is still exhibiting significant developmental delays at 24 months, it is more clearly discernible that those delays are attributable to an identifiable disorder. Within the period between 12 to 24 months of age, however, pediatric practice varies as the pediatrician sorts out developmental effects that may still be attributable to prematurity from those that may be attributable to a medically determinable impairment. During this period, pediatricians may make a full adjustment of age (e.g., deducting 10 weeks from a child's chronological age if the child was born 10 weeks prematurely), or only a partial adjustment (e.g., deducting 5 weeks from a child's chronological age if the child was born 10 weeks prematurely), or no adjustment at all.

In cases of developmental delay, whether or not an adjustment of chronological age is made during the period between 12 and 24 months of age depends upon clinical judgment about many qualitative factors concerning the child's development and the severity of the child's developmental delays. The more significant the developmental delays, the more likely it is that no adjustment or only partial adjustment would be made, because the observable delays are more likely to be the result of underlying impairment rather than of prematurity. For instance, in the example provided by all three commenters about the 18-month-old child with mild mental retardation (i.e., mental retardation with an IQ in the 60 to 70 range), it is not necessarily the case that a pediatrician (whether treating, consultative, or reviewing) would fully adjust the chronological age of the child. Many factors would have to be considered. For example, manifestations of delay in more than one area of functioning, as indicated in the example, tend to suggest that the child is experiencing the global effects of the medically determinable impairment rather than of prematurity. Therefore, the clinician would have to consider the particular nature and severity of the medical impairment(s) and the child's delays in order to determine whether full, partial, or no adjustment of age would be appropriate. We must also add again that the example submitted by the three commenters seemed to assume that the child had to have an impairment that met the listings in order to be found disabled; this, of course, is not the case under the new rules.

Given the foregoing discussions and the comments, we have revised the rules to indicate more clearly that when assessing either development or linear growth in premature children, we will make a full adjustment for chronological age until age 1; thereafter, in cases involving developmental delay and until prematurity is no longer a factor (generally, around age 2), we will decide whether to make an adjustment and, if so, the extent of the adjustment to be made. Our decision will be based on judgment, informed, of course, by the individual facts of the case, including any treating source opinion on the matter. Even though it is not the exact approach the first two commenters suggested, we believe that it is fair, consistent with standard pediatric practice, and administratively feasible. We did not adopt the first two commenters' suggestion that, when we have made an unfavorable decision in a case, we should provide benefits retroactive to the date of the original application if we later determine that a disabling impairment was present. However, the rules for reopening in §§ 416.1487 to 416.1493 would still be applicable should the claimant reapply. In addition, the claimant has the right to appeal an adverse determination in accordance with our regulations.

Comment: A number of people submitted the same comment, asking us to delete § 416.924b(d)(3) of the prior rules. The commenters thought that the paragraph stated we would make assumptions about a child's "adaptability" based on age without individualized consideration of the effects of the child's impairments. Most of the commenters said that it is not true that every child benefits from increased adaptability as he or she grows older. Some commenters said that older adolescents may experience a variety of impairments that may render their functioning similar to that of younger children, and make any transition into the adult workplace exceedingly difficult. Advocates of children with severe physical impairments (e.g., cerebral palsy, spina bifida) were concerned that the general guidance in § 416.924b(d)(3) of the prior rules might be applied as a presumption in the case of adolescents whose impairments only exacerbate the difficulty of assimilation into adult society as they grow older. The commenters said that evaluation of a child's adaptation to his or her impairment(s) and ability to function age-appropriately must consider the nature of the child's impairment(s), when the impairment(s) began, and how it affects the particular child.

Two commenters perceived the provision as a "double-counting" of the factor of age in the case of older adolescents. That is, they thought we

make a general presumption of increased adaptability due to the adolescent's age in addition to considering the child's age as a factor in the individualized functional assessment (i.e., in terms of the child's performance of age-appropriate activities of daily living).

Two commenters also recommended the deletion of the last sentence in § 416.924b(d)(2) of the prior rules: "Generally, the more global effect of these kinds of impairment on development diminishes with increasing age."

Response: We disagree with the commenters, but we have clarified final § 416.924a(d) in response to the comments. We believe that it is a well-established and widely accepted principle that, given the nature of child development, impairments that occur during the early developmental period generally have a more pervasive impact on a child's functioning than those that occur later in life.

We did not intend the statement of this general truth, however, to obscure the fact that adaptability to an impairment is a highly individual matter regardless of one's age. For this reason, we evaluate an older adolescent's impairment(s) in the same manner that we evaluate all other children's impairments: We consider those activities, skills, and behaviors that are appropriate for children of the same age. It is also certainly true that adolescents may experience serious functional limitations resulting from developmental, degenerative, or traumatic impairments, as well as other impairments with onset later in childhood. Therefore, we do not "presume" that an older child is better able to adapt to his or her impairment than a younger child; we evaluate each case on its own facts.

To make this policy clearer, we have revised the opening sentences of § 416.924b(d) of the prior rules (final § 416.924a(d)), and added a new § 416.924a(d)(1), both of which explain that these guidelines apply to determinations of disability, not to the assessment of functioning itself. New paragraph (d)(1) explains that we recognize that how a child adapts to an impairment(s) depends on many factors, including the nature and severity of the impairment(s), the child's temperament, adult intervention, and the child's age at onset. We then explain that "adapting to an impairment" means the child's ability to learn skills, habits, or behaviors that allow the child to compensate for the impairment(s) and to function as well as possible despite the impairment(s). Finally, we explain that our disability determination will consider how the child has adapted to the impairment(s) and how well the child is functioning, considering all appropriate factors.

Comment: Several commenters thought that the principle in § 416.924b(d) of the prior rules was not legal. The commenters said that the statute allows us to consider an adult's age when determining disability, but that the law has no similar provision for children.

Response: We disagree with the comments. The Act does not preclude consideration of age in childhood claims. Indeed, as we have already stated at the beginning of this preamble, the statute states very little about what the standard of disability for children should be, only that a child's impairment(s) should be of "comparable severity" to an impairment(s) that would disable an adult. Because the statutory standard is one of comparability to the adult standard, we believe that consideration of age is permissible under the law.

Comment: Several commenters discussed whether the new rules set a higher standard of disability for older adolescents. Five commenters, in identical language, said that the rule might be considered a higher standard and, therefore, be misapplied. One commenter said that the provision violates the spirit of *Zebley* because it sets a higher standard of disability for older adolescents. Finally, one commenter said that we treat 16–18-year-olds as if they were already younger adults, subject to SSA's adult claimant rules. The commenter said that we were required to do a full analysis of the child's functioning, using the five functional domains.

Response: We disagree with these comments. We do not evaluate the disability claims of older adolescents using a higher standard than we use for younger children, nor do we believe that these rules disadvantage older adolescents. Our rules recognize that adolescents begin activities that prepare them for the world of work, and that these activities may occur both in and outside of school. Specifically, with regard to older adolescents, the definition of disability in § 416.924(a)(3) recognizes that the functional abilities, skills, and behaviors that are age-appropriate for 16-to-18-year-olds are those that are also age-appropriate for 18-year-olds; i.e., those capacities that allow a person to function in the adult world. Final § 416.924a(d) provides more detail to the basic definition. We have established a new § 416.924a(d)(4) for adolescents, which clarifies principles from the basic definition of disability in § 416.924(a)(3) and in § 416.924b(d) of the prior rules, and adopts language from our manual instructions. In new subparagraph (d)(4)(ii) we clarify our policy that, inasmuch as age-appropriate functioning for an older adolescent is also that of an 18-year-old, the disability determination for an older adolescent must be consistent with the disability determination we would make for an 18-year-old with the same functional limitations. Thus, final § 416.924e(d) further describes the work-related mental and physical functions that we evaluate for older adolescents.

We also do not believe that the rules violate the letter or spirit of *Zebley*. As required by the Supreme Court's decision, the rules provide older adolescents an additional adjudicative opportunity beyond the listings step to demonstrate they are disabled, comparable to the opportunity which is given adults. Our experience has shown that the rules have not been misapplied.

Finally, we do not apply SSA's adult claimant rules to the claims of older adolescents. Older adolescents receive the same kind of individualized functional analysis as all other children under these rules. When we perform an individualized functional assessment, we draw a profile of how an older adolescent is functioning by considering his or her activities of daily living in the applicable functional domains. We then evaluate whether those activities are age-appropriate. That is the same general process by which we evaluate the impairment(s) of a child of any age. For an older adolescent, once we have gathered all the information we need about the adolescent's activities of daily living, we construct a profile of his or her functioning in all of the five functional domains that may be affected by the impairment. Once that profile is established, we translate the functional information that we have into work-related (and, therefore, age-appropriate) terms. The profile we draw of the adolescent's physical abilities must enable us to determine if he or she can perform the basic physical demands of at least sedentary work. The profile we draw of the adolescent's mental abilities must also enable us to determine if he or she can perform the basic mental demands of at least unskilled work. This is not the same determination we make for adults: In an adult's claim, the disability determination finally addresses whether the person can do past relevant work or other work; a disability determination in an older adolescent's claim does not address whether the child can work, only

whether the child can do work-related physical and mental activities.

Comment: One commenter said that it is important to emphasize that § 416.924b(d) of the prior rules provides only guidelines concerning the impact of severe impairments on younger children and older adolescents. It was recommended, therefore, that we add three sentences from the prior preamble (56 FR at 5540) to the paragraph.

Response: Although we did not incorporate the exact language suggested by the commenter, we provided two sentences in § 416.924a(d)(4)(ii) which have the same meaning. We also believe that we have addressed the comment by adding final § 416.924a(d)(1), the new paragraph that provides rules on how children "adapt" to their impairments.

Section 416.924b—Functioning in Children

Comment: One commenter pointed out that there were inconsistencies in § 416.924(a), § 416.924a(c), and § 416.924e(b) of the prior rules in our use of terms to describe functioning at the different age levels. The commenter recommended that we make these various age category descriptions consistent.

Response: We adopted the comment. We agree that there were some unintentional inconsistencies in the rules. For example, § 416.924a(c)(2) in the prior rules, (§ 416.924b(b)(2), "Developmental milestones," in these final rules) stated that "developmental milestones" are ordinarily the most important indicators of impaired functioning in children from birth until the attainment of age 6, although they might be used to evaluate older children, especially school-age children. However, § 416.924e(b)(1) in the prior rules ("How we describe functional limitations") appeared to stress the use of developmental milestones only for children aged from birth to 3 years while § 416.924e(c)(2) in the former rules seemed to stress the use of activities of daily living in children aged 3 to 6.

We have, therefore, stated in § 416.924b(b)(2) in the final rules (§ 416.924a(c)(2) in the prior rules) that "failures to achieve developmental milestones" are ordinarily "the most important indicators of impaired functioning from birth until the attainment of age 3, although they may be used to evaluate older children, especially preschool children." This revision makes § 416.924b(b)(2) consistent with the guidance in final § 416.924e(b)(1), the language of which we have not changed. The revision also makes both sections consistent with our basic definition of disability in § 416.924(a)(1). Similarly, § 416.924b(b)(3) now states that "activities of daily living" are ordinarily "the most important indicators of functional limitations in children aged 3 to 16," but that "they may be used to evaluate children younger than age 3." This makes the language of § 416.924b(b)(3) consistent with our statements in § 416.924e(b)(2), which is unchanged, and § 416.924(a)(2) in the basic definition of disability. We have also added a new § 416.924b(b)(4), "Work-related activities," for children aged 16 to 18, to be consistent with §§ 416.924e(b)(3) and 416.924(a)(3). Finally, to reflect the addition of new § 416.924b(b)(4), we have redesignated paragraph (c)(4) of the prior rules, "Domains," as paragraph (b)(5) in the final rules; we have also amended the age ranges referred to in the third sentence of the paragraph to reflect the foregoing changes. In addition, we have changed the heading of final paragraph (b)(5) to "Domains and Behaviors" because "responsiveness to stimuli" and "concentration, persistence, and pace" are not "domains" but "behaviors."

None of these revisions is intended to be a substantive change from the rules as we originally published them; rather, they clarify our intent so as to prevent any misunderstanding of our policy. The rules in final § 416.924b(b) are definitions of terms we use in other rules. From the outset, our primary intent in including these definitions was to provide a common set of terms for use with the new rules and to provide some guidance about the kinds of evidence of functioning one might expect to find (or seek) for children of different ages. By using words like "ordinarily" and "although" in these sections, our intent has been to make clear that the terms we use to describe functioning are not meant to be hard-and-fast rules, but only what we think would be the most likely information we would encounter in our case development.

Comment: One commenter said that the wording of § 416.924a(c)(4) of the prior rules (final § 416.924b(b)(5)) was ambiguous in its use of the phrase "development or functioning." This commenter also believed that language in the preamble to the publication of the prior rules that explained the all-inclusive nature of the domains and behaviors with respect to children's functioning should be included in the regulations.

Response: We adopted the comments. We deleted from the first sentence of final § 416.924b(b)(5) the phrase, "development or", to emphasize that the domains and behaviors do, indeed, address functioning in all children. We added a new fourth sentence to explain that the domains and behaviors are intended to include all of a child's functioning, and a new fifth sentence to explain that all effects of a child's impairment(s) on daily functioning will be considered within the domains and behaviors.

Comment: One commenter who was concerned that we do not adequately provide for the assessment of children with physical impairments, requested that we add to the definition of "activities of daily living" a sentence that would indicate that activities of daily living may be more useful than developmental milestones for evaluating children with physical or nondevelopmental impairments.

Response: We believe that our revisions to § 416.924b(b) (2) and (3), described in a previous response, respond to the comment. With these changes, we now place greater emphasis on "activities of daily living" for children who are at least 3 years old. In further response to the comment, we have also revised the end of the second sentence of § 416.924b(b)(2) to indicate that such activities may also be used to evaluate children who are younger than age 3.

Section 416.924c—Other Factors We Will Consider

Comment: One commenter maintained that additional language and direction were needed to emphasize the relevance of other factors not enumerated in § 416.924d of the prior rules (final § 416.924c). The commenter said that, although former § 416.924d(a) of the prior rules (final § 416.924c(a)) states that the enumerated factors are "some" of the factors to be considered in an individualized functional assessment and "are not limited to" the factors enumerated, the section does not provide guidance about what those other factors might be. The commenter thought it "clear" that there were many other factors that could be considered, such as allergies and environmental limitations. The commenter referred us to a footnote in the *Zebley* decision. *Zebley*, 110 S.Ct. at 894, n.17. Four other commenters echoed this comment in the same or similar language, suggesting that we add certain risk factors to the section, such as the impact of socioeconomic factors on impairments; familial and environmental risks, including parental problems due to age, substance abuse, illness, or developmental disability; and

effects of homelessness, abuse/neglect, and malnutrition.

Response: We did not adopt the comment. The first sentence of final § 416.924c states clearly that we will consider all factors that are relevant to the evaluation of the effects of a child's impairment(s) on his or her functioning. The third sentence of the paragraph further states that the factors described in the section are some, but not all, of the possible factors that could be considered in the evaluation of a child's impairment(s). We included these provisions because it would not be possible to identify every factor to be considered in the evaluation of every child's claim; each claim presents a unique profile of impairment(s) and factors that are particular to that child.

In any case, we could not add the "factors" suggested by the commenters. Allergies and malnutrition would never be "other" factors because they are themselves medically determinable impairments; to call them "other" factors would be incorrect and confusing. The other suggestions described "risk" factors, which we cannot include in this rule or any other, as we explained in the preamble to the prior rules and will explain in more detail in our response below regarding the use of risk factors.

Finally, the first commenter's reference to footnote 17 in the *Zebley* decision was unclear. The footnote addressed "the rigidity of the Secretary's listings-only approach" and mentioned the following factors: pain, side effects of medication, feeding problems, dependence on medical equipment, confinement at home, and frequent hospitalization. *Zebley,* 110 S.Ct. at 894, n.17. The Court also later in the footnote mentioned "severe swelling, food allergies and fever," in a context which showed that it understood that these are medical findings. Aside from the fact that we no longer employ a listings-only approach, our rules plainly consider all of the factors noted by the Court at steps 2, 3, and 4 of the sequential evaluation process. Furthermore, our rules explicitly mention pain (which we address in the next three separate comments), side effects of medication, dependence on medical equipment, confinement at home, frequent hospitalization, and (as in the case of fever) chronic illness.

Comment: Several commenters were concerned about what they perceived to be a lack of any reference in our new rules to the evaluation of pain and other symptoms in light of the Supreme Court's criticism of the way in which we considered pain and other symptoms under the listings-only approach we used to deny childhood disability claims. These commenters held that the statement in the preamble to the prior rules that the childhood regulations, "must be read in the context of * * * existing rules for determining disability" (56 FR at 5537) was inadequate because § 416.929, "How we evaluate symptoms, including pain," and Social Security Ruling 88–13, "Evaluation of Pain and Other Symptoms," did not mention children and were not written with children in mind.

Several commenters stressed that symptoms may be particularly difficult to evaluate in children because children may not be able to describe their own symptoms, may have other problems articulating their symptoms because of shame, embarrassment, or fear, may shy away from activities causing pain more than adults because they do not understand that pain can be overcome or controlled, or, if their symptoms had existed since birth, because they had no symptom-free frame of reference. One commenter said that these rules "never" mention symptoms.

These commenters stated that adjudicators are more likely to consider a child's symptoms if the childhood disability rules specifically require them to do so. Therefore, they recommended that we add a paragraph to § 416.924d of the prior rules (final § 416.924c) to include pain and other symptoms among the "other factors" we will consider. The new paragraph would address the consideration adjudicators are to give to allegations of pain and other symptoms in children.

Response: The comments have been rendered moot by an event that took place after the close of the comment period. On November 14, 1991, we published in the **Federal Register** final rules for the "Evaluation of Symptoms, Including Pain" (56 FR 57928). These new rules, which revise our previous rules in § 416.929 for the evaluation of pain and other symptoms, include specific reference to the evaluation of symptoms in determining a child's ability to function independently, appropriately, and effectively in an age-appropriate manner at each step of the childhood sequential evaluation process, and were prepared with the evaluation of children in mind.

It is not true that the prior rules "never" mentioned symptoms. Section 416.924a(b)(1) of the prior rules (final § 416.924(g)(1)) requires us to consider evidence of symptoms when we assess functioning, as do three of the paragraphs in § 416.924d of the prior rules (final § 416.924c), and final § 416.926a(a).

However, we do agree with the commenters who pointed out that children may not be able to describe their own symptoms or may have difficulty articulating symptoms. Therefore, in response to the comments, we have added a new second sentence to § 416.928(a), "Symptoms," which states that we will accept as a statement of a child's symptoms the description given by the person most familiar with the child when the child is unable to adequately describe his or her symptoms. We have also made minor editorial changes to the prior text for context. In response to the comments, we have also added to final § 416.924(b) a statement that we will evaluate any limitations in a child's ability to function that result from symptoms, including pain. We have also added a statement to final § 416.924b(b)(5) that the presence of pain or other symptoms can adversely affect functioning in the domains or behaviors. We continue to emphasize, however, that these childhood disability rules must be read in the context of all the other rules governing the evaluation of disability. Thus, every reference to an "impairment" and to "medical findings" carries with it the requirement to obtain evidence about and consider "symptoms, signs, and laboratory findings," as set forth in §§ 416.908, 416.928, and 416.929.

Comment: One commenter said that the Eighth Circuit in *Polaski* v. *Heckler,* 739 F.2d 1320 (8th Cir. 1984), specifically held that we must consider allegations of pain and other subjective complaints. The commenter noted that *Polaski* required us to give full consideration to all evidence, including (1) the claimant's daily activities; (2) the duration, frequency, and intensity of pain and other subjective complaints; (3) precipitating and aggravating factors; (4) dosage, effectiveness, and side effects of medication; and (5) functional restrictions. Another commenter thought that the absence of a reference to pain in the childhood disability rules will be in violation of the law set forth in *Marcus* v. *Califano,* 615 F.2d 23, 27 (2d Cir. 1979). The commenter said that the *Marcus* decision held that, as long as an actual impairment had been established by medically acceptable clinical and/or laboratory techniques, the absence of objective medical evidence could not be grounds to reject or find not credible a claimant's statements as to the pain associated with that impairment.

Response: Revised § 416.929, "How we evaluate symptoms, including pain,"

contains language that addresses the holdings in both of these cases, as well as others. Section 416.929(c)(3) of the regulations states that factors relevant to a claimant's symptoms include the five factors from *Polaski* cited in the comment, and several others. (See 56 FR at 57946.) The second commenter did not point to any language in the prior childhood rules which led to the belief that we would require children to establish the existence and severity of their symptoms through objective medical evidence. We do not know of any language in these rules that could have led the commenter to such a belief. In any case, revised § 416.929(b) of our rules provides that a person must have a medically determinable impairment which could reasonably be expected to produce the pain or other symptoms. The rule specifically states: "The finding that your impairment(s) could reasonably be expected to produce your pain or other symptoms does not involve a determination as to the intensity, persistence, or functionally limiting effects of your symptoms." The fourth sentence of revised § 416.929(c)(2) further states: "* * * we will not reject your statements about the intensity and persistence of your pain or other symptoms or about the effect your symptoms have on your ability to work (or if you are a child, to function independently, appropriately, and effectively in an age-appropriate manner) solely because the available objective medical evidence does not substantiate your statements." (Both cites at 56 FR at 57945.)

Thus, we believe that these final childhood disability rules, which must be read in the context of our existing policies for the evaluation of pain and other symptoms, are not inconsistent with the circuit court rulings in either of the cited cases. Our rules make clear that, once an adjudicator determines that the individual has an impairment which is reasonably expected to produce the alleged symptoms, the adjudicator must consider all of the evidence relevant to the individual's alleged symptoms, even if the alleged symptoms are more severe or persistent than would be expected from the objective medical findings.

Comment: Two commenters suggested that we convene an "advisory panel" similar to the Pain Commission, or consult with multidisciplinary experts, to consider pain in children and how best to evaluate it and other symptoms in the disability determination process. They argued the need for such an effort because children may experience and respond to pain differently than do adults.

Response: The recommendation goes beyond the scope of these rules. Nevertheless, we believe that the rules we published on November 14, 1991, are sufficient to guide adjudicators in the evaluation of pain and other symptoms in children. Section 416.929 of our rules contains a detailed discussion of our policies on the evaluation of pain and other symptoms. These policies include specific reference to the evaluation of symptoms in determining a child's ability to function independently, appropriately, and effectively in an age-appropriate manner and were prepared with the evaluation of children in mind. However, we agree with the commenters that children may experience and respond to their symptoms differently than do adults. Therefore, we have revised § 416.928(a) to expand the definition of our term "symptoms" to recognize the problems children may have articulating their symptoms. Further, our current policies and procedures provide for the use of pediatric experts, where indicated, for consultative examinations, including experts in pediatric pain, where appropriate and available. Finally, under the provisions of section 1614(a)(3)(H) of the Act, we will make reasonable efforts to ensure that a qualified pediatrician or other appropriate specialist evaluates each childhood case; such individuals are aware of the special problems of evaluating symptoms in children.

Comment: Several commenters urged us to include in § 416.924d of our prior rules (final § 416.924c) an explicit consideration of the impact of "risk factors" on a child's functioning. The commenters said that by "risk factors" they mean biological factors (e.g., low birth weight, neonatal seizures, anemia, recurrent infections, spinal, cardiac, and pulmonary abnormalities), health-related factors (e.g., inadequate treatment, lack of access to treatment facilities and therapy centers), and familial/environmental factors (e.g., malnutrition, homelessness, poor air quality, parental substance abuse, dysfunctional family environment, history of physical or sexual abuse). One commenter added that the conditions that manifest themselves due to risk factors can be physical or mental/emotional in nature.

The commenters said that the Supreme Court emphasized in *Zebley* that we must take into account all relevant factors in child claims (e.g., age, educational background, and circumstances), and the commenters regarded risk factors among the circumstances to be considered. One commenter, who was not a pediatrician, said that "standard pediatric practice" takes risk factors into account in evaluating the severity of pediatric impairments, and that risk factors are indispensable in making longitudinal judgments about pediatric impairments. For example, the commenter thought that if a child has been abused it is relevant to consider that experience in order to arrive at a valid prognosis and to make informed decisions about duration.

The commenters noted several points we made in the preamble to the prior rules (56 FR at 5551). Most importantly, the commenters noted our position that a rule incorporating certain risk factors for children results only in a prediction of the possibility of future disability, and that to count certain factors again, after they have already been considered in the course of an equivalence determination or an individualized functional assessment, would be a double weighing of the same factors. The commenters asserted that elimination of express references in the regulations to "risk factors" is not necessary; rather we should provide language that avoids these problems. For example, one commenter said that many children with biological conditions that are not overt (e.g., spina bifida occulta, congenital heart problems) are already functionally impaired, at the very least by prophylactic orders from treating physicians; the commenter argued that consideration of risk factors may contribute to findings of current disability in these cases.

Some commenters also suggested that allowances based on predictions of disability *can* be appropriate. For example, one commenter said that, "without an express provision allowing the consideration of such risk factors * * * many claims in which the *current* level of functional impairment is not sufficient will be denied by lay adjudicators who may discount subtle but very serious underlying problems where consequences have yet to manifest themselves." (Emphasis in original.) One commenter maintained that the assumption made in the preamble to the regulations that risk factors may have an "observable, current impact" and, therefore, will be considered in the individualized functional assessment, is not supported by the language of the regulations. The commenter said that risk factors, "must be expressly laid out for lay adjudicators" and administrative law judges. To overcome our concerns about

the intrusiveness of inquiry into risk factors, as explained in the preamble to the prior rules, the commenter recommended that we limit consideration of risk factors, "to those that are objectively observed as affecting the particular child."

In addition to the commenters who proposed that we add a new paragraph to § 416.924d of our prior rules (final § 416.924c) specifically directing the consideration of risk factors, another commenter proposed that we add a new domain titled, "Abilities as affected by environment," to § 416.924c(a)(2) of our prior rules (final § 416.924d(c)) to address the ways in which a child's environment may contribute to, or decrease, the chance that a disability will improve.

Response: We did not adopt the comments. As we discussed in the preamble to the prior rules (56 FR at 5551), we do consider what the commenters called "risk factors" insofar as they affect the child's medical status and ability to function in an age-appropriate manner. As we explained in the preamble to the prior rules, many of the factors mentioned are covered in various ways in the rules. For instance, the so-called biological risk factors mentioned by the commenters (neonatal seizures, anemia, low birth weight, recurrent infections, and spinal, cardiac, and pulmonary abnormalities) as well as two of the familial/environmental factors (malnutrition and history of physical or sexual abuse) are, in these rules, "medically determinable impairments," or the effects of medically determinable impairments, or (as in the case of abuse) the cause of medically determinable impairments. To call these "other factors" or "risk factors" would only be confusing since we have always considered these "factors" in our determinations. Indeed, these "factors" can be disabling or be the cause of impairments that are.

The other categories of "risk factors" named by the commenters do not contribute to our determinations of disability except if one holds—as some of the commenters did and we cannot—that a child who is not currently disabled may be granted benefits based on a prediction of future disability. If a child has a disabling respiratory impairment, we will find the child disabled: We do not have to consider that the child lives in an environment with poor air quality or receives substandard medical treatment to make this determination, just as we would not use such factors to find the child not disabled.

As we explained in the preamble to the prior rules, these kinds of factors are not relevant to a determination of disability. A child is either disabled or not, and we cannot say that the fact of homelessness or the fact that the child's parents abuse drugs can be additional factors that make the difference between a finding of "disabled" and a finding of "not disabled" without contravening the law. We do not agree with the assertion by one of the commenters that "standard pediatric practice" takes risk factors into account in evaluating severity, although we would agree that these factors are relevent to such issues as etiology, treatment plan, and prognosis.

Returning to the issue of "biological risk factors," we want to assure the commenters about spina bifida occulta and other hidden conditions that these rules already provide for the kind of considerations the commenters feared we would overlook. If a child with spina bifida is unable to engage in strenuous play because there is a real danger of paralysis, we would find that child to be medically limited in the ability to engage in strenuous play, even if the child is otherwise asymptomatic and able to do less strenuous activities. (This does not mean that we would find the child disabled; whether the child would be found disabled would depend on the extent to which the child is limited by his or her impairment.) Final § 416.924c (d) and (e) also address this subject: The example is of a child who has structured his or her life (i.e., by avoiding strenuous play) so as to minimize the chance of devastating injury. Also, as a general matter, final § 416.924d(a) says, "When we assess your functioning, we will consider all information in your case record that can help us determine the impact of your impairment(s) on your physical and mental functioning"; similar directives are found throughout the rules. We require our adjudicators to develop and consider all impairment-related effects on function.

Thus, for purposes of assessing current disability, we believe the rules fully cover "risk factors" to the extent possible under the statute. Insofar as some commenters suggested that consideration of risk factors will allow us to predict future disability, we must repeat that allowances based on such predictions alone are contrary to the Act.

Comment: Three commenters focused on the importance of an impaired child's need for early professional care. The commenters said that many children have primary conditions which, if not treated with the necessary medical and allied professional interventions, will worsen and produce secondary deficits. Moreover, the child might be tracked into an educational program more restrictive than would have been necessary had the child been given early and proper treatment. The commenters thought that, by recognizing and considering risk factors, we could make early intervention possible through the assistance of SSI and the Medicaid entitlement that accompanies SSI in most states.

Response: We do know of the importance of early intervention for children with impairments. However, we are not legally able to provide SSI eligibility for children who are not disabled within the time period covered by their application for benefits. There are programs designed to provide early intervention for children at risk (e.g., Part H of the Individuals with Disabilities Education Act (IDEA) and Headstart), but the Social Security Act's disability provisions do not allow us to pay benefits to children who are not disabled, but who may become disabled in the future.

Comment: One commenter recommended language for the first and second sentences of § 416.924d(b) of the prior rules (final § 416.924c(b)) to convey the idea that a child might have a chronic impairment(s) which causes periods of debility but which does not necessarily always require hospitalization or outpatient care. Other commenters were concerned that § 416.924d of the prior rules did not address the possibility of children with episodic impairments.

Response: We adopted the comment, but did not use the language the first commenter recommended. Instead, we added a new first sentence to the provision, which states: "If you have a chronic impairment(s) that is characterized by episodes of exacerbation (worsening) or remission (improvement), we will consider the frequency and severity of your episodes of exacerbation and your periods of remission as factors in our determination of your overall ability to function." We revised the next sentence (the prior first sentence of the paragraph) to state: "For instance, if you require repeated hospitalizations or frequent outpatient care with supportive therapy for a chronic impairment(s), we will consider this need for treatment in our determination." We then replaced the last sentence with two sentences that more clearly explain how we consider the need for treatment and the frequency of exacerbations in the disability determination. The revisions better convey our original intent for this provision, which was to give some guidance for the evaluation of children who have chronic, episodic

impairments that may not always limit their functioning (or may limit their functioning to a lesser extent during periods of remission) but who, on a longitudinal basis, may be so frequently and severely limited as to be disabled.

Comment: Comments and questions we received from three commenters pointed out that the language in § 416.924d(e) of the prior rules, "Adaptations," was unclear. One commenter wanted to know whether, following the language of the rule, we could conclude that a child with cerebral palsy who is nonverbal and unable to walk is not disabled if the child can communicate with an electronic device or a manual system and can get around in a motorized wheelchair. The commenter thought that the evaluation of these adaptations should be similar to the evaluation of the factors discussed in § 416.924d(d) of the prior rules, "Effects of structured or highly supportive settings." That is, the commenter thought we should consider the child's ability to function without an adaptation in a way comparable to the way we consider a child who functions better in a highly structured setting but is still impaired in age-appropriate settings. In a similar vein, a second commenter noted that even with the best device, a person who is otherwise nonverbal can only communicate somewhat better than not at all, but still not normally. This commenter suggested that communication devices could fall under the category of adaptations that may "impose additional limitations," or, alternatively, be listed as a self-care activity.

The third commenter thought our statement that some adaptations "may impose additional limitations that interfere with performance of age-appropriate activities" was problematic. The commenter pointed out that the examples we provided were of devices that "enable" a person to do an activity; they did not actually illustrate adaptations that would in themselves cause limitations. For example, the commenter noted that a child who required an adapted utensil would not be able to eat in the school cafeteria without the utensil, but would be able to do so with the utensil. The utensil itself does not impose additional limitations; rather, it enables the child to do something. Indeed, the commenter said that, if an adaptive device imposes a limitation that was not previously present (i.e., that was not part of the impairment itself) it would be necessary to reevaluate the appropriateness of the device.

Finally, one of the commenters said that the child who needs an adaptation in order to function may depend upon Medicaid (through SSI) to obtain the adaptation. The commenter recommended that we clarify § 416.924d(e) to explain both the benefits to a child's functioning attributable to an adaptation and the potential loss of functioning attributable to the loss of an adaptation. The purpose of such clarification would be to ensure that children do not end up in recurring cycles of SSI eligibility and non-eligibility based on the absence or presence of such adaptations.

Response: We adopted the comments by revising § 416.924d(e) of the prior rules (final § 416.924c(e)) to make it clearer. Our intent in this rule was to evaluate the impact of adaptations essentially as the commenters thought we should. Children whose functioning is improved with an adaptation may function normally, or almost normally, but many children only function better, not necessarily independently, appropriately, and effectively in an age-appropriate manner. For instance, an ankle-foot orthosis may enable a child to walk independently, but the child may still be unable to run and engage in certain play activities; although the child's ability to function is increased, his or her abilities are still limited to some extent. Certainly, we consider a child who is unable to communicate without the assistance of an electronic device to be limited in the communicative domain, even though the device may enable the child to communicate to some extent.

We also agree with the third commenter that the examples of adaptations that may impose additional limitations did not illustrate the principle. They are not in themselves intrusive—as in the example of the special utensil, they enable children to function better, even if not "normally."

For these reasons, we revised the paragraph to state that some adaptations (such as eyeglasses and hearing aids) may enable a child to function normally, or almost normally, whereas others (such as ankle-foot orthoses, hand or foot splints, and other adaptations we formerly said could be intrusive) may increase functioning even though the child is still functionally limited. (We deleted the reference to "sleeping" because it was unclear.) In the second case, the extent of the limitation will, of course, vary from case to case. These revisions are not a change in our original intent, but the comments did enable us to better express our intent.

In clarification of the first commenter's concerns, we also note that children who must use wheelchairs or who cannot produce speech by any means have impairments that meet or equal the listings. Therefore, we would not be concerned with evaluating the effects of these kinds of adaptations, which do not so much improve the particular function as substitute for it.

With regard to the suggestion that we employ a method similar to the rules for highly structured settings, we believe that the revisions accomplish the end the commenter had in mind, which was to recognize that children who use adaptations may still not be functioning independently, appropriately, and effectively in an age-appropriate manner. We do not believe that there is a valid comparison between a child's ability to function with or without an adaptation and a child's ability to function within or outside of a highly structured or supportive setting. A highly structured setting (such as a special class for children with behavioral problems) is an abnormal environment. In this situation, we need to determine how the child will function outside the setting—i.e., how the child will function in the settings that are normal to children of the child's age—because structured settings may mask how severely impaired—or typical—a child really is compared to other children.

Adaptations, on the other hand, may enable a child to function independently, appropriately, and effectively in an age-appropriate manner—i.e., they may enable the child to do normal activities in normal settings—or, at least, improve that ability. Knowing how the child would function without the adaptation does not really tell us anything about how the child can function. To take an obvious example, many children would have very serious visual impairments if they were not to wear glasses, but can see normally with glasses. However, a child who must use a built-up spoon or a rocker knife has augmented his or her functioning but is obviously still limited in the motor domain.

Comment: One commenter urged us, when applying the policy in § 416.924d(f) of the prior rules, final § 416.924c(f), concerning multidisciplinary therapy, to take into consideration the time commitment necessary for children with cystic fibrosis to perform chest therapy three or four times a day. Although these children may continue to attend school, performing the needed therapy several times a day can be very time-consuming and may seriously impede their ability to keep up with peers. Consideration of this factor may strongly influence a disability determination about these

children. Another commenter asked us to remove all references to multidisciplinary therapy and focus only on the time spent in treatment.

Response: We adopted the comments. In the fifth sentence of final § 416.924c(f), we deleted the words, "in order to go," from the opening clause of the prior language, "If you must frequently interrupt your activities at school or at home in order to go for therapy * * *," to convey the idea that the therapy may be given at home or school.

We adopted the second comment by changing the heading of final § 416.924c(f) from "Multidisciplinary therapy" to "Time spent in therapy". In addition, in the first sentence, we changed the phrase, "more than one kind of health care professional", to "one or more kinds of health care professionals" to indicate that even one kind of therapy can be very time-consuming. The second sentence now refers simply to "therapy," which may include multidisciplinary therapy. Nevertheless, this paragraph still provides for the situation in which each kind of therapy a child receives may not in itself involve much time but, cumulatively, the time spent in the various modes of therapy is significant.

Comment: One commenter was concerned about the statement in the second sentence of § 416.924d(g) of the prior rules (final § 416.924c(g)) that if a child attends school, "we will consider this evidence." The commenter was concerned about the situation in which we try, but are unable, to obtain evidence from the school.

Response: We adopted the comment. We revised the sentence to state that if a child attends school, we will consider this evidence when it is relevant and available to us. This revision more accurately reflects our policy and current development procedures and is consistent with the first sentence of the section, which explains that school records and information from people at school who know the child "may" be important sources of information. In some cases, such as allowances in which the child has an impairment that meets or medically equals a listing, or in which it is clear from the evidence that there is no limitation in the child's functioning at school, we may be able to make a decision without obtaining information from the school. The revision, therefore, covers the situations in which we try to get evidence from school but fail, and in which evidence from school is not necessary to reach a decision.

Comment: One commenter said that, since the law mandates that developmentally disabled children be mainstreamed in regular classrooms, it is important to note in the childhood disability regulations that attendance in a regular classroom is not totally indicative of nondisability. We must also consider whether the child can function independently in that classroom in an age-appropriate manner.

Response: We have adopted the commenter's suggestion to add the word "regular" before the word "classroom" in the second sentence of final § 416.924c(g)(2). We also added the words "appropriately, and effectively" to the phrase "to function independently," in order to include all the characteristics of a child's functioning in a regular classroom that we would consider in our evaluation. We made a similar addition to final § 416.924c(g)(3), adding after "to function" the phrase, "independently, appropriately, and effectively."

Section 416.924d—Individualized Functional Assessment for Children

Comment: One commenter noted that § 416.926a(c), lists the individuals who have responsibility for making determinations of equivalence at each stage of the administrative review process. The commenter noted that we had omitted a corresponding section in § 416.924e stating the responsibility for the individualized functional assessment.

Response: We adopted the comment. We have added a new paragraph (b) to final § 416.924d to list the individuals who have the overall responsibility for the individualized functional assessment. The new paragraph does not contain any changes in policy, but only incorporates our policy as we have been applying it since we first published the prior rules. It is also consistent with the rules stating responsibility for equivalence in childhood claims and residual functional capacity assessments in adult claims. We adopted the first and third sentences of the paragraph from § 416.926a(c), with appropriate modifications to make it relevant to the individualized functional assessment. (In the first sentence, after "designee," we added the phrase, "of the Secretary." Since this phrase was missing from the first sentence of § 416.926a(c), we also added it to that sentence in the same place.) We adopted the second sentence from the third sentence of § 416.946, the provision in the adult rules setting out the responsibility for residual functional capacity assessments, again with minor revisions, to make the statement relevant to the evaluation of children.

Finally, we redesignated the following paragraphs because of the insertion of the new paragraph.

Comment: One commenter, whose particular concern is the emotional development of young children, made recommendations for improving the descriptions of the social development of newborns and young infants in § 416.924c(b) of the prior rules (final § 416.924d(e)), and the cognitive and social development of older infants and toddlers in § 416.924c(c) of the prior rules (final § 416.924d(f)).

Response: We adopted the language recommended by the commenter with minor amendment. However, in two instances, we used the language the commenter provided but placed it under different domains than were recommended. We also revised the sections of the rules for older children in a similar manner to maintain consistency among the rules and because we believe that the commenter's suggestions have applicability to older children as well. These changes are not substantive; they merely provide greater detail and accuracy to the descriptions we originally published.

In response to the comment, we revised the example of social development for newborns and young infants in § 416.924c(b)(4) of the prior rules (final § 416.924d(e)(4)) to state, "* * * your ability to form patterns of self-regulation, to form and maintain intimate relationships with your primary caregivers, and to exchange a variety of age-appropriate emotional cues and begin to organize intentional behavior * * *" In § 416.924c(c)(1) of the prior rules (final § 416.924d(f)(1)), we added the following language to the examples of cognitive development in older infants and toddlers: "* * * and by knowing what you want as illustrated, for example, by searching for a toy or asking for a special food * * *." We also made minor editorial revisions to the sentence to accommodate the new language.

We expanded the examples in § 416.924c(c)(2) of the prior rules (final § 416.924d(f)(2)), describing communicative development in older infants and toddlers by including most of the commenter's more precise language. The new language is, "* * * your ability to communicate your wishes or needs by using gestures or pretend play, and by understanding, imitating, and using * * *." The commenter had recommended that some of this language be used to describe the domain of social development, but we believe that it more accurately describes

communicative development as used in these rules.

In § 416.924c(c)(4) of the prior rules (final § 416.924d(f)(4)), we deleted the phrase, "and emotional bonding with," from the example of social development and revised the example to state, "* * * your ability to express normal dependence upon, and intimacy with, your primary caregivers, as well as increasing independence from them, to initiate and respond to a variety of age-appropriate emotional cues, and to regulate and organize emotions and behaviors * * *" We deleted "emotional bonding" because we agree with the commenter that this descriptor is generally applicable only to the youngest infants (i.e., those in the birth to age 1 category); the replacement language is more accurate and detailed.

In § 416.924c(c)(5) of the prior rules (final § 416.924d(f)(5)), personal/behavioral development, we added the phrase, "in responding to limits," after the phrase, "in adapting to your environment." This, too, was language the commenter suggested for the domain of social development; however, it comports more closely with our definition of personal/behavioral functioning, which concerns a child's learning and demonstrating self-control. In addition, in § 416.924c(d)(5) of the prior rules (final § 416.924d(g)(5)), we extended this same descriptor to preschool children, for whom learning self-control is also as important as it is for older infants and toddlers. In a related change, we deleted the phrase "self-control" from § 416.924c(d)(4) of the prior rules (final § 416.924d(g)(4)), social development of preschool children.

Although the foregoing comments were confined to children from birth to age 3, we believe that the suggestions made by the commenter about social functioning have applicability for other age groups and that, to maintain consistency among the rules, we made similar changes to the rules for older children. Therefore, to emphasize the continuity of social development across age groups, we have added parallel descriptors for preschool and school-age children and young and older adolescents in §§ 416.924d(g)(4) (for preschool children), 416.924d(h)(4) (for school-age children), 416.924d(i)(4) (for young adolescents), and 416.924d(j)(2) (for older adolescents). The descriptors refer to a child's ability to initiate age-appropriate social exchanges and friendships and to respond appropriately to social environments (i.e., to individuals and to groups) with increasingly complex interpersonal behaviors.

Comment: One commenter seemed pleased that we included responsiveness to stimuli for the youngest group of children, newborns and young infants in § 416.924c(b)(5) of the prior rules. However, the commenter recommended the addition of the phrase, "* * * and all sensory stimulation," or the addition of specific descriptions of the other kinds of sensory input that infants experience, i.e., vestibular or proprioceptive stimulation.

Response: In response to the comment, we clarified the descriptor. As written, § 416.924c(b)(5) of the prior rules (final § 416.924d(e)(5)) stated that a child's ability to respond appropriately to visual, auditory, and tactile stimulation was only an example of a child's responsiveness to sensory stimuli, rather than the definition of such responsiveness. Therefore, to make our intention clearer, we rephrased the provision to say: "Responsiveness to stimuli, i.e., your ability to respond appropriately to stimulation, e.g., visual, auditory, and tactile." Because the sensory responses in the descriptor are only examples, other kinds of sensory input (such as vestibular, proprioceptive) are included. Also, if we were to add a phrase including "all" sensory stimuli, the senses we mentioned would no longer be examples.

Comment: One commenter found commendable the inclusion of the factor of "adapting to the environment" in the personal/behavioral domains for older infants and toddlers in § 416.924c(c)(5) of the prior rules and for preschool children in § 416.924c(d)(5) of the prior rules. The commenter observed, however, that adaptation to the demands of the environment and the settings in which people function is a continuous process throughout life and a primary contributor to functioning at all ages. Therefore, the commenter recommended that we add similar language to the sections applicable to school-age children, young adolescents, and older adolescents.

Response: We accepted the comment and added the appropriate language to final §§ 416.924d(h)(5) (for school-age children) and 416.924d(i)(5) (for young adolescents). We also added a cross-reference at the end of § 416.924d(j)(1), for older adolescents, which incorporates by reference the descriptions of domains and behaviors in § 416.924d(i), the section for younger adolescents, and therefore accomplishes the same end.

Comment: Another commenter provided many comments concerning the area of communicative development and functioning in children. The commenter recommended that we maintain continuity with our description of the communicative ability of children ages 1 to 3 years in § 416.924c(c)(2) of the prior rules—i.e., to eventually form two-to-four word sentences—by providing a description of the ability of children from age 3 to 6 years to form complete sentences in grammatical form. The commenter also noted that our descriptor for children age 6 to 12 years in § 416.924c(e)(2) of the prior rules described the ability to communicate pragmatically "or" conversationally. The commenter pointed out that by age 6 to 12 years a child should be able to communicate both pragmatically and conversationally; therefore, the commenter recommended that we use the conjunctive "and" rather than the disjunctive "or." Similarly, the commenter also recommended that the description of communication for young adolescents in § 416.924c(f)(2) of the prior rules should include the ability to express complex thoughts, with increased vocabulary, in a spontaneous and interactive manner.

The commenter also noted that in § 416.924c(d)(4) of the prior rules for children age 3 to 6 years, we included the ability to relate to a group, but we did not mention group relationships (except obliquely) in the communicative and social domains for subsequent age groups. The commenter also thought our descriptors varied from age group to age group. The commenter remarked that by the ages of 6 to 12, a child should be able to initiate communication in all communication environments and with all communication partners. Finally, the same commenter observed that the examples given to guide determination of an older adolescent's ability to do work-related activities did not include any statements about communication proficiency. The commenter recommended that we include communication proficiency in the factors to be considered regarding older adolescents.

Response: We adopted the comments. In final § 416.924d(g)(2) (§ 416.924c(d)(2) of the prior rules), we added the words, "using simple sentences in grammatical form," to the end of the descriptor of the communicative domain for preschool children. In final § 416.924d(h)(2) we changed the conjunction "or" to "and" in the three places in which it appeared, and added language for consistency with other rules, as already described. The descriptor now reads, "* * * your ability to communicate pragmatically * * * and conversationally (i.e., to

exchange information and ideas with your school classes, with peers, and family) in a spontaneous, interactive, sustained and intelligible manner * * *." In final § 416.924d(e)(2), (f)(2), (g)(2), (h)(2), (i)(2), and (j)(2), we added the words "spontaneous, interactive" or similar language to the descriptor of communication; even though the comment was directed only at final § 416.924d(i)(2), for young adolescents, we believe that it is relevant to all of the age categories.

To address the commenter's concerns about the ability of older children, as well as preschool children, to relate to, and communicate with, groups as well as individuals, we made the following changes: For school-age children, as suggested, we changed the phrase, "in your classroom," to "with your school classes" in the parenthetical statement in final § 416.924d(h)(2); and, in final § 416.924d(h)(4), we deleted, "to your siblings and parents or caregivers," and added the more precise language after the word "relate," "appropriately to individuals and groups (e.g., siblings, parents or caregivers, peers, teachers, school classes, neighborhood groups) * * *."

For young adolescents, in final § 416.924d(i)(2), beginning with the word "conversationally," we have replaced the remainder of the clause with, "* * * to converse spontaneously and interactively, expressing complex thoughts with increasing vocabulary in all communication environments (e.g., home, classroom, playground, extra-curricular activities, job) and with all communication partners (e.g., parents or caregivers, siblings, peers, school classes, teachers, other authority figures) * * *." We also revised the paragraph on social function, final § 416.924d(i)(4), to be consistent with other corresponding sections. Finally, in final § 416.924d(j)(2), we have added a new third sentence to address communication in older adolescents.

Comment: The same commenter also offered an additional comment concerning children who are nonverbal, particularly children with the physical impairment cerebral palsy. The comment was directed specifically at the descriptor for communicative development for preschool children in § 416.924c(d)(2) of the prior rules (final § 416.924d(g)(2)), which refers to a child's "* * * telling, requesting, predicting, and relating information * * *." The commenter noted that children with cerebral palsy who are nonverbal may be able to make some guttural noises and gesticulations that approximate interactive communication, but that are so limited that they do not constitute effective, meaningful communication. The commenter was concerned that the language of our rules might be misinterpreted to include such output as effective functioning. The commenter, therefore, recommended that we add a reference to the development of interactive communicative skills, which would ensure that the more limited expression of nonverbal children not be construed as "normal."

Response: We adopted the comment in final § 416.924d(g)(2) by adding the word "interactive" to the descriptor. As with all functions described by these rules, it was always our intent that, fundamentally, any evaluation of a child's ability to communicate would have to consider its practical success as compared with age-appropriate norms, but we agree that the simple addition of the word "interactive" will make our intent clearer. Because we believe that the comment is relevant to other age groups as well, and for the sake of consistency among the rules, we have also made the same addition to the sections on communication for the other relevant age categories.

We would like to point out, however, that the commenter described a communication impairment that would meet the criteria of a listing; in fact, a child with cerebral palsy need not have as severe a communication impairment as described by the commenter to meet the requirements of our listings. Listing 111.07 may be satisfied by a child with cerebral palsy if the child also has a "significant interference with communication due to speech, hearing or visual defect"; the child need not be nonverbal. Moreover, children with other physical impairments that cause the level of speech impairment described by the commenter may meet Listing 2.09 if they are unable to produce by any means speech which can be heard, understood, and sustained. Nevertheless, there will be children who have impaired communication abilities that are not of listing-level severity, and we want to ensure that the descriptors for evaluating communication are complete.

Comment: One commenter was aware that we had created charts for our manual instructions to display the functional descriptors in § 416.924c in prior rules. The commenter noted that the charts include "conceptual growth" under the cognitive domain for young adolescents, a descriptor that was not in the regulations section. The commenter suggested that we add it.

Response: As suggested, we added the term, "conceptual growth," to final § 416.924d(i)(1), the cognitive domain for young adolescents.

Comment: Several comments were made concerning the discussion of functioning of older adolescents in § 416.924c(g) of the prior rules (final § 416.924d(j)). Two commenters noted that functional domains and behaviors and their descriptors were not included for this age group. Another comment recommended that we delete the reference to remembering "short instructions" in the discussion of the school activities that would be considered as evidence of an older adolescent's ability to function in a job setting because "there is more to employability than just taking 'short' instruction." Finally, one commenter thought that there was an implicit presumption in § 416.924c of the prior rules that older adolescents without impairments function like adults. The commenter observed that in some domains, older adolescents may function in a manner similar to that of adults, but in areas involving cognitive skills and judgment, their functioning is less similar to that of adults.

Response: We adopted the comments about adding a reference to the functional domains and behavior for older adolescents by adding at the end of final § 416.924d(j)(1) (§ 416.924c(g)(1) of the prior rules) a cross-reference to the descriptors in final § 416.924d(i)(1)–(5), which are also applicable to older adolescents. For consistency throughout the rules, we also added statements to the first sentences of final § 416.924e(d)(2) and (3) referring to the domains. We also changed "short instruction" to "simple instruction," which is not only more accurate, but consistent with the description of basic work-related activities in other regulations sections (e.g., § 416.921).

Finally, we do maintain, as stated in final § 416.924e(d)(1), that children aged 16 to 18 who do not have impairment-related limitations are ordinarily expected to be able to do the kinds of physical and mental activities that are expected of persons who are at least 18 years old. We believe that this is a reasonable policy because it is consistent with current knowledge about the abilities of 16- and 17-year-olds as compared with 18- and 19-year-olds. For the same reason, we have articulated the principle in final § 416.924a(d)(4) that older adolescents generally share with the youngest adults (i.e., 18-years-olds) the same abilities to adapt to work-related activities despite a severe impairment(s).

Comment: Six commenters submitted comments that discussed in identical or similar language the efficacy of these rules as they apply to the evaluation of children with physical impairments. Several of these commenters said that, although the domains of functional assessment in §§ 416.924c and 416.924d of the prior rules (final §§ 416.924d and 416.924e) are reasonable for determining developmental disability, they are insufficient for determining physical disability. They also said that the regulations, in general, fail to provide appropriate guidance for the evaluation of physical impairments. One commenter said that 30 percent of children suffer from physical impairments, many of which do not have much effect on development.

One commenter thought that the problem was that we had borrowed developmental terms from the pediatric community that have received meanings which are used only in certain contexts. The commenter said that, because we were implicitly altering the meanings of these terms and using the concept of "domains" as an all-inclusive framework, we were increasing the potential for confusion and making our adjudications more difficult.

Response: We disagree with the commenters' view that the domains of functional assessment are not adequate for the purpose of evaluating physical disability in children.

We first repeat the definition of "domains" in final § 416.924b(b)(5), "Domains and Behaviors," in these final rules:

> The terms "developmental domains," "functional domains," and "behaviors," which we use when we perform an individualized functional assessment, refer to broad areas of development or functioning that can be identified in infancy and traced throughout a child's growth and maturation into adulthood. The domains describe the child's major spheres of activity—i.e., physical, cognitive, communicative, social/emotional, and personal/behavioral. In addition, there are certain areas of behavior that are applicable to specific age categories (i.e., responsiveness to stimuli; concentration, persistence, and pace). In these regulations, the term "developmental domains" is generally used when we discuss younger children * * *; the term "functional domains" is generally used when we discuss older children * * *.

This provision shows that the distinction between "developmental domains" and "functional domains" has reference only to age groups, not to the nature of the child's impairment, as the commenters seemed to have assumed. More importantly, the provision clearly states that the domains applicable at any age describe the child's functioning, the child's "major spheres of activity." Thus, they encompass and reflect all that a child can and cannot do given his or her impairment(s), regardless of the nature of the impairment; they are not confined merely to "development."

From the perspective of these rules, we think the commenters draw an artificial distinction between children with "developmental disabilities" and children with "physical disabilities" which these rules neither state nor imply. The commenters seem to believe that there is a distinction between conditions that may inherently limit or delay a child's "development" (e.g., mental retardation, cerebral palsy) and those that supposedly do not limit development but may limit a child's functioning (e.g., asthma, seizures, rheumatoid arthritis).

We do not maintain such a distinction in these rules because we believe that it would be artificial in the context of our program and that it has several flaws. The most obvious flaw is that many children who are regarded as "developmentally disabled" by other public laws and agencies have physical impairments as the basis of their developmental disabilities. Another flaw is in the implication that children with physical impairments are not affected in their development by their physical impairments. Certainly, all children with physical impairments cope differently with their impairments, depending on their individual capabilities and temperaments, and the nature of external support from their environments. But this is a highly relative matter, and it is likely that the development of all physically impaired children is affected to one degree or another.

The most important flaw in the distinction, however, is the implication that children with "developmental disabilities" and those with "physical disabilities" are somehow essentially different from one another—as if the things they are expected to do as children are altogether different. This is not the case. All children are expected to do the same things in childhood: To play, to learn to walk and talk, to learn to read and write, to live with adults and children, to learn to care for themselves, to become task-oriented. How well children do these things depends on their strengths and weaknesses, their skills and deficits, their abilities and limitations. However, because all children are expected to do these things, we evaluate each child from the perspective of the things that all children are expected to do.

Moreover, this is the perspective from which the Supreme Court directed us to evaluate functioning in children, to make "(a)n inquiry into the impact of an impairment on the normal daily activities of a child of the claimant's age—speaking, walking, washing, dressing, and feeding oneself, going to school, playing, etc. * * *." *Zebley*, 110 S.Ct. at 896. The Court did not direct us to consider developmentally disabled children on the one hand and physically disabled children on the other.

These rules, therefore, require an evaluation of what the child is doing in all the major domains of functioning and behaviors appropriate to the child's age: Physical, cognitive, communicative, social/emotional, etc. This determination is made irrespective of the nature of the child's impairment because the point is to determine the actual outcome of the impairment; that is, the impact on the child's functioning in practical, specific terms. For example, a child who has difficulty breathing and who experiences shortness of breath, or a child with limited strength and endurance may have difficulty keeping pace with peers at school; in such a case, a limitation in the area of concentration, persistence, or pace would be indicated. If a physical impairment causing a motor deficit limits a child's ability to engage in outdoor play, playground games, or sports, we would indicate some limitation in the motor domain. A child who has problems with eating, or who is susceptible to infection or other chronic illness, may be weakened by the condition or may experience pain; the functional effect of these symptoms could be manifested in diminished ability to concentrate, persist, or maintain pace, in social functioning, in motor functioning, or in any of the other domains or behaviors, depending on the specific impact the impairment has on the specific child. A child with a fine motor impairment that limits the ability to perform age-appropriate self-care activities (such as dressing), would have a limitation in the personal/behavioral domain. A child who has difficulty seeing or hearing may have problems in one or more of several functional areas, including cognitive, communicative, motor, social, and personal/behavioral. Thus, a physical impairment could cause limitation in any of the domains and behaviors considered in the evaluation of childhood disability and would be evaluated according to its impact on the child's functioning.

Finally, we do not believe that our use of the domains as an all-inclusive

framework would confuse our adjudicators. Any programmatic approach to evaluating disability—in a child or adult—must necessarily be tied to a scheme of some kind that will allow adjudicators to organize information about how the impairment affects the person. We know from the past year-and-a-half of implementation experience that these rules have been effective and fair. The rules have provided adjudicators a means of organizing the information they obtain about child claimants from medical and nonmedical sources, employing functional domain terminology with which they already had some familiarity because we adopted it from the childhood mental listings. As we have said, we also believe that the rules provide a means of evaluating the effects of all impairments in all children, so it is also fair to the children. For this reason, we believe that we have made a difficult and complex task more manageable and less confusing than it would have been without such a framework.

Comment: One commenter suggested that we should add provisions that allow for nondevelopmental factors to be assessed outside the domains. The commenter also stated that, to the extent that domains are used in a determination, we should fully explain how they are being used, and that whenever examples are given in the rules, we should provide examples of physical impairments as well as developmental and mental disorder examples. The commenter also believed that the domains and criteria for age-appropriate activity should be revised to be more representative of children with physical impairments. For instance, this commenter and one other recommended that we revise § 416.924c(a)(2) of the prior rules (final § 416.924d(c)) to state: "The following are domains of development, functioning and some of the specific behaviors and capacities that should be addressed in an individualized functional assessment * * * (viii) breathing; (ix) eating and eliminating; (x) seeing and hearing; (xi) ability to resist disease and function in the physical world (i.e., cope with the environment); (xii) strength and endurance; and (xiii) other physical and mental functions considered a part of normal function." The two commenters also recommended changes in § 416.924c (c)(5), (d)(5), (e)(5), and (f)(5) of the prior rules to insert the word "functioning," and a new sentence for § 416.924e of the prior rules to convey the idea that the domains were not all-inclusive.

Response: For the most part, we have not adopted the commenters' suggestions. We believe our response to the previous comments explains why it is unnecessary for "nondevelopmental factors" to be assessed outside the functional domains and behaviors that we use to assess children's impairments. We do not believe it is necessary for adjudicators to explain how the functional domains and behaviors are being used in any particular determination, because adjudicators use them in the manner described in the previous response and as appropriate to the case. We explain elsewhere that we do not believe examples are universally helpful to adjudicators because of the limitations inherent in generalizing an example to any specific case. However, in response to the commenter, we have added an example of a physical impairment to final § 416.924e(c)(2)(i). We have not revised the functional domains and behaviors to be "more representative of children with physical impairments" because, as we explained in the previous response, we do not distinguish categories of children in terms of the nature of their impairments but, rather, we evaluate all children in terms of the functional impact of their impairments.

In response to the commenter who recommended that we add several "specific behaviors and capacities" to the functional domains and behaviors in these rules, we do not believe it is appropriate to add capacities such as breathing, eating, eliminating, and strength as though they were separate and apart from the domains of functioning or specific behaviors that we consider for each age group. The domains and behaviors already take these limitations and impairment manifestations into account, not so much in terms of what they are, but in terms of how they affect the child's ability to function "independently, appropriately, and effectively in an age-appropriate manner" as shown by the things that the child actually does. Moreover, in response to the commenter who asked us to convey that the domains are not all-inclusive, we would say that, by definition in these rules, the domains and behaviors are all-inclusive and are intended to cover every possible activity a child may have. Finally, we could not adopt the other proposed language change in § 416.924c (c) through (f) of the prior rules (final § 416.924d (g) through (i)) because "functioning" is not distinct from "adapting": All children with all impairments (including physical) must adapt to their environments in order to function as effectively as possible in those environments.

Comment: One commenter who thought that the use of "domains" did not address physical impairments said that the determination of physical disability seems central to the notion of disability for adults and is clearly relevant to the functional assessment available to adults.

Response: We believe that we have made it clear that we agree with the comment and that these rules accomplish the same thing for children. The evaluation of disability in adults is more readily and observably divisible into physical and mental disability because the world of work activity is divisible into physical functions and mental functions, and the workplace is the context against which we must evaluate adults. The rules for the evaluation of disability in children are, in effect, more broadly based than the rules for the evaluation of adults because we must consider children in the context of their entire lives, 24 hours a day. This does not mean that the evaluation of physical disability plays a lesser role in the determination of disability for children. It means that the limitations imposed by a child's physical impairment(s) are evaluated in terms of the child's activities in all areas of living. This means that we assess a child's physical impairments in terms of all of the domains and behaviors and the myriad functions they subsume.

Comment: Two commenters observed that, even when a child's physical impairments do impede development, physicians and others are not accustomed to evaluating the impairments in developmental terms. For example, a child missing several fingers would not be described as having the fine motor developmental skills of a child half her age; she would merely be described as missing several fingers. Similarly, the impairments of children with asthma or cystic fibrosis are not described in developmental terms. Although these children may have marked restrictions in daily activities, "* * * most health care professionals consulted will not describe limitations in those terms." Therefore, these commenters thought that, if we were going to use a "developmental model" for the assessment of impairment in all children, we must explain this decision to the public, the medical community, and the consulting examiners we employ, and must ask for such "developmental appraisals."

Response: As we have explained, we do not use a developmental model. What we need to know is how the

impairment(s) specifically affects the child's functioning, information that we will obtain from medical and nonmedical sources, for instance, how the child missing fingers on one hand is able to play, dress herself, feed herself, and so on. We will compare this information with the activities that are age-appropriate for the child and determine whether the child's impairment(s) substantially reduces his or her ability to do those things that are age-appropriate.

We should add, however, that the evidence we receive in documentation of the claims of young children (from birth to age 3, 4, or 5) often contains the results of screening and assessment devices used by pediatricians, early child development specialists, and therapists to evaluate a child's condition and to plan appropriate interventions. These measures of a child's growth and progress are often expressed in developmental terms, i.e., as a proportion of the child's chronological age. Even when a child has a physical impairment, a pediatrician, therapist, or other health care professional may evaluate the child in "developmental" terms, depending on the nature of the impairment and the purpose of the evaluation. For example, if a 3-year-old child who was missing several fingers required therapeutic intervention, an occupational therapist would be interested in assessing the extent (in terms of age level) of the child's motor skills in order to match the child's skill level with appropriate interventions.

Section 416.924e—Guidelines for Determining Disability Using the Individualized Functional Assessment

Comment: We received many comments stating the same four recommendations reflecting a general concern that the guidelines for the individualized functional assessment and accompanying examples might be applied rigidly or mechanically. The commenters feared that, even though we state that the examples are not all-inclusive, there may be a tendency to use them as hard-and-fast rules. The first of the four recommendations had several aspects. It was suggested that we add a provision that requires adjudicators to demonstrate flexibility in decision making by taking into account all relevant evidence before rendering a final individualized functional assessment. Four commenters suggested that the regulations should require adjudicators to demonstrate their application of the individualized functional assessment rules in a descriptive narrative or findings of fact. Several commenters also suggested that we include language from the preamble to the prior rules about the "initial guidelines" in the rules themselves.

Response: We adopted the comment about strengthening the rules that require consideration of all the evidence. The second sentence of final § 416.924d(b) now states: "This assessment is based on all of the evidence we have, including any statements regarding what you can still do that have been provided by treating or examining physicians, consultative physicians, or any other medical or psychological consultant designated by the Secretary." As we explained in an earlier response, we copied this sentence from § 416.946. This provides consistency between the adult and childhood rules while, at the same time, it makes the statement that the commenters requested.

We also partially adopted the comment that asked us to include language from the preamble throughout the rules, although we did not include the specific statements some of the commenters recommended. We identified language in the preamble (56 FR at 5542) that we believe clarifies two statements in final § 416.924e(b). In the preamble to the prior rules, we explained that the guidelines for individualized functional assessments are based on the rules and principles already present in the listings for childhood mental disorders. One of those principles is that a finding of "marked" limitation is a finding about how a child is functioning in a developmental or functional domain. Our guidelines therefore state, in the manner of 112.00C of the listings, that "marked" and "moderate" do not connote a particular number of restricted activities or functions, but the overall degree of restriction or combination of restrictions. To emphasize our original intent that this means the overall degree of restriction in a developmental or functional domain or behavior, we have added the phrase, "in a domain or behavior," to the last two sentences of final § 416.924e(b). We made similar additions in final § 416.924e (b)(1), (c)(2), and (d)(2).

We did not adopt the comment that asked us to require in the regulations that adjudicators prepare a narrative rationale of the individualized functional assessment. This is because we believe there is sufficient indication in the regulations of the requirements of a determination or decision. For instance, with respect to the individualized functional assessment step, final §§ 416.924d(a) and 416.924c(a) provide that we will consider all information in the case record that is relevant to the claim and all of the factors set forth in §§ 416.924 through 416.924c, the rules that describe the steps of the childhood sequence, the effects of age, and other factors. Other rules, such as those at §§ 416.927 (evaluating medical opinions) and 416.929 (evaluating symptoms, such as pain) also provide specific requirements for the evaluation of cases involving those factors. In addition, subpart N of part 416 of 20 CFR provides rules directing the contents of notices of initial and reconsideration determinations, and hearings and Appeals Council decisions. The more detailed instructions for practical implementation of the rules properly belong in manual instructions, just as they are for all other issues, such as the adult residual functional capacity assessment. In fact, our manual instructions already require the kinds of narrative explanations and findings of fact requested by the commenters.

Comment: The commenters' second recommendation was that we repeat in the paragraphs illustrating disability for each age group the cautionary language from the third sentence of § 416.924e(a): "The examples in this section are only guidelines to illustrate severity and are not all-inclusive rules."

Response: We adopted the comment. In fact, we already make a similar statement in final § 416.924e(d)(1)(ii), the section for older adolescents: "As in the examples for younger children, the guidance for evaluating older adolescents is not intended to be a standard by which all cases must be judged. Each case must be evaluated on its own merits using the principles and guidelines of all of the regulations addressing childhood disability." (The prior rules stated that the guidance was "not intended to be all-inclusive, or a standard by which all cases must be judged." We deleted the words, "all-inclusive, or," because they are redundant of the remainder of the statement, that the guidance is not "a standard by which all cases must be judged." However, we have still retained the language in final § 416.924e(a).)

In response to the comments—and because the same guidance is applicable to the evaluation of children from birth to the attainment of age 16—we have now added these two sentences (modified to be appropriate to their respective sections) to final §§ 416.924e(c)(1), "Young children," and 416.924e(c)(2), "Older children and young adolescents."

Comment: The third and fourth recommendations were that we commit to conducting special monitoring of the use of the individualized functional assessment rules, and that we conduct "adequate" training of all appropriate personnel to ensure proper implementation of the guidelines.

Response: We have conducted adequate monitoring and training on the implementation of the new childhood rules, as the commenters recommended. For example, during the first few months after implementation we used an "Early Implementation System," which was a special, multilevel review to ensure that all of the new childhood rules were properly implemented. Since that time, we have continued to carefully monitor the use of the rules at the State Agency, Regional Office, and Central Office levels. Moreover, the training we conducted was one of the most extensive training efforts we ever mounted, and was accompanied by a large student training manual. Since completion of the training, we have also answered in writing questions we have received from the field; the questions and answers are provided to all field personnel, not only those who asked the questions. We also share information about our actions on case reviews with all adjudicators as part of our ongoing commitment to education and consistency.

Comment: Some commenters said that the specific "mathematical" definitions of "marked" and "moderate" limitations for very young children in final § 416.924e(b)(1) do not conform with the idea that the rules are meant to be "guidelines" and a "framework." They were concerned that these definitions have the potential of being applied rigidly and mechanically by disability examiners, who may rely entirely on various test results. One commenter asked what evidence we would use to make these very refined judgments regarding a child's functioning at ⅔ to ¾ of chronological age. A few commenters remarked that it was not clear what the measurable difference in a child's social functioning is between ⅔ and ¾ of chronological age, or how this narrow gap would be determined in individual cases.

To address these concerns, one group of commenters recommended that we delete the arithmetical definitions of "marked" and "moderate" for very young children and redefine them in qualitative terms. Another commenter, questioning whether tools exist for such precise numerical determinations, recommended that we include the word "approximately" when referring to the numerical measures throughout the rules.

Response: We did not adopt the comments. We do not think that the use of numerical measures of developmental milestones threatens the flexibility inherent in the individualized functional assessment process. The examples in the guidelines that use fractions of chronological age to describe a child's functioning do not represent the results of a single test or, indeed, of test results alone, and the determinations we make based on the guidelines do not rest on test results alone. The results of developmental tests are only one component in the whole assessment of how a young child is functioning, which includes not only quantitative evidence but also qualitative findings based on clinical observations and conclusions.

With regard to the comment asking what evidence we could use to make refined judgments about a child's achievement of developmental milestones, there are tests that measure this functioning. Such tests include, but are not limited to, the Cattell Infant Intelligence Scale, the Bayley Scales of Infant Development, and the Revised Stanford-Binet. Development is sometimes expressed in test results as a developmental quotient (DQ), or the relation between developmental age and chronological age as determined by specific standardized measurements and observations. With regard to the comments about the precision of the measurements, there are valid, reliable tests of the attainment of developmental milestones, such as those mentioned above, that are generally used in clinical settings for the determination of the developmental status of infants and toddlers. We believe that our pediatricians and other specialists in childhood medicine will be able to make the kinds of refined clinical judgments required of these cases. The guidelines reflect the kinds of evidence that we frequently find in the record.

Comment: Some of the foregoing commenters noted that the regulations provide only two examples of how the terms "marked" and "moderate" are to be applied for children aged 3 to 16. One commenter requested that we add to final § 416.924e(c)(2) an example of a physical impairment(s) that does not meet the listings but is disabling because the existing two examples are both of mental impairments. Several commenters also recommended that we include in the regulations additional examples of application of the guidelines to specific patterns of childhood dysfunction.

Respone: In response to the comments, we have added an example of a physical impairment to final § 416.924e(c)(2)(i). Beyond this, we decided not to provide additional examples. We believe that any example we might devise would have to be as clear and unambiguous as we could possibly make it; and we believe that such an example would have to be so obvious that it may not provide appropriate guidance. Moreover, we question whether there are "specific patterns of childhood dysfunction" that lend themselves to illustration. In any particular child there may be a specific pattern of dysfunction, but that pattern is unique to that child; it would be hazardous to generalize an example, on the basis of which someone might overlook or misinterpret evidence that is peculiar to another child's claim.

Comment: One commenter had difficulty understanding the third sentence in § 416.924e(c)(2). The commenter said that, instead of saying that the term "moderate" and the overall level of disability at less than the listing level are "based on comparison with" listing level severity, we should say they are "established in relation to" the descriptors of listing-level severity. The commenter also suggested that we add a new fourth sentence stating that the term "moderate" signifies a lesser level of severity than the term "marked."

Response: We did not adopt the comments. We believe the phrase, "based on comparison with," in the third sentence of final § 416.924e(c)(2) conveys our intent more clearly and accurately than does the suggested alternative phrase, which we assume was merely an editorial suggestion and was intended to mean the same thing. We did not adopt the commenter's second recommendation because we believe the general reader of the rules—and, certainly, our adjudicators—will have no difficulty understanding that a "moderate" limitation of functioning is less severe than a "marked" limitation.

Comment: One commenter wanted us to delete the word "simple" from "simple instructions" and "simple decisions" in § 416.924e(d)(2) because employability entails more than the capacity to handle simple instructions or decisions.

Response: We did not adopt the comment because the capacity to handle simple instructions is a basic work activity, as set forth in § 416.921(b)(3).

Comment: One commenter thought that there was a new term, "a substantial loss or deficit of capacity," in § 416.924e(d)(4) and wondered what it meant. The commenter said that if

"substantial" means "moderate," we should employ that term since it is already in use. If "substantial loss or deficit" has a different meaning, we should explain and justify it.

Response: We adopted the comment. The phrase, "substantial loss or deficit of capacity" is not a new term but a logical extension of the basic definition of disability as it pertains to older adolescents. That definition, in § 416.924(a)(3), states, in pertinent part, that disability means, "* * * your impairment(s) must substantially reduce your ability to * * * acquire the skills needed to assume roles reasonably expected of adults * * *." In final § 416.924e(d)(4), we take the phrase "substantially reduce" from the definition in § 416.924(a) and state more explicitly how an older adolescent might experience such a substantial reduction in the ability to acquire the skills needed to assume roles reasonably expected of adults. Thus, by "loss" we mean that an older adolescent may have had the capacity for work-related physical and mental activities but have lost that ability through traumatic or degenerative impairment; by "deficit" we mean that the older adolescent may not have had such capacity at any time because of physical or mental deficits ensuing from a preexisting impairment, such as a congenital or developmental disorder. For this reason, we will continue to use the phrase in the rules.

Since the term "substantial" comes from the definition of disability in § 416.924(a)(3), it does not mean "moderate"—it equates with disability. We agree, however, that the section does not give the level of guidance that the preceding sections do for younger children about what it means for an older adolescent to be disabled. Therefore, in response to the comment, we have revised § 416.924e(d)(4) to incorporate guidance from our manual instructions that implement this section. In new subparagraph (d)(4)(i) of final § 416.924e we state that the term "substantial loss or deficit" is not a precise number, percentage, or other quantitative measure. Then, in new subparagraph (d)(4)(ii), we explain that the term means that an older adolescent is unable to meet the basic physical demands of at least "sedentary" work, as that term is defined in § 416.967; or the basic mental demands of "unskilled" work, as defined in § 416.968; or has an impairment(s) that would severely limit the potential occupational base of a person age 18–45 and would justify a finding of inability to perform other work even for a person with favorable age, education, and work experience, as set out in appendix 2 to subpart P of part 404 of 20 CFR. The last clause, especially, recognizes children with combinations of impairments and with nonexertional limitations, which may result from many mental and physical factors, including pain.

For consistency with these revisions, we have also added to the cross-references in the second sentence of final § 416.924e(b)(3), cross-references to §§ 416.968 and 416.969a ("Exertional and nonexertional limitations").

Our justification for this policy is in final § 416.924e(d)(1), which we have not revised. In paragraph (d)(1) we provide that children aged 16–18 are closely approaching adulthood and can be evaluated in terms that are the same as, or similar to, those used for the evaluation of the youngest adults; i.e., those in the age 18–45 category (see § 416.963(b)). We go on to state that older adolescents who do not have impairment-related limitations are ordinarily expected to be able to do the kinds of physical and mental activities of individuals who are at least 18 years old.

Section 416.926a—Equivalence for Children

Comment: We received only favorable comments about our addition of the new policy that revises the concept of "equivalence to the Listing of Impairments" in SSI children's claims to include the concept of "functional equivalence" to the listings. However, we received many suggestions for clarifying and augmenting the explanations of the new rules. The commenters thought that, because the functional equivalence policy was complex and unfamiliar, it was important that we provide as much detail as possible in the regulation section itself so that all adjudicators would understand and apply the new rules in the same way. Several commenters also said that § 416.926a should explain the "thought processes" an adjudicator could employ to make a finding of functional equivalence; otherwise, the functional equivalence principle might be under-utilized. One suggestion was that we incorporate into the rules the more detailed instructions in our operating manuals and training guides. One commenter suggested that we add subheadings of "medical equivalency" and "functional equivalency," to highlight the differences and the novelty of the functional equivalence policy.

Response: Although we did not adopt all of the comments, we have adopted some of them, as we explain in several of the responses below. We did not adopt the suggestion that we incorporate the longer explanations of the principles underlying "functional equivalence," which are now contained in our operating manuals and various training guides. In our view, these lengthy explanations are not substantive rules and should not be included in the Code of Federal Regulations.

We did not adopt the comment suggesting that we add subheadings that would distinguish functional equivalence from medical equivalence. We do not believe, in light of our experience using the rules, that it is necessary to highlight the approach, since our adjudicators are now well aware of its existence and have been trained in how to apply the policy. Moreover, we are concerned that if we were to highlight the functional equivalence policy in this way we might create the mistaken impression that "functional equivalence" is another step in the sequential evaluation process, distinct from and subsequent to the third, "meets or equals" step. In fact, the policy of functional equivalence is only a facet of the third step of the sequence, and provides another way in which to determine whether an impairment or combination of impairments is equivalent to any listed impairment.

Comment: Three commenters provided comments about the second sentence in § 416.926a(a) which reads as follows:

While all possible impairments are not addressed within the Listing of Impairments, within the listed impairments are all the physical and mental functional limitations, i.e., what a child cannot do as a result of an impairment, that are considered severe enough to prevent a child from functioning independently, appropriately, and effectively in an age-appropriate manner.

Two commenters said that there was no "documented basis" for this claim. The commenters repeated that many functions, such as "breathing, eating, eliminating, immunity, strength and endurance," were not dealt with in functional terms that capture all limitations. The third commenter thought that the sentence was confusing because the listings do not contain all functional limitations.

Response: With regard to the first comment, we have already explained in our responses to the comments about § 416.924d our policy that the kinds of physiological functions the commenter lists (breathing, eating, etc.) can and must be translated into the kinds of activities that children do. These activities are in fact covered by the domains we have provided. We, therefore, disagree with the comment.

All listing-level physical and mental functional limitations are in the listings because of the "paragraph B" (and "C") criteria of the childhood and adult mental disorder listings and Listing 112.12 in the childhood mental disorder listings. These sections consist of listing-level functional criteria stated in terms of the same domains of functioning we use in the childhood disability rules, the same domains that, as we have already explained under the comments regarding § 416.924d, do include all of the functions performed by children. As we noted in the preamble to the prior rules (56 FR at 5544), aside from the many specific functional limitations stated in the listings (such as deafness or marked impairment of ambulation), the functional criteria of the mental listings provide "another, comprehensive way to look at the functional effects of impairments." These criteria demonstrate a way to consider the practical effects on functioning of any impairment or combination of impairments in terms of adaptive activities, socialization, personal/behavioral functioning, and so on.

Comment: Two commenters suggested that we revise the rules to acknowledge that both the listings and the equivalence examples were limited, since both consist of "a list" which is inherently incomplete and could be out-of-date. One commenter suggested language for § 416.926a(a).

Response: We did not adopt the comment because we do not agree that the listings are inherently incomplete for the narrow purpose of establishing functional equivalence, even though we do agree that the listings do not list every possible diagnosis or combination of diagnoses a person might have. Moreover, we continually strive to ensure that the listings are up to date and reflect current medical knowledge. However, if a listing may be out of date, one of the purposes of our equivalence policies is to deal with the situation. For instance, equivalence permits us to substitute more up-to-date imaging techniques for x-ray findings in the listings. Nevertheless, we do not maintain that the list of examples of functional equivalence is an all-inclusive list. Rather, as we explain in the responses that follow, we have made several revisions to § 416.926a that are designed to remind our adjudicators not to limit their evaluations to the examples found in final § 416.926a(d).

Comment: One commenter said that the equivalence regulation makes no mention of symptoms or the effects of medications. The commenter noted that the Supreme Court had specifically criticized our prior equivalence policies in this regard. The commenter suggested that we add language from our training manual to the section on functional equivalence that would direct the consideration of a child's symptoms and the effects of medications and that would indicate that symptoms can be the basis for a finding of reduced functioning and, therefore, of equivalence.

Response: We have not explicitly adopted the comments in these rules; however, they have been obviated by other rules that we have already referenced or discussed above (e.g., §§ 416.929, 416.924c). We have also addressed them in the reorganization and revision of the childhood disability rules in §§ 416.924 through 416.924e.

As a preliminary matter, we direct the attention of the commenter to the third sentence of § 416.926a(a), which provides explicitly that we will consider symptoms in our equivalence determinations. The fourth sentence of the paragraph also states that we will consider "all relevant evidence" in a child's case record. Furthermore, as we have explained elsewhere in this preamble, we intend each rule in these final regulations to be read in the context of all the other rules, including existing regulations that are not part of these final rules. Thus, § 416.926a(b) (1) and (2)—which describes "medical" equivalence—states that we will consider a child's "medical findings" when we decide equivalence. The term "medical findings" is a term of art in our rules, defined in § 416.928 and in the last sentence of § 416.925(c) as meaning "symptoms, signs, and laboratory findings." These are some of the oldest terms in our rules and are well-known to our adjudicators.

The rules on the evaluation of symptoms, including pain, already mentioned above in another response, include sections on the role of symptoms at each step of the sequential evaluation process, and take cognizance of the childhood disability rules, including the rules on functional equivalence. Thus, in § 416.929(d)(3) of the final rules addressing the evaluation of symptoms, headed "Decision whether the Listing of Impairments is equaled," we state: "If you are a child and we cannot find equivalence based on medical evidence only, we will consider pain and other symptoms under § 416.926a(b)(3) in determining whether you have an impairment(s) that results in overall functional limitations that are the same as the disabling functional consequences of a listed impairment" (56 FR at 57946). We believe that this squarely addresses the comment and that there is no need to repeat the statement in § 416.926a, just as we do not repeat statements about symptoms from § 416.929 in the adult rules on equivalence.

In addition, and as we explained at the beginning of this preamble, we have reorganized the rules in §§ 416.924a through 416.924e of the prior rules, and revised several statements in §§ 416.924c and 416.924d of the prior rules (final §§ 416.924b, 416.924c and 416.924d) to make it clear that the same considerations and kinds of evidence apply to all assessments of functioning, irrespective of the step of the sequence at which we are doing the assessment. We believe that this reorganization will make it clear that the effects of symptoms can so limit a child's functioning that a finding of equivalence may be appropriate. (Ordinarily, this will be a functional equivalence, but there are circumstances, such as in the case of mental impairments, when the functional effects of symptoms can result in a finding of medical equivalence.) We also believe that the reorganization will not only address the comments by underscoring the need to consider a child's symptoms and the effects of medication on functioning when we consider functional equivalence, but that they go further than the commenters' suggestions by reminding our adjudicators to consider all other relevant factors as well. (See, e.g., final § 416.924c.)

Comment: Several commenters suggested that the rules should include language explicitly stating the requirement to evaluate the combined effects of all a child's impairments on overall functioning. They also asked that we state the policy that a child's impairment(s) need not be medically related to a listed impairment in order to use the listing for the purpose of functional equivalence comparisons.

Response: We have adopted the comments. In § 416.926a(b)(3), we have added a new second sentence which states that we will consider the combined effects of all of a child's impairments when we assess overall functioning. We have also added a clause at the end of the original second sentence (now the third sentence in these final rules) which states that the listing we choose for comparison need not be medically related to the child's impairment(s). Neither of these changes is substantive; they merely reflect our actual practice in adjudicating claims under the prior rules.

Comment: Two commenters recommended that we include the general cautionary language from the

preamble to the prior rules (56 FR at 5544): "* * * the primary focus should be on the disabling consequences of an individual's conditions, as long as there is a direct, medically determinable cause for an individual's disability."

Response: We did not adopt the comment because the rules already contain nearly identical language. The last sentence of § 416.926a(b)(3) states: "When we make a determination or decision using this rule, the primary focus will be on the disabling consequences of your impairment(s), as long as there is a direct, medically determinable cause for these consequences."

Comment: One commenter, in an apparent reference to § 416.926a(c), "Responsibility for determining equivalence," stated that it would be inappropriate for a nonphysician, such as a psychologist, to make a decision of functional equivalence using any nonmental listing. The commenter provided as an example somatoform disorders that result in listing-level physical restrictions which are functionally equivalent to a musculoskeletal listing. The commenter suggested that, at a minimum, all claims based on the mental impairment listings that were reviewed by a psychologist and denied should be reviewed by a physician to ensure that functional equivalence had been considered.

Response: It has been our longstanding policy that psychologists in the State agencies are permitted to make determinations based on any mental disorders, including the various kinds of somatoform disorders. This policy also applies to determinations of functional equivalence. If necessary, a psychologist may consult with an appropriate physician specialist to assist in the determination whether a somatic listing is functionally equaled.

Comment: One commenter wanted to know who the "other designee of the Secretary" in § 416.926a(c) might be.

Response: The "other designee" refers to Federal medical and psychological consultants in those situations in which we, rather than a State agency, make the determination. This can happen in a number of circumstances, such as when our Federal Disability Determination Services adjudicates a case, in foreign claims, and in claims involving the Railroad Retirement Board. (See § 416.903, "Who makes disability and blindness determinations.")

Comment: Several commenters were concerned that the examples in § 416.926a(d) would become a kind of "listing," and that the principles of functional equivalence would be applied only in cases which presented facts that matched the examples. The commenters offered several specific suggestions for revising the text, ranging from additional language to underscore the fact that the examples were not an all-inclusive list to suggestions for adding explanations of the rationales behind the various examples in order to provide more insight into the principles the examples are intended to illustrate. One commenter recommended language we could use to explain several of the examples. Two commenters asked us to cite the listings that are equaled in the examples, stating that this, too, would help provide more insight into the process.

Response: We adopted the comments that asked us to state even more clearly that the examples are not all-inclusive. We revised the last sentence of § 416.926a(d) by dividing it into two sentences and adding language to the second of the newly created sentences. The latter sentence now provides that, "Findings of equivalence based on the disabling functional consequences of a child's impairments should not be limited to the examples below, because these examples do not describe all the possible effects of impairments that might establish equivalence to a listed impairment." We also added a final sentence to this paragraph to state the duration requirement.

We did not adopt the comment suggesting that we add rationales to some or all of the examples in order to provide more insight into their intent. We believe that such expository language is not appropriate in a regulatory context. However, we have used much of the language suggested by one of the commenters in our operating manuals.

We also did not adopt the comment that asked us to state the particular listings that are equaled in the various examples. In some cases, the examples do equate with specific listings. For instance, the second clause of final example 4, ("ambulation possible only with obligatory bilateral upper limb assistance") restates the disabling functional consequences of Listing 101.03B, and final example 5 describes two of the so-called paragraph B criteria of the childhood mental listings. Other examples, for instance, final example 3 ("frequent need for a life-sustaining device"), are not as specifically tied to single listings and could be found equivalent to more than one listing. We, therefore, believe that adding listings references could have the paradoxical effect of narrowing the use of the examples, an outcome this commenter and others cautioned us to avoid in the comment immediately preceding this one.

Comment: In a related comment, two commenters urged us to add a new example 16 in order to prevent the list of examples from being viewed as all-inclusive. They recommended language for the provision that would remind adjudicators to include "any other impairment or combination of impairments which equivalently limits function at a listing level equivalent of severity."

Response: We did not adopt the comment because such language is already included in the regulations. As the introductory paragraph of § 416.926a(d) explains, the subparagraphs are merely "some examples" of consequences of impairments that we might not have found medically equivalent under the rules we used prior to the decision in *Zebley*, but which are functionally equivalent under these rules. Moreover, in our opinion, the provision proposed by the commenters would not fit logically into the list of examples. The commenters' language is a general statement that in itself is all-inclusive and, therefore, is not an "example." However, as we explained in the previous response, we have revised § 416.926a(d) to state even more strongly that the determination of functional equivalence should not be limited to the examples in the subparagraphs because the examples do not describe all the possible effects of impairments that might establish equivalence under the new rules.

Comment: Several commenters noted that the source of some of the functional equivalence examples was the proposed "screen" which was discussed in the preamble to the prior rules (56 FR at 5536, 5550). The commenters observed that the suggested screen criteria were somewhat analogous to presumptive eligibility criteria, and were sometimes unwittingly stated in terms of severity that exceeded listing-level severity. Thus, these commenters thought that, because we had included these proposed screen criteria, the list of functional equivalence examples could set a "standard" or threshold" for functional equivalence that is higher than it ought to be.

The commenters offered several suggestions. One suggestion was that we include additional examples that were "closer to the threshold of what constitutes functional equivalence." Several commenters asked us to revise the examples that described limitations even greater than listing level so that they were not as severe. Other

comments asked us to delete those examples.

Response: We did not adopt the comment asking us to add more examples. Generally, we try not to use examples in the regulations, although we may make an exception when—as here—there is a policy for which we think a few examples may be helpful during the initial implementation period. Furthermore, we are afraid that, were we to make the list longer, we would increase the risk of the examples being viewed as an all-inclusive "listing."

We adopted several, but not all, of the comments that asked us to delete or revise certain examples. We provide our responses to the specific comments about the examples in the following comments and responses.

Comment: Three commenters asked us to delete the word "daily" before "need for a life-sustaining device" in example 3.

Response: Although we believe that the provision cannot stand without some quantification, we changed the adjective "daily" to "frequent" in response to the comments. We believe that if we had deleted the adjective entirely, the example would have been too imprecise. The example includes "mechanical ventilation" as an indication of the kind of life-sustaining device we intend by this example. If we had deleted the word "daily" without replacement, the example could have been misconstrued to include any child who needed mechanical ventilation, even if only infrequently. An additional advantage to using the word "frequent" is that the example now describes conditions that may be episodic; i.e., subject to frequent exacerbations and remissions.

As we explained in the "Explanation of Final Rules" section of this preamble, we also deleted the statement, "lasting or expected to last," from this example. This is because the statement is a statutory requirement that applies to all of the examples and we did not want to give the impression that it only applied to those examples that mentioned it. We have moved the statement to the opening text of § 416.926a(d), before the beginning of the list of examples.

Comment: Other comments asked us to delete example 4 in the prior rules, because "complete inability to stand and walk" is more severe than example 5 in the prior rules, "marked inability to stand and walk," and, thus, is superfluous. One commenter suggested that we combine former examples 4 and 5 to read "inability to stand and walk." One commenter asked us to delete, "e.g., ambulation possible only with obligatory upper limb assistance," from former example 5 because the commenter thought that an example within an example would lead to less flexible interpretation and application of the example.

Response: We have deleted example 4 of the prior rules because we agree with the commenters that it merely describes the most severe limitation on the ability to stand and walk and is, therefore, subsumed under former example 5. Moreover, a child who is unable to stand and walk would be found to have an impairment that meets or medically equals one of our listings. For the same reasons, we did not adopt the comment that asked us to combine former examples 4 and 5 to state, "inability to stand and walk," which is only a less-redundant way of saying "complete inability." We did not adopt the comment that suggested we delete the example within former example 5 (now example 4 in these final rules). The example-within-the-example is adopted from Listing 101.03B and provides a more precise description of listing-level severity.

Comment: Other comments asked us to delete the word "complete" before "inability to perform self-care skills" in former example 6 and in former example 8 before "inability to function independently outside the area of one's home * * *"; the second comment suggested that as an alternative we replace "complete" with "marked" in example 8.

Response: Instead of deleting the word "complete" from former example 6, we have deleted the example entirely. As in the preceding comment and response, we agree with the commenters who pointed out that complete inability to perform self-care skills would not be useful as an example of functional equivalence. In addition, based on the general comments that asked us to delete language from the examples illustrating impairment severity that exceeded the severity of the medical listings, we have deleted former example 15, "gross microcephaly of greater than 3 standard deviations," which is generally associated with significant mental retardation. Most, if not all, children with such limitations would have impairments that are likely to meet or medically equal one of our listings.

We did not adopt the comment asking us to revise former example 8 (now example 6 in the final rules, "Any physical impairment(s) or combination of physical and mental impairments causing complete inability to function independently outside the area of one's home within age-appropriate norms") because its language is adopted from adult Listing 12.06C, except for the final phrase, "within age-appropriate norms." Our intent with this example was to show how a physical impairment(s), or a combination of physical or mental impairments, in a child could be found equivalent to the listings by reference to an adult listing. We believe that altering the language could obscure this point. In any case, for the sake of consistency and clarity, we would prefer not to introduce a separate rule that uses slightly different language than an existing, but obviously similar rule.

Comment: One commenter suggested that we delete the criterion for "prematurity" from former example 10 (now example 8), because a weight of less than 1200 grams at birth in a full-term infant has implications for the infant's growth and development that are at least as serious as those for premature infants. The commenter also pointed out that there was an inconsistency in our rules defining prematurity: Example 10 defined prematurity as "37 weeks or less," while § 416.924b(c) of the prior rules (final § 416.924a(c)) defined prematurity as "less than 37 weeks." By deleting the references to prematurity from the example, we could eliminate the inconsistency.

Response: We adopted the comment by deleting the word "premature" and the parenthetical statement, "i.e., 37 weeks or less," from final example 8. For the same reason, we deleted the word "premature" from final example 9 (former example 11), "Infants weighing at least 1200 but less than 2000 grams at birth *and* who are small for gestational age, until attainment of at least 1 year of age."

Comment: One commenter asked us to define "small for gestational age" in final example 9 (former example 11).

Response: We adopted the comment. We deleted the phrase, "at least 4 weeks," from the phrase "at least 4 weeks small for gestational age," in final example 9 and added the more precise statement that "small for gestational age" means a birth weight that is at or more than two standard deviations below the mean or below the third growth percentile.

Comment: Two commenters also suggested that the provision of example 14 of the prior rules (example 12 in the final rules) which "qualifies" children up to the age of 3 should be extended to former examples 10, 11, 12, and 13 (final examples 8, 9, 10, and 11). They said that many of the extremely serious conditions in the list of examples will require extensive medical intervention well beyond the first year of the child's

life, and that SSA should therefore assure families that financial assistance and access to Medicaid would be available for at least 3 years. This extension of time would eliminate the inefficient and needless cost to SSA of evaluating these children at 1 year of age, only to find that they continue to be disabled.

Response: We did not adopt the comment. The various examples cited by the commenters have different purposes. Final examples 8, 9, and 10 (the two low birth weight examples and the example of physical impairment(s) that satisfy the requirements of Listing 112.12) are essentially examples for infants whose impairments cannot be precisely diagnosed.

Final example 11, for children who have major congenital organ dysfunction which could be expected to result in death in the first year of life without surgical correction, is more medical in its approach. It describes children with physical impairments who may eventually improve so that they are no longer disabled but who we can reasonably expect will be disabled until at least age 1 based on the nature of the impairment, the child's current functional status, the extent of the treatment and recovery required, and clinical judgment about the outcome of the treatment. However, the principles in the example could certainly apply to older children if the facts warranted.

Final example 12, "Tracheostomy or gastrostomy in a child who has not attained age 3," is more akin to final example 11 than to the other three examples. It is not an example that necessarily means a child will be found disabled until age 3. It merely says that, in such a small child, this kind of treatment, if it has lasted or is expected to last for 12 months, will have a serious enough impact on daily functioning and age-appropriate behavior as to constitute a disability.

Nonetheless, our use of age 1 in the other examples is not an automatic cutoff date at which we assume children are no longer disabled or at which we necessarily require a continuing disability review. Our intent from the outset was to employ sound, basic adjudicatory principles, which dictate that some judgment be made as to when to reexamine each individual child based on the facts presented. This is, in fact, the guidance we have given our adjudicators and the way we have actually implemented these rules. Our goal has only been to provide examples, not all-inclusive listings: If we were to change the age reference to 3 years, we could still be subject to the same criticism from those who pointed out that some children are difficult to test at ages 4 or 5.

Finally, we want to state clearly that, by statute and regulation, we do not automatically terminate the benefits of any disabled person, adult or child, at a given time. Once we have found a child disabled, we may only find the child no longer disabled if the standards for terminating an individual's benefits as set forth in the statute and regulations are met.

Comment: One commenter recommended that we add the language, "Dependence on life-sustaining medical equipment or intervention such as tracheostomy and gastrostomy," to former example 14 ("Tracheostomy in a child who has not attained age 3") in order to make it clear that there are other kinds of major medical intervention or support that are similarly intrusive and impairing.

Response: We partially adopted the comment. We added "gastrostomy" as another example of functional equivalence in children who have not attained age 3 in final example 12.

Comment: One commenter stated that "many of the remaining functional equivalence examples are taken directly from the 'B' criteria of the childhood mental disorder listings." The commenter felt that, although the examples were correct, "those listings already allow such determinations." The commenter said that it would be better if we were to include examples involving physical impairments "and other 'harder' examples," targeted more toward physical impairments. Another commenter thought that none of the examples captured the situation of children with arthritis who may not have complete or even marked inability to stand or walk, but may be able to walk only short distances and stand for only short periods. This commenter also wondered why there were no examples of diseases with periods of remission.

Response: We have clarified the examples in response to the comments. We believe that the commenters misunderstood the purpose of the examples, which are almost exclusively for use in evaluating physical impairments or combinations of physical and mental impairments.

Only three of the functional equivalence examples were taken from the mental listings: Final example 5, which illustrates the use of the paragraph "B" criteria for physical, or combined physical and mental impairments; final example 6, which illustrates the use of an adult paragraph "C" criterion for physical, or combined physical and mental impairments; and final example 10, which illustrates the use of the mental listing for infants to evaluate infants with physical, or combined physical and mental impairments. By suggesting that "those listings already allow such determinations," the first commenter apparently misunderstood that these few examples refer to the use of mental criteria to evaluate physical impairments, or combinations of physical and mental impairments. We did not intend them to refer to mental disorders because mental disorders that satisfy the criteria of the mental listings already meet or medically equal the mental listings. The point of the examples was to illustrate how a physical impairment(s) could be found equivalent by reference to the broad functional criteria in the mental listings, in our view a concept that is especially useful for evaluating the effects of multiple impairments, chronic episodic impairments, and impairments involving diminished functioning because of symptoms.

However, since the commenter misunderstood the purpose of these examples, we believe that it would be helpful to clarify the purpose of the examples. Therefore, we have added the clause, "Any physical impairment(s) or combination of physical and mental impairments causing * * *," to the beginnings of final examples 5 and 6. In final example 10, we also added the phrase, "or combination of physical and mental impairments," for consistency with the other examples. For the same reason, we replaced the word "disorder" with the more precise "impairment(s)." We believe that with these clarifications it should be clear that these examples are targeted almost exclusively at physical impairments.

With regard to the second commenter's concerns, we want to assure the commenter that the examples do cover the situations described. There is no requirement that marked inability to stand and walk be the result of a continuous, mechanical musculoskeletal defect, since that would, in effect, describe medical equivalence and defeat the purpose of the functional equivalence policy. Children with rheumatoid arthritis who are able to walk only short distances and stand for only short periods because of pain, fatigue, or weakness do have marked inability to stand and walk. Indeed, one of the exercises we use in our training describes a child with a respiratory impairment that results in marked inability to stand and walk because of shortness of breath and fatigue; the impairment need not be one that has articular or other musculoskeletal manifestations, as long

as the disabling functional outcome is the same. As to the concern about impairments (such as rheumatoid arthritis) that are subject to periods of remission and exacerbation, we believe that our reorganization of the rules makes clear that the "other factors" in final § 416.924c apply at every step of the sequence. This means that chronic, episodic impairments or impairments that require adaptations or structured settings must be considered in the same way at the listings step as at the other steps of the sequential evaluation process. As we have already stated, the revision to final example 3 and the examples of the functional criteria from the mental listings also include such impairments.

Comment: One commenter was concerned that children who are impaired to a lesser degree than complete dysfunction or who require something less than 24-hour monitoring "will be denied eligibility on equivalence grounds." The commenter said that many children with spina bifida occulta, for example, must contend with severe restrictions on their behavior, education, and development and yet often do not suffer impairments of the degree indicated by § 416.926a(d).

Response: We believe that we have made clear in the foregoing responses and revisions that children do not have to be completely dysfunctional or require 24-hour monitoring to have impairments that are functionally equivalent to the listings. We also believe that we have made clear in the response immediately preceding this one that children with sufficiently severe limitations in their ability to function—which could be in terms of behavior, development, and ability to learn or go to school—could be found to have impairments that are functionally equivalent to the listings, especially through the use of final example 5. Those whose functional limitations are less severe will not be "denied eligibility on equivalence grounds"; rather, their disability decisions will be based on an individualized functional assessment at the last step of the sequence.

Comment: Several commenters submitted identical language revisions that would provide for the "affirmative solicitation of medical evidence, including medical opinion, preferably from a treating source." Some commenters explained that they were submitting this language because they thought we did not provide for the solicitation of treating source evidence at all, or for solicitation of the kind of evidence regarding functioning that we would need to make a determination of functional equivalence. For instance, one commenter suggested that we add a provision "*inviting* applicants to submit evidence from doctors, occupational and physical therapists, and other health professionals to support their application." (Emphasis in original.) Another comment, which we received from two commenters, also said: "Unless SSA's own consultative examiners are asked about equivalence, and the specific factors that will go into such a decision, their reports will not be complete enough for adjudicators to make reasonable decisions. One must ask the right question to get the answer." Others saw the language they submitted to mean what the original drafters of the comment undoubtedly intended: that we should solicit opinions about functional equivalence from both treating sources and consultative examiners. Most of the commenters acknowledged that outside opinions about functional equivalence of an impairment should not be binding on us. However, they urged that we actively solicit these opinions as expert testimony from the people who were likely to know the child the best. One commenter cited a 1981 case from the 5th Circuit (*Smith* v. *Schweiker*, 646 F.2d 1075) and a 1985 case from the 11th Circuit (*Broughton* v. *Heckler*, 776 F.2d 960) as support for the notion that we should give "substantial" or "considerable" weight to the opinions of treating sources unless good cause exists to the contrary. Several commenters stated that SSA "in *all* other areas of assessment emphasizes the importance of soliciting evidence and views of treating professionals." (Emphasis in original.)

Response: We did not adopt the comments, which were beyond the scope of these rules. The comments address an issue related to our policies on medical source opinions in § 416.927, which we addressed subsequently in the "Standards for Consultative Examinations and Existing Medical Evidence" (56 FR 36932, August 1, 1991). In the preamble to those rules, we provided lengthy discussions and responses to comments about the role of medical source opinions regarding equivalence, residual functional capacity, and other issues that are reserved to the Secretary because they are dispositive of the ultimate determination of disability. We refer interested readers to those discussions at 56 FR at 36934 and 36950, and the regulation section at 56 FR at 36968. In the preamble, we also explained that we were guided in the development of the rules by the general principles articulated by the various courts of appeals. (See 56 FR at 36934 and 36950.)

In brief, we do not solicit opinions on issues such as whether an impairment(s) is equivalent to a listing because we do not consider treating sources or consultative examiners to be experts in these matters. However, we do solicit opinions about the "specific factors that will go into such a decision" (as two of the commenters said); i.e., the nature and severity of the claimant's impairments. The fact that we do not solicit opinions about equivalence, disability, and other dispositive issues, does not mean that we will disregard any opinions that treating sources submit to us. It is not true, as several commenters believed, that we "deprive the treating pediatrician of the opportunity to submit such evidence." The rules in § 416.927 provide that we must consider such opinions as part of the evidence.

Finally, we actively and routinely solicit medical evidence from treating and examining sources, including opinions about the nature and severity of the impairments. In fact, we ordinarily request the evidence for the claimant; the claimant need only give us permission to do so.

Section 416.994a—How We Will Decide Whether Your Disability Continues or Ends, Disabled Children

Comment: One commenter asked whether the reference to equivalence to the listings in § 416.994a(b)(1) included functional equivalence.

Response: Yes. The reference in the paragraph to § 416.926, the rules on equivalence for adults, was a typographical error which we corrected in an error notice on April 1, 1991 (56 FR 13266). The reference should have been to the childhood rule, § 416.926a, which includes the policy of functional equivalence.

Comment: One commenter referred to the rule in § 416.994a(d)(1)(i). This section provides that we will find medical improvement related to the ability to work when the most recent favorable decision was based on a finding that the child had an impairment that met or equaled a current listing and the child no longer meets or equals that listing. The commenter said that in the past we had modified a similar rule for adults to permit adults to show that they could meet the revised adult mental listings published in 1985. The commenter recommended that there should be a similar modification of the language for children with regard to the new childhood mental disorder listings. The

commenter also stated that the "patent absurdity" of our rules was demonstrated by the fact that some children who have medically improved, so that their impairments no longer meet the prior listings, will still be found disabled on the basis of the individualized functional assessment rules.

Response: We did not adopt the comment, because these rules already protect children in the manner suggested. First, the commenter was not correct about our modification of the adult rules. Except for the minor editorial revisions we made in connection with the prior publication of the childhood rules on February 11, 1991, we have not substantively modified the adult rules on continuing disability since their initial publication on December 6, 1985 (50 FR 50118). Second, we believe that the commenter misunderstood these rules. The first step in the medical improvement sequential evaluation process asks whether the child has an impairment that meets a current listing, or an impairment(s) that equals a *current* listing (§ 416.994a(b)(1)). Therefore, we make this determination before we consider whether there was medical improvement (§ 416.994a(b)(2)), and before we consider whether the impairment meets a prior listing, when we are considering whether there is medical improvement related to the ability to work (§ 416.994a(d)(1)). This policy is identical to the process in the adult rules in § 416.994.

We also disagree with the last comment. We believe that the fact that children will have an opportunity to show that they are still disabled, even though their impairments have improved so that they no longer meet or equal current or former listings, demonstrates the inherent fairness of these rules and our compliance with the *Zebley* decision and congressional intent.

Comment: The same commenter objected to the provision in § 416.994a(d)(2). This section addresses the situation in which we must decide whether there has been medical improvement "related to the ability to work" when the most recent favorable decision was based on an individualized functional assessment. The section provides that we will do a new individualized functional assessment based on the impairments that were present at the time of the most recent favorable decision, although we will consider functions appropriate to the child's current age. The commenter, who acknowledged that the rules for children were the same as the rules for adults, objected that there is no discussion in this section about looking at the whole child or considering impairments that have arisen since the last favorable decision and that are related to the old impairments.

Response: As the commenter noted, the rules in § 416.994a(d)(2) mirror the rules for adults in § 416.994(b)(2)(ii), as well as the rules for disabled beneficiaries under title II in § 404.1594(c)(2). The only difference in the rules for children is that they refer to an "individualized functional assessment" instead of a "residual functional capacity assessment," which only applies to adults.

The commenter's concerns are the same as those in comments we received when we first published the medical improvement regulations. In the preamble to those rules, we explained that the decision whether medical improvement is related to the person's ability to work is required by the statute but that it is not a decision that the person's disability has ended, only a decision about whether we have to go on and decide if the person is still disabled based on all of his or her current impairments (50 FR at 50122). At the time we responded to the comments, we believed the concerns were unfounded, and approximately 7 years of continuing disability reviews for adults under titles II and XVI have substantiated that belief.

A finding that any medical improvement is related to the ability to work is not a finding that the child's disability has ended. We state this unequivocally in § 416.994a(d): "A determination that there has been medical improvement related to your ability to work does not necessarily mean that we will find that your disability has ended. We must also show that you are not currently disabled using rules governing severity and the last step of the childhood sequential evaluation process for initial claims in §§ 416.924 through 416.924e." It is at this "currently disabled" step that we consider what the commenter referred to as the "whole child" by considering all the child's current impairments. Nevertheless, in response to the comment, we have reinforced this statement in final § 416.994a(d)(2) by revising the second sentence as follows: "However, the new individualized functional assessment will take into consideration any current medical findings or functional limitations related to the previously existing impairments, and will be based on those functions that are appropriate to your current age."

Comment: The same commenter stated that it is likely there will be some cases of children having both mental and physical impairments in which we did not document the mental impairment because an allowance could be determined based on the physical impairment alone. The commenter advised us to take careful note of this situation when it occurs and to instruct adjudicators to carefully scrutinize these children's files for the existence of a mental impairment at the time of the last favorable decision when we determine whether any medical improvement is related to the ability to work.

Response: As the commenter is apparently aware, we instruct our adjudicators to consider all impairments that were present at the time of the most recent favorable decision, not only those that went into the favorable determination, when we determine whether any medical improvement is related to the ability to work. We will continue to be very careful in this regard.

Comment: The same commenter said that the child's continuing disability review process is complicated by the role that age will play. The commenter asked how an adjudicator will factor in age-appropriate functions on top of a "fictitious" individualized functional assessment that does not take into account new impairments that did not exist at the time of the most recent favorable decision.

Response: For reasons already discussed, we do not agree with the characterization of the process for determining whether any medical improvement is related to the ability to work as "fictitious." We have been employing this process in adult continuing disability reviews for approximately 7 years; our experience in adult cases is a valid basis for our conclusion that the process will work for children.

The remainder of the comment was not clear, but we assume that the commenter was referring to the situation in which the child is in a later age category at the time of the continuing disability review. The commenter seems to have thought that there would be a problem evaluating a child's age-appropriate functioning with reference only to the impairments that existed at the time of the most recent favorable decision. We disagree. We believe that the process of doing a current individualized functional assessment based on the current status of those impairments that were present at the time of the most recent favorable determination will be no more difficult

than the corresponding process in adult claims; indeed, we think that the process will be the same.

Comment: The same commenter asked what "eligible to receive special Supplemental Security Income cash benefits" means in the fourth sentence of § 416.994a(f)(1). The commenter wondered if it was a reference to the special provisions, in section 1619 of the Act which permit a person who continues to have a "disabling impairment" to work at the substantial gainful activity level and be eligible for special SSI cash benefits. The commenter also asked whether the phrase in the same sentence, "eligible to receive," meant something different from "receiving." The commenter then said that there was a "key problem" with the provision in that section 1619 of the Act is a protection for people who continue to have disabling impairments and who work at the substantial gainful activity level, but most children will not have earnings at that level. The commenter wondered whether children would, therefore, be somehow less protected for work incentives than those over age 18 and whether we would consider earnings which are below the substantial gainful activity level as evidence of ability to work.

Response: The phrase "eligible to receive special Supplemental Security Income cash benefits" does refer to the special provisions in section 1619(a) of the Act. This language does not mean something different than "receiving." The language and the limited exception it explains have not been changed by § 416.994a. Finally, we do not believe that children are less protected for work incentives than are individuals over age 18. We do not consider earnings below the substantial gainful activity level as evidence of ability to work and, thus, children, who generally earn less than the substantial gainful activity level, do not need the work incentives of section 1619 to protect their eligibility.

Comment: The same commenter was concerned about the vocational therapy exception in § 416.994a(f)(2). The commenter thought it "probable" that the majority of children will be receiving some vocational therapy. As a result of the aging process in children, the commenter thought it was not fair to apply this standard, because unlike the situation for adults, the nature of the services available to children in the school setting could result in many not benefiting from the medical improvement review standard.

Response: The vocational therapy exception is a statutory requirement in section 1614(a)(4)(B)(i)(I) of the Act (42 U.S.C. 1382c(a)(4)(B)(i)(I)) which applies both to adults and children. For that reason, we must include the provision in our regulations. In those childhood cases where the exception is found to apply, the rules in § 416.994a(f) state that we must still also show that the child's impairment(s) is now no longer of comparable severity to any impairment(s) that would disable an adult, taking all of the child's current impairments into account. Therefore, we believe that when the vocational therapy exception does apply, it will be a valid finding and not unfair.

Comment: Two commenters referred to the statutorily mandated exception to medical improvement for failure to follow prescribed treatment in § 416.994a(g)(4). Both commenters thought that it was unreasonable to hold children to the adult standard and to penalize them for failure to follow prescribed treatment. One commenter said that we should delete the paragraph; alternatively, we should add language to it from two cases that were decided by the Court of Appeals for the Eighth Circuit. The other commenter said that we should modify the section to provide standards for children.

Response: We did not adopt the comments. We could not delete the paragraph because it reflects a statutory requirement in section 1614(a)(4) of the Act (42 U.S.C. 1382c(a)(4)). We also believe that the changes suggested by the commenters involve issues that are beyond the scope of these rules. The changes would also require changes to other regulations addressing the failure to cooperate. We are considering issuance of an NPRM that will address the broader issues. As we draft the NPRM, we will consider including the language suggested by the first commenter as well as all of the other suggestions we received.

Comment: Two commenters said that the rules did not say what we do in the continuing disability review process when a child who is receiving SSI payments based on disability turns age 18; i.e., how we make the transition from child to adult in continuing disability reviews.

Response: There is no separate section in the rules to address this issue because the policy is inherent in the existing rules; it stems from the statutory requirement that we generally may not find that disability has ended unless there has been medical improvement related to the ability to work. Therefore, if the most recent favorable decision was based on a childhood listing, we use the childhood listing for comparison, even though the person is now an adult. If the most recent favorable decision was based on an individualized functional assessment which considered the domains of development and functioning, we prepare a current individualized functional assessment as though the person were just under age 18. This assessment is then compared with the prior assessment. If the basis for the prior allowance was an individualized functional assessment that considered work-related activities, we prepare a residual functional capacity assessment for the comparison.

Comment: A commenter asked whether we plan to do special screenings of childhood cases where the exceptions are applied, as we did for adults when we first implemented the medical improvement rules in 1985.

Response: We do not have any plans to do this. We instituted the "special screenings" when we first promulgated the rules in 1985 because they contained many new concepts, including the exceptions, and we wanted to be sure that the new, complex rules were correctly understood. The special screenings were not confined to adult cases, but included title XVI childhood disability cases. As adjudicators became familiar with the medical improvement concepts, we gradually eliminated categories of cases subject to review until we stopped the review entirely; we have not reviewed any cases under this special screening for several years. Since the purpose of the review was to gauge adjudicator understanding of then-new medical improvement concepts and the concepts are now well understood, we do not believe we need a new special screening of childhood disability reviews which utilize essentially the same principles we use under the adult rules.

Additional Comments

Request for Additional Public Comment Time

Comment: Several commenters urged us to extend the comment period to more than 60 days. The commenters said that a longer comment period would give us, as well as advocates and the families of disabled children, more time to gain a clear understanding of how the new regulations would work and any problems associated with their application and implementation. One of the commenters also urged us to keep an open mind on the new rules as adjudicative experience is generated during the first two years of their implementation, and to be willing to make needed changes in the rules in response to public feedback.

Response: We adopted the comments, although not to the extent that some

commenters had asked. A 60-day comment period is our standard period of time for allowing comments on administrative rules, even when they are proposed rules that have never been tried before and will not be used until after the public has had an opportunity to comment. However, because of the number of requests we received, and because we agreed with the commenters about the unusual significance of these rules, we extended the closing date from April 12, 1991, the date we originally announced in the **Federal Register** (56 FR 5534), to July 8, 1991 (56 FR 21075, May 7, 1991). Although some commenters recommended longer extensions—some, up to one year—we believe that 147 days, or nearly 5 months, was sufficient; with the extension, the length of the comment period was also consistent with a recommendation we received from the late Senator John Heinz of the Senate Special Committee on Aging, who recommended a 150-day comment period.

With regard to the second comment, we have been carefully monitoring these rules during the more than one- and-one-half years since their implementation. We believe that the reorganization and revisions in these final rules demonstrate that we have kept an open mind about any changes that we deem necessary based on our own experience and public feedback. We will also continue to keep an open mind in the future, as we always do.

Comment: One commenter suggested that we consider reconvening the individual childhood disability experts who helped us in the early stages of the regulation process before finalizing these rules.

Response: We do not believe that it is necessary to consult with the experts again. We do not believe there are any issues in these rules or in the comments that would be the proper focus of the experts. Moreover, shortly after publication of the prior rules on February 11, 1991, we sent copies of the rules published in the **Federal Register** to each of the experts, providing them an opportunity to submit comments. We received comments from one of the experts, which we have incorporated into these final rules.

Commitment To Update Regulations in Future

Comment: One commenter observed that, given the dynamic nature of medicine, with rapidly expanding technology, it is reasonable to anticipate advances in the screening and diagnosis of, and early intervention for, children with impairments. For this reason, the commenter recommended that we provide a sunset date of 3 years for the new rules.

Response: We do not believe that it is necessary to provide a sunset date, as we do for our medical listings. The medical listings in the Listing of Impairments contain specific medical criteria; as such, they do require updating from time to time.

These childhood rules are not analogous to the Listing of Impairments. They are grounded on a requirement for an individualized assessment of each child's ability to function, an assessment that we believe will always be relevant regardless of any future advances in screening, diagnosis, and early intervention. Thus, the fact that there may be such changes should have little or no impact on these rules because our ultimate concern will still be to determine how a given child is able to function and how that ability comports with our definition of disability. The kinds of advances described by the commenter will surely assist us in making this determination (in an evidentiary way and perhaps by providing greater insight into the effects of children's impairments), but we do not think that they will affect the rules themselves. As with all other regulations, we will make changes to the rules in the future should such changes become necessary.

Presumption Of Disability

Comment: We received two comments recommending that we include a separate provision in these rules providing a "presumption" of eligibility for SSI payments for some young children with genetic, congenital, or acquired impairments. (Despite the use of the word "presumption," it was apparent that neither comment was about the special temporary SSI benefit we may pay for a period up to 6 months while we are adjudicating a claim, called "presumptive disability payments.")

One commenter, who may have thought that the rules we published on February 11, 1991, were an NPRM, and who may have been unaware of the interim standard we had been following since the *Zebley* decision, stated that the current rules required children to have impairments that met or equaled the listings. Because of this, and because very young children are difficult to test, the commenter suggested that we provide a separate rule allowing a rebuttable presumption of disability for children under 2 years of age who are born with impairments such as infant drug dependency, AIDS, Infantile Pseudoleukemia, and Tay-Sachs disease; and to children from 2 to 6 years of age with cerebral palsy, severe orthopedic impairments that affect gait, deafness or blindness, Hodgkin's disease, Tourette syndrome, or multiple sclerosis. The other comment suggested a provision for presuming disability in children under age 4 with certain genetic or congenital impairments that would unquestionably result in eligibility when the children are old enough to be properly tested.

Response: We did not adopt the comments. Notwithstanding the functional equivalence examples in § 416.926a(d), the primary focus of these rules is not on specific impairments that may be disabling, but on establishing general rules for determining disability regardless of the impairment or combination of impairments. Thus, the comments address a subject that is beyond the scope of this particular set of rules.

However, we recognize the commenters' recommendations as being adopted from several pieces of legislation that were proposed in the Senate and House of Representatives during approximately the 3 years preceding the publication of these rules. (For example, see H.R. 868, "SSI Disabled and Blind Children Act of 1989," February 6, 1989; S. 1718, "SSI Disabled Children's Eligibility Act of 1989," October 3, 1989; and S. 2290, "Disabled Children's and Widow's Eligibility Reform Act of 1990," March 3, 1990.) Even though the proposed bills were not enacted into law, we have been addressing in our regulations the underlying concerns of these comments. For instance, on December 12, 1990, we published a new Listing 110.06 in the **Federal Register** (55 FR 51204) which provides that all children with non-mosaic Down syndrome established by clinical and laboratory findings meet the requirements of the Listing of Impairments. We also published separate Listing 110.07 for evaluating FAS and other infant drug dependencies, severe chronic neonatal infections, and other serious hereditary, congenital, or acquired disorders that usually affect multiple body systems. On the same date, we also published Listing 112.07, which includes Tourette syndrome. (See 55 FR at 51225 and 51234.) Some of the impairments named by the first commenter, such as Tay-Sachs disease (Listing 110.08B), have been in our listings for many years. Moreover, the various provisions of these rules that are aimed at the evaluation of infants and young children are also intended to address, in a more sweeping and inclusive way than any finite list of impairments ever

could, Congressional concerns about the difficulty of determining disability in small children. We do not believe that we could have gone any further in these rules without a legislative change.

Finally, we want to make absolutely clear that we have not employed a listings-only test for evaluating childhood disability since the Supreme Court's decision on February 20, 1990, nearly a year before we published the prior version of these final rules on February 11, 1991. The "current" rules at the time of the comment were in fact the prior version of these rules and, of course, went far beyond a listings-only test.

Disability Determinations by Other Agencies

Comment: Two commenters recommended that we make more use of the disability determinations made by other agencies than is indicated in the current rules. One commenter understood the preamble to say that we had "dismissed" the Developmental Disabilities Act (DDA) definition because it was less broad and less liberal than the Social Security criteria. If this is accurate, the commenter maintained, then a child determined to be disabled under the DDA should be eligible for SSI (assuming that the income and resources requirements are met). Similarly, the commenter thought that we "dismiss" the use of determinations made under Part B of the Education of All Handicapped Children Act (now the IDEA) because that part is an entitlement provision without a means test. Another commenter said that the preamble language "cavalierly dismissing the professional evaluations of the Developmental Disabilities Act and the Education of the Handicapped Act are (sic) singularly unpersuasive."

Both commenters pointed out that the information gathered in connection with determinations under these other laws would have relevance to our determinations; one commenter suggested that we could markedly decrease our administrative costs if we were to use this evidence, and encouraged us to actively collaborate with other programs. One of the commenters said that, although we should not be bound by the determinations of other agencies, we should afford considerable weight to their determinations.

Response: Although we agree with the comment about the desirability of obtaining and considering evidence from other agencies, we do not agree that any changes are necessary in these rules. The comment about whether we should consider decisions of other agencies and the weight we should give such decisions has been obviated by other rules we published subsequent to the close of the comment period for these rules.

The comments addressed a rather lengthy discussion in the preamble to the prior regulations (56 FR at 5539), which we had provided only for informational purposes. The purpose of the discussion was to alert the public to the fact that we were aware of other Federal childhood disability laws (specifically, the DDA and parts B and H of the IDEA), and to explain: (1) That under our regulations we are not bound by disability decisions made under those laws, and (2) why we were unable to adopt their definitions as our standard of childhood disability. We did not intend to give the impression that we would "dismiss" such determinations; as we have stated repeatedly throughout these rules and others we have published during the past several years, we do not "dismiss" or ignore any evidence that is relevant to our determination, including disability determinations made by other agencies.

The point is now moot because we have codified our policy in final rules published on August 1, 1991 (56 FR 36932, "Standards for Consultative Examinations and Existing Medical Evidence"). We now include in § 416.912(b)(5) of this part (as well as § 404.1512(b)(5) of part 404) a rule which states that for our purposes "evidence" includes "decisions by any governmental or nongovernmental agency about whether you are disabled or blind." (See 56 FR at 36955 and 36963.) We believe that this addition to the rules responds to the commenter who thought we would not consider such determinations. As in any situation in which we are required to "weigh" evidence, the weight to which such determinations will be entitled will necessarily depend on the individual facts of each case. However, we must reiterate that we have retained our longstanding rule in § 416.904 (and § 404.1504) that decisions made by other agencies are not binding on us.

In the preamble to the prior childhood disability rules, we also stated that we recognized that the kind of descriptive information obtained in connection with disability evaluations under the other laws was "vital to making decisions about the presence or absence of disability according to SSA's definition of disability." (56 FR at 5539.) Our intent in this passage was to provide reassurance that we would use evidence gathered in connection with other disability determinations. We made this statement because we held the same position as the commenters, that much of the evidence gathered by other agencies for their determinations would be relevant to our determinations and that it was administratively expedient to try to obtain evidence from these sources. We believe, however, that the recent revisions to § 416.912 mentioned above adequately capture the various kinds of evidence that could be present in another agency's records (including the agency's own decision), and that further revision to our rules is unnecessary at this time.

Impact of the Childhood Regulations on School Systems

Comment: Two commenters, who identified themselves as a school psychologist and a teacher of learning disabled children, expressed the belief that some parents have begun to want the schools to label their children "handicapped" so that they can receive SSI benefits. They reported that they had already been involved in two such cases in which the parents were upset when the commenters refused to provide labels of "learning disabled" to their children, resulting in a poor relationship between the school and the home. In addition, the commenters were concerned about the expense to their school that the number of requests for evidence would cause.

Response: As we have already stated in this preamble, we are required to follow the statute and our regulations. Because school evidence is one important source of information about children's functioning, we will continue to seek such evidence when it is relevant to our determinations.

We also state clearly in our rules that, even though we will consider determinations by other governmental or nongovernmental agencies, such determinations (such as that a child is "handicapped") are not binding on us. We nevertheless understand the commenters' concern: This is why our notices clearly state that the determination was made by an agency of the State and was not made by the claimant's doctor or by other people or agencies who gave us evidence. We also share the commenters' concern about the impact our requests for school evidence may have on the school systems. For this reason, we have been working at both the local and national levels to clarify the types of information we will need. In response to the comment (and one other, already described in an earlier comment and response), we have also clarified the rules in § 416.924c(g)(1) to state that we

will consider school evidence only when it is relevant and available to us.

Comment: One commenter, who identified himself as a superintendent of schools, was concerned that the Federal government, in reaching beyond the Federal children's program criteria to identify students who might qualify for benefits, may be creating a barrier to the educational process that has traditionally taken place in the schools. The commenter stated that a "student's perception of himself and his ability to learn is called into question when he is labelled as handicapped." The commenter thought that the student's "incentive to achieve is weakened by the knowledge that a monthly check is based on the failure to achieve." In addition, the commenter was concerned that if we provide assistance to students who exhibit violent and disruptive behavior, the perception will exist (for students and faculty alike) that financial gain is the reward for non-conformance.

Response: These rules implement the law and are consistent with the Supreme Court's decision in *Zebley*. In any event, we do not agree with the commenter that they present a barrier to the educational process. First, in many cases a parent or other caregiver files the claim and the child may not be aware that a claim has been filed or that monthly benefits are being paid. Second, children who have impairments that limit their ability to function in an age-appropriate manner to the extent required by these regulations may already know they are different from other children. Third, many of the school-age children for whom claims are filed have already been labelled as handicapped by the school system. Fourth, we have a more sanguine view of the motivation of students with impairments, and believe that these benefits will not be an incentive to underachieve but rather function as support toward becoming a productive member of society. Last, these rules allow payment of benefits to children who exhibit violent and disruptive behavior only as the result of medically determinable impairments which cause them to behave that way, not as a reward for nonconformity.

Comment: The first two commenters expressed concern that we recognize "learning disabilities" as medically determinable impairments that could result in, or contribute to, a finding of disability. According to the commenters' interpretation of the definition of learning disabilities in the IDEA, children with learning disabilities should have been excluded from the proposed SSI childhood regulations. The commenters noted that the definition of learning disabilities in the IDEA excludes from the term "learning disability" any learning impairment that is attributable to environmental, cultural, or economic disadvantage. The commenters seemed to reason, therefore, that a poor child with a learning problem could not also be labelled "learning disabled" under the definition in the IDEA.

Response: We disagree. It is well understood that learning disabilities can, and do, coexist with other medical conditions and in different environments. We have reviewed many claims in which both we and the child's school system determined the child's learning problems could not be attributed to the fact that the child was poor or had one of the impairments named in the IDEA, and that the child did have a "specific learning disability." Moreover, a learning disability can be a "medically determinable impairment," and we have no authority to exclude it from our consideration of children's claims.

Comment: The same two commenters thought that the rules required a child to be unable to perform the normal activities of childhood—such as dressing and feeding oneself, playing, and going to school. This would mean, according to the commenters, that only children who were not in school would qualify for benefits. The only exception would be children with severe (profound) mental retardation; they attend school but are unable to do the other normal childhood activities. The commenters said that SSI payments should be made available only to children who have multiple handicaps, i.e., those with profound mental retardation and physical handicaps; an exception would include those children who have been identified as having severe (profound) mental retardation or other health-impaired conditions under the IDEA. The commenters stated that the rules "need to have many more restrictions" or they would be too expensive.

Response: The regulations require that a child's impairment(s) must substantially reduce his or her ability to perform the normal activities of childhood, not make the child completely unable to do these activities. Additionally, § 416.924c(g)(2) in these final rules (§ 416.924d(g)(2) in the prior rules) specifically states that the fact that a child is able to attend school will not, in itself, be an indication that he or she is not disabled.

There is no statutory requirement that a child have multiple impairments to be found disabled. To introduce this requirement in our regulations would be contrary to the statute. Moreover, we do not believe that these rules are too expensive. Rather, they are the best way to fully comply with the Supreme Court's decision in *Zebley* and to implement the Act.

Multidisciplinary Assessments

Comment: We received several comments urging us to require in regulations that the State agencies use multidisciplinary teams to evaluate the evidence of children's functioning and make disability determinations. Chief among the reasons offered were that multidisciplinary assessments are common in pediatrics and professional practice in the child development and early education fields, that such assessments are often necessary to establish a diagnosis, and that the disability advocates and childhood disability experts had emphasized the importance of the role of multidisciplinary assessment during early discussions about the childhood rules.

Response: We do not agree with those commenters who thought that multidisciplinary review at the State agencies is an absolute necessity. We believe that it is far more important to require—as we did—the gathering of appropriate evidence. Once an appropriate record is established, the State agency teams are capable of doing individualized functional assessments and making childhood disability determinations, just as they are capable of assessing residual functional capacity and deciding whether an adult can do "other work" without multidisciplinary review. As we have emphasized throughout these rules, the issues of diagnosis and treatment are, in a sense, secondary; we need only know that a child has a severe medically determinable impairment that does not meet or equal the requirements of the listings, in order to cross the threshold to an individualized functional assessment. We need not necessarily know exactly what the impairment is. Our determination does not involve judgments about how to treat a child's impairments; our concern is with the severity and impact on functioning of a child's impairments as shown by the evidence.

In addition, since well before the *Zebley* decision, we had begun ensuring that the State agencies include pediatricians and other appropriate specialists on their staffs, so that all State agencies now have such individuals on the teams deciding childhood claims. We are confident that these specialists have the expertise to

properly evaluate childhood impairments.

Comment: Several of the same commenters also referred to the need to obtain multidisciplinary "consultations." A concerned parent of a child with very severe impairments also seemed to support the need to obtain multidisciplinary evidence. She explained that her son had multiple problems but that he was not diagnosed until well after age 1 and after he had been evaluated through the use of neurological testing, orthopedic evaluation, and psychological testing. She was sure that this was the case for many children.

Response: We agree with the commenters that it will often be necessary to obtain evidence from multiple kinds of sources. These include not only multiple medical sources, as described by the parent commenter, but other sources as well. This is why we have stressed the need to obtain all relevant existing evidence from the appropriate sources, which may include schools and other disability programs. We have also always permitted—and, at times, required—the purchase of consultative examinations from sources other than "acceptable medical sources," such as audiologists and speech and language therapists. However, we believe that the rules already address this issue adequately.

Comment: In a related comment, one commenter wanted to know what mechanisms we would put into place to ensure that the multidisciplinary assessments from various service providers are well-coordinated, so as not to delay processing of applications.

Response: We have always had procedures governing the development of evidence to provide guidance on the kinds of evidence to obtain and to mandate procedures for requesting evidence and ensuring that it is obtained as quickly as possible. With the publication of the "Standards for Consultative Examinations and Existing Medical Evidence" in the **Federal Register** on August 1, 1991 (56 FR 36932), and its accompanying manual instructions, we now provide detailed rules about whom to contact, when they should be contacted, and schedules for following up on evidence that is not immediately forthcoming. (If by "service providers" the commenter meant those who perform consultative examinations for us, the rules pertain to this kind of evidence as well.) In conjunction with the publication of the childhood rules, we developed a special questionnaire which is completed in every childhood disability claim to record the names of nonmedical sources of a child's functioning, such as caregivers, schools, counselors, therapists, and social services caseworkers. We believe these procedures will result in a well-coordinated processing of claims.

Comment: Two commenters said that the multidisciplinary principle or approach to childhood disability evaluation was "central" to the Supreme Court's decision in *Zebley*. Two commenters thought that the regulation stated that a multidisciplinary assessment of a child's functioning shall take place, but that it did not describe in any detail what the assessment will consist of nor what is meant by "multidisciplinary." These commenters thought it very important to define and describe in detail "the multidisciplinary functional assessment that is proposed for step four in the determination process."

Response: There is no language in the *Zebley* decision which states or implies that a "multidisciplinary" approach to evaluating children's claims is required under the statute. As we have stated elsewhere, the Supreme Court did not provide any instruction on how we were to draft these rules, save that we were to provide individualized functional assessments for children comparable to the type of assessment we provide for adults. Nevertheless, as we have said, we agree that multidisciplinary evidence is valuable, and sometimes necessary, whether the Supreme Court addressed the issue or not.

With regard to the two comments that we should describe in detail the multidisciplinary approach at step four, we assume that the commenters were referring to the provisions which appears in final § 416.924c(f) (§ 416.924d(f) of the prior rules), the only section in the rules in which we use the word "multidisciplinary." The purpose of this provision was to give another example of our policy that we look not only at the individual components of a child's life but also at the child's life as a whole. Thus, the section describes children who may require more than one kind of therapy, each in itself posing a relatively small burden on the child, but cumulatively involving a substantial amount of the child's time. It does not describe a multidisciplinary approach to evaluation at step four, but how the need for multidisciplinary therapy might contribute to a finding of disability. As we have already explained, we have also retitled and renumbered the entire regulations section (from "Other factors we will consider in the individualized functional assessment," § 416.924d, to "Other factors we will consider," § 416.924c) to make clear that this policy applies at every step of the sequence at which we assess functioning.

Payment of Childhood Disability Benefits

Comment: One commenter questioned whether it was appropriate to pay cash benefits to disabled children, as provided under title XVI, noting that the principal needs of disabled children are access to medical treatment and other interventions, and medical insurance to cover the cost of such treatment. The commenter said that we should at least give some consideration to establishing a monitoring system to ensure that benefits awarded to children are correctly utilized for the care and support of the child.

Response: We pay benefits to children pursuant to the law. Our regulations implement the law and explain in a practical way how we will abide by it. To address the appropriateness of paying cash benefits to disabled children is beyond the purview of these or any other regulations. However, it should be noted that in many States eligibility for SSI results in eligibility for Medicaid. The second part of the comment refers to our rules regarding representative payees and is also beyond the purview of these rules; we have referred the comment to the appropriate section of SSA for consideration.

Regulatory Procedures

Executive Order 12291

The regulations that we published on February 11, 1991 resulted in a major increase in costs for the Federal government. We are providing an updated regulatory impact analysis to further public understanding of the fiscal impact of the regulations published on February 11, 1991. The changes to the rules which we are publishing today do not further affect title XVI or Medicaid program or administrative costs.

Regulatory Impact Analysis

A. Introduction

The Secretary determined that the regulations published on February 11, 1991 required a Regulatory Impact Analysis under Executive Order 12291 because they would result in a major increase in costs for the Federal government. The Department has updated the Regulatory Impact Analysis to identify the cost impact and the potential benefits to society of the regulations that were published on

February 11, 1991, and to inform the public of the considerations supporting these revisions in accordance with Executive Order 12291.

Executive Order 12291 requires that a Regulatory Impact Analysis be performed on any major rule, i.e., a rule that is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Nature of the Program

Payments to certain disabled and blind individuals are provided under title XVI of the Act, the SSI program. An individual is considered disabled if he or she is "* * * unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment * * * (or, in the case of a child under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity)."

The Supreme Court, in the *Zebley* decision, decided that SSA's prior regulations implementing the law for evaluating disability in children did not adequately reflect Congressional intent. Implementation of the Supreme Court's decision required us to revise the rules to provide an individualized functional assessment when evaluating disability in children for purposes of eligibility for SSI payments. We discussed the method used to revise the rules, including the solicitation and consideration of comments and suggestions from child development and childhood disability experts, and others, in the section of the preamble to the rules we published on February 11, 1991 entitled "Supplementary Information" (56 FR at 5534–35).

C. Potential Benefits

The new rules for determining disability in children have resulted in increases in the number of childhood disability allowances under the SSI program. This is because we added a step to the disability evaluation process for children that permits findings of disability for children who do not have impairments that meet or equal a listing in appendix 1 of subpart P of part 404 of the regulations. For the same reason, we expect fewer terminations of payments of children already receiving SSI payments when their cases are periodically reviewed for continuing disability. Since, in many States, entitlement to SSI results in entitlement to Medicaid under title XIX of the Act, we also have experienced increases in the number of children eligible for Medicaid.

D. Projected Costs ($ in millions)

We have provided data based on actual experience for fiscal year (FY) 1991 and 1992. The data shown for FY 1993 incorporates actual data through June 1993 and a projected total through the end of the fiscal year. We also have prepared estimates for FY 1994 and FY 1995 based on our experience to date. We have provided data on the amount of increased benefit payments, the amount of increased administrative costs and the number of increased SSI awards. These data do not include administrative or program benefit costs for members of the *Zebley* class.

All allowances based on functional equivalence and individualized functional assessments are attributable to the changes made by the regulations we published on February 11, 1991. The number of childhood applications used in this estimate is consistent with the President's Budget. Increased administrative costs reflect the cost of processing additional functional allowances (i.e., determinations based on functional equivalence or on individualized functional assessments) and the additional processing costs associated with developing functional considerations, in addition to medical factors.

5-YEAR PROJECTED EXPENDITURES

[In millions of dollars]

	Fiscal year 1991	Fiscal year 1992	Fiscal year 1993	Fiscal year 1994	Fiscal year 1995	5-year total
Federal SSI benefits	90	260	570	1,030	1,485	3,435
Federal Medicaid benefits	55	65	160	215	200	695
Total Federal benefits	145	325	730	1,245	1,685	4,130
Increased Federal administrative costs	17	22	48	61	52	200
Increased SSI awards (thousands)	37	41	93	115	98	[1]385

[1] Rounded to the nearest thousand.

E. Alternative Approaches

Section 3(d)(4) of Executive Order 12291 provides that a Regulatory Impact Analysis shall provide a "description of alternative approaches that could substantially achieve the same regulatory goal at lower cost, together with an analysis of this potential benefit and costs and a brief explanation of the legal reasons why such alternatives, if proposed, could not be adopted." Described here are various alternative approaches that we considered in the course of developing the new rule published on February 11, 1991, and for these rules that we are publishing today.

In the final analysis, we concluded that we could not have achieved the same regulatory goal (i.e., fully complying with the principles enunciated in the Supreme Court's decision in *Zebley*) at lower cost. We believe that the regulations as published are necessary to comply completely with the Supreme Court's *Zebley* decision and that the regulations are consistent with and are a reasonable interpretation of the Supreme Court's action in that case. The regulations are structured so as to provide complete and coherent rules for evaluating the disabilities of children under the Court's decision. For that reason, we included some items not specifically mentioned by the Supreme Court, but which are a part of an integrated, rational and complete set of rules for the guidance of the public and the adjudication of children's claims. As it turned out, providing a whole set of rules for evaluating the disabilities of children, as was done in the regulations published on February 11, 1991, was the least costly way of implementing *Zebley*. As explained below, all the reasonable alternatives we considered would have been more costly than the approach we took in the regulations. Moreover, we

determined that any alternatives that would perhaps be less costly than the approach taken might run the risk of not complying fully with the Supreme Court's *Zebley* decision. A discussion of the alternatives we considered is repeated to provide better insight into the decision making process that led to the development of the regulations that were originally published on February 11, 1991.

1. *Incorporating a Screen*—We considered incorporating a screen into the regulations; i.e., including as the first step of the childhood disability evaluation process a process in which children who are manifestly disabled could be identified quickly. The screen would have been a list of specific impairments, or effects of impairments, that would result in an immediate finding of disability.

We did not include a screening list in these rules for several reasons discussed at length in the preamble to the regulations published on February 11, 1991. In short, we decided that our revision of the equivalence policy was the better option because it included the concepts of the screen, but in a more general rule. The screen list would have been only another circumscribed listing, similar to appendix 1. We believe that the option we selected provides a greater net benefit to society.

Cost Considerations. We believe that the selected option is more administratively cost-effective than the screen, inasmuch as it permits our adjudicators to quickly and efficiently identify the most obviously disabled children. The screen list also would have been administratively cost effective, but would have applied to fewer cases. However, it still would result in higher overall administrative costs than the final rules since fewer cases would be decided under the screen than under the equivalence policy, necessitating more decisions after the individualized functional assessment.

As to program costs, the screen approach (like the functional equals step) was simply intended to identify the most seriously impaired children earlier in the adjudicative sequence. Thus, neither the proposed screen approach nor the functional equals approach, which we adopted, would affect program costs since both would allow children who would be found eligible later in the sequence.

2. *Including Risk Factors*—At the suggestion of individual experts, we also considered developing rules that would establish disability for children who are not currently disabled, based on a prediction that they might become disabled in the future because of their particular life circumstances. This approach would have been based on the premise that a combination of "risk" factors for a child with a medically determinable severe impairment(s) could affect the child's future development and that intervention now, through the assistance of SSI and the Medicaid entitlement that comes to SSI beneficiaries could help to ensure that the child would not become disabled or that the child would have the best possible chance to maximize his or her abilities.

Risk factors include such things as familial/environmental risks (for example, very young parents), health-related risks (for example, lack of proper treatment and poor parental supervision), and biological risks (for example, the child's mother had a previous neonatal death).

In an attempt to draft such a rule, we tried to incorporate risk factors as an analogous step to the fifth step of the adult evaluation sequence. At that step adults who have impairments that are not in and of themselves disabling (i.e. impairments that do not meet or equal the listings) can be found disabled because of the functional impact of nonmedical factors (i.e., their age, education, and work experience). These vocational factors can have an effect on an adult's current ability to make an adjustment to other work, or to begin work for the first time and hence, can contribute to a finding that the individual is disabled.

However, when we examined the rule we had drafted, we realized that it was not analogous to the adult rules. When we find an adult disabled based on consideration of his or her residual functional capacity and vocational factors, the adult is currently disabled, whereas a rule incorporating risk factors for children results only in a prediction of the possibility of future disability, not a finding of current disability.

Nonetheless, the regulations we have established do not fail to consider risk factors on a child's current functioning. In the case of biological risk factors, the rules provide several means for evaluating those children who are already affected by demonstrable biological problems (such as low birth weight, poor tone, and respiratory distress) in the special rules for premature infants, the functional equivalence step for those children who do not already meet or equal listed impairment(s) solely for medical reasons, and the individualized functional assessment, all of which require evaluation of the individual child's actual status. To count such factors again, however, in the same manner as age, education, or work experience in adults, would be a double weighting of the same factors. The other kinds of risk factors may also have an observable, current impact on a child and would, to that extent, also be considered when we assess the child's actual functioning.

We believe that any other consideration of risk factors would go beyond our authority due to the statutory requirement that a child suffer from an impairment of "comparable severity" to that of an adult. Predicting future disability based on risks goes beyond comparability to the adult rules. Furthermore, it is not reliably predictive, provides no basis for future comparison for determining continuing disability, and might require us to engage in intrusive investigative practices and to make value judgments that are far beyond our purview.

Cost Considerations. The inclusion of risk factors in the manner suggested by some individual experts would have increased both program and administrative costs. Administratively, it would have resulted in additional development and investigatory procedures, as well as additional staff time justifying decisions. Because it would have granted benefits to children who are not currently disabled and who might not become disabled, it would have resulted in increased program costs; it would likely have increased program costs on continuing disability review as well. We are unable to estimate the extent of the increased costs.

3. *Limiting the Scope of the Regulations to Individualized Functional Assessment*—

• Comparable Severity—We considered limiting the scope of the regulations published on February 11, 1991 by simply adding a step after the meets/equals step in which adjudicators would determine, based on an individualized functional assessment, whether the child's impairment(s) is comparable in severity to one that would prevent an adult from engaging in substantial gainful activity. Under this alternative, we would not have developed the not severe step, the functional equivalence process, and the revised continuing disability review procedures. We did not adopt this alternative because it would not have achieved the same regulatory goal: to fully and fairly implement the *Zebley* decision and comply with the law by providing a process for determining whether a child's impairment(s) is of comparable severity to an impairment that would disable an adult. We found,

in reviewing the disability determination process for children and comparing it to the adult process, that simply adding a step that instructed adjudicators to assess a child's functioning and decide comparable severity would not provide a sound adjudicative process for deciding children's claims. Therefore, substantial legal support exists for not adopting this alternative.

Cost Considerations. With regard to initial cases, this alternative would not have changed the ultimate decision for any child. In other words, a child applicant, who is allowed at the functional equals step or denied at the not severe step would receive the same decision, only later in the sequence (i.e., after the individual functional assessment). However, it would have resulted in a further increase in administrative funds needed to process initial cases because it would have required that we subject every child who does not meet or medically equal a listing, including the most extremely impaired and the most minimally impaired children, to an individualized functional assessment. With regard to cessation cases, the inclusion of the revised medical improvement procedures allowed the agency to resume conducting continuing disability reviews for children, which it had not been doing since the end of February 1990. As a result, the continuing disability review rules increase administrative costs. However, these administrative costs are more than offset by program savings that would be lost if these regulations had not been published on February 11, 1991. Following is a more detailed discussion of each of the three provisions.

- *Including a "Severe" Step*—We could have published these regulations on February 11, 1991 without providing a step that permits denial based on a finding that a child's impairment(s) is not "severe." Prior to the *Zebley* decision, we did not have such a step for children; we considered only whether the child was engaging in substantial gainful activity and, if not, whether his or her medically determinable impairment(s) met or equaled in severity an impairment in the listings. Adding a severe step made the childhood and adult evaluation processes more alike and comported with the spirit of the *Zebley* decision to evaluate children comparably to adults and with our regulatory goal. In adult cases, we assess residual functional capacity only after we have found that the person has a severe impairment(s). Likewise, we believe that we must first determine that a child has an impairment(s) that is severe before we do an individualized functional assessment.

Even though the *Zebley* decision did not expressly require the addition of this step, the tenor of the decision was that children should be treated comparably to adults and thus directed the inclusion of this step in the process. There is no indication that the Supreme Court intended that children with minimal impairments should be treated differently than adults with such impairments. Further, in *Yuckert* the Court upheld the severity concept as a legitimate way to efficiently and validly screen out de minimis claims.

We could have achieved the same regulatory result without this step, but at a higher administrative cost. The step has increased the efficiency and reliability of the disability evaluation process by identifying those children whose impairments are so slight that they would not be found eligible even if we were to proceed to the more costly and time-consuming individualized functional assessment step.

Cost Considerations. There is no program benefit cost impact. The program cost would have been the same even if we had not included the step. Approximately 10 percent of childhood disability claimants are denied because their impairments do not more than minimally affect their ability to function in an age-appropriate manner. However, because their impairments are minimal these children would have been denied at the comparable severity step (step 4). Administrative savings have occurred because it was not necessary to conduct individualized functional assessments for children with no more than minimal impairments. The inclusion of the severe step has saved approximately $3.8 million per year in administrative costs.

- *Including a Functional Equivalence Process*—Our former policy on making equivalence determinations was criticized by the Supreme Court in *Zebley* because the policy did not adequately cover combinations of impairments, the effects of symptoms, and the effects of medication, among other things. The functional equivalence policy responds to each of these criticisms. Moreover, the U.S. District Court for the Eastern District of Pennsylvania (where the *Zebley* case was remanded) approved an interim standard on May 5, 1990, which required the consideration of a child's functioning and a comparison of this functional assessment with the functional consequences of impairments in the listings. The functional equivalence concept that was incorporated into our regulations on February 11, 1991 is also suggested by the listings themselves, which describe overall impairments of functioning (for example, a young child not functioning at one-half his or her chronological age) as well as specific functional impairments (for example, blindness).

Nevertheless, we could have devised rules that did not include functional equivalence, yet achieve the same outcome following an individualized functional assessment. However, aside from the foregoing reasons supporting the need for the rule, the functional equivalence process also has provided administrative advantages as it allowed us to make determinations of disability on the obvious functionally-impaired children without making us or them go through the complete development and documentation required under the individualized functional assessment. Therefore, it achieved our regulatory goal at the lowest cost.

Cost Considerations. Program costs are not affected. However, administrative savings have occurred because the process is less complex than the comprehensive individualized functional assessment and has allowed the most severely impaired children to be paid earlier in the process. We estimate that the functional equivalence process has saved approximately $1.5 million per year in administrative funds.

- *Including Continuing Disability Review Process*—The *Zebley* decision did not explicitly mandate a revision of the continuing disability review process for children. However, our former rules for determining whether a child's disability continues contained the same policy that was struck down by the Supreme Court. In fact, the named plaintiff in *Zebley* was a child whose SSI benefits had been terminated. Therefore, there was no alternative to revising the continuing disability review rules; only whether we would make the change with the publication of the rule on February 11, 1991 or at a later date. Furthermore, individual experts who assisted us agreed that it was important that we have a mechanism to periodically reevaluate childhood claims because children can change rapidly. It was essential that we be able to reassess the functioning of eligible children as they age against the activities and behaviors appropriate to their age group.

Cost Considerations. The volume of continuing disability reviews and the administrative costs associated with such reviews will increase over the next 5 years because more children have been awarded benefits under the rules

published on February 11, 1991. Initially, we expect that the rate of cessations will be somewhat lower than in the past because a large proportion of all children currently on the rolls was found disabled because they had impairments that met or equaled the listings. Fewer of these children will be found no longer disabled, even if their impairments have medically improved, because they will now benefit from the incorporation of functional steps into the medical improvement review standard.

Many of the additional allowances since the regulations were published in February 1991 and many future allowances will be based on functional impairments that are medically less severe than the listings; therefore, the rate of cessation for this population may be somewhat higher than it was when the eligibility criteria for children were based only on the listings. Program costs would be higher if the continuing disability review process was not included in the regulations. The program savings associated with processing childhood continuing disability reviews exceed the administrative cost.

F. Executive Order 12291, Section 2, General Requirements

The foregoing discussions demonstrate that our objective in the regulations published on February 11, 1991 was to provide the greatest potential benefits to society at the least net cost, by providing efficient, comprehensive, and up-to-date rules for identifying and assisting children who have impairments of comparable severity to impairments that would disable adults.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only individuals and States. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, is not required.

Paperwork Reduction Act

These final regulations do not contain specific reporting requirements which are subject to approval by the Office of Management and Budget (OMB). However, § 416.924 contains a description of the information we collect as a result of *Sullivan* v. *Zebley*. We already have OMB clearance to use form SSA–3881 (OMB Number 0960–0499) to collect this information.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, blind, disability benefits, Public assistance programs, Supplemental security income, Reporting and recordkeeping requirements.

Dated: March 23, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: May 24, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, part 416, subpart I, chapter III of title 20, Code of Federal Regulations, is amended as set forth below.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for subpart I continues to read as follows:

Subpart I—Determining Disability and Blindness

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808.

2. Section 416.902 is amended by adding the following two definitions to the beginning of the alphabetical listing of definitions:

§ 416.902 General definitions and terms for this subpart.

As used in this subpart—

Adult means a person who is age 18 or older.

Child means a person who has not attained age 18.

* * * * *

3. Section 416.903 is amended by adding a new paragraph (f) to read as follows:

§ 416.903 Who makes disability and blindness determinations.

* * * * *

(f) *Determinations for childhood impairments.* In making a determination under title XVI with respect to the disability of a child to whom paragraph (e) of this section does not apply, we will make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to the child's impairment(s) evaluates the case of the child.

4. Section 416.913 is amended by adding paragraph (c)(3) and revising paragraphs (e) (2) and (3) to read as follows:

§ 416.913 Medical evidence of your impairment.

* * * * *

(c) *Statements about what you can still do.* * * *

(3) If you are a child, the medical source's opinion about your physical or mental abilities to function independently, appropriately, and effectively in an age-appropriate manner, as described in § 416.924d.

* * * * *

(e) *Information from other sources.* * * *

(2) Observations by people who know you (for example, spouses, parents and other caregivers, siblings, other relatives, friends or neighbors, clergy);

(3) Other practitioners (for example, nurse practitioners and physicians' assistants, naturopaths, and chiropractors);

* * * * *

5. Section 416.916 is revised to read as follows:

§ 416.916 If you fail to submit medical and other evidence.

You (and if you are a child, your parent, guardian, relative, or other person acting on your behalf) must cooperate in furnishing us with, or in helping us to obtain or identify, available medical or other evidence about your impairment(s). When you fail to cooperate with us in obtaining evidence, we will have to make a decision based on information available in your case. We will not excuse you from giving us evidence because you have religious or personal reasons against medical examinations, tests, or treatment.

6. Section 416.924 is revised to read as follows:

§ 416.924 How we determine disability for children.

(a) *Definition of comparable severity.* If you are a child, we will find you disabled if you are not engaging in substantial gainful activity and you have an impairment or combination of impairments that is of comparable severity to an impairment or combination of impairments that would disable an adult and which meets the duration requirement (see § 416.909). By the term *comparable severity,* we mean that your physical or mental impairment(s) so limits your ability to function independently, appropriately, and effectively in an age-appropriate manner that your impairment(s) and the

limitations resulting from it are comparable to those which would disable an adult. Specifically, your impairment(s) must substantially reduce your ability to—

(1) Grow, develop, or mature physically, mentally, or emotionally and, thus, to attain developmental milestones (see § 416.924b(b)(2)) at an age-appropriate rate; or

(2) Grow, develop, or mature physically, mentally, or emotionally and, thus, to engage in age-appropriate activities of daily living (see § 416.924b(b)(3)) in self-care, play and recreation, school and academics, community activities, vocational settings, peer relationships, or family life; or

(3) Acquire the skills needed to assume roles reasonably expected of adults (see § 416.924b(b)(4)).

(b) *Steps in evaluating disability.* We consider all evidence in your case record when we make a determination or decision whether you are disabled. If you allege more than one impairment, we will evaluate all the impairments for which we have evidence. Thus, we will consider the combined effects of all your impairments upon your overall health and ability to function. We will also evaluate any limitations in your ability to function that result from your symptoms, including pain (see § 416.929). When you file a claim, we use the evaluation process set forth in (c) through (f) of this section. We follow a set order to determine whether you are disabled. If you are doing substantial gainful activity, we will determine that you are not disabled and not review your claim further. If you are not doing substantial gainful activity, we will consider your physical or mental impairment(s) first to see if you have an impairment or combination of impairments that is severe. If your impairment(s) is not severe, we will determine that you are not disabled and not review your claim further. If your impairment(s) is severe, we will review your claim further to see if you have an impairment(s) that meets or equals in severity any impairment that is listed in appendix 1 of subpart P of part 404 of this chapter, in which case we will find you disabled. If you do not have such an impairment(s), we will do an individualized functional assessment and determine whether you are disabled. Once you have been found eligible for disability benefits, we follow a somewhat different procedure to determine whether your eligibility continues, as explained in § 416.994a.

(c) *If you are working.* If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or age, education, or work experience. (For our rules on how we decide whether you are engaging in substantial gainful activity, see §§ 416.971 through 416.976.)

(d) *You must have a severe impairment(s).* If your impairment is a slight abnormality or a combination of slight abnormalities that causes no more than minimal limitation in your ability to function independently, appropriately, and effectively in an age-appropriate manner, we will find that you do not have a severe impairment and are, therefore, not disabled.

(e) *When your impairment(s) meets or equals a listed impairment in appendix 1.* The Listing of Impairments in appendix 1 of subpart P of part 404 of this chapter is set at a level of severity that precludes any gainful activity or that is comparable in severity to an impairment that would preclude an adult from engaging in any gainful activity. Therefore, if you have an impairment(s) which meets the duration requirement and is listed in appendix 1, or is equal to a listed impairment, we will find you disabled. We will not deny your claim on the basis of a finding that your impairment(s) does not meet the requirements for any listed impairment or is not equal in severity to any of the impairments listed in appendix 1. We explain our rules for deciding whether an impairment meets a listing in § 416.925. Our rules for how we decide whether an impairment(s) equals a listing are set forth in § 416.926a.

(f) *Your impairment(s) must be of comparable severity to an impairment(s) that would disable an adult.* When we determine that your impairment(s) is severe, but that it does not meet or equal in severity any listed impairment, we will assess the impact of your impairment(s) on your overall ability to function independently, appropriately, and effectively in an age-appropriate manner. We will use this individualized functional assessment to decide whether you have an impairment(s) of comparable severity to an impairment(s) that would prevent an adult from engaging in substantial gainful activity and, thus, to determine whether or not you are disabled. We will use the individualized functional assessment in the following manner:

(1) If:

(i) Our evaluation of all the evidence in your claim shows that your impairment(s) substantially reduces your physical or mental ability to function independently, appropriately, and effectively in an age-appropriate manner, and

(ii) Your impairment(s) meets the duration requirement, we will find you disabled.

(2) If we find that your impairment(s) does not substantially reduce your physical or mental ability to function independently, appropriately, and effectively in an age-appropriate manner, or if your impairment(s) does not meet the duration requirement, we will find that you are not disabled.

(g) *Basic considerations.* When we determine whether you are disabled, we will consider all relevant evidence in your case record. This may include medical evidence, school records, information from people who know you and can provide evidence about your functioning—such as your parents, caregivers, and teachers—and other evidence that can help us assess your functioning on a longitudinal basis.

(1) Medical evidence of your impairment(s) must describe symptoms, signs, or laboratory findings. The medical evidence may include formal testing that provides information about your development or functioning in terms of percentiles, percentages, standard deviations, or chronology (such as months of delay). Whenever possible, a medical source's findings should reflect consideration of information from your parents or other people who know you, as well as the medical source's findings and observations on examination; any discrepancies between formal test results and your customary behavior and daily activities should be duly noted and resolved.

(2) Your functional limitations may also be observed and reported by others. Parents (or other caregivers), and other family members may provide important evidence on how well you are functioning on a day-to-day basis. Educational and other intervention programs may be important sources of evidence about your functioning, and will often have documentary evidence in the form of evaluation instruments and other evidence from a variety of disciplines.

7. Section 416.924a is revised to read as follows:

§ 416.924a Age as a factor of evaluation in childhood disability.

(a) *General.* In this regulation, we explain how we consider age when we decide whether you are disabled. Your age may or may not be a factor in our determination whether your impairment(s) meets or equals a listing, depending on the listing we use for comparison. However, your age is always an important factor when we decide whether your impairment(s) is

severe (see § 416.924(d)) or whether you are disabled based on an individualized functional assessment (see § 416.924(f)). Except in the case of certain premature infants, as described in paragraph (c) of this section, age means chronological age.

(1) When we determine whether you have an impairment or combination of impairments that is severe, we will always consider the significance of your impairment(s) in relation to your age.

(2) The Listing of Impairments in appendix 1 of subpart P of part 404 of this chapter contains examples of impairments that we consider of such significance that they prevent a child from functioning independently, appropriately, and effectively in an age-appropriate manner. Therefore, we will usually decide whether your impairment meets a listing without giving special consideration to your age. However, several listings are divided into age categories. If the listing appropriate for evaluating your impairment includes such age categories, we will evaluate your impairment under the criteria for your age when we decide whether your impairment meets that listing.

(3) When we compare an unlisted impairment or combination of impairments with a listed impairment to determine whether you have an impairment(s) which equals a listing, the way in which we consider your age will depend on the listing we use for comparison. We will use the same principles for considering your age as in paragraph (a)(2) of this section; that is, we will consider your age only if we are comparing your impairment(s) to a listing that includes specific age categories.

(4) When we determine whether you have an impairment(s) which, though not meeting or equaling the listings, is of comparable severity to an impairment that would disable an adult, we will always consider the significance of your impairment(s) in relation to your age. We will consider the functions, behaviors, and activities that are appropriate to your age, and will evaluate the effect of your impairment(s), either alone or in conjunction with other relevant factors, on your ability to perform these functions, behaviors, and activities. (We explain how we do this individualized functional assessment in §§ 416.924d and 416.924e.)

(5) In any disability determination, we will consider your age and whether it affects your ability to be tested. Even when your impairment(s) is not amenable to formal testing because of your age, we will consider all evidence that will help us decide whether you are disabled.

(b) *Age categories.* When we determine whether you are functioning independently, appropriately, and effectively in an age-appropriate manner, we will consider your age in the following categories:

(1) Newborn and young infants (birth to attainment of age 1).

(2) Older infants and toddlers (age 1 to attainment of age 3).

(3) Children (age 3 to attainment of age 18), considered according to the following subcategories:

(i) Preschool children (age 3 to attainment of age 6).

(ii) School-age children (age 6 to attainment of age 12).

(iii) Young adolescents (age 12 to attainment of age 16), and

(iv) Older adolescents (age 16 to attainment of age 18).

(c) *Correcting chronological age of premature infants.* We generally use chronological age (that is, a child's age based on birth date) when we decide whether, or the extent to which, a physical or mental impairment(s) affects a child's ability to function independently, appropriately, and effectively in an age-appropriate manner. However, if you were born prematurely, we may consider you to be younger than your chronological age. When we evaluate the development or linear growth of a child born prematurely, we may use a "corrected" chronological age; that is, the chronological age adjusted by a period of gestational prematurity. We consider an infant born at less than 37 weeks' gestation to be born prematurely.

(1) We apply a corrected chronological age in these situations—

(i) When we evaluate developmental delay in premature children until the child's prematurity is no longer a relevant factor; generally no later than about chronological age 2 (see paragraph (c)(2) of this section);

(ii) When we evaluate an impairment of linear growth, such as under the listings in § 100.00 in appendix 1 of subpart P of part 404 of this chapter, until the child is 12 months old. In this situation, we refer to neonatal growth charts which have been developed to evaluate growth in premature infants (see paragraph (c)(2) of this section).

(2) We compute a corrected chronological age as follows—(i) If you have not attained age 1, we will correct your chronological age. We compute the corrected chronological age by subtracting the number of weeks of prematurity (i.e., the difference between 40 weeks of full-term gestation and the number of actual weeks of gestation) from your chronological age. The result is your corrected chronological age.

(ii) If you are over age 1, have a developmental delay, and prematurity is still a relevant factor in your case (generally, no later than about chronological age 2), we will decide whether to correct your chronological age. Our decision will be based on our judgment and all the facts of your case. If we decide to correct your chronological age, we may correct it by subtracting the full number of weeks of prematurity or a lesser number of weeks. We will also decide not to correct your chronological age if we can determine from the evidence that your developmental delay is the result of your medically determinable impairment(s) and is not attributable to your prematurity.

(3) Notwithstanding the provisions in paragraph (c)(1) of this section, we will not compute a corrected chronological age if the medical evidence shows that your treating source or other medical source has already taken your prematurity into consideration in his or her assessment of your development. Also, we will not compute a corrected chronological age when we find you disabled using the examples of functional equivalence based on low birth weight in § 416.926a(d) (8) or (9).

(d) *Age and the impact of severe impairments on younger children and older adolescents.* Although a child may become disabled at any age, impairments of similar severity may have different effects on children of different ages. The following guidelines apply to determinations of disability for children of different ages, especially very young children and children approaching adulthood.

(1) We recognize that how a particular child adapts to an impairment(s) depends on many factors (e.g., the nature and severity of the impairment(s), the child's temperament, the quality of adult intervention, and the child's age at onset of the impairment(s)). By *adapting to an impairment*, we mean the child's ability to learn those skills, habits, or behaviors which allow the child to compensate for the impairment(s) and, thus, to function in an age-appropriate manner as well as possible despite the impairment(s). Therefore, our disability determination will consider how you are adapting to your impairment(s) and the extent to which you are able to function independently, appropriately, and effectively in an age-appropriate manner as set forth in this section and §§ 416.924 and 416.924c through 416.924e.

(2) When we decide whether you are disabled, we will generally consider the factor of age in a manner opposite from that described in the rules for determining whether an adult has the ability to adjust to other work (see §§ 416.920(f) and 416.963). Thus, we consider that the older a child is, the more he or she is like a younger adult; we consider an older adolescent (i.e., a child aged 16 to 18) to be most like a "younger person" (i.e., a person in the age category 18 to 45 (see § 416.963(b)), and younger children to be most like older adults in terms of the significance of their impairments.

(3) Although various kinds of growth and development occur throughout childhood and adolescence, the earliest years, from birth to approximately attainment of age 6, are characterized by complex and rapid changes; for example, learning to walk, talk, and care for basic physical and emotional needs.

(i) The development of fundamental skills is a cumulative process founded upon skills acquired at each stage of a child's life. A child's ability to acquire or perform these skills ultimately determines his or her ability to master learning tasks in school and more complex physical activities and, eventually, affects the ability to work. Therefore, deficits of function resulting from impairments that occur before the attainment of age 6 may have a potentially greater, more limiting effect on a child's overall growth and development than impairments that occur later in life; and such deficits are increasingly significant with decreasing age.

(ii) Furthermore, the mastery of skills in early childhood is a highly interactive and interdependent process within a child. This interdependence is especially true of development in certain areas; e.g., cognitive skill deficits may affect communication, and social and emotional deficits may affect cognitive and communicative development. This interdependent process also requires proper functioning in areas that may not be obviously relevant to the acquisition of the skill. For example, physical mobility is affected by how well a child sees; therefore, visual impairment, especially in a young child, can affect the way a child acquires certain motor skills even though the child does not have a specific motor impairment. Similarly, emotional bonding to parents can be affected by how well a child hears. Therefore, the impact of such seemingly isolated impairments can have implications for the overall development of the youngest children.

(4) As children approach adulthood—that is, by about age 16—the functional abilities, skills, and behaviors that are age-appropriate for them are those that are also age-appropriate for 18-year-olds, i.e., those that are needed to assume roles reasonably expected of adults. Older adolescents generally also share with the youngest adults the same abilities to adapt to work-related activities despite a severe impairment(s).

(i) By the age of adolescence, children have developed basic physical and mental skills and behaviors, so that impairments occurring in adolescence may not have the cumulative interactive effects on functioning that impairments occurring in infancy and early childhood do. (However, as set forth in paragraph (d)(1) of this section, we also recognize that young and older adolescents may experience a variety of impairments with different effects on their ability to function in an age-appropriate manner. For instance, a child born with a degenerative disorder may experience a worsening of its effects as he or she grows older so that functioning is more limited for the older child than it is for a younger child with the same illness or disorder.)

(ii) Inasmuch as age-appropriate functioning for an older adolescent is also that of an 18-year-old young adult, the disability determination for an older adolescent must be consistent with the disability determination we would make for an 18-year-old person having the same functional limitations.

8. Section 416.924b is revised to read as follows:

§ 416.924b Functioning in children.

(a) *General.* When we evaluate your functioning, we will consider all of your mental and physical limitations that result from your impairment(s). We will evaluate the extent to which you can engage in age-appropriate activities in an independent, appropriate, and effective manner and, when applicable, whether you can do these things on a sustained basis appropriate to your age.

(b) *Terms used to describe functioning*— (1) *Age-appropriate activities.* As used in these regulations, the term *age-appropriate activities* is a comprehensive term that refers to what a child is expected to be able to do given his or her age. A child's activities may be described in terms of the achievement of "developmental milestones," "activities of daily living," or other such terms. Information about a child's activities creates a profile of how the child is functioning, i.e., what a child does, and thus what he or she is able to do. This makes possible a comparison between the child's profile and the activities that are age-appropriate for that child.

(2) *Developmental milestones.* The term *developmental milestones* refers to a child's expected principal developmental achievements at particular points in time. Ordinarily, failures to achieve developmental milestones are the most important indicators of impaired functioning from birth until the attainment of age 3, although they may be used to evaluate older children, especially preschool children.

(3) *Activities of daily living.* The term *activities of daily living* refers to those activities of children that involve continuity of purpose and action, and goal or task orientation; that is, the practical implementation of skills mastered at earlier ages. Ordinarily, activities of daily living are the most important indicators of functional limitations in children aged 3 to attainment of age 16, although they may be used to evaluate children younger than age 3.

(4) *Work-related activities.* The term *work-related activities* refers to those physical and mental activities that are associated with, or related to, activities in the workplace, as manifested in a person's activities in age-appropriate contexts, such as school, work, vocational programs, and organized activities. Ordinarily, inability to perform work-related activities is the most important indicator of impaired functioning in older adolescents, aged 16 to attainment of age 18.

(5) *Domains and behaviors.* The terms *developmental domains, functional domains,* and *behaviors,* which we use when we perform an individualized functional assessment, refer to broad areas of functioning that can be identified in infancy and traced throughout a child's growth and maturation into adulthood. The domains describe the child's major spheres of activity—i.e., physical, cognitive, communicative, social/emotional, and personal/behavioral. In addition, there are certain areas of behavior that are applicable to specific age categories (i.e., responsiveness to stimuli; concentration, persistence, and pace). The domains and behaviors we use in these regulations are intended to encompass and reflect all the things that a child may do at any particular age, and are, therefore, intended to include all of a child's functioning. All the effects of a child's impairment(s) on daily functioning will be considered within these domains and behaviors. The presence of pain or other symptoms can adversely affect functioning in the

domains or behaviors. In these regulations, the term *developmental domains* is generally used when we discuss the functioning of younger children, i.e., from birth to age 3; the term *functional domains* is generally used when we discuss older children and adolescents, i.e., from age 3 to age 18. (See § 416.924d for descriptions of the various domains and behaviors as they pertain to the different age categories.)

9. Section 416.924c is revised to read as follows:

§ 416.924c Other factors we will consider.

(a) *General.* When we evaluate how you are able to function, we will consider all factors that are relevant to the evaluation of the effects of your impairment(s) on your functioning, such as the effects of your medications, the setting in which you live, your need for assistive devices, and your functioning in school. Therefore, when we assess the effect of your impairment(s) on your functioning, we will consider all evidence from medical and nonmedical sources—such as your parents, teachers, and other people who know you—that can help us to understand how your impairment(s) affects your ability to function, and help us to assess your functioning within the domains and behaviors (see § 416.924b(b)(5)). Some of the factors we will consider include, but are not limited to, the factors in paragraphs (b) through (g) of this section.

(b) *Chronic illness.* If you have a chronic impairment(s) that is characterized by episodes of exacerbation (worsening) or remission (improvement), we will consider the frequency and severity of your episodes of exacerbation and your periods of remission as factors in our determination of your overall ability to function. For instance, if you require repeated hospitalizations or frequent outpatient care with supportive therapy for a chronic impairment(s), we will consider this need for treatment in our determination. When we determine whether you can function independently, appropriately, and effectively in an age-appropriate manner, we will consider how the level of treatment you need for your chronic illness affects your functioning. We will consider whether the length and frequency of your hospitalizations or episodes of exacerbation significantly interfere with your overall functioning on a longitudinal basis, or whether your outpatient care (because of its frequency, effects on your functioning, or both) significantly interferes with your activities of daily living.

(c) *Effects of medication.* We will consider the effects of medication on your symptoms, signs, and laboratory findings, including your ability to function. Although medications may control the most obvious manifestations of your condition(s), they may or may not affect the functional limitations imposed by your impairment(s). If your symptoms or signs are reduced by medications, we will consider whether you have any functional limitations which may nevertheless persist, even if there is apparent improvement from the medications. We will also consider whether your medications create any side effects which cause or contribute to your functional limitations.

(d) *Effects of structured or highly supportive settings.* Children with severe impairments may spend much of their time in structured or highly supportive settings. A structured or highly supportive setting may be your own home, in which family members make extraordinary adjustments to accommodate your impairment(s); or your classroom at school, whether a regular class in which you are accommodated or a special classroom; or a residential facility or school where you live for a period of time. Children with chronic impairments also commonly have their lives structured in such a way as to minimize stress and reduce their symptoms or signs, and may be relatively free of obvious symptoms or signs of impairment; others may continue to have persistent pain, fatigue, decreased energy, or other symptoms or signs, though at a lesser level of severity. Such children may be more impaired in their overall ability to function in an age-appropriate manner than their symptoms and signs would indicate. Therefore, if your symptoms or signs are controlled or reduced by the environment in which you live, we will consider your ability to function independently, appropriately, and effectively in an age-appropriate manner outside of this highly structured setting.

(e) *Adaptations.* We will consider the nature and extent of any other adaptations that are made for you in order to enable you to function. Such adaptations may include assistive devices, appliances, or technology. Some adaptations may enable you to function normally, or almost normally (e.g., eyeglasses, hearing aids). Others may increase your ability to function, even though you may still have limitations in your ability to function in an age-appropriate manner (e.g., ankle-foot orthoses, hand or foot splints, and specially adapted or custom-made tools, utensils, or devices for self-care activities such as bathing, feeding, toileting, and dressing). When we evaluate your overall ability to function with an adaptation, we will consider the degree to which the adaptation enables you to function independently, appropriately, and effectively in an age-appropriate manner.

(f) *Time spent in therapy.* You may need frequent and ongoing therapy from one or more kinds of health care professionals in order to maintain or improve your functional status. Therapy may include occupational, physical, or speech and language therapy, special nursing services, psychotherapy, or psychosocial counseling. Frequent and continuous therapy, although intended to improve your functioning, may also interfere significantly with your opportunities to engage in, and sustain, age-appropriate activities. If you receive such therapy at school during a normal school day, it may or may not interfere significantly with your doing age-appropriate activities. If you must frequently interrupt your activities at school or at home for therapy, these interruptions may interfere with your development and age-appropriate functioning. When we determine whether you can function independently, appropriately, and effectively in an age-appropriate manner, we will consider the frequency of any multidisciplinary therapy that you must have, how long you have needed the therapy or will need the therapy, and the extent to which it interferes with your age-appropriate functioning.

(g) *School attendance.* (1) School records and information from people at school who know you or who have examined you, such as teachers and school psychologists, psychiatrists, or therapists, may be important sources of information about your impairment(s) and its effect on your ability to function. If you attend school, we will consider this evidence when it is relevant and available to us.

(2) The fact that you are able to attend school will not, in itself, be an indication that you are not disabled. We will consider the circumstances of your school attendance, such as your ability to function independently, appropriately, and effectively in a regular classroom setting in an age-appropriate manner. Likewise, the fact that you are in a special education classroom setting, or that you are not in such a setting, will not in itself establish your actual limitations or abilities. We will consider the fact of such placement or lack of placement in the context of the remainder of the evidence in your case record.

(3) However, if you are unable to attend school on a regular basis because of your impairment(s), we will consider this when we determine whether you are able to function independently, appropriately, and effectively in an age-appropriate manner.

(h) *Treatment and intervention, in general.* With adequate treatment or intervention, some children not only have their symptoms and signs reduced, but also return to or achieve a level of functioning that is consistent with the norms for their age. We will, therefore, evaluate the effects of your treatment or intervention to determine the actual outcome of the treatment or intervention in your particular case.

10. Section 416.924d is revised to read as follows:

§ 416.924d Individualized functional assessment for children.

(a) *General.* If your impairment(s) is severe, but does not meet or equal in severity any of the listings in appendix 1 of subpart P of part 404 of this chapter, we will do an individualized functional assessment to determine whether you have an impairment or combination of impairments which would nevertheless be of comparable severity to an impairment(s) that would disable an adult. When we assess your functioning, we will consider all information in your case record that can help us determine the impact of your impairment(s) on your physical and mental functioning. We will consider the nature of your impairment(s), your age, your ability to be tested given your age, your ability to perform age-appropriate daily activities, and other relevant factors. (See §§ 416.924a through 416.924c.) We will assess the extent to which you are able to function independently, appropriately, and effectively in an age-appropriate manner despite your impairment(s), and use this assessment to determine whether you are disabled.

(b) *Responsibility for individualized functional assessment.* In cases where the State agency or other designee of the Secretary makes the initial or reconsideration disability determination, a State agency staff medical or psychological consultant or other designee of the Secretary (see § 416.1016) has the overall responsibility for the individualized functional assessment. This assessment is based on all of the evidence we have, from all sources, including any statements regarding what you can still do that have been provided by treating or examining physicians, consultative physicians, or any other medical or psychological consultant designated by the Secretary. For cases in the disability hearing process, the responsibility for the individualized functional assessment rests with either the disability hearing officer or, if the disability hearing officer's reconsidered determination is changed under § 416.1418, with the Associate Commissioner for Disability or his or her delegate. For cases at the Administrative Law Judge hearing or Appeals Council level, the responsibility for the individualized functional assessment rests with the Administrative Law Judge or Appeals Council.

(c) *Domains of development or functioning.* The following are the domains of development or functioning, or specific behaviors, that may be addressed in an individualized functional assessment:

(1) Cognition;
(2) Communication;
(3) Motor abilities;
(4) Social abilities;
(5) Responsiveness to stimuli (in children from birth to the attainment of age 1);
(6) Personal/behavioral patterns (in children from age 1 to the attainment of age 18); and
(7) Concentration, persistence, and pace in task completion (in children from age 3 to the attainment of age 18).

(d) *How we use the domains.* (1) When we do an individualized functional assessment, we will consider the extent of your impairment-related limitations in the domains or behaviors affected by your impairment(s), and how well you are able to do age-appropriate activities despite your limitations. We will also consider how your impairment(s) in one domain affects your development or functioning in other domains.

(2) We will consider whether any help or intervention that you need from others to enable you to do any particular activity is appropriate to your age.

(3) The guidelines in paragraphs (e) through (j) of this section describe, in terms of the age categories outlined in § 416.924a(b), the domains of development or functioning and the behaviors used in doing an individualized functional assessment, and the general kinds of age-related activities that may be affected by your impairment(s). (See § 416.924a(a)(5) for guidelines on age and a child's ability to be tested, and § 416.924e for guidelines for determining disability using an individualized functional assessment.)

(e) *Newborns and young infants (birth to attainment of age 1).* Children in this age group are evaluated in an individualized functional assessment in terms of four developmental domains and an area of behavior important to newborns and young infants.

(1) Cognitive development, e.g., your ability to begin to organize and regulate how you feel and the ways you react to your environment;

(2) Communicative development (includes speech and language), e.g., your ability to communicate spontaneously and with intention through visual, motor, and vocal exchanges;

(3) Motor development (includes gross and fine motor skills), e.g., your ability to explore your environment by moving your body, and your ability to manipulate your environment by using your hands;

(4) Social development, e.g., your ability to form patterns of self-regulation, to form and maintain intimate relationships with your primary caregivers, and to exchange a variety of age-appropriate emotional cues and begin to organize intentional behavior;

(5) Responsiveness to stimuli, i.e., your ability to respond appropriately to stimulation, e.g., visual, auditory, and tactile.

(f) *Older infants and toddlers (age 1 to attainment of age 3).* Children in this age group are evaluated in an individualized functional assessment in terms of five developmental domains.

(1) Cognitive development, e.g., your ability to understand by responding to increasingly complex requests, instructions or questions, by referring to yourself and things around you by pointing and eventually by naming, and by copying things or imitating actions shown to you by others, and by knowing what you want, as illustrated, for example, by searching for a toy or asking for a special food;

(2) Communicative development (includes speech and language), e.g., your ability to communicate your wishes or needs by using gestures or pretend play, and by understanding, imitating, and using an increasing number of intelligible words, and eventually forming two-to-four word sentences in spontaneous, interactive conversation;

(3) Motor development (includes gross and fine motor skills), e.g., your ability to move in your environment using your body with steadily increasing dexterity and independence from support by others, and your ability to use your hands to do something that you want or get something that you need;

(4) Social development, e.g., your ability to express normal dependence

upon, and intimacy with, your primary caregivers, as well as increasing independence from them, to initiate and respond to a variety of age-appropriate emotional cues, and to regulate and organize emotions and behaviors;

(5) Personal/behavioral development, e.g., your ability to help yourself and to cooperate with others in taking care of your personal needs, in adapting to your environment, in responding to limits, and in learning new skills.

(g) *Preschool children (age 3 to attainment of age 6).* Children in this age group are evaluated in an individualized functional assessment in terms of five developmental domains and an area of behavior important to preschool children.

(1) Cognitive development, e.g., your ability to understand, to reason and to solve problems, and to use acquired knowledge and concepts;

(2) Communicative development (includes speech and language), e.g., your ability to communicate by telling, requesting, predicting, and relating information, by following and giving directions, by describing actions and functions, and by expressing your needs, feelings, and preferences in a spontaneous, interactive, and increasingly intelligible manner, using simple sentences in grammatical form;

(3) Motor development (includes gross and fine motor skills), e.g., your ability to move and use your arms and legs in increasingly more intricate and coordinated activity, and your ability to use your hands with increasing coordination to manipulate small objects during play.

(4) Social development, e.g., your ability to initiate age-appropriate social exchanges and to respond to your social environment through appropriate and increasingly complex interpersonal behaviors, such as showing affection, sharing, cooperating, helping, and relating to other children as individuals or as a group;

(5) Personal/behavioral development, e.g., your ability to help yourself and to cooperate with others in taking care of your personal needs, in adapting to your environment, in responding to limits, and in learning new skills;

(6) Concentration, persistence, and pace, e.g., your ability to engage in an activity, such as dressing or playing, and to sustain the activity for a period of time and at a pace appropriate to your age.

(h) *School-age children (age 6 to attainment of age 12).* Children in this age group are evaluated in an individualized functional assessment in terms of five functional domains and an area of behavior important to school-age children.

(1) Cognitive function, e.g., your ability to progress in learning the skills involved in reading, writing, and mathematics;

(2) Communicative function (includes speech and language), e.g., your ability to communicate pragmatically (i.e., to meet your needs) and conversationally (i.e., to exchange information and ideas with peers and family or with groups such as your school classes) in a spontaneous, interactive, sustained, and intelligible manner;

(3) Motor function (includes gross and fine motor skills), e.g., your ability to engage in the physical activities involved in play and physical education, appropriate to your age;

(4) Social function, e.g., your ability to play alone, or with another child, or in a group; to initiate and develop friendships, to respond to your social environments through appropriate and increasingly complex interpersonal behaviors, such as empathizing with others and tolerating differences; and to relate appropriately to individuals and groups (e.g., siblings, parents or caregivers, peers, teachers, school classes, neighborhood groups);

(5) Personal/behavioral function, e.g., your ability to help yourself and to cooperate with others in taking care of your personal needs and safety; to respond appropriately to authority and school rules; to manifest a sense of responsibility for yourself and respect for others; to adapt to your environment; and to learn new skills;

(6) Concentration, persistence, and pace, e.g., your ability to engage in an activity, such as playing or reading, and to sustain the activity for a period of time and at a pace appropriate to your age.

(i) *Young adolescents (age 12 to attainment of age 16).* Children in this age group are evaluated in an individualized functional assessment in terms of five functional domains and an area of behavior important to young adolescents.

(1) Cognitive function, e.g., your ability to progress in applying the skills involved in reading, writing, and mathematics; your conceptual growth, reasoning and problem-solving abilities;

(2) Communicative function (includes speech and language), e.g., your ability to communicate pragmatically (i.e., to meet your needs) and to converse spontaneously and interactively, expressing complex thoughts with increasing vocabulary in all communication environments (e.g., home, classroom, playground, extra-curricular activities, job) and with all communication partners (e.g., parents or caregivers, siblings, peers, school classes, teachers, other authority figures);

(3) Motor function (includes gross and fine motor skills), e.g., your ability to engage in the physical activities involved in physical education, sports, and social events appropriate to your age;

(4) Social function, e.g., your ability to initiate and develop friendships, to relate appropriately to individual peers and adults and to peer and adult groups, and to reconcile conflicts between yourself and peers or family members or other adults outside your family;

(5) Personal/behavioral function, e.g., your ability to help yourself in taking care of your personal needs and safety, to respond appropriately to authority and school rules, to manifest a sense of responsibility for yourself and respect for others; to adapt to your environment; and to learn new skills;

(6) Concentration, persistence, and pace, e.g., your ability to engage in an activity, such as studying or practicing a sport, and to sustain the activity for a period of time and at a pace appropriate to your age.

(j) *Older adolescents (age 16 to attainment of age 18).* (1) Descriptive information about your activities of daily living will tell us about the nature and age-appropriateness of your activities with respect to your cognitive functioning, communicative functioning, motor functioning, social functioning, personal/behavioral functioning, and your concentration, persistence, and pace in school or work-related activities. (See 416.924d(i) (1) through (6) for a description of these domains and behaviors.)

(2) As you approach adulthood (i.e., beginning at about age 16), we will consider some of your school activities as evidence of your ability to function in a job setting. For example, we will consider your ability to understand, carry out, and remember simple instructions and work-like procedures in the classroom as evidence of your ability to do these things in a job. We will consider your ability to communicate spontaneously, interactively, and age-appropriately in the classroom as evidence of your ability to do this in a job. We will consider your ability to maintain attention for extended periods of time and to sustain an ordinary daily routine without special supervision as evidence of your ability to do these things in a job. We will consider your ability to deal with authority figures and to follow directions in school, responding appropriately to correction or criticism,

as evidence of your ability to deal with supervision on a job. We will consider your ability to interact with peers in school, school-related activities, and other age-appropriate environments as evidence of your ability to relate to co-workers in a job. We will consider your ability to regulate your mood and behavior in various school settings as evidence of your ability to deal with change in a work setting. We will consider your ability to engage in physical activities both in and out of school as evidence of your ability to perform the physical demands of work. We will also consider whether you have acquired any skills from specific vocational education and whether you have pursued any part-time or stay-in-school employment.

(3) If you are working or have worked, we will evaluate such things as: The physical activities in which you are engaged on the job; the regularity and punctuality of your attendance; your ability to follow directions and deal with supervisors; and your ability to work independently and to deal with others in your job.

11. Section 416.924e is revised to read as follows:

§ 416.924e Guidelines for determining disability using the individualized functional assessment.

(a) *General.* The guidelines in this section are provided as a framework for deciding whether a child who has a severe impairment(s) that does not meet or equal the listings nevertheless has an impairment(s) that is of comparable severity to one that would disable an adult, and is, therefore, disabled. The guidelines illustrate a level of impairment severity that is generally, though not invariably, sufficient to establish comparable severity; i.e., to establish that there is an impairment or combination of impairments that substantially reduces your ability to function independently, appropriately, and effectively in an age-appropriate manner. The examples in this section are only guidelines to illustrate severity and are not all-inclusive rules. The determination of your claim is based on all relevant evidence in the case record, using the principles and guidance in §§ 416.924 through 416.924d on a case-by-case basis.

(b) *How we describe functional limitations.* The terms used in this section to describe functional severity of both physical and mental impairments employ as a frame of reference the terminology and definitions in the childhood mental listings in 112.00 of the Listing of Impairments in appendix 1 to subpart P of part 404 of this chapter. Hence, the examples of "moderate" and other limitations are derived from a comparison with the "marked" levels of functional limitation in the listings. As in those listings, "marked" and "moderate" are not the number of activities or functions which are restricted, but the overall degree of restriction or combination of restrictions in a domain or behavior. A marked or moderate limitation may arise when several activities or functions in a domain or behavior are impaired, or even when only one is impaired.

(1) If you are a younger child, from birth to the attainment of age 3, your functional limitations will generally be described in the examples in terms of a developmental delay, or the fraction or percentage of your chronological age that represents the levels of your functioning; e.g., three-fourths of chronological age. If you are functioning in one of the domains or behaviors described for your age in § 416.924d at more than one-half, but not more than two-thirds, of your chronological age, you are said to have a marked impairment in that domain or behavior. If you are functioning in one of the domains or behaviors described for your age in § 416.924d at more than two-thirds, but not more than three-fourths of your chronological age, we describe your impairment in that domain or behavior as moderate.

(2) If you are an older child or young adolescent, from age 3 to the attainment of age 16, your impairment(s) will generally be described in the examples in terms of specific kinds of age-appropriate activities, functional abilities, or abnormal behaviors. Although it is sometimes appropriate to evaluate severity in this age group in the same terms as are used in paragraph (b)(1) of this section, which describes moderate limitation of functioning in terms of a level that is more than two-thirds but not more than three-fourths of a child's chronological age, the older a child becomes, the less precise are the means of determining this kind of profile. The spectrum of limitations that may constitute "moderate" impairment in this age group ranges from limitations that may be close to the "marked" level in severity to limitations that may be close to the "mild" level and, thus, considerably less limiting. Use of the examples as guides in the evaluation of older children and young adolescents, therefore, requires careful evaluation and judgment in each individual case, taking into account the child's age (as explained in § 416.924a) and all other relevant factors described in §§ 416.924 through 416.924d.

(3) If you are an older adolescent, aged 16 to the attainment of age 18, functional limitations are generally evaluated in terms of physical and mental activities that are the same as, or similar to, activities of young adults. Hence, the guidance and examples in paragraph (d) of this section focus on physical abilities (exertional and nonexertional) and mental abilities associated with work activities, as described in §§ 416.921, 416.945, 416.967, 416.968, and 416.969a. However, assessment of an older adolescent's abilities and limitations is to be made in an age-appropriate context, as demonstrated by performance in school, work, and other relevant settings.

(c) *How we evaluate children from birth to attainment of age 16*—(1) *Young children (birth to attainment of age 3).* If you are a newborn or young infant (birth to the attainment of age 1), we evaluate the severity of your impairment(s) with respect to four developmental domains (cognitive, communicative, motor, and social development) and your responsiveness to stimuli. If you are an older infant or toddler (age 1 to the attainment of age 3), we evaluate the severity of your impairment(s) with respect to five developmental domains (cognitive, communicative, motor, social, and personal/behavioral development). (See § 416.924d(e) and (f) for descriptions of the domains and behaviors appropriate to each age group.) Our evaluation of severity is based on comparison with the descriptors of functional severity in Listings 112.02–112.12 for childhood mental disorders: If you achieve development of only one-half or less of your chronological age in a single domain, or of only two-thirds or less of your chronological age in two domains, your limitations are at listing-level severity. Examples of when we will generally find comparable severity (as defined in paragraph (a) of this section) and, thus, find you disabled include the following situations described in paragraphs (c)(1) (i) through (ii) of this section. However, the guidance provided by these examples for evaluating young children is not intended to be a standard by which all cases must be judged. Each case must be evaluated on its own merits using the principles and guidelines of all the regulations addressing childhood disability.

(i) You are functioning in one domain (e.g., motor development) at a level that is more than one-half, but not more than two-thirds of the normal age-appropriate level for a child your age and you are functioning in another domain (e.g.,

communicative) at a level that is more than two-thirds but not more than three-fourths of the normal age-appropriate level for a child your age; or

(ii) You are functioning in three domains (e.g., cognitive, motor, and social development) at a level that is more than two-thirds, but not more than three-fourths of the normal age-appropriate level for a child your age.

(2) *Older children and young adolescents, age 3 to attainment of age 16.* If you are in this age group, we evaluate the severity of your impairment(s) with respect to five functional domains (cognitive, communicative, motor, social, and personal/behavioral function), and your concentration, persistence, and pace in the completion of age-appropriate tasks. (See § 416.924d(g) through (i) for descriptions of the domains and behaviors appropriate to this age group.) The level of severity illustrating the term "moderate," and the overall level of disability at less than the listing level, are based on comparison with the listing-level requirement for marked impairment in two domains, as described in 112.00C of the Listing of Impairments in appendix 1 of subpart P of part 404 of this chapter. In the case of preschoolers (age 3 to the attainment of age 6), it may be appropriate to evaluate the level of severity in terms of developmental age, as in younger children. Examples of when we will generally find comparable severity (as defined in paragraph (a) of this section) and, thus, find you disabled include the following situations described in paragraphs (c)(2) (i) through (ii) of this section. However, the guidance provided by these examples for evaluating older children and young adolescents is not intended to be a standard by which all cases must be judged. Each case must be evaluated on its own merits using the principles and guidelines of all the regulations addressing childhood disability.

(i) You are functioning at the marked level in one domain or behavior (e.g., in the domain of social functioning, you are generally unable to maintain age-appropriate relationships with peers and adults, with frequent serious conflicts with your family, classmates, and teachers; or in the domain of motor functioning, your range of motion in your elbows, wrists, and fingers is limited by less than 50 percent and you have difficulty writing, typing, picking up and handling small objects, carrying, reaching, and engaging in physical activities which rely heavily on the use of the upper extremities), *and* you are functioning at the moderate level in another domain or behavior (e.g., in the domain of personal/behavioral functioning, you are frequently unable to perform self-care activities independently); or

(ii) You are functioning at the moderate level in three areas (e.g., in the domain of cognitive functioning, you have a valid full scale IQ of 74; in the domain of social functioning you have limited age-appropriate relationships with peers and adults, with occasional serious conflicts with family, classmates, teachers, and others; and with respect to the behavior of concentration, persistence and pace, you are frequently unable to complete age-appropriate complex tasks, and occasionally unable to perform simple age-appropriate tasks adequately).

(d) *How we evaluate older adolescents, from age 16 to attainment of age 18*—(1) *General.* As we explain in § 416.924d(j), children aged 16 to 18 are closely approaching adulthood and can be evaluated in terms that are the same as, or similar to, those used for the evaluation of the youngest adults. Children in this age range who do not have impairment-related limitations are ordinarily expected to be able to do the kinds of physical and mental activities expected of individuals who are at least 18 years old.

(i) The discussions in this section are predicated on the foregoing principles. They describe limitations of physical and mental functions that are associated with, or related to, functions in the workplace, as demonstrated by a child's performance of age-appropriate activities in age-appropriate context, such as school, part-time or full-time work, vocational programs, and organized activities. (See also § 416.924d(j).)

(ii) As in the examples for younger children, the guidance for evaluating older adolescents is not intended to be a standard by which all cases must be judged. Each case must be evaluated on its own merits using the principles and guidelines of all of the regulations addressing childhood disability.

(2) *Mental functions.* Based on the profile of your activities and functioning in the relevant domains and behavior of cognition, communication, social functioning, personal/behavioral functioning, and your concentration, persistence, and pace in age-appropriate activities, we will consider your mental capacities to perform on a sustained basis (i.e., 8 hours a day, 5 days a week) the general kinds of mental activities that we evaluate for adults. We will consider such things as your ability to understand, carry out, and remember simple instructions; to maintain attention for extended periods of time; to use judgment; to make simple decisions; to take necessary safety precautions; to respond appropriately to supervision and peers (e.g., by being able to accept instructions and criticism, by not requiring special supervision, and by not being unduly distracted by your peers or unduly distracting to them in a school or work setting); and dealing with changes in your routine school or work setting. (See also, § 416.924d(j).)

(3) *Physical functions.* Based on the profile of your activities in the relevant domain of motor functioning, and your concentration, persistence, and pace in age-appropriate activities, we will consider your physical capacity to perform on a sustained basis (i.e., 8 hours a day, 5 days a week) the types and ranges of exertional and nonexertional activities that we evaluate for adults; e.g., sitting, standing, walking, lifting, carrying, pushing, pulling, reaching, handling, manipulating, seeing, hearing, and speaking. (See also, § 416.924d(j).)

(4) *Evaluation.* If an individualized functional assessment shows that you experience a substantial loss or deficit of capacity to perform the age-appropriate mental or physical activities described, we will find that your impairment(s) seriously interferes with your ability to function independently, appropriately, and effectively in an age-appropriate manner, and that it has substantially reduced your ability to acquire the skills needed to assume roles reasonably expected of adults. Therefore, we will conclude that you have an impairment(s) that is comparable in severity to an impairment that would disable an adult, and that you are disabled.

(i) The term "substantial loss or deficit" is not a precise number, percentage, or quantitative measure.

(ii) *Substantial loss or deficit* means that you are unable to meet the basic physical demands of at least sedentary work (as defined in § 416.967(a)); or you are unable to meet the basic mental demands of at least unskilled work (as defined in § 416.968(a)); or that you have an impairment(s) that would severely limit the potential occupational base of a person age 18 through 45 and that would justify a finding of inability to perform other work even for a person with favorable age, education, and work experience (see §§ 416.969, 416.969a, and Appendix 2 to subpart P of part 404 of this chapter).

12. Section 416.926a is amended by revising paragraphs (b)(3), (c), and (d) to read as follows:

§ 416.926a Equivalence for children.

* * * * *

(b) *How we determine the equivalence of impairments for children.* * * *

(3) If we cannot find equivalence under either of the foregoing provisions, we will assess the overall functional limitations that result from your impairment(s), i.e., what you cannot do because of your impairment(s). If you have more than one impairment, we will consider the combined effects of all your impairments on your overall functioning. We will compare the functional limitations(s) resulting from your impairment(s) with the functional consequences of any listed impairment which includes the same functional limitations; the listing we choose for comparison need not be medically related to your impairment(s). If the functional limitation(s) resulting from your impairment(s) is the same as the disabling functional consequences of a listed impairment, we will find that your impairment(s) is equivalent to that listed impairment. When we make a determination or decision using this rule, the primary focus will be on the disabling consequences of your impairment(s), as long as there is a direct, medically determinable cause for these consequences.

(c) *Responsibility for determining equivalence.* In cases where the State agency or other designee of the Secretary makes the initial or reconsideration disability determination, a State agency staff medical or psychological consultant or other designee of the Secretary (see § 416.1016) has the overall responsibility for determining equivalence. For cases in the disability hearing process, the responsibility for determining equivalence rests with either the disability hearing officer or, if the disability hearing officer's reconsidered determination is changed under § 416.1418, with the Associate Commissioner for Disability or his or her delegate. For cases at the Administrative Law Judge or Appeals Council level, the responsibility for deciding equivalence rests with the Administrative Law Judge or Appeals Council.

(d) *Examples of impairments of children that are functionally equivalent to the listings.* The following are some examples of consequences of impairments that are functionally equivalent to listed impairments. The consequences of each child's impairment(s) must be assessed to determine whether they are functionally equivalent to those of a listed impairment. Findings of equivalence based on the disabling functional consequences of a child's impairment(s) should not be limited to the examples below, because these examples do not describe all the possible effects of impairments that might be found to be equivalent to a listed impairment. As with any disabling impairment, the duration requirement must also be met (see §§ 416.909 and 416.924(a)).

(1) Documented need for major organ transplant (e.g., heart, liver).

(2) Any condition that is disabling at the time of onset, requiring a series of staged surgical procedures within 12 months after onset as a life-saving measure or for salvage or restoration of function, and such major function is not restored or is not expected to be restored within 12 months after onset of the condition.

(3) Frequent need for a life-sustaining device (e.g., mechanical ventilation), at home or elsewhere.

(4) Marked inability to stand and walk; e.g., ambulation possible only with obligatory bilateral upper limb assistance.

(5) Any physical impairment(s) or combination of physical and mental impairments causing marked restriction of age-appropriate activities of daily living and marked difficulties in maintaining age-appropriate social functioning.

(6) Any physical impairment(s) or combination of physical and mental impairments causing complete inability to function independently outside the area of one's home within age-appropriate norms.

(7) Requirement for 24-hour-a-day supervision for medical or behavioral reasons.

(8) Infants weighing less than 1200 grams at birth, until attainment of 1 year of age.

(9) Infants weighing at least 1200 but less than 2000 grams at birth, *and* who are small for gestational age, until attainment of 1 year of age. (*Small for gestational age* means a birth weight that is at or more than 2 standard deviations below the mean or that is below the 3rd growth percentile.)

(10) In an infant who has not attained age 1 year, any physical impairment(s) or combination of physical and mental impairments that satisfies the requirements of Listing 112.12.

(11) Major congenital organ dysfunction (e.g., congenital heart disease) which could be expected to result in death within the first year of life without surgical correction, and the impairment is expected to be disabling (because of residual impairment following surgery, or the recovery time required, or both) until attainment of 1 year of age.

(12) Tracheostomy or gastrostomy in a child who has not attained age 3.

13. Section 416.928 is amended by revising paragraph (a) to read as follows:

§ 416.928 Symptoms, signs, and laboratory findings.

* * * * *

(a) *Symptoms* are your own description of your physical or mental impairment. If you are a child under age 18 and are unable to adequately describe your symptom(s), we will accept as a statement of this symptom(s) the description given by the person who is most familiar with you, such as a parent, other relative, or guardian. Your statements (or those of another person) alone, however, are not enough to establish that there is a physical or mental impairment.

* * * * *

14. Section 416.994a is amended by revising the first sentence and the parenthetical cross-reference of paragraph (b)(5), paragraph (d)(2), the third sentence and the parenthetical cross-reference in paragraph (f)(1), and the second sentence and parenthetical cross-reference of paragraph (f)(2) to read as follows:

§ 416.994a How we will decide whether your disability continues or ends, disabled children.

* * * * *

(b) * * *

(5) *Are you currently disabled?* In connection with our determination that there has been medical improvement in your impairment(s) related to the ability to work, or if one of the first group of exceptions applies, and you have a severe impairment or combination of impairments, we will do an individualized functional assessment of the impact of your impairment(s) on your overall ability to function independently, appropriately, and effectively in an age-appropriate manner. (See §§ 416.924d and 416.924e.)

* * * * *

(d) * * *

(2) *Previous decision based on an individualized functional assessment.* If our most recent favorable decision was based on an individualized functional assessment, we will do a new individualized functional assessment based on the previously existing impairments. However, the new individualized functional assessment will take into consideration any current medical findings or functional limitations related to the previously existing impairments, and will be based on those functions that are appropriate to your current age.

* * * * *

(f) * * *

(1) * * * This decision will be based on new medical evidence and a new individualized functional assessment. (See §§ 416.924d and 416.924e.) * * *

(2) Substantial evidence shows that you have undergone vocational therapy (related to your ability to work). * * * This decision will be based on substantial evidence which includes new medical evidence and a new individualized functional assessment. (See §§ 416.924d and 416.924e.) * * *

* * * * *

For the reasons set out in the preamble, part 416, Subpart J, chapter III of title 20, Code of Federal Regulations, is amended as set forth below.

1. The authority citation for Subpart J continues to read as follows:

Subpart J—Determinations of Disability

Authority: Secs. 1102, 1614, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c, 1383, and 1383b.

2. Section 416.1015 is amended by redesignating paragraphs (e), (f), and (g) as paragraphs (f), (g), and (h), and by adding a new paragraph (e) to read as follows:

§ 416.1015 Making disability determinations.

* * * * *

(e) In making a determination under title XVI with respect to the disability of a child to whom paragraph (d) of this section does not apply, we will make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to the child's impairment(s) evaluates the case of the child.

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September 9, 1993

Part III

Department of Health and Human Services

Administration for Children and Families

Administration for Native Americans: Availability of Financial Assistance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–941]

Administration for Native Americans: Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA), Administration for Children and Families, (ACF), HHS.

ACTION: Announcement of availability of competitive financial assistance for American Indian, Native Hawaiian, Alaskan Natives and Native American Pacific Islanders for social and economic development projects.

SUMMARY: The Administration for Native Americans (ANA) announces the anticipated availability of fiscal year 1994 funds for social and economic development projects. Financial assistance provided by ANA is designed to promote the goal of self-sufficiency for Native American tribes and organizations through support of locally determined social and economic development strategies (SEDS) and the strengthening of local governance capabilities.

DATES: The closing dates for submission of applications are October 22, 1993, February 11, 1994, and May 20, 1994.

FOR FURTHER INFORMATION CONTACT: Lucille Dawson (202) 690–6034 or Hank Aguirre, (202) 690–6439, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Avenue, SW., 349F, Washington, DC 20201–0001.

SUPPLEMENTARY INFORMATION:

A. Introduction and Purpose

The purpose of this program announcement is to announce the anticipated availability of fiscal year 1994 financial assistance to promote the goal of social and economic self-sufficiency for American Indians, Alaskan Natives, Native Hawaiians, and Native American Pacific Islanders through projects that advance locally developed social and economic development (SEDS) strategies. Funds will be awarded under section 803(a) of the Native American Programs Act of 1974, as amended, Public Law 93–644, 88 Stat. 2324, 42 U.S.C. 2991b for local governance and social and economic development projects.

Proposed projects will be reviewed on a competitive basis against the evaluation criteria in this announcement.

The Administration for Native Americans believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes, Alaska Native villages, and in the leadership of Native American groups. Progress toward the goal of self-sufficiency requires active development with regard to the strengthening of governmental responsibilities, economic progress, and improvement of social systems which protect and enhance the health and economic well-being of individuals, families and communities. Progress toward self-sufficiency is based on the community's ability to develop a social and economic development strategy and to plan, organize, and direct resources in a comprehensive manner to achieve the community's long-range goals. A Native American community is self-sufficient when it can generate and control the resources which are necessary to meet the needs of its members and to meet its own social and economic goals.

The Administration for Native Americans bases its program and policy on three interrelated goals:

(1) *Governance:* To assist tribal and village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

(2) *Economic Development:* To foster the development of stable, diversified local economies and economic activities which will provide jobs and promote economic well-being.

(3) *Social Development:* To support local access to, control of, and coordination of services and programs which safeguard the health and well-being of people, provide support services and training so people can work, and which are essential to a thriving and self-sufficient community.

To achieve these Federal agency goals, ANA supports tribal and village governments, and other Native American organizations, in their efforts to develop and implement community-based, long-term governance, social and economic development strategies (SEDS). These strategies must promote the goal of self-sufficiency in local communities.

The ANA SEDS approach supports ANA's Federal agency goals and is based on two fundamental principles:

(1) The local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs aimed at achieving those goals. The unique mix of socio-economic, political, and cultural factors in each community makes local self-determination necessary. The local community is in the best position to apply its own cultural, political, and socio-economic values to its long-term strategies and programs.

(2) Economic, governance, and social development are interrelated. Development in one area should be balanced with development in the others to move toward self-sufficiency. Consequently, comprehensive development strategies should address all aspects of the governmental, economic, and social infrastructures needed to develop self-sufficient communities.

The principles of the SEDS approach discussed above assume these definitions of important terms linked to the SEDS process:

- "Governmental infrastructure" includes the constitutional, legal, and administrative development requisite for independent governance.
- "Economic infrastructure" includes the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.
- "Social infrastructure" includes those components through which health and economic well-being are maintained within the community and that support governance and economic goals.

These definitions should be kept in mind as a local SEDS strategy is developed as part of the application for project funding. Without a careful balance between governmental, economic and social development infrastructures, a community's development efforts could be jeopardized.

For example, expansion of social services, without providing opportunities for employment and economic development, could lead to dependency on social services. Conversely, inadequate social support services and training could seriously impede productivity and local economic development. Additionally, the governmental infrastructures must be put in place to support or institute social and economic development and growth.

B. Proposed Projects To Be Funded

1. General Considerations

The Administration for Native Americans assists eligible applicants (see section C below) to undertake one- to three-year development projects that are a part of long-range comprehensive plans to move toward social and economic self-sufficiency. Applicants

must also propose a concrete, locally determined strategy to carrying out a proposed project and fundable activities. Local long-range planning must consider the maximum use of all available resources, how these resources will be directed to development opportunities, and present a strategy for overcoming the local issues that hinder social and economic growth in the community. The Administration for Native Americans encourages applicants to design project strategies to achieve their specific but interrelated governance, and social and economic objectives and to use available human, natural, financial, and physical resources to which the applicant has access.

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period. "Completed" means that the project ANA funded is finished, and the desired result(s) have been attained. "Self-sustaining" means that a project will continue without outside resources. "Supported by other than ANA funds" means that the project will continue beyond the ANA project period, but supported by funds other than ANA's.

2. Activities That Cannot Be Funded by ANA

The Administration for Native Americans does not fund programs which operate indefinitely or require ANA funding on a recurring basis.

The Administration for Native Americans does not fund objectives or activities for the core administration of an organization. "Core administration" is defined as funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.

However, functions and activities that are clearly project related are eligible for grant funding. For example, the management and administrative functions necessary to carry out an ANA approved project are not considered "core administration" and are therefore grant eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.

3. SEDS Goals and Potential Activity Focus

This sub-section discusses SEDS goals and the range of possible activities that are thought to be consistent with each of the three SEDS goals below. Applicants should define their own activities, keeping in mind the range of options that encompass each goal.

Social and Economic Development Strategies (SEDS)

Building on developing the foundation for strong local governance, ANA supports tribal and village governments' and other Native American organizations' corollary plans to achieve coordinated and balanced development through the implementation of social and economic development strategies (SEDS). These interrelated strategies and their objectives should describe in detail how the community coordinates and directs all resources (Federal and non-Federal) toward locally determined priorities, and how the community and its members are assisted in ways that promote greater economic and social self-sufficiency. In addition, SEDS strategies that combine balanced social and economic and governance goals should address how to obtain independent sources of revenue for the community or how the venture supports the long-term goals.

Goal 1: Governance Development. Effective governance is a necessary foundation and condition for the social and economic development of Indian tribes, Alaska Native villages, and Native American groups. Efforts to achieve effective governance include: (1) Strengthening the governmental, judicial and/or administrative infrastructures of tribal and village governments; (2) increasing the ability of tribes, villages, and Native American groups and organizations to plan, develop, and administer a comprehensive program to support community social and economic self-sufficiency; and (3) increasing awareness of and exercising the legal rights and benefits to which Native Americans are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, or as citizens of a particular state, or of the United States. Under its governance development goal ANA strongly encourages tribal and village councils, and other governing bodies, to strengthen and streamline their established administrative and management procedures that influence their institutional management systems. The purpose of this capacity is to develop and implement effective social and economic development strategies and their comprehensive community long term goals and to improve their day-to-day governmental management. By improving governance and management capabilities, Indian Tribes, Alaska Native villages, and Native American groups can better define and achieve their goals, promote greater efficiency, and the effective use of all available resources.

Applications in this area are generally under the following categories:

- Clarification of tribal status;
- Federal or State tribal recognition;
- Amendments to tribal constitutions; court procedures and functions; by-laws or codes; and council or executive branch duties and functions; and,
- Improvements in administration and management of tribes/villages.

Goal 2: Economic Development is the long-term mobilization and management of economic resources to achieve a diversified economy. It is characterized by the effective and planned distribution of economic resources, services, and benefits. It also includes the participation of community members in the productive activities and economic investments of the community, and the pursuit of economic interests through methods that balance economic gain with social development, supported by an adequate governmental infrastructure.

Goal 3: Social Development is the mobilization and management of resources for the social benefit of community members. It involves the establishment of institutions, systems, and practices that contribute to the social environment desired by the community. This includes the development of, access to, and local control over, the projects and institutions that protect the health and economic well-being of individuals and families, and preserve the values, language, and culture of the community.

C. Eligible Applicants

1. Who Is Generally Eligible To Apply?

Current ANA grantees whose project period terminates in fiscal year 1994 (October 1, 1993–September 30, 1994) are eligible to apply for a grant award under this program announcement. (The Project Period is noted in Block 9 of the "Financial Assistance Award" document).

Additionally, provided they are not current ANA grantees, the following organizations are eligible to apply:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated non-Federally recognized Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- Public and nonprofit private agencies serving Native Hawaiians;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served may be located on these islands or in the United States);
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Associations in Alaska with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects; and
- Nonprofit Alaska Native community entities or tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs.

2. Who Is Not Generally Eligible

Colleges and universities are not eligible applicants unless they serve Native Hawaiians or the other Native American Pacific Islanders. Native American Pacific Islanders are defined as American Samoan Natives and indigenous peoples of Guam, the Northern Marianas, and Palau.

This program announcement does not apply to current grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

3. Special Circumstances for Alaska Native Organizations

A separate program announcement for fiscal year 1994 funding will also be published specifically for Alaska Native applicants (Program Announcement 93612–942). In Fiscal Year 1994, Alaska Native entities are eligible to submit an application under the special announcement for Alaska Native Organizations (93612–942) or this announcement (93612–941). However, when applying under either announcement, Alaskan Native entities are limited to a single application for each closing date.

An Alaska Native applicant may apply for the:

(1) October 22, 1993 closing date of Program Announcement 93612–941; and

(2) February 11, 1994 closing date for Program Announcement 93612–941 OR for Program Announcement 93612–942; and

(3) May 20, 1994 closing date for Program Announcement 93612–941 OR for Program Announcement 93612–942.

D. Available Funds

Approximately $14 million of financial assistance is anticipated to be available under this program announcement for American Indian, Alaska Native, Native Hawaiian, and Native American Pacific Islander projects. This program announcement is being issued in anticipation of the appropriation of funds for FY 1994, and is contingent upon sufficient final appropriations.

Each tribe, Native American organization, or other eligible applicant can receive only one grant award under this announcement. The Administration for Native Americans will accept only one application from any one applicant. If an eligible applicant sends in two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

E. Multi-Year Projects

Applicants may apply for projects of up to 36 months duration. A multi-year project is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. Applicants are encouraged to develop multi-year projects. A multi-year project *cannot* be a series of unrelated objectives with activities presented in chronological order over a two or three year period.

The budget period for each multi-year project grant is 12 months. The non-competitive funding for the second and third years is contingent upon the grantee's satisfactory progress in achieving the objectives of the project, according to the approved Objective Work Plan (OWP), the availability of Federal funds, and compliance with the applicable statutory, regulatory and grant requirements, including timely objective progress reports (OPRs).

F. Grantee Share of Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $300,000 in Federal funds (based on an award of $100,000 per budget period for three years), must include a match of at least $25,000 (20% total project cost per budget year). An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

Applications originating from American Samoa, Guam, Palau, or the Commonwealth of the Northern Mariana Islands are covered under section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for local matching funds under $200,000 (including in-kind contributions).

G. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

H. The Application Process

1. Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, room 348F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201–0001, Attention: Earldine Glover. Phone: (202) 690–5781.

2. Application Submission

One signed original, and two copies, of the grant application, including all attachments, must be hand delivered or mailed by the closing date to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, Room 341F, Hubert H. Humphrey Building, 200 Independence

Avenue, SW., Washington, DC 20201–0001, Attention: ANA 93612–941.

The application must be signed by an individual authorized (1) to act for the applicant tribe or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

3. Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken on each grant application received under this program announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process (discussed in section I below). An independent review panel consisting of reviewers familiar with Native American Tribes, communities and organizations evaluates each application against the published criteria in this announcement. The review will result in a numerical score attributed to each application. The results of this review assist the Commissioner to make final funding decisions.
- The Commissioner's funding decision also takes into account the analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.
- After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within approximately 120 days of the closing date. The notification will be accompanied by a critique including recommendations for improving the application. Successful applicants are notified through an official Financial Assistance Award (FAA) document. The Administration for Native Americans staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-Federal matching share requirement.

I. Review Process and Criteria

1. Initial Application Review

Applications submitted by the closing date and verified by the postmark under this program announcement will undergo a pre-review to determine that:

- The applicant is eligible in accordance with the Eligible Applicants Section of this announcement; and
- The application narrative, forms and materials submitted are adequate to allow the review panel to undertake an indepth evaluation. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).

2. Applicants Rejected for Organizational or Activities Ineligibility

Applicants who are initially rejected from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. Section 810(b) (42 U.S.C. 2991h) of the Native American Programs Act Amendments provides for an appeals process when ANA determines that an organization or activities are ineligible for assistance. Section 810(b) (42 U.S.C. 2991h) provides that:

"* * * (b) If an application is rejected on the grounds that the applicant is ineligible or that activities proposed by the applicant are ineligible for funding, the applicant may appeal to the Secretary, not later than 30 days after the date of receipt of notification of such rejection, for a review of the grounds for such rejection. On appeal if the Secretary finds that an applicant is eligible or that its proposed activities are eligible, such eligibility shall not be effective until the next cycle of grant proposals are considered by the Administration * * *"

When an applicant or the activities proposed by the applicant are rejected as ineligible, the applicant will be advised of the appropriate appeal process.

3. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the five evaluation criteria listed below. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success. A proposed project should reflect the purposes of ANA's SEDS policy and program goals (described in Introduction and Program Purposes of this announcement), include a social and economic development strategy, and address the specific developmental steps toward self-sufficiency that the specific tribe or Native American community is undertaking.

The five programmatic and management criteria are closely related to each other. They are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this announcement and these criteria. The five evaluation criteria are:

(1) *Long-Range Goals and Available Resources.* (15 points)

(a) The application explains how specific social, governance and economic long-range community goals related to the proposed project and strategy. It explains how the community intends to achieve these goals. It documents the type of involvement and support of the community in the planning process and implementation of the proposed project. The goals are described within the context of the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary). The application has a clearly delineated social and economic development (SEDS) strategy.

(b) Available resources (other than ANA) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support. "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or documents that factually establish the authenticity of other resources. Letters and other documents of commitment are binding in that they specifically state the nature, amount and conditions under which another agency or organization will support a project funded with ANA monies. For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Applicant statements that additional funding will be sought from

other specific sources is not considered a binding commitment of outside resources.

Note: Applicants from the Native American Pacific Islands are not required to provide a 20% match for the non-Federal share if it is under $200,000 and may not have points reduced for this policy. They are, however, expected to coordinate non-ANA resources for the proposed project, as are all of ANA applicants.

(2) *Organizational Capabilities and Qualifications.* (10 points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well defined. The application clearly shows the successful management of prior or current projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions or resumés of key personnel, including those of consultants, are presented. The position descriptions and resumés relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly related to the personnel staffing required to achieve of the project objectives. Resumés indicate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumés set forth the qualifications that the applicant believes are necessary for overall quality management of the project.

(3) *Project Objectives, Approach and Activities.* (45 points)

The application proposes specific project objective work plans with activities related to the SEDS strategy and the overall long-term goals. The objective work plan(s) in the application include(s) project objectives and activities for each budget period proposed and demonstrate(s) that each of the objectives and its activities:

- Are measurable and/or quantifiable in terms of results or outcomes;
- Are based on the fully described and locally determined balanced SEDS strategy narrative for governance or social and economic development;
- Clearly relate to the community's long-range goals which the project addresses;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicate when the objective, and major activities under each objective, will be accomplished;
- Specify who will conduct the activities under each to achieve the objective; and,
- Support a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) *Results or Benefits Expected.* (20 points)

The proposed objectives will result in specific, measurable outcomes to be achieved that will clearly contribute to the completion of the overall project and will help the community meet its goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) *Budget.* (10 points)

There is a detailed budget provided for each budget period requested. The budget is fully explained. It justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. (Applicants from the Native American Pacific Islands are exempt from the non-Federal share requirement). Sufficient cost and other detail is included and explained to facilitate the determination of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project. For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.

J. Guidance to Applicants

The following is provided to assist applicants in developing a competitive application.

(1) Program Guidance

- The Administration for Native Americans funds projects that present the strongest prospects for fulfilling a community's governance, social or economic development leading to its self-sufficiency. The Administration for Native Americans does not fund on the basis of need alone.
- In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these issues and/or progress to date, as well as the size of the population to be served. The appropriateness and potential of the proposed project in strengthening and promoting the goal of the self-sufficiency of a community will be determined by reviewers.
- An application should describe a clear relationship between the proposed project, the SEDS strategy, and the community's long-range goals or plan.
- The project application must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact on the community that the project will have.
- Supporting documentation or other testimonies from concerned interests other than the applicant should be included to provide support for the feasibility and the commitment of other resources to implement or conduct the proposed project.

In the ANA Project Narrative, Section A of the application package, Resources Available to the Proposed Project, the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.

- Reviewers of applications for ANA indicate they are better able to evaluate whether the feasibility has been addressed and the practicality of a proposed economic development project, or a new business, if the applicant includes a business plan that clearly describes its feasibility and the plan for the implementation and marketing of the business. (ANA has included sample business plans in the application kit). It is strongly recommended that an applicant use these as a guide to its development of an economic development project or business that is part of the application. The more information provided a review panel, the better able the panel is to evaluate the potential for the success of the proposed project.
- A "multi-purpose community-based native American organization" is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several differing areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational

activities, and the delivery of human service such as health, day care, counseling, education, and training.

(2) Technical Guidance

- It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications for social and economic development projects.
- Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and to score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.
- There is no maximum or minimum amount of Federal funds that may be requested.
- For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.
- The Administration for Native Americans will not fund essentially identical projects serving the same constituency.
- The Administration for Native Americans will accept only one application from any one applicant. If an eligible applicant sends in two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.
- An application from a Federally recognized tribe or an organization serving members of a Federally recognized tribe must be from the governing body of the tribe.
- An application from a Native American organization must be from the governing body of the applicant.
- The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.
- The Administration for Native Americans requires that the pages of the application be numbered sequentially from the first page, and that a table of contents be provided. This allows for easy reference during the review process. Simple tabbing of the sections of the application is also helpful to the reviewers.
- Two copies of the application plus the original are required.
- The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.
- The Approach page (Section B of the ANA Program Narrative) for each Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities if the applicant is funded.
- The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application's contents propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as governing.
- Line 15a of the 424 should specify the Federal funds requested for the first Budget Period, not the entire project period.
- If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award regarding appropriate use of program income. (See 45 CFR part 74 and part 92.)
- Applicants proposing multi-year projects must fully describe each year's project objectives and activities. Separate Objective Work Plans (OWPs) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.
- Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.

(3) Projects or Activities That Generally Will Not Meet the Purposes of This Announcement

- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.
- Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's SEDS strategy long-range development plan. The Administration for Native Americans is not interested in funding "wish lists" of business possibilities. The Administration for Native Americans expects written evidence of the solid investment of time and consideration on the part of the applicant with regard to the development of business plans. Business plans should be developed based on market analysis and feasibility studies on the potential success to the business prior to the submission of the application.
- The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.
- Core administration functions, or other activities, that essentially support only the applicant's on-going administrative functions.
- Project goals which are not responsive to one or more of the three interrelated ANA goals (Governance Development, Economic Development, and Social Development).
- Proposals from consortia of tribes that are not specific with regard to support from, and roles of, member tribes. The Administration for Native Americans expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members. In situations where both consortia of tribes and individual consortia tribal members receive ANA funding, ANA expects that consortia groups will not seek funding that duplicates what their members are doing.
- Projects which should be supported by other Federal funding sources that are appropriate, and available, for the proposed activity.
- Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period.
- The purchase of real estate (see 45 CFR 1336.50(e)) or construction (see ACF Grants Administration Manual Ch. 3, § E.).
- Projects originated and designed by consultants who are not members of the applicant organization, tribe or village who prepared the application and provide a major role for themselves in the proposed project.

The Administration for Native Americans will critically evaluate applications in which the acquisition of major capital equipment (i.e., oil rigs, agricultural equipment, etc.) is a major component of the Federal share of the budget. During negotiation, such expenditures may be deleted from the

budget of an otherwise approved application, if not fully justified by the applicant and not deemed appropriate to the needs of the project by ANA.

K. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record ANA grant applications under the Program Narrative Statement by OMB.

L. Due Date for Receipt of Applications

The closing dates for applications submitted in response to this program announcement are October 22, 1993, February 11, 1994, and May 20, 1994.

M. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section H, The Application Process: Application Submission.

The Administration for Native Americans will not accept applications submitted via facsimile (FAX) equipment.

Deadlines

Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting an announced closing date if they are either:

(1) Received on or before the deadline date at the address specified in Section H, Application Submission, or

(2) Sent on, or before, the deadline date and received in time for the ANA independent review. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark date from the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

Late Applications

Applications which do not meet the criteria in the above paragraph of this section are considered late applications and will be returned to the applicant. The Administration for Native Americans shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines

The Administration for Native Americans may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ANA does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 93.612 Native American Programs)

Dated: June 21, 1993.

Dominic Mastrapasqua,

(Acting) Commissioner, Administration for Native Americans.

[FR Doc. 93–21925 Filed 9–8–93; 8:45 am]

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federal register

Thursday
September 9, 1993

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 800

Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 800

RIN 1029–AB61

Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) proposes to amend its regulations by revising the provisions and requirements for an Alternative Bonding System. OSM proposes to amend its bonding regulations to assure adequate funds for reclamation in the event of the termination of an alternative system, and to ensure the United States has the ability to effect all necessary and expedient transfers of authority should OSM become a successor Regulatory Authority (RA) where such a system exists. The proposed rule is the result of a report recommendation made by an OSM Ad Hoc Bonding Committee.

The proposed rule is warranted because a major finding of an OSM Ad Hoc Bonding Committee report was that the alternative systems, as presently constituted, pose sufficient risk to reclamation in the event of ABS failure.

DATES: *Written comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on November 8, 1993.

Public hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, DC; Denver, Colorado; and Knoxville, Tennessee on November 1, 1993. Upon request, OSM will also hold public hearings in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota and Washington at times and on dates to be announced prior to the hearings. OSM will accept requests for public hearings until 5 p.m. Eastern time on October 15, 1993. Individuals wishing to attend but not testify at any hearing should contact the person identified under **FOR FURTHER INFORMATION CONTACT** beforehand to verify that the hearing will be held.

ADDRESSES: *Written comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, rm. 660 N.C., 800 North Capitol Street NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660 N.C., 1951 Constitution Avenue NW., Washington, DC 20240.

Public hearings: Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue, SE., Knoxville, Tennessee. The addresses for any hearings in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota and Washington will be announced prior to the hearings.

Request for public hearings: Submit requests orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Richard Lord, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave. NW., Washington, DC 20240: Telephone (202) 343–3375.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see **ADDRESSES**). Comments received after the close of the comment period or delivered to addresses other than those listed above (see **DATES**) may not necessarily be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The times, dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see **DATES** and **ADDRESSES**). The times, dates and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr. Lord (see **FOR FURTHER INFORMATION CONTACT**) either orally or in writing of the desired hearing location by 5 p.m. Eastern time October 15, 1993. If no one has contacted Mr. Lord to express an interest in participating in a hearing in a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and assure an accurate record, OSM requests that persons who testify at the hearing give the transcriber a copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see **ADDRESSES**) an advance copy of their testimony.

II. Background

Authority for the rule is found in title V, section 509(c) of the Surface Mining Control and Reclamation Act of 1977 (the Act or SMCRA), 30 U.S.C. 1259. Section 509(c) of SMCRA provides for the approval of an Alternative Bonding System (ABS) that achieves the objectives and purposes of the Act. Implementing regulations 30 CFR 800.11(e) require that an ABS assures that the RA has available sufficient money to complete the reclamation plan for any areas which may be in default at any time, and provide a substantial economic incentive for the permittee to perform the reclamation. However, OSM believes that current regulatory language concerning an ABS is inadequate to safeguard reclamation in the event an ABS fails, but that ABS viability may be assured with explicit regulatory statement regarding ABS termination.

III. Discussion of Proposed Rule

According to an OSM Ad Hoc Bonding Committee finding, there is a significant financial and reclamation risk associated with the existing ABSs. OSM's concern is for the continued solvency of an ABS should an RA choose to adopt a new bonding system and/or terminate an existing ABS, of if a state's program is substituted by a Federal program.

Existing regulations do not provide sufficient reclamation fund safeguards with respect to ABS termination or State program substitution. Therefore, DOI proposes to amend 30 CFR 800.11 Requirement to file a bond, by adding paragraph (f) which would add provisions and stipulations for an ABS.

Section 800.11(f)(1) would assure that in the event an ABS terminates, it would remain viable and liable for the generation of income needed to satisfy existing forfeitures and future liability of the sites covered by the ABS, or until another approved bonding mechanism is put in place to substitute the coverage by the ABS. Section 800.11(f)(2) would assure that in the event of a 30 CFR part 733 action, the ABS fund and all supporting legal documents, such as indemnity agreements, would be transferable to the United States, OSM, that would become the successor RA under a Federal program.

IV. Procedural Matters

Effect in Federal Program States and on Indian Lands

The proposed rules apply through cross-referencing in those States with Federal Programs. This includes California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington. The Federal Programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942 and 947 respectively. The proposed rules also apply through cross-referencing to Indian lands under Federal programs for Indian lands as provided in 30 CFR part 750.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule does not distinguish between small and large entities. The economic effects of the proposed rule are estimated to be minor and no incremental economic effects are anticipated as a result of the rule.

Federal Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget as approved under 44 U.S.C. 3501 *et seq.*

Executive Order 12612 on Federalism

Executive Order 12612 requires that Federal departments and agencies evaluate regulatory proposals to determine whether they would have a substantial impact on Federalism. The Executive Order sets forth fundamental Federalism principles, criteria for Federalism policymaking, and requirements for Federalism assessments. The proposed rule has been reviewed according to the Executive Order on Federalism and it was determined that the proposed rule has Federalism implications. A Federalism Assessment was prepared and is on file in the administrative record for the rulemaking. The Federalism Assessment concluded that the rule would shift some policymaking decisions from the States to the Federal government by establishing standards for the approval of alternative bonding systems. However, the authority to do so is already implicit in SMCRA. Therefore, the Federalism implications are not considered to be substantial.

Executive Order 12778 on Civil Justice Reform

This proposed rule has been reviewed under the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this proposed rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

The rule, if adopted, will have the same preemptive effect as other standards adopted pursuant to SMCRA. To retain primacy, States have to adopt and apply standards for their regulatory programs that are no less effective than those set forth in OSM's rules. Any State law that is inconsistent with or that would preclude implementation of this rule would be subject to preemption under SMCRA section 505 and implementing regulations at 30 CFR 730.11. To the extent that the rule would result in preemption of State law, the provisions of SMCRA are intended to preclude inconsistent State laws and regulations. This approach is established in SMCRA, and has been judicially affirmed. See *Hodel* v. *Virginia Surface Mining and Reclamation Ass'n.*, 452 U.S. 264 (1981).

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified.

This rule would modify the implementation of SMCRA as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are effected by this rule.

C. Does not rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA.

D. What is the retroactive effect, if any, to be given to the regulation?

This rule is not intended to have retroactive effect.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under section 526(a) of SMCRA, 30 U.S.C. 1276(a).

Prior to any judicial challenge to the application of the rule, however, administrative procedures must be exhausted. In situations involving OSM application of the rule, applicable administrative procedures may be found at 43 CFR part 4. In situations involving State regulatory authority application of provisions equivalent to those contained in this rule, applicable administrative procedures are set forth in the particular State program.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items?

Terms which are important to the understanding of this rule are set forth in 30 CFR 700.5 and 701.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

The Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA), and has made a tentative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is anticipated that a Finding of No Significant Impact (FONS) will be approved for the final rule in accordance with OSM procedures under NEPA. The EA is on file in the OSM Administrative Record at the address specified previously (see **ADDRESSES**). An EA will be completed on the final

rule and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Author

The principal author of this rule is Richard Lord, Division of Technical Services, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone (202) 343–3375.

List of Subjects in 30 CFR Part 800

Insurance, Reporting and recordkeeping requirements, Surety bonds, Surface mining, Underground mining.

Dated: June 14, 1993.

Bob Armstrong,

Assistant Secretary for Land and Minerals Management.

Accordingly, it is proposed to amend 30 CFR part 800 as set forth below:

PART 800—BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER REGULATORY PROGRAMS

1. The authority citation for part 800 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

2. Section 800.11 is amended by adding paragraph (f) to read as follows:

§ 800.11 Requirement to file a bond.

* * * * *

(f) An OSM approved State or Federal alternative bonding system must also provide the following assurance:

(1) The alternative, if terminated, will continue to generate income in the amount sufficient to cover the period of liability for any area in accordance with § 800.13 until the reclamation plan for any area in default is completed, or until performance bond liability is transferred to another approved performance bond; and

(2) No alternative may be approved under the provisions of this section unless the alternative provides that in the event the State program is substituted by direct Federal enforcement, or in the event the approval of the State program is withdrawn in accordance with 30 CFR part 733, the reclamation funds and the supporting performance bond documents of the alternative shall transfer to and become payable only to the United States.

* * * * *

[FR Doc. 93–21920 Filed 9–8–93; 8:45 am]

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federal register

Thursday
September 9, 1993

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Ingrown Toenail Relief Drug Products; Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 80N–0348]

RIN 0905–AA06

Ingrown Toenail Relief Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any ingrown toenail relief drug product for over-the-counter (OTC) human use is not generally recognized as safe and effective and is misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on OTC ingrown toenail relief drug products that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: March 9, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 17, 1980 (45 FR 69128), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC ingrown toenail relief drug products, together with the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by January 15, 1981. Reply comments in response to comments filed in the initial comment period could be submitted by February 16, 1981.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC ingrown toenail relief drug products was published in the **Federal Register** of September 3, 1982 (47 FR 39120). Interested persons were invited to file by November 2, 1982, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by January 2, 1983. New data could have been submitted until September 3, 1983, and comments on the new data until November 3, 1983.

In the **Federal Register** of November 7, 1990 (55 FR 46914), the agency published a final rule in 21 CFR part 310 establishing that certain active ingredients that had been under consideration in a number of OTC drug rulemaking proceedings were not generally recognized as safe and effective. That final rule was effective on May 7, 1991, and included, in § 310.545(a)(11), chloroxylenol and urea, active ingredients under consideration in the rulemaking for OTC ingrown toenail relief drug products. These ingredients were determined to be nonmonograph because no additional data had been submitted establishing that they were generally recognized as safe and effective for ingrown toenail relief. Final agency action on all other OTC ingrown toenail relief drug products occurs with the publication of this final rule.

In the proposed rule, the agency did not propose any OTC ingrown toenail relief active ingredient as generally recognized as safe and effective and not misbranded. However, the agency proposed monograph labeling in the event that data were submitted that resulted in the upgrading of any ingredient to monograph status in the final rule. In this final rule, however, no ingredient has been determined to be generally recognized as safe and effective for use in OTC ingrown toenail relief drug products. Therefore, proposed subpart D of 21 CFR part 358 for OTC ingrown toenail relief drug products is not being issued as a final regulation.

This final rule declares OTC drug products containing active ingredients for ingrown toenail relief to be new drugs under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)), for which an application or abbreviated application (hereinafter called application) approved under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 is required for marketing. In the absence of an approved application, products containing these drugs for this use also would be misbranded under section 502 of the act (21 U.S.C. 352). In appropriate circumstances, a citizen petition to establish a monograph may be submitted under 21 CFR 10.30 in lieu of an application.

This final rule amends 21 CFR part 310 to include drug products containing ingrown toenail relief ingredients by adding new § 310.538 (21 CFR 310.538) to subpart E. The inclusion of OTC ingrown toenail relief drug products in part 310 follows FDA's established policy for regulations in which there are no monograph conditions. (See, e.g., §§ 310.510, 310.519, 310.525, 310.526, 310.532, 310.533, and 310.534.) If, in the future, any ingredient is determined to be generally recognized as safe and effective for use in an OTC ingrown toenail relief drug product, the agency will promulgate an appropriate regulation at that time.

The OTC drug procedural regulations (21 CFR 330.10) now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA does not use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage. In place of Category I, the term "monograph conditions" is used; in place of Categories II or III, the term "nonmonograph conditions" is used.

In the proposed regulation for OTC ingrown toenail relief drug products (47 FR 39120), the agency advised that it would provide a period of 12 months after the date of publication of the final monograph in the **Federal Register** for relabeling and reformulation of ingrown toenail relief drug products to be in compliance with the monograph. Although data and information were submitted on tannic acid and sodium sulfide 1 percent in response to the proposed rule, they were not sufficient to support monograph conditions, and no monograph is being established at this time. Therefore, ingrown toenail relief drug products that are subject to this rule are not generally recognized as safe and effective and are misbranded (nonmonograph conditions). In the advance notice of proposed rulemaking

(45 FR 69128), the agency advised that conditions excluded from the monograph (Category II) would be effective 6 months after the date of publication of a final monograph in the **Federal Register**. Because no OTC drug monograph is being established for this class of drug products, the agency is adopting this 6-month effective date for the nonmonograph conditions for these drug products. Therefore, on or after March 9, 1994, no OTC drug products that are subject to this final monograph may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved application.

In response to the proposed rule on OTC ingrown toenail relief drug products, two drug manufacturers submitted comments. Copies of the comments received are on public display in the Dockets Management Branch (address above). Additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comments

A. Comments on Ingredients

1. One comment requested Category I status for tannic acid contending that it has the capability to harden the nail groove by hardening the skin around the nail, which the Panel considered the prime treatment consideration in relief of ingrown toenail (45 FR 69128 at 69131). The comment reviewed the Panel's assessment of tannic acid and disagreed with the agency's assessment of data discussed in the tentative final monograph (comment 5, 47 FR 39120 at 39122).

The comment submitted clinical data (Refs. 1 and 2) to support the epidermal hardening action of tannic acid. One study (Ref. 1) was a double-blind, randomized, parallel, multi-centered, outpatient study of 53 subjects who applied 25 percent tannic acid in isopropyl alcohol (83 percent by volume) or isopropyl alcohol (83 percent by volume) alone to their ingrown toenails 3 or 4 times a day. Symptoms were evaluated during the initial visit, after 7 days, and at the completion of the 14-day study. The study evaluated epidermal hardening, tenderness, infection, skin temperature, inflammation, edema, nail-flap hypertrophy, and cellulitis. At the completion of the study, global evaluations were made by both the investigator and the subjects using a scale of 1 to 6 with a score of 1 equal to complete clinical control of the condition, a score of 5 equal to exacerbation of the condition, and a score of 6 representing no evaluation. In addition, each subject was provided with a self-rating daily diary and instructed to record the relief of pain, swelling, and redness, using a four-point scale: none, mild, moderate, and severe.

The comment submitted the results of a second double-blind, randomized, parallel study of 42 subjects using a modified in vivo technique (Ref. 2) to substantiate the epidermal hardening effect of tannic acid. The technique utilized blunt (nonabrasive) probes connected to a desktop computer terminal to objectively determine skin softness and smoothness. Subjects applied either 25 percent tannic acid in 83 percent isopropyl alcohol (21 subjects) or 83 percent isopropyl alcohol alone (21 subjects) 3 or 4 times daily for 7 days. Epidermal hardening was measured on the skin proximal to an ingrown toenail and at a control site on each subject on the initial visit and again after 7 days. The comment contended that the study's results demonstrate a statistically significant hardening effect of the tannic acid solution on skin surrounding ingrown toenails with a p-value of .008.

As discussed in the tentative final monograph (47 FR 39120 at 39122), the agency concurs with the Panel that evidence was insufficient to show that tannic acid is effective in relieving the symptoms of ingrown toenail by hardening the skin and shrinking the soft tissue surrounding an ingrown toenail because the studies submitted to the Panel did not test tannic acid alone. The agency has reviewed the new clinical data and determined that they also are inadequate to support the effectiveness of tannic acid for the relief of ingrown toenails. In the first study (Ref. 1), the subjects selected were to have been classified as having "mild to moderate ingrown toenail" or "acute mild to moderate ingrown toenail," yet several subjects in the study had ingrown toenails for long periods of time (ranging up to 3 years), and one subject had had previous surgery and was without a nail. Thus, it was not clear what is meant by "acute, mild to moderate" ingrown toenail and it appears that some of the subjects were not appropriately included in the study. Subject selection was to be based on both inclusion characteristics (age and nail involvement) and exclusion characteristics (pregnancy, preexisting diseases, sensitivities, deformed nails, and infection). These criteria were not followed. Of the 53 subjects in the study, 14 should not have been included according to the protocol.

Target symptoms and parameters were evaluated on three visits; however, the grading scale was highly subjective with inconsistencies occurring between investigators and between investigators and subjects. Adjunctive therapy, including sandals, open toe shoes, and cut shoes, was used in a least 11 subjects with no evaluation made of the effects of this additional treatment.

The statistical analysis and conclusions addressed only a few of the test parameters. Comparisons of nail-flap hypertrophy, nail-cutting difference, pain difference, and redness difference were not made between the second and third visits and overall. The agency concludes that in a study to demonstrate the "relief of symptoms of ingrown toenail," all data for all symptoms used as test parameters need to be included and considered.

While the study's conclusions were drawn from 47 of the 53 subjects enrolled, data from only 26 subjects can be considered due to both protocol and investigational discrepancies on 27 subjects. Even if only the 26 subjects who meet the protocol were considered, 50 percent or greater relief of symptoms was obtained in 28 percent of the tannic acid group compared to 34 percent of the control group. Therefore, it could be argued that the base was more effective than the tannic acid.

In the second study (Ref. 2), the comment contends that the study shows a 46 percent increase in skin hardness for the tannic acid group and a 6 percent decrease in skin hardness for the alcohol-control group. The agency notes, however, that no other symptoms of ingrown toenail relief were assessed. While the study may provide support for tannic acid as a "skin hardener," it is not acceptable as adequate proof of effectiveness for tannic acid for the relief of other symptoms of ingrown toenail, such as pain, inflammation, and tenderness.

Although the comment contends that tannic acid hardens epidermal tissue and reduces inflammation significantly better than the base alone, the submitted studies do not show significant differences in favor of tannic acid. Based on the deficiencies in both studies, as noted above, the agency concludes that these data are not acceptable as adequate proof of effectiveness that tannic acid relieves symptoms of ingrown toenails.

References

(1) "A Comparison of the Efficacy of Tannic Acid in Isopropyl Alcohol versus Isopropyl Alcohol Base for Relief of

Discomfort of Ingrown Toenail," Comment No. C00007, Docket No. 80N–0348, Dockets Management Branch.

(2) "Double Blind, Randomized Parallel Study of the Effect of a Tannic Acid Solution on the Hardness of the Skin of People with Onychocryptosis," Comment No. C00009, Docket No. 80N–0348, Dockets Management Branch.

2. One comment submitted data (Ref. 1) to support the use of sodium sulfide 1 percent for the temporary relief of pain associated with ingrown toenails. In addition, the comment stated that the data support an expanded indications statement for products containing sodium sulfide: "Relieves pain by softening imbedded (ingrown) toenails." The data resulted from a well-controlled, double-blind, multicenter clinical study involving a total of 61 subjects in two separate trials. In both trials, the test subjects applied sodium sulfide 1 percent for 7 days, while the control subjects used a placebo consisting of the identical vehicle without the active ingredient. One of the subjects treated two toes, while another subject dropped out after 5 days.

The agency has evaluated the results of the study and determined that they demonstrate that sodium sulfide 1 percent, when compared to placebo, is effective in providing temporary relief of pain due to ingrown toenails. The difference was shown to be statistically significant (p = less than .001). The sodium sulfide treated group showed a decrease in pain beginning on day 2, with continuing decrease in pain throughout the remaining 5 days of the study. The placebo group did not improve significantly throughout the 7-day study period.

The data also show that the nails of the test subjects who used sodium sulfide 1 percent were softened beginning on day 2, with improvement to day 6, but with no significant improvement thereafter. However, the study did not clearly establish that the symptomatic relief reported was due to softening of the imbedded (ingrown) toenail. Subjects receiving the placebo also showed a slight but not significant increase in nail softness by days 4, 6, and 7 compared to day 1.

In reviewing the data, the agency noted that in both trials many of the subjects using the test drug product suffered adverse effects. This raised questions about the safety of using sodium sulfide for the relief of pain associated with ingrown toenails.

In the first trial consisting of 32 subjects, 15 used the sodium sulfide product and 17 used the placebo. One subject using the sodium sulfide drug product dropped out of the study after day 5 because of erosions that failed to heal within 24 hours. Seven of the subjects using the sodium sulfide product experienced mild to moderate adverse reactions such as tingling, stinging sensation, and/or slight to severe burning sensations. Four of the subjects using the placebo also reported some mild adverse reactions, such as stinging, throbbing, swelling, numbness, and/or rash.

In the second trial, 29 subjects completed the study. Fourteen subjects used the sodium sulfide product, and 15 subjects used the placebo. Five of the subjects using sodium sulfide reported severe adverse reactions, such as burning, "open and sore," "red and open," and slight erythema. Three subjects stopped using the sodium sulfide product temporarily. Three other subjects using the sodium sulfide product experienced mild reactions, such as slight burning or tingling.

In summary, 16 of the 29 subjects using the sodium sulfide product in the two trials experienced some type of adverse reaction. The agency could not clearly ascertain from the clinical data submitted what proportion of the adverse reactions may have been drug induced. However, many of the subjects were advised to use vaseline, stop using the product, and/or use soapy soaks and epsom salts.

The agency concludes that the extremely high incidence of adverse reactions, particularly the burning sensations and irritation, and the need for subsequent professional advice and counseling to counter the effects of these adverse reactions makes this ingredient unacceptable for OTC use. The agency considers sodium sulfide as unsafe for OTC human use for the temporary relief of pain associated with ingrown toenails. Therefore, sodium sulfide 1 percent is not considered a monograph condition.

Reference

(1) "New Clinical Data Supporting Efficacy of Sodium Sulfide, 1 percent in Relieving Pain of Ingrown Toenails," Comment No. C00008, Docket No. 80N–0348, Dockets Management Branch.

3. One manufacturer requested a meeting to discuss protocols for studies to support the safety and effectiveness of an anesthetic in combination with tannic acid (Ref. 1).

The agency requested the manufacturer to provide proposed protocols (Refs. 2 and 3), but none have been submitted to date. The use of several anesthetic ingredients (benzocaine, chlorobutanol, and dibucaine) in ingrown toenail relief drug products was discussed by the Panel (45 FR 69122 at 69129) and their review was deferred to the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products. That Panel did not review these ingredients for this use. The agency is not aware of any data that establish the safety and effectiveness of anesthetic ingredients for the relief of symptoms (e.g., pain) of ingrown toenail. Therefore, benzocaine, chlorobutanol, and dibucaine are nonmonograph conditions for this use.

References

(1) Comment No. C00010, Docket No. 80N0348, Dockets Management Branch.

(2) Letter from W. E. Gilbertson, FDA, to C. Farhi, American Home Products Corp., coded ANS/C00010, Docket No. 80N–0348, Dockets Management Branch.

(3) Letter from W. E. Gilbertson, FDA, to C. Farhi, American Home Products Corp., coded LET2, Docket No. 80N–0348, Dockets Management Branch.

B. Comments on Directions

4. One comment requested revisions in the directions for use for OTC ingrown toenail drug products. The comment noted that it used these suggested directions in a clinical study and they were easy for consumers to understand. A second comment requested that the directions provide the option of applying ingrown toenail relief drug products with an applicator or with cotton in the nail groove.

The agency is not addressing these comments in this final rule because no active ingredients are included in a monograph for OTC ingrown toenail relief drug products. When an active ingredient achieves Category I status for this use, the agency will develop appropriate directions for use and will consider the comments' requests at that time.

II. The Agency's Final Conclusions on OTC Ingrown Toenail Relief Drug Products

At this time, there is a lack of sufficient data to establish that benzocaine, chlorobutanol, dibucaine, sodium sulfide, tannic acid, or any other ingredients are safe and effective for use for ingrown toenail relief. The agency has determined that no active ingredient has been found to be generally recognized as safe and effective and not misbranded for use in an OTC ingrown toenail relief drug product.

In the **Federal Register** of November 7, 1990 (55 FR 46914), the agency published a final rule in part 310 establishing that certain active ingredients that had been under consideration in a number of OTC drug

rulemaking proceedings were not generally recognized as safe and effective. That final rule was effective on May 7, 1991, and included in § 310.545(a)(11) the ingredients chloroxylenol and urea that had been previously considered under this rulemaking for use as active ingredients in ingrown toenail relief drug products. This final rule establishes that any OTC ingrown toenail relief drug product is not generally recognized as safe and effective and expands the nonmonograph ingredients to include all other OTC ingrown toenail relief active ingredients. These additional ingredients include, but are not limited to, benzocaine, chlorobutanol, dibucaine, sodium sulfide, and tannic acid, which were reviewed by the Panel and the agency. Therefore, any ingredient that is labeled, represented, or promoted for use as an ingrown toenail relief drug product is considered nonmonograph and misbranded under section 502 of the act and is a new drug under section 201(p) of the act for which an approved application under section 505 of the act and 21 CFR part 314 of the regulations is required for marketing. In appropriate circumstances, a citizen petition to establish a monograph may be submitted under 21 CFR 10.30 in lieu of an application. Any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce after the effective date of the final rule that is not in compliance with the regulation is subject to regulatory action. In order to avoid duplication in listing OTC ingrown toenail relief active ingredients in more than one regulation and for ease in locating these ingredients in the Code of Federal Regulations, the agency is listing all of these ingredients in a single regulation in new § 310.538 entitled "Drug products containing active ingredients offered over-the-counter (OTC) for use for ingrown toenail relief." Accordingly, § 310.545(a)(11) is being removed.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (47 FR 39120 at 39124). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC ingrown toenail relief drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC ingrown toenail relief drug products is not expected to pose such an impact on small businesses because only a limited number of products are affected. As noted above, the ingredients chloroxylenol and urea have already been removed from OTC ingrown toenail relief drug products. The submitted product that contained sodium sulfide is not currently marketed. The agency is only aware of a few products containing other ingredients (e.g., two combination drug products containing chlorobutanol and tannic acid, and one containing benzocaine and tannic acid). Based on the limited number of affected products, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. New § 310.538 is added to subpart E to read as follows:

§ 310.538 Drug products containing active ingredients offered over-the-counter (OTC) for use for ingrown toenail relief.

(a) Any product that bears labeling claims such as for "temporary relief of discomfort from ingrown toenails," or "ingrown toenail relief product," or "ingrown toenail reliever," or similar claims is considered an ingrown toenail relief drug product. Benzocaine, chlorobutanol, chloroxylenol, dibucaine, sodium sulfide, tannic acid, and urea have been present as ingredients in such products. There is lack of adequate data to establish general recognition of the safety and effectiveness of these or any other ingredients for OTC use for ingrown toenail relief. Based on evidence currently available, any OTC drug product containing ingredients offered for use for ingrown toenail relief cannot be generally recognized as safe and effective.

(b) Any OTC drug product that is labeled, represented, or promoted for ingrown toenail relief is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act), for which an approved application or abbreviated application under section 505 of the act and part 314 of this chapter is required for marketing. In the absence of an approved new drug application or abbreviated new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted for OTC use for ingrown toenail relief is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

(d) After March 9, 1994, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

§ 310.545 [Amended]

3. Section 310.545 *Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses* is amended by removing and reserving paragraph (a)(11).

Dated: September 2, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–21948 Filed 9–8–93; 8:45 am]

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federal register

Thursday
September 9, 1993

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 310, 700 and 701
Hormone-Containing Drug Products; Cosmetic Products Containing Hormone Ingredients; Rule and Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 81N-0144]

RIN 0905-AA06

Topically Applied Hormone-Containing Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any topically applied hormone-containing drug product for over-the-counter (OTC) human use is not generally recognized as safe and effective and is misbranded. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final rule, and all new data and information on topically applied hormone-containing drug products that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: March 9, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5000.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 5, 1982 (47 FR 430), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking that would classify topically applied hormone-containing drug products for OTC human use as not generally recognized as safe and effective and as being misbranded and would declare these products to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). The notice was based on the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by April 5, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by May 5, 1982.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

The agency's proposed regulation, in the form of a tentative final rule, for OTC topically applied hormone-containing drug products was published in the Federal Register of October 2, 1989 (54 FR 40618). Interested persons were invited to file by December 1, 1989, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by January 30, 1990. New data could have been submitted until October 2, 1990, and comments on the new data until December 3, 1990. Final agency action occurs with the publication of this final rule on OTC topically applied hormone-containing drug products.

As discussed in the preamble to the agency's proposed rule for OTC topically applied hormone-containing drug products (54 FR 40618), the agency advised that the drug products covered by this regulation would be subject to the regulation effective 6 months after date of publication of the final rule in the Federal Register. On or after March 9, 1994, no OTC drug products that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved application. If, in the future, any ingredient is determined to be generally recognized as safe and effective for use in an OTC topically applied hormone-containing drug product, the agency will promulgate an appropriate regulation at that time.

In response to the proposed rule, one comment from an individual was submitted. A copy of the comment is on public display in the Dockets Management Branch (address above). In proceeding with this final rule, the agency has considered the issues raised in the comment.

I. The Agency's Conclusions on the Comment

One comment expressed concern about the presence of steroids and steroid derivatives in OTC cosmetic drug products. The comment mentioned the recent purchase of two cosmetic products containing pregnenolone acetate. The comment stated that the name of the ingredient was listed in the labeling of both products, but expressed concern that the labeling of neither product indicated the chemical origin of the hormone ingredient. The comment stated that cosmetic manufacturers may use corticosteroids such as pregnenolone acetate as well as hormones (from an animal source) in the form of tissue extracts in "F.D.A. acceptable amounts" without truly informing the consumer. The comment mentioned that FDA regulations for cosmetic products require in the product's labeling a listing of all ingredients present, but complained that the source of a hormone ingredient is not required to be disclosed. The comment noted that people with major health concerns, as in the case of a cortisone-related disease such as Cushing's syndrome or an immunosuppressive disorder such as Lupus, might prefer to avoid corticosteroids from a hidden source. The comment contended that consumers who wish to avoid using such products have a right to know what they are using. The comment stated that a product's labeling is misleading when this information is not disclosed and suggested that the agency require disclosure of the chemical origin of a hormone in a cosmetic product's labeling.

There currently is no provision in sections 601 through 603 of the act (21 U.S.C. 361 through 363) that requires manufacturers of cosmetic products to disclose the chemical origin of a hormone ingredient in a cosmetic product's labeling. Nor is there currently any FDA regulation requiring this type of labeling.

In the notice of proposed rulemaking for topically applied hormone-containing drug products for OTC use (54 FR 40618 at 40620), the agency discussed the labeling of cosmetic products containing hormone ingredients. The agency stated that it considers the use of the word "hormone" in the text of the product's labeling or in the ingredient statement to be an implied drug claim, and that such labeling would cause the product to be regulated as a drug. The agency stated that if a manufacturer includes a hormone in its cosmetic product, it may designate this ingredient in the product's labeling by any appropriate name. The agency stated that the chemical name is preferable and mentioned that the chemical name for pregnenolone acetate is "3-hydroxypregn-5-ene-20-one acetate." This name would appear in a listing of all ingredients in the product in accordance with agency regulations in § 701.3 (21 CFR 701.3). Under this regulation, an ingredient must be declared in the product's labeling by the

name specified in the Cosmetics, Toiletries, and Fragrances Association Cosmetic Ingredient Dictionary or, if not in that dictionary, by the name specified in several alternative recognized compendia of chemical substances. The agency now urges cosmetic product manufacturers who include hormone ingredients (or substances containing hormones) in their products to identify these substances in their ingredient declaration using names that are most likely to be recognized by consumers. Following the sequence for designating cosmetic ingredients in § 701.3(c), the agency has now determined that the most appropriate names to use are those contained in the "USAN and the USP dictionary of drug names" listed in § 701.3(c)(2)(v). The names for hormone ingredients are currently not designated in agency regulations. Because the agency's cosmetic regulations specify a specific sequence of sources to be utilized to establish the name to be used for a cosmetic ingredient when the agency has not specified a name in § 701.30, elsewhere in this issue of the **Federal Register**, the agency is proposing to amend § 701.30 to establish the names that would be permitted to identify hormone ingredients in cosmetic product labeling.

Using the names established by the agency, consumers who wish to avoid a particular cosmetic ingredient, for medical or other reasons, would be able to identify the ingredient contained in a product. Consumers may also contact manufacturers of cosmetic products if they are uncertain whether or not the product contains a specific hormone ingredient. The agency also suggests that consumers with medical conditions who wish to avoid topical corticosteroid products consult with a physician or pharmacist before using a cosmetic product that they believe contains a hormone ingredient.

Because certain hormone ingredients may be present in cosmetic products, the agency believes it would be appropriate to amend the cosmetic regulations to identify these hormones and to specify the upper concentration limits for those ingredients. Therefore, elsewhere in this issue of the **Federal Register**, the agency is proposing to amend Part 700 (21 CFR part 700) by adding new § 700.20 entitled "Use of certain hormones as ingredients in cosmetic products."

II. The Agency's Final Conclusions on OTC Topically Applied Hormone-Containing Drug Products

The agency has determined that all topically applied hormone-containing drug products for OTC human use are not generally recognized as safe and effective and are misbranded. This determination includes, but is not limited to, products that contain estrogens, progestins, androgens, anabolic steroids, and adrenal corticosteroids and synthetic analogs. The final regulation also covers pregnenolone and pregnenolone acetate, steroids that are closely related to progesterone in chemical structure and that exert an estrogen-like action on the skin when applied topically. However, the final regulation does not include hydrocortisone and hydrocortisone acetate labeled, represented, or promoted for OTC topical analgesic use in accordance with Part 348 (21 CFR part 348).

Except for drug products containing hydrocortisone or hydrocortisone acetate discussed above, any topically applied hormone-containing product bearing any drug claims is considered misbranded under section 502 of the act (21 U.S.C. 352) and is a new drug under section 201(p) of the act for which an approved application under section 505 of the act (21 U.S.C. 355) and Part 314 (21 CFR part 314) of the regulations is required for marketing. In appropriate circumstances, where there are adequate data to establish general recognition of safety and effectiveness, a citizen petition to establish a monograph for OTC topically applied hormone-containing drug products may be submitted under § 10.30 (21 CFR 10.30) in lieu of an application. Any OTC drug product subject to this final rule that is introduced or initially delivered for introduction into interstate commerce after the effective date of the final rule that is not in compliance with the regulation is subject to regulatory action.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (54 FR 40618 at 40621 to 40622). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC topically applied hormone-containing drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC topically applied hormone-containing drug products is not expected to pose such an impact on small businesses because there are a limited number of these types of products currently being marketed. As noted in the proposed rule (54 FR 40618 at 40620), there are only a few OTC skin care products containing hormones that are currently subject to new drug applications. The agency is aware of only a few other products that are currently marketed without new drug applications. These products would be able to remain in the market with some relabeling in accord with the notice of proposed rulemaking for cosmetic products containing certain hormone ingredients, published elsewhere in this issue of the **Federal Register**. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. New § 310.530 is added to subpart E to read as follows:

§ 310.530 Topically applied hormone-containing drug products for over-the-counter (OTC) human use.

(a) The term "hormone" is used broadly to describe a chemical substance formed in some organ of the body, such as the adrenal glands or the pituitary, and carried to another organ or tissue, where it has a specific effect. Hormones include, for example, estrogens, progestins, androgens, anabolic steroids, and adrenal corticosteroids, and synthetic analogs. Estrogens, progesterone, pregnenolone, and pregnenolone acetate have been present as ingredients in OTC drug products marketed for topical use as hormone creams. However, there is a lack of adequate data to establish effectiveness for any OTC drug use of these ingredients. Therefore, with the exception of those hormones identified in paragraph (e) of this section, any OTC drug product containing an ingredient offered for use as a topically applied hormone cannot be considered generally recognized as safe and effective for its intended use. The intended use of the product may be inferred from the product's labeling, promotional material, advertising, and any other relevant factor. The use of the word "hormone" in the text of the labeling or in the ingredient statement is an implied drug claim. The claim implied by the use of this term is that the product will have a therapeutic or some other physiological effect on the body. Therefore, reference to a product as a "hormone cream" or any statement in the labeling indicating that "hormones" are present in the product, or any statement that features or emphasizes the presence of a hormone ingredient in the product, will be considered to be a therapeutic claim for the product, or a claim that the product will affect the structure or function of the body, and will consequently cause the product to be a drug.

(b) Any OTC drug product that is labeled, represented, or promoted as a topically applied hormone-containing product for drug use, with the exception of those hormones identified in paragraph (e) of this section, is regarded as a new drug within the meaning of section 201(p) of the act, for which an approved application or abbreviated application under section 505 of the act and Part 314 of this chapter is required for marketing. In the absence of an approved new drug application or abbreviated new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted for OTC use as a topically applied hormone-containing drug product is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in Part 312 of this chapter.

(d) After March 9, 1994, any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

(e) This section does not apply to hydrocortisone and hydrocortisone acetate labeled, represented, or promoted for OTC topical use in accordance with Part 348 of this chapter.

Dated: September 2, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-21946 Filed 9-8-93; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 700 and 701

[Docket No. 91N-0245]

Cosmetic Products Containing Certain Hormone Ingredients; Notice of Proposed Rulemaking

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking identifying certain hormones that may appear in cosmetic products, specifying the upper concentration limits for those ingredients, and designating the source for naming those ingredients in product labeling. FDA is issuing this notice of proposed rulemaking in conjunction with the agency's final rule for topically applied hormone-containing drug products for over-the-counter (OTC) human use, published elsewhere in this issue of the **Federal Register**.

DATES: Written comments by November 8, 1993.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John E. Bailey, Center for Food Safety and Applied Nutrition (HFS-440), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-205-4530.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register** FDA is issuing a final rule establishing that any OTC drug product that is labeled, represented, or promoted as a topically applied hormone-containing product for drug use, with the exception of hydrocortisone and hydrocortisone acetate, is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act). In that final rule, the agency states that "hormone" includes estrogens, progestins, androgens, anabolic steroids, adrenal corticosteroids and synthetic analogs, progesterone, pregnenolone and pregneno- lone acetate, and hydrocortisone and hydrocortisone acetate.

Part 720 of FDA's regulations (21 CFR part 720) permits the voluntary filing of cosmetic product ingredient and cosmetic raw material composition statements. Section 720.4(c) requests that one or more of the categories listed in this section be cited to indicate the product's intended use. In the past, paragraph (12) of § 720.4(c) (skin care preparations) included the category hormone under paragraph (v). However, in the **Federal Register** of January 28, 1992 (57 FR 3128 at 3129), the agency removed from § 720.4(c)(12) the skin care categories "Hormone," "Skin lighteners," and "Wrinkle smoothing (removers)." The agency noted in its proposal to remove these categories (see the **Federal Register** of October 25, 1990, 55 FR 42993 at 42994) that these designations have been the subject of considerable regulatory controversy because such items can be both cosmetics and drugs under the act. These designations originally were included in the list of product categories when the regulation was published in the **Federal Register** of April 11, 1972 (37 FR 7151). At that time, it was the agency's intent to permit the registration of these types of products as cosmetics, but with the understanding that these products are legally both drugs and cosmetics. However, the original category designations have been interpreted by cosmetic manufacturers, and others, to mean that FDA considered these products to be exclusively cosmetics, which certainly is not the case. The agency expects the removal of these three category designations, and registration of such products, if they are also cosmetics, under the remaining category designations, to alleviate misunderstandings that have existed.

Elsewhere in this issue of the **Federal Register** the agency is completing the rulemaking for topically applied drug products containing hormone ingredients. While products containing hormone ingredients and making drug claims are drugs under the act, certain hormone-containing products not bearing drug claims could be cosmetics depending on the levels of hormones used and whether that level of use affects the structure or any function of the body. However, some hormones, such as anabolic steroids (e.g., methandrostenolone, stanozolol, and oxymetholone) and adrenal corticosteroids (e.g., betamethasone, prednisolone, and prednisone) would be inappropriate for use in a cosmetic product These hormone ingredients that are used in drug products do not at any level. These hormone ingredients that are used in drug products do not have any legitimate cosmetic uses. A review of cosmetic products registered voluntarily with the agency reveals that no product identifies any of these drug ingredients in its formulation.

The safety of certain hormone ingredients at specific concentration levels used for topical application has been established by many years of marketing of these products as OTC drugs. In the **Federal Register** of January 5, 1982 (47 FR 430 at 432), FDA published an advance notice of proposed rulemaking on OTC topically applied hormone-containing drug products. That document contained the results of a review of a number of marketed products containing hormone ingredients that was done by the Advisory Review Panel on OTC Miscellaneous External Drug Products (the Panel). The Panel recommended that FDA regard progesterone in a concentration up to 5 milligrams (mg)/ounce (oz) is safe when used on the skin daily in a quantity not exceeding 2 oz per month. The Panel determined that this amount of topical progesterone does not produce systemic effects and has a low incidence of irritation or allergic local effects. The agency's adverse reaction files (Ref. 1) contain occurrences reported for topical hormone-containing products. None of the occurrences was classified as serious. The reports included two occurrences of vaginal hemorrhage, one of menorrhagia, and one of menstrual disorder. The other reports relate to contact dermatitis, urticaria, rash, and conjunctivitis and are considered less serious.

In the **Federal Register** of October 2, 1989 (54 FR 40618 at 40621), in the proposed rule on OTC topically applied hormone-containing drug products, FDA concurred with the Panel's conclusion that 5 mg/oz progesterone is safe for OTC use when used in an amount not exceeding 2 oz per month. As discussed below, the agency is proposing in new § 700.20(b)(2) to limit the use of progesterone in cosmetic products to these levels that have been found to be safe but lack effectiveness for drug use (do not affect the structure or any function of the body).

In the same proposed rule (54 FR 40618 at 40621), the agency also tentatively concluded that pregnenolone acetate up to 0.5 percent is safe for OTC use. The agency's proposal was based on findings of the National Academy of Sciences/National Research Council, as part of the agency's Drug Efficacy Study Implementation. (The Panel did not review pregnenolone acetate.) A review of cosmetic products registered voluntarily with the agency reveals only two products formulated using pregnenolone acetate as an ingredient. One product is reported to contain

pregnenolone hemisuccinate in addition to pregnenolone acetate. Pregnenolone succinate is listed in the 1993 edition of "USAN and the USP dictionary of drug names" (Ref. 2), which is the authorized list of established names for drugs in the United States. Pregnenolone acetate is not listed in this reference. Based on its previous evaluation of the safety of pregnenolone acetate, the agency is proposing in new § 700.20(b)(1) to restrict the use of pregnenolone acetate in cosmetic products to no more than 0.5 percent, not to exceed 2 oz per month. At this level, the ingredient would not have a drug effect. However, the agency has not evaluated any safety and effectiveness data on pregnenolone hemisuccinate or pregnenolone succinate. Therefore, the agency is not proposing to include these ingredients in new § 700.20(b)(1), but invites comments and data to support the safe use of these ingredients in cosmetic products. The agency will announce in the final rule whether these ingredients will be included in § 700.20(b)(1).

This proposal specifies the hormone ingredients and their concentrations that may be used in the formulation of cosmetic products. The restrictions on the types and amount of hormone that may be used are based on agency determinations that these are safe levels which do not have any therapeutic effects or do not affect the structure or any function of the body (i.e., have no drug effect). Therefore, the agency is proposing that these levels of hormones be permitted for cosmetic conditions of use. At this time, the safety of hormones for inclusion in cosmetic products has been established only for progesterone at a concentration level up to 5 mg/oz and pregnenolone acetate at a concentration level up to 0.5 percent, when labeled for use not to exceed 2 oz per month. Any topically-applied products containing progesterone at concentrations of 5 mg/oz or less or pregnenolone acetate at concentrations of 0.5 percent or less are at this time regarded as cosmetics, provided the product labeling does not contain any drug claims as discussed elsewhere in this issue of the **Federal Register**.

The Panel reviewed a product containing "natural estrogens," i.e., a mixture of estrone and estradiol at a total concentration of 10,000 International Units (I.U.) per oz, and concluded that there were inadequate data to establish the safety of topically applied estrogens in concentrations up to 10,000 I.U. per oz. In the proposed rule for OTC topically applied hormone-containing drug products (54 FR 40618 at 40621), the agency stated that natural estrogens in concentrations up to 10,000 I.U. per oz are safe for topical application to the skin when used in amounts not to exceed 2 oz per month. However, the agency has no information on the concentration of individual estrogenic hormone chemicals (i.e., estradiol and estrone or any other estrogenic chemicals) present in natural estrogens. As a result, the agency is not currently able to establish the concentrations at which the individual estrogen hormone chemicals (which were found by the Panel to be safe for drug use) do not have therapeutic or other drug effects, i.e., at what levels it has been established that the ingredients do not affect the structure or any function of the body. Because insufficient information exists to allow the establishment of safe concentrations of individual estrogen hormone chemicals for use in cosmetic products, the agency is proposing at this time not to permit the use of natural estrogens, or any individual hormone chemicals that are constituents of natural estrogens, as ingredients for formulating cosmetic products. This use is not allowable because the agency is unable to establish at this time at what level of use of these hormone ingredients there is only a cosmetic effect and no drug effect. Therefore, the agency concludes at this time that any use of natural estrogens in cosmetic products makes the product an unapproved new drug. The conclusion is based on available data stating conclusively that at some levels the ingredients affect the structure or function of the body, and a concomitant lack of data establishing at what level, if any, the drug effect ceases. The agency invites comment on the qualitative and quantitative composition of natural estrogens that would allow the setting of safe levels for use in cosmetic products.

The agency is aware that estrogens and estrogen-containing substances have been used in cosmetic products. Manufacturers of such products are urged to submit data on the safety and exact chemical identity of such estrogens or estrogen-containing substances. The submission should also contain product labeling (current and historical) and provide information showing how long the cosmetic product containing this ingredient has been marketed. If adequate information is not provided to establish the chemical identity and composition of natural estrogens used in cosmetic hormone products, the agency will amend § 700.20 at the final rule stage to state that natural estrogens may not be used as ingredients for formulating cosmetic products. Thereafter, any use of natural estrogens in cosmetic products would make the product an unapproved new drug.

The agency has determined that use of the word "hormone" in the text of the labeling or in the ingredient statement is an implied drug claim. The claim implied by the use of this term is that the product will have a therapeutic or some other physiological effect on the body. Therefore, reference to a product as a "hormone cream" or any statement in the labeling that "hormones" are present in the product will be considered to be a therapeutic claim for the product, or a claim that the product will affect the structure or any function of the body. Such claims cause the product to be a drug.

In the proposed rule for OTC topically applied hormone-containing drug products, the agency stated that use of the chemical name of a hormone ingredient in labeling is preferable (54 FR 40618 at 40620). Based on a comment received in response to that proposal, as discussed elsewhere in this issue of the **Federal Register** the agency acknowledges that the chemical name may not be readily recognized by consumers. The agency is designating generally recognized established names to be used to identify these hormone ingredients in cosmetic product labeling, and is including these names in § 701.30.

The agency's cosmetic regulations (21 CFR 701.3(c)) specify a specific sequence of sources to be utilized to establish the name to be used for a cosmetic ingredient when the agency has not specified a name in § 701.30. Under that sequence, "USAN and the USP dictionary of drug names" is not the first source to be utilized. Progesterone is found in USAN (Ref. 3), but pregnenolono acetate is not. Therefore, the agency is proposing to amend § 701.30 to establish progesterone and pregnenolone acetate as the names that are to be used to identify these ingredients in cosmetic product labeling.

The agency is aware that some consumers may wish to avoid using a cosmetic product containing a hormone ingredient for medical or other reasons. The establishment of uniform names to be used in all cosmetic product labeling should aid consumers in identifying those ingredients. Consumers may contact manufacturers of cosmetic products if they are uncertain whether or not the product contains a hormone ingredient. Consumers may also want to consult with a physician or pharmacist before using a cosmetic product that they believe contains a hormone ingredient.

References

(1) Department of Health and Human Services, Food and Drug Administration, Adverse Reaction Summary Listings, pertinent pages for the years 1969–1985, copy in OTC Volume 16GTFM, Docket No. 81N–0144, Dockets Management Branch.

(2) "USAN and the USP dictionary of drug names," 30th ed., United States Pharmacopeial Convention, Inc., Rockville, MD, p. 524, 1993.

(3) "USAN and the USP dictionary of drug names," 30th ed., United States Pharmacopeial Convention, Inc., Rockville, MD, p. 529, 1993.

The agency has determined under 21 CFR 25.24(a)(11) that this proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposal and has determined that the final rule, if promulgated, will not be a major rule as defined by the Order. The agency is not aware of any cosmetic hormone products that contain pregnenolone acetate or progesterone in an amount above the levels being proposed in § 700.20(b). Thus, no product reformulations appear to be necessary. Some product relabeling may be necessary if the cosmetic product currently uses the word "hormone" or makes an implied drug claim in its labeling. However, because of the limited number of products affected, the agency concludes that this proposed rule is not a major rule.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that, based on the limited number of affected products, no significant impact on a substantial number of small entities will derive from this action.

Interested persons may, on or before November 8, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 700

Cosmetics, Packaging and containers.

21 CFR Part 701

Cosmetics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR Parts 700 and 701 be amended as follows:

PART 700—GENERAL

1. The authority citation for 21 CFR part 700 continues to read as follows:

Authority: Secs. 201, 301, 502, 505, 601, 602, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331,352, 355, 361, 362, 371, 374).

2. New § 700.20 is added to read as follows:

§ 700.20 Use of certain hormones as ingredients in cosmetic products.

(a) Pregnenolone acetate and progesterone have been used as ingredients in both cosmetics and in cosmetics that are also drugs, depending on the claims made for the product. There are currently no approved over-the-counter hormone drug products except those identified in § 310.530(e) of this chapter.

(b) Pregnenolone acetate and progesterone may be safely used in cosmetic products at certain concentration levels. These ingredients may be included as single ingredients in cosmetic products when the product is formulated to contain up to the following amounts and is labeled with directions for use not to exceed 2 ounces of the product applied topically per month:

(1) Pregnenolone acetate 0.5 percent.

(2) Progesterone 5 milligrams per ounce.

(c) Any cosmetic product that contains pregnenolone acetate or progesterone in an amount exceeding that stated in paragraph (b) of this section or labeled with directions for use that exceed 2 ounces of the product applied topically per month is regarded as an unapproved new drug in accord with § 310.530 of this chapter and is subject to regulatory action under sections 502 and 505 of the act.

(d) Any cosmetic product using the word "hormone" in the text of its labeling or in its ingredient statement is considered as making an implied drug claim. The claim implied by the use of this term is that the product will have a therapeutic or some other physiological effect on the body. Any cosmetic product labeled as a "hormone cream" or with any statement in its labeling that "hormones" are present in the product or with any claim that the product will affect the structure or function of the body is subject to regulatory action under sections 502 and 505 of the act.

PART 701—COSMETIC LABELING

3. The authority citation for 21 CFR Part 701 continues to read as follows:

Authority: Secs. 201, 502, 601, 602, 603, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 352, 361, 362, 363, 371, 374); secs. 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1454, 1455).

4. Section 701.30 is amended by adding two new entries to the table to read as follows:

§ 701.30 Ingredient names established for cosmetic ingredient labeling.

* * * * *

Chemical name or description	Chemical formula	Established label name
*	* * * *	*
3-Hydroxypregn -5-ene-20-one acetate.	$C_{23}H_{34}O_3$	Pregnenolone acetate.
Pregn-4-ene-3,20- dione.	$C_{21}H_{30}O_22$	Progesterone.

Dated: September 2, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–21947 Filed 9–8–93; 8:45 am]

BILLING CODE 4160–01–F

federal register

Thursday
September 9, 1993

Part VII

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for May 1993

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–53167; FRL–4636–4]

Premanufacture Notices; Monthly Status Report for May 1993

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for May 1993.

Nonconfidential portions of the PMNs and exemption request may be seen in the TSCA Nonconfidential Information Center (NCIC) ETG–099 at the address below between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

ADDRESSES: Written comments, identified with the document control number "[OPPTS–53167]" and the specific PMN and exemption request number should be sent to: Document Control Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099, Washington, DC 20460, (202) 260–1532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460 (202) 260–3725.

SUPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during May; (b) PMNs received previously and still under review at the end of May; (c) PMNs for which the notice review period has ended during May; (d) chemical substances for which EPA has received a notice of commencement to manufacture during May; and (e) PMNs for which the review period has been suspended. Therefore, the May 1993 PMN Status Report is being published.

Dated: August 31, 1993.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

Premanufacture Notice Monthly Status Report for May 1993

I. 142 Premanufacture notices and exemption requests received during the month:

PMN No.

P 93–0896 P 93–0950 P 93–0952 P 93–0954
P 93–0955 P 93–0956 P 93–0957 P 93–0958
P 93–0959 P 93–0960 P 93–0961 P 93–0962
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Y 93–0146 Y 93–0147 Y 93–0148 Y 93–0149
Y 93–0150 Y 93–0151 Y 93–0152 Y 93–0153
Y 93–0154 Y 93–0155

II. 253 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

P 84–0660 P 84–0704 P 84–1145 P 85–0619
P 85–0941 P 85–1331 P 86–0066 P 86–1315
P 86–1648 P 86–1662 P 87–0323 P 88–0998
P 88–0999 P 88–1937 P 88–1938 P 88–1980
P 88–1982 P 88–1984 P 88–1985 P 88–1999
P 88–2000 P 88–2001 P 88–2484 P 88–2518
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P 89–0957 P 89–0958 P 89–0959 P 89–1038
P 89–1058 P 90–0158 P 90–0261 P 90–0262
P 90–0263 P 90–0372 P 90–0550 P 90–0558
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P 93–0882 P 93–0936 P 93–0937 P 93–0941
Y 93–0109

III. 177 Premanufacture notices and exemption request for which the notice review period has ended during the month. (Expiration of the notice review period does not signify that the chemieal has been added to the Inventory).

PMN No.

P 89–1038 P 90–1318 P 90–1319 P 90–1320
P 90–1321 P 90–1322 P 90–1687 P 90–1745
P 92–0031 P 92–0032 P 92–0033 P 92–0396
P 92–0813 P 92–1337 P 92–1394 P 92–1454
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P 93–0123 P 93–0124 P 93–0173 P 93–0174
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Y 93–0131 Y 93–0132 Y 93–0133 Y 93–0134
Y 93–0135 Y 93–0136 Y 93–0137 Y 93–0138
Y 93–0139

IV. 64 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/Generic Name	Date of Commencement
P 85–0718	G Polyol polyacrylate	March 17, 1993.
P 86–1648	1-Oxo 4-azaspiro(4,5decane, 4-(dichloroacetyl)-	October 29, 1990.
P 87–0555	Octanol propanol	March 26, 1993.
P 88–1303	G Halogenated hydrocarbon	December 8, 1990.
P 88–1304	G Polypiperidinol acrylate-methacrylate	March 19, 1993.
P 88–1616	G Carboxylated novolak acrylate	January 5, 1989.
P 88–2540	G Nitrate esters	February 21, 1990.
P 88–2600	G Dialkyl dimethyl ammonium salt of substituted arylazo	March 19, 1993.
P 88–2601	G Dialkyldimethyl salt of substituted arylazo butanamide	March 19, 1993.
P 90–0164	G Mixed esters of oleic acid, an unsaturated fatty acid, and an oil containing fatty acids, glycerides and alcohols	March 17, 1993.
P 90–0212	G Chlorofluoroalkane	August 16, 1990.
P 91–0259	G Amine functional acrylic polymer salt	March 19, 1993.
P 91–0638	G Ethyl, alkenoate	April 6, 1993.
P 91–0992	Trimethylolpropane, esters with C_5–C_9 fatty acid and isononanoic acid	March 22, 1993.
P 91–0993	Trimethylolpropane, esters with C_5–C_9 fatty acid and isononanoic acid	March 22, 1993.
P 91–1012	G Substituted alkyl alcohol	March 24, 1993.
P 91–1226	G Fatty diol, C_{36} branched, saturated	March 16, 1993.
P 92–0149	G Organopolysiloxane metal salt	February 10, 1992.
P 92–0328	G Trisubstituted hydroquinone	February 26, 1993.
P 92–0329	G Trisubstituted hydroquinone diester	March 11, 1993.
P 92–0443	G Vinylchloride-ethylene-vinyllaurate terpolymer	December 25, 1992.
P 92–0516	G Alkyl methacrylate copolymer	March 29, 1993.
P 92–0612	G Amine-terminated polyol	March 17, 1993.
P 92–0733	G Mono-bromo substituted alkyne	March 18, 1993.
P 92–0736	G Urethane acrylic latex	March 5, 1993.
P 92–0831	3,4-Dimethyl benzaldehyde	March 28, 1993.
P 92–0988	G Alkylsichlorosilane	March 4, 1993.
P 92–0989	G Dialkyldichlorosilane	March 4, 1993.
P 92–1001	G Acrylic tetrapolymer	March 2, 1993.
P 92–1005	G Polyester	March 30, 1993.
P 92–1006	G Acrylate functional polyurethane resin	March 5, 1993.
P 92–1140	G Water based polyurethane	April 1, 1993.
P 92–1319	G 2,2-Bis(hydroxymethyl)-1,-propanediol, tetraesters with straight chain and branched acids	March 30, 1993.
P 92–1362	G Polymer from aromatic amine maleimide and a vinyl comonomer	March 2, 1993.
P 92–1372	G Poly(acrylonitrile-co-styrene-co-vinylidene chloride)	March 30, 1993.
P 92–1380	G Acrylic polymer	March 24, 1993.
P 92–1412	Hydrogenated hydroxy terminated polyisoprene	March 19, 1993.
P 92–1436	G Polyurethane, trimethylamine salt	March 28, 1993.
P 92–1481	G Poly alpha olefin	March 4, 1993.
P 92–1486	G Modified styrene-isoprene block copolymer	March 16, 1993.
P 92–1511	G Aliphatic polyester polyurethane	March 10, 1993.
P 93–0016	G Polyamideimide	April 2, 1993.
P 93–0044	G Vinyl modified nonionic surfactant	March 29, 1993.
P 93–0054	G Polyester polyurethane	March 24, 1993.
P 93–0060	G Anthraquinone derivative	April 8, 1993.
P 93–0088	G Acrylic polymer	April 2, 1993.
P 93–0108	G Polyether acetate	March 5, 1993.
P 93–0110	G Vinylidene chloride acrylate ester polymer	March 10, 1993.
P 93–0120	G Polyester polyurethane acrylate oligomer	March 10, 1993.
P 93–0125	A phthalic anhydride, maleic anhydride, tall oil fatty acids, neopentyl glycol, ethylene glycol, andpentaerythritol polyester reacted with styrene and methacrylate acid	April 1, 1993.
P 93–0162	G Aromatic polyether polyester	March 16, 1993.
P 93–0191	G 2-Propenoic acid, reaction product with tetrakisol	March 1, 1993.
P 93–0219	G Blocked aliphatic polyisocyanate	April 2, 1993

IV. 64 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 93–0223	G Polyether urethane acrylate oligomer	March 10, 1993.
P 93–0225	G Copolymer alkyd	March 10, 1993.
P 93–0259	G Aqueous polyurethane dispersion	March 19, 1993.
P 93–0285	Amines, hydrogenated rapseed alkyl	March 25, 1993.
P 93–0297	G Polyurethane	March 23, 1993.
P 93–0344	1-(2-Tert-butyl cyclohexyloxy)-2-butanol	April 12, 1993.
P 93–0535	G Substituted triazine	March 29, 1993.
Y 88–0223	G Oil-free polyester resin	March 9, 1993.
Y 93–0047	G Copolymer of methacrylic esters	March 30, 1993.
Y 93–0055	G Polymer of modified bisphenol*A* and aliphatic anhydrides	March 23, 1993.
Y 93–0072	G Hydroxyl functional polycarbomoyl (polyalkylene oxide) oligomer	April 8, 1993.

V 17 Premanufacture notices for which the period has been suspended.

PMN No.

P 93–0317 P 93–0318 P 93–0505 P 93–0507 P 93–0512 P 93–0552 P 93–0555 P 93–0561 P 93–0568 P 93–0572 P 93–0577 P 93–0603 P 93–0627 P 93–0633 P 93–0701 P 93–0720 Y 93–0131

[FR Doc. 93–21992 Filed 9–8–93; 8:45 am]

BILLING CODE 6560–50–F

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Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 103d Congress, 1st Session, 1993.

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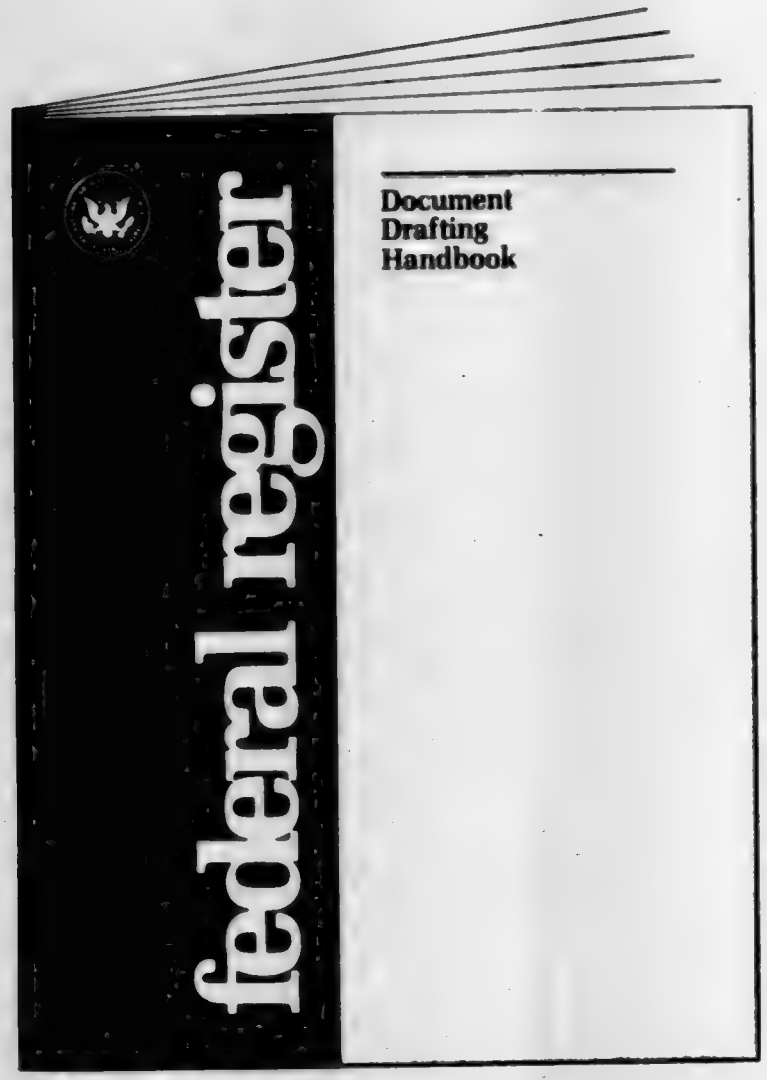

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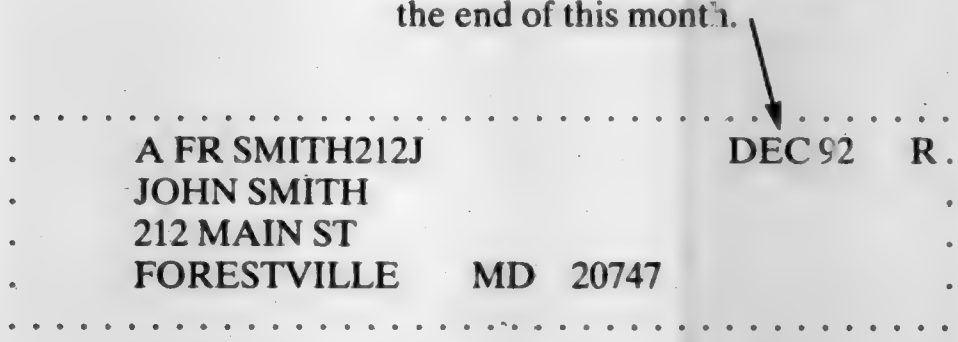

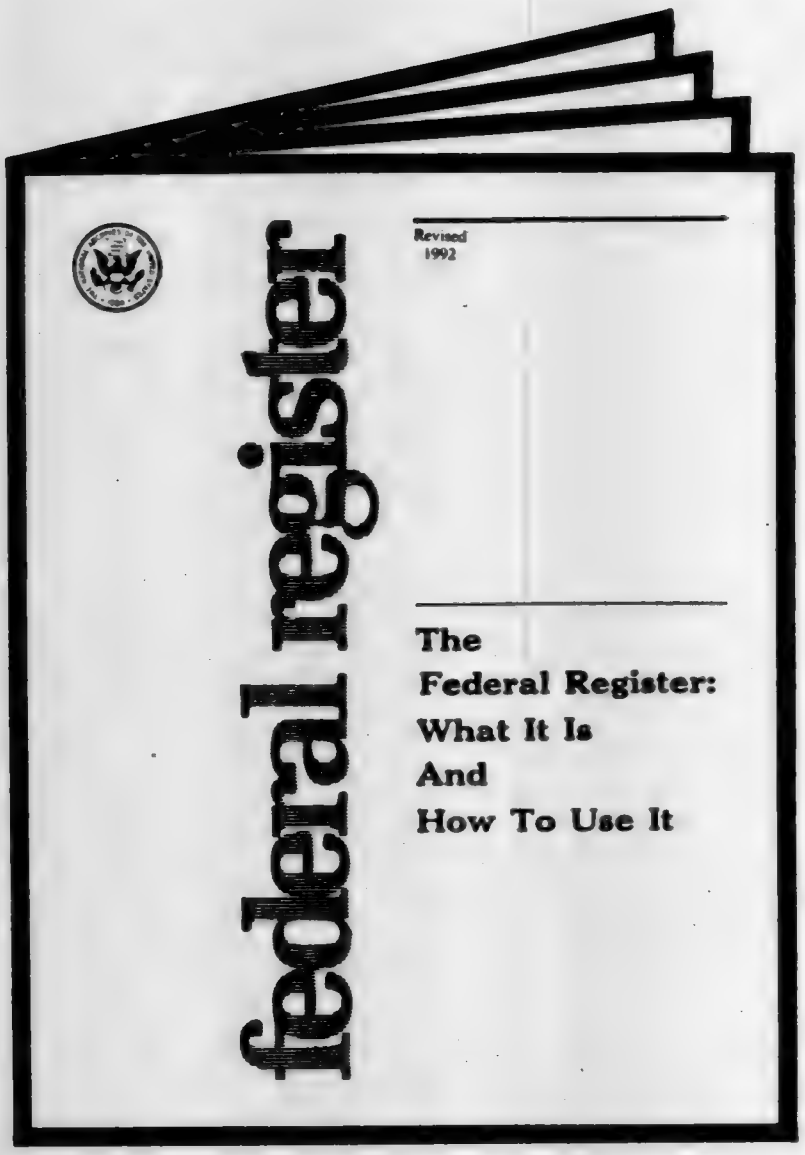

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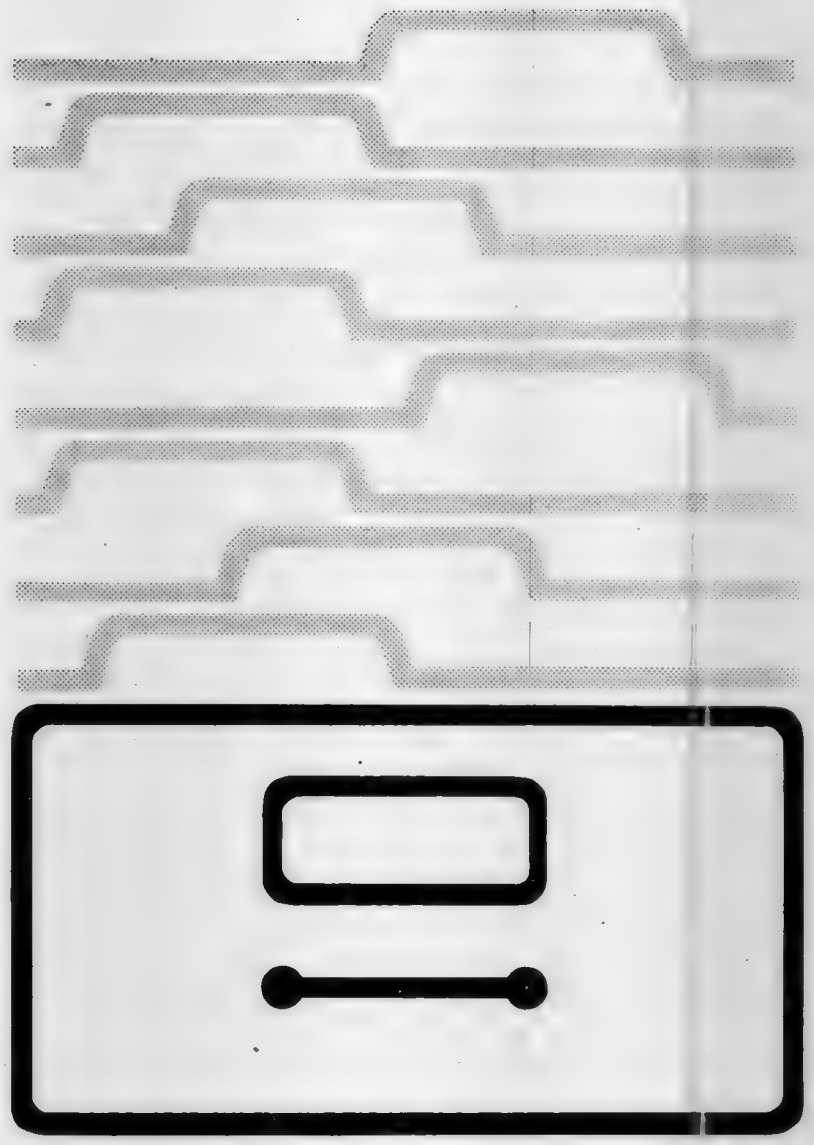

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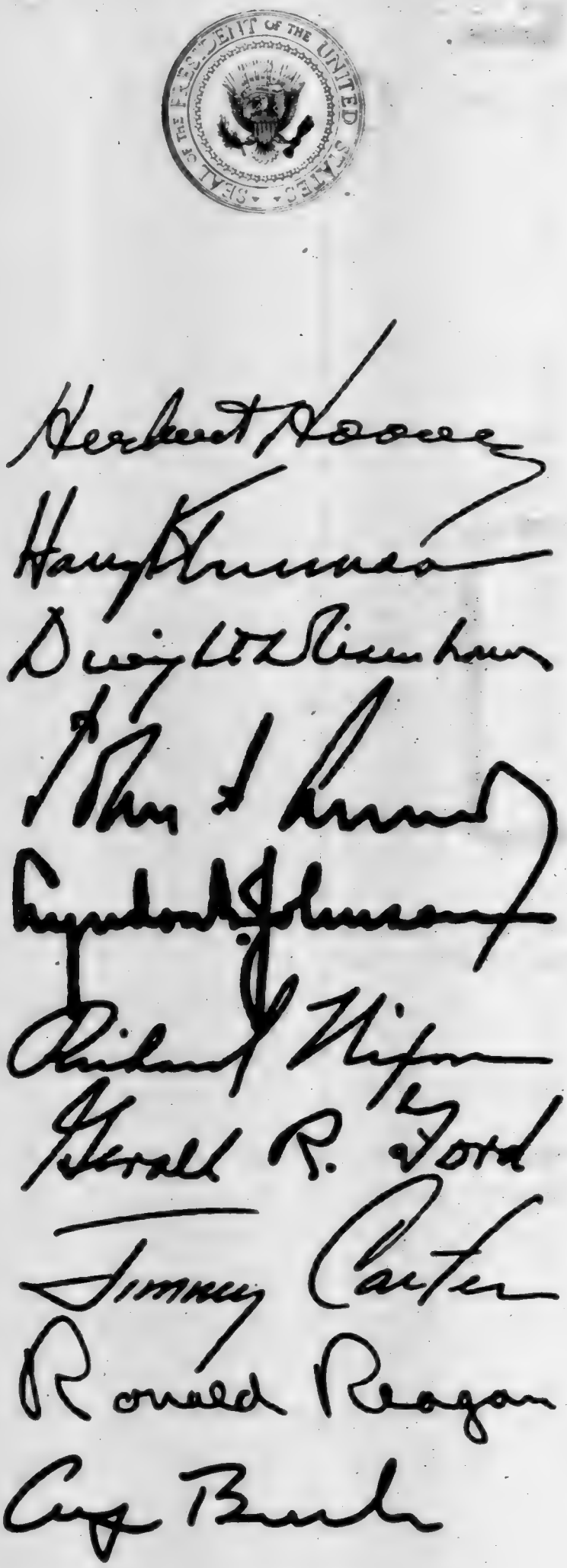

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Federal Register
Vol. 58, No. 174
Friday, September 10, 1993

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF DEFENSE

5 CFR Chapter XXVI

32 CFR Part 40

RIN 3209–AA00, 3209–AA04, 3209–AA14, 3209–AA15, and 0790–AF08

Supplemental Standards of Ethical Conduct for Employees of the Department of Defense

AGENCY: Department of Defense (DoD).

ACTION: Interim rule, with request for comments.

SUMMARY: DoD, with the concurrence of the Office of Government Ethics (OGE), is issuing an interim rule which establishes standards of ethical conduct for DoD employees that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE effective February 3, 1993. The interim rule is a necessary supplement because it addresses ethical issues specific to DoD. The interim rule: (1) Designates separate agency components; (2) establishes additional exceptions to the prohibitions on gifts from outside sources; (3) imposes additional limitations on gifts between DoD employees; (4) requires notification of disqualifications; (5) limits sales to subordinates; (6) requires prior approval for certain outside activities; and (7) establishes an additional disclaimer requirement for certain speeches and writings. DoD is also revising its existing standards of conduct regulation, 32 CFR part 40, to retain the 18 U.S.C. 208(b) waiver provision and to cross-reference to executive branch-wide standards of ethical conduct, financial disclosure and post-employment regulations, and to this supplemental regulation.

DATES: Interim rule effective September 10, 1993. Comments are invited and must be received on or before October 9, 1993.

ADDRESSES: Send comments to the Standard of Conduct Office, Office of General Counsel, 1600 Defense Pentagon, Washington, DC 20301–1600.

FOR FURTHER INFORMATION CONTACT: Randi Elizabeth DuFresne, DoD Standards of Conduct Office, (703) 697–5305, FAX (703) 697–1640.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published a final rule entitled "Standards of Ethical Conduct for Employees of the Executive Branch" (Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557 and 52583. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct that are applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorized executive branch agencies to publish agency-specific supplemental regulations that are necessary to implement their agency ethics programs. The Department of Defense and OGE have determined that the following interim rule which appears in new 5 CFR chapter XXVI, is necessary in light of DoD's particular programs and operations.

II. Analysis of the Regulations

§ 3601.101 Purpose

Section 3601.101 of the interim rule explains that the regulations contained in the interim rule apply to Department of Defense employees and are supplemental to the executive branch-wide Standards in 5 CFR part 2635. Further, all DoD employees must comply with the executive branch-wide regulations, these supplemental regulations and applicable guidance and procedures implementing both.

§ 3601.102 Designation of Separate Agency Components

5 CFR 2635.202(a) prohibits an employee from soliciting or accepting a gift from a prohibited source. A prohibited source is defined by 5 CFR 2635.203(d) to include a person who has a specific relationship with an employee's agency. For purposes of identifying an employee's agency, 5 CFR 2635.203(a) authorizes an executive department, by supplemental regulation, to designate as separate agencies components of the department that exercise distinct and separate functions. Designations made pursuant to section 2635.203(a) are used also for purposes of applying the prohibition in 5 CFR 2635.807(a) on receipt of compensation for teaching, speaking or writing related to an employee's duties.

Section 3601.102(a) of the interim rule designates 15 components of the Department of Defense as separate agencies. In addition to the Office of the Inspector General and Uniformed Services University of the Health Sciences, these include each of the three military departments and 10 components that are generally recognized as separate agencies within DoD because they exercise separate and distinct functions. As further amplified in § 3601.102(b), DoD employees not employed in one of the 15 designated agencies are to be deemed employees of an agency that consists of all parts of the Department, other than the 15 designated agencies, and that is separate and distinct from each of those agencies. Thus, for example, an Army contractor would be a prohibited source for all employees of the Department of the Army, but not for employees of the Department of the Navy. Neither would that Army contractor be a prohibited source for employees of the Office of the Secretary of Defense (OSD) unless the contractor had a matter pending before OSD or a DoD component other than one of the 15 designated as separate agencies. The separate agency designations made by § 3601.102(a) are used in § 3601.103(a) of this supplemental for purposes of determining agency interest, in § 3901.107 for determining whether an employee must obtain approval for outside employment or business activities with a prohibited source, and in § 3601.108 for purposes of identifying when a DoD employee engaged in teaching, speaking or writing must make the disclaimer required by that section.

§ 3601.103 Additional Exceptions for Gifts From Outside Sources

Section 3601.103 of this interim rule provides two additional exceptions to the prohibitions in 5 CFR 2635.202(a) on gifts from outside sources. It thus supplements the gift exceptions in 5 CFR 2635.204, paragraph (k) of which permits an employee to accept any gift which is specifically authorized by a supplemental agency regulation.

Under § 3601.103(a) of the interim rule, a DoD employee may accept free attendance at certain events sponsored by State or local governments or by qualifying civic organizations when his attendance has been determined to serve the DoD employee's agency's community relations interests. The free attendance must not have been solicited by the employee. The cost of DoD employee's attendance and, when invited, the cost of a spouse's attendance must be provided by the sponsor of the event in accordance with the standard set forth in 5 CFR 2635.204(g)(5).

5 CFR 2635.204 contains two exceptions to the prohibitions on gifts from outside sources that are specifically tailored to permit employees to attend certain events. Free attendance at certain widely attended gatherings is permitted by § 2635.204(g)(2) and, under § 2635.204(h), employees may accept certain social invitations from persons who are not prohibited sources. While these two exceptions permit free attendance at a wide range of events, DoD has determined that they do not provide enough flexibility to meet its community relations needs. Largely unique to DoD, these community relations needs arise from DoD's system of installations located throughout the country. Many of these installations are major factors in the local communities where they are located and a reasonable degree of social interchange between DoD personnel and members of the local community is mutually beneficial.

By virtue of utility and other arrangements for installation support services, many State and local governments are prohibited sources for DoD personnel. The commanding officer of a local installation, therefore, may be unable to avail himself of the exception at CFR 2635.204(h) to accept an invitation to attend a local government-sponsored luncheon for local community leaders. Although the particular luncheon may fail to rise to the level of a widely attended gathering, DoD views the commanding officer's attendance at this sort of event as appropriate to meet its community relations interests. The exception at § 3601.103(a) is intended to permit attendance at events of this nature. As used in this section, the term "event" is not intended to permit one-on-one entertainment of a DoD employee, as in the case of a local official taking a military officer and his spouse out to dinner at the expense of the local government. Where such entertainment is provided by a prohibited source or because of the DoD employee's official position, it may be accepted only if covered by an exception contained in 5 CFR 2635.204.

Section 3601.103(b) of the interim rule supplements the authority of 5 CFR 2635.204(d) for acceptance of certain awards for meritorious public service and achievement. While § 2635.204(d) will permit employees to accept many scholarships and grants awarded on the basis of merit, DoD has determined that it will not always permit DoD employees and their dependents to accept many scholarships and grants under programs that have been tailored specifically for DoD personnel. As in the case of a one-time scholarship for DoD personnel who served in Operation Desert Storm, not all such scholarships are funded to ensure continuation on a regular basis nor are they necessarily to be awarded on the basis of merit. Section 3601.103(b)(1) incorporates many of the conditions found in 5 CFR 2635.204(d), but does not limit acceptance to those scholarships and grants given for meritorious public service or meritorious achievement. Section 3601.103(b)(2) permits even one-time scholarships and grants when awarded under written standards approved by the Secretary concerned.

§ 3601.104 Additional Limitations on Gifts Between DoD Employees

Section 3601.104 supplements subpart C of 5 CFR by adding two provisions that limit use of the exceptions in 5 CFR 2635.305 regarding certain gifts between employees.

Under 5 CFR 2635.302 a DoD employee is generally prohibited from accepting a gift from an employee receiving less pay than himself and may not donate toward a gift for an official superior. As an exception to this general prohibition, § 2635.304(b) permits an employee to accept an appropriate gift on certain special, infrequent occasions, such as retirement or marriage. In recognition of such occasions, § 2635.304(c)(1) also permits employees to contribute nominal amounts for an appropriate group gift to a superior and it permits a superior to accept an appropriate group gift, even though a subordinate may have contributed to its purchase. Within DoD, commanding officers and other supervisors may have authority over hundreds, if not thousands, of employees and enlisted personnel. The very size of some DoD components and offices, on occasion, has meant that small amounts collected from subordinates have been sufficient, in the aggregate, to finance gifts that are lavish and beyond what would meet the requirement in 5 CFR 2635.304(b) that the gift be appropriate to the occasion.

To ensure that group gifts are appropriate to the special, infrequent occasions for which they are given, § 3601.104(a) limits to $300 the value of a gift or gifts an employee may accept from any single donating group if the employee knows or has reason to know that one or more of the persons donating to the gift is his subordinate. In addition to those items that are excluded from the definition of a gift by 5 CFR 2635.203(b), this limitation does not apply to the cost of food, refreshments and entertainment provided to the employee and his personal guests at an event, such as a retirement party. The section provides, however, that the value of gifts from two or more groups will be aggregated and treated as gifts from a single group, and thus subject to a single $300 limitation, if the recipient knows or has reason to know that any subordinate is a member of more than one such group. This supplemental regulation places the obligation to decline the gift on the employee who is the recipient of the gift, not on the subordinate who may have contributed.

Nothing in § 3601.104(a) places a limitation on the number of group gifts that may be accepted by an employee to mark the special, infrequent occasions permitted by 5 CFR 2635.304(b). To help ensure, however, that the number of group gifts given is not compounded by individual contributions that fail to meet the requirement in 5 CFR 2635.304(c) that they be nominal in amount, § 3601.104(b) of the interim rule specifies that an employee may not contribute more than $10 to a group gift for a superior. It excludes from the $10 limitation nominal amounts separately and voluntarily contributed for food, refreshments and entertainment for the superior, the superior's personal guests and others who attend the event.

§ 3601.105 Standard for Accomplishing Disqualification

Section 3601.105 of the interim rule supplements the standards for disqualification contained in 5 CFR part 2635. Under § 2635.402(c) of this title, it is the employee's obligation to disqualify from participation in matters affecting his own financial interests or those of persons whose interests are imputed to him under 18 U.S.C. 208(a). Under 5 CFR 2635.502(e) and 2635.604 the same is true when an employee is required to disqualify to avoid an appearance of lack of impartiality or to avoid participating in a matter affecting the financial interests of a prospective employer. Under each of these sections, the executive branch-wide Standards generally permit disqualification to be accomplished simply by not

participating in the matter, although each provides that the disqualified employee should notify the person responsible for his assignment.

For a number of years, it has been the practice throughout DoD to require written notice of employee disqualifications. Because of the problems of managing its vast workforce, DoD has determined that it is necessary to the success of its mission, and to the success of its ethics program, to continue its procedures for written notice of disqualifications. DoD recognizes the problems noted by the Office of Government Ethics in adopting a requirement for written notice of disqualification on an executive branch-wide basis. See 57 FR 35024. It is not DoD's purpose to impose an overly technical requirement that would result in disciplining an employee for failure to provide written notice by some arbitrary deadline. Thus, the notice requirement imposed by § 3601.105 is phrased to give an employee flexibility in determining precisely when he will give notice of disqualification from a matter to which he has been assigned. Notice is to be given when the employee determines that he will not participate in the matter. In no way does this notice requirement affect the employee's primary obligation to not participate in the matter.

§ 3601.106 Limitation on Solicited Sales

5 CFR part 2635 prohibits an employee from using public office for private gain, but contains no specific prohibition on sales to junior personnel where the sale price is fair and does not result in a gift to the superior. Because of its command structure, senior personnel within DoD exert a degree of authority over junior personnel that exceeds that present in most civilian agencies. DoD standards of conduct regulations have long contained a prohibition on sales to subordinates and § 3601.106 of this interim rule is a restatement, with minor modifications, of that prohibition. It prohibits a DoD employee from soliciting or making solicited sales to DoD personnel who are junior in rank, grade or position or to the family members of such personnel, regardless of whether the solicitation or sale takes place on or off duty. The section specifically permits employees to post sales notices on DoD bulletin boards provided for those purposes. And, in the absence of coercion or intimidation, it permits sale or lease of the employee's own personal or real property and sales made by an employee during outside employment in a retail establishment.

§ 3601.107 Prior Approval for Outside Employment and Business Activities

When it is determined that such a requirement is necessary or desirable for the purpose of administering its ethics program, 5 CFR 2635.803 provides that an agency may, by supplemental regulation, require its employees to obtain prior approval before engaging in outside employment or other outside activities. To ensure that the outside activities of its many employees do not violate the executive branch-wide standards in 5 CFR 2635, any provision of these supplemental regulations, or any other provision of law or regulation, DoD has determined that it is necessary to the successful administration of its ethics program to require employees to obtain prior written approval before engaging in a business activity or compensated outside employment with a prohibited source. Section 3601.107(a) of the interim rule imposes a requirement to obtain approval before engaging in such activities and contains definitions of the terms "business activity," "employment," and "prohibited source" used in stating that requirement.

To ensure that § 3601.107 is not itself construed as authority to deny permission to engage in any outside activity, it includes a sentence specifying that approval will be granted unless the activity is expected to involve conduct prohibited by statute or regulation. Where a determination can be made that those activities are not likely to be prohibited, § 3601.107(b) delegates to the designated agency ethics official or his designee authority to issue written notice exempting categories of business activities or employment from the requirement for prior approval.

§ 3601.108 Disclaimer for Speeches and Writings Devoted to Agency Matters

Under 5 CFR 2635.807(a) an employee may not accept compensation for, but otherwise may engage in outside teaching, speaking or writing related to his official duties. In connection with such activities, 5 CFR 2635.807(b) prohibits the use of an employee's official title or position to identify the DoD employee in connection with the outside teaching, speaking or writing activity, except when given as one of several biographical details or, when accompanied by a appropriate disclaimer, in connection with an article published in a scientific or professional journal. Nothing in the executive branch-wide Standards, however, limits an employee's use of a military rank to identify himself in connection with the teaching, speaking or writing activity.

Even though not required to do so by 5 CFR 2635.807(b), § 3601.108 of the interim rule requires an employee to make an appropriate disclaimer when any reference is made to the DoD employee's rank, or to his official title or position, in connection with teaching, speaking or writing when the subject matter deals in significant part with an ongoing or announced policy, program or operation of the DoD employee's agency. This supplement to the standards in 5 CFR 2635.807(b) has been determined by DoD to be necessary to avoid any suggestion that a DoD employee is speaking on behalf of his agency or otherwise presenting an agency position. For the purpose of determining whether subject matter deals with a policy, program or operation of the DoD employee's agency, § 3601.108 incorporates the separate agency designations made by § 3601.102 of the interim rule. It also contains a requirement to ensure that the disclaimer is given prominence appropriate to the activity.

32 CFR Part 40 Standards of Conduct

32 CFR part 40 is revised to remove standards of conduct superseded by 5 CFR part 2635. Section 40.1 retains 18 U.S.C. 208(b) waivers for DoD, the Army, the Navy, and the Air Force. Sections 40.2 through 40.7 cross-reference to OGE regulations.

III. Matters of Regulatory Procedure

Administrative Procedure Act

As the Secretary of Defense, I have found good cause, pursuant to 5 U.S.C. 553(b), for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these interim rules. It is important to a smooth transition from DoD's prior ethics rules to the new executive branch-wide Standards that these rule-making actions take place as soon as possible. Furthermore, this rule-making is related to DoD's organization, procedure and practice. As an interim rule, there is provision for a 30-day public comment period. DoD will review comments received within the comment period and will consider modifications that appear appropriate in adopting these rules as final, with the concurrence of OGE.

Executive Order 12291, Federal Regulation

As the Secretary of Defense, I have determined that this is not a major rule

as defined in section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As the Secretary of Defense, I have determined under the regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule will not have a significant economic impact on a substantial number of small entities because it affects only DoD employees.

Paperwork Reduction Act

As the Secretary of Defense, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rule does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

5 CFR Part 3601

Conflict of interests, Ethics standards, Executive branch standards of conduct, Government employees.

32 CFR Part 40

Conflict of interests, Ethics standards, Executive branch standards of conduct, Government employees, Financial disclosure, Honoraria, Post-employment.

Dated: August 30, 1993.

Les Aspin,

Secretary of Defense.

Approved: September 3, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Department of Defense, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 32, chapter I, part 40 of the Code of Federal Regulations as follows:

Title 5—[Amended]

1. A new chapter XXVI, consisting of part 3601, is added to title 5 of the Code of Federal Regulations to read as follows:

CHAPTER XXVI—DEPARTMENT OF DEFENSE

PART 3601—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF DEFENSE

Sec.

3601.101 Purpose.
3601.102 Designation of separate agency components.
3601.103 Additional exceptions for gifts from outside sources.
3601.104 Additional limitations on gifts between DoD employees.
3601.105 Standards for accomplishing disqualification.
3601.106 Limitation on solicited sales.
3601.107 Prior approval for outside employment and business activities.
3601.108 Disclaimer for speeches and writing devoted to agency matters.

Authority: 5 U.S.C. 301, 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.204(k), 2635.803.

§ 3601.101 Purpose.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Defense (DoD) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. DoD employees are required to comply with part 2635, this part, and implementing guidance and procedures.

§ 3601.102 Designation of separate agency components.

(a) Pursuant to 5 CFR 2635.203(a), each of the following components of DoD is designated as a separate agency for purposes of the regulations in subpart B of 5 CFR part 2635 governing gifts from outside sources and 5 CFR 2635.807 governing teaching, speaking and writing:

(1) Department of the Army;
(2) Department of the Navy;
(3) Department of the Air Force;
(4) Defense Commissary Agency;
(5) Defense Contract Audit Agency;
(6) Defense Finance and Accounting Service;
(7) Defense Information Systems Agency;
(8) Defense Intelligence Agency;
(9) Defense Investigative Service;
(10) Defense Logistics Agency;
(11) Defense Mapping Agency;
(12) Defense Nuclear Agency;
(13) National Security Agency;
(14) Office of the Inspector General; and
(15) Uniformed Services University of the Health Sciences.

(b) Employees of DoD components not designated as separate agencies, including employees of the Office of the Secretary of Defense, will be treated as employees of DoD which shall be treated as a single agency that is separate from the above listed agencies for purposes of determining whether the donor of a gift is a prohibited source under 5 CFR 2635.203(d) and for identifying the DoD employee's agency under 5 CFR 2635.807 governing teaching, speaking and writing.

§ 3601.103 Additional exceptions for gifts from outside sources.

In addition to the gifts which come within the exceptions set forth in 5 CFR 2635.204, and subject to all provisions of 5 CFR 2635.201 through 2635.205, a DoD employee may accept gifts from outside sources otherwise prohibited by 5 CFR 2635.202(a) as follows:

(a) *Events sponsored by States, local governments or civic organizations.* A DoD employee may accept a sponsor's unsolicited gift of free attendance for himself and an accompanying spouse at an event sponsored by a State or local government or by a civic organization exempt from taxation under 26 U.S.C. 501(c)(4) when:

(1) The agency designee has determined that the community relations interests of the agency will be served by the DoD employee's attendance;

(2) The cost of the DoD employee's and the spouse's attendance is provided by the sponsor in accordance with 5 CFR 2635.204(g)(5); and

(3) The gift of free attendance meets the definition in 5 CFR 2635.204(g)(4).

(b) *Scholarships and grants.* A DoD employee, or the dependent of a DoD employee, may accept an educational scholarship or grant from an entity that does not have interests that may be substantially affected by the performance or non-performance of the involved DoD employee's official duties, or from an association or similar entity that does not have a majority of members with such interests, if the designated agency ethics official or designee determines that:

(1) The scholarship or grant is made as part of an established program of grants or awards that is funded, wholly or in part, to ensure its continuation on a regular basis and under which recipients are selected pursuant to written standards; or

(2) The scholarship or grant is established for the benefit of DoD employees, or the dependents of DoD employees, and recipients are selected pursuant to written standards approved by the Secretary of Defense or, where the scholarship or grant is available only to military members or their dependents, by the Secretary of the military department concerned.

§ 3601.104 Additional limitations on gifts between DoD employees.

The following limitations shall apply to gifts from groups of DoD employees that include a subordinate and to voluntary contributions to gifts for superiors permitted under 5 CFR 2635.304(c)(1):

(a) *Gifts from a group that includes a subordinate.* Regardless of the number of DoD employees contributing to a gift on a special, infrequent occasion as permitted by 5 CFR 2635.304(c)(1), a DoD employee may not accept a gift or gifts from a donating group if the market value exceeds an aggregate of $300 and if the DoD employee knows or has reason to know that any member of the donating group is his subordinate.

(1) The cost of items excluded from the definition of a gift by 5 CFR 2635.203(b) and the cost of food, refreshments and entertainment provided to the DoD employee and his personal guests to mark the occasion for which the gift is given shall not be included in determining whether the value of a gift or gifts exceeds the $300 aggregate limit.

(2) The value of a gift or gifts from two or more donating groups shall be aggregated and shall be considered to be from a single donating group if the DoD employee offered the gift knows or has reason to know that an individual who is his subordinate is a member of more than one of the donating groups.

(b) *Voluntary contribution.* For purposes of 5 CFR 2635.304(c)(1), the nominal amount of a voluntary contribution that a DoD employee may solicit from another DoD employee for a group gift to the contributing DoD employee's superior for any special, infrequent occasion shall not exceed $10. A voluntary contribution of a nominal amount for food, refreshments and entertainment for the superior, the personal guests of the superior and other attendees at an event to mark the occasion for which a group gift is given may be solicited as a separate, voluntary contribution not subject to the $10 limit.

§ 3601.105 Standard for accomplishing disqualification.

(a) *Disqualifying financial interests.* A DoD employee who is required, in accordance with 5 CFR 2635.402(c), to disqualify himself from participation in a particular matter to which he has been assigned shall, notwithstanding the guidance in 5 CFR 2635.4029(c) (1) and (2), provide written notice of disqualification to his supervisor upon determining that he will not participate in the matter.

(b) *Disqualification to ensure impartiality.* A DoD employee who is required, in accordance with 5 CFR 2635.502(e), to disqualify himself from participation in a particular matter involving specific parties to which he has been assigned shall, notwithstanding the guidance in 5 CFR 2635.502(e) (1) and (2), provide written notice of disqualification to his supervisor upon determining that he will not participate in the matter.

(c) *Disqualification from matter effecting prospective employees.* A DoD employee who is required, in accordance with 5 CFR 2635.604(a), to disqualify himself from participation in a particular matter to which he has been assigned shall, notwithstanding the guidance in 5 CFR 2635.604 (b) and (c), provide written notice of disqualification to his supervisor upon determining that he will not participate in the matter.

(d) *Withdrawal of notification.* A DoD employee may withdraw written notice under paragraphs (a), (b) or (c) of this section upon deciding that disqualification from participation in the matter is no longer required.

§ 3601.106 Limitation on solicited sales.

A DoD employee shall not knowingly solicit or make solicited sales to DoD personnel who are junior in rank, grade or position, or to the family members of such personnel, on or off duty. In the absence of coercion or intimidation, this does not prohibit the sale or lease of a DoD employee's noncommercial personal or real property or commercial sales solicited and made in a retail establishment during off-duty employment. The posting of an advertisement in accordance with Federal building management policies does not constitute solicitation for purposes of this section.

§ 3601.107 Prior approval for outside employment and business activities.

(a) A DoD employee, other than a special Government employee, who is required to file a financial disclosure report (SF 450 or SF 278) shall obtain written approval from the agency designee before engaging in a business activity or compensated outside employment with a prohibited source, unless general approval has been given in accordance with paragraph (b) of this section. Approval shall be granted unless a determination is made that the business activity or compensated outside employment is expected to involve conduct prohibited by statute or regulation. For purposes of this section, the following definitions apply:

(1) *Business activity.* Any business, contractual or other financial relationship not involving the provision of personal services by the DoD employee. It does not include a routine commercial transaction or the purchase of an asset or interest, such as common stock, that is available to the general public;

(2) *Employment.* Any form of non-Federal employment or business relationship involving the provision of personal services by the DoD employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee; and

(3) *Prohibited source.* See 5 CFR 2635.203(d) (modified by the separate DoD component agency designations in § 3601.102 of this part).

(b) The DoD component designated agency ethics official or designee may, by a written notice, exempt categories of business activities or employment from the requirement of paragraph (a) of this section, for prior approval based on a determination that business activities or employment within those categories would generally be approved and are not likely to involve conduct prohibited by statute or regulation.

§ 3601.108 Disclaimer for speeches and writings devoted to agency matters.

A DoD employee who uses or permits the use of his military rank or who includes or permits the inclusion of his title or position as one of several biographical details given to identify himself in connection with teaching, speaking or writing, in accordance with 5 CFR 2635.807(b), shall make a disclaimer if the subject of the teaching, speaking or writing deals in significant part with any ongoing or announced policy, program or operation of the DoD employee's agency, as defined in § 3601.102, and the DoD employee has not been authorized by appropriate agency authority to present that material as the agency's position. The disclaimer shall be made as follows:

(a) The required disclaimer shall expressly state that the views presented are those of the speaker or author and do not necessarily represent the views of DoD or its components.

(b) Where a disclaimer is required for an article, book or other writing, the disclaimer will be printed in a reasonably prominent position in the writing itself.

(c) Where a disclaimer is required for a speech or other oral presentation, the disclaimer may be given orally provided it is given at the beginning of the oral presentation.

Title 32—National Defense

CHAPTER I—DEPARTMENT OF DEFENSE

2. Part 40 of 32 CFR chapter I is revised to read as follows:

PART 40—STANDARDS OF CONDUCT

Sec.

40.1 18 U.S.C. 208(b) waivers.
40.2 Cross-reference to Standards of Ethical Conduct for Employees of the Executive Branch.
40.3 Cross-reference to Financial Disclosure, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees.
40.4 Cross-reference to Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria.
40.5 Cross-reference to Regulations Concerning Post-Employment Conflict of Interest.
40.6 Cross-reference to Office of Government Ethics and Executive Agency Ethics Program Responsibilities.
40.7 Cross-reference to Post-Employment Conflict of Interest Restrictions.

Authority: 5 U.S.C. 7301.

§ 40.1 18 U.S.C. 208(b) waivers.

Under 18 U.S.C. 208(b) categories of financial interests may be made non-disqualifying for purposes of 18 U.S.C. 208(a) by a general regulation published in the **Federal Register**. Shares of a widely held, diversified mutual fund or regulated investment company have been exempted by a general regulation as being too remote or inconsequential to affect the integrity of Government personnel.

§ 40.2 Cross-reference to Standards of Ethical Conduct for Employees of the Executive Branch.

DoD employees should refer to the Office of Government Ethics (OGE) regulation, Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and the Department of Defense (DoD) regulation that supplements the OGE regulation, 5 CFR 3601.101, for standards of conduct provisions, including standards for gifts from outside sources, gifts between employees, conflicting financial interests, impartiality in performing official duties, seeking other employment, misuse of position, and outside activities.

§ 40.3 Cross-reference to Financial Disclosure, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees.

DoD employees should refer to the OGE regulation, Financial Disclosure, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees, 5 CFR part 2634, for financial disclosure provisions.

§ 40.4 Cross-reference to Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria.

DoD employees should refer to the OGE regulation, Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria, 5 CFR part 2636, for provisions on outside employment and honoraria.

§ 40.5 Cross-reference to Regulations Concerning Post-Employment Conflict of Interest.

DoD employees and former DoD employees should refer to the OGE regulation, Regulations Concerning Post-Employment Conflict of Interest, 5 CFR part 2637, for provisions on post-employment applicable to those who left DoD employment prior to January 1, 1991.

§ 40.6 Cross-reference to Office of Government Ethics and Executive Agency Ethics Program Responsibilities.

DoD employees should refer to the OGE regulation, Office of Government Ethics and Executive Agency Ethics Program Responsibilities, 5 CFR part 2638, for provisions establishing executive branch ethics programs, including ethics training programs.

§ 40.7 Cross-reference to Post-Employment Conflict of Interest Restrictions.

DoD employees and former DoD employees should refer the to OGE regulation, Post-Employment Conflict of Interest Restrictions, 5 CFR part 2641, for provisions on post-employment applicable to those who left DoD employment on or after January 1, 1991.

[FR Doc. 93–22128 Filed 9–9–93; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 91–006I]
RIN 0583–AB34

Nutrition Labeling of Meat and Poultry Products; Technical Amendments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim final rule; technical amendments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its final nutrition labeling regulations, which were published in the **Federal Register** on January 6, 1993 (58 FR 632). FSIS is taking this action to improve the clarity and accuracy of the regulations, and to provide regulations that parallel the Food and Drug Administration's (FDA) nutrition labeling regulations to the maximum extent possible.

DATES: Interim rule effective date is July 6, 1994; comments must be received on or before October 12, 1993.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments, as provided by the Poultry Products Inspection Act, should be directed to Mr. Charles Edwards, (202) 254–2565. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit comments concerning this interim final rule. Written comments should be sent to the Policy Office and refer to Docket No. 91–006I. Any person desiring an opportunity for an oral presentation of views, as provided by the Poultry Products Inspection Act, should make such request to Mr. Charles Edwards, so that arrangements can be made for such views to be presented. A transcript will be made of all views orally presented. All comments submitted in response to this interim final rule will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

On January 6, 1993, FSIS published in the **Federal Register** (58 FR 632) final regulations on nutrition labeling for meat and poultry products. FSIS's nutrition labeling regulations parallel, to the extent possible at that time, FDA's nutrition labeling regulations promulgated under the Nutrition Labeling and Education Act. FSIS published its final regulations on nutrition labeling simultaneously with FDA's publication.

After the publication of FSIS's final regulations on nutrition labeling, FSIS received several comments from various interested parties contending that portions of FSIS's regulations were

unclear, contained technical, unintended consequences in a specific provision, or were not parallel to FDA's nutrition labeling regulations. Those portions included provisions related to: (a) Providing nutrition labeling by alternate means for packages that have a total surface area available to bear labeling of less than 12 square inches; (b) the saturated fat criterion for the "lean" definition; and (c) the use of nutrient content claims on infant and toddler foods.

After considering these comments and conducting an in-depth review of FDA's final nutrition labeling regulations, FSIS believes that its final regulations are inconsistent with FDA's regulations in certain areas where uniformity should exist. FSIS has also determined that several provisions were inadvertently omitted in its final regulations.

Accordingly, FSIS is issuing technical amendments to its nutrition labeling regulations to provide more well-defined regulations that reflect accuracy and clarity regarding the nutrition labeling of meat and poultry products. The amendments consist of clarifications that are essential to understanding and complying with published provisions, changes that are necessary to avoid technical, unintentional consequences in specific provisions, and additional provisions that were inadvertently omitted.

Technical Amendments

Exemptions

In its final nutrition labeling regulations, FSIS exempted individually wrapped packages of less than ½ ounce net weight from nutrition labeling requirements. This decision was based on providing consistency with the Agency's current net weight exemption. In addition, comments on the proposed rule did not reveal a consensus on the definition of a small package. FSIS has since received and evaluated a number of requests to allow for nutrition labeling to be provided by alternate means for packages that have a total surface area available to bear labeling of less than 12 square inches. FSIS believes these requests have merit, and recognizes the need for incorporating sufficient flexibility. FSIS agrees with the comments that alternate means of providing nutrition labeling should be in harmony with FDA. Accordingly, FSIS is adding provisions at § 317.400(d) and § 381.500(d) of the regulations to permit manufacturers to provide an address or telephone number on the package for consumers to write or call for nutrition information, provided that the labels for these products bear no nutrition claims or nutrition information. These provisions do not affect the exemption for individually wrapped packages of less than ½ ounce net weight.

FSIS inadvertently omitted a small business exemption provision from its final nutrition labeling regulations. FSIS received numerous comments on its supplemental proposed rule (57 FR 10298). Commenters stated that the fluctuation of business activity for small firms (i.e., production of specialty foods, regional and seasonal foods, a large number of product lines and low volume sales per product) should be considered. Additionally, the commenters stated that products are constantly being created and removed to account for seasonal gift buying, and product variety is often a primary selling point. In many cases, survival of the small firm is based on adding product lines, rather than on increasing the volume on existing lines. Based on these comments received in response to its supplemental proposed rule and comments received at the three small business exemption public forums, FSIS has determined that the calculation of poundage will be based on the most recent 2-year average of business activity. Although this was addressed in the preamble to the January 6, 1993, final rule, FSIS omitted the regulatory provision reflecting this determination. Therefore, FSIS is adding a provision to § 317.400(a) and § 381.500(a) of the regulations stating that the calculation of poundage shall be based on the most recent 2-year average of business activity.

Nutrition Label Content

In its final nutrition labeling regulations, FSIS used the term "insignificant amount" in prescribing conditions when nutrition information may be presented in a simplified format. The term "insignificant amount" is defined as that amount that may be rounded to zero in nutrition labeling, except that for total carbohydrate, dietary fiber, and protein, it is an amount less than 1 gram. The definition of an insignificant amount for calories is less than 5 calories. Because 1 gram of each of these three nutrients yields 4 or less calories, a 1-gram amount of each yields an insignificant amount of calories. FSIS has determined that sugars is another nutrient with a caloric contribution which is consistent with that for total carbohydrate, dietary fiber, and protein. One gram of sugars yields 4 calories. Therefore, when used in reference to the simplified format, an insignificant amount of sugars is that amount which is less than 1 gram. FSIS is amending §§ 317.309(g)(1) and 381.409(g)(1) of the regulations by revising the definition of insignificant amount to indicate that an insignificant amount of sugars is an amount less than 1 gram.

FSIS made reference in §§ 317.345(a)(1) and 381.445(a)(1) of the regulations to a retailer providing nutrition information on the label of single-ingredient, raw products without referring to a manufacturer. As stated in the preamble to the final rule, FSIS makes no distinction between products packaged in official establishments and those packaged at retail level. The Agency does not believe that the site where a product is packaged and labeled has any relevance to its inclusion or exclusion from the voluntary program. However, to clarify any misunderstanding regarding these provisions, FSIS is modifying §§ 317.345(a)(1) and 381.445(a)(1) of the regulations to include reference to a manufacturer.

Reference Amounts

In §§ 317.312(b) and 381.412(b) of the regulations, Table 1.—Reference Amounts Customarily Consumed Per Eating Occasion—Infant and Toddler Foods, FSIS inadvertently omitted product categories for plain meats and plain poultry for infants and meat sticks and poultry sticks for toddlers. In 21 CFR 101.12(b), FDA included a product category for eggs/egg yolks, ready-to-serve, for infants and toddlers with a reference amount of 55 grams. Egg yolks are used in a manner similar to the plain meat and poultry items in the infant diet. Also, the 2.5 ounce single-serve jar used for egg yolks, plain meats, plain poultry, meat sticks, and poultry sticks contains 63 grams of egg yolk, 71 grams of meat or poultry, and 71 grams of meat or poultry sticks. Because the 2.5 ounce jar is currently the single-serve unit for baby and toddler plain meat and poultry food products, a 55-gram reference amount would be consistent with FDA's reference amount established for egg yolks and consistent with the single-serving container definition. Additionally, a 55-gram reference amount which was the average amount of frankfurter eaten per occasion by 1–2 and 3–5 year olds, based on data from the 1977–78 Nationwide Food Consumption Survey, is also appropriate for meat sticks and poultry sticks. FSIS is amending Table 1 to include product categories for plain meats and meat sticks and plain poultry and poultry sticks with reference amounts of "55 g."

In §§ 317.312(b) and 381.412(b) of the regulations, Table 2.—Reference

Amounts Customarily Consumed Per Eating Occasion—General Food Supply, FSIS erred by listing meat lasagna and poultry lasagna as examples under the product category of mixed dishes not measurable with a cup. Based on food consumption data, these food products belong in the category of mixed dishes measurable with a cup. FSIS fully intended to harmonize its product categories with similar FDA categories. FDA lists vegetable lasagna as an example of a mixed dish measurable with a cup in its extended list of products for each product category, which is referenced in footnote 4 of 21 CFR 101.12(b), Table 2. FSIS is moving the lasagna examples to the category of mixed dishes measurable with a cup and also adding meat and poultry filled pasta as further examples of products in this category.

For purposes of clarification and to more fully harmonize with FDA requirements, FSIS is revising footnote 4 to Table 2 in §§ 317.312(b) and 381.412(b) of the regulations by adding the following words at the end: "except for products in which both the solids and liquids are customarily consumed."

Nutrient Content Claims

FSIS's final nutrition labeling regulations define the term "lean" with a saturated fat criterion. FSIS has received a comment suggesting a change in the saturated fat criterion for the "lean" definition to reflect the change in the saturated fat definition. The comment stated that the saturated fat criterion has become largely unrealistic and virtually unobtainable for many meal-type products. A number of products that qualified for the "lean" definition, as originally proposed, no longer qualify due to the change in definition for saturated fat. The comment stated that this situation is particularly true of meal-type products containing dairy-based ingredients.

In its proposed rule published in the **Federal Register** on November 27, 1991 (56 FR 60302), FSIS proposed to adopt FDA's definition of saturated fat as the sum of lauric, myristic, palmitic, and stearic acids. FDA, in its proposed rule also published in the **Federal Register** on November 27, 1991 (56 FR 60366) specifically required comments to which fatty acids should be included or excluded from the definition. FSIS and FDA received a number of comments supporting the fact that there was substantial controversy regarding the inclusion or exclusion of specific fatty acids in the definition. Based on comments, FSIS and FDA determined that a chemical definition for saturated fat was appropriate for various reasons described in FDA's final regulation. Therefore, the final regulations of both agencies define saturated fat as the sum of all fatty acids containing no double bonds.

FSIS is aware that the modification to the saturated fat definition may possibly impact a product's ability to qualify for the "lean" definition. Meat and poultry meal-type products containing dairy ingredients, such as cheese and cream-based sauces, which met the "lean" criteria based on the proposed definition of saturated fat may be unable to meet criteria based on the definition of saturated fat in the final regulation. The Agency believes it is necessary to modify the "lean" definition to reflect the change in the saturated fat definition. Inclusion of all fatty acids with no double bonds in the definition of saturated fat can inflate the level of saturated fat as previously defined by approximately 15 percent. To offset this unintended effect, FSIS will increase the saturated fat criterion for the "lean" definition from less than 4 grams to 4.5 or less grams.

FSIS's cross-reference to 21 CFR 101.13 (a) and (b) caused confusion concerning the use of nutrient content claims on infant and toddler foods. FSIS received requests to clarify the provisions concerning nutrient content claims on foods for infants and children under 2 years of age. Sections 317.313(a) and 381.413(a) of the regulations inadvertently contained the language "except that nutrient content claims may not be made on products intended specifically for use by infants and toddlers less than 2 years of age." This language was used in the proposal and inadvertently repeated in the final regulation. This section was modified in FDA's final regulation. In response to comments, FDA reconsidered the propriety of nutrient content claims on foods specifically intended for infants and children less than 2 years of age. FDA believed that the complete prohibition of nutrient content claims on foods for infants and children under 2 years of age may have been overly broad. FSIS agrees with this position. Therefore, FSIS is changing §§ 317.313(a) and 381.413(a) of the regulations to omit the following language "except that nutrient content claims may not be made on products intended specifically for use by infants and toddlers less than 2 years of age."

It was FSIS's intent to allow percentage labeling of vitamins and minerals on foods intended for use by infants and children less than 2 years of age, as provided for by FDA in 21 CFR 101.13(q)(3). Therefore, FSIS is amending §§ 317.313(q)(3) and 381.413(q)(3) of the regulations to allow percentage labeling of vitamin and minerals on such foods.

In cross-referencing FDA's final regulation, FSIS inadvertently omitted paragraphs (e) and (f) as contained in 21 CFR 101.66, label statements relating to usefulness in reducing or maintaining body weight. Generally, for meat and poultry products, "sugar free" claims are not particularly relevant. However, to harmonize with FDA regulations, FSIS has added provisions regarding the labeling of products as "sugar free" and "no added sugar," and the use of label terms suggesting low calorie or reduced calorie foods. FSIS is amending §§ 317.380 and 381.480 of the regulations to incorporate the provisions of 21 CFR 101.66 (e) and (f).

Need for Interim Final Rule

FSIS has determined that issuing these amendments as a proposed rule is unnecessary, time-consuming, and contrary to the public interest, and, thus, is issuing these amendments as an interim final rule. The Administrative Procedure Act provides for notice and opportunity for public comment on proposed Agency rules to ensure meaningful public input into Agency rules that affect the public. FSIS believes that it has fulfilled the intent of this requirement by providing several prior opportunities for public comment on nutrition labeling: The advance notice of proposed rulemaking (ANPR) published on April 2, 1991 (56 FR 13564); the 1991 proposed and 1992 supplemental proposed rules, previously addressed in this document; and the proposed rule concerning format published on August 28, 1992 (57 FR 39332). FSIS considered all comments on its ANPR and proposed rules in reaching the determinations set forth in its final regulations. In addition, FSIS held three public forums concerning the small business exemption. The determinations contained in this interim final rule stem from the final regulations and were addressed, in some fashion either directly or indirectly, throughout the rulemaking process on nutrition labeling.

Second, failure to codify the amendments in a timely manner may deprive consumers of the health benefits of nutrition labeling on certain meat or poultry products, and may substantially reduce the time for industry to comply with the new changes. Establishments require a sufficient amount of time to study all provisions of the nutrition labeling regulation to determine which portions relate to their specific labels. Afterward, they need time to devise new

labels as necessary under the new regulations, to obtain FSIS approval of these labels, and to print the labels for use on their meat and poultry products.

Finally, FSIS believes that failure to codify the amendments in a timely manner could add to the implementation cost that industry will incur. In issuing the final nutrition labeling regulation, FSIS believed it necessary to provide establishments with sufficient time for implementing the regulations to minimize industry costs. Accordingly, FSIS provided an 18-month implementation period, with an effective date of July 6, 1994. In its Nutrition Labeling Regulatory Impact Analysis, FSIS estimated that the total inventory costs for all establishments (small, medium, and large) dropped from approximately $22.6 million with a 6-month implementation period to $8.49 million at 18 months. The total labeling printing costs for all establishments dropped from approximately $517.3 million with a 6-month implementation period to $320.9 million at 18 months. Thus, the longer the implementation period, the less costs industry incurs in complying with the regulations. Some establishments have already revised their labels, or are in the process of doing so, in compliance with the new nutrition labeling regulations. Because this interim final rule may prompt establishments to make even further label revisions, FSIS sees an immediate need to issue this interim final rule in light of possible additional costs for label revisions and reprinting.

FSIS will receive comments on these technical amendments for 30 days after publication of this interim final rule. FSIS does not anticipate significant issues to surface from any comments that would further delay the implementation period for complying with the nutrition labeling regulation. FSIS simply wants to ensure that the technical amendments set forth in this interim final rule meet the general expectations and understanding of all affected parties. A final rule will be published shortly thereafter to respond to any comments received and to promulgate the changes as part of the nutrition labeling regulations.

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products, Poultry inspection.

Interim Final Rule

For the reasons discussed in the preamble, FSIS is amending 9 CFR parts 317 and 381 of the Federal meat and poultry products inspection regulations as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.309 is amended by revising the last sentence of paragraph (g)(1) to read as follows:

§ 317.309 Nutrition label content.

* * * * *

(g)(1) * * *. An insignificant amount shall be defined as that amount that may be rounded to zero in nutrition labeling, except that for total carbohydrate, dietary fiber, sugars, and protein, it shall be an amount less than 1 gram.

* * * * *

§ 317.312 [Table 1 amended]

3. Table 1 in § 317.312(b) is amended by adding under the Product Category, at the end thereof, a new Product Category to read: "Plain meats and meat sticks, ready-to-serve." Furthermore, under the Reference Amount column, a Reference Amount of "55 g" is added for the new category.

§ 317.312 [Table 2 amended]

4. Table 2 in § 317.312(b) is amended by removing the words "meat lasagna" from the Product Category "Mixed dishes NOT measurable with a cup," and by adding the words "meat lasagna" and "meat filled pasta," at the end thereof, to the Product Category "Mixed dishes measurable with a cup." Furthermore, footnote 4 is revised to read: "If packed or canned in liquid, the Reference Amount is for the drained solids, except for products in which both the solids and liquids are customarily consumed."

5. Section 317.313 is amended by revising paragraphs (a) and (q)(3) to read as follows:

§ 317.313 Nutrient content claims; general principles.

(a) This section applies to meat products that are intended for human consumption and that are offered for sale.

* * * * *

(q) * * *

(3) A statement that describes the percentage of a vitamin or mineral in the food, including foods intended specifically for use by infants and children less than 2 years of age, in relation to a Reference Daily Intake (RDI) as defined in § 317.309 may be made on the label or in the labeling of a food without a regulation authorizing such a claim for a specific vitamin or mineral.

* * * * *

§ 317.345 [Amended]

6. Section 317.345(a)(1) is amended by adding to the first sentence the words "or manufacturer" after the word "retailer."

§ 317.362 [Amended]

7. Section 317.362(c)(1) is amended by removing the words "less than 4 grams saturated fat" and instead, adding the words "4.5 grams or less saturated fat."

8. Section 317.380 is amended by adding new paragraphs (e) and (f) to read as follows:

§ 317.380 Label statements relating to usefulness in reducing or maintaining body weight.

* * * * *

(e) *"Label terms suggesting usefulness as low calorie or reduced calorie foods".* A product whose label contains terms suggesting usefulness as a low calorie or reduced calorie product shall be in accordance with 21 CFR 105.66.

(f) *"Sugar free" and "no added sugar".* A product whose label contains the terms "sugar free" and "no added sugar" shall be labeled in accordance with 21 CFR 105.66.

9. Section 317.400 is amended by adding new paragraphs (a)(1)(iii) and (d) to read as follows:

§ 317.400 Exemption from nutrition labeling.

(a) * * *

(1) * * *

(iii) For purposes of this paragraph, calculation of the amount of pounds shall be based on the most recent 2-year average of business activity. Where firms have been in business less than 2 years or where products have been produced for less than 2 years, reasonable estimates must indicate that the annual pounds produced will not exceed the amounts specified.

* * * * *

(d) Products in packages that have a total surface area available to bear labeling of less than 12 square inches, provided that the labels for these products bear no nutrition claims or other nutrition information. The manufacturer, packer, or distributor shall provide, on the label of packages that qualify for and use this exemption, an address or telephone number that a

consumer can use to obtain the required nutrition information (e.g., "For nutrition information call 1–800–123–4567").

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

10. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470, 7 CFR 2.17, 2.55.

11. Section 381.409 is amended by revising the last sentence of paragraph (g)(1) to read as follows:

§ 381.409 Nutrition label content.

* * * * *

(g) * * *

(1) * * *. An insignificant amount shall be defined as that amount that may be rounded to zero in nutrition labeling, except that for total carbohydrate, dietary fiber, sugars, and protein, it shall be an amount less than 1 gram.

* * * * *

§ 381.412 [Table 1 amended]

12. Table 1 in § 381.412(b) is amended by adding under the Product Category, at the end thereof, a new Product Category to read: "Plain poultry and poultry sticks, ready-to-serve." Furthermore, under the Reference Amount column, a Reference Amount of "55 g" is added for the new category.

§ 381.412 [Table 2 amended]

13. Table 2 in § 381.412(b) is amended by removing the words "poultry lasagna" from the Product Category "Mixed dishes NOT measurable with a cup," and by adding the words "poultry lasagna" and "poultry filled pasta", at the end thereof, to the Product Category "Mixed dishes measurable with a cup." Furthermore, footnote 4 is revised to read: "If packed or canned in liquid, the Reference Amount is for the drained solids, except for products in which both the solids and liquids are customarily consumed."

14. Section 381.413 is amended by revising paragraphs (a) and (q)(3) to read as follows:

§ 381.413 Nutrient content claims; general principles.

(a) This section applies to poultry products that are intended for human consumption and that are offered for sale.

* * * * *

(q) * * *

(3) A statement that describes the percentage of a vitamin or mineral in the food, including foods intended specifically for use by infants and children less than 2 years of age, in relation to a Reference Daily Intake (RDI) as defined in § 381.409 may be made on the label or in the labeling of a food without a regulation authorizing such a claim for a specific vitamin or mineral.

* * * * *

§ 381.445 [Amended]

15. Section 381.445(a)(1) is amended by adding to the first sentence the words "or manufacturer" after the word "retailer."

§ 381.462 [Amended]

16. Section 381.462(c)(1) is amended by removing the words "less than 4 grams saturated fat" and instead, adding the words "4.5 grams or less saturated fat."

17. Section 381.480 is amended by adding new paragraphs (e) and (f) to read as follows:

§ 381.480 Label statements relating to usefulness in reducing or maintaining body weight.

* * * * *

(e) *"Label terms suggesting usefulness as low calorie or reduced calorie foods".* A product whose label contains terms suggesting usefulness as a low calorie or reduced calorie product shall be in accordance with 21 CFR 105.66.

(f) *"Sugar free" and "no added sugar".* A product whose label contains the terms "sugar free" and "no added sugar" shall be labeled in accordance with 21 CFR 105.66.

18. Section 381.500 is amended by adding new paragraphs (a)(1)(iii) and (d) to read as follows:

§ 381.500 Exemption from nutrition labeling.

(a) * * *

(1) * * *

(iii) For purposes of this paragraph, calculation of the amount of pounds shall be based on the most recent 2-year average of business activity. Where firms have been in business less than 2 years or where products have been produced for less than 2 years, reasonable estimates must indicate that the annual pounds produced will not exceed the amounts specified.

* * * * *

(d) Products in packages that have a total surface area available to bear labeling of less than 12 square inches, provided that the labels for these products bear no nutrition claims or other nutrition information. The manufacturer, packer, or distributor shall provide, on the label of packages that qualify for and use this exemption, an address or telephone number that a consumer can use to obtain the required nutrition information (e.g., "For nutrition information call 1–800–123–4567").

* * * * *

Done at Washington, DC, on: September 2, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–22117 Filed 9–9–93; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–88; Special Conditions No. 25–ANM–76]

Special Conditions: Dornier Model 328–100 Airplane; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions with request for comments.

SUMMARY: These special conditions are issued for the Dornier Model 328–100 airplane manufactured by Dornier GmbH, Federal Republic of Germany. This airplane is equipped with high-technology digital avionics systems that perform critical or essential functions. The applicable type certification regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

DATES: The effective date of these special conditions is August 31, 1993. Comments must be received on or before October 25, 1993.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–88, 1601 Lind Avenue SW., Renton, Washington, 98055–4506; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked; Docket No. NM–88. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Gary Lium, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (206) 227–1112.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–88," The postcard will be date stamped, and returned to the commenter.

Background

On April 5, 1989, Dornier GmbH of Friedrichshafen, Federal Republic of Germany, made application for a new U.S. Type Certificate for their Model 328–100 airplane. The Model 328–100 is a 30-passenger turboprop, commuter-type airplane, powered by two Pratt & Whitney 119B engines and new composite 6-blade propellers, with a maximum takeoff weight of 30,000 pounds. The Model 328–100 airplane is equipped with high-technology digital avionics systems, including an electronic flight instrument system (EFIS), which is vulnerable to lightning and high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of § 21.17, Dornier must show that the Model 328–100 meets the applicable provisions of part 25 of the FAR, as amended by Amendments 25–1 through 25–64.

The certification basis for the Dornier Model 328–100 airplane has been established as follows: Part 25 of the FAR, effective February 1, 1965, including Amendments 25–1 through 25–61, as well as Amendments 25–62, 25–63, and 25–64, which Dornier has requested to be added to the certification basis. In addition, the certification basis includes certain exemptions and later amended sections of part 25 that are not relevant to these special conditions.

In addition to the applicable airworthiness regulations and special conditions, the Model 328–100 must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36; and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the "Noise Control Act of 1972."

If the Administrator finds that the applicable airworthiness regulations (i.e. part 25, as amended) do not contain adequate or appropriate safety standards for the Dornier Model 328–100 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with new technology avionics and electronic systems. There are two regulations that specifically pertain to lightning protection: one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Dornier Model 328–100 airplane that would require that new technology electrical and electronic systems, such as electronic flight instrument systems, electronic engine information displays, and digital avionics systems be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with the lightning special conditions, clarification of the threat definition of lightning is needed. The following "threat definition," based on FAA Advisory Circular (AC) 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition, with the exception of the multiple burst environment which has been changed to agree with the latest recommendations from the Society of Automotive Engineers (SAE) AE4L Committee.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in AC 20–53A, will provide a consistent and reasonable standard that is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. The effect of these threats on the airplane and its systems depends upon several factors, including installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike-Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level.

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of repetitive Component H waveforms in 3 sets of 20 pulses each. The minimum time between individual Component H pulses within a burst is 50 microseconds; the maximum is 1000 microseconds. The 3 bursts are distributed according to the following constraints: (1) the minimum period between bursts is 30ms, and (2) the maximum period between bursts is 300ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$i(t)=I_o (e^{-at}-e^{-bt})$

where:

t=time in seconds,

i=current in amperes, and

		Severe Strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp	=	218,810	109.405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100
This equation produces the following characteristics:					
i_{peak}	=	200 KA	100 KA	50 KA	10 KA
and,					
$(di/dt)_{max}$(amp/sec)	=	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec)	=	@t=.5μs	1.0×10^{11} @t=.25μs	1.0×10^{11} @t=.25μs	0.5×10^{11} .....
Action Integral (amp^2 sec)	=		2.0×10^{6}	0.25×10^{6}	0.0625×10^{6}

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz– 2MHz	70	70
2 MHz– 30 MHz	200	200
30 MHz– 70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz– 1 GHz	1,700	170
1 GHz– 2 GHz	5,000	990
2 GHz– 4 GHz	6,680	840
4 GHz– 6 GHz	6,850	310
6 GHz– 8 GHz	3,600	670
8 GHz– 12GHz	3,500	1270
12 GHz– 18GHz	3,500	360
18 GHz– 40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions

in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Aviation Authorities.

Conclusion

This action affects only certain unusual or novel design features on the Dornier Model 328–100 airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation Safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Dornier Model 328–1000 airplanes.

I. Lightning Protection

a. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each electrical or electron system that performs essential functions must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

3. The following definitions apply with respect to these special conditions:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on August 31, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 93–22163 Filed 9–9–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ANM–14]

Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the descriptions of several Very High Frequency Omnidirectional Range (VOR) Federal airways located in Colorado, Nebraska, and Wyoming to accommodate the new Denver International Airport, scheduled to open in December, 1993. Two new VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) facilities, Mile High (DVV) and Falcon (FQF), have been established north and south of the new Denver International Airport. This action will realign the en route airway structure to the new navigational aids and enhance the efficient utilization of airspace.

EFFECTIVE DATE: 0701 UTC, December 19, 1993.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

History

On March 31, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of several VOR Federal airways located in Colorado, Nebraska, and Wyoming to accommodate the new Denver International Airport, scheduled to open in December, 1993 (57 FR 10847). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The FAA received 14 comments on the proposal.

The Air Transport Association (ATA) concurred without comment.

The Aircraft Owners and Pilots Association (AOPA) requested that the FAA reconsider its proposal to realign V–83 because it would create a new intersection over the Calhan Airport (5V4). AOPA noted the Calhan Airport has an active parachute drop zone with a ceiling of 17,000 feet mean sea level (Front Range Skydivers) and an aerobatic box west of the field. Further, the proposed realignment of V–83 would place the airway over Meadow Lake Airport (OOV), an active gliderport.

These concerns were shared by the Pikes Peaks Area Council of Governments, a flight instructor, several members of the Front Range Skydivers, Inc., and several private pilots. These commenters believe that the new intersection would create an unnecessary safety risk by further congesting the airspace in the proximity of the Calhan Airport. They content that the realignment of the airways over Calhan, CO would impact the operations and economics of the existing activities of the aviation community. One commenter recommended maintaining V–593 as it currently exists, intersection V–366 near the Kiowa VORTAC. The Kiowa VORTAC is scheduled to be decommissioned, but this will not prevent it from becoming an airway intersection. Other suggestions were to retain the current routing of V–83 to the proposed intersection of Kiowa.

In light of these comments, the FAA, conducted research at the FAA Technical Center in Atlantic City, NJ. It found that realignment of the Federal airways in the area of the new Denver International Airport could be accomplished to avoid the Calhan Airport without derogating operational efficiency in the area around Calhan, CO. This resulted in the realignment of V–83.

The Department of the Air Force commented that the alignment of V–83, as it was originally proposed, would reduce available airspace for a possible Military Operations Area (MOA) being discussed with FAA. Although only informal discussions have been held to date with the Air Force about establishing a MOA, the modifications made to V–83 will mitigate the Air Force's concerns. Except for editorial changes; a minor radial change from 008° to 002° at the intersection of Pueblo and Colorado Springs in the description for V–83 and the termination of V–83 at Colorado Springs to avoid the active parachute drop zone and an aerobatic training area over the Calhan Airport; the addition of an intersection between Red Table, CO, and Falcon, CO, in the description for V–134; the realignment at the Kremmling intersection for V–238 to Mile High, CO, to support the airway reconfiguration for the new airport; and a one degree radial change in the description for V–361 at the intersection of Montrose, CO, to support a new approach procedure at the Aspen, CO, Airport this amendment is the same as that proposed in the notice. A supplemental notice was not issued for this airspace action because the changes were minor in nature and within the scope of the original proposal, and it was determined that further notice and public procedure were unnecessary. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The airways listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) alters the descriptions of several VOR Federal airways located in Colorado, Nebraska, and Wyoming to accommodate the new Denver International Airport, scheduled to open in December, 1993. Two new VORTAC's, Mile High and Falcon, have been established north and south of the new airport. This action will realign the en route airway structure of these new navigational aids and enhance the efficient utilization of airspace. Additional FAA research conducted to the FAA Technical Center resulted in the realignment of Federal Airway V–83 at the intersection of Pueblo and Colorado Springs and the termination of V–83 at Colorado Springs to avoid congestion as perceived by the commenters over the Calhan Airport practice areas; the addition of an intersection between Red Table, CO, and Falcon, CO, in the description for V–134; the realignment at the Kremmling intersection for V–328 to Mile High, CO, to support the airway reconfiguration for the new airport; and a one degree radial change in the description for V–361 at the intersection of Montrose, CO, to support a new approach procedure at the Aspen, CO, Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–4 [Revised]

From Tatoosh, WA, via the INT of Tatoosh 102° and Seattle, WA, 329° radials; Seattle; Yakima, WA; Pendleton, OR; Baker, OR; Boise, ID; INT Boise 130° and Burley, ID, 292° radials; Burley; Malad City, ID; Rock Springs, WY; Cherokee, WY; Laramie, WY; Gill, CO; Thurman, CO; Goodland, KS; Hill City, KS; Salina, KS; Topeka, KS; Kansas City, MO; Hallsville, MO; St. Louis, MO; Troy, IL; Centralia, IL; Pocket City; IN; Louisville, KY; Lexington, KY; Newcombe, KY; Charleston, WV; Elkins, WV; Kessel, WV; INT Kessel 097° and Armel, VA, 292° radials; to Armel.

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V–8 [Revised]

From INT Seal Beach, CA, 266° and Ventura, CA 144° radials; Seal Beach; Paradise, CA; 35 miles, 7 miles wide (3 miles SE and 4 miles NW of centerline) Hector, CA; Goffs, CA; INT Goffs 033° and Morman Mesa, NV, 196° radials; Morman Mesa; Bryce Canyon, UT; Hanksville, UT; Grand Junction, CO; Kremmling, CO; Mile High, CO; Akron, CO; Hayes Center, NE; Grand Island, NE; Omaha, NE; Des Moines, IA; Iowa City, IA; Moline, IL; Joliet, IL; Chicago Heights, IL; Goshen, IN; Findlay, OH; Mansfield, OH; Briggs, OH; Bellaire, OH; INT Bellaire 107° and Grantsville, MD, 285° radials; Grantsville; Martinsburg, WV; to DC. The portion outside the United States has no upper limit.

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V–19 [Revised]

From Newman, TX, via INT Newman 286° and Truth or Consequences, NM, 159° radials; Truth or Consequences; INT Truth or Consequences 028° and Socorro, NM, 189° radials; Socorro; Albuquerque, NM; INT Albuquerque 036° and Santa Fe, NM, 245° radials; Santa Fe; Las Vegas, NM; Cimarron, NM; Pueblo, CO; Colorado Springs, CO; INT Colorado Springs 036° and Gill, CO, 149° radials; Gill; Cheyenne, WY; Muddy Mountain, WY; 5 miles, 45 miles 71 MSL, Crazy Woman, WY; Sheridan, WY; Billings, MT; 38 miles 72 MSL, INT Billings 347° and Lewistown, MT, 104° radials; Lewistown; INT Lewistown 322° and Havre, MT, 226° radials; to Havre.

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V–81 [Revised]

From Chihuahua, Mexico, via Marfa, TX; Fort Stockton, TX; Midland, TX; Lubbock, TX; Plainview, TX; Amarillo, TX; Dalhart, TX; Tobe, CO; Pueblo, CO; Colorado Springs, CO; Jeffco, CO; Cheyenne, WY; Scottsbluff, NE; to Chadron, NE. The airspace outside the United States is excluded.

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V–83 [Revised]

From Carlsbad, NM, via Chisum, NM; 40 miles 85 MSL Corona, NM; Otto, NM; Santa

Fe, NM; Taos, NM; Alamosa, CO; INT Alamosa 074° and Pueblo, CO, 191° radials; Pueblo; INT Pueblo 002° and Colorado Springs, CO, 153° radials; to Colorado Springs.

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V–85 [Revised]

From Falcon, Co, via INT Falcon 317° and Laramie, WY, 176° radials; Laramie; Medicine Bow, WY; Muddy Mountain, WY; 29 miles, 48 miles 77 MSL, Riverton, WY; Boysen Reservoir, WY; Cody, WY; to Billings, MT.

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V–89 [Revised]

From Gill, CO, via INT Gill 003° and Cheyenne, WY, 131° radials; Cheyenne; to Chadron, NE.

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V–95 [Revised]

From Gila Bend, AZ, via INT Gila Bend 096° and Phoenix, AZ, 197° radials; Phoenix; 49 miles, 40 miles 95 MSL; Winslow, AZ; 66 miles, 39 miles 125 MSL; Farmington, NM; Durango, CO; Blue Mesa, CO; INT Blue Mesa 081° and Falcon, CO, 208° radials; to Falcon.

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V–134 [Revised]

From Fairfield, UT, via Carbon, UT; Grand Junction, CO; 33 miles 12 AGL, 21 miles 127 MSL, 16 miles 120 MSL, 34 miles 12 AGL, Red Table, CO; INT Red Table 076° and Falcon, CO, 265° radials; to Falcon, CO.

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V–148 [Revised]

From Falcon, CO; Thurman, CO; 65 MSL INT Thurman 067° and Hayes Center, NE, 246° radials; Hayes Center; North Platte, NE; O'Neill, NE; Sioux Falls, SD; Redwood Falls, MN; Gopher, MN; Hayward, WI; Ironwood, MI; to Houghton, MI.

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V–160 [Revised]

From Blue Mesa, CO, INT Blue Mesa 064° and Falcon, CO, 231° radials; Falcon; INT Falcon 049° and Sidney, NE, 215° radials; to Sidney.

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V–207 [Revised]

From Gill, CO; to Scottsbluff, NE.

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V–220 [Revised]

From Grand Junction, CO; 25 miles 90 MSL, 28 miles 120 MSL; INT Grand Junction 075° and Meeker, CO, 167° radials; Meeker; Hayden, CO; Kremmling, CO; INT Kremmling 081° and Gill, CO, 234° radials; Gill; Akron, CO; INT Akron 094° and McCook, NE, 264° radials; McCook; INT McCook 072° and Grand Island, NE, 241° radials; Kearney, NE; Hastings, NE; Columbus, NE. From Norfolk, NE; Yankton, SD; INT Yanton 015° and Sioux Falls, SD, 231° radials; Sioux Falls; INT Sioux Falls 004° and Watertown, SD, 154° radials; Watertown; INT Watertown 021° and Fargo, ND, 172° radials; Fargo; INT Fargo 004° and Grand Forks, ND, 152° radials; to Grand Forks.

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V–263 [Revised]

From Corona, NM, INT Corona 278° and Albuquerque, NM, 160° radials; Albuquerque; INT Albuquerque 019° and Santa Fe, NM, 268° radials; Santa Fe; Las Vegas, NM; Cimarron, NM; Tobe, CO; 54 miles 69 MSL; Lamar, CO; 17 miles 63 MSL; Hugo, CO; INT Hugo 345° and Akron, CO, 232° radials; to Akron. From Pierre, SD; Aberdeen, SD.

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V–328 [Revised]

From Jackson, WY, via Big Piney, WY; 53 miles 95 MSL; Rock Springs, WY; Hayden, CO; Kremmling, CO; INT Kremmling 139° and Mile High, CO, 233° radials; to Mile High.

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V–356 [Revised]

From Red Table, CO, via INT Red Table 058° and Mile High, CO, 265° radials; to Mile High.

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V–361 [Revised]

From Farmington, NM, via Montose, CO; INT Montrose 025° and Red Table, CO, 224° radials; Red Table; Kremmling, CO; via INT Kremmling 059° and Cheyenne, WY, 216° radials; to Cheyenne.

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V–366 [Revised]

From Hugo, CO; to Falcon, CO.

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V–383 [Removed]

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Issued in Washington, DC, on September 2, 1993.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93–22159 Filed 9–9–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ANM–16]

Alteration of Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the descriptions of several jet routes located in Colorado, Idaho, Kansas, Nebraska, South Dakota, Utah, and Wyoming to accommodate the new Denver International Airport, scheduled to open in December, 1993. This action will improve traffic flow, increase aircraft safety, and reduce controller workload.

EFFECTIVE DATE: 0701 UTC, December 19, 1993.

FOR FURTHER INFORMATION CONTACT:

Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

History

On March 31, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of several jet routes located in Colorado, Idaho, Kansas, Nebraska, South Dakota, Utah, and Wyoming to accommodate the new Denver International Airport, scheduled to open in December, 1993 (57 FR 10841). Simulations conducted at the FAA Technical Center required changes to the original proposal. On September 2, 1992, the FAA published a supplemental notice proposing to alter the jet route structures of J–56 and J–114 as proposed in the original notice and to alter Jet Route J–54 between Idaho and Wyoming (57 FR 40149). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Based on the need for corrections discovered during flight checks of the proposed routes, the radials for J–20 and J–52 were revised to align with the Standard Terminal Arrival Route (STAR) over the Hugo, CO, Very High Frequency Omnidirectional Range/Tactical Air Navigation. The proposal to alter the jet route structure of J–10 resulted in the removal of a segment from the intersection of Falcon, CO, and North Platte, NE; and the extension of J–54 from Baker, OR, to Pocatello, ID, resulted in the removal of Boise, ID, from that segment of the route to improve existing air traffic control route continuity on frequently used high altitude routes. Otherwise, this amendment is the same as that proposed in the supplemental notice. Jet routes are published in paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The jet routes listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the descriptions for several jet routes located in Colorado, Idaho, Kansas, Nebraska, South Dakota, Utah, and Wyoming to accommodate the new Denver International Airport, scheduled to open in December, 1993. This action will improve traffic flow, increase aircraft safety, and reduce controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app; 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–10 [Revised]

From Los Angeles, CA; via INT Los Angeles 083° and Twentynine Palms, CA, 269° radials; Twentynine Palms; INT of Twentynine Palms 075° and Drake, AZ, 262° radials; Drake; Farmington, NM, Blue Mesa, CO; Falcon, CO; North Platte, NE; Wolbach, NE; Des Moines, IA; to Iowa City, IA.

* * * * *

J–13 [Revised]

From the INT of the United States/Mexican border and the Truth or Consequences, NM, 162° radial, via Truth or Consequences; Albuquerque, NM; Alamosa, CO; INT Alamosa 015° and Falcon, CO, 209° radials; Falcon; Cheyenne, WY; Muddy Mountain, WY; Billings, MT; Great Falls, MT; to Lethbridge, AB, Canada. The airspace within Canada is excluded.

* * * * *

J–17 [Revised]

From San Antonio, TX; via Abilene, TX; Amarillo, TX; Tobe, CO; Pueblo, CO; Falcon, CO; Cheyenne, WY; to Rapid City, SD.

* * * * *

J–20 [Revised]

From Seattle, WA; via Yakima, WA; Pendleton, OR; Donnelly, ID; Pocatello, ID; Rock Springs, WY; Falcon, CO; Hugo, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Will Rogers, OK, 284° radials; Will Rogers; Shreveport, LA; Jackson, MS; Montgomery, AL; Meridian, MS; Tallahassee, FL; INT Tallahassee 129° and Orlando, FL, 306° radials; Orlando; INT Orlando 154° and Fort Lauderdale, FL, 339° radials; to Fort Lauderdale

* * * * *

J–44 [Revised]

From Phoenix, AZ; via Winslow, AZ, Farmington, NM; Alamosa, CO; INT Alamosa 015° and Falcon, CO, 209° radials; Falcon; McCook, NE; to Lincoln, NE.

* * * * *

J–52 [Revised]

From Vancouver, BC, Canada; via Spokane, WA; Salmon, ID; Dubois, ID; Rock Springs, WY; Falcon, CO; Hugo, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Ardmore, OK, 309° radials; Ardmore; Dallas-Fort Worth, TX; Texarkana, AR; Sidon, MS; Bigbee, MS; Vulcan, AL; Atlanta, GA; Colliers, SC; Columbia, SC; Raleigh-Durham, NC; to Richmond, VA. The portion within Canada is excluded.

* * * * *

J–54 [Revised]

From Tatoosh, WA; via Olympia, WA; Baker, OR; Pocatello, ID; Cherokee, WY; to Laramie, WY.

* * * * *

J–56 [Revised]

From Mina, NV; Salt Lake City, UT; Hayden, CO; INT Hayden 090° and Falcon, CO, 317° radials; to Falcon.

* * * * *

J–60 [Revised]

From Los Angeles, CA; via Paradise, CA; Hector, CA; Boulder City, NV; Bryce Canyon, UT; Hanksville, UT; Red Table, CO; Mile High, CO; Hayes Center, NE; Lincoln, NE; Iowa City, IA; Joliet, IL; Goshen, IN; Dryer, OH; Philipsburg, PA; East Texas, PA; to Sparta, NJ.

* * * * *

J–80 [Revised]

From Oakland, CA; via Manteca, CA; Coaldale, NV; Wilson Creek, NV; Milford, UT; Grand Junction, CO; Red Table, CO; Falcon, CO; Goodland, KS; Hill City, KS; Kansas City, MO; Capital, IL; Indianapolis, IN; Bellaire, OH; INT Bellaire 090° and East Texas, PA, 240° radials; East Texas; Sparta, NJ; Barnes, MA; to Bangor, ME.

* * * * *

J–114 [Revised]

From Mile High, CO; Sidney, NE; INT Sidney 075° and O'Neill, NE, 239° radials; O'Neill; Sioux Falls, SD; to Gopher, MN.

* * * * *

J–116 [Revised]

From Salt Lake City, UT, via Fairfield, UT; Meeker, CO; to Falcon, CO.

* * * * *

J–128 [Revised]

From Los Angeles, CA, via INT Los Angeles 083° and Peach Springs, AZ, 244° radials; Peach Springs; Tuba City, AZ; Blue Mesa, CO; Falcon, CO; Hayes Center, NE; Wolbach, NE; Dubuque, IA; to Northbrook, IL.

* * * * *

J–130 [Revised]

From McCook, NE; to Pawnee City, NE.

* * * * *

J–154 [Revised]

From Battle Mountain, NV; Bonneville, UT; Salt Lake City, UT; Rock Springs, WY; INT Rock Springs 106° and Mile High, CO, 322° radials; Mile High; INT Mile High 133° and Garden City, KS, 296° radials; to Garden City.

* * * * *

J–157 [Revised]

From Myton, UT; Laramie, WY; Scottsbluff, NE; to Rapid City, SD.

* * * * *

J–168 [Revised]

From Wichita Falls, TX; Lamar, CO.

* * * * *

J–170 [Revised]

From Crazy Woman, WY; via Muddy Mountain, WY; to Medicine Bow, WY.

* * * * *

J–172 [Removed]

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Issued in Washington, DC, on September 2, 1993.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93–22160 Filed 9–9–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 91–ANM–17]

Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the descriptions of three Very High Frequency Omnidirectional Range (VOR) Federal airways located in Colorado and Wyoming to accommodate the new Denver International Airport, scheduled to open in December, 1993. Two new VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) facilities, Mile High (DVV) and Falcon (FQF), have been established north and south of the new Denver International Airport. This action will realign the en route airway structure to the new navigational aids and enhance the efficient utilization of airspace.

EFFECTIVE DATE: 0701 UTC, December 19, 1993.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

History

On March 31, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of three VOR Federal airways located in Colorado and Wyoming to accommodate the new Denver International Airport, scheduled to open in December, 1993 (57 FR 10843). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA.

The Air Transport Association (ATA) concurred without comment to the FAA's proposal to alter the VOR Federal airways in Colorado and Wyoming.

The Aircraft Owners and Pilots Association (AOPA) requested the FAA to reconsider its proposal to realign V–389 and V–593 because it would create a new intersection over the Calhan Airport (5V4). AOPA noted the Calhan Airport has an active parachute drop zone with a ceiling of 17,000 feet mean sea level (Front Range Skydivers) and an aerobatic box west of the field. These concerns were shared by the Pikes Peak Area Council of Governments, a flight instructor, several members of the Front Range Skydivers, Inc., and several private pilots. These commenters believe that the new intersection would create an unnecessary safety risk by further congesting the airspace in the proximity of the airport. They contend that the realignment of the airways over Calhan, CO would impact the operations and economics of the existing activities of the aviation community. One commenter recommended maintaining V–593 as it currently exists, intersecting V–366 near the Kiowa VORTAC. The Kiowa VORTAC is scheduled to be decommissioned, but this will not prevent it from becoming an airway intersection. Other suggestions were to eliminate the proposed V–389 and use the existing V–593.

In light of these comments, the FAA conducted research at the FAA Technical Center in Atlantic City, NJ. It found that V–389 could be realigned and V–593 could be removed to avoid the Calhan Airport without derogating operational efficiency in the area around Calhan, CO.

The Department of the Air Force commented that the alignment of V–389, as it was originally proposed, would reduce available airspace for a possible Military Operations Area (MOA) being discussed with FAA. Although only informal discussions have been held to date with the Air Force about establishing a MOA, the modifications made to V–389 will mitigate the Air Force's concerns. Except for editorial changes, the realignment of V–389, a one degree radial change in the description for V–575 at the Laramie INT, and the removal of V–593, this amendment is the same as that proposed in the notice. A supplemental notice was not issued for this airspace action because the changes were minor in nature and within the scope of the original proposal, and it was determined that further notice and public procedure were unnecessary. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The airways listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the descriptions of several VOR Federal airways located in Colorado and Wyoming to accommodate the new Denver International Airport, scheduled to open in December, 1993. Additional FAA research conducted at the FAA Technical Center resulted in the realignment of Federal Airway V–389 to avoid congestion as perceived by the commenters over the Calhan Airport practice areas; a one degree radial correction in the description of V–575 at the Laramie intersection; and the removal of V–593 to enhance the efficient utilization of airspace. In addition, two new VORTAC's, Mile High and Falcon, have been established north and south of the new airport. This action will realign the en route airway structure to the new navigational aids.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–389 [Revised]

From Cimarron, NM, via INT Cimarron 053° and Pueblo, CO, 176° radials; Pueblo; INT Pueblo 002° and Falcon, CO, 159° radials; to Falcon.

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V-575 [Revised]

From Laramie, WY, INT Laramie 156° and Mile High, CO, 322° radials; to Mile High.

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V-593 [Removed]

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Issued in Washington, DC on September 2, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-22164 Filed 9-9-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM93-16-001]

Revisions to the Regulations Governing Natural Gas Pipelines; Order No. 554

September 3, 1993.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: The Commission is correcting its final rule published in the **Federal Register** on July 19, 1993, pertaining to the elimination of the requirement that natural gas pipeline companies file FERC Form No. 15, "Interstate Pipeline's Annual Report of Gas Supply," and FERC Form No. 16, "Report of Gas Supply and Requirements." The rule inadvertently amended a section of the Commission's regulations which had been removed effective May 1, 1992.

EFFECTIVE DATE: This correction is effective September 3, 1993.

FOR FURTHER INFORMATION CONTACT: Gordon Wagner, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 219-0122.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208-1781. The full text of this document will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

On July 13, 1993, the Commission issued Order No. 554 (58 FR 38524, July 19, 1993; 64 FERC ¶ 61,059 (1993)), a final rule eliminating the requirement that natural gas pipeline companies file FERC Form No. 15, "Interstate Pipeline's Annual Report of Gas Supply," and FERC Form No. 16, "Report of Gas Supply and Requirements." Order No. 554 inadvertently revised 18 CFR 2.61, which had been removed from the Commission's regulations effective May 1, 1992. (57 FR 21891, May 26, 1992). Therefore, the final rule published in the **Federal Register** on July 19, 1993, is corrected as follows:

1. On page 38526, the paragraph entitled "C. Section 2.61" is removed and paragraphs "D, E, and F" are redesignated as "C, D, and E," respectively.

2. On page 38527, the heading "PART 2—GENERAL POLICY AND INTERPRETATIONS" and amendatory instructions 1 and 2 are removed; amendatory instructions 3 through 13 are redesignated as amendatory instructions 1 through 11.

Lois D. Cashell,

Secretary.

[FR Doc. 93-22072 Filed 9-9-93; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

22 CFR Part 121

[Public Notice 1858]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This final rule is the result of a notice of proposed rule-making published in the **Federal Register**, 57 FR 61589, dated December 28, 1992. It amends the regulations implementing section 38 of the Arms Export Control Act, which governs the export of defense articles and defense services. Specifically, this rule moves remote sensing satellites and some ground stations for controlling remote sensing satellites, as well as relevant components, parts, accessories, attachments and associated equipment and technical data and defense services into Category XV of the U.S. Munitions List (USML). Accordingly, it removes those commodities from Category VIII (h), (i), (j) and (k) and Category XI (c) and (e) of the USML where, until now, they had been controlled. (See the **Federal Register**, 57 FR 15227, dated April 27, 1992.)

This rule reduces the burden on exporters by consolidating all spacecraft to be controlled under the USML, as well as all specifically designed or modified components, parts, accessories, and attachments of such satellites, and their directly related technical data and defense services, into a single category of the USML. At the same time, this rule initiates the movement off the USML to the Department of Commerce's Commerce Control List (CCL) of some ground stations for remote sensing satellites as well as all components, parts, accessories, attachments and associated equipment of spacecraft which have not been specifically designed or modified to provide the characteristics of capabilities described in Category XV which cause a spacecraft to remain under the control of the USML. The Department of Commerce is publishing separately a final rule under the provisions of the Export Administration Act, as amended, to amend the relevant Export Commodity Control Number (ECCN) category to include the spacecraft components, parts, accessories, and attachments and associated equipment being moved as a result of this rule.

EFFECTIVE DATE: This rule is effective September 8, 1993.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Peoples, Office of Defense Trade Controls, Department of State, telephone 703-875-6619, or fax 703-875-6647; or Thomas Oldenburg, Office of Strategic Technology Affairs, Department of State, telephone 202-647-2432, or fax 202-736-7336.

SUPPLEMENTARY INFORMATION: On November 16, 1990, the President

signed Executive Order 12735 on Chemical and Biological Weapons Proliferation and directed various other export control measures. The measures directed by the President included removal from the USML of all items contained on the COCOM dual-use list unless significant U.S. national security interests would be jeopardized by such a move.

In implementing this directive, the Department created an interagency working group which reviewed the coverage of spacecraft and related components. Chaired by the Department of State, the Space Technical Working Group, (STWG) is comprised of representatives of the Departments of State, Commerce, Defense, and other executive agencies. The group was established to identify and recommend for removal from the USML commercial satellites and related articles covered by the COCOM Industrial List (IL) except where such movement would jeopardize U.S. national security interests. In pursuing this objective, the STWG has also sought to eliminate real or apparent overlaps between the U.S. Munitions List and the Commerce Control List. This rule derives from both objectives.

On September 5, 1991, the Department published in the **Federal Register** an advanced notice of proposed rule-making, establishing a new Category XV on the USML for spacecraft and related systems (56 FR 43894). A final rule formally creating Category XV for Spacecraft Systems and Associated Equipment was published in the **Federal Register** on April 27, 1992 (57 FR 15227).

The advanced notice of proposed rule-making which the Department published in the **Federal Register** on September 5, 1991, advised that a series of proposed rules would follow. Subsequent to the April 27, 1992, final rule, a final rule published on September 9, 1992 (57 FR 41077), identified military GPS receivers and moved them into the new Category XV. Another final rule, dated October 23, 1992, moved military satellites to Category XV and identified certain non-military communications satellites which have capabilities that justify keeping them on the USML in the interest of U.S. national security (57 FR 48315). That rule, along with a final rule published simultaneously by the Department of Commerce, moved all other complete commercial communications satellites to the export licensing control of the Department of Commerce. This final rule completes the internal movement within the USML to Category XV of all remaining satellites and the components, parts, accessories, and attachments and associated equipment specifically designed for those satellites, and all directly related technical data and defense services for those satellites. At the same time, in conjunction with a final rule being published simultaneously by the Department of Commerce, all generic satellite components, parts, accessories, attachments and associated equipment except where such equipment is specifically designed or modified to provide one or more of the characteristics or capabilities identified in Category XV of the USML as requiring control under the USML) are being moved from the USML to the CCL. In addition, under this final rule and the new Department of Commerce final rule referred to above, all passive ground stations for receipt of data from remote sensing satellites are being moved from the USML to the CCL; ground stations for remote sensing satellites which have USML encryption capability or uplink command capability will remain in Category XV of the USML.

The proposed rule published in the **Federal Register** on December 28, 1992, generated nine responses during the 30-day public comment period for the proposed rule. With a few exceptions, most of industry's comments focused upon language related to commercial communications satellites, which were published as a final rule on October 23, 1992. While the Department will consider those comments for possible future action, it does not intend to make any changes to the language regarding commercial communications satellites at this time.

One industry comment did touch upon the inclusion of certain radiation hardened integrated circuits (IC's) in the specific language of Category XV(e)(2). Heretofore, the USML controlled exports of a large proportion of radiation hardened IC's under the USML under Category XI; as a result of this final rule, all so-called "class 2" radiation hardened IC's previously controlled under the USML are being moved to the CCL. Those radiation hardened IC's which the Department has determined should continue to be controlled under the USML are specifically identified in the language of Category XV(e)(2).

Other comments mentioned the language of Category XV(e), which controls all components, parts, accessories, attachments and associated equipment which are specifically designed, modified or configured for the items in Category XV. Industry recognized that the language moves a significant quantity of such components, parts, etc., off the USML, but expressed concern that some such components (for example, traveling wave tube amplifiers) must receive minor adjustments which do not affect their capabilities or characteristics in order to be usable in a specific satellite. Such a situation would result in some satellite components being subject to the CCL when the satellite for which it is being exported is on the CCL, while virtually identical components would be controlled on the USML when the specific satellite for which it is being exported is on the USML. The Department understands industry's concern in this instance and does not intend such a result; however, it has been determined that the clarification in this paragraph will suffice to put such concerns to rest without having to make any additional changes in the actual text of Category XV(e)(1). The language of Category XV(e)(1) captures only those specific components, parts, etc., of a satellite or military GPS receiver which are specifically designed, modified or configured to provide one or more of the characteristics or capabilities specifically identified in Category XV. All other components, parts, accessories, attachments and associated equipment specifically designed for satellites but not providing such a capability or characteristic will henceforth be under the export licensing jurisdiction of the Department of Commerce, regardless of whether the satellite is on the USML or the CCL. However, this paragraph regarding Category XV of the USML must not be used to infer movement to the CCL of equipment controlled under other categories of the USML. For example, military telemetry equipment continues to be controlled under Category XI of the USML, even though a specific export transaction of such equipment may be intended for end-use in a passive remote sensing ground station; in this situation, the ground station would also be controlled under the USML because of the inclusion of the military telemetry equipment capture in Category XI.

In addition to comments received from the private sector, the Department received from other Federal agencies several detailed technical suggestions related to language in Category XV(b), which controls remote sensing satellites. The STWG has requested and was granted additional time to review the technical merits of those proposals. However, because of the advantages to industry and to the United States Government of the transfer of material from the USML to the CCL implicit in the language of the December 28, 1992, proposed rule, the Department has

decided to enact the language of the December 28, 1992, proposed rule as a final rule and publish it in conjunction with a complementary final rule by the Department of Commerce. The STWG anticipates completing its review of the language of Category XV(b) on remote sensing satellites approximately 120 days following publication of this final rule. Any further changes (if any) to the language in the USML on remote sensing satellites will be made in a follow-on final rule at that time.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulations is amended to read as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. In § 121.1, Category XV is revised to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category XV—Spacecraft Systems and Associated Equipment

* (a) Spacecraft and associated hardware, including ground support equipment, specifically designed or modified for military use.

(b) Remote sensing satellite systems as follows:

* (1) All Remote sensing satellites;

(2) Ground control stations for remote sensing satellites as follows:

(i) Ground control stations for telemetry, tracking and control of such satellites; or

(ii) Passive ground stations for remote sensing satellites having any of the following characteristics:

(A) Employing any of the cryptographic items controlled under Category XIII of this subchapter; or

(B) Employing any uplink command capability.

Note: For export licensing controls over any passive ground receive only stations for remote sensing satellites not having any of the above parameters nor any systems or major components controlled elsewhere under this subchapter, see the Commerce Control List.

(c) Communications satellites (excluding ground stations and their associated equipment and technical data not enumerated elsewhere in this § 121.1; for controls on such ground stations, see the Commerce Control List) with any of the following characteristics:

(1) Anti-jam capability. Antennas and/or antenna systems with ability to respond to incoming interference by adaptively reducing antenna gain in the direction of the interference.

(2) Antennas:

(i) With aperture (overall dimension of the radiating portions of the antenna) greater than 30 feet ; or

(ii) With sidelobes less than or equal to −35dB; or

(iii) Designed, modified, or configured to provide coverage area on the surface of the earth less than 200 nm in diameter, where "coverage area" is defined as that area on the surface of the earth that is illuminated by the main beam width of the antenna (which is the angular distance between half power points of the beam).

(3) Designed, modified or configured for intersatellite data relay links that do not involve a ground relay terminal ("cross-links").

(4) Spaceborne baseband processing equipment that uses any technique other than frequency translation which can be changed several times a day on a channel by channel basis among previously assigned fixed frequencies.

(5) Employing any of the cryptographic items controlled under Category XIII (b) of this subchapter.

(6) Employing radiation-hardened devices controlled elsewhere in this § 121.1 that are not "embedded" in the satellite in such a way as to deny physical access. (Here "embedded" means that the device either cannot feasibly be removed from the satellite or be used for other purposes.)

(7) Having propulsion systems which permit acceleration of the satellite on-orbit (i.e., after mission orbit injection) at rates greater than 0.1g.

(8) Having attitude control and determination systems designed to provide spacecraft pointing determination and control better than 0.02 degrees per axis.

(9) Having orbit transfer engines ("kick-motors") which remain permanently with the spacecraft and are capable of being restarted after achievement of mission orbit and providing acceleration greater than 1g. (Orbit transfer engines which are not designed, built, and shipped as an integral part of the satellite are controlled under Category IV of this subchapter.)

(d) Global Positioning System (GPS) receiving equipment specifically designed, modified or configured for military use; or GPS receiving equipment with any of the following characteristics:

(1) Designed for encryption or decryption (e.g., Y-Code) of GPS precise positioning service (PPS) signals;

(2) Designed for producing navigation results above 60,000 feet altitude and at 1,000 knots velocity or greater;

(3) Specifically designed or modified for use with a null steering antenna or including a null steering antenna designed to reduce or avoid jamming signals;

(4) Designed or modified for use with unmanned air vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km.

(**Note**: GPS receivers designed or modified for use with military unmanned air vehicle systems with less capability are considered to be specifically designed, modified or configured for military use and therefore covered under this paragraph (d)(4).)

Any GPS equipment not meeting this definition is subject to the jurisdiction of the Department of Commerce (DOC). Manufacturers or exporters of equipment under DOC jurisdiction are advised that the U.S. Government does not assure the availability of the GPS P-Code for civil navigation. It is the policy of the Department of Defense (DOD) that GPS receivers using P-Code without clarification as to whether or not those receivers were designed or modified to use Y-Code will be presumed to be Y-Code capable and covered under this paragraph. The DOD policy further requires that a notice be attached to all P-Code receivers presented for export. The notice must state the following: "ADVISORY NOTICE: This receiver uses the GPS P-Code signal, which by U.S. policy, may be switched off without notice."

(e) Components, parts, accessories, attachments, and associated equipment (including ground support equipment) as follows:

(1) Specifically designed, modified or configured for the articles in paragraphs (a) through (d) of this category.

(2) Radiation hardened microelectronic circuits that are specifically designed or rated to meet or exceed all five of the following characteristics:

(**Note**: For export controls on all other radiation hardened microelectronic circuits not captured below, see the Commerce Control List.)

(i) A total dose of 5×10^5 Rads (Si);

(ii) A dose rate upset of 5×10^8 Rads (Si)/Sec.;

(iii) A neutron dose of 1×10^{14} N/cm^2;

(iv) A single event upset of 1×10^{-7} or less error/bit/day; and

(v) Single event latch-up free and having a dose rate latch-up of 5×10^{8} Rads(Si)/sec or greater.

(f) Technical data (as defined in § 120.21) and defense services (as defined in § 120.8) directly related to the defense articles enumerated in paragraphs (a) through (f) of this category. (See § 125.4 for exceptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME. In addition, detailed design, development, production or manufacturing data for all spacecraft systems and specifically designed or modified components thereof, regardless of which U.S. Government agency has jurisdiction for export of the spacecraft. (See § 125.4 for exceptions.) This restriction does not include that level of technical data (including marketing data) necessary and reasonable for a purchaser to have assurance that a U.S.-built item intended to operate in space has been designed, manufactured and tested in conformance with specified contract requirements (e.g., operational performance, reliability, lifetime, product quality, or delivery expectations), as well as data necessary to evaluate in-orbit anomalies and to operate and maintain associated ground equipment.

* * * * *

Dated: July 19, 1993.

Lynn E. Davis,

Under Secretary of State for International Security Affairs.

[FR Doc. 93–21465 Filed 9–9–93; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8489]

RIN 1545–AP53

Combat Zone Compensation of Members of the Armed Forces

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to whether compensation received for active service in the Armed Forces of the United States in a combat zone is excludable from the recipient's gross income. These regulations reflect various statutory changes enacted since the publication of prior regulations under section 112. These regulations provide guidance to personnel departments of the Armed Forces and help service members determine their income tax liability for compensation received for service in a combat zone.

EFFECTIVE DATE: These regulations are effective January 16, 1991.

FOR FURTHER INFORMATION CONTACT: Robert B. Goettlich at (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1991, the Internal Revenue Service published in the **Federal Register** (56 FR 10211) proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 112 of the Internal Revenue Code of 1986 (Code), which provides an exclusion from gross income for compensation paid to members of the Armed Forces of the United States for service in a combat zone (combat zone compensation exclusion). The amendments were proposed to reflect the statutory changes made by sections 2(a) and 6(b) of Public Law 93–597, 88 Stat. 1950, and section 3(b) of Public Law 94–569, 90 Stat. 2699 (both amending sections 112 and 2201 of the Code), and section 905 of Public Law 98–94, 97 Stat. 614, 636 (amending 37 U.S.C. 310). Many of those changes expanded the combat zone compensation exclusion by eliminating certain limits on its availability. In addition to those changes, amendments were proposed to make the regulations clearer and better organized.

Written comments were received from the public on the proposed regulations, but no public hearing was requested or held. After consideration of all of the written comments received, the proposed regulations under section 112 are adopted as modified by this Treasury decision.

Explanation of Provisions

Section 112 of the Code excludes from gross income certain compensation received by members of the Armed Forces of the United States for active duty in a "combat zone." This exclusion applies to compensation received for the period of active service in the combat zone. It also applies to compensation received for the period in which the service member is hospitalized as a result of wounds, disease, or injury incurred while serving in the combat zone.

An area in which the Armed Forces of the United States are engaging or have engaged in combat is a "combat zone" for purposes of section 112 only if the President of the United States designates the area as a combat zone by Executive Order. Under § 1.112–1(e) of these regulations, members of the Armed Forces who perform military service in an area outside a combat zone specified by Executive Order are also deemed to serve in the combat zone for purposes of the exclusion under section 112 if their service is in direct support of the military operations in the combat zone and qualifies them for special pay authorized under section 310 of title 37 of the United States Code (37 U.S.C. 310).

Before October 1, 1983, special pay under 37 U.S.C. 310 was referred to as "hostile fire pay" because it could be authorized only if service members were subject to hostile fire or explosion of hostile mines. Effective October 1, 1983, 37 U.S.C. 310 was amended to add 37 U.S.C. 310(a)(4), which provides that special pay can also be authorized for certain service members who are on duty in a foreign area in which they are subject to the threat of physical harm or imminent danger on the basis of civil insurrection, civil war, terrorism, or wartime conditions. The Department of Defense refers to special pay under 37 U.S.C. 310 (whether due to either hostile fire or imminent danger) as special pay for duty subject to hostile fire or imminent danger.

These regulations reflect the amendment of 37 U.S.C. 310 providing for imminent danger pay. Paragraphs (e) and (f) of § 1.112–1 of these regulations (formerly paragraphs (j) and (k) of § 1.112–1) clarify that special pay received under the imminent danger provision of 37 U.S.C. 310(a)(4) is treated in the same manner for purposes of section 112 as special pay received under the hostile fire provisions of 37 U.S.C. 310(a) (1) through (3). As a result, members of the Armed Forces who perform military service outside a combat zone are nevertheless deemed to serve in the combat zone during the period in which they perform service qualifying them for pay under any provision of 37 U.S.C. 310, including the imminent danger provision of 37 U.S.C. 310(a)(4), if the service is in direct support of military operations in the combat zone. These regulations provide an example illustrating this provision.

Prior to July 1, 1973, the combat zone compensation exclusion only applied to compensation received for service in a combat zone "during an induction period" (generally, any period during which individuals could be inducted into the Armed Forces for training and

service). This limitation was removed from section 112 by section 2(a) of Public Law 93–597. These regulations reflect the elimination of the phrase "during an induction period" throughout § 1.112–1.

Summary of Significant Modifications

In general, these final regulations retain the structure of the proposed regulations. However, the final regulations reflect certain modifications to the proposed regulations in response to comments received from the public.

Some commentators suggested that the regulations provide examples of specific types of compensation that might be excluded under section 112. Consistent with positions announced in Revenue Ruling 71–343, 1971–2 C.B. 92, and Revenue Ruling 73–187, 1973–1 C.B. 51, new § 1.112–1(b)(5) provides six examples of combat zone compensation, illustrating that compensation other than military basic pay can be eligible for the exclusion. The examples also illustrate the principle that the time and place of entitlement to compensation, not the time and place of payment of the compensation, determine whether the compensation can be excluded from income under section 112. A statement of that principle and of the meaning of the term "entitlement" were also added to § 1.112–1(b)(4).

One commentator suggested that *Examples 1* and *2* in § 1.112–1(e)(2) clarify that the combat zone compensation exclusion is available for the month of May (a month during which the member in the examples actually served in the combat zone) as well as for June (a month in which the member served outside the combat zone but satisfied the conditions for deemed combat zone service). The examples have been so clarified.

One commentator suggested that the regulations could be interpreted to allow a member who remained a prisoner of war for three years after the termination of combatant activities in the combat zone and who was hospitalized upon release to exclude military compensation received for two years of hospitalization following release. The commentator requested that an example be added reflecting that interpretation. Section 112 expressly limits the combat zone compensation exclusion for hospitalization to the two-year period following termination of combatant activities in the zone. No exception to this limit is provided for hospitalization of former prisoners of war. Accordingly, the final regulations do not adopt the commentator's interpretation or provide an example supporting that interpretation.

Finally, § 1.112–1(a)(4) was included in the proposed regulations to clarify that the exclusion under section 112 applies only to combat zone compensation received from the Armed Forces of the United States, except as provided in section 112(d)(2) (which extends the exclusion to compensation of civilian employees of the Federal Government who are in missing status as a result of the Vietnam conflict). Payments by other employers (whether private enterprises or governmental entities) cannot be excluded from income under section 112. The final regulations retain this provision but, consistent with Revenue Ruling 69–353, 1969–1 C.B. 49, include a limited exception for combat zone compensation paid by an agency or instrumentality of the United States or by an international organization to active duty military personnel who are assigned to the agency or instrumentality or organization on official detail.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Robert B. Goettlich of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 1.112–1 is revised to read as follows:

§ 1.112–1 Combat zone compensation of members of the Armed Forces.

(a) *Combat zone compensation exclusion*—(1) *Amount excluded.* In addition to the exemptions and credits otherwise applicable, section 112 excludes from gross income the following compensation of members of the Armed Forces:

(i) *Enlisted personnel.* Compensation received for active service as a member below the grade of commissioned officer in the Armed Forces of the United States for any month during any part of which the member served in a combat zone or was hospitalized at any place as a result of wounds, disease, or injury incurred while serving in the combat zone.

(ii) *Commissioned officers.* Compensation not exceeding the monthly dollar limit received for active service as a commissioned officer in the Armed Forces of the United States for any month during any part of which the officer served in a combat zone or was hospitalized at any place as a result of wounds, disease, or injury incurred while serving in the combat zone. The monthly dollar limit is the monthly amount excludable from the officer's income under section 112(b) as amended. Beginning in 1966, the monthly dollar limit for periods of active service after 1965 became $500. As of September 10, 1993, the monthly dollar limit continues to be $500.

(2) *Time limits on exclusion during hospitalization.* Compensation received for service for any month of hospitalization that begins more than 2 years after the date specified by the President in an Executive Order as the date of the termination of combatant activities in the combat zone cannot be excluded under section 112. Furthermore, compensation received while hospitalized after January 1978 for wounds, disease, or injury incurred in the Vietnam combat zone designated by Executive Order 11216 cannot be excluded under section 112.

(3) *Special terms.* A commissioned warrant officer is not a *commissioned officer* under section 112(b) and is entitled to the exclusion allowed to enlisted personnel under section 112(a). *Compensation*, for the purpose of section 112, does not include pensions and retirement pay. *Armed Forces of the*

United States is defined (and members of the Armed Forces are described) in section 7701(a)(15).

(4) *Military compensation only.* Only compensation paid by the Armed Forces of the United States to members of the Armed Forces can be excluded under section 112, except for compensation paid by an agency or instrumentality of the United States or by an international organization to a member of the Armed Forces whose military active duty status continues during the member's assignment to the agency or instrumentality or organization on official detail. Compensation paid by other employers (whether private enterprises or governmental entities) to members of the Armed Forces cannot be excluded under section 112 even if the payment is made to supplement the member's military compensation or is labeled by the employer as compensation for active service in the Armed Forces of the United States. Compensation paid to civilian employees of the federal government, including civilian employees of the Armed Forces, cannot be excluded under section 112, except as provided in section 112(d)(2) (which extends the exclusion to compensation of civilian employees of the federal government in missing status due to the Vietnam conflict).

(b) *Service in combat zone*—(1) *Active service.* The exclusion under section 112 applies only if active service is performed in a combat zone. A member of the Armed Forces is in active service if the member is actually serving in the Armed Forces of the United States. Periods during which a member of the Armed Forces is absent from duty on account of sickness, wounds, leave, internment by the enemy, or other lawful cause are periods of active service. A member of the Armed Forces in active service in a combat zone who becomes a prisoner of war or missing in action in the combat zone is deemed, for the purpose of section 112, to continue in active service in the combat zone for the period for which the member is treated as a prisoner of war or as missing in action for military pay purposes.

(2) *Combat zone status.* Except as provided in paragraphs (e) and (f) of this section, service is performed in a combat zone only if it is performed in an area which the President of the United States has designated by Executive Order, for the purpose of section 112, as an area in which Armed Forces of the United States are or have been engaged in combat, and only if it is performed on or after the date designated by the President by Executive Order as the date of the commencing of combatant activities in that zone and on or before the date designated by the President by Executive Order as the date of the termination of combatant activities in that zone.

(3) *Partial month service.* If a member of the Armed Forces serves in a combat zone for any part of a month, the member is entitled to the exclusion for that month to the same extent as if the member has served in that zone for the entire month. If a member of the Armed Forces is hospitalized for a part of a month as a result of wounds, disease, or injury incurred while serving in that zone, the member is entitled to the exclusion for the entire month.

(4) *Payment time and place.* The time and place of payment are irrelevant in considering whether compensation is excludable under section 112; rather, the time and place of the entitlement to compensation determine whether the compensation is excludable under section 112. Thus, compensation can be excluded under section 112 whether or not it is received outside a combat zone, or while the recipient is hospitalized, or in a year different from that in which the service was rendered for which the compensation is paid, provided that the member's entitlement to the compensation fully accrued in a month during which the member served in the combat zone or was hospitalized as a result of wounds, disease, or injury incurred while serving in the combat zone. For this purpose, entitlement to compensation fully accrues upon the completion of all actions required of the member to receive the compensation. Compensation received by a member of the Armed Forces for services rendered while in active service can be excluded under section 112 even though payment is received subsequent to discharge or release from active service. Compensation credited to a deceased member's account for a period subsequent to the established date of the member's death and received by the member's estate can be excluded from the gross income of the estate under section 112 to the same extent that it would have been excluded from the gross income of the member had the member lived and received the compensation.

(5) *Examples of combat zone compensation.* The rules of this section are illustrated by the following examples:

Example 1. On January 5, outside of a combat zone, an enlisted member received basic pay for active duty services performed from the preceding December 1 through December 31. On December 4 (and no other date), the member performed services within a combat zone. The member may exclude from income the entire payment received on January 5, although the member served in the combat zone only one day during December, received the payment outside of the combat zone, and received the payment in a year other than the year in which the combat zone services were performed.

Example 2. From March through December, an enlisted member became entitled to 25 days of annual leave while serving in a combat zone. The member used all 25 days of leave in the following year. The member may exclude from income the compensation received for those 25 days, even if the member performs no services in the combat zone in the year the compensation is received.

Example 3. From March through December, a commissioned officer became entitled to 25 days of annual leave while serving in a combat zone. During that period the officer also received basic pay of $1,000 per month from which the officer excluded from income $500 per month (exhausting the monthly dollar limit under section 112 for that period). The officer used all 25 days of leave in the following year. The officer may not exclude from income any compensation received in the following year related to those 25 days of leave, since the officer had already excluded from income the maximum amount of combat zone compensation for the period in which the leave was earned.

Example 4. In November, while serving in a combat zone, an enlisted member competing for a cash award submitted an employee suggestion. After November, the member neither served in a combat zone nor was hospitalized for wounds incurred in the combat zone. In June of the following year, the member's suggestion was selected as the winner of the competition and the award was paid. The award can be excluded from income as combat zone compensation although granted and received outside of the combat zone, since the member completed the necessary action to win the award (submission of the suggestion) in a month during which the member served in the combat zone.

Example 5. In July, while serving in a combat zone, an enlisted member voluntarily reenlisted. After July, the member neither served in a combat zone nor was hospitalized for wounds incurred in the combat zone. In February of the following year, the member received a bonus as a result of the July reenlistment. The reenlistment bonus can be excluded from income as combat zone compensation although received outside of the combat zone, since the member completed the necessary action for entitlement to the reenlistment bonus in a month during which the member served in the combat zone.

Example 6. In July, while serving outside a combat zone, an enlisted member voluntarily reenlisted. In February of the following year, the member, while performing services in a combat zone, received a bonus as a result of the July reenlistment. The reenlistment bonus cannot be excluded from income as combat zone compensation although received while

serving in the combat zone, since the member completed the necessary action for entitlement to the reenlistment bonus in a month during which the member had neither served in the combat zone nor was hospitalized for wounds incurred while serving in a combat zone.

(c) *Hospitalization*—(1) *Presumption of combat zone injury.* If an individual is hospitalized for wound, disease, or injury while serving in a combat zone, the wound, disease, or injury will be presumed to have been incurred while serving in a combat zone, unless the contrary clearly appears. In certain cases, however, a wound, disease, or injury may have been incurred while serving in a combat zone even though the individual was not hospitalized for it while so serving. In exceptional cases, a wound, disease, or injury will not have been incurred while serving in a combat zone even though the individual was hospitalized for it while so serving.

(2) *Length of hospitalization.* An individual is hospitalized only until the date the individual is discharged from the hospital.

(3) *Examples of combat zone injury.* The rules of this paragraph (c) are illustrated by the following examples:

Example 1. An individual is hospitalized for a disease in the combat zone where the individual has been serving for three weeks. The incubation period of the disease is two to four weeks. The disease is incurred while serving in the combat zone.

Example 2. The facts are the same as in *Example 1* except that the incubation period of the disease is one year. The disease is not incurred while serving in the combat zone.

Example 3. A member of the Air Force, stationed outside the combat zone, is shot while participating in aerial combat over the combat zone, but is not hospitalized until returning to the home base. The injury is incurred while serving in a combat zone.

Example 4. An individual is hospitalized for a disease three weeks after having departed from a combat zone. The incubation period of the disease is two to four weeks. The disease is incurred while serving in a combat zone.

(d) *Married members.* The exclusion under section 112 applies without regard to the marital status of the recipient of the compensation. If both spouses meet the requirements of the statute, then each spouse is entitled to the benefit of an exclusion. In the case of a husband and wife domiciled in a State recognized for Federal income tax purposes as a community property State, any exclusion from gross income under section 112 operates before apportionment of the gross income of the spouses under community property law. For example, a husband and wife are domiciled in a community property State and the member spouse is entitled, as a commissioned officer, to the benefit of the exclusion under section 112(b) of $500 for each month. The member receives $7,899 as compensation for active service for 3 months in a combat zone. Of that amount, $1,500 is excluded from gross income under section 112(b) and $6,399 is taken into account in determining the gross income of both spouses.

(e) *Service in area outside combat zone*—(1) *Combat zone treatment.* For purposes of section 112, a member of the Armed Forces who performs military service in an area outside the area designated by Executive Order as a combat zone is deemed to serve in that combat zone while the member's service is in direct support of military operations in that zone and qualifies the member for the special pay for duty subject to hostile fire or imminent danger authorized under section 310 of title 37 of the United States Code, as amended (37 U.S.C. 310) (hostile fire/imminent danger pay).

(2) *Examples of combat zone treatment.* The examples in this paragraph (e)(2) are based on the following circumstances: Certain areas, airspace, and adjacent waters are designated as a combat zone for purposes of section 112 as of May 1. Some members of the Armed Forces are stationed in the combat zone; others are stationed in two foreign countries outside the combat zone, named Nearby Country and Destination Country.

Example 1. B is a member of an Armed Forces ground unit stationed in the combat zone. On May 31, B's unit crosses into Nearby Country. B performs military service in Nearby Country in direct support of the military operations in the combat zone from June 1 through June 8 that qualifies B for hostile fire/imminent danger pay. B does not return to the combat zone during June. B is deemed to serve in the combat zone from June 1 through June 8. Accordingly, B is entitled to the exclusion under section 112 for June. Of course, B is also entitled to the exclusion for any month (May, in this example) in which B actually served in the combat zone.

Example 2. B is a member of an Armed Forces ground unit stationed in the combat zone. On May 31, B's unit crosses into Nearby Country. On June 1, B is wounded while performing military service in Nearby Country in direct support of the military operations in the combat zone that qualifies B for hostile fire/imminent danger pay. On June 2, B is transferred for treatment to a hospital in the United States. B is hospitalized from June through October for those wounds. B is deemed to have incurred the wounds while serving in the combat zone on June 1. Accordingly, B is entitled to the exclusion under section 112 for June through October. Of course, B is also entitled to the exclusion for any month (May, in this example) in which B actually served in the combat zone.

Example 3. B is stationed in Nearby Country for the entire month of June as a member of a ground crew servicing combat aircraft operating in the combat zone. B's service in Nearby Country during June does not qualify B for hostile fire/imminent danger pay. Accordingly, B is not deemed to serve in the combat zone during June and is not entitled to the exclusion under section 112 for that month.

Example 4. B is assigned to an air unit stationed in Nearby Country for the entire month of June. In June, members of air units of the Armed Forces stationed in Nearby Country fly combat and supply missions into and over Destination Country in direct support of military operations in the combat zone. B flies combat missions over Destination Country from Nearby Country from June 1 through June 8. B's service qualifies B for hostile fire/imminent danger pay. Accordingly, B is deemed to serve in the combat zone during June and is entitled to the exclusion under section 112. The result would be the same if B were to fly supply missions into Destination Country from Nearby Country in direct support of operations in the combat zone qualifying B for hostile fire/imminent danger pay.

Example 5. Assigned to an air unit stationed in Nearby Country, B was killed in June when B's plane crashed on returning to the airbase in Nearby Country. B was performing military service in direct support of the military operations in the combat zone at the time of B's death. B's service also qualified B for hostile fire/imminent danger pay. B is deemed to have died while serving in the combat zone or to have died as a result of wounds, disease, or injury incurred while serving in the combat zone for purposes of section 692(a) and section 692(b) (providing relief from certain income taxes for members of the Armed Forces dying in a combat zone or as a result of wounds, disease, or injury incurred while serving in a combat zone) and section 2201 (providing relief from certain estate taxes for members of the Armed Forces dying in a combat zone or by reason of combat-zone-incurred wounds). The result would be the same if B's mission had been a supply mission instead of a combat mission.

Example 6. In June, B was killed as a result of an off-duty automobile accident while leaving the airbase in Nearby Country shortly after returning from a mission over Destination Country. At the time of B's death, B was not performing military duty qualifying B for hostile fire/imminent danger pay. B is not deemed to have died while serving in the combat zone or to have died as the result of wounds, disease, or injury incurred while serving in the combat zone. Accordingly, B does not qualify for the benefits of section 692(a), section 692(b), or section 2201.

Example 7. B performs military service in Nearby Country from June 1 through June 8 in direct support of the military operations in the combat zone. Nearby Country is designated as an area in which members of the Armed Forces qualify for hostile fire/imminent danger pay due to imminent

danger, even though members in Nearby Country are not subject to hostile fire. B is deemed to serve in the combat zone from June 1 through June 8. Accordingly, B is entitled to the exclusion under section 112 for June.

(f) *Nonqualifying presence in combat zone*—(1) *Inapplicability of exclusion.* The following members of the Armed Forces are not deemed to serve in a combat zone within the meaning of section 112(a)(1) or section 112(b)(1) or to be hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone within the meaning of section 112(a)(2) or section 112(b)(2)—

(i) Members present in a combat zone while on leave from a duty station located outside a combat zone;

(ii) Members who pass over or through a combat zone during the course of a trip between two points both of which lie outside a combat zone; or

(iii) Members present in a combat zone solely for their own personal convenience.

(2) *Exceptions for temporary duty or special pay.* Paragraph (f)(1) of this section does not apply to members of the Armed Forces who—

(i) Are assigned on official temporary duty to a combat zone (including official temporary duty to the airspace of a combat zone); or

(ii) Qualify for hostile fire/imminent danger pay.

(3) *Examples of nonqualifying presence and its exceptions.* The examples in this paragraph (f)(3) are based on the following circumstances: Certain areas, airspace, and adjacent waters are designated as a combat zone for purposes of section 112 as of May 1. Some members of the Armed Forces are stationed in the combat zone; others are stationed in two foreign countries outside the combat zone, named Nearby Country and Destination Country.

Example 1. B is a member of the Armed Forces assigned to a unit stationed in Nearby Country. On June 1, B voluntarily visits a city within the combat zone while on leave. B is not deemed to serve in a combat zone since B is present in a combat zone while on leave from a duty station located outside a combat zone.

Example 2. B is a member of the Armed Forces assigned to a unit stationed in Nearby Country. During June, B takes authorized leave and elects to spend the leave period by visiting a city in the combat zone. While on leave in the combat zone, B is subject to hostile fire qualifying B for hostile fire/imminent danger pay. Although B is present in the combat zone while on leave from a duty station outside the combat zone, B qualifies for the exclusion under section 112 because B qualifies for hostile fire/imminent danger pay while in the combat zone.

Example 3. B is a member of the Armed Forces assigned to a ground unit stationed in the combat zone. During June, B takes authorized leave and elects to spend the leave period in the combat zone. B is not on leave from a duty station located outside a combat zone, nor is B present in a combat zone solely for B's own personal convenience. Accordingly, B's combat zone tax benefits continue while B is on leave in the combat zone.

Example 4. B is assigned as a navigator to an air unit stationed in Nearby Country. On June 4, during the course of a flight between B's home base in Nearby Country and another base in Destination Country, the aircraft on which B serves as a navigator flies over the combat zone. B is not on official temporary duty to the airspace of the combat zone and does not qualify for hostile fire/imminent danger pay as a result of the flight. Accordingly, B is not deemed to serve in a combat zone since B passes over the combat zone during the course of a trip between two points both of which lie outside the combat zone without either being on official temporary duty to the combat zone or qualifying for hostile fire/imminent danger pay.

Example 5. B is a member of the Armed Forces assigned to a unit stationed in Nearby Country. B enters the combat zone on a 3-day pass. B is not on official temporary duty and does not qualify for hostile fire/imminent danger pay while present in the combat zone. Accordingly, B is not deemed to serve in a combat zone since B is present in the combat zone solely for B's own personal convenience.

Example 6. B, stationed in Nearby Country, is a military courier assigned on official temporary duty to deliver military pouches in the combat zone and in Destination Country. On June 1, B arrives in the combat zone from Nearby Country, and on June 2, B departs for Destination Country. Although B passes through the combat zone during the course of a trip between two points outside the combat zone, B is nevertheless deemed to serve in a combat zone while in the combat zone because B is assigned to the combat zone on official temporary duty.

Example 7. B is a member of an Armed Forces ground unit stationed in Nearby Country. On June 1, B took authorized leave and elected to spend the leave period by visiting a city in the combat zone. On June 2, while on leave in the combat zone, B was wounded by hostile fire qualifying B for hostile fire/imminent danger pay. On June 3, B was transferred for treatment to a hospital in the United States. B is hospitalized from June through October for those wounds. Although B was present in the combat zone while on leave from a duty station outside the combat zone, B is deemed to have incurred the wounds while serving in the combat zone on June 2, because B qualified for hostile fire/imminent danger pay while in the combat zone. Accordingly, B is entitled to the exclusion under section 112 for June through October.

Example 8. The facts are the same as in *Example 7* except that B dies on September 1 as a result of the wounds incurred in the combat zone. B is deemed to have died as a result of wounds, disease, or injury incurred while serving in the combat zone for purposes of section 692(a) and section 692(b) (providing relief from certain income taxes for members of the Armed Forces dying in a combat zone or as a result of wounds, disease, or injury incurred while serving in a combat zone) and section 2201 (providing relief from certain estate taxes for members of the Armed Forces dying in a combat zone or by reason of combat-zone-incurred wounds).

Michael P. Dolan,

Commissioner of Internal Revenue.

Approved: August 19, 1993.

Samuel Y. Sessions,

Acting Assistant Secretary of the Treasury.

[FR Doc. 93–22070 Filed 9–9–93; 8:45 am]

BILLING CODE 4830–01–U

Office of Foreign Assets Control

31 CFR Parts 500, 515, 550, 575, 580, and 585

Foreign Assets Control, Cuban Assets Control, Libyan Sanctions, Iraqi Sanctions, Haitian Transactions, and Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final Rule; amendment.

SUMMARY: This rule amends the Foreign Assets Control Regulations, the Cuban Assets Control Regulations, the Libyan Sanctions Regulations, the Iraqi Sanctions Regulations, the Haitian Transactions Regulations, and the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations (collectively, the "Regulations"), by standardizing and supplementing reporting requirements for U.S. financial institutions holding blocked accounts. Under the new requirements, a U.S. financial institution must provide written notification to the Office of Foreign Assets Control of any transfer into a blocked account within 10 days of the transfer. This rule also amends the Regulations by instituting standard registration and reporting requirements applicable to all persons holding blocked property, including the annual designation of a contact individual by each person holding blocked property.

EFFECTIVE DATE: September 10, 1993.

FOR FURTHER INFORMATION CONTACT: Dennis P. Wood, Chief of Compliance Programs, Tel.: 202/622–2490, Loren L. Dohm, Chief of Blocked Assets, Tel.: 202/622–2440, or William B. Hoffman, Chief Counsel, Tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: Currently, the notification requirements for U.S. financial institutions holding blocked accounts vary significantly from program to program, among the Foreign Assets Control Regulations, 31 CFR part 500, the Cuban Assets Control Regulations, 31 CFR part 515, the Libyan Sanctions Regulations, 31 CFR part 550, the Iraqi Sanctions Regulations, 31 CFR part 575, the Haitian Transactions Regulations, 31 CFR part 580, and the Federal Republic of Yugoslavia (Serbia and Montenegro) Sanctions Regulations, 31 CFR part 585. This rule amends the notification requirements to ensure that such requirements are consistent from program to program. Additionally, this rule institutes standardized reporting and registration requirements for persons holding blocked property and requires that holders of blocked property annually provide notice of an individual who is responsible for providing information required by the Office of Foreign Assets Control.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., does not apply.

The rule is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act. For this reason, the collections of information contained in §§ 500.508, 500.603, 515.508, 515.603, 550.511, 550.603, 575.503, 575.606, 580.503, 580.603, 585.503, and 585.603 (collectively the "sections") are being submitted to the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Comments concerning the collection of information and the accuracy of estimated average annual burden, and suggestions for reducing this burden should be directed to OMB, Paperwork Reduction Project (1505–****), Washington, DC 20503, with copies to the Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW.—Annex, Washington, DC 20220. Any such comments should be submitted no later than November 9, 1993. Notice of OMB action on these requests will be published in the **Federal Register**.

The collections of information in the sections is required by the Office of Foreign Assets Control standardize reporting on blocked property. The likely respondents are individuals, business organizations, and financial institutions. Estimated total annual reporting burden for the sections: 900 hours.

The estimated annual burden per respondent varies from 15 minutes to three hours, depending on individual circumstances, with an estimated average of 2 hours.

Estimated number of respondents: 350.

Estimated annual frequency of response: 1 to 12.

List of Subjects in 31 CFR Parts 500, 515, 550, 575, 580, 585

Administrative practice and procedure, Banks, Blocking of assets, Cambodia, Cuba, Federal Republic of Yugoslavia (Serbia and Montenegro), Haiti, Iraq, North Korea, Reporting and recordkeeping requirements, Vietnam.

For the reasons set forth in the preamble, 31 CFR chapter V is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 is revised to read as follows:

Authority: 50 U.S.C. App. 1–44; E.O. 9193, 3 CFR, 1938–1943, Comp., p. 1174; E.O. 9989, 3 CFR, 1943–1948, Comp., p. 748.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. Paragraph (f) of § 500.508 is revised to read as follows:

§ 500.508 Payments to blocked accounts in domestic banks.

* * * * *

(f) Banking institutions receiving instructions to execute payments or transfers under paragraph (a) of this section must provide written notification to the Office of Foreign Assets Control, Compliance Division, U.S. Treasury Department, 1500 Pennsylvania Avenue NW.—Annex, Washington DC 20220, within 10 business days from the value date of the payment or transfer. The notification shall include a photocopy of the payment or transfer instructions received, shall confirm that the payment or transfer has been deposited into a new or existing blocked account established in the name of the designated national pursuant to the requirements of this part and shall provide the account number, the name of the account, the location of the account, the name and address of the transferee banking institution, the date of the deposit, the amount of the payment transfer, the name and telephone number of a contact person at the transferee financial institution from whom compliance information may be obtained, and the name and telephone number of the person, registered with the Office of Foreign Assets Control pursuant to § 500.603, responsible for the administration of blocked assets at the transferee financial institution from whom records on blocked assets may be obtained.

Subpart F—Reports

3. Section 500.603 is added to Subpart F to read as follows:

§ 500.603 Registration of persons holding blocked property subject to § 500.201 or § 500.202.

(a) Any individual holding property subject to § 500.201 or § 500.202 must register his or her name, address, and telephone number with the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW.—Annex, Washington, DC 20220, by the later of October 12, 1993, or 10 days after the date such property is received or becomes subject to § 500.201 or § 500.202.

(b) Any person, other than an individual, holding property subject to § 500.201 or § 500.202, must register the name, title, address, and telephone number of the individual designated to be responsible for the administration of blocked assets, from whom the Office of Foreign Assets Control can obtain information and records. The registration shall be sent to the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW.—Annex, Washington, DC 20220, by the later of October 12, 1993, or, unless notification is being given pursuant to § 500.508, 10 days after the date such property is received and becomes subject to § 500.201 or § 500.202.

(c) Registrations with the Office of Foreign Assets Control pursuant to paragraphs (a) and (b) of this section must be renewed annually on or before July 1.

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 is revised to read as follows:

Authority: 50 U.S.C. App. 5; secs. 1701–1712, Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6001–6010); 22 U.S.C. 2370(a); Proc. 3447, 3 CFR, 1959–1963 Comp., p. 157; E.O. 9193, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 3 CFR, 1943–1948 Comp., p. 748; E.O. 12854, 58 FR 36587, July 7, 1993.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. Paragraph (f) is added to § 515.508 to read as follows:

§ 515.508 Payments to blocked accounts in domestic banks.

* * * * *

(f) Banking institutions receiving instructions to execute payments or transfers under paragraph (a) of this section must provide written notification to the Office of Foreign Assets Control, Compliance Programs Division, U.S. Treasury Department, 1500 Pennsylvania Avenue NW—Annex, Washington DC 20220, within 10 business days from the value date of the payment or transfer. The notification shall include a photocopy of the payment or transfer instructions received, shall confirm that the payment or transfer has been deposited into a new or existing blocked account established in the name of the designated national pursuant to the requirements of this part and shall provide the account number, the name of the account, the location of the account, the name and address of the transferee banking institution, the date of the deposit, the amount of the payment transfer, the name and telephone number of a contact person at the transferee financial institution from whom compliance information may be obtained, and the name and telephone number of the person, registered with the Office of Foreign Assets Control pursuant to § 515.603, responsible for the administration of blocked assets at the transferee financial institution from whom records on blocked assets may be obtained.

Subpart F—Reports

3. Section 515.603 is added to subpart F to read as follows:

§ 515.603 Registration of persons holding blocked property subject to § 515.201 or § 515.202.

(a) Any individual holding property subject to § 515.201 or § 515.202 must register his or her name, address, and telephone number with the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220, by the later of October 12, 1993, or 10 days after the date such property is received or becomes subject to § 515.201 or § 515.202.

(b) Any person, other than an individual, holding property subject to § 515.201 or § 515.202, must register the name, title, address, and telephone number of the individual designated to be responsible for the administration of blocked assets, from whom the Office of Foreign Assets Control can obtain information and records. The registration shall be sent to the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220, by the later of October 12, 1993, or, unless notification is being given pursuant to § 515.508, 10 days after the date such property is received and becomes subject to § 515.201 or § 515.202.

(c) Registrations with the Office of Foreign Assets Control pursuant to paragraphs (a) and (b) of this section must be renewed annually on or before July 1.

PART 550—LIBYAN SANCTIONS REGULATIONS

1. The authority citation for part 550 is revised to read as follows:

Authority: 50 U.S.C. 1701–1706; 50 U.S.C. 1601–1651; 22 U.S.C. 287c; 49 U.S.C. App. 1514; 22 U.S.C. 2349aa–8 and 2349aa–9; 3 U.S.C. 301; E.O. 12543, 3 CFR, 1986 Comp., p. 181; E.O. 12544, 3 CFR, 1986 Comp., p. 183; E.O. 12801, 3 CFR, 1992 Comp., p. 294.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. Paragraph (g) of § 550.511 is revised to read as follows:

§ 550.511 Payments to blocked accounts in domestic banks.

* * * * *

(g) Banking institutions receiving instructions to execute payments or transfers under paragraph (a) of this section must provide written notification to the Office of Foreign Assets Control, Compliance Programs Division, U.S. Treasury Department, 1500 Pennsylvania Avenue NW—Annex, Washington DC 20220, within 10 business days from the value date of the payment or transfer. The notification shall include a photocopy of the payment or transfer instructions received, shall confirm that the payment or transfer has been deposited into a new or existing blocked account established in the name of the individual or entity of the Government of Libya pursuant to the requirements of this part and shall provide the account number, the name of the account, the location of the account, the name and address of the transferee banking institution, the date of the deposit, the amount of the payment transfer, the name and telephone number of a contact person at the transferee financial institution from whom compliance information may be obtained, and the name and telephone number of the person, registered with the Office of Foreign Assets Control pursuant to § 550.603, responsible for the administration of blocked assets at the transferee financial institution from whom records on blocked assets may be obtained.

Subpart F—Reports

3. Section 550.603 is added to subpart F to read as follows:

§ 550.603 Registration of persons holding blocked property subject to § 550.209.

(a) Any individual holding property subject to § 550.209 must register his or her name, address, and telephone number with the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220, by the later of October 12, 1993 or 10 days after the date such property is received or becomes subject to § 550.209.

(b) Any person, other than an individual, holding property subject to § 550.209, must register the name, title, address, and telephone number of the individual designated to be responsible for the administration of blocked assets, from whom the Office of Foreign Assets Control can obtain information and records. The registration shall be sent to the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220, by the later of October 12, 1993 or, unless notification is being given pursuant to § 550.511, 10 days after the date such property is received and becomes subject to § 550.209.

(c) Registrations with the Office of Foreign Assets Control, pursuant to paragraphs (a) and (b) of this section, must be renewed annually on or before July 1.

PART 575—IRAQI SANCTIONS REGULATIONS

1. The authority citation for part 575 is revised to read as follows:

Authority: 50 U.S.C. 1701–1706; 50 U.S.C. 1601–1651; 22 U.S.C. 287c; Pub. L. 101–513, 104 Stat. 2047–2055; 3 U.S.C. 301; E.O. 12722, 3 CFR, 1990 Comp., p. 294; E.O. 12724, 3 CFR, 1990 Comp., p. 297; E.O. 12817, 3 CFR, 1992 Comp., p. 317.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. Paragraph (h) of § 575.503 is revised to read as follows:

§ 575.503 Payments and transfers to blocked account in U.S. financial institutions.

* * * * *

(h) Banking institutions receiving instructions to execute payments or transfers under paragraph (a) of this section must provide written notification to the Office of Foreign Assets Control, Compliance Programs Division, U.S. Treasury Department, 1500 Pennsylvania Avenue NW—Annex, Washington DC 20220, within 10 business days from the value date of the payment or transfer. The notification shall include a photocopy of the payment or transfer instructions received, shall confirm that the payment or transfer has been deposited into a new or existing blocked account established in the name of the individual or entity of the Government of Iraq pursuant to the requirements of this part and shall provide the account number, the name of the account, the location of the account, the name and address of the transferee banking institution, the date of the deposit, the amount of the payment transfer, the name and telephone number of a contact person at the transferee financial institution from whom compliance information may be obtained, and the name and telephone number of the person, registered with the Office of Foreign Assets Control pursuant to § 575.606, responsible for the administration of blocked assets at the transferee financial institution from whom records on blocked assets may be obtained.

Subpart F—Reports

3. Section 575.606 is added to subpart F to read as follows:

§ 575.606 Registration of persons holding blocked property subject to § 575.201.

(a) Any individual holding property subject to § 575.201 must register his or her name, address, and telephone number with the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220, by the later of October 12, 1993, or 10 days after the date such property is received or becomes subject to § 575.201.

(b) Any person, other than an individual, holding property subject to § 575.201, must register the name, title, address, and telephone number of the individual designated to be responsible for the administration of blocked assets, from whom the Office of Foreign Assets Control can obtain information and records. The registration shall be sent to the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220, by the later of October 12, 1993, or, unless notification is being given pursuant to § 575.503, 10 days after the date such property is received and becomes subject to § 575.201.

(c) Registrations with the Office of Foreign Assets Control, pursuant to paragraphs (a) and (b) of this section, must be renewed annually on or before July 1.

PART 580—HAITIAN TRANSACTIONS REGULATIONS

1. The authority citation for part 580 is revised to read as follows:

Authority: 50 U.S.C. 1701–1706; 50 U.S.C. 1601–1651; 22 U.S.C. 287c; 3 U.S.C. 301; E.O. 12775, 3 CFR, 1991 Comp., p. 349; E.O. 12779, 3 CFR, 1991 Comp., p. 367; E.O. 12853, 58 FR 35843–35444, July 2, 1993.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. Paragraph (h) of § 580.503 is revised to read as follows:

§ 580.503 Payments and transfers to blocked account in U.S. financial institutions.

* * * * *

(h) Banking institutions receiving instructions to execute payments or transfers under paragraph (a) of this section must provide written notification to the Office of Foreign Assets Control, Compliance Programs Division, U.S. Treasury Department, 1500 Pennsylvania Avenue NW—Annex, Washington DC 20220, within 10 business days from the value date of the payment or transfer. The notification shall include a photocopy of the payment or transfer instructions received, shall confirm that the payment or transfer has been deposited into a new or existing blocked account established in the name of the individual or entity of the Government of Haiti pursuant to the requirements of this part and shall provide the account number, the name of the account, the location of the account, the name and address of the transferee banking institution, the date of the deposit, the amount of the payment transfer, the name and telephone number of a contact person at the transferee financial institution from whom compliance information may be obtained, and the name and telephone number of the person, registered with the Office of Foreign Assets Control pursuant to § 580.603, responsible for the administration of blocked assets at the transferee financial institution from whom records on blocked assets may be obtained.

Subpart F—Reports

3. Section 580.603 is revised to read as follows:

§ 580.603 Registration of persons holding blocked property subject to § 580.201.

(a) Any individual holding property subject to § 580.201 must register his or her name, address, and telephone number with the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220, by the later of October 12, 1993, or 10 days after the date such property is received or becomes subject to § 580.201.

(b) Any person, other than an individual, holding property subject to § 580.201, must register the name, title, address, and telephone number of the individual designated under § 580.601(b) to be responsible for the administration of blocked assets, from whom the Office of Foreign Assets Control can obtain information and records. The registration shall be sent to the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220, by the later of October 12, 1993, or, unless notification is being given pursuant to § 580.503, 10 days after the date such property is received and becomes subject to § 580.201.

(c) Registrations with the Office of Foreign Assets Control, pursuant to paragraphs (a) and (b) of this section, must be renewed annually on or before July 1.

PART 585—FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO) SANCTIONS REGULATIONS

1. The authority citation for part 585 is revised to read as follows:

Authority: 50 U.S.C. 1701–1706; 50 U.S.C. 1601–1651; 22 U.S.C. 287c; 49 U.S.C. App. 1514; 3 U.S.C. 301; E.O. 12808, 3 CFR, 1992 Comp., p. 305; E.O. 12810, 3 CFR, 1992 Comp., p. 307; E.O. 12831, 58 FR 5253, January 21, 1993; E.O. 12846, 58 FR 25771, April 27, 1993.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. Paragraph (a) of § 585.503 is revised to read as follows:

§ 585.503 Payments and transfers to blocked account in U.S. financial institutions.

(a) Any payment of funds or transfer of credit or other fi ıancial or economic

resources or assets into a blocked account in a U.S. financial institution is authorized, provided that a transfer from a blocked account may only be made to another blocked account held in the same name on the books of the same U.S. financial institution. This authorization is subject to the condition that written notification from the U.S. financial institution receiving an authorized payment or transfer is furnished to the Compliance Programs Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220, within 10 days from the value date of the payment or transfer. This notification shall confirm that the payment or transfer has been deposited in a blocked account pursuant to this section and § 585.203 and shall provide the account number, the name and address of the blocked person in whose name the account is held, the name and address of the transferee U.S. financial institution, the name and address of the transferor financial institution, the amount of the payment or transfer, the name and telephone number of a contact person at the transferee financial institution from whom compliance information may be obtained, and the name and telephone number of the person, registered with the Office of Foreign Assets Control pursuant to § 585.603, responsible for the administration of blocked assets at the transferee financial institution from whom records on blocked assets may be obtained.

* * * * *

Subpart F—Reports

3. Section 585.603 is revised to read as follows:

§ 585.603 Registration of persons holding blocked property subject to § 585.201.

(a) Any individual holding property subject to § 585.201 must register his or her name, address, and telephone number with the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220, by the later of October 12, 1993, or 10 days after the date such property is received or becomes subject to § 585.201.

(b) Any person, other than an individual, holding property subject to § 585.201, must register the name, title, address, and telephone number of the individual designated under § 585.601(b) to be responsible for the administration of blocked assets, from whom the Office of Foreign Assets Control can obtain information and records. The registration shall be sent to the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220, by the later of October 12, 1993, or, unless notification is being given pursuant to § 585.503, 10 days after the date such property is received and becomes subject to § 585.201.

(c) Registrations with the Office of Foreign Assets Control, pursuant to paragraphs (a) and (b) of this section, must be renewed annually on or before July 1.

Dated: August 25, 1993.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: August 28, 1993.

Ronald K. Noble,

Assistant Secretary for Enforcement.

[FR Doc. 93–22105 Filed 9–7–93; 9:19 am]

BILLING CODE 4810–25–W

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 712 and 716

[OPPTS–82040A; FRL–4637–1]

Preliminary Assessment Information and Health and Safety Data Reporting; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This notice makes certain modifications to a final rule published in the **Federal Register** of May 14, 1993: the Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Rule (PAIR) and the TSCA section 8(d) Health and Safety Data Reporting Rule.

EFFECTIVE DATE: This rule will become effective on October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. E–543, Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 14, 1993 (58 FR 28511), EPA issued a final rule which added chemicals to two model information-gathering rules: the Toxic Substances Control Act (TSCA) section 8(d) Preliminary Assessment Information Rule (PAIR) and the TSCA section 8(d) Health and Safety Data Reporting Rule. This document makes the following modifications to that rule: (1) Certain chemicals listed in § 716.120(d) under the category "Siloxanes" are exempt from reporting acute oral, dermal, and inhalation information as well as primary eye and dermal irritation information under the section 8(d) rule; (2) the reporting period for the chemicals listed under the category "Siloxanes" under § 712.30(x) is extended for 120 days from the effective date of this amendment (February 28, 1993) and for 180 days from the effective date of this amendment (April 29, 1994) under § 716.120(d); (3) the CAS number for non-end-blocked siloxanes listed under the siloxanes category in §§ 712.30(x) and 716.120(d) as 7013–67–8 is corrected to read 70131–67–8; (4) the chemicals, dimethicone (CAS No. 9006–65–9), polydimethylsiloxane (CAS No. 9016–00–6), and dimethylmethyltrifluoropropylsiloxane (CAS No. not available) are removed from the siloxane category in §§ 712.30(x) and 716.120(d); (5) the chemical, dimethylmethyl 3,3,3-trifluoropropyl (CAS No. 115361–68–7) is added to §§ 712.30(x) and 716.120(d) under the category siloxanes.

EPA is not requiring the reporting of acute oral, dermal, and inhalation toxicity studies, and primary eye and dermal irritation studies on certain of the listed siloxanes because the primary intended data user, the Food and Drug Administration (FDA), has expressed no need for the data at this time. See the regulatory text of this document for the specific siloxanes which are subjects of this "special exemption."

The extensions of the reporting periods for the chemicals listed under the category "Siloxanes" under §§ 712.30(x) and 716.120(d) are made in response to numerous requests received by EPA and to allow respondents to report per the other amendments contained herein. In addition, certain siloxane producers are in the process of creating a data base for siloxane health and safety data reporting which EPA, the ITC, and FDA believe will significantly aid data review; the extensions will facilitate the development of this data base. These extensions also apply to companies which have been previously granted extensions of the reporting periods.

Additionally, the 30th ITC report listed CAS numbers for dimethicone (9006–65–9) and polydimethylsiloxane (9016–00–6). These chemicals are already listed as dimethyl silicones and siloxanes and bear CAS number 63148–62–9. Therefore, EPA is removing dimethicone (CAS No. 9006–65–9) and

polydimethylsiloxane (CAS No. 9016–99–6) from the PAIR and section 8(d) rules.

Finally, the 30th ITC report recommended testing for dimethylmethyltrifluoropropylsiloxane but did not list a CAS number. The ITC has indicated that it needs PAIR reports and section 8(d) studies for siloxanes and silicones, dimethyl 3,3,3-trifluoropropyl (CAS No. 115361–68–7), but not on dimethylmethyltrifluoropropylsiloxane. Therefore, this notice removes dimethylmethyltrifluoropropylsiloxane (no CAS number) from section 8 rules and adds dimethyl 3,3,3-trifluoropropyl (CAS No. 115361–68–7) to the rules.

I. Rulemaking Record

The following documents constitute the record for the rule (docket control number OPPTS–82040A). All of these documents are available to the public in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. TSCA NCIC is located at EPA Headquarters, Rm. E–G102, 401 M St., SW., Washington, DC.

1. This final rule.
2. The economic analysis for the rule.
3. The Thirtieth Report of the ITC.
4. Letters requesting reporting extensions.
5. Internal Agency memorandum.

II. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This rule is not major because it will not result in an effect on the economy of $100 million or more, an increase in costs or prices, or any of the adverse effects described in the Executive Order.

This amendment was not submitted to the Office of Management and Budget (OMB) for review, because the automatic listing of substances recommended by the ITC is provided for in 40 CFR 712.30(c) and 716.105(b).

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned OMB control numbers 2070–0054 for PAIR reporting and 2070–0004 for TSCA section 8(d) reporting.

Public reporting burden for this collection of information is estimated to average 19 hours for PAIR per response and 60.72 hours for section 8(d), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Parts 712 and 716

Chemicals, Environmental protection, Hazardous substances, Health and safety data, Recordkeeping and reporting requirements.

Dated: September 2, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 712 and 716 are amended to read as follows:

PART 712—[AMENDED]

1. In part 712:

a. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. Section 712.30 is amended by revising the siloxanes category under paragraph (x) to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(x) * * *

CAS No.	Substance	Effective date	Reporting date
*	* * * * *		
Siloxanes:			
107–46–0	Hexamethyldisiloxane	10/12/93	2/28/94
107–50–6	Tetradecamethylcycloheptasiloxane	10/12/93	2/28/94
107–51–7	Octamethyltrisiloxane	10/12/93	2/28/94
107–52–8	Tetradecamethylhexasiloxane	10/12/93	2/28/94
107–53–9	Tetracosamethylundecasiloxane	10/12/93	2/28/94
141–62–8	Decamethyltetrasiloxane	10/12/93	2/28/94
141–63–9	Dodecamethylpentasiloxane	10/12/93	2/28/94
540–97–6	Dodecamethylcyclohexasiloxane	10/12/93	2/28/94
541–01–5	Hexadecamethylheptasiloxane	10/12/93	2/28/94
541–02–6	Decamethylcyclopentasiloxane	10/12/93	2/28/94
541–05–9	Hexamethylcyclotrisiloxane	10/12/93	2/28/94
546–56–5	Octaphenylcyclotetrasiloxane	10/12/93	2/28/94
556–67–2	Octamethylcyclotetrasiloxane	10/12/93	2/28/94
556–68–3	Hexadecamethylcyclooctasiloxane	10/12/93	2/28/94
556–69–4	Octadecamethyloctasiloxane	10/12/93	2/28/94
556–70–7	Docosamethyldecasiloxane	10/12/93	2/28/94
556–71–8	Octadecamethylcyclononasiloxane	10/12/93	2/28/94
999–97–3	Hexamethyldisilazane	10/12/93	2/28/94
2370–88–9	Tetramethylcyclotetrasiloxane	10/12/93	2/28/94
2374–14–3	Trifluoropropylmethylcyclotrisiloxane	10/12/93	2/28/94
2471–08–1	Hexacosamethyldodecasiloxane	10/12/93	2/28/94

CAS No.	Substance	Effective date	Reporting date
2471-09-2	Octacosamethyltridecasiloxane	10/12/93	2/28/94
2471-10-5	Triacontamethyltetradecasiloxane	10/12/93	2/28/94
2471-11-6	Dotriacontamethylpentadecasiloxane	10/12/93	2/28/94
2554-06-5	Methylvinylcyclosiloxane	10/12/93	2/28/94
2627-95-4	Tetramethyldivinyldisiloxane	10/12/93	2/28/94
2652-13-3	Eicosamethylnonasiloxane	10/12/93	2/28/94
70131-67-8	Non-end-blocked siloxanes	10/12/93	2/28/94
9004-73-3	Methylpolysiloxane	10/12/93	2/28/94
9016-00-6	Polydimethylsiloxane	10/12/93	2/28/94
18766-38-6	Docosamethylcycloundecasiloxane	10/12/93	2/28/94
18772-36-6	Eicosamethylcyclodecasiloxane	10/12/93	2/28/94
18844-04-7	Hexatriacontamethylheptadecasiloxane	10/12/93	2/28/94
18919-94-3	Tetracosamethylcyclododecasiloxane	10/12/93	2/28/94
23523-12-8	Hexatriacontamethylcyclooctadecasiloxane	10/12/93	2/28/94
23523-14-0	Triacontamethylcyclopentadecasiloxane	10/12/93	2/28/94
23732-94-7	Hexacosamethylcyclotridecasiloxane	10/12/93	2/28/94
36938-50-8	Tetratriacontamethyl hexadecasiloxane	10/12/93	2/28/94
36938-52-0	Octatriacontamethyl octadecasiloxane	10/12/93	2/28/94
63148-62-9	Dimethyl silicones and siloxanes	10/12/93	2/28/94
67762-90-7	Dimethyl silicones and siloxane, reaction products with silica	10/12/93	2/28/94
67762-94-1	Dimethylmethylvinylsiloxane	10/12/93	2/28/94
68037-59-2	Dimethylhydropolylsiloxane	10/12/93	2/28/94
68037-74-1	Dimethylpolysiloxanes	10/12/93	2/28/94
68083-14-7	Dimethyldiphenylsiloxane	10/12/93	2/28/94
69430-24-6	Cyclopolydimethylsiloxane	10/12/93	2/28/94
115361-68-7	Dimethylmethyl 3,3,3-trifluoropropyl	10/12/93	2/28/94
not available	Tetracontamethylnonadecasiloxane	10/12/93	2/28/94
not available	Octacosamethylcyclotetradecasiloxane	10/12/93	2/28/94
not available	Dotetracontamethyleicosasiloxane	10/12/93	2/28/94
not available	Tetracontamethylcycloeicosasiloxane	10/12/93	2/28/94
not available	Octatriacontamethylcyclononadecasiloxane	10/12/93	2/28/94
not available	Tetratriacontamethylcycloheptadecasiloxane	10/12/93	2/28/94
not available	Dotriacontamethylcyclohexadecasiloxane	10/12/93	2/28/94
not available	Polymethyloctadecylsiloxane	10/12/93	2/28/94

PART 716—[AMENDED]

2. In part 716:

a. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

b. Section 716.20 is amended by revising pargraph (b)(2) to read as follows:

§ 716.20 Studies not subject to the reporting requirements.

* * * * *

(b) * * *

(2) For the specified chemicals in § 716.120(d) under the category "Siloxanes," acute oral, dermal, and inhalation toxicity studies and primary eye and dermal irritation studies.

c. Section 716.120 is amended by revising the siloxanes category under paragraph (d) to read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

* * * * *

(d) * * *

Category	CAS No.	Special exemptions	Effective date	Sunset date
Siloxanes:				
Cyclopolydimethylsiloxane	69430-24-6		10/12/93	10/12/03
Decamethylcyclopentasiloxane	541-02-6		10/12/93	10/12/03
Decamethyltetrasiloxane	141-62-8		10/12/93	10/12/03
Dimethyldiphenylsiloxane	68083-14-7		10/12/93	10/12/03
Dimethylhydropolylsiloxane	68037-59-2		10/12/93	10/12/03
Dimethylmethyl 3,3,3-trifluoropropyl	115361-68-7		10/12/93	10/12/03
Dimethylmethylvinylsiloxane	67762-94-1		10/12/93	10/12/03
Dimethylpolysiloxanes	68037-74-1	§ 716.20(b)(2) applies	10/12/93	10/12/03
Dimethyl silicones and siloxanes	63148-62-9		10/12/93	10/12/03
Dimethyl silicones and siloxane, reaction products with silica	67762-90-7	§ 716.20(b)(2) applies	10/12/93	10/12/03
Docosamethylcycloundecasiloxane	18766-38-6	§ 716.20(b)(2) applies	10/12/93	10/12/03

Category	CAS No.	Special exemptions	Effective date	Sunset date
Docosamethyldecasiloxane	556-70-7	§716.20(b)(2) applies	10/12/93	10/12/03
Dodecamethylcyclohexasiloxane	540-97-6		10/12/93	10/12/03
Dodecamethylpentasiloxane	141-63-9		10/12/93	10/12/03
Dotetracontamethyleicosasiloxane	not available	§716.20(b)(2) applies	10/12/93	10/12/03
Dotriacontamethylcyclohexadecasiloxane	not available	§716.20(b)(2) applies	10/12/93	10/12/03
Dotriacontamethylpentadecasiloxane	2471-11-6	§716.20(b)(2) applies	10/12/93	10/12/03
Eicosamethylcyclodecasiloxane	18772-36-6	§716.20(b)(2) applies	10/12/93	10/12/03
Eicosamethylnonasiloxane	2652-13-3	§716.20(b)(2) applies	10/12/93	10/12/03
Hexacosamethylcyclotridecasiloxane	23732-94-7	§716.20(b)(2) applies	10/12/93	10/12/03
Hexacosamethyldodecasiloxane	2471-08-1	§716.20(b)(2) applies	10/12/93	10/12/03
Hexadecamethylcyclooctasiloxane	556-68-3	§716.20(b)(2) applies	10/12/93	10/12/03
Hexadecamethylheptasiloxane	541-01-5	§716.20(b)(2) applies	10/12/93	10/12/03
Hexamethylcyclotrisiloxane	541-05-9		10/12/93	10/12/03
Hexamethyldisilazane	999-97-3		10/12/93	10/12/03
Hexamethyldisiloxane	107-46-0		10/12/93	10/12/03
Hexatriacontamethylcyclooctadecasiloxane	23523-12-8	§716.20(b)(2) applies	10/12/93	10/12/03
Hexatriacontamethylheptadecasiloxane	18844-04-7	§716.20(b)(2) applies	10/12/93	10/12/03
Methylpolysiloxane	9004-73-3		10/12/93	10/12/03
Methylvinylcyclosiloxane	2554-06-5		10/12/93	10/12/03
Non-end-blocked siloxanes	70131-67-8	§716.20(b)(2) applies	10/12/93	10/12/03
Octacosamethylcyclotetradecasiloxane	not available	§716.20(b)(2) applies	10/12/93	10/12/03
Octacosamethyltridecasiloxane	2471-09-2	§716.20(b)(2) applies	10/12/93	10/12/03
Octadecamethylcyclononasiloxane	556-71-8	§716.20(b)(2) applies	10/12/93	10/12/03
Octadecamethyloctasiloxane	556-69-4	§716.20(b)(2) applies	10/12/93	10/12/03
Octamethyltrisiloxane	107-51-7		10/12/93	10/12/03
Octaphenylcyclotetrasiloxane	546-56-5		10/12/93	10/12/03
Octatriacontamethylcyclononadecasiloxane	not available	§716.20(b)(2) applies	10/12/93	10/12/03
Octatriacontamethyloctadecasiloxane	36938-52-0	§716.20(b)(2) applies	10/12/93	10/12/03
Polymethyloctadecylsiloxane	not available	§716.20(b)(2) applies	10/12/93	10/12/03
Tetracontamethylcycloeicosasiloxane	not available	§716.20(b)(2) applies	10/12/93	10/12/03
Tetracontamethylnonadecasiloxane	not available	§716.20(b)(2) applies	10/12/93	10/12/03
Tetracosamethylcyclododecasiloxane	18919-94-3	§716.20(b)(2) applies	10/12/93	10/12/03
Tetracosamethylundecasiloxane	107-53-8	§716.20(b)(2) applies	10/12/93	10/12/03
Tetradecamethylcycloheptasiloxane	107-50-6	§716.20(b)(2) applies	10/12/93	10/12/03
Tetradecamethylhexasiloxane	107-52-8	§716.20(b)(2) applies	10/12/93	10/12/03
Tetramethylcyclotetrasiloxane	2370-88-9		10/12/93	10/12/03
Tetramethyldivinyldisiloxane	2627-95-4		10/12/93	10/12/03
Tetratriacontamethylcycloheptadecasiloxane	not available		10/12/93	10/12/03
Tetratriacontamethylhexadecasiloxane	36938-50-8	§716.20(b)(2) applies	10/12/93	10/12/03
Triacontamethylcyclopentadecasiloxane	23523-14-0	§716.20(b)(2) applies	10/12/93	10/12/03
Triacontamethyltetradecasiloxane	2471-10-5	§716.20(b)(2) applies	10/12/93	10/12/03
Trifluoropropylmethylcyclotrisiloxane	2374-14-3		10/12/93	10/12/03

[FR Doc. 93-21989 Filed 9-9-93; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 171, 172, 173, 174, and 179

Statement of Enforcement Policy

AGENCY: Federal Railroad Administration (FRA), Transportation.

ACTION: Statement of enforcement policy.

SUMMARY: This notice reminds users of tank cars that new Federal requirements become effective on October 1, 1993, for materials poisonous by inhalation. FRA intends to take action to assure compliance with those requirements.

FOR FURTHER INFORMATION CONTACT: Edward W. Pritchard (Telephone (202-366-9178)) or James H. Rader (Telephone (202-366-9178)), Hazardous Materials Division, FRA, Washington, DC 20590; or Thomas A. Phemister (Telephone (202-366-0635)), Trial Attorney, Office of Chief Counsel, FRA, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In its investigation of the July 26, 1993, release of oleum [1] at Richmond, California, the Federal Railroad Administration learned that some users of tank cars may not have taken appropriate measures to comply with the requirements that become mandatory on October 1, 1993. These regulations require use of upgraded tank cars to transport materials that are poisonous by inhalation (PIH).

The Hazardous Materials Regulations (HMR) were amended on December 21, 1990, with the publication of the final rule in Docket HM-181.[2] This comprehensive proceeding revised the HMR in many areas including new requirements for tank cars transporting

[1] This material, also known as fuming sulfuric acid, becomes poisonous by inhalation at concentrations greater than 30 percent free sulfur trioxide. In this incident, it was the sulfur trioxide fumes that escaped and combined with moisture in the air to form sulfuric acid mist particles that materialized as dense white clouds.

[2] Performance-Oriented Packaging Standards; Changes to Classification, Hazard Communication, Packaging and Handling Requirements Based on UN Standards and Agency Initiative; Docket HM-181, Final Rule, 55 FR 52402, December 21, 1990.

PIH materials. In order to facilitate an orderly transition from pre-HM–181 regulations to the new standards, the Research and Special Programs Administration (RSPA) established an implementation schedule that phased in the mandatory compliance dates for the amendments over a period of several years, starting with 1991. Regulations affecting shipping papers, marking, labelling/placarding and emergency response communications for PIH materials went into effect October 1, 1992. Regulations for packaging PIH materials become mandatory on October 1, 1993.

On and after that date, shippers offering PIH materials must choose from a limited and specific set of tank cars:

- Liquid PIH materials ranked in Hazard Zone A (for example, ethyleneimine) must be transported in DOT 105J tank cars with a 500 psi tank test pressure (or higher), and
- Liquid PIH materials ranked in Hazard Zone B (for example, acetone cyanohydrin) must be transported in DOT 105J tank cars with a 300 pound (or greater) tank test pressure.
- Gaseous PIH materials have similar constraints requiring the use of upgraded tank cars and producers and shippers are cautioned to review the HMR to determine the restrictions for each specific product.

RSPA published a notice of proposed rulemaking on July 12, 1993,[3] that would, if made final in its proposed form, authorize additional tank cars for the transportation of liquid PIH materials in Hazard Zone B. That NPRM does not, however, propose any general extension of the October 1, 1993 deadline. RPSA and FRA are also considering changes to tank cars transporting PIH gases. However, this regulatory effort is only at a preliminary stage and will not affect the October 1, 1993 deadline.[4] Interested persons should refer to these regulatory publications for further information.

FRA is taking this opportunity to remind shippers and car owners of the October 1, 1993, compliance date for packagings (including tank cars) that contain PIH materials and to state our enforcement policy. Packagings not in compliance with the October 1, 1993, deadline may not be loaded with PIH materials. If loaded prior to the compliance deadline, they may continue to destination for unloading. Once unloaded, the packages may not be reloaded until brought into compliance.

The performance-oriented packaging standards were promulgated under the Hazardous Materials Transportation Act.[5] Subsection 110(a) of the Act provides for the assessment of a civil penalty of up to $25,000 for each violation of any regulation issued under the Act. Each day of violation is a separate offense. Subsection 110(b) of the Act provides that any person who knowingly tampers with a marking, label, placard, or description or willfully violates a regulation issued under the Act shall be fined under title 18, United States Code, or imprisoned for not more than 5 years. The FRA may, through the Attorney General, also seek injunctive relief in a Federal district court to enforce rules issued under the railroad safety laws.[6]

It is the policy of the FRA to monitor the activities of railroads, shippers, and tank car manufacturers to safeguard the public from risks associated with the transportation of hazardous materials in commerce and to take actions necessary to assure compliance with the hazardous materials regulations, including those new requirements that become effective on October 1, 1993.

Issued in Washington, DC, on August 30, 1993.

Jolene M. Molitoris,

Administrator.

[FR Doc. 93–21773 Filed 9–9–93; 8:45 am]

BILLING CODE 4910–06–P

[3] Performance Oriented Packaging Standards; Miscellaneous Amendments; Docket HM–181F, Notice of Proposed Rulemaking, 58 FR 37612, July 20, 1993.

[4] Specifications for Tank Cars, Docket HM–175A, ANPRMs published 55 FR 20242, May 15, 1990, and 55 FR 35327, August 29, 1990.

[5] 49 App. U.S.C. 1801 *et seq.*

[6] See 45 U.S.C. 439 and 49 App. U.S.C. 1810.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 921253–2353; ID. 090293B]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, (NOAA), Commerce.

ACTION: Fishing restrictions, request for comments.

SUMMARY: NMFS announces reductions in vessel trip limits for trawl-caught sablefish, which is a component of the deepwater complex (thornyheads, Dover sole, and trawl-caught sablefish) in the groundfish fishery off Washington, Oregon, and California. This action is authorized under the Pacific Coast Groundfish Fishery Management Plan (FMP). The trip limit is designed to keep the catch within the 1993 harvest guideline while extending the fishery as long as possible during the year.

DATES: Effective Date: Effective from 0001 hours (local time) September 8, 1993, until modified, superseded, or rescinded. Comments will be accepted through September 27, 1993.

ADDRESSES: Submit comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN–C15700, Seattle, Washington, 98115–0070; or Dr. Gary Matlock, Acting Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., suite 4200, Long Beach, California 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140; or Rodney McInnis at 310–980–4040.

SUPPLEMENTARY INFORMATION: The FMP and its implementing regulations (50 CFR part 663) provide for rapid changes to specific management measures that have been designated "routine." Trip landing and frequency limits for trawl-caught sablefish, Dover sole, and thornyheads, the species comprising the deepwater complex, are among those management measures that have been designated as routine at 50 CFR 663.23(c)(1). Implementation and further adjustment of those measures may occur after consideration at a single Pacific Fishery Management Council (Council) meeting. A trip limit is defined at 50 CFR 663.2 as the total allowable amount of a groundfish species or species complex by weight, or by percentage of weight of fish on board, that may be taken and retained, possessed, or landed from a single fishing trip.

Sablefish, thornyheads, and Dover sole are managed collectively as the deepwater complex because they are often caught together in the trawl fishery. Sablefish are managed with a species harvest guideline of 7,000 metric tons (mt), which, after subtracting a treaty Indian set-aside of 300 mt, is allocated between trawl and nontrawl fisheries. The trawl and nontrawl allocations also are considered harvest guidelines.

On January 1, 1993, the trip limit for the deepwater complex was set at 45,000 pounds (20,412 kg) cumulative in a 2-week period, of which no more than 20,000 pounds (9,072 kg) could be thornyheads. The trip limit for sablefish taken with trawl gear, which was applied to each trip rather than cumulatively over the 2-week period, was 25 percent of the deepwater

complex if more than 1,000 pounds (454 kg) of sablefish were landed. In any landing, no more than 5,000 pounds (2,268 kg) could be sablefish smaller than 22-inches (56 cm) (total length). Catch information presented at the April Council meeting indicated that the trawl allocation for sablefish of 3,886 mt would be exceeded around October.

Consequently, the Council recommended and NMFS imposed a 30 percent reduction to the cumulative trip limit for the deepwater complex, from 45,000 pounds (20,412 kg) per 2-week period to 60,000 pounds (27,216 kg) per 4-week period, hoping for a similar reduction in the catch of sablefish. To avoid an increase in the rate of thornyhead landings, the thornyhead trip limit also was reduced from 20,000 pounds (9,072 kg) cumulative per 2-week period to 35,000 pounds (15,876 kg) cumulative per 4-week period (58 FR 21949, April 26, 1993).

Also at its April meeting, the Council recommended that the Director, NMFS, Northwest Region, make further adjustments to routine management measures before the September Council meeting, in consultation with relevant advisors and interested Council members, if it appeared that a harvest guideline would be reached by October 31, 1993. The best available information on August 31, 1993, indicates that the trawl catch of sablefish through August 21, 1993, was 3,014 mt, 90 percent of the trawl catch for the same period in 1991–1992. However, the trawl allocation is only 75 percent of the annual catch in 1991–1992. Consequently, if landing rates are not curtailed, the trawl allocation of 3,886 mt would be taken near October 20 and the 7,000-mt harvest guideline for sablefish would be reached in mid-November. If no action is taken, the trawl allocation will be exceeded by about 20 percent, and the species harvest guideline by about 8 percent in 1993. The harvest guidelines for sabelfish caught with nontrawl gear, Dover sole, and thornyheads are not expected to be reached.

In consultation with relevant advisors and interested Council members, including the State fishery agency directors of Washington, Oregon, and California, the Regional Director has decided to impose an additional 3,000-pound (1,361 kg) limit on the amount of trawl-caught sablefish that may be landed per trip. This would modify the current trip limit by allowing trawl-caught sablefish landings of either 1,000 pounds (454 kg), or 25 percent of the deepwater complex not to exceed 3,000 pounds (1,361 kg), whichever is greater. Because each landing would contain less than the current 5,000-pound (2,268 kg) limit for trawl-caught sablefish smaller than 22 inches (56 cm), that trip limit is removed and all sablefish could be smaller than 22 inches. This is intended to reduce the catch as the species harvest guideline is approached, but may slightly exceed the trawl allocation for sablefish. No change is made to the cumulative trip limits for the deepwater complex or thornyheads. The Council will discuss this issue again at its September 1993 meeting and may recommend further action.

Secretarial Action

The Secretary of Commerce (Secretary) concurs with the Regional Director's recommendation and announces the following change to the management measures for sablefish announced at 58 FR 2990 (January 7, 1993) and 58 FR 21949 (April 26, 1993) In any landing of the deepwater complex, the trip limit for trawl-caught sablefish is reduced to the greater of 1,000 pounds (454 kg), or 25 percent of the deepwater complex not to exceed 3,000 pounds (1,361 kg)

Classification

The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until September 27, 1993.

This action is taken under the authority of 50 CFR 663.23(c), and section III.C.(1) of the Appendix to 50 CFR part 663.

This action is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 3, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–22123 Filed 9–7–93; 2:58 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 174
Friday, September 10, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1007, 1093, 1094, 1096, and 1108

[Docket Nos. AO–366–A36, et al.; DA–93–21]

Milk in the Georgia and Certain Other Marketing Areas; Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	Docket No.
1007 ...	Georgia	AO–366–A36
1093 ...	Alabama-West Florida.	AO–386–A14
1094 ...	New Orleans-Mississippi.	AO–103–A56
1096 ...	Greater Louisiana	AO–257–A43
1108 ...	Central Arkansas .	AO–243–A46

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals that would: Merge several Federal milk orders in the southern United States; incorporate six now-unregulated Tennessee counties and the marketing areas of the recently terminated Nashville and Memphis, Tennessee, orders into the new merged order; provide "unit pooling" for the Alabama-West Florida order; and change the plant location adjustments for producers delivering milk to plants located in the Mobile, Alabama, area of the merged order.

DATES: The hearing will convene at 1 p.m., November 1, 1993.

ADDRESSES: The hearing will be held at the Holiday Inn—Perimeter Dunwoody, 4386 Chamblee-Dunwoody Road, Atlanta, Georgia 30341. (Telephone: 404/457–6363).

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, PO Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Holiday Inn—Perimeter Dunwoody, 4386 Chamblee-Dunwoody Road, Atlanta, GA, 30341 beginning at 1 p.m., on November 1, 1993, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Georgia; Alabama-West Florida; New Orleans-Mississippi; Greater Louisiana; and Central Arkansas marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) ("the Act"), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with these rules.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 4 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

Several of the proposals to be considered would combine the several existing marketing areas under one order, raising the issue of whether the provisions set forth in those proposals would tend to effectuate the declared policy of the Act if they are applied to the proposed merged marketing area, and, if not, what modifications of the provisions would be appropriate.

The issues raised by these proposals include whether the declared policy of the Act would tend to be effectuated by:

(a) Merger of one or more of the marketing areas, or any combination of marketing areas for separate or combined orders which include part or all of the areas presently defined in the respective orders; and

(b) Adoption of any of the proposed provisions, or appropriate modifications thereof, for any separate order or any combination of such orders including a review of the appropriate pricing and pooling provisions of the orders whether separate or in any combination.

The proposed merger of orders also raises the issue of the appropriate disposition of the producer-settlement funds, marketing service funds, and any administrative funds accumulated under the existing individual orders.

List of Subjects in 7 CFR Parts 1007, 1093, 1094, 1096, and 1108

Milk marketing orders.

The authority citation for 7 CFR parts 1007, 1093, 1094, 1096, and 1108 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Dairymen, Inc., Gulf Dairy Association, Inc., Southern Milk Sales, Inc., and Carolina Virginia Milk Producers Association, Inc.:

Proposal No. 1

Merge the marketing areas of the Georgia (part 1007), Alabama-West Florida (part 1093), New Orleans-Mississippi (part 1094), Greater Louisiana (part 1096), and recently terminated Nashville, Tennessee, milk orders with the unregulated Tennessee counties of Lincoln, Moore, Franklin, and Van Buren, to form a "Gulf States" marketing area (part 1007) with terms and provisions as follows:

§ 1007.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

§ 1007.2 Gulf States marketing area.

The *Gulf States marketing area*, hereinafter called the *marketing area*, means all territory within the bounds of the following Alabama, Florida, Georgia, Kentucky, Mississippi, and Tennessee counties and Louisiana parishes, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties or parishes:

Zone 1

Kentucky Counties

Allen, Barren, Metcalfe, Monroe, Simpson, and Warren.

Zone 2

Tennessee Counties

Cheatham, Clay, Davidson, Dickson, Fentress, Houston, Humphreys, Jackson, Macon, Montgomery, Overton, Pickett, Putnam, Robertson, Smith, Stewart, Sumner, Trousdale, and Wilson.

Zone 3

Tennessee Counties

Bedford, Cannon, Coffee, De Kalb, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Marshall, Maury, Moore, Perry, Rutherford, Warren, Wayne, White, Williamson, and Van Buren.

Zone 4

Alabama Counties

Cherokee, Colbert, De Kalb, Franklin, Jackson, Lauderdale, Lawrence, Limestone, Madison, Marshall, and Morgan.

Zone 5

Mississippi Counties

Alcorn, Benton, Itawamba, Lee, Pontotoc, Prentiss, Tippah, Tishomingo, and Union.

Zone 6

Georgia Counties

Bartow, Cherokee, Dawson, Floyd, Forsyth, Gilmer, Gordon, Habersham, Hall, Lumpkin, Pickens, Towns, Union, and White.

Zone 7

Mississippi Counties

Calhoun, Chickasaw, Clay, Coahoma, Grenada, Monroe, Quitman, Tallahatchie, and Yalobusha.

Zone 8

Alabama Counties

Bibb, Blount, Calhoun, Chambers, Chilton, Clay, Cleburne, Coosa, Cullman, Etowah, Fayette, Jefferson, Lamar, Marion, Pickens, Randolph, St. Clair, Shelby, Talledega, Tallapoosa, Tuscaloosa, Walker, and Winston.

Georgia Counties

Banks, Barrow, Butts, Carroll, Clarke, Clayton, Cobb, Coweta, DeKalb, Douglas, Elbert, Fayette, Franklin, Fulton, Greene, Gwinnett, Haralson, Hart, Heard, Henry, Jackson, Jasper, Lamar, Lincoln, Madison, Meriwether, Morgan, Newton, Oconee, Oglethorpe, Paulding, Pike, Polk, Putnam, Rockdale, Spalding, Stephens, Taliaferro, Troup, Walton, and Wilkes.

Zone 9

Mississippi Counties

Bolivar, Carroll, Choctaw, Leflore, Lowndes, Montgomery, Oktibbeha, Sunflower, and Webster.

Zone 10

Georgia Counties

Baldwin, Bibb, Beckley, Burke, Chattahoochee, Columbia, Crawford, Crisp, Dodge, Dooly, Emanuel, Glascock, Hancock, Harris, Houston, Jefferson, Jenkins, Johnson, Jones, Laurens, Macon, Marion, McDuffie, Monroe, Muscogee, Peach, Pulaski, Richmond, Schley, Stewart, Sumter, Talbot, Taylor, Treutlen, Twiggs, Upson, Warren, Washington, Webster, Wilcox, and Wilkinson.

Zone 11

Mississippi Counties

Attala, Holmes, Humphreys, Noxubee, Washington, and Winston.

Zone 12

Louisiana Parishes

Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, De Soto, East Carroll, Franklin, Grant, Jackson, La Salle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Red River, Richland, Sabine, Tensas, Union, Webster, West Carroll, and Winn.

Zone 13

Alabama Counties

Autauga, Barbour, Bullock, Butler, Choctaw, Clarke, Conecuh, Crenshaw, Dallas, Elmore, Greene, Hale, Lee, Lowndes, Macon, Marengo, Monroe, Montgomery, Perry, Pike, Russell, Sumter, Washington, and Wilcox.

Mississippi Counties

Adams, Claiborne, Clarke, Copiah, Hinds, Issaquena, Jasper, Jefferson, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Rankin, Scott, Sharkey, Simpson, Smith, Warren, and Yazoo.

Zone 14

Alabama County of Houston

Georgia Counties

Appling, Atkinson, Bacon, Baker, Ben Hill, Berrien, Bleckley, Bulloch, Brantley, Brooks, Bryan, Calhoun, Candler, Camden, Charlton, Chatham, Clay, Clinch, Coffee, Coulquitt, Cook, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Effingham, Emanuel, Evans, Glynn, Grady, Irwin, Jeff Davis, Jenkins, Johnson, Lanier, Laurens, Lee, Liberty, Long, Lowndes, McIntosh, Miller, Mitchell, Montgomery, Pierce, Pulaski, Quitman, Randolph, Seminole, Screven, Stewart, Sumter, Tattnall, Telfair, Terrell, Thomas, Tift, Toombs, Turner, Treutlen, Ware, Wayne, Webster, Wheeler, Wilcox, and Worth.

Zone 15

Mississippi Counties

Amite, Covington, Forrest, Franklin, Greene, Jefferson Davis, Jones, Lamar, Lawrence, Lincoln, Marion, Perry, Pike, Walthall, Wayne, and Wilkinson.

Zone 16

Louisiana Parishes

Allen, Avoyelles, Beauregard, East Feliciana, Evangeline, Livingston, Rapides, Saint Helena, Vernon, and West Feliciana.

Zone 17

Alabama Counties

Baldwin, Coffee, Covington, Dale, Escambia, Geneva, Henry, and Mobile.

Florida Counties

Escambia, Okaloosa, Santa Rosa, and Walton.

Louisiana Parishes

St. Tammany, Tangipahoa, and Washington.

Mississippi Counties

George, Hancock, Harrison, Jackson, Pearl River, and Stone.

Zone 18

Louisiana Parishes

Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, Iberia, Iberville, Jefferson Davis, Lafayette, Pointe Coupee, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, Vermilion, and West Baton Rouge.

Zone 19

Louisiana Parishes

Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, and Terrebonne.

§ 1007.3 Route disposition.

Route disposition means a delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk.

§ 1007.4 Plant.

Plant means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products, including filled milk, are received, processed, or packaged. Separate facilities without stationary storage tanks that are used only as a reload point for transferring bulk milk from one tank truck to another or separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1007.5 Distributing plant.

Distributing plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1007.6 Supply plant.

Supply plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which fluid milk products are transferred during the month to a pool distributing plant.

§ 1007.7 Pool plant.

Except as provided in paragraph (d) of this section, *pool plant* means:

(a) A distributing plant from which during the month there is:

(1) Total route disposition, except filled milk, equal to 50 percent or more of the total quantity of Grade A fluid milk products; except filled milk, physically received at such plant or diverted therefrom pursuant to § 1007.13; and

(2) Route disposition, except filled milk, in the marketing area is at least the lesser of a daily average of 1,500 pounds or 10 percent of the total quantity of fluid milk products, except filled milk, physically received or diverted therefrom pursuant to § 1007.13.

(b) A supply plant from which fluid milk products are transferred to pool distributing plants. Such transfers, in excess of receipts by transfer from pool distributing plants, must equal not less than 60 percent in each of the months of July through November, and 40 percent in each of the months of December through June, of the total quantity of Grade A milk that is received during the month from dairy farmers (including producer milk diverted from the plant pursuant to § 1007.13 but excluding milk diverted to such plant) and handlers described in § 1007.9(c).

(c) A plant operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product from the cooperative's plant. Such deliveries, in excess of receipts by transfer from pool distributing plants, must equal not less than 60 percent of the total producer milk of such cooperative association in each of the months of July through November, and 40 percent of such milk in each of the months of December through June. The plant's pool plant status shall be subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under the provisions of another Federal order applicable to a distributing plant or a supply plant; and

(2) The plant is approved by a duly constituted regulatory agency to handle Grade A milk.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined pursuant to § 1007 8(e) (1) or (2);

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area;

(4) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which there is a greater quantity of route disposition, except filled milk, in this marketing area than such other marketing area but the plant is, nevertheless, fully regulated under such other Federal order; and

(5) A plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under such other order than are made to plants regulated under this part, or such plant has automatic pooling status under such other order.

§ 1007.8 Nonpool plant.

Nonpool plant means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *Other order plant* means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) *Partially regulated distributing plant* means a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) *Unregulated supply plant* means a supply plant that does not qualify as a pool supply plant and is not an other order plant, a producer-handler plant, or a governmental agency plant.

(e) *Exempt plant* means a plant:

(1) Operated by a governmental agency from which fluid milk products are distributed in the marketing area. Such plant shall be exempt from all provisions of this part; or

(2) Which has monthly route disposition of 100,000 pounds or less during the month. Such plant will be exempt from the pricing and pooling provisions of this order. However, such handler must file periodic reports as prescribed by the market administrator to enable determination of the exempt status of such handler.

§ 1007.9 Handler.

Handler means:

(a) Any person who operates one or more pool plants;

(b) Any cooperative with respect to producer milk which it causes to be diverted pursuant to § 1007.13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered that the plant operator will be the handler of such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1007.7(d);

(g) Any person who operates an unregulated supply plant; and

(h) Any person who operates an exempt plant.

§ 1007.10 Producer-handler.

Producer-handler means a person who is engaged in the production of milk and also operates a plant from which during the month fluid milk products, except filled milk, are disposed of only directly to consumers through home delivery retail routes or through a retail store located on the same property as the plant, and who has been so designated by the market administrator upon the market administrator's determination that all the requirements of this section have been met, and that none of the conditions therein for cancellation of such designation exists. All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

(a) *Requirements for designation.* (1) The producer-handler has and exercises (in such person's capacity as a handler) complete and exclusive control over the operation and management of a plant at which milk is processed and received from the milk production resources and facilities of such handler (designated as such pursuant to paragraph (b)(1) of this section), the operation and management of which are under the complete and exclusive control of the producer-handler (in that person's capacity as a dairy farmer).

(2) The producer-handler neither receives at such designated milk production resources and facilities nor receives, handles, processes, or distributes at or through any of such person's milk handling, processing or distributing resources and facilities (designated as such pursuant to paragraph (b)(2) of this section) milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than:

(i) Such person's designated milk production resources and facilities;

(ii) Pool plants within the limitation specified in paragraph (c)(2) of this section; or

(iii) Nonfat milk solids which are used to fortify fluid milk products.

(3) The producer-handler is neither directly nor indirectly associated with the business or management of, nor has financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(4) The producer-handler is neither directly nor indirectly associated with the business or management of, nor has financial interest in, another producer's operation (in this or any Federal order).

(5) Designation of any person as a producer-handler following a cancellation of such person's prior designation shall be preceded by performance in accordance with paragraphs (a) (1), (2), (3), and (4) of this section for a period of one month.

(b) *Resources and facilities.* Designation of a person as a producer-handler shall include the determination and designation of the milk production, handling, processing, and distribution resources and facilities, all of which shall be deemed to constitute an integrated operation, as follows:

(1) As milk production resources and facilities: All resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk:

(i) Which are directly, indirectly or partially owned, operated or controlled by the producer-handler;

(ii) In which the producer-handler in any way has an interest including any contractual arrangement; and

(iii) Which are directly, indirectly, or partially owned, operated or controlled by any partner or stockholder of the producer-handler.

(2) As milk handling, processing and distribution resources and facilities: All resources and facilities (including store outlets) used for handling, processing and distributing any fluid milk product:

(i) Which are directly, indirectly, or partially owned, operated, or controlled by the producer-handler;

(ii) In which the producer-handler in any way has an interest including any contractual arrangement, or with respect to which the producer-handler directly or indirectly exercises any degree of management or control.

(c) *Cancellation.* The designation as a producer-handler shall be canceled under any of the conditions set forth in paragraphs (c) (1) and (2) of this section or upon determination by the market administrator that any of the requirements of paragraphs (a)(1) through (a)(4) of this section are not continuing to be met. Such cancellation is to apply to any month in which the requirements are not met, or the conditions for cancellation occurred.

(1) Milk from the designated production resources and facilities of the producer-handler is delivered in the name of another person as producer milk to another handler under this or any other Federal order.

(2) The producer-handler handles fluid milk products derived from sources other than designated milk production facilities and resources, with the exception of purchases from pool plants in the form of fluid milk products which does not exceed the lessor of 5 percent of the producer-handler's Class I disposition during the month or 5,000 pounds.

(d) *Public announcement.* The market administrator shall publicly announce the name, plant location, and farm location(s) of persons designated as producer-handlers, of those whose designations have been canceled, and the effective dates of producer-handler status or loss of producer-handler status for each.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to § 1007.32 that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation do not exist.

§ 1007.11 [Reserved]

§ 1007.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is:

(1) Received at a pool plant directly from such producer;

(2) Received by a handler described in § 1007.9(c); or

(3) Diverted from a pool plant in accordance with § 1007.13.

(b) *Producer* shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by such person whose milk is delivered to an exempt plant, excluding producer milk diverted to such exempt plant pursuant to § 1007.13;

(3) Any person with respect to milk produced by such person which is diverted to a pool plant from an other order plant if the other order plant designates such person under that order as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1007.44(a)(8)(iii) and the corresponding step of § 1007.44(b);

(4) Any person with respect to milk produced by such person which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order; or

(5) Any person with respect to milk produced by such person during the months of December through June that is caused to be delivered to a pool plant by a cooperative association or a pool plant operator if during the immediately preceding months of July through November more than one-fifth of the milk from the same farm was caused by such cooperative association or pool plant operator to be delivered to plants as other than producer milk (except milk that is not producer milk as a result of a temporary loss of grade A approval or the application of § 1007.13(e) (5), (6), and (7)), unless such pool plant was a nonpool plant during any of such immediately preceding months.

§ 1007.13 Producer milk.

Producer milk means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant;

(b) Received by a handler described in § 1007.9(c); or

(c) Diverted from a pool plant to the pool plant of another handler. Milk so diverted shall be deemed to have been received at the location of the plant to which diverted; and

(d) Diverted by the operator of a pool plant or cooperative association to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) In any month of December through June, not less than four days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of July through November, not less than ten days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 33 percent during the months of July through November, or 50 percent during the months of December through June, of the producer milk that the cooperative association caused to be delivered to, and is physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (c)(3) of this section. The total quantity of milk so diverted during the month shall not exceed 33 percent during the months of July through November, or 50 percent during the months of December through June, of the producer milk physically received at such plant during the month;

(5) Any milk diverted in excess of the limits prescribed in paragraphs (c) (3) and (4) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that will not be producer milk pursuant to paragraph (c) (3) and (4) of this section. If the handler fails to make such designation, no milk diverted by such handler shall be producer milk;

(6) To the extent that it would result in nonpool status for the plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(7) The cooperative association shall designate the dairy farm deliveries that are not producer milk pursuant to paragraph (c)(6) of this section. If the cooperative association fails to make such designation, no milk diverted by it to a nonpool plant shall be producer milk; and

(8) Diverted milk shall be priced at the location of the plant to which diverted.

§ 1007.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1007.40(b)(1) from any source other than producers, a handler described in § 1007.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1007.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1007.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1007.40(b)(1)) for which the handler fails to establish a disposition.

§ 1007.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, *fluid milk product* means any milk products in fluid or frozen form containing less than 9 percent butterfat, that are in bulk or are packaged, distributed and intended to be used as beverages. Such products include, but are not limited to: Milk, skim milk, lowfat milk, milk drinks, buttermilk, and filled milk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated (to not more than 50 percent total milk solids), or reconstituted.

(b) The term *fluid milk product* shall not include:

(1) Plain or sweetened evaporated milk, plain or sweetened evaporated skim milk, sweetened condensed milk or skim milk, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1007.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1007.17 Filled milk.

Filled milk means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so

that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1007.18 Cooperative association.

Cooperative association means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act;" and

(b) To have full authority in the sale of milk of its members and be engaged in making collective sales of, or marketing, milk or milk products for its members.

§ 1007.19 Commercial food processing establishment.

Commercial food processing establishment means any facility, other than a milk or filled milk plant, to which bulk fluid milk products and bulk fluid cream products are disposed of, or producer milk is diverted, that uses such receipts as ingredients in food products, and has no disposition of fluid milk products or fluid cream products other than those that it received in consumer type packages. Producer milk diverted to commercial food processing establishments shall be subject to the same provisions relating to diversions to plants, including, but not limited to, provisions in §§ 1007.13, 1007.41, and 1007.52.

§ 1007.20 Product prices.

The following prices shall be used in calculating the basic Class II formula price:

(a) *Butter price* means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following workday until the next price is reported. A workday is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) *Cheddar cheese price* means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following workday until the next price is reported. A workday is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) *Nonfat dry milk price* means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding workday until the day such prices were previously reported. A workday is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) *Edible whey price* means the simple average for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding workday until the day such price was previously reported. A workday is each Monday through Friday, except national holidays.

§ 1007.30 Reports of receipts and utilization.

On or before the 5th day after the end of the month (if postmarked), or not later than the 7th day if the report is delivered in person to the office of the market administrator, each handler shall report for such month to the market administrator, in detail and on forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of its pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1007.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1007.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1007.9 (b) and (c) shall report:

(1) The quantities of skim milk and butterfat contained in receipts from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1007.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1007.9 (a), (b), and (c) shall report to the market administrator its producer payroll for such month, in detail prescribed by the market administrator, showing for each producer:

(1) Such producer's name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deduction, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1007.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1007.32 Other reports.

(a) Each handler described in § 1007.9 (a), (b), and (c) shall report to the market administrator on or before the 7th day after the end of each month of February through May the aggregate quantity of base milk received from producers during the month, and on or before the 20th day after the end of each month of February through May the pounds of base milk received from each producer during the month.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1007.30 and 1007.31, each handler shall report such information as the market administrator deems necessary to verify or establish each handler's obligation under the order.

§ 1007.40 Classes of utilization.

Except as provided in § 1007.42, all skim milk and butterfat required to be reported pursuant to § 1007.30 shall be classified as follows:

(a) *Class I milk* shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section;

(2) In packaged fluid milk products in inventory at the end of the month; and

(3) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk* shall be all skim milk and butterfat:

(1) Disposed in the form of a fluid cream product or any product containing artificial fat, fat substitutes, or 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section and in bulk concentrated fluid milk products in inventory at the end of the month;

(3) In bulk fluid milk products and bulk fluid cream products disposed of or diverted to a commercial food processing establishment if the market administrator is permitted to audit the records of the commercial food processing establishment for the purpose of verification. Otherwise, such uses shall be Class I;

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, ricotta cheese, pot cheese, Creole cheese, and any similar soft, high-moisture cheese resembling cottage cheese in form or use;

(ii) Milkshake and ice milk mixes (or bases), frozen desserts, and frozen dessert mixes distributed in one-quart containers or larger and intended to be used in soft or semi-solid form;

(iii) Aerated cream, frozen cream, sour cream, sour half-and-half, sour cream mixtures containing nonmilk items, yogurt, and any other semi-solid product resembling a Class II product;

(iv) Eggnog, custards, puddings, pancake mixes, buttermilk biscuit mixes, coatings, batter, and similar products;

(v) Formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically sealed containers;

(vi) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public, and intermediate products, including sweetened condensed milk, to be used in processing such prepared food products; and

(vii) Any product not otherwise specified in this section.

(c) *Class III milk* shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cream cheese and other spreadable cheeses, and hard cheese of types that may be shredded, grated, or crumbled, and are not included in paragraph (b)(4)(i) of this section;

(ii) Butter, plastic cream, anhydrous milkfat, and butteroil;

(iii) Any milk product in dry form except nonfat dry milk;

(iv) Evaporated or sweetened condensed milk in a consumer-type package and evaporated or sweetened condensed skim milk in a consumer-type package; and

(2) In inventory at the end of the month of unconcentrated fluid milk products in bulk form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products, products specified in paragraph (b)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (b)(4) (i) through (iv) of this section, that are disposed of by a handler for animal feed;

(4) In fluid milk products, products specified in paragraph (b)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (b)(4) (i) through (iv) of this section, that are dumped by a handler. The market administrator may require notification by the handler of such dumping in advance for the purpose of having the opportunity to verify such disposition. In any case, classification under this paragraph requires a handler to maintain adequate records of such use. If advance notification of such dumping is not possible, or if the market administrator so requires, the handler must notify the market administrator on the next business day following such use;

(5) In fluid milk products and products specified in paragraph (b)(1) of this section that are destroyed or lost by a handler in a vehicular accident, flood, fire, or in a similar occurrence beyond the handler's control, to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator;

(6) In skim milk in any modified fluid milk product or in any product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1007.15 and the fluid cream product definition pursuant to § 1007.16; and

(7) In shrinkage assigned pursuant to § 1007.41(a) to the receipts specified in § 1007.41(a)(2) and in shrinkage specified in § 1007.41(b) and (c).

(d) *Class III–A milk* shall be all skim milk and butterfat used to produce nonfat dry milk.

§ 1007.41 Shrinkage.

For the purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1007.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1007.9(c), except that if the operator of the plant to which the milk is delivered purchased such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchased such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amount of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1007.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1007.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1007.44(a)(12) and the corresponding step of § 1007.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products.

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1007.44(a)(7) or the corresponding step of § 1007.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1007.44(a)(11) or (12) or the corresponding steps of § 1007.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section.

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be Class I subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to the class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1007.40.

(c) *Transfers to producer-handlers and transfers and diversions to exempt plants.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to an exempt plant shall be classified:

(1) As Class I milk if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(A) The transferor-handler or divertor-handler claims such classification in such handler's report of receipts and utilization filed pursuant § 1007.30 for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plants from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plants from other order plants;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be classified to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(B) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class II utilization, and then to Class III utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class II utilization, then to any remaining Class III utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

(e) *Transfers by a handler described in § 1007.9(c) to pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1007.9(c) to another handler's pool plant shall be classified pursuant to § 1007.44 pro rata with producer milk received at the transferee-handler's plant.

§ 1007.43 General classification rules.

In determining the classification of producer milk pursuant to § 1007.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1007.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1007.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1007.40, 1007.41, and 1007.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1007.9 (b) or (c) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by the handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1007.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association;

(d) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignment under § 1007.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under § 1007.44 on a pro rata basis, unless a specific use of such receipts is established by the handler; and

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III use at the plant.

§ 1007.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1007.9(a) for each pool plant of the handler separately, the classification of producer milk and milk received from a handler described in § 1007.9(c), by allocating the handler's receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1007.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in:

(i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(ii) Packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1007.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1007.40(b)(1) in packaged form and in bulk concentrated fluid milk products that were in inventory at the beginning of the month, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in bulk concentrated fluid milk products and in other source milk (except other source milk received in the form of an unconcentrated fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1007.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1007.40(c)(6)), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Bulk concentrated fluid milk products and other source milk (except other source milk received in the form of an unconcentrated fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1007.40(b)(1) that were not subtracted pursuant to paragraphs (a)(4), (a)(5), and (a)(6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under any Federal milk order and from an exempt plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2)(i) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is fully regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount;

(A) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler;

(B) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1007.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(C) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1007.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(2)(ii), (a)(5), and (a)(7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the

plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i), (a)(7)(v), and (a)(8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii) and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(A) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1007.45(a); or

(B) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1007.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler described in § 1007.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1007.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1007.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1007.44(a)(12) and the corresponding step of § 1007.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream

products from an other order plant, the class to which such receipts are allocated pursuant to §§ 1007.43(d) and 1007.44 on the basis of such report (including any reclassification of inventories of bulk concentrated fluid milk products), and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association that was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

§ 1007.50 Class prices.

Subject to the provisions of § 1007.52, the class prices for the month per hundredweight of milk containing 3.5% butterfat shall be as follows:

(a) The *Class I price* shall be the basic formula price for the second preceding month plus $3.08.

(b) The *Class II price* shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1007.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1007.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1007.51a.

(c) The *Class III price* shall be the basic formula price for the month, as adjusted by the following amounts:

Month	Amount
January	−$0.10
February	−0.10
March	−0.30
April	−0.30
May	−0.30
June	+0.10
July	+0.20
August	+0.25
September	+0.25
October	+0.25
November	+0.15
December	−0.10

(d) The *Class III–A price* for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing 0.4 by such nonfat dry milk price, plus the butterfat differential value per hundredweight of 3.5 percent milk and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month.

§ 1007.51 Basic formula price.

The *basic formula price* shall be the average price per hundredweight for manufacturing grade milk f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1007.74 shall be used.

§ 1007.51a Basic Class II formula price.

The *basic Class II formula price* for the month shall be the basic formula price determined pursuant to § 1007.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1007.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and separately, for the first 15 days of the second preceding month, as follows:

(1) The gross value of milk used to produce cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to produce cheddar cheese and the gross value of milk used to produce butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk

determined pursuant to paragraph (c) of this section.

§ 1007.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1007.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1007.50(a) shall be adjusted by the amount stated in paragraphs (a) (1) through (4) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1007.2, the adjustment (cents per hundredweight) shall be as follows:

Zone 1	Minus 69.
Zone 2	Minus 56.
Zone 3	Minus 47.5.
Zone 4	Minus 23.
Zone 5	Minus 18.
Zone 6	Minus 15.
Zone 7	Minus 3.
Zone 8	No adjustment.
Zone 9	Plus 2.
Zone 10	Plus 10.
Zone 11	Plus 12.
Zone 12	Plus 20.
Zone 13	Plus 27.
Zone 14	Plus 30.
Zone 15	Plus 37.
Zone 16	Plus 47.
Zone 17	Plus 57.
Zone 18	Plus 70.
Zone 19	Plus 77.

(2) For a plant located within the marketing area of another order issued pursuant to the Act, the location adjustment shall be computed in the following manner: Subtract the Class I price applicable in Zone 8 of this order from the Class I price applicable at such plant, had the plant been regulated under such order.

(3) For a plant located outside the areas described in paragraphs (a) (1) and (2) of this section, and north of a line extending through the northern borders of the States of Alabama, Georgia, and Mississippi the adjustment shall be minus 23 cents for plants located nearest the city hall of Florence or Huntsville, Alabama; minus 15 cents for plants located nearest the city hall of Rome or Blairsville, Georgia; minus 18 cents for plants located nearest the city hall of Corinth, Mississippi; or plus 20 cents for plants located nearest the city hall of Monroe or Shreveport, Louisiana. Such minus adjustment shall be increased (plus adjustments decreased) 2.5 cents for each 10 miles or fraction thereof (by the shortest hardsurfaced highway distance as determined by the market administrator) that such plant is from the nearer of the cities of Florence or Huntsville, Alabama; Rome or Blairsville, Georgia; Corinth, Mississippi; or Monroe or Shreveport, Louisiana.

(4) For a plant located outside the areas specified in paragraphs (a) (1) through (3) of this section the adjustment shall be the adjustment applicable at the nearer of the cities of Lavonia, Augusta, or Savannah, Georgia; or Lake Charles, Leesville, or Shreveport, Louisiana.

(b) For fluid milk products transferred in bulk form from a pool plant to a pool distributing plant at which a higher Class I price applies and which are classified as Class I milk, the Class I price shall be the Class I price at the transferee-plant subject to a location adjustment credit for the transferor-plant which shall be determined by the market administrator for skim milk and butterfat, respectively, as follows:

(1) Subtract from the pounds of skim milk remaining in Class I at the transferee-plant after the computations pursuant to § 1007.44(a)(12) plus the pounds of skim milk in receipts of concentrated fluid milk products from other pool plants that are assigned to Class I use, an amount equal to:

(i) The pounds of skim milk in receipts of milk at the transferee-plant from producers and handlers described in § 1007.9(c); and

(ii) The pounds of skim milk in receipts of packaged fluid milk products from other pool plants;

(2) Assign any remaining pounds of skim milk in Class I at the transferee-plant to the skim milk in receipts of fluid milk products from other pool plants, first to the transferor-plants at which the highest Class I price applies and then to other plants in sequence beginning with the plant at which the next highest Class I price applies;

(3) Compute the total amount of location adjustment credits to be assigned to transferor-plants by multiplying the hundredweight of skim milk assigned pursuant to paragraph (b)(2) of this section to each transferor-plant at which the Class I price is lower than the Class I price applicable at the transferor-plant and the transferee-plant, and add the resulting amounts;

(4) Assign the total amount of location adjustment credits computed pursuant to paragraph (b)(3) of this section to those transferor-plants that transferred fluid milk products containing skim milk classified as Class I milk pursuant to § 1007.42(a) and at which the applicable Class I price is less than the Class I price at the transferee-plant, in sequence beginning with the plant at which the highest Class I price applies. Subject to the availability of such credits, the credit assigned to each plant shall be equal to the hundredweight of such Class I skim milk multiplied by the adjustment rate determined pursuant to paragraph (b)(3) of this section for such plant. If the aggregate of this computation for all plants having the same adjustment as determined pursuant to paragraph (b)(3) of this section exceeds the credits that are available to those plants, such credits shall be prorated to the volume of skim milk in Class I in transfers from such plants; and

(5) Location adjustment credit for butterfat shall be determined in accordance with the procedure outlined for skim milk in paragraphs (b) (1) through (4) of this section.

(c) The market administrator shall determine and publicly announce the zone location of each plant of each handler. The market administrator shall notify the handler on or before the first day of any month in which a change in a plant location zone will apply.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1007.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1007.50(b).

§ 1007.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

§ 1007.60 Handler's value of milk for computing the uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1007.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1007.9(c) that were classified in each class pursuant to

§§ 1007.43(a) and 1007.44(c) by the applicable class prices, and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1007.44(14) and the corresponding step of § 1007.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1007.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1007.44(a)(9) and the corresponding step of § 1007.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1007.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a)(7) (i) through (iv) and the corresponding step of § 1007.44(b), excluding receipts of a bulk fluid cream product from an other order plant and bulk concentrated fluid milk products from pool plants, other order plants, and unregulated supply plants;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a)(7) (v) and (vi) and the corresponding step of § 1007.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1007.43(d) and § 1007.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a)(11) and the corresponding step of § 1007.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(g) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1007.43(d);

(h) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1007.76 (a)(5) or (c); and

(i) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any such applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

§ 1007.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) The market administrator shall compute the weighted average price for each month and the uniform price for each month of June through January per hundredweight of milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1007.60 for all handlers who filed the reports prescribed in § 1007.30 for the month and who made payments pursuant to § 1007.71 for the preceding month;

(2) Add not less than one-half the unobligated balance in the producer-settlement fund;

(3) Add an amount equal to the total value of the minus adjustments and subtract an amount equal to the total value of the plus adjustments computed pursuant to § 1007.75;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1007.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure, rounded to the nearest cent, shall be the weighted average price for each month and the uniform price for the months of June through January.

(b) For each month of February through May, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the total value of excess milk for all handlers included in the computations pursuant to paragraph (a)(1) of this section as follows:

(i) Multiply the hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class III by the Class III price;

(ii) Multiply the remaining hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class II by the Class II price;

(iii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk;

(3) From the amount resulting from the computations pursuant to paragraphs (a) (1) through (3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b)(2) of this section times the hundredweight of excess milk from the amount computed pursuant to paragraph (b)(3) of this section;

(5) Divide the amount calculated pursuant to paragraph (b)(4) of this section by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The resulting figure, rounded to the nearest cent, shall be the uniform price for base milk.

§ 1007.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of the month the applicable uniform price(s) pursuant to § 1007.61 for such month.

§ 1007.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which the market administrator shall deposit all payments made by handlers pursuant to §§ 1007.71, 1007.76, and 1007.77, and out of which the market administrator shall make all payments pursuant to §§ 1007.72 and 1007.77. Payments due any handler shall be offset by any payments due from such handler.

§ 1007.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1007.60.

(2) The sum of:

(i) The value at the uniform price(s) as adjusted pursuant to § 1007.75, of such handler's receipts of producer milk and milk received from handlers pursuant to § 1007.9(c); and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1007.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by the difference between the Class I price under this part applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1007.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1007.71(a)(2) exceeds the amount computed pursuant to § 1007.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1007.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the 26th day of each month, for milk received during the first 15 days of the month from such producer who has not discontinued delivery of milk to such handler before the 23rd day of the month at not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher, less proper deductions authorized in writing by the producer. If the producer had discontinued shipping milk to such handler before the 25th day of any month, or if the producer had no established base upon which to receive payments during the base paying months of February through May, the applicable rate for making payments to such producer shall be the Class III price for the preceding month; and

(2) On or before the 15th day of the following month, an amount equal to not less than the uniform price(s), as adjusted pursuant to §§ 1007.74 and 1007.75, multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1007.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producers; and

(iv) Less proper deductions authorized in writing by such producer.

(3) If a handler has not received full payment from the market administrator pursuant to § 1007.72 by the 15th day of such month, such handler may reduce payments pursuant to this paragraph to producers on a pro rata basis but not by more than the amount of the underpayment. Such payments shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(b) On or before the day prior to the dates specified in paragraph (a) (1) and (2) of this section, each handler shall make payment to the cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraph (a) (1) and (2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1007.72 by the 14th day of such month, such handler may reduce payments pursuant to paragraph (b) of this section to such cooperative association on a pro rata basis, prorating such underpayment to the volume of milk received from such cooperative association in proportion to the total milk received from producers by the handler, but not by more than the amount of the underpayment. Such payments shall be completed in the following manner:

(1) If the handler receives full payment from the market administrator by the 15th day of the month, the handler shall make payment to the cooperative association of the full value of the underpayment on the 15th day of the month;

(2) If the handler has not received full payment from the market administrator by the 15th day of the month, the handler shall make payment to the cooperative association of the full value of the underpayment on or before the date for making such payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(d) Each handler pursuant to § 1007.9(a) who receives milk from a cooperative association as a handler pursuant to § 1007.9(c), including the milk of producers who are not members of such association, and who the market

administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk as follows:

(1) On or before the 25th day of the month for milk received during the first 15 days of the month, not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher; and

(2) On or before the 14th day of the following month, not less than the appropriate uniform price(s) as adjusted pursuant to §§ 1007.74 and 1007.75, and less any payments made pursuant to paragraph (d)(1) of this section.

(e) If a handler has not received full payment from the market administrator pursuant to § 1007.72 by the 14th day of such month, such handler may reduce payments pursuant to paragraph (d) of this section to such cooperative association and complete such payments for milk received from such cooperative association in its capacity as a handler pursuant to § 1007.9(c), in the manner prescribed in paragraph (c) (1) and (2) of this section.

(f) In making payments for producer milk pursuant to this section, each handler shall furnish each producer or cooperative association from whom such handler has received producer milk a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds and the average butterfat content of producer milk;

(3) For the months of February through May the total pounds of base milk received from such producer;

(4) The minimum rate(s) at which payment to the producer is required pursuant to this order;

(5) The rate(s) used in making the payment if such rate(s) is (are) other than the applicable minimum rate(s);

(6) The amount, or rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to such producer or cooperative association.

§ 1007.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price(s) shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

§ 1007.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price and the uniform price for base milk shall be adjusted according to the location of the plant at which the milk was physically received at the rates set forth in § 1007.52(a); and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in § 1007.52(a) applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1007.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1007.30(b) and 1007.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be an amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order;

(3) Subtract the pounds of reconstituted milk that are made from nonfluid milk products and which are then disposed of as route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and weighted average price shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant less $1.00 (but not to be less than the Class III price) and the Class III price. For any reconstituted milk that is not so labeled, the Class I price shall not be reduced by $1.00. Alternatively, for such disposition, payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed (but not to be less than the Class III price) and the Class III price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1007.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated

distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be computed to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1007.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest price class of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1007.60 for such handler shall include, in lieu of the value of other source milk specified in § 1007.60(f) less the value of such other source milk specified in § 1007.71(a)(2)(ii), a value of milk determined pursuant to § 1007.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributed plant during the month equivalent to the requirements of § 1007.7(b), subject to the following conditions:

(A) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ 1007.30(b) and 1007.31(b) similar reports for each such nonpool supply plant;

(B) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(C) The value of milk determined pursuant to § 1007.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of the partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1007.74, for milk received at the plant during the month that would have been producer milk had the plant been fully regulated;

(ii) If paragraph (b) 1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1007.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

(c) Any handler may elect partially regulated distributing plant status for any plant with respect to receipts of nonfluid milk ingredients assigned to Class I use under § 1007.43(d). Payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed (but not less than the Class III price) and the Class III price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

§ 1007.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or other verification discloses errors resulting in money due the market administrator from a handler, or due a handler from the market administrator, or due a producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which the error(s) occurred.

§ 1007.78 Charges on overdue accounts.

Any unpaid obligation due the market administrator from a handler pursuant to §§ 1007.71, 1007.76, 1007.77, 1007.78, 1007.85, and 1007.86 shall be increased 1.5 percent each month beginning with the day following the date such obligation was due under the order. Any remaining amount due shall be increased at the same rate on the corresponding day of each month until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation and shall include any unpaid charges previously made pursuant to this section. For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

§ 1007.85 Assessment for order administration.

As each handler's pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Receipts of producer milk (including such handler's own production) other than such receipts by a handler described in § 1007.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1007.9(c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1007.43(d) and other source milk allocated to Class I pursuant to § 1007.44(a) (7) and (11) and the corresponding steps of § 1007.44(b), except such other source milk that is excluded from the computations pursuant to § 1007.60 (d) and (f); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1007.76(a)(2).

§ 1007.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section each handler, in making payments to producers for milk (other than milk of such handler's own production) pursuant to § 1007.73, shall deduct 7 cents per hundredweight or such lesser amount as the Secretary may prescribe and shall pay such deductions to the market administrator not later than the 15th day after the month. Such money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and provide market information for producers who are not receiving such services from a cooperative association. Such services shall be performed in whole or in part by the market administrator or an agent engaged by and responsible to the market administrator;

(b) In the case of producers for whom a cooperative association that the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 15th day after the end of the month, pay such deductions to the cooperative association rendering such services accompanied by a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

§ 1007.90 Base milk.

Base milk means the producer milk of a producer in each month of February through May that is not in excess of the producer's base multiplied by the number of days in the month.

§ 1007.91 Excess milk.

Excess milk means the producer milk of a producer in each month of February through May in excess of the producer's base milk for the month, and shall include all the producer milk in such months of a producer who has no base.

§ 1007.92 Computation of base for each producer

(a) Subject to § 1007.93, the base for each producer shall be an amount obtained by dividing the total pounds of producer milk delivered by such producer during the immediately preceding months of September through December by the number of days represented by such producer milk or 100, whichever is more. If a producer operated more than one farm at the same time, a separate computation of base shall be made for each such farm.

(b) Any producer who, during the immediately preceding months of September through December, delivered milk to a nonpool plant that became a pool plant after the beginning of such base-forming period shall be assigned a base calculated as if the plant were a pool plant during such entire base-forming period. A base thus assigned shall not be transferable.

§ 1007.93 Base rules.

(a) Except as provided in § 1007.92(b) and paragraph (b) of this section, a base may be transferred in its entirety or in amounts of not less than 300 pounds effective on the first day of the month following the date on which such application is received by the market administrator. Base may be transferred only to a person who is or will be a producer by the end of the month that the transfer is to be effective. A base transfer to be effective on February 1 for the month of February must be received on or before February 15. Such application shall be on a form approved by the market administrator and signed by the baseholder or the legal representative of the baseholder's estate and the person to whom the base is to be transferred. If a base is held jointly, the application shall be signed by all joint holders or the legal representative of the estate of any deceased baseholder.

(b) A producer who transferred base on or after February 1 may not receive by transfer additional base that would be applicable during February through May of the same year. A producer who received base by transfer on or after February 1 may not transfer a portion of the base to be applicable during February through May of the same year, but may transfer the entire base.

(c) The base established by a partnership may be divided between the partners on any basis agreed to in writing by them if written notification of the agreed upon division of base by each partner is received by the market administrator prior to the first day of the month in which such division is to be effective.

(d) Two or more producers in a partnership may combine their separately established bases by giving notice to the market administrator prior to the first day of the month in which such combination of bases is to be effective.

(e) The base assigned a person who was a producer during the immediately preceding months of September through December may be increased to such producer's average daily producer milk deliveries in the month immediately preceding the month during which a condition described in paragraph (e) (1), (2), or (3) of this section occurred, providing such producer submitted to the market administrator in writing on or before February 1 a statement that established to the satisfaction of the market administrator that in the immediately preceding September through December base-forming period the amount of milk produced on such producer's farm was substantially reduced because of conditions beyond the control of such person, which resulted from:

(1) The loss by fire or windstorm of a farm building used in the production of milk on the producer's farm;

(2) Brucellosis, bovine tuberculosis or other infectious diseases in the producer's milking herd as certified by a licensed veterinarian; or

(3) A quarantine by a Federal or State authority that prevents the dairy farmer from supplying milk from the farm of such producer to a plant.

§ 1007.94 Announcement of established bases.

On or before February 1 of each year, the market administrator shall calculate a base for each person who was a producer during any of the preceding months of September through December and shall notify each producer and the handler receiving milk from such dairy farmer of the base established by the producer. If requested by a cooperative association, the market administrator shall notify the cooperative association of each producer-member's base.

Proposed by Arkansas Dairy Cooperative Association, Inc.:

Proposal No. 2

Include the Central Arkansas milk order in the proposed merger of milk orders in the southern United States.

Proposed by Dairy Fresh of Louisiana:

Proposal No. 3

Establish a Class I differential of $3.65 per hundredweight in the Louisiana parishes of Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson Davis, Lafayette, Pointe Coupee, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Washington, West Baton Rouge, and West Feliciana. Establish a Class I differential of $3.72 per hundredweight in the Louisiana parishes of Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, and Terrebone.

Proposed by Barber Pure Milk Company and Dairy Fresh Corporation:

Proposal No. 4

Provide for "unit pooling" by including the following paragraph in the pool plant section of the proposed merged order:

"A unit consisting of one distributing plant and one or more additional plants of a handler at which Class I and/or Class II products only are processed and packaged shall be considered as one plant for the purpose of meeting the requirements of this paragraph if all such plants are located within the marketing area, and if, prior to the first of the month, the handler operating such plants has filed a written request for such plants to be considered a unit with the Market Administrator. Only one unit may be qualified by a handler pursuant to this section."

Proposal No. 5

Provide a Class I differential of $3.58 (i.e., a plus location adjustment of 50 cents relative to the proposed Class I differential of $3.08 in Proposal No. 1) and a producer location adjustment of plus 72 cents in the Alabama counties of Baldwin, Coffee, Covington, Dale, Escambia, Geneva, Henry, and Mobile, and the Florida counties of Escambia, Okaloosa, Santa Rosa, and Walton.

Proposal No. 6

Permit the operator of a pool plant that is not a cooperative association to divert any milk that is not under the control of a cooperative association that diverts milk during the month. The total quantity of milk so diverted during any month shall not exceed 30 percent of the producer milk physically received at all pool plants of the handler during the month.

Proposed by Georgia Milk Producers, Inc.:

Proposal No. 7

Provide for two advanced payments to producers, as specified in the following provision, in the Georgia order or in any merged order including the Georgia order:

§ 1007.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment for producer milk as follows:

(1) On or before the 20th day of the month, to each producer who had not discontinued shipping milk to such handler before the 15th day of the month, not less than 85 percent of the uniform price for the preceding month per hundredweight of milk received during the first 15 days of the month, less proper deductions authorized in writing by such producer;

(2) On or before the 5th day of the following month, to each producer who had not discontinued shipping milk to such handler before the last day of the month, not less than 85 percent of the uniform price for the preceding month per hundredweight of milk received from the 16th through the last day of the month, less proper deductions authorized in writing by such producer; and

(3) On or before the 15th day of each month to each producer for milk received during the preceding month, not less than the uniform price per hundredweight, adjusted pursuant to §§ 1007.74, 1007.75, and 1007.86, subject to the following:

(i) Minus payments made pursuant to paragraphs (a) (1) and (2) of this section;

(ii) Less proper deductions authorized in writing by such producer; and

(iii) If by such date such handler has not received full payment from the market administrator pursuant to § 1007.72 for such month, the handler may reduce pro rata its payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, together with a written promise of such association to reimburse the handler the amount of any actual loss incurred by the handler because of any improper claim on the part of the association, such handler, on or before the second day prior to the date on which payments are due individual producers, shall pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount not less than the total due such producer-members pursuant to paragraph (a) of this section, subject to the following:

(1) Payment pursuant to this paragraph shall be made for milk received from any producer beginning on the first day of the month following receipt from the cooperative association of its certification that such producer is a member, and continuing through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association; and

(2) Copies of the written request of the cooperative association to receive payments on behalf of its members, together with its promise to reimburse and its certified list of members shall be submitted simultaneously both to the handler and to the market administrator and shall be subject to verification by the market administrator at his/her discretion, through audit of the records of the cooperative association. Exceptions, if any, to the accuracy of such certification claimed by any producer or by a handler shall be made by written notice to the market administrator and shall be subject to the market administrator's determination.

Proposal No. 8

Establish a fund under the merged order to protect dairymen from losses resulting from handler bankruptcies. The fund would be established through assessment of fully regulated handlers under the order. Once the fund has reached a predetermined amount, assessments would be halted until such time that additional funds are needed.

Proposed by Malone & Hyde:

Proposal No. 9

Adopt the following provisions for §§ 1007.2, 1007.7 (b) and (c), 1007.50(a), and 1007.52(a), of a merged Federal milk marketing order for the southeastern United States:

§ 1007.2 Southeast marketing area.

The *Southeast Marketing Area*, hereinafter called the *marketing area*, means all territory within the boundaries of the following: Alabama, Florida, Georgia, Mississippi, Tennessee, and Arkansas counties and Louisiana parishes, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties or parishes:

Zone 1

Tennessee Counties

Cheatham, Clay, Davidson, Dickson, Fentress, Houston, Humphreys, Jackson, Macon, Montgomery, Overton, Pickett, Puntam, Robertson, Smith, Stewart, Sumner, Trousdale, and Wilson.

Zone 2

Tennessee Counties

Bedford, Cannon, Coffee, DeKalb, Hickman, Lewis, Marshall, Maury, Perry, Rutherford, Van Buren, Warren, White, and Williamson

Zone 3

Arkansas County of Crittenden.

Tennessee Counties

Bledsloe, Fayette, Franklin, Giles, Grundy, Hardeman, Hardin, Lawrence, Lincoln, McNairy, Moore, Shelby, and Tipton.

Alabama Counties

Cherokee, Colbert, Cullman, DeKalb, Franklin, Jackson, Lauderdale, Lawrence, Limestone, Madison, Marion, Marshall, Morgan, and Winston.

Georgia Counties

Bartow, Cherokee, Dawson, Floyd, Forsyth, Gilmer, Gordon, Habersham, Hall, Lumpkin, Pickens, Rabun, Towns, Union, and White.

Mississippi Counties

Alcorn, Benton, De Soto, Itawamba, LaFayette, Lee, Marshall, Panola, Pontotoc, Prentiss, Tate, Tippah, Tishomingo, Tunica, and Union.

Zone 5

Alabama Counties

Blount, Calhoun, Clay, Cleyburne, Etowah, Fayette, Jefferson, Lamar, Randolph, St. Clair, Shelby, Talledega, and Walker.

Georgia Counties

Banks, Barrow, Butts, Carrol, Clarke, Clayton, Cobb, Coweta, DeKalb, Douglas, Elbert, Fayette, Franklin, Fulton, Greene, Gwinett, Heralson, Hart, Heard, Henry, Jackson, Jasper, Lamar, Lincoln, Madison, Meriwether, Morgan, Newton, Oconee, Olgethorpe, Paulding, Pike, Polk, Putman, Rockdale, Spalding, Stephens, Taliaferro, Troup, Walton, and Wilkes.

Mississippi Counties

Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, Grenada, Leflore, Lowndes, Monroe, Montgomery, Oktibbeha, Quitman, Sunflower, Tallahatchie, Webster, and Yalobusha.

Zone 6

Alabama Counties

Autauga, Bibb, Chambers, Chilton, Coosa, Elmore, Greene, Hale, Lee, Macon, Perry, Pickens, Russell, Tallapoosa, and Tuscaloosa.

Georgia Counties

Baldwin, Bibb, Burke, Chattahoochee, Columbia, Crawford, Glascock, Hancock, Harris, Houston, Jefferson, Jones, Macon, Marion, McDuffie, Monroe, Muscogee, Peach, Richmond, Schley, Talbot, Twiggs, Upson, Warren, Washington, and Wilkinson.

Mississippi Counties

Attala, Holmes, Humphreys, Noxubee, Washington, and Winston.

Zone 7

Louisiana Parishes

Bienville, Bossier, Caddo, Caldwell, Claiborne, De Soto, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Red River, Richland, Texas, Union, Webster, West Carroll, and Winn.

Zone 8

Alabama Counties

Barbour, Bullock, Choctaw, Dallas, Lowndes, Marengo, Montgomery, Pike, Sumter, and Wilcox.

Georgia Counties

Ben Hill, Bleckley, Bulloch, Candler, Clay, Crisp, Dodge, Dooly, Effingham, Emanuel, Evans, Jeff Davis, Jenkins, Johnson, Laurens, Lee, Montgomery, Pulaski, Quitman, Randolph, Screven, Stewart, Sumter, Tattnall, Telfair, Terrell, Toombs, Treutlen, Turner, Webster, Wheeler, and Wilcox.

Mississippi Counties

Claiborne, Clarke, Copiah, Hinds, Issequena, Jasper, Kemper, Lauderdale, Leake, Madison, Noshoba, Newton, Rankin, Scott, Sharkey, Simpson, Smith, Warren, and Yazoo.

Zone 9

Alabama Counties

Coffee, Dale, Geneva, Henry, and Houston.

Georgia Counties

Appling, Atkison, Bacon, Baker, Berrien, Brantley, Brooks, Bryan, Calhoun, Camden, Charlton, Chatman, Clinch, Coffee, Colquitt, Cook, Decatur, Dougherty, Early, Echols, Gynn, Grady, Irwin, Lanier, Liberty, Long, Lowndes, McIntosh, Miller, Mitchell, Pierce, Seminole, Thomas, Tift, Ware, Wayne, and Worth.

Zone 10

Alabama Counties

Butler, Clarke, Conecub, Covington, Crenshaw, Monroe, and Washington.

Louisiana Parishes

Avoyelles, Catahoula, Concordia, Grant, La Salle, Natchitoches, Rapides, Sabine, and Vernon.

Mississippi Counties

Adams, Amite, Covington, Forrest, Franklin, Greene, Jefferson, Jefferson Davis, Jones, Lamar, Lawrence, Lincoln, Marion, Perry, Pike, Walthall, Wayne, and Wilkinson.

Zone 11

Alabama Counties

Baldwin, Escambia, and Mobile.

Florida Counties

Escambia, Okaloosa, Santa Rosa, and Walton.

Louisiana Parishes

Acadia, Allen, Ascension, Assumption, Beauregard, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Livingston, Pointe Coupee, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Helena, St. Tammany, Tangipahoa, Vermilion, Washington, West Beton Rouge, and West Feliciana.

Mississippi Counties

George, Hancock, Harrison, Jackson, Pearl River, and Stone.

Zone 12

Louisiana Parishes

Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, and Terrebonne.

§ 1007.7 Pool plant.

* * * * *

(b) A supply plant from which fluid milk products are transferred or diverted to pool distributing plants. Such transfers or diversions, in excess of receipts by transfer from pool distributing plants, must equal not less than 60 percent in each of the months of July through November, and 40 percent in each of the months of December through June, of the total quantity of Grade A milk that is received during the month from dairy farmers (including producer milk diverted from the plant pursuant to § 1007.13 but excluding milk diverted to such plant) and handlers described in § 1007.9(c).

(c) A plant operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product from the cooperative's plant. Such deliveries, in excess of receipts by transfer from pool distributing plants, must equal not less than 60 percent of the total producer milk of such cooperative association in each of the months of July through November, and 40 percent of such milk in each of the months of December through June. The plant's pool plant status shall be subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a) or (b) of this section or under the provisions of another Federal order applicable to a distributing plant or a supply plant;

(2) The plant is approved by a duly constituted regulatory agency to handle Grade A milk;

(3) The plant is located in the marketing area; and

(4) Not less than 20 percent of producer milk received at the plant during the months of July through November, and 10 percent of producer milk received at the plant during the months of December through June, is transferred to pool distributing plants.

* * * * *

§ 1007.50 Class prices.

Subject to the provisions of § 1007.52, the class prices for the month per hundredweight of milk containing 3.5% butterfat shall be as follows:

(a) The *Class I price* shall be the basic formula price for the second preceding month plus $3.08.

* * * * *

§ 1007.52 Plant location adjustments for handlers.

(a) For milk received at a plant from producers or a handler described in § 1007.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1007.50(a) shall be adjusted by the amount stated in paragraphs (a) (1) through (4) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1007.2, the adjustment shall be as follows:

Zone	Adjustment per hundredweight
Zone 1	Minus 56 cents.
Zone 2	Minus 53 cents.
Zone 3	Minus 31 cents.
Zone 4	Minus 23 cents.
Zone 5	No Adjustment.
Zone 6	Plus 10 cents.
Zone 7	Plus 20 cents.
Zone 8	Plus 27 cents.
Zone 9	Plus 30 cents.
Zone 10	Plus 37 cents.
Zone 11	Plus 57 cents.
Zone 12	Plus 64 cents.

(2) For a plant located within the marketing area of another order issued pursuant to the Act, the location adjustment shall be computed by subtracting the Class I price applicable in Zone 5 of this order from the Class I price applicable at such plant under the order in which the plant is located.

(3) For a plant located in the Kentucky counties of Allen, Barren, Hart, Metcalfe, Monroe, Simpson, and Warren, subtract 69 cents.

(4) For a plant located outside the areas described in paragraphs (a) (1), (2), and (3) of this section, and north of a line extending through the northern borders of the States of Alabama, Georgia, and Mississippi, the adjustment shall be minus 56 cents for plants nearest the city hall of Nashville, Tennessee; minus 20 cents for plants nearest the city hall of Florence, Alabama; Rome or Blairsville, Georgia; Clarksdale or Corinth, Mississippi; minus 35 cents for plants located nearest the city hall of Shreveport, Louisiana, or minus 31 cents for plants located nearest the city hall of Memphis or Chattanooga, Tennessee. Such minus adjustment shall be increased 2.25 cents for each 10 miles or fraction thereof (by the shortest hardsurfaced highway distance as determined by the market administrator) that such plant is from the nearer of the aforementioned cities.

(5) For a plant located outside the areas specified in paragraphs (a) (1) through (3) of this section, the adjustment shall be the adjustment applicable at the nearer of the cities of Lavonia, Augusta, or Savannah, Georgia; Lake Charles, Leesville, or Shreveport, Louisiana; or Greenville, Mississippi.

* * * * *

Proposal No. 10

If a base-excess seasonal production incentive plan is adopted for the merged order, provide in §§ 1007.90 through 1007.94 for computation of base for each producer by reference to producer milk delivered by such producer during the months of July through November, and for payment on base milk and excess milk during the months of January through May.

Proposed by Mid-America Dairymen, Inc., and Southern Milk Sales, Inc.:

Proposal No. 11

Amend § 1096.7 of the Greater Louisiana Milk Marketing Order or, if Proposal No. 1 is adopted, § 1007.7 of the proposed Gulf States Milk Marketing Order, by replacing the period at the end of paragraph (a)(2) with "; or" and adding a new paragraph to read as follows:

§ 1096.7 Pool plant.

* * * * *

(a) * * *

(3) Located in the marketing area that qualifies pursuant to paragraph (a) (1) and (2) of this section so long as this order's Class I price applicable at such plant location is not less than an other order's Class I price applicable at the same location even though the plant may meet the pooling requirements of the other Federal order and have greater route disposition in the other marketing area than in the Greater Louisiana—or "Gulf States"—marketing area.

Proposed by Dairy Division, Agricultural Marketing Service:

Proposal No. 12

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing may be obtained from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250 or from the following market administrators: Paul W. Halnon, USDA–AMS–Dairy Division, P.O. Box 49025, Atlanta, GA 30359; or Richard E. Arnold, USDA–AMS–Dairy Division, P.O. Box 701440, Tulsa, OK 74170–1440.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office)
Offices of the Market Administrators for each of the markets included in this notice.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: September 3, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–22116 Filed 9–9–93; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Part 313

[Docket No. 91–035P]

RIN 0583–AB54

Use of Carbon Dioxide in the Humane Slaughter of Swine

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: FSIS is proposing to amend the Federal meat inspection regulations to permit the use of carbon dioxide to induce death in swine. Current regulations governing the humane slaughter of swine permit carbon dioxide to be used to render the animals unconscious, with death resulting from the bleeding operation. The proposed amendment, prompted by a petition from the Danish and Swedish Meat

Research Institute, is based on scientific research that shows the use of carbon dioxide to induce death in swine to be an effective and humane slaughtering method.

DATES: Comments must be received on or before November 8, 1993.

ADDRESSES: Written comments may be mailed to: Policy Office, Attn: Linda Carey, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that the proposed rule is not a major rule under Executive Order 12291. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets.

Executive Order 12778

This proposed rule has been reviewed pursuant to Executive Order 12778, Civil Justice Reform. This proposed rule would permit swine to be humanely slaughtered in official meat-packing establishments through the administration of carbon dioxide.

States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) from imposing any requirements with respect to federally inspected premises and facilities, and operations of such establishments, that are in addition to, or different than, those imposed under the FMIA. States and local jurisdictions are also preempted under the FMIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected poultry products that are in addition to, or different than, those imposed under the FMIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat products that are outside official establishments for the purpose of preventing the distribution of meat products that are misbranded or adulterated under the FMIA or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. States and local jurisdictions may also make requirements or take other actions that are consistent with the FMIA, with respect to any other matters regulated under the FMIA.

Under the FMIA, States that maintain meat inspection programs must impose requirements on State-inspected products and establishments that are at least equal to those required under the FMIA. These States may, however, impose more stringent requirements on such State-inspected products and establishments.

In the event of its adoption, no retroactive effect would be given to this proposed rule, and applicable administrative procedures must be exhausted before any judicial challenge can be taken to the application of these provisions. Those administrative procedures are set forth in 9 CFR 306.5.

Effect on Small Entities

The Administrator has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

The use of the carbon dioxide (CO_2) slaughtering methods is voluntary. FSIS is not aware of any domestic establishments that are currently planning to use the proposed swine slaughtering method. Even if some establishments did decide to use the method after adoption of the proposed rule, there is no indication that a substantial number of establishments would. There would be no impact on entities other than establishments engaged in the slaughter of swine and the sale of swine carcasses and parts for human food. A significant investment would be required by large or small entities establishing CO_2 slaughtering facilities. Inspection program experts estimate that an investment of $50,000 to $100,000 per slaughtering line would be necessary, depending on the size and complexity of the establishment. The decision to make this initial investment would be entirely up to the establishment, although this proposed rule authorizing CO_2 slaughtering of swine would be a factor in making the decision. This investment could be more than offset by a reduction in manpower required for restraining, stunning, and handling hogs after stunning.

Further, the improvement in meat quality, which advocates of the CO_2 process claim, could lead to a greater amount of saleable product. Because the hogs are much more relaxed when slaughtered with CO_2 than they are when slaughtered by current methods, a number of desirable characteristics are imparted to the meat. The amount of pale, soft, exudative pork, considered undesirable by meat buyers, is reduced under the process, as well as blood spattering and broken bones. Also, less effort is expended on trimming and the removal of quality defects.

No adverse competitive effects on small entities resulting from adoption of the proposed rule are anticipated. Because the equipment needed for establishments to benefit from CO_2 slaughtering is available in a range of prices, larger establishments choosing to use this method would not receive greater proportional advantages than smaller ones choosing to do the same. For the reasons discussed above, the proposed rule would not have a significant impact on a substantial number of small entities.

Paperwork Requirements

This proposed rule imposes no new information collection requirements on official establishments or other members of the public. However, under the existing rules for the use of carbon dioxide to anaesthetize animals before slaughter, establishments are required to sample gas for analysis from representative locations within the gas tunnels through which the animals are conveyed. Gas concentrations and exposure times are to be recorded throughout each day's operations. The records are subject to FSIS's standard records retention requirement at 9 CFR 320.3 and must be available to employees of the inspection service. These requirements would be continued under the proposal.

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments should be sent to the Policy Office at the address shown above and should refer to the docket number located in the heading of this document. All comments submitted in response to this proposal will be available for public inspection in the Policy Office between 9 a.m. and 4 p.m., Monday through Friday.

Background

Under the Humane Slaughter Act (HSA) of 1958 (7 U.S.C. 1901–1906), as amended, the Secretary of Agriculture is authorized to designate humane methods of handling and slaughter of food animals. The HSA (section 2(a)) sets forth a number of methods of handling and slaughtering that have been found to be humane, including the anaesthetization of animals by electrical or chemical means (such as the

administration of carbon dioxide gas) before they are shackled, hoisted, thrown, cast, or cut. These methods are available to slaughtering establishments under the FMIA (section 3; 21 U.S.C. 603).

Section 313.5 of the Federal meat inspection regulations (at 9 CFR 313.5) provides for the administration of CO_2 gas to sheep, calves, and swine for the purpose of inducing surgical anaesthesia in the animals before they are shackled, hoisted, thrown, cast, or cut. The regulations require that the animals be exposed to the CO_2 in a way that will accomplish the anaesthesia quickly, with a minimum of excitement or discomfort to the animals. Although the regulations allow stunning by CO_2, they explicitly prohibit asphyxia or death in the animals before sticking and bleeding.

FSIS has traditionally required animals to be rendered insensible to pain by some method of stunning before they are slaughtered. Death has been expected to be caused by asphyxiation due to bleeding and not to be directly caused by the stunning method.

Stunning of swine has traditionally been required to be reversible; that is, it must be possible for stunned animals to be brought back into consciousness. This requirement was based on the belief of veterinarians and other experts that if the stunned animals were still alive when they were bled, the bleeding would be assisted by the still-beating heart and would be thorough. Thus, animals could be rendered unconscious by an authorized method but not killed. Death would occur only upon the bleeding of the stunned animals.

Since at least the 1970's, however, studies have shown that the bleeding out of a carcass can be just as thorough regardless of the degree of stunning if the carcass is correctly positioned for bleed-out. The length of time for bleeding may vary but the results are still the same.

After it had been demonstrated that electrocution, irreversible electrical stunning, was an efficient and humane method of slaughtering animals and had no adverse effect on meat or meat products, FSIS published regulations permitting this slaughtering method (50 FR 25202). FSIS is proposing a similar measure with respect to CO_2 use.

The use of CO_2 gas for stunning has been permitted since the early 1900's and is explicitly permitted by the HSA. Animals to be anaesthetized by this method are placed on a conveyor and passed through tunnels filled with the gas. They are moved through the tunnels at such a slow rate that they are unconscious when they emerge. They are then shackled, hoisted, stuck, and bled out.

In the last two decades, reports in the scientific literature have shown that the stunning of slaughter animals by the administration of CO_2 gas is just as effective as electrical stunning. There is little or no difference between the two methods in the amount of stress inflicted on the animal. Whichever method is used, animals should be carefully handled before slaughter to reduce stress, and sticking (exsanguination) should take place as soon as possible after stunning to prevent a return to consciousness.

With respect to the administration of CO_2, it has been demonstrated that if the concentration of the gas in the tunnels is increased, death ensures. Other effects, including fewer injuries to the animals or establishment employees, have also been noted. Depending on the facilities and equipment used and the technique of administration, CO_2 stunning of swine can yield meat that has improved color, carcasses with fewer broken bones and blood spots in the most desired cuts, less pale, soft, exudative pork, and higher boning and cutting yields.

Studies have shown that the necessary conditions for irreversible stunning to take place are a 95–98 percent CO_2 concentration and an exposure time of 3.5 minutes. The stunning-to-bleeding interval should be no longer than 2 minutes to prevent pooling of blood in intestines and edible organs and no longer than 5 minutes to prevent the pooling of blood in muscle tissue.[1]

FSIS has been petitioned by the Danish and Swedish Meat Research Institute to amend the Federal meat inspection regulations to permit the use of CO_2 for the purpose of inducing death in swine. The petitioners have based their request on studies demonstrating the beneficial effects of this method on meat quality and the efficient handling of slaughter swine. Some Danish firms that export product to the United States are planning to install systems for slaughtering swine with CO_2, and FSIS believes it may be potentially beneficial to U.S. industry to make the option of this use of CO_2 available.

Under the FMIA, only those foreign establishments that have complied with inspection standards "at least equal to" those enforced domestically by the United States Government may export product to this country. An establishment in which slaughter methods are used that are prohibited by regulations under the FMIA is not eligible to export product to the United States. An establishment using CO_2 to induce death in swine would not be able to export pork products to the United States without a change in Federal regulations.

The proposed amendment of the regulations is consistent with the main purpose of the HSA, which is to render animals insensible to pain before slaughter. Section 313.5 of the Federal meat inspection regulations would be amended to remove the prohibition against the use of CO_2 as a direct cause of asphyxiation or death in swine and provide for monitoring of the conditions under which slaughter by use of CO_2 gas is administered. The proposed change would not require swine to be asphyxiated by CO_2 before bleeding, but would permit exposure to concentrations of the gas for a sufficient amount of time for death to occur. A revision to the current requirement for a suitable exhaust system (proposed 9 CFR 313.5(b)(3)) would state more accurately than does the current wording the purpose of the exhaust system, which is intended, in case of equipment breakdown, to prevent both nonuniform carbon dioxide concentrations in the gas tunnel and leakage of carbon dioxide gas into the ambient air of the establishment.

The degree of CO_2 exposure beyond that necessary for effective stunning would be determined by the establishment. However, if the animal were not asphyxiated by CO_2, then it would have to be stuck as soon as possible to prevent it from regaining consciousness.

FSIS does not find it necessary to establish a limit for the death-to-bleeding time interval for an animal asphyxiated by CO_2. If the delay between death and bleeding is too long, the deleterious effect on the meat would entail condemnation upon post mortem inspection.

List of Subjects in 9 CFR Part 313

Meat inspection, Humane slaughter of livestock.

For the reasons set out in the preamble, it is proposed that 9 CFR part 313 of the Federal meat inspection regulations be amended as follows:

PART 313—HUMANE SLAUGHTER OF LIVESTOCK

1. The authority citation for part 313 would continue to read as follows:

[1] Copies of articles on the stunning of slaughter animals and on irreversible stunning with CO_2 may be viewed in the Office of the Hearing Clerk, room 3171, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250.

Authority: 7 U.S.C. 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Paragraph (a)(1) of § 313.5 would be amended by the addition of a new last sentence; paragraphs (a)(3), (b)(1)(i), and (b)(1)(ii) would be revised; and the last sentence of paragraph (b)(3) would be revised to read as follows:

§ 313.5 Chemical; carbon dioxide.

* * * * *

(a) * * *

(1) * * *

In swine, carbon dioxide may be administered to induce death in the animals before they are shackled, hoisted, thrown, cast, or cut.

* * * * *

(3) On emerging from the carbon dioxide tunnel, the animals shall be in a state of surgical anesthesia and shall remain in this condition throughout shackling, sticking, and bleeding, except for swine in which death has been induced by the administration of carbon dioxide. Asphyxia or death from any cause shall not be produced in animals before bleeding, except for swine in which death has been induced by the administration of carbon dioxide.

(b) * * *

(1) * * *

(i) The carbon dioxide gas shall be administered in a tunnel which is designed to permit the effective exposure of the animal. Two types of tunnels, based on the same principle, are in common use for carbon dioxide anesthesia. They are the "U" type tunnel and the "Straight Line" type tunnel, and are based on the principle that carbon dioxide gas has a higher specific gravity than air. The tunnels are open at both ends for entry and exit of animals and have a depressed central section. Anesthetizing, or, in the case of swine, death-inducing, carbon dioxide concentrations are maintained in the central sections of the tunnels. Effective anesthetization is produced in these central sections. Animals are driven from holding pens through pathways constructed of large-diameter pipe or smooth metal and onto continuous conveyor devices that move the animals through the tunnels. The animals are either compartmentalized on the conveyors by mechanical impellers synchronized with the conveyor or they are otherwise prevented from crowding. While impellers are used to compartmentalize the animals, mechanically or manually operated gates are used to move the animals onto the conveyors. Surgically anesthetized animals, or killed swine, are moved out of the tunnels by the same continuous conveyors that moved them into and through the carbon dioxide gas.

* * * * *

(3) * * * An exhaust system must be provided so that, in case of equipment failure, non-uniform carbon dioxide concentrations in the gas tunnel or contamination of the ambient air of the establishment will be prevented.

September 2, 1993.

Done at Washington, DC.

Eugene Branstool,

Assistant Secretary.

[FR Doc. 93–22118 Filed 9–9–93; 8:45 am]

BILLING CODE 3410–DM–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. PRM–20–21]

Keith J. Schiager, Ph.D., et al., Receipt of a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by Keith J. Schiager, Ph.D., *et al.* The petition has been docketed by the Commission and has been assigned Docket No. PRM–20–21. The petitioners request that the NRC amend its regulations governing the disposal of certain low-level radioactive wastes to provide additional options for the disposal of very low concentrations of short-lived radionuclides. The petitioners believe such an amendment would permit more cost-effective radioactive waste management by research institutions and would not adversely affect public health and safety.

DATES: Submit comments by November 24, 1993. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

For a copy of the petition, write: Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services; Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–492–7758 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission (NRC) received a petition for rulemaking submitted by Keith J. Schiager, Ph.D., *et al.*, dated May 18, 1993. The petition was docketed as PRM–20–21 on July 6, 1993. The petitioners requested that the NRC amend its regulations in 10 CFR part 20 that will become mandatory for all licensees on January 1, 1994, to permit additional methods for disposal of certain low-level radioactive wastes. The petitioners note that current NRC regulations on low-level radioactive waste disposal (10 CFR 20.306) permit the disposal of liquid scintillation fluid that contains no more than 0.05 microcurie of hydrogen-3 (H–3) or carbon-14 (C–14) per gram.

The petitioners believe this provision is appropriate because it allows disposal of flammable solvents by incineration but claim that procedures other than liquid scintillation counting generate similar flammable or combustible liquid wastes that contain low concentrations of H–3 and C–14. On May 21, 1991 (56 FR 23360, 23391), the NRC published a final rule that added revised standards for protection against radiation to the regulations in 10 CFR part 20. Although the final rule became effective June 20, 1991, licensees are not required to implement the provisions of the final rule until January 1, 1994. The petitioners contend that the regulations that become mandatory for all licensees on January 1, 1994, are too restrictive and prevent many research institutions from pursuing certain types of research that cannot be conducted effectively without the use of radioactive materials.

On January 30, 1984 (49 FR 3667), the NRC published a petition for rulemaking submitted by Keith J. Schiager, Ph.D., on behalf of the University of Utah (PRM–20–14). The petitioner requested that NRC amend its regulations in 10 CFR part 20 to provide for additional options for the disposal of very low concentrations of short-lived radionuclides.

In a letter dated June 1, 1993, Dr. Schiager requested, on behalf of the University of Utah, that this petition be withdrawn because of changes in

legislation and operational requirements since the date his original petition was published in January 1984. Dr. Schiager also indicated that a revised petition for rulemaking, which will propose amendments to provisions for disposal of wastes containing low-level radionuclides in 10 CFR part 20 that become mandatory for all licensees on January 1, 1994, would be filed in the near future. On July 22, 1993 (58 FR 39173), the NRC published a notice of withdrawal of the University of Utah's petition for rulemaking.

The NRC is soliciting public comment on the petition submitted by Keith J. Schiager, Ph.D., *et al.*, that requests the changes as discussed below to the regulations in 10 CFR part 20 that will become mandatory for all licensees on January 1, 1994.

The Petitioners

The petitioners are a group of individuals responsible for radioactive waste management at various educational and medical institutions with extensive biomedical research activities. The petitioners indicate they are submitting this petition for rulemaking only as individual citizens, not as authorized representatives of the institutions that possess NRC licenses at which they are currently employed.

Adverse Effects on the Petitioners

The petitioners have submitted this petition for rulemaking because they believe they have been adversely affected by the current regulations that restrict low-level radioactive waste disposal. The petitioners' primary concern is that these restrictions will prevent them from pursuing certain types of research which they believe cannot be effectively performed without the use of radioactive materials.

The petitioners state that while the current regulations are appropriate in permitting disposal of liquid scintillation fluid that contains no more than 0.05 microcurie of H–3 or C–14 as if it were not radioactive, they indicate that other procedures also generate similar combustible liquid wastes. The petitioners believe that these materials could be included under the disposal criteria for specific wastes that contain very low levels of radionuclides. The petitioners also assert that proposed disposal criteria would result in a cost-effective option that would not adversely affect public health or environmental quality.

The petitioners state that under the current industry practice, wastes containing low-level radionuclides are usually stored for 10 half-lives, then are monitored for levels of radioactivity. If no residual radioactivity is discovered, the material can be treated as nonradioactive for disposal purposes. The petitioners state that wastes stored for the prescribed timeframe will lose 99.9 percent of their radioactive content.

The petitioners note that under the current regulations most NRC licensees are permitted to use this disposal method for materials that have half-lives of less than 65 days, but also assert that this disposal practice is appropriate for materials with half-lives of up to 1 year. The petitioners also believe that an arbitrary number of half-lives is not equally protective in all situations. As an example, the petitioners state that waste material containing one millicurie of radioactivity would decay to one microcurie in 10 half-lives, while waste containing one curie of radioactivity will still contain one millicurie after the same storage time.

The petitioners believe that, regardless of the initial radioactivity present in waste material, there is no significant risk that materials with a half-life of 1 year or less would leach from a landfill before they decay. The petitioners state that the intent of the required storage time of low-level radioactive waste material before disposal is to make certain that all radioactivity has decayed to harmless levels. The petitioners assert that radioactive decay associated with buried wastes containing low levels of radionuclides will have no more adverse effect on public health and the environment than if the wastes are stored in a licensee-controlled facility.

The petitioners also assert that the current regulatory limits on radioactivity in buried waste materials are intended to protect not only individuals who transport and handle the waste, but also to protect the general public if a transportation accident enroute to the burial site results in a release. The petitioners believe that a regulatory limit on the exposure rate from the waste container or the transport vehicle would accomplish the same result.

The petitioners recommend that the identical requirement currently in place for specific licenses, which requires that the deep-dose equivalent exposure rate be indistinguishable from background levels as measured by low-level laboratory survey instruments, would also be adequate to protect public health and the environment from adverse radiological effects from buried low-level biological wastes. The petitioners believe that such a provision would allow for immediate disposal of wastes containing low levels of radionuclides and would permit more cost-effective waste disposal practices for biological research activities.

The Petitioners' Proposals

The petitioners request that 10 CFR part 20 be amended to overcome the problems the petitioners have itemized and recommend the following revision to the regulations:

The petitioners propose that § 20.2005 be amended by revising paragraph (a); redesignating paragraph (c) as paragraph (g); and adding new paragraphs (c), (d), (e), and (f) to read as follows:

Proposed Revision

§ 20.2005 Disposal of specific wastes.

(a) A licensee may dispose of the following licensed material as if it were not radioactive:

(1) 0.05 microcurie (1.85 kBq), or less, of hydrogen-3 or carbon-14 per gram of flammable or combustible liquid; and

(2) 0.05 microcurie (1.85 kBq), or less, of hydrogen-3 or carbon-14 per gram of biological tissue, animal bedding material or animal excreta, averaged over the weight of the entire tissue, bedding material or excreta.

* * * * *

(c) Any licensee may dispose of 0.05 microcurie (1.85 kBq), or less, of licensed material consisting of any mixture of hydrogen-3, carbon-14, and radionuclides with half-lives of less than 1 year, per gram of incinerator ash or nonsalvable trash, averaged over the weight of the ash or trash generated directly in the utilization of the radionuclides present, by burial in a landfill approved by the U.S. Environmental Protection Agency or appropriate State regulatory agency.

(d) The deep-dose equivalent dose rate at the surface of containers and vehicles used for transporting wastes disposed of under the provisions of paragraph (c) of this section shall be indistinguishable from background with typical low-level laboratory survey instruments.

(e) All "radioactive materials" labels shall be removed or obliterated prior to disposal under the provisions of paragraph (c) of this section, and the containers and the transport vehicles of these waste materials shall not be labeled as containing radioactive materials unless so required by the U.S. Department of Transportation.

(f) Wastes disposed of under the provisions of paragraph (c) of this section are not subject to the requirements of § 20.2006.

* * * * *

The petitioners admit that proposed § 20.2005(c) and (e) would result in a potential conflict between NRC

requirements and U.S. Department of Transportation (DOT) regulations that specify that any material with a specific gravity greater than 0.002 microcurie per gram must be treated as radioactive. The petitioners indicate that if the petition for rulemaking before the NRC results in favorable action, they will submit a petition for rulemaking to DOT to revise the relevant regulation (49 CFR 173.403(y)) to permit an identical method for disposal of waste material that contains low levels of radionuclides.

The petitioners also recognize that the types of waste specified in proposed § 20.2005(c) are incinerator ash and nonsalvable trash, and that the incineration process is covered in § 20.2004. The petitioners emphasize that the regulatory intent is to exclude discarded laboratory apparatus, equipment, or furniture that could result in unintended or unauthorized retrieval of contaminated items.

The Petitioners' Conclusion

The petitioners have concluded that the current restrictions on low-level radioactive waste disposal have hindered certain types of research that they believe cannot be effectively performed without the use of radioactive materials. The petitioners have proposed revisions and additions to the current regulations in 10 CFR part 20 that they believe will permit more cost-effective disposal of wastes containing very low levels of radionuclides without adversely affecting public health or the environment. The petitioners request that the NRC consider its proposals to amend the rules in 10 CFR part 20.

Dated at Rockville, Maryland, this 3rd day of September, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–22136 Filed 9–9–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–93–16]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received by November 9, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 3, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 26500
Petitioner: Air Line Pilots Association
Regulations Affected:
14 CFR 121 appendix I, Section V, Paragraph C
Description of Rulechange Sought:
To eliminate random drug testing for flight crew members.
Petitioner's Reason for the Request:
Denial, August 23, 1993

[FR Doc. 93–22156 Filed 9–9–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 93–CE–42–AD]

Airworthiness Directives: Beech Aircraft Corporation Models B300 and B300C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Beech Aircraft Corporation (Beech) Models B300 and B300C airplanes that do not have all cabin seats modified through the incorporation of Beech Kit No. 303–307. The proposed action would require inspecting the cabin seat frames for cracks, repairing any cracks, and modifying the cabin seat frames by installing Beech Kit No. 303–307. Inspection of affected in-service airplanes reveals cracking of these cabin seats around the welded-in bushings. The bearing shafts, which retain the seat frame and belted occupant, are bolted to the frame through these bushings. The actions specified by the proposed AD are intended to prevent separation of the seat from its base caused by cracks around the welded-in bushings.

DATES: Comments must be received on or before November 12, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–42–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085, or Tosington Enterprises Inc., 2261 Madera Road, Simi Valley California. This information also may be examined at the Rules Docket at the address above..

FOR FURTHER INFORMATION CONTACT: Mr. Don Campbell, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4128; Facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–42–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–42–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Inspection of several Beech Models B300 and B300C airplanes that do not have all cabin seats modified through the incorporation of Beech Kit No. 303–307 reveals that cracks are propagating around the welded-in bushings in the cabin chairs. The bearing shafts, which retain the seat frame and belted occupant, are bolted to the frame through these welded-in bushings. These cracks are developing because of insufficient penetration of metal at the weld surface. Bolting the rods to the frame without properly shimming to reduce the gap could cause the weakened welds to crack. A cracked cabin seat at the welded-in bushing, if not detected and corrected, could result in separation of the seat from its base.

Beech has issued Service Bulletin No. 2443, dated July 1993, which specifies procedures for the following on airplanes that have seats manufactured by the Gordon-Piatt Energy Group: (1) Inspecting each forward or aft facing single occupant cabin seat for the existence of Beech Kit No. 303–307; (2) inspecting those seats without the kit for cracks, and repairing any cracks found; and (3) modifying those seats by installing Beech Kit No. 303–307.

In addition, some of the affected airplanes have seats installed that are manufactured by Tosington Enterprises, Inc. (Tosington). Tosington has issued SB No. 001, dated July 1993, which specifies the same procedures as Beech SB No. 2443, except it provides procedures for accomplishing the actions on the Tosington seats.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent separation of the seat from its base caused by cracks around the welded-in bushings.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech Models B300 and B300C airplanes of the same type design that do not have all cabin seats modified through the incorporation of Beech Kit No. 303–307, the proposed AD would require inspecting the cabin seat frames for cracks, repairing any cracks, and modifying the cabin seat frames by installing Beech Kit No. 303–307. The proposed actions would be accomplished in accordance with either Beech SB N. 2443 or Tosington SB No. 001, both dated July 1993, as applicable.

The FAA estimates that 79 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 45 workhours per airplane (5 hours per seat × 9 seats per airplane) to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts will be provided by the manufacturer at no cost to the airplane operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $195,525. These figures take into account that none of the affected airplanes operators have accomplished the proposed action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Beech Aircraft Corporation: Docket No. 93–CE–42–AD.

Applicability: The following model and serial number airplanes, certificated in any category, that do not have all (9) cabin seats modified through the incorporation of Beech Kit No. 303–307:

Model	Serial Numbers
B300	FL–1 through FL–76.
B300C.	FM–1, FM–2, and FM–3.

Note 1: Beech Service Bulletin (SB) 2443 and Tosington Enterprises Inc. (Tosington) SB No. 001, both dated July 1994, specify procedures for determining whether Beech Kit No. 303–307 is installed on a cabin seat frame.

Compliance: Required within the next 150 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent separation of the seat from its base caused by cracks around the welded-in bushings, accomplish the following:

(a) Inspect each cabin seat for cracks in accordance with the ACCOMPLISHMENT

INSTRUCTIONS section of either Beech SB 2443 or Tosington SB No. 001, both dated July 1994, as applicable. If any crack is found, prior to further flight, repair the crack in accordance with the applicable SB referenced above.

Note 2: Each cabin seat has a placard on the lower seat frame that specifies whether the seat is manufactured by Gordon-Piatt Energy Group (Beech SB No. 2443) or Tosington Enterprises Inc. (Tosington SB No. 001).

(b) Modify the cabin seat frames by installing Beech Kit No. 303–307 in accordance with the actions specified in the ACCOMPLISHMENT INSTRUCTIONS section of either Beech SB 2443 or Tosington SB No. 001, both dated July 1994, as applicable.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(e) Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085, or Tosington Enterprises Inc., 2261 Madera Road, Simi Valley, California 93065. This information may also be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri.

Issued in Kansas City, Missouri, on September 2, 1993.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–22208 Filed 9–9–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 93–AWA–1]

Proposed Alteration of Jet Route J–29

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would realign Jet Route J–29 from the Bangor, ME, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) to the Halifax, Canada, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME). This action was requested by the Canadian government to improve operations and expedite the flow of air traffic transiting to the Halifax area.

DATES: Comments must be received on or before October 29, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANE–500, Docket No. 93–AWA–1, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AWA–1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to realign J–29 from the Bangor, ME, VORTAC (BGR), to the Halifax, Canada, VOR/DME (YHZ). Realigning J–29 would improve operations and expedite the flow of air traffic to the Canadian airspace. Jet routes are published in paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 in effect as of September 16, 1993 (58 FR 36298; July 6, 1993). The jet route listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Jet Routes.

* * * * *

J–29 [Revised]

From the INT of the United States/Mexican Border and the Corpus Christi, TX, 229° radial, via Corpus Christi; Palacios, TX; Humble, TX; Lufkin, TX; Elm Grove, LA; El Dorado, AR; Memphis, TN; Pocket City, IN; INT Pocket City 051° and Rosewood, OH, 230° radials; Rosewood; DRYER, OH; Jamestown, NY; Syracuse, NY; Plattsburgh, NY; Bangor, ME; to Halifax, Canada; excluding the portions within Mexico and Canada.

* * * * *

Issued in Washington, DC, on September 2, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–22158 Filed 9–9–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 382

49 CFR Part 27

[Docket 49113; Notice 93–18]

RIN 2105–AB60 and AB62

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance; Nondiscrimination on the Basis of Handicap in Air Travel

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Department is proposing to amend its rules implementing section 504 of the Rehabilitation Act of 1973 and the Air Carrier Access Act of 1986 concerning the provision of equipment to facilitate the boarding by individuals with disabilities on small commuter aircraft. The proposed rule would address existing problems that result, in some cases, in individuals being denied air transportation by requiring air carriers and airports to work jointly to make lifts or other boarding devices available. The proposed rule also would harmonize requirements relating to airport facilities in the Department's section 504 and Air Carrier Access Act regulations.

DATES: Comments are requested by December 9, 1993. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No. 49113, Department of Transportation, 400 7th Street, SW., room 4107, Washington, DC, 20590. Comments will be available for inspection at this address from 9 a.m. to 5:30 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., room 10424, Washington, DC, 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD); or Nancy Ebersole, Office of Transportation Regulatory Affairs, same address, room 9217, (202) 366–4864.

SUPPLEMENTARY INFORMATION:

Background

In the Department's regulation implementing section 504 of the Rehabilitation Act of 1973, which went into effect in 1979, the Department requires Federally-assisted airports to play a role in boarding assistance for individuals with disabilities:

> Each operator at an airport receiving any Federal financial assistance shall assure that adequate assistance is provided for enplaning and deplaning hand capped persons. Boarding by level entry boarding platforms and by passenger lounges are the preferred methods for movement of handicapped persons between terminal buildings and aircraft at air carrier airports; however, where this is not practicable, operators at air carrier airport terminals shall assure that there are lifts, ramps, or other suitable devices not normally used for freight that are available for enplaning and deplaning handicapped passengers. (49 CFR 27.71(a)(2)(v)).

This provision does not necessarily require that an airport acquire its own lifts or other devices. Airports may comply if other parties at the airport (e.g., air carriers) have devices which can be used for this purpose.

Airlines' boarding assistance responsibilities are discussed in the Department's Air Carrier Access Act (ACAA) regulations. In 1990, when the Department published its ACAA rule (14 CFR part 382), the Department knew that the rule did not address completely the issue of boarding assistance for individuals with disabilities—particularly those with mobility impairments—on some small commuter aircraft. Section 382.49(a) requires carriers to provide boarding assistance, including, "as needed, the services [of] personnel and the use of ground wheelchairs, boarding wheelchairs, on-board wheelchairs . . . and ramps or mechanical lifts." Where level entry boarding platforms are not available, "carriers shall use ramps, lifts, or other devices (not normally used for freight) for enplaning and deplaning handicapped individuals who need them" (§ 382.39(a)(2)). However, the rule provides a partial exception to the boarding assistance requirement:

> In the event that the physical limitations of an aircraft with less than 30 passenger seats preclude the use of existing models of lifts, boarding chairs, or other feasible devices to enplane a handicapped person, carrier personnel are not required to carry the handicapped person onto the aircraft by hand. (§ 382.39(a)(4)).

This effect of this provision is that if there is no existing model of lift, boarding chair, or other device that will work with a particular aircraft having fewer than 30 seats, so that hand-carrying (i.e., having airline personnel physically pick up a passenger in their arms and carry the passenger on board) is the only means by which the passenger can board the aircraft, the carrier is not required to provide boarding assistance. The rationale for not requiring hand-carrying is sound: hand-carrying involves significant risks of injury to both carrier personnel and passengers, and it is an undignified way of providing assistance. Moreover, in some models of aircraft, the stairs that are built into the door of the aircraft are not strong enough to accommodate two or three persons at a time, as either hand-carrying or the use of a boarding chair would require. The result of this exception, however, is that carriers may legally deny boarding to persons with mobility impairments in some

situations. (For discussion of this provision and its background, see 55 FR 8033–8034; March 6, 1990.)

In an advance notice of proposed rulemaking (ANPRM) issued at the same time as the Department's Air Carrier Access Act rule (55 FR 8078; March 6, 1990), the Department asked for additional information and comment on the subject of lift devices for small commuter aircraft. In the ANPRM, the Department noted that, in 1990, the development of lift devices appeared not to have proceeded to the point where imposing requirements for them through regulation would have been justified. We received little information in response to this ANPRM. Subsequently, the Department learned that a number of manufacturers had developed and were attempting to market lift devices for small aircraft, and that some airlines had tested models of these lifts in a variety of operational conditions.

In June 1992, the Department held a workshop of parties interested in this issue, including representatives of commuter airlines, disability groups, lift manufacturers, and aircraft manufacturers. The Department heard presentations from lift manufacturers concerning their devices and from some air carriers that had tested various devices with their aircraft. Department staff also conducted informal surveys of carriers that used various devices to determine how well carrier personnel believed the devices had worked with different types of commuter aircraft. From this information, it appears to the Department that there are now available for marketing several lift devices that can effectively facilitate boarding assistance for persons with mobility impairments on most small commuter aircraft in the 19–30 seat capacity range. The FAA has recently issued an advisory circular concerning recommended specifications for such lifts. (FAA Advisory Circular 150/5200XX—"Guide Specification for Mobility Impaired Passenger Boarding Devices." Interested persons may obtain copies from the "For Further Information Contact" address listed above.) It is the Department's understanding that the lift models we have seen or heard described either now meet, or can readily be modified by their manufacturers to meet, the FAA advisory circular's recommendations. The Department seeks comment on whether this understanding is accurate.

At the same time, none of the participants in the workshop appeared to suggest that the existing lift devices were designed to work, or could work, with many of the smallest aircraft (e.g., those under 19 passenger seats). The Department seeks comment on whether there are existing lifts that will work well with certain aircraft in the 18-and-under seat category. Carriers also raised significant concerns about the compatibility of the lift devices with certain existing aircraft models in the 19–30 seat class. For example, while lifts could pull up to the door of the Fairchild Metro, there would be a foot or less clearance between the lift and the propeller assembly, creating a risk of costly damage to the aircraft. Some carrier participants also expressed concerns that, once a lift got a passenger to the aircraft door, it could be difficult in some models to transfer the passenger to a seat in the aircraft (e.g., because of narrow very limited maneuvering room in some aircraft cabins). The Department seeks updated information from manufacturers, carriers, and other interested parties concerning the types of lifts available and their suitability for various models of commuter aircraft.

One of the most important discussions at the workshop concerned the allocation of responsibility for obtaining and operating lifts for accessing small aircraft. Generally, commuter carriers and airport operators each believed that the other should bear the primary responsibility and cost for ensuring accessibility to small commuter aircraft. For example, the Regional Airline Association (RAA) representatives at the June 1992 workshop asserted that their efforts to interest airports in sharing the cost of lift devices had generated little response. Carriers cited what they viewed as the greater financial resources of airports (e.g., airports could apply for FAA Airport Improvement Program funds or passenger facility charge revenues to help fund lifts); airports cited the traditional control of carriers over passenger boarding. Both were wary of potentially increased liability exposure from using lift devices to board passengers with disabilities. Disability group representatives were concerned that, in the absence of regulatory direction from the Department, there would be an impasse that would postpone unreasonably passengers' ability to use small commuter aircraft. Lift manufacturers were concerned that lengthy delays in resolving issues in this area could undermine the fragile, but developing, market for their products.

The Department views airports and carriers as key parts of an inextricably intertwined air transportation system. No one can fly between Point A and Point B without using at least one carrier and at least two airports. To complete a trip, every passenger must be able to travel to the first airport, move through the first airport (including ticketing, baggage checking, and check-in, where necessary), use the interface provided by some combination of the airport and the carrier to enter the aircraft, get to his or her seat on the aircraft, fly to the second airport, and reverse the process at that end of the trip. What matters, from the passenger's point of view, is not which participant in the system is responsible for each part of the process, but that the entire process operates so that the passenger can successfully complete the trip.

The air travel system would never work for anyone unless airports and carriers worked together to get passengers from their place of origin to their destination. This is as true for passengers with disabilities as for anyone else. From the Department's point of view, airports and carriers have the responsibility of working together to ensure that passengers with disabilities can use commuter air service, which has become an increasingly important part of the air transportation system. Consequently, the Department is proposing to amend both its Air Carrier Access Act regulations (which apply to carriers) and its section 504 regulations (which apply primarily to airports) to establish the joint responsibility of both carriers and airports to ensure that passengers with disabilities have the opportunity to use commuter air service.

The NPRM

The NPRM would create identical requirements in the ACAA and section 504 rules, directing each airport and each carrier serving that airport to establish a written agreement that would provide for ensuring that lifts, ramps, or other suitable devices would be provided and used to ensure that passengers could enter and leave small commuter aircraft. Under the existing regulation, the Department has interpreted "suitable devices" to include boarding chairs. The Department seeks comment on whether we should redefine the term "suitable devices" to limit the use of boarding chairs to situations where a lift is inoperable or other emergencies. We note that, as the Department uses the terms, the use of boarding chairs is distinguishable from "hand-carrying," which involves the direct picking up of the passenger's body in the arms of carrier personnel.

The written agreement between carriers and airports, which would not have to be submitted to DOT but which would be kept on file for DOT

inspection, would have to be completed within nine months of the effective date of the rule. The Department seeks comment on whether a longer (e.g., 12 months) or shorter (e.g., 3 or 6 months) deadline is appropriate for this part of the implementation of the rule.

The agreement would call for full implementation of accessibility to small commuter aircraft at the airport no later than three years from the effective date of the rule. The proposed phase-in period is intended to permit an orderly acquisition process for equipment and to avoid increasing costs through a too-abrupt startup requirement. The Department seeks comment on whether this phase-in for implementation should be longer or shorter. The Department also seeks comment on what mechanism, if any, the rule should provide for adding or deleting carriers which begin or terminate service to a particular airport.

The Department seeks comment on whether the rule should allow carriers to seek a waiver from the requirement to use a lift or other device with a particular type of aircraft on the basis that use of the device would present an unacceptable risk of significant damage to the aircraft. For purposes of generating comments on this issue, we have included such a provision in the proposed regulatory text, though the Department has not decided whether it favors the concept. The Department seeks comment not only about whether there should be such a provision, but also how such a provision would best be framed to accommodate the legitimate concerns of both carriers and passengers.

The Department recognizes the concerns that have been expressed about the difficulty that may occur in some aircraft (e.g., the BAE Jetstream models) in getting a passenger with a disability to a non-exit row seat after the individual has entered the aircraft door. The Department does seek information from commenters on which aircraft models present this problem, and any suggestions for solving it. The Department also seeks comment on whether a waiver provision should be provided for situations of this kind. Such a waiver could permit an individual to be denied boarding in such an aircraft be based on functional criteria (e.g., inability to use an on-board wheelchair, to occupy a non-exit seat if exit seating is precluded by FAA rules, or to be moved physically through narrow aisles).

The main focus of the boarding assistance requirement in the NPRM is small commuter aircraft (i.e., those in the 19–30 seat range). As drafted, the NPRM would require boarding assistance for any aircraft with 19 or more seats when level-entry boarding was not available. This would mean that lifts, ramps or other suitable devices would need to be available, for example, to assist persons with disabilities in boarding a 45-seat or 60-seat aircraft as well as one in the 19–30 seat range. Otherwise, in the absence of hand-carrying (which the NPRM does not propose to require), persons with disabilities would be unable to use these aircraft.

It is the Department's understanding that level-entry boarding (whether through existing models of lifts, boarding platforms, etc.) is often available for these larger aircraft, but we seek comment on whether the contrary is frequently the case. In addition, we seek comment on whether it is feasible to use the lifts developed for 19–30 seat aircraft for these larger aircraft, what additional costs may be involved, and whether there are any feasible alternatives to applying this requirement to the 31-seat and above category of aircraft.

As noted above, the NPRM does not propose to require hand-carrying. However, the Department seeks comment on whether there should be an exception for emergency circumstances (e.g., a lift malfunction at the time the passenger needs to board), in which case hand-carrying could be required if the passenger requested it and it was physically possible for carrier personnel on the scene to provide the service. The Department also asks whether, in the interim before lifts are made available at a particular location, it is feasible or desirable to require the use of boarding chairs or hand-carrying.

The Department also seeks comment on whether the rule should require training for persons who operate boarding lifts. If so, what should the content and duration of the training be? What would be the cost of this training, if the Department required it?

The Department is also concerned about effects of the proposal in small airports. The proposal would apply only to "commercial service airports," those with more than 2,500 enplanements per year. However, it appears that the cost per boarding of installing and maintaining lift equipment at small commercial airports could be very high. Should there be a waiver provision that would excuse carriers and operators at small commercial service airports from obtaining lift equipment if the cost per boarding exceeded a certain amount? If so, how would the projection of likely numbers of boardings (crucial to making this cost determination) be done? What should the cost per boarding threshold be? What should the Department regard as a "small" commercial service airport for this purpose? Alternatively, would stretching out the implementation schedule for these smaller airports (e.g., to five years, if the basic proposed implementation schedule of three years were used elsewhere) be feasible? At an airport where such a waiver were granted, should use of a boarding chair or hand-carrying be required?

Another area of concern that has been expressed about using lifts to board passengers on small commuter aircraft is the possible disruption of schedules. That is, it takes a certain amount of time to deploy a lift, cycle the lift to board a passenger, and remove the lift. This time is increased if more than one passenger is using the lift for a particular flight. With some lift models (i.e., those without integrated stairs) it would not be possible to board other passengers at the same time the lift is being used, unless the aircraft has two entrances that can be used simultaneously. Given the hub-and-spoke system into which commuter flights feed, and the sometimes close schedule tolerances involved, the time taken to use the lift to board passengers could delay flights, possibly leading to other passengers missing connections at hubs in some situations. The Department seeks information on how serious a problem this would be. How much tolerance is there in schedules? How much time would use of a lift involve? How frequently are situations likely to occur in which there would be multiple lift boardings, especially at small airports? Are the probabilities of delay significantly greater than the probabilities of delay from routine causes such as weather and mechanical problems? If delays would occur, what, if anything, could be done to mitigate the problem?

Airport Facility Requirements and Application of Section 504 to EAS Carriers

The Department's section 504 and ACAA regulations' sections concerning airport facilities differ in a number of details. This NPRM would also make changes to harmonize the two sets of requirements. The Department published a notice of proposed rulemaking for section 504 and an advance notice of proposed rulemaking under the ACAA that would have harmonized the two provisions in 1990, at the same time as it published its ACAA final rule. The Department received very few comments in response to those notices, and many of the specific points raised by the

commenters have been overtaken by the enactment of the Americans with Disabilities Act (ADA). The Department will take these existing comments into consideration, along with the comments received in response to this NPRM, as we work toward a final rule on this subject.

Both the section 504 and ACAA proposals would add a requirement for a "program accessible" path from the beginning of a passenger's encounter with the airport facility to the aircraft door. Obviously, the means of boarding an aircraft, whether a level-entry boarding platform or a mechanical lift, is a part of this path. So are parking lots, ground transportation facilities, and terminal entrances. One area of particular concern is the way of moving between the gate and the means of boarding the aircraft. Often, the gate area is on an upper level of the terminal, and passengers have to descend to the ground level and cross the tarmac to get to a commuter aircraft that is parked some distance from the terminal building. In other cases, a ramp or level entry boarding platform may have stairs or other barriers involved with its use. If there is no program accessible means of making this part of the journey, then a significant barrier to the use of the system by a passenger with a mobility impairment exists.

The concept of program accessibility used here is the same one explained by the Department of Justice in its ADA rules. The basic idea is that a key aspect of airports' and carriers' program—getting someone through the airport and onto an aircraft—must be accessible to individuals with disabilities, including those using wheelchairs. There is not a hard and fast requirement that facilities be modified for accessibility (e.g., that an elevator be installed everywhere there is a stairway). Means other than structural modifications of facilities may be used (e.g., assistance of airport personnel). The bottom line performance requirement is that a passenger be able to complete the journey to the aircraft. The Department seeks comment on whether a phase-in period for meeting this requirement should be stated in the rule and, if so, what it should be.

The Department is aware that ensuring a program accessible path can involve costs to airports, which may be significant in some cases. The Department does not have the data from which it can quantify these potential costs at this time, in part because we do not know how many cases there are where structural modifications would be necessary. We request information on this matter, particularly for small airports.

The Department does not believe that any airport-related changes to its ADA regulation are needed at this time. Air carriers' terminal facilities appear not to be subject to direct ADA coverage. Under the Department of Justice (DOJ) rules implementing Title III of the ADA, airport terminals are not viewed as a place of public accommodation. The reason is that places of public accommodation include only those terminals used for the provision of "designated" or "specified" public transportation, and transportation by aircraft does not constitute "designated" or "specified" public transportation. Congress excluded transportation by aircraft from these ADA provisions because Congress had already subjected carriers to the ACAA, and it did not want to impose duplicative requirements.

The language and legislative history of the ADA, however, reveal no Congressional intent that carriers' facilities be subject to any different substantive requirements from those affecting places of public accommodation. It is clear that carriers have an ACAA obligation with respect to airport facilities. In defining the standard by which carriers' compliance with this obligation is judged, the Department believes it makes sense to refer to the ADA standard for public accommodations. Consequently, the proposed rule provides that carriers, with respect to terminal facilities and services, would be deemed to comply with their ACAA obligations if they meet the requirements spelled out for places of public accommodation in Department of Justice ADA rules.

Under Department of Justice regulations implementing Title II of the ADA (28 CFR part 35), "title II applies to everything anything a public entity does * * * All governmental activities of public entities are covered." (56 FR 35696; July 26, 1991). Public airport authorities are public entities for purposes of Title II; consequently, their activities and facilities appear subject to the requirements of DOJ Title II rules. It has long been clear that airport authorities that receive DOT financial assistance are subject to section 504 of the Rehabilitation Act of 1973, as amended. In amending the Department's section 504 rule provision concerning DOT-assisted airports, it makes sense to refer to ADA standards. (Congress, in enacting the ADA, made clear that it intended for consistent substantive standards to apply under both statutes.) Therefore, under the NPRM, the basic standard for judging whether a public airport authority complies with section 504 is compliance with the DOJ rules for Title II of the ADA.

Obviously, there are some portions of airports at which airport operators' section 504 obligations and the ACAA obligations of carriers overlap. The Department believes that most of these overlaps can be treated in the same manner as the relationships between public entity landlords and private entity tenants discussed in the Department of Justice ADA regulations.

The existing DOJ and DOT ADA regulations say little specifically about airports. For this reason, the Department is proposing to retain, with some modifications, the airport-specific requirements of the current ACAA and 504 rules. The Department seeks comment, given the proposed reference to ADA standards, on whether any of the specific airport facility requirements (including phase-in periods for various requirements) in the NPRM are unnecessary or would conflict with standards derived from the ADA. The Department also seeks comment on whether, on the other hand, it would make more sense to set forth in these rules specific ACAA/504 standards applicable to carriers and airports, without reference to ADA standards. If the Department did so, would the current standards be sufficient, or should there be additions?

The NPRM would repeat the existing language of the ACAA regulation concerning TDDs, saying that at least one TDD shall be placed in each terminal. The Department has interpreted "terminal" in this context to mean, not the entire airport, but a distinguishable segment of an airport. For example, if, as at many major airports, there are several different satellite terminals, or different terminal buildings, or different concourses that have their own security checkpoints, each of those areas is considered a "terminal" that would have a TDD. The same is true for common terminal areas, such as ticketing or baggage retrieval areas. The Department seeks comment on whether this existing understanding of this provision should be made a part of the regulatory text (or, indeed, whether any different provision should be included in the regulatory text). Particularly with respect to carriers covered under the ACAA, the Department seeks comment on whether a specific ACAA standard is preferable to reliance on ADA-derived standards on this subject.

Previous DOT rulemakings have asked for comments concerning intra-terminal transportation. Larger airport terminals often have facilities or

services (e.g., electric carts, moving sidewalks) to aid passengers in traveling the seemingly endless distances between the entrance and their gate, or between concourses. The Department's information is that some of these facilities (e.g., moving sidewalks) generally tend to be accessible. Electric carts are generally not accessible to individuals who use wheelchairs. However, the Department's understanding is that carts which can accommodate a wheelchair user in his or her own wheelchair (i.e., not requiring a transfer) are not readily available at this time. For these reasons, the Department is not proposing any specific provisions concerning intra-terminal transportation in this NPRM.

The provisions of the NPRM concerning information media in airports useful to persons with hearing or vision impairments are substantively unchanged from the existing ACAA and 504 requirements. The Department notes that requirements for providing information in a way that persons with hearing impairments can use do not necessarily require elaborate, expensive electronic systems. In at least some airport situations, it is possible that relatively simple, inexpensive solutions may work.

In both the ACAA and section 504 rules, terminology would be updated (e.g., changing "handicapped person" to "individual with disabilities"), consistent with practice under the ADA. The proposed section 504 amendment would also make two administrative additions, requiring the submittal of transition plans by any airports which had not already done so and specifically applying nondiscrimination on the basis of disability requirements to subsidized Essential Air Service (EAS) carriers. Unlike most carriers, who do not receive Federal assistance, these carriers have been covered under the existing section 504 rule, but they have not been mentioned specifically, since part 27 was promulgated before the Essential Air Service program came under DOT jurisdiction in January 1985. This administrative addition does not create any new obligations for subsidized EAS carriers.

Proposed Amendment of Communicable Diseases Section

Section 382.51 of the ACAA rule provides that a carrier may not refuse transportation to a passenger, require the person to provide a medical certificate, or impose other conditions or restrictions on passengers, on the basis that the passenger has a communicable disease, except with respect to an individual who has a communicable disease or infection which has been determined by the U.S. Surgeon General, the Centers for Disease Control, or other Federal public health authority knowledgeable about the disease or infection, to be transmissible to other persons in the normal course of flight.

This provision was originally designed in response to a number of incidents in the 1980s in which persons with AIDS had been denied transportation or otherwise discriminated against by air carriers, apparently because of fear of, or misinformation about, HIV infection and how it is transmitted. (The level of public awareness about HIV transmission is doubtless better now than in the mid-1980s, though one well-publicized instance of mistreatment of passengers by personnel of an air carrier, following the April 1993 Gay Rights march in Washington, DC, is troubling.)

It has been apparent to the Department for some time that this provision of the rule needs clarification. Given the absence of definitive guidance from the Surgeon General, the Centers for Disease Control, or the Public Health Service, (which the Department has unsuccessfully sought), the closest approach to medical guidance the Department has been able to find is a Food and Drug Administration (FDA) regulation listing several diseases (e.g., infectious tuberculosis, several viral hemmoragic fevers) appropriate for travel restrictions. The Department issued guidance based on this FDA list, stating that since other diseases have not been named by Federal public health authorities, carriers may not deny or restrict transportation of persons with other diseases.

Carrier medical personnel have expressed the concern that this guidance is too restrictive, leading to potential conflicts between the rule and their normal, prudent medical judgment. They have cited persons in the infectious stages of chicken pox or measles as persons who it may be appropriate to restrict to protect the health of other passengers. In response to their concern, the Air Transport Association (a lobbying group for large air carriers) requested that the Department withdraw the guidance in question. In addition, it has been pointed out that, read literally, the current regulatory provision could be construed allow carriers to exclude persons with illnesses that are clearly communicable by airborne transmission or casual contact but which are not serious for most persons, such as the common cold (the Department would not construe the rule in this fashion, however).

The Department believes that three principles should drive the policy concerning communicable diseases:

(1) It is reasonable for carriers to impose restrictions on transportation only of persons with diseases that are readily communicable, in the normal course of flights, by airborne transmission or casual contact. (For example, restrictions could not be imposed on persons because they were infected with HIV.)

(2) It is reasonable for carriers to impose restrictions on transportation only of persons with diseases that have serious consequences for the health of persons who catch the disease. (For example, restrictions could not be imposed on persons because they have a common cold.)

(3) Carriers should impose restrictions on persons for reasons relating to communicable diseases only with the advice and concurrence of a physician. (That is, airline personnel such as pilots, flight attendants, or gate agents could not make unilateral decisions to impose restrictions on passengers.)

The Department believes that application of these three principles would achieve the Department's goals concerning nondiscrimination on the basis of disability and would allow airline medical personnel reasonable discretion to exercise their professional judgment. While the Department has issued additional guidance to this effect, readers of part 382 probably could not clearly infer these principles from the current regulatory text. For this reason, the Department believes there is merit in clarifying the regulatory text by rewriting the current § 382.51(b) to reflect these three principles. The proposed amendment to this section has this objective.

The NPRM proposes two methods carriers could use to implement these principles. First, when faced with someone who may have a contagious disease that may make travel inadvisable, the carrier can obtain a specific recommendation from a physician. Second, the carrier, together with its medical staff or consultants, can devise a list of diseases that can affect travel, consistent with the three principles. The list would include information on the stages of various diseases during which travel would be counterindicated. The list would be made part of the carrier's regular information base for employees (e.g., manuals, computer reservation system instructions). To promote consistency, we believe that carriers (e.g., through their trade organizations) should

coordinate a single, unified list, so the same diseases have the same consequences on all airlines. The Department would informally work with carriers on such a list; we seek comment on whether a regulatory mandate for uniformity is needed.

In cases where there is no dispute between the carrier and a passenger over the fact that a passenger has a disease on the list at a point in time when it is contagious, the passenger could be denied transportation until a later time without the carrier having to obtain a recommendation from a physician in the particular case. However, if the passenger denies that he or she has a disease on the list, or acknowledges having the disease but insists that it is not at the stage which the list describes as infectious, then the carrier employee would have to consult a physician. The Department seeks comment on the entire proposal to revamp the infectious diseases provision portion of the rule.

In addition, the proposed amendment would state that airlines must impose the least restrictive alternative in communicable disease situations (e.g., should not deny transportation when requiring a medical certificate is sufficient); must allow a passenger to travel at his or her original fare if travel is postponed as the result of having a communicable disease; and must provide, on request, a written explanation of any restrictions that are imposed for reasons relating to communicable diseases. The Department seeks comment on this proposal and on communicable disease issues generally.

Petitions for Rulemaking

The Department has received three petitions for rulemaking from interested individuals which we believe have sufficient merit to warrant a request for public response. The Department has not determined whether or not to propose the amendments to its ACAA regulation requested by the petitioners, but we seek comment on whether the Department should propose these changes.

1. Requirement for Medical Oxygen

Under the current ACAA regulation, providing oxygen for passengers who need it during a flight is optional with carriers. They have discretion to provide it or not. For example, § 382.33(b)(1) allows carriers to insist on an advance request for medical oxygen, "if this service is available on the flight."

Ms. Melinda Lebens, a consumer who uses oxygen, has petitioned the Department to require carriers to provide medical oxygen to passengers who need it. Her petition relates that she has had difficulty traveling in some instances because the carrier for a particular leg of a trip has declined to provide oxygen. She views such a refusal as contrary to the nondiscrimination mandate of the ACAA, since it acts as a barrier that prevents her from traveling by air on account of her disability. Ms. Lebens' request, as the Department understands it, would not affect the ability of carriers to require advance notice or to charge a user fee for the provision of oxygen.

Another consumer, Ms. Gladyse B. Russell, also has made a request for rulemaking concerning oxygen. She is concerned that there are no requirements for oxygen to be made available at airports. This problem concerns the airport where the passenger first arrives, hubs where the passenger changes flights, and the airport where the passenger finally arrives. Just as a wheelchair user needs mobility devices at all these points, Ms. Russell says, an oxygen user needs oxygen provided in order to have access to airport facilities. The Department seeks comment on whether we should propose a requirement for making oxygen available to passengers who need it at airports and, if so, which party or combination of parties should be responsible for providing it.

The Department has received other correspondence, over a period of time, from consumers concerned about the availability of oxygen on flights. Some of these letters have suggested allowing passengers to bring their own oxygen on board. Current FAA safety regulations do not allow individuals to bring their personal oxygen supplies aboard an aircraft, since oxygen in a container is a hazardous material. Because these letters pertain to an FAA safety regulation, they are beyond the scope of this rulemaking. Other letters have requested that carriers not charge for providing oxygen to passengers, saying that it should be regarded as an accommodation (analogous to providing boarding assistance or on-board wheelchairs to individuals with mobility impairments) for which carriers should not be permitted to impose special charges. The Department seeks comment on this suggestion, on the prices that are charged for oxygen, and on whether there is any appropriate role for the Department, under the ACAA, concerning the pricing of in-flight oxygen.

2. Handling of Collapsible Electric Wheelchairs

The Department received a petition from Mr. Ralph Black, an attorney representing a consumer who uses a collapsible electric wheelchair, powered by a non-spillable battery. The consumer has encountered difficulty with airlines that, in her view, treat the wheelchair as it were a non-collapsible wheelchair powered by a spillable battery. The petition sets forth a rationale for changing the ACAA rule and suggested revisions to the rule's language. For the information of commenters, we are printing the key portions of the petition below:

Petitioner's Explanation of Proposed Changes

1. Section 382.41(g) would be amended to provide that, in the case of a battery-powered wheelchair which is designed to fold or collapse, the passenger may request that the wheelchair be folded and stored separately from the batteries.

2. Section 382.41(g) would be further amended to specify that, where a wheelchair is powered by non-spillable batteries which are housed in a suitable rigid container, the carrier shall transport the batteries without removing them from that case for hazardous materials packaging, unless there is obvious evidence that the batteries are damaged, or unless the passenger requests that the batteries be packaged as hazardous materials.

3. The amendments would also specify that the carrier must accept a passenger's declaration that batteries are non-spillable or, alternatively, establish and maintain a list of all non-spillable batteries which meet the requirements of 49 CFR 173.159(d).

The reason for these requested changes is that § 173.159(d) provides that non-spillable batteries are exempt from hazardous materials packaging, but some airlines interpret this to mean that they have the right to go ahead and package such batteries as hazardous materials if they wish. Section 175.10(a)(19) does provide that non-spillable batteries should not be detached from the wheelchair, but this does not take into account that newer lightweight collapsible power wheelchairs are not designed to be left upright in the cargo hold. These chairs can be damaged (and frequently are) if they are transported in this fashion. The basic problem is that some airlines read these two provisions together and conclude that batteries should always be left attached to power wheelchairs and, if the passenger does request that the chair be collapsed and the batteries removed, then the carrier sometimes insists that the batteries must be packed.

This is appropriate when the passenger is using wet cell batteries, but it is unnecessary and inappropriate when non-spillable batteries are involved. Such batteries pose no safety hazard and requiring them to be packaged is inconvenient because it is usually necessary to remove the batteries from the special battery case in which they are typically housed. This involves disconnecting the internal wiring and can result in damage to the wheelchair or the batteries if the airline personnel do not properly rewire the batteries upon arrival.

For the reasons set forth below, we believe the carriers are misinterpreting existing

regulations and that, when the hazardous materials regulations are read in conjunction with the Air Access Act regulations, one must conclude that this practice is prohibited.

First, I would point out that § 382.41(b) clearly allows a person with a disability to bring a respirator, with non-spillable batteries, into the cabin of the aircraft. This is done because there is no need to package non-spillable batteries as hazardous materials and the needs of the passenger require that the carrier permit such batteries to be transported without this packaging. Although this provision is not directly applicable here, the principle is relevant. If non-spillable batteries can be carried into the aircraft cabin without special packaging when the passenger's disability-related needs so require, it seems logical that they could be checked as baggage (where there is presumably less danger) for similar reasons.

As discussed above, removing the batteries from their case is very problematic because this means that the wiring inside the battery case must be disconnected and reconnected. This is a procedure which requires time and some skill and, if airline personnel are not able to even distinguish one type of battery from another (as the airlines claim), then it is obvious that there is considerable risk in relying on them to disconnect and properly rewire the batteries.

Second, Section 382.41(g)(5) provides the carrier must follow written instructions given the passenger for the assembly of wheelchairs. If a passenger gave written instructions to the effect that their collapsible wheelchair be folded and the non-spillable batteries be left in their case, it would appear that the airline would be compelled to use the exemption in § 173.159(d) in order to comply with the written instructions authorized by § 382.41(g)(5). This is just another instance when the Air Access regulations interact with and override the carrier's discretion under § 173.159(d).

Petitioner's Proposed Regulatory Text Changes to 49 CFR 382.41(g)

(g) Where baggage compartment size and aircraft airworthiness considerations do not prohibit doing so, carriers shall accept as baggage battery-powered wheelchairs, including the batteries, consistent with the requirements of DOT regulations on the transportation of hazardous materials (49 CFR parts 172, 173 and 175).

(1) Carriers may require that qualified handicapped individuals wishing to have electric wheelchairs transported on a flight check in one hour before the scheduled departure time for the flight. If such a handicapped individual checks in after this time, the carrier shall nonetheless carry the wheelchair if it can do so by making a reasonable effort, without delaying the flight.

(2) Whenever feasible, the carrier shall transport electric-powered wheelchairs secured in an upright position, so that batteries need not be separated from the wheelchair in order to comply with DOT hazardous materials rules. *However when an electric-powered wheelchair is designed to fold or collapse, the passenger may request that the batteries be removed and the wheelchair be folded.* [emphasis in original, denoting changed text]

(3) When a wet-cell battery is removed from the wheelchair, carriers shall, upon request, provide packaging for the batteries meeting the requirements of the DOT hazardous materials rules and package the battery. Carriers may refuse to use packaging materials or devices other than those they normally use for this purpose.

(4) *When non-spillable batteries are removed from a wheelchair, the carrier shall, at the request of the passenger, transport such batteries without packaging them as hazardous materials, so long as there is no obvious evidence of punctures or damage of the batteries and the batteries are contained in a rigid, closed container which protects them from damage and prevents short-circuits.* [emphasis in original, denoting changed text]

(5) *Carriers shall accept a passenger's declaration that batteries are non-spillable unless the carrier has established a list of all batteries meeting the requirements of 49 CFR 173.159(d). If the carrier elects to establish such a list, it shall be updated at least annually and shall be distributed to appropriate personnel and to the public upon request at each location from which the carrier operates passenger service.* [emphasis in original, denoting changed text]

(6) Carriers shall not drain batteries.

(7) Handicapped individuals shall be permitted to provide written directions concerning the disassembling and assembling of their wheelchairs.

3. Seating Assignments To Accommodate Passengers' Disabilities

Section 382.37 of the existing rule, concerning seating assignments, prohibits carriers from excluding a person from a particular seat location or requiring a person to sit in a particular location, on the basis of disability, with certain exceptions (e.g., to comply with the FAA's exit row seating rule). The provision does not require an airline to provide a seat assignment for a passenger that the passenger asserts a need for to accommodate a disability.

A consumer, Ms. Anna Mae Doyle, requests an amendment to this provision. Ms. Doyle has a disability that renders one of her legs essentially immobile (she likens her situation to wearing a full-length leg cast beginning at the hip). She asked an airline to arrange seating to accommodate her disability (i.e., a bulkhead seat or other seat that would allow her to minimize discomfort and avoid having her leg extend into the aisle where it is frequently bumped and could be a hazard to others using the aisle). The airline declined to provide this accommodation.

Ms. Doyle suggests that the rule be modified to require airlines to seat a passenger in a location requested by the passenger when sitting in that location is necessary to reasonably accommodate the passenger's disability, even if this requires changing the seat assignment of another passenger. The Department also requests comments on whether, if this petition is granted, carriers should be permitted to require advance notice for this accommodation.

Regulatory Analyses and Notices

This NPRM does not propose a major rule under Executive Order 12291. It is a significant rule under the Department's Regulatory Policies and Procedures. A regulatory evaluation that examines the projected costs and impacts of the proposal has been placed in the docket. The evaluation assumes that the rule will apply at 546 commercial service airports. The annual compliance cost is estimated to range between approximately $1.0 and $9.2 million, depending on the number and type of lift devices needed at different size airports.

The Department certifies that this rule, if adopted, would not have a significant economic effect on a substantial number of small entities. The basis for this statement is that the overall national annual costs are not great, and few airline companies and commercial service airports could properly be regarded as small entities. Nevertheless, the Department seeks comment on whether there are small entity impacts the Department should consider, and what those impacts are. If comments provide information that there are significant small entity impacts, the Department will provide a regulatory flexibility analysis at the final rule stage. The Department does not believe that there would be sufficient Federalism impacts to warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 382 and 49 CFR Part 27

Aviation, Handicapped.

Issued this 26th day of August 1993, at Washington, DC.

Federico Peña,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department proposes to amend 14 CFR part 382 and 49 CFR part 27 as follows:

14 CFR chapter II, Office of the Secretary, Department of Transportation (Aviation Proceedings).

PART 382—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN AIR TRAVEL

1. The authority citation for 14 CFR Part 382 continues to read as follows:

Authority: Sections 404(a), 404(c) and 411 of the Federal Aviation Act of 1958, as amended [49 U.S.C. 1374(a), 1374(c), and 1381).

2. In 14 CFR part 382, the word "handicap" is changed to the word "disability" wherever it occurs. The term "handicapped individual(s)" is changed to "individual(s) with disabilities" wherever it occurs. The term "qualified handicapped individual(s)" is changed to "qualified individual(s) with disabilities" wherever it occurs.

3. Section 382.23 of 14 CFR part 382 is revised to read as follows:

§ 382.23 Airport facilities.

(a) This section applies to all terminal facilities and services owned, leased, or operated on any basis by an air carrier at a commercial service airport.

(b) Air carriers shall ensure that the terminal facilities and services subject to this section shall be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Air carriers shall be deemed to comply with this Air Carrier Access Act obligation if they meet requirements applying to places of public accommodation under the Department of Justice (DOJ) regulations implementing title III of the Americans with Disabilities Act (ADA) at 28 CFR part 36.

(c) In addition to requirements of paragraph (b) of this section, terminal facilities and services covered by this section shall provide the following accessibility features:

(1) The basic terminal design shall permit efficient entrance and movement of individuals with disabilities while at the same time giving consideration to their comfort, convenience, and safety. The design, especially concerning the location of means of vertical access, shall minimize any extra distance that individuals with disabilities must travel, compared to other persons, to reach ticket counters, waiting areas, baggage handling areas, and boarding locations.

(2) The carrier shall ensure that all portions of a passenger's path between the entrance to the facility (including parking and public transportation as well as the entrance to terminal buildings) and the aircraft that are under the control of the carrier are program accessible to passengers with disabilities, including individuals who use wheelchairs.

(3) The ticketing system shall provide individuals with disabilities with the opportunity to use the primary fare collection area to obtain a ticket and pay the fare.

(4) Outbound and inbound baggage facilities shall allow efficient baggage handling by individuals with disabilities. Passenger baggage facilities shall be designed and operated without unattended physical barriers, such as gates, that are inaccessible for individuals with disabilities.

(5) Each terminal shall contain at least one telecommunications device for the deaf (TDD) to enable persons with hearing impairments to make phone calls from the terminal. The TDD(s) shall be placed in a clearly marked, readily accessible location, and airport signage shall clearly indicate the location of the TDD(s).

(6) Terminal information systems shall take into consideration the needs of individuals with disabilities. The primary information mode shall be visual words or letters, or symbols, using lighting and color coding. Terminals shall also have facilities for providing information aurally.

(d) Systems of inter-terminal transportation, including, but not limited to, shuttle vehicles and people movers, shall comply with applicable requirements of the Department of Transportation's ADA rule, 49 CFR parts 37 and 38.

(e) Contracts or leases between carriers and airport operators concerning the use of airport facilities shall set forth the respective responsibilities of the parties for the provision of accessible facilities and services to individuals with disabilities as required by this part and applicable section 504 and ADA rules of the Department of Transportation at 49 CFR part 27 and Department of Justice at 28 CFR part 35.

A. In paragraph (a)(2), the word "suitable" shall be added before the words "devices (not normally used for freight)" and the following sentence is added at the end of the paragraph as set forth below.

B. Paragraph (a)(4) is removed, paragraph (a)(3) is redesignated as paragraph (a)(4), and a new paragraph (a)(3) is added to read as follows:

§ 382.39 Provision of services and equipment.

* * * * *

(a) * * *

(2) * * *

In no case shall carrier personnel be required to hand-carry a passenger in order to provide boarding assistance (i.e., to directly pickup the passenger's body in the arms of one or more carrier personnel).

(3) Each carrier conducting passenger operations at a commercial service airport involving aircraft which passengers at that airport cannot enter or leave using accessible level entry boarding platforms or mobile lounges shall ensure that ramps, mechanical lifts, or other suitable devices (not normally used for freight) are available for the boarding of individuals with disabilities. The carrier shall use these devices to provide boarding assistance to individuals who need this assistance.

(i) Each such carrier shall negotiate in good faith with the airport operator at each such airport concerning the acquisition and use of boarding assistance devices. The carrier(s) and the airport operator shall, by [a date no later than nine months from the effective date of this section], sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. This document shall be retained by each party to it and made available, on request, to representatives of the Department of Transportation.

(ii) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed no later than [a date three years from the effective date of this section]. All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(iii) The agreement is not required to provide for the use of boarding devices or boarding assistance concerning aircraft with a capacity of fewer than 19 passenger seats. However, if boarding devices or boarding assistance provided under the agreement can be used for an aircraft with a capacity of fewer than 19 passenger seats, the parties are required to provide this assistance.

(iv) A carrier may apply to the Department of Transportation for a waiver of the requirement to provide boarding assistance for an aircraft or aircraft model with a capacity of 19–30 passenger seats. The basis for the grant of such a waiver is a showing that use of the only device or devices that could be used to provide boarding assistance on that aircraft or aircraft model would present an unacceptable risk of significant damage to the aircraft.

5. In § 382.51 of 14 CFR part 382, paragraph (b) is revised to read as follows:

§ 382.51 Communicable diseases.

* * * * *

(b)(1) The carrier may take the actions listed in paragraph (a) of this section with respect to an individual who has a communicable disease or infection only if all of the following conditions are met:

(i) The disease or infection is one that, at the time the individual would travel, is readily communicable to other persons, in the normal course of flight, through airborne transmission of disease organisms or casual contact;

(ii) The disease or infection is one that is likely to have significant health consequences for an individual who becomes infected; and

(iii)(A) The carrier's action is based upon the recommendation of a physician and pertains to the specific passenger and circumstances involved; or

(B) The carrier's action is based on a list of diseases meeting the criteria of paragraphs (b)(1) (i) and (ii) of this section that has been established by the carrier's medical staff (or by carrier officials in conjunction with a consulting physician). The list shall specify the time periods during which each disease meets the criteria of paragraph (b)(1)(i) of this section. If the passenger denies that he or she has a disease on the list, or that it is not at a stage that the list describes as meeting the criteria of paragraph (b)(1)(i) of this section, any action by the carrier to restrict the passenger's travel shall be based upon the recommendation of a physician and pertains to the specific passenger and circumstances involved.

(2) In taking actions authorized under this paragraph, carriers shall select the alternative, consistent with the recommendation of the physician involved, that is least restrictive from the point of view of the passenger.

(3) If an action authorized under this paragraph results in the postponement of a passenger's travel, the carrier shall permit the passenger to travel at a later time at the fare that would have applied to the passenger's originally scheduled trip.

(4) Upon the passenger's request, the carrier shall provide to the passenger a written explanation of any action taken under this paragraph within 10 days of the action. The explanation shall include a signed statement by the physician of his or her recommendation and the reasons for it.

49 CFR Subtitle A—Office of the Secretary of Transportation

PART 27—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITTING FROM FEDERAL FINANCIAL ASSISTANCE

6. The authority citation for 49 CFR Part 27 is revised to read as follows:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec 16 (a) and (d) of the Federal Transit Act of 1964, as amended (49 U.S.C. 1612 (a) and (d)); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended (23 U.S.C. 142 nt.).

PART 27—[AMENDED]

7. In 49 CFR part 27, the word "handicap" is changed to the word "disability" wherever it occurs. The term "handicapped individual(s)" is changed to "individual(s) with disabilities" wherever it occurs. The term "qualified handicapped individual(s)" is changed to "qualified individual(s) with disabilities" wherever it occurs.

8. In § 27.5 of 49 CFR part 27, the definition of "Air Carrier Airport" is removed, and a new definition of "Commercial service airport" is added in the appropriate alphabetical placement, to read as follows:

§ 27.5 Definitions.

* * * * *

"Commercial service airport" means an airport that is defined as a commercial service airport for purposes of the Federal Aviation Administration's Airport Improvement Program and that enplanes annually 2500 or more passengers and receives scheduled passenger service of aircraft.

* * * * *

9. Section 27.71 of 49 CFR part 27 is revised to read as follows:

§ 27.71 Airport facilities.

(a) This section applies to all terminal facilities and services owned, leased, or operated on any basis by a recipient of DOT financial assistance at a commercial service airport.

(b) Airport operators shall ensure that the terminal facilities and services subject to this section shall be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Airport operators shall be deemed to comply with this section 504 obligation if they meet requirements applying to state and local government programs and facilities under Department of Justice (DOJ) regulations implementing Title II of the Americans with Disabilities Act (ADA) at 28 CFR part 35.

(c) In addition to requirements specified in DOJ ADA regulations, terminal facilities and services covered by this section shall provide the following accessibility features:

(1) The basic terminal design shall permit efficient entrance and movement of individuals with disabilities while at the same time giving consideration to their comfort, convenience, and safety. The design, especially concerning the location of means of vertical access, shall minimize any extra distance that individuals with disabilities must travel, compared to other persons, to reach ticket counters, waiting areas, baggage handling areas, and boarding locations.

(2) The airport operator shall ensure that all portions of a passenger's path between the entrance to the facility (including parking and public transportation as well as the entrance to terminal buildings) and the aircraft that are under the control of the airport operator are program accessible to passengers with disabilities, including individuals who use wheelchairs.

(3) The ticketing system shall provide individuals with disabilities with the opportunity to use the primary fare collection area to obtain a ticket and pay the fare.

(4) Outbound and inbound baggage facilities shall allow efficient baggage handling by individuals with disabilities. Passenger baggage facilities shall be designed and operated without unattended physical barriers, such as gates, that are inaccessible for individuals with disabilities.

(5) Each terminal shall contain at least one TDD to enable persons with hearing impairments to make phone calls from the terminal. The TDD(s) shall be placed in a clearly marked, readily accessible location, and airport signage shall clearly indicate the location of the TDD(s).

(6) Terminal information systems shall take into consideration the needs of individuals with disabilities,. The primary information mode shall be visual words or letters, or symbols, using lighting and color coding. Terminals shall also have facilities for providing information aurally.

(d) Systems of inter-terminal transportation, including, but not limited to, shuttle vehicles and people movers, shall comply with applicable requirements of the Department of Transportation's ADA rules at 49 CFR parts 37 and 38

(e) Contracts or leases between carriers and airport operators concerning the use of airport facilities shall set forth the respective responsibilities of the parties for the provision of accessible facilities and services to individuals with disabilities as required by this part and applicable Air Carrier Access Act (ACAA) and ADA rules of the Department of Transportation at 49 CFR part 37 and Department of Justice at 28 CFR part 35

(f) Each airport operator at a commercial service airport served by one or more air carrier's aircraft which passengers cannot enter or leave using accessible level entry boarding

platforms or mobile lounges shall ensure that ramps, mechanical lifts, or other suitable devices (not normally used for freight) are available for the boarding of individuals with disabilities. The airport operator shall ensure the use of these devices to provide boarding assistance to individuals who need this assistance.

(1) Each such airport operator shall negotiate in good faith with each air carrier conducting operations at the airport using aircraft which passengers cannot enter or leave using accessible level entry boarding platforms or mobile lounges, concerning the acquisition and use of boarding assistance devices. The carrier(s) and the airport operator shall, by [a date no later than nine months from the effective date of this section], sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. This document shall be retained by each party to it and made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed no later than [a date three years from the effective date of this section]. All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) The agreement is not required to provide for the use of boarding devices or boarding assistance concerning aircraft with a capacity of fewer than 19 passenger seats. However, if boarding devices or boarding assistance provided under the agreement can be used for an aircraft with a capacity of fewer than 19 passenger seats, the parties are required to provide this assistance, provided that a means of deplaning the passenger is available at the passenger's destination.

(g) If an airport operator who receives Federal financial assistance for an existing airport facility has not already done so, the recipient shall submit a transition plan meeting the requirements of § 27.65(d) of this part to the FAA no later than [a date 90 days from the effective date of this section].

10. A new § 27.77 is added to 49 CFR part 27, subpart B, to read as follows:

§ 27.77 Recipients of essential air service subsidies.

Any air carrier receiving Federal financial assistance from the Department of Transportation under the Essential Air Service program shall, as a condition of receiving such assistance, comply with applicable requirements of this part and ACAA rules of the Department of Transportation at 14 CFR part 382.

[FR Doc. 93-22124 Filed 9-8-93; 8:45 am]

BILLING CODE 4910-62-U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

[Docket No. H-022I]

RIN 1218-AB42

Retention of Markings and Placards

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule.

SUMMARY: OSHA is hereby proposing a requirement for employers who receive packages, containers, motor vehicles, rail freight cars, aircraft or vessels which contain hazardous materials and which are required to be marked, placarded, or labeled in accordance with regulations issued under the Hazardous Materials Transportation Act, to retain the markings, placards, and labels, and any other information as may be required by such regulations on the packages, containers, motor vehicles, rail freight cars, aircraft or vessels until the hazardous materials have been removed therefrom. This rule is proposed pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (the Act) and in accordance with section 29 of Public Law 101-615, the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA).

DATES: Written comments on the issues discussed in this notice and requests for informal public hearings must be postmarked by October 12, 1993.

ADDRESSES: Comments and hearing requests must be submitted in quadruplicate to the Docket Officer, Docket No. H-022I, Occupational Safety and Health Administration, room N-2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone: (202) 219-7894, where they will be available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA Office of Public Affairs, room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 219-8151.

SUPPLEMENTARY INFORMATION: Public Law 101-615, the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), 104 Stat. 3244, was enacted by Congress on November 17, 1990. Section 29 of HMTUSA reads as follows:

> Not later than 18 months after the date of enactment of this Act, the Secretary of Labor, in consultation with the Secretary of Transportation and the Secretary of the Treasury, shall issue under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)) standards requiring any employer who receives a package, container, motor vehicle, rail freight car, aircraft, or vessel which contains a hazardous material and which is required to be marked, placarded, or labeled in accordance with regulations issued under the Hazardous Materials Transportation Act to retain the markings, placards, and labels, and any other information as may be required by such regulations on the package, container, motor vehicle, rail freight car, aircraft, or vessel, until the hazardous materials have been removed therefrom.

The rule being proposed today is being issued in accordance with the requirements of HMTUSA.

OSHA believes that this rule will impose no significant compliance burdens on industry. It requires only that when hazardous materials are transported in packagings or vehicles which are already required by the Department of Transportation to be marked, placarded, or labeled, and such packagings or vehicles are received by an employer, that employer must assure that the markings, placards, and labels, and any other information required by the DOT regulations to be displayed on the packagings or vehicles, remain thereon until the hazardous materials have been removed so that they no longer pose a health or safety risk.

The Congressional rationale for this requirement was provided in Senate Report No. 101-449, (p. 16), as follows:

> In November 1988, six Kansas City firemen were killed when the arson-caused fire they were fighting caused the violent explosion of an unmarked truck-trailer parked at a highway construction site. Because the trailer's hazardous materials placards had been removed, the firemen were unaware of the danger it posed. The Secretaries of Labor Transportation and the Treasury should cooperate in order to ensure that placards and labels required on hazardous materials and explosives, both in transportation and at stationary facilities, be retained until such materials have been removed to the extent that they no longer pose a safety risk.

Congress was specific in its mandate to OSHA for this rule, and the rule itself is limited to implementing the Congressional mandate. In this proposal, OSHA has slightly elaborated on the statutory language to the extent necessary to ensure that its requirements are clear. This regulation is essentially a continuation of the DOT

regulations, so employers may wish to consult those regulations, which are codified at 49 CFR parts 171–180, in regard to complying with this section.

While OSHA does not believe that these provisions require further elaboration, comments and information are invited on the following issues. Any comments received will be considered before issuing the final standard on the retention of markings and placards.

(1) OSHA believes that the proposed standard would have only a minimal cost impact on affected employers and that such costs would be associated with the replacement of placards and labels that have been damaged or lost. OSHA specifically requests information from employers who have had experience with lost or damaged DOT placards and labels to assess more fully the associated costs.

(a) How frequently do incidents of lost or damaged placards and labels occur?

(b) In your experience, when DOT placards and labels have required replacement what have been the associated costs?

(c) How much time is required to replace placards and labels?

(d) What are the unit prices for placards and labels?

(2) The length of time that a container, motor vehicle, rail freight car, aircraft, vessel or similar receptacle which contains hazardous materials remains on a worksite obviously varies. Please describe the average length of time that such containers may be present at your worksite.

(3) The proposed standard requires that DOT placards and labels remain on containers of hazardous materials until the material has been removed so that it no longer poses a safety or health risk.

(a) What problems, if any, may be encountered in achieving this requirement?

(b) If problems may arise, what alternative solutions would you recommend?

(c) What measures do employers take to assure that placards and labels remain on containers of hazardous materials?

(4) Have you had incidences of injury or illness that have resulted from workers handling unlabelled vehicles, containers, etc., covered by the proposed rule?

In addition to the issues addressed above, OSHA invites comments on any other concerns that may be pertinent to this proposed regulation.

Because Congress has directed that OSHA issue this regulation for all employers covered by the OSH Act, this notice includes separate but identical standards for general industry (§ 1910.1201), construction (§ 1926.60), shipyards (§ 1915.100), marine terminals (§ 1917.29), and longshoring (§ 1918.100). The general industry standard will also be added to the list of Part 1910 standards which apply to agricultural operations, as a new paragraph (a)(7) of § 1928.21.

In preparing this proposed rule, OSHA has consulted with delegated officials of the Secretary of Transportation and the Secretary of the Treasury, as required by HMTUSA.

A 30-day comment period is being provided for those who wish to comment on the issues raised in this notice. In addition, pursuant to section 6(b)(3) of the Act, any interested person, on or before the last day of the period provided for the submission of written comments, may file with the Secretary written objections to the proposed rule, stating the grounds therefor and requesting a public hearing on such objections. In accordance with 29 CFR 1911.11, any objections submitted must be accompanied by a summary of the evidence proposed to be adduced at the requested hearing.

Regulatory Flexibility Act

OSHA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Orders 12291, 12612 and 12778

This rule is not a major rule for the purposes of Executive Order 12291. It also does not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612. This rule has been certified in accordance with Executive Order 12778 regarding Civil Justice Reform.

Paperwork Reduction Act

This rulemaking action imposes no recordkeeping or other paperwork burdens under the Paperwork Reduction Act.

List of Index Terms

Occupational safety and health, hazardous materials transportation, hazardous substances, explosives, chemicals, health, safety.

This document was prepared under the direction of David C. Zeigler, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Washington, DC 20210.

Accordingly, pursuant to section 29 of the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101–615, 104 Stat. 3277), sections 4 and 6(b) of the Occupational Safety and Health Act (29 U.S.C. 653, 655), Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR part 1911, parts 1910, 1915, 1917, 1918, 1926, and 1928 of 29 CFR are proposed to be amended as set forth below.

Signed this 2nd day of September, 1993

David C. Zeigler,

Acting Assistant Secretary of Labor

OSHA is proposing to amend Parts 1910, 1915, 1917, 1918, 1926, and 1928 of Title 29 of the Code of Federal Regulations as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

PART 1917—MARINE TERMINALS

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

PART 1910—[AMENDED]

1. The authority citation for subpart Z of Part 1910 is revised to read as follows:

Authority: Secs. 4, 6, and 8, Occupational Safety and Health Act, 29 U.S.C. 653, 655, and 657; Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b) except those substances listed in the Final Rule Limits columns of Table Z–1–A, which have identical limits listed in the Transitional Limits columns of Table Z–1–A, Table Z–2 or Table Z–3. The latter were issued under Section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, the Transitional Limits columns of Table Z–1–A, Table Z–2, and Table Z–3 also issued under 5 U.S.C. 533. Section 1910.1000, the Transitional Limits columns of Table Z–1–A, Table Z–2 and Table Z–3 not issued under 29 CFR part 1911 except for the arsenic, benzene, cotton dust, and formaldehyde listings.

Section 1910.1001 also issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Section 1910.1025 also issued under 5 U.S.C. 553.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Section 1910.1201 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101–615, 104 Stat. 3244 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

PART 1915—[AMENDED]

2. The authority citation for part 1915 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable; and 29 CFR part 1911.

Section 1915.99 also issued under 5 U.S.C. 553.

Section 1915.100 also issued under Section 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101–615, 104 Stat. 3244 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

PART 1917—[AMENDED]

3. The authority citation for part 1917 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable; 29 CFR Part 1911.

Section 1917.28 also issued under 5 U.S.C. 553.

Section 1917.129 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990, Public Law 101–615, 104 Stat. 3244 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

PART 1918—[AMENDED]

4. The authority citation for part 1918 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable.

Section 1918.90 also issued under 5 U.S.C. 553 and 29 CFR part 1911.

Section 1918.100 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101–615, 104 Stat. 3244 (49 U.S.C. 1801–1819, 5 U.S.C. 553, and 29 U.S.C. part 1911).

PART 1926—[AMENDED]

5. The authority citation for subpart D of part 1926 is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable.

Section 1926.59 also issued under 5 U.S.C. 553 and 29 CFR Part 1911.

Section 1926.60 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101–615, 104 Stat. 3277), 5 U.S.C. 553, and 29 U.S.C. Part 1911.

PARTS 1910, 1915, 1917, 1918, AND 1926—[AMENDED]

6. Parts 1910, 1915, subpart F; 1917, subpart B; 1918, subpart I and 1926, subpart D of Title 29 of the Code of Federal Regulations are amended by adding identical sections as §§ 1910.1201, 1915.100, 1917.29, 1918.100 and 1926.60 to read as follows:

§ **.*** Retention of markings and placards.**

(a) Any employer who receives a package, container, motor vehicle, rail freight car, aircraft, or vessel which contains a hazardous material and which is required to be marked, placarded, or labeled in accordance with regulations issued under the Hazardous Materials Transportation Act, codified at 49 CFR parts 171 through 180, shall retain the markings, placards, and labels, and any other information as may be required by such regulations on the package, container, motor vehicle, rail freight car, aircraft, vessel, or similar receptacle in accordance with the following:

(1) Such markings, placards and labels shall be retained on the package, container, motor vehicle, rail freight car, aircraft, vessel, or similar receptacle until the hazardous materials have been removed therefrom so that they no longer pose a health or safety risk.

(2) Such markings, placards and labels shall be maintained in a manner that ensures that the legend is readily visible.

(b) For the purposes of this section, the term "hazardous material" has the same definition as in the Hazardous Materials Regulations of the U.S. Department of Transportation at 49 CFR 171.8.

PART 1928—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE

7. The authority citation for Part 1928 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

Section 1928.21 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Public Law 101–615, 104 Stat. 3244 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

PART 1928—[AMENDED]

8. Section 1928.21 is proposed to be amended by adding a new paragraph (a)(7) to the list of part 1910 standards applicable to agriculture as follows:

§ 1928.21 Applicable standards in 29 CFR Part 1910.

(a) * * *

(7) Retention of markings and placards —§ 1910.1201.

* * * * *

[FR Doc. 93–21869 Filed 9–9–93; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN–0720–AA18

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Hospice Care

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the Civilian Health and Medical Program of the Uniformed Services. The proposed amendment establishes a hospice benefit for the terminally ill that offers an alternative to traditional therapeutic treatment which may no longer be appropriate or desirable. Hospice care is palliative rather than curative, generally emphasizing home care rather than institutional care, and treating the social, psychological, spiritual, and physical needs of the entire family.

DATES: Written public comments must be received on or before October 12, 1993.

FOR FURTHER INFORMATION CONTACT: David E. Bennett, Program Development Branch, OCHAMPUS, Aurora, Colorado 80045–6900, telephone (303) 361–1094.

SUPPLEMENTARY INFORMATION: The Defense Authorization Act for FY 1992–93, Public Law 102–190, directs CHAMPUS to provide hospice care in the manner and under the conditions provided in section 1861(dd) of the Social Security Act (42 U.S.C.

1395x(dd)). This section of the Social Security Act sets forth coverage/benefit guidelines, along with certification criteria for participation in a hospice program. Since it is Congress' specific intent to establish a benefit identical to that of Medicare, CHAMPUS will adopt the provisions currently set out in Medicare's hospice coverage/benefit guidelines, reimbursement methodologies (including national hospice rates and wage indices), and certification criteria for participation in the hospice program (42 CFR part 418, Hospice Care).

The CHAMPUS hospice benefit is designed to provide palliative care to individuals with prognoses of less than 6 months to live. The benefit is based upon a patient and family-centered model where the views of the patient and family or friends figure predominantly in the care decisions. This type of care emphasizes supportive services, such as pain control and home care, rather than cure-oriented services provided in institutions that are otherwise the primary focus under CHAMPUS. This benefit provides coverage for a humane and sensible approach to care during the last days of life for some terminally ill patients.

Coverage/Benefits

CHAMPUS beneficiaries who are terminally ill (that is, a life expectancy of six months or less) will be eligible for the following services and supplies in lieu of other CHAMPUS benefits: (1) Physicians' services; (2) nursing care provided by or under the supervision of a registered professional nurse; (3) medical social services provided by a social worker who is working under the direction of a physician; (4) counseling services provided to the terminally ill individual and the family members or other persons caring for the individual at home; (5) short-term inpatient care (both general and respite); (6) medical supplies, including drugs and biologicals; (7) durable medical equipment, as well as other self-help and personal comfort items related to the palliation or management of the patient's terminal illness and provided for use in the patient's home; (8) home health aide services furnished by qualified aides and homemakers services; and (9) physical therapy, occupational therapy and speech-language pathology services.

The hospice must be capable of providing core services on a 24-hour basis. This consists of physician services, nursing care, medical social services, and counseling services for individuals and care givers. While non-core services (i.e., short-term inpatient care, medical supplies and equipment, etc.) may be provided under arrangements with other agencies or organizations, the hospice must maintain professional management of the patient at all times.

Twenty-four-hour nursing and home health aide services may be provided only during periods of crisis and then only as necessary to maintain the terminally ill individual at home. A period of crisis is defined as the time a patient requires continuous care to achieve palliation or management of acute medical symptoms. Those services which are not necessary for the palliation or management of the terminal illness are excluded from CHAMPUS coverage.

Short-term inpatient care, both general and respite care, may be provided in participating hospice inpatient units, hospitals, or skilled nursing facilities (SNFs). Inpatient respite care is provided when necessary to relieve family members or other persons caring for the individual at home. Respite care may be provided only on an occasional basis and is limited to no more than five consecutive days at a time. The necessity and frequency of this care will be determined by the beneficiary's treatment team with input from his or her attending physician and the hospice's medical director. The care also will be subject to medical review by the CHAMPUS medical peer review contractor. Inpatient respite care is the only type of care that can be provided in a Medicaid (title XIX) certified nursing facility.

Counseling services are provided for the purpose of training the terminally ill patient's family or other care-giver to provide care and to help the patient and those caring for him or her to adjust to the individual's approaching death. While bereavement counseling/therapy is required as part of the overall CHAMPUS hospice benefit, it is not reimbursable under CHAMPUS. The specific exclusions of custodial care and personal comfort items applicable to other CHAMPUS services is not applicable to hospice care.

Conditions for Coverage

Under the hospice benefit, patients with a life expectancy of six months or less may receive four episodes of care: Two 90-day periods, one 30-day period and a final period of unlimited duration (a subsequent extension period). These episodes of care must be used consecutively; that is, the two 90-day election periods must be used before the 30-day period, and the 30-day period must be used before the final period of care. Hospice coverage will continue as long as the beneficiary is certified as terminally ill and has not revoked his or her final election period.

Each hospice will design and print its own election statement to include the following information: (1) Identification of the particular hospice that will provide care to the individual; (2) the individual's or representative's acknowledgment that he or she has been given a full understanding of hospice care; (3) the individual's or representative's acknowledgment that he or she understands that certain CHAMPUS services are waived by the election; (4) the effective date of the election; and (5) the signature of the individual or representative. The hospice must notify the CHAMPUS contractor of the initiation, change or revocation of any election.

A beneficiary's terminal illness must be certified in the medical record by the beneficiary's attending physician (if the patient has an attending physician) and/or the medical director of the hospice program providing the care, or by a physician member of the hospice interdisciplinary team. This certification must be made no later than two days after the hospice care is initiated. If a subsequent period of hospice care is elected, the medical director or a staff physician of the hospice must recertify at the beginning of that period that the individual is terminally ill. The beneficiary must file an election statement with a particular hospice in order to obtain coverage. In doing so, the beneficiary waives all rights to CHAMPUS payments for the duration of the election period for: (1) Care provided by hospice programs other than the one chosen unless provided under arrangements made by the elected hospice; and (2) other CHAMPUS basic program services/benefits related to the terminal illness, except for services of an attending physician who is not employed by or under contract with the hospice program. However, any covered CHAMPUS services not related to the treatment of the terminal condition for which hospice care was elected, which are provided during a hospice election period may be billed to the CHAMPUS contractor for nonhospice CHAMPUS reimbursement.

Patients may revoke a hospice election, but in doing so, they forfeit the remaining days in the election period and resume CHAMPUS coverage of the benefits waived under that election. For example, a patient may elect to receive services under the second 90-day period after completing the first election period, and then after 60 days of that care, decide to revoke the election. The

remaining days (30 days) of the election period would be forfeited. However, the patient could at any time elect to receive coverage for any other hospice election period for which he or she was eligible. In this particular case, it would be the next 30-day period. Hospice payment/coverage ends upon revocation of the final election period. Patients may also change from one hospice program to another once during each of their election periods. The change is accomplished by submitting a signed statement addressed both to the hospice from which the patient received care and to the newly designated hospice. The statement shall include the following information: (1) The name of the hospice from which the individual has received care; (2) the name of the hospice from which the patient plans to receive the care; and (3) the date the change is to be effective.

A written plan of care must be established and periodically reviewed by the beneficiary's attending physician or the hospice's medical director and his/her staff. Hospice care must be provided pursuant to this established plan of care.

The CHAMPUS medical peer review contractor will request and review medical records, including written plans of care, to make sure that the services were: (1) Covered hospice services; (2) stipulated in the written plan of care; (3) necessary for the application or management of the beneficiary's terminal illness; and (4) appropriately classified for payment. Complete medical records and all supporting documentation must be submitted to the CHAMPUS medical peer review contractor within 30 days of the date of its request. If records are not received within the designated time frame, authorization of the hospice benefit will be denied and any prior payments made will be recouped. A denial issued for this reason is not an initial determination under § 199.10 of this part, and is not appealable.

Certification

Hospice programs must be Medicare certified in order to receive reimbursement under CHAMPUS. The hospice program can be either a public agency or a private organization which provides those services described under the coverage section above on a 24-hour basis, and which also provides bereavement counseling for the immediate family of the terminally ill individual. The program must be able to provide these services in the patient's home, on an outpatient basis, and on a short-term inpatient basis, directly or under arrangements made by the agency or organization. However, the hospice program must maintain professional management responsibility for all such services furnished to the individual, regardless of the location or facility in which such services are rendered.

The hospice must enter into an agreement with CHAMPUS to be qualified to participate and to be eligible for payment under the program. This agreement will be patterned after the Medicare hospice participation agreement and will be available from the CHAMPUS contractors to any Medicare approved hospice wishing to participate under the CHAMPUS hospice program.

Reimbursement

CHAMPUS will use national Medicare hospice rates for reimbursement of each of the following levels of care provided by or under arrangement with a Medicare approved hospice program: (1) Routine home care; (2) continuous home care; (3) inpatient respite care; (4) general inpatient care. The hospice will be paid a daily rate for the above levels of care, with the exception of continuous home care which will be reimbursed on an hourly rate. The rates are based on a cost-related prospective payment method subject to a "cap" amount and will be adjusted annually by the Medicare hospital market basket inflation factor for services rendered on or after October 1 of each fiscal year. Table I represents the national Medicare rates for hospice services provided on or after October 1, 1992, through September 30, 1993, along with the wage and nonwage components of each:

TABLE I

	National rate	Wage component	Nonwage component
Routine Home Care	$86.66	$59.54	$27.12
Continuous Home Care	505.80	347.54	158.26
Inpatient Respite	89.64	48.52	41.12
General Inpatient	385.52	246.77	138.75

These national payment rates will be adjusted for regional wage differences by using appropriate area wage indices. The hospice will be reimbursed for an amount applicable to the type and intensity of the services furnished to the beneficiary on a particular day.

One rate will be paid for each level of care, except for continuous home care where reimbursement is based on the number of hours of continuous care furnished to the beneficiary on that day. More than half of the period of continuous care must be provided by either a registered or licensed practical nurse. A minimum of 8 hours must be provided during a 24-hour day which begins and ends at midnight. The care need not be continuous; that is, four hours could be provided in the morning and another four hours in the evening. Homemaker and aide services may be provided to supplement the nursing care to enable the individual to remain at home. Table II provides an example of CHAMPUS reimbursement for 10 hours of continuous home care provided in Denver, Colorado:

TABLE II

National Rate	Wage Component Subject to Index	×	Index for Denver	=	Adjusted Wage Component
$505.80	$347.54	×	1.2141	=	$421.95

Adjusted Wage Component	+	Nonwage Component	÷	24 Hour Day	×	Hours of Care	=	Hospice Rate

$$\frac{(\$421.95 + \$158.26)}{24\ \text{hr}} \times 10 = \$241.75$$

The continuous home care rate of $241.75 was figured by dividing the adjusted rate (i.e., the adjusted wage component plus nonwage component) by 24 hours and multiplying that amount by the actual number of hours rendered.

Payment for inpatient respite care may be made for a maximum of 5 days at a time, including the date of admission but not counting the date of discharge. Payment for the sixth and any subsequent days is to be made at the routine home care rate. Table III provides an example of CHAMPUS reimbursement for 12 days of inpatient respite care in Cheyenne, Wyoming:

TABLE III

Respite Rate (5 days)

Wage Component Subject to Index	×	Index for Cheyenne	=	Adjusted Wage Component
$48.52	×	.9565	=	$46.41

Adjusted Wage Component	+	Nonwage Component	=	Adjusted Rate	×	5 days Maximum	=	Respite Rate
$46.41	+	$41.12	=	$87.53	×	5	=	$437.65

Routine Home Care Rate (7 days)

Wage Component Subject to Index	×	Index for Cheyenne	=	Adjusted Wage Component
$59.54	×	.9565	=	$56.95

Adjusted Wage Component	+	Nonwage Component	=	Adjusted Rate	×	7 days Home Care	=	Routine Rate
$56.95	+	$27.12	=	$84.07	×	7	=	$588.49

CHAMPUS Payment for Respite Care

Respite Rate for 5 days	+	Routine Home Care Rate for 7 days	=	Payment for 12 days of Respite Care
$437.65	+	$588.49	=	$1,026.14

Since respite care is limited to a maximum of 5 days, the remaining 7 days were figured using the routine home care rate. The payment amounts for both respite and routine home care were combined to establish a payment amount for the 12 days of inpatient care.

Payment for physicians' administrative and general supervisory activities are included in the national payment rate. This involves the establishment, review and updating of plans of care, supervising care and services, and establishing governing policies. These services are generally performed by the hospice's medical director and the physician member of the treatment team.

Payment for physicians' direct patient care services (i.e., physicians employed by or under contract with a hospice program) may be paid in addition to the adjusted national rate for that particular level of care. The hospice will be reimbursed in accordance with CHAMPUS' allowable charge methodology. However, these physician payments will be counted toward the hospice cap limitation.

Patient care services rendered by an independent attending physician (a physician who is not employed by or under contract with the hospice) are not part of the hospice benefit. The provider may bill in his/her own right, and the services are subject to the CHAMPUS allowable charge methodology. This reimbursement is not counted toward the cap limitation. Services provided by an independent attending physician must be coordinated with any direct care services provided by hospice physicians. The hospice must notify the CHAMPUS contractor of the name of the physician who has been designated as the attending physician whenever the attending physician is not a hospice employee.

No payment may be made for physician services furnished voluntarily (both physicians employed by and under contract with the hospice and independent attending physicians). The physician rendering such services may not discriminate against CHAMPUS beneficiaries; e.g., designate all or a majority of services rendered to non-CHAMPUS patients as volunteer and at the same time bill for CHAMPUS patients.

Each hospice program will be subject to a cap on aggregate CHAMPUS payments from November 1 through October 31 of each year, hereafter known as "the cap period." CHAMPUS will use the annual Medicare statutory amount in calculation of each of the hospice's aggregate cap limitations. The Medicare cap amount for the period November 1, 1992, through October 31, 1993, is $11,551. Annual adjustments to the cap amount will be the same as Medicare. The aggregate cap amount (statutory Medicare cap amount times the number of CHAMPUS beneficiaries electing hospice care during cap period) will be compared with total (actual) CHAMPUS payments made during the same period. Payments in excess of the aggregate cap amount must be refunded by the hospice program. The adjusted statutory Medicare cap amount will be obtained from Medicare (Health Care Financing Administration (HCFA)) prior to the end of each cap period. Computation and application of the "cap amount" will be made by the CHAMPUS contractors at the end of each cap period.

Calculation of the cap amount for a hospice which has not participated in the program for an entire cap year (November 1 through October 31) will be based on a period of least 12 months but no more than 24 months. For example, the first cap period for a hospice entering the program after November 1, 1993, but before November 1, 1994, would end October 31, 1995.

Payments for inpatient hospice care are also subject to a limitation on the number of days of inpatient care furnished to a CHAMPUS patient. During the 12-month period beginning November 1 of each year and ending October 31, the aggregate number of inpatient days (both for general inpatient care and inpatient respite care) may not exceed 20 percent of the aggregate total number of days of hospice care provided to all CHAMPUS beneficiaries during the same period. Computation and application of the limit will be made by the CHAMPUS contractors at the end of each cap period. Any excess reimbursement must be refunded by the hospice.

The hospice is responsible for reporting the following data within 30 days after the end of the cap period: (1) The total number of inpatient days furnished to CHAMPUS hospice patients (both general inpatient and inpatient respite days); (2) the total number of days of CHAMPUS hospice care (both inpatient and home care); and (3) the total number of CHAMPUS beneficiaries electing hospice care. When a beneficiary elects to receive hospice benefits from two or more different hospices, there will be a proportional application of the cap amount.

A hospice dissatisfied with the contractor's calculation and application of its cap amount and/or inpatient limitation may request and obtain a contractor review if the amount of program reimbursement in controversy—with respect to the matter which the hospice has a right to review—is at least $1000. The administrative review by the CHAMPUS contractor of the calculation and application of the cap amount and/or the inpatient limitation is the only

administrative review available. These calculations are not subject to the appeal procedures set forth in § 199.10 of this part. In addition, the methods and standards for calculation of the hospice payment rates established by CHAMPUS, as well as questions as to the validity of the applicable law, regulation or CHAMPUS decisions, are not subject to administrative review, including the appeal procedures of § 199.10 of this part.

There are no deductibles under the hospice benefit. CHAMPUS pays the full cost of all covered services for the terminal illness, except for small cost-share amounts for outpatient drugs and inpatient respite care. The patient is responsible for 5 percent of the cost of outpatient drugs or $5 toward each prescription, whichever is less. Additionally, the cost of the prescription (drugs or biologicals) may not exceed what a prudent buyer (that is, a buyer who refuses to pay more than the going price for an item or service and also seeks to economize by minimizing costs) would pay in similar circumstances. For inpatient respite care, the patient pays 5 percent of the CHAMPUS-allowed rate (approximately $4.31 per day); i.e., 5 percent of the amount CHAMPUS has estimated to be the cost of respite care, after adjusting the national rate for local wage differences. The rate varies slightly depending on the geographic area of the country. Table IV provides an example of the calculation of the cost-share for respite care in Denver, Colorado:

TABLE IV

Wage Component Subject to Index	×	Index for Denver	=	Adjusted Wage Component
$48.52	×	1.2141	=	$58.91

Adjusted Wage Component	+	Nonwage Component	=	Adjusted Rate
$55.98	+	39.50	=	$95.48

Adjusted Rate	÷	.95 (Rate to Include Cost - Share)	×	% Cost - Share	=	Cost - Share Amount
95.48	÷	.95	×	.05	=	$5.03

The total amount of cost-share for inpatient respite care for any beneficiary during a hospice cost-share period may not exceed the amount of the inpatient Medicare hospital deductible applicable for the year in which the hospice cost-share period began.

Hospice care is viewed as the most cost-effective form of treatment for the terminally ill. The benefit lowers costs by reducing or eliminating inpatient days, unnecessary tests, and expensive curative therapies. The national rate system is designed to reimburse the hospice for the costs of all covered services related to the treatment of the beneficiary's terminal illness, including the administrative and general supervisory activities performed by physicians who are employees of or working under arrangements made with the hospice. Establishment of treatment plans, supervision of care and services and periodic review and updating of plans are included in the reimbursement rates.

The beneficiary is required to waive all other CHAMPUS benefits when electing hospice care since continued receipt of nonhospice services, whose purpose is to effect a cure, would be inappropriate for beneficiaries selecting hospice care and inconsistent with the intention that the hospice benefit should be a substitute for, not an addition to, coverage of intensive curative care under the basic CHAMPUS benefit.

Appeal rights subsequent to a review decision by a medical peer review contractor differ from those made by a CHAMPUS contractor. 32 CFR 199.15 governs appeal rights for peer review. Beneficiaries are entitled to a reconsideration and, if the denial is upheld and the amount in controversy is $300 or more, a hearing at OCHAMPUS. Providers, however, are only entitled to a reconsideration for denials based on medical necessity and/or appropriateness of the care setting. Conversely, when a CHAMPUS contractor denies a claim, both beneficiary and provider are entitled to a (1) reconsideration; (2) formal review if the amount in controversy is $50; and (3) a hearing if the amount in controversy is $300. Denials for medical necessity are the responsibility of the medical peer review contractor, while coverage denials are the CHAMPUS contractor's responsibility.

Regulatory Procedures

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would result in an annual effect on the national economy of $100 million or more, or which would have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public

comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This proposed rule is not a major rule under Executive Order 12291. The changes set forth in this proposed rule are major revisions to existing regulation. The changes made in this proposed rule involved an expansion of CHAMPUS benefits. In addition, this proposed rule will have minor impact and will not significantly affect a substantial number of small entities. In light of the above, no regulatory impact analysis is required.

We certify that this proposed rule has been reviewed under the provisions of the October 23, 1991, Executive Order on Civil Justice Reform. This proposed rule meets all applicable standards provided in that executive order.

This rule does impose minimal information collection requirements to include the following: (1) Total number of inpatient hospice days; (2) total number hospice days (both inpatient and home care); and (3) total number of beneficiaries electing hospice care.

The fact that all CHAMPUS approved hospice programs are subject to Medicare reporting requirements (i.e., they must be Medicare certified in order to receive CHAMPUS reimbursement), will tend to minimize the administrative burden imposed by this rule. The hospice will already have an established data collection system in place for developing these annual reports. Overall, resource allocation (administrative time) will be minimal since the number of CHAMPUS hospice beneficiaries would be disproportionately low compared to the number of Medicare patients. In other words, since the facility already has to collect, arrange, and submit the data on a majority of its patients, the administrative costs and/or burden of reporting CHAMPUS hospice patients could be minimal. The hospice would have to expand only the data collection parameters (data on CHAMPUS beneficiaries) in order to meet the requirements under this rule.

The rule represents an expansion of benefits under the CHAMPUS program, resulting in certification of a new provider category (hospice). Although hospice programs are accustomed to the proposed reporting requirements and would not view this as an administrative intrusion, the proposed rule has been prepared for review by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR part 199, is proposed to be amended as follows:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, and 5 U.S.C. 301.

2. Section 199.2(b) is amended by adding a definition for "hospice care" in alphabetical order as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Hospice care. Hospice care is a program which provides an integrated set of services and supplies designed to care for the terminally ill. This type of care emphasizes supportive services, such as pain control and home care, rather than cure-oriented services provided in institutions that are otherwise the primary focus under CHAMPUS. The benefit provides coverage for a humane and sensible approach to care during the last days of life for some terminally ill patients.

* * * * *

3. Section 199.4 is proposed to be amended by adding new paragraph (e)(19).

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(19) *Hospice care.* Hospice care is a program which provides an integrated set of services and supplies designed to care for the terminally ill. This type of care emphasizes supportive services, such as pain control and home care, rather than cure-oriented services provided in institutions that are otherwise the primary focus under CHAMPUS. The benefit provides coverage for a humane and sensible approach to care during the last days of life for some terminally ill patients.

(i) *Benefit coverage.* CHAMPUS beneficiaries who are terminally ill (that is, a life expectancy of six months or less) will be eligible for the following services and supplies in lieu of most other CHAMPUS benefits:

(A) Physician services.

(B) Nursing care provided by or under the supervision of a registered professional nurse.

(C) Medical social services provided by a social worker who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education, and who is working under the direction of a physician.

(D) Counseling services provided to the terminally ill individual and the family member or other persons caring for the individual at home. Counseling, including dietary counseling, may be provided both for the purpose of training the individual's family or other care-giver to provide care, and for the purpose of helping the individual and those caring for him or her to adjust to the individual's approaching death. Bereavement counseling, which consists of counseling services provided to the individual's family after the individual's death, is a required hospice service but it is not reimbursable.

(E) Home health aide services furnished by qualified aides and homemaker services. Home health aides may provide personal care services. Aides also may perform household services to maintain a safe and sanitary environment in areas of the home used by the patient. Examples of such services are changing the bed or light cleaning and laundering essential to the comfort and cleanliness of the patient. Aide services must be provided under the general supervision of a registered nurse. Homemaker services may include assistance in personal care, maintenance of a safe and healthy environment and services to enable the individual to carry out the plan of care.

(F) Medical appliances and supplies, including drugs and biological. Only drugs that are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered. Appliances may include covered durable medical equipment, as well as other self-help and personal comfort items related to the palliation or management of the patient's condition while he or she is under hospice care. Medical supplies include those that are part of the written plan of care.

(G) Physical therapy, occupational therapy and speech-language pathology services provided for purposes of symptom control or to enable the individual to maintain activities of daily living and basic functional skills.

(H) Short-term inpatient care provided in a participating hospice inpatient unit, or a participating hospital, skilled nursing facility (SNF) or nursing home that additionally meets the special hospice standards regarding staffing and patient areas. Services provided in an inpatient setting must conform to the written plan of care. Inpatient care may be required for procedures necessary for pain control or

acute or chronic symptom management. Inpatient care may also be furnished to provide respite for the individual's family or other persons caring for the individual at home. Respite care is the only type of inpatient care that may be provided in a nursing home.

Note: The limitations on custodial care and personal comfort items applicable to other CHAMPUS services are not applicable to hospice care.

(ii) The hospice must be capable of providing core services on a 24-hour basis; i.e., physician services, nursing care, medical social services for individuals and care givers. Refer to paragraphs (e)(19)(i)(A), (e)(19)(i)(B), and (e)(19)(i)(C) of this section.

(iii) While non-core services (i.e., counseling services, home health aid services, medical appliances and supplies, physical therapy, occupational therapy, speech-language pathology and short-term inpatient care) may be provided under arrangements with other agencies or organizations, the hospice must maintain professional management of the patient at all times. Refer to paragraphs (e)(19)(i)(D), (e)(19)(i)(E), (e)(19)(i)(F), (e)(19)(i)(G), and (e)(19)(i)(H) of this section.

(iv) Hospice care is divided into distinct periods/episodes of care. The terminally ill beneficiary may elect to receive hospice benefits for an initial period of 90 days, a subsequent period of 90 days, a second subsequent period of 30 days, and a final period of unlimited duration.

(v) *Conditions for coverage.* The CHAMPUS beneficiary must meet the following conditions/criteria in order to be eligible for the hospice benefits and services referenced in paragraph (e)(19)(i) of this section.

(A) There must be written certification in the medical record by the beneficiary's attending physician (if the patient has an attending physician) and the medical director of the hospice providing the care, or by a physician member of the hospice interdisciplinary team that the beneficiary is terminally ill with a life expectancy of six months or less.

(*1*) Written certification must be made within two calendar days after hospice care is initiated. If the hospice cannot obtain the written certifications within two calendar days, it must obtain oral certifications within two calendar days and written certification no later than eight calendar days after hospice care is initiated.

(*2*) The medical director or a staff physician of the hospice program must recertify any subsequent periods of hospice care for which the beneficiary is eligible.

(*3*) Hospice staff must make an appropriate entry in the patient's medical record as soon as oral certification is received and file written certification in the medical record as soon as it is received.

(B) The terminally ill beneficiary must elect to receive hospice care for each specified period of time; i.e., the two 90-day periods, a subsequent 30-day period, and a final period of unlimited duration.

(*1*) The episodes of care must be used consecutively; i.e., the two 90-day periods first, then the 30-day period, followed by the final period.

(*2*) The initial election will continue through subsequent election periods without a break in care as long as the individual remains in the hospice and does not revoke the election.

(*3*) The effective date of the election may begin on the first day of hospice care or any subsequent day of care, but the effective date cannot be made prior to the date that the election was made.

(*4*) The beneficiary or representative may revoke a hospice election at any time, but in doing so, the remaining days of that particular election period are forfeited and standard CHAMPUS coverage resumes. To revoke the hospice benefit, the beneficiary or representative must file, with the hospice, a signed and dated statement with the hospice.

Note: Representative means an individual who has been authorized under State law to terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill individual who is mentally or physically incapacitated.

(*5*) If an election of hospice benefits has been revoked, the individual, or his or her representative, may at any time file a hospice election for any period of time still available to the individual, in accordance with § 199.4(e)(19)(v)(B).

(*6*) A CHAMPUS beneficiary may change, once in each election period, the designation of the particular hospice from which he or she elects to receive hospice care.

(*7*) Each hospice will design and print its own election statement to include the following information:

(*i*) Identification of the particular hospice that will provide care to the individual.

(*ii*) The individual's or representative's acknowledgment that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the individual's terminal illness.

(*iii*) The individual's or representative's acknowledgment that he or she understands that certain CHAMPUS services are waived by the election.

(*iv*) The effective date of the election.

(*v*) The signature of the individual or representative, and the date signed.

(*8*) The hospice must notify the CHAMPUS contractor of the initiation, change or revocation of any election.

(C) The beneficiary must waive all rights to other CHAMPUS payments for the duration of the election period for:

(*1*) Care provided by any hospice program other than the one chosen unless provided under arrangements made by the elected hospice; and

(*2*) Other CHAMPUS basic program services/benefits related to the terminal illness, except for services of an attending physician who is not employed by or under contract with the hospice program.

(*3*) Basic CHAMPUS coverage will be reinstated upon revocation of the hospice election.

(D) A written plan of care must be established within two calendar days following the day of the beneficiary's assessment by the attending physician, medical director, or physician designee and interdisciplinary group (this group must have at least one physician, one registered professional nurse, one social worker, and one pastoral or other counselor) prior to providing care. The hospice must follow this plan in the treatment of the patient. The plan must be reviewed and updated, at intervals specified in the plan, by the attending physician, medical director and interdisciplinary group. These reviews must be documented.

(E) Complete medical records and all supporting documentation must be submitted to the CHAMPUS medical peer review contractor within 30 days of the date of its request. If records are not received within the designated time frame, authorization of the hospice benefit will be denied and any prior payments made will be recouped. A denial issued for this reason is not an initial determination under § 199.10 and is not appealable.

* * * * *

3. Section 199.6 is proposed to be amended by adding new paragraph (b)(4)(xiii).

§ 199.6 Authorized providers.

* * * * *

(b) * * *

(4) * * *

(xii) Hospice programs must be Medicare certified and meet all Medicare Conditions of participation (42 CFR part 418) in relation to CHAMPUS patients in order to receive payment under the CHAMPUS program.

The hospice program can be either a public agency or private organization (or a subdivision thereof) which:

(A) Is primarily engaged in providing the care and services described under § 199.4(e)(19) and makes such services available on a 24-hour basis.

(B) Provides bereavement counseling for the immediate family of terminally ill individuals.

(C) Provides for such care and services in individuals' homes, on an outpatient basis, and on a short-term inpatient basis, directly or under arrangements made by the hospice program, except that the agency or organization must:

(*1*) Routinely supply a substantial amount of the nursing and physician services; medical supplies and appliances; and counseling services for the patient and his or her family.

(*2*) Maintain professional management responsibility for all services which are not directly furnished to the patient, regardless of the location or facility in which the services are rendered.

(*3*) Provide assurances that the aggregate number of days of inpatient care provided in any 12-month period does not exceed 20 percent of the aggregate number of actual days of care during the same period.

(*4*) Have an interdisciplinary group composed of the following personnel who provide the care and services described under § 199.4(e)(19) and establish the policies governing the provision of such care/services:

(*i*) One physician.

(*ii*) One registered professional nurse, and

(*iii*) One social worker.

(*iv*) One pastoral or other counselor.

(*5*) Maintain central clinical records on all patients.

(*6*) Utilize volunteers.

(*7*) In the case of an agency or organization in any state in which state or applicable local law provides for the licensing of agencies or organizations of this nature, is licensed pursuant to such law.

(*8*) The hospice must enter into an agreement with CHAMPUS in order to be qualified to participate and to be eligible for payment under the program. In this agreement the hospice and CHAMPUS agree the hospice will:

(*i*) Not charge the beneficiary or any other person for items or services for which the beneficiary is entitled to have payment made under the CHAMPUS hospice benefit.

(*ii*) Be allowed to charge the beneficiary for items or service requested by the beneficiary in addition to those that are covered under the CHAMPUS hospice benefit.

(*9*) Meet such other requirements as the Secretary of Defense may find necessary in the interest of the health and safety of the individuals who are provided care and services by such agency or organization.

* * * * *

4. Section 199.10 is amended by adding a new paragraph (f).

§ 199.10 Appeal and hearing procedures.

* * * * *

(f) *Appeal rights under hospice benefit.* A beneficiary or provider is entitled to appeal rights for cases involving a denial of benefits in accordance with provisions this section and/or § 199.15.

* * * * *

5. Section 199.14 is amended by redesignating paragraphs (g), (h), (i), (j), and (k) as (h), (i), (j), (k), and (l), adding new paragraph (g).

§ 199.14 Provider reimbursement methods.

* * * * *

(g) *Reimbursement of hospice programs.* Hospice care will be reimbursed at one of four predetermined national Medicare rates based on the type and intensity of services furnished to the beneficiary. A single rate is applicable for each day of care except for continuous home care where payment is based on the number of hours of care furnished during a 24-hour period.

(1) CHAMPUS will use the national Medicare hospice rates for reimbursement of each of the following levels of care provided by or under arrangement with a CHAMPUS approved hospice program:

(i) *Routine home care.* The hospice will be paid the routine home care rate for each day the patient is at home, under the care of the hospice, and not receiving continuous home care. This rate is paid without regard to the volume or intensity of routine home care services provided on any given day.

(ii) *Continuous home care.* The hospice will be paid the continuous home care rate when continuous home care is provided. The continuous home care is divided by 24 hours in order to arrive at an hourly rate.

(A) A minimum of 8 hours of care must be provided within a 24-hour day starting and ending at midnight.

(B) More than half of the continuous home care must be provided by either a registered or licensed practical nurse.

(C) Homemaker and home health aide services may be provided to supplement the nursing care to enable the beneficiary to remain at home.

(D) For every hour or part of an hour of continuous care furnished, the hourly rate will be reimbursed to the hospice up to 24 hours a day.

(iii) *Inpatient respite care.* The hospice will be paid at the inpatient respite care rate for each day on which the beneficiary is in an approved inpatient facility and is receiving respite care.

(A) Payment for respite care may be made for a maximum of 5 days at a time, including the date of admission but not counting the date of discharge.

(B) Payment for the sixth and any subsequent days is to be made at the routine home care rate.

(iv) *General inpatient care.* Payment at the inpatient rate will be made when general inpatient care is provided. None of the other fixed payment rates (i.e., routine home care) will be applicable for a day on which the patient receives general inpatient care except on the date of discharge.

(v) *Date of discharge.* For the day of discharge from an inpatient unit, the appropriate home care rate is to be paid unless the patient dies as an inpatient. When the patient is discharged deceased, the inpatient rate (general or respite) is to be paid for the discharge date.

(2) *Physician reimbursement.* Payment is dependent on the physician's relationship with both the beneficiary and the hospice program.

(i) *Physicians employed by or contracted with the hospice.*

(A) Administrative and supervisory activities (i.e., establishment, review and updating of plans of care, supervising care and services, and establishing governing policies) are included in the adjusted national payment rate.

(B) Direct patient care services are paid in addition to the adjusted national payment rate.

(*1*) Physician services will be reimbursed in accordance with CHAMPUS' allowable charge methodology.

(*2*) Physician payments will be counted toward the hospice cap limitation.

(ii) *Independent attending physician.* Patient care services rendered by an independent attending physician (a physician who is not considered employed by or under contract with the hospice) are not part of the hospice benefit.

(A) Attending physician may bill in his/her own right.

(B) Services will be subject to the appropriate allowable charge methodology.

(C) Reimbursement is not counted toward the cap limitation.

Note: Services provided by an independent attending physician must be coordinated with any direct care services provided by hospice physicians.

(D) The hospice must notify the CHAMPUS contractor of the name of the physician whenever the attending physician is not a hospice employee.

(iii) No payment will be allowed for physician services furnished voluntarily (both physicians employed by and under contract with the hospice and independent attending physicians). Physicians may not discriminate against CHAMPUS beneficiaries; e.g., designate all services rendered to non-CHAMPUS patients as volunteer and at the same time bill for CHAMPUS patients.

(3) *Cap amount.* Each CHAMPUS approved hospice program will be subject to a cap on aggregate CHAMPUS payments from November 1 through October 31 of each year, hereafter known as "the cap period."

(i) The cap amount will be adjusted annually by the percent of increase or decrease in the medical expenditure category of the Consumer Price Index for all urban consumers (CPI–U).

(ii) The aggregate cap amount (i.e., the statutory cap amount times the number of CHAMPUS beneficiaries electing hospice care during the cap period) will be compared with total actual CHAMPUS payments made during the same cap period.

(iii) Payments in excess of the cap amount must be refunded by the hospice program.

Note: The adjusted cap amount will be obtained from the Health Care Financing Administration (HCFA) prior to the end of each cap period.

(iv) Calculation of the cap amount for a hospice which has not participated in the program for an entire cap year (November 1 through October 31) will be based on a period of a least 12 months but no more than 23 months. For example, the first cap period for a hospice entering the program after November 1, 1993, but before November 1, 1994, will have a cap period from November 1, 1993, through October 31, 1995.

(4) *Inpatient limitation.* Payments for inpatient hospice care are subject to a limitation on the number of days of inpatient care furnished to a CHAMPUS patient.

(5) *Hospice reporting responsibilities.* The hospice is responsible for reporting the following data within 30 days after the end of the cap period:

(i) Total number of inpatient days furnished to CHAMPUS hospice patients (both general inpatient and inpatient respite days).

(ii) Total number of CHAMPUS hospice days (both inpatient and home care).

(iii) Total number of beneficiaries electing hospice care. The following rules must be adhered to by the hospice in determining the number of CHAMPUS beneficiaries who have elected hospice care during the period:

(A) The beneficiary must not have been counted previously in either another hospice's cap or another reporting year.

(B) The beneficiary must file an initial election during the period beginning September 28 of the previous cap year through September 27 of the current cap year in order to be counted as an electing CHAMPUS beneficiary during the current cap year.

(C) Once a beneficiary has been included in the calculation of a hospice cap amount he or she may not be included in the cap for that hospice again, even if the number of covered days in a subsequent reporting period exceeds that of the period where the beneficiary was included.

(D) There will be proportional application of the cap amount when a beneficiary elects to receive hospice benefits from two or more different CHAMPUS certified hospices. A calculation must be made to determine that percentage of the patient's length of stay in each hospice relative to the total length of hospice stay.

(*i*) During the 12-month period beginning November 1 of each year and ending October 31, the aggregate number of inpatient days, both for general inpatient care and respite care, may not exceed 20 percent of the aggregate total number of days of hospice care provided to all CHAMPUS beneficiaries during the same period.

(*ii*) Payments in excess of the inpatient limitation must be refunded by the hospice program.

(6) *Reconsideration of cap amount and inpatient limit.* A hospice dissatisfied with the contractor's calculation and application of its cap amount and/or inpatient limitation may request and obtain a contractor review if the amount of program reimbursement in controversy—with respect to the matters which the hospice has a right to review—is at least $1000. The administrative review by the contractor of the calculation and application of the cap amount and inpatient limitation is the only administrative review available. These calculations are not subject to the appeal procedures set forth in § 199.10.

Note: The methods and standards for calculation of the hospice payments rates established by CHAMPUS, as well as questions as to the validity of the applicable law, regulations or CHAMPUS decisions, are not subject to administrative review, including the appeal procedures of § 199.10 of this part.

(7) *Beneficiary cost-sharing.* There are no deductibles under the hospice benefit. CHAMPUS pays the full cost of all covered services for the terminal illness, except for small cost-share amounts of outpatient drugs and inpatient respite care.

(i) The patient is responsible for 5 percent of the cost of outpatient drugs or $5 toward each prescription, whichever is less. Additionally, the cost of prescription drugs (drugs or biologicals) may not exceed that which a prudent buyer would pay in similar circumstances; that is, a buyer who refuses to pay more than the going price for an item or service and also seeks to economize by minimizing costs.

(ii) For inpatient respite care, the cost-share for each respite care day is equal to 5 percent of the amount CHAMPUS has estimated to be the cost of respite care, after adjusting the national rate for local wage differences.

(iii) The amount of the individual cost-share liability for respite care during a hospice cost share period may not exceed the Medicare inpatient hospital deductible applicable for the year in which the hospice cost-share period began. The individual hospice cost share period begins on the first day an election is in effect for the beneficiary and ends with the close of the first period of 14 consecutive days on each of which an election is not in effect for the beneficiary.

* * * * *

Dated: September 2, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN22–1–5724; FRL–4728–1]

Approval and Promulgation of an Implementation Plan for Vehicle Miles Traveled; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposes to conditionally approve a request for a State Implementation Plan (SIP) revision, addressing the Lake and Porter County ozone nonattainment area, submitted by the State of Indiana for the purpose of offsetting any growth in emissions from growth in vehicle miles traveled (VMT) or number of vehicle trips, and to attain reduction in motor vehicle emissions, in combination with other emission reduction requirements, as necessary to comply with Reasonable Further Progress (RFP) milestones and attainment requirements of the Clean Air Act (Act). The implementation plan request was submitted by the State of Indiana to satisfy the statutory mandate that the State submit a SIP revision which identifies and adopts specific enforceable TCMs to offset any growth in emissions from growth in VMT or number of vehicle trips in severe and extreme ozone nonattainment areas. The rationale for the conditional approval is set forth in this document; additional information is available at the address indicated in the **ADDRESSES** section.

DATES: Comments on this proposed action must be received in writing by October 9, 1993. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the State's submittal and U.S. EPA's technical support document are available for inspection during normal business hours at the following location: Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(d)(1)(A) of the Clean Air Act (Act), as amended in 1990, requires States containing ozone nonattainment areas classified as "severe" pursuant to section 181(a) of the Act to adopt transportation control measures (TCMs) and transportation control strategies to offset any growth in emissions from growth in VMT or number of vehicle trips, and to attain reductions in motor vehicle emissions (in combination with other emission reduction requirements) as necessary to comply with the Act's RFP milestones and attainment requirements. The requirements for establishing a VMT Offset program are discussed in the April 16, 1992, General Preamble to Title I of the Act (57 FR 13498), in addition to section 182(d)(1)(A) of the Act.

Section 110(k) of the Act contains provisions governing U.S. EPA's action on SIP submittals. Once found to be complete (or deemed complete by the passage of time), this section authorizes U.S. EPA to take one of three actions on SIP submittals. As provided by section 110(k)(3), if the submittal satisfactorily addresses all of the required VMT Offset elements, the U.S. EPA will grant full approval. U.S. EPA may grant a conditional approval of the submission under section 110(k)(4), however, if the submittal contains: (1) A commitment from the Governor or the Governor's designee to take the required actions; (2) a schedule establishing a date certain for taking the required actions, with the date not being later than one year from the time U.S. EPA will issue a final conditional approval; and (3) evidence that a public hearing was held on the commitments. See July 22, 1992, memorandum from Michael M. Shapiro, Deputy Assistant Administrator for Air and Radiation, entitled "Guidelines for State Implementation Plan (SIP) Submittals Due November 15, 1992." Finally, if the submittal fails to adequately address or commit to address one or more of the mandatory VMT Offset elements, the U.S. EPA must issue a disapproval. A State plan may therefore be approved, conditionally approved or disapproved.

In order to satisfy the applicable requirements, and to gain full approval, section 182(d)(1)(A) requires that a State VMT offset SIP submittal must: (1) Identify and adopt specific enforceable transportation control strategies and TCMs to offset any growth in emissions from growth in VMT or number of vehicle trips; (2) identify and adopt specific enforceable transportation control strategies and TCMs that attain reductions in motor vehicle emissions (in combination with other emission reduction requirements) as necessary to comply with RFP milestones; (3) consider and choose from among the 16 types of measures specified in section 108(f) of the Act and implement such measures as necessary to demonstrate attainment of the National Ambient Air Quality Standards; and (4) ensure adequate access to downtown or other commercial, and residential areas, and ensure that emissions and congestion are reduced rather than relocated.

II. Analysis

The following discussion provides more information on the requirements for full approval, and Indiana's efforts to meet these requirements. Section 182(d)(1)(A) sets forth four requirements that must be met by a VMT Offset SIP. The first and second requirements mandate that the State submit a revision, by November 15, 1992, that identifies and adopts specific enforceable transportation control strategies and TCMs to offset any growth in emissions from growth in VMT or number of vehicle trips in affected areas, and attains reduction in motor vehicle emissions as necessary in combination with other emission reduction requirements of the Act, title I, part D, subpart II to comply with the requirements of section 182(d)(1)(A). This requirement is to ensure that projected motor vehicle volatile organic compound (VOC) emissions will never be greater during the ozone season in any given year than during the preceding year's ozone season. When growth in VMT and vehicle trips would otherwise cause a motor vehicle emissions upturn, that upturn must be prevented. The emissions level at the point of potential upturn becomes a ceiling on motor vehicle emissions.

It should be noted that while the above requirements are simple in concept, their application could encourage areas to delay VMT or emissions reduction measures suitable for use as offsets until the trend in motor vehicle emissions reaches its minimum point and is about to turn upwards. To implement the VMT offset provision while avoiding this counterproductive incentive for delay, U.S. EPA looks for State compliance with the following approach; if projected motor vehicle emissions during the ozone season in one year are not higher than during the ozone season the year before, given the control measures in the SIP, the VMT offset requirement is satisfied. However, if the State plans to implement control measures over and above those specifically required by the Act and those required to demonstrate RFP and attainment, earlier than would be necessary and sufficient to prevent an emissions upturn, a projected subsequent growth-related increase to the level of emissions that would occur if these measures were scheduled later

will not be considered to violate the requirement to offset emissions due to growth in VMT or vehicle trips. The latter situation will be viewed as a temporary reduction in emissions to a level below that required by the provision, rather than an increase above the required level, with no effect on emissions at or after the point at which offsetting measures become essential to compliance.

The U.S. EPA will approve a SIP revision as meeting this provision despite a forecasted upturn in vehicle emissions, as long as motor vehicle volatile organic compound (VOC) emissions in the ozone season of a given year do not exceed a ceiling level which reflects a hypothetical strategy of implementing otherwise specifically required measures on schedule and saving offset measures until the point at which VMT growth would otherwise cause an emission upturn. The ceiling level is therefore defined (up to the point of upturn) as motor vehicle emissions that would occur in the ozone season of that year, with VMT growth, if all measures for that area in that year were implemented as required by the Act. When this curve begins to turn up due to growth in VMT or vehicle trips, the ceiling becomes a fixed value. The ceiling line would include the effects of Federal measures such as new motor vehicle standards, Phase II RVP controls, and reformulated gasoline, as well as Act-mandated SIP requirements such as enhanced inspection and maintenance, the fleet clean-fuel vehicle program, and the employee commute options program. The ceiling line would also include the effect of forecasted growth in VMT and vehicle trips in the absence of new discretionary measures to reduce them. The ceiling line must, in combination with projected emissions from nonvehicle sources, satisfy the RFP requirements for the area. Any VMT reduction measures or other actions to reduce motor vehicle emissions adopted since November 15, 1990 and not specifically required for the area by another provision of the Act would not be included in the calculation of the ceiling line.

Forecasted motor vehicle emissions must be held at or below the minimum level of the ceiling line after the ceiling line reaches its minimum level. If an area implements offset measures early, the forecasted emissions will be less than the ceiling line, and forecasted motor vehicle emissions could increase from one year to the next, as long as forecasted emissions never exceed the ceiling line.

The emissions offset requirements apply to projected emissions during the years between submission of the SIP revision and the statutory ozone national ambient air quality standard (NAAQS) attainment deadline. The State has not met these requirements but has forecasted future travel and emissions levels, has evaluated a number of TCMs and has committed to implement these requirements by adopting specific enforceable measures within one year of U.S. EPA conditional approval.

The third requirement is that the State shall consider TCMs specified in section 108(f) and choose from among and implement such measures as necessary to demonstrate attainment with the NAAQS standards. The State has not met this requirement, but is assessing TCM strategies to offset any growth in emissions from growth in VMT or number of vehicle trips and has committed to implement this requirement by adopting specific enforceable measures within one year of U.S. EPA conditional approval.

The fourth requirement is that the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them. The State has not met this requirement, but has made progress toward forecasting future emissions that would occur from implementing specific TCMs, and has committed to meet this requirement by adopting specific enforceable measures within one year of U.S. EPA conditional approval.

The State of Indiana has not submitted a SIP revision implementing all the requirements relevant to the nonattainment classification of the State's nonattainment areas contained in section 182(d)(1)(A) of the Act. Indiana has, however, projected motor vehicle emissions until the statutory attainment year of 2007 using the most recent population and economic growth projections. Although these projections were not a part of the formal SIP revision submission, the projections have been reviewed in draft by the U.S. EPA. Using current VMT forecasts, these projections show that motor vehicle emissions are not expected to rise above the ceiling level through the year 2007. In addition, Indiana has identified and evaluated a number of specific transportation control measures to reduce single occupancy vehicle usage. These TCMs have also been received in draft and reviewed by U.S. EPA. Several of these identified transportation control measures are currently in the process of being implemented.

The remaining requirements of the VMT offset pertain to the RFP and attainment demonstrations. Indiana is currently preparing the RFP SIP revision submittal and is actively participating in the urban airshed modeling being conducted for the attainment demonstration for the Lake Michigan region. The 1990 to 1996, 15 percent RFP SIP revision request is required by the Act to be submitted by November 15, 1993, (see section 182(b)(1)(A)) and the 3 percent per year RFP and the attainment demonstration SIP revision is required to be submitted by November 15, 1994 (see section 182(c)(2)(A)).

Indiana has made a commitment to adopt each of the required elements and submit these as a SIP revision request within one year of U.S. EPA conditional approval. These commitments were subjected to a public hearing on October 22, 1992. The commitment however, did not include a schedule nor the absolute November 15, 1994, date in the General Preamble to Title I of the Act (57 FR 13498 at 13523) (in the event U.S. EPA grants final conditional approval after November 15, 1993) for the final full submittal. Under section 110(k)(4) of the Act, U.S. EPA may conditionally approve a VMT Offset plan revision if the State commits to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision, and submits a schedule or workplan. Because Indiana did not include a schedule and did not specifically include the November 15, 1994, date for the final submittal as indicated in the General Preamble to Title I, U.S. EPA cannot take final action to conditionally approve the SIP revision until Indiana formally submits these required elements. The submittal with the schedule and November 15, 1994 deadline, with evidence of public hearing, must be submitted to the U.S. EPA before the U.S. EPA takes final action to conditionally approve the commitment, otherwise the SIP revision request must be disapproved. The schedule should include interim milestones such as projection of emissions, evaluation of TCMs and dates for formal submittals such as the RFP analysis including any TCMs necessary to meet the required reduction and the attainment demonstration with any TCMs necessary to meet attainment.

U.S. EPA believes that VMT Offset submittals such as Indiana's are appropriate for conditional approval considerations because section 182(d)(1)(A) of the Act requires that specific, enforceable measures

identified and adopted by the State be submitted by November 15, 1992, along with a demonstration that they are adequate to offset any growth in emissions from growth in VMT or number of vehicle trips, which U.S. EPA interprets to mean adequate to hold vehicle emissions within the emissions ceiling described in the General Preamble to Title I, Section III (A)(5)(d) (57 FR 13498, 13521–13523). The Act also states that these measures, beyond offsetting growth in emissions, shall be sufficient to allow total area emissions to comply with the RFP and attainment requirements. These requirements create a timing problem. Ozone nonattainment areas affected by this provision are not otherwise required to submit SIP demonstrations which would predict attainment of the 1996 RFP milestone until November 15, 1993, and likewise are not required to demonstrate post–1996 RFP and attainment until November 15, 1994. U.S. EPA does not believe that Congress intended the offset growth provisions to advance the dates for these broader submissions. Even without the requirement that the offset growth measures be sufficient to allow overall RFP and attainment in conjunction with other measures, U.S. EPA believes that the November 15, 1992, date might not allow the States sufficient time to develop a set of measures that would comply with the offset growth provisions over the long term.

To solve this timing problem and to allow a more coordinated and comprehensive planning process, U.S. EPA may accept and conditionally approve committal SIP revisions for the offset growth requirements under the authority of section 110(k)(4) of the Act. This could allow States one (1) year from the date of U.S. EPA's final *conditional* approval of the committal SIP revision, but not beyond November, 1994, to submit the full revision containing sufficient measures in specific and enforceable form.

III. Proposed Rulemaking Action

U.S. EPA is proposing to conditionally approve the SIP revision commitment submitted by the State of Indiana, if the State submits a schedule and a date certain (not beyond November 15, 1994) for the full submittal with enforceable measures by the close of the public comment period. If the State does not submit the required schedule and date certain, then U.S. EPA proposes in the alternative to disapprove the SIP revision commitment.

If U.S. EPA takes final conditional approval on the commitment, the State must meet its commitment to adopt the specific enforceable VMT requirements, as necessary, in combination with other emission reduction requirements, and submit these rules to U.S. EPA within the time specified in its schedule but no later than November 15, 1994. If the State fails to adopt or submit the necessary requirements to U.S. EPA within this time frame, this approval will become a disapproval upon U.S. EPA notification of the State by letter. At that time, this commitment will no longer be a part of the approved Indiana SIP. U.S. EPA subsequently will publish a notice in the notice Section of the **Federal Register** indicating that the commitment has been disapproved and removed from the SIP. If the State adopts and submits all necessary rules to U.S. EPA within the applicable time frame, the conditionally approved commitment will remain a part of the SIP until U.S. EPA takes final action approving or disapproving the new submittal. If U.S. EPA approves the new submittal, those newly approved requirements will become a part of the SIP.

If U.S. EPA issues a final disapproval, or if the conditional approval is converted to a disapproval, the sanctions clock under section 179(a) will begin to run. This clock will begin at the time U.S. EPA issues the final disapproval or at the time U.S. EPA notifies the State by letter that a conditional approval has been converted to a disapproval. If the State does not submit and U.S. EPA does not approve the requirements on which the disapproval was based within 18 months of the disapproval, U.S. EPA must impose one of the sanctions under section 179(b)—highway funding restrictions or the offset sanction. In addition, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). Finally, under section 110(m), U.S. EPA has discretionary authority to impose sanctions at any time after a final disapproval or conversion of conditional approval to disapproval.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989 the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on U.S. EPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, U.S. EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, U.S. EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids U.S. EPA to base its actions concerning SIPs on such grounds. See *Union Electric CO. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to disapproval under section 110(k) of the Act, based upon the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the State submittal does not affect its state-enforceability. Moreover, U.S. EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, U.S. EPA certifies that this potential disapproval does not have a significant impact on a substantial number of small entities because it does not remove existing state requirements nor does it substitute a new Federal requirement.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 1, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–22192 Filed 9–9–93; 8:45 am]

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40 CFR Part 52

[CA57–4–6047; FRL–4727–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the South Coast Air Quality Management District (SCAQMD) on September 6, 1991 and on August 2, 1991. The California Air Resources Board (CARB) submitted these revisions to EPA on May 13, 1993 and on June 19, 1992. The revisions concern the following SCAQMD rules: Rule 1151, Motor Vehicle Non-Assembly Line Coating Operations and Rule 1171, Solvent Cleaning Operations. The intended effect of proposing limited approval and limited disapproval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate these rules into the federally approved SIP. EPA has evaluated the revisions to Rules 1151 and 1171 and is proposing a limited approval under provisions of the CAA regarding EPA actions on SIP submittals and general rulemaking authority because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under the CAA provisions cited above because the rules do not meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments must be received on or before October 12, 1993.

ADDRESSES: Comments may be mailed to: Daniel Meer, Rulemaking Section II (A–5–3), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 L Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Chris Stamos, Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1187.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the Los Angeles South Coast Air Basin. 43 FR 8964; 40 CFR 81.305. Because the Los Angeles South Coast Air Basin was unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under pre-amended section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. The Los Angeles South Coast Air Basin did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the SCAQMD portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Los Angeles South Coast Air Basin is classified as extreme;[2] therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on September 14, 1992 and on May 13, 1993 including the rules being acted on in this document.[3] This document addresses EPA's proposed action for Rule 1151, Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations, and Rule 1171, Solvent Cleaning Operations. These submitted rules were found to be complete on July 19, 1993 and on August 27, 1992 pursuant to EPA's completeness criteria, as revised on August 26, 1991 (56 FR 42216) and set forth in 40 CFR part 51, appendix V and are being proposed for limited approval and limited disapproval.

Rule 1151 controls VOC emissions from motor vehicle and mobile equipment refinishing operations, and Rule 1171 controls emissions from solvent cleaning operations. VOCs contribute to the production of ground level ozone and smog. Rules 1151 and 1171 are new rules which have been adopted to meet EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for SCAQMD Rules 1151 and 1171.

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations. Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Los Angeles South Coast Air Basin retained its designation and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] The rule submitted on May 13, 1993 (SCAQMD Rule 1151, Motor Vehicle and Mobile Equipment Non-assembly Line Coating Operations) was substantially similar to earlier VOC rules adopted by SCAQMD, except it added a termination date to an exemption for aerosol containers. After the rule was submitted, other SCAQMD VOC rules that also terminated the aerosol container exemption were invalidated in trial court rulings. See, e.g., *Dunn-Edwards Corp. v. South Coast Air Quality Management District*, No. BC753978, (L.A. Super. Ct. Aug. 21, 1990), *rev'd*, No. B0655562 (2d App. Dist. May 19, 1993). Following these decisions, SCAQMD deleted the invalidated language from its VOC rules, including the rule contained in this rulemaking notice.

To preserve its rights while appealing the trial court decisions, SCAQMD did not hold a public hearing to formally readopt the revised rules. Nevertheless, EPA may approve this rule into the SIP because the deleted provisions are severable from the adopted rule. Moreover, the deletion of language terminating the aerosol container exemption does not create a new regulation; rather, the deletion revives the SCAQMD's original rule (which was fully adopted) that also exempted aerosol containers. See *Board of Osteopathic Examiners* v. *Board of Medical Examiners*, 53 Cal. App. 3d 78, 85, 125 Cal. Rptr. 619, 623–624 (1976).

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents which specify the minimum requirements that a rule must contain in order to be approved into the SIP. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). Submitted Rules 1151 and 1171 control emissions from source categories for which EPA has not issued a CTG. Consequently, these rules were evaluated against the general RACT requirements of the Clean Air Act (section 110 and part D), 40 CFR part 51, *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987* **Federal Register**; May 25, 1988 (EPA's "Blue Book"), and other EPA policy including the EPA Region 9 CARB document entitled, *Guidance Document for Correcting VOC Rule Deficiencies* (April, 1991). In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SCAQMD Rules 1151 and 1171 are new rules which were adopted to control VOC emissions from motor vehicle and mobile equipment refinishing and solvent cleaning operations.

EPA has found that new Rules 1151 and 1171 will strengthen the SIP by controlling previously unregulated source categories in the Los Angeles Air Basin. Although SCAQMD Rules 1151 and 1171 will strengthen the SIP, these rules still contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA. These deficiencies are related to recordkeeping requirements, test method references, control device equivalency, and rule applicability—a detailed discussion of rule deficiencies can be found in the Technical Support Documents for SCAQMD's Rule 1151 and Rule 1171 (dated 4/30/93 and 4/12/93 respectively) which are available from the U.S. EPA, Region 9 office. Because of these deficiencies, the rules are not approvable pursuant to section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of SCAQMD submitted Rules 1151 and 1171 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this NPR have been adopted by the SCAQMD and are currently in effect in the South Coast. EPA's limited disapproval action in this NPR does not prevent the SCAQMD or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

Limited approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. U.S. E.P.A., 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

EPA's limited disapproval of the State request under sections 110 and 301 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state enforceability. Moreover, EPA's limited disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this limited disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures

published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 31, 1993.

John C. Wise,

Acting Regional Administrator.

[FR Doc. 93–22194 Filed 9–9–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[CT–9–1–5895; RI–5–1–5855; A–1–FRL–4727–7]

Approval and Promulgation of Implementation Plans; Connecticut and Rhode Island; Stage II Vapor Recovery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve Section 22a–174–30 of the Connecticut Regulations for the Abatement of Air Pollution entitled "Dispensing of Gasoline/Stage II Vapor Recovery" as a revision to the Connecticut State implementation plan (SIP) for ozone. In addition, EPA is proposing to approve amendments to Rhode Island's Regulation No. 11 entitled "Petroleum Liquids Marketing and Storage" as a revision to the Rhode Island SIP. On January 12, 1993 Connecticut and Rhode Island submitted these regulations to EPA in response to section 182(b)(3) of the Clean Air Act, as amended in 1990, which requires all ozone nonattainment areas classified as moderate or above to adopt regulations which require owners and operators of gasoline dispensing facilities to install and operate Stage II vapor recovery equipment.

DATES: Comments must be received by October 12, 1993.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203.

Copies of the States' submittals and EPA's technical support documents are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA. In addition, Connecticut's submittal is available at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106 and Rhode Island's submittal is available at Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold at (617) 565–3166.

SUPPLEMENTARY INFORMATION: Under section 182(b)(3), EPA was required to issue guidance as to the effectiveness of Stage II systems. In November 1991, EPA issued technical and enforcement guidance to meet this requirement.[1] In addition, on April 16, 1992, EPA published the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) (57 FR 13498). The guidance documents and the General Preamble interpret the Stage II statutory requirement and indicate what EPA believes a State submittal needs to include to meet that requirement.

Under section 182(b)(3) of the amended Act, moderate and above ozone nonattainment areas were required to submit Stage II vapor recovery rules by November 15, 1992. In addition, section 184(b)(2) of the amended Act requires all areas that are located in an ozone transport region (OTR) to adopt Stage II regulations in accordance with section 182(b)(3) or measures that EPA has identified as capable of achieving equivalent reductions to section 182(b)(3) Stage II controls.[2] These measures must be submitted within 1 year of EPA's completion of its Stage II comparability study.

The entire State of Connecticut is designated nonattainment for ozone and is classified as serious, except for the south western portion of the State which is classified as severe. The entire State of Rhode Island is also designated nonattainment for ozone and is classified as serious. See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.307 and 81.340. In addition, both Connecticut and Rhode Island are located in the northeast ozone transport region. See CAA section 184(a). Thus, these States are required to adopt Stage II vapor recovery rules in accordance with sections 182(b)(3) and 184(b)(2) of the amended Act. I11Under section 182(b)(3), moderate and above ozone nonattainment areas are required to adopt regulations requiring owners or operators of gasoline dispensing systems to install and operate vapor recovery equipment at their facilities. Section 182 (b)(3)(A) of the Act specifies that Stage II controls must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer (ISBM)[3], any facility that dispenses more than 50,000 gallons of gasoline per month. As discussed in EPA's Enforcement Guidance, EPA recommends that the applicability determination be based on the average volume of gasoline dispensed per month for the two year period prior to state adoption of the regulation.

The Act also specifies the time by which certain facilities must comply with the State regulation. For facilities that are not owned or operated by an ISBM, these times, calculated from the time of State adoption of the regulation, are: (1) 6 months for facilities for which construction began after November 15, 1990; (2) 1 year for facilities that dispense greater than 100,000 gallons of gasoline per month (based on average monthly througput for the two year period prior to adoption); and (3) 2 years for all other facilities.

In addition, EPA's guidance states that States should require that Stage II systems be tested and certified to meet a 95 percent emission reduction efficiency by using: (1) A method tested and approved by the California Air Resources Board (CARB); (2) a testing program that is equivalent to the CARB program, that will be conducted by the State (or by a third party recognized by the State), and that EPA has approved (is proposing for approval) for incorporation into the SIP; or (3) a system approved by CARB. EPA guidance also states that facilities

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[1] These two documents are entitled "Technical Guidance-Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities" (EPA-450/3-91-022) and "Enforcement Guidance for Stage II Vehicle Refueling Control Programs."

[2] Pursuant to section 184(b)(2), by November 15, 1993, EPA must complete a study identifying control measures capable of achieving emission reductions comparable to those achievable through the section 182(b)(3) Stage II controls. The EPA is in the process of performing that study.

[3] Section 324 of the Act defines an ISBM.

should be required to verify proper installation and function of Stage II equipment through use of a liquid blockage test and a leak test prior to system operation and every five years or upon major modification of a facility (i.e., 75 percent or more equipment change).

Furthermore, EPA's guidance specifies that sources subject to Stage II must maintain the following records on site: (1) A license or permit to install a Stage II system; (2) Stage II system testing results; (3) an equipment maintenance log; (4) training certification files; and (5) inspection and compliance records issued by the state. In addition, facilities not subject to Stage II should maintain files containing the gasoline throughput of the facility.

Connecticut's Stage II Regulations

On January 12, 1993, the Connecticut Department of Environmental Protection submitted to EPA Section 22a–174–30 entitled "Dispensing of Gasoline/Stage II Vapor Recovery." By this action, EPA is proposing to approve this submittal as meeting the requirements of sections 182(b)(3) and 184(b)(2). The EPA has reviewed the State submittal against the statutory requirements and for consistency with EPA guidance. Connecticut's regulation and EPA's evaluation are detailed in a memorandum, dated April 15, 1993, entitled "Technical Support Document–Connecticut–Stage II Vapor Recovery." Copies of that document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this document.

Connecticut's regulation prohibits the transfer of gasoline into a motor vehicle fuel tank at a dispensing facility unless a properly operating Stage II vapor recovery system is used for such transfer. This prohibition applies to the following gasoline dispensing facilities: (1) A facility which begins actual construction of a stationary storage tank after November 30, 1992 and such facility has a throughput of 10,000 gallons or more during any calendar month; (2) a facility for which construction commenced between November 15, 1990 and November 30, 1992 and which has a throughput of 10,000 gallons or more during any one month; (3) a facility for which construction commenced on or before November 15, 1990 and which has a monthly throughput of 100,00 gallons or more calculated based on the highest throughput in a calendar month during the two year period between November 30, 1990 and November 30, 1992; and (4) a facility for which construction commenced on or before November 15, 1990 and which has a monthly throughput of 10,000 gallons or more during any calendar month after November 30, 1992. As previously stated, EPA's Enforcement Guidance specifies that the 10,000 gallon per month applicability cut-off should be based on the average monthly throughput for the two year period preceding adoption. Although some of Connecticut's applicability provisions outlined above are not based on a two year period, these provisions rely on throughput experienced during any one month rather than on an average monthly throughput. The compliance schedule stated in Connecticut's rule is consistent with that required by the Act. Connecticut's regulation does not contain a separate applicability cut-off or compliance schedule for ISBMs.

Consistent with EPA's guidance, Connecticut's regulation requires that facilities install Stage II systems that have been tested and approved by CARB or have been tested and approved by another state using test methods approved by CARB. The State also requires facilities to verify proper installation and function of Stage II equipment through use of a liquid blockage test and a leak test prior to system operation and every five years or upon major system modification of a facility. In addition, Connecticut's regulation requires facilities to maintain various records, such as an equipment maintenance log, in accordance with EPA's guidance. These records must be maintained in a location in the State of Connecticut for not less than five years. Although EPA's guidance states that these records should be kept on site, this difference in Connecticut's rule will not impede enforcement since the rule also requires that records be made available for inspection by the State or EPA.

Rhode Island's Stage II Regulations

On January 12, 1993, the Rhode Island Department of Environmental Management (DEM) submitted to EPA Regulation No. 11 entitled "Petroleum Liquids Marketing and Storage" which had been recently amended to include new Stage II vapor recovery requirements. By this action, EPA is proposing to approve this submittal as meeting the requirements of sections 182(b)(3) and 184(b)(2). The EPA has reviewed the State submittal against the statutory requirements and for consistency with EPA guidance. Rhode Island's regulation and EPA's evaluation are detailed in a memorandum, dated April 7, 1993, entitled "Technical Support Document–Rhode Island–Stage II Vapor Recovery." Copies of that document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this document.

Rhode Island's Regulation No. 11 contains requirements for fixed roof tanks, external floating roof tanks, bulk gasoline terminals, bulk gasoline plants, gasoline dispensing facilities, and gasoline tank trucks. This regulation was first approved into the Rhode Island SIP on May 7, 1981. Since that time, various amendments to this regulation have also been approved into the SIP. See 40 CFR 52.2070. The most recent amendments to this rule include three new definitions in Section 1 of the rule as well as a new section, Section 10, which contains Stage II vapor recovery requirements for gasoline dispensing facilities.

Section 10 requires that all gasoline dispensing facilities constructed or substantially modified after November 15, 1992, as well as all other facilities which have or have had a monthly throughput of greater than 10,000 gallons in any one month after November 1991, install and operate Stage II vapor recovery controls. Although the 10,000 gallon per month applicability cut-off in Rhode Island's rule is based on throughput occurring after November 1991 (approximately one year prior to adoption), rather than two year prior to adoption as stated in EPA's guidance, this difference is not critical since the applicability is based on throughput in any one month, rather than an average monthly throughput. Rhode Island's compliance schedule for installation of Stage II controls is also generally consistent with that required by the Act, except that the 100,000 gallon throughput referenced in the State's compliance schedule is again based on throughput in any one month after November 1991. Rhode Island's regulation does not contain a separate Stage II applicability cut-off or compliance schedule for ISBMs.

Consistent with EPA's guidance, Rhode Island's regulation requires that facilities install Stage II systems which have been approved by CARB. The State also requires facilities to verify proper installation and function of Stage II equipment through use of a liquid blockage test and a leak test prior to system operation and at least once every five years and within thirty days of any major system modification of a facility. In addition, Rhode Island's regulation requires facilities to maintain various records, such as an equipment maintenance log, in accordance with EPA's guidance. Although the State does not require that facilities keep a file of inspection and compliance

reports issued by DEM as stated in EPA's guidance, enforcement of the rule is not impeded since these records are maintained by the State.

Rulemaking Action

Because EPA believes that the State of Connecticut has adopted a Stage II regulation in accordance with sections 182(b)(3) and 184(b)(2) of the Act, as interpreted in EPA's guidance, EPA is proposing to approve Section 22a–174–30 of the Connecticut Regulations for the Abatement of Air Pollution entitled "Dispensing of Gasoline/Stage II Vapor Recovery" as meeting the requirements of sections 182(b)(3) and 184(b)(2). In addition, because EPA believes that the State of Rhode Island has also adopted a Stage II regulation in accordance with sections 182(b)(3) and 184(b)(2) of the Act, as interpreted in EPA's guidance, EPA is proposing to approve amendments to Rhode Island's Regulation No. 11 entitled "Petroleum Liquids Marketing and Storage" as meeting the requirements of sections 182(b)(3) and 184(b)(2).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of 2 years (54 FR at 2222). The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 1, 1993.

Paul Keough,

Acting Regional Administrator, Region I.

[FR Doc. 93–22195 Filed 9–9–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 372

[OPPTS–400069A; FRL–4644–9]

Emergency Planning and Community Right-to-Know; Notice of Availability and Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and reopening of comment period.

SUMMARY: In the **Federal Register** of September 8, 1992, EPA published a proposed rule partially granting a petition to add 80 chemicals and 2 chemical categories to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). The period for accepting comments on the proposed rule ended November 9, 1992. Certain documents relevant to the review of this petition have been added to the public docket subsequent to the close of the public comment period. Additionally, certain information about the basis for listing for one chemical was included in the docket in the support document for the petition review but was not summarized in the discussion of the chemical in the preamble to the proposed rule. This information is summarized in this notice. To assure that the public and other interested parties are able to review and comment on the additional documents and information, EPA is requesting comment on the additional documents and information only. Comments must be confined to the contents of these documents. The Agency will not respond to comments on any other aspect of the petition or the proposed rule.

DATES: Comments must be received by September 27, 1993.

ADDRESSES: Written comments should be submitted in triplicate to: OPPT Docket Clerk, TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460, Attn: Docket Number OPPTS–400069.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop TS–799, 401 M St., SW., Washington, DC 20460, Toll free: 800–535–0202.

SUPPLEMENTARY INFORMATION:

I. Introduction

In response to a petition to add 80 chemicals and 2 chemical categories to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA), EPA proposed to add 68 chemicals and 2 chemical categories that were found to meet the statutory criteria for listing. Alternatively, EPA proposed to add only that subset of chemicals that meet the statutory criteria for listing and are produced in quantities greater than a certain manufacturing threshold.

II. Description of Additional Documents and Information

For certain of the chemicals proposed for addition to section 313, estimates of environmental toxicity were estimated using Quantitative Structure Activity Relationships (QSARs). EPA's QSAR reference manual, which has been publicly available since 1988, was omitted from the public docket for the proposed rule. This document has now been added to the docket (Ref. 1).

Formic acid was proposed for listing based on acute human health effects only. EPA has reviewed a new study (Ref. 2) that became available following

the publication of the proposed rule, and has determined that this study is sufficient evidence for listing formic acid under EPCRA section 313(d)(2)(B) for chronic human health effects. Toxicity data from this study have also been used in the risk assessment for acute exposure for this chemical. This study has now been added to the docket.

Pronamide was proposed for listing based on chronic human health effects. EPA's Office of Pesticide Programs has received and recently completed its evaluation of an additional chronic feeding/oncogenicity study of pronamide in rats. Based on this information, the Office of Pesticide Programs has classified pronamide as a Group B2 compound for carcinogenicity (Ref. 3). EPA considers this to be sufficient evidence to meet the statutory criteria for listing under EPCRA section 313(d)(2)(B). This information has now been added to the docket.

Ethylidene dichloride was proposed for listing based on chronic human health effects (carcinogenicity). The basis for the carcinogenicity finding was summarized in the preamble to the proposed rule. Evidence of other types of chronic toxicity, including hepatotoxicity, renal toxicity, and respiratory effects, was included in the petition review support document, which was entered into the public docket for the proposed rule. However, this evidence of non-cancer chronic human health effects was inadvertently omitted from the discussion of the chemical in the preamble to the proposed rule. The Agency believes that the evidence for non-cancer chronic human health effects, combined with the evidence of carcinogenicity, constitutes sufficient evidence that this chemical meets the statutory criteria for listing under EPCRA section 313(d)(2)(B).

Several chemicals were proposed for listing based on acute human health effects only. Due to the time limitations imposed by the statute and limitations in production information available at the time of EPA's review, EPA was unable for the proposal to conduct exposure assessments for these chemicals. Therefore, EPA assumed for the purposes of the proposal that there are sufficient releases to reasonably anticipate that these chemicals would cause "significant adverse human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries" [Section 313(d)(2)(A)].

EPA has now conducted exposure assessments for the chemicals that were included in the alternative proposal based on evidence of acute human health effects only (Ref. 4). For three of these chemicals (formic acid, bis(2-chloroethoxy)methane, and methyl chlorocarbonate), the exposure analyses indicate that concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA has also conducted an exposure assessment for one chemical, crotonaldehyde, that was included in the alternative proposal based on evidence of ecotoxicity (Ref. 5). Based on this exposure analysis and crotonaldehyde's moderate ecotoxicity, the Agency does not believe in its judgment that the chemical satisfies the criterion of section 313(d)(2)(C). These exposure assessments, as well as the chemistry data (Ref. 6) and release estimates (Ref. 7) underlying them, have now been added to the docket. In addition, the Agency's ecological assessment of several chronic aquatic studies on crotonaldehyde was omitted from its support document and has now been added to the docket (Ref. 8).

III. Rulemaking Record

The documents listed under Unit IV. of this document are available for viewing and photocopying in the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. TSCA NCIC is located at EPA Headquarters, Rm. E–G102, 401 M St., SW., Washington, DC.

IV. References

(1) U.S. EPA. 1988. Estimating Toxicity of Industrial Chemicals to Aquatic Organisms Using Structure Activity Relationships. EPA Publication #560/6–88–001.

(2) National Toxicology Program (NTP). 1992. NTP Technical Report on Toxicity Studies of Formic Acid (CAS No: 64–18–6) Administered by Inhalation to F344/N Rats and B6C3F1 Mice. NTPTOX 19, NIH Publication 92–3342. Research Triangle Park, NC.

(3) U.S. EPA/OPPTS/HED to SRRD. 1993. Memorandum from Nguyen B. Thoa, Ph.D., and Esther Rinde, Ph.D., Health Effects Division, to Robert Taylor, Registration Division, and Lois Rossi and Karen Farmer, Special Review and Reregistration Division. "Carcinogenicity Peer Review of Pronamide (3rd)."

(4) U.S. EPA/OPPT/EETD. 1993. "Final Exposure Report for the Proposed TRI Chemicals," Mary Ryan.

(5) U.S. EPA/OPPT/EETD. 1993. Memorandum from Bob Boethling, Chief, Environmental Fate Section, to David Brooks. "Reachscan/PDM Analyses for Crotonaldehyde."

(6) U.S. EPA/OPPT/EETD. 1993. "Final Chemistry Report for Formic Acid, Methyl Mercaptan, Methyl Chlorocarbonate, p-Chloro-m-cresol, and bis (2-Chloroethoxy)methane," Steven DeVito.

(7) U.S. EPA/OPPT/EETD. 1993. "Release Assessment for the Proposed RCRA Chemicals," Paul Quillen.

(8) U.S. EPA/OPTS/HERD to CCD. 1992. Memorandum from Maurice Zeeman, Ph.D., Chief, Environmental Effects Branch, to John Schaeffer, Program Manager, Chemical Testing and Information Branch. "Review of Daphnid Flow-Through Life-Cycle and Fathead Minnow Flow-Through Early Life Stage Chronic Toxicity Tests, Using Crotonaldehyde."

Dated: September 3, 1993.

Mark Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93–22189 Filed 9–9–93; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[Docket No. 920545–2145; I.D. 083193B]

Endangered and Threatened Species; Endangered Status for Sacramento River Winter-Run Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: New information and reopening of comment period.

SUMMARY: Based on new information about the 1993 spawning of winter-run chinook salmon, NMFS is reopening the comment period on the proposed rule to reclassify this species from threatened to endangered under provisions of the Endangered Species Act (ESA).

DATES: Comments should be received by October 12, 1993.

ADDRESSES: Comments should be addressed to Dr. William Fox, Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Margaret Lorenz, Office of Protected Resources, NMFS, (301) 713–2322 or Jim Lecky, Southwest Region, NMFS, (310) 980–4015.

SUPPLEMENTARY INFORMATION: On June 19, 1992 (57 FR 27416), NMFS published a proposed rule to reclassify Sacramento River winter-run chinook salmon from threatened to endangered under the ESA. On June 4, 1993, NMFS published a notice (58 FR 31688) delaying for up to 6 months its final determination on whether to reclassify this species in order to obtain and evaluate additional information on the 1993 spawning run.

Based on counts of fish passing the Red Bluff Diversion Dam, the California Department of Fish and Game (CDFG) estimates that the 1993 Sacramento River winter-run chinook salmon spawning run size is 341 adults. This represents a slight decline in one generation from the 1990 run, which was estimated at 441 adults, and a substantial decline from the 1992 run-size estimate of 1,180 adults. CDFG conducted numerous aerial surveys of redd (nest) counts in the Sacramento River during the winter-run chinook's spawning period, and observed an unusually large number of redds (about 110) due to excellent viewing conditions in the river. Based on these surveys, almost all winter-run chinook salmon redds appear to be located in a reach of the river, between Jelly's Ferry and Ball's Ferry, where the Bureau of Reclamation will be able to control water temperatures during the critical incubation and fry emergency stages in 1993. NMFS invites comments on this new information before making a final determination on whether to reclassify winter-run chinook salmon.

List of Subjects

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

(Authority: 16 U.S.C. 1531–1543)

Dated: September 3, 1993.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources.

[FR Doc. 93–22120 Filed 9–9–93; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 174
Friday, September 10, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Exemption of the Cache Creek Timber Salvage, Boise National Forest, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that timber salvage harvest and reforestation activities to recover and rehabilitate natural resources from recent insect epidemics on the Cache Creek project area, Lowman Ranger District, Boise National Forest, are exempt from appeal in accordance with 36 CFR 217.4(a)(11).

DATES: September 10, 1993.

FOR FURTHER INFORMATION CONTACT: Mark Sigrist or Dautis Pearson, Lowman Ranger District, Boise National Forest, HC 77 Box 3020, Lowman, ID 83637, Telephone: 208–259–3361.

SUPPLEMENTARY INFORMATION: Several years of drought in southwest Idaho have reduced soil moisture and weakened conifer trees. Consequently, Douglas-fir bark beetle populations have dramatically increased and reached epidemic levels on the Boise National Forest. It is estimated that more than 400,000 trees larger than 12 inches in diameter have died on the Forest as a result of insect damage since 1986.

As part of the effort to recover and rehabilitate natural resources damaged by the insect epidemic, Lowman Ranger District personnel have developed a proposal to harvest dead and dying timber, and reforest damaged acres. The Forest Service has completed the Cache Creek Salvage Environmental Assessment (EA). Issues have been identified, alternatives have been developed and an analysis of the effects of implementing timber salvage and other recovery activities is complete.

The analysis area for the Cache Creek Salvage is located about 16 miles north of Lowman, Idaho. The Forest would salvage trees dead or dying from the bark beetles epidemic on 950 acres and recover approximately 4.0 million board feet (MMBF), 100 percent helicopter systems. The Douglas-fir beetle infestation has created several open areas of dead and dying trees. Salvage of these stands would result in "salvage openings," resembling clearcuts. A total of 100 acres of salvage opening would be created. These openings would range in size from 5 to 25 acres. These acres would be rehabilitated by planting with ponderosa pine and Douglas-fir, to increase the sites' timber productivity, resilience and diversity of forest stands. Natural regeneration would be used to reforest small areas (less than five acres in size).

No new road construction would occur Construction of approximately 1,000 feet of temporary road to access unit 8, and light reconstruction of approximately 10 miles of existing road. After harvest 8 miles of road would be closed and reclaimed. The project would have 4 helicopter landings. One landing exists, two landings will need light reconstruction and one new landing would be built. Management direction for the Bear Valley Management Area is established in the Boise National Forest Land and Resource Management Plan (Forest Plan). The proposed project is not within an Inventoried Roadless Area nor is it within areas considered for wilderness in the Forest Plan, nor within areas recommended for wilderness in the recent legislative proposal entitled "Idaho Wilderness, Sustainable Forests and Communities Act of 1993".

The Forest Plan provides for the removal of salvage timber from lands within the project area. In addition, the Forest Plan prescribes standards to protect soil, water, wildlife, visual, and other onsite resources. The proposed action for the Cache Creek Salvage project is consistent with standards and guidelines, objectives, and direction contained in the Forest Plan.

Forest Pest Management Specialists and District Foresters have analyzed the insect situation and have found no economical or practical means to control the current insect epidemic. Although salvage harvesting and reforestation would not control the epidemic, these activities would: (1) Recover valuable timber that would otherwise deteriorate, (2) reforest those areas that have been left without tree cover as a result of the insect-caused mortality, and (3) disrupt beetle breeding cycles by pheromone baiting into the epicenters. Through the timber salvage operations, breeding insects can be removed in the logs and Knutson-Vandenburg (K–V) funds can be generated for use to restore forest resources that have been damaged by the insect epidemic.

The Forest Supervisor has determined through preliminary scoping and environmental analysis that there is justification to expedite this project.

The decision for the Cache Creek Salvage project may be implemented after publication of this notice in the **Federal Register** and after the decision has been signed by the responsible official. If the project is delayed because of an appeal (delays of up to 150 days are possible), it is likely that much of the salvage harvest could not be implemented during the 1993 normal operating season. This would result in a loss of an estimated 2.0 MMBF with an associated value of $200,000 due to deterioration. The total estimated value of the merchantable dead, dying and unhealthy timber is $400,000. Of this, approximately $100,000 would be returned to counties from 25 percent fund receipts. Delays resulting from appeals could cause the loss of up to half of this value and potentially make the salvage sale unattractive to timber purchasers. This would jeopardize the objectives of the recovery and rehabilitation project.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt the Warmfork Salvage Project, Lowman Ranger District, Boise National Forest, from appeal. The environmental assessment discloses the effects of the proposed actions on the environment and addresses issues resulting from the proposal.

Dated: September 2, 1993.

Robert C. Joslin,

Deputy Regional Forester, Intermountain Region, USDA Forest Service.

[FR Doc. 93–22119 Filed 9–9–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of the Rainbow Meadows Recovery Project, Dixie National Forest, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that decisions to implement timber salvage and sanitation, tree baiting, and reforestation projects to rehabilitate and recover natural resources from recent spruce beetle attack (in the Rainbow Meadows area of the Cedar City Ranger District of the Dixie National Forest) are exempted from appeal as per provisions of 36 CFR 217.4(a)(11).

DATES: September 10, 1993.

FOR FURTHER INFORMATION CONTACT: Ronald S. Wilson, District Ranger, Dixie National Forest, P.O. Box 627, Cedar City, Utah 84720, (801) 865–3200.

SUPPLEMENTARY INFORMATION: Several years of drought in southern Utah have reduced soil moisture and added to the weakened condition of large spruce trees on the Cedar City Ranger District of the Dixie National Forest. This factor in combination with the high stocking and generally continuous mature spruce forest on the District has made a situation conducive to spruce beetle buildup.

The warm spring of 1992 and heavy winter snow of 1993 provided ideal conditions for spruce beetle population development, resulting in substantial buildups of spruce beetle from 1991–1993.

As part of the effort to rehabilitate and recover timber resources damaged by the insect population buildup, the Cedar City Ranger District is proposing to: (1) Salvage dead, dying and spruce beetle infested spruce; (2) remove additional live spruce trees necessary to reduce, forest susceptibility levels to future spruce beetle attack; (3) salvage blow down spruce within 1–3 years following the initial entry, and; (4) bait and trap spruce beetles to designated locations to further interrupt their life cycles with the Rainbow Meadows area. To establish a new forest as quickly as possible, reforestation of 225 acres would be completed in areas that have been heavily impacted by spruce beetle mortality.

A district ID team has completed the NEPA process to identify issues, develop alternatives and to analyze the effects of implementing proposed recovery activities. This process has resulted in the completion of an environmental assessment documenting the analysis of the proposed action.

The project area is located approximately 14 air miles east of Cedar City, Utah, and 4 air miles southeast of Brian Head Ski area. The project area is approximately 841 acres; 605 acres are estimated to be forested and 236 acres are nonforest. The forest type is Englemann spruce and subalpine fir, with scattered aspen patches. Utah State Highway 143 splits this project area into nearly equal halves, north and south. Included in the project area are all, or portions, of the following legal locations: T36S R8W Sections 30 and 31, T36S R9W Sections 13 and 24; Salt Lake Meridian.

It is estimated that spruce beetle has killed 60–90% of the mature spruce on 225 acres of the 605 forested acres. Within these acres the proposed action would salvage dead, dying and spruce beetle infested trees. By removing spruce beetle infested trees, spruce beetle populations would be reduced, and the population cycle disrupted. These acres with heavy spruce beetle mortality are now considered to be unstocked openings. To bring these areas back to a stocked condition these areas would be partially or fully planted back to spruce, with natural regeneration of subalpine fir and aspen.

Approximately 380 acres in the project area have mortality from spruce beetle ranging from 0–30%. Mortality has increased substantially within these areas in the past year. Within the 380 acres that have light mortality levels, enough large trees remain in the stands to support continued spruce beetle population buildup. Any further losses of this spruce component would result in substantial losses from the standpoint of visual quality, wildlife habitat and forest health in this already heavily impacted spruce beetle area.

Of the 380 lightly affected acres, 270 acres would be commercially treated to remove dead, dying and spruce beetle infested trees. In addition to this salvage treatment, these acres would be treated through sanitation treatments removing selected spruce trees to reduce risk to future beetle infestation. This additional sanitation treatment is considered critical to forest health due to the adjacency of other spruce beetle populations within areas that are inaccessible or not expected to be treated due to their location within Cedar Breaks National Monument or the Ashdown Gorge Wilderness Area.

The remaining 110 acres of the 380 acres that have light spruce beetle populations would not be commercially treated with a timber harvest. These acres are not in low to moderate spruce beetle susceptible stands (mainly due to species mix), and would be treated with on-site tree destruction, only. In these areas spruce beetle infested trees would be felled, bucked up into 18 inch pieces and burned or covered in plastic to kill the insect brood. If plastic is used, it would be removed the field season following the action.

Within the total 495 acres to be commercially treated with a commercial timber harvest, followup salvage of blowdown and newly infested spruce beetle trees would be completed within 1–3 years following the initial entry. On the remaining 110 acres, any blow down or newly infested trees would be destroyed on site within 1–3 years.

Baits and trap trees would be used as necessary over the next 1–3 years within this project area to assist in further spruce beetle population reduction and life cycle disruptions. It is expected that no more than 15 additional acres would be impacted by bait and trap tree work.

To complete this operation approximately 1.2 miles of existing roads would require reconditioning. An additional 1 mile of temporary road would be constructed; these temporary roads would be rehabilitated, and revegetated, following treatment.

Management direction for the Rainbow Meadows area is established in the Dixie National Forest Land and Resource Management Plan (DNF–LRMP). The DNF–LRMP provides for the removal of salvage timber from lands within the project area, as well as the prevention of future losses of forests by spruce beetle infestations. In addition, the plan describes standards and guidelines which must be observed when harvesting timber to protect soil, water, wildlife, visual quality, and other resources. The proposed action for the Rainbow Meadows Recovery Project is consistent with the standards and guidelines contained in the DNF–LRMP.

The Regional entomologist has analyzed the insect situation and has assisted in the design of the rehabilitation and recovery process defined in the proposed action. The rehabilitation and recovery activities would: (1) Reduce spruce beetle populations and break up the insect life cycle; (2) reduce the risk of further deterioration of visual quality along Utah State Highway 143 (a Scenic By-way), wildlife habitat and forest health by reducing forest susceptibility to future bark beetle attach; (3) Rehabilitate affected areas to provide the most rapid progression toward the desired future condition; (4) reduce wildfire fire hazards and fuel loading, and; (5) recover the value of timber products in the project area that would otherwise be lost.

The Forest Supervisory has determined, through scoping and

environmental analysis, that there is good cause to expedite this project.

The decision for the Rainbow Meadows recovery project may be implemented after publication of this notice in the **Federal Register** and after the decision document has been signed by the responsible official. If the project is delayed because of appeals it is likely that beetle flight would occur before described actions can be implemented. This could result in the loss of many additional large spruce trees within the area. Volume and value lost due to insect damage could easily double within the next few months (value relates to both sawtimber deterioration and loss of visual quality).

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeals the decision relating to salvage and sanitation harvest, tree baiting, and restoration of lands affected by spruce beetle in the Rainbow Meadows project area of the Cedar City Ranger District, Dixie National Forest. The environmental assessment discloses the effects of the proposed action on the environment and addresses the issues resulting from the proposal.

Dated: September 2, 1993.

Robert C. Joslin,

Deputy Regional Forester, Intermountain Region, USDA, Forest Service.

[FR Doc. 93–22121 Filed 9–9–93; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 12 p.m. and adjourn at 5 p.m. on Thursday, September 30, 1993, at the Council Chambers, Leon County Courthouse, 301 South Monroe Street, in Tallahassee. The purpose of the meeting is to discuss the status of the Commission and the Advisory Committee, to review problems and progress in civil rights throughout the State, and to update and discuss the current project. In addition, the Committee will receive information from the community on racial and ethnic tensions in Florida (Tallahassee).

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Bradford Brown, 305–361–4991, or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 1, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–22039 Filed 9–9–93; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Illinois Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Illinois Advisory Committee to the Commission will be held from 9 a.m. to 5 p.m. on Thursday, September 30, 1993, and Friday, October 1, 1993, from 9 a.m. to 1 p.m. at the Midland Hotel, 172 West Adams Street, Chicago, Illinois. The purpose of the meeting is to discuss current issues, orient members, plan future activities, and hold a press conference to release the Advisory Committee's report, *Police Protection of the African American Community in Chicago.*

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Faye M. Lyon, 815–965–9595, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 1, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–22040 Filed 9–9–93; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Oregon Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will be held on September 23, 1993, from 1 p.m. to 4 p.m., at the Red Lion Hotel—Columbia River, 1401 North Hayden Island Drive, Portland, Oregon 97217. The purpose of the meeting is to discuss the Advisory Committee's report on hate group activity in Oregon and to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Jeannette V. Pai, 503–378–5336, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 1, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–22041 Filed 9–9–93; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Project I.D. No. 06–10–94003–01]

Business Development Center Applications: Dallas/Fort Worth MBDC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $368,020 in Federal funds. An audit fee of $9,201 has been added to the Federal amount (applicable only for non-CPA firms. CPA firms are audited by the Office of Inspector General). The total funding breakdown is as follows: $377,221 Federal and $66,568 non-Federal for a total of $443,789. The period of

performance will be from March 1, 1994 to February 28, 1995. The MBDC will operate in the Dallas/Fort Worth, Texas MSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially be regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

If the MBDC performs satisfactorily, it may continue to operate after the initial competitive year for up to 2 additional budget periods. An MBDC with year-to-date "commendable" and "excellent" performance ratings (28 consecutive months) may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal Laws and Department of Commerce policies, regulations, and procedures applicable to Federal assistance financial awards.

Consistent with OMB Circular A–129, "Policies for Federal Credit Programs and Non-tax Receivables," no award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to DoC are made.

Notification that a false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are currently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's managements honesty or financial integrity. Notification that if applicants incur any costs prior to an award being made they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may have received, there is no obligation on the part of DOC to cover pre-award costs.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreement" and CD–511, the "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered by Transactions and Lobbying".

CLOSING DATE: The closing date for applications is November 10, 1993. Applications must be postmarked on or before November 10, 1993.

Note: Please mail completed application to the following address: Dallas Regional Office, 1100 Commerce St., room 7B23, Dallas, Texas 75242.

FOR ADDITIONAL INFORMATION REGARDING THIS SOLICITATION: Dallas Regional Office, 1100 Commerce Street, room 7B32, Dallas, Texas 75242, Attn: Demetrice Jenkins. (214) 767–8001

Requests for applications kit must be in writing.

A pre-bid conference will be held on October 8, 1993 in the Earl Cabell Federal Building, room 7B23, on 1100 Commerce Street, Dallas, Texas at 10 a.m.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Dated: September 3, 1993.

Bobby Jefferson,

Acting Regional Director, Dallas Regional Office.

[FR Doc. 93–22122 Filed 9–9–93; 8:45 am]

BILLING CODE 3510–21–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list

SUMMARY: This action adds to the Procurement List commodities, military resale commodities and services to be furnished bynonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 12, 1993.

ADDRESSES: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 30, June 18, July 16, 23 and 30, 1993, the Committee for Purchase from People Who Are Blind or Severely Disabled published notices (58 FR 26125, 33622, 38364, 39527 and 40800) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, military resale commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities, military resale commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities, military resale commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities, military resale commodities and services.

3. The action will result in authorizing small entities to furnish the commodities, military resale commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities, military resale commodities and services proposed for addition to the Procurement List. Accordingly, the following commodities, military resale commodities and services are hereby added to the Procurement List:

Commodities

Line, Multi-Loop
1670–01–062–6302
Carrier Wheel Assembly
5340–01–000–8752
Folder, IRS Tax Form
Document No. 6981

Military Resale Commodities

Sweatshirt, Private Label
M.R. 630
M.R. 632
Sweatpants, Private Label
M.R. 631
M.R. 633

Services

Janitorial/Custodial, Department of Energy, Child Care Development Center, Germantown, Maryland.
Janitorial/Custodial, Army Depot, Corpus Christi, Texas.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–22204 Filed 9–9–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities, military resale commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 12, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities, military resale commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities, military resale commodities and service to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the commodities, military resale commodities and service.

3. The action will result in authorizing small entities to furnish the commodities, military resale commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities, military resale commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities, military resale commodities and service have been proposed for addition to the Procurement List for production by the nonprofit agency listed:

Commodities

Sweatshirt, Hooded
8415–00–NIB–0012 Large
8415–00–NIB–0013 Extra Large
8415–00–NIB–0014 Medium
Sweatshirt, Crewneck
8415–00–NIB–0015 Large
8415–00–NIB–0016 Extra Large

8415–00–NIB–0017 Medium
Trousers, Sweat
8415–00–NIB–0018 Large
8415–00–NIB–0019 Extra Large
8415–00–NIB–0020 Medium
(Requirements for the U.S. Military Academy, West Point, NY)
Nonprofit Agency: Blind Industries and Services of Maryland Baltimore, Maryland at its facility in Salisbury, Maryland

Military Resale Commodities

Knife, Paring
M.R. 870
Knife, Steak/Utility
M.R. 871
Knife, Slicer
M.R. 874
Nonprofit Agency: Tampa Lighthouse for the Blind, Tampa, Florida

Service

Janitorial/Custodial, Bonneville Power Administration, Kalispell Maintenance Complex, 2520 Highway #2 East, Kalispell, Montana.
Nonprofit Agency: Flathead Industries for the Handicapped Kalispell, Montana.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–22205 Filed 9–9–93; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting

AGENCY: Office of the Deputy Under Secretary of Defense (Environmental Security), DoD.

ACTION: Notice of business meeting and hearing.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a business meeting and hearing of the Defense Environmental Response Task Force. The purpose of the meeting is to monitor the progress of relevant Federal and State agencies in implementing the reported recommendations of the previous task force and to discuss ways to expedite and improve environmental response actions at military installations that are being closed or realigned pursuant to Public Law 100–536 and Public Law 101–510. Testimony will be taken from invited witnesses. The business meeting and hearing will be open to the public. Public witnesses desiring to speak before the Task Force should contact LTC William Andrews, USA, Task Force Executive Director, and prepare a written statement which can be summarized orally before the Task Force at the time to be fixed for public witnesses. Written statements must be received by the close of business, September 16, 1993, at the Office of the Deputy Under Secretary of Defense (Environmental Security).

DATES: September 23, 1993, 9 a.m.–5 p.m., September 24, 1993, 9 a.m.–12 p.m.

ADDRESSES: Krueger Conference Center Auditorium, PRC/Environmental Management Inc., 1505 PRC Drive, McLean, Virginia 22102.

FOR FURTHER INFORMATION CONTACT: LTC William Andrews, USA, Task Force Executive Director, Office of the Deputy Under Secretary of Defense (Environmental Security), RM–3C771, the Pentagon, Washington, DC 20301–8000, telephone (703) 697–9793.

Dated: September 3, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–22107 Filed 9–7–93; 9:38 am]

BILLING CODE 5000–04–M

Department of the Army

Proposed Revision to DOD 4500.34R, Personal Property Traffic Management Regulation, Appendix A, Tender of Service, the Total Quality Assurance Program (TQAP) Pamphlet

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC) will revise the TQAP pamphlet, dated February 1992 and the DOD 4500.34R, Personal Property Traffic Management Regulation, Appendix A, TOS, paragraph 52.e, to require carriers to furnish the DD Form 1840 to the origin PPSO within 75 calendar days of delivery.

DATES: October 12, 1993.

ADDRESSES: Comments on the proposed revision should be addressed to Headquarters, Military Traffic Management Command, ATTN: MTOP–QEC, 5611 Columbia Pike, room 629, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Betty Wells, MTOP–QEC, (703) 756–1598.

SUPPLEMENTARY INFORMATION: This action is being taken to better streamline the TQAP procedures by removing the middle-man in the DD Form 1840 process. The revised paragraph 52.3 will read as follows: "I shall furnish the origin PPSO a copy of the DD Form 1840 within 75 calendar days of shipment delivery."

TQAP pamphlet, paragraph C.4.c.(8), page 24, will be changed to read: (8) Carriers will provide a copy of the DD Form 1840 to the origin PPSO within 75 calendar days of delivery of the shipment. The PPSO will sign and return by mail a receipt if a self addressed stamped card or letter of transmittal is included by the carrier."

All references in the TQAP pampblet which direct the destination PPSO has having the responsibility of returning the DD Forms 1840 to origin will be changed to coincide with the above paragraph change.

Guidance will be published in the TQAP procedures indicating shipments are normally scored after 120 days of delivery. This will allow the origin PPSO ample time to not only receive the DD Form 1840 from the carrier, but the DD Form 1780 and if availabe, a copy of the DD Form 1840–R. Origin PPSOs will be cautioned to allow carriers the maximum amount of time from delivery to return the DD Form 1840 before shipments are scored. Paragraph C.5. will recommend scoring to be done as soon as possible after the origin receives the DD Form 1840 and the feedback or DD Form 1780 from the destination.

Since these changes will directly involve the carrier industry, MTMC requests public comment on the proposed revisions. MTMC is providing notice of these proposed revisions and offering a 30-day period for receiving and considering the views of all interested parties. Timely written comments will be reviewed and considered for incorporation prior to publication of the final change.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–22147 Filed 9–9–93; 8:45 am]

BILLING CODE 3710–08–M

Policy Change Concerning the Transloading of Department of Defense Arms, Division 1.1, 1.2, 1.3 Ammunition and Explosives

AGENCY: Military Traffic Management Command, DoD.

ACTION: Notice.

SUMMARY: Military Traffic Management Command (MTMC) is proposing that transloading of arms, division 1.1, 1.2, and 1.3 ammunition and explosives shipments be kept to a minimum and be performed in bona fide terminals or carriers facilities. In the case of truckload shipments, these commodities will not be offloaded or transferred en route except in cases of emergencies. In the case of less-than-truckload shipments, transloading will be kept to a minimum and performed only in a bona fide terminal or carrier facility. "The Agreement between the Military

Traffic Management Command and Motor Common Carriers Governing the Transportation of Ammunition and Explosives, Class A and B for and on behalf of the U.S. Department of Defense" will be amended to include the following: "Section 7. Safety and Security.

g. Shipments of division 1.1, 1.2 and 1.3 explosives will be moved in direct single line service, as outlined in Section 2 (Rules: Security Services) of the MTMC Freight Traffic rules Publication No. 1A. Truckload shipments of division 1.1, 1.2, 1.3 explosives will not be offloaded or transferred to another vehicle en route, except in emergencies (as defined in 49 Code of Federal Regulations (CFR) 390.5). On less-than-truckload shipments, loading and unloading of explosives will be kept to a minimum and will be performed in a bona fide terminal or carrier facility. If transloading less-than-truckload shipments is necessary, or if there is a change in equipment or driver after a shipment leaves origin, all drivers, tractors, and trailers must meet or exceed the inspection requirements of DD Form 626 (Motor Vehicle Inspection Report and 49 CFR). In addition, upon transloading the shipment, the carrier accepts liability for the integrity of the shipment and its blocking and bracing. Any failure to comply with the aforementioned will be cause for carrier performance action."

DATES: Comments must be received on or before October 12, 1993.

ADDRESSES: Submit written, signed, comments to the Military Traffic Management Command, ADCSOPS–Quality, 5611 Columbia Pike, Falls Church, Virginia 22041–5050.

FOR FURTHER INFORMATION CONTACT:

Ms. Shirley Stachkunas, ADCSLOPS–Quality, Evaluation Division, (703) 756–1292.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–22045 Filed 9–9–93; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Anacostia River and Tributaries, District of Columbia and Maryland Feasibility Study

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Baltimore District, U.S. Army Corps of Engineers is investigating the feasibility of the construction of fish and wildlife restoration actions in the Anacostia River Basin. The environmental integrity of much of the Anacostia River and its tributaries has been severely degraded by urbanization and previous construction of Federal projects to meet flood control and navigation needs. The feasibility study of the potential restoration actions is being conducted under authority of a U.S. House of Representatives Committee on Public Works and Transportation resolution adopted September 8, 1988. The non-Federal sponsors for the feasibility phase of the project are: Montgomery County, Prince George's County, the District of Columbia, the State of Maryland, and the Interstate Commission on the Potomac River Basin, and the Metropolitan Washington Council of Governments.

ADDRESSES: Project Manager, Baltimore, District, U.S. Army Corps of Engineers, ATTN: CENAB–PL–PR, P.O. Box 1715, Baltimore, Maryland 21203–1715.

FOR FURTHER INFORMATION CONTACT: Mr. Mark McKevitt, Project Manager (410) 962–2650.

SUPPLEMENTARY INFORMATION: 1. The U.S. House of Representatives, Committee on Public Works and Transportation, authorized the Anacostia River and Tributaries study in a resolution adopted on September 8, 1988. The resolution requested the Board of Engineers for Rivers and Harbors to determine if further improvements for flood control, navigation, erosion, sedimentation, water quality and other related water resources needs are advisable on the Anacostia River and tributaries.

2. The Anacostia River basin is a 170-square mile sub-basin of the Potomac River. Headwaters of the Anacostia River are in the piedmont and coastal plain areas of Montgomery and Prince George's Counties, Maryland and it joins with the Potomac River in the District of Columbia. The entire river system is freshwater; although, the tidal influence extends for approximately 8 miles above the confluence with the Potomac River.

The environmental integrity of much of the Anacostia River and its tributaries has been severely degraded by urbanization and previous construction of Federal Works to meet flood control and navigation needs. However, portions of the upper reaches of some of the tributaries are relatively undisturbed and contain unique environmental reaches for this watershed.

3. The Corps of Engineers involvement in the basin dates back more than 115 years and includes projects and programs for navigation, flood control, debris removal and aquatic vegetation control. These Federal actions have served their intended purposes well and have benefited the area in terms of improved navigation and reduced flood damages. However, from 1902 through the 1960's project construction eliminated approximately 2,600 acres of wetlands, 99,000 linear feet of aquatic habitat and 700 acres of bottomland hardwoods. These ecosystems performed numerous beneficial ecological functions for the Anacostia basin and associated Potomac River and Chesapeake Bay. One of the primary functions of these ecosystems is fish and wildlife habitat. Historically the Anacosita River basin contained a diverse assemblage of fish and wildlife species. However, populations of many species have sharply declined due to the habitat loss and degradation in the Anacostia basin.

4. For each of the following actions various restoration alternatives will be considered, including the No Action alternative. A summary of the proposed restoration action are as follows:

Site	Action	Target stream	Location
Wetland Restoration:			
Kingman Lake	WR	Anacostia River	Washington, DC.
River Fringe Wetlands	WR	Anacostia River	Washington, DC.
Fordham Street Wetland	WR	Northwest Branch	Prince George's Co.
Acquatic Restoration:			
NW Branch-PG Co	SR	Northwest Branch	Prince George's Co.
Tanglewood Retrofit	WR/SM/SR	Little Paint Branch	Montgomery Co.
Snowden's Mill I	WR/SM/SR	Paint Branch	Montgomery Co.
Snowden's Mill II	WR/SM/SR	Paint Branch	Montgomery Co.
Stewart/April Lane	WR/SM/SR	Paint Branch	Montgomery Co.

Site	Action	Target stream	Location
Lockridge Drive	WR/SM/SR	Northwest Branch	Montgomery Co.
Gum Springs	SR	Gum Springs	Montgomery Co.
Sligo Creek	SR	Sligo Creek	Montgomery Co.
NW Branch-Mont. Co			
Paint	SR	Northwest Branch	Montgomery Co.
Branch	SR	Paint Branch	Montgomery Co.
*WR—Wetland Restoration			
*SM—Stormwater Management			
*SR—Stream Restoration			

5. The Baltimore District is preparing a DEIS which will describe the impacts of the proposed projects on environmental and cultural resources in the study area and the overall public interest. If applicable, the DEIS will also apply guidelines issued by the Environmental Protection Agency, under authority of section 404 of the Clean Water Act of 1977 (Pub. L. 95–217).

6. The public involvement will include meetings and close coordination with interested private individuals and organizations, as well as concerned Federal, state and local agencies. A public notice requesting comments on the proposed project and DEIS will be provided to appropriate agencies and the public through printed media and mailings. A scoping meeting is not planned at this time. The Baltimore District invites potentially affected Federal, state and local agencies, and other interested organizations and parties to participate in this study. Agencies that are currently involved in the feasibility study and EIS process include, but are not limited to the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Geological Service, U.S. Soil Conservation Service, National Park Service, Montgomery County Department of Environmental Protection, Prince George's County Department of Environmental Resources, District of Columbia Department of Consumer and Regulatory Affairs and Department of Public Works, Maryland Department of Natural Resources, Maryland Department of the Environment, Maryland National Capital Park and Planning Commission, Interstate Commission on the Potomac River Basin, and the Metropolitan Washington Council of Governments.

7. The DEIS is tentatively scheduled to be available for public review in the spring of 1994.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–22044 Filed 9–9–93; 8:45 am]

BILLING CODE 3710–41–M

Regulatory Guidance Letters Issued by the Corps of Engineers

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide a copy of the Regulatory Guidance Letter (RGL 93–2) to all known interested parties. RGL's are used by the Corps of Engineers as a means to transmit guidance on the permit program (33 CFR parts 320–330) to its division and district engineers. The Corps of Engineers publishes RGL's in the **Federal Register** upon issuance as a means of informing the public of Corps guidance.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Collinson, Regulatory Branch, Office of the Chief of Engineers at (202) 272–1782.

SUPPLEMENTARY INFORMATION: RGL 93–2, Subject: Guidance on Flexibility of the 404(b)(1) Guidelines and Mitigation Banking is hereby published as follows:

Dated: September 2, 1993.

Approved:

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Regulatory Guidance Letter, RGL 93–2.

Date: 23 August 1993, Expires: 31 December 1998.

Subject: Guidance on Flexibility of the 404(b)(1) Guidelines and Mitigation Banking.

1. Enclosed are two guidance documents signed by the Office of the Assistant Secretary of the Army (Civil Works) and the Environmental Protection Agency. The first document provides guidance on the flexibility that the U.S. Army Corps of Engineers should be utilizing when making determinations of compliance with the section 404(b)(1) Guidelines, particularly with regard to the alternatives analysis. The second document provides guidance on the use of mitigation banks as a means of providing compensatory mitigation for Corps regulatory decisions.

2. Both enclosed guidance documents should be implemented immediately. These guidance documents constitute an important aspect of the President's plan for protecting the Nation's wetlands, "Protecting America's Wetlands: A Fair, Flexible and Effective Approach" (published on 24 August 1993).

3. This guidance expires 31 December 1998 unless sooner revised or rescinded.

For The Director of Civil Works:

2 Encls

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Memorandum to the Field

Subject: Appropriate level of analysis required for evaluating compliance with the section 404(b)(1) guidelines alternative requirements.

1. Purpose: The purpose of this memorandum is to clarify the appropriate level of analysis required for evaluating compliance with the Clean Water Act section 404(b)(1) Guidelines' (Guidelines) requirements for consideration of alternatives. 40 CFR 230.10(a). Specifically, this memorandum describes the flexibility afforded by the Guidelines to make regulatory decisions based on the relative severity of the environmental impact of proposed discharges of dredged or fill material into waters of the United States.

2. Background: The Guidelines are the substantive environmental standards by which all section 404 permit applications are evaluated. The Guidelines, which are binding regulations, were published by the Environmental Protection Agency at 40 CFR part 230 on December 24, 1980. The fundamental precept of the Guidelines is that discharges of dredged or fill material into waters of the United States, including wetlands, should not occur unless it can be demonstrated that such discharges, either individually or cumulatively, will not result in unacceptable adverse effects on the aquatic ecosystem. The Guidelines specifically require that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." 40 CFR 230.10(a). Based on this provision, the applicant is required in every case (irrespective of whether the discharge site is a special aquatic site or whether the activity associated with the discharge is water dependent) to evaluate opportunities for use of non-aquatic areas and other aquatic sites that would result in less adverse impact on the aquatic ecosystem. A permit cannot be issued, therefore, in circumstances where a less environmentally damaging practicable alternative for the

proposed discharge exists (except as provided for under section 404(b)(2)).

3. Discussion: The Guidelines are, as noted above, binding regulations. It is important to recognize, however, that this regulatory status does not limit the inherent flexibility provided in the Guidelines for implementing these provisions. The preamble to the Guidelines is very clear in this regard:

Of course, as the regulation itself makes clear, a certain amount of flexibility is still intended. For example, while the ultimate conditions of compliance are "regulatory", the Guidelines allow some room for judgment in determining what must be done to arrive at a conclusion that those conditions have or have not been met.

Guidelines preamble, "Regulation versus Guidelines", 45 FR 85336 (December 24, 1980).

Notwithstanding this flexibility, the record must contain sufficient information to demonstrate that the proposed discharge complies with the requirements of Section 230.10(a) of the Guidelines. The amount of information needed to make such a determination and the level of scrutiny required by the Guidelines is commensurate with the severity of the environmental impact (as determined by the functions of the aquatic resource and the nature of the proposed activity) and the scope/cost of the project.

a. Analysis Associated with Minor Impacts: The Guidelines do not contemplate that the same intensity of analysis will be required for all types of projects but instead envision a correlation between the scope of the evaluation and the potential extent of adverse impacts on the aquatic environment. The introduction to Section 230.10(a) recognizes that the level of analysis required may vary with the nature and complexity of each individual case:

Although all requirements in § 230.10 must be met, the compliance evaluation procedures will vary to reflect the seriousness of the potential for adverse impacts on the aquatic ecosystems posed by specific dredged or fill material discharge activities.

40 CFR 230.10

Similarly, Section 230.6 ("Adaptability") makes clear that the Guidelines:

Allow evaluation and documentation for a variety of activities, ranging from those with large, complex impacts on the aquatic environment to those for which the impact is likely to be innocuous. It is unlikely that the Guidelines will apply in their entirety to any one activity, no matter how complex. It is anticipated that substantial numbers of permit applications will be for minor, routine activities that have little, if any, potential for significant degradation of the aquatic environment. *It generally is not intended or expected that extensive testing, evaluation or analysis will be needed to make findings of compliance in such routine cases.*

40 CFR 230.6(9) (emphasis added)

Section 230.6 also emphasizes that when making determinations of compliance with the Guidelines, users:

Must recognize the different levels of effort that should be associated with varying degrees of impact and require or prepare commensurate documentation. *The level of documentation should reflect the significance and complexity of the discharge activity.*

40 CFR 230.6(b) (emphasis added)

Consequently, the Guidelines clearly afford flexibility to adjust the stringency of the alternatives review for projects that would have only minor impacts. Minor impacts are associated with activities that generally would have little potential to degrade the aquatic environment and include one, and frequently more, of the following characteristics: Are located in aquatic resources of limited natural function; are small in size and cause little direct impact; have little potential for secondary or cumulative impacts; or cause only temporary impacts. It is important to recognize, however, that in some circumstances even small or temporary files result in substantial impacts, and that in such cases a more detailed evaluation is necessary. The Corps Districts and EPA Regions will, through the standard permit evaluation process, coordinate with the U.S. Fish and Wildlife Service, National Marine Fisheries Service and other appropriate state and Federal agencies in evaluating the likelihood that adverse impacts would result from a particular proposal. It is not appropriate to consider compensatory mitigation in determining whether a proposed discharge will cause only minor impacts for purposes of the alternatives analysis required by Section 230.10(a).

In reviewing projects that have the potential for only minor impacts on the aquatic environment, Corps and EPA field offices are directed to consider, in coordination with state and Federal resource agencies, the following factors:

(i) Such projects by their nature should not cause or contribute to significant degradation individually or cumulatively. Therefore, it generally should not be necessary to conduct or require detailed analyses to determine compliance with Section 230.10(c).

(ii) Although sufficient information must be developed to determine whether the proposed activity is in fact the least damaging practicable alternative, the Guidelines do not require an elaborate search for practicable alternatives if it is reasonably anticipated that there are only minor differences between the environmental impacts of the proposed activity and potentially practicable alternatives. This decision will be made after consideration of resource agency comments on the proposed project. It often makes sense to examine first whether potential alternatives would result in no identifiable or discernible difference in impact on the aquatic ecosystem. Those alternatives that do not may be eliminated from the analysis since Section 230.10(a) of the Guidelines only prohibits discharges when a practicable alternative exists which would have less adverse impact on the aquatic ecosystem. Because evaluating practicability is generally the more difficult aspect of the alternatives analysis, this approach should save time and effort for both the applicant and the regulatory agencies.[1] By initially focusing the alternatives analysis on the question of impacts on the aquatic ecosystem, it may be possible to limit (or in some instances eliminate altogether) the number of alternatives that have to be evaluated for practicability.

(iii) When it is determined that there is no identifiable or discernible difference in adverse impact on the environment between the applicant's proposed alternative and all other practicable alternatives, then the applicant's alternative is considered as satisfying the requirements of Section 230.10(a).

(iv) Even where a practicable alternative exists that would have less adverse impact on the aquatic ecosystem, the Guidelines allow it to be rejected if it would have "other significant adverse environmental consequences." 40 CFR 230.10(a). As explained in the preamble, this allows for consideration of "evidence of damages to other ecosystems in deciding whether there is a 'better' alternative." Hence, in applying the alternatives analysis required by the Guidelines, it is not appropriate to select an alternative where minor impacts on the aquatic environment are avoided at the cost of substantial impacts to other natural environmental values.

(v) In cases of negligible or trivial impacts (e.g., small discharges to construct individual driveways), it may be possible to conclude that no alternative location could result in less adverse impact on the aquatic environment within the meaning of the Guidelines. In such cases, it may not be necessary to conduct an offsite alternatives analysis but instead require only any practicable onsite minimization.

This guidance concerns application of the Section 404(b)(1) Guidelines to projects with minor impacts. Projects which may cause more than minor impacts on the aquatic environment, either individually or cumulatively, should be subjected to a proportionately more detailed level of analysis to determine compliance or noncompliance with the Guidelines. Projects which cause substantial impacts, in particular, must be thoroughly evaluated through the standard permit evaluation process to determine compliance with all provisions of the Guidelines.

b. Relationship between the Scope of Analysis and the Scope/Cost of the Proposed Project: The Guidelines provide the Corps and EPA with discretion for determining the necessary level of analysis to support a conclusion as to whether or not an alternative is practicable. Practicable alternatives are those alternatives that are "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes." 40 CFR 230.10(a)(2). The preamble to the Guidelines provides clarification on how cost is to be considered in the determination of practicability:

[1] In certain instances, however, it may be easier to examine practicability first. Some projects may be so site-specific (e.g., erosion control, bridge replacement) that no offsite alternative could be practicable. In such cases the alternatives analysis may appropriately be limited to onsite options only.

Our intent is to consider those alternatives which are reasonable in terms of the overall scope/cost of the proposed project. The term economic [for which the term "cost" was substituted in the final rule] might be construed to include consideration of the applicant's financial standing, or investment, or market share, a cumbersome inquiry which is not necessarily material to the objectives of the Guidelines.

Guidelines Preamble, "Alternatives", 45 FR 85339 (December 24, 1980) (emphasis added).

Therefore, the level of analysis required for determining which alternatives are practicable will vary depending on the type of project proposed. The determination of what constitutes an unreasonable expense should generally consider whether the projected cost is substantially greater than the costs normally associated with the particular type of project. Generally, as the scope/cost of the project increases, the level of analysis should also increase. To the extent the Corps obtains information on the costs associated with the project, such information may be considered when making a determination of what constitutes an unreasonable expense.

The preamble to the Guidelines also states that "[i]f an alleged alternative is unreasonably expensive to the applicant, the alternative is not 'practicable.'" Guidelines Preamble, "Economic Factors", 45 FR 85343 (December 24, 1980). Therefore, to the extent that individual homeowners and small businesses may typically be associated with small projects with minor impacts, the nature of the applicant may also be a relevant consideration in determining what constitutes a practicable alternative. It is important to emphasize, however, that it is not a particular applicant's financial standing that is the primary consideration for determining practicability, but rather characteristics of the project and what constitutes a reasonable expense for these projects that are most relevant to practicability determinations.

4. The burden of proof to demonstrate compliance with the Guidelines rests with the applicant; where insufficient information is provided to determine compliance, the Guidelines require that no permit be issued. 40 CFR 230.12(a)(3)(iv).

5. A reasonable, common sense approach in applying the requirements of the Guidelines' alternatives analysis is fully consistent with sound environmental protection. The Guidelines clearly contemplate that reasonable discretion should be applied based on the nature of the aquatic resource and potential impacts of a proposed activity in determining compliance with the alternatives test. Such an approach encourages effective decisionmaking and fosters a better understanding and enhanced confidence in the Section 404 program.

6. This guidance is consistent with the February 6, 1990 "Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation under the Clear Water Act Section 404(b)(1) Guidelines."

Signed 8–23–93

Robert H. Wayland, III,

Director, Office of Wetlands, Oceans, and Watersheds, U.S. Environmental Protection Agency.

Signed 8–23–93

Michael L. Davis,

Office of the Assistant Secretary of the Army (Civil Works), Department of the Army.

Memorandum to the Field

Subject: Establishment and use of wetland mitigation banks in the Clean Water Act section 404 regulatory program.

1. This memorandum provides general guidelines for the establishment and use of wetland mitigation banks in the Clean Water Act Section 404 regulatory program. This memorandum serves as interim guidance pending completion of Phase I of by the Corps of Engineers' Institute for Water Resources study on wetland mitigation banking[2], at which time this guidance will be reviewed and any appropriate revisions will be incorporated into final guidelines.

2. For purposes of this guidance, wetland mitigation banking refers to the restoration, creation, enhancement, and, in exceptional circumstances, preservation of wetlands or other aquatic habitats expressly for the purpose of providing compensatory mitigation in advance of discharges into wetlands permitted under the Section 404 regulatory program. Wetland mitigation banks can have several advantages over individual mitigation projects, some of which are listed below:

(a) Compensatory mitigation can be implemented and functioning in advance of project impacts, thereby reducing temporal losses of wetland functions and uncertainty over whether the mitigation will be successful in offsetting wetland losses.

(b) It may be more ecologically advantageous for maintaining the integrity of the aquatic ecosystem to consolidate compensatory mitigation for impacts to many smaller, isolated or fragmented habitats into a single large parcel or contiguous parcels.

(c) Development of a wetland mitigation bank can bring together financial resources and planning and scientific expertise not practicable to many individual mitigation proposals. This consolidation of resources can increase the potential for the establishment and long-term management of successful mitigation.

(d) Wetland mitigation banking proposals may reduce regulatory uncertainty and provide more cost-effective compensatory mitigation opportunities.

3. The Section 404(b)(1) Guidelines (Guildelines), as clarified by the "Memorandum of Agreement Concerning the Determination of Mitigation under the Section 404(b)(1) Guidelines" (Mitigation MOA) signed February 6, 1990, by the Environmental Protection Agency and the Department of the Army, establish a mitigation sequence that is used in the evaluation of individual permit applications. Under this sequence, all appropriate and practicable steps must be undertaken by the applicant to first avoid and then minimize adverse impacts to the aquatic ecosystem. Remaining unavoidable impacts must then be offset through compensatory mitigation to the extent appropriate and practicable. Requirements for compensatory mitigation may be satisfied through the use of wetland mitigation banks, so long as their use is consistent with standard practices for evaluating compensatory mitigation proposals outlined in the Mitigation MOA. It is important to emphasize that, given mitigation sequence requirements described above, permit applicants should not anticipate that the establishment of, or participation in, a wetland mitigation bank will ultimately lead to a determination of compliance with the Section 404(b)(1) Guidelines without adequate demonstration that impacts associated with the proposed discharge have been avoided and minimized to the extent practicable.

4. The agencies' preference for on-site, in-kind compensatory mitigation does not preclude the use of wetland mitigation banks where it has been determined by the Corps, or other appropriate permitting agency, in coordination with the Federal resource agencies through the standard permit evaluation process, that the use of a particular mitigation bank as compensation for proposed wetland impacts would be appropriate for offsetting impacts to the aquatic ecosystem. In making such a determination, careful consideration must be given to wetland functions, landscape position, and affected species populations at both the impact and mitigation bank sites. In addition, compensation for wetland impacts should occur, where appropriate and practicable, within the same watershed as the impact site. Where a mitigation bank is being developed in conjunction with a wetland resource planning initiative (e.g., Special Area Management Plan, State Wetland Conservation Plan) to satisfy particular wetland restoration objectives, the permitting agency will determine, in coordination with the Federal resource agencies, whether use of the bank should be considered an appropriate form of compensatory mitigation for impacts occurring within the same watershed.

5. Wetland mitigation banks should generally be place and functional before credits may be used to offset permitted wetland losses. However, it may be appropriate to allow incremental distribution of credits corresponding to the appropriate stage of successful establishment of wetland functions. Moreover, variable mitigation ratios (credit acreage to impacted wetland acreage) may be used in such circumstances to reflect the wetland functions attained at a bank site at a particular point in time. For example, higher ratios would be required when a bank is not yet fully functional at the time credits are to be withdrawn.

6. Establishment of each mitigation bank should be accompanied by the development

[2] The Corps of Engineers Institute for Water Resources, under the authority of section 307(d) of the Water Resources Development Act of 1990, is undertaking a comprehensive two-year review and evaluation of wetland mitigation banking to assist in the development of a national policy on this issue. The interim summary report documenting the results of the first phase of the study is scheduled for completion in the fall of 1993.

of a formal written agreement (e.g., memorandum of agreement) among the Corps, EPA, other relevant resource agencies, and those parties who will own, develop, operate or otherwise participate in the bank. The purpose of the agreement is to establish clear guidelines for establishment and use of the mitigation bank. A wetlands mitigation bank may also be established through issuance of a Section 404 permit where establishing the proposed bank involves a discharge of dredged or fill material into waters of the United States. The banking agreement or, where applicable, special conditions of the permit establishing the bank should address the following considerations, where appropriate:

(a) Location of the mitigation bank
(b) Goals and objectives for the mitigation bank projects;
(c) Identification of bank sponsors and participants;
(d) Development and maintenance plan;
(e) Evaluation methodology acceptable to all signatories to establish bank credits and assess bank success in meeting the project goals and objectives;
(f) Specific accounting procedures for tracking crediting and debiting;
(g) Geographic area of applicability;
(h) Monitoring requirements and responsibilities;
(i) Remedial action responsibilities including funding; and
(j) Provisions for protecting the mitigation bank in perpetuity.

Agency participation in a wetlands mitigation banking agreement may not, in any way, restrict or limit the authorities and responsibilities of the agencies.

7. An appropriate methodology, acceptable to all signatories, should be identified and used to evaluate the success of wetland restoration and creation efforts within the mitigation bank and to identify the appropriate stage of development for issuing mitigation credits. A full range of wetland functions should be assessed. Functional evaluations of the mitigation bank should generally be conducted by a multi-disciplinary team representing involved resource and regulatory agencies and other appropriate parties. The same methodology should be used to determine the functions and values of both credits and debits. As an alternative, credits and debits can be based on acres of various types of wetlands (e.g., National Wetland Inventory classes). Final determinations regarding debits and credits will be made by the Corps, or other appropriate permitting agency, in consultation with Federal resource agencies.

8. Permit applicants may draw upon the available credits of a third party mitigation bank (i.e., a bank developed and operated by an entity other than the permit applicant). The Section 404 permit, however, must state explicitly that the permittee remains responsible for ensuring that the mitigation requirements are satisfied.

9. To ensure legal enforceability of the mitigation conditions, use of mitigation bank credits must be conditioned in the Section 404 permit by referencing the banking agreement or Section 404 permit establishing the bank; however, such a provision should not limit the responsibility of the Section 404 permittee for satisfying all legal requirements of the permit.

Signed 8–23–93:

Robert H. Wayland, III,

Director, Office of Wetland, Oceans, and Watersheds, U.S. Environmental Protection Agency.

Signed 8–23–93:

Michael L. Davis,

Office of the Assistant Secretary of the Army (Civil Works), Department of the Army.

[FR Doc. 93–22172 Filed 9–9–93; 8:45 am]

BILLING CODE 3710–92–M

Department of the Navy

Record of Decision for Base Realignment of Dahlgren Division, Naval Surface Warfare Center, Dahlgren, VA

Pursuant to section 102(2) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations on Implementing NEPA Procedures (40 CFR parts 1500–1508), the Department of the Navy announces its decision to construct new facilities and renovate existing facilities in support of the realignment of Dahlgren Division, Naval Surface Warfare Center (NSWCDL) at Dahlgren, Virginia. The realignment and relocation of the operations and associated personnel from Silver Spring, Maryland; Panama City, Florida; and San Diego, California, is to be implemented as a matter of law under the Defense Base Closure and Realignment Act of 1990. The facilities will accommodate those research and development operations at NSWCDL.

Draft and Final Environmental Impact Statement (DEIS/FEIS) were prepared by the Navy and distributed to federal and state agencies and elected officials, and to the interested public for review and comment.

The Navy will accommodate most of the programs and the majority of the approximately 906 associated personnel in sixteen existing buildings. Due to the need to satisfy unique space requirements not available in existing structures, the Navy will construct a 171,000 square foot laboratory in the northeast corner of the base, and demolish four existing structures currently on the site. There will also be modifications to B Gate off of Route 301 to accommodate the increased flow of traffic to and from the new laboratory.

With the anticipated increase in personnel due to the realignment, the Navy will upgrade its existing sewage treatment plant from a design capacity of 400,000 gallons per day (gpd) to 600,000 gpd, and upgrade the sewer pipeline that extends to the site of the new laboratory. Construction of the upgrades will require demolition of nine structures, which will be replaced by construction of a 17,200 square foot addition to Building 182, located just north of the site of the upgraded sewage treatment plant. Contaminated material at the site of the existing sewage treatment plant due to wastewater discharges from a former electroplating operation will be removed pursuant to an existing Federal Facility Compliance Agreement. The upgraded sewage treatment plant will continue to discharge into Upper Machodoc Creek. Wetlands will be constructed as part of the tertiary treatment process. A portion of the constructed wetlands will be located in the floodplain. The elevation of the constructed wetlands will exceed the elevation of the base flood level, however. No structural or mechanical components of the upgraded sewage treatment plant will be located within the floodplain. The Navy considered several site alternatives for construction of the laboratory. The preferred site was selected, however, because it was not constrained by explosive safety quantity distance arcs, safety zones, airfield approach/transition zones, contaminated sites, floodplains, wetlands, and bald eagle nesting areas. Other unconstrained sites were eliminated from consideration because of the cost of extensive demolition and upgrades to the utility and roadway systems.

The Navy considered both site and process alternatives for construction of the upgraded sewage treatment plant. The selected site plan gains maximum utilization of existing plant components while avoiding wetlands and an Installation Restoration site. The existing sewage treatment plant can also continue operating while the upgrades are being constructed. The Navy eliminated the alternative of combining sewage treatment capabilities with King George County at an off-base facility because of excessive cost and appropriation and construction completion could not occur by the Navy's deadline of January, 1995.

A no action alternative was not considered because the Defense Base Closure and Realignment Act exempts from the NEPA process the consideration of both the need for realigning the military installation as directed by the Commission, and the need for transferring functions to the designated receiving installation. All practicable means to avoid or minimize environmental harm from this action have been adopted. Sites for the

laboratory, the sewer pipeline, the addition to Building 182, and modifications to B Gate have been selected to avoid impacts to wetlands, floodplains, threatened or endangered plant or wildlife species, cultural resources, coastal zone protection areas, and areas of environmental contamination.

Although the upgraded sewage treatment plant will treat more waste, it will meet or surpass current and anticipated future Virginia Pollutant Discharge Elimination System permit requirements for sewage treatment plants.

Buildings that will be renovated have been or will be evaluated to determine if the structures are eligible for listing on the National Register of Historic Places. One building has been determined to be eligible as a contributing structure to a National Register District. However, renovation will not adversely effect the building since renovation will be conducted on the interior only.

A soil erosion and sediment control plan and a stormwater management plan will be prepared prior to construction, and monitored throughout construction. Any hazardous material in buildings that will be demolished or renovated, such as asbestos-containing building materials, will be properly removed and disposed.

Impacts associated with the relocation of 906 personnel and their families have been addressed and thoroughly coordinated with the state and local governments and agencies. The influx of personnel will increase the demand for community services, schools, housing, infrastructure, and utilities, and impact traffic congestion in the area. Demand will likely be distributed throughout several counties within commuting distance of the NSWCDL. Demand for community services, housing, infrastructure, and utilities in the surrounding communities is not anticipated to be significant. Several schools in the area are at or near capacity, but capital improvements have been proposed by the school districts for these schools. Positive impacts from the relocation include the generation of an estimated 2,058 direct and indirect jobs, and an estimated $125.5 million in economic growth. Local and state governments will benefit from increased taxes and revenues.

Traffic congestion around NSWCDL will increase, particularly during rush hours. Although modifications to B Gate will lessen the traffic impacts on-base, additional mitigative measures off-base to alleviate or lessen the potential impacts will need to be coordinated and implemented by the Virginia Department of Transportation.

Comments received from agencies and the public on the DEIS included concerns about natural resources protection, Upper Machodoc Creek water quality, floodplain mitigation, air quality, affordable housing, hazardous materials and waste, electromagnetic field exposure, traffic, construction-related noise, historic and cultural resources, and solid waste. All issues were addressed in the FEIS.

Questions regarding the Draft and Final Environmental Impact Statement prepared for this action may be directed to U.S. Department of the Navy, Chesapeake Division, Naval Facilities Engineering Command, 901 M Street, SE., Building 212, Washington, DC 20374–5018 (ATTN: Mr. Larry Chernikoff), telephone (202) 433–3387.

Dated: September 7, 1993.

Elsie L. Munsell,

Deputy Assistant Secretary of the Navy (Environment and Safety).

Dated: September 7, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–22127 Filed 9–9–93; 8:45 am]

BILLING CODE 3810–AE–M

Intent To Prepare a Draft Environmental Impact Statement for the Proposed Disposal and Reuse of Naval Construction Battalion Center Davisville, North Kingstown, RI

Pursuant to the National Environmental Policy Act (NEPA) as implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500-1508), the Department of the Navy announces its intent to prepare a Draft Environmental Impact Statement (DEIS) to evaluate the environmental effects of the disposal and reuse of the Naval Construction Battalion Center (NCBC), Davisville, North Kingstown, Rhode Island.

In accordance with recommendations of the 1991 Base Closure and Realignment Commission, the Navy plans to disestablish NCBC Davisville in March 1994. Operations conducted at NCBC Davisville are currently relocating to other NCBC's located in the continental United States. The proposed action involves the disposal of land, buildings, and infrastructure of NCBC Davisville for subsequent reuse.

NCBC Davisville consists of a total of 1,267.27 acres, including all lands on the main base, West Davisville, and Camp Fogarty. Camp Fogarty has been transferred to the Department of the Army for use by the Rhode Island National Guard and therefore is not part of the proposed action. NCBC Davisville and the West District have a combined total of 237 buildings and structures including 62 permanent, 161 semi-permanent, and 14 temporary facilities.

NCBC Davisville is located in the Town of North Kingstown eighteen miles south of the City of Providence in the County of Washington. The West Davisville Storage Area, (also known as "West District") located approximately one mile west of the main center, is a non-contiguous area consisting of approximately 50 acres and contains four large warehouses providing 800,000 sf of storage space.

The reuse of NCBC Davisville is being studied by an independent Base Reuse Committee (BRC) comprised of state and local governmental agencies and private citizens. The redevelopment/reuse plan to be developed by the BRC will be the basis for the DEIS. Various reuse alternatives will be developed during the scoping process and analyzed to provide facilities and/or building sites for potential users. The "no action" alternative, Navy retention of NCBC Davisville land and infrastructure in caretaker status, will be addressed in the EIS.

However, because of the process mandated by the Base Closure and Realignment Act, selection of the "no action" alternative would be considered outside the jurisdiction of the Navy.

The DEIS to be prepared by the Navy will address the following known areas of concern: effects of new development at the Center on the natural and socioeconomic environments, effects of future growth on area schools, recreation facilities, and transportation systems. Major environmental issues that will be addressed in the EIS include, but are not limited to, air quality, water quality, wetlands, endangered species, cultural resources, transportation, and socioeconomic impacts.

The Navy and the BRC will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to the proposed reuse alternatives. A public scoping meeting is scheduled for Tuesday, September 28, 1993, beginning at 7:30 p.m., at the North Kingstown High School Auditorium, 150 Fairway, North Kingstown, Rhode Island. This meeting will be advertised in local newspapers.

A brief presentation will precede request for public comment. Navy representatives will be available at this

meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the DEIS. In the interest of available time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed no later than October 28, 1993, to: Commanding Officer, Northern Division, Naval Facilities Engineering Command, Code 202, 10 Industrial Highway, Lester, PA 19113 (Attn: Mr. Bob Ostermueller, Code 2022), telephone (215) 595–0759.

Dated: September 7, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–22125 Filed 9–9–93; 8:45 am]

BILLING CODE 3810–AE–M

Public Hearing for the Draft Environmental Impact Statement for the Management of Air Operations at Naval Air Station Whidbey Island, Oak Harbor, WA

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for the Management of Air Operations at Naval Air Station Whidbey Island, Oak Harbor, Washington.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held on September 29, 1993, at 7 p.m. in the Oak Harbor High School Commons Area, Oak Harbor, Washington.

The public hearing will be conducted by the Navy. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to three minutes. Because of the large number of speakers expected, we will not be able to permit a speaker to defer speaking time to another speaker. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by October 12, 1993, to become part of the official record.

The DEIS addresses the Navy's proposal to modify previous air operations management programs to incorporate specific flight pattern redistribution, aircraft operations guidelines, and an annual Field Carrier Landing Practice (FCLP) operations distribution goal between the existing field assets of Ault Field and Outlying Landing Field (OLF) Coupeville. This proposal meets the Navy's need to provide effective environmental compliance while planning for and meeting assigned military mission requirements necessary to ensure fleet readiness and aircrew proficiency. The DEIS addresses air operations management changes which can mitigate adverse environmental effects of air operations. Discussed are the issues of air traffic, noise, public health and safety of air operations, land use, population and housing, aesthetics, socioeconomics, historic resources, slope stability, air quality, water quality, and biological resources. Alternatives assessed in the DEIS focus on various distributions of FCLP training between Ault Field and OLF Coupeville, with all other air operations conducted at Ault Field.

Additional information concerning this notice may be obtained by contacting: Mr. Peter Havens (Code 203PH), Engineering Field Activity, Northwest, Naval Facilities Engineering Command, 3505 NW. Anderson Hill Road, Silverdale, WA 98383, telephone (206) 396–5976.

Dated: September 7, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–22126 Filed 9–9–93; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 12, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these

requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: September 7, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Reinstatement
Title: Application for the Drug Prevention Program of the Fund for the Improvement of Postsecondary Education
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden: Responses: 400, Burden Hours: 6,400
Recordkeeping Burden: Recordkeepers: 0, Burden Hours: 0
Abstract: The Secretary of Education is authorized under Public Law 99–570 to hold competitions to develop, implement, operate, and improve drug prevention programs. Competitions require that applicants submit applications which compete for funding. Respondents are institutions of higher education requesting funds.

Office of Vocation and Adult Education

Type of Review: Extension
Title: Performance Report for State-Administered Vocational-Technical Education Programs
Frequency: Annually
Affected Public: State or local governments
Reporting Burden: Responses: 53, Burden Hours: 2,756
Recordkeeping Burden: Recordkeepers: 0, Burden Hours: 0
Abstract: This report will identify students served in all the State Vocational-Technical education systems with emphasis on special populations, States in need of technical assistance to improve services to students, and to provide trend data to demonstrate the effectiveness of vocational-technical education in meeting the needs of youths and adults.

[FR Doc. 93–22206 Filed 9–9–93; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center, Study of Utilization of Coal Combustion Byproducts

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of interest to obtain information to assist the Department of Energy's study of utilization of coal combustion byproducts.

SUMMARY: The Energy Policy Act of 1992 directed the Secretary of the Department of Energy (DOE) to conduct a comprehensive study on the institutional, legal, and regulatory barriers to increased use of coal combustion byproducts by potential governmental and commercial users. Information is requested from interested parties to ensure that all barriers are identified and that adequate consideration is given to issues inhibiting coal combustion byproduct utilization. The specific form and content of the informational data to be submitted is left to the discretion of the submitting organization, although the informational data must be relevant and should be concise (i.e. 10 pages or less). Any information submitted in response to this notice shall be prepared at the submitters expense. The DOE is not obligated, and will not reimburse, any submitter for expenses incurred in the preparation or submittal of information.

DATES: Information shall be provided no later than September 24, 1993 to Mr. Jerry L. Harness at the address provided below.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry L. Harness, E02, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone (304) 291–4835.

SUPPLEMENTARY INFORMATION: "Coal combustion byproducts" means the residues from the combustion of coal including ash, slag, and flue gas desulfurization materials. Information is requested from interested parties to ensure that all barriers are identified and consideration is given to issues inhibiting coal combustion byproduct utilization. Information on barriers which exist at the Federal, State, or local levels, which may have limited or may have the foreseeable effect of limiting the quantities of coal combustion byproducts that are utilized, is requested. Information on barriers which inhibit the use of coal combustion byproducts in applications such as: Bridge and highway construction stabilizing wastes; procurement by departments and agencies of the Federal Government and State and local governments; and federally funded or federally subsidized procurement by the private sector is requested.

Dated: September 1, 1993.

John S. Wilson,

Acting Director, Morgantown Energy Technology Center.

[FR Doc. 93–22200 Filed 9–9–93; 8:45 am]
BILLING CODE 6450–01–M

Opportunity for Additional Public Comment, Environmental Impact Statement on Environmental Restoration and Waste Management Activities at the Idaho National Engineering Laboratory; Correction

AGENCY: Department of Energy—Idaho Operations Office.

ACTION: Correction notice.

SUMMARY: Today's notice adds a paragraph that was inadvertently omitted from the Friday, September 3, 1993 (58 FR 46951) publication of a Notice of Opportunity for Additional Public Comment, Environmental Impact Statement (EIS) on Environmental Restoration and Waste Management (ER&WM) Activities at the Idaho National Engineering Laboratory (INEL).

SUPPLEMENTARY INFORMATION: The following paragraph should be inserted on page 46953, second column, before the paragraph that begins "As indicated by the preceding discussion * * *":

"Because DOE proposes to analyze the maximum potential cumulative impacts of accepting spent nuclear fuel (SNF) from foreign research reactors (FRR) in the INEL ER&WM EIS and to analyze the pending proposal to accept such SNF in a separate EIS, no decision concerning the transporting, receipt, processing, and storage of SNF from FRR at the INEL will be made until both of these EISs are completed."

Issued in Washington, DC, September 3, 1993.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 93–22196 Filed 9–9–93; 8:45 am]
BILLING CODE 6450–01–M

Award of a Cooperative Agreement, Noncompetitive Financial Assistance; Electric Power Research Institute

AGENCY: U.S. Department of Energy (DOE), Richland Operations Office.

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Richland Operations Office (DOE/RL) announces that pursuant to House Report 2427, Public Law 102–104, it intends to make a statutory financial assistant award based on the criterion set forth in 10 CFR 600.7(b)(2)(i) (B) and (G) to the Electric Power Research Institute (EPRI), Palo Alto, California, under Cooperative Agreement Number DE–FC06–93RL12450. The primary purpose of the cooperative agreement is the design of a spent fuel dry transfer system for use with a transportable storage unit. This five year effort will have a total estimated cost of $1,528,000, of which $698,000 will be provided by DOE and $830,000 will be provided by EPRI.

FOR FURTHER INFORMATION CONTACT: Questions regarding this announcement should be addressed to the U.S. Department of Energy, Richland Operations Office, Procurement Division, Mail Stop A7–80, P.O. Box 550, 825 Jadwin Avenue, Richland, Washington 99352, ATTN: Jo Lauglin, Contract Specialist.

SUPPLEMENTARY INFORMATION: Congress has appropriated $8 million ($4 million each in FY 1992 and FY 1993) for the Department of Energy (DOE) to implement a cooperative research and development project to demonstrate the dry transfer of spent unclear fuel from one transportable storage system to another. Public Law 102–104 initiated the project and refers to an implementation plan developed in response to prior direction given to DOE by Congress. The prior direction indicated that the project was to be pursued in cooperation with a west coast utility which has a nuclear reactor prematurely shut down due to a citizens' initiative (the Rancho Seco reactor owned by the Sacremento Municipal Utility District). The plan identified the Electric Power Research Institute (ERPI) and the Sacramento Municipal Utility District (SMUD) as participants with DOE in the project. The plan indicates that ERPI is to complete the detailed design of an acceptable spent fuel dry transfer system. EPRI is to provide the detailed design including procurement specifications and Nuclear Regulatory Commission (NRC) licensing support to DOE. SMUD is to procure and demonstrate two NRC licensed transportable storage units and a spent fuel dry transfer system. In the context of the Congressional guidance, eligibility to participate in the project is restricted to EPRI and SMUD. Successful completion of the cooperative projects will result in an NRC licensed transportable storage system, and a NRC licensable spent fuel dry transfer system. Successful completion of the project is expected to provide valuable information on the cost and operation of a spent fuel dry transfer system applicable to the federal waste disposal system, and should provide utilities with an option to allow decommissioning of their storage pools prior to final transfer of fuel from their ISFSI to the federal waste system. It will also provide valuable NRC licensing experience associated with spent fuel dry transfer systems and for transportable storage systems.

Dated: August 27, 1993.

Robert D. Larson,

Director, Procurement Division, Richland Operations Office.

[FR Doc. 93–22197 Filed 9–9–93; 8:45 am]

BILLING CODE 6450–01–M

Determination of Noncompetitive Financial Assistance; North Carolina Agriculture and Technical State University

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2)(i) it intends to award on a noncompetitive basis a grant to North Carolina Agriculture and Technical (A&T) State University for performing research on continuous fiber ceramic composites under a grant entitled "The Effect of Sample Size and Finish on the Tensile Characteristics of Continuous Filament Ceramic Composites." The award is to be in the amount of $100,000 for a one-year period. The goal of the Continuous Fiber Ceramic Composite (CFCC) Program is to develop primary processing methods for the reliable and cost-effective fabrication of components for use in industrial applications. North Carolina A&T State University will test a specified number of CFCC tensile specimens offering valuable information to the CFCC Program. Similar work has been performed at North Carolina A&T over the past few years and has been very successful. In consideration of the fact that North Carolina A&T State University has outstanding technical expertise and unique facilities in the area of ceramic/ceramic composites testing, eligibility for this award is restricted to North Carolina A&T State University.

FOR FURTHER INFORMATION CONTACT: Mary Harris, ER–111, Energy Programs Division, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831–6269, (615) 576–4507.

Issued in Oak Ridge, Tennessee on August 23, 1993.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations Office.

[FR Doc. 93–22198 Filed 9–9–93; 8:45 am]

BILLING CODE 6450–01–M

Alaska Power Administration

Eklutna Project Draft Power Marketing Plan

AGENCY: Alaska Power Administration, Department of Energy.

ACTION: Notice of draft marketing plan, public information and comment forum, and opportunity for review and comment.

SUMMARY: Alaska Power Administration (APA) is publishing its Draft Marketing Plan—Eklutna Project to start the process to establish new allocations of power and long-term power sales contracts for the Eklutna Project. The new contracts will replace contracts which have been in place since 1979 and which expire at the end of December 1994. APA is publishing the draft plan to provide an opportunity for public review and comment. The Marketing Plan and the new contracts will be fully compatible with the Department of Energy legislative proposal on APA divestiture.

DATES: Written comments must be submitted on or before October 12, 1993.

A public information and comment forum will be held Thursday, September 30, 1993, 7 p.m., at the Z.J. Loussac Library in Anchorage, Alaska.

ADDRESSES: Written comments should be submitted to: Mr. Michael Deihl, Alaska Power Administration, 2770 Sherwood Lane, suite 2B, Juneau, Alaska 99801.

FOR FURTHER INFORMATION CONTACT: Mr. Lloyd Linke, Alaska Power Administration, 2770 Sherwood Lane, suite 2B, Juneau, Alaska 99801, (907) 586–7405.

SUPPLEMENTARY INFORMATION:

Draft Marketing Plan—Eklutna Project

A. General

APA is establishing new allocations of power and long-term power sales contracts for the Eklutna Project. The new contracts will replace contracts which have been in place since 1979 and which expire at the end of December 1993. APA is in the process

of temporarily extending the current contracts one year, until the end of December 1994. During this one year period, APA will complete finalizing of the marketing plan, grant new power allocations and establish new long-term power sales contracts.

The Eklutna Project authorization (64 Stat. 382) establishes the general criteria for marketing project power and energy. This marketing plan describes APA's implementation policies for these legislated marketing criteria.

Department of Energy (DOE) regulations for the National Environmental Policy Act (NEPA) require that an Environmental Assessment (EA) be prepared for long-term power sales contracts. APA has prepared an EA. DOE has approved the EA, and a Finding of No Significant Impact has been signed.

APA has an agreement with Anchorage Water and Wastewater Utility (AWWU) for diversion of water from Eklutna Lake for municipal drinking water. These diversions are under a separate long-term agreement between APA and AWWU. This plan will not alter the agreement with AWWU.

B. Background

APA markets power and energy from the Eklutna Project. The project was authorized by Congress in 1950. Construction of the project was completed by the U.S. Bureau of Reclamation in 1955. Since construction, Eklutna has served three customer utilities in the Anchorage/Matanuska Valley area: Anchorage Municipal Light and Power (ML&P), Chugach Electric Association (CEA), and Matanuska Electric Association (MEA). At the time it was completed, the Eklutna Project provided about 30% of the Anchorage area electrical supply. Since that time, the area has grown to the point that the project now provides approximately 5% of the area's electrical energy. In 1986 the Federal government formally proposed the sale of the Eklutna Project. A purchase agreement for the Eklutna Project was negotiated and signed with the three customer utilities in 1989. The divestiture of the Federal project will be submitted for Congressional consideration and approval this year.

The Marketing Plan and the subsequent power sales contracts will be compatible with the divestiture proposal. Under terms of the Eklutna Purchase Agreement, the new owners will take over APA's rights and allocation obligations under the new power sales contracts when they acquire ownership of the project.

C. Objectives

The objectives of this plan are to establish the criteria and process for allocating power from APA's Eklutna Project in accordance with provisions set forth in the Eklutna Project authorizing legislation. Such provisions include instructions to market power so as to (1) encourage the most widespread use; (2) do so at lowest possible rates to consumers consistent with sound business principles; and (3) give preference to Federal agencies, public bodies, and cooperatives. An additional objective of the plan is to facilitate implementation of the divestiture if and when Congress approves the measure.

D. Marketable Resources

This plan shall become effective on approval by Alaska Power Administration's (APA) Administrator and will apply to all power marketed by APA from the Eklutna Project.

The energy production and generation capacity from the Eklutna Project is:

Firm energy—153 Gwh
Capacity—30 MW

The marketable resource was derived from the capacity of the Eklutna Project based on average hydrologic conditions. Project requirements such as project use and transmission losses have been subtracted from this.

E. Market Area

The market area for power from the Eklutna Project is the Anchorage/Matanuska Valley area, i.e. the area served by ML&P, CEA, and MEA.

F. Classes of Service

APA offers long-term firm energy with capacity. APA will market average energy as firm energy. Any portion of a contractor's allocation which cannot be delivered by APA due to hydrologic conditions may be carried over to the following year. APA offers no commitment which would require APA to purchase energy or capacity.

G. Proposed Allocations

Since construction of the Project, APA has served the three customer utilities with the same allocations of energy and capacity. Due to the relatively small size of the Eklutna Project and the limited nature of the resource, APA proposes to retain the existing allocations:

1. Anchorage Municipal Light & Power.	81.6 gWh	16 MW
2. Chugach Electric Association.	45.9 gWh	9 MW
3. Matanuska Electric Association.	25.5 gWh	5 MW
Total	153 gWh	30 MW

All are preference customers within the market area. There is no new resource available from the Eklutna Project for increased allocations to existing customers or allocations to new customers. This allocation is consistent with the divestiture purchase agreement which provides for sale and ownership of the project to these three utilities in this ratio.

H. Integrated Resource Planning

The electric service contracts will contain provisions that will incorporate the Eklutna Project resources in the overall resource planning of the area. This will allow for better utilization of the Eklutna Project's resources, and at the same time minimize the additional resources that may be needed in the area.

I. Contract Arrangements

Entitles receiving an allocation of Eklutna resources will be offered an electric service contract for the allocated resource based on this plan. Consideration will be given to contract terms of up to twenty years and that include "take or pay" provisions, a flat fee provision, or other arrangements subject to the integrity of the project and availability of the resource.

Delivery points will be on the Eklutna transmission system. Normal delivery will be made at Eklutna transmission voltages. Deliveries may continue to be made at subtransmission voltages at powerplant, substation, and tap locations where contractors already have systems operating at such lower voltage levels.

All costs for delivery of energy beyond the Eklutna transmission system will be the responsibility of the contractor.

J. Reallocations

Resources made available for marketing because an allocation(s) has been reduced or withdrawn may be administratively reallocated by APA's Administrator without further public process.

Issued at Juneau, Alaska; August 12, 1993.

Michael A. Deihl,

Administrator.

[FR Doc. 93–22202 Filed 9–9–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 349-024 Alabama]

Alabama Power Co.; Availability of Environmental Assessment

September 3, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application to amend the license for the Martin Dam Project to permit excavation of two slough areas by Mr. Roy Granger. The staff of OHL's Division of Project Compliance and Administration has prepared a Draft Environmental Assessment (EA) for the proposed action. In the Draft EA, staff concludes that approval after-the-fact of the proposal to excavate one slough with required mitigation, and denial to excavate a second slough is the preferred alternative and would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available at the Commission's Reference and Information Center, room 3308, of the Commission's Offices at 941 North Capitol Street, NE., Washington, DC 20426, telephone (202) 208-1371.

Agencies non-governmental organizations or individuals are invited to file comments pursuant to the requirements the National Environmental Policy Act of 1969 (NEPA) and the Commission's regulations implementing NEPA (18 CFR part 380). Any comments, conclusions, or recommendations that draw upon studies, reports or other working papers should be supported by appropriate documentation.

An original and eight copies of the comments should be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The Comments should be filed by not later than September 15, 1993 and should reference Project 349-024.

Lois D. Cashell,

Secretary.

[FR Doc. 93-22076 Filed 9-9-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EL92-33-002, et al.]

Citizens Utilities Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 3, 1993.

Take notice that the following filings have been made with the Commission:

1. Citizens Utilities Co.

[Docket No. EL92-33-002]

Take notice that on August 23, 1993, Citizens Utilities Company tendered for filing its compliance filing in the above referenced docket.

Comment date: September 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Co.

[Docket No. ER93-904-000]

Take notice that on August 27, 1993, New England Power Company (NEP), tendered for filing a service agreement for transmission service to the Chicopee (Mass.) Municipal Lighting Plant. Said service will be provided according to the rates, terms and conditions of NEP's FERC Electric Tariff, Original Volume No. 3, on file with the Commission.

Comment date: September 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Duke Power Co.

[Docket No. ER93-899-000]

Take notice that on August 26, 1993, Duke Power Company (Duke) filed revised Amendments to Service Schedules C and E and the index and the Agreement to Adjust Demand Charge Pursuant to Schedule C. These service schedules are part of the Interconnection Agreement between Duke and Yadkin, Inc. (Yadkin) dated October 17, 1983, as amended. The revised Amendments will supersede the amendments dated 1989, as amended, currently in effect between Duke and Yadkin. The revised Amendment to Service Schedule C removes the floor price restriction for the demand charge and extends the date of termination to October 17, 1998. The revised Amendment to Service Schedule E extends the date of termination to October 17, 1998.

Comment date: September 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Co.

[Docket No. ER93-891-000]

Take notice that on August 24, 1993, Northeast Utilities Service Company (NUSCO), on behalf of the Connecticut Light and Power Company (CL&P) and The United Illuminating Company (UI) to be attached as an addendum to the transmission agreements between CL&P and UI designated as FPC Rate Schedule Nos. 15 (and Supplement No. 1), 103, 42, 17 and 16.

Comment date: September 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Allegheny Power System Corp.

[Docket No. ER93-893-000]

Take notice that on August 25, 1993, Allegheny Power System Corporation (Allegheny) tendered for Notices of Cancellation of FERC Rate Schedule No. 98, 77 and 36.

Comment date: September 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Connecticut Yankee Atomic Co.

[Docket Nos. ER93-85-002 and EL93-7-000]

Take notice that on August 20, 1993, Connecticut Yankee Atomic Company tendered for filing its compliance report in the above referenced dockets.

Comment date: September 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Portland General Electric Co.

[Docket No. ER93-842-000]

Take notice that on August 27, 1993, Portland General Electric Company (PGE) tendered for filing a Certificate of Concurrence under Docket No. ER93-842-000, relating to an agreement for transmission and firming services between Idaho Power Company (IPC) and Portland General Electric. Copies of this agreement have been served on the parties included in the distribution list defined in the filing letter.

Comment date: September 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Co. (Minnesota)

[Docket No. ER93-259-002]

Take notice that on August 25, 1993, Northern States Power Company (Minnesota) (NSP) tendered for filing an Amendment to Service Schedule B for Municipal Purchase for Resale Power—Summer Season between NSP and the Water, Light and Power Commission to the City of East Grand Forks, Minnesota (City). NSP Rate Schedule FERC No. 476.

NSP requests that revised Service Schedule B be accepted for filing effective January 1, 1993, and requests waiver of the Commission's notice requirements in order for the Service Schedule to be accepted for filing on the date requested.

Comment date: September 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Pacific Gas and Electric Co.

[Docket No. ER93–903–000]

Take notice that on August 27, 1993, Pacific Gas and Electric Company (PG&E) tendered for filing an agreement entitled "Special Facilities Agreement for Transmission Facilities for the Interconnection of NCPA's 49 MW STIG Project" (Special Facilities Agreement) between the Northern California Power Agency (NCPA) and PG&E.

The Special Facilities Agreement has been entered into pursuant to the NCPA and PG&E Interconnection Agreement, PG&E Rate Schedule FERC No. 142. The Special Facilities Agreement sets forth the rate, terms and conditions under which PG&E will design, install, own, operate and maintain the facilities for the interconnection of a new gas turbine generating plant owned by NCPA. Under the Special Facilities Agreement, PG&E proposes to charge NCPA a capital advance and monthly Cost of Ownership Charge, with the latter using the Cost of Ownership Rate for transmission-level, customer-financed facilities filed with the California Public Utilities Commission (CPUC) pursuant to PG&E's Electric Rule No. 2. The Cost of Ownership Rate is expressed as a monthly percentage of the installed cost of the facilities.

PG&E has requested permission to use automatic rate adjustments whenever the CPUC authorizes a revised Electric Rule No. 2 Cost of Ownership Rate, limited by a rate cap of 0.5% monthly.

Copies of this filing have been served upon NCPA and the CPUC.

Comment date: September 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Maine Public Service Co.

[Docket Nos. EL91–56–002, EL91–56–003, ER92–774–004]

Take notice that on August 9, 1993, Maine Public Service Company (Maine) tendered for filing its refund report in the above-referenced dockets.

Comment date: September 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Oregon Trail Electric Consumers Cooperative, Inc.

[Docket No. ES93–48–000]

Take notice that on August 30, 1993, Oregon Trail Electric Consumers Cooperative, Inc. (Oregon Trail) filed an application under section 204 of the Federal Power Act requesting authorization:

(a) to issue a five-year promissory note in the amount of $3 million to replace a prior note issued by Oregon Trail, and

(b) to enter into and borrow funds under a five-year, $5 million line-of-credit agreement.

Also, Oregon Trail requests exemption from the Commission's competitive bidding regulations.

Comment date: September 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22134 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

Chicago Operations Office; Solicitation for Cooperative Agreements

AGENCY: Chicago Operations Office, U.S. Department of Energy.

ACTION: Solicitation for cooperative agreements.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.9 intends to issue Solicitation No. DE–SC02–94CE1064, for Waste Reduction in the Metals and Pulp and Paper Industries on September 3, 1993.

DATES: Applications submitted in response to this Notice should be received by November 30, 1993.

FOR FURTHER INFORMATION CONTACT: To obtain a complete solicitation package, please contact Tanga Baylor, U.S. Department of Energy, Chicago Operations Office, Contracts Division, 9800 S. Cass Ave., Argonne IL 60439. Telephone (708) 252–2090.

SUPPLEMENTARY INFORMATION:

Program Title: Industrial Waste Reduction Program

Solicitation Number: DE–SC02–94CE41064

Citation of Authority: PL 95–91

U.S. Department of Energy (DOE), Office of Industrial Technologies, is planning to fund research and development for unique and innovative technologies in the areas of industrial processes, process changes, feedstock substitution, and/or product changes that will conserve energy while minimizing or reducing industrial waste material. For the purpose of this Solicitation, technologies include concepts, processes, and/or hardware. The term "innovative technology" will be used in a very broad sense and includes, but is not limited to, (1) development of new processes, materials, or products, (2) substitution of input materials or products, or (3) significant changes to existing manufacturing processes and operations, and (4) modification of final product. Applications with innovative technology applicable to more than one industry with enhanced energy savings potential are encouraged. Applications must meet the nominal U.S. national net energy savings goal of one trillion BTUs by fuel type per year by the year 2010. Waste reduction does not include waste heat, noise, electromagnetic radiation, nuclear radiation, lowering the level or degree that waste is toxic or hazardous, and those cross-media transfers (i.e. processes that convert waste material into different physical states such as from solid to liquid or gas) which are for the purpose of reducing the toxicity or hazardousness of the waste.

The focus of this effort will be on the metals industry and the pulp and paper industry, but industries in Standard Industrial Code (SIC) 1–39 will also be considered. Research and Development activities will be classified into four progressive phases. Phase I is "Exploratory Development", Phase II pertains to "Technology Development", Phase III is "Engineering Development" for pilot-scale and full-scale test, and Phase IV involves "Demonstration" to test and verify the potential for commercial application. Applicants may propose one or more of these phases. The proposed effort may be initiated at any phase if conclusive evidence is presented that the previous phase(s) have been completed successfully. This Solicitation will not fund work which falls within the categories "Basic Research" and "Commercialization". Basic research is defined as the investigation of fundamental understanding, creation of generic scientific knowledge, or establishment of technology base.

without known application. Commercialization is defined as production, marketing and sales of full-scale unit, or products of full-scale units.

Multiple awards are expected to be made in Fiscal Year (FY) 94 (possibly three to four Cooperative Agreements). The period of performance for these Cooperative Agreements may vary from several months up to 3–5 years, depending on the projects selected. Estimated DOE funding available is $3 million for FY 94, $4.5 million for FY 95, and $4.5 million for FY 96. A minimum of 50 percent cost sharing over the life of the project is.required. Industrial participation or support by the affected industry is essential in all phases.

Complete solicitation packages will be available from DOE, Chicago Operations Office during the first week of September, 1993. The complete Solicitation package with information on application preparation, evaluation procedures and criteria, the extent of Government participation in the Cooperative Agreements to be awarded, and other required data will be available upon request during the time the Solicitation is open. Please note that both DOE and non-DOE evaluators will be used to evaluate applications. All responsible sources may submit an application which will be considered. Applications must be submitted to DOE, Chicago Operations office, no later than November 30, 1993. Please note that the Solicitation is being printed on recycled paper. All applicants are encouraged to use recycled paper. If you are interested in receiving a complete Solicitation package, contact the automated telephone service at 708/252–2090 or write to the above address, Attention: Tanga Baylor, Executive Secretary, Contracts Division. All responsible sources may submit an application which will be considered.

Issued in Chicago, Illinois on August 27, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93–22201 Filed 9–9–93; 8:45 am]

BILLING CODE 6450–01–M

Golden Field Office; Grant Award to User Scale Applications—Photovoltaics, Inc.

AGENCY: Department of Energy.

ACTION: Notice of financial assistance award in response to an unsolicited financial assistance application.

SUMMARY: The U.S. Department of Energy (DOE) pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14 is announcing its intention to award a cost sharing grant to User Scale Applications Photovoltaics, Inc. (USAPV) to develop marketing and business plans, develop standards, and generally develop and expand the use of photovoltaics (PV) in the United States.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden CO 80401, Attention: John W. Meeker, Contract Specialist. The Contracting Officer for this action is Dr. Paul K. Kearns.

SUPPLEMENTARY INFORMATION: DOE evaluated the unsolicited application in accordance with 10 CFR 600.14 and, based on this evaluation, it was recommended that the application submitted by USAPV be accepted for support.

The application was considered to be meritorious due to the fact that PV applications may allow utilities to increase the benefits and efficient use of existing capital investment in both transmission and distribution. Additionally, ideal insolation in the northeastern U.S. is coincident with most utility peak power demand periods. The project will incorporate a number of smaller PV projects aimed at solving operational problems and meeting distribution system peak demands by integrating PV technologies into the portfolio of products and services offered by the utilities of the Northeast. Finally, the project will help provide information to utilities that will accelerate PV deployment, achieving greater national energy independence while minimizing impact to the environment.

The objectives of the project are:

(1) To develop the necessary marketing business plans and regulatory framework (pricing, etc.) required to integrate PV technology into the portfolio of products and services offered by utilities to their customers;

(2) To develop the necessary standards for, and an understanding of PV technology such that PV becomes one of several solutions employed by utilities to solve operational problems and meet distribution system peak demands;

(3) To introduce at least 10 MW of new PV demand within the Pennsylvania—Jersey—Maryland Interconnection; to provide opportunities for utilities with little or no technical understanding of PV technology to gain a rapid understanding of applications as well as its benefits and constraints;

(4) To demonstrate a role for PV technology in the utilities' portfolios of demand-side management techniques;

(5) To identify and evaluate various methods of determining the value of benefits to all parties and their concomitant rate regulatory treatment for end-user located generation;

(6) To provide hands-on experience to increase awareness and education for utilities, businesses and consumers in the design, installation, maintenance and operation of small scale PV applications;

(7) To provide for greater knowledge of PV applications in the northeastern geographic area;

(8) To encourage the development of and utility sharing of standards and specifications for PV end-use distributed installations so as to encourage greater efficiencies and lower costs of PV technology;

(9) To document and disseminate knowledge gained from shared learning experiences for both business and utility purposes to accelerate technology transfer and application transfer;

(10) To provide high public visibility to applications to promote greater awareness and acceptance;

(11) To specifically promote applications with near cost effectiveness utilizing advanced PV technology; and

(12) To promote the integration of PV with existing available utility hardware, construction methods, procedures, etc., to further reduce utility system expansion costs where transmission and distribution savings can be offset.

These objectives will be achieved through installation of six smaller sub-projects:

(1) Commercial Fluorescent Lighting at five customer sites;

(2) Commercial Outdoor Lighting at six customer sites;

(3) Residential and Farm Isolated Loads at six sites;

(4) 50 kw Grid Support at the Barnegat Light State Park;

(5) 2kw Utility Interactive System at a municipal building; and

(6) High Pressure Sodium Street Lights at five sites.

USAPV has a unique relationship with Jersey Central Power & Light Company, Atlantic Electric and GPU Service Corporation. This relationship will allow successful attainment of project objectives. The Project is endorsed by the New Jersey Department of Environmental Protection and Energy, as well as the New Jersey Board of Regulatory Commissioners Division of Electric Staff.

Walter G. Runte, Jr. will be the project director. Mr. Runte has been associated

with the electric utility business since 1975. He has held a variety of positions with increasing responsibility at both GPU Service and GPU Nuclear Corporations. In his present position, Mr. Runte, in conjunction with its operating subsidiaries, is responsible for the identification, development and implementation of new business ventures and new customer service offerings for the GPU System, including investments in strategic industries. In addition, he plays an integral role in a corporate development process, the purpose of which is to assist in the repositioning of the organization for an increasingly competitive marketplace.

Based on the general evaluation, the application was found to be meritorious. The proposed project represents a unique approach and would not be eligible for financial assistance under a recent, current, or planned solicitation, and it is considered by DOE that a competitive solicitation would be inappropriate for this action.

The total estimated value of the grant is $705,480. Cost sharing will be on a 50/50 basis with both DOE and USAPV contributing $352,740. The term of the proposed grant will be 12 months.

Issued in Chicago, Illinois on August 26, 1993.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 93–22199 Filed 9–9–93; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. TM94–1–88–000]

Black Marlin Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 3, 1993.

Take Notice that on August 31, 1993, Black Marlin Pipeline Company (Black Marlin) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheet to be effective October 1, 1993:

Fourth Revised Sheet No. 4

Black Marlin states that the above-referenced tariff sheet is being filed pursuant to Section 18 of the General Terms and Conditions of Black Marlin's tariff to reflect the increase of the ACA charge to .25¢/MMBtu based on the Commission's Annual Charge Billing for Fiscal Year 1993.

Black Marlin further states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22083 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–67–000]

Canyon Creek Compression Co.; Proposed Changes in FERC Gas Tariff

September 3, 1993.

Take notice that on August 31, 1993, Canyon Creek Compression Company (Canyon) tendered for filing Fourth Revised Sheet No. 7 (First Revised Volume No. 1) and Fourth Revised Sheet No. 5 (First Revised Volume No. 1A) to be a part of its FERC Gas Tariff, to be effective October 1, 1993.

Canyon states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Canyon to recover from its customers annual charges assessed it by the Commission pursuant to part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1993 is .26¢ per Mcf.

Canyon requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective on October 1, 1993.

Canyon states that a copy of the filing is being mailed to Canyon's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22084 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–185–000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 3, 1993.

Take notice that on August 31, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet, with a proposed effective date of October 1, 1993:

Original Sheet No. 9

Carnegie states that it is filing the above tariff sheet as a limited application under section 4 of the Natural Gas Act and the Commission's Order No. 636 to direct bill to Carnegie's former firm sales customers gas costs direct billed to Carnegie by Carnegie's upstream pipeline, Texas Eastern Transmission Corporation (Texas Eastern), pursuant to Texas Eastern's filings in Docket Nos. RP93–112–000, RP93–122–000, and RP93–128–000. Carnegie states that it is filing making this filing pursuant to Section 31.3(b) of the General Terms and Conditions of its FERC gas tariff.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22086 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–184–000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 3, 1993.

Take notice that on August 31, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet, with a proposed effective date of October 1, 1993:

First Revised Sheet No. 8

Carnegie states that it is filing the above tariff sheet as a limited application under section 4 of the Natural Gas Act and the Commission's Order No. 636 to direct bill to New Jersey Natural Gas Company the adjusted balance of Carnegie's Account No. 191 as of July 31, 1993, exclusive of amounts direct billed to Carnegie by Carnegie's upstream pipeline, Texas Eastern Transmission Corporation pursuant to Texas Eastern's filings in Docket Nos. RP93–112–000, RP93–122–000 and RP93–128–000. Carnegie states that it is making this filing pursuant to Section 31.3(a) of the General Terms and Conditions of its FERC gas tariff.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22085 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–186–000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 3, 1993.

Take notice that on August 31, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet, with a proposed effective date of October 1, 1993:

Second Revised Sheet No. 7

Carnegie states that it is filing the above tariff sheets as a limited application under section 4 of the Natural Gas Act pursuant to Section 32.2 of the General Terms and Conditions of Carnegie's tariff. The filing seeks to recover, through a monthly demand surcharge on Rate Schedule FTS service, $1.1624/Dth for the unrecovered costs of 12,222 Dth/d of unassigned upstream capacity. Carnegie proposes an effective date of October 1, 1993, the date of implementation of its restructured services pursuant to the August 2, 1993, Order in Docket No. RS92–30–000.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22087 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–178–000 and TM94–1–97–000]

Chandeleur Pipe Line Co.; Annual Charge Adjustment Clause Filing

September 3, 1993.

Take notice on August 31, 1993, Chandeleur Pipe Line Company (Chandeleur) tendered for filing proposed tariff sheets designed to add an Annual Charge Adjustment Clause to its FERC Gas Tariff. Chandeleur also proposes to adjust its rates to reflect the Federal Energy Regulatory Commission's FY 1994 annual charge for natural gas pipeline companies of $0.0026 per Mcf. Chandeleur has proposed an effective date for the revised tariff sheets of October 1, 1993.

Chandeleur states that a copy of this filing has been mailed to each of Chandeleur's current FT and IT shippers as well as the two state public utility commissions in Chandeleur's service area.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 375.211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All such motions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22078 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–5–2–000]

East Tennessee Natural Gas Co.; Rate Filing

September 3, 1993.

Take notice that on August 31, 1993, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Tariff Sheet No. 7, with a proposed effective date of September 1, 1993.

East Tennessee states that the purpose of this filing is to pass through take-or-pay transition costs assessed to East Tennessee by Tennessee Gas Pipeline Company (Tennessee) pursuant to Section 26.5 of the General Terms and Conditions of Volume 1 of East Tennessee's tariff. Tennessee made its filing assessing costs against East Tennessee in Docket No. RP93–132–000 on May 28, 1993 for a proposed effective date of July 1, 1993. The provisions of Section 26.5 of East Tennessee's tariff

require East Tennessee to file to pass through the Tennessee charges within thirty days of billing by Tennessee. Tennessee billed East Tennessee for the increase on August 15, 1993.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22080 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–33–000]

El Paso Natural Gas Co. Tariff Filing

September 3, 1993.

Take notice that on August 31, 1993, El Paso Natural Gas Company (El Paso), tendered for filing, pursuant to part 154 of the Federal Energy Regulatory Commission's (Commission) Regulations Under the Natural Gas Act, a notice of:

(i) A revision to El Paso's Take-or-Pay Buyout and Buydown Cost Recovery for interest in accordance with Sections 22 and 21, Take-or-Pay Buyout and Buydown Cost Recovery, of its First Revised Volume No. 1–A and Second Revised Volume No. 1 FERC Gas Tariffs, respectively; and

(ii) A revision in the Annual Charge Adjustment (ACA) in accordance with Section 21, Annual Charge Adjustment Provision, contained in the General Terms and Conditions in El Paso's First Revised Volume No. 1–A FERC Gas Tariff.

El Paso states that the instant filing reflects no additions to the principal amounts presently being amortized under El Paso's Take-or-Pay Cost Recover mechanism as set forth in El Paso's filing made April 30, 1993, at Docket No. RP93–108–000. The only adjustments proposed by the filing are being made pursuant to Sections 21.4(d)(iii) and 21.5(c)(iii) contained in its Second Revised Volume No. 1 Tariff which provides for adjustments to El Paso's Monthly Direct Charge and Throughput Surcharge for interest calculated on the unrecovered balance of El Paso's buyout and buydown costs. El Paso states that interest is permitted to accrue, with respect to its buyout and buydown costs, commencing on the effective date of the rates including such costs or the date El Paso makes the take-or-pay payment, whichever is later. As a result, the Throughput Surcharge has been changed from a Maximum Rate of $0.0422 per dth to $0.0417 per dth.

In addition, El Paso states that the proposed tariff sheets reflect an ACA charge of $0.0025 per dth to be collected for the fiscal year beginning October 1, 1993. This represents an increase of $0.0003 per dth in the ACA charge currently being charged.

El Paso respectfully requests that the Commission accept the tendered tariff sheets for filing and permit them to become effective October 1, 1993, which is not less than thirty (30) days after the date of filing.

El Paso states that copies of the filing were served upon all interstate pipeline system transportation and affected sales customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Regulations. All such motions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public conference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22082 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–34–000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 3, 1993.

Take notice that on August 31, 1993, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective October 1, 1993:

Forty-Seventh Revised Sheet No. 8
Sixteenth Revised Sheet No. 8A
Thirteenth Revised Sheet No. 8B

FGT states that the above-referenced tariff sheets are being filed pursuant to section 22 of the General Terms and Conditions of FGT's Tariff to reflect the increase of the ACA charge to .25¢/MMBtu (.025¢/therm) based on the Commission's Annual Charge Billing for Fiscal Year 1993.

FGT further states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with § 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22088 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–51–000]

Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff

September 3, 1993.

Take notice that on August 31, 1993, Great Lakes Gas Transmission Limited Partnership (Great Lakes), tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, with a proposed effective date of October 1, 1993:

First Revised Volume No. 1
Tenth Revised Sheet No. 57(iv)

Original Volume No. 3
Ninth Revised Sheet No. 2

Tenth Revised Sheet No. 3

Great Lakes states that the above tariff sheets reflect the new ACA rate to be charged pursuant to the Annual Charges Adjustment Clause provisions established by the Commission in Order No. 472, issued May 29, 1987. The new ACA rate to be charged by Great Lakes was established by FERC notice given on July 26, 1993 and is to be effective October 1, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22089 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–110–000]

Iroquois Gas Transmission System, L.P.; Proposed Changes in FERC Gas Tariff

September 3, 1993.

Take notice that on August 31, 1993, Iroquois Gas Transmission System, L.P. (Iroquois), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of October 1, 1993.

First Revised Volume No. 1
Second Revised Sheet No. 4
Second Revised Sheet No. 5

Iroquois states that the above tariff sheets were filed to reflect an adjustment to its current ACA charge to reflect the charge specified in the Commission's Annual Bill of which the unit amortization charge would be $0.0026. Iroquois states that its First Revised FERC Gas Tariff Volume No. 1 complies with § 154.38(d)(6)(ii)(A)(1)–(4) of the Commission's Regulations.

Iroquois states that copies of the filing were served upon Iroquois' jurisdictional customers, interested state regulatory commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such petitions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22090 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–65–000]

Jupiter Energy Corp.; Proposed Changes in FERC Gas Tariff

September 3, 1993.

Take notice that on August 31, 1993, Jupiter Energy Corporation (Jupiter Energy), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with a proposed effective date of October 1, 1993:

Seventh Revised Sheet No. 4A
Seventh Revised Sheet No. 5A
Seventh Revised Sheet No. 6A

Jupiter Energy states that the filed tariff reflect revision, pursuant to § 154.38(d)(6) of the Commission's regulations, of Jupiter Energy's Annual Charge Adjustment (ACA) surcharge. The new surcharge rate is .26¢ per Mcf.

Jupiter Energy states that copies of the filing have been served on the Company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Jupiter Energy's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22091 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–46–000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

September 3, 1993.

Take notice that on August 31, 1993, Kentucky West Virginia Gas Company (Kentucky West), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 163, to become effective October 1, 1993.

Kentucky West states the revised tariff sheet amends its Annual Charge Adjustment (ACA) charge to place in effect the new ACA funding unit of $.0026 per MCF which represents an increase of $.0003 per MCF. This rate is $.0023 per Dth as converted on Kentucky West's system.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22092 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–47–000]

MIGC, Inc.; Proposed Changes in FERC Gas Tariff

September 3, 1993.

Take notice that on August 31, 1993, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 4, with a proposed effective date October 1, 1993.

MIGC states that the instant filing is being submitted to reflect Annual Charge Adjustment unit charges applicable to transportation services during the fiscal year commencing October 1, 1993.

MIGC states that copies of the filing are being served upon all of MIGC's jurisdictional customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22093 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–25–000]

Mississippi River Transmission Corp.; Proposed Change in FERC Gas Tariff

September 3, 1993.

Take notice that on August 31, 1993, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, with a proposed effective date of October 1, 1993:

Second Revised Volume No. 1

Ninety-Third Revised Sheet No. 4
Fifty-Second Revised Sheet No. 4.1
Eleventh Revised Sheet No. 4D

Original Volume No. 1–A

Thirteenth Revised Sheet No. 2
Thirteenth Revised Sheet No. 3
Eighth Revised Sheet No. 4

MRT states that the purpose of the instant filing is to adjust the currently effective ACA charge in its jurisdictional sales and transportation rates to the new FERC approved surcharge of $.0025 per MMBtu effective October 1, 1993.

MRT states that a copy of revised sheets is being mailed to each of its jurisdictional customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22094 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–688–000]

Natural Gas Pipeline Company of America; Application

September 3, 1993.

Take notice that on August 27, 1993, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP93–688–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon, effective September 2, 1993, Natural's firm transportation service for Sea Robin Pipeline Company (Sea Robin) performed under the Natural's Rate Schedule X–93, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement between Natural and Sea Robin Dated September 2, 1977 (Agreement), Natural's Rate Schedule X–93, Natural states that it had received on a firm basis up to 4,500 Mcf of natural gas per day in Eugene Island Block 305, offshore Louisiana for Sea Robin and had redelivered such gas to Sea Robin in Eugene Island Block 295, offshore Louisiana.

Natural states further that Sea Robin, by a letter to Natural dated January 8, 1993, requested that Natural abandon, effective September 2, 1993, the Agreement and Natural's Rate Schedule X–93 firm transportation service. Natural therefore proposes to abandon, effective September 2, 1993, its firm transportation service for Sea Robin provided under the Agreement and Natural's Rate Schedule X–93 as authorized in Docket No. CP77–641.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before September 24, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22074 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–26–000]

Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

September 3, 1993.

Take notice on August 31, 1993, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, revised tariff sheets to be effective October 1, 1993.

Natural states that the purpose of the filing is to implement the Annual

Charges Adjustment (ACA) charge necessary for Natural to recover from its customers annual charges assessed it by the Commission pursuant to part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1993 is .26¢ per Mcf. Under Natural's billing basis of 14.73 psia at 1,000 Btu, this rate converts to .25¢ per Mcf.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective on October 1, 1993.

Natural states that a copy of the filing is being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion in intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22097 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–16–000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

September 3, 1993.

Take notice that on August 31, 1993, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective on October 1, 1993.

First Revised Sheet Nos. 219–220
First Revised Sheet Nos. 222–223
First Revised Sheet No. 225

National states that the purpose of this filing is to (1) update the amount of take-or-pay charges approved by the Federal Energy Regulatory Commission to be billed to National by its pipeline-suppliers and to be recovered by National by operation of Section 20 of the General Terms and Conditions to National's FERC Gas Tariff, Third Revised Volume No. 1 and; (2) update Third Revised Volume No.1 Section 20 tariff sheets to conform to those filed and approved under Second Revised Volumes No. 1 in Docket TM93–4–16.

National further states that the pipeline-supplier which has received approval to bill revised take-or-pay charges, as reflected in National's filing herein, is Tennessee Gas Pipe Line Corporation.

National states copies of National's filing were served on National's jurisdictional customers and on the interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions to intervene or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22095 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–16–000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

September 3, 1993.

Take notice that on August 31, 1993, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective on October 1, 1993.

First Revised Sheet Nos. 5–6

National states that the purpose of this filing is to revise the ACA unit surcharge authorized by the Commission for Fiscal 1994 to $.0026 per Mcf or $.0025 per Dth converted to National's measurement basis.

National states that copies of the filing were served on National's jurisdictional customers and on the interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22096 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–100–000]

Nora Transmission Co.; Proposed Change in FERC Gas Tariff

September 3, 1993.

Take notice that on August 31, 1993, Nora Transmission Company (Nora), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Third Revised Sheet No. 5, to become effective October 1, 1993.

Nora states the revised tariff sheet amends its Annual Charge Adjustment (ACA) charge to place in effect the new ACA funding unit of $.0026 per MCF which represents an increase of $.0003 per MCF. This rate converts to $.0025 per Dth.

Nora states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22098 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93-692-000]

Northern Natural Gas Co.; Request Under Blanket Authorization

September 3, 1993.

Take notice that on August 30, 1993, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP93-692-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install a delivery point to accommodate increased natural gas deliveries to Northwestern Public Service Co. (NWPS) under Northern's blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to install and operate one small volume measuring station and appurtenant facilities as a delivery point to provide natural gas deliveries to NWPS to accommodate service under Northern's existing transportation service agreement with NWPS, to serve John Kertscher, an end-user located in Hanson County, South Dakota.

Northern states that the estimated volumes to be delivered to NWPS is 3.0 Mcf per day and 112 Mcf on an annual basis. Northern states that the volumes proposed to be delivered to NWPS at the proposed delivery point will be within the currently effective service agreements with NWPS. It is estimated that the total cost to install the proposed delivery will be $930.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-22075 Filed 9-9-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-6-000]

Northwest Pipeline Corp., Technical Conference

September 3, 1993.

In his order Rescheduling Procedural Dates, issued August 27, 1993, Presiding Administrative Law Judge Harfeld suggested that a technical conference be arranged "for the purpose of allowing all parties and participants a final and full opportunity to acquire a working knowledge of all submissions and, thereby, of limiting the need for undue exploratory cross-examination." For this purpose, take notice that a technical conference will be convened in this proceeding at 9 a.m. on September 28, 1993 at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend.

For additional information, contact Marc G. Denkinger, (202) 208-2215 or Kathleen M. Dias, (202) 208-0524.

Lois D. Cashell,

Secretary.

[FR Doc. 93-22073 Filed 9-9-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-59-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 3, 1993.

Take notice that on August 31, 1993, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fourth Revised Volume No. 1 and Original Volume No. 2.

Northern states that the filing establishes the revised Annual Charge Adjustment (ACA) rate effective October 1, 1993, for Northern's sales and transportation rates. The ACA rate is designed to recover the charge assessed by the Commission pursuant to part 382 of the Commission's Regulations.

Northern copies of this filing were served upon Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.44 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1993. All protests will be considered by the Commission in determining the appropriate proceeding, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-22099 Filed 9-9-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-73-000]

Ozark Gas Transmission System; Proposed Change in FERC Gas Tariff

September 3, 1993.

Take notice that on August 31, 1993, Ozark Gas Transmission System (Ozark), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet, with a proposed effective date of October 1, 1993:

Sixth Revised Sheet No. 4

Ozark states that it is amending its transportation rate schedule to reflect its Commission-authorized Annual Charge Adjustment (ACA) unit charge of $.0026. Ozark states that this filing is submitted in compliance with Section 154.38(d)(6)(iii) of the Commission's Regulations.

Ozark states that copies of the filing were served upon Ozark's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-22100 Filed 9-9-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-64-000]

Pacific Interstate Offshore Co.; Change in Rate

September 3, 1993.

Take notice that on August 31, 1993, Pacific Interstate Offshore Company (PIOC), tendered for filing, to be part of its FERC Gas Tariff, the following tariff sheets, with a proposed effective date October 1, 1993:

First Revised Volume No. 1
Second Revised Volume No. 1
Third Revised Sheet No. 4
Substitute Original Sheet No. 6

PIOC states the purpose of this filing is to set forth in applicable Annual Charge Adjustment (ACA) surcharge of .26 cents per MMBtu.

PIOC states that a copy of this filing has been served on PIOC's sole customer, the Southern California Gas Company and the Public Utilities Commission of the State of California and other interested parties.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-22079 Filed 9-9-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-166-000]

Panhandle Eastern Pipe Line Co.; Informal Settlement Conference

September 3, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on Monday, September 13, 1993, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Carmen Gastilo at (202) 208-2182 or Joanne Leveque at (202) 208-5705.

Lois D. Cashell,

Secretary.

[FR Doc. 93-22077 Filed 9-9-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-55-000]

Questar Pipeline Co.; Tariff Filing

September 3, 1993.

Take notice that on August 31, 1993, Questar Pipeline Company, tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, with a proposed effective date of October 1, 1993:

First Revised Volume No. 1

First Revised Sheet No. 5
Alternate First Revised Sheet No. 5
First Revised Sheet No. 5A
First Revised Sheet No. 6

Original Volume No. 3

Twelfth Revised Sheet No. 8
Alternate Twelfth Revised Sheet No. 8

Quester states that this filing incorporates into its storage and transportation rates the annual charge unit rate of $0.0026 per Mcf adjusted to $0:00245 per Dth.

Questar states that copies of this filing were served upon Questar's jurisdictional customers and interested state public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-22081 Filed 9-9-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-69-000]

Stingray Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 3, 1993.

Take notice that on August 31, 1993, Stingray Pipeline Company (Stingray) tendered for filing, to be a part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 4 to be effective October 1, 1993.

Stingray states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Stingray to recover from its customers annual charges assessed it by the Commission pursuant to part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1993 is .26¢ per Mcf. Under Stingray's billing basis, this rate converts to .25¢ per Dekatherm.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective on October 1, 1993.

Stingray states that a copy of the filing is being mailed to Stingray's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-22101 Filed 9-9-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-63-000]

Trailblazer Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 3, 1993.

Take notice that on August 31, 1993, Trailblazer Pipeline Company (Trailblazer) tendered for filing First Revised Sheet No. 4 (First Revised Volume No. 1) and Fourth Revised Sheet No. 5 (First Revised Volume No.

1A) to be a part of its FERC Gas Tariff, to be effective October 1, 1993.

Trailblazer states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Trailblazer to recover from its customers annual charges assessed it by the Commission pursuant to part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1993 is .26¢ per Mcf.

Trailblazer requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective on October 1, 1993.

Trailblazer states that a copy of the filing is being mailed to Trailblazer's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22102 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–43–000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

September 3, 1993.

Take notice that on August 31, 1993, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet Nos. 6 and 6A, with a proposed effective date of October 1, 1993.

WNG states that pursuant to Article 26 of the General Terms and Conditions of such tariff, it proposes to increase its rates effective October 1, 1993, to reflect an increase in the FERC Annual Charge Adjustment from $.0023 to $.0025 per Dth for the fiscal year beginning October 1, 1993, per the Commission's Annual Charges Billing issued July 26, 1993.

WNG states that copies of the filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22103 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–56–000]

Valero Interstate Transmission Co., Proposed Changes in FERC Gas Tariff

Take notice that on August 31, 1993, Valero Interstate Transmission Company (Vitco), tendered for filing the following tariff sheets containing changes to the ACA unit rate in each applicable rate schedule:

FERC Gas Tariff, First Revised Volume No. 1
- 2nd Revised Sheet No. 7
- 2nd Revised Sheet No. 8
- 2nd Revised Sheet No. 70

FERC Gas Tariff, First Revised Volume No. 2
- 11th Revised Sheet No. 6
- 2nd Revised Sheet No. 21

The proposed effective date of the above filing is October 1, 1993.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22104 Filed 9–9–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4727–8]

National Emission Standards for Hazardous Air Pollutants; Compliance Extensions for Early Reductions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of complete enforceable commitments received.

SUMMARY: This notice provides a list of companies that have submitted "complete" enforceable commitments to the EPA under the Early Reductions Provisions (section 112(i)(5)) of the Clean Air Act (CAA) as amended in 1990. The list covers commitments determined by the EPA to be complete through August 9, 1993, and includes the name of each participating company, the associated emissions source location, and the EPA Regional Office which is the point of contact for further information. This is one of a series of notices of this type. The most recent notice listed nineteen sources which have had commitments deemed complete by the EPA. The EPA will publish additional lists of complete submittals on a monthly basis, as needed.

FOR FURTHER INFORMATION CONTACT: David Beck (telephone: 919–541–5421), Rick Colyer (telephone: 919–541–5262), or Mark Morris (telephone: 919–541–5416), Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 for general information on the Early Reductions Program. For further information on specific submittals received under the Early Reductions Program contact the appropriate EPA Regional Office representative listed below.

Region I—Janet Beloin (617) 565–2734
Region II—Umesh Dholakia or Harish Patel (212) 264–6676
Region III—Alice Chow (215) 597–6550
Region IV—Anthony Toney (404) 347–2864
Region V—Aurelio Alvarez (312) 353–8657

Region VI—Tom Driscoll (214) 655–7549
Region VII—Ward Burns (913) 551–7960
Region VIII—Cory Potash (303) 293–1886
Region IX—Ed Pike (415) 744–1248
Region X—Chris Hall (206) 553–1949

SUPPLEMENTARY INFORMATION: Under section 112(i)(5) of the Clean Air Act (CAA) as amended in 1990, an existing source of hazardous air pollutant emissions may obtain a 6-year extension of compliance with an emission standard promulgated under section 112(d) of the CAA, if the source achieves sufficient reductions of hazardous air pollutant emissions prior to certain dates. On October 29, 1992, the EPA Administrator signed a final rule to implement this "Early Reductions" provision. The final rule was published in the **Federal Register** on December 29, 1992, (57 FR 61970).

Sources choosing to participate in the Early Reductions Program must document base year emissions and post-reduction emissions to show that sufficient emission reductions have been achieved to qualify for a compliance extension. As a first step toward this demonstration, some sources may be required to submit an enforceable commitment containing base year emission information, or if not required, may voluntarily submit such emission information to the EPA for approval. As stated in the proposed Early Reductions rule, the EPA will review these submittals to verify emission information, and also will provide the opportunity for public review and comment. Following the review and comment process and after sources have had the chance to revise submittals (if necessary), the EPA will approve or disapprove the base year emissions.

To facilitate the public review process for program submittals, the proposed rule contains a commitment by the EPA to give monthly public notice of submittals received which have been determined to be complete and which are about to undergo technical review within the EPA. Members of the public wishing to obtain more information on a specific submittal then may contact the appropriate EPA Regional Office representative listed above.

Eighty-four enforceable commitments have been received by the EPA (Note: In the previous notice eighty-seven submittals were listed as being received, since then four submittals from First Chemical were combined into one submittal, reducing the total to eighty-four submittals), and twenty-five have been determined to be complete to date. Some of the early reductions submittals received actually contain multiple enforceable commitments; that is, some companies have decided to divide their particular plant sites into more than one early reductions source. Each of these sources must achieve the required emissions reductions individually to qualify for a compliance extension. The purpose of today's notice is to add commitments from Dayco, Dow, First Chemical, Monsanto, and PPG to the previously published list of commitments that have been determined to be complete by the EPA under the Early Reductions Program. Since the last notice, the EPA has deemed complete one commitment from Dayco for a source in Waynesville, North Carolina, one from Dow in Dalton, Georgia, one from First Chemical in Pascagoula, Mississippi, two from Monsanto in Springfield, Massachusetts, and one from PPG in Lake Charles, Louisiana. As the remaining submittals are determined to be complete, they will appear in subsequent monthly notices.

At a later time (most likely within one to three months of today's date), the EPA Regional Offices will provide a formal opportunity for the public to comment on the submittals added to the list by today's notice. To do this, the Regional Office will publish a notice in the source's general area announcing that a copy of the source's submittal is available for public inspection and that comments will be received for a 30 day period.

The table below lists those companies that have made complete enforceable commitments or base year emission submittals under the Early Reductions Program through August 9, 1993. These submittals are undergoing technical review within the EPA at this time.

TABLE 1.—COMPLETE ENFORCEABLE COMMITMENTS AS OF AUGUST 9, 1993

Company	Location	EPA region
1. Amoco Chemical Co. (first source)	Texas City, TX	VI
2. Amoco Chemical Co. (second source)	Texas City, TX	VI
3. Johnson & Johnson Medical, Inc.	Sherman, TX	VI
4. PPG Industries	Lake Charles, LA	VI
5. Allied-Signal (first source)	Baton Rouge, LA	VI
6. Allied-Signal (second source)	Baton Rouge, LA	VI
7. Allied-Signal (third source)	Baton Rouge, LA	VI
8. Allied-Signal (first source)	Ironton, OH	V
9. Allied-Signal (second source)	Ironton, OH	V
10. Monsanto	Sauget, IL	V
11. Dow Corning	Midland, MI	V
12. Allied-Signal	Philadelphia, PA	III
13. Texaco-Neches	Port Neches, TX	VI
14. Wyeth Ayerst	Rouses Point, NY	II
15. Marathon Oil	Garyville, LA	VI
16. Monsanto	Springfield, MA	I
17. Polyken	Franklin, KY	IV
18. Occidental Chemical	Belle, WV	III
19. Dayco	Waynesville, NC	IV
20. Dow	Dalton, GA	IV
21. First Chemical	Pascagoula, MS	IV
22. Hoechst Celanese	Bishop, TX	VI
23. Monsanto (first source)	St. Louis, MO	VII
24. Monsanto (second source)	St. Louis, MO	VII
25. PPG	New Martinsville, WV	III

Dated: September 2, 1993.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93-22193 Filed 9-9-93; 8:45 am]

BILLING CODE 6560-50-P

[ER-FRL-4624-4]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 or (202) 260-5075.

Weekly receipt of Environmental Impact Statements Filed August 30, 1993 Through September 03, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930305, DRAFT EIS, FHW, IL, IL-13 (FAP-331) Transportation Improvements from west of the Illinois Central Railroad to US 45 east of Harrisburg, Funding, COE Section 404 and NPDES Permits, Williamson and Saline Counties, IL, Due: October 25, 1993, Contact: Lyle P. Renz (217) 492-4600.

EIS No. 930306, DRAFT EIS, NPS, AZ, Tumacacori National Historical Park, General Management Plan (GMP), Implementation, Santa Cruz County, AZ, Due: November 26, 1993, Contact: Stanley T. Albright (415) 744-3968.

EIS No. 930307, DRAFT SUPPLEMENT, FHW, NY, NY-9A Reconstruction Project, Battery Place to 59th Street along the western edge of Manhattan, New Information, Funding and Approval of Permits, New York County, NY, Due: November 03, 1993, Contact: Harold J. Brown (518) 472-3616.

EIS No. 930308, DRAFT EIS, HUD, CA, Martin Luther King, Jr. Plaza Development on the former Marritt College and University High School Site, Funding and Implementation, City of Oakland, Alameda County, CA, Due: October 25, 1993, Contact: Richard Broun (202) 708-3297.

EIS No. 930309, DRAFT EIS, AFS, CA, Hamm-Hasloe Reforestation Project, Implementation, Stanislaus National Forest, Groveland Ranger District, Tuolume and Mariposa Counties, CA, Due: October 25, 1993, Contact: Herb Hahn (209) 962-7825.

EIS No. 930310, FINAL EIS, AFS, MT, Tolan Creek Timber Sale, Timber Harvest and Road Construction, Tolan Creek, Bitterroot National Forest, Sula Ranger District, Ravalli County, MT, Due: October 12, 1993, Contact: David M. Campbell (406) 821-3201.

EIS No. 930311, FINAL EIS, EPA, CA, San Francisco Bay Deep-Water Ocean Dredged Material Disposal Sites (ODMDs), Site Designation, COE Section 404 Permit and Long-term Management Strategy (LTMS), San Francisco Bay, CA, Due: October 12, 1993, Contact: Allen Ofa (415) 744-1164.

EIS No. 930312, DRAFT SUPPLEMENT, FHW, PA, Mon/Fayette Transportation Project, I-70 in Fallowfield Township to PA-51 in Jefferson Borough, Updated Information concerning the addition of the Green Alignment Alternative, Funding, COE Section 404 and NPDES Permits, Mon Valley, Washington and Allegheny Cos., PA, Due: October 25, 1993, Contact: Daniel W. Johnson (717) 782-3461.

Amended Notices

EIS No. 930273, DRAFT EIS, AFS, AK, Main Bay Salmon Hatchery Expansion, Implementation, Special-Use-Permit and COE Section 404 Permit, Prince William Sound, Chugach National Forest, Glacier Ranger District, AK, Due: October 04, 1993, Contact: John Dorio (907) 783-3242.

Published FR 08-20-93—Review period extended.

Dated: September 7, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93-22191 Filed 9-9-93; 8:45 am]

BILLING CODE 6560-50-U

[ER-FRL-4624-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 23, 1993 Through August 27, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D-FHW-F40333-WI Rating EC2, US 10 Corridor between Waupaca and Fremont Transportation Improvement from Anderson Road west of the WI-TH-54/49 Interchange to Brown Road and west of the Village of Fremont, Funding and COE Section 404 Permit, Waupaca County, WI.

Summary: EPA expressed environmental concerns that will be satisfied when mitigation for woodland impacts are discussed, actions are identified and implemented and when noise mitigation measures in addition to noise barriers are considered.

ERP No. D-NOA-K64013-HI Rating LO, Pelagic Fisheries of the Western Pacific Region, Amendment 7 to the Fishery Management Plan, Implementation, Exclusive Economic Zone, (EEZ), HI.

Summary: EPA had no objections to the proposed action.

Final EISs

ERP No. F-AFS-L82011-ID, Coeur d'Arlene Nursery Pest Management, Implementation, Idaho Panhandle National Forests, Kootenai County, ID.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the preparing agency.

ERP No. F-FAA-E51043-TN, Memphis International Airport, Runway 18L-36R Extension, Construction and Operation of Associated Facilities and Relocation of Swinnea Road, portion of Winchester Road and Shelby Drive, Airport Layout Plan (ALP) Approval, Funding and COE Section 404 Permits, Shelby County, TN.

Summary: EPA had environmental concerns although an overall noise reduction is projected for the airport environs by the year 2000, additional information on air traffic patterns, noise level increases within the 65 and 60 Ldn contours, and noise mitigation is needed to fully evaluate all noise impacts.

ERP No. F-NPS-B61018-VT, Appalachian National Scenic Trail Protection from Deer Leap Mountain to the Mendon-Shrewsbury Town Line, Pico/Killington Section, Implementation, Rutland County, VT.

Summary: EPA continued to have environmental objections to the National Park Service's proposed relocation of the Applachian Trail (AT) in Vermont. EPA stated that the choice of an alternative for protecting the existing AT should not be based on whether it potentially affects future ski area development, but on which alternative maximizes protection for the Trail.

ERP No. F-USN-D11020-MD, Naval Air Warfare Center Aircraft Division Base Realignment, Naval Air Station Patuxent River, St. Mary's, Calvert and Charles Counties, MD.

Summary: EPA expressed environmental concerns regarding the lack of a full discussion on wetland mitigation, farmlands and electromagnetic fields.

ERP No. F–USN–D11022–00, Dahlgren Division, Naval Surface Warfare Center Base Realignment, New Construction and Renovation, Westmoreland, Stafford, Spotsylvania and King George Counties, VA and Charles County, MD.

Summary: EPA continued to express environmental concern regarding electromagnetic field impacts.

Dated: September 7, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities

[FR Doc. 93–22190 Filed 9–9–93; 8:45 am]

BILLING CODE 6560–50–U

[OPP–00364; FRL–4646–5]

State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Ground Water Protection and Pesticide Disposal; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Ground Water Protection and Pesticide Disposal will hold a 2–day meeting, beginning on September 27, 1993, and ending on September 28, 1993. This notice announces the location and times for the meeting and sets forth tentative agenda topics.

DATES: The SFIREG Working Committee on Ground Water Protection and Pesticide Disposal will meet on Monday, September 27, 1993 from 8:30 a.m. to 5 p.m. and on Tuesday, September 28, 1993 beginning at 8:30 a.m. and adjourning at approximately noon.

ADDRESSES: The meeting will be held at: DoubleTree Hotel National Airport - Crystal City, 300 Army-Navy Drive, Arlington, Virginia, (703) 892–4100.

FOR FURTHER INFORMATION CONTACT: By Mail: Shirley M. Howard, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Office location and telephone number: Rm. 1109, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia, (703) 305–7371.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee includes the following:

1. Reports from the SFIREG Working Committee Members on State Ground Water Protection & Pesticide Disposal projects.
2. Report from EPA Regional/ Headquarters Review Team Meetingregarding State Management Plans.
3. Update on Laboratory Issues.
4. Discussion on Land Spreading Procedures & Issues.
5. Update on Groundwater Monitoring Protocols & Studies.
6. Update on EPA's Rinsate Policy.
7. Discussion of EPA response to the Midwest Flood.

Dated: September 2, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–21993 Filed 9–9–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before November 9, 1993.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Reinstatement of 3067–0018.

Title: National Flood Insurance Program Biennial Report.

Abstract: The Federal Emergency Management Agency requires that communities participating in the National Flood Insurance Program submit a biennial report on progress made in the implementation and enforcement of floodplain management regulations. The information provided by communities using FEMA Forms 81–28, 81–29, and 81–29A enables FEMA to be more responsive to the ongoing changes which occur in each participating community's flood hazard area, as well as to evaluate the effectiveness of the community's floodplain management activities.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 7,988 hours.

Number of Respondents: 17,730.

Estimated Average Burden Time per Response: 27 minutes.

Frequency of Response: Biennially.

Dated: August 27, 1993.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 93–22218 Filed 9–9–93; 8:45 am]

BILLING CODE 6718–01–M

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paper Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before November 9, 1993.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Extension of 3067–0181.

Title: Survey of Contractor Responsibility.

Abstract: FEMA Form 40–25, Survey of Contractor Responsibility, is used to collect financial and historical business

data on prospective FEMA contractors. The survey will assist the contracting officer in making the required determination of contractor responsibility so that mobile home set-up contracts can be awarded expeditiously during disaster relief operations.

Type of Respondents: Individuals and households, small businesses or organizations.

Estimate of Total Annual Reporting and Recordkeeping Burden: 245 hours.

Number of Respondents: 150.

Estimated Average Burden Time per Response: 1.63 hours.

Frequency of Response: On occasion during a Presidentially-declared major disaster or emergency.

Dated: August 27, 1993.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 93–22154 Filed 9–9–93; 8:45 am]

BILLING CODE 6718–01–M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before November 9, 1993.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Extension of 3067–0177.

Title: Local Level Civil Rights Compliance Checklist.

Abstract: FEMA Form 14–4, Local Civil Rights Compliance Checklist, will be used to obtain information on warning and communications, evacuation and shelter, and emergency operating centers from State and local governments. The information is needed to assess their compliance with civil-rights statutes. The information will provide an inventory of accomplishments and deficiencies that will enable FEMA to offer technical assistance where appropriate.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 1,350 hours.

Number of Respondents: 675.

Estimated Average Burden Time per Response: 2 hours.

Frequency of Response: On occasion.

Dated: August 31, 1993.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 93–22217 Filed 9–9–93; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; APL–TMM Discussion Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011428.

Title: APL–TMM Discussion Agreement.

Parties:

American President Line, Ltd.
Transportation Maritime Mexicana, S.A. de C.V.

Synopsis: The proposed Agreement would permit the parties to discuss rates, costs of service and other matters of mutual concern in the trade and various subtrades between ports and points in the Far East, the Indian Subcontinent, the Middle East, and ports and points in the United States. Adherence is voluntary.

Dated: September 3, 1993.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–22066 Filed 9–9–93; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Silversea Cruises, Ltd., 110 E. Broward Blvd., Ft. Lauderdale, Florida 33301.

Vessel: SILVER CLOUD

Dated: September 3, 1993.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–22065 Filed 9–9–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P61–93, et al]

Petitions for Temporary Exemption From Electronic Tariff Filing Requirements

In the matter of petition No. P61–93, Distribution Services, Ltd. and Distribution Services Export Ltd.; Petition No. P62–93, Effective Tariff Management Corporation on Behalf of Farrell Lines Incorporated; Petition No. P63–93, Trans-American Steamship Agency.

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from ATFI filing deadlines.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than September 15, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on the following:

P61–93—David P. Street, Esq., Galland, Kharasch, Morse & Garfinkle, P.C., 1054 Thirty-first Street, NW., Washington, D.C. 20007–4492

P62–93—Ms. Tanga S. Fitzgibbon, Executive Vice President, Effective Tariff Management Corporation, 4000 Mitchellville Road, suite 326–B, Bowie, Maryland 20716

P63–93—Ms. Meiko Geyer, Pricing Supervisor, Trans-American Steamship Agency, 140 W. 6th Street, San Pedro, California 90731

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–22064 Filed 9–9–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P65–93, et al]

Petitions for Temporary Exemption From Electronic Tariff Filing Requirements; Filing of Petitions

In the matter of Petition No. P65–93, Seth Shipping Corp.; Petition No. P66–93, Zim Israel Navigation Co.

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request a further extension of the June 4, 1993, electronic filing deadline.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than September 16, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC. 20573–0001, shall consist of an original and 15 copies, and shall be served on Wayne Rohde, Esq., Sher & Backwell, 1255 Twenty-third Street, NW., Suite 500, Washington, DC. 20037–1194.

Copies of the petitions are available for examination at the Washington DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–22067 Filed 9–9–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P64–93]

Petition of Transax Data on Behalf of Various Carriers for Temporary Exemption from Electronic Tariff Filing Requirements; Filing of Petition

Notice is hereby given of the filing of a petition by the above named petitioner, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioner requests exemption from the June 4, 1993, electronic filing deadline.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than September 16, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on Mr. Steve Baker, Manager, Regulatory, Transax Data, 721 Route 202/206, Bridgewater, New Jersey 08807.

Copies of the petition are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–22068 Filed 9–9–93; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Federal Property Resources Service

[Wildlife Order 182; 7–D–LA–0435–D]

Portion, Louisiana Army Ammunition Plant, Webster Parish, LA; Transfer of Property

Pursuant to section 2 of Public Law 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. By deed from the General Services Administration, dated February 22, 1993, the property, consisting of 24.94 acres of unimproved land, known as a Portion, Louisiana Army Ammunition Plant, Near Minden, Webster Parish, Louisiana, has been transferred to the State of Louisiana.

2. The above described property was conveyed for wildlife conservation in accordance with the provisions of section 1 of said Public Law 80–537 (16 U.S.C. 667b), as amended by Public Law 92–432.

Dated: August 25, 1993.

Earl E. Jones,

Commissioner, Federal Property Resources Service.

[FR Doc. 93–22169 Filed 9–9–93; 8:45 am]

BILLING CODE 6820–96–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration For Children And Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of a new information collection to conduct a four-year evaluation of the effectiveness of the Head Start Family Child Care Homes program. This study is sponsored by the Head Start Bureau of the Administration for Children and Families (ACF).

Addressees: Copies of the Information Collection request may be obtained from Steve R. Smith, Office of Information Systems Management, ACF, by calling (202) 401–6964.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Evaluation of Head Start Family Child Care Homes.

OMB No.: 0980–New Request.

Description: Section 649 of the Head Start Act requires that the "Secretary of the Department of Health and Human Services shall conduct * * * a study of Head Start family day care that is in compliance with the performance standards under section 651(b). Such study shall consider the effectiveness of providing Head Start services in a family day care setting and assess the program characteristics that are necessary to ensure that programs are effective."

Head Start is a national program providing comprehensive developmental services primarily to low-income preschool children and their families. In the past, the majority of Head Start programs have provided services on a part-day basis in center settings or through home visits. As more women have entered the work force, there has been an increased need for full-day services and for additional options in the way Head Start services are delivered. In an effort to better enable local grantees to respond to these community needs, the Administration on Children, Youth and Families

(ACYF) began funding Head Start family child care projects in 1984 through the Locally Designed Options in the Head Start Expansion, and in 1985 through Innovative Projects. In response to the call for an evaluation of the effectiveness of providing Head Start Services in a family child care setting, ACYF is funding eighteen grantees to plan and implement demonstrations of Head Start family child care homes for a three-year period.

Families who participate in the family child care demonstration projects must meet several criteria:

—The child is four years old, or in the year prior to entering kindergarten;
—The parents are working, in job training, or in school;
—The parents are willing to accept random assignment to either the family child care setting or the Center-based comparison group.

The evaluation will examine services provided and outcomes of those services in the Head Start Family Child Care homes and Center-Based programs. The evaluation has three objectives:

(1) To test whether comprehensive Head Start services which meet the Program Performance Standards can be provided in a family child care setting;

(2) To assess the program implementation characteristics that are necessary to ensure programs meet the Head Start Program Performance Standards; and

(3) To assess the impact on children and parents participating in the demonstration in comparison with children and parents participating in the Center-based program.

Annual Number of Respondents: 3,240
Annual Frequency: 2
Average Burden Hours Per Response: 1
Total Burden Hours: 6,480

Dated: August 25, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–22046 Filed 9–9–93; 8:45 am]

BILLING CODE 4184–01–M

Agency for Health Care Policy and Research

Meetings

In accordance with section 10(a) of the Federal Advisory Committee Act (title 5, U.S.C., Appendix 2) announcement is made of the following advisory committees scheduled to meet during the month of October 1993:

Name: Health Services Research Review Subcommittee.

Date and Time: October 6–8, 1993, 2 p.m.

Place: Crowne Plaza Hotel, 1750 Rockville Pike, Conference Theater, Rockville, MD 20852.

Open October 7, 8 a.m. to 8:45 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by Agency for Health Care Policy and Research (AHCPR).

Agenda: The open session of the meeting on October 7 from 8 a.m. to 8:45 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed sessions, the Subcommittee will be reviewing analytical and theoretical research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S.C., Appendix 2 and title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Patricia G. Thompson, Ph.D., Scientific Review Administrator, Scientific Review Branch, Agency for Health Care Policy and Research, Suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449.

Name: Health Services Developmental Grants Review Subcommittee.

Date and Time: October 13–15, 1993, 8 a.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Conference Room TBA, Bethesda, Maryland 20814.

Open October 13, 1 p.m. to 2 p.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing experimental, analytical and theoretical research on costs, quality, access, effectiveness, and efficiency of the delivery of health services for the research grant program administered by the AHCPR.

Agenda: The open session of the meeting on October 13 from 1 p.m. to 2 p.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed session, the Subcommittee will be reviewing research and demonstration grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S.C., Appendix 2 and title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Elizabeth A. Breckinridge, Scientific Review Administrator, Scientific Review Branch, Agency for Health Care Policy and Research, Suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449.

Name: Health Care Technology Study Section.

Date and Time: October 18–20, 1993, 8:30 a.m.

Place: Marriott Residence Inn, 7335 Wisconsin Avenue, Montgomery II Room, Bethesda, Maryland 20814.

Open October 18, 8:30 a.m. to 9:30 a.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with conducting the initial review of health services research grant applications concerned with medical decisionmaking, computers in health care delivery, and the utilization and effects of health care technologies and procedures.

Agenda: The open session on October 18 from 8:30 a.m. to 9:30 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. The closed sessions of the meeting will be devoted to a review of health services research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S.C., Appendix 2 and title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Alan E. Mayers, Ph.D., Scientific Review Administrator, Scientific Review Branch, Agency for Health Care Policy and Research, Suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449.

Name: Health Services Research Dissemination Study Section.

Date and Time: October 21–22, 1993, 8:30 a.m.

Place: Sheraton Washington Hotel, 2660 Woodley Road, N.W., Delaware B Room, Washington, D.C. 20008.

Open October 21, 8:30–9:30 a.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with the review of and making recommendations on grant applications for Federal support of conferences, workshops, meetings, or projects related to dissemination and utilization of research findings, and AHCPR liaison with health care policy makers, providers, and consumers.

Agenda: The open session of the meeting on October 21 from 8:30 a.m. to 9:30 a.m. will be devoted to a business meeting covering administrative matters and reports. During the closed portions of the meeting.

the Study Section will be reviewing grant applications relating to the dissemination of research on the organization, costs, and efficiency of health care. In accordance with the Federal Advisory Committee Act, title 5, U.S.C., Appendix 2 and title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure..

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Mrs. Linda Blankenbaker, Scientific Review Administrator, Scientific Review Branch, Agency for Health Care Policy and Research, Suite 602, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449.

Agenda items for all meetings are subject to change as priorities dictate.

Dated: September 2, 1993.

J. Jarrett Clinton,

Administrator.

[FR Doc. 93–22135 Filed 9–9–93; 8:45 am]

BILLING CODE 4160–90–U

Food and Drug Administration

[Docket No. 93G–0198]

Purac Biochem b.v.; Filing of Petition For Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Purac Biochem b.v. has filed a petition (GRASP 2G0391), proposing to affirm that 4-O-(β-galactosyl)-D-glucitol (lactitol) is generally recognized as safe (GRAS) for use as a low calorie bulk sweetener in chewing gum, hard and soft candy, and frozen dairy desserts.

DATES: Written comments by November 9, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rosalie M. Angeles, Center for Food Safety and Applied Nutrition (HFS–207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9528.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 19, 1983 (48 FR 37708), FDA announced that a food additive petition (FAP 3A3727) had been filed by C.V. Chemie Combinatie Amsterdam C. C. A. (now Purac Biochem b.v.), Gorinchem, Holland, proposing that part 172 (21 CFR part 172) be amended to provide for the safe use of 4-O-(β-galactosyl)-D-glucitol (lactitol) as a reduced calorie sweetening agent for food. The petitioner, in a letter dated May 15, 1992, requested that FAP 3A3727 be withdrawn without prejudice to a future filing. The notice of withdrawal of FAP 3A3727 was published in the **Federal Register** on July 28, 1992 (57 FR 33358).

The petitioner subsequently submitted a petition to affirm that the subject food ingredient, for more limited use, is GRAS. Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409(b)(5) (21 U.S.C. 321(s), 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Purac Biochem b.v., c/o Hyman, Phelps & McNamara, 700 Thirteenth St., NW., Washington, DC 20005, has filed a petition (GRASP 2G0391), proposing to affirm that lactitol is GRAS for use as a low calorie bulk sweetener in chewing gum, hard and soft candy, and frozen dairy desserts. The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 (21 CFR 170. 30 and 170.35) is filed by the agency. Importantly, however, FDA conducts no prefiling review of the adequacy of data to support a conclusion that the subject of the petition is generally recognized as safe. Thus, the filing of this petition for GRAS affirmation should not be interpreted as a preliminary indication of the suitability of lactitol for GRAS affirmation.

At the time the food additive petition (FAP 3A3727) was withdrawn, the Center for Food Safety and Applied Nutrition (CFSAN) had questions about certain data pertaining to lactitol. CFSAN's questions concerned data submitted in FAP 3A3727 showing a significantly increased incidence of Leydig cell tumors in male Wistar-derived rats fed diets containing 10 percent lactitol during their lifetime. The agency acknowledges that GRASP 2G0391 includes a recently published assessment of the relevance of Leydig cell neoplasia for human safety. However, the agency's notice of filing of GRASP 2G0391 should not be interpreted either as a determination, preliminary or otherwise, that the issue of the Leydig cell tumors has been resolved or that lactitol qualifies for GRAS affirmation. These determinations can be made only after CFSAN has completed its review of GRASP 2G0391 and confirmed that the information available adequately addresses the safety of lactitol.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before November 9, 1993, review the petition or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use, especially information regarding the production of Leydig cell tumors in rats, and the relevance of such tumors to human safety. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 31, 1993.

John E. Bailey,

Acting Director, Center for Food Safety and Nutrition.

[FR Doc. 93–22060 Filed 9–9–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0286]

Hoechst Celanese Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hoechst Celanese Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of acesulfame potassium as a nonnutritive sweetener in alcoholic beverages.

DATES: Written comments on the petitioner's environmental assessment by October 12, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia A. Hansen, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration,

200 C St. SW., Washington, DC 20204, 202–254–9523.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3A4391) has been filed by Hoechst Celanese Corp., Rt. 202–206 North, Somerville, NJ 08876. The petition proposes that the food additive regulations in § 172.800 *Acesulfame potassium* (21 CFR 172.800) be amended to provide for the safe use of acesulfame potassium as a nonnutritive sweetener in alcoholic beverages.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before October 12, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 31, 1993.

John E. Bailey,

Acting Director, Center for Food Safety and Nutrition.

[FR Doc. 93–22061 Filed 9–9–93; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the last list was published on September 3. (Call Reports Clearance Officer on 202–690–7100 for copies of package)

1. Scientific and Technical Competency Form—0925–0287—The Office of Personnel Management (OPM) granted the National Institutes of Health (NIH) authority to rate, rank and establish competitor inventories for Biologist, Microbiologist, and Chemist positions, GS–9/15. The NIH will utilize OPM's Competitive, Recruiting and Examining System (CRES) to meet these objectives. The NIH-wide Scientific and Technical Competency Form was developed from the currently approved NCI form to capture the data needed to issue the applicant a Notice of Rating, certify the best qualified candidates to selecting officials, and expeditiously fill critical scientific positions at NIH. *Respondents:* Individuals or households; *Number of Respondents:* 1800; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .083 hr.; *Estimated Annual Burden:* 150 hrs.

2. 1994 National Household Survey on Drug Abuse—0930–0110—This study, which will affect the population of the United States, is necessary to determine the prevalence of cigarette, alcohol, licit and illicit drug use. The results will be used by SAMHSA, ONDCP, government agencies and other concerned individuals and organizations to direct their activities and establish policy. *Respondents:* Individuals or households; *Number of Respondents:* 23,500; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 1.38 hrs.; *Estimated Annual Burden:* 32,490 hrs.

3. Minors' Access to Tobacco—45 CFR parts 96.122 and 96.130—NPRM—New—The rule will provide guidance to States regarding compliance with Section 1926 of the Public Health Service Act (42 U.S.C. 300x–26) related to smoking. The rule would implement the legislation by specifying the annual reporting requirements to be in compliance with this section; *Respondents:* State or local governments; *Number of Respondents:* 1; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 1 hr.; *Estimated Annual Burden:* 1 hr.

Desk Officer: Shannah Koss.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: September 3, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93–22057 Filed 9–9–93; 8:45 am]

BILLING CODE 4160–17–M

Core Support of Selected Boards

Introduction

The Public Health Service (PHS) announces it has awarded fiscal year (FY) 1993 funds for a cooperative agreement to provide core support to selected boards of the National Academy of Sciences to support activities in a number of health areas, including health promotion and disease prevention; healthcare services and maintenance; mental health; toxicology and environmental health hazards; laboratory animal research; food and nutrition; and biological effects of ionizing radiation.

In carrying out its mission, the PHS wishes to have available to it standing boards composed of leading researchers in relevant domains that could be called together to provide either informal advice or more deliberative seminars or studies on discrete issues.

Authority

This program is authorized under Section 301 of the Public Health Act, 42 CFR part 52.

Eligible Applicants

Assistance was provided only to the National Academy of Sciences, Washington, DC. No other applications were solicited.

The National Academy of Sciences (NAS) is the only organization that has a unique and special relationship with the Federal Government which has the ability to assemble committees and boards of the Nation's most eminent scholars, to furnish independent advice and guidance of the highest quality with an unparalleled level of objectivity. This combination of advice and objectivity is a succinct asset to the PHS in carrying out its mission.

Funding Level

$546,800, including direct and indirect costs, was awarded to the National Academy of Sciences for this cooperative agreement for a 12-month budget period with a project period of up to 5 years. Continuation awards

within the project period will be made on the basis of satisfactory performance and the availability of funds.

Purpose

The purpose of this cooperative agreement is to provide access by PHS to comments from board members regarding matters of interest to PHS, including independent advice on how complex issues might be defined and addressed in further studies and to shape an annual program of studies in the subject areas designed to address the problems and issues identified.

Program Requirements

During the period of this cooperative agreement, the federal substantial involvement will be as follows:

1. Meet with NAS to discuss plans for the activity of the Boards during the coming year;
2. Be in contact with NAS staff prior to Board meetings to discuss the agenda for board meetings; and
3. Attend presentations, when appropriate, to pursue specific ideas and suggestions generated by the Boards.

Evaluation Criteria

The application was reviewed and evaluated according to the following criteria:

A. Degree to which the applicant demonstrates their understanding of the problem and the purpose of the award.

B. Degree to which the objectives are consistent with the stated purpose of the application and the ability to meet the objectives within the specified period.

C. Adequacy of plans to monitor progress toward meeting the programs activities and objectives.

D. Degree to which the applicant demonstrates the capability to provide the staff and resources necessary to perform and manage the project.

E. Degree to which the budget is reasonable, adequately justified and consistent with the intended use of the grant funds.

Catalog of Federal Domestic Assistance Number

A Catalog of Federal Domestic Assistance Number is not required because the project is the only one to be funded in this activity.

Where to Obtain Additional Information

Additional information regarding this program can be obtained by contacting Cindy Oswald, Contract Specialist, General Acquisitions Branch, Division of Acquisition Management, ASC/OM, 5600 Fishers Lane, room 5–101, Rockville, MD 20857.

Programmatic technical assistance may be obtained from Melanie Timberlake, Office of Health Planning and Evaluation, HHH Building, room 740G, 200 Independence Ave. SW., Washington, DC 20001.

Dated: August 17, 1993.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 93–22053 Filed 9–9–93; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Statement of Organization, Functions and Delegation of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration. Chapter S1 covers the Deputy Commissioner for Finance, Assessment and Management. Notice is hereby given that subchapter S1R, the Office of Facilities Management, is being amended to reflect the realignment of division functions within that office. The changes are as follows:

Section S1R.10 *The Office of Facilities Management*—(Organization):

Add:

F. The Division of Building Operations (S1RC). Section S1R.20 *The Office of Facilities Management*—(Functions):

D. The Division of Facilities (S1RA).

Delete:

1. through 5. In its entirety.

Add:

1. Directs the national SSA real property program including short- and long-range facilities planning; design, construction and leasing of central office and large field facilities; maintenance, repair and construction projects and policy development related to these operations. Oversees the preventive maintenance program for all Government-owned, SSA occupied buildings nationwide.

2. Provides technical guidance, consultation, coordination and advice on architectural and engineering design for SSA, manages a technical drafting service and design support function and provides an engineering resource to plan and review alterations, repairs and improvements to SSA facilities.

3. Develops and implements nationwide SSA policies, objectives, standards and procedures in the areas of real property and space management.

4. Provides SSA liaison on all matters concerning nationwide space and real property management, delegations of building operations and space acquisition with the General Services Administration (GSA), HHS, other Federal agencies and the Public Works Committees.

5. Provides automation support for SSA facilities management.

Add:

F. The Division of Building Operations (S1RC)

1. Has responsibility for SSA headquarters facility planning and space management. Acquires, utilizes and manages space at SSA headquarters and directs a comprehensive space inventory and utilization system.

2. Develops and implements policies, objectives, standards and procedures regarding SSA headquarters real property and space management.

3. Provides liaison on matters concerning SSA headquarters space and real property management including building operations and space acquisition with GSA, HHS and other Federal agencies, as necessary.

4. Directs real property program for headquarters central office including facilities planning; and maintenance, repair, and construction projects and policy development related to these operations.

Dated: August 24, 1993.

Ruth A. Pierce,

Deputy Commissioner for Human Resources.

[FR Doc. 93–22144 Filed 9–9–93; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–48]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Department of Health and Human Services:* Judy Breitman, Chief, Real Property Branch, Div. of Health Facilities Planning, Rm. 17A10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265; *Department of Interior:* Lola D. Knight, Property Management Specialist, 1849 C St. NW, Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; *U.S. Air Force:* John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 696–5569; (These are not toll-free numbers).

Dated: September 3, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 9/10/93

Suitable/Available Properties

Buildings (by State)

California
Quarters 1, TV 0001
950 Tennessee Valley Road
Mill Valley Co: Marin CA 94941-
Landholding Agency: Interior
Property Number: 619320002
Status: Unutilized
Comment: 828 sq. ft., 1 story wood frame residence, fair condition, off-site use only

Land (by State)

California

Airfield
Norton Air Force Base
San Bernardino Co: San Bernardino CA 92409-
Landholding Agency: Air Force-BC
Property Number: 199330023
Status: Excess
Base closure Number of Units: 1
Comment: approximately 1100 acres of land (airfield), scheduled to be vacated 3/31/94.

Folsom South Canal
SW corner of Whiterock Rd. & Folsom S Canal
Rancho Cordova Co: Sacramento CA 95670-
Landholding Agency: Interior
Property Number: 619310002
Status: Excess
Comment: 1.52 acres; perpetual easement over .25 acre, surrounding land use is commercial

Suitable/To Be Excessed

Land (by State)

Arizona

LAND—APO–GR–12–26A–09
120 Street and Mountain View
Scottsdale Co: Maricopa AZ 85259-
Location: South of Shea Boulevard and East of 120th Street
Landholding Agency: Interior
Property Number: 619240002
Status: Unutilized
Comment: 4.75 acres, easement restrictions, most recent use—acquired for construction of CAP canal.

New Mexico

Land, LPN Service Bldg.
1015 Indian School Road
Albuquerque Co: Bernalillo NM 87102-
Landholding Agency: HHS
Property Number: 579220001
Status: Unutilized
Comment: 0.2732 acres, underground lawn sprinkler, most recent use—maintenance yard, secured w/chain link fence.

Unsuitable Properties

Buildings (by State)

Arkansas

Winston Spring House
Garfield Co: Benton AR 72732-
Landholding Agency: Interior
Property Number: 619320001
Status: Excess
Reason: Other
Comment: Extensive deterioration

New Mexico

Farmington Office and Yard
900 La Plata Highway
Farmington Co: San Juan NM 87499-
Landholding Agency: Interior
Property Number: 619010001
Status: Unutilized
Reason: Within airport runway clear zone

Oregon

Eugene District Office Site
751 South Danebo
Eugene Co: Lane OR 97402-
Landholding Agency: Interior
Property Number: 619010003
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Land (by State)

Puerto Rico

119.3 acres
Culebra Island PR 00775-
Landholding Agency: Interior
Property Number: 619210001
Status: Excess
Reason: Floodway

[FR Doc. 93-21945 Filed 9-9-93; 8:45 a.m.]

BILLING CODE 4210-29-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-040-03-4212-14]

Proposed Plan Amendment; Vermilion Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: This notice is to advise the public that the proposed planning amendment and associated environmental assessment for the Vermilion Management Framework Plan (VMFP), Kanab Resources Area, Cedar City District have been completed. The proposed decision provides for the sale of 240.37 acres of public land in Kane County, Utah, described below to Kanab City.

Salt Lake Meridian, Utah

T.43 S., R.6 W.,
Sec. 23 S½SE¼SE¼
Sec. 26, Lots 7, 8, S½SE¼NE¼, NE¼SW¼, E½SE¼.

DATES: The protest period for this plan amendment and decision will commence with the date of this notice. Protests must be submitted on or before October 12, 1993.

ADDRESSES: Protests should be addressed to the Director, Bureau of Land Management (760), MS 406 LS, 849 C Street NW., Washington DC 20240.

FOR FURTHER INFORMATION CONTACT: Verlin L. Smith, Area Manager, Kanab Resource Area Office, 318 North 100 East, Kanab, Utah 84741, telephone (801) 644-2612.

SUPPLEMENTARY INFORMATION: This plan amendment is nescessary since the existing plan does not identify this land for disposal. The environmental assessment does not identify any significant impacts. Resource values, public values, objectives involved, and the public interest would be served by providing these lands within the city limits of Kanab, Utah, to Kanab City through a noncompetitive sale consistent with the Omnibus Public Lands and National Forest Adjustments Act of 1988 (Public Law 100-699).

This action is announced pursuant to section 203 of the Federal Land Policy and Management Act of 1976 and 43 CFR, part 1610. The proposed planning amendment is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with the provisions of 43 CFR 1610.5-2. Protests must contain the following minimal information:

- The name, mailing address, telephone number, and interest of the person filing the protest.
- A statement of the issue or issues being protested.
- A statement of the part or parts being protested and a citing of pages, paragraphs, maps, etc., of the proposed plan amendment, where practical.
- A copy of all documents addressing the issue(s) submitted by the protester during the planning process or a reference to the date when the protester discussed the issue(s) for the record.
- A concise statement as to why the protester believes the BLM State Director's decision is in error.

G. William Lamb,

Acting State Director.

[FR Doc. 93-22054 Filed 9-9-93; 8:45 am]

BILLING CODE 4310-DQ-M

[CA-020-4320-01]

Susanville District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior; Susanville District Advisory Council, Susanville, California

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Bureau of Land Management's Susanville District Advisory Council will meet Tuesday, September 28, from 10 a.m. to 4 p.m. in the BLM's Susanville District Office, 705 Hall Street, Susanville, California.

Items on the agenda will include a discussion about the Department of the Interior's Rangeland Reform '94, an update on the Susanville District's progress in Ecosystem Management, an update on the District's Wild Horse and Burro management program, and a report on the BLM's proposal to withdraw lands in High Rock Canyon from mineral entry. BLM Area Managers will present reports on activities in their Resource Areas.

The meeting is open to the public and time will be provided on the agenda for public comment.

Summary minutes of the board meeting will be maintained in the Susanville District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Herrick E. Hanks,

District Manager.

[FR Doc. 93-22174 Filed 9-9-93; 8:45 am]

BILLING CODE 4310-40-M

[OR-943-2300-02; GP3-382; OR-47632]

Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 2,280 acres of the 2,360 acres of acquired lands to surface entry, and 2,284 acres to mining and mineral leasing. The mineral estate in 76 acres is not in Federal ownership, and 80 acres are within the boundary of the Deschutes Wild and Scenic River withdrawal and will not be opened to surface entry.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/ Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION:

1. Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described lands were acquired by the United States to be administered as public lands under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 2 S., R. 15 E.,
Sec. 14, S½NE¼, NW¼, and NW¼SW¼;
Sec. 15, SE¼NE¼ and NE¼SE¼;
Sec. 16, S½N½ and S½;
Sec. 17, that portion of the E½E½ described as follows: Beginning at the northeast corner of the SE¼NE¼; Thence west 330 feet; Thence southwesterly to a point on the south line of Sec. 17, said point being 1,055 feet west of the southeast corner of said Sec. 17; Thence east along the south line of Sec. 17, 1,055 feet, more or less, to the east line of Sec. 17; Thence north along the east line of Sec. 17 to the northeast corner of the SE¼NE¼ and the point of beginning;
Sec. 20, that portion of the NE¼ described as follows: Beginning at the northeast corner of Sec. 20; Thence west along the north section line of said Sec. 20 a distance of 1,056 feet; Thence southwesterly to a point on the north line of the south one-half of said Sec. 20, said point being 1,618 feet, more or less, from the east quarter corner of said Sec.

20; Thence east along said north line of the south half of Sec. 20, 1,618 feet, more or less, to the east quarter corner of Sec. 20; Thence north on the east section line of said Sec. 20 to the point of beginning:
Sec. 21, N½, S½S½, and NE¼SE¼;
Sec. 22, S½S½;
Sec. 23, that portion of the S½SW¼ lying west of the Deschutes River, excepting the right-of-way of the Oregon Trunk Railroad;
Sec. 26, W½NW¼ and NW¼SW¼, excepting the right-of-way of the Oregon Trunk Railroad;
Sec. 27, NE¼NE¼ and those portions of the E½SE¼ lying north of the Deschutes River, excepting the right-of-way of the Oregon Trunk Railroad;
Sec. 28, N½N½, S½NW¼, and N½S½.
The areas described aggregate approximately 2,360 acres in Wasco County.

2. The land lying within one-quarter mile of the river in the land described below is included in the withdrawal for the Deschutes Wild and Scenic River and will remain closed to surface entry:

Willamette Meridian

T. 2 S., R. 15 E.,
Sec. 23, that portion of the S½SW¼ lying west of the Deschutes River, excepting the right-of-way of the Oregon Trunk Railroad;
Sec. 26, NW¼SW¼, excepting the right-of-way of the Oregon Trunk Railroad;
Sec. 27, that portion of the E½SE¼ lying north of the Deschutes River, excepting the right-of-way of the Oregon Trunk Railroad.
The areas described aggregate approximately 80 acres in Wasco County.

3. The mineral estate in Sec. 20, T. 2 S., R. 15 E., W.M., is not in Federal ownership and will not be opened to mining and mineral leasing.

4. At 8:30 a.m., on October 15, 1993, the lands described in paragraph 1, except as provided in paragraph 2, will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on October 15, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

5. At 8:30 a.m. on October 15, 1993, the lands described in paragraph 1, except as provided in paragraph 3, will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

6. At 8:30 a.m. on October 15, 1993, the lands described in paragraph 1, except as provided in paragraph 3, will be opened to applications and offers under the mineral leasing laws.

Dated: August 31, 1993.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–22049 Filed 9–9–93; 8:45 am]

BILLING CODE 4310–33–M

[WY–040–4210–05; WYW 128014]

Bureau Motion Recreation and Public Purposes (R&PP) Act Classification; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Classification.

SUMMARY: The following public lands near the community of Rock Springs, Wyoming have been examined and found suitable for classification and opening under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*) for the purpose of a proposed shooting range complex.

6th Principal Meridian

T. 17 N., R. 106 W.,
Sec. 14, E½, E½W½.
The area contains 480 acres more or less.

This action is a motion by the Bureau of Land Management to make available lands identified in the Big Sandy Management Framework Plan not needed for Federal purposes and having potential for disposal to support recreation. Lease or conveyance of the lands for recreational or public purpose use would be in the public interest. Detailed information concerning this classification is available for review at the office of the Bureau of Land Management, Green River Resource Area, 1993 Dewar Drive, Rock Springs, Wyoming.

Upon publication of this notice in the **Federal Register** the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act.

For a period of 45 days from the date of publication, interested persons may submit comments regarding the proposed classification of the lands to the Area Manager, Green River Resource Area, 1993 Dewar Drive, Rock Springs, Wyoming 82901. Comments are restricted to whether the land is physically suited for a shooting range complex, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Upon the effective date of classification, the lands will be open to the filing of an application under the Recreation and Public Purposes by any interested, qualified applicant. If, after 18 months following the effective date of classification, an application has not been filed, the segregative effect of the classification shall automatically expire and the lands classified shall return to their former status without further action by the authorized officer.

Dated: August 27, 1993.

William W. LeBarron,

Area Manager.

[FR Doc. 93–22048 Filed 9–9–93; 8:45 am]

BILLING CODE 4310–22–M

[AZ–050–03–4210–05; AZA 27798 and AZA 27895]

Realty Action, Recreation and Public Purposes Act Classification; La Paz County, AZ; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

In notice document 93–19021 appearing on page 42346 in the issue of Monday, August 9, 1993, in the first column, in the **SUMMARY**, in the twenty-third line, "T. 7 N., R. 16 W.," should read "T. 7 N., R. 17 W.,".

FOR FURTHER INFORMATION CONTACT: Karen Vercauteren, Realty Specialist, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406.

Dated: September 1, 1993.

Maureen A. Merrell,

Acting District Manager.

[FR Doc. 93–22152 Filed 9–9–93; 8:45 am]

BILLING CODE 4310–32–M

[MT-070-4210-05; MTM181950]

Realty Action: Recreation and Public Purposes Act Classification; Montana

AGENCY: Bureau of Land Management, Butte District, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Beaverhead County, Montana, have been examined and found suitable for classification for lease or conveyance to the State of Montana under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The State of Montana proposes to use the lands for inclusion into the Bannack State Park and Historical Area.

Principal Meridian Montana

T. 8 S., R. 11 W.,
Section 5, Lots 4, 7, 8, SWNW, NWSW
Section 6, Lots 1-9, 11, S2NE, SENW
Section 7, Lots 1, 4, 5, 6, 8, 10, 11, 14, 16, 17, N2NESW, N2NWSE
Section 8, Lots, 4, 5, 6
T. 8 S., R. 12 W.,
Section 1, Lot 6
Section 12, E2NE
Containing 1006.05 acres more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current Bureau of Land Management (BLM) land use planning and would be in the public interest. A lease will be issued for those lands which may be encumbered. For those lands which are not encumbered or become unencumbered, a patent will be issued. The lease or patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. The lands will be conveyed subject to all valid, existing rights (e.g., rights-of-way, easements and leases of record).

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Dillon Resource Area, 1005 Selway Drive, Dillon, Montana 59725-9431.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Butte District Office, 106 North Parkmont, Box 3388, Butte, Montana 59702-3388.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a State park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a State park.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: September 2, 1993.

Orval L. Hadley,

Associate District Manager.

[FR Doc. 93-22148 Filed 9-9-93; 8:45 am]

BILLING CODE 4310-DN-M

[AZ-030-4210-06; AR-04756 and A-18780]

Proposed Modification and Continuation of Withdrawals; Opportunity for Public Comment, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to modify and continue for 20 years, Public Land Order 1556 of November 19, 1957 (AR-04756), as modified, and Secretarial Order of June 18, 1908 (A-18780), which withdrew National Forest System lands in the Prescott National Forest for use of the Forest Service as administrative sites, recreation areas, and roadside zones. The Forest Service proposes to continue the withdrawals for these purposes for 20 years, and does not anticipate any significant changes in land use. The land will remain closed to operation of the mining laws only.

DATES: Comments on this notice should be received by December 9, 1993.

ADDRESSES: Comments should be addressed to the Arizona State Director, BLM, P.O. Box 16565, Phoenix, Arizona, 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16565, Arizona, 85011, 602-650-0509.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that Public Land Order 1556 of November 19, 1957, as modified, and Secretarial Order dated June 18, 1908, withdrawing the lands from all forms of use for an indefinite period of time, be modified and continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described land within the Prescott National Forest in the State of Arizona. Some of the lands in Public Land Order 1556 were terminated or modified by Public Land Order 3878 of November 23, 1965. In addition, some acreage and legal descriptions have been changed due to new surveys, protraction surveys, and relotting. All land described below is located in Yavapai County, Arizona.

Gila and Salt River Meridian

Crown King Administrative Site (AR-04756)

T. 10 N., R. 1 W., unsurveyed,

Starting at Corner No. 1 of Estella patented mining claim covered by Mineral Survey No. 3187 and expected to be located in sec. 14, T. 10 N., R. 1 W., thence due East for a distance of 10 chains, thence due South for a distance of 20 chains, thence due West for a distance of 20 chains, thence due North for a distance of 20 chains, thence due East for a distance of 10 chains to point of beginning.

The area described contains 40 acres.

Granite Creek Recreation Area (AR-04756)

T. 13 N., R. 2 W.,
Sec. 16, W½E½NW¼, SE¼NW¼NW¼, E½SW¼NW¼, E½NW¼SW¼, SW¼NW¼SW¼, N½NE¼SW¼, SE¼NE¼SW¼, and NW¼SW¼SW¼.

The areas described contains 140 acres.

Groom Creek Administrative Site (AR-04756)

T. 13 N., R. 2 W.,
Sec. 26, Lot 28.

The area described contains 7.88 acres.

Hickey Mountain Summer Home Area, Potato Patch Picnic Area, and Lower Minqus Mountain Winter Sports Area (AR-04756)

T. 15 N., R. 2 E. unsurveyed,

Sec. 3, SW¼NW¼ and NW¼SW¼ (corrected description);
Sec. 4, S½NE¼ and N½SE¼ (corrected description).

The areas described contains 240 acres.

Hyde Mountain Lookout (AR–04756)

T. 17 N., R. 6 W.,
Sec. 20, S½SW¼SE¼;
Sec 29, N½NW¼NE¼

The areas described contains 40 acres.

Indian Creek Recreation Area (AR–04756)

T. 13 N., R. 2 W.,
Sec. 19, lots 12, 13, 19, and 20;
Sec. 20, lots 5, 12, and 13;
Sec. 29, lots 6 and 7;
Sec. 30, lot 5.

The areas described contains 441.37 acres.

Minqus Mountain Lookout, Minqus Mountain Recreation Area, Minqus Mountain Summer Home Area and Playgrounds Picnic Area (AR–04756)

T. 15 N., R. 2 E., unsurveyed.

Starting at Corner No. 6 of Homestead Entry Survey No. 92, expected to be located in secs. 3, 4, 9 and 10, thence due East for a distance of 50 chains, thence due South for a distance of 60 chains, thence due West for a distance of 130 chains, thence due North for a distance of 60 chains, thence due East for a distance of 80 chains to point of beginning.

The area described contains 662.84 acres.

Powell Springs Recreation Area (AR–04756)

T. 14 N., R. 3 E.,
Sec. 19, E½NE¼SW¼, NW¼SE¼, SW¼NE¼SE¼, N½SW¼SE¼, and NW¼SE¼SE¼.

The areas described contains 100 acres.

Spruce Mountain Lookout (AR–04756)

T. 13 N., R. 1 W.,
Sec. 31, NW¼SE¼.

The area described contains 40 acres.

Thumb Butte Recreation Area (AR–04756)

T. 14 N., R. 3 W.,
Sec. 36, lots 1, 2, SE¼NW¼NE¼, and NE¼SW¼NE¼.

The areas described contains 105.28 acres.

Tonto Springs Administrative Site (AR–04756)

T. 15 N., R. 4 W.,
Sec. 34, W½ lot 1, W½W½NW¼, W½NW¼SW¼ (corrected description).

The area described contains 80.475 acres.

Towers Mountain Lookout (AR–04756)

T. 10 N., R. 1 W., unsurveyed.,

Starting at the mineral survey corner designated as Corner No. 2 of the Bear patented mining claim and Corner No. 3 of the Kitty patented mining claim as shown on Mineral Survey No. 3010, thence due South along the West side of the Kitty patented claim a distance of 750 feet to the point of beginning, thence due South a distance of 20 chains, thence due West a distance of 20 chains, thence due North a distance of 20 chains, thence due East a distance of 20 chains to the point of beginning.

The area described contains 40 acres.

Wolf Creek Recreation Area (AR–04756)

T. 12½ N., R. 2 W., unsurveyed,
Sec. 22, N½ lot 2 (corrected description).
T. 13 N., R 2 W.,
Sec. 34, lots 15, 16, and 17.

The areas described contain 135.93 acres.

White Spar (U.S. No. 89) Highway, Roadside Zone (AR–04756)

A strip of land 300 feet on each side of the center line of U.S. Highway No. 89 through the following legal subdivisions:

T. 12½ N., R. 3 W.,
Sec. 23, lots 1, 2, SW¼SE¼, and SE¼SW¼;
Sec. 24, lots 2, 3 and 4;
Sec. 26, NW¼ and SW¼
Sec. 33, NW¼, SW¼ and SE¼;
Sec. 34, SW¼, SE¼ and NE¼;
Sec. 35, NW¼.
T. 13 N., R. 2 W.,
Sec. 16, NW¼ and SW¼;
Sec. 17, lot 16;
Sec. 19, lots 12, 13, and 20;
Sec. 20, lots 1, 2, 3, 4, 5, and 6;
Sec. 30, lots 5, 10, 11, 12, 15, 16, and 17;
Sec. 31, lot 8.
T. 13 N., R. 3 W.,
Sec. 25, lots 3 and 4;
Sec. 35, SE¼;
Sec. 36, NE¼, SE¼ and SW¼.

The area described contains 753.84 acres.

Prescott-Ashfork (U S. No. 89) Highway Roadside Zone (AR–04756)

A strip of land 200 feet on each side of the center line of U.S. Highway No. 89 through the following legal subdivisions:

T. 18 N., R. 1 W.,
Sec. 6, NE¼, NW¼ and SW¼.
T. 18 N., R. 2 W., unsurveyed;
Sec. 1, SE¼;
Sec. 12, NE¼, SE¼, and SW¼;
Sec. 13, NW¼ and SW¼;
Sec. 14, SE¼;
Sec. 23, NE¼, NW¼, and SW¼.
T. 19 N., R. 1 W.,
Sec. 6, NE¼ and SE¼;
Sec. 7, NE¼ and SE¼;
Sec. 17, NW¼ and SW¼;
Sec. 18, NE¼ and SE¼;
Sec. 20, NW¼ and SW¼;
Sec. 29, NW¼ and SW¼;
Sec. 31, NE¼ and SE¼;
Sec. 32, NW¼.
T. 20. N., R. 1 W.,
Sec. 31, NE¼, NW¼, and SE¼.

The areas described contains 581.24 acres.

New Black Canyon Highway—Cordes Junction to Flagstaff, Roadside Zone (AR–04756)

A strip of land 200 feet on each side of the center line of the Cordes Junction to Flagstaff section of the New Black Canyon Highway, through the following legal subdivisions:

T. 12 N., R. 3 E.,
Sec. 3, NE¼, NW¼ and SE¼;
Sec. 10, NE¼, SE¼, and SW¼;
Sec. 15, NW¼;
Sec. 16, NE¼ and NW¼;
Sec. 17, NE¼, SE¼, and SW¼;
Sec. 20, NE¼, NW¼, and SW¼;
T. 13 N., R. 3 E.
Sec. 1, SE¼ and SW¼;
Sec. 2, SE¼;
Sec. 11, NE¼ and SE¼;
Sec. 14, NE¼ and SW¼;
Sec. 15, SE¼;
Sec. 22, NE¼, SE¼, and SW¼;
Sec. 27, NW¼;
Sec. 28, NE¼ and SE¼;
Sec. 33, NE¼, SE¼, and SW¼
T. 13 N., R. 4 E.,
Sec. 3, NE¼SE¼;
Sec. 7, lots 2 and 3;
Sec. 8, NW¼, SW¼, and SE¼;
Sec. 9, NE¼, NW¼, and SW¼;
Sec. 10, NE¼ and NW¼.
T. 14 N., R. 4 E.,
Sec. 25, NW¼ and SW¼;
Sec. 26, SE¼;
Sec. 34, SE¼;
Sec. 35, NE¼, NW¼, and SW¼.

The areas described contains 952.99 acres.

Mingus Mountain Highway (U.S. Hwy. No. 89A) Roadside Zone (AR–04756)

A strip of land 200 feet on each side of the center line of the Mingus Mountain Highway, U.S. Highway 89A, through the following legal subdivisions:

T. 15 N., R. 2 E., unsurveyed,
Sec. 3, NW¼ and SW¼;
Sec. 4, NE¼, SE¼ and SW¼;
Sec. 8, NE¼ and SE¼;
Sec. 9, NE¼ and NW¼;
Sec. 17, NE¼, SE¼, and SW¼;
Sec. 18, SE¼ and SW¼;
T. 16 N., R. 2 E.,
Sec. 13, SE¼;
Sec. 22, NE¼ and SE¼;
Sec. 23, NE¼, SE¼ and SW¼;
Sec. 24, NE¼ and NW¼;
Sec. 27, NE¼ and NW¼;
Sec. 28, all;
Sec. 32, NE¼ and SE¼;
Sec. 33, NW¼ and SW¼.

The areas described contains 592.84 acres.

Senator Highway (Forest Road No. 52) Roadside Zone (AR–04756)

A strip of land 300 feet on each side of the center line of the Senator Highway, Forest Highway No. 52, through the following legal subdivisions:

T. 13 N., R. 2 W.,
Sec. 14, lots 4, 12, 13, and 14;
Sec. 15, lots 1, 8, and 9;
Sec. 23, lots 3, 4, 6, 7, 10, and 14;
Sec. 26, lots 20, 26, 33 and 34;
Sec. 35, lots 5, 6, 7, 8, 14, 15, and 16.
T. 12½ N., R. 2 W.,
Sec. 23, lots 2, 3, 5 and 6 (corrected description);
Sec. 26, NE¼ and SE¼.

The areas described contains 358.44 acres.

Tonto Springs Administrative Site (A–18780)

T. 15 N., R. 4 W.,
Sec. 33, lots 2, 3, and 4, NE¼, NE¼SW¼, N½SE¼.

The areas described contain 399.45 acres.

The areas described in this publication aggregates 5,712.575 acres. The purpose of these withdrawals is to protect U.S. Forest Service administrative sites, recreation areas and roadside zones from prospecting

and possible disturbances caused by mining. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with these proposed actions may present their views in writing to this office. The authorized officer of the BLM will undertake such investigation as is necessary to determine the existing and potential demand for the land and its resources.

A report will be prepared for consideration to determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of a final determination will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Herman Kast,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 93-22151 Filed 9-9-93; 8:45 am]

BILLING CODE 4310-32-M

[AZ-930-4210-06; A-19128, A-19129, A-18097, A-2183, A-5883 and A-6882]

Proposed Modification, Continuation and/or Termination of Withdrawals; Opportunity for Public Comment, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, generally proposes to modify and continue, 2 Secretarial Orders and 4 Public Land Orders which withdrew public land and National Forest System land in the Kaibab National Forest for use of the Forest Service as administrative sites, campgrounds, range station and game preserves. It is proposed that portions of two Public Land Orders be terminated. The Forest Service proposes to continue the withdrawals for these purposes for 20 years, and does not anticipate any significant changes in land use. All of the land will remain closed to operation of the mining laws. In addition, land identified under case files A-19129 and A-18097 will remain closed to all forms of appropriation under the public land laws.

DATES: Comments on this notice should be received by December 9, 1993.

ADDRESSES: Comments should be addressed to the Arizona State Director, BLM, P.O. Box 16565, Phoenix, Arizona 85011.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16565, Phoenix, Arizona 85011, 602-650-0509.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that Secretarial Order of February 26, 1907 (A-19128), Secretarial Order of August 22, 1908 (A-19129), Public Land Order 832 of May 21, 1952 (A-18097), Public Land Order 4565 of January 16, 1969, Public Land Order 5030 of March 20, 1971 (A-5883), and Public Land Order 5472 of January 31, 1975 (A-6882), withdrawing the lands for an indefinite period of time, be modified and continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, insofar as it affects the following described land within the Kaibab National Forest. All land described below is located in Coconino County, Arizona.

Gila and Salt River Meridian

Hull Tank Administrative Site No. 2 (A-19128)

T. 30 N., R. 4 E.,
Sec. 22, lots 1 and 2, NW¼NE¼, S½NE¼, SE¼.

The area described contains 314 acres. The Forest Service has recommended the withdrawal be continued on 240 acres and terminated on 74 acres that lie within the Grand Canyon National Park.

Big Springs Administrative Site (A-19129)

T. 37 N., R. 1 W.,
Sec. 12, partial (metes and bounds).
Sec. 13, partial (metes and bounds).

The area described contains 124 acres.

Fredonia Administrative Site (A-18097)

T. 41 N., R. 2 W.,
Sec. 21, S½SE¼NW¼, N½NE¼SE¼.

The area described contains 40 acres of public land lying outside of the Kaibab NF boundary.

Ten X Campground (A-2183)

T. 29 N., R. 2 E.,
Sec. 1, lots 1 and 2.
T. 30 N., R. 2 E.,
Sec. 36, S½NE¼, SE¼NW¼, E½SE¼, SW¼.
T. 30 N., R. 3 E.,
Sec. 31, lot 4.

The area described contains 478.31 acres.

Kaibab Lake Campground (A-2183)

T. 22 N., R. 2 E.,
Sec. 14, S½SW¼NW¼, E½NE¼NW¼, SE¼NW¼, NE¼, SW¼, W½SE¼, NE¼SE¼.
Sec. 15, S½SE¼NE¼, E½SE¼.

The area described contains 620 acres.

Parks Campground (A-2183)

T. 22 N., R. 4 E.,
Sec. 22, lots 1, 2, 7 and 8,
Sec. 27, lots 5, 15, 16, 17, 18, 20, 21 and 22.

The area described contains 272.60 acres. The entire area has been recommended for termination since it is no longer needed for the purpose it was withdrawn.

Dogtown Campground (A-5883)

T. 21 N., R. 2 E.,
Sec. 12, S½NE¼, S½.

The area described contains 400 acres

Chalender and Williams Ranger Station (A-5883)

T. 22 N., R. 2 E.,
Sec. 27, SE¼, portions thereof.

The area described contains 15.5 acres, more or less. The entire area has been recommended for termination since the land is no longer needed for the purpose it was withdrawn.

Lambs Lake Game Preserve (A-6882)

T. 38 N., R. 1 E.,
Sec. 13, MS 1655 as located in lots 3, 5, and 6,
Sec. 14, MS 1655 as located in lots 1, 2, 3, and 4.

The area described contains 98.03 acres.

Three Lakes Game Preserve (A-6882)

T. 37 N., R. 2 E.,
Sec. 6, SW¼NE¼NE¼, SE¼NW¼NE¼, E½SW¼NE¼, W½SE¼NE¼, NW¼NE¼SE¼, NE¼NW¼SE¼.

The area described contains 80 acres.

The areas described in this publication aggregates 2,442.44 acres. The purpose of these withdrawals is to protect U.S. Forest Service administrative sites, campgrounds, ranger station and game preserves from prospecting and possible disturbances caused by mining. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with these proposed actions may present their views in writing to this office. The authorized officer of the BLM will undertake such investigation as is necessary to determine the existing and potential demand for the land and its resources.

A report will be prepared for consideration to determine whether or not the withdrawal will be modified, terminated or continued and, if continued, for how long. Notice of a final determination will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Herman Kast,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 92-22150 Filed 9-9-93; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section

10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–782246

Applicant: George Riley, Farmington Hills, MI.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. V.L. Pringle, "Huntley Glen", Bedford, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–782370

Applicant: Craig Leerberg, Colorado Springs, CO.

The applicants requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. V.L. Pringle, "Huntley Glen", Bedford, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–782430

Applicant: Stephen G. Barry, Jr., Atlantis, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. L. Tonks, "Sondagsrivierhoek", Graaf Reinet, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–781544

Applicant: Circus Tihany, Sarasota, FL.

The applicant requests a permit to export and reimport one captive-born female Asian elephant (*Elephas maximus*) for circus performances, during which the applicant intends to inform the public of the Asian elephant's ecological role and conservation needs.

PRT–780849

Applicant: Sidney Wilhite, West Monroe, LA.

The applicant requests a permit to import a sport-hunted mountain zebra (*Equus zebra zebra*) trophy from South Africa for the purpose of enhancement of propagation and survival of the species.

PRT–779622

Applicant: William P. Deschner, Fort Wayne, IN.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from South Africa for the purpose of enhancement of propagation and survival of the species.

PRT–781179

Applicant: Richard Pickard, North Miami Beach, FL.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Namibia for the purpose of enhancement of propagation and survival of the species.

PRT–778674

Applicant: Mareen D. Waterman, Queenstown, MD.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Namibia for the purpose of enhancement of propagation and survival of the species.

PRT–781481

Applicant: Roy Montgomery, Jacksonville, FL.

The applicant requests a permit to import a sport-hunted cheetah (*Acinonyx jubatus*) trophy from Namibia for the purpose of enhancement of propagation and survival of the species.

PRT–782328

Applicant: Henry Doorly Zoo, Omaha, NE.

Applicant requests a permit to import serum, urine, and fecal samples of the Sumatran rhino (*Dicerorhinus sumatrensis*) from Malaysia for scientific purposes.

PRT–782329

Applicant: David McBrayer, Seattle, WA.

Applicant requests a permit to import a sport-hunted shapo (*Ovis vignei vignei*) trophy from India for the purpose of enhancement of propagation and survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281)

Dated: September 3, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–22112 Filed 9–9–93; 8:45 am]

BILLING CODE 4310–55–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018–XXXX), Washington, DC 20503, telephone 202–395–7340.

Title: Pumpout and Dump Station Survey

OMB Approval Number: New collection

Abstract: The Clean Vessel Act of 1992, subtitle F, section 5603 (b), authorizes the Secretary of the Interior to develop a plan for any construction or renovation of pumpout stations and waste reception facilities that are necessary to ensure that there are adequate pumpout stations and waste reception facilities in the States that are adequate and reasonably available to meet the needs of recreational boaters. The Act further directs that each coastal State shall conduct a survey to determine: (1) The number and location of all operational pumpout stations and waste reception facilities at public and private marinas, mooring areas, docks and other boating facilities within the coastal zone of the State; and (2) the number of recreational vessels in the coastal waters with Type III marine sanitation devices or portable toilets and the areas where such vessels congregate. Under section 5603 (a), the coastal States must conduct such a survey, and may receive funds under the Grant Program in section 5604 (c) for conducting the survey.

Service Form Number(s):

Frequency: One time only survey

Description of Respondents: State governments, Individuals and households, and marina operators

Estimated Completion Time: The reporting burden is estimated to average .17 (10 minutes) per response, including time for reviewing instructions.
Annual Responses: 176,665
Annual Burden Hours: 30,033
Service Clearance Officer: Phyllis H. Cook, 703–358–1943 Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240

Dated: August 19, 1993.

M.J. Spear,

Assistant Director, Ecological Services.

[FR Doc. 93–22047 Filed 9–9–93; 8:45 am]

BILLING CODE 4310–65–M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032–0004), Washington, DC 20503, telephone 202–395–7340.

Title: Nonferrous Metals Surveys
OMB approval number: 1032–0004
Abstract: Respondents supply the Bureau of Mines with domestic production and consumption data on nonfuel mineral commodities. This information is published in Bureau of Mines publications including the Mineral Industry Surveys, Volumes I, II, and III of the Minerals Yearbook, and Mineral Commodity Summaries for use by private organizations and other Government agencies.
Bureau form number: 6–1151–MA et al (30 forms)
Frequency: Monthly, Quarterly, and Annual
Description of respondents: Producers and consumers of nonferrous metals
Annual responses: 10,955
Annual burden hours: 12,980
Bureau clearance officer: Alice J. Wissman 202–501–9569.

Dated: July 29, 1993.

Jerome F. Hayes,

Acting Chief, Division of Statistics and Information Services.

[FR Doc. 93–22051 Filed 9–9–93; 8:45 am]

BILLING CODE 4310–63–M

National Park Service

Petroglyph National Monument Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Petroglyph National Monument Advisory Commission will be held at 2 p.m., Friday, October 15, 1993, at the City Council Chambers, City Hall, Albuquerque Civic Plaza, 4th and Grand, Albuquerque, New Mexico.

The Petroglyph National Monument Advisory Commission was established pursuant to Public Law 101–313, establishing Petroglyph National Monument, to advise the Secretary of the Interior on the management and development of the monument and on the preparation of the monument's general management plan.

The matters to be discussed at this meeting include:

—Superintendent's Update on Activities
—Change in Advisory Commission Charter
—General Management Plan Update
—New Business
—Public Comment

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed at the commission meeting with the Superintendent, Petroglyph National Monument.

Persons who wish further information concerning the meeting, or who wish to submit written statements may contact Stephen Whiteself, Superintendent, Petroglyph National Monument, 123 4th Street, SW., room 101, Albuquerque, New Mexico 87102, telephone 505/766–8375.

Minutes of the commission meeting will be available for public inspection six weeks after the meeting at the office of Petroglyph National Monument.

Dated: September 1, 1993.

John Cook,

Regional Director, Southwest Region.

[FR Doc. 93–22203 Filed 9–9–93; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: September 7, 1993.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) MFA Incorporated
(2) 615 Locust Street, Columbia, MO 65201
(3) 615 Locust Street, Columbia, MO 65201
(4) Ann Simpson, 615 Locust Street, Columbia, MO 65201

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–22133 Filed 9–9–93; 8:45 am]

BILLING CODE 7035–01–M

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. Parent corporation and address of principal office:

Browning-Ferris Industries, Inc., 757 N. Eldridge, Houston, Texas 77079	Delaware.
Wholly-owned subsidiaries which will participate in the operations and states of incorporation:	
1. Acco International, Inc	Texas.
2. Acco Waste Disposal, Inc	Texas.
3. Acco Waste Paper, Inc	Texas.
4. Action Disposal System, Inc	Minnesota.
5. Arbor Hills Center for Resource Management, Inc	Delaware.
6. Azusa Land Reclamation Co., Inc	California.
7. BFI Acquisition Company	Ohio.
8. BFI Constructors	California.
9. BFI Disposal Systems of Alabama, Inc	Delaware.
10. BFI Disposal Systems of Florida, Inc	Florida.
11. BFI Disposal Systems of Georgia, Inc	Delaware.
12. BFI Disposal Systems of Mississippi, Inc	Delaware.
13. BFI Disposal Systems of North America, Inc	Delaware.
14. BFI Disposal Systems of North Carolina, Inc	Delaware.
15. BFI Disposal Systems of Ohio, Inc	Delaware.
16. BFI Fountain Landfill, Inc	Colorado
17. BFI Medical Waste Systems of Arizona, Inc	Delaware.
18. BFI Medical Waste Systems of California, Inc	Georgia
19. BFI Medical Waste Systems of Colorado, Inc	Delaware.
20. BFI Medical Waste Systems of Illinois, Inc	Delaware.
21. BFI Medical Waste Systems of Iowa, Inc	Iowa.
22. BFI Medical Waste Systems of Minnesota, Inc	Minnesota
23. BFI Medical Waste Systems of New Jersey, Inc	New Jersey
24. BFI Medical Waste Systems of Oregon, Inc	Delaware.
25. BFI Medical Waste Systems of Utah, Inc	Delaware.
26. BFI Medical Waste Systems of Washington, Inc	Delaware.
27. BFI Medical Waste Systems of Niagara Frontier, Inc	New York
28. BFI Medical Waste Systems of (Atlantic), Inc	Delaware.
29. BFI Medical Waste Systems of (Northeast), Inc	Delaware.
30. BFI Medical Waste Systems of Steel, Inc	Delaware.
31. BFI Medical Waste Systems of (South Central), Inc	Tennessee
32. BFI Medical Waste Systems of (Southeast), Inc	Delaware.
33. BFI Memphis Recyclery, Inc	Tennessee.
34. BFI Modern Landfill, Inc	Illinois.
35. BFI Northern Transfer	Delaware.
36. BFI Palisades, Inc	New Jersey.
37. BFI Recycling Systems of Minnesota, Inc	Minnesota.
38. BFI Recycling of Nebraska, Inc	Nebraska.
39. BFI Recycling of New Jersey, Inc	New Jersey.
40. BFI Riverside, Inc	California.
41. BFI of Albion, Inc	New York.
42. BFI of Metro New York, Inc	Delaware.
43. BFI of North Metro, Inc	Michigan.
44. BFI Organic Waste Services, Inc	Connecticut.
45. BFI Services Group, Inc	California.
46. BFI Tire Recyclers of Georgia, Inc	Georgia.
47. BFI Tire Recyclers of Minnesota, Inc	Minnesota.
48. BFI Tire Recyclers of Ohio, Inc	Ohio.
49. BFI Transfer Systems of Maryland, Inc	Maryland.
50. BFI Transfer Systems of New Jersey, Inc	New Jersey.
51. BFI Twin Cities Recyclery, Inc	Minnesota.
52. BFI Waste Systems, Inc	Texas.
53. BFI Waste Systems of Michigan, Inc	Delaware.
54. BFI Waste Systems of Ohio, Inc	Delaware.
55. BFI Whispering Oaks Sanitary Landfill, Inc	Missouri.
56. BFI Wood Resource of Jacksonville, Inc	Florida.
57. Bio-Medical Services Corp	Georgia.
58. Bio-Tech Services, Inc	Missouri.
59. Blount County Disposal, Inc	Alabama.
60. Brooks Disposal Service, Inc	Illinois.
61. Browning-Ferris, Inc	Delaware.
62. Browning-Ferris, Inc	Maryland.
63. Browning-Ferris Industries Chemical Services, Inc	Nevada.
64. Browning-Ferris Industries Waste Control, Inc	Delaware.
65. Browning-Ferris Industries, Inc	Massachusetts.
66. Browning-Ferris Industries of Alabama, Inc	Alabama.
67. Browning-Ferris Industries of Arizona, Inc	Delaware.
68. Browning-Ferris Industries of Arkansas, Inc	Arkansas.
69. Browning-Ferris Industries of Atlanta, Inc	Delaware.
70. Browning-Ferris Industries of California, Inc	California.
71. Browning-Ferris Industries of Central Jersey, Inc	Delaware.
72. Browning-Ferris Industries of Colorado, Inc	Colorado.
73. Browning-Ferris Industries of Connecticut, Inc	Delaware.

74.	Browning-Ferris Industries of Eagle, New York, Inc	Texas.
75.	Browning-Ferris Industries of Elizabeth, N.J., Inc	New Jersey.
76.	Browning-Ferris Industries of Falls Township, Inc	Pennsylvania.
77.	Browning-Ferris Industries of Florida, Inc	Delaware.
78.	Browning-Ferris Industries of Georgia, Inc	Georgia.
79.	Browning-Ferris Industries of Hawaii, Inc	Delaware.
80.	Browning-Ferris Industries of Idaho, Inc	Idaho.
81.	Browning-Ferris Industries of Illinois, Inc	Delaware.
82.	Browning-Ferris Industries of Indiana, Inc	Indiana
83.	Browning-Ferris Industries of Iowa, Inc	Iowa.
84.	Browning-Ferris Industries of Kansas, Inc	Kansas.
85.	Browning-Ferris Industries of Kansas City, Inc	Missouri.
86.	Browning-Ferris Industries of Kentucky, Inc	Delaware.
87.	Browning-Ferris Industries of Long Island, Inc	New York.
88.	Browning-Ferris Industries of Maine, Inc	Delaware.
89.	Browning-Ferris Industries of Marion County, Inc	Delaware.
90.	Browning-Ferris Industries of Michigan, Inc	Michigan.
91.	Browning-Ferris Industries of Minnesota, Inc	Minnesota.
92.	Browning-Ferris Industries of Mississippi, Inc	Mississippi.
93.	Browning-Ferris Industries of Montana, Inc	Nevada.
94.	Browning-Ferris Industries of Nebraska, Inc	Nebraska.
95.	Browning-Ferris Industries of New Hampshire, Inc	New Hampshire.
96.	Browning-Ferris Industries of New Jersey, Inc	New Jersey.
97.	Browning-Ferris Industries of New York, Inc	New York.
98.	Browning-Ferris Industries of North Jersey, Inc	New Jersey.
99.	Browning-Ferris Industries of Ohio, Inc	Delaware.
100.	Browning-Ferris Industries of Ohio and Michigan, Inc	Ohio.
101.	Browning-Ferris Industries of Oregon, Inc	Oregon.
102.	Browning-Ferris Industries of Owensboro, Inc	Delaware.
103.	Browning-Ferris Industries of Oyster Bay, Inc	Delaware.
104.	Browning-Ferris Industries of Paterson, N.J., Inc	New Jersey.
105.	Browning-Ferris Industries of Pennsylvania, Inc	Delaware.
106.	Browning-Ferris Industries of Philadelphia, Inc	Pennsylvania.
107.	Browning-Ferris Industries of Pinal County, Inc	Arizona.
108.	Browning-Ferris Industries of Quincy, Illinois, Inc	Iowa.
109.	Browning-Ferris Industries of Rhode Island, Inc	Delaware.
110.	Browning-Ferris Industries of Rochester, Inc	Minnesota.
111.	Browning-Ferris Industries of South Atlantic, Inc	North Carolina.
112.	Browning-Ferris Industries of South Jersey, Inc	New Jersey.
113.	Browning-Ferris Industries of Southern Illinois, Inc	Delaware.
114.	Browning-Ferris Industries of Southeastern Michigan, Inc	Michigan.
115.	Browning-Ferris Industries of Southwest Virginia, Inc	Virginia.
116.	Browning-Ferris Industries of Southwestern Jersey, Inc	New Jersey.
117.	Browning-Ferris Industries of Springfield, Inc	Missouir.
118.	Browning-Ferris Industries of St. Louis, Inc	Delaware.
119.	Browning-Ferris Industries of Tennessee, Inc	Tennessee.
120.	Browning-Ferris Industries of Utah, Inc	Utah.
121.	Browning-Ferris Industries of Vermont, Inc	Vermont.
122.	Browning-Ferris Industries of Washington, Inc	Washington.
123.	Browning-Ferris Industries of West Virginia, Inc	Delaware.
124.	Browning-Ferris Industries of Western Jersey, Inc	New Jersey.
125.	Browning-Ferris Industries of Wisconsin, Inc	Wisconsin.
126.	Browning-Ferris Industries of Wyoming, Inc	Wyoming.
127.	Butts County Development Corp	Georgia.
128.	CECOS International, Inc	New York.
129.	CMS Development Corp	North Carolina.
130.	Condor Waste Transportation, Inc	Texas.
131.	Disposal Specialists, Inc	Vermont.
132.	Dooley Equipment Corporation	Massachusetts.
133.	E&E Hauling, Inc	Illinois.
134.	East DeKalb Landfill, Inc	Georgia.
135.	EnviroMed, Inc	Massachusetts.
136.	Escatawpa Environmental Services, Inc	Mississippi.
137.	Geneva Waste Services, Inc	New York.
138.	George Fenske Sanitary Service, Inc	Minnesota.
139.	Hall's Ferry Investments, Inc	Missouri.
140.	Hawk Ridge Compost Facility, Inc	Maine.
141.	Hawk Ridge Farms, Inc	Maine.
142.	Heavy Equipment Leasing Services Co., Inc	New York.
143.	Health Management, Inc	Tennessee.
144.	Health Management of New Orleans, Inc	Louisiana.
145.	Hennepin Transfer, Inc	Minnesota.
146.	Holly Springs Disposal, Inc	North Carolina.
147.	Homestead Land Corp	Pennsylvania.
148.	Hooksett Recycling & Processing Center, Inc	New Hampshire.
149.	HL-NIW, Inc	New York.

150.	Imperial Landfill Company, Inc	Pennsylvania.
151.	International Disposal Corp. of California	California.
152.	Isler's Refuse Service, Inc	Ohio.
153.	Jefferson Pike Landfill, Inc	Tennessee.
154.	Karas Trucking Co., Inc	Ohio.
155.	Keller Canyon Landfill Company	California.
156.	Lancaster Bio-Medical Services Group	Pennsylvania.
157.	Land Reclamation, Inc	New York.
158.	Lawrence County Disposal, Inc	Alabama.
159.	Loma Linda Disposal, Inc	California.
160.	Lorain County Resource Recovery Complex, Inc	Delaware.
161.	Louis Kmito & Son, Inc	Massachusetts.
162.	Lyon Development Co	Michigan.
163.	Marble Mill Recycling and Transfer Station, Inc	Georgia.
164.	Merrimack Valley Medical Services Company, Inc	Massachusetts.
165.	Middle Tennessee Recyclery, Inc	Tennessee.
166.	Mon Valley Sanitary Landfill, Inc	Pennsylvania.
167.	Moreland Avenue Disposal, Inc	Georgia.
168.	National Disposal Service of Nebraska, Inc	Nebraska.
169.	New Morgan Landfill Company, Inc	Pennsylvania.
170.	Newco Waste Systems, Inc	New York.
171.	Newco Waste Systems of New Jersey, Inc	New Jersey.
172.	Niagara Landfill, Inc	New York.
173.	Niagara Recycling, Inc	New York.
174.	Niagara Sanitation Company, Inc	New York.
175.	Ninety Plus, Inc	Louisiana.
176.	Northern Disposal, Inc	Massachusetts.
177.	Philadelphia Bio-Medical Services Corp	Pennsylvania.
178.	Pine Bend Landfill, Inc	Minnesota.
179.	Pleasant Hill Bayshore Disposal, Inc	California.
180.	Port of Albany Medical Waste Facility New York, Inc	New York.
181.	RPS, Inc	Colorado.
182.	Rx Thermal of Colorado, Inc	Colorado.
183.	Refuse Transfer, Inc	Minnesota.
184.	Regional Landfill, Inc	Texas.
185.	Residential Service, Inc	Nebraska.
186.	Resource Conservation Services, Inc	Maine.
187.	Resource Recovery Corporation	Massachusetts.
188.	River City Refuse Removal, Inc	Wisconsin.
189.	Sampson County Disposal, Inc	North Carolina.
190.	South Alabama Disposal, Inc	Alabama.
191.	Springfield Relay Systems, Inc	Missouri.
192.	TRC, Inc	Pennsylvania.
193.	T.R.A.S.H., Inc	Tennessee.
194.	Town and Country Waste Service, Inc	Wisconsin.
195.	Troy Area Landfill, Inc	Wisconsin.
196.	Van Buren Services, Inc	New York.
197.	Walker County Disposal, Inc	Alabama.
198.	West Roxbury Crushed Stone Co	Massachusetts.
199.	Westowns Disposal Systems, Inc	Wyoming.
200.	Wood Resource Recovery, Inc	Florida.
201.	Woodlake Sanitary Service, Inc	Minnesota.
202.	Youngstown BFI Waste Systems, Inc	Ohio.

B. 1. Parent Corporation—Smith-Rogers Oil Co., Inc.—Hwy 76 West. P.O. Box 308 Mullins, SC 29574. (mc-190159)
2. Subsidiaries—Tiger Mart Inc. S-R Transport Inc.—South Carolina

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–22132 Filed 9–9–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–88 (Sub–No. 6)]

Bessemer and Lake Erie Railroad Company—Abandonment and Discontinuance of Trackage Rights in Erie County, PA; Findings

The Commission has issued a certificate authorizing Bessemer and Lake Erie Railroad Company (B&LE) to abandon a 0.95-mile line of railroad between milepost 21.34 (B&LE sta −9+76.5) and milepost 22.29 (B&LE sta 40+35) and to discontinue trackage rights over 12.2 miles of rail line owned by Norfolk and Southern Railroad Company between B&LE sta 5580+66.9 and B&LE sta −9+76.5, in Erie County, PA. The abandonment and discontinuance certificate will become effective October 10, 1993, unless the Commission finds that (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate B&LE.

Any offers of financial assistance must be filed with the Commission and B&LE no later than September 20, 1993. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Section of Legal Counsel, AB–OFA." Any offer previously made must be remade within the 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: August 30, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Vice

Chairman Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–22290 Filed 9–10–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32346]

EASX Corp., D/B/A EASX Railroad Corp.; Acquisition and Operation Exemption; The Three Rivers Railway Co. and CSX Transportation, Inc.

EASX Corporation, d/b/a EASX Railroad Corporation (EASX), a noncarrier, has filed a notice of exemption: (1) To acquire and operate approximately 3.24-miles of rail line at or near New Castle, PA, owned by the Three Rivers Railway Company, a wholly-owned carrier subsidiary of CSX Transportation, Inc. (CSXT). The involved lines consist of two branches: (a) The "New Castle Branch" which begins at New Castle Branch Monumented Base Line (MBL) at survey Station 10+00, opposite the former Pittsburgh and Lake Erie Railroad Company's (P&LE) Main Line MBL Survey Station 2580+10, and extends in a generally northeasterly direction to the former P&LE Valuation Station 146+10; and (b) the "Big Run Branch" which begins at P&LE New Castle Branch Baseline of Survey at Survey Station 84+44, and extends in a generally southwesterly direction to the connection with trackage of CSXT; and (2) to lease from CSXT (with an option to purchase) and operate approximately 0.7-miles of rail line known as the "Sample Spur" which begins at Valuation Station 2+00 off of CSXT's main line between Cumberland, MD, and Willard, OH, and continues in a generally northwardly direction to Valuation Station 40+75.7.[1] The transaction was expected to be consummated after the August 30, 1993, effective date of the exemption.[2]

Any comments must be filed with the Commission and served on: Betty Jo Christian, Steptoe & Johnson, 1330 Connecticut Ave., NW., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 1, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–22131 Filed 9–9–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32330]

New Hampshire Northcoast Corp.; Acquisition Exemption; Boston and Maine Corp., et al.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–44 the purchase by New Hampshire Northcoast Corporation of two segments of line in New Hampshire totaling about 17.77 route miles. The segments, owned by Boston and Maine Corporation and Springfield Terminal Railway Company, are between milepost 69.83, at or near Rollinsford, and milepost 80.30, at or near Rochester, and between milepost D–9.72, at or near Rochester, and milepost D–17.0, at or near Farmington. The exemption is subject to standard employee protective conditions.

DATES: This exemption will be effective on October 10, 1993. Petitions to stay must be filed by September 27, 1993, and petitions to reopen must be filed by October 5, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32330 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, (2) Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, NW., Suite 400, Washington, DC 20036, and (3) John R. Nadolny, Boston and Maine Corporation, Iron Horse Park, North Billerica, MA 01862.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 927–5610. [TDD for hearing impaired (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721].

Decided: August 27, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–22129 Filed 9–9–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32321]

Southern Gulf Railway Company—Construction Exemption—In Calcasieu Parish, LA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission conditionally exempts from the prior approval requirements of 49 U.S.C. 10901 Southern Gulf Railway Company's construction of about 4 miles of rail line near Westlake, Calcasieu Parish, LA. The proposed transaction involves construction of a rail line running southwesterly and southerly from a second industrial track leading from the Roy S. Nelson Generating Station Unit 6 (Nelson Unit 6), operated by Gulf States Utilities Company (GSU), to a main line of Southern Pacific Transportation Company (SP). The exemption is subject to the results of the Commission's environmental review of the proposal.

DATES: On completion of all environmental review, the Commission will issue a further decision addressing those matters and making the exemption effective at that time, if appropriate. Petitions to reopen must be filed by September 30, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32321 to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, (2) John R. Molm, NationsBank Plaza, suite 5200, 600 Peachtree Street, NE., Atlanta, GA 30308–2216, and (3) William D. Moeller, Gulf States Utilities Company, P.O. Box 2951, Beaumont, TX 77704.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate

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[1] EASX is acquiring these lines in order to provide rail service to the New Castle manufacturing facility of its affiliate, East Railcar Corporation.

[2] EASX anticipates that, by the time of consummation, it will enter into an operating agreement with ISS Railroad, Inc. (ISS), an unaffiliated class III rail carrier, which will initially operate the New Castle Lines and Sample Spur on behalf of EASX. ISS will, of course, be required to file for approval or exemption to operate the line if such an agreement is reached.

Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: August 27, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–22310 Filed 9–9–93; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersede as decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

Kentucky
- KY930054 (Sept. 10, 1993)

Tennessee
- TN930046 (Sept. 10, 1993)

Volume III

Colorado
- CO930019 (Sept. 10, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Kentucky
- KY930001 (Feb. 19, 1993)
- KY930002 (Feb. 19, 1993)
- KY930029 (Feb. 19, 1993)
- KY930030 (Feb. 19, 1993)
- KY930031 (Feb. 19, 1993)
- KY930032 (Feb. 19, 1993)
- KY930033 (Feb. 19, 1993)
- KY930034 (Feb. 19, 1993)
- KY930035 (Feb. 19, 1993)
- KY930036 (Sept. 3, 1993)
- KY930037 (Sept. 3, 1993)
- KY930038 (Sept. 3, 1993)
- KY930039 (Sept. 3, 1993)
- KY930040 (Sept. 3, 1993)
- KY930041 (Sept. 3, 1993)
- KY930042 (Sept. 3, 1993)
- KY930043 (Sept. 3, 1993)
- KY930045 (Sept. 3, 1993)
- KY930046 (Sept. 3, 1993)
- KY930047 (Sept. 3, 1993)
- KY930049 (Sept. 3, 1993)
- KY930050 (Sept. 3, 1993)
- KY930051 (Sept. 3, 1993)
- KY930053 (Sept. 3, 1993)

New Jersey
- NJ930002 (Feb. 19, 1993)
- NJ930003 (Feb. 19, 1993)
- NJ930004 (Feb. 19, 1993)
- NJ930007 (Feb. 19, 1993)

New York
- NY930013 (Feb. 19, 1993)

Tennessee
- TN930005 (Feb. 19, 1993)

Virginia
- VA930005 (Feb. 19, 1993)
- VA930008 (Feb. 19, 1993)
- VA930018 (Feb. 19, 1993)
- VA930033 (Feb. 19, 1993)
- VA930034 (Feb. 19, 1993)
- VA930036 (Feb. 19, 1993)
- VA930039 (Feb. 19, 1993)
- VA930046 (Feb. 19, 1993)
- VA930047 (Feb. 19, 1993)
- VA930051 (Feb. 19, 1993)
- VA930069 (Feb. 19, 1993)
- VA930085 (July 9, 1993)

West Virginia
- WV930001 (Feb. 19, 1993)
- WV930002 (Feb. 19, 1993)
- WV930003 (Feb. 19, 1993)
- WV930005 (Feb. 19, 1993)

Volume II

Illinois
- IL930019 (Feb. 19, 1993)

Indiana
- IN930001 (Feb. 19, 1993)
- IN930002 (Feb. 19, 1993)
- IN930003 (Feb. 19, 1993)
- IN930004 (Feb. 19, 1993)
- IN930005 (Feb. 19, 1993)

IN930018 (Feb. 19, 1993)
Kansas
KS930005 (Feb. 19, 1993)
Michigan
MI930007 (Feb. 19, 1993)
Missouri
MO930001 (Feb. 19, 1993)
Texas
TX930019 (Feb. 19, 1993)

Volume III

California
CA930004 (Feb. 19, 1993)
Montana
MT930009 (Aug. 6, 1993)
MT930010 (Aug. 6, 1993)
MT930011 (Aug. 6, 1993)
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MT930020 (Aug. 6, 1993)
Utah
UT930001 (Feb. 19, 1993)
UT930004 (Feb. 19, 1993)
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UT930015 (Feb. 19, 1993)
UT930020 (Feb. 19, 1993)
UT930023 (Feb. 19, 1993)
UT930031 (Feb. 19, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 3rd day of September 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–22000 Filed 9–9–93; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–28,697]

Agrico Chemical Co. Mulberry, FL; Notice of Affirmative Determination Regarding Application for Reconsideration

On August 5, 1993, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on July 19, 1993 and published in the **Federal Register** on August 10, 1993 (58 FR 42577).

The company submitted an additional list of customers and claims that the former Soviet Union (FSU) is dumping phosphate fertilizers into the U.S.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 30th day of August 1993.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93–22176 Filed 9–9–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,786]

Douglas Aircraft Co. Torrance, CA Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice for petition TA–W–28,786 which was published in the **Federal Register** on July 7, 1993 (58 FR 36422) in FR Document 93–15996.

A printing error concerning the location of Douglas Aircraft Company (TA–W–28,786) appears in the 4th line of the second column in the appendix table on page 36422. The location should read "Torrance, California" instead of Phoenix, Arizona.

Signed in Washington, DC, this August 30, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–22179 Filed 9–9–93; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 20, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 20, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 23rd day of August, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Durametal Corp (Wkrs)	Muncy, PA	08/23/93	08/23/93	28,970	Refiner Plates.
Penco of Lyndhurst (CWU)	Lyndhurst, NJ	08/23/93	08/17/93	28,971	Various Chemicals.
AT&T (IBEW)	Westminster, CO	08/23/93	08/09/93	28,972	PBX Units.
Springfield Sportswear (Wkrs)	Coal Township, PA	08/23/93	08/11/93	28,973	Dresses and Skirts.
Ithaca Industries (Wkrs)	Edison, GA	08/23/93	08/17/93	28,974	Mens' Underwear.
Patent Scaffolding Co. (Wkrs)	Uniontown, PA	08/23/93	08/13/93	28,975	Scaffolds.
RHN Corporation (Co)	Canastota, NY	08/23/93	08/09/93	28,976	Automotive Plastic Parts.
People Pool, Inc., (The) (Co)	Canastota, NY	08/23/93	08/09/93	28,977	Automobile Services.
MAS Cutting Inc. (Wkrs)	Pittston, PA	08/23/93	08/11/93	28,978	Ladies' Dresses.
Formosa Exploration, Inc. (Wkrs)	Riddle, OR	08/23/93	08/10/93	28,979	Copper and Zinc Concentrates.
Alumax Extrusions, Inc. (USWA)	Dunkirk, NY	08/23/93	08/03/93	28,980	Aluminum Extrusions.
Cyprus Sierrita Corp. (Wkrs)	Green Valley, AZ	08/23/93	08/05/93	28,981	Copper.
Abrasive Technology, Inc. (Wkrs)	Southbridge, MA	08/23/93	07/23/93	28,982	Abrasives.
Intelogic Trace, Inc., (Wkrs)	San Antonio, TX	08/23/93	08/09/93	28,983	Repair Computers.
Carole Hochman Designs (ACTWU)	Mifflinburg, PA	08/23/93	08/13/93	28,984	Warehouse Services.

[FR Doc. 93–22175 Filed 9–9–93; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–28,839]

General Dynamics Fort Worth Division, Fort Worth, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 6, 1993 in response to a worker petition which was filed on July 6, 1993 on behalf of workers at General Dynamics, Fort Worth Division, Fort Worth, Texas.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–28,821). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 31st day of August, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–22181 Filed 9–9–93; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–27,440, TA–W–27,440A, TA–W–27,440B]

Geotrace Technologies, Inc. a/k/a Daniel Geophysical, Inc. Headquartered in Denver, CO and Operating Out of the Following Locations: Houston, and Dallas, TX; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of Geotrace Technologies, Inc., in the above mentioned locations. The certification notice was published in the **Federal Register** on September 9, 1992 (57 FR 41153).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that some of the claimants' wages for Geotrace Technologies, Inc., are being reported under Daniel Geophysical, Inc., a firm which Geotrace recently purchased.

Accordingly, the Department is amending the certification to properly reflect the correct worker groups.

The amended notice applicable to TA–W–27,440 is hereby published as follows: All workers of Geotrace Technologies, Inc., a/k/a Daniel Geophysical, Inc., Headquartered in Denver, Colorado and operating out of Houston, Texas and Dallas, Texas who became totally or partially separated from employment on or after June 19, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this September 1, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–22184 Filed 9–9–93; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–28,748]

GTI Corp. Hadley, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at GTI Corporation, Hadley, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–28,748; GTI Corporation
Hadley, Pennsylvania (August 20, 1993)

Signed at Washington, DC this 31st day of August, 1993.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 93–22178 Filed 9–9–93; 8:45 am]
BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the

Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 20, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of the Trade Adjustment Assistance, at the address shown below, not later than September 20, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 30th day of August, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Julie Fashion I (Wkrs)	Minersville, PA	08/30/93	08/14/93	28,985	Ladies' Jackets.
Southern Shipbuilding Corp. (Wkrs)	Slidell, LA	08/30/93	08/17/93	28,986	Ship Building & Repair.
Reynolds Metals Co. (AFAC)	Longview, WA	08/30/93	08/18/93	28,987	Aluminum.
Weeks Exploration Co. (Wkrs)	Houston, TX	08/30/93	08/19/93	28,988	Oil & Gas Exploration, Production.
Quite Valley Forest Products, Inc. (Wkrs)	Myrtle Point, OR	08/30/93	08/16/93	28,989	Veneer for Plywood.
Tennessee Shirt Works, Inc. (Wkrs)	Lawrenceburg, TN	08/30/93	08/18/93	28,990	Ladies Blouses and Shirts.
Tennessee Shirt Works, Inc. (Wkrs)	Fayettsville, TN	08/30/93	08/18/93	28,991	Ladies Blouses and Shirts.
New London Oil, Inc. (Wkrs)	San Antonio, TX	08/30/93	08/20/93	28,992	Crude Oil.
Lennox Industries, Inc. (Wkrs)	Columbus, OH	08/30/93	08/20/93	28,993	Air Conditioners & Parts.
El Paso Refining, L.P. (OCAW)	El Paso, TX	08/30/93	08/16/93	28,994	Refined Petroleum Products.
Crown Cork & Seal Co. (IAMAW)	Baltimore, MD	08/30/93	08/13/93	28,995	Beverage Fillers Machinery.
Cooper Industries, Pennsylvania (IUE)	Easton, PA	08/30/93	08/06/93	28,996	Specialty Reciprocal Compressors.
AGIP Petroleum Co., Inc. (Wkrs)	Houston, TX	08/30/93	08/20/93	28,997	Crude Oil.
Chalk Line, Inc. (Wkrs)	Shelbyville, TN	08/30/93	08/17/93	28,998	Men's and Boys' Outerwear.
Phillips Petroleum Co. (Wkrs)	Lafayette, LA	08/30/93	07/31/93	28,999	Natural Gas and Oil.
Pennsylvania Optical (Wkrs)	Reading, PA	08/30/93	08/06/93	29,000	Reading Glasses.
Dow Chemical Co. (Wkrs)	Midland, MI	08/30/93	08/12/93	29,001	Chemicals.

[FR Doc. 93–22185 Filed 9–9–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,545]

NERCO, Incorporated Headquarters, Portland, OR; Negative Determination Regarding Application for Reconsideration

By an application dated August 12, 1993, the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on July 2, 1993 and was published in the **Federal Register** on July 27, 1993 (58 FR 40161).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers were engaged in employment related to administrative functions for their subsidiaries.

The workers were denied certification because they did not produce an article within the meaning of the Trade Act of 1974. The workers were informed, however, that they may be certified if their separation was caused importantly by a reduced demand for their services from a firm related to it by ownership or control. In any event, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification. These conditions were not met for workers at NERCO, Inc. in Portland, Oregon.

Company officials state that the NERCO, Inc., workers in Portland, Oregon should be certified eligible for TAA if workers at other NERCO firms were to become certified on reconsideration.

Investigation findings, however, show that the reduced demand for NERCO's Headquarters unit's services does not meet the minimum threshold requirements for certification. There is only one NERCO production facility whose workers are certified eligible for TAA—NERCO Minerals in Portland, Oregon (TA–W–28,544). Further, workers at NERCO Oil & Gas, Inc., in Houston, Texas, TA–W–28,597; Lafayette, Louisiana, TA–W–28,673; Black Lake, Louisiana, TA–W–28,674 and Berwick, Louisiana, TA–W–675 were denied certification on application for reconsideration on August 4, 1993.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 1st day of September 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–22186 Filed 9–9–93; 8:45 a.m.]

BILLING CODE 4510–30–M

[TA–W–28,760]

Target Sportswear, Inc., Kent II Plant, Curwensville, PA; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated August 16, 1993, the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial Notice was signed on August 5, 1993 and published in the **Federal Register** on August 17, 1993 (58 FR 43656).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the Kent II plant produced military jackets for the U.S. Air Force and that their contract with the Air Force was completed.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey revealed that the customer for whom the Kent II plant performed contract work did not purchase imported military jackets in the relevant periods.

When work runs out the company would normally have two options: (1) Move other work to the affected plant or (2) transfer the affected employees to another production facility. However, the company states that these options were not available because of the impact of imports at their other locations.

The lack of work at other plants or the inability to transfer employees to other production facilities for whatever reason would not provide a basis for a worker group certification—only increased imports of articles that are like or directly competitive with the article produced by the workers' firm or appropriate subdivision of the firm which contribute importantly to declines in sales or production and employment may serve as a basis for certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 30th day of August 1993.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Service Unemployment Insurance Service.

[FR Doc. 93–22177 Filed 9–9–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,781]

Villa Fashions, Incorporated Shenandoah, PA; Affirmative Determination Regarding Application for Reconsideration

On August 18, 1993, one of the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was published in the **Federal Register** on August 17, 1993 (58 FR 43656).

The petitioner stated that the Department's survey was inadequate and submitted additional information.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 1st day of September 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93–22187 Filed 9–9–93; 8:45 am]

BILLING CODE 4510–30–M

Reauthorization of the Targeted Jobs Tax Credit Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATES: The reauthorization of the TJTC program is effective for individuals hired after June 30, 1992.

SUMMARY: The Targeted Jobs Tax Credit (TJTC) program offers employers a tax credit against their tax liability for hiring individuals from nine targeted groups who have traditionally had difficulty in obtaining and holding jobs.

The previous TJTC program authorization, the result of a six-month extension under the Tax Extension Act of 1991 (Pub. L. 102–227), expired on June 30, 1992. The program has been reauthorized for an additional thirty (30) months by the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, August 10, 1993). The reauthorization is effective for employees who begin work for the employer after June 30, 1992 (retroactive to July 1, 1992). Eligible employees may be certified provided the requirement for a timely request for certification has been met and all other appropriate information is provided.

The TJTC program is administered by the U.S. Department of Labor's Employment and Training Administration, the Internal Revenue Service (IRS) of the Treasury Department and the U.S. Department of Education's Office of Vocational and Adult Education.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Schaerfl, Director, U.S. Employment Service/Employment and Training Administration, 200 Constitution Ave., NW., room N–4470, Washington, DC 20210. Telephone 202–219–5257. For general TJTC program information contact: local office of any State Employment Security Agency (SESA). Such offices are called either Employment Service offices or Job Service offices and can usually be found in telephone directories under State government listings. Also, contact schools that offer vocational, adult or cooperative education programs or any local IRS office.

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, August 10, 1993) reauthorizes the TJTC program for thirty (30) months through December 31, 1994. No modifications in the program were included in the new law. Procedural guidance in the form of an Employment Service Program Letter (ESPL) is being issued by the U.S. Department of Labor/Employment and Training Administration, to State Employment Security Agencies. Any necessary changes to the program will also be incorporated, as appropriate, in forthcoming changes to ET Handbook No. 377, 5th Edition, August 1991, "Targeted Jobs Tax Credit Program."

Employers who hire individuals in the targeted groups may claim a credit of 40 percent of wages up to $6,000 per employee for a maximum credit of

$2,400. The value of the credit employers can claim for economically disadvantaged summer youth employees hired between May 1 and September 15 is 40 percent of wages up to $3,000 for a maximum credit of $1,200.

The nine target groups served under the program are:

—People with disabilities who have been referred to employers from approved State rehabilitation programs or from the Department of Veterans Affairs,
—Youth aged 18–22 from economically disadvantaged families,
—Economically disadvantaged Vietnam-era veterans,
—Recipients of Federal Supplemental Security Income,
—Recipients of State and local general assistance payments for at least 90 days,
—Youth aged 16 to 19 who are from economically disadvantaged families and participate in a qualified cooperative education program,
—Economically disadvantaged ex-convicts who are hired no later than five years after the date of release from prison or the date of conviction, whichever is more recent; an individual is to be treated as convicted, if placed on probation without a finding of guilty having been made (deferred adjudication),
—Recipients of Aid to Families with Dependent Children who are eligible for such assistance on the hiring date and have received assistance for 90 days immediately prior to being hired, and
—Economically disadvantaged youth who are 16 and 17 years of age on the hiring date, have not previously worked for the employer and are hired for a summer job.

Signed at Washington, DC, this 7th day of September 1993.

Doug Ross,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 93–22183 Filed 9–9–93; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: In the **Federal Register** notices listed below, the Mine Safety and Health Administration (MSHA) announced the receipt of several petitions for modification of the application of mandatory safety standard 30 CFR 75.1200(d) (mine map) to underground anthracite mines. MSHA has determined that these requests concerning the spacing of lines on contour maps can be addressed under 30 CFR 75.1200–1(m) rather than through the petition process. Accordingly, MSHA has ceased review of the following petitions in regard to 30 CFR 75.1200(d): M–93–91–C, M–93–100–C, M–93–106–C, M–93–112–C, M–93–119–C, M–93–128–C, M–93–136–C, and M–93–140–C published on July 22, 1993 (58 FR 39234); M–93–155–C published on July 23, 1993 (58 FR 39569); M–93–164–C, M–93–170–C, M–93–177–C, M–93–186–C, and M–93–195–C published on August 3, 1993 (58 FR 41294); and M–93–206–C published on August 24, 1993 (58 FR 44699).

Dated: September 2, 1993.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 93–22182 Filed 9–9–93; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before October 25, 1993. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. United States Commission on Improving the Effectiveness of the United Nations (N1–220–93–12). Transcribed audiotapes.

2. Christopher Columbus Quincentenary Jubilee Commission (N1–220–93–9). Comprehensive records schedule.

3. Railroad Retirement Board, Bureau of Unemployment and Sickness Insurance (N1–184–93–7). Routine and facilitative records.

4. Railroad Retirement Board (N1–184–93–4). Taxation Update Listings.

5. Department of the Army (N1–AU–93–3). Input worksheets and printouts relating to the Medical Expense and Performance Reporting System.

6. Department of the Army (N1–AU–93–4). DNA specimen registry files.

7. Department of the Army (N1–AU–93–5). Routine administrative records of the Exceptional Family Member Program.

8. Executive Office of the President, Office of National Drug Control Policy (N1–429–93–3). Public opinion mail.

9. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs (N1–59–93–30). Routine and facilitative records relating to environment, health, and natural resources.

10. Department of Energy, Office of the Federal Inspector (N1–434–93–7). Working papers, field logs, and correspondence relating to facilitative matters.

11. Department of Justice, Office of Special Counsel for Unfair Immigration Practices (N1–60–92–3). Copies of forms submitted to the Immigration and Naturalization Services by aliens declaring their intention to become citizens.

12. Department of Energy, Bonneville Power Administration (N1–305–91–1). Image processing and computer assisted mapping systems.

13. National Commission on Judicial Discipline and Removal (N1–220–93–11). Drafts to interim and final reports.

Dated: August 31, 1993.

Raymond A. Mosley,

Acting Archivist of the United States.

[FR Doc. 93–22052 Filed 9–9–93; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a master permit application for the U.S. Antarctic Program (USAP), submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application on or before October 12, 1993. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT:

Peter R. Karasik at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 40 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a banned substance or designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a master permit application under this Regulation which covers USAP activities in these areas. The permit applicants are:

Co-Applicants

U.S. Naval Support Force, Antarctica, Building 836, Construction Battalion Center, 651 Lyon Street, Port Hueneme, California 93043–4345

Antarctic Support Associates, 61 Inverness Drive East, Suite 300, Englewood, California 80112;

the permit application applies to USAP activities at all of its facilities in Antarctica; and the proposed duration of the permit is from August 15, 1993 through September 30, 1994.

Activity for Which Permit Requested

The Naval Support Force, Antarctica (NSFA) and Antarctic Support Associates (ASA) provide broad based logistical and technical support services to the U.S. Antarctic Program (USAP). NSFA duties include procurement, transport to Antarctica, and storing and tracking materials and storing and tracking waste, including hazardous waste, in Antarctica. NSFA also manages fuel operations including fuel storage, distribution and resupply.

ASA operations include procuring, transporting to Antarctica, and tracking materials containing designated pollutants that are required for USAP operations, NSF and NSF grantees. ASA is also responsible for the daily management of hazardous and nonhazardous waste materials and providing training and technical guidance documents for waste management practices.

Peter Karasik,

Associate Compliance Manager.

[FR Doc. 93–22055 Filed 9–9–93; 8:45 am]

BILLING CODE 7555–01–M

Permit Declined Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit declined under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits declined under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On July 22, 1993 the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was denied to Langdon B. Quetin on September 2, 1993.

Thomas F. Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–22115 Filed 9–9–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 04008989]

Envirocare of Utah, Inc.; Availability of the Envirocare Final Environmental Impact Statement

1. Description of Proposed Action—Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published the Final Environmental Impact Statement (FEIS) regarding the Envirocare of Utah, Inc., license action. The FEIS documents the environmental consequences of granting Envirocare of Utah, Inc., a license to receive, store, and dispose of uranium and thorium byproduct material (as defined in section 11e.(2) of the Atomic Energy Act, as amended) received from other persons, at a site near Clive, Tooele County, Utah. The FEIS also documents the NRC staff response to public comments received on the Draft EIS.

The applicant proposes to dispose of high-volume, low-activity 11e.(2) byproduct material received in bulk by rail and truck. The material will be placed in earthen disposal cells in lifts and covered with earth and rock. The applicant proposes to conduct operations on a site where the applicant currently disposes of Naturally Occurring Radioactive Material and Low-Level radioactive waste under licenses from the Utah Department of

Health, Bureau of Radiation Control. The State of Utah, however, does not have the authority to regulate the disposal of section 11e.(2) byproduct material, which remains with the Nuclear Regulatory Commission (NRC).

2. Document Availability—A Federal Register Notice by the U.S. Environmental Protection Agency will also be issued advising of the availability of this FEIS. A free single copy of final NUREG–1476 may be requested by writing to the U.S. Nuclear Regulatory Commission, ATTN: Distribution Section, room P–368B, Washington, DC 20555. A copy is also available for inspection and/or copying in the NRC Public Document Room, 2120 L St. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sandra L. Wastler, Uranium Recovery Branch, Division of Low-Level Waste Management and Decommissioning, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504–2582.

Dated at Rockville, MD, this 2nd day of September 1993.

For the Nuclear Regulatory Commission.

Myron H. Fliegel,

Acting Branch Chief, Uranium Recovery Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, NRC.

[FR Doc. 93–22141 Filed 9–9–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corp. and Jersey Central Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16 issued to GPU Nuclear Corporation, et al. (the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would revise Technical Specification 5.2.A to change the current containment drywell pressure of 62 psig to the new design pressure of 44 psig and the current containment drywell temperatures of 175 °F to the new design temperature of 292 °F. Related changes to Technical Specification Bases are also proposed. Unrelated editorial changes to the bases of Technical Specification 3.4 and 3.5 are also proposed.

The proposed amendment is in accordance with GPU Nuclear Corporation's application dated July 22, 1991, as supplemented February 14, 1992, August 19, 1992, and July 12, 1993.

Need for the Proposed Action

The proposed changes to the Facility Operating License are needed because it is a part of GPU Nuclear Corporation's comprehensive program to address the corrosion of the Oyster Creek drywell.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's proposal to change the current containment drywell pressure of 62 psig to the new design pressure of 44 psig and the current containment drywell temperatures of 175 °F to the new design temperature of 292 °F. The licensee also proposes to change the related Technical Specification Bases.

Based on its review of the licensee's analyses and the licensee's statement that the analyses have been performed in accordance with the Standard Review Plan, the staff finds that the licensee's proposed change to reduce the current containment drywell pressure of 62 psig to the new design pressure of 44 psig and the current containment drywell temperatures of 175 °F to the new design temperature of 292 °F is acceptable. The Commission has determined that the proposed changes do not alter any initial conditions assumed for the design basis accidents previously evaluated nor change operation of safety systems utilized to mitigate the design basis accidents.

The proposed changes do not increase the probability or consequences of accidents. No change is being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that the proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed changes to the Technical Specifications involve components in the plant which are located within the restricted area as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impacts. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission concludes that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the action would be to deny the amendment requested. Such action would not enhance the protection of the environment.

Alternative Use of Resources

The action would involve no use of resources not previously considered in the Final Environmental Statement for the Oyster Creek Nuclear Generating Station dated December 1974.

Agencies and Persons Consulted

The NRC staff consulted with the State of New Jersey regarding the environmental impact of the proposed action.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the application for amendment dated July 22, 1991, as supplemented February 14, 1992, August 19, 1992, and July 12, 1993, which are available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Md., this 2nd day of September 1993.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Acting Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–22140 Filed 9–9–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–320]

Meeting of the Advisory Panel for the Decontamination of Three Mile Island, Unit 2, GPU Nuclear Corp.

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the

Decontamination of Three Mile Island, Unit 2 (TMI–2) will be holding its final meeting on September 23, 1993, from 7 p.m.–10 p.m. at the Harrisburg Hotel, Center City, 23 South Second Street, Harrisburg, Pennsylvania. The meeting will be open to the public.

At this meeting, the Panel will receive a presentation from GPU Nuclear Corporation on the status of preparations for long-term storage of TMI–2. GPU Nuclear will also discuss the recent completion of the disposal of the accident generated water, and the status of their decommissioning fund. The Nuclear Regulatory Commission staff will discuss the results of a study on costs to decommission a pressurized light water reactor, and a study on the Advisory Panel for the Decontamination of Three Mile Island, Unit 2.

Further information on the meeting may be obtained from Dr. Michael Masnik, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–1191.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–22143 Filed 9–9–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–245, 50–336]

Northeast Utilities; (Millstone Nuclear Power Station) (License Nos. DPR–21, DPR–65); Receipt of Petition for Director's Decision under 10 CFR 2.206

Notice is hereby given that by Petition dated August 7, 1993, Anthony J. Ross (Petitioner) has requested that the Executive Director for Operations take escalated enforcement action with regard to alleged violations at Millstone Nuclear Power Station Unit 1. Specifically, Mr. Ross requests that a Severity Level II violation be issued against his department manager and a Severity Level III violation be issued against his first-line supervisor for apparent violation of the provisions of 10 CFR 50.7, that sanctions be instituted against these individuals for engaging in deliberate misconduct as described in 10 CFR 50.5, and that the first-line supervisor be removed from his position until a satisfactory solution to the problem can be achieved. As grounds for this request, the Petitioner asserts he continues to be subjected to harassment, retaliation and discrimination by his first-line supervisor and department manager for raising concerns to these individuals regarding work by the first-line supervisor on an emergency lighting system without a work order.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of Enforcement. As provided by § 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of this Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Md., this 15th day of September 1993.

For the Nuclear Regulatory Commission.

Joseph R. Gray,

Deputy Director, Office of Enforcement.

[FR Doc. 93–22139 Filed 9–9–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–249]

Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit 3); Exemption

I

Commonwealth Edison Company (CECo, the licensee) is the holder of Facility Operating License No. DPR–25 which authorizes operation of the Dresden Nuclear Power Station, Unit 3 (the facility) at a steady-state power level not in excess of 2527 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in Grundy County, Illinois. The licensee provides, among other things, that the facility is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in affect.

II

By letter dated May 14, 1993, as supplemented June 30, 1993, CECo requested a schedular exemption for Dresden, Unit 3, from the Type A, B, and C leak rate test intervals required by 10 CFR part 50, Appendix J, Sections III.A.6(b), III.D.2(a), and III.D.3. The exemption was requested to support the Dresden, Unit 3, refueling outage schedule and to avoid the potential for an earlier (6 month) reactor shutdown.

CECo is rescheduling the Dresden, Unit 3, refueling outage from September 1993 to February 1994 and has requested a maximum exemption of up to 190 days, for the most extreme case, from the Appendix J test intervals for Type A, B, and C testable volumes for the penetrations that can not be tested during operation.

III

In their letter dated May 14, 1993, as supplemented June 30, 1993, CECo requested a one-time exemption from the Type A, B, and C test interval requirements of Appendix J for the primary containment enclosure and certain volumes (i.e., bellows, manway gasket seals, flanges, and isolation valves) identified in Attachments II and III of their submittal. CECo stated that these volumes can not be tested while the reactor is at power and provided the basis for this conclusion in Attachment IV of their submittal.

CECo provided leakage test results and maintenance information on these volumes for the past two testing programs. The current maximum pathway leakage rate for Dresden, Unit 3, as determined through Type B and C leak rate testing, is 275.12 standard cubic feet per hour (scfh). This value is approximately 56% of the Technical Specification limit of 488.45 scfh ($0.6L_a$). In addition, the previous outage "As Left" total minimum pathway leakage rate for Type B and C testable penetrations was 145.71 scfh. The D3R12, "As Left" Integrated Leak Rate Test, completed on March 16, 1992, indicated that the primary containment overall integrated leakage rate, which obtains the summation of all potential leakage paths including containment welds, valves, fittings, and penetrations, was 0.6706 wt%/day. This value is the sum of the 95% upper confidence limit calculated leak rate of 0.5545 wt%/day plus the leakage rate of all nonvented pathways and the leakage compensation for the change in the drywell sump levels. This value is approximately 56% of the limit specified in the Technical Specifications (1.2 wt%/day or 0.75 L_a).

In order to provide an added margin of safety and to account for possible increases in the leakage rates of untested volumes during the relatively short period of the exemption, Dresden Nuclear Power Station, Unit 3, will impose an administrative limit for maximum pathway leakage of 80% of $0.6L_a$ for the remaining Unit 3 fuel cycle.

To reduce the number of volumes which need an exemption, CECo will test the volumes listed in Attachment V of their submittal during reactor operation. In addition, volumes listed in Attachment III of their submittal will be tested should a forced outage of suitable duration occur prior to March 15, 1994.

The staff has reviewed CECo's submittal regarding the Appendix J test interval exemption request. Based on the above discussion, the staff finds that for the component volumes identified in Attachments II and III of CECo's submittal, an exemption from the local leak rate (LLRT) test frequency specified in Appendix J should be granted based on the following.

1. Testing has shown low "as found" leakage during the past two outages. The ample margin between the measured leakage and the allowable leakage should accommodate any degradation likely to be experienced for these components during the extended period.

2. The intent of Appendix J was that Type A, B, and C testing be performed during a refueling outage. It is not the intent of Appendix J to require a shutdown solely for surveillance testing. The exemption would provide relief from the requirements of Appendix J to allow a test interval extension for these components which only became necessary as a result of rescheduling the Unit 3, Cycle 13, refueling outage.

3. Although a 190 day extension has been requested, many of the affected volumes will need an exemption for a much shorter time.

Regarding the extension of the Type A test interval beyond 18 months, the following justifications are presented:

1. At the time the pertinent requirements of Appendix J were established (1973), the typical nuclear power plant fuel cycle lasted 12 months. Section III.A.6.(b) could have been written to simply require a Type A test at every refueling outage, but it was felt that a numerical cap should be put on the interval to prevent extreme cases of very long intervals between tests caused by extended shutdowns or operation at reduced power. An 18-month cap was reasonable for 12-month fuel cycles, but with today's 18- and 24-month fuel cycles, it clearly is not sufficient. The intent of III.A.6.(b) is to increase the testing frequency for a containment that exhibits leakage problems, but not to increase it so much that special shutdowns are required. Refueling outages are the only reasonable times to perform Type A tests, since most plants do not have extended shutdowns at other times. Considering today's longer fuel cycles, the staff's current thinking is that the 18-month cap should reasonably be changed to 30 months.

2. Dresden, Unit 3, failed its D3R12 Type A test as a result of several major contributing factors. The As Left Maximum Pathway Leakage Rate, as measured through Type B and C local leak rate testing, was 485.43 scfh after the D3R11 refuel outage. This value represents 99% of the Technical Specification Limit for Maximum Pathway Leakage (0.61_a). The As Left Maximum Pathway Leakage Rate for Type B and C local leak rate testing was 284.54 scfh after the D3R12 refueling outage. The value represents 58% of the Technical Specification Limit for Maximum Pathway Leakage. This reduction in Type B and C is viewed as part of the corrective actions that will help prevent future As Found Type A failures since the Type B and C leakage rate is used as a maintenance indication of overall primary containment isolation valve performance that contributes to passing As Found ILRTs.

An additional contributing factor for the failure of the D3R12 As Found Type A test was the failure of the HPCI Turbine Exhaust Valve 3–2301–45 which was found to have an undetermined leakage rate when Type C tested. This pathway contains another valve between the torus and the exhaust check valve; however, it is not Type C testable and all leakage is assumed to be past valve 3–2301–45. Therefore, this valve is considered a single valve pathway since there is no redundant isolation valve in the pathway which can be Type C tested. Examination of the failed valve identified that the viton seat of the dual-disk check valve was torn. The valve was replaced and was successfully leak rate tested prior to the Unit start up. This valve failure was attributed to excessive cycling caused by operating the HPCI turbine at 1000 rpm during the monthly surveillance testing. Turbine exhaust pressure at 1000 rpm is approximately 7 psig. The low exhaust pressure causes the 3–2301–45 valve to cycle excessively. Following D3R12, interim corrective actions were to increase the HPCI pump discharge pressure. This increased the amount of steam flow through the turbine. This action reduced the cycling but did not eliminate it completely. HPCI operating procedure changes were made to increase the HPCI turbine warm-up speed to 2500 rpm. The exhaust pressure at 2500 rpm is approximately 13 psig which eliminates valve cycling. These changes were made to the operating procedures in February 1993. Future actions planned by the licensee include further revisions to the operating procedures as well as changes to the opening pressure of the valve. These corrective measures taken should reduce the chances of D3R13 failing the As Found Type A test.

Based on the above, the staff finds that the licensee's corrective actions have reduced the likelihood of excessive leakage during the extension of the Type A test interval. Further, considering the intent of the 18-month interval cap and its relation to longer fuel cycles, the staff finds that the safety benefit to be derived from performing a Type A test at 18 months rather than 24 months does not justify the hardship of a forced plant shutdown. Therefore, that staff finds that the requested Type A interval exemption should be granted.

IV

Based on the above, the staff concludes that the licensee's proposed extension of the test intervals for test components identified in its submittal is acceptable. This is a one-time exemption from the Type A, B, and Type C test interval requirements as prescribed in Appendix J, and is intended to be in effect until March 15, 1994. This approval is based on the assumption that all other tests will be conducted in accordance with the requirements of Appendix J.

The Commission's regulations at 10 CFR 50.12 provide that special circumstances must be present in order for an exemption from the regulations to be granted. According to 10 CFR 50.12(a)(2)(ii), special circumstances are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. As discussed above, the intent of Appendix J was that Type A, B, and C testing be performed during a refueling outage. The intent of III.A.6.(b) is to increase the frequency for a containment that exhibits leakage problems, but not to increase it so much that special shutdowns are required. To require a shutdown solely for surveillance testing would not serve the underlying purpose of the rule.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), that this exemption is authorized by law and will not present an undue risk to the public health and safety, and is consistent with the common defense and security. In addition, the Commission has found special circumstances in that application of the regulation in these particular circumstances would not serve the underlying purpose of the rule. Therefore, the Commission hereby grants the exemption from 10 CFR part 50, Appendix J, Sections III.A.6(b), III.D.2(a), and III.D.3 to the extent that the Appendix J test interval for performing Type A tests and Type B tests (except for air locks) and Type C tests may be extended for 190 days until March 15, 1994, on a one-time only basis, for Dresden, Unit 3, as described in Section III, above.

Pursuant to 10 CFR 51.32 the Commission has determined that the granting of this Exemption will have no significant impact on the environment (58 FR 45923).

Dated at Rockville, Maryland this 1st day of September 1993.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–22138 Filed 9–9–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–410]

Nine Mile Point Nuclear Station, Unit 2; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–69 issued to Niagara Mohawk Power Corporation for operation of Nine Mile Point Nuclear Station, Unit 2, located in Oswego County, New York.

The proposed amendment would revise Technical Specification Section 3/4.1.3.5, "Control Rod Scram Accumulators." Surveillance Requirement 4.1.3.5.b.2, which requires control rod drive scram accumulator testing once per 18 months and specifies test acceptance criteria, would be deleted. In addition, the required actions for inoperable control rod scram accumulators in Operational Conditions 1 and 2, contained in Actions a.1 and a.2 of Limiting Condition for Operation 3.1.3.5, would be modified. This notice supersedes the notice published on April 28, 1993 (58 FR 25858) in its entirety.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes would eliminate leak rate testing of the scram accumulator check valves. Corresponding changes would restrict plant operation such that either adequate charging water header or reactor steam dome pressure is available to insert control rods when scram accumulators are inoperable. The proposed changes provide operating flexibility where plant safety is not an immediate concern and prevent operation in a condition where inoperable accumulators are required to support the scram function. If neither charging water header or reactor steam dome pressure is adequate to meet scram insertion times, immediate shutdown is required by placing the mode switch in the Shutdown position. When adequate reactor steam dome pressure exists to assure scram capability, a limited period of time is allowed to restore a CRD [Control Rod Drive] pump to service. To protect against loss of scram capability during rapid depressurization, control rods associated with multiple inoperable scram accumulators are inserted and disarmed. Since the changes assure control rod operability during applicable operational conditions, the probability of CRD system failure is not significantly increased. Thus, the probability of an ATWS [Anticipated Transient Without Scram] event is not significantly increased.

The proposed required actions assure that either adequate charging water pressure or adequate reactor steam dome pressure is always available to support the scram function. The ability of the CRD system to perform its function during various degraded operating conditions is assured by the proposed changes. Those circumstances where scram function is not assured require immediate shutdown. Therefore, operation of Nine Mile Point Unit 2 in accordance with this proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The safety function of the scram accumulator is to assist in control rod insertion when reactor steam dome pressure alone is insufficient. Prompt operator action is still required to prevent circumstances where scram accumulators with withdrawn rods are inoperable and reactor steam dome pressure might be insufficient to scram the reactor. Thus, the capability of the control rods to perform their safety function, i.e., insert within the required time, will not be affected by the proposed changes.

The proposed additions to LCO [Limiting Condition for Operation] 3.1.3.5 action statements will assure the scram capability of all control rods while reducing the probability of forced shutdowns and the associated demands on safety systems. The additional LCO action (i.e., shutdown if reactor steam dome pressure is less than 900 psig with no operating CRD pump) provides for prompt operator action to prevent operation in a condition where inoperable accumulators might be required to support the scram function.

In addition, the proposed changes do not represent a physical change to the plant as described in the NMP2 Updated Safety Analysis Report. The proposed changes do not modify any equipment nor do they create any potential initiating events that would create any new or different kinds of accident. As such, the plant initial conditions utilized for the design basis accident analysis are still valid. Therefore, operation of Nine Mile Point Unit 2 in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any previously assessed.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

At normal reactor steam dome pressure (i.e., greater than or equal to 900 psig), reactor steam dome pressure alone is sufficient to scram the control rods. The proposed TS (Technical Specification) changes allow the plant operator 20 minutes to restart at least one CRD pump if there is more than one inoperable scram accumulator and reactor steam dome pressure is equal to or greater than 900 psig. To protect against degradation of the scram function during a depressurization event, the proposed changes require inserting and disarming control rods associated with multiple inoperable scram accumulators. The proposed TS changes require immediate shutdown if no CRD pumps are operating, reactor steam dome pressure is less than 900 psig, and one or more inoperable scram accumulators have associated control rods withdrawn.

The control rod system is designed to bring the reactor subcritical at a rate fast enough to prevent fuel thermal parameters from exceeding their respective safety limits during plant events. The safety function of the scram accumulators is to assist in control rod insertion when the reactor steam dome pressure alone is insufficient. The proposed changes do not affect the capability of the control rods to perform their safety function and provide proper reactivity insertion within the required time. Therefore, the fuel cladding safety limit will not be affected as the MCPR [Minimum Critical Power Ratio] limit will continue to be met. The proposed changes do not affect the basis for any Technical Specification and previously established safety limits remain valid. Therefore, the operation of Nine Mile Point Unit 2 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received

within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 12, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra, Director, Project Directorate I–1: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW.,

Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 7, 1993, as superseded September 2, 1993, which is available for public inspection at the commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Reference and Documents Department Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Md., this 3rd day of September 1993.

For the Nuclear Regulatory Commission.

John E. Menning,

Project Manager, Project Directorate I–1, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–22142 Filed 9–9–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–443]

North Atlantic Energy Service Co., et al; Consideration of Issuance of Amendment to Facility Operating License, Proposed Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–86 issued to North Atlantic Energy Service Company (the licensee) for operation of the Seabrook Station, Unit No. 1, located in Rockingham County, New Hampshire.

The proposed amendment would revise a requirement with respect to a surveillance requirement relating to the Refueling Water Storage Tank (RWST) narrow range level transmitters. Specifically, the proposed amendment would revise Technical Specification 4.3.2.1, Table 4.3–2, Functional Unit 8.b by deleting the requirement to perform a CHANNEL CHECK at least once per 12 hours and by adding a new requirement to perform a TRIP ACTUATING DEVICE OPERATIONAL TEST (TADOT) at least once per 92 days. A note would be added to clarify that setpoint verification would not be applicable to the TADOT.

On August 25, 1993, North Atlantic representatives requested the NRC to exercise its discretion not to enforce compliance with Seabrook Technical Specification Surveillance Requirement 4.3.2.1, Table 4 3–2, Functional Unit 8.b, CHANNEL CHECK, commencing on August 25, 1993. The request for enforcement discretion was presented during a teleconference between NRC and North Atlantic representatives. The request also was submitted by letter dated August 26, 1993, along with the proposed amendment. The licensee requested expeditious review of the proposed amendment consistent with the provisions of Appendix C, Section VII.

On August 24, 1993, North Atlantic determined that the present design of the RWST narrow range level instrumentation precludes performing an adequate CHANNEL CHECK. Thereupon, North Atlantic substituted an operational check (which meets the intent of the CHANNEL CHECK) on each of the four level channels. To perform the operational check requires that the channel being tested be placed in the tripped condition. This could contribute to premature switchover of the Residual Heat Removal suction path from the RWST to the containment sump during accident conditions. The performance of the operational checks every 12 hours is undesirable because this activity has the potential to reduce the level of protection to the health and safety of the public, increases occupational exposure, and has the potential to contaminate personnel with radioactive water. Furthermore, the frequent manipulation of equipment to perform the operational checks greatly increases the potential for equipment malfunction and human error.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1) because they do not involve a change in the design or operation of the facility, nor do they affect the response of the facility to an accident. Since the proposed changes merely involve a surveillance requirement for devices which are used in the mitigation of an accident, they will not affect the operation of the equipment. Furthermore, none of the failure modes of the instruments are accident initiators, and any failure would be detected during the proposed quarterly TADOT or during calibrations. The revised surveillance requirements will continue to provide adequate assurance that the equipment will perform its specified function if called upon to do so.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the changes do not affect the manner by which the facility is operated or involve any changes to equipment or features which affect the operational characteristics of the facility.

(3) The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because they do not affect the manner by which the facility is operated or involve any changes to equipment or features which affect the operational characteristics of the facility.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that

failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 12, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110–2624, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a

balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 26, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Dated at Rockville, MD, this 2nd day of September 1993.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Sr. Project Manager, Project Directorate I–4, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–22137 Filed 9–9–93; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Studies Interim Spent Fuel Storage

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board's Panels on the Engineered Barrier System and Transportation & Systems will hold a workshop studying the technical challenges of interim storage of spent nuclear fuel on November 1–2, 1993, in Dallas, Texas. The workshop will focus on current Department of Energy (DOE) plans for interim storage, institutional issues relating to on- and off-site storage, the technical aspects of interim storage containers, and compatibility of the multipurpose container/ multipurpose unit concept with a potential repository. A site at Yucca Mountain currently is being characterized by the DOE for its suitability as the possible location of a permanent repository for civilian spent fuel and defense high-level waste.

This workshop, which is open to the public, will be held in the DoubleTree Park West Hotel, 1590 LBJ Freeway, Dallas, Texas 75234; telephone (214) 869–4300. For further information, contact Frank Randall, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; telephone (703) 235–4473; FAX (703) 235–4495.

Dated: September 3, 1993.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 93–22173 Filed 9–9–93; 8:45 am]

BILLING CODE 6820–AS–M

Board to Study Drilling and Testing—October 19–20, 1993

Pursuant to the Nuclear Waste Technical Review Board's (the Board) authority under section 5051 of the Nuclear Waste Policy Amendments Act of 1987 (Pub. L. 100–203), the Board will hold its fall meeting October 19–20, 1993, in Las Vegas, Nevada. The meeting will focus on the surface-based dry drilling and underground testing programs being conducted at Yucca Mountain, Nevada. The Board would like to review the Department of Energy's (DOE) plans and progress toward determining site suitability using both above- and below-ground testing and evaluation. Specifically, the Board is interested in the status of the surface-based dry drilling program, including reducing core needs and increasing core production rates, and the status of the underground testing program, including plans for thermal, hydrogeologic/geochemical, and geomechanical testing. The Board has invited representatives from the DOE and its contractors, the state of Nevada, and other interested organizations to participate in the meeting. A round-table discussion will complete each day's presentations. The meeting, which is open to the public, will be held at the Plaza Suite Hotel, 4255 South Paradise Road, Las Vegas, Nevada 89109; telephone (702) 369–4400.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's spent nuclear fuel and defense high-level waste. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for disposal of that waste.

Transcripts of the meeting will be available on a library-loan basis from Victoria Reich, Board librarian, beginning December 1, 1993. For further information, contact Frank B. Randall, Jr., External Affairs, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473; (FAX) 703–235–4495.

Dated: September 3, 1993.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 93–22155 Filed 9–9–93; 8:45 am]

BILLING CODE 6820–AM

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and to Withdraw Unlisted Privileges in an Over-the-Counter Issue

September 3, 1993.

On August 30, 1993, the Chicago Stock Exchange, Inc. ("CHX"), submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under Section 12(b) of the Act.

File No.	Symbol	Issuer
7-11220 ..	MTEL	Mobile Telecommunication Technologies Corporation Common Stock, $.01 par value.

The above-referenced issue is being applied for as a replacement for the following security, which forms a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The CHX also applied to withdraw UTP pursuant to section 12(f)(4) of the Act for the following issue:

File No.	Symbol	Issuer
711221 ...	TKOS	Tokos Medical Corp., Common Stock, $.001 par value.

A replacement issue is being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before September 24, 1993, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant

of UTP as well as the withdrawal of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Magaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-22188 Filed 9-9-93; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-93-41]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 4, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 3, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27372
Petitioner: Fly BVI
Sections of the FAR Affected:
14 CFR 61.89(a)(5)
Description of Relief Sought:
To allow Fly BVI student pilots to fly between Tortola in the British Virgin Islands and the airports of the U.S. Virgin Islands and Puerto Rico, while fulfilling the cross-country requirement for their private pilot certificate.

Docket No.: 27408
Petitioner: Chester County Aviation, Inc.
Sections of the FAR Affected:
14 CFR 141.27(c)(2)
Description of Relief Sought/Disposition:
To allow Chester County Aviation, Inc. to immediately reapply for a provisional pilot school certificate without waiting the requisite 180 days as specified in the FAR.

Docket No.: 27418
Petitioner: National Business Aircraft Association, Inc.
Sections of the FAR Affected:
14 CFR 135.299(c)
Description of Relief Sought/Disposition

To allow National Business Aircraft Association-member pilots in command (PIC) to complete PIC route and airport checks in a flight simulator rather than in an aircraft.

Dispositions of Petitions

Docket No.: 26592
Petitioner: Philadelphia Jet Service
Sections of the FAR Affected:
14 CFR 135.165
Description of Relief Sought/Disposition:

To extend Exemption No. 5341 to continue to allow Philadelphia Jet Service to operate its HS125-700A equipped with one high frequency (HF) communication system in extended over-water operations.

GRANT, August 31, 1993, Exemption No. 5341A

Docket No.: 27307
Petitioner: Comair Inc. d/b/a Delta Connection
Sections of the FAR Affected:
14 CFR 61.57(e), 121.433(c)(1)(iii), 121.440(a), 121.441(a), 121.441(b)(1) and 121 appendix F
Description of Relief Sought/Disposition:
To permit Comair to conduct a Single Visit Training Program (SVTP) for flight crew members, and eventually transition into Advanced Qualification Program (AQP) codified in Special Federal Aviation Regulation (SFAR) 58.

PARTIAL GRANT, August 31, 1993, Exemption No. 5734

[FR Doc. 93-22157 Filed 9-9-93; 8:45 am]

BILLING CODE 4910-13-M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Panama City-Bay County International Airport, Panama City, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Panama City-Bay County International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 12, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Orlando Airport District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Jeff Vickers, Airport Director of the Panama City-Bay County International Airport at the following address: Panama City-Bay

County Airport and Industrial District, P.O. Box 1029, Panama City, Florida 32402.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Panama City-Bay County Airport and Industrial District under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Carlos E. Maeda, Plans and Programs Manager, FAA, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Panama City-Bay County International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 1, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by Panama City-Bay County Airport and Industrial District was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 22, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: February 1, 1994

Proposed charge expiration date: September 30, 2007

Total estimated PFC revenue: $7,422,988

Brief description of proposed project: New Terminal, Access System and Related Facilities.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled operations by Air Taxi/Commercial Operators reported on FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT."

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Panama City-Bay County Airport and Industrial District.

Issued in Atlanta, Ga., on September 2, 1993.

Stephen A. Brill,

Manager, Airports Division, Southern Region.

[FR Doc. 93–22162 Filed 9–9–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Bay and Saginaw Counties, MI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for reconstruction of M–84 between Tittabawassee Road in Saginaw County and Euclid Avenue in Bay City, Michigan.

FOR FURTHER INFORMATION CONTACT: Norman R. Stoner, Program Operations Engineer, Federal Highway Administration, 315 W. Allegan Street, room 211, Lansing, Michigan 48933, Telephone: (517) 377–1880 or Mr. Andrew J. Zeigler, Contract Administrator, Bureau of Transportation Planning, Michigan Department of Transportation, PO Box 30050, Lansing, Michigan 48909, Telephone: (517) 373–3251.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Michigan Department of Transportation, (MDOT), is preparing an Environmental Impact Statement (EIS) for reconstruction of M–84, an existing state trunkline, between Tittabawassee Road in Saginaw County and Euclid Avenue in Bay City, Bay County, Michigan. The proposed project is approximately 12.9 kilometers (8 miles) in length and is needed to accommodate current and future traffic volumes, improve operating conditions and the safety of the traveling public to this two-lane section. It is also intended to improve service in this developing area in southern Bay and northern Saginaw Counties. Alternatives under consideration include (1) taking no action to improve this section of M–84 other than routine maintenance; (2) mass transit; (3) five-lane cross section; (4) divided cross section (boulevard); and (5) combination boulevard and five-lane cross section. Scoping of this project began in 1991 and included: meetings with local jurisdictions and representatives from Bay and Saginaw Counties, Bay City Metropolitan Planning Authority and exchange of information and meetings with U.S. and State legislators representing the area. Letters and a scoping document describing the proposed action and soliciting comments will be sent to appropriate federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interests in this proposal. Although no agency scoping meeting is planned at this time, a pre-study meeting will be held in the near future to provide the public an opportunity to discuss the proposed action. A public hearing will be held. Public notice will be given of the time and place of the hearing. The Draft Environmental Impact Statement (EIS) is scheduled for completion in December, 1994, and will be made available for public and agency review and comment prior to the public hearing. The U.S. Environmental Protection Agency and the U.S. Fish and Wildlife Service are requested to be cooperating agencies on this project.

To ensure that the full range of issues relating to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 3, 1993.

James K. Erickson,

Asst. Div. Administrator, Lansing, Michigan.

[FR Doc. 93–22167 Filed 9–9–93; 8:45 am]

BILLING CODE 4910–22–M

Federal Aviation Administration

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Luis Munoz Marin International Airport, San Juan, Puerto Rico

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at the Luis Munoz Marin International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L.

101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 12, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827–5397.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Carlos Diaz Olivo, Esq., Executive Director of the Puerto Rico Ports Authority at the following address: Isla Grande Airport, GPO Box 362829, San Juan, Puerto Rico 00936–2829.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Puerto Rico Ports Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mrs. Ilia A. Quinones, Airports Plans and Programs Manager, FAA, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827–5397, telephone (407) 648–6583. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposed to rule and invites public comment on the application to use the revenue from a PFC at the Luis Munoz Marin International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 26, 1993, the FAA determined that the application to use the revenue from a PFC submitted by Puerto Rico Ports Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 14, 1993.

The following is a brief overview of the application.

Level of the approved PFC: $3.00
Actual charge effective date: March 1, 1993
Estimated charge expiration date: February 1, 1997
Total approved net PFC revenue: $49,768,000
Estimated PFC revenues to be used on projects in this application: $20,790,261
Brief description of proposed project: Construct Single West Crossfield Taxiway
Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Puerto Rico Ports Authority, Isla Grande Airport, San Juan, Puerto Rico.

Issued in Atlanta, Ga., on September 1, 1993.

Dell T. Jernigan,

Manager, Planning and Development Branch, Airports Division, Southern Region.

[FR Doc. 93–22161 Filed 9–9–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Emmet County, MI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for reconstruction of US–31 or relocation of a US–31 Beltway from the west city limits of Petoskey to just east of M–119 in Emmet County, Michigan.

FOR FURTHER INFORMATION CONTACT: Norman R. Stoner, Program Operations Engineer, Federal Highway Administration, 315 W. Allegan Street, room 211, Lansing, Michigan 48933, Telephone: (517) 377–1880 or Mr. Andrew J. Zeigler, Contract Administrator, Bureau of Transportation Planning, Michigan Department of Transportation, PO Box 30050, Lansing, Michigan 48909, Telephone: (517) 373–3251.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Michigan Department of Transportation, (MDOT), is preparing an Environmental Impact Statement (EIS) for reconstruction of US–31, an existing state trunkline, or relocation of a US–31 Beltway from the west city limits of Petoskey to just east of M–119 in Emmet County, Michigan. The proposed project is approximately 16.1 kilometers (10 miles) in length and is needed to make capacity improvements to this two-lane section to improve service in this rapidly-developing area in southern Emmet County. The limits of the study extend between Townsend Road on the west, Stump, Kemp and Click Roads on the south, Little Traverse Bay and M–119 to the north and northeast, Boyer and Valley Roads on the east. Alternatives under consideration include (1) taking no action to improve this section of US–31 other than routine maintenance; (2) mass transit; (3) four to five-lane reconstruction along existing; and (4) beltway alternatives.

Scoping of this project began in 1990 and included: Field surveys; meetings with local jurisdictions and representatives from Emmet County, City of Petoskey, and surrounding townships; formation of, numerous meetings with, the Citizens Advisory Group (CAG) with the specific purpose of providing a forum for communication from community leaders concerning the project. Two public information meetings have been held on the project. The first was held on May 10, 1992, and the second on August 20, 1992 to provide the public with an overview of the project scope and schedule , public and agency involvement process, and an opportunity to discuss the proposed action. Letters and a scoping document describing the proposed action and soliciting comments will be sent to appropriate federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interests in this proposal. A scoping meeting with federal, State, and local agencies will be held in the near future. A public hearing will be held. Public notice will be given of the time and place of the hearing. The Draft Environmental Impact Statement (EIS) is scheduled for completion in August, 1994, and will be made available for public and agency review and comment prior to the public hearing. The U.S. Environmental Protection Agency and the U.S. Fish and Wildlife Service are requested to be cooperating agencies on this project.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 3, 1993.

James K. Erickson,

Asst. Div. Administrator, Lansing, Michigan.

[FR Doc. 93-22168 Filed 9-9-93; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

September 2, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1028
Regulation ID Number: INTL-941-86 NPRM and INTL-655-87 TEMP
Type of Review: Extension
Title: Passive Foreign Investment Companies
Description: These regulations specify how U.S. persons who are shareholders of passive foreign investment companies (PFICs) make elections with respect to their PFIC stock.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 900,000
Estimated Burden Hours Per Respondent: 3 hours
Frequency of Response: Annually and Other (one-time only)
Estimated Total Reporting Burden: 206,250 hours
Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93-22108 Filed 9-9-93; 8:45 am]

BILLING CODE 4830-01-P

Public Information Collection Requirements Submitted to OMB for Review

September 2, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0256
Form Number: IRS Forms 941c and 941cPR
Type of Review: Revision
Title: Supporting Statement to Correct Information Planilla Para La Correccion De Informacion
Description: Used by employers to correct previously reported FICA or income tax data. It may be used to support a credit or adjustment claimed on a current return for an error in a prior return period. The information is used to reconcile wages and taxes previously reported or used to support a claim for refund credit for adjustment of FICA or income tax.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 958,050
Estimated Burden Hours Per Respondent/Recordkeeper:

	941c	941cPR
Recordkeeping	8 hrs., 51 min.	7 hrs., 25 min.
Preparing the form ...	8 min	7 min.

Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 8,528,697 hours
Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93-22109 Filed 9-9-93; 8:45 am]

BILLING CODE 4830-01-P

Public Information Collection Requirements Submitted to OMB for Review

September 2, 1993

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Special Request: The Internal Revenue Service (IRS) is requesting that the Office of Management and Budget (OMB) review and approve the information collection described below by October 4, 1993. This information is needed to ensure that IRS notices are mailed to taxpayers on time. All public comments must be received by close of business September 27, 1993.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New collection
Title: Focus Group Interviews to Obtain Taxpayer Input on Notices Sent to Taxpayers
Description: The group interviews are necessary to obtain taxpayer input to the changes necessary for notices mailed to taxpayers. The results will be used to determine future revisions of notices.
Respondents: Individuals or households
Estimated Number of Respondents: 900
Estimated Burden Hours Per Respondent:
Screening Questionnaire—5 minutes
Focus Group Sessions—2 hours
Travel Time To and From Facility Site—1 hour
Frequency of Response: Other (one time only)
Estimated Total Reporting Burden: 318 hours
Clearance Officer: Garrick Shear (202) 622-869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–22110 Filed 9–9–93; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

September 2, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0142
Form Number: None
Type of Review: Extension
Title: Transfer of Cargo to a Container Station
Description: The container station operator may file an application for transfer of a container station vehicle which is moved from the place of unlading or from a bonded carrier after transportation in-bond before filing of entry for the purposes of breaking bulk or redelivery.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 360
Estimated Burden Hours Per Respondent: 6 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1,872 hours
Clearance Officer: Ralph Meyer, (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–22111 Filed 9–9–93; 8:45 am]

BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review

September 3, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550–0072
Form Number: Forms MHC–1 and MHC–2
Type of Review: Extension
Title: Notice of Mutual Holding Company Reorganization (MHC–1) and Minority Stock Issuance Application (MHC–2)
Description: The information collections described herein will apply to a class of companies known as "mutual holding companies" and to their subsidiaries. The collections are necessary (i) to fulfill statutory requirements; and (ii) to facilitate review of transactions presenting risks.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 17
Estimated Burden Hours Per Respondent: 379 hours, 25 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 6,450 hours
Clearance Officer: Colleen Devine (202) 906–6025, Office of Thrift Supervision, 2nd Floor, 1700 G. Street, NW., Washington, DC 20552.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–22165 Filed 9–9–93; 8:45 am]

BILLING CODE 4810–25–P

Public Information Collection Requirements Submitted to OMB for Review

September 3, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0061
Form Number: CF 1302
Type of Review: Extension
Title: Crew's Effects Declaration
Description: This is a list of the crew's effects that are accompanying them on the trip, which are required to be manifested, and also the statement of the master of the vessel attesting to the truthfulness of the merchandise being carried on board the vessel as crew's effect.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 9,000
Estimated Burden Hours Per Respondent: 5 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 17,168 hours
Clearance Officer: Ralph Meyer (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–22166 Filed 9–9–93; 8:45 am]

BILLING CODE 4820–02–P

General Counsel; Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), and pursuant to the Civil Service Act, I hereby appoint the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, David L. Jordan, Acting Chief Counsel;

2. Dennis I. Foreman, Deputy General Counsel;

3. Richard J. Mihelcic, Associate Chief Counsel (Finance & Management);

4. John T. Lyons, Midwest Regional Counsel;

5. Agatha L. Vorsanger, North Atlantic Regional Counse ;

6. Marlene Gross, Deputy Associate Chief Counsel (Domestic Field Service);

7. Melvin E. Lefkowitz, Washington District Counsel.

This publication is required by 5 U.S.C. 4314(c)(4).

David L. Jordan,

Acting Chief Counsel.

[FR Doc. 93–22071 Filed 9–9–93; 8:45 am]

BILLING CODE 4830–01–U

Sunshine Act Meetings

Federal Register
Vol. 58, No. 174
Friday, September 10, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the following meeting of the Board:

TIME AND DATE: 9:00 a.m., September 29, 1993.

PLACE: Public Hearing Room, Suite 700, 625 Indiana Avenue NW., Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Public and worker health and safety issues pertaining to operation of the Savannah River Site Replacement Tritium Facility.
2. Presentations by DOE and possibly the Board's Technical Staff relating to adequate protection of public and worker health and safety relative to the Savannah River Site Replacement Tritium Facility.

The Department of Energy will take appropriate measures to safeguard any classified or controlled nuclear information it presents at this meeting.

CONTACT PERSONS FOR MORE INFORMATION: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, or Carole J. Council, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004, (202) 208–6400. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The Savannah River Site Replacement Tritium Facility currently contains a minimal inventory of tritium to perform system and equipment testing. The Board will discuss and deliberate upon public and worker health and safety issues related to increasing the tritium inventory of the Savannah River Site Replacement Tritium Facility to support the continuation and completion of testing and ultimately production operations. The meeting will include presentations by DOE and possibly the Board's Technical Staff relating to the Replacement Tritium Facility.

A transcript of the meeting will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office.

The Board reserves its right to further schedule and otherwise regulate the course of the meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: September 7, 1993.

Robert M. Andersen,

General Counsel.

[FR Doc. 93–22310 Filed 9–8–93; 2:14 pm]

BILLING CODE 6820–KD–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 9, 1993, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

1. Regulations

a. Special Collateral Requirement (Proposed)

b. Financial Disclosure and Conflict of Interest Reporting for Farmer Mac (Proposed)

c. Part 621—High Risk Asset Accounting (Final)

Closed Session*

A. New Business

1. Enforcement Actions

Dated: September 7, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–22243 Filed 9–7–93; 4:30 pm]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board) concerning the Farm Credit System Building Association.

DATE AND TIME: The special meeting of the Board concerning the Farm Credit System Building Association will be held at the offices of the Farm Credit Administration in McLean, Virginia, immediately following its 10 a.m. regular meeting on September 9, 1993.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. New Business

1. Preliminary 1994 FCSBA Assessment Levels for FCS Member Banks

Closed Session*

A. New Business

1. FCSBA Personnel Issues

Dated: September 7, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–22244 Filed 9–7–93; 4:31 pm]

BILLING CODE 6705–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, September 15, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street

*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (8) and (9)

*Session closed—Exempt pursuant to 5 U.S.C. 552b(c)(6).

entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 7, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–22242 Filed 9–7–93; 4:29 pm]

BILLING CODE 6210–01–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–93–26]

TIME AND DATE: September 16, 1993 at 10 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–515 (Final) (Portable Electric Typewriters from Singapore)—briefing and vote.
5. Continuation of discussion of APO matters.
6. Outstanding action jackets.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205–2000.

Issued: September 7, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–22264 Filed 9–8–93; 10:35 am]

BILLING CODE 7020–02–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: Tuesday, September 21, 1993, 1 p.m. (Closed Portion), 3:30 p.m. (Open Portion.)

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: The first part of the meeting, from 1:00 p.m. to 3:00 p.m., will be closed to the public. The open portion will commence at 3:30 p.m. (approximately).

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Budget for FY 1995.
3. Finance Project Worldwide.
4. Finance Project in Russia.
5. Finance Project in Argentina.
6. Insurance Project in Uzbekistan.
7. Insurance Project in Argentina.
8. Insurance Project in Argentina.
9. Approval of 7/13/93 Minutes (Closed Portion).

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 3:30 p.m.)

1. Approval of the 7/13/93 Minutes (Open Portion).
2. Recommendation for meeting schedule through end of March 1994.

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Corporation Secretary on (202)–336–8403.

Dated: September 6, 1993.

Anne H. Smart,

OPIC Corporate Secretary.

[FR Doc. 93–22340 Filed 9–8–93; 3:56 pm]

BILLING CODE 3210–01–M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors' Meeting

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, September 22, 1993, at 10:00 a.m.

ADDRESS: The meeting will be held at the Pennsylvania Avenue Development Corporation, Suite 1220 North, 1331 Pennsylvania Avenue, N.W., Washington, D.C.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Dated: September 7, 1993.

Robert E. McCally,

Acting Executive Director.

[FR Doc. 93–22302 Filed 9–8–93; 2:02 pm]

BILLING CODE 7630–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 13, 1993.

A closed meeting will be held on Tuesday, September 14, 1993, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 14, 1993, at 10 a.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.
Settlement of injunctive actions.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brian Lane at (202) 272–2400.

Dated: September 7, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22283 Filed 9–8–93; 11:45 am]

BILLING CODE 8010–01–M

Corrections

Federal Register

Vol. 58, No. 174

Friday, September 10, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 171

[CGD 93-041]
RIN 2115-AD33

Domestic Passenger Vessel Damage Stability Standards

Correction

In rule document 93-20886 beginning on page 45264 in the issue of Friday, August 27, 1993, make the following corrections:

1. On page 45265, in the first column, in the first full paragraph, in the third line from the bottom, "stamp" should read "stamped"; and in the second line from the bottom, "envelope" was misspelled.

2. On the same page, in the third column, in the first full paragraph, "46 CFR 170.80" should read "46 CFR 170.080".

3. On page 45266, in the second column, in the sixth line, the signature should read "A.E. Henn".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8482]
RIN 1545-AQ90

Capitalization and Inclusion in Inventory of Certain Costs

Correction

In rule document 93-18130 beginning on page 42198 in the issue of Monday, August 9, 1993, make the following corrections:

§ 1.263A-3 [Corrected]

1. On page 42224, in the second column, in § 1.263A-3(a)(1), in the second line below the second equation, "§ 10,000,000" should read "$10,000,000".

2. On the same page, in the third column, in § 1.263A-3(a)(2)(iii)(B), in the *Example*, in the sixth line, "§ 10,000,000" should read "$10,000,000".

3. On page 42225, in the first column, in § 1.263A-3(b)(1), in the ninth line, "§ 10,000,000" should read "$10,000,000".

4. On the same page, in the second column, in § 1.263A-3(b)(2), in the first line, "*(i) In*" should read "(i) *In*".

BILLING CODE 1505-01-D

federal register

Friday
September 10, 1993

Part II

Department of Defense

Department of the Army
Corps of Engineers

33 CFR Part 334
Restricted Areas and Danger Zone, Cooper River and Tributaries, Charleston, SC; Proposed Rule

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Part 334

Restricted Areas and Danger Zone, Cooper River and Tributaries, Charleston, SC

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Army Corps of Engineers proposes to establish a danger zone in the waters of an unnamed tributary of Foster Creek, a tributary of the Cooper River. The proposed danger zone generally borders the Charleston Naval Base and the Naval Weapons Station, Charleston and Berkeley Counties, South Carolina. The danger zone is needed to protect the public from the dangers associated with the possibility of an errant round from an existing pistol range impacting in the unnamed creek. In addition to these regulations, the Navy has received authorization from the Charleston District Engineer to erect a fence and a gate across the creek to control passage into the area. Although the area is not closed to the public on a full-time basis, the Commanding Officer, Naval Weapons Station, may close the area at any time and reopen the area when he/she determines that such restrictions may be terminated.

DATES: Written comments must be submitted on or before October 12, 1993.

ADDRESSES: HQUSACE, Attn: CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Tina Hadden at (803) 727–4330 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: The Commanding Officer, Naval Weapons Station, Charleston, South Carolina, has requested that the Corps expand the existing restricted areas in the waters of the Cooper River and its tributaries pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (33 U.S.C. 1) and section XIX of the Army Appropriations Act of 1919 (33 U.S.C. 3). We have determined that it would be inappropriate to designate the expanded area a restricted area in view of the definitions of danger zones and restricted areas published in 33 CFR 334.2 on July 12, 1993 (58 FR 37607–37609). Accordingly, we propose to designate the area a danger zone. The danger zone will generally border the Charleston Naval Base and Naval Weapons Station. The danger zone is needed to provide a margin of safety for vessels operating in the unnamed creek which is a tributary to Foster Creek by prohibiting entry into the area when determined appropriate by the Commanding Officer of the Naval Weapons Station. An errant round from an existing pistol range near the waterway could impact into the water. Vessels shall also be prevented from entering the area by a fence and gate across the waterway. Closure of the gate and prohibited entry by these regulations shall be as required by the Commanding Officer of the Naval Weapons Station.

Economic Assessment and Certification

This proposed rule is issued with respect to a military function of the Defense Department and accordingly, the provisions of Executive Order 12291 do not apply. These rules have been reviewed under the Regulatory Flexibility Act (Public Law 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small businesses (i.e., small businesses and small governmental jurisdictions). These regulations, if approved, may have a minimal impact on individuals fishing in the area. However, these regulations will not prohibit their entry into the area except on an intermittent basis as required for the Government's operations. The area is not known to support a commercial fishery and will not affect the food fishing industry. In addition, there will be no fees or charges imposed by the base commander for registration or entry into the area. This will not result in any increase in costs to those fishermen. Accordingly, the preparation of a regulatory flexibility analysis is not warranted.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Transportation. In consideration of the above, the Corps proposes to amend part 334 of title 33 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.460 is amended by adding paragraphs (a)(12) and (b)(11) to read as follows:

§ 334.460 Cooper River and tributaries at Charleston, SC.

(a) The areas. * * *

(12) Danger zone. That portion of Foster Creek beginning at the point of the southern shoreline of an unnamed tributary of Foster Creek at its intersection with Foster Creek at latitude 31°59′16″ N, longitude 79°57′23″; thence back proceeding along the eastern shoreline to the terminus of the tributary at latitude 32°59′49″, longitude 79°57′29″; thence back down the western shoreline of the unnamed tributary of latitude 32°59′15″, longitude 79°57′26″.

(b) The regulations. * * *

(11) The Commanding Officer of the U.S. Naval Weapons Station, Charleston, SC, may at his/her discretion, close passage to all watercraft and vessels in the danger zone described in paragraph (a)(12) until such time as he/she determines such restrictions should be terminated.

John R. Brown,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 93–22043 Filed 9–9–93; 8:45 am]

BILLING CODE 3710–62–M

federal register

Friday
September 10, 1993

Part III

Department of Defense

Department of the Army
Corps of Engineers

33 CFR Part 334
Restricted Area, North and Southwest Branch, Back River, Hampton, VA; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Part 334

Restricted Area, North and Southwest Branch, Back River, Hampton, VA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is establishing a naval restricted area in the waters of the Back River, a tributary of the Chesapeake Bay. The restricted area is located offshore of the Langley Air Force Base. The restricted area is needed to protect Government property and personnel and prevent unauthorized entry by the public into the area. All vessels are prohibited from entering the restricted area without permission from the Commanding Officer of the Langley Air Force Base.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Henderson at (804) 441–7652 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: The Commanding Officer, Langley Air Force Base, Langley, Virginia, has requested that the Corps establish a restricted area in the waters of the Back River pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (33 U.S.C. 1) and Section XIX of the Army Appropriations Act of 1919 (33 U.S.C. 3). A notice of proposed rulemaking soliciting comments on this proposed restricted area was published in the **Federal Register** on July 14, 1993 (58 FR 37889) with the comment period expiring on August 13, 1993. No comments were received in response to the notice of proposed rulemaking and accordingly, the final rule is promulgated without change. The restricted area extends out from the shoreline of the Langley Air Force Base approximately 35 yards. The restricted area is needed to provide security for the Air Force Base by preventing entry via the waterfront to all vessels except those contracted by or utilized by the State of Virginia to work in the oyster grounds located within the restricted area and city, State and Federal law enforcement vessels. Vessels working the oyster grounds are required to notify Langley Air Force Base Security Office personnel in person or by telephone prior to entering the area and may be required to register with the base commander on an annual basis.

Economic Assessment and Certification

This rule is issued with respect to a military function of the Defense Department and accordingly, the provisions of Executive Order 12291 do not apply. These rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small businesses (i.e., small businesses and small governmental jurisdictions). These regulations may have a minimal impact on individuals and/or small businesses engaged in work associated with oyster ground leases in the area. However, these regulations will not prohibit their entry into area, but will require them to contact the base commander so that any vessels entering the restricted area are identified by base security personnel. There will be no fees or charges imposed by the base commander for registration or entry into the area. This will not result in any increase in costs to those oyster planting/harvesting concerns. Accordingly, the preparation of a regulatory flexibility analysis is not warranted.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

In consideration of the above, the Corps is amending part 334 of Title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add a new § 334.275 to read as follows:

§ 334.275 North and Southwest Branch, Back River, Hampton, U.S. Air Force Base, Langley, VA; restricted area.

(a) The area. Beginning at a point on the island at the entrance to Tide Mills Creek in the Southwest Branch of the Back River at latitude 37°03'50" N, longitude 076°22'00" W, thence along the shore of Langley Air Force Base, 35 yards off the ordinary mean high water (MHW) mark, to a point in the Northwest Branch of the Back River at latitude 37°06'40" N, longitude 076°22'55" W.

(b) The regulations.

(1) No persons or vessels, recreational or commercial, may enter this restricted area without the permission of the Commanding Officer, Langley Air Force Base.

(2) The Commanding Officer shall not prevent persons from fulfilling their legal obligation to the Commonwealth of Virginia with regard to oyster planting ground leases that lie within the restricted area. The Commanding Officer may, at his/her discretion, require those persons and vessels working those leases to register with the Langley Air Force Base Security Officer on an annual basis. Failure to comply with this request may result in denial to access the oyster grounds until such time as the request has been complied with.

(3) Persons or vessels contracted with or utilized by the Commonwealth of Virginia to work the oyster grounds shall give verbal notification to the base Security Office prior to entering the restricted area.

(4) City, State and Federal law enforcement vessels may enter the restricted area at any time they deem necessary for the enforcement of their respective laws.

(c) Enforcement. The regulations in this section shall be enforced by the Commanding Officer of the Langley Air Force Base and such agencies as he/she may designate.

Dated: August 30, 1993.

Stanley G. Genega,

Brigadier General (P), U.S. Army; Director of Civil Works.

[FR Doc. 93–22171 Filed 9–9–93; 4:45 pm]

BILLING CODE 3710–92–M

federal register

Friday
September 10, 1993

Part IV

Office of Management and Budget

Management of Federal Information Resources; Notice

OFFICE OF MANAGEMENT AND BUDGET

Management of Federal Information Resources

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Proposed Revision of OMB Circular No. A–130, Transmittal 2, *Management of Federal Information Resources.*

SUMMARY: The Office of Management and Budget is revising Circular No. A–130, *Management of Federal Information Resources* (hereafter referred to as Circular A–130). Transmittal 1 to Circular A–130, effective June 25, 1993, and published on July 2, 1993 (58 FR 36068) addressed the Information Management Policy section of the Circular, as well as Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals."

That issuance dealt primarily with how the Federal government manages its information holdings, particularly information exchange with the public. In contrast, the revisions proposed herein address agencies' internal management practices for information systems and information technology. These practices are addressed in Section 8b and Appendix II of the Circular, which date from 1985. These proposed revisions to those parts of Circular A–130 are intended to: (1) promote agency investment in information technology that improves service delivery to the public, reduces burden on the public, and lowers the cost of Federal program administration; (2) encourage agencies to manage information technology as a strategic resource as important as financial and personnel resources; and (3) recognize the change in the technical, legal, and operational environment that agencies now face when managing their information technology.

The process of revising Circular A–130 brought to light an overlap of policy statements between Section 8a, as recently amended, and the revisions proposed herein for Section 8b. As part of the final publication of the revised Circular A–130, OMB intends to consolidate those policy statements that generally apply to both information and information technology. This consolidation will not substantively alter the policies now contained in Section 8a or proposed for Section 8b.

Finally, OMB proposes to make a few changes to Sections 6 and 7 of the Circular, which were recently amended.

DATES: Persons who wish to comment on this proposal should submit their comments no later than November 9, 1993.

ADDRESSES: Comments should be addressed to: Information Technology Management Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3221 New Executive Office Building, Washington, D.C. 20503.

ELECTRONIC AVAILABILITY AND COMMENTS: This document is available on the Internet via anonymous File Transfer Protocol (FTP) from *nis.nsf.net* as */omb/omb.a130.rev3* (do not use any capital letters in the file name). For those who do not have FTP capability, the document can also be retrieved via mail query by sending an electronic mail message to *nis-info@nis.nsf.net* with no subject, and with *send omb.a130.rev3* as the first line of the body of the message.

Comments may be sent via electronic mail to an OMB x.400 mail address, which is */s=a130/c=us/admd=telemail/prmd=gov+eop* (Internet users should add */@sprint.com* at the end of the address.) Comments sent to this address will be included as part of the official record.

For assistance using FTP, mail query, or electronic mail, please contact your system administrator.

FOR FURTHER INFORMATION CONTACT: Stephen H. Holden, Information Technology Management Branch, (202) 395–7231. Interested parties may obtain copies of the original OMB Circular A–130 (50 FR 52730) and the revisions (58 FR 36070) from the Executive Office of the President, Publications Services, by calling (202) 395–7732, between 9 am and 4 pm EST. The public can also obtain copies of referenced Circulars A–11, A–94, A–109, A–123, and A–127 from Publications Services.

SUPPLEMENTARY INFORMATION:

Background

The Paperwork Reduction Act (44 U.S.C. Chapter 35) assigns the Director of the Office of Management and Budget (OMB) responsibility for maintaining a comprehensive set of information resources management policies, and for promoting the application of information technology to improve the use and dissemination of information in the operation of Federal programs.

To fulfill these responsibilities, OMB originally issued Circular No. A–130, *Management of Federal Information Resources* (50 FR 52730; December 24, 1985), which provided a policy framework for Federal information resources management (IRM). Since the Circular was issued in 1985, Congress has enacted several laws bearing on the information technology management section of the Circular, especially amendments to the Paperwork Reduction Act (Public Law 99–500).

OMB published three notices relating to this revision of the Circular. On March 4, 1991, OMB published a notice setting forth plans for revising all of the Circular (56 FR 9026) and on April 29, 1992, OMB specifically requested comments on topics for the proposed revision to the information technology management section of the Circular (57 FR 18296). On July 2, 1993, OMB published a notice (58 FR 36068) amending most of the Circular; in that notice, OMB stated its plans for amending other parts of the Circular (58 FR 36069–70).

This notice presents the revisions contemplated in these three notices and addresses the following findings:

(1) Section 8b and Appendix II of the Circular, which were issued in 1985 (50 FR 52736–37 and 41–42, December 24, 1985), do not reflect amendments to the Paperwork Reduction Act and recent advances in technology and related management techniques;

(2) Section 8b of the Circular (50 FR 52736–37) does not include benefits to the public (i.e., improved service delivery and burden reduction) as a criterion for evaluating information technology investments;

(3) Agency planning processes and documents often do not adequately address how life cycle management relates to agency-wide information technology planning, and in turn, how these elements relate to agency-wide IRM planning;

(4) Circular A–130 policies on cost recovery and charge-back for information processing resource sharing, contained in Appendix II, do not reflect the changes in the technical environment that allow for broader categories of resource sharing;

(5) Circular A–130 does not incorporate or reference several OMB policy documents governing the management of agency information resources;

(6) Some agencies have not adopted the major principles of Circular A–130 in their internal policies, and often have not established procedures for overseeing the management of major information systems; and

(7) Agencies do not consistently link investments in information technology to the achievement of agency missions, or to the management of other agency resources. Information systems management and project oversight is

generally ineffective when agencies do not integrate these processes with agency decision making on strategic planning, budget formulation, human resource management, and acquisition approval.

Accordingly, OMB's goals for the second phase of the revisions of OMB Circular No. A–130 are to:

(1) Update the policies contained in the Circular to reflect changes in the technical and legal environment shaping the management of information resources in the Federal government;

(2) Broaden the criteria for evaluating proposed investments in information resources to include improving program delivery to the public, reducing information collection burden, and increasing the efficiency of Federal program administration;

(3) Introduce an IRM planning framework with special attention to relating IRM planning to agency-wide strategic planning, and strengthening the ties among IRM and other agency management processes such as human resources management, financial management and budgeting, and acquisition and contract management;

(4) Revise substantially the operational guidance contained in Appendix II (issued in 1985, at 50 FR 52741–42), which covers cost recovery and information resource sharing, and incorporate this revised policy in Section 8b of the Circular (Appendix II is proposed to be deleted, and the revised guidance is in proposed Section 8b);

(5) Harmonize definitions, policy principles, and system review requirements provided by policy documents such as OMB Circular No. A–123, *Internal Control Systems;* OMB Circular No. A–127, *Financial Management Systems;* OMB Circular No. A–109, *Acquisition of Major Systems;* OMB Circular No. A–11, *Preparation and Submission of Budget Estimates;* and OMB Circular No. A–94, *Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs;*

(6) Encourage agencies to implement the policies and guidance of Circular A–130 through policies and procedures of their own, including review mechanisms to oversee major information systems; and

(7) Provide more comprehensive guidance for agencies on life cycle management, including evaluation of proposed information technology investments, technological uncertainty, and the stability of user requirements.

Request for Public Comments

OMB consulted with Federal agencies and other organizations while drafting these proposed revisions. The purpose of these discussions was to help ensure that the revisions address the real issues facing Federal agencies using information technology. That is also OMB's purpose in requesting public comment. Therefore, while comments on all issues pertaining to the proposed revisions are requested and will be considered, OMB asks readers to focus on three particular questions when providing comments.

First, are the problem statements listed above accurate? These statements reflect OMB's analyses of agency management policies and practices for information technology over the last several years. Since these problem statements drive the content of the proposed revisions, it would be helpful to know if readers believe OMB has accurately described the principal areas of Federal agency information technology management that require improvement.

Second, do the proposed revisions adequately address those problems? In particular, understanding that agencies use Circular A–130 to shape internal policies, do the proposed revisions adequately explain OMB's expectations for managing information technology so that agencies can update their policies and improve their practices accordingly?

Finally, are these proposed revisions flexible and forward-looking enough to accommodate emerging trends in technology? While the proposed revisions to the Circular are written to be technology-neutral, will the policies be difficult to interpret or to apply due to changes in information technology five years from now? In particular, does the Circular adequately address the increasingly common practice of distributing and decentralizing information resources throughout organizations?

Structure of this Proposed Revision

This proposed revision substantially reorganizes Section 8b, Information Systems and Information Technology Management, which was issued in 1985 (50 FR 52741–42, December 24, 1985). This proposed revision supplements Transmittal 1 of Circular A–130, which revised Section 8a and other related sections dealing with information management (58 FR 36070, July 2, 1993). The revisions proposed herein primarily address portions of the Circular that were not addressed in the July 1993 **Federal Register** notice (i.e., Section 8b and Appendix II). However, revisions are also proposed for Section 6, Definitions, Section 7, Basic Considerations and Assumptions, and Appendix IV, which were addressed in the July 1993 notice.

Outline of Circular A–130 [Reflecting revisions proposed by this notice]:

1. *Purpose:* [Unchanged; see 58 FR 36070]
2. *Rescissions:* [Unchanged; see 58 FR 36070]
3. *Authorities:* [Unchanged; see 58 FR 36070]
4. *Applicability and Scope:* [Unchanged; see 58 FR 36070]
5. *Background:* [Unchanged; see 58 FR 36070]
6. *Definitions:* [Changes proposed; see 58 FR 36070–71]
7. *Basic Considerations and Assumptions:* [Changes proposed; see 58 FR 36071]
8. *Policies:*

a. *Information Management Policy:* [Unchanged; see 58 FR 36071–73]

b. *Information Systems and Information Technology Management:* [Changes proposed; see 50 FR 52736–37]

9. *Assignment of Responsibilities:* [Unchanged; see 58 FR 36073–74]
10. *Oversight:* [Unchanged; see 58 FR 36074]
11. *Effectiveness:* [Unchanged; see 58 FR 36074]
12. *Inquiries:* [Unchanged; see 58 FR 36074]
13. *Sunset Review Date:* [Unchanged; see 58 FR 36075]

Appendix I: *Federal Agency Responsibilities for Maintaining Records about Individuals* [Unchanged; see 58 FR 36075–79]

Appendix II: *Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities* [Deletion proposed; see 50 FR 52741–42]

Appendix III: *Security of Federal Automated Information Systems* [Unchanged; see 50 FR 52742–44]

Appendix IV: *Analysis of Key Sections* [Changes proposed; see 58 FR 36080 (Section 6) and 50 FR 52748–50 (Section 8b)]

Summary of Proposed Revisions

1. Section 6. *Definitions.*

"Information resources". OMB proposes to include a definition for the term "information resources," which is implied in Circular A–130's current definition of "information resources management" (Sec. 6i, 58 FR 36070). The purpose is to more clearly delineate those management techniques that apply to both information and information technology.

"Information management". OMB proposes to include a definition for the term "information management" to distinguish the management of information from the management of information technology where necessary.

"Major information systems". OMB proposes minor editorial changes to the existing definition of the term "major information systems" (Sec. 6m, 58 FR 36071) changing "impact on" to "role in" to better reflect the purpose of information systems.

"Information technology facility" and *"Information processing services organization"*. OMB proposes to replace the existing term "information technology facility" (Sec. 6l, 58 FR 36071) with the new term "information processing services organization" (IPSO). OMB believes the term "information technology facility" limited the application of policy formerly contained in Appendix II (50 FR 52741–42) to mainframe computing centers. Today, with the use of decentralized, distributed, and cooperative architectures, information processing services extend to the end user's desk over local-area and wide-area networks. To recognize these changes in the computing environment, OMB proposes using the term "IPSO", expanding coverage of the policy formerly in Appendix II, and discussing the proposed policy in Section 8b rather than in an appendix.

"Full cost" and *"User"*. OMB proposes to move these terms formerly contained in Appendix II (50 FR 52741–42) into Section 6 consistent with the proposal to incorporate the Appendix II guidance into Section 8b(5). Although these definitions are shortened for ease of reading, as discussed in Appendix IV, they retain the same meaning.

"Information systems life cycle". OMB proposes to move this term formerly contained in Appendix IV (50 FR 52749) into Section 6 consistent with the proposed discussion of information systems life cycle in Section 8b(3).

2. Section 7. *Basic Considerations and Assumptions.*

OMB proposes to add three new statements to this section that address:

(1) The need for agencies to apply information resources to meet the mission needs of the agency as agreed upon through agency strategic planning processes,

(2) The need for agencies to examine the ultimate impact information resources can have on Federal agency operations through work process redesign, and

(3) The need for training to encourage informed use of information resources, inside and outside the Federal government.

3. Section 8b. *Information Systems and Information Technology Management Policy.*

(1) *Evaluation and Performance Measurement.*

OMB proposes to expand on the guidance for evaluating investments in information technology currently found in Section 43 of OMB Circular No. A–11, *Preparation and Submission of Budget Estimates*, and OMB Circular No. A–94, *Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs* (57 FR 53519, November 10, 1992). Additionally, OMB proposes to broaden the criteria for evaluating information systems to include benefits to the public. The proposed new policy requires agencies to prepare such analyses using systematic performance measurement of agency outputs whenever possible.

(2) *Strategic Information Resources Management (IRM) Planning.*

OMB proposes to address the shortcomings of the current planning policy by proposing a planning framework that links project level life cycle management to agency-wide strategic IRM planning. In addition, OMB proposes to expand the scope of the current planning requirement beyond automatic data processing equipment to planning for all information resources. As in the past, OMB policy does not explicitly prescribe the format of the plans because the uniqueness of mission and culture dictates that agencies perform and document their planning in formats that make sense for their organizations. OMB proposes to add new policy at 8b(2)(c) that prompts agencies to address the need for organization-wide architectures for providing information resources services.

(3) *Information Systems Management Oversight.*

OMB does not presently articulate a life cycle management policy for information systems in one document. Proposed Section 8b(3) addresses the management of information systems throughout their life cycle, recognizing that all information systems, from an off-the-shelf personal computer utility to a large integrated nationwide application, have a life cycle.

OMB proposes to add a new policy, Section 8b(3)(g), that explicitly links the oversight of financial management systems through Circular No. A–127, *Financial Management Systems* (58 FR 41014–19, July 23, 1993), to the management of information systems more generally. Circular A–127 sets forth additional requirements for financial management systems.

(4) *Use of Information Systems and Acquisition of Information Technology.*

The proposed revisions in Section 8b(4) recognize a change in the mix of agency acquisitions for information technology goods and services in recent years. Policies pertaining to acquisition use the term "information technology" as defined in the Circular (Sec. 6k, 58 FR 36071). The use of the term "information technology," which includes equipment, software, services, and telecommunications, recognizes the growing trend in the public and private sectors to "outsource" a variety of information technology activities. Increasingly, agencies acquire a "solution" from the private sector instead of just the hardware. Policies pertaining the use of information technology use the term "information systems" which includes automated and manual information processing processes.

OMB proposes to apply the economic principle of maximizing return on investment when acquiring information technology. This supports the criterion used in 8b(1) to evaluate investments in information technology for improvements in service delivery to the public.

OMB also proposes to drop the policy statement on the use of Federal Information Processing Standards (FIPS) from Section 8b of the Circular (Sec. 8b(14), 50 FR 52737) because it is now covered in Section 8a(1)(h) of Transmittal 1 of Circular A–130 (58 FR 36072). This proposed change recognizes that the Computer Security Act of 1987 amended the Brooks Act to give the Secretary of Commerce the responsibility for determining the applicability of FIPS (see 40 U.S.C. 759(d)).

(5) *Information Processing Service Organizations (IPSO).*

OMB proposes incorporating guidance formerly found in Appendix II in its entirety (50 FR 52741–42) into Section 8b(5). This reflects changes in the technical environment surrounding the sharing of federal information processing services that allow for sharing of more than just mainframe computing resources. Moving this guidance into the policy section of the Circular gives it more prominence and better integrates these principles in agencies' information technology management programs.

Policy statements in Section 8a and Section 8b that apply to both information and information technology will be consolidated in the final publication of the revised OMB Circular

A–130. This includes such areas as planning for information resources throughout their life cycle, training users of information resources, sharing information resources within and between agencies, reducing the burdens imposed upon the public, and accommodations for persons with disabilities. Comments are invited to suggest additional areas where consolidation could eliminate overlap.

4. Appendix II: *Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities.*

In the July, 1993 **Federal Register** notice (58 FR 36069–70), OMB stated its intention to revise the guidance in Appendix II, issued in 1985 (50 FR 52741–42). This notice contains the revised guidance, but it is proposed for inclusion in Section 8b. Accordingly, it is proposed that Appendix II be deleted.

5. Appendix IV: *Analysis of Key Sections.*

The following additions are proposed to Appendix IV of 50 FR 52744–50 as modified by 58 FR 36079–86:

OMB proposes to completely revise the portion of this appendix pertaining to Section 8b, Information Systems and Information Technology Management (see 50 FR 52748–50) to address the changes proposed for Section 8b.

OMB also proposes to correct a typographical error in the July, 1993 **Federal Register** notice. The application of Circular A–25 is clarified by Section 8a(7)(c), not Section 8a(8)(c) as stated in the July, 1993 notice (58 FR 36084).

Development of Future Topics

Appendix III: *Security of Federal Automated Information Systems.*

OMB did not amend Appendix III (50 FR 52742–44) in the July 1993 **Federal Register** notice, and is not proposing to amend Appendix III in this notice. OMB intends to issue a proposal that would revise Appendix III to incorporate requirements of the Computer Security Act of 1987 including requirements for security plans described in OMB Bulletin 90–08. Those revisions will incorporate changes based on the experience gained in recent computer security visits to agencies by teams of staff from OMB, the National Institute of Standards and Technology (NIST), and the National Security Agency. OMB will also work with NIST to implement recommendations of the Computer Security and Privacy Advisory Board (established by the Computer Security Act) regarding better coordination between this Circular and OMB Circular No. A–123.

Accordingly, OMB proposes to revise Circular A–130 as set forth below.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

Proposed Revisions to Circular No. A–130, Transmittal 1

Section 6. *Definitions* [58 FR 36070–71] [Definitions j, k, and m are not proposed revisions but set forth for ease of reference.]

* * * *

j. The term "information system" means the organized collection, processing, maintenance, transmission, and dissemination of information in accordance with defined procedures, whether automated or manual.

k. The term "information technology" means the hardware and software operated by a Federal agency or by a contractor of a Federal agency or other organization that processes information on behalf of the Federal Government to accomplish a Federal function, regardless of the technology involved, whether computers, telecommunications, or others. It includes automatic data processing equipment as that term is defined in Section 111(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a)(2)). For the purposes of this Circular, automatic data processing and telecommunications activities related to certain critical national security missions, as defined in 44 U.S.C. 3502(2) and 10 U.S.C. 2315, are excluded.

l. The term "information processing services organization" (IPSO) means a discrete set of personnel, information technology, and support equipment with the primary function of providing services to one or more users.

m. The term "major information system" means an information system that requires continuing management attention because of its importance to an agency mission; its high development, operating or maintenance costs; or its significant role in the administration of agency programs, finances, property, or other resources.

* * * *

p. The term "information management" means the planning, budgeting, manipulating, and controlling of information throughout its life cycle.

q. The term "information resources" includes both government information and information technology.

r. The term "information systems life cycle" means the phases through which information systems pass, typically characterized as initiation, development, operation, and termination.

s. The term "full costs" means expenses incurred in the operation of an information processing service organization, including those for direct, indirect, general, and administrative expenses.

t. The term "user" means an organizational or programmatic entity that receives information processing services from an information processing services organization (IPSO). A user may be either internal or external to the organization responsible for providing information resources services, but normally does not report either to the manager or director of the IPSO or to the same immediate supervisor.

Final publication of the revised Circular A–130 will include reordering the definitions to restore the terms to alphabetical order.

Section 7: *Basic Considerations and Assumptions* [58 FR 36071]

* * * *

i. Agency strategic planning can improve the operation of government programs. The application of information resources should support an agency's strategic plan to fulfill its mission. The integration of IRM planning with agency strategic planning promotes the appropriate application of Federal information resources.

* * * *

l. Information technology is not an end in itself. It is one set of resources that can improve the effectiveness and efficiency of Federal program delivery. The application of up-to-date information technology presents opportunities to improve the management of government programs through work process redesign and thereby provide better service delivery to the public. The availability of government information in diverse media, including electronic formats, permits greater flexibility in using the information.

* * * *

n. Users of Federal information resources must have knowledge and training to effectively use these information resources.

Section 8. *Policy* [50 FR 52736–37; see also 58 FR 36071–73]

* * * *

b. *Information Systems and Information Technology Management.*

(1) *Evaluation and Performance Measurement.* Agencies shall promote the appropriate application of Federal information resources as follows:

(a) Seek opportunities to improve the effectiveness of government programs through the judicious application of

information technology in conjunction with work process redesign;

(b) Prepare, and update as necessary throughout the information systems life cycle, benefit-cost analyses for all information systems at a level of detail appropriate to the size of the investment using the methodology described in OMB Circular No. A–94, *Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs;*

(c) In conducting benefit-cost analyses to support ongoing management oversight, agencies should seek to maximize return on investment over the information system life cycle by establishing and evaluating systematic performance measures, which should include the:

(1) effectiveness of program delivery,

(2) efficiency of program administration, and

(3) reduction in burden, including information collection burden, imposed on the public.

(2) Strategic Information Resources Management (IRM) Planning. Agencies shall maintain strategic information resources management planning processes which include the following components:

(a) Strategic IRM planning that links information resources management with agency strategic planning. Strategic IRM planning shall address how the management of information resources promotes the fulfillment of an agency's mission. This planning process should result in the preparation of a plan when the agency faces fundamental change in its mission, policy direction, or resource levels.

(b) Information planning that promotes the use of information throughout its life cycle to maximize the usefulness of information, minimize the burden on the public, and preserve integrity, availability, and, as needed, confidentiality of information. It shall specifically address the planning and budgeting for the information collection burden imposed on the public as defined by 5 C.F.R. 1320;

(c) Operational information technology planning that links information technology to anticipated program and mission needs, reflects budget constraints, and forms the basis for budget requests. This planning should articulate a desired "target architecture" that ultimately creates an open systems environment. Operational information technology planning should also include technical strategies to move towards the chosen target architecture. This planning should result in an annually updated five-year plan, as required by 44 U.S.C. 3506, which includes a summary of computer system security planning, as required by Section 6 of the Computer Security Act of 1987 (40 U.S.C. 759 note); and

(d) Coordination with other agency resource planning processes including human, financial, and other resources.

(3) *Information Systems Management Oversight.* Agencies shall establish information system life cycle management oversight mechanisms that:

(a) Document the mission and technical requirements that each information system is intended to meet;

(b) Provide for periodic review of those requirements to determine:

(1) how those requirements might have changed,

(2) whether the system continues to fulfill ongoing and anticipated requirements, and

(3) what the appropriate level of maintenance is to ensure the system operates cost effectively;

(c) Ensure that the official who administers a program supported by an information system is responsible and accountable for the management of that information system throughout its life cycle;

(d) Provide for the appropriate training for users of Federal information resources;

(e) Prescribe Federal information system requirements that do not unduly restrict the prerogatives of State and local governments;

(f) Establish and maintain oversight and management mechanisms to ensure that major information systems proceed in a timely fashion, meet user requirements, and deliver intended benefits to the agency and affected publics through coordinated decision making about the information, human, financial, and other resources supporting these major information systems; and

(g) Ensure that financial management systems conform to the requirements of OMB Circular No. A–127, *Financial Management Systems.*

(4) *Use of Information Systems and Acquisition of Information Technology.* Agencies shall:

(a) Ensure that existing and planned information systems do not unnecessarily duplicate information systems available from other agencies or from the private sector;

(b) Share available information systems with other agencies to the extent practicable and legally permissible;

(c) Meet information technology needs through intra-agency and interagency sharing, when it is cost effective, before acquiring new information technology resources;

(d) Acquire information technology in a manner that makes use of full and open competition and that maximizes return on investment;

(e) Acquire off-the-shelf software from commercial sources, unless the cost effectiveness of developing custom software to meet mission needs is clear and has been documented;

(f) Acquire information technology or develop information systems in a manner that facilitates necessary interoperability, application portability, and scalability of computerized applications across networks of heterogeneous hardware, software, and communications platforms;

(g) Acquire information technology in accordance with OMB Circular No. A–109, *Acquisition of Major Systems,* where appropriate; and

(h) Ensure that planned acquisitions of information technology consider the needs for accommodations of accessibility for individuals with disabilities to the extent that needs for such access exist.

(5) *Information Processing Service Organizations (IPSO).* Agencies shall account for the full costs of operating information processing services organizations. When the obligations for such organizations exceed $3 million annually, agencies shall:

(a) Implement a system to distribute and recover the obligations incurred for providing services to all users that:

(1) Prices each service provided by the IPSO to each user on an equitable basis commensurate with the resources required to provide that service and the priority of service provided. Agencies may estimate the price of individual transactions provided that these estimates are periodically reconciled to assure that the full costs of operations are equitably distributed among all users;

(2) Directly distributes the full costs of dedicated services to users;

(3) Provides for the periodic submission of statements to all users, itemizing the costs of services provided; and

(4) Provides for the preparation of a report that documents the past year's obligations for operating the IPSO at the close of each fiscal year.

(b) Document IPSO agreements to identify:

(1) Services to be provided and responsibilities of the IPSO and users;

(2) Service priorities and terms (e.g., quality performance standards) for each user;

(3) Prices to be charged for providing services;

(4) Reimbursement arrangements for services provided; and

(5) Conditions for terminating such agreements by either party.

(c) Provide standard terms and conditions to users obtaining similar services insofar as possible.

(d) Cite such IPSO agreements in justifications to OMB for resource requests (see OMB Circular No. A–11, *Preparation and Submission of Budget Estimates*) and allocations:

(1) Federal users shall include resource requests for the amount of planned IPSO use in their budget and request justifications to OMB and Congress; and

(2) IPSOs shall assure that planned reimbursements from users reduce requests for appropriated funds by that amount; and

(e) Establish a users group to advise the IPSO regularly on such issues as those specified under the IPSO agreements required in subsection (b) above.

Appendix II: *Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities* [50 FR 52741–42]

Appendix II is proposed for deletion.

Appendix IV: *Analysis of Key Sections* [58 FR 36079–85; 50 FR 52748–50]

At this point, the text of Appendix IV consists of revisions issued in July 1993 [58 FR 36079–86] and the discussion of Sections 8b, 9 and 10 of the 1985 issuance [50 FR 52748–51]. The following additions and revisions are proposed to Appendix IV of 50 FR 52744–51 as modified by 58 FR 36079–86:

6. *Definitions.*

OMB acknowledges that its use of the term "major information system" and variations on the term in other Circulars is a source of confusion to agencies. However, the variations contained in other OMB Circulars serve different purposes. OMB Circular No. A–109, *Acquisition of Major Systems*, presents a definition for the term "major systems" for acquisitions that includes more than information resources [41 FR 14825, April 7, 1976]. OMB Circular No. A–11, *Preparation and Submission of Budget Estimates*, defines the term "information technology initiatives" for purposes of providing benefit-cost analyses to OMB as budget justification materials where an initiative creates or modifies an information system and therefore requires an investment above normal operating costs. The definition of "major information systems" presented in this Circular drives the applicability of the policy for management control of information systems stated in Section 8b(3)(f), as discussed further below.

The definition of the term "full costs" includes all direct, indirect, general, and administrative obligations incurred in the operation of an IPSO. These include: personnel, equipment, software, supplies, contracted services from private sector providers, space occupancy, intra-agency services from within the agency and interagency services from other Federal agencies, and other services that are provided by State and local governments, and Judicial and Legislative branch organizations, and that are paid by the IPSO.

Section 8b. *Information Systems and Information Technology Management Policy.*

(1) *Evaluation and Performance Measurement.* OMB encourages agencies to stress several types of evaluation in their oversight of information systems life cycle management. As a first step, agencies must assess the continuing need for the function. If the agency determines there is a continuing need for a function, agencies should reevaluate existing work processes prior to creating new or updating existing information systems. Agencies often design work processes to maximize efficiency in traditional paper-based processing that may no longer make sense in an automated environment. The application of information technology presents an opportunity to reevaluate existing organizational structures and work processes to see whether they are still effective in achieving the organization's mission.

In conjunction with work process redesign, agencies should conduct evaluations that ensure: (a) alignment of the planned information system with agency strategic planning, (b) acceptability of information system implementation to users inside the Government, (c) accessibility to clientele outside the Government, and (d) realization of projected benefits. Agencies should also conduct benefit-cost analysis, which is a vital management tool for linking function and budget. Whenever possible in preparing benefit-cost analyses to support investments in information technology, agencies should quantify the performance of the information system in providing services to the public through systematic measurement of outputs.

While it is not necessary to create a new benefit-cost analysis at each stage of the information systems life cycle, it is useful to refresh these analyses with up-to-date information to ensure the continued viability of an information system prior to and during implementation. Reasons for updating a benefit-cost analysis may include such factors as significant changes in projected costs and benefits, major changes in requirements (including legislative or regulatory changes), or empirical data based on performance measurement gained through prototype or pilot experience.

(2) *Strategic Information Resources Management (IRM) Planning.* Linking IRM planning to agency strategic planning ensures that agencies apply information resources to programs that support the achievement of agreed-upon mission goals. Additionally, the agencies may avoid automating out-of-date, ineffective, or inefficient procedures and work processes.

Agency planning efforts should establish agency-wide information and information technology architectures. Such architectures should provide a technical framework for updates to existing and new information systems. Agencies should integrate proposed information systems projects into the architecture in a manner that will ensure progress towards achieving an open systems environment. Agency strategic IRM planning should describe the parameters (e.g., technical standards) of such an architecture and operational planning should describe how the agency intends to put the technology in place to build such an architecture.

Agencies should also devote management attention to more immediate issues of information resources management planning. This operational level of planning, providing a one to five year focus to agency IRM activities and projects, should address agency strategies to move toward an open systems environment. These strategies should consist of one or multiple profiles (an internally consistent subset of standards), based on the current version of the Application Portability Profile, which address issues such as satisfying functional user requirements, accommodation of standards, interoperability, application portability, and scalability by defining interfaces, services, protocols, and data formats in terms of nonproprietary specifications.

Agency operational planning should also communicate to the public how the agency's application of information resources might affect them. For the contractor community, this includes articulating the agency's intent to acquire information resources from the private sector. OMB encourages agencies to use Section 43 of OMB Circular No. A–11 to serve this purpose. These data are not acquisition sensitive, and therefore should be distributed as widely as possible to the vendor

community in order to promote competition.

This operational planning should also include initiatives to reduce the burden, including information collection burden, an agency imposes on the public. Too often, for example, agencies require personal visits to government offices during office hours inconvenient to the public. Consequently, agencies should plan to use information technology in ways that make the public's dealing with the Federal government as "user-friendly" as possible. In particular, agencies should focus on how to better utilize the data they currently collect from the public. Because agencies have not shared their respective information inventories, the public often must respond to duplicative information collections from various agencies or their components. Any such sharing of information about individuals should be consistent with the Privacy Act of 1974, as amended, and Appendix I of this Circular.

(3) *Information Systems Management Oversight.* While each phase of a life cycle may have unique characteristics, the dividing line between the phases may not always be distinct. For instance, both planning and evaluation should continue throughout the life cycle. In fact, during any phase, it may be necessary to revisit the previous stages based on new learning or changes in the environment in which the system is being developed. OMB is currently working with GSA to provide agencies with technical assistance to explain how agencies may apply this life cycle management philosophy.

This policy describes a life cycle. It does not, however, make a definitive statement that there must be four versus five phases of a life cycle because the life cycle varies by the nature of the information system. Only two phases are common to all information systems—a beginning and a end. As a result, life cycle management techniques that agencies can use may vary depending on the complexity and risk inherent in the project.

Agencies should consider the definition of what constitutes a "major information system" for purposes of this Circular when determining the appropriate level of oversight for an information system. The anticipated dollar size of an information system or a supporting acquisition is only one of the determinants of the level of management attention an information system requires. Additional issues to consider include the maturity and stability of the technology under consideration, how well defined the users' requirements are, the level of stability of program and user requirements, and security considerations.

For instance, certain risky or "cutting-edge" information systems require closer scrutiny and more points of review and evaluation. This is particularly true when an agency uses an evolutionary life cycle strategy that requires a technical and financial evaluation of the project's viability at prototype and pilot testing phases. Projects relying on commercial off-the-shelf technology and applications will generally require less oversight than those using custom-designed software.

One of the elements of this life cycle management philosophy is the recognition of imbedded and/or parallel life cycles. Within an information system's life cycle there may be other subsidiary life cycles. For instance, most Federal information systems projects include an acquisition of goods and services that have life cycle characteristics. Some projects include software development components, which also have life cycles. At the same time, information systems project managers must coordinate with the budget and human resource management cycles that exist in the agency.

The distinction between information system life cycles and acquisition life cycles is important when considering the implications of Circular A–109 to the acquisition of information resources. Circular A–109 pertains to acquisition of major systems and its applicability to the acquisition of information resources is discussed in more detail in the next section.

Section 8b(2) of the Circular underscores the need for agencies to bring an agency-wide perspective to a number of information resources management issues. These issues include policy formulation, planning, architecture creation and support, and project life cycle management. Agencies should also provide for coordinated decision making (Section 8b(3)(f)) in order to bring together the perspectives from across an agency, and outside if appropriate. Interested groups typically include functional users, managers of financial and human resources, information resources management specialists, and, as appropriate, affected publics.

(4) *Use of Information Systems and Acquisition of Information Technology.* Outsourcing, or relying on the private sector to provide a service instead of a set of goods, may include such activities as telecommunications services, computer center operations, architectural design, software development, or other analytical support of agency information resources management activities.

Consistent with the requirements of both the Brooks Act and the Paperwork Reduction Act, agencies should acquire information resources to serve a number of purposes that include improving service delivery, reducing the cost of Federal program administration, and minimizing burden of dealing with the Federal government. Any evaluation of acquisition of information resources must assess both the benefits and costs of applying technology. Focussing on only the cost of the technology addresses only half of the issue.

Circular A–130 recognizes that agencies may wish to ask potential offerors to propose different technical solutions and approaches to fulfilling agency requirements.

Agencies should apply Circular A–109 acquisition strategies for information resources when:

(1) The agency intends to fund operational tests and demonstrations of system design;

(2) The risk is high due to the unproven integration of custom designed software and/or hardware components;

(3) The estimated cost savings or operational improvements from such a demonstration will further improve the return on investment; or

(4) The agency wants to acquire a solution based on state-of-the-art, unproven technology.

Agencies should ensure that acquisitions for new information resources services comply with GSA regulations concerning information technology accessibility for individuals with disabilities [41 C.F.R. 201–20.103–7].

(5) *Information Processing Service Organizations (IPSO).* This section incorporates guidance once found in Appendix II to better reflect the relationship of cost accounting, cost recovery, and sharing to the overall policy in the Circular. This policy guidance uses the terms "sharing" and "cross servicing" interchangeably rather than trying to continue the distinction of the past. The term "sharing" had been interpreted as furnishing excess information processing capacity to users where the primary service provided was data processing and any other support services were incidental. The term "cross servicing" included a broader scope of technical assistance services and might include software development for instance.

The policy retains the principle that bringing market forces to bear on the consumption of information processing

services, through reimbursable agreements that specify service and quality levels, improves the management of those resources. Implicit in this policy is an assumption that users should retain the ability to acquire services from a variety of service providers, inside and outside the Federal government, so that market forces can be brought to bear on the provision of these services.

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federal register

Friday
September 10, 1993

Part V

Department of Education

Library Education and Human Resource Development Program; Inviting Applications for New Awards for Fiscal Year 1994; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.036 A & B]

Library Education and Human Resource Development Program; Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: The purpose of the Library Education and Human Resource Development Program is to promote high quality library and information science education. The program provides grants to institutions of higher education and library organizations or agencies to recruit, educate, and train persons, and to establish, develop, or expand programs, through courses of study or staff development (including institutes), fellowships, or traineeships in library and information science.

This program furthers all of the National Education Goals. In particular, it supports Goal Five, which calls for every adult American to be literate and to possess the knowledge and skills necessary to compete in a global economy.

Eligible Applicants: Eligible applicants are institutions of higher education, library organizations, and library agencies.

Deadline for Transmittal of Applications: November 30, 1993.

Deadline for Intergovernmental Review: January 31, 1994.

Applications Available: September 29, 1993.

Available Funds: For fellowship grants: $3.5 million (master's and doctoral only). For institute grants: $1.5 million.

Estimated Range of Awards: For fellowship grants: $22,000—$332,000. For institute grants: $35,000—$125,000.

Estimated Average Size of Awards: For fellowship grants: $78,000. For institute grants: $66,000.

Estimated Number of Awards: For fellowship grants: 45. For institute grants: 23.

Note: The Department is not bound by any estimate in this notice.

Project Periods: For fellowship grants: A new fellowship grant at the master's level must be at least one academic year; a new fellowship at the doctoral level must be at least one academic year and may be planned for up to two additional annual budget periods to be awarded on a noncompetitive continuation basis.

For institute grants: A long-term institute project must provide at least one academic year but no more than 12 months of training; a short-term institute project must provide at least one week but no more than six weeks of training.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, and 86; and (b) The regulations for this program as published in the **Federal Register** on August 26, 1993 (58 FR 45210).

Priorities

CFDA No. 84.036B—Fellowship Projects

Absolute Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 776.5 the Secretary gives an absolute preference to applications for fellowships that meet one or more of the following priorities. The Secretary funds under this competition only applications for fellowships that meet one or more of the following priorities:

Absolute Priority 1—To recruit, educate, train, retrain and retain minorities in library and information science.

Absolute Priority 2—To educate, train or retrain library personnel in areas of library specialization where there are currently shortages, such as school media, children's services, young adult services, science reference, and cataloging.

Absolute Priority 3—To increase excellence in library education by encouraging study in library and information science and related fields at the doctoral level.

Invitational Priority: Within absolute priority 3 specified in this notice under fellowship projects, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Applications for fellowships that place particular emphases on the study of library planning, evaluation, and research.

CFDA No. 84-036A—Institute Projects

Absolute Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 776.5(a) the Secretary gives an absolute preference to applications that meet one or more of the following priorities. The Secretary funds under this competition only applications that meet one or more of these absolute priorities:

Absolute Priority 1—To recruit, educate, train, retrain and retain minorities in library and information sciences.

Absolute Priority 2—To educate, train or retrain library personnel in areas of library specialization where there are currently shortages, such as school media, children's services, young adult services, science reference, and cataloging.

Absolute Priority 3—To train or retrain library personnel to serve the information needs of the elderly, the illiterate, the disadvantaged, or residents of rural America.

Invitational Priority: Within absolute priorities 2 and 3 specified in this notice under institute projects, the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR. 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Applications for institutes that place particular emphasis on libraries and their contributions to achieving one or more of the following National Education Goals (1, 2, 3, 4, and 5):

Goal 1—Readiness for School: By the year 2000, all children in America will start school ready to learn.

Goal 2—High School Completion: By the year 2000, the high school graduation rate will increase to at least 90 percent.

Goal 3—Student Achievement and Citizenship: By the year 2000, American students will leave grades four, eight and twelve having demonstrated competency in challenging subject matter including English, mathematics, science, history, and geography; and every school in America will ensure that all students learn to use their minds well, so they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy.

Goal 4—Science and Mathematics: By the year 2000, U.S. students will be first in the world in science and mathematics achievement.

Goal 5—Adult Literacy and Lifelong Learning: By the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Note: Applicants interested in the invitational priority addressing libraries and their contributions to achieving the National Education Goals may request from the program office the complete text of the six goals, including the objectives supporting each individual goal.

For Applications or Information Contact: Louise Sutherland, Acting Director, Discretionary Library Programs Division, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1021, 1032.

Dated: September 3, 1993.

Dick W. Hays,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 93–22207 Filed 9–9–93; 8:45 am]

BILLING CODE 4000–01–P

federal register

Friday
September 10, 1993

Part VI

Department of Transportation

Federal Aviation Administration

Explosive Detection Systems; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 27026]

RIN 2120–AE77

Explosive Detection Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final criteria for certification of explosive detection systems.

SUMMARY: The FAA is issuing final criteria for the certification of explosive detection systems (EDS) to screen checked baggage for international flights. The criteria establish minimum performance requirements for EDS equipment. The proposed criteria were issued for comment on November 4, 1992 (Notice No. 92–16; 57 FR 52698). This action implements section 108 of the Aviation Security Improvement Act of 1990, which requires the Administrator to certify such systems prior to mandating their deployment. This document includes those portions of the criteria that do not contain sensitive security information.

EFFECTIVE DATE: September 10, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Butterworth, Director (ACP–1), Office of Civil Aviation Security Policy and Planning, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591, telephone 202–267–8058.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number.

Release of National Security and Sensitive Information

The Assistant Administrator for Civil Aviation Security has determined that certain portions of the final criteria are of national security concern and require safeguarding from unauthorized disclosure pursuant to Executive Order 12356 (National Security Information). Further, pursuant to 14 CFR part 191 (Withholding Security Information from Disclosure Under the Air Transportation Security Act of 1974), certain unclassified information has been determined to be sensitive security information. Upon request, the complete criteria will be provided to prospective manufacturers of explosive detection equipment, and other interested parties with a bona fide need to have the complete criteria, provided such persons have appropriate authorization for access to U.S. Government national security information and/or security sensitive information.

Availability of Criteria

Persons requesting access to, or a copy of, the complete text (including all classified and sensitive security information) of the "Final Criteria for Certification of Explosive Detection Systems," may write to the Federal Aviation Administration, Office of Civil Aviation Security Operations, Attention: FAA Security Control Point (ACO–320A), Docket No. ACP–27026–C, 800 Independence Avenue, SW., Washington, DC 20591.

Individuals requesting the final criteria must include information regarding authorizations and security clearances for access to U.S. Government national security information, and sufficient explanatory information supporting the request to demonstrate a bona fide need to know the information contained in the final criteria.

Background

During the past two decades, the FAA has been working on the development of explosive detection equipment, with the initial explosive detection research and development (R&D) efforts beginning in 1977. As a part of these R&D efforts, in 1983 the FAA established a formal, internal statement of detection and false alarm performance goals for explosive detectors for checked baggage, air cargo, carry-on baggage and passengers. Based upon additional information and further evaluation, these FAA explosive detection goals were revised and upgraded in 1986 to reflect the changing terrorist threat to civil aviation. Portions of these performance requirements were further revised in August 1989 in anticipation of using explosive detection equipment for screening international checked baggage.

The December 1988 catastrophic bombing of Pan American World Airways Flight 103 over Lockerbie, Scotland, increased the focus on explosive detection capabilities and the desire to prevent recurrences of such an event. This tragedy prompted the passage of Public Law 101–45 (June 30, 1989) containing the following requirement, that—

Not later than thirty days after the date of enactment of this Act, the Federal Aviation Administrator shall initiate action, including such rulemaking or other actions as necessary, to require the use of explosive detection systems that meet minimum performance standards requiring the application of technology equivalent to or better than thermal neutron analysis technology at such airports (whether located within or outside the United States) as the Administrator determines that the installation and use of such system is necessary to ensure the safety of air commerce. The Administrator shall complete these actions within sixty days of enactment of the Act.

As a result of this statutory mandate, on July 10, 1989, the FAA issued a notice proposing to amend 14 CFR 108 to require U.S. air carriers to use an explosive detection system (EDS) for screening checked baggage on international flights (54 FR 28985). Thereafter, the FAA issued a final rule (14 CFR 108.20, effective on October 5, 1989) specifying the procedures for deployment by air carriers of systems for screening checked baggage (54 FR 36938), when their security programs are amended by the FAA. Section 108.20 provides that—

When the Administrator shall require an amendment under § 108.25, each certificate holder required to conduct screening under a security program shall use an explosive detection system that has been approved by the Administrator to screen checked baggage on international flights in accordance with the certificate holder's security program.

Responding to the Pan Am 103 tragedy, on August 4, 1989, former President Bush established the President's Commission on Aviation Security and Terrorism (Commission) (E.O. 12686). The Commission was tasked to assess the overall effectiveness of the U.S. civil aviation security system.

The Commission's May 15, 1990, report presented a series of recommendations intended to improve the U.S. civil aviation security system, which is administered by the FAA's Office of Civil Aviation Security. The Commission generally criticized the FAA's explosive detection requirements, and specifically criticized the detection capabilities and false alarm rates of the thermal neutron analysis explosive detection system. The Commission's report recommended that the FAA "* * * should undertake a vigorous effort to marshal the necessary expertise to develop and test effective explosive detection systems." The Commission's recommendations formed the basis of the Aviation Security Improvement Act of 1990,

Public Law 101–604 (the Aviation Security Improvement Act or the Act).

Section 108 of the Act amends Title III of the Federal Aviation Act of 1958 (49 U.S.C. App. 1341–1358) by adding, among others, a new section 320, entitled Deployment of Explosive Detection Equipment. This section provides specific guidance on how to implement 14 CFR 108.20. Section 320 provides in pertinent part that—

No deployment or purchase of any explosive detection equipment pursuant to sections 108.7(b)(8) and 108.20 of title 14, Code of Federal Regulations, or any similar rule, shall be required after the date of the enactment of this section, unless the Administrator certifies that, based on the results of tests conducted pursuant to protocols developed in consultation with expert scientists from outside the Federal Aviation Administration, such equipment alone or as part of an integrated system can detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material which would be likely to be used to cause catastrophic damage to commercial aircraft.

The Act further mandates that the FAA complete an intensive review of security threats to civil aviation, and establish and carry out a program to accelerate R&D efforts. As evidence of the concern for prompt action, section 107 of the Act states in pertinent part that—

It shall be the purpose of the [accelerated research and development] program to develop and have in place not later than 36 months such new equipment and procedures as are needed to meet the technological challenges presented by terrorism.

In 1990, two other significant reports were issued subsequent to the report of the President's Commission, the first by the National Academy of Sciences and the second by the Congressional Office of Technology Assessment. These organizations recommended that the FAA set EDS standards that require detection of substantially smaller amounts of explosives than previously specified. In addition, they made recommendations regarding false alarm rates, throughput and other parameters, and stated that it is generally accepted that no single technology can currently, or in the near future be expected to, meet these substantially more stringent requirements.

Development of the Final Criteria

Issuance of the final criteria responds to the statutory mandate for testing and certifying EDS equipment and takes into account the comments received regarding the proposed criteria in Notice No. 92–16. In October 1991, the FAA completed an internal review of all previous studies, reviews, analyses and other materials associated with explosive detection. The review was the most extensive examination yet conducted of previous classified and non-classified technical reviews and available information on the amounts, types and configurations of explosives used in attempted or successful acts of sabotage against civil aviation.

This review provided the basis for developing the proposed criteria. The proposed criteria were based upon the best scientific, intelligence and investigative information available. The amounts and types of explosives specified in the proposed criteria reflected the advice and counsel of the intelligence community, including, among others, the Federal Bureau of Investigation, the Central Intelligence Agency, the Department of Defense, and the Department of State. The FAA also consulted with a number of independent experts in the scientific community (both from within and outside the Federal government) in early 1992, including prominent scientists on the Aviation Security R&D Subcommittee of the FAA Research, Engineering and Development Advisory Committee, as well as the National Academy of Sciences.

While the FAA has a high degree of confidence in the information gathered for developing the criteria, the Agency, in consultation with the intelligence and scientific communities, continues its efforts to analyze potential changes in the capabilities of and attack methods used by terrorists. Further, the FAA is engaged in an aggressive research program to develop additional scientific and analytical data to more precisely quantify the elements of the criteria, and to perform laboratory and field test validations of those elements. This includes the research being conducted on aircraft and cargo container hardening.

Based on the need to respond to changes in the methods used by terrorists, it is possible that, at some future time, these on-going projects may identify changes in the amounts, configurations, and types of explosive material that might be used to cause catastrophic damage to commercial aircraft. In that case, the criteria will be amended appropriately, although any changes are expected to be small. This issue is addressed in the discussion of comments section of this document.

The FAA recognizes the requirement of the Act to move expeditiously to put in place new equipment to combat the technological challenges of terrorism. The release of the final certification criteria is an essential step in the process of deploying effective EDS to improve aviation security. It is critical to facilitating efforts of manufacturers and system integrators to develop, combine and test such systems. The FAA contends that there may be combinations of technologies available now (or in the near future) that can be effectively integrated to meet the criteria, and encourages potential vendors to combine their resources to build systems as rapidly as possible.

Management Plan for Certification Testing

The FAA has prepared a separate management plan outlining the framework for EDS certification testing. The draft version of this management plan for EDS certification testing is based upon the general testing protocols developed independently for the FAA by the National Academy of Sciences and incorporates comments to the draft criteria as noted in the discussion of comments. The Notice of Availability of this draft document was published in the **Federal Register** on June 22, 1993 (58 FR 33967).

Discussion of Comments

The FAA received 18 comments responding to issues raised in the unclassified portion of the Explosive Detection Systems; Proposed Criteria for Certification, Notice No. 92–16. The commenters include: Air Line Pilots Association (ALPA); Air Transport Association (ATA); Airports Association Council International (AACI); Department of Transport, United Kingdom; Families of Pan-Am 103/Lockerbie; numerous manufacturers of explosive detection equipment; and National Association of Photographic Manufacturers.

The following discussion addresses the views of the commenters and the FAA's response to the issues raised.

Relating Criteria to Deployment

Six commenters discuss several recommendations and concerns over the future use of the EDS equipment. Specifically, the respondents express concerns regarding the use and the placement of the equipment by the carriers, along with questions on the effect EDS deployment will have on current security procedures.

Two of the commenters, AACI and ATA, contend that the EDS cannot be approved until the FAA indicates a need for the equipment. ATA argues that the EDS equipment will be expensive and should only be required

where there is a clear justification, contending that neither certification nor mandated deployment should occur until the threats which the EDS are intended to counter are established and the operational and economic implications are evaluated. AACI also argues that the threat should be established indicating the need for the EDS before the requirements are implemented. AACI also points to the FAA Technical Center's efforts to develop a computer simulation program to analyze the effects of EDS on airport operations and traffic flow as an example of research that should be completed prior to mandated deployment of the equipment.

Two commenters discuss other countries' efforts on explosive detection. One states that in the United Kingdom the explosive detection equipment used for screening is located at or near the check-in area. The commenter contends that this placement is preferred because the passenger is available to resolve any threat bags. The other commenter indicates the deployment of advanced technology is 3 to 5 years away. The commenter argues that several European countries are closer to deployment of explosive detection equipment and encourages the FAA to work with its European counterparts to coordinate the standards. This commenter contends that the delay in mandated deployment is in conflict with the "purpose of the accelerated research and development program to develop and have new equipment in place not later than 36 months." It also argues that the government should establish some form of financial incentives to allow funding of the purchase and deployment of this equipment at Category X airports.

Several commenters discuss the issues surrounding the effect the mandated deployment of EDS will have on the current security procedures and the placement of the equipment in airports. One of these commenters believes that the proposed criteria did not address the scope of specific deployment at any facility (e.g., use at the check-in area or in the baggage make-up area), but expresses the opinion that this issue will clearly have the greatest physical impact on facilities. The commenter adds that using EDS for targeted flights, selected baggage or specified locations requires physical planning different from that required for a 100 percent coverage for all international flights. Another commenter states the FAA must clearly determine the use of EDS equipment to structure the certification requirements and its effect on current security procedures (e.g., use of EDS should exceed the effectiveness of current security procedures). The commenter contends that EDS deployment will determine the degree of sophistication required by the equipment. The commenter also argues that if EDS is not intended to replace current procedures, the use of such equipment must provide appreciable, economic enhancements to existing procedures.

Another commenter states that locating the EDS at the check-in counters or in the queue prior to the ticket counter would be convenient because the passenger would be available to assist in resolving possible threat bags, although it could require specific shielding standards. This commenter further states that employing EDS within the baggage system would have the greatest impact on facilities and would require an extra effort to match the passenger with the bag, if a search is necessary. Overall the commenter states that physical planning and airport operational issues are major determinates for EDS criteria. The commenter concludes by stating that the extent of mandated deployment and the detailed physical operating issues for any existing or planned terminal facility must also be addressed.

An equipment manufacturer believes that criteria are needed as the first step towards deployment and that it will provide invaluable direction and definition to the efforts of equipment manufacturers. However, this commenter is concerned as to when the deployment will become mandatory explaining that the proposed criteria document indicates deployment will not occur until several EDS have been certified. This commenter contends that a mandatory deployment date should be set based on a suggested maximum cost per bag, even if only one system is certified.

Response: While the criteria for certification of EDS equipment will affect the eventual mandated deployment decision, the FAA is handling the criteria and the deployment decisions separately. The FAA's existing security requirements are, and mandated deployment of EDS equipment will be, threat-driven.

The mandated deployment of EDS equipment will be phased-in and the deployment decision cannot be made until at least one EDS has been certified. The speed, scope, and priority of the deployment will be dependent upon the analysis of current and probable future threats with the initial deployment targeted at higher risk locations. The total life cycle costs associated with mandated EDS deployment will also be considered during the deployment decision, including costs for installation, personnel, maintenance, operations, and delays. This analysis will also consider unit availability, and specific EDS employment issues such as throughput, weight, size, and even power supply requirements. Ideally, the FAA would like to avoid full scale mandated deployment until at least two or more systems are certified, in order to promote competition and reduce per unit costs.

The FAA will also carefully consider whether existing security procedures may be modified or eliminated as a result of mandated EDS employment. The FAA's goal will be to avoid redundancies and to capture potential cost savings.

The FAA seeks to maintain flexibility in the operation of EDS equipment. For that reason, the criteria do not specify precise operational parameters because that may constrain the ability of designers to develop systems that could address the tremendous diversity in operating environments.

As part of the pre-certification vendor testing and data collection included in the draft Management Plan for EDS Certification Testing, the FAA has established a minimum level of operational analysis required before certification testing. If there are any substantial residual questions about the overall operating envelope (e.g., reliability, maintainability, life cycle costs to operate, adaptability to a variety of airport operating environments) of a particular EDS after certification testing, the FAA would work to resolve these questions through whatever means are practical including an operational airport demonstration prior to requiring deployment of that equipment. However, the costs, delays and other problems associated with full scale operational testing of EDS equipment at airports as a prerequisite for certification are not acceptable.

On a related issue, the FAA has modified the criteria allowing for reciprocal recognition of EDS testing and certification by aviation security organizations of foreign governments. This is discussed later in this document.

Finally, the FAA chose not to include a maximum cost per bag because several EDS units may eventually be certified for use. The estimated price ranges and capabilities of the equipment may vary considerably depending upon individual airport installation scenarios resulting in a range of values for calculating a cost per bag. For example, an inexpensive but slower EDS may be ideal for low volume applications even though it may have a higher cost per bag screened due to a lower usage rate.

Therefore, the FAA contends that it is inappropriate to include the calculated cost per bag limitation in the criteria.

General Operational Requirements

Four of the commenters address the general operational requirements proposed in the criteria. One commenter explains that because of the "professional" nature of many terrorists, the potential explosive devices may be of a quality that is not easily detected by configuration or components. Therefore, the commenter supports the requirement in the proposed criteria that the EDS be capable of detecting explosives.

Two commenters specifically discuss the use of X-ray equipment. The first references the FAA's past recognition of the need to have X-ray standards requiring either that the equipment not damage film, or that signs be posted notifying passengers of the potential damage to film. This commenter recommends that the statement in the proposed criteria, "the EDS must not cause damage or significant residual change to the luggage or its contents" apply to film being exposed to X-rays. The other commenter argues that it has been FAA's policy to allow the use of X-ray equipment that is not film safe provided warning signs are posted advising passengers to remove all X-ray, scientific, and high speed film before approaching nominally film-safe security equipment.

Another commenter also supports the requirement in the proposed criteria that the EDS be neither destructive nor invasive in nature. This commenter explains that the effect upon baggage and persons operating the equipment should be benign and any health hazards associated with the use of the equipment must be identified and resolved before certification.

Response: The final criteria adopt the requirement that the EDS detect explosives as proposed in the Notice. Under this requirement, the detection must not depend on the shape, position, or orientation of the explosive or configuration of an improvised explosive device (IED). The criteria focus on the detection of the explosive because the primary explosive charge is the essential, unique component that differentiates between a bag that represents a potentially catastrophic danger to an aircraft and other non-threat passenger bags. This action is also consistent with section 320 of the Act which describes the EDS equipment as able to: detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material which would be likely to be used to cause catastrophic damage to commercial aircraft.

On the issue of a film-safe X-ray requirement, the final criteria have been modified to exclude highly sensitive materials such as photographic film from the requirement in the criteria that the EDS must not cause damage or significant residual change to the luggage or its contents. This action is similar to that allowed for X-ray systems used for screening checked baggage and its addition to the criteria is appropriate in order to not otherwise unduly restrict technologies that can be applied in developing an EDS. However, in an operational capacity, it will be necessary to post signs notifying the travelling public of the potential damage to highly sensitive materials such as film and warning the passengers to remove these items from checked baggage. The certification would be contingent upon the use of appropriate operations related procedures such as signage. This is similar to the current procedures for checkpoint X-ray equipment under § 108.17(e).

The FAA also has adopted the requirement as proposed in the Notice that the EDS must not pose a health hazard to the operators or the public. Therefore, the FAA anticipates any health hazards associated with the use of the equipment will be identified in the manner outlined in the management plan for EDS certification testing and resolved before the equipment may be certified.

Detection Requirements—Checked Baggage

One commenter expresses concern about the EDS requirement to detect a specific quantity of explosive. This equipment producer suggests the language be modified to reflect the requirement that the EDS detect the amount of explosive equal to or more than that specified.

Another commenter questions the definition of the term "checked baggage." This commenter contends it includes originating and transfer baggage at the international gateway. The definition influences the screening and bag reconciliation processes and affects the space necessary to perform these functions along with the time requirements for processing.

A third commenter states a need to combine acceptable detection rates for all known available explosives, particularly those previously used by terrorist and extremist groups.

Three commenters believe that the FAA should focus on the types of explosives that represent the highest threat. One of these commenters states that a category of explosives appears on the classified list that is not included in the European Civil Aviation Conference (ECAC) standards currently under consideration by member countries. The United Kingdom's Department of Transport states that the range of explosive types proposed in the criteria is probably greater than what it would consider constitutes the greatest threat. In previous correspondence to the FAA, the Department of Transport had explained that it has concentrated on one group of explosives which historically had been the material used by terrorists.

Response: The FAA included a clarification in the final criteria on the quantity of explosives which must be detected. It has always been the intention of the FAA that the EDS equipment have the capability of finding not only the threshold amounts but also be able to find larger quantities of explosives.

The FAA has added to the Criteria a definition of the term "checked baggage" which applies to all bags, regardless of whether the bags accompany a passenger on a particular flight, that are in the cargo hold including originating and transfer baggage at the international gateway.

The detection rates in the final criteria are based on an extensive examination of the best information available on the amounts, types and configurations of explosives used or likely to be used in attempted or successful acts of sabotage against civil aviation. In developing the criteria, the FAA consulted with experts from the intelligence and scientific communities, particularly regarding the types and amounts of explosives specified in the criteria. The resulting criteria represent the consensus of the FAA and these experts regarding the types and minimum threat quantities of explosives most likely to be used against commercial civil aircraft to cause catastrophic damage.

However, based on the comments and a further analysis of the threat by type, location, and historical experience, the FAA has modified the classified portion of the criteria. The FAA's goal is to establish realistic criteria to certify systems in a timely manner while meeting the Act's requirement to detect explosives "likely to be used" based on an analysis of the threat. Adopting this strategy for the certification criteria is likely to speed up the rate at which certified equipment will be available for use at many locations.

Throughput Rate (Relates to Criteria and Performance Requirements)

Of the six commenters responding to the throughput rate issue, only one commenter supports the proposed 450 bags per hour rate. However, this commenter (an equipment producer) wants to provide only one device for certification testing and approval when more than one identical device or "module" will be operated in parallel as a "system" to meet the system throughput processing. This commenter recommends testing one module with the expectation that an EDS would consist of several identical modules operating in parallel. As a corollary to this issue, the commenter justifies its request on the basis that it would cost too much for it, a small business, to send three machines or modules for testing.

The remaining five commenters, including ATA, an airport operator and several equipment manufacturers and suppliers, believe the proposed throughput is too slow. One of these commenters is concerned about the proposed automated processing rate, stating that it would take more than one hour to clear the baggage for a single Boeing 747. However, the commenter makes no specific recommendation for an acceptable rate. This view was supported by another commenter who believes that the proposed rate is quite slow for "on-line" equipment. The commenter explains that in a major international operation conveyors operate at speeds equivalent to 40 bags per minute, processing between 3,500 to 5,000 originating and transfer bags during peak hours. The commenter estimates it would take 8 to 14 detection systems operating at the proposed rate to provide full on-line capability.

Two commenters state the throughput rate should be a minimum of 600 bags per hour. According to one of these commenters, the traditional rate has been 600. The commenter contends that lowering the throughput rate from 600 to 450 would increase the infrastructure and labor cost by 25 percent to achieve the same passenger flow rate. The commenter also states that the standard must prevent delays in baggage processing because those delays have a "devastating" effect on the ability of carriers to dispatch aircraft on-time. In addition, the processing equipment must have a very low false alarm rate (although none was specified by the commenter).

A commenter explains that the resolution of false alarms should be factored into the throughput rate. This commenter recommends that the 450 throughput rate include the resolution of all false alarms. According to this commenter, the product of the false alarm and the average time to clear the alarm are important. However, the commenter provides no specific suggestions on how this could be tested and measured and notes that the nature of false alarms affects the economic utility of the system.

The fifth commenter contends that the 450 bags per hour rate is signficantly too slow. The commenter recommends the rate be increased to 2,500 bags per hour (which is a belt speed of at least 100 feet per minute). The commenter contends that the FAA should not approve systems that will cause delays and force excessive expenditures (although these terms were not quantified by the commenter). The commenter notes that in an operational setting, the bags do not flow at an even rate. Therefore, a slow EDS would require complex, automated bag holding facilities to handle bags awaiting processing, and it would be operationally impossible to place bags on a belt to allow the EDS to function at its maximum rate.

The commenter expands on this issue by explaining that the 450 rate would cause delays or result in requiring passengers to arrive earlier. The commenter believes multiple modules linked in parallel requires more complex baggage handling conveyor equipment, more room to accommodate the screening and processing equipment, more personnel and higher expense to buy extra equipment.

Response: Standards are established in the final criteria for approving an EDS with specific requirements that must be met for the entire automated system. The criteria does not include a provision for dividing the system into "modules" for approval, as requested by one commenter. Rather, the FAA will evaluate the entire system performance to ensure that the manufacturer has effectively integrated the equipment components into a total "system" and that the "system" meets all of the minimum performance requirements for certification.

The FAA established the requirement for throughput to provide a minimum standard for developing the systems by the manufacturers. However, it must be recognized that the throughput rate of the systems is extremely important when considering the eventual mandated deployment and placement of the equipment. For instance, the placement of the equipment within the air carrier baggage processing system will heavily influence the need for high throughput capabilities for individual devices or components (e.g., centralized screening would require faster throughput rates versus decentralized screening at the check-in area or other intermediate points, as would screening all baggage versus screening selectee baggage). Likewise, a manufacturer's focus on producing equipment that exceeds the minimum rate may influence the cost and the timing of the equipment availability.

The final criteria retain the minimum throughput rate of 450 bags per hour as proposed in the Notice. While high overall throughput may be necessary at many locations, which could be accommodated by having more than one EDS, other locations may not have high throughput needs. Therefore, the FAA does not want to exclude manufacturers from offering relatively slow systems provided that they meet the minimum rate. System cost is affected by throughput rate and certification should not be geared solely for high volume locations. Moreover, in establishing the criteria, the FAA prefers that manufacturers place emphasis on meeting the explosive detection requirements with reasonable false alarm rates rather than focusing on faster throughput rates. By retaining the 450 bags per hour rate, the FAA contends that the air carriers' choices of certified systems of varying throughput rates will be broader and ultimately made through marketplace decisions of individual purchasers. The FAA is also concerned about the possible delay in the availability of EDS equipment if higher throughput rates are required. As discussed previously, the throughput rates of certified systems will be factored into, and will significantly influence the timing, scope and speed of FAA's deployment decisions on EDS equipment, because they affect one of the most important factors—delays.

The automated throughput rate does not include the resolution of alarms. However, additional information that may be provided as a result of the automated screening process (e.g., location of the source of the alarm in the suspect bag) could assist in the resolution of the alarm and is a key element in the marketability of the equipment. Similarly, false alarm rates substantially below the maximum permitted in the criteria for EDS certification, although a separate factor from throughput rate, will be an important element in the practical operational use and marketability of certified systems.

Overall Performance Requirements

Three commenters address the resolution of bags identified during the EDS screening process as "suspect."

Two of these commenters recommend that procedures for treating bags that are rejected by the automated screening process be established by the FAA. The commenters contend that it is unclear if these bags are a threat and how to consistently and reliably resolve or reconcile these bags. Also, the commenters explain that different EDS designs are required if procedures mandate immediate removal of bags to a containment area versus procedures that focus on calling the passenger to open the bag and assist in resolving an alarm before it is considered an immediate threat.

The third commenter addresses the Notice's omission of procedures to handle the detection of guns or knives that may occur during EDS screening. The commenter contends that this will affect the processing rates due to the need for reconciliation.

Response: The treatment of suspect bags after an initial automated alarm is an operational issue that is more appropriately addressed in each air carrier's security program rather than the criteria. These procedures will be unique to the use and location of the machines in the carrier's system and the type of additional alarm information provided by the equipment. Manufacturers should be aware that the procedures, and consequently the time necessary to resolve these suspect bags, are dependent, in part, on the type, detail, and accuracy of information provided to the screener by the EDS equipment. These capabilities will influence the marketability of the equipment to potential users.

The purpose of EDS is to identify the presence of explosives that represent a direct, potentially catastrophic threat to the safety of the aircraft and its passengers, not weapons which would be inaccessible to passengers while the aircraft is in flight. However, the possibility of identifying weapons or hazardous materials during the EDS screening process does exist and may represent an additional benefit that would be factored into the future deployment decision. These situations should continue to be handled as currently addressed in the FAA regulations and air carrier security program requirements.

Other Operational Considerations

Six commenters, an airport operator, AACI, ATA, Department of Transport United Kingdom and two manufacturers, address the operational considerations of EDS equipment. The comments cover both the actual operation of the equipment in an airport and its affect on the development of the equipment.

The airport operator argues that airports cannot accommodate an EDS that is not materially faster, smaller, lighter, cheaper and more reliable than TNA equipment. AACI contends that the operational effect must be analyzed so that problems associated with TNA (i.e., size, weight, shielding, power requirements, throughput rates, queues, congestion at check points, requirements for ancillary explosives handling staff, equipment and facilities at airports) are addressed. Representing the air carrier's views, ATA states that the EDS should be able to operate using existing electrical services and airport facilities. This commenter also notes that the equipment should not require structural or utility modifications in order to be usable; therefore, the size and weight are important elements in the design.

The equipment manufacturers respond to the statement in the proposed criteria, "the FAA will not require carriers to purchase and deploy EDS unless equipment is practical for use under realistic air carrier operating conditions (cost, size, weight, reliability, maintainability, availability and cost effective)." One commenter believes that this may serve as a disincentive because the risk to producers becomes unacceptable when the criteria does not clearly define these operational considerations. This producer recommends that the FAA synthesize these other performance factors into one criterion—the maximum cost per screened bag. The commenter contends that the cost can be related to acceptable alternates and can be defined for given throughput rates and hours of operation. The other manufacturer also argues that the shielding requirements from accidental detonation must be determined.

Response: Although the FAA is keenly aware of the industry's experience with TNA, and its concerns about cost, size, weight and throughput, these operational considerations are not part of the critical detection requirements in the certification criteria. Further, specific criteria for these parameters would not universally apply to the various baggage screening scenarios (e.g., centralized screening in baggage makeup areas versus decentralized screening at each check-in counter, as well as selectee screening versus screening all baggage) that could be implemented based upon conditions at individual airports, the FAA's threat-based screening requirements, and the equipment choices made by the air carriers. The total life cycle costs associated with mandated EDS deployment will be fully considered during the deployment decision making process (i.e., costs for installation, personnel, maintenance, operations, and delay). This decision will also include consideration of unit availability, and specific EDS deployment and utilization issues such as throughput, weight, size, and power supply requirements. As previously addressed, these types of issues will be considered and evaluated as part of any future deployment decision.

The criteria specifically provide that these operational considerations will affect the timing and scope of any FAA mandated deployment of EDS equipment. These factors also will have a substantial effect on the marketability of EDS equipment developed by a manufacturer to the air carriers. The FAA contends that these marketplace issues serve as appropriate incentive for the manufacturers of EDS equipment, and that it would be inappropriate to establish specific parameters in the certification criteria that would serve to limit the creativity of manufacturers in developing equipment and integrating technologies.

System Certification and Testing

Five commenters (ATA and four manufacturers) address system certification and testing. Three of these commenters address the cost of testing the equipment, the location of the testing, and the need for operational testing.

The first commenter states that it is expensive to transport the EDS equipment to the FAA Technical Center in New Jersey and assemble it there. Instead, the commenter recommends that the FAA provide the option of FAA testing in an operational setting as long as the criteria can be approximated to the satisfaction of the test director.

The second commenter argues that the government should bear the FAA laboratory costs because these costs are outside of the manufacturer's control. Likewise, the commenter recommends that the government bear the costs resulting from the FAA's laboratory limitations and recommends that the FAA explain the means for replicating operating conditions in the certification test plan. The commenter also contends that the FAA laboratory may not be suitable or capable of testing some EDS equipment and suggests that alternative approaches be used. This commenter suggests that the choice of bags and their contents may influence test results. Specifically, the commenter recommends that the bags represent the

actual types encountered in day-to-day air carrier operations.

The third commenter explains that the operational testing is important because security devices that do not perform at very high levels of reliability wreak havoc with air carrier operations. The commenter recommends that operational and maintenance requirements be included in the criteria, along with a one-year evaluation at a category X airport as a prerequisite to certification. The commenter argues that this evaluation is necessary to fulfill the requirements of section 320 of the Federal Aviation Act which specifies that the device must be capable of detecting "under realistic operating conditions the amounts, configurations, and types of explosive material which would be likely to be used to cause catastrophic damage to commercial aircraft." This commenter references the portion of the Notice that states the certification test plan is being prepared but has not yet been adopted. The commenter suggests that this plan be completed because it may result in changes to the certification criteria, which would have an adverse effect on vendors, especially small businesses.

One commenter supports providing specific systems information; however, it is concerned that the "not limited to" phrase will require the submission of source code information for all computer plans which could be proprietary and not protected. To address this concern, this commenter suggests the following language be inserted in the criteria: prior to final certification, the FAA will require manufacturers and vendors to provide all system documentation required to install, calibrate, maintain, and operate the system in the field environment.

Another commenter requests that the FAA promulgate criteria for a full checked baggage screening system with requirements for both a primary automatic and secondary screening. The commenter also recommends that the automatic mode detection rates include criteria for additional screening of bags rejected by primary screening, thus requiring the FAA to issue a certification test plan for secondary explosive detection devices.

In addition, one commenter requests that the FAA examine the procedures and standards which will be required to routinely test detection performance once the equipment is installed.

Response: The FAA acknowledges that, in rare cases, there may be extenuating circumstances making it impractical for the equipment to be accommodated at the FAA Technical Center. The FAA will, on a case-by-case basis, consider requests for an exception to the requirement for testing the equipment at its Technical Center facilities. The request for an exception must explain in detail why such testing is in the best interests of the government and indicate the methods, procedures and controls that will be used to provide testing equivalent to that conducted at the FAA's facility. Any additional expenses for off-site testing of the equipment by FAA testing personnel must be paid for by the equipment manufacturer.

The payment of these expenses by the manufacturer is consistent with the requirement in the criteria that the manufacturer pay for the direct costs associated with testing and certification at the FAA Technical Center. FAA's policy requires manufacturers to pay for these costs for several reasons, including the economic benefit that accrues to a manufacturer when it has obtained FAA certification of its equipment.

Several commenters raise issues associated with the FAA's testing requirements and procedures. These comments should be directed to the draft Management Plan for EDS Certification Testing containing the specifics on how the certification tests will be conducted. Notice of this document's availability for comment by inserted parties appeared in the **Federal Register** on June 22, 1993 (58 FR 33967). Individuals wishing to obtain a copy of the draft document should submit a written request to the Aviation Security R&D Service (Attn: ACA–1A), Federal Aviation Administration, Technical Center, Atlantic City, NJ 08405, or facsimile (609) 383–1973.

As previously discussed, operational testing is proposed in the draft Management Plan to be a part of the vendor testing and data collection required prior to the equipment being submitted to the FAA for certification testing. These proposed requirements are contained in the draft Management Plan for EDS Certification Testing. The FAA recognizes that many vendors utilize airport data collection and testing during the development of their systems. The FAA will continue to provide assistance to vendors for the placement of equipment for testing, collecting data and improving technologies. This data, combined with other experience gained in U.S. or foreign airport demonstrations, will be carefully considered by the FAA in the deployment decision making process for EDS.

The FAA has added a provision to the criteria allowing for the reciprocal recognition of EDS testing and certification by aviation security organizations of a foreign government. The foreign government testing will only be acceptable based on the negotiation of an appropriate security technical exchange agreement. The agreement must include assurances to demonstrate compliance with the FAA Certification Criteria using strict quality control procedures consistent with FAA testing procedures, and provide full reciprocity for certifications issued by both the foreign government aviation security organization and the FAA.

The final criteria require vendors to provide full system documentation prior to certification. The FAA must have all the required information to fully evaluate and document the equipment as part of the certification process. Data submitted to the FAA that is clearly identified and properly marked as proprietary will be handled in a confidential manner consistent with federal requirements for protecting proprietary information provided for federal certification.

As discussed by one commenter, the FAA adopted requirements in the criteria for full documentation of routine field testing procedures and test objects to be used along with operating procedures. These requirements are identical to those proposed in the Notice.

Component testing

Four commenters recommend testing components that do not meet the criteria established for an EDS. The first commenter disagrees with the concept included in the proposed criteria of not approving the use of an explosive detection device (EDD). This organization contends that an EDD can and should be used to supplement existing security systems prior to the deployment of EDS. This view was supported by another commenter who encourages the FAA to deploy EDD equipment should there be no complete system available that meets the EDS performance standards. The commenter believes the EDD increases the chances of detecting an IED and the use of EDDs should be encouraged by the FAA.

Three commenters state that the FAA should indicate the technologies which can be combined to make an EDS and that it should provide the supporting documentation. One of the commenters recommends that the FAA implement a "qualifying program" for EDDs so that a systems integrator can develop a complete system. The commenter contends that this could affect partnerships by redirecting the efforts of producers and reducing development time.

Response: A definition for an EDD has been included in the final criteria for clarification and to provide better guidance to a potential manufacturer. An EDD is defined as an automated bulk explosive detector that is capable of meeting the detection requirements for at least one of the categories of explosives in the criteria. The FAA will attest to the capabilities of EDDs where applicable as it had proposed in the Notice. As part of the future deployment decision, the FAA is evaluating approval of EDDs for limited applications under certain circumstances providing that all critical explosives detection requirements have been met. For example, an EDD which meets all but the throughput criteria may have a potential use at low volume locations. At this time, however, the FAA strongly encourages manufacturers to focus their resources on the development of equipment which can be certified as an EDS.

While the FAA is not providing specific recommendations for combining technologies, it will continue to provide technical advice and consultation to equipment producers. For example, an appropriate mechanism could be developed through a cooperative research and development agreement (CRDA) with the FAA Technical Center. Use of a CRDA could assist a manufacturer of EDS equipment in identifying technologies that may be compatible and provide complementary strengths that would improve overall system performance.

Future Modification of Criteria

Two commenters, ATA and an equipment manufacturer, address possible future changes that might affect the certification criteria.

ATA contends that the certification criteria will effectively freeze the technological development of EDS. It explains that an air carrier would not be able to replace EDS equipment every time a vendor produces a device with enhanced features. ATA recommends that each candidate system for certification demonstrate its effectiveness under current threats and its ability to adapt to future threats. This is especially important because the costs of EDS, and the possibility that the certification criteria may make it necessary for multiple units to be operated in tandem to form a system, require that any equipment certified be capable of responding to new security demands. ATA argues that the FAA's current threat assessment needs to be updated prior to making a final decision on the criteria.

The equipment manufacturer is concerned that future changes may result in decertification of existing equipment. It also expresses concerns about future changes, including inventory strategies that mitigate the risk of decertification, reduced equipment and spare parts availability, and overshooting the design criteria all of which may result in higher costs and delays in availability.

Response: As described previously, the FAA has developed the criteria in close consultation with the intelligence and scientific community based upon the best information currently available and has a great deal of confidence in the quality of the information used as the basis for establishing these criteria. However, should the need arise to make the criteria more stringent and to require the upgrading of EDS equipment, the FAA will give air carriers an adequate opportunity to recover their investment in equipment certified under these criteria. The standards may be relaxed if threat against aviation is significantly reduced, or progress in the aircraft hardening program develops, or other changes or improvements to the security system occur.

Although not a requirement for obtaining certification, equipment with built-in sensitivity and selectivity adjustments capable of adjusting to varying detection thresholds and requirements would be received favorably. Because many technologies have an inherent range of sensitivity settings for detection, such add-on features increase the equipment's attractiveness to potential purchasers and to the FAA.

Regulatory Flexibility Determination

One commenter contends that the estimates included in the proposed criteria on the economic affect the criteria would have on small business is not correct. The commenter takes exception to the statement in the proposal that, "small businesses (less than 175 employees) which are manufacturers of EDS equipment should not be significantly impacted (i.e., incur costs of more than $13,130 per year) by the proposed action." The commenter argues the total economic costs will be far greater than this amount.

Response: This commenter apparently confused the imposition of such costs for small businesses with the development and other capital costs. The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of small entities." Under these criteria, manufacturers may willingly choose to incur capital costs with the anticipation that its equipment would be certified by the FAA and available for use by the air carriers when the deployment of such equipment is required. Because a prospective EDS manufacturer is not required by regulation to produce an EDS or EDD, such costs are not covered by the RFA and are not considered to impose a significant impact on small businesses.

Executive Order 12291 (Federal Regulation)

Executive Order 12291 (E.O. 12291), dated February 17, 1981, directs the Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that no cost benefit analysis is needed for the establishment of criteria for certification of explosive detection systems and related steps such as the certification test plan. Any final decision on the deployment of EDS will be the subject of further review, according to the requirements of E.O. 12291. In this regard, the Department determined that the rule authorizing deployment of an EDS for screening international flights was a major rule as defined in the Executive Order. Based upon circumstances and information available at the final rule stage in 1989, the FAA determined that the EDS available at that time, (the Thermal Neutron Analysis (TNA) device), would be cost-beneficial. The FAA's deployment strategy requires deployment of effective EDS equipment in the most cost-effective manner.

Information relevant to deployment decisions was developed in the 1989 final rule (54 FR 36946) in terms of the development, installation, and annual operating costs of a TNA device. However, as the certification process and policies affecting deployment of any EDS proceed, further review will be given to all relevant issues, including changed circumstances, influencing the ultimate decisions on the timing and scope of deployment. The FAA will

analyze the information submitted by the manufacturers during the certification testing process to determine the future decisions on the scope and timing of deployment.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of small entities." Small entities are independently owned and operated small businesses and small not-for-profit organizations.

Under FAA Order 2100.14A, the criterion for a "substantial number" is a number that is not less than 11 and that is more than one third of the small entities subject to the rule. This Order indicates size and "significant impact" thresholds for specific entity types related to the aircraft industry. There is no entity categorization in this Order for manufacturers of this type of equipment. The closest applicable Standard Industrial Classification for these manufacturers is No. 3728, which is for "manufacturers of aircraft parts and auxiliary equipment not elsewhere classified." For such small entities, the applicable size threshold is 175 employees. The FAA's criteria for "significant impact" for each of these manufacturers is $13,130 per year.

The small entities that could be potentially affected by the implementation of this criteria are small business enterprises that are or might seek to become manufacturers of EDS equipment. The number of small business enterprises that are in, or might seek to enter, this market cannot be determined.

The criteria would impose minimal costs on those small business enterprises. These costs are primarily for obtaining access to or copies of the classified and sensitive security information portions of these criteria. Because the incremental cost imposed by this action is expected to be small and certainly less than the aforementioned threshold level ($13,130 per year), the FAA finds that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. Law 96–511), there are no requirements for information collection associated with this action.

The Final Criteria (Excluding Sensitive Portions)

The following sets forth the entire text of the final criteria except those portions of the document that contain either national security information that requires safeguarding pursuant to Executive Order 12356, or sensitive security information that requires safeguarding pursuant to 14 CFR Part 191 of the FAR.

[**Note:** Paragraph markings (U) indicate that the content of the paragraph is unclassified consistent with standard procedures for paragraph markings in the original classified document.]

"Criteria for Certification of Explosives Detection Systems"

Introduction

(U) Prior to any requirement for the deployment or purchase of explosive detection equipment under 14 CFR 108.7(b)(8) and 14 CFR 108.20, Section 108 of the Aviation Security Improvement Act of 1990, Public Law 101–604, mandates the FAA to certify that, based upon the results of tests conducted pursuant to protocols developed in consultation with expert scientists from outside the FAA, such equipment can detect under realistic air carrier operating conditions the amounts, configurations and types of explosive material likely to be used to cause catastrophic damage to commercial aircraft.

(U) These criteria establish the minimum acceptable performance requirements for an explosive detection system (EDS) to meet the mandate of Public Law 101–604 for certification by the FAA, and supersede previous EDS performance requirements established by the FAA.

Explosive Detection System Definition

(U) An EDS is an automated device, or combination of devices, which has the ability to detect, in passenger checked baggage, the amounts of different types of explosives as specified by the Federal Aviation Administration. The term "automated" means that the ability of the system to detect explosives, prior to the initial automated system alarm, does not depend on human skill, vigilance, or judgment.

[*Sensitive Portion of Document Deleted:* In the full text of the classified EDS Certification Criteria document, this portion of the document addresses alarm resolution requirements subsequent to the initial automated alarm.]

General Operational Requirements

(U) The EDS must detect explosives from among all other materials found in checked baggage.

(U) The detection must not be dependent on the shape, position, or orientation of the explosive, or the configuration of an improvised explosive device (IED).

(U) The EDS must not pose a health hazard to the operators or the public (e.g. see 10 CFR 20, 51 [Nuclear Radiation] and 21 CFR 1020 [Ionizing Radiation]).

(U) The EDS must not cause damage or significant residual change to the luggage or its contents, other than highly sensitive materials such as photographic film.

Detection Requirements

(U) The detection of commercial and military explosives in baggage is affected by the type, quantity, and configuration of the explosive, as well as the bag and its contents. The EDS must reliably detect a mix of threat types and quantities of explosives selected by the FAA when any of these explosive materials are present in checked baggage.

(U) The term "checked baggage" applies to all bags, regardless of whether the bags accompany a passenger on a particular flight, that are in the cargo hold including originating and transfer baggage at the international gateway.

[*Sensitive Portion of Document Deleted:* In the full text of the classified EDS Certification Criteria document, this portion of the document contains three tables that establish: (1) the types and quantities of explosive material that must be detected, and the minimum detection rate for each category of explosive for non-U.S. locations; (2) the types and quantities of explosive material that must be detected, and the minimum detection rate for each category of explosive for U.S. locations; and (3) the system performance requirements for the minimum detection rate and maximum false alarm rate. The tables specify the requirement to detect the minimum quantity and larger quantities of each listed explosive. The throughput requirement that follows appears in these tables, and is quoted below because it is the only item that is not sensitive security information.]

(U) Throughput: Minimum Automated Processing Rate of 450 bags/hour (not including alarm resolution).

Overall Performance Requirements

(U) All the criteria pertaining to detection rate, false alarm rate and

throughput are based exclusively on the fully automated component(s) or element(s) of the system.

[*Sensitive Portion of Document Deleted:* In the full text of the classified EDS Certification Criteria document, this portion of the document includes information regarding requirements for no human intervention, detection rate, and false alarm rate. The throughput requirement that follows appears in this section, and is included below because it is not considered sensitive security information.]

(U) The cumulative system throughput processing rate during the certification tests must be at least 450 bags/hour (not including alarm resolution).

Other Operational Considerations

(U) In addition to the mandatory criteria discussed above, there are a number of other operational considerations that will influence any future FAA decision to require the use of EDS equipment for screening international baggage. While these considerations are not mandatory for certification of EDS equipment, they should be factored into development and design decisions made by potential manufacturers and vendors of EDS equipment.

(U) The FAA has not yet established precise EDS parameters which would serve to define what is practical or cost-effective (e.g., the precise physical characteristics such as unit weight and size, or the precise unit cost). Given the variety of airport and air carrier operating environments, the FAA does not wish to foreclose the development of technologies which may work under some, but not all, air carrier operating conditions.

(U) The FAA can, however, provide potential manufacturers and vendors, as well as air carriers, and airports with the following guidance. In general, EDS equipment that is less costly, smaller and lighter is more practical for use in a variety of airports than a system that is more expensive, larger and heavier—especially if such equipment would require separate structures or substantial modifications of existing terminal structures for installation or operation. Also, systems which are easily operated and maintained, and proven to be reliable, will be more acceptable than systems that require extensive specialized training for operation, calibration and maintenance.

(U) In addition, systems with throughput rates that substantially exceed the minimum rate established in the certification criteria are operationally more efficient in many applications, and are less likely to cause delays and congestion when large numbers of passenger bags must be screened in short periods of time. Further, systems that can be more easily integrated into existing passenger and baggage processing systems would be more acceptable to potential users.

(U) Trade-offs are often made among these and other operational considerations during the course of system design. For example, reliability, maintainability, and availability can usually be improved, but often at the expense of an increase in purchase price. While such trade-offs may not affect certification, they will be considered in decision making to require deployment of certified EDS systems.

System Certification

(U) The FAA will certify EDS equipment based upon the mandatory detection criteria for the purpose of developing a list of equipment that would be eligible for use by air carriers at the point deployment is made mandatory. Actions must be taken under 14 CFR 108.25 to establish a requirement to deploy EDS to screen international checked baggage.

[*Sensitive Portions of Document Deleted:* In the full text of the classified EDS Certification Criteria document, this portion contains information on the Act's requirement to detect likely to be used explosives.]

(U) The FAA will not require air carriers to use certified EDS equipment until such time as the FAA determines that such equipment is available in sufficient quantities to satisfy air carrier needs, adaptable to various air carrier and airport operating environments, practical for use under realistic air carrier operating conditions (e.g., cost, size, weight, reliability, maintainability, and availability), and cost-effective.

(U) The FAA will only certify complete systems. It will not certify or approve for use, individual component devices. Prior to final certification, the FAA will require manufacturers and vendors to provide full system documentation including, but not limited to, recommended system installation and calibration procedures, minimum essential test equipment and devices, routine field testing procedures and test objects to be used, routine and emergency operating procedures, field preventative maintenance and repair procedures, and training programs.

Certification Testing

(U) Testing of EDS equipment presented to the FAA for certification will be performed in accordance with the FAA Management Plan for EDS Certification Testing based upon Detection of Explosives for Commercial Aviation Security, Appendix A, *A General Testing Protocol for Bulk Explosive Detection Systems* (National Academy of Sciences, National Materials Advisory Board, final report 1993). The FAA Technical Center in Atlantic City, New Jersey will perform certification tests for producers of candidate explosive detection systems. The EDS Certification Test Director at the Aviation Security Research and Development Service is the point of contact.

(U) As required by the Management Plan for EDS Certification Testing, manufacturers seeking FAA certification for their candidate EDS must submit complete descriptive data and their test results to the FAA prior to receiving permission to ship their equipment to the FAA Technical Center. The FAA reserves the right to visit the manufacturers' facilities for technical quality assurance purposes, require and/or monitor in-house tests, and review associated data prior to granting permission to ship equipment for certification testing.

(U) There may be extenuating circumstances that make it impractical for the equipment to be accommodated at the FAA Technical Center. Therefore, the FAA will consider requests for an exception that would permit the equipment testing at a facility other than the FAA Technical Center facilities. The written request must explain in detail why such testing is in the best interests of the government and indicate the methods and procedures that will be used to provide an equivalent test to those conducted at the FAA's facility.

(U) The FAA may recognize on a reciprocal basis EDS testing and certification conducted by a foreign government's aviation security organization. Such recognition by the FAA will only be considered if certain conditions are met including, but not limited to, negotiation of an appropriate security technical exchange agreement which assures compliance with the FAA Certification Criteria using strict quality control procedures consistent with FAA testing procedures, and provide full reciprocity for certifications issued by both the foreign government aviation security organization and the FAA.

(U) All direct costs associated with testing and certification (e.g., insurance, shipping, installation, set-up, technical operation, maintenance, calibration, disassembly, and FAA laboratory testing costs) must be borne by the manufacturers or vendors. The Management Plan for EDS Certification

Testing contains specific information on the incremental costs associated with testing performed at the FAA Technical Center facilities, or other locations.

Component Testing

(U) As part of the FAA Security R&D program, the FAA Technical Center evaluates devices whose capabilities do not meet all of these performance criteria. For instance, some of the devices that the FAA has evaluated have relatively low throughput rates and higher false alarm rates than the maximum acceptable rate. It will be possible, under certain circumstances, for a manufacturer of an automated bulk explosive detection device (EDD) to have the FAA test and evaluate the device, even when it is not expected to fully meet the EDS performance criteria (e.g., false alarm rate or throughput). An EDD is an automated bulk explosive detector that is capable of meeting the detection requirements for at least one of the categories of explosives in the criteria.

(U) Although only complete systems can be certified, FAA may attest to the performance of, but not certify or approve for use, EDDs or individual components. Attesting to the performance of EDDs is intended to assist manufacturers and vendors who are seeking partners with whom they can create a functioning EDS composed of multiple devices.

(U) Testing of EDDs will only be conducted: (1) on a first come, first served basis; (2) if adequate resources and facilities are available at the FAA's Technical Center facilities to permit such testing (The FAA will also consider requests to test the equipment at a facility other than the FAA Technical Center facilities. However, these requests will be given the lowest priority and will only be performed if it would not otherwise delay testing being performed by the FAA Technical Center.); (3) at a lower precedence than EDS certification testing; and, (4) if the FAA determines from the manufacturer's test data that there is a substantial likelihood that the device will meet the minimum detection criteria for one or more categories of explosives specified in these criteria.

Authority: 49 U.S.C. App. 1354, 1356, 1357, 1358a, 1358c, 1421, 1424, and 1511; 49 U.S.C. 106(g).

Issued in Washington, DC on September 3, 1993.

David R. Hinson,

Administrator.

[FR Doc. 93–22270 Filed 9–9–93; 8:45 am]

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federal register

Friday
September 10, 1993

Part VII

Department of Education

Federal Direct Student Loan Program: Proposed Information Collection Requests; Notices

DEPARTMENT OF EDUCATION

Federal Direct Student Loan Program

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary of Education issues a notice inviting applications by schools to participate in the Federal Direct Student Loan Program (FDSLP) in the academic year beginning July 1, 1994.

EFFECTIVE DATE: This notice is effective on September 10, 1993.

DEADLINE DATE FOR REQUEST TO PARTICIPATE IN THE FDSLP: As required by statute, a school must submit its request to participate in the FDSLP by October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Lloyd Robertson, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–5162. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Loan Reform Act of 1993, part of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), established a new loan program under title IV, part D of the Higher Education Act of 1965 as amended (HEA). Under this program, known as the Federal Direct Student Loan Program (FDSLP), loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders. This program replaces the direct loan demonstration program that was authorized by the Higher Education Amendments of 1992 (Pub. L. 102–325).

For the first academic year during which the FDSLP is operational, the year beginning July 1, 1994, the Secretary will select schools to participate in the FDSLP from those schools that have applied to participate in the FDSLP. The Secretary may also select additional schools if necessary to carry out the purposes of part D. The statute directs the Secretary to exercise his discretion in the selection of schools so that the loans made under the FDSLP will represent 5 percent of the new student loan volume for academic year 1994–1995. The goals for the percentage of new student loan volume in subsequent years of loans made under the FDSLP increase significantly. See Section 455(a)(2) of the HEA. The Secretary anticipates that schools selected to participate in the FDSLP in the 1994–1995 academic year will continue to participate in subsequent years and will not be required to re-apply in subsequent years.

The Secretary will publish rules regarding the administration and operation of the FDSLP for the 1994–1995 academic year in the **Federal Register** shortly. The Secretary anticipates that these rules will be based on the final regulations for the direct loan demonstration program published in the **Federal Register** on July 2, 1993 (58 FR 36088), revised to reflect changes from the Student Loan Reform Act of 1993 and administrative initiatives. These rules will be published after consultation with members of the higher education community. Schools that are selected to participate in the FDSLP but wish to withdraw after publication of the rules will be allowed a reasonable period to do so.

I. School Selection

The Secretary will exercise the discretion afforded him in the statute in selecting schools for participation in the FDSLP during the 1994–1995 academic year to ensure as smooth an implementation as possible and to provide a solid base of experience for the increase in FDSLP volume. The Secretary will select, to the extent practicable, schools to participate in the FDSLP that reasonably represent the universe of participants in the Federal Family Education Loan (FFEL) Program, along with such factors as type and control of institution, geographic distribution, loan volume, default rates, composition of student body, etc. A broad spectrum of schools participating in the first year of the program will also provide the robust test of the FDSLP operations and procedures that is necessary for the second and subsequent years when the volume of loans made under the FDSLP will increase significantly.

A. Requirements for Participation

The Secretary has decided that, to participate in the FDSLP in the 1994–1995 academic year, a school must have a program participation agreement under the FFEL Program. In addition, because a school in the FDSLP must be an eligible institution according to section 435(a) of the HEA and is thus subject to certain provisions relating to cohort default rates, the Secretary has decided that in order for a school to be selected to participate in the FDSLP in the 1994–1995 academic year, that school must have a cohort default rate that is less than 25 percent in one of the two most recent years for which cohort default rates are available. See section 453(d) of the HEA. Because participation is limited, the Secretary believes that it is not in the best interest of the FDSLP to allow a school to participate if there is a high probability that the school will lose its eligibility to participate in the Federal student loan programs. The Secretary reserves his right to exempt Historically Black Colleges and Universities as defined in section 322(2) of the HEA, tribally controlled community colleges within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978, or a Navajo Community College under the Navajo Community College Act from the default rate requirement.

B. Other Factors Considered by the Secretary

The Secretary anticipates choosing schools that have demonstrated a strong commitment to direct lending and the capacity to implement and administer the FDSLP. The Secretary will base his decision on whether a school has this capacity on a number of factors such as those given as criteria for a school to originate loans. The Secretary views the FDSLP as the future of student loans. As such, the Secretary intends to make maximum use of available technology in the program. Consistent with this intention, the Secretary anticipates that the majority of schools participating will participate electronically or be willing and capable to do so in the very near future. In order to originate loans a school must participate electronically. Currently, schools participating in the campus-based programs, which include the Federal Perkins Loan Program, the Federal Supplemental Educational Opportunity Grants Program, and the Federal Work-Study Program, must do so electronically. Additionally, the majority of schools participating in the Federal Pell Grant Program also do so electronically. Therefore, the Secretary will give strong consideration to a school that is currently participating in the Department's Electronic Data Exchange program when selecting schools to participate in the FDSLP.

II. School Participation

A. Participation in the FFEL Program and the FDSLP

Generally, a school participating in the FDSLP will make loans (not including loans made under the Federal Perkins Loan Program) to students and parents of students attending that school only through the FDSLP. However, the Secretary has the discretion to allow schools to participate in both the FFEL

Program and the FDSLP. Schools permitted to participate in both programs may certify loans under the FFEL Program only to those borrowers that have an outstanding balance on an FFEL Program loan. Students who have no outstanding balance on an FFEL Program loan may receive loans only under the FDSLP. The Secretary anticipates that the percentage of schools in the FDSLP that also participate in the FFEL Program will be small. A school permitted to participate in both the FFEL Program and the FDSLP would be responsible for ensuring that a borrower at that school does not receive loans under a program for which the borrower is not eligible.

B. Federal Direct PLUS Loans

Some schools have expressed concern that they would be required to conduct the credit check mandated for Federal Direct PLUS loans. Schools will not be responsible for conducting credit checks. Federal Direct PLUS loans will be made through a process similar to the one used in the FFEL Program. The parent will complete a combined application/promissory note and send it to the school. The school will forward this document to the Secretary where the data will be key entered and a credit check performed. Alternatively, a school will enter the data using the software provided by the Secretary, and electronically forward this information to the Secretary. In either case, the Secretary will perform the credit check and notify the school of the results. The Secretary will also notify the parent directly if the credit check indicates an adverse credit history, and advise the parent what options are available, *e.g.*, obtaining an endorser without an adverse credit history. Once the loan is approved, the school may then draw down money and disburse the loan funds in the same manner as it would for other loans made under the FDSLP. For those schools which participate in both the FDSLP and the FFEL Program, a parent of an eligible student may borrow only under the program from which the student borrowed, or would have borrowed, if the student had received a student loan.

C. Origination

The Student Loan Reform Act of 1993 requires that a school originating loans in the FDSLP in the 1994–1995 academic year:

(1) Have signed a participation agreement with the Secretary for participation in the FDSLP;

(2) Desire to originate loans;

(3) Have made loans in the Federal Perkins Loan Program and not have exceeded the applicable maximum default rate under section 462(g) of the HEA for the most recent fiscal year for which data are available;

(4) Not be on the reimbursement system of payment for any of the programs under subpart 1 or 3 of part A, part C, or part E of title IV of the HEA;

(5) Not be overdue on program or financial reports or audits required under title IV of the HEA;

(6) Not be subject to a proposed or final emergency action, or a proposed or final limitation, suspension, or termination action under section 428(b)(1)(T), 432(h), or 487(c) of the HEA;

(7) Not, in the opinion of the Secretary, have significant deficiencies identified by a State postsecondary review entity under subpart 1 of part H of title IV of the HEA;

(8) Not, in the opinion of the Secretary, have had severe performance deficiencies for any of the programs under this title, including such deficiencies demonstrated by audits or program reviews submitted or conducted during the 5 calendar years immediately preceding the date of application; and

(9) Provide an assurance that the institution has no delinquent outstanding debts to the Federal Government, unless (a) those debts are being repaid under or in accordance with a repayment arrangement satisfactory to the Federal Government; or (b) the Secretary determines that the existence or amount of the debts has not been finally determined by the cognizant Federal agency.

See Section 453(c) of the HEA.

D. Alternate Originator

If a school that participates in the FDSLP does not originate loans, it will use the services of an alternate originator that has contracted with the Secretary for that purpose. An alternate originator in the FDSLP will perform the functions that are necessary in the FDSLP that in the FFEL Program are performed by guaranty agencies and lenders.

E. Consortia

A consortium of schools in the FDSLP would interact with the Secretary in the same manner as other schools, except that the communication between the Secretary and the schools in the consortia is consolidated and channeled through a single point. Each school in a consortium will be required to sign the FDSLP participation agreement with the Secretary and be responsible for the information supplied through the consortium. If a consortium wishes to originate loans, each school in the consortium must be eligible to originate.

Application Procedures

The Secretary has developed an application for a school to use to apply to participate in the FDSLP. A copy of the application is included as Appendix A with this notice. A place is provided for an applying school to indicate whether it desires to originate loans under the FDSLP. In addition, an applying school must indicate how it anticipates participating in the FDSLP, (*i.e.*, mainframe, PC, or paper).

If a school desires to participate in both the FFEL Program and FDSLP, it must include an estimate of the percentage of new loan volume that will be made under the FDSLP. In addition, such a school must provide a written statement that explains why the school wishes to participate in both the FFEL Program and the FDSLP and how the school anticipates managing the FFEL Program and the FDSLP simultaneously.

If a school is applying as part of a consortium, it must indicate the exact names of all schools in the consortium.

In order to be considered for participation in the 1994–1995 academic year, a school must complete the application and submit it to the Secretary by October 1, 1993. Applications postmarked after October 1, 1993 will not be accepted. A school may fax its application to the Secretary at (202) 401–3424 or (202) 205–0786. If a school does fax its application, it must do so not later than October 1, 1993.

Waiver of Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the Omnibus Budget Reconciliation Act of 1993, enacted August 10, 1993 (Reconciliation Act), requires that the Secretary publish a notice in lieu of regulations for the first year of the FDSLP and exempts the contents of the notice from the rulemaking requirements of section 431 of the General Education Provisions Act. The Reconciliation Act also requires that the Secretary establish a date not later than October 1, 1993, as the closing date for receiving applications from institutions of higher education desiring to participate in the first year of the program. While the Secretary has consulted with members of the higher education community in the development of this notice, the statutory timeframe for the program does not permit the solicitation of further public comment. Therefore, the Secretary finds that such a solicitation would be

impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

(Catalog of Federal Domestic Assistance Number has not been assigned)

Dated: September 8, 1993.

Richard W. Riley,

Secretary of Education.

BILLING CODE 4000-01-P

Form Approved - 9/9/93
O M B No 1840 - 0664
Expiration Date 12/7/93

Appendix

FEDERAL DIRECT STUDENT LOAN PROGRAM SCHOOL PARTICIPATION APPLICATION

Section I: School Information

School Name: _____

School Address: _____

_____

_____

Signature of School Official: _____

Printed Name and Title: _____

Telephone and FAX Number of School Official: _____ Telephone | FAX

IRS Employer Identification Number: _____

School Code Used in the Federal Family Education Loan Program: _____

Section II: Participation Information

Do you wish to originate loans? ❑ *Yes* ❑ *No*

Mode of participation: ❑ *Mainframe* ❑ *PC* ❑ *Paper*

Would you like to participate in both the FDSLP and the FFEL Program? ❑ *Yes* ❑ *No*

If yes, what percentage of estimated loan volume would be made under the FDSLP? _____%

Attach a separate sheet explaining why the school wishes to participate in both the FFEL Program and the FDSLP, and how the school anticipates managing the FFEL Program and the FDSLP simultaneously.

Section III: School Consortium Information

If applying as part of a consortium, please indicate the exact names of all schools in the consortium ***(Attach additional names on a separate sheet, if necessary)***:

Public reporting burden for this collection of information is estimated to average 12 minutes per response, the estimated burden to complete the statement is 20 minutes, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project, 1840-0664, Washington, DC 20503.

Applications should be sent to:

U.S. Department of Education
Office of Postsecondary Education, ROB - 3
Federal Direct Loan Task Force, Room 4043
400 Maryland Avenue, SW
Washington, DC 20202-5162
FAX (202) 401-3424 or (202) 205-0786

[FR Doc. 93-22288 Filed 9-9-93; 8:45 am]
BILLING CODE 4000-01-C

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An emergency review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. The approval has been requested from the Office of Management and Budget (OMB).

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Cary Green, Department of Education, 7th & D Streets SW., room 4682, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: September 7, 1993.

Cary Green

Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Emergency.

Title: Federal Direct Student Loan Program School Participation Application.

Abstract: In compliance with the Omnibus Budget Reconciliation Act of 1993, enacted August 10, 1993, ED is requesting application information from institutions of higher education that are interested in participating in the Federal Direct Student Loan Program. ED is requesting application information as prescribed in a notice and application that will be published in the **Federal Register**. ED will review the application requirements and select institutions to participate in the first year of this program.

Additional Information: ED has requested an emergency review and approval from the Office of Management and Budget. The emergency review and approval is required in order to satisfy the requirements of the Onmibus Budget Reconciliation Act of 1993.

Frequency: Annually.

Affected Public: Businesses or other for-profit; and non-profit institutions.

Reporting Burden:

Responses: 750.

Burden Hours: 398

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0

[FR Doc. 93–22289 Filed 9–9–93; 8:45 am]

BILLING CODE 4000–01–M

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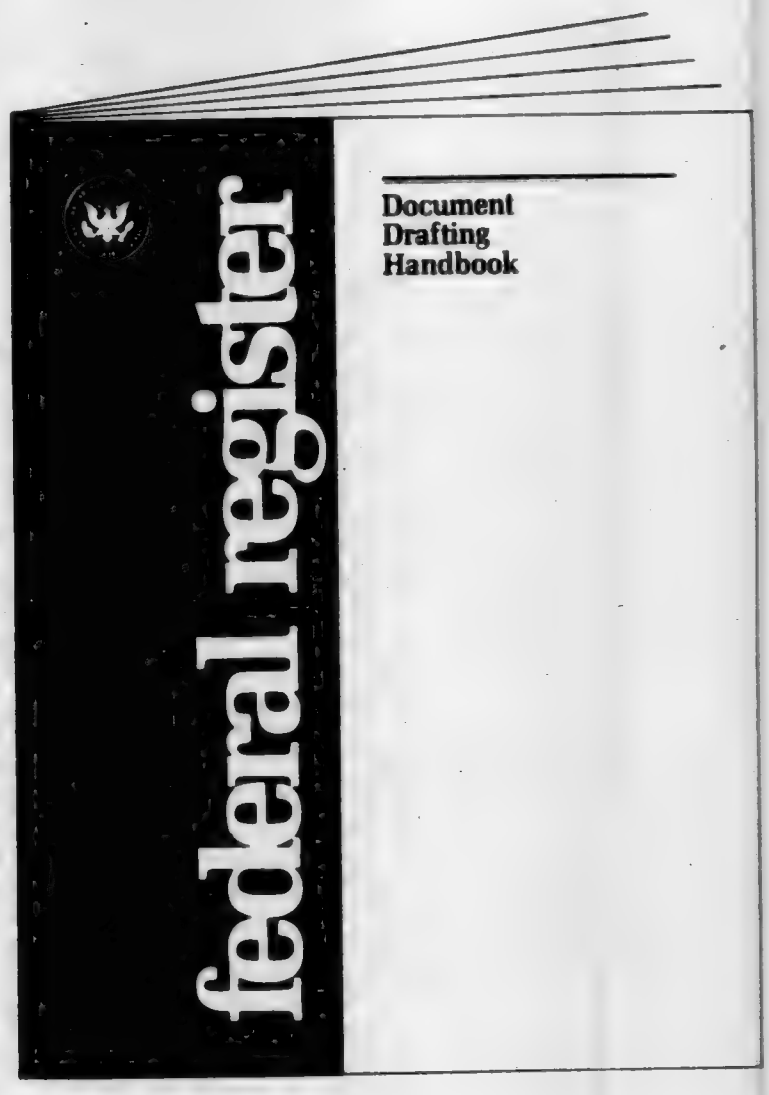

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103d Congress, 1st Session, 1993

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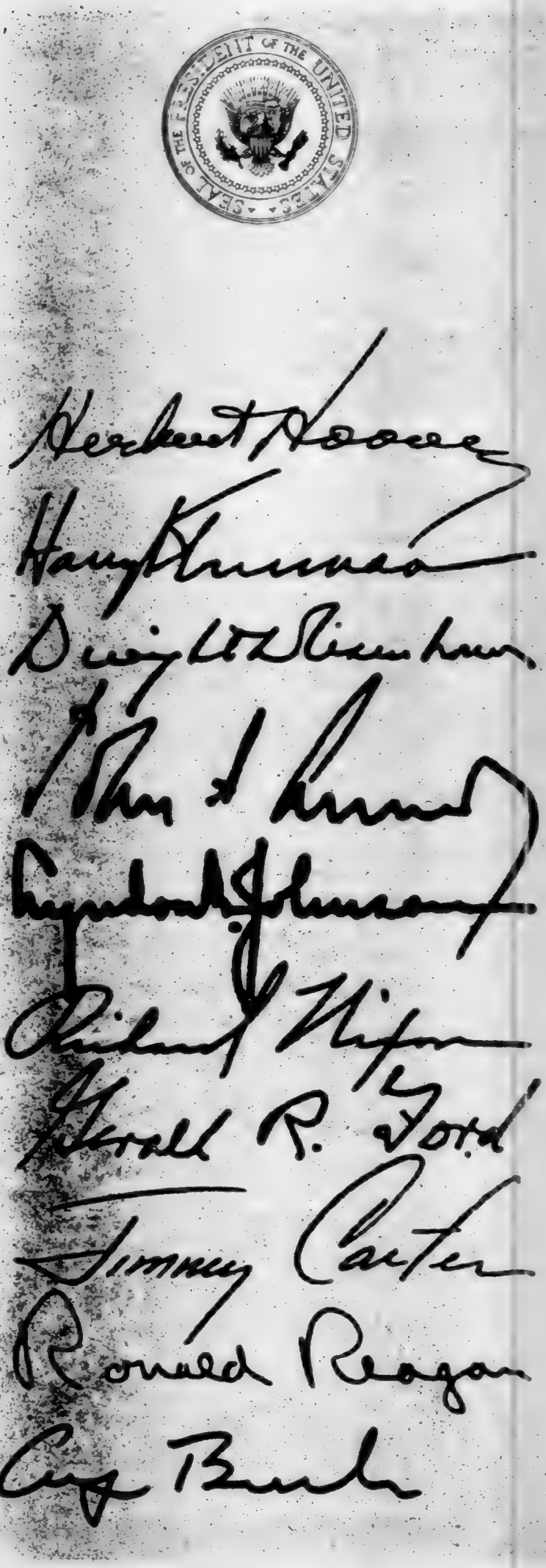

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 846

RIN 3206–AE01

Deemed Elections of Coverage Under the Federal Employees Retirement System

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to allow employees to remain covered by the Federal Employees Retirement System (FERS), if their employing agency erroneously placed them under FERS during the period when they would have had the opportunity to elect FERS coverage. These regulations will deem employees to have elected FERS coverage unless they notify the employing agency that they do not want to be deemed to have elected FERS. These regulations are necessary to prevent the agency error from depriving such employees of their statutory right to have elected FERS coverage.

DATES: Interim rules effective October 13, 1993; comments must be received on or before November 12, 1993.

ADDRESSES: Send comments to Mary M. Sugar, Deputy Assistant Director for Retirement and Insurance Policy; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: The Federal Employees Retirement System (FERS) Act of 1986, Public Law 99–335, enacted June 6, 1986, created a new retirement system for Federal employees. Employees may acquire coverage under FERS either automatically by operation of law or voluntarily by election of the employee. Generally, Federal employees first employed after December 31, 1983, are automatically covered by FERS, as are some rehired employees who are reemployed after a 365-day break in service who lack 5 years of prior civilian service. Individuals who are automatically covered by FERS have no choice concerning retirement coverage.

Provisions of the FERS Act also permit certain employees to elect coverage under FERS. Those eligible to elect FERS coverage include rehired employees who have at least 5 years of prior civilian service. Generally, with the exception of the July-December open season in 1987, elections can be made only within 6 months after reemployment or conversion to a qualifying appointment. OPM's interim regulations also allow agencies to accept prospective belated elections during the 6-month period following the statutory election period if circumstances beyond the employee's control prevented him or her from making an election within the prescribed time limit. (Following the open season, this meant that agencies could accept belated elections through June 30, 1988.) In addition, OPM had been allowing individuals to make retroactive elections of FERS coverage if OPM determined that retroactive relief was necessary to assure that the employee had an opportunity to make an informed election.

In a recent decision, the United States Court of Appeals for the Federal Circuit determined that OPM did not have authority to allow retroactive belated FERS elections made after June 30, 1988, on the basis that the employing agency provided incomplete information to the employee, or that the employee was otherwise prevented from making an informed election by circumstances beyond the employee's control. The case *Killip* v. *Office of Personnel Management*, 991 F. 2d 1564 (Fed. Cir. 1993), involved an employee who had an opportunity to elect FERS during the July-December 1987 open season. She did not file her request to transfer until March 1990. She claimed that she received incorrect information concerning the public pension offset from Social Security benefits and should be allowed to make a belated election. OPM and the Merit Systems Protection Board found that she was not prevented by circumstances beyond her control from making an informed election prior to March 1990 and did not approve the belated election. The court affirmed the denial, but on the grounds that OPM did not have authority to allow the belated election.

After carefully reviewing the court decision, we have determined that the court found that OPM lacks authority to allow retroactive transfers by employees who did have an opportunity to make an election, regardless of circumstances that may have prevented the employee from making an informed election. However, the court decision does not address the situation of employees who were incorrectly denied any right of election whatsoever during the election period provided by statute. Employees never had their "open season" to elect FERS if their agency placed them in FERS automatically.

As employing agencies review their employees' personnel folders, they occasionally find coverage errors. Because the coverage determinations are governed by rules set out in law, the employing agency is required to correct an erroneous determination retroactively. An explanation of the coverage rules may be found in Federal Personnel Manual Supplement 830–1, Chapter 10.

For example, an agency may have erroneously put an employee in FERS on January 15, 1989, when he was reinstated after a break in service because the agency did not realize that the employee had 5 years of previous civilian service. Years later in an audit the agency discovered its error and found that the employee should have had Civil Service Retirement System (CSRS) Offset coverage. Under the FERS law this employee should have had a 6-month election period to elect FERS coverage following reemployment, but did not get the opportunity because the employing agency automatically placed this employee in FERS upon reinstatement. Because the agency error prevented the employee from having an opportunity to elect FERS coverage, we believe the employee must still be allowed the opportunity to retain FERS coverage. The Congressional purpose in enacting section 301 of the FERS Act, which provides for the election right,

would otherwise be thwarted by denying this statutory right to these individuals.

For the reasons, we believe that under our general regulatory authority to administer FERS, section 8461 of title 5, United States Code, allowing the employee to be deemed to have elected FERS coverage is allowable and appropriate in this special situation and that the court in *Killip* did not intend to preclude this action.

Based on our experience, we believe that most employees who have been denied the opportunity to elect FERS because their employing agencies erroneously decided that they were automatically covered by FERS will want to be covered under FERS. This is especially true for employees who have been contributing to the Thrift Savings Plan and receiving matching Government contributions that are only available under FERS. To minimize the paperwork required and simplify the procedures as much as possible in accommodating employees who have been denied their election rights, these regulations will treat the employees as having made timely elections to join FERS, which is what we expect most will want. For affected employees who do not want to be deemed to have elected FERS, the regulation provides each affected employee 60 days in which to choose not to be deemed to have elected FERS. An agency's authority under this regulation to retain employees under FERS coverage based on deemed elections does not extend beyond circumstances in which an agency is retroactively correcting an erroneous determination that an employee was automatically covered by FERS and that the error prevented the employee from exercising the statutory right to make an election to join FERS.

Section 846.204(b)(2)(i) delegates to agencies authority to implement deemed elections to join FERS only if—

1. The agency determines that the employee, separated employee, or retiree was erroneously placed under FERS, during the time when a timely FERS election could have been filed;

2. The employee, separated employee, or retiree should have been placed under CSRS, CSRS Offset, or Social Security only, with the right to transfer to FERS; and

3. The employee, separated employee, or retiree does not decline to be deemed to have elected coverage under FERS after receiving written notice of the error.

If the employee declines to be deemed to have elected FERS coverage, the agency must retroactively correct the individual's retirement, Thrift Savings Plan, and, as appropriate, Social Security, records. OPM will issue updated payroll office instructions concerning actions necessary to correct these types of personnel and payroll records, and how to report the retirement corrections to OPM.

Section 831.204(b)(2)(ii) establishes the procedure for declining the deemed election. Paragraph (A) provides a 60-day time limit to decline the deemed election. The 60-day period does not begin until the employee receives written notice about the deemed election, the right to decline the deemed election, and the applicable time limit. The time limit may be extended, as explained below.

Paragraph (B) establishes the rights of survivors if the employee dies during the election period. The person who would be entitled to survivor benefits under the retirement system that would cover the employee if no election is deemed has the right to decline the deemed election. This differs from the way we handle all other FERS-transfer elections, but is necessary in this class of cases. In all other situations, we treat the decision to elect FERS as personal to the employee. If the employee dies, the right to elect terminates and cannot be exercised by anyone else. What makes these deemed elections different is that, by this regulation, we are deeming an outcome that will happen if no action is taken (FERS coverage) that is different from the outcome that is provided by statute if no action is taken (CSRS, CSRS Offset, or Social Security only coverage). By allowing the person entitled under the system that would apply by statute to decline the deemed election, we are merely assuring that the deemed election will not deprive anyone of benefits established by statute, while providing what the employee and survivor would be anticipating (benefits under FERS) unless the survivor chooses otherwise. This unique situation requires that we allow survivors to decline the deemed election.

Paragraph (C) grants agencies broad authority to waive the time limit to decline the deemed election. Agencies may approve the waiver of the time limit if the employee or survivor exercised due diligence in declining the deemed election but was prevented by circumstances beyond his or her control from declining in a timely manner. Agency decisions to grant a waiver are not subject to further administrative review. Agency denials of waiver are subject to review exclusively through the procedures established in paragraph (C), reconsideration by OPM and appeal to the Merit Systems Protection Board.

Under section 552(b)(3)(B) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. Delaying implementation of these regulations would be contrary to the public interest. Neither the Government's nor the employees' interest would be served by delaying relief to employees who have been denied their "open season" through agency error. Our current experience has shown that requiring OPM review of this limited category of cases is unnecessary.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

List of Subjects in 5 CFR Part 846

Administrative practice and procedure, Government employees, Pensions, Retirement.

Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, OPM is amending subpart B of part 846 of title 5, Code of Federal Regulations, as follows:

PART 846—FEDERAL EMPLOYEES RETIREMENT SYSTEM—ELECTING COVERAGE

1. The authority citation for part 846 continues to read as follows:

Authority: 5 U.S.C. 8461(g); § 846.202 also issued under section 301(d)(3) of Public Law 99–335.

Subpart B—Elections

2. In § 846.204, paragraph (b) is redesignated as paragraph (b)(1) and paragraph (b)(2) is added to read as follows:

§ 846.204 Belated elections and correction of administrative errors.

* * * * *

(b) * * *

(2)(i) For an employee, separated employee, or retiree whose employing agency erroneously determined that the individual was covered by FERS during the period under § 846.201 when the individual was eligible to elect FERS, and the employing agency should have

placed the individual in CSRS, CSRS Offset, or Social Security only, under conditions that would have included an opportunity to elect FERS coverage, the employee, separated employee, or retiree is deemed to have elected FERS coverage and the individual will remain covered by FERS, unless the individual declines under paragraph (b)(2)(ii) of this section to be covered by FERS.

(ii)(A) The employing agency must provide written notice to each individual who is deemed to have elected FERS under paragraph (b)(2)(i) of this section that the individual may, within 60 days after receiving the notice, decline to be deemed to have transferred to FERS.

(B) If the individual dies during the election period established by paragraphs (b)(2)(ii) (A) and (C) of this section, the right of election under paragraph (b)(2)(i) of this section may be exercised by any person who would be entitled to receive a current spouse survivor annuity or a former spouse survivor annuity under CSRS (or CSRS Offset), if any, if the error had not occurred (the election by any one such current or former spouse not to have the election of FERS coverage deemed is controlling); otherwise, by the individual or individuals entitled to receive the lump-sum credit under CSRS (or CSRS Offset) if the error had not occurred (the election by any individual entitled to a share of the lump-sum credit not to have the election of FERS coverage deemed is controlling). The time limit for making an election under this paragraph is 60 days after the date of the agency's notice to the individual (survivor) of the election right.

(C) The agency may waive the 60-day time limit under paragraphs (b)(2)(ii) (A) and (B) of this section if the individual (if living, otherwise the appropriate survivor) exercised due diligence in making the election but was prevented by circumstances beyond his or her control from making the election within the time limit. An agency decision not to waive the time limit under this paragraph must include notice to the individual of the individual's right to request OPM to reconsider the denial of the waiver of the time limit. OPM's reconsideration decision on denial of a waiver of the time limit will notify the individual of the right to appeal to the Merit Systems Protection Board under chapter II of this title.

(iii) The employing agency must document the individual's records to reflect his or her decision concerning retirement coverage.

* * * * *

[FR Doc. 93–22224 Filed 9–10–93; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Parts 870, 871, 872, and 873

Federal Employees' Group Life Insurance Program: Premium Rate Reduction and Open Enrollment Period

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations implementing a reduction in the premium rates for Basic coverage and for some age categories for Standard, Additional, and Family Optional insurance. The reductions were effective with the first pay period beginning on or after January 1, 1993. (For retirees, any reductions in premium levels were reflected in their February 1, 1993, annuity payments.) OPM also amended its regulations to permit an open enrollment period from March 29 through April 30, 1993, during which time employees otherwise eligible to participate in the Federal Employees' Group Life Insurance (FEGLI) Program had an opportunity to add to their existing coverage or to enroll in the Program if they had previously waived coverage.

EFFECTIVE DATE: September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Karen Leibach, (202) 606–0191.

SUPPLEMENTARY INFORMATION: On March 2, 1993, OPM issued interim regulations (58 FR 11953) implementing a reduction in the FEGLI premium rates and establishing an open enrollment period for eligible employees who wished to enroll in FEGLI or to add to their FEGLI coverage. The premium rate reduction was effective the first pay period beginning on or after January 1, 1993, and the open enrollment period was conducted from March 29 through April 30, 1993.

OPM received no comments on the interim regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect a small number of Federal employees.

List of Subjects in 5 CFR Parts 870, 871, 872, and 873

Administrative practice and procedure, Government employees, Life insurance, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, under the authority of 5 U.S.C. 8716, OPM is adopting its interim regulations amending 5 CFR parts 870, 871, 872, and 873 as published on March 2, 1993 (58 FR 11953), as final rules without change.

[FR Doc. 93–22225 Filed 9–10–93; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 890

RIN: 3206–AF17

Federal Employees Health Benefits Program; Coverage of Temporary Employees

AGENCY: U.S. Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to clarify the eligibility of temporary employees to continue their Federal Employees Health Benefits (FEHB) coverage when they become compensationers. These regulations are necessary to distinguish between retirement as an employee annuitant and "retirement" as a compensationer. OPM is also issuing regulations to allow temporary employees an opportunity to change health plans if their salary is insufficient to pay the premium withholdings, to show the effective date of such an enrollment change, and to provide for the termination of these employees' enrollment if they do not change health plans.

DATES: Interim regulations are effective September 13, 1993. Comments must be received on or before November 12, 1993.

ADDRESSES: Written comments may be sent to Abby L. Block, Chief, Insurance Policy Division, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Leibach, (202) 607–0191.

SUPPLEMENTARY INFORMATION: Title III of Public Law 100–654, enacted November

14, 1988, added section 8906a to chapter 89 of title 5, U.S.C., providing coverage under the FEHB Program for certain temporary employees. On February 23, 1989, OPM published interim regulations implementing section 8906a; final regulations were published December 28, 1989.

In amending 5 CFR to conform with the provisions of section 8906a, OPM added § 890.109 (Exclusion of certain periods of eligibility when determining continued coverage during retirement.). This was done to be fair to temporary employees, who are precluded from participating in a retirement system and may elect not to enroll in the FEHB Program. If they subsequently receive a permanent appointment covered under a retirement system, enroll in the FEHB Program, and then retire while enrolled for less than 5 years immediately preceding retirement, they will not be penalized for their earlier decision not to enroll as a temporary employee. For purposes of continuing enrollment during retirement, therefore, such employees' first opportunity to enroll would be when they receive the permanent appointment which entitles them to participate in a retirement system and also entitles them to receive the Government contribution toward their health benefits premium payments.

In providing health benefits coverage for temporary employees, title III of Public Law 100–654 states the requirements that temporary employees must have completed 1 year of current continuous employment, excluding any break in service of 5 days or less, to be eligible to participate, and that these employees do not receive a Government contribution toward the cost of their enrollment. There is nothing else in the law to indicate that temporary employees are to be treated any differently from other employees who are eligible to participate in the FEHB Program. Other employees who are injured on the job and receive compensation from the Office of Workers' Compensation Programs (OWCP) are eligible to continue their FEHB coverage if they meet the statutory requirements. Since for the purposes of chapter 89 of title 5 U.S.C., compensationers are considered annuitants, the requirements for continuing FEHB coverage as a compensationer annuitant are the same as the requirements for continuing coverage as a retiree annuitant, i.e., that the annuitant was enrolled as an employee for the 5 years of service immediately before retirement or the full period of service since first becoming eligible to enroll, if less than five years. The decision not to consider eligibility under § 8906a of the FEHB law as temporary employees' first opportunity to enroll may have had the inadvertent consequence of appearing to deny these employees eligibility for continued health benefits while receiving compensation from OWCP. It was not our intent to do so.

We therefore are clarifying the regulations to state that enrollment in the FEHB Program for the five years of service immediately preceding the commencement of monthly compensation or for the full period of service since first becoming eligible to enroll entitles a temporary employee to continue enrollment while receiving compensation and, for the purpose of continuing health benefits as a compensationer, a temporary employee's first opportunity to enroll is when he or she first becomes eligible under 5 U.S.C. 8906a.

We are also addressing the issue of what happens when a temporary employee's pay is insufficient to make withholdings for FEHB coverage. Since temporary employees must pay both the employee's and the Government's shares of the health benefits premium, a change in salary and/or premiums could result in pay that is no longer sufficient to make withholdings. Annuitants in this situation have the option of changing health plans or arranging to make direct payment of their premiums to their retirement system. OPM does not have the statutory authority to permit temporary employees to make direct premium payments. We can, however, grant these employees an opportunity to change to a lower cost health plan. The FEHB regulations are therefore being amended to grant this opportunity to change health plans, to specify the effective date of such a change, and to provide for the termination of enrollment of temporary employees in this situation who do not, or cannot, choose a lower cost health plan.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.
Patricia W. Lattimore,
Acting Deputy Director.

Accordingly, OPM is amending its regulations under 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

2. Section 890.109 is revised to read as follows:

§ 890.109 Exclusion of certain periods of eligibility when determining continued coverage during retirement.

(a) Except as provided in paragraph (b) of this section, periods during which temporary employees are eligible under 5 U.S.C. 8906a to receive health benefits by enrolling and paying the full subscription charge, but are not eligible to participate in a retirement system, are not considered when determining eligibility for continued coverage during retirement. For the purpose of continuing coverage during retirement, an employee is considered to have enrolled at his or her first opportunity if the employee registered to be enrolled when he or she received a permanent appointment entitling him or her to participate in a retirement system and to receive the Government contribution toward the health benefits premium payments.

(b) A temporary employee eligible under 5 U.S.C. 8906a may continue enrollment as a compensationer if he or she has been enrolled or covered as a family member under another enrollment under this part for:

(1) The 5 years of service immediately preceding the commencement of his or her monthly compensation; or

(2) During all periods of service since his or her first opportunity to enroll, if less than 5 years. For the purpose of this paragraph, an employee is considered to have enrolled at his or her first opportunity if the employee registered to be enrolled when he or she first became eligible under 5 U.S.C. 8906a.

3. In § 890.301, paragraph (ee) is added to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(ee) *Salary of temporary employee insufficient to pay withholdings.* If the salary of a temporary employee eligible under 5 U.S.C. 8906a is not sufficient to pay the withholdings for the plan in which the employee is enrolled, the employing office shall notify the employee of the plans available at a cost not in excess of the employee's salary. The employee may register to be

enrolled in another plan whose cost is no greater than his or her salary within 31 days after receiving such notification from the employing office.

4. In § 890.304(a), paragraphs (1) through (6) are redesignated as (i) through (vi). The introductory text following the word "Employees" is redesignated as paragraph (1) and a new paragraph (2) is added to read as follows:

§ 890.304 Termination of enrollment.

(a) * * *

(2) If the pay of a temporary employee eligible under 5 U.S.C. 8906a is insufficient to pay the withholdings for the plan in which the employee is enrolled, and the employee does not, or cannot, elect a plan under § 890.301(ee) at a cost to him or her not in excess of the pay, the employing office must terminate the employee's enrollment effective as of the end of the last period for which withholding was made. Each temporary employee whose enrollment is so terminated is entitled to a 31-day extension of coverage for conversion.

5. In § 890.306, paragraph (o) is added to read as follows:

§ 890.306 Effective dates.

* * * * *

(o) *Temporary employee required to change enrollment.* The effective date of a temporary employee's change to a lower cost enrollment under § 890.301(ee) is immediately upon termination of his or her prior enrollment.

[FR Doc. 93–22339 Filed 9–10–93; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–34–AD; Amendment 39–8667; AD 93–16–10]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A320 series airplanes, that requires inspections to detect cracks in the upper stringers of the center wing box, and repair, if necessary. This amendment is prompted by a report that, during fatigue testing, the upper stringers of the center wing box sustained damage. The actions specified by this AD are intended to detect fatigue cracking in the upper stringer which may result in loss of structural integrity.

DATES: Effective October 13, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 13, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A320 series airplanes was published in the **Federal Register** on May 14, 1993 (58 FR 28525). That action proposed to require inspections to detect cracks in the upper stringers of the center wing box, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received.

All commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Currently, there are no Airbus Industrie Model A320 series airplanes on the U.S. Register that are affected by this rule. However, should an affected airplane be imported and placed on the U.S. Register in the future, it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $165 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–16–10 Airbus Industrie: Amendment 39–8667. Docket 93–NM–34–AD.

Applicability: Model A320 series airplanes having manufacturer's serial numbers (MSN) 002 through 021 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect fatigue cracking in the upper stringer which may result in loss of structural integrity, accomplish the following:

(a) Prior to the accumulation of 10,000 total landings after the effective date of this AD, perform a detailed visual inspection to detect cracks in the front and rear faces and at the crown fittings of the upper stringers of the center wing box between frame (FR)36 and FR42, in accordance with Airbus A320

Service Bulletin No. A320–57–1030, dated August 12, 1991.

Note 1: Particular attention should be paid to the strut fittings and reinforcing plate ends when performing this inspection.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 7,500 landings, in accordance with the service bulletin.

(2) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113. Following accomplishment of this repair, no further action is required by this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection shall be done in accordance with Airbus A320 Service Bulletin No. A320–57–1030, dated August 12, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 13, 1993.

Issued in Renton, Washington, on August 18, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–22250 Filed 9–10–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 92–NM–248–AD; Amdt. 39–8670; AD 93–16–12]

Airworthiness Directives; Beech Aircraft Corporation Model 400A and 400T Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech Aircraft Corporation Model 400A and 400T airplanes, that requires an inspection to verify the installation of all rivets in the area adjacent to the upper edge of the emergency exit door, and installation of any missing rivets. This amendment is prompted by reports that, during manufacturing, rivets may have been inadvertently omitted from the area adjacent to the upper edge of the emergency exit door. The actions specified by this AD are intended to prevent structural failure of the emergency door frame support, which could lead to decompression of the cabin.

DATES: Effective October 13, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 13, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Aerospace Engineer, Airframe Branch, ACE–120W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Beech Aircraft Corporation Model 400A and 400T airplanes was published in the **Federal Register** as a supplemental notice of proposed rulemaking (NPRM) on June 14, 1993 (58 FR 32877). That action proposed to require a one-time inspection to verify the installation of all rivets in the area adjacent to the upper edge of the emergency exit door, and installation of any missing rivets.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 59 Beech Aircraft Corporation Model 400A and 400T airplanes of the affected design in the worldwide fleet. The FAA estimates that 41 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,765, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-16-12 Beech Aircraft Corporation: Amendment 39-8670. Docket 92-NM-248-AD.

Applicability: Model 400A airplanes, serial numbers RK-1 through RK-41 inclusive; and Model 400T airplanes, serial numbers TT-3 through TT-20 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the emergency door frame support, which could lead to decompression of the cabin, accomplish the following:

(a) Within 200 hours time-in-service after the effective date of this AD, perform an inspection to verify the installation of all rivets in the area adjacent to the upper edge of the emergency exit door, in accordance with Beechcraft Service Bulletin 2482, dated December 1992.

(1) If no rivet is missing, no further action is required by this AD.

(2) If any rivet is missing, prior to further flight, install a rivet in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and installation shall be done in accordance with Beechcraft Service Bulletin 2482, dated December 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 13, 1993.

Issued in Renton Washington, on August 18, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-22251 Filed 9-10-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-NM-43-AD; Amendment 39-8668; AD 90-12-04 R1]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that currently requires repetitive functional testing and modification of the wing and engine cowl anti-ice control and indication system. When accomplished, the modification terminates the requirement for the repetitive functional tests. This amendment expands the applicability of the rule to add two airplanes. This amendment is prompted by a report that two additional airplanes may be subject to the same unsafe condition. The actions specified by this AD are intended to prevent undetected failure of the anti-ice system which could ultimately result in unacceptable ice build-up on the wings or engine inlets.

DATES: Effective October 13, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 13, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kathi Ishimaru, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2674; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 90-12-04, Amendment 39-6621 (55 FR 22328, June 1, 1990), which is applicable to certain Boeing Model 757 series airplanes, was published in the **Federal Register** on May 28, 1993 (58 FR 31003). The action proposed to expand the applicability of the existing rule to add two airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 207 Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 128 airplanes of U.S. registry will be affected by this AD. The requirements of this AD action will not add any new additional economic burden on affected U.S. operators. The costs associated with the currently required tests and modification entail 24 work hours per airplane, at an average labor rate of $55 per work hour. Required parts will cost approximately $691 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $257,408, or $2,011 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6621 (55 FR 22328, June 1, 1990), and by adding a new airworthiness directive (AD), amendment 39–8668, to read as follows:

90–12–04 R1 Boeing: Amendment 39–8668. Docket 93–NM–43–AD. Revises AD 90–12–04, Amendment 39–6621.

Applicability: Model 757 series airplanes, listed in Boeing Alert Service Bulletin 757–30A0013, Revision 6, dated March 25, 1993, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent undetected failure of the anti-ice system which could ultimately result in unacceptable ice build-up on the wings or engine inlets, accomplish the following:

(a) For airplanes listed in Boeing Alert Service Bulletin 757–30A0013, Revision 5, dated September 7, 1989: Accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Within the next 300 hours time-in-service after February 4, 1988 (the effective date of AD 88–01–08, Amendment 39–5827), perform a functional test of the wing and engine cowl anti-ice control and indication system, in accordance with Section III, Part I of Boeing Alert Service Bulletin 757–30A0013, Revision 5, dated September 7, 1989. Repeat this functional test thereafter at intervals not to exceed 300 hours time-in-service until the modification required by paragraph (a)(2) of this AD is accomplished.

Note 1: Paragraph (a)(1) of this AD restates the requirements of AD 88–01–08, Amendment 39–5827, paragraph A. As allowed by the phrase, "unless accomplished previously," if the requirements of AD 88–01–08 have been accomplished previously, paragraph (a)(1) of this AD does not require that the initial inspection be repeated.

(2) Within the next 3,000 hours time-in-service after July 9, 1990 (the effective date of AD 90–12–04, Amendment 39–6621), modify and test the wing and engine cowl anti-ice control and indication system in accordance with Section III, Parts II, III, IV, V, VI, and VII, as applicable, of Boeing Alert Service Bulletin 757–30A0013, Revision 5, dated September 7, 1989; or Section III, Parts II, III, IV, V, VI, VII, and VIII, as applicable, of Revision 6, dated March 25, 1993. Accomplishment of this modification constitutes terminating action for the repetitive testing requirement of paragraph (a)(1) of this AD.

Note 2: Paragraph (a)(2) of this AD restates the requirements of AD 90–12–04, Amendment 39–6621, paragraph B. As allowed by the phrase, "unless accomplished previously," if the requirements of AD 90–12–04 have been accomplished previously, paragraph (a)(2) of this AD does not require that the modification be repeated.

(b) For airplanes listed in Boeing Alert Service Bulletin 757–30A0013, Revision 6, dated March 25, 1993, that are not subject to paragraph (a) of this AD: Accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD.

(1) Within the next 300 hours time-in-service after the effective date of this AD, perform a functional test of the wing and engine cowl anti-ice control and indication system, in accordance with Section III, Part I, of Boeing Alert Service Bulletin 757–30A0013, Revision 6, dated March 25, 1993. Repeat this functional test thereafter at intervals not to exceed 300 hours time-in-service until the modification required by paragraph (b)(2) of this AD is accomplished.

(2) Within the next 3,000 hours time-in-service after the effective date of this AD, modify and test the wing and engine cowl anti-ice control and indication system in accordance with Section III, Parts II, III, IV, V, VI, VII, and VIII, as applicable, of Boeing Alert Service Bulletin 757–30A0013, Revision 6, dated March 25, 1993. Accomplishment of this modification constitutes terminating action for the repetitive testing requirement of paragraph (b)(1) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The tests and modifications shall be done in accordance with Boeing Alert Service Bulletin 757–30A0013, Revision 5, dated September 7, 1989, or Boeing Alert Service Bulletin 757–30A0013, Revision 6, dated March 25, 1993, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 13, 1993.

Issued in Renton, Washington, on August 18, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–22253 Filed 9–10–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–33–AD; Amendment 39–8669; AD 93–16–11]

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes, that requires modification of the warning horns for the forward and rear lavatory smoke detectors. This amendment is prompted by a report that, during a recent flight of a Model BAe 146 series airplane, the smoke warning horn for the forward lavatory smoke detector did not emit a sound loud enough for the cabin crew members to hear from the passenger cabin. The actions specified by this AD are intended to prevent a fire in the lavatory from not being discovered and extinguished promptly.

DATES: Effective October 13, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 13, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, Inc., Avro Division, 22070 Broderick Drive, Sterling, Virginia 20166. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113,

FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes was published in the **Federal Register** on May 12, 1993 (58 FR 27955). That action proposed to require modification of the warning horns for the forward and rear lavatory smoke detectors.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 49 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $105 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $11,882.50, or $242.50 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–16–11 British Aerospace: Amendment 39–8669. Docket 93–NM–33–AD.

Applicability: Model 146–100A, –200A, and –300A series airplanes; equipped with Hosiden Besson Limited "Cybertone" smoke warning horns; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a fire in the lavatory from not being discovered and extinguished promptly, accomplish the following:

(a) Within 5 months after the effective date of this AD, modify the smoke warning horns for the forward and aft lavatory smoke detectors in accordance with British Aerospace Modification Service Bulletin SB.26–32–36128A, dated April 30, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with British Aerospace Modification Service Bulletin SB.26–32–36128A, dated April 30, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, Inc., Avro Division, 22070 Broderick Drive, Sterling, Virginia 20166. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 13, 1993.

Issued in Renton, Washington, on August 18, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–22252 Filed 9–10–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 92–AEA–11]

Modification of VOR Federal Airway V–162; WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the description for VOR Federal Airway V–162 by extending the airway from Pennsylvania to Martinsburg, WV. Extending the airway will accommodate flights destined for the Washington-Dulles International Airport. This action will facilitate air traffic operations and reduce the controller workload.

EFFECTIVE DATE: 0901 u.t.c., November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On April 9, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify VOR Federal Airway V–162 from Pennsylvania to Martinsburg, WV (58 FR 18350).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Domestic

VOR Federal Airways are published in Paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The airway listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the description for Federal Airway V–162 by extending the airway from the intersection of Martinsburg, WV, 058° and Harrisburg, PA 191° radials to the Martinsburg, WV, Very High Frequency Omnidirectional Range/Tactical Air Navigation facility. This action will accommodate flights inbound to Washington-Dulles International Airport. Modifying this rule will facilitate air traffic operations and reduce the controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–162 [Revised]

From Martinsburg, WV; INT Martinsburg 058° and Harrisburg, PA, 191° radials; Harrisburg; INT Harrisburg 092° and East Texas, PA, 251° radials; East Texas; Allentown, PA; to Huguenot, NY.

* * * * *

Issued in Washington, DC, on September 2, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–22281 Filed 9–10–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–AEA–1]

Alteration of VOR Federal Airway V–312; NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the description for VOR Federal Airway V–312 by removing an unused segment of that airway at the northern end in New Jersey. This action will reduce chart clutter.

EFFECTIVE DATE: 0901 u.t.c., November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On May 15, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description for V–312 by removing a segment at the northern end of that airway located in New Jersey (57 FR 20801).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 in effect as of September 16, 1993 (58 FR 36298; July 6, 1993). The Airway listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the description for Federal Airway V–312 located in New Jersey. Altering the airway by removing an unused segment in the northern end will reduce chart clutter.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V-312 [Revised]

From INT Andrews, MD, 060° and Baltimore, MD, 165° radials, via INT Andrews 060° and Woodstown, NJ, 230° radials; Woodstown; INT Woodstown 065° and Coyle, NJ, 264° radials; Coyle; INT Coyle 090° and Kennedy, NY, 154° radials. The airspace within R-5002D, the airspace below 2,000 feet MSL outside the United States, and the airspace above 8,000 feet MSL between Woodstown and Coyle is excluded.

* * * * *

Issued in Washington, DC, on September 2, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-22280 Filed 9-10-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 47

[T.D. ATF-349]

Importation of Arms, Ammunition and Implements of War [No. 93-01]

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule (Treasury Decision).

SUMMARY: On October 1, 1992, the Department of State recommended that the Bureau of Alcohol, Tobacco and Firearms (ATF) formally remove Estonia, Latvia and Lithuania from the list in 27 CFR 47.52(a), of countries from which the import of defense articles into the United States is proscribed.

EFFECTIVE DATE: September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Pearl E. Baylor, Specialist, Firearms and Explosives Imports Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202) 927-8320.

SUPPLEMENTARY INFORMATION: The Arms Export Control Act of 1976, 22 U.S.C. 2778, gives the President of the United States the authority to control the import and export of defense articles and defense services.

Executive Order 11958 of January 18, 1977, as amended (42 FR 4311 (1977)), delegated authority to control exports of defense articles and defense services to the Secretary of State.

The Executive Order also delegated to the Secretary of the Treasury the authority to control the import of such articles and services. However, as stated in 27 CFR 47.55, ATF is guided by the views of the Departments of State and Defense on matters affecting world peace and the external security and foreign policy of the United States. After consulting these Departments, ATF is revising the provisions of 27 CFR part 47 to conform to the recommendation of the State Department.

On October 1, 1992, the Department of State recommended that ATF formally remove Estonia, Latvia and Lithuania from the list in 27 CFR part 47.52(a) of countries from which the import of defense articles into the United States is proscribed.

Executive Order 12291

Because the amendment to 27 CFR part 47 involves a foreign affairs function, Executive Order 12291 does not apply.

Administrative Procedure Act

Under 27 CFR 47.54, the amendment made to 27 CFR part 47 is excluded from the rulemaking provisions of 5 U.S.C. 553 because this regulation involves a foreign affairs function of the United States. Accordingly, it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitation in 5 U.S.C. 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no reporting or recordkeeping requirements.

Drafting Information

The principal author of this Treasury decision is Pearl E. Baylor, Specialist, Firearms and Explosives Imports Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 47

Administrative practice and procedure, Arms control, Arms and munitions, Authority delegations, Chemicals, Customs duties and inspection, Imports, Penalties, Reporting requirements, Scientific equipment, Seizures and forfeitures.

Authority and Issuance

27 CFR Part 47—Importation of Arms, Ammunition and Implements of War, is amended as follows:

PART 47—[AMENDED]

Paragraph 1. The authority citation for 27 CFR Part 47 continues to read as follows:

Authority: 22 U.S.C. 2778.

Par. 2. Section 47.52 is amended by revising paragraph (a) to read as follows:

§ 47.52 Import restrictions applicable to certain countries.

(a) It is the policy of the United States to deny licenses and other approvals with respect to defense articles and defense services originating in certain countries or areas. This policy also applies to imports from these countries or areas. This policy applies to Albania, Bulgaria, Cuba, Kampuchea, North Korea, Outer Mongolia, Rumania, Vietnam and the States that comprise the former Soviet Union (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan). This policy applies to countries or areas with respect to which the United States maintains an arms embargo. It also applies when an import would not be in furtherance of world peace and the security and foreign policy of the United States.

* * * * *

Signed: August 3, 1993.

Stephen E. Higgins,

Director.

Approved: August 16, 1993.

Ronald K. Noble,

Assistant Secretary (Enforcement).

[FR Doc. 93-22216 Filed 9-10-93; 8:45 am]

BILLING CODE 4810-31-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA-12-16-5759; FRL-4701-3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking (NFR).

SUMMARY: EPA is finalizing the approval of revisions to the California State

Implementation Plan (SIP) proposed in the **Federal Register** on September 17, 1992. The revisions concern a rule from the San Diego County Air Pollution Control District (SDCAPCD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule provides general definitions pertaining to the storage and handling of organic compounds. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on October 13, 1993.

ADDRESSEES: Copies of the rule revisions and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section II (Mail Code: A–5–3), Air and Toxics Division U.S. Environmental Protection Agency, Region IX,75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, John Kurtzweg ANR–443,401 M Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation, 2020 L Street, Sacramento, CA 95814.

San Diego County Air Pollution Control District,County Administration Center, 1600 Pacific Highway,Room 335, San Diego CA 9210.

FOR FURTHER INFORMATION CONTACT: Chris Stamos, Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1187.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 1992 in 57 FR 42911, EPA proposed to approve the following rule into the California SIP: SDCAPCD Rule 61.0, Definitions Pertaining to the Storage and Handling of Organic Compounds. Rule 61.0 was adopted by SDCAPCD on November 16, 1990 and was submitted by CARB to EPA on April 5, 1991. This rule was submitted in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas to fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for the above rule and nonattainment area is provided in the NPR cited above.

EPA has evaluated the above rule for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPR cited above. EPA has found that the rule meets the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in 57 FR 42911 and in technical support documents (TSDs) available at EPA's Region IX office (Technical Support Document for EPA's Notice of Proposed Rulemaking for the California SIP, SDCAPCD, Rule 61.0 dated July 22, 1992).

Response to Comments

A 30-day public comment period was provided in 57 FR 42911. EPA received no comments on Rule 61.0.

EPA Action

EPA is finalizing action to approve the above rules for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the CAA. This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of VOCs in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 12, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: August 18, 1993.

John C. Wise,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, part 52, is amended to read as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c) (183)(i)(A)(6) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(183) * * *

(i) * * *

(A) * * *

(*6*) Amended Rule 61.0, adopted on September 16, 1990.

* * * * *

[FR Doc. 93–22219 Filed 9–10–93; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 921185–3021; I.D. 090793A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Prohibition of fishing; request for comments.

SUMMARY: NMFS is prohibiting directed fishing for groundfish in part of the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent overfishing Pacific ocean perch in the BS.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), September 7, 1993, through 12 midnight, A.l.t., December 31, 1993. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 28, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management specialist, Fisheries Management Division, Alaska Region, NMFS, 907 586–7228.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel), or be delivered to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone (EEZ) is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

Overfishing is defined at § 602.11(c)(1) to be a level or rate of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce maximum sustainable yield on a continuing basis. The 1993 overfishing level for Pacific ocean perch in the BS is established by the Scientific and Statistical Committee of the Council as 3,750 metric tons (mt). The directed fishery for Pacific ocean perch in the BS was closed on April 26, 1993 (58 FR 25952, April 29, 1993). Retention of Pacific ocean perch in the BS was prohibited effective June 7, 1993 (58 FR 32615, June 11, 1993). Since that date, 241 mt of Pacific ocean perch has been taken, including 220 mt since August 15, 1993. The total harvest as of September 1, 1993 is estimated as 3,815 mt, which exceeds the established overfishing level.

NMFS has determined, in accordance with § 675.20(e), that an inseason adjustment is necessary to prevent overfishing of Pacific ocean perch, and that closing that closing all directed fisheries for groundfish in part of the BS is the least restrictive measure that will prevent overfishing of Pacific ocean perch. Therefore, NMFS is prohibiting directed fishing for groundfish in that portion of the BS that is bounded by straight lines connecting the following coordinates in the order listed:

Latitude	Longitude
59°25′ N	179°20′ W
58°45′ N	177°35′ W
58°45′ N	174°30′ W
57°00′ N	173°00′ W
56°24′ N	171°00′ W
55°00′ N	171°00′ W
55°00′ N	180°00′ W

then continuing directly north to the boundary of the EEZ and following the boundary of the EEZ to 59°25′ N latitude, 179°20′ W longitude.

This closure is effective from 12 noon, A.l.t., September 7, 1993, through 12 midnight, A.l.t., December 31, 1993.

Classification

This action is taken under 50 CFR 675.20 and is in compliance with E.O. 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this notice is impracticable and contrary to the public interest. Without this prohibition of fishing, Pacific ocean perch in the BS will be overfished, jeopardizing the long-term capacity of that stock. Under § 675.20(b)(2), interested persons are invited to submit written comments on this action to the above address until September 28, 1993.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq*

Dated: September 7, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–22223 Filed 9–7–93; 5:01 p.m.]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 175
Monday, September 13, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 93–103–1]

Change in Disease Status of Belgium Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to declare Belgium free of rinderpest and foot-and-mouth disease (FMD). There have been no outbreaks of FMD in Belgium since 1976, and we have determined that rinderpest has not existed there since 1920. We are also proposing to add Belgium to a list of countries that, although declared free of rinderpest and FMD, are subject to special restrictions on the importation of their meat and other animal products into the United States. This proposed revision would remove the prohibition on the importation into the United States, from Belgium, of ruminants and fresh, chilled, and frozen meat from ruminants, and would relieve restrictions on the importation, from Belgium, of milk and milk products from ruminants.

Belgium is not declared to be free of hog cholera and swine vesicular disease. Therefore, even if this proposal is adopted, the importation from Belgium of swine and fresh, chilled, and frozen meat from swine would continue to be restricted because of these diseases. We are also proposing to add Belgium to the list of countries from which the importation into the United States of llamas and alpacas is restricted.

DATES: Consideration will be given only to comments received on or before October 13, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–103–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead (202–690–2817) to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Marolo Garcia, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, USDA, room 757, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7830.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as "the regulations") govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, African swine fever, hog cholera, and swine vesicular disease (SVD). These are dangerous and destructive communicable diseases of ruminants and swine.

Section 94.1(a)(1) of the regulations provides that rinderpest or FMD exists in all countries of the world except those listed in § 94.1(a)(2), which are declared to be free of both diseases. We are proposing to add Belgium to that list.

We will consider declaring a country to be free of rinderpest and FMD if there have been no reported cases of the diseases in that country for at least the previous 1-year period and no vaccinations for rinderpest or FMD have been administered to swine or ruminants in that country for at least the previous 1-year period. In the case of Belgium, rinderpest has not occurred since 1920, there have been no outbreaks of FMD since 1976, and vaccinations for FMD were discontinued in 1991.

Belgium has applied to the U.S. Department of Agriculture (USDA) to be recognized as free of rinderpest and FMD. The Animal and Plant Health Inspection Service (APHIS) has reviewed the documentation submitted by the government of Belgium in support of its request. In addition, a team of APHIS officials recently conducted an on-site evaluation of the animal health program in Belgium in regard to the FMD situation in that country. The evaluation consisted of a review of the capability of Belgium's veterinary services, laboratory and diagnostic procedures, vaccination practices, and the administration of laws and regulations to ensure against the introduction of FMD into Belgium through the importation of animals, meat, animal products, and garbage. The APHIS officials conducting the on-site evaluation concluded that Belgium is free of FMD. Details concerning the on-site evaluation are available upon written request from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Based on the information discussed above, we believe that Belgium qualifies for listing in § 94.1(a)(2) of the regulations as a country declared free of rinderpest and FMD. This action would remove the prohibition on the importation, from Belgium, of ruminants and fresh, chilled, and frozen meat from ruminants, and would relieve restrictions on the importation, from Belgium, of milk and milk products from ruminants. Importations, from Belgium, of swine and fresh, chilled, or frozen meat from swine would continue to be restricted under 9 CFR part 94 because Belgium has not been declared free of hog cholera and SVD.

Special Restrictions

We also propose to add Belgium to the list in § 94.11(a) of countries declared to be free of rinderpest and FMD that are subject to special restrictions on the importation of their meat and other animal products into the United States. The countries listed in § 94.11(a) are subject to these special restrictions because they:

1. Supplement their national meat supply by importing fresh, chilled, or frozen meat of ruminants or swine from countries that are designated in § 94.1(a) as infected with rinderpest or FMD;
2. Have a common land border with countries designated as infected with rinderpest or FMD; or
3. Import ruminants or swine from countries designated as infected with

rinderpest or FMD under conditions less restrictive than would be acceptable for importation into the United States.

Belgium supplements its national meat supply by the importation of fresh, chilled, and frozen meat of ruminants and swine from countries designated in § 94.1(a)(1) as countries in which rinderpest or FMD exists. As a result, even though Belgium appears to qualify for designation as a country free of rinderpest and FMD, the meat and other animal products produced in Belgium may be commingled with the fresh, chilled, or frozen meat of animals from a country in which rinderpest and FMD exists, resulting in an undue risk of introducing rinderpest or FMD into the United States. Additionally, Belgium has common land borders with Germany and Luxembourg, which are designated in § 94.1(a)(1) as countries in which rinderpest or FMD exists.

Therefore, we are proposing that meat and other animal products of ruminants and swine, and the ship stores, airplane meals, and baggage containing these meat or animal products imported into the United States from Belgium be subject to the restrictions specified in § 94.11 of the regulations, in addition to other applicable requirements of title 9, chapter III. The special restrictions placed on meat and meat products of ruminants and swine in § 94.11 generally require that the meat be:

1. Prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and

2. Accompanied by an additional certificate, issued by an animal health official of the national government of the country declared free of the disease, assuring that the meat and meat products have not been commingled with or exposed to meat or other meat products originating in, imported from, or transported through a country infected with rinderpest or FMD, and are otherwise handled in accordance with the requirements of § 94.11.

We also propose to add Belgium to the list in § 94.1(d)(1) of countries in which rinderpest or FMD has been known to exist and that were declared free of rinderpest and FMD on or after September 28, 1990. All countries in which rinderpest or FMD has been known to exist and that were declared free of rinderpest and FMD on or after September 28, 1990, must be added to this list. Adding Belgium to this list would restrict the importation or entry of llamas and alpacas from Belgium into the United States, unless in accordance with 9 CFR 92.435.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This proposed rule, if adopted, would add Belgium to the list in part 94 of countries declared to be free of rinderpest and FMD. This action would remove the prohibition on the importation into the United States, from Belgium, of ruminants and fresh, chilled, and frozen meat from ruminants, and would relieve restrictions on the importation, from Belgium, of milk and milk products from ruminants. This action would not relieve restrictions on the importation of live swine and fresh, chilled, and frozen meat of swine from Belgium because Belgium is still considered to be affected with hog cholera and SVD.

Based on available information, the Department does not anticipate a major increase in exports of ruminants and fresh, chilled, or frozen meat of ruminants from Belgium into the United States as a result of this proposed rule.

The value of total U.S. imports of cattle in 1991 was $951.6 million, and the value of total U.S. imports of sheep in 1991 was about $1.6 million. The United States did not import any cattle or sheep from Belgium during 1991. In fact, no cattle or sheep were imported into the United States from any country in Western Europe during 1991 (USDA, Economic Research Service [ERS], "Foreign Agricultural Trade of the United States: Calendar Year 1991 Supplement," 1992). Western Europe is not a source of ruminants for the United States; any increase in the import of ruminants from Belgium as a result of this rule would have a negligible impact on existing trade patterns.

Currently, due to APHIS restrictions, the United States does not import uncooked meat or meat products from Belgium. In 1991, total meat production in the United States (excluding pork) was just under 10.7 million metric tons, while total meat production in Belgium (excluding pork) was 385,000 metric tons, less than four percent of United States production. It is improbable that Belgium would begin to export any significant portion of its meat products to the United States as a result of this rule. Therefore, we estimate that the effect of this rule on domestic meat prices or supplies would be insignificant.

Similarly, we do not anticipate a major increase in exports of milk and milk products from Belgium into the United States as a result of this proposed rule. Importation into the United States of all dairy products, except for casein and other caseinates, is restricted by quotas. Furthermore, while the United States imports more than half of the casein produced in the world and the regulations allow casein and other caseinates to be imported from countries where rinderpest or FMD exists (if the importer has applied for and obtained written permission from the Administrator), Belgium does not currently export casein to the United States. Consequently, we believe that declaring Belgium free of rinderpest and FMD will have no significant effect on the amount of casein imported into the United States.

The effect of declaring Belgium free of rinderpest and FMD on the trade in bovine embryos and semen would also be minimal. The United States is a net exporter of bovine embryos and semen; in 1991, the value of bovine embryo and semen exports totalled to $46.5 million and 10.2 million, respectively, while imports amounted to only $2.7 million and $89,000, respectively. Though similar trade data was not available for Belgium, we believe that due to the relatively small size of the Belgium market, any increase in the export of bovine embryos and semen from Belgium would have a minimal impact on the United States market.

Five United States importers, all of whom are considered small entities by Small Business Administration standards (they have fewer than 100 employees), have expressed interest in importing bovine embryos and semen from Belgium. APHIS expects the value of the anticipated imports to be minimal in comparison to the domestic production of these entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has

determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted and approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would be revised to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. Section 94.1, paragraph (a)(2), would be amended by adding "Belgium," immediately after "Barbados,".

3. Section 94.1, paragraph (d)(1), would be amended by adding "Belgium," immediately before "Chile,".

§ 94.11 [Amended]

4. In § 94.11, paragraph (a), the first sentence would be amended by adding "Belgium," immediately after "The Bahamas,".

Done in Washington, DC, this 7th day of September 1993.

Patricia A. Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–22300 Filed 9–10–93; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Part 620

RIN 3052–AB37

Disclosure to Shareholders

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), proposes to amend the regulation regarding the association annual meeting information statement and the process for nominating candidates for association director positions. The FCA Board is proposing to amend the regulation in order to clarify disclosure requirements for floor nominees, including the procedure to be followed when annual meetings are held in more than one session, or when shareholders vote by mail. The proposed regulation permits nominations from the floor at any session of the annual meeting if mail balloting is utilized. If the director election is to be conducted by mail balloting, the proposed regulation permits persons nominated from the floor to provide the required written disclosures for mailing with the ballot.

DATES: Comments must be submitted on or before October 13, 1993.

ADDRESSES: Comments should be mailed or delivered (in triplicate) to Patricia W. DiMuzio, Division Director, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090. Copies of all comments will be available for examination by interested parties in the Regulation Development Division, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Eric Howard, Policy Analyst, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, or

James M. Morris, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: Section 620.21 describes the required contents of the association annual meeting information statement and identifies the information that candidates for the director positions must disclose. Section 620.21(d)(3) requires that the information statement state that nominations from the floor must be made at the first sectional meeting if an association's annual meeting is held in consecutive sectional meetings. Sections 620.21 (d)(5) and (d)(6) require that persons nominated from the floor provide certain written disclosure at the meeting(s) at which the nominations are considered.

The FCA Board is proposing to amend the regulation in order to clarify the process and the disclosure requirements for floor nominees, including the procedure to be followed when annual meetings are held in more than one session or when shareholders vote by mail. The FCA believes that changing the regulation to allow nominations at any session of an association annual meeting when mail balloting is utilized will provide more opportunity for members to nominate candidates from the floor without any significant inconvenience to management or other nominees. The proposed regulation would require that a floor nominee provide, prior to the balloting, the written disclosure that would be required if the nominee were an incumbent director. If shareholders vote by mail ballot, the proposed regulation would permit persons nominated from the floor to provide this written disclosure with the ballot mailing to members. Section 620.21(d)(1) would be revised to eliminate ambiguity and to make it clear that any nominee from the floor must meet the same eligibility criteria as any other nominee.

Comments are sought on § 620.21 (d)(1), (d)(3), (d)(5), and (d)(6).

List of Subjects in 12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, part 620 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 620—DISCLOSURE TO SHAREHOLDERS

1. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act; 12 U.S.C. 2252, 2254, 2279aa–11; sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart D—Association Annual Meeting Information Statement

2. Section 620.21 is amended by revising the heading and paragraphs (d)(1), (d)(3), (d)(5), and (d)(6) to read as follows:

§ 620.21 Contents of the information statement and other information to be furnished in connection with the annual meeting.

(d) * * *

(1) If directors are nominated by region, describe the regions and state the number of voting shareholders entitled to vote in each region. Any nominee from the floor must be an eligible candidate for the director position for which the person has been nominated.

* * * * *

(3) If the annual meeting is to be held in sessions and mail balloting will be conducted upon the conclusion of all sessions, state that nominations from the floor may be made at any session. If shareholders will not vote by mail ballot upon conclusion of all sessions, state that nominations from the floor must be made at the first session.

* * * * *

(5) For each nominee who is not an incumbent director, except a nominee from the floor, provide the information referred to in § 620.5 (j) and (k) and § 620.21(d)(4). If shareholders will vote by mail ballot upon conclusion of all sessions, each floor nominee must provide the information referred to in § 620.5 (j) and (k) and § 620.21(d)(4) in writing to the association within 10 days of the nomination. The association shall ensure that the information is distributed to the voting shareholders with the mailing of the ballots for the election of directors in the same format as the comparable information contained in the association's annual meeting information statement. If shareholders will not vote by mail ballot, each floor nominee must provide the information referred to in § 620.5 (j) and (k) and § 620.21(d)(4) in writing at the first session at which voting is held.

(6) No person may be a nominee for director who does not make the disclosures required by this subpart.

* * * * *

Dated: September 8, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–22333 Filed 9–10–93; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–133–AD]

Airworthiness Directives; Airbus Industrie Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300, A310, and A300–600 series airplanes. This proposal would require inspections to detect missing fasteners, cracked fitting angles, and elongated fastener holes in certain frames, and correction of discrepancies. This proposal is prompted by discrepancies found at the fitting angles on the frame at which a certain electronic rack is attached. The actions specified by the proposed AD are intended to prevent damage propagation that could lead to failure of the rack-to-structure attachment points, which could subsequently result in loss of airplane systems, structural damage, and possible electrical arcing.

DATES: Comments must be received by November 8, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–133–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Pont Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–133–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–133–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Airbus Model A300, A310, and A300–600 series airplanes. The DGAC advises that, during routine maintenance, various discrepancies were found on three airplanes at the fitting angles on frame 16 at the lower attachments of electric rack 101VU. These discrepancies included missing fasteners, elongated fastener holes, and cracks. The cause of these discrepancies is unknown at this time. Discrepancies such as those found in the subject area, if not detected and corrected in a timely manner, could lead to failure of the attachment points to secure the electric rack to the adjacent structure. This condition could result in loss of airplane systems, structural damage, and possible electrical arcing.

Airbus Industrie has issued All Operator Telex (AOT) 53–03, Revision 3, dated December 23, 1992, that

describes procedures for a conducting detailed visual inspections of the right- and left-hand lower attachments of electric rack 101VU, including the crossbeams at frames 15A and 16, to detect any missing fasteners, cracked fitting angles, or elongated fastener holes. This AOT also describes procedures and recommends a schedule for replacing any discrepant parts identified during the inspection. The DGAC classified this AOT (and its previous versions) as mandatory and issued French Airworthiness Directive 92–253–138(B), dated November 25, 1992, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive detailed visual inspections of the right- and left-hand lower attachments of electric rack 101VU, including the crossbeams at frames 15A and 16, to detect any missing fasteners, cracked fitting angles, or elongated fastener holes. Any discrepancies detected, would be required to be corrected. The actions would be required to be accomplished in accordance with the AOT described previously.

This is considered to be interim action. Airbus Industrie currently is developing a modification that is intended to eliminate the type of damage problems that have occurred in the subject area. When this modification is developed, approved, and available, the FAA may consider further rulemaking.

The FAA estimates that 78 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,290, or $55 per airplane, per inspection cycle. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 93–NM–133–AD.

Applicability: All Model A300, A310, and A300–600 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the rack-to-structure attachment points, which could subsequently result in loss of airplane systems, structural damage, and possible electrical arcing, accomplish the following:

(a) Prior to the accumulation of 8,000 total flight cycles, or within 50 flight cycles after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 850 flight cycles; perform a detailed visual inspection of the right- and left-hand lower attachments of electronic rack 101VU, including the crossbeams at frames 15A and 16, to detect missing fasteners, cracked fitting angles, or elongated fastener holes, in accordance with Airbus Industrie All Operator Telex (AOT) 53–03, Revision 3, dated December 23, 1992.

(b) If any missing fasteners, cracked fitting angles, or elongated fastener holes are found during any inspection required by paragraph (a) of this AD, prior to further flight, correct the discrepancy in accordance with the procedure specified in paragraph A., B., C., or D., as applicable, of Airbus AOT 53–03, Revision 3, dated December 23, 1992. After replacement of any discrepant part, continue to inspect in accordance with paragraph (a) of this AD at intervals not to exceed 850 flight cycles.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 7, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–22258 Filed 9–10–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–NM–136–AD]

Airworthiness Directives; Beech Model 400A and 400T Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Beech Model 400A and 400T airplanes. This proposal would require inspection of the rivets in the escape hatch substructure to verify that the proper rivets are installed, and replacement of the incorrect rivets with new rivets or fasteners. This proposal is prompted by the discovery that, during production, incorrect rivets may have been installed in the escape hatch substructure. The actions specified by the proposed AD are intended to prevent reduced structural capability of the airframe.

DATES: Comments must be received by November 8, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–136–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Aerospace Engineer, Propulsion Branch, ACE–140W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–136–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention Rules Docket No. 93–NM–136–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The manufacturer has discovered that, during production of certain Beech Model 400A and 400T airplanes, eight incorrect rivets, part number (P/N) MS20470AD5, may have been installed in the escape hatch substructure of these airplanes. Structural analysis of the incorrect rivets indicates that their use may impair the adjacent aircraft structure from sustaining the required ultimate loads. This condition, if not corrected, could result in reduced structural capability of the airframe. Such reduced structural capability may lead to fatigue of the substructure, structural failure of the airframe, and subsequent decompression of the airplane.

The FAA has reviewed and approved Beechcraft Service Bulletin 2509, dated July 1993, that describes procedures for a one-time inspection of the rivets in the escape hatch substructure to verify that the proper rivets are installed, and replacement of the incorrect rivets with new rivets or fasteners.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time inspection of the rivets in the escape hatch substructure to verify that the proper fasteners are installed, and replacement of the incorrect rivets with new rivets or fasteners. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 94 Beech Model 400A and 400T airplanes of the affected design in the worldwide fleet. The FAA estimates that 78 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $400 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $65,520, or $840 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Beech Aircraft Corporation: Docket 93–NM–136–AD.

Applicability: Model 400A airplanes having serial numbers RK–1 through RK–57 inclusive, RK–59, RK–60, and RK–62 through RK–66 inclusive; and Model 400T airplanes having serial numbers TT–02 through TT–30 inclusive, and TT–32; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural capability of the airframe, accomplish the following:

(a) Within 200 hours time-in-service after the effective date of this AD, inspect the rivets in the escape hatch substructure to verify that the proper rivets are installed in accordance with Beechcraft Service Bulletin 2509, dated July 1993.

(1) If the rivet has part number (P/N) MS20470E6, no further action is required by this AD.

(2) If the rivet does not have P/N MS20470E6, prior to further flight, replace the rivet with a new Cherry Max rivet or a HI–LOK fastener, in accordance with Beechcraft Service Bulletin 2509, dated July 1993.

(b) As of the effective date of this AD, no person shall install rivet, P/N MS20470AD5, in the location shown in Figure 1 of Beechcraft Service Bulletin 2509, dated July 1993, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 7, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–22259 Filed 9–10–93; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN12–1–6557; FRL–4728–3]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On May 29, 1992, the Minnesota Pollution Control Agency (MPCA) submitted proposed revisions to its State Implementation Plan for sulfur dioxide (SO_2). In the proposed revisions, MPCA is attempting to demonstrate attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for SO_2 as required by sections 110 and 172 of the Clean Air Act. The submittal consists of Administrative Orders representing five facilities in Air Quality Control Region 131. This region contains the Minneapolis/St. Paul Metropolitan area. The facilities are FMC Corporation and U.S. Navy; Federal Hoffman, Incorporated; GAF Building Materials Corporation; Minneapolis Energy Center, Incorporated; and Northern States Power Company. In today's action, USEPA is proposing to disapprove the State's submittal based on enforceability and attainment demonstration concerns. Assuming no other substantive, adverse public comments are received, the USEPA will proceed with a final approval of the submittal when the MPCA addresses the concerns detailed in this document and submits the Administrative Orders to USEPA before the end of the 30-day comment period. If the concerns are not adequately addressed before that time, USEPA will finalize the disapproval.

DATES: Comments on this requested revision and on the proposed USEPA action must be received by Ocotber 13, 1993.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Randy Robinson at (312) 353–6713, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randy Robinson, Regulation Development Section, Air Enforcement Branch, U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6713.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On May 29, 1992, the Minnesota Pollution Control Agency (MPCA) submitted to the United States Environmental Protection Agency (USEPA) revisions to the State Implementation Plan (SIP) for sulfur dioxide (SO_2) in Air Quality Control Region (AQCR) 131. The seven county metropolitan area (AQCR 131) has been designated, by the USEPA, as nonattainment for SO_2 (40 CFR 81.324). The submittal is intended to demonstrate attainment of the National Ambient Air Quality Standards (NAAQS) for SO_2 in AQCR 131, excluding an area surrounding the SO_2 emission sources at Ashland Petroleum Company, and an area surrounding the SO_2 emission sources at Koch Refining Company, Koch's Sulfuric Acid Unit Plant, Northern States Power Company-Inver Hills, and Continental Nitrogen and Resources Corporation (hereinafter "Ashland and Pine Bend" areas). These areas will be addressed in separate **Federal Register** (FR) notices. The demonstration consists of Administrative Orders, including modeling analyses, for the following facilities: Federal-Hoffman, Incorporated, Minneapolis Energy Center, Inc., Northern States Power Company, FMC Corporation and U.S. Navy, and GAF Building Materials Corporation.

Background

The USEPA published the designation of AQCR 131 as a primary nonattainment area for SO_2 on March 3, 1978 (43 FR 8962). The MPCA submitted a final SO_2 plan on August 4, 1980. USEPA published its final rule approving and promulgating the Minnesota Part D SIP for SO_2 for AQCR 131 on April 8, 1981 (46 FR 20997). The MPCA submitted a request for the redesignation to attainment of AQCR 131, except for the Pine Bend area of Dakota County, on September 2, 1983. The redesignation request was based in part on permits. Following the MPCA's request for redesignation to attainment, the USEPA requested revisions be made to the permits. Also, the Stack Height Rule, promulgated by USEPA on July 8, 1985, required further State analysis of

stack height credit and dispersion techniques.

On September 10, 1987, the MPCA submitted revisions to the operating permits for five sources and requested redesignation to SO_2 attainment for all of AQCR 131 except the Pine Bend and Ashland areas. The revised permits were for GAF Building Materials Corporation, Minneapolis Energy Center, Inc., Northern States Power Co., FMC Corporation and U.S. Navy, and Federal Hoffman, Inc. A notice of final rulemaking was never published regarding the redesignation request.

The current SO_2 SIP revision, although a continuation of the 1987 submittal, is a complete submittal and includes computer modeling and federally enforceable, permanent control measures in the form of rules and Administrative Orders. Instead of the permits submitted previously, the MPCA is now submitting non-expiring Administrative Orders that purport to satisfy all of the Clean Air Act requirements for nonattainment areas.

Attainment Demonstration Review

This section will provide a general description of the State submittal followed by USEPA's review of the attainment demonstration, including modeling specifics of the Administrative Orders for each of the five SO_2 sources noted above.

Description of State Emission Inventory

The emission limits in the submittal are included in the Administrative Orders issued by the State. The orders clearly identify the limits which apply to each source. In four of the orders, specific emission limits and operating capacities apply to each emission unit. However, for the Minneapolis Energy Center, a "total facility emission limit" has been applied to account for various operating scenarios. The individual emission limits are expressed in terms of pounds of sulfur dioxide per million British Thermal Units (lbs of SO_2/mmBTU), while the operating limits are expressed in mmBTU's per hour. The facility wide limit for Minneapolis Energy Center is expressed in pounds of sulfur dioxide per hour.

Most of the sources accounted for in the emission inventory are boilers. Two facilities also included emergency generators, and one facility included fluid heaters. All of the sources in the emission inventory were modeled as point sources. Any sources not explicitly modeled were included in a background concentration which was added to the predicted model concentration.

Description of State General Modeling Methodology

The dispersion modeling conducted for the five Administrative Orders in this submittal was performed using the Industrial Source Complex Short-term (ISCST) model (version 90346). The analysis generally followed USEPA guidelines as noted in the "Guideline on Air Quality Models (Revised)", including Supplement A (1987). The modeling incorporated five years of surface meteorological data from Minneapolis/St. Paul and associated upper air data from St. Cloud, Minnesota. The modeling was performed using the regulatory default option and urban dispersion coefficients. The SO_2 impacts were calculated at receptors with 100 meter resolution at identified hotspots.

The State is relying on the long-term impacts calculated in the original 1987 submittal to demonstrate attainment with the annual SO_2 standard. That demonstration used the Climatologic Dispersion Model (CDM 2.0), which is the preferred model for predicting long-term concentrations in urban, multiple source areas.

The MPCA air dispersion modeling is adequate based on current stack height regulations. Stack height credit for the purpose of establishing an emission limitation is restricted to the lesser of actual or good engineering practice (GEP) formula height (40 CFR 51.100(hh)(2)(v)). In the August 4, 1989, **Federal Register** notice (54 FR 32073), USEPA approved Minnesota's determination that no emission limitations, with the exception of Koch Refining and Ashland Petroleum, needed to be revised at that time. Two sources, Northern States Power-High Bridge and Northern States Power-Black Dog, were not included in the notice because they were affected by the January 22, 1988, U.S. D.C. Court of Appeals stack height regulations remand. This remand resulted from a challenge to the stack height regulations presented in *NRDC* v. *Thomas*, 838 F.2d 1224 (DC Cir. 1988). The remand required USEPA to reconsider three provisions. These are:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements.
2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks; and
3. Grandfathering pre-1979 use of the refined H+1.5L formula.

The sources, NSP-Black Dog and NSP-High Bridge, are not included in the Administrative Orders, but are included in the modeling. If USEPA's response to the remand modifies the July 8, 1985, regulations, the USEPA will notify the State that its rules must be changed to comport with the modified requirements. This may result in the State being required to revise its Administrative Orders to account for revised emission limitations or it may affect future actions taken by the MPCA and source owners or operators.

Section 110(a)(2) of the Clean Air Act requires that the Minnesota SIP prohibit emissions which would prevent attainment or maintenance of the NAAQS in any other State. The Wisconsin border is approximately 40 kilometers (km) to the east of the sources included in this attainment demonstration. For each source which was explicitly modeled in this submittal, attainment in the adjacent state was demonstrated through the use of percent of standard isopleth graphs. These graphs showed either decreasing or steady concentration gradients in the direction of the adjacent State and demonstrated that SO_2 emissions allowed in Minnesota would not prevent attainment or maintenance of the National Ambient Air Quality Standards (NAAQS) in Wisconsin.

Background concentrations were included to account for SO_2 sources not modeled. The MPCA utilized two methods to determine a representative background concentration. The first method involved 1984 Pine Bend monitor data. In this method the MPCA analyzed wind direction and used the monitor with the smallest maximum 1-hour concentration for each degree of wind direction. These maximum 1-hour concentrations were then averaged together, giving a background value of 8 $\mu g/m^3$. The second method used 1984 NSP-Sherco monitor data. The State concluded that the unmodeled sources in AQCR–131 contribute 8 $\mu g/m^3$ to the 24-hour and 3-hour, average concentrations. Growth margins of 30.8 $\mu g/m^3$ and 8.7 $\mu g/m^3$ were also added to the 3-hour and 24-hour average concentrations, respectively.

The State did not use the most recent version of the Industrial Source Complex model, known as ISC2. The MPCA had completed most of the modeling to determine appropriate SIP limits before the ISC2 model was released. Consequently, MPCA's use of the ISCST version 90346 model is acceptable for this particular submittal. Future modeling of the AQCR 131 area will need to be conducted using the ISC2 model.

Source Specifics

This section discusses the emission limits, and compliance methodology applicable to each source. Also, for each source, USEPA has provided comments discussing deficiencies that the MPCA must adequately address before USEPA can proceed with a final approval. A more detailed discussion of each specific Administrative Order and the attainment demonstration is included in the technical support document.

Federal Hoffman, Inc.

At the Federal Hoffman, Inc., (FHI) facility, five units emit SO_2. Two of the units are boilers and three are diesel generators. The Administrative Order limits one of the boilers to combusting only natural gas. The other boiler has #6 residual fuel oil available as backup with a corresponding fuel quality limit of 2.0 lbs of SO_2/mmBTU. In addition, it may not operate at greater than the rated heat input of 33 mmBTU per hour. The three diesel generators are limited to no more than 0.50 lbs of SO_2/mmBtu. Also, residual fuel usage may not exceed 2500 gallons per day.

FHI shall demonstrate compliance with the limits in the Administrative Order by determining fuel oil sulfur content and heating value by sampling and analyzing the residual fuel oil. FHI may demonstrate compliance with the No. 2 diesel fuel sulfur content and heating value by either sampling and analyzing the fuel oil, or by obtaining and maintaining a fuel supplier certification for each shipment of distillate fuel oil delivered to the facility.

The highest, second-highest modeled concentrations, plus background and growth allowances, do not exceed the NAAQS for SO_2.

Comments

1. The Administrative Order does not include a formula to determine compliance with the emission limit based on recorded data including the weight percent of the sulfur in the fuel oil, the heating value of the fuel, and the fuel usage on a daily basis. An approvable formula must be included in the Administrative Order.

2. The Administrative Order limits Emission Points Nos. 82, 83, and 84 to no more than 0.50 lbs of SO_2/mmBTU. It is not clear if the limit applies to each emission point or if it applies to the group. This must be made clear in the Administrative Order.

3. Part of the demonstration of compliance with emission and operating limits involves obtaining and maintaining a fuel supplier certification. The Administrative Order states that the certification must include the method used to determine that sulfur content of the fuel oil. It must be made clear that the method used must be an approved American Society for Testing and Materials (ASTM) method as listed in 40 CFR part 60, appendix A, method 19, section 5.2.2.

FMC Corporation (including US Navy facilities)

The FMC Corporation and US Navy (FMC) facility, which in the modeling encompassed the Naval Industrial Reserve Ordnance Plan adjacent to FMC, has 17 emission units that discharge SO_2 into the atmosphere. The units include 13 boilers capable of burning natural gas, residual oil, distillate oil, liquid propane, waste oil and de minimis waste solvents. All 17 boilers are to be replaced by three boilers, two of which are to burn natural gas or distillate oil, and the third of which is to burn natural gas, residual oil, liquid propane, waste oil, or de minimis waste solvents. These three boilers are to be operational by December 31, 1993.

The existing boilers numbered 1–13 are limited to 2.0 lbs of SO_2/mmBTU. Boilers 14–17 are authorized to burn only natural gas and liquid propane. The three new boilers are limited to no more than 0.5 pounds of SO_2/mmBTU. Boilers 1–13 are limited to fuel oil with a maximum sulfur content of 1.90 percent by weight. The three new boilers are limited to burning distillate oil with a maximum sulfur content of 0.4 percent by weight.

The Administrative Order requires the FMC facility to demonstrate compliance by obtaining and maintaining a fuel supplier certification from the fuel supplier for each shipment delivered to the facility, or by sampling and analyzing fuel in accordance with approved test methods whenever a tank is filled. It must also sample and analyze fuel oil with petroleum derived waste oil and de minimis waste solvents for sulfur content and heating value.

The modeling demonstration analyzed the impact from the existing boilers as well as from the new boilers. The results showed that when the existing and new replacement boilers were operating at full capacity, the predicted concentrations were below the NAAQS for SO_2.

The FMC Corporation and U.S. Navy Administrative Order was amended on March 5, 1993. The amendment made minor changes to the order by adding distillate oil to the list of allowable fuel types for boilers 1–13, by adding the diesel generators to Exhibit 1, and by renumbering the 3 new boilers and carrying the changes through in the text. The USEPA considers these Administrative Order changes to be part of this notice of proposed rulemaking.

Comments

1. A formula must be included in the order to determine compliance with the emission limit using the recorded data. The formula must include percent sulfur, heating value, and fuel oil usage.

2. The Administrative Order also requires the facility to obtain the sulfur content and heating value of fuel containing waste oil and de minimis waste solvent by analyzing the samples monthly. The USEPA requests that these analyses be conducted on a more frequent basis (daily or weekly) in order to demonstrate compliance and provide for protection of the short term NAAQS. In addition, the sampling must be done at the inlet to each boiler.

3. Part of the demonstration of compliance with emission and operating limits involves obtaining and maintaining a fuel supplier certification. The Administrative Order states that the certification must include the method used to determine the sulfur content of the fuel oil. It must be made clear that the method used must be an approved ASTM method as listed in 40 CFR part 60, appendix A, method 19, section 5.2.2.

Northern States Power

At Northern States Power-Riverside (NSP), there are three boilers which emit sulfur dioxide. The company is authorized to burn natural gas, distillate fuel oil, coal, petroleum coke, petroleum derived waste oil and other nonhazardous waste substances in the three boilers. A recent NSP submittal for NSP Riverside involves proposed emission limits with and without a scrubber (spray dryer absorber) on two of the three boilers. The implementation of a scrubber effects stack parameters and downwash.

The order limits emissions of SO_2 from the boilers #6 and #7 to no more than 0.83 lbs of SO_2/mmBTU on a 3-hour average when the spray dryer absorber is in operation, and no more than 713 pounds per hour of SO_2 on a 3-hour average for all three boilers. The order limits emissions of SO_2 from boilers #6 and #7 to no more than 1.08 lbs of SO_2/mmBTU on a 3-hour average while the spray dryer absorber is not in operation, and no more than 855 pounds per hour of SO_2 on a 3-hour average. The maximum heat input with a scrubber for the two boilers is 860 mmBTU; the maximum heat input

without a scrubber for the two boilers is 792 mmBTU.

The modeling used to determine the emission limits for NSP included several sources which were given credit for stack heights above the de minimis GEP level of 65 meters. These sources are:

NSP—Black Dog with a formula stack height of 115.4 meters.
NSP—High Bridge with a formula stack height of 130.1 meters.
NSP—King with an actual stack height of 239.3 meters.
NSP—Riverside, boilers 6 and 7 with an actual stack height of 74.1 meters.
NSP—Riverside, boiler 8 with an actual stack height of 144.6 meters.

It was determined that the three Riverside stacks and the King stack were in existence prior to December 31, 1970, and are eligible to receive credit for their actual stack height. As mentioned earlier, the Black Dog and High Bridge stacks are affected by the current federal circuit court stack height remand. Consequently, the modeling may have to be revisited depending on the results of that remand.

The Administrative Order requires NSP to demonstrate compliance by obtaining the sulfur content and heating value of petroleum derived waste oil and other nonhazardous waste substances by sampling and analyzing each shipment of fuel. It must maintain, calibrate, and operate the existing continuous monitoring systems for measuring sulfur dioxide from boilers #6, #7, and #8, and record the output of the systems.

The modeling utilized source groups to examine various operating scenarios. The scenarios represent different emission limits reflecting operations with and without scrubbing at units #6 and #7. The modeling showed that the NAAQS for SO_2 were not exceeded when any of the various scenarios were analyzed.

Comments

1. There is no formula explicitly mentioned to calculate SO_2 emissions based on the sulfur content and heating value of the fuel. An approvable formula must be included in the Administrative Order.

2. Emissions from emission point #3 are limited to no more than 2.5 lbs of SO_2/mmBTU on an annual average basis. In order to determine compliance, annual limits need to be based on a 365-day average, rolling daily. The Administrative Order must state how compliance is to be determined for this limit.

3. Exhibit 2, E. 1. of the Administrative Order must be entitled "Sources not subject to New Source Performance Standards." Also, in cases where test conditions are to be specified, they may be specified by the MPCA and/or the USEPA. This must be reflected in the administrative order.

4. Section III, B. of the Administrative Order, must read "shall obtain a permit amendment if required by state or federal regulation."

5. In Exhibit 2, E.1.a.1 and 2 of the Administrative Order, the operating capacities are to be specified by the MPCA. The operating capacities may also be specified by the USEPA. This must be reflected in the Administrative Order.

GAF Corporation

The GAF Building Material Corporation (GAF) has three emission units at the facility: two boilers, an afterburner which controls emissions from a blow still, and two fluid heaters. The primary fuel for all the emission units is natural gas, with #6 fuel oil (with or without knockout oil) as backup. The Administrative Order states that the sulfur content of the #6 fuel oil, asphalt and knockout oil shall not exceed 1.5 percent by weight. The limit on emissions of sulfur dioxide from these five emission points is no more than 1.5 lbs of SO_2/mmBTU per emission point. The emission units may operate at full rated heat input, but not greater than the full rated heat input.

The Administrative Order states that the company shall demonstrate compliance by obtaining and maintaining a #6 fuel oil supplier certification and an asphalt supplier certification from the fuel oil and asphalt suppliers for each shipment of fuel oil and asphalt delivered to the facility. Also, the company shall measure the total gallons of knockout oil and #6 fuel oil burned at each emission unit, as well as sample and analyze the knockout oil for sulfur content and heating value.

The modeling demonstration showed that the final concentrations did not exceed the NAAQS. These final concentrations reflect GAF sources, all regional sources, background, and future growth.

Comments

1. A formula is not included to calculate emissions from percent sulfur and heating value data. An approvable formula must be included in the order.

2. The order requires that the method used to determine the sulfur content of asphalt be included in the certification. The asphalt sulfur method must be identified in the Administrative Order.

3. An additional enforcement concern regards the testing of the knockout oil on a monthly basis. Daily or weekly testing of the mixture of fuel oil and knockout oil must be conducted at the inlet of the boiler, to provide for continuous compliance and for protection of the short-term NAAQS.

4. Part of the demonstration of compliance with emission and operating limits involves obtaining and maintaining a fuel supplier certification. The Administrative Order states that the certification must include the method used to determine the sulfur content of the fuel oil. It must be made clear that the method used must be an approved ASTM method as listed in CFR part 60, appendix A, method 19, section 5.2.2.

Minneapolis Energy Center, Incorporated

The Minneapolis Energy Center (MEC) contains three facilities which emit sulfur dioxide into the atmosphere. Those facilities are: (1) The Minneapolis Energy Center Main Plant which contains four boilers and one emergency diesel generator; (2) the Baker Boiler Plant which contains three boilers; and (3) the Soo Line Boiler Plant which contains three boilers. The MEC Main Plant boilers can operate on natural gas, distillate oil, or residual oil. The emergency generator operates on distillate fuel oil. The Baker and Soo Boiler Plants can operate on natural gas, or distillate oil. Unlike the other Administrative Orders submitted with this revision, the MEC order incorporates "total facility emission limits" in addition to specific source limits. The total facility emission limits are as follows:

	Main plant boilers				Baker plant boilers			Soo line boilers	3-hour	24-hour	Annual
	1	2	3	4	1	5	6	1–3			
A	X	X	X	X	....	....	....	.....	510	404	N/A
B	X	X	X	X	....	....	X	X	466	393	N/A
C	X	X	X	X	X	....	X	X	460	359	N/A
D	X	X	X	X	X	X	X	.....	447	298	N/A
E	X	X	X	X	X	X	X	X	447	278	142

A=applies when any one or more of the four boilers at the Main Plant are operating on oil and none of the six boilers at the Baker Boiler Plant and Soo Line Boiler Plant are operating on oil.

B=applies when the following are operating on oil: (1) Any one or more of the four boilers at the Main Plant; (2) Boiler No. 6 at the Baker Boiler Plant; and (3) one or more of the three boilers at the Soo Line Boiler Plant.

C=applies when the following are operating on oil. (1) Any one or more of the four boilers at the Main Plant; (2) Boiler Nos. 1 and 6 at the Baker Boiler Plant; and (3) any one or more of the three boilers at the Soo Line Boiler Plant.

D=applies when the following are operating on oil: (1) Any one or more of the four boilers at the Main Plant; (2) Boiler Nos. 1, 5, and 6 at the Baker Boiler Plant; and none of the three boilers at the Soo Line Boiler Plant.

E=applies when the following are operating on oil: (1) Any one or more of the four boilers at the Main Plant; (2) Boiler Nos. 1, 5, and 6 at the Baker Boiler Plant; and (3) any one or more of the three boilers at the Soo Line Boiler Plant.

In addition to the above total facility emission limits, the Company shall impose the following limits on individual sources at the three facilities; At MEC, emission points nos. 1 & 3 (boilers 1, 2, and 3) are limited to 1.6 lbs of SO_2/mmBTU when burning residual oil and 0.6 lbs of SO_2/mmBTU when burning distillate oil. Emission point no. 2 (boiler 4) is limited to 0.16 lbs of SO_2/mmBTU when burning residual oil and 0.6 lbs of SO_2/mmBTU when burning distillate oil. The emergency generator is limited to 0.5 lbs of SO_2/mmBTU. Emission points 1 and 2 (boilers 1, 5, and 6) at the Baker Boiler Plant are limited to 0.6 lbs of SO_2/mmBTU. At the Soo Line Boiler Plant, emission plant no. 1 (boilers 1, 2, and 3) is limited to 0.6 lbs of SO_2/mmBTU. The Company may not operate the boilers above the rated heat input listed in the Administrative Order at the Baker Boiler Plant, the Soo Line Boiler Plant, and the emergency generator at the MEC Main Plant.

Compliance for boilers 1, 2, and 3 at the Main Plant facility is determined through the use of stack tests, and daily sampling and analysis of residual oil, and vendor certification of each delivery of distillate oil. In addition, a continuous fuel monitoring system capable of providing lbs of SO_2 per hour information is employed. Compliance at boiler #4 will be determined through the use of a continuous emission monitoring system. The emergency generator will utilize distillate fuel analysis to determine compliance. At the Baker Plant, compliance for boilers #5 and #6 are to be determined through an initial stack test, and then by obtaining vendor certification of the sulfur content of each delivery of distillate fuel. At the Soo Line Plant, compliance at boilers 1 through 3 will be determined by an initial stack test and then by obtaining vendor certification of the sulfur content of each delivery of distillate fuel.

The dispersion modeling conducted for MEC reflected the multiple operating scenarios which are possible at the three facilities. Source groups were utilized to investigate the impact of the various scenarios. The final modeling run, reflecting SO_2 emission limits when all boilers are operating, resulted in predicted modeled concentrations, plus background and growth, of 1282.9 $\mu g/m^3$ and 363.9 $\mu g/m^3$ for the 3 and 24 hour averages, respectively. These values are below the NAAQS for SO_2.

Comments

1. There are some possible operating scenarios not specified in the Total Facility Emission Limit such as: some of the Baker Boilers are operating and none of the Soo Boilers, or Baker Boiler 1 and/or Boiler 5 are operating and not Boiler 6. In these cases, the individual limits apply as stated in section I.B.3. as stated in the Administrative Order. It has not been shown that this scenario provides for attainment of the NAAQS. Either the cases specified in the Administrative Order must be rewritten to include all possible operating scenarios, or it must be shown that the "unmodeled" scenarios provide for attainment.

2. The Total Facility Emission Limit involves lbs of SO_2/hr limits for 3-hour, 24-hour, and annual averaging periods. The Administrative Order does not indicate what limit would apply if the scenario changes in the middle of an averaging period. It must be stated in the Administrative Order what limit applies when operating scenarios only span partial averaging periods.

3. In the event of a breakdown of control equipment, the company must switch to natural gas. If natural gas supplies are interrupted, the company may burn distillate oil. There are no provisions for keeping records on whether natural gas service has been interrupted. These provisions must be included in the Administrative Order.

4. Again, a formula must be added to convert percent sulfur and heating value data to pounds of SO_2 per million BTU so a comparison can be made with the emission limits.

5. In Exhibit 1 of the Administrative Order, the three emission units for emission point No. 1 at the Soo Line boiler plant are all referred to as Boiler No. 1. The emission units must be identified as Boiler No. 1, Boiler No. 2, and Boiler No. 3.

General Comment

A general comment applies to each of the above Administrative Orders. All five Administrative Orders contain emission limits written as lbs of SO_2/mmBTU. None of the limits have an averaging time associated with them. This leads to the assumption that the limits exist on an instantaneous basis. If this is the case, the Administrative Orders must state this. Otherwise, other appropriate averaging times must be applied to the emission limits to insure protection of the short-term standards.

Section 172 Requirements

Air Quality Control Region 131 is classified as a nonattainment area for the primary NAAQS for sulfur dioxide. As a result, sulfur dioxide nonattainment area plans must meet the requirements of subpart 1 of part D of Title I of the Clean Air Act, particularly section 172(c).

Section 172(c)(1) states that these plans must require reasonably available control measures. The submittal includes modeling data designed to show that the area will achieve attainment of the SO_2 NAAQS with the control measures fully implemented. Because the measures are sufficient to demonstrate attainment, the control measures satisfy the SO_2 RACT requirements.

Section 172(c)(2) states that plans shall require reasonable further progress. The term "reasonable further progress" is defined in section 171(B)(1) as "such annual incremental reductions in emission of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date." The Administrative Orders included in the submittal generally provide for immediate compliance.

Section 172(c)(3) requires a suitable emission inventory. An emission inventory accompanied the submittal. The emission inventory followed the guidance in the "Guideline on Air Quality Models (Revised)", including Supplement A (1987), in regards to the use of allowable versus actual emissions.

Section 172(c)(4) mandates that any stationary source growth margin included in the SIP must be expressly identified and quantified. The attainment demonstration identifies 8.7 $\mu g/m^3$ and 30.8 $\mu g/m^3$ as future growth margins for 24-hour and 3-hour averages, respectively. This is adequate.

Section 172(c)(5) mandates a suitable permit program for new and modified major stationary sources. A new source permitting program for nonattainment areas has been submitted to USEPA by MPCA and is currently undergoing review. It will be addressed in a separate rulemaking. Prevention of Significant Deterioration (PSD) is delegated and a general permitting rule has been SIP approved.

Section 172(c)(6) requires enforceable limitations sufficient to provide for attainment. The comments included in this notice pertain primarily to the enforceability of the limits in the Administrative Orders. If these comments are adequately addressed, the limitations will be sufficient to provide for attainment.

Section 172(c)(7) mandates satisfaction of section 110(a)(2). Principle among the requirements of section 110(a)(2) are requirements that the State adopt its limitations following a suitable opportunity for public comment. The MPCA Commissioner has certified that the public hearing was noticed on April 27, 1992, and was held on May 27, 1992.

Paragraph 172(c)(8) states that the Administrator, in some circumstances, may allow the use of equivalent modeling emission inventory, and planning procedures. MPCA did not utilize this authorization.

Paragraph 172(c)(9) requires the plan to provide for implementation of specific measures to be undertaken if the area fails to make reasonable further progress (*i.e.*, contingency measures), or to attain the primary NAAQS by the attainment date applicable under this part. The May 31, 1991, memorandum from John Calcagni, Director, Air Quality Management Division to, among others, Director, Air and Radiation Division, Region V, provided guidance on SIP requirements for SO_2 nonattainment areas. The memorandum discusses contingency measures for SO_2 and states that it is unlikely for an area to implement SO_2 controls and fail to attain the NAAQS. Therefore, EPA interprets "contingency measures" for SO_2 to include the ability to rely on comprehensive State programs to identify violations and to provide for compliance and enforcement. Minnesota Stat. § 115.071 provides that the provisions issued by the MPCA may be enforced by various means. The orders also contain reporting requirements necessary to determine compliance. Given this information, it has been determined that the submittal contains appropriate contingency measures.

II. Proposed Rulemaking Action

The USEPA is proposing disapproval of the Minnesota SIP revision for SO_2 for AQCR 131. However, if the above comments, detailed in this notice, are adequately addressed in revisions to this plan, and those revisions are submitted to USEPA by the end of the 30-day comment period, then, assuming no other substantive, adverse public comments are received, USEPA will proceed with a final rulemaking approving the SIP revision as a whole including the supplemental submittal. If at the end of the 30-day comment period, the issues are still unresolved, final rulemaking disapproving the SIP revision will be promulgated.

Public comments are solicited on the requested SIP revision and on USEPA's proposal to disapprove. Public comments received by October 13, 1993, will be considered in the development of USEPA's final rulemaking action.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

Note—Incorporation by reference of the State Implementation Plan for the State of Minnesota was approved by the Director of the Federal Register on July 1, 1982.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 21, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–22299 Filed 9–10–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 122, 123, 131, and 132

[FRL 4729–3]

RIN 2040–AC08

Proposed Water Quality Guidance for the Great Lakes System

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule; availability of report; extension of comment period.

SUMMARY: The purpose of this document is to announce the availability of a report that EPA is considering as it

develops the final Water Quality Guidance for the Great Lakes System; to request public comment on the possible application of the recommendations set forth in this report in the final Guidance; and to extend the comment period solely for the purpose of receiving comments on the two reports announced in the August 9, 1993, **Federal Register** (58 FR 42266) that EPA is also considering as it develops the final Guidance. The proposed Guidance was published in the April 16, 1993, **Federal Register** (58 FR 20802), with corrections published at 58 FR 21046 and 58 FR 42266.

The report being made available is: "Review of the Methodology for Developing Ambient Water Quality Criteria for the Protection of Human Health." EPA wants to ensure that the public has an opportunity to comment on whether any of the recommendations in this report should be adopted in the final Great Lakes Water Quality Guidance methodologies for development of human health criteria and values. EPA is also extending the comment period solely for the purpose of receiving comments on two reports entitled: "Revision of Methodology for Deriving National Ambient Water Quality Criteria for the Protection of Human Health: Report of Workshop and EPA's Preliminary Recommendations," and "Interim Report on Data and Methods for Assessment of 2,3,7,8-Tetrachlorodibenzo-p-dioxin Risks to Aquatic Life and Associated Wildlife."

DATES: Written comments should be submitted on or before October 13, 1993. Comments postmarked after this date may not be considered.

ADDRESSES: Send written comments to Wendy Schumacher, Water Quality Branch (WQS–16J), U.S. EPA, Region V, 77 West Jackson Blvd., Chicago, Illinois, 60604 (telephone: 312–886–0142). Commenters are requested to submit one original and 4 copies of their written comments. In addition, EPA encourages commenters to provide one copy of their comments in electronic format, preferably 5.25" or 3.5" diskettes compatible with WordPerfect for DOS. A copy of the reports identified in this document are available for inspection and copying at the U.S. EPA Region V Records Center, 77 W. Jackson Blvd., Chicago, Illinois, by appointment only. Appointments may be made by calling Wendy Schumacher (telephone: 312–886–0142). A reasonable fee will be charged for photocopies. The three reports are also available by mail upon request for a fee (see Document Availability section below for more information).

FOR FURTHER INFORMATION CONTACT: Kenneth A. Fenner, Water Quality Branch Chief, (WQS–16J), U.S. EPA Region V, 77 W. Jackson Blvd., Chicago, Illinois, 60604 (telephone: 312–353–2079).

SUPPLEMENTARY INFORMATION:

I. Availability of Document and Request for Comments

Section 304(a)(1) of the Clean Water Act (33 U.S.C. 1314(a)(1)) requires EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life and recreation. Section 118(c)(2) of the Clean Water Act requires EPA to publish water quality guidance for the Great Lakes System which includes guidance on numerical limits on pollutants in ambient Great Lakes waters to protect human health, aquatic life and wildlife.

The proposed Water Quality Guidance for the Great Lakes System was published on April 16, 1993, in the **Federal Register** (58 FR 20802). Corrections to the proposed preamble and proposed rule text were published in the **Federal Register** on the same date (58 FR 21046) and in a subsequent notice published in the August 9, 1993, **Federal Register** (58 FR 42266). This Guidance, once finalized, will establish minimum water quality standards, antidegradation policies, and implementation procedures for waters within the Great Lakes System in the States of New York, Pennsylvania, Ohio, Indiana, Illinois, Minnesota, Wisconsin, and Michigan, including the waters within the jurisdiction of Indian Tribes.

As discussed in the April 16, 1993, and August 9, 1993, **Federal Register** notices, the proposed Great Lakes Human Health Methodology differs from current National Guidelines for the development of protective criteria for contaminants that may adversely affect human health in ambient water. The National Guidelines can be found at 45 FR 79347, dated November 28, 1980. For details on the proposed Great Lakes Human Health Methodology, including similarities and differences with the 1980 National Guidelines, readers are referred to the preamble discussion contained in the April 16, 1993, notice (58 FR 20863–20877).

The April 16, 1993, proposed Guidance indicated that EPA is currently in the process of reviewing and revising its 1980 National Guidelines. EPA believes that the National Guidelines should be evaluated from time to time to determine whether significant advances have occurred in the science which should be reflected in the National methodology guidelines. As part of the guidelines revision process, EPA requested a Science Advisory Board (SAB) review of changes EPA is considering in its revision of the 1980 National Guidelines. The SAB discussed EPA's preliminary recommendations for revisions during its February 9–10, 1993, meeting. The areas discussed at the meeting included the following technical subjects: (1) Cancer risk, (2) non-cancer risk, (3) bioaccumulation, (4) exposure, (5) microbiology, and (6) minimum data requirements. The August 9, 1993, **Federal Register** notice stated that the SAB's report of its review was expected this year.

The SAB transmitted its final report to Carol M. Browner, Administrator of EPA, on August 12, 1993. The report is entitled, "Review of the Methodology for Developing Ambient Water Quality Criteria For the Protection of Human Health," prepared by the Drinking Water Committee of the Science Advisory Board, August 12, 1993 (EPA Report Number: EPA–SAB–DWC–93–016). The report is being placed in the administrative record for the proposed Great Lakes Water Quality Guidance, and is available to the public as described in section III of this notice. EPA invites comments on whether any of the findings or recommendations in this report should be adopted in the final Great Lakes Water Quality Guidance methodologies for the development of human health criteria and values. EPA will consider the SAB report and any public comments submitted in response to this notice in the preparation of the final Great Lakes Guidance. EPA encourages the public to send one original and 4 copies of their written comments to Ms. Wendy Schumacher at the address specified at the beginning of this notice.

EPA is providing this notice of availability and placing the SAB report in the administrative record for the proposed Great Lakes Water Quality Guidance because EPA intends to consider all the recommendations concerning issues associated with the National Guidelines revision, and discussed in the SAB report, in the development of final Water Quality Guidance for the Great Lakes System.

II. Extension of Comment Period for Two Reports

EPA announced the availability of two reports in the August 9, 1993, **Federal Register** (58 FR 42266). The first report, entitled, "Revision of Methodology for Deriving National

Ambient Water Quality Criteria for the Protection of Human Health: Report of Workshop and EPA's Preliminary Recommendations for Revision," prepared by the Human Risk Assessment Branch, U.S. EPA Office of Water, January 8, 1993, was provided to the SAB for their review prior to their February 9–10, 1993, meeting on the proposed revisions to the 1980 National Guidelines. The second report is entitled, "Interim Report on Data and Methods for the Assessment of 2,3,7,8-Tetrachlorodibenzo-p-dioxin Risks to Aquatic Organisms and Associated Wildlife," prepared by the Office of Research and Development, U.S. EPA, March 1993 (EPA Report Number: EPA/600/R–93/055). EPA placed the two reports in the administrative record for the Great Lakes Guidance because EPA will consider information in these documents as it finalizes the Great Lakes Guidance. A summary of the information provided in these two reports and the issues relevant to the Great Lakes Guidance are discussed in the August 9, 1993, notice. Readers are referred to that notice for additional details.

In this notice, EPA is extending the public comment period for the two reports to October 13, 1993, to provide additional time for public review and comment. EPA believes that extension of the comment period for this limited purpose is necessary because several reviewers expressed difficulty in preparing comments simultaneously on both the April 16, 1993, proposed Guidance and the issues raised in the two reports announced on August 9, 1993, and because the SAB report being announced in this notice addresses the same issues as those in the first report announced on August 9, 1993.

III. Document Availability

The three reports that are referenced in this document are available for inspection and photocopying in the administrative record for this rulemaking at the address listed at the beginning of this preamble. A reasonable fee will be charged for photocopies.

The reports, "Revision of Methodology for Deriving National Ambient Water Quality Criteria for the Protection of Human Health: report of Workshop and EPA's Preliminary Recommendations for Revision" ("Preliminary Recommendations"), and "Review of the Methodology for Developing Ambient Water Quality Criteria for the Protection of Human Health" ("SAB Report"), are also available for a fee upon written request or telephone call to the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. The toll free number is 800–553–6847 and the local number is 703–487–6847. Alternatively, copies may be obtained for a fee upon written request or telephone call to the Educational Resources Information Center/Clearinghouse for Science, Mathematics and Environmental Education (ERIC/CSMEE), Chambers Road, Room 310, Columbus, Ohio 43212 (phone number: 614–292–6717). When ordering, please include the NTIS accession number (PB 93–213494 for the "Preliminary Recommendations" report and PB 93–227007 for the SAB report), or the ERIC/CSMEE accession number (687–D for the "Preliminary Recommendations" report and 696–D for the SAB report).

The report, "Interim Report on Data and Methods for Assessment of 2,3,7,8-Tetrachlorodibenzo-p-dioxin Risks to Aquatic Life and Associated Wildlife," is also available upon written request or telephone call to the Center for Environmental Research Information, EPA Office of Research and Development, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268 (phone number: 513–569–7562).

Dated: September 9, 1993.

Tudor T. Davies,

Acting Deputy Assistant Administrator.

[FR Doc. 93–22466 Filed 9–10–93; 8:45 am]

BILLING CODE 6560–60–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5460, 5510, 9230, and 9260

[WO–230–6310–02–24 1A]

RIN 1004–AB97

Free Use of Timber; General: Trespass: Law Enforcement; Criminal

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend provisions of the existing regulations on timber trespass. The rule would edit the existing regulations to make them more orderly and easier to read, and add a list of prohibited acts to provide guidance concerning the administration of forest product contracts and free use permits and law enforcement.

The rule is a continuation of the effort to provide more effective control of trespass of timber and other vegetative resources on public lands. It would provide further guidance to supplement the final rule published on March 11, 1991 (56 FR 10173).

DATES: Comments should be submitted by November 12, 1993. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ed Shepard, (202) 653–8864.

SUPPLEMENTARY INFORMATION: This rule proposes to make some editorial changes to the existing regulations to make them easier to use and also proposes to add some additional language to provide guidance on actions that are prohibited with regard to forest product sales and free use permits.

In order to provide further guidance on actions that are not permitted on public lands and proper conduct of operations under contracts and permits for cutting and removal of forest products, a list of prohibited acts is being included in this proposed rule. The following acts would be prohibited:

1. Cutting, removing, or otherwise damaging any timber, tree, or other vegetative resource, except as authorized by a forest product sale contract, permit, or Federal law or regulation.
2. Cutting any standing tree, under a permit or timber sale contract, before a BLM employee has marked it or has otherwise designated it for cutting.
3. Removing any timber or other vegetative resource cut under a permit or timber sale contract, except to a place designated for scaling or measurement, or removing it from that place before it is scaled, measured, counted, or otherwise accounted for by a BLM employee.
4. Stamping, marking with paint, tagging, or otherwise identifying any tree or other vegetative resources in a manner similar to that employed by BLM employees to mark or designate a tree or other vegetative resources for cutting, removal, or transportation.
5. Loading, removing, or hauling timber or other vegetative resources without a valid permit or forest product sale contract that authorizes such actions and pertains to the material in question.

6. Violating any of the terms and conditions of a permit or forest product sale contract.

7. Failing to have in possession and/or produce for inspection upon demand of a BLM employee or official of a cooperating law enforcement agency any required permit or forest product sale contract.

8. Violating any State or local ordinances relating to local permits, tagging, and transportation of forest products.

9. Violating any of the provisions regulating export and substitution contained in subpart 5403.

10. Obtaining any forest product sale contract or permit by fraud.

11. Negligent or intentional destruction of or injury to any timber or other vegetative resource during operations under a forest product sale contract or permit.

Proposed Amendment to 43 CFR Part 5460

Part 5460 contains guidance for the administration of contracts for the sale of forest products. The final rule published on March 11, 1991 (56 FR 10173), added a section listing minimum requirements to ensure contract compliance. However, it did not provide a list of prohibited acts and clearly indicate that commission of such acts is a violation of law. This proposed rule will add a section listing prohibited acts and making it clear that commission of any of these acts is a violation of these regulations and therefore would render any person responsible for such violation liable for civil damages for trespass and subject to criminal penalties under Federal law.

The final rule published on March 11, 1991 (56 FR 10173) included a provision in 43 CFR 9239.1–1(c) for cancellation of a contract or permit for failure to comply with the terms and conditions of such contract or permit. This proposed rule would remove this paragraph from section 9239.1–1 and put it in § 5462.1, so that all the regulations on contract compliance would be in one subpart.

Proposed Amendment to 43 CFR Subpart 5511

43 CFR 5511.1–1(f)(3) states that, where permits are secured by fraud or where timber is not taken or used in accordance with regulations or law, the Government may enforce the same civil and criminal liabilities as in other cases of timber trespass. This provision is repeated in part 9260 of these regulations (§ 9265.5(a)). This proposed rule would remove this provision from section 5511.1, and a new prohibited acts section would be added to the subpart. Civil liabilities would be listed in § 9239.1 and criminal penalties would be listed in § 9265.6.

Paragraph 5511.1–4(e) has the same provisions as paragraph 5511.1–1(f)(3), except that it applies specifically to lands under oil and gas leases. This proposed rule would combine prohibitions against fraudulent applications and misuse of timber from free use permits on oil and gas leases with other types of fraudulent applications and misuse of timber. These prohibitions would be put in the new prohibited acts section.

The proposed rule would remove § 5511.1–4(f), and incorporate the prohibition against sale, speculation, or use of timber by persons other than the permittee into the prohibited acts section of the proposed rule.

Section 5511.2–1 has two incorrect references. Reference is made to § 5511.2–4 when the correct reference is to § 5511.1–4. There is also a reference to a nonexistent section in the last sentence of this paragraph. The proposed rule would revise this paragraph to correct the first reference and remove the second.

The proposed rule would amend § 5511.2–4 by changing "5511.2–6" to "5511.2–5".

43 CFR 5511.2–5 states the liability of persons cutting timber from the public lands in Alaska, other than in accordance with sections 5511.2–1 to 5511.2–6. The proposed rule removes this paragraph from this part and puts it in part 9230—Trespass.

43 CFR 5511.2–7 has an incorrect reference at the end of the section. "§ 5511.2–4" should read "§ 5511.1–4". This correction is made in the proposed rule.

Amendment of Part 9230

Section 9239.1 is being revised to include all the regulations on timber and other vegetative resource trespass in this one section. This will make it much easier to find the regulations pertaining to timber and other vegetative resource trespass.

A paragraph stating the measure of damages for purchasing material from a willful trespasser was mistakenly omitted when this provision was rewritten in the final rule published on March 11, 1991 (56 FR 10173). This proposed rule would add that provision.

Amendment of Part 9260

Subpart 9265 would be revised to include only the regulations pertaining to criminal penalties for violations of the provisions in subparts 5462 and 5510. The proposed rule would make any violations of the prohibited acts listed in subparts 5462 and 5510 subject to these penalties and the title would be changed to "Timber and Other Vegetative Resource Management". The proposed rule would also include penalties provided for in the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733).

The principal author of this proposed rule is Richard Bird, Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the proposal would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The total value of BLM vegetative materials lost annually through trespass and other violations specified in the rule does not approach $100 million. Therefore, the annual effect on the economy will not remotely approach the threshold specified in the Executive Order. There would be no cost increases imposed on the lumber

industry other than those caused by violations of law, and there would thus be no substantial increases in consumer costs or prices resulting from the rule, and no substantial effects on government agencies or competition. Further, for the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. The rule does not distinguish between business entities based on their size.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. There will be no private property rights impaired as a result of this rule. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects

43 CFR Part 5460

Forest and forest products, Government contracts, Public lands.

43 CFR Part 5510

Forest and forest products, Public lands, Surety bonds.

43 CFR Part 9230

Penalties, Public lands.

43 CFR Part 9260

Penalties, Public lands.

For the reasons stated in the preamble, and under the authorities cited below, parts 5460 of Group 5000, 5510 of Group 5500, Subchapter E, and parts 9230, and 9260 of Group 9200, Subchapter I, Chapter II of Title 43 of the Code of Federal Regulations are proposed to be amended as set forth below:

PART 5460—SALES ADMINISTRATION

1. The authority citation for part 5460 continues to read as follows:

Authority: 30 U.S.C. 601 et seq.; 43 U.S.C. 1181e.

2. Subpart 5462 is amended by adding new paragraph (c) to section 5462.1 and new section 5462.2 to read as follows:

§ 5462.1 Contract and permit compliance.

* * * * *

(c)(1) The authorized officer may cancel a contract or permit upon determining that the holder has failed to comply with a law or regulation. The authorized officer may also cancel a contract or permit upon determining that the holder has failed to comply with a stipulation or requirement contained in the contract or permit and the noncompliance is detrimental to the public interest. Individual contracts or permits may contain specific language defining the remedies or penalties associated with noncompliance.

(2) Cancellation shall be mandatory in cases of intentional falsification of information used to obtain the permit or contract.

§ 5462.2 Prohibited acts.

(a) The acts or omissions listed in paragraph (b) of this section will render the person(s) responsible liable to the United States in a civil action for trespass, and such person(s) may be prosecuted criminally. If the authorized officer determines such acts to be detrimental to the public interest, the contract or permit may be canceled. See § 9239.1 of this title for trespass and subpart 9265 of this title for criminal prosecution.

(b) The following activities are prohibited:

(1) Cutting, removing, or otherwise damaging any timber, tree, or other vegetative resource, except as authorized by a forest product sale contract, permit, or Federal law or regulation.

(2) Cutting any standing tree, under a permit or timber sale contract, before a BLM employee has marked it or has otherwise designated it for cutting.

(3) Removing any timber or other vegetative resource cut under a permit or timber sale contract, except to a place designated for scaling or measurement, or removing it from that place before it is scaled, measured, counted, or otherwise accounted for by a BLM employee.

(4) Stamping, marking with paint, tagging, or otherwise identifying any tree or other vegetative resources in a manner similar to that employed by BLM employees to mark or designate a tree or other vegetative resources for cutting, removal, or transportation.

(5) Loading, removing, or hauling timber or other vegetative resources without a valid permit or forest product sale contract that authorizes such actions and pertains to the material in question.

(6) Violating any of the terms and conditions of a permit or forest product sale contract.

(7) Failing to have in possession and/or produce for inspection upon demand of a BLM employee or official of a cooperating law enforcement agency a valid permit or forest product sale contract while engaging in any activity connected with the harvest or removal of forest products.

(8) Violating any State or local ordinances relating to local permits, tagging, and transportation of forest products.

(9) Violating any of the provisions regulating export and substitution contained in subparts 5400, 5403, and 5420 of this title.

(10) Obtaining any forest product sale contract or permit by fraud.

(11) Negligent or intentional destruction of or injury to any timber or other vegetative resource during operations under a forest product sale contract or permit.

PART 5510—FREE USE OF TIMBER

3. The authority citation for part 5510 continues to read as follows:

Authority: 61 Stat. 681, as amended; 69 Stat. 367; 48 Stat. 1269, sec. 11, 30 Stat. 414, as amended, R.S. 2478, sec. 323, 41 Stat. 450; 30 U.S.C. 601 *et seq.*, 43 U.S.C. 315, 48 U.S.C. 423, 43 U.S.C. 1201, 30 U.S.C. 189.

Subpart 5511—Free Use Regulations

§ 5511.1–1 [Amended]

4. Section 5511.1–1 is amended by removing paragraph (f)(3).

§ 5511.1–4 [Amended]

5. Section 5511.1–4 is amended by removing paragraphs (e) and (f).

6. Section 5511.2–1 is amended by revising paragraph (a) to read as follows:

§ 5511.2–1 Free use privilege; cutting by agent.

(a) Except as provided in § 5511.1–4 the only timber which may be cut under §§ 5511.2–1 through 5511.2–5 for free use in Alaska is timber on vacant public lands in the State not reserved for national forest or other purposes. The timber so cut may not be sold or bartered. The free use privilege does not extend to associations or corporations, except churches, hospitals, and charitable institutions. Any applicant entitled to the free use of timber may procure it by agent, if desired, but no part of the timber may be used in payment for services in obtaining it or in manufacturing it into lumber. Timber may not be cut by an applicant under this section after the land has been included in a valid homestead settlement or entry or other claim, except that any applicant for the free use of timber who has been granted a permit to cut as hereinafter provided, will have a right to cut the timber while the permit remains in force as against a

subsequent applicant who may wish to obtain the same timber by purchase.

* * * * *

§ 5511.2–4 [Amended]

7. Section 5511.2–4 is amended by revising the reference "5511.2–6" to read "5511.2–5".

§ 5511.2–5 [Removed]

8. Section 5511.2–5 is removed.

§ 5511.2–7 [Redesignated and Amended]

9. Section 5511.2–7 is redesignated as section 5511.2–5 and the reference "§ 5511.2–4" at the end of the section is revised to read "§ 5511.1–4".

10. Section 5511.4 is added to read as follows:

§ 5511.4 Prohibited acts.

(a) In addition to the prohibited acts listed in § 5462.2, the acts or omissions listed in paragraph (b) of this section will render the person(s) responsible liable to the United States in a civil action for trespass and such persons may be prosecuted criminally. See § 9239.1 of this title for trespass and subpart 9265 of this title for criminal prosecution.

(b) The following acts are prohibited:

(1) Obtaining any free use permit by fraud.

(2) Using timber secured under a free use permit for any purpose other than provided for in §§ 5511.1–1(d), 5511.1–2, 5511.1–4, 5511.2–2, 5511.3–6, or 5511.3–8.

(3) Violating any of the terms and conditions of a free use permit.

(4) Exporting timber cut under a free use permit from the State in which it was cut, except as provided in § 5511.1–1(e).

(5) The cutting of timber under a free use permit for sale, barter, speculation, or use by others than the permittee.

PART 9230—TRESPASS

11. The authority citation for 43 CFR part 9230 continues to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201; 43 U.S.C. 1701, et seq.; 18 U.S.C. 1851–1858.

Subpart 9239—Grounds of Trespass

12. Section 9239.1–1 is amended by removing paragraph (c) and (d), and revising the heading and paragraph (b) to read as follows:

§ 9239.1–1 Unauthorized cutting, removal, or injury.

* * * * *

(b) Commission of any of the acts listed in §§ 5462.2 and 5511.4 of this title constitutes a trespass.

13. Section 9239.1–2 is amended by revising paragraph (a) to read as follows:

§ 9239.1–2 Penalty for trespass.

(a) In accordance with §§ 9239.0–7, 9239.0–8, and 9239.1–1 of this subpart, anyone responsible for a trespass act is liable to the United States in a civil action for damages and may be prosecuted under criminal law as provided in § 9265.6 of this title.

* * * * *

14. Section 9239.1–3 is amended by adding paragraph (a)(4) to read as follows:

§ 9239.1–3 Measure of damages.

(a) * * *

(4) In the case of a purchase from a willful trespasser without knowledge of the trespass, the value at the time of purchase.

* * * * *

PART 9260—LAW ENFORCEMENT—CRIMINAL

15. The authority citation for 43 CFR part 9260 is revised to read as follows:

Authority: 16 U.S.C. 433; 16 U.S.C. 460*l*–6a; 16 U.S.C. 670j; 16 U.S.C. 1246(i); 16 U.S.C. 1338; 18 U.S.C. 1851–1861; 18 U.S.C. 3551 *et seq.*; 43 U.S.C. 315(a); 43 U.S.C. 1061, 1063; 43 U.S.C. 1733.

Subpart 9265—Timber Management

16. The title of subpart 9265 is revised to read as follows:

Subpart 9265—Timber and Other Vegetative Resources Management

§ 9265.0–3 [Amended]

17. Section 9265.0–3 is amended by inserting after "title 18 U.S.C.," the phrase "and section 1733 of title 43 U.S.C.,".

18. Section 9265.4 is amended by adding text as follows:

§ 9265.4 Sales of forest products, general.

Commission of any of the acts listed in § 5462.2 of this title is a violation of Federal regulations and may subject the responsible person(s) to criminal penalties under titles 18 and 43 of the United States Code.

19. Section 9265.5 is revised to read as follows:

§ 9265.5 Non-sale disposals, general.

Commission of any of the acts listed in § 5511.4 of this title is a violation of Federal regulations and may subject the responsible person(s) to criminal penalties under titles 18 and 43 U.S.C.

20. Section 9265.6 is added to read as follows:

§ 9265.6 Penalties.

(a) *Timber removed or transported.* The following persons are subject to penalty under this part, and shall be fined not more than $100,000 or imprisoned not more than one year, or both, in accordance with the Sentencing Reform Act of 1984 (18 U.S.C. 3551 *et seq.*).

(1) Whoever cuts, or wantonly destroys, any timber growing on the public lands of the United States; or

(2) Whoever removes any timber from said public lands, with intent to export or dispose of the same; or

(3) Whoever, being the owner, master, pilot, operator, or consignee of any vessel, motor vehicle, or aircraft or the owner, director, or agent of any railroad, knowingly transports any timber cut or removed from said lands, or lumber manufactured therefrom.

(b) *Exceptions for mining and agriculture.* This section shall not prevent any miner or agriculturist from clearing his land in the ordinary working of his mining claim, or in the preparation of his farm for tillage, or from taking the timber necessary to support his improvements, or the taking of timber for the use of the United States; or take away any right or privilege under any existing law of the United States to cut or remove timber from any public lands.

(c) *Trees injured or cut.* Whoever unlawfully cuts, or wantonly injures or destroys any tree growing, standing, or being upon any land of the United States which, in pursuance of law, has been reserved or purchased by the United States for any public use, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under the authority of the United States, or any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be fined not more than $100,000 or imprisoned not more than one year, or both, in accordance with the Sentencing Reform Act of 1984 (18 U.S.C. 3551 *et seq.*).

Dated: July 28, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–21830 Filed 9–10–93; 8:45 am]

BILLING CODE 4310–84–P

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing on Proposed Endangered Status and Designation of Critical Habitat for the Alabama Sturgeon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule: notice of public hearing.

SUMMARY: The Service gives notice that a public hearing will be held on the proposed determination of endangered status and designation of critical habitat for the Alabama sturgeon, *Scaphirhynchus suttkusi*.

DATES: The public hearing will be held from 6 p.m. to 10 p.m., on Monday, October 4, 1993, in Mobile, Alabama. The comment period remains open until October 13, 1993.

ADDRESSES: The public hearing will be held in the William K. Weaver Hall Auditorium on the campus of Mobile College, Mobile, Alabama. Written comments and materials should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James H. Stewart, at the above address (601/965–4900).

SUPPLEMENTARY INFORMATION:

Background

The Service proposed to determine the Alabama sturgeon, *Scaphirhynchus suttkusi*, to be an endangered species and to designate its critical habitat on June 15, 1993 (58 FR 33148). This small sturgeon is endemic to the Mobile River system, Alabama and Mississippi. Its current range is restricted to the lower Alabama River and the Cahaba River in Alabama. Both of these areas and the free flowing portion of the lower Tombigbee River are proposed as critical habitat. Factors in the sturgeon's decline include dams, and possible adverse effects from altered water flows, channel maintenance and gravel dredging.

A public hearing, which was to be held on August 31, 1993, was announced in the **Federal Register** of July 27, 1993 (58 FR 40109), but the hearing was subsequently postponed by a notice published on August 24, 1993 (58 FR 44643). The hearing has been rescheduled as indicated in the current notice.

The Service intends that any final action resulting from the proposed rule will be as accurate and as effective as possible. Therefore, comments from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule are hereby solicited. Comments may be presented verbally at the public hearing or in writing. Verbal statements may be limited in length if the number of parties present necessitates such a limitation. There are, however, no limits to the length of written comments presented at the hearing or mailed to the Service office in the **ADDRESSES** section. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Endangered Species Act;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species; and,

(5) Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat.

Those parties wishing to make a verbal statement for the record are encouraged to provide a copy of their statement to the Service at the start of the hearing.

Author

The primary author of this notice is James H. Stewart (see **ADDRESSES** section).

Authority

The authority for this section is the Endangered Species Act (16 U.S.C. 1531–1544).

Dated: September 3, 1993.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 93–22295 Filed 9–10–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register

Vol. 58, No. 175

Monday, September 13, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 90-006-3]

Farm Animal Issues Under the Animal Welfare Act; Public Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service (APHIS) is hosting an open forum to discuss the care and use of farm animals for nonagricultural activities regulated by the Animal Welfare Act. Recommendations and proposed guidelines from this forum will be used by APHIS in further evaluation and review of regulatory issues concerning the care and use of farm animals for nonagricultural activities.

PLACE, DATES, AND TIMES OF MEETING: The meeting will be held at the Hilton Inn Northwest, 2945 N.W. Expressway, Oklahoma City, OK 73112. The meeting will be held from 1 p.m. until 5 p.m. on Tuesday, September 28, 1993, and will continue from 8 a.m. until noon on Wednesday, September 29, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. R. L. Crawford, Assistant Deputy Administrator for Animal Care, REAC, APHIS, USDA, room 554, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-4981.

SUPPLEMENTARY INFORMATION: Under the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), APHIS is responsible for regulating the care and use of farm animals for nonagricultural activities. The purpose of this public meeting is to canvass the concerned public for recommendations and opinions on the housing, care, handling, and unique practices applied to the nonagricultural uses of farm animals.

The meeting will focus only on farm animal issues that are subject to the Animal Welfare Act. At the meeting, facilitators and group participation will be used to develop recommendations and propose guidelines within specific topic areas. The topics to be addressed include: (1) Agricultural exemptions; (2) agricultural versus nonagricultural environments; (3) well-being of farm animals; and (4) special considerations for major operative procedures.

Recommendations and proposed guidelines developed at the meeting will be used by APHIS in further evaluation and review of regulatory issues concerning the care and use of farm animals for nonagricultural activities subject to the Animal Welfare Act.

Done in Washington, DC, this 9th day of September 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-22301 Filed 9-10-93; 8:45 am]

BILLING CODE 3410-34-P

Federal Grain Inspection Service

Designation of the Southern Illinois and Champaign Agencies to Provide Official Services in the Former Southern Illinois Geographic Area

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: FGIS announces the designation of Southern Illinois Grain Inspection Service, Inc. (Southern Illinois), for a 12-month interim period, and Champaign-Danville Grain Inspection Departments, Inc. (Champaign), to provide official inspection services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: October 1, 1993.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 31, 1993, **Federal Register** (58 FR 16810), FGIS announced that the designation of Southern Illinois ends on September 30, 1993, and asked persons interested in providing official services within the specified geographic area to submit an application for designation. Applications were due by April 30, 1993.

There were four applicants: Southern Illinois applied for designation in the entire area currently assigned to it; Missouri Department of Agriculture (Missouri) applied for all or a portion of the area, contingent upon Southern Illinois being deemed unqualified for redesignation; Champaign applied for a portion of the area, contingent upon Southern Illinois being deemed unqualified for redesignation; and James L. Goodge, Jr. (Goodge), applied for all or a portion of the area. FGIS announced the applicant names and requested comments on the applicants in the June 3, 1993, **Federal Register** (58 FR 31491). Comments were due by July 1, 1993. FGIS received sixty-one comments from grain firms, Congressmen, businessmen, and two of Southern Illinois' employees. One grain firm expressed conditional support of Southern Illinois agency, all others supported Southern Illinois. Two commenters also expressed their opinion that States should not be allowed to perform official services outside of their own State.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act. Southern Illinois was deemed unqualified to perform official services in the Terre Haute portion of the geographic area as specified below, and in accordance with section 7(f)(1)(B), Champaign is better able than any other applicant to provide official services in the Terre Haute geographic area. Southern Illinois was not determined to be unqualified to provide official services in the O'Fallon geographic area as specified below, and in accordance with section 7(f)(1)(B), Southern Illinois is better able than Goodge to provide official services in the O'Fallon geographic area.

The geographic area (Terre Haute) for which Champaign will be designated to

serve, in addition to the area currently assigned, is as follows:

Bounded on the North by U.S. Route 36; U.S. Route 36 east across the Illinois-Indiana State line to the western Parke County line; the northern Parke and Putnam County lines;

Bounded on the East in Indiana by the eastern Putnam, Owen, and Greene County lines;

Bounded on the South by the southern Greene County line; the southern Sullivan County line west to U.S. Route 41(150); U.S. Route 41(150) south to U.S. Route 50; U.S. Route 50 west to the eastern Lawrence County line; in Illinois, the eastern Lawrence County line north to the southern Crawford County line; the southern Crawford County line; and

Bounded on the West by the western Crawford and Clark County lines; the western Edgar County line north to U.S. Route 36.

In addition, Champaign will be designated to service the following locations previously serviced by Southern Illinois as part of its Terre Haute geographic area, and which are in Champaign's current geographic area: Tabor Grain Co., Newman, Douglas County, Illinois; Tabor Grain Co., Oakland, Coles County, Illinois; and Cargill, Inc., Dana, Vermillion County, Indiana.

The geographic area (O'Fallon) for which Southern Illinois will be designated to serve is as follows:

Bounded on the East by the eastern Cumberland and Jasper County lines, the northern Lawrence County line east to the Illinois-Indiana State line, the Illinois-Indiana State line south to the southern Gallatin County line;

Bounded on the South by the southern Gallatin, Saline, and Williamson County lines; the southern Jackson County line west to U.S. Route 51; U.S. Route 51 north to State Route 13; State Route 13 northwest to State Route 149; State Route 149 west to State Route 3; State Route 3 northwest to State Route 51; State Route 51 south to the Mississippi River;

Bounded on the West by the Mississippi River north to Interstate 270; Interstate 270 east to Interstate 70; Interstate 70 east to State Route 4; State Route 4 north to Macoupin County; the southern Macoupin County line; the eastern Macoupin County line north to a point on this line which intersects with a straight line, from the junction of State Route 111 and the northern Macoupin County line to the junction of Interstate 55 and State Route 16 (in Montgomery County); and

Bounded on the North from this point southeast along the straight line to the junction of Interstate 55 and State Route 16; State Route 16 east-northeast to a point approximately 1 mile northeast of Irving; a straight line from this point to the northern Fayette County line; the northern Fayette, Effingham, and Cumberland County lines.

An investigation of the Terre Haute specified service point (SSP) of Southern Illinois found severe problems that detracted from the integrity of the official grain inspection system. Because the investigation concentrated on that SSP and not the remaining area served by the other three SSPs, the same types of problems have not been documented to date in the management and operations of those SSPs. Therefore, we are granting Southern Illinois a designation for a 12-month interim period to allow FGIS additional time to ascertain the adequacy of performance in their remaining geographic area.

Effective October 1, 1993, and ending September 30, 1994, Southern Illinois is designated to provide official inspection services in the geographic area specified above. Effective October 1, 1993, and ending May 31, 1995, (the end of their present designation) Champaign is designated to provide official inspection services in the geographic area specified above in addition to the area they are already designated to serve.

Interested persons may obtain official services by contacting Southern Illinois at (618) 632–1921 and Champaign at (217) 398–0723.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 7, 1993.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 93–22249 Filed 9–10–93; 8:45 am]

BILLING CODE 3410–EN–F

Food and Nutrition Service

National School Lunch Program and School Breakfast Program: Notice of "Nutrition Objectives for School Meals"; Public Hearings

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of public hearings.

SUMMARY: This notice announces the U.S. Department of Agriculture's intention to hold four public hearings concerning the National School Lunch Program and the School Breakfast Program. The hearings, entitled "Nutrition Objectives for School Meals," will provide an opportunity for public dialogue on issues concerning meeting current nutrition objectives in school meal programs. The National School Lunch Program makes an important nutritional contribution to nearly 25 million school-age children. Over 5 million children get breakfast at school. The hearings will provide public comment on issues concerning how school meal programs can meet current nutritional goals.

DATES: FNS is requesting that participation forms be submitted no later than seven calendar days prior to the applicable hearing date. Written submissions in lieu of oral presentations must be submitted or postmarked no later than December 15, 1993. Hearings will be held on the following dates from 8:30 a.m. to 5 p.m.:

1. Atlanta, Georgia: Wednesday, October 13, 1993.
2. Los Angeles, California: Wednesday, October 27, 1993.
3. Flint, Michigan: Friday, November 12, 1993.
4. Washington, DC: Tuesday, December 7, 1993.

ADDRESSES: Written submissions should be clearly marked with the words "Nutrition Objectives" and submitted to Mr. Stanley C. Garnett, Director, Child Nutrition Division, FNS, USDA, 3101 Park Center Drive, room 1007, Alexandria, Virginia 22302 (Phone: (703) 305–2590).

Completed participation forms should be submitted to the appropriate Regional Office, as follows:

1. Atlanta, Georgia Hearing: Ms. Nena P. Bratianu, Regional Director, SERO, USDA, FNS, SNP, 77 Forsyth Street, SW, suite 112, Atlanta, GA 30303 (Phone: (404) 730–2612).
2. Los Angeles, California Hearing: Mr. Bob Kragh, Regional Director, WRO, USDA, FNS, SNP, 550 Kearny Street, room 400, San Francisco, CA 94108–2518 (Phone: (415) 705–2229).
3. Flint, Michigan Hearing: Ms. Theresa E. Bowman, Regional Director, MWRO, USDA, FNS, SNP, 77 West Jackson Boulevard, 20th Floor, Chicago, IL 60604–3507 (Phone: (312) 353–6673).
4. Washington, DC Hearing: Mr. Robert Freiler, Regional Director, MARO, USDA, FNS, SNP, Mercer Corporate Park, 300 Corporate Boulevard, Robbinsville, NJ 08691–1598 (Phone: (609) 259–5050).

FOR FURTHER INFORMATION CONTACT: Mr. Garnett or the appropriate Regional Director, at the numbers listed above.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements

have been included that are subject to approval from the Office of Management and Budget.

These program are listed in the Catalog of Federal Domestic Assistance under No. 10.553 and No. 10.555 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and the final rule related notice published at 48 FR 29112, June 24, 1983.)

Background

Over the past decade there has been a growing scientific consensus that diets high in fat, saturated fat, and cholesterol and low in fiber increase the risk of heart disease and certain cancers.

In 1988, the U.S. Surgeon General issued a comprehensive report showing that diets low in fat, saturated fat, cholesterol and sodium and high in fiber promote life-long health and reduce the risk of heart disease and certain cancers. The following year the National Academy of Sciences issued a report in agreement with the Surgeon General's findings.

In addition, there is increasing evidence that childhood diets high in fat, saturated fat and cholesterol have lasting adverse health consequences. A National Cholesterol Education Program report on cholesterol levels in children and adolescents cited studies showing that atherosclerosis begins in childhood. Children in the U.S. exhibit higher dietary intakes of fat and cholesterol than children in populations with lower rates of heart disease.

Based on the scientific evidence, the Departments of Agriculture and Health and Human Services issued the 1990 U.S. Dietary Guidelines that recommend that Americans 2 years and older limit fat to 30 percent of calories. Public health organizations such as the American Heart Association, the American Cancer Society and the National Academy of Sciences have also updated their recommendations based on current scientific knowledge.

The purpose of the Dietary Guidelines for Americans is to provide the best advice based on current scientific evidence for a diet that will help Americans live healthy lives. The guidelines are used as the basis for all federal government programs in nutrition.

The Dietary Guidelines for Americans are:

- Eat a variety of foods.
- Maintain healthy weight.
- Choose a diet low in fat, saturated fat and cholesterol.
- Choose a diet with plenty of vegetables, fruits, and grain products.
- Use sugars only in moderation.
- Use salt and sodium only in moderation.
- If you drink alcoholic beverages, do so in moderation.

Currently, five out of six school-age children (aged 6–19) have diets above the recommended levels of 30 percent calories from fat, according to the 1989/90 Continuing Survey of Food Intakes of Individuals done by the USDA's Human Nutrition Information Service. The survey also found that 35 percent of elementary school children ate no fruit on the day of the survey. The Food Guide Pyramid—which visually translates the Dietary Guidelines—recommends from two to four servings per day from the fruit group. The pyramid also recommends between three and five servings of vegetables each day. The USDA survey showed that approximately 25 percent of school-age children ate no vegetables on the day of the survey.

The National School Lunch Program operates in more than 90 percent of the nation's schools and makes lunches available to nearly 25 million school children on a regular basis. Half of those lunches are served free or at reduced price to needy students. Of the approximately 5 million school breakfasts served in the School Breakfast Program, 4.3 million are served free or at a reduced price to needy students.

Currently, school meals are effective in delivering vitamins and minerals but are too high in fat, cholesterol and sodium. Ten years ago, USDA's research, the National Evaluation of School Nutrition Programs, April 1983, indicated that school lunches provided 38–40 percent of calories from fat. More current USDA data, Child Nutrition Program Operations Study, Second Year Report, June, 1992, although not nationally representative, on 20 school food authorities in the program indicated that the meals served had 38 percent of calories from fat in school year 1989–1990.

"Healthy People 2000," a report issued by the Department of Health and Human Services in September, 1990, recommended that steps be taken to assure that at least 90 percent of National School Lunch Program menus adhere to the nutrition principles determined in the U.S. Dietary Guidelines.

Given the prevailing research linking diet and health, it is clear that the Department needs to expand its efforts to ensure that school meals are consistent with current nutritional recommendations. As a first step, the Department believes that the "Nutrition Objectives for School Meals" hearings will provide an opportunity for public dialogue prior to proposing changes in the National School Lunch Program and, if appropriate, the School Breakfast Program.

The "Nutrition Objectives for School Meals" Public Hearings

The Department is requesting representatives of the public to offer comments and suggestions about nutritional objectives of school meals and is particularly interested in gathering information concerning the issues listed below. Interested individuals are encouraged to address any other areas of concern regarding the implementation of current nutrition recommendations in the National School Lunch Program and, if appropriate, the School Breakfast Program.

I. What are the health consequences of children's current dietary patterns?

II. How can the Dietary Guidelines for Americans be used to bring about measurable nutritional improvements in school meals and in children's diets?

III. What are the opportunities and obstacles in meeting current nutrition recommendations in school meal programs?

IV. What actions can the USDA, parents, school food service, food industry and other public and private organizations take to encourage the implementation of current nutrition recommendations in local schools?

If you want to speak at a public hearing, complete the participation form attached to this Notice, with a concise description of the topic to be addressed, and return it to the appropriate Regional Office. To assist in the scheduling process, we are requesting that you submit your participation form no later than seven calendar days prior to the applicable hearing date.

Given the time constraints, individuals will be selected for oral presentations upon receipt of the participation form on a first-come, first-served basis. Individuals who have not submitted a participation form and who wish to make an oral presentation will have an opportunity to make oral presentations following the scheduled presentations, as time permits.

Oral presentations will be limited to no more than 5 minutes; however, the chairperson may, at his or her discretion, ask for additional clarification of issues and questions raised. Written submissions from those who want to present additional information will be accepted. Persons

unable to attend the hearings may also submit written comments.

Written submissions must be submitted or postmarked no later than December 15, 1993, to Mr. Stanley C. Garnett at the address listed below. All submissions should be clearly marked with the words "Nutrition Objectives."

This material will be considered in the development of any action that may result from the hearings process. Written submissions and hearing transcripts may be reviewed by the public at the 3101 Park Center Drive, Alexandria, Virginia address from 8:30 a.m. to 5 p.m., Monday through Friday.

Dated: September 9, 1993.

Ellen Haas,

Assistant Secretary for Food and Consumer Services.

BILLING CODE 3410-30-M

PLEASE SEND THIS FORM TO THE APPROPRIATE REGIONAL OFFICE:

Atlanta Hearing: Ms. Nena P. Bratianu, Regional Director, SERO, USDA, FNS, SNP, 77 Forsyth Street, SW, Suite 112, Atlanta, GA 30303

Los Angeles Hearing: Mr. Bob Kragh, Regional Director, WRO, USDA, FNS, SNP, 550 Kearny Street, Room 400, San Francisco, CA 94108-2518

Flint Hearing: Ms. Theresa E. Bowman, Regional Director, MWRO, USDA, FNS, SNP, 77 West Jackson Boulevard, 20th Floor, Chicago, IL 60604-3507

Washington, DC Hearing: Mr. Robert Freiler, Regional Director, MARO, USDA, FNS, SNP, Mercer Corporate Park, 300 Corporate Boulevard, Robbinsville, NJ 08691-1598

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"NUTRITION OBJECTIVES FOR SCHOOL MEALS" PUBLIC HEARINGS
PARTICIPATION FORM

I. Please enter participation of:_____
Name (please print)

_____ (___) _____
Address Phone Number

II. I am representing (if other than self) _____

_____

III. I would like to make an oral presentation at the

_____hearing. I request ____minutes (5 min. max.).
Name of City

IV. I would like to address one of the following areas (circle one):

QUESTION I; QUESTION II; QUESTION III; QUESTION IV; OTHER

V. My specific focus will be:_____

_____

_____ _____
SIGNATURE DATE

** *Please submit your participation form no later than seven calendar days prior to the applicable hearing. If you are unable to attend, you may send written comments to Mr. Stanley C. Garnett, Director, Child Nutrition Division, FNS, USDA, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302.***

[FR Doc. 93-22457 Filed 9-10-93; 8:45 am]
BILLING CODE 3410-30-C

Forest Service

Exemption of Moores Creek Road Salvage Timber Sale From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project designed to recover down, dead and dying timber is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: Insects and disease, along with scattered windthrown trees, drought conditions and the maturity of timber stands in the Moores Creek Drainage on the Priest Lake Ranger District, Idaho Panhandle National Forests, has caused significant tree mortality. The Priest Lake District Ranger has proposed rehabilitation activities designed to salvage dead, down and dying timber and contribute towards watershed recovery in the Moores Creek Drainage. The District Ranger has determined, through an interdisciplinary process documented in the Moores Creek Road Salvage Timber Sale Decision Memo and project file, that there is good cause to expedite these actions to recover damage resources and rehabilitate National Forest System lands. Salvage of this type of timber must be accomplished quickly to avoid further losses of the resource and to contribute to the rehabilitation of the watershed and fishery resources.

EFFECTIVE DATE: Effective on September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Kent Dunstan, Priest Lake District Ranger; Idaho Panhandle National Forests, HCR 5, Box 207; Priest River, ID 83856. Telephone: 208–443–2512.

SUPPLEMENTARY INFORMATION: Root disease, bark beetles, white pine blister rust and stem decays, in association with the scattered windthrown trees, drought conditions and the maturity of the stands, have caused significant tree mortality in the upper portion of the Moores Creek drainage. The project area is located within Management Area 1 and designated by the Idaho Panhandle National Forests Plan as suitable timberland. This District Ranger has proposed the salvage harvest of the dead and damaged timber. This proposal is designed to meet the following needs: (1) Salvage dead and dying timber while it still has maximum commercial value, (2) expedite watershed rehabilitation, (3) improve the current health and vigor of the timber stands, and (4) decrease wildfire hazard by reducing fuel loading.

In January of 1993, an interdisciplinary team was convened, and scoping began. It was determined that the activities had no extraordinary circumstances and could be categorically excluded from documentation in an environmental impact statement or environmental assessment, [FSH 1909.15.31.2(4)]. The proposed action will salvage approximately 250 MBF of merchantable timber. Harvesting will be done from existing roads, no new road will be constructed or reconstructed.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR Part 217.4(a)(11) are being followed. Under this regulation the following may be exempt from appeal:

"Decisions related to rehabilitation of National Forest System lands and the recovery of Forest Resources from natural disasters or other natural phenomena * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good causes exist to exempt such decisions from review under this part."

Based on the information presented in the District Ranger's project file and Decision Memo for this project, I have determined that good cause exist to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: September 7, 1993.

Christopher D. Risbrudt,

Deputy Regional Forester; Northern Region.

[FR Doc. 93–22254 Filed 9–10–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Sensors Technical Advisory Committee; Notice of Closed Meeting

A meeting of the Sensors Technical Advisory Committee will be held October 1, 1993, 9 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th Street & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to sensors and related equipment and technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 482–2583.

Dated: September 7, 1993.

Betty Anne Ferrell,

Director, Technical Advisory Committee Staff.

[FR Doc. 93–22322 Filed 9–10–93; 8:45 am]

BILLING CODE 3510–DT–M

Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration will be held September 29, 1993, 9 a.m., at the U.S. Department of Commerce, Herbert Hoover Building, room 1617(M2), 14th & Constitution Avenue, NW., Washington, DC. The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

Executive Session: 9–10:30.

1. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

General Session: 10:30–12.

2. Opening remarks by the Chairman.
3. Trade Promotion Coordination Council.
4. Vietnam Sanctions.

5. PEC Recommendation on Improving Export Controls.
6. Review of National Association of Manufacturers Proposal on Export Controls.

A notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved Sept. 27, 1991, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC.

For further information, contact Ms. Betty A. Ferrell (202) 482–2583.

Dated: September 7, 1993.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 93–22319 Filed 9–10–93; 8:45 am]

BILLING CODE 3510–DT–P

Foreign-Trade Zones Board

[Docket 48–93]

Foreign-Trade Zone 40—Cleveland, OH; Application for Subzone, Mr. Coffee, Inc., Facilities (Appliances/ Coffeemakers) Bedford Heights, OH

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Cleveland Regional Port Authority, grantee of FTZ 40, requesting special-purpose subzone status for the appliance/coffeemaker manufacturing facilities of Mr. Coffee, Inc., in Bedford Heights, Ohio. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 30, 1993.

The Mr. Coffee facilities involve a main manufacturing plant (35 acres) located at 24700 Mills Road, Bedford Heights, Ohio, and a distribution center (6 acres) at 26840 Fargo Avenue, Bedford Heights, Ohio. The facilities (600 employees) are used to manufacture and distribute coffeemakers and teamakers and other small countertop kitchen appliances such as food dehydrators, juicers, mug warmers, and coffee mills. Certain components are sourced abroad (some 12–20% of value), including heating elements, switches, timing modules, thermometers, cords, plastic parts, rubber tubing, and packaging.

Zone procedures would exempt Mr. Coffee from Customs duty payments on the foreign products that are reexported. On domestic sales, the company would be able to choose the duty rates that apply to finished appliances (3.4% to 5.3%). The duty rates on foreign-sourced items range from 2.8 percent to 5.3 percent. Foreign merchandise and finished products held for export would be eligible for exemption from certain state and local ad valorem taxes. The application indicates that zone savings would help improve the international competitiveness of Mr. Coffee's Ohio facilities.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 12, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 8, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 600 Superior Avenue East, room 700, Cleveland, OH 44114,

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: September 2, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–22318 Filed 9–10–93; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 49–93]

Foreign-Trade Zone 61—San Juan, Puerto Rico; Application for Subzone, Merck Plant, (Pharmaceutical and Agricultural Chemical Products) Barceloneta, PR

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Commercial and Farm Credit and Development Corporation of Puerto Rico, grantee of FTZ 61, requesting special-purpose subzone status for the pharmaceutical and agricultural chemical product manufacturing facility of Merck, Sharp & Dohme Química de Puerto Rico, Inc. (MSD), a wholly-owned subsidiary of Merck & Co., Inc. (Merck), in Barceloneta, Puerto Rico, adjacent to the San Juan Customs port of entry area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 30, 1993.

Merck is one of the world's largest pharmaceutical manufacturers with nearly $9 billion in total sales in 1991. Its primary product lines include: Patented prescription and over-the-counter pharmaceutical products, veterinary pharmaceuticals and agricultural and specialty chemicals. This proposal is part of an overall company cost reduction effort. (Applications for subzone status are also being submitted for seven other Merck facilities.)

MSD's Barceloneta plant (221 acres, 440,616 sq. ft., 76 bldgs.) is located at RD 2, Km. 57, 30 miles west of San Juan, in the municipality of Barceloneta, Puerto Rico. The facility (850 employees) is used to produce pharmaceutical bulk chemicals and intermediates used in Merck's human and animal health products, and finished animal health and agricultural chemical products for its AgVet (agricultural/veterinary) Division. Bulk pharmaceutical and intermediate products currently include amiloride HCl, enalapril maleate, lisinopril and methyldopa, used in the treatment of high blood pressure; cyclobenzaprine, a muscle relaxant; ivermectin bulk, a livestock anti-parasitic; and timolol free base and timolol maleate, for the treatment of glaucoma. These active ingredients are sent to Merck's other facilities for processing into final products. Finished animal health/ agricultural chemical products currently include "Avid", an antiparasitic for crop protection, "Curatrim", treatment for liver flake in cattle, "Heartgard Plus", for prevention of canine heartworm disease, and "L–AAN", used in the treatment of hypertension. Finished products are then shipped to Merck's West Point, Pennsylvania, facility (application pending FTZ Board approval, FTZ Doc. 29–93, 58 FR 38749, 7/20/93) for U.S. distribution.

Currently, foreign-sourced materials account for, on average, 40 percent of the value of the products that leave the Barceloneta plant including the following specific chemicals: amiloride HCl crude, avermectin B_1, trienone, clorsulon, keto ester, ala-pro, pyrantel, DMSO, vanillin, TFA LYS PRO free base, formamide, S-glycolamine, and DCT. The company also may purchase products from abroad in the following general product categories: Gums,

starches, waxes, vegetable extracts, mineral oils, phosphoric acid, hydroxides, hydrazine and hydroxylamine, chlorides, phosphates, carbonates, hydrocarbons, alcohols, phenols, ethers, epoxides, acetals, aldehydes, ketone function compounds, mono- and polycarboxylic acids, phosphoric esters, amine-, carboxymide, nitrile- and oxygen-function compounds, heterocyclic compounds, sulfonamides, vitamins, hormones, sugars, antibiotics, gelatins, enzymes, color lakes, soaps and detergents, medicaments, and pharmaceutical products. The company may also source abroad insecticides, rodenticides, fungicides and herbicides for use in its AgVet production.

Zone procedures would exempt MSD from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (duty-free to 23.5%, most falling in the 3.7%–13.5% range). The duty rates on foreign-sourced items range from duty-free to 23.5 percent, with most falling in 3.7%–13.5% range. The application indicates that the savings from zone procedures will help improve the firm's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 12, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 29, 1993.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, room G–55, Federal Building, Chardon Avenue, San Juan, Puerto Rico 00918.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: September 2, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–22317 Filed 9–10–93; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 653]

Expansion of Subzone Status (Personal Computers) Subzone 77A; Sharp Manufacturing Company of America Plant Memphis, TN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the City of Memphis, Tennessee, grantee of Foreign-Trade Zone Subzone No. 77A, at the Sharp Manufacturing Company of America plant, requesting authority to expand the subzone area and the scope of manufacturing authority under zone procedures to include portable personal computers (televisions and microwave ovens are currently authorized), was filed by the Foreign-Trade Zones (FTZ) Board on April 15, 1992 (Docket 10–92, 57 FR 18467, 4/30/92) (Amendment: 57 FR 28828, 6/29/92);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that approval is in the public interest;

Now, therefore, the Board hereby orders:

The grantee is authorized to expand Subzone 77A and the scope of manufacturing authority as requested in the application, as amended, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 1st day of September, 1993.

Joseph A. Spetrini,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 93–22316 Filed 9–10–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–570–814]

Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China; Initiation of Anti-Circumvention Inquiry on Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of initiation of anti-circumvention inquiry.

SUMMARY: On the basis of a petition filed with the Department of Commerce, we are initiating an anti-circumvention inquiry to determine whether producers of carbon steel butt-weld pipe fittings from the People's Republic of China are circumventing the antidumping duty order on carbon steel butt-weld pipe fittings.

EFFECTIVE DATE: September 13, 1993.

FOR FURTHER INFORMATION CONTACT: David Genovese, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On July 21, 1993, the Department of Commerce (the Department) received a petition filed by the U.S. Fittings Group, which is an *ad hoc* trade association of domestic producers of carbon steel butt-weld pipe fittings whose members currently consist of Hackney, Inc., Ladish Co., Inc., L.A. Boiler Works, Inc., Mills Iron Works, Inc., Steel Forgings, Inc., and Tube Forgings of America, Inc. (the petitioners), requesting that the Department conduct an anti-circumvention inquiry on the antidumping duty order on certain carbon steel butt-weld pipe fittings (CSPFs) from the People's Republic of China (PRC) (57 FR 21058, May 18, 1992). The petitioners allege that producers of CSPFs from the PRC are circumventing, within the meaning of section 781(b) of the Tariff Act of 1930, as amended (the Act), the antidumping duty order on CSPFs by exporting unfinished CSPFs to Awaji Sangyo Co. (Thailand), in Thailand, which then completes the finishing operations and exports the merchandise to the United States free of any antidumping duties.

Initiation of Anti-circumvention Proceeding

Section 781(b) of the Act allows the Department to include merchandise within the scope of an existing antidumping duty order if: (1) The merchandise imported into the United States is of the same class or kind as merchandise produced in a foreign country that is the subject of an antidumping duty order; (2) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise imported from the country which is subject to the antidumping duty order, and the difference between the value of the completed merchandise exported to the United States and the value of the merchandise imported to the third

country prior to completion or assembly for export to the United States is small.

Based on the Department's analysis of petitioners' submission (see Decision Memorandum from Holly A. Kuga to Joseph A. Spetrini, dated 08/23/93), we are initiating an anti-circumvention inquiry on carbon steel butt-weld pipe fittings from the People's Republic of China, case number A–570–814.

The Department will not suspend liquidation at this time. However, the Department will instruct the U.S. Customs Service to suspend liquidation in the event of an affirmative preliminary determination of circumvention.

This notice is published in accordance with section 781(b) of the Act (19 U.S.C. 1677j(b)) and 19 CFR 353.29.

Dated: September 2, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–22315 Filed 9–10–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–810]

Mechanical Transfer Presses From Japan; Preliminary Results and Termination in Part of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results and termination in part of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioners and three manufacturers/exporters, the Department of Commerce is conducting an administrative review of the antidumping duty order on mechanical transfer presses from Japan. The review covers three manufacturer/exporters of the subject merchandise to the United States during the period February 1, 1991, through January 31, 1992. The review indicates the existence of dumping margins during the period.

As a result of this review, we have preliminarily determined to assess antidumping duties equal to the differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 3740) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on mechanical transfer presses (MTPs) from Japan. On February 27, 1992, the petitioners, the Verson Division of Allied Products Corp., the United Autoworkers of America, and the United Steelworkers of America (AFL–CIO/CLC), requested a review of Ishikawajima-Harima Heavy Industries Co., Ltd. (IHI), and Hitachi Zosen Corp. (Hitachi); on February 28, 1992, Komatsu Ltd. (Komatsu), Aida Engineering, Ltd. (Aida), and Hitachi requested to be reviewed; all requests were in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Tariff Act), and § 353.22(a) of the Department's regulations. We published the notice of initiation of the antidumping duty administrative review on March 16, 1992 (57 FR 9104), covering the period February 1, 1991, through January 31, 1992.

The initiation notice names four companies. Of these four companies, we are terminating the review of one company (see "Termination of Review in Part" section of this notice). Of the three remaining companies, IHI had no shipments for the period of review. We analyzed the responses of Aida and Hitachi to the Department's antidumping questionnaire. The Department has now conducted the review in accordance with section 751 of the Tariff Act.

Termination of Review in Part

On May 7, 1992, Komatsu withdrew its request for review. The petitioners had not requested a review of this company. Therefore, in accordance with 19 CFR 353.22(a)(5), the Department is terminating the review with respect to Komatsu.

Scope of the Review

Imports covered by this review include MTPs currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8462.99.0035 and 8466.94.5040. The HTS numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive.

For purposes of this review, the term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled.

This review covers sales by Aida and Hitachi of MTPs from Japan entered into the United States during the period February 1, 1991, through January 31, 1992. This review does not cover spare and replacement parts and accessories. The review also does not cover Aida's FMX series cold forging press, with optional transfer feed unit, which is the subject of a pending scope ruling. If the Department determines that the FMX press is within the scope of the antidumping duty order, we will include sales of FMX presses by Aida in the final results of this administrative review.

United States Price

The Department used purchase price (PP), as defined in section 772 of the Tariff Act, in calculating United States price (U.S. price) for Aida and Hitachi because all sales were made directly to unrelated parties prior to importation into the United States. U.S. price was based on packed, f.o.b. Japanese or U.S. port prices, as appropriate. We made deductions, where applicable, for foreign inland freight and insurance, ocean freight, export insurance expenses, brokerage and handling, stevedoring charges, marine insurance, air freight, and U.S. Customs duties and fees. No other adjustments were claimed or allowed.

Foreign Market Value

We have preliminarily determined that models of MTPs sold in the home market are not comparable to the U.S. models sold during the period of review. Accordingly, the Department has used constructed value (CV), as defined in section 773(e) of the Tariff Act, to calculate foreign market value (FMV). We note that Aida and Hitachi have argued that home market models are not similar to models sold to the United States, and that we have received no comments from petitioners on the issue.

We calculated CV as the cost of materials and fabrication of the merchandise exported to the United States, plus general expenses, profit and packing. We used the respondents' CV data, except in the following instances where the costs were not appropriately quantified or valued:

For Aida:

(1) We revised the submitted general and administrative expense calculation to include certain non-operating income and expense items; and (2) we recalculated interest expense by disallowing the reported interest income offset because Aida did not break out interest income into short-term and long-term interest income.

For Hitachi:

(1) We adjusted the submitted general and administrative expense calculation using Hitachi's audited unconsolidated financial statements for the fiscal year ending March 31, 1992; (2) we reduced net interest expense, rather than gross interest expense, by the ratio of trade accounts receivable and inventory to total assets; and (3) we disallowed the negative imputed credit on prepaid sales because the benefit from the prepayment is already accounted for in the interest expense calculation.

We made circumstance-of-sale adjustments to CV for credit, technical services, and warranty expenses to reflect the differences between the home market and U.S. costs. We denied a circumstance-of-sale adjustment claimed by Hitachi for export insurance expenses because we consider these expenses to be movement expenses, and treated them as such in our U.S. price calculation. No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our review, the Department preliminarily determines that the following margins exist for the period February 1, 1991, through January 31, 1992:

Manufacturer/exporter	Margin (percent)
Aida Engineering, Ltd.	0.84
Hitachi Zosen Corp.	0.00
Ishikawajima-Harima	[1]0.00

[1] No shipments during the period. Rate is from the last final results of review for this company.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of MTPs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) the cash deposit rates for the reviewed companies will be those established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all others" rate established in the final notice of the LTFV investigation of this case, in accordance with the Court of International Trade's decisions in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83. The all others rate is 14.51 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: September 3, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–22308 Filed 9–10–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–437–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the Republic of Hungary; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty review.

SUMMARY: On August 12, 1992, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the Republic of Hungary. The period of review is June 1, 1990 through May 31, 1991.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those in our preliminary results of review.

EFFECTIVE DATE: September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Breck Richardson, Elisabeth Urfer, or Maureen Flannery of the Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–4733.

Background

On August 12, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 36069) the preliminary results of this administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, (TRBs) from Hungary (52 FR 23319, June 19, 1987). The respondent, Magyar Gordulocsapagy Muvek (MGM), requested that we conduct an administrative review in accordance with 19 CFR 353.22(a). We published a notice of initiation of this antidumping duty administrative review on August 14, 1991 (56 FR 40305).

We sent MGM a questionnaire on December 31, 1991, and received a response on February 14, 1992. We

issued a supplemental questionnaire on May 14, 1992. On May 29, 1992, MGM requested an additional 14 days to respond to the supplemental questionnaire. We granted an extension until June 12, 1992. On June 11, 1992, MGM requested that it be allowed to submit its supplemental questionnaire response by June 16, 1992. We granted an extension for the public version until June 15, 1992, the proprietary version remaining due June 12, 1992. We received both the proprietary and the public versions after the June 15, 1992 deadline had expired (the deadline for submission of the public version of the supplemental response was 5 p.m., close of business, on June 15). In accordance with § 353.31(b)(2) of the Department's regulations, we rejected as untimely both the proprietary and the public versions of the supplemental response.

MGM and Petitioner, the Timken Company, submitted case and rebuttal briefs. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of TRBs and parts thereof, finished and unfinished, from Hungary. This merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 8482.20.00, 8482.91.00.60, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30 and 8483.90.80. Although the HTS item numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

This review covers the period June 1, 1990, through May 31, 1991. MGM accounts for all Hungarian exports to the United States of the subject merchandise.

United States Price

We based the United States price (USP) on purchase price (PP), in accordance with section 772(b) of the Act, as the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States. PP was based on either FOB Hamburg port price to unrelated purchasers or the ex-factory price to unrelated purchasers. With respect to FOB Hamburg sales, we made deductions for brokerage and handling and foreign inland freight charges. The brokerage and handling charges were paid in convertible currency. We valued foreign inland freight deductions using surrogate data based on Mexican freight costs. We selected Mexico as the surrogate country for the reasons explained in the "Foreign Market Value" section of this notice.

Foreign Market Value

In the most recent review of this order, the Department treated Hungary as a non-market economy country. See Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the Republic of Hungary, 56 FR 41819 (August 23, 1991). Because none of the parties to this proceeding has contested such treatment in this review, we have calculated foreign market value in accordance with section 773(c) of the Act and § 353.52 of the Department's regulations. Section 773(c) of the Act requires us to base foreign market value on a valuation of the factors of production in a market economy country that is at a level of development comparable to the non-market economy country and is a significant producer of comparable merchandise.

It is the Department's practice to value factor of production inputs from publicly available sources in a market economy. When there are no publicly available sources, we obtain other information for valuing factors of production, such as actual acquisition prices in a market economy.

We determined that South Africa, Uruguay, Algeria, Malaysia and Mexico are the most appropriate surrogates for Hungary. We researched publicly available documents relating to these countries and sent cables to the American embassies in each possible surrogate country requesting documentation relating to the values for the factors of production. We chose Mexico as the surrogate for valuing the factors of production because we were able to obtain more complete publicly available data pertaining to Mexico than for the other potential surrogate countries with comparable economies which produced TRBs.

We valued the factors of production as follows:

- The material cost for each component was determined by multiplying the gross weight (in kilograms) of steel by the cost per kilogram of the raw material input, and then deducting an amount to account for the sale of scrap.
- Certain raw material costs were valued based on MGM's imports of steel products from market economies that were paid for in freely convertible currency.
- In the absence of market economy prices paid by MGM, we valued other raw material inputs using National Trade Data Bank information for 1990–1991. We used United States FAS export data for sales to Mexico to value hot-rolled steel rods, steel strips and steel alloy scrap. See our response to comment 7 below.
- We valued both inland freight for the finished TRBs and inland freight on the steel inputs using publicly available Mexican freight rates. This information was taken from data obtained from the Mexican Freight Transportation Industry Chamber.
- We valued direct labor using a 1990 Mexican labor rate (the equivalent of 2.31 U.S. dollars per hour) for industrial-commercial machinery obtained from the Bureau of Labor Statistics (BLS). The BLS rate includes basic salaries, bonuses and other premiums paid to the industrial-commercial manufacturing industry in Mexico. We used the wage index published by the Bank of Mexico to adjust this figure to account for the 1991 portion of the period of review (POR). The specific portion of the wage index used reflects metal products, machinery and equipment industries in Mexico. Therefore, this rate is representative of actual labor rates in Mexico for all categories of employees within the metal products industry. The labor cost for each component was calculated by multiplying the total labor minutes by the surrogate labor rate (.385 U.S. dollars per minute).
- We were able to obtain a range of factory overhead and indirect labor rates of a number of roller bearing and steel producers in Mexico as reported by the Bearing Distributors Association in Mexico. We used a simple average of the range obtained from actual producers of the subject merchandise in Mexico as the most reasonable rate, given that there was no public information available on this subject.
- We used the statutory minimum of ten percent of the sum of material and fabrication costs for general expenses.
- We used the statutory minimum of eight percent of material and fabrication costs plus general expenses for profit.
- Consistent with our valuation of packing in the Final Determination of Sales at Less than Fair Value: Tapered Roller Bearings from the Hungarian People's Republic, 52 FR 17428 (May 8, 1989), the Final Determination of Sales at Less than Fair Value: Tapered Roller Bearings from the Socialist Republic of Romania, 52 FR 17433 (May 8, 1989), the Final Determination of Sales at Less than Fair Value: Tapered Roller Bearings from the People's Republic of China, 52 FR 19748 (May 27, 1987), Final Results of Antidumping Duty Administrative Review: Tapered Roller

Bearings from the Republic of Hungary, 55 FR 48146 (November 19, 1990) and Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the Republic of Hungary, 56 FR 41819 (August 23, 1991), the value of packing was based on publicly available data contained in the public file of the investigation of Tapered Roller Bearings from Italy, 52 FR 24198 (June 29, 1987).

Currency Conversion

We made currency conversions in accordance with 19 CFR 353.60(a). Currency conversions were made at the rates certified by the Federal Reserve Bank or at rates published by the International Monetary Fund in International Financial Statistics.

Analysis of the Comments Received

We invited interested parties to comment on the preliminary results. We received case and rebuttal briefs from MGM and Timken.

Comment 1: Timken argues that the absence of a response to the Department's supplemental questionnaire requires use of adverse best information available (BIA). Timken contends that the Department calculated the margin for the preliminary results as if deficiencies had never been identified and the supplemental questionnaire never sent, and cites 19 U.S.C. 1677e(b) of the statute, which states:

> In making their determinations under this subtitle, the administering authority and the Commission shall, whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, use the best information otherwise available.

Timken further cites § 353.37(a) of the regulations, which states:

> (a) Use of best information available. The Secretary will use the best information available whenever the Secretary:
>
> (1) Does not receive a complete, accurate and timely response to the Secretary's request for factual information; or
>
> (2) Is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted.

Timken asserts that the highest rate in the past is the most appropriate rate to use as BIA. The highest rate is from the investigation in which the Department calculated a margin of 7.42 percent. Timken argues that alternatively the duties could be assessed at the rate at which duties were deposited, 5.38 percent. Timken contends that, as it was the respondent who requested this review in order to change the deposit rates, and the respondent who failed to respond in a timely manner to the Department's request for information, the application of rates which would have applied had MGM not requested the review would be a reasonable and fair solution.

MGM disagrees with Timken's assertion that the Department relied upon deficient data in the preliminary results, and argues that a timely response to the supplemental questionnaire would not have directly affected the data ultimately used in the margin calculation. MGM argues that it did submit a detailed and essentially complete and accurate 184-page response to the Department's original questionnaire, and that the BIA consequences, suggested by Timken, for its late supplemental questionnaire response are unwarranted. MGM argues that the Department's goal is not to punish parties that do not meet deadlines for submitting information. MGM points out that, in *Rhone-Poulenc* v. *United States*, 899 F.2d. 1185 (Fed. Cir. 1990), the Court of Appeals for the Federal Circuit (CAFC) ruled that the aims of the Department are controlled by the goal of calculating the most accurate dumping margin possible. MGM further notes that, in *Olympic Adhesives, Inc.* v. *United States*, 899 F.2d 1565 (Fed. Cir. 1990), the CAFC found that the Department improperly used BIA where respondent's answers to the Department's questionnaire were complete and not deficient even though answers did not definitely resolve the overall issue presented.

Department's Position: While MGM failed to submit its response to the supplemental questionnaire in a timely manner, the circumstances of this case do not warrant the use of BIA. Methodological decisions made subsequent to the issuance of the supplemental questionnaire, and the nature of the available surrogate information, rendered much of the information requested in that questionnaire moot. For example, we selected Mexico as our surrogate country, and the Mexican overhead information we were able to find had only broad applications, thus making it impossible to match this information to detailed data such as that requested in the supplemental questionnaire. Therefore, the information requested in the supplemental questionnaire was essentially academic and unnecessary for the purposes of our antidumping calculations. Although we could not have known the outcome at the time we made the supplemental request, if we had found that the requested information could have been matched to our surrogate country information, we would have resorted to BIA because the missing supplemental data would have precluded us from making appropriate comparisons with surrogate country data. We therefore disagree with Timken's contention that BIA is appropriate, and we are addressing the issues raised by Timken regarding the specific questions asked in the supplemental questionnaire. See our responses to Comments 2–5 below.

Comment 2: Timken argues that the first four questions of the supplemental questionnaire relate to information that does not enter the margin calculation, but is nevertheless important to an understanding of the operations of MGM, and the absence of this information calls into question the accuracy of the data submitted.

MGM contends that while its response to the supplemental questionnaire would have formally clarified its submission, the errors were so obviously typographical that the Department could have corrected the discrepancies on its own. MGM further contends that, with regard to questions 1–3, which asked MGM to clear up minor discrepancies in the narrative response and the appendices, the issue is rendered moot because the Department does not have to rely at all on this information to calculate the final margin.

Department's Position: We do not agree with Timken that MGM's failure to supply the requested information called into question the accuracy of the data reported. Questions 1–3 asked MGM to clarify discrepancies between the narrative description and the appendices, with respect to the period covered by the data given in the appendices. This information was not essential to the margin calculation, but would have helped to tie the information used in those calculations to source documents, had we chosen to verify MGM's response. Question 4 asked MGM to report all costs in the currencies in which they were incurred. Because this is a non-market-economy case, values are based on information reflecting actual market-oriented costs; where costs were incurred in non-market-economy currencies, surrogate values were used for our analysis. Therefore, those costs incurred in the native currency of Hungary are irrelevant to the analysis performed for this case. For those inputs that were purchased by MGM in market-oriented currencies from companies in market economy countries, we were able to use the costs as reported by MGM because, as noted in MGM's rebuttal brief, in the response to the original questionnaire,

MGM reported those costs in the actual market-oriented currencies in which they were incurred.

Comment 3: Timken maintains that a response to the Department's supplemental questionnaire would have given the Department an understanding of the specific activities included in overhead, direct labor, indirect labor, and general expenses. Timken argues that, because MGM did not submit in a timely manner its response to the supplemental questionnaire, the Department should use, as BIA, the highest overhead rate reported by the Bearing Distributors Association in Mexico. Also, as BIA for general expenses, Timken asks that the Department contact that association to request the general expenses percentage for the same producer from which the overhead rate was reported.

MGM argues that the Department's question in the supplemental questionnaire regarding overhead related to details that would not change the Department's margin calculation. MGM notes that the information requested was in regard to factory overhead data for Hungary, but that in the preliminary results, Mexican overhead data were used.

Regarding the Department's unanswered request for information about the allocation of social security benefits in Hungary, MGM claims that this was a question that was not pursued in light of the Department's decision to use BLS data for wage rates, which include all fringe benefits. Regarding the Department's request that MGM explain why safety guards, auxiliary workers, and technical employees are accounted for under "general expenses," MGM argues that this question was not pursued by the Department for the preliminary results; instead, the Department relied on the statutory minimum for general expenses, as it had done in prior reviews. Concerning the Department's unanswered request that MGM explain whether the benefits of "working and protecting clothes" and "donation to travel to work" apply to all workers and, if so, to indicate how they are allocated, MGM claims that, like the question regarding social security payments, this also was a question that was not pursued by the Department, as demonstrated by the Department's decision to use BLS data for wage rates, which include all fringe benefits.

Department's Position: In the supplemental questionnaire, we requested a detailed description of MGM's methodology for calculating factory overhead, including worksheets and explanations of differences in allocation methods. However, in the preliminary results, we used a Mexican overhead rate, based on a simple average of a range of factory overhead and indirect labor rates for a number of actual roller bearing and steel producers in Mexico. Thus, the information requested in the supplemental questionnaire regarding factory overhead was rendered moot by our decision regarding the best way to value factory overhead. The information on overhead we requested in our questionnaire would have allowed us to confirm that MGM made proper allocations of overhead to TRBs. Had we been able to obtain a surrogate overhead rate that could be broken down into individual elements, it might have been necessary to make adjustments to that rate based on details of MGM's overhead allocation methodology. Since the overhead rate we were able to obtain did not specify the elements of which it was comprised, no adjustments could be made to that rate even if we did have detailed information on MGM's TRB allocation methodology. Therefore, regardless of whether MGM had supplied the requested overhead information, we would still have resorted to the same Mexican overhead rate. As a result, we have continued to use the same factory overhead rate that was used for the preliminary results.

On the point concerning the Department's request that MGM explain why certain items are accounted for under "general expenses," we again agree with MGM. We used the statutory minimum rate for general expenses. By our so doing, the need to know specific information concerning the individual components of this expense was eliminated. We have, therefore, continued to use the statutory minimum general expense amount.

We agree with MGM that the wage rate used as best available information for the preliminary results included all fringe benefits, and this would have encompassed social security. At the time we sent our supplemental questionnaire, we had not determined a labor rate to use for our calculations, or the individual costs that should be included in that rate. The rate we ultimately chose was fully loaded and, therefore, inclusive of the labor costs described in the supplemental questionnaire. The only effect on the labor rate that a response to the supplemental questionnaire might have had would have been a downward adjustment to the labor rate in the event that fully-loaded labor costs did not apply to MGM during the POR, an adjustment which would have actually benefitted MGM.

Comment 4: Timken contends that, without the data requested in the supplemental questionnaire regarding the Debrecen plant, the factors of production information for that plant remain unknown. Timken further argues that there is no rational basis for using data pertaining to the Diosd plant rather than data for the Debrecen plant. Noting that there may not be an easy method to account for the lack of data pertaining to the Debrecen plant (and possibly other facilities), Timken advises the Department to keep this absence of information in mind when deciding on BIA for the other factors of production.

Regarding the failure to report the same factors of production for the Debrecen plant, MGM indicates that the percentage of the products exported to the United States that were produced at the Debrecen plant is insignificant.

Department's Position: We agree with Timken that MGM should have provided the same data for the Debrecen facility as it provided for the Diosd facility. However, MGM did provide limited data for the Debrecen facility. Because the margins calculated for the TRB models manufactured at the facility in Debrecen are higher than the BIA rate suggested by Timken, we have concluded that the data associated with manufacturing at the Debrecen facility are the best information available for factors of production at that facility. Therefore, we are using these data for our margin calculations.

Comment 5: Petitioner indicates that MGM's failure to respond to the Department's request to confirm that all imports for the steel used to manufacture TRBs during the period had been reported and, if they had not, to resubmit the data to complete the record, should result in BIA. Timken asserts that, if steel data are to be used at all, the Department should use, as BIA, the highest cost for any type of steel reported. With respect to steel scrap, Timken claims that a downward adjustment of the gross steel values based on scrap should not be made unless scrap produced revenues. Without the data regarding scrap sales, Timken argues, the only rational BIA would be to disregard the scrap adjustment entirely and to base the steel value entirely upon the gross weight of steel which enters into the production process.

MGM argues that the Department only requested confirmation that all imports for steel used to manufacture TRBs during the POR had been reported, and maintains that they had indeed been reported. MGM contends that prior verified scrap usage ratios were used,

and scrap values were computed from surrogate country sources.

Department's Position: These questions were of the type intended to lay the groundwork for a possible verification. Since we chose not to verify MGM's response, we are accepting the information in the original response.

Comment 6: MGM asserts that the Department made a number of clerical errors. The clerical errors included errors in inputting the net weight for product KL68149/11, the net weight for product KHM218248, the net sales price for product KHM218210, the foreign market value for product KLM67048/10 and a zero margin for products KHM212049 and KHM218248, when the correct calculation yields a margin.

Timken argues that, although the clerical errors cited by MGM are in fact errors, correction of the errors will be unnecessary if information other than MGM's deficient response is used as BIA.

Department's Position: We agree with MGM that we made clerical errors in the preliminary results, and should correct those errors. Accordingly, we have corrected the errors noted by MGM, as well as additional clerical errors we found, and the results are reflected in the final results margin. See the August 23, 1993 analysis memorandum of final results.

Comment 7: MGM argues that the Department should have utilized Mexican import data, rather than data of United States steel exports to Mexico, to value hot-rolled steel rods. MGM notes that, pursuant to 19 U.S.C. 1677b(c), the Department is required to value each of the factors based on "the best available information regarding the value of such factors" in the surrogate country. MGM argues that Mexican import data from the official statistics of the Ministry of Commerce and Industry of Mexico is readily available and is the best available public source indicating the value of hot-rolled steel rods in Mexico. MGM argues that the value of hot-rolled steel rods which Mexican producers import from countries throughout the world reflects more accurately the cost of production in Mexico than do the United States export data upon which the Department has relied.

Timken argues that MGM submitted alternative data for Mexican steel values too late to be considered. Citing Tapered Roller Bearings from Romania, 56 FR 41518 (August 21, 1991), Timken argues that the Department does not consider factor values placed on the record after the preliminary results.

Department's Position: We agree with Timken that the Mexican import data should not be used to value hot-rolled steel rods. The data submitted for the record was untimely and was returned, in accordance with 19 CFR 353.31 (a)(3), to counsel for MGM by letter dated September 28, 1992.

Final Results of the Review

As a result of our comparison of the United States price to foreign market value, we preliminarily determine that the following dumping margin exists:

Manufacturer/ Exporter	Time period	Margin (percent)
Magyar Gordulocs-apagy Muvek	6/1/90–5/31/91	6.66 percent.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, in accordance with section 751(a)(1) of the Act, we will instruct the Customs Service to collect cash deposits for MGM and all other exporters of Hungarian TRBs, at the rate indicated above. This deposit requirement will be effective upon publication of this notice for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date. This deposit requirement, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) or 355.34(d). Timely written notification of return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: September 7, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

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[C–791–801]

Preliminary Negative Countervailing Duty Determinations: Certain Steel Products From South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Graham or Kristin M. Heim, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4105 or 482–3798, respectively.

PRELIMINARY DETERMINATION:

Case History

Since the publication of the notice of initiation in the **Federal Register** (58 FR 32515, June 10, 1993), the following events have occurred.

On June 14, 1993, we issued a questionnaire to the Government of South Africa ("GOSA") in Washington, DC, concerning petitioners' allegations.

On July 14, 1993, we received responses from the GOSA, South African Iron and Steel Industrial Corporation, Ltd. ("ISCOR"), its wholly-owned subsidiary, Vantin (Pty) Ltd. ("Vantin"), and Highveld and Steel and Vanadium Corporation Ltd. ("Highveld").

On July 26, 1993, we postponed the preliminary determinations to September 3, 1993 (58 FR 39790). On July 30, 1993, we presented the GOSA, ISCOR, Vantin, and Highveld with supplemental questionnaires and received responses from these parties on August 16, 1993.

Scope of Investigations

The products covered by these investigations, certain steel products, constitute the following four separate "classes or kinds" of merchandise: (1) Certain hot-rolled carbon steel flat products, (2) certain cold-rolled carbon steel flat products, (3) certain cut-to-length carbon steel plate, and (4) certain corrosion-resistant carbon steel flat products. See Appendix A to this notice for a complete description of the merchandise.

Injury Test

South Africa is not a "country under the Agreement" within the meaning of section 701(b) of the Tariff Act of 1930, as amended, ("the Act") and the products covered by these investigations are dutiable. Therefore, the U.S. International Trade Commission is not required to determine whether imports of these products from South Africa materially injure, or threaten material injury to, a U.S. industry.

Petitioners

Petitioners for each class or kind of merchandise subject to investigation are Armco Steel Company, L.P.; Bethlehem Steel Corporation; Geneva Steel; Gulf States Steel Inc. of Alabama; Inland Steel Industries, Inc.; Laclede Steel Company; LTV Steel Company, Inc.; Lukens Steel Company; National Steel Corporation; Sharon Steel Corporation; U.S. Steel Group (a unit of USX Corporation); and WCI Steel, Inc.

Respondents

The GOSA, Iscor and its wholly-owned subsidiary, Vantin, are respondents for all four classes or kinds of merchandise. Highveld is a respondent for cut-to-length carbon steel plate.

Analysis of Programs

For purposes of these preliminary determinations, the period for which we are measuring bounties or grants, the period of investigation ("the POI"), is calendar year 1992.

In determining the benefits received under the program described below, we used the following calculation methodology. We first calculated a country-wide rate for the program. This rate is comprised of the *ad valorem* benefit received by each firm weighted by each firm's share of exports, separately for each class or kind of merchandise, to the United States. Because Vantin is a wholly-owned subsidiary of Iscor, the benefits received by Iscor and Vantin were combined and weighted by their combined share of exports to the United States.

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determinations. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a bounty or grant in the final determinations.

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Program Preliminarily Determined To Be Countervailable

The following program is preliminarily determined to be countervailable.

Export Marketing Allowance Program

The Export Marketing Allowance ("EMA") program was established in 1962 to encourage export trade. The allowance may result in an additional deduction from taxable income of 75 to 100 percent of the marketing expenditure incurred. Exporters are allowed to deduct the additional 100 percent of their export marketing expenditures if their exports have increased by 10 percent over a specific time period. The program was terminated effective April 1, 1992. However, any unused portion of the allowance may be carried forward.

Iscor, Vantin and Highveld all applied for and received deductions under this program. All three companies were able to claim a 100 percent allowance. Vantin stated that all of its EMA claims were applicable to markets other than the U.S. Iscor and Highveld provided a breakdown of expenditures which were applicable to the U.S. market. Furthermore, while Iscor was able to claim an allowance under this program, the company was in a tax loss situation and, therefore, did not pay income tax for the tax return filed in the POI. Because Iscor's tax liability was not affected by the use of this program in the POI, we determine that this program was not used by Iscor (see, *e.g.*, Final Negative Countervailing Duty Determination: Low-Fuming Brazing Copper Rod and Wire from South Africa, (50 FR 31642, 31643, August 5, 1985)). Accordingly, we determine that this program was used only by Highveld based only on eligible U.S. expenditures.

Because this program is limited to exporters, we determine that it confers an export bounty or grant. To calculate the benefit for the POI, we divided the tax savings related to the U.S. market under the program by the total value of export sales to the U.S. of all products. On this basis, we determine the net bounties or grants from this program to be 0.00 percent *ad valorem* for hot-rolled carbon steel products; 0.00 percent *ad valorem* for cold-rolled carbon steel products; 0.00 percent *ad valorem* for corrosion-resistant carbon steel flat products; and 0.05 percent *ad valorem* for cut-to-length carbon steel plate.

Because this is the only countervailable program and the rates are zero or *de minimis*, pursuant to 19 CFR 355.7, we preliminarily determine that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of certain steel products in South Africa.

II. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that producers or exporters in South Africa of the subject merchandise did not receive benefits during the POI for exports of the subject merchandise to the United States under the following programs:

A. General Export Incentive Scheme
B. Export Marketing Assistance Schemes
C. Beneficiation Allowance
D. Industrial Development Corporation Financing
   1. Industrial Financing
   2. Low Interest-Rate Scheme for Export Promotion
   3. Export Finance Scheme
   4. Export Capacity Scheme
   5. Export Credit Scheme Interest-Rate Subsidy
   6. Multi Shift Scheme
E. Regional Industrial Development Incentives
   1. Incentives Provided Under the 1982 Regional Industrial Development Policy
   a. Rebates of Transportation Expense
   b. Electricity Rebates
   c. Housing Subsidies for Key Personnel
   d. Special Tender Preferences
   e. Short-term Financing Incentives
   f. Labor Incentives
   g. Long-Term Interest and Rent Incentives
   h. Cash Training Allowances

2. Incentives Provided Under the 1991 Regional Industrial Development Policy
   a. Annual Establishment Grant
   b. Profit Based Incentive
   c. Relocation Incentive
F. Tax Benefits Given to Manufacturers in Economic Development Areas Relating to the Cost of Power, Water and Transport

Verification

In accordance with section 776(b) of the Act, we will verify the information used in making our final determinations.

Public Comment

In accordance with 19 CFR 355.38, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary determinations on Friday, November 5, 1993, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to request a hearing must submit such a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than October 29, 1993. Ten copies of the business proprietary version and five copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than November 3, 1993. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with section 355.38 of the Commerce Department's regulations and will be considered if received within the time limits specified above.

These determinations are published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: September 3, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix A

Scope of the Investigations

The products covered by these investigations, certain flat-rolled steel products, constitute the following four separate "classes or kinds" of merchandise, as outlined below. Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written descriptions and the scope of this proceeding are dispositive.

Certain Hot-Rolled Carbon Steel Flat-Rolled Products

These products include hot-rolled carbon steel flat products, of a width of 0.5 inch or greater, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers), or in straight lengths which are less than 4.75 millimeters in thickness and of a width measuring at least 10 times the thickness, as currently classifiable in the HTS under item numbers 7208.11.0000, 7208.12.0000, 7208.13.1000, 7208.13.5000, 7208.14.1000, 7208.14.5000, 7208.21.1000, 7208.21.5000, 7208.22.1000, 7208.22.5000, 7208.23.1000, 7208.23.5030, 7208.23.5090, 7208.24.1000, 7208.24.5030, 7208.24.5090, 7208.34.1000, 7208.34.5000, 7208.35.1000, 7208.35.5000, 7208.44.0000, 7208.45.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.12.0000, 7211.19.1000, 7211.19.5000, 7211.22.0090, 7211.29.1000, 7211.29.3000, 7211.29.5000, 7211.29.7030, 7211.29.7060, 7211.29.7090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.30.0000, 7214.40.0010, 7214.50.0010, 7214.60.0010, and 7215.90.5000. Excluded from this investigation are certain seat belt retractor spring steel and certain carbon band saw steel, which are defined respectively by the following specifications:

Certain Seat Belt Retractor Spring Steel

Chemical Composition:
  Carbon—0.78%–0.83%
  Manganese 0.35%–0.50%
  Phosphorus 0.020% maximum
  Sulphur 0.008% maximum
  Silicon 0.10%–0.20%
  Aluminum 0.020%–0.060%
  Chromium 0.05%–0.15%
  Copper 0.12% maximum
Non-Metallic Inclusion Rating:
  (1) IPSI 10,000 maximum
  (2) ASTM E45
  A: 2 maximum
  B and C: 1 maximum
  D: 1 maximum
  (3) DIN 50602
  SS: maximum 3
  OA: maximum 1
  OS: maximum 1
  OG: maximum 2
Banding:
  #1 maximum
Decarburization:
  Complete=0.0005 inch maximum
  Total=0.002 inch maximum
Width:
  14 inches maximum
Thickness:
  0.07 to 0.125 inches

Certain Carbon Band Saw Steel

Chemical Composition:
  Carbon—1.21%–1.35%
  Manganese—0.15%–0.35%
  Phosphorus 0.025% maximum
  Sulphur—0.010% maximum
  Silicon—0.10%–0.25%
  Aluminum—0.015% maximum
  Chromium—0.10%–0.30%
  Copper—0.15% maximum
Microstructure:
  Must be fully sorbitic with carbide size #1 absolute maximum.

Certain Cold-Rolled Carbon Steel Flat-Rolled Products

These products include cold-rolled (cold-reduced) carbon steel flat products, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000,

7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Excluded from this investigation is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

Certain Corrosion-Resistant Carbon Steel Flat-Rolled Products

These products include flat-rolled carbon steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000.

Excluded from this investigation are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this investigation are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in thickness that consist of a carbon steel flat-rolled product clad on both sides with cold-rolled processed stainless steel flat-rolled products in a 20%–60%–20% ratio.

Certain Cut-to-Length Flat-Rolled Carbon Steel Plate

These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat products in straight lengths, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Excluded from this investigation is grade X–70 plate.

[FR Doc. 93–22311 Filed 9–10–93; 8:45 am]
BILLING CODE 3510–DS–P

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, Application No. 88–2A012.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the National Tooling & Machining Association ("NTMA") on October 18, 1988. Notice of issuance of the Certificate was published in the **Federal Register** on October 25, 1988 (53 FR 43140).

FOR FURTHER INFORMATION CONTACT: Jude Kearney, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1991) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 88–00012, was issued to the National Tooling & Machining Association ("NTMA") on October 18, 1988 (53 FR 43140, October 25, 1988) and previously amended on December 4, 1989 (54 FR 51914, December 19, 1989).

NTMA's Export Trade Certificate of Review has been amended to:

1. Add each of the companies listed in Appendix A as a "Member" of the Certificate. See Appendix A.

2. Delete each of the companies listed in Appendix B as a "Member" of the Certificate. See Appendix B.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: September 2, 1993.

Jude Kearney,

Acting Director, Office of Export Trading Company Affairs.

Appendix A

A & A Machine Company, Inc	Hatboro, PA.
A & A Tool & Die Co., Inc	Lynn, MA.
A & E Machine Shop, Inc	Lone Star, TX.
A & G Machine	Kent, WA.
A & M Engineering Inc	Burbank, CA.
A & R Manufacturing, Inc	Indianapolis, IN.
A & R Precision	Tucson, AZ.
A C Machine & Manufacturing	Meadville, PA.
A & S Precision Sheet Metal	Tucson, AZ.
A L Machining & Manufacturing	Chatsworth, CA.
A Landau Company	Warminster, PA.
A M Design	Canton, OH.
A & S, Inc	Van Nuys, CA.
A M T Applied Mfg. Technologies	Desoto, TX.
A S P Industries	Rochester, NY.
A Z Manufacturing & Sales	Independence, MO.
A–Cube Precision	Woodland Park, CO.
A–TP Precision Deburring	Phoenix, AZ.
A–1 Machining Company	New Britain, CT.
A–1 Valve Repair, Inc	Oklahoma City, OK.
Abco Tool and Die, Inc	Hyannis, MA.
Able Wire EDM, Inc	Orange, CA.
Accu Rounds, Inc	Avon, MA.
Accu-Met Laser, Inc	Cranston, RI.
Accurate Steel Treating, Inc	South Gate, CA.
Accurate Welding II, Inc	Warren, MI.
Ace Machine	Boise, ID.
Ackley Machine Corporation	Moorestown, NJ.
Acro-Fab Ltd	Hannibal, NY.
Adept Precision Machining	Milpitas, CA.
Adler Manufacturing	Burbank, CA.
Advanced Ceramic Technology	Orange, CA.
Advanced Grinding, Inc	Oakland, CA.
Advanced Machine & Eng. Co	Rockford, IL.
Advanced Machine Technology, Inc	Indianapolis, IN.
Advanced Tooling Systems, Inc	Comstock Park, MI.
Aero Engineering & Mfg. Company	Valenica, CA.
Aerospace Products, Inc	Wichita, KS.
Aerospace, Inc	Chandler, AZ.
Aerotek Mfg., Inc	Barton, VT.
Afam Manufacturing, Inc	Albuquerque, NM.
Agape Precision Machining, Inc	Rochester, NY.
Air Capital Tool Services, Inc	Wichita, KS.
Aircraft Hinge	Valencia, CA.
Airmetal Corporation	Jackson, MI.
Alan Ramsay, Inc	Webster, NY.
Alard Machine Products	Gardena, CA.
All Metals Fabricating, Inc	Richardson, TX.
All Tools Texas, Inc	Houston, TX.
All-Tech Machining, Inc	Oakland Park, FL.
Allen Randall Enterprises, Inc	Wadsworth, OH.
Allfab Engineering Company, Inc	Phoenix, AZ.
Alliance Metal Stamping	Rochester, NY.
Alliance Precision Plastics	Rochester, NY.
Alpha Mold Inc	Dayton, OH.
Alpha Mold West Inc	Broomfield, CO.
Alpha Tooling, Inc	Santa Fe Springs, CA.
Alpine Precision, Inc	Chelmsford, MA.
Alro Machine Co., Inc	Lindenhurst, NY.
Alt's Tool & Machine, Inc	Santee, CA.
Ambel Precision Mfg. Corp	Bethel, CT.
American Mfg. & Machining, Inc	Racine, WI.
American Tool & Die Welding	Roseville, MI.
Amerimold, Inc	Mogadore, OH.
Ameritec Tool & Die, Inc	Bay City, MI.
Ames Engineering Corporation	Wilmington, DE.
Andon Electronic Corporation	Lincoln, RI.
Angone Tool & Die, Inc	Vernon, CA.
Anoroc Company	Gardena, CA.
Arc Drilling—Dynamic Balancing	Garfield Heights, OH.
Arrow Diversified Tooling, Inc	Ellington, CT.
Artisan Tool & Die, Inc	Muncie, IN.
Artron Precision Inc	Sunnyvale, CA.
Associated Spring/Raymond	Maumee, OH.
Assured Quality Machining, Inc	St. Petersburg, FL.

Appendix A—Continued

Astro Automation, Inc	Trafford, PA.
Astrotronics' Inc	Mesa, AZ.
Atch-Mont Gear, Inc	Ivyland, PA.
Atlantic Tool & Die Company	Hampstead, NC.
August Machine, Inc	Phoenix, AZ.
Aurelius Mfg. Co, Inc	Braham, MN.
Austin Machine Company	St. Charles, MO.
Automated System Integrators	Evansville, IN.
Avtech Systems, Inc	Provo, UT.
Axis CNC Machining	S. El Monte, CA.
ABBEC Tool & Die	Rochester, NY.
AT Engineering & Mfg., Inc	Chatsworth, CA.
B & E Electroform Co. of S.C	Simpsonville, SC.
B & L Engravers, Inc	Clearwater, FL.
B & W Manufacturing Company	Bristol, CT.
B C Machine Shop	Rochester, NY.
B M Company	Cranston, RI.
Bahnson's Machine Shop	Palm Springs, CA.
Barberie Mold	Gardena, CA.
Barnes Machine, Inc	Shelton, WA.
Bartley Machine & Manufacturing	Amesbury, MA.
Bay Tech Industries, Inc	Tampa, FL.
Beacon Metrology, Inc	Chardon, OH.
Beaver Fab Inc	Cedar Hill, TX.
Beck Tool Company	Cambridge Springs, PA
Bedard Machine, Inc	Brea, CA.
Bedford Precision	Kirkland, WA.
Bennett Machine & Welding, Inc	Caldwell, ID.
Benning Inc	Blaine, MN.
Bent River Machine	Cottonwood, AZ.
Best Way Stamping Inc	La Habra, CA.
Beta Tool & Mold/Dyna-Tech	Independance, OH.
Bimco, Inc	Salt Lake City, UT.
Birdsall Tool & Gage	Farmington Hills, MI.
Blackburn Melton Mfg. Company	Houston, TX.
Blackhawk Engineering Co., Inc	Cedar Falls, IA.
Blackwood Grinding Inc	Hurst, TX.
Blankinship Industries, Ltd	Kent, WA.
Blue Chip Tool Company	Titusville, PA.
Boehm Pressed Steel Company	Cleveland, OH.
Bonneville Machine, Inc	Salt Lake City, UT.
Booz Tooling	Willow Grove, PA.
Boyce Machine	Tallmadge, OH.
Bradford Machine Company Inc	Brattleboro, VT.
Brady Mold and Machine Co., Inc	Kent, OH.
Brasco Machine	Anaheim, CA.
Breeze Industrial Products	Saltsburg, PA.
Breeze's Precision Boring Compan	Pinellas Park, FL.
Brent Grinding & Machine, Inc	Houston, TX.
Broaching Specialties, Inc	Madison Heights, MI.
Broadway Carolina, Inc	Anderson, SC.
Brookfield Machine, Inc	West Brookfield, MA.
Brown Corporation of Waverly	Waverly, OH.
Browning Technology, Inc	Dayton, OH.
BroTron Mfg. Inc	Kent, WA.
Burr N Bench, Inc	Westfield, MA.
Buss Precision Mold Inc	Milwaukie, OR.
C & A Precision, Inc	Phoenix, AZ.
C & M Precision Spindle, Inc	Carlton, OR.
C A S Industries Inc	Paramount, CA.
C D S Leopold	San Carlos, CA.
C E C Tool Co., Inc	Fountain Inn, SC.
C E I Automation	Aurora, CO.
C F A Company, Inc	Milford, CT.
C J Machine Products	Hayward, CA.
C K D Engineering & Mfg	La Habra, CA.
C M Industries, Inc	Old Saybrook, CT.
C P M, Inc	Billings, MT.
C Q Machining, Inc	Phoenix, AZ.
C R Metal Products, Inc	St. Louis, MO.
C A J Welding	Westfield, MA.
C C Industries	Brea, CA.
Cal & Rogers	Meridian, ID.

Appendix A—Continued

Calder Machine Co. (C M C)	Florence, SC.
California Tool Grinding	Rancho Cordova, CA.
Cameron Machine Shop, Inc	Richardson, TX.
CamTech Systems	Carson, CA.
Cannon Industries, Inc	Rochester, NY.
Carbide Probes, Inc	Dayton, OH.
Carlton Precision Machine Inc	Norwich, CT.
Cascade Plastics Company, Inc	Tacoma, WA.
Cast Industries, Corp	Costa Mesa, CA.
Castle Hone & Lap	Santa Clara, CA.
Catalina Precision Engineering	Irvine, CA.
Cedarbrook Engineering Corp	Minneapolis, MN.
Center Machine Company	Webster, PA.
Centerpoint Mfg. Co., Inc	Burbank, CA.
Central Massachusetts Machine	Holyoke, MA.
Central Tools, Inc	Cranston, RI.
Centurion Manufacturing	Simi Valley, CA.
Century Tool & Engr., Inc	Indianapolis, IN.
Challenge Machining Co	Piedmont, SC.
Chance Tool & Die Co., Inc	Cincinnati, OH.
Chandler Tool Company	Rockford, IL.
Charles P. Schilling & Sons, Inc	Bohemia, NY.
Chatham Precision, Inc	Hinesburg, VT.
Chicago Grinding & Machine Compa	Melrose Park, IL.
Chip-Makers Tooling Supply	Whittier, CA.
Chip's Machine Shop Service	Phoenix, AZ.
Cimco	Costa Mesa, CA.
Cinex Inc	Cincinnati, OH.
City Industrial Tool & Die	Harbor City, CA.
Clark & Clark Enterprises, Inc	Tucson, AZ.
Clark & Wheeler Engineering, Inc	Cerritos, CA.
Clarke Engineering, Inc	North Hollywood, CA.
Class Machine & Welding, Inc	Arkron, OH.
Classic Tool	Saegertown, PA.
Classic Tool & Mold, Inc	Alvin, TX.
Cleveland Electric Laboratories	Twinsburg, OH.
Coastal Machine Company	Branford, CT.
Cogswell Mfg. Co., Inc	Agawam, MA.
Colbrit Manufacturing Co., Inc	Chatsworth, CA.
Collins Machine Works, Inc	Wellford, SC.
Collins Manufacturing, Inc	Essex, MA.
Colonial Machine Co., Inc	Pleasantville, PA.
Columbia Products, Inc	Dallastown, PA.
Comac Manufacturing Corporation	Santa Clara, CA.
Commercial Aircraft Products, Inc	Wichita, KS.
Compact Air Products, Inc	Westminster, SC.
Compdraw Inc	Attleboro, MA.
Competitive Engineering Inc	Tucson, AZ.
Computech Manufacturing Co., Inc	North Kansas City, MO.
Concept Group	Berlin, NJ.
Condor Engineering, Inc	Colorado Springs, CO.
Connecticut Tool & Cutter Co	Cheshire, CT.
Conroy & Knowlton, Inc	Lake Forest, CA.
Contine Corporation	Erie, PA.
Continental Precision Machining	Santa Clara CA.
Contour Metrological & Mfg., Inc.	Troy, MI.
Cook Specialty Company	Green Lane, PA.
Coventry Carbide Tool	Coventry, RI.
Cramer Engineering Company	Santa Fe Springs, CA.
Creative Manufacturing, Inc	Tempe, AZ.
Creative Precision, Inc	Folsom, PA
Creb Engineering	Pascoag, RI.
Crowe Industries	Dayton, OH.
Custom Die & Insert, Inc	Lafayette, LA.
Custom Precision Grinding Inc	Ft. Lauderdale, FL.
Custom Ultrasonics, Inc	Buckingham, PA.
Cutting Tool Technologies, Inc	Wilton, NH.
CAL-SWISS Manufacturing Company	Pasadena, CA.
CAM Fran Tool Co., Inc	Bensenville, IL.
D & D Tool, Inc	Westfield, MA.
D & K Industries	Chatsworth, CA.
D & S Tool, Inc	Dallas, TX.
D & F O'Brien & Associates	Santa Fe Springs, CA.

Appendix A—Continued

D K Tool & Die, Inc	Grand Rapids, MI.
D M Machine & Tool	Kennerdell, PA.
D O Fabrication, Inc	Sacramento, CA.
D–J Engineering	Augusta, KS.
Dakota Machine Tool Company	West Fargo, ND.
Dan McEachern	Alameda, CA.
Danson Tool and Die Inc	Bay City, MI.
Darco Manufacturing, Inc	Syracuse, NY.
Day-Tec Tool & Mfg., Inc	Dayton, OH.
DaCo Precision Manufacturers	Sandy, UT.
DaKa Enterprises	Tucson, AZ.
Delaware Valley Manufacturing	Cherry Hill, NJ.
Delta Fabrication & Machine	Daingerfield, TX.
Delta Machine & Tool Company	Valley View, OH.
Delta Tech, Inc	Mentor, OH.
Desert Tool	Tucson, AZ.
Dial Machine Company	Andalusia, PA.
Diamond Door	Dunkirk, OH.
Die Dimensions	Grand Rapids, MI.
Die Tech Industries, Ltd	Providence, RI.
Die Technology, Inc	Santa Ana, CA.
Die-Namic Tool & Mfg., Inc	Rockford, IL.
Digital Tool & Die, Inc	Grand Rapids, MI.
Dimension Mold & Design	Tempe, AZ.
Direct Machine, Inc	Tucson, AZ.
Diversified Manufacturing, Inc	Lockport, NY.
Diversified Tool, Inc	Mukwonago, WI.
Dot Tool Company, Inc	Binghamton, NY.
Dresco Machining Servicenter	Bay City, MI.
Drewco Corporation	Franksville, WI.
Drill Masters Inc	Hamden, CT.
Dun-Rite Deburring	Denver, CO.
Dyna-Tech Molding, Inc	Independence, OH.
Dynamic Fabrication, Inc	Santa Ana, CA.
Dynamic Technology Corporation	Fountain Inn, SC.
E & S Equipment, Inc	Norman, OK.
E & W Services	Mentor, OH.
E K G Precision Machining	Mt. View, CA.
E K L Machine Company, Inc	Andalusia, PA.
E-Fab, Inc	Santa Clara, CA.
Eagle Mold Company, Inc	Carlisle, OH.
Eagle Precision Tooling	Erie, PA.
East Side Machine, Inc	Webster, NY.
Eckert Machining, Inc	San Jose, CA.
Eckhart & Associates, Inc	Lansing, MI.
Edwards Enterprises	Newark, CA.
Egbert Precision, Inc	Colorado Springs, CO.
Electro Products Company	Waltham, MA.
Electronic Dev. Labs, Inc	Danville, VA.
Ellison Machine Company	Laurens, SC.
Emptool Co., Inc	New Kingstown, PA.
Engineering Technology, Inc	Salt Lake City, UT.
Erie Shore Machine Co., Inc	Cleveland, OH.
Erie Specialty Products, Inc	Erie, PA.
Euro Swiss, Inc	San Diego, CA.
Eurotech, Inc	Greenville, SC.
Evans Machine	Evanston, IL.
Evans Production Engineering Co	St. Louis, MO.
Everett Mfg. Technologies	Santa Ana, CA.
Exar Industries, Inc	Sinking Spring, PA.
Excalibur Precision Tool	Hampstead, NH.
Excel Manufacturing, Inc	Valencia, CA.
Expedient Tool & Manufacturing	Rockford, IL.
EBCO Tools, Inc	St. Louis, MO.
F & F Machining Co., Inc	East Northport, NY.
F F I F F Industries Inc	Grandview, MO.
F R B Machine	Emlenton, PA.
F S G, Inc	Mishawaka, IN.
F T T Manufacturing	Lakeville, NY.
F W Gartner Thermal Spraying Co	Houston, TX.
Fantasy Manufacturing	Windsor, CA.
Fenwick Machine & Tool	Piedmont, SC.
Fischer Engineering, Inc	Duarte, CA.

Appendix A—Continued

Fleximation Tool Corporation	Riverside, CA.
Florida Wire EDM Systems	Largo, FL.
Flower City Fasteners, Inc	Rochester, NY.
Fluitron, Inc	Ivyland, PA.
Foriska Machine Shop	Saegertown, PA.
Forrest Manufacturing Company	Houston, TX.
Forte Company	Kansas City, MO.
Fortner Precision	Santa Fe Springs, CA.
Foundry & Steel, Inc	Anderson, SC.
Fox Hone & Lap, Inc	Chatsworth, CA.
Frasal Tool Company	Newington, CT.
Frazier Aviation, Inc	North Hollywood, CA.
Freeport Welding & Fabricating	Freeport, TX.
Future Machine	Kent, OH.
Future Tool, Inc	Rockford, IL.
G & K Machine Company	Denver, CO.
G & L Enterprises	Tucson, AZ.
G & L Precision Products	Deer Park, NY.
G & N Gear, Inc	Santa Ana, CA.
G E B Industries, Inc	Torrance, CA.
G F S, Inc	Cleveland, OH.
G F T Manufacturing Corporation	Vandergrift, PA.
G M S Metal Works	Auburn, WA.
G N F Computer Services	Redlands, CA.
G–S Industries, Inc	Fraser, MI.
Gain Industries, Inc	West Allis, WI.
Galvin Precision Machining Inc	Santa Rosa, CA.
Gar Manufacturing Company	Taylor, MI.
Gardner Industries	Independence, MO.
Garland Laboratory	Silver Spring, MD.
Garvey & Associates	Centerville, VA.
Garvey Precision Machine, Inc	Cranston, RI.
Gebhardt Machine Works, Inc	Portland, OR.
Geiger Manufacturing, Inc	Stockton, CA.
Gene's Gundrilling	Los Angeles, CA.
General Die Casters, Inc./Engrav	Peninsula, OH.
General Weldments Inc	Irwin, PA.
Geometric Engineering	Tucson, AZ.
Geometric Tool & Machine Co., Inc	Piedmont, SC.
Gidden's Industries, Inc	Everett, WA.
Giessen Tool & Lathe	Anaheim, CA.
Gillespie Machine & Tool Company	Erie, PA.
Global Tool & Mfg. Company, Inc	Dayton, OH.
Golder State Engineering, Inc	Paramount, CA.
Golis Machine, Inc	Montrose, PA.
Great Western Grinding & Eng., Inc	Huntington Beach, CA.
Green Machine & Tool Inc	Houston, TX.
Greene International West, Inc	Oceanside, CA.
Grinding Service & Mfg. Co	Forrestville, CT.
Grinding Specialties	Eastlake, OH.
Groveland Engineering Inc	Groveland, MA.
Grover's Machine Shop	Taylors, SC.
Gurney Precision Machining	Pinellas Park, FL.
Gust Swenson & Sons, Inc	Crookston, MN.
H & M Metal Processing Company	Cuyahoga Falls, OH.
Hager Machine & Tool, Inc	Houston, TX.
Haig Precision Mfg. Corp	Campbell, CA.
Hamblen Gage Corporation	Indianapolis, IN.
Hamilton Metalcraft, Inc	Pasadena, CA.
Harris & Bruno Machine Company	San Leandro, CA.
Harris Manufacturing Co., Inc	Grand Prairie, TX.
Harter Industries, Inc	Tempe, AZ.
Heinhold Engineering & Machine Co	Salt Lake City, UT.
Hendricks & Richardson, Inc	Piedmont, SC.
Hexatron Engineering Co., Inc	Salt Lake City, UT.
Heyden Mold & Bench Company	Tallmadge, Ori.
Hi-Tech Machine & Tool, Inc	Byron Center, MI.
Hickman Industries, Inc	LaPorte, TX.
Hickory Machine Company, Inc	Newark, NY.
Highland Mfg. Inc	Manchester, CT.
Hill Tool & Die Company	Danville, KY.
Hillcrest Tool & Die	Titusville, PA.
Honemasters, Inc	Huntington Beach, CA.

Appendix A—Continued

Horizon Industries	Lancaster, PA.
Horizon Machining, Inc	San Jose, CA.
Hornet Bay, Ltd	Philadelphia, PA.
Hughes Industries	Riverton, NJ.
Humble Machine Works, Inc	Humble, TX.
Hunt Enterprises	Santa Ana, CA.
Huntington Beach Machining	Huntington Beach, CA.
Hurco Companies, Inc	Indianapolis, IN.
Huron Machine Products, Inc	Burbank, CA.
Huwelco, Inc	Pasadena, TX.
Hy-Tech Mold, Inc	Rochester, NY.
Hydromat, Inc	St. Louis, MO.
HGG Laser Fare, Inc	Smithfield, RI.
Image Casting Inc	Oxnard, CA.
Imaginetics, Inc	Kent, WA.
Imperial Machining Co	Denver, CO.
Imperial Mfg	Santa Fe Springs, CA.
Impex Machine	Newington, CT.
Industrial Brake and Clutch	Buffalo, NY.
Industrial Machining	Santa Clara, CA.
Industrial Mold, Inc	Twinsburg, OH.
Industrial Research	Litchfield, MN.
Ingalls Machine	Bakersfield, CA.
Inject Tool & Die, Inc	Oak Harbor, WA.
Inline Inc	Phoenix, AZ.
Innovative E D M, Inc	Warren, MI.
International Stamping Inc	Warwick, RI.
Interscope Manufacturing Inc	Middletown, OH.
Intrex Corporation	Broomfield, CO.
Intri-Cut, Inc	Amherst, NY.
Iowa Laser Technology, Inc	Cedar Falls, IA.
Isylon Machining Co., Inc	Bohemia, NY.
Iverson Industries, Inc	Wyandotte, MI.
J & A Honing Service	La Verne, CA.
J & G Tool Co	Saginaw, MI.
J & M Unlimited	Ashland City, TN.
J B M Precision Honing, Inc	Bohemia, NY.
J B M, Inc	Kalispell, MT.
J D C Manufacturing	Redwood City, CA.
J F Machine, Inc	W. Babylon, NY.
J K B Tool Company, Inc	Milford, CT.
J K Engineering Company	Corona, CA.
J M Mold South	Easley, SC.
J M P Industries, Inc	Parma, OH.
J O Tool & Manuf. Company, Inc	Kenilworth, NJ.
J R F Sharpening Service	Berlin, CT.
J R Tool & Die	Wooster, OH.
J R's Tool Crib	Mogadore, OH.
Jackson's Precision Machine Co	Nashville, TN.
Jaco Tool Company, Inc	Birmingham, AL.
Jaques Diamond Tool	Indianapolis, IN.
Jason Tool & Engineering, Inc	Garden Grove, CA.
Jatco Machine & Tool Company, Inc	Pittsburgh, PA.
Jayco Engineering	Costa Mesa, CA.
Jena Tool Company	Dayton, OH.
Jepson Precision Tool, Inc	Cranesville, PA.
Jeropa Swiss Precision, Inc	Escondido, CA.
Jerry Roberts & Company	San Carlos, CA.
Jerry Roberts Machine	St. Paul, MN.
Jessl, Inc	Wall, NJ.
Jesse Industries, Inc	Phoenix, AZ.
John L Lutz Welding & Fabricating	Frenchtown, NJ.
John List Corporation/Chatsworth	Chatsworth, CA.
John Ramming Machine Company	St. Louis, MO.
Jorgenson Fabrication & Welding	Santa Fe Springs, CA.
JST Custom Fabrication	Boise, ID.
K & H Precision Products, Inc	Honeoye Falls, NY.
K & K Laser Marking	Stanton, CA.
K & K Machine Shop	Attleboro, MA.
K & W Machine Products, Inc	Galax, VA.
K L H Industries, Inc	Germantown, WI.
K–B Machine Shop	Olathe, KS.
Kalman Manufacturing	San Jose, CA.

Appendix A—Continued

Karlson Machine Works, Inc	Phoenix, AZ.
Kaskaskia Tool & Machine, Inc	New Athens, IL.
Keil-Strom Tool Company, Inc	Wethersfield, CT.
Kellar's Honing & Lapping	Van Nuys, CA.
Kenmore Gear & Machine Co	Akron, OH.
Keystone Electric Co., Inc	Baltimore, MD.
Kickhaefer Manufacturing Company	Port Washington, WI.
King Machine & Engineering Co	Indianapolis, IN.
King-Tek Wire EDM, Inc	Fullerton, CA.
Kitco Machine Shop	Springville, UT.
Kiwanda Machine Works, Inc	Clackamas, OR.
Kolenda Tool & Die, Inc	Wyoming, MI.
Koval Tool & Die, Inc	Somerset, PA.
Krug Precision Industries	Port Washington, NY.
Krukemeier Machine & Tool Co., Inc	Beech Grove, IN.
Kuhn Tool & Die Co	Meadville, PA.
Kurt J. Lesker Company	Pittsburgh, PA.
Kurt Manufacturing Company	Minneapolis, MN.
L & L Industries	Jackson, MI.
L & T Machining	Temecula, CA.
L & W Machine Co	Phoenix, AZ.
L A Wilper Mfg. Co	Hazelwood, MO.
L B M Manufacturing	Belmont, CA.
L D C Inc	North Providence, RI.
L J R Grinding Corporation	Gardena, CA.
Lake Manufacturing Co., Inc	Wakefield, MA.
Lapco Industries, Inc	Haledon, NJ.
Laser Automation, Inc	Chagrin Falls, OH.
Laser Mark-It	Glendale, CA.
Laser Marking Services, Inc	Esmond, RI.
Laser Specialists, Inc	Fraser, MI.
Laser Workshop	Anaheim, CA.
Laser-Tech Engineering	Irvine, CA.
Lasercut Machining, Inc	Dallas, TX.
Layke Incorporated	Phoenix, AZ.
LaCour Engineering	Culver City, CA.
LaFarge & Egge, Inc	Lynnwood, WA.
Lee's Grinding, Inc	Cleveland, OH.
Leefson Tool & Die Company	Fernwood, PA.
Light & Medium Fabricating, Inc	Willoughby, OH.
Lorraine Machine, Inc	Greenville, SC.
Lu-den Machine Tool Co., Inc	Plainville, CT.
M & S Holes Corporation	Berkeley Heights, NJ.
M C I Tool & Die, Inc	Saginaw, MI.
M Earl Adams Company	Johnston, RI.
M J C Machine, Inc	Tewksbury, MA.
M J M Interests	Kensington, CT.
MPE Machine Tool	Corry, PA.
MR Mold & Engineering Corp	Brea, CA.
MSP Tool Company, Inc	E. Kingston, NH.
MTI Manufacturing Technologies	Woburn, MA.
M-Ron Corporation	Phoenix, AZ.
Mac Lean Precision	Madison, NH.
Mac-Erie Inc	Erie, PA.
Mac-Mold Base, Inc	Romeo, MI.
Machine Kinetics Corporation	Knoxville, TN.
Machine Shop Services	Duncan, SC.
Machine Tool Technologies, Inc	Mt. Clemens, MI.
Machinery Maintenance	Greenville, SC.
Machinist Cooperative	Gilroy, CA.
MacKay Manufacturing	Spokane, WA.
Magnum Manufacturing Corporation	Colorado Springs, CO.
Main Tool & Mfg. Co., Inc	Minneapolis, MN.
Majestic EDM, Inc	Bensenville, IL.
Manor Research Inc	Hayward, CA.
Mantel & Mantel Stamping Corp	Ronkonkoma, NY.
Manufacturing Designs	Buffalo Creek, CO.
Manufacturing Service Corp	Hartford, CT.
Mara Products, Inc	Everett, MA.
Mardeco Mold Tooling, Inc	Wichita, KS.
Mark Williams Enterprises, Inc	Lousiville, CO.
Martin Production Tooling Inc	Corona, CA.
Martinek Manufacturing	Fremont, CA.

Appendix A—Continued

Master Research & Manufacturing	San Fernando, CA.
Master Swaging	Jackson Center, OH.
Master Tool & Die Company	Warren, MI.
Masterman's Machine Shop	Kent, WA.
Matrix Manufacturing, Inc	Pearland, TX.
McDanniels Machinery Company	Erie, PA.
McIntyre Machine Co., Inc	Charlotte, NC.
MechTech, Inc	Cranston, RI.
Metadyne Technologies, Inc	Boise, ID.
Metal Specialists	Fremont, CA.
Metalcraft	Akron, OH.
Metric Machining	Monrovia, CA.
Metric Precision	Spartanburg, SC.
Micro Dimensions, Inc	Vancouver, WA.
Micro Precision Corporation	Mountville, PA.
Micro-Tronics, Inc	Tempe, AZ.
Microfinish Precision Lapping	San Jose, CA.
Microform Corp	Auburn, WA.
Microphoto, Inc	Detroit, MI.
Mid-Continent Engineering, Inc	Minneapolis, MN.
Mid-States Forging Die & Tool	Rockford, IL.
Midway Mfg. Inc	Elyria, OH.
Midwest Fabricating	Grand Rapids, MI.
Mikron Machine, Inc	Cranesville, PA.
Millennium Three Corporation	Platteville, WI.
Miller Equipment Corperation	Richmond, VA.
Milling Precision Tool, Inc	Wichita, KS.
Milwaukee Precision Corporation	Milwaukee, WI.
Mitutoyo/MTI Engineering Corp	Huntington Beach, CA.
Mod Tech Industries, Inc	Shawano, WI.
Mold Consultants of America, Inc	Orrville, OH.
Morland, Inc	Manchester, CT.
Morlin Incorporated	Erie, PA.
Morrissey Corporation	Bloomington, MN.
Moseys' Production Machinists	Fullerton, CA.
Mountain Tool Corporation	Caldwell, ID.
Mullen Machine & Mfg. Co	St. Clair, MO.
Musgrove Machine Works	Boise, ID.
Myers Amazing Machine Works	Bloomingdale, NJ.
Myers Precision Grinding Company	Warrensville Hts., OH.
NBS, Inc	Macedonia, OH.
NICO Machine, Inc	Phoenix, AZ.
N/C Industries	Brea, CA.
National Center for Tooling &	Toledo, OH.
National Flight Services	Glendale, AZ.
National Jet Company	LaVale, MD.
Nelson Grinding, Inc	Fullerton, CA.
Neutronics, Inc	Phoenix, AZ.
New Tech Industrial	Portland, OR.
Newton Tool & Manufacturing Co	Wenonah, NJ.
Niles Machine & Tool Works, Inc	Newark, CA.
Nimco Instruments	Houston, TX.
Noesting, Inc	Bronx, NY.
North Canton Tool Company	Canton, OH.
North Coast Tool, Inc	Erie, PA.
Northeast EDM	Newburyport, MA.
Northeast Mold & Plastic Inc	Portland, CT.
Northeast Quality Service	Wellingford, CT.
Northern Precision Metal Product	San Jose, CA.
Northland Extension Drills	Grove City, MN.
Northtech Manufacturing Corp	Phoenix, AZ.
Northwest Machine Works, Inc	Grand Junction, CO.
Northwest Machining & Mfg., Inc	Meridian, ID.
Northwest Tool & Die	Saegertown, PA.
Northwood Industries	Toledo, OH.
Norton Company	Northboro, MA.
Norwood Tool Company	Dayton, OH.
Nova Machine Company, Inc	Rochester, NY.
Nova Manufacturing Company	North Hollywood, CA.
Novatech Machining Corporation	Buffalo, NY.
Numeric Machine	Fremont, CA.
Numet Machine	Stratford, CT.
O-D Tool & Cutter Inc	Mansfield, MA.

Appendix A—Continued

Oaklyn Specialty Company	Bellmawr, NJ.
Oconee Machine & Tool Company, Inc	Westminster, SC.
Oconnor Engineering Laboratories	Costa Mesa, CA.
Oilfield Die Manufacturing, Inc	Lafayette, LA.
Olympic Fabrications Corporation	Brentwood, NY.
Omega One, Inc	Maple Heights, OH.
Omni-Tech Mfg. & Eng., Inc	Hillsboro, OR.
On-Tech Machine & Manufacturing	San Jose, CA.
One-Way Manufacturing, Inc	Santa Ana, CA.
Orach Machine Shop Service	Tucson, AZ.
Orange County Grinding	Anaheim, CA.
Orco Block Company	Stanton, CA.
Orix Credit Alliance, Inc	Pasadena, CA.
Ornee Mfg	Glendora, CA.
Overton & Sons Tool & Die Co. Inc	Mooresville, IN.
Overton Corporation	E. Cleveland, OH.
P & J Machining, Inc	Puyallup, WA.
P D Q Inc	Middletown, CT.
P M C Machining, Inc	Phoenix, AZ.
P M Tool & Die Company	Caldwell, ID.
P X Engineering Company, Inc	Hingham, MA.
Pace Design & Fab., Inc	Whittier, CA.
Pacific Metal Craft, Inc	Bell Gardens, CA.
Pacific Tool Corporation	Englewood, CO.
Palmer Machine Company	Conway, NH.
Palmetto Machine Parts	Anderson, SC.
Palmetto Mechanical Services	Spartanburg, SC.
Papago Plastics, Inc	Rochester, NY.
Paragon N/C Machining	Elk Grove Village, IL.
Parkway Machine Services, Inc	Lafayette, LA.
Parkway-Kew Corporation	Edison, NJ.
Part-Rite, Inc	North Royalton, OH.
Parts Fabricators, Inc	New Carlisle, OH.
Pelmor Laboratories, Inc	Newtown, PA.
Pendama, Company	Seattle, WA.
Pengo Corporation	Union City, CA.
Peninsula Screw Machine Products	Belmont, CA.
PenTel Tool & Die, Inc	Romulus, MI.
Performance Grinding and	Tempe, AZ.
Performance Machining Services	Irwin, PA.
Performance Systems Inc	Tempe, AZ.
Perkinson Foundry & Machine Co	Danville, VA.
Pettey Machine Works, Inc	Trinity, AL.
Phillips Machine & Stamping Corp	Akron, OH.
Phoenix Precision Pattern Corp	Tempe, AZ.
Phoenix, Inc	Seekonk, MA.
Pickens Tool Company, Inc	Pickens, SC.
Plastic Technology Company	Monroe, GA.
Plastics Development, Inc	Milwaukie, OR.
Plastipak Packaging, Inc	Medina, OH.
Polycast Mfg. of Annandale, Inc	Annandale, MN.
Polymer Mold and Engineering	Medina, OH.
Polynetics, Inc	Fullerton, CA.
Pope Corporation	Santa Ana, CA.
Popp Machine & Tool, Inc	Louisville, KY.
Portage Knife Company, Inc	Mogadore, OH.
Post Products, Inc	Kent, OH.
Potter & Son, Inc	Piedmont, SC.
Powers Bros. Machine, Inc	Montebello, CA.
Prebco Bushing Company	Baldwin Park, CA.
Precise Mold & Engineering Inc	Valley Park, MO.
Precision Aircraft Components, Inc	Dayton, OH.
Precision Automated Machining	Englewood, CO.
Precision Automatics, Inc	Gadsden, AL.
Precision Metal Fabrication	Dayton, OH.
Precision Metal Finishing Co	Erie, PA.
Precision Metal Tooling, Inc	Hayward, CA.
Precision Profiling, Inc	Wichita, KS.
Precision Resources	Gardena, CA.
Precision Specialists, Inc	Berlin, NJ.
Precision Technologies	Grand Junction, CO.
Precision Technology, Inc	Chandler, AZ.
Precision Tool & Die, Inc	Lawrence, MA.

Appendix A—Continued

Precision Turned Components, Inc	Cranston, RI.
Precision Valve Modification, Inc	Houston, TX.
Precision Welding, Mach. & Fab	Bridgeport, CT.
Precision Wire Cut Corporation	Watertown, CT.
Precon, Inc	Anaheim, CA.
Premac Inc	Rahway, NJ.
Prima Die Castings, Inc	Clearwater, FL.
Pro-Gram Engineering Corporation	Barberton, OH.
Pro-Met Machining Inc	Gresham, OR.
Process Manufacturing Inc	Richmond, KY.
Production Products Inc	Broomfield, CO.
Professional Machine & Tool Co	Hendersonville, TN.
Proficient Machining Co., Inc	Mentor, OH.
Profile Grinding, Inc	Cleveland, OH.
Proform Tool Corporation	Sagertown, PA.
Progressive Concepts Machining	Pleasanton, CA.
Proto Machine & Manufacturing	Kent, OH.
Prototype and Short-Run Services	Fullerton, CA.
Pull-Brite	Fremont, CA.
Q S P Technology, Inc	Boise, ID.
Qualfab Machining	Redwood City, CA.
Quality Machine & Supply, Inc	Lafayette, LA.
Quality Machine & Tool Co., Inc	St. Louis, MO.
Quality Machine Engineering, Inc	Santa Rosa, CA.
Quality Precision, Inc	Hayward, CA.
Queen City Precision, Inc	Cincinnati, OH.
Quick Tool & Machine	Barberton, OH.
Quintex Tooling	Nampa, ID.
R & D Engineering	Hawaiian Gardens, CA.
R & D Machine Shop	Dallas, TX.
R & R Precision Machine, Inc	Wichita, KS.
R C Machine	Clackamas, OR.
R H Spencer Co	West Boxford, MA.
R J S Machine Products	Campbell, CA.
R M Johnson Company	Annandale, MN.
R R Howell Company	Annandale, MN.
R V P Industries	Newhall, CA.
Ralph Stockton Valve Products, Inc	Houston, TX.
Ranor, Inc	Westminster, MA.
Ray Paradis Machine, Inc	Jackson, CA.
Re-Del Engineering	Campbell, CA.
Reclamation Dynamics	Nashville, TN.
Rectack of America	Los Angeles, CA.
Regional Tool Corporation	Hamden, CT.
Remco Industries, Inc	Chatsworth, CA.
Remington Products Company	Wadsworth, OH.
Reny & Company	El Monte, CA.
Ribic Tool, Inc	Willoughby, OH.
Rich Tool & Die Company	Scarborough, ME.
Rick Sanford Machine Company	San Leandro, CA.
Right Way Tool, Inc	Redmond, WA.
Ring Technologies, Inc	Warren, MI.
Rite Design	Rochester, NY.
Riteway Precision Machine, Inc	Minneapolis, MN.
Ro-Mai Industries, Inc	Twinsburg, OH.
Robert C. Reetz Company, Inc	Pawtucket, RI.
Robinson Manufacturing Inc	Brea, CA.
Robrad Tool & Engineering	Mesa, AZ.
Roc-Aire Corporation	South El Monte, CA.
Rockford Spring Company	Rockford, IL.
Rogers Wire EDM Service	Arvada, CO.
Ron-Vik, Inc	Minneapolis, MN.
Rons Racing Products, Inc	Tucson, AZ.
Rotational Technology, Inc	Houston, TX.
Rovi Products Incorporated	Simi Valley, CA.
Roy & Val Tool Grinding, Inc	Chatsworth, CA.
Royal Wire Products, Inc	N. Royalton, OH.
Rubbermaid, Inc.—Mold Division	Wooster, OH.
Russing Machine Corp	Glendale, CA.
Ruxton Tool & Die	Upper Marlboro, MD.
RA-White, Inc	Inglewood, CA.
S & K Machine, Inc	Detroit, MI.
S & R Precision Company	San Jose, CA.

Appendix A—Continued

S D S Machine, Inc	Hayward, CA.
S H E Industries, Inc	Torrance, CA.
S J R Precision	Burbank, CA.
S M S Technologies Company	Chatsworth, CA.
S P M/Anaheim	Anaheim, CA.
S T I Manufacturing Group (STIM)	Dallas, TX.
Sager Precision Machine Inc	Weymouth, MA.
Samaniego Enterprises, Inc	Tucson, AZ.
Santa Clarita Mfg. Co	Valencia, CA.
Sawtech	Lawrence, MA.
Scheirer Machine Co., Inc	Bethel Park, PA.
Schmitt Machine, Inc	Ventura, CA.
Schneider Machine Company	Torrance, CA.
Scott Engineering Company	Phoenix, AZ.
Seafood Machine Works, Inc	Seaford, DE.
Seaway Industrial Products	Erie, PA.
Sematool Mold & Die Co	Santa Clara, CA.
Service Industries, Inc	Ocala, FL.
Setters Tools, Inc	Piedmont, SC.
Sherman Tool & Gage	Erie, PA.
Shomo Tool Co., Inc	Redford, MI.
Shookus Tool & Die, Inc	Epping, NH.
Sieger Engineering, Inc	S. San Francisco, CA.
Sigma Specialties	Torrance, CA.
Silco Engineering Co., Inc	Beech Grove, IN.
Sim's Precision Machining	Santa Ana, CA.
Simmons Machine Tool Corporation	Albany, NY.
Simons & Susslin	Mountain View, CA.
Simplex Engine & Machine, Inc	Providence, RI.
Smith Bell & Thompson, Inc	Burlington, VT.
Smith Precision Grinding & Mfg	Sun Valley, CA.
Solo Enterprise Corp	City of Industry, CA.
Sonic Machine & Tool, Inc	Tempe, AZ.
Sonoma Precision Mfg. Co	Santa Rosa, CA.
South Bay Machining	Santa Clara, CA.
Southern Die-Casters, Inc	Shrewsbury, PA.
Southwest Manufacturing Company	Wichita, KS.
Southwest Metalcraft Corporation	Tucson, AZ.
Specialty Machine & Hydraulics	Pleasantville, PA.
Specialty Machining, Inc	Oakland Park, FL.
Spenco Machine & Manufacturing	Temecula, CA.
Spike Industries	North Lima, OH.
Spin Pro Inc	San Jose, CA.
Spiral Grinding Company	Culver City, CA.
Sprint Tool & Die Inc	Meadville, PA.
St. Mary Manufacturing Corporation	North Tonawanda, NY.
Stanley Engineering Company	Glen Burnie, MD.
Stearman Aircraft Products Corp	Valley Center, KS.
Steel Craft Manufacturing, Inc	Hopewell, VA.
Stelted Manufacturing, Inc	Tempe, AZ.
Stevens Industries, Inc	Norcross, GA.
Stone Tool & Machine, Inc	Louisville, KY.
Strobel Machine, Inc	Worthington, PA.
Subsea Ventures Inc	Houston, TX.
Suburban Boring Company	Oak Park, MI.
Suburban Jewelry Co., Inc	Charlestown, RI.
Summit Precision, Inc	Phoenix, AZ.
Sun Tool Supply, Inc	St. Petersburg, FL.
Super Finishers II	Glendale, AZ.
Superior Technology, Inc	Rochester, NY.
Superior Tool Service, Inc	Wichita, KS.
Supreme Machine Products, Inc	Rancho Cucamonga, CA.
Supreme Tool & Die Company	Fenton, MO.
Systems 3, Inc	Tempe, AZ.
SEPCO-ERIE	Erie, PA.
STD Precision Gear & Instrument	West Bridgewater, MA.
T & C Industries, Inc	Irwin, PA.
T & E Manufacturing, Inc	Kent, WA.
T & S Industrial Machining Corp	Lynn, MA.
T C Precision Machine	Dayton, OH.
T M S Inc	Cumberland, RI.
T R Jones Machine Company, Inc	Woodstock, IL.
T. J. Karg Company, Inc	Akron, OH.

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T-Mac Machine Company	Kent, OH.
Talent Manufacturing	Star, ID.
Tangent Machine & Tool Corporation	Farmindgale, NY.
Tanksley Machine & Tool, Inc	Decatur, AL.
Tarus Products Inc	Sterling Heights, MI.
Task Industrial Corporation	Greenville, SC.
Tate Andale, Inc	Baltimore, MD.
Tech-Marine Enterprises, Inc	Seattle, WA.
Techniplas, Inc	Ankeny, IA.
Tek-Am Corporation	Springfield, VA.
Tempco Manufacturing Co., Inc	Mendota Heights, MN.
Tennessee Tool Corporation	Charlotte, TN.
Textile Machinery, Inc	Greenville, SC.
The Buckeye Stamping Company	Columbus, OH.
The Freeman Company	Yankton, SD.
The Will-Burt Company	Orrville, OH.
Themac, Inc	Colorado Springs, CO.
Thomas C N C Machining	Yorba Linda, CA.
Thomas Tool and Manufacturing	Pleasanton, CA.
Thornton Company	Wichita, KS.
Thurman's Tool & Machine Co	Dayton, OH.
Tight Tolerance Machining	Boise, ID.
Timberland Tool & Die	Newberg, OR.
Tool & Die Supply, Inc	Santa Ana, Ca.
Tooling & Production	Olathe, KS.
Tooling Concepts	Nashville, TN.
Tooling Designs, Inc	Humble, TX.
Top Quality Tool & Machine	Grandview, MO.
Toth Aerospace Manufacturing	Cherry Hill, NJ.
Traco Manufacturing Corp	Houston, TX.
Treblig, Inc	Greenville, SC.
Tren Engineering Corporation	Beverly, MA.
Tri J Machine Company	Gardena, CA.
Tri-Gon Precision, Inc	Colorado Springs, CO.
Triangle Mold & Machine Co. Inc	Hartville, OH.
Trico Industries, Inc	Lexington, TN.
Trico Machine Products Corp	Bedford Heights, OH.
Tridecs Corporation	Hayward, CA.
Trim Tech, Inc	Columbia Station, OH.
True Cut EDM	Garland, TX.
True Position	Fremont, CA.
Tucson Tool & Manufacturing	Tucson, AZ.
Turner and Walima Mfg. Co., Inc	Essex, MA.
Turning Technology, Inc	Tipp City, OH.
TTI Testron, Inc	Woonsocket, RI.
U N C Manufacturing Technology	Uncasville, CT.
Uddeholm Corporation	Santa Fe Springs, CA.
Ultra Stamping & Assembly, Inc	Rockford, IL.
Uni-Tek	Phoenix, AZ.
Unique Model, Inc	Walker, MI.
United Gage, Inc	North Hollywood, CA.
United Machine Co., Inc	Wichita, KS.
United States Fittings, Inc	Warrinsville Heights, OH.
Universal Custom Process, Inc	Bedford Heights, OH.
Universal Machine	Boise, ID.
V I P Tooling, Inc	Shelbyville, IN.
Valley Tool & Machine Co., Inc	Pomona, CA.
Valv-Trol Company	Stow, OH.
Van Os Machine Works, Inc	St. Louis, MO.
Van Sanford Tool Company	E. Syracuse, NY.
Vandeventer Machine Works Corp	St. Louis, MO.
Vector Design and Mfg., Inc	Tucson, AZ.
Venture Tool, Inc	Erie, PA.
Versa Companies	St. Paul, MN.
Vertex Tool and Die	Akron, OH.
Vicount Industries	Farmington Hills, MI.
Vitullo & Associates, Inc	Warren, MI.
Vogel Tool and Die Corp	Stone Park, IL.
Volume Machine	Pacoima, CA.
Vortex Precision Services, Inc	Houston, TX.
W E C Technologies Corporation	Deer Park, NY.
W. or K. Precision Machining	Garden Grove, CA.
W. R. Lathom Tool, Inc	Rockford, IL.

Appendix A—Continued

Wagner Precision, Inc	N. Tonawanda, NY.
Wajo Tool and Die, Inc	East Hamstead, NH.
Waltz Industries	Ontario, CA.
Walz & Krenzer, Inc	Rochester, NY.
Waxler Machine and Tool, Inc	Houston, TX.
Wayne Manufacturing, Inc	Boulder, CO.
Webber Metal Products, Inc	Cascade, IA.
Webco Machine Products, Inc	Valley View, OH.
Webco Tool & Die, Inc	Toledo, OH.
Weber Tool & Mfg. Inc	Cleveland, OH.
Welding Service Company	Gelndora, CA.
West Fab Manufacturing	San Jose, CA.
Westech Corporation	Muskegon, MI.
Western Gage Repair Company	Santa Clara, CA.
Western Grinding	Tempe, AZ.
Western Metal Products, Inc	Seattle, WA.
Western Precision	West Jordon, UT.
Western Steel Cutting, Inc	San Jose, CA.
Western Unitool Mfg. Inc	Burnaby, BC V3N 4A4, XX.
Westhoff Tool & Die Company	St. Charles, MO.
Westside Metal Fabricators, Inc	Canoga Park, CA.
Whelan Machine & Tool Co., Inc	Louisville, KY.
Whole Shop, Inc	Munroe Falls, OH.
Wichita Manufacturing, Inc	Cerritos, CA.
Wilkinson Mfg., Inc	Santa Clara, CA.
William A. McGovern, Inc	Jamesburg, NJ.
Winegard Co	Burlington, IA.
Winter's Grinding Service	Menomonee Falls, WI.
Wire Tech	Waterbury, CT.
Wire Tech E D M, Inc	Los Alamitos, CA.
Woehr Tool & Die	San Jose, CA.
Wood's Service Corporation	Old Ocean, TX.
Woodcraft Manufacturing Company	Pataskala, OH.
X-Cel Machine Tool, Inc	Cochranton, PA.
Yampa Valley Manufacturing	Prescott Valley, AZ.
Yates Tool, Inc	Medina, OH.
Yoder Die Casting Corporation	Dayton, OH.
Youngstown Plastic Tooling &	Youngstown, OH.
Z M D Mold & Die Inc	Mentor, OH.
Zacova Industries, Inc	Roseville, MI.
Zellcon Industries	Milford, CT.
Zetec, Inc	Issaquah, WA.
4B Precision Products	Boring, OR.

Appendix B

A & W Specialty Co., Inc	Deer Park, NY.
A B C Machine Works, Ltd	Bethel, CT.
A D Grinding	La Habra, CA.
A I D Corporation	Clayton, GA.
A.N.O. Machining Corporation	Santa Fe Springs, CA.
Abbey Machine Products Company	Euclid, OH.
Able Spinning & Stamping Inc	Riverside, CA.
Accu-Turn Machine Works, Inc	Houston, TX.
Accura Industries	Rochester, NY.
Accurate Metal Fabricators	Long Beach, CA.
Acro Tech	Redmond, WA.
Adams Machine & Tools, Inc	Capitol Heights, MD.
Aerodyne Mfg. Corp	North Hollywood, CA.
Aeromach—LFP	Sylmar, CA.
Alcatel Comptech, Inc	San Jose, CA.
Algenic Machine Corporation	Farmingdale, NY.
All Custom Form Tools, Inc	Anaheim, CA
Allied Machine Products, Inc	Smithfield, RI.
Alto Systems, Inc	Houston, TX.
Amco Precision Tool, Inc	Kensington, CT.
American Machine Systems, Inc	Muncie, IN.
American Metalcrafters, Inc	Stockton, CA.
American Trion Corporation	Casa Grande, AZ.
American Trion Corporation	Arizona City, AZ.
American Tube	Nazareth, PA.
Anaheim Gear	Anaheim, CA.
Anco Precision Products, Inc	Fullerton, CA.

Appendix B—Continued

Anmark Machine	Tempe, AZ.
Apparatus Repair Company	Houston, TX.
Applied Industrial Machining	Oklahoma City, OK
Arbor Model & Tooling, Inc	Grand Rapids, MI
Ardent Engineering	Seattle, WA.
Aroplax Corporation	Minneapolis, MN.
Asteric Tool & Die Mfg. Co., Inc	Philadelphia, PA.
Atlas Machine Products Co	Cleveland, OH.
Atlas Precision, Inc	Woodstock, VA.
Aul Bros. Tool & Die	Muncie, IN.
Aurora Technology Corporation	East Aurora, NY.
B & C Engineering, Inc	Goshen, IN.
B & C Machine, Inc	Pinellas Park, FL.
B & R Machine Company Inc	New Britain, CT.
B M I, Inc	Palatine, IL.
Barberton Mold & Machine Co	Barberton, OH.
Barth Industries, Inc	Cleveland, OH.
Bartlett Enterprises	Hillsboro, OR.
Baystate Machine	Warwick, RI.
Beaverton Parts Mfg. Co., Inc	Hillsboro, OR.
Belding Tool & Machine Corporation	Belding, MI.
Bergdorf Engineering	Pomona, CA.
Black Machine—B T Industries	Port Clinton, OH.
Blackie's Grinding Service	Auburn, WA.
Blessing Industries	Lockport, NY.
Bond's Custom Manufacturing	Arvada, CO.
Bradley Machine, Inc	Wichita, KS.
Bratton Machine Works, Inc	Houston, TX.
Briley's Machine Works	Kent, WA.
Bristol Machining & Fabrication	Bristol, RI.
Brontel/Bearing Bronze Company	Cleveland, OH.
Burkey & Sons, Inc	Anaheim, CA.
Burn-Rite Mold & Machine, Inc	Canton, OH.
Busnardo Engineering, Inc	Nampa, ID.
C & P Industries	Seneca, PA.
C M S Graphite/Ed Welch Partners	Cheshire, CT.
C N C Machining Inc	East Berlin, CT.
C N C Manufacturing, Inc	Lynnwood, WA.
Cal-Bay Grinding, Inc	San Jose, CA.
Cal-Dan	Fountain Valley, CA.
Cal-Tron Corporation	Bishop, CA.
California Spline and Gage Co	Santa Ana, CA.
Campanile Tool Co	Sunnyvale, CA.
Canton Industrial Systems, Inc	East Canton, OH.
Capitol Machine Company	Phoenix, AZ.
Caretti Tool & Mfg., Inc	Pinellas Park, FL.
Carlson-Formetec, Inc	Tacoma, WA.
Carolina Tool & Die	Charlotte, NC.
Central Manufacturing, Inc	Parker City, IN.
Central Specialties Mfg. Co	Tulsa, OK.
Cercon Division Howmet-Cercast	Hillsboro, TX.
Clarence Machine Co., Inc	St. Louis, MO.
Clark Precision Sheetmetal, Inc	Santa Clara, CA.
Classic Craft, Inc	Tucson, AZ.
Clearwater Engineering	Clearwater, KS.
Columbia Machine Works, Inc	Columbia, TN.
Commercial Grinding Company	Paramount, CA.
Concept Components Co	Bohemia, NY.
Cone Engineering, Inc	Hawaiian Gardens, CA
Continental Tool & Gage Company	N. Hollywood, CA.
Contour Plastics, Inc	Baldwin, WI.
Contour Tool & Die, Inc	South Bend, IN.
Counts Precision Grinding, Inc	Hazel Park, MI.
Couple-Up, Inc	Compton, CA.
Cox Machine, Inc	Wichita, KS.
Custom Lathe & Mfg., Inc	Graham, WA.
D A Griffin Corp	West Seneca, NY.
D M Z Machine Company	Eastlake, OH.
D Y E Design, Inc	Louisville, KY.
Dallen Precision CNC Machining	Paramount, CA.
Damon Industries, Inc	Pompano Beach, FL.
Dan Krall & Co., Inc	Franklin, WI.
Danlyn Machine Co., Inc	Douglas, MA.

Appendix 3—Continued

Darco Products Incoporated	Albuquerque, NM.
Davalor Mold Corpporation	Chesterfield, MI.
Decsa Precision Machining, Inc	Houston, TX.
Dell Manufacturing Co	Farmington, CT.
Delta Design & Manufacturing	Phoenix, AZ.
Derleth & Kelley Tool & Die	Rochester, NY.
Dern/Moore Machine Co., Inc	Lockport, NY.
Design Tool & Machine	Macon, MO.
Diematics, Inc	Littleton, CO.
Digital Machine Co., Inc	Warminster, PA.
Donal Machine, Inc	Petaluma, CA.
Douglas Machining, Inc	Hillsboro, OR.
Duluth Engineering	Duluth, NM.
Duncan Industries, Inc	Los Angeles, CA.
Dynamic Machine Service	Houston, TX.
DEMCO, Inc	Milford, DE.
E Fred Portwine, M.D., P.C	Waycross, GA.
Eagle Tool & Die	Richmond, MI.
Earl Mfg. Co., Inc	Santa Fe Springs, CA.
East Side Tool & Die Co	Portland, OR.
Eihinger Machine, Inc	Norton, OH.
Eltee Tool & Die	Newark Valley, NY.
Empire Machine & Manufacturing Co	St. Louis, MO.
Esteem Manufacturing Corporation	Ellingon, CT.
Eutsler Technical Products, Inc	Houston, TX.
Exacta Tool & Engineering, Inc	Largo, FL.
F B F Industries	Southhampton, PA.
F M Machining	Santa Clara, CA.
F. A. Wunder Associates, Inc	Adah, PA.
Factum, Inc	Santa Clara, CA.
Faivre Machine & Fabrication, Inc	Meadville, PA.
Falcon Corporation	Ferrysburg, MI.
Fech-Tech Precision	Palmadle, CA.
Federal Machine Tool	Bristol, CT.
Ferco Tech	Franklin, OH.
Florida Custom Mold, Inc	Clearwater, FL.
Florida Tri-City Fabricators	St. Petersburg, FL.
Form-A-Tool South, Inc	Piedmont, SC.
Francois Belvisi Co., Inc	Bohemia, NY.
Futureweld Co., Inc	Phoenix, AZ.
G L Bly Company	Wichita, KS.
G N F, Inc	Olmasmar, Fl.
G Pruefer Manufacturing Co., Inc	Johnston, RI.
G R McCormick	Burbank, CA.
Gardner Tools Corporation	Broomfield, CO.
Gaydash Industries, Inc	Uniontown, OH.
Global Tool & Manufacturing Co Inc	Dayton, OH.
Globe Grinding Corporation	Farmingdale, NY.
Graduate N/C Machining	Rancho Cordova, CA.
Graphite & Specialty Products, Inc	Paramount, CA.
Greenfeather Tool & Gage	Euless, TX.
Gundrilling Ltd	Paramount, CA.
H & H Machine Tool Co., Inc	Dayton, OH.
H & H Molds, Inc	Spokane, WA.
H T M Corporation	Hillsboro, OR.
Hall's Machining Services, Inc	Easley, SC.
Hamilton Machine	West Point, PA.
Hammock Machine & Welding Co., Inc	Perry, GA.
Hedger Company	Los Angeles, CA.
Heinz Plastic Mold Co	Elk Grove, IL.
Hi-Tech Machine, Inc	Old Saybrook, CT.
High Tech Machinists Inc	Chelmsford, MA.
High Tech West, Inc	Long Beach, CA.
High-Low, Inc	Tempe, AZ.
High-Tech Manufacturing Service	Vancouver, WA.
Hydel Engineering	San Jose, CA.
I M C Magnetics Corp	Hauppauge, NY.
Imo Industries	Manchester, CT.
Industrial Design Company	Mill Valley, CA.
Industrial Services Group	New Alexandria, PA.
Inland Tool & Mfg. Co., Inc	Kansas City, KS.
Innovative Plastics	San Jose, CA.
Inter Precision Tools, Inc	Seattle, WA.

Appendix B—Continued

International Lasersmiths	Compton, CA.
J & Vee Precision Depp Hole	Roosevelt, NY.
J B Armstrong Machine Co., Inc	Cypress, TX.
J E B Tool & Manufacturing	Enfield, CT.
J G Grinding	Redwood City, CA.
J. G. Minter & Son, Inc	Brea, CA.
Jacobi Industries	Santa Ana, CA.
Jesse Industries, Inc	Newberry Park, CA.
Jessee Brothers	Campbell, CA.
Jeyan Engineering Group	Santa Ana, CA.
Jim Talbot Machine Tool	North Hollywood, CA.
John Weitzel, Inc	Wichita, KS.
Justrite Machine Works, Inc	Kansas City, MO.
K & A Tool Company	Cleveland, OH.
K & M Machine Company, Inc	Newport, NH.
K K Molds, Inc	Grand Rapids, MI.
Kaman Industrial Technologies Co	Spokane, WA.
Kirkwood Commutator	Cleveland, OH.
Kofler's Tool & Die, Inc	Farmingdale, NY.
Kyden Machine, Inc	Salt Lake City, UT.
L & M Machining	Anaheim, CA.
L C Miller Company	Monterey Park, CA.
L F W Manufacturing	Stockton, CA.
L J Machine Works	Houston, TX.
L M B Industrial Services Corp	Menlo Park, CA.
Lab Engineering & Mfg., Inc	Watertown, MA.
Lake Quality Products, Inc	Wickliffe, OH.
Lange Engineering, Inc	Minneapolis, MN.
Larrus Engineering	Santa Fe Springs, CA.
Larson Enterprises	Santa Clara, CA.
Laser Applications, Inc	Westminster, MD.
Laser Technology, Inc	North Hollywood, CA.
Lemco	Danvers, MA.
Lenape Forge, Inc	West Chester, PA.
Lindberg Heat Treating	Orlando, FL.
Lobsien's Machine Company	Tewksbury, MA.
Lonero Engineering Co., Inc	Troy, MI.
Lowry Tool & Cutter Grinding	Coconut Creek, FL.
Lublink Tool & Die Co	Boring, OR.
M & M Machine and Tool Company	Westminster, CA.
M & N Machine Co	Simi Valley, CA.
M & R Machine and Tool Co	Easthampton, MA.
M & S Precision Company	Ft. Lauderdale, FL.
MC Aero-Tech, Inc	Anaheim, CA.
M I W Aerospace	Tacoma, WA.
M M F Inc	Taylors, SC.
M T C Industries, Inc	Corsicana, AZ.
M W J, Inc	Clinton, MD.
Malbert & Mitchell Grinding	Brea, CA.
Malco Tool & Machine, Inc	Stanton, CA.
Manchack Manufacturing, Inc	Houston, TX.
Maryland MechTech, Inc	Catonsville, MD.
Master Tool Engineering	Santa Clara, CA.
MaTech Machining Technologies, Inc	Salisbury, MD.
McAlpin Industries, Inc	Rochester, NY.
McGregor Manufacturing	Arcadia, CA.
Mechtech, Inc	Amesbury, MA.
Medina Tool & Die Co., Inc	Medina, OH.
Memory Engineering Co	Gardena, CA.
Mercury Engineering & Mfg., Inc	Canton, OH.
Met-Tek, Inc	Clackamas, OR.
Metra Electronics Corporation	Holly Hill, FL.
Metro Dynamics	Franklin Square, NY.
Micro Accurate Corporation	Tucson, AZ.
Micro Precision Machining	Campbell, CA.
Micro Tech Tool	Seekonk, MA.
Mid-State Machine Products, Inc	Winslow, ME.
Midway Machine & Instrument Co	South Houston, TX.
Mika Prototype Eng. Co., Inc	Largo, FL.
Milwaukee Bearing & Machining	Milwaukee, WI.
Minnesota Fineblanking	Minneapolis, MN.
Missouri Pressed Metals Inc	Sedalia, MO.
Model Screw Products, Inc	Clearwater, FL.

Appendix B—Continued

Mult-Swiss Technology, Inc	Sunnyvale, CA.
Nadler, Incorporated	Plaquemine, LA.
Nance Manufacturing, Inc	Wichita, KS.
National Tooling Company	Tempe, AZ.
Northeast Metrology Corp	Rochester, NY.
Northwest Machine Products, Inc	Sumner, WA.
Northwestern Palm Tool & Mfg. Co	Coon Rapids, MN.
Numeric Systems	Fife, WA.
Numerical Tool Division	Houston, TX.
Ochs Industries, Inc	Vandalia, OH.
Ogren Industries	Asheville, NC.
Operating and Maintenance	Charlotte, NC.
Optical Radiation Corp	Azusa, CA.
Orange County Tool & Engineering	Santa Ana, CA.
Oregon Tool and Die, Inc	Portland, OR.
OMEGA Engineering Company	Kansas City, MO.
P B Machine Co., Inc	Palmyra, NY.
P D S	Bell Gardens, CA.
P H Precision Products Corporation	Pembroke, NY.
Pacific Machine & Development, Inc	Vancouver, WA.
Pacific Precision Machine, Inc	Belmont, CA.
Paradigm Metals, Inc	Sunnyvale, CA.
Parallel Ventures, Inc	Tucson, AZ.
Parker Kinetic Designs, Inc	Austin, TX.
Paul Schurman Machine Inc	Ridgefield, WA.
Paul's Products Corporation	Belmont, NC.
Pease Grinding Service Inc	Dayton, OH.
Pentz Design Pattern & Foundry	Duvall, WA.
Pequot Tool & Mfg., Inc	Pequot Lakes, MN.
Petersen Instruments, Inc	Concord, CA.
Phoenix Precision Products, Inc	Hartford, WI.
Phoenix Stainless & Alloy, Inc	Houston, TX.
Pierce Precision Finishing	Santa Ana, CA.
Pinnacle Tool	Bloomington, IN.
Potter County Precision Co., Inc	Tucson, AZ.
Power Mfg	Santa Clara, CA.
Precision Fabricating & Tool	Bridgeport, CT.
Precision Laser, Inc	High Point, NC.
Precision Plus, Inc	Greenwood, SC.
Precision Prototypes	Mineola, NY.
Precision Rings Inc	Indianapolis, IN.
Precision Tool Company	Englewood, CO.
Precision Wheels, Inc	Ronkonkoma, NY.
Prime Machine & Tool, Inc	Lantana, FL.
Prior Lake Machine, Inc	Prior Lake, MN.
Priority Mfg., Inc	Wood Dale, IL.
Product Services, Inc	Santa Clarita, CA.
Progressive Tool & Engineering	Mora, MN.
PLASTECH	San Jose, CA.
Q E C, Inc	La Mirada, CA.
Q M, Inc	Connellsville, PA.
Qualicut, Inc	Rochester, NY.
Quality Concept	Arlington, WA.
Quality Tool, Inc	E. Longmeadow, MA.
Quasar Industries	Rochester Hills, MI.
R & J Tool and Manufacturing	Livermore, CA.
R & J Tool, Inc	Brookville, OH.
R & R Grinding Company	Santa Fe Springs, CA.
R M S Tool & Die	Foster, RI.
R S Machining Inc	Manitowoc, WI.
R W Dunn Machine, Inc	Arcadia, CA.
Ram Precision Inc	Deer Park, NY.
Rantom, Inc	Canton, MI.
Raycon Corporation	Ann Arbor, MI.
Reading Plastic Fabricators	Reading, PA.
Refrigeration Research	Brighton, MI.
Relli Manufacturing, Inc	Valley Stream, NY
Richard's Grinding, Inc	Cleveland, OH.
Ricman Manufacturing	Hayward, CA.
Rico's Tool and Engineering	Chandler, AZ.
Riverside Foundry, Inc	Marysville, WA.
Roberts Precision Machine, Inc	Duvall, WA.
Robinson Precision Die Casting	Huntington Beach, CA.

Appendix B—Continued

Rockhill Machining Industries	Akron, OH.
Rockwood Swendeman Corp	S. Portland, ME.
Rocky Mountain Precision Co. Inc	Windsor, CO.
Rohrer, Incorporated	Boardman, OH.
Ron Mills & Co	Walnut, CA.
Rush Machine & Tool Co., Inc	Los Angeles, CA.
Saturn Manufacturing, Inc	Mishawaka, IN.
Scharers' Engineering	Gardena, CA.
Select Mold	Anaheim, CA.
Shackelford Machine	Clearwater, KS.
Shiloh Corporation	Mansfield, OH.
Simi Industries	Simi Valley, CA.
Sirius Enterprises, Inc	Dallas, TX.
Sizemore Machine, Inc	Wichita, KS.
Snow Corporation	Fort Worth, TX.
Sonic Engineering	Garden Grove, CA.
Spec-Tech Unlimited	Orange, CA.
Specialty Machines & Manufacturing	Kensington, MD.
Standard-Hall Group	Greenville, SC.
Stanley Tool & Die, Inc	Deerfield Beach, FL.
Star Tool Service, Inc	Wichita, KS.
Starwin Industries, Inc	Dayton, OH.
Steel & O'Brien Manufacturing, Inc	Springville, NY.
Steel Products Inc	Seattle, WA.
Stelmar Mfg., Inc	Safety Harbor, FL.
Stidd Systems, Inc	Greenport, NY.
Stines Designs	Huntsville, AR.
Sto-Kar Enterprises, Inc	Northridge, CA.
Stringer Welding & Machine, Inc	Dugger, IN.
Sumner Machining Center	Sumner, WA.
Superior Plate Products, Inc	Cheshire, CT.
Swissline Products, Inc	Woonsocket, RI.
T L C Tool, Inc	Clearwater, FL.
T-Tech Machine, Inc	Warwick, RI.
Tampa Bay Machining, Inc	Tampa, FL.
Target Manufacturing Company	Pasadena, MD.
Taton's Machine Shop	Goddard, KS.
Tennessee Precision Tool & Die Co	Nashville, TN.
Tessa Precision Products	Mentor, OH.
The McGinty Machine Company, Inc	Wichita, KS.
The Tool Room—Tool & Die Co	North Scituate, RI.
Tice Industries	Portland, OR.
Tool Service Co., Inc	Dayton, OH.
Tool Technology Dist. Inc	Fremont, CA.
Trans Spar	San Jacinto, CA.
Triangle Engineering Corporation	Indianapolis, IN.
Trinity Machine & Grinding, Inc	Phoenix, AZ.
Triple S Industries	Linden, NJ.
True Dimension Mfg. Inc	Kent, WA.
Turning Technology, Inc	Golden, CO.
Tydeman Machine Works Inc	Redwood City, CA.
United Mold Incorporated	Milpitas, CA.
UFE CalTec Inc	Brea, CA.
Valley Fabricators	Simi Valley, CA.
Valvtron Industries	Houston, TX.
Ve-Ve, Incorporated	Anoka, MN.
Vector Engineering	Chaska, MN.
Vosky Precision Machining Corp	Deer Park, NY.
W Machine Works	Panorama City, CA.
Watson's Profiling Corp	Ontario, CA.
Wichita Design & Mfg., Inc	Wichita, KS.
Williams Metal Blanking Die Co	Paramount, CA.
Willow Tool & Machining, Inc	Strongsville, OH.
Wilson Tool & Manufacuring Comp	Spokane, WA.
Wire—E D M Company, Inc	Middleburg Heights, OH.
Wirecut Specialties	Owings Mills, MD.
Woods Machining & Tooling, Inc	Akron, OH.

[FR Doc. 93–22307 Filed 9–10–93; 8:45 am]
BILLING CODE 3510–DR–M

Columbia University in the City of New York et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Numbers: 93–053 & 93–054. *Applicant:* Columbia University in the City of New York, New York, NY 10027. *Instruments:* (10) High Voltage Power Supplies and (4) Multiwire Detectors. *Manufacturer:* LAS/CNR, Italy. *Intended Use:* See notice at 58 FR 34566, June 28, 1993. *Reasons:* The foreign instruments provide imaging proportional counters with high voltage power supplies for detection and measurement of x-ray polarization from stellar sources aboard an orbiting satellite. *Advice Received From:* Sandia National Laboratory, July 28, 1993.

Docket Number: 93–051. *Applicant:* Southwest Missouri State University, Springfield, MO 65804. *Instrument:* Dipole/Dipole Electromagnetic Surveying System, Model EM 34-3 XL/DL. *Manufacturer:* Geonics Limited, Canada. *Intended Use:* See notice at 58 FR 34566, June 28, 1993. *Reasons:* The foreign instrument provides non-contacting measurements of terrain conductivity at depths to 7.5, 15 and 30 meters with noise reduction to a factor of 10. *Advice Received From:* U.S. Geological Survey, July 22, 1993.

Docket Number: 93–062. *Applicant:* University of Connecticut, Storrs, CT 06269-3060. *Instrument:* Electron Paramagnetic Resonance Spectrometer, Model ER300-10R/12. *Manufacturer:* Bruker Instruments, Inc., Germany. *Intended Use:* See notice at 58 FR 34567, June 28, 1993. *Reasons:* The foreign instrument provides: (1) a microprocessor based field controller and time base with an operating range of −50 G to +23 kG and field accuracy to 500 mG over the full range, and (2) automatic calibration for phase and amplitude modulation. *Advice Received From:* National Institute of Standards and Technology, July 22, 1993.

The Sandia National Laboratory, U.S. Geological Survey and National Institute of Standards of Technology advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 93–22314 Filed 9–10–93; 8:45 am]
BILLING CODE 3510–DS–F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 93–093. *Applicant:* University of New Mexico, Purchasing Department, 609 Buena Vista NE, Albuquerque, NM 87131. *Instrument:* Electron Microscope, Model JEM-2010/SEG/SIP/DP. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for studies of a range of physical and chemical properties, such as structure, composition, morphology and crystallinity at the atomic level. The materials studied will include minerals (silicates, oxides, sulfides, etc.), meteorites, micro-meteorites, engineering materials (metals, semiconductors alloys, composites, catalysts, etc.). In addition, the instrument will be used for educational purposes in various courses in Earth & Planetary Sciences. *Application Received by Commissioner of Customs:* July 21, 1993.

Docket Number: 93–094. *Applicant:* University Research Association, Inc., Super Conducting Super Collider Laboratory, 2550 Beckleymeade Avenue, Dallas, TX 75237. *Instrument:* Spirex DIP 1700 Coil Winding Machine. *Manufacturer:* Ezio Selva S.R.L., Italy. *Intended Use:* The instrument will be used to produce magnets by wrapping insulated superconducting cable under tension around a mandrel to the design length and shape using software controlled automated winding with minimal operator intervention. *Application Received by Commissioner of Customs:* July 28, 1993.

Docket Number: 93–095. *Applicant:* Lehigh University, Department of Earth & Environmental Sciences, 31 Williams Drive, Bethlehem, PA 18015. *Instrument:* Gas Source Isotope Ratio Mass Spectrometer, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used in a wide range of obvious applications of stable isotope chemistry to the ongoing and planned research programs in not only the geological and hydrological, but also the ecological sciences. The principal uses include applications of N isotopes to igneous and metamorphic petrogenetic studies and other planned and ongoing stable isotope applications related to crustal fluid-related processes. In addition, the instrument will be used for educational purposes in the context of formal classes. *Application Received by Commissioner of Customs:* July 29, 1993.

Docket Number: 93–096. *Applicant:* University of Arkansas, Department of Physics, 105 Physics Building, Fayetteville, AR 72701. *Instrument:* Tandem Fabry-Perot Interferometer. *Manufacturer:* JRS, Switzerland. *Intended Use:* The instrument will be used for studies of simple liquid and more complex polymeric glass forming systems, ferroelectric and incommensurate materials, aerogels, diamond and superconducting thin films and other materials. In particular, the instrument will be used to measure the hypersonic acoustic properties (sound velocities and attenuations), the densities, the elastic constants and other phenomenon such as diffusion and relaxation times near structural phase transitions and in metastable viscoelastic systems. In addition, the instrument will be used for educational purposes in various physics courses. *Application Received by Commissioner of Customs:* July 30, 1993.

Docket Number: 93–097. *Applicant:* University of Oklahoma, 660 Parrington

Oval, Room 321, Norman, OK 73019. *Instrument:* Gas Chromatograph Isotope Ratio Mass Spectrometer, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used to separate and determine the isotopic composition of individual compounds in complex mixtures derived from geological sources such as crude oils, source rocks, sediments, water samples, plant materials and various bacteria and algae. The instrument will also be used in a number of graduate courses in the School of Geology including: Petroleum Geochemistry; Environmental Geochemistry; Organic Geochemistry; and Isotope Geochemistry. These courses are designed to teach the students the basic concepts concerning the origin and fate of organic matter in various types of environments. *Application Received by Commissioner of Customs:* August 4, 1993.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 93–22313 Filed 9–10–93; 8:45 am]

BILLING CODE 3510–DS–F

Yale University School of Medicine, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 86–205. *Applicant:* Yale University School of Medicine, New Haven, CT 06511. *Instrument:* Small Animal NMR Spectrometer/ Imager, Model Biospec 300/4.7T. *Manufacturer:* Oxford Research Systems, United Kingdom. *Intended Use:* See notice at 51 FR 19242, May 28, 1986. *Advice Received From:* National Institutes of Health, September 10, 1985.

Comments: No comments have been received with respect to this application. *Decision:* Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered March 25, 1985. *Reasons:* The foreign instrument provides a magnet bore diameter sufficient for whole-body, horizontal imaging of the animals under study and for the required probe configurations. The National Institutes of Health advises in its memorandum that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use which was being manufactured in the United States at the time the foreign instrument was ordered (comparable case).

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which was being manufactured in the United States at the time the foreign instrument was ordered.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 93–22312 Filed 9–10–93; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

National Marine Fisheries Service

Marine Fisheries Advisory Committee; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA.

TIME AND DATE: Meeting will convene at 8:45 a.m., September 29, and adjourn at 3:30 p.m., September 30, 1993.

PLACE: The Sheraton Premiere at Tysons Corner, 8661 Leesburg Pike, Vienna, Virginia.

STATUS: As required by Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of a meeting of the Marine Fisheries Advisory Committee (MAFAC). MAFAC was established by the Secretary of Commerce on February 17, 1991, to advise the Secretary on all living marine resources matters which are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of this Nation are adequate to meet the needs of commercial and recreational fishermen, and environmental, state, consumer, academic, and other national interests.

MATTERS TO BE CONSIDERED:

September 29, 1993, 8:45 a.m.–5 p.m., (1) NOAA 1995–2005 Strategic Plan, (2) NMFS FY 1994 budget, (3) National Fisheries Data Collection and Management Program, (4) A National Agenda to Protect, Restore, and Conserve Marine Fisheries, and (5) NMFS Habitat Restoration Center.

September 30, 1993, 9 a.m.–3:30 p.m., (1) North American Free Trade Agreement, (2) U.S. Policy for General Agreement on Tariffs and Trade and Organization for Economic Cooperation and Development, (3) Norwegian Whaling, (4) Management of Straddling Stocks, (5) Code of Conduct for Responsible Fishing and (6) Definitions for Vessels for Hire Engaged in Fishing.

FOR FURTHER INFORMATION CONTACT: Ann Smith, Executive Secretary, Marine Fisheries Advisory Committee, Policy and Coordination Office, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. Telephone: (301) 713–2259.

Dated: September 7, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service, NOAA.

[FR Doc. 93–22294 Filed 9–10–93; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment and Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

September 2, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6711. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The U.S. Government has agreed to increase the 1993 designated consultation levels for Categories 335 (Normal Regime), 338/339/638/639 (Special Regime), 347/348/647/648 (Special Regime and Normal Regime), 351/651 (Normal Regime) and 352/652 (Special Regime). Also, the current

Normal Regime limit for Category 635 is being increased for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 58 FR 88, published on January 4, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 2, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 28, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on you are directed to amend further the directive dated December 28, 1992 to increase the limits for the following categories, pursuant to the current bilateral agreement and the Memorandum of Understanding dated August 26, 1993 between the Governments of the United States and the United Mexican States:

Category	Adjusted twelve-month limit [1]
Individual limits not in a group	
338/339/638/639	6,000,000 dozen.
347/348/647/648 (Special Regime).	7,400,000 dozen.
352/652 (Special Regime).	4,541,000 dozen.
Normal Regime Category (Not subject to the Special Regime)	
335 (sublimit)	45,000 dozen.
347/348/647/648	1,170,000 dozen.
351/651	145,000 dozen.
635	175,442 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Special Regime limits for Categories 335, 351/651 and 635; Normal Regime limit for Categories 352/652; and Normal Regime sublimit for Categories 338/339/638/639 remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-22305 Filed 9-10-93; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

September 7, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 14, 1993.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6714. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 56904, published on December 1, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 7, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 25, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on September 14, 1993, you are directed to amend further the directive dated November 25, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Pakistan:

Category	Adjusted twelve-month limit [1]
Specific Limits	
237	214,895 dozen.
239	875,440 kilograms.
338	4,088,500 dozen.
339	1,063,860 dozen.
340/640	457,960 dozen of which not more than 160,500 dozen shall be in Categories 340-D/640-D[2].
341/641	515,205 dozen.
347/348	577,782 dozen.
359-C/659-C[3]	899,935 kilograms.
369-F[4]	1,144,936 kilograms.
638/639	105,817 dozen.
647/648	531,876 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 340-D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640-D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.2030 and 6205.90.4030.

[3] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369-F: only HTS number 6302.91.0045.

The Committee for the Implementation of Textile Agreements has determined that

these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–22320 Filed 9–10–93; 8:45 am]

BILLING CODE 3510–DR–F

Permitting Entry of Certain Cotton Textile Products Exported from Pakistan

September 7, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs permitting entry of certain textile products.

EFFECTIVE DATE: September 14, 1993.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Based upon a letter from the Government of Pakistan dated August 17, 1993 resulting from investigations concerning alleged circumvention of the current textile and apparel agreement between the Governments of the United States and Pakistan, the Government of the United States, at the request of the Government of Pakistan, shall permit entry of certain shipments of cotton sheets in Category 361 which were visaed by the Government of Pakistan during 1992. The remaining shipments referenced in the directive issued to the Commissioner of Customs on November 17, 1992 shall continue to be denied entry.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 54773, published on November 20, 1992.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 7, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 17, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to deny entry of shipments of certain cotton sheets in Category 361 which were visaed by the Government of Pakistan during 1992.

Based upon a letter dated August 17, 1993 from the Government of Pakistan, effective on September 14, 1993, you are directed to permit entry of shipments of certain cotton sheets in Category 361 which are accompanied by a visa issued by the Government of Pakistan during 1992. The remaining shipments referenced in the November 17, 1992 directive shall continue to be denied entry until further notice.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–22321 Filed 9–10–93; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Applications for Approval of Ethics Training Programs

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice Regarding Rule 3.34(b)(3).

SUMMARY: The Commodity Futures Trading Commission ("Commission") is issuing this notice to clarify the application process for persons seeking to provide ethics training to registrants under the Commodity Exchange Act ("Act") in accordance with Commission Rule 3.34(b)(3). This notice provides guidance regarding information to be supplied to the Commission in applications submitted by individuals or firms requesting approval as providers of ethics training.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Carla Behnfeldt, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581; telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Background Regarding the Ethics Training Rule and Commission Approval of Ethics Training Programs

On April 6, 1993, the Commission approved Rule 3.34 which, effective April 26, 1993, implements the ethics training requirement established by section 4p(b) of the Act.[1] Under Rule 3.34(b)(3), ethics training programs other than those provided by or pursuant to a program of training sponsored by a self-regulatory organization ("SRO") or an entity accredited to conduct continuing education programs by a State professional licensing authority in the fields of law, finance, accounting or economics must be approved by the Commission. In approving Rule 3.34, the Commission stated that in reviewing applications from potential offerors of ethics training, it would consider such factors as pedagogical expertise and knowledge of futures[2], specified required and suggested topics for coverage[3] and set forth minimum duration requirements for initial and

[1] 7 U.S.C. 6p(b) (Supp. IV 1992); 48 FR 19575 (April 15, 1993).

[2] 58 FR 19575, 19586.

[3] With respect to the content of an ethics training program, Rule 3.34(b) provides that such training must: (1) Include a description of the requirements of the Act and rules promulgated thereunder concerning treatment of customer orders and handling of customer business, and (2) address the registrant's responsibilities to the public under the Act, including responsibilities to observe just and equitable principles of trade, rules or regulations of the Commission, rules of any appropriate contract market, registered futures association, or other SRO, or any other applicable federal or state law, rule or regulation, as these principles pertain to the registration category in which the person is registered or seeking registration. 58 FR 19575, 19593.

Additionally, Rule 3.34(c) identifies other issues that ethics training programs may address such as (1) how to act honestly and fairly and with due skill, care and diligence in the best interests of customers and the integrity of the market; (2) how to establish effective supervisory systems and internal controls; (3) obtaining and assessing the financial situation and investment experience of customers; (4) disclosure of material information in dealings with customers; and (5) avoidance of conflicts of interest, and when they cannot be avoided, disclosure to the customer and authorization to continue handling the customer's business if permitted under the Act and Commission rules. *Id.*

Rule 3.34(b)(4) also imposes certain recordkeeping requirements upon ethics training providers to facilitate audits of training programs and as a supplement to the requirement that registrants and their sponsors maintain evidence of ethics training attendance. *Id.*

periodic training.[4] Rule 3.34(b)(3) contemplates that the ethics training may be provided in a number of ways, including videotape or electronic presentation. The Commission has suggested that it would be acceptable for certain registrants to fulfill their ethics training obligations through computerized "self-training" programs or the viewing of videotapes or other materials provided by appropriate vendors for which completion can be substantiated without undue burdens on registrants. This training could include, for example, an interactive computerized training program that requires and records the registrant's participation, the return of the computer disk to the vendor for verification of such participation, and the issuance of a certificate to that effect by the vendor to the registrant. The Commission indicated in the **Federal Register** release adopting Rule 3.34 that this kind of training might be most appropriate where in-person training was not feasible.[5]

As of September 7, 1993 the Commission has approved four entities as providers of ethics training for registrants under the Act. A number of additional applications have been filed with the Commission and, based upon the large number of preliminary inquiries Commission staff have received, the Commission expects to receive and review several additional applications in the future. Based upon its experience to date with the application process, the Commission believes that the process will be facilitated and potentially expedited if applicants provide certain basic categories of information in their submissions. This notice is intended to apprise prospective applicants of the type of information that generally will assist the Commission in evaluating applications for approval of ethics training programs.

II. Content of Ethics Training Program Applications for Approval

To facilitate Commission review, the following information with respect to the applicant, the ethics training program and the proposed instructors should be included in applications for approval of ethics training programs.

A. With respect to the applicant:

1. The applicant's name, business address and telephone number;

2. Whether the applicant meets the criteria set forth in Section 501(c)(3) of the Internal Revenue Code or is a trade association;

3. Whether the applicant is offering ethics training only for its employees, members or affiliates or is offering ethics training to unaffiliated individuals;

4. Whether the applicant is or has ever been registered with the Commission in any capacity; and

5. A description of the nature of the applicant's business activities or, if the applicant was formed for the sole purpose of offering ethics training to Commission registrants, a statement to that effect.

B. With respect to the program:

1. The registration category with respect to which the ethics training program approval is sought, including futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators, leverage transaction merchants, as well as associated persons ("APs"), floor brokers ("FBs") or floor traders ("FTs");[6]

2. The type of course (*i.e.*, initial or periodic training and the duration of the course) proposed to be taught;[7]

a. If all course lengths will be taught, describe the way in which the shorter courses will differ from the longer in terms of the material covered;

3. The format of and media used in the course, including

a. Whether the course will be conducted, in full or in part, in-person, by telephone conference call in several locations simultaneously, on videotape, by interactive computer or otherwise;

b. If not solely in-person,

(i) Whether the instructor will be present at all times including, for example, during the showing of a videotape; and

(ii) How attendance will be monitored and substantiated (for example, by requiring the filling out of a questionnaire);

4. Attach a subject matter outline or schedule, with parenthetical references after each topic covered in the outline or schedule indicating the length of time that will be allocated to that topic. The outline should indicate, as appropriate, coverage of the topics specified in Rule 3.34(b) including: (a) A description of the requirements of the Act and rules promulgated thereunder concerning treatment of customer orders and handling of customer business, and (b) the registrant's responsibilities to the public under the Act, including responsibilities to observe just and equitable principles of trade, rules or regulations of the Commission, rules of any appropriate contract market, registered futures association, or other SRO, or any other applicable federal or state law, rule or regulation, as these principles pertain to the registration categories of course participants.[8]

C. With respect to the instructors:

1. The names of and biographical information (including education as well as pedagogical experience and business background as specified below) concerning all proposed instructors;

2. Each instructor's business background, including the instructor's background in futures, whether the instructor is or has been registered at any time with the Commission, and whether the instructor has any other background in financial markets; and

3. The instructor's pedagogical expertise, including

a. Whether this expertise is in futures, financial markets or in other areas; and

b. The length of time the instructor has engaged in teaching various subject areas.

This information may be in the form of a current resume, dated no earlier than one month prior to the date on which the Commission receives the ethics training approval request.

The Commission expects that provision of this information will facilitate its consideration of ethics training approval applications. However, because not all questions with

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[4] Rule 3.34(d) prescribes initial and periodic training and prescribes training sessions of one, two and four hours' duration, depending on the registrant's individual circumstances. 58 FR 19575, 19593–94.

[5] 58 FR 19575, 19586–87.

[6] The Commission noted in the **Federal Register** release adopting Rule 3.34 its belief that training should be focused to some extent on a person's registrant category, although there will obviously be certain principles and issues common to all registrants. However, training for FTs and FBs, for example, who are not subject to the (the National Futures Association's) proficiency testing requirement, should devote greater attention to issues relating to contract market operations than training of APs, which would have greater concentration on sales practice issues. 58 FR 19575, 19585.

[7] See *supra* note 4.

[8] The Commission noted in the **Federal Register** release adopting Rule 3.34 with respect to these responsibilities that "reference to Commission interpretations and decisions with respect to specific fact situations may be helpful." 58 FR 19575, 19585 n. 42. The Commission also identified in Rule 3.34(c) suggested topics for inclusion in ethics training programs, including:

(1) How to act honestly and fairly and with due skill, care and diligence in the best interests of customers and the integrity of the market;

(2) How to establish effective supervisory systems and internal controls;

(3) Obtaining and assessing the financial situation and investment experience of customers;

(4) Disclosure of material information in dealings with customers; and

(5) Avoidance of conflicts of interest, and when they cannot be avoided, disclosure to the customer and authorization to continue handling the customer's business if permitted under the Act and Commission rules.

respect to any particular applicant can be anticipated at this time, additional information may be requested by Commission staff when and as warranted upon receipt and review of the application.

Issued in Washington, DC, on September 7, 1993 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93-22332 Filed 9-10-93; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Government-Industry Technical Data Committee

AGENCY: Office of the Under Secretary of Defense (Acquisition).

ACTION: Notice.

SUMMARY: Pursuant to section 807 of Public Law 102-120, the National Defense Authorization Act for Fiscal Years 1992 and 1993, a Government-Industry Technical Data Committee has been formed. The committee will make recommendations to the Secretary of Defense for the final regulations required by subsection (a) of 10 U.S.C. 2320, "Rights in Technical Data."

The next committee meetings are scheduled for September 22 and 23, 1993, from 9:30 a.m. to 4 p.m. at The Russell Baker Conference Room, room 1000, 815 Connecticut Ave., NW., Washington, DC 20006-4078. These meetings will be open to the public. For more information, please contact the Committee Executive Secretary, Angelena Moy at (703) 693-5639.

Dated: September 7, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-22214 Filed 9-10-93; 8:45 am]

BILLING CODE 5000-04-M

Joint Advisory Committee on Nuclear Weapons Surety

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Joint Advisory Committee (JAC) on Nuclear Weapons Surety will meet in closed session on September 28-29, 1993, at San Diego, California.

The Joint Advisory Committee is charged with advising the Secretary of Defense, Secretary of Energy, and the Joint Nuclear Weapons Council on nuclear weapons systems surety matters. At this meeting, the Joint Advisory Committee will receive classified briefings on transportation and reconstitution of nuclear weapons and nuclear weapon systems.

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended, Title 5, U.S.C. App. II, (1988)), this meeting concerns matters, sensitive to the interests of national security, listed in 5 U.S.C. 552b(c)(1) and accordingly this meeting will be closed to the public.

Dated: September 8, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-22337 Filed 9-10-93; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER92-890-000, et al.]

Citizens Utilities Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 7, 1993.

Take notice that the following filings have been made with the Commission:

1. Citizens Utilities Company

[Docket No. ER93-890-000]

Take notice that on August 24, 1993, Citizens Utilities Company (Citizens) tendered for filing an agreement between Citizens and Missisquoi Associates, dated March 7, 1986, as amended August 23, 1993.

Comment date: September 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Electric and Gas Company

[Docket No. ER93-917-000]

Take notice that on August 31, 1993, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial Rate Schedule to provide interruptible transmission service to the Orange and Rockland Utilities, Inc. (O&R). The service provides for the delivery of non-firm electric power and associated energy transactions between any investor-owned utility interconnected with the PSE&G high voltage transmission system and O&R.

Comment date: September 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. PacifiCorp

[Docket No. ER93-723-000]

Take notice that on August 30, 1993, PacifiCorp tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, Amendment No. 1 to Contract No. 93-LAO-714, Installation of Facilities at PacifiCorp's Laramie Substation and Western's Laramie Tap, with a request that the Commission find that the agreement as amended filed under this Docket is not subject to the Commission's jurisdiction pursuant to the Commission's Final Order on Prior Notice and Filing Requirements Under Part II of the Federal Power Act in Docket No. PL93-2-002.

Copies of this filing were supplied to Western and the Wyoming Public Service Commission.

Comment date: September 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation

[Docket No. ER93-916-000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk), on August 31, 1993, tendered for filing a proposed change to Rate Schedule No. 180 which is an agreement dated October 29, 1992, between Niagara Mohawk and the New York Power Authority (NYPA) which provides for certain interruptible transmission services, with an option to convert to firm service in the future, for NYPA.

The October 29, 1992 agreement provides for transmission service from NYPA's Crescent, Vischers Ferry and Jarvis Hydroelectric plants to Niagara Mohawk's existing interconnection with Consolidated Edison.

The effective date of November 1, 1993 is requested by Niagara Mohawk.

Copies of this filing were served upon NYPA and the New York State Public Service Commission.

Comment date: September 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Northeast Utilities Service Company

[Docket No. ER93-913-000]

Take notice that on August 31, 1993, Northeast Utilities Service Company (NUSCO) on behalf of The Connecticut Light and Power Company (CL&P), Holyoke Water Power Company, and Public Service Company of New Hampshire (PSNH), tendered for filing a filing System Power Sales Agreement for purchases by the Vermont Public Power Supply Authority.

NUSCO states that the filing is in accordance with part 35 of the Commission's regulations.

Comment date. September 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER93–914–000]

Take notice that on August 31, 1993, Northeast Utilities Service Company (NUSCO) on behalf of The Connecticut Light and Power Company (CL&P) tendered for filing an amendment for additional capacity purchases by New England Power Company (NEP).

NUSCO states that the filing is in accordance with part 35 of the Commission's regulations.

Comment date. September 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Utilities Service Company

[Docket No. ER93–915–000]

Take notice that on August 31, 1993, Northeast Utilities Service Company (NUSCO) on behalf of The Connecticut Light and Power Company (CL&P), Holyoke Water Power Company, and Public Service Company of New Hampshire (PSNH), tendered for filing Unit Sales Agreements for purchases by Princeton Municipal Light Department Princeton.

NUSCO states that the filing is in accordance with part 35 of the Commission's regulations.

Comment date: September 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Electric Power Company

[Docket No. ER93–856–000]

Take notice that on September 1, 1993, Southwestern Electric Power Company (SWEPCO) tendered for filing Amendment No. 1 to the Restated and Amended Interconnection Agreement with Gulf States Utilities Company (Amendment No. 1). Amendment No. 1 was inadvertently omitted from the initial filing submitted on August 11.

Copies of the filing have been served on Gulf States Utilities Company, the Public Utility Commission of Texas and all parties to this proceeding.

Comment date: September 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Iowa Electric Light and Power Company

[Docket No. ER93–638–000]

Take notice that Iowa Electric Light and Power Company (Iowa Electric) on August 17, 1993, tendered for filing a Second Amendment to its May 10, 1993 filing in the above docket. The Amendment includes changes in the proposed fuel adjustment clause for resale electric service to comply with the Commission's regulations.

Copies of this filing have been sent to the Iowa State Utilities Board and to Iowa Electric's jurisdictional customers.

Comment date: September 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of Colorado

[Docket No. ER93–909–000]

Take notice that on August 30, 1993, Public Service Company of Colorado (Public Service) tendered for filing a Notice of Cancellation of existing FERC Electric Rate Schedule No. 61 and Supplement No. 1 to Rate Schedule No. 61 between Public Service and Platte River Power Authority.

Comment date: September 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Southwestern Electric Power Company

[Docket No. ER93–741–000]

Take notice that on august 20, 1993, Southwestern Electric Power Company (SWEPCO), by its counsel, submitted for filing a correction to its June 29, 1993 (as corrected June 30, 1993) filing of Amendment No. 2 to SWEPCO's Electric System Interconnection Agreement with Cajun Electric Power Cooperative, Inc. SWEPCO has requested that the correction be accepted to become effective on the same date as its June 29 and June 30 filings become effective.

Copies of the filing have been served on Cajun, the Louisiana Public Service Commission, and to other SWEPCO wholesale customers to advise them of the requested waiver of notice requirements.

Comment date: September 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Company

[Docket No. ER93–920–000]

Take notice that New England Power company (NEP) on September 1, 1993, tendered for filing its proposed FERC Electric Tariff, Original Volume No. 8, Tariff for Firm Transmission Service. The proposed tariff would provide firm service over NEP's transmission facilities and the transmission facilities of NEP's affiliates which are made available to NEP to meet the load of the integrated generation and transmission system. NEP states that the tariff was filed in complies with the approved settlement in Docket No. ER92–113–001.

NEP requests that the proposed tariff be permitted to become effective on November 1, 1993.

Comment date. September 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Company

[Docket No. ER93–922–000]

Take notice that on September 1, 1993, Florida Power & Light Company (FPL) tendered for filing the following transmission agreements: (1) Amendment Number Five to the Amended Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Seminole Electric Cooperative, Inc.; (ii) Amendment Number Three to the Restated and Revised Transmission Service Agreement Between Florida Power & Light Company and The Florida Municipal Power Agency; (iii) Amendment Number Two to the Stanton Transmission Service Agreement Between Florida Power & Light Company and Florida Municipal Power Agency; (iv) Amendment Number Two to the Stanton Tri-City Transmission Service Agreement Between Florida Power & Light Company and Florida Municipal Power Agency; (v) Amendment Number Seven to the St. Lucie Delivery Service Agreement Between Florida Power & Light Company and Florida Municipal Power Agency; (vi) Amendment Number Four to the St. Lucie Delivery Service Agreement Between Florida Power & Light Company and Orlando Utilities Commission; Amendment Number Seven to the St. Lucie Delivery Service Agreement Between Florida Power & Light Company and Florida Municipal Power Agency; and (vii) Amendment Number One to the Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Metropolitan Dade County, Florida.

FPL states that the filing is in accordance with part 35 of the Commission's regulations.

Comment date: September 21, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests

should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22287 Filed 9–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–20–000]

Algonquin Gas Transmission Company; Proposed Changes in FERC Gas Tariff

September 7, 1993.

Take notice on September 1, 1993, that Algonquin Gas Transmission Company (Algonquin), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 and Original Volume No. 2, of the following tariff sheets, with a proposed effective date of October 1, 1993:

Fourth Revised Volume No. 1
Second Revised Sheet No. 21
Second Revised Sheet No. 22
Second Revised Sheet No. 23
Second Revised Sheet No. 24
Second Revised Sheet No. 25
Second Revised Sheet No. 27
Second Revised Sheet No. 29
Second Revised Sheet No. 30
Second Revised Sheet No. 31
Second Revised Sheet No. 32
Second Revised Sheet No. 33
First Revised Sheet No. 34
First Revised Sheet No. 35

Original Volume No. 2

Third Revised Sheet No. 259
Third Revised Sheet No. 296
Second Revised Sheet No. 343

Algonquin states that this filing increases its current Annual Charge Adjustment (ACA) charge by $0.0003 per MMBtu.

Algonquin states that copies of this tariff filing were mailed to all customers of Algonquin and interested state commissions shown on Algonquin's system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22236 Filed 9–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ93–8–22–000 and TM93–8–22–000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 7, 1993.

Take notice that on August 31, 1993, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with a proposed effective date of September 1, 1993:

Thirty-Fourth Revised Sheet No. 31
Twenty-Fifth Revised Sheet No. 32
Thirtieth Revised Sheet No. 34
Twenty-Fourth Revised Sheet No. 35

CNG states that the proposed tariff sheets reflect two changes: An increase in natural gas spot prices and changes in rates and services on Tennessee Gas Pipeline Company arising out of its implementation of its Order No. 636 restructuring effective September 1, 1993, in Docket No. RS92–23.

CNG states that copies of the filing were served upon CNG's jurisdictional customers and interested state commissions. Copies of the filing are also available during regular business hours at CNG's offices in Clarksburg, West Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22231 Filed 9–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–22–000]

CNG Transmission Corporation; Proposed Changes in FERC Gas Tariff

September 7, 1993.

Take notice that on August 31, 1993, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, the following revised tariff sheets, with a proposed effective date of October 1, 1993:

First Revised Volume No. 1

Thirty-Fifth Revised Sheet No. 31
Twenty-Sixth Revised Sheet No. 32
Thirty-First Revised Sheet No. 34
Twenty-Fifth Revised Sheet No. 35

Original Volume No. 2

Sixth Revised Sheet Nos. 250 and 290

Original Volume No. 2A

Sixth Revised Sheet Nos. 18, 28, 35, 48, and 87

CNG states that the proposed tariff sheets reflect a new ACA unit rate of 0.25 cents per dekatherm.

CNG states that copies of the filing were served upon CNG's jurisdictional customers and interested state commissions. Copies of the filing are also available during regular business hours at CNG's offices in Clarksburg, West Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22238 Filed 9–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–21–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 7, 1993.

Take notice that on August 31, 1993, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with a proposed effective date of October 1, 1993:

Thirty-sixth Revised Sheet No. 26.1
Thirty-sixth Revised Sheet No. 26A.1
Thirty-fourth Revised Sheet No. 26C
Thirty-first Revised Sheet No. 26D

Columbia states that the listed tariff sheets set forth the adjustment to its sales and transportation rates applicable to the Annual Charge Adjustment, pursuant to the Commission's Regulations as set forth in Order No. 472, et seq.

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22237 Filed 9–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–70–000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

September 7, 1993.

Take notice that on August 31, 1993 Columbia Gulf Transmission Company (Columbia Gulf), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with the proposed effective date of October 1, 1993:

Tenth Revised Sheet No. 021
Fifth Revised Sheet No. 022
Fourth Revised Sheet No. 046

Columbia Gulf states that the listed tariff sheets set forth the adjustment to its sales and transportation rates applicable to the Annual Charge Adjustment, pursuant to the Commission's regulations as set forth in Order No. 472, *et seq.*

Columbia Gulf states that copies of this filing were served upon all Columbia Gulf's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22247 Filed 9–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–7–2–000]

East Tennessee Natural Gas Co.; Rate Filing

September 7, 1993.

Take notice that on August 31, 1993, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fortieth Revised Tariff Sheet Nos. 4 and 5, with a proposed effective date of September 1, 1993.

East Tennessee Natural Gas Company states that the purpose of the instant filing is to implement an out-of-cycle PGA rate adjustment to East Tennessee's current gas rates, to be effective from September 1 through September 30, 1993. East Tennessee states that due to the non-coincidental implementation of Order 636 on East Tennessee's upstream pipeline supplier, Tennessee Gas Pipeline Company (Tennessee), and East Tennessee, during the PGA period East Tennessee will subscribe to a transportation service on Tennessee and that such transportation service will act as a surrogate for the CD sales service previously provided by Tennessee. East Tennessee seeks to recover the related transportation cost through its PGA adjustment.

East Tennessee also states that due to an unexpected increase in gas prices, it is currently unable to purchase gas at or below the rates reflected in its previously scheduled PGA filing in Docket No. TQ93–6–2, filed on May 28, 1993 to be effective July 1, 1993. The increase in the current adjustment is necessary to prevent substantial underrecoveries of gas costs.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before September 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22230 Filed 9–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–2–000, TQ94–1–2–000]

East Tennessee Natural Gas Co.; Rate Filing

September 7, 1993.

Take notice that on August 31, 1993, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Tariff, First Revised Volume No. 1, Forty-First Revised Tariff Sheet Nos. 4 and 5, and Original Volume No. 1A, Ninth Revised Sheet Nos. 6 and 7, with a proposed effective date of October 1, 1993.

East Tennessee Natural Gas Company states that the purpose of the instant filing is to implement a quarterly PGA rate adjustment to East Tennessee's current gas rates, to be effective from October 1 through October 31, 1993, pursuant to § 21.(b) of the General Terms and Conditions of East Tennessee's FERC Gas Tariff.

East Tennessee also states that the filing reflects the new Annual Charge Adjustment (ACA) to be effective

October 1, 1993, pursuant to article 19 of the General Terms and Conditions of East Tennessee's FERC Gas Tariff. The new ACA rate is $.0025 compared to $.0022, an increase of $.0003.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before September 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22245 Filed 9–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–187–000]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

September 7, 1993.

Take notice that on September 2, 1993, Equitrans, Inc. (Equitrans) tendered for filing proposed changes in its FERC Gas Tariff reflecting a rate change from currently effective rates and other changes in its tariff. Equitrans proposes a decrease in the jurisdictional annual cost of service of approximately $5 million based on costs for the twelve (12) month period ending May 31, 1993, as adjusted. However, the proposed rates include approximately $60 million in Order No. 636 transition costs which Equitrans proposes to amortize over a four year period and incorporate into the rates charged to firm open-access transportation services. Thus, overall, this rate filing will increase the level of Equitrans' jurisdictional rates above Equitrans' Docket No. RP93–62 rates which are currently in effect, subject to refund.

Equitrans states that the rates, terms and conditions reflected in the proposed sheets reflect various new or expanded services including no-notice transportation service and open access firm and interruptible storage service, which are required by Order No. 636. In addition, Equitrans proposes to apply the cost allocation and rate design principles directed by Order No. 636, including the adoption of straight fixed-variable rate design, removal of costs related to Equitrans' merchant function from the cost of service, and the reallocation of storage costs among services.

Equitrans states it proposes to recover $60,090,621 in transition costs related to stranded gathering facilities and products extraction and well plugging costs. Equitrans proposes to amortize these costs over a four-year period and to incorporate 100% of these costs into rate charged to all part 284 transportation.

Equitrans requests that the proposed tariff sheets become effective on October 1, 1993. Equitrans requests waiver of the Commission's notice requirements for the Commission to make the tariff sheets effective on the date requested subject to refund.

Equitrans states that copies of this filing were served upon the Equitrans jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 14, 1993. Protests will be considered by the Commission in determining appropriate action, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22227 Filed 9–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–188–000]

Florida Gas Transmission Co.; Compliance Filing

September 7, 1993.

Take notice that on August 31, 1993, Florida Gas Transmission Company (FGT) tendered for filing the information required by the provisions contained in Section 27 of FGT's FERC Gas Tariff, Third Revised Volume No. 1, currently pending Commission approval.

FGT states that Section 27 of its pending FERC Gas Tariff, Third Revised Volume No. 1, provides that FGT will file a Fuel Reimbursement Charge Adjustment to be effective each April 1 and October 1. Sections 27.C and 27.D provide that the Initial Fuel Reimbursement Charge Percentage shall be based on the actual fuel usage, and lost and unaccounted for gas, and the volumes delivered during the six month period commencing one year prior to the effective date of the Fuel Reimbursement Charge Adjustment. FGT is required to file work papers with the Commission at least thirty (30) days prior to the effective date of the Adjustment, setting forth the revised, or initial, Fuel Reimbursement Charge. The instant filing is submitted in conformance with the provisions of the tariff and in anticipation of the October 1, 1993, effective date.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22229 Filed 9–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–114–000]

Gateway Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 7, 1993.

Take notice that on August 31, 1993, Gateway Pipeline Company (Gateway) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 4, with a proposed effective date of October 1, 1993:

Gateway states that the above referenced tariff sheets reflect an upward revision to the unit rate of the Annual Charge Adjustment (ACA) Clause to be generally applied to interstate natural gas pipeline rates for the recovery of the 1992 Annual Charges, pursuant to Order No. 472.

Gateway states that this revision authorizes Gateway to collect $0.0026 per each Mcf of natural gas sold or transported applicable to the 1993 Annual charge assessed Gateway by the Commission under part 382 of the Commission's Regulations.

Gateway also states that the tariff sheets are being mailed to its customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NW., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before September 14, 1993. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22248 Filed 9–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–11–000]

Koch Gateway Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 7, 1993.

Take notice that on August 31, 1993, Koch Gateway Pipeline Company (KGPL), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective October 1, 1993:

Third Revised Sheet No. 4
Third Revised Sheet No. 4A
Third Revised Sheet No. 4B
Third Revised Sheet No. 4D
Third Revised Sheet No. 4E
Third Revised Sheet No. 4F
Third Revised Sheet No. 4G
Third Revised Sheet No. 4H

KGPL states that the above referenced tariff sheets reflect an upward revision to the unit rate of the Annual Charge Adjustment (ACA) Clause to be generally applied to interstate natural gas pipeline rates for the recovery of the 1992 Annual Charges, pursuant to Order No. 472.

KGPL notes that this revision authorizes KGPL to collect $0.0026 per each Mcf ($0.0025 per MMBtu as converted on KGPL's system) of natural gas sold or transported applicable to the 1993 Annual charge assessed KGPL by the Commission under Part 382 of the Commission's Regulations.

KGPL also states that the tariff sheets are being mailed to its customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NW., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before September 14, 1993. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22234 Filed 9–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–5–000]

Midwestern Gas Transmission Co.; Filing

September 7, 1993.

Take notice that on September 1, 1993, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 5, with a proposed effective date of October 1, 1993.

Midwestern states that this filing reflects the new Annual Charge Adjustment (ACA) of $.0025 per dekatherm.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22232 Filed 9–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–28–000]

Panhandle Eastern Pipe Line Company; Proposed Change in FERC Gas Tariff

September 7, 1993.

Take notice that on August 31, 1993, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2, revised sheets as reflected in Appendix A to the filing. The proposed effective date of the above-referenced tariff sheets is October 1, 1993.

Panhandle states that these revised tariff sheets are being submitted in accordance with Section 18.2 (Annual Charge Adjustment Provision) of the General Terms and Conditions of Panhandle's FERC Gas Tariff, First Revised Volume No. 1. The Commission has changed the unit rate of the Annual Charge Adjustment to be applied to rates for recovery of 1993 Annual Charges pursuant to Order No. 472 in Docket No. RM87–3–000. The surcharge attributable to fiscal year 1993 program costs is $0.0026 per Mcf ($0.0026 per Dt to reflect Panhandle's billing unit) of natural gas transported.

Panhandle states that copies of this letter and enclosures are being served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22239 Filed 9–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94-1-6-000]

Sea Robin Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 7, 1993.

Take notice that on August 31, 1993, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised sheets, with a proposed effective date of October 1, 1993:

Thirty-Sixth Revised Sheet No. 4–A
Thirteenth Revised Sheet No. 4–A1
Twelfth Revised Sheet No. 4–A2

Sea Robin states that the aforesaid tariff sheet implements the Federal Energy Regulatory Commission's (Commission) revised Annual Charge Adjustment (ACA) of .26¢ per Mcf. This represents an increase of .03¢ per Mcf in the ACA charge from the current level of .23¢ per Mcf.

Sea Robin states that copies of Sea Robin's filing will be served upon all of Sea Robin's customers, interested commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214 and 385.211). All such petitions or protests should be filed on or before September 14, 1993. Protests will be considered by the Commission in determining the appropriate action be to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22233 Filed 9–10–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-9-000]

Tennessee Gas Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 7, 1993.

Take notice that on August 31, 1993, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, the following tariff sheets with a proposed effective date of October 1, 1993:

Fifth Revised Volume No. 1

First Revised Sheet No. 30

Original Volume No. 2

Fifteenth Revised Sheet No. 10
Second Revised Sheet No. 10A

Tennessee states that the purpose of this filing is to reflect the increase in the Annual Charge Adjustment (ACA) rate adjustment to Tennessee's commodity rates for the period October 1, 1993 through September 30, 1994.

Tennessee states that copies of the filing are being mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22246 Filed 9–10–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-18-000]

Texas Gas Transmission Corp., Proposed Changes in FERC Gas Tariff

September 7, 1993.

Take notice that on August 31, 1993, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, and First Revised Volume No. 2–A the following revised tariff sheets, with a proposed effective date of October 1, 1993:

FERC Gas Tariff, Original Volume No. 1

Eighth Revised Seventy-third Revised Sheet No. 10
Eighth Revised Seventy-second Revised Sheet No. 10A
Eighth Revised Fifty-fourth Revised Sheet No. 11
Eighth Revised Forty-fourth Revised Sheet No. 11A
Eighth Revised Forty-third Revised Sheet No. 11B

FERC Gas Tariff, First Revised Volume No. 2–A

Sixth Revised Sheet No. 10A
Fifth Revised Sheet No. 10C
Third Revised Sixth Revised Sheet No. 11

Texas Gas states that the revised tariff sheets are being filed pursuant to Section 25 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, Original Volume No. 1, and Section 21 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 2–A, which affords Texas Gas the right to recover the costs billed to Texas Gas by the Federal Energy Regulatory Commission via the FERC ACA Unit Charge method. That unit charge, as determined by the Commission, is $.0026/Mcf ($.0025/MMBtu converted) as set forth on Texas Gas's Annual Charges Bill for fiscal year 1993, to be effective October 1, 1993.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22235 Filed 9–10–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-42-000]

Transwestern Pipeline Company; Proposed Changes in FERC Gas Tariff

September 7, 1993.

Take notice that on August 31, 1993 Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of October 1, 1993:

103rd Revised Sheet No. 5
9th Revised Sheet No. 5A
5th Revised Sheet No. 5A.01
3rd Revised Sheet No. 5A.02
3rd Revised Sheet No. 5A.03
3rd Revised Sheet No. 5A.04
7th Revised Sheet No. 5B

Transwestern states that the tariff sheets referenced above are being filed to adjust Transwestern's Annual Charge Adjustment (ACA) pursuant to section 23, of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The adjustment of the ACA Surcharge is determined each fiscal year pursuant to the Commission's Order No. 472. The ACA Surcharge of $0.0025/dth as determined by the Commission on July 26, 1993, reflects an increase of $0.0003/dth from the currently effective ACA Surcharge of $0.0022/dth.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Lois D. Cashell,

Secretary.

[FR Doc. 93–22241 Filed 9–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–26–009]

Transwestern Pipeline Co.; Tariff Filing

September 7, 1993.

Take notice that on August 31, 1993, Transwestern Pipeline Company (Transwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

Effective September 1, 1993

10th Revised Sheet No. 73

Transwestern states that the above-referenced tariff sheet is being filed by Transwestern to modify Section 19 of the General Terms and Conditions of its FERC Gas Tariff to reflect certain organizational changes affecting Transwestern's shared operating personnel and facilities.

Transwestern requests that the Commission grant any and all waivers of its rules, regulations, and orders as may be necessary so as to permit the tariff sheet submitted by it to become effective September 1, 1993.

Transwestern states that copies of the filing were served upon all of Transwestern's gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22228 Filed 9–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–30–000]

Trunkline Gas Company; Proposed Changes in FERC Gas Tariff

September 7, 1993.

Take notice that on August 31, 1993, Trunkline Gas Company (Trunkline) tendered for filing the revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, and to its FERC Gas Tariff, Original Volume No. 2, as reflected in Appendix No. 1 attached to the filing, with a proposed effective date of October 1, 1993.

Trunkline states that the above-referenced tariff sheets are being filed in accordance with the Commission's Order No. 472 and pursuant to Section 21 (Annual Charge Adjustment (ACA) Provision) of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1.

Trunkline's current ACA Unit Surcharge of $0.0022 per Dt effective October 1, 1992, as approved by the Commission's Order dated September 30, 1992 in Docket No. TM93–1–30–000 changes to $0.0025 per Dt with the tracking of the ACA Unit Surcharge authorized for the fiscal year 1993 and the additional increment for the fiscal year 1992 adjustment.

Several of Trunkline's rate schedules involve utilization of Trunkline's capacity in third party pipelines. This filing incorporates ACA revisions filed by these third party pipelines into Trunkline's FERC Gas Tariff, Original Volume No. 2.

Trunkline states that copies of this letter and enclosures are being served on all customers subject to the tariff sheets and the applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22240 Filed 9–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER91–195–011]

Western Systems Power Pool; Informational Filing

September 7, 1993.

Take notice that on July 30, 1993 the Western Systems Power Pool (WSPP) filed certain information as required by Ordering Paragraph (D) of the Commission's June 27, 1991 Order (55 FERC ¶ 61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992 Order on Rehearing Denying Request Not To Submit Information, And Granting In Part And Denying In Part Privileged Treatment. Pursuant to 18 CFR 385.211, WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order. Copies of WSPP's informational filing are on file with the Commission, and the non-privileged portions are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22226 Filed 9–10–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4728–4]

Office of Air and Radiation, Management of the Air Docket

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Air Docket located at 401 M St. SW., currently operated by the EPA office of General Counsel will be operated by the Office of Air and Radiation effective 1 October 93. Labat-Anderson contractors will operate the Air Docket.

FOR FURTHER INFORMATION CONTACT: The Air Docket 401 M St. SW., Washington, DC 20460. Phone 202–260–7548.

Jerry Kurtzweg,

Director, Office of Program Management Operation, Office of Air and Radiation.

[FR Doc. 93–22296 Filed 9–10–93; 8:45 am]

BILLING CODE 6450–01–M

[OPPTS–41039A; FRL–4644–6]

Thirty-Second Report of the TSCA Interagency Testing Committee; Reopening Public Comment Period and Extension of Testing Proposal and Interested Party Submission Deadlines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening Comment Period, and Extension of Testing Proposal and Interested Party Submission Deadlines.

SUMMARY: EPA is reopening the written comment period for the Thirty-Second Interagency Testing Committee (ITC) Report, published in the **Federal Register** of July 16, 1993. Additionally, EPA is extending the date for submitting written testing proposals, and notices of interest in being designated an "interested party" in the TSCA section 4 testing consent order development process for chemicals designated in the Thirty-Second ITC Report.

DATES: Written comments on the Thirty Second ITC Report must be received by September 30, 1993. Written testing proposals and notice of interest in being designated an "interested party" to the development or monitoring of a consent agreement for the chemicals designated for dermal absorption testing must be received by October 29, 1993.

ADDRESSES: Send six copies of written submissions to: TSCA Docket Receipts (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. ET G–99, 401 M St., SW., Washington, DC 20460. Submissions should bear the document control number (OPPTS–41039). The public record supporting this action, including comments is available for public inspection in Rm ET G–102 at the address noted above from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm E–543B, Washington, DC 20460, (202) 554–1404, TDD (202)554–0551.

SUPPLEMENTARY INFORMATION:

EPA published the Thirty-Second ITC Report in the **Federal Register** of July 16, 1993 (58 FR 38490). In this Report, the ITC revised and updated the ITC's priority list of chemicals by designating 35 chemicals for testing under TSCA section 4(a), for which dermal testing is needed. In that **Federal Register** Notice, EPA solicited comments on the ITC Report, with the comment period closing on August 16, 1993. EPA also solicited testing consent order proposals and asked for Notices of interest in being designated "interested parties", per the procedures set forth at 40 CFR part 790. In the **Federal Register** Notice, the deadline for submitting testing proposals and notices of interest in being designated "interested parties" was September 14, 1993.

EPA has received requests from the Chemical Manufacturers Association, DuPont Chemicals, and BASF Corporation for additional time to prepare written comments. Additionally, CMA requested additional time to submit written testing proposals. EPA believes these requests to be reasonable and is reopening the written comment period for the Thirty-Second ITC Report to September 30, 1993. In addition, EPA is extending the time to submit written testing proposals and notices of interest in being designated an "interested party" to the development or monitoring of a consent agreement for the chemicals designated for dermal absorption testing to October 29, 1993.

Authority: 15 U.S.C. 2603.

Dated: August 27, 1993.

Denise M. Kehner,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–22298 Filed 9–10–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Meeting, Federal Emergency Management Agency Advisory Board

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, FEMA announces a meeting of the FEMA Advisory Board.

NAME: Federal Emergency Management Agency Advisory Board (FAB).

DATE OF MEETING: September 28, 1993.

PLACE: Federal Emergency Management Agency, Emergency Information and Coordination Center, 500 C Street, SW., Washington, DC 20472.

TIME: September 28, 1993, 9 a.m.–3 p.m.

PROPOSED AGENDA: General orientation and update on programs and issues concerning FEMA.

SUPPLEMENTARY INFORMATION: Members will be oriented and brought current on FEMA programs and issues. Senior FEMA executives will discuss FEMA programs, including emergency preparedness initiatives. The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact John "Chili" Cole, Confidential Assistant to the Director of the Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3746, on or before September 24, 1993.

Minutes of the meeting will be prepared and will be available for public viewing upon request 60 days after the meeting.

Dated: September 8, 1993.

James L. Witt,

Director.

[FR Doc. 93–22338 Filed 9–10–93; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL MARITIME COMMISSION

Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following item has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3601, et. seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime

Commission, 800 North Capitol, NW., room 900, Washington, DC 20573, telephone number (202) 523–5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Item Submitted for OMB Review

46 CFR Part 530

FMC requests extension of clearance for 46 CFR 530 which provides procedures for the expeditious processing by terminals of trucks laden with cargo for vessels to reduce congestion and delay in the Port of New York. The Commission estimates a respondent universe of 10 with an estimated 10 annual responses and 20 manhour burden. Total cost to the Federal Government is estimated at $150; total cost to respondents is estimated at $400.

Joseph C. Polking,

Secretary.

[FR Doc. 93–22223 Filed 9–7–93; 5:01 pm]

BILLING CODE 3510–22–M

Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, 800 North Capitol Street, NW., room 900, Washington, DC 20573, telephone number (202) 523–5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Items Submitted for OMB Review 46 CFR Part 581

The Federal Maritime Commission requests extension of the clearance for its regulations governing the filing of service contracts issued under the provisions of section 8(c) of the Shipping Act of 1984. These regulations provide for the filing and amendment of service contracts and their essential terms, and the recordkeeping requirements associated with service contracts.

The Commission estimates a respondent universe of 100 and with an estimated burden of 9,926 annual manhours. Total estimated annual cost to the Government for this is $337,813; estimated annual cost to the public is $532,796.

Joseph C. Polking,

Secretary.

[FR Doc. 93–22211 Filed 9–10–93; 8:45 am]

BILLING CODE 6730–01–M

Organization and Functions of the Federal Maritime Commission; C.O. 1, Amdt. No. 24

[This amendment to Commission Order 1, *Organization and Functions,* adds the *Bureau of Administration* (including its four Offices) so as accurately reflect existing organization, and provides for delegation of certain authorities to the Director of that Bureau (including one authority previously delegated to the Director, Bureau of Tariffs, Certification and Licensing), with redelegation of both authorities to the Director of its *Office of Information Resources Management.*]

In *Section 3. Organizational Components,* delete subsections (13) to (18), inclusive,* retain subsections (14) to (18) inclusive as "RESERVED," and add a new subsection (13) to read as follows:

(13) Bureau of Administration
- a. Office of Administrative Services
- b. Office of Budget and Financial Management
- c. Office of Information Resources Management
- d. Office of Personnel.

In *Section 4. Lines of Responsibility,* in Subsection 4.04, add the "Bureau of Administration" as one of the entities which reports to the Managing Director.

In *Section 5. Specific Functions of the Organizational Components of the Federal Maritime Commission,* delete subsections (5.13) to (5.17), inclusive,* retain subsections (5.14) to (5.17) inclusive as "RESERVED," and add a new subsection (5.13) to read as follows:

5.13 The *Bureau of Administration* is responsible for the direct administration and coordination of the Offices of: Administrative Services; Budget and Financial Management; Information Resources Management; and Personnel. The Office of the Director of the Bureau of Administration is responsible for directing and administering the Commission's Information Security Program, which includes an active oversight and security education program to ensure effective implementation of Executive Order 12356. The FMC training and development function is also administered within the Office of the Director. The Director of the Bureau of Administration is the Commission representative, as Principal Management Official, to the Small Agency Council ("SAC"), and is a member of SAC's Executive Committee. Other program activities of the Bureau of Administration are carried out by its Offices, as follows:

(1) The *Office of Administrative Services* directs and administers a variety of management services functions that principally provide administrative support to the regulatory program operations of the Commission. The Director of the Office is the Commission's Contracting Officer. The Office's support programs include communications, telecommunications, procurement of administrative goods and services, property management, space management, printing and copying management, mail and records services, forms and graphic designs, facilities and equipment maintenance, and transportation. The Office's major functions are to secure and furnish all necessary supplies, equipment and services required in support of the Commission's mission and to formulate regulations, policies, procedures, and methods governing the use and provision of these support services in compliance with the FAR, the Federal Property Management Regulations, the Federal Information Resources Management Regulation, and other appropriate Federal guidelines.

(2) The *Office of Budget and Financial Management* administers the Commission's financial management program and is responsible for optimal utilization of the Commission's physical, fiscal, and staffing resources. The Office is charged with interpreting government budgetary and financial policies and programs, and developing annual budget justifications for submission to the Congress and OMB. The Office also administers internal controls systems for agency funds, travel and cash management programs, and the Commission's imprest fund. The Director of the Office is the Commission's Chief Financial Officer.

(3) The *Office of Information Resources Management's* major

* The Offices deleted are: "Energy and Environmental Impact," "Personnel," "Budget and Financial Management," "Management Evaluation and Review," "Data Systems," and "Administrative Services."

functions are: planning and contract administration; telecommunications/database management and application development; and records management and OMB clearances. The Office is delegated responsibility to ensure that the Commission's information resources management ("IRM") program is administered in a manner consistent with the Paperwork Reduction Act of 1980, Public Law No. 96–511, as amended by the Paperwork Reduction Authorization Act of 1986, Public Law No. 99–500, and other appropriate Federal guidelines.

(4) The *Office of Personnel* plans and administers a complete personnel management program including: recruitment and placement, position classification and pay administration, occupational safety and health, employee counseling services, employee relations, workforce discipline, performance appraisal, incentive awards, retirement, and personnel security.

In *Section 6, Delegation of Authorities,* Change subsection 6.01 to read as follows:

6.01 Pursuant to section 105 of Reorganization Plan No. 7 of 1961, August 12, 1961, the Federal Maritime Commission hereby delegates the specific authorities described in subsequent sections of this Order to the officials designated therein, subject to the limitations prescribed in subsequent subsections of this section, as follows:

In *Section 9, Specific Authorities Delegated to the Director, Bureau of Tariffs, Certification and Licensing,* delete but retain as "RESERVED" subsection 9.16 (from Amendment No. 18 of December 9, 1991), relating to certification of ATFI batch filing capability (transferred to the Bureau of Administration and redelegated to the Office of Information Resources Management).

In *Section 12, Public Requests for Information and Decisions,* in subsection 12.05 add appropriate subsections for the "Bureau of Administration" and the "Office of Information Resources Management."

Add a new Section 14 to read as follows:

Section 14, Specific Authorities Delegated to, and Redelegated by, the Director, Bureau of Administration

14.01(a) Authority under 46 CFR part 514, after consultation with the Bureau of Tariffs, Certification and Licensing, and the Office of the Managing Director, to issue letters notifying applicants for certification of ATFI batch filing capability that their applications have or have not been granted.

(b) The authority under this subsection is redelegated to the Director, Office of Information Resources Management.

14.02(a) Authority under 46 CFR 514.21(m)(2), after consultation with the Bureau of Tariffs, Certification and Licensing, the Office of Budget and Financial Management, and the Office of the Managing Director, to evaluate and approve or disapprove by letter the accounting or charging system the applicant intends to use for charging users and remitting to the Commission indirect (subsequent) access user fees under 46 U.S.C. app. 1107a(d)(1)(B)(ii).

(b) The authority under this subsection is redelegated to the Director, Office of Information Resources Management.

Dated: September 3, 1993.

William D. Hathaway,

Chairman.

[FR Doc. 93–22220 Filed 9–10–93; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Request for Ideas/Comments—Inter-city Telecommunications Services—Further Information for Inclusion in the Post-FTS2000 Concept Development Record

SUMMARY: The federal government currently meets its needs for inter-city telecommunications services through the FTS2000 program. The existing FTS2000 contracts will expire in December 1998.

The federal government currently meets its needs for inter-city telecommunications services through the FTS2000 program. The existing FTS2000 contracts will expire in December 1998. In the May 14, 1993, edition of the Commerce Business Daily (Issue PSA–0846) the federal government made known its desire for a free and open discussion of ideas related to the provision of intercity telecommunications resources to its users after 1998. At that time, the government stated that it would accept ideas and comments from all interested parties using two mechanisms. First, the government requested written comments related to the future provision of intercity telecommunications services. These comments are being organized into a post-FTS2000 environment concept development record. The government will make this record available to the public for review and further comment. Second, the government announced that it would conduct a conference on October 19, 20, and 21, 1993, to hear further comments and encourage discussion of different points of view on the post-FTS2000 environment. Due to requests by responding parties and to ensure that all ideas are heard, the government will provide for two additional mechanisms. First, in order that all parties have an opportunity to respond to ideas and comments presented at the October Conference, the conference proceedings will be added to the post-FTS2000 concept development record for further comment by interested parties. Written comments made in response to the conference proceedings may be submitted to General Services Administration, Attention: Concept Development Conference, 7980 Boeing Court, Vienna, VA 22182–3988, by fax at (703) 760–7523, or electronically at concept@access.digex.com. No comments will be accepted after December 1, 1993. It is anticipated that the conference proceedings and the concept development record will be available for public review in the GSA Public Reading Room on or about November 1, 1993. Second, the government will accept ideas and comments that are considered as corporate proprietary information. This proprietary information will be included in the formal concept development record, but will be physically separated from the publicly available record.

The proprietary information will be secured by the General Services Administration. This proprietary information will be available for review only by appropriately cleared personnel. Comments containing proprietary information may be submitted only with the advance written coordination with the General Services Administration. Requests to provide proprietary information may be submitted to the General Services Administration, Attention: Concept Development Conference, 7980 Boeing Court, Vienna, VA 22182–3988, or by fax at (703) 760–7523. The General Services Administration will then coordinate the delivery and receipt of such information. All such requests must be received no later than November 15, 1993. The government will accept proprietary information beginning October 25, 1993, but no later than December 1, 1993.

DATES: The Concept Development Conference is scheduled for October 19–21, 1993. The government will accept

proprietary information beginning October 25, 1993, but no later than December 1, 1993. The concept Development Record is scheduled for public review on/or about November 1, 1993. Request to provide proprietary information must be received no later than November 15, 1993. No comments will be accepted after December 1, 1993.

ADDRESSES: Responses to this Notice must be mailed to: General Services Administration, Attention: Concept Development Conference, 7980 Boeing Court, Vienna, VA 22182–3988.

FOR FURTHER INFORMATION CONTACT: Delores W. Sharpe, Contracting Officer, (703) 760–7488 or Darlene Goggins at (703) 760–7487.

SUPPLEMENTARY INFORMATION: The October 1993 Concept Development Conference will be held at the Department of Commerce Auditorium, located at 100 14th Street, NW., Washington, DC.

Note: The Concept Development Record (Release #1) will be available for public review only beginning September 7, 1993, Mon–Fri from 8:15—4:45 p.m. at the General Services Administration Bid Room, room 1701 7th & D Streets, SW., Washington, this Record contains the comments received August 1, 1993. Copies of the Concept Development Record will be available on hard copy and on 3.5" MS–DOS diskettes from the Department of Commerce, National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, VA 22161. To place your order for a copy of the Concept Development Record, please call the Sales Desk at (703) 487–4650. Release #2 of the Concept Development Record will be available for public review on/or about November 1, 1993. There is no solicitation document.

Dated: September 2, 1993.

Barbara R. Norsworthy,

Deputy Director, Network Telecommunications Procurement Division.

[FR Doc. 93–22213 Filed 9–10–93; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Chronic Disease Prevention and Control National Conference

The Centers for Disease Control and Prevention (CDC), the Association of State and Territorial Health Officials, and the Association of State and Territorial Chronic Disease Program Directors (ASTCDPD) will cosponsor the following meeting.

Name: Eighth National Conference on Chronic Disease Prevention and Control: The Role of Chronic Disease Prevention and Control in Changing Health Environment.

Times and Dates: Registration—12 noon–6 p.m., November 16, 1993, and throughout the conference. 8:30 a.m.–5 p.m., November 17–18, 1993. 8:30 a.m.–11 a.m., November 19, 1993.

The preregistration deadline is October 25, 1993. Preregistration fee is $40; on-site registration fee is $45. Make checks payable to ASTCDPD and mail to Chronic Disease Conference, Professional and Scientific Associates, Inc., 2635 Century Parkway, suite 990, Atlanta, Georgia 30345.

Place: Westin Crown Center Hotel, One Pershing Road, Kansas City, Missouri 64108, telephone 800/228–3000 or 816/474–4400. Conference attendees receive special room rates of $66.63 for single and $100.78 for double occupancy. Reservations should be made directly with the hotel.

Status: Open to the public, limited only by available space.

Purpose: Attendees from around the nation and the world will have both structured and informal opportunities to exchange information, skills, knowledge, and experiences related to chronic disease prevention and control.

Matters To Be Discussed: Topics to be presented will include worksite health promotion; nutrition and health; chronic disease and young people; diabetes epidemiology; cancer epidemiology; older adults and their health; cardiovascular disease epidemiology; tobacco and health; using local data for decision making; the aging American; building community partnerships for healthy behavioral change in schools; and pitfalls of community intervention.

Contact Person for More Information: Mr. Jack Friel, Chief, Conference Management Operations, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., Mailstop K–43, Atlanta, Georgia 30341–3724, telephone 404/488–5390.

Dated: September 2, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–22257 Filed 9–10–93; 8:45 am]

BILLING CODE 4160–18–M

Advisory Committee on Immunization Practices; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Committee on Immunization Practices.

Times and Dates: 8 a.m.–5:30 p.m., October 6, 1993; 8:30 a.m.–12:45 p.m., October 7, 1993.

Place: CDC, Auditorium A, Building 2, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents.

Matters To Be Discussed: The committee will discuss antiviral recommendations for influenza; licensure of rimantadine; antiviral resistance to amantadine and rimantadine; recommendation for use of meningococcal vaccines; varicella disease and vaccine; drug resistant pneumococcal infections; need for 4th dose DTP vaccine at 15–18 months; liberalization of the time of first measles vaccine dose to 12–15 months of age; recommendation for use of BCG vaccine; and cost benefit of childhood vaccinations.

The agenda also includes a presentation on the President's new immunization initiative; update on the National Vaccine Program; childhood immunization schedule; reconsideration of the timing of the third dose of oral poliovirus vaccine (OPV); enhanced inactivated polio virus-OPV combined schedules; the Institute of Medicine's review of adverse consequences of vaccines other than pertussis and rubella; and an update on the Injury Compensation Program. Other matters of relevance among the committee's objectives may be discussed.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Gloria A. Kovach, Staff Specialist, CDC (1–B72), 1600 Clifton Road, NE., Mailstop A20, Atlanta, Georgia 30333, telephone 404/639–3851.

Dated: September 2, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–22256 Filed 9–10–93; 8:45 am]

BILLING CODE 4160–18–M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Mental Health Statistics; Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and

Prevention (CDC), announces the following committee meeting.

Name: NCVHS Subcommittee on Mental Health Statistics.

Time and Date: 9:30 a.m.–3:30 p.m., October 19, 1993.

Place: Room 503A–529A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will examine the need to advance interagency collaboration and explore health care reform implications for mental health data.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone number 301/436–7050.

Dated: September 2, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–22255 Filed 9–10–93; 8:45 am]

BILLING CODE 4160–18–M

Health Care Financing Administration

Public Information Collection Requirements (ICR) Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511).

1. *Type of Request:* Extension; *Title of Information Collection:* Chronic Renal Disease Medical Evidence Report; *Form No.:* HCFA–2728; *Use:* This form is used to determine entitlement to Medicare for chronic renal patients and by HCFA to collect data for research and policy decisions on this population; *Frequency:* On occasion; *Respondents:* Businesses or other for profit, small businesses or organizations, individuals or households; *Estimated Number of Responses:* 60,000; *Average Hours Per Response:* 0.42; *Total Estimated Burden Hours:* 25,200.

2. *Type of Request:* Reinstatement; *Title of Information Collection:* Medicare Common Claims Form; *Form Nos.:* HCFA–1500, HCFA–1490S and HCFA–1490U; *Use:* These are standardized forms for use in the Medicare/Medicaid programs to apply for reimbursement for covered services. Use of these forms will reduce the cost and administrative burdens associated with claims; *Frequency:* On occasion; *Respondents:* State or local governments, businesses or other for profit, small businesses or organizations; *Estimated Number of Responses:* 546,115,406; *Average Hours Per Response:* 0.13; *Total Estimated Burden Hours:* 70,995,002.78.

3. *Type of Request:* Extension; *Title of Information Collection:* Social Security Office Report of State Buy-In Problem; *Form No.:* HCFA–1957; *Use:* This form is used in the resolution of beneficiary complaints regarding State-buy-in. Under the State Buy-In Program, States enroll certain groups of needy people in the Part B Supplementary Medical Insurance (SMI) Program and pay their premiums; *Frequency:* On occasion; *Respondents:* Individuals or households, State or local governments, Federal agencies or employees; *Estimated Number of Responses:* 22,000; *Average Hours Per Response:* 0.291; *Total Estimated Burden Hours:* 6,402.

4. *Type of Request:* Revision; *Title of Information Collection:* Medicare Physician Survey Form; *Form No.:* HCFA–412 (formerly HCFA–R–15); *Use:* The survey form will be used to collect input from the physician community regarding Medicare contractors' service and to produce improvements in the quality of services rendered by the contractors. The present contractor evaluation process does not include comments from physicians; *Frequency:* Annually; *Respondents:* Individuals or households, businesses or other for-profit, small businesses or organizations; *Estimated Number of Responses:* 22,000; *Average Hours Per Response:* 0.25; *Total Estimated Burden Hours:* 5,500.

5. *Type of Request:* New; *Title of Information Collection:* Beneficiary Survey Form; *Form No.:* HCFA–413; *Use:* The survey form will be used to collect input from the beneficiary community regarding Medicare contractors' service and to produce improvements in the quality of services rendered by the contractors. The present contractor evaluation process does not include comments from beneficiaries; *Frequency:* Annually; *Respondents:* Individuals or households, businesses or other for-profit, small businesses or organizations; *Estimated Number of Responses:* 9,000; *Average Hours Per Response:* 0.25; *Total Estimated Burden Hours:* 2,250.

6. *Type of Request:* Reinstatement; *Title of Information Collection:* ICR in 42 CFR 447.253 Medicaid Payment Rate Changes for Inpatient Hospital or Long Term Care Services; *Form No.:* HCFA–R–117; *Use:* These regulatory provisions require the Medicaid agency to submit, along with their State plan amendment, assurances and related information whenever the State makes any change to its method and standards for determining payment rates; *Frequency:* On occasion; *Respondents:* State or local governments; *Estimated Number of Responses:* 54; *Average Hours Per Response:* 1; *Total Estimated Burden Hours:* 54.

7. *Type of Request:* Reinstatement; *Title of Information Collection:* ICR in 42 CFR 441.302 and 42 CFR 441.303 Home & Community-Based Services: Waiver Requirements; State Medicaid Manual Sections 4442–4445; *Form No.:* HCFA–8003; *Use:* Under a secretarial waiver, States may offer a wide array of home and community-based services to individuals who would otherwise require institutionalization. States requesting a waiver must provide certain assurances, documentation, and cost and utilization estimates; *Frequency:* When a State requests a waiver or waiver renewal; *Respondents:* State or local governments; *Estimated Number of Responses:* 50; *Average Hours Per Response:* 200; *Total Estimated Burden Hours:* 10,000.

8. *Type of Request:* Reinstatement; *Title of Information Collection:* Medicare Peer Review Organizations (PROs) Reporting Forms; *Form Nos.:* HCFA–613 through 627; *Use:* PROs are authorized to review inpatient and outpatient services for quality of care provided and to eliminate unreasonable, unnecessary, and inappropriate care provided to Medicare beneficiaries. The PROs are required to report the results of the review to HCFA; *Frequency:* Five monthly reports and five quarterly reports; *Respondents:* State or local governments; *Estimated Number of Responses:* 3,180 monthly reports and 1,060 quarterly reports; *Average Hours Per Response:* 0.25; *Total Estimated Burden Hours:* 795 monthly and 265 quarterly for a total of 1,060.

9. *Type of Request:* Reinstatement; *Title of Information Collection:* Uniform Institutional Provider Claim Form; *Form No.:* HCFA–1450; *Use:* All claims processed by Medicare fiscal intermediaries, providers, and Medicaid State agencies must be submitted on the HCFA–1450 form, or via electronic media using the HCFA–1450 data set. The form contains specific data

elements relative to patient information, diagnostic codes and billing. The form will also reduce the processing costs, expedite payment, and facilitate record maintenance. No information of a sensitive nature is requested on the form. A similar form HCFA–1450, designated as UB–82, has been in use for a number of years, the current revised version is designated as the UB–92 and contains various improvements recommended by the National Uniform Billing Commission (NUBC). The NUBC, is composed of representatives of the health industry. Because the revised form is a joint effort of the respondents, HCFA expects a high degree of acceptance by the industry. After approval, the form will be phased in, and by April 1, 1994 will be the preferred billing format for Medicare and Medicaid services. *Frequency:* As Needed; *Respondents:* Hospitals, other providers, fiscal intermediaries, State Medicaid agencies; *Estimated Number of Responses:* 193,168,729 ; *Average Hours Per Response:* Varies from 9 minutes per hard copy bill, to one half a minutes for electronic billing; 8: *Total Estimated Burden Hours:* 7,057,685.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, room 3001, Washington, DC 20503.

Dated: September 2, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 93–22335 Filed 9–10–93; 8:45 am]

BILLING CODE 4120–03–P

Hearing: Reconsideration of Disapproval of New York State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on October 20, 1993, at 10 a.m. in room 230, 26 Federal Plaza, New York, New York, to reconsider our decision to disapprove New York SPA 90–11.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by September 28, 1993.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, Groundfloor, Meadowwood East Building, 1849 Gwynn Oak Avenue, Baltimore, Maryland 21207, Telephone: (410) 597–3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove New York State plan amendment (SPA) number 90–11.

Section 1116 of the Social Security Act (the Act) and 42 CFR, part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The State of New York submitted SPA 90–11 with a requested effective date of January 1, 1987, which would change significantly the methods and standards for setting payment rates for long term care facility services.

Federal regulations at 42 CFR 430.12(c) require a State plan to be amended to reflect new or revised Federal statutes or regulations or a material change in any phase of State law, organization, policy, or State agency operation. In accordance with Federal regulations at 42 CFR 447.253(h), the Medicaid agency must comply with the public notice requirements at 42 CFR 447.205 when it is proposing significant changes to its methods or standards for setting payment rates for inpatient hospital or long term care facility services. Section 447.205(d)(1) requires that the notice be published before the proposed effective date of the change.

The issue in this matter is whether New York met Federal regulations at 42 CFR 447.253(h) and 447.205 regarding public notice for this amendment.

HCFA believes the proposed January 1, 1987, effective date was not approvable because the State did not publish public notice for this amendment until April 1, 1992. Therefore, the earliest approvable effective date for this amendment was April 2, 1992, the day following the April 1 publication in the New York State Register.

The State's position is that the Federal regulations at 42 CFR 447.253(h) and 447.205 regarding public notice were met for this amendment. An October 22, 1986, publication in the New York State Register reflected that the Regional Input Price Adjustment Factor (RIPAF) was added to the State of New York's Resource Utilization Grouping (RUG) methodology by SPA TN 87–07. The State believes that the October 22, 1986, notice is sufficient for TN 90–11 because amendment TN 90–11 is simply a resubmission of amendment TN 87–07 which was invalidated by the United States Court of Appeals for the Second Circuit. The Court invalidated TN 87–07 because the State failed to make the required findings regarding the establishment of reasonable and adequate rates. The State believes it was not required to give a second, identical notice for the resubmitted amendment and that nursing facilities challenging amendment TN 90–11 had actual notice of the amendment, as evidenced by its identification in litigation brought by them. The State claims this is an acceptable substitute for the constructive notice provided by publication in the State Register.

HCFA has determined, and the State does not dispute, that the RIPAF adjustment methodology is a significant change to the State's methods and standards for setting Medicaid nursing facility payment rates. When the District Court and the Second Circuit Court of Appeals, in the case of *Pinnacle Nursing Home, et al* v. *Axelrod, et. al.* declared SPA 87–07 null and void, the State was enjoined from using the RIPAF adjustment methodology. HCFA believes that the reestablishment of the RIPAF adjustment methodology through TN 90–11 requires the publication of a public notice to inform the public that the RIPAF will be reinstituted. This change represents a significant change to the State's methods and standards for determining Medicaid nursing facility payment rates, which in accordance with the Federal regulations at 42 CFR 447.253(h) and 447.205 require the publication of a new public notice, separate and distinct from the public notice provided for TN 87–07. In accordance with these regulations, HCFA believes the earliest approvable

effective date for this amendment was April 2, 1992.

While the regulations at § 447.205 provide for some exceptions to the requirement of providing public notice of significant proposed changes in methods and standards for setting payment rates (e.g., the change is required by court order), there is no exception applicable to this case.

The notice to New York announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Michael Dowling,
Commissioner,
New York State Department of Social Services,
40 North Pearl Street,
Albany, New York 12243–0001.

Dear Mr. Dowling: I am responding to your request for reconsideration of the decision to disapprove New York State Plan Amendment (SPA) 90–11.

The State of New York submitted SPA 90–11 with a requested effective date of January 1, 1987, which would change significantly the methods and standards for setting payment rates for long term care facility services.

In accordance with Federal regulations at 42 CFR 447.253(h), the Medicaid agency must comply with the public notice requirements at 42 CFR 447.205 when it is proposing significant changes to its methods or standards for setting payment rates for inpatient hospital or long term care facility services. Section 447.205(d)(1) requires that the notice be published before the proposed effective date of the change.

The issue in the matter is whether New York meets Federal regulations §§ 447.253(h) and 447.205 regarding public notice for this amendment.

I am scheduling a hearing on your request for reconsideration to be held on October 20, 1993, at 10 a.m., in room 230, 26 Federal Plaza, New York, New York. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (410) 597–3013.

Sincerely,

Bruce C. Vladeck,

Administrator.

Authority: Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: September 1, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 93–22334 Filed 9–10–93; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

Recombinant DNA Research: Action Under the Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Action Under the NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth an action to be taken by the Director, National Institutes of Health (NIH), under the May 7, 1986, NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958).

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities (ORDA), Office of Science Policy and Technology Transfer, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

SUPPLEMENTARY INFORMATION: Today, one action is being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules. This proposed action was published for comment in the **Federal Register** of November 2, 1992 (57 FR 48584), and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on December 3–4, 1992.

I. Background Information and Decisions on Action Under the NIH Guidelines

A. Addition of Appendix D–XLVI to the NIH Guidelines

In a letter dated October 8, 1992, Dr. James M. Wilson, University of Michigan Medical Center, Ann Arbor, Michigan, submitted a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Gene Therapy of Cystic Fibrosis Lung Diseases Using E1 Deleted Adenoviruses: A Phase I Trail. This request was published for comment in the **Federal Register** of November 2, 1992 (57 FR 49584).

The protocol was reviewed and recommended for approval during the RAC meeting of December 3–4, 1992, by a vote of 16 in favor, 0 opposed, and no abstentions. Approval of the protocol was contingent on the following stipulations: (1) The patient eligibility criterion in the Informed Consent document requiring that patients are documented to be sterile will be replaced with a statement suggesting that all patients should exercise appropriate birth control methods; (2) the expected benefits of the procedure should be clearly stated in the first section of the document; (3) submission of a revised Informed Consent document incorporating minor changes suggested by committee members; and (4) the demonstration that there is less than one replication-competent adenovirus particle per 20 milliliters of vector supernatant.

On June 24, 1993, Dr. Wilson submitted sequencing information on the recombinant adenovirus vector, Ad.CF–CFTR, that will be used in the protocol. On August 2, 13, and 16, Dr. Wilson submitted materials to satisfy the rest of the stipulations. These materials were reviewed by primary reviewers of the protocol, and it was determined that the stipulations of the RAC were met. The following section may be added to Appendix D:

"Appendix D–XLVI

"Dr. James M. Wilson of the University of Pennsylvania Medical Center, Philadelphia, Pennsylvania, may conduct experiments on 20 adult patients with advanced cystic fibrosis lung disease. An isolated segment of the patients' lung will be transduced with the E1 deleted, replication-incompetent adenovirus vector, Ad.CB–CFTR using a bronchoscope for gene delivery. Ad.CB–CFTR contains the human gene encoding the cystic fibrosis transmembrane conductance regulator (CFTR) protein. Pulmonary biopsies will be obtained by bronchoscopy at 4 days, 6 weeks, and 3 months following treatment. Patients will be monitored for evidence of CFTR gene transfer and expression, immunological responses to CFTR or adenovirus proteins, and toxicity."

I accept this recommendation, and Appendix D–XLVI of the NIH Guidelines will be added accordingly.

II. Summary of Actions

A. Addition of Appendix D–XLVI to the NIH Guidelines

The following section is added to Appendix D:

"Dr. James M. Wilson of the University of Pennsylvania Medical Center, Philadelphia, Pennsylvania, may conduct experiments on 20 adult patients with advanced cystic fibrosis lung disease. An isolated segment of the

patients' lung will be transduced with the E1 deleted, replication-incompetent adenovirus vector, Ad.CB–CFTR using a bronchoscope for gene delivery. Ad.CB–CFTR contains the human gene encoding the cystic fibrosis transmembrane conductance regulator (CFTR) protein. Pulmonary biopsies will be obtained by bronchosopy at 4 days, 6 weeks, and 3 months following treatment. Patients will be monitored for evidence of CFTR gene transfer and expression, immunological responses to CFTR or adenovirus proteins, and toxicity."

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: August 25, 1993.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 93–22260 Filed 9–10–93; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Research: Actions Under the Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth twelve actions to be taken by the Director, National Institutes of Health (NIH), under the May 7, 1986, NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958).

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities (ORDA), Office of Science Policy and Technology Transfer, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, (301) 496–9838).

SUPPLEMENTARY INFORMATION: Today twelve actions are being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules. These twelve proposed actions were published for comment in the **Federal Register** of August 19, 1992 (57 FR 37680), and May 4, 1993 (58 FR 26676), and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meetings on September 14–15, 1992 and June 7–8, 1993.

I. Background Information and Decisions on Actions Under the NIH Guidelines.

A. Addition of Appendix D–XLVII to the NIH Guidelines

In a letter dated December 16, 1992, Dr. Hilliard F. Seigler of the Duke University Medical Center, Durham, North Carolina, indicated the intention to submit a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: A Phase I Trial of Human Gamma Interferon-Transduced Autologous Tumor Cells in Patients with Disseminated Malignant Melanoma. This request was published for comment in the **Federal Register** of February 12, 1993 (58 FR 8500).

The protocol was reviewed and recommended for deferral during the RAC meeting of March 1–2, 1993, by a vote of 16 in favor, 1 opposed, and 1 abstention. Approval of the protocol was deferred until the investigators submit the following data for full RAC review: (1) Generation of cytotoxic T lymphocytes (CTL) for human peripheral blood lymphocyte from tumor-bearing patients in response to transduced autologous tumor, (2) quantitative correlation between Class I antigen expression and the amount of human gamma-interferon (IFN), and (3) quantitative correlation between the number of CTLs generated per unit of human gamma-IFN.

In a letter dated April 9, 1993, Dr. Seigler resubmitted the human gene therapy protocol with additional data to the Recombinant DNA Advisory Committee for formal review and approval. This request was published for comment in the **Federal Register** of May 4, 1993 (58 FR 26676).

The protocol was reviewed and recommended for approval during the RAC meeting of June 7–8, 1993, by a vote of 20 in favor, 0 opposed, and no abstentions. The following section may be added to Appendix D:

"Appendix D–XLVII

"Dr. Hilliard F. Seigler of Duke University Medical Center, Durham, North Carolina, may conduct experiments on 20 patients with disseminated malignant melanoma. Autologous tumor cells will be transduced with a retrovirus vector, pHuγ–IFN, that contains the gene encoding human γ–IFN. Following lethal irradiation, the transduced cells will be readministered to patients for the purpose of generating cytotoxin T cells that are tumor specific along with the up-regulation of Class I major histocompatibility antigens. Patients will be monitored for clinical regression of tumors and generation of tumor-specific cytotoxic T lymphocytes."

I accept this recommendation, and Appendix D–XLVII of the NIH Guidelines will be added accordingly.

B. Addition of Appendix D–XLVIII to the NIH Guidelines

In a letter dated April 10, 1993, Drs. Stefan Karlsson and Cynthia Dunbar of the National Institutes of Health, Bethesda, Maryland, and Dr. Donald B. Kohn of the Childrens Hospital of Los Angeles, Los Angeles, California, submitted a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Retroviral Mediated Transfer of the cDNA for Human Glucocerebrosidase into Hematopoietic Stem Cells of Patients with Gaucher Disease. This request was published for comment in the **Federal Register** of May 4, 1993 (58 FR 26676).

The protocol was reviewed and recommended for approval during the RAC meeting of June 7–8, 1993, by a vote of 14 in favor, 0 opposed, and 4 abstentions. The following section may be added to Appendix D:

"Appendix D–XLVIII

"Drs. Stefan Karlsson and Cynthia Dunbar of the National Institutes of Health, Bethesda, Maryland, and Dr. Donald B. Kohn of the Childrens Hospital of Los Angeles, Los Angeles, California, may conduct experiments on 10 patients with Gaucher disease. CD34(+) hematopoietic stem cells will be isolated from bone marrow or from peripheral blood treated with

granulocyte-colony stimulating factor. CD34(+) cells will be transduced with a retrovirus vector, G1Gc, containing cDNA encoding human glucocerebrosidase and administered intravenously. Patients will be monitored for toxicity and glucocerebrosidase expression."

I accept this recommendation, and Appendix D–XLVIII of the NIH Guidelines will be added accordingly.

C. Addition of Appendix D–XLIX to the NIH Guidelines

In a letter dated April 9, 1993, Dr. Gary J. Nabel of the University of Michigan Medical Center, Ann Arbor, Michigan, submitted a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: A Molecular Genetic Intervention for AIDS—Effects of a Transdominant Negative Form of Rev. This request was published for comment in the **Federal Register** of May 4, 1993 (58 FR 26676).

The protocol was reviewed and recommended for approval during the RAC meeting of June 7–8, 1993, by a vote of 14 in favor, 0 opposed, and 4 abstentions. Approval of the protocol was contingent on the submission of a revised Informed Consent document including the following: (1) A recommendation that contraception be used by males as well as females, and (2) a request for autopsy in the event of death, and (3) an explanation of long-term patient follow-up.

On June 15, 1993, Dr. Nabel submitted the modified Informed Consent document. The modified Informed Consent document was reviewed by a primary reviewer of the protocol, and it was determined that it meets the request of the RAC. The following section may be added to Appendix D:

"Appendix D–XLIX

"Dr. Gary J. Nabel of the University of Michigan Medical Center, Ann Arbor, Michigan, may conduct experiments on 12 patients with AIDS to be divided into 4 experimental groups. CD4(+) lymphocytes will be isolated from peripheral blood and transduced with Rev M10, a transdominant inhibitory mutant of the *rev* gene of the human immunodeficiency virus (HIV). Transduction of the *rev* mutant will be mediated either by the retrovirus vector, PLJ–cREV M10, or a plasmid DNA/liposome complex. Patients will be monitored for survival of the transduced CD4(+) cells by polymerase chain reaction and whether Rev M10 can confer protection against HIV infection to CD4(+) cells."

I accept this recommendation, and Appendix D–XLIX of the NIH Guidelines will be added accordingly.

D. Addition of Appendix D–L to the NIH Guidelines

In a letter dated April 9, 1993, Dr. Gary J. Nabel of the University of Michigan Medical Center, Ann Arbor, Michigan, submitted a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Immunotherapy for Cancer by Direct Gene Transfer into Tumors. This request was published for comment in the **Federal Register** of May 4, 1993 (58 FR 26676).

The protocol was reviewed and recommended for approval during the RAC meeting of June 7–8, 1993, by a vote of 19 in favor, 0 opposed, and 1 abstention.

No restrictions were placed on the types of tumors to be treated. Approval of the protocol was contingent on the review and approval of materials submitted in response to the following stipulations: (1) A revised patient eligibility section including the provision that patients who are eligible for catheter delivery of cationic liposomes must have a performance status of 0–1, and (2) a revised Informed Consent document including a recommendation that male/female patients use contraception and females not be pregnant or plan to become pregnant while participating in the study, an explanation of long-term follow-up, and a request for autopsy in the event of death.

On June 15, 1993, Dr. Nabel submitted the modified patient eligibility section and a modified Informed Consent document. These documents were reviewed by the primary reviewers of the protocol, and it was determined that it meets the request of the RAC. The following section may be added to Appendix D:

"Appendix D–L

"Dr. Gary J. Nabel of the University of Michigan Medical Center, Ann Arbor, Michigan, may conduct experiments on 24 patients with advanced cancer. Patients will undergo *in vivo* transduction with DNA/liposome complexes containing genes encoding the HLA–B7 histocompatibility antigen and beta-2 microglobulin in a non-viral plasmid. These DNA/liposome complexes will be administered either by intratumoral injection or catheter delivery. Patients will be monitored for enhanced immune responses against tumor cells, and safe and effective doses will be determined."

I accept this recommendation, and Appendix D–L of the NIH Guidelines will be added accordingly.

E. Addition of Appendix D–LI to the NIH Guidelines

In a letter dated March 26, 1993, Dr. John A. Barranger of the University of Pittsburgh, Pittsburgh, Pennsylvania, indicated his intention to submit a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Gene Therapy for Gaucher Disease: *Ex Vivo* Gene Transfer and Autologous Transplantation of CD34(+) Cells. This request was published for comment in the **Federal Register** of May 4, 1993 (58 FR 26676).

The protocol was reviewed and recommended for approval during the RAC meeting of June 7–8, 1993, by a vote of 15 in favor, 0 opposed, and 4 abstentions. Approval of the protocol was contingent on review and approval of materials submitted in response to the following stipulations: (1) A maximum of 5 patients will be entered into the study, (2) patients will not receive cyclophosphamide ablation of bone marrow, (3) patients who demonstrate antibodies against glucocerebrosidase (GC) will not be eligible for this protocol, (4) GC enzyme replacement therapy will not be discontinued until cytochemical evidence of engraftment is demonstrated, and (5) the Informed Consent document will be revised to include a recommendation that male/female patients use contraception and females not be pregnant or plan to become pregnant while participating in the study, an explanation of long-term follow-up, a request for autopsy in the event of death, patient protection from media inquiries, and a statement informing the patients that although they may receive no direct benefit from the protocol, knowledge may be gained that will benefit others.

On June 11, 1993, Dr. Barranger submitted a modified protocol and Informed Consent document. These documents were reviewed by the primary reviewers of the protocol, and it was determined that it meets the request of the RAC. The following section may be added to Appendix D:

"Appendix D–LI

"Dr. John A. Barranger of the University of Pittsburgh, Pittsburgh, Pennsylvania, may conduct experiments on 5 patients with Gaucher disease. The CD34(+) hematopoietic stem cells will be isolated from peripheral blood and transduced *in vitro* with the retrovirus

vector, N2-Sv-GC, encoding the glucocerebrosidase (GC) enzyme. Following reinfusion of the transduced cells, patients will be monitored by PCR analysis for GC expression in peripheral blood leukocytes. Patients currently receiving GC replacement therapy and who demonstrate clinical responsiveness will be withdrawn from exogenous GC therapy. Patients not previously treated with exogenous GC, will be monitored for clinical reversal of lipid storage symptoms."

I accept this recommendation, and Appendix D–LI of the NIH Guidelines will be added accordingly.

F. Addition of Appendix D–LII to the NIH Guidelines

In a letter dated July 20, 1992, Drs. Robert Walker and R. Michael Blaese, National Institutes of Health, Bethesda, Maryland, submitted a human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: A Study of the Safety and Survival of the Adoptive Transfer of Genetically Marked Syngeneic Lymphocytes in Human Immunodeficiency Virus (HIV) Infected Identical Twins. This request was published for comment in the **Federal Register** of August 19, 1992 (57 FR 37680).

The protocol was reviewed and recommended for approval during the RAC meeting of September 14–15, 1992, by a vote of 19 in favor, 0 opposed, and no abstentions. Approval of the protocol was contingent on the following stipulations: (1) The investigators may use the vector supernatants currently in storage; however, any future vector preparations will be tested by long-term culturing of the packaging line following vector supernatant harvest, (2) the Informed Consent document should be divided into two separate documents, one for gene marking and the other for the therapeutic aspects, and (3) the section of the donor Informed Consent document describing the lymphopheresis procedure should be moved before the section describing the required travel schedule.

On July 15, 1993, Dr. Walker submitted a modified Informed Consent document. This document was reviewed by the primary reviewers of the protocol, and it was determined that it meets the request of the RAC. The following section may be added to Appendix D:

"Appendix D–LII

"Dr. Robert Walker of the National Institutes of Health, Bethesda, Maryland, may conduct experiments on 12 HIV-infected patients who have a seronegative identical twin. CD4(+) and CD8(+) cells will be isolated from the seronegative twin and induced to polyclonal proliferation with anti-CD3 and interleukin-2. The enriched population of cells will be transduced with either LNL6 or G1Na, which contain the neo^R gene. The transduced cells will be expanded in tissue culture and administered to the HIV-infected twin. Patients will be monitored for immune function and the presence of marked cells."

I accept this recommendation, and Appendix D–LII of the NIH Guidelines will be added accordingly.

G. Addition of Appendix D–LII to the NIH Guidelines

In a letter dated April 5, 1993, Dr. Corey Raffel of the Childrens Hospital Los Angeles, Los Angeles, California, and Dr. Kenneth Culver of Iowa Methodist Medical Center, Des Moines, Iowa, submitted a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is Gene Therapy for the Treatment of Recurrent Pediatric Malignant Astrocytomas with *In Vivo* Tumor Transduction with the Herpes Simplex Thymidine Kinase Gene. This request was published for comment in the **Federal Register** of May 4, 1993 (58 FR 26676).

The protocol was reviewed and recommended for approval during the RAC meeting of June 7–8, 1993, by a vote of 19 in favor, 0 opposed, and no abstentions. Approval of the protocol was contingent on the following stipulation: (1) The investigators must submit a document that will inform children of the experimental procedures and associated risks.

On July 13, 1993, Dr. Raffel submitted the document. This document was reviewed by two RAC members. Additional changes were requested, and the investigator incorporated those changes. It was determined that the revised document met the request of the RAC. The following section may be added to Appendix D:

"Appendix D–LII

"Dr. Cory Raffel of the Childrens Hospital Los Angeles, Los Angeles, California, and Dr. Kenneth Culver of Iowa Methodist Medical Center, Des Moines, Iowa, may conduct experiments on 30 patients between 2 and 18 years of age with recurrent malignant astrocytoma. Fifteen patients will be accrued into this study initially. If at least one patient responds to therapy, an additional 14 patients will be treated. Patients with either surgically accessible or non-accessible tumors will be treated with the vector producing cell line (PA317) carrying the retrovirus vector, G1TkSvNa. This vector will transduce tumor cells *in vivo* with the *Herpes simplex* thymidine kinase (HS-tk) gene that renders the cells sensitive to killing by ganciclovir. Surgically accessible patients will undergo surgical debulking of their tumor followed by repeated administration of the HS-tk vector producer cells into the tumor bed. Children with unresectable tumors will undergo stereotaxic injection of vector producer cells into tumors."

I accept this recommendation, and Appendix D–LIII of the NIH Guidelines will be added accordingly.

H. Addition of Appendix D–LIV to the NIH Guidelines

On April 9, 1993, a human gene therapy protocol was submitted for Dr. Jeffrey E. Galpin of the University of Southern California, Los Angeles, California, and Dr. Dennis A. Casciato of the University of California, Los Angeles, California, by Dr. Bruce Merchant, Viagene, Inc., San Diego, California (sponsor of the protocol), to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: A Preliminary Study to Evaluate the Safety and Biologic Effects of Murine Retroviral Vector Encoding HIV–1 Genes (HIV–IT(V)] in Asymptomatic Subjects Infected with HIV–1. This request was published for comment in the **Federal Register** of May 4, 1993 (58 FR 26676).

The protocol was reviewed and recommended for approval during the RAC meeting of June 7–8, 1993, by a vote of 16 in favor, 0 opposed, and 2 abstentions. Approval of the protocol was contingent on the following stipulations: (1) The Informed Consent document must include a request for autopsy, and (2) the formulation of the excipient that will be used for the retrovirus vector preparation must be submitted for review.

On June 11, 1993, Dr. Donald Longenecker of Viagene, Inc., submitted the formulation of the vector preparation; and on June 23, 1993, Dr. Rose Hermanson of Viagene, Inc., submitted the revised Informed Consent document. These documents were reviewed by two RAC members, and it was determined that it meets the request of the RAC. The following section may be added to Appendix D:

"Appendix D–LIV

"Dr. Jeffrey E. Galpin of the University of Southern California, Los

Angeles, California and Dr. Dennis A. Casciato of the University of California, Los Angeles, California, may conduct experiments on 15 HIV(+) asymptomatic patients. Patients will receive 3 monthly intramuscular injections of the retrovirus vector (N2IIIBenv) encoding the HIV–1 IIIB envelope protein. Patients will be monitored for acute toxicity, CD4 levels, HIV-specific CTL responses, and viral burdens."

I accept this recommendation, and Appendix D–LIV of the NIH Guidelines will be added accordingly.

I. Addition of Appendix D–LV to the NIH Guidelines

In a letter dated March 8, 1993, Dr. Arthur Bank of Columbia University, New York, New York, indicated the intention of Drs. Charles Hesdorffer and Karen Antman of the Columbia University, College of Physicians and Surgeons, New York, New York, to submit a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Human Multi-Drug Resistance (MDR) Gene Transfer in Patients with Advanced Cancer. This request was published for comment in the **Federal Register** of May 4, 1993 (58 FR 26676).

The protocol was reviewed and recommended for approval during the RAC meeting of June 7–8, 1993, by a vote of 11 in favor, 5 opposed, and 3 abstentions. Approval of the protocol was contingent on the following stipulations: (1) submission of data demonstrating the transduction efficiency of human CD34(+) cells, and (2) providing a description of the assays that will be performed on the clinical grade supernatant.

On June 15, 1993, Dr. Charles Hesdorffer submitted the transduction efficiency data and the assay description for the clinical grade supernatant. These documents were reviewed by the primary reviewers of the protocol. It was determined that the revised document met the request of the RAC. The following section may be added to Appendix D:

"Appendix D–LV

"Drs. Charles Hesdorffer and Karen Antman of Columbia University College of Physicians and Surgeons, New York, New York, may conduct experiments on 20 patients with advanced breast, ovary, and brain cancer. CD34(+) hematopoietic stem cells will be isolated from bone marrow, transduced with the retrovirus vector, PHaMDR1/A, and readministered to patients. Patients will be monitored for the presence and expression of the MDR–1 gene. The investigators will determine whether MDR–1 expression increases following chemotherapy."

I accept this recommendation, and Appendix D–LV of the NIH Guidelines will be added accordingly.

J. Addition of Appendix D–LVI to the NIH Guidelines

In a letter dated January 8, 1993, Ms. Arvilla L. Trag of Virogenetics Corporation, Troy, New York, submitted a request on behalf of Dr. Enzo Paoletti for reduction in physical containment from Biosafety Level 2 to Biosafety Level 1 for three poxvirus vectors: NYVAC, ALVAC, and TROVAC. This request was published for comment in the **Federal Register** of May 4, 1993 (58 FR 26676). NYVAC is derived from the Copenhagen strain of vaccinia virus in which 18 viral genes have been deleted. ALVAC is derived from an attenuated strain of canarypox virus. TROVAC is derived from an attenuated strain of fowlpox virus. These vectors are proposed for use in the production of animal vaccines.

This request was reviewed and recommended for approval during the RAC meeting of June 7–8, 1993, by a vote of 15 in favor, 0 opposed, and 1 abstention. The following section may be added to Appendix D:

"Appendix D–LVI

"Dr. Enzo Paoletti of Virogenetics Corporation, Troy, New York, may conduct experiments with poxvirus vectors NYVAC, ALVAC, and TROVAC at Biosafety Level 1."

I accept this recommendation, and Appendix D–LVI of the NIH Guidelines will be added accordingly.

K. Amendment to Section IV–C–3–c of the NIH Guidelines Regarding the Responsibility of the Office of Recombinant DNA Activities

In a letter dated April 5, 1993, Ms. Debra Wilson of the National Institutes of Health submitted a request that Section IV–C–3–c be amended to delete the requirement that the Office of Recombinant DNA Activities (ORDA) publish the Recombinant DNA Technical Bulletin, and to add the requirement that ORDA will serve as the focal point for data management of the NIH-approved human gene transfer protocols.

Section IV–C–3–c currently reads that the Office of Recombinant DNA Activities shall be responsible for the following:

"IV–C–3–c. Publishing the Recombinant DNA Technical Bulletin * * *."

Section IV–C–3–c proposed wording reads that the Office of Recombinant DNA Activities shall be responsible for the following:

"IV–C–3–c. Serve as the focal point for data management of NIH-approved human gene transfer protocols as required in the Reporting Requirements section of the Points to Consider."

This request was published for comment in the **Federal Register** of May 4, 1993 (58 FR 26676).

The request was reviewed and recommended for approval during the RAC meeting of June 7–8, 1993, by a vote of 16 in favor, 0 opposed, and 2 absentions. Section IV–C–3 may be amended to read that the Office of Recombinant DNA Activities shall be responsible for the following:

"IV–C–3–c. Serve as the focal point for data management of NIH-approved human gene transfer protocols as required in the Reporting Requirements section of the Points to Consider."

I accept this recommendation, and Section IV–C–3–c of the NIH Guidelines will be amended accordingly.

L. Amendment to Section III–A–4 of the NIH Guidelines and the Points To Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA into the Genome of Human Subjects

During the March 1–2, 1993, Recombinant DNA Advisory Committee meeting, Dr. Robertson Parkman requested that the terms subject and subjects be amended to read subject(s). Section III–A–4 currently reads:

"III–A–4. Deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into human subjects [21] * * *."

Throughout the Points to Consider document the terms subject and subjects are used. This amendment will clarify Section III–A–4 and Points to Consider. This request was published for comment in the **Federal Register** of May 4, 1993 (58 FR 26676).

During the June 7–8, 1993, meeting, the committee reviewed the request. The committee recommended changing the term "subject(s)" to "one or more human subjects." The recommendation was approved by a vote of 20 in favor, 0 opposed, and no abstentions. Section III–A–4 may be amended to read:

"III–A–4. Deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subject [21] * * *."

The term "subject" and "subjects" will be changed throughout the NIH Guidelines to "one or more human subjects."

I accept this recommendation, and Section III–A–4 of the NIH Guidelines and the Points to Consider will be amended accordingly.

II. Summary of Actions

A. Addition of Appendix D–XLVII to the NIH Guidelines

The following section is added to Appendix D:

"Dr. Hilliard F. Seigler of Duke University Medical Center, Durham, North Carolina, may conduct experiments on 20 patients with disseminated malignant melanoma. Autologous tumor cells will be transduced with a retroviral vector, pHuγ–IFN, that contains the gene encoding human γ–IFN. Following lethal irradiation, the transduced cells will be readministered to patients for the purpose of generating cytotoxin T cells that are tumor specific along with the up-regulation of Class I major histocompatibility antigens. Patients will be monitored for clinical regression of tumors and generation of tumor-specific cytotoxic T lymphocytes."

B. Addition of Appendix D–XLVIII to the NIH Guidelines

The following section is added to Appendix D:

"Drs. Stefan Karlsson and Cynthia Dunbar of the National Institutes of Health, Bethesda, Maryland, and Dr. Donald B. Kohn of the Childrens Hospital of Los Angeles, Los Angeles, California, may conduct experiments on 10 patients with Gaucher disease. CD34(+) hematopoietic stem cells will be isolated from bone marrow or from peripheral blood treated with granulocyte-colony stimulating factor. CD34(+) cells will be transduced with a retrovirus vector, G1Gc, containing cDNA encoding human glucocerebrosidase and administered intravenously. Patients will be monitored for toxicity and glucocerebrosidase expression."

C. Addition of Appendix D–XLIX to the NIH Guidelines

The following section is added to Appendix D:

"Dr. Gary J. Nabel of the University of Michigan Medical Center, Ann Arbor, Michigan, may conduct experiments on 12 patients with AIDS to be divided into 4 experimental groups. CD4(+) lymphocytes will be isolated from peripheral blood and transduced with Rev M10, a transdominant inhibitory mutant of the rev gene of the human immunodeficiency virus (HIV). Transduction of the rev mutant will be mediated either by the retrovirus vector, PLJ-cREV M10, or a plasmid DNA/liposome complex. Patients will be monitored for survival of the transduced CD4(+) cells by polymerase chain reaction and whether Rev M10 can confer protection against HIV infection to CD4(+) cells."

D. Addition of Appendix D–L to the NIH Guidelines

The following section is added to Appendix D:

"Dr. Gary J. Nabel of the University of Michigan Medical Center, Ann Arbor, Michigan, may conduct experiments on 24 patients with advanced cancer. Patients will undergo *in vivo* transduction with DNA/liposome complexes containing genes encoding the HLA–B7 hisotcompatibility antigen and beta-2 microglobulin in a non-viral plasmid. These DNA/liposome complexes will be administered either by intratumoral injection or catheter delivery. Patients will be monitored for enhanced immune responses against tumor cells, and safe and effective doses will be determined."

E. Addition of Appendix D–LI to the NIH Guidelines

The following section is added to Appendix D:

"Dr. John A. Barranger of the University of Pittsburgh, Pittsburgh, Pennsylvania, may conduct experiments on 5 patients with Gaucher disease. The CD34(+) hematopoietic stem cells will be isolated from peripheral blood and transduced *in vitro* with the retrovirus vector, N2–Sv–GC, encoding the glucocerebrosidase (GC) enzyme. Following reinfusion of the transduced cells, patients will be monitored by PCR analysis for GC expression in peripheral blood leukocytes. Patients currently receiving GC replacement therapy and who demonstrate clinical responsiveness will be withdrawn from exogenous GC therapy. Patients not previously treated with exogenous GC, will be monitored for clinical reversal of lipid storage symptoms."

F. Addition of Appendix D–LII to the NIH Guidelines

The following section is added to Appendix D:

"Dr. Robert Walker of the National Institutes of Health, Bethesda, Maryland, may conduct experiments on 12 HIV-infected patients who have a seronegative identical twin. CD4(+) and CD8(+) cells will be isolated from the seronegative twin and induced to polyclonal proliferation with anit-CD3 and interleukin-2. The enriched population of cells will be transduced with either LNL6 or G1Na, which contain the neo^R gene. The transduced cells will be expanded in tissue culture and administered to the HIV-infected twin. Patients will be monitored for immune function and the presence of marked cells."

G. Addition to Appendix D–LIII to the NIH Guidelines

The following section is added to Appendix D:

"Dr. Corey Raffel of the Childrens Hospital Los Angeles, California, and Dr. Kenneth Culver of Iowa Methodist Medical Center, Des Moines, Iowa, may conduct experiments on 30 patients between 2 and 18 years of age with recurrent malignant astrocytoma. Fifteen patients will be accrued into this study initially. If at least one patient responds to therapy, an additional 14 patients will be treated. Patients with either surgically accessible or non-accessible tumors will be treated with the vector producing cell line (PA317) carrying the retrovirus vector, G1TkSvNa. This vector will transduce tumor cells *in vivo* with the *Herpes simplex* thymidine kinase (HS-tk) gene that renders the cells sensitive to killing by ganciclovir. Surgically accessible patients will undergo surgical debulking of their tumor followed by repeated administration of the HS-tk vector producer cells into the tumor bed. Children with unresectable tumors will undergo stereotaxic injection of vector producer cells into tumors."

H. Addition of Appendix D–LIV to the NIH Guidelines

The following section is added to Appendix D:

"Dr. Jeffrey E. Galpin of the University of Southern California, Los Angeles, California, and Dr. Dennis A. Casciato of the University of California, Los Angeles, California, may conduct experiments on 15 HIV(+) asymptomatic patients. Patients will receive 3 monthly intramuscular injections of the retrovirus vector (N2IIIBenv) encoding the HIV–1 IIIB envelope protein. Patients will be monitored for acute toxicity, CD4 levels, HIV-specific CTL responses, and viral burdens."

I. Addition of Appendix D–LV to the NIH Guidelines

The following section is added to Appendix D:

"Drs. Charles Hesdorffer and Karen Antman of Columbia University College of Physicians and Surgeons, New York, New York, may conduct experiments on 20 patients with advanced breast, ovary, and brain cancer. CD34(+) hematopoietic stem cells will be isolated from bone marrow, transduced

with the retrovirus vector, PHaMDR1/A, and readministered to patients. Patients will be monitored for the presence and expression of the MDR–1 gene. The investigators will determine whether MDR–1 expression increases following chemotherapy."

J. Addition of Appendix D–LVI to the NIH Guidelines

The following section is added to Appendix D:

"Dr. Enzo Paoletti of Virogenetics Corporation, Troy, New York, may conduct experiments with poxvirus vectors NYVAC, ALVAC, and TROVAC at Biosafety Level 1."

K. Amendment to Section IV–C–3–c of the NIH Guidelines Regarding the Responsibility of the Office of Recombinant DNA Activities

Section IV–C–3–c will read as follows:

"IV–C–3–c. Serve as the focal point for data management of NIH-approved human gene transfer protocols as required in the Reporting Requirements section of the Points to Consider."

L. Amendment to Section III–A–4 of the NIH Guidelines and the Points To Consider in the Design and Submission of Protocol for the Transfer of Recombinant DNA Into the Genome of Human Subjects

Section III–A–4 will read as follows:

"III–A–4. Deliberate transfer of recombinant DNA or DNA or RNA derived from recombinant DNA into one or more human subjects [21] * * *"

The terms "subject" and "subjects" will be changed throughout the NIH Guidelines to "one or more human subjects."

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: September 3, 1993.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 93–22261 Filed 9–10–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Meetings: Klamath River Basin Fisheries Task Force

AGENCY: Fish and Wildlife Service, Interior.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force and the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public. Handicap access and hearing-impaired assistance will be provided if requested. Persons needing special assistance must notify the Klamath River Fishery Resource Office (see **FOR FURTHER INFORMATION CONTACT:**) in advance of the meetings.

DATES: The Klamath River Basin Fisheries Task Force (Task Force) will meet from 8 a.m. to 5 p.m. on Tuesday, October 5, and from 8 a.m. to 12 noon, Wednesday, October 6, 1993. The Task Force will then meet in joint session with the Klamath Fishery Management Council (Council) from 1 p.m. until 5 p.m. on October 6. The Task Force will adjourn at 5 p.m., October 6, and the Council will continue to meet from 8 a.m. until 5 p.m. on October 7, 1993.

PLACE: The meeting will be held at the Hoopa Tribe's Neighborhood Facilities Building located on the west side of Highway 96, just south of the Trinity River Bridge in Hoopa, California.

FOR FURTHER INFORMTION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006, Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARTY INFORMATION: For background information on the Task Force and Council, please refer to the notice of their initial meetings that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). The Task Force will meet to discuss the Federal and California (State) work plans for Fiscal Year 1994; will discuss the amendment to their long-range plan which incorporates the Klamath Basin above Iron Gate Dam into the Restoration Program planning area; will hear a status report from staff of the recently established Klamath River Basin Ecosystem Restoration Office in Klamath Falls; will hear a staff report on the draft Annual Accomplishments Report for Fiscal 1993; will hear a Hoopa Tribal Fisheries Department report on the Pine Creek watershed restoration project; will hear discussion from Oregon Natural Resources Council staff on their perspective of upper Klamath Basin ecosystem restoration; will hear a presentation on Salmon River spring chinook genetics work; will hear a presentation on the Bureau of Land Management Fisheries Program for Northern California; and will discuss the amendment of the Trinity River Fish and Wildlife Restoration Act. The Task Force will take action by making assignments to staff for finalizing the annual accomplishment report and for proceeding with the upper basin amendment to the long-range plan. The public will be invited to provide input throughout the meeting. During the joint session of the Task Force and the Council, the two committees will discuss mutual goals and objectives for implementing the Klamath Act; will discuss the U.S. Department of Interior Klamath/Trinity working group, and the recent correspondence between the Council and Secretaries of Interior and Commerce. Public input will be invited at the close of joint meeting. The Council will meet on October 7 to hear reports from the Council's Technical Advisory Team on issues involving incidental salmon harvest in the Pacific whiting fishery and spring chinook harvest; will hear a report on the Pacific Fishery Management Council's action on the Hoopa Tribe's recommendation to increase the escapement floor for fall chinook; will consider an amendment to their long-term harvest plan, specifically Option 7.2; will hear a report from the Department of the Interior on the status of the legal opinion of Native American trust harvest rights; and will discuss harvest allocation and assignments to the Harvest Allocation Work Group. The Council will take action by deciding to continue or cease harvest allocation negotiations and for what geographic areas; will decide how to proceed with the first amendment to the long-term harvest plan and how to put the plan into action; and will assign tasks to the

Technical Advisory Team for work on spring chinook issues.

Dated: September 2, 1993.

William E. Martin,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–22276 Filed 9–10–93; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[AK–964–4230–05–P]

Notice for Publication; F–40301, F–40308, F–40311, F–40315, Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), will be issued to Bering Straits Native Corporation for approximately 41,007 acres. The lands involved are in the vicinity of Mary's Igloo, Alaska, within Ts. 2 and 4 S., Rs. 29 W.; Ts. 2, 3, 4 and 5 S., Rs. 30 W.; and T. 6 S., R. 31 W., Kateel River Meridian.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until October 13, 1993 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Lead Land Law Examiner, Branch of Doyon/ Northwest Adjudication.

[FR Doc. 93–22303 Filed 9–10–93; 8:45 am]

BILLING CODE 4310–JA–P

[AK–964–4230–05–P; F–19525–A2 and F–19525–B2]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Council Native Corporation for approximately 14,858.25 acres. The lands involved are in the vicinity of Council, Alaska, within Tps. 5 and 6 S., Rs. 25 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 13, 1993, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Carolyn A. Bailey,

Lead Land Law Examiner Branch of Doyon/ Northwest Adjudication.

[FR Doc. 93–22271 Filed 9–10–93; 8:45 am]

BILLING CODE 4310–JA–P

[AK–070–03–4230–05; F–23280]

Termination of Segregative Effect and Opening of Land; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of 39.86 acres of public land included in a reverted Recreation and Public Purposes patent and opens the land for selection by the State of Alaska.

EFFECTIVE DATE: September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Helen M. Hankins, District Manager, Kobuk District, 1150 University Avenue, Fairbanks, Alaska, 99707–38444, 907–474–2332.

SUPPLEMENTARY INFORMATION: Pursuant to the regulation contained in 43 CFR 2091.2–2(2), it is ordered as follows:

1. Subject to valid existing rights, at 8 a.m. on September 13, 1993, the following described land is hereby opened to selection by the State of Alaska under the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21(1988).

Fairbanks Meridian

T.7S., R. 8 W.
Sec. 5, Lot 3.
Containing 39.86 acres.

2. The State of Alaska application for selection made pursuant to section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this notice in the Federal Register, if such land is otherwise available.

Dated: September 2, 1993.

Helen M. Hankins,

Kobuk District Manager.

[FR Doc. 93–22209 Filed 9–10–93; 8:45 am]

BILLING CODE 4310–JA–M

[WY–930–03–4320–01–4FC15; WYW–122556]

Recreation and Public Purposes Classification and Application for Lease in Uinta County; Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Recreation and Public Purposes Classification and Application for Lease in Uinta County.

SUMMARY: The following public lands have been identified and examined and are classified as suitable for lease under the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 *et seq.*

Sixth Principal Meridian, Uinta County, Wyoming

T. 16 N., R. 113 W.,
Sec. 6: Lot 2;
Sec. 7: NW¼NE¼.
The above lands aggregate 2.03 acres.

FOR FURTHER INFORMATION CONTACT: Becky D. Heick, Realty Specialist, Kemmerer Resource Area, Rock Springs District, Bureau of Land Management, 312 Highway 189 North, Kemmerer, Wyoming 83101, 307–877-3933.

SUPPLEMENTARY INFORMATION: The purpose of this classification and

application for lease of these lands is for Uinta County to expand an existing recreational chariot racing site. Uinta County acquired a lease containing 33.91 acres on October 29, 1992 to construct and operate a recreational chariot racing site. Uinta County has requested the lease be amended to include an additional 2.03 acres to allow for a wider, safer curve on the turnaround of the track. The lease is subject to existing prior rights. The proposed leases is consistent with the Kemmerer Resource Management Plan. The land is not required for any Federal purpose. Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws.

The lands will not be offered for lease until at least November 12, 1993.

The lease will have no effect on the south Monument grazing lease permittee. For a 45 day period ending on October 28, 1993 interested parties may submit comments to the District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902–1869. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Dated: August 31, 1993.

Mark R. Hatchel,

Acting Area Manager.

[FR Doc. 93–22330 Filed 9–10–93; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

Upper Delaware Citizens Advisory Council; Meetings

AGENCY: National Park Service; Upper Delaware Citizen Advisory Council, Interior.

ACTION: Notice of change of meeting date.

SUMMARY: This notice revises the schedule for calendar year 1993 meetings of the Upper Delaware Citizens Advisory Council, as required under the Federal Advisory Committee Act.

DATES: August 26, 1993.

TYPE OF MEETING: Plenary and Informational Meetings.

ADDRESSES:

Tuesday Meetings: National Park Service Headquarters, River Road, Beach Lake, Pennsylvania.

Saturday Meetings: Tusten Town Hall, Bridge Street, Narrowsburg, New York.

1993 UPPER DELAWARE CITIZENS ADVISORY COUNCIL REVISED MEETING SCHEDULE

Dates	Type of meeting	Weather reschedule
Tuesday Evening:		
September 14, 1993	Regular.	
Tuesday Evening:		
October 12, 1993	7 pm Business.	
Saturday:		
October 23, 1993	9 am Educational Forum Re: Project Learning Tree	
Tuesday Evening:		
November 9, 1993	7 pm Informational Re: The Delaware & Hudson Canal	November 30, 1993.
Tuesday Evening:		
December 14, 1993	7 pm Business	None.

Additional subjects may be added as necessity dictates throughout the year.

Press Releases containing specific information regarding the subject of the monthly meeting will be published in the following area newspapers:

The Sullivan County Democrat
The Times Herald Record
The River Reporter
The Tri-state Gazette
The Pike County Dispatch
The Pike County Courier
The Wayne Independent
The Hawley News Eagle
The Weekly Almanac

Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL and WVOS.

FOR FURTHER INFORMATION CONTACT:

John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, New York 12764–0159; 717–729–8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and recreation Act of 1978, Public Law 95–625, U.S.C. s1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware Region.

All meetings are open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, New York 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River, River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

B.J. Griffin,

Regional Director, Mid-Atlantic Region.

[FR Doc. 93–22304 Filed 9–10–93; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–290 (Sub-No. 130X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Cleveland County, NC

Norfolk Southern Railway Company (NS) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 1.5-mile line of railroad between milepost SB–154.5 and milepost SB–156.0 in Shelby, Cleveland County, NC.

NS has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user for rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either in pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of the exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 13, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking request under 49 CFR 1152.29[3] must be filed by September 23, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 4, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Richard W. Kienle, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

NS has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by September 17, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219), Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 2, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–22291 Filed 9–10–93; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Alloyd Asbestos Abatement Co., et al.*, Civil Action No. C–3–91–107, was lodged on August 5, 1993 with the United States District Court for the Southern District of Ohio. The Consent Decree provides for penalties for violating Section 112(c) of the Clean Air Act, 42 U.S.C. 7412(c), as amended, and the National Emission Standards for Hazardous Air Pollutants for asbestos (the "asbestos NESHAP"), 40 CFR Part 61, subpart M. The Consent Decree requires Defendant Beerman Realty Company to establish an asbestos control program, achieve full compliance with the asbestos NESHAP, and pay a civil penalty of $10,000 for its past violations of the Act and the asbestos NESHAP.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Alloyd Asbestos Abatement Co., et al.*, DOJ Ref. #90–5–2–1–1554.

The proposed consent decree may be examined at the office of the United States Attorney, 602 Federal Building, 200 West Second Street, Dayton, Ohio, 45402; the Region Five Office of the Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois, 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.00 (25 cents per page reproduction costs), payable to the Consent Decree Libary.

John C. Cruden,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–22272 Filed 9–10–93; 8:45 am]

BILLING CODE 4410–02–M

Lodging of Consent Decree; United States v. American National Can Co., et al.

Notice is hereby given that a Consent Decree in *United States* v. *American National Can Company, et al.*, Civil Action No. 4–93–CV–815 (D. Minn.), was lodged with the United States District Court for the District of Minnesota on August 25, 1993. This action was brought under section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9607. The Consent Decree provides that defendants will pay $522,566 of the past response costs and all oversight costs incurred by the U.S. Environmental Protection Agency in connection with the Waste Disposal Engineering, Inc. Superfund Site.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *American National Can Company, et al.*, D.O.J. Ref. No. 90–11–2–217A.

The Consent Decree may be examined at the Office of the United States Attorney, District of Minnesota, 234 U.S. Courthouse, 110 South Fourth Street, Minneapolis, Minnesota 55401 and at the Region 5 office of the U.S. Environmental Protection Agency, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

A copy of the Consent Decree also may be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington DC 20005, telephone number (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library. The proposed Consent Decree package consists of a 59 page. Consent Decree. A request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $14.75 (25 cents per page reproduction charge) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–22323 Filed 9–10–93; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Final Judgment by Consent Pursuant to the Safe Drinking Water Act

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that on a Consent Decree in *United States and State of Montana* v. *Butte Water Company*, No. CV 91–100–BU–PGH, was lodged with the United States District Court for the District of Montana.

The United States filed its Complaint in this action on December 31, 1991, and its First Amended Complaint on January 21, 1992, against Butte Water Company seeking injunctive relief and civil penalties of up to $25,000 per day of violation under sections 1414(b) and 1431 of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. 300g–3(b) and 300i. The State of Montana also filed a complaint in this action against Butte Water Company seeking civil penalties of up to $10,000 per day of violation, costs, and attorneys fees under the Montana Public Water Supply Act ("MPWSA"), Mont. Code Ann. tit. 75, ch. 6, pt. 1. The United States and the State allege that Butte Water Company has violated the SDWA, the MPWSA, and the national primary drinking water regulations, and that the violations resulted in an imminent and substantial endangerment to the health of persons who consume drinking water from the Butte water system. The United States' and the State's claims for injunctive relief have been resolved in a previous settlement with the new owner and operator of the Butte water system, Silver Bow Water, Inc. and the City-County of Butte-Silver Bow. *United States and State of Montana* v. *Silver Bow Water, Inc. and City-County of Butte-Silver Bow*, No. CV 92–26–BU–PGH (D. Mont. consent decree entered May 15, 1992). See 57 Fed. Reg. 17930 (Apr. 28, 1992). Pursuant to that settlement, two drinking water filtration plants are under construction on an expedited schedule, and other measures are being implemented to mitigate turbidity in the Butte water system until the filtration plants are completed.

Under the proposed Consent Decree, Butte Water Company will pay a civil penalty of $900,000.00 in settlement of the United States' and the State's claims. The penalty will be divided between the United States and the State, with $720,000.00 to be paid to the United States and $180,000.00 to be paid to the State.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of fourteen (14) days from the date of publication of this notice. All comments must be received within the fourteen day period to be considered. Comments should refer to *United States* v. *Butte Water Company*, No. CV 91–100–BU–PGH (D. Mont.), DOJ Ref. No. 90–5–1–1–3751 and should be addressed to the Acting Assistant Attorney General for the Environment and Natural Resources Division. Comments sent by U.S. Mail should be sent to the U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. Comments sent by overnight mail should be sent to the U.S. Department of Justice, room 12015, 1425 New York Avenue, Washington, DC 20005. Comments sent by Telefax should be sent to Telefax No. (202) 616–6583 using Voice Confirmation No. (202) 514–1111.

The proposed Consent Decree may be examined at any of the following offices: (1) The Office of the United States Attorney for the District of Montana, Butte Division, 167 Federal Building, Butte, Montana 59701; (2) the U.S. Environmental Protection Agency, Montana Operations Office, Federal Building, 301 South Park Street, Helena, Montana 59626; (3) the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado 80202; and (4) the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. Copies of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. Please enclose a check for $2.50 ($0.25 per page reproduction charge) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–22468 Filed 9–10–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act and the Rivers and Harbors Act; United States v. Connolly Development

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *Connolly Development*, Civil Action No. CIV–S–93–0044–WBS–GGH (E.D. Cal.), was lodged with the United States District Court for the Eastern District of California on August 24, 1993.

The proposed Consent Decree concerns alleged violations of sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, and section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403, as a result of the discharge of earthen fill material into wetlands. The wetlands involved consist of about 6 acres of seasonal and tidal wetlands located east of Highway 29 (Sonoma Boulevard), west of Broadway and north of Sereno Drive in Vallejo, Solano County, California. The unauthorized fill was discharged into approximately ½ acre of the wetlands and affected the rest of the parcel through blockage of a culvert, which partially obstructed the tidal action thereto. The discharge was accomplished in connection with Connolly Development's construction of a shopping center adjacent to the affected property.

The Consent Decree requires Connolly Development to fully restore and enhance the property in accordance with a Corps-approved restoration plan attached to the Consent Decree lodged with the Court. The Decree further requires Connolly Development to post $100,000.00 as financial security to ensure the restoration and enhancement

is satisfactorily completed and requires the payment of a civil penalty in the amount of $120,000.00 for these violations of the statutes. Upon proper and timely satisfaction of all terms of the Consent Decree, however, the civil penalty will be reduced by $20,000.

The Department of Justice will receive written comments relating to the Consent Decree for a period of 30 days from the date of publication of this notice. Comments should be addressed to Edmund F. Brennan, Assistant U.S. Attorney, Eastern District of California, room 3305 Federal Building, United States Courthouse, 650 Capitol Mall, Sacramento, California 95814, and should refer to *United States* v. *Connolly Development*, Civil Action No. CIV–S–93–0044–WBS–GGH (E.D. Cal.).

The Consent Decree may be examined at the Clerk's Office, United States District Court for the Eastern District of California, 650 Capitol Mall, Sacramento, California 95814.

Myles E. Flint,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 93–22324 Filed 9–10–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that two proposed consent decrees in *United States* v. *Zemlicka*, Civil Action No. CIV 92–0236–S–MJC, were lodged on August 26, 1993, with the United States District Court for the District of Idaho. The Consent Decrees settle all claims with the two defendants, Donald Davis, doing business as Concept West, and Thomas Zemlicka.

This action was brought for violations of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos, 40 CFR Part 61, subpart M, promulgated pursuant to section 112 of the Clean Air Act, prior to the 1990 Amendments to the Clean Air Act, 42 U.S.C. 7412. Defendant Zemlicka was the owner of the former John Deere Tractor Building (also known as the Campbell Building) in Nampa, Idaho. Defendant Davis was hired by Zemlicka to demolish the building. The Complaint alleged that the defendants violated the asbestos NESHAP regulations by failing to notify EPA of their intent to remove friable asbestos from the building prior to its demolition, and that defendants violated four work practice standards during the demolition.

Pursuant to the proposed Consent Decrees, defendant Zemlicka will pay a civil penalty of $25,000, and defendant Davis will pay a civil penalty of $1,000. Both defendants have also agreed to the imposition of injunctive relief, which shall be in effect for three years after entry of the Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Zemlicka*, DOJ Ref. #90–5–2–1–1682.

The proposed consent decrees may be examined at the office of the United States Attorney, Federal Building, Room 328, 550 West Fort Street, Boise, Idaho 83724; the Region 10 Office of EPA, 7th Floor Records Center, 1200 Sixth Avenue, Seattle, WA 98101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.25 for the consent decree entered into with Donald Davis or $4.25 for the consent decree with Thomas Zemlicka (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, EES Environment and Natural Resources Division.

[FR Doc. 93–22275 Filed 9–10–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act in United States v. Consolidated Papers, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Consolidated Papers, Inc.*, Civil Action No. 92–C–0668C, was lodged on August 26, 1993 with the United States District Court for the Western District of Wisconsin.

The Consent Decree resolves the claims against Consolidated Papers, Inc. for violations of the prevention of significant deterioration provisions of the Clean Air Act, 42 U.S.C. 7401 *et seq.* The Consent Decree requires Consolidated Papers, Inc. to (1) Maintain full compliance with all requirements of the Act and all regulations promulgated thereunder; (2) implement a monitoring system and conduct a series of emissions tests at its facility; (3) follow reporting requirements to ensure U.S. EPA's ability to monitor the facility's continuing operations; (4) and to pay a civil penalty of $510,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Consolidated Papers, Inc.*, DOJ Ref. #90–5–2–1–1827.

The proposed consent decree may be examined at the Region V Office of the U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.00 (16 pages at 25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–22274 Filed 9–10–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and pursuant to section 122(d)(20)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d)(1)(B), notice is hereby given that a proposed consent decree in *United States* v. *E.I. du Pont de Nemours and Company, et al.*, Civil Action No. C2–91–742, was lodged on August 31, 1993, with the United States District Court for the Southern District of Ohio, Eastern Division. The United States filed this action under Sections 107 and 113 of CERCLA, 42 U.S.C. 9607 and 9613, to recover its environmental response costs incurred and to be incurred in connection with the Bowers

Landfill Superfund Site ("Site") in Pickaway County, Ohio.

The proposed consent decree requires the defendants and certain third-party defendants to reimburse the United States for response costs concerning the Site and requires the defendants to complete specified groundwater monitoring activities at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *E.I. du Pont de Nemours and Company, et al.*, DOJ Ref. #90–11–2–345.

The proposed consent decree may be examined at the office of the United States Attorney, Southern District of Ohio, 250 North High Street, Columbus, Ohio 43215; the Region V Office of the Environmental Protection Agency, Records Center 60604–3590; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree, including its attachments, may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $54.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Peter R. Steenland,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–22273 Filed 9–10–93; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Proposed 1993 Aggregate Production Quotas for Schedule I Controlled Substances

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed 1993 aggregate production quotas.

SUMMARY: This notice proposes 1993 aggregate production quotas for controlled substances in Schedule I of the Controlled Substances Act (CSA).

DATES: Comments or objections should be received on or before October 13, 1993.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative (CCR).

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

Applications have been made for manufacturing quotas for several Schedule I controlled substances. Based on a review of these applications and other information available to the DEA, the Administrator of the DEA, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator by § 0.100 of Title 28 of the Code of Federal Regulations, hereby proposes the 1993 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous base, be established as follows:

Basic class	Proposed 1993 aggregate production quota (grams)
Aminorex	2
4-Methoxyamphetamine	10
3, 4-Methylenedioxy-N-ethylamphetamine	2
3-Methylfentanyl	10

All interested persons are invited to submit their comments or objections, in writing, regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to sections (3)(c)(3) and 3(e)(2)(c) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning of and intent of the Regulatory Flexibility Act, 5 U.S.C., 601, et seq. The establishment of annual production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: August 17, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–22221 Filed 9–10–93; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems.

Date and Time: September 29, 1993; 8:30 a.m. to 5 p.m.

Place: Rooms A–E, 1110 Vermont Avenue, NW., Washington, DC.

Type of Meeting: Closed.

Contact Persons: Dr. Lawrence Goldberg, Dr. Albert Harvey and Dr. Brian Clifton, Program Directors, Division of Electrical and Communications Systems, NSF, 1800 G Street, NW., room 1151, Washington, DC 20550 Telephone: (202) 357–9618.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b(c)(4) and (6) the Government in the Sunshine Act.

Dated: September 7, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–22278 Filed 9–10–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 57th meeting on Wednesday and Thursday, September 29–30, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, MD, 8:30 a.m. until 6 p.m. each day.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss information the release of which would represent a clearly unwarranted invasion of personnel privacy pursuant to 5 U.S.C. 552b(c)(6).

During this meeting, the Committee plans to consider the following:

1. The Committee will continue its discussions of matters related to implementation plans for future ACNW activities, this will include drafting reports on ACNW protocols, topics for review, and resource requirements.

2. The Committee will continue its discussion of matters related to the appointment of new members. Portions of this session may be closed to public attendance to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

3. The Committee will discuss topics proposed for consideration during future ACNW meetings.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Dr. John T. Larkins (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy pursuant 5 U.S.C. 552b(c)(6).

Dated: September 7, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–22269 Filed 9–10–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–389]

St. Lucie Plant, Unit No. 2; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that on July 2, 1993, Robert J. Jablon, Esq., on behalf of Florida Municipal Power Agency ("FMPA" or "Petitioner") submitted a Petition dated July 2, 1993, to the U.S. Nuclear Regulatory Commission (NRC) pursuant to 10 CFR 2.206 regarding the St. Lucie Plant, Unit No. 2, of the Florida Power & Light Company ("FPL" or "Licensee"). The Petition has been referred to the Office of Nuclear Reactor Regulation for preparation of a response.

The Petitioner requests that the NRC (1) declare that FPL is obligated to provide network transmission among geographically separated sections of FMPA without imposing multiple charges for transmission among multiple delivery points; (2) issue a Notice of Violation of that obligation; (3) impose a requirement by order directing FPL to file with the Federal Energy Regulatory Commission a rate schedule that provides for transmission in a manner that complies with the antitrust conditions; (4) take such other action as may be proper, including proposed imposition of civil monetary penalties; and (5) publish notice of the Petition including when the NRC expects to decide whether to take action in response to the Petition.

Specifically, the Petitioner alleges that the antitrust license conditions for the St. Lucie Plant, Unit No. 2, require FPL to provide transmission of power over its network among the various sections of FMPA on a network basis, that is, without imposing multiple charges for transmission among multiple FMPA receipt and delivery points. Petitioner alleges that FPL has refused to provide such network transmission and is, thereby, in violation of the St. Lucie Plant, Unit No. 2, license conditions.

The Petitioner advises the NRC that proceedings are pending before the Federal District Court and the Federal Energy Regulatory Commission ("FERC"), which present issues overlapping with those presented in the Petition. The Petitioner states that FMPA filed a lawsuit in Florida state court on December 13, 1991, asserting FMPA's right to network transmission under contract law and Florida's antitrust statute and that FPL removed the case to the Federal District Court for the Middle District of Florida, where the case is docketed as *Florida Municipal Power Agency* v. *Florida Power and Light Co.*, Case No. 92–35–Civ–Orl–3A22, and scheduled for trial to begin in September 1993. The Petitioner further states that FPL submitted a tariff filing to the FERC on March 19, 1993, FERC Docket No. ER93–465–000, to which FMPA has filed a protest alleging that FPL's failure to file for network transmission service is anticompetitive and inconsistent with FPL's obligations under the St. Lucie Plant, Unit No. 2, license conditions.

In accordance with 10 CFR 2.206, appropriate action with regard to the specific issues raised in the Petition will be taken within a reasonable time.

In accordance with NRC practice regarding petitions under 10 CFR 2.206 concerning antitrust license conditions, copies of the Petition and this **Federal Register** Notice will be sent to the Licensee and the Attorney General for information.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the St. Lucie Plant, Unit No. 2, located at Indian River Community College Library, 3209 Virginia Avenue, Ft. Pierce, Florida 33450.

Dated at Rockville, Maryland, this 1st day of September 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93–22267 Filed 9–10–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–010; Facility License No. DPR–2]

Commonwealth Edison Company, (Dresden Nuclear Power Station Unit No. 1); Order Authorizing Decommissioning of Facility

In an application of January 7, 1986, as revised December 22, 1987; April 29, September 2, and November 21, 1988; March 27, April 10, May 16, and November 1, 1989; June 7, 1991; February 7, and October 30, 1992; and June 8, and July 2, 1993, Commonwealth Edison Company (CECo or the licensee) requested the U.S. Nuclear Regulatory Commission (the Commission, NRC) to approve its proposed Decommissioning Plan (Plan) for the Dresden Nuclear Power Station, Unit 1 (Dresden 1) and an amendment to License DPR–2. The amendment would renew the license to 2029, revise the technical specifications, and delete obsolete license conditions. The Decommissioning Plan involves long-term safe storage (SAFSTOR) of Dresdon 1 until after the adjacent nuclear units (Dresden 2 and 3) are permanently shut down.

On June 27, 1989, the NRC published a Notice of Consideration of Issuance of Amendment to License and Opportunity for Hearing in the **Federal Register** (54 FR 27081). No request for hearing or petition for leave to intervene was filed after the notice of proposed action.

The Commission has reviewed the application to determine if it meets Commission rules and regulations and has found that decommissioning as stated in the Plan will be consistent with the regulations in 10 CFR chapter I, and will not be inimical to the common defense and security or to the health and safety of the public. The bases for these findings are in the Safety Evaluation issued concurrently by the NRC Office of Nuclear Reactor Regulation.

The Decommissioning Plan replaces the Dresden 1 safety analysis report. Accordingly, the NRC added a license condition allowing the licensee to make changes to the Decommissioning Plan after performing a review based on criteria similar to the criteria of § 50.59 of title 10 of the Code of Federal Regulations (10 CFR 50.59).

The Commission prepared an Environmental Assessment and Finding of No Significant Impact for the proposed action. The Commission has determined that the proposed action will not result in any significant environmental impact and that an environmental impact statement need not be prepared. The Notice of Issuance of Environmental Assessment was published in the **Federal Register** on September 3, 1993 (58 FR 47001).

Accordingly, pursuant to sections 103, 161b, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.82, the Commission approves the Proposed Decommissioning Plan of January 7, 1986, as revised, and authorizes the licensee to decommission the Dresden 1 facility in accordance with the Decommissioning Plan and the rules and regulations of the Commission, subject to the following conditions:

(a)(1) The approved Decommissioning Plan replaces the safety analysis report in its entirety, and the licensee may (i) make changes in the facility or procedures as described in the Decommissioning Plan, and (ii) conduct tests or experiments not described in the Decommissioning Plan, without prior Commission approval, unless the proposed changes, tests, or experiments involve a change in the technical specifications (TS) incorporated in the license or an unreviewed safety question.

(2) A proposed change, test or experiment shall be deemed to involve an unreviewed safety question (i) if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the Decommissioning Plan may be increased, or (ii) if a possibility for an accident or malfunction of a different type than evaluated previously in the Decommissioning Plan may be created, or (iii) if the margin of safety as defined in the basis for any TS is reduced.

(b)(1) The licensee shall maintain records of changes in the facility and of changes in procedures made pursuant to this section, to the extent that these changes constitute changes in the facility or procedures as described in the Decommissioning Plan. The licensee shall also maintain records of tests and experiments performed pursuant to paragraph (a) of this section. These records must include a written safety evaluation containing the basis for the determination that the changes, tests or experiments do not involve an unreviewed safety question.

(2) The licensee shall annually submit, as specified in 10 CFR 50.4, a report containing a brief description of any changes, tests and experiments, including a summary of the safety evaluation of each.

(3) The licensee shall maintain the records of changes in the facility until the date of termination of the license and shall maintain the records of changes in procedures and records of tests and experiments for three years.

(c) If the licensee desires (1) to make a change in the TS or (2) to make a change in the facility or procedures described in the Decommissioning Plan or to conduct tests or experiments not described in the Decommissioning Plan, which involve an unreviewed safety question or a change in the TS, it shall submit an application for amendment of its license pursuant to 10 CFR 50.90 or request approval of a revision to the Decommissioning Plan.

For further details with respect to this action, see: (1) The application for authorization to decommission Dresden 1, dated January 7, 1986, as revised; (2) Amendment No. 37 to License No. DPR–2; (3) the Commission Safety Evaluation; and (4) the Commission Environmental Assessment. These documents are available for public inspection at the Commission Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland this 3rd day of September 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93–22268 Filed 9–10–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, September 23, 1993, has been cancelled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street NW., Washington, DC 20415, (202) 606–1500.

Dated: September 1, 1993.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 93–22222 Filed 9–10–93; 8:45 am]

BILLING CODE 6717–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32843; File No. SR–NASD–93–44]

Self-Regulatory Organizations; Notice and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees for the Fixed Income Pricing System

September 3, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 1, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes the following fee structure for the NASD's Fixed Income Pricing System ("FIPS"). All of the following is an addition to part VIII of schedule D to the NASD's By-Laws.

Schedule D

Part VIII

16. Fixed Income Pricing System ("FIPS")

a. The following charges shall apply to the operation of Full Function and Limited Function FIPS terminals. Charges for Full Function and Limited Function FIPS terminals will also include equipment related charges as detailed in part D.

1. Full Function FIPS Terminals: $1,000/month for the first terminal plus $350/month for each additional terminal.

Full Function FIPS terminals provide access to the full range of quotation and trade reporting capabilities of FIPS through dedicated communication circuits.

2. Limited Function FIPS terminals: $300/month for each terminal plus dial-up communication charges assessed based on actual costs incurred.

Limited Function FIPS terminals provide access to the full range of quotation and trade reporting capabilities of FIPS through a dial-up service.

b. For each transaction in a high-yield security that is reportable to the NASD pursuant to part IV of the FIPS rules, there shall be a $1 charge assessed against the member responsible for reporting the transaction under Sections (a)(3) or (b)(3) of part IV of the FIPS Rules.

c. There shall be a $50 monthly charge assessed against members using the FIPS service desk.*

* Pursuant to part IV, section (a)(2)(B) of the FIPS Rules, members that do not have access to a FIPS terminal and average five or fewer trades per day in high yield securities, inclusive of FIPS securities, during the previous calendar quarter may utilize the FIPS service desk to report trades in high yield bonds effected in the over-the-counter market.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On March 19, 1993, the SEC approved an NASD proposal to establish and operate FIPS, an electronic facility that collects, processes, and disseminates real-time, firm quotations for 30 to 50 of the most liquid high yield bonds.[1] The FIPS system also requires members to report all over-the-counter ("OTC") transactions in high yield bonds. In addition, FIPS disseminates hourly summary transaction reports on FIPS securities that provide the high and low execution prices and the accumulated trading volume for each FIPS security during the preceding hour.

To formulate the FIPS fee structure, the NASD and its subsidiary corporations conducted a thorough analysis of the anticipated revenues and costs of operating FIPS. These revenue and cost assumptions were based upon forecasts and projections of the number of market participants likely to participate in FIPS, the likely demand for quotation and transaction information generated by FIPS, the volume of OTC transactions in high yield bonds, and the "start-up" and recurring costs associated with FIPS, among other things. As discussed in more detail below, the FIPS fee structure has three components.[2]

The first component is a terminal-based charge that varies depending upon whether the member seeks to operate a "Full Function" terminal or a "Limited Function" terminal. "Full Function" terminals provide access to full range of quotation and trade reporting capabilities of FIPS through dedicated communication circuits and "Limited Function" terminals provide access to FIPS through a dial-up service. Specifically, for "Full Function" terminals the charge is $1,000/month for the first terminal plus $350/month for each additional terminal. For "Limited Function" terminals the charge is $300/month for each terminal plus dial-up communication charges assessed based on actual costs incurred. Subscribers will also incur an initial installation cost for the circuits and equipment to provide the service which will vary depending upon the costs incurred in connection with the particular facilities of the subscriber. The installation charges will represent a direct pass through of the costs incurred by the telecommunications provider.

Second, in order to offset the market surveillance costs associated with mandatory trade reporting for high yield bonds, there is a $1 charge for each transaction in a high yield bond that is reported to the NASD. The charge will be assessed against the member responsible for reporting the trade and will apply to all OTC transactions in high yield bonds, regardless of whether the bonds are FIPS securities or not. In addition, when FIPS is enhanced to possess execution capabilities, the $1 transaction reporting charge will apply to transactions effected through FIPS. As noted in the NASD's FIPS proposal and the Commission's order approving FIPS, the NASD contemplates enhancing FIPS to include execution and trade negotiation capabilities. Due to the need for additional systems work, however, the NASD has not yet sought Commission approval for these systems features.[3]

Third, there is a $50 monthly charge assessed on those members who use the

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[1] See Securities Exchange Act Release No. 32019 (March 19, 1993), 57 FR 16428 (March 26, 1993) ("FIPS Approval Order").

[2] Concurrent with the submission of this filing, the NASD submitted a separate proposal governing fees assessed for the receipt of quotation and summary transaction information on FIPS securities via information vendors. See File No. SR–NASD–93–49.

[3] See FIPS Approval Order, *supra* note 1, 57 FR 16431 at n. 43.

FIPS service desk to report trades in FIPS securities and other high yield bonds effected in the OTC market. In order to be eligible to use the FIPS service desk, the member must not have access to a FIPS terminal and average five or fewer trades per day in high yield securities, inclusive of FIPS securities, during the previous calendar quarter.

The NASD will endeavor to periodically review the FIPS fee structure in light of the utilization of the system, the costs of past and future enhancements to the system, the costs of operating the system, the volume of OTC transactions in high yield bonds, and the demand for FIPS quotation and transaction information, among other things. These reviews will ensure that the FIPS fees are properly related to the costs associated with operating FIPS.

The NASD believes that the proposed rule change is consistent with section 15A(b)(5) of the Act. Section 15A(b)(5) requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Association operates or controls. Specifically, the FIPS fee structure reflects a thorough analysis by the NASD to ensure that the fees assessed by the NASD in connection with the use and operation of FIPS are properly related to the development and operational costs of FIPS. Moreover, the NASD will periodically review the FIPS fee structure to ensure that the fees are reasonable and equitably allocated.

B. Self-Regulatory Organization's Statement on Burden on Competition

Te NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder because the proposal establishes or changes a due, fee, or other charge imposed by the NASD. At any time within 60 days of the filing of the rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of this publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22286 Filed 9–10–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19687; No. 811–3328]

American Express Variable Annuity Fund, Inc.

September 7, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: American Express Variable Annuity Fund, Inc. ("Applicant").

RELEVANT 1940 ACT SECTION: Order requested under Section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on June 30, 1993 and amended on August 24, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 1, 1993, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o The Boston Company Advisors, Inc., Exchange Place, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Counsel, on (202) 272–2676, or Michael V. Wible, Special Counsel, on (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SES's Public Reference Branch.

Applicant's Representations

1. Applicant, a diversified open-end management company, filed a Registration Statement on Form N–1 pursuant to Section 8(b) of the 1940 Act on November 20, 1981 (File No. 2–74985).

2. On November 20, 1981, Applicant also filed its Registration Statement on Form N–1 pursuant to the Securities Act of 1933 and registered an indefinite number of shares of common stock. Applicant filed Pre-Effective Amendments No. 1 and No. 2 to its Registration Statement on July 9, 1982 and August 30, 1982, respectively. Applicant's Registration Statement was declared effective on September 13, 1982, and the public offering of its shares commenced immediately thereafter.

3. Applicant was incorporated in Maryland on November 17, 1981 as Shearson/American Express Variable Annuity Fund, Inc. On March 17, 1982, Applicant changed its name to Shearson/American Express Variable Annuity Money Market Fund, Inc. and

[4] 17 CFR 200.30–3(a)(12)(1989).

on July 1, 1982, changed its name to American Express Variable Annuity Fund, Inc.

4. Applicant's authorized capital stock consists of three billion shares of common stock, par value $0.01 per share, of which one billion shares were allocated to the Money Market Portfolio, and 250 million shares allocated to each of the following: Growth Portfolio; Income Portfolio; Government Securities Portfolio; Zero Coupon Bond Portfolio; and Managed Series Portfolio. Of the Portfolios' allocated shares, only the Money Market, Growth and Income Portfolios commenced operations. As of July 7, 1986, the date of liquidation of the Income Portfolio, the last Portfolio to hold assets, shares of all Portfolios of Applicant were available for purchase only be segregated investment accounts established by certain insurance concerns as an investment medium for tax deferred variable annuity contracts.

5. On June 1, 1986, the Board of Directors of Applicant authorized any and all actions necessary to effect the liquidation of the Applicant and the cessation of its financial operations.

6. As of June 30, 1986, there were: (a) 371,763.38 shares of common stock of the Income Portfolio outstanding, having a net asset value of $4,944,000 and a per share net asset value of $13.30; (b) 306,000 shares of common stock of the Growth Portfolio outstanding, having a net asset value of $4,670,000 and a per share net asset value of $15.26; and (c) no shares of common stock of the Money Market Portfolio outstanding. There are no other classes of securities of the Applicant outstanding. As of August 1, 1993, there were no shares of common stock outstanding.

Exhibit A to Applicant's application sets forth for the Money Market, Growth, and Income Portfolios a Statement of Assets and Liabilities, as of June 30, 1986:

	Money market	Growth	Income
Portfolio Securities:			
At Amortized Cost	$0	.....	.....
At Market Value	.....	$4,756,000	$5,013,000
Total Assets	140,000	4,761,000	5,052,000
Liabilities	140,000	91,000	108,000
Net Assets	0	4,670,000	4,944,000

7. In January, 1986, Fireman's Fund Insurance Company ("Fireman's Fund"), an equity investment of American Express Company, redeemed portfolio shares with a value of approximately $7.9 million, representing $6 million of original investment and $1.9 million of interest earned. On June 5, 1986, the remaining shares of the Money Market Portfolio were redeemed, and that Portfolio was liquidated. On July 2, 1986, Fireman's Fund and AMEX Life Assurance Company ("AMEX Life") redeemed approximately $3.1 million shares that they had invested in the Growth Portfolio, and that Portfolio was liquidated. On July 7, 1986, Fireman's Fund and AMEX Life redeemed approximately $3.2 million of shares that they had invested in the Income Portfolio, and that Portfolio was liquidated.

8. Applicant ceased all investment operations as of July 7, 1986, the date of liquidation of Income Portfolio. Information pertaining to the disposition of the Applicant's portfolio securities as of July 7, 1986 has not been recovered.

9. Applicant's annual report for fiscal year ended December 31, 1986, discloses that Growth Portfolio paid $5,477 in total brokerage commissions over that fiscal year, of which none was paid to any affiliated broker-dealer. No other portfolios of the Applicant incurred broker commissions during the fiscal year ended December 31, 1986, the last year in which any portfolio of Applicant held assets.

10. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of Applicant.

11. The expenses applicable to the liquidation of Applicant's assets were de minimis and were borne entirely by AMEX Life.

12. Applicant had no remaining assets and no debts or liabilities remain outstanding. Applicant is not a party to any litigation or administrative proceeding. There are no security holders of Applicant.

13. Applicant is not engaged, and does not propose to engage, in any business activities other than that necessary for the winding-up of its affairs.

14. Applicant intends to file Articles of Dissolution with the Maryland State Department of Assessments and Taxation to terminate its existence.

15. Applicant filed a final Form N–SAR on August 29, 1992. Prior to that date, all required filings of Form N–SAR had been made on a timely basis.

Applicant's Legal Analysis

1. Section 3(c)(1) of the 1940 Act excludes from the definition of an investment company any issuer whose outstanding securities are beneficially owned by not more than 100 persons and that is not making and does not propose to make a public offering of its securities.

2. Applicant represents that by virtue of the liquidation of each of its portfolios and the cessation of its financial operations, it ceased to have at least one hundred persons who are beneficial owners of its shares. Applicant is not making and does not propose to make a public offering of its securities. Applicant therefore represents that it is no longer within the definition of an investment company set forth in Section 3(c)(1) of the 1940 Act and has ceased to be an investment company within the meaning of Section 8(f) of the 1940 Act.

3. Applicant, thus, requests an order pursuant to Section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22285 Filed 9–10–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19685; 811–5161]

The Kotrozo Mutual Fund Group, Inc.; Application for Deregistration

September 7, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Kotrozo Mutual Fund Group, Inc.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on December 11, 1990, and amended on April 26, 1991, and August 23, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 4, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, The Kotrozo Mutual Fund Group, Inc., c/o Paul J. Roshka, Jr., O'Connor, Cavanagh, Anderson, Westover, Killingsworth & Beshears, One East Camelback Road, Suite 1100, Phoenix, Arizona 85012.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Prior to May 22, 1991, applicant, a diversified open-end management investment company, was an Arizona corporation. SEC records indicate that, on April 6, 1987, applicant filed a registration statement pursuant to section 8(b) of the Act, and registered an indefinite number of shares of Kotrozo Option Income Fund (the "Option Income Series"), a series of applicant. On August 12, 1987, applicant's registration statement was declared effective and applicant commenced its initial public offering of shares of Option Income Series. In 1988, applicant filed a post-effective amendment to register an indefinite number of shares of Kotrozo State and Federal Tax Free Income Fund (the "Tax Free Series"), another series of applicant. On November 7, 1988, the post-effective amendment was declared effective and applicant commenced its public offering of shares of Tax Free Series.

2. In connection with an SEC investigation of applicant and R.L. Kotrozo, Inc. ("Kotrozo"), staff of the SEC informed applicant's board of directors that, effective February 20, 1990, Kotrozo, applicant's investment adviser at the time, was no longer eligible to act as applicant's investment adviser. Accordingly, applicant entered into interim advisory agreements pursuant to rule 15a–4 under the Act with Analytic Management, Inc. ("Analytic Management") and Aquila Management Corporation ("Aquila") with respect to Option Income Series and Tax Free Series, respectively. These interim advisory agreements contemplated the acquisition of the assets of Option Income Series by Analytic Optioned Equity Fund, Inc. ("Analytic Fund"), a registered investment company advised by Analytic Management, and the acquisition of the assets of Tax Free Series by Tax Free Trust of Arizona (the "Tax Free Trust"), a registered investment company advised by Aquila.

3. At a special meeting of applicant's board of directors held on May 18, 1990, consistent with rule 17a–8 of the Act, all of applicant's directors adopted a resolution approving an Agreement and Plan of Reorganization and Liquidation for each of its series (collectively, the "Agreements"). The Agreements provided that substantially all of the assets of Option Income Series and Tax Free Series would be exchanged for shares of Analytic Fund and Tax Free Trust, respectively, on the basis of the relative net asset value of the respective series. The Agreements further provided that the shares of Analytic Fund and Tax Free Trust would be distributed *pro rata* to shareholders of Option Income Series and Tax Free Series, respectively, immediately after the exchange. In approving the Agreements, applicant's board considered the relatively small size of applicant's series and the corresponding high transaction and administrative costs, and the cost of future advisory services.

4. The Agreements also provided that applicant would establish a reserve for each series to provide for contingent or unknown claims, including any request for indemnification by applicant's president if the SEC brought a civil enforcement action against him. Each reserve also would be used to satisfy previously incurred but unpaid legal, accounting, operating, and dissolution expenses of applicant's respective series. Each reserve would be established with no more than 3% of the total net assets of the respective series.

5. Applicant distributed to its shareholders proxy materials dated June 28, 1990, relating to the transactions contemplated under the Agreements. At a special meeting of applicant's shareholders held on July 31, 1990, each series' shareholders approved the applicable Agreement, and applicant's shareholders approved the liquidation and dissolution of applicant. As of July 31, 1991, there were 119,945.002 outstanding shares of Option Income Series with an aggregate net asset value of $952,578.37, and per share net asset value of $7.94 and there were 2,669,014.679 outstanding shares of Tax Free Series with an aggregate net asset value of $25,237,278.85, and per share net asset value of $9.46. On August 1, 1990, the exchanges were consummated and the *pro rata* distributions were made, pursuant to the Agreements.

6. On August 2, 1990, applicant and the members of its board entered into liquidating trust agreements under which the reserves established for Option Income Series and Tax Free Series were distributed to Option Income Fund Liquidating Trust and Tax Free Fund Liquidating Trust, respectively, and the shareholders of each series received *pro rata* beneficial interests in the corresponding liquidating trust. Each liquidating trust's activities were limited to holding the assets transferred to it by applicant on behalf of its beneficiaries, enforcing the rights of the beneficiaries with respect to such assets, preserving and protecting the liquidating trust property, and providing for the orderly liquidation of the assets transferred to the liquidating trust.

7. The trustees of the liquidating trusts satisfied all of applicant's outstanding liabilities, debts, and obligations, and determined that the possibility of the indemnification claim described above no longer existed. Accordingly, on December 18, 1992, all remaining assets of the liquidating trusts were distributed in cash to the holders of their beneficial interests.

8. The expenses incurred in connection with the liquidation and dissolution of applicant totalled $491,100. Of this amount, $278,500 was borne by applicant and the balance was borne by Aquila, applicant's investment adviser. Expenses which were not

separately identified to one series were allocated between the series based on comparative assets (or, in the case of printing and proxy costs, comparative numbers of shareholders).

9. As of the date of the application, applicant had no debts, liabilities, or shareholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

10. Applicant filed Articles of Dissolution with the Arizona Secretary of State on May 22, 1991.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-22284 Filed 9-10-93; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Gorda Aero Service, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 93-9-4, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Gorda Aero Service, Inc., is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with Barbara P. Dunnigan, Air Carrier Fitness Division, P-56, Room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than September 20, 1993.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara P. Dunnigan, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2342.

Dated: September 3, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93-22212 Filed 9-10-93; 8:45 am]

BILLING CODE 4910-62-P

Federal Aviation Administration

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Portland International Jetport, Maine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge at Portland International Jetport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 13, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Thomas F. Valleau, Director, Transportation and Waterfront Facilities of the City of Portland at the following address: Portland International Jetport, 1001 Westbrook Street, Portland, Maine 04102.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Portland under § 158.23 of part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Soldan, Airports Program Specialist, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238-7614. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at Portland International Jetport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 16, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Portland was substantially complete within the requirements of § 158.25 of part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than November 12, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: January 1, 1994

Proposed charge expiration date: March 31, 2001

Total estimated PFC revenue: $12,642,000

Brief description of proposed project:

Impose Only Projects

Extend Terminal Ramp, Residential Soundproofing.

Impose and Use Projects

Expand Snow Removal Equipment Building, Install Guidance Signs, Conduct Airport Master Plan Update, Reconstruct West Ramp, Replace Baggage Carousels, Expand Gate 4, Terminal Expansion, Acquire Wheelchair Lift, PFC-Enhanced Bond Financing Costs.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Charter Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**".

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Portland International Jetport, 1001 Westbrook Street, Portland, Maine 04102.

Issued in Burlington, Massachusetts on August 30, 1993.

Vincent A Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 93-22279 Filed 9-10-93; 8:45 am]

BILLING CODE 4910-13-M

TREASURY DEPARTMENT

Senior Executive Service Departmental Performance Review Board; Membership

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the

Departmental PRB. The purpose of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions for which the Secretary or Deputy Secretary is the appointing authority. These positions include SES bureau heads, deputy bureau heads and certain other positions. The Board will perform PRB functions for other key bureau positions if requested.

COMPOSITION OF DEPARTMENTAL PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the PRB members are as follows:

Deborah M. Witchey, Acting Assistant Secretary (Management)—Chairperson
William E. Barreda, Deputy Assistant Secretary (Trade and Investment Policy)
Carlton L. Brainard, Assistant Commissioner (Management), U.S. Customs Service
Robert P. Cesca, Deputy Inspector General
Peter H. Daly, Director, Bureau of Engraving and Printing
Michael P. Dolan, Deputy Commissioner, Internal Revenue Service
Eugene H. Essner, Deputy Director, U.S. Mint
Dennis I. Foreman, Deputy General Counsel
William H. Gillers, Director, Office of Assets Forfeiture Financial Management
Richard L. Gregg, Commissioner, Bureau of Public Debt
Jean E. Hanson, General Counsel
Stephen E. Higgins, Director, Bureau of Alcohol, Tobacco and Firearms
Michael H. Lane, Deputy Commissioner, U.S. Customs Service
David C. Lee, Assistant Director (Administration), U.S. Secret Service
John W. Magaw, Director, U.S. Secret Service
Russell D. Morris, Commissioner, Financial Management Service
Gerald Murphy, Fiscal Assistant Secretary
Thomas P. O'Malley, Director, Management Programs Directorate
Marcus W. Page, Deputy Fiscal Assistant Secretary
Charlene J. Robinson, Director, Human Resources Directorate
Kenneth R. Schmalzbach, Assistant General Counsel (Administrative and General Law)
Charles Schotta, Deputy Assistant Secretary (Middle East and Energy Policy)
John P. Simpson, Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement)
Edwin A. Verburg, Director, Financial Services Directorate
George J. Weise, Commissioner, U.S. Customs Service

DATES: Membership is effective on September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Jack R. Howard, Department of the Treasury, Director, Office of Personnel Policy, Annex Building, room 4150, Pennsylvania Avenue at Madison Place, NW., Washington, DC 20220, Telephone: (202) 622–1530 or 622–1091 TDD.

This notice does not meet the Department's criteria for significant regulations.

Dated: September 2, 1993.

Deborah M. Witchey,

Acting Assistant Secretary (Management).

[FR Doc. 93–22331 Filed 9–10–93; 8:45 am]

BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Group Projects for International Visitor Grantees

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs, U.S. Information Agency (USIA) announces its intention to award ten grants of approximately $130,000 each to not-for-profit organizations arranging group projects for International Visitors traveling within the U.S.

DATES: Dates for the programs and deadlines for submission of each proposal are indicated in the individual program descriptions which follow. All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on the due date indicated. Faxed documents will not be accepted, nor will documents postmarked on the due date but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the deadline indicated. Grants should begin approximately four weeks prior to the project opening date.

ADDRESSES: Proposals should be submitted by the deadline to: U.S. Information Agency, Ref: International Visitor Group Projects, Office of Grants Management, E/XE, room 336, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should write or call Mr. Jay Taylor, Chief, Group Projects Division (E/VP), room 255, 301 4th Street, SW., Washington, DC 20547; telephone (202) 619–6285, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

Overview

Programs are authorized under Public Law 87–256, the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), "to increase mutual understanding between the people of the United States and the people of other countries." Pursuant to the Bureau's authorizing legislation, programs must maintain a non-partisan character and should be balanced and representative of the diversity of American political, social and cultural life. Programs must conform to all Agency requirements and guidelines and are subject to final review by the USIA contracting officer.

Guidelines

Subject to the availability of funds, USIA seeks separate proposals from non-profit organizations for programs for International Visitors traveling throughout the U.S. in seven Multi-Regional group projects, two Regional group projects and one Young African Leaders group project. Each is centered around a different theme. Participants in the projects will be foreign leaders or potential leaders selected by U.S. embassy committees abroad. Each group will consist of approximately 20 foreign visitors in addition to the three or four American escort officers, selected and funded by USIA, who accompany them.

Projects will be four to six weeks in length. Many programs begin in Washington, DC, with an orientation and overview of the issues and a central examination of federal policies regarding these issues. Openings in cities other than Washington, DC, may be proposed for substantive reasons. If Washington, DC is not the opening site, it should be included on the itinerary. Well-paced project itineraries often include programs in four to six communities, including the opening site. Project itineraries should include urban and rural small communities in distinctive geographical and cultural regions of the U.S. The programs should provide numerous opportunities for participants to experience the diversity of American society and culture. At appropriate points in the project, participants may be divided into

smaller, three or four-member teams for simultaneous visits to different communities, with subsequent opportunities to share their experiences with the full group. There should be numerous opportunities for "home hospitality" with Americans of diverse occupational, age, gender and ethnic groups. Some projects should include at least one opportunity for an overnight "homestay." The foreign participants should be provided opportunities to speak to student, civic and professional groups in relaxed and informal settings. For some projects, "shadowing" experiences with American professional colleagues may be proposed. Participants should have numerous opportunities for site visits and hands-on experiences relevant to project themes. Proposals should also allow time for participants to reflect on their experiences, share observations with project colleagues and visit cultural and touristic sites. In cities where such councils exist, arrangements for community visits must be made through the National Council for International Visitors (NCIV) and the network of its constituent councils throughout the U.S.

Proposed Budget

Proposals must include a comprehensive line item budget for which specific details are available in the application packet.

Application Procedures

To be eligible for consideration, organizations must be incorporated in the U.S., have not-for-profit status as determined by the IRS, and be able to demonstrate expertise in a field relevant to the theme of the project. Organizations with less than four years' experience in international exchange will not be eligible to compete for these grants. Experience in programming exchange visitors is desirable.

Interested organizations should write or call the Group Projects Division (address provided above) to request application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

Following are the preliminary project summaries for each project

Title: Ethnicity and Pluralism in American Politics
Type: EU Regional (English)
Dates: February 22–March 18, 1994
Proposal Due: November 9, 1993

Project Goals

—To demonstrate the role, influence and contributions of various minority groups in the American political process;
—To present a discussion of current issues confronting Americans as they attempt to accommodate the demands of a pluralistic and ethnically diverse society;
—To introduce participants to the rich diversity of American culture, including ethnic, religious, linguistic and racial groups.

Participants

This project is intended for government officials, journalists, politicians, academics and others with a professional interest in and responsibility for immigration, ethnicity and assimilation concerns, and the social welfare and political integration of minority groups.

Summary

For many countries in Europe, the ongoing international economic integration brings with it the need to accommodate the special needs and interests of newly-arrived immigrant groups and increasingly diversified populations. The solutions to be sought will affect such diverse areas as social welfare, the movement of labor across borders, national economies, investment, and political power shift. Throughout its history, the U.S. has faced such challenges and continues to address the dilemma of incorporating into the social and political fabric of the country an ever increasing number of special interest groups. The strength and resilience of the American political system rests in its reliance on a pluralistic structure. This project will explore the historical, political and cultural bases of American pluralism as well as current issues such as education, social welfare, political activism, and affirmative action. Participants will learn about the efforts of groups to pursue their particular economic, social and political agendas, while maintaining their cultural distinctiveness and about the political environment that not only allows but encourages them to do so.

The program will open in Washington with an introduction to American politics, emphasizing the role played by a variety of interest groups in influencing domestic as well as foreign policy. The opening session will provide an academic perspective on American political thought and practice. A specialist in demographics will give an overview of historical immigration and current population trends in the U.S. and their significance in the political process. Participants will then meet with representatives of Congressional Committees to discuss legislation such as the Immigration and Naturalization Control Act of 1990; with appropriate officials at the Departments of State, Health and Human Services, Justice and Labor; and with independent agencies such as the U.S. Commission on Civil Rights and the Equal Employment Opportunity Commission. They will also have the opportunity to discuss issues with association representatives, lobbyists and think tank scholars.

Outside Washington, the group's itinerary, reflecting regional balance, will take them to locations across the country in order to demonstrate the practical side of theoretical topics introduced in the Nation's Capital. They will have the chance to observe and discuss issues of political access and activism related to ethnic, religious, racial and linguistic affiliation. The program will address topics such as the bilingual education/multicultural curriculum debate, grassroots political organizing, the civil rights movement, gay rights issues, and immigration and the ethnic composition of communities.

Title: Debt and U.S. Capital Markets
Type: Multi-Regional
Dates: March 7–April 1, 1994
Proposal Due: November 30, 1993

Project Goals

—To highlight U.S. initiatives in working with developing nations to meet financial obligations;
—To enhance understanding of the U.S. economic system and the decision-making process in formulating U.S. economic assistance policy;
—To clarify U.S. perspectives on international economic relations and to provide an appreciation for the impact which U.S. domestic economic activities have on the world economic system.

Participants

This project is designed for government finance and trade officials, economic planners, private industry representatives, bankers, Chamber of Commerce officials, economics professors, and journalists who specialize in international, comparative, or U.S. economic policies and issues.

Summary

This program will give participants an in-depth look at U.S. policy toward debt reduction and private foreign investment, especially the Administration's efforts to reduce national debt and to provide debt relief to those nations willing to develop effective free-market reforms. Participants will learn about U.S.

domestic economic policies, especially measures taken to deal with trade and budget deficits. Also explored will be U.S. efforts to achieve international economic coordination and resolve current economic imbalances in the global system.

Initially, participants will receive an update from senior officials at the Department of the Treasury, Office of the Trade Negotiator, the Federal Reserve Bank and the Council of Economic Advisors on the status of the Uruguay round of GATT and on the progress of Third World debt negotiations through such vehicles as the Brady Plan. A briefing at the Agency for International Development will explain the objectives of U.S. assistance in general and provide insight into the complexities of resource allocation in the foreign aid process, emphasizing U.S. support for the structural adjustment process and discouragement of debt repudiation. Briefings by officials at OPIC will provide information on practical applications of privatization efforts worldwide and the role U.S. investment plays in helping these efforts succeed. At the World Bank, participants will look at U.S. assistance provided through multilateral organizations and discuss the range of available debt relief mechanisms, including debt swaps. A senior official will discuss factors inhibiting multinational consensus on international debt problems.

During group and small-team travel to different regions of the country, participants will visit regional economic development authorities and state-financed business incubators to see examples of practical, relevant U.S. experience in aiding small and medium enterprise development, credit financing, and job creation. In an academic setting, leading economists will discuss factors promoting stability in international economic relations and how market economics and privatization contribute to economic development. A technical seminar will provide participants with practical information on creating conditions to attract foreign capital and on dealing with those factors discourage foreign investors.

Home hospitality will be provided at several stops during the program.

Title: The Fourth Estate: The Media
Type: Young African Leaders (English/Portuguese)
Dates: March 7–April 15, 1994
Proposal Due: November 30, 1993

Project Goals

—To deepen understanding of the Constitutional, political, social and technical principles of journalism in the U.S.;
—To examine the impact of the media on the formulation and implementation of key U.S. foreign and domestic policies;
—To analyze the ethical issues inherent in reporting, the right to privacy, and balanced and accurate reporting; and
—To promote an appreciation of American culture and pluralism.

Participants

This project is designed for young African journalists (between 25 and 35 years of age) whose emerging talents and potential are recognized and who are expected to be influential in shaping the perceptions of and attitudes toward the U.S. in their home countries. The project is for Portuguese- and English-speaking editors, writers, announcers, producers, and instructors of mass communications. The project is not designed for filing of stories.

Summary

The project will be six weeks in length and will consist of six distinct program segments, including an initial week of orientation in Washington, DC, a week of regionally balanced team city visits, a week-long practicum with professional counterparts around the country, a week-long university-based seminar, a second week of team city visits, and a final week which will include a synthesis discussion and a final evaluation session.

The project will open in Washington with orientation briefings to introduce participants to American government, economy, society and culture. The week will also consist of introductory sessions on the role of a free press, journalistic ethics, the economics of mass media, and the international news flow. Meetings will be arranged to discuss the impact of the media on decision-making in U.S. foreign policy, especially American foreign policy towards Africa. Participants will meet with government officials to discuss media relations at the federal level and with representatives from the commercial and non-profit media.

Professional appointments will include VOA, WORLDNET, and the Washington Foreign Press Center. Other media organizations will include Accuracy in Media and the Reporters Committee for Freedom of the Press. A workshop should be scheduled at the Center for Foreign Journalists in Reston.

One week should involve visits to capital cities to examine policy-making at the state and local levels, and to examine relations between journalists and local government. In addition to large metropolitan newspapers, visits to small and medium sized operations will be arranged to allow interaction with local reports, editorial staff, administrators and readers.

Another week should be devoted to "shadowing" experiences with American counterparts in both print and broadcast media. This is an extremely important part of the program. The Portuguese-speaking participants should be in a city with a large Portuguese-speaking population which will allow them to have a one-on-one practicum. This period will also allow each visitor to have an opportunity to address an American audience about his/her country which is a vital part of the program.

A university week will permit the participants to delve into current issues and trends in mass communications. Topics will include curriculum design, new technologies, desktop publishing, mass communications in multilingual societies, programming for minorities, and media innovations. They will also participate in campus activities and interact with faculty and students.

One week will take participants in small teams to medium-sized cities to explore the wide variety of radio and TV specialized programs, including all talk, religious, special language, and ethnic groups. The visitors should have the opportunity to attend a popular TV talk show. Relevant discussions should be arranged with major advertising agencies and audience research organizations.

Cultural events and home hospitality will be provided as often as possible.

Title: Environmental Protection and Sustainable Economic Development in the U.S.
Type: American Republics Regional (Spanish)
Dates: March 28–April 22, 1994
Proposal Due: December 21, 1993

Project Goals

—To familiarize participants with key environmental concerns as they relate to local economic and development issues in the U.S.;
—To introduce participants to public and private efforts in the U.S. to protect and sustain the environment;
—To enhance participants' understanding of the U.S. experience in developing standards and programs which address the problems of deforestation, water and air pollution, soil conservation, and uncontrolled urbanization;
—To acquaint participants with U.S. efforts to transcend national borders to improve levels of cooperation in protecting global resources.

Participants

This project is intended for public and private officials working in the environmental field, as well as academics, journalists. This project is intended for Spanish-speaking visitors.

Summary

Through site visits and discussions with public and private environmental officials, academics, business representatives, researchers, and media representatives, this project will provide participants with an overview of the efforts expended by Americans to protect and sustain the environment in light of economic development concerns, as well as efforts to expand cooperation with other countries. In addition to reviewing the U.S. experience, participants will have opportunities to exchange ideas concerning the issues of most concern in their countries. Participants will, throughout this project, look at efforts to correct errors of the past as well as plan for regenerative development for the future. Participants will look at new technologies and review methods, techniques and materials used in educating the public about development and the environment.

The project will open in Washington, DC with an introduction to the U.S. federal system of government and the roles played by federal, state and local governments in natural resource management, policy formulation and implementation. The opening week will also provide an overview of the role of national and international non-governmental organizations.

Outside of Washington, DC participants will travel to five distinctly different ecological regions, including one rural area, for a closer look at programs which address the problems of deforestation, water and air pollution, soil conservation, and uncontrolled urbanization. Through discussions with representatives of universities, advocacy groups and the media, participants will enhance their understanding of efforts to educate the public about problems as well as solutions to preserving the environment and sustaining development. There will be opportunities to discuss the business view of growth and environmental protection. National park management, ecotourism, energy conservation will also be reviewed. Participants will meet with state and local government representatives to learn of cooperative efforts with local citizens.

The project will provide a variety of formats, including panel discussions, for the exchange of ideas. The project will provide opportunities for participants to share issues and concerns in their countries. Home hospitality, sightseeing, and cultural activities will also be included.

Title: Museums and Art Centers in the U.S.
Type: Multi-Regional
Dates: March 28–April 29, 1994
Proposal Due: December 21, 1993

Project Goals

—To explore the traditional and current roles played by museums and art and science centers in American society and culture;
—To provide participants with exposure to current techniques and approaches to museum management in the United States;
—To provide opportunities for discussion aimed at increasing international cooperation and exchange of staff, publications, and exhibits.

Participants

The project is designed for museum and art exhibition professionals, including those who work in management positions involving administration, collections, conservation, exhibits, public relations, and education. It is also appropriate for artists and critics whose professional interests include the role of museums in society.

Summary

The rich and varied museum and gallery collections and resources in the nation's capital make Washington, DC the appropriate place to begin this project. By meeting with museum professionals from the Smithsonian Institution and other area museums, galleries, associations, artists, and art critics and writers, participants will gain an overview of the role of museums and art centers in American society as well as current trends in American art. Experts in various fields will lead discussions on: The functions of museums; U.S. government policies towards museums; the role of the government and the private sector in funding and promoting museums; training docents and other volunteers; new technologies used in museum management; education and public programs; curatorship; acquisitions; and collections preservation. Meetings with appropriate USIA officials involved in issues such as the protection and repatriation of cultural property will be included. There will be a special session to allow participants to discuss and show slides of their home institutions.

The group will then travel to regional art and science centers in a variety of cities and towns throughout the United States. Participants will observe the relationship between regional and ethnic museum collections and programs and the communities they are designed to serve. The variety of ways in which small museums raise funds, the recruitment and training of volunteer docents, and the design and implementation of community outreach programs will be explored. A discussion of the new wave of participatory, "hands-on" museums and science centers will be included since these new centers of learning are developing rapidly in the U.S. and throughout the world. An appropriate balance should be struck between the attention given to contemporary and more traditional museum collections and concerns. Discussions with local museum professionals will focus on topics such as management techniques, procurement, conservation public relations and education, exhibit design, security, and community programs. Participants will also visit several university museums and art departments in order to explore the roles played by academic institutions in promoting the arts in the community.

The itinerary will include New York for visits to some of the major museums there, as well as corporate collections and foundations which support the arts. Depending on the interests of participants, a university seminar on the role of art in society will be included.

This project will conclude in Seattle, Washington, with participation in the American Association of Museums annual conference, April 24–28, 1994. This fifth week of the program will be optional, so that these participants who need to return home after the fourth week will be able to do so without having missed any of the significant cities, cultural centers and collections scheduled to be visited prior to Seattle. The addition of this fifth week of programming should also help to slow the pace of this project and thus, create a less frantic sense of travel.

Home hospitality should be organized in each distinct region of the U.S. visited. A variety of hosts, including those in similar professions to the visitors and some representing entirely different lifestyles and concerns should be incorporated into this critical element of the program. All of these opportunities should provide informal settings which might encourage and foster discussions about everyday life in this country, the cultural values that shape our society, and the American approach to dealing with them.

Title: State and Local Government in the U.S.
Type: Multi-Regional
Dates: April 18–May 13, 1994
Proposal Due: January 11, 1994

Project Goals

—To increase understanding of the U.S. federal system of government;
—To outline how local and state governments function in the U.S. and how they interact with the federal government;
—To examine the separation of powers in state and local government and the division of authority and responsibility between the two levels of government;

Participants

This project is intended for elected officials, academicians, journalists and career civil servants interested in local government and public administration.

Summary

This project is designed to allow participants to observe and compare local and state governmental structures as well as the legislative and executive processes at the two levels of government. Participants in this project will be provided with an overview of the principal institutions of American government. The history and cultural context of governmental responsibilities, the interrelationships among national, state and local levels of government, and the separation of powers between the executive, legislative, and judicial branches will be carefully delineated.

The project will open in Washington, DC with lectures and discussions on U.S. Federalism, particularly the evolution of federal, state and local government relationships. The group should meet with representatives of the White House, the Congress, and the Departments of Commerce and of Housing and Urban Development to discuss liaison between those federal agencies and local government. Meetings may also be arranged at the Advisory Commission on Intergovernmental Relations, the National Academy of Public Administration and groups lobbying Federal agencies and Congress on behalf of local governments. The proximity of Annapolis, the historic capital of Maryland, provides an opportunity to combine professional appointments, recreation and sightseeing.

During travel around the U.S., the group will explore intergovernmental relationships through discussions and site visits to various forms of local government entities in geographically and socially diverse locales, allowing participants to understand the responsibilities of state and local governments and to see the range of configurations such governments may take. The itinerary will include visits to large urban areas, medium-sized cities and small towns in several different regions to meet with a variety of local authorities including city managers, fire and police officers, budget directors, waste management experts and health care providers. Emphasis will be placed on innovative and creative methods local governments have developed, including volunteerism, to provide services. A period of travel in small teams should be included.

At a state legislature, participants should sit in on discussions of key issues in local politics. Meetings with elected municipal officials will allow participants to contrast their role with that of the state-wide elected officials and to underscore the decentralization of the U.S. political system. Participants should meet with a range of leaders, including those representing non-governmental organizations, who influence local decision-making. In a rural state, such as Iowa, the group will learn about programs like Iowa's Farm Family Assistance Program and the potent influence of agricultural interests on state and national politics.

The project should include several days at an academic institution with strong programs on state and local government. For example, previous versions of this project have included very useful discussions at the Center for the Study of Federalism, Temple University.

Home hospitality will be emphasized to provide the participants with the maximum opportunity to meet with citizens from all walks of life and to hear their views on government. Participants will have opportunities to talk informally to local civic and professional groups, and to visit schools to talk with groups of teachers and students.

Title: U.S. Agriculture
Type: Multi-Regional
Dates: May 9–June 3, 1994
Proposal Due: February 8, 1994

Project Goals

—To highlight the roots of the U.S. economy which lie in the agricultural sector and the importance of the agrarian lifestyle to many U.S. citizens;
—To expose participants to domestic political, social and economic forces that influence U.S. agricultural trade and production policies;
—To explore initiatives designed to promote sustainable agriculture and conservation of resources;
—To analyze U.S. positions on key current world agricultural and trade issues in order to explain the U.S. decision-making process.

Participants

This project is designed for agricultural leaders, including government officials, agricultural researchers, farmers' union representatives and others in policy positions dealing with agriculture or agricultural trade.

Summary

Many Americans, regardless of their current occupation or lifestyle, have antecedents in the rural farmland of this country and maintain strong attachments to the land. Much of the strength of the nation stems from its self-sufficiency in feeding and clothing the population from the successful production of fibers and foodstuffs in the agricultural belt. This project will explore the current state of agriculture in the U.S. and afford participants opportunity to meet not only with agricultural policymakers, but also with present day practitioners of a proud and historic vocation.

In Washington, DC, the group will hear discussions reflecting the American perspective on major current agricultural issues, including farm subsidies, current bilateral and multilateral agricultural trade negotiations, and agricultural environmental problems. From meetings with Department of Agriculture officials, Congressional staff, the American Farm Bureau Federation, environmental advocates, trade policy experts, and representatives from the private sector and agribusiness associations, participants will hear in detail assessments of the present state of the American agricultural economy and its future prospects.

During travel throughout the country, participants will learn of the diversity of the U.S. agricultural sector and the many forms which farming takes in the U.S. from the vast tracts of grain in the "breadbasket" of America to the many belt farms surrounding metropolitan areas operated by "gentleman farmers" to the city gardenspaces and farmers' markets found in densely populated areas.

Participants will meet with farmers and their families, as well as with officials at cooperatives, farm bureaus, rural banks, and with journalists specializing in farming issues in order to learn how regional agricultural

problems influence federal agricultural policy and, ultimately, national foreign policy. Meetings will also be arranged with local elected officials, at state departments of agriculture, with experts at key universities and agricultural research stations, and with representatives of agribusiness. The program will include at least one opportunity to visit an institution involved in developing sustainable farming techniques such as the Land Institute or the Institute for Alternative Agriculture. Issues surrounding use of chemical fertilizers and pesticides, as well as irrigation methods and the importance of soil conservation will receive thorough examination.

Home hospitality and home stays will be emphasized in order to give participants multiple opportunities to meet with farmers and their families and to observe firsthand the impact which agriculture and the international trade in agricultural products have on agrarian families in this country and the way they voice their concerns to national policymakers.

Title: Entrepreneurship in the U.S.
Type: Multi-Regional
Dates: May 31–June 24, 1994
Proposal Due: March 1, 1994

Project Goals

—To further understanding of the social, economic, and political factors which influence and encourage private enterprise;
—To present the U.S. economy as one developed historically through equal access to economic opportunity;
—To provide examples of both large and small successful entrepreneurial efforts in the U.S.

Participants

This project is designed for private businesspersons, elected and appointed government officials, academics, and journalists with an interest in the American free market system.

Summary

Participants will survey current U.S. economic conditions and factors which influence and encourage private enterprise. Illustrative appointments, including site visits, lectures, and panel discussions should provide examples of the influence of labor, immigration, and private and public cooperation, as well as the successes and struggles facing small and large business. One case study providing an inside look at the historical development of a successful, well-known business venture would provide a more realistic view of the various challenges with which the typical American entrepreneur has been or is likely to be met.

In Washington, DC, participants will receive an overview of the structure of American government, the history and philosophy of the American free market system, federal economic policies, and current issues in entrepreneurship and the creation of small businesses. Participants will meet with representatives from the Departments of Commerce and Treasury, Congress, the U.S. Chamber of Commerce, the National Federation of Independent Businesses, the Small Business Administration, trade associations and think tanks, to learn about the growing importance of privatization in the U.S. economy. In addressing these stated objectives, to the extent that it is possible, appointments should be tailored to address specific economic issues and concerns relevant to the countries group participants represent.

Participants should be exposed to the most recent research focusing on what individual psychological characteristics contribute to successful entrepreneurship and discuss current theories on how to achieve business success. A specialist will be asked to illustrate the parallels between greater individual freedom in the market place and increased economic growth.

Beyond Washington, the group will observe examples of successful entrepreneurial efforts in other geographic regions of the U.S. A very successful appointment in previous projects has been a visit to a recipient of the Malcolm Baldrige Award for Excellence in American Business, and this should be incorporated into this program as well. Visits to state-sponsored small business "incubators", to learn more about this example of public and private cooperation were very well-received in past years. One program segment should be devoted to the process of financing, tax incentives for small business development, as well as the role of banks and venture capitalists. Participants should also be given exposure to the ways that the U.S. federal, state, and local governments attempt to foster the growth of small business. Opportunities to observe programs designed to assist women and other minorities start up a business should be included, but should not dominate the essence of this project. With the scaling down of the U.S. defense industry and in its place, the rapid growth of the high-tech electronic and bio-tech manufacturing industries, the participants should be exposed to what is current in these arenas, as well as their implications for future business concerns both in the U.S. and abroad.

Lastly, since many successful businesses are often not an entrepreneur's first attempt, discussions and analyses of failed efforts should also be reviewed.

For a more individualized, small-group experience, the visitors will be divided into teams at some juncture during the course of the program. Cities of equal character and size will be visited by each team, where similar aspects of the program topic will be covered. Team travel would also be the appropriate point for each participant to be given the opportunity for a "career shadowing" experience. Every effort should be made to identify an appropriate business contact with concerns similar to each visitor's interest or profession. In addition to having as individually tailored an experience as possible while still under the auspices of a group project, each visitor will also have information to share and contrast with that of fellow colleagues in the group.

Home hospitality should be organized in each distinct region of the U.S. visited. A variety of hosts, including those in similar professions to the visitors and some representing entirely different lifestyles and concerns should be incorporated into this critical element of the program. All of these opportunities should provide informal settings which might encourage and foster discussions about everyday life in this country, the cultural values that shape our society, and the American approach to dealing with them.

Title: Grassroots Democracy in the U.S.
Type: Multi-Regional
Dates: June 20–July 15, 1994
Proposal Due: March 29, 1994

Project Goals

—To provide a greater understanding of the democratic form of government in the U.S. and of citizens' involvement in their own governance;
—To observe the variety of citizen groups which interact with American elected officials at all levels to address legitimate, divergent interests;
—To illustrate the diversity of viewpoints held by Americans and how this diversity contributes to a dynamic and resilient pluralistic political system.

Participants

This project is intended for civic and community leaders, political party leaders, local government officials, journalists and educators.

Summary

The aim of this project is to demonstrate that citizen participation in

the political process is a means of harnessing the power of constructive criticism to effect change and to ensure stability in government. Participants will encounter a wide variety of special interest and citizen action groups which have arisen in the U.S. to articulate the social and economic pressures inherent in a multi-ethnic, market-oriented society.

The group will visit different geographic regions to see grassroots political organizing firsthand and to observe local citizens contributing to the debate on national and international concerns, including world peace, immigration, the environment, human rights, economic revitalization, consumer protection and accountability in government. Discussions will include voters' expectations for elected officials at all levels of government.

In cities and small towns located in diverse economic regions of the country, participants will meet with a wide variety of grassroots organizations such as neighborhood boards, professional associations, citizen action leagues, church groups and local chapters of single-issue advocacy organizations such as Mothers Against Drunk Driving or Sane/Freeze. They will observe the extensive range of ways in which American citizens can become involved in the political process and advocate their particular cause or viewpoint. Additionally local leaders of demographic groups such as AARP, the NAACP, and the National Organization of Women will address the group on their grassroots activities to promote policies beneficial to their members.

In a state capital with a sitting legislature, participants will attend a public hearing on bills being considered by lawmakers and meet with elected officials to hear about their efforts to ensure that all viewpoints are accommodated during the policy making process. The group will observe the input citizens can make on public policy through the processes of initiative and referendum, as well as through use of the media, both free and paid. Home hospitality will be a major component of this project.

In Washington, DC, meetings with academics and think tank specialists will center on factors that shape the participatory nature of democracy in a pluralistic society. At the national headquarters of selected special interest groups, participants will learn the impact that local and regional outlooks have on national policy-making and they will learn more about the philosophy and techniques of citizen action groups, including those related to coalition-building, fund-raising, lobbying Congress and other government officials, and to drafting legislation. The group will meet with members of Congress or staff to discuss the pressures on Congress from its various constituencies and the means by which the conflicting demands of these groups are accommodated. The participants will be briefed at federal agencies such as the Environmental Protection Agency and the Consumer Product Safety Commission, bodies formed as government's response to civic action and advocacy.

Title: Community Service in the U.S.
Type: Multi-Regional
Dates: July 18–August 12, 1994
Proposal Due: April 26, 1994

Project Goals

—To illustrate how the values of fairness and equal opportunity underlie American society and contribute to a widespread commitment to volunteer service;
—To explore the role of voluntary service as a way of addressing the many social problems faced by a rapidly changing society;
—To provide information on planning, designing, managing and developing volunteer programs;
—To facilitate the exchange of ideas and experiences between volunteer organizations in the U.S. and those in participants' home countries.

Participants

This project is intended for community leaders who are active in volunteer work, administrators of volunteer programs, and scholars and professionals who are interested in citizen activities and community development.

Summary

This project is designed to illustrate how strong ethical, social, and moral values form the basis for the vast array of human services offered in America through the efforts of unpaid individuals. Additionally, emphasis will be placed on the non-monetary benefits which these individuals realize through their volunteer efforts such as enhanced self esteem and greater social awareness.

In Washington, DC, the program will provide an overview of the American tradition of volunteerism, government and corporate efforts to promote voluntary service in community development, and the many types of private volunteer programs throughout the country. The overview will also provide background on the educational, political, economic and social systems of the U.S., with an emphasis on how they encourage volunteer service. Appointments will be scheduled at Vista, the Peace Corps, and the President's Commission on Volunteerism, as well as possible visits to programs for the homeless or people living with AIDS. A specialist in the field will describe how U.S. tax incentives stimulate charitable donations by both corporations and individuals and how laws encourage tax-exempt organizations to exist for the public benefit.

Beyond Washington, the participants should discuss issues involved in creating and administering volunteer programs, with special emphasis on fund-raising and volunteer recruitment and training; the benefits which voluntary service contributes to community and personal development, emphasizing the creation of community partnerships that cross racial, cultural and religious lines; the skills which individuals acquire in the areas of teamwork and goal-setting; skills which contribute directly to advancement in paid positions, especially for women and minorities. Participants should have opportunities to share information on volunteer efforts in their home countries with their colleagues and American counterparts. During the visits to cities and small towns in different regions of the country, participants should have opportunities to work side-by-side with American volunteers and become familiar with the daily operations of volunteer organizations. Participants will also learn about the role volunteer organizations such as Common Cause and League of Women Voters play in providing avenues for citizen participation in the political process and in increasing governmental accountability. Participants should also visit a public action lobbying office.

For a more individualized, small group experience, the visitors will be divided into teams at some point during the course of this program. Cities equal in character and size will be visited by each team and similar aspects of the program topic will be covered. In this way, participants will have new experiences to share with their fellow colleagues when the teams are reunited, and they will have the opportunity to compare and contrast how certain subject areas are addressed in these different locations.

As the NCIV network is so fundamental to the USIA IV program, the importance of this organization will be highlighted as the project unfolds across the country. In addition, home hospitality invitations with professional colleagues and Americans from all walks of life will provide informal

settings for further discussions of legal and social issues and the American approaches in dealing with them.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines herein and in the application packet. Eligible proposals will be forwarded to panels of expert USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. *Quality of program idea:* Proposals should exhibit originality, substance, rigor, and relevance to Agency mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity. Program Agency and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet with program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Value to U.S.-Partner Country Relations:* Assessments will be made by USIA's geographic area desks and overseas officers of the needs, potential impact and significance in the partner country(ies).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Track Record/Ability:* Proposals should demonstrate a track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

8. *Cost-effectiveness:* The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

Notice: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through USIA procedures.

Notification

All applicants will be notified of the results of the review process approximately six weeks prior to the project's opening date. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: September 3, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–22266 Filed 9–10–93; 8:45 am]

BILLING CODE 8230–01–M

[Announcement Number E/P–94–9]

Secondary School Exchange Initiative; Academic Year Inbound

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The United States Information Agency (USIA) invites applications from U.S. educational, cultural, and other not-for-profit institutions to arrange school placements, homestays and programming for high school students from the Newly Independent States of the former Soviet Union (NIS) and to supervise them during academic year 1994–95. This program is sponsored under the Secondary School Exchange Initiative as originally authorized under the Freedom Support Act of 1992. Funding for the program is subject to the availability of a Congressional authorization and appropriation.

This is a request for proposals for two categories: (1) The academic year program inbound only; (2) intensive English training. Organizations may submit proposals for either category or both. Requests for proposals in support of other youth exchange programs with the NIS are being published separately

DATES: Deadline for proposals: All copies of proposals for grants under this request must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, November 19, 1993.

Faxed documents will not be accepted, nor will documents postmarked on November 19 but received at a later date. It is the responsibility of each grant applicant to ensure that its proposal is received by the above deadlines. Grant funding should be available after March 1, 1994 in support of a program in which participants will be arriving in July.

ADDRESSES: The original, 4 fully tabbed copies and 10 copies (Tabs A–D) of the completed application, including required forms, should be submitted in the format described in the Bureau's application package and mailed to: U.S. Information Agency, Ref: Secondary School Initiative—Academic Year Inbound, Grants Management Division, E/XE, 301 4th Street SW., rm. 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact David Dallas, Division for the Secondary School Initiative, E/PY, room 357, (202) 619–6299; FAX (202) 619–5311, to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Overall authority for these exchanges is contained in the Freedom Support Act (Pub. L. 102–391).

Overview

Grant funding is intended to provide an opportunity for students aged 15 to 18½ from the following countries to live with a host family, attend high school, and experience community life in the United States: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgystan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Students will be selected through a process administered and funded separately.

This grant competition does not include a provision for the placement organization to recruit and select participants. Proposals are also invited

for intensive English training for a portion of the students.

Guidelines

The purposes of this program are: To place pre-selected high school students from NIS countries in the U.S. to study and live for up to one academic year; to place the students in qualified host families and welcoming schools; to provide English and intercultural training to ensure that all students are able to function in their host communities; to enable participants to have program enhancements that give them a broader view of the society and culture of the U.S.; and to promote mutual understanding between the people of the NIS and the U.S.

The administration of this program has been divided into four parts: 1. Recruitment, selection, pre-departure logistics, international travel and orientation; 2. Placement, supervision and program enhancements during the school year; 3. intensive English and intercultural training for some participants; 4. Washington, DC enhancement program. Grants to organizations to administer components one and four are being awarded separately.

Note: Each student will have a 7-day Washington, DC enhancement program scheduled during the months of November through February for all students. Placement organizations need not plan a mid-year program nor budget for the Washington program.)

A. Placement, Supervision and Programming

The following factors should be considered in preparing proposals:

—Placements will be for one full academic year. It is anticipated that approximately 20 organizations will be funded to provide placement for at least 1,100 students. The final number of participants is subject to the availability of funding.

—Organizations may bid on placing no fewer than 15 students. There is no maximum number of placement slots; however, organizations must demonstrate the capacity to secure quality homestays and school placements for the number of students on which they are bidding in conformance with the regulations governing J visas for secondary school students.

The proposal should include a description of the process your organization uses to identify and screen potential host families, as well as your system for making school placements.

—Placements will be spread all across the U.S. Organizations have the option to (a) disperse students widely or (b) concentrate groups of students in clusters who will live within a two-hour driving radius of each other. The purpose of clustering is to facilitate periodic gatherings for ongoing orientation, excursions and cultural programming, as well as supervision and feedback. All proposals should identify the target regions, states and/or communities in which placements will be sought.

Proposals using option (a) should include a justification for not using the cluster model and explain your placement philosophy. Proposals using option (b) should: Specify the cluster size; specify likely locations; and include a description of how clustering will affect the program, such as scheduling periodic gatherings of the students. In the latter case, a sample schedule of gatherings and topics or themes to be addressed should be included.

—Organizations, regardless of the placement plan, may propose periodic gatherings of students locally, regionally, or nationally for ongoing orientation, excursions and cultural programming, and supervision and feedback. The proposal should include a tentative itinerary for a sample meeting.

The organization's approach to orientation once the students are in the US and for re-entry training should be described. (**Note:** Pre-departure orientation is being administered under the separate recruitment/selection grant noted above.)

B. Intensive English and Cross-Cultural Training

Organizations are invited to submit proposals to provide a 4-week intensive course in English as a second language and an introduction to US society and culture. It is anticipated that at least 300 students will require this training. Organizations may bid on a portion or all of these students. USIA will likely award more than one grant for this purpose. The following factors should be discussed in the proposal:

—The proposal should describe: your organization's approach to and design for the training; the mix of classroom and extracurricular activities; and the use of dormstays vs. homestays.

—Testing instruments should be used when the students arrive and at the completion of their program. Other methods of measuring the students' progress should be described.

—Describe the criteria for selecting teaching staff.

—Describe how students will be supervised. It is the responsibility of the training organization to communicate with each student's placement organization on matters relating to the student's welfare and possible placement issues.

Airfare to and from the language training site will be paid under the separate grants to the organizations administering recruitment and selection.

Proposed Budget

Organizations must submit a comprehensive line item budget. Details are available in the application packet. Grants awarded to eligible organizations with fewer than four years of experience in conducting international exchange programs will be limited to $60,000. Organizations should be familiar with OMB Circulars A110, A122 and A133 on cost accounting principles. Organizations bidding on both categories—placement and ESL training—must submit separate budgets and proposals for each.

Cost sharing is encouraged. Cost sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as cost to be paid by the federal government. Such records are subject to audit.

The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E. Cost Sharing and Matching should be described in the proposal. In the event the recipient does not provide the minimum amount of cost sharing as stipulated in the recipient's budget, the Agency's contribution will be reduced in proportion to the recipient's contribution.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contract offices. Proposals may also be reviewed by the Agency's Office of the General Counsel.

Funding decisions are at the discretion of the Associate Director of Educational and Cultural Affairs.

Final technical authority for grant awards resides with the Agency's Office of Contracts.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality of the Program Idea: Proposals should exhibit originality, substance, rigor and relevance to Agency mission and adherence to the criteria and conditions described above.

2. Reasonable, Feasible, and Flexible Objectives: Proposals should clearly demonstrate how the institution will meet the program's purposes as outlined in this RFP.

3. Multiplier Effect/Impact: Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual linkages.

4. Cost Effectiveness: The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

5. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

6. Institution's Track Record/Ability: Proposals should demonstrate a track record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). The Agency will consider the past performance of prior grantees and the demonstrated potential new applicants.

7. Follow-on Activities: Proposals should be provided a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

8. Evaluation Plan: Proposals should provide a plan for evaluation by the grantee institution.

9. Geographic Diversity: The Agency will seek to provide geographic diversity within the NIS and the U.S. through this program.

10. Organizational Restrictions: The Agency will need to consider any restrictions an organization may have on their acceptance of students for the placement program. If no restrictions are mentioned and explained in the proposal, the organization is obligated to accept any participant assigned by the Agency.

11. Organizational Standing: An organization submitting a proposal should be in good standing with USIA and the Council on Standards for International Educational Travel.

12. English Training: The quality of the program proposed and the cost will be judged.

13. Re-entry Training: The proposal should demonstrate the organization's understanding of the importance of re-entry training and describe the content of the proposed program.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about March 1, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: September 3, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–22265 Filed 9–10–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 175
Monday, September 13, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), U.S.C. 552b:

DATE AND TIME: September 15, 1993, 10:00 a.m.

PLACE: 825 North Capitol Street NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro 985th Meeting—September 15, 1993 Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 7274–023, Town of Wells, New York
CAH–2.
Project No. 6624–008, Alfred D. Huey
CAH–3.
Project No. 9732–009, Brookside Hydroelectric Company, Inc.
CAH–4.
Docket No. RM93–17–000, License Termination
CAH–5.
Project No. 3258–002, Joseph M. Keating
CAH–6.
Omitted
CAH–7.
Project No. 2741–007, Kings River Conservation District

Consent Agenda—Electric

CAE–1.
Docket No. ER93–493–000, Milford Power Limited Partnership
CAE–2.
Docket No. EF93–5011–000, United States Department of Energy—Western Area Power Administration (Central Valley Project)
CAE–3.
Docket No. ER93–385–000, Northern States Power Company (Minnesota)
CAE–4.
Docket Nos. ER90–349–000, ER90–406–000 and ER91–21–000, Northern States Power Company (Minnesota and Wisconsin)
CAE–5.
Docket No. ER93–160–001, Puget Sound Power & Light Company
CAE–6.
Docket Nos. ER92–436–004 and EL92–29–003, Florida Power Corporation
CAE–7.
Docket No. EL92–22–001, City of Lebanon, Ohio v. Cincinnati Gas & Electric Company
CAE–8.
Docket No. ER84–560–033, Union Electric Company
CAE–9.
Docket Nos. ER92–236–004 and EL92–13–003, Delmarva Power & Light Company
CAE–10.
Omitted
CAE–11.
Docket Nos. ER76–205–011 (Phase II), ER79–150–023 (Phase II), ER81–177–017, ER82–427–012, ER84–75–018, ER86–271–004, ER87–483–002, ER91–201–002 and FA85–67–004, Southern California Edison Company
Docket No. ER93–200–001, Appalachian Power Company
Docket No. ER93–191–000, Alabama Power Company
CAE–13.
Docket Nos. ER93–594–001, ER93–595–001 and ER93–604–001, Pennsylvania Power and Light Company
CAE–14.
Omitted
CAE–15.
Docket No. ER91–457–004, Central Maine Power Company
Docket Nos. ER92–286–003, ER92–484–002, ER92–512–002, ER93–130–002, New England Power Company
CAE–16.
Docket No. EL92–38–001, Villages of Andover, Bergen, Bonnville, Fairport, Freeport, Greenport, Lake Placid, Penn Yan, Rockville Centre, Solvay, and Westfield, City of Jamestown, and Town of Massena, New York v. Power Authority of the State of New York
CAE–17.
Docket No. AC92–163–001, Wisconsin Electric Power Company
CAE–18.
Docket Nos. ER92–2–001, ER92–3–001, ER92–4–001, ER92–7–001, ER92–14–001, ER92–27–001 and ER92–443–001, United Illuminating Company
Docket No. ER92–110–002, PacifiCorp Electric Operations
Docket No. ER92–361–003, Green Mountain Power Corporation
Docket No. ER93–413–001, Niagara Mohawk Power Corporation
Docket No. ER92–544–001, Montaup Electric Company
Docket No. ER92–601–001, Entergy Power, Inc.
Docket Nos. ER92–770–001 and ER92–771–001, Interstate Power Company
Docket No. ER93–222–001, Northeast Utilities Service Company
Docket No. ER93–224–001, Public Service Company of New Hampshire
Docket No. ER93–338–001, Rochester Gas & Electric Company
Docket Nos. ER93–491–001 and ER93–513–002, Idaho Power Company
CAE–19.
Docket Nos. EC92–21–003 and ER92–806–003, Entergy Services, Inc. and Gulf States Utilities Company
CAE–20.
Docket No. EG93–62–000, Lakewood Cogeneration, L.P.
CAE–21.
Docket No. EG93–60–000, Dominion Management Argentina S.A.
CAE–22.
Docket No. EG93–61–000, Hidroelectrica El Chocon S.A.
CAE–23.
Docket No. EG93–59–000, Blue Diamond Power Partners L.P.
CAE–24.
Docket No. EL91–28–000, Carolina Power & Light Company
CAE–25.
Docket No. RM93–18–000, Ratemaking Treatment of Special Assessments Levied Under the Atomic Energy Act of 1954, as Amended by Title XI of the Energy Policy Act of 1992
CAE–26.
Docket No. RM93–18–001, Accounting Treatment of Special Assessments Levied Under the Atomic Energy Act of 1954, as Amended by Title XI of the Energy Policy Act of 1992
CAE–27.
Docket No. RM87–12–000, Cogeneration; Small Power Production—Notice of Public Conference and Request for Comments
Docket No. RM88–4–000, Regulations Governing Independent Power Producers
Docket No. RM88–5–000, Regulations Governing Bidding Programs
Docket No. RM88–17–000, Regulations Governing the Public Utility Regulatory Policies Act of 1978
CAE–28.
Docket No. RM93–24–000, Revision of Fuel Adjustment Clause Regulations Relating to Fuel Purchases From Company-Owned of Controlled Source
CAE–29.
Docket Nos. EL92–25–000 and EL93–30–000, Cities and Villages of Albany and

Hanover, Illinois; Alta Vista, Bellevue, Fairbank, Fredericksburg, Grafton, Guttenburg, Readlyn, Sabula and Strawberry Point, Iowa; and Rushford and St. Charles, Minnesota v. Interstate Power Company

CAE–30.
Docket Nos. EL91–56–000 and ER92–774–000, Maine Public Service Company

CAE–31.
Docket No. ER85–477–014, Southwestern Public Service Company

Consent Agenda—Oil and Gas

CAG–1.
Docket No. RP93–174–000, Northwest Pipeline Corporation

CAG–2.
Docket No. RP93–99–000, Colorado Interstate Gas Company

CAG–3.
Docket No. RP93–14–000, Algonquin Gas Transmission Company

CAG–4.
Docket No. FA91–34–001, Tennessee Gas Pipeline Company

CAG–5.
Docket No. RP93–106–002, Texas Gas Transmission Corporation

CAG–6.
Docket No. TA91–1–31–002, Arkla Energy Resources Company, a Division of Arkla, Inc.

CAG–7.
Docket No. RP85–122–021, Colorado Interstate Gas Company

CAG–8.
Docket Nos. RP93–56–002, RP93–86–002 and RP93–139–002, Transwestern Pipeline Company

CAG–9.
Docket No. OR89–2–003, *et al.*, Trans Alaska Pipeline System
Docket No. IS89–7–004, *et al.*, Amerada Hess Pipeline Corporation
Docket No. IS89–8–004, *et al.*, ARCO Transportation Alaska, Inc.
Docket No. IS89–9–004, *et al.*, BP Pipeline (Alaska), Inc.
Docket No. IS89–10–004, *et al.*, Exxon Pipeline Company
Docket No. IS89–11–004 *et al.*, Mobil Alaska Pipeline Company
Docket No. IS89–12–004, *et al.*, Phillips Alaska Pipeline Corporation
Docket No. IS89–13–004, *et al.*, Unocal Pipeline Company

CAG–10.
Docket Nos. RP90–137–010 and TM93–6–49–003, Williston Basin Interstate Pipeline Company

CAG–11.
Docket Nos. RM87–34–071, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (In re Tennessee Gas Pipeline Company)
Docket Nos. TA91–1–21–004 and TM91–8–21–004, Columbia Gas Transmission Corporation
Docket No. RM85–1–185, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol
Docket Nos. CP87–115–010, Tennessee Gas Pipeline Company

CAG–12.
Omitted

CAG–13.
Omitted

CAG–14.
Docket No. AI93–5–001 Accounting for Income Taxes Under SFAS 109

CAG–15.
Omitted

CAG–16.
Docket Nos. OR92–8–002, OR93–5–000, OR93–6–000, IS92–3[illegible]–003 and IS92–6–002, SFPP, Inc.

CAG–17.
Docket Nos. RP92–133–000 and RP93–140–000, Gas Research Institute

CAG–18.
Docket No. GP93–6–000, Railroad Commission of Texas, Tight Formation Determination, Unit Petroleum Company, FERC No. D93–13959

CAG–19.
Docket No. GP93–7–000, Railroad Commission of Texas, Tight Formation Determination, Unit Petroleum Company, FERC No. D93–13959

CAG–20.
Docket Nos. CI73–334–004, CI73–476–002, CI74–610–002, CI80–133–003 and CI87–746–000, Mobil Exploration and Producing North America, Inc., Mobil Oil Exploration and Producing Southeast, Inc. and ANR Pipeline Company

CAG–21.
Docket No. RS92–9–005, Questar Pipeline Company

CAG–22.
Docket No. RS92–79–002, Sea Robin Pipeline Company

CAG–23.
Docket No. RS92–1–007, ANR Pipeline Company

CAG–24.
Docket No. RS92–25–006, Trunkline Gas Company

CAG–25.
Docket No. RS92–52–004, Viking Gas Transmission Company

CAG–26.
Docket Nos. RS92–86–008, RP92–108–007 and RP92–137–017, Transcontinental Gas Pipe Line Corporation

CAG–27.
Docket No. CP92–186–001, Blue Ridge Pipeline Company
Docket No. CP93–187–001, Transcontinental Gas Pipe Line Corporation

CAG–28.
Docket No. CP92–165–002, Texas Eastern Transmission Corporation

CAG–29.
Docket No. CP87–75–009, Tennessee Gas Pipeline Company

CAG–30.
Docket No. CP92–459–001, Texas Eastern Transmission Corporation
Docket No. CP92–460–001, Trunkline Gas Company

CAG–31.
Docket No. CP86–492–009, Moraine Pipeline Company

CAG–32.
Docket No. CP91–2206–006, Tennessee Gas Pipeline Company

CAG–33.
Docket Nos. CP92–182–004 and 005, Florida Gas Transmission Company
Docket Nos. CP92–415–002 and 003, Transcontinental Gas Pipe Line Corporation and Florida Gas Transmission Company

CAG–34.
Docket Nos. CP89–7–023 and CP89–710–009, Transcontinental Gas Pipe Line Corporation

CAG–35.
Docket No. CP93–283–000, Williston Basin Interstate Pipeline Company

CAG–36.
Docket No. CP93–100–000, Texas Eastern Transmission Corporation

CAG–37.
Docket No. CP93–251–000, Northern Natural Gas Company

CAG–38.
Docket Nos. CP93–303–000 and 001, Transcontinental Gas Pipe Line Corporation

CAG–39.
Omitted

CAG–40.
Docket No. CP93–351–000, Moraine Pipeline Company and Natural Gas Pipeline Company of America
Docket No. RS92–44–000, Moraine Pipeline Company

CAG–41.
Docket No. RP93–3–004, Arkla Energy Resources Company

CAG–42.
Docket Nos. CP93–574–000, Mid-Louisiana Gas Company

Hydro Agenda

H–1.
Docket No. RM93–23–000, Project Decommissioning at Relicensing. Notice of inquiry.

H–2.
Docket No. RM93–25–000, Use of Reserved Authority in Hydropower Licenses to Ameliorate Cumulative Impacts. Notice of proposed policy statement.

Electric Agenda

E–1.
Omitted

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Restructuring Matters

RS–1.
Omitted

RS–2.
Docket Nos. RS92–64–001, 002, 003, and 004, High Island Offshore System
Docket Nos. RS92–88–001, 002, 005 and 006, U–T Offshore System. Order on compliance and rehearing.

RS–3.
Omitted

RS–4.
Docket Nos. RS92–48–000 and 001, Riverside Pipeline Company, L.P. Order on compliance and rehearing.

RS–5.
Omitted

RS–6.
Docket Nos. RS92–43–000, 002, 004, 005 and RP93–4–009, Mississippi River

Transmission Corporation. Order on compliance and rehearing.

RS–7.

Docket Nos. RS92–14–005, 006, CP93–39–001, CP93–147–001, CP93–149–001, G–1391–001, RP93–72–001, CP88–197–006, CP88–388–006, CP87–5–029, CP87–312–017, CP87–313–004, CP87–314–004, CP84–306–005, CP80–223–005, CP92–397–002, CP91–554–009, CP92–491–005, CP61–198–001, RP89–124–006, RP91–51–011, RP91–98–007, RP91–125–004, TM91–5–22–002, TM91–6–22–005, TM91–7–22–003, TM91–9–22–003, TM92–1–22–004, RP91–222–004, RP92–7–001, TM92–3–22–002, TM92–4–22–001, TM92–5–22–003, TM92–7–22–001, TM92–10–22–002, RP93–69–002, TM93–3–22–001, TQ93–3–22–002, TQ93–4–22–002, TQ93–3–22–001, TF93–3–22–001, TF92–22–001, TF93–1–22–002, TQ93–1–22–001, TA92–1–22–003, TQ92–2–22–002, TQ92–3–22–001, TQ92–4–22–002, TQ92–1–22–002, TA91–1–22–007, TQ91–3–22–003, TQ91–4–22–001, TF91–2–22–001, TF91–1–22–001, TQ91–1–22–003 and TF91–2–22–002, CNG Transmission Corporation. Order on compliance and rehearing.

RS–8

Docket No. RS92–83–002, Tarpon Transmission Company. Order on compliance and rehearing.

RS–9.

Docket Nos. RS92–16–002, 003, RP91–187–010 and CP91–2448–004, Florida Gas Transmission Company. Order on compliance and rehearing.

RS–10.

Docket Nos. RS92–13–002, CP82–487–041, RP86–10–021, RP89–34–007, RP92–163–005, RP92–170–005 and RP92–236–003, Williston Basin Interstate Pipeline Company. Order on compliance and rehearing.

RS–11.

Docket No. RS92–18–004, Kentucky West Virginia Gas Company. Order on compliance and waiver.

RS–12.

Docket Nos. RS92–90–003 and 004, Wyoming Interstate Company, Ltd. Order on compliance and rehearing.

RS–13.

Omitted

RS–14.

Docket Nos. RS92–45–000, 001, 002 and 004 and 006, Natural Gas Pipeline Company of America. Order on compliance and rehearing.

RS–15.

Omitted

RS–16.

Docket Nos. RS92–72–001, 002 and 003, Ozark Gas Transmission System. Order on compliance and rehearing.

RS–17.

Docket Nos. RS92–11–000, 009, 010, 012, 013, RP88–67–068, *et al.* (Phase I/Rates), RP92–234–003, RP85–177–106, RP93–13–003, RP93–22–002, CP90–2154–005, RP88–81–022, RP88–221–016, RP89–255–005, RP90–15–003, RP90–119–016 and RP91–4–004, Texas Eastern Transmission Corporation

Docket No. RP93–65–001, Public Service Electric and Gas Company v. Texas Eastern Transmission Corporation. Order on compliance and rehearing.

III. Pipeline Certificate Matters

PC–1.

Reserved

Lois D. Cashell,

Secretary.

[FR Doc. 93–22397 Filed 9–9–93; 11:33 am]

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federal register

Monday
September 13, 1993

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Funding Availability for FY 1993: Invitation for Applications; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-93-3658; FR-3530-N-01]

Funding Availability (NOFA) for FY 1993; Invitation for Applications: Public Housing Development—MROP Activities

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1993 for Public Housing Development—MROP activities; invitation for applications.

SUMMARY: This NOFA announces the availability for FY 1993 funding, and invites eligible public housing agencies (PHAs) to submit development applications for MROP activities. ("MROP" stands for Major Reconstruction of Obsolete Public Housing.) No other types of applications will be accepted under this NOFA; a separate NOFA, applicable to the public housing development program, was published in the **Federal Register** on June 28, 1993 (58 FR 34670). This Public Housing Development—MROP Activities NOFA also provides instructions regarding the preparation and processing of applications. This NOFA is NOT applicable to the Indian housing program.

DATES: Applications are due at the HUD Field Office on or before 4:30 p.m., local time, on October 28, 1993. See Section III of this NOFA for further information on application submission. If an application is mailed to the Field Office, the PHA must clearly write "PUBLIC HOUSING DEVELOPMENT—MROP ACTIVITIES APPLICATION" on the outside of the envelope and obtain a return receipt indicating the date and time of delivery. The application deadline is firm as to date and hour. In the interest of fairness to all applicants, HUD will not consider any application that is received after the deadline. PHAs should take this into account and submit applications as early as possible to avoid risk of application ineligibility brought about by unanticipated delays or delivery-related problems. In particular, PHAs intending to mail applications must provide sufficient time to permit delivery on or before the deadline date. Acceptance by a Post Office or private mailer does not constitute delivery. Facsimile (Fax), COD, and postage due applications will NOT be accepted.

FOR FURTHER INFORMATION CONTACT: Janice Rattley, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4136, Washington, DC 20410. Telephone (202) 708-1800 (voice) or (202) 708-4595 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the OMB under the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers 2577-0033, 2577-0036, and 2577-0044.

I. Introduction

A. Authority

Section 5 of the United States Housing Act of 1937 (42 U.S.C. 1437c); and sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Public housing development regulations are published at 24 CFR part 941. The Catalog of Federal Domestic Assistance Program number is 14.850.

B. Fund Availability

In accordance with the Joint Statement of the Managers in Explanation of the Conference Agreement (see H.R. Rep. 103-165, pg. 31) on the Supplemental Appropriations Act of 1993 (Pub. L. 103-50, approved July 2, 1993), the Department is making available, through this NOFA, $60 million of the FY 1993 public housing development funds provided in the FY 1993 HUD Appropriation Act (Pub. L. 102-389, approved October 6, 1992) for MROP activities consistent with section 111 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992). The Department is to make these funds available on an expedited basis through notice in the **Federal Register**.

C. Fund Assignments

Section 213(d) of the Housing and Community Development Act of 1974 (HCD Act of 1974) requires that funds be allocated on a fair share basis, but this requirement does not apply to appropriations determined incapable of geographic allocation. Since the purpose of the allocation for public housing development—MROP activities is to reconstruct existing public housing for which the extent of need is not predictable by formula, the Department does not intend to fair share these funds. This determination was made on the basis of the exclusion of funds described in Operating Plans as incapable of geographic allocation, pursuant to the amendment of 24 CFR 791.403(b) published in the **Federal Register** on August 4, 1993 (cite to be inserted). Field Offices will rate threshold-approvable applications based on the criteria in Section IV.D of this NOFA. The Regional Offices shall rank applications in accordance with Field Office ratings and provide Headquarters a list, in rank order, reflecting Field Office ratings. Headquarters will minimize the effect of Field Office rating bias by using standard statistical techniques to adjust the rating scores within each Field Office and using the adjusted scores in the selection process. The Department, in its discretion, may choose to select a lower-rated application in order to increase national geographic diversity, and/or to increase the diversity of development types (high-rise buildings of five or more stories and those which include only low-rise buildings).

D. Eligibility

Applications for public housing development—MROP activities must be submitted by PHAs eligible for development funding which have the required local cooperation and legal authority to develop, own and operate public housing projects. Both Comprehensive Improvement Assistance Program (CIAP)-eligible and Comprehensive Grant Program-eligible PHAs may apply for these funds. The CIAP and Comprehensive Grant Programs are hereinafter referred to as "modernization." Applications will be determined eligible using the CIAP procedures outlined in Handbook 7485.1 REV-4, Chapter 3 (as modified by this NOFA). Applications must meet the threshold approvability requirements in Section IV.B of this NOFA, and will be rated on the Technical Review Factors listed on Section IV.D of this NOFA. In addition:

1. A development project for MROP activities must have long-term viability after completion and the annual contributions contract (ACC) for the project must remain in effect for 40 years. In determining viability, the PHA must have a comprehensive plan for MROP activities at the development for which the development funds for MROP activities are being requested.

2. A proposed MROP activities project must be a rental (not homeownership) project.

3. An "obsolete project or building" is one that has design or marketability problems that have resulted in:

a. Current vacancies of more than 25 percent of the units available for occupancy; or

b. (1) Estimated costs of the project (including any costs for lead-based paint abatement activities) that exceed 70 percent of the total current development cost limits for new construction of similar units in the area; and

(2) An occupancy density or a building height that is significantly in excess of that which prevails in the neighborhood in which the project is located, a bedroom configuration that could be altered to better serve the needs of families seeking occupancy to dwellings of the PHA, significant security problems in and around the project, or significant physical deterioration or inefficient energy and utility systems; and

c. The need to go to Step 3 of the viability review of the CIAP program (see paragraph 3–9c of CIAP Handbook 7485.1 REV–4).

4. A combination of MROP activities and modernization funds may be used within a project, but may not be used within the same units (or buildings, as applicable). For example, if an existing project consists of low-rise, row, and elevator buildings, an MROP activities development project could be approved to include all or some of the row units; with the balance of units included in a modernization project.

5. Management improvements are an eligible cost under MROP activities to the extent that such improvements are necessary to maintain the physical improvements resulting from the proposed redesign, reconstruction, or redevelopment.

F. Restrictions

1. If partial demolition/disposition is required:

a. A demolition/disposition application must have been approved before the MROP activities application may be approved; or

b. The application must have been submitted along with a Local Governing Body resolution approving a replacement housing plan, pursuant to section 18 of the U.S. Housing Act of 1937.

2. Conversion of units (by combining small units to make larger units or vice versa) must either be approved before an MROP activities application involving conversion may be approved, or an application for said conversion must have been submitted.

3. Funding provided for MROP activities at a project may not be used for total demolition/disposition of that project.

II. Application Process Overview

A. PHA application

A PHA applying for development funds for MROP activities shall prepare a CIAP application, as modified by this NOFA. The review process shall follow the CIAP procedures; however, once selected, the application shall be processed under public housing development procedures.

B. Application Processing

The Field Office will screen each application for completeness and will provide the PHA a 14-calendar-day opportunity to furnish missing technical information or exhibits, or to correct technical mistakes. Each application will then be subjected to a "pass/fail" threshold examination. Each passing application will be rated by the Field Office. Regional Offices will verify Field Office actions and rank-order applications for approval based on Field Office ratings.

C. Application Approval

Headquarters will perform a national ranking based on Field Office ratings and select applications for approval to the extent funds are available.

D. Disclosure of Information

The Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) prohibits advance disclosure of funding decisions. (See 24 CFR part 4, and the interim rule amending 24 CFR part 4, published on August 4, 1992, 57 FR 34246). Civil penalties related to advance disclosure are set out in 24 CFR part 30. Application approval/non-approval notifications shall not occur until the congressional notification process is completed.

E. Records Retention

Applications and materials related to applications (e.g., application scoring sheets, and notifications of selection/non-selection) will be retained in the appropriate Field Office for five years, and be available for public inspection in accordance with 24 CFR part 12.

III. Application Requirements

A. All Applicants

No more than one project (or portion of a project) may be proposed for MROP activities per application, although more than one application may be submitted by a PHA. Each application shall consist of an original and two copies, and must include the following:

1. *Cover letter.* The cover letter must identify the project proposed for MROP activities by its original project number (e.g., WY 22–2), and its total number of units (and buildings, if applicable). If fewer than the total number of units are being proposed, the cover letter shall describe the PHA's plans for the remaining units. If more than one application is submitted, the cover letter must state the PHA's priorities for funding. The PHA must include a statement of whether the PHA will accept fewer units.

2. *CIAP application—form HUD 52822.* The application must be signed and dated and include the information as specified in the form. No more than one project number shall be entered in Column 2.

3. *Narrative statement.* The narrative statement must address each of the technical review factors, the rating criteria, and the results of the PHA's viability review, unless the project (or portion) was reviewed previously under a comprehensive plan for modernization. The PHA shall indicate whether any management improvements are necessary for the viability of the project (i.e., necessary to maintain the physical improvements resulting from the proposed MROP activities); if any management improvements are considered necessary, the PHA statement shall address the extent to which such improvement is necessary.

4. *Demolition/disposition or conversion of units.* If, as part of the MROP activities, the PHA intends to demolish/dispose (demo/dispo) of some of the units or to convert units (combine small units to make larger ones, or vice versa), the PHA shall provide the date the demo/dispo or conversion was approved by HUD or the date the demo/dispo or conversion application was submitted. If the demo/dispo application has not yet been approved, the application for MROP activities that involves the demo/dispo of units must be accompanied by a Local Governing Body Resolution approving the replacement housing plan pursuant to section 18 of the Act. Development funds for MROP activities may not be used for total demo/dispo.

5. *PHA local cooperation and legal authority.* The PHA must submit evidence that it has the required local cooperation (copy of Form HUD–52481 covering the original development units) and any other State/local requirements are met, and that it has the required legal authority/is legally organized with a current (applicable) General Certificate (Form HUD–9009).

6. *PHA resolution in support of the application (Form HUD–52471).* Under this resolution, the PHA agrees to comply with all requirements of 24 CFR

part 941. These requirements include, among others: Nondiscrimination under the applicable civil rights laws; the requirements imposed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655); the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations at 24 CFR part 8; and section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and HUD's implementing regulations at 24 CFR part 135. Additionally, the PHA must include a statement that it will comply with the accessibility requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131), and its implementing regulation at 28 CFR part 35.

7. *Local governing body resolution (Form HUD–52472).* If front-end funds are requested, the PHA must submit a Local Governing Body Resolution/ Transcript of Proceedings (Form HUD–52472).

8. *Drug-free workplace.* The PHA must submit the Certification for a Drug-Free Workplace (Form HUD–50070) in accordance with 24 CFR 24.630.

9. *Certification for contracts, grants, loans and cooperative agreements (Form HUD–50071).* In accordance with section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the regulations at 24 CFR part 87, the PHA must certify that no federally appropriated funds have been paid or will be paid, by or on behalf of the PHA for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

10. *Form SF–LLL, disclosure of lobbying activities.* Also, in accordance with the Byrd Amendment and the regulations at 24 CFR part 87, the PHA must complete and submit Form SF–LLL if funds other than federally appropriated funds have been paid or will be paid by or on behalf of the PHA for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant or loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modifications of any Federal contract, grant, loan, or cooperative agreement.

11. *Disclosure of government assistance and identity of interested parties (Form HUD 2880).* The PHA must submit the Applicant/Recipient Disclosure/Update Report (Form HUD–2880) in accordance with the requirements of 24 CFR part 12, subpart C.

IV. Field Office Processing of Applications

A. Initial Screening

1. Immediately after the deadline for receipt of applications, the Field Office will screen each application to determine whether all information and exhibits have been submitted.

a. If an application lacks any technical information or exhibit, or contains a technical mistake, the PHA will be advised in writing and will have 14 calendar days from the date of the issuance of HUD's notification to deliver the missing or corrected information or documentation to the Field Office.

b. Curable technical deficiencies relate only to items that would not improve the substantive quality of the application, relative to the ranking factors.

c. If Form HUD 52822 (Application) is missing, the PHA's application will be considered substantively incomplete, and therefore ineligible for further processing. If, for example, Form HUD 50070 (Drug Free Workplace Certification) is missing, or if there is a technical mistake, such as no signature on a submitted form, the PHA will be given an opportunity to correct the deficiency.

2. An application that does not meet the applicable threshold and NOFA requirements after the 14-day technical deficiency period will be rejected from processing and determined to be unapprovable.

3. The responsibility for submitting a complete application rests with the PHA. The failure of the Field Office to identify and provide a notice of deficiency to the PHA shall not relieve the PHA of the consequences of failure to submit a complete application.

B. Application Threshold Approvability

After initial screening and upon expiration of the deficiency "cure" period, applications for which *all* the information, certifications, and documentation required by the NOFA have been received by HUD will be examined for threshold approvability. Applications that fail one or more of the threshold criteria will be rejected from processing and determined to be unapprovable. All applications must meet the following thresholds to be determined approvable:

1. The PHA may not have any litigation pending which would preclude approval of the application. The PHA must be legally eligible to develop, own, and operate public housing under the U.S. Housing Act of 1937 and have:

a. Approved and current PHA organization documents.

b. Local cooperation agreements to cover the units under management, in development, and the units requested (Form HUD 52481), and any other required local authority.

c. A properly executed and complete PHA Resolution (Form HUD 52471) referring to the need for front-end funding, if requested, and a Local Governing Body Resolution (HUD 52472) which approves the request for front-end funds, if front-end funds are requested.

Note: The PHA Resolution certifies to the PHA's intent to comply with all requirements imposed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655; the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations at 24 CFR part 8; and section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and HUD's implementing regulations at 24 CFR part 135.

2. The Field Office must determine that the PHA has or will have the capability to complete the MROP activities and manage the proposed housing. The Field Office shall determine capability based upon the PHA's overall capability; the PHA's total score under the Public Housing Management Assessment Program (PHMAP) (see 24 CFR part 901); the PHA's most recent fiscal audit; and outstanding HUD monitoring findings.

a. A PHA that has been designated as "troubled" shall be considered eligible if its most recent PHMAP assessment improved by a least 5 points (on a zero-to-one hundred point scale) as compared to the assessment completed on April 16, 1992; or it can demonstrate to the satisfaction of the Field Office that it is making substantial progress by a narrative describing actions that have been taken to address deficiencies identified by PHMAP, by the PHA's Memorandum of Agreement with HUD, or by HUD reviews, audits or surveys; *or* it provides an acceptable binding contract from another public or private entity to act as administrator of the project on behalf of the PHA.

b. A PHA shall not be determined to lack administrative or development capability simply because it has no recent experience in developing or managing public/assisted housing.

c. No application shall be determined to be approvable if the PHA has failed to return excess advances received during development or modernization, or amounts determined by HUD to constitute excess financing based on a HUD-approved Actual Development Cost Certificate (ADCC) or Actual Modernization Cost Certificate (AMCC), unless HUD has approved a pay-back plan.

3. There are no environmental factors precluding the MROP activities.

4. The following certifications are included in the application and have been executed by the appropriate person(s):

a. Form HUD–50070, Drug-Free Workplace;

b. Form HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements;

c. Form SF–LLL, Disclosure of Lobbying Activities, if applicable;

d. Form HUD–2880, Applicant/Recipient Disclosure/Update Report;

5. The PHA Narrative Statement addresses the viability of the proposed MROP activities, including whether there is any need for management improvements and the extent to which such improvements are necessary to maintain the physical improvements resulting from the proposed MROP activities.

6. The PHA must be in compliance with civil rights laws and equal opportunity requirements. A PHA will be considered to be in compliance if (1) as a result of formal administrative proceedings, there are no outstanding findings of noncompliance with civil rights laws unless the PHA is operating in compliance with a HUD-approved compliance agreement designed to correct the area(s) of noncompliance; (2) there is no adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the applicant demonstrates that it is operating in compliance with a court order designed to correct the area(s) of noncompliance; (3) there is no deferral of Federal funding based upon civil rights violations; (4) there is no pending civil rights suit brought against the PHA by the Department of Justice; or (5) there is no unresolved charge of discrimination against the PHA issued by the Secretary under section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400.

C. Threshold Approvable Applications

Applications will be determined approvable if they successfully pass the threshold review. Threshold-approvable applications will be rated by the Field Office, using the criteria set out in the following Section D.

D. Rating Criteria

In accordance with the Regional Office designation of projects requiring Joint Reviews, the Field Office will schedule Joint Reviews for eligible MROP activities applications as early as possible. Field Offices will rate and rank threshold-approvable applications as follows:

a. MROP Activities Technical Review Factors:

	Point range
(1) PHA's management capability to carry out the proposed MROP activities	1–30
(2) The expected term of useful life of the project or building after completion of MROP activities	1–30
(3) The likelihood of achieving full occupancy within the project or building after completion of MROP activities	1–30
MROP Activities Total Possible Points	90

b. *MROP activities rating considerations.* A PHA should not be automatically penalized in the rating of the development and management capability factors because it has not previously received funding under MROP or CIAP. In rating these factors, a PHA's expected ability to carry out the proposed MROP activities must be considered in relation to the PHA's proposed MROP activities, staffing and inspection plan. Conversely, a PHA that has modernization experience but missed deadline dates in a Project Implementation Schedule without valid reasons shall receive low ratings for these factors.

c. *Field and regional submissions.* For each approvable application, highest ranked first, the ratings assigned, the number of units and units by bedroom size, structure type(s), cost areas, funding required and the metro/nonmetro area designation must be submitted to Headquarters by each Regional Office. The following must also be prepared and submitted by the Field Office to the Regional Office:

(1) Narrative description of the results of Steps 1, 2 and 3 of the viability review, including the Field Office conclusions regarding project viability;

(2) Final rating of the Technical Review Factors, including the score for each factor and the total project score; and

(3) Review sheet summarizing critical information about the project, including a brief description of proposed MROP activities and their proposed cost including any management improvements and a statement of the determination made as to the extent such improvements are necessary to maintain the physical improvements resulting from the proposed MROP activities, the applicable total development cost limitation, a discussion of the relationship and approval date of any demolition/disposition or conversion, and the feasibility of MROP activities compared to demolition/disposition.

V. MROP Activities Funding and Further Processing

A. Each MROP activities application selected for funding shall:

(1) Have funds reserved in an amount of at least 70 percent of the development cost limitation for the area and:

a. The reservation amount will be "trended".

b. The trend will be calculated by multiplying the percent of development cost by 5.4 percent (1.054), rounded to the nearest $50.

(2) Be assigned a development project number and entered into the appropriate HUD data systems; and

(3) After fund reservation, development procedures shall be followed (24 CFR part 941 and Handbook 7417.1 REV–1) except:

a. MROP activities work must be competitively bid (i.e., turnkey may not be used); and CIAP modernization standards set forth in Handbook 7485.2 REV–1 must be used.

b. The PHA must incorporate its approved MROP activities application into a PHA Proposal (Form HUD–52483A).

c. The special MROP Annual Contributions Contract (Form HUD–53010–I), included in Notice PIH 89–41(HUD), must be used.

d. Neither the Regional Administrator nor the Field Office Manager may increase the original scope of the MROP activities.

VI. Checklist of Application Submission Requirements

A. Application Checklist

PHAs may use the following application checklist, which enumerates the submission requirements of Section III of this NOFA.

(1) Form HUD–52822, CIAP Application;

(2) Evidence of legal eligibility with a current General Certificate (HUD–9009);

(3) Evidence of local cooperation with a copy of the Form HUD–52481 covering the original development units for which funding for MROP activities is requested;

(4) Narrative statement addressing each of the review factors and the results of the PHA's viability review, unless the project (or portion) was reviewed previously under a Comprehensive Plan for Modernization;

(5) Information/certification, as applicable, if the application involves demo/disco or conversion of units;

(6) HUD–52471, PHA Resolution in Support of Public Housing;

(7) HUD–52472, Local Governing Body Resolution, if front-end funds are being requested by the PHA,

Note: If front-end funds are requested, the HUD–52471 must be appropriately modified.

(8) PHA statement identifying its funding preferences if more than one application is being submitted;

(9) HUD–50070, PHA Certification for a Drug-Free Workplace;

(10) HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements;

(11) Form ST–LLL, Byrd Amendment Disclosure and Certification Regarding Lobbying, only if the applicant determines it is applicable;

(12) Form HUD–2880, Disclosure of Government Assistance and Identity of Interested Parties.

B. Application Packets

Forms comprising the application package may be obtained from the HUD Field Office.

VII. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410.

B. Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The NOFA will provide PHAs with funding for public housing development MROP activities.

C. Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA do not have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. To the extent that the funding provided through this NOFA results in additional or improved housing, the effects on the family will be beneficial.

D. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. (See Section III of this NOFA.) These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

E. Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

HUD's regulation implementing section 13 is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule. Appendix A of this rule contains examples of activities covered by this rule.

Any questions concerning the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815 (voice/TDD). This not a toll-free number. Forms necessary for compliance with the rule may be obtained from the local HUD office.

F. Prohibition Against Advance Information on Funding Decisions

Section 103 of the HUD Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing section 103 is codified at 24 CFR part 4, and was amended by an interim rule published in the **Federal Register** on August 4, 1992 (57 FR 34246). In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.)

G. Accountability in the Provision of HUD Assistance

HUD's regulations at 24 CFR part 12 implement section 102 of the HUD Reform Act. Section 102 contains a number of provisions designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. The following requirements concerning documentation and public access disclosures are applicable to assistance awarded under this NOFA.

1. *Documentation and public access.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis

upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on these requirements.)

2. *Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Dated: September 3, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 93–22263 Filed 9–10–93; 8:45 am]

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Monday
September 13, 1993

Part III

Department Of Health and Human Services

Food and Drug Administration

21 CFR Part 206, et al.
Imprinting of Solid Oral Dosage Form Drug Products for Human Use; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 206, 207, 314, and 330

[Docket Nos. 88P-0380 and 89P-0163]

Imprinting of Solid Oral Dosage Form Drug Products for Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing new regulations that require that human drug products in solid oral dosage form (e.g., tablets and capsules) be imprinted with product-specific identification codes. This rule will serve several public health purposes related to FDA's responsibilities under the Federal Food, Drug, and Cosmetic Act (the Act) and the Public Health Service Act (the PHS Act). Poison control centers use imprinted drug codes to help identify drug products in overdose emergencies. Consumers and health professionals also use imprinted drug codes to recognize whether a different manufacturer's product has been dispensed or whether a prescription has been incorrectly filled. Imprinting can also aid in the prevention of emergencies caused by tampering. Moreover, it can assist law enforcement, regulatory, and other public officials to trace counterfeit and defective drug products. The regulations will provide a national framework within which pharmaceutical corporations can implement their imprinting programs.

DATES: Effective September 13, 1995; written comments on FDA's role to ensure compliance that drug products be uniquely identifiable by November 12, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Deborah Wolf, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1046.

SUPPLEMENTARY INFORMATION:

I. Introduction

This final rule establishes a Federal requirement that each solid oral dosage form human drug product distributed in interstate commerce bear a code imprint that, in conjunction with the product's size, shape, and color, permits the identification of the drug product and its manufacturer or distributor. In the Federal Register of May 15, 1991 (56 FR 22370), FDA issued a proposed rule on imprinting. The agency gave interested persons until August 13, 1991, to comment on the proposal. In the Federal Register of August 20, 1991 (56 FR 41313), FDA reopened the comment period until September 19, 1991. In preparing this final rule, FDA carefully reviewed more than 50 comments received from pharmaceutical manufacturers and distributors, trade associations, State legislatures and boards of pharmacy, health professionals, professional societies, consumer organizations, and individual consumers. Thus, the agency has considered the views of persons representing many interests affected by the imprinting requirement.

The rule serves several public health purposes related to FDA's responsibilities under the act and the PHS Act. Poison control centers and others use imprinted drug codes to identify drug products in overdose emergencies. Consumers and health professionals also use imprinted drug codes to recognize whether a pharmacist has dispensed a different manufacturer's product or has incorrectly filled a prescription. Imprinting can also aid in the prevention of emergencies caused by tampering because consumers can detect an imprint on a tablet or capsule that is not identical to a recognized mark. Additionally, it can assist law enforcement, regulatory, and other public officials in tracing counterfeit and defective drug products.

Imprinting is already widely used by the pharmaceutical industry. FDA estimates that between 90 and 95 percent of solid oral dosage form prescription drug products and approximately 70 percent of solid oral dosage form drug products sold over-the-counter (OTC) are now being imprinted. Drug companies select the codes they use on their drug products. These codes allow the products and their manufacturers or distributors to be identified by reference to several commercially available compendia.

Currently, 23 States require imprinting of prescription drug products. Typical State laws require solid oral dosage form prescription drug products to be clearly marked or imprinted with an individual symbol, number, company name, words, letters, marking, or national drug code number identifying the drug product and its manufacturer or distributor. One State, Washington, has enacted a statute to require the imprinting of OTC drugs. The law was originally scheduled to become effective in January 1993, but a later enactment delayed the implementation dates of the statute until 1994 and 1995, respectively, for the manufacture in or the importation into Washington, and the retail sale in Washington of all affected drug products. (State of Washington, Engrossed House Bill 1415, 1993). The Washington law provides that, if and when a Federal imprinting requirement that satisfies the objectives of the Washington law is in place, the State law will be nullified. *Wash. Rev. Code Ann.* § 69.60.010 *et seq.* (1989).

Congress and FDA have periodically considered adopting a Federal drug imprinting requirement. In 1986, the National Association of Pharmaceutical Manufacturers (NAPM), a generic drug industry trade association, submitted a citizen petition (86P-0244) requesting that FDA issue a regulation requiring imprinting of solid oral dosage form prescription drug products. The NAPM petition proposed that imprints identify products by active ingredient. NAPM urged Federal action, arguing that there were conflicting requirements among the State imprinting statutes. FDA denied the NAPM petition in 1987, stating that voluntary drug imprinting was preferable to a Federal requirement. The agency did not find conflicting requirements among the States. In addition, FDA found NAPM's proposed system inadequate because it was not product-specific, i.e., it would not require identification of a specific product or its manufacturer and would not, therefore, meet the requirements imposed by State imprinting laws.

In 1988, two members of Congress wrote a letter urging the agency to require that all drug products be marked to identify the manufacturer and active ingredient. According to the letter, some patients with epilepsy may have received one brand of an anticonvulsive drug in place of another without the knowledge of the patients or their physicians. The letter suggested that the switch may have been responsible for reported breakthrough seizures in these patients and urged that FDA require imprinting so that patients would be better alerted to generic substitutions.

Also in 1988, NAPM resubmitted its petition (88P-0380/CP) and urged FDA to require that drug products bear a product-specific identification code that would identify the active ingredient and manufacturer. In 1989, the Nonprescription Drug Manufacturers Association (NDMA) submitted a citizen petition (89P-0163/CP) asking FDA to require identification of solid oral dosage form drug products and to adopt

a flexible system that would allow manufacturers to continue to use current imprints.

At its 1987 and 1989 annual meetings, the American Medical Association House of Delegates adopted resolutions urging that a coding system be developed for the identification of all solid medication forms. This resolution applied to both prescription and OTC drug products. In a letter to FDA dated July 12, 1989, the American Medical Association urged that FDA mandate such a requirement.

Based on continuing expressions of interest in a federally mandated drug imprinting program, FDA reconsidered its earlier decision not to undertake Federal rulemaking. In 1989, the agency requested data and information from poison control centers, health officials, trade associations, and consumer groups on several issues central to the decision to develop a Federal imprinting requirement: The justification for a Federal imprinting requirement; the information to be revealed by an imprinting code; and the advantages and disadvantages of a uniform imprinting code. While the responses differed with respect to the issue of a uniform code and the information that should be communicated by the imprint, all respondents strongly supported Federal action to require imprinting of solid oral dosage form drug products.

This final rule provides for a flexible drug imprinting system that will enhance the current system and allow drug companies to select the imprints they will use as long as products are properly identified. The rule provides for the exemption of products whose size or physical characteristics make imprinting infeasible or impossible. Drugs intended for use in clinical investigations under section 505(i) of the act (21 U.S.C. 355(i)) and drugs that are extemporaneously compounded by a licensed pharmacist, upon receipt of a valid prescription for an individual patient from a licensed practitioner, to be used solely by the patient for whom they are prescribed, will also be exempt from the requirement. So will drug products, other than reference listed drugs, intended for use in bioequivalence studies. Drugs distributed under treatment IND's (investigational new drug applications) and those distributed in nonconcurrently controlled (parallel track) studies will not, however, be exempt. These products, while considered investigational, are more widely distributed than drugs used in controlled clinical trials, and therefore pose some of the risks that imprinting is meant to address. Radiopharmaceutical drug products will also be exempt from the requirement because of the strict control exercised over their use. The rule provides other mechanisms for case-by-case exemptions in certain circumstances. Finally, the rule permits applicants or firms to report new imprints or changes in imprints through the submission of supplemental applications and annual reports.

II. Highlights of the Final Rule

This final rule creates an effective system in which most solid oral dosage form human drug products will be imprinted in a manner that will facilitate product identification by consumers and health professionals. The rule will enhance an already existing system to make it more effective in providing identification of drug products.

A. Scope of the Final Rule

The rule applies to prescription and OTC human drug products, biological drug products, and homeopathic drug products in solid oral dosage form (e.g., tablets and capsules). The rule does not apply to dosage forms not susceptible to imprinting (e.g., liquid medicine), other dosage forms (e.g., transdermal delivery systems), or animal drug products. Some solid oral dosage form drug products have been categorically exempted from the requirements of the regulation.

B. The Content of the Code Imprint

The final rule requires that the code imprint consist of at least one number, letter, mark, monogram, symbol, or logo. An imprint may be embossed, debossed, engraved, or printed on the surface of the oral solid dosage form.

C. What the Imprint Must Identify

The imprint, in conjunction with the other physical characteristics of the drug product (i.e., its shape, color, and size), must uniquely identify the drug product. This means identifying the drug product's active ingredients, dosage strength, and manufacturer or distributor. The code imprint will thus allow health professionals to identify a product through available references.

D. Exemptions

The rule exempts certain classes of drug products from the imprinting requirement and provides for case-by-case exemptions in particular circumstances. Drugs intended for use in clinical investigations under section 505(i) of the act and drugs that are extemporaneously compounded by a licensed pharmacist, upon receipt of a valid prescription for an individual patient from a practitioner licensed by law to prescribe or administer drugs, to be used solely by the patient for whom they are prescribed will also be exempt from the requirement. So will drug products, other than reference listed drugs, intended for use in bioequivalence studies. Drugs distributed under treatment IND's and those distributed in nonconcurrently controlled (parallel track) studies will not, however, be exempt. These products, while considered investigational, are more widely distributed than drugs used in controlled clinical trials, and therefore pose some of the risks that imprinting is meant to address. Radiopharmaceutical drug products will also be exempt from the requirement because of the strict control exercised over their use. The rule provides other mechanisms for case-by-case exemptions in certain circumstances. In addition, the final rule provides exemptions for drug products whose size or other physical characteristics make imprinting infeasible or impossible, and for products that are administered only in controlled health care facilities, e.g., hospitals, physicians' offices, and medical imaging centers, and not dispensed to patients for self-administration. The final rule outlines the categorical exemptions as well as the procedures for requesting exemptions when appropriate.

E. Reporting Imprints and Changes in Imprints

For drug products subject to premarket approval that were not previously imprinted and whose new imprints will be printed with ink, approval of a supplemental drug application will be required under § 314.70(b) (21 CFR 314.70(b)). However, until this final rule becomes effective, FDA will permit submission of supplements under § 314.70(c), provided that: (1) Any colors used in the imprint meet applicable color additive requirements; (2) the substances used in printing do not interfere with the approved analytical procedures; (3) the "Description" and "How supplied" sections of the package insert are updated to include the appropriate information; (4) the drug product meets all the approved specifications in the drug application (including dissolution specifications and tests; for generic drug products, sponsors should submit completed batch records reflecting the imprinting and a certificate of analysis for the product); and (5) the applicant makes a commitment to place the

marketed drug on appropriate stability studies and withdraw from the market any lots found to fall outside the approved specifications. Manufacturers of biological drug products not previously imprinted should submit product license amendments as required by § 601.12(b) (21 CFR 601.12(b)).

For all products other than modified release dosage form products (e.g., extended and delayed release products) that are subject to premarket approval and whose imprints are embossed, debossed, or engraved rather than printed with ink, the final rule requires that the applicant report the addition of the imprint in the applicant's next annual report under § 314.70(d). In such cases, FDA will not require a supplementary application provided that: (1) The product meets all current specifications; (2) the agency has approved the dissolution specifications and test procedures; (3) the comparative dissolution profiles of the embossed, debossed, or engraved drug product and the nonembossed, nondebossed, or nonengraved drug product are similar (for generic drug products sponsors should submit completed batch records reflecting the new tooling and a certificate of analysis for each product); (4) the newly marketed drug products are placed in appropriate stability studies and the applicant withdraws from the market any lots found to fall outside the approved specifications; and (5) the "Description" and "How supplied" sections of the package insert are updated to include the appropriate information.

For modified release dosage form products subject to premarket approval that are not yet imprinted and whose imprint will be made by embossing, debossing, or engraving, the rule requires that applicants report the addition of the imprint in a supplemental application under § 314.70(b)(2)(xii).

For minor changes to an existing code imprint, the supplementary information would be included in the next annual report under § 314.70(d)(9) provided that the "Description" and "How supplied" sections of the package insert are updated to include the appropriate information.

F. Submitting Imprinting and Identifying Information to FDA

For each drug product listed that is subject to the imprinting requirements, including products that are exempted under § 206.7(b) (21 CFR 206.7(b)), the final rule requires, in § 207.25(c) (21 CFR 207.25(c)), that drug listing information include the name of the product, its active ingredient(s), dosage strength, National Drug Code number, the name of its manufacturer or distributor, its size, shape, color, and code imprint (if any), and any other information that allows the product to be uniquely identified. Companies should not submit the required imprinting information on the Form FDA 2657, but should submit a separate document. The information should be submitted once for all products, and should be updated as described in the procedures in § 207.30 (21 CFR 207.30).

Information about imprinting submitted under § 207.25 will be available for public disclosure under § 207.37(a)(1)(xi) (21 CFR 207.37(a)(1)(xi)).

FDA notes that the proposal indicated that the agency would collect imprinting information on Form FDA 2657, "Drug Product Listing." However, after further consideration, FDA has concluded that this approach would be impractical and result in a cumbersome form. Consequently, the agency, on its own initiative, has added § 207.25(c) to require information about a drug product and its imprint and identifying characteristics on a separate document.

Companies should submit two copies of the information. Information should be submitted to the Drug Listing Branch (HFD–334), Center for Drug Evaluation and Research, 7500 Standish Pl., Rockville, MD 20855.

G. Effective Date

The final rule will become effective September 13, 1995. Any drug product subject to the requirements of this rule that is distributed in interstate commerce after that date will be deemed to be adulterated, misbranded, or an unapproved new drug, unless it is imprinted in compliance with the requirements of new part 206.

III. Comments on the Final Rule

The proposed rule included in its scope the imprinting of both prescription and OTC solid oral dosage form human drug and biological products. The proposal applied to products for which new drug applications (NDA's), product license applications (PLA's), or abbreviated new drug applications (ANDA's) are required, drugs first marketed before 1938 for which NDA's and ANDA's are not currently required, and drugs subject to the OTC drug review. It also applied to biological drug products licensed under section 351 of the PHS Act (42 U.S.C. 262).

1. A few comments suggested that the rule be revised to include animal drug products as well as human drug products because it would enable health care providers to identify, in emergency situations, more products that patients might have used.

FDA has decided that the final rule is limited to human drug products. Although imprinting animal drug products might help health care providers and poison control personnel to identify more products in emergency situations, FDA is not aware that animal drugs pose the problems that the rule was designed to address. Unless such problems are identified, FDA does not believe it appropriate to require imprinting of animal drug products and thereby impose additional costs on the manufacturers and distributors of these products. If FDA finds that animal drug products pose the same problems as human drug products, FDA will reevaluate its decision not to require imprinting of animal drug products.

2. One comment would exclude homeopathic drug products from the final rule. The comment claimed that a homeopathic drug will be effective only when it is administered to a patient who is susceptible to its action: The patient is susceptible only to the action of remedies specifically directed to the patient's conditions or diseases. The comment claimed that incorrectly selected medicines have little or no effect, and that even gross abuse of homeopathic drugs is unlikely to cause harm. The comment asserted that most reasons FDA identified for requiring imprints are not applicable to homeopathic drug products. The comment stated that there is no drug substitution in the dispensing of homeopathic remedies, that homeopathic drugs do not mimic drugs of abuse, that homeopathic drugs are not counterfeited and have not been recalled, and that homeopathic remedies are not used in hospitals and nursing homes to any large extent. The comment asked FDA to consider the remote possibility of harm resulting from homeopathic drug products against the projected economic consequences to the homeopathic drug industry, and to exempt homeopathic remedies categorically from the requirement.

FDA has determined that including homeopathic drug products in the scope of the rule will contribute to its public health and safety goals. FDA recognized in the proposed rule that properly manufactured homeopathic drugs are unlikely to cause overdoses. However, homeopathic drugs require accountability for their manufacture and processing just as other drugs do. In addition, FDA believes that poison control centers should have access to identification information pertaining to homeopathic drugs. Therefore,

homeopathic drug products are included in this final rule. However, FDA has revised proposed § 206.10 to require homeopathic drugs to bear imprints that identify only the manufacturer and their homeopathic nature. To reduce the burden on the homeopathic industry, FDA is not requiring homeopathic drugs to bear product-specific codes. This means that the industry as a whole or each homeopathic manufacturer could select one symbol, mark, or other identifier to indicate that products are homeopathic without having to assign a different identifier to each product. If industry selects one identifier, then an additional identifier would be necessary to identify the product's manufacturer. Manufacturers may decide instead to select one identifier that can identify both the manufacturer and the homeopathic nature of the product.

3. One comment suggested that transdermal delivery systems be included in the scope of this rule so that any imprinting scheme would include as many drug products as possible.

Transdermal delivery products are placed on the skin and provide continuous delivery of drug substances through the skin. FDA has determined that the issue of imprinting transdermal delivery products should be considered separately from that of solid oral dosage form drug products. While the agency recognizes the value of identifying all drug products, this rule is a response to problems that have already been observed with significant frequency. FDA has, therefore, limited the scope of these regulations to solid oral dosage form drug products.

The scope of this final rule thus remains unchanged from that of the proposed rule. This final rule requires imprinting of all prescription and OTC solid oral dosage form human drug and biological products. The requirement applies to products for which NDA's, PLA's, or ANDA's are required, drugs first marketed before 1938 for which NDA's and ANDA's are not currently required, and drugs subject to the OTC drug review. This rule also applies to biological drug products licensed under section 351 of the PHS Act.

4. Many comments addressed the content of the code imprint. Proposed § 206.3 defined the code imprint as "any combination of letters or numbers, including, e.g., words, company name, and National Drug Code, assigned by the drug firm to a specific drug product, or marks, symbols, or monograms unique to the firm, in combination with at least one letter or number." One comment argued that requiring a firm to use a unique logo or symbol would establish FDA as a trademark office and would give FDA improper control over the symbols and imprints selected by drug firms.

The agency has removed the definition of "code imprint" from § 206.3. The requirement for a code imprint is established in § 206.10 and provides for many combinations of letters, numbers, and symbols that would suffice to meet the requirements of the regulation. This final rule does not require that an imprint be unique to a company, but that the imprint, in conjunction with the product's shape, size, and color, uniquely identify a particular drug product and the manufacturer or distributor of the product.

5. The proposal would have required that the imprint contain "at least one letter or number." Letters and numbers are "alphanumeric" components. Several comments stated that a logo or symbol by itself may be sufficient to uniquely identify a drug product. One comment asserted that retrieval of imprints from both computer and manual data bases can be easily accomplished without alphanumeric characters. Another comment said that if FDA requires that an imprint include a letter or number, some firms might have to change their current imprints and delete a symbol, mark, or logo if the limited space on a particular drug product does not allow for both a logo and an alphanumeric character.

FDA has revised this final rule to make the use of a letter or number voluntary. Because of the effectiveness of the current imprinting system and the disruption that could result from requiring specific elements in a code imprint, this final rule does not require an imprint to contain a letter or a number. However, FDA strongly recommends the inclusion of at least one alphanumeric component.

As for automated drug identification systems, FDA has learned that, while it is possible to retrieve an imprint through a description of a mark, monogram, symbol, or logo, retrieval may be more difficult. In emergencies, delays in retrieving information about a drug could have tragic consequences. Thus, FDA has no objection to the use of a logo or symbol, but encourages firms to include at least one letter or number in an imprint. Including one such element will ensure faster access to automated retrieval systems, which poison control centers use extensively.

6. Another comment asked whether a code imprint consisting only of one letter or one number would satisfy the requirements of the regulation.

If the drug product can be uniquely identified by the presence of one letter or number, then such an imprint satisfies the requirements of the regulation. Drug companies may consider the physical characteristics of size, shape, and color in designing a composite that uniquely identifies a particular drug product.

7. Under proposed § 206.10, the strength of any product manufactured in more than one dosage strength would have had to be identified either by its imprint or its physical characteristics, i.e., its color, shape, or size. Some comments understood this to mean that these physical characteristics could be used only to distinguish dosage strengths and not different kinds of drug products. Many comments emphasized the value of a product's physical characteristics in aiding consumer recognition of drug products. They stressed the significance of shape, color, and size as clues to identification and the importance of these factors in promoting the goals of the imprinting requirement.

FDA did not intend for the imprinting regulation to prescribe the shape, size, or color of solid oral dosage form drug products or to minimize the importance of those elements in a product's recognition. However, an imprint provides a more systematic means of product identification. A clear imprint, taken in conjunction with a product's appearance, can provide unique identification of a drug product even if either the imprint or the appearance is duplicated in another product, as long as the composite of the product's physical characteristics and its imprint is unique.

FDA has, therefore, revised this final rule to clarify the agency's intent that an individual product, including each strength of a particular line of drug products, should be identifiable through a composite of its color, shape, size, and imprint.

8. Several comments urged that the code imprint identify the active drug substance or combination in a drug product rather than the distinct drug product. These comments urged the agency to promulgate a uniform active ingredient code consisting of letters and numbers.

As noted in the proposed rule and earlier in the preamble of this document, FDA declined to adopt a uniform code in 1987 when it denied a petition submitted by NAPM. The agency found that such a plan would not distinguish between specific drug products or companies and would therefore not satisfy the State laws that require code imprints to provide such

distinguishing information. Generally, the State statutes on imprinting also include requirements for identifying a product's manufacturer or distributor and for distinguishing between generic substitutes and brand-name products. Codes identifying only active ingredients could not distinguish between different brands of products.

As FDA also stated in its 1987 denial of NAPM's petition, an alphanumeric plan identifying only active ingredients would require FDA to maintain an alphanumeric code system and assign designated codes to each existing drug substance and to any new drug substance developed in the future. New ingredients and combinations, as well as new strengths and dosage forms, would require constant changes in the listing. Maintaining such an identification list would impose a significant and unnecessary burden on FDA's resources.

The final rule requires that drug companies select an imprinting code that will uniquely identify each distinct drug product (as noted above, this includes each separate dosage strength). The code must identify the active ingredients and may also assist in the identification of the product's inactive ingredients. The code must also identify either the manufacturer or the distributor. This will satisfy State requirements. In addition, it ensures that other specific goals of the identification program, discussed earlier in the preamble to this rule, are met.

9. The proposed rule stated that an imprint would have to identify a product's manufacturer or distributor or, for products subject to premarket approval, the holder of an approved application for marketing. FDA specifically requested comments on whether the imprint should identify the holder of an approved NDA. Most comments said that it would be inappropriate to require the identification of a holder of an approved application for marketing because, the comments said, the holder is not necessarily accountable for, or knowledgeable about, the manufacturing process or the quality of specific products or batches of products.

A sponsor is accountable for its product regardless of who manufactures or distributes it. However, as discussed below, the final rule does not require that the holder of an approved application be identified by the imprint.

10. One comment said that, because there is no need to refer inquiries about quality assurance to NDA holders except for adverse experience reporting purposes, the NDA holder does not need to be identified. Immediate inquiries would more appropriately be made to the manufacturer or distributor.

Another comment said that whether a drug is subject to premarket approval is irrelevant to its identification and that separate requirements should therefore not be imposed on drugs subject to such approval.

FDA agrees that, in terms of product source identification, there is no basis for distinguishing between drugs for which premarket approval is required and those for which it is not. In addition, the postmarketing reporting of adverse drug experiences described in 21 CFR 314.80 ensures that the holder of an approved NDA will be informed of adverse drug experiences by manufacturers, packers, and distributors who may be the first to be made aware of them. Immediate reference in an emergency situation or quality assurance inquiry should be made to whoever is in the best position to describe ingredients, the manufacturing process, quality control, and poison antidotes. Thus, the final rule eliminates the requirement that a drug subject to premarket approval identify the holder of the approved application. The final rule requires the imprint of each solid oral dosage drug product to identify either the manufacturer or the distributor.

11. The preamble to the proposed rule stated that, under § 206.7(b), FDA would consider and grant exemptions on a case-by-case basis, upon a showing that a product's size, shape, texture, or other physical characteristics make imprinting impracticable or impossible (56 FR 22370 at 22376). Some comments suggested that FDA establish criteria for such exemptions.

The agency has determined that requests for exemptions for drug products subject to premarket approval will be considered on an individual basis. The regulatory language in proposed § 206.7(b) is retained and incorporated into this final rule insofar as it establishes general parameters for exemptions from the imprinting requirement. However, the final rule does not impose premarket review of exemption requests for those products that are not otherwise subject to premarket approval. Thus, a product subject to the requirements of this rule but not subject to premarket approval under section 505 of the act or section 507 of the act (21 U.S.C. 357) may be marketed without an imprint if its size, shape, texture, or other physical characteristics make it technologically infeasible or impossible to imprint. A marketed product without an imprint whose physical characteristics do not preclude imprinting and that is not otherwise exempt from the imprinting requirement is subject to the pertinent adulteration and misbranding provisions of the act.

For a product that is subject to premarket approval, a request for a waiver of the general imprinting requirement on the basis of a product's physical characteristics should be submitted in writing to the appropriate review division in the Center for Drug Evaluation and Research or the Center for Biologics Evaluation and Research. The division will determine whether to approve a waiver based on the product's physical properties.

FDA will not formally establish or publish other criteria for such exemptions. The agency does not want to discourage innovative attempts to comply with the requirements of the regulation. Additionally, as the proposed rule discussed, FDA understands that very few exemptions have been granted under State statutory imprinting schemes. Therefore, the agency believes that most solid oral dosage form drug products can and should be imprinted.

12. The proposal did not address the timing of exemption requests. One comment suggested that requests for exemption should be handled at the end of Phase 2 or at the beginning of Phase 3 studies.

FDA recognizes that it is important for sponsors to know whether a drug product has to be imprinted because imprinting may affect a product's solubility, stability, or formulation. Requests for exemption for products under development should be submitted as early as possible in the drug development process.

13. A few comments requested exemptions for those drug products for which bona fide requests for exemptions are pending.

This would be an issue only for a transition period for a drug covered by an approved marketing application. Exemption requests for such products are to be submitted within 90 days of the publication of this final rule. The appropriate reviewing division will, as noted above, decide whether to approve the request. If the agency denies the request, the holder of the approved application will have 1 year from the date of a denial by the agency or until September 13, 1995, to imprint the drug product. If the applicant does not submit an exemption request by December 13, 1993, it must imprint the product by the effective date of the rule or be liable for misbranding and adulteration. If FDA does approve an exemption request, the applicant will

not be required to comply with the requirements of this rule.

14. One comment requested an exemption for those products for which a supplemental application is pending under proposed § 314.70(b)(2)(xi). That section, as proposed, would have required a supplement for the printing of an ink imprint on a product that does not currently have such an imprint.

Under § 206.10(b) of this final rule, a holder of an approved application who has, under § 314.70 (b)(2)(xi) or (b)(2)(xii), supplemented its application to provide for a new imprint is not required to bring its product into compliance with new § 206.10(a) during the pendency of the agency's review. Once the review is complete, the drug product is subject to the requirements of the rule.

15. One comment expressed concern that an imprinting requirement would impede innovation in developing new products or dosage forms. The comment was concerned that products whose physical characteristics might offer a health benefit but also make imprinting infeasible would be required to be imprinted and would therefore not be able to be produced.

FDA intends for this regulation not to impede the development of drug products that benefit the public health. The exemption process expressly allows for the manufacture and distribution of drug products whose physical characteristics make imprinting infeasible or impossible.

16. Proposed § 206.7(a)(1) would exempt drugs intended for use in clinical investigations under section 505(i) of the act.

Several comments favored the exemption for investigational drugs, stating that the distribution of such drugs is limited to selected populations and that their use is monitored to a much greater degree than that of marketed approved drugs.

One comment opposed the exemption of all investigational drugs, citing the blurring of lines between investigational and clinical uses of drug products. The objection was also based on the emphasis on shifting clinical trials of pharmaceuticals into the community and the mobility of subjects receiving drugs subject to IND's, who may commingle the investigational drugs and may not be in the presence of an investigator when the need for identification arises.

FDA has decided to exempt investigational drugs because investigators exercise control over their distribution and there is, therefore, less danger of overdose emergencies or most of the other dangers that are meant to be addressed by the regulation.

17. FDA had sought comment on whether to include within the exemption for investigational drugs those drugs approved for distribution under treatment IND's. One comment favored exempting drugs distributed under treatment IND's, saying that such drugs are often developed at a rapid pace and that final product characteristics may not always be in place when they are distributed. If such a product is otherwise ready and available for distribution, the comment indicated that the lack of an imprint should not prevent its distribution.

However, a few comments opposed a categorical exclusion for such products on the ground that a drug covered under a treatment IND may be widely distributed and will not have received as complete an evaluation for safety as an approved drug, so imprinting a treatment IND drug is even more important.

FDA has decided not to exempt drugs distributed under treatment IND's from the requirements of the rule. Drug products are generally approved for treatment IND distribution close to the time that they receive approval for general marketing. Imprinting them will not, therefore, create a large additional burden for industry. Because such products have a potential for wider distribution than drugs in earlier investigational stages, FDA has decided that imprinting them is necessary to further the objectives of this rule.

Products approved for testing in a nonconcurrently controlled (parallel track) study will be treated the same way as those distributed under treatment IND's. FDA established the parallel track mechanism to make promising investigational drugs for acquired immunodeficiency syndrome (AIDS) and other diseases related to the human immunodeficiency virus (HIV) more widely available to those who cannot participate in controlled clinical trials. These investigational drugs are available very early in the stages of product development and expose those patients taking them to greater uncertainty and risk than drugs being tested in controlled studies. The drug products must bear imprints because they are administered in a manner that more closely resembles that of treatment IND's than that of standard and early phase investigational drugs.

18. One comment asked how the rule would apply to placebos.

Placebos intended for use in clinical investigations will not be subject to the requirements of this rule if they are designed to copy the active drug products used in that investigation. This exemption is included so as not to destroy double-blind studies by allowing participants or investigators to distinguish between the active and inactive products. Similarly, if an investigational drug is imprinted, a placebo made to copy it may be imprinted.

In addition, if a placebo is designed to replace a drug product that has a high abuse potential so that it can be used in the treatment of a drug dependency, it should resemble as closely as possible the drug it is designed to replace, and should bear an imprint if necessary.

19. Some comments asked whether the inert tablet in a package of oral contraceptives would be required to be imprinted with a code different from that of the active tablets.

Inert tablets may bear the same imprint as the active tablets in a package of contraceptives as long as they are distinguishable by their color or shape.

20. Several comments asked FDA to exempt all diagnostic radiopharmaceutical products. The comments cited the strict control exercised over these products by health care facilities and stated that the goals of the imprinting requirement do not apply to radiopharmaceutical products.

FDA has decided to exempt all radiopharmaceutical drug products from the requirements of this rule. There are very few solid oral dosage form radiopharmaceutical products; most are parenteral drugs. Most radiopharmaceutical products are administered to patients only when a diagnostic procedure is performed and under the supervision of health care personnel authorized to administer them. These products are not dispensed for home administration and therefore do not pose the important dangers addressed by the imprinting rule. For example, patients will not be able to commingle these products or accidentally or intentionally consume an overdose.

The final rule provides that these drug products are categorically exempt and do not, therefore, require submission of an exemption request.

21. One comment requested an exemption from the imprinting requirement for OTC drug products whose labeling is exempt from the requirement set forth in 21 CFR 330.1(g) regarding accidental overdose.

FDA declines to exempt such drugs from the imprinting requirement. Imprinting drugs that are exempt from the accidental overdose labeling requirement provides information that is helpful in contexts other than cases of overdose. Imprinting can assist in the

detection of counterfeiting and the possible prevention of tragedies caused by tampering. Imprinting can also help eliminate unnecessary or inappropriate emergency intervention. In addition, it serves to further the goals of quality assurance by enabling identification of the manufacturer. All these objectives are furthered by requiring the imprinting of those drugs that are not likely to cause overdose emergencies.

22. Another comment requested clarification of the treatment of physician's samples, particularly samples that a drug company might imprint with the word "SAMPLE" as a voluntary effort to prevent diversion of samples in accordance with the requirements of section 503(c)(1) of the act (21 U.S.C. 353(c)(1)).

FDA has determined that the public safety goals enumerated in this regulation require the imprinting of a unique identifier. The agency notes that imprinting a sample with the word "SAMPLE" is certainly a helpful method of enhancing the effectiveness of section 503(c)(1) of the act. However, the law does not require such an imprint. If a solid oral dosage form drug product can accommodate both an imprint that identifies the drug company and the drug product, and the word "SAMPLE," FDA encourages the imprinting of both pieces of information. If a tablet or capsule can accommodate only one imprint, however, the identifying imprint that is the subject of this regulation is the required one.

23. Several comments requested an exemption for drug products packaged in individually labeled unit-of-use packages. One comment said that the individual packaging has room for more information than the actual dosage form itself.

After careful consideration, FDA has decided to require each dosage unit to be imprinted to satisfy the goals of the regulation. While individually labeled dosage units may be less likely than other products to be removed from their packaging before the time that a consumer takes them, and are therefore less likely to be misidentified by the consumer, the unit of use labeling does not satisfy all the goals of the imprinting rule. Package information does not prevent cases of drug reaction or overdose that occur after the packaging has been discarded. In addition, imprinting aids in quality assurance, counterfeit deterrence, and detection of product tampering.

24. One comment requested an exemption for drugs intended for export.

Section 801(e) of the act (21 U.S.C. 381(e)) declares that a drug intended for export shall not be deemed to be adulterated or misbranded if it meets the specifications of the foreign purchaser, is not in conflict with the laws of the country to which it is intended for export, is labeled that it is intended for export, and is not sold or offered for sale in domestic commerce.

A drug not subject to premarket approval may be exported without an imprint if it complies with the requirements of section 801(e) of the act. For drugs that are subject to premarket approval, FDA will consider supplemental applications under § 314.70(b) that request approval for deviations from a previously approved application. Companies may request approval for drug products that will be changed to delete an imprint or to market a drug without an imprint for the purposes of exporting that product. FDA believes that this takes into consideration the commercial concerns of drug companies and recognizes the possibility that foreign countries may impose conflicting imprinting requirements.

25. The proposed rule contemplated that the final rule would become effective 1 year after its date of publication in the **Federal Register**. Many comments responded that this was insufficient time for industry to develop imprint designs and equipment necessitated by the final rule.

FDA has revised this final rule to designate an effective date of 2 years after the publication of the regulation. After that time, any drug distributed in interstate commerce and not in compliance with the requirements of this rule will be deemed to be adulterated or misbranded or an unapproved new drug.

26. The proposed rule provided that, in general, for drug products subject to premarket approval that were not previously imprinted, approval of a supplemental drug application would be required under § 314.70(b). The proposed rule provided, however, that until the effective date of the final rule, FDA would permit submission of supplements under § 314.70(c), provided that: (1) Any colors used in the imprint meet applicable color additive requirements; (2) the substances used in printing do not interfere with the approved analytical procedures; (3) the "Description" and "How supplied" sections of the package insert are updated to include the appropriate information; (4) the drug product meets all the approved specifications in the drug application (including dissolution specifications and tests); and (5) the applicant makes a commitment to place the marketed drug product on appropriate stability studies and withdraw from the market any lots found to fall outside the approved specifications. The proposal provided that manufacturers of biological drug products which were not previously imprinted should submit a product license amendment as required in § 601.12(b).

The proposal also provided that, if the rule became effective, when a product imprint is embossed or engraved, the applicant would report the addition of the imprint in the applicant's next annual report under § 314.70(d). In such cases, a supplementary application would not be required provided that: (1) The product meets all current specifications; (2) FDA has approved the dissolution specifications and test procedures; (3) the comparative dissolution profiles of the embossed/engraved and nonembossed/nonengraved drug products are similar; (4) the newly marketed drug products are placed in appropriate stability studies and the applicant withdraws from the market any lots found to fall outside the approved specifications; and (5) the "Description" and "How supplied" sections of the package insert are updated to include the appropriate information.

Finally, the proposed rule provided that for minor changes to an existing imprint, e.g., changing the alphanumeric identifiers or substituting a number for a symbol, the supplementary information would be included in the applicant's next annual report under § 314.70(d) provided that the "Description" and "How supplied" sections of the package insert are updated to include the appropriate information.

Several comments requested clarification of the implementation section.

The implementation section of the final rule incorporates all of the provisions of the proposed rule but clarifies them and distinguishes between more categories of drug products. On its own initiative, the agency is clarifying, in this preamble, the intent of the rule to distinguish between products whose imprints are made with ink and products whose imprints are made by processes of embossing, debossing, or engraving. In addition, the rule distinguishes between modified release (delayed and extended release) dosage form drug products and immediate release products.

For all products subject to premarket approval that were not previously imprinted and whose imprints will be

made with ink, the final rule, once it becomes effective, requires approval of a supplemental drug application under § 314.70(b)(2)(xi).

Until the effective date of the final rule, FDA will permit submission of supplements under § 314.70(c), provided that: (1) Any colors used in the imprint meet applicable color additive requirements; (2) the substances used in printing do not interfere with the approved analytical procedures; (3) the "Description" and "How supplied" sections of the package insert are updated to include the appropriate information; (4) the drug product meets all the approved specifications in the drug application (including dissolution profile, specifications, and tests; for generic drug products sponsors should submit completed batch records reflecting the imprinting and a certificate of analysis of the product); and (5) the applicant makes a commitment to place the marketed drug product on appropriate stability studies and withdraw from the market any lots found to fall outside the approved specifications. The rule provides that manufacturers of biological drug products that were not previously imprinted should submit product license amendments as required in § 601.12(b).

The rule treats differently those products whose imprints will be made by embossing, debossing, or engraving. On its own initiative, the agency has added a reference to debossing as a means of product imprinting. The additional reference allows a more precise understanding of the physical method of imprinting. The definitions of debossed, embossed, and engraved have been added to the final rule.

For products subject to premarket approval, other than modified release dosage forms, that were not previously imprinted and whose imprints will be made by embossing, debossing, or engraving, the applicant will report the addition of the imprint in the applicant's next annual report under § 314.70(d)(9). In such cases, a supplementary application will not be required, provided that: (1) The product meets all current specifications; (2) FDA has approved the dissolution specifications and test procedures; (3) the comparative dissolution profiles of the embossed, debossed, or engraved drug product and the nonembossed, nondebossed, or nonengraved drug product are similar (for generic drug products sponsors should submit completed batch records reflecting the new tooling and a certificate of analysis for each product); (4) the newly marketed drug products are placed in appropriate stability studies and the applicant withdraws from the market any lots found to fall outside the approved specifications; and (5) the "Description" and "How supplied" sections of the package insert are updated to include the appropriate information.

For modified release dosage forms that have not been previously imprinted, the final rule requires approval of a supplemental drug application. If the imprint is made with ink, the requirement is contained in the new § 314.70(b)(2)(xi). This is consistent with the requirement described above that all products imprinted with ink require approval of a supplemental application. If the imprint is made by embossing, debossing, or engraving, the requirement is contained in the new § 314.70(b)(2)(xii). The agency determined on its own initiative that it is necessary to approve the imprints of all modified release dosage forms made by embossing, debossing, or engraving because of the effects these processes could have on the dissolution and bioavailability of modified release products.

Finally, the final rule permits minor changes to an existing imprint, e.g., changing the identifier or substituting a number for a symbol, to be reported in the next annual report under § 314.70(d)(9) provided that the "Description" and "How supplied" sections of the package insert are updated to include the appropriate information.

27. Some comments asked whether FDA would seek to approve imprints before companies are allowed to use them to ensure that they uniquely identify the products that bear them.

FDA does not plan to evaluate individual imprints on a premarket basis. Imprints will be approved under § 314.70 as discussed above with reference to the ink used and the effects of embossing, debossing, and engraving on the solubility and stability of the drug product. The selection of an imprint code is left to the manufacturer or distributor. FDA's decision is based, in large part, on the effectiveness of the current system.

28. Some comments asked FDA to compile and distribute a listing of the code imprints submitted by drug companies. Most comments expressed concern that health care practitioners, pharmacists, and poison control center staff need information that is not currently accessible to all such practitioners. The comments noted that many generic drug products are not represented in the available proprietary compendia and that some health care facilities, particularly those that serve the elderly and poor sectors of society, cannot afford all the proprietary publications. In addition, some comments suggested that the existing publications are not an efficient means of identifying drug products.

The agency does not have the resources to manage the administrative burden of maintaining, updating, and distributing such a compilation. As described earlier in the preamble, companies are required to submit imprint identification information to the Center for Drug Evaluation and Research's Drug Listing Branch. This information is available upon request as needed, but the agency will not compile or distribute a listing of the information. FDA urges companies to submit such information to available private data bases to facilitate wide dissemination of the information.

Many comments responded to FDA's request for comments concerning the feasibility of imposing a uniform imprinting code. Most comments advocated a flexible code that would permit manufacturers to choose their own imprints as long as the imprints satisfy the objectives of the regulation.

29. Some comments claimed confusion would result if manufacturers were required to change their imprints to conform to a uniform code. The comments asserted that a uniform code would prevent consumers from using familiar imprints, such as recognizable logos or trademarks, to identify products. The comments said that in the event that a uniform code system were adopted, imprints would have less value as identifiers until new codes were established and had become familiar to consumers.

FDA recognizes the value of permitting companies to continue to use current imprints if they provide the unique identifying information sought by the regulation. Continuity in imprinting is important to several goals of the regulation. Enabling consumers to recognize the products they use will help alert them to tampered drug products. In addition, recognition of product codes assists in the detection of substituted products and counterfeit drug products. Allowing companies to continue to use the imprints they currently use, as long as the imprints satisfy the rule's objectives, will enhance product identification and recognition.

30. Several comments noted that a uniform code would limit many drug companies' ability to use their current imprints because many tablets or capsules could not be imprinted with more than one code, and companies

would therefore have to substitute the uniform identifier for the companies' chosen imprints. Space limitations would result in codes too small to read, and, in many cases, the product's physical properties would make additional embossing or engraving impossible.

In addition, some comments asserted that drug companies would lose the goodwill that they derive from their investment in trademark symbols.

FDA recognizes that drug companies have invested time and capital into the development of legally protected trademarks as well as other marks that identify specific products or companies and is determined to implement these regulations with as little marketplace disruption as possible. As discussed above, FDA has decided not to require a uniform code system, and the flexible code will permit companies to retain, for the most part, the imprints they currently use.

31. Many comments addressed the costs that would be associated with a uniform code. One comment claimed that the rule would require much greater expenditure by industry than FDA had estimated. The comment said that FDA's estimate was flawed because it was based on costs to implement an enhancement of the current system, whereas the rule actually imposed significant changes on the system. The comment estimated that converting to a uniform code system would involve at least $20 million in capital and ongoing costs, which is deemed to be at least one order of magnitude greater than costs to implement a flexible code.

The agency believes that this comment misinterpreted the rule because the original economic estimate was based on FDA's intention to allow a flexible code. As this has been clarified in the final rule, the agency has not changed its estimate of the economic impact of the rule.

32. Some comments did advocate a uniform code. The comments said a uniform code would be easier to administer and would be more effective in meeting the public safety objectives of the regulation.

FDA understands these concerns, but, taking into account the breadth and effectiveness of the current system, has determined that a flexible code would be more effective. However, the agency does not foreclose the possibility of reconsidering a uniform code in the future.

33. A number of comments advocated Federal preemption of the field of drug imprinting. The comments expressed concern that State laws would be in conflict and would leave the drug companies unable to comply with various State requirements.

FDA does not believe that preemption of State laws in this field is necessary. The agency has examined various State laws and has not found their requirements to be in conflict. In general, State laws are, in fact, consistent and require the same information to be identified that this final rule requires. Executive Order No. 12612 on federalism, which the proposed rule discussed, requires Federal agencies to determine whether anticipated regulatory actions will have significant federalism implications. The agency does not believe that the rule is incompatible with any State requirements or that these State laws are an obstacle to the effective implementation of the regulation.

FDA has authority to preempt inconsistent State requirements on imprinting of prescription and OTC drugs, if needed, to enhance the goals of the act. However, FDA believes that requiring imprinting but not preempting State laws on the issue is appropriate, given the extent of State action on this issue and the absence of current conflict between the State and Federal approaches to imprinting. FDA will, however, continue to monitor State imprinting laws for conflicts.

34. One comment expressed concern that the Washington State law requiring imprinting of OTC products has the effect of dictating national regulation or requiring more stringent local rules.

The Washington law, as enacted, is not any more stringent than this final rule. The Washington law requires solid oral dosage form OTC drug products to be imprinted with a symbol, number, company name, words, letters, marking, or national drug code number identifying the medication and the manufacturer or distributor of the medication. A product is in compliance with the law if its color, shape, or size together with a distinctive logo, symbol, product name, letters, or other mark make it identifiable. Thus, the Washington law is consistent with the requirements of this final rule. The Washington law provides that it will cease to exist when a Federal requirement is implemented and the State determines that the Federal requirement is substantially equivalent to the State law.

To clarify the applicability of this regulation to OTC drug products, FDA has added a conforming cross-reference in a new regulatory section, 21 CFR 330.3. This section did not appear in the proposed rule, but has been added to the final rule.

IV. Legal Authority

FDA has concluded that it has sufficient authority to issue regulations under section 701(a) of the act (21 U.S.C. 371(a)), imposing a drug imprinting requirement for the efficient enforcement of various sections of the act, including sections 201(p), 501, 502, 503, and 505 (21 U.S.C. 321(p), 351, 352, 353, and 355).

A drug imprinting requirement permits the efficient enforcement of the safety and effectiveness provisions of sections 201(p) and 505 of the act, and the misbranding provisions in section 502(a) and (f) of the act, in that imprinting: (1) Permits the safe, nonmisleading use of prescription drugs that have been substituted for an original prescription by allowing the identification of the person responsible for marketing the substituted drug; (2) helps to provide adequate directions for use in the event of overdose or drug interaction, and reduces or prevents harm from these adverse events by permitting easier identification of drugs that have been removed from their original packaging and labeling; and (3) may permit detection of certain fraudulent testing procedures.

An imprinting requirement also permits the efficient enforcement of other adulteration and misbranding provisions of the act. A regulation requiring the imprinting of every solid oral dosage form during its manufacture may avert unintentional mix-up and mislabeling of drugs during labeling and packaging. An imprinting requirement thus may be justified to prevent adulteration under section 501(a)(2)(B) of the act as a manufacturing method or control necessary to ensure that a drug product has the identity and strength its labeling represents it to have.

Requiring that solid oral dosage forms be imprinted to identify the drug product and its manufacturer or distributor also furthers the efficient enforcement of section 502(i)(2) of the act, under which a drug is misbranded if it is an imitation of another drug. Imprinting will impede attempts to pass off imprinted drugs as other drugs, by identifying to potential customers the drugs being sold, and would permit investigators to identify drugs found during investigations rather than having to rely on laboratory analysis. Finally, an imprinting requirement may assist in the identification and recall of adulterated and misbranded drug products.

Once this imprinting requirement is effective, a product not properly imprinted can be considered adulterated or misbranded. A drug product whose

approval under section 505 of the act was based in part on its being imprinted could be subject to withdrawal of approval or considered an unapproved new drug if it were manufactured without an imprint. In other words, where FDA determines that a drug product is safe and effective when it is imprinted, a subsequent failure to properly imprint the product could result in a finding that the product is no longer shown to be safe or that the improperly imprinted product is not the subject of the approved application. Any marketed OTC product may be considered adulterated or misbranded if it is not imprinted in compliance with § 206.10. In addition, an oral solid dosage form drug product subject to an OTC monograph could be considered an unapproved new drug, on the ground that it was not generally recognized as safe and effective unless properly imprinted. This requirement for imprinting of solid oral dosage form OTC drug products will be referenced by a new § 330.3. If a drug product marketed without an approved new drug application is not properly imprinted, FDA may consider that fact in exercising its enforcement discretion under section 505 of the act. Those engaged in the sale of imitation drugs who imprint their products with codes copied from other drugs could be subject to criminal prosecution for violating the prohibition against counterfeiting in section 301(i)(3) of the act (21 U.S.C. 331(i)(3)).

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Economic Analysis

FDA has carefully considered the economic impact of this final rule and has determined that it requires neither a regulatory impact analysis as specified by Executive Order 12291 nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96–354). The agency anticipates that a regulation that enhances the current system of drug imprinting will have a minimal economic impact on most drug companies. Moreover, FDA believes that the costs of implementing this flexible code will be considerably less than the costs that would have been imposed by requiring a uniform code. For solid oral dosage form drug products subject to the rule and not currently imprinted, it is estimated that the total annual costs of imprinting would be $1.7 million, which includes $1.1 million for prescription drug products and $0.6 million for nonprescription drug products.

The agency recognizes that repeat stability testing of some dosage forms will have to be performed as the result of imprinting. FDA currently estimates $8.3 million in one-time product testing costs. A copy of the agency's assessment of the economic impact is on file with the Dockets Management Branch (address above).

Comments submitted on behalf of the homeopathic drug industry estimated that the costs of imprinting unique product identifiers would be so high as to seriously compromise that industry's viability. One estimate is of a range from $5.7 million to $45 million for a single manufacturer making 5,700 different compressed tablet drug dosage forms. The final rule, however, only requires homeopathic drugs to be imprinted with codes that identify the manufacturer and the homeopathic nature of the drug product. FDA believes that this adjustment will substantially mitigate any excess economic burden on the homeopathic drug industry.

VII. Executive Order 12612: Federalism

Executive Order 12612 requires that Federal agencies carefully examine regulatory actions to determine whether they will have significant federalism implications. As noted above, the proposed rule would require the imprinting of both prescription and OTC human drugs in solid oral dosage form. Currently, 23 States require imprinting of prescription drugs. FDA believes that consistent national requirements for the marketing of drugs is desirable. FDA has authority to preempt inconsistent State requirements on imprinting of prescription and OTC drugs, if needed, to enhance the goals of the Federal Food, Drug, and Cosmetic Act. However, FDA does not believe that the final rule is incompatible with the requirements of any of the State laws or that the State laws stand as an obstacle to the accomplishment and execution of the full purposes and objectives of the agency. For that reason, FDA does not believe that preemption of State laws is necessary at this time. FDA will, however, monitor State imprinting laws for conflicts. For the reasons stated, FDA believes that the federalism effects are not significant and do not require an assessment under Executive Order 12612.

VIII. Paperwork Reduction Act of 1980

This final rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The information collections will not be effective until OMB approval is obtained. The title, description, and respondents of the information collection are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Imprinting of Solid Oral Dosage Form Drug Products for Human Use: Final Rule.

Description: FDA is adding new § 207.25(c) for imprinting of solid oral dosage form drug products for human use. The information requirements contained in the final rule require drug companies to submit to FDA a listing, for every solid oral dosage form drug product, that provides the name of the product, its active ingredient(s), dosage strength, and National Drug Code number, the name of its manufacturer or distributor, its size, shape, color, and code imprint (if any), and any other characteristic that identifies the product as unique.

Description of Respondents: Businesses or other for-profit and small businesses or organizations.

ESTIMATED ANNUAL BURDEN FOR REPORTING

21 CFR section 207.25(c)	Annual no. of respondents	Annual no. of responses per respondent	Total annual responses	Hours per response	Total hours
*Initial	1,500	17.9	26,850	0.5	13,425

ESTIMATED ANNUAL BURDEN FOR REPORTING—Continued

21 CFR section 207.25(c)	Annual no. of respondents	Annual no. of responses per respondent	Total annual responses	Hours per response	Total hours
Subsequent	1,500	.33	500	0.5	250

*The information requirements contained in this final rule will be a one-time submission which will be completed in 2 years.

Under OMB information collection No. 0910–0045, an estimated 22,334 burden hours have already been approved for 21 CFR part 207. It will be amended to include the additional hours. The estimated annual burden hours differ from estimates in the proposal. FDA has reestimated the number of drug products and manufacturers affected by the imprinting requirement. The information should be submitted once in any manner that the manufacturers choose for all products. After the initial reporting, only new products or updates as imprints and identifying information change need be reported.

List of Subjects

21 CFR Part 206

Drugs.

21 CFR Part 207

Drugs, Reporting and recordkeeping requirements.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 330

Over-the-counter drugs.

Therefore under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, Title 21 of the Code of Federal Regulations is amended as follows:

1. Part 206 is added to read as follows:

PART 206—IMPRINTING OF SOLID ORAL DOSAGE FORM DRUG PRODUCTS FOR HUMAN USE

Sec.
206.1 Scope.
206.3 Definitions.
206.7 Exemptions.
206.10 Code imprint required.

Authority: Secs. 201, 301, 501, 502, 505, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 355, 357, 371); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

§ 206.1 Scope.

This part applies to all solid oral dosage form human drug products, including prescription drug products, over-the-counter drug products, biological drug products, and homeopathic drug products, unless otherwise exempted under § 206.7.

§ 206.3 Definitions.

The following definitions apply to this part:

The act means the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*).

Debossed means imprinted with a mark below the dosage form surface.

Drug product means a finished dosage form, e.g., a tablet or capsule that contains a drug substance, generally, but not necessarily, in association with one or more other ingredients.

Embossed means imprinted with a mark raised above the dosage form surface.

Engraved means imprinted with a code that is cut into the dosage form surface after it has been completed.

Imprinted means marked with an identification code by means of embossing, debossing, engraving, or printing with ink.

Manufacturer means the manufacturer as described in §§ 201.1 and 600.3(t) of this chapter.

Solid oral dosage form means capsules, tablets, or similar drug products intended for oral use.

§ 206.7 Exemptions.

(a) The following classes of drug products are exempt from requirements of this part:

(1) Drug products intended for use in a clinical investigation under section 505(i) of the act, but not including drugs distributed under a treatment IND under part 312 of this chapter or distributed as part of a nonconcurrently controlled study. Placebos intended for use in a clinical investigation are exempt from the requirements of this part if they are designed to copy the active drug products used in that investigation.

(2) Drugs, other than reference listed drugs, intended for use in bioequivalence studies.

(3) Drugs that are extemporaneously compounded by a licensed pharmacist, upon receipt of a valid prescription for an individual patient from a practitioner licensed by law to prescribe or administer drugs, to be used solely by the patient for whom they are prescribed.

(4) Radiopharmaceutical drug products.

(b) Exemption of drugs because of size or unique physical characteristics:

(1) For a drug subject to premarket approval, FDA may provide an exemption from the requirements of § 206.10 upon a showing that the product's size, shape, texture, or other physical characteristics make imprinting technologically infeasible or impossible.

(i) Exemption requests for products with approved applications shall be made in writing to the appropriate review division in the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. If FDA denies the request, the holder of the approved application will have 1 year after the date of an agency denial to imprint the drug product.

(ii) Exemption requests for products that have not yet received approval shall be made in writing to the appropriate review division in CDER or CBER.

(2) Any product not subject to premarket approval is exempt from the requirement of § 206.10 if, based on the product's size, shape, texture, or other physical characteristics, the manufacturer or distributor of the product is prepared to demonstrate that imprinting the dosage form is technologically infeasible or impossible.

(c) For drugs that are administered solely in controlled health care settings and not provided to patients for self-administration, sponsors may submit requests for exemptions from the requirements of this rule. Controlled settings include physicians' offices and other health care facilities. Exemption requests should be submitted in writing to the appropriate review division in CDER or CBER.

§ 206.10 Code imprint required.

(a) Unless exempted under § 206.7, no drug product in solid oral dosage form may be distributed in interstate commerce unless it is clearly marked or imprinted with a code imprint that, in conjunction with the product's size, shape, and color, permits the unique identification of the drug product and the manufacturer or distributor of the product. Identification of the drug product requires identification of its active ingredients and its dosage strength. Inclusion of a letter or number in the imprint, while not required, is encouraged as a more effective means of identification than a symbol or logo by itself. Homeopathic drug products are required only to bear an imprint that identifies the manufacturer and their homeopathic nature.

(b) A holder of an approved application who has, under § 314.70(b)(2)(xi) or (b)(2)(xii) of this chapter, supplemented its application to provide for a new imprint is not required to bring its product into compliance with this section during the pendency of the agency's review. Once the review is complete, the drug product is subject to the requirements of the rule.

(c) A solid oral dosage form drug product that does not meet the requirement for imprinting in paragraph (a) of this section and is not exempt from the requirement may be considered adulterated and misbranded and may be an unapproved new drug.

(d) For purposes of this section, *code imprint* means any single letter or number or any combination of letters and numbers, including, e.g., words, company name, and National Drug Code, or a mark, symbol, logo, or monogram, or a combination of letters, numbers, and marks or symbols, assigned by a drug firm to a specific drug product.

PART 207—REGISTRATION OF PRODUCERS OF DRUGS AND LISTING OF DRUGS IN COMMERCIAL DISTRIBUTION

2. The authority citation for 21 CFR part 207 continues to read as follows:

Authority: Secs. 301, 501, 502, 505, 506, 507, 510, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 355, 356, 357, 360, 360b, 371, 374); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

3. Section 207.25 is amended by adding new paragraph (c) to read as follows:

§ 207.25 Information required in registration and drug listing.

* * * * *

(c) For each drug product listed that is subject to the imprinting requirements of part 206 of this chapter, including products that are exempted under § 206.7(b), drug companies must submit a document that provides the name of the product, its active ingredient(s), dosage strength, National Drug Code number, the name of its manufacturer or distributor, its size, shape, color, and code imprint (if any), and any other characteristic that identifies the product as unique.

4. Section 207.37 is amended by adding paragraph (a)(1)(xi) to read as follows:

§ 207.37 Inspection of registrations and drug listings.

(a) * * *

(1) * * *

(xi) A list of all code imprints.

* * * * *

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET; A NEW DRUG OR AN ANTIBIOTIC DRUG

5. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 376).

6. Section 314.70 is amended by adding new paragraphs (b)(2)(xi), (b)(2)(xii), and (d)(9) to read as follows:

§ 314.70 Supplements and other changes to an approved application.

* * * * *

(b) * * *

(2) * * *

(xi) To add a code imprint by printing with ink on a solid oral dosage form drug product.

(xii) To add a code imprint by embossing, debossing, or engraving on a modified release solid oral dosage form drug product.

* * * * *

(d) * * *

(9) The addition by embossing, debossing, or engraving of a code imprint to a solid oral dosage form drug product other than a modified release dosage form, or a minor change in an existing code imprint.

* * * * *

PART 330—OVER-THE-COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

7. The authority citation for 21 CFR part 330 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

8. New § 330.3 is added to subpart A to read as follows:

§ 330.3 Imprinting of solid oral dosage form drug products.

A requirement to imprint an identification code on solid oral dosage form drug products is set forth under part 206 of this chapter.

Dated: May 21, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–22282 Filed 09–10–93, 8:45 am]

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Monday
September 13, 1993

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 558 and 573
Food Additives Permitted in Feed and Drinking Water of Animals; Selenium; Stay of the 1987 Amendments; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 558 and 573

[Docket No. 86F–0060]

Food Additives Permitted in Feed and Drinking Water of Animals; Selenium; Stay of the 1987 Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is staying the 1987 amendments to the selenium food additive regulations. The amendments provided for an increase in the maximum supplementation level of selenium in animal feeds. This action is being taken in part in response to objections to, and requests for a hearing on or a stay of, the 1987 amendments by a number of organizations because of alleged inadequacies found in the agency's finding of no significant impact and in the petitioner's environmental assessment. FDA has concluded that the finding and the assessment are inadequate and that there is no genuine or substantial issue of fact as to their inadequacy. FDA has also concluded that the information that is available, if accepted as accurate, would not be sufficient to permit an adequate environmental analysis, and that the information that is necessary to do an adequate environmental analysis is unavailable. As a result of the stay of the 1987 amendments, the maximum permitted use levels of selenium in animal feeds will return to those levels permitted before FDA issued the amendments. FDA is also staying the portion of the regulation which provides for the use of a bolus for selenium supplementation at the increased levels.

DATES: Effective September 13, 1993.

ADDRESSES: Submit information to the Dockets Management Branch (HFA–305) Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Information should be identified with docket no. 86F–0060.

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1731.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 6, 1987 (52 FR 10887), FDA issued a final rule (the 1987 amendments) amending the agency's selenium food additive regulation to increase the maximum amount of selenium supplementation permitted in animal feeds. Because of alleged inadequacies in FDA's finding of no significant impact and the environmental assessment upon which the agency's finding was based, a number of organizations filed objections to, and requested a hearing on or a stay of, the 1987 amendments.

Selenium is one of the approximately 22 elements that are essential for normal growth and production in animals. The minimum dietary requirement for selenium ranges from 0.1 to 0.5 part per million (ppm) depending upon species, age or level of production, husbandry practices, and other factors. An inadequate intake of selenium may result in a variety of selenium deficiency conditions: White muscle disease, nutritional myodegeneration, exudative diathesis, pancreatic fibrosis, and cardiac myopathy (sudden death). Because an estimated 70 percent of domestic basic feedstuffs (corn and soybeans) contain less selenium than required to meet the nutritional needs of animals, dietary supplementation of the inorganic sources, sodium selenite and sodium selenate, has been widely practiced and is an effective method to reduce the incidence of selenium deficiency diseases. Alternate methods of supplying adequate selenium include blending of feedstuffs that are naturally high in selenium, such as crops grown in seleniferous areas (e.g., South Dakota) and other feed ingredients (e.g., fish meal) with feedstuffs that are naturally low in selenium, and parenteral administration of selenium solutions.

Unlike most other required minerals, selenium is also a highly toxic element, with a narrow margin of safety. For example, in aquatic species, levels as low as 1 part per billion (ppb) of selenium in the water have been associated with adverse biological effects (Ref. 1).

When used in the feed of livestock and poultry, selenium is a food additive as defined in section 201(s) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s)). Accordingly, selenium may not be added to animal feed in the absence of a food additive regulation published in accordance with section 409 of the act (21 U.S.C. 348). (See also sections 301 and 402 of the act (21 U.S.C. 331 and 342).)

Section 409 of the act provides that any person may file a food additive petition with FDA with respect to any intended use of the additive. Under section 409(b) of the act and 21 CFR 571.1(c), a food additive petition is required to include the following: (1) The complete identity of the additive; (2) the amount of the additive intended for use; (3) data to show that the additive will have the intended physical or other technical effect; (4) a description of practicable methods to determine the amount of the additive in food because of its use; (5) full reports of investigations made with respect to the safety of the food additive; (6) a proposed tolerance for the food additive in food if a tolerance is required; and (7) a claim for categorical exclusion under 21 CFR 25.24 or an environmental assessment under 21 CFR 25.31.

Selenium was initially the subject of a food additive regulation in 21 CFR 121.325 (recodified as § 573.920 (21 CFR 573.920)) published in the **Federal Register** of January 8, 1974 (39 FR 1355), providing for its addition to the complete feed of growing chickens and swine at a level of 0.1 ppm and for its addition to the complete feed of turkeys at a level of 0.2 ppm. When the regulation was proposed in 1973 (38 FR 10458, April 27, 1973), there were questions about the possible carcinogenicity of selenium in rodents, and an environmental impact statement (EIS) was prepared for the action. The cancer question was resolved (39 FR 1355), and in the EIS, FDA concluded that when considering the potential value of the addition of selenium to the feed of chickens, turkeys, and swine against possible environmental consequences of such action, selenium could be judiciously used with appropriate quality control procedures in the production of food animals for the benefit of the consumer.

Section 573.920 has been amended a number of times since the food additive regulation was issued in 1974. The 1987 amendments were issued in the **Federal Register** of April 6, 1987 (52 FR 10887) (corrected June 4, 1987, 52 FR 21001), in response to a food additive petition from the American Feed Industry Association (AFIA), 1501 Wilson Blvd., suite 1100, Arlington, VA 22209. (FDA published a notice of filing of the petition in the **Federal Register** of February 21, 1986 (56 FR 6321).)

The 1987 amendments permitted: (1) An increase from 0.1 to 0.3 ppm in the level of selenium (as sodium selenite or sodium selenate) in complete feeds for cattle, sheep, chickens, ducks, and swine (except for weanling swine, which was already approved at 0.3 ppm); (2) an increase from 0.2 to 0.3 ppm for turkeys; (3) a proportional increase in the limit feeding (feed supplements and salt-mineral mixtures) consumption rates for sheep and beef cattle to 0.7 and 3 milligrams (mg) per

head per day, respectively; (4) an increase in the selenium fortification levels for salt-mineral mixtures for sheep and cattle to 90 and 120 ppm, respectively; and (5) more flexibility in certain manufacturing controls by eliminating the requirement for premix manufacturers to analyze each production batch of selenium premix. At the same time, the regulation was amended to include requirements for current good manufacturing practices.

The agency based its decision to amend the selenium food additive regulation on safety, utility, manufacturing, and other data in the petition and data in its files. In issuing the 1987 amendments, FDA determined, based in part on the environmental impact analysis report (now known as an environmental assessment or EA) submitted by AFIA, that selenium supplementation of animal feeds at a level of 0.3 ppm in the total diet would not have a significant impact on the human environment. The agency made that determination in a finding of no significant impact (FONSI).

In accordance with section 409(f)(1) of the act, persons adversely affected by the 1987 amendments were given the opportunity to file objections by May 6, 1987 (52 FR 10887).

In April, May, and July 1987, six organizations filed objections to, or comments on the 1987 amendments. Some of these organizations requested a hearing on their objections, a stay of the 1987 amendments, or both a hearing and a stay on the grounds that the agency had not properly considered the effect of the amendments on the environment, human food safety, target animal safety, manufacturing controls, or the economic viability of a company. There were, in addition, objections based on alleged procedural deficiencies in the proceeding. In addition, one organization objected to the 1987 amendments on the ground that the level of selenium allowed in the selenium premixes was not proportionally increased with the increase in selenium permitted in the feed. The objection was appropriate and the agency corrected the oversight in the June 4, 1987, correction to the amendments.

In response to the June 4, 1987, correction, one organization filed an additional objection and requested that the agency rescind the amendments on the ground that the agency had not properly considered the environmental impact of increasing the potency of selenium premixes and eliminating the requirement that every batch of selenium premix be analyzed.

In the **Federal Register** of July 27, 1992 (57 FR 33244), FDA published a document (the 1992 decision document) denying all requests for a hearing on or a stay of the 1987 amendments and responding to all objections to those amendments insofar as the requests and objections related to human food safety, target animal safety, manufacturing controls, claims of economic harm, and certain alleged procedural deficiencies. The 1992 decision document did not address any of the environmentally based objections lodged in support of requests for a stay of or a hearing on the 1987 amendments. This document addresses those objections. After reviewing the objections, requests, information submitted in support of the objections and requests, and other information (such as that obtained at the August 25, 1992, public hearing), FDA has concluded that the FONSI and the EA for the 1987 amendments are inadequate and that there is no genuine or substantial factas to their inadequacy. FDA has also concluded that the information that is available, if accepted as accurate, would not be sufficient to permit an adequate environmental analysis, and that the information that is necessary to do an adequate environmental analysis is unavailable. Accordingly, FDA is staying the 1987 amendments. In addition as discussed in section IV.A. of this document the requests for a hearing are denied, and a hearing will not be held on any of the environmentally based objections.

Section 10.35(a) (21 CFR 10.35(a)) of FDA's regulations provides that the Commissioner of Food and Drugs (the Commissioner) may stay or extend the effective date of an action pending or following a decision on any matter. A stay may be granted if the Commissioner determines the stay is in the public interest (§ 10.35(d)(1)). FDA has determined that a stay of the 1987 amendments is a proper course of action because information is inadequate to support a FONSI or EIS. FDA is providing the petitioners and any other interested person the opportunity to collect the required information to support an adequate environmental analysis by staying the 1987 amendments.

The research needed to make an adequate environmental analysis is discussed in section III. of this document. FDA believes that a coordinated effort is needed to gather and assemble the needed information to more carefully evaluate the impacts of selenium in specific sites in the environment.

The agency will reassess the decision to stay the 1987 amendment of the regulation within September 13, 1994, and as needed thereafter. The agency will consider progress made on research required to complete an adequate environmental analysis to determine the continued validity of the stay. If the agency determines that the progress is not adequate, the agency will take the actions necessary to deny the petition and revoke the 1987 amendments. For that reason, the Center for Veterinary Medicine (CVM) should be kept apprised of all research endeavors; including, protocols, contracts, and results. This information should be submitted to the Dockets Management Branch (address above) and identified with the docket no. 86F–0060. Through the contact person listed above, CVM is available to discuss testing plans and protocols to develop the information described in section III. of this document.

As a result of the stay of the 1987 amendments, the maximum permitted use levels of selenium in animal feeds will return to those levels permitted before FDA issued the amendments. To facilitate an orderly implementation of this stay of the 1987 amendments and a smooth transition to the maximum use levels permitted before issuance of the 1987 amendments, the agency will exercise its enforcement discretion for a period of 1 year after the effective date of the stay and will not take regulatory action against feeds complying with the 1987 amendments. This enforcement discretion period provides for the use of existing stocks of feed and mineral mixes and adjustments in manufacturing processes as required to comply with the pre-1987 levels. The 1987 amendments (§ 573.920 introductory text, paragraphs (a) through (e), are stayed on September 13, 1993.

In 1989, the selenium food additive regulation was amended by adding § 573.920(f) to permit selenium supplementation to cattle via a controlled-release bolus (the 1989 amendment), in accordance with the maximum permitted use levels specified in the 1987 amendments (54 FR 14214, April 10, 1989). At the time of the 1989 amendment, the EA prepared by the petitioner (Schering-Plough Animal Health Corp., FAP 2210 (Schering)) addressed only the environmental impact of the manufacture of the bolus. Schering relied upon the EA and FONSI for the 1987 amendments to address the potential environmental impacts due to the use of the increased level of selenium and its subsequent introduction into the environment

through animal wastes. Therefore, the Schering food additive petition also is deficient in this regard. Accordingly, FDA is staying the controlled-release selenium bolus amendment as a result of this staying of the 1987 amendments. Because there were no previously approved levels of selenium for this bolus, there is no food additive regulation providing for use of the bolus. The 1989 amendment (§ 573.920(f)) is stayed on September 13, 1993. Consistent with FDA action with regard to feeds, the agency will exercise its enforcement discretion and will not take regulatory action against the sale and/or use of the bolus complying with the 1989 amendments for 8 months after the effective date of the stay. The bolus provides selenium for a 4-month period at levels permitted by the 1987 amendments.

FDA recognizes that its decision to stay the 1987 amendments reflects a change of position on the adequacy of the FONSI and the EA. But, the FONSI and EA were prepared in the mid-1980's (see section II.A. of this document), and to the extent that there could have been any confusion about FDA's reconsideration of the adequacy of the environmental analysis, that confusion was eliminated by the agency in its June 26, 1992, notice (57 FR 28606) (discussed in detail in sections II. and III. of this document) concerning the actual and potential adverse environmental effects of the 1987 amendments. In that notice (57 FR 28606 and 28610), FDA indicated that environmental concerns could lead to further agency action.

II. Environmental Concerns 1986–1989

A. FONSI and EA

Before amending the selenium food additive regulation in 1987, FDA evaluated the EA prepared by AFIA and determined the proposed increase in the level of selenium supplementation to animal diets was not expected to result in a significant adverse environmental impact. FDA prepared a FONSI for the action. The FONSI included a section that attempted to identify missing and incomplete information. In order to compensate for the incomplete data, the FONSI also included a worst-case analysis using what the agency considered to be extremely conservative assumptions.

From the model (FONSI, p. 9) it was estimated that, on a local basis, as a result of the 1987 amendments, the worst-case increase in concentration of selenium in agricultural soils amended with manure from animals receiving selenium supplementation would be about 2 ppb per application. Further, in a modelled 10-hectare watershed where all the runoff would be carried into a 1-hectare pond, it was estimated that there would be an increase of 0.02 to 0.24 ppb of selenium per year in the pond. Those estimates were based upon the following assumptions: (1) The maximum amounts of selenium would be used in feeds, mineral mixes, and feed supplements; (2) all the supplemented selenium would be excreted directly into the animals' waste and then onto the soil; (3) the animal waste would be applied to the soil at the maximum practical rate; (4) all the excreted selenium would be in a chemical form readily soluble in water; (5) up to 10 percent of the selenium in the waste-amended soil would be lost to runoff from a single, large rainfall (soil-incorporated pesticides show losses to runoff of no more than 0.5 to 1.5 percent (FONSI, p. 9)); and (6) all the runoff from the large rainfall of a 10-hectare watershed would be carried into a 1-hectare farm pond and would constitute 20 percent of all the water in the pond.

B. Objections and Requests

The only substantial requests for a stay or a hearing on the 1987 amendments were grounded in objections to the EA submitted by AFIA and the FONSI prepared by the agency. Those requests were based on the potential for significant adverse environmental effects to occur from selenium environmental introductions and the asserted inadequacy of the EA and FONSI to predict the seriousness of the selenium environmental introductions expected from the 1987 amendments.

Six organizations filed objections to or comments on the 1987 amendments within the 30-day comment period. Five of these organizations, the American Council of Independent Laboratories, the State of California Health and Welfare Agency, Micro Tracers, Inc., the National Mixer-Feeder Association, and the Natural Resources Defense Council, requested a hearing on their objections, a stay of the 1987 amendments, or both a hearing and a stay on the grounds that AFIA's EA and the agency's FONSI did not adequately address the environmental impact of increasing the permitted amount of supplemental selenium in animal feeds.

These organizations argued that the literature demonstrates that selenium bioconcentrates, bioaccumulates, and biomagnifies and that these processes were not considered by the FONSI to estimate the possible buildup of selenium from its continued use in animal feeds. Moreover, these processes can create environmental problems, particularly in aquatic ecosystems, that could threaten the health of fish and wildlife.

More than 50 references were submitted by the five organizations identified above. For the most part, the references discussed the selenium toxicity problems that have occurred at the Kesterson Reservoir in California. None of the references submitted by any of the organizations discussed the relevance of this information in terms of whether the addition of selenium to animal feeds and its consequent disposal through animal wastes would be of adequate quantity and bioavailability to cause a significant adverse environmental impact.

C. The 1989 Notice

CVM set out tentative responses to the environmentally based objections in a notice published in the **Federal Register** of July 11, 1989 (54 FR 29019) (the 1989 notice). The 1989 notice updated the existing environmental analysis with additional information obtained from the scientific literature and discussed CVM's understanding of the selenium cycle in the environment, the interconversion of selenium from one chemical form to another by the action of living organisms and chemical and geological processes, and the factors that affect selenium concentrations found in the food chain. CVM reevaluated the worst-case analysis in the FONSI and tentatively concluded that the model was conservative enough to account for the uncertainties and local variations involved in the environmental fate and effects of selenium introduced into the environment as a result of the 1987 amendments (54 FR 29019 at 29022).

During the 60-day comment period for the 1989 notice, the agency received 20 comments from scientists in other Federal and State governmental agencies, representatives from conservation and environmental organizations, industry consultants, and U.S. Congressmen. Eight comments provided additional information for consideration. These comments took the position that more precise scientific data were needed to support the assumptions used in the model for the worst-case analysis. Comments from three scientists in the Department of the Interior (DOI) criticized the assumptions in the worst-case analysis as based upon limited field data on: (1) The various forms of selenium excreted in animal wastes; (2) the rates of weathering of animal waste; and (3) the effect of weathering on the conversion of selenium to different forms and resulting selenium concentrations in

animal wastes, soils, leachate, and receiving waters. Lemly (Fish and Wildlife Service) commented that although the forms of selenium excreted by animals may not be bioavailable to terrestrial ecosystems, they may be bioavailable in aquatic ecosystems. He suggested that certain areas of the United States, where soil selenium levels are relatively high, are incapable of sustaining even small increases of selenium in the aqueous environment (Ref. 2, p. 2). Further information submitted by Skorupa (Fish and Wildlife Service) showed that selenium from agricultural irrigation return waters may contribute to problems in various areas throughout the Western United States, and that the long-term safety of aquatic systems containing 2 to 5 ppb of total waterborne selenium can be questioned (Ref. 3, p. 3). Sylvester (Geological Survey) contended that selenium in manure spread on farm land in semi-arid to arid areas in the Western United States would most likely be oxidized to the selenate form which is very mobile; therefore, the assumption used in the worst-case analysis that a maximum of 10 percent of the selenium in waste-amended soil would be lost to runoff is unreasonable (Ref. 4).

CVM met with the three scientists from DOI on May 31, 1990, to discuss their concerns. These scientists stated that research in progress indicates that the specific form of selenium is critical in determining the potential for selenium toxicity because amino forms of selenium may bioconcentrate to toxic levels in fish and birds even when concentrations in water are less than 1 microgram per liter (1 ppb). According to the DOI scientists, information, as opposed to the assumptions used in the worst-case analysis of the FONSI and the 1989 notice, is needed on the specific forms of selenium entering the environment through animal wastes and the fate of these forms (Ref. 1). DOI supported the comments of the three scientists in an August 31, 1992, letter to FDA (Ref. 5).

Based on the information received following the 1989 notice, the consultations with the DOI scientists studying selenium in the environment, and information in the scientific literature, FDA tentatively concluded that, in areas of the Western United States, in particular, where geological sources of selenium are abundant in the soil profile and bioavailable to ecosystems, the worst-case assumptions in the FONSI might not be adequate to assess the environmental safety of the additional introductions of selenium resulting from the 1987 amendments. In the **Federal Register** of June 26, 1992 (57 FR 28606) (the June 1992 notice), FDA outlined information needed to more thoroughly assess the environmental impact of the 1987 amendments, and invited persons to provide that information, their views, and analyses in a legislative-type public hearing, which was held on August 25, 1992. In addition to requesting environmental information, the June 1992 notice outlined several possible courses of action that the agency would consider in response to the environmental concerns.

III. Environmental Information Sought Through the Public Hearing

FDA sought additional information on: (1) The environmental introductions of selenium from each supplemented animal species and waste management system; (2) the environmental fate of selenium introduced into agricultural and aquatic ecosystems; (3) the effects caused by the various selenium compounds and the concentrations at which those effects are expected to be manifested for exposed organisms in the environment; and (4) a manner in which to integrate this information into a predictive model for watersheds (as, presumably, there are locations where it is undesirable to introduce additional selenium from animal supplementation) (57 FR 28606 at 28609 and 28610).

A. Environmental Introductions

When selenium, as sodium selenite or selenate, is consumed by animals, it is converted into any one of a number of organic forms that are utilized in metabolism and excreted or exhaled, retained in the body, or secreted in milk or eggs. FDA sought information on how much selenium is retained and excreted in wastes from poultry, swine, and ruminants, and secreted in milk by dairy cattle or in eggs by laying hens. The chemical forms of selenium introduced into wastes are also unknown and it is thought that the various chemical forms might have different environmental fates.

A variety of animal waste management practices are in use, including anaerobic lagoons, oxidation ditches, and storage followed by direct application to agricultural soils. Since some selenium compounds are sensitive to changes in both the pH and the amount of oxygen present (redox potential), the selenium excreted in animal wastes might be converted to other chemical forms with their own environmental mobility, persistence, and toxicity.

In short, in order to define the scope of environmental impacts due to selenium introduced as a result of supplementation of animal feeds, it is necessary to know what forms of selenium are being introduced and the concentrations of each. The forms and concentrations are thought to vary between animal species and growth stage and among alternate waste management systems and, therefore, appear to present more complex questions for selenium than for carbon-based products included in animal feeds.

The FONSI and EA for the 1987 amendments made assumptions for the amounts and forms of selenium introduced and their bioavailability. These assumptions were thought to result in worst-case estimates. These estimates resulted in calculated environmental concentrations that, according to some Federal scientists, suggest adverse potential environmental impacts for some locations (Refs. 2, 3, and 4) for which restrictive measures would be needed. On the other hand, use of overly restrictive measures in areas with selenium deficiencies could lead to adverse effects on domestic animals with no environmental benefits. In sum, worst-case assumptions are not sufficient to predict selenium environmental introductions, and detailed environmental introduction, as well as fate and effects, information is needed to provide a basis to identify and assess impacts and to identify areas where additional selenium introductions should be limited or avoided altogether and other areas where current supplementation practices are environmentally acceptable.

In the August 1992 public hearing and in comments submitted after the hearing, information presented by representatives from the American Society for Animal Science compared the total quantities of selenium used for animal supplementation to other sources of selenium entering the environment (Refs. 6, 7, and 8). Ullrey argued that, based on calculations of the amount of selenium entering the atmosphere from natural and anthropogenic sources, the selenium used in animal feed would account for less than 0.5 percent of the total selenium entering the environment and thus would be unlikely to cause a significant impact (Ref. 6). Oldfield (Refs. 7 and 8) compared possible environmental introductions resulting from selenium supplementation of feeds with introductions resulting from the use of selenate-containing fertilizers, which are used in some countries as a means of increasing the selenium status of forages. He also noted the extensive

areas where selenium deficiencies occur in the United States. Representing himself, Norman (Ref. 9) presented the results of a field study where selenium supplementation was practiced in cattle. The general conclusions of Ullrey, Oldfield, and Norman were that: (1) The quantities of selenium used in animal feed supplementation are small compared to other natural and industrial introductions into the environment; (2) there are very few areas of the country where excessive selenium occurs in forages; and (3) the fact that domesticated animals continue to respond to selenium supplementation, even though selenium has been used in animal feed for 17 years in the United States, indirectly argues against any residual buildup of selenium from animal manure in the environment or toxicity problems resulting from animal feed use of selenium. For example, if there were a buildup of selenium in the soil, this would result in higher concentrations in forages and plant products harvested and used as animal feed, and therefore, less selenium supplementation should be needed to prevent selenium deficiencies in livestock.

This information suggests that selenium supplementation of animal feeds is not currently causing environmental problems, but it does not provide a scientific basis to evaluate the potential effects of selenium supplementation through time and in the many environmental conditions present in the United States. As DOI has pointed out, the selenium in animal manure would not be equally distributed across the United States but would be locally concentrated in the areas of animal production (Ref. 10). Runoff from this waste and waste amended soil could pose a problem in aquatic systems in certain areas of the country since any increase could result in adverse biological effects, e.g., the amino forms of selenium may bioconcentrate to toxic levels in fish and aquatic birds even when concentrations in water are less than 1 ppb (Ref. 1). Further, the lack of any known environmental problems directly resulting from animal feed use may be simply because there is a lack of research in this area (Refs. 10 and 11). Information sufficient to test these opposing viewpoints and hypotheses is missing for the specific level of selenium supplementation provided for in the 1987 amendments. Specific information applicable to individual sites is also missing. Such information is needed in order to prepare an adequate evaluation of the long term environmental effects of selenium supplementation of domesticated animals at the 1987 levels.

In the June 1992 notice (57 FR 28606), FDA requested information on the amount(s) and form(s) of selenium in manure from animals fed supplemental sodium selenite or sodium selenate. Information was also requested on the effects of the type of waste management system on biotransformation of selenium to different inorganic and organic forms. The information submitted to the agency and other relevant information in the scientific literature is summarized below for ruminants, swine, and poultry.

1. Dairy and Beef Cattle and Sheep

i. *Excretion.* Ullrey provided information on the amount of selenium in dairy and beef cattle manure (Ref. 6). From unpublished research conducted at Michigan State University, Ullrey reported that lactating Holstein cows consuming 10.2 to 12.0 mg of supplemental selenium per day as sodium selenite excreted an average of 6.2 kilograms per day of fecal dry matter containing 4.5 mg of selenium (0.73 ppm of selenium, dry matter basis), representing about 40 percent of the selenium ingested. Feces was the main route of selenium excretion, which is an observation supported by peer-reviewed scientific literature (Refs. 12 through 17). The same lactating cows excreted an average of 20 liters of urine per day containing 1.8 mg of selenium (0.09 ppm of selenium), representing about 16 percent of the selenium ingested. A portion of the remaining ingested selenium would be secreted into milk, which contains from 0.02 to 0.06 ppm of selenium (Refs. 18 through 20). The remaining amount of ingested selenium could be retained by the tissues to maintain selenium status (Ref. 21) or, some studies show, could be converted to selenide and expired by the lungs (Ref. 22). However, information is inadequate to determine the amount of selenium lost to the environment through respiration.

There was no information provided at the hearing or submitted to the docket on the specific forms of selenium in beef or dairy cattle manure. Previous studies by Butler and Peterson (Ref. 12) and Ehlig et al. (Ref. 16) were cited by Ullrey (Ref. 6), Oldfield (Ref. 7), and Norman (Ref. 9), as suggesting that highly water-insoluble forms of selenium, such as elemental selenium and metal selenides, are the primary forms found in the feces, whereas primarily methylated forms are excreted in the urine. However, the forms of selenium present in urine are still uncertain; in the August 1992 hearing, Sunde stated that the forms of selenium excreted in the urine are at this time uncharacterized when dietary selenium levels are in the deficient to adequate range (Ref. 21). Without more and better information on the forms of selenium in beef and dairy cattle manure and urine, the potential environmental impact of selenium cannot be adequately evaluated.

The two studies cited above (Refs. 12 and 16) broadly characterize the forms of selenium in sheep feces. FDA previously considered the study by Butler and Peterson (Ref. 12) (54 FR 29019 at 29022, July 11, 1989). Sheep were dosed with ^{75}Se-selenious acid, and the feces were collected over a 72-hour period. The amount of radioactivity in the feces was 51 percent after 72 hours. Chemical fractionation of the feces showed that most of the selenium was present in water-insoluble inorganic forms, but the specific forms could not be determined. Protein-bound forms were also detected using protease digests. The study by Ehlig et al. (Ref. 16) attempted to characterize the forms of selenium in feces of sheep supplemented with sodium selenite. Using ^{75}Se as a tracer, 10 to 20 percent of the selenium in the feces was in water-soluble forms (selenate and selenite). When the water-insoluble selenium was hydrolyzed with pronase, a proteolytic enzyme, 10 percent was found to be protein-bound. The remaining 70 to 80 percent was solubilized by nitric acid, indicating the presence of elemental selenium and selenide forms. Based on studies on the metabolism of selenium by rumen microorganisms, it appears that the protein bound forms of selenium would most likely be selenocysteine, since rumen microorganisms incorporate selenite and selenate into selenocysteine (Refs. 23 and 24). Part of the protein bound selenium in the feces could also be unabsorbed dietary selenomethionine, the primary amino acid form in plants (Ref. 25).

Other studies in the literature support the hypothesis that the forms of selenium in the feces are primarily water-insoluble and inorganic (Refs. 13 and 14), but do not provide enough information to sufficiently characterize those forms to permit evaluation of their potential impact on the environment.

ii. *Effects of waste management.* One method of managing dairy cattle manure is as a slurry stored in pits or lagoons. Ullrey (Ref. 26) reported that the selenium concentration of dairy cattle manure taken from pits under slatted floors of cattle fed 0.3 ppm of supplemental selenium since 1987 ranged from 0.070 to 0.088 ppm, with

an average of 0.08 ppm, wet basis (0.9 ppm, dry basis). Eisenberg reported values of 0.063 ppm selenium in samples taken from the top of a pond containing dairy cattle manure and 0.20 ppm from the bottom of the pond (average value of 0.13 ppm, wet basis or 3.4 ppm, dry basis) located on a farm in Pennsylvania (Ref. 27). Ullrey also reported on work conducted by Stowe at Michigan State University on the selenium concentration of beef cattle manure stored as a liquid manure slurry in a pit below slatted floor pens where beef cattle had been housed and fed diets supplemented with 0.1 to 0.2 ppm of selenium (Ref. 6). Samples were taken from the top, middle, and bottom of the pit in three locations. Concentrations ranged from 0.055 to 0.071 ppm, wet basis, with an average of 0.062 ppm (0.59 ppm, dry basis) (Ref. 6).

This type of sampling represents limited surveys of the selenium concentration in manure and is not sufficient to determine how much selenium enters the environment through animal waste. No information was submitted on how much selenium accumulates in these systems over time and how much may have been lost to air, ground water, removed sludge, or liquid effluent. In order to develop a model for selenium in various waste management systems, more specific information on selenium inputs and outputs is needed, such as number of animals, lagoon size, partitioning between sludge and liquid phases, and rates of transformation of excreted selenium to different forms.

2. Growing Swine

i. *Excretion.* Ullrey cited studies with growing swine fed corn-soybean meal diets containing 0.04 ppm of selenium and supplemented with 0.0, 0.05, 0.1, 0.2, or 0.5 ppm of selenium in the form of sodium selenite (Ref. 6). The amount of selenium excreted in the feces for the 0.0, 0.05, 0.1, 0.2, and 0.5 ppm supplemental selenium diets was 42, 38, 27, 33, and 24 percent of the selenium intake, respectively; the amount of selenium excreted in the urine represented 10, 9, 13, 26, and 61 percent of the intake for the same respective diets. Ullrey noted that absolute retention of selenium by pigs was the greatest at the 0.2 ppm supplemental selenium level, which is the closest level to the 0.3 ppm supplemental selenium level permitted by the 1987 amendments. Going from the 0.2 to 0.5 ppm level resulted in a large increase in the amount of selenium excreted in the urine. Based on this information, growing swine retain 41 percent of the selenium ingested and excrete 33 percent in the feces and 26 percent in the urine. The data presented by Ullrey correlate well with those found in the literature on growing swine fed 0.3 ppm of selenium from sodium selenite and are most likely representative of the amount of selenium found in swine fecal and urinary excretion (Refs. 28 through 30). For example, Mahan reported growing swine retained 44 percent of the selenium ingested with 30 percent excreted in the feces and 25 percent in the urine (Ref. 28).

Ullrey commented that evidence to date suggests that highly insoluble forms of selenium, such as elemental selenium and metal selenides, predominate in the feces (Ref. 6), and that recent data (Ref. 31) from rats show that 50 percent or more of the selenium in the urine is present as monomethylated selenium at normal levels of selenium intake. Trimethylselenonium and dimethylselenide forms are the major urine metabolites at selenium intakes higher than what is required by the animals (Ref. 6). FDA, on the contrary, found no information in the literature that specifically characterizes the individual forms of selenium in manure from selenium-supplemented swine; and Sunde (Ref. 21) reported that the forms in the urine are still uncharacterized in animals fed adequate dietary selenium. Without specific information on the forms and amounts of selenium in swine manure, the fate of selenium in swine manure in the environment cannot be determined.

ii. *Effects of waste management.* Further information supplied by Ullrey included selenium analysis of swine manure taken from manure pits under slatted floors from the Michigan Swine Teaching and Research Farm (Ref. 26). Pigs in this facility had been supplemented with 0.3 ppm selenium since 1987. Selenium values taken from four different manure pits were 0.133, 0.108, 0.088, and 0.085 ppm, wet basis (1.8, 2.7, 3.8, and 3.7 ppm, dry basis, respectively). The selenium levels in samples taken from the east and west halves of the manure lagoon, which the manure pits are emptied into, were 0.006 and 0.005 ppm, wet basis (2.5 and 3.0 ppm, dry basis, respectively). Eisenberg also reported average values for four samples of sow urine, three samples of sow feces, and three samples of grower pig feces obtained from a farm in the San Joaquin Valley of California were, respectively, 0.106 ppm, 0.328 ppm, and 0.157 ppm, wet basis (Ref. 27). (Values were not reported on a dry matter basis.) As discussed above in section III.A.1. of this document, this type of sampling represents limited surveys of the selenium concentration in manure and is not sufficient to determine how much selenium enters the environment through animal waste. More specific information on selenium inputs and outputs is needed for the various types of waste management systems, including information on the forms of selenium in swine manure and the effect of waste management practices on the conversion of excreted selenium to different forms.

3. Poultry

i. *Excretion.* No information was provided regarding the amount or form of selenium in poultry manure. Oldfield reported that, generally, in monogastrics the pathway for excretion is the urine rather than the feces, and that a major form of selenium in the urine and thus poultry manure is trimethylselenonium (Ref. 7). Based on information in the literature, poultry excrete in both the feces and urine an average of 40 percent of the selenium ingested. Latshaw and Osman (Ref. 32) fed laying hens practical diets containing 0.27 ppm of supplemental selenium as sodium selenite and found that hens consumed an average of 127 grams (g) of feed/day and excreted 36 g of dry manure/day. The selenium concentration of the dry manure was 0.47 ppm and selenium retention (i.e., not appearing in feces) was calculated to be 62 percent. Eggs contain 0.4 to 0.5 ppm of selenium, dry basis, which is approximately 50 percent of the selenium ingested. The disposition of the remaining 12 percent of the amount retained by the bird was not determined but was most likely used to meet metabolic requirements, stored, or exhaled.

The selenium content of caged layer waste was reported by the National Research Council (Ref. 33) to be 0.56 ppm selenium, dry basis, which is slightly higher than the above value reported by Latshaw and Osman. Helmer (Ref. 34) recently reported that values for caged layer waste varied from 0.06 to 0.75 ppm, dry basis. Caged layer waste also contains shed feathers, spilled feed, and broken eggs that can contribute to variability in selenium levels in poultry waste.

It appears that broilers do not retain as much selenium as laying hens. Based on a study by Scott and Thompson (Ref. 35), Cantor (Ref. 36) calculated that growing chicks retained 23 percent of the selenium ingested. Miller et al. (Ref. 37) also reported that growing chicks retained 27 percent of the selenium ingested when diets were supplemented with 0.125 ppm selenium from sodium selenite and 14 percent when supplementation was increased to 0.5

ppm. Thus, the selenium content of broiler manure may be higher than that for laying hens (since laying hens deposit a proportion of administered selenium in eggs).

ii. *Effects of waste management.* No data were submitted concerning the forms of selenium found in poultry waste or the rates of conversion of the forms that are excreted. Therefore, the forms of selenium in poultry manure and the effect of waste management practices on the conversion of excreted selenium to different forms cannot be determined.

4. Environmental Introductions Summarized

Significant animal metabolism and excretion information is still missing. Some species apparently are capable of expiring a portion of the selenium dose; the conditions under which this might be an important loss are poorly defined. No information was provided or found on the chemical forms of selenium in manure under different waste management systems. This information is critical in predicting the environmental fate of selenium from animal manure.

B. Environmental Fate

There are a number of possible organic and inorganic forms of selenium introduced into the environment as an indirect result of supplementing animal feed with sodium selenite or selenate. It is important to predict the environmental fate of each of these compounds in order to determine exposures that might occur. Environmental fate information includes the transformation of introduced selenium compounds to other forms, the mobility of each form through various soil profiles and into ground and surface waters, and the potential for each form to bioaccumulate in biota and to be biomagnified through food webs. Soil type, pH, redox potential, presence of organic matter, and microbial activity all influence the forms of selenium expected to predominate, but the effect of these factors on the rates of chemical and biological transformation of the various introduced forms is unknown. Given that the chemical forms derived from animals and animal waste management systems have been characterized in only the most general terms (see section III.A. of this document), their environmental fate cannot be predicted with confidence.

1. Transformations and Mobility

Selenium is a dynamic element that is transformed in the environment by physical, chemical, and biological mechanisms. Under common environmental conditions, four principal inorganic species of selenium are found: Selenide (−2), elemental selenium (0), selenite (+4), and selenate (+6). Partitioning among the inorganic forms in the environment depends largely on pH and redox conditions, solubilities, the complexing ability of soluble and solid ligands, and reaction kinetics. Biological activity can alter inorganic forms and produce organoselenium compounds. For example, selenate and selenite can be reduced to elemental selenium by numerous bacteria (Ref. 38), and inorganic selenium species can be incorporated into selenoamino acids and derivative proteins (Ref. 39), or reduced organoselenium compounds such as volatile dimethyl selenide (Refs. 40 and 41).

Although there is a general understanding of factors that control the transformation of inorganic and organic selenium compounds, little is known about pathways and reaction kinetics. This type of information is especially important for selenium transformations in microbially active environments such as animal wastes and manured agricultural soils. The transformation kinetics among inorganic selenium forms is important for our understanding of the formation of biologically available and mobile forms of selenium.

According to pH and reduction potential (Eh) diagrams (for example, Ref. 42), several generalizations can be made about the major inorganic selenium species expected in soils. In alkaline and well-oxidized soils, selenate is thermodynamically stable. Selenate salts are very soluble in water, and selenate is poorly sorbed to soil surfaces. Selenate is one of the most mobile forms of selenium and can be leached from soils and transported to groundwater and surface water. In sediments, selenate is reduced to elemental selenium by anaerobic bacteria (Ref. 38). In addition, selenate appears to be the form most readily taken up by plants (Ref. 43). Under mildly oxidizing neutral pH environments, selenite is the predominant form. Selenite forms relatively insoluble complexes with iron and aluminum sesquioxides in certain soil environments. Oxidation of selenite to selenate in alkaline and well-oxidized soils, although slow, can increase the mobility of selenium. $MnSeO_3$ is the only selenite mineral that might persist in strongly acid soils. Eh-pH diagrams indicate that elemental selenium is stable in reducing environments. All crystalline forms are very insoluble in water and oxidation or reduction kinetics would be expected to be very sluggish. Selenide should exist in reducing conditions as H_2Se and as metal selenides. As a rule, the mobility of selenide minerals is extremely low in soils under reducing conditions (Ref. 42). (Microbial processes that occur in both oxidizing and reducing soils can produce organic selenide compounds such as dimethyl diselenide or selenomethionine.)

In agricultural soils that are amended with animal wastes, elevated organic matter levels and microbial activities would complicate this analysis. Agricultural soils are highly manipulated oxidized systems that tend to favor the formation of selenite and selenate and stimulate microbial activities. Biological, chemical, and physical transformations take place when wastes containing selenium are initially applied to soils. As organic levels diminish and microbial populations stabilize, the contribution of biological transformations may be reduced. Information concerning the relative contribution and rates of each of these processes is lacking.

2. Bioaccumulation/Biomagnification

i. *Crop plant species.* The oxidation state of selenium is of primary importance in determining its availability to crops (Ref. 44). For most crop plants, soil selenate is the most available inorganic form. Selenite is also absorbed, but the decreased solubility of this species generally makes it less available for plant uptake. Selenium is incorporated into organic constituents in the plant after conversion to selenite primarily in the form of selenoether amino acids (R-Se-R'). These amino acids include methylselenocystine, selenocystathionone and methylselenomethionine (Ref. 45), which are incorporated into plant protein. In addition, plants form volatile organic selenium compounds from selenium forms and concentrations that can be found in and absorbed from soils (Refs. 46 and 47).

Soil factors that govern the availability of selenium include soil pH and Eh, soil texture and mineralogy, organic matter levels and competitive ions such as SO_4^{2-} and PO_4^{3-}. Plants may compete with soil microorganisms for available water soluble selenium.

Thus, phytoavailable selenium in agricultural soils amended with animal wastes may be absorbed and converted to organic forms, including volatile forms that are released to the atmosphere. The rates of uptake and conversion of inorganic selenium to

organic forms depend on a variety of factors including selenium concentrations, soil conditions, crop species and growth rates. Rates of formation and estimates of release are not available. No models are available for describing the metabolism of selenium in crop plants.

ii. *Pasture ecosystems.* A field study submitted by Norman et al. (Refs. 9 and 48) attempted to address the environmental fate of selenium in a cattle pasture setting. Interpretation of the results to yield a general understanding of selenium dynamics in pasture settings is inappropriate, due to the limited experimental design. The field study utilized elemental selenium pellets placed in the rumen of cattle for sustained release. This is not the form of selenium or the manner of administration permitted by the selenium food additive regulation, before or after issuance of the 1987 amendments. There is inadequate information to compare the quantities and chemical form of selenium excreted by cows treated with the sustained-release elemental selenium pellets with those supplemented with the permitted selenium forms, sodium selenite and sodium selenate. Additionally, the experimental design included sampling for total selenium in soils and sediments rather than including a characterization of the various selenium forms present. The study was also conducted at a site with an elevated selenium background, which might obscure the selenium introductions from the treated animals. Site characterization as to soil pH, Eh, organic matter content and the like was also incomplete.

iii. *Food chain bioconcentration.* Food chain bioconcentration of selenium, the conditions under which it occurs, the forms of selenium involved and the significance of its occurrence are the focus of very different viewpoints (see Refs. 10, 11, 21, 49, 50, 51, and 52). Selenium is a rare, required element for life, and most biota appear to possess enzyme pathways for selenium bioaccumulation and storage (Ref. 21). Moller presented evidence suggesting that selenium bioaccumulation was a normal response when animals are under oxidative stress from other metals as a means to counter metal toxicity (Refs. 10 and 49).

The effects of other metals and metalloids on the bioavailability and toxicity of various selenium forms are not well known. It has been suggested that sulfur, phosphate, iron, and manganese, among others, must all be considered when evaluating selenium availability, bioaccumulation, and toxicity (Refs. 42, 49, and 50).

Skorupa, on the other hand, stated that his research on birds in the Kesterson Reservoir area indicated that selenium was the cause of the observed toxic effects, and that exposures to other metals or combinations of metals could not account for the observations (Ref. 10). Lemly's research in eastern U.S. reservoirs (Ref. 11) also implicates selenium (accumulated through the food chain) as the cause of the observed toxic effects; his research does not suggest that selenium was bioaccumulated by stressed organisms as the result of other toxic exposures. Peterson (Refs. 51 and 52), in his modeling of selenium risks to wildlife and in extrapolating a safe water concentration for selenium for use as a water quality criterion under the Clean Water Act, appears to ignore the requirement for selenium by most, if not all, biota and instead uses bioconcentration factors as one would for xenobiotic compounds whose only potential environmental effects are adverse.

The basis for extrapolating bioaccumulation information from the Kesterson Reservoir area to other freshwater ecosystems across the United States is questionable, given the evident importance of biogeochemistry in controlling the environmental fate of selenium. The Kesterson Reservoir and its watershed are saline, alkaline, eutrophic waters containing not only excessive levels of selenium but also other elements, such as boron and molybdenum, that have their own bioactivity and effects on aquatic populations that may live in these systems (Refs. 53 and 54). Although the biogeochemistry of the Kesterson Reservoir area may be representative of certain other watersheds in the western United States that received runoff water from agricultural irrigation, it is not representative of most of the surface waters in the United States. The impact of biogeochemistry on the bioaccumulation of selenium is not well characterized or known in the quantitive manner required for extrapolation from one site to another. Neither Peterson's model nor FDA's FONSI addresses this issue. Use of partitioning models for predicting bioaccumulation (as are used for xenobiotics) is also questionable for modeling selenium compound bioaccumulation, because selenium accumulation could be active, enzyme-mediated, and subject to regulation by feedback systems.

Peterson's empirical approach is similar to the worst-case approach used by FDA in its FONSI for the 1987 amendments. Both approaches attempt to compensate for the lack of information about the biogeochemistry of selenium by making assumptions that are questionable. Both approaches make predictions that are too weakly supported given the importance of selenium compounds both as a benefit and as a detriment to the health of organisms in the environment.

It should be noted that none of the field studies or models presented in the record, as discussed in section III. of this document, was based on environmental introductions due to use of sodium selenate or selenite as an animal feed supplement. Moreover, field conditions in areas where very high concentrations of selenium were present and where one set of soil and rainfall conditions occurs may not be applicable to other sites where biogeochemistry favors lower concentrations and fewer bioavailable forms. Those submitting information to the record neither showed the applicability nor inapplicability of selenium environmental effects findings from heavily impacted sites, such as Kesterson Reservoir, to other sites that do not appear to be experiencing selenium excess-related effects. Predictive models, including the worst-case analysis in the FONSI, likewise make assumptions to make up for the lack of data about biogeochemistry and bioconcentration rather than address the environmental fate of selenium from a mechanistic viewpoint.

C. Environmental Effects

As explained in sections III.A. and B. of this document, information to determine exposure to various selenium chemical forms and their concentrations is not available for environmental introductions, transport, or transformations of selenium resulting from the supplementation of animal feeds. Additionally, both the laboratory and field data bases on effects of selenium are of limited usefulness. Few studies control for the identity of the form of selenium evaluated. The limited available information suggests that various chemical forms of selenium have not been tested at all. Selenomethionine is commonly used as a surrogate of undefined organoselenium exposures, even though the literature indicates that there are many selenium-containing amino acids and, further, that most dietary exposures to organoselenium forms in the environment would be as selenium-containing proteins (Ref. 55).

Peterson's (Refs. 51 and 52) and Skorupa's (Ref. 10) approaches to setting selenium water quality criteria for total selenium concentrations protective of wildlife are unsatisfactory, in light of

the requirement for selenium shown in freshwater invertebrates, fish and waterfowl, and the variable bioavailability of the various selenium forms. Approaches used to set water quality goals for xenobiotic compounds, such as polychlorinated biphenyls (PCB's), might be misleading or simply wrong for selenium. In the case of selenium, it appears that the water quality criteria being considered, perhaps less than 1 ppb (Ref. 10), may be below the selenium nutritional requirement for the optimum health of some freshwater creatures (Ref. 56). In addition, this level is lower than the amounts of selenium found in rainwater (Ref. 6). Attempting to set a water concentration based on a measurement of total selenium that will provide for safety of the entire ecosystem has questionable merit, as water concentration would appear to correlate poorly with the total quantities of selenium moving through the ecosystem. This selenium flux and accumulation in various environmental compartments is controlled by both inorganic and biologic factors. Lastly, the use of Kesterson Reservoir data as the predominant basis for preparing water quality goals for the nation as a whole ignores the unique biological and geological characteristics of that watershed and evaporation pond systems.

In sum, both field and laboratory data on selenium are sufficient to show the deficiencies in the approaches used by the Environmental Protection Agency (EPA) and the Fish and Wildlife Service as well as FDA in trying to evaluate the potential environmental impact of various selenium introductions. The current data base is inadequate to evaluate the safety of such introductions.

D. Predictive Model

Integration of the above three areas (environmental introductions, fates, and effects) to make predictions based on relatively simple starting information for conditions in local watersheds-ecosystems should be a goal for management of selenium introductions. Although several reviews have attempted a qualitative synthesis, FDA is unaware of any quantitive selenium cycling model, for organic or inorganic forms of selenium, that is in existence or under development. Quantitative models are necessary to predict the concentrations and forms of selenium that can be expected under a variety of environmental conditions. This type of predictive model can then be used to identify areas sensitive to selenium introductions. A predictive model must adequately describe the environmental concentrations of inorganic, organic, and volatile forms of selenium.

The Center for Exposure Assessment Modeling (CEAM) of EPA has available environmental software for exposure assessment modeling (Ref. 57) that could be useful in developing a complete quantitative selenium cycling model. The Metals Speciation Model or MINTEQA2 is an equilibrium chemical speciation model for dilute aqueous systems and can be used to calculate the mass distribution at equilibrium among dissolved, adsorbed and solid phase systems under a variety of water and soil conditions. The chemical species distribution within each phase is also calculated. MINTEQA2 can be used for both surface water and ground water problems where speciation and mobility are of concern. Equilibrium thermodynamic calculations, however, do not accurately predict the chemical speciation of selenium because of the influence of biological processes. As discussed in sections III.A. and B. of this document, the forms of organic selenium in animal wastes and the subsequent microbial conversions of selenium in animal wastes and manured agricultural fields are expected to be significant. Due to the very limited data on the forms and reaction kinetics of organic selenium species, the use of equilibrium thermodynamics to model the speciation of selenium from the use as animal supplements is questionable. The MINTEQA2 model could be useful only if it assumed that selenium in animal wastes and soils are present as inorganic forms and that the biological conversions of selenium is negligible. Without additional data on the contribution of organic forms of selenium and information on the reaction kinetics of organic selenium species, this model cannot be validated.

EPA's Exposure Analysis Modeling System (EXAMS) is an interactive modeling system that conducts evaluation and error analysis of the probable aquatic fate of synthetic organic chemicals. It can handle inorganic species to a limited extent. The validity of the model is dependent on providing accurate input parameters (chemical loading, molecular weight, solubility, sediment-sorption and biosorption, volatilization, photolysis, hydrolysis, oxidation, biotransformation, system geometry, and hydrology). EXAMS accepts standard water quality parameters and system characteristics and chemical datasets.

EXAMS has been designed to provide information on trace-level contamination of aquatic ecosystems that result from long-term chemical loading and thus could be of value in modeling the fate of selenium in aquatic systems from runoff or soil leachate. As indicated above, however, the validity of the model is dependent on providing accurate input parameters for organic selenium forms. There is a general lack of information on not only the type of organic forms that enter the environment but also on the reactions and transformations that alter the forms and concentrations.

Thus, there are two major limitations that must be addressed in order to adequately use models for describing the cycling of selenium in the environment. There is a lack of data on reaction kinetics and transformations of selenium species among organic forms and between organic and inorganic forms. Second, there is little if any information on the forms and concentrations of selenium that are present in animal wastes from animals receiving selenium supplementation and the waste management systems used to treat these wastes. This information is critical for the development of accurate predictions.

E. Summary

The worst-case analysis employed by FDA in predicting the potential environmental impacts of the 1987 amendments is inadequate because it cannot be validated, i.e., it may either be correct or incorrect. A more detailed analysis, based on more data and fewer assumptions and calculations is needed. The information submitted to FDA as part of this proceeding and the information that FDA found in the scientific literature are inadequate to determine the concentrations and forms of selenium compounds introduced into the environment in waste from animals receiving selenium supplements, inadequate to predict the effect of animal waste management practices on the concentrations and forms of selenium present, and inadequate to predict the environmental fate of various selenium compounds under the variety of biogeochemical conditions experienced in the United States. Thus, an exposure assessment for various environmental conditions cannot be prepared. Environmental toxicology data that control for all the chemical forms of selenium that may be introduced into the environment were not submitted. The applicability of field studies in areas affected by large quantities of geological or anthropogenic selenium (not from animal wastes) to areas currently producing selenium-deficient crops is questionable. A predictive model that

could be used to identify areas sensitive to selenium introductions and facilitate management of selenium introductions from all sources, including animal waste, cannot be prepared and validated with the current scientific data base. Mitigations designed to avoid selenium introductions into selenium-sensitive ecosystems or watersheds can therefore not be effectively implemented in a manner that also ensures appropriate selenium use in deficient areas.

A basic problem with the available environmental introductions, fate, and effects studies for selenium is the apparent absence of a consistent, reliable analytical method or methods that can be used to detect the various selenium chemical species, both inorganic and organic, in environmental media. Methods reported do not appear to be validated, and there does not appear to be a basis for comparing values obtained using different methods. Analytical methodology needs must be convincingly addressed before much of the necessary environmental research can be undertaken.

FDA's evaluation of the available information is consistent with the official position on the matter received from DOI (Ref. 5). Although EPA did not provide its evaluation of the 1987 FONSI and EA to the record, EPA completed an evaluation (Ref. 58) on December 10, 1992, in response to a request by Congressman John Dingell, Chairman of the House Subcommittee on Oversight and Investigations. EPA's findings support gathering additional information and reevaluation of the environmental documents for the 1987 amendments. Therefore, the decision in this document is consistent with the findings of EPA as well as DOI.

IV. Other Alternatives Considered

Objections to the 1987 amendments and comments on the 1989 notice included requests that FDA hold a formal evidentiary hearing on the environmental issues, stay the 1987 amendments, and/or prepare an EIS. These requests were considered by FDA in determining the appropriate course of action to resolve the environmental issues raised. In addition, as discussed in the June 1992 notice, FDA considered a partial stay of the 1987 amendments in so far as they permitted an increase to 0.3 ppm of selenium supplementation in the Western United States (states west of and including North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas). Each of the alternatives to stay the 1987 amendments is moot. Additional reasons for rejecting the alternatives are set out below.

A. Hearing

The criteria for deciding whether to grant or deny a hearing in a food additive proceeding are set out and discussed in detail in the 1992 decision document (57 FR 33244 at 33245). In essence, those criteria provide that a hearing is not required where there is no material factual dispute over which a meaningful hearing might be held. *Pineapple Growers Ass'n* v. *FDA*, 673 F.2d 1083, 1085 (9th Cir. 1982). That is the case here. As a legal matter, the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* supplements the act (*Environmental Defense Fund* v. *Mathews*, 410 F. Supp. 336 (D.D.C. 1976); see *Marshall Minerals, Inc.* v. *FDA*, 661 F.2d 409, 424 (5th Cir. 1981)), and an agency's FONSI and the EA on which the FONSI is based must be adequate (see *Foundation on Economic Trends* v. *Heckler*, 756 F.2d 143 (D.C. Cir. 1985)). As a factual matter, there is no genuine and substantial dispute that the FONSI and the EA for the 1987 amendments are inadequate. Moreover, the data and information that are available, if accepted as accurate, would not be sufficient to permit an adequate environmental analysis (§ 12.24(b)(3)), and the data and information that are necessary to do an adequate environmental analysis, though identifiable, are not available (§ 12.24(b)(2) (21 CFR 12.24(b)(2)). Therefore, the requests for a hearing are denied.

B. Preparation of an EIS

Preparation of an EIS without improved selenium environmental information would not be expected to yield improved decisionmaking, consistent with the goals of the National Environmental Policy Act. The information in the record demonstrates that using the current data base and making assumptions where data are missing leads to interpretations of potential environmental impact across the entire spectrum from no impacts expected to significant impacts expected. Consequently, FDA has determined that the preparation of an EIS would not be helpful at this time.

C. Stay of the 1987 Amendments in the Western United States

In the June 1992 notice (57 FR 28606 at 28608), FDA discussed the geological factors present in the Western United States that favor the conversion of selenium to more bioavailable and potentially more toxic forms. FDA believed that the worst-case assumptions in the FONSI and the EA might not be adequate to assess the environmental safety of additional introductions of selenium into ecosystems where selenium is already abundant and bioavailable. Conversely, FDA suggested that the potential for an adverse environmental impact as a result of selenium supplementation might be low in the Eastern United States because geological factors present there favor the formation of selenium forms that are generally water insoluble and of low bioavailability. In these areas, FDA tentatively concluded that the worst-case analysis might be adequate to assess the environmental impact.

However, after reviewing the information submitted in response to the June 1992 notice, the agency has concluded that there is insufficient information to address the potential for significant impacts in the Eastern United States as well as the Western United States. The amount and type of missing information, as discussed in section III. of this document, preclude the agency from preparing a new EA and FONSI for the Eastern United States or accepting as adequate for the Eastern United States the EA and FONSI prepared for the 1987 amendments.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Giduck, S.A., FDA memorandum of meeting, May 31, 1990.
2. Lemly, A.D., Comment 17 to FDA, docket No. 86F–0060, August 4, 1989.
3. Skorupa, J.P., Comment 27 to FDA, docket No. 86F–0060, August 8, 1989.
4. Sylvester, M.A., Comment 29 to FDA, docket No. 86F–0060, August 9, 1989.
5. Schrote, J.E., Assistant Secretary, Policy, Management and Budget, DOI letter to J.E. Henney, Deputy Commissioner for Operations, FDA, August 31, 1992.
6. Ullrey, D.E., Michigan State University, Testimony No. 3 to FDA, docket No. 86F–0060, August 25, 1992.
7. Oldfield, J.E., Oregon State University, Testimony No. 1 to FDA, docket No. 86F–0060, August 25, 1992.
8. Oldfield, J.E., Oregon State University, Comment No. 16 to FDA, docket No. 86F–0060, September 3, 1992.
9. Norman, B.B., Cooperative Extension, University of California, Testimony No. 2 to FDA, docket No. 86F–0060, August 25, 1992.
10. Skorupa, J., U.S. Fish and Wildlife Service, Comment No. 28 to FDA, docket No. 86F–0060, September 28, 1992. Written submission under cover letter from R.N. Smith, Fish and Wildlife Enhancement.
11. Lemly, A.D., U.S. Department of Agriculture, Comment No. 10 to FDA, docket No. 86F–0060, August 12, 1992.

12. Butler, G.W., and P.J. Peterson, "Aspects of the Faecal Excretion of Selenium by Sheep," New Zealand Journal of Agricultural Research, 4:484, 1961.

13. Cousins, F.B., and I.M. Cairney, "Some Aspects of Selenium Metabolism in Sheep," Australian Journal of Agricultural Research, 12:927, 1961.

14. Peterson, P.J., and D.J. Spedding, "The Excretion by Sheep of ^{75}Selenium Incorporated Into Red Clover (*Trifolium pratense L.*): The Chemical Nature of the Excreted Selenium and its Uptake by Three Plant Species," New Zealand Journal of Agricultural Research, 6:13, 1963.

15. Paulson, G.D. et al., "Fate of a Physiological Dose of Selenate in the Lactating Ewe: Effect of Sulfate," Journal of Animal Science, 25:1054, 1966.

16. Ehlig, C.F. et al., "Fate of Selenium From Selenite or Seleno-Methionine, With or Without Vitamin-E, in Lambs," Journal of Nutrition, 92:121, 1967.

17. Langlands, J.P. et al., "Selenium Excretion in Sheep," Australian Journal of Agricultural Research, 37:201, 1986.

18. Maus, R.W. et al., "Relationship of Dietary Selenium in Plasma and Milk From Dairy Cows," Journal of Dairy Science, 63:532, 1980.

19. Olson, O.E., and I.S. Palmer, "Selenium in Foods Purchased or Produced in South Dakota," Journal of Food Science, 49:446, 1984.

20. Schubert, A. et al., "Selenium Content of a Core Group of Foods Based on a Critical Evaluation of Published Analytical Data," Journal of the American Dietetic Association, 87:285, 1987.

21. Sunde, R.A., University of Missouri-Columbia, Testimony No. 4 to FDA, docket No. 86F-0060, August 21, 1992.

22. Lopez, P.L. et al., "Whole-body Retention, Tissue Distribution and Excretion of ^{75}Selenium After Oral and Intravenous Administration in Lambs Fed Varying Selenium Intakes," Journal of Nutrition, 97:123, 1969.

23. Paulson, G.D. et al., "Metabolism of ^{75} Se-Selenite, ^{75} Se-Selenate, ^{75}Se-Selenomethionine, and ^{35}S-Sulfate by Rumen Microorganisms In Vitro," Journal of Animal Science, 27:497, 1968.

24. van Ryssen, J.B.J. et al., "Comparative Metabolism of Organic and Inorganic Selenium by Sheep," Journal of Agriculture and Food Chemistry, 37:1358, 1989.

25. Palmer, I.S., and O.E. Olson, "Selenium Research at the South Dakota Agricultural Experiment Station," in "Proceedings of the 1990 Billings Land Reclamation Symposium on Selenium in Arid and Semiarid Environments, Western United States," edited by Severson, R.C., S.E. Fisher, Jr., and L.P. Gough, U.S. Geological Survey, 1991.

26. Ullrey, D.E., Michigan State University, Comment 17 to FDA, docket No. 86F-0060, September 16, 1992.

27. Eisenberg, D.A., Micro Tracers, Inc., Comment 11 to FDA, docket No. 86F-0060, August 25, 1992.

28. Mahan, D.C., "Effect of Inorganic Selenium Supplementation on Selenium Retention in Postweaning Swine," Journal of Animal Science, 61:173, 1985.

29. Lowry, K.R. et al., "Effect of Dietary Calcium on Selenium Retention in Postweaning Swine," Journal of Animal Science, 60:1429, 1985.

30. Lowry, K.R. et al., "Effect of Dietary Phosphorus on Selenium Retention in Postweaning Swine," Journal of Animal Science, 60:1438, 1985.

31. Ganther, H.E. et al., "Selenium Methylation, Demethylation and Biological Activity in the Rat," Federation of American Societies of Experimental Biology Journal, 4:A372, 1990.

32. Latshaw, J.D., and M. Osman, "Distribution of Selenium in Egg White and Yolk After Feeding Natural and Synthetic Selenium Compounds," Poultry Science, 54:1244, 1975.

33. National Research Council, "Underutilized Resources as Animal Feedstuffs," National Academy Press, 1983.

34. Helmer, J.W., "Monitoring the Quality and Safety of Processed Animal Waste Products Sold Commercially as Feed," Journal of Animal Science, 50:349, 1980.

35. Scott, M.L., and J.N. Thompson, "Selenium Content of Feedstuffs and Effects of Dietary Selenium Levels Upon Tissue Selenium in Chicks and Poults," Poultry Science, 50:1742, 1971.

36. Cantor, A., memorandum of calculation on poultry products, addressed to K. Smedley, 1989.

37. Miller, D. et al., "Comparative Selenium Retention by Chicks Fed Sodium Selenite, Selenomethionine, Fish Meal, and Fish Solubles," Poultry Science, 51:1669, 1972.

38. Oremland, R.S. et al., "Measurement of In Situ Rates of Selenate Removal by Dissimilatory Bacterial Reduction in Sediments," Environmental Science and Technology, 24:1157, 1990.

39. Doran, J.W., "Microorganisms and the Biological Cycling of Selenium," Advances in Microbial Ecology, 6:1, 1982.

40. Reamer, D.C., and W.H. Zoller, "Selenium Biomethylation Products From Soil and Sewage Sludge," Science, 208:500, 1980.

41. Doran, J.W., and M. Alexander, "Microbial Formation of Volatile Selenium Compounds in Soil," Soil Science Society of America Journal, 41:70, 1977.

42. Elrashidi, M.A., D.C. Adriano, S.M. Workman, and W.I. Lindsay, "Chemical Equilibria of Selenium in Soils: A Theoretical Development," Soil Science, 144:141-152, 1987.

43. Gissel-Nielson, G., "Uptake and Distribution of Added Selenite and Selenate by Barley and Red Clover as Influenced by Sulfur," Journal of the Science of Food and Agriculture, 24:649, 1973.

44. Mikkelsen, R.L. et al., "Factors Affecting Selenium Accumulation by Agricultural Crops" in "Selenium in Agriculture and the Environment," edited by L.W. Jacobs, Soil Science Society of America, Special Publication Number 23.

45. Mayland, H.F. et al. "Selenium Mobility in Soils and its Absorption, Translocation, and Metabolism in Plants," in "Proceedings of the 1990 Billings Land Reclamation Symposium on Selenium in Arid and Semiarid Environments, Western United States," edited by Severson, R.C., S.E. Fisher, Jr., and L.P. Gough, U.S. Geological Survey, 1991.

46. Terry, N., "Rates of Selenium Volatilization Among Crop Species," Journal of Environmental Quality, 21:341, 1992.

47. Zieve R., and P.J. Peterson, "Volatilization of Selenium From Plants and Soils," The Science of the Total Environment, 32:197, 1984.

48. Norman, B. et al., "Effects of Selenium Supplementation in Cattle on Aquatic Ecosystems in Northern California," Journal of the American Veterinary Medical Association, 201:869-872, 1992.

49. Moller, G., Department of Food Science and Technology, University of Idaho, Transcript of Hearing, p. 185, docket No. 86F-0060, August 25, 1992.

50. Moller, G., Department of Food Science and Technology, University of Idaho, Comment No. 20, docket No. 86F-0060, September 22, 1992.

51. Peterson, J.A., Transcript of Hearing, p. 138, docket No. 86F-0060, August 25, 1992.

52. Peterson, J.A., and A.V. Nebeker, Notice of Participation, No. 7, ("Estimation of Waterborne Selenium Concentrations That are Toxicity Thresholds for Wildlife," Preprint from Archives of Environmental Contamination and Toxicology), docket No. 86F-0060, July 28, 1992.

53. U.S. Department of the Interior, Agricultural Irrigation Drainwater Studies in Support of the San Joaquin Valley Drainage Program, Final Report, Fish and Wildlife Service, Columbia, MO, August 1990.

54. Tidball, R.R. et al. "Distribution of Selenium, Mercury, and Other Elements in Soils of the San Joaquin Valley and Parts of the San Luis Drain Service Area, California," in A.Q. Howard, editor, "Selenium in Agricultural Drainage: Implications for San Francisco Bay and the California Environment," proceedings of the 3d selenium symposium, the Bay Institute of San Francisco and the Department of Conservation and Resource Studies, Berkley, CA, March 15, 1986.

55. Maier, K.J. et al., "The Dynamics of Selenium in Aquatic Ecosystems," 21st annual conference on trace substances in environmental health, University of Missouri, 1987.

56. Lovell, R.T., Auburn University Fisheries Department, Comment No. 14, docket No. 86F-0060, August 21, 1992.

57. Ambrose, R.B.,P.E., and T.O. Barnwell, "Environmental Software at the U.S. Environmental Protection Agency's Center for Exposure Assessment Modeling," Environmental Software, 4:76-93, 1989.

58. Wilcher, L.S., Office of Water, EPA, letter to J.D. Dingell, Subcommittee on Oversight and Investigations, U.S. House of Representatives, December 10, 1992.

VI. Agency Action

For the reasons discussed previously in this document, the 1987 amendments, the 1989 amendment, and corresponding cross-references are stayed. As a result of the stay of the 1987 amendments, the maximum permitted use levels of selenium in animal feeds will return to those levels permitted before FDA issued the amendments. FDA is exercising

enforcement discretion and will not take regulatory action against feeds marketed in compliance with the 1987 amendments for a period of 1 year to facilitate an orderly implementation of the stay of the 1987 amendments and a smooth transition to the maximum use levels permitted before issuance of the 1987 amendments. Consistent with this, the agency will exercise its enforcement discretion and not take regulatory action against the sale or use of selenium bolus which complies with the 1989 amendments for a period of 8 months. The 1987 and 1989 amendments to § 573.920 are stayed on September 13, 1993. Conforming amendments in §§ 558.258 and 558.311 are also being stayed to reflect the changes in § 573.920.

List of Subjects

21 CFR Part 558

Animal drugs, Animal feeds.

21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the National Environmental Policy Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 558 and 573 are amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.258 [Amended]

2. Section 558.258 *Fenbendazole* is amended in paragraph (c)(3)(iv)(C) by removing the last sentence.

§ 558.311 [Amended]

3. Section 558.311 *Lasalocid* is amended in paragraph (e)(2)(i), in the footnote to the table by removing the fourth sentence.

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

4. The authority citation for 21 CFR part 573 continues to read as follows:

Authority: Secs. 201, 402, 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348).

5. The amendments to § 573.920 that were published in the **Federal Register** of April 6, 1987 (52 FR 10887); June 4, 1987 (52 FR 21001); and April 10, 1989 (54 FR 14214), respectively are stayed until further notice.

Dated: September 3, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–22277 Filed 9–10–93; 8:45 am]

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federal register

Monday
September 13, 1993

Part V

Department of Justice

Bureau of Prisons

28 CFR Part 527
Transfer of Offenders To or From Foreign Countries; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 527

RIN 1120–AA08

Control, Custody, Care, Treatment and Instruction of Inmates; Transfer of Offenders to or From Foreign Countries

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This document amends Bureau of Prisons regulations on Transfer of Offenders to or from Foreign Countries by making nomenclature changes regarding office designations and court officials, by making various editorial or organizational changes, by clarifying procedures regarding hearings before the Parole Commission, by designating the authorizing official for the selection of escorts, and by incorporating statutory changes regarding parole eligibility and the establishment of release dates. These amendments are necessary to update Bureau regulations with respect to agency procedures and department organization and to clarify the statutory requirement that American inmates returning from other countries who committed their offense on or after November 1, 1987 are not immediately eligible for parole but, rather, are entitled to have release dates set by the Parole Commission upon application of the guidelines promulgated by the United States Sentencing Commission.

EFFECTIVE DATE: September 13, 1993.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations published on December 4, 1981 (46 FR 59507) and amended on January 19, 1983 (48 FR 2502) on the transfer of inmates to or from foreign countries. Specifically, a foreign inmate's request for transfer to another country was previously reviewed by the Office of International Affairs, Criminal Division, Department of Justice. These requests are now being handled by the Office of Enforcement Operations, Criminal Division, International Prisoner Transfer Unit, Department of Justice. Examples of required documentation accompanying inmates being transported to other countries have been revised to reflect agency procedures for management of paperwork. Prior to the inmate's transfer, he or she shall receive a verification hearing before a U.S. Magistrate or U.S. District Court Judge. Formerly, the regulations in § 527.45 used the word "transport" or "transported" throughout; as revised, this section now also uses the word "escort" or "escorted". This change is editorial in nature, and represents no change in policy.

Previously, U.S. citizen inmates transferred from a foreign country to the U.S. were by law immediately eligible for parole. The regulations now reflect that only those U.S. citizen inmates transferred from a foreign country to the U.S. who committed their offense before November 1, 1987, are by law immediately eligible for parole. Those U.S. citizen inmates returning to the U.S. who committed their offenses on or after November 1, 1987, are to receive a hearing before the Parole Commission within 120 days of entry into the United States, or as soon as practicable, pursuant to 18 U.S.C. § 4106A and 28 CFR 2.62.

The authorizing official for the selection of escorts for offenders being received from other countries had been the Warden. As amended, newly designated § 527.46 now designates the Assistant Director, Correctional Programs Division, as the authorizing official. This is intended to allow for the more efficient use of staff.

In addition, various editorial amendments have been made for stylistic or organizational reasons. Former § 527.46 has been redesignated as § 527.42, and former §§ 527.42 through 527.45 have been accordingly redesignated as §§ 527.43 through 527.46. Minor changes in wording or punctuation have been made in the introductory text of § 527.41 and in paragraphs (c), (d), (e), (g), (h) of newly designated § 527.44.

Because these amendments pertain to agency management or are editorial in nature, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 527

Prisoners; Aliens.

Kathleen M. Hawk,

Director, Federal Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 527 in subchapter B of 28 CFR, chapter V is amended as follows:

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 527—TRANSFERS

1. The authority citation for 28 CFR part 527 is revised to read as follows, and all other authority citations in the part are removed:

Authority: 5 U.S.C. 301; 10 U.S.C. 858; 18 U.S.C. 3565, 3569, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4100–4115, 4161–4166, 4201–4218, 5003, 5006–5024 (repealed October 12, 1984 as to offenses committed after that date); 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 527.41, the introductory text is revised to read as follows:

§ 527.41 Definitions.

For the purpose of this rule the following definitions apply.

* * * * *

§§ 527.42 through 527.46 [Redesignated as §§ 527.43–527.46 and 527.42.]

3. Sections 527.42, 527.43, 527.44, 527.45, and 527.46 are redesignated respectively as §§ 527.43, 527.44, 527.45, 527.46, and 527.42.

4. In newly designated § 527.44, amend paragraph (h)(2) by revising the second sentence and amend paragraph (g) by revising the third sentence to read as set forth below, and make the following nomenclature changes:

(a) In paragraph (c), remove the words "Office of International Affairs (OIA), Criminal Division" and add, in their place, the words "Office of Enforcement Operations (OEO), Criminal Division, International Prisoner Transfer Unit,".

(b) In paragraphs (c), (d) introductory text, (d)(1), (d)(2), and (e), revise the phrase "Correctional Programs Division" to read "Correctional Programs Division,".

(c) In paragraphs (d) introductory text, (d)(1), and (e), remove "OIA" and add, in its place, "OEO".

(d) In paragraph (g), remove the words "U.S. Magistrate or U.S. Judge or other appointed U.S. official" and in their place, add "U.S. Magistrate Judge or U.S. District Court Judge".

§ 527.44 Transfer of Bureau of Prisons inmates to other countries.

* * * * *

(g) * * * When requested, the Warden shall allow counsel to interview the inmate prior to the hearing.

(h) * * *

(2) * * * The Warden shall assure that required documentation (for example, proof of citizenship and appropriate travel documents) accompanies each inmate transported.

5. In newly designated § 527.46, paragraphs (b) and (c)(3) are revised to read as follows:

§ 527.46 Receiving United States citizens from other countries.

* * * * *

(b) The Assistant Director, Correctional Programs Division, shall direct, in writing, specific staff, preferably staff who speak the language of the treaty nation, to escort the offender from the transporting country to the admission institution. The directive shall cite 28 CFR 0.96b as the authority to escort the offender. When the admission institution is not able to accept the inmate (for example, a female inmate escorted to a male institution), the Warden shall make appropriate housing requirements with a nearby jail.

(c) * * *

(3) Notify the U.S. Parole Commission of the inmate's arrival. Inmates returning from other countries are by law immediately eligible for parole if they committed their offense prior to November 1, 1987. Prisoners who committed their foreign offense on or after November 1, 1987 are to receive a hearing before the Parole Commission within 120 days of entry into the United States, or as soon as practicable, pursuant to 18 U.S.C. 4106A and 28 CFR 2.62. Staff at the admission institution shall determine if each inmate received at that institution should be retained at the admission institution for the initial hearing before the Parole Commission or promptly transferred to a more appropriate institution.

* * * * *

[FR Doc. 93–22336 Filed 9–10–93; 8:45 am]

BILLING CODE 4410–05–P

federal register

Monday
September 13, 1993

Part VI

The President

Proclamation 6588—National D.A.R.E. Day, 1993 and 1994

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Presidential Documents

Title 3—

The President

Proclamation 6588 of September 9, 1993

National D.A.R.E. Day, 1993 and 1994

By the President of the United States of America

A Proclamation

America's young people face some daunting challenges. One of the most difficult decisions they have to make is whether or not to use drugs. The signals they receive in this country, where only 5 percent of the world's population consumes approximately 50 percent of the world's illegal drugs, often encourage them to gamble away their future on the false security of momentary escape.

In the knowledge-based world of today, their future, as well as the future of America, rests on education. The successes in Europe and Asia have taught us that the nation most equipped to compete in the 21st century will be the nation that can best educate its children. Our students must be properly prepared to enter school and encouraged to complete their studies. They must be taught responsibility for themselves and their community. They must be first in math and science, as well as in literacy and vocational skills. Perhaps most important, they must be given safe classrooms, where they are free to hope for a bright future and where they are not bound in fear to a dark present.

Our National Education Goals were formulated to give America's educators, parents, and students solid objectives in the field of education. Goal 6 of the National Education Goals demands that we develop safe, disciplined, and drug-free schools by the year 2000. My Goals 2000: Educate America Act provides the framework for our educators to reach all of these goals, but until we are successful at achieving Goal 6, we will be unable to implement any of our other education objectives.

Drug Abuse Resistance Education (D.A.R.E.), a program developed by the Los Angeles Police Department and the Los Angeles Unified School District to prevent drug use, now reaches 25 million students from Kindergarten to 12th grade in all 50 states. This program also touches youth in Australia, New Zealand, American Samoa, Canada, Puerto Rico, the Virgin Islands, Costa Rica, Mexico, Brazil, Hungary, and Department of Defense Dependent Schools worldwide.

Taught by veteran police officers, D.A.R.E. aims to prevent substance abuse among school-age children by providing accurate information about alcohol and drugs, by teaching decision-making skills, by educating students about the consequences of their actions, and by building self-esteem. Our students often need the influence and attention of these dedicated officers to combat the peer pressure they face every day on the streets.

In recognition of this anti-drug program's promotion of cooperation among law enforcement, schools, officials, students, and parents, the Congress, by Senate Joint Resolution 99, has designated September 9, 1993, and April 21, 1994, as "National D.A.R.E. Day" and has requested the President to issue a proclamation in observance of these days.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 9, 1993, and April 21, 1994, as National D.A.R.E. Day. I call upon the people of the United States, government officials, educators, and volunteers to observe the day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of September, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-22517
Filed 9-10-93; 11:06 am]
Billing code 3195-01-P

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CFR CHECKLIST

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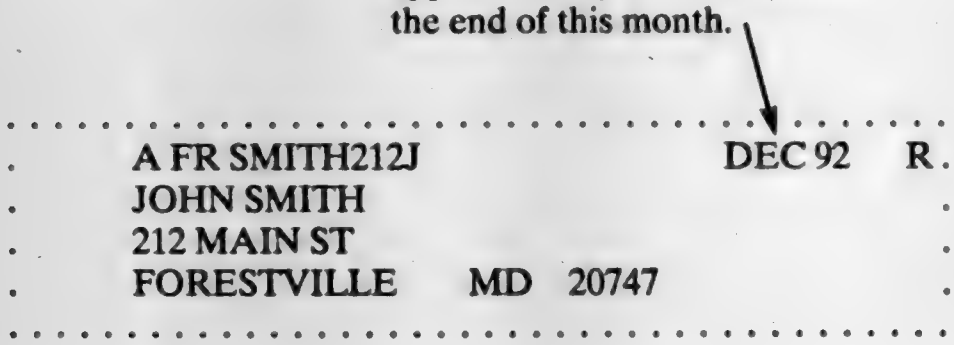

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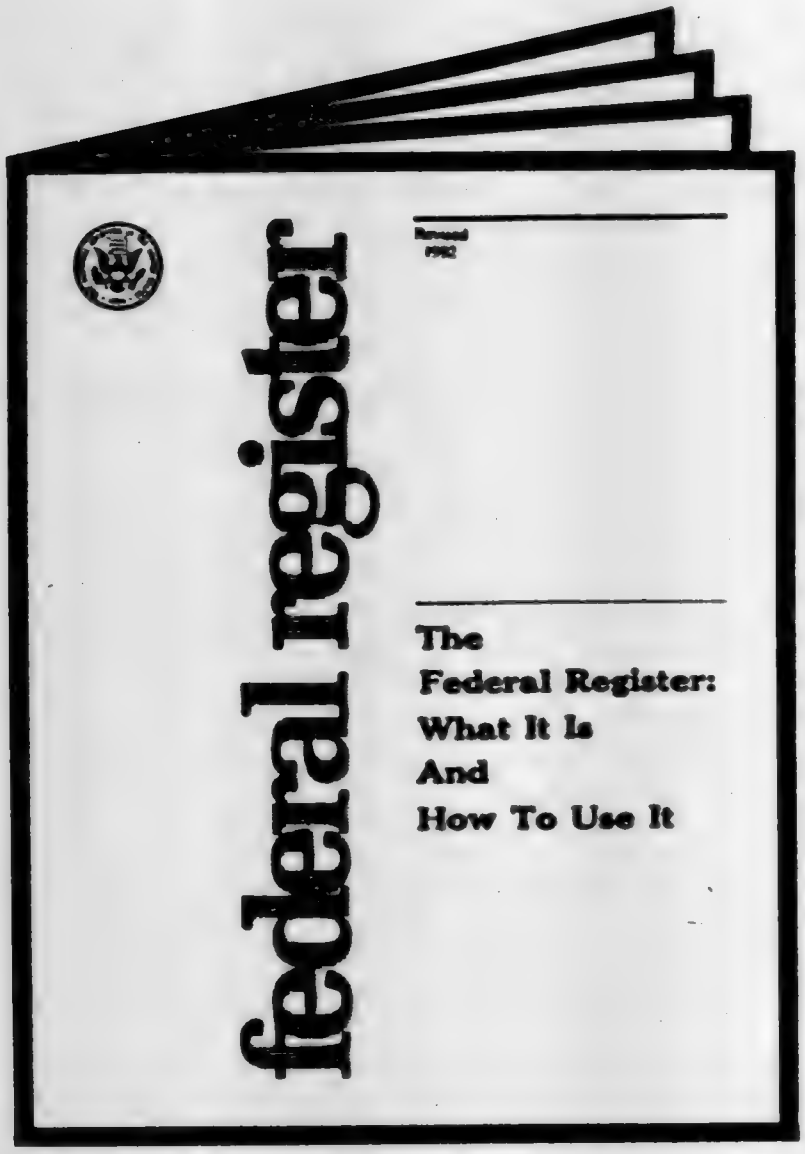

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Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 58, No. 176
Tuesday, September 14, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[No. LS-92-004]

RIN 0581-AA78

Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From the Soybean Promotion and Research Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Soybean Promotion, Research, and Consumer Information Act authorizes a national program of promotion and research to be developed through the promulgation of an Order. Pursuant to the Act, a Soybean Promotion and Research Order has been issued. This final rule adopts without change the interim final rule containing rules of practice governing proceedings on petitions to modify or to be exempted from the Soybean Promotion and Research Order.

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch; Livestock and Seed Division; AMS, USDA, room 2624–S; P.O. Box 96456; Washington, DC 20090–6456. Telephone number 202/720–1115.

SUPPLEMENTARY INFORMATION:

Prior Document

Interim Final Rule—Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted From the Soybean Promotion and Research Order published June 10, 1993 (58 FR 32436).

Regulatory Impact

This final rule was reviewed by the U.S. Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order No. 12291 and has been determined to be a "non-major" rule because it does not meet the criteria for a major rule as stated in the Order.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1971 of the Act, a person subject to the Soybean Promotion and Research Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The statute provides that the district court of the United States in any district in which the person who is a petitioner resides or carries on business has jurisdiction to review a ruling on the petition if a complaint for that purpose is filed not later than 20 days after the date of the entry of the ruling.

Further, section 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State. One exception in the Act concerns assessments collected by Qualified State Soybean Boards. The exception provides that to ensure adequate funding of the operations of Qualified State Soybean Boards under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a Qualified State Soybean Board in that State may collect, and which is authorized to be credited under the Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation or termination of a Qualified State Soybean Board or State soybean assessment.

This action was also reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This action establishes rules of practice governing proceedings on petitions to modify or be exempted from the Order or any provision thereof. Such petitions could be made by any person subject to the Order desiring to complain that the Order, or a provision of such Order, or any obligation imposed in connection with the Order, is not in accordance with law. The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small business entities.

The soybean promotion and research program is funded by an assessment of one-half of 1 percent of the net market price of soybeans. First purchasers of soybeans are required to collect assessments from producers. Appropriate recordkeeping and reporting requirements are also provided for in the Order. The term "soybean" means all varieties of Glycine max or Glycine soya.

The interim final rule was published in the **Federal Register** on June 10, 1993, with a request for comments by July 12. No comments were received. Thus, the final rule is unchanged from the interim final rule.

This final rule establishes rules of practice governing petitions to modify or be exempted from the Order. Section 1971 of the Act provides that any person subject to the Order may file a written petition with the Secretary stating that such Order, any provision of such Order, or any obligation imposed in connection with the Order is not in accordance with law. The person may request a modification of such Order or an exemption from certain provisions or obligations of such Order. The person shall be given an opportunity for a hearing on the petition pursuant to the regulations prescribed by the Secretary.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1220 is amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311.

2. Accordingly, the interim final rule amending 7 CFR part 1220 which was published at 58 FR 32436 on June 10, 1993, is adopted as a final rule without change.

Dated: September 7, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–22421 Filed 9–13–93; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 51

Animals Destroyed Because of Brucellosis

CFR Correction

In title 9 of the Code of Federal Regulations, parts 1 to 199, revised as of Jan. 1, 1993, make the following corrections:

1. On page 145, in § 51.3, footnote "1" contained in paragraphs (a)(3), (b)(1), (2) and (3) should be redesignated to read footnote "3". Footnote "2" contained in paragraphs (b)(1), (2) and (3) should be redesignated to read footnote "4".

2. At the bottom of page 144, the first set of footnotes 3 and 4 should be removed.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

10 CFR Part 860

Trespassing on Department of Energy Property

AGENCY: Office of Security Affairs, Department of Energy.

ACTION: Final rule.

SUMMARY: Today's rule revises the Department of Energy's (DOE) trespassing regulations by adding provisions that set forth criminal fines for trespassing on DOE property. The purpose of this revision is to bring the regulation into conformity with current Federal law. Other technical amendments to the rule are also being made at this time.

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: William J. Desmond, Physical Security Branch, U.S. Department of Energy, Office of Security Affairs, SA–121, Washington, DC 20585, (301) 903–4244.

SUPPLEMENTARY INFORMATION:

A. Discussion of Amendments

Section 860.5 "Violations and Penalties" is amended to recognize the effect by operation of law of the Criminal Fine Improvements Act of 1987, *inter alia*, on the criminal fines that are established by section 229 of the Atomic Energy Act of 1954, as amended, and are restated in § 60.5. Section 860.5(a) will now specify that willful violation of § 860.3 or § 860.4 is an infraction punishable, upon conviction, by a fine of not more than $5,000. Section 860.5(b) will now specify that willful violation of § 860.3 or § 860.4 with respect to any facility, installation or real property enclosed by a fence, wall, floor, roof, or other structural barrier is a Class A misdemeanor punishable, upon conviction, by a fine not to exceed $100,000 or imprisonment for not more than one year, or both. The fines set forth in § 860.5(a) and (b) were previously not more than $1,000 and not more than $5,000, respectively.

DOE also is amending the Authority provision to add references to sections 5 and 6 of the Criminal Fine Improvements Act of 1987. These provisions mandate the increase in the fines set forth in § 860.5. Sections 5 and 6 are codified at 18 U.S.C. 3559 and 18 U.S.C. 3571, respectively.

The title of part 860 is changed from "Trespassing on Administration Property" to "Trespassing on Department of Energy Property" to reflect Government reorganization. The Department of Energy Organization Act of 1978 abolished the Energy Research and Development Administration and transferred the nuclear installations and other property of the Administration to the Department of Energy. While the text of part 860 was previously modified to substitute references to the Department of Energy for references to the Energy Research and Development Administration, the title inadvertently was not updated.

B. Administrative Procedure Act

The DOE has determined that this Final Rule may be promulgated without notice and opportunity for public comment. The only substantive amendment, the increase in the criminal fines set forth in § 860.5, is made to conform the regulations to changes effected in Federal criminal law (including the trespass provisions of the Atomic Energy Act of 1954) by enactment of the Criminal Fine Improvements Act of 1987. The DOE has no discretion over this matter since the increase in fines is mandated by Federal statute and therefore notice and public comment are unnecessary. The amendment to the authority provision and the title are mere technical changes.

C. Regulatory Review

Pursuant to the January 22, 1993, memorandum on the subject of regulatory review from the Director of the Office of Management and Budget (OMB) (58 FR 6074, January 25, 1993), DOE submitted this notice to the Director for appropriate review. The Director has completed his review. Separately, DOE has determined that there is no need for a regulatory impact analysis because the rule is not a major rule as that term is defined in section 1(b) of Executive Order 12291.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164 (U.S.C. 601 *et seq.*), requires, in part, that an agency prepare a regulatory flexibility analysis for any final rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and an explanation of that determination in the **Federal Register**. This Final Rule merely reflects statutorily mandated increases in Federal criminal fines. The economic impact on small business is negligible. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, DOE certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities.

E. Environmental Review

DOE has determined that this Final Rule is not a major Federal action with significant environmental impact and therefore does not require preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq*).

F. Paperwork Reduction Act

No new information or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 10 CFR Part 860

Federal buildings and facilities, Security measures, Penalties.

Issued in Washington, DC, September 3, 1993.

George L. McFadden,

Director, Office of Security Affairs.

For the reasons set out in the preamble, part 860 of Chapter III, Title 10 of the Code of Federal Regulations is revised to read as follows:

PART 860—TRESPASSING ON DEPARTMENT OF ENERGY PROPERTY

Sec.

860.1 Purpose.
860.2 Scope.
860.3 Trespass.
860.4 Unauthorized introduction of weapons or dangerous materials.
860.5 Violations and penalties.
860.6 Posting.
860.7 Effective date of prohibition on designated locations.
860.8 Applicability of other laws.

Authority: Sec. 161, 68 Stat. 948, sec. 229, 70 Stat. 1070; (42 U.S.C. 2201; 2278a); sec. 104, 88 Stat. 1237, sec. 105, 88 Stat. 1238 (42 U.S.C. 5814, 5815); sec. 5, Pub. L. 100–185, 101 Stat. 1279 (18 U.S.C. 3559); sec. 6, Pub. L. 100–185, 101 Stat. 1280 (18 U.S.C. 3571); sec. 7041, Pub. L. 100–690, 102 Stat. 4899 (18 U.S.C. 3559).

§ 860.1 Purpose.

The regulations in this part are issued for the protection and security of facilities, installations and real property subject to the jurisdiction or administration, or in the custody of, the Department of Energy.

§ 860.2 Scope.

The regulations in this part apply to all facilities, installations and real property subject to the jurisdiction or administration of the Department of Energy or in its custody which have been posted with a notice of the prohibitions and penalties set forth in this part.

§ 860.3 Trespass.

Unauthorized entry upon any facility, installation or real property subject to this part is prohibited.

§ 860.4 Unauthorized introduction of weapons or dangerous materials.

Unauthorized carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property, into or upon any facility, installation or real property subject to this part, is prohibited.

§ 860.5 Violations and penalties.

(a) Whoever willfully violates either § 860.3 or § 860.4 shall, upon conviction, be guilty of an infraction punishable by a fine of not more than $5,000.

(b) Whoever willfully violates either § 860.3 or § 860.4 with respect to any facility, installation or real property enclosed by a fence, wall, floor, roof, or other structural barrier shall upon conviction, be guilty of a Class A misdemeanor punishable by a fine not to exceed $100,000 or imprisonment for not more than one year, or both.

§ 860.6 Posting.

Notices stating the pertinent prohibitions of §§ 860.3 and 860.4 and penalties of § 860.5 will be conspicuously posted at all entrances of each designated facility, installation or parcel of real property and at such intervals along the perimeter as will provide reasonable assurance of notice to persons about to enter.

§ 860.7 Effective date of prohibition on designated locations.

The prohibitions in §§ 860.3 and 860.4 shall take effect as to any facility, installation or real property on publication in the Federal Register of the notice designating the facility, installation or real property and posting in accordance with § 860.6.

§ 860.8 Applicability of other laws.

Nothing in this part shall be construed to affect the applicability of the provisions of State or other Federal laws.

[FR Doc. 93–22450 Filed 9–13–93; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 262

[Docket No. R-0810]

Rules of Procedure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: This regulation changes the publication requirements for notice of applications under the Federal Deposit Insurance Act for the merger, consolidation, or acquisition of assets or the assumption of liabilities, if the acquiring, assuming, or resulting bank will be a state member bank. This change will require that notice be published on least 3 occasions to conform the regulation to the statutory requirements. In addition, the Board is making technical changes to the regulation.

DATES: This rule is effective September 30, 1993. This rule applies to applications filed on or after September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Sidney M. Sussan, Assistant Director, (202-452-2638), Beverly Evans, Supervisory Financial Analyst (202-452-2573), Division of Banking Supervision and Regulation; Patrick J. McDivitt, Attorney (202-452-3818), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202-452-3544), Board of Governors of the Federal Reserve System, 20th and C Street NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 18(c) of the Federal Deposit Insurance Act, 12 U.S.C. 1828(c), generally requires that public notice be given when a state member bank seeks to merge or consolidate with a bank or institution, assume certain liabilities including the liability to pay deposits, or transfer assets to a noninsured bank or institution. Section 18(c)(3)(C) requires that the notice be published "at appropriate intervals" during a period of at least thirty days, unless the Board determines that the Board must act immediately in order to prevent the probable default of a state member bank. Currently, the Rules of Procedure of the Board, 12 CFR 262.3(b)(1), require that notice be published only one time.

In light of the statutory language, the Board believes that it is appropriate to revise the notice requirements relating to applications under section 18(c). Accordingly, the Board is amending § 262.3 to require that notice of applications subject to section 18(c) be published at least three times at appropriate intervals and that the last publication appear at least thirty days after the first publication. Other existing procedural requirements relating to publication of notice of these applications will not be affected by this amendment.

The Board is also making technical changes to the regulation to correct a citation, to renumber certain provisions as a result of the change in publication requirements, and to correct a typographical error.

Notice and Public Participation

The provisions of 5 U.S.C. 553 relating to notice and public participation have not been followed in connection with the adoption of this amendment because the changes are technical or result from requirements mandated by statute. For these reasons, the Board finds good cause for determining, and so determines, that

notice and public participation are unnecessary and contrary to the public interest.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act the Board certifies that the amendment will not have a significant economic impact on a substantial number of small entities. The change in publication requirements is not significant as the amendment will require only two additional notices of publication and the economic impact of the additional publications will be minimal.

List of Subjects in 12 CFR Part 262

Administrative practice and procedure.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 262 as follows:

PART 262—RULES OF PROCEDURE

1. The authority citation for part 262 is revised to read as follows:

Authority: 5 U.S.C. 552, 12 U.S.C. 321, 1828(c), and 1842.

2. In § 262.3, paragraph (b)(1)(i)(D) is removed, and paragraphs (b)(1)(i)(E) and (F) are redesignated as paragraphs (b)(1)(i)(D) and (E), respectively, in paragraph (b)(2) the first sentence, the word "applicaition" is corrected to read "application", a new paragraph (b)(3) is added, and paragraph (j), introductory text, is revised to read as follows:

§ 262.3 Applications.

* * * * *

(b) * * *

(3) In the case of an application for a merger, consolidation, or acquisition of assets or assumption of liabilities, if the acquiring, assuming, or resulting bank is to be a State member bank, the applicant shall cause to be published notice in the form prescribed by the Board. The notice shall be published in a newspaper of general circulation in the community or communities in which the head office of each of the banks to be a party to the merger, consolidation, or acquisition of assets or assumption of liabilities is located. The notice shall be published on at least three occasions at appropriate intervals. The last publication of the notice shall appear at least thirty days after the first publication. The notice must provide an opportunity for the public to give written comment on the application to the appropriate Federal Reserve Bank for at least thirty days after the date of the first publication of the notice. Within seven days of publication of notice for the first time, the applicant shall submit its application to the appropriate Reserve Bank for acceptance, along with a copy of the notice. If the Reserve Bank has not accepted the application as complete within ninety days of the date of the first publication of the notice, the applicant may be required to republish notice of the application.

* * * * *

(j) * * * The following types of applications require procedures exclusive of, or in addition to, those described in paragraphs (i)(1) through (5) of this section.

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 7, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-22262 Filed 9-13-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-103-AD; Amendment 39-8686; AD 93-15-08 R1]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD), applicable to Boeing Model 737 series airplanes equipped with certain IPECO pilot and co-pilot seats. The existing AD currently requires an inspection to determine whether the bearings of the tracklock bracket assemblies of the pilot and co-pilot seats are secure, modification of loose bearings, and marking the seat identification label. The actions specified in that AD are intended to prevent the pilot and co-pilot seats from sliding freely on the track, which could lead to the inability of the pilots to control the airplane. This action revises the AD by providing for an alternative identification marking on pilot/co-pilot seats approved for installation on these airplanes.

DATES: Effective August 24, 1993.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of August 24, 1993 (58 FR 42192, August 9, 1993).

ADDRESSES: The service information referenced in this AD may be obtained from IPECO, Inc., 3882 Del Amo Boulevard, suite 604, Torrance, California 90503. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Boffo, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2780; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: On August 2, 1993, the FAA issued AD 93-15-08, Amendment 39-8654 (58 FR 42192, August 9, 1993), which is applicable to Boeing Model 737 series airplanes equipped with certain IPECO pilot and co-pilot seats. That AD requires an inspection to determine whether the bearings of the tracklock bracket assemblies of the pilot and co-pilot seats are secure, modification of loose bearings, and marking the seat identification label. That action was prompted by reports of pilot seats failing to lock horizontally due to the tracklock pin bearing becoming detached from its housing and wedged in the mechanism. The actions required by that AD are intended to prevent the pilot and co-pilot seats from sliding freely on the track, which could lead to the inability of the pilots to control the airplane.

Recently, the FAA has become aware of the fact that an alternative identification marking that may appear on pilot/co-pilot seats approved for installation on these airplanes was inadvertently omitted from paragraph (b) of AD 93-15-08. Specifically, paragraph (a)(1) of that AD requires that certain seats must be modified and then marked with "A001-25-74" on the identification label. However, paragraph (b) of that same AD indicates that no seat may be installed unless it has been marked "INSPECTED REF. SBA001-25-74" on the identification label. Clearly, the intent of paragraph (b) was to permit the installation of seats marked with either "INSPECTED REF. SBA001-25-74" or "A001-25-74" on the identification label.

The FAA has determined that it is appropriate to take action to correct paragraph (b) of AD 93-15-08 to permit operators to install pilot/co-pilot seats

that are marked with either one of the two described identification markings.

Action is taken herein to correct the error and to correctly add the AD as an amendment to Section 39.13 of the Federal Aviation Regulations (FAR). The effective date of the rule remains August 23, 1993.

The final rule is being reprinted in its entirety for the convenience of affected operators.

Since this action only provides for the use of an alternative marking on the identification label on pilot/co-pilot seats installed in these airplanes, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8654 (58 FR 42192, August 9, 1993), and by adding a new airworthiness directive (AD), amendment 39–8686, to read as follows:

93–15–08–R1 Boeing: Amendment 39–8686. Docket 93–NM–103–AD. Revises AD 93–15–08, Amendment 39–8654.

Applicability: Model 737 series airplanes equipped with IPECO, Model 093, pilot and co-pilot seats, having seat serial numbers up to and including 21121; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the pilot and co-pilot seats from sliding freely on the track, which could lead to the inability of the pilots to control the airplane, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform an inspection to determine whether the bearings of the tracklock bracket assemblies of the pilot and co-pilot seats are secure by attempting to rotate the head of the bearing in either direction in accordance with IPECO Service Bulletin A001–25–74, Issue 2, dated May 6, 1993.

(1) If a bearing rotates in either direction: Prior to further flight, modify the tracklock bracket assembly in accordance with the service bulletin, and mark the seat identification label by service bulletin number, "A001–25–74," using vibro-etch or a similar method in accordance with the service bulletin.

(2) If a bearing does not rotate in either direction: Prior to further flight, mark the seat identification label "INSPECTED REF. SBA001–25–74", using vibro-etch or a similar method in accordance with the service bulletin.

(b) As of the effective date of this AD, no person shall install on any airplane a pilot/co-pilot seat that does not bear "A001–25–74" or "INSPECTED REF. SBA001–25–74" on its identification label.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection, modification, and marking of the seat shall be done in accordance with IPECO Service Bulletin A001–25–74, Issue 2, dated May 6, 1993, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3	2	May 6, 1993.
2, 4–8	1	Apr. 15, 1993.

This incorporation by reference was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51, as of August 24, 1993 (58 FR 42192, August 9, 1993). Copies may be obtained from IPECO, Inc., 3882 Del Amo Boulevard, suite 604, Torrance, California 90503. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 24, 1993.

Issued in Renton, Washington, on September 7, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–22329 Filed 9–13–93; 8:45 am]

BILLING CODE 4910–13–P

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach Regulation 93–009]

Security Zone Regulations; Pacific Ocean South of Santa Cruz Island, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a Security Zone in the Territorial Waters south of Santa Cruz Island in the vicinity of Yellow Bluff. The zone is needed to safeguard national defense assets against destruction/loss/injury from sabotage or other subversive acts, accidents, or causes of a similar nature while undergoing operational testing. Entry into this zone is prohibited unless authorized by the Captain of Port.

EFFECTIVE DATE: This regulation becomes effective on October 3, 1993 and terminates at midnight on October 15, 1993.

FOR FURTHER INFORMATION CONTACT: CAPT J.B. Morris at 310–980–4429.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking (NPRM) was not published for this regulation and it is being made effective in less than 30 days after Federal Regulation Publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent destruction/loss/injury to national defense assets involved in operational testing.

Drafting Information

The drafters of this regulation are CAPT J.B. Morris, Captain of the Port, Los Angeles-Long Beach and CAPT B. Weule, Eleventh Coast Guard District Legal Officer.

Discussion of Regulation

The operations requiring this regulation will begin on October 3, 1993. This Security Zone is necessary to ensure the security and safety of national defense assets during operational testing. Entry into the zone may be allowed if testing permits and there are no hazards to transiting vessels or test equipment. Requests to enter the zone should be addressed to the Coast Guard patrol vessel(s) on scene or the representative of the Captain of the Port Los Angeles-Long Beach embarked in the M/V McGAW.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart D of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new section 165.T01–109 is added to read as follows:

§ 165.T01–109 Security Zone: Pacific Ocean, California.

(a) *Location.* The following area is a Security Zone: The Territorial Waters south of Santa Cruz Island, California; in the vicinity of Yellow Bluff; bounded on the north by Santa Cruz Island, on the south by latitude 33–56N, on the east by longitude 119–34W, and on the west by longitude 119–41W.

(b) *Effective date.* This regulation becomes effective on October 3, 1993 and terminates at midnight October 15, 1993.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, no person may swim, skin dive, or scuba dive in the waters within the Security Zone, and no vessel may enter, remain in, or transit the Security Zone without the permission of the Captain of the Port. Section 165.33 also contains other general requirements.

Dated: September 7, 1993.

J.B. Morris,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles/Long Beach.

[FR Doc. 93–22447 Filed 9–13–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CCGD01–93–119]

Safety Zone Regulations; M/V Empire Knight, Boon Island, ME

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the waters one and one half miles southeast of Boon Island, ME, within 2,000 yards of the wreck of the M/V EMPIRE KNIGHT. This zone is needed to protect the maritime community including vessels and personnel involved in an investigation and possible recovery operation. Entry into this zone, or movement within this zone, is prohibited unless authorized by the Captain of the Port, Portland, Maine.

EFFECTIVE DATE: This regulation becomes effective at 6 a.m., August 28, 1993, and terminates at 12 p.m., October 30, 1993, unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT A.W. Echols of Captain of the Port, Portland, Maine at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LT A.W. Echols, project officer, Captain of the Port, Portland, Maine, and LCDR J. Stieb, project attorney, First Coast Guard District Legal Office.

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Due to the emergency nature of the event, there was not sufficient time to publish proposed rules in advance of the event. Publishing a NPRM and delaying its date would be contrary to the public interest because the event is a search for a possible cargo of mercury and if located, its possible recovery from the wreck of the EMPIRE KNIGHT. If the event were required to be postponed by publishing a NPRM, the survey would have to be delayed approximately nine months due to the expected weather conditions from late October throughout the winter months. Delay would increase the potential for release of the Mercury and the possible danger to the marine environment and recovery personnel would be increased.

Background and Purpose

On February 11, 1944 the British freighter EMPIRE KNIGHT grounded on Boon Island Ledge, off the coast of York, Maine. The stern section broke free and sank in approximately 250 feet of water. According to a plan of stowage, the EMPIRE KNIGHT was to carry 221 flasks of mercury in number 5 cargo hold. The Coast Guard will be conducting an investigation of the wreck to determine the possible presence of mercury. If mercury cargo is found to be on board, it will be removed from the wreck provided it is necessary, feasible and safe to do so. This zone is required to protect the maritime community, including vessels, equipment and personnel associated with this survey and possible recovery operation. The 290 foot pipe lay barge LB–278 and support vessels will be on scene throughout the operation. The zone covers all the waters within 2,000 yards of the stern section of the EMPIRE KNIGHT, located 1.5 miles southeast of Boon Island, Maine. No vessels, divers, or underwater craft will be allowed access to the area without the permission of the Captain of the Port Portland, Maine, or his on scene representative.

Regulatory Evaluation

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The event will last approximately two months. The area affected by this event receives infrequent commercial traffic. Because of the relatively remote location of the operation and the extensive advisories which will be made, commercial entities will be able to adjust to any disruptions. The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 601 *et seq.*)

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that these regulations do not raise sufficient

federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coat Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c of Commandant Instruction M16457.1B, they are an action to protect public safety and they are categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary section 165.T01–119 is added to read as follows:

§ 165.T01–119 M/V EMPIRE KNIGHT, Boon Island, Maine.

(a) *Location.* All the waters within 2,000 yards of the stern section of the EMPIRE KNIGHT, located 1.5 miles southeast of Boon Island, Maine, position 43°06.2′ N, 070°27.1′ W.

(b) *Effective date.* This regulation becomes effective at 6 a.m., August 28, 1993 and terminates at 12 p.m. October 30, 1993 unless terminated sooner by the Captain of the Port.

(c) *Regulations.* (1) The general regulations covering safety zones contained in § 165.23 of this part apply.

(2) Divers and manned or unmanned underwater craft are prohibited from entering the zone without the permission of the Captain of the Port Portland, Maine or his on scene representative.

Dated: August 19, 1993.

D.B. Pascoe,

Captain, U.S. Coast Guard, Captain of the Port, Portland.

[FR Doc. 93–22445 Filed 9–13–93; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Baltimore, MD Regulation 93–05–024]

Safety Zone Regulation: Route 450 Severn River Bridge, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Severn River during the installation of support beams on the new route 450 Severn River Bridge by CIANBRO Corporation of Pittsfield, Maine. This safety zone is necessary to control recreational vessel traffic, and to provide for the safety of life and property on U.S. Navigable waters from the hazards associated with this construction operation. Entry into this zone is prohibited unless authorized by the Captain of the Port, Baltimore, MD.

EFFECTIVE DATE: This regulation will become effective at 7 a.m. and terminate at 5 p.m. daily on September 7, 8, 9, 10, 13, 14, 15, 16 and 17, unless sooner terminated by the COTP.

FOR FURTHER INFORMATION CONTACT: Lieutenant Mark Williams at U.S. Coast Guard Marine Safety Office Baltimore, 40 S. Gay Street, Baltimore, Maryland, (410) 962–5100.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. The construction company did not provide the Coast Guard with sufficient advance notice to allow for the normal rule making process. Publishing a NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to protect recreational vessel traffic against potential hazards associated with this construction project to facilitate completion of the bridge.

Drafting Information

The drafters of this regulation are Lieutenant Mark R. Williams, project officer for the Captain of the Port, Baltimore, Maryland and Lieutenant John B. Gately, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose

CIANBRO Corporation requested Coast Guard assistance controlling vessel traffic on the Severn River in the vicinity of the bridge project, during placement of bridge support beams. As part of their request, CIANBRO indicated that it will be necessary for the Coast Guard to close the channel while lifting the channel span support beams.

Discussion of Regulation

On August 5, 1993, CIANBRO Corporation made public construction plans and schedule for the erection of structural steel on the new route 450 Severn River Bridge in Annapolis, Maryland. The work involves lifting support beams into place from barge mounted heavylift cranes. While the beams are supported by crane and not secured to the bridge support columns, a severe hazard exists to anyone positioned immediately beneath or near the operation. In order to facilitate the lifts of the Severn River channel span beams, and protect recreational vessel traffic from the hazard associated with the lifts, a safety zone will be established on each of the days the work will be ongoing. This safety zone consists of all waters within 500 feet upstream and downstream of the bridge construction site, located at Latitude 38°59.6′ N, Longitude 076°29.8′ W. This regulation is necessary to facilitate the construction of the new Severn River bridge, ensure the safety of recreational vessels, and to provide for the safety of life and property on U.S. Navigable waters during the bridge construction. Since the Severn River channel will be closed daily for 9 weekdays from 7 a.m. until 5 p.m., vessel traffic will be severely disrupted. Periodic openings will be possible once support beams are adequately secured to surrounding support columns and bridge abutments. The support tug "HELEN E" will remain onscene during the entire operation and will be monitoring VHF channels 13 and 16.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be minimal, therefore a full regulatory evaluation is unnecessary. The Coast Guard also considered the impact of this regulation on small entities and concluded that such impact is expected to be minimal Therefore the Coast Guard certifies under 5 U.S.C. 605(b), that this regulation will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. This final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulations

In consideration of the foregoing, the Coast Guard is amending part 165 of title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; U.S.C. 191; 33 CFR 1.05–(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T05–063 is added to read as follows:

165.T05–063 Safety Zone: Route 450 Severn River Bridge, Annapolis, MD.

(a) *Location.* The following area is a safety zone. All waters within 500 feet of either upstream and downstream sides of the bridge construction site located at Latitude 38°59.6′ N, Longitude 076°29.3′ W.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf.

(c) *General information.* The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland may be contacted at telephone number (410) 962–5105. The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone may be contacted on VHF–FM channels 16 and 13.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) The operator of any vessel which enters into or operates in this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(e) *Effective dates.* This regulation is effective from 7 a.m. until 5 p.m. on September 7, 8, 9, 10, 13, 14, 15, 16 and 17, unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

Dated: September 2, 1993.

G.S. Cope,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 93–22448 Filed 9–13–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–93–001]

Safety Zone; Boston Inner Harbor, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone around the USS CASSIN YOUNG (DD–793), with the size of the zone varying appropriate to prevailing conditions. This zone is needed to safeguard the USS CASSIN YOUNG as an historic national maritime attraction and to protect other vessels and persons from the risk of collision, damage or personal injury due to the limited maneuverability of the USS CASSIN YOUNG while under tow. Implementation of this safety zone will enhance safe navigation in Boston Harbor by defining permanent operational parameters for public viewing of the USS CASSIN YOUNG (DD–793) when it is underway.

EFFECTIVE DATE: This regulation becomes effective on October 14, 1993.

FOR FURTHER INFORMATION CONTACT: MST1 Daniel J. Dugery, USCG Marine Safety Office Boston, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are MST1 Daniel J. Dugery, assistant Waterways Management Officer, Captain of the Port of Boston, and Lieutenant Commander Jeffrey Stieb, project attorney, First Coast Guard District Legal Office.

Regulatory History

On May 18, 1993, the Coast Guard published a notice of proposed rulemaking entitled, "SAFETY ZONE; BOSTON INNER HARBOR, BOSTON, MA" in the **Federal Register** (58 FR 28942). The Coast Guard received no comments on the proposal. A public hearing was not requested and one was not held. The Coast Guard Captain of the Port Boston is publishing the final rule as proposed.

Background and Purpose

The USS CASSIN YOUNG (DD–793), a 376 foot World War II Fletcher Class destroyer, operated by the National Park Service in Boston, had a distinguished combat career in the Pacific during World War II and also participated in the Korean Conflict. CASSIN YOUNG now serves as a permanent national memorial to destroyermen and the ships they served on. To protect the vessel, the Captain of the Port (COTP) Boston has routinely established a temporary moving safety zone around the USS CASSIN YOUNG whenever it is underway in Boston Harbor.

The USS CASSIN YOUNG's Columbus Day Turnaround Cruise is an annual event in Boston Harbor. Typically, at 10 a.m. on the Columbus Day weekend, the USS CASSIN YOUNG departs berth at Pier 1, Charlestown Navy Yard, with veterans and visitors on board. The USS CASSIN YOUNG, sometimes joined by other parade vessels, is towed outbound by two tug boats through Boston Inner Harbor to the vicinity of Buoys 2 and 4 off Castle Island. At that point the USS CASSIN YOUNG, and any accompanying parade vessels turn and proceed inbound. Experience has demonstrated that this annual event attracts numerous spectator vessels and may create significant congestion in Boston Harbor. The limited maneuverability of the USS CASSIN YOUNG and other participating vessels while underway for this event poses a hazard for spectator vessels in the area, precipitating the need for a safety zone. A moving safety zone around the USS CASSIN YOUNG (DD–793), and any other associated parade vessels, during the event minimizes the chances of collision with other vessels by eliminating crossing or overtaking situations and helps to provide sufficient maneuvering room for participating vessels. It also minimizes disruption to other vessel traffic, as operators can schedule vessel movements before or after the USS CASSIN YOUNG's transit.

In addition to this annual event, the USS CASSIN YOUNG occasionally gets underway in Boston Harbor for other special events. Like the USS CASSIN YOUNG's Columbus Day Turnaround Cruise, these events are well published and attract many spectator vessels, creating a similar need for a safety zone. Accordingly, the COTP Boston is hereby establishing a permanent moving safety zone for one hundred yards in all directions around the USS CASSIN YOUNG (DD–793) and around each accompanying parade vessel whenever such vessels are underway together in Boston Harbor.

Scheduled movements of the USS CASSIN YOUNG (DD–793) and the names and berthing locations of accompanying parade vessels will be published in the Local Notice to Mariners and in a Safety Marine Information Broadcast. During scheduled events, other marine traffic may not enter the moving safety zone without authorization from the COTP Boston.

Discussion of Comments and Changes

No written comments were received during the comment period. Accordingly, the text of these regulations appears as it did in the notice of proposed rulemaking.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 on Federal Regulations and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. The practice of establishing a safety zone to protect CASSIN YOUNG and accompanying parade vessels underway in Boston Harbor has been in effect for many years. Costs to the shipping industry from these regulations, if any, will be minor and have no significant adverse financial effect on vessel operators as the events will normally be of less than three hours duration. Deep draft vessel traffic, fishing vessels, and tour boats may experience slight delays in departures or arrivals during the transit, however, mariners can time their movements just ahead or just after the USS CASSIN YOUNG (DD–793) and accompanying parade vessels have completed their transit.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act, that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. No written comments relating to this section were received, and the regulatory text remains unchanged.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded under section 2.B.2.C of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. In fact, implementation of this rulemaking should help to preserve a national historic landmark and protect the environment by reducing the risk of collision or other marine accidents. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, 33 CFR part 165 is amended as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.112 is added to read as follows:

§ 165.112 Safety Zone: USS CASSIN YOUNG, Boston, Massachusetts.

(a) *Location.* The following area is a safety zone:

Around the USS CASSIN YOUNG (DD–793) and any accompanying parade vessels when the USS CASSIN YOUNG is underway. The zone extends 100 yards in all directions in the waters around the USS CASSIN YOUNG and accompanying parade vessels whenever the USS CASSIN YOUNG is underway in Boston Harbor from the time the USS CASSIN YOUNG departs its berth until it is safely moored.

(b) *Regulations.* The general regulations governing safety zones as contained in 33 CFR 165.23 apply.

Dated: September 1, 1993.

G.W. Abrams,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 93–22444 Filed 9–13–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–93–034]

Safety Zone; New York National Championship Race, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Lower Hudson River, for the New York National Championship Race. The event, sponsored by Super Boat Racing Inc., will take place on Sunday, October 3, 1993 from 12 p.m. until 4 p.m. Temporary closure of the entire Lower Hudson River between Battery Park and Pier 76 in Manhattan is needed to protect the boating public from the hazards associated with high speed powerboats racing in confined waters.

DATES: This rule is effective from 12 p.m. until 4 p.m. on October 3, 1993, with a rain date of October 4, 1993, at the same time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Rosanne Trabocchi, Waterways Management Officer, Coast Guard Group New York (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LT Rosanne Trabocchi, Project Manager, Captain of the Port, New York and LCDR J. Stieb, Project Attorney, First Coast Guard District Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after the **Federal Register** publication. Publishing a NPRM and delaying the date of this event would be contrary to public interest since this program is for the benefit and enjoyment of the public.

Background and Purpose

On April 16, 1993, Super Boat Racing Inc. submitted a request to hold its annual power boat race in the Lower Hudson River. The Coast Guard is establishing a temporary safety zone in the Lower Hudson River for this annual event known as the "New York National Championship Race". This regulation will close all waters of the Lower Hudson River south of a line drawn from Pier 76 in Manhattan to a point located directly opposite on the New Jersey shoreline and north of a line drawn between the Battery in Manhattan and the southernmost point of Ellis Island in the Upper New York Bay.

Regulatory Evaluation

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). This safety zone will close a four mile area in the Lower Hudson River to all vessel traffic between the hours of 12 p.m. and 4 p.m. on October 3, 1993. The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary for several reasons. The volume of commercial vessel traffic transiting the Lower Hudson River on a Sunday is less than half of the normal daily traffic volume. Pleasure craft desiring to view the race will be directed to designated spectator areas outside the zone. Pleasure craft can take an alternate route through the East River and the Harlem River. In addition, the duration of the event is limited to four hours and extensive advisories will be made to the affected maritime community.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under Section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, 49 CFR 1.46.

2. A temporary § 165.T01–034 is added to read as follows:

§ 165.T01–034 Safety Zone; New York National Championship Race, New York and New Jersey.

(a) *Location.* The safety zone includes all waters of the Lower Hudson River south of a line drawn between Pier 76 Manhattan and a point on the New Jersey shore in Weehawken, New Jersey at 40°45′52″ N latitude 74°01′01″ W longtitude, and north of a line connecting the following points beginning at:

Latitude	Longitude
40°42′16.0″ N .	074°01′09.0″ W, then south to
40°41′55.0″ N .	074°01′16.0″ W, then west to
40°41′47.0″ N .	074°01′36.0″ W, then northwest to
40°41′55.0″ N .	074°01′59.0″ W, then to shore at
40°42′20.5″ N .	074°02′06.0″ W.

(b) *Effective period.* This regulation will be effective from 12 p.m. until 4 p.m. on October 3, 1993, with a raindate of October 4, 1993 at the same time.

(c) *Regulations.* (1) No person or vessel may enter, transit, or remain in the regulated area during the effective period of regulation unless authorized by the U. S. Coast Guard Captain of the Port, New York.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard as well as Coast Guard Auxiliary personnel. Upon being hailed by a U.S. Coast Guard vessel or Coast Guard Auxiliary vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 24, 1993.

T. H. Gilmour,

Captain, U.S. Coast Guard; Captain of the Port, New York.

[FR Doc. 93–22446 Filed 9-13–93; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AB86

Disaster Assistance; Eligibility of Private Nonprofit Facilities

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is changing the eligibility of private nonprofit facilities for disaster assistance grants made under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). The rule is intended to clarify the statutory term

"essential services of a governmental nature" as applied to private nonprofit facilities, and to limit the types of private nonprofit organizations eligible for disaster assistance under the Stafford Act.

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Laurence W. Zensinger, Chief, Public Assistance Division, room 714, 500 C Street, SW., Washington, DC 20472, (202) 646–4240.

SUPPLEMENTARY INFORMATION: The Stafford Act added a new category of private nonprofit (PNP) facility eligible for assistance, namely, "facilities which provide essential services of a governmental nature to the general public." On April 30, 1992, FEMA published in the **Federal Register** at 57 FR 18441 a Proposed Rule, and invited comments for 60 days ending on June 29, 1992.

Comments were received from 23 sources representing State and local governments, private nonprofit organizations and others. The regulation proposed to limit the facilities that qualify as private, nonprofit organizations to "museums, zoos, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities and shelter workshops which are open to the general public." This list of facilities is a list of examples from House Report No. 100–517, which accompanied H.R. 2707 (the bill which became the Stafford Act).

A frequent general comment was that the Congress intended to provide flexibility in determining eligible PNPs that provide essential services of a government nature. Limiting the eligible PNPs to only those on the list of examples was not the intent of Congress. The history of PNPs under the Stafford Act is briefly discussed in addressing this comment.

The law contains no further definition of what is included in the category of "facilities which provide essential services of a governmental nature to the general public". However, House Report No. 100–517, which accompanied H.R. 2707 (the bill which became the Stafford Act), provides a list of examples of eligible facilities. The list includes facilities such as "museums, zoos, community centers, rehabilitation facilities and shelter workshops."

Since passage of the Stafford Act, FEMA has used the list from House Report No. 100–517 to determine whether other facilities, which perform a similar function to those on the list, are eligible facilities. For example, theaters and other performing arts have been considered eligible because they perform a cultural function similar to a museum. FEMA has also considered as eligible facilities, facilities such as parking facilities, which some governmental entities provide.

The floor debates of this bill contain only one reference to what facilities should be included. Mr. Stangeland, on October 21, 1988 stated "We have added the term 'essential services of a governmental nature to the general public' to provide flexibility, not to encourage unsupported, broad-reaching expansions of the definition."

Since passage of the Stafford Act, FEMA has considered as eligible PNP facilities both facilities which are the same as those provided by some government entities and PNP facilities which have a similar function to the list of examples from the House Report. By doing this FEMA considerably expanded the definition of facilities which provide "essential services of a governmental nature to the general public."

As previously noted, numerous comments were made that the proposed rule limits eligible facilities to a list of examples that was not intended by Congress to be all inclusive. FEMA agrees with the comment. However, to avoid the broad-reaching expansion of the definition cautioned against in the floor debate, regulations need to address the issue of what are "essential services of a governmental nature".

Defining "essential services of a governmental nature", is difficult because of the wide range of services that different State and local governments provide. One government may provide limited government services such as fire and police protection, while another government may provide extensive recreation, educational and cultural services. To complicate the situation further, a local government might not provide a service, because a PNP in the community already provides the service.

To maintain consistency, essential government services are defined in this rule in addition to those facilities listed in the House Report, as facilities whose primary purpose is the provision of health and safety services. Health and safety services are essential services that are commonly provided by all local governments and which directly affect the health and safety of individuals. Low-income housing, alcohol and drug rehabilitation, programs for battered spouses, transportation to medical facilities, and food programs are examples of health services under this definition. Examples of ineligible services or facilities are: recreational services, job counseling or job training, advocacy groups not directly providing health services, conference facilities, performing arts, and other groups not providing health or safety services. The proposed regulation is changed to include in the definition of essential governmental services those facilities that provide health and safety services and are open to the general public.

Other comments addressed a particular PNP or a type of PNP that should be considered as an eligible facility. The case was presented that some PNPs provide vital services, services which are sometimes in great demand after a disaster, and communities rely on the many services provided by PNPs. Theaters and various PNPs providing social services, have been eligible for assistance since the Stafford Act and have made strong cases for public support. However worthwhile the PNP, FEMA must rely on the language of the Stafford Act to determine whether the PNP provides "essential services of a governmental nature to the general public." To ensure consistency in determining eligibility for assistance, FEMA is justified in clearly defining essential services. This will result in many PNPs being excluded from the definition. The justification for this definition is discussed in the preceding paragraph.

One comment was made that the proposed regulation does not recognize the different needs of different communities and should be delayed until the States can be consulted. The final rule's definition of eligible facilities, including those that provide health and safety services to the community, should be sufficiently broad to address the different needs of communities in various parts of the country.

The comment period provided the opportunity for the general public and governmental entities to respond to the proposed rule. FEMA believes this period was adequate and that no further consultation is needed.

National Environmental Policy Act

An environmental assessment has been prepared, leading to the determination that this rule will not have a significant impact on the environment and that an Environmental Impact Statement is not required. The assessment is available for review at the Office of the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Regulatory Flexibility Act

The Director certifies that this rule is not a major rule under Executive Order 12291, and will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, and is not expected (1) To adversely affect the availability of disaster assistance funding to small entities, (2) to have significant secondary or incidental effects on a substantial number of small entities, nor (3) to create any additional burden on small entities. Hence, no regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

In promulgating this rule, FEMA has considered the President's Executive Order 12612 on Federalism. This rule makes no changes in the division of governmental responsibilities between the Federal government and the States. Grant administration procedures in accordance with 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, remain the same. No Federalism assessment has been prepared.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform, dated October 25, 1991, 3 CFR, 1991 Comp., p. 359.

List of Subjects in 44 CFR Part 206

Disaster Assistance, Public Assistance.

Accordingly, 44 CFR part 206 is amended as follows:

PART 206—[AMENDED]

1. The authority citation for part 206 continues to read a follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq.; Reorganization Plan No. 3 of 1978, 5 U.S.C. App. 1; E.O. 12148, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 3 CFR, 1989 Comp., p. 214.

2. Section 206.221 is amended by revising paragraph (e)(6) to read as follows:

§ 206.221 Definitions.

* * * * *

(e) * * *

(6) *Other essential governmental service facility* means museums, zoos, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops and facilities which provide health and safety services of a governmental nature. All such facilities must be open to the general public.

* * * * *

Dated: September 7, 1993.

James L. Witt,

Director.

[FR Doc. 93-22432 Filed 9-13-93; 8:45 am]

BILLING CODE 6718-02-P

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44 CFR Part 206

RIN 3067-AB85

Disaster Assistance; Eligibility of Costs

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is changing the eligibility of costs which may be claimed in the performance of work under a disaster assistance grant. It changes to $1000 the minimum dollar amount of damages eligible for disaster assistance, and makes straight-time force labor account costs of permanent employees ineligible for assistance. The changes are intended to improve program efficiency, and to clarify that only direct, additional costs caused by the disaster are eligible for assistance.

EFFECTIVE DATE: October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Laurence W. Zensinger, Chief, Public Assistance Division, room 714, 500 C Street, SW., Washington, DC 20472, (202) 646-4240.

SUPPLEMENTARY INFORMATION: On April 30, 1992, FEMA published a proposed rule in the **Federal Register** at 57 FR 18442, and invited comments for 60 days ending on June 29, 1992. The proposed rule made two changes affecting federal disaster assistance: the one proposed change to the eligible force labor account costs for emergency work, and the other proposed change to the minimum threshold of damage used to determine eligible damage sites. Comments were received from 38 sources representing State and local governments and others.

Force Account Labor Costs

When an applicant for disaster assistance performs emergency response or recovery work using regularly employed personnel, the term for the practice is "force account labor." The proposed change makes the cost of straight-time salaries and benefits of force account labor used in emergency response ineligible for assistance. A frequent comment was that the proposed change undermines Congress' intent to give minimum assistance of 75 percent for eligible costs.

The Stafford Act, section 403(b), 42 U.S.C. 5170b, states, "The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of such assistance." FEMA agrees with the commentators that it must provide minimum assistance of 75 percent of the eligible cost of assistance. However, FEMA can define eligible costs.

The authority for FEMA determining eligible costs is stated in Office of Management and Budget (OMB) Circular A-87, Principles for Determining Costs Applicable to Grants and Contracts with State, Local, and Federally Recognized Indian Tribal Governments. This circular is incorporated into 44 CFR part 13, Uniform Administrative Requirements to State and Local Governments. Paragraph A.1. of the circular states in part: "The principles (of this circular) are for the purposes of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of a particular grant."

The granting agency may determine which particular costs will be eligible for reimbursement under a grant program unless the authorizing statute provides otherwise. Based on the statute not specifically discussing eligible force-account labor costs for emergency work, as it does for permanent work, we conclude that Congress has authorized FEMA to define eligible costs.

Comments Received on the Proposed Rule

(1) *Costs to the applicant.* The most frequent comment concerns the costs and related issues in diverting employees from their normal duties to perform disaster related emergency work. Commentators dispute FEMA's assertion that (just considering the straight- or regular-time salaries of force-account labor involved in emergency work) there is no incremental cost to the applicant because of the disaster since the straight-time salary costs would be incurred whether or not the disaster occurred.

Comments note that a normal work force providing emergency response during a disaster is unable to accomplish its normal duties. These

deferred duties must be accomplished at a later date at a real cost to the applicant, or if not accomplished, they will have an adverse effect on the community.

FEMA agrees that some normally scheduled force account work may be deferred to provide emergency response. Other deferred work, such as a police patrol, cannot be accomplished later. It also is true, however, that reduced future maintenance by force account labor may be required on facilities damaged in the disaster that have been repaired or replaced. As an example, a road that has been damaged and repaved will not need the same maintenance by an applicant's permanent work force. In considering the additional costs to the applicant of this emergency work, FEMA opts to consider only the direct additional expenses of the applicant. Deferred work may or may not be accomplished by the applicant in the future. Federal disaster assistance is intended to supplement state and local efforts, and the costs of deferred work may or may not be spent by the applicant in the future. A reasonable criterion for eligibility of emergency work is that additional funds be spent by the applicant. This criterion ensures that two objectives are met; that federal assistance supplements state and local efforts, and that only additional expenses directly caused by the disaster are eligible for assistance. Meeting these objectives justifies the change in this regulation.

(2) *Consequences of the regulation.* Commentators note that the results of using force account labor for emergency work include: deferred work is contracted out or accomplished with overtime later at a higher cost; normal projects are delayed or eliminated; delay of maintenance causes more costly maintenance in the future.

Current FEMA policy, the comments note, provides assistance which helps avoid these problems. The proposed changes make the same work (for example, debris removal) eligible for assistance if accomplished as overtime by force account labor or by contract, but ineligible if accomplished by force account labor on a straight-time basis. The comments note that FEMA is encouraging applicants to rely on overtime and contract work (at an increased cost) to accomplish emergency work.

If the applicant has the time to choose a course of action, FEMA agrees that contracting for emergency work may be chosen rather than using force account labor. This prediction assumes that the applicant knows a presidentially declared disaster is or will be declared, and that a contractor can respond as quickly as the permanent work force. FEMA expects, however, that an applicant will normally respond to a disaster with all available resources, both private and public, without regard to the eligibility of costs for federal assistance.

(3) *Administrative problems.* The following comments were made on the regulation: Documenting regular-time and overtime separately is burdensome; the correlation between eligible equipment costs and ineligible (straight-time) operator costs is lost (an audit looks at the correlation between labor and equipment); and paying for equipment and not for labor are inconsistent.

The separation of regular and overtime hours need not be burdensome. Since overtime is normally paid at a higher rate, overtime and regular time are routinely separated.

The correlation between equipment costs and ineligible (straight-time) operator costs need not be lost. The straight-time hours of the operator can still be logged to compare with equipment hours, but the straight-time labor costs of the operator will not be eligible costs.

FEMA disagrees that paying for equipment and not for labor are inconsistent. Equipment costs are based on purchase cost, depreciation, operating costs, maintenance costs, salvage values and other factors. The applicant has only a small cost if the equipment sits unused for a week and a much larger cost if the equipment is used during a disaster. In contrast, employees must be paid regardless of how they are employed. FEMA considers equipment use to cause an additional expense to the applicant. Straight-time labor costs are a fixed commitment made by the applicant before the disaster which cause no additional expense.

One comment suggested that mutual aid by other jurisdictions be considered the same as extra hires for eligible work, that is, as an eligible cost. If the mutual aid agreement requires that the applicant pay the salaries of the other jurisdiction's employees providing assistance, FEMA agrees that it serves the same purpose as extra hires and that these are eligible costs. However, if the mutual aid is provided at no additional expense to the applicant, then these costs are not eligible. This is current practice and is unaffected by the proposed rule change.

Another comment proposed that the wages of fill-in workers (both regular and overtime) and the overtime wages of regular employees be eligible costs. The overtime wages of regular employees performing eligible work remain an eligible cost under the regulation. Extra employees hired to perform eligible work represent an incremental disaster-related expense and are an eligible cost. Fill-in workers refer to extra employees hired to perform the duties of regular employees who are performing disaster-related work. Because fill-in workers do not perform disaster-related work, assistance for the cost of their wages is not justified.

Another commentator proposed that only the regular-time wages of emergency and public safety personnel (police and fire) should be ineligible costs. As noted in the previous discussion, the change in regulation is to meet two objectives, that federal assistance only supplement state and local efforts, and that only additional expenses directly caused by the disaster are eligible for assistance. The basis for all regular time wages (for force account labor used for emergency work) being ineligible is that there are no direct additional expenses to the applicant.

Minimum Costs in Damage Survey Report (DSR)

In the proposed rule, FEMA proposed to set a new minimum threshold cost of $1000 for work at a damage site. If the cost of work at a damage site was less than $1000, it would not be eligible for assistance.

Comments Received on the Damage Survey Report and Damage Site Definition

Numerous comments addressed two issues together, a reasonable minimum DSR amount and how a damage site would be defined to which to apply this minimum. Suggested amounts for minimum DSR amounts ranged from $250 to $1000. Several commentators noted that the proposed minimum amount of the DSR has been increased to an amount higher than the rate of inflation.

FEMA acknowledges that this rule will decrease disaster assistance to some applicants. The proportionately large administrative costs of these small amount DSRs, however, justifies an increase in the current minimum DSR amount of $250. There are certain fixed administrative costs for any project such as inspecting, estimating, reviewing, and associated paperwork. For the projects being affected by the proposed change, these administrative costs are a proportionately greater amount than for other projects. If the existing level of $250 remains the same, inflation will cause the fixed administrative costs to

increase to a proportionately greater percentage of the project.

A repeated comment was that DSRs should be written for all sites even if ineligible, consequently savings in administrative costs by raising the minimum DSR amount are minimal. FEMA agrees that a DSR should be written if the issue of the amount of damage or eligibility of the work is likely to arise. The applicant, however, may choose not to show the inspection team damage sites which are clearly ineligible for assistance. The administrative costs from visiting these clearly ineligible damage sites will be avoided.

Several comments conceded that an increase was justified but questioned the amount of the increase, which is greater than inflation. The new minimum DSR amount is not based solely on the inflation rate, but is intended to improve program efficiency and to reduce fixed administrative costs associated with small claims. Most sites with less than $1000 of damage can be repaired during maintenance operations by the applicant. To improve program efficiency, the fixed costs of DSR preparation must be considered in setting a minimum DSR amount. The new minimum DSR amount of $1000 is justified to achieve the objectives of improving program efficiency and focusing resources in areas less likely to be able to be taken care of through normal maintenance procedures.

The other issue raised in conjunction with the minimum threshold cost is the definition of a damage site. The concern is that damage sites will be defined so as to fall below the minimum DSR amount and thus be ineligible for assistance.

A broad range of facilities can be damaged during a disaster from roads and utility systems that are geographically very dispersed to buildings at a specific street address. A definition of a damage site for a road, unless worded generally, will not be applicable to a building. To define damage sites specifically for each type of facility would be needlessly cumbersome. The federal inspectors will be given guidance that damage sites should be defined using engineering judgement and an understanding of the function of the damaged facility. Damage sites shall not be separated with the intent to cause damages to fall below the minimum threshold, and thus be ineligible for assistance.

National Environmental Policy Act

An environmental assessment has been prepared and concludes that this rule will not have a significant impact on the environment and that an Environmental Impact Statement is not required. The assessment is available for review through the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Regulatory Flexibility Act

The Director certifies that this rule is not a major rule under Executive Order 12291, and will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, and is not expected (1) to adversely affect the availability of disaster assistance funding to small entities, (2) to have significant secondary or incidental effects on a substantial number of small entities, nor (3) to create any additional burden on small entities. Hence, no regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

In promulgating this rule, FEMA has considered the President's Executive Order 12612 on Federalism. This rule makes no changes in the division of governmental responsibilities between the Federal government and the States. Grant administration procedures in accordance with 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, remain the same. No Federalism assessment has been prepared.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform, dated October 25, 1991, 3 CFR, 1991 Comp., p. 359.

List of Subjects in 44 CFR Part 206

Disaster assistance, Public assistance.

Accordingly, 44 CFR part 206 is amended as follows:

PART 206—[AMENDED]

1. The authority citation for part 206 is revised to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq.; Reorganization Plan No. 3 of 1978, 5 U.S.C. App. 1; E.O. 12148, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 3 CFR, 1989 Comp., p. 214.

2. Section 206.202 is amended by revising paragraph (d) to read as follows:

§ 206.202 Application Procedures.

* * * * *

(d) *Damage Survey Reports (DSRs).*— (1) Damage surveys are conducted by an inspection team. An authorized local representative accompanies the inspection team and is responsible for representing the applicant and ensuring that all eligible work and costs are identified. The inspectors prepare a Damage Survey Report-Data Sheet (FEMA Form 90–91) for each site. On the Damage Survey Report-Data Sheet the inspectors will identify the eligible scope of work and prepare a quantitative estimate for the eligible work. Any damage that is not shown to the inspection team during its initial visit shall be reported in writing to the Regional Director by the Grantee within 60 days after the initial visit.

(2) When the estimate of work at a damage site is less than $1000, such work is not eligible and a DSR will not be written. This minimum amount for a DSR shall be reviewed periodically by FEMA and adjusted through regulation as necessary.

* * * * *

3. Section 206.228 is amended by adding paragraph (a)(4) as follows:

§ 206.228 Allowable Costs

(a) * * *

(4) *Force Account Labor Costs.* The straight- or regular-time salaries and benefits of a subgrantee's permanently employed personnel are not eligible in calculating the cost of eligible work under sections 403 and 407 of the Stafford Act, 42 U.S.C. 5170b and 5173. For the performance of eligible permanent restoration under section 406 of the Act, 42 U.S.C. 5172, straight-time salaries and benefits of a subgrantee's permanently employed personnel are eligible.

* * * * *

(Catalogue of Federal Domestic Assistance No. 83–516, "Disaster Assistance")

Dated: September 7, 1993.

James L. Witt,

Director.

[FR Doc. 93–22433 Filed 9–13–93; 8:45 am]

BILLING CODE 6718–02–P

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44 CFR Part 353

Memorandum of Understanding Between Federal Emergency Management Agency and Nuclear Regulatory Commission

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) and the Nuclear Regulatory Commission (NRC) have entered into a new Memorandum of Understanding (MOU) Relating to Radiological Emergency Planning Preparedness, dated June 17, 1993. The text of the MOU is set out in this rule.

EFFECTIVE DATE: June 17, 1993.

FOR FURTHER INFORMATION CONTACT: Vernon L. Wingert, Office of Technological Hazards, State and Local Programs and Support, Federal Emergency Management Agency, 500 C Street, SW., room 617, Washington, DC 20472, (202) 646–2872.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) and the Nuclear Regulatory Commission (NRC) have entered into a new Memorandum of Understanding (MOU) Relating to Radiological Emergency Planning Preparedness, dated June 17, 1993. This MOU supersedes a memorandum entered into on November 1, 1980 (published December 16, 1980, 45 FR 82713), revised April 9, 1985 (published April 18, 1985, 50 FR 15485), and published as Appendix A to 44 CFR part 353. The substantive changes in the new MOU are: (1) Self-initiated review by the NRC; (2) Early Site Permit process; (3) adoption of FEMA exercise time-frames; (4) incorporation of FEMA definition of exercise deficiency; (5) NRC commitment to work with licensees in support of State and local governments to correct exercise deficiencies; (6) correlation of FEMA actions on withdrawal of approvals under 44 CFR Part 350 and NRC enforcement actions; and (7) disaster-initiated reviews in situations that affect offsite emergency infrastructures.

Regulatory Flexibility Act

The Director certifies that this interim rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule will not apply to a substantial number of small entities as defined by the Small Business Size Standards, 13 CFR 121.601, Division E, Major Group 49, as amended 57 FR 62520, December 31, 1992, and is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, nor (2) to create any additional burden on a substantial number of small entities.

National Environmental Policy Act

The Director has determined under the National Environmental Policy Act of 1969 and FEMA Regulation, 44 CFR part 10, Environmental Considerations, that this rule is not a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

Regulatory Analysis

This interim rule is not a "major rule" as the term is used in Executive Order 12291 and implementing OMB guidance. It will not have an annual effect on the economy of $100 million or more, will not result in a major increase in costs or prices to consumers, individual industries, Federal, State or local agencies or geographic regions and will not have a significant adverse impact on competition, employment, investment, productivity, innovation or the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. Therefore, no regulatory analysis is required.

Paper Work Reduction Act

This rule does not contain collection of information requirements and is not subject to the Paper Work Reduction Act of 1980, as amended (44 U.S.C. 3501 et seq.).

Executive Order 12612, Federalism

A Federalism assessment under E.O. 12612 has been prepared and a copy is available for inspection and copying for a fee from the Rules Docket Clerk, above.

List of Subjects in 44 CFR Part 353

Disaster assistance, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reporting and recordkeeping requirements, and Technical assistance.

Accordingly, 44 CFR is amended by revising part 353, as follows:

PART 353—[AMENDED]

1. The authority citation of part 353 is revised to read as follows:

Authority: 31 U.S.C. 9701; E.O. 12657 of November 18, 1988, 3 CFR, 1988 Comp., p. 611, 50 U.S.C. App. § 2251 note; E.O. 12148 of July 20, 1979, 3 CFR, 1979 Comp., p. 412, 50 U.S.C. App. 2251 note.

2. Appendix A to part 353 is revised to read as follows:

APPENDIX A OF PART 354—MEMORANDUM OF UNDERSTANDING BETWEEN FEDERAL EMERGENCY MANAGEMENT AGENCY AND NUCLEAR REGULATORY COMMISSION

The Federal Emergency Management Agency (FEMA) and the Nuclear Regulatory Commission (NRC) have entered into a new Memorandum of Understanding (MOU) Relating To Radiological Emergency Planning and Preparedness. This supersedes a memorandum entered into on November 1, 1980 (published December 16, 1980, 45 FR 82713), revised April 9, 1985 (published April 18, 1985, 50 FR 15485), and published as Appendix A to 44 CFR part 353. The substantive changes in the new MOU are: (1) Self-initiated review by the NRC; (2) Early Site Permit process; (3) adoption of FEMA exercise time-frames; (4) incorporation of FEMA definition of exercise deficiency; (5) NRC commitment to work with licensees in support of State and local governments to correct exercise deficiencies; (6) correlation of FEMA actions on withdrawal of approvals under 44 CFR part 350 and NRC enforcement actions; and (7) disaster-initiated reviews in situations that affect offsite emergency infrastructures. The text of the MOU follows.

Memorandum of Understanding Between NRC and FEMA Relating to Radiological Emergency Planning and Preparedness

I. Background and Purposes

This Memorandum of Understanding (MOU) establishes a framework of cooperation between the Federal Emergency Management Agency (FEMA) and the U.S. Nuclear Regulatory Commission (NRC) in radiological emergency response planning matters so that their mutual efforts will be directed toward more effective plans and related preparedness measures at and in the vicinity of nuclear reactors and fuel cycle facilities which are subject to 10 CFR part 50, appendix E, and certain other fuel cycle and materials licensees which have potential for significant accidental offsite radiological releases. The memorandum is responsive to the President's decision of December 7, 1979, that FEMA will take the lead in offsite planning and response, his request that NRC assist FEMA in carrying out this role, and the NRC's continuing statutory responsibility for the radiological health and safety of the public.

On January 14, 1980, the two agencies entered into a "Memorandum of Understanding Between NRC and FEMA to Accomplish a Prompt Improvement in Radiological Emergency Preparedness," that was responsive to the President's December 7, 1979, statement. A revised and updated Memorandum of Understanding became effective November 1, 1980. The MOU was further revised and updated on April 9, 1985. This MOU is a further revision to reflect the evolving relationship between NRC and FEMA and the experience gained in carrying out the provisions of the previous MOU's. This MOU supersedes these two earlier versions of the MOU.

The general principles agreed to in the previous MOU's and reaffirmed in this MOU, are as follows: FEMA coordinates all Federal planning for the offsite impact of radiological emergencies and takes the lead for assessing offsite radiological emergency response plans [1] and preparedness, makes findings and determinations as to the adequacy and capability of implementing offsite plans, and communicates those findings and determinations to the NRC. The NRC reviews those FEMA findings and determinations in conjunction with the NRC onsite findings for the purpose of making determinations on the overall state of emergency preparedness. These overall findings and determinations are used by NRC to make radiological health and safety decisions in the issuance of licenses and the continued operation of licensed plants to include taking enforcement actions as notices of violations, civil penalties, orders, or shutdown of operating reactors. This delineation of responsibilities avoids duplicative efforts by the NRC staff in offsite preparedness matters. However, if FEMA informs the NRC that an emergency, unforeseen contingency, or other reason would prevent FEMA from providing a requested finding in a reasonable time, then, in consultation with FEMA, the NRC might initiate its own review of offsite emergency preparedness.

A separate MOU dated October 22, 1980, deals with NRC/FEMA cooperation and responsibilities in response to an actual or potential radiological emergency. Operations Response Procedures have been developed that implement the provisions of the Incident Response MOU. These documents are intended to be consistent with the Federal Radiological Emergency Response Plan which describes the relationships, roles, and responsibilities of Federal Agencies for responding to accidents involving peacetime nuclear emergencies. On December 1, 1991, the NRC and FEMA also concluded a separate MOU in support of Executive Order 12657 (FEMA Assistance in Emergency Preparedness Planning at Commercial Nuclear Power Plants).

II. Authorities and Responsibilities

FEMA-Executive Order 12148 charges the Director, FEMA, with the responsibility to "* * * establish Federal policies for, and coordinate, all civil defense and civil emergency planning, management, mitigation, and assistance functions of Executive agencies" (Section 2–101) and "* * * represent the President in working with State and local governments and the private sector to stimulate vigorous participation in civil emergency preparedness, mitigation, response, and recovery programs" (Section 2–104.).

On December 7, 1979, the President, in response to the recommendations of the Kemeny Commission on the Accident at Three Mile Island, directed that FEMA assume lead responsibility for all offsite nuclear emergency planning and response.

Specifically, the FEMA responsibilities with respect to radiological emergency preparedness as they relate to NRC are:

1. To take the lead in offsite emergency planning and to review and assess offsite emergency plans and preparedness for adequacy.

2. To make findings and determinations as to whether offsite emergency plans are adequate and can be implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment). Notwithstanding the procedures which are set forth in 44 CFR part 350 for requesting and reaching a FEMA administrative approval of State and local plans, findings, and determinations on the current status of emergency planning and preparedness around particular sites, referred to as interim findings, will be provided by FEMA for use as needed in the NRC licensing process. Such findings will be provided by FEMA on mutually agreed to schedules or on specific NRC request. The request and findings will normally be by written communications between the co-chairs of the NRC/FEMA Steering Committee. An interim finding provided under this arrangement will be an extension of FEMA's procedures for review and approval of offsite radiological emergency plans and preparedness set forth in 44 CFR part 350. It will be based on the review of currently available plans and, if appropriate, joint exercise results related to a specific nuclear power plant site.

If the review involves an application under 10 CFR part 52 for an early site permit, the NRC will forward to FEMA pertinent information provided by the applicant and consult with FEMA as to whether there is any significant impediment to the development of offsite emergency plans. As appropriate, depending upon the nature of information provided by the applicant, the NRC will also request that FEMA determine whether major features of offsite emergency plans submitted by the applicant are acceptable, or whether offsite emergency plans submitted by the applicant are adequate, as discussed below.

An interim finding based only on the review of currently available offsite plans will include an assessment as to whether these plans are adequate when measured against the standards and criteria of NUREG–0654/FEMA–REP–1, and, pending a demonstration through an exercise, whether there is reasonable assurance that the plans can be implemented. The finding will indicate one of the following conditions: (1) Plans are adequate and there is reasonable assurance that they can be implemented with only limited or no corrections needed; (2) plans are adequate, but before a determination can be made as to whether they can be implemented, corrections must be made to the plans or supporting measures must be demonstrated (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment) or (3) plans are inadequate and cannot be implemented until they are revised to correct deficiencies noted in the Federal review.

If, in FEMA's view, the plans that are available are not completed or are not ready for review, FEMA will provide NRC with a status report delineating milestones for preparation of the plan by the offsite authorities as well as FEMA's actions to assist in timely development and review of the plans.

An interim finding on preparedness will be based on review of currently available plans and joint exercise results and will include an assessment as to (1) whether offsite emergency plans are adequate as measured against the standards and criteria of NUREG–0654/

[1] Assessments of offsite plans may be based on State and local government plans submitted to FEMA under its rule (44 CFR Part 350), and as noted in 44 CFR 350.3(f), may also be based on plans currently available to FEMA or furnished to FEMA through the NRC/FEMA Steering Committee.

FEMA–REP–1 and (2) whether the exercise(s) demonstrated that there is reasonable assurance that the plans can be implemented.

An interim finding on preparedness will indicate one of the following conditions: (1) There is reasonable assurance that the plans are adequate and can be implemented as demonstrated in an exercise; (2) there are deficiencies that must be corrected; or (3) FEMA is undecided and will provide a schedule of actions leading to a decision.

3. To assume responsibility, as a supplement to State, local, and utility efforts, for radiological emergency preparedness training of State and local officials.

4. To develop and issue an updated series of interagency assignments which delineate respective agency capabilities and responsibilities and define procedures for coordination and direction for emergency planning and response. [Current assignments are in 44 CFR part 351, March 11, 1982. (47 FR 10758)]

NRC-The Atomic Energy Act of 1954, as amended, requires that the NRC grant licenses only if the health and safety of the public is adequately protected. While the Atomic Energy Act does not specifically require emergency plans and related preparedness measures, the NRC requires consideration of overall emergency preparedness as a part of the licensing process. The NRC rules (10 CFR 50.33, 50.34, 50.47, 50.54, and appendix E to 10 CFR part 50, and 10 CFR part 52) include requirements for the licensee's emergency plans.

Specifically, the NRC responsibilities for radiological emergency preparedness are:

1. To assess licensee emergency plans for adequacy. This review will include organizations with whom licensees have written agreements to provide onsite support services under emergency conditions.

2. To verify that licensee emergency plans are adequately implemented (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualifications, and equipment).

3. To review the FEMA findings and determinations as to whether offsite plans are adequate and can be implemented.

4. To make radiological health and safety decisions with regard to the overall state of emergency preparedness (i.e., integration of emergency preparedness onsite as determined by the NRC and offsite as determined by FEMA and reviewed by NRC) such as assurance for continued operation, for issuance of operating licenses, or for taking enforcement actions, such as notices of violations, civil penalties, orders, or shutdown of operating reactors.

III. Areas of Cooperation

A. NRC Licensing Reviews

FEMA will provide support to the NRC for licensing reviews related to reactors, fuel facilities, and materials licensees with regard to the assessment of the adequacy of offsite radiological emergency response plans and preparedness. This will include timely submittal of an evaluation suitable for inclusion in NRC safety evaluation reports.

Substantially prior to the time that a FEMA evaluation is required with regard to fuel facility or materials license review, NRC will identify those fuel and materials licensees with potential for significant accidental offsite radiological releases and transmit a request for review to FEMA as the emergency plans are completed.

FEMA routine support will include providing assessments, findings and determinations (interim and final) on offsite plans and preparedness related to reactor license reviews. To support its findings and determinations, FEMA will make expert witnesses available before the Commission, the NRC Advisory Committee on Reactor Safeguards, NRC hearing boards and administrative law judges, for any court actions, and during any related discovery proceedings.

FEMA will appear in NRC licensing proceedings as part of the presentation of the NRC staff. FEMA counsel will normally present FEMA witnesses and be permitted, at the discretion of the NRC licensing board, to cross-examine the witnesses of parties, other than the NRC witnesses, on matters involving FEMA findings and determinations, policies, or operations; however, FEMA will not be asked to testify on status reports. FEMA is not a party to NRC proceedings and, therefore, is not subject to formal discovery requirements placed upon parties to NRC proceedings. Consistent with available resources, however, FEMA will respond informally to discovery requests by parties. Specific assignment of professional responsibilities between NRC and FEMA counsel will be primarily the responsibility of the attorneys assigned to a particular case. In situations where questions of professional responsibility cannot be resolved by the attorneys assigned, resolution of any differences will be made by the General Counsel of FEMA and the General Counsel of the NRC or their designees. NRC will request the presiding Board to place FEMA on the service list for all litigation in which it is expected to participate.

Nothing in this MOU shall be construed in any way to diminish NRC's responsibility for protecting the radiological health and safety of the public.

B. FEMA Review of Offsite Plans and Preparedness

NRC will assist in the development and review of offsite plans and preparedness through its membership on the Regional Assistance Committees (RAC). FEMA will chair the Regional Assistance Committees. Consistent with NRC's statutory responsibility, NRC will recognize FEMA as the interface with State and local governments for interpreting offsite radiological emergency planning and preparedness criteria as they affect those governments and for reporting to those governments the results of any evaluation of their radiological emergency plans and preparedness.

Where questions arise concerning the interpretation of the criteria, such questions will continue to be referred to FEMA Headquarters, and when appropriate, to the NRC/FEMA Steering Committee to assure uniform interpretation.

C. Preparation for and Evaluation of Joint Exercises

FEMA and NRC will cooperate in determining exercise requirements for licensees, and State and local governments. They will also jointly observe and evaluate exercises. NRC and FEMA will institute procedures to enhance the review of objectives and scenarios for joint exercises. This review is to assure that both the onsite considerations of NRC and the offsite considerations of FEMA are adequately addressed and integrated in a manner that will provide for a technically sound exercise upon which an assessment of preparedness capabilities can be based. The NRC/FEMA procedures will provide for the availability of exercise objectives and scenarios sufficiently in advance of scheduled exercises to allow enough time for adequate review by NRC and FEMA and correction of any deficiencies by the licensee. The failure of a licensee to develop a scenario that adequately addresses both onsite and offsite considerations may result in NRC taking enforcement actions.

The FEMA reports will be a part of an interim finding on emergency preparedness; or will be the result of an exercise conducted pursuant to FEMA's review and approval procedures under

44 CFR part 350 and NRC's requirement under 10 CFR part 50, appendix E, Section IV.F. Exercise evaluations will identify one of the following conditions: (1) There is reasonable assurance that the plans are adequate and can be implemented as demonstrated in the exercise; (2) there are deficiencies that must be corrected; or (3) FEMA is undecided and will provide a schedule of actions leading to a decision. The schedule for issuance of the draft and final exercise reports will be as shown in FEMA-REP–14 (Radiological Emergency Preparedness Exercise Manual).

The deficiency referred to in (2) above is defined as an observed or identified inadequacy of organizational performance in an exercise that could cause a finding that offsite emergency preparedness is not adequate to provide reasonable assurance that appropriate protective measures can be taken in the event of a radiological emergency to protect the health and safety of the public living in the vicinity of a nuclear power plant. Because of the potential impact of deficiencies on emergency preparedness, they should be corrected within 120 days through appropriate remedial actions, including remedial exercises, drills, or other actions.

Where there are deficiencies of the types noted above, and when there is a potential for remedial actions, FEMA Headquarters will promptly (1–2 days) discuss these with NRC Headquarters. Within 10 days of the exercise, official notification of identified deficiencies will be made by FEMA to the State, NRC Headquarters, and the RAC with an information copy to the licensee. NRC will formally notify the licensee of the deficiencies and monitor the licensee's efforts to work with State and local authorities to correct the deficiencies. Approximately 60 days after official notification of the deficiency, the NRC, in consultation with FEMA, will assess the progress being made toward resolution of the deficiencies.

D. Withdrawal of Reasonable Assurance Finding

If FEMA determines under 44 CFR 350.13 of its regulations that offsite emergency plans or preparedness are not adequate to provide reasonable assurance that appropriate protective measures can be taken in the event of radiological emergency to protect the health and safety of the public, FEMA shall, as described in its rule, withdraw approval.

Upon receiving notification of such action from FEMA, the NRC will promptly review FEMA's findings and determinations and formally document the NRC's position. When, as described in 10 CFR 50.54(s)(2)(ii) and 50.54(s)(3) of its regulations, the NRC finds the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, the NRC will notify the affected licensee accordingly and start the "120-day clock."[2]

E. Emergency Planning and Preparedness Guidance

NRC has lead responsibility for the development of emergency planning and preparedness guidance for licensees. FEMA has lead responsibility for the development of radiological emergency planning and preparedness guidance for State and local agencies. NRC and FEMA recognize the need for an integrated, coordinated approach to radiological emergency planning and preparedness by NRC licensees and State and local governments. NRC and FEMA will each, therefore, provide opportunity for the other agency to review and comment on such guidance (including interpretations of agreed joint guidance) prior to adoption as formal agency guidance.

F. Support for Document Management System

FEMA and NRC will each provide the other with continued access to those automatic data processing support systems which contain relevant emergency preparedness data.

G. Ongoing NRC Research and Development Programs

Ongoing NRC and FEMA research and development programs that are related to State and local radiological emergency planning and preparedness will be coordinated. NRC and FEMA will each provide opportunity for the other agency to review and comment on relevant research and development programs prior to implementing them.

H. Public Information and Education Programs

FEMA will take the lead in developing public information and educational programs. NRC will assist FEMA by reviewing for accuracy educational materials concerning radiation, and its hazards and information regarding appropriate actions to be taken by the general public in the event of an accident involving radioactive materials.

I. Recovery from Disasters Affecting Offsite Emergency Preparedness

Disasters that destroy roads, buildings, communications, transportation resources or other offsite infrastructure in the vicinity of a nuclear power plant can degrade the capabilities of offsite response organizations in the 10-mile plume emergency planning zone. Examples of events that could cause such devastation are hurricanes, tornadoes, earthquakes, tsunamis, volcanic eruptions, major fires, large explosions, and riots.

If a disaster damages the area around a licensed operating nuclear power plant to an extent that FEMA seriously questions the continued adequacy of offsite emergency preparedness, FEMA will inform the NRC promptly. Likewise, the NRC will inform FEMA promptly of any information it receives from licensees, its inspectors, or others, that raises serious questions about the continued adequacy of offsite emergency preparedness. If FEMA concludes that a disaster-initiated review of offsite radiological emergency preparedness is necessary to determine if offsite emergency preparedness is still adequate, it will inform the NRC in writing, as soon as practicable, including a schedule for conduct of the review. FEMA will also give the NRC (1) interim written reports of its findings, as appropriate, and (2) a final written report on the results of its review.

The disaster-initiated review is performed to reaffirm the radiological emergency preparedness capabilities of affected offsite jurisdictions located in the 10-mile emergency planning zone and is not intended to be a comprehensive review of offsite plans and preparedness.

The NRC will consider information provided by FEMA Headquarters and pertinent findings from FEMA's disaster-initiated review in making decisions regarding the restart or continued operation of an affected operating nuclear power reactor. The NRC will notify FEMA Headquarters, in writing, of the schedule for restart of an affected reactor and keep FEMA Headquarters informed of changes in that schedule.

IV. NRC/FEMA Steering Committee

The NRC/FEMA Steering Committee on Emergency Preparedness will continue to be the focal point for

[2] Per 10 CFR 50.54(s)(2)(ii), the Commission will determine whether the reactor shall be shut down or other appropriate enforcement actions if such conditions are not corrected within four months. The NRC is not limited by this provision of the rule, for, as stated in 10 CFR 50.54(s)(3), "Nothing in this paragraph shall be construed as limiting the authority of the Commission to take action under any other regulation or authority of the Commission *or at any time other than that specified in this paragraph*" (emphasis added).

coordination of emergency planning and preparedness. As discussed in Section I of this agreement, response activities between these two agencies are addressed in a separate MOU. The Steering Committee will consist of an equal number of members to represent each agency with one vote per agency. When the Steering Committee cannot agree on the resolution of an issue, the issue will be referred to NRC and FEMA management. The NRC members will have lead responsibility for licensee planning and preparedness and the FEMA members will have lead responsibility for offsite planning and preparedness. The Steering Committee will assure coordination of plans and preparedness evaluation activities and revise, as necessary, acceptance criteria for licensee, State and local radiological emergency planning and preparedness. NRC and FEMA will then consider and adopt criteria, as appropriate, in their respective jurisdictions. (See Attachment 1).

V. Working Arrangements

A. The normal point of contact for implementation of the points in this MOU will be the NRC/FEMA Steering Committee.

B. The Steering Committee will establish the day-to-day procedures for assuring that the arrangements of this MOU are carried out.

VI. Memorandum of Understanding

A. This MOU shall be effective as of date of signature and shall continue in effect unless terminated by either party upon 30 days notice in writing.

B. Amendments or modifications to this MOU may be made upon written agreement by both parties.

Approved for the U.S. Nuclear Regulatory Commission.

Dated: June 17, 1993.

James M. Taylor,

Executive Director for Operations.

Dated: June 17, 1993.

Approved for the Federal Emergency Management Agency.

Richard W. Krimm,

Acting Associate Director, State and Local Programs and Support.

Attachment 1—FEMA/NRC Steering Committee

Purpose

Assure coordination of efforts to maintain and improve emergency planning and preparedness for nuclear power reactors as described in the NRC and FEMA rules and the NRC/FEMA MOU on Radiological Emergency Planning and Preparedness. Coordinate consistent criteria for licensee, State and local emergency plans and preparedness.

Membership

The NRC and FEMA consignees of this MOU will designate respective co-chairs for the Steering Committee. The designated co-chairs will, in turn, appoint their respective members to the Committee.

Membership Changes

Changes to the membership of the NRC/FEMA Steering Committee may be made by the co-chairs representing the agency whose member is being changed.

Operating Procedures

The Steering Committee will maintain a record of each meeting to include identification of issues discussed and conclusions reached. No meeting will be held without the attendance and participation of at least the co-chairs or two assigned members of each agency.

Coordination

When items involving responsibilities of other NRC or FEMA offices are discussed, the affected offices will be contacted as appropriate.

Dated: September 7, 1993.

James L. Witt,

Director.

[FR Doc. 93-22431 Filed 9-13-93; 8:45 am]

BILLING CODE 6718-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 930402-3134; I.D. 090293A]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustments.

SUMMARY: NMFS announces that the quotas for the commercial fishery in the subarea from the Queets River, Washington, to Cape Falcon, Oregon, which began on August 27, 1993, are increased to 5,800 chinook salmon and 26,300 coho salmon to account for fish not harvested by earlier commercial fisheries north of Cape Falcon. The commercial fishery from the Queets River, Washington, to Cape Falcon, Oregon, will reopen for 4 days on September 1–4, 1993, with a possession and landing limit of 70 coho salmon for the open period, followed by a 4-day closure on September 5–8, 1993. These adjustments are intended to provide additional fishing opportunity to catch the available fish and minimize disruption to the commercial fishery without exceeding the ocean share allocated to the commercial fishery in this subarea.

DATES: Effective at 0001 hours local time, September 1, 1993, through 2400 hours local time, September 8, 1993. Comments will be accepted through September 28, 1993.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140.

SUPPLEMENTARY INFORMATION: In its amended emergency interim rule (58 FR 31664, June 4, 1993), NMFS announced that "All non-Indian troll and recreational ocean fisheries will be limited by either (a) an overall 60,000 chinook quota or (b) impacts on critical Washington coastal and Puget Sound natural coho stocks equivalent to the preseason coho quota of 250,000 (including hooking mortality associated with the May/June chinook fisheries). The initial troll allocation provides for a harvest of no more than 30,000 chinook and 62,500 coho. However, a preseason species trade with the recreational fishery of 15,000 coho for 5,000 chinook results in the troll fishery being limited by overall quotas of 35,000 chinook and 47,500 coho."

The commercial fishery North of Cape Falcon was subject to chinook and coho quotas in three seasons set forth in the emergency interim rule. Based on the best available information on August 30, the commercial fishery catch north of Cape Falcon, Oregon, resulted in 17,300 coho salmon and 4,900 chinook salmon remaining in the harvest guidelines following the previous season closure on August 6 of the commercial fishery for all salmon species between the U.S.-Canada border and Cape Falcon. The emergency interim rule states that "Any transfers between subarea quotas of 5,000 fish or less shall be done on a fish-for-fish basis." Unlike the first two seasons this third season opening is within a subarea and therefore the chinook salmon quota for the commercial fishery beginning August 27 between the Queets River and Cape Falcon has been increased by the 4,900 remaining fish, from 900 to 5,800 fish. To maintain impacts at preseason levels on critical Queets River natural coho

salmon stocks, the coho salmon quota for this same fishery has been increased by 13,000 fish, from 13,300 to 26,300 fish.

Under the preseason regulations, the 1993 commercial fishery between the Queets River, Washington, and Cape Falcon, Oregon, was scheduled to open August 27 and continue through the earliest of October 31 or attainment of subarea quotas of either 13,300 coho salmon or 900 chinook salmon. Preseason restrictions included a cycle of 2 days open and 3 days closed and a possession and landing limit of 35 coho salmon per opening.

The best available information on August 30 indicated that commercial catches during the first open period on August 27–28 in the subarea from the Queets River to Cape Falcon totaled about 2,700 coho salmon and 570 chinook salmon. To provide commercial fishermen additional opportunity to catch the available fish, the fishery in this subarea will reopen for 4 days, effective 0001 hours local time, September 1 through 2400 hours local time, September 4. Furthermore, each vessel may possess, land and deliver not more than 70 coho salmon for this open period. Following this 4-day open period, the commercial fishery in this subarea will close for 4 days, September 5–8. During this closed period, catches will be evaluated to determine if sufficient fish remain to reopen this fishery.

Modifications of quotas, fishing seasons, and limited retention regulations are authorized by regulations at 50 CFR 661.21(b)(1) (i) and (ii). All other restrictions that apply to this fishery remain in effect as announced in the amended emergency interim rule (58 FR 31664).

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife, regarding these adjustments affecting the commercial fishery between the Queets River and Cape Falcon. The states of Washington and Oregon will manage the commercial fishery in state waters adjacent to this area of the EEZ in accordance with this Federal action. In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 0001 hours local time, September 1, 1993, by telephone hotline number (206) 526–6667 or (800) 662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 Khz. Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.21 and 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 8, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–22376 Filed 9–13–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 176
Tuesday, September 14, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 93-073-1]

Quarantine Fee for Horses, Ruminants, and Swine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to require importers of horses, ruminants, and swine wishing to use a U.S. Department of Agriculture quarantine facility to pay a reservation fee covering 100 percent of the estimated cost of care, feed, and handling of the animals. This proposal is intended to protect the Department from financial losses in the event an importer places animals in quarantine and then fails to pay outstanding bills.

DATES: Consideration will be given only to comments received on or before October 14, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-073-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel Richeson, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436-8170.

SUPPLEMENTARY INFORMATION:

Background

The animal import regulations contained in 9 CFR part 92 (referred to below as the regulations) govern the importation of certain animals into the United States, and require certain animals to be quarantined in the United States as part of their importation. The regulations in §§ 92.304, 92.404, and 92.504 require importers to pay a reservation fee covering 25 percent of the estimated cost of care, feed, and handling of horses, ruminants, and swine, respectively, to be quarantined in U.S. Department of Agriculture (USDA) facilities. Based on our experience conducting quarantines at USDA facilities, we have discovered that requiring only a partial payment of estimated costs prior to quarantine leaves USDA vulnerable to significant financial losses in the event importers abandon their animals in quarantine facilities.

The regulations in §§ 92.103 and 92.204 address this concern by requiring that importers wishing to use USDA facilities for the quarantine of birds and poultry, respectively, pay a reservation fee covering 100 percent of estimated quarantine costs. This requirement better protects USDA from incurring quarantine expenses that could be difficult or impossible to recover.

We propose to provide USDA with similar protection against financial losses incurred from the uncompensated quarantine of imported horses, ruminants, and swine by amending §§ 92.304(a)(3)(i), 92.404(a)(4)(i), and 92.504(a)(4)(i) to require that importers pay a reservation fee covering 100 percent of estimated quarantine costs.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Requiring horse, ruminant, and swine importers to pay reservation fees covering 100 percent of estimated quarantine costs would have no significant economic consequences. Importers would pay the same fees as previously required, only sooner.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 92 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.304 [Amended]

2. In § 92.304, paragraph (a)(3)(i), the second sentence would be amended by

removing "25" and adding "100" in its place; and the third sentence would be removed.

§ 92.404 [Amended]

3. In § 92.404, paragraph (a)(4)(i), the second sentence would be amended by removing "25" and adding "100" in its place; and the third sentence would be removed.

§ 92.504 [Amended]

4. In § 92.504, paragraph (a)(4)(i), the second sentence would be amended by removing "25" and adding "100" in its place; and the third sentence would be removed.

Done in Washington, DC, this 3rd day of September.

Patricia A. Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-22423 Filed 9-13-93; 8:45 am]

BILLING CODE 3410-34-P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 72

RIN 3150-AE64

Interim Storage of Spent Fuel in an Independent Spent Fuel Storage Installation; Site-Specific License to a Qualified Applicant

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; Extension of public comment period.

SUMMARY: On June 3, 1993 (58 FR 31478), the Nuclear Regulatory Commission (NRC) published for public comment a proposed rule to amend its procedures under which the Director of Nuclear Materials Safety and Safeguards can issue a site-specific license to a qualified applicant for the interim storage of spent fuel in an independent spent fuel storage installation (ISFSI) following satisfactory completion of NRC safety and environmental reviews and after any public hearing on the application. The comment period for this proposed rule was to have expired on August 17, 1993.

The Commission received a joint request from three organizations, requesting the Commission to extend the public comment period. The joint request states in pertinent part that "[t]he proposed rule appears to make the opportunity for site-specific analysis and judicial review more remote than it now is. We and several organizations concerned about the trend toward long-term dry storage at reactors would like the opportunity to obtain a greater understanding of the proposed rule and its implications."

The Commission's intention underlying the proposed rule, as explained in the notice of proposed rulemaking, is to make procedural changes that are essentially administrative in nature; the proposed changes would not affect the scope of NRC site-specific reviews or change current public hearing opportunities. Therefore, it would be of particular interest for NRC to understand fully the basis for public comments that appear to suggest (as indicated by the above-quoted comment) the proposed rule would actually do the contrary. Accordingly, the Commission finds that it is reasonable to extend the public comment period 45 days to October 1, 1993, in order to allow all interested persons adequate time fully to provide their views.

DATES: The comment period has been extended and now expires October 1, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC. 20555. ATTN: Docketing and Services Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. Federal workdays.

Copies of comments may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC in the lower level of the Gelman Building.

FOR FURTHER INFORMATION CONTACT: C. William Reamer, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 504-1640.

Dated at Rockville, Maryland, this 8th day of September, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93-22389 Filed 9-13-93; 8:45 am]

BILLING CODE 7590-01-P

10 CFR Part 72

RIN 3150-AE37

Notification of Events at Independent Spent Fuel Storage Installations and the Monitored Retrievable Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to amend its regulations to revise licensee reporting requirements regarding the notification of events related to radiation safety at Independent Spent Fuel Storage Installations (ISFSIs) and a Monitored Retrievable Storage Installation (MRS). This action will ensure that significant occurrences at these licensed facilities are promptly reported to NRC so that the Commission can evaluate whether the licensee has taken appropriate actions to protect the public health and safety and whether prompt NRC action is necessary to address generic safety concerns.

DATES: The comment period expires November 29, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch. Comments may be delivered to One White Flint North, 11555 Rockville Pike, Rockville, MD, 20852, between 7:45 am and 4:15 pm on Federal workdays.

Copies of the draft regulatory analysis, the finding of no significant impact, the supporting statement submitted to OMB, and comments received may be examined at: The NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Naiem S. Tanious, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC, 20555. Telephone (301) 492-3878.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 1991 (56 FR 40757), the NRC amended its regulations in Title 10, Code of Federal Regulations (10 CFR), parts 20, 30, 40, and 70 to better describe those events that must be reported to the NRC because they pose a hazard to public health and safety or the environment. These new reporting requirements covered the following areas: Inability to control licensed material, unplanned contamination events, failure of safety equipment, personal injury events, and fires and explosions.

Public comments received when the amendments were proposed suggested that part 72 also be amended to require notification of events at ISFSIs and the

MRS. The NRC responded that it would consider the suggestion and initiate rulemaking to amend part 72, if appropriate. In considering the suggestion, the NRC reviewed the event reporting requirements imposed on part 72 licensees and found that, except for criticality, part 72 itself contains no reporting requirements for the types of events covered by the recent amendments to parts 30, 40, and 70. Furthermore, among the six existing part 72 licensees, the reporting requirements (imposed by license conditions) were not consistent. Therefore, the NRC has now decided that it is desirable to proceed with amending part 72.

Discussion

The event reporting requirements which are the subject of this proposed rulemaking are similar to those added to parts 30, 40, and 70. The NRC believes that the proposed requirements more accurately describe events that must be reported to the NRC because they affect the health and safety of the public and the environment.

The intent of event reporting requirements is to require timely notification (either immediately or within 24 hours, depending on severity) to the NRC of events that could require prompt action by the NRC to protect public health and safety or the environment. Events that may require notification include personal injuries, fires, explosions, toxic gas releases, tornados, etc. Prompt NRC actions may include evaluating the potential hazards and corrective actions being taken by the licensee, issuing immediate warnings of generic hazards to other licensees, communicating with other Federal and State organizations, activating the NRC incident response center, or dispatching a response team to the site of the event.

With one exception (i.e., GE Morris), ISFSIs currently licensed under Part 72 are located at commercial power reactor sites, and those reactor licensees are already subject to event reporting requirements under 10 CFR 50.72 as well as, in some cases, under part 72 license conditions. The proposed amendments would therefore achieve consistent event reporting requirements for ISFSIs and an MRS with very little practical impact on current part 72 licensees.

To avoid conflicts, the proposed amendments do not apply to licensee events subject to the reporting requirements in 10 CFR § 50.72 by virtue of license conditions included in their part 72 licenses. However, these amendments would otherwise apply to commercial power reactor licensees for activities licensed under part 72; the amendments also apply to research and test reactor licensees possessing material licensed under part 72 who are not subject to the notification requirements in § 50.72. For simplicity, a nuclear power plant licensee who holds both part 50 and part 72 licenses may use reporting requirements from part 50 for reporting events from both the reactor and the ISFSI. Furthermore, the licensee would not necessarily make any changes to comply with the requirements of this rule if the reporting requirements in the technical specifications for ISFSI would be at least as stringent as the reporting requirements proposed for part 72.

If, as NRC now intends, this proposed rule becomes final, conforming license amendments may be issued by the NRC to resolve any remaining conflicts between the newly promulgated rule and existing license conditions. If conforming license amendments are required, the NRC intends to issue these amendments on its own initiative without a formal submittal from the licensee requesting the amendments.

The NRC specifically requests public comments on (1) the completeness of these reporting requirements, (2) the number of reports that licensees expect might be generated yearly, (3) how to minimize reports of events that do not require a prompt NRC response without excluding any events that do require prompt NRC actions, and (4) events that would require prompt NRC actions but are not covered under the proposed amendments.

For purposes of Section 223 of the Atomic Energy Act of 1954, as amended, concerning violations under circumstances set forth in that section, the amendments are proposed for issuance under Sections 161b, 161i, or 161o of the Act.

A. Immediate Notification

A period of 4 hours would be the maximum time allowed for "immediate notification" by part 72 licensees. It is intended that licensees will notify the NRC of events requiring immediate notification, as described below, as soon as possible, but in no case later than four hours after discovery of the event. The proposed "immediate notification" requirements are consistent with the immediate notification requirements specified in § 50.72 for power reactors.

Control of Spent Fuel or High-Level Radioactive Waste

The primary responsibility for controlling spent nuclear fuel (as defined in 10 CFR 72.3, spent fuel includes the special nuclear material, byproduct material, source material, and other radioactive materials associated with fuel assemblies), or high-level radioactive waste (HLW), rests with the licensee. It is important that the NRC immediately receive reports of events that prevent the licensee from performing immediate actions necessary to maintain control of spent fuel or HLW and from protecting the public. Licensees will need to exercise some judgment in determining when events require immediate NRC notification. After an event has been discovered, the licensee must determine what immediate actions are necessary to: (1) Maintain and verify control of all spent fuel or HLW involved and (2) avoid exposures to radiation or radioactive materials that could exceed regulatory limits, or to releases of spent fuel and HLW that could exceed regulatory limits. Events may include fires, explosions, toxic gas releases, natural phenomena that can cause damage such as tornados and earthquakes, etc. An immediate NRC notification would be required if the event prevented the licensee from performing any of those actions, regardless of the duration of the event.

The NRC expects licensees to report as soon as possible any event where personnel normally able to take an immediate action are somehow prevented from taking the action. An immediate action is an initial action taken after a hazardous situation is identified to minimize exposures to radiation or radioactive materials, or to minimize releases of radioactive materials. Immediate actions would normally be taken within 15 minutes of identifying the hazard. The NRC does not expect immediate reports of normal delays associated with sounding alarms and responding to the site of the emergency. However, if alarms cannot be sounded or personnel cannot respond, an immediate report (within 4 hours) would be required. A normal delay in responding to an event such as the time to drive to the site or the time to call the fire department would not be reportable. However, once responders are available and able to do the job, any additional delay would be reportable.

Examples of cases where an immediate report would be required include: A toxic gas leak near an operation that prevents workers from immediately reducing a high radiation field around the leak; a fire that prevents workers from immediately securing a ventilation system to stop a release of airborne radioactive material exceeding regulatory limits; and a collapsed ceiling from an explosion that

prevents workers from immediately closing a valve to stop a release of radioactive material exceeding regulatory limits.

Power Reactors Using Storage Casks

Pursuant to § 72.216(c), as proposed, reporting requirements would be added by this proposed rule in § 72.75 (a)(2) and (a)(3) to cover power reactors licensed under part 50 who are also using fuel storage casks under a general license issued under § 72.210 (Subpart K—General License for Storage of Spent Fuel at Power Reactor Sites). These ISFSI general licensees are required by § 72.216 and § 50.72(b)(2)(vii) to report immediately, but not later than 4 hours, any defect in a spent fuel storage cask structure, system, or component which is important to safety, or a significant reduction in the effectiveness of any spent fuel storage cask confinement system. Adding these requirements to the new section 72.75 will establish consistent reporting requirements among all licensees using spent fuel storage casks.

A reporting requirement is being proposed in § 72.75(a)(4) to cover immediate actions needed to protect the public health and safety taken in an emergency that depart from a license condition or a technical specification. (To combat a fire, for example the licensee may take measures that are not normally allowed by the license.) This proposed requirement is based on existing requirements in parts 50.72(b)(1)(i)(B) and 50.54(x). Adding this reporting requirement to § 72.75 will ensure that such reports will still be required if the part 50 license is terminated and the ISFSI continues operation under a specific part 72 license.

Personal Injury Events

A requirement would be added for licensees to report as soon as possible but not later than 4 hours after discovering any event that requires unplanned medical treatment at a medical facility of an individual with radioactive contamination on the individual's clothing or body which could cause further contamination. These events are significant because they may (1) indicate physical safety problems in a licensed operation, (2) risk internal contamination through open wounds, and (3) expose medical personnel to radiation and contamination.

This information is necessary to provide the basis for an independent determination by the NRC that appropriate actions have been taken both to control the spread of contamination and to perform any necessary decontamination. Prompt action may also be required to investigate the cause of the injury and to prevent additional contamination problems. If within 4 hours of discovering the personal injury event the licensee has not verified whether the individual receiving medical treatment was contaminated, the licensee is expected to act conservatively and report the event.

The requirement to report personal injury events is being proposed as an immediate report rather than the 24 hours reporting requirement established in parts 30, 40, and 70 to make the proposed requirement consistent with § 50.72(b)(2)(v) which requires a 4 hour report from power reactors. As stated earlier, most facilities licensed under part 72 are located at power reactor sites, and event reporting has been incorporated into the administrative procedures for the power reactors. As a result, those part 72 facilities would already report personal injury events within 4 hours. The NRC is proposing to make this consistent with part 50 because most part 72 facilities are so closely associated with power reactors. As for research and test reactors, which will be covered by this proposed rule, there are no licenses issued under part 72 to these nonpower reactors for independent storage of their spent fuel. The NRC believes that the impact of this requirement on part 72 facilities which are not located at power reactor sites (i.e., GE Morris) will be minimal.

Fires and Explosions

A new requirement would be added to report as soon as possible but not later than 4 hours after discovering any fire or explosion that damages spent fuel or HLW, or any device, container, or equipment that contains spent fuel or HLW. These events must be evaluated promptly to minimize any spread of contamination and to determine the performance of shielding and other features designed to control spent fuel or HLW. Fires or explosions that damage spent fuel or HLW are of particular significance because they can cause radioactive materials to be released, generate airborne radioactive contamination, and generate contaminated runoff from water used to extinguish fires. A second notification is not required if an immediate notification was made for a fire or explosion that prevented immediate response actions (see the discussion above for control of spent fuel or HLW).

This information is necessary to assure the NRC that appropriate actions have been taken to detect and control any releases that may have occurred. Prompt action may be required to verify survey results and radiological controls for recovery efforts. In the event of a fire or explosion, an immediate report would be required if licensee personnel or firefighters were prevented by radiation hazards or other conditions from performing immediate response actions that they would normally be able to perform. However, if no immediate response actions were prevented, but there was damage that affected the integrity of the spent fuel or HLW or its container, an immediate report would still be required. If within 4 hours of discovering the fire or explosion the licensee has not verified whether any reportable damage occurred, the licensee is expected to act conservatively and report the event.

B. 24-Hour Notification

Contamination Events

The proposed rule would require licensees to notify the NRC within 24 hours of discovering any unplanned contamination event that requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours through the imposition of additional radiological controls or prohibiting entry into the area. If a licensee discovers that an area has unexpectedly been contaminated with a licensed material, the NRC expects the licensee to impose appropriate controls to keep exposures and releases as low as reasonably achievable (ALARA) until the area can be decontaminated. If controls beyond those required before the contamination event occurred are necessary for more than 24 hours, a report would be required.

Safety Equipment Related Events

A reporting requirement would be added for licensees to report within 24 hours of discovering any event in which equipment is disabled or fails to function as designed if (1) the equipment is required by regulation or license condition to prevent releases or exposures exceeding regulatory limits, or to mitigate the consequences of an accident; (2) the equipment is required to be available and operable when it is disabled or fails; and (3) no redundant equipment is available and operable to perform the required safety function when the failure occurs. This reporting requirement includes equipment failure, equipment damage, and procedural errors which cause equipment to fail or be disabled. NRC must be aware of these events to identify potential safety hazards and to ensure that the licensee

takes appropriate actions to protect workers and the public.

Licensees will need to exercise some judgment in determining when an event requires a 24-hour NRC notification. First, the licensee must determine whether the inoperable equipment was required by regulation or license condition to prevent releases or overexposures exceeding regulatory limits, or mitigate the consequences of an accident. Second, the licensee must determine whether the function of the equipment, or the availability of the function was needed when the equipment was disabled or failed to function. A 24-hour notification is not required under this requirement if neither the function nor its availability was required when the equipment was inoperable. Third, the licensee must determine whether redundant equipment was operable and available to perform the required safety function. The accident consequences to be mitigated by the equipment include major property damage, widespread contamination of uncontrolled areas, or fatalities or serious injuries requiring medical treatment.

The following are examples of events that would require a 24-hour NRC notification:

(1) Damage to a filtered ventilation system, required by regulation or license condition, that permits effluent air to bypass filters during operations. This bypass could result in either releases that exceed regulatory limits or exposure of personnel to levels of airborne radioactive material that exceed regulatory limits.

(2) Failure of equipment or shielding materials required by regulation or license condition to shield radiation from spent fuel or HLW.

(3) Failure of monitoring equipment required by regulation or license condition to verify that safe criticality conditions exist while spent fuel bundles are being moved in a pool.

This information is necessary to assure the NRC that when the function of required safety equipment has been lost, the licensee has taken appropriate action to compensate for the lost safety function or to eliminate the hazard requiring the safety function.

Written Reports

The proposed rule would require a written report within 30 days of any immediate or 24-hour notification. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the report contains all of the necessary information and the appropriate distribution is made.

Applicability of the Rule

The NRC believes that the proposed rule will have little or no impact on current part 72 licensees. The proposed rule would not apply to power reactor licensees who do not store spent fuel under a part 72 license. The rule would apply to research and test reactor licensees possessing spent fuel under a part 72 license, and not subject to the notification requirements in § 50.72. However, at the present time there are no part 72 licenses issued to research or test reactor licensees. With one exception (i.e., General Electric, Morris, IL), all current part 72 specific licensees are ISFSIs operated by nuclear power plants holding part 50 licenses. All of these power plants have incorporated their ISFSI into the reactor administrative procedures which include reporting procedures subject to the requirements in § 50.72. Therefore, the proposed rule would have no impact on these ISFSIs.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in the categorical exclusion 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0132), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft analysis may be obtained from Naiem S. Tanious, telephone (301) 492–3878. The Commission requests public comments on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

The NRC has prepared a draft regulatory analysis of the impact of this proposed rule on small entities. The draft analysis indicates that the proposed rule is estimated to have no significant economic impact on part 72 licensees, because the estimated cost to industry of reporting postulated events would be in the range of $0–2112 annually. Moreover, none of the current part 72 licensees are considered small entities. The proposed rule would apply to research and test reactors who are small entities, should they choose to store spent fuel under a part 72 license. However none of these are part 72 licensees at present. In any case, no report would be required of licensees unless there is an incident involving spent fuel or HLW that meets the criteria specified in the proposed amendments. Hence, the impact on part 72 licensees should be minimal. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft analysis may be obtained from Naiem S. Tanious, telephone (301) 492–3878.

Backfit Analysis

The NRC has determined that the backfit rule 10 CFR 50.109, does not apply to this proposed rule because these amendments do not involve any provisions which would impose backfits on licensees as defined in § 50.109(a)(1). Also, the NRC has determined that backfitting requirements in § 72.62 do not apply to this proposed rule because the proposed event reporting requirements are not procedures required to operate an ISFSI or MRS. Therefore a backfit analysis is not required.

List of Subjects in 10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Nuclear Waste Policy Act of 1982, as amended; and 5 U.S.C. 553, the Commission is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 is revised to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145 (g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g); Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. A new § 72.75 under subpart D—"Records, Reports, Inspections, and Enforcement"—is added to read as follows:

§ 72.75 Reporting requirements for events other than criticality.

(a) Immediate report. Each licensee shall notify the NRC as soon as possible but not later than 4 hours after the discovery of any of the following events or conditions involving spent fuel or HLW:

(1) An event that prevents immediate actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits, or releases of radioactive materials that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, etc.).

(2) A defect in any spent fuel storage structure, system, or component which is important to safety.

(3) A significant reduction in the effectiveness of any spent fuel storage confinement system during use.

(4) An action taken in an emergency that departs from a license condition or a technical specification contained in a license issued under this part when the action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent.

(5) An event that requires unplanned medical treatment at a medical facility of an individual with radioactive contamination on the individual's clothing or body which could cause further radioactive contamination.

(6) An unplanned fire or explosion damaging any spent fuel or HLW, or any device, container, or equipment containing spent fuel or HLW when the damage affects the integrity of the material or its container.

(b) Twenty-four hour report. Each licensee shall notify the NRC within 24 hours after the discovery of any of the following events involving spent fuel or HLW:

(1) Any unplanned contamination event that requires access to the contaminated area by workers or the public to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area.

(2) An event in which safety equipment is disabled or fails to function as designed when:

(i) The equipment is required by regulation or licensee condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(ii) The equipment is required to be available and operable when it is disabled or fails to function; and

(iii) No redundant equipment is available and operable to perform the required safety function.

(c) Preparation and submission of reports. Reports made by licensees in response to the requirements of this section must be made as follows:

(1) Licensees shall make reports required by paragraphs (a) and (b) of this section by telephone to the NRC Operations Center.[2] To the extent that the information is available at the time of notification, the information provided on these reports must include:

(i) The caller's name and call back telephone number;

(ii) A description of the event, including date and time;

(iii) The exact location of the event;

(iv) The quantities, and chemical and physical form of the spent fuel or HLW involved; and

(v) Any personnel radiation exposure data available.

(2) Written report. Each licensee who makes a report required by paragraph (a) or (b) of this section shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports must be sent to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC, 20555, with a copy to the appropriate NRC Regional Office listed in Appendix D of 10 CFR part 20. The reports must include the following:

(i) A description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

(ii) The exact location of the event;

(iii) Quantities, and chemical and physical form of the spent fuel or HLW involved;

(iv) Date and time of the event;

(v) Corrective actions taken or planned and the results of any evaluations or assessments; and

(vi) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

(d) The provisions of § 72.75 do not apply to licensees who are required by their part 72 licenses to comply with the notification requirements in § 50.72 of this chapter. They do apply to research and test reactor licensees possessing material licensed under part 72 who are not subject to the notification requirements in § 50.72.

3. In § 72.142(b) Footnote 2 is redesignated as footnote 3.

4. Section 72.216 under Subpart K—"Reports"—is amended by adding a new paragraph (c) to read as follows:

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[2] The commercial telephone number for the NRC Operations Center is (301) 951–0550.

§ 72.216 Reports

* * * * *

(c) The general licensee shall comply with § 72.75 of this chapter according to the terms of that section.

Dated at Rockville, Maryland, this 27th day of August, 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 93–22390 Filed 9–13–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–130–AD]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This proposal would require a cold expansion of certain attachment holes for the forward pintle fitting and certain holes at the actuating cylinder anchorage of the main landing gear (MLG). This proposal is prompted by reports that, during fatigue testing, cracking was found propagating from attachment holes for the forward pintle fitting of the MLG. The actions specified by the proposed AD are intended to prevent fatigue cracking, which may lead to rupture of the inner rear spar and subsequent reduced structural integrity of the wing.

DATES: Comments must be received by November 8, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–130–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac, Cedex France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–130–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–130–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The DGAC advises that, during fatigue testing, cracking was found propagating from six attachment holes for the forward pintle fitting of the main landing gear (MLG). This cracking occurred on a test airplane between 69,000 and 83,000 simulated flights. Fatigue cracking, if not detected and corrected in a timely manner, could lead to rupture of the inner rear spar and subsequent reduced structural integrity of the wing.

Airbus Industrie has issued Service Bulletin A320–57–1060, dated December 8, 1992, that describes procedures for performing a cold expansion of all the attachment holes for the forward pintle fitting of the MLG, except for the holes that are for taper-lok bolts. The service bulletin also describes procedures for cold expansion of the holes that have not been previously cold expanded at the actuating cylinder anchorage of the MLG. The cold expansion increases the fatigue life of the rear spar. The DGAC classified this service bulletin as mandatory and issued Airworthiness Directive 92–276–035(B), dated December 23, 1992, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a cold expansion of all the attachment holes for the forward pintle fitting of the MLG, except for the holes that are for taper-lok bolts. The proposed AD would also require a cold expansion of the holes that have not been previously cold expanded at the actuating cylinder anchorage of the MLG. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 5 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 600 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $165,000, or $33,000 per

airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 93–NM–130–AD.

Applicability: Model A320 series airplanes, manufacturer's serial numbers (MSN) 002 through 051 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking, which could lead to reduced structural integrity of the wing, accomplish the following:

(a) Prior to the accumulation of 12,000 total landings, or within 2,000 landings after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Airbus Industrie Service Bulletin A320–57–1060, dated December 8, 1992.

(1) Perform a cold expansion of all the attachment holes for the forward pintle fitting of the MLG, except for the holes that are for taper-lok bolts.

(2) Perform a cold expansion of the holes at the actuating cylinder anchorage of the MLG.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 8, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–22369 Filed 9–13–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–137–AD]

Airworthiness Directives; SAAB-Scania Model SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain SAAB-Scania Model SF340A and SAAB 340B series airplanes. This proposal would require replacement of the left- and right-hand AC generator control relays with new relays at the generator control positions. This proposal is prompted by reports that in-service AC generator control relays, specifically used for generator transfer functions, have failed where the main contacts arced. The actions specified by the proposed AD are intended to prevent loss of AC electrical power, and local area damage that may lead to further electrical failures and smoke in the cockpit.

DATES: Comments must be received by November 8, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–137–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SAAB-Scania AB, SAAB Aircraft Support Product, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–137–AD." The

postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–137–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain SAAB-Scania Model SF340A and SAAB 340B series airplanes. The LFV advises that eight in-service AC generator control relays, specifically used for generator transfer functions, have failed where the main contacts arced. Subsequent investigation has revealed that arcing is caused by insufficient transfer time within the relay and affects only those relays installed in a generator transfer position. Arcing of the subject area can cause the airplane to lose AC electrical power from the generator on the affected side. Arcing also could cause metal from the relay case to melt onto the electrical wires routed below the relays, which could result in local area damage that may lead to further electrical failures and smoke in the cockpit.

SAAB-Scania has issued SAAB 340 Service Bulletin SAAB 340–24–022, dated October 21, 1992, that describes procedures for replacement of the left- and right-hand AC generator control relays, part number (P/N) SM15CXD1, with new relays, P/N SM15CXD4, at generator control positions 7XA and 8XA. The LFV classified this service bulletin as mandatory and issued Swedish Airworthiness Directive SAD No. 1–057, dated October 31, 1992, in order to assure the continued airworthiness of these airplanes in Sweden.

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the left- and right-hand AC generator control relays, part number (P/N) SM15CXD1, with new relays, P/N SM15CXD4, at the generator control positions (7XA/8XA). The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 200 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $27,500, or $137.50 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

SAAB-Scania: Docket 93–NM–137–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers 004 through 159 inclusive; and Model SAAB 340B series airplanes, serial numbers 160 through 325 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of AC electrical power, and local area damage that may lead to further electrical failures and smoke in the cockpit, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace the left- and right-hand AC generator control relays, part number (P/N) SM15CXD1, with new relays, P/N SM15CXD4, at generator control positions 7XA and 8XA, in accordance with SAAB 340 Service Bulletin SAAB 340–24–022, dated October 21, 1992.

(b) As of the effective date of this AD, no person shall install an AC generator control relay, P/N SM15CXD1, at generator control positions 7XA or 8XA on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 8, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–22370 Filed 9–13–93; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–4728–6]

Open Meeting on the Definition of Solid Waste and Hazardous Waste Recycling

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) is conducting a public meeting on revising the regulatory definition of solid waste under the Resource Conservation and Recovery Act (RCRA). The revisions are intended to simplify the regulations and to eliminate disincentives to recycling while maintaining full protection of human health and the environment. They are also intended to reduce any possible current underregulation of hazardous waste recycling.

DATES: The meeting will take place on October 5, 1993 from 9:30 a.m. to 6 p.m., and on October 6, 1993 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at the DuPont Plaza Hotel at 1500 New Hampshire Avenue NW., Washington, DC 20036 (202–483–6000).

FOR FURTHER INFORMATION CONTACT: For additional information on the meeting, please contact Sarah Davis at EPA's Office of Solid Waste at (202) 260–8104.

SUPPLEMENTARY INFORMATION: The Agency has selected sixteen individuals to provide technical and policy expertise at the meeting. These individuals will provide their opinions about the issues of hazardous waste recycling and how the federal solid waste rules affect such recycling. The individuals are:

Dorothy Kelly (Ciba-Geigy Corp.)
John Fognani (Gibson, Dunn, and Crutcher)
Harvey Alter (Chamber of Commerce)
Jeff Reamy (Phillips Petroleum Co.)
Jon Jewett (Solite Corp.)
Robert Wescott (Wesco Parts Cleaners)
Richard Fortuna (Hazardous Waste Treatment Council)
John Wittenborn (Collier, Rill, Shannon, and Scott)
William Collinson (General Motors Corp.)
Gerald Dumas (RSR Corp.)
Kevin Igli (Waste Management Inc.)
Karen Florini (Consultant)
David Lennett (Consultant)
Melinda Taylor (Consultant)
Roy Brower (State of Oregon)
Pat Matuseski (State of Minnesota)

EPA participants in the discussions will be James Berlow, Director of the Definition of Solid Waste Task Force, and Andy Bellina from EPA Region II. In addition, any interested member of the public may attend the meeting.

Dated: September 8, 1993.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 93–22440 Filed 9–13–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB94

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for 12 Plants From the Hawaiian Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for 12 plants: *Adenophorus periens* (pendant kihi fern), *Bonamia menziesii* (no common name (NCN)), *Diellia erecta* (NCN), *Flueggea neowawraea* (mehamehame), *Hibiscus brackenridgei* (ma'o hau hele), *Mariscus pennatiformis* (NCN), *Neraudia sericea* (NCN), *Plantago princeps* (laukahi kuahiwi), *Sesbania tomentosa* ('ohai), *Solanum incompletum* (popolo ku mai), *Spermolepis hawaiiensis* (NCN), and *Vigna o-wahuensis* (NCN). These 12 species are found on one or more of the following Hawaiian Islands: Laysan, Necker, Nihoa, Niihau, Kauai, Oahu, Molokai, Lanai, Kahoolawe, Maui, and Hawaii. The 12 plant species and their habitats have been variously affected or are currently threatened by one or more of the following: habitat degradation and/or predation by wild, feral, or domestic animals (pigs, goats, deer, cattle); competition for space, light, water, and nutrients by naturalized, introduced vegetation; habitat loss from fires; human impacts from recreational activities; and insect infestations. Due to the small number of existing individuals and/or their very narrow distributions, these species and most of their populations are subject to an increased likelihood of extinction and/or reduced reproductive vigor from stochastic events. This proposal, if made final, would implement the Federal protection and recovery provisions provided by the Act. If made final, it would also implement State regulations protecting these plants as endangered species. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by November 15, 1993. Public hearing requests must be received by October 29, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

Robert P. Smith, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

Adenophorus periens, Bonamia menziesii, Diellia erecta, Flueggea neowawraea, Hibiscus brackenridgei, Mariscus pennatiformis, Neraudia sericea, Plantago princeps, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis, and *Vigna o-wahuensis* are currently known from 11 Hawaiian Islands: Laysan, Necker, Nihoa, Niihau, Kauai, Oahu, Molokai, Lanai, Kahoolawe, Maui, and Hawaii. The current and historical distribution by island is presented in Table 1 for each of the 12 species.

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF THE PROPOSED SPECIES

Species	Hawaiian Islands										
	LY	NE	NH	NI	KA	OA	MO	LA	KH	MA	HA
Adenophorus periens	.....	.....	.....	.....	C	H	C	H	.....	H	C
Bonamia menziesii	.....	.....	.....	.....	C	C	H	C	.....	C	C
Diellia erecta	.....	.....	.....	.....	H	H	C	H	.....	C	C
Flueggea neowawraea	.....	.....	.....	.....	C	C	H	.....	.....	C	C
Hibiscus brackenridgei	.....	.....	.....	.....	C?	C	H	C	H	C	C
Mariscus pennatiformis	C	.....	.....	.....	H	H	.....	.....	.....	C?	H
Neraudia sericea	.....	.....	.....	.....	.....	.....	C	H	H	C	.....
Plantago princeps	.....	.....	.....	.....	C	C	C	.....	.....	C	H
Sesbania tomentosa	.....	C	C	C	C	C	C	C	C	C	C
Solanum incompletum	.....	.....	.....	.....	C?	.....	C?	H	.....	H	C
Spermolepis hawaiiensis	.....	.....	.....	.....	H	C	C	C	.....	C	C?
Vigna o-wahuensis	.....	.....	.....	H	H	H	C	C	C	H	C

C=current; population last observed within the past 50 years.
H=historical; population not seen for over 50 years.
?=questionable locality or inconsistent information in sources.
LY—Laysan; NE—Necker; NH—Nihoa; NI—Niihau; KA—Kauai; OA—Oahu; MO—Molokai; LA—Lanai; KH—Kahoolawe; MA—Maui, HA—Hawaii.

The Hawaiian archipelago includes eight large volcanic islands (Niihau, Kauai, Oahu, Molokai, Lanai, Kahoolawe, Maui, and Hawaii), as well as offshore islets, shoals, and atolls set on submerged volcanic remnants at the northwest end of the chain (the Northwestern Hawaiian Islands). The archipelago covers a land area of about 16,600 square kilometers (sq km) (6,400 sq miles (mi)), extending roughly between latitude 18°50′ to 28°15′ N and longitude 154°40′ to 178°70′ W, and ranging in elevation from sea level to 4,200 meters (m) (13,800 feet (ft)) (Dept. of Geography 1983). The regional geological setting is a mid-oceanic volcanic island archipelago set in a roughly northwest to southeast line, with younger islands to the southeast. The youngest island, Hawaii, is volcanically active. The older islands are increasingly eroded, so that the basaltic portions of many of the northwesternmost islands (such as Laysan, Necker, and Nihoa) are entirely submerged, and coralline atolls and shoals are often all that remain above sea level (Macdonald *et al.* 1986). The topography of the Hawaiian Islands is extremely diverse. On the youngest islands, Hawaii and Maui, gently sloping unweathered shield volcanoes with very poor soil development are juxtaposed with older, heavily weathered valleys with steep walls, well-developed streams, and gently sloped flood plains. The older islands to the northwest (i.e., Niihau, Kauai, Oahu, and Molokai) are generally more weathered. On a typical older island, sea cliffs and large amphitheater-headed valleys on the windward (northeast) side contrast with erosionally younger, dissected slopes on the leeward (southwest) side (Dept. of Geography 1983).

The climate of the Hawaiian Islands reflects the tropical setting buffered by the surrounding ocean (Dept. of Geography 1983). The prevailing winds are northeast trades with some seasonal fluctuation in strength. There are also winter storm systems and occasional hurricanes. Temperatures vary over the year an average of 5° Celsius (C) (11° Fahrenheit (F)) or less, with daily variation usually exceeding seasonal variation in temperature. Temperature varies with elevation and ranges from a maximum recorded temperature of 37.7°C (99.9°F), measured at 265 m (870 ft) elevation, to a minimum of −12.7°C (9.1°F) recorded at 4,205 m (13,795 ft) elevation. Annual rainfall varies greatly by location, with marked windward to leeward gradients over short distances. Minimum average annual rainfall is less than 250 millimeters (mm) (10 inches (in)); the maximum average precipitation is well in excess of 11,000 mm (450 in) per year. Precipitation is greatest during the months of October through April. A dry season is apparent in leeward settings, while windward settings generally receive tradewind-driven rainfall throughout the year (Dept. of Geography 1983).

The native-dominated vegetation of the Hawaiian Islands varies greatly according to elevation, moisture regime, and substrate. The most recent classification of Hawaiian natural communities recognizes nearly 100 native vegetation types (Gagne and Cuddihy 1990). Within these types are numerous island-specific or region-specific associations, comprising an extremely rich array of vegetation types within a very limited geographic area. Major vegetation formations include forests, woodlands, shrublands, grasslands, herblands, and pioneer associations on lava and cinder substrates.

There are lowland, montane, and subalpine forest types in Hawaii, extending from sea level to above 3,000 m (9,800 ft) in elevation. Coastal and lowland forests are generally dry or mesic and may be open- or closed-canopied. The stature of lowland forests is generally under 10 m (30 ft). Eleven of the species proposed for listing, (*Adenophorus periens, Bonamia menziesii, Diellia erecta, Flueggea neowawraea, Hibiscus brackenridgei, Mariscus pennatiformis, Neraudia sericea, Plantago princeps, Solanum incompletum, Spermolepis hawaiiensis,* and *Vigna o-wahuensis*) have been reported from lowland forest habitat. Montane forests, occupying elevations between 1,000 and 2,000 m (3,000 and 6,000 ft), are dry to mesic on the leeward slopes of the islands of Kauai, Maui, and Hawaii. On those islands, as well as Oahu, Molokai, and Lanai, mesic to wet motane forests occur on the windward slopes and summits. The dry and mesic forests may be open- to closed-canopied, and may exceed 20 m (65 ft) in stature. Of the proposed species, four (*Diellia erecta, Plantago princeps, Solanum incompletum,* and *Vigna o-wahuensis*) have been reported from montane mesic and dry forest habitats. Montane wet forests are usually dominated by several species of native trees and tree ferns. Three of the proposed species (*Adenophorus periens, Mariscus pennatiformis,* and *Plantago princeps*) have been reported from montane wet forest habitat. At high montane and subalpine elevations, at and above 2,000 m (6,500 ft) elevation, are subalpine forests, usually open-

canopied and forming a mosaic with surrounding grasslands and shrublands. Subalpine forests are known only from Haleakala on East Maui and from Hualalai, Mauna Kea, and Mauna Loa on Hawaii. *Solanum incompletum* has been reported from subalpine forest habitat.

Hawaiian shrublands are also found from coastal to alpine elevations. The majority of Hawaiian shrubland types are in dry and mesic settings, or on cliffs and slopes too steep to support trees. Wet motane shrublands are typically dominated by *Metrosideros* ('ohi'a). Proposed taxa reported from native shrublands included *Bonamia menziesii, Hibiscus brackenridgei,* and *Sesbania tomentosa.* Hawaiian grassland types are found from coastal to subalpine settings. Coastal and lowland grasslands are known from the Northwestern Hawaiian Islands, Kauai, Oahu, Molokai, Lanai, Maui, and Hawaii. Both *Hibiscus brackenridgei* and *Vigna o-wahuensis* have been reported from native grasslands.

The land that supports these 12 plant species is owned by various private parties, the City and County of Honolulu, the County of Maui, the State of Hawaii (including State parks, forest reserves, natural area reserves, and Hawaiian Home Lands), and the Federal government (including national parks, national wildlife refuges, national historic sites, and the Department of Defense).

Discussion of the 12 Species Proposed for Listing

Adenophorus periens was first collected by Captain Fredrick William Beechey in the 1820s or 1830s. It was not formally described until 1974, when L. Earl Bishop published the name *Adenophorus periens.* Prior to its description, the names *Polypodium adenophorus* and *Adenophorus pinnatifidus* had been erroneously applied to the species represented by Beechey's specimen (Bishop 1974).

Adenophorus periens, a member of the grammitis family (Grammitidaceae), is a small, pendant, epiphytic (not rooted on the ground) fern. The rhizome (prostrate stem) is covered with small dark, stiff scales 2 to 4 centimers (cm) (0.8 to 1.6 in) long. Its yellowish green fronds are usually between 10 and 40 cm (4 and 16 in) long and covered with hairs. The fronds have slightly hairy stalks less than 1 cm (0.4 in) long. Each frond is comprised of oblong or narrowly triangular pinnae (divisions or leaflets) 5 to 15 mm (0.2 to 0.6 in) long with margins that are smooth or toothed and lined with sparse hairs. The pinnae are situated perpendicular to the axis of the midrib, with each pinna twisted such that its upper surface faces upward. Round sori (groups of spore-producing bodies) usually develop in the central portion of the fertile frond, forming two regular rows on each pinna. This species differs from other species in this endemic Hawaiian genus by having hairs along the pinna margins, pinnae at right angles to the midrib axis, by the placement of the sori, and the degree of dissection of each pinna (Bishop 1970, 1974; Hillebrand 1888; Linney 1989).

Historically, *Adenophorus periens* was known from the following general areas: Halemanu on Kauai, the Koolau Mountains of Oahu, the summit Lanai, Kula Pipeline on East Maui, and Hilo and Waimea on Hawaii Island (Hawaii Hertiage Program (HHP) 1992a1 to 1992a6, 1992a10 to 1992a13). Currently, *Adenophorus periens* is known from several locations on three islands. On Kauai, one population is known from the boundary of Hono O Na Pali Natural Area Reserve (NAR) and Na Pali Coast State Park on State land, one from Waioli on State land, and four are clustered in the Wahiawa area over a distance of 2 sq km (0.8 sq mi) on private land (HHP 1992a15 to 1992a17; Hawaii Plant Conservation Center (HPCC) 1991b, 1991c; Lorence and Flynn 1991). On Molokai, a single population of three plants occurs on private land at Kamakou Preserve (HHP 1992a7). On the island of Hawaii, four populations are found at Olaa Tract, Kane Nui o Hamo Crater, Kahaualea NAR, and 2.4 km (1.5 mi) northwest of Puu Kauka on private, State, and Federal land (L. Cuddihy, in litt., 1983, 1988; HHP 1992a8, 1992a9, 1992a14). The statewide total of 11 current populations comprises approximately 1,280 individuals of this species; on Kauai there are about 63 individuals, on Molokai there are 3, and on Hawaii there are approximately 1,215 (L. Cuddihy, in litt., 1983, 1988; HHP 1992a7 to 1992a9, 1992a14 to 1992a17; HPCC 1991a to 1991c; Lorence and Flynn 1991).

Adenophorus periens is found in *Metrosideros polymorpha* ('Ohi'a)/ *Cibotium glaucum* (Hapu'u) Lowland Wet Forest between 470 and 1,270 m (1,540 and 4,140 ft) in elevation (HHP 1992a7, 1992a8, 1992a14 to 1992a16). Associated species include *Broussaisia arguta* (kanawao ke'oke'o), *Cheirodendron trigynum* ('olapa), *Dicranopteris linearis* (uluhe), *Freycinetia arborea* ('ie'ie), and *Psychotria hawaiiensis* (kopiko) (HHP 1992a7, 1992a8, 1992a15, 1992a16). The primary threats to *Adenophorus periens* are habitat degradation by *Sus scrofa* (pigs); competition for light, space, nutrients, and water with alien plant species; and habitat destruction by fires.

Asa Gray gave the name *Bonamia menziesii* to a plant from the Sandwich Islands (Hawaii) in honor of its collector, Archibald Menzies (Gray 1862). Wilhelm Hillebrand (1888) placed the species into the segregate genus *Breweria.* Otto Degener (1932a, 1932b) described a new genus, *Perispermum,* and placed Bonamia menziesii in it. He also described another species of *Perispermum, P. albiflorum.* T. Myint and D.B. Ward (1968) recognized only one Hawaiian species and placed it in the genus *Bonamia.* They recognized two varieties: variety *menziesii* and a new variety, *rockii.* The current treatment (Austin 1990) recognizes only one species with no subspecific taxa.

Bonamia menziesii, a member of the morning-glory family (Convoluvulaceae), is a vine with twining branches up to 10 m (33 ft) long that are fuzzy when young. The leathery, oblong to oval leaves measure 3 to 9 cm (1.2 to 3.5 in) in length and 1 to 4 cm (0.4 to 1.6 in) wide. The upper leaf surface is usually hairless or covered with sparse hairs and the lower surface is covered with dense fuzzy hairs. The white to greenish funnel-shaped flowers, each 2.5 mm (0.08 to 0.1 in) long, are produced singly or in clusters of three on stalks 1 to 2 cm (0.4 to 0.8 in) long with tiny bracts (modified leaves) at the base of each stalk. Stamens usually have glandular hairs at their bases. The flower has two styles that are separate or partly fused. The fruits are tan or yellowish brown capsules 1 to 1.5 cm (0.4 to 0.6 in) long that contain 1 or 2 oval seeds imbeded in black pulp. This species is the only member of the genus that is endemic to the Hawaiian Islands and differs from other genera in the family by its two styles, longer stems and petioles, and rounder leaves (Austin 1990).

Historically, *Bonamia menziesii* was known from the following general areas: scattered locations on Kauai, the Waianae Mountains of Oahu, scattered locations on Molokai, and the eastern sides of Maui and Hawaii (HHP 1992b3, 1992b4, 1992b10, 1992b11, 1992b13, 1992b15 to 1992b17, 1992b28, 1992b35). Currently, *Bonamia menziesii* is known from 28 populations on 5 islands. On Kauai, a total a five populations is known from Kalalau, Paaiki Valley, Mount Kahili (all on State land), and Wahiawa drainage on private land (HHP 1992b25 to 1992b27, Lorence and Flynn 1991). On Oahu, *Bonamia menziesii* is known from both the Waianae and the Koolau Mountains. In

the Waianae Mountains between Kuaokala and Nanakuli, 10 populations are spread over a distance of 24 km (15 mi) on Federal, private, and State land; 8 of these populations are clustered on the northernmost section over a distance of 8 km (5 mi) (HHP 1992b6, 1992b8, 1992b9, 1992b12, 1992b19, 1992b20, 1992b22, 1992b23, 1992b30, 1992b34). In the southeastern part of the Koolau Mountains, five populations are found over an area of 6 sq km (2.5 sq mi) on private and State land (HHP 1992b5, 1992b14, 1992b18, 1992b21, 1992b31). On Lanai, *Bonamia menziesii* is known from four scattered locations from Kanepuu to Puhielelu on private land (Garnett 1991; HHP 1992b1, 1992b2, 1992b32; HPCC 1991d). On Maui, one population is known from the western slopes of West Maui on private land and two populations are located on East Maui on private and State land (HHP 1992b24, 1992b29, 1992b33). On the island on Hawaii, a single population is located at Kaupulehu on private land (HHP 1992b7). The total current populations throughout the State consist of approximately 200 individuals, with the largest populations occurring on Oahu (HHP 1992b14, 1992b21, 1992b23, 1992b30). On Kauai, there are approximately 28 plants; on Oahu no more than 150; on Lanai approximately 9; on Maui a total of 10; and on the island of Hawaii at least 1 specimen has been collected (HHP 1992b1, 1992b2, 1992b5 to 1992b12, 1992b14, 1992b18 to 1992b27, 1992b29 to 1992b34; Lorence and Flynn 1991).

Bonamia menziesii is found on steep slopes in dry to mesic forest and sometimes in wet forest between the elevation of 150 and 625 m (492 and 2,051 ft) (Austin 1990). Associated species included 'ohi'a, *Canthium odoratum* (alahe'e), *Nestegis sandwicense* (olopua), *Pisonia* sp. (papala kepau), and *Sapindus oahuensis* (lonomea) (HHP 1992b1, 1992b2, 1992b4, 1992b7 to 1992b9, 1992b18 to 1992b20, 1992b22, 1992b23, 1992b25, 1992b27, 1992b30, 1992b31, 1992b33). The primary threats to *Bonamia menziesii* are habitat degradation and possible predation by wild and feral ungulates (pigs, goats (*Capra hirus*), axis deer (*Axis axis*), black-tailed deer (*Odocoileus hemionus*), and cattle (*Bos taurus*)), competition with a variety of alien plant species, and fire.

Diellia erecta was described by William Dunlop Brackenridge based on a specimen collected during the Wilkes Expedition in 1840 (Brackenridge 1854). He also described *Diellia pumila* which subsequently has been considered a depauperate form of *D. erecta*. *Davallia alexandri* was published by Hillebrand in 1873. It has subsequently been considered a form of *D. erecta* with finely dissected fronds. *Diellia erecta* and *Davallia alexandri* had been placed in the genus *Lindsaya* by certain early authors, and *Diellia erecta* into the genus *Schizoloma*. Degener and Amy B. Greenwell (1950) published the new combination *Diellia erecta* var. *falcata* for a taxon originally described by Brackenridge as *Diellia falcata*. However, further study has been established that *Diellia falcata* is best considered a separate species. *Diellia erecta* is now considered to be a species with no subspecific taxa (Wagner 1952, Wagner and Wagner 1992).

Diellia erecta, a member of the spleenwort family (Aspleniaceae), is a fern that grows in tufts of 3 to 9 lance-shaped fronds, each 20 to 70 cm (8 to 28 in) long. The fronds emerge from a 1 to 2.5 cm (0.4 to 1 in) long rhizome covered with brown to dark gray scales. The frond stalks are reddish brown to black and smooth and glossy, 2 to 21 cm (0.8 to 8.3 in) long, and have a few stiff scales at their bases. Each frond has 15 to 50 lance-shaped pinnae arranged oppositely long the midrib. The pinnae are usually between 2 and 4 cm (0.8 and 1.6 in) long and 4 to 8 mm (0.2 to 0.3 in) wide. Ten to 20 sori, which may be separate or fused, are borne on each margin of the pinna. Each sorus is covered by an indusium (protective membrane) that falls short of the edge of the frond and runs parallel to the edge of each pinna. This species differs from other members of the genus in having brown or dark gray scales usually more than 2 cm (0.8 in) in length, fused or separate sori along with margins, shiny black midribs that have a hardened surface, and veins that do not usually encircle the sori (Degener and Greenwell 1950, Hillebrand 1888, Robinson 1912, Smith 1934, Wagner 1952).

Historically, *Diellia erecta* was known from the Kokee area on Kauai; the Koolau Mountains on Oahu, Pukoo, Pelekunu Valley, and Kaunakakai Gulch on Molokai; Mahana Valley and Hauola Gulch on Lanai; scattered locations on West Maui; and various locations on Hawaii Island (HHP 1992c1 to 1992c3, 1992c6, 1992c8 to 1992c11, 1992c16, 1992c18 to 1992c26). Currently *Diellia erecta* is only known from Molokai, Maui, and Hawaii. On Molokai, there are four locations with an unknown number of individuals at Halawa Valley, Kahuaawi Gulch, Mckolelau, and Puu Kolekole on private land (HHP 1992c12, 1992c14, 1992c15; Robert Hobdy, Hawaii State Division of Forestry and Wildlife (DOFAW), (pers. Comm., 1991). On Maui there is a total of at least 38 individuals at 7 locations: 4 populations on West Maui at Iao Valley on private land, and Kanaha Stream, Manawainui Plant Sanctuary, and Papalaua Gulch on State land; and 3 populations on East Maui at Olinda, Waiopai Gulch, and near Makawao on State and private land (HHP 1992c4, 1992c5, 1992c7, 1992c13, 1992c17; HPCC 1990a; Joel Lau, HHP, and R. Hobdy, pers. comms., 1992). On the island of Hawaii, there are 2 populations on State land: one at Honomalino with over 20 plants, and one at Manuka NAR with at least 1 plant (J. Lau, pers. comm., 1992). Statewide, this species has a total of 13 populations and approximately 63 known individuals.

Diellia erecta is found in *Diospyros sandwicensis* (Lama)/'Ohi'a Lowland Mesic Forest between 210 and 1,590 m (700 and 5,200 ft) in elevation (HHP 1992c21; HPCC 1990a; R. Hobdy, pers. comm. 1992). Other associated plant species include *Dodonaea viscosa* ('a'ali'i), *Dryopteris unidentata*, *Pleomele auwahiensis* (halapepe), *Syzygium sandwicensis* ('ohi'a ha), and *Wikstroemia* sp. ('akia) (HPCC 1990a). The major threats to *Diellia erecta* are habitat degradation by pigs, goats, and cattle; competition with alien plant species; and stochastic extinction due to the small number of existing individuals.

In 1912, Joseph F. Rock collected the first specimens of *Flueggea neowawraea* from Kapua on the island of Hawaii (Rock 1913). Based on his specimens, he established the monotypic genus *Neowawraea*, named for Dr. Heinrich W. Wawra, a colleague of Rock's. He named the species *Neowawraea phyllanthoides* because of its apparent resemblance to *Phyllanthus*, a member of the same family (Euphorbiaceae). Earl Edward Sherff (1939) later transferred the taxon to the genus *Drypetes*. W. John Hayden (1987), upon further investigation, placed the species in the genus *Flueggea*. Because retention of the specific epithet would result in a later homonym, Hayden chose to maintain the tribute to Wawra in the new epithet, *neowawraea*.

Flueggea neowawraea, a member of the spurge family (Euphorbiaceae), is a large tree up to 30 m (100 ft) tall and 2 m (7 ft) in diameter with white oblong pores covering its scaly, pale brown bark. The thin, papery, oval leaves, 4 to 14 cm (1.5 to 5.5 in) long and 2 to 9 cm (0.8 to 3.5 in) wide, are green on the upper surface and pale green on the lower surface. Plants are usually dioecious (having separate male and female plants) with unisexual flowers lacking petals. Male flowers, on stalks less than 4 mm (0.2 in) long, have 5

green sepals with brownish tips. The female flowers, on stalks 1 to 2.5 mm (0.04 to 0.1 in) long, have sepals of unequal length with irregular margins. The two-lobed stigma is positioned atop a 2.5 to 3 mm (0.1 in) long, round ovary with a nectary disk. The fleshy, round fruits, about 5 mm (0.2 in) in diameter, are reddish brown to black and contain two slightly curved seeds about 3 mm (0.1 in) long that are somewhat triangular in cross section. This species is the only member of the genus found in Hawaii and can be distinguished from other species in the genus by its large size; scaly bark; the shape, size, and color of the leaves; flowers clustered along the branches; and the size and shape of the fruits (Hayden 1990, Linney 1982, Neal 1965).

Historically, *Flueggea neowawraea* was known from Waihii near Kapuna on Molokai, but is now presumed extinct on that island (HHP 1992d25, Hayden 1990). This species was also known from Kealia Trail, Kahanahaiki Valley, and Pohakea Gulch in the Waianae Mountains of Oahu (HHP 1992d5, 1992d10, 1992d33). Currently, *Flueggea neowawraea* is known on Kauai from Limahuli Valley, Kalalau, Pohakuao, and from the Koaie and Poomau branches of Waimea Canyon (HHP 1992d17, 1992d18, 1992d30 to 1992d32; HPCC 1990b; J. Lau, pers. comm., 1992). Also, three individuals (some of which may be dead) are known from the two adjacent valleys of Mahanaloa and Paaiki, near Makaha Point, on State-owned land (HHP 1992d9, 1992d13). Only one unhealthy individual is known from Limahuli Valley on privately owned land (HHP 1992d17). One tree is known from Kalalau and 10 from Pohakuao on State-owned land (J. Lau, pers. comm., 1992). Sixteen trees are known from the Poomau branch of Waimea Canyon, and 40 to 80 individuals are known from 4 scattered populations along the Koaie branch of Waimea Canyon on State-owned land (HHP 1992d18, 1992d30, 1992d31; HPCC 1990b; J. Lau, pers. comm., 1992). On Oahu *Flueggea neowawraea* is currently known from 15 locations with approximately 33 individuals in the Waianae Mountains. The populations are spread from East Kapuahikahi Gulch to Puumaialau Gulch over a distance of about 15.5 km (9.6 mi) on Federal, State, County, and private land (HHP 1992d1 to 1992d4, 1992d6 to 1992d8, 1992d11, 1992d12, 1992d14 to 1992d16, 1992d19, 1992d20, 1992d24, 1992d26, 1992d29; J. Lau, pers. comm., 1992). On East Maui, one or two individuals are known from Auwahi on the southwest slope of Haleakala at approximately 850 m (2,800 ft) elevation on privately owned land (HHP 1992d23). Five populations are known from the island of Hawaii in South Kona and Kau, extending over an area of about 10 by 5 km (6 by 3 mi) from Papa to Manuka, and numbering approximately 20 individuals, on State and private land (HHP 1992d21, 1992d22, 1992d27, 1992d28, 1992d34, 1992d35; J. Lau, pers. comm., 1990). A Hawaii Island population on private land at Huehue Ranch in North Kona consists of an unknown number of individuals (Hayden 1990). Statewide, the species totals 28 populations containing approximately 127 to 167 known individuals.

Flueggea neowawraea occurs in dry to mesic forest at 250 to 1,000 m (820 to 3,280 ft) elevation (Hayden 1990). Associated plant species include alahèe, lama, *Aleurites moluccana* (kukui), *Antidesma pulvinatum* (hame), and *Streblus pendulina* (aiai) (HHP 1992d3, 1992d7, 1992d9, 1992d12 to 1992d19, 1992d30, 1992d31, 1992d34). The primary threat to the threat to the continued existence of *Flueggea neowawraea* is *Xylosandrus compactus*, the black twig borer, which has affected all known *Flueggea neowawraea* plants. Other major threats include habitat degradation by feral and wild ungulates (pigs, goats, deer, and cattle), competition with alien plant species, and fire. The small population size with its limited gene pool and depressed reproductive vigor, compounded by a requirement for cross-pollination because the species is dioecious, must be considered a serious threat.

In 1838, Asa Gray described *Hibiscus brackenridgei* from a specimen collected on West Maui (Roe 1961). Then, in 1930, Edward Leonard Caum published two varieties, *molokaiana* and *kauaiana*, based upon type specimens from the islands of Molokai and Kauai. An additional variety, var. *mokuleiana*, was named by Sister Margaret James Roe in 1961. In 1990, David Bates recognized two subspecific taxa: ssp. *mokuleianus* and ssp. *brackenridgei* (including var. *molokaiana*). He placed *Hibiscus brackenridgei* var. *kauaiana* in synonymy with a non-Hawaiian species of *Hibiscus, H. calyphyllus*.

Hibiscus brackenridgei, a member of the mallow family (Malvaceae), is a sprawling to erect shrub or small tree up to 5 m (16 ft) tall. Most plant parts (young branches, leaves, and some flower parts) vary in the degree of hairiness. The leaves, about 5 to 15 cm (2 to 6 in) long and equally wide, have three to seven lobes but are generally heart-shaped in outline. Beneath each leaf stalk is a pair of very thin stipules (leaf-like appendages), 5 to 15 mm (0.2 to 0.6 in) long, that fall off early in development, leaving an elliptic scar. Flowers are borne singly or in small clusters. The petals, between 3.5 and 8 cm (1.4 and 3.1 in) long, are yellow, usually with a maroon spot in the center of the flower. Each triangular calyx lobe is reddish to yellow, and usually has a raised, elongated gland on the midrib. Seven to 10 bracts are attached below the calyx. The staminal column, which has anthers attached to the upper three-fourths or nearly to the base, extends beyond the petals. The fruits are somewhat round or oval capsules 1.1 to 2 cm (0.4 to 0.8 in) long that have a beak-like appendage at one end. This species differs from other members of the genus in having the following combination of characteristics: yellow petals, a calyx comprised of triangular lobes with raised veins and a single midrib often bearing a prominent elongated gland, 7 to 10 bracts attached below the calyx, and thin stipules 5 to 15 mm (0.2 to 0.6 in) long that fall off, leaving an elliptic scar (Bates 1990).

Hibiscus brackenridgei is currently known from Oahu, Lanai, Maui, and Hawaii; it may possibly occur on Kauai. A total of 12 populations is known to exist, containing approximately 60 individuals. The two recognized subspecies are discussed separately below. *Hibiscus brackenridgei* ssp. *brackenridgei* was known historically from Laau Point on Molokai (HHP 1992e7), from scattered locations on Lanai, and from Pohakea Gulch south to near McGregor Point on West Maui (HHP 1992e4, 1992e5, 1992e10 to 1992e13, 1992e15). *Hibiscus brackenridgei* was also collected from an unspecified site on Kahoolawe (HHP 1992e17). However, the specimen is unavailable, and the subspecies was not determined (Bates 1990). Currently, *Hibiscus brackenridgei* ssp. *brackenridgei* consists of about 7 populations containing probably fewer than 60 individuals on State and private land on the islands of Lanai, Maui, and Hawaii (HHP 1992e1 to 1992e3, 1992e6, 1992e9, 1992e14, 1992e16; HPCC 1990c, 1991e; J. Lau, pers. comm., 1992). On Lanai, only 5 or 6 plants remain near Keomuku Road at 275 m (900 ft) elevation on privately owned land (HHP 1992e14, HPCC 1991e). On West Maui, *Hibiscus brackenridgei* ssp. *brackenridgei* is known from two populations occurring at Kaunohua Gulch and the West Maui NAR (HHP 1992e2, 1992e3; J. Lau, pers. comm., 1992). The Kaunohua Gulch population, numbering approximately eight individuals, is found within a fenced area of 5 to 10 sq m (55 to 110 sq ft) on

privately owned land (HHP 1992e3). The West Maui NAR population, consisting of 14 individuals, is located in the Lihau section at about 400 m (1,300 ft) elevation in lowland dry forest on State-owned land (HHP 1992e2; J. Lau, pers. comm., 1992). On East Maui, the known populations, which extend over a 6.25 sq km (2.4 sq mi) area, number no more than 20 individuals (HHP 1992e1, 1992e8; HPCC 1990c). These populations are near Puu o Kali between 249 and 440 m (800 and 1,450 ft) in elevation on State-owned land (HHP 1992e1, 1992e8). On the island of Hawaii, *Hibiscus brackenridgei* ssp. *brackenridgei* is known from two populations on State and private land: at Puu Anahulu Homesteads and Puu Huluhulu, approximately 3.5 km (2 mi) apart. These two populations contain no more than five individuals (HHP 1992e6, 1992e16).

Hibiscus brackenridgei ssp. *mokuleianus* is currently known from five populations, possibly containing as few as six to eight individuals. Undocumented observations of this taxon have been reported from Lihue and Olokele Canyon on Kauai (Bates 1990). On Oahu, *Hibiscus brackenridgei* ssp. *mokuleianus* was known historically from scattered locations in the Waianae Mountains (HHP 1992e18, 1992e21, 1992e22, 1992e24). These scattered populations occurred in the area from which this taxon is currently known. Scattered within this 12 by 5 km (7.5 by 3 mi) area extending from Puu Pane to Kealia-Kawaihapai are three current populations (1992e19, 1992e20, 1992e23, 1992e25; HPCC 1990d). The northernmost population, consisting of three individuals and occupying an area of 10 to 100 sq m (110 to 1,080 sq ft), is in the mountains south of the Dillingham Military Reservation at an elevation of 170 m (560 ft) on privately owned land (HHP 1992e25, HPCC 1990d). Another population is known from two adjuacent gulches between the Dupont Trail and Puu Iki at elevations between 120 and 240 m (400 and 800 ft) (HHP 1992e19, 1992e23). This population on privately owned land consists of 3 to 5 individuals in an area measuring not more than 0.25 sq km (0.1 sq mi) (HHP 1992e19, 1992e23). A population of *Hibiscus brackenridgei* ssp. *mokuleianus* reported from the Puu Pane area has not been seen for more than 40 years (HHP 1992e20).

Hibiscus brackenridgei occurs in lowland dry to mesic forest and shrubland from 130 to 800 m (425 to 2,625 ft) in elevation (Geesink *et al.* 1990; HHP 1992e1, 1992e4, 1992e5, 1992e8, 1992e14, 1992e19, 1992e25). Associated plant species include ààlii, alahèe, *Erythrina sandwicensis* (wiliwili), *Reynoldsia sandwicensis* (òhe), and *Sida fallax* (ìlima) (HHP 1992e1 to 1992e3, 1992e6, 1992e8, 1992e20, 1992e23, 1992e25). The primary threats to this species are habitat degradation and possible predation by pigs, goats, axis deer, and cattle; competition with alien plant species; road construction; and stochastic extinction and/or reduced reproductive vigor due to the small number of existing individuals.

In 1931, the name *Cyperus pennatiformis* was published by Georg Kukenthal based on a specimen collected from Hana on Maui (Christophersen and Caum 1931). He also described a variety of the species, variety *bryanii*, for plants collected from the Northwestern Hawaiian Island of Laysan. Tetsuo Koyama recombined the species under the genus *Mariscus* and maintained the two subspecific taxa as subspecies (Wagner *et al.* 1989).

Mariscus pennatiformis, a member of the sedge family (Cyperaceae), is a perennial plant with a woody root system covered with brown scales. The stout, smooth, three-angled stems are between 0.4 and 1.2 m (1.3 and 4 ft) long, slightly concave and 3 to 7 mm (0.1 to 0.3 in) in diameter in the lower part. The three to five linear, somewhat leathery leaves are 8 to 17 mm (0.3 to 0.7 in) wide and at least as long as the stem. Each flower cluster, umbrella-shaped and moderately dense, is 4 to 15 cm (1.5 to 6 in) long and 5 to 25 cm (2 to 10 in) wide. About 5 to 18 spikes, comprised of numerous spikelets, form each cluster. Each spikelet, measuring about 8 to 14 mm (0.3 to 0.6 in) in length, is yellowish brown or grayish brown and is comprised of 8 to 25 densely arranged flowers. The glumes (bracts beneath each flower), which are less than twice as long as wide, are spreading and overlap tightly. The lowest glume does not overlap the base of the uppermost glume. This species differs from other members of the genus by its three-sided, slightly concave, smooth stems; the length and number of spikelets; the leaf width; and the length and diameter of stems. The two subspecies are distinguished primarily by larger and more numerous spikelets, larger achenes (dry, one-seeded fruits), and more overlapping and yellower glumes in ssp. *pennatiformis* as compared with ssp. *bryanii* (Koyama 1990).

Historically, *Mariscus pennatiformis* ssp. *pennatiformis* was known from five populations, located on Kauai at Halemanu in Kokee State Park, on Oahu in the Waianae Mountains on a ridge above Makaha Valley, on East Maui at Keanae Valley and Hana, and on the island of Hawaii at an unspecified location (HHP 1992f3 to 1992f6). *Mariscus pennatiformis* ssp. *pennatiformis* also exists in cultivation at the Maui Zoological and Botanical Gardens. The cultivated plants were originally from Nahiku, East Maui (J. Davis and R. Silva, in litt., 1978). It is not known whether the Nahiku population is still extant. The six current populations, with an unknown number of individuals, are at open sites in mesic forests and low elevation grasslands from sea level to 1,200 m (3,940 ft) in elevation. No historical locations are known for *Mariscus pennatiformis* ssp. *bryanii*. It is currently known only from federally managed Laysan Island, which is part of the Hawaiian Islands National Wildlife Refuge. This subspecies is found on the southeast end of the central lagoon, and the west and northeast sides of the island (HHP 1992f1, 1992f2; Koyama 1990). The 3 populations are found on sandy substrate at 5 m (16 ft) in elevation and number approximately 30 individuals (HHP 1992f1, 1992f2; Koyama 1990). Associated species include *Cyperus laevigatus* (makaloa), *Eragrostis variabilis* (kawelu), and *Ipomoea* sp. (HHP 1992f1, Koyama 1990). The small number of individuals and fewer than 10 known populations of *Mariscus pennatiformis* make the species vulnerable to stochastic extinction and/or reduced reproductive vigor.

Neraudia sericea was published by Gaudichaud in 1851 (Cowan 1949). In 1888, Hillebrand reduced it to a variety of *N. melastomaefolia* (*N. melastomaefolia* var. *sericea*). He also described a new species, *N. kahoolawensis*, named for a specimen collected by J.M. Lydgate on the island of Kahoolawe. In the most current treatment (Wagner *et al.* 1990), the reduction of *N. sericea* to a variety of *N. melastomaefolia* is not accepted and *N. kahoolawensis* is considered a Kahoolawe population of *N. sericea*.

Neraudia sericea, a member of the nettle family (Urticaceae), is a 3 to 5 m (10 to 16 ft) tall shrub with densely hairy branches. The elliptic or oval leaves are between 4.3 and 13 cm (1.7 and 5.1 in) long and have smooth margins or slightly toothed margins on young leaves. The upper leaf surface is moderately hairy and the lower leaf surface is densely covered with irregularly curved, silky gray to white hairs up to 1 mm (0.04 in) long along the veins. The male flowers may be stalkless or have short stalks. The female flowers are stalkless and have a densely hairy calyx that is either

toothed, collar-like, or divided into narrow unequal segments. The fruits are 1 mm (0.04 in) long achenes with the apical section separated from the basal portion by a deep constriction. Seeds are oval with a constriction across the upper half. *Neraudia sericea* differs from the other four closely related species of this endemic Hawaiian genus by the density, length, color, and posture of the hairs on the lower leaf surface and by its mostly entire leaf margins (Wagner *et al.* 1990).

Neraudia sericea was known historically from Kamalo and near Waianui on Molokai, from Kaiholena on central Lanai, Olowalu Valley on West Maui, the southern slopes of Haleakala on East Maui, and from an unspecified site on Kahoolawe (HHP 1992g1, 1992g3, 1992g4, 1992g6 to 1992g10). Currently, two populations of this species are known, from the slopes below Puu Kolekole on Molakai, specifically along the bottom and lower slopes of Makolelau Gulch, and from Pohadea Gulch on West Maui (HHP 1992g2, 1992g5, 1992g11). Both populations are on privately owned land. The Makolelau population contains an estimated 50 to 100 individuals growing in 'Ohi'a/'A'ali'i/ *Styphelia tameiameiae* (Pukiawe) Lowland Dry Shrubland in an area of over 100 sq m (1,080 sq ft) (HHP 1992g11). The population size of the Pohakea population is undetermined (HHP 1992g2). *Neraudia sericea* generally occurs in lowland dry to mesic shrubland or forest between 670 and 1,370 m (2,200 and 4,500 ft) in elevation (HHP 1992g3, 1992g10, 1992g11; Wagner *et al.* 1990). Other associated plant species include 'ilima, lama, *Bobea* ('ahakea), *Coprosma* (pilo), and *Hedyotis* (HHP 1992g11). The primary threats to *Neraudia sericea* are habitat degradation by feral pigs and goats; competition with the alien plant, *Melinus minutilfora* (molasses grass); and stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals.

In 1826, Louis Charles Adelbert von Chamisso and D.F.L. Schlectendal described the species *Plantago princeps* (Rock 1920a). In 1829, *P. queleniana* was described by Gaudichaud. An additional species, *P. fauriei*, was described by H. Leveille (1911) from a specimen collected by Abbe Urbain Jean Faurie from Hanapepe Falls on Kauai. Several varieties and forms of *P. princeps* have also been described. The currently accepted classification places *P. queleniana* and *P. fauriei* in synonymy with *P. princeps* and recognizes only four varieties: *anomala*, *laxifolia*, *longibracteata*, and *princeps* (Gaudichaud 1829, Gray 1862, Hillbrand 1888, Mann 1867, Rock 1920a Wager *et al.* 1990, Wawra 1874).

Plantago princeps, a member of the plaintain family (Plantaginaceae), is a small shrub or robust perennial herb. Its erect or ascending stems are hollow, about 2 to 250 cm (1 to 100 in) long, and often branched with young internodes that are more or less woolly with reddish brown hairs. The oblong to elliptic, thick, leathery leaves are between 6 to 30 cm (2.4 and 12 in) long and up to 5 cm (2 in) wide and are tufted near the ends of stems. The leaves have smooth or minutely toothed margins, a pointed tip, and primary veins that converge at the base of the leaves. Numerous stalkless flowers are densely arranged in a cluster 11 to 28 cm (4.3 to 11 in) long with each cluster on a stalk 10 to 50 cm (4 to 20 in) long. Each flower spreads at an angle of nearly 90 degrees to the axis of the stalk or grows upright. The sepals are somewhat distinct and elliptic in shape. The fruits are capsules that contain three or four tiny black seeds; the surface of the seeds is apparently covered with a sticky membrane. This species differs from other native members of the genus in Hawaii by its large branched stems, flowers at nearly right angles to the axis of the flower cluster, and fruits that break open at a point two-thirds from the base. The four varieties (*anomala*, *laxiflora*, *longibracteata*, and *princeps*) are distinguished by the branching and pubescence of the stems; the size, pubescence, and venation of the leaves; the density of the inflorescence; and the orientation of the flowers (Wagner *et al.* 1990).

The four varieties of *Plantago princeps* were historically found on five islands, and now occur on Kauai, Oahu, Molokai, and Maui. A total of 18 populations containing approximately 300 to 1,200 individuals is currently known. The four varieties are discussed separately below. Historically, *Plantago princeps* var. *anomala* was known from Makaleha in the Waianae Mountains on Oahu, and ridge west of Hanapepe River on Kauai (HHP 1992i1, 1992i4). Currently on Kauai, 4 populations with 45 individuals are known from the south rim and upper reaches of Kalalau Valley on State land (HHP 1992i2; HPCC 1990e, 1990g, 1991g). Historically, *Plantago princeps* var. *laxiflora* was known from Waikolu, Olokui, Kamakou, and Pelekunu on the east side of Molokai; in back of Lahaina on West Maui; and Hamakua and Kohala on Hawaii Island (HHP 1992i6, 1992i8 to 1992i11, 1992i16, 1992i17). Currently on Molokai, *Plantago princeps* var. *laxiflora* is known from one population with five individuals at Kawela Gulch on private land (HHP 1992i5). On Maui, it is known from 2 locations in Iao Valley on West Maui, and 4 locations within Haleakala National Park and adjacent Waikamoi Preserve on East Maui on Federal and private land, totalling about 100 plants on that island (HHP 1992i7, 1992i12 to 1992i15, 1992i18; HPCC 1990h to 1990j, 1991h, 1991i).

Plantago princeps var. *longibracteata* was historically known from Hanalei, the Wahiawa Mountains, and Hanapepe Falls on Kauai, and from Kaala and the Koolauloa Mountains on Oahu (HHP 1992i19, 1992i21, 1992i23, 1992i24, 1992i26). Currently, 2 populations are known from Kauai at Waioli Valley and Waialeale on State land; they are estimated to contain between 130 and more than 1,000 individuals (HHP 1992i25, 1992i27). On Oahu, two populations approximately 3.5 km (2.2 mi) apart are known from the Poamoho area on private and State land; the number of individuals is not known (HHP 1992i20, 1992i22). Historically, *Plantago princeps* var. *princeps* was known from Nuuanu Pali and Kalihi in the Koolau Mountains of Oahu (HHP 1992i28 to 1992i30). Three current populations of this taxon are known from Mount Tantalus in the Koolau Mountains and from North Palawai and Ekahanui gulches in the Waianae Mountains of Oahu. Between 16 and 20 individuals are known from the Waianae Mountains. The number of individuals at the Koolau site is not known, as it was last observed in 1948 (HHP 1992i3, 1992i28 to 1992i31; HPCC 1990f; J. Lau, pers. comm., 1992).

Plantago princeps is typically found on steep slopes, rock walls, or at bases of waterfalls from 480 to about 1,100 m (1,580 to 3,600 ft) in elevation (Wagner *et al.* 1990). Associated plant species include 'a'ali'i, kopiko, 'ohi'a, uluhe, and *Dubautia plantaginea* (HHP 1992i28, HPCC 1990e to 1990i, 1990k, 1991g to 1991i). The primary threats to *Plantago princeps* are habitat degradation by ungulates (pigs and goats) and competition with various alien plant species.

Sesbania tomentosa was first described by W.J. Hooker and G.A.W. Arnott in 1836 from collections from Oahu (Degener 1937); it was named for its silvery hairs. In 1920, Joseph F. Rock described an arborescent form of the species (*S. tomentosa* f. *arborea*) based on a Molokai specimen. Degener and Sherff (Sherff 1949) published a new variety, var. *molokaiensis*, based on plants from West Molokai. Nearly 30

years later, Otto and Isa Degener elevated that variety to the specific level (Degener and Degener 1978). At that time, the Degeners also described two new species, *S. hawaiiensis* and *S. hobdyi*. In the currently accepted classification by Geesink and others (1990), *S. arborea*, *S. hawaiiensis*, *S. hobdyi*, and *S. molokaiensis* are synonymized with *S. tomentosa*. However, they note that the arborescent form of the species found on the island of Molokai probably merits formal taxonomic recognition.

Sesbania tomentosa, a member of the pea family (Fabaceae), is typically a sprawling shrub with branches up to 14 m (45 ft) long but may also be a small tree up to 6 m (20 ft) in height. Each compound leaf is comprised of 18 to 38 oblong to elliptic leaflets, each 15 to 38 mm (0.6 to 1.5 in) long and 5 to 18 mm (0.2 to 0.7 in) wide, and is usually sparsely to densely covered with silky hairs. The flowers, in clusters of two to nine, are salmon tinged with yellow, orange-red, or scarlet, or rarely pure yellow. The petals are between 23 and 45 mm (0.9 and 1.8 in) long, the upper pair sometimes of a lighter color than the other petals. The calyx is about 7 to 12 mm (0.3 to 0.5 in) long. Fruits are slightly flattened pods 7 to 23 cm (2.8 to 9 in) long and about 5 mm (0.2 in) wide that contain about 6 to 27 olive to pale or dark brown, oblong seeds. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *S. sesban* by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink *et al.* 1990).

On Molokai, *Sesbania tomentosa* was known historically from Mahana on Mauna Loa, in the vicinity of the coast near Waiahewahewa Gulch, and on Molokai's west coast at Laau and Ilio Points (HHP 1992j16, 1992j18, 1992j23, 1992j26, 1992j37). On Oahu, *Sesbania tomentosa* was known historically from eastern Oahu at Ulupau Crater, and on the islets of Kaohikaipu and Mokulua (HHP 1992j3, 1992j6, 1992j34). This taxon was also known historically from western Oahu at an unspecified location along the Waianae coast (HHP 1992j10). On Lanai, *Sesbania tomentosa* was known historically from scattered locations on the south half of the island and on the east slope of the island at Kahinahina (HHP 1992j5, 1992j19 to 1992j22, 1992j42). *Sesbania tomentosa* was also known historically from an unspecified location on Kahoolawe (HHP 1992j24).

Currently, there are two populations of *Sesbania tomentosa* in the Northwestern Hawaiian Islands (HHP 1992j35, 1992j36). One population is on the island of Nihoa, which comprises 0.8 sq km (0.3 sq mi) and is under U.S. Fish and Wildlife Service management as part of the Hawaiian Islands National Wildlife Refuge (Dept. of Geography 1983, HHP 1992j35). The Nihoa plants have been described as relatively common in some areas, with several thousand individuals known (HHP 1992j35). Another population is known from Necker Island, which is only 0.2 sq km (0.1 sq mi) in area, and like Nihoa is managed by the U.S. Fish and Wildlife Service as part of the Hawaiian Islands National Wildlife Refuge (HHP 1992j36). Although there are no population estimates for Necker Island, *Sesbania tomentosa* is known to occur from 45 m (150 ft) elevation to the summit, growing on the tops of all hills of the main island with a few individuals found on the Northwest Cape (HHP 1992j36). On the privately owned island of Niihau, *Sesbania tomentosa* is known from the south tip of the island at the headland west of Kaumuhonu Bay. The size of this population has not been determined; in 1947 at least one collection was made at an elevation of 50 m (160 ft) (HHP 1992j14).

On Kauai, *Sesbania tomentosa* is found between Mana town and Mana Point and at Polihale State Park (HHP 1992j15, 1992j33; HPCC 1991L). The population on State-owned land at Polihale State Park consists of about 30 individuals growing in a lithified dune area at approximately 12 m (40 ft) elevation in an area of approximately 10 to 50 sq m (110 to 540 sq ft) (HHP 1992j33). The second population is approximately 6 km (4 mi) southwest of the Polihale State Park population, growing alongside a pond owned by the State (HHP 1992j15). The size of the population has not been determined. On Oahu, *Sesbania tomentosa* is currently known from one population of 50 to 100 individuals on State-owned land at Kaena Point (HHP 1992j1, 1992j2). This population is primarily within the Kaena Point NAR, growing in sand dunes in a Naupaka kahakai Mixed Coastal Dry Shrubland (HHP 1992j1, 1992j2; HPCC 1990o). However, scattered individuals are also located to the east for about 3.5 km (2.25 mi) along the north coast (HHP 1992j1, 1992j2; Woodward *et al.* 1991).

On Molokai, *Sesbania tomentosa* is known from the south slopes of central Molokai from Kamiloloa to Makolelau and along Molokai's northwest coast from Moomomi to east of Hinanaulua. The 4 populations on private and State-owned land from Kamiloloa to Makolelau total fewer than 2,000 individuals and grow in a 7 by 3 km (4.5 by 2 mi) area (HHP 1992j11, 1992j13, 1992j25, 1992j27; HPCC 1990m, 1990n). The 3 populations from Moomomi to east of Hinanaulua consist of about 100 to 150 plants growing on State and private land from sea level to 60 m (200 ft) elevation in a 5 by 1 km (3 by 0.5 mi) area (HHP 1992j12, 1992j28, 1992j49; HPCC 1990L). On Lanai, *Sesbania tomentosa* is now restricted to the northern slopes of the island. This cluster of 3 populations between Paomai and Maunalei is on privately owned land and includes at least 12 individuals growing on arid slopes (HHP 1992j17, 1992j38, 1992j39).

On Maui, *Sesbania tomentosa* is only known from two areas on West Maui. One plant is on State-owned land below Lihau Peak (HHP 1992j30). *Sesbania tomentosa* also occurs on a 6 km (4 mi) stretch of the northeast coast of West Maui, from the lighthouse near Nakalele Point to Puu Kahulianapa (HHP 1992j31, 1992j32, 1992j43, 1992j48; HPCC 1991m). This cluster of 4 populations contains an estimated 50 to 75 individuals on land owned by the State, the County of Maui, and private individuals (HHP 1992j31, 1992j32, 1992j43, 1992j48; R. Hobdy, pers. comm., 1992). Off the south central coast of Kahoolawe, approximately 25 to 30 individuals of *Sesbania tomentosa* are found on the sparsely vegetated islet of Puu Koae, which is a State-owned seabird sanctuary (HHP 1992j29).

On the island of Hawaii, *Sesbania tomentosa* is known from two regions of the southeast coast. It occurs along 13 km (8 mi) of coastline between Ka Lae and Kaalualu. This cluster of populations on State-owned land contains an estimated 250 individuals growing between sea level and 25 m (80 ft) elevation, with some populations occurring in 'Ilima Coastal Dry Shrubland (HHP 1992j7, 1992j9, 1992j44, 1992j45, 1992j50; HPCC 1991j, 1991k). The second cluster is in Hawaii Volcanoes National Park and consists of scattered populations within a 19 by 8 km (12 by 5 mi) area from above Kukalauula Pali to Kahue, at elevations between 10 and 850 m (30 and 2,800 ft). This cluster of populations on federally owned land contains at least 10 individuals (HHP 1992j4, 1992j8, 1992j40, 1992j41, 1992j46, 1992j47). The currrently known populations of *Sesbania tomentosa* on the 8 main Hawaiian islands (Niihau, Kauai, Oahu, Molokai, Lanai, Kahoolawe, Maui, and Hawaii) contain an estimated 2,000 to 3,000 individuals. In the Northwestern Hawaiian Islands, the largest population occurs on Nihoa and consists of several thousand individuals (HHP 1992j35).

Sesbania tomentosa is found on sandy beaches, dunes, soil pockets on lava, and along pond margins (Geesink *et al.* 1990). It commonly occurs in coastal dry shrublands and grasslands, but is also known from open 'ohi'a forests and Mixed Coastal Dry Cliffs (HHP 1992j2, 1992j4, 1992j5, 1992j7, 1992j14, 1992j27, 1992j28, 1992j35, 1992j49). Associated plant species include 'ilima, naupaka kahakai, *Heteropogon contortus* (pili), *Myoporum sandwicense* (naio), and *Sporobolus virginicus* ('aki 'aki) (HHP 1992j1, 1992j2, 1992j7, 1992j8, 1992j12, 1992j13, 1992j25, 1992j28, 1992j31, 1992j33, 1992j40, 1992j45, 1992j49, 1992j50). The primary threats of *Sesbania tomentosa* are habitat degradation caused by axis deer and cattle, competition with various alien plant species, fire, and destruction by off-road vehicles.

A specimen collected by David Nelson in 1779 from the island of Hawaii was described and named *Solanum incompletum* by Dunal (1852). In 1888, Hillebrand described two varieties of the species: var. *glabratum* and var. *mauiense*. In 1969, Harold St. John described the species *S. haleakalaense* based on a specimen collected by Hillebrand on the south slope of Haleakala on Maui. In the latest treatment, *S. haleakalaense* was synonymized with *S. incompletum* and no subspecific taxa of *S. incompletum* were recognized (Symon 1990).

Solanum incompletum, a member of the nightshade family (Solanaceae), is a woody shrub up to 3 m (10 ft) tall. Its stems and lower leaf surfaces are covered with prominent reddish prickles about 4 mm (0.2 in) long or sometimes with yellow fuzzy hairs on young plant parts and lower leaf surfaces. The oval to elliptic leaves, 10 to 15 cm (4 to 6 in) long and about 7 cm (2.8 in) wide, have prominent veins on the lower surface, and are on stalks up to 7 cm (2.8 in) long. The leaf margins are lobed with one to four lobes on each side. Numerous flowers grow in loose branching clusters with each flower on a stalk about 9 mm (0.4 in) long. The calyx and flowers generally lack prickles. The white petals form a star-shaped corla about 2 cm (0.8 in) in diameter. The curved anthers, about 2 mm (0.08 in) long, top short filaments that do not extend beyond the petals. Fruits are round berries about 1.5 cm (0.6 in) in diameter that mature from yellow-orange to black. This species differs from others in the genus by being generally prickly and having loosely clustered while flowers, curved anthers about 2 mm (0.08 in) long, and berries 1 to 2 cm (0.4 to 0.8 in) in diameter (Symon 1990).

Historically, *Solanum incompletum* was known from central and northeastern Lanai and from scattered locations on Maui (HHP 1992k1, 1992k2, 1992k4, 1992k10 to 1992k13; Symon 1990). According to David Symon (1990), the known distribution of *Solanum incompletum* also extends to the islands of Kauai and Molokai. On the island of Hawaii, *Solanum incompletum* was known historically from the Kohala Mountains, Kona, Puu Waawaa, Puu Ikaaka Crater, and Omaokoili (HHP1992k3, 1992k5, 1992k7 to 1992k9). The single remaining known population is from the island of Hawaii; it has not been seen for more than 40 years. This population is on State-owned land at Puu Huluhulu and consists of perhaps two individuals at an approximate elevation of 2,040 m (6,700 ft) (HHP 1992k6). Associated species include naio, *Acacia koa* (koa), and *Sophora chrysophylla* (mamane in dry mesic forest, diverse mesic forest, and subalpine forest at elevations from 300 to 2,040 m (1,000 to 6,700 ft) (HHP 1992k1, 1992k6; Symon 1990; J. Lau, Pers. comm., 1992). The primary threats to the last remaining individuals of *Solanum incompletum* are stochastic extinction and reduced reproductive vigor due to the extremely small number of existing plants, and competition with the alien plant *Senecio mikanioides* (German ivy).

Spermolepis hawaiiensis was first described by H. Wolff in 1921. In the past, this Hawaiian species had been confused with the European plants *Apium echinatum* and *Caucalis daucoides* (Constance and Affolter 1990, Wolff 1921).

Spermolepis hawaiiensis, a member of the parsley family (Apiaceae), is a slender annual herb with few branches that grows to a height of 5 to 20 cm (2 to 8 in). Its leaves, dissected into narrow, lance-shaped divisions, are oblong to somewhat oval in outline and grow on stalks about 2.5 cm (1 in) long. Flowers are arranged in a loose, compound umbrella-shaped inflorescence arising from the stem, opposite the leaves. Each cluster consists of two to six flowers, with each flower on a stalk between 2 and 6 mm (0.08 and 0.2 in) long. The calyx is lacking in this species, but one to five bracts grow below the clusters of flowers. The fruits are oval and laterally compressed and constricted at the line where the two halves of the fruit meet. The fruits are 4 mm (0.2 in) long and 3 mm (0.1 in) wide, covered with curved bristles, and contain seeds that are marked with longitudinal grooves beneath oil tubes that are characteristic of the parsley family. *Spermolepis hawaiiensis* is the only member of the genus native to Hawaii. It is distinguished from other native members of the family by being a non-succulent annual with an umbrella-shaped inflorescence (Constance and Affolter 1990).

Historically, *Spermolepis hawaiiensis* was known from Waimea on Kauai, Koko Head on Oahu, and Paomai and Kahinahina on Lanai (HHP 1992L3 to 1992L5, 1992L8). Currently, a total of six populations is known on Oahu, Molokai, Lanai, and West Maui; one additional population may exist on Hawaii. On Oahu, on State land at Diamond Head (land leased to the Department of Defense at the Diamond Head Reservation), 10 plants were observed in 1992 during the dry season. In 1988, when the site was first visited, thousands of plants were seen over an area less than 50 sq m (several hundred sq ft) (Wayne Takeuchi, DOFAW, pers. comm., 1992). The population fluctuations probably reflect seasonal changes in precipitation. On Molokai, about 600 plants were reported from Kamalo on private land within an area of less than 400 sq m (0.1 ac) (HHP 1992L6). On Lanai, 2 populations of *S. hawaiiensis* are known on private land: one at Kapoho with 100 individuals and one west of Puu Manu with 50 to 100 individuals covering an area of about 0.1 ha (0.25 ac) (HHP 1992L7; R. Hobdy, pers. comm., 1992). On West Maui, 3 populations are known on State land: one in the Lihau section of the West Maui NAR, with 60 to 100 individuals within an area of about 0.4 ha (1 ac); one further east in the Lihau section of the West Maui NAR, with several hundred plants scattered over a distance of 0.7 km (0.4 mi); and one above Lahainaluna School, with several hundred individuals spread over an area of about 0.4 ha (1 ac) (HHP 1992L1, 1992L2; HPCC 1991n). On the island of Hawaii, a collection of *Spermolepis hawaiiensis* was made at an unspecified location in 1943; it is not known whether this population still exists (HHP 1992L9).

Spermolepis hawaiiensis is known from various vegetation types, including 'ohi'a forests, 'A'ali'i Lowland Dry Shrubland, cultivated fields, and pastures between about 300 and 600 m (1,000 and 2,000 ft) in elevation (HHP 1992L2, 1992L8, 1992L9; HPCC 1991n). Associated plant species include 'ilima, *Doryopteris* sp., *Gouania hillebrandii*, and the alien plant *Leucaena leucocephala* (koa haole) (HHP 1991L1). The primary threats to *Spermolepis hawaiiensis* are habitat degradation by axis deer; competition with the alien

plant koa haole; and stochastic extinction and reduced reproductive vigor due to the small number of existing populations.

Vigna o-wahuensis was described by T. Vogel in 1836 from a specimen from the Waianae Mountains of Oahu (Gray 1854). In 1854, Gray described another species, *Vigna sandwicensis*, for which Rock later designated two varieties: var. *heterophylla* and var. *sandwicensis* (Rock 1920b). The currently accepted treatment places *V. sandwicensis* in synonymy under *V. o-wahuensis* (Geesink *et al.* 1990).

Vigna o-wahuensis, a member of the pea family, is a slender twining annual or perennial herb with fuzzy stems that grows to 0.4 m (1.3 ft) in length. Each leaf is made up of three leaflets which vary in shape from round to linear, are 1.2 to 8 cm (0.5 to 3 in) long and 0.1 to 2.5 cm (0.04 to 1 in) wide, and are sparsely or moderately covered with coarse hairs. Flowers, in clusters of one to four, have thin, translucent, pale yellow or greenish yellow petals about 2 to 2.5 cm (0.8 to 1 in) long. The two lowermost petals are fused and appear distinctly beaked. The sparsely hairy calyx is 4 to 8 mm (0.2 to 0.3 in) long with asymmetrical lobes that measure about 3 mm (0.1 in) long. The fruits are long slender pods 4 to 9 cm (1.6 to 3.5 in) long and about 5 mm (0.2 in) wide that may or may not be slightly inflated and contain 7 to 15 gray to black seeds less than 6 mm (0.2 in) long. This species differs from others in the genus by its thin yellowish petals, sparsely hairy calyx, and thin pods which may or may not be slightly inflated (Geesink *et al.* 1990).

Historically, *Vigna o-wahuensis* was known from Niihau and from an unspecified location on Kauai (HHP 1992m10, 1992m16). On Oahu, this taxon was known from between Waimanalo and Makapuu Point, the Mokulua Islets, and the Waianae Mountains (HHP 1992m13 to 1992m15, 1992m20). On Maui, *Vigna o-wahuensis* was known from an unspecified site on West Maui and from Makawao, Waiakoa, and Haleakala on East Maui (HHP 1992m2 to 1992m4, 1992m25). There are no currently known populations on Niihau, Kauai, Oahu, or Maui. On Molokai, *Vigna o-wahuensis* was known historically from the western end of the island in the vicinity of Ilio Point (HHP 1992m18). On Lanai, this species occurred historically at scattered locations across the island's southern half (HHP 1992m5, 1992m6, 1992m8, 1992m9, 1992m17). And on the island of Hawaii, this taxon was known from Mauna Loa and Kau at unspecified sites (HHP 1992m1, 1992m19, 1992m24).

Currently, a total of fewer than 100 individuals of *Vigna o-wahuensis* is known from 7 populations on the islands of Molokai, Lanai, Kahoolawe, and Hawaii (HHP 1992m11, 1992m12, 1992m21 to 1992m23; HPCC 1991o; J. Lau, pers. comm., 1992). On Molokai are two populations separated by a distance of 4 km (2.5 mi). One population, south of Onini Gulch at about 850 m (2,800 ft) elevation on privately owned land, covers an area of 18 sq m (200 sq ft) in a forestry planting of *Fraxinus uhdei* (tropical ash) and *Pinus* (pine) (HHP 1992m11). The other Molokai population of about 10 individuals is on privately owned land at Makolelau (J. Lau, pers. comm., 1992). On Lanai, at least one individual of *Vigna o-wahuensis* is known from the arid windward slopes northeast of Kanepuu above Lapaiki at about 370 m (1,200 ft) elevation on privately owned land (HHP 1992m7, 1992m23). On the federally owned island of Kahoolawe, *Vigna o-wahuensis* grows between Makaalae and Lua Kealialalo at 140 m (460 ft) elevation, near the summit at about 400 m (1,300 ft) elevation, and about 0.8 km (0.5 mi) south of Hanakanaea near "Sailor's Hat" (HHP 1992m21, 1992m23; J. Lau, pers. comm., 1992). Only one individual is known from the population between Makaalae and Lua Kealialalo in pili grassland (J. Lau, pers. comm., 1992). Near the summit, about 20 plants grow in a 9 sq m (100 sq ft) area with a few more plants scattered nearby (HHP 1992m22). The size of the population south of Hanakanaea has not been determined, but at least one collection has been made recently (HHP 1992m21). On the island of Hawaii, *Vigna o-wahuensis* is known only from Nohonaohae Cinder Cone on privately owned land. Ten plants are known from 'A'ali'i Lowland Dry Shrubland within an enclosure containing pasture grass (HHP 1992m12, HPCC 1991o).

Vigna o-wahuensis occurs in dry to mesic grassland and shrubland from 10 to 1,370 m (30 to 4,500 ft) in elevation (Geesink *et al.* 1990; HHP 1992m1 to 1992m3, 1992m5, 1992m11, 1992m12, 1992m15, 1992m22, 1992m24). Other associated plant species include 'ilima, *Chenopodium* ('aheahea), *Dubautia menziesii*, and *Osteomeles anthyllidifolia* (ulei) (HHP 1992m11, 1992m12, 1992m23; HPCC 1991o). The primary threats to *Vigna o-wahuensis* are habitat degradation by ungulates (pigs and axis deer), competition with various alien plant species, fire, and stochastic extinction and/or reduced reproductive vigor due to the small number of existing populations and individuals.

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened,or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Adenophorus periens, Bonamia menziesii, Flueggea neowawraea* (as *Drypetes phyllanthoides*), *Hibiscus brackenridgei* (as *H. b.* var. *brackenridgei*, var. *mokuleianus*, and var. "from Hawaii"), *Neraudia sericea, Plantago princeps* (as *P. p.* var. *elata*, var. *laxifolia*, and var. *princeps*), *Sesbania tomentosa* (as *S. t.* var. *tomentosa*), *Solanum incompletum* (as *S. i.* var. *glabratum*, var. *incompletum*, and var. *mauiensis*), and *Vigna o-wahuensis* (also as *V. sandwicensis* var. *heterophylla* and *V. s.* var. *sandwicensis*) were considered to be endangered. *Diellia erecta* and *Plantago princeps* (as *P. p.* var. *acaulis*, var. *denticulata*, and var. *queleniana*) were considered to be threatened, and *Neraudia sericea* (as *N. kahoolawensis*) and *Solanum incompletum* (as *S. haleakalense*) were considered to be extinct.

On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including all of the above taxa considered to be endangered or thought to be extinct, plus *Diellia erecta* (considered threatened). The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the

Service published a notice in the Federal Register (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In these notices, 11 of the taxa (including synonymous taxa) that had been in the 1976 proposed rule were treated as Category 1 candidates for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. Other than *Mariscus pennatiformis*, *Neraudia sericea* (as *N. kahoolawensis*), *Plantago princeps* (as *P. p.* var. *acaulis* and var. *queleniana*), *Sesbania tomentosa* as *S. hobdyi*), *Solanum incompletum* (as *S. haleakalense*), and *Spermolepis hawaiiensis*, all the aforementioned taxa that were proposed as endangered in the June 16, 1976, proposed rule were considered Category 1 candidates on all three notices of review. *Flueggea neowawraea* appeared as *Neowawraea phyllanthoides* on the 1980 and 1985 notices. In the 1980 and 1985 notices, *Sesbania tomentosa* (as *S. hobdyi*) and *Solanum incompletum* (as *S. haleakalense*) were considered Category 1* species. Category 1* species are those which are possibly extinct. *Plantago princeps* (as *P. p.* var. *acaulis* and var. *queleniana*) appeared as a Category 2 taxon and *Neraudia sericea* (as *N. kahoolawensis*) as a Category 3A species in the 1980 and 1985 notices. Category 2 taxa are those for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at the time. Category 3A taxa are those for which the Service has persuasive evidence of extinction. Through taxonomic revisions, each of the Category 1*, 2, and 3A taxa were synonymized under Category 1 taxa on the 1990 list. *Mariscus pennatiformis* (as *Cyperus p.* var. *bryanii*) first appeared on the 1985 notice of review as a Category 1 taxon. *Spermolepis, hawaiiensis* first appeared on the 1990 notice of review as a Category 1 species after it was rediscovered in 1986.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1983, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the present proposal constitutes the final 1-year finding for these species.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The threats facing these 12 species are summarized in Table 2.

TABLE 2.—SUMMARY OF THREATS

Species	Feral animal activity				Alien plants	Fire	Human impacts	Insects	Limited numbers*
	Pigs	Goats	Deer	Cattle					
Adenophorus periens	X				X	X			
Bonamia menziesii	X	X	X	X	X	X			
Diellia erecta	X	X		X	X				X[1]
Flueggea neowawraea	X	X	X	X	X	X		X	
Hibiscus brackenridgei	X	X	X	X	X		X		X[1]
Mariscus pennatiformis									X[1,2]
Neraudia sericea	X	X			X				X[1,2]
Plantago princeps	X	X			X				
Sesbania tomentosa			X	X	X	X	X		
Solanum incompletum					X				X[2,3]
Spermolepis hawaiiensis			X		X				X[2]
Vigna o-wahuensis	X		X		X	X			X[1,2]

*No more than 100 individuals and/or fewer than 10 populations.
[1] No more than 100 individuals.
[2] Fewer than 10 populations.
[3] No more than 10 individuals.

These factors and their application to *Adenophorus periens* L.E. Bishop (pendant kihi fern), *Bonamia menziesii* A. Gray (no common name (NCN)), *Diellia erecta* Brack. (NCN), *Flueggea neowawraea* W. Hayden (mehamehame), *Hibiscus brackenridgei* A. Gray (mào hau hele), *Mariscus pennatiformis* (Kekunth.) T. Koyama (NCN), *Neraudia sericea* Gaud. (NCN), *Plantago princeps* Cham. and Schlechtend. (laukahi kuahiwi), *Sesbania tomentosa* Hook. and Arnott ('ohai), *Solanum incompletum* Dunal (popolo ku mai), *Spermolepis hawaiiensis* Wolff (NCN), and *Vigna o-wahuensis* Vogel (NCN) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Native vegetation on all of the main Hawaiian Islands has undergone extreme alteration because of past and present land management practices including ranching, deliberate alien animal and plant introductions, and agricultural development (Cuddihy and Stone 1990, Wagner *et al.* 1985). The Northwestern Hawaiian Islands have undergone similar alteration, but to a lesser degree. The primary threats facing the 12 plant species proposed for listing are ongoing and threatened destruction and adverse modification of habitat by feral animals and competition with alien plants.

Ten of the 12 proposed species are variously threatened by feral animals (see Table 2). Animals such as pigs,

goats, axis deer, black-tailed deer, and cattle were introduced either by the early Hawaiians (pigs) or more recently by European settlers (all ungulate species) for food and/or commercial ranching activities. Over the 200 years following their introduction, their numbers increased and the adverse impacts of feral ungulates on native vegetation have become increasingly apparent. Beyond the direct effect of trampling and grazing native plants, feral ungulates have contributed significantly to the heavy erosion still taking place on most of the main Hawaiian islands.

Pigs (*Sus scrofa*), originally native to Europe, Africa, and Asia, were introduced to Hawaii by the Polynesian ancestors of Hawaiians, and later by western immigrants. The pigs escaped domestication and invaded primarily wet and mesic forests and grasslands of Kauai, Oahu, Molokai, Maui, and Hawaii. They presently threaten the existence of at least eight of the proposed plant species in those habitats. While foraging, pigs root and trample the forest floor, encouraging the establishment of alien plants in the newly disturbed soil. Pigs also disseminate alien plant seeds through their feces and on their bodies, accelerating the spread of alien plants through native forest (Cuddihy and Stone 1990, Stone 1985). On Kauai, three populations each of *Adenophorus periens* and *Flueggea neowawraea* and a single population each of *Plantago princeps* var. *anomala* and *P. p.* var. *longibracteata* have sustained loss of individual plants and/or habitat as a result of feral pig activities (HHP 1992d18, 1992i2; J. Lau, pers. comm., 1992). The following numbers of populations of proposed plants on Oahu are threatened by pigs: 4 populations of *Bonamia menziesii*, 15 of *Flueggea neowawraea*, 1 of *Hibiscus brackenridgei* ssp. *mokuleianus*, and 2 populations each of *Plantago princeps* var. *longibracteata* and *P. p.* var. *princeps*. On Molokai, one population each of *Diellia erecta*, *Plantago princeps* var. *laxiflora*, and *Vigna o-wahuensis*, and two populations of *Neraudia sericea* are also threatened by pigs. On East Maui, pigs are destroying the habitat of three populations of *Plantago princeps* var. *laxiflora* (HHP 1992i12; J. Lau, pers. comm., 1992). On the island of Hawaii, feral pigs are a major threat to proposed species at the following locations: In Kahaualea NAR, Olaa Tract, and 2.4 km (1.5 mi) northwest of Puu Kauka, where at least three populations of *Adenophorus periens* occur; and in the regions of Manuka and Honomalino in the South Kona District, where one or more populations of *Diellia erecta* and *Flueggea neowawraea* remain (J. Lau, pers. comm., 1992).

Goats (*Capra hircus*), native to the Middle East and India, were first successfully introduced to the Hawaiian Islands in 1792. Feral goats now occupy a wide variety of habitats from lowland dry forests to montane grasslands on Kauai, Oahu, Molokai, Maui, and Hawaii, where they consume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of alien plants (Stone 1985, van Riper and van Riper 1982). Goats are significantly degrading the habitat of at least five species proposed in this rule. On Kauai, goats contribute to the substantial decline of one population of *Bonamia menziesii*, four populations of *Flueggea neowawraea*, and one population of *Plantago princeps* var. *anomala* (HHP 1992d18, 1992d30, 1992d31, 1992i2; J. Lau, pers. comm., 1992). On Oahu, encroaching urbanization and hunting pressure tend to concentrate the goat population in the dry upper slopes of the Waianae Mountains, where one population of *Bonamia menziesii* and two populations of *Flueggea neowawraea* exist (HHP 1992d15; J. Lau, pers. comm., 1992). The goat population in the Waianae area is apparently increasing, becoming an even greater threat to the rare plants that grow there. On Molokai, two populations of *Diellia erecta* in Halawa Valley and Puu Kolekole and one population of *Neraudia sericea* at Makolelau are presently threatened by goats (HHP 1992c12, 1992c13; J. Lau, pers. comm., 1992). Until a few years ago, feral goats were a major threat to rare plants in Haleakala National Park on East Maui, but because of an active ungulate control program, the goat population was reduced to 100 by 1988. While they are no longer a significant threat, the future ingress and reestablishment of goats are still a possibility (Lloyd Loope, National Park Service, pers. comm., 1992) and could potentially affect the three populations of *Plantago princeps* var *Laxiflora* found in the park (J. Lau, pers. comm., 1992).

Eight individuals of axis deer (*Axis axis*), introduced to the island of Molokai in 1868, increased to thousands of animals within about 30 years (Tomich 1986). By the turn of the century, the herds so damaged the vegetation of Molokai that professional hunters were hired to control their numbers (Tomich 1986). By then, the native vegetation had suffered irreparable damage from overgrazing by axis deer. They degrade the habitat by trampling and overgrazing vegetation, which removes ground cover and exposes the soil to erosion (J. Lau, pers. comm., 1992). Activity of deer on Molokai has resulted in loss of habitat and/or individuals of at least five of the proposed species. On both Molokai and Lanai, the axis deer population is presently actively managed for recreational hunting by the State Department of Land and Natural Resources. Extensive red erosional scars caused by decades of deer activity are evident on Lanai. The habitat of three Lanai populations of *Bonamia menziesii* and one population of *Hibiscus brackenridgei* ssp. *brackenridgei* on that island is negatively affected by axis deer (HHP 1992e1; J. Lau, pers. comm., 1992). Two populations of *Sesbania tomentosa* at Paomai and Mahana on Lanai were last seen in the mid-1950s (HHP 1992j17, 1992j38). Those areas have long supported axis deer, which probably pose the primary threat to those two *Sesbania* populations. Elsewhere on Lanai, one population of *Vigna o-wahuensis* above Lapaiki and one population of *Spermolepis hawaiiensis* at Kapoho are threatened by axis deer (HHP 1992L7, 1992m23). To control deer in what remains of Lanai's dry forests, TNCH is presently erecting fenced exclosures to protect populations of rare taxa (including two populations of *Bonamia menziesii*) that occur within Kanepuu Preserve (Heidi Bornhorst, TNCH, and J. Lau, pers. comm., 1992). Although the fence is high enough to normally inhibit entry by deer, human pressure can force the deer to jump over the fence. On Maui, deer damage plants of two populations of *Hibiscus brackenridgei* ssp. *brackenridgei* at Puu O Kali by stripping the bark and breaking limbs (HHP 1992e1, 1992e8).

Black-tailed deer (*Odocoileus hemionus*) were first introduced to Kauai in 1961 for the purpose of sport hunting and today probably number well over 500 animals. The deer are presently confined to the western side of the island, where they feed on a variety of native and alien plants (van Riper and van Riper 1982). On Kauai, one population of *Bonamia menziesii* in Paaiki Valley and the population of *Flueggea neowawraea* in Paaiki and Mahanaloa valleys are threatened by black-tailed deer (J. Lau, pers. comm., 1992).

Large-scale ranching of cattle (*Bos taurus*) in the Hawaiian Islands began in the middle of the 19th century on the islands of Kauai, Oahu, Maui, and Hawaii. Large ranches tens of thousands of acres in size developed on East Maui and Hawaii (Cuddihy and Stone 1990) where most of the State's large ranches still exist today. Degradation of native

forests used for ranching activities became evident soon after full-scale ranching began. The negative impact of cattle on Hawaii's ecosystem is similar to that described for goats and deer (Cuddihy and Stone 1990, Stone 1985). Cattle grazing continues in several lowland regions in the northern portion of the Waianae Mountains of Oahu: in Lualualei, where one population of *Bonamia menziesii* exists, and in Kaumoku Gulch, where one population of *Hibiscus brackenridgei* ssp. *mokuleianus* remains (HHP 1992b30; J. Lau, pers. comm., 1992). On Molokai, cattle ranching is slowly recovering from setbacks caused by recent herd reductions enforced in an effort to eliminate bovine tuberculosis from domestic and feral stock. As cattle ranching becomes reestablished on Molokai and the number of cattle increases, the threat to the rare plant species that remain in those ranching areas will also likely increase. One population of *Sesbania tomentosa* located east of Moomomi Preserve grows in a grazing area. On Maui, cattle ranching is the primary agricultural activity on the west and southwest slopes of East Maui and in lowland regions of West Maui. On both East and West Maui, one or more populations of *Bonamia menziesii, Diellia erecta,* and *Hibiscus brackenridgei* ssp. *brackenridgei* and the only Maui population of *Flueggea neowawraea* continue to be threatened by grazing cattle (HHP 1992c13; J. Lau, pers. comm., 1992). The *Flueggea neowawraea* population and one of the *Bonamia menziesii* populations grow within a fenced exclosure. Although probably minimal, the possibility of cattle entering the exclosure poses a potential threat. In the Kamaoa-Puueo and South Point regions of the island of Hawaii, cattle continue to graze in habitat currently occupied by most of the populations of *Sesbania tomentosa* on that island (J. Lau, pers. comm., 1992). In addition, one population of *Hibiscus brackenridgei* ssp. *brackenridgei* and the only known population of *Bonamia menziesii* on that island grow in regions currently used for cattle ranching (J. Lau, pers. comm., 1992).

Habitat disturbance caused by human activities threatens two of the proposed taxa. On West Maui, all-terrain vehicles have driven over *Sesbania tomentosa* plants growing west of Nakalele Point lighthouse (HHP 1992j43). Continued off-road activity threatens to destroy a significant portion of that population. On Hawaii Island, a dirt road runs through a population of *Sesbania tomentosa* located in the Kamaoa-Puueo region (HHP 1992j50). Off-road activity would damage a significant portion of that population as well. In the Puu Anahulu region on that island, a ranch road was bulldozed close to a plant of *Hibiscus brackenridgei* ssp. *brackenridgei* in 1989 (HHP 1992e6). Continued road development threatens to destroy the only known population of that taxon in the area.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a factor, but unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity and would seriously impact the six species whose low numbers make them especially vulnerable to disturbances (*Diellia erecta, Hibiscus brackenridgei, Mariscus pennatiformis, Neraudia sericea, Solanum incompletum,* and *Vigna o-wahuensis*). Such disturbances could also promote erosion and greater ingression of alien plant species.

C. *Disease and predation.* Black twig borer (*Xylosandrus compactus*) has been cited as an immediate threat to all extant populations of *Flueggea neowawraea* (J. Lau, pers. comm., 1992). The black twig borer burrows into the branches and introduces a pathogenic fungus, pruning the host severely and often killing branches or whole plants (Howarth 1985). All known plants of *Flueggea neowawraea* suffer slight to severe defoliation and reduced vigor due to infestations of this alien insect.

Evidence of predation on two of the proposed taxa by ungulates (cattle, deer, goats) is documented on Oahu, Lanai, and Maui. On Oahu, plants of *Bonamia menziesii* at Lualualei grow over native vegetation and drape well below the browse line of cattle, indicating the potential for cattle to feed on the plants (HHP 1992b30). On Lanai, axis deer are known to feed on this species, especially at Kanepuu. Depredation of *Hibiscus brackenridgei* ssp. *brackenridgei* by goats has been observed on Lanai and Maui. Goats are known to eat the branch tips and strip the bark of the plants (HHP 1992e14). While there is no evidence of predation on the other 11 species, none of them are known to be unpalatable to cattle, deer, or goats. Predation is therefore a probable threat to species growing at sites where those animals have been reported (*Diellia erecta, Flueggea neowawraea, Neraudia sericea, Plantago princeps, Sesbania tomentosa, Spermolepis hawaiiensis,* and *Vigna o-wahuensis*) (see Factor A).

D. *The inadequacy of existing regulatory mechanisms.* Of the 12 proposed species, a total of 10 have populations located on private land, 1 on County land, 8 on State land, and 9 on Federal land. While 8 of the species occur in more than 1 of those ownership categories, the other 4 are restricted to a single category (i.e., only on private, State, or Federal land). There are no State laws or existing regulatory mechanisms at the present time to protect or prevent further decline of these plants on private land. However, Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State Government agencies. State regulations prohibit the removal, destruction, or damage of plants found on State lands. However, the regulations are difficult to enforce because of limited personnel. Hawaii's Endangered Species Act (HRS, Sect. 195D–4(a)) states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter and any indigenous species of aquatic life, wildlife, or land that has been determined to be a threatened species pursuant to the [Federal] Endangered Species Act shall be deemed to be a threatened species under the provisions of this chapter." Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, Sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of these 12 plant species would therefore reinforce and supplement the protection available under State law.

E. *Other natural or manmade factors affecting its continued existence.* Eleven of the 12 species being proposed for listing are threatened by competition with 1 or more alien plant species (see Table 2). The most significant of these appear to be *Schinus terebinthifolius* (Christmasberry), *Psidium cattleianum* (strawberry guava), *Melinus minutiflora* (molasses grass), *Pennisetum setaceum* (fountain grass), *Clidemia hirta* (Koster's curse), *Lantana camara* (lantana), *Leucaena leucocephala* (koa haole), *Prosopis pallida* (kiawe), *Toona ciliata* (Australian red cedar), *Cenchrus ciliaris* (buffelgrass), *Rubus argutus* (prickly Florida blackberry), *Passiflora*

mollissima (banana poka), and *Rubus ellipticus* (Himalayan raspberry).

Many noxious alien plants such as Christmasberry have invaded the dry to mesic lowland regions of the Hawaiian Islands. Introduced to Hawaii before 1911, Christmasberry forms dense thickets that shade out and displace other plants (Cuddihy and Stone 1990). This fast-growing tree or shrub is found in lowland areas of the major Hawaiian Islands (Smith 1985) and is currently expanding its range. Christmasberry is a major component of the mesic forests of the Waianae and Koolau Mountains of Oahu. For example, over half of the populations of *Bonamia menziesii*, 2 of the populations of *Plantago princeps* var. *princeps*, and all 15 populations of *Flueggea neowawraea* that occur on Oahu are negatively affected by this invasive plant (HHP 1992b18, 1992b22, 1992b31, 1992d3, 1992d15, 1992d16; J. Lau, pers. comm., 1992). In addition, one population of *Diellia erecta* at Halawa Valley on Molokai and one population of *Bonamia menziesii* on Lanai are also affected (J. Lau, pers. comm., 1992). On Maui, Christmasberry is spreading in Iao Valley and on the south slope of East Maui (Haleakala Volcano) and is one of the primary alien plant threats to one or more populations of *Bonamia menziesii*, *Diellia erecta*, and *Plantago princeps* var. *laxiflora* that exist there (J. Lau, pers. comm., 1992). On the island of Hawaii, Christmasberry continues to threaten at least two populations of *Diellia erecta* and *Flueggea neowawraea* in the regions of Manuka and Honomalino in the South Kona District (HHP 1992d34; J. Lau, pers. comm., 1992).

Strawberry guava, an invasive shrub or small tree native to tropical America, has become naturalized on all of the main Hawaiian islands. Like Christmasberry, strawberry guava is capable of forming dense stands that exclude other plant species (Cuddihy and Stone 1990) and is dispersed mainly by feral pigs and fruit-eating birds (Smith 1985). This alien plant grows primarily in mesic and wet habitats and provides food for several alien animal species, including feral pigs and game birds, which disperse the plant's seeds through the forest (Smith 1985, Wagner *et al.* 1985). Strawberry guava is considered one of the greatest alien plant threats to Hawaii's rain forests and is known to pose a direct threat to at least one population each of *Adenophorus periens* and *Bonamia menziesii* on the island of Kauai (HHP 1992a16; J. Lau, pers. comm., 1992). Strawberry guava is a major invader of forests in the Waianae and Koolau Mountains of Oahu, where it often forms single-species stands. It poses an immediate threat to 6 populations of *Bonamia menziesii*, 10 populations of *Flueggea neowawraea*, and 1 population of *Plantago princeps* var. *princeps* on that island (HHP 1992b5, 1992b14, 1992b18, 1992b21; J. Lau, pers. comm., 1992). On Molokai, the habitat of the Halawa Valley population of *Diellia erecta* is currently being invaded by strawberry guava (HHP 1992c12). On Maui, strawberry guava is beginning to invade the habitat of one population each of *Bonamia menziesii* and *Plantago princeps* var. *laxiflora* on West Maui and at least one population each of *Diellia erecta* and *Plantago princeps* var. *laxiflora* on East Maui (J. Lau, pers. comm., 1992). It is also a major threat to the habitat of *Adenophorus periens* in Kahaualea NAR on the island of Hawaii (HHP 1992a8).

First introduced to the Hawaiian Islands as cattle fodder, molasses grass was later planted for erosion control (Cuddihy and Stone 1990). This alien grass quickly spread to dry and mesic forests previously disturbed by ungulates. Molasses grass produces a dense mat capable of smothering plants (Smith 1985), essentially preventing seedling growth and native plant reproduction (Cuddihy and Stone 1990). Because it burns readily and often grows at the border of forests, molasses grass tends to carry fire into areas with woody native plants (Cuddihy and Stone 1990, Smith 1985). It is able to spread prolifically after a fire and effectively compete with less fire-adapted native plant species, ultimately creating a stand of alien grass where forest once stood. Molasses grass is becoming a major threat to several of the proposed species on four islands. In the Waianae Mountains of Oahu, three populations of *Bonamia menziesii* and one population of *Plantago princeps* var. *princeps* are immediately threatened by this grass. On Molokai, at least one population each of *Diellia erecta*, *Plantago princeps* var. *laxiflora*, and *Neraudia sericea* and all populations of *Vigna o-wahuensis* on the island are also negatively affected. Molasses grass is quickly spreading throughout the dry regions of West Maui, threatening two populations of *Diellia erecta* there. On Hawaii Island, a population of *Sesbania tomentosa* in Hawaii Volcanoes National Park is located in an area invaded by molasses grass (J. Lau, pers. comm., 1992).

Like molasses grass, fountain grass has greatly increased fire risk in some regions, especially on the dry slopes of Hualalai, Kilauea, and Mauna Loa volcanoes on the island of Hawaii. The effects of fountain grass invasion are similar to those discussed above for molasses grass. Fountain grass threatens the native vegetation on the leeward slopes of Hualalai in a region where at least one population of *Hibiscus brackenridgei* ssp. *brackenridgei* and the only known Hawaii Island populations of *Bonamia menziesii* and *Vigna o-wahuensis* exist (HHP 1992m12; J. Lau, pers. comm., 1992).

Koster's curse, a noxious shrub native to tropical America, was first reported on Oahu in 1941. It had spread through much of the Koolau Mountains by the early 1960s, and spread to the Waianae Mountains by 1970 (Cuddihy and Stone 1990). It poses a serious threat to two populations of *Plantago princeps* var. *longibracteata* in the Koolau Mountains. Koster's curse is widespread in Honouliuli and threatens two populations of *Flueggea neowawraea* that occur in that area of the Waianae Mountains. This prolific alien plant has recently spread to five other islands, including Kauai, where there are at least five small infestations totalling about 40 ha (100 ac) (Cuddihy and Stone 1990); one of these poses an immediate threat to one population of *Adenophorus periens* in Waioli Valley (J. Lau, pers. comm., 1992).

Lantana, a native of the West Indies, became naturalized in dry to mesic forests and shrublands of the Hawaiian Islands before 1871 (Cuddihy and Stone 1990). This shrub often forms thick cover and produces chemicals that inhibit the growth of other plant species (Smith 1985). On Kauai, lantana is a major component of the vegetation at Paaiki Valley and Waimea Canyon and is rapidly becoming established in Pohakuao. It poses a threat to populations of *Flueggea neowawraea* in those areas (HHP 1992d13, 1992d17, 1992d18, 1992d30, 1992d31). One population of *Bonamia menziesii* on Lanai and one on Maui are also negatively affected by this invasive plant (HHP 1992b1, 1992b24).

Koa haole, a shrub naturalized and often dominant in low elevation, dry, disturbed areas on all of the main Hawaiian Islands, threatens to degrade the habitat of six of the proposed species. Koa haole is one of the major weeds found at Polihale on the island of Kauai, growing in the vicinity of a population of *sesbania tomentosa* (HHP 1992j33; J. Lau, pers. comm., 1992). In the Waianae Mountains of Oahu, koa haole is one of the primary weed threats to half of the *Bonamia menziesii* populations and all of the *Hibiscus brackenridgei* ssp. *mokuleianus* populations found in the area (HHP 1992b12, 1992b19, 1992e23; J. Lau, pers. comm., 1992). Most of the Molokai

populations of *Sesbania tomentosa* and one of the Kahoolawe populations of *Vigna o-wahuensis* are also negatively affected by koa haole (HHP 1992j13; J. Lau, pers. comm., 1992). On Maui, koa haole poses a threat to *Hibiscus brackenridgei* ssp. *brackenridgei* and *Spermolepis hawaiiensis* in the Lihau Section of the West Maui NAR, and is probably also a threat to *Hibiscus brackenridgei* ssp. *brackenridgei* and *Sesbania tomentosa* elsewhere on West Maui (HHP 1992e3; J. Lau, pers. comm., 1992).

Kiawe, a deciduous thorny tree that can grow to 20 m (65 ft) in height, overshadows other plants and competes with associated vegetation for available water and space. At Polihale on the island of Kauai, it is the primary alien plant threat to *Sesbania tomentosa*. Two Molokai populations of *Sesbania tomentosa* compete with kiawe for water and space on Moomomi's beaches. The primary alien plant threat to *Vigna o-wahuensis* on the island of Kahoolawe is kiawe (HHP 1992m21).

Australian red cedar is a fast-growing tree that was probably introduced to Hawaii for lumber. It is now found in many of Hawaii's extensively planted lowland forests and has become naturalized in mesic to wet forests (Wagner *et al.* 1990). Today, this tree is a definite threat to at least one population of *Bonamia menziesii* and most of the plants of *Flueggea neowawraea* in the Waianae Mountains of Oahu (J. Lau, pers. comm., 1992).

Buffelgrass forms continuous cover in dry habitats and provides excellent fuel for fire, from which it recovers quickly. Its seeds are easily dispersed by wind (Smith 1985). Buffelgrass threatens the habitat of two populations of *Sesbania tomentosa* on Molokai, and at least one population of *Vigna o-wahuensis* on Kahoolawe (J. Lau, pers. comm., 1992).

Prickly Florida blackberry was introduced to the Hawaiian Islands in the late 1800s (Haselwood and Motter 1976). The fruit are easily spread by birds to open areas where this plant can form dense, impenetrable thickets (Smith 1985). The Kauai population of *Adenophorus periens* that is located at the boundary of Hono O Na Pali NAR and Na Pali Coast State Park is threatened by this noxious weed (J. Lau, pers. comm., 1992).

A vine in the passionflower family, banana poka was introduced to the islands in the 1920s, probably as an ornamental. This vine is extremely detrimental to certain wet forest habitats of Kauai, Maui, and Hawaii. Heavy growth of this vine can cause damage or death to the native trees by overloading branches, causing breakage, or by forming a dense canopy cover, intercepting sunlight and shading out native plants below. An infestation of this vine is located at Olaa Tract on Hawaii Island, the site of one population of *Adenophorus periens* (J. Lau, pers. comm., 1992).

A recent introduction to the Hawaiian Islands, yellow Himalayan raspberry is rapidly becoming a major weed pest in wet forests, pastures, and other open areas on the island of Hawaii. It forms large thorny thickets and displaces native plants. Its ability to invade the understory of wet forests enables it to fill a niche presently unoccupied by any other major wet forest weed in Hawaii. This has resulted in an extremely rapid population expansion of this alien plant in recent years. One population of *Adenophorus periens* grows in Olaa Tract within Hawaii Volcanoes National Park in a region where yellow Himalayan raspberry is found in increasing numbers (J. Lau, pers. comm., 1992).

There are a number of other alien plant species that pose a significant threat to populations of the plants being proposed. *Cynodon dactylon* (Bermuda grass) is a major threat to at least one population of *Sesbania tomentosa* at Moomomi on Molokai. *Senecio mikanioides* (German ivy), a noxious, wind-dispersed vine that forms localized mats of vegetation, is a threat to the only currently known population of *Solanum incompletum* on the island of Hawaii (J. Lau, pers. comm., 1992). This *Solanum incompletum* population is fenced and protected from ungulates; however, it is not protected from German ivy. *Syzygium cumini* (Java plum), a large evergreen tree, is an aggressive invader of undisturbed forests (Smith 1985). It threatens to shade out the only known populations of *Hibiscus brackenridgei* ssp. *mokuleianus* on Oahu (J. Lau, pers. comm., 1992). *Melia azedarach* (pride of India), a fast-growing deciduous tree that forms deep shade, grows in open dry habitats. A major infestation of this large tree in Waimea Canyon on Kauai poses an immediate threat to individuals of *Flueggea neowawraea* (HHP 1992d18, 1992d31).

Fire threatens five plant species growing in dry to mesic grassland, shrubland, and forests on five islands. On Oahu, fire is a potential threat to three populations of *Bonamia menziesii* and two populations of *Flueggea neowawraea* located adjacent to Makua Military Reservation, where current ordnance training exercises could unintentionally ignite fires (HHP 1992b12, 1992b19, 1992b20, 1992d12; J. Lau, pers. comm., 1992). The area has had a history of fires that may have burned through at least one of the populations of *Bonamia menziesii* and burned to within a few tens of meters of another (HHP 1992b19, 1992b20). Fire is also a threat to the following populations: one population each of *Bonamia menziesii* and *Flueggea neowawraea* on Oahu, one population of *Bonamia menziesii* on Lanai, two populations of *Sesbania tomentosa* and one population of *Vigna o-wahuensis* on Molokai, all known populations of *Vigna o-wahuensis* on Kahoolawe, and at least one population each of *Bonamia menziesii* and *Sesbania tomentosa* on Hawaii Island (HHP 1992d12; J. Lau, pers. comm., 1992). Of note is a population of *Adenophorus periens* in Kahaualea NAR on the island of Hawaii (HHP 1992a8). Tephra fallout and lava flows from Kilauea Volcano have affected the NAR over the past several years. Wildfires ignited by volcanic activity have destroyed some of the NAR's mesic and wet forests. In addition, tephra fallout and noxious volcanic gases have caused extensive damage to surrounding native forests. Such catastrophic natural events threaten to destroy the region's largest population of *Adenophorus periens*.

The small number of populations and of individual plants of seven of these species (*Diellia erecta, Hibiscus brackenridgei, Mariscus pennatiformis, Neraudia sericea, Solanum incompletum, Spermolepis hawaiiensis,* and *Vigna o-wahuensis*) increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or the only known extant population. For example, *Solanum incompletum* is known from a single population on Hawaii Island and numbers only two individuals. A total of 5 of the proposed species has fewer than 10 populations and 5 of the species are estimated to number no more than 100 individuals (see Table 2). All of the proposed species except *Sesbania tomentosa* either number fewer than 20 populations or total fewer than 200 individuals. The reproductive system of *Flueggia neowawraea* further exacerbates the problem of limited numbers: because each tree bears only male or female flowers, they must be cross-pollinated from a different tree (Hayden 1990). If only a few trees flower at the same time, or if flowering trees are too widely separated for pollination by insects, no seed will be set. The survival of small, isolated populations, which probably are already

experiencing depressed reproductive vigor, is therefore further threatened.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this analysis, the preferred action is to propose 12 species, *Adenophorus periens, Bonamia menziesii, Diellia erecta, Flueggea neowawraea, Hibiscus brackenridgei, Mariscus pennatiformis, Neraudia sericea, Plantago princeps, Sesbania tomentosa, Solanum incompletum, Spermolepis hawaiiensis,* and *Vigna o-wahuensis,* as endangered. The 12 species are threatened by 1 or more of the following: habitat degradation and/or predation by pigs, goats, deer, and cattle; competition for space, light, water, and nutrients by alien plants; habitat loss from fires; human impacts from recreational activities; and insect infestations. Seven of the 12 species either number no more than about 100 individuals or are known from fewer than 10 populations. Small population size and limited distribution make these species particularly vulnerable to extinction from reduced reproductive vigor or from stochastic events. Because these 12 species are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act. Therefore, the determination of endangered status for these 12 species appears warranted.

Critical habitat is not being proposed for the 12 species included in this rule for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species. Such a determination would result in no known benefit to the species. The species have low total populations and/or numbers of individuals and face anthropogenic threats. The publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers as required in proposal for critical habitat would increase the degree of threat to these plants from take or vandalism and could contribute to their decline. The listing of these species as either endangered or threatened publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowners have been notified of the importance of protecting the habitat of these species. Protection of the habitat of the species will be addressed through the recovery process and through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for these species is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of these species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species as its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Two taxa are located on Federal land in a national wildlife refuge on three Northwestern Hawaiian Islands: *Mariscus pennatiformis* ssp. *bryanii* grows only on the island of Laysan and *Sesbania tomentosa* is on Necker and Nihoa. On Hawaii Island, two species (*Adenophorus periens* and *Sesbania tomentosa*) are located in Hawaii Volcanoes National Park. Three populations of *Plantago princeps* var. *laxiflora* are located in Haleakala National Park on Maui. The two national parks and historic site on Maui and Hawaii are under the jurisdiction of the National Park Service. Federal laws protect all plants on the national wildlife refuges, national parks, and national historic sites from damage or removal.

Six of the species being proposed occur on land owned or leased by the U.S. Department of Defense. Populations of *Bonamia menziesii* and *Flueggea neowawraea* are located in the mountains of the Lualualei Naval Reservation. No military activities currently affect those populations. On the island of Oahu, *Flueggea neowawraea* is known to grow on lands owned by the U.S. Army in Schofield Barracks Military Reservation. One population of *Hibiscus brackenridgei* ssp. *mokuleianus* may possibly occur at Schofield Barracks as well. Three of the proposed species are located on State-owned land currently leased to the U.S. military: On Oahu, *Bonamia menziesii* and *Flueggea neowawraea* are located within Makua Military Reservation and *Spermolepis hawaiiensis* is located in Diamond Head Reservation, leased by the Department of Defense. Portions of Makua Military Reservation are used by the Army and other branches of the military for ordnance training. The two species are not located inside the impact areas or adjacent buffer zones and thus are not directly affected by military activities. The Army has constructed firebreaks on the Makua Military Reservation to minimize damage from unintentional fires that occasionally result from stray bullets (Herve Messier, U.S. Army, Ft. Shafter, pers. comm., 1990). Plants of *Spermolepis hawaiiensis* are restricted to the outer slope of Diamond Head and are not in an area affected by military activities. Two proposed species (*Sesbania tomentosa* and *Vigna o-wahuensis*) grow on the federally owned island of Kahoolawe. Although ordnance disposal procedures are currently in place and periodic detonation of ordnance is required on the island, the populations of the three species found there are at sites too remote to sustain impacts from such detonation (J. Lau, pers. comm., 1992). The federally appointed Kahoolawe Island Conveyance Commission is currently assessing the future use of the island and possible

transfer of land title to the State. If such a transfer were to occur, the three species would continue to be protected under both the Federal and State Endangered Species Acts. There are no other known Federal activities that occur within the presently known habitat of these 12 plant species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to the 12 plant species proposed to be listed as endangered, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species are not common in cultivation nor in the wild.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104; FAX 703/358–2281).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for at least one public hearing on this proposal, if requested. Hearing requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor of the Pacific Islands Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Office (see **ADDRESSES** above).

Author

The primary authors of this proposed rule are Joan E. Canfield and Derral R. Herbst, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749). Substantial data were contributed by the Hawaii Heritage Program.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend 17.12(h) by adding the following species, in alphabetical order under the families indicated, and by adding two new families, "Grammitidaceae—Grammitis family" and "Plantaginaceae—Plantain family," in alphabetical order, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
• • •		•	•	•	•	•
Apiaceae—Parsley family:						
• • •		•	•	•	•	•
Spermolepis hawaiiensis	None	U.S.A. (HI)	E		NA	NA

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
• •	•	•	•	•	•	•
Aspleniaceae—Spleenwort family:						
• •	•	•	•	•	•	•
Diellia erecta	None	U.S.A. (HI)	E		NA	NA
• •	•	•	•	•	•	•
Convolvulaceae—Morning-glory family:						
• •	•	•	•	•	•	•
Bonamia menziesii	None	U.S.A. (HI)	E		NA	NA
• •	•	•	•	•	•	•
Cyperaceae—Sedge family:						
• •	•	•	•	•	•	•
Mariscus pennatiformis	None	U.S.A. (HI)	E		NA	NA
• •	•	•	•	•	•	•
Euphorbiaceae—Spurge family:						
• •	•	•	•	•	•	•
Flueggea neowawraea	Mehamehame	U.S.A. (HI)	E		NA	NA
• •	•	•	•	•	•	•
Fabaceae—Pea family:						
• •	•	•	•	•	•	•
Sesbania tomentosa	'Ohai	U.S.A. (HI)	E		NA	NA
• •	•	•	•	•	•	•
Vigna o-wahuensis	None	U.S.A. (HI)	E		NA	NA
• •	•	•	•	•	•	•
Grammitidaceae—Grammitis family:						
• •	•	•	•	•	•	•
Adenophorus periens	Pendant kihi fern	U.S.A. (HI)	E		NA	NA
• •	•	•	•	•	•	•
Malvaceae—Mallow family:						
• •	•	•	•	•	•	•
Hibiscus brackenridgei	Ma'o hau hele	U.S.A. (HI)	E		NA	NA
• •	•	•	•	•	•	•
Plantaginaceae—Plantain family:						
Plantago princeps	Laukahi Kuahiwi	U.S.A. (HI)	E		NA	NA
• •	•	•	•	•	•	•
Solanaceae—Nightshade family:						
• •	•	•	•	•	•	•
Solanum incompletum	Popolo ku mai	U.S.A. (HI)	E		NA	NA
• •	•	•	•	•	•	•
Urticaceae—Nettle family:						
• •	•	•	•	•	•	•
Neraudia sericea	None	U.S.A. (HI)	E		NA	NA
• •	•	•	•	•	•	•

Dated: August 17, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–22306 Filed 9–13–93; 8:45 am]

BILLING CODE 4310–55–P–M

Notices

Federal Register
Vol. 58, No. 176
Tuesday, September 14, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 93–117–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date Issued	Organisms	Field Test Location
93–054–02 ...	Michigan State University.	08–11–93	Bentgrass plants genetically engineered to express the enzyme betaglucuronidase as a marker.	Michigan.
93–165–02 ...	Upjohn Company.	08–12–93	Squash plants genetically engineered to express resistance to zucchini yellow mosaic virus, and watermelon mosaic virus 2.	North Carolina.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 8th day of September 1993

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–22425 Filed 9–13–93; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 93–114–1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service, during the month of July 1993. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of July 1993. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 9th day of September 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–22424 Filed 9–13–93; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Exemption of Selway Fire Timber Salvage Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a project designed to recover dead and dying timber is exempted from appeals filed under 36 CFR part 217.

SUMMARY: In September 1991, the Rackliff Fire on the Nez Perce National Forest burned about 3,400 acres. In August 1992, the Selway Complex burned about 733 acres near the Rackliff Fire. In February 1993, the Forest Supervisor proposed a salvage timber sale project to recover dead and damaged sawtimber from within the perimeter of these fires. The Forest Supervisor has determined, through an environmental analysis documented in the Selway Fire Timber Salvage Environmental Assessment (EA) and Decision Notice, that good cause exists to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the affected area must be accomplished quickly to avoid further deterioration and to reduce the risk of catastrophic wild fire and to minimize the risk of insect infestation.

DATES: Effective on September 14, 1993.

FOR FURTHER INFORMATION CONTACT: Cynthia Lane, Selway District Ranger; Nez Perce National Forest; HCR 75, Box 91; Kooskia, ID 83539. Telephone 208–926–4258.

SUPPLEMENTARY INFORMATION: The Selway fires of 1991 and 1992 burned approximately 4,133 acres within the Selway River watershed. Most of the tree mortality and damage occurred on about 1,000 acres. The affected areas are located in Management Areas 8.2, 15, and 16, which are designed as suitable timberland in the Nez Perce Forest Plan (October 1987).

In February 1993, the Forest Supervisor proposed the salvage of commercial sawtimber on lands that were affected by these fires. This proposal was designed to meet the following needs: (1) Capture as much of the economic value as possible, (2) reduce or eliminate the food source for insects and reduce the potential for live trees to be impacted by the increase in insect populations, and (3) reduce potential fuel levels.

Nine significant environmental issues were identified through scoping, and these issues were the basis for the environmental analysis disclosed in the EA. Five alternatives were analyzed. Five other alternatives were considered but dismissed from detailed consideration.

The selected alternative would salvage approximately 5.5 MMBF of dead and damaged timber from approximately 398 acres. All yarding is to be done with helicopters to one landing, which will be accessed on existing roads. Approximately 0.3 miles of road reconstruction is required. The access road will be closed to public traffic after use.

The sale is designed to accomplish the objectives as quickly as possible to minimize the risk of insect infestations, to reduce fuel loading, and to recover merchantable sawtimber before it deteriorates in value and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being carried out. Under this regulation, the following types of decisions may be exempted from administration appeal:

> Decisions related to the rehabilitation of National Forest System lands and recovery of forest resources resulting from * * * wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based on the environmental analysis documented in the Selway Fire Salvage Timber Sale EA and in the Nez Perce Forest Supervisor's Decision Notice, I have determined that good cause exists to exempt the decision to implement this project. Therefore, upon publication of this notice, the Selway Fire Salvage Timber Sale will not be subject to review under 36 CFR part 217.

Dated: September 8, 1993.

Christopher D. Risbrudt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93–22366 Filed 9–13–93; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Membership of the Performance Review Board

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of membership of the USCCR Performance Review Board.

SUMMARY: This notice announces the appointment of the Performance Review Board (PRB) of the United States Commission on Civil Rights. Publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of the U.S. Commission on Civil Rights Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Staff Director, U.S. Commission on Civil Rights for the FY 1993 rating year.

FOR FURTHER INFORMATION CONTACT:

Ms. Marcia Tyler, Personnel Division, U.S. Commission on Civil Rights, 624 Ninth Street NW., Washington, DC 20425 (202) 376–8364.

Members

Lawrence B. Glick, Chairman of PRB, Acting General Counsel, U.S. Commission on Civil Rights

Sharon Smith Holston, Associate Commissioner for Management, Food and Drug Administration

Gene Kinlow, Deputy Assistant Secretary for Personnel Administration, Department of Health and Human Services

Bert Silver, Assistant Staff Director for Administration (Retired), U.S. Commission on Civil Rights

Dated: September 9, 1993.

Emma Gonzalez-Joy,

Solicitor.

[FR Doc. 93–22426 Filed 9–13–93; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Report of Disposition of Section 232 National Security Import Investigation of Ceramic Semiconductor Packages

AGENCY: Department of Commerce. Bureau of Export Administration, Office of Industrial Resource Administration.

ACTION: Notice of report of disposition of section 232 national security import investigation of ceramic semiconductor packages.

SUMMARY: The Secretary of Commerce has determined that imports of ceramic semiconductor packages are not a present threat to U.S. national security. The Secretary recommended steps to improve the economic condition and defense responsiveness of the U.S. ceramic semiconductor package industry, and said that he will review the status of the domestic industry in one year to determine whether another national security study is warranted. This notice includes the Executive Summary of the Department's section 232 investigation report to the President.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Deputy Assistant Secretary for Industrial Resource Administration, (202) 482–4506, or Brad Botwin, Director, Strategic Analysis Division, (202) 482–4060, room H3878, U.S. Department of Commerce, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On November 18, 1992, the Bureau of Export Administration initiated an investigation of the impact of imports of ceramic semiconductor packages on the national security. The Department announced this action in the **Federal Register** on November 25, 1992, and solicited public comments at that time. This investigation was made pursuant to a petition brought by the Coors Electronic Package Company and Ceramic Process Systems Corporation under the terms of section 232 of the Trade Expansion Act of 1962, as amended. The Department had 270 days (in this case until August 16, 1993) to submit a report of its investigation to the President.

On August 16, 1993, the Department submitted its investigation report to the President. The investigation found that ceramic semiconductor packages were not now being imported into the United States in such quantities or under such circumstances as threaten to impair the national security. The Secretary stated that he will review the financial and production status of the domestic industry in one year, and if the situation warrants, another national security investigation will be initiated.

Although current conditions in the ceramic package industry do not present an immediate threat to national security, improving the capabilities of the domestic industry was deemed desirable for both economic and national security reasons. Therefore, the Secretary of Commerce recommended a four-part Action plan to improve the competitiveness of this industry in the United States. The recommended Action plan consists of the following: (1) Establishment of a Manufacturing Center of Excellence to address domestic producers' production deficiencies; (2) creation of a Materials Research and Development Program; (3) creation of a Product and Process Qualification Program; and (4) formation of a Government-Industry Ceramic Package Working Group to coordinate the above activities.

Commerce's Bureau of Export Administration (BXA) organized an interagency team of experts for this study effort, and conducted a comprehensive survey of all identifiable domestic ceramic package producers and importers, and a sample of ceramic package end users. The survey covered such topics as shipments, employment, R&D, investment, and defense capabilities. We supplemented this information with additional independent research, and a review of earlier public- and private-sector industry studies.

From a military perspective, we found that ceramic packages are a key component of the microelectronic element of virtually every U.S. military system. Defense products account for about 20 percent of all ceramic packages used in the United States. The investigation found that the U.S. industry suffered declines in profitability, capacity, capacity utilization, investment and employment between 1990 and 1992.

The text of the Commerce report (excluding business proprietary and national security classified information) will be made available for public review and duplication in the Bureau of Export Administration's Public Reference Room, room 4525, U.S. Department of Commerce, Washington, DC 20230, (202) 482–2593. Copies are available for sale from the National Technical Information Service (NTIS) by calling (703) 487–4650 and requesting PB 93–

192441. The Executive Summary follows below.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

Executive Summary

Finding and Recommendations

• The Department of Commerce finds that ceramic semiconductor packages are not being imported into the United States in quantities and under such circumstances as to threaten to impair U.S. national security. Although current conditions in the ceramic package industry do not present an immediate threat to national security, improving the capabilities of the domestic ceramic package industry is desirable for both economic and national security reasons.

• The Department of Commerce has developed an Action Plan consisting of four elements to address the manufacturing, technology, and financial shortfalls of the domestic ceramic package industry. This plan was developed with extensive input from representatives of a number of government agencies and laboratories with expertise in ceramic package material and manufacturing issues, and is a cost-effective, broad-based industry-government effort to address the challenges facing this key sector.

• The Action Plan consists of the following four elements:

(1) Manufacturing Center of Excellence for Ceramic Packages to address the production deficiencies of domestic producers;

(2) Ceramic Materials Research and Development Program to develop advanced materials to ensure the qualitative superiority of ceramic packages for defense and commercial use, to be led by the National Institute of Standards and Technology and Oak Ridge National Laboratory;

(3) Product and Process Qualification will be undertaken to remove one of the most costly impediments to the growth of the domestic industry. This qualification program involving on-site company certification and laboratory support will be carried out by the National Institute of Standards and Technology and Sandia National Laboratory.

(4) Government-Industry Working Group on Ceramic Packages to coordinate the above activities with each other and seek the participation of related industry end user groups to ensure continued commitment by all parties.

• In addition, the Department of Commerce will review the financial and production status of the domestic industry one year from now, and if the situation warrants will initiate another section 232 investigation.

• The Department of Commerce/Bureau of Export Administration will also examine further the criteria for determining in future section 232 investigations what "threaten[s] to impair the national security" in the post-Cold War environment.

Background

• On November 10, 1992, Coors Electronic Package Company (Coors) of Chattanooga, TN and Ceramic Process Systems Corporation (CPSC) of Milford, MA petitioned the Department of Commerce (DOC) to conduct an investigation under section 232 of the Trade Expansion Act of 1962, as amended, to determine the effect of imports of ceramic semiconductor packages on the national security.

• In their petition, Coors and CPSC asserted that "(t)he most important example of the interdependence of the U.S. industrial base is the symbiotic relationship between semiconductors and the packages which house these integrated circuits." Coors/CPSC added that "a crisis exists within the ceramic package industry—a crisis precipitated by increased imports of ceramic packages from Japan and the 'monopoly' stranglehold of one foreign company on the ceramic packaging industry."

• The petitioners requested: (1) Government support for additional research and development leading to commercialization of advanced materials; (2) qualification assistance to enable domestic suppliers to participate on existing military programs being supplied with ceramic packages from Japan; and (3) any (additional) relief the President deems appropriate to stop the further deterioration of the U.S. ceramic package industry.

• By law, the Secretary of Commerce had 270 days from the date of initiation (in this case until August 16, 1993) in which to conduct an investigation and forward his findings and recommendations to the President.

Methodology

• Section 232(d) of the Act directs us to evaluate the "domestic production needed for projected national defense requirements, the capacity of domestic industries to meet such requirements, * * * the requirements of growth of such industries * * * including the investment * * * and development necessary to assure such growth, the importation of goods in terms of their quantities, availabilities, character, and use, * * * (and) the impact of foreign competition on the economic welfare of individual domestic industries," among other factors.

• Commerce conducted this investigation with assistance from the interagency community including the Departments of Defense (DOD), Energy, Justice, Labor, State and the Treasury; the Central Intelligence Agency; the Council of Economic Advisors; the National Aeronautics and Space Administration (NASA); the Office of Management and Budget; and the Office of the U.S. Trade Representative. Several of the government's leading experts in this technology took part including participants from: Commerce/National Institute of Standards and Technology (NIST); Defense/Naval Command, Control, and Ocean Surveillance Center; Energy/Sandia Lab; and NASA/Jet Propulsion Lab.

• The Department gathered further information by conducting separate surveys of ceramic package producers and ceramic package importer/end users. These surveys focused on such issues as: imports, production, financial condition, supplier qualification, research and development, investment, employment, complexity of defense products, alternative technologies, capacity constraints, and foreign sourcing/dependency.

• The Department received surveys from all identified U.S. producers and all identified direct importers, and secured additional surveys from a sampling of end users in the semiconductor, computer systems and defense systems industries.

• Additional information was gathered from public comments received in response to our **Federal Register** notice, on-the-record meetings held with interested parties, factory visits to five leading U.S. suppliers, and supplementary independent research.

The Product

• The four major functions of the ceramic package are: (1) To distribute electric power through and outside of the device; (2) to communicate signals through and outside of the device; (3) to dissipate heat; and (4) to protect the semiconductor die from potentially harmful elements of the ambient environment such as heat, moisture, and radiation.

• The value of ceramic packages may exceed 25 percent of the value of the integrated circuit. Packages increase in cost and importance as chips contain more information, operate faster and generate more heat.

• Most packages are custom-designed in an intimate collaboration between package manufacturer and customer. Most of the process is conducted in

clean room facilities to keep dust and other potential contaminants from adulterating the product.

• Both the complexity of design and difficulty of manufacturing semiconductor packages outstrip one's usual understanding of "packages" as being merely low-technology dispensable material. In their function, semiconductor packages are roughly comparable to a person's nervous system "interconnecting" the person's (or semiconductor device's) brain (or integrated circuit) with the rest of its system, as well as protecting its internal organs.

• Different package specifications are used depending upon the sophistication of the microchip housed in the package and on the device's intended use. One semiconductor producer reported to us, for example, that it employs over 100 different ceramic packages to house its various semiconductor products. Across the industry, there are many thousands of unique ceramic package products in use.

• Design and tooling costs, in particular, can be substantial. Comprehensive design capability is essential to the ultimate successful manufacture and use of the package. Green tape, the basic ceramic material, is another critical determinant of a company's capabilities and of the ultimate quality of its production. Each company's green tape formula is a closely-guarded secret consisting of a unique recipe of inputs and resulting in distinctive shrinkage during the subsequent firing process.

• In the basic production flow, after product design, green tape is produced on a tape casting machine or in rare instances, brought in from outside sources. Required holes are punched in the tape which are then filled with a conductive paste. The appropriate metallization pattern is screen-printed onto the tape, which is next laminated together with other tape if it is to be part of a multi-layer package. The single- or multi-layer tape sections are then fired at high temperature in a kiln. After firing, leads, pins and other external items are added, and gold or other protective coatings are affixed.

Importance of the Industry to National Security

• Ceramic semiconductor packages are a key component of the microelectronic element of virtually every military system. Survey respondents identified 113 distinct defense systems which require ceramic packages, and industry experts were unable to identify any system which does not include this product.

• Systems using ceramic packages include: The Patriot, Tomahawk, and Trident missiles; the Tacfire Artillery Fire Control System; the AEGIS radar; the Comanche Helicopter; the F–14 and F–18 aircraft, and the M1A1 Tank. In addition, ceramic packages are the medium of choice for latest-generation semiconductor products.

• Department of Commerce microelectronics industry experts and the Semiconductor Industry Association both estimate that direct and indirect military consumption account for approximately 20 percent of U.S. apparent consumption of ceramic packages. However, survey data show that defense users account for about 14 percent of U.S. apparent consumption of ceramic packages. This discrepancy can be accounted for by the lack of information available to package producers about the ultimate end use of some of their production.

• Virtually all producers and customers of ceramic packages state that it is extremely difficult to accurately estimate the percentage of ceramic packages they produce and/or use which ultimately go to defense end use. Reasons cited include: production of commercial and military products on the same line to identical specifications; use of commercial products for defense applications; and sale of semiconductors through distributors who do not report ultimate disposition to chip producers.

• Moreover, survey data show that imports account for 85 percent by value and 92 percent by units of all identifiable defense shipments. This finding is similar to that of a 1992 Department of Commerce study of sourcing patterns for three Naval weapon systems. That study found that ceramic packages exhibited the highest percentage foreign sourcing (in excess of 90 percent) for any of the hundreds of manufactured inputs into these systems.

Competitive Factors/Economic and Trade Data

• The 232 statute directs us to evaluate "the impact of foreign competition on the economic welfare of individual domestic industries * * * in determining whether such weakening of our internal economy may impair the national security."

• Domestic customers rate Japanese suppliers as superior on a wide range of competitive factors including: Breadth of product line, historical performance, quality and service.

• U.S.-owned firms' precarious competitive position is underscored by the economic and trade data. By virtually any measure, the U.S. ceramic package industry's performance has declined in recent years. Declines have occurred, for example, in profitability, production, capacity and capacity utilization, employment and other indicators.

• The eight domestic producers reporting lost $65 million in 1990 (20 percent of sales), lost an additional $96 million in 1991 (28 percent), and lost a further $90 million in 1992 (27 percent of sales). At least four of these eight firms were unprofitable for each of the three years of the survey period.

• Overall, U.S. production of ceramic packages declined 60 percent on a unit basis and 24 percent on a value basis between 1990 and 1992. The biggest declines occurred in high volume cerdip and cerpack product categories. Industry experts indicate that this trend is likely to continue.

• In 1992, the average capacity utilization rate (all firms, all types) was 52 percent on a unit basis. Capacity utilization of non-captive production was only 25 percent, however, and capacity utilization has sharply decreased in 1993 for the leading captive producer.

• In general, products in which U.S. production capacity had declined significantly had the highest capacity utilization rates, whereas products in which U.S. capacity had increased had low utilization rates. Capacity utilization rates in 1992 (unit basis) ranged from six percent for both chip carriers with less than 50 terminals and other area arrays to 85 percent for cerdip. By firm, capacity utilization in 1992 ranged from 16 to 81 percent.

• U.S. producers identified labor cost/training and tooling availability as the most important bottlenecks to ramping up to maximum production capacity.

• Surveyed firms reported that employment fell 21 percent from 1991 to 1992, and is expected to decrease an additional seven percent in 1993. Nevertheless, two companies reported having difficulty in acquiring skilled labor, in particular engineers with proper education and experience in the ceramic package process.

• Import penetration has increased, and concerns are heightened by the high degree of dependence (about two-thirds of consumption) on one foreign producer with a limited number of production facilities. The danger of dependence on such a concentrated supply can be illustrated by the worldwide scramble to obtain sufficient epoxy resin for plastic semiconductor packages resulting from the recent explosion at Sumitomo's plant in Ebimo, Japan.

• Following this explosion, epoxy resin prices have sharply increased. If alternative sources of supply are not found, Japanese companies or the Japanese government may allocate the limited supplies of epoxy resin. As a result, the availability of epoxy resin—a commodity taken for granted a few weeks ago—could become a pacing item which will determine companies' ability to produce and supply semiconductor devices.

• Should the supply of ceramic packages from the dominant foreign producer be disrupted for whatever reason, semiconductor companies would be unable to produce semiconductor devices requiring ceramic packages for either military or advanced commercial products.

• U.S. industry investment has remained at 20 percent or above of shipments during the survey period, exceeding the level in the overall U.S. semiconductor industry. U.S. industry investment is projected to drop precipitously in 1993, however, reflecting decreased activity by two key producers.

• Based on U.S. firms' production and capacity declines and their tenuous financial condition, officials from several leading U.S. firms have told us that their continued survival in the ceramic package business is uncertain. Corroborating this, leading U.S. government industry experts including those from the Navy, Energy/Sandia and Commerce/NIST believe that survival of the U.S.-owned companies is problematic. The Commerce/NIST and the Department of the Navy electronic package industry experts forecast, for example, that without government action, all U.S.-owned ceramic package producers will exit the business within three to five years.

• A major captive producer of ceramic packages has just recently begun to participate in the merchant market. The success of this company in commercial markets is as yet untested.

Government Policies and Trade Practices

• Most U.S. producers and importers did not report that they had experienced foreign government or company anticompetitive trade practices that had affected their companies' economic condition or hampered their ability to supply U.S. national security needs.

• Allegations were made by some companies, however, that foreign suppliers provide free up-front tooling, require bundling (must buy all or nothing from one supplier), and that foreign producers will not certify the location of manufacture in order to avoid "Buy America" provisions for some weapons systems. Further, one respondent reported that it had never been able to sell ceramic packages in Japan "despite repeated efforts" even at a time when no competitive Japanese industry yet existed.

• All ceramic package producers reported having to make some type of adjustment to their business practices to meet U.S. government policies. Most complained of increased operating costs resulting from environmental and defense procurement qualifications in particular. To alleviate this perceived competitive disadvantage, most producers recommended some type of increased government assistant—such as an R&D tax credit, and increased funding of DOD's Manufacturing Technology (MANTECH) program. Importers similarly emphasized the need to adjust to environmental and defense procurement policies.

National Security Production Capacity Issues

• As a result of the rapidly changing national security challenges facing this country, the Department of Defense is currently unable to identify its exact quantitative requirements for ceramic semiconductor packages during a national security emergency.

• DOD states "that it is important to maintain a national security capability to produce semiconductor ceramic packaging, particularly custom packages and those used in space applications and in heavily corrosive environments."

• Survey respondents reported closing eight U.S. production lines since January 1991. The total annual production capacity lost due to these closings was $354 million, representing 39 percent of U.S. production capacity. In addition, several U.S. producers exited the ceramic package market altogether in recent years.

• Four firms identified six planned increases in domestic production capacity slated for 1993 through 1996; all involve expansions to current facilities, rather than greenfield construction. These expansions will represent an additional $27 million of U.S. annual production capacity (less than three percent of the 1992 total).

• The leading foreign-owned supplier of ceramic packages operates a U.S. production facility, and also serves as distributor for its company's imported packages. In 1992, 88 percent of the units and 78 percent of the value of packages sold in the United States by this company were imported. In addition, for the packages built in this country, this supplier sources green tape—the critical unfired ceramic input—and precision tooling from its foreign parent and is similarly dependent on its parent for advanced design and R&D. This company was considered a reliable and high quality supplier by both commercial and defense customers.

National Security Technology Issues

• The manufacturing of ceramic semiconductor packages is a complex multi-step practice. The basic steps of the manufacturing process are well understood by several companies, any one of whom could produce a certain package given sufficient time and money. Only very few companies, however, have mastered the art of increasing manufacturing yields, and are able to reliably produce multiple copies of a given package at competitive cost within tight delivery time.

• Most surveyed firms confirmed that they do not lack access to technologies available to their foreign competition, but noted that it was difficult to compete with the major foreign competitor's market and financial clout.

• The DOD reported that while they are willing to use plastic semiconductor packages were feasible, a substantial number of ceramic packages will be required for DOD weapon systems for the indefinite future. DOD's continuing commitment to ceramic packages is demonstrated by the Advanced Research Projects Agency's funding of multi-chip module R&D.

• Commerce industry analysts further expect that there will continue to be demand for ceramics in high-end and next generation defense and commercial semiconductor products, and that net demand for ceramic packages will remain essentially unchanged in years to come.

• Ceramic package producers report that packages supplied for defense use are generally more complex than those supplied for commercial applications. While a minority of importer/end-users agree with this view, the majority state that defense packages are generally of equivalent complexity. Commerce industry analysts note that DOD is simultaneously a leading customer for older-generation technologies such as cerdip and a leading customer for next-generation technologies such as multi-chip modules and hybrids.

• Qualification of suppliers is generally performed by semiconductor and computer systems manufacturers, rather than by DOD. These companies reported that qualifying new suppliers did, on balance, require more time than qualifying existing suppliers for new packages. Reasons cited include: similarities between new and already

qualified packages, and familiarity with the supplier's manufacturing process.

- Commercial R&D expenditures by domestic producers were fairly stable from 1990 to 1992, but are forecast to decrease precipitously in 1993, falling 80 percent from $187 million to $37 million. This decrease is primarily accounted for by expected reductions by the two firms responsible for most industry R&D.
- Defense R&D expenditures have continued to increase over the survey period, increasing from $1.5 million in 1990 to a projected $8 million in 1993. Over this period, however, defense R&D has never represented more than 17 percent of industry R&D.
- Offshore production currently accounts for over 90 percent of defense end use ceramic packages. As noted above, without remedial action, government industry experts project that all remaining U.S.-owned producers will exit the industry within three to five years.
- This dependence on foreign sources is exacerbated by the fact that two-thirds of the packages consumed in the United States are provided by one foreign company. If there is a disruption of shipments from this one supplier, U.S. economic and national security could be at risk.

[FR Doc. 93–22374 Filed 9–13–93; 8:45 am]
BILLING CODE 3510–DT–M

International Trade Administration

[A–122–822]

Certain Corrosion-Resistant Carbon Steel Flat Products from Canada; Initiation of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 14, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen Jacques or Jean Kemp, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3793.

INITIATION OF REVIEW: In accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), we are initiating a changed circumstances review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Canada. (*See* Antidumping Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada, 58 FR 44162, August 19, 1993.)

On August 31, 1993, National Steel Corporation (National), a petitioner in the above-referenced case, filed a request for review pursuant to section 751(b) of the Act and 19 CFR 353.22(f). In the original investigation, the Department verified that DNN (a joint venture galvanizing facility which is owned by National, NKK Steel Corp. of Japan (NKK), and Dofasco, Inc. (Dofasco), a Canadian respondent in the investigation) did not have sales of this merchandise to the United States. In its request for a review, National presented evidence that DNN began producing corrosion-resistant carbon steel flat products for sale in the United States between the time of the end of the period of investigation and the time of our final determinations. Further, National has presented evidence indicating that DNN's operations involve galvanizing steel which is owned by its parent companies and at no time takes title to the steel (i.e. DNN is engaged in a "tolling" operation). Therefore, DNN may be improperly receiving, on its imports of tolled merchandise, a cash deposit rate based on untolled sales.

In accordance with 19 CFR 353.22(f)(1) and (3), the Department has determined these facts constitute sufficient good cause and changed circumstances to warrant initiating a changed circumstances review before the end of the second annual anniversary month of the antidumping duty order.

The Department will review information covering the period January 1, 1993, to June 30, 1993.

This notice is published in accordance with 19 CFR 353.22(f)(1)(i).

Dated: September 3, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–22461 Filed 9–13–93; 8:45 am]
BILLING CODE 3510–DS–M

[A–729–801]

Final Determination of Sales at Less Than Fair Value; Ferrosilicon From Egypt

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 14, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or Brian Smith, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230, at (202) 482–1756 and (202) 482–1766, respectively.

FINAL DETERMINATION: The Department of Commerce (the Department) determines that ferrosilicon from Egypt is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the publication of our affirmative preliminary determination on June 28, 1993 (58 FR 34564), the only event which has occurred is that petitioners submitted a case brief on August 10, 1993.

Scope of Investigation

The product covered by this investigation is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this investigation. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy

containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1992, through December 31, 1992.

Best Information Available (BIA)

We have determined, in accordance with section 776(c) of the Act, that the use of BIA is appropriate for sales of the subject merchandise in this investigation. In deciding to use BIA, section 776(c) provides that the Department may take into account whether the respondent was able to produce information requested in a timely manner and in the form required. In this case, the exporter of ferrosilicon from Egypt, the Egyptian Ferroalloy Company (EFACO), did not respond to any request for information.

As BIA, we are assigning the highest margin among the margins in the petition, in accordance with the two-tiered BIA methodology under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding, and as outlined in the Final Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings and Parts Thereof from the Federal Republic of Germany, Italy, Japan, Romania, Sweden, Thailand, and the United Kingdom (54 FR 18992, 19033, May 3, 1989); and as upheld in Krupp Stahl AG. et al v. U.S., Slip Op. 93–84 (CIT May 24, 1993).

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) (19 U.S.C. 1673b(d)(1)) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of ferrosilicon from Egypt, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted average margin percent
The Egyptian Ferroalloy Company	90.50
All Others	90.50

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO. See 19 CFR 353.35(e).

This notice is published pursuant to section 735(d) of the Act and (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a).

Dated: September 7, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–22462 Filed 9–13–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–535–001]

Cotton Shop Towels From Pakistan; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On June 8, 1993, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on cotton shop towels from Pakistan. We have now completed that review and determine the net subsidy to be 12.46 percent *ad valorem* during the period January 1, 1991 through December 31, 1991.

EFFECTIVE DATE: September 14, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0983.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 32104) the preliminary results of its administrative review of the countervailing duty order on cotton shop towels from Pakistan (49 FR 8974; March 9, 1984). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of Pakistani cotton shop towels. This merchandise is classifiable under item number 6307.10.20 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1991 through December 31, 1991, and five programs:

(1) Export Financing;
(2) Excise Tax, Sales Tax and Customs Duty Rebate;
(3) Income Tax Reduction;
(4) Import Duty Rebate; and
(5) Export Credit Insurance.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our review, we determine the net subsidy to be 12.46 percent *ad valorem* for all firms during the period January 1, 1991 through December 31, 1991.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 12.46 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1991 and on or before December 31, 1991. The Department will also instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 12.46 percent of the f.o.b. invoice price on all shipments of the subject merchandise from Pakistan entered, or withdrawn from warehouse, for consumption on or after

the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: September 7, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–22463 Filed 9–13–93; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of correction regarding application for a scientific research permit to take marine mammals (P397A).

SUMMARY: This notice corrects an omission in the final sentence of the second paragraph of the supplementary information section of a notice previously published in the **Federal Register** on August 31, 1993 (58 FR 45881). This sentence is revised as follows:

The proposed activities will be conducted in Hawaiian and Alaskan waters over a 5-year period.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s): Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, 709 West 9th Street, Federal Building, Juneau, AK 99802 (909/586–7233); and

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4016).

Dated: September 8, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–22367 Filed 9–13–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Oman

September 8, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending a limit.

EFFECTIVE DATE: September 21, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has decided to continue the restraint limit on Categories 340/640 for an additional twelve-month period, beginning on September 21, 1993 and extending through September 20, 1994. Overshipments of the limit for the period ending September 20, 1993 will be charged to the restraint limit for the period beginning September 21, 1993, as they are entered. As a result, the limit for the period September 21, 1993 through September 30,1994 may close at opening. Overshipments of the limit for the period ending September 20, 1993, totalling 84,778 dozen, will be charged against the new limit for Oman 340/640 at opening on September 21, 1993.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Oman, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 56329, published on November 27, 1992; and 53 FR 12029, published on March 2, 1993.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 8, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 21, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Oman and exported during the twelve-month period beginning on September 21, 1993 and extending through September 20, 1994, in excess of 110,826 dozen.

Imports charged to this category limit for the period September 21, 1992 through September 20, 1993 shall be charged against the level of restraint to the extent of any unfilled balance. Goods in excess of that limit shall be subject to the limit established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–22458 Filed 9–13–93; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of Import Limits, Restraint Periods and Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

September 8, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending limits, restraint periods and visa requirements.

EFFECTIVE DATE: September 15, 1993.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and

Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated August 19, 1993, the Governments of the United States and Pakistan agreed to increase the current specific limit for Category 219 and establish specific limits for Categories 314, 334/634 and 335/635 for the 1993 agreement year.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the existing limits and restraint periods for the new restraint period beginning on January 1, 1993 and extending through December 31, 1993. Also, the existing visa requirements are being amended to include coverage of merged Categories 334/634 and 335/635.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 48 FR 25257, published on June 6, 1983; 57 FR 56904, published on December 1, 1992; 58 FR 15486, published on March 23, 1993; 58 FR 19656, published on April 15, 1993; 58 FR 33085, published on June 15, 1993; 58 FR 33259, published on June 16, 1993; and 58 FR 33257, published on June 16, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 8, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on November 25, 1992, as amended (April 9, 1993; June 9, 1993; and June 10, 1993), and March 18, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. Those directives concern imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during 1993.

Effective on September 15, 1993, you are directed, pursuant to a Memorandum of Understanding dated August 19, 1993 between the Governments of the United States and Pakistan, to amend the restraint periods for Categories 314 (March 28, 1993 through June 25, 1993; June 26, 1993 through December 31, 1993), 334/634 (February 28, 1993 through May 28, 1993; May 29, 1993 through December 31, 1993) and 335/635 (May 26, 1993 through August 23, 1993) for a new restraint period beginning on January 1, 1993 and extending through December 31, 1993. Categories 314, 334 and 335 shall no longer be subject to the group limit. Import charges shall be retained and applied to the new limits established for the January 1, 1993 through December 31, 1993 restraint period.

Also effective on September 15, 1993, you are directed to amend the limits for the following categories, pursuant to the August 19, 1993 MOU:

Category	Twelve-month restraint limit [1]
219	5,500,000 square meters.
314	4,000,000 square meters.
334/634	158,000 dozen.
335/635	244,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

You are directed to charge the following amounts to Categories 634 and 635 for the import periods listed below:

Category	Amount to be charged	Import period
634	5,247 dozen	Jan. 1–Feb. 27, 1993.
	272 dozen	May 29–June 16, 1993.
635	53,231 dozen	Jan. 1–May 25, 1993.
	2,726 dozen	May 26–June 16, 1993.

For visa purposes, you are directed, effective on September 15, 1993, to amend further the directive dated May 27, 1983 to include coverage of merged Categories 334/634 and 335/635 for goods produced or manufactured in Pakistan and exported from Pakistan on and after September 15, 1993.

Merchandise in merged Categories 334/634 and 335/635 may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–22460 Filed 9–13–93; 8:45 am]

BILLING CODE 3510–DR–F

Extension of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

September 8, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending a limit.

EFFECTIVE DATE: September 24, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has decided to continue the restraint limit on Categories 341/641 for an additional twelve-month period, beginning on September 24, 1993 and extending through September 23, 1994.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Qatar, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also

see 57 FR 54222, published on November 17, 1992.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 8, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 24, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 341/641, produced or manufactured in Qatar and exported during the twelve-month period beginning on September 24, 1993 and extending through September 23, 1994, in excess of 106,094 dozen.

Imports charged to this category limit for the period September 24, 1992 through September 23, 1993 shall be charged against the level of restraint to the extent of any unfilled balance. Goods in excess of that limit shall be subject to the limit established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–22459 Filed 9–13–93; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Office of the Secretary of the Army; Notice of Intent To Prepare Environmental Impact Analyses for Base Realignment Actions

AGENCY: Department of the Army, DOD.

ACTION: Notice of intent.

SUMMARY: The Defense Base Closure and Realignment Commission was mandated by Public Law 101–510, the Defense Base Closure and Realignment Act of 1990, to recommend military installations for realignment and closure. The Commission's recommendations were included in their 1993 report which was presented to the President on July 1, 1993. The President approved the Commission's recommendations and they were forwarded to the Congress on July 2, 1993. Public Law 101–510 exempted the decisionmaking process of the Commission in recommending installations to be closed or realigned from the provisions of the National Environmental Policy Act of 1969. However, the Department of the Army must still prepare environmental impact analyses to assess the environmental effects of realignment on installations receiving functions from other installations and on installations subject to property disposal. These analyses will include the cumulative effects of these and other actions impacting the installation during the same timeframe.

FOR FURTHER INFORMATION CONTACT: Please contact the Public Affairs Office of the affected installation for further information regarding these environmental impact analyses.

SUPPLEMENTARY INFORMATION: The Army intends to prepare environmental impact analyses to assess the environmental effects of the actions listed below. The public will have an opportunity to comment on these analyses before any action is taken to implement these realignment/disposal actions.

A. Detroit Arsenal, Michigan, receiving: Elements from the Belvoir Research and Development Center, Fort Belvoir, Virginia.

B. Fort Jackson, South Carolina, receiving: Chaplain School from Fort Monmouth, New Jersey.

C. Fort Monmouth, New Jersey, receiving: Program Executive Office (PEO), Research, Development, and Engineering Center (RDEC), and material management elements from Vint Hill Farms Station, Virginia, as well as tenants of the Evans Subpost and the leased CECOM office building in Tinton Falls, New Jersey.

D. Fort Monmouth, New Jersey, disposal: Excess facilities and real property at main post and Charles Wood Subpost; all facilities and real property at Evans Subpost.

E. Letterkenny Army Depot, Pennsylvania, receiving: Depot-level tactical missile maintenance workload of the Department of Defense.

F. Red River Army Depot, Texas, receiving: Depot maintenance workload from Tooele Army Depot, Utah.

G. Tobyhanna Army Depot, Pennsylvania, receiving: Depot maintenance workload from Tooele Army Depot, Utah, and the maintenance and repair functions of the Intelligence Materiel Management Center, Vint Hill Farms Station, Virginia.

H. Tooele Army Depot, Utah, disposal: Excess facilities and real property not required to support the conventional and chemical munitions mission.

I. Vint Hill Farms Station, Virginia, disposal: All facilities and real property.

Dated: September 8, 1993.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health OASA (IL&E).

[FR Doc. 93–22467 Filed 9–13–93; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA No.: 84.180A]

Technology, Educational Media, and Materials for Individuals With Disabilities Program; Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: To support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of early intervention services to infants and toddlers with disabilities.

This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Eligible Applicants: Institutions of higher education, State and local educational agencies, public agencies, and private nonprofit or for-profit organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 333.

Applications Available: October 29, 1993.

Deadline for Transmittal of Applications: January 7, 1994.

Deadline for Intergovernmental Review: March 9, 1994.

Available Funds: $1,250,000.

Estimated Average Size of Awards: $250,000 for the first 12 months of the projects. Multi-year projects are likely to be level funded unless there are increases in costs attributable to significant changes in activity level.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Priority: The priority Organizational Support and Professional Development in the Use of Technology, media, and Materials with Children and Youth with Disabilities in the notice of final priority for this program, published elsewhere in this issue of the **Federal Register** applies to this competition.

For Technical Information Contact: Dr. David Malouf, U.S. Department of Education, 400 Maryland Avenue, SW., room 3521, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8111. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

For Applications and General Information Contact: Requests for applications and general information should be addressed to: Darlene Crumblin, U.S. Department of Education, 400 Maryland Avenue, SW., room 3525, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–9864.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1461.

Dated: September 9, 1993.

Andrew Pepin,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93–22435 Filed 9–13–93; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.078C]

Postsecondary Education Programs for Individuals With Disabilities; Inviting Application for New Awards for Fiscal Years (FY) 1994 and 1995

Purpose of Program: To provide assistance for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities.

This notice supports National Education Goal 5 by assisting students with disabilities in developing competitive workplace skills through improved services and better trained service providers.

Eligible Applicants: State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies.

Deadline for Transmittal of Applications: February 4, 1994.

Deadline for Intergovernmental Review: April 4, 1994.

Applications Available: October 20, 1993.

Available Funds: $700,000.

Estimated Range of Awards: $90,000–110,000.

Estimated Size of Awards: $100,000.

Estimated Number of Awards: 7.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 338.

Priority: The priority in the notice of final authority for this program, as published elsewhere in this issue of the **Federal Register** applies to this competition.

For Applications: To request an application, telephone (202) 205–8485.

For Further Information Contact: Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–9503.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8170.

Program Authority: 20 U.S.C. 1424a.

Dated: September 9, 1993.

Judith E. Heumann,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93–22437 Filed 9–13–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Cases Filed During the Week of August 6 Through August 13, 1993

During the Week of August 6 through 13, 1993, the appeal and the applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: September 3, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 6 through August 13, 1993]

Date	Name and Location of Applicant	Case No.	Type of Submission
Aug. 9, 1993 ...	Farmers Union Elevator Company, Moundridge, KS.	RR272–110	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The June 8, 1993 Decision and Order (Case No. RF272–81889) issued to Farmers Union Elevator Company would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.
Aug. 11, 1993 .	Sandia National Laboratories, Albuquerque, NM.	LWZ–0021	Interlocutory Order. If granted: The request for a hearing by an alleged whistleblower, Ronald Sorri (Case No. LWA–0001) would be dismissed.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of August 6 through August 13, 1993]

Date	Name and Location of Applicant	Case No.	Type of Submission
Aug. 12, 1993	Department of Veteran Affairs, Washington, D.C..	RR272–111	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The July 13, 1993 Decision and Order (Case No. RF272–89357) issued to the Department of Veteran Affairs would be modified regarding the state's application for refund submitted in the Crude Oil Refund Proceeding.
Aug. 12, 1993	Milton L. Loeb, Albuquerque, NM	LFA–0313	Appeal of an Information Request Denial. If granted: The July 12, 1993 Freedom of Information Request Denial issued by the Albuquerque Field Office would be rescinded, and Milton L. Loeb would receive access to computer software used by the Department of Energy.

REFUND APPLICATIONS RECEIVED

[Week of August 6 Through August 13, 1993]

Date received	Name of refund proceeding/name of refund applicant	Case No.
8/5/93	ELI'S Texaco Service Center	RF321–19833
8/5/93	Walnut Creek Gulf	RF300–21751
8/5/93	Ashland Chemical, Inc.	RF351–6
8/6/93	Arthur Kelley's Texaco #2	RF321–19834
8/9/93	Mobil Chemical Company	RF351–7
8/10/93	Dameron's Texaco	RF321–19835
8/10/93	Bonnie's Grocery	RF346–58
8/10/93	Rayne Canal Station	RF346–59
8/10/93	Canal Econo Center	RF346–60
8/10/93	Loreauville Canal Service	RF346–61
8/10/93	Moss Street Canal	RF346–62
8/10/93	Latio Lais Canal Station	RF346–63
8/10/93	Bertrand Canal Service Station	RF346–64
8/10/93	Rochon's Comm. Canal & Grocery	RF346–65
8/6/93 thru 8/13/93.	Atlantic Richfield Refund, Applications Received	RF304–14339 thru RF304–14380
8/6/93 thru 8/13/93.	Crude Oil Refund, Applications Received	RF272–94830 thru RF272–94840

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Finding of No Significant Impact; Consolidation of the Nonnuclear Component Within the Nuclear Weapons Complex

AGENCY: Department of Energy.

ACTION: Finding of no significant impact.

SUMMARY: The Department of Energy (DOE) issues this Finding of No Significant Impact (FONSI) on its proposal to consolidate certain nonnuclear component manufacturing, surveillance, and storage functions of the Nation's Nuclear Weapons Complex (Complex). This finding is based on the DOE "Nonnuclear Consolidation Environmental Assessment" (EA), DOE/EA–0792, June 1993, which analyzes the proposed consolidation of these nonnuclear functions that DOE performs in the Complex. The DOE sites involved in the nonnuclear consolidation proposal are the Kansas City Plant (KCP) in Kansas City, Missouri; Los Alamos National Laboratory (LANL) in Los Alamos, New Mexico; the Mound Plant (Mound) in Miamisburg, Ohio; the Y–12 Plant in Oak Ridge, Tennessee; the Pinellas Plant (Pinellas) in Largo, Florida; the Rocky Flats Plant (RFP) in Golden, Colorado; Sandia National Laboratories, New Mexico (SNL/NM) in Albuquerque, New Mexico; and the Savannah River Site (SRS) near Aiken, South Carolina. DOE's proposed action is to consolidate certain nonnuclear manufacturing activities at KCP, relocate others to SRS, LANL, and SNL/NM, and close out the Complex missions at Mound and Pinellas, and Complex nonnuclear missions at RFP. The proposed action responds to Presidential initiatives, including the START II Treaty, to reduce the Nation's nuclear weapons stockpile, and is expected to achieve more efficient and effective management of nonnuclear functions within the Complex, while also decreasing the long-term operating costs of this aspect of the Complex. The proposed action is part of DOE's larger proposal to reconfigure the entire Complex. The remainder of this reconfiguration proposal is being analyzed in the Nuclear Weapons Complex Reconfiguration Programmatic Environmental Impact Statement (PEIS).

Based on the analyses in the EA, DOE issued a proposed FONSI on July 8, 1993, for a 30-day public review period. Twenty-nine documents were received from the public which provided comments on the proposed FONSI and EA. The comments addressed several topics including: DOE's interpretation of the National Environmental Policy Act of 1969 (NEPA) requirements (i.e., whether an EA or environmental impact statement (EIS) was appropriate for the proposed action); existing waste management and cleanup activities at the DOE facilities; socioeconomic and community issues; DOE's mission as it relates to changing world events; and the risks due to consolidation from natural and manmade threats. The U.S. Environmental Protection Agency also reviewed the EA and proposed FONSI and submitted comments concerning

waste management at the Y–12 Plant and the Savannah River Site. The Kansas City Regional Office of the Department of Housing and Urban Development stated in its comment letter that "* * * no apparent adverse impacts were noted relating to Housing and Urban Development projects in this jurisdiction." The U.S. Fish and Wildlife Service, Albuquerque Regional Office, indicated that no federally listed endangered and threatened species would be affected and that review of contamination issues would not result in significant impacts in New Mexico; the Service therefore concurred with the proposed FONSI. No other Federal agencies responded.

DOE has reviewed the comments received and has concluded that no new information has been made available which would change the determination that the proposed action does not constitute a major Federal action within the meaning of NEPA, 42 U.S.C. 4321 *et seq.* Therefore, an EIS is not required and incorporation of the analysis of the proposed nonnuclear consolidation into the Reconfiguration PEIS is not necessary. A summary of the comments received, and DOE's response, is provided in the Attachment to this FONSI.

COPIES OF THE EA AND FONSI: Copies of the EA and FONSI are available from: Howard R. Canter, U.S. Department of Energy, Weapons Complex Reconfiguration Office, DP–40, 1000 Independence Avenue SW., Washington, DC 20585.

The FONSI, EA and related documents are also available for public review at the DOE public reading rooms listed below.

California

U.S. Department of Energy, San Francisco Operations Office, 1301 Clay Street, room 700N, Oakland, California 94612 (510) 637–1762

Colorado

U.S. Department of Energy, Rocky Flats Public Reading Room, Front Range Community College Library, 3645 West 12th Avenue, Westminster, Colorado 80030 (303) 469–4435

Florida

U.S. Department of Energy, Public Reading Room, Largo Public Library 351 East Bay Drive, Largo, Florida 34640 (813) 587–6715

Idaho

U.S. Department of Energy, Idaho Operations Office, Public Reading Room, 1776 Science Center Drive, Idaho Falls, Idaho 83402 (208) 526–9162

Nevada

U.S. Department of Energy, Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada 89193 (702) 295–1274

Ohio

U.S. Department of Energy, Miamisburg Library, DOE Public Reading Room, 35 South Fifth Street, Miamisburg, Ohio 45342 (513) 866–1071

South Carolina

U.S. Department of Energy Reading Rm., University of South Carolina, Aiken Campus, 171 University Parkway, Aiken, South Carolina 29801 (803) 641–3320

Tennessee

U.S. Department of Energy, Oak Ridge Operations Office, Freedom of Information Officer, 200 Administration Road, room G–209, Oak Ridge, Tennessee 37831 (615) 576–5765

Illinois

U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois 60439 (708) 972–2010

Missouri

U.S. Department of Energy, Public Reading Room, Red Bridge Branch, Mid-Continent Public Library, 11140 Locust Street, Kansas City, Missouri 64137 (816) 942–1780

New Mexico-Albuquerque

U.S. Department of Energy, Public Reading Room, National Atomic Museum, 20358 Wyoming SE, Albuquerque, New Mexico 87185 (505) 845–6670/4378

New Mexico-Los Alamos

Los Alamos National Laboratory, Community Reading Room, 1450 Central Avenue, suite 101, Los Alamos, New Mexico 87545 (505) 665–2127

Texas

U.S. Department of Energy, Lynn Library/ Learning Center, Amarillo College, 2201 South Washington Street, Amarillo, Texas 79109 (806) 371–5400

Washington

U.S. Department of Energy, Richland Operations Office, 100 Sprout Road, Richland, Washington 99352 (509) 376–8583

District of Columbia

U.S. Department of Energy, Freedom of Information Reading Room, Forrestal Building, room 1E–90, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 586–6020

For information on the availability of specific documents and hours of operation, please contact reading rooms at the telephone numbers provided.

FOR FURTHER INFORMATION CONTACT: Requests for further information on the proposed project or the Nuclear Weapons Complex Reconfiguration Program should be sent to: Howard R. Canter, U.S. Department of Energy, Weapons Complex Reconfiguration Office, DP–40, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–1300.

For general information on the DOE NEPA review process, contact: Carol M. Borgstrom, U.S. Department of Energy, Office of NEPA Oversight (EH–25), 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: On December 16, 1991, the then Secretary of Energy announced his decision to prepare an EA for the consolidation of nonnuclear functions of the Complex. The public notice regarding the Secretary's decision was published on January 27, 1992 (57 FR 3046). The nonnuclear consolidation proposal is based upon the DOE Nonnuclear Consolidation Plan (NCP), September 1991, as amended. The NCP also provided the basis for determining the consolidation alternatives analyzed in the EA. DOE determined that the proposal to consolidate nonnuclear facilities could be analyzed in an EA prior to completion of the Reconfiguration PEIS (see 40 CFR 1506.1(c)) because (1) there are significant benefits for the Nation from nonnuclear consolidation, i.e., cost savings and preservation of technical competence, whether the rest of the Complex is reconfigured or not, and (2) decisions regarding nonnuclear consolidation will neither affect nor be affected by decisions to be made following the completion of the Reconfiguration PEIS.

A pre-approval review copy of the EA was sent to affected states and Indian Tribes for comment in December 1992. Comments received during the review period were taken into account in preparing the final EA. Appendix G of the EA contains all comments received and DOE responses.

As required by the Energy and Water Development Appropriations Act, 1993 and the National Defense Authorization Act for Fiscal Year 1993, DOE also prepared and submitted to Congress the Nonnuclear Reconfiguration Cost Effectiveness Report (CER) on January 15, 1993. Each of three independent consultants, appointed by Energy Secretary Hazel R. O'Leary to review the CER and accompanying certifications, confirmed on May 25, 1993, that the proposed consolidation is cost effective and would not increase the technological, environmental, safety, or health risks associated with Departmental activities. Their review and conclusions did not result in any changes to the proposed nonnuclear consolidation proposal, and the

Secretary made the decision to proceed with the Nonnuclear Consolidation process.

Proposed Action

DOE proposes to terminate the Complex missions at Mound and Pinellas, and Complex nonnuclear missions at RFP. The nonnuclear electrical and mechanical manufacturing functions would be consolidated at KCP. Existing research, development, and testing (RD&T) and prototype fabrication capabilities at LANL and SNL/NM would be augmented to provide a limited fabricating capability for future neutron generator work, high power detonators, beryllium technology, pit support functions, and other nonnuclear components now located at Mound, Pinellas, and RFP. These enhanced capabilities would be used to satisfy future weapons stockpile needs, if and when identified. Tritium-handling functions now performed at Mound and Pinellas would be consolidated with tritium functions now located at the Savannah River Site (SRS) and LANL, respectively. The capabilities transferred to KCP, SRS, LANL and SNL/NM would, for the most part, be integrated into the existing plant facilities with appropriate plant modifications and renovations. The nonnuclear manufacturing workload would be downsized at all sites in response to Presidential initiatives, including START II, to reduce the nuclear weapons stockpile. The following specific actions are proposed:

- Mission Closeouts—Complex missions at Mound and Pinellas and the Complex nonnuclear missions at RFP would be terminated, and associated nonnuclear facilities turned over to the DOE Office of Environmental Restoration and Waste Management (EM) for cleanup and restoration.
- Electrical and Mechanical—The nonnuclear electrical and mechanical capabilities now at Mound, Pinellas, and RFP would be consolidated at KCP within existing facilities.
- Tritium-Handling—All tritium-handling capabilities now performed at Mound would be relocated to be with the tritium functions now performed at SRS. The neutron tube target loading for the current design of neutron generators, now performed at Pinellas, would be completed. Capability for future neutron tube target loading requirements would be provided within existing facilities at LANL.
- Detonators—The existing RD&T and prototyping capability at LANL would be enhanced to provide a limited manufacturing capability for high power detonators, now done at Mound. (The existing RD&T technology base for low-power explosives components would be maintained at SNL/NM; the existing capabilities at Mound to manufacture these components would no longer be needed.)
- Beryllium Technology and Pit Support—The existing technology base and prototyping capability at LANL would be enhanced to provide limited manufacturing capability for beryllium technology and pit support work now done at RFP.
- Neutron Generators, Cap Assemblies, and Batteries—Manufacture of the current design of neutron generators at Pinellas would be completed. The existing technology base for neutron generators would be maintained at SNL/NM. Existing RD&T and prototyping capability at SNL/NM would be augmented to provide a limited manufacturing capability for future advanced design neutron generators. Manufacturing capability for cap assemblies would be relocated from Pinellas to existing facilities at SNL/NM. The technology base now at Pinellas for the manufacture of thermal batteries would be transferred to existing facilities at SNL/NM; manufacture of the batteries would continue to be performed by the private sector. The assembly of lithium ambient batteries from commercially acquired lithium cells would be transferred to KCP.
- Special Products—The nuclear grade steels procurement and storage capability, safe secure trailer manufacturing capability, weapons trainer shop, and metrology services would be transferred from RFP to KCP. The calorimeter manufacturing capability would be relocated from Mound to existing facilities at LANL. The milliwatt heat source surveillance activities would be relocated from Mound to SNL/NM.

Purpose and Need

DOE has proposed to reconfigure the Complex to be smaller, less diverse, and less expensive to operate. The Complex must safely and reliably support whatever nuclear deterrent stockpile objectives are established in the future by the President and funded by Congress. The Nation's nuclear weapons manufacturing requirements are not as great as they were in the past, and maintaining a large manufacturing infrastructure is not a productive use of national resources.

The purpose of nonnuclear consolidation is to manage better nonnuclear manufacturing activities within the Complex, and to decrease the long-term operating costs of the Complex. In addition, consolidation of the nonnuclear manufacturing activities would provide a means to maintain the specialized skill base needed to produce and test these components, as workload requirements decrease significantly.

The nonnuclear products and services of the Complex are needed to design and manufacture nuclear weapons and test individual components. DOE needs to maintain a nonnuclear capability in order to be able to manufacture, test, and monitor nuclear weapons.

Alternatives

In addition to the proposed action, the EA analyzed three alternatives in which electrical and mechanical manufacturing activities would be consolidated at sites other than KCP. The three alternative consolidation sites for electrical and mechanical manufacturing activities were Mound, Pinellas, and RFP. For each of these alternatives, the consolidation site for electrical and mechanical activities would retain all of its other nonnuclear manufacturing activities and receive additional electrical and mechanical activities from KCP and the other two mission closeout sites. The current nonnuclear manufacturing activities at KCP and the other two mission closeout sites would be terminated and remaining nonnuclear activities at these sites would be relocated to either SRS, LANL, or SNL/NM.

The EA analyzed the option of locating beryllium technology and pit support work, now done at RFP, at the Y–12 Plant in Oak Ridge, Tennessee instead of at LANL. Under the Y–12 option, the existing capability at Y–12 would be enhanced to accomplish this work. The proposed action does not include the Y–12 option.

No Action Alternative

The EA compared the impacts of the proposed action to those expected to occur if DOE did not consolidate these functions. Under this alternative, all sites included in the proposed action would retain their current weapons missions. Planned upgrades, renovations, repairs, and maintenance activities necessary to improve Complex compliance with all environment, safety, and health and environmental restoration standards would continue irrespective of future Complex configuration. DOE expects that under No Action many current facilities would be placed in an essentially standby mode due to a major reduction in nuclear weapons manufacturing requirements, with correspondingly reduced environmental impacts.

Considerations Common to All Alternatives

All alternatives were based on the same projected workload, which is substantially lower than requirements of the recent past. Planned upgrades, renovations, repairs, and maintenance activities necessary to enable DOE compliance with all environment, safety, and health and environmental restoration standards would continue at Complex facilities irrespective of the configuration of the Complex.

The nonnuclear consolidation proposal does not include components currently purchased from the private sector. Many nonnuclear weapons components are now manufactured and supplied by private companies. Private manufacture of certain components would continue under all alternatives. Where practical and cost effective, DOE may transfer manufacture of additional products to the private sector under existing procurement procedures. However, with recent reductions in the stockpile level, component manufacturing activities may be returned to the government from the private sector because the workload does not make it cost effective for these private suppliers to continue manufacturing such small quantities.

Environmental Impacts of the Proposed Action

Based on the analysis of environmental impacts in the Nonnuclear Consolidation EA, DOE believes that the proposed action would not result in any significant environmental impacts.

Implementing the proposed action would involve changes and/or modifications to existing buildings at KCP, SRS, LANL, and SNL/NM. Relocated activities would be compatible with existing land use plans and policies. The peak construction workforce of fewer than 100 workers at each site would have negligible effects on area land use, housing, and social services. No significant impacts on ecological resources, geological resources, or soil are expected. Air quality and noise impacts from construction activities are expected to be negligible since most activities would occur within existing buildings. No new construction or activities associated with the proposed action would occur within identified base floodplains or wetlands that would require a floodplain/wetland assessment under 10 CFR 1022.12 (a). (The base floodplain is defined as the 100-year (1.0 percent chance of occurring per year) floodplain.) Currently, KCP is the only site potentially vulnerable to floods in the proposed consolidated nonnuclear complex. However, KCP would be protected from a 500-year flood event upon completion in December 1993 of a new levee. Construction of the levee is covered by an EA and FONSI prepared by the U.S. Army Corps of Engineers, Environmental Assessment: Completion of Flood Protection Works, Bannister Road Federal Complex, Kansas City, Missouri (September 1990). The Department adopted this EA (DOE/EA–0509) and issued a FONSI on September 18, 1991. No impacts are expected on archaeological or historic sites on any of the sites proposed to receive relocated nonnuclear activities. Based on comments received from the EA preapproval review process, there is no indication that the proposed action would have any adverse effects on any historic or archaeological resources at KCP, SRS, LANL, or SNL/NM.

During operation, minor increases in air emissions and noise are expected, but would not exceed applicable emissions standards and/or guidelines. Therefore, air quality and noise impacts would not be significant. Terminating the nonnuclear missions at Mound, Pinellas, and RFP would improve the local air quality near these sites, but not significantly. Increases in water usage would be less than 1 percent of current usage at KCP, SRS, and LANL, and less than 3 percent at SNL/NM. Adequate water supplies are available to accommodate the increase; therefore, no significant impacts on water resources are expected.

Socioeconomic and community service impacts at KCP, SRS, LANL, and SNL/NM are not expected to be significant. The proposed action would create approximately 1,095 jobs (425 direct and 670 indirect) at KCP at peak operations. Total in-migration would be approximately 558 persons. At SRS, approximately 103 jobs (45 direct and 58 indirect) would be created. Total in-migration would be approximately 60 persons. At LANL, approximately 294 jobs (115 direct and 179 indirect) would be created. Total in-migration would be about 154 persons. At SNL/NM, approximately 940 jobs (385 direct and 555 indirect) would be created at peak operation. Total in-migration would be about 515 persons. The change in population during the time of peak operation would be less than 1 percent at all sites and the need for additional housing units would be negligible. Therefore, socioeconomic impacts at these sites are not significant.

These in-migration estimates do not take into account such factors as rehiring preference for displaced workers that may result from the workforce restructing plan developed for the site, as required by section 3161 of the National Defense Authorization Act for Fiscal Year 1993. Accordingly, these in-migration estimates represent the maximum expected at each site.

Adverse economic consequences would occur at Mound, Pinellas, and RFP due to the termination of nonnuclear missions at these sites. At Mound, approximately 2,846 jobs (1,070 direct and 1,776 indirect) would be lost. This reduction in jobs is expected to increase the unemployment rate in the year 2000 from about 5.6 percent to about 6.1 percent. Earnings in the Mound region-of-influence (those areas in which approximately 90 percent of current DOE and contractor employees reside) would be reduced by about $93.1 million, with related decrease in the total personal income of $119.3 million. The City of Miamisburg would lose an estimated $0.8 million in income tax revenue in the year 2000 as a result of the loss of direct employment at Mound. This loss represents a 10 percent loss in total income tax revenue, a 9 percent loss in General Fund revenue, and a loss of less than 4 percent in total actual revenues. The Mound region-of-influence had 14,168 vacant housing units out of 391,809 total units at a vacancy rate of 3.6 percent in 1990. The less than 1 percent change in population after weapons mission termination would create an estimated 600 additional vacant housing units. Assuming the vacancy rate in the projected baseline year is the same as 1990, this additional 600 vacant housing units would increase the vacancy rate to less than 3.7 percent.

At Pinellas, approximately 3,038 jobs (1,050 direct and 1,988 indirect) would be lost. This reduction in jobs is expected to increase the unemployment rate in the year 2000 from 5.4 percent to 5.6 percent. Earnings in the Pinellas region-of-influence would be reduced by about $103.1 million, with a related decrease in the total personal income of $148.2 million. The Pinellas region-of-influence had 63,198 vacant housing units out of 975,046 total units at a vacancy rate of 6.5 percent in 1990. The less than 1 percent change in population after weapons mission termination would create an estimated 700 additional vacant housing units. Assuming the vacancy rate in the projected baseline year is the same as 1990, this additional 700 vacant housing units would increase the vacancy rate to less than 6.6 percent.

At RFP, approximately 1,917 jobs (750 direct and 1,167 indirect) would be lost. This reduction in jobs is expected to

increase the unemployment rate in the year 2000 from 5.6 percent to 5.7 percent. Earnings in the RFP region-of-influence would be reduced by about $68.5 million, with a related decrease in the total personal income of $82.2 million. The RFP region-of-influence had 51,030 vacant housing units out of 788,480 total units at a vacancy rate of 6.5 percent in 1990. The less than 1 percent change in population after weapons mission termination would create an estimated 400 additional vacant housing units. Assuming the vacancy rate in the projected baseline year is the same as 1990, this additional 400 vacant housing units would increase the vacancy rate to less than 6.6 percent.

The DOE has committed resources to local communities to minimize the effects described above from termination of nonnuclear missions at Mound, Pinellas, and RFP. Included in the measures and actions identified is the commitment that the DOE would develop a draft worker retraining and potential facility reuse plan by December 1993 and that the Office of Defense Programs would allocate $1.5 million to assist with developing these plans; and the Department would provide a total of $1.5 million to match $3 for each $1 provided by the Mound, Pinellas, and Rocky Flats communities for economic development planning, and up to $12 million seed money to meet the objectives of the Technology Reinvestment Project established pursuant to the Defense Authorization and Appropriations Acts for Fiscal Year 1993.

As a result of ongoing planning, DOE has revised the workforce estimates presented in the EA. Recently revised workforce figures for direct jobs are slightly different from those used in the EA analysis and, therefore, the estimates of indirect jobs would also be slightly different. Additional estimated direct jobs have been revised to 330 at KCP (a decrease of 95), 125 at LANL (an increase of 10), 390 at SNL (an increase of 5), and 50 at SRS (an increase of 5).

The proposed fiscal year 1994 budget projects a reduction in expenditures at most DOE sites estimated to result in reduced employment. The current estimate of direct jobs lost at sites with mission closeouts is 1,020 at Mound (a decrease of 50), 800 at Pinellas (a decrease of 250), and 715 at RFP (a decrease of 15). The estimated direct jobs reduction would also cause the estimated number of indirect jobs lost to be less than those used in the EA analysis. The revised workforce estimates do not affect any impact conclusions presented in the EA.

Nonnuclear manufacturing activities associated with the proposed action would increase hazardous waste volumes by less than 7 percent and would not have significant impacts on waste management at KCP, SRS, LANL, and SNL/NM. Anticipated increases in waste volumes at these sites are well within the existing treatment, storage, and disposal capabilities. Effluents and emissions due to waste management activities attributed to the proposed action would be negligible. Under the proposed action sanitary/industrial wastewater volumes are projected to increase at all sites, but not significantly. At KCP, SRS, and LANL, the increase is less than 1 percent over the current rate at these sites; at SNL/NM, the increase is less than 2 percent over the current rate. All sites have sufficient waste treatment, storage, and disposal capacity to handle the projected increases; therefore, no significant impacts are expected. At Mound, Pinellas, and RFP, nonnuclear production waste streams would be eliminated; however, this would not result in a significant impact.

No significant adverse impacts to the health of the public or workers is expected from implementation or operation activities associated with the proposed action at any of the sites. Hazard Indexes of less than 1.0 were calculated for onsite and at the site boundary at KCP, SRS, LANL, and SNL/NM. (The Hazard Index is a numerical indicator of the threshold between acceptable and unacceptable exposure levels of noncarcinogenic hazardous compounds. A Hazard Index value of 1.0 or less means that no adverse health effects are expected to occur.) The cancer risk to workers at KCP, SRS, LANL, and SNL/NM would be insignificant. The amount and types of chemicals associated with relocated activities would not add significantly to existing health conditions at these sites. Activities relocated to SNL/NM would result in lifetime cancer risks to workers of 6×10^{-6} per year of exposure due to the introduction of certain chemical solvents. The cancer risk to the public at SNL/NM should they be exposed to this level over their lifetimes would be less than 10^{-6}. Measures such as substituting less toxic solvents or modifying production procedures would be implemented to minimize the cancer risk to workers at SNL/NM. No significant radiological health effects are expected at LANL, SNL/NM, or SRS as a result of the proposed action. The annual dose increment associated with the increase in tritium emissions at LANL and SNL/NM would be less than 0.1 mrem and 0.022 mrem effective dose equivalent, respectively. At SRS, the annual dose increment would be less than 0.001 mrem effective dose equivalent. These doses would result in an increased risk of less than 4.5×10^{-8} and 9.8×10^{-9} potential fatal cancers from 1 year of operation at LANL and SNL/NM, respectively, and 4.5×10^{-10} at SRS. The annual dose increment to workers at LANL, SNL/NM, and SRS would be less than 0.011 mrem. This dose would result in an incremental and cumulative increased risk of 4.9×10^{-9} and 1.3×10^{-7} potential fatal cancers, respectively, from 1 year of operation at these sites.

The accident profiles at each site would not change as a result of the proposed action. The probability or consequences of potential accidents would not increase appreciably at any of the sites since relocated functions involve activities and chemicals that are currently being performed at consolidation sites.

The proposed action would have no cumulative effects on the Complex, because the action represents a consolidation of existing activities and functions, rather than an initiation of new activities. In most instances, consolidation would reduce potential cumulative environmental impacts at all sites. Nonnuclear activities now located within aging facilities at donor sites would be transferred to sites with newly refurbished facilities. These facilities would be designed and constructed to incorporate DOE environment, safety, and health requirements on Complex reconfiguration and meet all applicable codes and standards. The facilities to which the nonnuclear activities would be transferred already contain virtually all of these operations, materials, and/or hazardous waste streams. Consolidation would also reduce the number of sites with activities generating these hazardous materials within the Complex.

Environmental Impacts of Alternatives

Environmental consequences discussed above at SRS, LANL, and SNL/NM under the proposed action would be the same or less under the Mound, Pinellas, and RFP alternatives and not significant. At the consolidation sites for each alternative (Mound, Pinellas, and RFP), substantial new construction would be required. If these alternatives were selected, additional site-specific NEPA documentation would be required.

Determination

Based on the information and analysis in the EA, the comments received on the

proposed FONSI, and the DOE response to those comments, the DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA. Therefore, an EIS is not required and incorporation of the analysis of the proposed nonnuclear consolidation into the Reconfiguration PEIS is not necessary.

Issued in Washington, D.C. this 8th day of September, 1993.

Peter N. Brush,

Acting Assistant Secretary Environment, Safety and Health.

ATTACHMENT

Summary of Comments Received on the Proposed FONSI

A total of 29 documents containing comments were submitted on the proposed FONSI and supporting EA during the 30-day public review period. Although the comments raised questions concerning the proposed action, no significant new information having a bearing on environmental concerns was presented which affects the DOE's proposed NEPA determination. Those comments requiring a response are summarized below along with the DOE's response.

Comment: DOE should reconsider the alternative of consolidating electrical and mechanical functions at two sites and the alternative to consolidate all tritium work at Mound.

Response: The two-site proposal was analyzed and documented in DOE's Two-Site Nonnuclear Consolidation Study (August 1992) and its addendum (December 1992) that updated the Study to account for the START II arms reductions. The two-site alternatives, while less expensive in initial capital cost, are much more expensive from a long-term life-cycle cost perspective. The cost study prepared for the Mound tritium consolidation proposal concluded that the life-cycle costs of consolidating such work at Mound would be nearly $2 billion greater than the life-cycle consolidation costs at SRS. The two-site alternatives and the Mound tritium consolidation alternative were considered unreasonable due to life-cycle costs and eliminated from further analysis as described in EA section 3.1.4.

Comment: Existing land use plans and policies are outdated and inappropriate at LANL and SNL; also emission standards are not currently being met at these sites.

Response: Site Development Plans for LANL and SNL were updated in 1990 and 1989, respectively. These plans are reviewed and revised as appropriate, to meet mission requirements at these sites. As described in sections 4.1.3.2 and 4.1.5.2 of the EA, baseline air quality is well within applicable guidelines and standards except for the ozone (1-hour) standard at LANL and SNL, and the Total Suspended Particulate (TSP) standard at LANL. The ozone exceedence is typical of urban areas and areas affected by vehicle exhaust. The TSP exceedence is typical of semiarid and arid regions with large areas of exposed earth. Neither exceedence is the result of activities at either of the sites.

Comment: Monitoring of air quality on the Santa Clara Reservation (northwest of Los Alamos) identified elevated radiation background levels. No mention is made in the FONSI to assess this potential adverse impact.

Response: Impacts to the public and the environment, worker exposures, and accidents due to chemicals and tritium emissions from the proposed action at LANL are described in EA section 4.1.3.9. Activities associated with the proposed action at LANL would not add to radiation background levels on the Santa Clara Reservation. The tritium inventory requirements for the neutron tube target loading activities are about 2 grams (EA section 4.1.3.9, pg 4–91). As indicated in the FONSI, no significant adverse impact to the health of the public from tritium is expected.

Comment: Over time, water usage increases of 4 percent and 1 percent at SNL and LANL, respectively, may prove significant; DOE has failed to meet clean water standards at LANL or SNL.

Response: As described in EA section 4.1.5.3, water samples are obtained from monitoring stations upstream and downstream of SNL in the Rio Grande and from Coyote Springs as part of the annual surface water monitoring program. Results from the 1990 annual monitoring for radionuclides are presented in EA table 4.1.5.3–1 and show that concentrations of radionuclides in surface waters do not exceed applicable standards. As described in EA sections 4.1.3.3 and 4.1.5.3, the proposed action would increase water use by 1,840 gallons per day (<1 percent) and 25,000 gallons per day (<3 percent) over current water use at LANL and SNL, respectively. Based on current water use and available water supplies, the additional amounts are not significant. The Affected Environment parts of these same sections also discuss the instances where discharges at LANL and SNL were noncompliant (mostly for pH) with NPDES permit limits and the City of Albuquerque's Sewer Use and Wastewater Control Ordinance. As indicated in the EA, all noncompliances were reported and corrective actions implemented.

Comment: Some buildings at LANL and SNL that are within the 30-year-old or older category may have historic qualities associated with them that would qualify them for listing on the National Register of Historic Places. This is particularly true for buildings associated with the Manhattan Project at LANL and buildings associated with the assembly of the first atomic and hydrogen bombs at SNL.

Response: Facilities that will be affected by nonnuclear consolidation at LANL and SNL are identified and described in EA sections 3.3.3 and 3.3.5, respectively. None of them were considered associated with either the Manhattan Project or the assembly of the first atomic and hydrogen bombs at LANL (EA sections 4.1.3.6 and 4.1.5.6). A final determination will be requested from the State Historic Preservation Office prior to project implementation.

Comment: The DOE should not close the Rocky Flats Plant; jobs would be lost in Boulder and Denver.

Response: Suburban expansion, changing world conditions, and the cost savings to be realized through consolidation, contributed to the decision to terminate the nonnuclear mission at RFP. It is estimated that the jobs lost at Rocky Flats would increase the unemployment rate in the local Region of Influence (which includes the cities of Boulder and Denver) from 5.6 percent to 5.7 percent.

Comment: Seventy-seven percent of current Mound employees live in a geographic area whose population is only 37 percent of the population in the DOE defined Region of Influence; where half of the current Mound employees reside the unemployment rate would rise from 4.5 percent to 8.0 percent.

Response: In order to assess the effects of in-migration and out-migration patterns, DOE assessed local Regions of Influence where 90 percent of the site employees reside. This standard was used for all sites in the EA to assure that the analyses would be consistent and comparable. Site employment data and residence data were obtained from all sites. In the case of Mound Plant, the number of employees and their residences was provided by Mound Plant Personnel Staff (EA appendix E, table E3.6–1a). An analysis of the in-migration and out-migration estimates was presented in the EA for all cities and counties contained in each Region of Influence. The estimate that unemployment would rise from 4.5 percent to 8.0 percent assumes that half the indirect jobs lost would come from

the small residential communities where half the current Mound Employees reside. However, the economic interactions of industries in the region indicate that the majority of the indirect job loss would come from more urbanized areas in the Region of Influence.

Comment: The statement "This reduction in jobs would not increase the unemployment rate in the year 2000 beyond the projected baseline level of 5.6 percent (pp 4–150, 4–151)" misstates the conclusion of DOE's own Socioeconomic Model. Model results indicate a rise in the unemployment rate from 5.6 percent to 6.1 percent.

Response: The comment is correct. This statement in the EA was based upon an earlier analysis and is incorrect. The most recent and final conclusion from the model results are that unemployment in the Mound Region of Influence would increase from 5.6 percent to 6.1 percent; in the Pinellas Region of Influence from 5.4 to 5.6 percent; and in the RFP Region of Influence from 5.6 to 5.7 percent. The FONSI has been changed to reflect the new model results.

Comment: The EA does not adequately address the socioeconomic impacts on the City of Miamisburg and other local communities.

Response: The EA addresses any community with concentrations of Mound employees. The assessment showed that only three communities would have an out-migration of greater that 1 percent of population. No community would have an out-migration of more than 2 percent. These out-migrations would have minor effects on schools and tax revenue, however, because the out-migration estimated for the local communities over the four-year period of nonnuclear consolidation is less than the annual rate of change experienced by the communities from 1980 to 1990.

Comment: The EA assumes that 50 percent of critical people/skills will move to receiver sites. This assumption is contrary to DOE experience in Burlington, Iowa, where consolidation of assembly options with Pantex (1970) resulted in 4 percent of the workforce transferred.

Response: The DOE believes the assumption of 50 percent of critical skilled employees (employees with specific technical skills that, if lacking, would cause delays, or employees in jobs critical to the continued operation) moving to receiver sites to be valid. If these critical people/skills prefer to stay in the local region, it can only be assumed that they would choose to do so because alternative employment opportunities were available. In that case, the estimates presented in section 4.1.6.7 of the EA for indirect job losses, population out-migration, and housing vacancies would be lower. If fewer critical people/skills relocate, then the effects will be lower than estimated in the EA.

Comment: Miamisburg will lose 16 percent of the City's General Revenue and 21 percent of the Capital Improvement Budget as a direct result of the Mound Plant losing Defense Programs missions.

Response: The DOE is reacting to changing world events by downsizing and consolidating. A consequence of this would be to reduce the number of workers needed at Mound for the DOE to perform its mission in the future. However, new jobs would also be created by follow-on efforts to decontaminate and transition to other uses those facilities that are no longer needed to support the national security mission. The General Revenue in Miamisburg is supported by revenues primarily generated from an income tax imposed on anyone working in Miamisburg regardless of residence. As described in EA section 4.1.6.7, the estimated loss in Miamisburg General Fund revenue due to the proposed action from direct jobs is projected to be 9 percent. This does not assume any new jobs being added for decontamination and transition activities that would lessen budget impacts for Miamisburg.

Comment: The loss of approximately 3038 jobs, 1050 direct and 1988 indirect, and the resulting loss of more than $250 million in personal income in the Largo, FL area would have significant detrimental effects.

Response: The estimated loss of $250 million in personal income in the year 2000 is less than 0.05 percent of the estimated $51.5 billion in personal income in the Region of Influence. This estimate does not include the resources DOE has committed to mitigate the effects which terminating the nonnuclear mission at Pinellas would have on the Largo, FL area. However, socioeconomic impacts alone, without significant impact to the physical environment, cannot render the overall impacts of a proposal "significant" within the meaning of the National Environmental Policy Act.

Comment: The impacts of cleaning up LANL solid waste management units have not been addressed; the annual increase in waste amounts resulting from the proposed action are only guesses; future demands for increased weapons production could change those figures by orders of magnitude; any new waste generation while a facility is in non-compliance would be prohibited.

Response: The Los Alamos Waste Management Program treats, stores, and disposes of existing wastes generated at LANL, and would do so for process wastes generated by nonnuclear consolidation. The Los Alamos Environmental Restoration Program identifies and cleans up sites where hazardous and radioactive wastes were disposed of in the past, and is independent of the nonnuclear consolidation proposed action. Approximately 2,250 potential release sites aggregated into 24 operable units, are currently scheduled for investigation in the LANL Environmental Restoration Program under the RCRA Hazardous and Solid Waste Amendments permit. Nonnuclear consolidation would not affect or be affected by the Environmental Restoration Program's projected cost for cleanup or estimated time for assessment.

The annual waste amounts presented in the EA are process engineering estimates based on many years of manufacturing experience. Projected demands for future production have already been accounted for in these estimates. There are no foreseeable production workloads that can change these figures by orders of magnitude.

Wastes generated at LANL and SNL are managed in accordance with an extensive network of DOE Orders as well as Federal, State, and local laws and regulations established to protect the health and safety of workers, the public and the environment. A Federal Facility Compliance Agreement and Administrative Order dictates the Corrective Activities Programs to bring LANL and SNL into regulatory compliance within a short time frame by specifically addressing waste issues. The Federal Facility Compliance Act of 1992 requires DOE to provide specific information to EPA and the State of New Mexico on LANL's and SNL's mixed waste streams, treatment facilities, and technology development activities. LANL and SNL have devoted significant resources to revise and improve waste handling and characterization procedures for safe handling of waste and to meet established waste acceptance criteria for safe treatment and/or disposal of wastes.

Both LANL and SNL have implemented and are developing waste minimization programs to minimize generation of these wastes. DOE is currently addressing DOE-wide waste disposal issues in the Programmatic EIS for the Integrated Environmental Restoration and Waste Management Program. That document, for which a

notice of intent was published on October 22, 1990 (55 FR 42633), will analyze alternative means of managing DOE's hazardous, radioactive, mixed, and other waste; transportation issues regarding waste treatment or disposal; and environmental restoration of DOE sites.

Comment: Reconfiguration of nonnuclear and nuclear activities at Los Alamos sustains and increases the risk of accidents and exposure to Santa Clara Pueblo; the system used to determine acceptable exposures to toxic substances is unacceptable.

Response: Reconfiguration of nuclear activities is not covered in this EA. Those issues as they pertain to LANL will be covered in the Reconfiguration PEIS scheduled for release to the public for comment in 1994. The relocation and subsequent operation of nonnuclear activities at LANL would be done in strict accordance with all applicable ES&H requirements and as such would not present any significant risks or exposures to Santa Clara Pueblo. Section 4.1.3.9 of the EA describes the human health baseline and impacts from the proposed action at LANL.

All of the risk calculations presented in the EA were based on incremental changes to the existing site-related hazards from the introduction of new operations. Appendix F of the EA describes the methodology used to access potential public and worker risks for hazardous chemicals and radioactive materials during an accident and normal operations.

The health risk methodology used in the EA received internal technical peer review as well as outside review during the State/Indian Tribe pre-approval review process. The technical review determined that the methodology used usually will overestimate the risk by assuming between 50 and 100 percent uptake of the chemical of concern in the calculations. No comments or concerns were raised by state agencies on the health risk methodology during the pre-approval review process.

Comment: Hazardous/toxic material is being transported across reservation lands of Santa Clara Pueblo and San Ildefonso Pueblo. Neither Pueblo has received financial or technical assistance to hire and train emergency staff, procure equipment and develop/implement emergency preparedness plans.

Response: This concern was addressed previously in EA Appendix G, comment summary 10.1 of the EA. For neutron tube target loading, only very small quantities of tritium would be transported to or from LANL by air. The risk of transporting this tritium is very small, as explained in section 4.5 of the EA. All shipments to and from LANL would be in compliance with Federal transportation regulations (title 49, Code of Federal Regulations). By themselves, the functions proposed for transfer to LANL do not justify the Government's providing special technical assistance to the Indian Pueblo Tribes for emergency preparedness. In any case, the Department of Transportation is responsible, under the Hazardous Materials Transportation Act, as amended by the Hazardous Materials Transportation Uniform Safety Act, for coordinating Federal training programs and for providing technical assistance to States, tribes and local governments for emergency response training and planning.

Comment: The DOE must take a whole system/whole planet look at this proposal; only decreased weapons production should be permitted at LANL and SNL; DOE should stop using all heavy metals and nuclear materials which are harmful to life, and study bacteria, plants, and amoebas which can feed on and neutralize plutonium, tritium, etc., so that we can deal responsibly with the byproducts we produce.

Response: The cumulative effects of the nonnuclear consolidation proposal are described in EA section 4.3.6. Implementing the proposed action would reduce potential environmental impacts from those that would occur with the No Action alternative. Consolidation would also reduce the number of sites with hazardous activities and/or materials within the Complex. The existing air quality and groundwater quality at LANL and estimated additional air and water emissions due to the activities that are part of the proposed action are discussed in EA section 4.1.3.2 and 4.1.3.3. The proposed action would have a negligible effect on cumulative air quality. Cumulative impacts are not expected on groundwater resources at LANL and SNL (See EA section 4.3). The proposed action would not interfere with ongoing and planned environmental remediation activities that address known air quality concerns and groundwater contamination at these sites.

The Los Alamos National Laboratory is presently engaged in conducting research related to environmental cleanup technologies. However, the DOE is required by the Atomic Energy Act to ensure that the United States maintains a credible nuclear deterrent. To assure this deterrent capability, the DOE must use certain materials in weapons-related work. To minimize environmental impacts associated with, and hazardous and toxic materials which may be used in, this endeavor, the DOE has implemented waste minimization and pollution prevention programs at all facilities. Discussion of these programs is presented in chapter 4 of the EA under Waste Management/Pollution Prevention.

Comment: No new expansion or production involving hazardous materials should be undertaken without first doing a site-wide EIS at LANL and SNL; site-wide EISs for LANL/SNL need to be updated and separate EISs should be prepared for these new and changed production capacities.

Response: DOE's NEPA regulations provide for the preparation and periodic reevaluation of site-wide EISs for certain large, multiple-facility DOE sites (10 CFR 1021.330). Implementation of this provision is independent of those decisions necessary to carry out the activities planned at LANL and SNL under the proposed action. This FONSI is based on the analysis presented in the EA. Chapter 3 of the EA describes the processes and activities to be received at each site due to the proposed action. The affected environment and environmental consequences due to the proposed action at each site are described in chapter 4 of the EA. This analysis shows that the activities involving hazardous materials would not result in significant impacts.

Comment: The DOE should not be consolidating its nonnuclear manufacturing activities at one site as it makes the weapons complex more vulnerable to natural and manmade disasters, such as flooding at Kansas City and the terrorist bombing of the World Trade Center.

Response: The Kansas City Plant was not affected by recent floods, and the ongoing Corps of Engineers flood control project described in EA section 4.1.1.3 will only improve the Plant's flood protection. The risks to our national security as well as the mission of DOE to manufacture nuclear weapons and maintain the Nation's weapons stockpile are considered in all policy decisions regarding the Nuclear Weapons Complex. Possible threats due to weather, terrorism, war, and accidents are included in the evaluations. In all cases, measures are taken to ensure that all possible risks are minimized and that safeguards are in place to mitigate any unforeseen disruptions to national security or the role of DOE in maintaining the Nation's nuclear deterrent. Protection against terrorism is an ongoing activity at all DOE sites.

Comment: DOE's weapons mission now must be the elimination of nuclear weapons, and, as a corollary, stopping nuclear weapons proliferation and associated pollution worldwide. All steps to continue nuclear weapons production will contradict and derail this mission and expend Federal funds much needed for public programs. Decisions to continue or increase nuclear weapons production anywhere have the direct consequence of acting to increase these activities everywhere.

Response: The mission of DOE and its role in maintaining the nuclear weapons stockpile is discussed in the EA in section 1.1. The size of the nuclear weapons stockpile is determined on a year-to-year basis through a joint recommendation by the Secretaries of Defense and Energy approved by the President. Although recent world events have made the need to maintain a large nuclear weapons stockpile no longer a requirement for national defense, the basic defense mission of DOE under the Atomic Energy Act, as reflected in annual authorization and appropriations legislation, has not changed.

In order to carry out this mission safely and effectively, DOE must retain the capability to maintain the weapons stockpile. The purpose of this nonnuclear consolidation is to carry out this national security requirement at the lowest possible cost. By consolidating and downsizing the Complex, DOE would eventually reduce the cost of weapons operations, making more resources available for other Federal activities. This proposal has been analyzed and its cost-effectiveness confirmed in the DOE Nonnuclear Consolidation Cost Effectiveness Report which was delivered to Congress in January 1993. In addition, this proposed consolidation would reduce the overall environmental impacts of maintaining the nuclear deterrent.

No increase in nuclear weapons production is planned. Rather, this consolidation reflects a decrease in the size of the stockpile to the lower levels that are now deemed adequate for national security.

Comment: Nonnuclear consolidation is an extension of, not separate from nuclear reconfiguration and should be included as part of the Reconfiguration PEIS since the processes described in the EA contain or are associated with radioactive materials.

Response: As stated in the EA (section 2.4), the term "nuclear" is limited to those weapons components fabricated from or containing various isotopes of plutonium and uranium defined as Special Nuclear Materials. All other weapons components (some of which contain small amounts of tritium) and processes are called nonnuclear. The DOE determined that the nonnuclear consolidation proposal could be separated from the Reconfiguration PEIS because the nonnuclear consolidation would not affect or predetermine the outcome of the PEIS (57 FR 3046). Additionally, by separating the nonnuclear element of the Complex the Nation would realize the annual savings resulting from effectively closing down three separate nonnuclear weapons component fabrication sites early. The technical capability that otherwise would be lost through inactivity at these sites would also be retained. All of the processes involved in the nonnuclear consolidation proposal have been described and the environmental impacts of the action evaluated in accordance with NEPA.

Comment: The DOE did not give the public adequate time to comment on the FONSI.

Response: The DOE distributed approximately 3,000 copies of the proposed FONSI, 2,000 copies of the EA Executive Summary, and 1,200 copies of the complete EA to Federal agencies, state and local governments, American Indian groups, and interested members of the public on July 2, 1993. Copies were also sent to the 15 designated DOE reading rooms across the Nation. Additionally, the **Federal Register** notice of the proposed FONSI published July 8, 1993, indicated that copies of the EA or EA Executive Summary were available to the public upon request. The proposed FONSI and supporting documents were available for public review for 30 days in accordance with 40 CFR 1501.4(a)(2)(i) and 10 CFR 1021.322(d). All comments postmarked before the closing date have been considered. In addition, DOE considered late comments to the extent practicable.

Comment: Waste treatment, storage, and disposal practices are problematic, unsafe, and often illegal throughout DOE facilities. In view of their past and present practices, it is exceedingly inappropriate to remove the public's oversight capabilities of this major Federal action at this time.

Response: DOE acknowledges that not all of its facilities are currently in full compliance with applicable Federal and state regulations. DOE has entered into numerous agreements with individual states and the EPA to address environmental compliance issues which have arisen, due in many cases to the age of the DOE facilities or the uniqueness of DOE operations (EA table 5–4). Most of these compliance agreements include a commitment from the DOE to achieve compliance by a specified date and include schedules and milestones for achieving compliance. Through these agreements, Federal agencies and state governments maintain involvement and oversight on behalf of the public.

Comment: DOE should not forget to consider solar power, wind, and other natural energies. By changing its priorities, DOE could become the most respected government department.

Response: The DOE coordinates and administers the energy functions of the Federal government. In that capacity, specific organizations within the Department have missions related to long-term, high risk research and development of energy technologies such as solar power, wind and other natural energy sources; the marketing of Federal power; energy conservation; energy regulatory programs; and a central energy data collection and analysis program. However, the Department is also responsible by law to maintain the nuclear weapons program. The priority given to the nuclear weapons program is dictated by national security concerns.

Comment: DOE has been implementing the proposed action for several years by not funding or implementing upgrade projects at Mound; the Replacement Tritium Facility (RTF) at SRS is not capable of accepting tritium functions from Mound without environmental impacts; SRS has a history of serious tritium releases to the environment which indicates the impacts at SRS have been underestimated.

Response: Not funding some of the proposed upgrade projects at Mound over the past several years was based on normal budgetary and programmatic considerations applied to all DOE programs. The fact that certain upgrade projects have not been completed was not a factor in the decision to consolidate at sites other than Mound. The proposal to consolidate at the Kansas City Plant was based on the detailed analysis performed in the Nonnuclear Consolidation Plan, which is described in Section 1.8 of the EA and was confirmed by three independent consultants appointed by the Secretary.

The Replacement Tritium Facility (RTF) at the Savannah River Site (SRS) is a new state-of-the-art tritium handling facility designed to comply with all current operating requirements. A separate Environmental Assessment (DOE/EA–0297, classified, March 1986) was prepared for this facility and a Finding of No Significant Impact was issued on April 15, 1986 (51 FR 12727). Prior to full operation and consolidation

of the Mound tritium handling functions in the RTF, a standard DOE Operations Readiness Review (ORR) to ensure proper operation and compliance with all applicable regulations is being performed. If, at the completion of this review, the facility does not meet standards then full operation and consolidation would not proceed until any deficiencies are corrected.

The impacts of possible tritium releases resulting from nonnuclear consolidation at SRS have been fully and conservatively analyzed in Section 4.1.2 of the EA. No significant impact on the environment, workers, and the general public due to normal operations or accidents were identified. Past tritium releases at SRS have mainly been associated with nuclear reactor operations. Since the reactors at SRS are no longer operational and there are no plans to restart them, the major source of these releases has been eliminated.

[FR Doc. 93–22451 Filed 9–13–93; 8:45 am]
BILLING CODE 6450–01–P

Hot Dry Rock Geothermal Energy Systems; Development of a Facility To Produce and Market Electric Power or Thermal Energy

AGENCY: Albuquerque Operations Office (DOE/AL), Department of Energy.

ACTION: Notice of program interest.

SUMMARY: DOE/AL is soliciting comments and expressions of interest in developing a cost-shared, industry-led project to develop a prototype facility to produce and market electric power or heat generated from geothermal energy in hot dry rock.

DATES: Statement of interest should be received at DOE/AL on or before October 29, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Gladys J. Hooper, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1146. Mr. Nyles Lackey, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico 87185–5400, (505) 845–4527. Dr. David Duchane, Los Alamos National Laboratory, EES–DO, MS D443, Los Alamos, New Mexico 87545, (505) 667–4318.

SUPPLEMENTARY INFORMATION:

Background

Geothermal energy is found at depth everywhere in the world in the form of heat stored in rock which is hot but essentially dry. Advanced technology to extract the geothermal energy from this hot dry rock has been under development for over 20 years. The technology entails using wells to circulate water through a man-made geothermal reservoir to extract energy and bring it to the surface for recovery and use. Several studies have estimated that geothermal energy from hot dry rock could be used to produce electricity at costs of $0.05–0.07 per kWh at numerous high gradient locations located in the western U.S. and elsewhere around the world. Recent testing at a pilot facility at Fenton Hill, New Mexico, produced the following results; (1) Steady, uniform heat production at a level of four thermal megawatts was achieved from a single production well over a period of more than six months (with continuous operation of nearly four months); (2) Access to fractured hot rock increased with time as fluid was circulated through the reservoir; (3) Water consumption decreased to seven percent of the injected fluid over the course of the testing; (4) Thermal energy in the amount of more than six times the thermal equivalent of the fuel and electricity used to run the plant was continuously produced; (5) Geothermal energy was extracted with essentially no emissions (except waste heat) to the environment during normal operations; and (6) Dissolved solids remained at levels of less than 4,000 parts per million (ppm) and did not present scaling problems in piping and equipment. Based on this recent experience and other experiences obtained over the years in the United States and overseas, there appear to be no technical impediments to the commercialization of hot dry rock technology.

Purpose

The purpose of this notice is to obtain a preliminary indication of interest by utilities and industrial concerns in cost-sharing to develop and operate a demonstration facility to generate and market electric power or heat from hot dry rock geothermal energy. Comments are solicited from independent power producers, utilities, energy companies, well field drilling and service organizations, turbine manufacturers, and other businesses with an interest in the development of geothermal energy resources. This notice is only intended to: Decide whether to proceed with a solicitation; refine the specifications of the solicitation, identify potential bidders, promote the formation of partnerships or consortia; and stimulate interactions among potential participants. At some future date, if a solicitation for this project is issued, the offeror will be invited to specify a site for the development of the facility, the size and scope of the plant, and the customer(s) to whom the electric power or thermal energy will be sold, as well as to provide a plan for the construction of the facility. DOE expects that appropriate facilities for consideration under this project will be on the order of 1–25 megawatts in electricity generating capacity or 10–150 thermal megawatts of heat production potential. DOE will not operate or assume an ownership position in the facility. The plant and its revenue will be the property of the successful offeror(s). A minimum direct cost-sharing by the offerer for this facility on the order of 30 percent is expected with a target of 50 percent. A portion of the cost-sharing, generally that in excess of 30 percent, may include in-kind cost participation. The federal government's share of any project will be limited to about $30 million over a period covering the construction of the facility and up to two years of operations. DOE will exercise appropriate oversight authority, but the day-to-day management of the project will be exercised by the offerer. In connection with this project, DOE is prepared to make available the equipment, materials, and other resources of the hot dry rock pilot facility located at Fenton Hill, New Mexico. This facility may be used for cost-shared additional testing in order to provide any specialized information that may be needed to further commercialization of hot dry rock technology. Alternatively, the facility can be made available for the commercial applications contemplated by this notice.

Expressions of Interest

DOE, through its AL office, requests comments and expressions of interest in order to determine the level of interest by private parties in the proposed project to build and operate a geothermal power facility using hot dry rock technology. Moreover, the requested information will help the DOE to decide whether to issue a solicitation, refine the specifications of the solicitation, and identify potential bidders. Comments, suggested modifications, additions, deletions or alternative approaches are encouraged and welcomed. Proprietary details of responses should be identified and will be kept in confidence. Failure to respond to this notice will not disqualify any party from responding to any subsequent solicitation, but a response will assure that the party receives the solicitation and notification of related activities. Expressions of interest should not include detailed plans or proposals but should include

the following: (1) The name, address, telephone number, and facsimile number of the primary contact person; (2) the potential participants, their affiliations, their proposed roles, and brief documentation of their interest in the project; (3) interest, if any, in possible membership in a consortium which may be put together to carry out the program(s) defined herein; (4) comments on the proposed approach, the scope of the proposed project as outlined in this notice, cost sharing, funding level, project location criteria, and other information deemed pertinent to the final definition of the project; and (5) a statement indicating whether or not the respondent wishes to receive a copy of the solicitation. Responses to this notice should not exceed five pages in length exclusive of appendices. Responses shall be sent to the attention of Mr. Nyles Lackey at the address listed above.

Technology Prospects

Copies of pertinent reports on hot dry rock are available to aid parties in deciding their level of interest. Copies of these reports are available from Los Alamos National Laboratory.

Contact Dr. David Duchane, at the address listed above, for information on how to obtain copies of these reports.

Issued in Albuquerque, New Mexico on August 25, 1993.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 93–22453 Filed 9–13–93; 8:45 am]

BILLING CODE 6450–01–M

Environmental Technology Community College; Educational Bridge Program

AGENCY: Albuquerque Operations Office (DOE/AL), Department of Energy.

ACTION: Notice of program intent.

SUMMARY: DOE, Technology Development, Office of Environmental Restoration and Waste Management, pursuant to the DOE Financial Assistance Rules, 10 CFR part 600, and Public Law 101–510, announces that an Environmental Technology Community College Educational Bridge Program will be established in the near future. DOE is soliciting expressions of interest in the development or enhancement of an educational program whose purpose is to link high school students, interested in Environmental Technology curriculums, to four year institutions via community colleges. The purpose of this program is to help meet the manpower needs of DOE in its cleanup mission. In light of this mission, the program objectives are:

(1) To enhance the quality and quantity of Environmental Restoration and Waste Management (EM) technician curricula, which will provide skilled environmental professionals,

(2) To promote and increase technology transfer opportunities for students; and

(3) To increase the participation of minority and educationally disadvantaged students in post-secondary education.

DATES: Statement of Interest should be received at DOE/AL on or before October 14, 1993.

FOR FURTHER INFORMATION CONTACT: Statement of Interest should be sent to the attention of Mr. Roger Cartee, Department of Energy, Albuquerque Operations Office, Technology Transfer and Commercialization Staff, P.O. Box 5400, Albuquerque, New Mexico 87185–5400, telephone (505) 845–5251.

SUPPLEMENTARY INFORMATION: The Office of the Technology Development is planning to support a Community College Educational Bridge Program that will ultimately increase the future work force of professionals and technologists who can help to meet DOE's environmental challenges of site restoration and cleanup. The Community College Bridge Program will provide a curriculum that focuses on environmental restoration and waste management. Additionally, emphasis is placed on increasing the participation of women, minorities, disabled, and disadvantaged students in the required work force.

For the purpose of this Community College Bridge Program, a community college shall be defined by the state in which the school resides, offer two-year degrees, and be capable of delivering environmental education programs to the local population. It is also anticipated that the DOE will be interested in community colleges that can provide the following requirements:

1. Create a plan to show the interface and interaction procedures with high schools and four year educational entities.

2. A statement of proposed means of delivering environmental education to community college students, as well as a description of the environmentally based curriculum, the community college's facility (including classrooms and laboratories), and faculty.

3. Describe strategies for developing linkages with other entities for additional funding/leveraging purposes.

4. Provide a detailed discussion of the milestones and funding required to accomplish the goals and objectives of the Community College Bridge Program.

5. Include a procedure to evaluate and review student progress to determine if program goals and objectives are being met.

Funding: The estimated total program funding available from DOE is approximately $800,000 for fiscal year (FY) 94. It is possible that up to four awards of $200,000 will be made.

Issued in Albuquerque, New Mexico, on September 3, 1993.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 93–22454 Filed 9–13–93; 8:45 am]

BILLING CODE 6450–01–M

Oak Ridge Field Office; Acceptance of an Unsolicited Application for Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.14(f) it intends to accept an unsolicited application from Institute for Paper Science and Technology (IPST) and award a cooperative agreement in the amount of $120,000 for commercialization of on-line ultrasonic sensors for measuring paper mechanical properties. Successful implementation of this instrumentation will permit more effective utilization of raw materials and energy while producing products with improved uniformity and performance. Energy savings result from optimization of the utilization of energy intensive processes, such as refining, and from efficiency improvement in subsequent converting processes as a result of uniform product. Energy waste is avoided by minimizing substandard production. The proposed work is to develop a commercially viable system for on-machine, out-of-plane and in-plane measurements of ultrasound velocities; install a working system on a paper machine in a host paper mill; demonstrate the system's capabilities and benefits to the paper manufacturing industry; and have a vendor committed to providing and supporting the system. Eligibility for this award is, therefore, restricted to IPST pursuant to 10 CFR 600.14(j).

FOR FURTHER INFORMATION CONTACT:

Stanley Sobczynski, Conservation and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, 202–586–1878.

Issued in Oak Ridge, Tennessee on September 7, 1993.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Field Office.

[FR Doc. 93–22452 Filed 9–13–93; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for expedited review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE)

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report per period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: DOE has requested expedited OMB approval by September 17, 1993. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration, Office of Energy Markets and End Use.
2. EIA–457A/H.
3. 905–0092.
4. Residential Energy Consumption Survey.
5. Revision.
6. Triennially.
7. Mandatory.
8. Individuals or households, state or local governments, businesses or other for-profit, Federal agencies or employees, and small businesses or organizations.
9. 9,430 respondents.
10. .333 responses.
11. 2.08 hours per response.
12. 6,557 hours.
13. EIA–457A/H collection comprehensive national and regional data on the consumption of energy in the residential sector. Data are used for analysis and forecasting. The revisions proposed are: (1) The addition of questions to be asked at single-family, owner-occupied homes built in 1988 or later (a copy of the additional questions is included in this notice); and (2) the deletion of some questions previously approved that are now considered unnecessary. The deleted questions are: A–7 (energy rating), A–10A (modular housing), A–11 (built as apartment), C–9 (zoned heating), D–11 (preference for new air conditioner over old one), D–15 (size of window air conditioners), E–6 (preference for new water heater over old one), E–9 (are baths taken more often than showers), G–2d (use of stovetop grill), G17 (preference for new refrigerator over old one), G–18 (person who decided on what refrigerator to purchase), G–22 (use of hot water for laundry), G–24 (loads of laundry dried), G–29 (hours television sets turned on), H–3 (uses of reflective film on windows, blinds or insulated drapes, shutters, or awnings), I–7 (fuel oil demand side management programs), and J–32 (use of photovoltaic cells).

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. 96–511), which amended chapter 35 of title 44 United States Code (See 44 U.S.C. 3506(a) and (c)(1)).

Issued in Washington, DC, September 9, 1993.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

BILLING CODE 6450–01–M

Form EIA-457A (1993)

NEW HOME SUPPLEMENT

BOX 20

INTERVIEWER: CHECK FOLDOUT PAGE. ASK THIS SECTION IF SINGLE-FAMILY HOME, OWNED (NOT RENTED), AND BUILT IN 1988 OR LATER. OTHERWISE GO TO THE LIGHTING SUPPLEMENT, IF HOUSEHOLD HAS BEEN SELECTED FOR THE LIGHTING SUPPLEMENT. (SEE THE HOUSING UNIT RECORD SHEET.)

INTERVIEWER READ: "Since this is a (relatively) new house, I have a few questions about this house."

NH-1. Do you know which side of your home faces the South?

YES 1 1234
NO ..... 0 –> [NH-3]

If "YES" on NH-1, ASK:

NH-2. Using your best estimate, does the side of your home facing the South have more, the same, or less glass area than the North side of your home?

MORE GLASS AREA 1
SAME GLASS AREA 2 1235
LESS GLASS AREA 3
NO GLASS AREA ON SOUTH SIDE 0

INTERVIEWER READ: "Here are some questions that relate to the technical characteristics of your house. You might remember some of these items from the materials you received when you bought the house."

NH-3. What is your best estimate of the R-value of the insulation in the roof or ceiling, or perhaps you know the inches of insulation? (R-VALUES RANGE FROM 4 TO 49.)

R-VALUE ☐☐ OR INCHES ☐☐ ... –> [NH-5]
DON'T KNOW 96 1236-39
NO INSULATION ..... 00 –> [NH-5]

Form EIA-457A (1993)

IF "DON'T KNOW" ON NH-3, ASK:

NH-4. When you purchased your home, were you informed that the insulation in your roof or ceiling meets or exceeds the building code for your location?

MEETS THE BUILDING CODES	1	
EXCEEDS THE BUILDING CODES	2	1240
DON'T REMEMBER/NOT INFORMED	6	

INTERVIEWER: CHECK FOLDOUT PAGE. IF CENTRAL AIR CONDITIONING CONTINUE, OTHERWISE SKIP TO NH-7.

IF HAS CENTRAL AIR-CONDITIONING, ASK; OTHERWISE –> [NH-7]

NH-5. For your central air-conditioner, what is your best estimate of the size of the cooling capacity in tons or Btu? (12,000 Btu per hour = 1 ton cooling capacity.)

TONS ☐ OR BTU/HOUR ☐ 1241-48

DON'T KNOW 96

NH-6. Is your air-conditioner a high-efficiency unit?

YES	1	
NO	0	1249
DON'T KNOW	6	

NH-7. Is your heating equipment a high-efficiency unit?

YES	1	
NO	0	1250
DON'T KNOW	6	

NH-8. Can you set thermostats for your main heating equipment so that you have different temperatures in sections of your home? This is usually called "Zoned-Heating".

YES	1	
NO/NO THERMOSTAT	2	1251
DON'T KNOW	6	

Form EIA-457A (1993)

NH-9. Please don't try to find them, but we are interested in whether you maintain files or still have the brochures pertaining to information about the characteristics of your home and major appliances?

YES	1	
NO	0	1252
DON'T KNOW	6	

INTERVIEWER: SEE THE HOUSING UNIT RECORD SHEET. IF THE HOUSING UNIT HAS BEEN SELECTED FOR THE LIGHTING SUPPLEMENT, GO TO THE LIGHTING SUPPLEMENT, OTHERWISE CONTINUE WITH SECTION O.

[FR Doc. 93-22455 Filed 9-13-93; 8:45 am]
BILLING CODE 6450-0-C

Federal Energy Regulatory Commission

[Project Nos. 2451–004, 2452–007, and 2468–003 Michigan]

Consumers Power Co.; Availability of Draft Multiple Project Environmental Assessment

September 8, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the three applications for major license for the existing Rogers, Hardy, and Croton Hydroelectric Projects, located on the Muskegon River in Mecosta and Newaygo Counties, in southwest Michigan, and has prepared a Draft Multiple Project Environmental Assessment (MPEA) for the projects in cooperation with the U.S. Department of Agriculture, Forest Service, Huron-Manistee National Forests. In the draft MPEA, the Commission and Forest Service staffs analyzed the site-specific and cumulative environmental effects of the existing projects, as proposed in a Settlement Agreement reached between Consumers Power Company and the state and Federal resource agencies. The Commission staff has concluded that approval of the applications for new license, with appropriate enhancement measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the draft MPEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Please submit any comments within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project Nos. 2451, 2452, and 2468 to all comments. For further information, please contact Frank Karwoski, Environmental Coordinator, at (202) 219–2782.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22347 Filed 9–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–13997T Colorado–61]

Department of the Interior, Bureau of Land Management; NGPA Amended Notice of Determination by Jurisdictional Agency Denying Designation of Tight Formation

September 8, 1993.

Take notice that on September 3, 1993, the United States Department of Interior, Bureau of Land Management (BLM) amended its notice of determination that was filed in the above-referenced proceedings on August 16, 1993, pursuant to § 271.703(c)(3) of the Commission's regulations. The August 16, 1993 notice determined that a portion of the Upper Lewis Shale Formation (Blue Gravel Sand) in Moffat County, Colorado, does not qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA).

The amended notice of determination reduces the geographical area recommended to be denied tight formation designation. The amended area covers only the 2,080 acres, more or less, of Federal Lands described as follows:

Township 9, North, Range 90 West

Section 31: W/2

Township 9 North, Range 91 West

Section 23: E/2
Section 24: W/2
Section 25: All
Section 26: NE/4
Section 35: E/2

The notice of determination also contains BLM's findings that the referenced portion of the Pictured Cliffs Formation does not meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 10 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22346 Filed 9–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–14300T New Mexico–53]

Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

September 8, 1993.

Take notice that on September 2, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Chacra Formation underlying certain lands in the Jicarilla Area of the Otero Chacra Pool located in Rio Arriba County, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 2,560 acres, all of which are located on the Jicarilla Apache Indian Reservation. The recommended area is described as follows:

Township 25 North, Range 5 West

Sections 21–22: S/2
Sections 27–28: All
Sections 33–34: N/2

The notice of determination also contains BLM's findings that the referenced portion of the Chacra Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22348 Filed 9–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–14301T Colorado–62]

Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

September 8, 1993.

Take notice that on September 2, 1993, the United States Department of Interior, Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that a portion of the Corcoran-Cozzette Formation in the Lower Mesaverde Members, Cozzette and Corcoran Sandstones in Garfield County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA).

The recommended area encompasses approximately 201,160 acres of which approximately 56% are Federal Lands and 46% are Fee Lands described as follows:

Township 5 South, Range 98 West
Township 5 South, Range 99 West
Township 5 South, Range 100 West
Township 6 South, Range 98 West
Township 6 South, Range 99 West
Township 6 South, Range 100 West
Township 7 South, Range 98 West
Township 7 South, Range 99 West
Township 7 South, Range 100 West
Sections 1–36: All

The notice of determination also contains BLM's findings that the referenced portion of the Corcoran-Cozzette Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22349 Filed 9–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–190–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 8, 1993.

Take notice that on September 3, 1993, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of October 1, 1993:

First Revised Sheet No. 20A
Original Sheet No. 98
Sheet No. 99

Algonquin states that the purpose of this filing is to establish the balance and allocation of Stranded Costs to be paid by Algonquin to Texas Eastern Transmission Corporation (Texas Eastern) pursuant to Texas Eastern's direct bill of Stranded Costs filed on August 31, 1993.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22353 Filed 9–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–191–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 8, 1993.

Take notice that on September 3, 1993, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, First Revised Sheet No. 97, with a proposed effective date of October 1, 1993.

Algonquin states that the purpose of this filing is to provide for the recovery of certain transition costs associated with upstream capacity retained by Algonquin. Specifically, Algonquin seeks to recover gas supply realignment (GSR) costs associated with retained capacity that are to be paid by Algonquin to Texas Eastern Transmission Corporation (Texas Eastern).

Algonquin requests that the Commission waive § 154.22 of the Commission's regulations to the extent necessary in order to permit this application to take effect on October 1, 1993.

Algonquin states that copies of this tariff filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22354 Filed 9–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–696–000]

Arkla Energy Resources Co.; Request Under Blanket Authorization

September 8, 1993.

Take notice that on August 30, 1993, Arkla Energy Resources Company (AER), 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71151 filed in Docket No. CP93–696–000 a request pursuant to §§ 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate certain facilities in Arkansas, under its blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER specifically proposes to construct and operate a new delivery tap and meter station for delivery of gas to Arkansas Louisiana Gas Company's customers in Arkansas County, Arkansas. AER states that the volume of gas that will be delivered through this tap is approximately 7,300 Mcf annually and 80 Mcf on a peak day. AER indicates that the proposed facilities will be constructed at an estimated cost of $15,958 and that Arkansas Louisiana Gas Company will reimburse AER for all construction costs. AER states that it has sufficient capacity to accomplish the deliveries referenced herein without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time

allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7(c) of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22344 Filed 9–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–84–000]

Caprock Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 8, 1993.

Take notice that on September 1, 1993, Caprock Pipeline Company, (Caprock Pipeline), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with a proposed effective date of October 1, 1993:

First Revised Sheet No. 4
First Revised Sheet No. 5
First Revised Sheet No. 28

Caprock Pipeline states that the purpose of these changes is to establish the ACA surcharge in its rates for fiscal year 1993 and to note the new telephone number for their electronic bulletin board supplier, Enernet.

Caprock Pipeline states that a copy of this filing has been served upon all of Caprock Pipeline's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22355 Filed 9–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–552–000]

Carnegie Natural Gas Company and Carnegie Interstate Pipeline Co., Technical Conference

September 8, 1993.

A technical conference will be held to discuss issues raised in the above-captioned proceeding on Thursday, October 14, 1993, at 10 a.m., in room 3400–B at the offices of the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend. However, attendance does not confer party status.

For additional information, contact Timothy W. Gordon at (202) 208–2059.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22343 Filed 9–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP89–5–005]

CNG Transmission Corp., Sale of Natural Gas

September 8, 1993.

Take notice that on January 21, 1992, CNG Transmission Corporation (CNG), 445 West Main Street, PO Box 2450, Clarksburg, West Virginia, submitted the following information regarding the sale of natural gas to be made to an affiliate under CNG's Rate Schedule USA, pursuant to the authorization granted by an order issued December 20, 1988, in Docket No. CP89–5–000.[1]

(1) Name of Buyer: The East Ohio Gas Company

(2) Location of Buyer: Cleveland, Ohio.

(3) Affiliation between CNG and Buyer: East Ohio is an affiliate of CNG, owned by the same parent, Consolidated Natural Gas Company.

(4) Term of Sale: The agreement is for a one-day sale on September 30, 1993.

(5) Estimated Total and Daily Quantities: The maximum daily quantity for the one day sale is no more than 3,000,000 Dt.

(6) maximum sales rate: As with all USA Sales, the maximum sales rates will be the 100% load factor ACD rate.

Minimum sales rate: The minimum rate will be the actual Weighted average Cost of Gas ("WACOG"), plus adjustments

Rate to be charged during the billing period: The actual price within this range will be primarily a function of CNG's actual costs for the injection period, the price of which will not be known exactly until after the sale is made.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of December 20, 1988. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, CNG may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22341 Filed 9–13–93; 8:45 am]

BILLING CODE 6717–01–M

[1] CNG Transmission Corporation, 45 FERC ¶61,446 (1988).

[Docket No. TM94–1–15–000]

Mid Louisiana Gas Co.; Proposed Changes in FERC Gas Tariff

September 8, 1993.

Take notice that on September 1, 1993, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with a proposed effective date of October 1, 1993:

First Revised Sheet No. 4
First Revised Sheet No. 4A
First Revised Sheet No. 4B

Mid Louisiana states that the purpose of filing the revised tariff sheets is to reflect a revision to the unit rates for the collection of the Annual Charges imposed by Section 382 of the Commission's Regulations.

Mid Louisiana states that this filing is being made in accordance with Section 22 of Mid Louisiana's FERC Gas Tariff.

Mid Louisiana states that copies of this filing have been mailed to Mid Louisiana's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214, the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before September 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22359 Filed 9–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–700–000]

Paiute Pipeline Co.; Request Under Blanket Authorization

September 8, 1993.

Take notice that on September 2, 1993, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193–4197, filed in Docket No. CP93–700–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery tap to deliver natural gas to R.R. Donnelley and Sons Company (Donnelley), an end user, under Paiute's blanket certificate issued in Docket No. CP84–739–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Paiute proposes to construct and operate a delivery tap on its Reno Lateral in Washoe County, Nevada to deliver natural gas, transported by Paiute, directly to Donnelley. Paiute states that it has been informed that Donnelley would construct pipeline facilities to connect the proposed delivery tap to its plant.

Paiute further states that its existing tariff does not prohibit the addition of new delivery points and that it has sufficient capacity to provide for the proposed deliveries without any detriment or disadvantage to its existing customers. Paiute avers that deliveries to the proposed tap will have little or no effect on its peak day and annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22345 Filed 9–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–459–002]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 8, 1993.

Take notice that on August 31, 1993, Texas Eastern Transmission Corporation (Texas Eastern), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A of the filing.

By this filing, and in compliance with ordering paragraph (G) of the Commission's July 20, 1993, Order Approving Abandonment, Authorizing Acquisition, and Granting Motion for Waiver, Texas Eastern states that it is filing tariff sheets to establish new incremental, open-access transportation rate schedules for transportation on new pipeline facilities, known as the "Lebanon Lateral", for customers using that portion of the Lebanon Lateral capacity not committed to Texas Eastern.

Texas Eastern requests that the Commission waive all necessary rules and regulations to permit the tariff sheets listed on Appendix A to become effective on October 1, 1993. Texas Eastern states that pursuant to and in compliance with ordering paragraph (J) of the July 20 Order, Texas Eastern will notify the Commission upon completion of the acquisition within 10 days thereof.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before September 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22342 Filed 9–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–171–003]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 8, 1993.

Take notice that on September 3, 1993, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of July 1, 1992:

Sub Sixth Revised Sheet No. 526
Sub Sixth Revised Sheet No. 528

Texas Eastern states that the above tariff sheets are being filed in compliance with Ordering Paragraph (D) of the Commission's Order on Technical Conference, Compliance Filing, and Rehearing issued August 4, 1993 in the subject docket (August 4 Order). Texas Eastern states that the August 4 Order required Texas Eastern to revise its ASA tariff provision: (1) "to ensure that Texas Eastern's non-sales ASA Rate Schedule customers are not responsible for any fuel-use underrecoveries Texas Eastern might incur related to service to Texas Eastern's non-sales, non-ASA Rate Schedule customers"; and (2) to incorporate the tariff revisions proposed in Texas Eastern's August 21, 1992 data response. Texas Eastern states that the above tariff sheets comply with these requirements.

Texas Eastern states that copies of the filing were served on all firm customers of Texas Eastern Transmission Corporation and interested state commissions. In addition, copies of the filing have been served upon all shippers under Rate Schedules IT–1 and PTI.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's regulations. All such protests should be filed on or before September 15, 1993. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22351 Filed 9–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93-189-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 8, 1993.

Take notice that on September 2, 1993, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, and First Revised Volume No. 2A, the tariff sheets listed in Appendix A to the filing, with a proposed effective date of October 1, 1993.

Texas Gas states that the proposed tariff sheets, listed in Appendix A of the filing, are being filed in order to establish a cost allocation methodology and recovery mechanism pursuant to Commission Order No. 528, whereby Texas Gas would recover 75% of an additional $3.4 million in Take-or-Pay (TOP) Settlement Payments attributable to Texas Gas' obligation to indemnify certain producers for certain royalty attributable to prior take-or-pay settlement payments. Specifically, Texas Gas proposes to absorb 25% of these additional TOP Settlement Payments, recover 25% through a monthly fixed charge to current firm customers and recover the remaining 50% via a volumetric commodity surcharge on throughput, including both sales and transportation volumes.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas' jurisdictional customers, interested state commissions and each person listed on the official service list previously compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-22352 Filed 9-13-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

September 8, 1993.

Take notice that on September 1, 1993, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Seventh Revised Sheet No. 60, with a proposed effective date of October 1, 1993.

TGPL states that the purpose of the filing is to reflect an increase in the Annual Charge Adjustment (ACA) Charge in the commodity portion of TGPL's sales and transportation rates. Pursuant to Order No. 472, the Commission has assessed TGPL its ACA unit rate of $0.0026/Mcf ($0.0025/dt on TGPL's system) for the annual period commencing October 1, 1993.

TGPL states that copies of the filing are being mailed to affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before September 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-22358 Filed 9-13-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-82-000]

Viking Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 8, 1993.

Take notice that on September 3, 1993, Viking Gas Transmission Company (Viking), tendered for filing as part of its FERC Tariff, Original Revised Volume No. 1, Twenty-Fourth Revised Sheet No. 6, and First Revised Volume No. 1, Substitute Original Sheet No. 6, with a proposed effective date of October 1, 1993.

Viking states that this filing reflects the new Annual Charge Adjustment of $.0026 per dekatherm.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 15, 1993. Protests will be considered by the commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-22356 Filed 9-13-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-1-52-000]

Western Gas Interstate Co.; Proposed Changes in FERC Gas Tariff

September 8, 1993.

Take notice that on September 2, 1993, Western Gas Interstate Company (Western), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with an effective date of October 1, 1993.

1st Revised Sheet No. 10
1st Revised Sheet No. 11

Western states that, its filing proposes changes to its rates in accordance with the terms of the Annual Charge Adjustment Clause of its FERC Gas Tariff.

Western states that the tariff sheets proposed to become effective October 1, 1993 is to account for the increase in Western's Annual Charge Adjustment (ACA). The adjustment of the ACA Surcharge is determined each fiscal year, and reflects an increase of $0.0002/MMbtu from the currently effective ACA Surcharge.

Finally, Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules

and Regulations. All such motions or protests should be filed on or before September 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22357 Filed 9–13–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–109–005]

Williams Natural Gas Co.; Supplemental Compliance Filing

September 8, 1993.

Take notice that on September 1, 1993, Williams Natural Gas Company (WNG) tendered for filing the following tariff sheets to its proposed tariff applicable to restructured services, Second Revised Volume No. 1:

Second Substitute Original Sheet No. 283
Substitute Original Sheet Nos. 300–304

The proposed effective date of these tariff sheets is October 1, 1993.

WNG states that the tendered tariff sheets list each customer's initial allocation of capacity on WNG's pipeline system which resulted from the open season conducted during August, 1993 as required by the August 2, 1993 order in the above referenced docket.

WNG states that a copy of it filing was served on all parties in this docket and on all jurisdictional customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before September 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22350 Filed 9–13–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ECAO–RTP–0746; FRL–4728–7]

Three Review Workshops on Draft Chapters of a Revised Air Quality Criteria for Ozone and Related Photochemical Oxidants

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meetings.

SUMMARY: Three review workshops will be held by the Environmental Criteria and Assessment Office (ECAO) of EPA's Office of Health and Environmental Assessment to facilitate preparation of the chapters dealing with environmental ozone/oxidants concentrations, ecological effects, and atmospheric ozone and precursors for an external review draft of the revised Air Quality Criteria for Ozone and Related Photochemical Oxidants.

DATES: The first workshop, which addresses environmental ozone/oxidants concentrations, will be held on September 23, 1993, from 9 a.m. to 5 p.m. at EPA's Environmental Research Center, at the intersection of Alexander Drive and Highway 54, in Research Triangle Park, NC. The second workshop, which addresses ecological effects, will be held September 27 through September 29, 1993, from 8:30 a.m. to 5 p.m. each day at the Valley River Inn, 1000 Valley River Way, Eugene, OR 97401, telephone 1–800–543–8266. The third workshop, which addresses atmospheric ozone and precursors, will be held September 29 through October 1, 1993, also at EPA's Environmental Research Center in Research Triangle Park, NC. Meeting times on September 29 and 30 will be from 9 a.m. to 4:30 p.m. and on October 1 will be from 8:30 a.m. to 12 noon. All three workshops are open to the public.

FOR FURTHER INFORMATION CONTACT: Mr. William G. Ewald, manager for the chapter on environmental ozone/oxidants concentrations. U.S. Environmental Protection Agency, ECAO, MD–52, Research Triangle Park, NC 27711; telephone 919–541–4164, for information on the first workshop. Information on the second workshop may be obtained from Dr. J.H.B. Garner, manager for the chapter on ecological effects, at the same address, but telephone 919–541–4153. For information on the third workshop, contact Ms. Beverly E. Tilton, manager for the chapter on atmospheric ozone and precursors, at the same address but telephone 919–541–4161.

SUPPLEMENTARY INFORMATION: As discussed in a previous call for information (57 FR 38832, August 27, 1992), EPA is undertaking to review and, where appropriate, update and revise the document, Air Quality Criteria for Ozone and Related Photochemical Oxidants. As part of this review, the first workshop will cover a draft chapter (Chapter 4) on environmental ozone/oxidants concentrations, patterns, and exposure estimates. The second workshop will cover a draft chapter (Chapter 5) on the effects of ozone on managed and natural ecosystems, including crops. The third worksnop will cover a draft chapter (Chapter 3) on the atmospheric chemistry, meteorological and transport processes, and analytical methods for ozone/oxidants; and precursor sources, emissions, analytical methods, and concentrations. The particular chapter covered at each workshop will be available to the public at the time of the workshop. Members of the public will have an opportunity at the workshops to make brief, oral statements. Interested parties also are invited to assist the EPA in developing and refining the scientific information base for ozone by submitting new information on the topics covered at these three workshops. To be considered for inclusion in the review process, submitted information should be published or accepted for publication in a peer-reviewed, scientific journal.

Dated: September 7, 1993.

Gary J. Foley,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93–22439 Filed 9–13–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4729–2]

Science Advisory Board Executive Committee, Environmental Futures Committee; Public Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Environmental Futures Committee of the Science Advisory Board (SAB) will meet from 8:30 a.m. until 5 p.m. on Thursday, September 30, 1993 at Crystal Station, Conference Room C, 2nd Floor, 2800 Crystal Drive, Arlington, Virginia 22202.

The Environmental Futures Committee (EFC) was formed by the SAB at the request of Administrator Browner to assist the Agency in anticipating environmental problems, issues and opportunities. The charge to this Committee includes: Developing a

procedure for short-and long-term forecasting of natural and anthropogenic developments which may affect environmental quality and its protection; develop detailed examinations procedures and apply them to some future developments; and draw implications from the examinations of future developments and recommend actions for EPA to address them. This meeting will focus on orientation for the Standing Committees and the Committee will receive briefings from the Office of Policy, Planning and Evaluation (OPPE) on driving factors and an overview of the Futures methods.

This meeting is open to the public, but seating is limited and available on a first come basis. Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact the Designated Federal Official, Mr. Robert Flaak, Science Advisory Board (A–101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–6552; FAX (202) 260–7118.

Dated: September 2, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–22442 Filed 9–13–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4729–9]

Science Advisory Board Environmental Health Committee; Open Conference Call Meeting

Under Public Law 92–463, notice is hereby given that the Environmental Health Committee (EHC) of the Science Advisory Board of EPA will conduct a conference call meeting Friday, September 24, 1993 from 3 to 5 p.m. EDT. The meeting is open to the public.

At this meeting, the Committee will review methodologies for estimating health benefits resulting from corrective actions at hazardous waste sites, as incorporated in the draft document Regulatory Impact Analysis (RIA) for the Final Rulemaking on Corrective Action for Solid Waste Management Units developed by the Office of Solid Waste. The Committee will address a variety of issues related to the quantification of these benefits, particularly the exposure and health risk assumptions underlying the estimates.

Requests for copies of the draft RIA document should be directed to the Resource Conservation and Recovery Act (RCRA) Hotline (1–800–424–9346). The document is not available from the Science Advisory Board. Questions concerning its content should be addressed to Mr. Gary Ballard (OS–311), Regulatory Analysis Branch, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460 (202) 260–2429.

Members of the public desiring additional information about the conduct of the meeting or the agenda, or who wish to call into the conference should contact Mr. Samuel Rondberg (A101F), Science Advisory Board, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460 (202) 260–2559 or fax to (202) 260–7118. Anyone wishing to provide public comment for the meeting should contact Mr. Rondberg by September 22, and be prepared to fax any materials to the participants. Opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes in total. A fixed number of conference lines have been reserved for the meeting and participation will be on an "as available basis."

Dated: September 9, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–22557 Filed 9–13–93; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATES: Comments must be received on or before October 29, 1993. If you anticipate commenting on a report form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Copies of the proposed report form, the request for clearance (Standard Form 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

EEOC Agency Clearance Officer: Margaret P. Ulmer, Office of Management, room 2204, 1801 L Street, NW., Washington, DC 20507; Telephone: (202) 663–4279.

OMB Reviewer: Joseph Lackey, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503; Telephone: (202) 395–7316.

Type of Request: Extension (No change)

Title: Employer Information Report EEO–1

Form Number: Standard Form 100

Frequency of Report: Annually

Type of Respondent: Private employers with 100 or more employees and certain Federal government contractors with 50 or more employees

Standard Industrial Classification (SIC) Code: Multiple

Description of Affected Public: IND/HHID and Farms and Businesses/INST

Responses: 126,700

Reporting Hours: 503,500

Federal Cost: $728,000

Applicable under Section 3504(h) of Public Law 96–511: Not applicable

Number of Forms: 1

Abstract-Needs/Users: EEO–1 data are used by EEOC to investigate charges of discrimination against employers in private industry. Data are shared with several Federal government agencies, particularly the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor. Under Section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–1 data are also shared with approximately 83 State and local FEP agencies.

Dated: September 8, 1993.

For the Commission.

Patricia C. Johnson,

Acting Director of Management, Equal Employment Opportunity Commission.

[FR Doc. 93–22449 Filed 9–13–93; 8:45 am]

BILLING CODE 6570–06–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB For Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Title: Community Reinvestment Act Statement and Recordkeeping.

Form Number: None.

OMB Number: 3064–0092.

Expiration Date of OMB Clearance: October 31, 1993.

Frequency of Response: On occasion (recordkeeping).

Respondents: Insured nonmember banks.

Number of Respondents: 7,387.

Annual Hours Per Recordkeeper: 68.

Total Recordkeeping Hours: 502,316.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project (3064–0092), Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before November 15, 1993.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Under the Community Reinvestment Act (CRA) and Regulation 12 CFR part 345, the FDIC requires each insured state nonmember bank to adopt a CRA statement, post a CRA notice, and maintain a CRA public file. They must also disclose their CRA ratings and written Performance Evaluations.

Dated: September 8, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–22361 Filed 9–13–93; 8:45 am]

BILLING CODE 6714–01–M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Title: Procedures for Monitoring Bank Protection Act Compliance.

Form Number: None.

OMB Number: 3064–0095.

Expiration Date of OMB Clearance: October 31, 1993.

Frequency of Response: On occasion (recordkeeping).

Respondents: Insured nonmember banks.

Number of Respondents: 7,400.

Annual Hours Per Recordkeeper: 0.5.

Total Recordkeeping Hours: 3,700.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project (3064–0092), Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before November 15, 1993.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Insured nonmember banks must keep records to show compliance with the Bank Protection Act.

Dated: September 8, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–22403 Filed 9–13–93; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1000–DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

Jefferson and Morris Counties for Public Assistance. (Already designated for Individual Assistance.)

Chase, Hodgeman, and Smith Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–22430 Filed 9–13–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–995–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–995–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal

Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated July 9, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

The counties of Crawford and Mississippi for Public Assistance. (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–22428 Filed 9–13–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–999–DR]

South Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota, (FEMA–999–DR), dated July 19, 1993, and related determinations.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of South Dakota dated July 19, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 19, 1993:

The county of Ziebach for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–22429 Filed 9–3–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–994–DR]

Wisconsin; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin, (FEMA–994–DR), dated July 2, 1993, and related determinations.

EFFECTIVE DATE: September 8, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Wisconsin dated July 2, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 2, 1993:

The county of Brown for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–22427 Filed 9–13–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

The Colonial BancGroup, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 8, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. The Colonial BancGroup, Inc., Montgomery, Alabama; to acquire 100 percent of the voting shares of Colonial Bank of Tennessee, Ardmore, Tennessee.

2. Premier Bancorp, Inc., Baton Rouge, Louisiana; to merge with Alerion Corporation, New Orleans, Louisiana, and thereby indirectly acquire Alerion Bank, New Orleans, Louisiana.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. CBT Corporation, Paducah, Kentucky; to acquire 100 percent of the voting shares of Pennyrile Bancshares, Inc., Hopkinsville, Kentucky, and thereby indirectly acquire Pennyrile Citizens Bank and Trust Company, Hopkinsville, Kentucky. **Comments on this application must be received by October 1, 1993.**

2. First National Security Company, DeQueen, Arkansas; to acquire at least 32 percent of the voting shares of First National Bancshares of Hempstead County, Inc., Hope, Arkansas, and thereby indirectly acquire The First National Bank, Hope, Arkansas, and Bank of Blevins, Blevins, Arkansas.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. L&M Bancshares, Inc., Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Plummer State Bank, Plummer, Minnesota.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. OMNIBANCORP, Denver, Colorado; to acquire 100 percent of the voting shares of Denver West Bank & Trust, Golden, Colorado.

2. RCB Holding Company, Claremore, Oklahoma; to acquire 80.3 percent of the voting shares of American Exchange Bank, Collinsville, Oklahoma.

3. Rice Insurance Agency, Inc., Strasburg, Colorado; to acquire 80 percent of the voting shares of Banking Group, Ltd., Castle Rock, Colorado, and thereby indirectly acquire The First National Bank of Castle Rock, Castle Rock, Colorado.

Board of Governors of the Federal Reserve System, September 8, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-22385 Filed 9-13-93; 8:45 am]

BILLING CODE 6210-01-F

First National Bank Shares, Ltd.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 8, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First National Bank Shares, Ltd., Great Bend, Kansas; to acquire 100 percent of the voting shares of The Home State Building, Inc., Lewis, Kansas, and thereby indirectly acquire The Home State Bank, Lewis, Kansas.

In connection with this application, Applicant also proposes to acquire Lewis Insurance Services, Inc., Lewis, Kansas, and Potpourri Insurance, Inc., Kinsley, Kansas, and thereby engage in the sale of general insurance in the towns of Kinsley and Lewis, Kansas, each with populations of less than 5,000 pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 8, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-22386 Filed 9-13-93; 8:45 am]

BILLING CODE 6210-01-F

Allen D. Gunn, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 4, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Allen D. Gunn, Harbor Beach, Michigan; to acquire an additional 9.7 percent of the voting shares of First of Huron Corp., Bad Axe, Michigan, for a total of 24.9 percent, and thereby indirectly acquire First National Bank of Bad Axe, Bad Axe, Michigan, and State Bank of Port Hope, Port Hope, Michigan.

2. Stephen J. Lyon, Christopher J. Lyon, and Michael J. Pint, as Trustees of the George J. Lyon estate; to acquire 26.80 percent of the voting shares of Minowa Bancshares, Inc., Decorah, Iowa, and thereby indirectly acquire Decorah State Bank, Decorah, Iowa, and thereby indirectly acquire First National Bank of Mabel, and Minnesota Bank, National Association, Caledonia, Minnesota.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Thomas R. Rogers, Minnetonka, Minnesota; acquire an additional 14.82 percent of the voting shares of First Minnetonka Bancorporation, Inc., Minnetonka, Minnesota, as the result of a stock redemption, for a total of 26.67 percent, and thereby indirectly acquire First Minnetonka City Bank, Minnetonka, Minnesota.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. David R. Brooks, Farmersville, Texas, to acquire 8.2 percent; Vincent J. Viola, Chatham, New Jersey, to acquire 32.7 percent; and W. Mark David, McKinney, Texas, to acquire 32.7 percnt of the voting shares of First McKinney Bancshares, Inc., McKinney, Texas, and thereby indirectly acquire First Bank, McKinney, Texas.

Board of Governors of the Federal Reserve System, September 8, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-22387 Filed 9-13-93; 8:45 am]

BILLING CODE 6210-01-F

Huntington Bancshares Incorporated, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the

application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 4, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Huntington Bancshares Incorporated, Columbus, Ohio, and Huntington Bancshares Indiana, Inc., Columbus, Ohio; to acquire Huntington Federal Savings Bank of Illinois, Chicago, Illinois, and thereby engage *de novo* in owning, controlling and operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. United Missouri Bancshares, Inc., Kansas City, Missouri; to engage *de novo* through its subsidiary, UMBCDC, Inc., Kansas City, Missouri, in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 8, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-22388 Filed 9-13-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Final Criteria for Allocation of Funds for Cooperative Agreements for the Model State-Supported Area Health Education Centers Program

The Health Resources and Services Administration (HRSA) announces the final criteria for allocation of available funds for fiscal year (FY) 1993 Cooperative Agreements for the Model State-Supported Area Health Education Centers (AHEC) Program authorized under the authority of section 746(a)(3) of the Public Health Service (PHS) Act, title VII, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

Purpose and Eligibility

Section 746(a)(3) authorizes Federal assistance to any school of medicine or osteopathic medicine that is operating an area health education centers program and that is not receiving financial assistance under section 746(a)(l) (previously section 781(a)(l)) of the PHS Act. In general, an area health education centers program shall be a cooperative program of one or more medical (M.D. and D.O.) school(s) and one or more nonprofit private regional area health education centers.

The statutory authority for the Model State-Supported AHEC Program contains explicit language regarding activities and agreements between the medical and osteopathic schools which develop AHEC programs and the free-standing, community-based area health education centers which provide training sites and resources for the activities. To accomplish these specific tasks, a system of subcontracts is developed between the health professions schools and the independent centers in the communities.

To receive support, programs must meet the requirements of section 746(a)(3) and program regulations as set forth in 42 CFR part 57, subpart MM.

Matching Funds Requirement: Non-Federal Contributions in Cash

With respect to the costs of operating the area health education center program of the school, the school will make available (directly or through donations from public or private entities) non-Federal contributions in cash toward such costs in an amount that is not less than 50 percent of such costs. These funds must be for the express use of the AHEC Program and Centers, and not funds designated for other categorical or specific purposes. Amounts provided by the Federal Government may not be included in determining the amount of non-Federal contributions in cash.

Programmatic Agreements of Model State-Supported AHEC Programs

Certain programmatic agreements are essential to the operation of a model State-supported AHEC program. In operating such a program, the school agrees to:

a. Coordinate the activities of the program with the activities of any office of rural health established by the State or States in which the program is operating;

b. Conduct health professions education and training activities consistent with national and State priorities in the area served by the program in coordination with the National Health Service Corps, entities receiving funds under section 329 or 330, and public health departments; and

c. Cooperate with any entities that are in operation in the area served by the program and that receive Federal or State funds to carry out activities regarding the recruitment and retention of health care providers.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project adequately provides for the program requirements set forth in section 746 (a)(3) and program regulations as cited above.

2. The capability of the applicant to carry out the proposed project; and

3. The extent of the need of the area to be served by the proposed model State-supported area health education center program.

Degree of Federal Involvement in the Planning, Development and Operation of Model State-Supported Area Health Education Centers Program

Personnel of the Bureau of Health Professions have substantial programmatic involvement with the planning, developing, and administering of the AHEC projects by:

1. Reviewing and approving plans, upon which continuation of the cooperative agreement is contingent, to permit appropriate direction and redirection of activities.

2. Reviewing and approving all contracts and agreements among recipient and medical or osteopathic schools, other health professions schools and community-based centers.

3. Participating with project staff in the development of funding projections.

4. Developing with project staff individual project data collection systems and procedures.

5. Participating with project staff in the design of project evaluation protocols and methodologies.

Other Considerations

Applicants in States where more than one eligible entity exists are encouraged to collaborate in the submission of a single application, which reflects a consortium of Statewide programs to coordinate community-based health professions training activities.

The principal objective of this new legislation is to encourage State coordination and support for AHEC activities. The most effective approach for obtaining support from State legislatures is to present a unified plan showing how all the programs are working together to provide the needed services in the State. Competitive applications from one State tends to be devisive rather than unifying in reaching common goals.

Final Criteria for Allocation of Available Funds

Proposed criteria for allocation of available funds was published in the **Federal Register** on June 8, 1993, 58 FR 32150 for public comment. No comments were received during the 30-day comment period. Therefore, as proposed, the final criteria for allocation of available funds will be retained as follows:

As a condition of receiving funding:

(1) Applicants will be required to meet the eligibility conditions of programs as set forth in section 746(b), and the AHEC centers they wish to have included must meet eligibility requirements in accordance with section 746(d);

(2) The State contribution to the AHEC program(s) in the current year is at least equal to the amount to be received from the Federal program as required by section 746(a)(3)(B); and

(3) The program activities for which support is requested are determined by peer reviewers to be qualitatively acceptable.

Programs that submit acceptable applications, in accordance with the above criteria, will receive funding based on the following allocation of funds:

1. The total amount available for funding under section 746(a)(3) will be divided by the total number of qualifying AHEC centers in approved applications. This will yield the per center allocation. The coordinating AHEC applicant for each State will receive an amount equal to the number of qualifying centers in the approved application times the per center allocation.

2. In accordance with the provisions of section 746(e)(l)(A), the award will clearly indicate that 75 percent of the awarded funds are to be spent in approved centers. The remaining 25 percent can be allocated to the AHEC program office and/or other participating schools.

The State matching provision was included in this new legislation to promote State funding. The allocation of Federal funds to all qualifying AHEC programs is intended to provide as broad as possible a base for the accomplishment of this purpose. The number of qualifying AHEC centers is used as the means for distribution of funds because the statute requires that 3/4 of funds are designated to go to these entities.

Questions regarding programmatic information should be directed to: Ms. Cherry Tsutsumida, Chief, AHEC and Special Programs Branch, Division of Medicine, Bureau of Health Professions, HRSA, Parklawn Building, room 4C–03, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6950.

This program is listed at 93.107 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: September 8, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–22407 Filed 9–13–93; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Biomedical Use of Adenosine Derivatives

AGENCY: National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks an agreement with a pharmaceutical or biotechnology company for the joint research, development, evaluation and possible commercialization of agonists and antagonists of adenosine-A_1 and adenosine-A_2 receptors and other subtypes of purine receptors.

ADDRESSES: Proposals and questions about this opportunity may be addressed to Dr. C. R. Creveling, Office of Technology Development, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 8A, room 1A–27, Bethesda, MD 20892 (301–496–5360; FAX 301–402–0008).

DATES: Proposals must be received by November 29th, 1993.

SUPPLEMENTARY INFORMATION: Purinoceptor pharmacology is a rapidly expanding area mainly focused upon the potential therapeutic aspects of agonists and antagonists of adenosine receptors. Adenosine derivatives have been implicated as effective agents for hypertension; pain control; selective cognition-enhancing activity; antiasthmatic activity; cystic fibrosis; treatment of CNS disorders (Parkinson's and Huntington's diseases, epilepsy); stroke protection; kidney protection; the treatment of cardiovascular disease; and modulation of immunological responses. Current research is directed towards the development of adenosine derivatives with selective actions *in vivo* and developing therapeutic potential of an increasing number of adenosine and ATP receptor subtypes.

CRADA aims include the rapid publication of research results and the timely exploitation of commercial opportunities. The CRADA partner will enjoy rights of first negotiation for licensing Government rights to any subject inventions arising under the agreement and will advance funds payable upon signing the CRADA to help defray Government expenses for patenting such invention and other CRADA-related costs.

The role of the Laboratory of Bioorganic Chemistry, NIDDK, in this CRADA will be as follows:

1. Provide the Collaborator with samples of the subject compounds for pharmaceutical evaluation.

2. Synthesize structural variants of the subject compounds to optimize the desired effects.

3. Continue the detailed physicochemical characterization of the test compounds as well as research on the mechanism of biological action. Publish these results and provide all data to the Collaborator as soon as they become available.

The role of the Collaborator will be to perform a reasonably comprehensive evaluation of the adenosine derivatives with respect to the biological activities covered in the CRADA. The collaborator

will supply data to the NIDDK in a timely fashion.

Selection criteria for choosing the CRADA partner will include but not be limited to:

1. Ability to complete quality pharmacological evaluation required according to an appropriate timetable to be outlined in the Collaborators's proposal. The target commercial application as well as the strategy for evaluation of the test agents' potential in that capacity must be clearly delineated therein.

2. The level of financial support the collaborator will supply for CRADA-related activities.

3. A willingness to cooperate with the NIDDK in the publication of research results.

4. An agreement to be bound by the DHHS rules involving human subjects, patent rights and ethical treatment of animals.

5. Agreement regarding provisions for equitable distribution of patent rights to any subject invention arising under the CRADA. Generally, the rights of ownership are retained by the organization which is the employee of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee is the sole or joint inventor).

The following is a listing of Dr. Kenneth Jacobson's patent portfolio. Each of the listed inventions is available for licensing and/or further development under a CRADA:

Adenosine-Related Inventions

(1) Jacobson, K.A., Daly, J.W., and Kirk, K.L., "Biologically-Active 1,3,-Dipropyl-8-Phenylxanthine Derivatives," U.S. Appl. 06/664,953, filing date 10/26/84.
Status: U.S. Patent No. 4,612,315—Issued 9/16/86. Eur. Pat. Appl. EP 85905958.6.

(2) Jacobson, K.A., Daly, J.W., and Kirk, K.L., "Biologically-Active Xanthine Derivatives," U.S. Appl. 06/717,616, filing date 3/29/85.
Status: U.S. Patent No. 4,696,932—Issued 9/29/87.

(3) Jacobson, K.A., Daly, J.W., and Kirk, K.L., "Adenosine Receptor Prodrugs," U.S. Appl. 07/000,229, filing date 1/2/87.
Status: U.S. Patent No. 4,968,672—Issued 11/6/90.

(4) Jacobson, K.A. and Stiles, G.L., "Irreversible Inhibitors of Adenosine Receptors," U.S. Appl. 07/837,105 (FWC of 07/221,413) filing date 2/18/92.
Status: Allowed.

(5) Jacobson, K.A., Kirk, K.L., and Daly, J.W., "Molecular Probes for Adenosine Receptors," U.S. Appl. 07/287,539, filing date 12/19/88.
Status: Allowed.

(6) Jacobson, K.A., Pfleiderer, W., Daly, J.W., and Neumeyer, J.L., "Sulfur-Containing Xanthine Derivatives as Adenosine Antagonists," U.S. Appl. 07/340,351, filing date 4/19/89.
Status: Appealed.

(7) Jacobson, K.A., Kirk, K.L., and Daly, J.W., "Adenosine Functionalized Congeners as Cardiovascular Treating Agents," U.S. Appl. 07/924,792 (FWC of 07/346,257), filing date 8/6/92.
Status: Allowed.

(8) Jacobson, K.A., Stiles, G.L., and Boring, D.L., "Preparation of Xanthine Derivatives as Irreversible Inhibitors of A_1-Adenosine Receptors," U.S. Appl. 07/572,410, filing date 8/24/90.
Status: Pending.

(9) Jacobson, K.A., McCabe, T., and Skolnick, P., "Preparation, Pharmaceutical Compositions, and Methods of Use of Adenosine A_2 Receptor Agonists for Adenosine A_2 Receptor Probes and for Therapeutic Agents," U.S. Appl. 07/577,528, filing date 9/5/90.
Status: Allowed.

(10) Jacobson, K.A., and Maillard, M., "Sulfo-Derivatives of Adenosine," U.S. Appl. 07/914,428, filing date 7/15/92.
Status: Pending.

(11) Pollard, H., Jacobson, K., Cabantchik, I., and van Galen, P., "Adenosine Antagonists To Treat Cystic Fibrosis and Related Diseases," U.S. Appl. 07/952,965, Filing date 9/29/92.
Status: Pending.

(12) Jacobson, K.A., Karton, Y., Gallo-Rodriguez, C., Fischer, B., van Galen, P., and Maillard, M., "8-Substituted-1,3,7-Trialkylxanthine Derivatives," U.S. Appl. 08/057,086, filing date 5/3/93.
Status: Pending.

(13) van Galen, P., Jacobson, K.A., and Gallo-Rodriguez, C., "A_3 Adenosine Receptor Agonists and Antagonists," U.S. Appl. 08/091,109, filing date 7/13/93.
Status: Pending.

Non-Adenosine-Related Inventions

(1) Jacobson, K.A., Linnoila, M., Mine, K., Miller, T., and Kirk, K.L., "Derivatization of Amines for Electrochemical Detection," U.S. Appl. 07/290,279, filing date 12/27/88.
Status: U.S. 4,908,322—Issued 3/12/90.

(2) Jacobson, K.A., Kirk, K.L., Furlano, D., and Shai, Y., "Process for Introducing Fluorine Into Biologically Active Material," U.S. Appl. 07/168,494, filing date 3/15/88.
Status: U.S. Patent No. 5,098,996—Issued 3/24/92.

(3) Jacobson, K.A., Bradbury, B.J., and Baumgold, J., "Novel Muscarinic Agents," U.S. Appl. 07/876,917 (FWC of 7/310,954), filing date 4/30/92.
Status: Allowed.

(4) Jacobson, K.A., Bradbury, B.J., and Karton, Y., "Muscarinic Antagonists," U.S. Appl. 07/725,066, filing date 7/3/91.
Status: Allowed.

Dated: September 1, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93–22414 Filed 9–13–93; 8:45 am]

BILLING CODE 4140–01–M

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated Licensing Specialist at the Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892 (telephone 301/496–7735; fax 301/402–0220). A signed Confidentiality Agreement will be required to receive copies of the patent applications. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

07/269,407 Construction of Non-Infectious Retroviral Mutants Deficient in Viral RNA. Licensing Specialist: Steven M. Ferguson.

07/623,690 Method of Treating Ocular Inflammatory Diseases. Licensing Specialist: Marjorie D. Hunter.

08/030,843 Redirected Targeting Through the Use of 2 or More Targeting Agents Having a Self-Associating Property. Licensing Specialist: Marjorie D. Hunter.
08/037,578 Calpain Inhibitors to Treat Programmed Cell Death. Licensing Specialist: Steven M. Ferguson.
08/037,633 Suppression of HIV Expression by Organic Thiophosphate. Licensing Specialist: Steven M. Ferguson.
08/061,889 Von Hippel-Lindau Disease Gene and Corresponding cDNA. Licensing Specialist: Marjorie D. Hunter.
08/063,315 Immunologic Enhancement in HIV-Infected Patients with Intermittent Interleukin-2 Therapy. Licensing Specialist: Steven M. Ferguson.
08/065,814 New Procedure to Block the Replication of Reverse Transcriptase Dependent Viruses by the Use of Inhibitors of Deoxynucleotide Synthesis. Licensing Specialist: Steven M. Ferguson.
08/085,994 Means to Provide Improved Seating for an Endotracheal Tube Including the Use of Nitinol Alloys for Crush Resistance. Licensing Specialist: John Fahner-Vihtelic.

Dated: September 7, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93–22413 Filed 9–13–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting: Microbiology and Infectious Diseases Research Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on October 7–8, 1993, at the Bethesda Ramada Inn, Room Ambassador I, 8400 Wisconsin Avenue, Bethesda, Maryland 20815.

The meeting will be open to the public from 8 a.m. to 9 a.m. on October 7, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9 a.m. until recess on October 7, and from 9 a.m. until adjournment on October 8. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Peter R. Jackson, Scientific Review Administrator, Microbiology and Infectious Diseases Research Committee, NIAID, NIH, Solar Building, room 4C13, Rockville, Maryland 20892, telephone 301–496–8426, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: September 7, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–22417 Filed 9–13–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting: Allergy, Immunology, and Transplantation Research Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Allergy, Immunology, and Transplantation Research Committee on October 13–14, 1993, at the Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 9:45 a.m. on October 13, to discuss administration details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:45 a.m. until recess on October 13 and from 8:30 a.m. until adjournment on October 14. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Mark L. Rohrbaugh, Scientific Review Administrator, Allergy, Immunology and Transportation Research Committee, NIAID, NIH, Solar Building, room 4C22, Bethesda, Maryland 20892, telephone 301–496–8424, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research, National Institutes of Health.)

Dated: September 7, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–22418 Filed 9–13–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Cancer Research Manpower Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, on October 13–15, 1993, The Saint James Hotel, 950 24th Street, NW., Washington, DC 20037.

This meeting will be open to the public on October 13, 1993, from 7:30 p.m. to 8 p.m., to review administrative details and other cancer research manpower review issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on October 14 from 8 a.m. to recess and on October 15 from 8 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Executive Plaza North, room 630E, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Mary Bell, Scientific Review Administrator, Cancer Research Manpower Review Committee, National Cancer Institute, Executive Plaza North, room 611A, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7978) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign

language interpretation or other reasonable accommodations, should contact Dr. Mary Bell, (301) 496–7978 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Number: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: September 7, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–22416 Filed 9–13–93; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health, National Cancer Institute; Meeting of the Biometry and Epidemiology Contract Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, on November 1, 1993, at the Executive Plaza North Building, Conference Room G, 6130 Executive Boulevard, Rockville, Maryland 20852.

This meeting will be open to the public from 9 a.m. to 10 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on November 1 from 10 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Executive Plaza North, room 630, National Institutes of Health, Bethesda, Maryland 20892–9903, Tel. 301/496–5708, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Harvey P. Stein, Scientific Review Administrator, Contracts Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 601C, Bethesda, Maryland 20892–9903, Tel. 301/496–7030, will furnish substantive program information.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Ms. Alma O. Carter on (301) 496–7523 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: September 7, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–22420 Filed 9–13–93; 8:45 am]

BILLING CODE 4140–01–M

National Institutes on Deafness and Other Communication Disorders; Meeting of the Communication Disorders Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Communication Disorders Review Committee on October 20–22, 1993. The Committee will meet at the Hyatt Regency-Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814. Notice of the meeting room will be posted in the hotel lobby.

The Committee meeting will be open to the public on October 20 from 8 a.m. until approximately 8:30 a.m. to discuss administrative details relating to Committee business. Attendance by the public will be limited to space available.

The meeting of the Committee will be closed to the public from approximately 8:30 a.m. October 20 until adjournment on October 22 in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Committee meeting may be obtained from Dr. Craig A. Jordan, Scientific Review Administrator, National Institute on Deafness and Other Communication Disorders, room 400B Executive Plaza South, Bethesda, Maryland 20892, 301–496–8683. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Jordan two weeks prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communication Disorders)

Dated: September 7, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–22419 Filed 9–13–93; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of an Exclusive License

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in USPA numbers: (1) 07/758,824, entitled, "Apparatus For And Method Of Making Ultra-Thin Walled And Wire-Reinforced Endotracheal Tubing"; (2) 07/878,784, entitled, "Sealing Means for Endotracheal Tubes"; and (3) 08/085/994, entitled "Means To Provide Improved Seating For An Endotracheal Tube Including The Use of Nitinol Alloys For Crush Resistance."

The patient rights in these inventions have been assigned to the United States of America.

The prospective license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the exclusive license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

These inventions relate to apparatus for and methods of producing endotracheal tubing. Also covered by the prospective license is a device and method of sealing endotracheal tubes while in use. This technology provides a seal between the trachea and the tube which allows for a maximum amount of fresh air to be delivered to the patient.

ADDRESSES: Requests for a copy of the subject patent applications, inquiries, and comments relating to the contemplated license should be directed

to: John E. Fahner-Vihtelic, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892 (telephone 301/496–7735; fax 301/402–0220). Properly filed competing applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by the Office of Technology Transfer, NIH, within sixty (60) days of this notice will be considered.

Dated: August 12, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93–22415 Filed 9–13–93; 8:45 am]

BILLING CODE 4140–01–M

Office of Inspector General

Program Exclusions: August 1993

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of August 1993, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all other Federal non-procurement programs.

Subject, city, state	Effective date
Program-Related Convictions:	
Adams, Gary L., Baton Rouge, LA	08/26/93
Ansari, Inamul H, Detroit, MI	08/29/93
Bockrath, Eugene T, Colorado Springs, CO	09/13/93
Boudreaux, Lois Adams, Melville, LA	08/26/93
Clinical Regional Lab Inc, Hazelcrest, IL	09/13/93
Moore, Wesley D, Clinton, NC	09/13/93
Morales, Nelson, Flushing, NY	08/29/93
Pages, Ana Garcia, Coral Gables, FL	09/02/93
Pearce, William John, Mt Pleasant, SC,	09/02/93
Smith, Lance C, Gaithersburg, MD	09/15/93
Stillwagon, Linda G, Seymour, CT	09/14/93
Woodman, Jack S, Dayton, OH	08/29/93
Patient Abuse/Neglect Convictions:	
Boudreaux, Peggy Marie, Harvey, LA	08/26/93
Bowser-Buford, Michelle, Mt Morris, MI	08/29/93
Carson, Tawana M, Muskegon Hgts, MI	08/29/93
Dirrell, Sid Carrold, Flint, MI	09/13/93
Gowen, Burma J, Scottville, MI	08/29/93
Hart, Ralph Lee, Odenville, AL	09/15/93
Harvell, Thomas, Corinth, MS	09/15/93
Henry, Beckie Marie, Alexandria, LA	08/26/93
Hersey, Letha, Shannon, MS	09/15/93
Koo, Young Soo, Hammond, IN	08/29/93
Lawler, William C, Baltimore, MD	08/29/93
Madison, Mary Ella, Montgomery, AL	09/02/93
McCall, Melvin, Tuscaloosa, AL	09/15/93
McDonald, Roxanne, Gerrardstown, WV	08/29/93
Michael, Lana, Baldwin, MS	09/15/93
Schulz, Randy Noel, Andover, MN	09/13/93
Washington, Jackie, Birmingham, AL	09/15/93
Controlled Substance Convictions:	
Rodriquez, Roniel III, Hialeah, FL	09/15/93
Entities Owned/Controlled by Convicted:	
American Medical Transport, Baton Rouge, LA	08/26/93
Nathan's Pharmacy, W Palm Beach, FL	09/02/93
Default on Heal Loan:	
Ash/Slayter, Carolyn M, San Diego, CA	09/23/93
Bledsoe, Ralph C, Carson, CA	09/23/93
Braxton-Davis, Pamela M, San Gabriel, CA	09/05/93
Bronk, Brian R, Santa Monica, CA	09/05/93
Brown, James E, East Orange, NJ	09/08/93
Burns-Toole, Peggy L, Houston, TX	09/05/93
Cody, Ronald J, Valley Center, KS	09/08/93
Collins, Henry L, Chicago, IL	09/08/93
Collins, Norman E, Renton, WA	09/05/93
Dancer, Gena A, Trumbull, CT	09/12/93
Davis, Keith A, Chicago, IL	09/08/93
Garcia, Roger, Columbus, Oh	09/23/93
Gonzales, Edward J, Los Angeles, CA	09/05/93
Gross, Dale M, Canoga Park, CA	09/05/93
Hofner, Mark, Dearborn Hgts, MI	09/08/93
Hughes, Charles E Jr, Baltimore, MD	09/08/93
Kane, Richard A, Somerset, NJ	09/08/93
Karnes, Ronald D, Haysville, KS	09/08/93
Kendrick, John Charles, Beaverton, OR	09/23/93
King, James Ray, Fort Myers, FL	09/12/93
Kogut, Dennis W, Miami, FL	09/12/93
Langham, Mary L, Chugiak, AK	09/12/93
Matthews, Paul E, Fort Worth, TX	09/05/93
McGregory, Scott Duncan, Carrollton, TX	09/05/93
Meininger, Kathryn L, Collingswood, NJ	09/08/93
Nuhfer, Dina L Dempsey, Erie, PA	09/23/93
Rosenthal, Neil D, Colonie, NY	09/08/93
Silverstein, Michael A, New York, NY	09/08/93
Peer Review Organization Case:	
Nelson, Karl, Princeton, IL	08/19/93

* * * * *

Dated: September 7, 1993.

James F. Patton,

Director, Health Care Administrative Sanctions, Office of Investigations

[FR Doc. 93–22364 Filed 9–13–93; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–920–4140–02–GEOT; GP3–383; OR 12765]

Addition to the Newberry Caldera Known Geothermal Resource Area, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of addition to the Newberry Caldera Known Geothermal Resource Area, Oregon.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by Section 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), the delegations of authority in 235 Departmental Manual 1.1 K & L, to the Bureau of Land Management, the following lands are hereby added to the Newberry Caldera Known Geothermal Resource Area.

EFFECTIVE DATE: September 15, 1993.

FOR FURTHER INFORMATION CONTACT: Jack Feuer, Bureau of Land Management, Oregon State Office, Division of Mineral Resources, 1300 NE 44th Avenue, P.O. Box 2965, Portland, Oregon 97208–2965, (503) 280–7043.

Newberry Caldera Known Geothermal Resource Area

Willamette Meridian, Oregon

T. 21 S., R. 13 E.,
Secs. 7, 8, and 9
T. 22 S., R. 13 E.,
Secs. 18
T. 21 S., R. 12 E.,
Secs. 9, 10, 12, 16, 17, 20, and 29 through 32
T. 22 S., R. 12 E.,
Secs. 5, 6, 8, and 13 through 16

The above area aggregates 13,344.68 acres more or less

Dated: September 2, 1993.

Patrick H. Geehan,

Deputy State Director for Mineral Resources.

[FR Doc. 93–22378 Filed 9–13–93; 8:45 am]

BILLING CODE 4310-33-M

[UT–942–4210–05; UTU–65091]

Correction of Previous FR Notice; Goshute Indian Reservation; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: The notice published in 54 FR 19245, dated May 4, 1989 is corrected in its entirety by this notice. Public Law 100–708 (102 Stat. 4717) corrected historical and geographical oversights in the establishment and development of the Goshute Indian Reservation in Utah. Because of several errors in the original FR notice, this notice is being published.

FOR FURTHER INFORMATION CONTACT: For further information contact Randy Massey, Utah State Office, Bureau of Land Management, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

SUPPLEMENTARY INFORMATION: Public Law 100–708 (102 Stat. 4717), dated November 23, 1988, corrected historical and geographical oversights in the establishment and development of the Utah component of the Confederated Tribes of the Goshute Reservation, unified the land base of the Goshute Reservation, and simplified the boundaries of the Reservation. The lands in Utah in Executive Order 1539, dated May 29, 1912, and Executive Order 1903, dated March 23, 1914, are declared to be held in trust. The following described lands, and interest in lands, in Utah are hereby added to the Reservation and declared to be held in trust by the United States for the use and benefit of the Goshute Indian Tribe.

Salt Lake Meridian

1. The following described lands are held in fee (surface and subsurface):

T. 10 S., R. 19 W.,
Sec. 4, lots 3 and 4, SW¼NW¼, E½SE¼NW¼, NW¼SE¼NW¼, N½SW¼SE¼NW¼, SW¼;
Sec. 9, NW¼NW¼.
T. 11 S., R. 20 W.,
Sec. 1;
Sec. 12, lots 1–4, NE¼, NE¼SE¼;
Sec. 13, lots 1–4, W½SE¼, SE¼SE¼;
Sec. 24;
Sec. 25.
T. 12 S., R. 20 W.,
Sec. 1;
Sec. 12, lots 1 and 2.

2. The surface only of the following described lands is held in trust:

T. 9 S., R. 19 W.,
Sec. 22, SE¼SW¼;
Sec. 27, E½W½;
Sec. 33, SE¼NE¼, SE¼SW¼, SE¼;
Sec. 34, NW¼, NE¼SW¼, W½SW¼.
T. 10 S., R. 19 W.,
Sec. 3, lot 4, SW¼NW¼;
Sec. 4, lots 1 and 2, S½NE¼, SE¼;
Sec. 9, NE¼NW¼, S½NW¼, N½S½.
T. 11 S., R. 19 W.,
Sec. 8, SE¼SE¼;
Sec. 9, SW¼SW¼;
Sec. 19, NE¼SW¼;
Sec. 20, E½W½;
Sec. 22.
T. 12 S., R. 19 W.,
Sec. 27, NW¼NW¼, S½NW¼, SW¼;
Sec. 28;
Sec. 29, E½;
Sec. 30, lot 1, NE¼, NE¼NW¼;
Sec. 33, NE¼, NE¼NW¼;
Sec. 34;
Sec. 35, NW¼SW¼.
T. 12 S., R. 20 W.,
Sec. 12, lots 3 and 4;
Sec. 13, lots 1–4;
Sec. 24, lots 1–4.

3. The subsurface of the following described land is held in trust:

T. 9 S., R. 19 W.,
Sec. 22, SE¼SW¼ (oil and gas).
T. 10 S., R. 19 W.,
Sec. 4, S½SW¼SE¼NW¼ (oil and gas).
T. 12 S., R. 19 W.,
Sec. 28, N½NW¼, SE¼NW¼ (all minerals);
Sec. 29, NE¼NE¼, W½E½, E½SE¼ (all minerals);
Sec. 30, S½NE¼ (all minerals).
T. 12 S., R. 20 W.,
Sec. 12, lots 3 and 4 (all minerals);
Sec. 13, (all minerals);
Sec. 24, (all minerals).

4. The Secretary of the Interior may accept a conveyance by the Tribe of all right, title, and interest of the Tribe in and to the lands described below and any such lands accepted by the Secretary shall be held by the United States in trust for use and benefit of the Tribe and shall become part of the Reservation: (lands held by the Tribe as a private party)

T. 10 S., R. 19 W.,
Sec. 4, S½SW¼SW¼NW¼.

A map depicting the lands added to the Reservation is on file and available for public inspection in the Eastern Nevada Agency Office, Bureau of Indian Affairs, 1555 Shoshone Circle, Elko, Nevada 89801.

JoAn Robbins,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–22405 Filed 9–13–93; 8:45 am]

BILLING CODE 4210-DQ-M

[WY–031–4210–05; WYW 129881]

Request for Sale of Public Lands in Fremont County, WY; Realty Actions

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; request for sale of public lands in Fremont County, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) has received a request from the Great Buffalo Herd Monument Foundation (Foundation) to purchase 367.42 acres of public land that is located about 30 miles southeast of Lander and about 6 miles northwest of Sweetwater Station near Beaver Rim. This notice segregates the proposed parcel from appropriation under the public land laws, including the mining laws, and provides notice to the public and to current land users in accordance with existing regulations.

This notice does not constitute endorsement or approval by the BLM. Rather, it provides time for the Foundation to provide all the required information for their proposal; allows time for the public to comment; and time for the BLM to do an environmental analysis of the proposal. It will also be used to determine whether or not an Environmental Impact Statement (EIS) is necessary for the requested sale of the public land.

The next public comment period would follow the environmental analysis but precede the decision on whether or not the public land should be sold as requested by the Foundation.

The proposal consists of purchase by the Foundation of the surface and mineral estates, pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719; and the regulations at 43 CFR 2710 and 2720.

The parcel is described as:

Sixth Principal Meridian

T. 31 N., R. 95 W.,
Sec. 31: Lots 1, 2, and 3, W1/2NE¼, E½NW¼, NE¼SW¼, NW¼SE¼.

The above lands aggregate 367.42 acres.

The Foundation proposal is for acquisition of this parcel to establish the Great Buffalo Herd Monument, consisting of 1,000 metal buffalo sculptures. Associated visitor facilities such as a visitor information center are not proposed for public lands administered by the BLM, but have been proposed on adjacent State of Wyoming lands.

If sold, the sale would be at fair market value as determined by appraisal. An additional nonrefundable application fee of $50.00 would be required in accordance with 43 part 2720 for conveyance of all unreserved mineral interest in the parcel.

Final determination of suitability for disposal will be made through the environmental analysis process pursuant to the National Environmental Policy Act of 1969, as amended and the Federal Land Policy and Management Act (FLPMA). The environmental assessment and/or environmental impact statement will be made available for review and subsequent public comment prior to a final decision. The proposal will also be reviewed to determine conformance with the Lander Resource Management Plan.

Conveyance would be subject to the following:

1. Reservation of a right-of-way for ditches or canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Possible reservation of oil and gas interests to the United States with the right to prospect, explore, and develop the same in accordance with the provision of the federal mineral laws in effect at the time of disposal. Determination of whether this reservation will be effected will occur after a mineral analysis and report are accomplished, if the public benefit decision and evironmental assessment lead to a final decision to transfer the land.

4. BLM oil and gas lease, serial number WYW 123480.

5. Any other valid existing rights, unknown at present, that are identified during the environmental assessment process.

The public lands involved are within the Dishpan Butte Allotment No. 1716. The grazing permittees are D.T. Abernathy and Philip Sheep Company. These permittee's will be sent a 2-year notice, as required by 43 CFR 4110.4–2(b), prior to cancellation of a portion of the grazing permits. The grazing privileges would not be cancelled if the lands are not sold.

The public land parcel described above shall be segregated from all forms of appropriation under the public land laws, including the mining laws, upon publication of this notice in the **Federal Register**. The segregative effect will end 270 days from the date of publication, upon issuance of a patent, or upon publication in the **Federal Register** of a termination of the segregation, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Jack Kelly, Area Manager, Lander Resource Area, 125 Sunflower, P.O. Box 589, Lander, Wyoming 82520, (307) 332–7822.

SUPPLEMENTARY INFORMATION: For a period of forty five (45) days from the date of publication of this notice, interested parties may submit comments to the Area Manager, Bureau of Land Management, Lander Resource Area, P.O. Box 589, Lander, Wyoming 82520. All comments will be retained and evaluated by the BLM Wyoming State Director who may sustain, vacate, or modify this proposed realty action.

Dated: September 7, 1993.

Jack Kelly,

Area Manager.

[FR Doc. 93–22368 Filed 9–13–93; 8:45 am]

BILLING CODE 4310–22–M

[G–910–G3–0065–4210–04; NMNM 90022]

Farmington District; Realty Action—Exchange; New Mexico

AGENCY: Bureau of Land Management, Farmington District, Interior.

ACTION: Notice of realty action, NM90022. Exchange of public and private lands in McKinley and San Juan Counties, New Mexico.

SUMMARY: The following described Federally owned surface estate has been determined suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of October 21, 1976, as amended (FLPMA), 43 U.S.C. 1716.

New Mexico Principal Meridian

T. 20 N., R. 5 W.,
Sec. 15, N½NW¼SE¼, N½S½NW¼SE¼.
T. 23 N., R. 9 W.,
Sec. 1, lots 1, 2 (except the NW¼NW¼ of lot 2), S½NE¼.

Containing 181.10 acres, more of less. Not all of these lands would be exchanged, only the acreage needed to equalize the exchange.

In exchange for this Federal surface estate, the United States will acquire the following described surface estate from the Navajo Nation.

New Mexico Principal Meridian

T. 24 N., R. 9 W.,
Sec. 9, SW¼.

Containing 160.00 acres, more of less.

The purpose of this land exchange is to provide land for construction of a sewage lagoon to accommodate human health needs at the Ojo Encino Chapter of the Navajo Nation, provide land for economic development at the Nageezi Chapter of the Navajo Nation, and to acquire privately owned land located in the retention zone established in the Farmington Resource Management Plan (RMP). The exchange is an opportunity to provide land needed at the two Chapters while consolidating public land in response to a RMP decision. The public land is not needed for Federal purposes and the public interest will be served. This action is consistent with the Farmington RMP approved July 1988. The purpose of this Notice of Realty Action in the **Federal Register** is twofold. First, this Notice provides a response period of forty-five (45) days from the date of publication during which public comments regarding this land exchange will be accepted. Secondly, this action, as provided in 43 CFR 2201.1 (b), segregates the public land described above from all other forms of appropriation under the public land laws, including the mining laws, except for exchange under the FLPMA, and leasing under the mineral leasing laws. The segregative effect shall terminate: (1) with the issuance of a patent or other document of conveyance, (2) upon publication in the **Federal Register** of a termination of the segregation, or (3) two years from the date of this publication, whichever occurs first.

COMMENT DATES: For 45 days from date of publication in the **Federal Register**, interested parties may submit comments to the Bureau of Land Management at the address given below. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty

action becomes the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Jerry Crockford at (505) 599–6300. Information related to this action, including the environmental assessment, is available for review at the Bureau of Land Management, Farmington District Office, 1235 La Plata Highway, Farmington, New Mexico 87401.

SUPPLEMENTARY INFORMATION: The exchange is subject to the following:

1. Reservation to the United States of a right-of-way for ditches and canals in accordance with 43 U.S.C 945.

2. All minerals shall be reserved to the United States together with the right to prospect for, mine and remove the minerals.

3. All valid existing rights, e.g. rights-of-way and leases of record.

Joel Farrell,

Assistant District Manager for Lands and Renewable Resources.

Dated: September 7, 1993.

[FR Doc. 93–22396 Filed 9–13–93; 8:45 am]

BILLING CODE 4310–FB–M

[UT–020–03–4210–04; U–69548]

Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action. Exchange of public lands in Tooele, Box Elder, and Rich Counties, Utah.

SUMMARY: The Bureau of Land Management is considering an exchange of land in Tooele, Box Elder, and Rich Counties, Utah. This notice provides a public comment period and segregates the lands described from entry and location under the mining laws, but not the mineral leasing laws or the material sale laws.

DATES: Comments must be received by October 29, 1993.

ADDRESS: Comments should be sent to the District Manager, Salt Lake District BLM, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Michael G. Nelson, BLM Salt Lake District Office, (801) 977–4300.

SUPPLEMENTARY INFORMATION: The following described lands have been found suitable for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1716):

Selected (Public) Lands

T. 1 N., R. 12 W., SLM,
Section 8, SE¼;
Section 9, S½;
Section 10, SW¼;
Section 15, W½;
Section 17, E½;
Section 20, NE¼;
Section 21, N½;
Section 22, NW¼ (excluding private land).

Containing approximately 1886 acres.

Offered (Private) Lands

Holt Property-Tooele County

T. 9 S., R. 3 W., SLM.

The following patented lode mining claims within sections 5, 8, and 9:

Alexander: Mineral Survey No. 5448
Angela: Mineral Survey No. 6197
Blue Tail: Lot No. 43
Bramel: Survey No. 5603
Delmonte: Lot No. 41
Dey: Survey No. 4567
Dolphin: Survey No. 5603
Eldorado: Lot No. 38
Essex: Lot No. 39
South Essex: Lot No. 44
Foster: Survey No. 5602
Grand Cross: Lot No. 40
Hall: Survey No. 5604
Heinze: Survey No. 5568
Isreal: Survey No. 5602
Iron Mountain: Lot No. 37
Knapp: Survey No. 5569
Pearl Athol: Survey No. 6194
Sanderson: Survey No. 5602
Warren: Survey No. 5569
Wolf: Survey No. 5448

Containing 393.861 acres.

Watts Property-Tooele County

T. 10 S., R. 8 W., SLM,
The Mary Ann Tucker, Mary Ann Tucker No. II, Bar "X" No. 1 Claim, and Bar "X" No. 3 Claim lode mining claims, Mineral Survey No. 7228, within Sections 27 and 34.

Containing 58.097 acres more or less.

Chournos Property-Box Elder County

T. 11 N., R. 16 W., SLM,
Section 30, NE¼.
T. 10 N., R. 17 W., SLM,
Section 3, All;
Section 4, Lot 4, SW¼NW¼;
Sections 9–11, All;
Sections 14–15, All;
Sections 17–19, All;
Section 20, N½NE¼, SW¼NE¼, W½, NW¼SE¼, S½SE¼;
Section 21, All;
Section 22, N½, SE¼, S½SW¼, NE¼SW¼;
Section 23, All;
Section 26–31, All;
Section 33–34, All;
Section 35, W½.
T. 11 N., R. 17 W., SLM,
Section 26, S½, S½N½;
Section 27, All;
Section 34, All;
Section 35, All.
T. 10 N., R. 18 W., SLM,
Section 13, All;
Section 24, All;
Section 25, All;
Section 35, All.

Containing 18,835.35 acres.

Goring Property-Rich County

T. 12 N., R. 5 E., SLM,
Section 13, Lot 2.
T. 12 N., R. 5 E., SLM,
Section 7, SW¼SE¼;
Section 17, SE¼SW¼;
Section 19, NE¼, SE¼NW¼, NE¼SW¼;
Section 20, N½;
Section 21, N½NW¼, SW¼NW¼.

Containing 804.62 acres.

Mayhue Property-Tooele County

T. 4 S., R. 4 W., SLM,
Section 8, Lot 7, W½ of lot 6.

Containing 54.895 acres.

Atkin Property-Tooele County

T. 4 S., R. 4 W., SLM,
Section 8, Lots 1,2,5, N½SW¼NE¼;
Also: That portion of the SW¼NW¼ lying within the following: Commencing at a point 25 rods West of the Southeast corner of the NE¼SW¼, and extending thence West 135 rods to the West Section line of said Section; thence North 160 rods; thence East 16 rods; thence southeasterly to the point of beginning. Containing 24 acres more or less.

Containing 136.67 acres.

Black Property-Tooele County

T. 4 S., R. 4 W., SLM,
Section 8, Lot 3, E½ of lot 6.

Containing 45.825 acres.
Grand Total of 20,329.318.

The purpose of this exchange is to acquire lands which have high values for wildlife, recreation, and riparian habitat. The exchange would also create a more logical and efficient land management pattern. The public interest will be served by completing the exchange.

The value of the lands to be exchanged are approximately equal.

The exchange will be made for both surface and subsurface estates, where possible. The mineral estate of some of the offered lands is held by other owners and will not be a part of this exchange.

The selected lands will have a reservation of a right-of-way for ditches and canals constructed by the authority of the United States under the provisions of the Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945) and an access road to the GAPA archaeological site and will be subject to all existing rights-of-way.

In accordance with the regulations in 43 CFR 2201.1(b), the publication of this notice will segregate the public lands as described above, from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws, nor the material sale laws. This segregation supersedes and replaces all previous segregations for the above described public lands. The segregation of the above described lands shall terminate upon issuance of a

document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first. Information on the exchange is available from the District Manager, Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 93–22404 Filed 9–13–93; 8:45 am]

BILLING CODE 4310–DQ–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 4, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by September 29, 1993.

Carol D. Shull,

Chief of Registration, National Register.

Alabama

Talladega County

Idlewild, AL 5, 0.1 mi N of AL 21, Talladega vicinity, 93001012.

Arkansas

Benton County

Rogers Commercial Historic District (Boundary Increase) (Benton County MPS), Roughly bounded by Walnut, First, Poplar and Second Sts., Rogers, 93001028.

Faulkner County

Patton House, AR 25, Wooster, 93001026.

Izard County

Izard County Courthouse, AR 69 (Courthouse Square), Melbourne, 93001025.

Logan County

Gill, Tolbert E., House, AR 22 W of jct. with AR 109, Paris, 93001024.

Polk County

Bogg Springs Hotel, AR 84, Bogg Springs, 93001023.

California

Contra Costa County

Hard, Roswell Butler, House, 815 W. First St., Antioch, 93001020.

Los Angeles County

Cedar Avenue Complex, 44843 (44855), 44845 and 44851 Cedar Ave., 606 Lancaster Blvd., and Old Jail (no address), Lancaster, 93001017.

Mendocino County

Hofman, Charles, House, 308 S. School St., Ukiah, 93001022.

Orange County

Plummer, Louis, Auditorium, 201 E. Chapman Ave., Fullerton, 93001019.

San Diego County

Baker, Pearl, Row House (Lilian Rice-Designed Buildings in Rancho Santa Fe MPS), 6122 Paseo Delicias, Rancho Santa Fe, 93001018.

Carlsbad Santa Fe Depot, 400 Carlsbad Village Dr. (Elm Ave.), Carlsbad, 93001016.

District of Columbia

District of Columbia State Equivalent

Bunche, Ralph, House, 1510 Jackson St., NE., Washington, 93001013.

Cardozo, Francis L., Senior High School, Jct. of 13th and Clifton Sts., NW., Washington, 93001015.

Gulf Service Station, 2200 P St., NW., Washington, 93001014.

Florida

Polk County

Lakeland High School, Old, 400 N. Florida Ave., Lakeland, 93001027.

North Carolina

Wake County

Oaky Grove (Wake County MPS), Jct. of NC 2506 and NC 2507, SE, corner, Shotwell vicinity, 93001021.

Vermont

Caledonia County

Cobb School (Educational Resources of Vermont MPS), Jct. of Hardwick Town Hwy. 10 (Cobb School Rd.) and Sanborn Cemetery Rd., Hardwick, 93001007.

Chittendon County

Whitcomb, M.S., Farm (Agricultural Resources of Vermont MPS), US 2, Richmond, 93001010.

Winooski Falls Mill Historic District (Boundary Increase), 485–497 Colchester Ave., 5–21 Mill St., 8–32 Barrett St., Burlington, 93001009.

Washington County

Woodbury Graded School (Educational Resources of Vermont MPS), Jct. of Town Hwy. 22 and VT 14, Woodbury, 93001008.

Wisconsin

Richland County

Richland Center Archeological District, Address Restricted. Richland vicinity, 93001006.

Vernon County

Archeological Site No. 47 VE–881, Address Restricted, Sterling vicinity, 93001005.

Wyoming

Park County

Pioneer School, Co. Rd. 1–AG N of Badger Basin, Clark vicinity, 93001011.

[FR Doc. 93–22394 Filed 9–13–93; 8:45 am]

BILLING CODE 4310–70–M

[Order 77, Amendment 15]

Regional Directors; Delegation of Authority

Order No. 77, approved February 27, 1973, and published in the **Federal Register** of March 22, 1973 (38 FR 7478), as amended, set forth in section 1 the exceptions on delegations of authority, and section 2 certain limitations on redelegation of authority.

Section 1 delegation is hereby amended by deleting paragraph (20).

Section 2 is hereby amended by changing paragraph 3 to read as follows:

Section, Redelegation * * *

(3) Authority to approve land acquisition priorities may not be redelegated. Authority to execute the land acquisition program, including contracting for acquisition of lands and related property, and options and offers to sell related thereto, may be redelegated only to the Chief, Land Resources Office, in the Regional Offices and Land Acquisition Field Officers.

Dated: August 31, 1993.

Roger Kennedy,

Director.

[FR Doc. 93–22395 Filed 9–13–93; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32334]

The Delaware-Lackawanna Railroad Co., Inc.; Operation Exemption; Line of Lackawanna County Railroad Authority

The Delaware-Lackawanna Railroad Co., Inc. (Delaware), a noncarrier, has filed a notice of exemption to operator under contract a 58.0-mile line of railroad between Fell Township and Mt. Pocono, PA owned by Lackawanna County Railroad Authority (LCRA)[1] and currently operated by Lackawanna Valley Railroad Corporation (LVAL) and Lackawanna Railway, Inc. (LRWY).[2] The line consists of the following three segments: (1) between former Delaware

[1] LCRA is a public rail authority and political subdivision established in 1985 under the laws of the Commonwealth of Pennsylvania for the purpose of preserving railroad branch lines.

[2] Delaware states that, in accordance with its operating agreement with LCRA, LVAL and LRWY will be terminating operations on August 26, 1993.

& Hudson Railway (D&H) milepost 174.59 in Fell Township and D&H milepost 196.9 in the Borough of Moosic (essentially Scranton, PA) (also including the 1.2 mile Vine Street Branch in Scranton); a grant of approximately 4.0 miles of incidental overhead trackage rights over the D&H's railroad between former Delaware, Lackawanna & Western Railway (DL&W) milepost 134.0 [3] at Bloom and former D&H milepost 130.4; and a grant of approximately 6.5 miles of incidental overhead trackage rights over Consolidated Rail Corporation's line of railroad between former DL&W milepost 136.7 at Minooka Jct. and former DL&W milepost 142.8 at Pittston Jct.; (2) between former DL&W milepost 134.0 and former DL&W milepost 132.0 in the City of Scranton which ihcludes the mainline, Brady lead track, and Chamberlain lead track; and (3) between former DL&W milepost 132.0 in the City of Scranton and former DL&W milepost 101.0 at Mt. Pocono.

This transaction is related to Finance Docket No. 32333, *Genesee Valley Transportation Company, Inc.—Continuance in Control Exemption—The Delaware-Lackawanna Railroad Co., Inc.*, wherein Genesee Valley Transportation Company, Inc. has concurrently filed a notice of exemption under 49 CFR 1180.2(d)(2) to continue to control of Delaware and four other class III rail carriers [4] when Delaware becomes a class III rail carrier upon consummation of this transaction on August 27, 1993.

Any comments must be filed with the Commission and served on: John D. Heffner, Esq., Gerst, Heffner, Carpenter & Precup, Suite 1107, 1700 K Street, NW., Washington, DC 20006.

This notice is filed under 49 CFR 1150.31. If this notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay this transaction.

Decided: August 27, 1993.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–22399 Filed 9–13–93; 8:45 am]

BILLING CODE 7035–01–M

[3] There was no former D&H milepost at former DL&W milepost 134.0 and conversely there was no former DL&W milepost at former D&H milepost 196.9.

[4] Depew, Lancaster & Western Railroad Co., Inc., Lowville and Beaver River Railroad Co., Mohawk, Adirondack & Northern Railroad Corp., and Genesee & Mohawk Valley Railroad Co.

[Finance Docket No. 32333]

Genesee Valley Transportation Company, Inc.—Continuance in Control Exemption—The Delaware-Lackawanna Railroad Co., Inc.; Notice of Exemption

Genesee Valley Transportation Company, Inc. (Genesee), a noncarrier, has filed a notice of exemption to continue in control of The Delaware-Lackawanna Railroad Co., Inc. (Delaware), upon Delaware becoming a class III rail carrier.

Delaware, a noncarrier, has concurrently filed a notice of exemption in Finance Docket No. 32334, The Delaware-Lackawanna Railroad Co., Inc.—Operation Exemption—Line of Lackawanna County Railroad Authority to operate approximately 58.0 miles of rail line owned by Lackawanna County Railroad Authority between Fell Township and Mt. Pocono, PA, under an operating agreement effective August 27, 1993. The operating agreement also includes the grant of incidental overhead trackage rights on:

(1) Approximately 4.0 miles of the Delaware & Hudson Railway Company's (D&H) line of railroad between former Delaware, Lackawanna & Western Railway (DL&W) milepost 134.0 at Bloom and former D&H milepost 130.4; and

(2) Approximately 6.5 miles of the Consolidated Rail Corporation's (Conrail) line of railroad between former DL&W milepost 136.7 at Minooka Jct. and former DL&W milepost 142.8 at Pittston Jct.

Genesee also controls four other class III rail carriers, including Depew, Lancaster & Western Railroad Co., Inc., Lowville and Beaver River Railroad Co., Mohawk, Adirondack & Northern Railroad Corp., and Genesee & Mohawk Valley Railroad Co. (Valley)[1] Genesee indicates that:

(1) The rail lines to be operated by Delaware will not connect with any other railroad in its corporate family;

(2) The continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any other railroad in its corporate family; and

(3) The transaction does not involve a class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: John D. Heffner, Esq., Gerst, Heffner, Carpenter & Precup, suite 1107, 1700 K Street, NW., Washington, DC 20006.

Decided: August 27, 1993.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–22400 Filed 9–13–93; 8:45 am]

BILLING CODE 7035–01–M

[1] The history of the Genesee corporate family is set forth in Finance Docket No. 32170, David Monte Verde, Michael Thomas, Charles Riedmiller, Jeffrey Baxter, and John Herbrand and Genesee Valley Transportation Company, Inc.—Continuance in Control Exemption—Genesee & Mohawk Valley Railroad Co. (not printed) served November 30, 1992 and the proceedings cited therein. In addition, Valley consummated its acquisition of certain Conrail trackage in Utica, Rome, and Batavia, NY on August 12, 1993.

Release of Waybill Data

The Commission has received a request from Gellman Research Associates, Inc. for permission to use certain data from the 1991–1992 ICC Waybill Samples.

A copy of the request (WB429–8/4/93) may be obtained from the ICC Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data [Ex Parte 385 (Sub-No. 2)] are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–22402 Filed 9–13–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32344]

Providence and Worcester Railroad Co.—Merger Exemption—Connecticut Rail Systems, Inc.; Notice of Exemption

Providence and Worcester Railway Company (P&W) and its wholly owned subsidiary, Connecticut Rail Systems, Inc. (CRSI), have filed a notice of exemption to merge CRSI into P&W, with P&W as the surviving entity. Under

the agreement and plan of merger, P&W will assume all rights, obligations and business functions of its subsidiary. The merger can be consummated on or after September 1, 1993.[1]

CRSI, a Class III carrier, operates approximately 10.2 miles of track in the State of Connecticut. P&W, a Class III rail carrier, owns and/or operates rail lines in the States of Connecticut, Massachusetts, and Rhode Island. P&W's rail lines include approximately 216 miles of main line track and approximately 149 miles of branch lines.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The purpose of the transaction is to simplify P&W's corporate structure and eliminate costs associated with separate accounting, bookkeeping, and reporting functions. Because CRSI is already controlled and operated by P&W, the transaction will cause no changes in the competitive balance with carriers outside the P&W corporate family, nor will it result in significant operational changes or adverse changes in service levels.

To ensure that all employees who may be affected by the transaction are given the protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Terence M. Hynes, 1722 Eye Street, NW., Washington, DC 20006.

Decided: September 3, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Signey L. Strickland, Jr.,

Secretary.

[FR Doc. 93–22401 Filed 9–13–93; 8:45 am]

BILLING CODE 7035–01–M

[1] The parties state that consummation was expected to occur on August 31, 1993. Under the class exemption invoked here, consummation may not occur until at least one week after the notice of exemption is filed. 49 CFR 1180.4(g)(1). This notice was filed with the Commission on August 25, 1993. Under 49 CFR 1104.7, when computing any period of time, the date of the act (filing) upon which the designated period of time begins to run is not included. This makes September 1, 1993, the earliest possible consummation date.

[Finance Docket No. 32324]

The Kansas City Southern Railway Co.—Purchase and Operation Exemption—the Atchison, Topeka and Santa Fe Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343, the purchase and operation by The Kansas City Southern Railway Company (KCS) of several line segments totalling about 87.2 miles, owned by The Atchison, Topeka and Santa Fe Railway Company (Santa Fe). The segments are located in Collin, Dallas, and Denton Counties, TX. The exemption is subject to standard employee protective conditions.

DATES: This exemption will be effective October 14, 1993. Petitions to stay must be filed by September 29, 1993. Petitions to reopen must be filed by October 12, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32324 to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Robert K. Dreiling, The Kansas City Southern Railway Company, 114 West 11th Street, Kansas City, MO 64105.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 927–5610 [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: August 27, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips Philbin and Walden.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 93–22398 Filed 9–13–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–28,781]

Villa Fashions, Inc., Shenandoah, Pennsylvania; Revised Determination on Reconsideration

On September 1, 1993, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. This notice will soon be published in the Federal Register.

On reconsideration, the Department surveyed another manufacturer which contracted work to Villa Fashions in Shenandoah, Pennsylvania. The findings show that this manufacturer accounted for a substantial amount of the contract work supplied to the subject firm in 1992. Other findings show that this manufacturer increased its imports of ladies' blazers in 1992 and again in 1993 over the immediately preceding year.

The subject plant closed in May 1993 when all production ceased and most employees were laid off.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the Villa Fashions, Inc., workers in Shenandoah, Pennsylvania were adversely affected by increased imports of articles like or directly competitive with the ladies' blazers produced at Villa Fashions in Shenandoah, Pennsylvania.

All workers of Villa Fashions, Inc., in Shenandoah, Pennsylvania who became totally or partially separated from employment on or after June 2, 1992 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 2nd day of September 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–22438 Filed 9–13–93; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Meeting; Music Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Festivals/Jazz Special

Projects and Services to the Field Section) to the National Council on the Arts will be held on September 28–29, 1993 from 9 a.m. to 5:30 p.m. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4 p.m. to 5:30 p.m. on September 29, 1993 for a policy discussion and guideline review.

The remaining portions of this meeting from 9 a.m. to 5:30 p.m. on September 28, 1993 and from 9 a.m. to 4 p.m. on September 29, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: September 8, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–22362 Filed 9–13–93; 8:45 am]

BILLING CODE 7537–01–M

Meeting; Theater Program Task Force

Notice is hereby given that a meeting of the Theater Program Task Force will be held on September 27, 1993 from 9:30 a.m. to 5 p.m. in room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9:30 a.m. to 9:45 a.m. for introductions and a re-cap of the August 23, 1993 Task Force Meeting, and from 4 p.m. to 5 p.m. for a discussion of how to communicate task force ideas to the field.

During the remaining portion of this meeting from 9:45 a.m. to 4 p.m., the Task Force will discuss non-public commercial or financial information of intrinsic value, and will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 522b. Additionally, discussion concerning purely personal information about individuals submitted with grant applications, (e.g., personal biographical and salary data or medical information) as well as discussion of deliberations of specific panels on which Task Force members have served (information which remains confidential even after the final grant decision is made), will be conducted by the Task Force in closed session in accordance with subsection (c)(6) of 5 U.S.C., 522.

Any interested person may attend, as observers, the portion of the Task Force discussions which is open to the public, on a space available basis.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682/5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682/5439.

Dated: September 8, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Art.

[FR Doc. 93–22363 Filed 9–13–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences.

Date and Time: September 28–29, 1993; 9 a.m. to 5 p.m.

Place: Room 500A, 1110 Vermont Avenue, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Kent Wilson, Special Assistant, MPS, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7995.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–22360 Filed 9–13–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Staff Meetings Open to the Public; Proposed Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed policy statement; request for comment.

SUMMARY: This proposed policy statement presents the guidance which the Nuclear Regulatory Commission (NRC) staff proposes to follow in opening meetings between the NRC staff and one or more outside persons to public observation. The proposed policy statement applies solely to NRC staff-sponsored and conducted meetings and not to meetings conducted by outside entities that NRC staff members might attend and participate in. This policy also announces proposed central agency services available to the public for obtaining schedules for the staff meetings that are open to public attendance. The policy will be issued to the NRC staff as a management directive. Comments are invited on this policy and on the specific concerns raised by the American Mining Congress set forth in this document.

DATES: Comment period expires November 15, 1993. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington DC 20555. Attn: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone: (301) 492–7211.

SUPPLEMENTARY INFORMATION:

PROPOSED STATEMENT OF POLICY

A. Introduction

The NRC has a longstanding practice of providing the public with the fullest information practicable on its activities and of conducting business in an open manner, while balancing the need for the NRC staff to exercise its regulatory and safety responsibilities without undue administrative burden. This policy is wholly a matter of NRC discretion and can be and will be departed from as NRC convenience and necessity may dictate. This policy supersedes the policy approved by the Executive Director for Operations that was published in the **Federal Register** on June 28, 1978 (43 FR 28058).

B. Definition of Public Meeting:

1. A public meeting is a planned, formal encounter between one or more NRC staff members and one or more outside persons with the expressed intent of discussing substantive issues that are directly associated with NRC's regulatory and safety responsibilities. This policy applies solely to NRC staff-sponsored and conducted meetings and not to meetings conducted by outside entities that NRC staff members might attend and participate in.

2. An outside person is any individual who is not—

a. An NRC employee;

b. Under contract to the NRC;

c. Acting in an official capacity as a consultant to the NRC;

d. Acting in an official capacity as a representative of an agency of the executive, legislative, or judicial branch of the U.S. Government (except when the agency is subject to NRC regulatory oversight);

e. Acting in an official capacity as a representative of a foreign government.

C. Exemptions

1. This definition applies to meetings between the NRC staff and outside persons. It does not apply to the Commission or offices that report directly to the Commission. Similarly, it does not apply to meetings between the NRC staff and representatives of State governments, including Agreement State representatives, relating to NRC Agreement State activities or to State regulatory actions or to other matters of general interest to the State or to the Commission, that is, matters other than specific NRC licensing or regulatory actions involving specific licensees. Also, the definition of a public meeting is not intended to apply to or supersede any existing law, rule, or regulation that addresses public attendance at a specific type of meeting. For example, 10 CFR part 7 specifically addresses public attendance at advisory committee meetings; 10 CFR part 2, appendix C, addresses public attendance at enforcement conferences; and 10 CFR part 9, subpart C, addresses public attendance at Commission meetings.

2. In general, meetings between the NRC staff and outside parties will be classified as public meetings unless the NRC staff determines that—

The subject matter to be discussed—

a. Is specifically authorized by an Executive Order to be kept secret in the interests of national defense or foreign policy (classified information);

b. Contains trade secrets and commercial or financial information (proprietary information);

c. Contains safeguards information;

d. Is of a personal nature where such disclosure would constitute a clearly unwarranted invasion of personal privacy;

e. Is related to a planned, ongoing, or completed investigation and/or contains information compiled for law enforcement purposes;

f. Could result in the inappropriate disclosure and dissemination of preliminary, unverified information;

g. Has no direct, substantive connection to a specific NRC regulatory decision or action;

h. Indicates that the administrative burden associated with public attendance at the meeting could result in substantially interfering with the NRC staff's execution of its safety and regulatory responsibilities.

3. It is important to note that whether or not a meeting should be open for public attendance is dependent primarily on the subject matter to be discussed, not on whom within the NRC staff is participating (e.g., staff level versus senior management).

D. Notice to the Public

Normally, meeting announcement information is to be provided by the staff to the agency's meeting announcement coordinator at least ten days in advance of the date of the meeting so that adequate notice can be made to the public. Public notice will be provided weekly via a press release and posting in the agency headquarter's Public Document Room, 2120 L Street (Lower Level) NW., Washington, DC. The public may obtain a schedule of agency staff meetings via a toll-free telephone recording and toll-free electronic bulletin board (telephone numbers to be announced when the final policy statement is announced).

Meetings which are scheduled for the next 60 days will be announced to the public. Meeting announcements will include the date, time, and location of the meeting, as well as its purpose, the agency and outside organizations in attendance, and the name and telephone number of the agency contact for the meeting. Information about canceled, rescheduled, and open meetings scheduled on short notice will be updated daily or as needed via the posting at the agency Public Document Room, the telephone recording, and the electronic bulletin board.

Discussion of the Policy

The purpose of revising the open meeting policy is to further the goal of giving meaningful opportunities for the public to be informed of NRC activities without unduly affecting open and candid discussions between licensees and the NRC staff or interfering with the staff's ability to exercise its regulatory and safety responsibilities without undue administrative burden. The policy also provides staff guidance regarding what types of meetings should be open to public observation. The meeting policy is wholly a matter of NRC discretion and can be and will be departed from as NRC convenience and necessity may dictate.

The policy distinguishes between a planned, formal encounter from one that occurs informally, such as when an NRC official finds that an opportunity comes available while at a licensee's site to meet with a new plant manager or with a corporate official who is visiting the site, or when a licensee official attending an open meeting at an NRC office finds the Regional Administrator has time to visit with him for a short period. Such informal meetings are limited to those that do not have the express intent of discussing substantive issues that are directly associated with the NRC's regulatory and safety responsibilities.

The policy excludes meetings where the express intent is not to discuss substantive issues that are directly associated with NRC's regulatory and safety responsibilities. Such meetings could include training, conferences, and association meetings where both NRC staff and applicant/licensee officials participate. The policy also excludes meetings the NRC staff has with its own

employees, contractors, and consultants, other Federal government agencies where the matter does not relate to a specific activity for which NRC has oversight, and with representatives of foreign governments and State representatives on matters other than relating to specific NRC licensing or regulatory actions involving specific licensees.

The exceptions to staff meetings that will be open to the public permit meetings to be closed to ensure that classified, commercial or financial proprietary, safeguards, personal privacy and investigative information protected by statute or otherwise requiring protection is not disclosed to the public. The final three exceptions ensure that the staff has sufficient flexibility to carry out their responsibilities without being inhibited by the need to announce the meeting as one open to the public where it would interfere with the performance of the Commission's safety and regulatory responsibilities.

A meeting to discuss preliminary, unverified information is not an open meeting under the policy. The purpose of this exception is to ensure that licensees and applicants will not be inhibited in bringing to the Commission information that is preliminary in nature or is not verified or sufficiently analyzed to draw firm conclusions. It also ensures that discussions about potential implications of this information occur candidly and openly without fear that they may be misunderstood by the public as fact or as final conclusions.

A meeting where the subject matter has no direct, substantive connection to a specific NRC regulatory decision or action is not an open meeting under this policy. The purpose of this exception is to ensure that routine administrative matters relating to regulatory activities can be carried out efficiently. Meetings to discuss the status of actions, schedules for NRC action, an applicant's or licensee's activities, or general issues not directly related to a decision or action before the staff would not be open meetings under this exception.

The final exception is for meetings where the administrative burden associated with public attendance could result in substantially interfering with the NRC staff's execution of its safety and regulatory responsibilities. This exception ensures that the staff has the discretion to have a needed meeting on short notice where adequate public notice cannot be provided without placing an undue burden on the agency. The meeting could be necessary because of an urgent issue that needs addressing or where the opportunity becomes available on short notice to meet with an official of the applicant or licensee that would benefit the staff person in carrying out his or her duties. The meeting also might be in a location that does not have the facilities to easily accommodate the public, such as short morning meetings of resident inspectors with the plant manager, because such would require a daily effort to establish access authorization to protected areas. The meeting may not be able to be scheduled with sufficient definiteness to permit adequate public notice, such as when an inspector conducts an exit meeting with an applicant/licensee official at the conclusion of a routine inspection. A meeting with an applicant/licensee where agency staff is responding to a significant safety or safeguards event would not be open under this exception because to open such a meeting would be an undue burden on inspectors in that it would interfere with their safety and regulatory responsibilities at a time when they are focused on understanding and resolving significant safety or safeguards problems. Similarly, NRC inspections are not public meetings under this policy.

The system planned for providing public notice of all NRC staff open meetings will have a single toll-free telephone recording and an electronic bulletin board for providing meeting notice information. Open staff meetings will also be announced by a weekly press release as well as being posted in the agency's Public Document Room, as is the current practice.

American Mining Congress Concerns

The American Mining Congress (AMC) has expressed concerns on the agency's interim policy on open staff meetings. The interim policy is similar to the proposed policy statement. It has been used by the Office of Nuclear Reactor Regulation, Office for Analysis and Evaluation of Operational Data, and NRC regional offices since September 1992. The proposed policy statement differs from the interim policy statement in that several exemptions have been clarified. Several of these changes may have addressed the concerns of AMC. However, since the concerns raise issues that may still be applicable to the current policy statement, they are being presented and comments are invited on them.

First, the AMC expressed the concern that the policy definition is too broad and the exemptions are not adequate to provide licensees with a clear understanding on how the policy will be implemented.

Second, they expressed the concern that the policy adds little value to existing procedures and opportunities for meaningful and appropriate public participation and would create a substantial hindrance in important, ongoing communications between NRC and its licensees.

Third, the AMC believes that the policy is in conflict with 10 CFR 2.102, which permits staff to request applicants and licensees to confer informally with the staff and that the policy will likely discourage licensees from reporting and resolving compliance issues with NRC staff because it mandates public notice and potential access to the meetings by third parties. Also, the AMC believes that resolution of technical and enforcement matters will be protracted and more contentious than under the present policy and may often result in more litigation because it would chill the free exchange of ideas and information, and, in effect, create a significant roadblock to fulfillment of the Commission's regulatory responsibilities.

Fourth, the AMC saw the need for meetings to be scheduled in advance to ensure adequate public notice as hindering the regulatory process because it could prevent meetings from being held on short notice to resolve issues of immediate concern and could delay resolution of routine matters such as those relating to schedules.

Fifth, the AMC expressed concern that the policy would require increased expenditures by NRC and licensees to organize and monitor the meetings and respond to public comments. Also it stated that licensee fees should not be charged to cover meeting expenses unless the outside party also pays.

Sixth, the AMC expressed concern that the meetings will be used by outside parties to advance their personal agendas and stated that technical meetings between the NRC and licensees are not the proper forum for raising public policy issues.

Dated at Rockville, Maryland, this 8th day of September, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–22391 Filed 9–13–93; 8:45 am]

BILLING CODE 7590–01–P

Power Authority of the State of New York; James A. FitzPatrick Nuclear Power Plant; Partial Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has

granted the request by the Power Authority of the State of New York (PASNY or the licensee) to withdraw a portion of their June 16, 1993, application for a proposed amendment to Facility Operating License No. DPR–59 for the James A. FitzPatrick Nuclear Power Plant located in Oswego County, New York.

The proposed amendment involved changes to the Technical Specifications (TSs) to extend the current intervals for bench checking and disassembling safety/relief valves in accordance with TSs 4.6.E.1 and 4.6.E.2, and for functionally testing 10 percent of each snubber type in accordance with TS 4.6.1.3. The proposed changes would also extend the current interval for testing excess flow check valves in accordance with TS 4.7.D.1.b. PASNY requested extensions of these surveillance intervals until the start of the next refueling outage, scheduled to start in January 1995. The portions of the license amendment relating to safety/relief and excess flow check valve testing were approved in License Amendment No. 195 that was issued on August 11, 1993.

On August 19, 1993, the licensee submitted a letter to the NRC requesting withdrawal of the requested extension of the current surveillance interval for snubbers. The licensee requested withdrawal on the basis that the extension of the surveillance interval was not required.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing which was published in the **Federal Register** on July 7, 1993 (58 FR 36444).

For further details with respect to this action, see the application for amendment dated June 16, 1993, the supplement to the application dated July 30, 1993, and the licensee's letter of August 19, 1993, which withdrew the portion of the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York.

Dated at Rockville, Maryland, this 7th day of September 1993.

For the Nuclear Regulatory Commission.

John E. Menning,

Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–22393 Filed 9–13–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Chicago Board Options Exchange, Inc.

September 8, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Republic of Austria
Stock Index Growth Notes (File No. 7–11235)
Merrill Lynch
Market Index Target-Term Securities (File No. 7–11236)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 29, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22411 Filed 9–13–93; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–11153]

Issuer Delisting; Application to Withdraw from Listing and Registration; (Air Methods Corporation, Common Stock, $.06 Par Value)

September 8, 1993.

Air Methods Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on July 9, 1993, to withdraw the Company's Common Stock from listing on the Amex's Emerging company Marketplace ("ECM"), and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotations/National Market Systems ("NASDAQ/NMS"). According to the Company, the decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its stockholders than the present listing on the Amex because:

(1) The Company believes that the NASDAQ/NMS system of competing market-makers will result in increased visibility and sponsorship for the Common Stock and will offer the Company's shareholders more liquidity than is presently available on the Amex ECM, and less volatility in quoted prices per share when trading volume is slight;

(2) The Company believes that the NASDAQ/NMS system will offer the opportunity for the Company to secure its own group of market-makers who will be more inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports, and in doing so, expand the capital base available for trading in its Common Stock;

(3) The Company believes if the Common Stock is traded on the NMS it will be entitled to exemptions from certain registration requirements under the securities or Blue Sky Laws of a number of states which exemptions are

not available for securities listed on the Amex ECM; and

(4) The Board has determined that the company and the stockholders of the Company will benefit from the Company's Common Stock being traded on the NASDAQ/NMS rather than on the Amex ECM, where the Common Stock is now listed.

Any interested person may, on or before September 29, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order grating the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22410 Filed 9–13–93; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–11694]

Issuer Delisting; Application to Withdraw from Listing and Registration; (BioSafety Systems, Inc., Common Stock, $0.01 Par Value)

September 8, 1993.

BioSafety Systems, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on August 6, 1993, to withdraw the Company's Common Stock from listing on the Amex and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotations/National Market Systems ("NASDAQ/NMS"). According to the Company, the decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its stockholders than the present listing on the Amex because:

(1) The company believes that the NASDAQ/NMS system of competing market-makers will result in increased visibility and sponsorship for the Common Stock than is presently the case with the single specialist assigned to the stock on the Amex;

(2) The Company believes that the NASDAQ/NMS system will offer the Company's stockholders more liquidity than is presently available on the Amex and less volatility in quoted prices per share when trading volume is slight;

(3) The Company believes that the NASDAQ/NMS system will offer the opportunity for the Company to secure its own group of market-makers and, in doing so, expand the capital base available for trading in its Common Stock; and

(4) The Company believes that firms making a market in the Company's Common Stock on the NASDAQ/NMS system will be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before September 29, 1993, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22409 Filed 9–13–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted by October 14, 1993. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3RD Street S.W., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

Title: Application for Certification as a Certified Development Company

Form No.: 1246

Frequency: On Occasion

Description of Respondents: Applicants to become CDCs

Annual Responses: 15

Annual Burden: 150

Cleo Verbillis,

Chief Administrative Information Branch.

[FR Doc. 93–22379 Filed 9–13–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2661]

Iowa; Amendment #1; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage to November 15, 1993.

All other information remains the same, i.e., the termination date for filing applications for economic injury is April 11, 1994.

The economic injury number for Iowa is 793100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 2, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–22380; Filed 9–13–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2669]

Kansas; Amendment #6; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with Notices from the Federal Emergency Management Agency, dated August 26 and 30, 1993, to include Mitchell County in the State of Kansas as a disaster area as a result of damages caused by flooding and severe storms, and to establish the incident period for this disaster as beginning on June 28, 1993 and continuing through August 26, 1993. The Declaration is further amended to extend the deadline for filing applications for physical damage to November 15, 1993.

All counties contiguous to the above-named primary county have been previously declared.

The termination date for filing applications for economic injury is April 25, 1994.

The economic injury number for Kansas is 793500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 2, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–22381 Filed 9–13–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2664]

Minnesota; Amendment #4; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with Notices from the Federal Emergency Management Agency, dated August 25 and 27, 1993, to include Wright County in the State of Minnesota as a disaster area as a result of damages caused by severe storms, flooding, and tornadoes, and to establish the incident period for this disaster as beginning on May 6, 1993 and continuing through August 25, 1993.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Sherburne, Minnesota may be filed until the specified date at the previously designed location.

Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is November 15, 1993 and for economic injury the deadline is April 11, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 2, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–22382 Filed 9–13–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2663]

Missouri; Amendment #5; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with a Notice from the Federal Emergency Management Agency dated August 26, 1993 to include Crawford, St. Clair, St. Francois, Stoddard, and Wayne Counties in the State of Missouri as a disaster area as a result of damages caused by severe storms and flooding beginning on June 10, 1993 and continuing. This Declaration is further amended to extend the deadline for filing applications for physical damage to November 15, 1993.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Butler, Carter, Cedar, Dent, Iron, and Reynolds in the State of Missouri may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

The termination date for filing applications for economic injury is April 11, 1994.

The economic injury number for Missouri is 793300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 2, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–22383 Filed 9–13–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2667]

Nebraska; Amendment #5; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage to November 15, 1993.

All other information remains the same, i.e., the termination date for filing applications for economic injury is April 19, 1994.

The economic injury number for Nebraska is 793400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 2, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–22384 Filed 9–13–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on the Vasona Corridor Light Rail Transit Project in Santa Clara County, CA

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Intent to prepare Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) and Santa Clara County Transit District (SCCTD) hereby give notice that they intend to prepare an Environmental Impact Statement (EIS) for light rail transit improvements in the Vasona Corridor area of Santa Clara County, California. FTA and the SCCTD will prepare the EIS in conformance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321), the Regulations for Implementing the Procedural Requirements of NEPA, Council on Environmental Quality (40 CFR parts 1500–1508), Environmental Impact and Related Procedures, FTA (49 CFR parts 622), and the appropriate Congressional Acts and Executive orders pertaining to federal environmental documents. The SCCTD will ensure that the EIS also satisfies the requirements of the California Environmental Quality Act (CEQA) and serves as the Environmental Impact Report (EIR) required by CEQA. Scoping will be accomplished through correspondence with interested persons, organizations, and Federal, state, and local agencies and through a public scoping meeting. See **SUPPLEMENTARY INFORMATION** below for details.

DATES:

Comment Due Date: Written comments on the scope of alternatives and impacts to be considered should be sent to Julie Render, Santa Clara County Transportation Agency by October 15, 1993.

Scoping Meeting: A public scoping meeting will be held on Thursday, September 30, 1993 at 7 p.m. at the Campell City Council Chambers. See **ADDRESSES** below.

ADDRESSES: Written comments on the project scope should be sent to Julie Render, Environmental Analyst, Santa

Clara County Transportation Agency, 3331 North First Street, Building B, 2nd Floor, San Jose, CA 95134–1906. The public scoping meeting will be held at the Campbell City Council Chambers, 70 North First Street, Campbell, CA 95008.

FOR FURTHER INFORMATION CONTACT: Mr. Jerome Wiggins, Office of Program Operations, Federal Transit Administration, Region 9, U.S. Department of Transportation, Telephone: (415) 744–3115.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and SCCTD invite the public and affected Federal, State and local agencies to participate in defining the alternatives to be evaluated in the EIS/EIR and identifying the significant social, economic, or environmental issues related to the proposed project. The SCCTD will conduct scoping to help establish the purpose, scope, framework, and approach for the analysis in the EIS. An information packet describing the purpose of the project, the proposed alternatives, the impact areas to be evaluated, and preliminary schedule is being mailed to affected Federal, State and local agencies and to interested parties on record. Others may request the scoping materials by contacting Julie Render at the address above, or by calling (408) 321–5789. Scoping comments may be made verbally at the public scoping meeting or in writing. See the **DATES** and **ADDRESSES** sections above for locations and times. During scoping, comments should focus on identifying specific social, economic or environmental impacts to be evaluated and suggesting alternatives which are less costly or less environmentally damaging while achieving similar transit objectives. Scoping is not the appropriate time to indicate a preference for a particular alternative. Comments on preferences should be communicated after the Draft EIS/EIR has been completed. If you wish to be placed on the mailing list to receive further information as the project develops, contact Julie Render as previously described.

II. Description of Study Area and Project Need

The Vasona Corridor is the name given to a heavily traveled transportation corridor approximately 6 miles in length in Santa Clara County. It extends from downtown San Jose on the north, traverses the City of Campbell and continues south to the Town of Los Gatos. The Vasona Corridor is generally oriented in a northeast-southwest direction. The Vasona Corridor has been identified in Santa Clara County's comprehensive Transportation 2010 study as one of the top three high priority transportation corridors for future major capital improvements. The proposed facility is primarily within the existing Southern Pacific Railroad (SPRR) right-of-way. As part of the regional public transit system, the Vasona Corridor Project would provide improved accessibility to the Peninsula CalTrain passenger rail system, the Guadalupe and Tasman Corridor light rail systems, and numerous County Transit bus routes.

III. Alternatives

The EIS will address the No-Project and two light rail transit (LRT) alternatives in detail, and also will include a discussion of other alternatives considered. Both LRT alternatives follow the same alignment along the Southern Pacific Railroad right-of-way from San Jose to the project terminus in Los Gatos. Different options are presented for the LRT track alignment in downtown San Jose. One of the LRT alternatives includes ten stations, the other includes eleven stations. Both LRT alternatives include five park-and-ride facilities.

IV. Probable Effects

The FTA and SCCTD propose to evaluate in the EIS all significant social, economic, and environmental impacts of the alternatives under consideration. The impacts analyzed will include noise and vibration, residential and business displacements, changes in development patterns and land use, community disruption, traffic and parking changes, effects on historic sites, degradation of local air quality, aesthetic quality of the area, and the disruption of recreation facilities, wetlands, floodplains, ecologically sensitive areas, and natural and man-made hazardous materials sites. These impacts will be evaluated both for the construction period and for the long-term operation of each alternative. Measures to mitigate significant adverse impacts will be explored.

V. FTA Procedures

After its publication, the Draft EIS/EIR will be available for public and agency review and comment, and a public hearing will be held. After the public comment period has closed, the SCCTD will prepare the Final EIS/EIR.

Issued on: September 8, 1993.

Leslie Rogers,

Deputy Regional Administrator.

[FR Doc. 93–22372 Filed 9–13–93; 8:45 am]

BILLING CODE 4910–57–M

National Highway Traffic Safety Administration

[Docket No. 93–66; Notice 1]

Notice of Receipt of Petition for Determination That Nonconforming 1990 Mercedes-Benz 420SEL Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1990 Mercedes-Benz 420SEL passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1990 Mercedes-Benz 420SEL that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is October 14, 1993.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.].

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all

applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) has petitioned NHTSA to determine whether 1990 Mercedes-Benz 420SEL (Model ID 126.035) passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1990 Mercedes-Benz 420SEL that Daimler Benz A.G. manufactured for importation into and sale in the United States, and certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner states that it carefully compared the non U.S.-certified 420SEL to its U.S.-certified counterpart, and found that two vehicles to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S.-certified 420SEL, an originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S.-certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1990 model 420SEL is identical to the U.S.-certified 1990 model 420SEL with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing System*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 111 *Rearview Mirrors*, 113 *Hood Latch System*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201, *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheal Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the non-U.S.-certified 1990 model 420SEL is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the seat belt symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims;* Installation of a tire information placard.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is turned off.

Standard No. 206 *Door Locks and Door Retention Components:* Replacement of the rear door locks and rear door locking buttons with U.S.-model parts.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of either a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer. The petitioner claims that the non-U.S.-certified 1990 model 420SEL is equipped with a passive restraint system consisting of an airbag, control module, and knee bolster, which have identical part numbers to those found on the U.S.-certified 1990 model 420SEL.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the non-U.S.-certified 1990 model 420SEL must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 8, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–22408 Filed 9–13–93; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods by Air; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise persons that RSPA will conduct a public meeting to exchange views on proposals submitted to the fourteenth session of the International Civil Aviation Organization's (ICAO) Dangerous Goods Panel (DGP) to be held in Montreal, Canada on October 12–22, 1993.

DATES: October 6, 1993 at 9:30 a.m.

ADDRESSES: Department of Transportation, Nassif Building, room 8334, 400 Seventh Street SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT:
Frits Wybenga, (202) 366–0656, International Standards Coordinator for Hazardous Materials Safety, RSPA, Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: This meeting will be held in preparation for the fourteenth session of the ICAO Dangerous Goods Panel Working Group. The primary purpose of the Panel meeting will be to discuss proposed amendments to the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air (the Technical Instructions). The Panel will consider possible amendments to resolve problems encountered with the use of the Technical Instructions, and amendments to the Technical Instructions on the basis of revisions to the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations).

The public is invited to attend without prior notification.

Documents

Documents submitted to the ICAO Dangerous Goods Panel may be reviewed between the hours of 8:30 a.m. and 5 p.m. in RSPA's Dockets Unit located in room 8419 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Copies of documents may be obtained from RSPA for a nominal fee. A listing of these documents is available on the Hazardous Materials Information Exchange (HMIX), RSPA's computer bulletin board. Documents may be ordered by filling out an on-line request form on the HMIX or by contacting RSPA's Dockets Unit (202–366–4453). For more information on the use of the HMIX system, contact the HMIX information center; 1–800–PLANFOR (782–6367); in Illinois, 1–800–367–9592; Monday through Friday, 8:30 a.m. to 5 p.m. Central time.

After the meeting, a summary of the public meeting will also be available from the Hazardous Materials Advisory Council (HMAC), suite 250, 1110 Vermont Ave., NW., Washington, DC 20005; telephone number (202) 728–1460.

Issued in Washington, DC, on September 7, 1993.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93–22371 Filed 9–13–93; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570. 1993 Rev., Supp. No. 2]

Surety Companies Acceptable on Federal Bonds; Redomestication; United Pacific Insurance Co.

United Pacific Insurance Company has redomesticated from the state of Washington to the state of Pennsylvania effective December 20, 1992. The company was last listed as an acceptable surety on Federal bonds at 58 FR 35821, July 1, 1993.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1993 revision, on page 35821 to reflect this change.

Questions concerning this notice may be directed to the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (FTS/202) 874–6850.

Dated: September 9, 1993

Charles F. Schwan, III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 93–22406 Filed 9–13–93; 8:45 am]

BILLING CODE 4810–35–M

Office of the Comptroller of the Currency

Office of the Assistant Secretary for International Affairs

[Docket No. 93–14]

Foreign Treatment of United States Financial Institutions

AGENCY: Office of the Comptroller of the Currency and Office of the Assistant Secretary for International Affairs, U.S. Treasury.

ACTION: Notice of study and request for comments.

SUMMARY: Section 3602 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418, requires that a quadrennial report on the foreign treatment of United States financial institutions be submitted to Congress by the Department of the Treasury, working with other agencies. The second report is due no later than December 1, 1994. This report will describe, *inter alia*, "the extent to which foreign countries deny national treatment to United States banking organizations and securities companies." Public comment is requested on significant denials of national treatment to United States banking organizations and securities companies.

DATES: Comments must be delivered on or before October 29, 1993.

ADDRESSES: Comments regarding banking market activities should be directed to: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219; Attention: Docket No. 93–14. Comments will be available for inspection and photocopying at the same location.

Comments regarding securities market activities should be directed to: Office of International Banking and Portfolio Investment, Office of the Assistant Secretary for International Affairs, room 5323, U.S. Treasury Department, Washington, DC 20220; Attention: National Treatment Study Director (Securities).

These comments will be available for public inspection and photocopying during the hours that the Treasury Department Library is open (by appointment) to members of the public. The Treasury Library is located in room 5030, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Appointments can be made by calling the Treasury Library at (202) 622–0045.

FOR FURTHER INFORMATION CONTACT:
C. Stewart Goddin, Study Director (Banking), or Howard Blacker, Senior International Adviser, International Banking and Finance, Office of the Comptroller of the Currency (202–874–4730) and James Ammerman, Study Director (Securities), Report on Foreign Treatment of United States Financial Institutions, Office of International Banking and Portfolio Investment, Treasury Department (202–622–0610).

SUPPLEMENTARY INFORMATION: In 1979, 1984, 1986, and 1990, Treasury, working with other interested departments and agencies, prepared reports on the treatment of U.S. commercial banks by foreign governments. (The 1986 and 1990 reports also covered securities markets.)

In 1988, Congress passed the Financial Reports Act as part of the Omnibus Trade and Competitiveness Act, which in section 3602 requires that Treasury, working with other agencies, report to the Congress on (1) the foreign countries from which foreign financial services institutions have entered into the business of providing financial services in the United States, (2) the kinds of financial services which are being offered, (3) the extent to which foreign countries deny national treatment to United States banking organizations and securities companies, and (4) the efforts undertaken by the

United States to eliminate such discrimination. The first such report, prepared in 1990, focused on those countries in which there are significant denials of national treatment that have an impact on United States financial firms. The second report will have a similar focus.

The policy of providing foreign financial firms an opportunity to compete on an equal basis with local domestic firms is known as "national treatment" or "equality of competitive opportunity."

Treasury would welcome specific comments on:

(a) Those markets which deny national treatment to U.S. banking organizations and securities companies in banking and/or securities activities;

(b) The laws, regulations, restrictions, or practices which result in the denial of equality of competitive opportunity;

(c) The seriousness of such obstacles to business operations;

(d) Significant denials in the provision of national treatment since June 30, 1990.

Dated: August 27, 1993.

Susan F. Krause,

Senior Deputy Comptroller for Bank Supervision Policy.

Dated: August 31, 1993.

Jeffrey R. Shafer,

Assistant Secretary for International Affairs.

[FR Doc. 93-22464 Filed 9-13-93; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Age of Baroque in Portugal" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC, from on or about November 7, 1993 to on or about February 6, 1994, is in the national interest.

Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: September 9, 1993.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93-22412 Filed 9-13-93; 8:45 am]

BILLING CODE 8230-12-M

[1] A copy of this may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/619-5078, and the address is room 700, U.S. Information Agency, 301 Fourth Street SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register

Vol.58, No.176

Tuesday, September 14, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, September 20, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 10, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-22521 Filed 9-10-93; 3:15 pm]

BILLING CODE 6210-01-P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 13, 20, 27, and October 4, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 13

Thursday, September 16

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Vermont Yankee Nuclear Power Corp.—Licensing Board Memorandum Regarding Termination of License Amendment Proceeding (LBP-93-16) (Tentative)
(Contact: Roland Frye, 301-504-3505)

Week of September 20—Tentative

Monday, September 20

10:00 a.m.
Briefing on Results of 2.206 Workshop (Public Meeting)
(Contact: Chip Cameron, 301-504-1642)
1:30 p.m.
Briefing on Status of AP600 and SBWR Thermal/Hydraulic Testing (Public Meeting)
(Contact: Brian Sheron, 301-492-3500)
3:00 p.m.
Briefing on NRC Reactor Inspection Program Assessment and Planned Improvements (Public Meeting)
(Contact: Anthony Gody, Sr., 301-492-1257)

Tuesday, September 21

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 27—Tentative

Thursday, September 30

2:00 p.m.
Briefing on Requirements for Storage and Transportation Casks (Public Meeting)
(Contact: Guy Arlotto, 301-504-3326)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 4—Tentative

There are no meetings scheduled for the Week of October 4.

ADDITIONAL INFORMATION: By a vote of 4-0 on September 8, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Sacramento Municipal Utility District (Rancho Seco Decommissioning Plan)" (Public Meeting) be held on September 10, and on less than one week's notice to the public.

Note—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301 504-1661.

Andrew L. Bates,

Chief, Operations Branch, Office of the Secretary.

[FR Doc. 93-22513 Filed 9-10-93; 11:38 am]

BILLING CODE 7590-01-M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

TIME AND DATE: Executive Committee of the Board of Regents, 11:00 a.m., September 13, 1993.

PLACE: Uniformed Services University of the Health Sciences, Bethesda, Maryland.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED: Agenda for the 1 November 1993 full board meeting.

CONTACT PERSON FOR MORE INFORMATION: George A. Drumbor, Executive Secretary of the Board of Regents, 301/295-3886.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-22521 Filed 9-10-93; 11:39 am]

BILLING CODE 5000-04-M

UNITED STATES INSTITUTE OF PEACE

DATE AND TIME: Thursday, September 23, 1993, 9 a.m. to 5:30 p.m.

LOCATION: First Floor Conference Room, 1550 M Street NW., Washington, DC.

STATUS: (Open Session)—Portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98-525.

AGENDA: Approval of Minutes of the Sixtieth Meeting of the Board of Directors; Chairman's Report; President's Report; General Issues; Budget Review; Deferred Grants; Introduction of Fellows; and Other Business.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs and Information, Telephone: (202) 457-1700.

Dated: September 10, 1993.

Bernice J. Carney,

Director, Office of Administration, United States Institute of Peace.

[FR Doc. 93-22534 Filed 9-10-93; 11:59 am]

BILLING CODE BAC 3155-01-M

federal register

Tuesday
September 14, 1993

Part II

Environmental Protection Agency

40 CFR Parts 148, et al.
Land Disposal Restrictions for Newly Identified and Listed Hazardous Wastes and Hazardous Soil; Proposed rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 260, 261, 268 and 271

[EPA #530-7-93-011, FRL-4725-5]

RIN 2050-AD37

Land Disposal Restrictions for Newly Identified and Listed Hazardous Wastes and Hazardous Soil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing treatment standards for the newly identified organic toxicity characteristic wastes (except those managed in Clean Water Act (CWA) systems, CWA-equivalent systems, or Class I Safe Drinking Water Act (SDWA) injection wells), and treatment standards for all newly listed coke by-product and chlorotoluene production wastes that must be met before these wastes are land disposed. EPA is also proposing to require ignitable characteristic wastes with a high total organic carbon (TOC) content and toxic characteristic pesticide wastes, that are being disposed in Class I nonhazardous waste injection wells, to either be injected into a well that is subject to a no-migration determination, or be treated to meet the LDR treatment standards prior to injection. These treatment standards and the dilution prohibitions for high TOC ignitables and pesticides are being proposed in order to comply with a proposed consent decree with the Environmental Defense Fund. This proposal also contains alternative standards for soil contaminated with prohibited hazardous wastes that will encourage use of noncombustion treatment technologies in treating hazardous soil. In addition, EPA is proposing several revisions to previously promulgated treatment standards and requirements in order to simplify the implementation of the land disposal restriction rules, including setting "universal treatment standards". Finally, EPA is proposing to modify the hazardous waste recycling regulations which will allow streamlined regulatory decisions to be made regarding the regulation of certain types of recycling activities.

DATES: Comments and data must be submitted on or before November 15, 1993.

ADDRESSES: The public must send an original and two copies of their written comments to EPA RCRA Docket (OS-305), U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Place the Docket Number F-92-CS2P-FFFFF on your comments. The RCRA Docket is located in room 2616 at the above address, and is open from 9 am to 4 pm Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (202) 260-9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424-9346 (toll-free) or (703) 412-9810 locally. For technical information on treatment standards, contact the Waste Treatment Branch, Office of Solid Waste (OS-322W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460, (703)308-8434. For technical information on capacity analyses, contact the Capacity Branch, Office of Solid Waste (OS-321W), (703)308-8440. For technical information on Hazardous Waste Recycling, contact the Regulation Development Branch, Office of Solid Waste (OS-332), (202)260-8551.

I. Background
A. Summary of the Statutory Requirements of the 1984 Hazardous and Solid Waste Amendments
B. Pollution Prevention Benefits
C. Relationship of Developing LDR Treatment Standards to Levels Being Considered in Hazardous Waste Identification Rule
II. Summary of Proposed Rule
A. Improvements to Existing LDR Program
B. Treatment Standards for Toxic Characteristic Wastes
C. Prohibition of Dilution of High TOC Ignitable and of TC Pesticide Wastes Injected into Class I Deep Wells
D. Treatment Standards for Newly Listed Wastes
E. Soil Contaminated with Hazardous Waste
F. Compliance Monitoring and Notification
G. Solicitation of Comment Regarding Exclusion of Hazardous Debris
H. Modifications to Hazardous Waste Recycling Regulations
III. Improvements to the Existing Land Disposal Restrictions Program
A. Proposed Universal Treatment Standards
1. Universal Standards for Organic Hazardous Constituents
a. Nonwastewaters
b. Wastewaters
c. Comments on the Advance Notice of Proposed Rulemaking
d. Other Revisions to Existing Treatment Standards
2. Universal Standards for Metal Hazardous Constituents
a. Nonwastewaters
b. Wastewaters
c. Comments on the Advance Notice of Proposed Rulemaking
d. Request for Data
3. Universal Standards for Cyanide
a. Wastewaters
b. Nonwastewaters
4. Universal Standards for Petroleum Refining Wastes
5. Universal Standards Will Not Apply to F024
B. Incorporation of Newly Listed Wastes into Lab Packs and Proposed Changes to Appendices
C. Proposed Changes in the LDR Program In Response to the LDR Roundtable
1. Background
2. Consolidated Treatment Table
3. Simplified LDR Notification Requirements
4. Demonstrating Acceptable Knowledge of One's Waste
a. Background
b. What Constitutes Acceptable Knowledge?
c. When Might Acceptable Knowledge be Used?
d. Why Provide Evidence to Support Acceptable Knowledge?
e. How Can A TSDF Verify Data Supplied by a Generator?
5. Advance Notice of Possible Changes to the LDR Program Resulting from the LDR Roundtable
a. Waste Code Carry Through
b. Use of Health-Based Levels Versus Technology-Based Levels in Establishing Treatment Standards
c. Inconsistency of Standards
d. Capacity-Related Issues
e. Generator Knowledge
f. Constituents
g. Detection Limits
h. Waste Analysis Plans (WAPs)
i. Paperwork
j. Complexity of the Regulations
IV. Treatment Standards for Toxicity Characteristic Waste
A. The Third Third Court Decision, The Emergency Interim Final Rule, and Their Applicability to TC Wastes
1. Background
2. Applicability of This Approach to TC Wastes and Hazardous Soil Covered by This Proposed Rule
3. Future Response to Issues Remanded by the Court
4. Request for Comment on Petition from Chemical Manufacturer's Association Regarding Deep Well Injection of Ignitable and Corrosive Characteristic Wastes
B. Background
1. Legal and Policy Background
2. Background on Toxicity Characteristic
C. Treatment Standards for New TC Organic Constituents
1. General Approach for Establishing Concentration-based Treatment Standards
a. Nonwastewaters
b. Wastewaters
2. Radioactive Mixed Waste
D. Treatment Standards for TC Pesticide Wastes (D012-D017)
1. Newly Identified Pesticide Nonwastewaters
2. Pesticide Wastewaters
E. Proposed Exemptions for *De Minimis* Losses of TC Wastes and for TC

Laboratory Wastes Discharged to CWA Wastewater Treatment
V. Deep Well Injection Issues
A. Prohibition of Dilution of High TOC Ignitable and of TC Pesticide Wastes Injected into Class I Deep Wells
B. Request for Comment on Petition from Chemical Manufacturer's Association Regarding Deep Well Injection of Ignitable and Corrosive Characteristic Wastes
VI. Treatment Standards for Newly Listed Wastes
A. Treatment Standards for Coke By-Product Production Wastes
1. Proposed Treatment Standards
2. Potential Future Revisions to Treatment Standards for Existing Coking Wastes K087, K060, and K035
B. Treatment Standards for Chlorotoluenes
VII. Treatment Standards for Hazardous Soils
A. Introduction
B. Applicability, Regulatory Status of Treated Soils, and Definitions
1. Applicability
2. Regulatory Status of Treated Soils
3. "Contained-in" Determinations
4. Definitions
a. Hazardous Soil
b. Constituents Subject to Treatment
c. Illegal Contamination of Soil
d. Nonanalyzable Constituents
C. Proposed Approaches for Establishing Treatment Standards for Hazardous Soils
1. Technology-Based Treatment Standards for Hazardous Soils
a. Range of Standards With A "Ceiling" One Order of Magnitude Above the Universal Standard, Provided 90% Treatment Occurs
b. Range of Standards With A "Ceiling" One Order of Magnitude Above the Universal Standard
c. Achieving 90% Treatment With No "Ceiling"
2. Explanation of Numeric Treatment Standards for Hazardous Soils
3. Treatment Standards for Residues from Soil Treatment
4. Treatability Variances
D. Contained-in Determinations
E. Soil Treatment Database
1. Treatment Technologies
2. Development of the Database
3. Analysis of the Database
a. Consideration of Innovative Technologies
b. Rationale for Not Using the "Traditional" BDAT Approach to Develop Hazardous Soil Treatment Standards
c. Graphical Analysis of Data
d. Transfer of Proposed Universal Standards to Constituents without Data
4. Request for Additional Data and Comment
F. Sampling and Analysis Protocols—Grab vs. Composite Samples
G. Relationship to Other Regulations and Programs
1. RCRA Land Disposal Restrictions Program
a. Existing LDR Treatment Standards
b. Soil Contaminated With Newly Listed Wastes Which Have Final Treatment Standards
c. Soil Contaminated With Newly Listed and Identified Wastes Which Have Proposed Treatment Standards
2. RCRA Corrective Action
3. Voluntary RCRA Cleanups
4. Phase I LDR Rule: Hazardous Debris
5. CERCLA as amended by SARA
6. Soil Contaminated by Underground Storage Tanks
7. Other Petroleum Contaminated Soil
8. Radioactive Mixed Wastes
a. Definition of Mixed Wastes
b. RCRA Requirements
9. Special Provisions for Soil Containing Asbestos
H. Related EPA Activities on Contaminated Media
1. Contaminated Media Cluster
2. Weathered Sludges
3. EPA Lead Strategy
4. Bioremediation
VIII. Compliance Monitoring and Notification
A. Compliance Monitoring
B. LDR Notification
1. Constituents To Be Included on the LDR Notification
2. Management in Subtitle C-Regulated Facilities
3. Potential Management of Decharacterized Wastes at a Subtitle D Waste Management Facility
IX. Further Solicitation of Comment Regarding Exclusion of Hazardous Debris that has been Treated by Immobilization Technologies
A. Background
B. Roundtable Discussion
C. EPA Investigations
D. Conclusions
X. Modifications to Hazardous Waste Recycling Regulations
A. Introduction
B. Modification of the Existing "Closed-Loop" Recycling Exclusion and Related Case-Specific Variance
1. Existing "Closed-Loop" Recycling Exclusion and Related Variance
2. K069 Wastes Recycled Back into the Secondary Process
3. Storage Prior to Recycling
XI. Implementation Issues
XII. Capacity Determinations
A. Capacity Analysis Results Summary
B. Analysis of Available Capacity
C. Surface Disposed Newly Identified and Listed Wastes
1. Required Capacity for Newly Identified TC Organics (D018–D043)
2. Required Capacity for Other Newly Listed Organic Wastes
a. Surface Disposed Coke By-Product Wastes
b. Surface Disposed Chlorinated Toluene Wastes
3. Newly Identified TC Wastes That Were Not Previously Hazardous by the Old EP Leaching Procedure
D. Required and Available Capacity for Newly Identified Wastes Mixed with Radioactive Components
E. Required and Available Capacity for High TOC Ignitable, TC Pesticide, and Newly Listed Wastes Injected into Class I Deep Wells
F. Required and Available Capacity for Hazardous Soil and Debris Contaminated with Newly Listed and Identified Wastes
1. Waste generation
a. Hazardous soil
b. Hazardous debris
2. Current management practices
3. Available capacity and capacity implications
a. Hazardous soil
b. Hazardous debris
XIII. State Authority
A. Applicability of Rules in Authorized States
B. Effect on State Authorization
XIV. Regulatory Requirements
A. Regulatory Impact Analysis Pursuant to Executive Order 12291
1. Methodology Section
a. Cost Methodology
b. Economic Impact Methodology
c. Benefits Methodology
2. Results Section
a. Cost Results
b. Economic Impact Results
c. Benefit Estimate
3. Regulatory Impact Analysis—Underground Injection Wastes
B. Regulatory Flexibility Analysis
C. Paperwork Reduction Act
Appendix A to the Preamble: Description of Hazardous Soil Treatment Technologies and Performance Standards

I. Background

A. Summary of the Statutory Requirements of the 1984 Hazardous and Solid Waste Amendments

The Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), enacted on November 8, 1984, largely prohibit the land disposal of untreated hazardous wastes. Once a hazardous waste is prohibited from land disposal, the statute provides only two options: Meet the treatment standard for the waste prior to land disposal, or dispose of the waste in a land disposal unit that has been found to satisfy the statutory no migration test. The treatment standards EPA establishes may be expressed as either levels or methods, and must substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized. RCRA section 3004(m)(1). A no migration unit is one from which there will be no migration of hazardous constituents for as long as the waste remains hazardous. RCRA sections 3004(d), (e), (g)(5). For purposes of the restrictions, land disposal includes any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave. RCRA section 3004(k).

The land disposal restrictions are effective upon promulgation. RCRA section 3004(h)(1). However, the Administrator may grant a national capacity variance from the immediate effective date and establish a later effective date (not to exceed two years) based on the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available. RCRA section 3004(h)(2). The Administrator may also grant a case-by-case extension of the effective date for up to one year, renewable once for up to one additional year, when an applicant successfully makes certain demonstrations. RCRA section 3004(h)(3). See 55 FR 22526 (June 1, 1990) for a more detailed discussion on national capacity variances and case-by-case extensions.

In addition, Congress prohibited storage of any waste which is prohibited from land disposal unless such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal. RCRA section 3004(j). For storage up to one year, EPA bears the burden of proving that such storage was not solely for the purpose of accumulation of quantities necessary to facilitate proper recovery, treatment or disposal. 40 CFR 268.50(b). For storage beyond one year, the burden of proof shifts to the generator or owner/operator of a treatment, storage or disposal facility to demonstrate that such storage was solely for the purpose of accumulation of quantities necessary to facilitate proper recovery, treatment or disposal. 40 CFR 268.50(c). The provision applies, of course, only to storage which is not also defined in section 3004(k) as land disposal.

EPA was required to promulgate land disposal prohibitions and treatment standards by May 8, 1990 for all wastes that were either listed or identified as hazardous at the time of the 1984 amendments, a task EPA completed within the statutory timeframes. RCRA sections 3004(d), (e), and (g). EPA is also required to promulgate prohibitions and treatment standards for wastes identified or listed as hazardous after the date of the 1984 amendments within six months after the listing or identification takes effect. RCRA section 3004(g)(4). The Agency did not meet this latter statutory deadline. As a result, a suit was filed by the Environmental Defense Fund (EDF) to compel agency action. In response to the suit, EPA filed with the District Court a proposed consent decree (not yet ratified by the Court) that would establish a schedule for adopting prohibitions and treatment standards for newly identified and listed wastes. (*EDF* v. *Reilly*, Civ. No. 89–0598, D.D.C.) Treatment standards proposed for the TC wastes (including TC soils) managed in non-CWA/non-CWA-equivalent/non-Class I SDWA well systems, and newly listed coke by-product and chlorotoluene production wastes are covered by this consent decree. The final treatment standards must be promulgated by July 1994.

None of the modifications to the existing land disposal restrictions rules proposed today are required by the EDF settlement. However, the Agency believes it important to review its regulations on a periodic basis and make changes, as appropriate, where such will improve or update our technical knowledge or improve or simplify the implementation of the program. In today's notice, EPA is proposing to modify the existing treatment standards for soil contaminated with prohibited hazardous waste(s), is proposing to develop a set of treatment standards (called universal standards) that would apply to most hazardous wastes, is proposing changes to the requirements for land disposal of lab packs containing prohibited hazardous wastes, and is proposing to modify the paperwork requirements so as to simplify the implementation of the regulations.

B. Pollution Prevention Benefits

EPA's progress over the years in improving environmental quality through its media-specific pollution control programs has been substantial. Over the past two decades, standard industrial practice for pollution control concentrated to a large extent on "end of pipe" treatment or land disposal of hazardous and non-hazardous wastes. However, EPA realizes that there are limits to how much environmental improvement can be achieved under these programs which emphasize management after pollutants have been generated. EPA believes that eliminating or reducing discharges and/or emissions to the environment through the implementation of cost-effective source reduction and environmentally sound recycling practices can provide additional environmental improvements. Examples of treatment standards proposed today that are based on the performance of a recovery technology are the universal standards for metals, which are based on the performance of high temperature metal recovery (HTMR). The Agency is requesting comment on whether other recovery technologies or source reduction activities are appropriate as the Best Demonstrated Available Technology (BDAT) for the wastes included in today's proposed rule.

The Agency has previously outlined the legal basis for waste minimization and source reduction as a potential type of LDR treatment standard, to be available as an optional choice for persons managing prohibited wastes. (See 56 FR 55162 (Oct. 24, 1991) and Supplemental Information Report pp. 30–31 prepared for the Notice of Data Availability (January 19, 1993).) Briefly, RCRA section 3004(m) requires the Agency to establish treatment standards so that short-term and long-term threats to human health and the environment are minimized. Waste minimization and source reduction potentially meet these criteria. They are a type of treatment, namely "a method, technique, or process * * * designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume." RCRA section 1004(34). Put another way, wastes ultimately generated will be less hazardous or reduced in volume by a process designed to change the composition of the hazardous waste being generated. Arguably, these process changes could apply to activities prior to the generation of the hazardous waste. Waste minimization and source reduction techniques also potentially further the ultimate statutory criteria of minimizing threats to human health and the environment. The endorsement of waste minimization and source reduction in the statute (see RCRA section 1003(6)) is a direct indication that these techniques further the statute's protectiveness objectives. See S. Rep. No. 284, 98th Cong. 1st Sess. 17 setting out the concept of a preferred waste management hierarchy in describing LDR requirements. It should also be noted that the D.C. Circuit has recently stated that one of the objectives of the section 3004 (m) treatment standards is to reduce the mass loading of hazardous constituents, *Chemical Waste Management* v. *EPA*, 976 F. 2d at 23–6, and this goal is perhaps best served by waste minimization and source reduction techniques.

This is not to say that there are no drawbacks to including these techniques as a type of section 3004(m) standard. The Agency would need to assess such factors as how these techniques affect: Production decisions; waste management costs and other market efficiencies; development of new

technologies; concentrations of hazardous constituents in the remaining residues; and, implementation difficulties noted in the Supplemental Information Report in making a decision to specify source reduction and waste minimization as a treatment standard. In addition, the Agency may also need to consider the applicability of the techniques to facilities which differ in processes used, size, age, and other factors.

To better understand these tradeoffs, the Agency solicited comments in the Supplemental Information Report (pp. 30–31) on allowing source reduction/waste minimization as an optional site-specific means of satisfying the LDR treatment standard. EPA is continuing to evaluate those comments, and requests further comment on this issue.

On May 18, 1993, the EPA Administrator announced new steps to protect public health and the environment by encouraging reduction in the amount of hazardous wastes generated in this country and strengthening federal controls governing hazardous waste incinerators and other combustion devices. One of those steps involved calling for a national review of the relative roles of waste combustion and waste reduction in hazardous waste management. The Agency is using today's proposed rule to solicit comment on the role of combustion and waste reduction in establishing BDAT. In particular, today's proposed rule specifies a series of new treatment standards that must be met before hazardous wastes are land disposed. These standards, which in many cases are based on combustion performance, specify numerical limits which allow the use of any treatment technology, and thereby recognizes the appropriateness of alternatives to combustion. The Agency specifically solicits comment and data on whether other treatment technologies, especially recycling technologies, can achieve these limits. If not, the Agency seeks comment and data on whether the levels should be modified so as to allow and encourage the use of non-combustion treatment technologies. As an example, the proposed standards for hazardous soils identify options which allow slightly higher levels of contaminants to remain in the treated soil so that innovative, non-combustion technologies may be used. In keeping with the call for a national review of the relative role of combustion, the Agency is soliciting comment on whether there are other actions that should be taken to achieve a reduction in waste generation, an increase in recycle/reuse, or greater use of non-combustion technologies. For example, land disposal restrictions have previously identified highly concentrated wastes that must be treated by recovery technologies. Are there contaminant levels for TC organics above which recovery should be required? With regard to non-combustion technologies, the Agency will attempt to encourage their use in the LDR program, to the extent that performance of such technologies satisfy the requirements of section 3004(m).

C. Relationship of Developing LDR Treatment Standards to Levels Being Considered in Hazardous Waste Identification Rule

A recurring debate throughout EPA's development of the land disposal restrictions has been whether the RCRA section 3004(m) treatment standards should be technology-based (i.e. based on performance of a treatment technology) or risk-based (i.e. based on assessment of risks to human health and the environment posed by the waste). By law, the treatment standards are to result in destruction, removal, or immobilization of hazardous constituents in the waste "so that short-term and long-term threats to human health and the environment are minimized." Section 3004(m). In making this determination, the Agency is directed to take into account the "long-term uncertainties associated with land disposal." Sections 3004 (d)(1)(A), (e)(1)(A) and (g)(5)(A). Technology-based standards achieve the objective of minimizing threats by eliminating as much of the uncertainty associated with disposal of hazardous waste as possible, and were upheld as legally permissible for this reason. *Hazardous Waste Treatment Council* v. *EPA*, 886 F. 2d 355, 361–64 (D.C. Cir. 1989), cert. denied 111 S. Ct. 139 (1990); see also 55 FR at 6642 (February 26, 1990). However, the court also held that treatment standards cannot be established "beyond the point at which there is no 'threat' to man or nature," *id.* at 362.

EPA has indicated that its ultimate policy preference is to establish risk-based levels that represent minimize threat levels and so cap the extent of hazardous waste treatment. 55 FR at 6641. The difficulties involved in this task, however, are formidable and very controversial. The technical issues include assessing exposure pathways other than migration to ground water, taking environmental risk into account, and developing adequate toxicological information for the hazardous constituents controlled by the hazardous waste program. 55 FR at 6642.

EPA is currently working on a rulemaking that will define hazardous constituent concentration levels below which a waste is no longer considered "hazardous." Discussions concerning these levels are taking place in the context of the recently chartered Federal Advisory Committee on the Hazardous Waste Identification Rule (HWIR). The Committee chose to initially discuss how to provide greater flexibility for the remediation of contamination at hazardous waste sites. It has also begun discussions by focusing on concentrations below which waste mixtures and treatment residuals would no longer be subject to the hazardous waste regulations ("exit" criteria), while also discussing whether there is a regulatory approach to relatively quickly bring under regulation clearly hazardous waste not now controlled by the hazardous waste regulations (an "entry" rule). To help address the uncertainties of assessing multiple exposure pathways, the Agency also has initiated research to examine exposure of humans and the environment to hazardous constituents through a large number and variety of pathways.

Because current technology-based standards (like those in today's proposal) impose substantial costs, EPA has asked the Committee to consider ways to reduce the costs of managing wastes and remediating sites under RCRA. In addition, EPA will specifically ask the Committee to consider by the end of December, whether risk-based exit criteria could also serve as minimize threat levels to potentially cap treatment standards for the land disposal restrictions. If the Committee recommends that the risk-based exit criteria approach being developed could serve as caps on BDAT treatment standards, EPA will prepare a supplemental notice to the current proposal or otherwise expeditiously propose such an approach as a complement to the current technology-based standards.

II. Summary of Proposed Rule

On October 24, 1991, EPA published an advance notice of proposed rulemaking (ANPRM) to solicit comment on many aspects of what is included in today's proposed rule. Comments and data received in response to the ANPRM have been incorporated into this package.

A. Improvements to Existing LDR Program

The land disposal restrictions (LDR) program has been in place for over seven years. Because the Agency was involved with promulgating treatment

standards in time to meet statutory deadlines, the program was not developed under optimum conditions. As a result, implementation of the LDR program may be quite complex. The Agency is considering a number of changes that could be made to the LDR program to simplify its implementation, without sacrificing protection of human health and the environment. In particular, the Agency is proposing in this notice to replace the existing constituent-specific/waste-specific standards for many hazardous wastes with a common set of treatment standards, referred to throughout this proposal as universal standards. Today's notice also proposes to simplify the requirements for lab packs containing hazardous wastes, and to eliminate some of the data items required on LDR notifications. Additionally, a clarifying chart of paperwork requirements and a discussion of what constitutes "acceptable knowledge of the waste" are included.

B. Treatment Standards for Toxic Characteristic Wastes

On March 29, 1990, EPA promulgated additional organic constituents and levels at which a waste is considered hazardous based on the characteristic of toxicity (55 FR 11798). Because these wastes were identified as hazardous after the enactment date of HSWA in 1984, they are referred to under the LDR program as "newly identified wastes". Included are wastes identified with the codes D018 through D043 based on the toxicity characteristic leaching procedure (TCLP), i.e., TC wastes. EPA is proposing treatment standards for each of these constituents as part of today's rule. In addition, because wastes exhibiting the toxicity characteristic can also contain treatable levels of other hazardous constituents, EPA is also proposing treatment standards for such constituents, as well as rules on testing and monitoring such constituents. These treatment standards and rules are necessary to implement the court's opinion in *Chemical Waste Management* v. *EPA*, 976 F. 2d 2, 17–8 (D.C. Cir. 1992), cert denied U.S. (April 26, 1993).

C. Prohibition of Dilution of High TOC Ignitable and of TC Pesticide Wastes Injected into Class I Deep Wells

In its September 25, 1992 ruling on the Third Third LDR Rule, the D.C. Circuit Court remanded the Agency's determination in that rule that allowed dilution to remove characteristics of hazardous waste that are injected into Class I nonhazardous deep injection wells regulated by the Safe Drinking Water Act. The Agency is continuing to develop a response to the court ruling. As part of that response, EPA is today proposing to prohibit dilution of two types of characteristic wastes disposed in Class I wells: High TOC ignitable liquids (D001) and halogenated pesticide wastes that exhibit the toxicity characteristic (D012–D017). The Agency is proposing this prohibition because in each of the two cases, treatment is the preferred management option; the organics in D001 high TOC liquids can be reused, and D012–D017 pesticide wastes contain particularly toxic constituents. The Agency is therefore proposing to require that these wastes be treated before injection in a Class I well, or that they be injected into a no-migration well.

D. Treatment Standards for Newly Listed Wastes

EPA has promulgated a number of hazardous waste listings since the enactment of HSWA in 1984, referred to as "newly listed wastes" under the LDR program. This proposed rule describes the treatment and/or recycling technologies identified as BDAT for several of these newly listed wastes, and proposes treatment standards based on these BDATs. Newly listed wastes included in today's proposal are K141–K145, K147–K148, and K149–K151 (coke by-product production wastes and chlorotoluene wastes) (see 40 CFR 261.32.)

E. Soil Contaminated with Hazardous Waste

This notice also proposes new alternative treatment standards for hazardous constituents when they are contaminating soil (i.e., hazardous soil). The Agency is proposing these alternatives in order to consider a full range of innovative technologies that are available to treat such hazardous soil. In particular, under the current regulations and the "contained-in" policy, soil contaminated with hazardous waste is regulated to the same degree as the contaminating hazardous waste itself, until such contamination can be separated from the soil matrix so that it no longer "contains" hazardous constituents. The numerical treatment standards for many of these hazardous wastes when they are not found in the soil matrix is based on the performance of incineration, a technology not uniformly appropriate for hazardous soil, because of the low concentrations of hazardous constituents often found in soil. Rather, other technologies may be more appropriate for the treatment of lightly contaminated hazardous soils. The Agency, therefore, is proposing these alternative treatment standards for hazardous soil based on performance of technologies more appropriate for soil treatment. In order to comply with the LDR's, hazardous soil would have to be treated either to meet the standards for the hazardous waste contaminating the soil, or the alternative treatment standards proposed in this notice.

The Agency is proposing three different approaches to develop alternative technology-based treatment standards for soils. Under these approaches, the universal treatment standards (discussed in section III.A of this preamble) are proposed for soil as "base" standards. Each approach allows for treatment to levels above the universal standards and differ primarily in the extent of treatment required.

Under the first approach, the Agency is proposing a range of standards with a "ceiling" one order of magnitude above the universal standard, provided 90% treatment of each constituent subject to treatment is achieved. The second approach is a variation of the first, in that the Agency is proposing a range of standards with a "ceiling" one order of magnitude above the universal standard; however, there is no requirement that 90% reduction occur. The third approach proposes an unlimited range of values above the universal standard provided 90% treatment is attained (i.e., there would be no "ceiling" value) unless 90% treatment would treat the waste to a level below the universal treatment standards. If such a level would be achieved through 90% treatment, the universal treatment standards would be met.

The Agency is proposing that these approaches would apply to all hazardous soils regardless of the type of contaminating hazardous waste. That is to say, the proposed approaches would apply to soils contaminated with listed hazardous wastes, soils displaying the toxicity characteristic, and soils displaying the characteristic of ignitability, corrosivity, or reactivity.

F. Compliance Monitoring and Notification

In the May 24, 1993 interim final rule (58 FR 29872), the Agency adopted an approach that allowed facilities handling ignitable or corrosive waste to monitor for additional hazardous constituents "reasonably expected to be present". The determination of "reasonably expected to be present" could be based on knowledge of the raw materials, process, and potential reaction products, or the results of a one-time analysis for the entire list of constituents subject to treatment. The

Agency noted that this approach would not necessarily be taken in the future when the remanded rules were addressed. The Agency is therefore taking comments in today's proposed rule on options for modifying this approach.

EPA is also soliciting comment on how to limit monitoring for those constituents subject to treatment in TC wastes and hazardous soil in subtitle C-regulated facilities, in subtitle D facilities, and at CERCLA or RCRA remediation sites.

G. Solicitation of Comments Regarding Exclusion of Hazardous Debris

In this proposal, the Agency is soliciting data to demonstrate whether immobilized hazardous debris (if treated properly) should be excluded from subtitle C control. This proposal describes a number of activities related to this issue which the Agency undertook after the promulgation of the land disposal restrictions for hazardous debris on August 18, 1992.

H. Modifications to Hazardous Waste Recycling Regulations

The Agency is also proposing modifications to the current regulatory framework to the definition of solid waste that, if promulgated, would modify the regulation of hazardous waste recycling by providing streamlined mechanisms that would encourage environmentally protective recycling of specific wastestreams. The Agency is looking at the definition of solid waste in a broader sense, and plans to consider broader changes at a later date. Today's modifications will, however, allow environmentally beneficial recycling operations to continue without the regulatory impediments imposed by full RCRA subtitle C requirements. In turn, this will allow EPA and the states to streamline their efforts and better focus on operations that are part of the nation's waste disposal problem, rather than on those that are not, while the Agency continues to look at the overall definition.

These modifications will broaden the § 261.2(e)(1)(iii) "closed-loop" recycling exclusion from the definition of solid waste such that the residues of a secondary process (in addition to residues of a primary process, as currently allowed) are excluded from being a solid waste if they are reinserted into the process without prior reclamation (and also similarly broaden the related § 260.30(b) variance for materials that are reclaimed prior to reinsertion).

The proposed modifications are based, in part, on two relatively recent Court opinions (*American Petroleum Institute* v. *EPA*, 906 F. 2d 726 (D.C. Cir. 1990) (API) and *American Mining Congress* v. *EPA*, 907 F. 2d 1179 (D.C. Cir. 1990) (AMC II)) which indicate that the Agency has some discretion to consider the manner in which a secondary material is managed in determining RCRA jurisdiction (i.e., RCRA jurisdiction may be determined, at least in part, by consideration of whether the material is part of the waste management problem, as indicated by the potential for the material to pose a hazard to human health and the environment when recycled).

III. Improvements to the Existing Land Disposal Restrictions Program

A. Proposed Universal Treatment Standards

Facilities that treat and land dispose hazardous wastes typically must comply with the LDR treatment standards that have been established for many different listed and characteristic hazardous waste codes. In some cases, a constituent regulated under the treatment standard for one waste may also be a constituent regulated under the treatment standard for another waste. These two treatment standards may be different concentration levels. Such differences in concentration limits for the same constituent may cause confusion to the regulated community and to enforcement personnel.

In an effort to simplify and streamline the LDR program, the Agency investigated the possibility of establishing a concentration limit for each constituent that would be its treatment standard, regardless of the hazardous waste in which it was present. This concept of establishing consistent concentration limits on a constituent-by-constituent basis is being referred to as establishing "universal" treatment standards.

Universal treatment standards are being proposed in this notice for organic and metal constituents—one set for wastewaters and a different set for nonwastewaters—that would replace most existing limits in previously promulgated treatment standards for listed hazardous wastes. These proposed universal standards would not apply, however, to wastes for which the Agency has previously promulgated treatment standards expressed as a required method of treatment (see 40 CFR 268.42).

EPA is also proposing that the universal treatment standards would *not* apply to F024, for reasons that are discussed later in this section of the preamble. EPA requests comment on whether the universal treatment standards should also apply to F024. EPA also requests comment on whether there are other wastes or groups of waste for which the universal treatment standards should not apply.

The primary goal of establishing universal standards is to provide technically consistent and equitable standards that simplify owner/operator compliance, as well as enforcement and compliance monitoring efforts. Another potential advantage is that the universal standards would provide the regulated community with consistent constituent-by-constituent concentration goals for which the facility can direct waste minimization investigations. Furthermore, universal standards could serve as a performance benchmark for developing alternative treatment technologies.

The universal standards will be particularly helpful in treating and measuring compliance when several listed wastes have been mixed together that contain the same constituent of concern, but under the present system have different concentration limits. Wastes that are amenable to treatment by the same technologies are often appropriately commingled prior to treatment and recovery. Since under universal standards the constituent of concern would have the same concentration limit no matter what listed waste code it is in, the need to determine and achieve different concentration limits would be eliminated. The development of universal standards is not intended, however, to modify current restrictions on the commingling of incompatible wastes, impermissible switching of treatability groups, or impermissible dilution. The Agency is not reopening these issues for comment.

Universal treatment standards would also provide EPA with a mechanism to streamline the development of treatment standards for future hazardous waste listings. In most cases, it could be assumed that the constituents in newly listed wastes would be subject to the universal standards. Facilities could then challenge these assumptions (if warranted) during the rulemaking for the waste listing. EPA solicits comment on the advantages and disadvantages of developing universal treatment standards.

EPA is proposing universal standards for over 200 constituents. This accounts for all of the organics and metals that can be analyzed consistently in treatment residuals and that have been regulated in previously-promulgated

treatment standards. The Agency is proposing that the generator or owner/operator would not have to analyze for all constituents in the BDAT list (See the BDAT list at "Guidebook for Quality Assurance/Quality Control Procedures for Submission of Data for the Land Disposal Restrictions Program," July 3, 1991, p. 8–15 in the docket for this rule.) Rather, it would only be necessary to analyze for those regulated constituents in the listed wastes that are being treated.

1. Universal Standards for Organic Hazardous Constituents

a. Nonwastewaters. The majority of the existing nonwastewater treatment standards for organics have been established based on data from some form of thermal destruction, typically incineration. This is due to the Agency's decision to establish methods of treatment instead of risk-based levels and the ability of thermal devices to destroy organics to levels at or near the detection limit (as measured in the ash). In fact, incineration has been determined to be BDAT for most of the wastes containing organics (i.e., most of the treatment standards for organic hazardous constituents are based on the performance of incineration.) Nevertheless, the Agency believes that other treatment technologies, including lower cost innovative technologies, can also meet these standards. In fact, the Agency has data on the treatment of these constituents by innovative technologies (technologies other than incineration, such as solvent extraction, thermal desorption) that support the levels being proposed today. However, the Agency specifically solicits comment as to what extent innovative technologies can meet the standards proposed today.

In establishing treatment standards in the First, Second and Third Third rulemakings, the Agency had varying amounts of treatment data; many of the existing nonwastewater treatment standards were established based on the transfer of thermal treatment data from similar waste. Because the number of organic constituents in existing treatment standards is so large, EPA arranged them into thirteen treatability groups based on similarities in chemistry, structure, usage, ease of treatability, detection limits, and waste generation patterns (many of these groups are based on treatability groups used to establish treatment standards in previous rulemakings.) These treatability groups are Chlorinated Volatiles, Organo-Bromines, Chlorobenzenes, PCBs and Dioxins, Chlorinated Pesticides, Chlorinated Phenolics and Derivatives, Nonchlorinated Phenolics, Phthalates, Oxygenated Hydrocarbons, Polynuclear Aromatic Hydrocarbons, Aromatic Hydrocarbons, Organo-Sulfur Pesticides, and Organo-Nitrogen Compounds.

The Agency examined all treatment data available for each treatability group. Because the constituents within each treatability group are generally treated by the same technology, patterns of similar treatment levels exist within each group. In some cases, however, there are constituents in the group that are either hard to treat or hard to detect. These are the constituents that tend to have higher treatment standards. The data used to establish the treatment levels were reviewed and the process refined, to ensure that the data that was used was the most appropriate for each constituent. Treatment performance data for wastes for which universal standards will not apply were removed from consideration. (See later section on waste codes for which universal standards will not apply.)

The treatment performance data were further examined to determine trends within each treatability group. These trends might have included transfers of data from specific constituents, similar treatment standards, and use of performance data from the same treatment test. In general, the treatment standards for the constituents within a treatability group were comparable in magnitude. Numbers higher than the majority of treatment standards normally indicated a waste harder to treat or analyze.

Universal standards were chosen on a constituent-by-constituent basis and are included in a table later in this section. The derivation of these standards is based on a number of factors. The Agency first considered performance data (i.e., the matrix spike recovery data and detection limit) transferred from the same constituent. If this was not possible, the Agency considered performance data (i.e., the matrix spike recovery data) from a constituent in the same treatability group. The Agency also preferred to use a matrix spike recovery value based on actual recovery rather than an average value. In addition, the detection limit data for the constituent were reviewed to see if the detection limit was reasonable and if it could be reasonably expected to be achieved—that is, after the universal standard was determined for a constituent, the value was compared to the detection limits used in the development of the existing treatment standards to see if other waste codes could be treated to meet the universal standard. (See the background document for universal standards for more information on the development of these standards.)

In the Third Third rulemaking, the Agency received comment that some of the treatment standards being promulgated at that time were too low to detect. In response, after reviewing the submitted data, the Agency decided as an interim measure that if incineration (the technology on which the standards in question were based) was used to achieve a "non-detect" level, and if that "non-detect" level was within an order of magnitude of the promulgated standard, it was considered to be in compliance with the treatment standard (see 40 CFR 268.43(c).) Because EPA is proposing that those treatment standards promulgated in the Third Third rule be revised based on the universal standards, the Agency is soliciting comment on the continued need for such a policy. An alternative would be if the facility measures compliance with the universal standards and detects at least one constituent at or below the universal standard within each treatability group, then any non-detects above the universal standards within that treatability group would be considered to be in compliance. In such cases, waste analysis plans could be modified to reflect monitoring for certain constituents within each treatability group that do not have detection level problems.

b. Wastewaters. The proposed universal standards for wastewaters are taken primarily from the treatment standards promulgated for F039—multi-source leachate, and are included in a table later in this section. These existing treatment standards for organic constituents in wastewaters were based on a variety of conventional wastewater treatment technologies. Information about these treatment standards can be found in the background document in the RCRA docket.

c. Comments on the Advance Notice of Proposed Rulemaking. Most commenters to the Advance Notice of Proposed Rulemaking supported the establishment of universal standards for organic wastes. However, several disagreed with the approach. In particular, several commenters were concerned that they would have to analyze the entire BDAT list for each waste to measure compliance with the universal standards. As indicated earlier in this section, a treater would only have to analyze for those constituents regulated in the listed wastes being treated.

Several commenters supported the idea of universal treatment standards for simplicity, but thought that these numbers should be health-based and not below the TC levels. EPA's historic position, echoed by the D.C. Circuit in *HWTC* v. *EPA*, 886 F.2d 355, 362 (D.C. Cir. 1989) cert. denied 111 S. Ct. 139 (1990), is that characteristic levels for toxic wastes do not minimize the threats these wastes may pose. EPA is considering whether to establish risk-based levels as part of the Hazardous Waste Identification Rule (HWIR) currently being developed. Depending on how this effort evolves and based on available data, these levels may be equal, lower, or higher than LDR treatment levels.

A few commenters argued that they did not like the idea of universal treatment standards for organics. One commenter stated that in order for EPA to establish universal standards, the Agency would have to adopt the highest treatment standard for any constituent to ensure that all wastes can be treated to conform with the standard. The commenter argued that there is a range of variation among specific standards for identical organic constituents in different wastes. The commenter indicated that the main reasons for these differences are the wide variety of matrices treated.

The Agency does not believe that the variety in organic treatment standards is the result of treating different matrices. The variety results chiefly from different detection limits used in developing the standards. For example, analytical laboratories have different levels of accuracy for reporting detection limits, and most of the organic treatment standards are based on detection limits. Furthermore, when developing universal standards, the Agency reviewed all treatment data to assure that the standard could be met by well-operated, well-designed treatment units appropriate for these types of wastes.

Several commenters stated that universal treatment standards were not supported by available treatment data for organics. The Agency disagrees with this comment. In fact, the organic universal standards were developed using only available treatment data.

In summary, EPA believes it is appropriate to develop universal treatment standards and that for nonwastewaters to base the standards on incineration because it is a matrix-independent technology that reduces the amount of material ultimately sent to land disposal and it destroys the organic hazardous constituents. However, the proposed levels would not be technology forcing since available data indicate that, depending on the concentration of the constituent, other technologies, including innovative technologies (i.e., solvent extraction, thermal desorption) can achieve the proposed universal treatment standards in the wide variety of nonwastewater matrices. The Agency specifically solicits comment on this point.

d. Other Revisions to Existing Treatment Standards. The Agency is today soliciting comment on whether we should regulate individual aroclors, or total PCBs. EPA is proposing as alternatives two different sets of standards for both wastewater and nonwastewater forms of PCBs. In one set, the treatment standard is a single number representing the sum of all individual aroclor concentrations. In the other set, each aroclor has its individual treatment standard. Total PCBs, which include seven aroclors, represent hundreds of isomers of polychlorinated biphenyls. This approach would be consistent with the regulations of other EPA offices, such as those promulgated pursuant to the Toxic Substance Control Act (TSCA). This approach would also eliminate any analytical difficulties in quantifying each of the individual aroclors. The current regulations addressing individual aroclors require a pattern recognition of the gas chromatograph, which is often difficult to differentiate. Furthermore, regulation of individual aroclors may be difficult for wastes subject to degradation or treatment. EPA would recommend SW-846 methods 8080 or 8081 (which use a gas chromatograph/electron capture detector) for measurement of total PCBs.

The Agency is proposing to regulate the sum of several constituents for xylenes in both wastewaters and nonwastewaters. The three xylenes included on the BDAT list of hazardous constituents are ortho-, meta-, and para-xylene. These constituents are proposed to be regulated as a sum in the universal standards because meta- and para-isomers co-elute in gas chromatograph analysis. Two methods exist in SW-846 for the measurement of total xylenes: 8020 and 8240. Method 8020 detects xylenes using a photoionization detector and 8240 uses a mass spectrometer. Total xylenes concentration is determined from the addition of the ortho-xylene concentration and the meta-para-xylene concentration.

Additionally, EPA is proposing to regulate two pairs of analytically problematic constituents, benzo(b)fluoranthene/benzo(k)fluoranthene and diphenylamine/diphenylnitrosamine with a single wastewater and nonwastewater number for each pair

PROPOSED UNIVERSAL TREATMENT STANDARDS FOR ORGANICS

[Nonwastewaters]

Regulated constituent	Maximum for any grab sample: total composition (mg/kg)
Acetone	160
Acetophenone	9.7
Acenaphthalene	3.4
Acenapthene	3.4
2-Acetylaminofluorene	140
Aldrin	0.066
Aniline	14
Anthracene	3.4
Aroclor 1016	0.92
Aroclor 1221	0.92
Aroclor 1232	0.92
Aroclor 1242	0.92
Aroclor 1248	0.92
Aroclor 1254	1.8
Aroclor 1260	1.8
Acrylonitrile	84
alpha-BHC	0.066
beta-BHC	0.066
delta-BHC	0.066
gamma-BHC	0.066
Benzal chloride	6.0
Benzene	10
Benz(a)anthracene	3.4
Benzo(a)pyrene	3.4
Benzo(b)fluoranthene	16.8
Benzo(k)fluoranthene	16.8
Benzo(g,h,i)perylene	1.8
Bis-(2-ethylhexyl) phthalate	28
Bromodichloromethane	15
Bromomethane (methyl bromide)	15
4-Bromophenyl phenyl ether	15
n-Butanol	2.6
Butyl benzyl phthalate	28
2-sec-Butyl-4,6-dinitrophenol	2.5
Carbon disulfide	4.81
Carbon tetrachloride	6.0
Chlordane	0.26
p-Chloroaniline	16
Chlorobenzene	6.0
Chlorodibromomethane	15
Chloroethane	6.0
bis-(2-Chloroethoxy) methane	7.2
bis-(2-Chloroethyl) ether	6.0
bis-(2-Chloroisopropyl) ether	7.2
p-Chloro-m-cresol	14
Chloroform	6.0
Chloromethane	30
2-Chloronaphthalene	5.6
2-Chlorophenol	5.7
3-Chloropropene	30
Chrysene	3.4
Cresol(m- and p-)	3.2
o-Cresol	5.6
Cyclohexanone	0.75
Dibenz(a,h)-anthracene	8.2
1,2-Dibromo-3-Chloropropane	15
1,2-Dibromoethane (Ethylene dibromide)	15
Dibromomethane	15
m-Dichlorobenzene	6.0
o-Dichlorobenzene	6.0
p-Dichlorobenzene	6.0
1,1-Dichloroethane	6.0

PROPOSED UNIVERSAL TREATMENT STANDARDS FOR ORGANICS—Continued

[Nonwastewaters]

Regulated constituent	Maximum for any grab sample: total composition (mg/kg)
1,2-Dichloroethane	6.0
2,4-Dichlorophenol	14
2,6-Dichlorophenol	14
2,4-Dichlorophenoxyacetic acid	10
o,p'-DDD	0.087
p,p'-DDD	0.087
o,p'-DDE	0.087
p,p'-DDE	0.087
o,p'-DDT	0.087
p,p'-DDT	0.087
Dichlorodifluoromethane	7.2
1,1-Dichloroethylene	6.0
trans-1,2-Dichloroethylene	30
1,2-Dichloropropane	18
cis-1,3-Dichloropropene	18
trans-1,3-Dichloropropene	18
Dieldrin	0.13
Diethyl phthalate	28
2,4-Dimethyl phenol	14
Dimethyl phthalate	28
1,4-Dinitrobenzene	2.3
4,6-Dinitro-o-cresol	160
2,4-Dinitrophenol	160
2,4-Dinitrotoluene	140
2,6-Dinitrotoluene	28
Di-n-butyl phthalate	28
Di-n-octyl phthalate	28
Di-n-propylnitrosoamine	14
1,4-Dioxane	170
Diphenylamine	[1] 13
Diphenylnitrosamine	[1] 13
Disulfoton	6.2
Endosulfan I	0.066
Endosulfan II	0.13
Endosulfan sulfate	0.13
Endrin	0.13
Endrin aldehyde	0.13
Ethyl acetate	33
Ethyl benzene	10
Ethyl ether	160
Ethyl methacrylate	160
Famphur	15
Fluoranthene	3.4
Fluorene	3.4
Heptachlor	0.066
Heptachlor epoxide	0.066
Hexachlorobenzene	10
Hexachlorobutadiene	5.6
Hexachlorocyclopentadiene	2.4
Hexachlorodibenzo-furans	0.001
Hexachlorodibenzo-p-dioxins	0.001
Hexachloroethane	30
Hexachloropropene	30
Ideno(1,2,3-cd)pyrene	3.4
Iodomethane	65
Isobutanol	170
Isodrin	0.066
Isosafrole	2.6
Kepone	0.13
Methacrylonitrile	84
Methanol	0.75
Methapyrilene	1.5

PROPOSED UNIVERSAL TREATMENT STANDARDS FOR ORGANICS—Continued

[Nonwastewaters]

Regulated constituent	Maximum for any grab sample: total composition (mg/kg)
Methoxychlor	0.18
3-Methylcholanthrene	15
4,4-Methylene-bis-(2-chloroaniline)	30
Methylene Chloride	30
Methyl ethyl ketone	36
Methyl isobutyl ketone	33
Methyl methacrylate	160
Methyl Parathion	4.6
Naphthalene	5.6
o-Nitroaniline	14
p-Nitroaniline	28
Nitrobenzene	14
5-Nitro-o-toluidine	28
o-Nitrophenol	13
p-Nitrophenol	29
N-Nitrosodiethylamine	28
N-Nitroso-di-n-butyamine	17
N-Nitrosomethylethylamine	2.3
N-Nitrosomorpholine	2.3
N-Nitrosopipendine	35
N-Nitrosopyrrolidine	35
Parathion	4.6
Pentachlorobenzene	10
Pentachlorodibenzo-furans	0.001
Pentachlorodibenzo-p-dioxins	0.001
Pentachloroethane	6
Pentachloronitrobenzene	4.8
Pentachlorophenol	7.4
Phenacetin	16
Phenanthrene	5.6
Phenol	6.2
Phorate	4.6
Phthalic anhydride	28
Propanenitrile	360
Pronamide	1.5
Pyrene	8.2
Pyridine	16
Safrole	22
Silvex (2,4,5-TP)	7.9
2,4,5-T	7.9
1,2,4,5-Tetrachlorobenzene	14
Tetrachlorodibenzo-furans	0.001
Tetrachlorodibenzo-p-dioxins	0.001
1,1,1,2-Tetrachloroethane	6.0
1,1,2,2-Tetrachloroethane	6.0
Tetrachloroethylene	6.0
2,3,4,6-Tetrachlorophenol	7.4
Toluene	10
Toxaphene	2.6
1,2,4-Trichlorobenzene	19
1,1,1-Trichloroethane	6.0
1,1,2-Trichloroethane	6.0
Trichloroethylene	6.0
2,4,5-Trichlorophenol	7.4
2,4,6-Trichlorophenol	7.4
1,2,3-Trichloropropane	30
1,1,2-Trichloro-1,2,2-trifluoroethane	30
Vinyl chloride	6.0
Xylene(s)	[3] 30

PROPOSED UNIVERSAL TREATMENT STANDARDS FOR ORGANICS—Continued

[Nonwastewaters]

Regulated constituent	Maximum for any grab sample: total composition (mg/kg)
Total PCBs	10

[1] This standard represents the sum of the concentrations for each of this pair of constituents.

[2] This standard represents the sum of the concentrations for each of this pair of constituents.

[3] This standard represents the sum of the concentrations of m-xylene, o-xylene, and p-xylene.

PROPOSED UNIVERSAL TREATMENT STANDARDS FOR ORGANICS

[Wastewaters]

Regulated constituents	Maximum for any 24 hr. composite: total composition (mg/l)
Acetone	0.28
Acenaphthalene	0.059
Acenaphthene	0.059
Acetonitrile	0.17
Acrolein	0.29
Acetophenone	0.010
2-Acetylaminofluorene	0.059
Acrylonitrile	0.24
Aldrin	0.021
4-Aminobiphenyl	0.13
Aniline	0.81
Anthracene	0.059
Aramite	0.36
Aroclor 1016	0.013
Aroclor 1221	0.014
Aroclor 1232	0.013
Aroclor 1242	0.017
Aroclor 1248	0.013
Aroclor 1254	0.014
Aroclor 1260	0.014
alpha-BHC	0.00014
beta-BHC	0.00014
delta-BHC	0.023
gamma-BHC	0.0017
Benzal chloride	0.055
Benzene	0.14
Benz(a)anthracene	0.059
Benzo(a)pyrene	0.061
Benzo(b)fluoranthene	[1] 0.11
Benzo(g,h,i)perylene	0.0055
Benzo(k)fluoranthene	[1] 0.11
Bromodichloromethane	0.35
Bromomethane	0.11
4-Bromophenyl phenyl ether	0.055
n-Butyl alcohol	5.6
Butyl benzyl phthalate	0.017
2-sec-Butyl-4,6-dinitrophenol	0.066
Carbon tetrachloride	0.057
Carbon disulfide	0.014

PROPOSED UNIVERSAL TREATMENT STANDARDS FOR ORGANICS—Continued

[Wastewaters]

Regulated constituents	Maximum for any 24 hr. composite: total composition (mg/l)
Chlordane	0.0033
p-Chloroaniline	0.46
Chlorobenzene	0.057
Chlorobenzilate	0.10
2–Chloro-1,3-butadiene	0.057
Chlorodibromomethane	0.057
Chloroethane	0.27
bis-(2-Chloroethoxy) methane	0.036
bis-(2-Chloroethyl) ether	0.033
2-Chloroethyl vinyl ether	0.062
Chloroform	0.046
bis-(2-Chloroisopropyl) ether	0.055
p-Chloro-m-cresol	0.018
Chloromethane (methyl chloride)	0.19
2-Chloronaphthalene	0.055
2-Chlorophenol	0.044
3-Chloropropene	0.036
Chrysene	0.059
o-Cresol	0.11
Cresol (m- and p- isomers)	0.77
Cyclohexanone	0.36
1,2-Dibromo-3-chloropropane	0.11
1,2-Dibromoethane	0.028
Dibromomethane	0.11
2,4-Dichlorophenoxyacetic acid	0.72
o,p'-DDD	0.023
p,p'-DDD	0.023
o,p'-DDE	0.031
p,p'-DDE	0.031
o,p'-DDT	0.0039
p,p'-DDT	0.0039
Dibenzo(a,e)pyrene	0.061
Dibenzo(a,h) anthracene	0.055
tris-(2,3-Dibromopropyl) phosphate	0.11
m-Dichlorobenzene	0.036
o-Dichlorobenzene	0.088
p-Dichlorobenzene	0.090
Dichlorodifluoromethane	0.23
1,1-Dichloroethane	0.059
1,2-Dichloroethane	0.21
1,1–Dichloroethylene	0.025
trans-1,2-Dichloroethene	0.054
2,4-Dichlorophenol	0.044
2,6-Dichlorophenol	0.044
1,2-Dichloropropane	0.85
cis-1,3-Dichloropropene	0.036
trans-1,3-Dichloropropene	0.036
Dieldrin	0.017
Diethyl phthalate	0.20
p-Dimethylaminoazobenzene	0.13
2,4-Dimethyl phenol	0.036
Dimethyl phthalate	0.047
Di-n-butyl phthalate	0.057
1,4-Dinitrobenzene	0.32
4,6-Dinitrocresol	0.28

PROPOSED UNIVERSAL TREATMENT STANDARDS FOR ORGANICS—Continued

[Wastewaters]

Regulated constituents	Maximum for any 24 hr. composite: total composition (mg/l)
2,4-Dinitrophenol	0.12
2,4-Dinitrotoluene	0.32
2,6-Dinitrotoluene	0.55
Di-n-octyl phthalate	0.017
Di-n-propylnitrosoamine	0.40
Diphenylamine	[2]0.92
1,2–Diphenyl hydrazine	0.087
Diphenylnitrosoamine	[2]0.92
1,4-Dioxane	0.12
Disulfoton	0.017
Endosulfan I	0.023
Endosulfan II	0.029
Endosulfan sulfate	0.029
Endrin	0.0028
Endrin aldehyde	0.025
Ethyl acetate	0.34
Ethyl benzene	0.057
Ethyl ether	0.12
bis-(2-Ethylhexyl) phthalate	0.28
Ethyl methacrylate	0.14
Ethylene oxide	0.12
Famphur	0.017
Fluoranthene	0.068
Fluorene	0.059
Heptachlor	0.0012
Heptachlor epoxide	0.016
Hexachlorobenzene	0.055
Hexachlorobutadiene	0.055
Hexachlorodibenzo-furans	0.000063
Hexachlorodibenzo-p-dioxins	0.000063
Hexachloroethane	0.055
Hexachloropropene	0.035
Indeno(1,2,3,-c,d)pyrene	0.0055
Iodomethane	0.19
Isobutyl alcohol	5.6
Isodrin	0.021
Isosafrole	0.081
Kepone	0.0011
Methacrylonitrile	0.24
Methanol	5.6
Methapyrilene	0.081
Methoxychlor	0.25
3-Methylchloanthrene	0.0055
4,4-Methylene-bis-(2-chloroaniline)	0.50
Methylene chloride	0.089
Methyl ethyl ketone	0.28
Methyl isobutyl ketone	0.14
Methyl methacrylate	0.14
Methyl methansulfonate	0.018
Methyl Parathion	0.014
Naphthalene	0.059
2-Naphthylamine	0.52
p-Nitroaniline	0.028
Nitrobenzene	0.068
5-Nitro-o-toluidine	0.32
p-Nitrophenol	0.12
N-Nitrosodiethylamine	0.40
N-Nitrosodimethylamine	0.40
N-Nitroso-di-n-butylamine	0.40
N-Nitrosomethylethylamine	0.40

PROPOSED UNIVERSAL TREATMENT STANDARDS FOR ORGANICS—Continued

[Wastewaters]

Regulated constituents	Maximum for any 24 hr. composite: total composition (mg/l)
N-Nitrosomorpholine	0.40
N-Nitrosopiperidine	0.013
N-Nitrosopyrrolidine	0.013
Parathion	0.014
Pentachlorobenzene	0.055
Pentachlorodibenzo-furans	0.000035
Pentachlorodibenzo-p-dioxins	0.000063
Pentachloronitrobenzene	0.055
Pentachlorophenol	0.089
Phenacetin	0.081
Phenanthrene	0.059
Phenol	0.039
Phorate	0.021
Phthalic anhydride	0.055
Pronamide	0.093
Propanenitrile	0.24
Pyrene	0.067
Pyridine	0.014
Safrole	0.081
Silvex (2,4,5-TP)	0.72
2,4,5-T	0.72
1,2,4,5-Tetrachlorobenzene	0.055
Tetrachlorodibenzo-furans	0.000063
Tetrachlorodibenzo-p-dioxins	0.000063
1,1,1,2-Tetrachloroethane	0.057
1,1,2,2-Tetrachloroethane	0.057
Tetrachloroethene	0.056
2,3,4,6-Tetrachlorophenol	0.030
Toluene	0.080
Toxaphene	0.0095
Tribromomethane (bromoform)	0.63
1,2,4-Trichlorobenzene	0.055
1,1,1-Trichloroethane	0.054
1,1,2-Trichloroethane	0.054
Trichloroethene	0.054
Trichloromonofluoromethane	0.020
2,4,5-Trichlorophenol	0.18
2,4,6-Trichlorophenol	0.035
1,2,3-Trichloropropane	0.85
81,1,2-Trichloro-1,2,2-trifluoroethane	0.057
Vinyl chloride	0.27
Xylene(s)	[3]0.32
Total PCBs	0.1

[1] This standard represents the sum of the concentrations for each of this pair of constituents.

[2] This standard represents the sum of the concentrations for each of this pair of constituents.

[3] This standard represents the sum of the concentrations of m-xylene, o-xylene, and p-xylene.

2. Universal Standards for Metal Hazardous Constituents

EPA is also proposing both wastewater and nonwastewater

universal treatment standards for all 14 BDAT list metal constituents. The Agency believes it appropriate to develop universal treatment standards for all 14 metals because it is common practice to mix metal wastes during both wastewater and nonwastewater treatment. Since universal standards would apply to all listed wastes, all 14 metals have the potential to be in the treatment residuals and effluents. Further evaluation of characteristic metal wastes to determine the applicability of universal standards will be made in future LDR rulemakings.

These universal metal standards would replace the existing listed metal treatment standards. However, just as for the organic universal standards, the generator or owner/operator would not have to analyze for the entire BDAT list of constituents when measuring compliance; only those constituents that are regulated constituents in the listed waste would have to be analyzed.

a. Nonwastewaters. Since metals cannot be destroyed, treatment options are limited, and typically include technologies that can either recover the metal or incorporate the metal in a stable matrix resistant to leaching. The Agency believes that the "best" treatment for metals is recovery, where feasible, especially when the waste material contains high concentrations of metals. See, e.g., S. Rep. No. 284, 98th Cong. 1st Sess. 17. It is encouraging to see the regulated community increasingly evaluating both pyrometallurgical and hydrometallurgical recovery processes as treatment options.

Pyrometallurgical technologies (often referred to by EPA as high temperature metals recovery or HTMR) use heat to separate metals and other constituents based on differences in constituent oxidation potential, melting point, vapor pressure and/or miscibility when melted. Hydrometallurgical technologies separate metals and other constituents based on differences in constituent solubilities and electrochemical properties in aqueous solutions (or in some cases, such as solvent extraction, organic solutions).

Both of these technologies appear to be matrix independent, especially the pyrometallurgical processes (i.e., HTMR). That is, these systems consistently achieve the same level of treatment performance regardless of the influent matrix compositions. Often, pretreatment steps such as crushing and pelletizing may be necessary, but the amount of metal recovered is generally consistent for each matrix, depending on the design of the recovery process. For instance, a HTMR process designed to recover 95% of chromium from wastes will recover 95% of the chromium in a spent material refractory brick and 95% of the chromium in a wastewater treatment sludge.

If recovery is not feasible because the metal content in the material is low or the material contains constituents that may adversely affect the product, then the generator could investigate ways to generate wastes that are amenable to recovery (e.g., segregation), or to substitute materials that are suitable for recovery for the unrecoverable materials that eventually become wastes. Also, combinations of hydrometallurgical and pyrometallurgical recovery processes may be suitable for some wastes concentrated with different metals. Because many hazardous wastes contain a variety of metal constituents, it often takes a series of separation and concentration steps before a material is generated that is suitable for primary or secondary smelting operations.

As a last resort (see S. Rep. No. 284 at 17), technologies such as stabilization and chemical conversion to less leachable metal compounds should be used to treat metal-containing wastes. The Agency realizes that recovery of metals from all wastes is not practical. Therefore, at some level of metal concentration (EPA believes this level to be approximately one percent total BDAT list metals), recovery efforts typically cease, and the remaining metals can instead be incorporated into a stable, leach-resistant matrix for safe disposal.

EPA is, therefore, proposing to develop universal treatment standards for 13 of the BDAT list metals based on the performance of high temperature metals recovery (HTMR) or stabilization. (The treatment standards are presented in a table at the end of this section.) While the Agency's available data indicate that these standards can be achieved by either HTMR or stabilization, the Agency solicits data on whether any specific waste matrices will not be able to achieve these universal treatment standards.

The Agency believes that the choice of technology will likely depend on the concentration of the metals present in the waste. At low concentrations, stabilization may be the preferred treatment technology. As the metal concentration increases, stabilization may be difficult and increase volumes to such a degree as to make that form of treatment undesirable. At high concentrations, recovery will be the preferred method of treatment because it reduces the amount of waste destined for land disposal and recovers valuable resources. (Environmentally sound recycling is favored as the best treatment for any waste, whenever feasible.) As always, when the Agency develops concentration-based treatment standards, the use of other technologies to achieve those standards is not precluded.

With respect to the other BDAT list metal, arsenic, EPA is proposing to base the arsenic treatment standard on slag vitrification. Currently, most arsenic is not reclaimed from waste materials, but is imported into the United States from other countries. The Agency knows of one facility that has plans to recover arsenic from waste in the near future. Until these recovery processes for arsenic can be evaluated, EPA is proposing to base the arsenic treatment standard on the treatment performance of slag vitrification.

b. Wastewaters. The proposed universal metals standards for wastewaters are based on chemical precipitation as BDAT. These treatment standards are presented in a table at the end of this section. The wastewater treatment standards were developed by evaluating many different wastewaters.

For the most part, chemical precipitation is a matrix independent technology. In fact, many hydrometallurgical recovery processes recover metals from a wide variety of wastewaters by adjusting the wastewater with chemicals so that metals can be selectively solubilized and precipitated. Simple pretreatment steps such as equalization, skimming, and settling or filtration may be needed before precipitating reagents are added to the wastewater to facilitate effective treatment. Also, depending on the initial concentration of metal constituents in the wastewater, the operating conditions such as retention time and mixing may need to be adjusted. Hence, EPA believes that the proposed universal treatment standards are achievable for all RCRA listed wastewaters.

The Agency notes that the universal standards for metal wastewaters are different from both the 1987 and 1993 effluent guidelines standards established under the Clean Water Act. The Agency solicits comments on whether the Clean Water Act standards for Metal Finishing Point Source Category would provide a more appropriate set of universal wastewater standards.

c. Comments on the Advance Notice of Proposed Rulemaking. Most commenters to the Advance Notice of Proposed Rulemaking supported the establishment of universal treatment standards for metal bearing wastes. However, several disagreed with the

approach. In particular, one commenter argued that establishing only one standard for each metal constituent would cause a problem because it would not account for the variety of waste matrices, and the differences in the ability of stabilization to treat different matrices. The commenter suggested that EPA develop a separate set of treatment standards for the following seven different metal-bearing waste subcategories: (1) Wastewater treatment residues, (2) direct process wastes, (3) biological and organic containing residues, (4) direct process dusts and solids, (5) soils and sludges from remediation projects, (6) incineration residues, and (7) waste treatment residues (i.e., brines), slags, and refractories.

EPA is not adopting the approach suggested by the commenter. As stated previously, HTMR and stabilization are being proposed as BDAT for metal-containing nonwastewaters. Because HTMR is not matrix dependent, and, where the metal concentrations are appropriate, stabilization is able to achieve those levels, treatment standards for different matrices are not necessary. While it may be possible to set lower treatment standards for certain of the subcategories, one of the major reasons for establishing universal treatment standards is to streamline the LDR program. Establishing different subcategories could be just as complex as the current system. In addition, questions on how to distinguish between different subcategories would require development of a multitude of regulatory definitions. Available data indicate that each of the suggested waste subcategories can be treated to comply with the universal metal standards.

One commenter argued that in order for EPA to establish universal standards, the Agency would have to adopt the highest standard for any constituent to ensure that all wastes can be treated to conform with the standard. The commenter argued that there is variation among the specific treatment standards for identical metal constituents in different wastes and treatment groups. The commenter indicated that the main reasons for the differences are the wide variety of matrices treated, along with the limitations of stabilization.

The Agency does not believe that the variety of treatment standards is solely the result of treating different matrices. For example, analytical laboratories have different levels of accuracy for reporting detection limits, and many of the metal treatment standards are based on detection limits.

Several commenters submitted data on the treatability of metal wastes using stabilization. EPA reviewed the data and concluded that most metal wastes can be stabilized to the levels proposed as nonwastewater universal treatment standards. Some concentrated chromium waste streams were treated to levels slightly above the universal standards; however, the Agency believes HTMR to be a more appropriate treatment technology for concentrated metal wastes. This is especially true of wastes with high levels of chromium which are technically very responsive to HTMR and have considerable economic value relative to other common metals.

Moreover, since the inception of the Land Disposal Restrictions, EPA has observed that treatment facilities alter process design and/or operating parameters to achieve the levels established as treatment standards. Consequently, the Agency believes that there exists a certain degree of flexibility with most treatment technologies. (In addition, national and site-specific variances from the treatment standards remain an option, (See § 268.44).)

In summary, EPA believes it is appropriate to base BDAT for the universal metal standards on HTMR because it is a matrix independent technology that reduces the amount of material ultimately sent for land disposal. Also, because these standards could also be achieved by stabilization, the proposed levels would not be technology forcing (i.e., data indicate that stabilization can achieve the proposed universal treatment standards for a wide variety of nonwastewater matrices.)

d. Request for data. The Agency requests data and comment on whether there are any especially difficult to treat wastes that cannot achieve the proposed universal treatment standards. For nonwastewaters, information provided should include characterization data on the untreated wastes, such as total metal content, TCLP leachate concentrations, and technical explanations of why the waste material is inappropriate for recovery or ineffectively stabilized. Stabilization information should include type of binder, both weight and volume binder-to-waste ratios, whether premixing with less concentrated wastes is used to make the waste more amenable to stabilization, and TCLP results for the 14 metals. Information describing the treatment performance of stabilization (or other technologies) should also be submitted.

For wastewaters, information should include total metal concentrations (preferably for all 14 metals present) in the influent and effluent. Information should also address any other constituents in the waste that may be interfering with treatment (such as complexing agents), operating conditions such as Ph and retention times, amount and type of precipitating reagents added, and any other information needed to assist the Agency in evaluating the wastewater treatment process.

PROPOSED UNIVERSAL TREATMENT STANDARDS FOR METALS

[Nonwastewaters]

Regulated Constituent	Maximum for any single composite sample TCLP (mg/l)
Antimony	2.1
Arsenic	5.0
Barium	7.6
Beryllium	0.014
Cadmium	0.19
Chromium (Total)	0.33
Lead	0.37
Mercury	0.009
Nickel	5.0
Selenium	0.16
Silver	0.30
Thallium	0.078
Vanadium	0.23
Zinc	5.3

PROPOSED UNIVERSAL TREATMENT STANDARDS FOR METALS

[Wastewaters]

Regulated Constituent	Maximum for any single composite sample (mg/l)
Antimony	1.9
Arsenic	1.4
Barium	1.2
Beryllium	0.82
Cadmium	0.20
Chromium (Total)	0.37
Lead	0.28
Mercury	0.15
Nickel	0.55
Selenium	0.82
Silver	0.29
Thallium	1.4
Vanadium	0.042
Zinc	1.0

3. Universal Standards for Cyanide

Both wastewater and nonwastewater universal treatment standards are being proposed for cyanide in today's rule. The Agency believes it is appropriate to regulate cyanide because cyanide is commonly found in many listed metal-containing and organic-containing wastes. Furthermore, it is common practice to mix wastes during both wastewater and nonwastewater treatment. In developing universal standards for cyanide, the Agency reviewed the existing treatment

standards for cyanide as well as the data that were used in developing those standards; some of the standards include levels for total and amenable cyanide, while others only regulate total cyanide.

The existing wastewater standards are based primarily on the performance of alkaline chlorination. Wet air oxidation is another treatment technology supporting treatment standards for acrylonitrile wastewaters (i.e., K011, K013, and K014). With regard to nonwastewater forms, several of the existing standards are based on incineration (i.e., K048–K052, F037, F038, and F010) while several are based on treatment of the wastewater to destroy the cyanide prior to generation of the nonwastewater residual by technologies such as alkaline chlorination (i.e., F006 and F019) and electrolytic oxidation followed by alkaline chlorination (i.e., F011 and F012). Several of the existing standards were established based on transfers of treatment data from the treatment of a similar waste.

The types of wastes in which cyanide has been regulated under the BDAT program include: Electroplating (D003 reactive cyanides, F006); aluminum coil conversion (F019); heat treating (F010, F011, F012); metal cyanides (P013, P021, P029, P030, P063, P074, P098, P099, P104, P106, P121); multi-source leachate (F039); pigments (K005, K007); petroleum (K048, K049, K050, K051, K052, F037, F038); coking (K060); and organo-nitrogen (K104). Cyanide is also a regulated constituent in acrylonitrile wastes (K011, K013, K014) which are not included under universal standards (see earlier discussion in this section of today's preamble.)

a. Wastewaters. In developing the cyanide universal standards, the Agency examined the existing data and noticed certain patterns. In particular, it appears that regardless of process waste type, the wastewaters could generally be treated to levels on the order of 1.9 mg/l for total cyanide. Thus, the Agency is proposing for universal standards a total cyanide limit of 1.9 mg/l for wastewaters. This level is widely used in wastewater discharge regulations—namely those for the Metal Finishing Industry and the Organic Chemicals, Plastics and Synthetic Fibers Industry. The Agency has also established for the Metal Finishing Industry, an alternative standard of 0.86 mg/l for amenable cyanide. As such, EPA solicits comment on the need to regulate wastewaters for both total and amenable cyanide, or whether the amenable cyanide level should be an alternative to the total standard as provided in the Metal Finishing standards, 40 CFR 433.14(b).

b. Nonwastewaters. In developing universal standards for cyanide in nonwastewaters, the Agency examined three options: A standard based on total and amenable cyanide concentrations, a standard based on TCLP concentrations, and a standard that specifies treatment methods. Although EPA is proposing today adoption of the first option, comments are solicited on all three options. These three options are discussed below. In addition, the Agency solicits comment on the appropriateness of withdrawing the cyanide treatability variances in the 40 CFR 268.44, if EPA decides to promulgate the leach or the specified method option. Also, the Agency solicits data on any technology advances in treating iron cyanide wastewaters that would justify withdrawing these variances, if EPA promulgates the concentration option.

i. A Concentration-Based Standard. In examining the total concentration option, the Agency examined several issues that would affect the development of a universal concentration-based number. First, there is a wide range of existing BDAT treatment standards for nonwastewater forms of cyanide, ranging from 1.8 to 590 mg/kg (total cyanide) and 9.1 to 30 mg/kg (amenable cyanide). EPA established these different treatment levels after concluding that the available treatment data supported the establishment of separate treatability groups as a direct result of waste characteristics affecting treatment performance. For example, iron levels, the presence of organics, or the presence of complex iron-cyanides can affect the treatability of cyanide wastes. In addition, EPA found that some wastes, as generated, already contained low levels of cyanide in the waste.

Second, the analytical method for measuring cyanide in nonwastewaters allows significant variabilities in the resulting concentrations of total and amenable cyanides. The specified methods, SW 846/Method 9010 and 9012, do not specify sample size or distillation time. By varying these two factors, reported cyanide concentrations may differ by a factor of more than 100. In the Third Third BDAT rulemaking, the Agency avoided these kind of variabilities by specifying a 10 gram sample and a 1 hour and 15 minute distillation time in order to comply with LDRs applicable to nonwastewater forms of D003, F006, and F019. However, the 10 gram sample size and 1 hour and 15 minute distillation time have not been specified in setting other LDR treatment standards and thus, do not apply to all LDR cyanide limits—that is, EPA's existing data-base contains treatability results using various sample sizes/distillation times. This basically ensures that we cannot group and compare these data as though they were all based on the same analytical method.

A third issue that EPA is considering is that much of the treatability variance activity has been associated with total cyanide concentrations. There have been two variances approved allowing significantly higher levels (see 56 FR 12351, March 25, 1991) and three other treatability variance requests indicating that the 1.8 mg/kg level of total cyanide in F039 is unachievable. Again, the analytical test methods or the presence of iron-cyanide complexes appear to play some role in these treatability variance petitions.

In spite of these issues, EPA believes that it is technically feasible to develop a concentration based standard provided analytical variabilities and treatment of complex cyanides are taken into account. Electroplating wastes, the aluminum coil conversion wastes, the heat treating wastes, and the metal cyanide P- wastecodes all have high levels of cyanide in the untreated waste and/or have cyanide in a matrix (such as an iron-cyanide complex) that is difficult to treat. In the June 23, 1989 preamble (54 FR 26608), the Agency agreed with commentors that high concentrations of iron in the cyanide wastes (when present as iron-cyanide complexes) appear to effect the level of cyanide destruction that is achievable.)

Based on the most difficult to treat nonwastewaters, the Agency is proposing universal treatment standards of 590 mg/kg for total cyanide and 30 mg/kg for amenable cyanide (as measured by Method 9010 or 9012). EPA is also proposing that a 10 gram sample and 1 hour and 15 minute distillation time be used for the purpose of complying with these universal standards.

Other wastes such as multi-source leachate, pigments, petroleum, coking, ink solvents and organo-nitrogen wastes generally have very little cyanide in the untreated waste to begin with, have cyanide along with organic constituents which are routinely incinerated, or have cyanide in a free form which is easier to treat by conventional treatment methods. For these nonwastewaters, the Agency is soliciting comment on whether these other wastes need to be regulated at a level below the universal treatment standard, namely, at 30 mg/kg for total cyanide and 1.8 for amenable cyanide.

At this time, the Agency believes that establishing a lower limit to address wastes that contain little to no cyanide is unnecessary; that control of organic constituents which are routinely incinerated provides adequate control, and that inorganic wastes with cyanide in a free form are adequately controlled by the amenable cyanide limit of 30 mg/kg. However, the Agency specifically solicits comments on these points.

ii. A Leachable Based Standard. The leach option involves specifying a concentration standard based on the TCLP or some other leaching procedure. For previous LDRs, the Agency has selected a total concentration standard to best reflect the capabilities of destruction technologies. In rare instances, where there are analytical difficulties, the Agency has elected to regulate wastes based on a TCLP concentration, even though the basis for BDAT was a destruction technology. For cyanide, EPA is faced with a chemical that has analytical difficulties and can be effectively destroyed by certain technologies. Basing the standard on the TCLP concentration, however, avoids the analytical difficulties and still provides the treater with the flexibility of using a variety of destruction technologies to comply with the standard.

After examining the treatment data for TCLP levels, the Agency solicits comments on the following TCLP cyanide limits: 16 mg/l for total cyanide and 3.5 mg/l for amenable cyanide. Each concentration based standard is based on two data points from a data set of three data points (an outlier test on TCLP levels for the amenable and total cyanide rejected one data point.) These cyanide limits are based on cyanide levels measured in residues from EPA's rotary kiln incineration test study of EPA Hazardous Waste No. K088. These hazardous wastes are associated with spent carbon electrodes (spent pot liners) generated by the aluminum industry. EPA Hazardous Waste No. K088 wastes are contaminated with sodium aluminum fluoride salts, trace metals, and heavy concentrations of free and iron complex cyanides.

EPA subsequently stabilized these K088 incineration residues in order to treat leachable fluoride values. None of the stabilized wastes show, however, any improvement for the leachability of amenable and total cyanide levels. To the contrary, some of the stabilized K088-incineration wastes show an increase of TCLP levels for amenable and total cyanide. Still, EPA's study shows that K088 underwent significant destruction of total and amenable cyanide values by rotary kiln incineration; concentrations of cyanide in untreated wastes ranged from 3,400 mg/kg to 5,240 mg/kg and in treated residues ranged from 95 to 210 mg/kg total cyanide and from 38 to 140 mg/kg amenable cyanide.

An alternative to these levels is an amenable cyanide level of 36 mg/l based on a modified TCLP. The modified TCLP is based on a deionized water leach as opposed to an acid leach. This proposed water leach level is based on residues resulting from the calcination of spent potliners via a Reynolds process. The Reynolds process carries out the calcination of K088 in a rotary kiln that operates at similar temperature and residence time conditions to those of EPA's incineration test study. In contrast to EPA's incineration study, Reynolds' process adds up to 35% sand and 35% limestone to the calcination of K088 (K088 may comprise up to 30% of the total feed charged to the calciner.)

Like EPA's incineration study, Reynolds' calcination process shows that substantial destruction of cyanide values can be achieved by thermal processes (in Reynolds' demonstration study, cyanide values in the untreated K088 wastes ranged from 18.1 mg/kg to 1,110 mg/kg for total cyanide and from 2.6 mg/kg to 1,110 mg/kg for amenable cyanide and in treated K088 residues levels of both cyanide species were below the detection level of 10 mg/kg. Taking into account any dilution resulting from the addition of lime and sand, these treated values are more likely to be in the range of 30 mg/kg.)

Other performance data measuring cyanide concentrations in leachate extracts include CyanoKem's stabilization of alkaline chlorinated cyanide wastes, EPA's stabilization study of cyanide wastes from the aluminum coil industry, and stabilization data submitted by commentors to EPA's second and third third rulemakings of cyanide wastes. EPA has placed all these stabilization data in the administrative record of today's proposal. (See memorandum to Administrative Record on Available Stabilization Data on Cyanide Wastes.)

Except for CyanoKem's data, these stabilization studies lack information on whether any pretreatment step for the destruction of the cyanide occurred prior to stabilization. Of course, a majority of the RCRA-cyanide wastes are likely to be sludges resulting from the treatment of cyanide/metal-bearing wastewaters discharged to POTWs or to outfalls under NPDES permits; however, these wastewater treatment sludges may not have been generated from cyanide destruction technologies. Some facilities discharging under NPDES or POTW permits may simply switch cyanides from wastewaters to sludges in a cyanide-metal complex form or into a thiocyanate form for the purpose of complying with their water effluent limitations. These matrices may leach from the landfill, migrate to surface waters, or oxidize when exposed to sunlight and thus, release free cyanides into the environment. EPA thus believes that treatment standards for cyanides must be based on residues from the destruction of cyanides prior to any stabilization or ultimate disposal. However, the Agency is soliciting comment on whether there are cyanide wastes that are more appropriately immobilized. Any commentors submitting such data should include proper justification for why the cyanide in these wastes cannot be destroyed (which is the Agency's preference).

Although 3004(m) of HSWA gives regulatory discretion to EPA on whether to set treatment standards that substantially reduce the mobility or toxicity of hazardous constituents prior to land disposal, the legislative history also emphasizes the Congressional concern that cyanides should be treated by destruction technologies prior to disposal: "[d]estruction of total cyanides should be required as a precondition to land disposal." 130 Cong. Rec. S 9179 (daily ed. July 25, 1984) (Statement of Senator Chaffee explaining the amendment which became section 3004(m).)

CyanoKem's stabilization data submittal may support development of a treatment standard of 10 mg/l of amenable cyanide, as measured in an extract of an alkaline leach of chemically stabilized cyanide wastes. These cyanide wastes were previously treated by alkaline chlorination and subsequently treated by stabilization. CyanoKem's data are based on monthly composite samples. CyanoKem points out, however, that the amenable leachate cyanide level can be enforced with the collection of grab samples. CyanoKem's data also indicate that a broad variety of cyanide wastes with untreated total cyanide concentrations up to 500,000 mg/kg, including complex cyanides, were treated by alkaline chlorination (to levels below 400 ppm—total cyanide, as measured by Method 9010) followed by chemical stabilization. The wastes treated by CyanoKem include: D003, F006–F012, P013, P021, P029, P030, P098, P106, and P121. CyanoKem also indicated that the addition of solidification/stabilization agents such as fly ash or cement does not result in any further treatment of cyanide in the final (the alkaline chlorinated) sludge. EPA

requests comments on the feasibility of basing a leachate standard based on these CyanoKem data including the adoption of its leaching procedure. The Agency also requests comments on whether amenable, total, or both total and amenable cyanide should be regulated under the universal standards.

iii. Specifying Treatment Methods. The final option is to specify methods. EPA is soliciting comments on requiring the use of incineration, alkaline chlorination, or electrolytic oxidation followed by alkaline chlorination, and wet air oxidation to treat cyanide. EPA believes these technologies have been demonstrated to treat wastes with high concentrations of free cyanides (over 100,000 ppm) or complex iron cyanides (the most difficult to treat of all the cyanide species.)

As part of the First, Second, and Third Third rulemakings, EPA examined a broad range of oxidation technologies that enable the destruction of cyanides in a diverse universe of wastewater and nonwastewater forms of hazardous wastes. Chemical oxidation technologies enable the destruction of dissolved cyanides in aqueous solutions, such as wastewaters from plating and finishing operations, or of inorganic sludges from these operations. Chemical oxidation technologies examined by EPA include:

(1) Electrical oxidation, (2) hypochlorite or chlorine oxidation (alkaline chlorination), (3) permanganate, ozone, or Sulfur dioxide/air (Inco process) oxidation, (4) wet air oxidation, (5) high temperature (cyanide) hydrolysis, and (6) UV/Ozonolysis.

One, or combinations, of these technologies can reduce the concentration of cyanides in the wastes. Incineration, peroxide treatment, alkaline chlorination, or electric oxidation followed by alkaline chlorination, high temperature hydrolysis, or UV/ozonolysis appear to effectively destroy amenable cyanides, cyanide-metal complexes (to varying degrees), or chelating agents. EPA has data in today's docket showing that high concentrations of amenable cyanides (over 100,000 ppm) can be treated effectively by high temperature hydrolysis or electric oxidation to levels below 500 ppm when followed by alkaline chlorination or other oxidation technologies. There are also data showing that complex cyanides, including iron-cyanides, can be treated effectively by combinations of alkaline chlorination and some oxidation technologies.

It appears that the use of sulfur dioxide/air oxidation, the Kastone process (an oxidation process for treating rinse waters from zinc or cadmium metal finishing operations), and potassium permanganate alone may only oxidize amenable cyanides to cyanates or thiocyanates and thus, further oxidation treatment is necessary to destroy cyanides. These technologies do not appear to destroy iron-cyanide complexes. For instance, sulfur dioxide/air oxidation leaves behind iron cyanide complexes reduced in a ferrous state that are removed from solution by precipitation of ferro-cyanide complexes. EPA solicits comments that demonstrate how these chemical oxidation technologies can destroy iron-cyanide complex wastes and not just shift iron-cyanide complexes from one media to another.

Incineration, UV/ozonation (catalyzed), and a proprietary improved alkaline chlorination process appear to more effectively treat complex cyanides including iron cyanides—the most resistant to oxidation treatment of the cyanide-metal complexes. EPA has data demonstrating its applicability to the following cyanide wastes: K086, F010, K048–K052, F037, F038, K011, K013, K014, K104, K106, F006, F010, and F019.

EPA also has data on the treatment of aluminum spent potliners by incineration and calcination technologies. These incineration and calcination data show that cyanide complexes and amenable cyanides can be treated to a total cyanide level below 210 mg/kg. (See above discussion supporting the alternative universal leachable levels for cyanides.)

Wet Air Oxidation (WAO) is another cyanide destruction technology examined by EPA. It is, in fact, the basis of treatment standards for K011, K013, and K014 (acrylonitrile) wastewaters (See 55 FR 22584, June 1, 1990). WAO can reduce the concentration of organics and cyanides in wastewaters (that contain less than 1% Total Suspended Solids and less than 5% Total Organic Content.) Effluent wastewaters often undergo additional treatment by other technologies such as biological treatment to further reduce organic levels in the wastewaters. Similarly, subsequent treatment of nonwastewater forms is often provided in order to comply with applicable LDRs for organics and metals. EPA thus believes that it is technically feasible to include WAO among those cyanide destruction technologies being considered under the option of prescribed technologies.

These treatment standards for wastewaters and nonwastewaters must be achieved by destruction, not by stabilization or immobilization or by simply converting the cyanide to cyanate, ferrous or ferric cyanide complexes. In light of the legislative history of HSWA, EPA believes (cyanide) destruction technologies will serve better the requirements of 3004(m).

In general, the Agency would prefer to specify a numerical standard, so that treaters may be free to use other technologies to destroy the cyanide and achieve the standard. Due to the complexity of the issues involved in treating cyanide, the Agency is including this option to provide commentors a complete range of options to consider.

PROPOSED UNIVERSAL TREATMENT STANDARD FOR CYANIDE

[Wastewaters]

Regulated constituent	Maximum for any single composite sample (mg/l)
Cyanide (Total)	1.9

PROPOSED UNIVERSAL TREATMENT STANDARDS FOR CYANIDE*

[Nonwastewaters]

Regulated constituent	Maximum for any single composite sample (mg/kg)
Cyanide (Total)	590
Cyanide (Amenable)	30

Note: *Cyanide nonwastewaters are analyzed using SW–846 Method 9010 or 9012, sample size 10 grams, distillation time, one hour and 15 minutes.

4. Universal Standards for Petroleum Refining Wastes

In the Third Third final rule (55 FR 22520, June 1, 1990) the Agency examined treatment data from noncombustion technologies as a basis for BDAT for certain petroleum refining listed wastes—K048–52. In the LDR Phase I final rule (57 FR 37194, August 18, 1992), the Agency extended those limits to other petroleum refining wastes—F037–38. The universal standards for organics, however, are based on combustion. The proposal to cover these wastes under the universal standards is based on the expectation that the noncombustion technologies considered during the development of the K048–52 standards (viz. 3- or 5-phase solvent extraction) can also achieve the universal standards. The background document for the F037–38 standards lists in Appendix B twenty treatability tests used to develop the

K048–52 standards. Eleven of these tests fully complied with the universal treatment standards. Appendix C of the same document identifies 28 other test runs using noncombustion technologies. All of these tests fully complied with universal standards.

During the later development of the F037–38 standards, comments were submitted that thermal desorption could achieve much lower levels than those used for K048–52; lower, in fact, than the universal treatment standards proposed in today's rule. Based on the information that noncombustion technologies can also achieve the universal standards when treating petroleum refining wastes, the Agency is proposing to include K048–52 and F037–38 petroleum refining wastes under the universal standards.

The Agency is aware that the industry is using combustion and thermal desorption, both of which should be capable of meeting the universal standards. Comments are solicited on whether the industry has invested in other technology that cannot meet the universal standards. In particular, information on the type of treatment, performance data, and an explanation as to why operational factors could not be adjusted to comply with the universal standards, are solicited. To the extent data demonstrates that petroleum refining wastes treated by appropriate noncombustion technologies can achieve slightly higher levels than those proposed for universal standards, the Agency may choose to revise the universal standards.

As a general matter for all hazardous wastes, the Agency solicits comments and data on whether slight adjustments to the universal standards would encourage the further use of noncombustion technologies and still represent BDAT.

5. Universal Standards Will Not Apply to F024

F024 is being excluded from the universal treatment standards. Treatment standards for F024 constituents, including polychlorinated dioxins and polychlorinated furans, were promulgated in the Second Third rule (54 FR 26615, June 23, 1989). The standards were revised in the Third Third rule (55 FR 22580, June 1, 1990). These concentration-based treatment standards for F024 are lower than the universal standards for the regulated F024 constituents. The revised standards did not include any specific concentration-based treatment standards for dioxins or furans, but did require that the F024 waste be treated by incineration.

The Agency believes that if F024 wastes are properly incinerated, and the treatment standards for the nine regulated organic constituents are met, then dioxins and furans, as well as all of the other hazardous constituents in the waste will be substantially destroyed. In light of this issue, the Agency is retaining the existing treatment standards for F024 and is not applying the universal treatment standards to this waste.

B. Incorporation of Newly Listed Wastes into Lab Packs and Proposed Changes to Appendices

On June 1, 1990 (55 FR 22629), EPA promulgated alternative treatment standards for lab packs under 40 CFR 268.42(c) that specified methods of treatment that could be used prior to land disposal. EPA promulgated these alternative standards to provide relief to treaters from having to monitor compliance with numeric treatment standards for many different wastes that could be included in the lab pack. The alternative treatment standards applied to two categories of lab packs as specified in Appendix IV (organometallic) and Appendix V (organic) to part 268. In the January, 1991, correction notice and again in the May 30, 1991, Advance Notice of Proposed Rulemaking (56 FR 24453), the Agency requested comment on potential improvements to the existing alternative treatment standards for Appendix IV and Appendix V. In particular, the Agency solicited opinions on whether a regulatory definition of organometallics was necessary, or whether other regulatory requirements should be developed to prevent potential misuse of the existing appendix IV lab pack requirements.

As noted in the May, 1991 ANPRM, EPA's original intent in establishing these two appendices was to simplify the regulations related to lab packs needed incineration followed by chemical stabilization of the ash (Appendix IV), from those lab packs needing only incineration (Appendix V). However, under 40 CFR 268.42(c)(4), the residue from incineration of both types of lab packs must be treated to address any hazardous characteristic for the TC metals, i.e., D004–D008, D010, and D011. (D009 mercury wastes are not included in this list because mercury-bearing wastes are excluded from the alternative lab pack treatment standard.) As such, there is no practical difference between the treatment required for the two types of lab packs. The Agency believes that combing the appendices into appendix IV will simplify procedures. In the May 30, 1991 ANPRM, EPA solicited comment on consolidating appendix V into appendix IV. Comments received were favorable in that such a change would simplify compliance with the procedures.

The Agency is proposing to replace the two appendices with a list of excluded wastes. The existing alternative treatment standard for lab packs would be retrained: Incineration (40 CFR 268.42(c)(3)) followed by treatment of characteristic metals (excluding mercury (40 CFR 268.42(c)(4).) Considering that two organo-mercury wastes, PO65 and PO92, are allowed in lab packs, the Agency solicits comments on whether incinerator residues should also be required to comply with the D009 mercury standards.

Because the number of prohibition waste codes is small, the regulated community will be able to quickly determine if a waste is excluded from the alternative lab pack treatment standard. The proposed list of excluded waste codes is shown in table D–1, below.

TABLE D–1.—LIST OF WASTE CODES TO BE EXCLUDED FROM THE LAB PACKS

D009, F019, K003, K004, K005, K006, K062, K071, K100, K106, P010, P011, P012, P076, P078, U134, U151.

The waste proposed for exclusion are the same as those currently excluded, with the following exceptions. K071, a mercury waste that was inadvertently listed on appendix IV, will now be excluded. The Agency's action regarding K071 is consistent with the exclusion of all other inorganic mercury wastes. Another difference with the current exclusion list is that six cyanide-containing wastes—F007, F008, F009, F011, F012, and K007 will be allowed in lab packs. EPA believes that cyanide will be effectively destroyed by combustion.

EPA is also proposing that the following newly listed wastes (i.e., all wastes listed or identified since November 1984) be eligible for the alternative treatment standards for lab packs: The newly listed wastes for which treatment standards were promulgated in the LDR Phase I rule (57 FR 37194, August 18, 1992), and the newly listed and TC wastes for which treatment standards are being proposed in today's rule.

EPA requests comments on all aspects of today's alternative lab pack proposal, including the usefulness of the proposed standards at treatment,

storage, and disposal facilities, and whether a list of excluded wastes is necessary, given the alternative of using limits on emissions from combustion units and metal limits on the solid residuals. For example, inorganic mercury wastes are excluded from lab packs. The reason for excluding these wastes is that they are not effectively treated by combustion; and furthermore mercury, which is a volatile metal, may cause emission concerns. Alternatively, EPA could rely on existing mercury standards for Boilers and Industrial Furnaces and omnibus limits for hazardous waste incinerators to address emission concerns; and a mercury limit could be placed on the solid residual by adding D009 to the list of metal limits in § 268.42(c)(4) to ensure effective treatment of the solid residual.

C. Proposed Changes in the LDR Program in Response to the LDR Roundtable

1. Background

The Office of Solid Waste convened a roundtable meeting on January 12–14, 1993, to discuss the LDR program. The purpose of the roundtable was to hear from persons experienced in implementing the LDR program on what was working well, what was not working well, and what could be done to improve the program. These discussions were a forum for sharing concerns and information in a constructive and candid manner, rather than to reach consensus or serve as formal negotiations.

In the spirit of quality improvement, EPA's goal is to make the LDR program more efficient and easier to implement. The roundtable was part of a comprehensive LDR implementation study. EPA developed the LDR program under stringent deadlines; thus the implementation study presents an opportunity to assess its effectiveness and implementation. The Agency is using the information gained from this study, beginning with the January roundtable, to improve the existing LDR program and to guide its future direction.

Roundtable participants were waste generators, treaters and disposers, public interest groups, state environmental agencies, other Federal agencies, and EPA headquarters and regional personnel. Major issues were identified in advance by roundtable participants and the discussions focused on these topics: Treatment standards, monitoring, and administrative and paperwork requirements.

To facilitate discussion, five small groups were created. The small groups discussed the issues, identified the most important issues associated with each topic and provided additional detail or potential solutions. The small groups then reconvened in general session to report back the group's recommendations. (The complete proceedings for the roundtable are included in the RCRA docket numbered F–92–CD2F–S0144.)

The participants identified the following major issues relative to the LDR treatment standards:

- Waste code-carry through,
- Use of health-based versus technology-based numbers as the standard,
- Defining the point at which wastes enter or exit the LDR "system",
- Inconsistency of individual standards for constituents across waste codes,
- Capacity for treatment,
- Storage of waste for greater than one year,
- Existing treatment standards for hazardous soil,
- Standards modifications, and
- The need for user-friendly guidance on treatment standards.

The participants identified the following major issues relative to LDR monitoring:

- Providing clarification for the use of generator knowledge,
- Constituent monitoring,
- Revisions to the Toxicity Characteristic Leaching Procedure (TCLP),
- Detection limits,
- Waste analysis plans, and
- Guidance and training.

Although views on the LDR program varied, feedback from the participants indicated that coming together to discuss these issues was very worthwhile. EPA is today proposing to incorporate some of the recommendations made by roundtable participants, as discussed below. For example, the Agency is proposing to consolidate the three existing treatment standard tables and to simplify the notification requirements, as discussed below. In addition, as discussed in section III.A., the Agency is also preparing to develop a uniform set of universal treatment standards. For other issues raised at the roundtable, the Agency is continuing to develop improvements to the LDR program.

2. Consolidated Treatment Table

Several of the groups present at the LDR roundtable expressed an interest in having a consolidated treatment standard table in the regulations. Participants stated that the existing system of three tables (see 40 CFR 268.41–268.43) was too complex and burdensome to use.

When the LDR program began, the Agency believed it was useful to clearly delineate in the regulation the differences between numerical treatment standards as measured in leachate from the Toxicity Characteristic Leaching Procedure (table CCWE at 268.43) from standards measured through a total waste analysis (table CCW at 268.42). Furthermore, it was useful to clarify that the specified methods of treatment (tables 2 and 3 at 268.43) differed from numerical standards in that numerical standards can be met through the use of any technology, whereas specified methods must be used to treat the waste. When specified methods are used, there is no need to measure the treatment residue for compliance purposes.

However, now that the program has been in place for a number of years and almost all hazardous wastes are subject to treatment standards, the Agency agrees that the regulations can be simplified. First, the Agency believes the program has been in place long enough so that the regulated community generally understands the system. Thus, it may not be necessary to make such obvious delineations. Second, there is considerable overlap between the tables. For instance, a listed waste may contain both organic constituents and metals. Treatment standards for the organic constituents appear in § 268.43, where a cross reference to § 268.41 appears that refers the reader to the treatment standards for the metals. A few wastes have treatment standards appearing in all three places. The consolidated table provides all necessary information in an easier-to-read format. The Agency notes that the new table does not contain the proposed universal treatment standards, instead relying on the standards currently found in the three existing tables. If the consolidated table and the universal standards are both finalized, the table will contain the universal standards.

Therefore, EPA is proposing in today's rule a table which combines the information found in § 268.41 Table CCWE.—Constituent Concentrations in Waste Extract, § 268.42 Table 2.—Technology-Based Standards by RCRA Waste Code, and § 268.43 Table CCW.—Constituent Concentrations in Wastes. The Agency is proposing to call the table "Treatment Standards for Hazardous Waste" and place it at § 268.40 along with much of the text found currently in §§ 268.41, 268.42, and 268.43. Section 268.42 would continue to be used to describe the technology codes, regulate California

list PCBs and HOCs, set out exemptions from the required methods, and provide for procedures for equivalency determinations. The Agency requests comments on the usefulness of the consolidated table.

3. Simplified LDR Notification Requirements

Comments on the § 268.7 notification requirements at the LDR roundtable ranged from eliminating notification altogether to modifying or deleting data items on the notification form. It was also suggested that the LDR notification form be combined with the manifest. The manifest form is currently being revised through a regulatory negotiation process; as part of the process, the group discussed the possibility of combining the manifest and the notification form. Due to a number of factors, the group decided not to consider combining the LDR notification requirements with the manifest form. Since it is not possible at this time to combine the manifest with the notification form, and since the Agency believes that the LDR notifications are necessary to document cradle-to-grave hazardous waste management, the Agency explored ways to simplify the information required on the notification form. The Agency proposes to omit the requirement at § 268.7(a)(1)(ii) and at § 268.9(d)(1) that the notification include treatment standards or references to those standards.

Such a simplification makes particular sense in conjunction with consolidating the treatment standard tables. Therefore, the Agency is proposing that the only information required to be included in the notification will be the EPA Hazardous Waste Number, whether the waste is a nonwastewater or wastewater, waste analysis data where available, the manifest number associated with the shipment, the constituents in the waste for certain D001 and D002 wastes for which treatment standards for the underlying hazardous constituents must be met (see 58 FR 29860, May 24, 1993), and the specific hazardous constituents in EPA Hazardous Wastes Nos. F001–F005, and F039 for which treatment is required. Today's proposal would not alter the certification requirements at § 268.7.

Participants at the LDR roundtable also requested a summary of all the LDR paperwork requirements. The Agency is therefore proposing that such a table be included as an appendix to part 268. The Agency requests comment on the notification simplification and summary table shown below. Also, comment and examples are requested on whether a flow chart might be more useful than the summary table.

TABLE 1.—RECORD-KEEPING, NOTIFICATION, AND/OR CERTIFICATION REQUIREMENTS

Entity	Scenario	Frequency	Recipient of notification	Record-keeping, notification, and/or certification requirements
1. Generator	A. Waste does not meet applicable treatment standards or exceeds applicable prohibition levels [§ 268.7(a)(1)].	Each shipment	Treatment or storage facility.	Notice must be in writing and include: • EPA hazardous waste number • Constituents of concern for certain wastes • Treatability group • Waste analysis data (where available).
	B. Waste can be disposed of without further treatment (meets applicable treatment standards or does not exceed prohibition levels upon generation) [§ 268.7(a)(2)].	Each shipment	Land disposal facility ...	Notice and certification statement that waste meets applicable treatment standards or applicable prohibition levels. Notice must include: • EPA hazardous waste number • Constituents of concern for certain wastes • Treatability group • Manifest number • Waste analysis data (where available) Certification statement required under § 266.7(a)(2)(ii) that waste complies with treatment standards and prohibitions.
	C. Waste is subject to exemption from a prohibition on the type of land disposal utilized for the waste, such as a case-by-case extension under § 268.5, an exemption under § 268.6, or a nationwide capacity variance [§ 268.7(a)(3)].	Each shipment	Receiving facility	Notice must include: • Statement that waste is not prohibited from land disposal • EPA hazardous waste number • Constituents of concern for certain wastes • Treatability group • Manifest number • Waste analysis data (where available) • Date the waste is subject to the prohibitions.
	D. Waste is in tanks or containers regulated under 40 CFR 262.34 (accumulated waste) and being treated in such containers to meet applicable treatment standards [§ 268.7(a)(4)].	Minimum of 30 days prior to treatment activity.	EPA Regional Administrator (or his designated representative) or authorized State. Delivery must be verified.	Generator must develop, keep onsite, and follow a written waste analysis plan describing procedures used to comply with the treatment standards. If waste is shipped offsite, generator also must comply with notification requirement of § 268.7(a)(2).

TABLE 1.—RECORD-KEEPING, NOTIFICATION, AND/OR CERTIFICATION REQUIREMENTS—Continued

Entity	Scenario	Frequency	Recipient of notification	Record-keeping, notification, and/or certification requirements
	E. Where generator is managing a lab pack containing certain wastes and wishes to use an alternative treatment standard [§ 268.7(a)(8) or (a)(9)].	Each shipment	Treatment facility	Notice in accordance with § 268.7(a)(1), (a)(5), and (a)(6), where applicable. Certification in accordance with § 268.7(a)(6) or § 268.7(a)(9), respectively.
	F. Small quantity generators with tolling agreements [pursuant to 40 CFR 262.20(c)] [§ 268.7(a)(10)].	Initial Shipment	Treatment facility	Must comply with applicable notification and certification requirements in § 268.7(a). Generator also must retain copy of the notification and certification together with tolling agreement onsite for at least 3 years after termination or expiration of agreement.
	G. Generator has determined waste is restricted based solely on his knowledge of the waste [§ 268.7(a)(5)].	N/A	Generator's file	All supporting data must be retained onsite in generator's files.
	H. Generator has determined waste is restricted based on testing waste or an extract [§ 268.7(a)(5)].	N/A	Generator's file	All waste analysis data must be retained onsite in generator's files.
	I. Generator has determined that waste is excluded from the definition of hazardous or solid waste or exempt from Subtitle C regulation [§ 268.7(a)(6)].	One-time	Generator's file	File a one-time notice stating such generation, subsequent exclusion from the definition or exemption from Subtitle C, and the disposition of waste.
	J. Other record-keeping requirements [§ 268.7(a)(7)].	N/A	Generator's file	Generator must retain a copy of all notices, certifications, demonstrations, waste analysis data, and other documentation produced pursuant to § 268.7 onsite for at least 5 years from the date that the waste was last sent to onsite or offsite treatment, storage, or disposal. This period is automatically extended during enforcement actions or as requested by the Administrator.
II. Treatment Facility.	A. Waste shipped from treatment facility to land disposal facility [§ 268.7(b)(4), (b)(5)].	Each shipment	Land disposal facility	Notice must include: • EPA hazardous waste number • Constituents of concern • Treatability group • Prohibition levels • Manifest number • Waste analysis data (where available) Certification as set out in § 268.7(b)(5)(i), (ii) and (iii) stating that the waste or treatment residue has been treated in compliance with applicable performance standards and prohibitions.
	B. Waste treatment residue from a treatment or storage facility will be further managed at a different treatment or storage facility [§ 268.7(b)(6)].	Each shipment	Receiving facility	Treatment, storage, or disposal facility must comply with all notice and certification requirements applicable to generators.

TABLE 1.—RECORD-KEEPING, NOTIFICATION, AND/OR CERTIFICATION REQUIREMENTS—Continued

Entity	Scenario	Frequency	Recipient of notification	Record-keeping, notification, and/or certification requirements
	C. Where wastes are recyclable materials used in a manner constituting disposal subject to § 266.20(b) [§ 268.7(b)(7)].	Each shipment	Regional Administrator (or his delegated representative).	No notification to receiving facility required pursuant to § 268.7(b)(4). Certification as described in § 268.7(b)(5) and notice with information listed in § 268.7(b)(4), except manifest number. Recycling facility must keep records of the name and location of each entity receiving hazardous waste-derived products.
III. Land Disposal Facility.	A. Wastes taken to land disposal facility [§ 268.7(c)].	.....	.....	Maintain copies of notice and certifications specified in § 268.7(a) and (b) and § 268.8, if applicable.

4. Demonstrating Acceptable Knowledge of One's Waste

Under the LDR program, generators may characterize their waste based either on knowledge of the waste or on analytical data. On the other hand, treatment, storage, and disposal facilities (TSDFs) must periodically test their wastes, according to the frequency specified in the Waste Analysis plan (WAP); at other times, they may use knowledge to characterize their waste. Several participants at the LDR Roundtable expressed the need for guidance as to what constitutes acceptable knowledge when characterizing waste.

a. Background. The general and specific waste characterization requirements can be met using several methods or combinations of methods. Wherever feasible, the preferred method to meet the waste characterization requirement is to conduct sampling and laboratory analysis because this data in most cases provides the most definitive information on constituent concentration levels in waste compared to LDR treatment standards. However, generators and TSDFs also can meet waste characterization requirements by applying "acceptable knowledge." Acceptable knowledge can be used to meet all or part of the waste characterization requirements.

b. What Constitutes Acceptable Knowledge? Acceptable knowledge is broadly defined to include "process knowledge" and the facility's records of analysis performed before the effective date of RCRA regulations, or a combination of these with actual chemical analysis of the waste.

"Process knowledge" could constitute acceptable knowledge when detailed information on the wastes is obtained from existing published or documented waste analysis data or studies conducted on hazardous wastes generated by processes similar to that which generated the waste. EPA also solicits comment on other types of information that would come under the definition of process knowledge.

EPA lists certain hazardous wastes in 40 CFR part 261. For example, the K-listed wastes (e.g., K001 wastes, defined as bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol) are listed by the specific process that generated the waste (rather than by the characteristic of the waste that is generated.) Therefore, with many listed wastes ("K", "P", and "U") the application of acceptable knowledge is appropriate because the waste characteristics are generally consistent and well known from facility to facility. In the case where a generator sends waste off-site for treatment, storage, or disposal, the TSDF may rely on process knowledge supplied by the generator as a basis for the TSDF's waste characterization. (See § 264.13.)

Some facilities have records of analysis performed before the effective date of RCRA regulations. While seemingly attractive because of the potential savings associated with using existing information (such as published data), the facility must ensure that this information accurately characterizes applicable wastes.

c. When Might Acceptable Knowledge Be Used? Generators and TSDFs may use acceptable knowledge alone or in conjunction with sampling and laboratory analysis. There are situations where it is appropriate to apply acceptable knowledge, for example, when:

- The hazardous constituents in wastes from specific processes are well documented, such as with the K-listed wastes mentioned previously.
- Wastes are discarded unused commercial chemical products, reagents or chemicals of known physical and chemical constituents. Several of these fall into the "P" and "U" categories.
- Other site-specific/process-specific factors.

The Agency requests comment on other appropriate situations in which acceptable knowledge is appropriate.

d. Why Provide Evidence to Support Acceptable Knowledge? For enforcement purposes, EPA seeks evidence that demonstrates that the information relied upon is sufficient to identify the waste accurately and completely. Such evidence (e.g., knowledge of the process that generated the waste) is essential for identifying constituents that must meet LDR standards.

e. How Can A TSDF Verify Data Supplied by a Generator? There are considerations that a TSDF should be aware of when relying upon acceptable knowledge to manage wastes. First, if the TSDF relies in part on information supplied by a generator, the TSDF must become thoroughly familiar with the generator's processes to verify the integrity of the data. This can be accomplished by: (1) Conducting facility visits of generators, (2) obtaining split sampling for confirmatory analysis, and/or (3) gathering other information.

Second, if the TSDF uses process descriptions and documented studies as acceptable knowledge, the data should be scrutinized carefully as to whether:

- There are any differences between the process in the study and the process used by the generator.
- The studies used are applicable.

These issues are of concern, for example, because EPA revised the criteria that qualify a waste as a hazardous waste due to meeting the toxicity characteristic. Not only were the number and type of constituents that could deem a waste hazardous modified but also the test for identifying these constituents was amended (i.e., the Toxicity Characteristic Leaching Procedure (TCLP) replaced the Extraction Procedure Toxicity Test (EP TOX Test).)

Therefore, if a TSDF has been using acceptable knowledge, it needs to review the waste analysis or waste characterization data to determine if it is managing any solid wastes that are now hazardous wastes. The TSDF needs to determine whether its existing data is sufficient to identify any new constituent concentrations limitation (i.e., demonstrate compliance with LDR requirements).

In addition, where documented studies are used as acceptable knowledge, the TSDF should determine whether the information is based on valid sampling and analytical techniques. Also, the ability of analytical equipment to detect low concentrations of contaminants has improved over the years, and constituents that once were determined to be "nondetectable" may, in fact, be detectable using the sophisticated equipment available today.

Although EPA recognizes that sampling and analysis is not as economical or convenient as using acceptable knowledge, it does have a number of advantages. Because accurate waste identification is such a critical factor for demonstrating compliance with RCRA, misidentification can render a facility liable for enforcement actions with respect to permit conditions, LDR requirements, annual reporting, and other RCRA requirements. In addition, accurate waste analysis is critical for meeting some of the requirements of other regulatory programs such as effluent discharges under the Clean Water Act, and transportation requirements regulated by the Department of Transportation.

5. Advance Notice of Possible Changes to the LDR Program Resulting From the LDR Roundtable

As was elaborated above in the section presenting background on the LDR Roundtable, EPA intends further review comments and recommendations made during the Roundtable and propose to incorporate them—where appropriate—into future LDR regulations. Below, some of the main problems and recommendations identified by Roundtable participants are briefly discussed. The recommendations are being presented in this proposed rule to solicit further comments that will be considered when developing possible revisions to existing LDR provisions in future rulemakings. Comment is solicited on each of the recommendations discussed above. More detailed information on the LDR Roundtable can be obtained by calling or writing the RCRA Docket and requesting the document "Summary of the Land Disposal Restrictions Evaluation Roundtable" found in the docket numbered F–92–CD2F–S0144.

a. Waste code carry through. One of the issues concerns the management of residuals from treating listed wastes. The waste codes for these wastes "carry through" to the treatment residual, even when the physical or chemical state of the waste has been modified. The Roundtable participants' recommendations included: (1) Dropping the waste code when the LDR treatment standards are met—groups contended that once standards are met for a waste, the waste code should be dropped from the residual so that legitimate mixing and other treatment could occur without retesting; (2) allowing the use of process knowledge to identify a short list of constituents in residuals for which analysis should be conducted; and (3) developing residual waste codes (as the Agency has done for multi-source leachate.)

b. Use of health-based levels versus technology-based levels in establishing treatment standards. A number of the participants suggested that the LDRs should be revised to allow materials to leave the hazardous waste (i.e., RCRA subtitle C) system—that is, the LDR treatment standards should be based on risk. Other participants recommended that EPA should consider socioeconomic factors and resource allocations during these risk evaluations. For further discussion, see Section II.H. Furthermore, it was also suggested that the Agency create a *de minimis* program to eliminate certain specific categories of small volume wastes from the LDR requirements. (This last alternative would, of course, likely require a statutory change.)

c. Inconsistency of standards. Some participants stated that requiring characteristic wastes to be treated below the characteristic level is inconsistent with the regulatory standards used for hazardous waste identification. Remedies included: (1) Capping treatment with risk-based levels; (2) implementing universal standards based on the least-stringent treatment standard; and (3) having EPA focus on hazardous compounds in wastes rather than on the existing set of waste codes, and establish technology-based treatment standards so that each compound would have a specific standard regardless of the waste in which it was found (such "universal standards" are proposed in section III.A of this preamble.)

d. Capacity-related issues. Participants cited a number of capacity-related concerns, including the lack of treatment capacity for highly-concentrated mercury waste, and insufficient treatment technologies to address ignitable, corrosive and reactive (ICR) wastes. With regard to mercury wastes, participants suggested EPA allow the low-level mercury treatment standard to be applied to high-level mercury wastes. For ICR wastes, the recommendation was to allow maximum flexibility concerning continued use of deactivation.

Furthermore, it was stated that the storage for greater than one year will occur for certain wastes because no treatment capacity exists (e.g., radioactive mixed wastes, mercury-bearing wastes not amenable to the current standards, PCBs, and dioxin-contaminated wastes.) (The 'one-year limitation' is, of course, a misnomer. Persons storing for over one year merely have the burden of showing they are storing waste in order to accumulate sufficient quantities to facilitate proper treatment or disposal. § 268.50(c).) Participants also indicated that the one-year storage limitation is a disincentive for waste minimization because the cost of disposal decreases as the volume of waste increases, and pollution prevention/waste minimization programs have created problems associated with generating sufficient waste for disposal. There is also confusion on the part of industry on what constitutes a good-faith effort to find treatment capacity. Possible solutions voiced included: (1) Guidance on what constitutes a good-faith effort to find treatment capacity; (2) streamlining capacity variance procedures; and (3) waste minimization storage allowances (e.g., EPA offering storage for greater than one year as a waste minimization incentive for non-permitted facilities.)

e. Generator knowledge. It was stated by a number of the participants that generator knowledge with respect to identifying constituents of concern in their hazardous waste was often rejected by TSDs, requiring testing by generators prior to acceptance of wastes for treatment or disposal. The one recommendation was to institute guidance on what the Agency considers sufficient written documentation to support a generator's knowledge of the waste. (The Agency is providing some guidance on this issue in section 4 above.)

f. Constituents. Conversely, a number of the participants stated that the Agency requires testing for too many constituents, presenting a cost burden to industry. Because generators are said to know the constituent content of their waste, it is unnecessary to test. Potential solutions to this problem included: (1)

Developing short, waste-specific, indicator constituent lists for testing; (2) initially testing the whole range of constituents, then testing again only if the waste stream changes; and (3) having EPA remove dioxins and furans from the F039 list due to the expense of analysis, while retaining the current standards for these compounds in F020–F023 and F026–F027.

g. Detection limits. Some participants maintained that some treatment standards are set at levels that may be below detection limits, creating obvious compliance difficulties. Recommendations included: (1) Allowing ranges in detection limits and in LDR treatment standards; (2) establishing LDR standards at levels that are not below detection limits; (3) use the practical quantitation limits (PQLs) as the default for matrix difficulties; (4) refining detection limits over time and allow the use of indicator compounds in difficult analyses; and (5) allowing the states and regions discretion when dealing with difficult matrices and standards.

h. Waste Analysis Plans (WAPs). The general problem voiced was that generators, treaters, disposers, and enforcement officials often obtain different analytical results for the same waste depending on the sampling (eg., grab versus composite samples), and the statistical or weighting methods employed, necessitating re-testing. Potential remedies included: (1) Developing WAP guidance to, among other things, minimize redundant testing and over-certification of wastes, and solicit comment on whether to specify WAP guidance at the time of promulgation of the rules; (2) having the Agency develop sampling guidance; (3) using composite sampling over grab sampling; (4) establishing mandatory quality control procedures; and (5) having the waste analysis plans rely more on generator knowledge.

i. Paperwork. In general it was felt that the paperwork requirements were too complicated. Some participants suggested that there is no longer a need for the LDR notification, and said that the separate LDR notification hampers inspections. Alternative options included: (1) Including the LDR notification on the manifest; (2) revising the LDR notification to exempt generators from informing the treater of the treatment standards applicable to the waste (EPA is proposing to make this change in this preamble at section 3 above); (3) creating a summary table of notification and certification requirements (included above in Table 1); and (4) solicit comment on reducing the number of years that records must be retained.

j. Complexity of the regulations. Most of the participants agreed that the preamble language is not consistently interpreted among government officials and that it is necessary to work with both the regulations and the preamble to understand what is required. Discussion in the groups pointed to the LDRs being difficult to understand, largely because the Codes of Federal Regulations (CFR) are quickly out of date; the preamble language contains significant guidance that is not always implicit in the regulatory language; and the treatment standards are found in the CFR in several tables. Recommendations included: (1) Developing consolidated treatment tables (this suggestion is being proposed in this notice, as discussed at section C.2 above); (2) having EPA develop a bulletin board to keep all involved parties informed of policy memoranda, scheduled briefings, and new rules; (3) having the Agency make inspector checklists available to the regulated community and hold workshops on compliance; (4) EPA physically reorganizing its regulations by incorporating part 268 into the generator and facility requirements (parts 262, 264 and 265); and, (5) having EPA expand preambles to include an implementation section, soliciting comment on implementation information during the development of the regulations (this is being implemented in this proposed rule in section XI.)

IV. Treatment Standards for Toxicity Characteristic Waste

A. The Third Third Court Decision, the Emergency Interim Final Rule, and Their Applicability to TC Wastes

In today's notice, EPA is proposing treatment standards for wastes displaying the toxicity characteristic (TC wastes) when the TC wastes are managed in systems other than: (1) In wastewater treatment systems which include surface impoundments and whose ultimate discharge is subject to the Clean Water Act (CWA); (2) in Class I non-hazardous underground injection wells subject to the Safe Drinking Water Act (SDWA) Underground Injection Control (UIC) program; or, (3) by a zero discharger who, before permanent land disposal of the wastewater, treats the wastewaters in a wastewater treatment system equivalent to that utilized by CWA dischargers. Consistent with the *Third Third Case*, the treatment standards proposed for these wastes include standards for "constituents subject to treatment" (i.e., any regulated constituent present at levels above the universal constituent-specific treatment standards at the point of generation of the TC waste).

This proposed approach is the same as that adopted in the recent interim final rule, promulgated on May 10, 1993 (published on May 24, 1993, 58 FR 29860) in response to the court's decision in *Chemical Waste Management* v. *EPA*, 976 F. 2d 2 (D.C. Cir. 1992). That case vacated and remanded certain Agency regulations (commonly referred to as the Third Third rule) establishing prohibitions and treatment standards for characteristic wastes, and also established rules as to when the prohibitions and standards would not apply.

This section provides a summary of the court's decision, an overview of the interim final rule published on May 24, 1993, and how the Agency proposes to apply this approach to the TC wastes.

1. Background

Among other things in the Third Third final rule, the Agency promulgated treatment standards and prohibitions for hazardous wastes that exhibited one or more of the following characteristics: Ignitability, corrosivity, reactivity, or EP toxicity (40 CFR 261.21–261.24). The Agency also evaluated the applicability of the LDR dilution prohibition to characteristic wastes, including characteristic wastes ultimately managed in wastewater management systems with land disposal units (i.e., impoundments or injection wells) which are subject to varying degrees of regulation under the CWA and SDWA. This was done in an effort to ensure the successful integration of these programs with the LDR regulations (see generally 55 FR 22653–59 (June 1, 1990)). Thus, except where the Agency specifically identified and required that hazardous constituents be treated, the rule indicated in essence that characteristic wastes need only be treated to remove the characteristic before land disposal where land disposal involved placement in surface impoundments whose ultimate discharge was subject to regulation under the CWA, or where the waste was injected into a Class I UIC well.

On September 25, 1992, the United States Court of Appeals for the District of Columbia Circuit ruled on various petitions for review of this rule. The principal holdings of the case with respect to characteristic wastes were that: (1) EPA may require treatment under RCRA section 3004(m) to more stringent levels than those at which wastes are identified as hazardous so

long as the level defining the waste as hazardous was above the level at which threats to human health and the environment are minimized, 976 F. 2d at 12–14; (2) section 3004(m) requires that treatment standards address both short-term and long-term potential harms posed by hazardous wastes, as well as removal of the characteristic property, *id.* at 16, 17, 23; as a consequence, dilution is permissible as an exclusive method of treatment only for those characteristic wastes that do not contain hazardous constituents "in sufficient concentrations to pose a threat to human health or the environment" (i.e., the minimize threat level in section 3004(m)), *id.* at 16; and, (3) situations where characteristic hazardous wastes are diluted, lose their characteristic(s) and are then managed in centralized wastewater management land disposal units (i.e., subtitle D surface impoundments or injection wells) are legal only if it can be demonstrated that hazardous constituents are reduced, destroyed or immobilized to the same extent as they would be pursuant to otherwise-applicable RCRA treatment standards, *id.* at 7.

As a consequence of these holdings, the court held that the deactivation treatment standard for ignitable and corrosive wastes (which allowed the hazardous characteristic to be removed by any type of treatment, including dilution) did not fully comport with RCRA section 3004(m). This was because that standard could be achieved by dilution, and section 3004(m) "* * * requires that any hazardous waste be treated in such a way that hazardous constituents be removed from the waste before it enters the environment." 976 F. 2d at 24.

In response to the court decision, EPA issued an emergency interim final rule with respect to those treatment standards that were vacated (as opposed to remanded) by the court (58 FR 29860, May 24, 1993). The distinction between vacated and remanded rules is that vacated rules are no longer in effect (once the court's mandate issues), whereas remanded rules remain in force until the Agency acts to replace them. This distinction has considerable significance with respect to LDR treatment standards. If there is no treatment standard for a prohibited waste (for example, as a result of a vacatur), that waste is prohibited from land disposal, because it has not been treated to meet the treatment standard established by EPA, and (presumably) is not being disposed in a no-migration unit. RCRA sections 3004 (d), (e), and (g)(5). A remanded treatment standard, on the other hand, would remain in effect, and disposal of prohibited wastes treated pursuant to that standard is legal until the standard is amended.

In the Agency's opinion, the rules dealing with centralized wastewater management involving land disposal (§§ 268.1(c)(3) and 268.3(b)) were remanded, not vacated. (See 976 F.2d at 7, 19–26 where these rules are discussed and not expressly vacated.) This means that the only wastes to which the interim final rule applied were those ignitable and corrosive wastes for which the treatment standard was deactivation (since the deactivation standard for these wastes was vacated) *and* which were managed in systems other than CWA, CWA-equivalent, or Class I UIC wells regulated under the SDWA.

The treatment standards promulgated in the interim final rule retained the requirement of deactivation to remove the hazardous characteristic; however, the rule also established numerical treatment standards for the underlying hazardous constituents that could be present in the wastes.

2. Applicability of This Approach to TC Wastes and Hazardous Soil Covered by This Proposed Rule

The Agency is today proposing the same approach adopted in the interim final rule for determining which hazardous constituents in TC wastes and hazardous soils to regulate and the types of treatment/disposal units covered. As with ignitable and corrosive wastes, the underlying hazardous constituents must be treated. The Agency believes that to do otherwise would be inconsistent with the court's holding that RCRA section 3004(m) requires that treatment standards address both short-term and long-term potential harms posed by hazardous wastes.

With respect to the units to be regulated, EPA is proposing to defer control of the same units not addressed by the interim final rule. Under that rule, the new treatment standards do not apply to ignitable or corrosive wastes managed in wastewater treatment systems whose ultimate discharge is subject to the CWA, Class I underground injection wells subject to the SDWA Underground Injection Control (UIC) program, and zero dischargers who, before final land disposal, treat wastewater with treatment equivalent to that utilized by CWA dischargers. CWA-equivalent treatment means biological treatment for organics, reduction of hexavalent chromium, precipitation/sedimentation for metals, alkaline chlorination or ferrous sulfate precipitation of cyanide (to the extent these constituents are present in the untreated influent to wastewater treatment systems), or treatment that the facility can show performs as well or better than these enumerated technologies. See § 258.37(a), 58 FR at 29885 (May 24, 1993).

EPA is proposing the same deferred coverage when these units are used to treat TC wastes. The Agency believes that it would be most appropriate to address all issues pertaining to such wastewater management operations at one time. Therefore, it is not addressing TC wastes managed in these systems in this rulemaking. They will be addressed in a later rulemaking, along with issues that pertain to the wastewater management facilities excluded from the interim final rule.

The treatment standards being proposed today for TC wastes would apply, however, when these wastes are injected into other than Class I wells (e.g., Class V shallow injection wells), even if the wastes were rendered noncharacteristic ("decharacterized") first. The exception to the dilution prohibition of the Third Third Final Rule never applied to other than Class I nonhazardous injection wells. This means that today's proposed requirements will apply to some injection practices, in particular, those involving Class V injection wells. These typically are wells injecting nonhazardous wastes above or into underground sources of drinking water. (If, however, the TC wastes injected into non-Class I wells were to be treated by CWA-equivalent means before injection, the proposed treatment standards would not apply. This is an example of the type of zero discharger referred to above.) The Agency solicits comments and data on volumes of TC wastes managed in Class V injection wells, and on waste management practices employed prior to injection.

The TC wastes covered by this rule have been, and will continue to be, managed in combustion devices or be stabilized. Upon promulgation of a final rule, such facilities must treat the wastes to meet the treatment standard for the TC waste—including standards for any underlying hazardous constituents—prior to land disposal.

3. Future Response to Issues Remanded by the Court

The Agency plans to address the issues having to do with CWA and CWA-equivalent wastewater management systems and injection into Class I injection wells in future rulemakings. For example: (1) Direct dischargers managing decharacterized wastes in surface impoundments; (2) indirect dischargers managing

decharacterized wastes in surface impoundments; (3) zero dischargers (including those injecting into non-Class I injection wells) who perform CWA-equivalent treatment before ultimate disposal; and (4) persons injecting decharacterized wastes into Class I deep injection wells will be subject to regulation in the future when the Agency addresses remanded issues from the *Third Third Case*. See 58 FR at 29860, May 24, 1993 explaining the basis for these categorizations.

Many of these remanded issues are significantly more complex than those dealt with in the interim final rule and in today's proposed rule. In addition, the universe of facilities affected by the remanded portions of the Third Third rule is much broader than that covered in either of these rules, as it will include (among other things) treatment systems regulated under the CWA, Class I nonhazardous injection wells regulated under the SDWA, plus zero discharge facilities that engage in treatment that is equivalent to that of CWA dischargers. Furthermore, the volumes of wastes affected by the remanded rules are much greater than those at issue in this regulation and the interim final rule.

Options for addressing these remanded issues with respect to ignitable, corrosive, and reactive characteristic wastes were presented in the Supplemental Information Report prepared for the January 19, 1993 Notice of Data Availability (58 FR 4972), available in the RCRA docket. EPA expects that most of the issues discussed there will also apply to TC wastes when treatment standards are promulgated. The following discussion summarizes many of the issues raised in the Supplemental Information Report.

It is clear that the court intended for the Agency to revise the special dilution provisions for management in a CWA facility (§ 268.3(b)) and in SDWA Class I injection wells (§ 268.1(c)(3)), because it specified that dilution alone is not adequate treatment if an ignitable, corrosive, and reactive waste contains hazardous constituents at levels above those the Agency finds minimize threats. This will greatly impact the injection of these wastes (and, potentially, TC wastes) in Class I nonhazardous deep wells, since there are few treatment systems currently in place upstream of the injection well that could treat the underlying hazardous constituents that are present. Such facilities seem to have few options for dealing with the court's decision: undertaking substantial waste minimization efforts; installing on-site treatment systems; arranging for off-site transport and treatment; or, applying for, and being granted, a no-migration petition that would allow continued land disposal of untreated wastes. Although commenters on the Supplemental Information Report suggested that EPA could promulgate a rule that does not require treatment of the underlying hazardous constituents, based on a generic finding that injection is a protective practice, the Agency's tentative view is that this is not a viable option (see Supplemental Information Report, pp. 25–7). However, the Agency seeks additional comment on the technical and legal issues raised in Notice of Data Availability and Supplemental Options Report as they may pertain to TC wastes.

Probably the most significant issue for CWA wastewater treatment facilities will be that of determining the equivalency of CWA treatment systems with RCRA LDR treatment. Associated issues such as whether the court opinion authorizes controls on leakage or volatilization from treatment surface impoundments, or whether sludges generated in impoundments must be treated, will be particularly controversial and will take time to resolve. Comments are solicited on these issues as they pertain to treatment of TC wastes.

4. Request for Comment on Petition From Chemical Manufacturer's Association Regarding Deep Well Injection of Ignitable and Corrosive Characteristic Wastes

In the May 24, 1993 interim final rule for ignitable and corrosive wastes managed in other than wastewater treatment systems whose ultimate discharge is subject to the CWA, in other than Class I underground injection wells subject to the SDWA UIC program, and by zero dischargers who do not treat wastewater with treatment equivalent to that utilized by CWA dischargers, the Agency discussed plans for future rulemakings covering those ignitable and corrosive wastes disposed in such units. As part of its response to May 24 interim final rule, the Chemical Manufacturers' Association (CMA) requested that the Agency develop treatment standards intended for those wastes disposed in Class I deep injection wells. CMA specifically requested the Agency to promulgate treatment standards for ignitable and corrosive wastes managed by deep well injection that, in view of the unique circumstances of deep well injection, meet the statutory "minimize threats" standard. Consequently, the Agency has placed CMA's petition in the docket and is soliciting comment on the petition.

B. Background

1. Legal and Policy Background

One of the key issues in the Third Third rule was whether characteristic wastes must be treated to a lesser extent than listed wastes. This result could come about because, under Agency regulations, characteristic wastes stop being "hazardous wastes" at the point they stop exhibiting the characteristic property. § 261.3(b). However, if treatment of characteristic wastes must cease at the point they are no longer hazardous wastes, any underlying hazardous constituents (hazardous constituents other than those for which the waste exhibits the characteristic) can go untreated. 55 FR at 22652 (June 1, 1990). Moreover, at that time, the Agency viewed the characteristic level as higher than the "minimize threat" level required for treatment of hazardous wastes by section 3004(m). *id.*

The Agency consequently took the position that Congress did not compel less treatment for characteristic wastes than for listed wastes (or, put another way, did not compel non-treatment of underlying hazardous constituents, treatment only to characteristic levels, or dilution to meet treatment standards for characteristic wastes.) *id.* at 22652–58. The Agency established this principle by stating that if a waste is hazardous at the point it is generated, the obligation to treat to section 3004(m) levels attaches at that point, whether or not the waste still exhibits a characteristic at the point it is disposed. *id.*

Reviewing this rule, the D.C. Circuit upheld the point of generation principle; however, it also invalidated some of the discretion EPA had asserted in whether to apply it. 976 F. 2d at 7, 13–14, 23, 25–6. The Agency is, of course, bound by this opinion, and today's proposal for TC wastes reflects the Agency's view of what the opinion requires in establishing treatment standards for characteristic wastes. Further discussion of the opinion, in particular, when different parts of the opinion start to apply, is found in the interim final rule promulgated on May 10, 1993 (58 FR 29860, May 24, 1993), as well as the preceding section of this preamble.

Today's rule consequently proposes treatment standards for TC wastes which standards are not constrained by the characteristic level, that prevent the standard from being achieved by dilution (albeit issues related to most types of land-based centralized wastewater management are not being addressed in this proposal), and which

require treatment of the underlying hazardous constituents.

With respect to treatment below characteristic levels, section 3004(m) of RCRA states that treatment standards must substantially diminish the waste's toxicity or mobility so that short-term and long-term threats posed by the waste are minimized. See 55 FR at 22654 (June 1, 1990). EPA has noted that the EP/TC limits are levels at which wastes clearly are hazardous. 45 FR 33084 (May 19, 1980); 51 FR 21648 (June 13, 1986); See 55 FR 11798 (March 27, 1990). EPA thus believes that further treatment below a characteristic level may be necessary before threats to human health and the environment are "minimized" within the meaning of section 3004(m). See 55 FR at 22654 (June 10, 1990). For some of the TC wastes addressed in today's rule, the concentration-based treatment standards are consequently lower (i.e. more stringent) than the regulatory levels that establish those wastes as characteristically hazardous.

Dilution rules are intended to prohibit dilution in lieu of treatment and to ensure that hazardous constituents are destroyed or removed by treatment. *Third Third Case*, 976 F. 2d at 16, 28. EPA is consequently proposing that it is impermissible to achieve the treatment standards for TC wastes by means of dilution. (As stated above, however, EPA is not addressing in this rule the management of TC wastes in land-based centralized wastewater management systems that were not included within the scope of the recent emergency rule. The court remanded these issues in the *Third Third Case (id.)*, leaving in place existing regulations that allow dilution in such systems).

Also, as described earlier, EPA is proposing treatment standards for the hazardous constituents that can be present in treatable concentrations in TC wastes, but which are not the basis for causing the waste to be identified as hazardous (for example, lead present at less than TC levels, but present at levels exceeding treatable concentrations and exceeding LDR levels, in a waste that exhibits the TC because of benzene). The Agency is proposing the same types of monitoring rules for these constituents recently adopted in the emergency rule, so that (in essence) monitoring for hazardous constituents is limited to those reasonably expected to be present in the wastes.

The Agency requests comments, generally, on mechanisms that may be used to streamline the compliance monitoring requirements under the LDR program. For example, for TC wastes that contain organic underlying hazardous constituents, incineration may destroy not only the TC constituent but the underlying organic hazardous constituents present at lower concentrations than the TC concentration. Comments are solicited on the need to monitor the residual ash for compliance with the treatment standards for the underlying organic hazardous constituents, if the treatment standard for the TC constituent has been met. The Agency solicits specific data that demonstrate that alternative monitoring requirements would provide adequate assurance that all treatment standards are met.

2. Background on Toxicity Characteristic

On March 29, 1990, EPA revised 40 CFR 261.24—the Toxicity Characteristic or "TC"—replacing the extraction procedure (EP) with the toxicity characteristic leaching procedure (TCLP). This rule also increased the number of hazardous constituents regulated under this characteristic from 14 to 40. These TC wastes are newly identified wastes for the purpose of developing land disposal restrictions (LDRs). See section 3004(g)(4). They fall into three categories for purposes of the LDR program. The first category consists of new organic constituents and includes all wastes identified as D018–D043. Today's proposal would establish treatment standards for D018 through D043 wastes when they are managed in non-CWA/non-CWA-equivalent/non-Class I SDWA systems. The second and third categories consist of those D004–D011 metal wastes and D012–D017 pesticide wastes that are now hazardous based on TCLP analysis rather than EP analysis. EPA established treatment standards in the Third Third final rule for these wastes if they exhibit both the TC (because they had to be hazardous waste) and the EP (because only EP wastes were covered by the Third Third prohibition). Today's rule establishes treatment standards for the TC pesticide wastes that do not exhibit the EP characteristic. EPA is not proposing treatment standards for the TC organic and pesticide wastewaters that are managed in CWA facilities or facilities that engage in CWA-equivalent treatment prior to land disposal or in Class I injection wells, or for TC metal wastes (D004–D011). Such standards will be proposed in a later rule.

EPA is soliciting information that may be used to characterize industrial generation patterns to assess the potential for source reduction or recycling for these TC wastes. While source reduction and recycling are high priorities for any hazardous waste, the wide diversity of these TC wastes is expected to impact EPA's ability to evaluate source reduction and recycling. (See also EPA's general solicitation for information on pollution prevention opportunities in section I.B. above).

C. Treatment Standards for New TC Organic Constituents

D018—Benzene
D019—Carbon tetrachloride
D020—Chlordane
D021—Chlorobenzene
D022—Chloroform
D023—o-Cresol
D024—m-Cresol
D025—p-Cresol
D026—Cresol
D027—1,4-Dichlorobenzene
D028—1,2-Dichloroethane
D029—1,1-Dichloroethylene
D030—2,4-Dinitrotoluene
D031—Heptachlor
D031—Heptachlor epoxide
D032—Hexachlorobenzene
D033—Hexachloro-1,3-butadiene
D034—Hexachloroethane
D035—Methyl ethyl ketone
D036—Nitrobenzene
D037—Pentachlorophenol
D038—Pyridine
D039—Tetrachloroethylene
D040—Trichloroethylene
D041—2,4,5-Trichlorophenol
D042—2,4,6-Trichlorophenol
D043—Vinyl chloride

1. General Approach for Establishing Concentration-Based Treatment Standards

Treatment standards established under the land disposal restrictions (LDR) program are based on performance of the best demonstrated available technology (BDAT) for treating a waste. Under EPA's procedure for establishing treatment standards, the Agency establishes concentration-based treatment standards with compliance measured through a total waste analysis as the best measure of destruction or extraction (typically BDAT for organics), or establishes concentration-based treatment standards with compliance measured through analysis of the TCLP leachate, as the best measure of metal treatment. The Agency generally specifies treatment technologies only for those situations where there are no analytical methods to measure compliance with a concentration-based treatment standard.

a. Nonwastewaters. The Agency is today proposing concentration-based treatment standards for nonwastewater TC organic wastes based on existing treatment data that were used to establish treatment standards for these same constituents in listed wastes. The proposed standards are presented at the end of this section. The treatment

standards proposed today are at the same levels as those proposed as universal standards in a separate part of today's rule.

The concentration-based treatment standards being proposed are primarily based on incineration data. The Agency believes, however, these proposed treatment standards can also be met by a number of other treatment technologies. (See discussion in section III.A of this preamble for more information about these proposed treatment standards). In fact, the Agency has some data on the treatment of these constituents by innovative technologies (i.e., solvent extraction, thermal desorption) that support the levels being proposed today.

The treatment technologies typically used for organic nonwastewaters (e.g., incineration, thermal desorption, solvent extraction) tend to destroy or extract the organics to a highly efficient degree. Thus, setting standards based on these treatment data may result in hazardous constituents being removed from the waste before disposal.

The *Third Third Case* directs EPA to ensure that the hazardous constituents in characteristic waste are adequately treated. Many TC organic nonwastewaters contain hazardous constituents in addition to those constituents which caused the waste to be identified as a hazardous TC waste; for example, a waste which is classified as TC hazardous waste because of its benzene concentration may also contain lead at levels of concern although not characteristically hazardous for lead, or may contain non-TC hazardous constituents. (Standards for these hazardous constituents would also be based on the universal treatment standards, since these are virtually identical to standards for F039, the basis for the standards included in the May 10 emergency interim final rule).

PROPOSED BDAT STANDARDS FOR TC ORGANIC WASTES

[Nonwastewaters]

Code	Regulated constituent	Maximum for any single grab sample: Total composition (mg/kg)
D018	Benzene	10
D019	Carbon tetrachloride.	6.0
D020	Chlordane	0.26
D021	Chlorobenzene	6.0
D022	Chloroform	6.0
D023	o-Cresol	5.6
D024	m-Cresol	3.2
D025	p-Cresol	3.2
D026	Cresol	8.8
D027	1,4-Dichlorobenzene	6.0
D028	1,2-Dichloroethane	6.0
D029	qxl1,1-Dichloroethylene.	6.0
D030	2,4-Dinitrotoluene	140
D031	Heptachlor	0.066
D031	Heptachlor epoxide.	0.066
D032	Hexachlorobenzene	10
D033	Hexachloro-1,3-butadiene.	5.6
D034	Hexachloroethane	30
D035	Methyl ethyl ketone	36
D036	Nitrobenzene	14
D037	Pentachlorophenol	7.4
D038	Pyridine	16
D039	Tetrachloroethylene	6.0
D040	Trichloroethy- lene	6.0
D041	2,4,5-Trichlorophenol	7.4
D042	2,4,6-Trichlorophenol	7.4
D043	Vinyl Chloride	6.0

b. Wastewaters. In today's notice, EPA is proposing treatment standards for newly identified TC wastewaters that are managed in systems other than those regulated under the CWA, those regulated under the SDWA that inject TC wastewaters into Class I injection wells, and those zero discharge facilities that engage in CWA-equivalent treatment prior to land disposal. The proposed treatment standards for newly identified TC wastewaters would require treatment to meet the universal treatment standards for the TC constituent and for the underlying hazardous constituents.

BDAT STANDARDS FOR TC ORGANICS

[Wastewaters]

Constituent	Maximum for any single grab sample: Total composition (mg/l)
D018—Benzene	0.014
D019—Carbon tetrachloride	0.057
D020—Chlordane	0.0033
D021—Chlorobenzene	0.057
D022—Chloroform	0.046
D023—o-Cresol	0.11
D024—m-Cresol	0.77
D025—p-Cresol	0.77
D026—Cresol	0.88
D027—1,4-Dichlorobenzene	0.09
D028—1,2-Dichloroethane	0.21
D029—1,1-Dichloroethylene	0.025
D030—2,4-Dinitrotol- uene	0.32
D031—Heptachlor	0.0012
D031—Heptachlor epoxide	0.016
D032—Hexachlorobenzene	0.055
D033—Hexachloro-1,3-butadiene	0.055
D034—Hexachaloroethane	0.055
D035—Methyl ethyl ketone	0.28
D036—Nitrobenzene	0.068
D037—Pentachlorophenol	0.089
D038—Pyridine	0.014
D039—Tetrachloroethylene	0.056
D040—Trichloroethylene	0.054
D041—2,4,5-Trichlorophenol	0.18
D042—2,4,6-Trichlorophenol	0.035
D043—Vinyl Chloride	0.27

2. Radioactive Mixed Waste

Radioactive mixed wastes are those wastes that satisfy the definition of radioactive waste subject to the Atomic Energy Act (AEA) that also contain waste that is either listed as a hazardous waste in subpart D of 40 CFR part 261, or that exhibit any of the hazardous waste characteristics identified in subpart C of 40 CFR part 261. Since the hazardous portions of the mixed waste are subject to RCRA, the land disposal restrictions apply. This means that the RCRA hazardous portion of all mixed waste must meet the appropriate treatment standards for all applicable waste codes before land disposal. In the case of these organic TC wastes, any radioactive waste mixed with organic TC wastes that are managed in non-CWA/non-CWA-equivalent/non-Class I SDWA facilities would have to meet the

promulgated treatment standards for the TC waste.

For the most part, the low concentrations of radioactive compounds should not interfere with the treatability of the hazardous constituents in the waste. Therefore, the standards being proposed for TC wastes are also being proposed for TC radioactive mixed wastes. The Agency is requesting data where this is not the case. The Department of Energy (DOE) has expressed some concerns about meeting certain treatment standards. DOE is currently collecting data from their facilities on mixed TC wastes. They are welcome to submit these data as part of this rulemaking, and the data will be placed in the RCRA docket for public review. The EPA will analyze these data along with all other data received on TC wastes, and consider them in promulgating final treatment standards.

D. Treatment Standards for TC Pesticide Wastes (D012–D017)

D012—Endrin
D013—Lindane
D014—Methoxychlor
D015—Toxaphene
D016—2,4-D
D017—2,4,5-TP (Silvex)

In the final rule for the Third Third wastes (55 FR 22520), EPA promulgated treatment standards for D012–D017 wastes, but only for those wastes that were hazardous by both the TCLP and the EP leaching procedures. Wastes that were not hazardous by the EP leaching procedure, but hazardous by the TCLP, are newly identified D012–D017 wastes and are currently not prohibited. EPA is proposing treatment standards for D012–D017 wastes managed in non-CWA/non-CWA-equivalent/non-Class I SDWA facilities in this notice. EPA is also proposing revised treatment standards for pesticide wastewaters, as explained below.

1. Newly Identified Pesticide Nonwastewaters

There is no reason to think these wastes cannot meet the existing treatment standards for D012–D017 nonwastewaters (55 FR 22554). Therefore, EPA is proposing that the existing treatment standards apply to newly identified D012–D017 nonwastewaters. (It should be noted that EPA determined that the amount of D012–D017 waste subject to the treatment standards is very small. 55 FR at 22634, 22646. Based on this determination, it is very unlikely that newly identified D012–D017 are being generated).

The Agency is also proposing to prohibit dilution of D012 and D017 nonwastewaters injected into Class I deep injection wells. If this prohibition on dilution before Class I injection is promulgated, these pesticide wastes must be treated to meet the treatment standards before they can permissibly be injected into such units, unless that unit has been granted a no-migration determination. See section IV.E which follows for more discussion on the proposed dilution prohibition for these and certain ignitable wastes.

2. Pesticide Wastewaters

EPA set treatment standards expressed as required methods of treatment for the EP toxic pesticide wastewaters in the Third Third final rule (55 FR 22554). EPA is not proposing to revise the treatment standards for pesticide wastewaters in today's rule. (See 268.40)

PROPOSED BDAT STANDARDS FOR PESTICIDES

[Nonwastewaters]

Code	Regulated constituent	Maximum for any single grab sample	Total composition (mg/kg)
D012	Endrin		.13
D013	alpha-BHC		.066
D013	beta-BHC		.066
D013	gamma-BHC		.066
D013	delta-BHC		.066
D014	Methoxychlor		.18
D015	Toxaphene		2.6
D016	2,4-D		10
D017	2,4,5-TP (Silvex)		7.9

E. Proposed Exemptions for De Minimis Losses of TC Wastes and for TC Laboratory Wastes Discharged to CWA Wastewater Treatment

The Agency is proposing to extend the exemptions established in the May 24, 1993 emergency interim final rule to TC organic wastes (58 FR 29860). Thus *de minimis* losses of TC organic wastes and TC organic laboratory wastes discharged to CWA wastewater treatment systems would not be subject to the requirements of 40 CFR part 268. (See proposed § 268.1 in today's rule.)

V. Deep Well Injection Issues

A. Prohibition of Dilution of High TOC Ignitable and of TC Pesticide Wastes Injected Into Class I Deep Wells

In the Third Third rule, EPA determined that decharacterized wastes could permissibly be injected in Safe Drinking Water Act Class I nonhazardous deep injection wells (wells that dispose of wastewaters deep below the lowermost underground source of drinking water) without first being treated to meet the treatment standard for the waste. See 55 FR at 22658 and § 268.1(c)(3). EPA indicated that so long as wastes that exhibit a characteristic at the point they are generated no longer exhibit a characteristic when disposed in a Class I deep injection well, they are not prohibited from land disposal. EPA took that position because the Agency believed that the deep injection of such wastewaters was an environmentally sound and technically effective waste management practice, and consequently that disposal of decharacterized wastes in Class I deep injection wells would not pose hazards to drinking water or to human health. *Id.*

As described previously, this determination was remanded by the D.C. Circuit. The court said, in essence, that not only must characteristic wastes be treated to destroy or remove hazardous constituents before land disposal, but that no deviation from this principle (pursuant to RCRA section 1006) was acceptable for underground injection practices because these practices were a type of permanent land disposal (as opposed to temporary land disposal incident to treatment in units that are part of Clean Water Act treatment systems). 976 F.2d at 25–6. Although the Agency is still evaluating its interpretation of this part of the opinion, the Agency has indicated (at least initially) that the most likely reading is that the available alternatives for decharacterized wastes being injected in Class I nonhazardous deep wells is for either these wastes to be treated to meet the treatment standard before injection (which option may involve segregation of wastes exhibiting characteristics at the point they are generated), or apply for and obtain a no-migration variance for the injection well. See 58 FR 4972, January 19, 1993 and 58 FR 29860, May 24, 1993. The treatment standards that apply to these wastes are found in the proposed treatment table found at § 268.40 of this rule. For D001 High TOC ignitables, the treatment standard is expressed as methods of treatment that must be used prior to land disposal: Fuel substitution,

solvent recovery or incineration. The treatment standards for EP pesticide wastewaters are also expressed as methods: Biodegradation or incineration. The treatment standards for EP pesticide nonwastewaters are expressed as levels that may be achieved by using any treatment technology.

EPA is proposing today to exclude two types of wastes from the portion of the rule (§ 268.1(c)(3)) that allows the waste to be injected into a Class I deep injection well if it no longer exhibits a characteristic when it is injected. The two types of waste are nonwastewaters that at the point of generation exhibit the characteristic of ignitability and contain greater than 10 percent Total Organic Carbon ("high TOC ignitable liquids subcategory") and TC toxic halogenated pesticide wastes (D012–D017). The Agency is singling out these wastes not only because of the court's mandate in the *Third Third Case*, but because the Agency believes that treatment of these wastes is a preferred management approach for them. (Indeed, the Agency had already singled these wastes out from the exception that allowed dilution of characteristic wastes that were to be managed in Clean Water Act treatment systems including land disposal units, § 268.3(b) and 55 FR at 22657). High TOC ignitable nonwastewaters contain high concentrations of organics that can either be recovered directly for reuse, or that can be burned for energy recovery. Treatment, consequently, not only eliminates the hazardous constituents in these wastes but utilizes recoverable resources in the wastes. The prohibited pesticide wastes contain a number of particularly toxic hazardous constituents (such as toxaphene, 2,4-D, and (in some cases) dioxins and furans) that warrant destruction or removal before land disposal. See generally 55 FR at 22657 and the waste management hierarchy in RCRA section 1003(6).

In addition, these wastes are not injected in significant volumes, so that redirection of the wastes to treatment technologies will not have any significant impact on well operators. (Although the issue of adverse impact on injection practices is ultimately "irrelevant" to determining how to apply prohibitions to underground injection practices, see 976 F. 2d at 26, the issue is relevant (at least to some extent) in determining how quickly EPA responds to the issues remanded by the court). In fact, as a worst case, the information the Agency gathered for the Third Third rulemaking indicated that a maximum of 6.9 million gallons of point of generation D001 ignitable wastes were injected in Class I nonhazardous deep injection wells annually. That same data set also indicated that all wastewaters which exhibit the toxicity characteristic for halogenated pesticide content (D012–D017) at the point they are generated totaled approximately 15 million gallons annually. The most recent information used for capacity determination in this proposed rule indicate that these injected volumes are, in fact, much lower. However, even the largest potential volumes are relatively small for Class I underground injection well waste streams.

EPA is not proposing to grant a national capacity variance for either of these waste types. There is approximately one-half million tons (i.e., approximately 120 million gallons) of available alternative treatment capacity for these liquid wastes. This treatment capacity is large compared to even the largest potential injected waste volumes; however, a three month capacity variance is proposed for the other wastes included in this proposed rule, in order that generators have time to locate and arrange for treatment of their wastes (see section XII for more information about capacity variances). This three-month variance would also apply to the prohibition of dilution of high TOC ignitable and TC pesticide wastes when they are injected into Class I wells.

The Agency is requesting any and all information regarding volumes, facilities, and properties of these wastes being injected in Class I nonhazardous deep wells in order to make a final determination on these issues.

B. Request for Comment on Petition From Chemical Manufacturer's Association Regarding Deep Well Injection of Ignitable and Corrosive Characteristic Wastes

In the May 24, 1993 interim final rule for ignitable and corrosive wastes managed in other than wastewater treatment systems whose ultimate discharge is subject to the CWA, in other than Class I underground injection wells subject to the SDWA UIC program, and by zero dischargers who do not treat wastewater with treatment equivalent to that utilized by CWA dischargers, the Agency discussed plans for future rulemakings covering those ignitable and corrosive wastes disposed in such units. As part of its response to May 24 interim final rule, the Chemical Manufacturers' Association (CMA) requested that the Agency develop treatment standards intended for those wastes disposed in Class I deep injection wells. CMA specifically requested the Agency to promulgate treatment standards for ignitable and corrosive wastes managed by deep well injection that, in view of the unique circumstances of deep well injection, meet the statutory "minimize threats" standard. Consequently, the Agency has placed CMA's petition in the docket and is soliciting comment on the petition.

VI. Treatment Standards for Newly Listed Wastes

A. Treatment Standards for Coke By-Product Production Wastes

K141—Process residues from the recovery of coal tar, including but not limited to tar collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087, decanter tank tar sludge from coking operations.

K142—Tar storage tank residues from the production of coke from coal or the recovery of coke by-products produced from coal.

K143—Process residues from the recovery of light oil, including but not limited to those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal.

K144—Wastewater treatment sludges from light oil refining, including but not limited to intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.

K145—Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.

K147—Tar storage tank residues from coal tar refining.

K148—Residues from coal tar distillation, including but not limited to still bottoms.

The Agency recently promulgated the listing of K141, K142, K143, K144, K145, K147, and K148 as hazardous wastes (August 18, 1992 (57 FR 37284)). These seven wastes are generated in the production, recovery, and refining of coke and coke by-products produced from coal. EPA estimates that there are approximately thirty-four facilities in the United States generating these wastes. Greater details on the description and generation of these wastes can be found in the listing rule and in the technical background document supporting that rule.

The final listing rule also describes certain recycling scenarios in which these materials are excluded from the definition of solid wastes (i.e., they are not listed as K141, K142, K143, K144, K145, K147, and K148). This occurs when these materials are recycled in one of three ways: Combined with coal feedstock residue as it is charged into the coke oven; added to the tar recovery process; or mixed with coal tar before this coal tar is sold as a product or further refined. See 57 FR 37285, 37297–37299 (August 18, 1992) for specific details of these conditions.

Under such conditions, since they are not the listed wastes, the proposed land disposal restrictions in today's rule for K141–K145, K147, and K148 would not apply.

1. Proposed Treatment Standards

In general, these waste streams consist primarily of organics with a minimum amount of water. Many are quite viscous and have the consistency of semisolids or sludges. With respect to hazardous organics, these wastes typically contain thousands of ppm of polynuclear aromatic compounds and hundreds of ppm of phenols, benzenes, and other single-ring aromatic compounds.

Because of their highly organic nature, EPA has determined that thermal destruction technologies, such as incineration or fuel substitution, represent BDAT for these wastes. While extraction technologies, such as thermal desorption and critical fluid extraction, appear to be potentially applicable, EPA currently lacks data verifying their performance on wastes similar to K141, K142, K143, K144, K145, K147, and K148. If these technologies can achieve the levels of performance (i.e., comply with the concentrations) of the proposed treatment standards, they could also be considered to be BDAT.

While most of these wastes, as generated, would be classified as "nonwastewaters" according to definitions applicable to the land disposal restrictions (40 CFR 268.2 (d) and (f)), EPA nevertheless sets treatment standards for wastewater forms as well as nonwastewater forms of these wastes on a waste code-basis. Even though the listing of these seven wastes does not specifically include wastewaters, if water or wastewater comes in contact with these wastes (such as during storage, treatment, or disposal), a wastewater form of these wastes would be generated that would have to comply with the treatment standards (provided the waste was to be placed in a land disposal unit).

As a result, EPA is proposing treatment standards for both wastewater and nonwastewater forms of K141, K142, K143, K144, K145, K147, and K148 wastes which are numerically equivalent to the universal standards proposed for the constituents selected for regulation in these wastes. The development of these standards is presented in the BDAT background document for these wastes located in the administrative docket for today's rule. EPA is proposing maximum concentration limits for benzene, naphthalene, and six polynuclear organics in both wastewaters and nonwastewaters. The tables at the end of this section list, by waste form, the proposed standards for each constituent and indicate the constituents that are regulated in each waste code. The proposed nonwastewater standards are based on the limits of analytical detection of these eight compounds in incineration ash residues. EPA has data from the incineration of fourteen vastly different, difficult to treat hazardous wastes indicating that these standards should be achievable on a routine basis for most hazardous wastes. The proposed wastewater standards reflect the performance of industrial wastewater treatment systems as documented in several of EPA's Office of Water and Risk Reduction Engineering Laboratory databases and presented in Volume C of the Final BDAT Background Document for U and P Wastes and Multi-Source Leachate available in the Third Third rulemaking docket.

2. Potential Future Revisions to Treatment Standards for Existing Coking Wastes K087, K060, and K035

In response to the rulemaking for Third Third wastes, the Hazardous Waste Treatment Council submitted data that they believe indicate that treatment standards for certain constituents (e.g., benzene) in other coking wastes, namely K087, K060, and K035, cannot be achieved on a regular basis in ash residues from the incineration of other types of hazardous wastes. (Note: The proposed nonwastewater standard for benzene in K141, K142, K143, K144, K145, K147, and K148 in today's rule is not transferred from K087, K060, or K035). The Agency agrees that when K087, K060, and K035 nonwastewaters are commingled with other wastes prior to treatment (such as the new coking wastes) the promulgated standards for those nonwastewaters may not always be achievable (primarily the benzene nonwastewater standard for K087 and K060). The Agency has not, however, received any requests for a treatability variance for any of these three wastes (i.e., K087, K060, and K035) nor has it been notified that any particular generator has had a problem complying with the standards. EPA believes that this is primarily because these wastes are no longer generated or generate no residues when treated, and there is, therefore, no demand for treatment. The Agency is, nevertheless, soliciting comment from generators on whether they have been unable to get their K087, K060, and K035 wastes treated because treatment standards could not be achieved or verified. The Agency requests any additional comment or information that would assist in determining whether the standards for these three wastes need to be revised.

PROPOSED BDAT STANDARDS FOR K141, K142, K143, K144, K145, K147, AND K148

[Nonwastewaters]

Constituent	Maximum for any single grab sample	Constituents regulated for waste codes						
	Total composition (mg/kg)	K141	K142	K143	K144	K145	K147	K148
Benzene	10.0	X	X	X	X	X	X	
Benz(a)anthracene	3.4	X	X	X	X	X	X	X
Benzo(a)pyrene	3.4	X	X	X	X	X	X	X
Benzo(b)fluoranthene [1]	6.8	X	X	X	X		X	X
Benzo(k)fluoranthene [1]	6.8	X	X	X	X		X	X
Chrysene	3.4	X	X	X	X	X	X	X
Dibenz(a,h)anthracene	8.2	X	X		X	X	X	X
Indeno(1,2,3-cd)pyrene	3.4	X	X				X	X
Naphthalene	5.6					X		

[1] This standard represents the sum of the concentrations for each of this pair of constituents.

PROPOSED BDAT STANDARDS FOR K141, K142, K143, K144, K145, K147, AND K148

[Wastewaters]

Constituent	Maximum for any single grab sample	Constituents regulated for waste codes						
	Total composition (mg/l)	K141	K142	K143	K144	K145	K147	K148
Benzene	0.14	X	X	X	X	X	X	
Benz(a)anthracene	0.059	X	X	X	X	X	X	
Benzo(a)pyrene	0.061	X	X	X	X	X	X	X
Benzo(b)fluoranthene	[1]0.11	X	X	X	X		X	X
Benzo(k)fluoranthene	[1]0.11	X	X	X	X		X	X
Chrysene	0.059	X	X	X	X	X	X	X
Dibenz(a,h)anthracene	0.055	X	X		X	X	X	X
Indeno(1,2,3-cd)pyrene	0.0055	X	X				X	X
Naphthalene	0.059					X		

[1] This standard represents the sum of the concentrations for each of this pair of constituents.

B. Treatment Standards for Chlorotoluenes

K149—Distillation bottoms from the production of alpha (methyl) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (This waste does not include still bottoms from the distillation of benzyl chloride.)

K150—Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha (methyl) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.

K151—Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha (methyl) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides and compounds with mixtures of these functional groups.

The Agency recently promulgated the listing of K149, K150, and K151 as hazardous wastes on October 15, 1992 (57 FR 47377). These three wastes are generated in the production of chlorinated toluenes and include both ring-chlorinated toluenes (where the chlorine atoms are attached to the aromatic ring) and methyl-chlorinated toluenes (where the chlorine atoms are attached to toluene's methyl moiety). EPA estimates that there are four facilities in the United States generating these wastes. Greater details on the description and generation of these wastes can be found in the final listing rule and in the technical background document supporting that rule.

K149 and K150 waste streams are typically generated as organic liquids. Any aqueous phase that may be present in these streams is expected to be extremely acidic; therefore, both streams could potentially be hazardous by the characteristic of corrosivity (i.e., D002). With respect to hazardous organics, both of these wastes contain thousands of ppm of chlorinated aromatic and chlorinated aliphatic compounds. In fact, K149 wastes can contain up to 10 percent benzotrichloride. K151 wastes include a variety of solid and semisolid streams including sludges and skimmings from various separation units. K151 can contain up to 3 percent toluene and lesser concentrations of chlorinated aliphatics, chlorinated aromatics, and benzene.

Because of their highly organic nature, EPA has determined that thermal destruction technologies, such as incineration or fuel substitution, represent BDAT for K149 and K150. In a similar manner, since K151 wastes may contain significant concentrations of hazardous organics and since K151 wastes comprise a variety of waste matrices, EPA has determined that incineration also represents BDAT for these wastes. While extraction technologies, such as thermal desorption and critical fluid extraction, appear to be potentially applicable to some K151 wastes, EPA currently lacks data verifying their performance on wastes similar to these K151 wastes. If these technologies can achieve the levels of performance (i.e., comply with the concentrations) of the proposed treatment standards, they could also be considered to be BDAT.

While most of these wastes, as generated, would be classified as "nonwastewaters" according to definitions applicable to the land disposal restrictions (40 CFR 268.2 (d) and (f)), EPA nevertheless sets treatment standards for wastewater forms as well as nonwastewater forms of these wastes on a waste code-basis. Even though the listing of these three wastes does not specifically include wastewaters, if water or wastewater comes in contact with these wastes (such as during storage, treatment, or disposal), a wastewater form of these would be generated that would have to comply with the treatment standards (provided the waste was to be placed in a land disposal unit.)

As a result, EPA is proposing treatment standards for both wastewater and nonwastewater forms of K149, K150, and K151 wastes which are numerically equivalent to the universal standards proposed for the constituents selected for regulation in these wastes. The development of these standards is presented in the BDAT background document for these wastes located in the administrative docket for today's rule. EPA is proposing maximum concentration limits for benzene, toluene, five chlorinated aliphatics, and six chlorinated aromatics in both wastewater and nonwastewater forms of these wastes. The tables at the end of this section list, by waste form, the proposed standards for each constituent and indicate the constituents that are regulated in each waste code. The proposed nonwastewater standards are based on the limits of analytical detection of these compounds in incineration ash residues. EPA has data from the incineration of fourteen vastly different, difficult to treat hazardous wastes indicating that these standards should be achievable on a routine basis for most hazardous wastes. The proposed wastewater standards reflect the performance of industrial wastewater treatment systems as documented in several of EPA's Office of Water and Risk Reduction Engineering Laboratory databases and presented in Volume C of the Final BDAT Background Document for U and P Wastes and Multi-Source Leachate available in the Third Third rulemaking docket.

PROPOSED BDAT STANDARDS FOR K149, K150, AND K151

[Nonwastewaters]

Constituent	Maximum for any single grab sample	Constituents regulated for waste codes		
	Total composition (mg/kg)	K149	K150	K151
Benzene	10			X
Carbon tetrachloride	6.0		X	X
Chloroform	6.0	X	X	X
Chloromethane	30	X	X	
Chlorobenzene	6.0	X		
1,4-Dichlorobenzene	6.0	X	X	
Hexachlorobenzene	10	X	X	X
Pentachlorobenzene	10	X	X	X
1,2,4,5-Tetrachlorobenzene	14	X	X	X
1,1,2,2-Tetrachloroethane	6.0		X	
Tetrachloroethylene	6.0		X	X
1,2,4-Trichlorobenzene	19		X	
Toluene	10	X		X

PROPOSED BDAT STANDARDS FOR K149, K150, AND K151

[Wastewaters]

Constituent	Maximum for any single grab sample	Constituents regulated for waste codes		
	Total composition (mg/l)	K149	K150	K151
Benzene	0.14			X
Carbon tetrachloride	0.057		X	X
Chloroform	0.046	X	X	X
Chloromethane	0.19	X	X	
Chlorobenzene	0.057	X		
1,4-Dichlorobenzene	0.090	X	X	
Hexachlorobenzene	0.055	X	X	X
Pentachlorobenzene	0.055	X	X	X
1,2,4,5-Tetrachlorobenzene	0.055	X	X	X
1,1,2,2-Tetrachloroethane	0.057		X	
Tetrachloroethylene	0.056		X	X
1,2,4-Trichlorobenzene	0.055		X	
Toluene	0.080	X		X

VII. Treatment Standards for Hazardous Soils

A. Introduction

This section discusses proposed alternative treatment standards for hazardous soils that may be met instead of the treatment standards that currently apply to the contâminating hazardous wastes. These proposed alternative standards would apply to soils that contain listed hazardous wastes, and soils that exhibit any of the characteristics of hazardous waste.

In particular, EPA is proposing two alternative technology-based treatment approaches for compliance with the hazardous soil treatment standards and also soliciting comment on variations of these alternate approaches. It should be understood that the Agency is also in the process of developing a proposed rule for contaminated media (including soil) in the context of the Hazardous Waste Identification Rule. As a result of that effort, the Agency may propose additional regulatory options for LDR treatment standards for hazardous soils, or modify the options presented here in order to establish a consistent regulatory framework for hazardous soils under RCRA.

Today's proposal is important in several respects. First, it continues the process of developing tailored standards, such as the previously promulgated treatment standards tailored to multi-source leachate and to hazardous debris. Because today's proposed treatment standards are tailored to contaminated soil media, this proposal would primarily affect activities associated with cleanup and consequent waste management at contaminated facilities and sites.

Second and more important, the treatment standards proposed today are based on levels attainable by a variety of technologies, including innovative technologies. Thus, technologies that are more appropriate for the treatment of hazardous soils than combustion are identified as BDAT.

In addition, EPA is proposing to codify the contained-in policy for soils (as it did for debris in the Phase I LDR rule, see 57 FR 37194, August 18, 1992.) The regulation would establish a process for determining on a site-specific basis whether or not environmental media (e.g., soil and ground water) "contain" a hazardous waste.

B. Applicability, Regulatory Status of Treated Soils, and Definitions

1. Applicability

Under current regulations, land disposal of soils that contain a prohibited listed hazardous waste, or that exhibit a prohibited characteristic of hazardous waste, is prohibited unless such soils have been treated to meet the treatment standards promulgated for that hazardous waste (i.e., the same treatment standard the waste would have to meet if it was newly generated rather than found in the soil matrix.) Today's rule proposes alternative treatment standards that are specific to hazardous soils. This continues the process of developing treatment standards tailored to specific types of hazardous wastes associated with remediation activities. The Agency thus has promulgated treatment standards specific to multi-source leachate and for hazardous debris.

2. Regulatory Status of Treated Soils

Under this proposal, treatment of soils to meet the proposed treatment standards may or may not affect the regulatory status of the soils under RCRA subtitle C, depending on whether the soil is contaminated with listed waste or displays a hazardous characteristic, or upon a site-specific determination that the soil no longer contains hazardous waste (see section 3 below). Treatment of hazardous soils to meet the proposed treatment standards would not, of itself, determine whether the soils would remain a hazardous waste. However, treatment to meet the proposed treatment standards may, in some cases, achieve the result that the soil is no longer hazardous based on separate regulatory determinations.

It is not possible to predict at this time precisely how, or if, the Agency may exempt certain hazardous soils from subtitle C in future actions, or how those exemptions (if such exemptions are developed) might compare with the LDR treatment standards proposed here for hazardous soils. If, however, the final exemption levels were at or above the LDR treatment standards and represented minimize threat levels, treatment standards would be capped at those levels, and the wastes also would no longer be subject to any other subtitle C control.

3. "Contained-in" Determinations

The Agency's "contained-in" policy says that environmental media such as soil or ground water that is contaminated with hazardous waste must be managed as the hazardous waste until the waste is separated from the media so that it no longer "contains" the hazardous waste. EPA is proposing in this notice to codify the contained-in policy for environmental media. The codification will provide a mechanism for determining when environmental media (e.g., soil, ground water) no longer "contain" listed hazardous wastes, and thus, are no longer subject to subtitle C regulation.

As proposed today, these contained-in determinations will be made by the EPA Regional Administrator or designee on a site-specific basis, considering factors such as exposure potential and contaminant characteristics (e.g., concentrations, mobility, persistence). Management scenarios for the contaminated media (e.g., disposal in a lined landfill) would not be a factor in making contained-in determinations. However, contained-in determinations could constitute "minimize threat" levels at a particular site. Thus, for a particular site, contained-in levels could function as a cap for LDR treatment standards.

4. Definitions

EPA is proposing a definition for hazardous soil, and identifying the constituents subject to treatment for hazardous soil. Soil is unconsolidated earth material composing the superficial geologic strata (material overlying bedrock), consisting of clay, silt, sand, or gravel size particles (sizes as classified by the U.S. Soil Conservation Service), or a mixture of such materials with liquids, sludges, or solids which is inseparable by simple mechanical removal processes and is made up primarily of soil. Cf. 57 FR at 37224 (August 18, 1992) where EPA adopted a similar classification scheme for debris.

This proposed definition would allow site managers (e.g., on-scene coordinators, remedial project managers, or equivalent corrective action officials) to determine whether the material to be excavated is waste, debris, or soil by judging the results of simple in-situ mechanical removal processes to separate the materials. Such processes include pumping, dredging, or excavation by backhoe, forklifts, or other devices. Of course, any non-soil that is separated is subject to the treatment standard for that material. *Id.* In addition, any intentional mixing of soil with non-soil does not result in the mixture being classified as soil. Rather, it is a type of impermissible dilution. *Id.* and *id.* at 37243.

This approach would avoid requiring chemical analysis for soil properties in order to differentiate precisely between waste, soil and debris (e.g., considering such things as soil particle size, elemental composition of the soil, or other properties that might distinguish soil from waste or debris). Attempting to distinguish more precisely between waste, soil, or debris using a chemical analysis or other tests would be difficult to develop and support, and cumbersome to administer. In addition, a basis for chemical analysis or other tests has not been developed, and implementation of any such approach would most likely not be beneficial, but rather simply delay the progress of remedial actions. The Agency specifically solicits comment on the definition proposed for soil and this type of pragmatic approach for classifying mixtures of soil and other materials. (As noted in a following section, however, adding soil to other materials to attempt to reclassify the mixture as "hazardous soil" is a form of impermissible dilution and is illegal under the LDR program.)

a. Hazardous soil. Hazardous soil is soil that contains RCRA hazardous waste(s) listed in 40 CFR part 261, subpart D, or soil that exhibits one or more of the characteristics of a hazardous waste defined in 40 CFR part 261, subpart C. It can be generated from a wide variety of activities, including remedial actions at Superfund and RCRA corrective action sites, and spills at manufacturing plants. It should be noted that in the Advance Notice of Proposed Rulemaking (ANPRM) published on October 24, 1991 (see 56 FR 55160 at 55172), EPA suggested that soils containing listed hazardous wastes and soils that exhibit one or more of the hazardous characteristics be defined as "contaminated soil." Many commenters to the ANPRM were confused as to the scope of the definition. They felt that the definition suggested in the ANPRM included not only hazardous soils but all soils contaminated with any toxic constituents. To clarify this point, the Agency is changing the term used to refer to soils subject to regulation from "contaminated soil" to "hazardous soil."

b. Constituents subject to treatment. Under today's proposed approach, hazardous soil would be treated for each constituent subject to treatment, regardless of whether the contaminating waste is a listed or characteristic waste. The Agency is proposing to define constituents subject to treatment as any regulated constituent found on Table UTS in today's proposed § 268.48, that is present at levels above the universal constituent-specific treatment standards. The constituents in Table UTS are all of the BDAT list hazardous constituents that can be analyzed. As with multi-source leachate, hazardous

soil can contain potentially all of these constituents. See, e.g., 55 FR at 22619–620 (June 1, 1990). Of course, not every soil will contain all of these constituents, and EPA is not proposing that soils necessarily be monitored for the entire list of hazardous constituents. (See section VII.A.) However, a scheme that limited treatment only to the hazardous constituents in the listed waste or the TC constituent contaminating the soil would usually overlook the reality of the situation: Soils (like multi-source leachates) frequently are contaminated with an enormous variety of contaminants from diverse sources. A treatment scheme that ignored this reality would not fulfill the requirement of section 3004(m) of RCRA that the hazardous constituents present in prohibited wastes be treated so as to minimize threats to human health and the environment. See also *Third Third Case*, 976 F.2d at 16 (treatment must remove or destroy the hazardous constituents in prohibited wastes in order to satisfy section 3004(m), and merely removing one indicia of hazardousness is insufficient to satisfy this requirement). For soil which is hazardous because it exhibits the characteristics of ignitability, corrosivity, or reactivity, the Agency would require treatment until the soil no longer exhibits the characteristic and also requires that the numerical treatment standards be met for all constituents subject to treatment.

c. Illegal contamination of soil. As noted above, illegal contamination of soil is the deliberate addition of hazardous constituents or hazardous waste to soil (or vice versa). The Agency believes that existing regulations concerning impermissible dilution (40 CFR 268.3 (a) and (b)) already make this conduct illegal, and subject the mixture to the most stringent treatment standard for any waste in the mixture (40 CFR 268.41(b)). The Agency acknowledges, however, that the promulgation of standards for hazardous soil which are less stringent than the treatment standards that apply to hazardous waste may create an incentive to illegally mix waste with soil.

Because such action would be illegal, the Agency believes that most generators of hazardous waste will not mix prohibited hazardous waste with soil. Specifically, section 3008(a) of RCRA provides EPA the authority to issue an order assessing a civil penalty against any person who violates any requirement of subtitle C of RCRA. Criminal penalties may also apply. EPA requests comment on whether any further safeguards are needed, however, to assure that no attempts are made to dilute hazardous waste with soil.

d. Nonanalyzable constituents. Hazardous soils are often contaminated with more than one hazardous constituent, many of which have analytical methods available while others do not. For soils containing multiple organic constituents, some of which are nonanalyzable, the Agency believes that treatment of the analyzable constituents to meet the soil treatment standards should provide adequate treatment of any nonanalyzable constituents to appropriate levels. The Agency is therefore not proposing treatment standards for nonanalyzable constituents found in such hazardous soil. The Agency requests comment on this approach as well as data on the degree to which nonanalyzable constituents are treated when the soil is treated for other organic constituents. If EPA should choose, based on public comments, to regulate these constituents, it could require treatment by specific technologies known to achieve adequate treatment of the constituent. If this is determined to be necessary, EPA could publish performance standards for the specified technologies with the promulgation of this regulation.

In other cases, a hazardous soil may be contaminated solely by nonanalyzable constituents, such as nonanalyzable U or P wastes. For these soils, the Agency proposes requiring treatment by the methods specified in § 268.42 for those U or P wastes. The Agency solicits comment on whether other technologies should be allowed for treatment of such soils.

EPA points out that in proposing to exempt certain wastes from subtitle C control (see 57 FR at 21469, May 29, 1992), the Agency did not allow wastes that contained nonanalyzable constituents to qualify for the generic exemption. The Agency has not yet finally determined whether such wastes will be available for the generic exemption, and whether hazardous soils should be addressed differently than wastes.

C. Proposed Approaches for Establishing Treatment Standards for Hazardous Soils

In developing an LDR program for hazardous soil, the Agency had a primary objective: The treatment standards should be appropriate for soil. The technology-based soil standards thus should not be based exclusively on incineration. See 55 FR at 8760–61 (March 8, 1990). Innovative technologies are particularly appropriate to treat the large volumes of low and moderately contaminated soil.

To satisfy this objective, the Agency is proposing two approaches it believes are achievable (in most cases) using innovative technologies, and is soliciting comment on a variation of one of the two options. The Agency solicits comments on which of the approaches should be promulgated in the final rule. Table UTS in today's proposal (§ 268.48) lists the constituents subject to treatment and the universal treatment standards which are the basis of the soil treatment standards.

1. Technology-Based Treatment Standards for Hazardous Soils

As indicated above, the Agency is considering several approaches for developing technology-based treatment standards for hazardous soils. Under these approaches, the universal treatment standards (discussed in section III.A of this preamble) are proposed for soil as "base" standards. Each approach allows for treatment to levels above the universal standards and differ primarily in the extent of treatment required.

Under the first approach, the Agency is proposing a range of standards with a "ceiling" one order of magnitude above the universal standard, provided 90% treatment of each constituent subject to treatment is achieved. The second approach is a variation of the first, in that the Agency is proposing a range of standards with a "ceiling" one order of magnitude above the universal standard, however, there is no requirement that 90% reduction occur. The third approach proposes an unlimited range of values above the universal standard provided 90% treatment is attained (i.e., there would be no "ceiling" value) unless 90% treatment would treat the waste to a level below the universal treatment standards. If such a level would be achieved through 90% treatment, the universal treatment standards would be met.

Analysis of the available soil treatability data has revealed that innovative technologies (e.g., thermal desorption, biological treatment, dechlorination) can generally achieve the universal standards proposed today. In several cases, however, non-combustion does not achieve the universal standards. Thus, the various approaches proposed today provide an additional assurance as to the achievability of meeting the treatment standards for potentially hard-to-treat soil matrices. Additionally, the proposed approaches would encourage the use of effective innovative (i.e. non-

incineration) technologies, a reasonable objective given EPA's determination that combustion is not always appropriate as the Best Demonstrated Available Technology for many soils. 55 FR at 8761.

Furthermore, the Agency believes these approaches are appropriate for setting treatment standards for hazardous soils, given the unique and often heterogeneous characteristics of soils. The proposed approaches accommodate possible limitations of the data: That is, the data may not represent potentially problematic matrices and varying contaminant levels. The proposed universal treatment standards are expressed as total concentration levels for each organic constituent. The proposed universal treatment standards for each metal constituent is expressed as a level measured in the TCLP extract, because metal treatment technologies typically involve stabilization or immobilization, and leachability and reduced mobility of the metals is best reflected in the concentrations in the TC extract (i.e., metals are not destroyed or eliminated after treatment with stabilization or immobilization technologies, but rather have reduced mobility.) Although metals recovery technologies are available, they are not generally practical for treating hazardous soil because of the relatively low levels of metal contamination typically found in soil (i.e., low relative to the concentrations necessary for economical metal recovery).

Soils that were contaminated with both organic and metal constituents would possibly require treatment by more than one technology. Generally, the first technology would treat the organic constituents (e.g., by thermal desorption) and the second technology would treat the metals (e.g., by stabilization).

Stabilization is typically not considered an effective treatment technology for organics; in addition, organics can interfere with the stabilization process. Nevertheless, difficulties can occur at those sites where metals are the constituents of concern, and where organic compounds are also present at concentrations only slightly greater than the universal standards. In this case, the generator or treater may consider treating the soil by stabilization without additional treatment for the organic constituents present. The data currently available to the Agency do not fully address the effectiveness of stabilization technologies for treatment of very low levels of specific organic constituents. Although not considered an appropriate treatment technology for organic constituents, the Agency requests comment on the practicality of using stabilization technologies for treating soil containing low levels of organic constituents. The Agency also requests that commenters provide analytical data demonstrating the effective treatment by stabilization of soil contaminated with organic constituents, if available.

a. Range of standards with a "Ceiling" one order of magnitude above the Universal Standard, provided 90% treatment occurs. Under this approach, EPA is proposing treatment standards for hazardous soil as a range of values. The base levels would correspond to the proposed universal standards, and the "ceiling" would be one order of magnitude above the universal levels. If the generator or treater of hazardous soil achieves a treatment standard above the universal level (but no higher than one order of magnitude above the universal standard, or the "ceiling"), they must document that at least 90% treatment of the constituent has been achieved by indicating the initial constituent concentration and the final constituent concentration. Such documentation would be placed in the generator's or facilities' files. (See proposed § 268.48.)

As concentrations increase in a hazardous soil, the percent treatment necessary to achieve at least the "ceiling" levels would also increase. For example, if the untreated concentration is one order of magnitude above the ceiling, achieving the ceiling level will require a 90% reduction of the constituent. As the initial concentration increases beyond an order of magnitude above the ceiling, reductions of greater than 90% would be needed in order to achieve the ceiling level. Thus, high initial concentrations would require high treatment efficiencies. For example, an initial concentration of 5,000 mg/kg of anthracene in hazardous soil would require a treatment efficiency of 99.3% to achieve the "ceiling" level of 34 mg/kg (anthracene universal standard = 3.4 mg/kg).

It could be argued that high initial concentrations requiring high treatment efficiencies would force treaters to select incineration and other high efficiency technologies. The Agency acknowledges that this may be the case with very high untreated concentrations. However, the Agency does not consider this a problem for three reasons: (1) Data indicate that relatively high treatment efficiencies are possible using some innovative technologies; (2) most hazardous soil is not highly contaminated and is well-suited to the use of innovative technologies; and, (3) when highly contaminated hazardous soils are encountered, the use of highly efficient technologies (i.e. incineration) may be appropriate. Thus, the Agency acknowledges that a highly contaminated hazardous soil may have to be treated with a fairly aggressive technology in order to achieve the "ceiling" value.

In analyzing the data, the Agency determined that a one order of magnitude "ceiling" was appropriate given the Agency's commitment to the increased use of innovative technologies. Although 65% of all data pairs for treated organics in EPA's database were treated using innovative technologies to levels less than the proposed universal standards, the proportion of data pairs capable of achieving the standard increased to 69% when the levels were established at the order of magnitude "ceiling" provided 90% treatment. Many innovative technologies were capable of achieving the treatment levels under this approach. The EPA solicits comment on this overall approach and also on whether the "ceiling" of ten times the universal standard (or other ceiling) appropriately addresses technical and environmental concerns where hazardous soils are heavily contaminated with toxic constituents and the 90% treatment portion of the option neither optimizes technology performance nor reduces hazardous constituents to levels at which threats are minimized.

b. Range of standards with a "ceiling" one order of magnitude above the universal standard. The Agency also requests comment on a variation of this approach: The order of magnitude increase over today's proposed universal standard would be the treatment standard. Under this option, the treater would be required to treat all constituents subject to treatment to levels at or below the ceiling, (i.e., the universal standard times ten), without consideration of treatment efficiency. In other words, the treater would have to achieve the standard regardless of whether to do so for a given constituent required a 20% treatment efficiency or a 99.9% treatment efficiency.

The basis for this option would be to increase the number and type of innovative technologies capable of achieving the treatment standards. In addition, this option has the advantage of simplifying compliance with the rule: Only one number per constituent would function as the treatment standard independent of treatment efficiencies. Under this option, analysis of the data for treatment of organic hazardous constituents in soils reveals that 91% of the organic data were treated to levels

less than or equal to the universal standard times 10 by a diverse range of innovative treatment technologies. The Agency solicits comment on how much waste volume would still be incinerated if this option is promulgated as the treatment standard.

c. Achieving 90% treatment with no "ceiling". Alternatively, EPA is also proposing today an approach which would allow the treater of hazardous soil the option of meeting the land disposal restriction requirement for soil by either achieving 90% treatment of each constituent subject to treatment or by achieving treatment to the universal treatment standard (in cases where 90% treatment would result in a concentration lower than the universal treatment standard.) This approach differs from the previous approaches in that there would be no numerical treatment standards that would have to be met in situations where 90% treatment occurs; documenting 90% treatment would be sufficient to meet the LDR requirements.

The Agency is presenting this approach as an alternative to possibly encourage the development of new and innovative technologies to provide safer, more cost-effective, and more publicly accepted methods for treating remediation-related wastes. There is some question whether innovative technologies can generally meet the numerical standards proposed under the approaches discussed above because it is unclear whether the available data in the soils database fully characterize the wide range of soils and contaminants potentially encountered in the field. Remediation-related soils are highly variable in concentration, contaminant mix, and type in the field, and EPA is concerned that its existing data may not adequately represent this diversity.

In addition, there is also concern that the existing data may not be representative of the performance of innovative technologies in the field. EPA collected available data of three scales: Bench, pilot, and field. EPA considered all available data in determining the treatment standards proposed under the previous approach; however, over 50% of the treatment tests upon which EPA based the treatment standards are bench scale tests. The Agency believes that less weight may need to be given to bench scale data than full and pilot scale data because of the greater uncertainty in performance of the technology.

EPA solicits comment on the technical or environmental appropriateness of a 90% reduction approach, in particular where hazardous soils are heavily contaminated with toxic constituents and a 90% floor on treatment neither optimizes technology performance nor reduces hazardous constituents to levels at which threats are minimized. EPA also solicits comments as to whether a 90% approach should be applied to inorganic hazardous constituents.

2. Explanation of Numeric Treatment Standards for Hazardous Soils

Under today's proposal, the specific hazardous soil treatment standard for a given constituent will depend on which of the approaches is promulgated. The following examples illustrate how the proposed approaches would work.

Example 1. The hypothetical basis for this example is a waste regulated for pentachlorophenol, which is present in the untreated soil at 1200 mg/kg.

Scenario 1. Today's proposed rule would require treatment to a level one order of magnitude greater than the universal standard (7.4 mg/kg), provided a 90% reduction in the constituent concentration occurs. Under this approach, pentachlorophenol would be reduced to at least 74 mg/kg, the value one order of magnitude greater than the universal standard (totals levels). Achieving the technology-based standard of 74 mg/kg would require a treatment efficiency of 94% for treating pentachlorophenol. The standard under this scenario is affected by the untreated contaminant level. If the untreated waste was at 120 mg/kg, 90% treatment would require achieving 12 mg/kg. If the untreated level was 12 mg/kg, 90% treatment would achieve 1.2 mg/kg; however, because the universal standard is 7.4 mg/kg, treatment would be required only to the 7.4 mg/kg universal standard level.

Scenario 2. Under this scenario, the proposed rule would require treatment to a level one order of magnitude greater than the universal standard. The proposed universal treatment standard for pentachlorophenol is 7.4 mg/kg; therefore soil would need to be treated until it achieved at least 74 mg/kg. Because a percentage removal is not required under this scenario, the limit is valid for all soils regardless of the untreated level.

Scenario 3. Under this scenario, a 90% reduction in constituent concentration must be achieved. The untreated level of pentachlorophenol was 1200 mg/kg. This constituent concentration must be reduced by 90%, thus a treated level of at least 120 mg/kg (1200 mg/kg reduced 90% is 120 mg/kg) would have to be met. The standard under this scenario is also affected by the untreated contaminant level. If the untreated waste concentration is 120 mg/kg, 90% treatment would require achieving 12 mg/kg. If the untreated level was 12 mg/kg, 90% treatment would achieve 1.2 mg/kg; however, because the universal standard is 7.4 mg/kg, treatment is required only to 7.4 mg/kg.

Example 2. Soils that are hazardous because they exhibit the characteristics of ignitability, corrosivity, or reactivity, would require treatment by technologies which eliminate these characteristics. If the hazardous soil was hazardous solely because it contained a TC constituent and no other underlying hazardous constituent, the proposed hazardous soil treatment standard for that constituent would have to be achieved. If, however, these wastes contained other constituents subject to treatment, as explained above, they would have to be treated to achieve the hazardous soil treatment standards for each constituent.

3. Treatment Standards for Residues from Soil Treatment

When hazardous soil is treated, several types of residues can be generated: The treated soil, including in some cases soil fractions containing concentrated levels of contaminants, wastewater from the treatment of hazardous soil, and possibly debris. In addition, treatment units often generate air emissions. The regulatory status of these residues and emissions is discussed below.

Treated soil, and any soil-like residue, would continue to be subject to the soil treatment standards (unless, as discussed above, the soil was determined on a site-specific basis to no longer "contain" hazardous waste, and thus the level of hazardous constituents remaining in the soil were determined not to exceed minimize threat levels). In particular, when a fraction of the treated soil contains concentrated levels of contaminants, additional treatment may be necessary using a different and more appropriate treatment technology. For example, soil washing may effectively treat the sandy fraction of a hazardous soil to the soil treatment standards, but may generate a clay fraction with high concentrations of contaminants that would more appropriately be treated with a thermal desorption or immobilization technology. This (hypothetical) clay fraction would also have to be treated to meet the applicable treatment standard. Thus, EPA does not consider such residues to be a new treatability group for purposes of this rule, and consequently such a nonwastewater residue would remain subject to the soil treatment standard. Cf. 55 FR at 22661 (June 1, 1990).

Hazardous wastewater from the treatment of hazardous soil would be subject to the universal standards being proposed under 40 CFR 268.48 for all hazardous constituents subject to treatment and for any hazardous constituents added during treatment. The Agency believes the universal standards are appropriate for such wastewater, given that the standards were initially developed for multi-source leachate, a wastewater that results from contact of water with soil and disposed hazardous constituents. (Characteristic wastewater managed in

land-based wastewater treatment systems, however, would normally not be subject to treatment standards under this rule, but rather would be addressed when the Agency takes up the issues relating to centralized wastewater management remanded by the court in the *Third Third Case.*)

Any hazardous debris residuals would be subject to the treatment standards for debris that were promulgated on August 18, 1992 (57 FR 37194).

Air emissions from treatment units are controlled, in some cases, by regulatory programs under the Clean Air Act (CAA) or under RCRA. In particular, the Agency initiated a three-phased program under section 3004(n) of RCRA to address air emissions from hazardous waste management units other than thermal treatment units (e.g., incinerators, boilers, industrial furnaces). The first phase addressed organic air emissions as a class from two types of emission sources. The first source category was process equipment (e.g., pumps, valves) that contact hazardous waste that contain greater than 10 percent organic compounds, including units such as distillation columns and incinerators. The second source category was certain vents on various treatment technologies, such as air or steam strippers. These standards were promulgated as final rules and published in the **Federal Register** on June 21, 1990 (55 FR 25454). The second phase of standards developed under section 3004(n) of RCRA was proposed on July 22, 1991 (56 FR 33491) and addressed organic air emissions from containers, surface impoundments, and certain tanks. In the third phase of the section 3004(n) standards development, the Agency will develop additional standards for the sources addressed in the first two phases as necessary to address residual risks.

In addition to the RCRA section 3004(n) standards, the Agency regulates organic and metal emissions from the combustion of hazardous waste in incinerators, boilers and industrial furnaces. See subpart O, part 264 for incinerators, and subpart H, part 266 for boilers and industrial furnaces. These controls are expected to address many risks posed by air emissions during treatment of hazardous soils in these units. (A May 18, 1993 Agency statement indicated, however, that some of these standards should be amended to be made more strict in order to adequately control such pollutants as particulate matter and dioxins.)

4. Treatability Variances

When a hazardous soil cannot be treated to the specified standard, the generator or treatment facility may petition the EPA for a variance from the treatment standard. A variance mechanism exists under the LDRs for providing variances from the required treatment standards for hazardous soils. See 40 CFR 268.44.

EPA established the variance procedure to accommodate those wastes that cannot be treated to meet the standards even when appropriate well-designed and well-operated treatment systems are used. A variance is also available when a treatment technology is inappropriate for a waste. Petitioners must demonstrate that the standard cannot be met because the physical or chemical properties of the hazardous soil differ significantly from the hazardous soils EPA examined in establishing the standard or that the standard is otherwise inappropriate for the hazardous soil. (See 51 FR 40605; Nov. 7, 1986.) While treatability variances may be granted that have generic applicability, usually for hazardous soil they are granted on a site-specific basis by the Regional Administrator.

D. Contained-In Determinations

EPA is proposing today to codify the "contained-in" policy for hazardous soil and other environmental media in new § 261.3(g). EPA recently codified this principle for hazardous debris. See § 261.3(f)(2); 57 FR 37194 (August 18, 1992). Today's rule also proposes procedures for obtaining contained-in determinations for contaminated media and requests comment on decision criteria for evaluating petitions for such actions.

In current practice, the primary function of a contained-in determination has been to determine specific constituent concentrations at which the media at a specific site no longer "contained" hazardous waste, and thus would no longer be subject to the management standards for hazardous waste. Such a determination may be made prior to treatment or subsequent to treatment. In the latter case, the contained-in concentration levels for hazardous soil, if they are also minimize threat levels, would serve as a floor on the LDR hazardous soil treatment standards. Thus, such soil is no longer subject to subtitle C management standards, provided that the soil does not exhibit a hazardous waste characteristic. EPA believes that, fundamentally, it is important and necessary to be able to consider, in certain cases, site-related conditions and waste-specific characteristics in establishing soil treatment standards and subtitle C exclusion levels.

Contained-in determinations would not be self-implementing. Rather, EPA believes that site-specific determinations must be made by the appropriate regulatory agency, in careful consideration of relevant factors. This proposal therefore specifies the factors and procedures to be considered and utilized in making contained-in determinations for soil. The proposed rule would not, however, require these explicit requirements when contained-in determinations are made in the context of RCRA closures and remedy selections under RCRA and CERCLA. Such activities are typically conducted with considerable Agency oversight, and cleanup decisions are made in consideration of substantial amounts of site specific technical data. Such remedy selection decisions are generally subject to public notice and comment, through Records of Decision (under CERCLA) or permit modifications, or analogous administrative mechanisms under RCRA. Thus, these processes will provide a surrogate for the petition review process that EPA is proposing today for contained-in determinations that are pursued outside the context of RCRA or CERCLA remedial actions.

In making contained-in determinations, we believe that EPA (or the authorized State) must consider all possible exposure pathways which could pose a threat to human health or the environment. Exposure pathways to be considered thus include direct human contact through ingestion, exposure to ecosystems, and potential for leaching of constituents to ground water.

Given the extreme variations in site-specific and constituent-specific characteristics, EPA is not proposing to adopt specific formulae or other quantitative means of calculating appropriate contained-in levels. The Agency believes that considerable flexibility must be allowed for such decisions, if the process is to be workable.

Proposed § 260.42 provides a set of decision factors that may be considered by the Regional Administrator (or State Director) in making contained-in determinations. In particular:

- Media characteristics;
- Waste constituent characteristics, including solubility, mobility, toxicity, and interactive effects of constituents present that may affect these properties;
- Exposure potential, including potential for direct human contact, and

potential for exposure of sensitive environmental receptors;

- An "acceptable" risk range of 10^{-4} to 10^{-6}
- Surface and subsurface characteristics, including depth to ground water, and characteristics of subsurface formations;
- Climatic conditions; and
- Other site or waste-specific characteristics or conditions that may affect whether residual constituent concentrations will pose a hazard to human health or the environment.

The Agency specifically requests comment regarding these contained-in decision criteria. In particular: (1) Should the final rule specify a list of criteria that must be considered; (2) should the criteria listed above be more specific regarding the conditions which would allow for or preclude contained-in determinations; and (3) are there other factors the Agency should consider when making contained-in determinations, in addition to those listed above?

The procedure for contained-in determinations, as specified in proposed § 260.42, would involve submission of a petition to the EPA Regional Administrator or State Director that requests approval of specific contained-in concentration levels, and which provides adequate supporting information addressing the factors specified in this section to enable an informed decision to be made. Opportunity for public comment would generally be provided for contained-in determinations by means of notice in a local newspaper. There would be a minimum 30-day period for submission of comments from the public. The Regional Administrator (or State Director) would assess any written comments received, and a notice in the local newspaper would be published announcing the final determination. Separate written notice would be sent to the petitioner. Such determinations would constitute final Agency action, and would not be subject to administrative appeal procedures. The Agency also proposes to waive from the procedural requirements of the contained-in determination those already subject to public notice under RCRA or CERCLA authority (See proposed § 260.42(c)).

We noted above that the Agency recently codified the contained-in principle for hazardous debris. See § 261.3(f)(2); 57 FR 37194 (August 18, 1992). The Agency did not, however, establish procedures at that time for making the determinations. Given that the procedures discussed above for hazardous soil are also appropriate for hazardous debris, we are today proposing to apply these procedures to both hazardous debris and hazardous soil and other environmental media.

EPA also notes that contained-in levels could represent site-specific levels at which threats to human health and the environment posed by hazardous constituents in the waste have been minimized. See 57 FR at 985–86 (Jan. 9, 1992) where EPA made a similar statement in the context of contaminated debris. In such a case, treatment standards would be capped at that level. *Id.* Although the contained-in and minimize threat determinations need not be identical (cf. *Hazardous Waste Treatment Council* v. *EPA*, 886 F. 2d at 362–63, explaining that the minimize threat level is a stricter standard (for example) than the levels at which wastes are identified or listed as hazardous), and indeed is generally regarded as among the strictest of the statutory environmental standards (*id.* and *Third Third Case*, 976 F. 2d at 14), there is no absolute bar to a determination that sufficient concentrations of hazardous constituents have been destroyed, removed, or immobilized to determine both that the soil no longer "contains" hazardous wastes and that threats to human health and the environment posed by the hazardous constituents in the wastes have been minimized. EPA stresses that in making such a determination, threats to both human health and the environment would have to be considered (see section 3004(m) and 886 F.2d at 362). In addition, any such determination would have to be based exclusively on remaining threats posed by the waste without regard to how the waste will be managed (see *American Petroleum Institute* v. *EPA*, 906 F. 2d 729, 735–36 (D.C. Cir. 1990) explaining that section 3004(m) standard ordinarily can be satisfied only by treatment occurring before subsequent disposal of the waste).

EPA solicits comment on its proposed approach for contained-in determinations, particularly on the decision factors to be used, the procedures for making determinations, and the proposed linkage to treatment standards and subtitle C exclusion levels.

E. Soil Treatment Database

1. Treatment Technologies

EPA believes that nine general technologies have been demonstrated and are available for treating hazardous soil: (1) Biological treatment; (2) chemical extraction; (3) dechlorination; (4) high-temperature metals recovery; (5) solidification/stabilization/immobilization; (6) thermal desorption; (7) thermal destruction; (8) vitrification, and, (9) soil washing. A brief description of each technology is presented in Appendix A following this preamble.

2. Development of the Database

The Agency has collected data on the treatment of hazardous soil from CERCLA remedial actions, demonstrations under the Superfund Innovative Technology Evaluation (SITE) program, industrial sources, and EPA-sponsored treatment tests. The Agency attempted to obtain all available soil treatment data which met minimum requirements of quality assurance and quality control. Each treatment test contains information on the treatment process used and results of laboratory analyses on untreated and treated soil. A hazardous soil database was developed to organize and analyze this treatment data. The database will be available as a national resource to EPA regions, states, PRPs and other government agencies to support LDR applications and compliance, technology screening for selection of remedial actions, and variance petition screening and support.

To develop the soil treatability database, the Agency prepared Data Summary Forms (DSFs) to record information from the treatment test reports. The DSFs contain information on site identification, soil matrix, soil collection description, treatment system, design and operating conditions of the treatment system, concentrations of hazardous constituents in untreated and treated soil, QA/QC information, and residual matrix information.

After all the data were edited (the next section of this preamble explains the criteria used to edit the data), 36 treatment technologies were represented by 2541 data pairs, for a total of 295 treatment tests: 43 (15%) of the tests were full scale, 108 (36%) were pilot scale, and 144 (49%) were bench scale. Table 1 lists the number of DSFs having information for each technology as well as the scale of the test.

TABLE 1—NUMBER OF BENCH, PILOT AND FULL SCALE TREATMENT TESTS BY TECHNOLOGY

Treatment Technology	Scale of test		
	Bench	Pilot	Full
BT01*—Aerobic Bioremediation	2	1	0
BT03*—Aerobic/Anaerobic Bioremediation	0	1	0

TABLE 1—NUMBER OF BENCH, PILOT AND FULL SCALE TREATMENT TESTS BY TECHNOLOGY—Continued

Treatment Technology	Scale of test		
	Bench	Pilot	Full
BT04*—Composting	4	1	0
BT05*—Aerobic Bioslurry	7	2	1
BT07*—In-situ Bioremediation/ Unlined	0	0	1
BT08*—Aerobic Composting/ Lined	3	5	0
BT12*—Aerobic Land Treatment/Lined	2	0	2
CE00*—Chemical Extration	0	3	0
CE01*—Solvent Extraction	9	6	0
CE03*—Critical Fluid Extraction	0	2	0
CT01*—Hydrolysis	1	0	0
DC01*—KPEG Dechlorination	6	1	1
DC02*—APEG Dechlorination	4	0	1
DC03*—High Temperature Dechlorination	0	1	0
IM00—Immobilization	9	2	1
IM01—Stabilization	18	16	8
IM03—Cement Stabilization	39	3	2
IM04—Fly Ash Stabilization	3	0	0
IM04/IM05—Fly Ash/Lime Stabilization	1	0	0
IM06—Kiln Dust Stabilization	5	0	0
ST01*—Air Stripping	0	1	1
ST02*—Steam Stripping	0	0	1
ST03*—Vacuum Extraction	0	0	5
SW01*—Soil Washing	8	0	0
SW02*—Acid Washing	0	1	0
SW03*—Water Washing	4	1	1
TD00—Thermal Destruction	1	0	0
TD01—Rotary Kiln	1	13	9
TD04—Infrared	0	8	0
TD06—Pyrolysis	0	2	0
TD07—Circulating Bed Combustion	0	1	0
TD08—Vitrification	0	1	0
TH01*—Low Temperature Thermal Desorption	9	28	7
TH02*—High Temperature Thermal Desorption	6	3	1
TH03*—Photolysis	1	5	0
TH07*—Thermal Distillation	1	0	1
Totals	144	108	43
(Percent)	(49)	(36)	(15)

* These technologies are considered by the Agency to be innovative technologies.

3. Analysis of the Database

In analyzing the soil treatability database, the Agency needed to determine the adequacy of the data for setting treatment standards for hazardous soil. Therefore, the Agency reviewed the design and operating conditions for each treatment test included in the database to determine if any data should be eliminated, i.e., the Agency believed that poorly designed and operated treatment tests should be eliminated from the data set used to determine treatment standards. To evaluate the data, the Agency developed a set of minimally acceptable design and operating conditions for each technology. These criteria, or performance standards, can be found in the Hazardous Soil Rule Background Document which is in the RCRA docket for this proposed rule. A list of the data eliminated from consideration along with the rationale for each decision can be found in the docket. A total of 1183 data pairs were removed from the soil treatment standard data set as a result of this review.

The Agency then further reviewed the data set using the following criteria: (1) Immobilization data for organic constituents were not used; (2) metal constituents data from immobilization, high temperature metals recovery, soil washing, acid washing, water washing, or detergent washing were used while metals data from all other technologies deemed as inappropriate for metals were removed, (3) dechlorination data were used only for appropriate organic constituents; (4) data pairs with nondetect untreated concentrations were not used; (5) data pairs where the treated concentration for metals was given as total concentration were not used (and initial concentration was a leachate); (6) treated levels were not used where the QA/QC indicated that the percent recovery values for spikes were less than 20% or greater than 200%, and, (7) data pairs with untreated concentrations less than the proposed universal standard were not used. A total of 2541 data pairs remained after application of these criteria.

a. *Consideration of innovative technologies.* As indicated earlier, the Agency believes it important (and reasonable) to allow the use of innovative technologies, as well as incineration, in setting treatment standards for soils. Our basis for this is severalfold: First, the data suggest that innovative technologies can achieve treatment levels within a reasonable range of the levels obtained by incineration. Second, the Agency believes that it is not generally practicable to treat the large volumes of hazardous soil by incineration, particularly given the relatively low concentrations of hazardous constituents typically present. A common sense approach would indicate that incineration may be practical only for "hot-spots" where soil is highly contaminated with organic constituents (see 55 FR 8760–61, March 8, 1990). For the large volumes of soil that are contaminated with low or moderate levels of toxic constituents, innovative technologies are practical, available, and can achieve the proposed levels of the technology-based standards. Third, several innovative technologies (e.g., high temperature metals recovery, chemical extraction) are recovery technologies; we note that RCRA voices a strong preference for use of such technologies. (See, e.g., H.R. Rep. No. 198, 98th Cong. 1st Sess. 31.) And, fourth, the Agency is committed to allowing and encouraging the use of innovative technologies, particularly biological technologies, for the treatment of hazardous waste.

b. *Rationale for not using the "traditional" BDAT approach to develop hazardous soil treatment standards.* In analyzing the data, the Agency determined that the "traditional" statistical method previously used by the LDR program was not appropriate for hazardous soil. In the past, the Agency has typically evaluated incineration treatability data to identify the "most difficult to treat" waste and established the treatment standard based on a statistical analysis of data from the treatment of that waste. We believe this approach is not appropriate for hazardous soil. As indicated above, the Agency prefers to establish soil treatment standards at levels achievable by a variety of technologies, including innovative technologies. Given the large volumes of

hazardous soil, wide variations in contamination, and varying soil types, the Agency believes that flexibility in choice of technology is appropriate. For example, an aggressive highly efficient technology would not be needed to treat a lightly contaminated soil.

c. *Graphical analysis of data.* The Agency used a graphical representation of the data for each of the 80 constituents for which there was adequate data. The Agency then developed a data set for each constituent with the screened data. The data in each data set were plotted using one variable, treated concentration. The Y-axis represented the treated concentration in parts per million and the X-axis arrayed the data from lowest to highest concentration. The data were plotted using symbols to distinguish the various treatment technologies for which data was available and to denote whether the value was a "detect" or a "nondetect" value. The existing LDR treatment standards for the constituent and the proposed universal standard were also represented on the plots as benchmarks. These graphs are available in the docket.

The graphical plots for each of the 80 constituents facilitated a comparison of the treatment levels achievable by the various technologies, the existing waste code treatment standards, and the proposed universal standards. To identify a potential soil treatment level, we identified the point on the graph that was the last point in the lowest "plateau" (i.e. where the slope of the curve is close to zero) and below which were included data representing one or more well designed and operated innovative technologies obtaining efficient removal of constituents (i.e., high percent removal). This point was called the potential BDAT level. Because the proposed universal standards were within a reasonable range of this potential BDAT level, and in order to simplify and streamline the LDR program, the universal standards were selected as base treatment levels. (We note that the proposed universal standards were within a reasonable range of, and generally higher than, the treatment level suggested by the plateau on the graph.)

To determine that the treatment data from the innovative technologies were, in fact, representative of well-operated, efficient treatment units, we analyzed all data points considering factors including: untreated concentration, percent treatment, and design and operating conditions of the technology.

Essentially, this analysis was used to answer two questions: (1.) Can the proposed universal standards be met for hazardous soil utilizing innovative technologies? and; (2.) Are there any constituents for which the universal treatment levels would not be achievable? The analysis concluded that for almost all constituents, the proposed universal standards can be met using well-designed and well-operated innovative technologies. For several constituents for which only incineration data were available, this conclusion could not be reached. However, incineration was shown to be effective in treating these constituents.

d. *Transfer of proposed universal standards to constituents without data.* The soil data base includes data for 94 of the 191 constituents subject to today's proposed soil treatment standards. Because the available data largely justify the use of the universal standards for soil treatment, (i.e., innovative technologies appear capable of treating soil to the universal levels proposed today), the universal standards were transferred to constituents for which the database does not contain data. This transfer is justified because for all organic constituents for which innovative technology data were available, the data supported the use of the universal standards. In addition, allowing the 90% reduction in hazardous constituents alternative, with or without the one order of magnitude "ceiling," provides assurance that the proposed levels would be routinely achievable. Treatability variances remain an option for particular soils which prove more difficult to treat.

4. Request for Additional Data and Comment

EPA continues to solicit treatability data and other information relevant to the hazardous soil treatment standards proposed today. Commenters submitting performance data for treatment or recovery technologies in response to today's proposed rule are requested to include, to the extent possible, the following: Complete chemical and physical analysis of the hazardous soil, treated soils, treatment residuals, and any other materials separated from the hazardous soil; technical descriptions of the treatment or recovery process, including design and operating parameters; and information on the quality control/quality assurance (QA/QC) procedures utilized for sampling, analyzing, and operating the technology.

EPA developed "Quality Assurance Project Plan (QAPP) for Characterization Sampling and Treatment Tests Conducted for the Hazardous Soil and Debris (CS&D) Program" that describes the data quality objectives of the hazardous soil and debris program and provides the following: Detailed protocols for field sampling and measurement; a list of hazardous soil and debris constituents; procedures for sample custody and transportation; and additional QA/QC procedures for sampling and analysis. This document is available in the docket. Those intending to submit additional data to EPA are urged to consult the QAPP and communicate with EPA to confirm that the data meets EPA's QA/QC objectives.

EPA prefers pilot and full scale data over bench scale data. The Agency considered treatment test scale to be associated closely with the quantity of material used in the individual treatment tests that provided treatment data. When entering data into EPA's database, scale was entered as indicated by the data and accompanying documents. When the data reference did not provide scale information, the scale was assigned by EPA according to the quantity of soil treated. Generally, if less than 1 kg was treated, the test was categorized as bench-scale. If more than 1 kg, but less than 1,000 kg was treated, the test was categorized as pilot-scale. Cases where treatment involved more than 1,000 kg, the tests were categorized as full-scale. EPA requests comments on these quantity specific categories.

Alternative methods for defining the scale of the treatment test will also be considered. One proposal considers the intent of the test. For example, bench-scale tests are designed to determine whether alternative technologies can achieve established performance criteria. Whereas the intent of a pilot-scale study is to provide detailed cost, design, and performance data. Thus, data collected from a pilot-scale study should yield accurate scale-up information. Full-scale operations are designed to achieve remediation of the site and are not considered studies. The Agency requests comment on this alternate definition of scale, and on other potential definitions or applications of treatment test scale.

In addition, EPA continues to solicit information on the costs associated with treatment or recovery technologies for hazardous soil in order to prepare a revised regulatory impact analysis. Of interest are technical reports that include costs or estimates of costs for set-up and operation of the treatment technology. These reports should include the appropriate information on treatment efficiencies and applicability to various soil types, including all the technical information discussed in the preceding paragraphs.

F. Sampling and Analysis Protocols—Grab vs. Composite Samples

Where performance data were based on the analysis of composite and grab samples, the Agency established treatment standards based on the analysis of grab samples. Grab samples normally reflect maximum process variability, and thus would reasonably characterize the range of treatment system performance. Basing treatment standards on grab samples (and enforcing on that basis) is, of course, permissible. *Third Third Case*, 976 F.2d at 34.

In cases where only composite data exist, the Agency considers the QA/QC of the data, the inherent efficiency of the process design, and the level of performance achieved. The Agency may then choose to use this composite data to develop treatment standards. Where these data were used to establish treatment standards, the treatment standards were identified as based on analysis of composite samples. Enforcement of that standard thus would also be based on composite samples.

G. Relationship to Other Regulations and Programs

1. RCRA Land Disposal Restrictions Program

a. Existing LDR treatment standards. The Agency has promulgated land disposal restriction treatment standards for all hazardous waste that were listed or identified in part 261 before the enactment of HSWA. Soil contaminated with a hazardous waste that is subject to a treatment standard is also subject to that treatment standard. There is a question as to whether treatment standards applicable to "as generated" hazardous waste are also appropriate for hazardous soil. The Agency is also concerned that treatment technologies considered BDAT for the actual waste may not be able to achieve the waste treatment standards in soil. The Agency believes that soil may be more difficult to treat than waste because of factors such as: (1) Contamination from multiple wastes results in complex treatment and analysis matrices; and, (2) varying soil types, such as easy-to-treat sandy soil, difficult-to-treat clays, and soils with high content of organic matter. To address these concerns, the Agency developed the soil treatment database to establish treatment standards that would be appropriate for hazardous soil. Thus, when today's proposed soil treatment standards are promulgated, hazardous soil will become subject to those standards in lieu of the treatment standards for the RCRA wastes contaminating the soil.

b. Soil contaminated with newly listed wastes which have final treatment standards. EPA recently promulgated treatment standards for "newly-listed" (i.e., listed since enactment of HSWA in 1984) hazardous wastes in the Phase I final rule (August 18, 1992) including: F037–F038, K107–K110, K111, K112, K117, K118, K123, K124, K125, K126, K131, K132, K136, U328, U353, and U359. The Agency chose not to apply the treatment standards for these wastes to hazardous soil contaminated with these wastes. Consequently, we are proposing today to subject soil contaminated with these newly listed wastes to the soil treatment standards.

c. Soil contaminated with newly listed and identified wastes which have proposed treatment standards. In a separate section of this proposed rule, the Agency is proposing treatment standards for additional newly listed and identified hazardous wastes, including those that exhibit the toxicity characteristic for organics. The proposed hazardous soil treatment standards, when final, would apply to soils contaminated with those newly listed or identified hazardous wastes.

2. RCRA Corrective Action

Treatment standards proposed in this rule would, when finalized, apply to all RCRA hazardous soil (i.e., soil contaminated with a listed waste or exhibiting a hazardous characteristic.) For example, soil treatment standards promulgated under this rule would apply to corrective action at RCRA-permitted facilities or interim status facilities, when remediation of hazardous soil involves excavation and land disposal or placement of such soil. However, the Corrective Action Management Units and Temporary Units Final Rule (58 FR 8656) creates a remediation unit, called a corrective action management unit (CAMU), within which management of remediation wastes would not constitute land disposal or placement. (See 58 FR 8659). Remediation waste includes soils containing listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under § 264.101 and RCRA section 3008(h). (See 58 FR 8683). Therefore, management of remediation wastes within a CAMU designated according to the criteria in § 264.552 would not require the application of LDRs, including today's soil treatment standards.

3. Voluntary RCRA Cleanups

The proposed hazardous soil treatment standards, when final, would apply to all RCRA hazardous waste land disposed. Therefore, hazardous soil generated during the course of a voluntary cleanup would be subject to the hazardous soil treatment standards.

The Agency is concerned that the existing treatment standards that apply to hazardous waste (and soil containing hazardous waste) may pose a disincentive to voluntary cleanups. The soil treatment standards proposed today should begin to alleviate the impediments to voluntary cleanups. In general, the treatment standards proposed in today's rule regarding hazardous soil are higher than the existing treatment standards, and are intended to allow flexibility in determining what treatment technologies to utilize. EPA requests comment regarding the proposed soil treatment standard options and the effect the approaches, if promulgated, may have on voluntary cleanups.

4. Phase I LDR Rule: Hazardous Debris

On August 18, 1992, the Agency published the Phase I LDR rule; among other things, this rule set technology-based treatment standards for hazardous waste-contaminated debris. In summary, to meet the land disposal restrictions, hazardous waste-contaminated debris must be treated to the existing standards, or alternatively by specified technologies (i.e. treatment methods) based on the type of debris and the type of contaminants present. If this treatment is performed with a specified destruction or extraction technology, the treated debris would no longer be considered contaminated nor is it a hazardous waste (provided it also does not exhibit a hazardous characteristic), and thus is no longer subject to RCRA subtitle C regulation. For a further discussion, refer to the final rule (57 FR 37194, August 18, 1992).

Debris is defined as a solid material (man-made objects or environmental media) intended for disposal that: (1) Has been originally manufactured or processed, except for solids that are listed wastes or can be identified as being residues from treatment of wastes and/or wastewaters, or air pollution control devices; or (2) is plant or animal matter; or (3) is natural geologic material exceeding a 60 mm sieve size including gravel, cobbles, and boulders (sizes as classified by the U.S. Soil Conservation Service), or is primarily debris mixed with soil, liquid, sludge, or other solid waste materials. The "primarily" determination is based on the volume of

soil and debris in the loader bucket as excavated. Separation is not required. However, the generator may use screening (or other separation techniques) to separate the soil from 60 mm and larger gravel and man-made objects.

It is clear from the definition of debris that there will be an overlap with the proposed hazardous soil requirements. The Agency is following the precedent set in the hazardous debris rule: In the event of mixtures of soil and debris that are not readily separable, the Agency has decided that the primary category of a mixture (i.e., soil or debris) based on visual inspection will determine how that mixture will be regulated.

5. CERCLA as amended by SARA

This section discusses the relationship between the proposed treatment standards for hazardous soil and the Agency's response actions implemented under CERCLA (Superfund). We discuss here the current applicability of the LDR program to the Superfund program as well as the impact of today's proposed soil LDR treatment standards on the Superfund program. In this section, we discuss the difference between applicable LDR requirements and the Superfund program's use of "relevant and appropriate" requirements of other environmental laws to remediate hazardous soil.

The Superfund program's efforts to remediate hazardous soil fall into three categories: (1) Where LDR requirements are applicable; (2) where LDR requirements are found to be relevant and appropriate under the circumstances of the release; and (3) where LDR requirements are neither applicable nor relevant and appropriate. When hazardous soil is excavated, treated in another unit, and replaced on the land, or excavated and disposed in a unit outside of the area of contamination (AOC), the LDR regulations are either applicable requirements or they may be found to be relevant and appropriate requirements under the circumstances of the release. When hazardous soil is not excavated and placed into another unit as part of a Superfund response action (e.g., consolidation within the AOC, in-situ treatment, or no treatment), the LDR treatment standards do not apply because there has been no "land disposal" of a hazardous waste (RCRA Section 3004(k), 55 FR 8759–60 (March 8, 1990).) Today's proposal would not change this.

If the hazardous soil is contaminated with a listed hazardous waste or if it fails a RCRA characteristic test, the LDR regulations are applicable to the hazardous soil (see, e.g. RCRA section 3004 (d)(3),(e)(3); also see Superfund LDR Guide #5, Directive 9347.3–06FS, July 1989.) In cases where there is no known evidence that the soil is contaminated with a prohibited listed hazardous waste and thus the LDRs are not legally applicable, but the soil is contaminated with substances known to be constituents of a particular listed waste, EPA evaluates the soil to determine whether the LDR treatment standards are relevant and appropriate. See NCP, 40 CFR 300.400 (g)(2); Superfund LDR Guide #7, Directive 9347.3–08FS, December 1989.

In determining the potential relevance and appropriateness of the LDR treatment standards in a particular response action under the Superfund program, EPA makes the following comparisons, among others, where pertinent: (1) The actions or activities regulated by the requirement as compared to the remedial action contemplated; (2) the purpose of the requirement and the purpose of the CERCLA action; (3) the substances regulated by the requirement and the substances found at the CERCLA site; and (4) the medium regulated or affected by the requirement and the medium contaminated or affected at the CERCLA site (NCP, 40 CFR 300.400 (g)(2).

Currently, as set out in the preamble to the NCP, there is an established presumption that the existing BDAT treatment standards are inappropriate for hazardous soil and debris, 55 FR 8759.62, and thus under RCRA regulations at 40 CFR 268.44(h), a treatability variance is generally appropriate (unless the presumption is rebutted). Accordingly, much of the hazardous soil from CERCLA actions now excavated and disposed of is treated to meet site specific treatability variance standards. (EPA has prepared guidance documents as an aid to implementation of treatability variances.) See Superfund LDR Guide #6a, Directive 9347.3–06FS, September 1990, or Superfund LDR Guide #6b, Directive 9347.3–07FS, December 1989. Given that today's proposed treatment standards for hazardous soil are based on actual soil treatability data from technologies other than incineration, including a number of innovative technologies, the Agency anticipates that there will be less need to invoke the variance process when soil treatment standards become effective. We note, however, that today's proposed soil treatment standards would retain the treatability variance procedures of 40 CFR 268.44.

6. Soil Contaminated by Underground Storage Tanks

Petroleum contaminated soil removed during remediation of releases from a RCRA Subtitle I underground storage tank (UST) generally are not subject to the LDR soil treatment standards. These soils would generally only be defined as hazardous because of the toxicity characteristic (TC). Such petroleum contaminated soil that fails the TC for one or more of the newly identified organic wastes (D018–D043) has been temporarily deferred from regulation as a hazardous waste (55 FR 26986). In addition, the Agency has recently proposed to permanently exempt UST petroleum-contaminated soils from the TC rule (58 FR 8504). However, should a Subtitle I petroleum contaminated soil fail the TC using the superseded Extraction Procedure (EP) for toxicity characteristics D001 through D017 (the original EP toxicity characteristics), ignitability (D001), corrosivity (D002), and reactivity (D003), the soil would not be subject to the deferral and would be subject to all applicable RCRA land disposal restriction requirements.

It is notable that there is a pending lawsuit challenging this deferral. Pending the results of the litigation, these TC soils may become subject to today's proposed soil treatment standards when finalized.

Finally, the Agency reminds the regulated community that any soil contaminated by a release from a hazardous substance UST (Subtitle I) as well as from all non-Subtitle I USTs (including petroleum tanks) will continue to be subject to applicable RCRA hazardous waste requirements, including the existing land disposal restrictions and the hazardous soil treatment standards, when promulgated.

7. Other Petroleum Contaminated Soil

In response to petitions from several states, the Agency has recently proposed to temporarily suspend from regulation as hazardous waste petroleum contaminated soils from sources other than Subtitle I USTs, such as above-ground tanks and pipelines. Such a deferral has only been proposed, however; until it is finalized, these soils would continue to be subject to the applicable RCRA hazardous waste regulations, including the existing and future land disposal restrictions. See 57 FR 61542.

8. Radioactive Mixed Wastes

a. Definition of mixed wastes. Radioactive mixed wastes are those wastes that satisfy the definition of radioactive waste subject to the Atomic

Energy Act (AEA) that also contain a waste that is either listed as a hazardous waste in subpart D of 40 CFR part 261, or that exhibits any of the hazardous waste characteristics identified in subpart C of 40 CFR part 261. On July 3, 1986 (51 FR 4504), EPA determined that the hazardous portions of mixed wastes are subject to the RCRA regulations.

The majority of mixed wastes can be divided into three categories based on the radioactive component of the waste: (1) Low-level wastes, (2) transuranic (TRU) wastes, and (3) high-level wastes. Low-level wastes include radioactive waste that are not classified as spent fuel from commercial nuclear power plants, or that is not defense high-level radioactive waste from weapons production. TRU wastes are those waste containing elements with atomic numbers greater than 92, the atomic number of uranium. High-level radioactive wastes are defined as spent fuel from commercial nuclear power plants, and wastes from weapons production.

b. RCRA requirements. In the final rule for the Third Third wastes, EPA promulgated treatment standards for four treatability groups of mixed waste: (1) Specific high-level wastes, (2) D008 radioactive lead solids, (3) mixed waste containing elemental mercury, and (4) mercury containing hydraulic fluid contaminated with radioactive materials. The Agency further asserted that "all promulgated treatment standards for RCRA listed and characteristic wastes apply to the RCRA hazardous portion of mixed radioactive (high-level, TRU and low-level) wastes unless EPA has specifically established a treatability group for that specific category of mixed waste."

The Agency is today proposing to subject mixed radioactive hazardous soil to the proposed treatment standards for hazardous soil (in addition to any regulation of that material under AEA), rather than to the treatment standards for the contaminating waste. This includes soil contaminated with mixed waste for which special treatability groups have been established. Therefore, this soil would be subject to the proposed soil standards rather than to the specified treatability group standards. The Agency solicits comments on this approach.

9. Special Provisions for Soil Containing Asbestos

Asbestos is a naturally occurring family of fibrous mineral substances. The typical size range of asbestos fibers is 0.1 to 10 micrometers in length, which is not generally visible to the human eye. When disturbed, asbestos fibers may become suspended in the air for many hours, thus increasing the extent of asbestos exposure for individuals within the area. EPA and the Occupational Safety and Health Administration (OSHA) have major responsibility for the regulatory control of exposure to asbestos. EPA controls emissions of asbestos to the ambient air under section 112 of the Clean Air Act, through the National Emission Standards for Hazardous Air Pollutants (NESHAPS) program.

The Agency believes that special provisions might be needed for regulation of hazardous soil that contains asbestos. The Agency specifically requests comment on the need for such provisions, and on what special provisions might be needed. One option the Agency is considering for disposal of hazardous soil containing asbestos is to collect and seal asbestos containing soil in leak-tight containers (as described in the NESHAP requirements), followed by macroencapsulation and disposal in a Subtitle C landfill. This option would be in lieu of treating the soil by destroying or removing the contaminants subject to treatment.

H. Related EPA Activities on Contaminated Media

1. Contaminated Media Cluster

The Agency has undertaken an initiative designed to improve the overall quality of its regulatory decision-making by looking at groups or "clusters" of regulations in order to develop more integrated approaches to various environmental problems. One of these "clusters" is contaminated media, which includes hazardous soil. The goal of the Contaminated Media Cluster project is to develop a set of overarching principles to guide the Agency's approach to policies and regulations dealing with remediation.

The Agency has gathered preliminary information on the quantities and types of media needing remediation, the types of risks they represent, the current statutory and regulatory framework, the elements of an effective cleanup process, and the costs and benefits of cleanup. As part of this effort, the Agency sponsored a forum in January 1992 with participants from industry, trade associations, and congressional staff, as well as a series of meetings for regional and state participants. The purpose of the forum and meetings was to discuss the issues involved in remediating contaminated media. This LDR proposed rule is consistent with the efforts of the Contaminated Media Cluster project. The LDR program will continue to consider the goals and principles of the Cluster as they are further developed.

2. Weathered Sludges

EPA believes that weathered sludges may constitute a new category of contaminated media, or at least a different treatability group. EPA currently is attempting to assess the definition of weathered sludges, the comparison of these sludges to newly generated sludges, methods available to treat these sludges, and the relationship of these sludges to sediments. EPA is requesting data or comments on any of the above areas to consider in developing a research program which may lead to an amendment of the LDR treatment standards that are currently applicable to weathered sludges.

3. EPA Lead Strategy

In the case of hazardous soil contaminated with lead, EPA seeks to integrate the present rulemaking effort with the Agency's Lead Strategy, which was issued on February 21, 1991. This strategy presents a coordinated approach addressing the significant health and environmental problems resulting from lead pollution. Lead is a multimedia pollutant with significant toxic concerns; accordingly, EPA plans to address lead contamination by coordinating its authorities across programs. EPA solicits comments on the option of setting a total lead standard (versus the proposed leachate standard), consistent with the goal of the lead strategy. Copies of the Lead Strategy can be obtained by calling the TSCA Hotline at 1–800–835–6700.

4. Bioremediation

As a follow-up to the Administrator's Bioremediation Summit held in February, 1990, EPA explicitly is soliciting treatment data on biological technologies to aid in the development of treatment standards for hazardous soil. EPA is aware of the impact of all LDR rulemakings on the development and application of innovative treatment technologies. This notice affirms EPA's interest in gathering private sector data for consideration in setting treatment standards.

VIII. Compliance Monitoring and Notification

A. Compliance Monitoring

In the May 24, 1993 interim final rule (58 FR 29872), the Agency adopted the same approach for monitoring underlying hazardous constituents that it had used previously (in the Third Third rule at 55 FR 22620, 22621) for

multi-source leachate (F039.) That approach allowed generators and facilities that manage ignitable or corrosive wastes to monitor for underlying hazardous constituents "reasonably expected to be present." Generators could base this determination on their knowledge of the raw materials they use, the process they operate, and the potential reaction products of the process, or upon the results of a one-time analysis for the entire list of constituents subject to treatment. Treaters and disposers must perform some testing to demonstrate compliance with the standards. 58 FR 29874–875.

In adopting these requirements, the Agency noted that they might be modified in the future, and that there are certain potential deficiencies in the process, in particular, the lack of a federal requirement to notify the subtitle D treatment (if any are actually treating decharacterized prohibited wastes) and disposal facilities (see further discussion at preamble section B.3 below, and in the interim final rule (58 FR 29874, May 24, 1990)). The Agency is further concerned that generators may not be able to adequately determine the underlying hazardous constituents present in characteristic wastes, or to determine, without testing, whether these constituents are present at levels below the treatment standards. (In the case of listed wastes, which are relatively uniform as to waste composition, EPA has identified all the potential hazardous constituents that could be in the waste and specified those that must be treated. EPA is unable to make such a general finding for characteristic wastes, because they vary to a great degree. Hence, the use of generator knowledge or sampling and analysis is necessary for determining the presence and levels of underlying hazardous constituents in characteristic wastes, although the Agency may be able to develop such information as guidance for specific types of characteristic wastes.)

The Agency solicits comment on whether generators should be required to do some testing of characteristic wastes to determine what hazardous constituents are present and whether they meet treatment standards. Alternatively, the Agency could require generators to certify what underlying hazardous constituents are in the waste and whether they meet treatment standards, in a manner similar to the existing certification requirement for generators of wastes that meet the treatment standards as generated (see 40 CFR 268.7(a)(2)(ii)). While a testing requirement would ensure that there is data for each waste, it could pose an unnecessary burden when generator knowledge would suffice.

If such testing were required, an issue would exist as to frequency of testing and how this could be determined without the type of interaction that occurs for facilities developing waste analysis plans as part of the permitting process. One possible option is to develop some type of self-implementing waste analysis plan analogous to that required for generators who treat their prohibited wastes in 90-day tanks and containers. See § 268.7(b)(4).

The Agency also solicits comment, however, whether such a testing requirement is necessary based on the following analysis of the existing rules. If a generator does no treatment of characteristic wastes, the wastes must be sent to subtitle C treatment facilities before disposal (since the wastes will still exhibit a characteristic). In this case, the wastes will be accompanied by the § 268.7(a) notice and certification telling the treater what the treatment standard for the waste is, including identification of the underlying hazardous constituents requiring treatment. Although this determination need not be based on testing, the treatment facility must do some actual testing to determine whether the treated waste meets the treatment standards, the frequency of testing to be determined by the treatment facility's waste analysis plan. § 268.7(b)(1)–(3) and 58 FR 29874. The treater would then send a notification form to the EPA Region or authorized state pursuant to § 268.9.

If a generator does some treatment, such as removing the characteristic but not treating for underlying hazardous constituents, then it would be a subtitle C treater and would be required to conduct some analysis of the waste, as just explained. If treatment is conducted in units not requiring permits, the generator must prepare a waste analysis plan "based on a detailed chemical and physical analysis of a representative sample of the prohibited waste(s)". § 268.7(b)(4)(i). Consequently, such a generator is already required to conduct some waste analysis.

EPA consequently solicits comment as to the appropriateness of a further (or perhaps, more explicit) requirement of generator testing.

B. LDR Notification

1. Constituents To Be Included on the LDR Notification

EPA solicited comment on how to limit the constituents subject to treatment to be monitored in TC wastes and hazardous soil (and thus, the ones required to be reported on the LDR notification) (see section VIII.A). Commenters on this issue when it was raised in regard to ignitable and corrosive characteristic wastes in the Supplemental Information Report prepared for the Notice of Data Availability on the *Third Third Case* generally said that the regulated community should only be required to address those constituents which are in the characteristic wastes as generated, prior to any subsequent mixing with other wastes, and the generators should monitor only for those hazardous constituents reasonably expected to be present in the characteristic waste. This is the approach being proposed in this rule. The determination of which constituents subject to treatment are in the waste may be made based on a one-time analysis of the waste to determine which of the constituents subject to treatment are present, or it may be made based on knowledge of what constituents are reasonably expected to be present in the waste. Supporting documentation for the determination should be kept in the generator's on-site files for five years. (See § 268.7(a)(7).) This approach for determining which constituents are present in the waste is not necessarily the approach that will be taken in future rulemakings.

2. Management in Subtitle C-Regulated Facilities

The Agency has information that many of the TC wastes that are not managed in CWA or SDWA systems are being treated in hazardous waste management units (primarily incinerators) subject to RCRA subtitle C. Hazardous soil contaminated with listed hazardous wastes and, perhaps, some characteristic wastes, will oftentimes be treated in a subtitle C unit. In such a case, the notification, certification, and recordkeeping requirements set out in 40 CFR 268.7 apply. This means, generally, that a notification would be prepared for each waste shipment sent from the generator to the treatment facility, in the same manner that such paperwork follows a listed waste from "cradle to grave."

For TC wastes and characteristic hazardous soils, once the waste is no longer hazardous, however, the only further recordkeeping and documentation required is set out in 40 CFR 268.9. Section 268.9 requires that the generator/treater (including generators who treat, see 51 FR at 40598, November 7, 1986) prepare a one-time notification which is sent to the EPA Region or authorized state and also kept in the generator or treater's files. The notification must include the

name and address of the subtitle D facility receiving a waste shipment, a description of the waste initially generated, and the treatment standard to which the waste is subject (see § 268.9(d), as amended at 57 FR 37271 (August 18, 1992)). For TC wastes and hazardous soils, these would be universal treatment standards. These treaters must certify that they are familiar with the treatment process used at their facility and that the process can successfully treat the waste to meet the treatment standards without impermissible dilution. See § 268.7(b)(5), which applies to persons who treat formerly characteristic wastes (see § 268.9(d)(2)). The Agency believes that, normally, at least some waste analysis is needed to make a good faith showing for meeting the treatment standards, given the number of hazardous constituents that could be covered by those standards.

It is important to state that in addition to other waste codes that are currently required to be included on notifications under § 268.7, generators of TC wastes that are managed in non-CWA/non-CWA-equivalent/non-Class I SDWA systems and in hazardous soil must identify the constituents subject to treatment along with the corresponding constituent universal treatment standards.[1]

3. Potential Management of Decharacterized Wastes at a Subtitle D Waste Management Facility

EPA is soliciting information on certain potential waste management practices for decharacterized TC wastes and soils to help determine whether new notification requirements are needed. The Agency wishes information on whether generators or treaters, after removing the characteristic, send the decharacterized TC waste or soil off-site to a subtitle D (nonhazardous waste) treatment facility for further treatment to address the underlying hazardous constituents subject to treatment. Although the initial generator of the waste would have to comply with § 268.9, there is no current requirement that the generator notify a subtitle D nonhazardous waste treater of the constituents subject to treatment in the waste, or for the subtitle D treater to verify compliance with the treatment standards or to notify the ultimate disposal facility as to the constituents in the waste. If such waste management arrangements currently exist or are likely to occur as a result of today's rule when it is finalized, some wastes would not be subject to the LDR notification requirements, as was described in the interim final rule of May 24, 1993 (58 FR 29874). Without such recordkeeping, EPA might have difficulty enforcing treatment standards for the constituents subject to treatment. However, these requirements would impose an additional burden on generators, especially those that have established alternative arrangements to provide this information to treaters. EPA solicits comment as to the potential enforcement concerns if there is not a federal requirement that generators notify subtitle D treatment and disposal facilities receiving decharacterized wastes.

Generators and subtitle D facilities may have substantial incentives to exchange and verify compliance with treatment standards for underlying hazardous constituents independently of regulatory requirements. Generators and subtitle D facilities, for example, are subject to CERCLA liability for their waste management practices. Therefore, the Agency solicits comment on whether it should consider a federally-mandated notification requirement. If a notification gap exists, one option would be to require that generators or treaters that decharacterize TC wastes or hazardous soil provide any subsequent treaters of that waste with a list of the underlying hazardous constituents subject to treatment that the waste contains, and for the final treater to provide a one-time notification to EPA.

IX. Further Solicitation of Comment Regarding Exclusion of Hazardous Debris That Has Been Treated by Immobilization Technologies

A. Background

The final Phase I Land Disposal Restrictions (LDR) rule promulgated on June 30, 1992 (57 FR 37194, August 18, 1992), excludes from subtitle C control hazardous debris that is treated using an extraction or destruction technology provided the treated debris meets the performance standards specified in § 268.45 Table 1. Our basis for doing this is that the debris no longer contains the hazardous waste. On the other hand, hazardous debris treated by an immobilization technology is still subject to the hazardous waste regulations because the Agency has insufficient data or information to support that such treated debris would not leach Appendix VIII constituents over time in a manner that would be protective to human health and the environment. In our proposal to the Phase I LDR rule, the Agency solicited comment on whether immobilized hazardous debris should be excluded from subtitle C control. While the Agency received favorable comments on excluding such treated debris from the hazardous waste regulations, no information or data was provided to support such a position. Therefore, the final rule requires that immobilized hazardous debris continue to be managed as a hazardous waste.

The Agency again wants to revisit the issue of whether immobilized hazardous debris, if treated in certain ways or is treated to meet certain limits, should be excluded from subtitle C control. As a result, since the promulgation of the Phase I LDR rule, the Agency has undertaken a number of activities.

B. Roundtable Discussion

In an attempt to gather information on the issue, the Agency sponsored a roundtable discussion on August 3, 1992. Participants at the meeting included persons who commented on the Phase I LDR rule, debris treatment vendors, hazardous waste treaters and disposers, state officials, and officials from the Department of Energy (see Docket for specific list of attendees). Representatives from the environmental interest groups were also invited but were unable to attend. The purpose of the meeting was to gather information and discuss various regulatory approaches that would allow the Agency to exclude immobilized hazardous debris from subtitle C control. While no specific information was gathered, there was a discussion on the types of standards that could be applied such as design and operating standards, leach test, structural integrity test, permeability test for encapsulating material, so as to exclude immobilized hazardous debris from hazardous waste control. Additionally, the following points were also made by one or more participants at the roundtable.

- A number of the attendees indicated that even if immobilized hazardous debris were excluded from hazardous waste control, it would continue to be managed as a hazardous waste due to CERCLA liability concerns.
- There was some question whether a specific exclusion for immobilized hazardous debris was necessary or whether the Hazardous Waste Identification Rule (HWIR) may be a

[1] An important issue that was discussed at the January 13–14, 1993, LDR Evaluation Project Roundtable meeting was the notification/recordkeeping requirements that are currently in place. Today's proposed rule would add certain requirements to the existing notification/recordkeeping system. In response to the concerns expressed by Roundtable participants and the streamlining and clarification efforts initiated in section III.C.3, however, the Agency will examine all the notification/recordkeeping requirements of the program to see if they can be simplified.

more appropriate mechanism for addressing this issue.

• A representative from the glass industry suggested that glass cullet and vitreous materials should have a separate treatment standard. He indicated that the glass matrix would not leach lead at a higher rate than would an immobilized product—that is, it made little sense to grind up the glass material and then to stabilize it when the original matrix is just as sound.

While no consensus was reached, the following principles were generally arrived at by most of the participants at the meeting.

Microencapsulation: Participants at the meeting seem to believe that using a leach test may be more appropriate to demonstrate effective microencapsulation immobilization over an approach of developing design and operating standards. It was noted that treatment of hazardous debris is very waste and debris specific; if one could define design and operating standards that were generally applicable, they would likely be too burdensome in many cases.

Macroencapsulation/Sealing: The participants seem to indicate that the grinding requirement in the TCLP leach test made it inappropriate for predicting performance of macroencapsulation/sealing immobilization technologies. These technologies rely on an impermeable coating applied to the outside of the debris. Rather, the participants suggested a structural test to determine whether the given debris/technology combination was sufficient to maintain the coating or a permeability test for the coating media. While the participants conceptually believed that such an approach was workable, no one was able to suggest a specific test or standard. In addition, it was felt by some of the participants that the development of such a test could be difficult to develop.

The Agency specifically solicits comments on the general principles described above. While no data or information was provided at the meeting, it was indicated that if such information was submitted to the Agency, the Agency would consider such information in making its decision.

C. EPA Investigations

In addition to the above roundtable discussions, EPA has also been reviewing the literature and talking to vendors in an effort to obtain sufficient information on how to propose standards that could allow the exclusion of immobilized hazardous debris. To date, no useful insights have been gained on how to specify design and operating standards that would ensure that immobilized hazardous debris was non-hazardous; the reason for this is the paucity of experience in immobilizing hazardous debris. Nevertheless, the Agency is interested in pursuing this area and specifically seeks assistance from the regulated community on this issue.

D. Conclusions

While the Agency has a better sense of the types of standards that may be appropriate for excluding immobilized hazardous debris from subtitle C control, the Agency still does not have the data to propose specific exclusions. In particular, for microencapsulation, if a leach test is the most appropriate mechanism for determining whether such treated debris is non-hazardous, the Agency believes that HWIR may be the appropriate rulemaking to address this issue. The Agency has a series of studies underway and is currently evaluating comments and is not in a position to determine what such levels are at this time. With respect to macroencapsulation/sealing, additional data or information will need to be gathered before the Agency is in a position to exclude this type of immobilized hazardous debris. To assist the Agency in this effort, we specifically solicit comment on the following questions:

Microencapsulation: Is the use of a leach test for excluding immobilized hazardous debris more appropriate than specification of design and operating standards? Is exclusion of immobilized hazardous debris using design and operating standards workable?

Macroencapsulation/Sealing: What type of structural or other test could be used? What type of criteria should be applied in determining whether such debris is non-hazardous? The Agency is considering allowing stabilization for soils containing low levels of organic constituents, and solicits comment on whether similar stabilization techniques or tests to ensure the effectiveness of such stabilization would be appropriate for excluding debris from subtitle C control.

In addition, the Agency specifically solicits comment on any data or information that is available to demonstrate that immobilized hazardous debris (if treated properly) would not pose a substantial hazard to human health and the environment. If such information is submitted to the Agency, the Agency will exclude such debris from subtitle C control.

X. Modifications to Hazardous Waste Recycling Regulations

A. Introduction

This proposal also includes changes to the hazardous waste recycling regulations which amend an exclusion (and related variance) which would allow streamlined regulatory decisions to be made regarding the regulation of certain types of recycling activities. These procedures should allow environmentally beneficial recycling to occur more easily. (This part of today's proposal is, however, not directly related to the proposed rules establishing prohibitions and treatment standards for hazardous wastes.)

EPA wishes to note that the changes to the definition of solid waste being proposed today are fairly narrow in scope. The Agency has also initiated a public dialogue process, administered by EPA's Definition of Solid Waste Task Force, which is examining the overall impacts of the RCRA program on recycling, and which will ultimately consider broader changes to the definition of solid waste.

B. Modification of the Existing "Closed-Loop" Recycling Exclusion and Related Case-Specific Variance

1. Existing "Closed-Loop" Recycling Exclusion and Related Variance

In the January 4, 1985 final rule, the Agency promulgated an exclusion from the definition of solid waste at § 261.2(e)(1)(iii) for secondary materials that are recycled in a "closed-loop," (i.e., returned to the original production process in which the material was generated (see preamble discussion at 50 FR 639)). To be considered such a "closed-loop" process, three conditions must be met. First, the secondary material must be returned to the original process without undergoing significant alteration or reprocessing (i.e., it must be returned without first being reclaimed). Second, the production process to which the unreclaimed material is returned must be a primary production process (i.e., a process that uses raw materials as the majority of its feedstock, as opposed to a secondary process that uses spent materials or scrap metal as the majority of its feedstock). And third, the secondary material must be returned as a feedstock to the original production process and must be recycled as part of that process (as opposed to an ancillary process such as degreasing). EPA believes that these conditions characterize a material that is part of an on-going production process, and as such, the management of the material should not be characterized as

waste management (i.e., the material is not part of the waste management problem).

The Agency is today proposing to readdress the second condition—that the production process to which secondary material is returned must be a primary process. The Agency imposed this condition due to considerations regarding jurisdiction, as it was understood in 1985, rather than to an evaluation of the potential impacts on the environment from closed-loop recycling involving secondary processes (i.e., this condition was established without a consideration of whether such secondary materials would be part of the waste management problem). By definition, a secondary process uses waste materials as its principal feedstock. Thus, the Agency concluded that the process residue, which is returned to the original process as a substitute for feedstock that is itself waste, is no less a waste than the waste material originally introduced (see 50 FR 639). (The Agency notes that in most cases this condition has no impact on the recycling of residues from secondary processes because such residues that exhibit a characteristic of hazardous waste (i.e., characteristic by-products and sludges) are already excluded from the definition of solid waste if reclaimed).

While the Agency continues to believe that the jurisdictional logic behind this condition is sound, the Court opinions regarding RCRA jurisdiction allow more weight to be given to environmental considerations. *API* v. *EPA*, 906 F.2d at 740–41; *AMC* v. *EPA*, 907 F2d 1179, 1186 (D.C. Cir. 1990). EPA has reevaluated this condition of the exclusion from the definition of solid waste due to its impact on the recycling of residues from secondary processes, in particular secondary lead smelters, and has determined that this condition is less relevant as an environmental consideration, assuming that the secondary material is well-managed prior to reprocessing. Therefore, the Agency is proposing to remove this condition from the "closed-loop" recycling exclusion. By doing this, secondary materials that are recycled in secondary production processes can be excluded from the definition of solid waste, provided that the materials are well-managed prior to recycling. The discussion of K069 wastes below illustrates the need for this amendment.

Following the same reasoning, the Agency is also proposing to amend § 260.33(b), a related case-by-case variance for materials that are reclaimed prior to reuse in the original primary production process from which they were generated (see 50 FR 652 for a discussion of the existing variance). The amendment would similarly expand the variance to make it available for materials that are returned to secondary processes, as well as those returned to primary processes.

2. K069 Wastes Recycled Back into the Secondary Process

In the case of K069 wastes (emission control dust/sludge from secondary lead smelting), the Agency identified thermal recovery of lead in secondary smelters (the same process that generates the waste) as BDAT in the Land Disposal Restrictions for the First Third Scheduled Wastes final rule (53 FR 31138; August 17, 1988). The treatment standard based on BDAT was expressed as "No Land Disposal" because the Agency believed the K069 waste to be "indigenous" to the smelting process and thus was no longer a solid waste within RCRA jurisdiction when introduced into the secondary smelter (which had been a long-standing policy regarding the reclamation of K069 waste, as stated in the November 29, 1985 preamble, 50 FR at 49167.) Therefore, the slag residue from the recovery of the K069 waste would not be derived from a solid waste and would thus not be a listed waste (but would be considered hazardous waste if it exhibited a hazardous characteristic.) (This view is also evident in the June 1, 1990 Land Disposal Restrictions for Third Third Scheduled Wastes final rule. In the preamble discussion regarding BDAT for wastes that exhibit the characteristic of toxicity for lead, the slag from secondary lead smelters is evaluated as a characteristic waste rather than a derived-from K069 waste (see 55 FR 22566–568; June 1, 1990).)

However, on June 26, 1990, the D.C. Circuit Court held in *American Petroleum Institute* v. *EPA*, 906 F.2d 726 (D.C. Cir. 1990) that EPA erred in disavowing the statutory authority to establish treatment standards for a slag residue of an "indigenous" waste and that RCRA jurisdiction could, in fact, extend to the slag. As a result of the mandate in that case, unless the Agency takes affirmative steps to otherwise exclude it, the slag resulting from the reclamation of K069 waste would likewise be a K069 hazardous waste, see 56 FR at 41165 (August 19, 1991), a result the Agency never intended.

The Agency notes that this would not be the outcome if the emission control dust was generated by a primary lead smelter and was recycled back into the original generating process. Such a sludge would be excluded from the definition of solid waste under 40 CFR 261.2(e)(1)(iii). The difference between the regulatory requirements applicable to the residues of primary processes and residues of secondary processes seems superfluous and is difficult to defend from an environmental standpoint because the residues of a secondary process that are recycled back into the process are no more of a waste management problem than the residues of a primary process recycled in a similar manner.

Therefore, the Agency proposes to modify the existing exclusion for secondary materials that are recycled back into the original process without prior reclamation to include those materials that are recycled back into secondary processes.

3. Storage Prior to Recycling

The Agency also proposes to condition the modification to the "closed-loop" exclusion (and the related 260.30(b) variance) such that secondary materials recycled back into secondary processes from which they were generated continue to be managed in an environmentally sound manner. Absent this condition, one possible outcome could be that a listed waste that is currently required to be managed in a protective manner (i.e., without land disposal) would begin to be managed in an unprotective manner because, as an excluded secondary material, no regulatory requirements would apply. The Agency is requiring sound management (i.e., management that is designed to contain the material or otherwise prevent its release to the environment) as a condition of this exclusion in order to keep this form of recycling from becoming part of the waste disposal problem, and to avoid a reduction in environmental protection from that currently existing. In particular, the Agency wishes to ensure that no land disposal of any excluded material occurs. EPA believes the *API* and *AMC II* cases discussed above support such an approach.

For example, under the current regulations, K069 waste is required to be managed in an environmentally sound manner prior to recycling. As a listed waste, it must be managed in storage units that meet specified criteria. And, as a waste subject to the land disposal restrictions, K069 waste may not be placed on the land, for example in open waste piles, until the applicable treatment standard has been met. However, as a secondary material that is excluded from the definition of solid waste because it is recycled back into the process from which it was generated, hazardous waste

management standards and the land disposal restrictions would not apply. (The Agency notes that such recycling is also the applicable treatment standard for K069 and that there is no conventional disposal alternative.)

The Agency solicits comment on broadening the "closed-loop recycling" exclusion and the related 260.30(b) variance to include secondary materials recycled into a secondary process. The Agency also solicits comment regarding the condition that such secondary materials from a secondary process be excluded only provided that the materials are managed such that the excluded material does not become part of the waste management problem, in particular, that there be no direct placement of materials on the land, and also solicits comments regarding whether all exclusions from the definition of solid waste should be conditioned on sound management practices.

XI. Implementation Issues

During the LDR Roundtable on January 14 and 15, 1993, participants expressed a need for more information to help implement regulations as they are issued. The Agency is specifically soliciting comments on possible implementation issues regarding the provisions being proposed today.

XII. Capacity Determinations

This section presents the data sources, methodology, and results of EPA's capacity analysis for today's rule. Section A summarizes the results of the capacity analysis for the wastes covered by this proposal; Section B summarizes the analysis of available capacity; Section C presents the results of the capacity analysis for surface disposed newly identified and listed wastes; Section D summarizes the capacity analysis for wastes mixed with radioactive contaminants; Section E summarizes the results of the capacity analysis for high TOC ignitable and TC pesticide wastes and newly listed wastes injected into Class I deep wells; and Section F presents the results of the capacity analysis for hazardous soil and debris contaminated with the newly listed and identified wastes covered in this proposal and for hazardous soil contaminated with Phase I wastes.

In general, EPA's capacity analysis methodologies focus on the amount of waste currently land disposed that will require alternative treatment as a result of the LDRs. Land-disposed wastes that do not require alternative treatment (e.g., those that are currently treated using an appropriate treatment technology) are excluded from the quantity estimates. In addition, wastes managed in CWA, SDWA, CWA-equivalent systems are not included in this rule and will be addressed in an upcoming rulemaking.

EPA's decisions on whether to grant a national capacity variance are based on the demand for commercial treatment or recovery technologies. Consequently, the methodology focuses on deriving estimates of the quantity of wastes that will require commercial treatment as a result of the LDRs—quantities of waste that will be treated on-site or by facilities owned by the same company as the generator are omitted from the required commercial capacity estimates.

The major capacity information collection initiative for this proposal was an EPA survey of all land disposal facilities that manage newly identified TC organic wastes (including TC-contaminated soil and debris) in land-based units. The survey, conducted in the spring of 1992, is a census of approximately 140 facilities. EPA identified the universe primarily based on those facilities that had submitted permit modifications or received interim status for managing these wastes. For each facility, EPA requested wastestream specific data on newly identified TC organic wastes and information on on-site land disposal units and treatment and recovery systems.

EPA developed a data set of the information on the survey results. Specifically, the data set contains information on the quantities of newly-identified organic TC wastes that will require commercial treatment capacity as a result of the LDRs. The data collected from the survey to date have been used for the required capacity estimates and are part of the docket for today's proposed rule. Additional analysis may revise the required capacity estimates for the final rule.

A. Capacity Analysis Results Summary

For the organic TC wastes (D018–D043), EPA estimates that 252,000 tons of newly identified organic TC sludges and solids will be managed off-site and require alternative treatment as a result of today's proposed rule.

EPA estimates that much smaller quantities of the other listed wastes included in today's proposed rule will require alternative treatment. In particular approximately 4,600 tons of coke by-products (K141–K145, K147 and K148) nonwastewaters are currently being land disposed. No K141–K145, K147 and K148 wastewaters are currently being land disposed. The majority of these nonwastewaters are likely to be recycled and, therefore, alternative treatment may not be required. Fewer than 100 tons of chlorinated toluene (K149–K151) nonwastewaters are currently being land disposed and will require alternative treatment due to the LDRs. No K149–K151 wastewaters are currently being land disposed.

The quantities of radioactive wastes mixed with wastes included in today's proposed rule and currently being land disposed are uncertain.

EPA has very limited information which differentiates high TOC D001 ignitable wastes from low TOC D001 ignitable wastes, particularly with reference to the type of Class I injection well (i.e., nonhazardous versus hazardous) the wastes are disposed into. However, the information the Agency does have indicates that both D001 ignitable wastes and D012–D017 TC pesticide wastes are deep well injected into Class I hazardous wells with no-migration petitions. EPA estimates that, based on management practices, little if any diluted high TOC ignitable waste is injected into Class I nonhazardous wells, and no more than 419 tons of D012–D017 pesticide wastes are deep well injected into class I wells without no-migration petitions.

EPA estimates that 3 million tons of hazardous soil contaminated with previously regulated wastes are presently land disposed without prior treatment.[2] The Agency also estimates that 234,000 tons of hazardous soil and 34,000 tons of hazardous debris contaminated with the newly identified organic TC wastes are currently being managed off-site and will require alternative treatment.

In addition, EPA expects a one-time generation of hazardous soil contaminated with F037 and F038 petroleum refining wastes of approximately 180,000 tons in 1994. This one-time generation is due to the cleanout or closure of surface impoundments at petroleum refineries. The estimation of 180,000 tons was based upon information submitted to EPA by petroleum refineries and an assessment of "typical" quantities of soil excavated during impoundment closures. Absent additional information, EPA expects a proportionate number of these surface impoundment closures to be completed prior to the effective date

[2] These wastes include soil contaminated with Third Third wastes that were granted a two-year capacity variance in the Third Third rule (55 FR 22520). This national capacity variance expired on May 8, 1992. However, the Agency granted a national case-by-case extension to hazardous soil contaminated with Third Third wastes which expired May 8, 1993.

of this rulemaking. Thus, EPA estimates approximately 90,000 tons of hazardous soil contaminated with F037 and F038 would require treatment as a result of this rulemaking. EPA requests comments on the timing of the surface impoundment closures and the affected quantities of wastes.

Table 1 lists each waste code for which EPA is proposing LDR standards today. For each code, this table indicates whether EPA is proposing to grant a national capacity variance for surface-disposed wastes. EPA is not proposing to grant a national capacity variance for newly identified organic TC wastes. However, the Agency is proposing to grant two-year national capacity variances for mixed radioactive wastes (i.e., radioactive wastes mixed with newly identified TC organic constituents D018–D043), for hazardous soil and debris contaminated with newly listed and identified wastes covered under this proposal, and hazardous soil contaminated with Phase I wastes. EPA is also proposing to extend the effective date for compliance with treatment standards for all waste codes covered by this rulemaking by granting a three-month national capacity variance. This extension would not apply to wastes with a specified longer national capacity variance. EPA is proposing to delay the effective date because the Agency realizes that even where data indicate that sufficient treatment capacity exists, such capacity may not be immediately available. Additional time may be required to determine what compliance entails, redesign tracking documents, possibly adjust facility operations, and possibly segregate wastestreams. EPA believes these legitimate delays can be encompassed within a short-term capacity variance because the ability to get wastes to the treatment capacity in a lawful manner is an inherent part of assessing available capacity.

EPA's recently promulgated final rule addressing corrective action management units (CAMUs) and temporary units (Tus) (published February 16, 1993 at 58 FR 8658) is likely to reduce the quantity of remediation wastes and soil subject to the land disposal restrictions by reducing the quantity of remediation waste and soil excavated and also by reducing the volume of material managed off-site. As a result, the CAMU/TU rule is likely to free up current hazardous waste treatment and disposal capacity and reduce the demand for future capacity.

In summary, the CAMU/TU rule is designed to facilitate RCRA corrective actions and CERCLA remediations by providing that remediation wastes managed within CAMUs and Tus will not be subject to the RCRA land disposal restrictions requirements. The CAMU rule does not apply to wastes generated from ongoing production processes or other industrial activities; it applies only to remediation wastes managed in implementing remedial actions. For example, under the final CAMU provisions, remediation wastes may be excavated from several isolated areas at a facility, treated in a central location on-site, and disposed in a CAMU without triggering the LDRs or other RCRA land disposal unit requirements. CAMUs can be used only at facilities regulated under subtitle C of RCRA, at CERCLA sites where determined to be applicable or relevant and appropriate requirements (ARARs), and under some state remedial programs (i.e., CAMUs cannot be used at facilities that are not currently remediating under federal or state authorities) and can be used only with the permission of the permit writer.

As a result, EPA believes that the CAMU rule will reduce the volume of remediation waste requiring treatment to LDR standards. In particular, incineration and off-site management are likely to be used less frequently than they currently are, while on-site management of in-situ and excavated soil will increase. Although estimates of the quantity of remediation waste and hazardous soil that will be affected by the CAMU is unknown, EPA estimates that about 1,500 facilities subject to the RCRA corrective action requirements will use CAMUs.

TABLE 1—VARIANCES FOR NEWLY LISTED AND IDENTIFIED WASTES

["Yes" Indicates EPA is Proposing to Grant a Variance]

Waste Type	Disposal Unit				
	Landfill	Land treatment	Surface impoundment	Waste pile	Deepwell
High TOC D001 Wastes	No	No	No	No	No
D012–D017 Wastes[a]	No	No	No	No	No
D018–D043 Nonwastewaters	No	No	No	No	N/A
K141–K145 Wastes	No	No	No	No	No
K147–K148 Wastes	No	No	No	No	No
K149–K151 Wastes	No	No	No	No	No
Mixed Radioactive	Yes	Yes	Yes	Yes	N/A
Soil (Prev. Regulated Wastes)[b]	No	No	No	No	N/A
Soil (Phase I Wastes)	Yes	Yes	Yes	Yes	N/A
Soil (Phase II Wastes)[c]	Yes	Yes	Yes	Yes	N/A
Debris (Phase II Wastes)[c]	Yes	Yes	Yes	Yes	N/A

N/A means Not applicable.

[a] Newly identified TC wastes that were not previously hazardous by the old EP Leaching Procedure.

[b] EPA has previously granted a two-year national capacity variance to soil contaminated with previously regulated wastes.

[c] EPA is proposing to grant a two-year national capacity variance for hazardous soil and debris contaminated with Phase II wastes, including mixed radioactive/Phase II wastes.

B. Analysis of Available Capacity

The analysis of commercial capacity for newly identified wastes is based primarily on the TSDR Survey capacity data set, data received in response to previous LDR notices and regulations, and data received in voluntary data submissions. These data include estimates of available capacity at commercial combustion facilities (i.e., incinerators and boilers and industrial furnaces (BIFs)), other conventional treatment facilities, and innovative technology vendors.

Combustion capacity. Combustion capacity for liquid hazardous wastes has historically been more readily available

than capacity for sludges and solids. Commercial capacity for combustion of sludges and solids is available at both incinerators and industrial furnaces (primarily cement kilns that are authorized to accept hazardous waste). Because of the new regulations and policies regarding the burning of hazardous wastes in boilers and industrial furnaces, many commercial cement kiln facilities are currently changing their operational practices. The effect of these new combustion controls and other changes will be addressed in future revisions to capacity estimates for wastes regulated in this final rule.

The types of wastes cement kilns are able to burn are limited by air emission limits, feed system limitations, and product (i.e., cement) quality considerations. For instance, cement quality considerations generally require that wastes burned in cement kilns have a heating value of at least 5,000 Btu/lb. In addition, combustion capacity may be limited by chemical characteristics, constituent levels, and physical properties of the waste.

Information available to EPA indicates that at least 192,000 tons/year of commercial combustion capacity are available for all newly identified TC organic sludges and solids, including soil and debris. However, EPA recently received data from the Hazardous Waste Treatment Council (HWTC) stating that a survey of their members showed approximately 300,000 tons of incineration capacity is currently available for solids. If the available capacity for cement kilns is added to this figure and the additional capacity required after the expiration of the F037/38 variance is subtracted, there would be approximately 334,000 tons of sludge/solids combustion capacity available. This quantity of available capacity takes into account capacity that will be required for Phase I wastes that were granted a national capacity variance (57 FR 37194, August 18, 1992), ignitable and corrosive wastes whose treatment standards were vacated (58 FR 29860, May 24, 1993), waste characteristics that affect the ability for a particular facility(s) to treat the wastes, and other factors that may limit capacity.

In the comments submitted in response to the October 24, 1991 Advanced Notice of Proposed Rulemaking (ANPRM), several commenters raised issues regarding EPA's methodology for determining available capacity. Commenters proposed that EPA should not consider planned capacity since new facilities and facility expansions are commonly delayed; not include capacity from facilities that violate environmental regulations; account for the expiration of capacity variances granted for combustion in the Third Third rule; and account for actual operating time in its assessment of a facility's available capacity. These factors were taken into account in the capacity analysis where appropriate.

Three commenters also reported ongoing data collection efforts that might provide additional information on available capacity in the near future. These efforts include surveys being conducted by the HWTC to determine its members' sludge and solid combustion capacity and their capacity to treat soil; the Cement Kiln Recycling Coalition on cement kiln dust issues that may contain information on the waste-burning practices at cement kilns; and Oak Ridge National Laboratories of mixed radioactive waste generators to assess mixed radioactive waste treatment capabilities. EPA has received confirmation that HWTC and the CKRC are planning to survey their members on available combustion capacity. Because of time constraints, this new information will be summarized and included in the Docket to today's proposed rule and will be considered in the capacity analysis for the final rule.

A few of the comments received on the ANPRM noted factors that may limit the applicability of commercial combustion for certain TC wastes. One commenter emphasized that EPA must consider certain external factors that can limit incineration capacity, including waste characteristics, such as heating value and chlorine content, that might affect waste acceptability; limitations imposed on wastes, such as TC wastes, which are often managed as bulk solids; packaging and transportation limitations; limited temporary storage space at certain facilities; and regulatory obstacles to permitting new incinerators. EPA requested information on these factors in the survey of facilities that manage organic TC wastes, including soil and debris, in land-based units. This information has been and will be re-evaluated and taken into account in the capacity analysis for the final rule.

Other potential capacity limitations noted in the comments were equipment problems at commercial facilities that can cause disruption in waste acceptance, and the Boiler and Industrial Furnace (BIF) rule which may potentially limit combustion capacity at cement kilns. One commenter also noted that if the cement produced by a kiln that burns listed hazardous wastes is subject to LDR standards, then cement kilns should not be considered in available capacity estimates.

EPA is also considering the capacity effects of recent court decisions regarding the regulation of hazardous constituents other than those for which the waste fails the TC test. EPA solicits comments on the treatment capacity effects of requiring facilities to treat the underlying hazardous constituents in TC organic hazardous wastes to meet the proposed universal treatment standards.

EPA will analyze the results of the combustion surveys that will be conducted by the Hazardous Waste Treatment Council and the Cement Kiln Recycling Coalition, review recent regulatory developments concerning combustion facilities, and determine how much combustion capacity will be available for wastes covered by this rule when it becomes effective.

Other conventional treatment technologies. There are three primary conventional commercial treatment technologies for the newly identified and listed wastes besides combustion: Stabilization, biological treatment, and chemical precipitation. EPA estimates that over 1 million tons of stabilization capacity, 187,000 tons of biological treatment capacity, and 813,000 tons of chemical precipitation capacity are currently available. In analyzing alternative treatment capacity for stabilization, biological treatment, and chemical precipitation for newly identified and listed wastes, the Agency built on the capacity analysis conducted for the Third Third LDR rule. This analysis was based on data contained in the TSDR Capacity Data Set which contains results from the National Survey of Hazardous Waste Treatment, Storage, Disposal and Recycling Survey (the TSDR Survey).

Innovative technologies. There are several innovative technologies for the treatment of hazardous soil including hydrolysis, vacuum extraction, photolysis, and oxidation. To the extent that these technologies can be used to treat hazardous soil on-site, the required capacity for combustion will decrease. EPA has limited information on innovative technologies with regard to both available capacity and to limitations of the technologies or constraints on the use of these technologies. EPA solicits comments on the use of innovative technologies for the treatment of hazardous soil. Specifically, EPA requests information on constraints on the use of these technologies both on- and off-site, including physical or chemical characteristics of the soils, and logistical constraints such as permitting.

scheduling, etc. EPA also solicits data on volumes of hazardous soil currently being treated by these technologies, current available capacity, and estimates of future capacity.

C. Surface Disposed Newly Identified and Listed Wastes

1. Required Capacity for Newly Identified TC Organics (D018–D043)

The Agency is proposing to develop treatment standards for TC organic nonwastewaters based primarily on incineration performance data. Newly identified organic TC wastewaters that are managed in systems other than those regulated under the CWA, those regulated under the SDWA that inject TC wastewaters into Class I injection wells, and those zero discharge facilities that engage in CWA-equivalent treatment prior to land disposal are also affected by today's proposed rule. (Organic TC wastewaters managed in CWA, SDWA, or CWA-equivalent systems will be addressed in future rulemakings, and EPA will make variance determinations at that time.) The Agency does not have data indicating that facilities managing organic TC wastewaters would be impacted. EPA solicits comments on the quantities of newly identified organic TC wastewaters affected by today's proposed rule.

EPA developed estimates of the quantities of newly identified TC organic wastes based on current management options to comply with the LDR requirements. The Agency also developed estimates of available on-site treatment and recovery capacity. Table 2 summarizes available capacity for each alternative treatment or recovery technology required for the newly identified Toxicity Characteristic nonwastewaters. The table also summarizes the required capacity for each technology. A comparison of required and available treatment capacity indicates that adequate treatment capacity exists for new TC nonwastewaters. Therefore, EPA is not proposing to grant a national capacity variance for D018 through D043 nonwastewaters. EPA is requesting comments and any additional data on its assessment that there is adequate treatment capacity for these wastes.

Table 3 presents the 1993 quantities of TC nonwastewaters requiring off-site treatment by waste code.

TABLE 2.—REQUIRED AND AVAILABLE CAPACITY FOR NEWLY IDENTIFIED ORGANIC TC WASTES[1]

[All quantities are in tons]

Treatment technology	Available capacity	Required capacity
Chemical precipitation	[2] 813,000	10,000
Liquid combustion	541,000	[3] 11,000
Sludge/solid combustion	334,000	253,000
Stabilization ..	[4] 1,127,000	41,250

[1] Does not include hazardous soil and debris, mixed radioactive wastes, or deepwell injected wastes.
[2] Capacity analysis for the Third Third rule.
[3] These are liquid nonwastewaters.
[4] Capacity analysis for the proposed Phase I Newly Listed and Newly Identified Waste rule.

Table 3.—1993 QUANTITIES OF TC NONWASTEWATERS REQUIRING OFF-SITE TREATMENT

[Surface Disposed Wastes in Tons]

Code	Non-wastewaters
D018	152,990
D019	8,510
D020	6,319
D021	8,484
D022	8,343
D023	3,897
D024	515
D025	308
D026	1,518
D027	1,142
D028	14,197
D029	3,859
D030	511
D031	203
D032	3,109
D033	450
D034	412
D035	4,216
D036	262
D037	612
D038	2,297
D039	6,900
D040	6,583
D041	108
D042	120
D043	16,482
Total	252,347

The quantities presented in Table 2 do not include used oil because in the May 1, final listing determination the Agency determined that the TC characteristic adequately defines those used oils which should be regulated as hazardous waste. Because of the TC regulation and other environmental regulation, the Agency determined that it is unnecessary to list used oil being disposed as hazardous. Thus, used oil that is not recycled and that exhibits the toxicity characteristic would be subject to the land disposal restrictions.[3] EPA has not separately quantified the amounts of used oil subject to the LDRs. The Agency requests comments on the quantities and management of the used oil that exhibits the toxicity characteristic and that is subject to the LDRs.

2. Required Capacity for Other Newly Listed Organic Wastes

This section presents EPA's analysis of required capacity for other listed organic wastes including coke by-product wastes and chlorinated toluene production wastes.

a. Surface Disposed Coke By-Product Wastes

K141 Process residues from the recovery of coal tar, including, but not limited to, tar collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations).

K142 Tar storage tank residues from the production of coke from coal or the recovery of coke by-products produced from coal.

K143 Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil units from the recovery of coke by-products produced from coal.

K144 Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.

K145 Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.

K147 Tar storage tank residues from coal tar refining.

K148 Residues from coal tar distillation, including but not limited to still bottoms.

For coke by-product nonwastewaters, EPA is proposing to establish concentration standards based on incineration. Under the authority of section 3007 of RCRA, EPA collected generation and management information concerning coke by-product wastes; this information was collected in 1985 and 1987. The Agency identified the following annualized quantities of wastes: 49 tons of K141 nonwastewaters, 2,750 tons of K142 nonwastewaters, 10 tons of K143 nonwastewaters, 304 tons of K144 nonwastewaters, 1,408 tons of K147 nonwastewaters, and less than 100 tons of K148 nonwastewaters. EPA identified no K145 nonwastewaters that were being land disposed. The majority of

[3] Used oil that is recycled is not subject to the land disposal restrictions. (40 CFR 261.6 (a) and (b))

K141 to K145 nonwastewaters generated during that timeframe were recycled or used for energy recovery. Tar storage tank and tar distillation bottoms may be removed periodically. The Agency is soliciting comments for the above estimated quantities which may require alternative treatment as a result of the LDRs.

Current management practices indicate that the majority of the newly listed coke by-product wastes are amenable to recycling, and therefore, alternative treatment may not be required as a result of today's proposed rule. Thus, EPA believes that adequate capacity exists to treat the small amount of wastes, if any, that require alternative treatment.

EPA does not have any information that coke by-product wastewaters are currently generated. The quantity of these wastewaters is assumed to be zero. EPA is soliciting comments on changes of management practices or generation data on these wastes.

As a result of this analysis, EPA is proposing not to grant a national capacity variance to K141, K142, K143, K144, K145, K147, and K148 nonwastewaters and wastewaters.

b. Surface Disposed Chlorinated Toluene Wastes

K149 Distillation bottoms from the production of alpha (methyl) chlorinated toluene, ring-chlorinated toluene, benzoyl chlorides, and compound with mixtures of these functional groups. (This waste does not include still bottoms from the distillation of benzyl chloride.)

K150 Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha (methyl) chlorinated toluene, ring-chlorinated toluene, benzoyl chlorides and compounds with mixtures of these functional groups.

K151 Wastewater treatment sludges, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha (methyl) chlorinated toluene, ring-chlorinated toluene, benzoyl chlorides and compounds with mixtures of these functional groups.

For wastes generated during the production of chlorinated toluene, EPA is proposing to establish concentration-based treatment standards based on incineration for nonwastewaters. EPA collected generation and management information on wastes generated from the production of chlorinated toluene. EPA collected this information under the authority of section 3007 of RCRA during engineering site visits in 1988. This capacity analysis incorporates data from the section 3007 information request and engineering site visits. EPA identified four facilities that produce chlorinated toluene wastes.

The Agency has identified no K149 nonwastewaters, no K150 nonwastewaters, and less than 100 tons of K151 nonwastewaters that were being land disposed. For the capacity analysis, EPA assumes that these quantities are currently being land disposed and will require further treatment as a result of today's proposed rule.

EPA does not have any information that chlorinated toluene wastewaters are currently generated. The quantity of these wastewaters is assumed to be zero. EPA is soliciting comments on changes of management practices or generation data on these wastes.

Because adequate capacity exists to treat these wastes, EPA is not proposing to grant a national capacity variance for K149, K150, and K151 nonwastewaters and wastewaters.

3. Newly Identified TC Wastes That Were Not Previously Hazardous by the Old EP Leaching Procedure

In the Third LDR rule (55 FR 22520, June 1, 1990), EPA promulgated treatment standards for D012 through D017 wastes, but only for those wastes that were previously hazardous by the old EP leaching procedure and remain hazardous under the new TCLP. D012 through D017 wastes that were not hazardous by the old EP leaching procedure but are now hazardous using the new TCLP are considered newly-identified D012 through D017 wastes.

In response to the ANPRM (56 FR 55160, October 24, 1991), EPA did not receive any estimates for additional waste quantities (or newly-identified wastes) due to the use of TCLP rather than the EP leaching procedure. EPA believes that the quantities of the newly-identified D012 through D017 wastes due to the use of the TCLP rather than the EP leaching procedure are small, if any, and, hence, expects little or no additional demand for commercial treatment capacity as a result of the LDRs. Because sufficient capacity exists to treat these wastes, EPA is proposing not to grant the newly-identified D012 through D017 wastes a national capacity variance.

D. Required and Available Capacity for Newly Identified Wastes Mixed with Radioactive Components

EPA has defined a mixed RCRA/radioactive waste as any matrix containing a RCRA hazardous waste and a radioactive waste subject to the Atomic Energy Act (53 FR 37045, 37046, September 23, 1988). These mixed wastes are subject to the RCRA hazardous waste regulations, including the land disposal restrictions, regardless of the type of radioactive constituents that these wastes contain.

Radioactive wastes that are mixed with spent solvents, dioxins, California list wastes, or First Third, Second Third, or Third Third wastes are subject to the land disposal restrictions already promulgated for these hazardous wastes. EPA granted national capacity variances for all of these mixed wastes because of a lack of national treatment capacity. Today's rule addresses the radioactive wastes that contain newly listed hazardous wastes being restricted in today's proposed rulemaking.

Based on comments received by EPA in response to the ANPRM (56 FR 55160) and previous rulemakings, the U.S. Department of Energy (DOE) is the primary generator of mixed RCRA/radioactive wastes. A variety of non-DOE facilities also generate mixed wastes, including nuclear power plants, academic and medical institutions, and industrial facilities.

In response to the ANPRM, DOE developed and submitted data on its generation of mixed RCRA/radioactive wastes and its capacity available to treat such wastes. To update and refine its data, DOE requested 37 DOE Field Organizations to identify and characterize their mixed waste streams, including developing profiles of the newly regulated TC organic waste streams. Twenty DOE Field Organizations responded to the data request and provided waste stream-specific data, including annual generation rates and the inventory of such wastes expected by May 1993. In April, 1993, this Interim Mixed Waste Inventory Report was prepared and included a national inventory of all mixed wastes that are currently stored or will be generated over the next five years, and a national inventory of mixed waste treatment capacities and technologies. The report provides waste stream-specific and treatment facility-specific information for each DOE site in each state. EPA has not completed its review of the data contained in this report, and consequently, the data were not available for use in this proposed rule. Additionally, the six-month public comment period for the Interim Report has not yet expired. EPA will update the results of the capacity analysis for the final rule with the results from the Final Mixed Waste Inventory Report.

Data on some of the other DOE facilities were derived from other data sources. DOE also submitted data gathered from its Field Organizations on the availability of its existing and

planned capacity to treat mixed RCRA/radioactive wastes, including TC wastes.

While DOE has provided its best available data on mixed waste generation, uncertainty remains about mixed waste generation at DOE (and non-DOE) facilities. For example, not all DOE Field Organizations responded to DOE's request for information. In addition, DOE recently completed an Interim Mixed Waste Inventory Report (April 1993). This information will be incorporated into the final capacity analysis. In addition, the data submitted to EPA generally did not include DOE environmental restoration wastes which, when generated, will increase the quantity of newly identified mixed wastes that require treatment.

Although DOE is in the process of increasing its capacity to manage mixed RCRA/radioactive wastes, information supplied by DOE indicates that a significant capacity shortfall currently exists for the treatment of mixed RCRA/radioactive wastes, much of which is in storage facilities awaiting treatment. DOE has indicated that it will generally give treatment priority to mixed wastes that are already restricted under previous LDR rules (e.g., radioactive wastes mixed with solvents, dioxins, California list wastes, or First Third, Second Third, or Third Third wastes.) DOE is also concerned about the availability of treatment capacity for mixed wastes that will be generated as a result of site remediation activities. EPA's review of non-DOE data sources also showed a significant lack of commercial treatment capacity.

Despite the uncertainty about quantities of mixed radioactive wastes containing newly listed and identified wastes that will require treatment as a result of today's proposed rule, any new commercial capacity that becomes available will be needed for mixed radioactive wastes that were regulated in previous LDR rulemakings and whose variances have already expired. Thus, EPA has determined that sufficient alternative treatment capacity is not available, and is proposing to grant a two-year national capacity variance for mixed RCRA/radioactive wastewaters and nonwastewaters contaminated with newly listed and identified wastes whose standards are being proposed today.

E. Required and Available Capacity for High TOC Ignitable, TC Pesticide, and Newly Listed Wastes Injected into Class I Deep Wells

As explained in previous rules concerning land disposal restrictions (see e.g., 52 FR 32450, August 27, 1987; 53 FR 30912, August 16, 1988; 55 FR 22520, June 1, 1990), EPA is allocating available capacity first to those wastes disposed in surface units, second to wastes resulting from CERCLA and RCRA clean ups, and finally to underground injected wastes. Based on this hierarchical approach, the Agency is proposing the following effective dates for injected wastes.

EPA has very limited information which differentiates high TOC D001 ignitable wastes from low TOC D001 ignitable wastes, particularly with reference to the type of Class I injection well (i.e. nonhazardous versus hazardous) the wastes are disposed into. However, the information the Agency does have indicates that both D001 ignitable wastes and D012–D017 TC pesticide wastes are deep well injected into Class I hazardous wells with no-migration petitions. EPA estimates that, based on management practices, little if any diluted high TOC ignitable waste is injected into Class I nonhazardous wells, and no more than 419 tons of D012–D017 pesticide wastes are deep well injected into Class I wells without no-migration petitions.

The following wastes are the newly listed wastes for which numerical standards are being proposed, and which current data indicate are not being underground injected:

Coke Production Wastes: K141, K142, K143, K144, K145, K147, K148
Chlorotoluene Production Wastes: K149, K150, K151

Therefore, EPA is proposing that these wastes be prohibited from underground injection upon the date of final promulgation of this rule. EPA is not proposing to grant a national capacity variance for any of these waste types. The Agency requests further comment on whether any of these wastes are being injected. Comment is also requested on what quantities of wastes are being injected, and on the characteristics of these wastes.

F. Required and Available Capacity for Hazardous Soil and Debris Contaminated With Newly Listed and Identified Wastes

This capacity analysis focuses on hazardous soil and debris contaminated with wastes whose treatment standards are proposed in this rule as well as hazardous soils contaminated with Phase I wastes.

Based on data currently available, EPA estimates that 3 million tons of hazardous soil contaminated with previously regulated wastes are presently disposed in hazardous waste landfills without prior treatment. These wastes were granted a two-year national capacity variance in the Third Third rule (55 FR 22520) which expired in May 1992. However, EPA granted a one-year national case-by-case extension for hazardous soil contaminated with previously regulated wastes requiring treatment by incineration, retorting, or vitrification. This variance expired in May 1993. Consequently, these wastes may undergo treatment prior to land disposal. In order to determine the capacity available to treat newly listed and identified hazardous soil, EPA must consider the impact that the treatment of hazardous soil contaminated with wastes regulated in previous LDR rulemakings will have on available commercial capacity. EPA used several data sources to estimate the total quantity of land-disposed hazardous soil and debris. These sources include: responses to the Advance Notice to the Proposed Rulemaking (ANPRM) for the newly identified wastes (56 FR 55160); the newly developed TC data set discussed earlier; information provided during a series of roundtable meetings held by the Agency in May and June of 1991 with representatives of companies involved in the management and disposal of hazardous debris and soil; the Biennial Reporting System (BRS); Records of Decision (RODs) of Superfund sites; the National Survey of Treatment, Storage, Disposal and Recycling Facilities (TSDR Survey); and the National Survey of Hazardous Waste Generators.[4]

In general, EPA found severe limitations in estimating the total quantity of hazardous soil because the available data are incomplete and poorly defined. The reason for this lack of comprehensive data is several-fold: First, the regulated community reported that their data generally are not classified by soil but rather by waste code and waste description; second, the data from the TSDR and Generator Surveys were not collected and categorized specifically for soil, and soil was often mixed with debris[5] and was frequently contaminated with more than one waste, thereby making the hazardous soil quantity determinations difficult; third, TSDR and Generator Surveys do not include data on hazardous soil contaminated with

[4] EPA conducted the surveys during 1987 and 1986 to obtain comprehensive data on the nation's capacity for managing hazardous waste and the volumes of hazardous waste being land disposed as well as data on waste generation, waste characterization, and hazardous waste treatment capacity in units exempt from RCRA permitting.

[5] Data submitted by TSDFs in roundtable meetings sometimes combine contaminated debris with soil. Furthermore, TSDFs have stated that historical waste data are generally not kept by soil classifications.

newly identified wastes because they were not considered hazardous wastes in 1986; and fourth, the BRS only covers active generators of hazardous waste and therefore may not capture soil volumes generated at inactive sites.

1. Waste Generation

a. *Hazardous soil.* The hazardous soil covered by this proposal includes soil contaminated with D018–D043 organic TC wastes, soils contaminated with coke-by product wastes and chlorinated toluene wastes, mixed radioactive soils contaminated with Phase II wastes, and soils contaminated with Phase I wastes. The largest quantity of hazardous soil in this proposal is from hazardous soil contaminated with D018–D043 organic TC wastes. Based on the results of the TC survey, EPA's current estimate for this quantity that will require off-site treatment is 234,000 tons per year. Table 4 presents the estimated 1993 quantities of soil and debris contaminated with newly identified TC wastes requiring off-site treatment, by waste code and type. The results of the newly developed TC data set discussed in the introductory section of this chapter have been used for these demand estimates and are part of the docket for today's rule. Additional analysis of the survey data will be incorporated in the capacity analysis for the final rule.[6]

One commenter to the ANPRM indicated that as many as 3,000 manufactured gas plants (MGP) may be generating TC-contaminated soil and debris. Most of the soil and debris generated at these plants is expected to be contaminated with benzene. While EPA acknowledges that the quantities of TC-contaminated soil from MGP are potentially large, the Agency expects that most of this quantity will be managed on-site and will not require off-site or commercial treatment capacity. EPA requests updated information on the generation and management of these wastes and on whether there will be sufficient commercial treatment services to treat these wastes on-site.

TABLE 4.—1993 QUANTITIES OF TC-CONTAMINATED SOIL AND DEBRIS REQUIRING OFF-SITE TREATMENT

[Surface Disposed Wastes in Tons]

Code	Soil	Debris
D018	161,166	27,574
D019	184	195
D020	325	16

[6] The total quantity of all TC hazardous soils impacted by LDR regulations may increase as further regulations are developed for TC wastes which are deferred to future rulemakings.

TABLE 4.—1993 QUANTITIES OF TC-CONTAMINATED SOIL AND DEBRIS REQUIRING OFF-SITE TREATMENT—Continued

[Surface Disposed Wastes in Tons]

Code	Soil	Debris
D021	29,760	212
D022	139	71
D023	31	57
D024	30	50
D025	30	60
D026	111	1,270
D027	1,795	244
D028	976	314
D029	1,831	324
D030	28,938	90
D031	17	13
D032	59	68
D033	60	103
D034	60	29
D035	461	293
D036	113	65
D037	336	227
D038	567	538
D039	2,789	961
D040	3,967	878
D041	17	22
D042	17	22
D043	66	85
Total	233,845	33,781

EPA believes mixed radioactive soils contaminated with Phase II wastes are currently generated. For example, DOE informed EPA that mixed radioactive soil contaminated with newly identified TC organic wastes are generated at a rate of 1.5 m^3 per year. Additionally, 23.7 m^3 of TC organic mixed radioactive soils are being stored awaiting treatment. Therefore EPA does not believe there is sufficient treatment capacity for the TC organic mixed radioactive soils generated annually.

Soils for Phase I wastes are being regulated under this rulemaking. The largest source of hazardous soil contaminated with Phase I wastes are F037 and F038 wastes generated at petroleum refining facilities. EPA believes that the quantities of hazardous soil contaminated with other Phase I wastes are relatively small. EPA has received information from petroleum refineries indicating that most facilities that were managing F037 and F038 wastes in surface impoundments are modifying their operations in some way. To the extent that a proportion of surface impoundments will be closed with waste removal, hazardous soil will be generated.

Information submitted to EPA by some petroleum refining facilities indicates that many surface impoundments managing F037 and F038 wastes will be closed with waste removal and that a significant number of these closures will occur during 1994. Closures with waste removal may involve the generation of hazardous soil. Based on assessments of the "typical" quantities of soil excavated during surface impoundment closures, EPA estimates that as much as 90,000 tons of F037- and F038-hazardous soil may be impacted by this rule. EPA stresses that these quantities represent a one-time generation of soil and are not expected to recur after 1994. EPA requests comments on this estimate and the timing.

EPA estimates that approximately 3 million tons of hazardous soil contaminated with previously regulated wastes are land disposed per year. EPA believes these quantities will initially have a significant impact on the capacity available to treat newly listed and identified hazardous soil. EPA solicits comment on this quantity estimate. Comments from the roundtable meetings indicate that decommissioning of large chemical plants and increasing remediation activities can significantly increase the estimated quantity of hazardous soil.

Several commenters to the ANPRM indicated that EPA may have underestimated the annual quantities of hazardous soil generated. Some commenters provided site specific data on the quantities of soil generated during remedial actions. The Agency is incorporating these data in its analysis of the required capacity for hazardous soil. Other commenters indicated that very large quantities of hazardous soil contaminated with wood preserving wastes and with former Bevill wastes will be generated in the near future. The Agency acknowledges these comments. However, hazardous soil contaminated with wood preserving wastes and with former Bevill wastes will be addressed in a future rulemaking.

EPA notes that the promulgation of new soil standards may encourage the development of on-site treatment technologies or the increased use of innovative technologies. EPA requests comments on the use of innovative technologies for hazardous soil. Specifically, EPA requests information on constraints to the use of these technologies both on- and off-site, including physical or chemical characteristics of the wastes, and logistical constraints such as permitting, scheduling, etc.

b. Hazardous debris. This rule covers debris contaminated with the newly listed and identified wastes covered in this proposal. An examination of the data from the TC survey indicates that approximately 34,000 tons of debris

contaminated with D018–D043 wastes may be currently land disposed.

EPA believes mixed radioactive debris contaminated with Phase II wastes are currently generated. For example, DOE informed EPA that mixed radioactive debris contaminated with newly identified TC organic wastes are generated at a rate of 46.36 m^3 per year. Additionally, 957.42 m^3 of TC organic mixed radioactive debris is being stored awaiting treatment. Therefore EPA does not believe there is sufficient treatment capacity for the TC organic mixed radioactive debris generated annually.

2. Current Management Practices

Waste generators and TSDFs report that most of the soils contaminated with D018–D043 newly identified organic TC wastes are currently landfilled without prior treatment. Incineration is the commercial off-site treatment technology reportedly available for these wastes.

Other than incineration for treating organic TC-contaminated soil, EPA has no information on the commercial off-site availability of other treatment technologies (e.g., low temperature thermal desorption, bioremediation, solvent extraction.) Although several commenters to the ANPRM mentioned bioremediation as an alternative to incineration for the treatment of TC-contaminated soils, no commenter provided facility specific information on commercially available off-site treatment capacity for bioremediation. The lack of off-site commercial capacity for technologies other than incineration was confirmed by responses to EPA's request for voluntary information from vendors of innovative technologies provided in the Vendor Information System for Innovative Treatment Technologies (VISITT). Although EPA has received no information that special-handling problems may limit the quantity of hazardous soil that currently can be treated by incineration, EPA is requesting information on special-handling concerns with managing these wastes.

3. Available Capacity and Capacity Implications

a. Hazardous soil. EPA is proposing that hazardous soil be treated prior to land disposal using one or more of the following general methods of soil treatment: Biological treatment, chemical extraction, soil washing, dechlorination, low-temperature thermal desorption, high-temperature distillation, thermal destruction, stabilization, and vitrification. EPA has determined that available destruction (e.g., incineration) capacity is inadequate, although adequate immobilization (e.g., stabilization) capacity exists. Inadequate capacity also exists for many of the proposed technologies in the extraction family (e.g., soil washing, chemical extraction). Much of the capacity of extraction technologies currently used to decontaminate soils, such as soil washing, may not be permitted prior to the effective date of this rule, although EPA is exploring options to expedite the permitting of these technologies. In conclusion, EPA anticipates that the off-site commercial capacity available to treat hazardous soils at the time this rule becomes effective will be limited to incineration and stabilization. EPA recognizes that innovative technologies are also available to treat hazardous soil. EPA requests comments on the practicality and current availability of these technologies.

EPA is proposing to grant a two-year national capacity variance for soils contaminated with newly identified TC organic wastes (D018–D043) and K141–K145, K147, K148, K149, K150, and K151 wastes. The variance is necessary because of the general lack of capacity to treat soil contaminated with organics, and the large quantity of soil contaminated with previously regulated organic wastes, for which the variances have expired. EPA is also proposing to grant a two-year national capacity variance to soils contaminated with newly listed wastes covered in the Phase I rule (i.e., F037 and F038 petroleum refining wastes; U328, U352, and U359; K107–K110, K111 and K112; K117, K118, and K136; and K123–K136.) The quantities of soil contaminated with F037 and F038 generated as a result of surface impoundment closures are estimated to be approximately 90,000 tons. EPA expects the quantities of soil contaminated with other Phase I wastes to be relatively small.

As discussed above, EPA estimates that as much as 3 million tons of hazardous soil contaminated with previously regulated wastes are land disposed per year. Any newly proposed commercial capacity will be needed for soil that is contaminated with wastes regulated in previous LDR rulemakings. The proposed variance may allow sufficient time for the installation and permitting of the treatment systems necessary to handle the quantities of soils contaminated with newly listed wastes covered in the Phase I rule.

The Agency's qualitative argument is based on this need and the lack of solid incineration as well as other capacity for managing hazardous soils. The Agency solicits comments on this approach and on estimates of available treatment capacity.

b. Hazardous debris. EPA estimates that approximately 34,000 tons of debris contaminated with newly identified organic TC wastes are currently land disposed and require off-site commercial treatment capacity. The capacity analysis conducted for debris contaminated with Phase II wastes indicates that insufficient capacity exists to treat debris contaminated with organics.

EPA is proposing to grant a two-year capacity variance for debris contaminated with newly listed and identified wastes covered under this proposal (i.e., newly identified organic TC wastes (D018–D043), K141–K145, and K147–K151 wastes.) The Agency is concerned that there will be insufficient time for facilities generating these debris and for potential treaters to plan for the management of such debris after the expiration of the one-year renewal of the hazardous debris case-by-case capacity variance in May 1994. EPA also realizes that there may be logistical problems associated with the management of hazardous debris cogenerated with hazardous soils contaminated with wastes covered in this proposal. In examining the generation of hazardous debris, EPA has learned that debris and soil are usually cogenerated; therefore, EPA is proposing to grant a two-year national capacity variance to debris contaminated with wastes covered by this proposal. EPA requests comments on this approach.

EPA notes that if soil and debris are contaminated with newly identified organic wastes covered in this rule and also with newly identified inorganic wastes whose treatment standard is based on an available technology, the soil and debris would remain eligible for the national capacity variance. This is because the hazardous soil and debris would still have to be treated by some technologies that EPA has evaluated as being unavailable at present.

XIII. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA is implemented Federally in authorized States in the interim.

Certain portions of today's rule are being proposed pursuant to sections 3004(d) through (k), and (m), of RCRA (42 U.S.C. 6924(d) through (k), and (m)). It is proposed that these be added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble. Table 2 in 40 CFR 271.1(j) is also proposed to be modified to indicate that this rule is a self-implementing provision of HSWA.

B. Effect on State Authorization

As noted above, EPA is today proposing a rule that in part, when final, will be implemented in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is proposed pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that HSWA interim authorization expired on January 1, 1993 (see 40 CFR 271.24(c)), although EPA is currently developing a rule which would extend this date.

Section 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modification to EPA for approval. The deadline by which the State would have to modify its program to adopt these regulations is specified in section 271.21(e). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's proposed rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modifications are approved. Of course, states with existing standards could continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these regulations in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these regulations must include standards equivalent to these regulations in their application. The requirements a state must meet when submitting its final authorization application are set forth in 40 CFR 271.3.

The regulations being proposed today need not affect the State's Underground Injection Control (UIC) primacy status. A State currently authorized to administer the UIC program under the Safe Drinking Water Act (SDWA) could continue to do so without seeking authority to administer the amendments that will be promulgated at a future date. However, a State which wished to implement part 148 and receive authorization to grant exemptions from the land disposal restrictions would have to demonstrate that it had the requisite authority to administer sections 3004(f) and (g) of RCRA. The conditions under which such an authorization may take place are summarized below and are discussed in a July 15, 1985 final rule (50 FR 28728).

XIV. Regulatory Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12291

Executive Order No. 12291 requires that a regulatory agency consider for each regulation the potential benefits as compared to the potential costs to society. To this end, for all major rules, a Regulatory Impact Analysis (RIA) must be conducted. An RIA consists in a quantification of the potential benefits, costs and economic impacts of a rule. A major rule is defined as a regulation estimated to result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individuals, industries, Federal, State, and local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Agency estimated the costs of today's proposed rule to determine if it is a "major" regulation as defined by the Executive Order. Today's rule is estimated to have total annual incremental costs of $330 million; therefore, today's proposed rule is considered a major rule. Because today's proposed rule is a major rule, the Agency has performed an Regulatory Impact Analysis, analyzing the benefits, costs, and economic impacts of today's proposed rule.

More detailed discussions of the methodology and results sections may be found in the background document, "Regulatory Impact Analysis of the Land Disposal Restrictions for the Phase 2 Newly Listed and Identified Wastes and Contaminated Soils," which has been placed in the docket for today's proposed rule.

1. Methodology Section

a. Cost methodology. In today's notice, the Agency is proposing treatment standards for newly identified wastes, consolidating waste stream LDR requirements into a "universal" set of LDR standards, as well as establishing standards for treatment of hazardous soil. The newly identified wastes covered under today's rule include wastes displaying the organic toxicity

characteristic (TC), and pesticide wastes that were not previously hazardous by the EP leaching procedure (see section IV of today's preamble for TC organic and pesticide wastes), as well as Coke Production wastes and Chlorotoluenes (see section V of today's preamble.)

The Agency has not estimated the potential changes in compliance costs for the proposal to adopt the universal LDR requirements. In general, the Agency believes that many standards would not change significantly, and thus not significantly alter current compliance costs. However, the Agency requests comment on the economic impacts of the universal treatment standards proposal. Of the newly regulated hazardous soil in today's rule, the only newly identified wastes contaminating soil are TC wastes. There are some volumes of F037 and F038 listed waste which has been found to contaminate soils, however these volumes are only generated on a non-routine basis, and are believed to be negligible. The volumes of soils which are under existing LDR regulations will receive a potential relief from regulation as the Agency is reducing the treatment standards to which these soils must comply. Finally, the Agency is proposing some new testing and recordkeeping requirements, as well as reducing other recordkeeping requirements.

The cost analysis seeks to estimate the incremental costs which will be incurred as a result of the proposed requirements. The incremental costs are estimated as the costs incurred for management under the post-regulatory requirements minus the costs currently incurred under the baseline practices of management. All dollar estimates are in 1992 dollars (unless otherwise noted.) The potential cost savings estimated for previously regulated hazardous soils has not been subtracted out of the incurred costs to obtain a total, but are presented as a separate cost savings estimate.

The effects of waste minimization have not been thoroughly accounted for in the Phase II RIA. There are two areas of concern.

The first issue is how to account for waste minimization in the future, due to the Phase II rule. To comply with LDR requirements, generators will choose the least costly means to comply: Either pay for treatment and subtitle C disposal costs, or reduce their waste volumes. EPA has not considered waste minimization as a low cost compliance approach in the RIA. To the degree that waste minimization will be employed to comply with the Phase II rule, the costs of the rule would be lower than are estimated in the RIA. However, the costs of the waste minimization activities would then be a part of the compliance costs of this rule.

The second question is how much of the waste minimization indicated in the 1992 TC Census is attributable to the TC Rule and how much is attributable to the Phase II proposed rule. The volumes assigned to waste minimization in the 1992 TC Census database have been removed from those volumes for which compliance costs were estimated in the Phase II RIA. If these waste minimization plans were in anticipation of the TC and the Phase II rule, then at least a portion of the costs for these waste minimization activities should be included in the costs for the rule. If these plans were due to the TC rule, then the costs of the TC rule may have been overestimated, and there would be not waste minimization costs incurred to the Phase II rule.

These waste minimization timing and accounting issues are difficult to evaluate given the data and understanding of facilities compliance practices which currently exist. The uncertainty noted, the EPA requests comment on ways to account for these costs in this rule and in future rulemakings.

i. Organic toxicity characteristic wastes (D018–D043). The treatment standards for the organic TC wastes require the regulation of all underlying hazardous constituents. The TC wastes covered in this analysis can be divided into three groups: TC nonwastewaters, TC soils and TC debris; while TC wastewaters are being regulated in today's rule, EPA believes any affected volumes to be negligible. EPA relied on existing unit costs which have been used in past regulatory analyses to perform the cost analysis of today's rule. EPA describes below the method of estimating the costs incurred in complying with the TC standards proposed in today's notice.

The volumes employed for the TC wastes, taken from the 1992 TC Census Database, differ from those in the capacity section. For the purposes of developing the cost estimates for today's rule, EPA used a different accounting of the reduction in volume due to waste minimization plans, which plans were indicated in the TC Census. This accounting approach used for the cost estimation allowed more waste minimization plans to be included in the long term volumes requiring treatment under today's rule. Approximately 90% of the TC nonwastewaters are estimated to require thermal treatment, either incineration or thermal desorption. The unit cost estimates range from $1850 per ton for off-site incineration, to $213 per ton for on-site thermal desorption.

Organic Toxicity Characteristic Nonwastewaters (D018–D043)

EPA employed the 1992 TC Census Database for the analysis of the TC nonwastewater volumes under regulation in today's proposed rule. As there is no proposed variance for these wastes, the Agency determined costs on an annual basis from the proposal date of the rule.

In establishing a baseline for the TC nonwastewaters, the Agency assumed subtitle C landfilling on-site, for noncommercial (company captive) facilities, and off-site, for commercial facilities. For the post-regulatory case, EPA developed technology assignments for the wastestreams at each facility based on the standards being established in today's rule.

Organic Toxicity Characteristic Hazardous Soil

EPA employed the 1992 TC Census Database, for the cost analysis of the TC hazardous soil volumes under regulation in today's proposed rule. The Agency applied an adjustment factor from the "Regulatory Impact Analysis for the Final Rulemaking on Corrective Action Management Units and Temporary Units" (January 11, 1993, CAMU RIA) to soil volumes from remediation to account for the effects of the CAMU rule on these volumes. In addition, the Agency is proposing a two year national capacity variance for these soils, therefore, costs incurred from these requirements do not begin until two years after the proposal date of the rule.

In establishing a baseline for the TC hazardous soils the Agency assumed subtitle C landfilling on-site, for noncommercial (company captive) facilities, and off-site, for commercial facilities. The Agency presents three options for the post-regulatory case in today's rule: (a) Universal Standards 10, (b) Universal Standards 10, with 90% Removal, and (c) 90% Removal (taking comment on a possible cap for option (c).) EPA modeled the costs for the soil standards under two approaches: Options (a) and (b) as roughly equivalent options, and (c) separately. For each approach, the Agency developed technology assignments for the soils at each facility based on the standards being established in today's rule. In all three options, EPA assumed that thermal desorption and soil vapor extraction (SVE) would be used approximately 90% at a cost between $515 to $213 per ton. The assignments include a treatment technology

residuals management, subsequent disposal, and transportation as needed. The Agency requests comment on the methodology and unit cost estimate.

Organic Toxicity Characteristic Hazardous Debris

EPA employed the 1992 TC Census Database, for the cost analysis of the TC hazardous debris volumes under regulation in today's proposed rule. As for the TC soil, the Agency applied an adjustment factor from the CAMU RIA to debris volumes from remediation, as was done for the soils volumes, to account for the effects of the CAMU rule on these volumes. The CAMU rule is expected to reduce volumes by approximately 54%. In addition, the Agency is proposing a two year national capacity variance for TC debris, therefore, costs incurred from these requirements do not begin until two years after the proposal date of the rule.

In establishing a baseline for the TC hazardous debris the Agency assumed subtitle C landfilling on-site, for noncommercial (company captive) facilities, and off-site, for commercial facilities. For the post-regulatory case, EPA developed technology assignments for the wastestreams at each facility based on the standards being established in today's rule. The assignments include a treatment technology (treatment train where required), subsequent disposal, and transportation as needed.

ii. Remaining wastes. In addition to organic TC wastes, the wastes affected by today's proposed rule include coke by-product wastes and chlorotoluenes. Based on an economic analysis of coke by-product waste management, EPA assumes that generators of these wastes will, for the most part, be recycling these wastes rather than disposing of them in subtitle C landfills. Therefore, EPA estimates that negligible coke by-product wastes will be affected by this rule. For the chlorotoluene waste volumes, EPA conducted a detailed cost analysis using site specific data.

iii. Previously regulated hazardous soil. The hazardous soil regulated under today's rule can be broken into two groups: Hazardous soil which is under existing regulations, and newly regulated hazardous soil. The newly regulated hazardous soil is contaminated with TC wastes, and were described above. The previously regulated hazardous soil represents soil contaminated with listed or Extraction Potential Leaching Procedure (EP) toxicity wastes. Treatment standards were placed on these soils during the scheduled waste rules (First Third LDR, Second Third LDR, etc.) These soils, having existing standards established for their treatment, are being placed under new proposed standards, which are specifically developed for soil treatment. To the degree that these standards are less stringent, there will be an incremental cost savings calculated for the impact from today's rule.

The Agency estimated a volume of previously regulated soil of 2.1 million tons per year which would incur costs under today's rule. This estimate is derived from the capacity analysis work performed for today's rule, applying an adjustment factor to account for a reduction in the volumes being treated due to the recently promulgated CAMU rule. As the Agency is unable to grant a national capacity variance for previously regulated soils, the costs savings is assumed incurred from the date of proposal of today's rule.

The standards being established in today's rule for previously regulated soil are the same three as those being established for newly regulated soil (i.e.: TC soil): (a) Universal Standards x 10, (b) Universal Standards x 10, with 90% Removal, and (c) 90% Removal (comment is taken on a possible cap for this option). The Agency did not have facility specific data to develop a post-regulatory scenario for these volumes. Therefore, for the baseline and post-regulatory alternatives, EPA used professional judgment in interpreting the available data to estimate percentages of treatment for the post-regulatory scenario. To determine these percentages of treatment, the Agency compared existing soil concentration data (1991) from the CERCLA Record of Decision (ROD) database with the universal treatment standards. From these data, the Agency was able to determine baseline and post-regulatory technology percentages for the soil volumes.

iv. Testing and recordkeeping costs. In addition to the costs for treatment of wastes, EPA estimated the incremental costs for the new testing and recordkeeping requirements in today's rule. Testing and recordkeeping costs were developed for organic TC wastes only, using the facility specific data available for these wastes in the 1992 TC Survey.

The Agency employed baseline and post-regulatory scenarios appropriate to the testing requirements for each waste to develop cost estimates for the testing requirements in the rule. The Agency made several assumptions as to how frequent a generator would need to test their wastes, and for how many constituents to test. The "Regulatory Impact Analysis of the Land Disposal Restrictions for the Phase 2 Newly Listed and Identified Wastes and Contaminated Soils," which has been placed in the docket for today's rule, presents these approaches in full.

The Information Collection Request (ICR) for today's rule, being prepared by EPA, estimates that the recordkeeping cost is $41 per wastestream. For the requirements in today's rule, it is estimated to take one hour to develop and submit the required notification and one quarter of an hour to retain copies of the documentation and notification. The Agency requests comment on this estimate.

b. Economic impact methodology. The economic effects of today's proposed rule are defined as the difference between the projections of the likely economic impacts on facilities that result from regulatory compliance and the industrial activity likely in the absence of regulation (i.e., baseline conditions).

The Agency has evaluated the economic impacts for facilities managing organic TC wastes on a facility-specific basis, limited only by the extent that data were available. EPA estimated the economic effects by comparing incremental annual compliance costs to a number of company financial measures, such as revenues, cost of operations, operating income, and net income. Financial data were obtained from Standard & Poor's Corporation Descriptions for the last fiscal year reported.

Since EPA believes that no costs will be associated with the treatment standards for coke by-products in the proposed rule, no economic impacts will be associated with regulation of these wastes. Economic impacts of compliance for facilities currently land disposing chlorotoluenes were evaluated on a facility-specific basis.

c. Benefits methodology. The Agency evaluated three types of benefits for today's standards for newly identified TC wastes: reduction in human health risks via the ground-water pathway, reduction in human health risks via the air pathway, and positive effects on the value of properties adjacent to waste management facilities. EPA's analysis of the benefits of today's rule covers TC wastes only. These wastes dominate the other wastestreams covered by today's rule in terms of volume and costs. Moreover, the Agency had better data available for the TC wastes, in terms of attributes such as constituent concentrations and volumes which are required in an analysis of benefits. The Agency did not conduct a quantitative benefits estimate of the universal LDR proposal or the previously regulated soil

standards. EPA believes that these proposals could potentially greatly reduce compliance costs, with negligible change in protection of human health and the environment. However, the Agency requests comment on this finding. If commenters believe the Agency should perform a quantified estimate of the change in benefits of this proposal, commenters should suggest appropriate methods and approaches.

i. Human health risk reduction—ground water pathway. The fundamental concept underlying EPA's approach for assessing ground-water risk reduction is that subtitle C containment is completely effective in the short-term, i.e., over a period of about 30 years. However, the Agency assumes that over the longer term, containment systems and monitoring will fail. The benefits analysis performed for today's rule captures this long-term risk which could be avoided under today's rule. EPA analyzed the baseline risks, i.e., risks posed by TC wastes in the absence of today's rule, as well as post-regulatory risks under two options. In the baseline, TC wastes are untreated, shipped off-site, and placed in subtitle C landfills. In the post-regulatory scenario, TC wastes are treated and placed in subtitle D landfills. The difference in risks from the baseline to the post-regulatory condition is a measure of the benefit of an option.

The basic approach involves the following steps (which are elaborated on in the RIA background document, which has been placed in the docket for today's rule):

(1) The Agency employed waste concentration data from the 1992 TC survey to represent waste concentrations.

(2) Where surveys reported total waste concentrations, rather than TCLP concentrations, the Agency used the Organic Leaching Model (OLM) to estimate leachate concentrations.

(3) EPA calculated the mean concentration of each constituent at each facility, weighted across the volume of all TC wastes managed at that facility.

(4) EPA calculated the risk that would be posed by consumption of leachate, for both cancer and non-cancer effects, at each facility.

(5) EPA developed a set of dilution/attenuation factors (DAF) to represent the effect of fate and transport processes in a ground-water system. For each facility, the Agency divided the risk posed by the consumption of leachate by the DAF (expressed as a probability distribution) to yield predicted concentration at an exposure well.

(6) EPA then summed the 1800 predicted risks across all facilities (i.e., 36 facility leachate risks times 50 DAFs) to develop an estimate of the distribution of risk at facilities managing untreated TC wastes. The Agency summed the risks across the distribution to obtain a total population risk estimate. The Agency employed standard assumptions of a 70 kg person drinking 2 liters of water per day over 70 years.

(7) To simulate the regulatory options, the Agency reset the leachate concentrations in Steps 2 through 4 with the universal standard concentrations. EPA then replaced the DAF distribution for subtitle C facilities (from Step 5) with a DAF distribution for subtitle D facilities, because the treated TC residues will not need to be managed as hazardous wastes.

ii. Human health risk reduction—Air pathway. Constituents contained in TC waste, soil, and debris may be emitted to air through volatilization and dust entrainment. Reducing the concentrations of TC constituents through the treatment standards set in today's rule significantly reduces the potential for air emissions, and the risks posed by those air emissions. The goal of the air pathway risk analysis was to characterize baseline (pre-LDR) risk and the reduction in baseline risk resulting from regulatory options.

In the baseline, untreated TC wastes are placed in subtitle C landfills. In the post-regulatory scenario, treated wastes are placed in subtitle C or D landfills. In this analysis, EPA assumed that any air emissions due to additional transportation, storage or treatment in the post-regulatory scenario are negligible.

The Agency's basic approach involves the following steps (which are elaborated on in the RIA background document, which has been placed in the docket for today's rule):

(1) EPA used bulk waste concentration data from the TC survey to represent waste concentrations.

(2) In cases where respondents reported TCLP concentrations, rather than bulk concentrations, the Organic Leaching Model (OLM) was used to "back-calculate" bulk concentrations.

(3) The Agency calculated the mean concentration of each constituent at each facility, weighted across the volume of all TC wastes managed at that facility.

(4) EPA calculated the unit area managing TC wastes.

(5) EPA estimated annual average emissions due to volatilization and dust entrainment for each constituent at each facility.

(6) Using the same meteorologic conditions assumed for the Corrective Action RIA (CARIA),[7] atmospheric transport for each constituent was evaluated. EPA then calculate concentrations at several downwind points corresponding to potential exposure locations.

(7) The Agency calculated individual cancer risk and non-cancer risk, using exposure assumptions from the CARIA.

(8) EPA calculated population risk for exposed populations.

(9) The Agency simulated the regulatory options.

2. Results Section

a. Cost results. In total, today's proposed rule would have an incremental annual cost of $330 million. Seventy percent of this cost would be for the treatment of organic TC nonwastewaters, and 18 percent and 12 percent would be for the treatment of organic TC contaminated soil and debris, respectively. In a separate analysis, EPA estimates that the regulatory options proposed for all previously regulated contaminated soil could represent a potential annual savings of approximately $250 million to $560 million.

i. Organic TC wastes and other newly regulated wastes. As described above, EPA conducted a facility-specific cost analysis for those facilities managing organic TC waste.

Since EPA believes no coke by-product wastes will be landfilled as a result of the coke by-product listing rule (August 18, 1992, at 57 FR 37284), EPA estimates that no cost impact will be associated with the treatment standards for coke production wastes. The incremental cost for chlorinated toluenes is estimated to be less than $0.1 million annually.

ii. Previously regulated hazardous soil. As described above, EPA relied on available soil concentration data and professional judgment to determine the effect of the proposed rule on previously regulated hazardous soil. Exhibit XIV–1 presents the percentages estimated by EPA for the post-regulatory scenario for the previously regulated soil.

EXHIBIT XIV–1.—BREAKDOWN OF PERCENTAGES OF TREATMENT TECHNOLOGIES FOR THE PREVIOUSLY REGULATED SOILS POST-REGULATORY SCENARIO

	90 percent only	UTS only	UTS+90 percent
Incineration	0%–10%	5%–15%	5%–15%
Stabilization	10%	10%	10%
Soil Washing	80%	55%	70%
Thermal Desorption	10%–20%	15%–25%	15%–25%
Total	110%	95%	110%

—For the UTS Only option, the total sums to 95% because 15% of the soil requires no treatment at all under this option.
—Technology assignments assume a small amount of treatment trains are required.
—Soil washing is assigned as a low cost technology where minimum treatment is required.

Both the data and the methodologies used for the cost analysis have limitations. The main limitations are addressed in the background RIA document which has been placed in the docket for today's rule. The Agency has limited unit cost data for these treatment technologies. The Agency requests additional data and comment on the assumptions in this analysis.

b. Economic Impact Results. For non-commercial companies (company captives) in the TC capacity database, only one company would have a ratio of incremental compliance cost to cost of operations greater than one-half percent. Looking at the ratio of net income (i.e., after tax) to the incremental compliance cost, five companies would have a ratio less than 20; four of these five companies, however, reported a net loss in the last fiscal year. Of these five companies, only one would have a ratio of operating income to the incremental compliance cost less than 20.

For the commercial companies in the TC capacity database, only one has a ratio of incremental annual cost to cost of operations greater than five percent.

Since no costs are associated with the treatment standards for coke by-products, no economic impacts are expected. Economic impacts for facilities that generate chlorinated toluene wastes are calculated based on the before-tax annualized incremental costs. The results of the analysis, however, are aggregated since the data used in the analysis are propriety. Based on a ratio analysis of incremental cost to total sales, none of the facilities that generate these wastes is expected to experience significant impacts as a result of the proposed rule.

Both the data used for the economic impact analysis and the methodologies developed have limitations. The main limitations are addressed in the background RIA document which has been placed in the docket for today's rule.

c. Benefit Estimate—i. Results—Groundwater Pathway. This section presents results for the baseline risks and two regulatory approaches. For each case, results for individual cancer and non-cancer risk are presented for both high end and central tendency approaches. The section concludes with population risk estimates for cancer risks.

The results, presented in full in the RIA background document which is included in the docket for today's rule, show about eight percent of the population having an individual lifetime excess cancer risk above 10^{-6} in the high end baseline, and four percent between 10^{-6} and 10^{-4}, and approximately four percent above 10^{-4} in the high end baseline. For the central tendency baseline, the individual excess lifetime cancer risk is approximately six percent above 10^{-6}, five percent between 10^{-6} and 10^{-4}, and two percent above 10^{-4}. For both regulatory options, EPA assumed that all constituents would be directly (option 1) or indirectly (option 2) treated to universal standards. For the post-regulatory cases, about five percent of the population has an individual lifetime excess cancer risk level above 10^{-6}.

Using the distribution of individual risks, the Agency calculated baseline cancer population risk. EPA used data from the Corrective Action RIA on the proportion of subtitle C facilities with potentially exposed populations through ground water (23 percent), and the mean size of the potentially exposed population (6,870 people per facility). Using the facility/risk distribution of 1800 points (i.e., 36 facilities times 50 DAFs) the Agency multiplied the individual risk for a certain percentile of the distribution by the number of people represented by each percentile (i.e., 6,870 people per facility divided by the percentile represented by a single facility. A single facility represents 100 percent divided by 48 facilities, or 2.08 percent per facility. Therefore, there are about 3,300 people per percentile.) The population risks were then converted to annual values by assuming an average life span of 70 years. Based on these assumptions, EPA estimates the baseline population cancer risk to be 0.33 cases per year for the central tendency baseline. The post-regulatory population cancer risk is about 0.031 cases per year in the central tendency. In other words, the regulatory option reduces 0.30 cases per year in the central tendency.

An approach which would render the same result would be to compute the mean individual risk across the distribution and multiply it by the total number of people potentially exposed across all facilities (i.e., 6,870 people per facility times 48 facilities times 23 percent with down gradient wells equals 75,800 people).

The analysis shows that the 99th percentile baseline exposure level is less than the reference dose. Because the riskiest facility has an expected value for non-cancer exposure that is below the reference dose, the Agency is assuming no significant non-cancer risk in the baseline. Post-regulatory non-cancer risk is also insignificant for both regulatory options.

Assumptions for the second regulatory option produced cancer risks identical to those of the first option. For non-cancer risks, however, the two options produced somewhat different results.

ii. Results—Air Pathway. This section provides results for the air pathway, for the baseline and post-regulatory options. The Agency used two methods to calculate potential emissions. Method 1 for limiting mass flux from volatilization was never triggered; Method 2 limited emissions for 30 of the 141 constituent/facility combinations modeled for the baseline, which accounts for the difference between the baseline risks in the two approaches. For both post-regulatory options, the two methods produced virtually identical results.

Using Method 1, approximately 27 (75 percent) of the 36 facilities modeled have individual cancer risk exceeding

10^{-6} at the 140 m distance in the baseline, 16 facilities (45 percent) are between 10^{-6} and 10^{-4}, and 11 facilities (30 percent) have individual cancer risk exceeding 10^{-4} at the 140 m, with the peak value at 2 times 10^{-3}. In the post-regulatory scenario, the individual cancer risk is reduced so that approximately 5 facilities (15 percent) have individual cancer risk over 10^{-6}.

At the 600 m distance, using Method 1, approximately 18 facilities (50 percent) of the 36 facilities have individual cancer risk exceeding 10^{-6} in the baseline, 16 facilities (45 percent) are between 10^{-6} and 10^{-4}, and about 2 facilities (5 percent) have individual cancer risk exceeding 10^{-4}. In the post-regulatory scenario, the individual cancer risk is reduced so that no facilities have an individual cancer risk over 10^{-6}.

Using Method 2, approximately 27 facilities (75 percent) of the 36 facilities modeled have individual cancer risks exceeding 10^{-6} at the 140 m distance in the baseline, 22 facilities (60 percent are between 10^{-6} and 10^{-4}, and 5 facilities (15 percent) have individual cancer risk exceeding 10^{-4} at the 140 m, with the peak value at 2 times 10^{-4}. In the post-regulatory scenario, the individual cancer risk is reduced so that approximately 5 facilities (15 percent) have individual cancer risk over 10^{-6}.

At the 600 m distance, using Method 2, approximately 14 facilities (40 percent) have individual cancer risks exceeding 10^{-6}, and no facilities have individual cancer risk exceeding 10^{-4}, with the peak value at 2 times 10^{-5}. In the post-regulatory scenario, the individual cancer risk is reduced so that approximately no facilities have individual cancer risk over 10^{-6}.

Using both sets of emission rates, non-cancer dose exceeds the reference dose at only one facility; this occurs at both distances with Method 1, and only at 140 m using Method 2. For the post-regulatory scenario, for both options, the highest individual risk is six times 10^{-6}. Doses of all non-carcinogens are well below reference doses under both options.

For the population risk estimates, the Agency determined that the central tendency incremental benefits are 0.033 (Method 1) and 0.0065 (Method 2).

3. Regulatory Impact Analysis—Underground Injected Wastes

The Agency has completed a separate regulatory impact analysis for underground injected wastes affected by the Phase II proposed rule.

This analysis describes and evaluates the regulatory impacts only to the Class I injection well universe. The Agency does not believe that many Class V injection well owners and operators will be affected by the proposed Phase II requirements. The Agency believes that the new proposed Phase II LDRs for injected wastes cover either listed wastes or distinctly industrial wastes that would be injected by owners and operators of only Class I injection wells. EPA has no data which definitively indicates that any volumes of Phase II wastes are being injected in Class V wells, but reiterates that we are soliciting any and all comments and information which will affect the regulatory impact analysis.

According to the available data, the RIA indicates that up to 43 Class I injection facilities will be potentially affected by the new Phase II Land Ban requirements. These Class I injection facilities will now be required to either treat wastes, or file "no migration" petitions as outlined in 40 part CFR 148 (See 53 FR 28118 preamble for a more thorough discussion of the no migration petition review process). Up to 21 formerly non-hazardous Class I facilities may become newly hazardous due to the additional restrictions, whereas 22 facilities already have no migration exemptions approved by EPA, but may face additional requirements requiring some modification of their petitions due to the proposed Phase II rule.

The additional facilities affected by Phase II rulemaking contributes to overall compliance costs already incurred by Class I injection well owners and operators managing hazardous wastes regulated by previous rulemaking. The Agency analyzed costs and benefits for today's rule by using the same approach and methodology developed in the Regulatory Impact Analysis of the Underground Injection Control Program: Proposed Hazardous Waste Disposal Injection Restrictions used for the July 26, 1988, final rule (53 FR 28118) and subsequent rulemaking. An analysis was performed to assess the economic effect of associated compliance costs for the additional volumes of injected wastes attributable to this proposed rule.

In general, Class I injection facilities affected by the Phase II rule will have several options. Some facilities will modify existing no migration petitions already approved by the Agency, other facilities may submit entirely new petitions, and still others may accept the prohibitions and either continue to inject wastes after treatment or cease injection operations all together.

The total annual no migration petition costs for facilities affected by the new Phase II prohibitions is estimated to be $858,000. The annual cost for affected facilities employing alternative treatment is estimated to range from $3.9 million to $58 million annually. The range of costs for alternative treatment is the result of applying a sensitivity analysis. Only the incremental treatment costs for the new waste listings are calculated in this RIA.

The total cost to industry of petitions and alternative treatment arising from the proposed Phase II revisions for deep well injection is estimated to range from $4.8 million to $58.9 million annually. All of these costs will be incurred by Class I injection well owners and operators.

The Agency did not perform a quantified risk assessment for this proposal. However, the benefits to human health and the environment in the RIA are generally defined as reduced human health risk resulting from fewer instances of ground water contamination. In general, potential health risks from Class I injection wells are extremely low. However, injection is not without risks. In isolated cases, potential risks to human health and the environment may be greater due to abandoned, unplugged wells near the injection well site. Other cases involve possible grout seal failure around the protective casing of an injection well, but cancer risks from such a failure are insignificant. Of studies conducted to describe Class I well problems, only six wells, or less than two percent of all Class I wells, were reported to have experienced malfunctions that contributed to any contamination of the surface or of an underground source of drinking water. No health-related problems attributed to Class I injection were reported in the same study.

The economic analysis estimates that none of the twenty-six publicly traded companies affected by the rule will be significantly economically impacted. The limited data available for the 17 privately held companies suggests, however, that they may face significant impacts. Overall, the RIA assumes that none of the companies affected will close as a result of the proposed Phase II rule.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, when an agency publishes a notice of rulemaking, for a rule that will have a significant effect on a substantial number of small entities, the agency must prepare and make available for public comment a regulatory flexibility analysis that considers the effect of the rule on small entities (i.e.: Small businesses, small organizations, and small governmental jurisdictions).

Under the Agency's Revised Guidelines for Implementing the Regulatory Flexibility Act, dated May 4, 1992, the Agency committed to considering regulatory alternatives in rulemakings when there were any economic impacts estimated on any small entities. Previous guidance required regulatory alternatives to be examined only when significant economic effects were estimated on a substantial number of small entities.

In assessing the regulatory approach for dealing with small entities in today's rule, for both surface disposal of wastes and underground injection control, the Agency considered two factors. First, data on potentially affected small entities are unavailable. And second, due to the statutory requirements of the RCRA LDR program, no legal avenues exist for the Agency to provide relief from the LDR's for small entities. The only relief available for small entities is the existing small quantity generators and conditionally exempt small quantity generator exemptions found in 40 CFR 262.11–12, and 261.5, respectively. These exemptions basically prescribe 100 kilograms (kg) per calendar month generation of hazardous waste as the limit below which one is exempted from complying with the RCRA standards.

Given these two factors, the Agency was unable to frame a series of small entity options from which to select the lowest cost approach; rather, the Agency was legally bound to regulate the land disposal of the hazardous wastes covered in today's rule without regard to the size of the entity being regulated.

C. Paperwork Reduction Act

The information collection requirements in today's proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1442.06) and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency; 401 M St., SW.; Washington, DC 20406 or by calling (202) 260–2740.

The annual public reporting burden for this collection of information is estimated to average 2 hours per treatment facility and 1 to 52 hours per generator, including time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. The annual recordkeeping burden for generators and treatment facilities is estimated to be 15 minutes per respondent.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency; 401 M St., SW.; Washington, DC 20406; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects

40 CFR Part 148

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Water supply

40 CFR Part 260

Administrative practice and procedure, Hazardous waste.

40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 271

Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Penalties, Reporting and recordkeeping requirements.

Dated: August 31, 1993.

Carol M. Browner,

Administrator.

Appendix A to the Preamble: Description of Hazardous Soil Treatment Technologies and Performance Standards

1. *Biological Treatment*

Biological treatment is a destruction technology that uses microorganisms to degrade and transform hazardous organic compounds into compounds of reduced toxicity. Bacteria, fungi, and yeasts are the microorganisms most frequently employed for biodegradation of hazardous compounds. Under aerobic conditions (in the presence of oxygen), microorganisms biodegrade organic contaminants to carbon dioxide, water, nitrate, sulfate, and cell protein. Under anaerobic conditions (in the absence of oxygen), microorganisms can biodegrade organic contaminants into methane, carbon dioxide, and cell protein.

Aerobic bioslurry treatment involves mixing contaminated material with water to form a slurry in an enclosed container. Nutrients and oxygen are added to the water to provide microorganisms with the proper environment to facilitate biodegradation, and the slurry is mixed to keep the solids in suspension. Bioslurry treatment has the advantage of providing for careful process control, and increased contact between microorganisms and contaminants in the slurry.

Aerobic biological treatment may also be conducted in the solid-phase. Solid-phase treatment activities include composting and prepared bed treatment. Optimized conditions for solid-phase treatment are maintained by tilling the soil regularly for aeration and contaminant mixing, addition of required nutrients for microbial metabolism, and supplemental irrigation for moisture control.

Anaerobic biological treatment may be conducted in either a solid- or a slurry-phase, using equipment similar to that used for aerobic treatment. Anaerobic treatment typically requires more time than aerobic treatment, due to the slow growth rate of the methanogenic (methane producing) bacteria. Anaerobic treatment is most effective on soils with a moderate to high Ph, containing contaminants that are nonhalogenated hydrocarbons, and soils with low biochemical oxygen demand.

2. *Chemical Extraction*

Extraction technologies are used to treat wastes containing a variety of organic constituents and a broad range of total organic content. This method of treatment is accomplished using an organic solvent in the liquid phase to solubilize contaminants for removal and can be used on many solvent-soluble contaminants. The effectiveness of this technology depends on the solvent-contaminant match. Two general extraction technologies are leaching and immersion extraction.

In its most typical form, leaching is a batch extraction operation in which an organic solvent is sprayed onto soil in a tank, causing the contaminant to leach from the soil. The solvent, containing the contaminant(s), is collected at the bottom of the tank after percolating through the soil. In the absence of agitation, the liquid-solid extraction is a slow and inefficient process. Channeling of the liquid solvent through the soil can result in untreated

portions of soil in the tank, further lowering the efficiency. Further, the presence of fines can stop the percolation process while the presence of coarse agglomerates with well-imbedded contaminants often can only be treated at the surface.

In immersion extraction, soil is suspended and thoroughly mixed in solvent baths operated at elevated or ambient temperatures to optimize treatment. Secondary treatment (e.g., distillation) is performed to separate the solvent from the contaminant. After treatment, it is sometimes possible to reuse the solvent in the treatment system.

A wide variety of organic solvents are commonly used, depending on the soil contaminant being treated. The choice of suitable solvent depends primarily on chemical structures of the contaminant, solubility of contaminants in the solvent, soil type, and equilibrium characteristics. Chemical extraction treatment systems rely on differences between the boiling points of the contaminant and the solvent to facilitate post-treatment separation (distillation).

A primary advantage of chemical extraction is the wide range of applicability for treating hazardous soil. If the proper solvent is selected, treatment of many soil contaminants is possible. Typical treatment times can range from several hours to several days.

3. *Dechlorination*

Dechlorination is a soil treatment process whereby contaminants in the soil are chemically reacted to form less toxic compounds. The soil is mixed with a chemical reagent and agitated to increase the contact of reagent with the soil contaminant. The reaction that takes place in the soil is a substitution reaction, in which chlorine is removed from the contaminant and substituted with a less toxic element (usually hydrogen). The contaminant and residual reagents that remain in the soil following the substitution reaction can be removed in a subsequent step using an extraction process.

Another type of dechlorination treatment technology that is available (although not commonly used) to dechlorinate chlorinated organic compounds in soil is photochemical degradation. This type of treatment technology uses photochemical energy in the form of ultraviolet (UV) radiation, usually artificial, to degrade halogenated contaminants such as polychlorinated biphenyls (PCBs), and polychlorinated dibenzodioxins (PCDDs), and polychlorinated dibenzofurans (PCDFs). These compounds are quite reactive in the presence of UV radiation. The photoreduction mechanism involves the substitution of hydrogen for chlorine, leading to the formation of detoxified substances.

4. *High-Temperature Metals Recovery*

High temperature metals recovery (HTMR) is a technology applicable to materials containing substantive amounts of metal oxides and metal salts (including cadmium, chromium, lead, nickel, and zinc compounds) at concentrations ranging up to 70 percent with low levels (i.e., below 5 percent) of organics and water in the wastes. There are a number of different types of HTMR systems, which generally differ from one another in source of energy used and the method of recovery. These HTMR systems include the rotary kiln process, the plasma arc reactor, the rotary hearth electric furnace system, the molten slag reactor, and the flame reactor.

The basic principle of operation for HTMR is that metal oxides and salts are separated from a waste through a high temperature thermal reduction process that uses carbon, limestone, and silica as raw materials. The carbon acts as a reducing agent and reacts with metal oxides to generate carbon dioxide and free metal. The silica and limestone serve as fluxing agents. This process yields a metal product for reuse and reduces the concentration of metals in the residuals. The HTMR process consists of a mixing unit, a high temperature processing unit (kiln, furnace, etc.), a product collection system, and a residual treatment system.

5. *Soil Washing*

Soil washing is used to describe a number of techniques where contaminants are either separated or removed from soil with an aqueous process. Soil washing has the potential to be applicable to many different types of contamination, including both organic and metallic contaminants.

In soil washing, soil is mixed with water and the resulting solution is augmented with a basic or surfactant agent that increases the solubility of the contaminant(s) in water. This is usually done to remove organics. Soil washing may be done with an acidic solution or a chelating agent that chemically reacts with metal ions and promotes their solubility.

6. *Solidification/Stabilization*

Solidification/stabilization is used to convert soil into a matrix that prevents contaminants from leaching. Stabilization techniques are most commonly used for hazardous wastes with treatment standards expressed as a concentration of constituents in an extract of the waste. (Stabilization of wastes (or hazardous soil) that have treatment standards expressed solely as specific concentrations of constituents in the entire waste stream is not appropriate.)

Three types of solidification/stabilization processes are used for treatment of soil. The first involves mixing the soil with cement, lime, fly ash, kiln dust, silicates, or other pozzolanic-type materials, and water; the mixture then goes through a curing process. The second process involves mixing the soil with asphalt and/or plastic. In this process, the mixture is heated to slightly above the melting point of the plastic or asphalt, which causes the soil to be covered with a polymeric or asphalt coating. The mixture is then cooled and allowed to cure prior to disposal. The third type of solidification/stabilization technologies use proprietary additives. These processes are fixation technologies that involve the addition of chemicals (reagents) to the contaminated matrix changing the form of the contaminant so that it is no longer soluble in water. Solidification/stabilization processes increase the volume of treated material, but leave no additional residuals.

To obtain a uniform stabilized material, the particle size of the soil being stabilized should be kept fairly small. Vendors of various solidification/stabilization processes have different size requirements, but the particular sizes generally range in diameter from 6.35 to 100 mm. Sizing equipment, such as ball mills or hammer mills, is commercially available to size most soil particles to meet the requirements for microencapsulation processes. Currently, shredding equipment may be used to process debris-like materials such as large stones or rocks that may be found in the soil.

7. *Thermal Desorption*

Thermal desorption systems employ either a direct or an indirectly-fired oven or heating chamber to volatilize organic contaminants. Usually soil is placed into the system and heated by convection using heating fuel or an electric heating element, or heated by radiation using infrared radiation or microwaves. For continuous operations, screw augers or rotary kilns are used to mix the soil while moving the hazardous soil through the system. To transfer heat to the soil in an auger system, a heating fluid is passed through the center of the auger. Heat transferred to the soil volatilizes the contaminants from the soil. Treatment

systems have an oxygen deficient atmosphere in order to prevent contaminants and soil from combusting or exploding. Volatilized contaminants can be separated from the gaseous effluent by scrubbing or absorption, or it may be incinerated. Thermal desorption systems can be designed to be run in either a batch or continuous mode.

8. *Thermal Destruction*

Thermal destruction includes treatment in an incinerator operated in accordance with the technical operating requirements of 40 CFR part 264 subpart O and 40 CFR part 265 subpart O, in boilers or industrial furnaces operating under either interim status or a RCRA permit in accordance with the requirements of 40 CFR part 266, subpart H, or in other RCRA permitted thermal treatment devices, such as pyrolysis units operating under interim status in accordance with the requirements of 40 CFR part 265, subpart P.

Thermal destruction uses heat to cause contaminants to chemically react to form nonhazardous chemicals. Thermal destruction units may use either an oxidizing or a nonoxidizing atmosphere. Units in which an oxidizing atmosphere is employed cause combustible contaminants to oxidize to carbon dioxide and water. Units that employ a non-oxidizing atmosphere frequently employ a nitrogen atmosphere in the combustion chamber. In these units, contaminants are reacted to form carbon monoxide and methane gas.

Many incinerators require size-reduction of soil or soil agitation during incineration in order to ensure that all of the soil being treated reaches the operating temperature of the unit. Units can be run under a slightly negative pressure to prevent emissions of volatilized or incompletely combusted contaminants. Thermal destruction units must also employ emission control devices to prevent emissions of a variety of combustion products including particulate matter, oxides of sulfur and nitrogen (SO_x and NO_x), and products of incomplete combustion.

Treatment residuals from thermal destruction units include effluent gas, wastewater and sludges from air pollution scrubbers, and residual ash, which consists of the noncombustible portion of soil and contaminants.

9. *Vitrification*

This technology uses heat to transform wastes into a glass and crystalline mass. The heat causes soil to be broken down into its mineral components and oxides, which then do not reform upon cooling. At the high temperatures associated with vitrification, most inorganic constituents fuse and become chemically incorporated into the molten mass or simply become immobilized in the mass without chemically changing form. The exceptions include the more volatile heavy metals (e.g., Hg) which may not enter the molten liquid, but may be removed with the other off-gases. The organics are generally pyrolyzed or oxidized and come out of the process in the off-gases. Vitrification can be performed in a treatment reactor at temperatures of up to 2000°C. This treatment is effective for soil containing most RCRA hazardous constituents.

The temperatures required for vitrification (up to 2000°C) can be generated a number of ways. These include: Joule heating by passing an electric current through the waste; heating in an electric furnace; heating by introduction of a plasma torch to the waste reactor; and heating in an incinerator operating in a slagging mode. With each of these methods, the waste stream (and additives, if necessary) is heated until a molten liquid is formed. Additional wastes may be introduced to the molten mass and treated with the heat transferred from the liquid. The molten glass can be either quenched or allowed to cool more slowly. In either case, an obsidian-like glass is generated which can be in the form of a large monolith or any number of smaller sizes down to small granules. Off-gases from vitrification may require further treatment.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Sec. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.

2. Section 148.17 is amended by redesignating paragraphs (b) and (c) as (c) and (d) and by adding paragraph (b) to read as follows:

§ 148.17 Waste specific prohibitions—Newly Listed Wastes.

* * * * *

(b) Effective [Insert date three months from date of publication], the wastes specified in 40 CFR 261.24 as EPA Hazardous waste numbers D012, D013, D014, D015, D016, D017 that are Toxicity Characteristic toxic halogenated pesticide wastes, and the wastes specified in 40 CFR 261.32 as EPA Hazardous waste numbers K141, K142, K143, K144, K145, K147, K148, K149, K150, and K151, are prohibited from underground injection.

* * * * *

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

3. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6939, and 6974.

4. In § 260.30, the introductory text and paragraph (b) are revised to read as follows:

§ 260.30 Variances from classification as a solid waste.

In accordance with the standards and criteria in § 260.31 and the procedures in § 260.33, the Administrator may determine on a case-by-case basis that the following recycled materials are not solid wastes:

* * * * *

(b) Materials that are reclaimed and then reused within the original production process in which they were generated; and

* * * * *

5. In § 260.31, paragraph (a) introductory text, and paragraph (b) is revised to read as follows:

§ 260.31 Standards and criteria for variances from classification as a solid waste.

(a) The Administrator may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The Administrator's decision will be based on the following criteria:

* * * * *

(b) The Administrator may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(1) How economically viable the production process would be if it were

to use virgin materials, rather than reclaimed materials;

(2) The prevalence of the practice, on an industry-wide basis;

(3) The extent to which the material is handled before reclamation to minimize loss;

(4) The time periods between generating the material and its reclamation, and between reclamation and return to the original production process;

(5) The location of the reclamation operation in relation to the production process;

(6) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(7) Whether the person who generates the material also reclaims it;

(8) In cases where the original process to which the material is returned is a secondary process, the extent to which materials are managed before return in a protective manner such that there will be little potential for release of the material or its hazardous constituents to the environment (e.g., storage in tanks, containers, and indoors such as containment buildings); and

(9) Other relevant factors.

* * * * *

6. In § 260.32, the introductory text is revised to read as follows:

§ 260.32 Variance to be classified as a boiler.

In accordance with the standards and criteria in § 260.10 (definition of "boiler"), and the procedures in § 260.33, the Administrator may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in § 260.10, after considering the following criteria:

* * * * *

7. Section 260.33 is revised to read as follows:

§ 260.33 Procedures for variances from classification as a solid waste or to be classified as a boiler.

The Administrator will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed controlled flame combustion devices as boilers:

(a) The applicant must apply to the Administrator for the variance. The application must address the relevant criteria contained in § 260.31 or § 260.32.

(b) The Administrator will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the recycler is located. The Administrator will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The Administrator will issue a final decision after receipt of comments and after the hearing (if any).

8. Section 260.42 is added to read as follows:

§ 260.42 Procedures for contained-in determinations for hazardous debris, hazardous soil and other environmental media.

(a) Any person may petition the Regional Administrator to exclude, under § 261.3(f)(2) or § 261.3(g) of this chapter, hazardous debris and hazardous soil or other environmental media, including but not limited to, ground water, surface water, and sediments, from regulation as hazardous waste. (Such a petition is not necessary for remedial actions conducted pursuant to RCRA or CERCLA authorities provided that a similar determination is made by the Regional Administrator based on information substantially equivalent to the information listed below including public notice and comment requirements.) The petition for a contained-in determination must include information sufficient to demonstrate that specific constituent concentrations in the hazardous debris, hazardous soil, or other environmental media to be excluded do not pose a hazard to human health and the environment at that site. Each petition must be submitted to the Regional Administrator and must include:

(1) The petitioner's name and address.

(2) An explanation, to the extent possible, of the circumstances by which the affected debris, soil, or other media became contaminated with hazardous wastes.

(3) Information on waste and site characteristics and conditions, to include at a minimum, the type of information listed in paragraph (c) of this section.

(4) After receiving a petition, the Regional Administrator may request additional information which may be required in making a determination.

(b) The Regional Administrator will make a tentative decision to grant or deny a petition for a contained-in determination after receipt of a complete petition, and will publish a newspaper notice of such tentative decision, and provide the opportunity for the petitioner and the public to submit written comments within 30 days of the publication of the notice. After consideration of the comments, the Regional Administrator will issue a final determination denying or approving the petition.

(c) The Regional Administrator will consider waste- and site-specific information in making such determinations. Such information may include, but is not limited to:

(1) Characteristics of the debris, soil, or other media;

(2) Waste constituent characteristics, such as solubility, mobility, toxicity, and interactive effects of constituents present in the contaminated debris, soil, or other media that may affect those properties;

(3) All possible exposure pathways, such as potential for direct human contact with the contaminated medium, and potential adverse ecological impacts;

(4) An "acceptable" risk range of 10^{-4} to 10^{-6};

(5) Surface and subsurface characteristics such as topography, hydraulic conductivity, permeability and porosity of soil, aquifer thickness, and other geologic and hydrogeologic characteristics that may influence constituent mobility and migration potential at the surface and in the unsaturated and saturated zones.

(6) Climatic conditions; and

(7) Other site or waste-specific characteristics or conditions that may affect the potential for constituents present in the contaminated medium to migrate and/or pose a hazard to human health or the environment.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

9. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

10. Section 261.2 is amended by revising paragraph (e)(1)(iii) to read as follows:

§ 261.2 Definition of solid waste.

* * * * *

(e) * * *

(1) * * *

(iii) Returned to the original process from which they are generated, without first being reclaimed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed before return in a protective manner (e.g.,

storage in tanks, containers, and indoors such as containment buildings) such that there will be little potential for release of the material or its hazardous constituents to the environment.

* * * * *

11. Section 261.3 is amended by revising paragraph (f)(2) and adding paragraph (g) to read as follows:

§ 261.3 Definition of hazardous waste.

* * * * *

(f) * * *

(2) Debris as defined in part 266 of this chapter that the Regional Administrator determines under § 260.42 of this chapter is no longer contaminated with hazardous waste.

(g) Notwithstanding paragraphs (a) through (d) of this section, soil and other environmental media including, but not limited to, ground water, surface water, and sediments, that is contaminated or mixed with one or more wastes listed in subpart D of this part, or that exhibits a hazardous waste characteristic in subpart C of this part, are not subject to regulation under 40 CFR parts 260, 261 to 266, or 270 provided that:

(1) The Regional Administrator determines under § 260.42 of this chapter that the soil or other environmental media is no longer contaminated with hazardous waste; and

(2) The soil or other environmental media does not exhibit a hazardous waste characteristic in subpart C of this part.

12. In § 261.4, paragraph (a)(13) is added to read as follows:

§ 261.4 Exclusions.

(a) * * *

(13) Environmental media, including, but not limited to soils, ground water, surface water, and sediments, that exhibit a hazardous waste characteristic in subpart C of this part, or that is contaminated or mixed with one or more wastes listed in subpart D of this part, or with residuals derived from the treatment, storage, or disposal of a waste listed in subpart D of this part with constituent concentrations below those that are determined by the Regional Administrator to represent minimized threats to human health and the environment. Such determinations will be made in accordance with § 260.42 of this chapter.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

13. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

14. In § 268.1, paragraphs (c)(3)(ii), (e)(4) and (e)(5) are revised and paragraph (c)(3)(iii) is added to read as follows:

§ 268.1 Purpose, scope and applicability.

* * * * *

(c) * * *

(3) * * *

(ii) Do not exhibit any prohibited characteristic of hazardous waste at the point of injection; and

(iii) If the injected wastes are D001 High TOC subcategory wastes or D012–D017 pesticide wastes, they have been treated to meet the treatment standards of § 268.40 before the point of injection, or they are disposed in an approved no-migration injection well as demonstrated pursuant to § 148.20 of this chapter.

* * * * *

(e) * * *

(4) *De minimis* losses to wastewater treatment systems of commercial chemical product or chemical intermediates that are ignitable (D001), corrosive (D002), or are organic constituents that exhibit the characteristic of toxicity (D012–D043) and that contain underlying hazardous constituents as defined in § 268.2, are not considered to be prohibited wastes. *De minimis* is defined as losses from normal material handling operations (e.g. spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; and relief device discharges.

(5) Land disposal prohibitions do not apply to laboratory wastes displaying the characteristic of ignitability (D001), corrosivity (D002), or are organic constituents that exhibit the characteristic of toxicity (D012–D043), that are commingled with other plant wastewaters under designated circumstances: ignitable, corrosive, and TC organic laboratory wastes containing underlying hazardous constituents from laboratory operations, that are mixed with other plant wastewaters at facilities whose ultimate discharge is subject to regulation under the CWA (including wastewaters at facilities which have eliminated the discharge of wastewater), provided that the annualized flow of laboratory wastewater into the facility's headwork does not exceed one percent, or provided that the laboratory wastes' combined annualized average concentration does not exceed one part per million in the facility's headwork.

15. Section 268.2 is amended by redesignating paragraphs (i) as (j), (e) as (i), (h) as (e), (d) as (h), (b) as (d), (g) as (b), (c) as (g), (a) as (c) and (f) as (k) and by adding paragraphs (a) and (f) to read as follows:

§ 268.2 Definitions applicable in this part.

* * * * *

(a) Constituents subject to regulation means those constituents for which treatment standards are established in § 268.48 at levels above the universal treatment standards.

* * * * *

(f) Hazardous soil means soil that contains RCRA hazardous waste(s) listed in 40 CFR part 261, subpart D, or that exhibits one or more of the characteristics of a hazardous waste as defined in 40 CFR part 261, subpart C.

* * * * *

16. In § 268.7, paragraphs (a) introductory text, (a)(1)(ii), and (a)(8) are revised, paragraph (a)(9) is removed, paragraph (a)(10) is redesignated as paragraph (a)(9), paragraphs (a)(10) and (a)(11) are added, paragraphs (b)(4)(ii) and (d) introductory text are revised, and paragraph (e) is added to read as follows:

§ 268.7 Waste analysis and recordkeeping.

(a) Except as specified in § 268.32, if a generator's waste is listed in 40 CFR part 261, subpart D, the generator must test his waste, or test an extract using test method 1311, the Toxicity Characteristic Leaching Procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW 846 as incorporated by reference in § 260.11, or use knowledge of the waste, to determine if the waste is restricted from land disposal under this part. Except as specified in § 268.32, if a generator's waste exhibits one or more of the characteristics set out at 40 CFR part 261, subpart C, the generator must test an extract using test method 1311, the Toxicity Characteristic Leaching Procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW–846), or use knowledge of the waste, to determine if the waste is restricted from land disposal under this part. If the generator determines that his waste exhibits:

(1) The characteristic of ignitability (D001) (and is not in the High TOC Ignitable Liquids Subcategory or is not treated by INCIN, FSUBS, or RORGS of § 268.42, Table 1), or the characteristic

of corrosivity (D002), and is prohibited under § 268.37; and/or

(2) The characteristic of toxicity, and is prohibited under § 268.38, the generator must determine what underlying hazardous constituents (as defined in § 268.2), are reasonably expected to be present in the D001, D002, or TC waste.

* * * * *

(1) * * *

(ii) The waste constituents for wastes F001–F005, F039, wastes prohibited pursuant to § 268.32 or RCRA section 3004(d), and for underlying hazardous constituents (as defined in § 268.2), in D001 and D002 wastes if those wastes are prohibited under § 268.37, and constituents subject to treatment in TC wastes that are prohibited under § 268.38. Also included must be the applicable wastewater (as defined in § 268.2(f)) or nonwastewater (as defined in § 268.2(d)) form and the applicable subcategories made within a waste code based on waste-specific criteria (such as D003 reactive cyanides).

* * * * *

(8) If a generator is managing a lab pack that contains prohibited wastes, and does not include any wastes found at § 268.42(c)(2), and wishes to use the alternative treatment standard under § 268.42, with each shipment of waste the generator must submit a notice to the treatment facility in accordance with paragraph (a)(1) of this section. The generator must also comply with the requirements in paragraphs (a)(5) through (a)(7) of this section, and must submit the following certification, which must be signed by an authorized representative:

I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack does not contain any waste found at § 268.42(c)(2). I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.

* * * * *

(10) If a generator determines that he is managing hazardous soil that does not meet the treatment standards established in § 268.47, then with each shipment of hazardous soil, the generator must notify the treatment or storage facility in writing of the constituents subject to treatment and the appropriate treatment standards as described in §§ 268.47. If the treatment standards specified on the notification indicate that 90% treatment of the initial concentrations of the constituents subject to treatment has been performed, the generator must maintain documentation, in the facility operating record, supporting the treatment standard by documenting the initial concentrations and the treated concentrations of constituents subject to treatment.

(11) If a generator determines that he is managing hazardous soil that is restricted under this part, and determines that the hazardous soil can be land disposed without further treatment, then, with each shipment of hazardous soil, the generator must certify and notify the treatment, storage, or land disposal facility in writing as described in paragraph (a)(2) of this section. To meet the requirements of paragraph (a)(2)(i)(B) of this section, the generator must specify the appropriate treatment standard for the hazardous soil. If the universal treatment standards are not specified as the appropriate treatment standards, the generator must maintain documentation, in their files, supporting the treatment standard specified to the treatment facility. In lieu of the certification in paragraph (a)(2)(ii) of this section, the following certification must be signed by an authorized representative:

I certify under penalty of law that I personally have examined and am familiar with the hazardous soil through analysis and testing or through knowledge of the hazardous soil to support this certification that the waste complies with the regulations and requirements that apply to hazardous soil as specified in 40 CFR parts 260 through 268. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment.

* * * * *

(b) * * *

(4) * * *

(ii) The waste constituents for wastes F001–F005, F039, wastes prohibited pursuant to § 268.32 or RCRA section 3004(d), and for underlying hazardous constituents (as defined in § 268.2), in D001 and D002 wastes if those wastes are prohibited under § 268.37, and constituents subject to treatment in TC wastes that are prohibited under § 268.38. Also included must be the applicable wastewater (as defined in § 268.2(f)) or nonwastewater (as defined in § 268.2(d)) form and the applicable subcategories made within a waste code based on waste-specific criteria (such as D003 reactive cyanides).

* * * * *

(d) Generators or treaters who determine that hazardous debris is excluded from the definition of hazardous waste under § 261.3(f)(1) of this chapter (i.e., debris treated by an extraction or destruction technology provided by Table 1, § 268.45) are subject to the following notification and certification requirement:

* * * * *

(e) Generators or treaters who first claim that hazardous debris or hazardous media is excluded from the definition of hazardous waste under § 261.3(f)(2) or § 261.3(g) of this chapter, must place a one-time notice stating the applicable exclusion and the disposition of the waste in the facility's files, and must retain such notices for at least five years.

17. In § 268.9, paragraphs (a), (d)(1) introductory text, (d)(1)(i) and (d)(1)(ii) are revised and (d)(1)(iii) is removed to read as follows:

§ 268.9 Special rules regarding wastes that exhibit a characteristic.

(a) The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of this part. For purposes of part 268, the waste will carry the waste code for any applicable listing under 40 CFR part 261, subpart D. In addition, the waste will carry one or more of the waste codes under 40 CFR part 261, subpart C, where the waste exhibits a characteristic, except in the case when the treatment standard for the waste code listed in 40 CFR part 261, subpart D operates in lieu of the standard for the waste code under 40 CFR part 261, subpart C, as specified in paragraph (b) of this section. If the generator determines that his waste displays the characteristic of ignitability (D001) (and is not in the High TOC Ignitable Liquids Subcategory or is not treated by INCIN, FSUBS, or RORGS of § 268.42, Table 1), or the characteristic of corrosivity (D002), and is prohibited under § 268.37; or if the generator determines that his waste displays the characteristic of toxicity (D011–D043), and is prohibited under § 268.38; or if the generator has characteristic hazardous soil prohibited under § 268.39, the generator must determine what underlying hazardous constituents (as defined in § 268.2), are reasonably expected to be present in the D001, D002, or TC waste.

* * * * *

(d) * * *

(1) The notification must include the following information:

(i) Name and address of the Subtitle D facility receiving the waste shipment; and

(ii) A description of the waste as initially generated, including the applicable EPA Hazardous Waste Number(s), treatability group(s), and

underlying hazardous constituents in D001, D002, TC wastes, or characteristic hazardous soil (if applicable).

* * * * *

Subpart C—Prohibitions on Land Disposal

18. In Subpart C, § 268.38 is added to read as follows:

§ 268.38 Waste specific prohibitions—newly listed and identified wastes.

(a) Effective [insert date 90 days from date of publication], the following wastes specified in 40 CFR 261.24, Table 1 as EPA Hazardous Waste numbers D012, D013, D014, D015, D016, D017, D018, and D019, D020, D021, D022, D023, D024, D025, D026, D027, D028, D029, D030, D031, D032, D033, D034, D035, D036, D037, D038, D039, D040, D041, D042, D043 nonwastewaters; and the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K141, K142, K143, K144, K145, K147, K148, K149, K150, and K151 are prohibited from land disposal.

(b) Effective [insert date two years from date of publication], radioactive wastes that are mixed with D018–D043 nonwastewaters, D012–D017 wastes that pass the EP toxicity test but fail the TCLP test, K141–K145, and K147–K151 are prohibited from land disposal.

(c) Between [insert date of publication] and [insert date two years from date of publication], the wastes included in paragraph (c) of this section may be disposed of in a landfill or surface impoundment, only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(d) The requirements of paragraphs (a), (b), and (c) of this section do not apply if:

(1) The wastes meet the applicable standards specified in subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable alternate standards established pursuant to a petition granted under § 268.44;

(4) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to these wastes covered by the extension.

(e) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in § 268.40, the initial generator must test a representative sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable subpart D of this part levels, the waste is prohibited from land disposal, and all requirements of 40 CFR part 268 are applicable, except as otherwise specified.

19. Section 268.39 is added to read as follows:

§ 268.39 Waste specific prohibitions—Hazardous soil, and debris contaminated with certain newly listed wastes.

(a) Effective [insert date two years from date of publication], soils that are contaminated with F037, F038, K107–K112, K117, K118, K123–K126, K131, K132, K136, U328, U353, U359, D018–D043, K141–145 and K147–151 wastes, soils that are contaminated with D012–D017 that pass the EP toxicity test but fail the TCLP test are prohibited from land disposal.

(b) Effective [insert date two years from date of publication], debris that are contaminated with D018–D043, K141–K145, or K147–K151 wastes, and debris that are contaminated with D012–D017 wastes that pass the EP toxicity test but fail the TCLP test are prohibited from land disposal.

(c) Between [insert date of publication] and [insert date two years from date of publication], the wastes included in paragraphs (a) and (b) of this section may be disposed of in a landfill or surface impoundment only if such unit is in compliance with the requirements specified in § 268.5(h)(2).

(d) The requirements of paragraphs (a) and (b) of this section do not apply if:

(1) The wastes meet the applicable standards specified in subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable alternate standards established pursuant to a petition granted under § 268.44;

(4) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to those wastes covered by the extension.

(e) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in §§ 268.40 and 268.48, the initial generator must test a representative sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable subpart D of this part levels, the waste is prohibited from land disposal, and all requirements of 40 CFR part 268 are applicable, except as otherwise specified.

Subpart D—Treatment Standards

20. Section 268.40 is revised to read as follows:

§ 268.40 Applicability of treatment standards.

(a) A waste identified in the Table Treatment Standards for Hazardous Wastes in this section may be land disposed only if it meets the requirements found in the table. For each waste, the table identifies one of three types of requirements ("treatment standards"):

(1) All hazardous constituents in the waste or in the treatment residue must be at or below the values found in the table for that waste ("total waste standards"); or

(2) The hazardous constituents in the extract of the waste or in the extract of the treatment residue must be at or below the values found in the table ("waste extract standards"); or

(3) The waste must be treated using the technology specified in the table ("technology standard").

(b) For waste covered by the total waste standards and waste extract standards, compliance is based upon grab samples, unless otherwise noted in the table. For wastes covered by the waste extract standards, the test Method 1311, the Toxicity Characteristic Leaching Procedure, must be used. An exception is made for D004, D008, K031, K084, K101, K102, P010, P011, P012, P036, P038, and U136, for which either of two test methods may be used: Method 1311, or Method 1310, the Extraction Procedure Toxicity Test, both found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW 846 as incorporated by reference in § 260.11 of this chapter. For wastes covered by a technology standard, the wastes may be land disposed after it is treated using that specified technology or an equivalent treatment technology approved by the Administrator under the procedures set forth in § 268.42(b).

(c) When wastes with differing treatment standards for a constituent of concern are combined for purposes of treatment, the treatment residue must meet the lowest treatment standard for the constituent of concern.

(d) Notwithstanding the prohibitions specified in paragraph (a) of this section, treatment and disposal facilities may demonstrate (and certify pursuant to § 268.7(b)(5)) compliance with the treatment standards for organic constituents specified by a footnote in the Table Treatment Standards for Hazardous Wastes in this section, provided the following conditions are satisfied:

(1) The treatment standards for the organic constituents were established based on incineration in units operated in accordance with the technical requirements of 40 CFR part 264, subpart O, or 40 CFR part 265, subpart O, or based on combustion in fuel substitution units operating in accordance with applicable technical requirements;

(2) The treatment or disposal facility has used the methods referenced in paragraph (c)(1) of this section to treat the organic constituents; and

(3) The treatment or disposal facility has been unable to detect the organic constituents despite using its best good-faith efforts as defined by applicable Agency guidance or standards. Until such guidance or standards are developed, the treatment or disposal facility may demonstrate such good-faith efforts by achieving detection limits for the regulated organic constituents that do not exceed the treatment standards specified in this section by an order of magnitude.

(e) If a treatment standard has been established in the Table Treatment Standards for Hazardous Wastes for a hazardous waste that is itself hazardous debris, the waste is subject to those standards rather than the standards for hazardous debris under § 268.45.

(f) Hazardous soil may be land disposed in a subtitle C unit only if all constituents subject to treatment in the hazardous soil are equal to or less than applicable total (for organics) or leachate (for metals) concentrations found in § 268.47.

(g) Soils that are hazardous solely because they exhibit the characteristics of ignitability, corrosivity, or reactivity, must be treated by deactivation technologies which eliminate these characteristics. If other constituents subject to treatment are also present, they must be treated to achieve the technology-based treatment standards found in § 268.48.

TREATMENT STANDARDS FOR HAZARDOUS WASTES

Waste code	Waste description and/or treatment subcategory	Regulated hazardous constituent		Wastewaters		Nonwastewaters	
		Common name	CAS No.	Concentration (mg/l) or technology code	Sampling basis	Concentration or technology code	Sampling basis and units
D001	All descriptions based on 40 CFR 261.21, except for the §261.21(a)(1) High TOC subcategory, managed in non-CWA/non-CWA-equivalent/non-Class I SDWA systems.	NA	NA	DEACT, and meet F039; or FSUBS; RORGS; or INCIN.	NA	DEACT, and meet F039; or FSUBS; RORGS; or INCIN.	NA.
D001	All descriptions based on 40 CFR 261.21, except for the §261.21(a)(1) High TOC subcategory, managed in CWA/CWA-equivalent/Class I SDWA systems.	NA	NA	DEACT	NA	DEACT	NA.
D001	All descriptions based on 40 CFR 261.21(a)(1)—High TOC Ignitable Liquids Subcategory-Greater than or equal to 10% total organic carbon.	NA	NA	NA	NA	FSUBS; RORGS; or INCIN.	NA.
D002	Radioactive High Level Wastes Generated During the Reprocessing of Fuel Rods Subcategory.	NA	NA	NA	NA	HLVIT	NA.
D002	Acid, alkaline, and other subcategory based on 261.22 managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	NA	NA	DEACT and meet F039.	NA	DEACT and meet F039.	NA.
D002	Acid, alkaline, and other subcategory based on 261.22 managed in CWA, CWA-equivalent, or Class I SDWA systems.	NA	NA	DEACT	NA	DEACT	NA.
D003	Reactive sulfides based on 261.23(a)(5). Dilution is not allowed per 58 FR 14317, March 17, 1993.	NA	NA	DEACT	NA	DEACT	NA.
D003	Explosives based on 261.23(a) (6), (7), and (8).	NA	NA	DEACT	NA	DEACT	NA.
D003	Water reactives based on 261.23(a) (2), (3), and (4).	NA	NA	NA	NA	DEACT	NA.
D003	Other reactives based on 261.23(a)(1)..	NA	NA	DEACT	NA	DEACT	NA.
D003	Reactive cyanides subcategory (Total) based on 261.23(a)(5).	Cyanides (Total)	57–12–5	Reserved	NA	590	Total (mg/kg).
D003	Reactive cyanides subcategory (Amenable) based on 261.23(a)(5).	Cyanides (Amenable)	57–12–5	0.86	Grab	30	Total (mg/kg).
D004		Arsenic	7440–38–2	5.0	Grab	5.0	TCLP (mg/l).
D004	Radioactive High Level Wastes Generated During the Reprocessing of Fuel Rods Subcategory.	NA	NA	NA	NA	HLVIT	NA.
D005		Barium	7440–39–3	100	Grab	100	TCLP (mg/l).
D005	Radioactive High Level Wastes	NA	NA	NA	NA	HLVIT	NA.

	ing of Fuel Rods Subcategory.						
D005	.....	Barium	7440–39–3	100	Grab	100	TCLP (mg/l).

D005	Radioactive High Level Wastes Generated During the Reprocessing of Fuel Rods Subcategory.	NA	NA	NA	NA	HLVIT	NA.
D006	.....	Cadmium	7440–43–9	1.0	Grab	1.0	TCLP (mg/l).
D008	Cadmium containing batteries	Cadmium	7440–43–9	NA	NA	RTHRM	NA.
D006	Radioactive High Level Wastes Generated During the Reprocessing of Fuel Rods Subcategory.	NA	NA	NA	NA	HLVIT	NA.
D007	.....	Chromium (Total)	7440–47–32	5.0	Grab	5.0	TCLP (mg/l).
D007	Radioactive High Level Wastes Generated During the Reprocessing of Fuel Rods Subcategory.	NA	NA	NA	NA	HLVIT	NA.
D008	.....	Lead	7439–92–1	5.0	Grab	5.0	TCLP (mg/l).
D008	Lead acid batteries (Note: This standard only applies to lead acid batteries that are identified as RCRA hazardous wastes and that are not excluded elsewhere from regulation under the land disposal restrictions of 40 CFR 268 or exempted under other EPA regulations (see 40 CFR 266.80).).	Lead	7439–92–1	NA	NA	RLEAD	NA.
D008	Radioactive Lead Solids Subcategory (Note: these lead solids include, but are not limited to, all forms of lead shielding and other elemental forms of lead. These lead solids do not include treatment residuals such as hydroxide sludges, other wastewater treatment residuals, or incinerator ashes that can undergo conventional pozzolanic stablization, nor do they include organo-lead materials that can be incinerated and stablized as ash.).	Lead-Radioactive	7439–92–1	NA	NA	MACRO	NA.
D008	Radioactive High Level Wastes Generated During the Reprocessing of Fuel Rods Subcategory.	NA	NA	NA	NA	HLVIT	NA.
D009	Low Mercury Subcategory—less than 260 mg/kg Mercury.	Mercury	7439–97–6	0.20	Grab	0.20	TCLP (mg/l).
D009	High Mercury Subcategory—greater than or equal to 260 mg/kg total Mercury—contains mercury and organics (and are not incinerator residues).	Mercury	7439–97–6	NA	NA	IMERC; OR RMERC.	NA.
D009	High Mercury Subcategory—greater than or equal to 260 mg/kg total Mercury—inorganics (including incinerator residues and residues from RMERC).	Mercury	7439–97–6	NA	NA	RMERC	NA.
D009	Elemental mercury contaminated with radioactive materials.	Mercury-Radioactive	7439–97–6	NA	NA	AMLGM	NA.
D009	Hydraulic oil contaminated with Mercury Radioactive Materials Subcategory.	Mercury-Radioactive	7439–97–6	NA	NA	IMERC	NA.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and/or treatment subcategory	Regulated hazardous constituent		Wastewaters		Nonwastewaters	
		Common name	CAS No.	Concentration (mg/l) or technology code	Sampling basis	Concentration or technology code	Sampling basis and units
D009	Radioactive High Level Wastes Generated During the Reprocessing of Fuel Rods Subcategory.	NA	NA	NA	NA	HLVIT	NA.
D010		Selenium	7782-49-2	1.0	Grab	5.7	TCLP (mg/l).
D010	Radioactive High Level Wastes Generated During the Reprocessing of Fuel Rods Subcategory.	NA	NA	NA	NA	HLVIT	NA.
D011		Silver	7440-22-4	5.0	Grab	5.0	TCLP (mg/l).
D011	Radioactive High Level Wastes Generated During the Reprocessing of Fuel Rods Subcategory.	NA	NA	NA	NA	HLVIT	NA.
D012		Endrin	72-20-8	BIODG or INCIN	NA	0.13	Total (mg/kg).
D012	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	Endrin	72-20-8	BIODG or INCIN	NA	0.13 (and meet §268.48 standards).	Total (mg/kg).
D013		Lindane	58-89-9	CARBN or INCIN	NA	0.066	Total (mg/kg).
D013	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	Lindane	58-89-9	CARBN or INCIN	NA	0.066 (and meet §268.48 standards).	Total (mg/kg)
D014		Methoxychlor	72-43-5	WETOX or INCIN	NA	0.18	Total (mg/kg).
D014	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	Methoxychlor	72-43-5	WETOX or INCIN	NA	0.18 (and meet §268.48 standards).	Total (mg/kg).
D015		Toxaphene	8001-35-2	BIODG or INCIN	NA	2.6	Total (mg/kg).
D015	Managed in non-CWA-/non-CWA equivalent/non-Class I SDWA systems.	Toxaphene	8001-35-2	BIODG or INCIN	NA	2.6 (and meet §268.48 standards).	Total (mg/kg).
D016		2,4-D	94-75-7	CHOXD, BIODG, or INCIN.	NA	10	Total (mg/kg).
D016	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	2,4-D	94-75-7	CHOXD, BIODG, or INCIN.	NA	10 (and meet §268.48 standards).	Total (mg/kg).
D017		2,4,5-TP (Silvex)	93-72-1	CHOXD or INCIN	NA	7.9	Total (mg/kg).
D017	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	2,4,5-TP (Silvex)	93-72-1	CHOXD or INCIN	NA	7.9 (and meet §268.48 standards).	Total (mg/kg).
D018	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	Benzene	71-43-2	0.14	Grab	10 (and meet §268.48 standards.	Total (mg/kg).
D019	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	Carbon tetrachloride	56-23-5	0.057	Grab	6.0 (and meet §268.48 standards).	Total (mg/kg).
D020	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	Chlordane	57-74-9	0.033	Grab	0.26 (and meet §268.48 standards).	Total (mg/kg).
D021	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	Chlorobenzene	108-90-7	0.057	Grab	6.0 (and meet §268.48 standards).	Total (mg/kg).
D022	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	Chloroform	67-66-3	0.046	Grab	6.0 (and meet §268.48 standards).	Total (mg/kg).
D023	Managed in non-CWA/non-CWA	o-Cresol	95-48-7	0.11	Grab	5.6 (and meet	Total (mg/kg).

D023	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	o-Cresol	95–48–7	0.11	Grab	5.6 (and meet §268.48 standards).	Total (mg/kg).
D024	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	m-Cresol	108–39–4	0.77	Grab	3.2 (and meet §268.48 standards).	Total (mg/kg).
D025	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	p-Cresol	106–44–5	0.77	Grab	3.2 (and meet §268.48 standards).	Total (mg/kg).
D026	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	Cresol	NA	0.77	Grab	8.8 (and meet §268.48 standards).	Total (mg/kg).
D027	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	1,4-Dichlorobenzene	106–46–7	0.09	Grab	6.0 (and meet §268.48 standards).	Total (mg/kg).
D028	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	1,2–Dichloroethane	107–06–2	0.21	Grab	6.0 (and meet §268.48 standards).	Total (mg/kg).
D029	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	1,1-Dichloroethylene	75–35–4	0.025	Grab	6.0 (and meet §268.48 standards).	Total (mg/kg).
D030	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	2,4-Dinitrotoluene	121–14–2	0.32	Grab	140 (and meet §268.48 standards).	Total (mg/kg).
D031	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	Heptachlor	76–44–8	0.0012	Grab	0.066 (and meet §268.48 standards).	Total (mg/kg).
D031	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	Heptachlor epoxide	76–44–8	0.016	Grab	0.066 (and meet §268.48 standards).	Total (mg/kg).
D032	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	Hexachlorobenzene	118–74–1	0.055	Grab	10 (and meet §268.48 standards).	Total (mg/kg).
D033	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	Hexachloro-1,3-butadiene	87–68–3	0.055	Grab	5.6 (and meet §268.48 standards).	Total (mg/kg).
D034	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	Hexachloroethane	67–72–1	0.055	Grab	30 (and meet §268.48 standards).	Total (mg/kg).
D035	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	Methyl ethyl ketone	78–93–3	0.28	Grab	36 (and meet §268.48 standards).	Total (mg/kg).
D036	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	Nitrobenzene	98–95–3	0.068	Grab	14 (and meet §268.48 standards).	Total (mg/kg).
D037	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	Pentachlorophenol	87–86–5	0.89	Grab	7.4 (and meet §268.48 standards).	Total (mg/kg).
D038	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	Pyridine	110–86–1	0.014	Grab	16 (and meet §268.48 standards).	Total (mg/kg).
D039	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	Tetrachloroethylene	127–18–4	0.056	Grab	6.0 (and meet §268.48 standards).	Total (mg/kg).
D040	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	Trichloroethylene	79–01–6	0.054	Grab	6.0 (and meet §268.48 standards).	Total (mg/kg).

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and/or treatment subcategory	Regulated hazardous constituent		Wastewaters		Nonwastewaters	
		Common name	CAS No.	Concentration (mg/l) or technology code	Sampling basis	Concentration or technology code	Sampling basis and units
D041	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	2,4,5-Trichlorophenol	95–95–4	0.18	Grab	7.4 (and meet §268.48 standards).	Total (mg/kg).
D042	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	2,4,6-Trichlorophenol	88–06–2	0.035	Grab	7.4 (and meet §268.48 standards).	Total (mg/kg).
D043	Managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems.	Vinyl chloride	75–01–4	0.27	Grab	6.0 (and meet §268.48 standards).	Total (mg/kg).
F001–F005	Spent solvents	Acetone	67–64–1	0.28	Grab	160	Total (mg/l)
		Benzene	71–43–2	0.070	Grab	3.7	Total (mg/kg).
		n-Butyl alcohol	71–36–3	5.6	Grab	2.6	Total (mg/l).
		Carbon disulfide	75–15–0	NA	Grab	4.8	TCLP (mg/l).
		Carbon tetrachloride	56–23–5	0.057	Grab	5.6	Total (mg/l).
		Chlorobenzene	108–90–7	0.057	Grab	5.7	Total (mg/l).
		Cresols (and cresylic acid)	NA	0.77	Grab	3.2	Total (mg/l).
		o-Cresol	95–48–7	0.11	Grab	5.6	Total (mg/l).
		Cyclohexanone	108–94–1	NA	Grab	0.75	TCLP (mg/l).
		o-Dichlorobenzene	95–50–1	0.088	Grab	6.2	Total (mg/l).
		Ethyl acetate	141–7–6	0.34	Grab	33	Total (mg/l).
		Ethyl benzene	100–41–4	0.057	Grab	6.0	Total (mg/l).
		Ethyl ether	60–29–7	0.12	Grab	160	Total (mg/l).
		Isobutyl Alcohol	78–83–1	5.6	Grab	170	Total (mg/l).
		Methanol	67–56–1	NA	Grab	0.75	TCLP (mg/l).
		Methylene chloride	75–9–2	0.069	Grab	33	Total (mg/l).
		Methyl ethyl ketone	78–93–3	0.28	Grab	36	Total (mg/l).
		Methyl isobutyl ketone	108–10–1	0.14	Grab	33	Total (mg/l).
		Nitrobenzene	98–95–3	0.068	Grab	14	Total (mg/l).
		Pyridine	110–86–1	0.014	Grab	16	Total (mg/l).
		Tetrachloroethylene	127–18–4	0.056	Grab	5.6	Total (mg/l).
		Toluene	108–88–3	0.08	Grab	28	Total (mg/l).
		1,1,1-Trichloroethane	71–55–6	0.054	Grab	5.6	Total (mg/l).
		1,1,2-Trichloroethane	79–00–5	0.030	Grab	7.6	Total (mg/kg).
		1,1,2-Trichloro-1,2,2-trifluoroethane	76–13–1	0.057	Grab	28	Total (mg/l).
		Trichloroethylene	79–01–6	0.054	Grab	5.6	Total (mg/l).
		Trichlorofluoromethane	75–69–4	0.02	Grab	33	Total (mg/l).
		Xylenes (total)	1330–20–7	0.32	Grab	28	Total (mg/l).
F001–F005	(Pharmaceutical industry wastewater subcategory).	Methylene chloride	75–09–2	0.44	Grab	NA	NA.
F005		2-Nitropropane	79–46–9	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
F006		2-Ethoxyethanol	110–80–5	BIODG: or INCIN	NA	INCIN	NA.
F006		Cadmium	7440–43–9	1.6	Grab	0.066	TCLP (mg/l).
		Chromium (Total)	7440–47–3	NA	NA	5.2	TCLP (mg/l).
		Chromium	7440–47–3	0.32	Grab	NA	NA.
		Cyanides (Total)	57–12–5	1.2	Grab	590	Total (mg/kg).
		Cyanides (Amenable)	57–12–5	0.86	Grab	30	Total (mg/kg).
		Lead	7439–92–1	0.040	Grab	0.51	TCLP (mg/l).
		Nickel	7440–02–0	0.44	Grab	0.32	TCLP (mg/l).
		Silver	7440–22–4	NA	NA	0.072	TCLP (mg/l).

		Nickel	7440–02–0	0.44	Grab	0.32	TCLP (mg/l).
		Silver	7440–22–4	NA	NA	0.072	TCLP (mg/l).
F007		Cadmium	7440–43–9	NA	NA	0.066	TCLP (mg/l).
		Chromium (Total)	7440–47–3	0.32	Grab	5.2	TCLP (mg/l).
		Cyanides (Total)	57–12–5	1.2	Grab	590	Total (mg/kg).
		Cyanides (Amenable)	57–12–5	0.86	Grab	30	Total (mg/kg).
		Lead	7439–92–1	0.04	Grab	0.51	TCLP (mg/l).
		Nickel	7440–02–0	0.44	Grab	0.32	TCLP (mg/l).
		Silver	7440–22–4	NA	NA	0.072	TCLP (mg/l).
F008		Cadmium	7440–43–9	NA	NA	0.066	TCLP (mg/l).
		Chromium (Total)	7440–47–3	NA	NA	5.2	TCLP (mg/l).
		Chromium	7440–47–3	0.32	Grab	NA	NA.
		Cyanides (Total)	57–12–5	1.2	Grab	590	Total (mg/kg).
		Cyanides (Amenable)	57–12–5	0.86	Grab	30	Total (mg/kg).
		Lead	7439–92–1	0.04	Grab	0.51	TCLP (mg/l).
		Nickel	7440–02–0	0.44	Grab	0.32	TCLP (mg/l).
		Silver	7440–22–4	NA	NA	0.072	TCLP (mg/l).
F009		Cadmium	7440–43–9	NA	NA	0.066	TCLP (mg/l).
		Chromium (Total)	7440–47–3	NA	NA	5.2	TCLP (mg/l).
		Chromium	7440–47–3	0.32	Grab	NA	NA.
		Cyanides (Total)	57–12–5	1.2	Grab	590	Total (mg/kg).
		Cyanides (Amenable)	57–12–5	0.86	Grab	30	Total (mg/kg).
		Lead	7439–92–1	0.04	Grab	0.51	TCLP (mg/l).
		Nickel	17440–02–0	0.44	Grab	0.32	TCLP (mg/l).
		Silver	7440–22–4	NA	NA	0.072	TCLP (mg/l).
F010		Cyanides (Total)	57–12–5	1.2	Grab	1.5	Total (mg/kg).
		Cyanides (Amenable)	57–12–5	0.86	Grab	NA	NA.
F011		Cadmium	7440–43–9	NA	NA	0.066	TCLP (mg/l).
		Chromium (Total)	7440–47–3	0.32	Grab	5.2	TCLP (mg/l).
		Cyanides (Total)	57–12–5	1.2	Grab	110	Total (mg/kg).
		Cyanides (Amenable)	57–12–5	0.1	Grab	9.1	Total (mg/kg).
		Lead	7439–92–1	0.04	Grab	0.51	TCLP (mg/l).
		Nickel	7440–02–0	0.44	Grab	0.32	TCLP (mg/l).
		Silver	7440–22–4	NA	NA	0.072	TCLP (mg/l).
F012		Cadmium	7440–43–9	NA	NA	0.066	TCLP (mg/l).
		Chromium (Total)	7440–47–3	0.32	Grab	5.2	TCLP (mg/l).
		Cyanides (Total)	57–12–5	1.2	Grab	110	Total (mg/kg).
		Cyanides (Amenable)	57–12–5	0.1	Grab	9.1	Total (mg/kg).
		Lead	7439–92–1	0.04	Grab	0.51	TCLP (mg/l).
		Nickel	7440–02–0	0.44	Grab	0.32	TCLP (mg/l).
		Silver	7440–22–4	NA	NA	0.072	TCLP (mg/l).
F019		Chromium (Total)	7440–47–3	0.32	Grab	5.2	TCLP (mg/l).
		Cyanides (Total)	57–12–5	1.2	Grab	590	Total (mg/kg).
		Cyanides (Amenable)	57–12–5	0.86	Grab	30	Total (mg/kg).
F020–F023, and F026–F028	Dioxin containing wastes (these waste codes are not subcategorized into wastewater and nonwastewaters).	HxCDD—All Hexachlorodibenzo-p-dioxins.	NA	<1 ppb	Grab	<1	TCLP (ppb).
		HxCDF—All Hexachlorodibenzofurans.	NA	<1 ppb	Grab	<1	TCLP (ppb).
		PeCDD—All Pentachlorodibenzo-p-dioxins.	NA	<1 ppb	Grab	<1	TCLP (ppb).
		PeCDF—All Pentachlorodibenzofurans.	NA	<1 ppb	Grab	<1	TCLP (ppb).
		TCDD—All Tetrachlorodibenzo-p-dioxins.	NA	<1 ppb	Grab	<1	TCLP (ppb).
		TCDF—All Tetrachlorodibenzofurans.	NA	<1 ppb	Grab	<1	TCLP (ppb).

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and/or treatment subcategory	Regulated hazardous constituent		Wastewaters		Nonwastewaters	
		Common name	CAS No.	Concentration (mg/l) or technology code	Sampling basis	Concentration or technology code	Sampling basis and units
		2,4,5-Trichlorophenol	95-95-4	<0.05 ppm	Grab	<0.05	TCLP (ppm).
		2,4,6-Trichlorophenol	88-06-2	<0.05 ppm	Grab	<0.05	TCLP (ppm).
		2,3,4,6-Tetrachlorophenol	58-90-2	<0.05 ppm	Grab	<0.05	TCLP (ppm).
		Pentachlorophenol	87-86-5	<0.01 ppm	Grab	<0.01	TCLP (ppm).
F024		All F024 organic standards	NA	INCIN	NA	INCIN	NA.
F024		2-Chloro-1,3-butadiene	126-99-8	0.28	Grab	0.28	Total (mg/kg).
		3-Chloropropene	107-05-1	0.28	Grab	0.28	Total (mg/kg).
		1,1-Dichloroethane	75-34-3	0.014	Grab	0.014	Total (mg/kg).
		1,2-Dichloroethane	107-06-2	0.014	Grab	0.014	Total (mg/kg).
		1,2-Dichloropropane	78-87-5	0.014	Grab	0.014	Total (mg/kg).
		cis-1,3-Dichloropropene	10061-01-5	0.014	Grab	0.014	Total (mg/kg).
		trans-1,3-Dichloropropene	10061-02-6	0.014	Grab	0.014	Total (mg/kg).
		Bis(2-ethylhexyl)phthalate	117-81-7	0.036	Grab	1.8	Total (mg/kg).
		Hexachloroethane	67-72-1	0.036	Grab	1.8	Total (mg/kg).
		Chromium (Total)	7440-47-32	0.35	Grab	0.073	TCLP (mg/l).
		Lead	7439-92-1	NA	NA	0.021	TCLP (mg/l).
		Nickel	7440-02-0	0.47	Grab	0.088	TCLP (mg/l).
F025	Light ends subcategory	Chloroform	67-66-3	0.046	Composite	6.2	Total (mg/kg).
		1,2-Dichloroethane	107-06-2	0.21	Composite	6.2	Total (mg/kg).
		1,1-Dichloroethylene	75-35-4	0.025	Composite	6.2	Total (mg/kg).
		Methylene chloride	75-9-2	0.089	Composite	31	Total (mg/kg).
		Carbon tetrachloride	56-23-5	0.057	Composite	6.2	Total (mg/kg).
		1,1,2-Trichloroethane	79-00-5	0.054	Composite	6.2	Total (mg/kg).
		Trichloroethylene	79-01-6	0.054	Composite	5.6	Total (mg/kg).
		Vinyl chloride	75-01-4	0.27	Composite	33	Total (mg/kg).
F025	Spent filters/aids and desiccants subcategory.	Chloroform	67-66-3	0.046	Composite	6.2	Total (mg/kg).
		Methylene chloride	75-9-2	0.089	Composite	31	Total (mg/kg).
		Carbon tetrachloride	56-23-5	0.057	Composite	6.2	Total (mg/kg).
		1,1,2-Trichloroethane	79-00-5	0.054	Composite	6.2	Total (mg/kg).
		Trichloroethylene	79-01-6	0.054	Composite	5.6	Total (mg/kg).
		Vinyl chloride	75-01-4	0.27	Composite	33	Total (mg/kg).
		Hexachlorobenzene	118-74-1	0.055	Composite	37	Total (mg/kg).
		Hexachlorobutadiene	87-68-3	0.055	Composite	28	Total (mg/kg).
		Hexachloroethane	67-72-1	0.055	Composite	30	Total (mg/kg).
F037		Acenaphthene	83-32-9	0.059	Composite	NA	NA.
		Anthracene	120-12-7	0.059	Composite	28	Total (mg/kg).
		Benzene	71-43-2	0.14	Composite	14	Total (mg/kg).
		Benzo (a) anthracene	56-55-3	0.059	Composite	20	Total (mg/kg).
		Benzo (a) pyrene	50-32-8	0.061	Composite	12	Total (mg/kg).
		Bis(2-ethylhexyl) phthalate	117-81-7	0.28	Composite	7.3	Total (mg/kg).
		Chrysene	218-01-9	0.059	Composite	15	Total (mg/kg).
		Di-n-butyl phthalate	84-74-2	0.057	Composite	3.6	Total (mg/kg).
		Ethylbenzene	100-41-4	0.057	Composite	14	Total (mg/kg).
		Fluorene	86-73-7	0.059	Composite	NA	NA
		Naphthalene	91-20-3	0.059	Composite	42	Total (mg/kg).
		Phenanthrene	85-01-8	0.059	Composite	34	Total (mg/kg).
		Phenol	108-95-2	0.039	Composite	3.6	Total (mg/kg).
		Pyrene	129-00-0	0.067	Composite	36	Total (mg/kg).
		Toluene	108-88-3	0.08	Composite	14	Total (mg/kg).
		Xylene(s)	1330-20-7	0.32	Composite	22	Total (mg/kg).

		Cyanides (Total)	57-12-5	0.028	grab	1.8	Total (mg/kg).

		Cyanides (Total)	57-12-5	0.028	grab	1.8	Total (mg/kg).
		Chromium (Total)	7440-47-3	0.2	grab	1.7	TCLP (mg/l).
		Lead	7439-92-1	0.037	grab	NA	NA
		Nickel	7440-02-0	NA	NA	0.20	TCLP (mg/l).
F038		Benzene	71-43-2	0.14	Composite	14	Total (mg/kg).
		Benzo(a) pyrene	50-32-8	0.061	Composite	12	Total (mg/kg).
		Bis(2-ethylhexyl) phthalate	117-81-7	0.28	Composite	7.3	Total (mg/kg).
		Chrysene	218-01-9	0.059	Composite	15	Total (mg/kg).
		Di-n-butyl phthalate	84-74-2	0.057	Composite	3.6	Total (mg/kg).
		Ethylbenzene	100-41-4	0.057	Composite	14	Total (mg/kg).
		Fluorene	86-73-7	0.059	Composite	NA	NA.
		Naphthalene	91-20-3	0.059	Composite	42	Total (mg/kg).
		Phenanthrene	85-01-8	0.059	Composite	34	Total (mg/kg).
		Phenol	108-95-2	0.039	Composite	3.6	Total (mg/kg).
		Pyrene	129-00-0	0.067	Composite	36	Total (mg/kg).
		Toluene	108-88-3	0.080	Composite	14	Total (mg/kg).
		Xylene(s)	1330-20-7	0.32	Composite	22	Total (mg/kg).
		Cyanides (Total)	57-12-5	0.028	grab	1.8	Total (mg/kg).
		Chromium (Total)	7440-47-3	0.2	grab	1.7	TCLP (mg/l).
		Lead	7439-92-1	0.037	grab	NA	NA.
		Nickel	7440-02-0	NA	NA	0.20	TCLP (mg/l).
(1)		Acetone	67-64-1	0.28	Composite	160	Total (mg/kg).
		Acenaphthalene	208-96-8	0.059	Composite	3.4	Total (mg/kg).
		Acenaphthene	83-32-9	0.059	Composite	4.0	Total (mg/kg).
		Acetonitrile	75-05-8	0.17	Composite	NA	NA.
		Acetophenone	96-86-2	0.010	Composite	9.7	Total (mg/kg).
		2-Acetyl-aminofluorene	53-96-3	0.059	Composite	140	Total (mg/kg).
		Acrolein	107-02-8	0.29	Composite	NA	NA.
		Acrylonitrile	107-13-1	0.24	Composite	84	Total (mg/kg).
		Aldrin	309-00-2	0.021	Composite	0.066	Total (mg/kg).
		4-Aminobiphenyl	192-67-1	0.13	Composite	NA	NA.
		Aniline	62-53-3	0.810	Composite	14	Total (mg/kg).
		Anthracene	120-12-7	0.059	Composite	4.0	Total (mg/kg).
		Aramite	140-57-8	0.36	Composite	NA	NA.
		Aroclor 1016	12674-11-2	0.013	Composite	0.92	Total (mg/kg).
		Aroclor 1221	11104-28-2	0.014	Composite	0.92	Total (mg/kg).
		Aroclor 1232	211141-16-5	0.013	Composite	0.92	Total (mg/kg).
		Aroclor 1242	53469-21-9	0.017	Composite	0.92	Total (mg/kg).
		Aroclor 1248	12672-29-6	0.013	Composite	0.92	Total (mg/kg).
		Aroclor 1254	11097-69-1	0.014	Composite	1.8	Total (mg/kg).
		Aroclor 1260	11096-82-5	0.014	Composite	1.8	Total (mg/kg).
		alpha-BHC	319-84-6	0.00014	Composite	0.066	Total (mg/kg).
		beta-BHC	319-85-7	0.00014	Composite	0.066	Total (mg/kg).
		delta-BHC	319-86-8	0.023	Composite	0.066	Total (mg/kg).
		gamma-BHC	58-89-9	0.0017	Composite	0.066	Total (mg/kg).
		Benzene	71-43-2	0.140	Composite	36	Total (mg/kg).
		Benz(a) anthracene	56-55-3	0.059	Composite	8.2	Total (mg/kg).
		Benzo(b) fluoranthene	205-99-2	0.055	Composite	3.4	Total (mg/kg).
		Benzo(k) fluoranthene	207-08-9	0.059	Composite	3.4	Total (mg/kg).
		Benzo(g,h,i) perylene	191-24-2	0.0055	Composite	1.5	Total (mg/kg).
		Benzo(a) pyrene	50-32-8	0.061	Composite	8.2	Total (mg/kg).
		Bromodi chloromethane	75-27-4	0.35	Composite	15	Total (mg/kg).
		Bromoform	75-25-2	0.63	Composite	15	Total (mg/kg).
		Bromomethane (methylbromide)	74-83-9	0.11	Composite	15	Total (mg/kg).
		4-Bromophenyl phenyl ether	101-55-3	0.055	Composite	15	Total (mg/kg).
		n-Butyl alcohol	171-36-3	5.6	Composite	2.6	Total (mg/kg).
		Butyl benzyl phthalate	85-68-7	0.017	Composite	7.9	Total (mg/kg).
		2-sec-Butyl-4,6-dinitrophenol	88-85-7	0.066	Composite	2.5	Total (mg/kg).

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and/or treatment subcategory	Regulated hazardous constituent		Wastewaters		Nonwastewaters	
		Common name	CAS No.	Concentration (mg/l) or technology code	Sampling basis	Concentration or technology code	Sampling basis and units
		Carbon tetrachloride	56–23–5	0.057	Composite	5.6	Total (mg/kg).
		Carbon disulfide	75–15–0	0.014	Composite	NA	NA.
		Chlordane	57–74–9	0.0033	Composite	0.13	Total (mg/kg).
		p-Chloroaniline	106–47–8	0.46	Composite	16	Total (mg/kg).
		Chlorobenzene	108–90–7	0.057	Composite	5.7	Total (mg/kg).
		Chlorobenzilate	510–15–6	0.10	Composite	NA	NA.
		2-chloro-1,3-butadiene	126–99–8	0.057	Composite	NA	NA.
		Chloro dibromomethane	124–48–1	0.057	Composite	15	Total (mg/kg).
		Chloroethane	75–00–3	0.27	Composite	6.0	Total (mg/kg).
		bis(2-Chloro ethoxy) methane	111–91–1	0.036	Composite	7.2	Total (mg/kg).
		bis(2-Chloroethyl)ether	111–44–4	0.033	Composite	7.2	Total (mg/kg).
		Chloroform	67–66–3	0.046	Composite	5.6	Total (mg/kg).
		bis(2-Chloroisopropyl) ether	39638–32–9	0.055	Composite	7.2	Total (mg/kg).
		p-Chloro-m-cresol	59–50–7	0.018	Composite	14	Total (mg/kg).
		Chloromethane (Methyl chloride)	74–87–3	0.19	Composite	33	Total (mg/kg).
		2-Chloronaphthalene	91–58–7	0.055	Composite	5.6	Total (mg/kg).
		2-Chlorophenol	95–57–8	0.044	Composite	5.7	Total (mg/kg).
		3-Chloropropene	107–05–1	0.036	Composite	28	Total (mg/kg).
		Chrysene	218–01–9	0.059	Composite	8.2	Total (mg/kg).
		o-Cresol	95–48–7	0.11	Composite	5.6	Total (mg/kg).
		Cresol (m- and p-isomers)	NA	0.77	Composite	3.2	Total (mg/kg).
		Cyclo hexanone	108–94–1	0.36	Composite	NA	NA.
		1,2-Dibromo-3- chloropropane	96–12–8	0.11	Composite	15	Total (mg/kg).
		1,2-Dibro moethane (Ethylene dibromide).	106–93–4	0.028	Composite	15	Total (mg/kg).
		Dibromo methane	74–95–3	0.11	Composite	15	Total (mg/kg).
		2,4-Dichloro pheno xyacetic acid (2,4-D).	94–75–7	0.72	Composite	10	Total (mg/kg).
		o,p'-DDD	53–19–0	0.023	Composite	0.087	Total (mg/kg).
		p,p'-DDD	72–54–8	0.023	Composite	0.087	Total (mg/kg).
		o,p'-DDE	3424–82–6	0.031	Composite	0.087	Total (mg/kg)
		p,p'-DDE	72–55–9	0.031	Composite	0.087	Total (mg/kg)
		o,p'-DDT	789–02–6	0.0039	Composite	0.087	Total (mg/kg)
		p,p'-DDT	50–29–30.0	039	Composite	0.087	Total (mg/kg).
		Dibenz(a,h) anthracene	53–70–3	0.055	Composite	8.2	Total (mg/kg).
		Dibenzo(a,e) pyrene	192–65–4	0.061	Composite	NA	NA.
		m-Dichlorobenzene	541–73–1	0.036	Composite	6.2	Total (mg/kg).
		o-Dichlorobenzene	95–50–1	0.088	Composite	6.2	Total (mg/kg).
		p-Dichlorobenzene	106–46–7	0.090	Composite	6.2	Total (mg/kg).
		Dichlorodifluoromethane	75–71–8	0.23	Composite	7.2	Total (mg/kg).
		1,1-Dichloroethane	75–34–3	0.059	Composite	7.2	Total (mg/kg).
		1,2-Dichloroethane	107–06–2	0.21	Composite	7.2	Total (mg/kg).
		1,1-Dichloroethylene	75–35–4	0.025	Composite	33	Total (mg/kg).
		trans-1,2-Dichloroethene	NA	0.054	Composite	33	Total (mg/kg).
		2,4-Dichlorophenol	120–83–2	0.044	Composite	14	Total (mg/kg).
		2,6-Dichlorophenol	87–65–0	0.044	Composite	14	Total (mg/kg).
		1,2-Dichloropropane	78–87–5	0.85	Composite	18	Total (mg/kg).
		cis-1,3-Dichloropropene	10061–01–5	0.036	Composite	18	Total (mg/kg).
		trans-1,3-Dichloropropene	10061–02–6	0.036	Composite	18	Total (mg/kg).
		Dieldrin	60–57–1	0.017	Composite	0.13	Total (mg/kg).
		Diethylphthalate	84–66–2	0.20	Composite	28	Total (mg/kg).

Diethylphthalate	84–66–2	0.20	Composite	28	Total (mg/kg).
2,4-Dimethylphenol	105–67–9	0.036	Composite	14	Total (mg/kg).
Dimethylphthalate	131–11–3	0.047	Composite	28	Total (mg/kg).
Di-n-butylphthalate	84–74–2	0.057	Composite	28	Total (mg/kg).
1,4-Dinitrobenzene	100–25–4	0.32	Composite	2.3	Total (mg/kg).
4,6-Dinitro-o-cresol	534–52–1	0.28	Composite	160	Total (mg/kg).
2,4-Dinitrophenol	51–28–5	0.12	Composite	160	Total (mg/kg).
2,4-Dinitrotoluene	121–14–2	0.32	Composite	140	Total (mg/kg).
2,6-Dinitrotoluene	606–20–2	0.55	Composite	28	Total (mg/kg).
Di-n-octylphthalate	117–84–0	0.017	Composite	28	Total (mg/kg).
Di-n-propylnitrosoamine	621–64–7	0.40	Composite	14	Total (mg/kg).
Diphenylamine	122–39–4	0.52	Composite	NA	NA.
1,2-Diphenylhydrazine	122–66–7	0.087	Composite	NA	NA.
Diphenylnitrosanine	621–64–7	0.40	Composite	NA	NA.
1,4-Dioxane	123–91–1	0.12	Composite	170	Total (mg/kg).
Disulfoton	298–04–4	0.017	Composite	6.2	Total (mg/kg).
Endosulfan I	939–98–8	0.023	Composite	0.066	Total (mg/kg).
Endosulfan II	33213–6–5	0.029	Composite	0.13	Total (mg/kg).
Endosulfansulfate	1031–07–8	0.029	Composite	0.13	Total (mg/kg).
Endrin	72–20–8	0.0028	Composite	0.13	Total (mg/kg).
Endrinaldehyde	7421–93–4	0.025	Composite	0.13	Total (mg/kg).
Ethylacetate	141–78–6	0.34	Composite	33	Total (mg/kg).
Ethylcyanide	107–12–0	0.24	Composite	360	Total (mg/kg).
Ethylbenzene	100–41–4	0.057	Composite	6.0	Total (mg/kg).
Ethylether	60–29–7	0.12	Composite	160	Total (mg/kg).
bis(2-Ethylhexyl) phthalate	117–81–7	0.28	Composite	28	Total (mg/kg).
Ethylmethacrylate	97–63–2	0.14	Composite	160	Total (mg/kg).
Ethyleneoxide	75–21–8	0.12	Composite	NA	NA.
Famphur	52–85–7	0.017	Composite	15	Total (mg/kg).
Fluoranthene	206–44–0	0.068	Composite	8.2	Total (mg/kg).
Fluorene	86–73–7	0.059	Composite	4.0	Total (mg/kg).
Fluorotrichloromethane	75–69–4	0.020	Composite	33	Total (mg/kg).
Heptachlor	76–44–8	0.0012	Composite	0.066	Total (mg/kg).
Heptachlorepoxide	1024–57–3	0.016	Composite	0.066	Total (mg/kg).
Hexachlorobenzene	118–74–1	0.055	Composite	37	Total (mg/kg).
Hexachlorobutadiene	87–68–3	0.055	Composite	28	Total (mg/kg).
Hexachlorocyclopentadiene	77–47–4	0.057	Composite	3.6	Total (mg/kg).
Hexachlorodibenzo furans	NA	0.000063	Composite	0.001	Total (mg/kg).
Hexachlorodibenzo pdioxins	NA	0.000063	Composite	0.001	Total (mg/kg).
Hexachloroethane	67–72–1	0.055	Composite	28	Total (mg/kg).
Hexachloropropene	1888–71–7	0.035	Composite	28	Total (mg/kg).
Indeno (1,2,3,-c,d) pyrene	193–39–5	0.0055	Composite	8.2	Total (mg/kg).
Iodomethane	74–88–4	0.19	Composite	65	Total (mg/kg).
Isobutanol	78–83–1	5.6	Composite	170	Total (mg/kg).
Isodrin	465–73–6	0.021	Composite	0.066	Total (mg/kg).
Isosafrole	120–58–1	0.081	Composite	2.6	Total (mg/kg).
Kepone	143–50–8	0.0011	Composite	0.13	Total (mg/kg).
Methacrylonitrile	126–98–7	0.24	Composite	84	Total (mg/kg).
Methanol	67–56–1	5.6	Composite	NA	NA.
Methapyrilene	91–80–5	0.081	Composite	1.5	Total (mg/kg).
Methoxychlor	72–43–5	0.25	Composite	0.18	Total (mg/kg).
3-Methylcholanthrene	56–49–5	0.0055	Composite	15	Total (mg/kg).
4,4-Methylenebis(2-chloroaniline)	101–14–4	0.50	Composite	35	Total (mg/kg).
Methylenechloride	75–09–2	0.089	Composite	33	Total (mg/kg).
Methylethylketone	78–93–3	0.28	Composite	36	Total (mg/kg).
Methylisobutylketone	108–10–1	0.14	Composite	33	Total (mg/kg).
Methylmethacrylate	80–62–6	0.14	Composite	160	Total (mg/kg).
Methylmethansulfonate	66–27–3	0.018	Composite	NA	NA.
Methylparathion	298–00–0	0.014	Composite	4.6	Total (mg/kg).
Naphthalene	91–20–3	0.059	Composite	3.1	Total (mg/kg).

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and/or treatment subcategory	Regulated hazardous constituent		Wastewaters		Nonwastewaters	
		Common name	CAS No.	Concentration (mg/l) or technology code	Sampling basis	Concentration or technology code	Sampling basis and units
		2-Naphthylamine	91–59–8	0.52	Composite	NA	NA.
		p-Nitroaniline	100–01–6	0.028	Composite	28	Total (mg/kg).
		Nitrobenzene	98–95–3	0.068	Composite	14	Total (mg/kg).
		5-Nitrotoluidine	99–55–8	0.32	Composite	28	Total (mg/kg).
		4-Nitrophenol	100–02–7	0.12	Composite	29	Total (mg/kg).
		N-Nitrosodiethylamine	55–18–5	0.40	Composite	28	Total (mg/kg).
		N-Nitrosodimethylamine	62–75–9	0.40	Composite	NA	NA
		N-Nitroso-di-n-butylamine	924–16–3	0.40	Composite	17	Total (mg/kg).
		N-Nitrosomethyl-ethylamine	10595–95–6	0.40	Composite	2.3	Total (mg/kg).
		N-Nitrosomorpho-line	59–89–2	0.40	Composite	2.3	Total (mg/kg).
		N-Nitrosopiperidine	100–75–4	0.013	Composite	35	Total (mg/kg).
		N-Nitrosopyrrolidine	930–55–2	0.013	Composite	35	Total (mg/kg).
		Parathion	56–38–2	0.014	Composite	4.6	Total (mg/kg).
		Pentachlorobenzene	608–93–5	0.055	Composite	37	Total (mg/kg).
		Pentachlorodibenzo-furans	NA	0.000063	Composite	0.001	Total (mg/kg).
		Pentachlorodibenzo-p-dioxins	NA	0.000063	Composite	0.001	Total (mg/kg).
		Pentachloronitro benzene	82–68–8	0.055	Composite	4.8	Total (mg/kg).
		Pentachlorophenol	87–86–5	0.089	Composite	7.4	Total (mg/kg).
		Phenacetin	62–44–2	0.081	Composite	16	Total (mg/kg).
		Phenanthrene	85–01–8	0.059	Composite	3.1	Total (mg/kg).
		Phenol	108–95–2	0.039	Composite	6.2	Total (mg/kg).
		Phorate	298–02–2	0.021	Composite	4.6	Total (mg/kg).
		Phthalic Anhydride	85–44–9	0.069	Composite	NA	NA.
		Pronamide	23950–58–5	0.093	Composite	1.5	Total (mg/kg).
		Pyrene	129–00–0	0.067	Composite	8.2	Total (mg/kg).
		Pyridine	110–86–1	0.014	Composite	16	Total (mg/kg).
		Safrole	94–59–7	0.081	Composite	22	Total (mg/kg).
		Silvex (2,4,5–TP)	93–72–1	0.72	Composite	7.9	Total (mg/kg).
		2,4,5–T	93–76–5	0.72	Composite	7.9	Total (mg/kg).
		1,2,4,5,-Tetrachlorobenzene	95–94–3	0.055	Composite	19	Total (mg/kg).
		Tetrachlorodibenzo-furans	NA	0.000063	Composite	0.001	Total (mg/kg).
		Tetrachlorodibenzo-p-dioxins	NA	0.000063	Composite	0.01	Total (mg/kg).
		1,1,1,2-Tetrachloroethane	630–20–6	0.057	Composite	42	Total (mg/kg).
		1,1,2,2,-Tetrachloroethane	79–34–6	0.057	Composite	42	Total (mg/kg).
		Tetrachloroethylene	127–18–4	0.056	Composite	5.6	Total (mg/kg).
		2,3,4,6-Tetrachlorophenol	58–90–2	0.030	Composite	37	Total (mg/kg).
		Toluene	108–88–3	0.080	Composite	28	Total (mg/kg).
		Toxaphene	8001–35–1	0.0095	Composite	1.3	Total (mg/kg).
		1,2,4-Trichlorobenzene	120–82–1	0.055	Composite	19	Total (mg/kg).
		1,1,1,-Trichloroethane	71–55–6	0.054	Composite	5.6	Total (mg/kg).
		1,1,2-Trichloroethane	79–00–5	0.054	Composite	5.6	Total (mg/kg).
		Trichloroethylene	79–01–6	0.054	Composite	5.6	Total (mg/kg).
		2,4,5-Trichlorophenol	95–95–4	0.18	Composite	37	Total (mg/kg).
		2,4,6-Trichlorophenol	88–06–2	0.035	Composite	37	Total (mg/kg).
		1,2,3-Trichloropropane	96–18–4	0.85	Composite	28	Total (mg/kg).
		1,1,2-Trichloro-1,2,2-trifluoroethane	76–13–1	0.057	Composite	28	Total (mg/kg).
		Tris(2,3-dibromopropyl)	126–72–7	0.11	Composite	NA	NA.
		Vinylchloride	75–01–4	0.27	Composite	33	Total (mg/kg).
		Xylene(s)	1330–20–7	0.32	Composite	28	Total (mg/kg).
		Cyanides (Total)	57–12–5	1.2	Composite	1.8	Total (mg/kg).
		Cyanides (Amenable)	57–12–5	0.86	Composite	NA	NA.
		Fluoride	16964–48–8	35	Composite	NA	NA.

		Fluoride	16964–48–8	35	Composite	NA	NA.
		Sulfide	8496–25–8	14	Composite	NA	NA.
		Antimony	7440–36–0	1.9	Composite	0.23	TCLP (mg/l).
		Arsenic	7440–38–2	1.4	Composite	5.0	TCLP (mg/l).
		Barium	7440–39–3	1.2	Composite	52	TCLP (mg/l).
		Beryllium	7440–41–7	0.82	Composite	NA	NA.
		Cadmium	7440–43–9	0.20	Composite	0.066	TCLP (mg/l).
		Chromium (Total)	7440–47–3	0.37	Composite	5.2	TCLP (mg/l).
		Copper	7440–50–8	1.3	Composite	NA	NA.
		Lead	7439–92–1	0.28	Composite	0.51	TCLP (mg/l).
		Mercury	7439–97–6	0.15	Composite	0.025	TCLP (mg/l).
		Nickel	7440–02–0	0.55	Composite	0.32	TCLP (mg/l).
		Selenium	7782–49–2	0.82	Composite	5.7	TCLP (mg/l).
		Silver	7440–22–4	0.29	Composite	0.072	TCLP (mg/l).
		Thallium	7440–28–0	1.4	Composite	NA	NA.
		Vanadium	7440–62–2	0.042	Composite	NA	NA.
		Zinc	7440–66–6	1.0	Composite	NA	NA.
K001		Naphthalene	91–20–3	0.031	Grab	1.5	Total (mg/kg).
		Pentachloro phenol	87–86–5	0.18	Grab	7.4	Total (mg/kg).
		Phenan threne	85–01–8	0.031	Grab	1.5	Total (mg/kg).
		Pyrene	129–00–0	0.028	Grab	1.5	Total (mg/kg).
		Toluene	108–88–3	0.028	Grab	28	Total (mg/kg).
		Xylenes (Total)	1330–20–7	0.032	Grab	33	Total (mg/kg).
		Lead	7439–92–1	0.037	Grab	0.51	TCLP (mg/l).
K002		Chromium (Total)	7440–47–3	0.9	Composite	0.094	TCLP (mg/l).
		Lead	7439–92–1	3.4	Composite	0.37	TCLP (mg/l).
K003		Chromium (Total)	7440–47–3	0.9	Composite	0.094	TCLP (mg/l).
		Lead	7439–92–1	3.4	Composite	0.37	TCLP (mg/l).
K004		Chromium (Total)	7440–47–3	0.9	Composite	0.094	TCLP (mg/l).
		Lead	7439–92–1	3.4	Composite	0.37	TCLP (mg/l).
K005		Chromium (Total)	7440–47–3	0.9	Composite	0.094	TCLP (mg/l).
		Lead	7439–92–1	3.4	Composite	0.37	TCLP (mg/l).
		Cyanides (Total)	57–12–5	0.74	Composite	Reserved	NA.
K006	Anhydrous	Chromium (Total)	7440–47–3	0.9	Composite	0.094	TCLP (mg/l).
		Lead	7439–92–1	3.4	Composite	0.37	TCLP (mg/l).
K006	Hydrated	Chromium (Total)	7440–47–3	0.9	Composite	5.2	TCLP (mg/l).
		Lead	7439–92–1	3.4	Composite	NA	NA.
K007		Chromium (Total)	7440–47–3	0.9	Composite	0.094	TCLP (mg/l).
		Lead	7439–92–1	3.4	Composite	0.37	TCLP (mg/l).
		Cyanides (Total)	57–12–5	0.74	Composite	Reserved	NA.
K008		Chromium (Total)	7440–47–3	0.9	Composite	0.094	TCLP (mg/l).
		Lead	7439–92–1	3.4	Composite	0.37	TCLP (mg/l).
K009		Chloroform	67–66–3	0.1	Grab	6.0	Total (mg/kg).
K010		Chloroform	67–66–3	0.1	Grab	6.0	Total (mg/kg).
K011		Acetonitrile	75–05–8	38	Grab	1.8	Total (mg/kg).
		Acrylonitrile	107–13–1	0.06	Grab	1.4	Total (mg/kg).
		Acrylamide	79–06–1	19	Grab	23	Total (mg/kg).
		Benzene	71–43–2	0.02	Grab	0.03	Total (mg/kg).
		Cyanide (Total)	57–12–5	21	Grab	57	Total (mg/kg).
K013		Acetonitrile	75–05–8	38	Grab	1.8	Total (mg/kg).
		Acrylonitrile	107–13–1	0.06	Grab	1.4	Total (mg/kg).
		Acrylamide	79–06–1	19	Grab	23	Total (mg/kg).
		Benzene	71–43–2	0.02	Grab	0.03	Total (mg/kg).
		Cyanide (Total)	57–12–5	21	Grab	57	Total (mg/kg).
K014		Acetonitrile	75–05–8	38	Grab	1.8	Total (mg/kg).
		Acrylonitrile	107–13–1	0.06	Grab	1.4	Total (mg/kg).
		Acrylamide	79–06–1	19	Grab	23	Total (mg/kg).
		Benzene	71–43–2	0.02	Grab	0.03	Total (mg/kg).
		Cyanide (Total)	57–12–5	21	Grab	57	Total (mg/kg).

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and/or treatment subcategory	Regulated hazardous constituent		Wastewaters		Nonwastewaters	
		Common name	CAS No.	Concentration (mg/l) or technology code	Sampling basis	Concentration or technology code	Sampling basis and units
K015		Anthracene	120–12–7	0.059	Grab	3.4	Total (mg/kg).
		Benzal chloride	98–87–3	0.28	Grab	6.2	Total (mg/kg).
		Sum of Benzo (b) fluoranthene and Benzo (k) fluoranthene.	205–08–9 207–08–09.	0.055	Grab	3.4	Total (mg/kg).
		Phenanthrene	85–01–8	0.059	Grab	3.4	Total (mg/kg).
		Toluene	108–88–3	0.08	Grab	6.0	Total (mg/kg).
		Chromium (Total)	7440–47–3	0.32	Grab	1.7	TCLP (mg/l).
		Nickel	7440–02–0	0.44	Grab	0.2	TCLP (mg/l).
K016		Hexachlorobenzene	118–74–1	0.055	Grab	28	Total (mg/kg).
		Hexachlorobutadiene	87–68–3	0.055	Grab	5.6	Total (mg/kg).
		Hexachlorocyclopentadiene	77–47–4	0.057	Grab	5.6	Total (mg/kg).
		Hexachloroethane	67–72–1	0.055	Grab	28	Total (mg/kg).
		Tetrachloroethene	127–18–4	0.056	Grab	6.0	Total (mg/kg).
K017		1,2-Dichloropropane	78–87–5	0.85	Composite	18	Total (mg/kg).
		1,2,3-Trichloropropane	96–18–4	0.85	Composite	28	Total (mg/kg).
		Bis(2-chloroethyl)ether	111–44–4	0.033	Composite	7.2	Total (mg/kg).
K018		Chloroethane	75–00–3	0.27	Grab	6.0	Total (mg/kg).
		Chloromethane	74–87–3	0.19	Grab	NA	NA
		1,1-Dichloro thane	75–34–3	0.059	Grab	6.0	Total (mg/kg).
		1,2-Dichloroethane	107–06–2	0.21	Grab	6.0	Total (mg/kg).
		Hexachlorobenzene	118–74–1	0.055	Grab	28	Total (mg/kg).
		Hexachlorobutadiene	87–68–3	0.055	Grab	5.6	Total (mg/kg).
		Hexachloroethane	67–72–1	0.055	Grab	28	Total (mg/kg).
		Pentachloroethane	76–01–7	NA	NA	5.6	Total (mg/kg).
		1,1,1-Trichloroethane	71–55–6	0.054	Grab	6.0	Total (mg/kg).
K019		Bis(2-chloroethyl)ether	111–44–4	0.033	Grab	5.6	Total (mg/kg).
		Chlorobenzene	108–90–7	0.057	Grab	6.0	Total (mg/kg).
		Chloroform	67–66–3	0.046	Grab	6.0	Total (mg/kg).
		p-Dichlorobenzene	106–46–7	0.09	Grab	NA	NA
		1,2-Dichloroethane	107–06–2	0.21	Grab	6.0	Total (mg/kg).
		Fluorene	86–73–7	0.059	Grab	NA	NA
		Hexachloroethane	67–72–1	0.055	Grab	28	Total (mg/kg).
		Naphthalene	91–20–3	0.059	Grab	5.6	Total (mg/kg).
		Phenanthrene	85–01–8	0.059	Grab	5.6	Total (mg/kg).
		1,2,4,5-Tetrachlorobenzene	95–94–3	0.055	Grab	NA	NA
		Tetrachloroethene	127–18–4	0.056	Grab	6.0	Total (mg/kg).
		1,2,4-Trichlorobenzene	120–82–1	0.055	Grab	19	Total (mg/kg).
		1,1,1-Trichloroethane	71–55–6	0.054	Grab	6.0	Total (mg/kg).
K020		1,2-Dichloroethane	107–06–2	0.21	Grab	6.0	Total (mg/kg)
		1,1,2,2-Tetrachloroethane	79–34–6	0.057	Grab	5.6	Total (mg/kg).
		Tetrachloroethene	127–18–4	0.056	Grab	6.0	Total (mg/kg).
K021		Chloroform	67–66–3	0.046	Composite	6.2	Total (mg/kg)
		Carbon tetrachloride	56–23–5	0.057	Composite	6.2	Total (mg/kg).
		Antimony	7440–36–0	0.60	Composite	0.23	TCLP (mg/l).
K022		Toluene	108–88–3	0.080	Composite	0.034	Total (mg/kg).
		Acetophenone	96–86–2	0.010	Grab	19	Total (mg/kg).
		Diphenylamine	22–39–4	0.52	Composite	NA	NA.
		Diphenylnitrosamine	86–30–6	0.40	Composite	NA	NA.
		Sum of Diphenylamine and Diphenylnitrosamine.	NA	NA	NA	13	Total (mg/kg).
		Phenol	108–95–2	0.039	Grab	12	Total (mg/kg).
		Chromium (Total)	7440–47–3	0.35	Grab	5.2	TCLP (mg/l).

		Chromium (Total)	7440–47–3	0.35	Grab	5.2	TCLP (mg/l).
		Nickel	7440–02–0	0.47	Grab	0.32	TCLP (mg/l).
K023		Phthalic anhydride (measured as Phthalic acid).	85–44–9	0.069	Grab	28	Total (mg/kg).
K024		Phthalic anhydride (measured as Phthalic acid).	85–44–9	0.069	Grab	28	Total (mg/kg).
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene.	NA	NA	LLEXT fb SSTRP fb CARBN; or INCIN.	NA	INCIN	NA
K026	Stripping still tails from the production of methyl ethyl pyridines.	NA	NA	INCIN	NA	INCIN	NA
K027	Centrifuge and distillation residues from toluene diisocyanate production.	NA	NA	CARBN; or INCIN	NA	FSUBS; or INCIN	NA
K028		1,1-Dichloroethane	75–34–3	0.059	Grab	6.0	Total (mg/kg).
		trans-1,2-Dichloroethane	NA	0.054	Grab	6.0	Total (mg/kg).
		Hexachlorobutadiene	87–68–3	0.055	Grab	5.6	Total (mg/kg).
		Hexachloroethane	67–72–1	0.055	Grab	28	Total (mg/kg).
		Pentachloroethane	76–01–7	NA	NA	5.6	Total (mg/kg).
		1,1,1,2-Tetrachloroethane	630–20–6	0.057	Grab	5.6	Total (mg/kg).
		1,1,2,2-Tetrachloroethane	79–34–6	0.057	Grab	5.6	Total (mg/kg).
		1,1,1-Trichloroethane	71–55–6	0.054	Grab	6.0	Total (mg/kg).
		1,1,2-Trichlorethane	79–00–5	0.054	Grab	6.0	Total (mg/kg).
		Tetrachloroethylene	127–18–4	0.056	Grab	6.0	Total (mg/kg).
		Cadmium	7440–43–9	6.4	Grab	NA	NA.
		Chromium (Total)	7440–47–3	0.35	Grab	0.073	TCLP (mg/l).
		Lead	7439–92–1	0.037	Grab	0.021	TCLP (mg/l).
		Nickel	7440–02–0	0.47	Grab	0.088	TCLP (mg/l)
K029		Chloroform	67–66–3	0.046	Grab	6.0	Total (mg/kg).
		1,2-Dichloroethane	107–06–2	0.21	Grab	6.0	Total (mg/kg).
		1,1,-Dichloroethylene	75–35–4	0.025	Grab	6.0	Total (mg/kg).
		1,1,1-Trichloroethane	71–55–6	0.054	Grab	6.0	Total (mg/kg).
		Vinyl chloride	75–01–4	0.27	Grab	6.0	Total (mg/kg).
K030		o-Dichlorobenzene	95–50–1	0.088	Grab	NA	NA.
		p-Dichlorobenzene	106–46–7	0.09	Grab	NA	NA.
		Hexachlorobutadiene	87–68–3	0.055	Grab	5.6	Total (mg/kg).
		Hexachloroethane	67–72–1	0.055	Grab	28	Total (mg/kg).
		Hexachloropropene	1888–71–7	NA	NA	19	Total (mg/kg).
		Pentachlorobenzene	608–93–5	NA	NA	28	Total (mg/kg).
		Pentachloroethane	76–01–7	NA	NA	5.6	Total (mg/kg).
		1,2,4,5-Tetrachlorobenzene	95–94–3	0.055	Grab	14	Total (mg/kg).
		Tetrachloroethene	127–18–4	0.056	Grab	6.0	Total (mg/kg).
		1,2,4-Trichlorobenzene	120–82–1	0.055	Grab	19	Total (mg/kg).
K031		Arsenic	7440–38–2	0.79	Grab	5.6	TCLP (mg/l).
K032		Hexachloropentadiene	77–47–4	0.057	Composite	2.4	Total (mg/kg).
		Chlordane	57–74–9	0.0033	Composite	0.26	Total (mg/kg).
		Heptachlor	76–44–8	0.0012	Composite	0.066	Total (mg/kg).
		Heptachlor epoxide	1024–57–3	0.016	Composite	0.066	Total (mg/kg).
K033		Hexachlorocyclopentadiene	77–47–4	0.057	Composite	2.4	Total (mg/kg).
K034		Hexachlorocyclopentadiene	77–47–4	0.057	Composite	2.4	Total (mg/kg).
K035		Acenaphthene	83–32–9	NA	NA	3.4	Total (mg/kg).
		Anthracene	120–12–7	NA	NA	3.4	Total (mg/kg).
		Benz(a)anthracene	56–55–3	0.059	Composite	3.4	Total (mg/kg).
		Benzo(a)pyrene	50–32–8	NA	NA	3.4	Total (mg/kg).
		Chrysene	218–01–9	0.059	Composite	3.4	Total (mg/kg).
		Dibenz(a,h)anthracene	53–70–3	NA	NA	3.4	Total (mg/kg).
		Fluoranthene	206–44–0	0.068	Composite	3.4	Total (mg/kg).
		Fluorene	86–73–7	NA	NA	3.4	Total (mg/kg).
		Indeno(1,2,3-cd)pyrene	193–39–5	NA	NA	3.4	Total (mg/kg).

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and/or treatment subcategory	Regulated hazardous constituent		Wastewaters		Nonwastewaters	
		Common name	CAS No.	Concentration (mg/l) or technology code	Sampling basis	Concentration or technology code	Sampling basis and units
		Cresols(m- and p-isomers)	NA	0.77	Composite	NA	NA
		Naphthalene	91-20-3	0.059	Composite	3.4	Total (mg/kg).
		o-cresol	95-48-7	0.11	Composite	NA	NA.
		Phenanthrene	85-01-8	0.059	Composite	3.4	Total (mg/kg).
		Phenol	108-95-2	0.039	Composite	NA	NA.
		Pyrene	129-00-0	0.067	Composite	8.2	Total (mg/kg).
K036		Disulfoton	298-04-4	0.026	Composite	0.1	Total (mg/kg).
K037		Disulfoton	298-04-4	0.026	Composite	0.1	Total (mg/kg).
		Toluene	108-88-3	0.080	Composite	28	Total (mg/kg).
K038		Phorate	298-02-2	0.026	Composite	0.1	Total (mg/kg).
K039	Filter cake from the filtration of diethylphosphorodithioc acid in the production of phorate.	NA	NA	CARBN; or INCIN	NA	FSUBS; or INCIN	NA.
K040		Phorate	298-02-2	0.026	Composite	0.1	Total (mg/kg).
K041		Toxaphene	8001-35-1	0.0095	Composite	2.6	Total (mg/kg).
K042		1,2,4,5-Tetrachlorobenzene	95-94-3	0.056	Composite	4.4	Total (mg/kg).
		o-Dichlorobenzene	95-50-1	0.088	Composite	4.4	Total (mg/kg).
		p-Dichlorobenzene	106-46-7	0.090	Composite	4.4	Total (mg/kg).
		Pentachlorobenzene	608-93-5	0.055	Composite	4.4	Total (mg/kg).
		1,2,4-Trichlorobenzene	120-82-1	0.055	Composite	4.4	Total (mg/kg).
K043		2,4-Dichlorophenol	120-83-2	0.044	Grab	0.38	Total (mg/kg).
		2,6-Dichlorophenol	87-65-0	0.044	Grab	0.34	Total (mg/kg).
		2,4,5-Trichlorophenol	95-95-4	0.18	Grab	8.2	Total (mg/kg).
		2,4,6-Trichlorophenol	88-06-2	0.035	Grab	7.8	Total (mg/kg).
		Tetrachlorophenols (Total)	NA	NA	Grab	0.68	Total (mg/kg).
		Pentachlorophenol	87-86-5	0.089	Grab	1.9	Total (mg/kg).
		Tetrachloroethene	79-01-6	0.056	Grab	1.7	Total (mg/kg).
		Hexachlorodibenzo-p-dioxins	NA	0.000063	Grab	0.001	Total (mg/kg).
		Hexachlorodibenzo-furans	NA	0.000063	Grab	0.001	Total (mg/kg).
		Pentachlorodibenzo-p-dioxins	NA	0.000063	Grab	0.001	Total (mg/kg).
		Pentachlorodibenzofurans	NA	0.000063	Grab	0.001	Total (mg/kg).
		Tetrachlorodibenzo-p-dioxins	NA	0.000063	Grab	0.001	Total (mg/kg).
		Tetrachlorodibenzofurans	NA	0.000063	Grab	0.001	Total (mg/kg).
K044	Wastewater treatment sludges from the manufacturing and processing of explosives.	NA	NA	DEACT	NA	DEACT	NA.
K045	Spent carbon from the treatment of wastewater containing explosives.	NA	NA	DEACT	NA	DEACT	NA.
K046		Lead	7439-92-1	0.037	Grab	0.18	TCLP (mg/l).
K047	Pink/red water form TNT operations	NA	NA	DEACT	NA	DEACT	NA.
K048		Benzene	71-43-2	0.14	Composite	14	Total (mg/kg).
		Benzo(a)pyrene	50-32-8	0.061	Composite	12	Total (mg/kg).
		Bis(2-ethylhexyl)phthalate	117-81-7	0.28	Composite	7.3	Total (mg/kg).
		Chrysene	218-01-9	0.059	Composite	15	Total (mg/kg).
		Di-n-butyl phthalate	84-74-2	0.057	Composite	3.6	Total (mg/kg).
		Ethylbenzene	100-41-4	0.057	Composite	14	Total (mg/kg).
		Fluorene	86-73-7	0.059	Composite	NA	NA.
		Naphthalene	91-20-3	0.059	Composite	42	Total (mg/kg).
		Phenanthrene	85-01-8	0.059	Composite	34	Total (mg/kg.
		Phenol	108-95-2	0.039	Composite	3.6	Total (mg/kg).
		Pyrene	129-00-0	0.067	Composite	36	Total (mg/kg).

		Toluene	108-88-33	0.080	Composite	14	Total (mg/kg).

		Toluene	108–88–33	0.080	Composite	14	Total (mg/kg).
		Xylene(s)	1330–20–7	0.032	Composite	22	Total (mg/kg).
		Cyanides (Total)	57–12–5	0.028	Grab	1.8	Total (mg/kg).
		Chromium (Total)	7440–47–3	0.2	Grab	1.7	TCLP (mg/l).
		Lead	7439–92–1	0.037	Grab	NA	NA.
		Nickel	7440–02–0	NA	NA	0.20	TCLP (mg/l).
K049		Anthracene	120–12–7	0.059	Composite	28	Total (mg/kg).
		Benzene	71–43–2	0.14	Composite	14	Total (mg/kg).
		Benzo(a)pyrene	50–32–8	0.061	Composite	12	Total (mg/kg).
		Bis(2-ethylhexyl)phthalate	117–81–7	0.28	Composite	7.3	Total (mg/kg).
		Carbon disulfide	75–15–0	0.014	Composite	NA	NA.
		Chrysene	2218–01–9	0.059	Composite	15	Total (mg/kg).
		2,4-Dimethylphenol	105–67–9	0.036	Composite	NA	NA.
		Ethylbenzene	100–41–4	0.057	Composite	14	Total (mg/kg).
		Naphthalene	91–20–3	0.059	Composite	42	Total (mg/kg).
		Phenanthrene	85–01–8	0.059	Composite	34	Total (mg/kg).
		Phenol	108–95–2	0.039	Composite	3.6	Total (mg/kg).
		Pyrene	129–00–0	0.067	Composite	36	Total (mg/kg).
		Toluene	108–88–3	0.080	Composite	14	Total (mg/kg).
		Xylene(s)	1330–20–7	0.32	Composite	22	Total (mg/kg).
		Cyanides (Total)	57–12–5	0.028	Grab	1.8	Total (mg/kg).
		Chromium (Total)	7440–47–3	0.2	Grab	1.7	TCLP (mg/l).
		Lead	7439–92–1	0.037	Grab	NA	NA.
		Nickel	7440–02–0	NA	NA	0.20	TCLP (mg/l).
K050		Benzo(a)pyrene	50–32–8	0.061	Composite	12	Total (mg/kg).
		Phenol	108–95–2	0.039	Composite	3.6	Total (mg/kg).
		Cyanides (Total)	57–12–5	0.028	Grab	1.8	Total (mg/kg).
		Chromium (Total)	7440–47–3	0.2	Grab	1.7	TCLP (mg/l).
		Lead	7439–92–1	0.037	Grab	NA	NA.
		Nickel	7440–02–0	NA	NA	0.20	TCLP (mg/l).
K051		Acenaphthene	83–32–9	0.059	Composite	NA	NA.
		Anthracene	120–12–7	0.059	Composite	28	Total (mg/kg).
		Benzene	71–43–2	0.14	Composite	14	Total (mg/kg).
		Benzo(a) anthracene	56–55–3	0.059	Composite	20	Total (mg/kg).
		Benzo(a)pyrene	50–32–8	0.061	Composite	12	Total (mg/kg).
		Bis(2-ethylhexyl)- phthalate	117–81–7	0.28	Composite	7.3	Total (mg/kg).
		Chrysene	2218–01–9	0.059	Composite	15	Total (mg/kg).
		Di-n-butyl phthalate	105–67–9	0.057	Composite	3.6	Total (mg/kg).
		Ethylbenzene	100–41–4	0.057	Composite	14	Total (mg/kg).
		Fluorene	86–73–7	0.059	Composite	NA	NA.
		Naphthalene	91–20–3	0.059	Composite	42	Total (mg/kg).
		Phenanthrene	85–01–8	0.059	Composite	34	Total (mg/kg).
		Phenol	108–95–2	0.039	Composite	3.6	Total (mg/kg).
		Pyrene	129–00–0	0.067	Composite	36	Total (mg/kg).
		Toluene	108–88–3	0.080	Composite	14	Total (mg/kg).
		Xylene(s)	1330–20–7	0.32	Composite	22	Total (mg/kg).
		Cyanides (Total)	57–12–5	0.028	Grab	1.8	Total (mg/kg).
		Chromium (Total)	7440–47–3	0.2	Grab	1.7	TCLP (mg/l).
		Lead	7439–92–1	0.037	Grab	NA	NA.
		Nickel	7440–02–0	NA	NA	0.20	TCLP (mg/l).
K052		Benzene	71–43–2	0.14	Composite	14	Total (mg/kg).
		Benzo(a)pyrene	50–32–8	0.061	Composite	12	Total (mg/kg).
		o-Cresol	95–48–7	0.011	Composite	6.2	Total (mg/kg).
		p-Cresol	106–44–5	0.77	Composite	6.2	Total (mg/kg).
		2,4,-Dimethylphenol	105–67–9	0.036	Composite	NA	NA.
		Ethylbenzene	100–41–4	0.057	Composite	14	Total (mg/kg).
		Naphthalene	91–20–3	0.059	Composite	42	Total (mg/kg).
		Phenanthrene	85–01–8	0.059	Composite	34	Total (mg/kg).
		Phenol	108–95–2	0.039	Composite	3.6	Total (mg/kg).

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and/or treatment subcategory	Regulated hazardous constituent		Wastewaters		Nonwastewaters	
		Common name	CAS No.	Concentration (mg/l) or technology code	Sampling basis	Concentration or technology code	Sampling basis and units
		Toluene	108–88–3	0.080	Composite	14	Total (mg/kg).
		Xylene(s)	1330–20–7	0.32	Composite	22	Total (mg/kg).
		Cyanides (Total)	57–12–5	0.028	Grab	1.8	Total (mg/kg).
		Chromium (Total)	7440–47–3	0.2	Grab	1.7	TCLP (mg/l).
		Lead	7439–92–1	0.037	Grab	NA	NA.
		Nickel	7440–02–0	NA	NA	0.20	TCLP (mg/l).
K060		Benzene	71–43–2	0.17	Composite	0.071	Total (mg/kg).
		Benzo(a)pyrene	50–32–8	0.035	Composite	3.6	Total (mg/kg).
		Naphthalene	91–20–3	0.028	Composite	3.4	Total (mg/kg).
		Phenol	108–95–2	0.042	Composite	3.4	Total (mg/kg).
		Cyanides (Total)	57–12–5	1.9	Grab	1.2	Total (mg/kg).
K061		Antimony	7440–36–0	NA	NA	2.1	TCLP (mg/l).
		Arsenic	7440–38–2	NA	NA	0.055	TCLP (mg/l).
		Barium	7440–39–3	NA	NA	7.6	TCLP (mg/l).
		Beryllium	7440–41–7	NA	NA	0.014	TCLP (mg/l).
		Cadmium	7440–43–9	1.61	Grab	0.19	TCLP (mg/l).
		Chromium (Total)	7440–47–3	0.32	Grab	0.33	TCLP (mg/l).
		Lead	7439–92–1	0.51	Grab	0.37	TCLP (mg/l).
		Mercury	7439–97–6	NA	NA	0.009	TCLP (mg/l).
		Nickel	7440–02–0	0.44	Grab	5.0	TCLP (mg/l).
		Selenium	7782–49–2	NA	NA	0.16	TCLP (mg/l).
		Silver	7440–22–4	NA	NA	0.3	TCLP (mg/l).
		Thallium	7440–28–0	NA	NA	0.078	TCLP (mg/l).
		Zinc	7440–66–6	NA	NA	5.3	TCLP (mg/l).
K062		Chromium (Total)	7440–47–3	0.32	Grab	0.094	TCLP (mg/l).
		Lead	7439–92–1	0.04	Grab	0.37	TCLP (mg/l).
		Nickel	7440–02–0	0.44	Grab	NA	NA.
K069	Calcium Sulfate Subcategory	Cadmium	7440–43–9	1.6	Grab	0.14	TCLP (mg/l).
		Lead	7439–92–1	0.51	Grab	0.24	TCLP (mg/l).
K069	Emission control dust/sludge from secondary lead smelting: Non-Calcium Sulfate Subcategory.	NA	NA	NA	NA	RLEAD	NA.
K071		Mercury	7439–97–6	0.030	Grab	0.025	TCLP (mg/l).
K073		Carbon tetrachloride	56–23–5	0.057	Composite	6.2	Total (mg/kg).
		Chloroform	67–66–3	0.046	Composite	6.2	Total (mg/kg).
		Hexachloroethane	67–72–1	0.055	Composite	30	Total (mg/kg).
		Tetrachloroethene	127–18–4	0.056	Composite	6.2	Total (mg/kg).
		1,1,1-Trichloroethane	71–55–6	0.054	Composite	6.2	Total (mg/kg).
K083		Benzene	71–43–2	0.14	Composite	6.6	Total (mg/kg).
		Aniline	62–53–3	0.81	Composite	14	Total (mg/kg).
		Diphenylamine	22–39–4	0.52	Composite	NA	NA.
		Diphenylnitrosamine	86–30–6	0.40	Composite	NA	NA
		Sum of Diphenylamine and Diphenylnitrosamine.	NA	NA	NA	14	Total (mg/kg).
		Nitrobenzene	98–95–3	0.068	Composite	14	Total (mg/kg).
		Phenol	108–95–2	0.039	Grab	5.6	Total (mg/kg).
		Cyclohexanone	108–94–1	0.36	Grab	NA	NA.
		Nickel	7440–02–0	0.47	Grab	0.088	TCLP (mg/l).
K084		Arsenic	7440–38–2	0.79	Grab	5.6	TCLP (mg/l).
K085		Benzene	71–43–2	0.14	Composite	4.4	Total (mg/kg).
		Chlorobenzene	108–90–7	0.057	Composite	4.4	Total (mg/kg).
		o-Dichlorobenzene	95–50–1	0.088	Composite	4.4	Total (mg/kg).

K085		Benzene	71–43–2	0.14	Composite	4.4	Total (mg/kg).
		Chlorobenzene	108–90–7	0.057	Composite	4.4	Total (mg/kg).
		o-Dichlorobenzene	95–50–1	0.088	Composite	4.4	Total (mg/kg).
		m-Dichlorobenzene	541–73–1	0.036	Composite	4.4	Total (mg/kg).
		p-Dichlorobenzene	106–46–7	0.090	Composite	4.4	Total (mg/kg).
		1,2,4,-Trichlorobenzene	120–82–1	0.055	Composite	4.4	Total (mg/kg).
		1,2,4,5-Tetrachlorobenzene	95–94–3	0.055	Composite	4.4	Total (mg/kg).
		Pentachlorobenzene	608–93–5	0.055	Composite	4.4	Total (mg/kg).
		Hexachlorobenzene	118–74–1	0.055	Composite	4.4	Total (mg/kg).
		Aroclor 1016	12674–11–2	0.013	Composite	0.92	Total (mg/kg).
		Aroclor 1221	11104–28–2	0.014	Composite	0.92	Total (mg/kg).
		Aroclor 1232	11141–16–5	0.013	Composite	0.92	Total (mg/kg).
		Aroclor 1242	53469–21–9	0.017	Composite	0.92	Total (mg/kg).
		Aroclor 1248	12672–29–6	0.013	Composite	0.92	Total (mg/kg).
		Aroclor 1254	11097–69–1	0.014	Composite	1.8	Total (mg/kg).
		Aroclor 1260	11096–82–5	0.014	Composite	1.8	Total (mg/kg).
K086		Acetone	67–64–1	0.28	Grab	160	Total (mg/kg).
		Acetophenone	96–86–2	0.010	Grab	9.7	Total (mg/kg).
		Bis(2-ethylhexyl)phthalate	117–81–7	0.28	Composite	28	Total (mg/kg).
		n-Butyl alcohol	71–36–3	5.6	Grab	2.6	Total (mg/kg).
		Butylbenzylphthalate	85–68–7	0.017	Composite	7.9	Total (mg/kg).
		Cyclohexanone	108–94–1	0.36	Grab	NA	NA.
		1,2-Dichlorobenzene	95–50–1	0.088	Grab	6.2	Total (mg/kg).
		Diethyl phthalate	84–66–2	0.20	Composite	28	Total (mg/kg).
		Dimethyl phthalate	131–11–3	0.047	Composite	28	Total (mg/kg).
		Di-n-butyl phthalate	84–74–2	0.057	Composite	28	Total (mg/kg).
		Di-n-octyl phthalate	117–84–0	0.017	Composite	28	Total (mg/kg).
		Ethyl acetate	141–78–6	0.34	Composite	33	Total (mg/kg).
		Ethylbenzene	100–41–4	0.057	Composite	6.0	Total (mg/kg).
		Methanol	67–56–1	5.6	Composite	NA	NA.
		Methyl isobutyl ketone	108–10–1	0.14	Grab	33	Total (mg/kg).
		Methyl ethyl ketone	78–93–3	0.28	Grab	36	Total (mg/kg).
		Methylene chloride	75–09–2	0.089	Composite	33	Total (mg/kg).
		Naphthalene	91–20–3	0.059	Composite	3.1	Total (mg/kg).
		Nitrobenzene	98–95–3	0.068	Composite	14	Total (mg/kg).
		Toluene	108–88–3	0.080	Composite	28	Total (mg/kg).
		1,1,1-Trichloroethane	71–55–6	0.054	Composite	5.6	Total (mg/kg).
		Trichloroethylene	79–01–6	0.054	Composite	5.6	Total (mg/kg).
		Xylenes (Total)	1330–20–7	0.32	Composite	28	Total (mg/kg).
		Cyanides (Total)	57–12–5	1.2	Grab	1.5	Total (mg/kg).
		Chromium (Total)	7440–47–3	0.32	Grab	0.094	TCLP (mg/l).
		Lead	7439–92–1	0.037	Grab	0.37	TCLP (mg/l).
K087		Acenaphthalene	208–96–8	0.059	Composite	3.4	Total (mg/kg).
		Benzene	71–43–2	0.14	Composite	0.071	Total (mg/kg).
		Chrysene	218–01–9	0.059	Composite	3.4	Total (mg/kg).
		Fluoranthene	206–44–0	0.068	Composite	3.4	Total (mg/kg).
		Indeno(1,2,3-cd)pyrene	193–39–5	0.0055	Composite	3.4	Total (mg/kg).
		Naphthalene	91–20–3	0.059	Composite	3.4	Total (mg/kg).
		Phenanthrene	85–01–8	0.059	Composite	3.4	Total (mg/kg).
		Toluene	108–88–3	0.06	Composite	0.65	Total (mg/kg).
		Xylene(s)	1330–20–7	0.32	Composite	0.07	Total (mg/kg).
		Lead	7439–92–1	0.037	Grab	0.51	TCLP (mg/l).
K093		Phthalic anhydride (measured as Phthalic acid).	85–44–9	0.069	Grab	28	Total (mg/kg).
K094		Phthalic anhydride (measured as Phthalic acid).	85–44–9	0.069	Grab	28	Total (mg/kg).
K095		1,1,1,2-Tetrachloroethane	630–20–6	0.057	Grab	5.6	Total (mg/kg).
		1,1,2,2-Tetrachloroethane	79–34–6	0.057	Grab	5.6	Total (mg/kg).
		Tetrachloroethene	127–18–4	0.056	Grab	6.0	Total (mg/kg).
		1,1,2-Trichloroethane	79–00–5	0.054	Grab	6.0	Total (mg/kg).
		Trichloroethylene	79–01–6	0.054	Grab	5.6	Total (mg/kg).

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and/or treatment subcategory	Regulated hazardous constituent		Wastewaters		Nonwastewaters	
		Common name	CAS No.	Concentration (mg/l) or technology code	Sampling basis	Concentration or technology code	Sampling basis and units
		Hexachloroethane	67–72–1	0.055	Grab	28	Total (mg/kg).
		Pentachloroethane	76–01–7	0.055	Grab	5.6	Total (mg/kg).
K096		1,1,1,2-Tetrachloroethane	630–20–6	0.057	Grab	5.6	Total (mg/kg).
		1,1,2,2-Tetrachloroethane	79–34–6	0.057	Grab	5.6	Total (mg/kg).
		Tetrachloroethene	127–18–4	0.056	Grab	6.0	Total (mg/kg).
		1,1,2-Trichloroethane	79–00–5	0.054	Grab	6.0	Total (mg/kg).
		Trichloroethene	79–01–6	0.054	Grab	5.6	Total (mg/kg).
		1,3-Dichlorobenzene	541–73–1	0.036	Grab	5.6	Total (mg/kg).
		Pentachloroethane	76–01–7	0.055	Grab	5.6	Total (mg/kg).
		1,2,4-Trichlorobenzene	120–82–1	0.055	Grab	19	Total (mg/kg).
K097		Hexachlorocyclopentadiene	77–47–4	0.057	Composite	2.4	Total (mg/kg).
		Chlordane	57–74–9	0.0033	Composite	0.26	Total (mg/kg).
		Heptachlor	76–44–8	0.0012	Composite	0.066	Total (mg/kg).
		Heptachlor epoxide	1024–57–3	0.016	Composite	0.066	Total (mg/kg).
K098		Toxaphene	8001–35–1	0.0095	Composite	2.6	Total (mg/kg).
K099		2,4-Dichlorophenoxyacetic acid	94–75–7	1.0	Grab	1.0	Total (mg/kg).
		Hexachlorodibenzo-p-dioxins	NA	0.001	Grab	0.001	Total (mg/kg).
		Hexachlorodibenzo-furans	NA	0.001	Grab	0.001	Total (mg/kg).
		Pentachlorodibenzo-p-dioxins	NA	0.001	Grab	0.001	Total (mg/kg).
		Pentachlorodibenzo-furans	NA	0.001	Grab	0.001	Total (mg/kg).
		Tetrachlorodibenzo-p-dioxins	1746–01–6	0.001	Grab	0.001	Total (mg/kg).
		Tetrachlorodibenzo-furans	NA	0.001	Grab	0.001	Total (mg/kg).
K100		Cadmium	7440–43–9	1.6	Grab	0.066	TCLP (mg/l).
		Chromium (Total)	7440–47–3	0.32	Grab	5.2	TCLP (mg/l).
		Lead	7439–92–1	0.51	Grab	0.51	TCLP (mg/l).
K101		o-Nitroaniline	NA	0.27	Grab	14	Total (mg/kg).
		Arsenic	7440–38–2	0.79	Grab	5.6	TCLP (mg/l).
		Cadmium	7440–43–9	0.24	Grab	NA	NA.
		Lead	7439–92–1	0.17	Grab	NA	NA.
		Mercury	7439–97–6	0.082	Grab	NA	NA.
K102		o-Nitrophenol	88–75–5	0.028	Grab	13	Total (mg/kg).
		Arsenic	7440–38–2	0.79	Grab	5.6	TCLP (mg/l).
		Cadmium	7440–43–9	0.24	Grab	NA	NA.
		Lead	7439–92–1	0.17	Grab	NA	NA.
		Mercury	7439–97–6	0.082	Grab	NA	NA.
K103		Aniline	62–53–3	4.5	Grab	5.6	Total (mg/kg).
		Benzene	71–43–2	0.15	Grab	6.0	Total (mg/kg).
		2,4-Dinitrophenol	51–28–5	0.61	Grab	5.6	Total (mg/kg).
		Nitrobenzene	98–95–3	0.073	Grab	5.6	Total (mg/kg).
		Phenol	108–95–2	1.4	Grab	5.6	Total (mg/kg).
K104		Aniline	62–53–3	4.5	Grab	5.6	Total (mg/kg).
		Benzene	71–43–2	0.15	Grab	6.0	Total (mg/kg).
		2,4-Dinitrophenol	51–28–5	0.61	Grab	5.6	Total (mg/kg).
		Nitrobenzene	98–95–3	0.073	Grab	5.6	Total (mg/kg).
		Phenol	108–95–2	1.4	Grab	5.6	Total (mg/kg).
		Cyanides (Total)	57–12–5	2.7	Grab	1.8	Total (mg/kg).
K105		Benzene	71–43–2	0.14	Grab	4.4	Total (mg/kg).
		Chlorobenzene	108–90–7	0.057	Grab	4.4	Total (mg/kg).
		o-Dichlorobenzene	95–50–1	0.088	Grab	4.4	Total (mg/kg).
		p-Dichlorobenzene	106–46–7	0.090	Grab	4.4	Total (mg/kg).
		2,4,5-Trichlorophenol	95–95–4	0.18	Grab	4.4	Total (mg/kg).
		2,4,6-Trichlorophenol	88–06–2	0.035	Grab	4.4	Total (mg/kg).

		2,4,6-Trichlorophenol	88–06–2	0.035	Grab	4.4	Total (mg/kg).
		2—Chlorophenol	95–57–8	0.044	Grab	4.4	Total (mg/kg).
		Phenol	108–95–2	0.039	Grab	4.4	Total (mg/kg).
K106	Low Mercury Subcategory—less than 260 mg/kg Mercury—residues from RMERC.	Mercury	7439–97–6	0.030	Grab	0.20	TCLP (mg/l).
K106	Low Mercury Subcategory—less than 260 mg/kg Mercury—that are not residues from RMERC.	Mercury	7439–97–6	0.030	Grab	0.025	TCLP (mg/l).
K106	Wastewater treatment sludge from the mercury cell process in chlorine production: (High Mercury Subcategory—greater than or equal to 260 mg/kg total mercury).	NA	NA	NA	NA	RMERC	NA.
K107	Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) form carboxylic acid hydrazides.	NA	NA	INCIN; or CHOXD fb, CARBN; or BIODG fb CARBN.	NA	INCIN	NA.
K108	Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	INCIN; or CHOXD fb, CARBN; or BIODG fb CARBN.	NA	INCIN	NA.
K109	Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	INCIN; or CHOXD fb, CARBN; or BIODG fb CARBN.	NA	INCIN	NA.
K110	Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	NA	INCIN; or CHOXD fb, CARBN; or BOIDG fb CARBN.	NA	INCIN	NA.
K111		2,4-Dinitrotoluene	121–1–2	0.32	Grab	140	Total (mg/kg).
		2,6-Dinitrotoluene	606–20–2	0.55	Grab	28	Total (mg/kg).
K112	Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	NA	INCIN; or CHOXD fb, CARBN; or BIODG fb CARBN.	NA	INCIN	NA.
K113	Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	NA	CARBN; OR INCIN.	NA	FSUBS; or INCIN	NA.
K114	Vicinals from the purification of toluenediame in the production of toluenediamine via hydrogenation of dinitrotolune.	NA	NA	CARBN; or INCIN	NA	FSUBS; or INCIN	NA.
K115		Nickel	7440–02–0	0.47	Grab	0.32	TCLP (mg/l).
K115	Heavy ends from the purification of toluenediame in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	NA	CARBN; or INCIN	NA	FSUBS; or INCIN	NA.
K116	Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.	NA	NA	CARBN; or INCIN	NA	FSUBS; or INCIN	NA.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and/or treatment subcategory	Regulated hazardous constituent		Wastewaters		Nonwastewaters	
		Common name	CAS No.	Concentration (mg/l) or technology code	Sampling basis	Concentration or technology code	Sampling basis and units
K117		Ethylene dibromide	106-93-4	0.028	Grab	15	Total (mg/kg).
		Methyl bromide	74-83-9	0.11	Grab	15	Total (mg/kg).
		Chloroform	67-66-3	0.046	Grab	5.6	Total (mg/kg).
K118		Ethylene dibromide	106-93-4	0.028	Grab	15	Total (mg/kg).
		Methyl bromide	74-83-9	0.11	Grab	15	Total (mg/kg).
		Chloroform	67-66-3	0.046	Grab	5.6	Total (mg/kg).
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.	NA	NA	INCIN; or CHOXD fb (BIODG or CARBN).	NA	INCIN	NA.
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.	NA	NA	INCIN; or CHOXD fb (BIODG or CARBN).	NA	INCIN	NA.
K125	Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts.	NA	NA	INCIN; or CHOXD fb (BIODG or CARBN).	NA	INCIN	NA.
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylene bisdithiocarbamic acid and its salts.	NA	NA	INCIN; or CHOXD fb (BIODG or CARBN).	NA	INCIN	NA.
K131		Methyl bromide	74-83-9	0.11	Grab	15	Total (mg/kg).
K132		Methyl bromide	74-83-9	0.11	Grab	15	Total (mg/kg).
K136		Ethylene dibromide	106-93-4	0.028	Grab	15	Total (mg/kg).
		Methyl bromide	74-83-9	0.11	Grab	15	Total (mg/kg).
		Chloroform	67-66-3	0.046	Grab	5.6	Total (mg/kg).
K141	Process related from the recovery of coal tar, including, but not limited to, tar collecting sump residues from the production of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations).	Benzene	71-43-2	0.14	Grab	10	Total (mg/kg).
		Benz(a)anthracene	56-55-3	0.059	Grab	3.4	Total (mg/kg).
		Benzo(a)pyrene	50-32-8	0.061	Grab	3.4	Total (mg/kg).
		Benzo(b) fluoranthene	205-99-2	0.11	Grab	6.8	Total (mg/kg).
		Benzo(k) fluoranthene	207-08-9	0.11	Grab	6.8	Total (mg/kg).
		Chrysene	218-01-9	0.059	Grab	3.4	Total (mg/kg).
		Dibenz(a,h)anthracene	53-70-3	0.055	Grab	8.2	Total (mg/kg).
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	Grab	3.4	Total (mg/kg).
K142	Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products producted from coal.	Benzene	71-43-2	0.14	Grab	10	Total (mg/kg).
		Benz(a)anthracene	56-55-3	0.059	Grab	3.4	Total (mg/kg).
		Benzo(a)pyrene	50-32-8	0.061	Grab	3.4	Total (mg/kg).
		Benzo(b)fluoranthene	205-99-2	0.11	Grab	6.8	Total (mg/kg).

		Benzo(b)fluoranthene	205-99-2	0.11	Grab	6.8	Total (mg/kg).
		Benzo(k)fluoranthene	207-08-9	0.11	Grab	6.8	Total (mg/kg).
		Chrysene	218-01-9	0.059	Grab	3.4	Total (mg/kg).
		Dibenz(a,h)anthracene	53-70-3	0.055	Grab	8.2	Total (mg/kg).
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	Grab	3.4	Total (mg/kg).
K143	Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal.	Benzene	71-43-2	0.14	Grab	10	Total (mg/kg).
		Benz(a)anthracene	56-55-3	0.059	Grab	3.4	Total (mg/kg).
		Benzo(a)pyrene	50-32-8	0.061	Grab	3.4	Total (mg/kg).
		Benzo(b)fluoranthene	205-99-2	0.11	Grab	6.8	Total (mg/kg).
		Benzo(k)flouranthene	207-08-9	0.11	Grab	6.8	Total (mg/kg).
		Chrysene	218-01-9	0.059	Grab	3.4	Total (mg/kg).
K144	Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.	Benzene	71-43-2	0.14	Grab	10	Total (mg/kg).
		Benz(a)anthracene	56-55-3	0.059	Grab	3.4	Total (mg/kg).
		Benzo(a)pyrene	50-32-8	0.061	Grab	3.4	Total (mg/kg).
		Benzo(b)fluoranthene	205-99-2	0.11	Grab	6.8	Total (mg/kg).
		Benzo(k)fluoranthene	207-08-9	0.11	Grab	6.8	Total (mg/kg).
		Chrysene	218-01-9	0.059	Grab	3.4	Total (mg/kg).
		Dibenz(a,h)anthracene	53-70-3	0.055	Grab	8.2	Total (mg/kg).
K145	Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.	Benzene	71-43-2	0.14	Grab	10	Total (mg/kg).
		Benz(a)anthracene	56-55-3	0.059	Grab	3.4	Total (mg/kg).
		Benzo(a)pyrene	50-32-8	0.061	Grab	3.4	Total (mg/kg).
		Chrysene	218-01-9	0.059	Grab	3.4	Total (mg/kg).
		Dibenz(a,h)anthracene	53-70-3	0.055	Grab	8.2	Total (mg/kg).
		Naphthalene	91-20-3	0.059	Grab	5.6	Total (mg/kg).
K147	Tar storage tank residues from coal tar refining.	Benzene	71-43-2	0.14	Grab	10	Total (mg/kg).
		Benz(a)anthracene	56-55-3	0.059	Grab	3.4	Total (mg/kg).
		Benzo(a)pyrene	50-32-8	0.061	Grab	3.4	Total (mg/kg).
		Benzo(b)fluoranthene	205-99-2	0.11	Grab	6.8	Total (mg/kg).
		Benzo(k)fluoranthene	207-08-9	0.11	Grab	6.8	Total (mg/kg).
		Chrysene	218-01-9	0.059	Grab	3.4	Total (mg/kg).
		Dibenz(a,h)anthracene	53-70-3	0.055	Grab	8.2	Total (mg/kg).
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	Grab	3.4	Total (mg/kg).
K148	Residues from coal tar distillation, including, but not limited to, still bottoms.	Benz(a)anthracene	56-55-3	0.059	Grab	3.4	Total (mg/kg).
		Benzo(a)pyrene	50-32-8	0.061	Grab	3.4	Total (mg/kg).
		Benzo(b)fluoranthene	205-99-2	0.11	Grab	6.8	Total (mg/kg).
		Benzo(k)fluoranthene	207-08-9	0.11	Grab	6.8	Total (mg/kg).
		Chrysene	218-01-9	0.059	Grab	3.4	Total (mg/kg).
		Dibenz(a,h)anthracene	53-70-3	0.055	Grab	8.2	Total (mg/kg).
		Indeno(1,2,3-cd)pyrene	193-39-5	0.0055	Grab	3.4	Total (mg/kg).

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and/or treatment subcategory	Regulated hazardous constituent		Wastewaters		Nonwastewaters	
		Common name	CAS No.	Concentration (mg/l) or technology code	Sampling basis	Concentration or technology code	Sampling basis and units
K149	Distillation of fractionation bottoms from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups. (This waste does not include still bottoms from the distillations of benzyl chloride.).	Chloroform	67-66-3	0.046	Grab	6.0	Total (mg/kg).
		Chloromethane	74-87-3	0.19	Grab	30	Total (mg/kg).
		Chlorobenzene	108-90-7	0.057	Grab	6.0	Total (mg/kg).
		1,4-Dichlorobenzene	106-46-7	0.090	Grab	6.0	Total (mg/kg).
		Hexachlorobenzene	118-74-1	0.055	Grab	10	Total (mg/kg).
		Pentachlorobenzene	608-93-5	0.055	Grab	10	Total (mg/kg).
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	Grab	14	Total (mg/kg).
		Toluene	108-88-3	0.080	Grab	10	Total (mg/kg).
		Carbon tetrachloride	56-23-5	0.057	Grab	6.0	Total (mg/kg).
K150	Organic residuals, excluding spent carbon adsorbent, from the spent chlorine gas and hydrochloric acid recovery processes associated with the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	Chloroform	67-66-3	0.046	Grab	6.0	Total (mg/kg).
		Chloromethane	74-87-3	0.19	Grab	30	Total (mg/kg).
		1,4-Dichlorobenzene	106-46-7	0.090	Grab	6.0	Total (mg/kg).
		Hexachlorobenzene	118-74-1	0.055	Grab	10	Total (mg/kg).
		Pentachloroben-zene	608-93-5	0.055	Grab	10	Total (mg/kg).
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	Grab	14	Total (mg/kg).
		1,1,2,2-Tetra-chlortheane	79-34-5	0.057	Grab	6.0	Total (mg/kg).
		Tetrachloroethylene	127-18-4	0.056	Grab	6.0	Total (mg/kg).
		1,2,4-Trichlorobenzene	120-82-1	0.055	Grab	19	Total (mg/kg).
		Benzene	71-43-2	0.14	Grab	10	Total (mg/kg).
K151	Wastewater treatment sludge, excluding neutralization and biological sludges, generated during the treatment of wastewaters from the production of alpha- (or methyl-) chlorinated toluenes, ring-chlorinated toluenes, benzoyl chlorides, and compounds with mixtures of these functional groups.	Carbon tetrachloride	56-23-5	0.057	Grab	6.0	Total (mg/kg).
		Chloroform	67-66-3	0.046	Grab	6.0	Total (mg/kg).
		Hexachlorobenzene	118-74-1	0.055	Grab	10	Total (mg/kg).
		Pentachlorobenzene	608-93-5	0.055	Grab	10	Total (mg/kg).
		1,2,4,5-Tetrachlorobenzene	95-94-3	0.055	Grab	14	Total (mg/kg).
		Tetrachloroethylene	127-18-4	0.056	Grab	6.0	Total (mg/kg).

		Tetrachloroethylene	127-18-4	0.056	Grab	6.0	Total (mg/kg).
P001	Warfarin (>0.3%)	Toluene	108-88-3	0.080	Grab	10	Total (mg/kg).
		Warfarin	81-81-2	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
P002	1-Acetyl-2- thiourea	1-Acetyl-2-thiourea	591-08-2	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P003	Acrolein	Acrolein	107-02-8	0.29	Composite	FSUBS; or INCIN	NA.
P004	Aldrin	Aldrin	309-00-2	0.021	Composite	0.066	Total (mg/kg).
P005	Allyl alcohol	Allyl alcohol	107-18-6	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
P006	Aluminum phosphide	Aluminum phosphide	20859-73-8	CHOXD; CHRED; or INCIN.	NA	CHOXD; CHRED; or INCIN.	NA.
P007	5-Aminoethyl 3-isoxazolol	5-Aminoethyl 3-isoxazolol	2763-96-4	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P008	4-Aminopyridine	4-Aminopyridine	504-24-5	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P009	Ammonium picrate	Ammonium picrate	131-74-8	CHOXD; CHRED; CARBN; BIODG; or INCIN.	NA	FSUBS; CHOXD; CHRED; or INCIN.	NA.
P010	Arsenic acid	Arsenic	7440-38-2	0.79	Grab	5.6	TCLP (mg/l).
P011	Arsenic pentoxide	Arsenic	7440-38-2	0.79	Grab	5.6	TCLP (mg/l).
P012	Arsenic trioxide	Arsenic	7440-38-2	0.79	Grab	5.6	TCLP (mg/l).
P013	Barium cyanide	Barium	7440-39-3	NA	NA	52	TCLP (mg/l).
		Cyanides (Total)	57-12-5	1.2	Grab	110	Total (mg/kg).
		Cyanides (Amenable)	57-12-5	0.1	Grab	9.1	Total (mg/kg).
P014	Thiophenol (Benzene thiol)	Thiophenol (Benzene thiol)	108-98-5	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P015	Beryllium dust	Beryllium dust	7440-41-7	NA	NA	RMETL; or RTHRM..	NA.
P016	Bis(chloromethyl)ether	Bis(chloromethyl) ether	542-88-1	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P017	Bromoacetone	Bromoacetone	598-31-2	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P018	Brucine	Brucine	357-57-3	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P020	2-sec-Butyl-4,6-dinitrophenol (Dinoseb).	2-sec-Butyl-4,6-dinitrophenol (Dinoseb).	88-85-7	0.066	Grab	2.5	Total (mg/kg).
P021	Calcium cyanide	Cyanides (Total)	57-12-5	1.9	Grab	110	Total (mg/kg).
		Cyanides (Amenable)	57-12-5	0.1	Grab	9.1	Total (mg/kg).
P022	Carbon disulfide	Carbon disulfide	75-15-0	0.014	GRAB	INCIN	NA.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and/or treatment subcategory	Regulated hazardous constituent		Wastewaters		Nonwastewaters	
		Common name	CAS No.	Concentration (mg/l) or technology code	Sampling basis	Concentration or technology code	Sampling basis and units
P023	Chloroacetaldehyde	Chloroacetaldehyde	107–20–0	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P024	p-Chloroaniline	p-Chloroaniline	106–47–8	0.46	Grab	16	Total (mg/kg).
P026	1-(o-Chlorophenyl) thiourea	1-(o-Chlorophenyl) thiourea	5344–82–1	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P027	3-Chloropropionitrile	3-Chloropropionitrile	542–76–7	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P028	Benzyl chloride	Benzylchloride	100–44–7	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P029	Copper cyanide	Cyanides (Total)	57–12–5	1.9	Grab	110	Total (mg/kg).
		Cyanides (Amenable)	57–12–5	0.1	Grab	9.1	Total (mg/kg).
P030	Cyanides (soluble salts and complexes).	Cyanides (Total)	57–12–5	1.2	Grab	110	Total (mg/kg).
		Cyanides (Amenable)	57–12–5	0.1	Grab	9.1	Total (mg/kg).
P031	Cyanogen	Cyanogen	460–19–5	CHOXD; WETOX; or INCIN.	NA	CHOXD; WETOX; or INCIN.	NA.
P033	Cyanogen chloride	Cyanogen chloride	506–77–4	CHOXD; WETOX; or INCIN.	NA	CHOXD; WETOX; or INCIN.	NA.
P034	2-Cyclohexyl-4,6-dinitrophenol	2-Cyclohexyl-4,6-dinitrophenol	131–89–5	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P036	Dichlorophenylarsine	Arsenic	7440–38–2	0.79	Grab	5.6	TCLP (mg/l).
P037	Dieldrin	Dieldrin	60–57–1	0.017	Composite	0.13	Total (mg/kg)
P038	Diethylarsine	Arsenic	7440–38–2	0.79	Grab	5.6	TCLP (mg/l).
P039	Disulfoton	Disulfoton	298–04–4	0.017	Grab	0.1	Total (mg/kg).
P040	0,0-Diethyl O-pyrazinyl phosphorothioate.	0,0-Diethyl O-pyrazinyl phosphorothioate.	297–97–2	CARBN; or INCIN	NA	FSUBS; or INCIN	NA.
P041	Diethyl-p-nitrophenyl phosphate	Diethyl-p-nitrophenyl phosphate	311–45–5	CARBN; or INCIN	NA	FSUBS; or INCIN	NA.
P042	Epinephrine	Epinephrine	51–43–4	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P043	Diisopropylfluorophosphate (DFP)	Diisopropylfluoro' phosphate (DFP)	55–91–4	CARBN; or INCIN	NA	FSUBS; or INCIN	NA.
P044	Dimethoate	Dimethoate	60–51–5	CARBN; or INCIN	NA	FSUBS; or INCIN	NA.
P045	Thiofanox	Thiofanox	39196–18–4	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P046	alpha,	alpha-Dimethylphene-	alpha	alpha-Dimethylphene	122-09-8	WETOX	NA	INCIN	NA.

P046	alpha, alpha-Dimethylphenethylamine.	alpha, alpha-Dimethylphenethylamine.	122-09-8	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P047	4,6-Dinitro-o-cresol	4,6-Dinitro-o-cresol	534-52-1	0.28	Composite	160	Total (mg/kg).
		4,6-Dinitro-o-cresol salts	534-52-1	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P048	2,4-Dinitrophenol	2,4-Dinitrophenol	151-28-5	0.12	Composite	160	Total (mg/kg).
P049	2,4-Dithiobiuret	2,4-Dithiobiuret	541-53-7	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P050	Endosulfan	Endosulfan I	939-98-8	0.023	Composite	0.066	Total (mg/kg).
		Endosulfan I	33213-6-5	0.029	Composite	0.13	Total (mg/kg).
		Endosulfan sulfate	1031-07-8	0.029	Composite	0.13	Total (mg/kg).
P051	Endrin	Endrin	72-20-8	0.0028	Composite	0.13	Total (mg/kg).
		Endrin aldehyde	7421-93-4	0.025	Composite	0.13	Total (mg/kg).
P054	Aziridine	Aziridine	151-56-4	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P066	Fluoride	Fluoride	16964-48-8	35	Grab	NA	NA.
		Fluorine	7782-41-4	NA	NA	ADGAS fb NEUTR.	NA.
P057	Fluoroacetamide	Fluoroacetamide	640-19-7	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P058	Fluoroacetic acid, sodium salt	Fluoroacetic acid, sodium salt	62-74-8	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P059	Heptachlor	Heptachlor	76-44-8	0.0012	Composite	0.066	Total (mg/kg).
		Heptachlor epoxide	1024-57-3	0.016	Composite	0.066	Total (mg/kg).
P060	Isodrin	Isodrin	465-73-6	0.021	Composite	0.066	Total (mg/kg).
P062	Hexaethyltetraphosphate	Hexaethyltetra- phosphate	757-58-4	CARBN; or INCIN	NA	FSUBS; or INCIN	NA.
P063	Hydrogen cyanide	Cyanides (Total)	57-12-5	1.2	Grab	110	Total (mg/kg)
		Cyanides (Amenable)	57-12-5	0.10	Grab	9.1	Total (mg/kg)
P064	Isocyanic acid, ethyl ester	Isocyanic acid, ethyl ester	624-83-9	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA
P065	Low Mercury Subcategory-less than 260 mg/kg Mercury-residues from RMERC-Mercury fulminate.	Mercury	7439-97-6	0.030	Grab	0.20	TCLP (mg/l).
P065	Low Mercury Subcategory-less than 260 mg/kg Mercury-incinerator residues(and are not residues from RMERC)-Mercury fulminate.	Mercury	7439-97-6	0.030	Grab	0.025	TCLP (mg/l).
P065	Mercury fulminate: (High mercury Subcategory-greater than or equal to 260 mg/kg total Mercury-either incinerator residues or residues from RMERC)..	Mercury Fulminate	628-86-4	NA	NA	RMERC	NA.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and/or treatment subcategory	Regulated hazardous constituent		Wastewaters		Nonwastewaters	
		Common name	CAS No.	Concentration (mg/l) or technology code	Sampling basis	Concentration or technology code	Sampling basis and units
	P065Mercury fulminate: (All nonwastewaters that are not incinerator residues from RMERC; regardless of Mercury Content).	Mercury Fulminate	628-86-4	NA	NA	IMERC	NA.
P066	Methomyl	Methomyl	116752-77-5	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P067	2-Methylaziridine	2-Methylaziridine	75-55-8	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P068	Methyl hydrazine	Methyl hydrazine	60-34-4	CHOXD; CHRED; CARBN; BIODG; or INCIN.	NA	FSUBS; CHOXD; CHRED; or INCIN.	NA.
P069	Methyllactonitrile	Methyllactonitrile	75-86-5	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P070	Aldicarb	Aldicarb	116-06-3	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P071	Methyl parathion	Methyl parathion	298-00-0	0.025	Grab	0.1	Total (mg/kg).
P072	1-Naphthyl-2-thiourea	1-Naphthyl-2-thiourea	86-88-4	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P073	Nickel carbonyl	Nickel	7440-02-0	0.32	Grab	0.32	TCLP (mg/l).
P074	Nickel cyanide	Cyanides (Total)	57-12-5	1.2	Grab	110	Total (mg/kg).
		Cyanides (Amenable)	57-12-5	0.10	Grab	9.1	Total (mg/kg).
		Nickel	7440-02-0	0.44	Grab	0.32	TCLP (mg/l).
P075	Nicotine and salts	Nicotine and salts	54-11-5	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P076	Nitric oxide	Nitric oxide	10102-43-9	ADGAS	NA	ADGAS	NA.
P077	p-Nitroaniline	p-Nitroaniline	100-01-6	0.028	Composite	28	Total (mg/kg).
P078	Nitrogen dioxide	Nitrogen dioxide	10102-44-0	ADGAS	NA	ADGAS	NA.
P081	Nitroglycerin	Nitroglycerin	55-63-0	CHOXD; CHRED; CARBN; BIODG; or INCIN.	NA	FSUBS; CHOXD; CHRED; or INCIN.	NA.
P082	N-Nitrosodimethylamine	N-Nitrosodimethylamine	62-75-9	0.40	Composite	INCIN	NA.
P084	N-Nitrosomethylvinylamine	N-Nitrosomethylvinylamine	4549-40-0	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P085	Octamethylpyrophosphoramide	Octamethylpyrophosphoramide	152-16-9	CARBN; or INCIN	NA	FSUBS; or INCIN	NA.
P087	Osmium tetroxide	Osmium tetroxide	20816-12-0	NA	NA	RMETL; or	NA.

P087	Osmium tetroxide	Osmium tetroxide	20816–12–0	NA	NA	RMETL; or RTHRM.	NA.
P088	Endothall	Endothall	145–73–3	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
P089		Parathion	56–38–2	0.025	Grab	0.1	Total (mg/kg).
P092	Low Mercury subcategory-less than 260 mg/kg Mercury residues from RMERC-Phenyl mercury acetate.	Mercury	7439–97–6	0.030	Grab	0.20	TCLP (mg/l).
P092	Low Mercury Subcategory-less than 260 mg/kg Mercury-incinerator residues (and are not residues from RMERC)-Phenyl mercury acetate.	Mercury	7439–97–6	0.030	Grab	0.025	TCLP (mg/l).
P092	Phenyl mercury acetate: (High Mercury Subcategory-greater than or equal to 260 mg/kg total Mercury-either incinerator residues or residues from RMERC).	Phenyl mercury acetate	62–38–4	NA	NA	RMERC	NA.
P092	Phenyl mercury acetate: (All nonwastewaters that are not incinerator residues and are not residues from RMERC: regardless of Mercury Content).	Phenyl mercury acetate	62–38–4	NA	NA	IMERC; or RMERC.	NA.
P093	N-Phenylthiouea	N-Phenylthiouea	103–85–5	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P094	Phorate	Phorate	298–02–2	0.025	Grab	0.1	Total (mg/kg).
P095	Phosgene	Phosgene	75–44–5	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P096	Phosphine	Phosphine	7803–51–2	CHOXD; CHRED; or INCIN.	NA	CHOXD; CHRED; or INCIN.	NA.
P097	Famphur	Famphur	52–85–7	0.025	Grab	0.1	Total (mg/kg).
P098	Potassium cyanide	Cyanides (Total)	57–12–5	1.2	Grab	110	Total (mg/kg).
		Cyanides (Amenable)	57–12–5	0.10	Grab	9.1	Total (mg/kg).
P099	Potassium silver cyanide	Cyanides (Total)	57–12–5	1.2	Grab	110	Total (mg/kg).
		Cyanides (Amenable)	57–12–5	0.1	Grab	9.1	Total (mg/kg).
		Silver	7440–22–4	0.29	Grab	0.072	TCLP (mg/l).
P101	Ethyl cyanide (Propanenitrile)	Ethyl cyanide (Propanenitrile)	107–12–0	0.24	Composite	360	Total (mg/kg).
P102	Propargyl alcohol	Propargyl alcohol	107–19–7	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
P103	Selenourea	Selenium	7782–49–2	1.0	Composite	5.7	TCLP (mg/l).
P104	Silver cyanide	Cyanides (Total)	57–12–5	1.2	Grab	110	Total (mg/kg).
		Cyanides (Amenable)	57–12–5	0.10	Grab	9.1	Total (mg/kg).
		Silver	7440–22–4	0.29	Grab	0.072	TCLP (mg/l).
P105	Sodium azide	Sodium azide	26628–22–8	CHOXD; CHRED; CARBN; BIODG; or INCIN.	NA	FSUBS; CHOXD; CHRED; or INCIN.	NA.
P106	Sodium cyanide	Cyanides (Total)	57–12–5	1.2	Grab	110	Total (mg/kg).
		Cyanides (Amenable)	57–12–5	0.10	Grab	9.1	Total (mg/kg).

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and/or treatment subcategory	Regulated hazardous constituent		Wastewaters		Nonwastewaters	
		Common name	CAS No.	Concentration (mg/l) or technology code	Sampling basis	Concentration or technology code	Sampling basis and units
P108	Strychnine and salts	Strychnine and salts	57–24–9	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P109	Tetraethyldithiopyrophosphate	Tetraethyldithiopyrophosphate	3689–24–5	CARBN; or INCIN	NA	FSUBS; or INCIN	NA.
P110	Tetraethyl lead	Lead	7439–92–1	0.040	Grab	0.51	TCLP (mg/l).
P112	Tetranitromethane	Tetranitromethane	509–14–8	CHOXD; CHRED; CARBN; BIODG; or INCIN.	NA	FSUBS; CHOXD; CHRED; or INCIN.	NA.
P113	Thallic oxide	Thallium	7440–28–0	0.14	Composite	NA	NA.
		Thallic oxide	1314–32–5	NA	NA	RTHRM; or STABL.	NA.
P114	Thallium selenite	Selenium	7782–49–2	1.0	Grab	5.7	TCLP (mg/l).
P115	Thallium (I) sulfate	Thallium	7440–28–0	0.14	Composite	NA	NA.
		Thallium (I) sulfate	7446–18–6	NA	NA	RTHRM; or STABL.	NA.
P116	Thiosemicarbazide	Thiosemicarbazide	79–19–6	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P118	Trichloromethanethiol	Trichloro methanethiol	75–70–7	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
P119	Ammonia vanadate	Vanadium	7440–62–2	28	Composite	NA	NA.
		Ammonium vandate	7803–55–6	NA	NA	STABL	NA.
P120	Vanadium pentoxide	Vanadium	7440–62–2	28	Composite	NA	NA.
		Vanadium pentoxide	1314–62–1	NA	NA	STABL	NA.
P121	Zinc cyanide	Cyanides (Total)	57–12–5	1.2	Grab	110	Total (mg/kg).
		Cyanides (Amenable)	57–12–5	0.10	Grab	9.1	Total (mg/kg).
P122	Zinc Phosphide (<10%)	Zinc Phosphide (<10%)	1314–84–7	CHOXD; CHRED; or INCIN.	NA	CHOXD; CHRED; or INCIN.	NA.
P123	Toxaphene	Toxaphene	8001–35–1	0.0095	Composite	1.3	Total (mg/kg).
U001	Acetaldehyde	Acetaldehyde	75–07–0	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U002	Acetone	Acetone	67–64–1	0.28	Grab	160	Total (mg/kg).
U003	Acetonitrile	Acetonitrile	75–05–8	0.17	Grab	INCIN	NA.
U004	Acetophenone	Acetophenone	98–86–2	0.010	Grab	9.7	Total (mg/kg).
U005	2-Acetylaminofluorene	2-Acetylaminofluorene	53–96–3	0.059	Composite	140	Total (mg/kg).
U006	Acetyl chloride	Acetyl chloride	75–36–5	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U007	Acrylamide	Acrylamide	79–06–1	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.

U008	Acrylic acid	Acrylic acid	79–10–7	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U009	Acrylonitrile	Acrylonitrile	107–13–1	0.24	Composite	84	Total (mg/kg).
U010	Mitomycin C	Mitomycin C	50–07–7	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U011	Amitrole	Amitrole	61–82–5	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U012	Aniline	Aniline	62–53–3	0.81	Grab	14	Total (mg/kg).
U014	Auramine	Auramine	492–80–8	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U015	Azaserine	Azaserine	115–02–6	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U016	Benz(c)acridine	Benz(c)acridine	225–51–4	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U017	Benzal chloride	Benzal chloride	98–87–3	0.055	Composite	INCIN	NA.
U018	Benz(a)anthracene	Benz(a)anthracene	56–55–3	0.059	Composite	8.2	Total (mg/kg).
U019	Benzene	Benzene	71–43–2	0.14	Composite	36	Total (mg/kg).
U020	Benzenesulfonyl chloride	Benzenesulfonyl chloride	98–09–9	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U021	Benzidine	Benzidine	92–87–5	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U022	Benzo(a)pyrene	Benzo(a)pyrene	50–32–8	0.061	Composite	8.2	Total (mg/kg).
U023	Benzotrichloride	Benzotrichloride	98–07–7	CHOXD; CHRED; CARBN; BIODG; or INCIN.	NA	FSUBS; CHOXD; CHRED; or INCIN.	NA.
U024	Bis(2-chloroethoxy)methane	Bis(2-chloroethoxy)methane	111–91–1	0.036	Grab	7.2	Total (mg/kg).
U025	Bis(2-chloroethyl)ether	Bis(2-chloroethyl)ether	111–44–4	0.033	Grab	7.2	Total (mg/kg).
U026	Chlornaphazin	Chlornaphazin	494–03–1	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U027	Bis(2-chloroisopropyl) ether	Bis(2-chloroisopropyl) ether	39638–32–9	0.055	Composite	7.2	Total (mg/kg).
U028	Bis(2-ethylhexyl)phthalate	Bis(2-ethylhexyl) phthalate	117–81–7	0.28	Grab	28	Total (mg/kg).
U029	Bromomethane (Methyl bromide)	Bromomethane (Methyl bromide)	74–83–9	0.11	Grab	15	Total (mg/kg).
U030	4-Bromophenyl phenyl ether	4-Bromophenyl phenyl ether	101–55–3	0.055	Grab	15	Total (mg/kg).
U031	n-Butyl alcohol	n-Butyl alcohol	71–36–3	5.6	Grab	2.6	Total (mg/kg).
U032	Calcium chromate	Chromium (Total)	7440–47–3	0.32	Grab	0.094	TCLP (mg/l).
U033	Carbonyl fluoride	Carbonyl fluoride	353–50–4	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and/or treatment subcategory	Regulated hazardous constituent		Wastewaters		Nonwastewaters	
		Common name	CAS No.	Concentration (mg/l) or technology code	Sampling basis	Concentration or technology code	Sampling basis and units
U034	Trichloroacetaldehyde (Chloral)	Trichloroacetaldehyde (Chloral)	75–87–6	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U035	Chlorambucil	Chlorambucil	305–03–3	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U036	Chlordane (alpha and gamma)	Chlordane (alpha and gamma)	57–74–9	0.0033	Composite	0.13	Total (mg/kg).
U037	Chlorobenzene	Chlorobenzene	108–90–7	0.057	Composite	5.7	Total (mg/kg).
U038	Chlorobenzilate	Chlorobenzilate	510–15–6	0.10	Composite	INCIN	NA.
U039	p-Chloro-m-cresol	p-Chloro-m-cresol	159–50–7	0.018	Composite	14	Total (mg/kg).
U041	1-Chloro-2,3-epoxypropane (Epichlorohydrin).	1-Chloro-2,3-epoxypropane (Epichlorohydrin).	106–89–8	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U043	Vinyl chloride	Vinyl chloride	75–01–4	0.27	Composite	33	Total (mg/kg).
U044	Chloroform	Chloroform	67–66–3	0.046	Composite	5.6	Total (mg/kg).
U045	Chloromethane (Methyl chloride)	Chloromethane (Methyl chloride)	74–87–3	0.19	Composite	33	Total (mg/kg).
U046	Chloromethyl methyl ether	Chloromethyl methyl ether	107–30–2	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U047	2-Chloronaphthalene	2-Chloronaphthalene	91–58–7	0.055	Composite	5.6	Total (mg/kg).
U048	2-Chlorophenol	2-Chlorophenol	95–57–8	0.044	Composite	5.7	Total (mg/kg).
U049	4-Chloro-o-toluidine hydrochloride	4-Chloro-o-toluidine hydrochloride	3165–93–3	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U050	Chrysene	Chrysene	218–01–9	0.059	Composite	8.2	Total (mg/kg).
U051	Creosote	Naphthalene	91–20–3	0.031	Grab	1.5	Total (mg/kg).
		Pentachlorophenol	87–86–5	0.18	Grab	7.4	Total (mg/kg).
		Phenanthrene	85–01–8	0.031	Grab	1.5	Total (mg/kg).
		Pyrene	129–00–0	0.028	Grab	1.5	Total (mg/kg).
		Toluene	108–88–3	0.028	Grab	28	Total (mg/kg).
		Xylenes (Total)	1330–20–7	0.032	Grab	33	Total (mg/kg).
		Lead	7439–92–1	0.037	Grab	0.51	TCLP (mg/l).
U052	Cresols (Cresylic acid)	o-Cresol	195–48–7	0.11	Composite	5.6	Total (mg/kg).
		Cresols (m- and p-isomers)	NA	0.77	Composite	3.2	Total (mg/kg).
U053	Crotonaldehyde	Crotonaldehyde	4170–30–3	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA
U055	Cumene	Cumene	98–82–8	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U056	Cyclohexane	Cyclohexane	110–82–7	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U057	Cyclohexanone	Cyclohexanone	108–94–1	0.36	Grab	FSUBS; or INCIN	NA.

U057	Cyclohexanone	Cyclohexanone	108-94-1	0.36	Grab	FSUBS; or INCIN	NA.
U058	Cyclophosphamide	Cyclophosphamide	50-18-0	CARBN; or INCIN	NA	FSUBS; or INCIN	NA.
U059	Daunomycin	Daunomycin	20830-81-3	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U060	DDD	o,p'-DDD	53-19-0	0.023	Grab	0.087	Total (mg/kg).
		p,p'-DDD	72-54-8	0.023	Grab	0.087	Total (mg/kg).
U061	DDT	o-p'-DDT	789-02-6	0.0039	Composite	0.087	Total (mg/kg).
		p,p'-DDT	50-29-3	0.0039	Composite	0.087	Total (mg/kg).
		o,p'-DDD	53-19-0	0.023	Composite	0.087	Total (mg/kg).
		p,p'-DDD	72-54-8	0.023	Composite	0.087	Total (mg/kg).
		o,p'-DDE	3424-82-6	0.031	Composite	0.087	Total (mg/kg).
		p,p'-DDE	72-55-9	0.031	Composite	0.087	Total (mg/kg).
U062	Diallate	Diallate	2303-16-4	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U063	Dibenzo(a,h) anthracene	Dibenzo(a,h) anthracene	53-70-3	0.055	Composite	8.2	Total (mg/kg).
U064	1,2,7,8-Dibenzopyrene	1,2,7,8-Dibenzopyrene	189-55-9	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U066	1,2-Dibromo-3-chloropropane	1,2-Dibromo-3-chloropropane	96-12-8	0.11	Composite	15	Total (mg/kg).
U067	1,2-Dibromoethane (Ethylenedibromide).	1,2-Dibromoethane (Ethylenedibromide).	106-93-4	0.028	Composite	15	Total (mg/kg).
U068	Dibromomethane	Dibromomethane	74-95-3	0.11	Composite	15	Total (mg/kg).
U069	Di-n-butyl phthalate	Di-n-butyl phthalate	84-74-2	0.057	Grab	28	Total (mg/kg).
U070	o-Dichlorobenzene	o-Dichlorobenzene	95-50-1	0.088	Composite	6.2	Total (mg/kg).
U071	1m-Dichlorobenzene	m-Dichlorobenzene	541-73-1	0.036	Grab	6.2	Total (mg/kg).
U072	p-Dichlorobenzene	p-Dichlorobenzene	104-46-7	0.090	Composite	6.2	Total (mg/kg).
U073	3,3'-Dichlorobenzidine	3,3'- Dichlorobenzidine	91-94-1	0.13	Composite	INCIN	NA.
U074	1,4-Dichloro-2-butenecis-	1,4-Dichloro-2-butene	1476-11-5	0.036	Composite	INCIN	NA
		trans-1,4-Dichloro-2-butene	NA	0.036	Composite	INCIN	NA.
U075	Dichlorodifluoromethane	Dichlorodifluoro- methane	75-71-8	0.23	Composite	7.2	Total (mg/kg).
U076	1,1-Dichloroethane	1,1-Dichloroethane	75-34-3	0.059	Composite	7.2	Total (mg/kg).
U077	1,2-Dichloroethane	1,2-Dichloroethane	107-06-2	0.21	Composite	7.2	Total (mg/kg).
U078	1,1-Dichloroethylene	1,1-Dichloroethylene	75-35-4	0.025	Composite	33	Total (mg/kg).
U079	1,2-Dichloroethylene	trans-1,2-Dichloroethylene	156-060-5	0.054	Composite	33	Total (mg/kg).
U080	Methylene chloride	Methylene chloride	75-09-2	0.089	Composite	33	Total (mg/kg).
U081	12,4-Dichlorophenol	12,4-Dichlorophenol	120-83-2	0.044	Composite	14	Total (mg/kg).
U082	2,6-Dichlorophenol	12,6-Dichlorophenol	187-65-0	0.044	Composite	14	Total (mg/kg).
U083	1,2-Dichloropropane	1,2-Dichloropropane	78-87-5	0.85	Composite	18	Total (mg/kg).
U084	1,3-Dichloropropene	cis-1,3-Dichloropropene	10061-01-5	0.036	Composite	18	Total (mg/kg).
		trans-1,3-Dichloropropylene	10061-02-6	0.036	Composite	18	Total (mg/kg).
U085	1,2:3,4-Diepoxybutane	1,2:3,4-Diepoxybutane	1464-53-5	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U086	N,N-Diethylhydrazine	N,N-Diethylhydrazine	1615-80-1	CHOXD; CHRED; CARBN; BIODG; or INCIN.	NA	FSUBS; CHOXD; CHRED; or INCIN.	NA.
U087	O,O-Diethyl S-methyldithiophosphate.	O,O-Diethyl S-methyldithiophosphate.	3288-58-2	CARBN; or INCIN	NA	FSUBS; or INCIN	NA
U088	Diethyl phthalate	Diethyl phthalate	84-66-2	0.2	Grab	28	Total (mg/kg).

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and/or treatment subcategory	Regulated hazardous constituent		Wastewaters		Nonwastewaters	
		Common name	CAS No.	Concentration (mg/l) or technology code	Sampling basis	Concentration or technology code	Sampling basis and units
U089	Diethyl stilbestrol	Diethyl stilbestro	156–53–1	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U090	Dihydrosafrole	Dihydrosafrole	94–58–6	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U091	3,3'-Dimethoxybenzidine	3,3'-Dimethoxy-benzidine	119–90–4	0.13	Composite	INCIN	NA.
U092	Dimethylamine	Dimethylamine	124–40–3	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U093	p-Dimethylaminoazobenzene	p-Dimethylamino- azobenzene	60–11–7	0.13	Composite	INCIN	NA.
U094	7,12-Dimethyl benz(a)anthracene	7,12-Dimethyl benz(a) anthracene	57–97–6	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U095	3,3'-Dimethylbenzidine	3,3'-Dimethyl-benzidine	119–93–7	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U096	a,a-Dimethyl benzyl hydroperoxide	a,a-Dimethyl benzyl hydroperoxide	80–15–9	CHOXD; CHRED; CARBN; BIODG; or INCIN.	NA	FSUBS; CHOXD; CHRED; or INCIN.	NA.
U097	Dimethylcarbomyl chloride	Dimethylcarbomyl chloride	79–44–7	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U098	1,1-Dimethylhydrazine	1,1-Dimethylhydrazine	57–14–7	CHOXD; CHRED; CARBN; BIODG; or INCIN.	NA	FSUBS; CHOXD; CHRED; or INCIN.	NA.
U099	1,2-Dimethylhydrazine	1,2-Dimethylhydrazine	540–73–8	CHOXD; CHRED; CARBN; BIODG; or INCIN.	NA	FSUBS; CHOXD; CHRED; or INCIN.	NA.
U101	2,4-Dimethylphenol	2,4-Dimethylphenol	105–67–9	0.036	Composite	14	Total (mg/kg).
U102	Dimethyl phthalate	Dimethyl phthalate	131–11–3	0.047	Grab	28	Total (mg/kg).
U103	Dimethyl sulfate	Dimethyl sulfate	77–78–1	CHOXD; CHRED; CARBN; BIODG; or INCIN.	NA	FSUBS; CHOXD; CHRED; or INCIN.	NA.
U105	2,4-Dinitrotoluene	2,4-Dinitrotoluene	121–14–2	0.32	Composite	140	Total (mg/kg).
U106	2,6-Dinitrotoluene	2,6-Dinitrotoluene	606–20–2	0.55	Composite	28	Total (mg/kg).
U107	Di-n-octyl phthalate	Di-n-octyl phthalate	117–84–0	0.017	Grab	28	Total (mg/kg).
U108	1,4-Dioxane	1,4-Dioxane	123–91–1	0.12	Composite	170	Total (mg/kg).
U109	1,2-Diphenylhydrazine	1,2-Diphenylhydrazine	122–66–7	CHOXD; CHRED;	NA	FSUBS; CHOXD;	NA

U108	1,4-Dioxane	1,4-Dioxane	123–91–1	0.12	Composite	170	Total (mg/kg).
U109	1,2-Diphenylhydrazine	1,2-Diphenylhydrazine	122–66–7	CHOXD; CHRED; CARBN; BIODG; or INCIN.	NA	FSUBS; CHOXD; CHRED; or INCIN.	NA.
U110	Dipropylamine	Dipropylamine	142–84–7	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U111	Di-n-propylnitrosoamine	Di-n-propylnitrosoamine	621–64–7	0.40	Composite	14	Total (mg/kg).
U112	Ethyl acetate	Ethyl acetate	141–78–6	0.34	Composite	33	Total (mg/kg)
U113	Ethyl acrylate	Ethyl acrylate	140–88–5	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U114	Ethylene bis-dithiocarbamic acid	Ethylene bis-dithiocarbamic acid	111–54–6	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U115	Ethylene oxide	Ethylene oxide	75–21–8	0.12	NA	NA	NA.
U116	Ethylene thiourea	Ethylene thiourea	96–45–7	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U117	Ethyl ether	Ethyl ether	60–29–7	0.12	Composite	160	Total (mg/kg).
U118	Ethyl methacrylate	Ethyl methacrylate	97–63–2	0.14	Composite	160	Total (mg/kg)
U119	Ethyl methane sulfonate	Ethyl methane sulfonate	62–50–0	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U120	Fluoranthene	Fluoranthene	206–44–0	0.068	Composite	8.2	Total (mg/kg).
U121	Trichloromonofluoro-methane	Trichloromonofluoro-methane	75–69–4	0.020	Composite	33	Total (mg/kg).
U122	Formaldehyde	Formaldehyde	50–00–0	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U123	Formic acid	Formic acid	64–18–6	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U124	Furan	Furan	110–00–9	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U125	Furfural	Furfural	98–01–1	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA
U126	Glycidadehyde	Glycidadehyde	765–34–4	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U127	Hexachlorobenzene	Hexachlorobenzene	118–74–1	0.055	Composite	37	Total (mg/kg).
U128	Hexachlorobutadiene	Hexachlorobuta-diene	87–68–3	0.055	Composite	28	Total (mg/kg).
U129	Lindane	alpha-BHC	319–84–6	0.00014	Composite	0.066	Total (mg/kg).
		beta-BHC	319–85–7	0.00014	Composite	0.066	Total (mg/kg).
		delta-BHC	319–86–8	0.023	Composite	0.066	Total (mg/kg).
		Gamma-BHC (Lindane)	58–89–9	0.0017	Composite	0.066	Total (mg/kg).
U130	Hexachlorocyclopentadiene	Hexachlorocyclopentadiene	77–47–7	0.057	Composite	3.6	Total (mg/kg).

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and/or treatment subcategory	Regulated hazardous constituent		Wastewaters		Nonwastewaters	
		Common name	CAS No.	Concentration (mg/l) or technology code	Sampling basis	Concentration or technology code	Sampling basis and units
U131	Hexachloroethane	Hexachloroethane	67–72–1	0.055	Composite	28	Total (mg/kg).
U132	Hexachlorophenene	Hexachlorophenene	70–30–4	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U133	Hydrazine	Hydrazine	302–01–2	CHOXD; CHRED; CARBN; DIODG; or INCIN.	NA	FSUBS; CHOXD; CHRED; or INCIN.	NA.
U134	Hydrogen fluoride	Fluoride	16964–48–8	35	Grab	NA	NA.
		Hydrogen fluoride	7664–39–3	NA	NA	ADGAS fb NEUTR; or NEUTR.	NA.
U135	Hydrogen sulfide	Hydrogen sulfide	7783–06–4	CHOXD; CHRED; or INCIN.	NA	CHOXD; CHRED; or INCIN.	NA
U136	Cacodylic acid	Arsenic	7440–38–2	0.79	Grab	5.6	TCLP (mg/l).
U137	Indeno(1,2,3-c,d)pyrene	Indeno(1,2,3-c,d)pyrene	193–39–5	0.0055	Composite	8.2	Total (mg/kg).
U138	Iodomethane	Iodomethane	74–88–4	0.19	Composite	65	Total (mg/kg).
U140	Isobutyl alcohol	Isobutyl alcohol	78–83–1	5.6	Grab	170	Total (mg/kg).
U141	Isosafrole	Isosafrole	120–58–1	0.081	Grab	2.6	Total (mg/kg).
U142	Kepone	Kepone	143–50–8	0.0011	Grab	0.13	Total (mg/kg).
U143	Lasiocarpine	Lasiocarpine	303–34–4	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U144	Lead acetate	Lead	7439–92–1	0.040	Grab	0.51	TCLP (mg/l).
U145	Lead phosphate	Lead	7439–92–1	0.040	Grab	0.51	TCLP (mg/l).
U146	Lead subacetate	Lead	7439–92–1	0.040	Grab	0.51	TCLP (mg/l).
U147	Maleic anhydride	Maleic anhydride	108–31–6	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U148	Maleic anhydride	Maleic hydrazide	123–33–1	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U149	Malononitrile	Malononitrile	109–77–3	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U150	Melphalan	Melphalan	148–82–3	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U151	Low Mercury Subcategory—less than 260 mg/kg Mercury—residues from RMERC—Mercury.	Mercury	7439–97–6	0.030	Grab	0.20	TCLP (mg/l).
U151	Low Mercury Subcategory—less than 260 mg/kg Mercury—that are not residues from RMERC—Mercury.	Mercury	7439–97–6	0.030	Grab	0.025	TCLP (mg/l).
U151	Mercury: (High Mercury Subcategory—greater than or equal	Mercury	7439–97–6	NA	NA	RMERC	NA.

	are not residues from RMERC—Mercury.						
U151	Mercury: (High Mercury Subcategory—greater than or equal to 260 mg/kg total Mercury).	Mercury	7439–97–6	NA	NA	RMERC	NA.
U151	Mercury: Elemental Mercury contaminated with radioactive materials.	Mercury	7439–97–6	NA	NA	AMLGM	NA.
U152	Methacrylonitrile	Methacrylonitrile	126–98–7	0.24	Composite	84	Total (mg/kg).
U153	Methane thiol	Methane thiol	74–93–1	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U154	Methanol	Methanol	67–56–1	5.6	Grab	FSUBS; or INCIN	NA.
U155	Methapyrilene	Methapyrilene	91–80–5	0.081	Grab	1.5	Total (mg/kg).
U156	Methyl chlorocarbonate	Methyl chlorocarbonate	79–22–1	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U157	3-Methylcholanthrene	3-Methylcholan-threne	56–49–5	0.0055	Composite	15	Total (mg/kg).
U158	4,4'-Methylenebis(2-chloroaniline)	4,4'-Methylenebis-(2-chloroaniline)	101–14–4	0.50	Composite	35	Total (mg/kg).
U159	Methyl ethyl ketone	Methyl ethyl ketone	78–93–3	0.28	Grab	36	Total (mg/kg).
U160	Methyl ethyl ketone peroxide	Methyl ethyl ketone peroxide	1338–23–4	CHOXD; CHRED; CARBN; BIODG; or INCIN.	NA	FSUBS; CHOXD; CHRED; or INCIN.	NA.
U161	Methyl isobutyl ketone	Methyl isobutyl ketone	108–10–1	0.14	Grab	33	Total (mg/kg).
U162	Methyl methacrylate	Methyl methacrylate	80–62–6	0.14	Grab	160	Total (mg/kg).
U163	N-Methyl N'-nitro N-Nitroso- guanidine.	N-Methyl N'-nitro N-Nitroso- guanidine.	70–25–7	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U164	Methylthiouracil	Methylthiouracil	56–04–2	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U165	Naphthalene	Naphthalene	91–20–3	0.059	Composite	3.1	Total (mg/kg).
U166	1,4-Naphthoquinone	1,4-Naphthoquinone	130–15–4	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U167	1-Naphthylamine	1-Naphthylamine	134–32–7	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U168	2-Naphthylamine	2-Naphthylamine	91–59–8	0.52	Composite	INCIN	NA.
U169	Nitrobenzene	Nitrobenzene	98–95–3	0.068	Composite	14	Total (mg/kg).
U170	4-Nitrophenol	4-Nitrophenol	100–02–7	0.12	Composite	29	Total (mg/kg).
U171	2-Nitropropane	2-Nitropropane	79–46–9	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U172	n-Nitrosodi-n-butylamine	n-Nitrosodi-n-butylamine	924–16–3	0.40	Composite	17	Total (mg/kg).
U173	N-Nitroso-di-n-ethanolamine	N-Nitroso-di-n-ethanolamine	1116–54–7	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U174	n-Nitrosodiethylamine	n-Nitrosodiethyl-amine	55–18–5	0.40	Composite	28	Total (mg/kg).

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and/or treatment subcategory	Regulated hazardous constituent		Wastewaters		Nonwastewaters	
		Common name	CAS No.	Concentration (mg/l) or technology code	Sampling basis	Concentration or technology code	Sampling basis and units
U176	N-Nitroso-N-ethylurea	N-Nitroso-N-ethylurea	759–73–9	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U177	N-Nitroso-N-methylurea	N-Nitroso-N-methylurea	684–93–5	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U178	N-Nitroso-N-methylurethane	N-Nitroso-N-methylurethane	615–53–2	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U179	n-Nitrosopiperidine	n-Nitrosopiperidine	100–75–4	0.013	Composite	35	Total (mg/kg).
U180	n-Nitrosopyrrolidine	n-Nitrosopyrrolidine	930–55–2	0.013	Composite	35	Total (mg/kg).
U181	5-Nitro-o-toluidine	5-Nitro-o-toluidine	99–55–8	0.32	Composite	28	Total (mg/kg).
U182	Paraldehyde	Paraldehyde	123–63–7	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U183	Pentachlorobenzene	Pentachlorobenzene	608–93–5	0.055	Composite	37	Total (mg/kg).
U184	Pentachloroethane	Pentachloroethane	76–01–7	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U185	Pentachloronitrobenzene	Pentachloronitro-benzene	82–68–8	0.055	Composite	4.8	Total (mg/kg).
U186	1,3-Pentadiene	1,3-Pentadiene	504–60–9	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U187	Phenacetin	Phenacetin	62–44–2	0.081	Grab	16	Total (mg/kg).
U188	Phenol	Phenol	108–95–2	0.039	Grab	6.2	Total (mg/kg).
U189	Phosphorus sulfide	Phosphorus sulfide	1314–80–3	CHOXD; CHRED; or INCIN.	NA	CHOXD; CHRED; or INCIN.	NA.
U190	Phthalic anhydride (measured as Phthalic acid).	Phthalic anhydride (measured as Phthalic acid).	85–44–9	0.069	Grab	28	Total (mg/kg).
U191	2-Picoline	2-Picoline	109–06–8	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U192	Pronamide	Pronamide	23950–58–5	0.093	Grab	1.5	Total (mg/kg).
U193	1,3-Propane sultone	1,3-Propane sultone	1120–71–4	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U194	n-Propylamine	n-Propylamine	107–10–8	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U196	Pyridine	Pyridine	110–86–1	0.014	Composite	16	Total (mg/kg).

U196	Pyridine	Pyridine	110–86–1	INCIN. 0.014	Composite	16	Total (mg/kg).
U197	p-Benzoquinone	p-Benzoquinone	106–51–4	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U200	Reserpine	Reserpine	50–55–5	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U201	Resorcinol	Resorcinol	108–46–3	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U202	Saccharin and salts	Saccharin and salts	81–07–2	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U203	Safrole	Safrole	94–59–7	0.081	Grab	22	Total (mg/kg).
U204	Selenium dioxide	Selenium	7782–49–2	1.0	Grab	5.7	TCLP (mg/l).
U205	Selenium sulfide	Selenium	7782–49–2	1.0	Grab	5.7	TCLP (mg/l).
U206	Streptozatocin	Streptozatocin	18883–66–4	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U207	1,2,4,5-Tetrachlorobenzene	1,2,4,5-Tetrachlorobenzene	95–94–3	0.055	Composite	19	Total (mg/kg).
U208	1,1,1,2-Tetrachloroethane	1,1,1,2-Tetrachloroethane	630–20–6	0.057	Grab	42	Total (mg/kg).
U209	1,1,2,2-Tetrachloroethane	1,1,2,2-Tetrachloroethane	79–34–5	0.057	Composite	42	Total (mg/kg).
U210	Tetrachloroethylene	Tetrachloroethylene	127–18–4	0.056	Composite	5.6	Total (mg/kg).
U211	Carbon tetrachloride	Carbon tetrachloride	56–23–5	0.057	Composite	5.6	Total (mg/kg).
U213	Tetrahydrofuran	Tetrahydrofuran	109–99–9	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	N
U214	Thallium(I)acetate	Thallium (I) acetate	563–68–8	NA	NA	RTHRM; or STABL.	NA
U215	Thallium(I)carbonate	Thallium	7440–28–0	0.14	Composite	NA	NA.
		Thallium (I) carbonate	6533–73–9	NA	NA	RTHRM; or STABL.	NA.
U216	Thallium (I) chloride	Thallium	7440–28–0	0.14	Composite	NA	NA.
		Thallium (I) chloride	7791–12–0	NA	NA	RTHRM; or STABL.	NA.
U217	Thallium (I) nitrate	Thallium	7440–28–0	0.14	Composite	NA	NA.
		Thallium (I) nitrate	10102–45–1	NA	NA	RTHRM; or STABL.	NA.
U218	Thioacetamide	Thallium	7440–28–0	0.14	Composite	NA	NA.
		Thioacetamide	62–55–5	(WETOX or CHOXD) fb CARBN; or INCIN.	NAINCIN	NA..	
U219	Thiourea	Thiourea	62–56–2	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U220	Toluene	Toluene	108–88–3	0.080	Composite	28	NA.
U221	Toluenediamine	Toluenediamine	25376–45–8	CARBN; or INCIN	NA	FSUBS; or INCIN	NA.
U222	o-Toluidine hydrochloride	o-Toluidine hydrochloride	636–21–5	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

Waste code	Waste description and/or treatment subcategory	Regulated hazardous constituent		Wastewaters		Nonwastewaters	
		Common name	CAS No.	Concentration (mg/l) or technology code	Sampling basis	Concentration or technology code	Sampling basis and units
U223	Toluene diisocyanate	Toluene diisocyanate	26471–62–5	CARBN; or INCIN	NA	FSUBS; or INCIN	NA.
U225	Tribromomethane (Bromoform)	Tribromomethane (Bromoform)	75–25–2	0.63	Composite	15	Total (mg/kg).
U226	1,1,1-Trichloroethane	1,1,1–Trichloroethane	71–55–6	0.054	Composite	5.6	Total (mg/kg).
U227	1,1,2-Trichloroethane	1,1,2-Trichloroethane	79–00–5	0.054	Composite	5.6	Total (mg/kg).
U228	Trichloroethylene	Trichloroethylene	79–01–6	0.054	Composite	5.6	Total (mg/kg).
U234	sym-Trinitrobenzene	sym-Trinitrobenzene	99–35–4	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U235	tris-(2,3-Dibromopropyl)phosphate	tris-(2,3-Dibromopropyl)phosphate	126–72–7	0.025	Grab	0.10	Total (mg/kg).
U236	Trypan Blue	Trypan Blue	72–57–1	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U237	Uracil mustard	Uracil mustard	66–75–1	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U238	Ethyl carbamate	Ethyl carbamate	51–79–6	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U239	Xylenes	Xylenes	1330–20–7	0.32	Composite	28	Total (mg/kg).
U240	2,4-Dichlorophenoxyacetic acid	2,4-Dichlorophenoxyacetic acid	94–75–7	0.72	Grab	10	Total (mg/kg).
U240	2,4-Dichlorophenoxyacetic Salts and esters.	2,4-Dichloro- phenoxy- acetic	NA	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U243	Hexachloropropene	Hexachloropropene	1888–71–7	0.035	Composite	28	Total (mg/kg).
U244	Thiram	Thiram	137–26–8	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	INCIN	NA.
U246	Cyanogen bromide	Cyanogen bromide	506–68–3	CHOXD; WETOX; or INCIN.	NA	CHOXD; WETOX; or INCIN.	NA.
U247	Methoxychlor	Methoxychlor	72–43–5	0.25	Composite	0.18	Total (mg/kg).
U248	Warfarin (greater than or equal to 3%).	Warfarin	81–81–2	(WETOX or CHOXD) fb CARBN; or INCIN.	NA	FSUBS; or INCIN	NA.
U249	Zinc Phosphide (<10%)	Zinc Phosphide	1314–84–7	CHOXD; CHRED; or INCIN.	NA	CHOXD; CHRED; or INCIN.	NA.
U328	o-toluidine	o-toluidine	95–53–4	INCIN; or CHOXD fb, (BIODG or CARBN); or BIODG fb CARBN.	NA	INCIN; or Thermal Destruction.	NA.
U353	p-toluidine	p-toluidine	106–49–0	INCIN; or CHOXD	NA	INCIN; or Thermal	NA.

U353	p-toluidine	p-toluidine	106–49–0	INCIN; or CHOXD fb, (BIODG or CARBN); or BIODG fb CARBN.	NA	INCIN; or Thermal Destruction.	NA.
U359	2-ethoxy- ethanol	2-ethoxy-ethanol	110–80–5	INCIN; or CHOXD fb, (BIODG or CARBN); or BIODG fb CARBN.	NA	INCIN; or FSUBS	NA.

[1] F039 (and D001 and D002 wastes prohibited under § 268.37)

§ 268.41 [Reserved]

21. Section 268.41 in subpart D is removed and reserved.

22. Section 268.42 is amended by removing Table 2 and Table 3, and revising paragraphs (a) introductory text, (c)(2) and (d) to read as follows:

§ 268.42 Treatment standards expressed as specified technologies.

(a) The following wastes in paragraphs (a)(1) and (a)(2) of this section and in the Table of Treatment Standards for which standards are expressed as a treatment method rather than a concentration must be treated using the technology or technologies specified in paragraphs (a)(1) and (a)(2) and Table 1 of this section.

* * * * *

(c) * * *

(2) The lab pack does not contain the following wastes: D009, F019, K003, K004, K005, K006, K062, K071, K100, K106, P010, P011, P012, P076, P078, U134, U151.

* * * * *

(d) Hazardous debris containing radioactive waste is subject to the treatment standards specified in § 268.45.

§ 268.43 [Reserved]

23. Section 268.43 in Subpart D is removed and reserved.

24. In subpart D, § 268.47 is added to read as follows:

§ 268.47 Treatment standards for hazardous soil.

(a) Treatment standards for the organic and inorganic constituents listed in § 268.48, Table UTS, Universal Treatment Standards, are applicable to RCRA hazardous soil before the soil is land disposed.

(b) Hazardous soil may be land disposed if the concentration of each constituent found on Table UTS in the soil is equal to or less than:

(1) A 90% reduction of the initial untreated concentration, provided that the resulting treated concentration is less than or equal to ten times the universal treatment standard; or

(2) The concentration is less than or equal to ten times the universal treatment standard; or

(3) A 90% reduction of the initial untreated concentration unless such would result in a treatment level below the universal treatment standard for that constituent, in which case the universal treatment standard would apply.

25. In subpart D, § 268.48 is added to read as follows:

§ 268.48 Universal treatment standards.

(a) Table UTS identifies the hazardous constituents associated with restricted hazardous wastes regulated under this part. It also establishes the concentrations of those constituents that may not be exceeded in the waste or treatment residual, or in an extract of such waste or residual, if so specified in Table UTS.

(1) Compliance with these treatment standards is measured by an analysis of grab samples, unless otherwise noted in the following Table UTS.

(2) The constituent-specific treatment standards in Table UTS supersede the treatment standards found at §§ 268.41 and 268.43, when such constituents are regulated in wastes listed as hazardous under 40 CFR part 261, subpart D, of this chapter.

(3) The requirements of paragraph (a)(2) of this section do not apply to the hazardous waste specified in §§ 268.41 and 268.43 as F024. This waste is subject to the treatment standards in §§ 268.41 and 268.43.

§ 268.48 TABLE UTS—UNIVERSAL TREATMENT STANDARDS

Regulated hazardous constituent	Wastewater concentration total composition (mg/l)	Nonwastewater concentration total composition (mg/kg)
Acenaphthalene	0.059	3.4
Acenaphthene	0.059	3.4
Acetone	0.28	160
Acetonitrile	0.17	NR
Acetophenone	0.010	9.7
2-Acetylaminofluorene	0.059	140
Acrolein	0.29	NR
Acrylonitrile	0.24	84
Aldrin	0.021	0.0664
4-Aminobiphenyl	0.13	NR
Aniline	0.81	14
Anthracene	0.059	3.4
Aramite	0.36	NR
Aroclor 1016	0.013	0.92
Aroclor 1221	0.014	0.92
Aroclor 1232	0.013	0.92
Aroclor 1242	0.017	0.92
Aroclor 1248	0.013	0.92
Aroclor 1254	0.014	1.8
Aroclor 1260	0.014	1.8
alpha-BHC	0.00014	0.066
beta-BHC	0.00014	0.066
delta-BHC	0.023	0.066
gamma-BHC	0.0017	0.066
Benz(a)anthracene	0.059	3.4
Benzal chloride	0.055	6.0
Benzene	0.14	10
Benzo(a)pyrene	0.061	3.4
Benzo-(b)fluoranthene	0.11	6.8
Benzo(g,h,i)perylene	0.0055	1.8
Benzo(k)fluoranthene	0.11	6.8
Bis(2-chloroethoxy)methane	0.036	7.2
Bis(2-chloroethyl)ether	0.033	6.0

§268.48 TABLE UTS—UNIVERSAL TREATMENT STANDARDS—Continued

Regulated hazardous constituent	Wastewater concentration total composition (mg/l)	Nonwastewater concentration total composition (mg/kg)
Bis(2-chloroisopropyl)ether	0.055	7.2
Bis(2-ethylhexyl)phthalate	0.28	28
Bromodichloromethane	0.35	15
Bromomethane	0.11	15
4-Bromophenyl phenyl ether	0.055	15
n-Butyl alcohol	5.6	2.6
Butyl benzyl phthalate	0.017	28
2-sec-Butyl-4,6- dinitrophenol	0.066	2.5
Carbon disulfide	0.014	4.81
Carbon tetrachloride	0.057	6.0
Chlordane	0.0033	0.26
p-Chloroaniline	0.46	16
Chlorobenzene	0.057	6.0
Chlorobenzilate	0.10	NR
2-Chloro-1,3-butadiene	0.057	NR
Chlorodibromomethane	0.057	15
Chloroethane	0.27	6.0
Chloroform	0.046	6.0
p-Chloro-m-cresol	0.018	14
2-Chloroethyl vinyl ether	0.062	NR
Chloromethane (Methyl chloride)	0.19	30
2-Chloronaphthalene	0.055	5.6
2-Chlorophenol	0.044	5.7
3-Chloropropylene	0.036	30
Chrysene	0.059	3.4
Cresol (m- and p-isomers)	0.77	3.2
o-Cresol	0.11	5.6
Cyclohexanone	0.36	0.75
o,p'-DDD	0.023	0.087
p,p'-DDD	0.023	0.087
o,p'-DDE	0.031	0.087
p,p'-DDE	0.031	0.087
o,p'-DDT	0.0039	0.087
p,p'-DDT	0.0039	0.087
Dibenzo(a,e)pyrene	0.061	NR
Dibenz(a,h)anthracene	0.055	8.2
tris-(2,3–Dibromopropyl) phosphate	0.11	NR
1,2-Dibromo-3-chloropropane	0.11	15
1,2-Dibromoethane	0.028	15
Dibromomethane	0.11	15
m-Dichlorobenzene	0.036	6.0
o-Dichlorobenzene	0.088	6.0
p-Dichlorobenzene	0.090	6.0
Dichlorodifluoromethane	0.23	7.2
1,1-Dichloroethane	0.059	6.0
1,2-Dichloroethane	0.21	6.0
1,1-Dichloroethylene	0.025	6.0
trans-1,2-Dichloroethylene	0.054	30
2,4-Dichlorophenol	0.044	14
2,6-Dichlorophenol	0.044	14
2,4-Dichlorophenoxyacetic acid (2,4-D)	0.72	10
1,2-Dichloropropane	0.85	18
cis-1,3-Dichloropropylene	0.036	18
trans-1,3-Dichloropropylene	0.036	18
Dieldrin	0.017	0.13
Diethyl phthalate	0.20	28
p-Dimethylaminoazo-benzene	0.13	NR
2,4-Dimethylphenol	0.036	14
Dimethyl phthalate	0.047	28
Di-n-butyl phthalate	0.057	28
1,4-Dinitrobenzene	0.32	2.3
4,6-Dinitrocresol	0.28	160
2,4-Dinitrophenol	0.12	160
2,4-Dinitrotoluene	0.32	140
2,6-Dinitrotoluene	0.55	28
Di-n-octyl phthalate	0.017	28
Di-n-propylnitrosamine	0.40	14
Diphenylamine	0.92	13
1,2-Diphenyl hydrazine	0.087	NR

§ 268.48 TABLE UTS—UNIVERSAL TREATMENT STANDARDS—Continued

Regulated hazardous constituent	Wastewater concentration total composition (mg/l)	Nonwastewater concentration total composition (mg/kg)
Diphenylnitrosoamine	0.92	13
1,4-Dioxane	0.12	170
Disulfoton	0.017	6.2
Endosulfan I	0.023	0.066
Endosulfan II	0.029	0.13
Endosulfan sulfate	0.029	0.13
Endrin	0.0028	0.13
Endrin aldehyde	0.025	0.13
Ethyl acetate	0.34	33
Ethyl benzene	0.057	10
Ethyl ether	0.12	160
Ethyl methacrylate	0.14	160
Ethylene oxide	0.12	NR
Famphur	0.017	15
Fluoranthene	0.068	3.4
Fluorene	0.059	3.4
Heptachlor	0.0012	0.066
Heptachlor epoxide	0.016	0.066
Hexachlorobenzene	0.055	10
Hexachlorobutadiene	0.055	5.6
Hexachlorodibenzofurans	0.000063	0.001
Hexachlorodibenzo-p-dioxins	0.000063	0.001
Hexachlorocyclopentadiene	0.057	2.4
Hexachloroethane	0.055	30
Hexachloropropylene	0.035	30
Indeno(1,2,3-c,d)pyrene	0.0055	3.4
Iodomethane	0.19	65
Isobutyl alcohol	5.6	170
Isodrin	0.021	0.066
Isosafrole	0.081	2.6
Kepone	0.0011	0.13
Methacrylonitrile	0.24	84
Methanol	5.6	0.75
Methapyrilene	0.081	1.5
Methoxychlor	0.25	0.18
3-Methylchloanthrene	0.0055	15
4,4-Methylene-bis-(2-chloraniline)	0.50	30
Methylene chloride	0.089	30
Methyl ethyl ketone	0.28	36
Methyl isobutyl ketone	0.14	33
Methyl methacrylate	0.14	160
Methyl methansulfonate	0.018	NR
Methyl parathion	0.014	4.6
Naphthalene	0.059	5.6
2-Naphthylamine	0.52	NR
p-Nitroaniline	0.0	28
o-Nitroaniline	NR	14
Nitrobenzene	0.068•	14
5-Nitro-o-toluidine	0.32	28
o-Nitrophenol	NR	13
p-Nitrophenol	0.12	29
N-Nitrosodiethylamine	0.40	28
N-Nitrosodimethylamine	0.40	2.3
N-Nitrosodi-n-butylamine	0.40	17
N-Nitrosomethylethylamine	0.40	2.3
N-Nitrosomorpholine	0.40	2.3
N-Nitrosopiperidine	0.013	35
N-Nitrosopyrrolidine	0.013	35
Parathion	0.014	4.6
Pentachlorobenzene	0.055	10
Pentachlorodibenzofurans	0.000035	0.001
Pentachlorodibenzo-p-dioxins	0.000063	0.001
Pentachloroethane	NR	6
Pentachloronitrobenzene	0.055	4.8
Pentachlorophenol	0.089	7.4
Phenacetin	0.081	16
Phenanthrene	0.059	5.6
Phenol	0.039	6.2
Phorate	0.021	4.6

§ 268.48 TABLE UTS—UNIVERSAL TREATMENT STANDARDS—Continued

Regulated hazardous constituent	Wastewater concentration total composition (mg/l)	Nonwastewater concentration total composition (mg/kg)
Phthalic acid	0.055	28
Phthalic anhydride	0.055	28
Pronamide	0.093	1.5
Propanenitrile	0.24	360
Pyrene	0.067	8.2
Pyridine	0.014	16
Safrole	0.081	22
Silvex (2,4,5-TP)	0.72	7.9
2,4,5,-T	0.72	7.9
1,2,4,5-Tetrachlorobenzene	0.055	14
Tetrachlorodibenzofurans	0.000063	0.001
Tetrachlorodibenzo-p-dioxins	0.000063	0.001
1,1,1,2-Tetrachloroethane	0.057	6.0
1,1,2,2-Tetrachloroethane	0.057	6.0
Tetrachloroethylene	0.056	6.0
2,3,4,6-Tetrachlorophenol	0.030	7.4
Toluene	0.080	10
Toxaphene	0.0095	2.6
Tribromomethane (Bromoform)	0.63	15
1,2,4-Trichlorobenzene	0.055	19
1,1,1-Trichloroethane	0.054	6.0
1,1,2-Trichloroethane	0.054	6.0
Trichloroethylene	0.054	6.0
Trichloromonofluoromethane	0.020	30
2,4,5-Trichlorophenol	0.18	7.4
2,4,6-Trichlorophenol	0.035	7.4
2,4,5-Trichlorophenoxyacetic acid	0.72	7.9
1,2,3-Trichloropropane	0.85	30
1,1,2-Trichloro-1,2,2-trifluoroethane	0.057	30
Vinyl chloride	0.27	6.0
Xylenes (total)	0.32	30
Total PCBs	0.1	10

Regulated hazardous constituent	Wastewater concentration total composition (mg/l)	Nonwastewater concentration TCLP (mg/l)
Antimony	1.9	2.1
Arsenic	1.4	5.0
Barium	1.2	7.6
Beryllium	0.82	0.014
Cadmium	0.20	0.19
Chromium (total)	0.37	0.33
Cyanide (total)	1.9	[1]590
Cyanide (amenable)	NR	[1]30
Lead	0.28	0.37
Mercury	0.15	0.009
Nickel	0.55	5.0
Selenium	0.82	0.16
Silver	0.29	0.30
Thallium	1.4	0.078
Vanadium	0.042	0.23
Zinc	1.0	5.3

[1] As analyzed using SW–846 Method 9010 or 9012; sample size 10 gram; distillation time one hour and fifteen minutes.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

26. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

27. Section 271.1(j) is amended by adding the following entries to Table 1 in chronological order by date of publication in the **Federal Register**, and by adding the following entries to Table 2 in chronological order by effective date in the **Federal Register**:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	FEDERAL REGISTER reference	Effective date
•	•	•	•
[Insert date of publication in the Federal Register (FR)].	Land disposal restrictions for newly listed and identified wastes in §268.38 and hazardous soil in §268.47, and universal treatment standards in §268.48.	[Insert FR page numbers].	[Insert date of signature of final rule].
•	•	•	•

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	FEDERAL REGISTER reference
•	•	•	•
[Insert date of signature of final rule].	Prohibition on land disposal of newly listed wastes and treatment standards for hazardous soil in §268.47 and universal standards in §268.48.	3004(g)(6)(A) and 3004(m).	[Insert date of publication] 58 FR [insert page numbers].
•	•	•	•

[FR Doc. 93-21703 Filed 9-13-93; 8:45 am]
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federal register

Tuesday
September 14, 1993

Part III

Department of the Treasury

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

12 CFR Parts 3, et al.
Risk-Based Capital Standards: Interest Rate Risk; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 93-11]

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R-0802]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064-AB22

Risk-Based Capital Standards: Interest Rate Risk

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury, Board of Governors of the Federal Reserve System (Board), and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC, the Board, and the FDIC (the Banking Agencies) are issuing this proposed rule to implement the portion of section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) that requires a revision of their risk-based capital guidelines to ensure that those standards take adequate account of interest rate risk (IRR). Other revisions to the risk-based capital standards as prescribed in section 305 of FDICIA are to be addressed in separate rulemakings.

This proposal would amend the Banking Agencies' capital adequacy standards to provide for consideration of IRR in the overall determination of a bank's minimum capital ratios. The intended effect of the proposal would be to ensure that banking institutions effectively measure and monitor their IRR and that they maintain adequate capital for that risk.

As part of the proposal, the Banking Agencies are publishing for comment procedures for measuring IRR exposures and two alternative methods for determining what amount of additional capital, if any, a bank may be required to have for interest rate risk. In addition, the Banking Agencies will recommend to the Federal Financial Institutions Examination Council (FFIEC) expanded Call Report requirements to facilitate the monitoring of IRR exposures of commercial banks.

The Banking Agencies sought public comment on a proposed framework for IRR in August, 1992. The current proposal reflects substantial modifications to that proposal in response to the concerns raised and recommendations made by commenters. The proposed amendments to the regulations differ among the Banking Agencies to take account of the existing regulatory structure at each Agency. Nonetheless, the proposed amendments are intended to have the same effect.

DATES: Comments must be received on or before October 29, 1993.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the Banking Agencies. All comments will be shared among the Banking Agencies.

OCC: Written comments should be submitted to Docket No. 93-11, Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, Attention: Karen Carter. Comments will be available for inspection and photocopying at that address.

Board of Governors: Comments, which should refer to Docket No. R-0802, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in Room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's "Rules Regarding Availability of Information," 12 CFR 261.8.

FDIC: Hoyle L. Robinson, Executive Secretary, Attention: Room F-400, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to Room F-400, 1776 F Street NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m. [FAX number (202) 898-3838]. Comments will be available for inspection and photocopying in Room 7118, 550 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Christina Benson, Capital Markets Specialist (202/874-5070), or Kurt Wilhelm, National Bank Examiner (202/874-5070), Office of the Chief National Bank Examiner; Kevin Jacques, Financial Economist, Economics and Evaluation (202/874-5220), and Ronald Shimabukuro, Senior Attorney, Bank Operations and Assets Division (202/874-4460), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board of Governors: James Houpt, Assistant Director (202/452-3358), James Embersit, Manager (202/452-5249), William Treacy, Supervisory Financial Analyst (202/452-3859), Division of Banking Supervision and Regulation; Scott G. Alvarez, Associate General Counsel (202/452-3583), Gregory A. Baer, Senior Attorney (202/452-3236), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: William A. Stark, Assistant Director (202/898-6972) or Sharon Lee, Capital Markets Specialist (202/898-6789), Division of Supervision; for legal issues, Claude A. Rollin, Senior Counsel (202/898-3985), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

A. Background

1. Section 305 and the Basle Accord

IRR is the adverse effect that changes in market interest rates may have on a bank's financial condition. This risk is inherent to the business of banking. Section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Public Law 102-242, requires the Banking Agencies to revise their risk-based capital guidelines to take adequate account of IRR. FDICIA also requires the Banking Agencies to publish final regulations implementing section 305 and to establish transition rules to facilitate compliance with those regulations.

Section 305(b)(2) of FDICIA requires the Banking Agencies to discuss the development of comparable standards with members of the supervisory committee of the Bank for International Settlements (BIS), which has also been working on ways to incorporate IRR into the risk-based capital standard. The Banking Agencies are actively participating in that international effort. However, the time required for developing and implementing an international standard is uncertain and an international standard is as yet unavailable.

In implementing section 305 of FDICIA, the Banking Agencies seek to create a viable system for measuring IRR, while at the same time continuing

to work with international organizations to develop consistent international capital standards. Many elements of the supervisory measurement system proposed in this notice are consistent with, although not identical to, key elements of the approach being pursued internationally. At the time that an international agreement emerges, the Banking Agencies will revisit this approach in light of the international standard. Such reevaluation may occur during the biennial review of capital standards that is required by section 305 of FDICIA.

Comments are requested on all aspects of this proposal. Issues on which comment is specifically requested are identified in numbered questions in section D.

2. Advance Notice of Proposed Rulemaking (ANPR)

In August 1992, the Banking Agencies issued an ANPR soliciting comments on a framework for revising their risk-based capital standards to take adequate account of IRR, as well as approaches to address the risks arising from credit concentrations and nontraditional activities (57 FR 35507, August 10, 1992). The ANPR outlined a possible IRR measurement system and asked for comments on that system, including its use as a basis for determining a capital requirement.

The framework outlined was designed to ensure that banks with significant levels of IRR would have sufficient capital to cover their exposure. IRR exposures were quantified by a proposed supervisory risk measure that sought to estimate the economic effect of an interest rate change on the present value of a bank's net worth, rather than the effect on current or near-term earnings. This measure required banks to slot their assets, liabilities, and off-balance-sheet instruments into a maturity schedule based on each instrument's remaining contractual maturity or next repricing date. The proposed maturity schedule used six maturity ranges or time bands, with balances in each time band weighted by a risk factor, or "risk weight," that estimated the price sensitivity of the instrument to changes in market interest rates. The summation of these weighted values, the "Net Risk-Weighted Position," was used to estimate the change in a bank's equity value for a 100 basis point change in interest rates. This measure was to serve as the basis for determining a bank's IRR exposure for capital adequacy purposes. To mitigate concerns about the imprecision in measuring IRR and to recognize that some degree of IRR is inherent in banking activities, only those banks with relatively significant measured exposure would have been required to allocate capital for IRR. As proposed, banks with exposures in excess of a "threshold" level of measured risk equal to plus or minus 1.0 percent of assets were required to allocate capital in an amount equal to that excess exposure.

3. Responses to the ANPR

The Banking Agencies collectively received a total of 214 responses to the ANPR. Of these, 182 addressed the proposed framework for IRR while 32 addressed only issues relating to credit concentrations or nontraditional activities.

The letters on the IRR proposal expressed a wide and diverse range of opinions. Most commenters recommended modifications to, or expressed concern with, some aspect of the proposal. Many commenters acknowledged the need for the Banking Agencies to monitor and evaluate the level of interest rate risk taken by banks. However, many commenters did not believe that the framework, as proposed, would lead to more effective supervision of IRR. As a result of these comments and further analysis, the Banking Agencies have modified the framework outlined in the ANPR in important ways. The public comments and key changes are summarized below.

a. Public Comments

Most respondents focused on the use of the measure as the basis for determining a regulatory capital requirement for IRR. Many urged greater discretion and flexibility in its use and recommended that it be used as an examiner tool, rather than as the basis for a capital charge. Many institutions believed that the precision of the measure should be enhanced if it is to be used to determine a capital charge. Therefore, they requested greater sophistication in some areas which would increase complexity and require more information. Others, however, cited concerns with the complexity and reporting burden of the measure and requested an exemption test to exclude banks with low IRR from added reporting or capital requirements.

Many commenters argued against a standard supervisory model and set of assumptions for measuring IRR, often citing the diversity within the commercial banking industry caused by the size, location, or general nature of each bank's activities. Many institutions also cited the greater accuracy of their own risk measurement models and urged the Banking Agencies to rely more heavily on them. Some cautioned that imposing a capital charge based on a supervisory model might cause some institutions to make decisions in deference to that model even though the bank's internal analysis might indicate that other actions were advisable.

Many respondents also stated that certain assumptions made in the supervisory model were improper for their institutions and perhaps for the industry as a whole. For example, many criticized the proposed treatment of deposits that do not have specified maturities (referred to as non-maturity deposits). These deposits can be withdrawn at any time but are typically rather stable both in price and volume. They include demand deposits, money market demand accounts (MMDA), negotiable order of withdrawal (NOW) accounts, and savings deposits. Other comments regarding specific aspects of the proposed supervisory model included criticisms and recommendations on the interest rate scenario used and the construction of the risk weights.

b. Responses to Comments

In response to the comments received, the Banking Agencies are proposing a measurement of IRR exposure with major changes from that in the ANPR and are considering two alternative uses of the measured exposure. Major changes are summarized below. However, other changes also have been incorporated to increase accuracy or reduce regulatory burden.

(1) A proposed quantitative screen would exempt banks identified as potentially low-risk institutions from additional reporting and, most likely, from any capital requirement for IRR.

(2) Use of a bank's internal risk measure would be permitted for evaluating IRR when the methodology and key assumptions of that measure are deemed adequate by the appropriate Banking Agency. Examination guidelines and analytical tools would be provided to examiners for this purpose. Banks would be expected to maintain appropriate internal risk measurement systems consistent with their risk profiles.

(3) Various refinements have been made to the supervisory measure that would be used to evaluate IRR for non-exempt banks where internal models are not available or are deemed inadequate. These modifications include changes to the method for determining risk weights, the specific treatment of non-maturity deposits, the reporting of amortizing and non-amortizing financial instruments, and the addition of another time band to provide for greater

accuracy and consistency with existing Call Report information.

B. Discussion of Proposal

1. Overview

The Banking Agencies propose to modify their existing risk-based capital standards to provide for the explicit consideration of IRR when assessing the capital adequacy of an institution. This proposal addresses two elements: A measure of IRR exposure and an approach for assessing capital adequacy for IRR. Exposures to IRR would be measured as the effect that a specified change in market interest rates would have on the net economic value of a bank.[1] This economic perspective considers the effect that changing market interest rates may have on the value of a bank's assets, liabilities, and off-balance-sheet positions.

The Banking Agencies propose to measure an institution's exposure using either a supervisory model or the bank's own internal model. In either case, the results could be used in one or two ways when assessing capital adequacy for IRR. One approach would be to reduce an institution's risk-based capital ratios by an amount based on the level of measured risk. The other would be to use the measured exposure as only one of several factors in assessing the need for capital. The measurement systems and their possible uses are discussed in greater detail in sections that follow.

a. Structure of the Supervisory Model

The supervisory model would require banks to report their assets, liabilities and off-balance-sheet positions into time bands based upon their remaining maturities or nearest repricing dates. Each position would then be multiplied by an IRR "risk weight" developed by the Banking Agencies that represents the estimated sensitivity of the economic value of that position to a specified change in market interest rates. The risk-weighted positions of all balances would be summed to produce a net risk-weighted position. This net position represents the estimated change in the bank's net economic value and would be the primary quantitative measure used to assess a bank's level of IRR.

To avoid collecting information about the maturities, cash flows, coupons, and yields of each bank's assets, liabilities, and off-balance-sheet positions, the risk weights would be developed using hypothetical instruments that are deemed to be representative of the position being weighted. The risk weights developed would be the percentage change in the present value of those hypothetical instruments for the given interest rate change.

The structure, reporting requirements, and key assumptions of the model are discussed in section 3 below. The Banking Agencies believe that this basic measure can be useful for supervisory purposes in evaluating the IRR of many banks. However, the Banking Agencies recognize that this basic model would not offer the precision of many acceptable internal models and that certain types of financial instruments have risk profiles that may be difficult to incorporate accurately into this basic model. For these reasons, the Banking Agencies are proposing to make use of a bank's own model, if it is deemed accurate.

b. Use of a Bank's Internal Model

The Banking Agencies recognize that many banking institutions have sophisticated internal models for measuring IRR that take account of complexities not addressed in the basic supervisory model and that are tailored to circumstances at each bank. Consequently, the Banking Agencies propose to make use of a bank's own IRR model if it is deemed adequate by examiners. To make this determination, examiners would consider the types of instruments held or offered by the bank, the integrity of the data, and whether the assumptions and relationships underlying the model are reasonable.

The supervisory model and other analytical tools could be used to assist examiners in evaluating the adequacy of a bank's internal model. The other analytical tools would be developed by the Banking Agencies over time. Such tools might include an options-pricing model to assist in the evaluation of explicit and embedded option products and the capability to use more detailed coupon and maturity information in estimating market value sensitivities. As experience is gained with the basic model and these supplemental tools, the Banking Agencies may seek to refine the basic measure to include additional or more sophisticated measurement methodologies or models.

When examiners determine that the risk profile generated by a bank's internal model is an adequate measure of the bank's risk position, that measure would be used for supervisory purposes. The bank, however, would continue to report the proposed expanded Call Report information used in the supervisory model. In banks without internal models, examiners would reply on the supervisory model. If warranted by the size and complexity of the bank's activities, however, examiners may require an institution to have an adequate internal model in the interest of bank safety and soundness. This approach should create incentives for banks to improve their ability to measure risk.

When reviewing a bank's internal model, examiners would evaluate its analytical approach and underlying assumptions. To the extent the model contains material weaknesses or its assumptions are judged to be unreasonable, examiners may require the bank to modify its procedures before judging the model to be acceptable or, alternatively, may rely on results of the supervisory model. At a minimum, examiners would identify the components of an internal model that incorporate assumptions or calculations that differ significantly from those used in the supervisory model, assess the importance of these differences, and then determine whether the bank has a sufficient basis for its treatment. Examiners would also monitor changes to an institution's assumptions or calculation procedures over time in order to assure the on-going integrity of the measure.

If the Minimum Capital Standard approach is adopted, an institution may be required to base that calculation on the results of a more sophisticated internal model, if available. Such an institution would not be permitted to use the basic supervisory model to determine its exposure for capital purposes, but rather would have to use an internal model. This requirement would be based upon the size and complexities of an institution's activities and would reflect the recognition that the supervisory model may not fully capture the risks of certain types of financial instruments or activities. The Banking Agencies seek comment on the appropriateness of such a requirement and on the types and scopes of activities that should trigger it.

c. Threshold Level

When evaluating a bank's need for capital IRR, the Banking Agencies propose to focus on institutions with relatively high levels of measured risk. This focus on "outliers" reflects that view that a certain amount of IRR is inherent and appropriate in commercial banking, that the level of risk is difficult to measure precisely, and that IRR has not been a principal threat to the financial health of commercial banks in the past.

[1] The change in an institution's net economic value is defined as the change in the present value of its assets minus the change in the present value of its liabilities plus the change in the present value of its off-balance-sheet positions.

A threshold level representing a decline in net economic value equal to 1.0 percent of assets is proposed to account for measurement imprecision and some amount of IRR implicit in the current risk-based capital standard. Measured exposures resulting in a decline in value of less than the 1.0 percent of assets level would generally be considered insufficient to require capital, although examiners could determine otherwise in unusual circumstances. The Banking Agencies may need to reconsider this proposed threshold level when other aspects of the proposal have been decided. Moreover, since the threshold exists in part to account for measurement imprecision, the Banking Agencies also request comment on the merits of using a lower threshold when results of more accurate internal models are used to evaluate IRR.

d. Reporting Requirements

While the regulatory changes proposed are expected to result in changes to the Call Report, no paperwork changes are specifically contained in this rule. The examples of Call Report schedules are provided to assist the reader in analyzing the full implications of the proposal. They are not intended as proposed forms. However, realistically, if the agencies adopt the final rule substantially as proposed, the resulting changes to the Call Report will probably be similar to the models provided and to what is recommended by the Banking Agencies to the Federal Financial Institutions Examination Council (FFIEC). The agencies will submit any Call Report changes to OMB for review as required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Opportunity for public comment is always provided in relation to such a submission. Nevertheless, the agencies invite comments regarding the paperwork implications of this notice of proposed rulemaking, and will carefully consider any comments received in the development of the final rule, as well as in the development of proposed revisions to the Call Report.

To collect the information necessary to monitor the level of IRR and assess the need for additional capital at banks that may have significant exposures, the Banking Agencies believe that additional Call Report information will be needed. Accordingly, the Banking Agencies seek comment on a Call Report schedule currently under consideration which would provide information necessary for calculating the supervisory measure. The FDIC would also replace supplemental Schedule RC–J, currently completed only by FDIC-supervised savings banks, with this new Call Report schedule. All FDIC-supervised savings banks would complete the new Call Report schedule and would not be afforded the reporting exemption as described in section E below. Comment is also requested on a second schedule that would be completed only by banks that elect or that may be required to use the results of their internal models. This second schedule would be required only if the Banking Agencies relied on the information to provide an explicit capital charge for IRR and would not be needed if the measured exposure was considered only as one element of broader guidelines for assessing capital adequacy for IRR.[2]

The proposed reporting schedules (Schedules 1 and 2) are illustrated and discussed in sections 3 and 4 below.

e. Reporting Exemptions

To minimize the reporting and other regulatory burdens associated with this proposal, the Banking Agencies propose to exempt from any additional reporting requirements institutions that meet certain criteria associated with "low-risk" institutions. The Banking Agencies propose that an institution would have to meet the following two criteria to qualify for such an exemption:

(1) The total notional principal amount of all of the institution's off-balance-sheet interest rate contracts [3] does not exceed 10 percent of its total assets; and

(2) 15 percent of the sum of the institution's fixed- and floating-rate loans and securities that mature or reprice beyond 5 years is less than 30 percent of its total capital.

The first criterion evaluates whether an institution has a significant amount of off-balance-sheet obligations that may warrant further scrutiny. The second criterion tests whether a significant decline in the market value of those assets most exposed to changing interest rates would reduce the institution's capital substantially.

To qualify for the reporting exemption, banks would need to meet these criteria at each quarterly Call Report date. Based on data for December 31, 1992, approximately 8,400 institutions with about 30 percent of U.S. commercial bank assets would meet these criteria. However, the Banking Agencies reserve the right to require an institution to report the additional information even if the institution satisfies these criteria. If a previously exempted bank fails to meet these criteria, or otherwise becomes non-exempt, it would be required to report the additional data at the next two Call Report dates, regardless of its future exemption status. Therefore, exempted banks would need to ensure that they are able to provide the requested information, if necessary.

Although exempted banks would not be required to report any additional data, they would be expected to maintain adequate policies and procedures for measuring, controlling, and managing interest rate risk.

f. Implementation Schedule

The Banking Agencies propose to require the additional reporting by non-exempt banks beginning with the March 1994 Call Reports. Full implementation of the guidelines for assessing the adequacy of bank capital would be effective December 31, 1994. However, the Banking Agencies also propose that examiners apply these standards on an advisory basis beginning with examinations commencing after December 31, 1993, to the extent that data are reasonably available.

Comments are requested on all aspects of the proposal, including the suggested implementation schedule.

2. Major Considerations in Measuring Interest Rate Risk

Obtaining meaningful results from either the supervisory or internal models requires appropriate treatment of three critical elements:

(1) The interest rate scenario used to measure the effect of changing rates;

(2) The asymmetrical rate sensitivity that results for certain bank products when both rising and falling interest rate scenarios are considered; and

(3) The treatment of non-maturity deposits, i.e., demand deposits, NOW and savings accounts, and MMDAs.

Another important consideration, especially when evaluating the risk of an individual bank that is part of a multi-bank holding company, is the relationship of that bank's exposure to positions held by its parent or other affiliated institutions. Each of these issues is discussed below.

a. Interest Rate Scenario

The interest rate scenario used to determine risk weights should cover an appropriate range of possible interest rate changes and reflect these factors:

(1) A time horizon over which institutions and supervisors can reasonably be expected to identify an institution's risk and implement

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[2] The Banking Agencies may choose to treat the proposed second schedule as confidential.

[3] Off-balance-sheet interest rate contracts are those reported on Schedule RC–L items 11.a., 11.b., 11.c.(1) and 11.c.(2) of the Consolidated Report of Financial Condition.

meaningful and loss-limiting responses, taking into account both the frequency of reporting and examinations; and

(2) An appropriate probability of occurrence, as reflected by the historical volatility of market interest rates over the chosen time horizon.

The chosen time horizon is an important determinant of the size of the specified rate change. In general, a shorter time horizon implies a smaller potential rate change; generally, nominal rate changes based on quarterly time horizons are roughly one half of those derived from annual time horizons. A quarterly interval would correspond to the regulatory reporting cycle and may also allow sufficient time for bank management to identify and reposition an interest rate risk exposure.

However, an annual or semi-annual time horizon may better reflect the time necessary for management to recognize trends in interest rates and determine an appropriate response, and for the results of management's actions to be reflected to a material degree in the bank's positions. It may also be more appropriate than a quarterly time horizon given the sluggishness of non-maturity deposit rates to respond to market changes.

The Banking Agencies recognize that interest rate volatility varies with different maturities and that this volatility generally increases with the level of rates (i.e., that volatility is roughly proportional to the absolute level of rates).[4] Holding other factors the same, longer-term rates are typically less volatile than short-term rates.

	Monthly changes	Quarterly changes	Annual changes
3 Mo	.0711	.1515	.2949
1 Yr	.0642	.1358	.2665
2 Yr	.0574	.1200	.2327
5 Yr	.0466	.0978	.1953
7 Yr	.0424	.0880	.1827
10 Yr	.0393	.0810	.1733
30 Yr	.0346	.0721	.1590

The observed range of historical movements in interest rates over the selected time horizon will differ depending on the sample period used. Volatility experienced over a long sample period (e.g., the past 15 years) could be significantly different from that experienced over a shorter sample period (e.g., the prior 3 to 5 years). Longer sample periods could be used to ensure that the estimated volatilities reflect the full range of potential changes in rates over entire interest rate cycles and thus, might be more representative than shorter sample periods. On the other hand, shorter and more recent sample periods would better reflect prevailing rates and volatilities.

The Banking Agencies solicit comments on the appropriate time horizon, volatility measure and historical sample period to use in developing an interest rate scenario for assessing interest rate risk exposures. Specifically, comments are sought on alternative methodologies for determining scenarios. The first alternative measures historical volatility using nominal basis point changes in market rates. For example, a change in the 6-month rate from 3.0 percent to 3.5 percent would be measured as a movement of 50 basis points, as would a change from 10.0 percent to 10.5 percent. Scenarios would be based on two standard deviations (covering 95 percent of the observations) of quarterly basis point changes over a selected sample period—for example, 5 years.

A second alternative measures historical volatility as a proportion by which rates change. For example, the same increase from 3.0 to 3.5 percent would be measured as a movement of 16.6 percent of the initial rate (i.e., 0.005/0.03) whereas the increase from 10.0 to 10.5 percent would be measured as a change of 5 percent (0.005/.10).[5] Under this alternative, a volatility factor covering two standard deviations of the distribution of proportional rate changes over the sample period would be applied to the prevailing level of rates at each point along the yield curve. A 30.0 percent proportional rate change represents roughly two standard deviations of quarterly movements of 3-month instruments, or annual movements of 30-year instruments observed during the period 1977 to 1992. This "volatility factor" would produce a 90 basis point change if applied to a market rate of 3.0 percent (0.300.03). The same factor, if applied to a 10.0 percent market rate, would produce a 300 basis point change (0.300.10).

Possible interest rate scenarios using both alternative methods and quarterly and annual time horizons are shown below:

Maturity	Scenarios using nominal change		Scenarios using proportional change	
	Quarterly horizon (Col. 1)	Annual horizon (Col. 2)	Quarterly horizon (Col. 3)	Annual horizon (Col. 4)
0–3 Months	115 bp	320 bp	100 bp	190 bp
3–12 Months	120 bp	300 bp	100 bp	190 bp
1–3 Years	130 bp	250 bp	110 bp	210 bp
3–5 Years	125 bp	200 bp	115 bp	235 bp
5–10 Years	110 bp	170 bp	110 bp	235 bp
10–20 Years	100 bp	140 bp	110 bp	235 bp
Over 20 Years	80 bp	130 bp	110 bp	240 bp

Columns 1 and 2 illustrate scenarios using nominal changes in rates for a quarterly and an annual time horizon, respectively, as exhibited during the past five years. Columns 3 and 4 illustrate the rate changes derived using volatility factors for quarterly and annual time horizons, respectively, applied to the average level of rates during the fourth quarter of 1992. The relative uniformity of rate changes across the term structure under the proportional methodology (columns 3 and 4) reflects the steepness of the yield curve during that quarter; the sharply

[4] Based on the following standard deviations of the percent change in rates on U.S. Treasury securities estimated over the period 1977 to 1992, one standard deviation of annual rate changes in the 3-month Treasury Bill is approximately 29.5% of the outstanding 3-month Bill rate. One standard deviation of annual changes for the 30-year U.S. Treasury bond is roughly 15.9% of the prevailing 30-year bond rate. The corresponding absolute changes in rates depend on the level of rates to which the percent change is applied.

[5] Under current industry convention, proportional volatility is expressed as a percent change in the level of a given market interest rate. This can create some confusion, in that it represents a "percent of a percent." Alternatively, the volatility can be considered to be a multiple of the level of a market rate (e.g., 30 percent of the rate is the same as .30 of the rate).

higher level of longer-term rates more than offsets the effect of their lower proportional volatility. A less steep yield curve would generally produce smaller changes for long-term rates than those for short-term rates.

Currently, the results under either proposed methodology indicate rate changes that are about 100 basis points using a quarterly time horizon and 200 basis points using annual volatilities. In the interest of simplicity, the Banking Agencies also seek comment on the use of a parallel 100 or 200 basis point shift. For purposes of this proposed rulemaking, a simple 200 basis point shift is illustrated in the proposed amendments to the regulations of the Banking Agencies.

Whichever rate scenario is selected, the rate change would be treated as an instantaneous movement in market interest rates and would be used for both the supervisory and internal models for purposes of assessing capital adequacy. The selected rate scenario would be reconsidered periodically as market conditions change. However, it is the intent of the Banking Agencies to minimize changes to the specified scenarios. Therefore, barring extenuating circumstances, the Banking Agencies propose to make changes to the specified scenarios no more frequently than annually.

b. Rising and Falling Rate Scenarios

Another issue is whether the Banking Agencies should evaluate IRR under scenarios reflecting both rising and declining market interest rates. The interest rate sensitivity of many financial instruments can differ, in amount, under rising and declining rate scenarios. This difference can reflect differences in consumer behavior as well as management's pricing strategies. Evaluating exposures for both rising and declining rate scenarios would allow consideration of the asymmetry in a bank's assets, liabilities and off-balance-sheet items. Although banks can face potential losses in economic value under either situation, historically a rising rate environment has been more threatening to depository institutions. Important exceptions include institutions that have purchased large amounts of mortgage servicing rights, that hold large volumes of certain types of high-risk mortgage derivative instruments, or that have created certain types of exposures in off-balance-sheet positions.

One possible approach, reflected in the proposed rule, would be to evaluate exposures to both rising and declining rates. Internal models could estimate the change in economic value for both scenarios. For the supervisory model, different risk weights would be used for the rising and declining rate scenarios to reflect the asymmetric behavior of certain instruments. In the interest of avoiding complexity, another approach would be to consider only the risk of rising rates in the supervisory model and to address exposure to declining rates during on-site examinations. Comments are requested regarding the burden associated with either approach.

c. Treatment of Non-Maturity Deposits

The treatment of deposits without specific maturity or repricing dates may be one of the most important elements in calculating an institution's level of IRR exposure, whether an internal model or the basic supervisory measure is used. For purposes of calculating the supervisory measure, the Banking Agencies propose to permit banks limited flexibility in distributing their non-maturity deposits among time bands. Within these limits, banks would distribute the balances as they believe most appropriately reflects the price sensitivity of these deposits. Banks using their own models would be subject to the same effective maturity ranges when estimating the sensitivity of their deposits. Details on the proposed maturity ranges that would be allowed are provided in section 3 below under the discussion of "Reporting for Non-Maturity Deposits."

Considering the inherent difficulties in determining the appropriate treatment of non-maturity deposits, the Banking Agencies solicit comment and any relevant empirical evidence on the price sensitivity and market valuation of these deposits. Information relevant to assessing the changes in the market value of these deposits relative to changing interest rates would be most helpful. The Banking Agencies also seek comment on whether banks that have well reasoned and documented calculations showing rate sensitivities that are outside the proposed supervisory ranges should be allowed to use those calculations. Of particular interest are the specific types of analyses that should be required from banks to support such calculations.

d. Multi-bank Holding Companies

Banking organizations manage the IRR of their bank and nonbank subsidiaries in a variety of ways. Techniques include managing risk separately for each subsidiary depository institution and nonbank affiliate, on a consolidated basis for all banking entities, or on a fully consolidated basis for the holding company and all its subsidiaries.

Although recognizing these diverse practices, the Banking Agencies propose that each subsidiary depository institution report its assets, liabilities and off-balance-sheet positions separately (provided that the subsidiary is not exempted from the reporting requirement based on the criteria described in section 1 above). Multi-bank holding companies that use their own models also would need to calculate the exposure of each individual bank, although the actual calculation could be done by staff at the corporate or lead-bank level. This procedure will allow the Banking Agencies to monitor the IRR exposure of individual banks and to evaluate the ability of the banks to manage their measured levels of risk. This approach seems most consistent with the structure of existing capital standards and legislative requirements.

3. Description of Supervisory Model

a. General Comments

This section describes the structure, possible reporting requirements, and key assumptions and procedures of the proposed supervisory model. The measurement system is designed to minimize reporting burdens while meeting the supervisory need to estimate the extent to which the net economic value of an institution would change under a specified change in market interest rates. As such, it is not intended to replace other, more sophisticated procedures that banks may use in their risk management process.

A key component of the proposed supervisory system is a set of "risk weights" that—when applied to reported asset, liability and off-balance-sheet positions—estimates the sensitivity of the present value of each position to a specified change in interest rates. The sum of all weighted values of a bank's assets, liabilities and off-balance-sheet positions represents the amount by which the bank's net economic value is estimated to change, given an assumed change in interest rates. This number, called the "Net Risk-Weighted Position", is the primary quantitative measure that would be used to evaluate an institution's exposure to IRR.

b. Information Requirements

Use of the supervisory measurement system requires information on the maturity and repricing characteristics of an institution's assets, liabilities and off-balance-sheet positions. As described in section 1 above, an IRR reporting exemption would be granted to

institutions meeting certain criteria. Non-exempt institutions and FDIC-insured savings banks would be required to report maturity and repricing information for both on- and off-balance-sheet items in a Call Report schedule such as that illustrated in Schedule 1. Non-exempt commercial banks would no longer need to report the similar maturity and repricing data currently collected on the memoranda items of Schedules RC–B, RC–C, and RC–E. Exempt institutions with the exception of FDIC-insured savings banks, however, would continue to report these memoranda items.

BILLING CODE 4810-33-M; 6210-01-M; 6714-01-M

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Schedule 1

Proposed Interest Rate Risk Schedule

Proposed Interest Rate Risk Schedule

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Schedule 1

(to be completed by non-exempt institutions only)

Maturity and repricing data:
Please break out the following items according to their remaining term to maturity or time to repricing.

Dollar Amounts in Thousands	Total	Up to 3 months	> 3 months and <= 1 year	> 1 year and <= 3 years	> 3 years and <= 5 years	> 5 years and <= 10 years	> 10 years and <= 20 years	> 20 years
1. Securities:								
a. Adjustable-rate mortgage securities	1 000	0	1 000	0	0			
b. Fixed-rate mtgs, asset-backed securities	11 750	0	0	1 100	0	0	3 250	7 400
c. Zero or low coupon securities	3 000	1 000	1 000	1 000	0	0	0	0
d. High-risk mortgage securities	3 000							
e. All other securities	59 208	7 000	12 150	4 475	6 720	10 564	8 837	9 462
2. Loan and Leases:								
a. Adjustable-rate mortgages	6 000	4 000	2 000	0	0			
b. Fixed-rate mtg, consumer loans	23 420	1 500	1 950	2 950	4 166	6 620	3 204	3 030
c. All other loans (C&I, etc.)	61 198	15 672	11 382	21 136	13 008	0	0	0
3. All Other Int-Bearing Assets (Bal. Due, Fed Funds)	1 450	1 450	0	0	0	0	0	0
4. Liabilities:								
a. Time deposits	71 070	21 433	31 862	8 621	9 090	64	0	0
b. All other (include repos and sub. debt)	14 258	1 650	6 433	6 175	0	0	0	0
c. MMDAs & DDAs - rising rates	59 287	0	36 287	23 000	0	0	0	0
d. NOWs & savings - rising rates	21 525	0	0	13 525	8 000	0	0	0
e. MMDAs & DDAs - declining rates	59 287	11 500	36 287	11 500	0	0	0	0
f. NOWs & savings - declining rates	21 525	4 000	3 000	13 525	1 000	0	0	0
5. Off-Balance-Sheet Positions:								
a. Swaps, futures, FRAs, etc	0	3 000	500	-3 050	-450	0	0	0
b. Options, caps, floors, etc	0	1 000	0	-1 000	0	0	0	0
c. Mortgages & other amortizing instruments	0	1 000	0	-1 000	0	0	0	0
6. Trading Account:								
a. Cash positions	12 975	2 550	4 900	5 525	0	0	0	0
b. Off-balance-sheet positions	0	0	0	0	0	0	0	0

Memoranda	Carrying Value	Rising Rates	Declining Rates
1. High-Risk Securities Evaluated	2 000	2 160	1 800
2. High-Risk Securities Not Evaluated	1 000		

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BILLING CODE 4810-33-C; 6210-10-C; 6714-01-C

The reporting format being proposed would require institutions to report assets, liabilities and off-balance-sheet items across seven maturity ranges (time bands) based on the time remaining to maturity or next repricing date. The proposed time bands are:

- Up to 3 Months,
- 3 to 12 Months,
- 1 to 3 Years,
- 3 to 5 Years,
- 5 to 10 Years,
- 10 to 20 Years,
- Greater than 20 years.

In the interest of minimizing reporting burdens, no coupon or yield data would be collected. Rather, the supervisory model would apply general assumptions regarding coupon rates and other characteristics of the underlying assets, liabilities, and off-balance-sheet instruments in developing the interest rate sensitivity weights. When used as an alternative, internal models would be expected to reflect actual coupons and yields of the specific holdings of the institution.

Reporting for assets. The price sensitivity of a financial instrument is determined by the instrument's cash flow characteristics. Accordingly, maturity and repricing data on most assets would be collected in one of four categories that reflect different types of cash flows:

- Adjustable-rate mortgages (ARMs) and mortgage securities;
- Fixed-rate mortgage securities, asset-backed securities, fixed-rate mortgages, consumer loans and other easily identifiable instruments that involve scheduled periodic amortization of principal;
- Zero or low coupon securities with either no periodic interest payments or interest coupons of 2 percent or lower; and
- All other instruments, which are assumed to involve scheduled periodic payments of interest and the payment of principal at maturity.

As proposed, those ARMs tied to a current market index (e.g., Constant Maturity Treasury rates) would be reported in the time band according to their next repricing date. ARMs tied to a lagging index (e.g., 11th District Cost of Funds) have greater price sensitivity owing to the lagging nature of their repricing behavior. These instruments would be reported in the 3 to 5 year time band to reflect this price sensitivity.

Only outstanding principal balances would be distributed across the time bands. This distribution would be based on each instrument's remaining contractual maturity or repricing date. A bank's own estimate of expected cash flows would not be reported. Instead, the Banking Agencies would incorporate the rate of anticipated prepayments on amortizing instruments, such as residential mortgages and mortgage pass-through securities, into the IRR risk weights using standardized assumptions and market expectations.

Mortgage derivative products would be treated differently. Under the FFIEC Policy Statement on Securities Activities, mortgage derivative products are defined as stripped mortgage-backed securities, tranches of collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs), CMO and REMIC residual securities and other instruments having the same characteristics as these securities. In general, banks would report "high-risk" mortgage derivative products differently from those that are "nonhigh-risk."[6] Banks would report only the total carrying value of "high-risk" mortgage derivative products that are held for sale. A memorandum item would be used to collect information on the interest rate sensitivity of these instruments. All other mortgage derivative products would be classified as "nonhigh-risk" and would be distributed across the time bands of the proposed reporting form, in the "All Other Securities" category, according to their current average life as calculated by bank management.[7]

Time deposits held at other institutions, Federal funds sold, Securities Purchased Under Agreement to Resell (i.e., reverse repurchase agreements) and other interest-bearing assets would also be reported in the proposed reporting form as a single line item.

Reporting for time deposits and purchased funds. All time deposits and other interest-bearing liabilities with well-defined maturities—such as Federal funds purchased, securities sold under agreement to repurchase and other borrowed funds—would be distributed across the time bands of Schedule 1 in the "All Other" category.

Reporting for non-maturity deposits. The Banking Agencies are proposing uniform rules for distributing deposits without well-defined maturities or repricing dates (demand deposits, MMDAs, NOWs and savings deposits) across the time bands. These proposed rules would specify the longest time band that could be used for each type of deposit and the maximum percentage amount that could be slotted into that time band. Institutions would distribute such deposits across the time bands according to their individual assumptions and experience, subject to the following constraints:

- Demand deposits and MMDAs may be distributed across any of the first three time bands, with a maximum of 40 percent of these balances in the 1 to 3 year time band, and
- Savings and NOW account balances may be distributed across any of the first four time bands, with a maximum of 40 percent of the total of these balances in the 3 to 5 year time band.

As was noted in section 2 above, the Banking Agencies are proposing to measure a bank's IRR exposure under both a rising and falling rate scenario. These deposit slotting rules would allow an institution some flexibility to slot deposits with undefined maturities differently for rising and falling rate scenarios.

Reporting for off-balance-sheet positions. Institutions would be required to distribute off-balance-sheet positions among the time bands of Schedule 1. The Banking Agencies expect banks that engage in a significant amount of off-balance-sheet activities to have internal systems, including options pricing models as appropriate, that can properly value the types of transactions they use in their risk management activities. Accordingly, the Banking Agencies propose to allow banks to estimate the interest sensitivity of off-balance-sheet instruments using internal models. If a separate Call Report schedule for reporting internal model results is not adopted or required (see discussion in section 4 below), the

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[6] Effective February 10, 1992 the Banking Agencies and the Office of Thrift Supervision adopted revised supervisory policies on securities activities that were developed under the auspices of the FFIEC. The revised policies established a framework for identifying "high-risk mortgage securities" which must be reported as securities held for sale or for trading. A "high-risk mortgage security" is defined as any mortgage derivative product that, at the time of purchase, or at a subsequent date, meets any of the following tests.

(1) *Average Life Test:* The mortgage derivative product has an expected weighted average life greater than 10.0 years.

(2) *Average Life Sensitivity Test.* The expected weighted average life of the product:

(a) Extends by more than 4.0 years, assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or

(b) Shortens by more than 6.0 years, assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points.

(3) *Price Sensitivity Test:* The estimated change in the price of the mortgage derivative product is more than 17 percent, due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

In general, a mortgage derivative product that does not meet any of the three tests is considered to be a "nonhigh-risk mortgage security."

[7] All underlying assumptions used in calculating the average life of these instruments must be reasonable and available for examiner review. For example, if an institution's prepayment assumptions differ significantly from the median prepayment assumptions of several major dealers as selected by examiners, the examiners may use these median prepayment assumptions in determining the appropriate average life of the instrument.

results of these internal models could be incorporated as a memorandum item on Schedule 1. These models would be reviewed by examiners as part of the examination process and exposures based on internal models would be used for supervisory purposes when available and deemed acceptable to the examiner. Comment is requested on the reporting burden associated with distributing off-balance-sheet positions among time bands, when results of internal models are also provided.

With regard to reporting off-balance-sheet positions in the proposed maturity reporting schedule, those with option characteristics (e.g., swaptions, caps, floors and options) would be reported separately from those representing firm commitments (e.g., swaps, futures, and forward-rate agreements). Mortgage-related fixed-rate commitments and other off-balance-sheet derivative instruments whose value depends on the value of an underlying asset or index with amortizing characteristics also would be reported separately.

Futures, forwards, options and firm commitments to buy or sell loans and securities would be reported using two entries, with one entry reported in the time band corresponding to the settlement date of the contract plus the maturity of the underlying instrument, and an offsetting entry of opposite sign slotted in the time band corresponding to the settlement date of the contract. Interest rate swaps, and floors would also be reported using two separate entries, with one entry reported in the time band corresponding to the maturity of the instrument and an offsetting entry in the time band corresponding to the next repricing of the floating side of the instrument.

The dollar entries reported for firm commitments would equal the national principal values of the instruments. The dollar entries reported for instruments with option characteristics would be derived using one of two alternative methods. The first method, reflected in the proposed rule, would require the reporting of positions using delta-equivalent values.[8] The second reporting alternative would require the reporting of position only if, on the report date, the index rate or the rate to be received is within 100 basis points of the strike rate (price). If the position is reported, the notional value would be used. Comment is requested on this reporting methodology as well as the use of delta-equivalent values for off-balance-sheet positions with option characteristics.

Reporting for trading account positions. Institutions would be required to distribute trading account securities, including off-balance-sheet positions associated with the trading account, by maturity in the rows and columns specified in Schedule 1. As with off-balance-sheet instruments, the Banking Agencies propose to allow banks to use and report the results of internal models for estimating the interest rate sensitivity of trading portfolios. This information would be collected either through the proposed separate Call Report schedule or through a memorandum item on Schedule 1. Comment is requested on the reporting burden associated with distributing trading account positions among time bands when results of internal models are also provided.

The Banking Agencies would expect banks to have prudential internal risk limits and effective risk measurement systems for their trading activities. For banks with significant trading operations, the adequacy and results of those systems will be closely reviewed by examiners and would be incorporated into their assessment of the bank's overall risk position.

The Basle Committee on Bank Supervision is also considering methods of evaluating IRR in trading accounts and determining appropriate capital requirements. This work, which relates to activities of internationally active banks could affect the treatment for trading activities for U.S. banks if it leads to an international agreement.

Memoranda items for "High-Risk Mortgage Securities". Under revised supervisory policies on securities activities that became effective on February 10, 1992, institutions must evaluate at least quarterly whether their holdings of high-risk mortgage securities reduce interest rate risk. The reporting form takes advantage of the availability of this information by allowing an institution to report, in a memorandum item, the current carrying value of high-risk mortgage derivative products that are held for sale along with the estimated changes in market value for the specified interest rate scenario. Such data would be used directly in calculating an institution's IRR exposure.

Mortgage derivative securities that were purchased prior to February 10, 1992 and meet the high-risk tests are subject to previously existing supervisory policies and are, therefore, not subject to the quarterly IRR risk evaluation criteria. For such holdings, institutions would have the option to: (1) Report the interest rate sensitivity of these holdings in a similar fashion as post-February 10, 1992, purchases; or (2) report only the current carrying value of those securities. Balances reported under the second option would be assumed to have significant price volatility, similar to long dated, zero or low coupon instruments. However, unlike zero coupon and most other debt instruments, the prices of certain high-risk mortgage securities do not always move in the opposite direction of a change in market interest rates (i.e., decline in price when interest rates rise or increase in price when interest rates decline). Because the directional change in the price of these securities is difficult to ascertain unless the specific cash flows of each security are reported, the Banking Agencies propose to assume that the balances reported under the second option will depreciate in value under both a rising and a falling interest rate scenario. To reflect this assumption, the balances would be assigned the risk weight that is applied to long-term, zero or low coupon securities under the rising interest rate scenario. The Banking Agencies request comment on the reasonableness of this approach. For illustrative purposes, the example bank in Schedule 1 that has $3 million in high-risk mortgage derivative securities has elected to report only the current carrying value for $1 million of securities that would otherwise meet the current high-risk tests but were purchased prior to February 10, 1992.

Reporting for multi-bank holding companies. As noted in section 2 above, the Banking Agencies propose that each subsidiary depository institution report its assets, liabilities and off-balance-sheet positions separately.

Reporting of foreign currency positions. The Banking Agencies propose that positions not denominated in U.S. dollars be converted into U.S. dollar equivalents using prevailing exchange rates and reported along with all other on- and off-balance-sheet positions on the same reporting form. Although this treatment ignores imperfect correlation among exchange rates, it avoids the complexity entailed by separate reporting for each currency, and the need to derive and distribute correlation statistics to reporting banks.

However, a basic supervisory principle in evaluating bank management is that an institution's policies, procedures and general capabilities should be consistent with the nature of the bank's business.

[8] The delta value of an option represents the expected change in the option's price as a proportion of a small change in the price of the underlying instrument. An option whose price changes by $1 for every $2 change in the price of the underlying instrument has a delta of 0.5. The delta-equivalent value of an option position is equal to the option's current delta multiplied by its principal or notional value.

Accordingly, examiners would expect institutions that have significant positions denominated in foreign currencies or that conduct significant foreign exchange transactions to have the capability to measure and assess the related risks. Examiners would consider both the adequacy and result of a bank's internal risk measure, along with other available information, in the overall evaluation of the bank's model. When appropriate, internal models should take adequate account of changes in foreign exchange rates.

c. Derivation of Risk Weights

In the proposed measurement system, reported positions would be multiplied by an IRR weight. Each risk weight is constructed to approximate the percentage change in value of the position resulting from a specified change in interest rates. The risk weights are based on the percentage change in present value (i.e., price) of hypothetical instruments, as calculated using static cash flow analysis. Such weights directly incorporate convexity for the rate scenario.* These weights also facilitate the measurement of options in certain types of assets, such as the prepayment option in mortgage loans.

The risk weights used would depend on the interest rate scenario for which the change is measured. As discussed above, comments are being sought on alternative methodologies for determining supervisory interest rate scenarios and whether these scenarios should include both rising and falling rates.

If both a rising-rate and declining-rate scenario are used, as reflected in the proposed rule, separate risk weights would be calculated to account for the asymmetrical price behavior of various bank assets, liabilities and off-balance-sheet instruments. An alternative and simpler approach would use the same risk weights for both rising and declining rate scenarios. The Banking Agencies seek comment on whether the distortions introduced by such a simpler approach are meaningful within the overall context of the supervisory model.

In general, the set of risk weights used for each scenario would consist of:

- Seven "Amortizing" risk weights (i.e., one for each time band) to be used for mortgages, pass-through mortgage securities, asset-backed securities, consumer loans and amortizing off-balance-sheet instruments;
- Seven "Zero or Low Coupon" risk weights;
- Seven "All Other" risk weights; and,
- Seven liability risk weights.

Bank supervisors would construct risk weights using hypothetical market instruments that are representative of the category being measured. The instruments chosen would vary depending on the category of instrument and the time band. A 30-year mortgage pass-through security with the composite characteristics (e.g., gross and net coupons, original and remaining maturity) of a current coupon, 30-year conventional mortgage pass-through security at par value would be used to estimate the price change for fixed-rate mortgages and mortgage securities reported in the greater than 20 year time band. Similarly, a current coupon 15-year conventional mortgage pass-through security would be used to estimate the risk weight for mortgages and mortgage securities reported in the 10 to 20 year time band. For the 5 to 10 year time band, a current coupon 15-year mortgage pass-through security with a remaining maturity equal to 7.5 years would be used.

For amortizing instruments with maturities less than 5 years, a hypothetical monthly amortizing instrument would be used that had these characteristics: (1) An original maturity equal to the end point of the specific time band; (2) a remaining maturity equal to the midpoint of the time band; and (3) a coupon and yield equal to the effective yield on the industry's earning assets.[10]

An important consideration in estimating the price sensitivity of amortizing instruments is the change in prepayments as interest rates change. In calculating the risk weights from the 15- and 30-year fixed-rate mortgages, expected prepayments would be applied in each rate scenario in accordance with a consensus of market prepayment estimates. Amortizing instruments with maturities of less than 5 years would be assumed to represent consumer installment loans with prepayment rates of approximately 1.0 percent (1 percent ABS) of outstanding principal per month.[11]

The risk weights for the "All Other" category would be calculated assuming semi-annual interest payments, a maturity equal to the mid-point of each time band, and an assumed coupon and yield equal to the effective yield on the industry's earning assets in 1992. Similarly, the "Zero or Low Coupon" risk weights are calculated using the percentage change in the price of a zero coupon instrument with an assumed maturity equal to the mid-point of each time band and the same industry average effective yield assumed above.

Only one set of risk weights would be used for liabilities: The percentage price change for a semi-annual interest-bearing instrument with an assumed coupon and yield equal to the effective yield on interest bearing liabilities.[12]

For illustrative purposes, Table 1 shows the risk weights developed for a 200 basis point parallel shift in interest rates, as well as the parameters used to derive them. The specific risk weights used to evaluate exposures would be derived in a similar fashion when the Banking Agencies adopt a specific supervisory scenario. In the illustration risk weights for both a rising and declining interest rate scenario have been constructed. Under the proposed measurement system, the Banking Agencies expect that the risk weights would be reasonably stable over time so as to facilitate a bank's risk management and capital planning. However, they may need to be adjusted periodically as market conditions, or as part of the biennial review of risk-based capital required biennial review of risk-based capital required by section 305(a) of FDICIA.

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*Convexity refers to the non-linear price/yield relationship of fixed-rate financial instruments. Instruments without option features, such as Treasury notes, have positive convexity, meaning that as the price of the instrument falls, its yield will increase by a proportionately greater amount. Other instruments, such as certain mortgage-backed securities, have negative convexity.

[10] For 1992 the average effective yield on earning assets at all commercial banks was approximately 8.5 percent.

[11] ABS stands for Asset-Backed Security. 1 percent ABS assumes 1 percent prepayment of outstanding principal balance per month throughout the life of the loan.

[12] For the liability weights a 4.75 percent coupon is assumed, which approximates the effective yield on interest bearing liabilities at all commercial banks during 1992.

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Table 1

Derivation of Risk Weights

Derivation of Risk Weights

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Table 1

Amortizing Instruments

Time band	Maturity	Coupon	Initial Price (% of Par)	Initial PSA/ ABS	Scenario 1 — 200 Basis Point Rise: Expected PSA/ ABS	Price (% of Par)	% Change in Present Value (Risk Weights)	Scenario 2 — 200 Basis Point Decline: Expected PSA/ ABS	Price (% of Par)	% Change in Present Value (Risk Weights)
0-3 Months	1.5 Mo.	8.5%	100.00%	1.0% ABS	1.0% ABS	99.90%	-0.10%	1.0% ABS	100.10%	0.10%
3-12 Months	7.5 Mo.	8.5%	100.00%	1.0% ABS	1.0% ABS	99.50%	-0.50%	1.0% ABS	100.60%	0.60%
1-3 Years	2 Years	8.5%	100.00%	1.0% ABS	1.0% ABS	98.40%	-1.60%	1.0% ABS	101.70%	1.70%
3-5 Years	4 Years	8.5%	100.00%	1.0% ABS	1.0% ABS	97.00%	-3.00%	1.0% ABS	103.10%	3.10%
5-10 Years	7.5 Years	7.0% *	100.00%	166% PSA ***	137% PSA ***	94.70%	-5.30%	501% PSA ***	103.40%	3.40%
10-20 Years	15 Years	7.0% *	100.00%	166% PSA ***	137% PSA ***	91.20%	-8.80%	501% PSA ***	105.90%	5.90%
Over 20 Years	25 Years	7.5% **	100.00%	242% PSA ***	146% PSA ***	90.80%	-9.20%	590% PSA ***	103.60%	3.60%

All Other Instruments

0-3 Months	1.5 Mo.	8.5%	100.00% ****			99.75%	-0.25%		100.25%	0.25%
3-12 Months	7.5 Mo.	8.5%	100.00% ****			98.80%	-1.20%		101.20%	1.20%
1-3 Years	2 Years	8.5%	100.00%			96.50%	-3.50%		103.70%	3.70%
3-5 Years	4 Years	8.5%	100.00%			93.60%	-6.40%		107.00%	7.00%
5-10 Years	7.5 Years	8.5%	100.00%			89.80%	-10.20%		111.70%	11.70%
10-20 Years	15 Years	8.5%	100.00%			85.10%	-14.90%		119.00%	19.00%
Over 20 Years	25 Years	8.5%	100.00%			82.40%	-17.60%		124.60%	24.60%

Liabilities

0-3 Months	1.5 Mo.	4.75%	100.00% ****			99.75%	0.25%		100.25%	-0.25%
3-12 Months	7.5 Mo.	4.75%	100.00% ****			98.80%	1.20%		101.20%	-1.20%
1-3 Years	2 Years	4.75%	100.00%			96.30%	3.70%		103.90%	-3.90%
3-5 Years	4 Years	4.75%	100.00%			93.10%	6.90%		107.50%	-7.50%
5-10 Years	7.5 Years	4.75%	100.00%			88.40%	11.60%		113.50%	-13.50%
10-20 Years	15 Years	4.75%	100.00%			81.30%	18.70%		124.50%	-24.50%
Over 20 Years	25 Years	4.75%	100.00%			76.00%	24.00%		136.00%	-36.00%

Zero or Low Coupon Securities

0-3 Months	1.5 Mo.	8.5%	98.97%			98.72%	-0.25%		99.22%	0.25%
3-12 Months	7.5 Mo.	8.5%	94.95%			93.81%	-1.20%		96.09%	1.20%
1-3 Years	2 Years	8.5%	84.66%			81.53%	-3.70%		87.96%	3.90%
3-5 Years	4 Years	8.5%	71.68%			66.38%	-7.40%		77.41%	8.00%
5-10 Years	7.5 Years	8.5%	53.56%			46.44%	-13.30%		61.92%	15.60%
10-20 Years	15 Years	8.5%	28.69%			21.55%	-24.90%		38.30%	33.50%
Over 20 Years	25 Years	8.5%	11.48%			7.74%	-38.00%		20.21%	61.90%

* Current coupon of 15-year conventional mortgage securities as of 12/31/92
** Current coupon of 30-year conventional mortgage securities as of 12/31/92
*** Consensus of dealer prepayment estimates for 15- & 30-year conventional mortgage securities for selected scenarios as of 12/31/92
**** Actual initial price is slightly less than par

Revision Date: 12-Jul-93

BILLING CODE 4810-33-C; 6210-01-C; 6714-01-C

d. Calculation of the Interest Rate Risk Measure

Tables 2 and 3 are IRR worksheets that illustrate the method by which an institution's IRR exposure would be calculated under the proposed supervisory methodology using a 200 basis point parallel shift in interest rates. Data collected on the reporting forms and the existing Call Report Schedules would be transcribed to column A. For illustrative purposes, non-interest-sensitive balances are included in "Other Assets" and "Other Liabilities" to allow the worksheet to represent an institution's entire balance sheet.

Under the proposed measure system, the risk weights (shown in column B of Tables 2 and 3) represent the estimated percentage change in the value of the instrument under the designated rate shock. Therefore, multiplying the reported positions by the risk weights produces an estimate of the dollar change in the present value of that position for the specified change in rates (column C of the Tables). In Table 2, for example, the $5.5 million of ARMs, fixed-rate mortgages, asset-backed securities and consumer loans repricing within 3 months and reported on line I.1.(a) are multiplied or "weighted" by 0.0010 (or .10 percent as shown in the second column) to produce an estimated change of $6,000 in present value of that position. This risk weight carries a negative sign, reflecting that the present value of these assets would decline if market rates were to rise. Conversely, Table 3 illustrates the changes in value for a decline in rates.

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Interest Rate Risk Worksheet (200 Basis Point Rising Rate Scenario)
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Table 2

REPORTING INSTITUTION: Sample Bank

Date: 12/31/92

$ Thousands

	(A) TOTAL	(B) Risk Weight	(C) Risk Weighted Position (A) x (B)	(D) Total Risk Weighted Position
I. INTEREST-SENSITIVE ASSETS				
1. ARMs, FRMs, asset-backed securities, consumer loans				
(a) Up to 3 months	$5,500	-0.10%	($6)	
(b) 3 to 12 months	$4,950	-0.50%	($25)	
(c) 1 to 3 years	$4,050	-1.60%	($65)	
(d) 3 to 5 years	$4,166	-3.00%	($125)	
(e) 5 to 10 years	$6,620	-5.30%	($351)	
(f) 10 to 20 years	$6,454	-8.80%	($568)	
(g) Greater than 20 years	$10,430	-9.20%	($960)	
2. Zero or low coupon securities				
(a) Up to 3 months	$1,000	-0.25%	($3)	
(b) 3 to 12 months	$1,000	-1.20%	($12)	
(c) 1 to 3 years	$1,000	-3.70%	($37)	
(d) 3 to 5 years	$0	-7.40%	$0	
(e) 5 to 10 years	$0	-13.30%	$0	
(f) 10 to 20 years	$0	-24.90%	$0	
(g) Greater than 20 years	$0	-38.00%	$0	
3. "All other" securities, loans, & trading account				
(a) Up to 3 months	$26,672	-0.25%	($67)	
(b) 3 to 12 months	$28,432	-1.20%	($341)	
(c) 1 to 3 years	$31,136	-3.50%	($1,090)	
(d) 3 to 5 years	$19,728	-6.40%	($1,263)	
(e) 5 to 10 years	$10,564	-10.20%	($1,078)	
(f) 10 to 20 years	$8,837	-14.90%	($1,317)	
(g) Greater than 20 years	$9,462	-17.60%	($1,665)	
4. High-risk mortgage securities				
(a) Self-reporting	$2,000		$160	
(b) Risk weighting	$1,000	-38.00%	($380)	
5. Total Interest-Sensitive Assets	$183,000		($9,190)	($9,190)
II. ALL OTHER ASSETS	$3,000			
III. TOTAL ASSETS	$186,000			
IV. INTEREST-SENSITIVE LIABILITIES				
1. Non-maturity deposits, time deposits and "all other"				
(a) Up to 3 months	$23,083	0.25%	$58	
(b) 3 to 12 months	$74,582	1.20%	$895	
(c) 1 to 3 years	$51,321	3.70%	$1,899	
(d) 3 to 5 years	$17,090	6.90%	$1,179	
(e) 5 to 10 years	$64	11.60%	$7	
(f) 10 to 20 years	$0	18.70%	$0	
(g) Greater than 20 years	$0	24.00%	$0	
2. Total Interest-Sensitive Liabilities	$166,140		$4,038	
V. NONINTEREST-SENSITIVE LIABILITIES	$860			
VI. TOTAL LIABILITIES	$167,000		$4,038	$4,038
VII. EQUITY CAPITAL	$19,001			
VIII. OFF-BALANCE-SHEET POSITIONS				
1. Interest rate contracts				
(a) Up to 3 months	$4,000	-0.25%	($10)	
(b) 3 to 12 months	$500	-1.20%	($6)	
(c) 1 to 3 years	($4,050)	-3.50%	$142	
(d) 3 to 5 years	($450)	-6.40%	$29	
(e) 5 to 10 years	$0	-10.20%	$0	
(f) 10 to 20 years	$0	-14.90%	$0	
(g) Greater than 20 years	$0	-17.60%	$0	
2. Mortgage and other amortizing contracts				
(a) Up to 3 months	$1,000	-0.10%	($1)	
(b) 3 to 12 months	$0	-0.50%	$0	
(c) 1 to 3 years	($1,000)	-1.60%	$16	
(d) 3 to 5 years	$0	-3.00%	$0	
(e) 5 to 10 years	$0	-5.30%	$0	
(f) 10 to 20 years	$0	-8.80%	$0	
(g) Greater than 20 years	$0	-9.20%	$0	
3. Total Off-Balance-Sheet Positions	$0		$170	$170
Net Risk Weighted Position				($4,981.00)
Net Position/ Assets				-2.68%

Interest Rate Risk Worksheet (200 Basis Point Declining Rate Scenario)
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Table 3

REPORTING INSTITUTION: Sample Bank

Date: 12/31/92

$ Thousands

	(A) TOTAL	(B) Risk Weights	(C) Risk Weighted Position (A) x (B)	(D) Total Risk Weighted Position
I. INTEREST-SENSITIVE ASSETS				
1. ARMs, FRMs, asset-backed securities, consumer loans				
(a) Up to 3 months	$5,500	0.10%	$6	
(b) 3 to 12 months	$4,950	0.60%	$30	
(c) 1 to 3 years	$4,050	1.70%	$69	
(d) 3 to 5 years	$4,166	3.10%	$129	
(e) 5 to 10 years	$6,620	3.40%	$225	
(f) 10 to 20 years	$6,454	5.90%	$381	
(g) Greater than 20 years	$10,430	3.60%	$375	
2. Zero or low coupon securities				
(a) Up to 3 months	$1,000	0.25%	$3	
(b) 3 to 12 months	$1,000	1.20%	$12	
(c) 1 to 3 years	$1,000	3.90%	$39	
(d) 3 to 5 years	$0	8.00%	$0	
(e) 5 to 10 years	$0	15.60%	$0	
(f) 10 to 20 years	$0	33.50%	$0	
(g) Greater than 20 years	$0	61.90%	$0	
3. "All other" securities, loans, & trading account				
(a) Up to 3 months	$26,672	0.25%	$67	
(b) 3 to 12 months	$28,432	1.20%	$341	
(c) 1 to 3 years	$31,136	3.70%	$1,152	
(d) 3 to 5 years	$19,728	7.00%	$1,381	
(e) 5 to 10 years	$10,564	11.70%	$1,236	
(f) 10 to 20 years	$8,837	19.00%	$1,679	
(g) Greater than 20 years	$9,462	24.60%	$2,328	
4. High-risk mortgage securities				
(a) Self-reporting	$2,000		($200)	
(b) Risk weighting	$1,000	-38.00%	($380)	
5. Total Interest-Sensitive Assets	$183,000		$8,871	$8,871
II. ALL OTHER ASSETS	$3,000			
III. TOTAL ASSETS	$186,000			
IV. INTEREST-SENSITIVE LIABILITIES				
1. Non-maturity deposits, time deposits and "all other"				
(a) Up to 3 months	$38,583	-0.25%	($96)	
(b) 3 to 12 months	$77,582	-1.20%	($931)	
(c) 1 to 3 years	$39,821	-3.90%	($1,553)	
(d) 3 to 5 years	$10,090	-7.50%	($757)	
(e) 5 to 10 years	$64	-13.50%	($9)	
(f) 10 to 20 years	$0	-24.50%	$0	
(g) Greater than 20 years	$0	-36.00%	$0	
2. Total Interest-Sensitive Liabilities	$166,140		($3,346)	
V. NONINTEREST-SENSITIVE LIABILITIES	$860			
VI. TOTAL LIABILITIES	$167,000		($3,346)	($3,346)
VII. EQUITY CAPITAL	$19,001			
VIII. OFF-BALANCE-SHEET POSITIONS				
1. Interest rate contracts				
(a) Up to 3 months	$4,000	0.25%	$10	
(b) 3 to 12 months	$500	1.20%	$6	
(c) 1 to 3 years	($4,050)	3.70%	($150)	
(d) 3 to 5 years	($450)	7.00%	($32)	
(e) 5 to 10 years	$0	11.70%	$0	
(f) 10 to 20 years	$0	19.00%	$0	
(g) Greater than 20 years	$0	24.60%	$0	
2. Mortgage and other amortizing contracts				
(a) Up to 3 months	$1,000	0.10%	$1	
(b) 3 to 12 months	$0	0.60%	$0	
(c) 1 to 3 years	($1,000)	1.70%	($17)	
(d) 3 to 5 years	$0	3.10%	$0	
(e) 5 to 10 years	$0	3.40%	$0	
(f) 10 to 20 years	$0	5.90%	$0	
(g) Greater than 20 years	$0	3.60%	$0	
3. Total Off-Balance-Sheet Positions	$0		($181)	($181)
Net Risk Weighted Position				$5,344.31
Net Position/ Assets				2.87%

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The sum of the estimated changes in present value for each category of instrument provides an estimate of the institution's overall interest rate risk, that is, the change in the net economic value of the institution that would result from the specified shift in market interest rates. As shown in Table 2, the specified 200 basis point increase in rates is estimated to reduce the present value of the bank's assets by roughly $9.19 million, raise the present value of its liabilities by an estimate $4.04 million and raise the value of its off-balance-sheet items by $170,000. The net result, or the "Net Risk-Weighted Position" (bottom of the worksheet) is a decline of roughly $4.98 million in the net economic value of this institution. This net risk-weighted position would be the primary measure of the level of an institution's interest rate risk.

Table 3 shows the effect of a decline in rates. This decline is estimated to increase the present value of the example bank's assets by $8.87 million, lower the present value of its liabilities by $3.35 million, and reduce the value of its off-balance-sheet items by $181,000. The Net Risk-Weighted Position represents an increase of roughly $5.34 million in the net economic value of this institution. The differences in the magnitude of the change in value from that derived for the rising rate scenario is attributable to asymmetries in the price sensitivity of financial instruments as interest rates change (i.e., convexity) and different slotting of non-maturity deposits in the rising and falling rate scenarios.

The rate scenario that produces the larger loss or negative net position would be used in the assessment of capital for IRR. In the case of the example bank illustrated in Tables 2 and 3, the exposure to rising rates would be used to evaluate capital adequacy for IRR.

4. Reporting of Internal Model Results

The Banking Agencies request comment on a second Call Report schedule under consideration that could be used by banks that elect or that may be required to have their exposures evaluated on the basis of the results of their own internal models. This supplemental schedule would be recommended to the Federal Financial Institution Examination Council if the Banking Agencies relied on the information to provide an explicit capital charge for IRR.

The schedule (Schedule 2) consist of several asset, liability, and off-balance-sheet categories, with two scenarios for each category:

- Scenario 1 represents a specified increase in interest rates over the rates prevailing as of the report date. In each category under Scenario 1, the bank would report its estimate of the change in present value of the instruments if rates were to rise as specified in Scenario 1.

Proposed Internal Interest Rate Scenario Analysis Schedule: DRAFT

Schedule 2

To be filed by institutions that use an internal interest rate risk measurement system for compliance with guidelines.

Dollar Amounts in Thousands

	Rising Rates				Declining Rates			
		Bil	Mil	Thou		Bil	Mil	Thou
Interest Rate Risk Sensitivity Analysis - Estimated Change in Economic Value								
1. Securities								
a. Adjustable-rate mortgage securities	RCFD XXXX				RCFD XXXX			
b. Fixed-rate mtgs, asset-backed securities	RCFD XXXX				RCFD XXXX			
c. Zero or low coupon securities	RCFD XXXX				RCFD XXXX			
d. High-risk mortgage securities	RCFD XXXX				RCFD XXXX			
e. All other securities	RCFD XXXX				RCFD XXXX			
2. Loan and Leases								
a. Adjustable-rate mortgages	RCFD XXXX				RCFD XXXX			
b. Fixed-rate mtg, consumer loans	RCFD XXXX				RCFD XXXX			
c. All other loans (C&I, etc.)	RCFD XXXX				RCFD XXXX			
3. All Other Int-Bearing Assets (Bal. Due, Fed Funds)	RCFD XXXX				RCFD XXXX			
4. Total Liabilities:								
a. Non-maturity deposits (MMDAs, DDAs, NOWs, savings)	RCFD XXXX				RCFD XXXX			
b. Time deposits	RCFD XXXX				RCFD XXXX			
c. All other (include repos and sub. debt)	RCFD XXXX				RCFD XXXX			
5. Off-Balance-Sheet Contracts								
a. Swaps, futures, FRAs, etc.	RCFD XXXX				RCFD XXXX			
b. Options, caps, floors, etc.	RCFD XXXX				RCFD XXXX			
c. Mortgages & other amortizing instruments	RCFD XXXX				RCFD XXXX			
6. Trading Account								
a. Cash positions	RCFD XXXX				RCFD XXXX			
b. Off-balance-sheet positions	RCFD XXXX				RCFD XXXX			
7. Total Assets - Total Liabilities +/- Off-Balance-Sheet	RCFD XXXX				RCFD XXXX			

• Likewise, Scenario 2 represents a specified decrease in interest rates below the rates prevailing as of the report date. In each category under Scenario 2, the bank would report its estimates of the dollar change in present value of the respective instruments should rates fall as specified in Scenario 2.

The rate scenarios would be the same as those used for the supervisory model. The rate scenario that produces the higher loss or negative net position would be used in the assessment of capital for IRR. When used, internal models would be expected to reflect actual coupons and yields for the institution's positions, rather than those incorporated in the construction of the risk weights used in the supervisory model.

As currently drafted, this schedule would be a supplemental one and non-exempted banks would still be required to complete, in its entirety, the proposed schedule illustrated by Schedule 1, found in section 2 above. However, the Banking Agencies recognize that spreading trading account and off-balance-sheet positions across time bands may be especially burdensome for banks with larger portfolios and that, in many instances, the results of internal models may provide a more accurate assessment of the risk in these portfolios. Hence, the Banking Agencies request comment on the regulatory burden associated with reporting such positions by time bands.

C. Assessment of Capital Adequacy for IRR

Two alternative methods are proposed for assessing a bank's capital adequacy for IRR. Under one approach the Banking Agencies would establish minimum capital standards for IRR, relying on results of either the supervisory measure or the bank's internal model. Banks would be required to have capital sufficient to cover the amount of measured exposure in excess of the threshold level (e.g., the amount of their "excess" exposure). The second approach would not establish an explicit minimum capital requirement for IRR. Rather, examiners would consider results of quantitative measures of IRR exposure along with other factors in evaluating a bank's capital adequacy for IRR. Both of these alternatives are discussed in greater detail below.

Current supervisory policies require examiners to review IRR exposure and bank IRR management systems during the examination process. This review would continue under either approach to capital, but more specific procedures or examiner tools would exist. In addition to reviewing the risk measures described in this proposal, examiners would continue to consider the following managerial factors when evaluating safety and soundness:

• The adequacy of and compliance with the bank's written policies, procedures and internal controls;

• The existence of and adherence to specific risk limits relating to both loss of income and capital;

• Management's knowledge and ability to identify and manage sources of interest rate risk effectively; and

• The adequacy of internal risk measurement and monitoring systems.

1. Minimum Capital Standard Approach

Under this approach, institutions would be required to hold capital for IRR sufficient to cover their "excess exposure." Excess exposure is defined as the aggregate dollar decline in the net economic value of the institution, as measured by either the supervisory or the internal bank model, that exceeds the proposed supervisory threshold of 1 percent of assets.[13]

The dollar amount of capital required for IRR would be incorporated into the risk-based capital requirements by increasing the bank's risk-weighted assets. Because the amount of risk-weighted assets forms the denominator of the risk-based capital ratios, any increase to that denominator will lower a bank's measured ratio. Specifically, the dollar amount of the capital requirement for IRR would be multiplied by 12.5, which is the reciprocal of the 8 percent minimum risk-based capital ratio. This amount would be added to the total of the bank's risk-weighted assets for purposes of calculating the risk-based capital ratios. This approach does not reduce the amount of Tier 1 or total capital used to derive a bank's risk-based capital ratio, and therefore, avoids reducing the bank's leverage ratio or producing other unintended results.[14]

The following example illustrates how capital for IRR would be calculated and incorporated into a bank's risk-based capital ratio. In this example, a bank has $125 million in total assets, $100 million in risk-weighted assets, and $10 million in total capital. The bank's own model is used for measuring its IRR exposure and the model indicates, using the specified rate scenarios, a $2.25 million decline in net economic value for the rising rate scenario and a $3.0 million increase for the declining rate scenario. For this bank, the rising rate scenario is used to evaluate capital because it is this scenario which produces a decline in net economic value. The bank's excess exposure, and hence the amount of capital required for IRR, is $1 million ($2.25 million measured exposure less the threshold level of 1 percent of total assets or $1.25 million). This $1 million capital charge is then multiplied by 12.5 with the result ($12.5 million) added to the bank's risk-weighted assets. The new level of risk-weighted assets that would be used to calculate the bank's risk-based capital ratio would be $112.5 million. The resulting risk-based capital ratio would be 8.89 percent.

This approach would explicitly incorporate IRR into the existing risk-based capital framework. Banks would be required to have capital equal to at least 8 percent of the new risk-weighted assets. However, because most banks currently have risk-based capital ratios above the 8 percent minimum, this additional component of risk-weighted assets would not require most banks to raise additional capital. The additional component would, however, reduce a bank's calculated risk-based capital ratios and, in certain cases, could affect the bank's treatment under the provisions of prompt corrective action, as well as its deposit insurance premiums.

As with the approach taken in administering the current international risk-based capital standard, any amount of capital required for IRR by this risk measurement process would represent a minimum capital requirement. The exposure would be calculated each quarter using Call Report data, and banks would be expected to meet any capital requirement on a continuous basis. Banks using examiner-approved

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[13] That is, when the measured exposure indicates a decline in net economic value that is greater than 1% of total assets, then:

Required Minimum Capital = Measured Exposure − (.01 Total Assets)

Otherwise, required minimum capital for IRR would be zero.

[14] An alternative technique being considered by the Banking Agencies would directly deduct the amount of excess measured exposure from Tier 1 or total capital. For an institution with an 8 percent risk-based capital ratio, the amount of capital required for IRR would be the same using either technique. However, this alternative capital calculation might have certain undesirable results. A deduction from Tier 1 would unintentionally complicate the calculation of an institution's leverage ratio and might require a different definition of Tier 1 capital for use in the leverage calculation. A deduction from total capital could, under certain conditions, leave an institution with Tier 1 risk-based capital ratio that is greater than its total capital ratio, even though total capital was intended to be the broader definition of capital. Moreover, in isolated cases, a deduction from capital for IRR could exceed the institution's regulatory capital, creating a negative capital, position. In Section D, the Banking Agencies seek comments on whether the proposed method or the alternative technique is more appropriate to use in calculating capital under the Minimum Capital Standard approach.

internal models to evaluate IRR for supervisory purposes would report the results of those models.

The adequacy of a bank's IRR management process and the precise characteristics of the bank's assets, liabilities and other positions would also be evaluated during on-site examinations. The on-site examination process would play a critical role in this approach by allowing examiners, during the examination, to consider specific factors relevant to that institution. A bank could be required to have higher amounts of capital for IRR is examiners found material deficiencies in its risk management policies, procedures, or controls or if its specific circumstances were substantially different from those assumed by the supervisory measure.[15]

2. Risk Assessment Approach

Under this approach, the level of measured interest rate exposure would be just one of several factors that examiners would consider when determining a bank's capital needs for interest rate risk. Other factors that would be considered include the quality of a bank's IRR management, internal controls, and the overall financial condition of the bank, including its earnings capacity, capital base, and the level of other risks which may impair future earnings or capital.

Examiners would evaluate a bank's capital adequacy as part of the on-site examination process and the Banking Agencies would provide examiners with guidance to determine the amount, which might be expressed as a range of capital, that may be needed for IRR in light of the above factors. These guidelines would provide examiners with criteria for assessing capital based on the adequacy of the bank's interest rate risk management process as well as the level of its interest rate risk exposure. In general, banks whose measured exposure exceeded the established threshold or whose risk management systems were judged to be deficient would be expected to hold additional capital commensurate with the risks being taken. However, any capital required for IRR would not be automatically incorporated into a bank's risk-based capital ratio.

This approach emphasizes the importance of risk factors that are not easily incorporated into quantitative measures and the role of examiner judgment. The on-site examination process would play a critical role in this approach by allowing examiners, during the examination, to consider specific factors relevant to that institution. Unique characteristics of each bank warrant evaluation on a case-by-case basis. However, uniformity in the examination process also is important and the guidelines mentioned above would be designed to ensure greater uniformity in this process.

To assess the level of interest rate risk exposure, examiners would initially use the supervisory model as a basis for discussions with bank management. All data, including trading account positions, would be drawn from Schedule 1 for use in this model. However, greater reliance would be placed on the results of a bank's own model if the examiner determined that the model provided a more accurate measure of the bank's risk. The examiner would evaluate the results of the internal model during on-site examinations, but banks would not be required to report this information in the Call Report. When an internal model is not available or is inadequate, examiners would rely on the results of the supervisory model.

In general, a bank would be viewed as having high levels of IRR if its measured exposure indicated a decline in the economic value of the institution that exceeded a threshold level of 1.0 percent of total assets. Banks that pass the reporting exemption test, or that otherwise have small measured interest rate risk exposures, would typically be considered to have low levels of risk. Other banks whose measured exposures were below threshold levels but were not minimal, or that held complex financial instruments with significant options-related risks that would result in significant risk measurement error, would generally be viewed as having moderate levels of interest rate risk.

At the completion of each examination, examiners would form and document conclusions as to the adequacy of a bank's capital and risk management process with regard to interest rate risk. An examiner's conclusions about both the level of risk and the adequacy of the risk management process would play an integral role in determining a bank's need for capital for IRR. Banks with high levels of measured exposure and weak management systems generally would need to hold capital for IRR, while those with low levels of exposures and adequate management systems might not be required to hold additional capital for IRR. The specific amount of capital that might be needed by a bank would be determined by the examiner using guidelines provided by the Banking Agencies. The examiner's findings would be discussed with bank management at the close of each examination.

During the intervals between examinations, the Banking Agencies would monitor bank IRR exposures through Call Report data and the supervisory model. Information about results of internal models would not be required in the Call Report. Significant changes in reported exposures or in a bank's overall financial condition would be analyzed by the supervisors to determine whether additional capital may be needed. This review of a bank's capital adequacy would also be required for any bank whose measured exposure exceeded the established threshold. The conclusions of this review would be documented by the supervisor and shared with bank management. However, bank management would be given the opportunity to respond to this review before any additional capital would be required.

D. Issues for Comment

1. Supervisory Measurement System

As proposed, the Banking Agencies would use the percent change in the net present value of a hypothetical instrument as the risk weight for balances represented by that instrument. Does use of the change in net present value sufficiently overcome the weakness of using the instrument's modified duration so as to provide a reasonable basis for risk weights?

2. Treatment of "Non-Maturity" Deposits

The Banking Agencies propose limits on the slotting of deposits without specified maturities (DDA, NOW, MMDA and savings) among time bands because of the problems inherent in measuring the price sensitivity of these deposits and the significant effect that different treatments for them can have on measuring a bank's IRR.

a. Do the proposed rules provide sufficient flexibility to reflect an institution's deposit behavior without undermining the risk measurement process?

b. Should institutions that have well-reasoned and documented internal assessments showing rate sensitivities that are outside of the proposed ranges be allowed to use those assessments? What specific types of analyses and supporting documentation should be required from banks that are allowed such an exception? Would most institutions have the capability of producing such types of analyses?

c. What is the appropriate basis for measuring changes in the price

[15] When internal models are used, by design, their results would always reflect the specific characteristics of the bank's on- and off-balance-sheet positions.

sensitivity or "market value" of these deposits?

The Banking Agencies also solicit comment and any relevant empirical evidence on the price sensitivity and market valuation of these deposits. Information relevant to assessing the changes in the market value of these deposits relative to changing interest rates would be most helpful.

3. Interest Rate Scenarios

In varying degrees, the proposed interest rate scenarios reflect the historical volatility of rates, the current level of rates, and the slope of the yield curve.

a. Should the sample period used to calculate the historical volatility of interest rates be based on a shorter period such as 5 years or a longer period such as 15 years?

b. Should the time interval used to measure volatility and to determine the corresponding rate scenarios be based on quarterly, semi-annual or annual interest rate volatilities?

c. Which is the preferred scenario to be used for both the supervisory and internal models?

d. Is it appropriate to use the same interest rate scenario for both the supervisory model and internal models?

e. Can banks' internal models incorporate the rate scenarios under consideration?

f. Should the Banking Agencies consider the effect of both rising and declining market interest rates? If both, should the risk weights be different to reflect the asymmetrical changes in the market values of certain instruments to the various rate changes, or should they be the same in the interest of simplicity?

g. Currently, the results under either proposed alternative indicate rate changes that are about 100 basis points using a quarterly time horizon and 200 basis points using annual volatilities. In the interest of simplicity, would the use of a parallel 100 or 200 basis point shift be preferred to the proposed nominal or proportional change methodology?

4. Use of Internal Models

The Banking Agencies propose to make greater use of a bank's own model, if the model is deemed adequate by examiners. The Banking Agencies seek comment on the following issues:

a. Is it appropriate to substitute the results of internal models for a standard supervisory calculation when assessing capital adequacy?

b. If internal models are used, to what extent should the Banking Agencies provide guidance to the industry on these models (e.g., acceptable methodologies or modeling parameters)? Would simply providing the interest rate scenario and requiring banks to evaluate the effect of the rate change on their net economic value suffice?

c. Which aspects of an internal model should examiners review to determine whether the model is adequate?

d. Should the assumptions required for the supervisory model also be imposed on internal models when these are used under Alternative One (Minimum Capital Standard approach)? To what degree should results of internal and supervisory measures be allowed to diverge because of different assumptions regarding non-maturity deposits, prepayments, or other factors? What competitive inequities might result if large differences are allowed?

e. Should some institutions be required to use more sophisticated internal models to calculate IRR exposure if an explicit capital charge for IRR is established? If so, what type or scope of activities should trigger such a requirement?

5. Use of OTS Model

The Office of Thrift Supervision (OTS) has adopted an alternative method for measuring the IRR exposures of savings associations which differs from that proposed by the Banking Agencies (see 57 FR 40524, September 3, 1992). Under the OTS method, savings associations report weighted average coupon and weighted maturity information for various classes of assets, liabilities and off-balance-sheet instruments. For certain instruments, mortgage-related instruments in particular, the amount of information reported is significantly more detailed than that proposed by the Banking Agencies.

The reported information is used in the OTS Market Value Model to estimate the change in a savings association's market value under various interest rate scenarios. The OTS model uses two valuation methodologies: (1) A static discounted cash flow analysis similar to that proposed by the Banking Agencies, and (2) an option-based pricing model (also known as an option-adjusted spread or OAS methodology) for valuing certain assets, such as mortgages and mortgage-related instruments, that contain embedded options.

The Banking Agencies request comment on the following issues:

a. Should commercial banks with portfolios that are similar to thrifts or those that are highly susceptible to IRR be required to use the OTS (or similar) model and reporting requirements to measure IRR in lieu of the proposed supervisory model?

b. If so, what criteria should the Banking Agencies use to determine which commercial banks should be subject to the OTS (or similar) model?

c. If a bank were required to use the OTS (or similar) model, should that bank still be allowed to report the results of an adequate internal model as proposed by the Banking Agencies? Alternatively, should the requirement to use the OTS (or similar) model rule out any reporting of the internal model?

d. For banks that may be required to use the OTS (or similar) model, does the OTS reporting format impose significant reporting burdens? What modifications could be made to reduce the burden if the Banking Agencies decide to use the basic approach of the OTS model?

6. Reporting Requirements

The Banking Agencies propose to recommend to the FFIEC a new reporting schedule to provide information better suited to determining the interest rate exposure of those institutions that do not meet the exemption criteria.

a. Does the reporting format currently under consideration, illustrated by Schedule 1, impose significant reporting burdens on non-exempted institutions? What modifications could be made to reduce the burden?

The Banking Agencies are also considering implementing a separate reporting schedule on which banks could report IRR exposures as measured by their own models.

b. If the Banking Agencies rely on a bank's internal model for assessing its IRR, should the bank be required to report the results of that model each quarter?

c. Should some or all of the information about the internal model be treated as confidential?

d. Is the information requested on Schedule 2 appropriate?

7. Threshold Level

The Banking Agencies propose to use a threshold level to determine whether a bank may be taking high levels of interest rate risk and, thus, need additional capital for IRR. As proposed, a bank would be viewed as having a high level of exposure if its measured exposure indicates a decline in the economic value of the institution that exceeds 1.0 percent of total assets.

a. Is this threshold appropriate?

b. The threshold level is based, in part, on the imprecision of the supervisory model. When more accurate internal systems are used, and especially if greater flexibility is permitted regarding the treatment of

non-maturity deposits, should a lower threshold also be used?

8. Exemption Test

The Banking Agencies have proposed a screening test that would exempt banks from any additional reporting requirements.

a. Are the exemption criteria reasonable?

b. Does the test adequately safeguard against exempting banks that pose significant risks to the deposit insurance fund due to IRR?

c. Since previously exempted banks may need to be prepared to report the data if they no longer meet the exemption criteria, does the exemption test significantly reduce record-keeping costs?

d. Is the reporting burden sufficiently onerous to warrant the reporting exemption?

9. Use of IRR Measure

The Banking Agencies are considering two approaches for using the proposed measurement system when evaluating capital adequacy. Under the Minimum Capital Standard approach, the measurement system would be the primary determinant in evaluating the need for capital for IRR. The Risk Assessment approach would use the measurement system as just one factor in determining the need for additional capital.

a. Comments are requested on the merits of each of these approaches.

b. Under the Minimum Capital Standard approach, the Banking Agencies are proposing that the capital requirement for IRR be implemented by increasing a bank's risk-weighted assets by an amount equal to 12.5 times the excess measured exposure, where 12.5 represents the reciprocal of the 8 percent minimum risk-based capital ratio. An alternative technique would be to directly deduct the amount of excess measured exposure from Tier 1 or total capital. The Banking Agencies seek comments on whether the proposed method or the alternative technique is more appropriate to use in calculating capital under the Minimum Capital Standard approach.

10. Capital Assessment

In determining a bank's capital needs for IRR, the Banking Agencies seek comment on the following issues:

a. To what extent should examiners have flexibility when evaluating an institution's measured IRR exposure for capital purposes?

b. What consideration should be given to the quality of a bank's risk management process when evaluating the bank's IRR? How should this consideration be incorporated into an assessment of capital adequacy?

11. Reporting for Multi-bank Holding Companies

The proposal states that data will be collected and risk measured for individual banks.

a. In addition to reviewing individual bank positions, to what extent should the Banking Agencies also consider consolidated positions of the parent holding company or, alternatively, the aggregate position of only its affiliated banks?

b. What is the extent of the reporting burden associated with reporting individual bank positions?

12. Leverage Standard

When announcing regulations to implement section 38 of FDICIA in September, 1992, the federal banking agencies stated that they intend to lower or eliminate the leverage capital component from the risk-based capital standard after that standard has been revised to take into account interest rate risk and after experience has been gained with the (modified) standard. Does either the Minimum Capital Standard approach or the Risk Assessment approach provide an adequate basis for reconsidering the need for the leverage standard? Would the basis for removing that standard be stronger under one approach than the other?

Regulatory Flexibility Act Statement

Each agency has concluded after reviewing the proposed regulations that the regulations, if adopted, will not impose a significant economic hardship on small institutions. The proposal does not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers in order to comply with the regulation. Each agency therefore hereby certifies pursuant to section 605b of the Regulatory Flexibility Act (5 U.S.C. 605b) that the proposal, if adopted, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Executive Order 12291

The Comptroller of the Currency has preliminarily determined that proposed regulation may be a "major rule" within the meaning of Executive Order 12291. Accordingly, the OCC has prepared a Preliminary Regulatory Impact Analysis.

The objectives of the proposed regulation are to ensure that banks: (1) Hold capital consistent with the level of IRR in their portfolios so as to reduce the incidence of bank failures and claims upon the Bank Insurance Fund (BIF); (2) effectively measure and monitor their IRR exposures; and (3) consider both interest rate and credit risks in making investment and lending decisions. This proposed rule implements section 305(b)(1)(A)(i) of FDICIA and is consistent with those requirements.

A number of benefits can be expected to accrue from the proposed regulation. These include: (1) Either an increase in bank capital or a reduction in IRR for those banks with high levels of IRR; (2) a reduction in the incentive for banks to substitute IRR for credit risk; and (3) an increase in the awareness among banks of the need to measure and manage IRR. A number of costs can be expected to accrue from the proposed regulation. These include: (1) Direct compliance costs; (2) supervisory costs; and (3) costs associated with the impact of the rule on bank behavior.

The Regulatory Impact Analysis is based on preliminary and limited data that make it difficult to estimate the impact of this rule. This difficulty arises from the lack of sufficient data to accurately estimate which banks may be found to have high IRR exposures under the proposal, the amount of capital those banks may need, and the complexities of trying to estimate how banks may change their behavior in response to the proposed rule.

The OCC seeks to issue a final rule that will meet its objectives at the least possible net cost to the economy. The OCC invites commenters to provide any data they may have on the costs and benefits of this proposal with regard to the management of IRR at banking organizations, the impact on bank capital levels and on the pricing, selection and offering of products and investments by banks, and on direct costs that banks may incur as the result of the proposed rule.

Copies of the Preliminary Regulatory Impact Analysis may be obtained by writing to the following address: IRR Impact Statement, Mail Stop 9–16, Communications Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Capital risk, National banks, Reporting and recordkeeping requirements.

12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Currency, Reporting and recordkeeping requirements, Securities.

12 CFR Part 325

Bank deposit insurance, Banks, Banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

COMTROLLER OF THE CURRENCY

Authority and Issuance

For the reasons set out in the joint preamble, part 3 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

1. The authority citation for part 3 continues to reads as follows:

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 3907 and 3909.

Alternative One (Minimum Capital Standard Approach) for Appendix A and B to Part 3—Risk-Based Capital Guidelines

2. In appendix A, section 4 is amended by revising paragraph (b)(1), redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4), respectively, and by adding a new paragraph (b)(2) to read as follows:

Section 4. Implementation, Transition Rules, and Target Ratios

* * * * *

(b)(1) Each national bank must maintain a minimum ratio of total capital (after deductions) to risk-weighted assets (adjusted for interest rate risk) of 8.0%.

(b)(2) If a bank is required to maintain additional capital for interest rate risk exposure, as determined in accordance with appendix B to part 3, risk-weighted assets must be increased by an amount equal to 12.5 times the dollar amount of the additional capital requirement for interest rate risk, before determining the minimum ratio of total capital to risk-weighted assets specified in section 4(b)(1) of this appendix A.

* * * * *

3. A new appendix B is added to part 3 after appendix A to read as follows:

Appendix B—Interest Rate Risk Component

Section 1. Purpose, Definitions, and Applicability of Guidelines

(a) *Purpose.* This appendix B explains precisely how the interest rate risk exposure of a bank is to be measured for the purpose of determining compliance with the capital adequacy requirements.

(b) *Definitions.* For the purpose of this appendix B, the following definitions apply:

(1) *Excess measured exposure* means the dollar amount of measured exposure to interest rate risk in excess of the supervisory threshold. This amount represents the amount of interest rate risk against which the bank must maintain capital.

(2) *Interest rate scenarios* means the specified changes in market interest rates used in calculating a bank's measured exposure.

(3) *Measured exposure* means the estimated dollar decline in the net economic value of the bank in response to a potential change in market interest rates under the specified interest rate scenarios, as determined pursuant to either the supervisory measure or the bank's internal measure. When the supervisory measure is used to calculate the bank's measured exposure, pursuant to section 4 of this appendix B, a bank's measured exposure is derived by calculating the bank's net risk-weighted position.

(4) *Mortgage derivative products* means interest-only and principal-only stripped mortgage-backed securities (IOs and POs), tranches of collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs), CMO and REMIC residual securities, and other instruments having the same characteristics as these securities.

(5) *Net economic value of the bank* means the net present value of its assets minus the net present value of its liabilities plus the net present value of its off-balance-sheet instruments.

(6) *Net risk-weighted position* means the sum of all risk-weighted positions of a bank's assets, liabilities and off-balance sheet items. For the purposes of the supervisory measure, this number represents the amount by which the net economic value of the bank is estimated to change in response to a potential change in market interest rates under the specified interest rate scenarios.

(7) *Nonmaturity deposits* mean demand deposit accounts (DDAs), money market deposit accounts (MMDAs), savings accounts, and negotiable order of withdrawal accounts (NOWs).

(8) *Notional principal amount* means the total dollar amount upon which a contract is based.

(9) *Supervisory threshold* means 1% of a bank's total assets.

(c) *Applicability and exemption for institutions with low risk.* (1) All national banks are subject to the requirements of this appendix B and must calculate their excess measured exposure as required by the supervisory model or by an internal measure, pursuant to sections 4 or 9 of this appendix B, unless:

(i) The total notional principal amount of the bank's off-balance sheet interest rate contracts is less than 10% of total assets, and

(ii) 15% of the sum of fixed- and floating-rate loans and securities that mature or reprice beyond 5 years is less than 30% of total capital.

(2) Notwithstanding paragraph (c)(1) of this section, the OCC may require a bank to meet the requirements of this appendix B if compliance is necessary to ensure the capital adequacy of the bank.

Section 2. Capital Requirement for Interest Rate Risk

A bank shall maintain capital for interest rate risk in an amount equal to the bank's excess measured exposure. The amount of capital required for interest rate risk is in addition to the amount of capital required by appendix A of this part 3. Compliance shall be determined as specified in section 4(b)(2) of Appendix A.

Section 3. Specified Interest Rate Scenarios

For the purpose of calculating a bank's measured exposure, under either the supervisory measure or an internal measure, the bank shall use both a rising and falling interest rate scenario based on an instantaneous uniform 200 basis point parallel change in market interest rates at all maturities. The interest rate scenarios, with the accompanying risk weights, are provided in Table 1 of section 7 of this appendix B. The OCC may modify the specified interest rate scenarios as appropriate considering historical and current interest rate levels, interest rate volatilities and other relevant market and supervisory considerations.

BILLING CODE 4810-33-M; 6210-01-M; 6714-01-M

Interest Rate Risk Worksheet (200 Basis Point Declining Rate Scenario)
DRAFT

Table 3

REPORTING INSTITUTION: Sample Bank

Date: 12/31/92

$ Thousands

	(A) TOTAL	(B) Risk Weights	(C) Risk Weighted Position (A) x (B)	(D) Total Risk Weighted Position
I. INTEREST-SENSITIVE ASSETS				
1. ARMs, FRMs, asset-backed securities, consumer loans				
(a) Up to 3 months	$5,500	0.10%	$6	
(b) 3 to 12 months	$4,950	0.60%	$30	
(c) 1 to 3 years	$4,050	1.70%	$69	
(d) 3 to 5 years	$4,166	3.10%	$129	
(e) 5 to 10 years	$6,620	3.40%	$225	
(f) 10 to 20 years	$6,454	5.90%	$381	
(g) Greater than 20 years	$10,430	3.60%	$375	
2. Zero or low coupon securities				
(a) Up to 3 months	$1,000	0.25%	$3	
(b) 3 to 12 months	$1,000	1.20%	$12	
(c) 1 to 3 years	$1,000	3.90%	$39	
(d) 3 to 5 years	$0	8.00%	$0	
(e) 5 to 10 years	$0	15.60%	$0	
(f) 10 to 20 years	$0	33.50%	$0	
(g) Greater than 20 years	$0	61.90%	$0	
3. "All other" securities, loans, & trading account				
(a) Up to 3 months	$26,572	0.25%	$67	
(b) 3 to 12 months	$28,432	1.20%	$341	
(c) 1 to 3 years	$31,136	3.70%	$1,152	
(d) 3 to 5 years	$19,728	7.00%	$1,381	
(e) 5 to 10 years	$10,564	11.70%	$1,236	
(f) 10 to 20 years	$8,837	19.00%	$1,679	
(g) Greater than 20 years	$9,462	24.60%	$2,328	
4. High-risk mortgage securities				
(a) Self-reporting	$2,000		($200)	
(b) Risk weighting	$1,000	-38.00%	($380)	
5. Total Interest-Sensitive Assets	$183,000		$8,871	$8,871
II. ALL OTHER ASSETS	$3,000			
III. TOTAL ASSETS	$186,000			
IV. INTEREST-SENSITIVE LIABILITIES				
1. Non-maturity deposits, time deposits and "all other"				
(a) Up to 3 months	$38,583	-0.25%	($96)	
(b) 3 to 12 months	$77,582	-1.20%	($931)	
(c) 1 to 3 years	$39,821	-3.90%	($1,553)	
(d) 3 to 5 years	$10,090	-7.50%	($757)	
(e) 5 to 10 years	$64	-13.50%	($9)	
(f) 10 to 20 years	$0	-24.50%	$0	
(g) Greater than 20 years	$0	-36.00%	$0	
2. Total Interest-Sensitive Liabilities	$166,140		($3,346)	
V. NONINTEREST-SENSITIVE LIABILITIES	$850			
VI. TOTAL LIABILITIES	$167,000		($3,346)	($3,346)
VII. EQUITY CAPITAL	$19,000			
VIII. OFF-BALANCE-SHEET POSITIONS				
1. Interest rate contracts				
(a) Up to 3 months	$4,000	0.25%	$10	
(b) 3 to 12 months	$500	1.20%	$6	
(c) 1 to 3 years	($4,000)	3.70%	($150)	
(d) 3 to 5 years	($450)	7.00%	($32)	
(e) 5 to 10 years	$0	11.70%	$0	
(f) 10 to 20 years	$0	19.00%	$0	
(g) Greater than 20 years	$0	24.60%	$0	
2. Mortgage and other amortizing contracts				
(a) Up to 3 months	$1,000	0.10%	$1	
(b) 3 to 12 months	$0	0.60%	$0	
(c) 1 to 3 years	($1,000)	1.70%	($17)	
(d) 3 to 5 years	$2	3.10%	$0	
(e) 5 to 10 years	$0	3.40%	$0	
(f) 10 to 20 years	$0	5.90%	$0	
(g) Greater than 20 years	$0	3.60%	$0	
3. Total Off-Balance-Sheet Positions	$0		($181)	($181)
Net Risk Weighted Position				$5,344.31
Net Position/ Assets				2.87%

BILLING CODE 4810-33-C; 6210-01-C; 6714-01-C

Section 4. Supervisory Measure

(a) *Use of supervisory measure.* Except as provided by section 9 of this appendix B, a bank's measured exposure to interest rate risk must be calculated pursuant to the supervisory measure as specified by sections 5 through 8 of this appendix B.

(b) *Overview of interest rate risk calculation.* The calculation of a bank's measured exposure generally requires the following steps:[1]

(1) The bank's assets, liabilities, and off-balance sheet contracts must be assigned to the appropriate balance sheet categories based on the instrument's cash flow characteristics.

(2) Within each balance sheet category, each asset, liability or off-balance sheet contract must be assigned to the appropriate time bank generally based on each instrument's remaining maturity or next repricing date.

(3) Balances within each time band are multiplied by the appropriate risk weight to produce a risk-weighted position for each interest rate scenario.

(4) All risk-weighted positions are summed to produce a net risk-weighted position for each interest rate scenario which is the basis for determining the bank's measured exposure to interest rate risk.

Section 5. Balance Sheet Categories

All assets, liabilities, and off-balance sheet positions must be assigned to one of the following interest rate risk balance-sheet categories, as appropriate:

(a) *Adjustable-rate assets.* Adjustable-rate mortgage loans and adjustable-rate mortgage securities.

(b) *Amortizing fixed-rate loans and securities.* Fixed-rate mortgage securities, and asset-backed securities, fixed-rate mortgage loans, consumer loans and other instruments that involve scheduled periodic amortization of principal, except for mortgage derivative products.

(c) *High-risk mortgage securities.* Any mortgage derivative product that at the time of purchase or at any subsequent date:

(1) Has an expected weighted average life greater than 10 years; or

(2) Has an expected weighted average life that:

(i) Extends by more than 4 years, assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points; or

(ii) Shortens by more than 6 years, assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points; or

(3) Has a change in price of greater than 17%, assuming an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

(d) *Zero- or low-coupon assets.* Securities with either no periodic interest payments or stated coupons of 2% or lower.

(e) *Trading account items.* Trading account assets and related off-balance sheet instruments.

(f) *All other assets.* All other interest-sensitive instruments, which are assumed to involve scheduled periodic payments of interest and the payment of principal at maturity and all mortgage derivative products that are not high-risk mortgage securities.

(g) *Liabilities.* All deposits and all nondeposit liabilities whose values are sensitive to movements in interest rates.

(h) *Off-balance sheet items.* Interest-rate contracts including swaps, forwards, options, and futures and mortgage-related fixed-rate commitments and other off-balance sheet derivative instruments whose value depends on the value of an underlying asset or index with amortizing characteristics

Section 6. Time Bands

(a) *Assignment of item balances.* The balance of each asset, liability, and off-balance sheet item within each balance sheet category, as specified in section 5 of this appendix B, must be assigned to one of the following time bands according to the remaining maturity of next repricing date of the asset, liability, or off-balance sheet item:

(1) Less than or equal to 3 months;

(2) Greater than 3 months and less than or equal to 12 months;

(3) Greater than 1 year and less than or equal to 3 years;

(4) Greater than 3 years and less than or equal to 5 years;

(5) Greater than 5 years and less than or equal to 10 years;

(6) Greater than 10 years and less than or equal to 20 years;

(7) Greater than 20 years.

(b) *Remaining maturity and repricing date.* (1) *General.* Except for certain mortgage derivative products and nonmaturity deposits, and the remaining maturity of an asset, liability, or off-balance sheet item generally is determined by the remaining time before maturity, or the next actual or potential repricing date, associated with the outstanding principal or notional principal amount as specified by contract or agreement.

(2) *Remaining maturity and repricing date for mortgage derivative products.* (i) For mortgage derivative products, other than for high-risk mortgage securities, the current expected average life must be used instead of the remaining time before maturity or the next actual or potential repricing date. For high-risk mortgage securities, a bank's own estimate of the change in market value under the specified interest rate scenario is to be used. However, if this information is not available from the bank, the OCC will determine the appropriate treatment for maturity and repricing.

(ii) The current expected average life of a mortgage derivative product is to be determined by the management of the bank. All underlying assumptions, such as prepayment assumptions, used in determining the current expected average life of these instruments must be reasonable and will be subject to OCC review.

(3) *Remaining maturity and repricing date for nonmaturity deposits.* Notwithstanding paragraph (b)(1) of this section, the remaining maturity and repricing date for nonmaturity deposits is determined by the management of the bank based on its own assumptions and experience, subject to the following conditions:

(i) The remaining maturity and repricing date for DDAs and MMDAs may not exceed 3 years, with a maximum of 40% of these balances in the "greater than 1 year but less than or equal to 3 years" time band;

(ii) The remaining maturity and repricing date for savings and NOW account balances may not exceed 5 years, with a maximum of 40% of the total of these balances in the "greater than 3 years but less than or equal to 5 years" time band; and

(iii) All assumptions used by the bank in determining the remaining maturity and repricing date for nonmaturity deposits must be reasonable and are subject to review by the OCC.

Section 7. Risk Weights

The risk weights estimate the sensitivity of the present value of each asset, liability, and off-balance sheet item within each balance sheet category and time band under a rising and falling interest rate scenario. These risk weights are provided in Table 1. The risk-weighted positions for all assets, liabilities, and off-balance sheet items must be calculated by multiplying all assets, liabilities, and off-balance sheet items as specified according to balance sheet category and time band, by the corresponding risk weight as illustrated in Table 2 (rising interest rate scenario) and Table 3 (falling interest rate scenario).

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[1] The calculations for the rising and falling interest rate scenarios are illustrated in Table 2 and Table 3, respectively.

Risk Weights

Table 1

Amortizing Instruments

Timeband	Scenario 1 200 Basis Point Rise % Change in Present Value (Risk Weights)	Scenario 2 200 Basis Point Decline % Change in Present Value (Risk Weights)
0-3 months	-0.10%	0.10%
3-12 months	-0.50%	0.60%
1-3 Years	-1.60%	1.70%
3-5 Years	-3.00%	3.10%
5-10 Years	-5.30%	3.40%
10-20 Years	-8.80%	5.90%
Over 20 Years	-9.20%	3.60%

All Other Instruments

0-3 months	-0.25%	0.25%
3-12 months	-1.20%	1.20%
1-3 Years	-3.50%	3.70%
3-5 Years	-6.40%	7.00%
5-10 Years	-10.20%	11.70%
10-20 Years	-14.90%	19.00%
Over 20 Years	-17.60%	24.60%

Liabilities

0-3 months	0.25%	-0.25%
3-12 months	1.20%	-1.20%
1-3 Years	3.70%	-3.90%
3-5 Years	6.90%	-7.50%
5-10 Years	11.60%	-13.50%
10-20 Years	18.70%	-24.50%
Over 20 Years	24.00%	-36.00%

Zero or Low Coupon Securities

0-3 months	-0.25%	0.25%
3-12 months	-1.20%	1.20%
1-3 Years	-3.70%	3.90%
3-5 Years	-7.40%	8.00%
5-10 Years	-13.30%	15.60%
10-20 Years	-24.90%	33.50%
Over 20 Years	-38.00%	61.90%

Interest Rate Risk Worksheet (200 Basis Point Rising Rate Scenario)
DRAFT

Table 2

REPORTING INSTITUTION: Sample Bank

Date: 12/31/92

$ Thousands

	(A) TOTAL	(B) Risk Weights	(C) Risk Weighted Position (A) x (B)	(D) Total Risk - Weighted Position
I. INTEREST-SENSITIVE ASSETS				
1. ARMs, FRMs, asset-backed securities, consumer loans				
(a) Up to 3 months	$5,500	-0.10%	($6)	
(b) 3 to 12 months	$4,950	-0.50%	($25)	
(c) 1 to 3 years	$4,050	-1.60%	($65)	
(d) 3 to 5 years	$4,166	-3.00%	($125)	
(e) 5 to 10 years	$6,620	-5.30%	($351)	
(f) 10 to 20 years	$6,454	-8.80%	($568)	
(g) Greater than 20 years	$10,430	-9.20%	($960)	
2. Zero or low coupon securities				
(a) Up to 3 months	$1,000	-0.25%	($3)	
(b) 3 to 12 months	$1,000	-1.20%	($12)	
(c) 1 to 3 years	$1,000	-3.70%	($37)	
(d) 3 to 5 years	$0	-7.40%	$0	
(e) 5 to 10 years	$0	-13.30%	$0	
(f) 10 to 20 years	$0	-24.90%	$0	
(g) Greater than 20 years	$0	-38.00%	$0	
3. "All other" securities, loans, & trading account				
(a) Up to 3 months	$26,672	-0.25%	($67)	
(b) 3 to 12 months	$28,432	-1.20%	($341)	
(c) 1 to 3 years	$31,136	-3.50%	($1,090)	
(d) 3 to 5 years	$19,728	-6.40%	($1,263)	
(e) 5 to 10 years	$10,564	-10.20%	($1,078)	
(f) 10 to 20 years	$8,837	-14.90%	($1,317)	
(g) Greater than 20 years	$9,462	-17.60%	($1,665)	
4. High-risk mortgage securities				
(a) Self-reporting	$2,000		$160	
(b) Risk weighting	$1,000	-38.00%	($380)	
5. Total Interest-Sensitive Assets	$183,000		($9,190)	($9,190)
II. ALL OTHER ASSETS	$3,000			
III. TOTAL ASSETS	$186,000			
IV. INTEREST-SENSITIVE LIABILITIES				
1. Non-maturity deposits, time deposits and "all other"				
(a) Up to 3 months	$23,083	0.25%	$58	
(b) 3 to 12 months	$74,582	1.20%	$895	
(c) 1 to 3 years	$51,321	3.70%	$1,899	
(d) 3 to 5 years	$17,090	6.90%	$1,179	
(e) 5 to 10 years	$64	11.60%	$7	
(f) 10 to 20 years	$0	18.70%	$0	
(g) Greater than 20 years	$0	24.00%	$0	
2. Total Interest-Sensitive Liabilities	$166,140		$4,038	
V. NONINTEREST-SENSITIVE LIABILITIES	$860			
VI. TOTAL LIABILITIES	$167,000		$4,038	$4,038
VII. EQUITY CAPITAL	$19,001			
VIII. OFF-BALANCE-SHEET POSITIONS				
1. Interest rate contracts				
(a) Up to 3 months	$4,000	-0.25%	($10)	
(b) 3 to 12 months	$500	-1.20%	($6)	
(c) 1 to 3 years	($4,050)	-3.50%	$142	
(d) 3 to 5 years	($450)	-6.40%	$29	
(e) 5 to 10 years	$0	-10.20%	$0	
(f) 10 to 20 years	$0	-14.90%	$0	
(g) Greater than 20 years	$0	-17.60%	$0	
2. Mortgage and other amortizing contracts				
(a) Up to 3 months	$1,000	-0.10%	($1)	
(b) 3 to 12 months	$0	-0.50%	$0	
(c) 1 to 3 years	($1,000)	-1.60%	$16	
(d) 3 to 5 years	$0	-3.00%	$0	
(e) 5 to 10 years	$0	-5.30%	$0	
(f) 10 to 20 years	$0	-8.80%	$0	
(g) Greater than 20 years	$0	-9.20%	$0	
3. Total Off-Balance-Sheet Positions	$0		$170	$170
Net Risk Weighted Position				($4,981.86)
Net Position/ Assets				-2.68%

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Section 8. Calculation of Excess Measured Exposure

(a) *Calculation of net risk-weighted position.* The net risk-weighted position must be calculated for both the rising interest rate scenario and the falling interest rate scenario. The net risk-weighted position for the rising interest rate scenario is calculated by summing the risk-weighted positions for all assets, liabilities, and off-balance sheet items, as derived in Table 2 of this appendix B. The net risk-weighted position for the falling interest rate scenario is calculated by summing the risk-weighted positions for all assets, liabilities, and off-balance sheet items, as derived in Table 3 of this appendix B. In mathematical terms the calculation for the net risk-weighted position is (Assets × Risk Weights) + (Liabilities × Risk Weights) + (Off-Balance-Sheet Positions × Risk Weight) = Net Risk-Weighted Position.9

(b) *Calculation of measured exposure to interest rates.* The bank's net risk-weighted positions under the rising interest rate scenario and the falling interest rate scenario represent the bank's measured exposures to interest rate risk. If the bank's net risk-weighed position is positive under both of the interest rate scenarios, then the bank's measured exposure is set to zero. If the bank's net risk-weighted position is negative under one or both of the interest rate scenarios, then the bank's measured exposure is equal to the larger decline in the net economic value of the bank under the two interest rate scenarios.

(c) *Calculation of excess measured exposure.* The bank's excess measured exposure is the positive difference of the absolute dollar amount of the measured exposure minus the dollar amount of the supervisory threshold. In mathematical terms the calculation for a bank's excess measured exposure is Measured Exposure—(Total Assets × .01). If the amount of the supervisory threshold is greater than the measured exposure, then the excess measured exposure is zero.

Section 9. Internal Measure

The OCC may permit or require a bank to use an internal measure developed or acquired by the bank to determine its measured exposure instead of the supervisory measure where the OCC deems that such internal measure is acceptable.

(a) *Acceptable internal measure.* Factors that the OCC will consider in determining whether to permit a bank to use an internal measure include:

(1) Whether the assumptions and structure of the supervisory measure accurately reflect the bank's assets, liabilities, and off-balance sheet positions, and whether the internal measure provides a more precise measurement of the changes in the net economic value of the bank than the supervisory measure;

(2) Whether the internal measure makes use of generally accepted techniques in estimating measured exposure;

(3) Whether the internal measure is appropriate to the nature and scope of the activities of the bank; and

(4) Whether the internal measure provides an adequate indication of the exposure of the institution to interest rate risk in all material respects.

(b) *Required use of internal measure.* The OCC may require a bank for the purposes of compliance with the requirements of this appendix B to use an existing internal measure where the OCC determines that:

(1) The supervisory measure does not adequately characterize the interest rate risk of the bank's positions; and

(2) The use of the supervisory measure would materially misrepresent the bank's actual interest rate risk exposure.

(c) *Interest Rate Scenario.* Where a bank is either permitted or required to use an internal measure, the internal measure must incorporate the same interest rate scenarios used by the supervisory measure as specified in section 3 in this appendix B.

Section 10. Implementation

The requirements of this appendix B are applicable to all national banks after December 31, 1994.

ALTERNATIVE TWO (RISK ASSESSMENT APPROACH) FOR PART 3—RISK-BASED CAPITAL GUIDELINES

4. In § 3.10, paragraph (d) is amended by removing the phrase "interest rate risk,"; paragraphs (e), (f), (g), (h), and (i) are redesignated as paragraphs as (f), (g), (h), (i), and (j), respectively; and new paragraph (e) is added to read as follows:

§ 3.10 Applicability.

* * * * *

(e) A bank with significant interest rate risk exposure;

* * * * *

This signature page relates to the Joint Notice of Proposed Rulemaking titled Risk-Based Capital Standards: Interest Rate Risk, Office of the Comptroller of the Currency, Department of the Treasury, Docket Number 93–11.

Office of the Comptroller of the Currency.

Dated: September 2, 1993.

Eugene A. Ludwig,

Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

Authority and Issuance

For the reasons set out in the joint preamble, part 208 of chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338, 461, 481–486, 601, 611, 1814, 1823(j), 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c)(5), 78q, 78q–1, and 78w.

ALTERNATIVE ONE (MINIMUM CAPITAL STANDARD APPROACH) FOR APPENDIX A TO PART 208—CAPITAL ADEQUACY GUIDELINES FOR STATE MEMBER BANKS: RISK-BASED MEASURE

2. Section III of appendix A to part 208 is amended by revising the first undesignated paragraph of paragraph A, and by adding new paragraph F. to read as follows:

Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

III. * * *

A. * * *

Assets and credit-equivalent amounts of off-balance-sheet items of state member banks are assigned to one of several broad risk categories, according to the obligor, or, if relevant, the guarantor or the nature of the collateral. The aggregate dollar value of the amount in each category is then multiplied by the risk weight associated with that category. In addition, a credit equivalent amount of each bank's excess measured exposure to interest rate risk is calculated. The weighted values from each of the risk categories and the credit equivalent amount for interest rate risk are added together, and this sum is the bank's total weighted-risk assets that comprise the denominator of the risk-based capital ratio. Attachment I provides a sample calculation.

* * * * *

F. Interest Rate Risk

Credit equivalent amounts for interest rate risk are calculated by multiplying a bank's excess measured exposure to interest rate risk by 12.5.

1. Definitions

(i) *Excess measured exposure* means the dollar amount of measured exposure to interest rate risk in excess of the supervisory threshold.

(ii) *Measured exposure* means the estimated dollar decline in the net economic value of the bank under the specified interest rate scenario, as determined pursuant to either a supervisory measure or, where the Board deems appropriate, the bank's internal measure of interest rate exposure. When the supervisory measure is used to calculate the bank's measured exposure pursuant to paragraph (2)(i), a bank's measured exposure is derived by calculating the bank's net risk-weighted position, as described in part I.A. of attachment VIII.

(iii) *Net economic value of a bank* means the net present value of its assets minus the net present value of its liabilities plus the net present value of its off-balance-sheet instruments.

(iv) *Net risk-weighted position* means the sum of all risk-weighted positions of a bank's assets, liabilities and off-balance-sheet items. For purposes of the supervisory measure, this number represents the amount by which the net economic value of the bank is estimated

to change in response to a potential change in market interest rates under the specified interest rate scenarios.

(v) *Supervisory threshold* means the equivalent of 1 percent of the bank's total assets.

2. Exemption for Banks With Low Risk

(i) *In general.* Except as provided in paragraph 2.(i), a state member bank's excess measured exposure shall be calculated pursuant to this section unless:

a. The total notional principal amount of the bank's off-balance-sheet interest rate contracts is less than 10% of total assets; and

b. 15 percent of the sum of fixed- and floating-rate loans and securities that mature or reprice beyond 5 years is less than 30 percent of total capital;

(ii) *Discretion of the Board.* The Board may require the calculation of a bank's excess measured exposure if the Board determines that such calculation is necessary to assess the capital adequacy of the bank.

3. Measured Exposure

(i) *Supervisory measure.* Except as provided in paragraph 3.(ii), a bank's measured exposure to interest rate risk shall be calculated pursuant to the supervisory measure set forth in attachment VIII to this appendix.

(ii) *Use of Internal Measure.* During each examination, or at the request of a bank, the Board will examine any internal measure of interest rate risk. If the bank's internal measure is acceptable to the Board in its sole discretion, then the bank's measure may be used in place of the supervisory model in determining the bank's excess measured exposure.

(iii) *Acceptable internal measure.* In determining whether a bank's internal measure of exposure to interest rate risk is acceptable, the Board will consider:

a. Whether the assumptions and structure of the supervisory measure accurately reflect the bank's assets, liabilities, and off-balance-sheet positions, and whether the internal measure provides a more precise measurement of the change in economic value of the bank;

b. Whether the internal measure makes use of generally accepted techniques in estimating measured exposure;

c. Whether the internal measure is appropriate to the nature and scope of the bank's activities; and

d. Whether the internal measure provides an adequate indication of the exposure of the bank to interest rate risk in all material respects.

(iv) *Requirement to use internal measure.* The Board may require that a bank use its existing internal measure for the purposes of this section if the Board determines that the internal measure represents the bank's positions more accurately than the supervisory model.

(v) *Interest rate scenario.* Measured exposure will be estimated for a specified change in the level of market interest rates, as provided in attachment VIII. This change will be a uniform increase of 2 percentage points (200 basis points) in market interest rates at all maturities.

3. Attachment I to Appendix A to part 208 is revised as follows:

Attachment I—Sample Calculation of Risk-Based Capital Ratio for State Member Banks

Example of a bank with $6,000 in total capital and the following assets and off-balance-sheet items.

Balance sheet assets:	
Cash	$5,000
U.S. Treasuries	20,000
Balances at domestic banks	5,000
Loans secured by first liens on 1- to 4- family residential properties	5,000
Loans to private corporations	65,000
Total Balance-Sheet Assets	100,000
Off-balance-sheet items:	
Standby letters of credit (SLCs) backing general-obligation debt issues of U.S. municipalities (GOs)	10,000
Long-term legally binding commitments to private corporations	20,000
Total Off-Balance-Sheet Items	30,000
Interest Rate Risk (IRR):	
Excess measured exposure to IRR	2,000

This bank's total capital to total assets (leverage) ratio would be: ($6,000/$100,000)=6.00%

To compute the bank's risk-weighted assets—

1. Compute the credit-equivalent amount of each off-balance-sheet (OBS) item.

Credit OBS

Item	Face value		Conversion factor		Equivalent amount
SLCs backing municipal GOs	$10,000	*	1.00	=	$10,000
Long-term commitments to private corporations	$20,000	*	0.50	=	$10,000

2. Compute the credit-equivalent amount of excess measured exposure to IRR.

Credit

Excess measured exposure		Conversion factor		Equivalent amount
$2,000	*	12.5	=	$25,000

3. Multiply each balance-sheet asset and the credit equivalent amount of each OBS item and excess measured exposure to IRR by the appropriate risk weight.

Credit

Item	Face value		Conversion factor		Equivalent amount
0% category:					
Cash	$5,000				
U.S. Treasuries	20,000				
	25,000	*	0	=	0
20% category:					
Balances at domestic banks	5,000				
Credit-equivalent amounts of SLCs backing GOs of U S. municipalities	10,000				
	15,000	*	0.20	=	3,000
50% category:					
Loans secured by first liens on 1- to 4-family residential properties	5,000	*	0.50	=	2,500

Item	Face value		Conversion factor		Equivalent amount
	Credit				
100% category:					
Loans to private corporations	65,000				
Credit-equivalent amounts of long-term commitments to private corporations	10,000				
Credit-equivalent amount of excess measured exposure to IRR	25,000				
	100,000	*	1.00	=	100,000
Total Risk-Weighted Assets					105,500

This bank's ratio of total capital to weighted-risk assets (risk-based capital ratio) would be: (6,000/$105,500)=5.69%.

Alternative Two (Risk Assessment Approach) for Appendix A to Part 208—Capital Adequacy Guidelines For State Member Banks: Risk-Based Measure

4. The sixth undesignated paragraph of section I of appendix A to part 208 is amended by adding the words "and interest rate risk, considering the bank's measured excess exposure to interest rate risk (as determined pursuant to attachment VIII) and other relevant factors" to the end of the first sentence.

2. Appendix A to part 208 is amended by adding Attachment VIII as follows:

Attachment VIII—Regulation H, Appendix A

Measurement of Interest Rate Risk for State Member Banks

I. Supervisory Measure

A. Measured Exposure to Interest Rates

A bank's measured exposure to interest rate risk is derived by calculating the bank's net risk-weighted position under two interest rate scenarios, a rise in interest rates and a fall in interest rates. If the bank's net risk-weighted position is positive under both scenarios, then the bank's measured exposure would be equal to zero. If the bank's net risk-weighted position is negative under one or both of the scenarios, then the bank's measured exposure would be equal to the larger decline in the net economic value of the bank under the two scenarios.

B. Calculation of Net Risk-Weighted Position

A bank's net risk-weighted position is calculated by multiplying its assets, liabilities, and off-balance-sheet positions by the appropriate risk weight for each scenario. The sum of the weighted values represents the net risk-weighted position or the dollar amount by which the bank's net economic value is estimated to change in response to each scenario.

The calculation is: (Assets Risk Weights) – (Liabilities Risk Weights) + (Off-Balance-Sheet Positions Risk Weight) = Net Risk Weighted Position. The resulting number is expressed as a percent of total assets and is the primary quantitative measure that would be used to evaluate a bank's measured exposure to IRR.

1. *Risk Weights.* For use in supervisory calculation of a bank's interest rate risk, reported asset, liability and off-balance-sheet positions will be multiplied by corresponding risk weights. The risk-weights estimate the sensitivity of the present value of each position to the specified interest rate scenario. The supervisory risk weights apply general assumptions regarding coupon rates and other characteristics of the underlying assets, liabilities, and off-balance-sheet instruments. Table 1 shows the risk weights developed for a 200 basis point parallel rise and fall in interest rates.

BILLING CODE 4810-33-M; 6210-01-M; 6714-01-M

Risk Weights

Table 1

Amortizing Instruments

Timeband	Scenario 1 200 Basis Point Rise % Change in Present Value (Risk Weights)	Scenario 2 200 Basis Point Decline % Change in Present Value (Risk Weights)
0-3 months	-0.10%	0.10%
3-12 months	-0.50%	0.60%
1-3 Years	-1.60%	1.70%
3-5 Years	-3.00%	3.10%
5-10 Years	-5.30%	3.40%
10-20 Years	-8.80%	5.90%
Over 20 Years	-9.20%	3.60%

All Other Instruments

0-3 months	-0.25%	0.25%
3-12 months	-1.20%	1.20%
1-3 Years	-3.50%	3.70%
3-5 Years	-6.40%	7.00%
5-10 Years	-10.20%	11.70%
10-20 Years	-14.90%	19.00%
Over 20 Years	-17.60%	24.60%

Liabilities

0-3 months	0.25%	-0.25%
3-12 months	1.20%	-1.20%
1-3 Years	3.70%	-3.90%
3-5 Years	6.90%	-7.50%
5-10 Years	11.60%	-13.50%
10-20 Years	18.70%	-24.50%
Over 20 Years	24.00%	-36.00%

Zero or Low Coupon Securities

0-3 months	-0.25%	0.25%
3-12 months	-1.20%	1.20%
1-3 Years	-3.70%	3.90%
3-5 Years	-7.40%	8.00%
5-10 Years	-13.30%	15.60%
10-20 Years	-24.90%	33.50%
Over 20 Years	-38.00%	61.90%

BILLING CODE 4810-33-C; 6210-01-C; 6714-01-C

2. *Reported Assets, Liabilities, and Off-Balance-Sheet Positions.* Assets, liabilities, and off-balance-sheet positions will be reported within the appropriate category and time band based on their remaining maturity, next repricing, average life, or other means as directed below.

C. Summary of Asset, Liability, and Off-Balance-Sheet Categories

1. *Adjustable-Rate Assets.* Adjustable-rate mortgage loans and adjustable-rate mortgage securities.

2. *Amortizing Fixed-rate Loans and Securities.* Fixed-rate mortgage securities, and asset-backed securities; fixed-rate mortgage loans, consumer loans and other instruments that involve scheduled periodic amortization of principal.

3. *Zero- or Low-Coupon Assets.* Securities with either no periodic interest payments or stated coupons of 2 percent or lower.

4. *Trading Account Items.* Trading account assets and related off-balance-sheet positions.

5. *High-risk Mortgage Security.* Mortgage derivative products that, at the time of purchase or at any subsequent time, that:

(a) Have an expected weighted average life greater than 10.0 years; or

(b) Have an expected weighted average life that:

(i) Extends by more than 4.0 years, assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points; or

(ii) Shortens by more than 6.0 years, assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points; or

(c) Has a change in price of greater than 17 percent, assuming an immediate sustained shift in the yield curve of plus or minus 300 basis points.

6. *All Other Assets.* All other interest-sensitive instruments, which are assumed to involve scheduled periodic payments of interest and the payment of principal at maturity.

7. *Liabilities.* All deposits and all non-deposit liabilities whose values are sensitive to movements in interest rates.

8. *Off-Balance-Sheet Items.* (1) Interest rate contracts, including swaps, forwards, options, and futures; (2) mortgage related fixed-rate commitments and other off-balance-sheet derivative instruments whose value depends on the value of an underlying asset or index with amortizing characteristics.

D. Summary of Time Intervals for Maturity and Repricing

Assets, liabilities and off-balance-sheet items are assigned (in part or in total) to one of seven maturity ranges:

- Up to 3 Months,
- 3 to 12 Months,
- 1 to 3 Years,
- 3 to 5 Years,
- 5 to 10 Years,
- 10 to 20 Years,
- Greater than 20 years.

E. Summary of Maturity and Repricing

1. *Maturity and Repricing—In General.* Except for mortgage derivative products and nonmaturity deposits, the remaining maturity of an asset, liability, or off-balance-sheet item is determined by the remaining time before maturity, or next actual or potential repricing date, associated with the outstanding principal or notional balances as specified by contract or agreement.

2. *Maturity and Repricing for Mortgage Derivative Products—*(a) *Use of Expected Average Life.* Maturity and repricing for mortgage derivative products other than high-risk mortgage securities will be defined as their current expected average life as determined by bank management.[2] Maturity and repricing of "high-risk" mortgage derivative products may be estimated by bank management. Otherwise, maturity and repricing of such products will be assumed to be in the "Greater Than 20 Years" time band.

(b) *Mortgage Derivative Products Defined.* Mortgage derivative products are defined as interest-only and principal-only stripped mortgage-backed securities (IOs and POs), tranches or collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs), CMO and REMIC residual securities and other instruments having the same characteristics as these securities.

3. *Maturity and Repricing for Nonmaturity Deposits—*(a) *Management determination of repricing and maturity.* Repricing and maturity for nonmaturity deposits is determined by bank management based on its own assumptions and experience, subject to the following constraints:

(i) Repricing and maturity for DDAs and MMDAs may not exceed three years, with a maximum of 40% of these balances in the "1–3 year" time band; and

(ii) Repricing and maturity for savings and NOW account balances may not exceed five years, with a maximum of 40% of the total of these balances in the "3–5 year" time band.

(b) *Nonmaturity deposits.* Nonmaturity deposits are defined as demand deposit accounts (DDAs), money market deposit accounts (MMDAs), savings accounts, and negotiable order of withdrawal accounts (NOWs).

F. Example of the Interest Rate Risk Measure

Table 2 is an interest rate risk worksheet that illustrates the method of which a bank's Net Risk-Weighted Position is calculated.

BILLING CODE 4810-33-M; 6210-01-M; 6714-01-M

[2] All underlying assumptions used in calculating the average life of these instruments must be reasonable and available for examiner review. For example, if an institution's prepayment assumptions differ significantly from the median prepayment assumptions of several major dealers as selected by examiners, the examiners may use these median prepayment assumptions in determining the appropriate average life of the instrument.

Interest Rate Risk Worksheet (200 Basis Point Rising Rate Scenario)
DRAFT

Table 2

REPORTING INSTITUTION: Sample Bank

Date: 12/31/92

$ Thousands

	(A) TOTAL	(B) Risk Weights	(C) Risk Weighted Position (A) x (B)	(D) Total Risk Weighted Position
I. INTEREST-SENSITIVE ASSETS				
1. ARMs, FRMs, asset-backed securities, consumer loans				
(a) Up to 3 months	$5,500	-0.10%	($6)	
(b) 3 to 12 months	$4,950	-0.50%	($25)	
(c) 1 to 3 years	$9,090	-1.60%	($65)	
(d) 3 to 5 years	$4,166	-3.00%	($125)	
(e) 5 to 10 years	$6,620	-5.30%	($351)	
(f) 10 to 20 years	$6,454	-8.80%	($568)	
(g) Greater than 20 years	$10,430	-9.20%	($960)	
2. Zero or low coupon securities				
(a) Up to 3 months	$1,000	-0.25%	($3)	
(b) 3 to 12 months	$1,000	-1.20%	($12)	
(c) 1 to 3 years	$1,000	-3.70%	($37)	
(d) 3 to 5 years	$0	-7.40%	$0	
(e) 5 to 10 years	$0	-13.30%	$0	
(f) 10 to 20 years	$0	-24.90%	$0	
(g) Greater than 20 years	$0	-38.00%	$0	
3. "All other" securities, loans, & trading account				
(a) Up to 3 months	$26,677	-0.25%	($67)	
(b) 3 to 12 months	$28,432	-1.20%	($341)	
(c) 1 to 3 years	$31,136	-3.50%	($1,090)	
(d) 3 to 5 years	$19,728	-6.40%	($1,263)	
(e) 5 to 10 years	$10,564	-10.20%	($1,078)	
(f) 10 to 20 years	$8,837	-14.90%	($1,317)	
(g) Greater than 20 years	$9,462	-17.60%	($1,665)	
4. High-risk mortgage securities				
(a) Self-reporting	$2,000		$160	
(b) Risk weighting	$1,000	-38.00%	($380)	
5. Total Interest-Sensitive Assets	$183,099		($9,190)	($9,190)
II. ALL OTHER ASSETS	$3,000			
III. TOTAL ASSETS	$186,099			
IV. INTEREST-SENSITIVE LIABILITIES				
1. Non-maturity deposits, time deposits and "all other"				
(a) Up to 3 months	$23,083	0.25%	$58	
(b) 3 to 12 months	$74,582	1.20%	$895	
(c) 1 to 3 years	$51,321	3.70%	$1,899	
(d) 3 to 5 years	$17,090	6.99%	$1,179	
(e) 5 to 10 years	$64	11.60%	$7	
(f) 10 to 20 years	$0	18.70%	$0	
(g) Greater than 20 years	$0	24.09%	$0	
2. Total Interest-Sensitive Liabilities	$166,140		$4,038	
V. NONINTEREST-SENSITIVE LIABILITIES	$960			
VI. TOTAL LIABILITIES	$167,000		$4,038	$4,038
VII. EQUITY CAPITAL	$19,001			
VIII. OFF-BALANCE-SHEET POSITIONS				
1. Interest rate contracts				
(a) Up to 3 months	$4,000	-0.25%	($10)	
(b) 3 to 12 months	$500	-1.20%	($6)	
(c) 1 to 3 years	($4,050)	-3.50%	$142	
(d) 3 to 5 years	($450)	-6.40%	$29	
(e) 5 to 10 years	$0	-10.20%	$0	
(f) 10 to 20 years	$0	-14.90%	$0	
(g) Greater than 20 years	$0	-17.60%	$0	
2. Mortgage and other amortizing contracts				
(a) Up to 3 months	$1,000	-0.10%	($1)	
(b) 3 to 12 months	$0	-0.50%	$0	
(c) 1 to 3 years	($1,000)	-1.60%	$16	
(d) 3 to 5 years	$0	-3.00%	$0	
(e) 5 to 10 years	$0	-5.30%	$0	
(f) 10 to 20 years	$0	-8.80%	$0	
(g) Greater than 20 years	$0	-9.20%	$0	
3. Total Off-Balance-Sheet Positions	$0		$170	$170
Net Risk Weighted Position				($4,981.90)
Net Position/ Assets				-2.68%

BILLING CODE 4810-33-C; 6210-01-C; 6714-01-C

II. Internal Measure

A state member bank's internal measure for interest rate risk will be evaluated and, if the measure is used in assessing the bank's measured exposure, calculated according to the following interest rate scenario:

Maturity	Scenario annual horizon (basis points)
0–3 Months	200
3–12 Months	200
1–3 Years	200
3–5 Years	200
5–10 Years	200
10–20 Years	200
Over 20 Years	200

This signature page relates to the Joint Notice of Proposed Rulemaking title Risk-Based Capital Standards: Interest Rate Risk, Office of the Comptroller of the Currency, Department of the Treasury, Docket Number R–0802.

By Order of the Board of Governors of the Federal Reserve System.

Dated: August 27, 1993.

William Wiles,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

Authority and Issuance

For reasons set out in the joint preamble, part 325 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909; Public Law 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Public Law 102–242, 105 Stat. 2236, 2386 (12 U.S.C. 1828 note).

ALTERNATIVE ONE (MINIMUM CAPITAL STANDARD APPROACH) FOR APPENDIX A TO SUBPART A OF PART 325—THE STATEMENT OF POLICY ON RISK-BASED CAPITAL

2. Section II of appendix A to subpart A of part 325 is amended by revising the first undesignated paragraph under paragraph A and by adding a new paragraph F. to read as follows:

Appendix A to Subpart A of Part 325—Statement of Policy on Risk-Based Capital

* * * * *

A. * * *

Under the risk-based capital framework, a bank's balance sheet assets and credit equivalent amounts of off-balance-sheet items are assigned to one of four broad risk categories according to the obligor or, if relevant, the guarantor or the nature of the collateral. The aggregate dollar amount in each category is then multiplied by the risk weight assigned to that category. In addition, a risk-weighted asset amount of a bank's excess measured exposure to interest rate risk (as determined pursuant to paragraph II.F. of this appendix) is calculated. The resulting weighted values from each of the four risk weight categories and the risk-weighted asset amount for interest rate risk are added together and this sum is the risk-weighted assets total that, as adjusted,[11] comprises the denominator of the risk-based capital ratio.

* * * * *

F. *Risk Weighted Asset Amount for Excessive Interest Rate Risk Exposure.* If a bank is required to maintain additional capital for excessive interest rate risk exposure, as determined in accordance with appendix C to subpart A of part 325, the dollar amount of this additional capital requirement for interest rate risk should be multiplied by 12.5. The resulting amount should be included in the denominator for risk-weighted assets. For example, if the capital required for excessive interest rate risk under appendix C is $100,000, the amount to be included in risk-weighted assets for this interest rate risk exposure will be $1,250,000. Thus, consistent with the 8 percent minimum total risk-based capital ratio that banks are required to maintain under this risk-based capital policy statement, if $100,000 in additional capital is required to be maintained for interest rate risk pursuant to appendix C, this amount will equal 8 percent of the $1,250,000 additional amount to be included in risk-weighted assets.

ALTERNATIVE TWO (RISK ASSESSMENT APPROACH) FOR APPENDIX A TO SUBPART A OF PART 325—THE STATEMENT OF POLICY ON RISK-BASED CAPITAL

3. The fifth undesignated paragraph of appendix A to subpart A of part 325 (the FDIC's Statement of Policy on Risk-Based Capital) is revised to read as follows:

Appendix A to Subpart A of Part 325—Statement of Policy on Risk-Based Capital

* * * * *

The risk-based capital ratio focuses principally on broad categories of credit risk; however, the ratio does not take account of many other factors that can affect a bank's financial condition. These factors include overall interest rate risk exposure; liquidity, funding and market risks; the quality and level of earnings; investment, loan portfolio, and other concentrations of credit risk; certain risks arising from nontraditional activities; the quality of loans and investments; the effectiveness of loan and investment policies; and management's overall ability to monitor and control financial and operating risks, including the risk presented by concentrations of credit and nontraditional activities. In addition to evaluating capital ratios, an overall assessment of capital adequacy must take account of each of these other factors, including, in particular, the level and severity of problem and adversely classified assets as well as a bank's excess measured exposure to interest rate risk. For this reason, the final supervisory judgment on a bank's capital adequacy may differ significantly from the conclusions that might be drawn solely from the absolute level of the bank's risk-based capital ratio.

4. Subpart A of part 325 is revised by adding a new appendix C to read as follows:

Appendix C to Subpart A of Part 325—Measurement of and the Assessment of Capital Requirements for Interest Rate Risk

This appendix sets forth a system for measuring IRR and determining if additional capital may be required in order to take adequate account of a bank's interest rate risk.

I. Definitions

A. *Excess Measured Exposure* means the dollar amount of measured exposure to interest rate risk in excess of the supervisory threshold.

B. *Measured Exposure* means the estimated dollar decline in the net economic value of a bank under the specified interest rate scenario(s) as determined pursuant to either a supervisory measure or, where the FDIC deems appropriate, the bank's internal measure of interest rate risk exposure. When the supervisory measure is used to calculate the bank's measured exposure pursuant to section III of this appendix, a bank's measured exposure is derived by calculating the bank's net risk-weighted position.

C. *Net Economic Value of a Bank* means the net present value of its assets minus the net present value of its liabilities plus the net present value of its off-balance-sheet instruments.

D. *Net Risk-Weighted Position* means the sum of all risk-weighted values of the bank's assets, liabilities and off-balance-sheet positions. For purposes of the supervisory measure, this number represents the amount by which the bank's net economic value is estimated to change in response to the interest rate scenario(s). This number may be expressed as a percentage of total assets or in dollar amounts.

E. *Supervisory Threshold* means the equivalent of 1 percent of the bank's total assets.

II. Applicability

A. Exemption Test for Banks with Low Risk

1. *General Rule.* Except as provided in paragraph A.2. a bank's excess measured exposure will be calculated pursuant to this appendix unless:

(a) The total notional principle amount of the bank's off-balance-sheet interest rate

[11] Any asset deducted from a bank's capital accounts when computing the numerator of the risk-based capital ratio will also be excluded from risk-weighted assets when calculating the denominator for the ratio.

contracts is less than 10 percent of total assets; and

(b) 15 percent of the sum of fixed- and floating-rate loans and securities that mature or reprice beyond 5 years is less than 30 percent of total capital.

2. *Discretion of the FDIC.* The FDIC may require the calculation of a bank's excess measured exposure if the FDIC determines, based on an overall assessment of the bank's financial condition, that such calculation is necessary to assess the capital adequacy of the bank.

III. Supervisory Measure

A. Measured Exposure to Interest Rates

A bank's measured exposure to interest rate risk must be calculated pursuant to the supervisory measure as specified in section III.C. and III.D. of this appendix C.

B. Calculation of Net Risk-Weighted Position

A bank's net risk-weighted position is calculated by multiplying its assets, liabilities, and off-balance-sheet positions by the appropriate risk weight [1] for each specified rate scenario. The sum of the weighted values represents the net risk-weighted position or the dollar amount by which the bank's net economic value is estimated to change in response to each scenario.

The calculation is as follows:

(Assests × Risk Weights) – (Liabilities × Risk Weights) + (Off-Balance-Sheet Positions × Risk Weight) = Net Risk Weighted Position

The resulting number is expressed in dollars and may be divided by total assets and expressed as a percent of total assets. It is the primary quantitative measure that would be used to evaluate a bank's measured exposure to interest rate risk.

[1] Risk weights estimate the sensitivity of the present value of assets, liabilities and off-balance-sheet positions to the specified interest rate scenario(s). The supervisory risk weights apply general assumptions regarding coupon rates and other characteristics of the underlying assets, liabilities and off-balance-sheet instruments. Table 1 shows the risk weights developed for a [200 basis point] parallel rise and fall in interest rates.

BILLING CODE 4810-33-M; 6210-01-M; 6714-01-M

Risk Weights

Table 1

Amortizing Instruments

Timeband	Scenario 1 — 200 Basis Point Rise: % Change in Present Value (Risk Weights)	Scenario 2 — 200 Basis Point Decline: % Change in Present Value (Risk Weights)
0-3 months	-0.10%	0.10%
3-12 months	-0.50%	0.60%
1-3 Years	-1.60%	1.70%
3-5 Years	-3.00%	3.10%
5-10 Years	-5.30%	3.40%
10-20 Years	-8.80%	5.90%
Over 20 Years	-9.20%	3.60%

All Other Instruments

0-3 months	-0.25%	0.25%
3-12 months	-1.20%	1.20%
1-3 Years	-3.50%	3.70%
3-5 Years	-6.40%	7.00%
5-10 Years	-10.20%	11.70%
10-20 Years	-14.90%	19.00%
Over 20 Years	-17.60%	24.60%

Liabilities

0-3 months	0.25%	-0.25%
3-12 months	1.20%	-1.20%
1-3 Years	3.70%	-3.90%
3-5 Years	6.90%	-7.50%
5-10 Years	11.60%	-13.50%
10-20 Years	18.70%	-24.50%
Over 20 Years	24.00%	-36.00%

Zero or Low Coupon Securities

0-3 months	-0.25%	0.25%
3-12 months	-1.20%	1.20%
1-3 Years	-3.70%	3.90%
3-5 Years	-7.40%	8.00%
5-10 Years	-13.30%	15.60%
10-20 Years	-24.90%	33.50%
Over 20 Years	-38.00%	61.90%

BILLING CODE 4810-33-C; 6210-01-C; 6714-01-C

C. Calculation of Measured Exposure

If the net risk-weighted position is positive under the specified interest rate scenario(s), the measured exposure would be equal to zero. If the net risk-weighted position is negative under the specified interest rate scenario(s), the measured exposure would be equal to the larger decline in the net economic value of the bank.

D. Calculation of Excess Measured Exposure

1. The dollar amount of the supervisory threshold would be subtracted from the absolute dollar amount of the measured exposure. The positive difference would equal the excess measured exposure.

Measured Exposure − (.01Total Assets)=Excess Measured Exposure

2. If the amount of the supervisory threshold were greater than the measured exposure, the excess measured exposure would be zero.

E. Interest Rate Scenario

Measured exposure will be estimated for a uniform increase and decrease of 2 percentage points (200 basis points) in market interest rates at all maturities.

IV. Reporting Requirements

Assets, liabilities and off-balance-sheet positions will be reported within the appropriate category and time band based upon their remaining maturities, nearest repricing dates, average life or other means as directed below.

A. Summary of Assets, Liabilities and Off-Balance-Sheet Categories

1. *Adjustable-Rate Assets.* Adjustable-rate mortgage loans and adjustable-rate mortgage securities.

2. *Fixed-Rate Assets.* Fixed-rate mortgage securities and asset-backed securities; fixed-rate mortgage loans, consumer loans and other instruments that have scheduled periodic amortization of principal.

3. *Zero- or Low-Coupon Assets.* Securities with either no periodic interest payments or with stated coupons of 2 percent or lower.

4. *Trading Account Assets.* Trading account assets and related off-balance-sheet instruments.

5. *High-Risk Mortgage Securities.* Mortgage derivative products that, at the time of purchase or at any subsequent time:

(a) Have an expected weighted average life greater than 10.0 years; or

(b) Have an expected weighted average life that:

(i) Extends by more than 4.0 years, assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points; or

(ii) Shortens by more than 6.0 years, assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points; or

(c) Has a change in price of greater than 17 percent, assuming an immediate sustained parallel shift in the yield curve of plus or minus 300 basis points.

6. *All Other Assets.* All other interest-sensitive instruments, which have scheduled periodic payments of interest and the payment of principal at maturity.

7. *Liabilities.* All deposits and all non-deposit liabilities whose values are sensitive to movements in interest rates.

8. *Off-Balance-Sheet Positions.* (a) Interest-rate contracts including swaps, forwards, options, and futures.

(b) Mortgage-related fixed-rate commitments and other off-balance-sheet derivative instruments whose value depends on the value of an underlying asset or index with amortizing characteristics.

B. Summary of Time Bands for Maturity and Repricing

Assets, liabilities and off-balance-sheet items are assigned (in part or in total) to one of seven maturity ranges:

- Up to 3 months,
- 3 to 12 months,
- 1 to 3 years,
- 3 to 5 years,
- 5 to 10 years,
- 10 to 20 years,
- Greater than 20 years.

C. Summary of Maturity and Repricing Instructions

1. *Maturity and Repricing for Assets, Liabilities and Off-Balance-Sheet Positions.* Remaining time before maturity, or next actual or potential repricing date, associated with outstanding principal or notional balances as specified in a contract or agreement with the exception of:

(a) *Maturity and Repricing for Mortgage Derivative Products.* Mortgage derivative products are defined as stripped mortgage-backed securities, tranches of collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs), CMO and REMIC residual securities and other instruments having the same characteristics as these securities.

For mortgage derivative products, other than those which may be deemed as a "high-risk mortgage security" by the FDIC, current average life will be reported in lieu of maturity or repricing dates in the "All Other Securities" category.[2] The carrying value of "high-risk mortgage securities" will be reported in the "High-Risk Mortgage Securities" category.[3] If not, maturity and repricing of high-risk mortgage securities will be as if the entire balance were a zero or low coupon instrument in the longest time band.

(b) *Maturity and Repricing for Non-Maturity Deposits.*

(i) *Non-maturity deposits* are defined as Demand Deposits Accounts (DDAs), Money Market Deposit Accounts (MMDAs), savings accounts, and Negotiable Order of Withdrawal accounts (NOWs).

(ii) *Management determination of repricing and maturity.* Repricing and maturity for non-maturity deposits are determined by bank management based on its own assumptions and experience, subject to the following constraints:

(1) Repricing and maturity for Demand Deposit Accounts (DDAs) and Money Market Deposit Accounts (MMDAs) may not exceed three years, with a maximum of 40 percent of these balances in the "1–3 year" time band; and

(2) Repricing and maturity for savings and Negotiable Order of Withdrawal (NOW) account balances may not exceed five years, with a maximum of 40 percent of the total of these balances in the "3–5 year" time band.

(iii) *Maturity and Repricing for Off-Balance-Sheet Positions.* Off-balance-sheet positions with option characteristics (e.g. options, caps, floors) are reported separately from those representing firm commitments (e.g., swaps, futures, and forward-rate agreements). Mortgage-related fixed rate commitments and other off-balance-sheet derivative instruments whose value depends on the value of an underlying asset or index with amortizing characteristics are reported separately.

D. Example of the Interest Rate Risk Measure

Tables 2 and 3 are interest rate risk worksheets that illustrate the method by which a bank's Net Risk-Weighted Position is calculated.

BILLING CODE 4810-33-M; 6210-01-M; 6714-01-M

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[2] All underlying assumptions used in calculating the average life of these instruments must be reasonable and available for examiner review. For example, if an institution's prepayment assumptions differ significantly from the median prepayment assumptions of several major dealers as selected by examiners, the examiners may use these median prepayment assumptions in determining the appropriate average life of the instrument.

[3] The interest rate sensitivity of high-risk mortgage securities purchased after February 10, 1992 must be reported in the memorandum items. The interest rate sensitivity of "high-risk mortgage securities" purchased prior to February 10, 1992 can be reported as a memorandum item.

Interest Rate Risk Worksheet (200 Basis Point Rising Rate Scenario)
DRAFT

Table 2

REPORTING INSTITUTION: Sample Bank

Date: 12/31/92

$ Thousands

	(A) TOTAL	(B) Risk Weight	(C) Risk Weighted Position (A) x (B)	(D) Total Risk Weighted Position
I. INTEREST-SENSITIVE ASSETS				
1. ARMs, FRMs, asset-backed securities, consumer loans				
(a) Up to 3 months	$3,920	-0.10%	($4)	
(b) 3 to 12 months	$4,930	-0.50%	($25)	
(c) 1 to 3 years	$4,050	-1.60%	($65)	
(d) 3 to 5 years	$4,166	-3.00%	($125)	
(e) 5 to 10 years	$6,629	-5.30%	($351)	
(f) 10 to 20 years	$6,454	-8.80%	($568)	
(g) Greater than 20 years	$10,430	-9.20%	($960)	
2. Zero or low coupon securities				
(a) Up to 3 months	$1,000	-0.25%	($3)	
(b) 3 to 12 months	$1,000	-1.20%	($12)	
(c) 1 to 3 years	$1,000	-3.70%	($37)	
(d) 3 to 5 years	$0	-7.40%	$0	
(e) 5 to 10 years	$0	-13.30%	$0	
(f) 10 to 20 years	$0	-24.90%	$0	
(g) Greater than 20 years	$0	-38.00%	$0	
3. "All other" securities, loans, & trading assets				
(a) Up to 3 months	$26,672	-0.25%	($67)	
(b) 3 to 12 months	$28,432	-1.20%	($341)	
(c) 1 to 3 years	$31,136	-3.50%	($1,090)	
(d) 3 to 5 years	$19,728	-6.40%	($1,263)	
(e) 5 to 10 years	$10,564	-10.20%	($1,078)	
(f) 10 to 20 years	$8,837	-14.90%	($1,317)	
(g) Greater than 20 years	$9,462	-17.60%	($1,665)	
4. High-risk mortgage securities				
(a) Self-reporting	$2,000		$160	
(b) Risk weighting	$1,000	-38.00%	($380)	
5. Total Interest-Sensitive Assets	$193,000		($9,190)	($9,190)
II. ALL OTHER ASSETS	$3,000			
III. TOTAL ASSETS	$196,000			
IV. INTEREST-SENSITIVE LIABILITIES				
1. Non-maturity deposits, time deposits and "all other"				
(a) Up to 3 months	$23,083	0.25%	$58	
(b) 3 to 12 months	$34,982	1.20%	$395	
(c) 1 to 3 years	$31,324	3.20%	$1,899	
(d) 3 to 5 years	$12,090	6.90%	$1,179	
(e) 5 to 10 years	$664	11.60%	$7	
(f) 10 to 20 years	$0	18.70%	$0	
(g) Greater than 20 years	$0	24.00%	$0	
2. Total Interest-Sensitive Liabilities	$102,143		$4,038	
V. NONINTEREST-SENSITIVE LIABILITIES	$960			
VI. TOTAL LIABILITIES	$103,099		$4,038	$4,038
VII. EQUITY CAPITAL	$12,901			
VIII. OFF-BALANCE-SHEET POSITIONS				
1. Interest rate contracts				
(a) Up to 3 months	$4,000	-0.25%	($10)	
(b) 3 to 12 months	$500	-1.20%	($6)	
(c) 1 to 3 years	($4,000)	-3.50%	$142	
(d) 3 to 5 years	($450)	-6.40%	$29	
(e) 5 to 10 years	$0	-10.20%	$0	
(f) 10 to 20 years	$0	-14.90%	$0	
(g) Greater than 20 years	$0	-17.60%	$0	
2. Mortgage and other commitments				
(a) Up to 3 months	$1,000	-0.10%	($1)	
(b) 3 to 12 months	$0	-0.50%	$0	
(c) 1 to 3 years	($1,000)	-1.60%	$16	
(d) 3 to 5 years	$0	-3.00%	$0	
(e) 5 to 10 years	$0	-5.30%	$0	
(f) 10 to 20 years	$0	-8.80%	$0	
(g) Greater than 20 years	$0	-9.20%	$0	
3. Total Off-Balance-Sheet Positions	$0		$170	$170
Net Risk Weighted Position				($13,058.60)
Net Position/ Assets				-6.66%

Interest Rate Risk Worksheet (200 Basis Point Declining Rate Scenario)
DRAFT
Table 3

REPORTING INSTITUTION: Sample Bank

Date: 12/31/92

$ Thousands

	(A) TOTAL	(B) Risk Weight	(C) Risk Weighted Position (A) x (B)	(D) Total Risk Weighted Position
I. INTEREST-SENSITIVE ASSETS				
1. ARMs, FRMs, asset-backed securities, consumer loans				
(a) Up to 3 months	$5,500	0.10%	$6	
(b) 3 to 12 months	$4,950	0.60%	$30	
(c) 1 to 3 years	$4,050	1.70%	$69	
(d) 3 to 5 years	$4,166	3.10%	$129	
(e) 5 to 10 years	$6,620	3.40%	$225	
(f) 10 to 20 years	$6,454	5.90%	$381	
(g) Greater than 20 years	$10,430	3.60%	$375	
2. Zero or low coupon securities				
(a) Up to 3 months	$1,000	0.25%	$3	
(b) 3 to 12 months	$1,000	1.20%	$12	
(c) 1 to 3 years	$1,000	3.90%	$39	
(d) 3 to 5 years	$0	8.00%	$0	
(e) 5 to 10 years	$0	15.60%	$0	
(f) 10 to 20 years	$0	33.50%	$0	
(g) Greater than 20 years	$0	61.90%	$0	
3. "All other" securities, loans, & trading account				
(a) Up to 3 months	$26,672	0.25%	$67	
(b) 3 to 12 months	$28,432	1.20%	$341	
(c) 1 to 3 years	$31,136	3.70%	$1,152	
(d) 3 to 5 years	$19,728	7.00%	$1,381	
(e) 5 to 10 years	$10,564	11.70%	$1,236	
(f) 10 to 20 years	$8,837	19.00%	$1,679	
(g) Greater than 20 years	$9,462	24.60%	$2,328	
4. High-risk mortgage securities				
(a) Self-reporting	$2,000		($200)	
(b) Risk weighting	$1,000	-38.00%	($380)	
5. Total Interest-Sensitive Assets	$183,000		$8,871	$8,871
II. ALL OTHER ASSETS	$3,000			
III. TOTAL ASSETS	$186,000			
IV. INTEREST-SENSITIVE LIABILITIES				
1. Non-maturity deposits, time deposits and "all other"				
(a) Up to 3 months	$98,583	-0.25%	($296)	
(b) 3 to 12 months	$77,582	-1.20%	($931)	
(c) 1 to 3 years	$39,821	-3.90%	($1,553)	
(d) 3 to 5 years	$10,090	-7.50%	($757)	
(e) 5 to 10 years	$64	-13.50%	($9)	
(f) 10 to 20 years	$0	-24.50%	$0	
(g) Greater than 20 years	$0	-36.00%	$0	
2. Total Interest-Sensitive Liabilities	$166,140		($3,346)	
V. NONINTEREST-SENSITIVE LIABILITIES	$860			
VI. TOTAL LIABILITIES	$167,000		($3,346)	($3,346)
VII. EQUITY CAPITAL	$19,001			
VIII. OFF-BALANCE-SHEET POSITIONS				
1. Interest rate contracts				
(a) Up to 3 months	$4,000	0.25%	$10	
(b) 3 to 12 months	$500	1.20%	$6	
(c) 1 to 3 years	($4,050)	3.70%	($150)	
(d) 3 to 5 years	($450)	7.00%	($32)	
(e) 5 to 10 years	$0	11.70%	$0	
(f) 10 to 20 years	$0	19.00%	$0	
(g) Greater than 20 years	$0	24.60%	$0	
2. Mortgage and other amortizing contracts				
(a) Up to 3 months	$1,000	0.10%	$1	
(b) 3 to 12 months	$0	0.60%	$0	
(c) 1 to 3 years	($1,000)	1.70%	($17)	
(d) 3 to 5 years	$0	3.10%	$0	
(e) 5 to 10 years	$0	3.40%	$0	
(f) 10 to 20 years	$0	5.90%	$0	
(g) Greater than 20 years	$0	3.60%	$0	
3. Total Off-Balance-Sheet Positions	$0		($181)	($181)
Net Risk Weighted Position				$5,344.91
Net Position/ Assets				2.87%

BILLING CODE 4810-33-C; 6210-01-C; 6714-01-C

V. Use of Internal Measures

A. Supervisory Measure

Except as provided in paragraph B, a bank's measured exposure to interest rate risk will be calculated pursuant to the supervisory measure set forth in section III of this appendix.

B. Use of Internal Measure

During an examination or at the request of a bank, the FDIC will evaluate any internal measure of interest rate risk exposure. If the bank's internal measure is acceptable to the FDIC, in its sole discretion, then the bank's measure may be used in place of the supervisory model in determining the bank's excess measured exposure.

C. Acceptable Internal Measure

In determining whether a bank's internal measure of exposure to interest rate risk is acceptable, the FDIC will consider:

1. Whether the assumptions and structure of the supervisory measure accurately reflect the actual positions, and whether the internal measure provides a more precise measurement of the change in economic value of the bank;

2. Whether the internal measure makes use of generally accepted techniques in estimating measured exposure;

3. Whether the internal measure is appropriate to the nature and scope of the bank's activities; and

4. Whether the internal measure provides an adequate indication of the exposure of the bank to interest rate risk in all material respects.

D. Requirement To Use Internal Measure

The FDIC may require that a bank use an existing internal measure for purposes of determining interest rate risk exposure if:

1. The supervisory measure does not adequately characterize the interest rate risk of the bank's positions; or

2. Use of the supervisory measure would materially misrepresent the bank's actual interest rate risk exposure.

The excess measured exposure determined by the internal measure would then be utilized to determine the risk-based capital requirement.

E. Reporting Requirements

In addition to completing the reporting requirements associated with the supervisory measure, a bank utilizing the internal measure would also report the interest rate sensitivity of its assets, liabilities and off-balance-sheet positions, as determined by its internal measure, on a separate reporting schedule.

F. Interest Rate Scenario(s)

The interest rate scenario(s) specified for the supervisory model (as set forth in section III.E. of this appendix) should also be utilized in conjunction with a bank's internal measure.

By order of the Board of Directors.

Dated at Washington, DC, this 9th day of June, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–22149 Filed 9–13–93; 8:45 am]

BILLING CODE 4810-33-M, 6210-01-M, 6714-01-M

federal register

Tuesday
September 14, 1993

Part IV

Department of Education

Office of Special Education and Rehabilitative Services; Technology, Educational Media, and Materials for Individuals With Disabilities Program; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Technology, Educational Media, and Materials for Individuals With Disabilities Program

AGENCY: Department of Education.

ACTION: Notice of final priority for Fiscal Years 1994–1995.

SUMMARY: The Secretary announces a final priority for the Technology, Educational Media, and Materials for Individuals with Disabilities Program to ensure effective use of program funds and to direct funds to an area of identified need during fiscal years 1994 and 1995.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Linda Glidewell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3524 Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–9864. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of this program is to support projects and centers for advancing the availability, quality, use, and effectiveness of technology, assistive technology, educational media, and materials in the education of children and youth with disabilities and in the provision of early intervention services to infants and toddlers with disabilities.

On June 8, 1993, the Secretary published a notice of proposed priority for this program in the **Federal Register** (58 FR 32206).

This priority supports the National Education Goals by improving our understanding of how to enable children and youth with disabilities to reach the high levels of academic achievement called for by the Goals.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, four parties submitted comments. An analysis of the comments and of the changes in the proposed priority follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comment: One commenter asked if "education and related services," as stated in the proposed priority, would include the transition planning component of the individualized education plan (IEP) process.

Discussion: The phrase "education and related services" used in the priority is a broad designation that includes the specific components of special education and related services called for in the Individual with Disabilities Education Act (IDEA). The Secretary believes that transition planning associated with the IEP would therefore be included.

Changes: None.

Comment: One commenter recommended that if projects must address and evaluate all of the specific issues and problem elements discussed in the background section of the priority then the project period should be extended to 60 months. Another commenter stated that the 3-year period with an optional six-month extension for dissemination appeared to be a reasonable length of time to accomplish the goals of the priority.

Discussion: The specific project requirements are contained in the "Priority" section, and include the statement that the priority supports projects that "take into account" the challenges described in the background section. The priority does not require that projects address and evaluate all of the specific issues and problem elements discussed in the background section. To do so would result in a priority that was needlessly complex and prescriptive, and that could not be adequately addressed even with the suggested 60-month project duration. The Secretary believes that a 36-month award with an optional six-month extension is appropriate for the tasks specified in the priority section.

Changes: None.

Comment: One commenter recommended that the priority clarify whether the phrases "innovative approaches" and "stages of change" (a phrase used by the commenter but not used in the priority) apply to demonstrating organizational support and professional development, or to technology, media, and materials.

Discussion: The section entitled "Background" begins with a statement of the purpose of this priority, which is "to support projects to develop, demonstrate, evaluate, and disseminate innovative approaches for providing organizational support combined with professional development in the use of technology (including assistive technology), media, and materials in providing education and related services to children and youth with disabilities." The section entitled "Proposed Priority" states that projects will be supported that develop and demonstrate innovative approaches that "take into account" the two challenges described in the "Background" section (i.e.: (1) That a "broad spectrum" of individual and organizational needs must be addressed, and (2) that change processes can be lengthy and can involve different stages). The innovative approaches must "provide the organizational support and professional development in a coordinated and mutually supportive combination * * *", and "must be designed to sustain a meaningful process of change in a range of organizational and individual areas." The Secretary believes that the priority as written is sufficiently clear with regard to innovative approaches and change processes, and that the recommended changes are unnecessary.

Changes: None.

Comment: One commenter recommended that the priority should specify what questions are to be addressed by the evaluation activities of the priority rather than indicate what factors to consider.

Discussion: The evaluation activities and factors must align with the projects proposed design and activities. Given the potential variety of approaches a particular project may pursue, the Secretary believes that it would be overly prescriptive to specify the activities to be addressed by the required evaluation plan.

Changes: None.

Comment: One commenter recommended that the priority should be scheduled for a second or third quarter award to permit projects to make use of summer months for planning and preparation.

Discussion: The Secretary agrees that earlier award dates are helpful to projects, and the Department is involved in a concerted effort to announce priorities in sufficient time to allow for second and third quarter awards.

Changes: None.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority:

Absolute Priority—Organizational Support and Professional Development in the Use of Technology, Media, and Materials With Children and Youth With Disabilities (CFDA 84.180A)

Background

The purpose of this priority is to support projects to develop, demonstrate, evaluate, and disseminate innovative approaches for providing organizational support combined with professional development in the use of technology (including assistive technology), media, and materials in providing education and related services to children and youth with disabilities.

Technology, media, and materials cannot work in isolation to achieve better outcomes for students with disabilities. In order for these tools to be effective, service providers, such as special educators, regular educators, and related services personnel, must perform a number of functions. These functions include appropriately selecting tools, managing their use in educational settings, integrating tools with curricula and services, and preparing students to use tools effectively. Sustained professional development is needed to prepare service providers to perform these functions.

However, the issue is not solely a matter of professional development. Various forms of organizational support are also required, including not only material resources, but also human resources such as administrative leadership, collaboration, technical assistance, and coordination.

Organizational support and professional development, as discussed here, are not sufficiently available in today's schools. This is due in part to a lack of effective approaches that are feasible in typical educational settings. To be effective, approaches must address two fundamental challenges found by previous Office of Special Education Programs (OSEP)- sponsored projects. First, improved use of technology, media, and materials must address a broad spectrum of interrelated needs at the organizational and individual levels. Organizations need expanded resources, as well as new structures, policies, and perceptions. Teachers need a range of new competencies, as well as new understandings about the nature of learning and instruction. Second, the processes of organizational and professional change can be lengthy and can involve a progression through qualitatively different stages requiring different types of facilitation. Organizations must not only select and implement changes, but must also refine and institutionalize them. Teachers must not only acquire new competencies and understandings, but must also assimilate them into their teaching practice.

Priority

This priority supports projects that—

(a) Develop and demonstrate innovative approaches that take into account the needs and challenges described above. Specifically, the approaches must provide organizational support and professional development in a coordinated and mutually supportive combination to advance the use and effectiveness of technology, media, and materials in providing education and related services to children and youth with disabilities. Further, the approaches must be designed to sustain a meaningful process of change in a range of organizational and individual areas;

(b) Focus on specific segments of the service provider population; specific student disabilities or ages; specific types of technology, media, and materials; or any combination of the above;

(c) Evaluate the approaches they develop with regard to factors that include, but are not limited to: (1) feasibility; (2) adaptability to other sites; (3) student outcomes; and (4) teacher effects on the use of technology, media, and materials in providing education and related services to children and youth with disabilities;

(d) Within the 36-month project period, disseminate information on innovative approaches for providing organizational support combined with professional development in the use of technology (including assistive technology), media, and materials in providing education and related services to children and youth with disabilities.

(e) Coordinate their activities, as appropriate, with recipients of grants under the Technology Related Assistance Act (Pub. L. 100–407).

During the third year of the project, the Department will determine whether or not to fund an optional six-month period. The purpose of the optional period would be for additional dissemination activities arranged with the Department.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: 34 CFR part 333.

Program Authority: 20 U.S.C. 1461.

(Catalog of Federal Domestic Assistance Number 84.180, Technology, Educational Media, and Materials for Individuals with Disabilities Program)

Dated: September 9, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–22434 Filed 9–13–93; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
September 14, 1993

Part V

Department of Education

Postsecondary Education Programs for Individuals With Disabilities; Notice

DEPARTMENT OF EDUCATION

Postsecondary Education Programs for Individuals With Disabilities

AGENCY: Department of Education

ACTION: Notice of Final Funding Priority for Fiscal Years 1994 and 1995.

SUMMARY: The Secretary announces a priority for fiscal years 1994 and 1995 under the Postsecondary Education Programs for Individuals with Disabilities. The Secretary takes this action to focus Federal financial assistance on an identified national need for maximizing student potential in postsecondary environments. This priority provides support for a variety of model demonstrations designed to (a) provide services to address the special needs of students with disabilities in postsecondary education programs, (b) expand the capacity of institutions of higher education and other institutions in improving programs and services for students with disabilities, and (c) improve the potential for successful postsecondary outcomes for these students.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–9503. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8170.

SUPPLEMENTARY INFORMATION: The purpose of this program is to provide assistance for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities. Section 625(a)(2) of the Individuals with Disabilities Education Act (IDEA) requires that priority consideration be given to four regional centers for the deaf and to model programs for individuals with disabling conditions other than deafness. Recipients of program funds must coordinate their efforts with and disseminate information about their activities to the National Clearinghouse on Postsecondary Education for Individuals with Disabilities.

This priority supports National Education Goal 5 by assisting students with disabilities in developing competitive workplace skills through improved services and better trained service providers.

On June 10, 1993 the Secretary published a notice of proposed priority for this program in the **Federal Register** (58 FR 32570).

Note: This notice of final priority does not solicit applications. A notice inviting applications under this program is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, five parties submitted comments. An analysis of the comments and of the changes in the priority since publication of the notice of proposed priority follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

Comment: One commenter suggested that the Secretary remove the requirement that programs address at least two of the three service issues described in the background of the priority. This commenter noted that these issues span a range of student development and functional settings that would be difficult to bridge within the same project.

Discussion: The Secretary agrees that although it is possible to design projects that would bridge high school, postsecondary institutions, and places of work, this requirement could preclude other innovative programs focusing on one of these issues.

Changes: The priority has been changed to require that model demonstration projects address one or more of the three specific service issues described in the background of the priority.

Comment: One commenter stated that the priority seemed ambiguous in terms of programs for students with learning disabilities. The commenter indicated that programs should encourage and enable these students to access postsecondary experiences.

Discussion: While students with learning disabilities are not specifically listed in the priority, they are within the population of students with disabilities addressed by the priority.

Changes: None.

Comment: One commenter wrote that the service issue related to accommodating diverse learning styles in a range of academic settings is not necessary and recommended instead that the priority focus on teaching requisite antecedent behaviors.

Discussion: The Secretary agrees that improving the prerequisite skills of students entering postsecondary programs is important, and, for this reason, has identified the third service issue related to improving student potential for successful postsecondary experiences. However, concerns from disabled student service providers indicate that many faculty members are not aware of strategies to accommodate students with diverse learning needs in the entire range of academic offerings. This obligation was mandated by section 504 of the Rehabilitation Act of 1973, and was recently reinforced by the Americans with Disabilities Act. Therefore, the Secretary believes that it is important to offer faculty training and information on state-of-the-art techniques for accommodating students with disabilities in a variety of academic settings.

Changes: None.

Comment: One commenter described an imperative need for teacher retraining centers where teachers at all levels could be trained to remediate the deficits of students ages six through adult in reading, spelling, and mathematics.

Discussion: Teacher retraining centers for teachers at all grade levels is not within the statutory authority for this program, which addresses only postsecondary education. Further, although training postsecondary educators to remediate deficits in reading, spelling, and mathematics may be an important component of improved postsecondary opportunities, the Secretary believes that it is important to focus resources at this time in the areas described in the priority.

Changes: None.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Priority—Model Demonstration Projects to Improve the Delivery and Outcomes of Postsecondary Education for Individuals with Disabilities

Background

This priority supports projects that develop, implement, evaluate, and disseminate new or improved approaches for serving the needs of students with disabilities in a variety of postsecondary settings. The intent of this priority is to improve the capacity of postsecondary institutions to reach out to and serve students with

disabilities and to improve the potential for successful postsecondary outcomes for these students. Projects supported under this priority would be major contributors of models or components of models for service providers in the field.

Although institutions of higher education have implemented measures to accommodate students with disabilities since the 1970's, longitudinal and follow-up studies of students exiting from secondary schools consistently show that fewer students with disabilities receive any type of postsecondary education than students without disabilities. Further, those students with disabilities who do attend postsecondary institutions are significantly less likely to complete their programs of studies or to be employed following their postsecondary experience. To change these outcomes, a number of specific barriers must be addressed, including the following:

Transferring of student accommodations to the employment setting. Students with disabilities who require classroom accommodations and adaptations to improve academic performance may require similar types of accommodations or adaptations on the job. In addition, specific jobs or professions may need additional accommodations or adaptations to successfully employ particular students with disabilities.

Thus, there is a need to develop strategies for helping students, placement specialists, and employers determine the accommodations or adaptations that would be required for professions or employment settings of interest to the student, and for transferring or arranging for those accommodations. This is likely to require cooperative efforts among representatives of the services responsible for successful vocational placements for people with disabilities. These collaborative efforts must include extensive involvement of representatives from an institution's program that provides support services to students with disabilities, the institution's career placement office, the State vocational rehabilitation (VR) agency (for VR-sponsored students), and business and industry.

Accommodating diverse learning styles in a range of academic settings. As the number and range of students with disabilities entering postsecondary institutions increase, there will be a continuing need for an institution's administration to accommodate or modify instructional strategies and classroom environments to promote improved participation and performance for these students. Thus, postsecondary institutions will have to work with individual faculty members and staff to implement the accommodations needed by particular students.

This is likely to require institutional strategies (1) to understand state-of-the-art practice in accommodating the full range of students with disabilities in traditional and emerging learning environments, and (2) to provide training on an on-going, as well as student-specific, basis to faculty or staff.

Improving student potential for successful postsecondary experiences. Some students with disabilities and their families may be unaware of the range of available postsecondary opportunities. Other students may be aware of these options but may not be prepared to benefit from postsecondary education. To increase the number of students with disabilities entering and successfully completing postsecondary education, there is a need to develop strategies for outreach activities to inform secondary special education teachers and counselors in secondary schools about the range of postsecondary opportunities available and how to work with students and families to understand and access these opportunities. Further, there is a need to develop or adapt programs such as Upward Bound and Talent Search that assist potential candidates to access postsecondary education.

Priority

A model demonstration project must—

(1) Develop and implement programs that address one or more of the three specific service issues described in the background of this priority;

(2) Develop and implement programs with specific project components or strategies that are based on theory, research, or evaluation;

(3) Produce detailed procedures and materials that would enable others to successfully replicate the model as implemented in the original site. Materials must include a manual or guide describing the components or strategies developed to address the specific issues; and

(4) Evaluate the model by using multiple outcome measures to determine the effectiveness of the model and its components or strategies, as well as a design that includes measures of multiple, functional student outcomes, other indices of the effects of the model, and cost data associated with implementing the model.

Competitive Priority

Within the absolute priority in this notice, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet the following competitive priority. The Secretary awards up to 10 points to an application that meets this competitive priority in a particularly effective way. These points would be in addition to any points the application earns under the selection criteria for this program:

Projects that would develop models for serving students with disabilities who are also members of minority groups (e.g., black, Hispanic, American Indian or Alaskan Native, Asian or Pacific Islander).

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations

34 CFR Part 338

Program Authority: 20 U.S.C. 1424a

(Catalog of Federal Domestic Assistance Number: Postsecondary Education Programs for Individuals with Disabilities 84.078)

Dated: September 9, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–22436 Filed 9–13–93; 8:45 am]

BILLING CODE 4000-01-P

federal register

Tuesday
September 14, 1993

Part VI

The President

Executive Order 12861—Elimination of One-Half of Executive Branch Internal Regulations

Executive Order 12862—Setting Customer Service Standards

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Federal Register
Vol. 58, No. 176
Tuesday, September 14, 1993

Presidential Documents

Title 3—

The President

Executive Order 12861 of September 11, 1993

Elimination of One-Half of Executive Branch Internal Regulations

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and section 1111 of title 31, United States Code, and to cut 50 percent of the executive branch's internal regulations in order to streamline and improve customer service to the American people, it is hereby ordered as follows:

Section 1. *Regulatory Reductions.* Each executive department and agency shall undertake to eliminate not less than 50 percent of its civilian internal management regulations that are not required by law within 3 years of the effective date of this order. An agency internal management regulation, for the purposes of this order, means an agency directive or regulation that pertains to its organization, management, or personnel matters. Reductions in agency internal management regulations shall be concentrated in areas that will result in the greatest improvement in productivity, streamlining of operations, and improvement in customer service.

Sec. 2. *Coverage.* This order applies to all executive branch departments and agencies.

Sec. 3. *Implementation.* The Director of the Office of Management and Budget shall issue instructions regarding the implementation of this order, including exemptions necessary for the delivery of essential services and compliance with applicable law.

Sec. 4. *Independent Agencies.* All independent regulatory commissions and agencies are requested to comply with the provisions of this order.

William J. Clinton

THE WHITE HOUSE,
September 11, 1993.

[FR Doc. 93-22649
Filed 9-13-93; 11:35 am]
Billing code 3195-01-P

Editorial note: For the President's remarks on signing this Executive order, see issue no. 37 of the *Weekly Compilation of Presidential Documents.*

Presidential Documents

Executive Order 12862 of September 11, 1993

Setting Customer Service Standards

Putting people first means ensuring that the Federal Government provides the highest quality service possible to the American people. Public officials must embark upon a revolution within the Federal Government to change the way it does business. This will require continual reform of the executive branch's management practices and operations to provide service to the public that matches or exceeds the best service available in the private sector.

NOW, THEREFORE, to establish and implement customer service standards to guide the operations of the executive branch, and by the authority vested in me as President by the Constitution and the laws of the United States, it is hereby ordered:

Section 1. *Customer Service Standards.* In order to carry out the principles of the National Performance Review, the Federal Government must be customer-driven. The standard of quality for services provided to the public shall be: Customer service equal to the best in business. For the purposes of this order, "customer" shall mean an individual or entity who is directly served by a department or agency. "Best in business" shall mean the highest quality of service delivered to customers by private organizations providing a comparable or analogous service.

All executive departments and agencies (hereinafter referred to collectively as "agency" or "agencies") that provide significant services directly to the public shall provide those services in a manner that seeks to meet the customer service standard established herein and shall take the following actions:

(a) identify the customers who are, or should be, served by the agency;

(b) survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services;

(c) post service standards and measure results against them;

(d) benchmark customer service performance against the best in business;

(e) survey front-line employees on barriers to, and ideas for, matching the best in business;

(f) provide customers with choices in both the sources of service and the means of delivery;

(g) make information, services, and complaint systems easily accessible; and

(h) provide means to address customer complaints.

Sec. 2. *Report on Customer Service Surveys.* By March 8, 1994, each agency subject to this order shall report on its customer surveys to the President. As information about customer satisfaction becomes available, each agency shall use that information in judging the performance of agency management and in making resource allocations.

Sec. 3. *Customer Service Plans.* By September 8, 1994, each agency subject to this order shall publish a customer service plan that can be readily understood by its customers. The plan shall include customer service standards and describe future plans for customer surveys. It also shall identify the private and public sector standards that the agency used to benchmark its performance against the best in business. In connection with the plan, each agency is encouraged to provide training resources for programs needed by employees who directly serve customers and by managers making use of customer survey information to promote the principles and objectives contained herein.

Sec. 4. *Independent Agencies.* Independent agencies are requested to adhere to this order.

Sec. 5. *Judicial Review.* This order is for the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

William J. Clinton

THE WHITE HOUSE,
September 11, 1993.

[FR Doc. 93-22648
Filed 9-13-93; 11:39 am]
Billing code 3195-01-P

Editorial note: For the President's remarks on signing this Executive order, see issue no. 37 of the *Weekly Compilation of Presidential Documents.*

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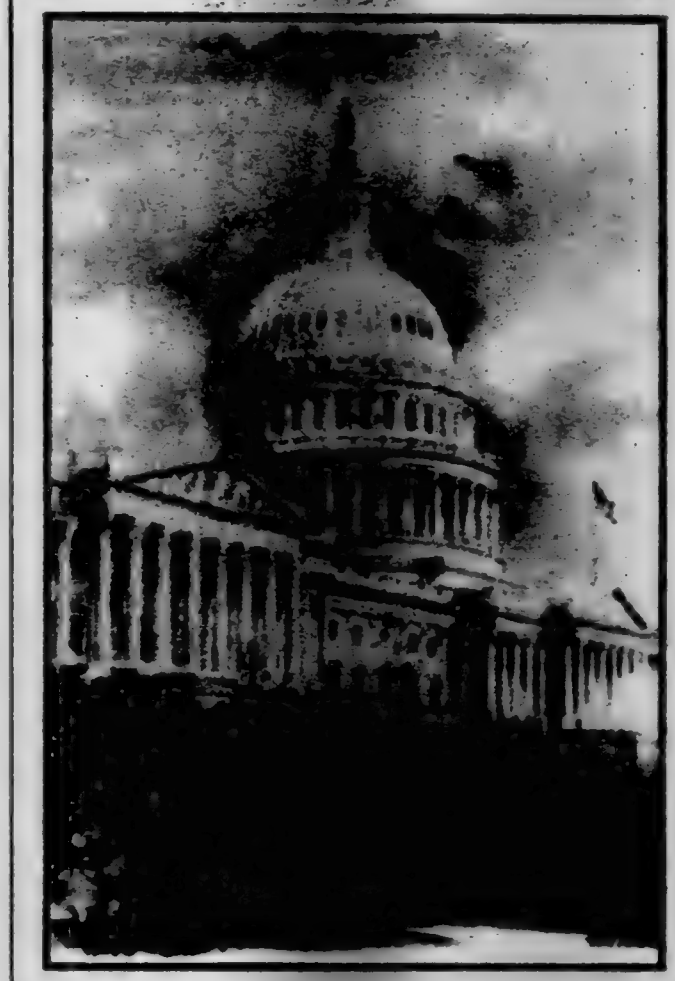

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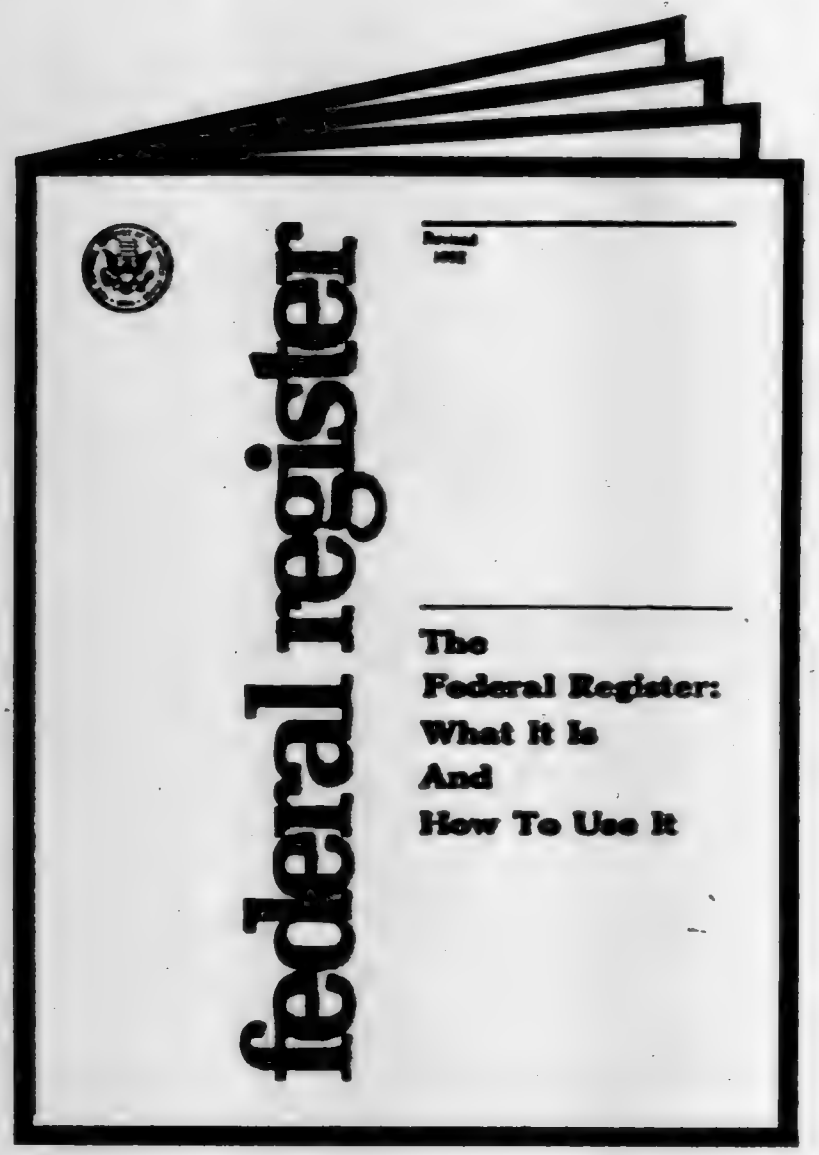

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Title 3—

The President

Presidential Determination No. 93–35 of August 30, 1993

Eligibility of the Cooperative Republic of Guyana To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 503(a) of the Foreign Assistance Act of 1961, as amended, and Section 3(a)(1) of the Arms Export Control Act, I hereby find that the furnishing, sale, and/or lease of defense articles and services to the Cooperative Republic of Guyana will strengthen the security of the United States and promote world peace.

You are authorized to report this finding to the Congress and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, August 30, 1993.

Justification for Presidential Determination of Eligibility of the Cooperative Republic of Guyana To Be Furnished Defense Articles and Services Under the Foreign Assistance Act of 1961 and the Arms Export Control Act

Section 503 of the Foreign Assistance Act of 1961 and Section 3(a)(1) of the Arms Export Control Act require, as a condition of eligibility to acquire defense articles and services from the United States, that the President find that the furnishing of such articles and services to the country concerned will "strengthen the security of the United States and promote world peace."

The Cooperative Republic of Guyana, with substantial U.S. help, implemented significant electoral reforms that enabled it in October 1992 to hold its first free and fair elections in over 25 years. The Guyana Defense Force (GDF) played a significant and non-partisan role in returning Guyana to the fold of democratic countries. It is in the interest of the U.S. to support the continued democratic evolution in Guyana and the professionalization of the military.

As pressure is placed on narcotics traffickers in neighboring countries, Guyana will likely become increasingly subject to drug smuggling. It also is in the national interest of the United States to support the counternarcotics efforts of Guyana and the ability of the Guyanese military to successfully interdict regional drug trafficking.

I have therefore concluded that providing defense articles and services to the Cooperative Republic of Guyana will further our long-term goals of strengthening democracy in South America, promoting regional stability and effectively meeting the threat posed by narcotics trafficking, and thereby will strengthen the security of the United States and promote world peace.

[FR Doc. 93–22689
Filed 9–13–93; 3:48 pm]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 93–36 of August 30, 1993

Determination and Waiver of Romania's Ineligibility Under Section 129 of the Atomic Energy Act of 1954 To Receive Certain U.S. Nuclear Exports

Memorandum for the Secretary of State

Pursuant to section 129 of the Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978 (P.L. 95–242), I hereby determine that Romania has materially violated the Romania-IAEA safeguards agreement and the U.S.-IAEA-Romania supply agreement. I hereby further determine that cessation of exports as provided for by section 129 of the Act would be seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security.

You are directed to report this Determination to the Congress and to provide copies of the Justification explaining the basis for this Determination. You are further directed to publish this Determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, August 30, 1993.

Justification for the President's Determination

On April 29, 1992, the Government of Romania informed the IAEA Director General, and on April 30, 1992, the United States, that an inventory conducted earlier that month at the former Institute for Nuclear Power Reactors (INPR) at Pitesti, Romania, had disclosed two (2) milligrams of plutonium stored outside the facility's safeguards material balance area, in effect kept hidden from IAEA safeguards inspectors in violation of the Romania-IAEA safeguards agreement. According to the Romanian Government report, further internal investigation determined that in 1985 INPR personnel carried out laboratory-scale reprocessing of nuclear material in a single fuel rod clandestinely irradiated in Romania's U.S.-supplied TRIGA research reactor, which resulted in the separation of the two milligrams of plutonium. The report noted that the reprocessing activity was not declared (as required by the Romania-IAEA safeguards agreement) to the IAEA. It further stated that the reprocessing activity was evidently no longer performed after 1985, although the two milligrams of plutonium continued to be stored outside the safeguarded area until it was discovered in April 1992.

The current Government of Romania described the case as "a residue of the practices of the former totalitarian Communist regime" and a breach of domestic Romanian law as well as of Romania's international obligations. It stressed its own policy of strict compliance with all its nuclear nonproliferation obligations, in the spirit of which it said it had moved imme-

diately to ensure full disclosure of the 1985 incident and had invited the IAEA to perform a special inspection. The IAEA in fact carried out such an inspection and confirmed the report of the present Government of Romania to the IAEA Board of Governors in June 1992.

Based on the current Romanian Government's own voluntary disclosures, it is clear that in 1985 and thereafter, subsequent to the effective date of the applicable U.S. statute, Romania materially violated an IAEA safeguards agreement within the meaning of section 129 of the Atomic Energy Act. (Inasmuch as the TRIGA reactor and the nuclear material used in the 1985 clandestine irradiation were supplied to Romania by the United States, Romania also violated it obligations to the United States under the trilateral U.S.-IAEA-Romania supply agreement, the agreement under which the TRIGA reactor and the nuclear material were transferred from the United States to Romania through the IAEA).

The President has therefore determined, pursuant to section 129 of the Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978 (Public Law 95–242), that Romania has materially violated an IAEA safeguards agreement and the U.S.-IAEA-Romania supply agreement.

Cessation of U.S. nuclear exports to Romania, however, would be seriously prejudicial to United States nonproliferation objectives and otherwise jeopardize the common defense and security. The violation occurred not merely under a different government, but under a very different form of government. The current Romanian Government initiated the investigation of its own accord, moved promptly to inform both the IAEA and the United States of the results (embarrassing and potentially damaging though they were), requested an immediate verification by IAEA inspectors, and has taken concrete steps to prevent any recurrence. It has strongly reaffirmed its intent to abide completely by its NPT and other international obligations with respect to nuclear nonproliferation. The present Romanian Government has demonstrated its commitment to a responsible nuclear export policy by joining the NPT Exporters Committee (Zangger Committee) and the Nuclear Supplies Group.

It is clearly in the U.S. interest to encourage other governments to take the same forthright steps that Romania has taken when similar circumstances arise. To impose sanctions on the current Romanian Government for the misdeeds of an earlier and far less open regime would discourage others from moving to publicize and rectify nonproliferation abuses when they discover them, and would thus make it substantially more difficult to achieve U.S. nonproliferation goals.

In addition, U.S. peaceful nuclear cooperation with Romania contributes to our overall policy of responding positively and constructively to the process of democratization and economic reform in that country. It would be counterproductive to permit sanctions tied to the misdeeds of the earlier regime to undermine our efforts to support positive developments under the current Government. Moreover, continued Romanian ineligibility for U.S. nuclear exports would needlessly disadvantage U.S. suppliers seeking to export to Romania.

The President has therefore further determined that cessation of exports as provided for by section 129 of the Act would be seriously prejudicial to the achievement of United States nonproliferation objectives and otherwise jeopardize the common defense and security.

[FR Doc. 93–22690
Filed 9–13–93; 3:49 pm]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 93–37 of September 2, 1993

Presidential Determination of the Proposed Agreement Between the United States of America and the Republic of Bulgaria for Cooperation in the Field of Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement Between the Government of the United States of America and the Government of the Republic of Bulgaria for Cooperation in the Field of Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed agreement and authorize you to arrange for its execution.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, September 2, 1993.

[FR Doc. 93–22691
Filed 9–13–93; 3:50 pm]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 58, No. 177
Wednesday, September 15, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 837, 841, 842, 844, and 846

RIN 3206–AD60

Reemployment of Annuitants

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This final rule amends the Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS) regulations governing reemployed annuitants, and the effect of reemployment on future CSRS and FERS benefits. These final rules implement section 134 of Public Law 100–238 and consolidate all the rules governing reemployed annuitants into a single part of OPM regulations.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Eugene R. Littleford, (202) 606–0299.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the **Federal Register** on October 9, 1992 (57 FR 46512), to create part 837 and amend parts 831, 841, 842, 844, and 846 of title 5, Code of Federal Regulations; to implement the provisions of section 134 of Public Law 100–238, enacted January 8, 1988, which governs the reemployment of FERS annuitants and CSRS annuitants who elect FERS coverage; and to consolidate the existing rules governing reemployed annuitants. An additional information collection was also proposed.

Written comments were received from two Federal agencies, two employee organizations, and two employees.

One commenter suggested that a note be added to § 837.101 (Applicability) to the effect that part 837 does not incorporate the rules governing the reemployment of annuitants without reduction in pay or annuity as provided by part 553 of title 5, Code of Federal Regulations. Annuitants reemployed under part 553 are not considered to be reemployed for the purposes of part 837. (See the definition of "reemployed" in § 837.102.) Service performed during reemployment under provisions permitting reemployment without offset of annuity cannot be credited in the computation of a supplemental or redetermined annuity or survivor annuity. For the convenience of readers, we are adding a reference to part 553, as suggested.

Another commenter suggested that the phrase "not for charges of misconduct or delinquency" be deleted as a modifier of the term "involuntary separation," where it appears in §§ 837.103(c) and 337.202(b). Section 837.103(c) details information that must be provided by the annuitant to the agency upon reemployment, while § 837.202(b) details the types of CSRS annuity that terminate on reemployment. The commenter's suggested deletion indicates a misunderstanding of the purpose of these regulations. While a discontinued service retirement must be based on an involuntary separation not for cause on charges of misconduct or delinquency, the annuity of a person who retired after meeting the age and length of service requirements for a voluntary retirement may also be based on an involuntary separation not for cause. By law, a retiree's treatment upon reemployment depends, among other things, on whether the retiree had been separated not for cause on charges of misconduct or delinquency, and this terminology is therefore needed in the regulations.

Another commenter suggested that § 837.301 specifically restate the rules of retirement coverage, rather than reference subpart E of part 831 and subpart A of part 842. It was also suggested that a reemployed annuitant's right to elect FERS under certain conditions also be described. While the suggested repetition of material might be appropriate in preparing operational guidance, it would unduly lengthen these regulations.

Another commenter suggested that § 837.403(b)(1) be amended by inserting a parenthetical exp anatory phrase, to read as follows: "If * * * the former disability annuitant is entitled to either an immediate or deferred annuity based on the most recent separation (for example, 5 or more years as a reemployed annuitant), any right to an annuity based on a prior separation is permanently extinguished." We decided not to adopt that suggestion because we believed that it could be misleading. Under CSRS and FERS, a former disability annuitant who has been found recovered, or restored to earning capacity, does not need to work for an additional 5 years to extinguish retirement rights based on prior separation. Under CSRS, any separation from covered service (as an employee, not as a reemployed annuitant) that meets the 1-year-out-of-2 coverage requirement of 5 U.S.C. 8333(b) would extinguish prior retirement rights. Since FERS does not have a 1-year-out-of-2 requirement, any separation from covered employment after 5 years of creditable service, *in totem*, extinguishes prior retirement rights.

Another commenter suggested that the CSRS or FERS retirement deductions withheld during a period of reemployment that is not used in annuity computation, because there is no title to either a supplemental or redetermined annuity benefit, should be automatically refunded to the annuitant. For the following reasons, we do not believe that this would be the best approach. If the annuitant has commenced, or is contemplating, subsequent employment that may establish a future right to supplemental or redetermined annuity in which the existing period of service would be credited, refunding the deductions could adversely impact the annuitant's interests. If it were CSRS service, a deposit would be required before the service could be credited. If it were FERS service, payment of the refund would bar future credit, since there are no applicable deposit or redeposit provisions. Consequently, we have decided only to pay these amounts at the request of the annuitant. It was also suggested that interest be paid on such a refund. This suggestion cannot be adopted because interest may only be paid where there is a statutory authority for such payment. There is no statutory authority for payment of interest under these circumstances.

Another commenter suggested that § 837.502 changed the rule on reinstatement of a CSRS discontinued

service annuity after reemployment, in that it would bar reinstatement if the individual is entitled to either an immediate or deferred annuity on the basis of the subsequent separation from reemployment. The commenter suggested that this was a major change in policy, apparently in the belief that the previous regulation barred reinstatement only if the individual was entitled to an immediate annuity. However, there has been no change in policy. The prior regulation, § 831.804, allowed reinstatement of the discontinued service annuity if the individual does not meet eligibility requirements for title to annuity based on the separation from reemployment. This was erroneously interpreted by the commenter to mean that only an immediate entitlement would prevent reinstatement of the prior annuity. To clarify, we have expressly stated in the regulations that the rule is applicable in cases of either an immediate or deferred annuity entitlement that is based on the separation from reemployment.

We received an oral comment suggesting that unused sick leave be referenced in § 837.503(b)(1), which describes the computation of a supplemental annuity. We agree and have amended § 837.503(b)(1)(i) to that effect.

Finally, a commenter suggested that § 837.503(c)(2), which excludes from a supplemental annuity computation credit for service as a reemployed annuitant when annuity was paid but not offset from salary, include a cross-reference to part 553 of title 5, Code of Federal Regulations. This section was intended to refer not just to employment under part 553, but also to other provisions of law that governed such employment in the past, as well as possible future enactments. We therefore determined that the suggested reference would be confusing, in that it might be interpreted as limiting in nature.

List of Subjects in 5 CFR Parts 831, 837, 841, 842, 844, and 846

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, the Office of Personnel Management amends 5 CFR parts 831, 837, 841, 842, 844, and 846, as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 continues to read in part as follows:

Authority: 5 U.S.C. 8347; * * *.

§ 831.502 [Amended]

2. Paragraph (f) of § 831.502 is removed, paragraph (g) is redesignated (f), and paragraph (f)(5), as redesignated, is removed.

§§ 831.801–831.805 Subpart H—[Removed and Reserved]

3. Subpart H of part 831, consisting of §§ 831.801–831.805, is removed and reserved.

4. Part 837 is added to read as follows:

PART 837—REEMPLOYMENT OF ANNUITANTS

Subpart A—General Provisions

Sec.
837.101 Applicability.
837.102 Definitions.
837.103 Notice.

Subpart B—Annuitant and Employee Status

837.201 Annuitant status.
837.202 Annuities that terminate on reemployment.
837.203 Annuities that are suspended during reemployment.

Subpart C—Coverage and Contributions

837.301 Coverage.
837.302 Agency contributions.
837.303 Annuity offset.
837.304 Agency liability for payments.
837.305 Lump-sum credit not reduced.
837.306 Refund of lump-sum credit.

Subpart D—Reemployment of Disability Annuitants

837.401 Generally.
837.402 Special notice.
837.403 Termination of annuity after reemployment.
837.404 Reinstatement of annuity during a period of employment not subject to CSRS or FERS.

Subpart E—Retirement Benefits on Separation

837.501 Refund of retirement deductions.
837.502 Reinstatement of annuity.
837.503 Supplemental annuity.
837.504 Redetermined annuity.

Subpart F—Death Benefits

837.601 Generally.
837.602 Lump-sum payment of retirement deductions.
837.603 Increased survivor benefits.

Subpart G—CSRS Offset

837.701 Offset from supplemental annuity.
837.702 Offset from supplemental survivor annuity.

Subpart H—Alternative Entitlements and Canceled Retirements

837.801 Unperfected entitlement to CSRS benefits based on a prior separation.
837.802 Benefits under another retirement system for Federal employees based on the most recent separation.
837.803 Cancellation of retirement by judicial or administrative authority.
837.804 Finality of elections under this subpart.

Authority: 5 U.S.C. 8337, 8344, 8347, 8455, 8456, 8461, and 8468; and section 302 of Pub. L. 99–335, June 6, 1986, as amended.

Subpart A—General Provisions

§ 837.101 Applicability.

(a) This part prescribes rules governing—

(1) Reemployment of an annuitant by the Federal Government;

(2) Reemployment of an annuitant by the government of the District of Columbia when the annuitant had been employed subject to CSRS by the District of Columbia prior to October 1, 1987, or was appointed to a position in the government of the District of Columbia on October 1, 1987, pursuant to the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act; and

(3) The payment of retirement and death benefits based on reemployment covered by this part.

(b) This part is not applicable to reemployment, in the Executive Branch, under 5 U.S.C. 8344(i) or 8468(f) (see part 553 of this chapter), relating to reemployment of retirees to meet exceptional employment needs, or to employment under 5 U.S.C. 8344 (j) or (k) or 5 U.S.C. 8468 (g) or (h) in the Judicial or Legislative Branches.

§ 837.102 Definitions.

Actual service means the period of time during which an annuitant is reemployed, excluding periods of separation and non-pay status.

Annuitant means a former employee or Member who is receiving, or meets the legal requirements and has filed claim for, annuity under either CSRS or FERS based on his or her service.

Another retirement system or "other retirement system" means a program created by Federal or District of Columbia statute or regulation and administered by an agency of the Federal Government or District of Columbia that provides retirement and/or death benefits to Federal or District of Columbia employees whose employment would otherwise be subject to the provisions of CSRS or FERS, or that credits service in the computation of benefits that would otherwise be credited in the computation of a CSRS or FERS benefit, or that provides a death benefit when a death benefit is payable from CSRS or FERS.

CSRS means the Civil Service Retirement System, as described in subchapter III of chapter 83 of title 5, United States Code.

CSRS annuitant means an annuitant retired under CSRS.

CSRS–Offset service means service by a reemployed CSRS annuitant that is subject to the OASDI tax by operation of section 101 of Public Law 98–21. It does not include any service performed before January 1, 1984.

CSRS-Offset wages means basic pay, as defined under 5 U.S.C. 8331(3), of an employee or Member performing CSRS-Offset service, but not to exceed the contribution and benefit base for the calendar year involved.

Continuous service means reemployment without a period of separation from service, or conversion to intermittent status, of more than 3 days.

Contribution and benefit base means the contribution and benefit base in effect with respect to the period involved, as determined under section 230 of the Social Security Act.

FEC means Federal Employees Compensation, that is, benefits paid on the basis of a work-related disease or injury under the provisions of chapter 81 of title 5, United States Code, but does not include a scheduled award under the provisions of 5 U.S.C. 8107, or medical services under 5 U.S.C. 8103.

FERS means the Federal Employees Retirement System, as described in chapter 84 of title 5, United States Code.

FERS annuitant means an annuitant who retired under FERS, or a reemployed CSRS annuitant whose election of FERS coverage under part 846 of this chapter is effective on or after January 8, 1988.

Full-time equivalent to part-time service means the amount of actual service that would result if the total hours worked on a part-time basis had been performed on a full-time basis, and the remaining portion of the period of reemployment was in a non-pay status.

Full-time service means actual service in which the reemployed annuitant is scheduled to work the number of hours and days required by the administrative workweek for his or her grade or class (normally 40 hours).

Fund means the Civil Service Retirement and Disability Fund as described at 5 U.S.C. 8348.

Intermittent service means any actual service performed on a less than full-time basis with no prescheduled regular tour of duty.

Lump-sum credit has the same meaning as the term is defined at section 8401(19) or section 8331(8) of title 5, United States Code, as may be applicable under the circumstances.

OASDI tax means, with respect to Federal wages, the Old Age, Survivors, and Disability Insurance tax imposed under section 3101(a) of the Internal Revenue Code of 1986.

Part-time service means actual service performed on a less than full-time basis under a pre-scheduled regular tour of duty.

Pay means the basic pay of the position to which the reemployed annuitant is appointed, prior to reduction for retirement contributions and annuity offset, and excludes any other benefits or compensation the reemployed annuitant receives, such as benefits authorized under the provisions of chapter 81 of title 5, United States Code.

Reemployed means reemployed in an appointive or elective position with the Federal Government, or reemployed in an appointive or elective position with the District of Columbia (when the annuitant was first employed subject to CSRS by the District of Columbia before October 1, 1987, or was appointed to a position in the government of the District of Columbia on October 1, 1987, pursuant to the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act), whether the position is subject to CSRS, FERS, or another retirement system, but does not include appointment as a Governor of the Board of Governors of the United States Postal Service, or reemployment under provisions of law that exclude offset of pay by annuity, that is, sections 8344 (i), (j), or (k), or 8468 (f), (g), or (h) of title 5, United States Code.

Retired Member means a former Member of Congress, as defined by 5 U.S.C. 2106, who has met the requirements for Member retirement as specified at sections 8336(g), 8337(a), 8338(b), 8412, 8413, and 8451(b) of title 5, United States Code, and who has filed claim therefor.

Suspension, in regard to payment of annuity, means that payment of annuity stops but annuitant status continues.

Termination in regard to payment of annuity, means that both payment of annuity and annuitant status cease.

§ 837.103 Notice

(a) *To OPM.* On or before the date a reemployed annuitant is appointed, the appointing agency must notify OPM in writing of the appointment, and provide OPM with the following information—

(1) The annuitant's name, date of birth, social security number (if applicable), and retirement claim number;

(2) A description of the kind of appointment;

(3) Whether the amount of annuity allocable to the period of reemployment is, or will be, withheld from the reemployed annuitant's pay, in accordance with § 837.303 of this part; and

(4) When the appointment is an interim appointment under § 772.102 of this chapter, an explicit statement that the appointment is required by the Whistleblower Protection Act of 1989.

(b) *To annuitant.* The agency should advise the annuitant in writing, generally, of the effect reemployment has on annuitant status and/or the continued receipt of annuity, the possible, future retirement benefits that may be payable to an annuitant on the basis of reemployment, and, for CSRS annuitants, whether the annuitant may elect to have retirement deductions withheld from his or her basic pay.

(c) *Obligation of annuitant to provide information.* Before appointment, and as a condition of reemployment, the annuitant must provide the employing agency with the following information—

(1) Whether the annuitant is then in receipt of annuity;

(2) The gross monthly amount of annuity the annuitant is then receiving;

(3) Whether the annuitant is a disability annuitant, and if so, whether OPM has found the annuitant recovered from his or her disability, or restored to earning capacity; and.

(4) If the annuitant is a CSRS annuitant, whether the annuitant's retirement was based on an involuntary separation, not for charges of misconduct or delinquency.

Subpart B—Annuitant and Employee Status

§ 837.201 Annuitant status.

Unless his or her annuity is terminated under the provisions of §§ 837.202 or 837.403 of this part, an annuitant continues to be an annuitant throughout the period of reemployment, whether or not he or she continues to receive annuity payments during the period of reemployment.

§ 837.202 Annuities that terminate on reemployment.

(a) *FERS annuitants.* (1) The annuity of a FERS annuitant who is a disability annuitant whom OPM has found recovered or restored to earning capacity prior to reemployment terminates on reemployment.

(2) The annuity of a FERS annuitant who is a former military reserve technician awarded a disability retirement annuity under 5 U.S.C. 8456, in addition to being subject to paragraph

(a)(1) of this section, shall terminate on the date the annuitant declines an offer of employment with a department or agency, where the employment is in the same commuting area and of the same grade as, or a level equivalent to, the position from which the annuitant retired.

(b) *CSRS annuitants.* (1) The annuity of a CSRS annuitant terminates on reemployment if—

(i) The annuitant is a disability annuitant whom OPM has found recovered or restored to earning capacity prior to reemployment, or whose disability annuity was awarded under the provisions of 5 U.S.C. 8337(h) because the annuitant was a National Guard Technician who was medically disqualified for continued membership in the National Guard;

(ii) The annuitant is not a retired Member and the annuity is based on an involuntary separation (other than a separation that was mandated by statute based on the annuitant's age and length of service, or a separation for cause on charges of misconduct or delinquency) where the reemployment would, if the individual were not an annuitant, be covered by CSRS;

(iii) The annuitant is not a retired Member and is appointed by the President to a position that would, if the individual were not an annuitant, be covered by CSRS; or

(iv) The annuitant is not a retired Member and is elected as a Member.

(2) A disability annuity awarded a former National Guard Technician under the provisions of 5 U.S.C. 8337(h) shall terminate on the date the annuitant declines an offer of employment with a department or agency, where the employment is in the same commuting area and of the same grade as, or a level equivalent to, the position from which the annuitant retired.

§ 837.203 Annuities that are suspended during reemployment.

(a) *All annuitants.* Payment of annuity is suspended when—

(1) The annuitant is appointed as a justice or judge of the United States, as defined by section 451 of title 28, United States Code; or

(2) The annuitant receives an interim appointment under § 772.102 of this chapter.

(b) *CSRS annuitants only.* Payment of annuity is suspended when the annuitant is a retired Member and becomes employed in an elective position, or is appointed to a position that is not intermittent or without pay.

Subpart C—Coverage and Contributions

§ 837.301 Coverage.

(a) *When annuity terminates on, or is suspended during, reemployment.* Retirement coverage under either CSRS or FERS is governed by subpart B of part 831 or subpart A of part 842 of this chapter, as is appropriate.

(b) *When annuity continues.* (1) Unless a reemployed FERS annuitant's employment is on an intermittent basis, as an employee subject to another retirement system, or as President, deductions for the Fund shall be made under 5 U.S.C. 8422(a).

(2) A CSRS annuitant is not subject to deductions, unless he or she is serving in an other-than-intermittent status (except as President), is not covered by another retirement system, and elects to have retirement deductions made from his or her pay. Generally, deductions are made no later than the beginning of the first pay period immediately following the date the reemployed annuitant files the election with the employing agency. When the annuitant elects to have deductions made, he or she may not change the election during continuous service with that agency.

(3) The amount of basic pay prior to offset of annuity under § 837.303 of this part is used in computing the amount of deductions. The rate of retirement deductions is that which attaches to the position under the provisions of sections 8334(a), 8334(k), or 8422(a) of title 5, United States Code, as is applicable.

§ 837.302 Agency contributions.

(a) *FERS annuitants.* An agency that reemploys a FERS annuitant subject to retirement deductions under § 837.301(b)(1) of this part shall make contributions, as specified in 5 U.S.C. 8423, to the Fund, based on the reemployed annuitant's pay prior to offset of annuity under the provisions of § 837.303 of this part.

(b) *CSRS annuitants.* An agency that reemploys a CSRS annuitant is required to make an agency contribution when—

(1) The annuity is suspended or terminated under the provisions of subpart B of this part; and

(2) The appointment is subject to CSRS deductions under the provisions of subpart B of part 831 of this chapter.

§ 837.303 Annuity offset.

(a) *Applicability.* When the right to receive annuity continues during reemployment (even though actual receipt of annuity may have been waived under 5 U.S.C. 8345(d) or 8465(a)), the pay of the reemployed annuitant shall be offset by the amount of annuity allocable to the period of reemployment, except that—

(1) No amount shall be offset from pay in accordance with this section for a period for which the annuitant has elected to receive FEC benefits in lieu of annuity; and

(2) No amount shall be offset from a lump-sum payment of annual leave, made on or after termination of the reemployment period.

(b) *Payment.* The employing agency shall pay to the Fund the full amount required to be offset from a reemployed annuitant's salary under this section in accordance with instructions issued by OPM. Payment in full to the Fund is not contingent on actual offset from the reemployed annuitant's salary.

(c) *Computation.* To compute the amount of the annuity offset for any particular pay period, divide the amount of annuity for the calendar days included in the pay period by the number of hours that would constitute a full-time tour of duty for that pay period, then multiply the result by the number of hours actually paid for the pay period, not to exceed the number of hours that constitutes a full-time tour of duty.

§ 837.304 Agency liability for payments.

(a) The agency will remit funds properly withheld from the pay of a reemployed annuitant in accordance with this subpart to OPM in the manner prescribed for the transmission of withholdings and contributions as soon as possible, but not later than provided by standards established by OPM in the Federal Personnel Manual.

(b) When the employing agency fails to withhold from the pay of the reemployed annuitant some or all of the amounts required to be withheld from that pay by this subpart, the employee has received an overpayment of pay. The employing agency must collect the overpayment of pay (unless it is waived under 5 U.S.C. 5584 or some other applicable statute) and remit the proper funds to OPM in the manner prescribed for the transmission of withholdings and contributions as soon as possible, but not later than provided by standards established by OPM in the Federal Personnel Manual.

(c) If the employing agency waives the annuitant's repayment of the salary overpayment, it must submit—on behalf of the reemployed annuitant—an amount equal to the correct deduction from pay (or the balance due in the case of a partial deduction) to OPM in the manner prescribed for the transmission of withholdings and contributions as soon as possible, but not later than

provided by standards established by OPM in the Federal Personnel Manual.

§ 837.305 Lump-sum credit not reduced.

When annuity continues during the period of reemployment, and the reemployment is subject to annuity offset under the provisions of § 837.303 of this subpart, or any similar provision of law or regulation, the amount of an annuitant's lump-sum credit to the Fund shall not be reduced by the amount of annuity allocable to the period of reemployment.

§ 837.306 Refund of lump-sum credit.

An annuitant serving as a justice or judge of the United States, as defined by section 451 of title 28, United States Code, may apply for and receive payment of the annuitant's lumpsum credit, less the amount of annuity or other benefits previously paid on that account. Receipt of a refund under this section will irrevocably terminate the right to annuity, and the annuitant status, of the recipient, based on any prior separations from employment covered by CSRS or FERS.

Subpart D—Reemployment of Disability Annuitants

§ 837.401 Generally.

A disability annuitant may be reemployed in any position for which he or she is qualified.

§ 837.402 Special notice.

(a) *To annuitant.* In addition to the advice described in paragraph 837.103(b) of this part, the agency should generally also advise a disability annuitant, in writing, prior to reemployment, that—

(1) Reemployment on a permanent basis in a position equivalent in grade and pay to the position from which the annuitant retired may constitute the basis for an OPM finding of recovery from disability;

(2) Reemployment subject to medical and physical qualification standards equivalent to those of the position from which the annuitant retired may constitute the basis for an OPM finding of recovery from disability;

(3) The pay of the position in which the annuitant is reemployed, prior to the offset of annuity, or the pay of an interim appointment under § 772.102 of this chapter, as may be applicable, will be included as earnings in determining whether the disability annuity will be terminated due to restoration to earning capacity;

(4) Receipt of, or continued entitlement to receive, full or partial FEC benefits during reemployment, when those benefits are based on the same injury or medical condition that is the basis for OPM's award of disability retirement, is conclusive evidence (unless there is contravening medical evidence) that the annuitant has not recovered from the disability; and

(5) A disability annuitant age 60 or over cannot be found by OPM to be restored to earning capacity, and can only be found recovered at the annuitant's request.

(b) *To OPM.* On reemployment of a disability annuitant, the employing agency shall, in addition to the notice required by § 837.103(a) of this part, notify OPM in writing of—

(1) The physical and medical requirements of the position (providing a copy of the employee's position description);

(2) The position's grade level and/or rate of pay;

(3) Whether the employment is full-time, part-time, or intermittent;

(4) Whether, to the best of the agency's knowledge, the reemployed annuitant is receiving, or entitled to receive, FEC benefits; and

(5) Whether any medical evidence was used in making the employment decision, and if so, provide OPM with a copy of the medical information.

§ 837.403 Termination of annuity during reemployment.

(a) *Agency action.*—When a reemployed disability annuitant is found recovered from disability or restored to earning capacity by OPM, OPM shall terminate the annuity as of the date of the finding, and the employing agency shall cease reducing pay by the amount of annuity allocable to the period of reemployment effective that same date. If the appointment is subject to retirement deductions, retirement deductions will begin or continue, as the case may be.

(b) *Subsequent benefits.*—(1) *CSRS.* If, on separation from a period of reemployment during which the disability annuity was terminated because of recovery or restoration to earning capacity, the former disability annuitant is entitled to either an immediate or deferred annuity based on the most recent separation, any right to an annuity based on a prior separation is permanently extinguished. If no such right to immediate or deferred annuity accrues based on this most recent separation, however, any right to immediate or deferred annuity will be determined on the basis of the next prior separation.

(2) *FERS.* If a disability annuity is terminated during a period of reemployment because of recovery or restoration to earning capacity, any right to an annuity based on a prior separation is permanently extinguished, except as otherwise provided by § 844.405(b)(2) of this chapter.

§ 837.404 Reinstatement of annuity during a period of employment not subject to CSRS or FERS.

When OPM reinstates the disability annuity of an individual employed in a position not subject to CSRS or FERS, the employing agency shall withhold retirement deductions and offset pay subject to the provisions of subpart C of this part, as of the date of OPM's administrative determination of reinstatement. OPM shall offset from any retroactive payment of annuity for a period that is also a period of employment an amount equal to the amount of annuity, or the pay for the period of employment, whichever is the lesser.

Subpart E—Retirement Benefits on Separation

§ 837.501 Refund of retirement deductions.

A reemployed annuitant who separates from reemployment without title to either a supplemental annuity or a redetermined annuity under this subpart is entitled to have any retirement deductions withheld from pay during the period of reemployment refunded without interest.

§ 837.502 Reinstatement of annuity.

(a) *When appropriate.* (1) When an annuity was terminated because of reemployment under the provisions of § 837.202 of this part, or any similar provision of statute or regulation in effect prior to the promulgation of this part, the annuity that was terminated will be reinstated effective the date immediately following the date the reemployed annuitant separated from reemployment, if—

(i) The reemployed annuitant's right to annuity has not been terminated under any other provision of regulation or statute; and

(ii) The reemployed annuitant is not entitled to either an immediate or deferred CSRS or FERS annuity based on the separation from reemployment.

(2) When an annuity was suspended because of reemployment under the provisions of § 837.203 of this part, the annuity that was suspended will be reinstated effective the date immediately following the date the reemployed annuitant separated from reemployment.

(b) *Amount of reinstated annuity.* The amount of an annuity reinstated under the provisions of paragraph (a)(2) of this section will be the amount of the

annuity at the effective date of termination, adjusted by such adjustments as would have occurred had the annuity remained payable during the period of reemployment.

§ 837.503 Supplemental annuity.

(a) *Title requirements.* A reemployed annuitant is entitled, on separation, or conversion to intermittent service, to a supplemental annuity if—

(1) The annuitant performed—

(i) At least 1 year of actual, continuous, full-time service;

(ii) Actual, continuous part-time service equivalent to 1 year of actual full-time service; or

(iii) A combination of part-time and full-time actual, continuous service that is equivalent to 1 year of actual full-time service; and

(2) (i) The annuity is not terminated or suspended on reemployment; and

(ii) The pay during reemployment was subject to offset by the amount of annuity allocable to the period of reemployment; *or*

(iii) The reemployed annuitant separates from an interim appointment made under the provisions of § 772.102 of this chapter.

(b) *Computation of supplemental annuity*—(1) *CSRS.* (i) That portion of a supplemental annuity that is based on the total years and full months of creditable reemployment service performed while covered under CSRS, is computed under the provisions of 5 U.S.C. 8339(a), (b), (d), (e), (h), (i), (n) and (q). Unused sick leave to the reemployed annuitant's credit immediately prior to separation from reemployed annuitant service will be credited under the rules prescribed in § 831.302 of this chapter, and 5 U.S.C. 8339(m), not to exceed the amount of unused sick leave available immediately before the effective date of an election of FERS coverage, and not including any unused sick leave included in the computation of an annuity or supplemental annuity the annuitant is receiving at the time of separation from the most recent period of reemployment.

(ii) A supplemental annuity computed in whole or in part under the provisions of this paragraph, using CSRS-Offset service, is subject to reduction under subpart G of this part.

(2) *FERS.* That portion of a supplemental annuity that is based on the total years and full months of creditable reemployment service performed on and after the effective date of FERS coverage is computed under the provisions of 5 U.S.C. 8415 (a) through (f).

(3) *Average pay.* The average pay used in the computation of a supplemental annuity is the average basic pay for the entire period of actual continuous reemployment service, excluding intermittent service.

(4) *Survivor reduction.* If the reemployed annuitant's annuity, at the time he or she applies for supplemental annuity, is reduced to provide a survivor benefit for a spouse, (or, for FERS annuitants only, a former spouse), the supplemental annuity will be reduced by 10 percent, and the survivor annuities increased, if the annuitant was retired under CSRS, by 55 percent of the supplemental annuity, and if the annuitant was retired under FERS, by 50 percent of the supplemental annuity, unless the reemployed annuitant notifies OPM at the time of application that he or she does not wish to have such reductions and increases effected.

(c) *Creditable service.* (1) All actual reemployment service performed after the date of retirement on a full-time or part-time basis may be credited in the computation of a supplemental annuity provided—

(i) When the reemployment service was performed on or after October 1, 1982, retirement deductions were withheld or, for CSRS annuitants, a deposit has been paid under the provisions of 5 U.S.C. 8334;

(ii) The reemployment service was not performed subject to another retirement system, except when the deductions under the other retirement system have been refunded and a deposit paid to OPM, where the law so permits, or benefits under the other retirement system have been waived in favor of CSRS or FERS benefits; and

(iii) The reemployment service has not been used in the computation of another supplemental or redetermined annuity.

(2) A period of reemployment service during which annuitant status continues and annuity is paid, and which is excluded from the normal annuity offset from pay by special statutory provision, cannot be credited in the computation of a supplemental annuity or any subsequent annuity entitlement.

(d) *Commencing date.* (1) Except as provided in clause (2) of this subparagraph, the supplemental annuity commences on the earlier of the first day of the month following—

(i) The day the annuitant is separated from reemployment; or

(ii) The day the annuitant is converted to an intermittent status.

(2) The supplemental annuity of a FERS annuitant, and the supplemental annuity of a CSRS reemployed annuitant who has not elected FERS coverage and who was—

(i) Involuntarily separated from the reemployment service (except by removal for cause on charges of misconduct or delinquency);

(ii) Involuntarily converted to an intermittent status, or;

(iii) Separated from reemployment service, or converted to intermittent status, after serving 3 days or less in the month of such separation or conversion—shall commence on the earlier of the day after separation from reemployment service, the effective date of conversion to intermittent status, or the day after the date pay ceases.

§ 837.504 Redetermined annuity.

(a) *Title requirements.* (1) A reemployed annuitant is entitled, on separation, or conversion to intermittent service, to a redetermined annuity if—

(i) The annuitant performed—

(A) At least 5 years of actual, continuous, full-time service;

(B) Actual, continuous part-time service equivalent to 5 years of actual full-time service, or;

(C) A combination of part-time and full-time actual, continuous service that is equivalent to 5 years of actual full-time service.

(ii) (A) The annuity was not terminated or suspended during reemployment; and

(B) The pay during reemployment was subject to offset by the amount of annuity allocable to the period of reemployment; *or*

(C) The reemployed annuitant separated from an interim appointment made under the provisions of § 772.102 of this chapter.

(iii) Retirement deductions are withheld, or a deposit is paid, for the entire period of continuous reemployment service immediately preceding the most recent separation from reemployment service; and

(iv) The reemployed annuitant elects the redetermined annuity in lieu of his or her prior annuity and the supplemental annuity that would be payable under § 837.503 of this subpart.

(2) An employee whose annuity was terminated under the provisions of § 837.202(b)(1)(iii) of this part, and who has not elected FERS coverage, is entitled to a redetermined annuity on separation.

(b) *Computation.* (1) A redetermined annuity is computed using all the reemployed annuitant's creditable service, under the provisions of law in effect governing the payment of CSRS and/or FERS annuities, as may be applicable, at the time of separation from reemployment service, or conversion to intermittent status.

(2) The amount of the redetermined annuity of an individual whose previous annuity was terminated under the provisions of § 837.202(b)(1)(iii) of this part will at least equal the amount of the terminated annuity plus any increases under section 8340 of title 5, United States Code, occurring after the termination of the previous annuity and before the commencement of the redetermined annuity, adjusted by any annuity increase or reduction resulting from additional or different elections made by the reemployed annuitant.

(c) *Commencing date.* The commencing date of the redetermined annuity is the same as the law and/or regulations would provide in the case of a retiring employee.

Subpart F—Death Benefits

§ 837.601 Generally.

Except as otherwise provided by this subpart, when an annuitant who is reemployed under circumstances that provide for continuation of annuitant status during reemployment dies, death benefits are payable under CSRS or FERS as if the individual died as an annuitant, and not as employee.

§ 837.602 Lump-sum payment of retirement deductions.

If an annuitant reemployed subject to the provisions of this part dies while so reemployed, and the annuitant would not have been entitled to a supplemental annuity, had the separation been for reasons other than death, or if there is no supplemental spousal survivor annuity payable (including a survivor annuity payable to a former spouse, if the annuitant retired under FERS) the amount of retirement deductions withheld during the period of reemployment will be paid in a lump sum to the person entitled under the provisions of 5 U.S.C. 8342(c) or 8424(d), as appropriate.

§ 837.603 Increased Survivor benefits.

(a) *Supplemental survivor annuity.* (1) If an annuitant reemployed subject to the provisions of this part dies while so reemployed, and the annuitant would have been entitled to a supplemental annuity, had the separation been for reasons other than death, and there is a spousal survivor annuity payable (including a survivor annuity payable to a former spouse, if the annuitant retired under FERS) the amount of the spousal survivor annuity will, if any necessary deposit for service credit is made, be increased by 55 percent of the supplemental annuity, if the reemployed annuitant was retired under CSRS, or 50 percent of the supplemental annuity, if the reemployed annuitant was retired under FERS.

(2) Supplemental survivor annuity benefits payable under this paragraph, computed in whole or in part under the provisions of § 837.503(b)(1)(i) of this part, using CSRS-Offset service, are subject to reduction under subpart G of this part.

(b) *Redetermined survivor annuity.* If an annuitant reemployed subject to the provisions of this part dies while so reemployed, and the annuitant would have been entitled to elect a redetermined annuity, had the separation been for reasons other than death, and if there is a spousal survivor annuity payable (including a survivor annuity payable to a former spouse, if the annuitant retired under FERS), a person entitled to a spousal survivor annuity may elect to have his or her survivor annuity computed as if the annuitant had elected a redetermined annuity, provided any necessary deposit for service credit is made.

Subpart G—CSRS Offset

§ 837.701 Offset from supplemental annuity.

(a) OPM will reduce the supplemental annuity of an individual who has performed CSRS-Offset service, if the individual is entitled, or on proper application would be entitled, to old-age benefits under title II of the Social Security Act.

(b) The reduction required under paragraph (a) of this section is effective on the first day of the month during which the reemployed annuitant—

(1) Is entitled to a supplemental annuity under this part; and

(2) Is entitled, or on proper application would be entitled, to old-age benefits under title II of the Social Security Act.

(c) Subject to paragraphs (d) and (e) of this section, the amount of the reduction required under paragraph (a) of this section is the lesser of—

(1) The difference between—

(i) The social security old-age benefit for the month referred to in paragraph (b) of this section; and

(ii) The old-age benefit that would be payable to the individual for the month referred to in paragraph (b) of this section, excluding all CSRS-Offset wages as a reemployed annuitant, and assuming the annuitant was fully insured (as defined by section 214(a) of the Social Security Act); or

(2) The product of—

(i) The old-age benefit to which the individual is entitled or would, on proper application, be entitled; and

(ii) A fraction—

(A) The numerator of which is the annuitant's total CSRS-Offset service as a reemployed annuitant, rounded to the nearest whole number of years not exceeding 40 years; and

(B) The denominator of which is 40.

(d) Cost-of-living adjustments under 5 U.S.C. 8340 occurring after the effective date of the reduction required under paragraph (a) of this section will be based on only the supplemental annuity remaining after reduction under this subpart.

(e) The amounts for paragraphs (c)(1)(i), (c)(1)(ii), and (c)(2)(i) of this section are computed without regard to subsections (b) through (1) of section 203 of the Social Security Act (relating to reductions in social security benefits), and without applying the provisions of the second sentence of section 215(a)(7)(B)(i) or section 215(d)(5)(ii) of the Social Security Act (relating to part of the computation of the social security windfall elimination provisions).

(f) OPM will accept the determination of the Social Security Administration, submitted in a form prescribed by OPM, concerning entitlement to social security benefits and the beginning and ending dates thereof.

§ 837.702 Offset from supplemental survivor annuity.

(a) OPM will reduce a supplemental survivor annuity (an annuity under 5 U.S.C. 8341) based on the service of an individual who performed CSRS-Offset service, if the survivor annuitant is entitled, or on proper application would be entitled, to survivor benefits under section 202(d), (e), or (f) (relating to children's, widows', and widowers' benefits, respectively) of the Social Security Act.

(b) The reduction required under paragraph (a) of this section begins (or is reinstated) on the first day of the month during which the survivor annuitant—

(1) Is entitled to a disability or survivor annuity under CSRS; and

(2) Is entitled, or on proper application would be entitled, to survivor benefits under the Social Security Act provisions mentioned in paragraphs (a) and (c) of this section, respectively.

(c) The reduction under paragraphs (a) of this section will be computed and adjusted in a manner consistent with the provisions of § 837.701 (c) through (e) of this part.

(d) A reduction under paragraph (a) of this section stops on the date entitlement to the disability or survivor benefits under title II of the Social Security Act terminates. In the case of a survivor annuitant who has not made

proper application for the social security benefit, the reduction under paragraph (a) of this section stops on the date entitlement to such survivor benefits would otherwise terminate. If a social security benefit is reduced under any provision of the Social Security Act, even if reduced to zero, entitlement to that benefit is not considered to have terminated.

(e) OPM will accept the determination or certification of the Social Security Administration, submitted in a form prescribed by OPM, concerning entitlement to social security survivor benefits and the beginning and ending dates thereof.

Subpart H—Alternative Entitlements and Canceled Retirements

§ 837.801 Unperfected entitlement to CSRS benefits based on a prior separation.

(a) An employee who meets the age and service requirements for title to a non-disability annuity under CSRS on the basis of a prior separation, but did not apply for that annuity before a subsequent separation from service to which a different annuity entitlement attaches, may elect, on application, to receive either—

(1) The annuity based on the later separation; or

(2) The annuity based on the prior separation, with payment of annuity suspended during the period(s) of employment subsequent to the commencing date of annuity, and such benefits as would be payable had the subsequent period(s) of employment been performed under the provisions of this part.

(b) When an individual who has applied for a deferred annuity under CSRS is reemployed under CSRS before the commencing date of that annuity, the application is deemed to have not been made.

§ 837.802 Benefits under another retirement system for Federal employees based on the most recent separation.

(a) *Generally.* An annuitant who has performed reemployment service after the commencing date of annuity under the provisions of another retirement system, and who is entitled to an annuity benefit from the other retirement system during a period in which he or she is also entitled to an annuity benefit under CSRS or FERS, may receive both benefits simultaneously, or for the same period, except that the annuitant may not receive both benefits simultaneously, or for the same period, if—

(1) The provisions of law or regulation governing the other retirement system do not permit the annuitant to receive both benefits simultaneously, or for the same period of time; or

(2) Entitlement to the annuity from the other retirement system is based on service credited in the computation of the CSRS or FERS annuity, or service credited in the computation of the annuity from the other retirement system was used in the computation of the CSRS or FERS annuity.

(b) *Election of alternative benefits.* (1) Where simultaneous receipt of, or entitlement to, both annuities is barred under the provisions of paragraph (a)(1) of this section, the annuitant must elect to receive either the annuity under the other retirement system, or the CSRS annuity.

(2) Where the annuitant, under the provisions of paragraph (b)(1) of this section, elects to receive annuity from the other retirement system in lieu of the CSRS or FERS annuity, the CSRS or FERS annuity terminates as of the commencing date of the other annuity, and any overpayment of CSRS annuity will be offset from the other annuity and paid to OPM.

(c) *Recomputation.* Where simultaneous receipt of annuities from more than one retirement system is barred by paragraph (a)(2), but not by paragraph (a)(1), of this section, the CSRS or FERS annuity may be recomputed to exclude credit for service credited in determining entitlement to, or the amount of, the annuity from the other retirement system, effective as of the commencing date of the annuity from the other retirement system for Federal employees, and the recomputed CSRS or FERS annuity may be paid simultaneous with, or for the same period as, the annuity from the other retirement system for Federal employees.

(d) *Forfeiture.* Where an annuitant's coverage as an employee under another retirement system, whether by election or by operation of law or regulation, results in forfeiture of annuity rights under CSRS or FERS, the CSRS or FERS annuity will terminate as of the effective date of coverage.

(e) *Survivors.* The rules detailed in this section in regard to dual entitlement to annuity benefits under CSRS or FERS and another retirement system also apply to dual entitlement to survivor benefits under CSRS or FERS and another retirement system, unless the particular circumstance is otherwise governed by specific provision of statute or regulation.

(f) *Agency responsibilities.* The agency responsible for administering another retirement system must—

(1) Promptly notify OPM of an election of coverage under that retirement system by a reemployed CSRS or FERS annuitant, or the coverage of a reemployed CSRS annuitant under that retirement system by election or operation of law or regulation, when such coverage affects the annuitant's entitlement to CSRS annuity;

(2) Promptly notify OPM when a reemployed annuitant separates with entitlement to an annuity under the other retirement system that cannot, under the provisions of paragraph (a) of this section, be paid simultaneous with, or during the same period as, the CSRS annuity; and

(3) Reimburse OPM for overpayments of annuity resulting from a failure to comply with paragraphs (b) (1) and (2) of this section.

§ 837.803 Cancellation of retirement by judicial or administrative authority.

(a) *Cancellation of retirement action.* A separation from employment on which an application for retirement is based may only be canceled by the former employing agency in response to a direct and final order of a judicial or administrative body charged with the responsibility of reviewing the legality of the separation, and authorized to make such order, or by agreement between the annuitant and the former employing agency in resolution of a grievance, complaint, dispute, appeal o other action, involving an allegedly erroneous separation, before such authority.

(b) *Agency notification to OPM.* Upon receiving a final order requiring cancellation of the annuitant's separation or after the annuitant and the agency agree to cancel the separation, the employing agency must notify OPM and request the amount of the erroneous payment to be recovered under § 550.805(e) of this chapter from any back pay adjustment to which the employee may be entitled.

(c) *Collection of erroneously paid retirement benefits.* (1) If OPM determines that an overpayment of annuity or lump-sum credit has occurred and the employee is entitled to receive back pay because of the canceled separation, the overpaid retirement benefits must be deducted to the extent they can be recovered from the back pay adjustment as required by § 550.805(e) of this chapter.

(2) Amounts recovered from back pay will not be subject to waiver consideration under the provisions of 5 U.S.C. 8346(b) or 8470(b). If there is no back pay or the back pay is insufficient to recover the entire payment, the employee may request that OPM waive the uncollected portion of the

overpayment. If waiver is not granted, the employee must repay the erroneous payment.

§ 837.804 Finality of elections under this subpart.

Except as otherwise provided by this subpart, an election of coverage under, or annuity from, another retirement system, in lieu of CSRS or FERS coverage or annuity, or the election between simultaneous entitlements under CSRS or FERS, is final and conclusive for the period of simultaneous entitlement to coverage or annuity.

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

Subpart E—Employee Deductions and Government Contributions

5. The authority citation for part 841 continues to read in part as follows:

Authority: 5 U.S.C. 8461; * * *

§ 841.506 [Amended]

6. In § 841.506, paragraphs (b), (d), and (e) are removed, and paragraph (c) is redesignated (b).

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

Subpart A—Coverage

7. The authority citation for part 842 continues to read in part as follows:

Authority: 5 U.S.C. 8461(g); * * *

§ 842.104 [Amended]

8. In § 842.104, paragraph (a) is removed, and paragraphs (b) through (g) are redesignated (a) through (f).

PART 844—FEDERAL EMPLOYEES RETIREMENT SYSTEM—DISABILITY RETIREMENT

9. The authority citation for part 844 continues to read as follows:

Authority: 5 U.S.C. 8461.

Subpart D—Termination and Reinstatement of Disability Annuity

§ 844.403 [Removed]; §§ 844.404 and 844.405 [Redesignated as §§ 844.403 and 844.404; Newly redesignated 844.404 amended]

10. Section 844.403 is removed, and §§ 844.404 and 844.405 are redesignated as §§ 844.403 and 844.404; in newly redesignated § 844.404, paragraph (a) is removed and paragraph (f) is redesignated (e).

PART 846—FEDERAL EMPLOYEES RETIREMENT SYSTEM—ELECTING COVERAGE

11. The authority citation for part 846 continues to read in part:

Authority: 5 U.S.C. 8461(g); * * *

Subpart C—Effect of an Election to Become Subject to FERS

§ 846.305 [Removed]; § 846.306 [Redesignated as § 846.305]

12. Section 846.305 is removed, and § 846.306 is redesignated as § 846.305.

[FR Doc. 93–22377 Filed 9–14–93; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 781

RIN 0560–AD06

Amendment to the Regulations for the Agricultural Foreign Investment Disclosure Act of 1978 Regarding Land Used for Forestry Production

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend, for clarification, the definition of agricultural land as it pertains to the reporting requirements for the disclosure of foreign investment in land used for forestry production under the authority of the Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA). This action will clarify the definition of agricultural land as it relates to land used for forestry production and reduce confusion regarding the reporting of foreign investment in agricultural land.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: William A. Brown, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), room 4095 South Building, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–6833.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as "nonmajor." It has been determined that this rule will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local governments, or geographical regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of the final rule do not preempt state laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

The program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354). Pursuant to that review, Bruce R. Weber, Acting Administrator, ASCS, has certified that this final rule does not have a significant economic impact on a substantial number of small entities because the rule merely requires reports to be filed by foreign persons owning U.S. agricultural land. The final rule will only impact a small percent of foreign investors owning land used for forestry production, allowing clearer and less burdensome reporting regulations to be followed in the reporting process. Therefore, no Regulatory Flexibility Analysis was prepared.

Paperwork Reduction Act of 1980

This final rule contains no information collection or recordkeeping requirements that require clearance by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an

Environmental Impact Statement is needed.

Background

On January 12, 1993, the Department issued a proposed rule (58 FR 3871) requesting comments with respect to amending the definition of agricultural land as it pertains to forestry production in regulations issued pursuant to the AFIDA.

There were no comments received pertaining to the proposed rule. Nevertheless, upon further review, the definition of forestry production set forth in the Proposed Rule has been revised to further clarify the Department's intent and to remove ambiguities concerning the size of the tract, percentage of land forested, size of trees, and other factors not pertinent to forestry production as they apply to the definition of agricultural land under the AFIDA.

It is intended that this final rule will provide the public with a better understanding of the term agricultural land as it pertains to land used for forestry production.

List of Subjects in 7 CFR Part 781

Administrative practice and procedure, Agriculture, Foreign investment in the United States, Penalties, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 781 is amended as follows:

PART 781—DISCLOSURE OF FOREIGN INVESTMENT IN AGRICULTURAL LAND

1. The authority citation for 7 CFR part 781 continues to read as follows:

Authority: 7 U.S.C. 3501 et seq.

2. Section 781.2(b) is revised to read as follows:

§ 781.2 Definitions.

* * * * *

(b) *Agricultural land.* Agricultural land means land in the United States used for forestry production and land in the United States currently used for, or, if currently idle, land last used within the past five years, for farming, ranching, or timber production, except land not exceeding ten acres in the aggregate, if the annual gross receipts from the sale of the farm, ranch, or timber products produced thereon do not exceed $1,000. Farming, ranching, or timber production includes, but is not limited to, activities set forth in the Standard Industrial Classification Manual (1987), Division A, exclusive of industry numbers 0711–0783, 0851, and 0912–0919 which cover animal trapping, game management, hunting carried on as a business enterprise, trapping carried on as a business enterprise, and wildlife management. Land used for forestry production means, land exceeding 10 acres in which 10 percent is stocked by trees of any size, including land that formerly had such tree cover and that will be naturally or artificially regenerated.

* * * * *

Signed at Washington, DC on September 9, 1993.

Dallas R. Smith,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 93–22544 Filed 9–14–93; 8:45 am]

BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV93–989–31FR]

Raisins Produced From Grapes Grown in California; Addition of Several Caribbean Area Countries as Countries Eligible for Exports of Reserve Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule adds several Caribbean countries as countries eligible for exports of reserve California raisins. This action was unanimously recommended by the Raisin Administrative Committee (Committee), the agency responsible for local administration of the Federal marketing order regulating raisins produced in California. By providing handlers with additional markets for their reserve raisins, this action is expected to reduce the burden of oversupply currently confronting the industry.

DATES: The interim final rule is effective on September 15, 1993. Comments which are received by October 15, 1993, will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, or faxed to (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901; or Valerie Emmer, Richard Lower, or Mark Slupek, Marketing Specialists, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2829, (202) 720–2020, or (202) 720–2830 respectively.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation No. 1512–1 and the criteria contained in Executive Order 12291, and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has

considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. A minority of handlers and a majority of producers of California raisins may be classified as small entities.

The marketing order provides for the establishment of "free" and "reserve" percentages by variety of raisin for each crop year. "Free" raisins are those which may be shipped freely to any market. Raisins in excess of free tonnage are reserve raisins which must be held by handlers for the account of the Committee. Most reserve raisins withheld under the order have been marketed as food in domestic and eligible export outlets. In crop years with inadequate raisin production, reserve raisins are available to supplement new crop supplies.

Pursuant to § 989.221, reserve raisins are currently sold to handlers for export to the Dominican Republic, islands on the continental shelf of South America, and to all other markets in the world except the following: Canada, Mexico, all islands adjacent to Canada and Mexico, and Caribbean islands north of the 12th parallel (with the exception of the Dominican Republic).

This action is based upon a recommendation and information submitted by the Committee and upon other available information. The Committee met on June 17, 1993, and unanimously recommended that the countries eligible for exports of reserve California raisins be expanded to include every market except Cuba, Puerto Rico, the U.S. Virgin Islands, Canada, Mexico, and all islands adjacent to Canada and Mexico. The Committee indicated that Puerto Rico and the U.S. Virgin Islands should continue to be ineligible because chain stores in the United States have stores in some of these markets and supply their stores in these territories with free percentage raisins purchased in the United States. The other countries would continue to be ineligible because of the potential for transhipment of free percentage tonnage to higher priced markets.

Increasing the number of countries eligible for exports of reserve raisins will give handlers more market outlets for their reserve raisins. Since this provision utilizes reserve raisins, it is expected to reduce the oversupply that is currently confronting the industry.

Based on available information, the Administrator of the AMS has determined that issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the Committee's recommendations and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes requirements on handlers; (2) this action was unanimously recommended at a public meeting; (3) it is desirable to have this action in place as soon as possible because the 1993–94 crop year began on August 1, 1993; (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

Subpart—Supplementary Regulations

2. Section 989.221 is revised to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 989.221 Sale and export of reserve raisins by handlers.

(a) *Eligible countries.* Pursuant to § 989.67(c), the Committee may sell reserve raisins to handlers for export to all markets in the world except those listed in paragraph (b) of this section.

(b) *Non-eligible countries.* The Committee may not sell reserve raisins to handlers for export to Cuba, Puerto Rico, the U.S. Virgin Islands, Canada, Mexico, and all islands adjacent to Canada and Mexico.

Dated: September 7, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–22479 Filed 9–14–93; 8:45 am]

BILLING CODE 3410–02–P

Farmers Home Administration

7 CFR Parts 1910, 1924, 1941, 1943, 1945, 1955, and 1980

RIN 0575–AB41

Revisions to the Direct and Guaranteed Operating (OL) and Farm Ownership (FO) Loan and Related Instructions to Implement Sections 4, 5, 7, 8, 9, and 19 of the Agricultural Credit Improvement Act of 1992 Relative to the Special OL Assistance and Downpayment FO Loan Programs for Beginning Farmers and Ranchers, and Graduation of Borrowers With Operating Loans or Guarantees to Private Credit

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its direct and guaranteed farm ownership (FO) and operating (OL) loan making regulations to implement amendments made to the Consolidated Farm and Rural Development Act (CONACT) by the Agricultural Credit Improvement Act of 1992 (Act). These amendments concern interest rates for loans sold on the secondary market and guaranteed loan fees, a downpayment FO loan program, a special assistance OL loan program for beginning farmers or ranchers, definition of "beginning farmer or rancher," limitations on the number of years that new and existing farm borrowers may receive direct and guaranteed OL loan assistance, and plans to encourage borrower graduation to private credit. The intended effect is to encourage and assist a larger number

of qualified beginning farmers and ranchers to become established in farming or ranching.

DATES: Interim rule effective September 30, 1993. Written comments must be submitted on or before October 15, 1993.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250–0700. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: David R. Smith, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Agriculture Building, room 5430, 14th and Independence Avenue SW., Washington, DC 20250–0700, Telephone (202) 720–1645.

SUPPLEMENTARY INFORMATION:

Classification

This action was reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Farm Ownership Loans, Farm Operating Loans, and Emergency Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Civil Justice Reform

This document has been reviewed in accordance with Executive Order (E.O.) 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the E.O.

Paperwork Reduction Act

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control numbers 0575–0134, 0575–0061, 0575–0141, 0575–0085, 0575–0083, 0575–0090, 0575–0024, and 0575–0079 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The interim final rule does not revise or impose any new information collection or recordkeeping requirement from those approved by OMB.

Discussion of Background

Farm loans made to FmHA applicants are governed mainly by the CONACT (7 U.S.C. 1921 et seq.). FmHA has historically assisted new and established farmers and ranchers through its regular direct and guaranteed FO and OL loan programs. Operating type credit is provided with a 1–7 year repayment term, while farm ownership loans may be repaid over a 40-year term. The interest rate charged on direct loans is either FmHA's regular rate or reduced rates (limited resource rates). Limited resource rates are available only to those low income applicants facing special obstacles and hardships and would otherwise be unable to develop a feasible plan of operation. Farmers who require less supervision and/or are in a more favorable financial position can obtain farm ownership or operating loans from commercial credit institutions backed by FmHA guarantees. The interest rate on guaranteed loans is negotiated between the lender and the borrower and is typically the lender's average interest rate for similar loans.

Thus far, FmHA has had no limit on the number of years that a farmer could receive FmHA direct or guaranteed loan assistance. The limiting conditions have primarily been statutory eligibility requirements, the lack of available credit elsewhere, maximum individual loan entitlement limits for each program, borrower repayment ebility, and adequate collateral to secure the loan.

During the mid 1980s, Congressional concern regarding the large National debt, and increasing FmHA loan losses within the farmer programs loan portfolio, precipitated a Congressionally mandated shift from direct to guaranteed lending. This shift in the source priority of loan funds was also prompted by less initial FmHA risk exposure and a more favorable loan cost ratio with guarantee funds. The Administration was also concerned with the long term loan commitment evidenced by the direct FO loan program. Future budget recommendations reflected a continuing decrease in direct FO funding. This has resulted in inadequate direct FO loan funding to continue with existing farmer programs borrowers needs and assist new applicants to become established in farming or ranching operations.

There has also been growing concern regarding the pending retirement of large numbers of farmers and ranchers, with fears there may be insufficient numbers of new farmers and ranchers to take their place. The House Committee Report 102–783 on the Act indicates the need to assist beginning farmers and ranchers get started in agriculture. Page 18 of that report stated that according to the most recent Census of Agriculture, taken in 1987, there was an increase of 20.7 percent in the number of farmers in the 65 and over age group between 1978 and 1987. During the same period, the number of farmers less than 25 years of age decreased by 46.2 percent, and the number of farmers between 25 and 34 years of age declined by 15 percent. The only age group to show an increase was the group of farmers 65 years of age and older. These statistics indicate that America's farm population is aging and that younger people are not replacing retiring farmers in adequate numbers to ensure a diverse family farm system of agriculture. This concern resulted in passage of section 7 (Downpayment FO Loan Program) and section 8 (Special OL Loan Assistance) of the Act relating to beginning farmer and rancher loan assistance. The intent of the statute and these implementing regulations is to refocus a larger portion of FmHA resources on establishing the next generation of agricultural producers,

and to reemphasize FmHA's role as a temporary source of credit by limiting the number of years that a borrower may obtain direct and guaranteed OL loan assistance.

Discussion of Interim Rule

It is the policy of this Department, that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. FmHA is making this action effective immediately as an interim rule upon publication in the **Federal Register** without prior public comment, however, as required by section 23 of the Act signed October 28, 1992. Even so, this rule provides for a 30-day comment period. Any comments received will be addressed in the final rule.

This rule addresses section 4 (Interest Rates for Loans Sold into the Secondary Market; Guaranteed Loan Fees), section 5 (Federal-State Beginning Farmer Partnership), section 7 (Downpayment Loan Program), section 8 (Special Assistance to Certain Qualified Beginning Farmers and Ranchers), section 9 (Graduation of Borrowers with Operating Loans or Guarantees to Private Commercial Credit), and section 19 (Definition of Qualified Beginning Farmer or Rancher) of the Act. The Agency is implementing these statutory provisions as discussed below. The Agency will address other sections of the Act with additional regulation packages.

Section 4—Interest Rates for Loans Sold into the Secondary Market; Guaranteed Loan Fees (CONACT Section 309(h) (7 U.S.C. 1929(h))

CONACT section 309(h) allows the guaranteed portion of any loan sold into the secondary market to provide borrowers a lower rate of interest than the rate provided for the non-guaranteed portion of the loan retained by the originating lender. However, since guaranteed lines of credit cannot be sold in the secondary market, CONACT section 309(h) does not apply to lines of credit. The Agency has amended 7 CFR part 1980, subpart B, § 1980.175 (e), to reflect that the guaranteed portion of the loan may carry an interest rate lower than the non-guaranteed portion, without reference to the secondary market. This is a slightly more liberal interpretation than the legislation requires. However, interest rates are normally established at loan origination and the lender is not always certain at that time whether the guaranteed portion will be sold. In accordance with the statute, the interest rate on the non-guaranteed portion is limited to a rate no more than that charged the lender's average farm customer. There is no reason not to permit the lender more flexibility in reducing the rate to the borrower. Other sections of 7 CFR part 1980, subpart B governing Soil and Water and Farm Ownership loan making refer to § 1980.175 regarding interest rate requirements. Therefore, modifying § 1980 175 in effect also changes section 1980.180, Farm Ownership Loans, and § 1980.185, Soil and Water Loans, bringing them into compliance with the Act.

Section 309(h) of the CONACT also prohibits FmHA from charging fees to lenders for guarantees made under the Downpayment Farm Ownership Loan Program established by the Act, and limits origination and servicing fees charged by lenders to 1 percent of the loan amount. These requirements are implemented with amendments to 7 CFR part 1980, Subpart A, § 1980.21, governing guarantee fees charged by the Agency, and section 1980.22, which limits lender fees charged to borrowers.

Section 5—Federal-State Beginning Farmer Partnership (CONACT Section 309(i)) (7 U.S.C. 1929)

CONACT Section 309(i) requires FmHA to coordinate assistance with any State Beginning Farmer Program to provide financing to qualified beginning farmers or ranchers. The State Beginning Farmer Program has been defined in 7 CFR part 1943, subpart A and 7 CFR part 1980, subpart B. It is referenced in the Downpayment Farm Ownership Loan Program section of 7 CFR part 1943, subpart A, and under general provisions in 7 CFR part 1980, subpart B. The Act defines "State Beginning Farmer program" as any program that is carried out by or under contract with the State and designed to assist persons enter agriculture and establish viable farming or ranching operations. The Act allows FmHA to guarantee financing provided by the State program to a qualified beginning farmer or rancher to establish or maintain a viable farming or ranching operation. House Committee Report 102–783 on the Act states that FmHA can provide a guarantee of operating financing provided by the State. Therefore, FmHA has included the maintenance as well as the establishment of "viable farming or ranching operations" in the definition of "State Beginning Farmer program." Under the new program, FmHA may provide an eligible farmer with a downpayment loan under FmHA's newly created Downpayment FO Loan Program, and/or an FO or OL guarantee of the financing provided by the State program. The Act states that FmHA will not charge any guarantee fee on any loan made by a State Beginning Farmer Program and guaranteed by FmHA. In addition, Office of Management and Budget Circular A–129, dated January 27, 1993, prohibits FmHA from providing guaranteed assistance when funds have been derived from tax-exempt bonds. These conditions have been adopted in the implementing regulations.

Specific instructions relative to the Federal-State Beginning Farmer Program will not be published in the **Federal Register** as all States will have received actual notice regarding the program.

Section 7—Downpayment Farm Ownership (FO) Loan Program (CONACT sections 310E and 310F) (7 U.S.C 1935 and 1936)

The Agency amends subpart A of part 1943 by adding a new section to establish a Downpayment FO Loan Program for Beginning Farmers and Ranchers. Applicants must meet the present general FO loan eligibility requirements and the definition of a beginning farmer or rancher, which is addressed in section 19 of the Act. (Implementation of section 19 is discussed below.) According to CONACT section 310E, the applicant must provide a downpayment equal to 10 percent of the purchase price of the farm or ranch being purchased. The purchase price or the appraised value of the farm or ranch, whichever is lower, cannot exceed $250,000. FmHA will provide a direct FO loan for up to 30 percent of the purchase price, or appraised value, whichever is lower, to qualified applicants for a period not to exceed 10 years at a 4 percent interest rate. The applicant must obtain other financing on the remaining 60 percent balance with or without an FmHA loan guarantee. The other financing must be repaid over a period not less than 30 years with no balloon payment scheduled during the 10 years of the FmHA loan.

CONACT section 310E also requires the Agency, to the maximum extent practicable, to facilitate the transfers of farms and ranches from retiring farmers and ranchers to persons eligible for insured real estate loans, and to make efforts to widely publicize the availability of Downpayment FO loans to FO applicants, potentially eligible applicants, and retiring farmers and ranchers. Provisions for implementing these administrative requirements are included in § 1943.14 of subpart A of part 1943 of this chapter.

CONACT section 310F further provides that an applicant that has received special beginning farmer OL loan assistance under CONACT section 318 cannot receive a downpayment FO loan, or a regular direct or guaranteed FO loan, until the applicant has farmed at least 5 years. An applicant can receive such loan assistance after 5 years if the applicant has conducted the operation in accordance with the plan required under CONACT section 318, and meets eligibility requirements for the requested loan assistance.

Pursuant to CONACT section 346(b)(3), in Fiscal Year (FY) 1994, 55 percent of all direct FO funds will be targeted to this program. In FY 1995, 65 percent of all direct FO funds will be targeted, and for FYs 1996 and beyond at least 65 percent of all direct FO funds will be targeted to this program.

The Agency amends subpart B of part 1980 by adding a reference under loan purposes to providing a loan guarantee in conjunction with the Downpayment FO Loan Program.

Section 8—Special Operating (OL) Loan Assistance for Beginning Farmers and Ranchers (CONACT Section 318) (7 U.S.C. 1948)

The Agency amends subpart A of part 1941 and subpart B of part 1980 by adding a new section to implement the Special OL Assistance Program for Beginning Farmers and Ranchers. The objective is to move the borrower through varying degrees of direct and guaranteed OL loan assistance with ultimate graduation to private credit. In accordance with the statute, FmHA will provide up to a 10-year commitment to provide a combination of direct and guaranteed OL loan assistance.

Section 318 of the CONACT states that the applicant must provide a plan of the farming operation for each of the first 5 years for which special OL assistance is requested. The plan must also project the financial status of the operation after assistance has been provided for not more than 10 years, as is necessary for the operation to become financially viable without further FmHA assistance. The Agency has defined "financially viable operation" in subpart A of part 1941 and subpart B of part 1980.

The plan must indicate how the operation is to be conducted; types and quantities of commodities to be produced; the production methods to be employed by the operator; conservation measures to be utilized; the equipment needed in the farming operation and whether the applicant owns, leases, has available, or plans to purchase each item of equipment; expected income and expenses of the operation; expected credit needs; and the site where the farming operation is, or will be located. While the law does not require the plan to include any livestock needed in the farming operation, the Agency has added livestock and whether the applicant owns, leases, has available, or plans to purchase such livestock. Livestock is as essential to a livestock operation as equipment is to a cash crop operation. The 5-year plan and financial projection required by statute cannot be developed on a livestock operation without this data.

One requirement for approval of an application for special OL assistance under section 318 of the CONACT is that the operation would generate income sufficient to cover the expenses of the operation, debt service, and adequate living expenses of the applicant to the extent that other income would not cover the living expenses. Under this provision and its legislative history, nonfarm income specifically is limited to cover living expenses. Under FmHA's regular OL program, nonfarm income may cover operating expenses and/or debt service in addition to living expenses.

Upon receipt of a first year plan from the applicant, including any planned purchases and changes to the operation, the Agency will, at the applicant's option, develop the 5-year plan and financial projection by using an automated system. This will be accomplished based upon the Economic Research Service's long-range farm budget projections, which are part of the automated system. The Agency believes the average applicant will not have the necessary resources to develop the projected 5-year plan and financial projection. Developing such a plan could be very time consuming and burdensome to the applicant. Therefore, FmHA will assist the applicant with this requirement at the applicant's option. However, in those cases where the applicant is in a position to develop a plan for each of the first 5 years and a financial status projection showing financial viability within 10 years, the Agency will accept such documents. The Agency has amended subpart A of part 1941 to implement this change.

In those cases where the loan applicant qualifies for guaranteed special OL loan assistance, the lender and/or loan applicant normally will develop the 5-year plan and financial projection. Lenders will have the knowledge and expertise to develop these documents. The lender and loan applicant, however, also have the option of developing and submitting a first year plan to the Agency and requesting the FmHA official to develop a 5-year plan and financial projection by using the above-described automated system. The Agency has amended subpart B of part 1980 to implement this change.

The plan will be submitted with the loan application to the FmHA County Committee for review in accordance with the statute. The Committee also must determine that the applicant meets the regular OL loan eligibility requirements, that the applicant meets the beginning farmer and rancher definition, and has not operated a farm or ranch for more than 5 years. In addition, they must determine that during the 5-year period prior to the date of initial application, the applicant has had sufficient education and experience to indicate the ability to conduct a successful farming or ranching operation. This latter requirement is more restrictive than the current "education and/or farm experience" eligibility requirement under the regular direct OL loan program.

The Agency shall, subject to availability of funds, and a feasible plan of operation, make a conditional commitment to the applicant for each year of the commitment period to provide direct or guaranteed funding for operating and capital purchase purposes in accordance with the 5-year plan. During the commitment period, the applicant shall receive priority in the purchase of inventory equipment necessary for the success of the operation, either by credit sale or loan guarantee.

Based on CONACT section 318(f), special beginning farmer OL loans, after the first year, are contingent on the revision of the projected plan based on an analysis of the prior year's operation. The plan revision must occur not later than 60 days prior to the assistance being provided for the particular year.

The length of the commitment period will be determined by an automated analysis of projected financial and income data to reflect a financially viable operation, as previously discussed. The commitment period cannot exceed 10 years. A commitment period established for less than 10 years may be extended, subject to the 10-year limit, providing that the borrower's failure to meet established goals were the result of circumstances beyond the borrower's control and did not materially reduce the likelihood of the operation becoming financially viable. Examples of circumstances beyond the borrower's control have been set out in § 1941.15 of subpart A of part 1941. These are consistent with those listed in FmHA servicing regulations, subpart S

of part 1951. According to statute, a commitment period will be terminated if the borrower fails to meet the goals specified in the plan for 2 consecutive years, unless the failure has not materially reduced the likelihood of the operation becoming financially viable and is due to circumstances beyond the borrower's control. The commitment will also be revoked if the County Committee fails to recertify the borrower as eligible for regular OL loan assistance after 5 years. By statute, the borrower shall not be eligible for assistance under this section for a 3-year period beginning from the date the commitment was terminated.

Section 318 of the CONACT also restricts the applicant to 8 years of special direct OL loan assistance during the 10-year commitment period. The Congressional Record, dated October 8, 1992 (S 17861), indicates that this limit does not preclude the borrower from receiving another 2 years of direct loans, if necessary, under the regular operating loan program, consistent with the overall graduation requirements in section 9 of the Act.

Pursuant to CONACT section 346(b), during the first 6 months of Fiscal Year (FY) 1994, not less than 30 percent of the direct OL funds will be targeted for loans to beginning farmers or ranchers. During the first 6 months of FYs 1995 and 1996, not less than 40 percent of available direct OL funds shall be targeted. During the first 6 months of FY 1997, and thereafter, not less than 50 percent of available direct OL funds shall be targeted for loans to beginning farmers or ranchers.

Since Congress has targeted funds to beginning farmers, the Agency believes that it will be able to assist a substantial number of beginning farmers under its existing operating loan program and new program for beginning farmers and ranchers. The law does not require the Agency to target funds solely to beginning farmers or ranchers receiving assistance under the special OL program. OL funds are targeted to all beginning farmers requesting any OL assistance.

The special beginning farmer OL assistance program, however, has several restrictions which will limit its availability to the public. The general beginning farmer definition states that the applicant must have farmed less than 10 years; however, under the special OL assistance program, applicants must have farmed less than 5 years. In addition, the special OL assistance program requires a 5-year plan, including a projection that within 10 years the operation will become financially viable. Applicants must also have had education and experience during the 5-year period prior to application. Sufficient education and/or experience is required for regular OL loans. Furthermore, special OL applicants cannot obtain FmHA financing to purchase a farm until the applicant has farmed for at least 5 years, and nonfarm income can only be used to cover living expenses in measuring cash flow.

Despite the greater restrictions of the program, there are two benefits for a participant in the special beginning farmer OL assistance program. First, the Agency can make up to a 10-year commitment to provide special beginning farmer OL assistance to the applicant. As mentioned above, the beginning farmer definition states that applicants must have farmed less than 10 years. Once the applicant receives assistance under this program, the applicant would not need to meet this beginning farmer definition, since the commitment has been made. (The applicant would have to continue to meet regular OL loan eligibility requirements.) Thus, if a beginning farmer has been farming for 4 years when special OL assistance is first received, a 10-year commitment would allow the beginning farmer to have access to targeted funds throughout the commitment period. Had the beginning farmer received assistance under the regular OL program, the applicant would only have access to targeted funds for 6 more years (the remaining years in which the definition of beginning farmer could be met).

Another benefit under this program is that if an applicant receives special beginning farmer OL assistance and obtains FmHA financing to purchase a farm after operating a farm for at least 5 years, the applicant will still have access to targeted beginning farmer OL funds. The beginning farmer definition restricts land ownership to no more than 15 percent of the average farm acreage in the County where the farm is located. As mentioned above, once an applicant receives a commitment under the special beginning farmer OL assistance program, the applicant meets the beginning farmer definition throughout the commitment period. Thus, if the beginning farmer obtained a farm during the commitment period, the beginning farmer would remain eligible for targeted funds even if the acreage exceeded the 15 percent limit. By contrast, if the applicant obtains FmHA financing to purchase a farm, was not involved in the special beginning farmer OL program, and owned land which exceeds 15 percent of the average acreage of the farms or ranches in the County, the applicant would not have access to targeted funds.

In accordance with section 318 of the CONACT, the Agency also amends subpart C of part 1955 by adding a new paragraph to § 1955.122 to indicate that beginning farmers and ranchers in the special OL loan assistance program will be given priority in the purchase of equipment in FmHA inventory. The priority will be throughout the commitment period and only when necessary for the success of the operation described in the loan application. This priority will be limited to the FmHA County Office service area, and the applicant will be given 10 working days to respond if interested in any item of inventory equipment. As a result of the statutory requirement, any former borrower-owner, including spouse or children, will no longer have first priority to purchase equipment in FmHA inventory under subpart C of part 1955.

Section 9—Graduation of Borrowers with Operating Loans or Guarantees to Private Commercial Credit (CONACT Section 319) (7 U.S.C. 1949)

CONACT section 319(a) requires FmHA to establish a plan to encourage direct and guaranteed OL borrowers to graduate to private credit without further FmHA OL assistance, as expeditiously as possible. When fully implemented, this directive will be coordinated with FmHA's "borrower training," "loan assessment," "market placement," and "supervised credit" activities required by CONACT sections 359, 360, 361 and 362, respectively. Supervised credit has long been a basic activity in FmHA's loan programs. The regulations implementing "borrower training," "loan assessment," and "market placement", however, are being promulgated through the proposed rule-making process. The anticipated final rule publication date for these regulations is on or about October 1, 1994. Coordination between the activities required by CONACT section 319(a) and the "borrower training," "loan assessment," and "market placement" will be implemented in stages through October 1, 1994, as the proposed rules are finalized.

To implement CONACT section 319(a), § 1924.60 of subpart B of part 1924 is revised to include the graduation of direct OL borrowers to private credit as one of the purposes listed for analyzing the agricultural business. The section also requires a plan for graduation in conjunction with FmHA's normal loan servicing and credit counseling activities. Section 1924.56(b)(3) of this subpart has been

added to require County Supervisors to counsel borrowers on the need to graduate to commercial credit as expeditiously as possible. Such graduation is important due to the 10 and 15 year time limitations on obtaining FmHA direct and guaranteed OL loans that were established by CONACT section 319(b).

In addition, FmHA will attempt to promote and encourage graduation of existing guaranteed OL loan borrowers, as required by the Act. FmHA is changing § 1980.147 of subpart B of part 1980 to direct FmHA County Supervisors to encourage lenders to provide non-guaranteed operating loans to their present borrowers that are obtaining operating credit by virtue of an FmHA OL loan guarantee.

This policy is being adopted in light of the special challenges to providing a comprehensive graduation requirement in relation to guaranteed loans. First, farmers who obtain financing through FmHA loan guarantees are generally paying the average commercial bank rates for similar loans, and are usually not suffering from the same level of management/financial/production distress that typifies many FmHA direct OL borrowers. Since a guaranteed loan borrower has already obtained commercial credit by means of the FmHA loan guarantee, a "graduation" can be accomplished only if the commercial lender somehow terminates an existing loan guarantee. FmHA will attempt to encourage lenders to do this in appropriate cases, but there is no legal requirement for the lenders to comply. Guaranteed loans have a specific exemption from graduation requirements under section 333 of the CONACT.

Second, financial incentive is lacking to attract typical lenders to comply with an FmHA "graduation" request. The lender will have already paid the mandatory guarantee fee of: One percent multiplied by the loan amount and again by the percentage of guarantee. Since providing pro-rata refunds to lenders would be administratively burdensome, it has been ruled out as a practical alternative. The loan guarantee is also backed by the full faith and credit of the U.S. Government, which makes it a federal security and not subject to the full reserve requirements of the banking regulators. If a lender surrendered an outstanding loan guarantee, its regulator would require a higher dollar reserve since the entire loan would now be considered "at risk," *i.e.*, subject to the loss of principal and interest. The guaranteed portion of a loan covered by a loan note guarantee may also be sold by a lender at any time (except when in default) on the secondary market to investors. While many lenders never sell the guaranteed farm loans they originate, it is a financial option that FmHA would be asking lenders to voluntarily surrender for no off-setting benefit.

A final aspect of the practical challenges facing FmHA in implementing guaranteed borrower graduation is that if FmHA were successful in persuading lenders to relinquish a portion of their outstanding OL loan guarantees, a rational lender would choose to dispose of those loans believed to be risk free because the lender would want to retain the guarantees on loans with a higher risk to protect itself against loss. Any cost savings would be remote since there would be a negligible probability of FmHA paying any losses on the risk-free type loans.

The general rule under CONACT section 319(b) prohibits FmHA from guaranteeing an OL loan if the borrower has already received 15 years of direct or guaranteed OL assistance from FmHA after the date of enactment (October 28, 1992). The legislative history of the provision, however, makes clear that Congress intended to prohibit FmHA from making or guaranteeing OL loans after the 15-year limit. FmHA regulations, therefore, reflect the broader prohibition. The statute further restricts the maximum number of years for direct loan assistance to 10 of these 15 years. For example, if an individual first receives FmHA direct OL loan assistance in 1993, that individual would be eligible to receive direct OL assistance for 10 years and guaranteed assistance for 5 years, for a total of 15 years. House Report 102–783 elaborates on this and expresses an intent that the OL limitations not be counted over consecutive years from the date a borrower first receives FmHA direct and/or guaranteed OL assistance, but only over the years in which assistance actually was received. For example, if an individual received and then repaid a direct OL loan in 1993, and then neither received nor had outstanding any other direct OL loans until 1999 when a new application was submitted, this individual would be eligible for 14 more years of FmHA direct and guaranteed assistance, 9 years of which could be direct OL assistance. The fact that several years had passed since the individual first obtained OL assistance will have no bearing on remaining years of eligibility.

Neither the Act nor the House Report are specific as to whether the OL limits should apply to the total number of years that a borrower can have OL loans outstanding, or to the number of years that a borrower can remain eligible for new loans, without regard to the years required for a borrower to repay the loan(s). FmHA intends to implement the OL limitation based on the latter method. The Agency selected this approach to provide the most flexibility to those borrowers who request loans for other than annual operating expenses, and who will require the maximum repayment terms of 7 years. To illustrate, the selected approach will enable borrowers to obtain a 7-year, direct OL loan for a machinery purchase in the 10th year of their eligibility. Under the first approach, which was not selected by FmHA, this borrower would have been unable to obtain such a loan because all OL loans would have had to have been repaid (as opposed to approved and closed) by the end of 10th year. The selected approach will not place as many constraints on both beginning and established farmers by forcing them to make major capital purchases within the first few years so that there would be sufficient years remaining to repay the loan. Another illustration of this is as follows: A new borrower who received 1-year direct OL loans in years 1, 3, 5, and 10, and a 3-year equipment loan in year 7 (years 7, 8 and 9), would have received operating credit in a cumulative total of 7 years. The borrower will have 3 years of eligibility left for direct OL assistance and 8 years for guaranteed OL assistance. In the final year of eligibility, the borrower could receive a 7-year OL loan for the purchase of machinery since the loan only need be closed, not repaid, during the period of eligibility.

The eligibility period will be determined by counting the years that any direct or guaranteed loan (made after October 28, 1992) has or had been outstanding. This is clearly the intent of Congress, as indicated in House Report 102–783. One full year will be counted against the eligibility period when a loan is outstanding during any portion of a calendar year. The Agency cannot administratively track various portions of years. However, a borrower who has multiple direct and/or guaranteed OL loans outstanding in any portion of the same calendar year will only have 1 year counted against their eligibility period. For example, a new borrower receives a 7-year direct OL loan in year 1, and then applies for a 1-year direct OL loan in year 3. FmHA would have determined that in year 3, the borrower has had 3 years of outstanding loans and 12 remaining years of eligibility for OL loans, of which no more than 7 years may be in the form of direct OL loans.

Again, the borrower may obtain multiple loans concurrent with other loans and it will count as one year. Should the borrower pay off the 7-year OL loan early, in year 5, for example, and have no other direct or guaranteed operating loans outstanding, the borrower's remaining years of eligibility would be 10 years, of which no more than 5 years could be direct OL loans.

Whenever a borrower's OL loan is closed after October 28, 1992, and is given an extended term through loan servicing or bankruptcy, FmHA will count each additional year the loan is outstanding against the borrower's eligibility period. Once again, the House Report addresses limitations based upon loans outstanding. For example, if a borrower fails to repay a 1-year annual operating loan and it is restructured for repayment over a 15-year period, the borrower will lose one year of direct loan eligibility for every year the restructured loan is outstanding. If the restructured OL loan is repaid in 11 years, the borrower will not be eligible for another direct OL loan thereafter. However, it should be reemphasized that additional direct OL loans can be made within the 10-year limit even though the borrower has a direct OL loan outstanding. Operating loans closed prior to October 28, 1992, that are given extended terms after October 28, 1992, will not be counted against the eligibility period, since the general rule under the statute applies only to loans made after October 28, 1992. Section 1941.17 of subpart A of part 1941 is modified to implement this change in the direct OL program. The preceding description of the eligibility limitation for direct OL loans is precisely the same for guaranteed OL borrowers, except the limitation is 15 rather than 10 years. §§ 1980.124(a)(1) and 1980.175 of subpart B of part 1980 is modified to implement this change in the Guaranteed OL program.

A transition period for the 10 and 15 year limitation is also provided in § 1941.17 of subpart A of part 1941 and § 1980.175 of subpart B of part 1980 for direct and guaranteed OL borrowers, respectively, to cover borrowers with loans outstanding as of October 28, 1992. CONACT section 319(b) states that if a direct OL loan had been made to a borrower for 5 years or more, or a guaranteed OL loan had been made for 10 years or more, from the date of enactment (October 28, 1992), the borrower cannot receive direct or guaranteed OL loan assistance "after the 5th year occurring after the enactment for which a loan is made under [Subtitle B] or such a guarantee is provided with respect to, the borrower." This language is ambiguous as to whether further loans/guarantees are prohibited after the 5th anniversary of the statute or after 5 years of OL assistance post-October 28, 1992. The legislative history on the provision is not clear on the issue. The Agency has decided to implement the transition rule by using borrower records for 5 calendar years for direct loans and 10 calendar years for guaranteed loans. Due to the Federal Retention Records Schedule, inactive borrower records generally are destroyed after 3 years. The Agency's Finance Office, however, does have complete and accurate records on existing direct borrowers from January 1, 1988, and on guaranteed borrowers from January 1, 1983. Therefore, the Agency will be able to determine if direct OL applicants were indebted in each of the 5 calendar years prior to October 28, 1992, and if guaranteed OL applicants were indebted in each of the 10 calendar years prior to October 28, 1992. While this may seem unfair to existing borrowers, the Agency is required to implement the statutory provision to the fullest extent reasonably possible.

For direct OL borrowers indebted to FmHA on October 28, 1992 (date of enactment), the following rules will apply: All direct OL loans outstanding since January 1, 1988, will be considered to determine if the borrower was indebted for 5 calendar years of direct OL assistance through the date of enactment. An OL loan outstanding in any portion of any calendar year shall be counted as 1 year. If the borrower had direct OL loans outstanding for 5 calendar years, that borrower will be eligible for any combination of direct and guaranteed OL loans for an additional 5 years (consecutive or non-consecutive), beginning with the first OL loan(s) made after October 28, 1992. For example: A borrower had an annual direct OL loan outstanding as of October 28, 1992. The borrower also had a direct, term OL loan outstanding from October 28, 1988, through October 28, 1992. Since the borrower had direct OL loans that spanned the 5 previous calendar years, the borrower would fall under the transition rule and be eligible for only 5 more consecutive or non-consecutive years of direct or guaranteed assistance beginning with the first OL loan made after October 28, 1992. FmHA will count the years beginning with the first loan made after October 28, 1992, as under the general rule. If a multi-year loan is made prior to October 28, 1992, the years of assistance on the loan after this date would not count towards the 5-year limit. As previously stated, the House Report clearly intended that eligibility under the general rule not to be limited to a consecutive number of years from the date of the borrower's first direct or guaranteed loan closed after October 28, 1992. The Agency will apply the same methodology under the transition rule for consistency. For guaranteed OL loans, the transition rule will work precisely the same way, except that it will apply after 10 years of assistance prior to enactment, instead of 5 years.

To ensure the eligibility limitation is applied uniformly and equitably, all individual members of a business entity will be defined as borrowers and will be personally liable for loan repayment. Thus, all business entity members will be required to sign the promissory note(s) as individuals. The Agency does not anticipate this to cause an inconvenience on entity applicants. Some State laws already require all members of an entity to sign the note. Of applicants applying for FmHA Farmer Programs assistance, a great majority are individual applicants. Those that are entity applicants consist of family-size farmers, the majority of whom are related by blood or marriage. There will be very few instances when the entity will include a large number of shareholders, some of whom own an insignificant percentage of interest in the operation.

The major reason for changing the definition of "borrower" is to ensure that the intent of Congress is not circumvented by borrowers reorganizing to acquire a new 10/15 year OL loan eligibility period. Cosigners, who sign the note only as additional security, are also defined to distinguish them from borrowers. The 10/15 year OL loan eligibility requirements do not apply to cosigners as they have not applied for loan assistance and are receiving no direct loan benefits. To effect these described changes concerning entity borrowers and cosigners, the following regulations will be modified: § 1941.4 of subpart A of part 1941; § 1941.54(b)(2) of subpart B of part 1941; §§ 1943.4 and 1943.38(g)(3)(ii) of subpart A of part 1943; §§ 1943.54 and 1943.88(g)(3)(ii) of subpart B of part 1943; §§ 1945.154 and 1945.169(c) (2) and (3) of subpart D of part 1945; and §§ 1980.106(b), 1980.108(a)(2), and 1980.109(a)(2) of subpart B of part 1980.

Section 19—Definition of Qualified Beginning Farmer or Rancher (CONACT Section 343(a)) (7 U.S.C. 1991(a))

7 CFR part 1941, subpart A; 7 CFR part 1943, subparts A and B; 7 CFR part 1945, subpart D; and 7 CFR part 1980,

subpart B have been revised by adding the definition of "beginning farmer or rancher" required by the Act. The former definition in 7 CFR part 1955, subpart C, which has been revised, gave priority to beginning farmers or ranchers when requesting the purchase of FmHA inventory farmland pursuant to the Food, Agriculture, Conservation and Trade Act of 1990 (FACT Act). Section 1943.80 of subpart B of part 1943 (Soil and Water Loans) and § 1945.180 of subpart D of part 1945 (Emergency Loans) were revised to state that the County Committee will certify as to beginning farmer or rancher status for tracking purposes only. The beginning farmer determination is not a consideration for soil and water or emergency loan assistance. However, it is the sense of Congress, as stated in the 1990 FACT Act, that FmHA maintain statistics on the number of direct and guaranteed loans made to beginning farmers and ranchers. Applicants who apply for the Special OL Assistance or Downpayment FO Program must meet the definition to qualify for such assistance. All eligible direct and guaranteed OL/FO applicants, and eligible guaranteed OL applicants who receive a subsidized loan, and are determined beginning farmers or ranchers, will have access to targeted funds.

The statutory definition of "qualified beginning farmer or rancher," in part, requires individual applicants to provide "substantial day-to-day labor and management of the farm or ranch * * *" The Congressional Record dated October 8, 1992 (S 17861), indicates that this applies only to beginning farmers and ranchers and is not intended to apply to other applicants. The entity eligibility requirement for beginning farmers or ranchers is more restrictive than in the general farmer programs loan making regulations. Entity members must be related by blood or marriage to meet the definition of qualified beginning farmer or rancher. Entity members of a Farmer Programs entity applicant do not have to be related by blood or marriage. The beginning farmer definition also requires that all members of entities must materially and substantially participate in the operation of the farm or ranch. Only one member of a Farmer Programs entity applicant must operate the farm or ranch. In addition, all stockholders of a corporation must meet the "beginning farmer or rancher" definition.

Another requirement of the beginning farmer definition is that an applicant has not operated a farm or ranch, or has operated a farm or ranch for not more than 10 years. The Agency has determined that this requirement will apply to all members of an entity. This was added to prohibit individuals that have farmed in excess of 10 years from forming an entity to circumvent this requirement to obtain beginning farmer or rancher loan assistance.

Under CONACT Section 343(a)(11)(F), the applicant must not own land or must not, directly or through interests in family farm corporations, own land, the "aggregate acreage of which does not exceed 15 percent of the median acreage of the farms or ranches in the county in which the farm or ranch operations of the applicant are located, as reported in the most recent Census of Agriculture* * *" The Agency has changed the reference in its regulations from median acreage to average acreage based on its perception of legislative intent. The Census of Agriculture does not capture median acreage but references only the average acreage of farms by county. For clarification purposes, the Agency has stated that when the farm is located in more than one County, the average farm acreage of the County where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the County where the major portion of the farm is located will be used.

Section 1941.25(a) of subpart A of part 1941 also has been amended by removing the requirement for FmHA to complete chattel and real estate appraisals when borrower's accounts are being serviced. This issue is covered in servicing regulations described in subpart A of part 1951.

Section 1945.161(a)(1) of subpart D of part 1945 also has been amended by removing the last sentence which read, "These applications must be processed within 12 months after they are filed." This statement is outdated as a result of the 60 day time frame requirements to process a complete application, established by CONACT Section 333A(a)(1).

Finally, references to "Insured Loans" have been changed to "Direct Loans" to reflect changes in terminology required by the Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

List of Subjects

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing.

7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR Part 1943

Credit, Loan Programs—Agriculture, Recreation, Water resources.

7 CFR Part 1945

Agriculture, Disaster assistance, Loan programs—Agriculture.

7 CFR Part 1955

Government acquired property, Sale of government acquired property, Surplus government property.

7 CFR Part 1980

Agriculture, Loan programs—Agriculture, Loan programs—Community programs, Rural Development Assistance.

Therefore, by the Under Secretary's authority 7 CFR 2.23, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

CHAPTER XVIII—[AMENDED]

1–2. 7 CFR chapter XVIII is amended by revising the word "insured" and/or "Insured" to read "direct" and/or "Direct" in the following places:

a. Part 1941, Subpart A

§ 1941.1
§ 1941.33 (a)

b. Part 1941, Subpart B

§ 1941.51

c. Part 1943, Subpart A

Subpart A—heading

§ 1943.1
§ 1943.17 (a)(1)
§ 1943.29, title, (b)(1), and (b)(2) [11 places].

d. Part 1943, Subpart B

Subpart B—heading

§ 1943.51

e. Part 1945, Subpart D

§ 1945.151 (a)

f. Part 1980, Subpart B

§ 1980.108 (b)(2) [2 places], the heading for paragraph (d), (d)(1), introductory (d)(2), (d)(2)(i), and (d)(2)(ii).
§ 1980.175 (c)(1)(iv), (d)(1), and (h)(2).

PART 1910—GENERAL

3. The authority citation for part 1910 is revised to read as follows:

Authority: 5 U.S.C. 301;7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.23 and 2.70

Subpart A—Receiving and Processing Applications

4. Section 1910.4 is amended by adding a new paragraph (b)(24), revising paragraph (g)(1), and revising paragraph (h) to read as follows:

§ 1910.4 Processing applications.

* * * * *

(b) * * *

(24) For special beginning farmer or rancher operating (OL) loan assistance, a plan of operation will be developed for each of the first 5 years for which such assistance is requested. A projection of the financial status of the operation showing financial viability within the commitment period will also be developed. The 5-year plan and projection will be developed as described in § 1941.15 of Subpart A of Part 1941 of this chapter. This information will be presented on reports generated on the FmHA automated Farm and Home Plan System, or in other plans or documents consistent and acceptable to FmHA.

* * * * *

(g) * * *

(1) The County Committee will certify whether or not the applicant meets the eligibility requirements and whether or not the applicant is a beginning farmer or rancher, as defined in the applicable Farmer Programs loan making regulation by use of Form FmHA 440–2, "County Committee Certification or Recommendation." An eligible OL or FO applicant, who is considered a beginning farmer or rancher, will have access to targeted funds. An eligible FO applicant requesting to purchase suitable farmland, who is considered a beginning farmer or rancher, will be given priority as outlined in § 1955.107 (f) of subpart C of part 1955 of this chapter. In addition, it is the responsibility of the County Committee to determine whether or not the FO applicant is an operator of not larger than a family size farm, as of the time immediately after the contract of sale or lease is entered into, even though the applicant is not in need of FmHA credit assistance on eligible rates and terms to purchase suitable farmland. The County Committee will not determine the applicant's projected repayment ability, or the adequacy of collateral equity to secure the requested loan(s), or the feasibility of the proposed operation. These decisions must be made by the loan approval official.

(h) *County Committee actions.* All actions by the committee regarding applicant eligibility will be taken in committee meetings attended by at least two committee members. If the County Committee is unable to reach a decision based on the information available, they may request a personal interview with the applicant. Applicants may not be interviewed for reasons unrelated to proper eligibility considerations. The County Committee will act on the application after considering all pertinent information. For special beginning farmer OL applicants, plans required under § 1941.15 (e) of subpart A of part 1941 of this chapter must be included with the application for the County Committee to review. County Committee members are required to adhere to all applicable provisions of this regulation when determining eligibility of applicants. This action will be taken in the absence of the applicant.

* * * * *

PART 1924—CONSTRUCTION AND REPAIR

5. The authority citation for part 1924 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.23 and 2.70.

Subpart B—Management Advice to Individual Borrowers and Applicants

6. Section 1924.56 is amended by adding a new paragraph (b)(3) to read as follows:

§ 1924.56 Credit counseling.

* * * * *

(b) * * *

(3) Discuss with the applicant the need to expeditiously graduate to private credit due to FmHA's limitation on providing OL assistance, as set forth in § 1941.17 of subpart A of part 1941 of this chapter.

7. Section 1924.60 is amended by redesignating current paragraphs (a)(4) through (a)(11) as (a)(5) through (a)(12), revising the introductory text of paragraph (a) and adding a new paragraph (a)(4) to read as follows:

§ 1924.60 Analysis.

(a) *Purpose of analyses.* Analyses are used to develop information for sound lending and supervisory decisions that will assist borrowers in utilizing sound business planning, management practices, and graduation to commercial sources of credit. Analysis is also used to provide a basis for determining if loan servicing under subpart S of part 1951 of this chapter is needed or whether financial assistance is necessary to meet essential family living and operating expenses. Analysis will be used to:

* * * * *

(4) Establish a plan for graduation from OL assistance to private or other financing in coordination with the activities in this subpart.

* * * * *

PART 1941—OPERATING LOANS

8. The authority citation for part 1941 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 7 CFR 2.23 and 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

9. Section 1941.4 is amended by revising the definition of "Borrower," and by adding, alphabetically, the definitions of "Beginning farmer or rancher," "Cosigner," and "Financially viable operation," to read as follows:

§ 1941.4 Definitions.

* * * * *

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(a) Meets the loan eligibility requirements for OL loan assistance in accordance with § 1941.12 of this subpart.

(b) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.

(c) Will materially and substantially participate in the operation of the farm or ranch.

(1) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(2) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(d) Agrees to participate in any loan assessment, borrower training, and financial management programs required by FmHA regulations.

(e) Does not own real farm or ranch property or who, directly or through

interests in family farm entities, owns real farm or ranch property, the aggregate acreage of which does not exceed 15 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(f) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming or ranching on a viable scale.

(g) In the case of an entity:

(1) All the members are related by blood or marriage.

(2) All the stockholders in a corporation are eligible beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA debt.

* * * * *

Cosigner. A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. The 10 and 15 year loan limits under § 1941.17(a) of this subpart and § 1980.175(d)(1) of subpart B of part 1980 of this chapter do not apply to cosigners. In the case of an entity applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

* * * * *

Financially viable operation. A financially viable operation is one which, with FmHA assistance, is projected to improve its financial condition over a period of time to the point that the operator can obtain commercial credit without further FmHA direct or guaranteed assistance. Such an operation must generate sufficient income to: Meet annual operating expenses and debt payments as they become due, meet basic family living expenses to the extent they are not met by dependable nonfarm income, provide for replacement of capital items, and provide for long-term financial growth. A borrower that will meet the FmHA classification of "Commercial," as defined in FmHA Instruction 2006–W (available in any FmHA office), will be considered to be financially viable.

* * * * *

§ 1941.14 [Amended]

10. Section 1941.14 (b) is amended by revising the reference from "Section 1962.17(b)(2)(ii)(A)" to "§ 1962.17."

11. Section 1941.15 is added to read as follows:

§ 1941.15 Special beginning farmer or rancher OL loan assistance.

(a) *Objectives.* The basic objective of this special OL loan program is to provide the applicant, whose primary occupation is or will be farming, with a reliable source of FmHA-assisted operating credit for annual operating and capital expenses needed to conduct a financially viable farming or ranching operation. The goal is to move the borrower through varying types of assistance, ranging from limited resource direct loans, regular interest direct loans, subsidized guaranteed loans, and unsubsidized guaranteed loans, with graduation to private credit occurring no later than 10 years from the date of initial assistance. Supervision will be provided to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government in accordance with subpart B of part 1924 of this chapter.

(b) *Eligibility requirements for special beginning farmer or rancher OL loan assistance.* Applicants must:

(1) Meet the "beginning farmer or rancher" definition in § 1941.4 of this subpart, and

(2) Have not operated a farm or ranch, or have operated a farm or ranch for not more than 5 years. This requirement applies to all members of an entity.

(3) During the 5-year period prior to applying for assistance, have sufficient education and experience to indicate that the applicant is able to conduct a successful farming or ranching operation.

(4) Own, lease, or have a commitment to lease the site of the operation, that is or will be sufficient to carry out the planned operation.

(5) Present a plan of operation in accordance with paragraph (e) of this section, which projects feasibility for each year of the 5-year period, and a financial projection reflecting a financially viable operation at the end of the commitment period referenced in paragraph (f) of this section.

(6) Have or will have access to livestock and equipment, sufficient to carry out the planned operation.

(c) *Loan purposes.* Loan purposes are as set forth in § 1941.16 of this subpart. Applicants approved for loan assistance under this section will also receive priority in the purchase of FmHA inventory equipment as stated in § 1955.122(a) of subpart C of part 1955 of this chapter.

(d) *Loan limitations.* In addition to the loan limitations stated in § 1941.17 of this subpart, the following limitations apply:

(1) The borrower shall not be eligible to receive additional special direct OL loan assistance during the commitment period referenced in paragraph (f) of this section after 8 years from the date of receiving the first such loan. This does not prohibit the borrower from receiving an additional 2 years of OL loan assistance under the regular direct OL loan program during the commitment period.

(2) The borrower is not eligible for special beginning farmer OL loan assistance for a 3-year period beginning on the date that a previous commitment is terminated under paragraph (h) of this section.

(e) *Plan of operation for special beginning farmer OL loan assistance.* In addition to the planning requirements set forth in § 1924.57 of subpart B of part 1924 of this chapter and subject to paragraph (e)(3) of this section, the following information must be submitted to the County Supervisor with the application for County Committee review:

(1) A first-year plan of the farming operation from the applicant providing the following details:

(i) How the operation is to be conducted.

(ii) The types and quantities of commodities to be produced.

(iii) The production methods to be employed by the operator.

(iv) The conservation measures to be utilized in the operation.

(v) The livestock and equipment needed to conduct the farming operation (including expected replacements or additions), and whether the applicant owns, leases, or has access to the item(s), or plans to purchase or lease the needed item(s).

(vi) The expected income and expenses of the operation.

(vii) The expected credit needs, including the types, amounts and sources.

(viii) The site or sites where the farming operation is, or will be, located.

(2) Upon receipt of the plan from the applicant, including any future planned purchases and changes to the operation, the County Supervisor will develop a 5-year plan by use of an automated analysis, described in § 1910.4 (b) of subpart A of part 1910 of this chapter, and a projection of the financial status of the farming operation after special beginning farmer OL loan assistance (direct/guaranteed OL) has been provided for the period necessary, not to exceed 10 years. The projected plan must indicate the operation will be financially viable without further FmHA assistance within 10 years. This plan will detail the specific goals addressed by the applicant in order to graduate to other credit in an expeditious manner. Failure to meet these goals may result in termination of the commitment under paragraph (h) of this section.

(3) An applicant has the option to develop the 5-year plan and financial projection without the use of FmHA's automated Farm and Home Plan system. The County Supervisor will notify the applicant of this option. For each year of the 5-year plan, the items listed under paragraph (e)(1) of this section must be provided. The financial projection must conform with the requirements set out in paragraph (e)(2) of this section.

(f) *Commitment period.* In making OL loans under this section, the County Supervisor will make a commitment to the borrower to provide direct and guaranteed operating credit for a period not to exceed 10 years, subject to loan limitations stated in paragraph (d) of this section. FmHA Form Letter 1941–A–2, "Conditional Commitment to Provide Special Operating Loan Assistance to Beginning Farmers or Ranchers," will be used for this purpose, and provided to the applicant when the loan is approved. The following conditions apply:

(1) The length of the commitment period will be determined by an automated analysis of projected financial and income data reflecting a financially viable operation as defined in § 1941.4 of this subpart.

(2) After the first year, subsequent loans under this section are contingent on the revision of the projected plan of operation required in paragraph (e)(1) of this section. The plan will be for the 5-year period beginning with the particular year for which assistance is requested, or if shorter, the period beginning with the particular year for which assistance is requested and ending with the year the plan projects a financially viable operation. A revised plan will be developed each year. This must be based on an analysis of the prior year's operation. The plan must be revised at least 60 days before the assistance will be needed for that particular year. The type of assistance provided each year (direct OL-Limited Resource, direct OL, guaranteed OL-Interest Assistance, or guaranteed OL) will depend upon the financial progress made by the loan applicant in accordance with FmHA regulations setting forth the eligibility requirements for each of the listed types of assistance.

(3) Borrowers under this section must demonstrate progress toward the specified goals with the objective of eliminating the need for FmHA credit after not more than 10 years. A borrower will be considered to have met the goals if FmHA payments are made on a timely basis, agreements with FmHA are kept, and financial progress is made such that the operation continues to be financially viable.

(g) *Extension of commitment period.* If a commitment has been issued for less than 10 years, the commitment period may be extended subject to the 10-year limit providing:

(1) The annual plan is revised in accordance with paragraph (f)(2) of this section;

(2) The failure to achieve the goals within the commitment period was due to circumstances beyond the control of the borrower. Acceptable new document circumstances for not achieving the goals include, but are not limited to:

(i) The reduction in essential income from a nonfarm job due to unemployment or underemployment of the borrower-operator or spouse caused by circumstances beyond the borrower's control.

(ii) Illness, injury, or death of an individual borrower, stockholder, member or partner who operates the farm.

(iii) Natural disasters, an outbreak of uncontrollable disease, and/or uncontrollable insect damage which caused severe loss of agricultural production that reduced the repayment ability of the borrower so that scheduled payments cannot be made.

(iv) Economic factors that are widespread and not limited to an individual case, such as high interest rates or low market prices for agricultural commodities as compared to production costs, that reduce the repayment ability of the borrower so that scheduled payments cannot be made, and;

(3) The failure to achieve such goals has not materially reduced the likelihood of the farming operation becoming financially viable.

(h) *Termination of commitment period.* (1) The commitment will be revoked if the County Committee fails to recertify the applicant as eligible for the regular direct and/or guaranteed OL loan programs under paragraph (k)(2) of this section.

(2) The commitment for FmHA-assisted operating credit also shall be revoked if the applicant fails, for 2 consecutive years, to meet the goals specified in the plan, unless both of the following are met:

(i) The failure has not materially reduced the likelihood of the operation becoming financially viable. (An updated projection of the financial status of the operation still reflects financial viability at the end of the commitment period.)

(ii) The failure to meet the goals of the 5-year plan was due to circumstances beyond the control of the borrower as described in paragraph (g)(2) of this section.

(3) Upon revocation of the commitment, the borrower will be given appeal rights in accordance with subpart B of part 1900 of this chapter.

(i) *Relationship between FmHA loans, direct and guaranteed.* The provisions of § 1941.29 of this subpart apply as stated. When a commitment is made to an applicant for 8 or more years, and no guaranteed special OLs are made, all direct operating loans are to be special operating loans for the first 8 years. OL loans made in the 9th and/or 10th years will be regular direct operating loans. With respect to loan objectives as stated in paragraph (a) of this section, and in accordance with paragraph (f)(2) of this section, whether the borrower receives a direct or guaranteed OL loan during the commitment period will depend on the borrower's financial condition, the projected 5-year plan of operation, and the availability of credit.

(j) *Completion of the 10-year commitment period.* If the borrower is unable to graduate to other credit without FmHA's assistance, FmHA may provide direct or guaranteed loan assistance subject to the lifetime loan limitations set forth in § 1941.17 of this subpart and § 1980.175 (d) of subpart B of part 1980 of this chapter and all other loan making regulations of this chapter.

(k) *County Committee certification.* A special beginning farmer OL loan application will not be presented to the County Committee until such time as a complete 5-year plan of operation and a projection of the financial status of the operation, as set forth in paragraph (e)

of this section, is submitted to FmHA for review. In addition to the requirements of § 1941.30 of this subpart, the following conditions apply:

(1) For initial special beginning farmer OL loan applicants, the County Committee will certify to the applicant meeting all the eligibility requirements as stated in paragraph (b) of this section. This certification is effective throughout the commitment period.

(2) For subsequent loan requests during the commitment period, the County Committee will certify as to the applicant meeting the eligibility requirements for the regular direct and/or guaranteed OL loan programs when the 5-year eligibility expires on the current Form FmHA 440–2, "County Committee Certification or Recommendation," unless the County Supervisor has determined that the applicant's situation has changed such that the eligibility determination would potentially be affected. If recertification is rejected, no subsequent loan will be made under the commitment and the commitment will be revoked in accordance with paragraph (h) of this section.

(l) *Loan approval or disapproval.* In addition to the requirements of § 1941.33 of this subpart, it must be determined that:

(1) *Initial loans.* (i) The plan of operation reflects that farm income is sufficient to cover farm operating expenses, replacement of capital items, debt service, and that part of living expenses not covered by nonfarm income (if any) for each year. Nonfarm income cannot be relied on to cover farm expenses or debt service.

(ii) At the end of the commitment period the operation will project financial viability without further assistance from FmHA, and the identified goals are reasonable and practicable.

(2) *Subsequent loans.* Subsequent loans will be approved or disapproved in accordance with FmHA Form Letter 1941–A–2 and paragraph (f) of this section.

12. Section 1941.17 is amended by redesignating current paragraphs (a) through (d) as paragraphs (b) through (e) and by adding new paragraphs (a) and (f) to read as follows:

§ 1941.17 Loan limitations.

An OL loan will not be approved:

(a) If the applicant:

(1) Received direct OL loans after October 28, 1992, and the sum of all calendar years those direct OL loans were outstanding (including any extension of terms through loan servicing or bankruptcy) is more than 10. The borrower, however, could still receive assistance in the following Example: A borrower received a 1-year, direct OL on February 1, 1993, and repaid it on December 15, 1993. The borrower does not apply for any more direct OL loans until the year 1996. This borrower still has 9 years in which new direct OL loans may be closed. The repayment term on any loan may extend beyond the 10-year eligibility limit as long as the loan is closed within the 10-year time period. Multiple loans outstanding in a given year count only as 1 year of eligibility. A loan outstanding in any portion of a year will be counted as a full year. For example, had this borrower repaid the OL loan on January 2, 1994, only 8 years of eligibility would remain.

(2) Received direct and/or guaranteed OL loans after October 28, 1992, and the sum of all calendar years that any combination of those loans were outstanding (including any extension of terms through loan servicing or bankruptcy) is more than 15. The borrower, however, could still receive assistance in the following Example: On February 1, 1993, a borrower obtains the first of 8 consecutive direct annual OL loans. In year 9, the borrower obtains a 7-year guaranteed OL loan. A few months prior to the end of the 15th year of having OL loans/guarantees outstanding, the borrower applies for a 7-year direct OL loan. This borrower is eligible providing the loan can be closed within the 15th year of eligibility. The repayment term on the loan may extend beyond the 15-year eligibility limit. Multiple loans outstanding in a given year count only as 1 year of eligibility. A loan outstanding in any portion of a year is counted as a full year.

(3) As of October 28, 1992, had one or more direct OL loans outstanding during each of the last 5 calendar years (January 1, 1988–October 28, 1992) and has had direct and/or guaranteed OL loans made after October 28, 1992, that have been outstanding for a sum of more than 5 calendar years (including any extension of terms through loan servicing or bankruptcy) since that date. The borrower, however, could still receive assistance in the following Example: A borrower had one direct OL loan outstanding on October 28, 1992, and had one direct OL loan outstanding every year since June 10, 1988 (the borrower received an annual OL loan every year between 1988 and 1992. Each year the loan was paid off in November). The borrower received a 3-year direct OL loan on January 28, 1993 (after October 28, 1992) and repaid the loan on December 31, 1995. The borrower does not apply for any more direct or guaranteed OL loans until 1997. The borrower still has 2 years in which new direct OL loans may be closed. The repayment term on any loan may extend beyond the 5-year eligibility period. Multiple loans outstanding in a given year count only as 1 year of eligibility. A loan outstanding in any portion of a year is counted as a full year.

(4) As of October 28, 1992, had one or more guaranteed OL loans outstanding during each of the last 10 calendar years, (January 1, 1983–October 28, 1992), and has had direct and/or guaranteed OL loans made after October 28, 1992, that have been outstanding for a sum of more than 5 calendar years (including any extension of terms through servicing or bankruptcy) since that date. The borrower, however, could still receive assistance in the following Example: A borrower had a guaranteed OL loan outstanding as of October 28, 1992, which had been outstanding for 7 calendar years. The borrower had a guaranteed OL loan prior to this one, also for 7 calendar years. (There were no overlapping years of assistance.) The borrower obtained a 3-year guaranteed OL loan on February 11, 1993 (after October 28, 1992). The loan was paid off on February 11, 1996. The borrower still has 2 years in which new direct OL loans may be closed. The repayment term on any loan may extend beyond the 5-year eligibility period. Multiple loans outstanding in a given year count only as 1 year of eligibility. A loan outstanding in any portion of a year is counted as a full year.

* * * * *

(f) For special beginning farmer or rancher OL loan assistance loan limitations, see § 1941.15 (d) of this subpart.

§ 1941.25 [Amended]

13. Section 1941.25 is amended by removing paragraphs (a)(3) and (a)(5)(iii), and by redesignating paragraphs (a)(4) and (a)(5) as paragraphs (a)(3) and (a)(4).

14. Section 1941.30 is amended by removing form title "County Committee Certification or Recommendation" and adding a new sentence at the end of the paragraph to read as follows:

§ 1941.30 County Committee Certification.

* * * See § 1941.15 (k) of this subpart for County Committee actions relative to special beginning farmer or rancher OL loan assistance.

Subpart B—Closing Loans Secured by Chattels

15. Section 1941.54 is amended in paragraph (b)(3) by revising the word

"cosigners" to read "individuals" and by revising paragraph (b)(2) to read as follows:

§ 1941.54 Promissory note.

* * * * *

(b) * * *

(2) *Cooperatives or corporations.* The promissory note(s) will be executed so as to evidence liability of the entity as well as individual liability of all member(s) or stockholder(s) in the entity.

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

16. The authority citation for part 1943 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 7 CFR 2.23 and 2.70.

Subpart A—Direct Farm Ownership Loan Policies, Procedures and Authorizations

17. Section 1943.4 is amended by revising the definition of "Borrower," and by adding, alphabetically, the definitions of "Beginning farmer or rancher," "Cosigner," and "State Beginning Farmer program," to read as follows:

§ 1943.4 Definitions.

* * * * *

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(a) Meets the loan eligibility requirements for FO loan assistance in accordance with § 1943.12 of this subpart.

(b) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.

(c) Will materially and substantially participate in the operation of the farm or ranch.

(1) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(2) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provides some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(d) Agrees to participate in any loan assessment, borrower training, and financial management programs required by FmHA regulations.

(e) Does not own real farm or ranch property or who, directly or through interests in family farm entities, owns real farm or ranch property, the aggregate acreage of which does not exceed 15 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(f) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming or ranching on a viable scale.

(g) In the case of an entity:

(1) All the members are related by blood or marriage.

(2) All the stockholders in a corporation are qualified beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA debt.

* * * * *

Cosigner. A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. The 10 and 15 year loan limits under § 1941.17 (a) of subpart A of part 1941 and § 1980.175 (d)(1) of subpart B of part 1980 do not apply to cosigners. In the case of an entity applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

* * * * *

State Beginning Farmer program. Any program that is carried out by or under contract with a State and designed to assist persons in obtaining the financial assistance necessary to establish and/or maintain viable farming or ranching operations.

* * * * *

18. Section 1943.14 is added to read as follows:

§ 1943.14 Downpayment FO loan program for beginning farmers or ranchers.

(a) *Objectives.* The basic objective of the downpayment FO loan program is to provide credit and assistance to eligible beginning farmers or ranchers to become owner-operators of family-size farms, including inventory farm property. Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government in accordance with subpart B of part 1924 of this chapter.

(b) *Eligibility requirements.* Applicants must meet the "beginning farmer or rancher" definition in § 1943.4 of this subpart to qualify for a downpayment loan.

(c) *Loan purposes.* Loans may be made to provide an amount equal to 30 percent of the purchase price or appraised value, whichever is lower, of the farm or ranch to be acquired, unless the applicant requests a lesser amount. The remaining balance of the purchase price or appraised value, whichever is lower, not to exceed 60 percent, may be guaranteed by FmHA.

(d) *Loan limitations.* In addition to the loan limitations stated in § 1943.17 of this subpart, the loan will not be approved if:

(1) The applicant cannot provide at least 10 percent of the purchase price of the farm or ranch.

(2) The purchase price or appraised value, whichever is lower, exceeds $250,000.

(3) Financing provided by FmHA and other credit exceeds 90 percent of the purchase price or appraised value, whichever is lower.

(4) The other financing for the balance of the purchase price is amortized for less than 30 years and/or a balloon payment is scheduled within the 10 years of the FmHA loan.

(e) *Rates and terms*—(1) *Interest rate.* Interest rates are specified in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office). The interest rate for beginning farmer or rancher downpayment loans shall be 4 percent.

(2) *Terms of loans.* (i) Each loan made under this section shall be amortized over a period of 10 years or less, at the option of the borrower.

(ii) Loans under this section shall be repaid in equal annual installments.

(f) *Security.* (1) Each loan will be secured by a lien on the property being acquired with loan funds. Security requirements under § 1943.19 of this subpart do not apply under this section.

(2) FmHA's secured interest in the farm or ranch being acquired will be junior only to the party providing the financing for the balance of the purchase price to the applicant.

(3) The borrower must agree to obtain permission from the County Supervisor prior to granting any additional security interest in the farm or ranch as stated in § 1965.16 of subpart A of part 1965 of this chapter.

(g) *Relationship between FmHA and a State Beginning Farmer program.* State Directors are delegated authority to execute a Memorandum of Understanding (MOU) with any State expressing an interest in coordinating financial assistance to beginning farmers or ranchers. The MOU must be executed within 60 days of the State notifying the State Director in writing of such interest, and will be developed in accordance with FmHA Guide Letter 1943–A–1 (available in any FmHA office). Under the MOU, FmHA will agree to provide qualified beginning farmers or ranchers with a downpayment loan under this section and/or a guarantee of the balance of the purchase price provided by the State program. This agreement will be subject to applicable law, loan approval requirements, and the availability of funds. FmHA will not charge a fee to obtain or retain a guarantee in connection with any joint funding under the MOU. If any changes are made to the MOU, the Regional Office of the General Counsel (OGC) will be consulted prior to signing the MOU. States will send copies of signed MOUs to the attention: Director, Farmer Programs Loan Making Division, National Office.

(h) *Program outreach.* The State Director shall be responsible for publicizing the Downpayment FO Loan program, with special emphasis on Socially Disadvantaged Individuals, and facilitating the transfer of retirees farms or ranchers to eligible FO applicants within the respective State. Program outreach will include:

(1) Maintaining close liaison and attending meetings with local, State and national organizations serving the agricultural community.

(2) Providing information to community and farm oriented organizations, agriculture colleges, other USDA Agencies and community leaders who are active in the farming area.

(3) Use of newspaper articles, radio announcements, and/or public television announcements.

19. Section 1943.16 is amended by adding paragraph (a)(4) to read as follows:

§ 1943.16 Loan purposes.

* * * * *

(a) * * *

(4) Making a Downpayment FO loan as referenced in § 1943.14 of this subpart.

20. Section 1943.17 is amended by adding paragraphs (a)(4) and (a)(5) to read as follows:

§ 1943.17 Loan limitations.

(a) * * *

(4) The applicant has received special beginning farmer or rancher OL assistance under § 1941.15 of subpart A of part 1941 of this chapter and has been farming for 5 years or less, including the period of time in which special OL assistance was received.

(5) The applicant has received special beginning farmer or rancher OL assistance and has not conducted the operation in accordance with the plan required under § 1941.15 of subpart A of part 1941 of this chapter.

* * * * *

21. Section 1943.28 is amended by adding a new sentence at the beginning of paragraph (a) to read as follows:

§ 1943.28 FmHA loans simultaneous with other lenders.

(a) FmHA Guide Letter 1943–A–1 (available in any FmHA office), will serve as a guide in executing MOUs with State Beginning Farmer programs by which FO loans will be made simultaneously with loans by any State Beginning Farmer program. * * *

* * * * *

§ 1943.29 [Amended]

22. Section 1943.29 is amended in paragraph (a) by revising the word "Insured" to "Direct," and in the introductory text of paragraph (b) by revising the words "An insured" to "A direct."

23. Section 1943.30 is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 1943.30 County Committee certification.

* * * The County Committee will also determine if the applicant is a beginning farmer or rancher as defined in § 1943.4 of this subpart.

24. Section 1943.38 is amended by revising the word "co-signers" to "individuals" in paragraph (g)(3)(iii) and revising paragraph (g)(3)(ii) to read as follows:

§ 1943.38 Loan closing actions.

* * * * *

(g) * * *

(3) * * *

(ii) Cooperatives or corporations. The promissory note(s) will be executed so as to evidence liability of the entity as well as individual liability of all member(s) or stockholder(s) in the entity.

* * * * *

Subpart B—Direct Soil and Water Loan Policies, Procedures, and Authorizations

25. Section 1943.54 is amended by revising the definition of "Borrower," and by adding, alphabetically, the definitions of "Beginning farmer or rancher," and "Cosigner," to read as follows:

§ 1943.54 Definitions.

* * * * *

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(a) Meets the loan eligibility requirements for SW loan assistance in accordance with § 1943.62 of this subpart.

(b) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.

(c) Will materially and substantially participate in the operation of the farm or ranch.

(1) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(2) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provides some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(d) Agrees to participate in any loan assessment, borrower training, and

financial management programs required by FmHA regulations.

(e) Does not own real farm or ranch property or who, directly or through interests in family farm entities owns real farm or ranch property, the aggregate acreage of which does not exceed 15 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(f) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming or ranching on a viable scale.

(g) In the case of an entity:

(1) All the members are related by blood or marriage.

(2) All the stockholders in a corporation are qualified beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA debt.

* * * * *

Cosigner. A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. The 10 and 15 year loan limits under § 1941.17(a) of Subpart A of Part 1941 and § 1980.175(d)(1) of Subpart B of part 1980 of this chapter do not apply to cosigners. In the case of an entity applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

* * * * *

§ 1943.75 [Amended]

26. Section 1943.75 is amended in paragraph (c)(4)(iii) by revising the word "Its" to "The."

§ 1943.79 [Amended]

27. Section 1943.79 is amended by removing the words "so used" at the end of paragraph (d).

28. Section 1943.80 is revised to read as follows:

§ 1943.80 County Committee certification.

The County Committee will certify that an applicant is eligible on Form FmHA 440–2, "County Committee Certification or Recommendation," before a loan is approved. In some instances the Committee may want to interview the applicant or see the farm before making any recommendations. The County Committee will also determine whether the applicant is a beginning farmer or rancher for tracking purposes only.

29. Section 1943.88 is amended by revising the word "co-signers" to "individuals" in paragraph (g)(3)(iii) and revising paragraph (g)(3)(ii) to read as follows:

§ 1943.88 Loan closing actions.

* * * * *

(g) * * *

(3) * * *

(ii) Cooperatives or corporations. The promissory note(s) will be executed so as to evidence liability of the entity as well as individual liability of all member(s) or stockholder(s) in the entity.

* * * * *

PART 1945—EMERGENCY

30. The authority citation for part 1945 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1980; 7 CFR 2.23 and 2.70.

Subpart D—Emergency Loan Policies, Procedures and Authorization

31. Section 1945.154(a) is amended by revising, the term "Insured loan" to read "Direct loan" and placing it in alphabetical order, revising the definition of "Borrower," and adding the definitions, alphabetically, of Beginning farmer or rancher," and "Cosigner," to read as follows:

§ 1945.154 Definitions and abbreviations.

(a) * * *

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(1) Meets the loan eligibility requirements for EM loan assistance in accordance with § 1945.162 of this subpart.

(2) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to *all* members of an entity.

(3) Will materially and substantially participate in the operation of the farm or ranch.

(i) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provides some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(4) Agrees to participate in any loan assessment, borrower training, and financial management programs required by FmHA regulations.

(5) Does not own real farm or ranch property or who, directly or through interests in family farm entities owns real farm or ranch property, the aggregate acreage of which does not exceed 15 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(6) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming or ranching on a viable scale.

(7) In the case of an entity:

(i) All the members are related by blood or marriage.

(ii) All the stockholders in a corporation are qualified beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA debt.

* * * * *

Cosigner. A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. The 10 and 15 year loan limits under § 1941.17 (a) of subpart A of part 1941 and § 1980.175 (d)(1) of subpart B of Part 1980 of this chapter do not apply to cosigners. In the case of an entity applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

* * * * *

§ 1945.161 [Amended]

32. Section 1945.161 is amended by removing the last sentence in paragraph (a)(1).

33. Section 1945.169 is amended by revising the word "cosigners" to "individuals" in paragraph (c)(3) and by revising paragraph (c)(2) to read as follows:

1945.169 Security.

* * * * *

(c) * * *

(2) Cooperatives or corporations. The promissory note(s) will be executed so as to evidence liability of the entity as well as individual liability of all member(s) or stockholder(s) in the entity.

* * * * *

34. Section 1945.180 is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 1945.180 County Committee certification.

* * * The County Committee will also determine whether the applicant is a beginning farmer or rancher for tracking purposes only.

§ 1945.182 [Amended]

35. Section 1945.182 is amended in the first sentence of paragraph (a) by revising "Insured" to "Direct."

PART 1955—PROPERTY MANAGEMENT

36. The authority citation for part 1955 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.23 and 2.70.

Subpart C—Disposal of Inventory Property

37. Section 1955.103 is amended by revising the definition of "Beginning farmer or rancher," and adding the definition "Borrower" to read as follows:

1955.103 Definitions.

* * * * * *

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(1) Is an eligible applicant for FO loan assistance in accordance with § 1943.12 of subpart A of part 1943 of this chapter or § 1980.180 of subpart B of part 1980 of this chapter.

(2) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.

(3) Will materially and substantially participate in the operation of the farm or ranch.

(i) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provides some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(4) Agrees to participate in any loan assessment, borrower training, and financial management programs required by FmHA regulations.

(5) Does not own real farm or ranch property or who, directly or through interests in family farm entities, owns real farm or ranch property, the aggregate acreage of which does not exceed 15 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(6) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming or ranching on a viable scale.

(7) In the case of an entity:

(i) All the members are related by blood or marriage.

(ii) All the stockholders in a corporation are qualified beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA debt.

* * * * *

38. Section 1955.122 is amended by redesignating current paragraphs (a) through (f) as (b) through (g), respectively, by adding a new paragraph (a), and revising newly redesignated paragraph (b) to read as follows:

§ 1955.122 Method of sale (Chattel).

* * * * *

(a) *Sale to beginning farmers or ranchers.* Beginning farmers or ranchers obtaining special OL loan assistance under § 1941.15 of Subpart A of part 1941 of this chapter will receive priority in the purchase of farm equipment held in government inventory during the commitment period. The County Supervisor will notify such applicants/borrowers of any farm equipment held in government inventory within the service area of the FmHA County Office. These applicants/borrowers will be given 10 working days to respond that they are interested in purchasing any or all items of equipment at the appraised fair market value established by FmHA. FmHA Form Letter 1955–C–1 will be used to notify applicants/borrowers of the availability of farm equipment in FmHA inventory. The equipment must be essential to the success of the operation described in the loan application in order for the applicant to have an opportunity to purchase such

equipment. The County Supervisor will determine what equipment is essential.

(b) *Repurchase by former borrower-owner.* If the former borrower-owner is participating in leaseback/buyback and/or homestead retention, the former borrower-owner will have an opportunity to repurchase the chattel property which has been conveyed to FmHA by the borrower, after special OL borrowers as described in paragraph (a) of this section. The sale will be market value and may be for cash or an FmHA credit sale. The borrower must repurchase all remaining chattel property conveyed to FmHA and may not pick and choose items to purchase. If the spouse or children of the previous owner, entity members of the previous owner or the immediate previous operator are leasing or purchasing the property under the leaseback/buyback program, such person may also have second opportunity (after special OL borrowers) to purchase all remaining chattels.

* * * * *

PART 1980—GENERAL

39. The authority citation for part 1980 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70

Subpart A—General

§ 1980.6 [Amended]

40. Section 1980.6 (a) is amended under the definition for "Borrower" by revising "§ 1980.106 (b)(4)" to read "§ 1980.106 (b)."

41. Section 1980.21 is amended by revising paragraph (a) to read as follows:

§ 1980.21 Guarantee fee.

(a) *Initial fee.* The fee will be the applicable rate multiplied by the principal loan amount or the Line of Credit ceiling amount multiplied by the percent of guarantee, paid one time only at the time the Loan Note Guarantee or Contract of Guarantee is issued. No guarantee fee will be charged when financing is provided by a State Beginning Farmer program as described in § 1980.108 (e) of Subpart B of this part.

(1) The fee will be paid to FmHA by the lender and is nonreturnable. The lender may pass on the fee to the borrower.

(2) Guarantee fee rates are specified in Exhibit K of FmHA Instruction 440.1 (available in any FmHA Office).

* * * * *

42. Section 1980.22 is amended by revising paragraph (a) to read as follows:

§ 1980.22 Charges and fees by lender.

(a) *Routine charges and fees.*

(1) Guarantee fees for Downpayment FO loan applicants. When a guaranteed loan is made in conjunction with the Downpayment FO Loan program for beginning farmers or ranchers referenced in § 1943.14 of subpart A of part 1943 of this chapter, the lender may charge a loan origination and servicing fee for an amount not to exceed 1 percent of the loan amount for the life of the loan.

(2) All Other Program Guarantees. Under all programs except the Downpayment FO Loan program for beginning farmers or ranchers, the lender may establish the charges and fees for the loan, provided they are the same as those charged other applicants for similar types of transactions. "Similar types of transactions" means those transactions involving the same type of loan requested for which a non-guaranteed loan applicant would be assessed charges and fees.

* * * * *

43. Appendix F of Subpart A is revised to read as follows:

BILLING CODE 3410-07-U

Appendix F—Conditional Commitment (Farmer Programs)

USDA-FmHA
Form FmHA 1980-15
(Rev 9-93)

FORM APPROVED
OMB NO. 0575-0079

CONDITIONAL COMMITMENT
(Farmer Programs)

TO: LENDER	TYPE OF LOAN ☐ FO ☐ SW ☐ OL ☐ OL/LOC
LENDER MAILING ADDRESS	NAME OF LOAN APPLICANT
	FmHA CASE NUMBER
CITY, STATE, AND ZIP CODE	PRINCIPAL AMOUNT OF LOAN/LINE OF CREDIT $

From an examination of information supplied by the Lender on the above proposed loan/line of credit, the County Committee certification or recommendation, if required, and other relevant information deemed necessary, it appears that the transaction can be properly completed.

Therefore, the United States of America acting through the Farmers Home Administration (FmHA) hereby agrees that, in accordance with applicable provisions of the FMHA regulations published in the Federal Register and related forms, it will execute Form FmHA 449-34, "Loan Note Guarantee," or Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)", as appropriate, subject to the conditions and requirements specified in said regulations and included below.

The guarantee fee payable by the Lender to FmHA will be the amount as specified in the regulations on the date of this Conditional Commitment.

The interest rate for the loan/line of credit is ____ % ☐ fixed, ☐ variable which cannot exceed the rate the lender charges his average farm customer. If a variable rate is used, it cannot change more often than _____.

If the interest rates will be different on the guaranteed and nonguaranteed portions of the loan, in accordance with Section 1980.175 of Subpart B of Part 1980, the overall rate will be ☐ fixed ☐ variable. The interest rate on the guaranteed portion cannot exceed the nonguaranteed portion.

A Loan Note Guarantee or Contract of Guarantee will not be issued until the Lender certifies to conditions in Form FmHA 1980-22, "Lender Certification," that there has been no adverse change(s) in the loan Applicant's financial condition, nor any other adverse change in the Loan Applicant's condition during the period of time from FmHA's issuance of the conditional Commitment, (Farmer Programs) to issuance of the Loan Note Guarantee or contract of Guarantee.

Unless indicated in the section "Additional Conditions and Requirements," the purposes for which the loan funds will be used are set out on the Farmer Programs Application.

The Lender agrees that, if liquidation of the account becomes imminent, the Lender will consider the Loan Applicant for Interest Assistance under Exhibit D of 7 CFR Part 1980, Subpart B, and request a determination of the Loan Applicant's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 calendar days after a determination has been made with respect to the eligibility of the Loan Applicant to participate in the Interest Assistance Program.

INTEREST ASSISTANCE REQUIREMENTS

☐ N/A The subject guaranteed loan/line of credit does not have Interest Assistance.

☐ INTEREST ASSISTANCE

The subject guaranteed loan/line of credit has been approved for participation in the Interest Assistance program. Interest Assistance during the first annual operating plan period will be _____ percent per annum of average outstanding principal. The Maximum Rate of Interest Assistance Available (MRIAA) under this commitment is _____ percent per annum of outstanding principal balance. Interest Assistance is available under this commitment for a period not to exceed _____ years. Availability of Interest Assistance is subject to the loan being closed in accordance with the conditions of this commitment and with the conditions of this commitment and with FmHA regulations. Interest Assistance availability is also subject to the execution of Form FmHA 1980-64, "Interest Assistance Agreement," and compliance with the conditions of that agreement. conditions include the requirement that the rate of Interest Assistance be adjusted annually based on an analysis of the borrower's need for Interest Assistance, with which the lender is required to perform and obtain FmHA concurrence.

porting burden for this collection of information is estimated to average 30 minutes per esponse, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0079), Washington, D.C. 20503. Please DO NOT RETURN this form to either of these addresses. Forward to FmHA only.

REQUIREMENTS FOR LOANS SECURED BY CHATTELS

A) All collateral for the loan, i.e., livestock, farming and other equipment, crops, other farm products, supplies, inventory, accounts and contract rights, and general intangibles, must be accounted for on a disposition or collateral control sheets. An assignment will be obtained on all USDA crop and livestock program payments. All collateral pertains to that now owned and hereafter acquired. A yearly accounting and reconciliation with the Security Agreement is required.

B) The Lender's financing statement must cover the proceeds and products of collateral and the following statement must be included· "Disposition of the collateral is not authorized hereby."

FOR OPERATING LOAN(S) / LINE OF CREDIT REQUIREMENTS

For an Operating Loan/Line of Credit loan(s), prior to any advances for the second or third plan year, Non-Certified Lenders must submit a copy of the borrower's income and expenses for the previous year, the projected cash flow for the borrower's operation for the upcoming operating cycle, a current financial statement a/k/a balance sheet, and a certification that the borrower is in compliance with the provisions of the Line of Credit Agreement and the income and expenses for the previous year have been accounted for. All of the above items are to be submitted to the County Supervisor for written approval.

GENERAL REQUIREMENTS

Lender agrees that any provisions in its security instruments, including promissory notes, security agreements, financing statements, deeds of trust, or other forms used by the lender to evidence or secure a loan to a guaranteed loan applicant, which do not comply with 7 CFR Parts 1980-A and B; are unenforceable by the lender without the written concurrence of FmHA. Such provisions and enforcement are hereby waived by the lender.

The Lender agrees that FmHA has not nor will certify to the validity, accuracy, legality, or enforceability of any note, security agreement, financing statement, deed of trust or other form which Lender has provided to FmHA, the providing of such forms being for informational purposes only.

HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION

A) This commitment is conditional upon loan proceeds not being used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

B) All guaranteed lenders will be required to monitor compliance of these requirements as part of their servicing responsibilities. During loan servicing contacts the borrower's compliance is to be reviewed and analyzed. If the borrower violates 7 CFR Part 1940, Subpart G, Exhibit M requirements, the loan will be in default.

C) ☐ N/A The loan applicant's farm properties do not contain any highly erodible land, wetland, or converted wetland.

☐ The lender will, for all applicants having highly erodible land, wetland, or converted wetlands on their farm properties, include the following provisions in its loan instruments:

PROMISSORY NOTES:

Borrower recognizes that the loan described in this note will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetland to produce or to make possible the production of an agricultural commodity, subject to 7 CFR Part 1940, Subpart G, Exhibit M.

MORTGAGES OR DEEDS OF TRUST:

"Borrower further agrees that the loan(s) secured by this instrument will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetland to produce or to make possible the production of an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M."

SECURITY AGREEMENTS:

"Default shall also exist if any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetland to produce or to make possible the production of an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M."

ADDITIONAL CONDITIONS AND REQUIREMENTS

1) Purpose for which guaranteed loan funds will be used:

2) Security required for the guaranteed loan:

3) Type and frequency of financial reports required by FmHA but not required by the Lender:

4) Other requirements: (Insert any additional conditions or requirements in this space or on an attachment referred to in this space; otherwise, insert "NONE.")

This conditional commitment becomes null and void unless the conditions are accepted by the Lender and Loan Applicant and will expire on _____ unless the time is extended in writing by FmHA, or upon the Lender's earlier notification to FmHA that it does not desire to obtain and FmHA guarantee. Any negotiations concerning these conditions must be completed by that time. Once this instrument is executed and returned to FmHA, no major change of conditions or approved loan purpose as listed on the Form FmHA 1910-1, "Farmer Programs Application," will be considered.

UNITED STATES OF AMERICA
FARMERS HOME ADMINISTRATION

By: _____

FmHA: _____

_____ _____
(Date)

ACCEPTANCE OR REJECTION OF CONDITIONS

To: Farmers Home Administration (FmHA)

The condition(s) of Form FmHA 1980-15 outlined on previous pages:

1. ☐ are acceptable and the undersigned Lender intends to proceed with the loan transaction and to request issuance of Form FmHA 449-34, "Loan Note Guarantee," or Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)," as applicable, at the appropriate time.

2. ☐ are acceptable, but not for other reasons as the undersigned Lender does not desire a Form FmHA 449-34, "Loan Note Guarantee," or Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)," as applicable. We withdraw our guaranteed loan application.

3. ☐ are not acceptable, and for that reason the undersigned Lender does not desire a Form FmHA 449-34, "Loan Note Guarantee," or Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)," as applicable. If you desire FmHA to withdraw your guaranteed loan application, check the following box ☐ WITHDRAW APPLICATION. If you do not withdraw the guaranteed loan application, a formal rejection letter notifying you of your appeal rights will be forthcoming.

4. ☐ are not acceptable but would be acceptable if the following changes were made:

Lender hereby certifies that it will comply with the requirements and regulations of 7 CFR Part 1980, Subparts A and B and Form FmHA 1980-38, "Agreement For Participation In Farmer Programs Guaranteed Loan Programs of the United States Government."

If block number "1" above is checked:

(a) It is understood that the following information may now be released upon request: Name and address of applicant, name and address of lender, amount of loan, and general purpose of loan.

(b) It is anticipated that Form FmHA 449-34, "Loan Note Guarantee," or Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)," as applicable, will be requested in approximately _____ days.

NOTE TO LENDER: Complete and execute the Acceptance or Rejection of Conditions as indicated above on the copy of this form and return it to FmHA.

_____
(Name of Lender)

_____ By: _____
(Date) (Signature of Lender)

[1] Insert the period prescribed in the applicable FmHA regulations.
[2] Insert expiration date. (Allow sufficient time for processing and issuance of the forms.)
[3] Return completed and signed copy of this form to FmHA office from which it was received.

BILLING CODE 3410-07-C

Subpart B—Farmer Program Loans

44. Section 1980.106 is amended by removing paragraph designations (b)(1) through (b)(23); by redesignating, under paragraph (b), the definition of "Family farm," paragraphs (i), (ii), (ii) (A), (B) and (C), (iii), (iii) (A) and (B), (iv), (iv) (A) and (B), and (v) as paragraphs (1), (2), (2) (i), (ii) and (iii), (3), (3) (i) and (ii), (4), (4) (i) and (ii), and (5), respectively; by redesignating, under the definition of "Positive cash flow," paragraphs (i), (ii), (iii) and (iv) as paragraphs (1), (2), (3) and (4), respectively; by revising the definition of "Borrower," and by adding, alphabetically, the definitions of "Beginning farmer or rancher," "Cosigner," "Financially viable operation," and "State Beginning Farmer program," to read as follows:

§ 1980.106 Abbreviations and definitions.

* * * * *

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(1) Meets the loan eligibility requirements for OL, FO or SW loan assistance, as applicable, in accordance with §§ 1980.175(b), 1980.180(b) or 1980.185(b) of this subpart.

(2) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.

(3) Will materially and substantially participate in the operation of the farm or ranch.

(i) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(4) Agrees to participate in any loan assessment, borrower training, and financial management programs required by FmHA regulations.

(5) Does not own real farm or ranch property or who, directly or through interests in family farm entities owns real farm or ranch property, the aggregate acreage of which does not exceed 15 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the loan applicant's residence is located will be used in the calculation. If the loan applicant's residence is not located on the farm or if the loan applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(6) Demonstrates that the available resources of the loan applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming or ranching on a viable scale.

(7) In the case of an entity:

(i) All the members are related by blood or marriage.

(ii) All the stockholders in a corporation are qualified beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA debt.

* * * * *

Cosigner. A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. The 10 and 15 year loan limits under § 1941.17(a) of subpart A of part 1941 and § 1980.175(d)(1) of this subpart do not apply to cosigners. In the case of an entity loan applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

* * * * *

Financially viable operation. A financially viable operation is one which, with FmHA assistance, is projected to improve its financial condition over a period of time to the point that the operator can obtain commercial credit without further FmHA direct or guaranteed assistance. Such an operation must generate sufficient income to: Meet annual operating expenses and debt payments as they become due, meet basic family living expenses to the extent they are not met by dependable nonfarm income, provide for replacement of capital items, and provides for long-term financial growth. A borrower that will meet the FmHA classification of "Commercial," as defined in FmHA Instruction 2006–W (available in any FmHA office), will be considered to be financially viable.

* * * * *

State Beginning Farmer program. Any program that is carried out by or under contract to a State and designed to assist persons in obtaining the financial assistance necessary to establish and/or maintain viable farming or ranching operations.

* * * * *

45. Section 1980.108 is amended by removing paragraph (a)(2)(i), redesignating current paragraphs (a)(2)(ii) through (a)(2)(iv) as paragraph (a)(2)(i) through (a)(2)(iii), revising the reference "§ 1980.106(b)(23)" to read "§ 1980.106(b)" in paragraph (b)(1), revising newly redesignated paragraph (a)(2)(i), and adding a new paragraph (e) preceding the heading "Administrative" to read as follows:

§ 1980.108 General provisions.

(a) * * *

(2) * * *

(i) Guarantees of parent, subsidiary, or affiliated companies may be required. Guarantees will be required in an amount which reasonably assures repayment of the loan/line of credit and provides sufficient security. If a review of all credit factors indicates the need for additional security, the lender and/or FmHA may require additional personal and corporate guarantees. The lender and/or FmHA may also require that such guarantees be secured.

* * * * *

(e) *Relationship between FmHA and a State Beginning Farmer program.* FmHA can provide an eligible beginning farmer with a guarantee of the financing provided by the State program. State Directors are delegated authority to execute a Memorandum of Understanding (MOU) with any State expressing an interest in coordinating financial assistance to beginning farmers and ranchers. The MOU must be executed within 60 days of the State notifying the State Director in writing of such interest, and will be developed in accordance with FmHA Guide Letter 1943–A–1 (available in any FmHA office). Under the MOU, FmHA will agree to provide qualified beginning

farmers or ranchers with a guarantee of any FO or OL financing provided by the State program. This agreement will be subject to applicable law, loan approval requirements, and the availability of funds. FmHA will not charge a fee to obtain or retain a guarantee in connection with any joint funding under the MOU. If any changes are made to the MOU, the Regional Office of the General Counsel (OGC) will be consulted prior to signing the MOU. States will send copies of signed MOUs to the attention: Director, Farmer Programs Loan Making Division, National Office.

* * * * *

46. Section 1980.109 is amended by revising the word "cosigners" to the word "individuals" in paragraph (a)(2)(ii), removing paragraph (a)(2)(iv), and revising paragraph (a)(2)(iii) to read as follows:

§ 1980.109 Promissory notes, line of credit agreements, security instruments, and financing statements.

(a) * * *

(2) * * *

(iii) Corporations or cooperatives. The promissory note(s) or Line of Credit Agreement will be executed so as to evidence liability of the entity as well as individual liability of all member(s) or stockholder(s) in the entity.

§ 1980.114 [Amended]

47. Section 1980.114, ADMINISTRATIVE B. is amended by revising "§ 1980.106(b)(17)" to read "§ 1980.106(b)."

48. Section 1980.115 introductory text is revised to read as follows:

§ 1980.115 County Committee review.

The County Committee will review loan applications to determine whether the loan applicants meet FmHA eligibility requirements and meet the definition of "beginning farmer and rancher," as defined in § 1980.106 of this subpart. See § 1980.176(k) for County Committee actions relative to special OL assistance to beginning farmers or ranchers. Applications do not need to be complete before they are reviewed by the County Committee; however, all information relating to the eligibility must be received. The County Supervisor will promptly notify both the lender and loan applicant in writing within 5 calendar days of the County Committee's determination.

* * * * *

49. Section 1980.124 is amended by revising paragraph (a)(1) to read as follows:

§ 1980.124 Consolidation, rescheduling, reamortizing and deferral.

(a) * * *

(1) The borrower meets the eligibility requirements under §§ 1980.175(b), 1980.176, 1980.180(b), and 1980.185(b) of this subpart for FO, SW, and OL loans/lines of credit, as applicable, and the lender's security position would not be adversely affected. For FO, SW loans and OL loans/lines of credit refer to this subpart for these requirements. For EM loans refer to subpart D of part 1945 of this chapter for eligibility and security requirements. For RL loans refer to SW eligibility and security requirements as set out in this subpart.

* * * * *

50. Section 1980.147 is revised to read as follows:

§ 1980.147 Graduation.

FmHA County Supervisors will encourage lenders to provide nonguaranteed operating credit, wherever possible, to existing OL borrowers. This effort will be made a part of FmHA contacts with lenders.

51. Section 1980.175 is amended in paragraph (b)(2)(iv)(A) by revising the reference "§ 1980.106 (b)(21)" to read "§ 1980.106 (b)," redesignating current paragraphs (d)(1) through (d)(5) as paragraphs (d)(2) through (d)(6), adding new paragraphs (d)(1) and (d)(7), and revising paragraphs (e)(1) and the first sentence of paragraph (e)(2) to read as follows:

§ 1980.175 Operating loans.

* * * * *

(d) * * *

(1) An OL guarantee/line of credit will not be approved if:

(i) The loan applicant received guaranteed and/or direct OL loans after October 28, 1992, and the sum of all calendar years that any combination of those loans were outstanding (including any extension of terms through servicing or bankruptcy) is more than 15. The borrower, however, could still receive assistance in the following Example: On February 1, 1993, a loan applicant receives the first of 6 consecutive direct annual OL loans. In year 7, the borrower obtains a 7-year guaranteed OL loan. The borrower receives no further FmHA OL assistance for 5 years. In year 12, the lender then submits a 7-year OL loan guarantee request. The loan applicant is eligible since direct and/or guaranteed loans/lines of credit have not been outstanding more than 15 calendar years. The repayment term on any loan may extend beyond the 15-year eligibility limit. A loan outstanding in any portion of a year will be counted as 1 year.

(ii) As of October 28, 1992, the loan applicant had one or more direct OL loan(s) outstanding during each of the last 5 calendar years (January 1, 1988—October 28, 1992) and has had direct and/or guaranteed OL loans made after October 28, 1992, that have been outstanding for a sum of more than 5 calendar years (including any extension of terms through servicing or bankruptcy) since that date. The borrower, however, could still receive assistance in the following Example: A loan applicant had two direct OL loans outstanding on October 28, 1992, one of which had been outstanding since March 15, 1988 (counted as 5 years). This loan applicant also received direct and/or guaranteed OL loans beginning on November 1, 1992 (after October 28, 1992), that have been outstanding for all or a portion of each year through 1995. The lender then applies for a guaranteed OL loan on January 1, 1996. This loan applicant is eligible for assistance. However, this is the loan applicant's last year that direct and/or guaranteed OL assistance can be received. The repayment term on any loan may extend beyond the 5-year eligibility limit. Multiple loans outstanding in a given year count only as 1 year of eligibility. A loan outstanding in any portion of a year is counted as a full year.

(iii) As of October 28, 1992, the loan applicant had one or more guaranteed OL loans outstanding during each of the last 10 calendar years (January 1, 1983—October 28, 1992) and has had direct and/or guaranteed OL loans made after October 28, 1992, that have been outstanding for a sum of more than 5 calendar years (including any extension of terms through servicing or bankruptcy) since that date. The borrower, however, could still receive assistance in the following Example: A borrower had two guaranteed OL loans outstanding as of October 28, 1992, and one of which had been outstanding for 7 of the last 10 calendar years. This borrower is eligible for 15 years of guaranteed/direct OL loan assistance since guaranteed OL loans had been outstanding for less than 10 calendar years as of October 28, 1992. (Direct OL loans also would be suspect to a 10-year limitation. See § 1941.17 of subpart A of part 1941 of this chapter.) The repayment term on any loan may extend beyond the 5-year eligibility limit. Multiple loans outstanding in a given year count only as 1 year of eligibility. A loan outstanding in any portion of a year is counted as a full year.

* * * * *

(7) For special beginning farmer or rancher OL loan assistance loan limitations see § 1980.176 of this subpart.

(e) * * *

(1) The interest rate for the entire loan may be a fixed or variable rate as agreed upon by the borrower and the lender. The guaranteed portion of the loan may carry an interest rate lower than the rate on the nonguaranteed portion. Lines of credit may also have fixed or variable rates but the rate must be the same on the guaranteed and nonguaranteed portions.

(2) The lender may charge a rate on both the guaranteed and nonguaranteed loan portion, not to exceed the rate the lender charges its average farm customer. * * *

* * * * *

52. Section 1980.176 is added to read as follows:

§ 1980.176 Special beginning farmer or rancher OL loan assistance.

(a) *Objectives.* The basic objective of this special OL loan program is to provide the loan applicant, whose primary occupation is or will be farming, with a reliable source of FmHA-assisted operating credit for annual operating and capital expenses needed to conduct a viable farming or ranching operation. The goal is to move the borrower through varying types of assistance, ranging from limited resource direct loans, regular interest direct loans, subsidized guaranteed loans, and unsubsidized guaranteed loans, with graduation to private credit occurring no later than 10 years from the date of initial assistance. The lender will provide borrower supervision to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government in accordance with Form FmHA 1980–38.

(b) *Eligibility requirements.* Loan applicants must:

(1) Meet the "beginning farmer or rancher" definition in § 1980.106(b) of this subpart.

(2) Have not operated a farm or ranch, or have operated a farm or ranch for not more than 5 years. This requirement applies to all members of an entity.

(3) During the 5-year period prior to applying for assistance, have sufficient education and experience to indicate that the loan applicant is able to conduct a successful farming or ranching operation.

(4) Own, lease, or have a commitment to lease the site of the operation, that is or will be sufficient to carry out the planned operation.

(5) Present a plan of operation in accordance with paragraph (e) of this section which projects feasibility for each year of the 5-year period, and a financial projection reflecting a financially viable operation at the end of the commitment period referenced in paragraph (f) of this section.

(6) Have or will have access to livestock and equipment, sufficient to carry out the planned operation.

(c) *Loan purposes.* Loan purposes are as set forth in § 1980.175(c) of this subpart. Applicants approved for loan assistance under this section will receive priority in the purchase of FmHA inventory equipment as stated in § 1955.122(a) of subpart C of part 1955 of this chapter.

(d) *Loan limitations.* In addition to the loan limitations stated in § 1980.175(d) of this subpart, the borrower is not eligible for special beginning farmer OL loan assistance for a 3-year period beginning on the date that a previous commitment is terminated under paragraph (h) of this section.

(e) *Plan of operation for special beginning farmer OL loan assistance.* In addition to the planning requirements set forth in § 1980.113(a) of this subpart, and subject to paragraph (e)(3) of this section, the following information must be submitted to the County Supervisor with the application for County Committee review:

(1) A plan of farming operation for each of the first 5 years for which special beginning farmer OL loan assistance is requested, providing the following details:

(i) How the operation is to be conducted.

(ii) The types and quantities of commodities to be produced.

(iii) The production methods to be employed by the operator.

(iv) The conservation measures to be utilized in the operation.

(v) The livestock and equipment needed to conduct the farming operation (including expected replacements and additions), and whether the loan applicant owns, leases, or has access to the item(s), or plans to purchase or lease the needed item(s).

(vi) The expected income and expenses of the operation.

(vii) The expected credit needs, including the types, amounts, and sources.

(viii) The site or sites where the farming operation is, or will be, located.

(2) A plan projecting the financial status of the farming operation after special beginning farmer OL loan assistance (direct/guaranteed OL loan) has been provided for the period necessary, not to exceed 10 years. The projected plan must indicate the operation will be financially viable without further FmHA assistance within 10 years. This plan will detail the specific goals addressed by the loan applicant in order to graduate to other credit in an expeditious manner. Failure to meet these goals may result in termination of the commitment under paragraph (h) of this section.

(3) The lender and loan applicant have the option of developing and submitting only a first year plan to the County Supervisor covering items listed under paragraph (e)(1) of this section. The County Supervisor then will develop a 5-year plan and financial projection, based upon FmHA's automated Farm and Home Plan system described in § 1910.4 (b) of subpart A of part 1910 of this chapter. The County Supervisor will notify the lender and loan applicant of this option.

(f) *Commitment period.* In making OL loans under this section, the County Supervisor will make a commitment to the borrower to provide FmHA-assisted direct and/or guaranteed operating credit for a period not to exceed 10 years, subject to loan limitations stated in paragraph (d) of this section. FmHA Form Letter 1941–A–2, "Conditional Commitment to Provide Special Operating Loan Assistance to Beginning Farmers or Ranchers," will be used for this purpose, and provided to the loan applicant when the loan is approved. The length of the commitment period will be determined by an automated analysis of projected financial and income data reflecting a financially viable operation as defined in § 1980.106 (b) of this subpart. The following conditions apply:

(1) The loan applicant will not be eligible for special guaranteed beginning farmer OL loan assistance after 10 years from the date of the first special direct or guaranteed OL loan.

(2) After the first year, subsequent loans under this section are contingent on the revision of the projected plan of operation required in paragraph (e)(1) of this section. The plan will be for the 5-year period beginning with the particular year for which assistance is requested or, if shorter, the period beginning with the particular year for which assistance is requested and ending with the year the plan projects a financially viable operation. A revised plan will be developed each year. This must be based on an analysis of the prior year's operation. The plan must be revised at least 60 days before the assistance will be needed for that particular year. The type of assistance provided each year (guaranteed OL, guaranteed OL-Interest Assistance, direct OL, direct or OL-Limited Resource) will depend upon the

financial progress made by the loan applicant in accordance with FmHA regulations setting forth the eligibility requirements for each of the listed types of assistance.

(3) Borrowers under this section must demonstrate progress toward the specified goals with the objective of eliminating the need for FmHA credit after not more than 10 years. A borrower will be considered to have met the goals if FmHA payments are made on a timely basis, agreements with FmHA are kept, and financial progress is made such that the operation continues to be financially viable.

(g) *Extension of commitment period.* If a commitment has been issued for less than 10 years, the commitment period may be extended subject to the 10-year limit providing:

(1) The annual plan is revised in accordance with paragraph (f)(2) of this section.

(2) The failure to achieve the goals within the commitment period was due to circumstances beyond the control of the borrower. Acceptable circumstances for not achieving the goals include, but are not limited to:

(i) The reduction in essential income from a nonfarm job due to unemployment or underemployment of the borrower-operator or spouse caused by circumstances beyond the borrower's control.

(ii) Illness, injury, or death of an individual borrower, stockholder, member or partner who operates the farm.

(iii) Natural disasters, an outbreak of uncontrollable disease, and/or uncontrollable insect damage which caused severe loss of agricultural production that reduced the repayment ability of the borrower so that scheduled payments cannot be made.

(iv) Economic factors that are widespread and not limited to an individual case, such as high interest rates or low market prices for agricultural commodities as compared to production costs, that reduce the repayment ability of the borrower so that scheduled payments cannot be made, and;

(3) The failure to achieve such goals has not materially reduced the likelihood of the farming operation becoming financially viable.

(h) *Termination of commitment period.*

(1) The commitment will be revoked if the County Committee fails to recertify the applicant as eligible for the regular direct and/or guaranteed OL loan programs under paragraph (k)(2) of this section.

(2) The commitment for FmHA-assisted operating credit also shall be revoked if the applicant fails, for 2 consecutive years, to meet the goals specified in the plan, unless both of the following are met:

(i) The failure has not materially reduced the likelihood of the operation becoming financially viable. (An updated projection of the financial status of the operation still reflects financial viability at the end of the commitment period.)

(ii) The failure to meet the goals of the 5-year plan was due to circumstances beyond the control of the borrower as described in paragraph (g)(2) of this section.

(3) Upon revocation of the commitment, the borrower will be given appeal rights in accordance with subpart B of part 1900 of this chapter.

(i) *Relationship between FmHA loans, direct and guaranteed.* The provisions of § 1980.108 (d) of this subpart apply as stated. With respect to loan objectives as stated in paragraph (a) of this section, and in accordance with paragraph (f)(2) of this section, whether the borrower receives a direct or guaranteed OL loan during the commitment period, will depend on the borrower's financial condition, the projected 5-year plan of operation, and availability of guaranteed credit.

(j) *Completion of the 10-year commitment period.* If the borrower is unable to graduate to other credit without FmHA's assistance, FmHA may provide direct or guaranteed loan assistance subject to the lifetime loan limitations set forth in § 1941.17 of subpart A of part 1941 of this chapter, and § 1980.175(d) of this subpart and all other loan making regulations of this chapter.

(k) *County Committee certification.* A special beginning farmer or rancher OL application will not be presented to the County Committee until such time as a complete 5-year plan of operation and a projection of the financial status of the operation, as set forth in paragraph (e) of this section, is submitted to FmHA for review. In addition to the requirements of § 1980.115 of this subpart, the following conditions apply:

(1) For initial special beginning farmer OL loan applicants, the County Committee will certify to the loan applicant meeting all the eligibility requirements as stated in paragraph (b) of this section. This certification is effective throughout the commitment period.

(2) For subsequent loan requests during the commitment period, the County Committee will certify as to the loan applicant meeting the eligibility requirements for the regular direct and/or guaranteed OL loan programs, when the 5-year eligibility expires on the current Form FmHA 440–2, "County Committee Certification or Recommendation," unless the County Supervisor has determined that the loan applicant's situation has changed such that the eligibility determination would potentially be affected. If recertification is rejected, no subsequent loan/guarantee will be made under the commitment, and the commitment will be revoked in accordance with paragraph (h) of this section.

(l) *Loan approval or disapproval.* In addition to the requirements of §§ 1980.114 and 1980.115 of this subpart, it must be determined that:

(1) *Initial loans.* (i) Farm income is sufficient to cover farm expenses and debt service as nonfarm income cannot be relied on to cover farm expenses or debt service.

(ii) At the end of the commitment period the operation will be financially viable without further assistance from FmHA, and the identified goals are reasonable and practicable.

(2) *Subsequent loans.* Subsequent loans will be approved or disapproved in accordance with FmHA Form Letter 1941–A–2 and paragraph (f) of this section.

53. Section 1980.180 is amended by adding paragraphs (c)(1)(iv), (d)(4), and (d)(5) to read as follows:

* * * * *

§ 1980.180 Farm ownership loans.

* * * * *

(c) * * *

(1) * * *

(iv) Provide a guarantee in conjunction with the Beginning Farmer Downpayment FO Loan Program referenced in § 1943.14 of subpart A of part 1943 of this chapter.

* * * * *

(d) * * *

(4) The loan applicant has received special beginning farmer OL loan assistance and has been farming or ranching for less than 5 years, including the period of time special OL loan assistance was first received.

(5) The loan applicant has received special beginning farmer or rancher OL assistance and has not conducted the operation in accordance with the plan required under paragraph (e) of this section.

* * * * *

§ 1980.185 [Amended]

54. Section 1980.185 is amended by revising the reference "§ 1980.106(b)(21)" to read

"§ 1980.106(b)" in paragraphs (b)(1)(i) and (b)(2)(iii).

Exhibit A, Subpart B [Amended]

55. Exhibit A, Attachment 1, to subpart B is amended in paragraph VII.C.9. by revising the reference "§ 1980.106(b)(4)" to read "1980.106(b)."

Exhibit E, Subpart B [Amended]

56. Exhibit E of subpart B is amended by revising the reference "§ 1980.106(b)(7)" to read "§ 1980.106(b)" in paragraph III.B.(2); by revising the reference "§ 1980.106(b)(17)" to read "§ 1980.106(b)" in paragraph III.E.; by revising the reference "§ 1980.106(b)(6)" to read "§ 1980.106(b)" in the third sentence of paragraph IV.B.; and by revising the reference "§ 1980.106(b)(17)(iii)" to read "§ 1980.106(b)" in paragraph III.E. and the last sentence of paragraph IV.A.

Subpart E—Business and Industrial Loan Program

57. Section 1980.498 is amended by revising the reference "§ 1980.113(d)(7)(ii)" to read "§ 1980.113" in paragraph (l)(4); by revising the reference "§ 1980.106(b)(8)" to read "§ 1980.106(b)" in paragraph (m)(5)(iii) and by revising paragraph (m)(3)(i) to read as follows:

§ 1980.498 Business and industry disaster loans.

* * * * *

(m) * * *

(3) * * *

(i) The abbreviations and definitions found in § 1980.106 of subpart B of part 1980 of this chapter will apply to loans made under this section except for "family farm," "related by blood or marriage," and "subsequent loans."

* * * * *

Dated: August 23, 1993.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93–22375 Filed 9–14–93; 8:45 am]

BILLING CODE 3410–07–U

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1944

RIN 0575–AB36

Section 502 Rural Housing Loan Policies, Procedures and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to clarify that the appraisal fee is to be included in the loan as an authorized loan purpose and to authorize a rural housing loan to exceed the market value of the security by the appraisal fee. The effect is to provide timely processing of home ownership loans for low- and very low-income families.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Betsy McDaniel, Senior Loan Specialist, Farmers Home Administration, USDA, room 5334–S, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 690–4209.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be nonmajor because there is no substantial change from practices under existing rules that would have an annual effect on the economy of $100 million or more. There is no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies; or geographical regions. Furthermore, there are no significant adverse effects on competition, employment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Background

This regulation was published on December 30, 1992 as a proposed rule and a final rule effective through September 30, 1993. This final rule is being published to respond to comments from the public on the proposed rule. No changes are being made to the regulation as it appeared in final form on December 30, 1992, therefore, the reference to the September 30, 1993 date in the regulation is correct.

Prudent lending practices dictate that appraisers should produce an objective opinion about the market value of a property. This objectivity may be compromised if the appraiser is involved in deciding to extend credit that is secured by such property. Under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, it is intended that appraisals conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by the Appraisal Standards Board of the Appraisal Foundation. These appraisal standards were mandatory as of January 1, 1993. The Executive Office of the President, Office of Management and Budget (OMB), directed credit Agencies through OMB Circular A–129 to comply with USPAP. Under the Conduct Section of the Ethics Provision of USPAP, the appraiser must perform appraisal assignments with objectivity, independence, and without accommodation of personal interests.

In order for FmHA to institute an appraisal process that institutes prudent lending practices and complies with the conduct provisions of USPAP, it must separate the duties of the appraiser and loan approval official. FmHA has instituted an appraisal process that does this and it is in the public interest that this process continues to ensure that the security value of a property is determined independently from a determination of the applicant's eligibility to purchase the property. To ensure the separation of loan approval and appraisal functions FmHA established a policy of hiring private appraisers. However, because of a reduction in the funds available for expenses such as the hiring of private appraisers, FmHA can no longer continue to pay for private appraisers for housing applicants without affecting its ability to deliver services to its borrowers and grantees. By instituting a fee for appraisal services that is included in the loan amount, FmHA has the resources to continue its appraisal process in compliance with the conduct provision of USPAP and have funds for other expenses which cannot be recovered for applicants, borrowers, or grantees. To minimize the impact of the appraisal fee on borrowers, the Agency is authorizing the loan to exceed the security value of the property purchased by the amount of the appraisal fee.

Section 510 of the Housing Act of 1949 requires that fee appraisers be used in any county or district office where loan applications can not be

expeditiously processed and to include the cost of the appraisal services in the loan or grant. By including the fee in the loan, when necessary, and amortizing the loan over 33 to 38 years, the borrower's payment for this cost is minimal and repayment ability is not affected.

Discussion of Comments

A proposed rule was published in the **Federal Register** (57 FR 62243) on December 30, 1992, and invited comments for 60 days ending March 1, 1993. Three comments were received. All comments were considered. Two comments were received from groups who work with FmHA applicants on a regular basis, or by employees of these groups. One respondent was an FmHA employee writing on behalf of the Rural Housing Committee of the National Association of County Supervisors.

One respondent was concerned that FmHA was not exercising prudent underwriting practices by lending over the appraised value. It is within the Secretary's discretion to loan over the appraised value for authorized purposes when necessary for low-income people to remain eligible for the program. We have determined this is an equitable method of obtaining appraisal fees from families who would not be able to pay for an appraisal with their own funds at loan closing.

All three respondents were concerned about contracting for appraisals, in-house appraisals and the collection of fees from borrowers. One respondent commented the fee should be split between FmHA and the borrowers or another payment rate established for very low-income borrowers. Another comment stated FmHA should do as many in-house appraisals as possible and only use contract appraising as a supplement. Another comment stated FmHA should seek adequate funding for contracting rather than relying on borrowers to pay for appraisals. FmHA will continue to do as many in-house appraisals as possible and only use contract appraisers as a supplement. A decision was made to charge an across the board fee to all borrowers regardless of their income. Any other approach would be subjective and possibly perceived as unfair. Additionally, the fee we are charging is not directly related to the cost of the appraisal. The fee is based on a number of factors which contribute to keeping the cost to the borrower as low as possible. In arriving at the appraisal fee charged to a borrower, we considered the varying costs of appraisals nationwide, the advantage of one appraiser charging a negotiated flat fee for appraisals in a subdivision and the use of FmHA appraisers. We determined this as a reliable and fair method to establish the amount charged for an appraisal. This fee will be adjusted as better cost data and fee collection information are known.

Another respondent recommended to be consistent we should charge appraisal fees to borrowers for credit sales. FmHA plans to adopt this to provide consistency to all borrowers.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this proposed action does not constitute a major Federal Action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Civil Justice Reform

This document has been reviewed in accordance with Executive Order (EO) 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court Systems in that it meets all applicable standards provided in section 2 of the EO.

Programs Affected

This program is listed in the catalog of Federal Domestic Assistance under 10.410, Low-Income Housing Loans.

Intergovernmental Consultation

For the reason set forth in the final rule and related Notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

List of Subjects in 7 CFR Part 1944

Home improvement, Loan programs-Housing and community development, Low and moderate income housing-Rental, Mobile homes, Mortgages, Rural housing, Subsidies.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

2. Section 1944.3 is amended by revising paragraph (b)(9) and (b)(14) to read as follows:

§ 1944.3 Loan purposes.

* * * * *

(b) * * *

(9) Pay incidental expenses such as fees for tax monitoring service, legal, title clearance, loan closing, architectural, appraisal, surveying, environmental, and other technical services and incidental expenses authorized in Exhibit F of this subpart.

* * * * *

(14) Provide living area for all members of the applicant's household including "extended family," as provided in § 1944.16(b).

3. Section 1944.17 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1944.17 Maximum loan amounts.

(a) An RH loan to buy or build a dwelling may be made up to the market value of the security plus an appraisal fee less the unpaid principal balance and past-due interest of any other liens against the security property for:

* * * * *

Dated: August 10, 1993.

Bob Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 93–22495 Filed 9–14–93; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90–AWA–10]

Establishment of Jet Route J–569; MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Jet Route J–569 between Great Falls, MT, and Cransbrook, B.C., Canada. This action stems from a request from Transport Canada and coincides with changes in the Canadian airspace structure. This action will improve traffic flow during transborder operations and will support the Canadian request.

EFFECTIVE DATE: 0901 UTC, November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and

Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

History

On August 31, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Jet Route J–569 in the vicinity of Great Falls, MT (55 FR 35650).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in Paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Jet Route J–569 between Great Falls, MT, and Cranbrook, B.C., Canada. This action is at the request of Transport Canada to support airway changes in the Canadian airspace structure. This action will improve traffic flow during transborder operations.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004 Jet Routes

* * * * *

J–569 [New]

From Great Falls, MT; to Cranbrook, BC, Canada. The portion within Canada is excluded.

* * * * *

Issued in Washington, DC, on September 8, 1993.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–22548 Filed 9–14–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 930827–3227]

Removal of National Security-Based Validated License Requirements for Exports to Controlled Destinations of Certain Voice Band Modems With a "Data Signalling Rate" Not Exceeding 19,200 Bits per Second

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends ECCN 5A02A to remove national security-based validated license requirements for exports to controlled destinations, i.e., Country Groups Q, W, Y, and Z and the People's Republic of China, of modems using the "bandwidth of one voice channel" that are capable of operating at a "data signalling rate" not exceeding 19,200 bits per second. This action is a result of a determination that foreign availability exists for these modems within the meaning of section 5(f) of the Export Administration Act (EAA) and part 791 of the Export Administration Regulations (EAR). The Bureau of Export Administration (BXA) published an interim rule in the **Federal Register** on May 12, 1993 (58 FR 27930), that included the foreign availability determination and removed national security-based validated license requirements for exports of these modems to non-controlled destinations (i.e., Country Groups T and V, except the People's Republic of China).

This final rule also conforms with changes in the International Industrial List (IL) that the governments participating in the Coordinating Committee for Multilateral Export Controls (COCOM) made, effective August 16, 1993, following a review of multilateral export controls on strategic items.

A validated license continues to be required for national security reasons for exports to all destinations of voice band modems controlled by ECCN 5A02.c.1 that operate at a "data signalling rate" exceeding 19,200 bits per second.

A validated license also continues to be required for foreign policy reasons for exports of all modems to Country Groups S and Z and military and police entities in the Republic of South Africa and for exports of voice band modems with a "data signalling rate" exceeding 9,600 bits per second to Iran and Syria.

This rule is expected to result in a reduction in the number of export license applications that will have to be submitted for modems controlled by 5A02.c.1, thereby reducing the paperwork burden on exporters.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature, contact Dale Jensen, Office of Technology and Policy Analysis, Telephone: (202) 482–0730.

For questions on the foreign availability assessment, contact Steven C. Goldman, Director, Office of Foreign Availability, Bureau of Export Administration, Department of Commerce, Telephone: (202) 482–0074.

SUPPLEMENTARY INFORMATION:

Background

Section 5(f)(3) of the EAA and part 791 of the EAR set forth the procedures and criteria for determining the foreign availability of items controlled for national security reasons. The Secretary of Commerce, or the Secretary's designee, is authorized to determine whether foreign availability exists.

With limited exceptions, the Department of Commerce may not maintain national security controls on exports of an item to countries when the Department determines that items of comparable quality are available in fact to such countries from foreign sources in quantities sufficient to render the controls ineffective in achieving their purpose.

On December 7, 1992, the Office of Foreign Availability (OFA) initiated a foreign availability assessment of voice band modems controlled by ECCN 5A02.c.1. OFA initiated the assessment in response to a claim filed with OFA pursuant to section 791 of the EAR. The Department published a notice of the initiation of the assessment in the **Federal Register** on January 11, 1993 (58 FR 3531).

On April 7, 1993, the Acting Assistant Secretary, having considered the assessment and other relevant information, determined that foreign availability of voice band modems operating at a "data signalling rate" not exceeding 19,200 bits per second exists within the meaning of section 5(f) of the EAA and part 791 of the EAR. The Department provided all interested agencies an opportunity to review and comment on the assessment and determination.

On May 12, 1993, the Department published an interim rule containing the foreign availability determination. This rule removed validated license requirements for exports to most non-controlled destinations (i.e., Country Groups T and V, except the People's Republic of China) of modems controlled by ECCN 5A02.c.1 that have a "data signalling rate" not exceeding 19,200 bits per second. Subject to the restrictions in § 771.2(c), these modems became eligible for export to most Country Group T and V destinations under General License GFW.

Effective August 16, 1993, these modems became eligible for export to most non-controlled destinations under General License G–DEST.

This final rule also reflects the foreign availability determination as it applies to most controlled destinations (i.e., Country Groups Q, W, Y, and Z and the People's Republic of China). ECCN 5A02A is amended to remove national security-based validated license requirements for exports to controlled destinations of voice band modems that use the "bandwidth of one voice channel" and operate at a "data signalling rate" not exceeding 19,200 bits per second. This change conforms with revisions in the International Industrial List (IL) that the governments participating in the Coordinating Committee for Multilateral Export Controls (COCOM) made, effective August 16, 1993, following a review of multilateral export controls on strategic items.

ECCN 5A02A continues to require a validated license for national security reasons for exports to all destinations of voice band modems that operate at a "data signalling rate" exceeding 19,200 bits per second.

In addition, a validated license continues to be required for foreign policy reasons for exports of all voice band modems to Country Groups S and Z and military and police entities in the Republic of South Africa. A validated license also continues to be required for foreign policy reasons for exports to Iran and Syria of voice band modems with a "data signalling rate" exceeding 9,600 bits per second.

Exporters should also be aware that the Department of the Treasury's Office of Foreign Assets Control maintains an embargo on other destinations, such as Iraq and the Federal Republic of Yugoslavia (Serbia and Montenegro).

Specifically, this final rule amends ECCN 5A02A by making the following changes:

(1) Revises the GFW paragraph in the Requirements section to remove GFW eligibility for voice band modems with a "data signalling rate" not exceeding 19,200 bits per second—General License GFW no longer applies to these modems because they may now be exported under General License G–DEST to most destinations;

(2) Revises paragraph c.1 in the List of Items Controlled to raise the control level from a "data signalling rate" exceeding 9,600 bits per second to a "data signalling rate" exceeding 19,200 bits per second;

(3) Removes the Note on dedicated stand-alone facsimile equipment that previously followed 5A02.c.1.

In addition, this rule revises Advisory Note 4 to eliminate administrative exceptions treatment for exports to the People's Republic of China of voice band modems with a "data signalling rate" not exceeding 19,200 bits per second. This change is being made because this rule removes national security-based validated license requirements for all of the modems previously eligible for administrative exceptions treatment under Advisory Note 4.

Finally, this rule adds a new ECCN 5A91F to maintain foreign policy-based validated license requirements on exports to Country Groups S and Z, Iran, Syria, and military and police entities in the Republic of South Africa of voice band modems not controlled by ECCN 5A02A that have a "data signalling rate" exceeding 9,600 bits per second. Voice band modems with a "data signalling rate" not exceeding 9,600 bits per second continue to be controlled by ECCN 5A96G, which requires a validated license for foreign policy reasons to Country Groups S and Z and military and police entities in the Republic of South Africa.

The August 16, 1993, effective date of this rule corresponds to the effective date of the COCOM revisions to ECCN 5A02A.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005 and 0694–0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

1. The authority citation for 15 CFR part 799 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

PART 799—[AMENDED]

2. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 5 (Telecommunications and "Information Security"), Section I (Telecommunications), ECCN 5A02A is revised to read as follows:

5A02A "Telecommunications transmission equipment" or systems and specially designed components and accessories therefor, having any of the following characteristics, functions or features.

Requirements

Validated License Required: QSTVWYZ
Unit: Equipment in number; parts and accessories in $ value
Reason for Control: NS
GLV: $5,000
GCT: Yes
GFW: Yes for items identified in Telecommunications Advisory Notes 11, 14, 19, 20, and 21 only

List of Items Controlled

Note: "Telecommunication transmission equipment."

a. Categorized as follows, or combinations thereof:
  1. Radio equipment (e.g., transmitters, receivers and transceivers);
  2. Line terminating equipment;
  3. Intermediate amplifier equipment;
  4. Repeater equipment;
  5. Regenerator equipment;
  6. Translation encoders (transcoders);
  7. Multiplex equipment (statistical multiplex included);
  8. Modulators/demodulators (modems);
  9. Transmultiplex equipment (see CCITT Rec. G701);
  10. "Stored program controlled" digital crossconnection equipment;
  11. "Gateways" and bridges;
  12. "Media access units"; and

b. Designed for use in single or multi-channel communication via:
  1. Wire (line);
  2. Coaxial cable;
  3. Optical fiber cable;
  4. Electromagnetic radiation.

"Telecommunication transmission equipment" or systems and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

a. Employing digital techniques, including digital processing of analog signals, and designed to operate at a "digital transfer rate" at the highest multiplex level exceeding 45 Mbit/s or a "total digital transfer rate" exceeding 90 Mbit/s.

Note: 5A02.a does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

b. Being "stored program controlled" digital cross connect equipment with a "digital transfer rate" exceeding 8.5 Mbit/s per port;

c. Being equipment containing:

c.1. Modems using the "bandwidth of one voice channel" with a "data signalling rate" exceeding 19,200 bit/s;

c.2. "Communication channel controllers" with a digital output having a "data signalling rate" exceeding 64,000 bit/s per channel; or

c.3. "Network access controllers" and their related common medium having a "digital transfer rate" exceeding 33 Mbit/s;

Note: If any uncontrolled equipment contains a "network access controller", it cannot have any type of telecommunications interface except those described in, but not controlled by, 5A02.c.

d. Employing a "laser" and having any of the following characteristics:

d.1. Having a transmission wavelength exceeding 1,000 nm;

d.2. Employing analog techniques and having a bandwidth exceeding 45 MHz;

d.3. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

d.4. Employing wavelength division multiplexing techniques; *or*

d.5. Performing "optical amplification".

e. Being radio equipment operating at input or output frequencies exceeding:

e.1. 31 GHz for satellite-earth station applications; *or*

e.2. 26.5 GHz for other applications;

Note: 5A02.e.2 does not control equipment for civil use when conforming with an ITU allocated band between 26.5 and 31 GHz.

f. Being radio equipment:

f.1. Employing quadrature-amplitude-modulation (QAM) techniques above level 4 if the "total digital transfer rate" exceeds 8.5 Mbit/s;

f.2. Employing quadrature-amplitude-modulation (QAM) techniques above level 16 if the "total digital transfer rate" is equal to or less than 8.5 Mbit/s; *or*

f.3. Employing other digital modulation techniques and having a "spectral efficiency" greater than 3 bit/s/Hz;

Note: 5A02.f.2 does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

g. Being radio equipment operating in the 1.5 to 87.5 MHz band and having either of the following characteristics:

g.1.a. Automatically predicting and selecting frequencies and "total digital transfer rates" per channel to optimize the transmission; and

g.1.b. Incorporating a linear power amplifier configuration having a capability to support multiple signals simultaneously at an output power of 1 kW or more in the 1.5 to 30 Mhz frequency range or 250 W or more in the 30 to 87.5 MHz frequency range, over an "instantaneous bandwidth" of one octave or more and with an output harmonic and distortion content of better than -80 dB; *or*

g.2. Incorporating adaptive techniques providing more than 15 dB suppression of an interfering signal;

h. Being radio equipment employing "spread spectrum" or "frequency agility" (frequency hopping) techniques having any of the following characteristics:

h.1. User programmable spreading codes; *or*

h.2. A total transmitted bandwidth that is 100 or more times the bandwidth of any one information channel and in excess of 50 kHz.

i. Being digitally controlled radio receivers having more than 1,000 channels, which:

i.1. Search or scan automatically a part of the electromagnetic spectrum;

i.2. Identify the received signals or the type of transmitter; and

i.3. Have a "frequency switching time" of less than 1 ms;

j. Providing functions of digital "signal processing" as follows:

j.1. Voice coding at rates less than 2,400 bit/s;

j.2. Employing circuitry that incorporates "user-accessible programmability" of digital "signal processing" circuits exceeding the limits of 4A03.f;

k. Being underwater communications systems having any of the following characteristics:

k.1. An acoustic carrier frequency outside the range of 20 to 60 kHz;

k.2. Using an electromagnetic carrier frequency below 30 kHz; or

k.3. Using electronic beam steering techniques.

3. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 5 (Telecommunications and "Information Security"), Section I (Telecommunications), Notes for Telecommunications, Advisory Note 4 is revised to read as follows:

Notes for Telecommunications:

* * * * *

Advisory Note 4: Licenses are likely to be approved, as administrative exceptions, for exports to satisfactory end-users in the People's Republic of China of "network access controllers" controlled by 5A02.c.3, when exported under the conditions of Advisory Note 2 to Category 4, with a "digital transfer rate" not exceeding 100 Mbits/s.

* * * * *

4. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 5 (Telecommunications and "Information Security"), Section III (Other Equipment, Materials, "Software", and Technology), a new ECCN 5A91F is added immediately following ECCN 5A80D to read as follows:

5A91F Modems, not controlled by 5A02, using the "bandwidth of one voice channel" with a "data signalling rate" exceeding 9,600 bits per second.

Requirements

Validated License Required: SZ, Iran, Syria, South African military and police
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

Dated: September 9, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93-22497 Filed 9-10-93; 10:48 am]

BILLING CODE 3510-DT-P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning October 1, 1993. the use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after October 1, 1993, which will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding.

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since August 1, 1993. This amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after October 1, 1993, which set reflects a decrease of ½ percent in the immediate interest rate from 4¾ percent to 4¼ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after October 1, 1993, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2619 of chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362 (1988).

2. Rate Set 106 of Appendix B is revised and Rate Set 107 of Appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (%)	Deferred annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
106	8–1–93	10–1–93	4.75	1.0400	1.0400	1.0400	7	8
107	10–1–93		4.25	1.0400	1.0400	1.0400	7	8

Issued in Washington, DC, on this 10th day of September, 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–22558 Filed 9–14–93; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule updates the table of interest rates issued by the Pension Benefit Guaranty Corporation (PBGC) for actuarial valuations of multiemployer pension plans following mass withdrawal. The rule adds to the rate series for October 1993.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202–778–8820 (202–778–1958 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This rule amends the PBGC's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of October 1993.

The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. §§ 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates the new entries to read as follows:

§ 2676.15 Interest.

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month	The values for i_t are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_{16}
October 1993	.0450	.0450	.0450	.0450	.0450	.04	.04	.04	.04	.04	.04	.04	.04	.04	.04	.04

Issued at Washington, DC, on this 10th day of September 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–22559 Filed 9–14–93; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 342

[DOD Directive 5124.4]

Department of Defense Civilian Personnel Management Service

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part reflects organizational changes made in the Department of Defense. It establishes the DoD Civilian Personnel Management Service (CPMS) as a DoD Field Activity under the authority, direction, and control of the Assistant Secretary of Defense for Personnel and Readiness. The mission of the CPMS is to provide

civilian personnel policy support, functional information management, and civilian personnel administrative services to the DoD Components and their activities.

EFFECTIVE DATE: August 30, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clark, Office of Organizational and Management Planning, telephone 703–695–4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 342

Organization and functions (Government agencies).

Accordingly, title 32, subchapter R is amended to add part 342 to read as follows:

PART 342—DEPARTMENT OF DEFENSE CIVILIAN PERSONNEL MANAGEMENT SERVICE

Sec.

342.1 Purpose.
342.2 Mission.
342.3 Organization and management.
342.4 Responsibilities and functions.
342.5 Relationships.
342.6 Authorities.
342.7 Administration.

Appendix A to Part 342—Delegations of Authority

Authority: 10 U.S.C. 301.

§ 342.1 Purpose.

(a) Establishes the DoD Civilian Personnel Management Service (CPMS) within the Department of Defense, pursuant to the authority vested in the Secretary of Defense under title 10, with the mission, organization, responsibilities, functions, relationships, and authorities as prescribed herein.

(b) Applies to the Office of the Secretary of Defense; the Military Departments; the Chairman of the Joint Chiefs of Staff and the Joint Staff; the Unified and Specified Combatant Commands; the Office of the Inspector General, Department of Defense; the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 342.2 Mission.

The CPMS shall provide civilian personnel policy support, functional information management, and civilian personnel administrative services to the DoD Components and their activities.

§ 342.32 Organization and management.

The CPMS is hereby established as a DoD Field Activity under the authority, direction, and control of the Assistant Secretary of Defense (Personnel and Readiness) (ASD(P&R)). The CPMS shall consist of a Director and such subordinate elements as the Director establishes, within the resources authorized by the Secretary of Defense.

§ 342.4 Responsibilities and functions.

(a) The Director, DoD Civilian Personnel Management Service shall:

(1) Organize, direct, and manage the CPMS and all assigned resources.

(2) Advise and assist the ASD(P&R) and the Deputy Assistant Secretary of Defense (Civilian Personnel Policy and Equal Opportunity) [DASD(CPP/EO)] within assigned responsibilities and functions.

(3) Provide support to the DoD Components in the administration of civilian personnel policy and programs, as directed.

(4) Administer civilian personnel functional information management activities including, but not limited to, business improvement and functional economic analyses.

(5) Administer civilian personnel programs specified in DoD Directive 5120.39 [1]; DoD Directive 5120.42 [2]; DoD Directive 5010.31 [3]; DoD Directive 1400.20 [4]; and DoD Directive 1430.14 [5].

(6) Perform such other functions as the ASD(P&R) may prescribe.

(b) The Assistant Secretary of Defense (Personnel and Readiness) shall:

(1) Exercise authority, direction, and control over the CPMS.

(2) Recommend policies and resources for the administration of the CPMS to the Secretary of Defense.

§ 342.5 Relationships.

(a) In the performance of assigned duties, the Director, CPMS, shall:

(1) Exchange information and advice and coordinate actions with DoD Components, as required, to carry out assigned responsibilities and functions.

(2) Use established facilities and services in the Department of Defense and other Government Agencies, whenever practicable, to achieve maximum efficiency and economy of operations

(3) Consult and coordinate with other governmental and nongovernmental agencies, as required, to carry out assigned responsibilities and functions.

(b) All DoD Components shall coordinate with the Director, CPMS, as appropriate, on matters affecting the operation of the CPMS.

[1] Copies may be obtained, at cost, from the National Technical Information Services, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 342.4(a)(5).

[3] See footnote 1 to § 342.4(a)(5).

[4] See footnote 1 to § 342.4(a)(5).

[5] See footnote 1 to § 342.4(a)(5).

§ 342.6 Authorities.

The Director, CPMS, is specifically delegated authority to:

(a) Represent the ASD(P&R) and the DASD(CPP/EO) on matters which fall within assigned responsibilities and functions.

(b) Obtain reports, information, advice, and assistance, consistent with the policies and criteria of DoD Directive 8910.1 [6], as deemed necessary.

(c) Communicate directly with appropriate representatives of the DoD Components and other governmental and nongovernmental agencies on matters related to the CPMS. Communications to the Commanders of Unified and Specified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(d) Exercise the administrative authorities in enclosure 2, when delegated by the ASD(P&R).

§ 342.7 Administration.

(a) The Director, CPMS, shall be a civilian selected by the ASD(P&R).

(b) The CPMS shall be authorized such personnel, facilities, funds, and other resources as the Secretary of Defense deems necessary.

(c) The Military Departments shall assign military personnel to the CPMS in accordance with approved authorizations and established procedures for assignment to joint duty.

(d) Administrative support for the CPMS shall be provided by the DoD Components through inter-service support agreements in accordance with DoD Directive 4000.19 [6].

Appendix A to Part 342—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to the direction, authority, and control of the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Assistant Secretary of Defense (Personnel and Readiness) (ASD(P&R)), or in the absence of the ASD(P&R), the person acting for the ASD(P&R), is hereby delegated authority as required in the administration and operation of the DoD Civilian Personnel Management Service to:

1. Establish advisory committees and employ temporary or intermittent experts or consultants, as approved by the Secretary of Defense, for the performance of DoD Civilian Personnel Management Service functions consistent with 10 U.S.C. 173; 5 U.S.C. 3109(b); DoD Directive 5105.4 [1] and the agreement between the Department of

[6] See footnote 1 to § 342.4(a)(5).

[1] Copies may be obtained, at cost, from the National Technical Information Services, 5285 Port Royal Road, Springfield, VA 22161.

Defense and the Office of Personnel Management (OPM) on employment of experts and consultants, June 21, 1977.

2. In accordance with 5 U.S.C. 7532; E.O. 10450, 18 FR 2489, 3 CFR, 1949–1953 Comp., p. 936; E.O. 12333, 46 FR 59941, 3 CFR, 1981 Comp., p. 200; and E.O. 12356, 47 FR 14874 and 15557, 3 CFR, 1982 Comp., p. 166; and DoD Directive 5200.2[2]; as appropriate:

a. Designate any position in the DoD Civilian Personnel Management Service as a "sensitive" position.

b. Authorize, in case of an emergency, the appointment of a person to a sensitive position in the DoD Civilian Personnel Management Service for a limited period of time and for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

c. Authorize the suspension, but not terminate the services, of a DoD Civilian Personnel Management Service employee in the interest of national security.

d. Initiate investigations, issue personnel security clearances and, if necessary, in the interest of national security, suspend, revoke, or deny a security clearance for personnel assigned, detailed to, or employed by the DoD Civilian Personnel Management Service. Any action to deny or revoke a security clearance shall be taken in accordance with procedures prescribed in DoD 5200.2–R[3].

3. Authorize and approve:

a. Temporary duty travel for military personnel assigned or detailed to the DoD Civilian Personnel Management Service in accordance with volume I, Joint Federal Travel Regulations.

b. Travel for DoD Civilian Personnel Management Service civilian employees in accordance with Volume II, Joint Travel Regulations.

c. Invitational travel to non-DoD personnel whose consultative, advisory, or other highly specialized technical services are required in a capacity that is directly related to, or in connection with, DoD Civilian Personnel Management Service activities, in accordance with Volume II, Joint Travel Regulations.

d. Overtime work for DoD Civilian Personnel Management Service civilian employees in accordance with chapter 55, subpart V, of 5 U.S.C. and applicable OPM regulations.

4. Approve the expenditure of funds available for travel by military personnel assigned or detailed to the DoD Civilian Personnel Management Service for expenses incident to attendance at meetings of technical, scientific, professional, or other similar organizations in such instances where the approval of the Secretary of Defense, or designee, is required by 37 U.S.C. 412, and 5 U.S.C. 4110 and 4111.

5. Develop, establish, and maintain an active and continuing Records Management Program pursuant to 44 U.S.C. 3102 and DoD Directive 5015.2[4].

6. Establish and use imprest funds for making small purchases of material and services, other than personal services, for the DoD Civilian Personnel Management Service, when it is determined more advantageous and consistent with the best interests of the Government, in accordance with DoD Directive 7360.10[5].

7. Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of the DoD Civilian Personnel Management Service, consistent with 44 U.S.C. 3702.

8. Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of common supply and service regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD 5025.1–M[6].

9. Enter into support and service agreements with the Military Departments, other DoD Components, or other Government Agencies, as required, for the effective performance of DoD Civilian Personnel Management Service functions and responsibilities.

10. Enter into and administer contracts, directly or through a Military Department, a DoD contract administration services component, or other Federal Agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of the DoD Civilian Personnel Management Service. To the extent that any law or Executive order specifically limits the exercise of such authority to persons at the Secretarial level of a Military Department, such authority shall be exercised by the appropriate Under Secretary or Assistant Secretary of Defense.

11. Exercise the authority delegated to the Secretary of Defense by the Administrator of General Services on the disposal of surplus personal property.

12. The ASD (P&R) may redelegate these authorities, as appropriate, and in writing, except as otherwise provided by law or regulation.

13. These delegations of authority are effective August 30, 1993.

Dated: September 10, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–22522 Filed 9–14–93; 8:45 am]

BILLING CODE 5000–04–M

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32 CFR Part 371

[DoD Directive 5110.10]

Defense Prisoner of War/Missing in Action Office (DPMO)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part reflects organizational changes made in the Department of Defense. It establishes the Defense Prisoner of War/Missing in Action Office (DPMO) as a DoD Field Activity under the authority, direction, and control of the Assistant Secretary of Defense for Regional Security Affairs, with mission, organization and management, responsibilities and functions, relationships, and authorities. The mission of the DPMO is to provide centralized management of prisoner of war/missing in action affairs within the Department of Defense. Administrative support for the DPMO shall be provided by the Director, Washington Headquarters Services.

EFFECTIVE DATE: July 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clark, Office of Organizational and Management Planning, telephone 703–695–4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 371

Organization and functions (Government agencies).

Accordingly, title 32, subchapter R is amended to add part 371 to read as follows:

PART 371—DEFENSE PRISONER OF WAR/MISSING IN ACTION OFFICE (DPMO)

Sec.

371.1 Purpose.
371.2 Applicability.
371.3 Mission.
371.4 Organization and management.
371.5 Responsibilities and functions.
371.6 Relationships.
371.7 Authorities.
371.8 Administration.

Authority: 10 U.S.C. 113 and 191.

§ 371.1 Purpose.

Under the authority vested in the Secretary of Defense by 10 U.S.C. 113 and 191, this part establishes the DPMO within the Department of Defense, with the mission, organization, responsibilities, functions, relationships, and authorities prescribed herein.

§ 371.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD); the Military Departments; the Chairman of the Joint Chiefs of Staff and the Joint Staff; the Unified and Specified Combatant Commands; the Inspector General of the Department of Defense; the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 371.3 Mission.

The DPMO provides centralized management of prisoner of war/missing in action (POW/MIA) affairs within the Department of Defense.

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[2] See footnote 1 to section 1. of this Appendix.
[3] See footnote 1 to section 1. of this Appendix.
[4] See footnote 1 to section 1. of this Appendix.
[5] See footnote 1 to section 1. of this Appendix.
[6] See footnote 1 to section 1. of this Appendix.

§ 371.4 Organization and management.

The DPMO is hereby established as a DoD Field Activity under the authority, direction, and control of the Assistant Secretary of Defense for Regional Security Affairs (ASD(RSA)). The DPMO shall consist of a Director and such subordinate elements as the Director establishes, within the resources authorized by the Secretary of Defense.

§ 371.5 Responsibilities and functions.

(a) The *Director, Defense Prisoner of War/Missing in Action Office* shall:

(1) Organize, direct, and manage the DPMO and all assigned resources.

(2) Advise and assist the Under Secretary of Defense for Policy (USD(P)) and the ASD(RSA) within assigned mission, responsibilities, and functions.

(3) Support the USD(P) and the ASD(RSA) in the execution of their responsibilities to develop, coordinate, and oversee the implementation of POW/MIA policy.

(4) Serve as the DoD focal point for POW/MIA matters.

(5) Provide DoD participation in the conduct of negotiations with officials of foreign governments in efforts to achieve the fullest possible accounting of missing American service members.

(6) Assemble and analyze information on U.S. military and civilian personnel who are, or were, prisoners of war or missing in action.

(7) Maintain data bases on U.S. military and civilian personnel who are, or were, prisoners of war or missing in action.

(8) Declassify DoD documents for disclosure and release in accordance with section 1082 of Public Law 102–190 and Executive Order 12812, 57 FR 32879, 3 CFR, 1992 Comp., p. 311.

(9) Maintain open channels of communication on POW/MIA matters between the Department of Defense and the Congress, POW/MIA families, and veteran organizations, through periodic consultations and other appropriate measures.

(10) Provide appropriate representation to established POW/MIA-related interagency fora.

(11) Provide a statement of intelligence collection requirements to the Defense Intelligence Agency, for which the DPMO identifies a need.

(12) Perform such other functions as the ASD(RSA) may prescribe.

(b) The *Assistant Secretary of Defense for Regional Security Affairs* shall:

(1) Exercise authority, direction, and control over the DPMO.

(2) Recommend policies and resources for the administration of the DPMO to the Under Secretary of Defense for Policy.

§ 371.6 Relationships.

(a) In the performance of assigned responsibilities and functions, the Director, DPMO, shall:

(1) Report directly to the ASD(RSA).

(2) Coordinate and exchange information with other OSD officials, heads of the DoD Components, and other Federal officials having collateral or related functions.

(3) Use existing facilities and services of the Department of Defense and other Federal Agencies, when practicable, to avoid duplication and to achieve maximum efficiency and economy.

(b) Other OSD officials and heads of the DoD Components shall coordinate with the Director, DPMO, on all matters related to the responsibilities and functions of the DPMO.

§ 371.7 Authorities.

The Director, DPMO, is hereby delegated authority to:

(a) Obtain reports, information, advice, and assistance, consistent with the policies and criteria of DoD Directive 8910.1,[1] as deemed necessary.

(b) Communicate directly with the heads of the DoD Components. Communications to the Commanders of Unified and Specified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(c) Communicate with other Government officials, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

§ 371.8 Administration.

(a) The DPMO shall be authorized such personnel, facilities, funds, and other resources as the Secretary of Defense deems necessary.

(b) The Military Departments shall assign military personnel to the DPMO in accordance with approved authorizations and established procedures for assignment to joint duty.

(c) Administrative support required for the DPMO shall be provided by the Director, Washington Headquarters Services.

Dated: September 10, 1993.

Patricia L. Toppings,

Alternate OSDA Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–22523 Filed 9–14–93; 8:45 am]

BILLING CODE [illegible]

[1] Copies may be obtained, at cost, from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 52

[WV13–1–5870; A–1–FRL–4726–7]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia Small Business Stationary Source Technical and Environmental Compliance Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a state implementation plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). This SIP revision was submitted by the State to satisfy the Federal mandate, found in section 507 of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval is set forth in this document; additional information is available at the address indicated in the **ADDRESSES** section. This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective November 15, 1993, unless notice is received on or before October 15, 1993, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia 25311.

FOR FURTHER INFORMATION CONTACT: Jennifer Moss at (215) 597–2923.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the CAA will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that states adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the federally approved SIP. In addition, the CAA directs EPA to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA. In February 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and state roles in meeting the new statutory provisions and as a tool to provide further guidance to the states on submitting acceptable SIP revisions.

On January 13, 1993, the State of West Virginia submitted a SIP revision to EPA in order to satisfy the requirements of section 507. In order to gain full approval, a state submittal must provide for each of the following PROGRAM elements:

(1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses;

(2) The establishment of a state Small Business Ombudsman to represent the interests of small business stationary sources in connection with the implementation of the CAA; and

(3) The creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP and state Small Business Ombudsman.

II. Analysis

1. Small Business Assistance Program

Section 16–20–19 of the Code of West Virginia authorizes the Secretary of the Department of Commerce, Labor and Environmental Resources (DCLER) to establish a Small Business Stationary Source Technical and Environmental Compliance Assistance Program which meets the requirements of title V of the CAA. In developing West Virginia's PROGRAM submittal, the Secretary of DCLER has delegated the authority to implement the provisions of West Virginia's SBAP to the Division of Environmental Protection's Office of Air Quality (OAQ).

Section 507(a) of the CAA sets forth seven requirements that states must meet to have an approvable SBAP. Six requirements will be discussed in this section of this notice, while the seventh requirement, establishment of a state Small Business Ombudsman, will be discussed in the next section. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the CAA. The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. Under its authority to implement the SBAP, the OAQ will meet these requirements by serving as a clearinghouse for information related to compliance methods and control technologies, pollution prevention and accidental release prevention and detection. Information on pollution prevention/accidental release will focus on the requirements under the accidental release provisions of title III of the CAA, the Emergency Planning and Community Right-to-Know Act of 1986, the Occupational Safety and Health Administration (OSHA) process safety standards, etc. Relevant clearinghouse material will be translated into layman's terms and organized into information packets. The OAQ will maintain a directory of additional information resources, such as U.S. EPA's Control Technology Center (CTC), Emissions Measurement Technical Information Center (EMTIC) and Pollution Prevention Clearinghouse (PPIC) and other state, regional and private resources. The OAQ will work closely with other State agencies, particularly the West Virginia Small Business Development Center (SBDC) and establish memoranda of understanding as necessary to optimize information exchange and program effectiveness. Information dissemination shall take two forms. *Proactive* or "outreach" mechanisms will utilize industry groups, trade associations, the West Virginia SBDC, and additional avenues as needed to disseminate information to eligible small business stationary sources. Under its delegated authority to implement the SBAP, the OAQ will also disseminate information in a *reactive* manner by designating a contact person who will be responsible for answering questions directly or referring them to appropriate agency experts. The contact person will also be responsible for distributing information packets on request and helping sources access information resources housed in the directory.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the CAA in a timely and efficient manner. Pursuant to its authority to implement the SBAP, the OAQ will develop fact sheets which will detail new and existing regulatory requirements on a source category basis. The fact sheets will be disseminated in a timely manner by the proactive and reactive mechanisms described in the preceding paragraph. Specific questions about permitting eligibility, responsibilities and procedures will be directed to appropriate experts in the Permitting Branch of the OAQ.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the CAA in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the CAA. The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the CAA, including mechanisms for referring such sources to qualified auditors or, at the option of the state, for providing audits of the operations of such sources to determine compliance with the CAA. Under its delegated authority to implement the SBAP, the OAQ will maintain a database of all small business stationary sources subject to Federal and/or state requirements. The OAQ will collect source information from the SBDC, commerce data, permitting and emission inventory lists. Database sources will be notified, in a timely manner by the proactive mechanisms described above, about rights and obligations under the CAA, related West

Virginia statutes and associated air quality regulations. In addition, the OAQ will be responsible for developing and maintaining a list of qualified auditors for small business stationary sources to contact. The list will include qualified OAQ personnel who will perform simple complimentary audits on request as well as other environmental consultants who will charge for their activities.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practices or compliance methods preceding any applicable compliance date. Under its delegated authority to implement the SBAP, the OAQ will meet this requirement by developing, in consultation with the state Small Business Ombudsman, formal procedures in accordance with section 507(a)(7) of the CAA to receive, review and process requests for work practice, compliance method or milestone modifications by no later than November 15, 1994. The Ombudsman will serve as a facilitator for these requests.

2. Ombudsman

Section 507(a)(3) of the CAA requires the designation of a state office to serve as the Ombudsman for small business stationary sources in connection with the implementation of the CAA. West Virginia's Secretary of DCLER will designate an office within the DCLER to serve as Ombudsman for small business concerns as they relate to the implementation of the CAA. It is anticipated that the Ombudsman will be located in the Economic Development Office. The DCLER will provide written notification to EPA confirming the designation and location of the Ombudsman's office by March 30, 1994. The Ombudsman will be readily accessible to small businesses and, on their behalf, be authorized to provide reports to and communicate with state air pollution control authorities and the Secretary of DCLER. The Ombudsman will also participate in many aspects of SBAP implementation such as assisting small businesses in locating sources of funds to comply with environmental regulations. Provisions in the PROGRAM submittal indicate that the Ombudsman's office will be adequately staffed and funded to fulfill its function in relation to the program.

3. Compliance Advisory Panel

Section 507(e) of the CAA requires the state to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small business stationary sources; four members selected by the state legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the air pollution permit program. Section 16–20–19 of the Code of West Virginia authorizes the establishment of a Compliance Advisory Panel in accordance with the method of selection described above and in section 507(e)(2) for a bicameral legislature. Panel members will be appointed no later than July 1, 1994.

In addition to establishing the minimum membership of the CAP the CAA delineates four responsibilities of the panel:

(A) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions;

(B) To review and assure that information for small business stationary sources is easily understandable;

(C) To periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act. (Section 507(e)(1)(B) requires the CAP to report on the *compliance* of the SBAP with these three statutes. However, since state agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal Statutes.); and

(D) To develop and disseminate the reports and advisory opinions made through the SBAP.

A description of the duties and authorities delegated to West Virginia's Compliance Advisory Panel indicates that it will be responsible for all four of the activities listed above.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals,

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

Except for source categories which the EPA Administrator or the State of West Virginia determines, in accordance with sections 507(c)(3)(A) and (B), to have sufficient financial and technical capabilities to meet the requirements of the CAA without PROGRAM assistance, all small business stationary sources located in West Virginia will be eligible to receive assistance under the PROGRAM. West Virginia's PROGRAM criteria for defining a "small business stationary source" is equivalent to the criteria listed in section 507(c)(1) of the CAA. The State of West Virginia has not provided for the extension of eligibility for assistance under the PROGRAM beyond the requirements of sections 507(c)(1)(C)-(E). However, the State may provide "unofficial" PROGRAM assistance to any source that requests help if resources are available.

III. Summary of SIP Revision

The State of West Virginia has submitted a SIP revision implementing each of the required PROGRAM elements required by section 507 of the CAA. As previously stated, the authority to implement the SBAP has been delegated to the OAQ. Program implementation will begin no later than November 15, 1994. The Secretary of West Virginia's DCLER will designate an office within DCLER to serve as Ombudsman for small business concerns as they relate to the SBAP by no later than March 30, 1994. Section 16–20–19 of the code of West Virginia authorizes the creation of a Compliance Advisory Panel to periodically review the effectiveness of the SBAP. All panel members will be appointed by no later than July 1, 1994. In this action, EPA is approving the SIP revision submitted by the State of West Virginia. Accordingly, § 52.2560 is added to 40 CFR part 52, subpart XX-West Virginia to reflect EPA's approval action and the fact that it is considered part of the West Virginia SIP.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of

the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on November 15, 1993.

IV. Final Action

EPA is approving West Virginia's plan for the establishment of a Small Business Stationary Source Technical and Environmental Compliance Assistance Program. Accordingly, § 52.2560 is added to 40 CFR part 52, subpart XX-West Virginia to reflect EPA's approval action. The Agency has reviewed this request for revision of the federally-approved state implementation plan for conformance with the CAA including sections 507 and 110(a)(2)(E).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this action, EPA is approving a state program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because EPA's approval of this program does not impose any new regulatory requirements on small businesses, the Administrator certifies that it does not have a significant economic impact on any small entities affected.

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, approving West Virginia's Small Business Stationary Source Technical and Environmental Compliance Assistance Program, must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Small business assistance program.

Dated: August 23, 1993.

W. T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52–[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart XX–West Virginia

2. Section 52.2560 is added to read as follows:

§ 52.2560 Small business technical and environmental compliance assistance program.

On January 13, 1993 the Secretary of the West Virginia Department of Commerce, Labor and Environmental Resources submitted a plan for the establishment and implementation of a Small Business Technical and Environmental Compliance Assistance Program as a state implementation plan revision (SIP), as required by title V of the Clean Air Act. EPA approved the Small Business Technical and Environmental Compliance Assistance Program on September 15, 1993, and made it part of the West Virginia SIP. As with all components of the SIP, West Virginia must implement the program as submitted and approved by EPA.

[FR Doc. 93–22062 Filed 9–14–93; 8:45 am]
BILLING CODE 6560-50-F

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40 CFR Part 52

[IL 7–2–5992; FRL–4702–3]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Final rule.

SUMMARY: U.S. EPA is approving a request by the State of Illinois to revise its Illinois State Implementation Plan (SIP) for Total Suspended Particulate (TSP) matter. The requested revision constitutes a relaxation of existing requirements as they pertain to particulate emissions from continuous automatic stoking animal pathological waste incinerators. Included with this revision request is a demonstration that the emission relaxations will not interfere with attainment and maintenance of the PM–10 (particulate matter with a nominal diameter of 10 micrometers or less) National Ambient Air Quality Standards (NAAQS) or of any other applicable requirement of the Clean Air Act (Act). U.S. EPA's action is based upon a revision request which was submitted by the State under the requirements of part D of the Act.

EFFECTIVE DATE: This action is effective on November 15, 1993 unless notice is received by October 15, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this revision to the Illinois SIP is available for inspection at: Jerry Kurtzweg (ANR–443), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Branch, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: U.S. EPA revised the particulate matter standard on July 1, 1987 (52 FR 24634), and replaced the TSP ambient air quality

standard. The revised standard is expressed in terms of PM–10. However, at the State's option, U.S. EPA continues to process TSP SIP revisions which were in process at the time the new (PM–10) standard was promulgated. In the policy document published on July 1, 1987 (52 FR 24679, column 2), U.S. EPA stated that it would regard existing TSP SIPs as necessary interim particulate matter plans during the period proceeding the approval of State plans specifically aimed at PM–10. Section 110(l) of the amended Act, 42 U.S.C. 7410(1), prohibits U.S. EPA from approving a revision of a plan if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirements of the Act. If the SIP revision is judged to include more stringent provisions than are in the existing plan, U.S. EPA's general policy is to approve it. Regulations in the TSP SIP cannot be relaxed without a demonstration that the revision will not interfere with attainment and maintenance of the PM–10 NAAQS. It is U.S. EPA's judgment that although this revision constitutes a relaxation of existing requirements, the State has provided an approvable demonstration that this requested SIP revision will not interfere with the attainment and maintenance of the PM–10 NAAQS nor of any other applicable requirement of the amended Act, as required by section 110(l).

Description of SIP Revision

On July 21, 1986, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to Illinois' TSP SIP for parallel processing. The proposed revision changes TSP emission limitations for continuous automatic stoking animal pathological waste incinerators. The only existing source that this revision would apply to is a pathological waste incinerator operated by the City of Chicago at Goose Island. Basic Environmental Engineering, Inc. designed and manufactured the Goose Island incinerator.

Goose Island is located in North Town Township, which has been redesignated to attainment for TSP. See 58 FR 25567 (April 27, 1993). The 1990 Amendments to the Act, upon enactment, provided that all areas of the country be designated either nonattainment or unclassifiable for PM–10 (section 107(d)(4)(B)). As further provided in section 107(d)(4)(B)(iii) of the Act, those areas in the State not designated nonattainment for PM–10 are designated as unclassifiable for PM–10. Goose Island was not among those areas designated as a nonattainment area for PM–10 under section 107(d)(4)(B). See 56 FR 56694 (November 6, 1991).

On January 4, 1984, a stack test at the Goose Island incinerator measured a TSP particulate concentration, corrected to 12 percent carbon dioxide (CO_2) utilizing the following methodology:

The emission rate (c_{12}) of particulate matter, corrected to 12 percent CO_2, is computed for each stack test run using the following equation:

$c_{12}=c_s(12/\%CO_2)$

where:

c_{12}=concentration of particulate matter, corrected to 12 percent CO_2.

c_s=concentration of particulate matter.

$\%CO_2=CO_2$ concentration.

The stack test found a particulate concentration of 0.464 gr/dscf, which is well above the current limit of 0.1 gr/scf.[1] A second stack test was conducted on April 12, 1984, with 40 pounds (lbs) of charcoal added to each load of animal carcasses entering the incinerator. Charcoal is not considered an auxiliary fuel; therefore, the CO_2 produced by the charcoal is not subtracted from the total flue gas CO_2. With the addition of charcoal, the TSP particulate concentration, corrected to 12 percent CO_2, measured at 0.097 gr/dscf. This is in compliance with the State rule. The Goose Island incinerator was granted a permit, with an operating condition requiring charcoal to be burned with the carcasses to maintain emissions in compliance with the State rule.

The source contends that adding charcoal to the charge is burdensome and expensive. The source would prefer that the incinerator have a less stringent limitation and be allowed to burn natural gas. The source also contends that the amount of particulate matter emitted per 100 lbs of charged waste is reduced when charcoal is not added to the waste.

The current regulation, Title 35 of the Illinois Administrative Code (35 IAC), Section 212.181,[2] limits particulate emissions from new incinerators burning less than 2000 lbs of refuse per hour to 0.10 gr/scf of effluent gases corrected to 12 percent carbon dioxide (CO_2).

The revision that has been submitted by Illinois, Section 212.185, would limit particulate emissions from continuous automatic stoking animal pathological waste incinerators to 0.1 lbs TSP per 100 lbs of animal pathological waste charged. In addition, the particulate matter emissions produced when burning animal pathological waste, using gaseous auxiliary fuel, shall not exceed the lbs TSP/hour emission rate equivalent to the maximum concentration rate set forth in Section 212.181(d) (the current rule) when applied to burning a maximum of 2000 lbs of mixed charge animal pathological waste plus solid waste for demonstration of compliance. "Mixed charge" shall contain no more than 25 percent by weight of solid waste other than animal pathological waste.

To determine compliance with the equivalent lbs TSP/hour emission limit, two series of tests would be performed. The first series of tests would be performed with a maximum of 2000 lbs of mixed charge and must demonstrate that the incinerator can meet the 0.1 gr/scf limit. The results of this series of tests are converted to a lbs TSP/hour rate. The second series of tests would be performed with animal pathological waste only to determine the lbs TSP/hour that is being emitted. To be in compliance with Section 212.185(d), the results of the second series of tests must be less than or equal to the results of the first series of tests.

The State rule requires that the following conditions also be met:

(1) The incinerator shall burn animal pathological waste exclusively, except as otherwise prescribed by the IEPA during specified test operations.

(2) The incinerator shall burn no more than 2000 lbs of waste per hour.

(3) The incinerator shall be a multi-stage controlled air combustion incinerator having a cyclical pulse stoking hearth.

Evaluation of Requested Revision

The requested SIP revision, Section 212.185, would establish two particulate emission limits for automatic stoking pathological waste incinerators. Section 212.185(c) establishes a 0.1 lbs TSP/100 lbs of charge limit. With a 2000 lbs of waste per hour capacity limit, this would allow the incinerator to emit up to 2 lbs TSP/hour. Section 212.185(d) limits the incinerator to a lbs TSP/hour emission rate equal to or less than the maximum equivalent lbs TSP/hour

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[1] To convert from grains per dry standard cubic foot (gr/dscf) to grains per standard cubic foot (gr/scf), multiply the gr/dscf by (1—percent moisture) to get gr/scf.

gr/scf=(gr/dscf)(1—percent moisture)

The higher the moisture content the greater the difference between "gr/dscf" and "gr/scf". The January 4, 1984 stack test averaged 14.3 percent moisture.

[2] It should be noted that Section 212.181 (35 IAC) was incorporated into the Illinois' SIP as Illinois Pollution Control Board (IPCB) Rule 203(e) on November 27, 1981 (46 FR 57893). Illinois has subsequently recodified its environmental regulations into 35 IAC. The regulations in the SIP have not been recodified. U.S. EPA treats this requested SIP revision as a modification to IPCB Rule 203(e).

emission rate allowed under a 0.1 gr/scf limit corrected to 12% CO_2.

As stated above, regulations in the TSP SIP cannot be relaxed without a demonstration that the revision will not interfere with attainment and maintenance of the PM–10 NAAQS. IEPA performed a dispersion modeling analysis according to U.S. EPA guidance to demonstrate attainment and maintenance of the PM–10 NAAQS. IEPA used the Industrial Source Complex Short Term model, version 92273. The modeling analysis was submitted on May 7, 1993, and supplementary documentation was received by U.S. EPA on June 5, 1993. The analysis models the PM–10 emissions of the incinerator and of three nearby PM–10 sources, and includes a conservative background ambient concentration estimate.

Considering all modeled sources, background emissions, and the maximum PM_{10} emissions allowed by the 0.1 lbs TSP/100 lbs charge limit at the incinerator, a maximum 24-hour ambient PM_{10} concentration of 131.5 $\mu g/m^3$ was predicted. This is well below the PM_{10} 24-hour standard of 150 $\mu g/m^3$. The annual ambient PM_{10} concentration predicted was 40 $\mu g/m^3$, which is below the PM_{10} annual standard of 50 $\mu g/m^3$. It is U.S. EPA's judgment that, in accordance with section 110(l), the State has provided an acceptable demonstration that this requested SIP relaxation revision will not interfere with attainment and maintenance of the PM–10 NAAQS nor of any other applicable requirement of the amended Act. A more detailed description of the attainment demonstration analysis may be found in the June 25, 1993 Technical Support Document available at the above address.

Rulemaking Action

Based on its review of the information presented by the State of Illinois, U.S. EPA is approving the requested SIP revision. As noted above, IEPA's submitted modeling analysis demonstrates that the requested SIP revision, while constituting a relaxation of the State of Illinois' existing requirements pertaining to particulate emissions from continuous automatic stoking animal pathological waste incinerators, will not interfere with attainment and maintenance of the PM–10 NAAQS nor of any other applicable requirement of the amended Act, as required by section 110(l).

Because U.S. EPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on November 15, 1993. However, if we receive notice by October 15, 1993 that someone wishes to submit adverse comments, then U.S. EPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on U.S. EPA's request.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP.

U.S. EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., U.S. EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, U.S. EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids U.S. EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 15, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental Protection, Incorporation by Reference, Particulate matter.

Note.—Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 20, 1993.

Valdas V. Adamkus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(98) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(98) On July 21, 1986, the State a submitted revision to its particulate matter regulations to incorporate an emission limit for continuous automatic stoking animal pathological waste incinerators.

(i) Incorporation by reference.

(A) Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, part 212 Visible and Particulate Matter Emissions, subpart D: Particulate Matter Emissions from Incinerators, section 212.185 Continuous Automatic Stoking Animal Pathological Waste Incinerators. Adopted December 18, 1986, added at 11 Ill. Reg. 1410, effective December 30, 1986.

[FR Doc. 93–22556 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MA-9-5-5824; A-1-FRL-4700-7]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Stage II Vapor Recovery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking action to approve Massachusetts' revised Stage II vapor recovery rule, entitled "Dispensing of Motor Vehicle Fuel," located at 310 CMR 7.24(6), as a revision to the Massachusetts State implementation plan (SIP) for ozone. Massachusetts submitted this revised regulation in response to the Stage II requirements of section 182(b)(3) of the Clean Air Act, as amended in 1990, which requires all ozone nonattainment areas classified as moderate or worse to require owners and operators of gasoline dispensing facilities to install and operate Stage II vapor recovery equipment, and EPA's December 14, 1992 Federal Register notice (57 FR 58993) regarding Massachusetts' existing Stage II regulation.

EFFECTIVE DATE: This action will become effective November 15, 1993, unless notice is received by October 15, 1993, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Jerry Kurtzweg, U.S. Environmental Protection Agency, 401 M Street, SW., (ANR-443), Washington, DC 20460; and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565-3166.

SUPPLEMENTARY INFORMATION: Under section 182(b)(3), EPA was required to issue guidance as to the effectiveness of Stage II systems. In November 1991, EPA issued technical and enforcement guidance to meet this requirement. These two documents are entitled "Technical Guidance-Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities" (Technical Guidance)(EPA-450/3-91-022) and "Enforcement Guidance for Stage II Vehicle Refueling Control Programs" (Enforcement Guidance). In addition, on April 16, 1992, EPA published the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) (57 FR 13498). The guidance documents and the General Preamble interpret the Stage II statutory requirement and indicate what EPA believes a State submittal needs to include to meet that requirement.

Under section 182(b)(3) of the amended Act, moderate and above ozone nonattainment areas were required to submit Stage II vapor recovery rules by November 15, 1992. In addition, section 184(b)(2) of the amended Act requires all areas that are located in an ozone transport region (OTR) to adopt Stage II regulations in accordance with section 182(b)(3) or measures that EPA has identified as capable of achieving equivalent reductions to section 182(b)(3) Stage II controls.[1] These measures must be submitted within 1 year of EPA's completion of its Stage II comparability study.

The entire Commonwealth of Massachusetts is designated nonattainment for ozone and is classified as serious. See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.322. In addition, Massachusetts is also located in the northeast ozone transport region. See CAA section 184(a). Thus, Massachusetts is required to adopt Stage II vapor recovery rules in accordance with sections 182(b)(3) and 184(b)(2) of the amended Act.

Under section 182(b)(3), moderate and above ozone nonattainment areas are required to adopt regulations requiring owners or operators of gasoline dispensing systems to install and operate vapor recovery equipment at their facilities. Section 182(b)(3)(A) of the Act specifies that Stage II controls must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer (ISBM), any facility that dispenses more than 50,000 gallons of gasoline per month. Section 324 of the Act defines an ISBM.

[1] Pursuant to section 184(b)(2), by November 15, 1993, EPA must complete a study identifying control measures capable of achieving emission reductions comparable to those achievable through the section 182(b)(3) Stage II controls. The EPA is in the process of performing that study.

In addition, EPA's guidance states that States should require that Stage II systems be tested and certified to meet a 95 percent emission reduction efficiency by using: (1) A method tested and approved by the California Air Resources Board (CARB); (2) a testing program that is equivalent to the CARB program, that will be conducted by the State (or by a third party recognized by the State), and that EPA has approved (or is proposing for approval) for incorporation into the SIP; or (3) a system approved by CARB. EPA guidance also states that facilities should be required to verify proper installation and function of Stage II equipment through use of a liquid blockage test and a leak test prior to system operation and every five years or upon major modification of a facility (i.e., 75 percent or more equipment change).

On May 17, 1990, EPA received a formal SIP submittal from the Massachusetts Department of Environmental Protection (DEP) containing the State's newly adopted Stage II vapor recovery regulation entitled "Dispensing of Motor Vehicle Fuel" located at 310 CMR 7.24(6). This state-initiated SIP submittal was submitted prior to the November 15, 1990 enactment of amendments to the Act. EPA published a Final Rulemaking Notice (FRN) approving Massachusetts' existing Stage II regulation on December 14, 1992 (57 FR 58993). As stated in EPA's FRN, although there were still outstanding issues associated with the existing Stage II rule, EPA approved this revision to the Massachusetts SIP, since it would strengthen the existing SIP and contribute to a reduction in volatile organic compound emissions until such time as DEP revised its Stage II rule to meet all of the requirements of section 182(b)(3) of the CAA. EPA's FRN also enumerated the outstanding issues associated with this rule which the State would need to address in order for EPA to approve the regulation as meeting the requirements of the CAA. Massachusetts subsequently adopted revisions to this regulation in accordance with the amendments outlined in EPA's FRN. The necessary amendments outlined in EPA's FRN and the State's response are discussed below.

On November 13, 1992, Massachusetts DEP submitted a formal request to EPA to amend the Massachusetts SIP. This SIP revision request contains amendments to the State's Stage II vapor recovery rule. In addition, on February 17, 1993, DEP submitted the adopted version of the revised Stage II regulation along with additional documentation regarding the

effective date of this rule. The EPA has reviewed this regulation against the statutory requirements and for consistency with EPA guidance. Massachusetts' regulation and EPA's evaluation are detailed in a memorandum dated April 5, 1993, entitled "Technical Support Document—Massachusetts—Stage II Vapor Recovery Revisions." Copies of that document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this notice. A summary of EPA's analysis is provided below.

310 CMR 7.24(6)—Dispensing of Motor Vehicle Fuel

This regulation requires all existing motor vehicle fuel dispensing facilities in Massachusetts with throughput volumes of greater than 10,000 gallons per month to install and operate Stage II vapor recovery equipment. The required installation date for this equipment varies depending on a facility's annual gasoline throughput (i.e., larger throughput facilities must comply earlier than smaller throughput facilities). The required installation dates range from April 1, 1991 to April 1, 1994. In addition, this regulation also requires any motor vehicle fuel dispensing facility, which has been constructed or substantially modified after November 1, 1989, regardless of throughput, to install and operate a Stage II vapor recovery and control system at the completion of its construction or substantial modification, or April 1, 1991, whichever is later.

Outstanding Issues Cited in EPA's FRN and Massachusetts' Response

1. The first necessary amendment noted in EPA's FRN relates to the applicability levels of Massachusetts' Stage II regulation. At the time of EPA's FRN, the regulation required that all motor vehicle fuel dispensing facilities with a throughput volume of greater than 20,000 gallons of motor vehicle fuel per month since January 1, 1988 install Stage II vapor recovery systems. Section 182(b)(3)(A) of the CAA, however, requires that Stage II provisions be adopted for facilities which dispense greater than 10,000 gallons per month, or 50,000 gallons per month in the case of ISBMs. Thus, the Massachusetts applicability levels were not consistent with the requirements of the CAA. For those stations that are not considered ISBMs, the Massachusetts regulation had a less stringent applicability cutoff.

In response to this noted deficiency, Massachusetts revised subsection 310 CMR 7.24(6)(a) to state that the Stage II requirements of the regulation apply to all facilities which dispense 10,000 gallons or more per month. In addition, the State revised the compliance schedule of the regulation in accordance with this change in applicability. Specifically, subsection 310 CMR 7.24(6)(d)2c was revised to state that compliance must be achieved by April 1, 1993 for facilities where the annual throughput is less than 500,000 gallons per year but is greater than or equal to 20,000 gallons in any one calendar month. Also, a new subsection was added, 310 CMR 7.24(6)(d)2d, which requires compliance by April 1, 1994, or thirty days after dispensing 10,000 gallons in any calendar month, whichever is later, for all other facilities subject to this rule.

Massachusetts' recent revisions, therefore, sufficiently address the previously noted deficiency regarding Stage II applicability levels. The applicability of Massachusetts' revised Stage II rule is more stringent than the CAA, since, in addition to requiring facilities which dispense 10,000 gallons or more per month to install Stage II systems, this rule also requires all facilities which have been constructed or substantially modified after November 1, 1989, regardless of throughput, to install Stage II systems. Furthermore, this regulation does not contain a 50,000 gallon per month exemption for ISBMs as allowed by the CAA.

2. EPA's FRN also noted that the following testing requirements should be included in the Massachusetts' Stage II regulation as outlined in EPA's Enforcement Guidance:

a. Testing, for verification of proper installation and function of the entire system, must be required once all of the equipment is in operational condition at the gasoline dispensing pumps. Liquid Blockage testing, Leak Check testing, and all other related tests for auto shutoff and flow prohibiting mechanisms, as applicable, must be conducted in accordance with the test procedures found in Appendix J of EPA's Technical Guidance.

b. Recertification of the function of Stage II equipment must be required at least every five years, or upon major system replacement or modification, whichever occurs first. This recertification must include a Leak Check Test and any and all other functional tests that were required for the initial system certification. A major system modification is considered to be replacing, repairing or upgrading 75 percent or more of a facility's Stage II equipment.

In response to this noted deficiency, Massachusetts added a new subsection, 310 CMR 7.24(6)(i), entitled "Testing at Installation," to its Stage II regulation. This section requires that any person installing a Stage II system, or replacing 75% or more of an existing system, conduct Liquid Blockage testing, Leak Check testing, and all other related testing for automatic shutoff and flow prohibiting mechanisms in accordance with EPA's Stage II Technical Guidance. In addition, this section requires that these tests also be conducted at least once every five years over the entire lifetime of the Stage II system. Massachusetts' recent revisions, therefore, sufficiently address the previously noted deficiency regarding Stage II testing requirements.

3. The third deficiency noted in EPA's FRN relates to Stage II recordkeeping requirements. The FRN noted that the recordkeeping provision in Massachusetts' regulation would need to be amended to include that the following records be kept, as specified by EPA's Stage II Enforcement Guidance:

a. Any and all permits and licenses to operate a facility or a specific system at a facility;

b. Records which verify that the Stage II system meets or exceeds the requirements of a Liquid Blockage Test, a Leakage Test, or other applicable tests and which indicate the date of the test results and the installing and test companies' names, addresses and phone numbers;

c. A chronological file of inspection reports issued by the state;

d. A chronological file of compliance records including warnings, notices of violation, and other compliance records issued by the state; and

e. Training certification records showing proof of attendance and completion of required training.

In addition, the FRN also noted, that, although the State's recordkeeping provisions required the recording of any failures of the Stage II equipment, the recording of maintenance performed in response to these system failures should also be included.

In response to the above-noted deficiencies in the State's Stage II recordkeeping requirements, Massachusetts amended the recordkeeping section of its Stage II rule, section 310 CMR 7.24(6)(f). The amended section (f) contains seven subsections which together address all of the recordkeeping deficiencies outlined above. Specifically, the deficiency stated in 3.a. has been addressed by subsection (f)(6) which requires that any and all permits, orders

or licenses to operate issued for the facility be kept. The deficiency stated in 3.b. has been addressed by subsection (f)(4) which requires that records of the results and dates of any testing performed, and the identity of the person who performed such tests, be maintained. The deficiencies stated in 3.c. and 3.d. have been addressed by subsection (f)(7) which requires that the facility maintain a chronological file of any inspection reports or other compliance documents issued for the facility by the DEP. The deficiency stated in 3.e. has been addressed by subsection (f)(5) which requires a record of certification that facility operators and employees have received training be kept.

In addition, subsection (f)(1) requires records of the failure or malfunction of the Stage II system and the date of its repair and subsection (f)(2) requires records of all maintenance performed, including the type and date of maintenance. These two subsections, therefore, sufficiently address the previously noted lack of requirements regarding the recording of maintenance performed in response to system failures. Finally, section (f) also requires that all records be kept on site for at least five years, rather than two years as was previously required.

Massachusetts' recent revisions to subsection (f), therefore, sufficiently address all of the previously noted deficiencies regarding Stage II recordkeeping requirements.

In summary, EPA's December 14, 1992 FRN cited outstanding issues associated with the Stage II applicability levels, testing requirements, and recordkeeping requirements in Massachusetts' existing Stage II regulation. Since that time, Massachusetts has adopted revisions to this regulation which sufficiently address all of the previously noted deficiencies.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective November 15, 1993, unless, by October 15, 1993, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on November 15, 1993.

Final Action

Because EPA believes that Massachusetts' revised Stage II regulation is consistent with sections 182(b)(3) and 184(b)(2) of the Act, as interpreted in EPA's guidance, EPA is approving 310 CMR 7.24(6) "Dispensing of Motor Vehicle Fuel" (effective in the State of Massachusetts on February 12, 1993) as meeting the requirements of sections 182(b)(3) and 184(b)(2).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of 2 years (54 FR at 2222). The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 15, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 16, 1993.

Patricia Meaney,

Acting Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(98) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(98) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on November 13, 1992, January 15, 1993, and February 17, 1993.

(i) Incorporation by reference.

(A) Letters from the Massachusetts Department of Environmental Protection dated November 13, 1992, January 15, 1993, and February 17, 1993 submitting a revision to the Massachusetts State Implementation Plan.

(B) 310 CMR 7.24(6) "Dispensing of Motor Vehicle Fuel," effective in the State of Massachusetts on February 12, 1993.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

3. In § 52.1167, Table 52.1167 is amended by adding new entries to state citation "310 CMR 7.24(6)" to read as follows:

§ 52.1167 EPA-Approved Massachusetts regulations.

* * * * *

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by state	Date approved by EPA	Federal Register citation	52.1120 (c)	Comments/unapproved sections
•	•	•	•	•	•	• • •
310 CMR 7.24(6)	Dispensing of motor vehicle fuel.	02/17/93	9/15/93	[Insert FR citation from published date].	98	Previous version of rule approved as strengthening the Massachusetts SIP. Revised rule being approved as meeting the Clean Air Act requirements.
•	•	•	•	•	•	• • •

[FR Doc. 93-22533 Filed 9-14-93; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 73

[FRL-4728-8]

Acid Rain Program: Allowance Tracking System; Manual Recordation of Allowance Transfers

AGENCY: Environmental Protection Agency.

ACTION: Notice of procedure for manual recordation of certain allowance transfers.

SUMMARY: The Environmental Protection Agency is instituting a procedure to implement subpart D of 40 CFR part 73, which governs EPA's recordation of transfers of sulfur dioxide (SO_2) emission allowances within the Allowance Tracking System (ATS). This procedure applies prior to the commencement of operation of the automated ATS in certain exceptional circumstances. Two criteria must be met before EPA will accept transfer forms for manual recordation: (1) There must be a risk of substantial loss of public funds should the transaction not be completed and the transfer not be recorded prior to the commencement of operation of the automated ATS; and (2) parties to the transfer agreement must have relied upon EPA's announced date of "late spring 1993" for the commencement of operation of the automated ATS when entering into the transfer agreement.

EFFECTIVE DATE: September 8, 1993.

ADDRESSES: All correspondence in this matter shall be sent to: U.S. Environmental Protection Agency, Acid Rain Division (6204J), 401 M Street, SW., Washington, DC 20460, Attn: ATS Manual Recordation.

FOR FURTHER INFORMATION CONTACT: Janice K. Wagner, Chief, Allowance Market Section, Acid Rain Division, (202) 233-9118 or by mail at the address above.

SUPPLEMENTARY INFORMATION: Subpart C of 40 CFR part 73 establishes an Allowance Tracking System (ATS) for the allocation, transfer, and use of SO_2 emissions allowances as required by section 403(b) of the Clean Air Act (CAA). Section 403(b) specifically provides that allowance transfers are not effective, for purposes of compliance with the allowance holding requirements of the Acid Rain Program, until EPA receives and records a written certification of the transfer signed by a responsible official of each party to the transfer. EPA will provide Allowance Transfer forms for this written certification. Subpart D of 40 CFR part 73 establishes the procedure by which EPA will record transfers of allowances to and from accounts established within the ATS.

EPA is in the process of implementing an automated system for handling the recordation of allowance transfers. To ensure the integrity of the recordation process, EPA decided that it would not begin accepting allowance transfer requests for recordation until this automated system is fully operational. EPA believes that the necessary task of recording numerous allowance transfers will be administratively feasible only if the automated ATS is operational and serial numbers for allowances involved in such transfers are issued.

EPA's general policy has been and will continue to be to not issue Allowance Transfer forms to parties nor to record allowance transfers prior to the commencement of operations of the automated ATS. When EPA developed the general policy on issuing Allowance Transfer forms and recording allowance transfers, EPA anticipated that the automated ATS would likely be operational in the late spring of 1993 and so informed ATS authorized account representatives in letters sent to them as their accounts were opened. However, the anticipated operational date for the ATS has been delayed. While the provisions of the Acid Rain Program authorize allowances to be sold without recordation with EPA, the Agency recognizes that, in certain limited circumstances, the delay in making operational the automated ATS may irreparably impair some transfer agreements. Furthermore, the failure to allow these agreements to go forward may have detrimental financial impacts not only on the parties to the transfer agreement but also on the public because of the extensive involvement of public entities in financing electricity production.

After examining the factors described above, the Agency has decided that an exception to the general policy may be appropriate in certain limited circumstances. The Agency believes that manual recordation is appropriate: (1) When substantial public funds are at risk if recording the transfer is delayed until the automated ATS commences operation; and (2) when parties to transfer agreements relied on EPA's representation concerning the anticipated operational date of the ATS to conclude agreements that are contingent on recordation.

The Agency determined that it needed to establish an exception to its general policy when it learned of the exceptional circumstances of Big Rivers Electric Corporation, a Kentucky cooperative utility with outstanding debt to the United States government in excess of $1 billion through loans from the Rural Electrification Administration (REA). Big Rivers' debt to REA did not arise in connection with this transaction or CAA Title IV. The utility is on REA's troubled loan watch list and has negative equity.

In order to meet its requirements under the Clean Air Act, the utility decided to construct and use a "scrubber" to minimize sulfur dioxide emissions and to sell excess emission allowances to finance the purchase of the scrubber. According to the utility, other methods of financing a scrubber, such as additional loans, are unavailable.

Potential buyers of the utility's allowances have not been willing to purchase them without immediately recording the transfer in the ATS because of concerns about whether the allowances would ultimately be delivered or the purchase price returned because of the utility's precarious financial position. Although ATS is designed to be a compliance tracking system, at this stage in the market's development it is viewed as the "official" ownership tracking system.

Based on EPA's representation that the automated ATS would likely be operational in late spring, an intermediary arranged for the sale of the utility's allowances to a third party, contingent on being able to immediately record the transfers with EPA. The utility committed to pay for the construction of the scrubber to be financed by the proceeds of the sale of allowances. Construction of the scrubber has begun and payments will be due prior to the date when the automated ATS will be operational.

The failure to have an operational automated ATS has put the contingent sale of the allowances at risk. Without the proceeds from the sale of allowances, the utility cannot make both payments for construction of the scrubber and anticipated debt service payments to the REA. Failure to make the necessary payments on the construction contract would result in cancellation of the scrubber contract and the incurrence of substantial cancellation charges. In addition, the cancellation charges incurred by the utility would reduce by a like amount the funds available for debt service payments to the REA. Failure to make anticipated debt service payments to the REA, either because the funds are used to meet construction payments or because the utility incurred cancellation charges, would compound the utility's precarious financial position and increase the financial risk to the public. At the request of REA, EPA agreed to look into ways to ensure that EPA's delay in making the automated ATS operational does not increase the financial risk to the public arising from the utility's $1 billion debt to the United States.

At this time, recording the transfer immediately in the automated ATS is not possible because the system is not yet fully operational. EPA investigated the feasibility of developing a manual recordation system that would be open to all ATS account holders. To make such a system work, each utility must know the serial numbers of the allowances it holds. By the time EPA could establish the serial numbers, provide them to the Authorized Account Representatives, and develop procedures, the manual ATS would be "open for business" only a few months earlier than EPA's current target for an operational automated ATS. All work on the manual system—both the development and the operation of the system—must be done by the same EPA staff who are currently working on the automated version of the ATS, so the schedule for the development of the automated ATS would slip significantly. Moreover, EPA believes that even interim use of a manual system is not feasible because without automated control procedures, EPA cannot ensure accurate recordation, which is crucial to allowance trading and to end-of-year compliance. For these reasons, EPA does not feel that it would benefit the allowance market overall for EPA to try to develop a large-scale manual recordation system.

Therefore, to respond to cases that meet the criteria established above—that is, substantial debt to the government where the risk of repayment is exacerbated by failure to sell allowances prior to the operation date of the automated ATS, and a contractual transfer arrangement that parties made contingent on recording in the ATS in reliance on EPA's statement of ATS's availability in spring of 1993—EPA is establishing a manual recordation procedure limited to such cases. To be eligible for manual recordation, a transfer must be the subject of a binding contract that: (1) Was executed prior to the date of this notice; and (2) expressly requires recordation of the transfer by EPA in accordance with subpart D of 40 CFR part 73 before the parties can fully perform their obligations under the contract. The manual recordation procedure is outlined below.

1. Apply for Eligibility Determination

Parties to allowance transfer contracts wishing to obtain manual recordation in accordance with the procedure set forth in this notice must contact EPA to obtain an eligibility determination. EPA will provide parties to an eligible transfer with Allowance Transfer forms for use in requesting recordation.

2. Complete Allowance Transfer Form

The parties must submit to EPA an Allowance Transfer form properly completed in accordance with 40 CFR 73.50(b)(1). In particular, the form must include:

(i) The transferor and transferee's ATS account numbers;

(ii) The signatures of the Authorized Account Representatives (AARs) for both the transferor and transferee accounts;

(iii) The dates of such signatures; and

(iv) The numbers identifying the AARs. The parties must follow the procedure set forth at 40 CFR part 73, subpart C to establish the ATS accounts and designate the AARs.

3. Specify Allowances To Be Transferred

The allowances to be transferred must be specified on the Allowance Transfer form. According to 40 CFR 73.50(b)(1)(ii), an Allowance Transfer form must include "a specification by serial number of each allowance to be transferred, or correct indication on the allowance transfer where a request involves the transfer of the unit's allowances in perpetuity." Because EPA has not yet assigned individual serial numbers to allowances, it is not possible at this time to list on the transfer form the official serial numbers of the allowances to be transferred. For purposes of a transfer to be recorded pursuant to the procedure set forth in this notice, however, EPA interprets this provision to be satisfied by a description of the allowances to be transferred based on the serial numbers that EPA eventually will assign to those allowances. Because such a description would permit allowances to be uniquely identified by serial number, EPA considers it "a specification by serial number," as required by the regulations, until such time as the official serial numbers are issued.

The Allowance Transfer form must identify each allowance to be transferred from a specific account by referring to a single identifying number that consists of the unit account number to which the allowance was initially

allocated, the year, and the number of the allowance. The allowances to be transferred must be a set of consecutive numbers. To ensure the integrity of the manual recordation procedure set forth in this notice, EPA will record transfers of allowances reflected in Column A of Table 1 to 40 CFR 73.10(a) or Columns E or I of Table 2 to 40 CFR 73.10(b). EPA will not allow the transfer of other allowances, such as those allocated from the Phase I Extension Reserve or pursuant to an approved Phase I substitution plan or compensating unit plan, until serial numbers have been assigned and the automated recordation system has commenced operation.

The identifying number listed on the Allowance Transfer form for a given allowance pursuant to the procedure described in this notice is based on and allows the future identification of that allowance by serial number upon EPA's assignment of serial numbers for allowances. For example, if the identifying number for an allowance identified in a transfer form pursuant to this procedure is XXXX–1995–00000001 (where "XXXX" is the unit account number and "1995" is the compliance use date of the allowance), that allowance is the one with the lowest serial number of all the serial numbers of the Table 1, Column A allowances for 1995 that are initially allocated to the unit account referred to in the identifying number. If the identifying number for an allowance identified in a transfer form pursuant to this procedure is XXXX–1995–00000150, that allowance is the one with the 150th lowest serial number of all the serial numbers of the Table 1, Column A allowances for 1995 that are initially allocated to that unit account. Thus, in this example, listing the range of consecutive identifying numbers of XXXX–1995–00000001 to XXXX–1995–00000150 on the Allowance Transfer Form specifies the 150 allowances that have the 150 lowest serial numbers of all the serial numbers of the Table 1, Column A allowances for 1995 that are initially allocated to the unit account referred to in the identifying number. Thus, use of the identifying number pursuant to the procedure described in this notice allows "specification by serial number of each allowance to be transferred," pursuant to 40 CFR 73.50 (b)(1)(ii).

To be considered correctly submitted under 40 CFR 73.50(b), every allowance transfer form submitted pursuant to the procedure set forth in this notice must describe the allowances being transferred by referring to the unit account or accounts to which such allowances have been initially allocated by EPA. Moreover, in accordance with 40 CFR 73.52(a)(2), EPA will record an allowance transfer only if the allowances to be transferred are actually held in the transferor account. Accordingly, to the extent that an allowance transfer form describes allowances being transferred by reference to any account other than the transferor account, EPA will record the transfer only if it has previously recorded a transfer into the transferor account of allowances of the same description.

4. Written Confirmation of Transfer

Pursuant to 40 CFR 73.52(a), EPA will record an eligible transfer by making a written record of the movement of allowances from the transferor account to the transferee account by no later than five business days following receipt of an Allowance Transfer form satisfying the requirements of 40 CFR part 73, subpart D as implemented by this notice. EPA shall notify each party, pursuant to 40 CFR 73.53(a), within five business days after recordation. If EPA declines to record a transfer, it shall notify the parties of that action, pursuant to 40 CFR 73.53(b), no later than five business days following receipt of an allowance transfer request.

EPA considers its recordation of an allowance transfer pursuant to the procedure set forth in this notice to be final and effective under 40 CFR part 73, subpart D and section 403(b) of the Clean Air Act. No further action will be required of the parties to the transfer to complete the recordation.

5. Claim of Error

Within 15 days of receipt of the written confirmation of transfer, the AAR must notify EPA of any claim of error in the recordation of such transfers. Such claim shall be filed and processed in accordance with 40 CFR 73.37.

6. Serialization of Allowances in the Automated ATS

In order to match the allowance descriptions associated with transfers recorded pursuant to the procedure set forth in this notice with the actual serialized allowances, EPA will assign serial numbers to allowances according to a sequence reflecting the initial allocations to unit accounts before any adjustment is made to reflect manually recorded transfers. Serialized allowances will then be moved between ATS accounts in accordance with all transfers previously recorded by EPA pursuant to the procedure set forth in this notice. The assignment of serial numbers is simply an accounting procedure. The allowances will be held in the transferee account as of the date of the recordation of the transfer.

7. Allowance Transfer Confirmation

Within five business days after the completion of the assignment of serial numbers, EPA will provide the AAR for each ATS account involved in a transfer recorded pursuant to the procedure set forth in this notice with a written account statement reflecting all such transfers.

8. Claim of Error

Within 15 days of receipt of the allowance transfer confirmation, the AAR must notify EPA of any claim of error in the recordation of such transfers. Such claim shall be filed and processed in accordance with 40 CFR 73.37.

Until such time as serial numbers for allowances are finalized, transfer forms that identify allowances in the manner discussed above satisfy the requirements of EPA's allowance transfer regulations in 40 CFR 73.50 and 73.52. The description of the allowances by account number, year, and number is a sufficient specification by serial number of each allowance to be transferred to allow EPA to identify the appropriate allowances to transfer in the ATS, when a limited number of transactions are being recorded and when the allowances are allocated but not serialized. Once serial numbers are finalized and made available to account holders, EPA will only accept transfer forms that include serial numbers, except for transfers of a unit's allowances in perpetuity.

Because of the issues described above, all allowance buyers and sellers should ensure that no action is required by EPA to complete future allowance transactions until the automated ATS is operational.

Dated: September 8, 1993.

Brian J. McLean,

Director, Acid Rain Division, Office of Air and Radiation.

[FR Doc. 93–22441 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 180 and 186

[PP 0E3823 and FAP 0H5592/R2009; FRL–4638–3]

RIN 2070–AB78

Pesticide Tolerance and Feed Additive Regulations for Hexakis (2-Methyl-2-Phenylpropyl)Distannoxane

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a pesticide tolerance for residues of the pesticide hexakis in or on the raw agricultural commodity marigolds and feed additive regulations for the processed feed commodities dried marigolds and marigold extract. The regulations to establish maximum permissible levels for residues of the pesticide in or on the commodities were requested by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective September 15, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 0E3823 and FAP 0H5592/R2009], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 7, 1993 (58 FR 36366), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 0E3823 and feed additive petition (FAP) 0H5592 to EPA on behalf of the Agricultural Experiment Station of California. Pesticide petition 0E3823 requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), amend 40 CFR part 180 by establishing a tolerance for residues of the pesticide hexakis, (2-methyl-2-phenylpropyl)distannoxane, and its organotin metabolites, calculated as hexakis, in or on the raw agricultural commodity marigolds at 4 parts per million (ppm). Feed additive petition 0H5592 requested that the Administrator, pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348), amend 40 CFR part 186 by establishing a feed additive regulation for residues of hexakis and its organotin metabolites in or on the processed feed commodities dry marigolds and marigold extract at 25 parts per million.

There were no comments or requests for referral to an advisory committee received in response to the proposed rules.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rules. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health and use of the pesticide with the feed additive regulation will be safe. Therefore, the tolerance and feed additive regulations are established as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulations deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or feed additive regulations or raising tolerance levels or feed additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 186

Administrative practice and procedure, Agricultural commodities, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 25, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.362, by revising the section heading and amending paragraph (b) in the table therein by adding and alphabetically inserting a tolerance for regional registration for fresh marigolds, to read as follows:

§ 180.362 Hexakis (2-methyl-2-phenylpropyl)distannoxane; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
Marigolds, fresh	4.0
* * * * *	

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By revising § 186.3550, to read as follows:

§ 186.3550 Hexakis (2-methyl-2-phenylpropyl)distannoxane.

(a) Tolerances are established for combined residues of the insecticide hexakis (2-methyl-2-phenylpropyl)distannoxane and its organotin metabolites calculated as hexakis (2-methyl-2-phenylpropyl)distannoxane in the following processed feeds when present therein as a result of application of the insecticide to growing crops:

Commodity	Parts per million
Apple pomace, dried	75.0
Citrus pulp, dried	35.0

Commodity	Parts per million
Grape pomace, dried	100
Raisin waste	20

(b) Tolerances with regional registration, as defined in § 180.1(n) of this chapter, are established for residues of the pesticide hexakis in or on the following feed commodities:

Feed	Parts per million
Marigolds (dried and extract)	25.0

[FR Doc. 93–22114 Filed 9–14–93; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 186

[PP 3H5665/R2012; FRL–4640–9]

RIN 2070–AB78

Temporary Feed Additive Tolerance for Pentyl 2-Chloro-4-Fluoro-5-(3,4,5,6-Tetrahydrophthalimido) Phenoxyacetate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a temporary feed additive tolerance for residues of the herbicide pentyl 2-chloro-4-fluoro-5-(3,4,5,6-tetrahydrophthalimido) phenoxyacetate in or on the animal feed soybean hulls at 0.02 part per million (ppm). This regulation was requested by Valent U.S.A. Corp. and would establish the maximum permissible level for residues of the herbicide in or on this animal feed.

EFFECTIVE DATE: This regulation becomes effective September 15, 1993, and expires March 1, 1995.

ADDRESSES: Written objections, identified by the document control number, [PP 3H5565/R2012], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7830.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 22, 1993 (58 FR 39180), EPA issued a proposed rule that gave notice that the Valent U.S.A. Corp., 1333 N. California Blvd., Suite 600, Walnut Creek, CA 95496, had submitted to EPA pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 348, feed additive petition (FAP) 3H5665, which proposed to amend 40 CFR part 186 by establishing a temporary feed additive regulation to permit residues of the herbicide pentyl 2-chloro-4-fluoro-5-(3,4,5,6-tetrahydrophthalimido) phenoxyacetate in or on the animal feed soybean hulls at 0.02 part per million (ppm).

On the basis of the information furnished by Valent U.S.A. Corp., an experimental use permit (EUP) has been issued for the pesticide under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 983). This permit authorizes the use of 45.95 pounds per year of the herbicide on soybeans for 2 years in the States of Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Ohio, South Dakota, Tennessee, and Wisconsin.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the feed additive regulation will protect the public health. Therefore, the feed additive regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food/feed additive regulations or raising tolerance levels or food/feed additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 186

Administrative practice and procedure, Agricultural commodities, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 27, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 186 is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 180.4725, to read as follows:

§ 186.4725 Pentyl 2-chloro-4-fluoro-5-(3,4,5,6-tetrahydrophthalimido) phenoxyacetate.

(a) A feed additive regulation is established permitting residues of the herbicide pentyl 2-chloro-4-fluoro-5-(3,4,5,6-tetrahydrophthalimido) phenoxyacetate in or on the following feed resulting from application of the herbicide to soybeans in accordance with an experimental program. The conditions set forth in this section shall be met.

Feed	Parts per million	Expiration date
Soybean hulls	0.02	March 1, 1995.

(b) Residues in the feed not in excess of the established tolerance resulting from the use described in paragraph (a)

of this section remaining after expiration of the experimental program will not be considered to be actionable if the herbicide is applied during the term of and in accordance with the provisions of the experimental use program and feed additive regulation.

(c) The company concerned shall immediately notify the Environmental Protection Agency of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

[FR Doc. 93–22113 Filed 9–14–93; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 493

[HSQ–212–CN]

Medicare, Medicaid and CLIA Programs; Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988

AGENCY: Health Care Financing Administration (HCFA) and Public Health Service (PHS), HHS.

ACTION: Final rule; correction.

SUMMARY: In the January 19, 1993 issue of the **Federal Register** (FR Doc. 93–1169) (58 FR 5215), we updated the rules concerning requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). We have identified an error in the text of the regulations and we are correcting it in this notice.

EFFECTIVE DATE: This correction is effective January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Tracy Mummert, (410) 597–5904.

SUPPLEMENTARY INFORMATION: In **Federal Register** document 93–1169, (58 FR 5215), published on January 19, 1993, we changed the title of the definition of "State-exempt laboratory" to "CLIA-exempt laboratory." Since there was an existing definition of "CLIA-exempt laboratory," this inadvertently resulted in two definitions of "CLIA-exempt laboratory." We are correcting this by removing the original definition of "State-exempt laboratory."

Correction of Publication

Accordingly, the publication on January 19, 1993 of the final regulations, which were the subject of FR Doc. 93–1169, is corrected as follows:

§ 493.2 [Corrected]

On page 5221, beginning in column one, § 493.2, amendment 2.e., "In the definition of *State-exempt laboratory*, 'State-exempt' is revised to read 'CLIA-exempt' and placed in appropriate alphabetical order." Is revised to read, "The definition of *State-exempt laboratory* is removed."

Authority: Sec. 353 of the Public Health Service Act (42 U.S.C. 263a)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program), Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 7, 1993.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 93–22520 Filed 9–14–93; 8:45 am]
BILLING CODE 4120-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43 and 61

[CC Docket No. 93–36, FCC 93–401]

Tariff Filing Requirements for Nondominant Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule [CC Docket No. 93–36, FCC 93–401], which was published Monday, August 23, 1993, [58 FR 44457]. The final rules specified the tariff filing requirements for domestic nondominant Carriers.

EFFECTIVE DATE: August 23, 1993.

FOR FURTHER INFORMATION CONTACT: Donna Lampert (202) 632–6365 or Daniel Gonzalez (202) 632–1299, Common Carrier Bureau, Policy and Program Planning Division.

NEED FOR CORRECTION: As published, the final rules proved to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of August 23, 1993 of the final rules [CC Docket No. 93–36, FCC 93–401] which were the subject of 58 FR 44457, is corrected as follows:

1. On page 44459, in the third column, in § 43.51, (a) introductory text is corrected to read as follows:

§ 43.51 Contracts and concessions.

(a) Any communications common carrier that is engaged in domestic communications and has not been classified as nondominant pursuant to § 61.3 of this chapter engaged in foreign communications, and enters into a contract with another carrier, including an operating agreement with a communications entity in a foreign point for the provision of a common carrier service between the United States and that point; must file with the Commission, within thirty (30) days of execution, a copy of each contract, agreement, concession, license, authorization, operating agreement or other arrangement to which it is a party and amendments thereto with respect to the following:

* * * * *

§ 61.22 Composition of Tariffs [Corrected].

2. On page 44460, in the second column, in section 61.22(b) on line 3 the term "203(c)" is corrected to read "203" and on line 6 the word "ranges" is corrected to read "rates".

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–22471 Filed 9–14–93; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92–304; FCC 93–416]

Renewal Reporting Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Through this Report and Order, the Commission modifies FCC Form 303–S to require licensees of commercial AM, FM and TV broadcast stations to disclose, at the time their renewal applications are filed, whether or not their stations are on the air. This new requirement will enhance the ability of the Commission to continue to license broadcast stations in the public interest.

EFFECTIVE DATE: October 15, 1993.

FOR FURTHER INFORMATION CONTACT: David E. Horowitz, Policy and Rules Division, Mass Media Bureau, (202) 632–7792.

SUPPLEMENTARY INFORMATION: The following is a synopsis of the Commission's Report and Order, in MM Docket No. 92–304, adopted August 20,

1992, and released September 1, 1992. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of Report and Order

1. On December 30, 1992, the Commission released a Notice of Proposed Rule Making (Notice), 58 FR 3002 (January 7, 1993), which initiated this proceeding to consider whether to require licensees of certain types of broadcast stations to report on their license renewal applications the current status of their operations. In particular, the Commission proposed to modify FCC Form 303–S to require licensees of full power commercial AM, FM and TV stations to report, at the time their license renewal applications are submitted, whether their stations are on the air or have discontinued operations. The Commission has adopted this proposed change to FCC Form 303–S.

2. When the Commission adopted the Notice, it was aware of more than 200 commercial AM and FM stations that had discontinued operations. In the time since the adoption of the Notice, the Commission has seen the number of reported silent AM and FM stations grow to more than 300. Of these stations, a number have gone silent without timely notification to the Commission as required by its Rules. See 47 CFR 73.1740(a)(4). When the Commission is unaware that a station has gone off the air, the lack of information about a station's operations impairs the Commission's ability to properly discharge its responsibility to determine whether grant of the renewal would be in the public interest. For example, failure to provide notice of discontinued operations prevents the Commission from assessing whether the license has complied with its rules for ceasing broadcast service, whether the cessation of service is justified, and whether the licensee has developed an acceptable plan for resuming operations. Such considerations persuade the Commission that adoption of the proposed changes to FCC Form 303–S is warranted. The information gathered will be of substantial benefit to the Commission while imposing, at most, a minor burden on licensees.

3. Currently, Form 303–S contains various instructions and question-by-question guidelines. The general instructions provide basic information that is of use to the applicant, such as where and when the form should be filed and by whom, and who is required to pay a fee. The question-by-question guidelines, on the other hand, provide more detailed information that is intended to aid the applicant in properly completing each of the specific questions on the form. Where a particular question does not apply to certain applicants, the guideline for that question so explains. The Notice explicitly stated that noncommercial broadcast licensees would be excluded from the reporting requirement at issue here, and nothing in the record of this proceeding counsels a different approach. Thus, the Commission continues to believe that the reporting requirement adopted in this Report and Order should apply only to commercial broadcast stations. Consistent with that belief, and consistent with the format of the Form 303–S instructions, the Commission is amending these instructions to clearly state that the new question is limited to licensees of commercial AM, FM and TV broadcast stations. In addition, the Commission has altered the language of the new question from that specified in the *Notice* to make it clear that licensees must, under § 1.65 of the Commission's Rules, report any changes in the station's status during the pendency of their applications. Moreover, the Commission stresses that nothing in this Report and Order is intended to alter the ongoing, independent obligations of commercial and noncommercial licensees to comply with the rules for notifying the Commission or seeking FCC authorization in connection with discontinued operations.

Final Regulatory Flexibility Analysis

4. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and purpose of this action: This Report and Order modifies FCC Form 303–S to solicit information as to the status of licensee's broadcast operations.

II. Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis: There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

III. Significant alternatives considered and rejected: None.

5. The Secretary shall cause a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981)

Ordering Clauses

6. Accordingly, it is *ordered, That* pursuant to the authority contained in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154 and 303, FCC Form 303–S is amended as set forth below.

7. It is further *ordered, That* this Report and Order will become effective October 15, 1993.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Appendix—Instructions for FCC Form 303–S

1. The instructions for FCC Form 303–S are amended by adding an explanation to question 10, to read as follows:

Instructions for FCC Form 303–S

Application for Renewal of License for Commercial and Noncommercial AM, FM or TV Broadcast Station

* * * * *

Question-by-Question Guidelines

* * * * *

Question 10. This question should be completed only by a commercial radio or television renewal applicant.

2. FCC Form 303–S is amended by adding question 10 to read as follows:

* * * * *

Application for Renewal of License for Commercial and Noncommercial AM, FM or TV Broadcast Station

* * * * *

10. For commercial AM, FM and TV applicants only: Is the station currently on the air? [ ] Yes [ ] No

If No, attach as Exhibit No. ____ a statement of explanation, including the steps the applicant intends to take to restore service to the public.

(Approved by the Office of Management and Budget under control number 3060–0110)

[FR Doc. 93–22470 Filed 9–14–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–140, RM–8169]

Radio Broadcasting Services; Miami, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 226C for Channel 226C1 at Miami, Florida, and modifies the license for Station WTMI (FM) to specify operation on Channel 226C, at the request of Marlin Broadcasting, Inc. See 58 FR 32503, June 10, 1993. Channel 226C can be allotted to Miami in compliance with the Commission's minimum distance separation requirements at Station WTMI (FM)'s licensed site. The coordinates for Channel 226C at Miami are North Latitude 25–57–59 and West Longitude 80–12–33. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 22, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–140, adopted August 20, 1993, and released September 7, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 226C1 and adding Channel 226C at Miami.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division; Mass Media Bureau.

[FR Doc. 93–22477 Filed 9–14–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–141]

Radio Broadcasting Services; Lebanon, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 265C3 for Channel 265A at Lebanon, Kentucky, and modifies the license for Station WLSK (FM) to specify operation on Channel 265C3, at the request of Lebanon-Springfield Broadcasting Company, Inc. See 58 FR 31687, June 4, 1993. Channel 265C3 can be allotted to Lebanon in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 17.9 kilometers (11.1 miles) southeast. The coordinates for Channel 265C3 at Lebanon are North Latitude 37–26–02 and West Longitude 85–08–43. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 22, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–141, adopted August 20, 1993, and released September 7, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 265A and adding Channel 265C3 at Lebanon.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–22476 Filed 9–14–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket Nos. 89–468; RM–6932; 89–465; RM–6905, RM–7266, RM–7267]

Radio Broadcasting Services; Chenango Bridge, Norwich and Cincinnatus, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 281A to Chenango Bridge, New York, in response to a petition filed by Northeastern Broadcasting, Inc. See Notice of Proposed Rule Making, 54 FR 47688 (November 16, 1989). Additionally, this document also allots Channel 237A to Norwich in response to a petition filed by Craig L. Fox. See Notice of Proposed Rule Making, 54 FR 46634 (October 6, 1989). A proposal to allot Channel 237A to Cincinnatus, New York, is denied. Channel 281A can be allotted to Chenango Bridge in compliance with the Commission's minimum distance requirements at city reference coordinates, North Latitude 42–10–12 and West Longitude 75–52–24. Channel 237A can be allotted to Norwich with a site restriction of 2.5 kilometers (1.5 miles) southwest of the city. The coordinates for Channel 237A are North Latitude 42–31–04 and West Longitude 75–32–28. Canadian concurrence has been received for the allotments. With this action, this proceeding is terminated.

EFFECTIVE DATES: October 22, 1993. The window period for filing applications for Channel 237A at Norwich, New York, and Channel 281A at Chenango Bridge, New York, will open on October 25, 1993, and close on November 24, 1993.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket Nos. 89–465 and 89–468, adopted Aug. 25, 1993, and released Sept. 7, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW. Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Chenango Bridge, Channel 281A and by adding Norwich, Channel 237A.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–22478 Filed 9–14–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–16; RM–8163, RM–8228]

Radio Broadcasting Services; Remington and Falmouth, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Stafford County Broadcasting (RM–8228), allots Channel 283A to Falmouth, Virginia. Channel 283A can be allotted to Falmouth in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.9 kilometers (6.8 miles) northwest. The coordinates for Channel 283A at Falmouth are 38–22–43 and 77–34–29. The proposal filed by Mountain Air Broadcasting (RM–8163), see 58 FR 11205, February 24, 1993, requesting the allotment of Channel 283A to Remington, Virginia, is denied. With this action, this proceeding is terminated.

DATES: Effective October 22, 1993. The window period for filing applications will open on October 25, 1993, and close on November 24, 1993.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–16, adopted August 25, 1993, and released September 7, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by adding Channel 283A, Falmouth.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–22475 Filed 9–14–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[Docket No. 930782–3182; I.D. 052493B]

Threatened Fish, Wildlife and Plants; Johnson's Seagrass

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: Based on a review of the status of the plant, Johnson's seagrass (*Halophila johnsonii*), NMFS believes that this species is threatened and proposed that it be added to the U.S. List of Endangered and Threatened Plants. NMFS used the best available scientific and commercial data to make this proposed determination.

DATES: Comments must be received by December 14, 1993. Requests for a public hearing must be received by November 1, 1993.

ADDRESSES: Send comments and requests for background reports to Dr. William W. Fox, Jr., Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dean Wilkinson, Office of Protected Resources, NMFS, at 301/713–2322.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; (ESA)) is administered jointly by the U.S. Fish and Wildlife Service (USFWS), Department of the Interior, and NMFS. NMFS has jurisdiction over most marine species and makes determinations under section 4 of the ESA as to whether the species should be listed as endangered or threatened. The USFWS maintains and publishes the List of Endangered and Threatened Wildlife and Plants in 50 CFR part 17 for all species determined by NMFS or USFWS to be endangered or threatened. Lists of threatened and endangered species under the jurisdiction of NMFS also are contained in 50 CFR 227.4 and 222.23(a), respectively.

Summary of Status Review

When NMFS initiated the status review of Johnson's seagrass, a review of available scientific literature showed significant gaps in knowledge of the species that needed to be addressed before a determination could be made of the species' status. Without information on such parameters as reproduction and life history, determining whether the species warrants listing under the ESA would be problematic. Therefore, NMFS initiated a field research project in 1990 to address these gaps in information.

The status review involved an extensive literature review for all available historical information pertaining to the species; interviews with scientists and resource managers with known expertise on seagrasses, especially *Halophila* species, and the Indian River Lagoon area in Florida in particular; and extensive field work at three sites in the Indian River area during 1990–1992. Data were drawn from this same study in periods 1987–1990 (Kenworthy 1992). The primary study site was located in the central region of the species' geographical distribution at Hobe and Jupiter Sounds, located at the southern end of the Indian River Lagoon in Martin County, FL. Sebastian Inlet, the second study site, is an artificially stabilized inlet connecting the Indian River to the Atlantic Ocean. The inlet has been dredged since 1948 and is permanantly stabilized by jetties. The third study site was located at the Ft. Pierce Inlet, also artificially stabilized, which connects the lagoon to the nearshore shelf. The proposed determination is based on the results of a report developed at the conclusion of the study (Kenworthy 1993).

The report highlights a number of factors leading to the conclusion that Johnson's seagrass should be listed as threatened. The species is rare and has a limited geographic range, within which it is the least common seagrass species. Its range is limited to the east coast of Florida from Biscayne Bay to Sebastian Inlet. Small species such as *Halophila* have rapid turnover rates and limited energy storage; therefore, forms of sexual reproduction which maximize

the number of offspring are critical to the dispersal and survival of such species. Johnson's seagrass appears to reproduce only through asexual branching or apomixis. Thus, the species is particularly vulnerable to human or environmental perturbations because regrowth and reestablishment of populations would be significantly more difficult than for *Halophila* species with a sexual life history. Populations of Johnson's seagrass may be adversely affected by dredging, prop scoring, storm surge, altered water quality, siltation, and other factors. It is doubtful that the species would be capable of repopulation, if extirpated from an area. Copies of the report are available to the public (see **ADDRESSES**).

Eiseman and McMillan (1980) published the first description of Johnson's seagrass (*Halophila johnsonii*), 1 of 12 species of the genus *Halophila*. *Halophila* species are distinguished morphologically from other seagrasses in their possession of either a pair of stalked leaves without scales or a pseudo whorl of leaves. Identifying characteristics of *H. johnsonii* include smooth foliage leaves in pairs 10–20 mm long, a creeping rhizome stem, sessile (attached to their bases) flowers, and longnecked fruits. Most *Halophila* species are reduced in size, more shallow rooted, and have two to three orders of magnitude less biomass per unit area compared to all other seagrasses. Historically, *H. johnsonii* has been misidentified as two other species of the same genus: *H. decipiens* and *H. basillonis*. *H. johnsonii* can be distinguished from other *Halophila* species by ecologically functional morphological differences, depth distribution, basic physiological differences in photosynthetic rates, metabolic rates and responses to salinity, and isozyme differences.

The most outstanding difference between *H. johnsonii* and other species is its distinct differences in sexual reproductive characteristics. *H. decipiens* is a monoecious plant (has both female and male flowers on the same plant) and successfully reproduces and propagates by seed. *H. johnsonii*, in comarison, appears to be dioecious (has flowers of a single sex on the same plant), but the male flower has never been described either in the field or in laboratory culture. The absence of male flowers supports the hypothesis that sexual reproduction is absent in this species, and propagation must be exclusively vegetative. After periods of unfavorable environmental conditions of growth and vegetative branching, the regrowth and reestablishment of surviving populations of *H. johnsonii* would be significantly more difficult than for species with a sexual life history.

The genus *Halophila* is distributed world-wide in tropical and warm temperate waters. Based on published reports and discussions with seagrass experts, the distributional range of *H. johnsonii* is limited to the east coast of Florida from central Biscayne Bay (25° 45′ N. lat.) to Sebastian Inlet (27° 50′ lat.). Most recent surveys have established the northernmost distribution of *H. johnsonii* in the vicinity of Sebastian Inlet in the Indian River, FL. *H. johnsonii* is patchily distributed between St. Lucie and Sebastian Inlets and in relatively low abundance compared to *H. decipiens* and the larger seagrasses *Halodule wrightii*, *Syringodium filiform*, and *Thalassia testudinum*. Extensive *H. johnsonii* meadows have been documented inside Lake Worth Inlet. The southernmost distribution of *H. johnsonii* is reported to be in the vicinity of Virginia Key in Biscayne Bay (Eiseman and McMillan 1980). There have been no reports of this species outside the currently known southern distribution (Kenworthy and DiPiero 1990). Primarily intertidal, the species often grows with *H. wrightii* Aschers and is also found in pure stands. The species inhabits coarse sand substrates in tidal channels, indicative of its ability to tolerate strong currents and stabilize unconsolidated sand substrates.

H. johnsonii is the least abundant of the seagrass species in the study range and is distributed in patches that range in size from a few centimeters to hundreds of meters. Biomass, patch sizes, and leaf pair densities were always less than those measured in *H. decipiens*. All data from Hobe Sound demonstrated that *H. johnsonii* was the least abundant species in the community. In August 1989, *H. decipiens* coverage averaged 26 percent in the deeper water, exceeding the cover of *H. johnsonii* by a factor of 24, exemplifying *H. johnsonii's* patchy distribution. Demonstrative of its limited abundance, *H. johnsonii* ranked fifth in relative abundance of the six seagrasses in the lagoon, comprising only 2 percent of the total coverage. Similar values were reported for areal biomass at Sebastian Inlet compared to Hobe and Jupiter Sounds. In Jupiter Inlet, female flowers were irregular in distribution, varying in abundance and distribution seasonally from shallow to deep locations. The largest populations generally occur closet to inlets and diminish in abundance in the more interior areas of the lagoons.

Unlike *H. decipiens*, *H. johnsonii* grows in both the shallow intertidal zone and in the deeper subtidal zone. *Halophila* differs from other seagrasses by the occurrence of species in clear, deep (8–40 m) or shallow, turbid water where other seagrasses are unable to colonize or maintain stable populations for long periods of time.

Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA and the NMFS listing regulations set forth procedures for listing species. The Secretary of Commerce (Secretary) must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Overutilization for commercial, recreational, scientific, or education purposes;

(3) Disease or predation;

(4) Inadequacy of existing regulatory mechanisms; or

(5) Other natural or human-made factors affecting its continued existence.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Habitat within the limited range in which *H. johnsonii* exists is at risk to destruction by a number of human and natural pertubations including: (1) Dredging; (2) prop scoring; (3) storm surge; (4) altered water quality; and (5) siltation. Due to fragile nature of *H. johnsonii's* shallow root system, the plants are vulnerable to human-induced disturbances in addition to major natural disturbances to the sediment, and their potential for recovery may be limited. The resultant destruction of the benthic community due to boating activities, propeller dredging and anchor mooring, was observed at all sites during the NMFS study. Further, this condition is expected to worsen with the predicted increase in boating activity. This severely disrupts the benthic habitat, breaching root systems and severing rhizomes, and significantly reducing the viability of the community. Maintenance dredging further jeopardizes critical habitat by redistributing sediments, burying plants, and destabilizing the bottom structure. By altering benthic topography or burying the plants, they may be removed from the photic zone. Because the most abundant populations are located in close proximity to inlets, they are likely to experience erosional forces and siltation associated with

severe storms. During hurricanes, storm surge may scour and redistribute sediments, thereby eroding and burying existing populations. The perennial nature and slower turnover rate has less of a potential for diminishing the negative effects of unsuitable environmental conditions imposed by dredging, boat traffic, siltation, and storm surge.

Turbidity is a critical factor in the distribution and survival of seagrasses, especially in deeper regions of the lagoon, where reduced photosynthetically active radiation (PAR) limits photosynthesis. Shallow regions are less affected by turbidity unless light is rapidly attenuated. In interior lagoonal areas where salinity is low, highly colored water typically is discharged via drainage systems. Stained waters attenuate shorter wavelengths rapidly, removing important PAR as well as potentially stressing plants due to the low salinity. This is a critical factor, especially in the vicinity of Sebastian and Ft. Pierce Inlets where freshwater reaches the flood tide delta and nearby seagrass meadows via canal systems that discharge into the lagoon.

Trampling due to human disturbance and increased land-use induced siltation can threaten viability of the species. Degradation of water quality due to human impact is also a threat to the welfare of seagrass communities. Nutrient overenrichment caused by inorganic and organic nitrogen and phosphorous loading via urban and agricultural land run-off, can stimulate increased algal growth that may smother the understory of *H. johnsonii*, shade rooted vegetation, and diminish the oxygen content of the water. Such low oxygen conditions have a demonstrated severe negative impact on seagrasses and associated communities. Continued and increased degradation of environmental quality also will have a detrimental effect upon *H. johnsonii* communities.

B. Overutilization for Commercial, Recreation, Scientific or Educational Purposes

There is no evidence that these activities have contributed to the decline of the species.

C. Disease or Predation

There are two known herbivores that occur in the range of *H. johnsonii*—the green sea turtle, *Chelonia mydas*, and the West Indian manatee, *Trichechus manatus*, both of which feed upon the seagrass. Herbivorous fish also feed upon the seagrass community. Predation pressures alone are not likely to be a threat to species existence.

D. Inadequacy of Existing Regulatory Mechanisms

Florida statutes that specifically and comprehensively protect seagrasses are: (1) Florida Statute (F.S.) 380.0552, Florida Keys area; protection and designation as area of special concern; and (2) F.S. 370.12, Marine animals; regulation giving Florida Department of Natural Resources the authority to adopt rules to protect manatee habitat, including seagrass beds, from "destruction by boats or other human activity." The Florida Administrative Code has rules in place that also protect seagrasses. They are: (1) Chapter 16D–2.003 and 16D–2.004, State and Park and Recreational Facilities; (2) Chapter 18–20.001 to 18–20.003: Florida Aquatic Preserves; and (3) Chapter 18–11: Sovereignty Submerged Lands Management. Distribution of *H. johnsonii* between Jupiter Inlet and Sebastian Inlet occurs entirely within Florida Aquatic Preserves. This particular legislation establishes that Aquatic Preserves are created to "preserve, promote and utilize indigenous life forms and habitats" including seagrasses. Distribution of *H. johnsonii* between Jupiter Inlet and Sebastian Inlet occurs entirely within Florida Aquatic Preserves.

Federal regulations which allow protection of seagrasses are issued under section 10 of the River and Harbors Act and section 404 of the Clean Water Act. The National Environmental Policy Act (NEPA) also contributes to seagrass protection by requiring an environmental evaluation for many projects involving wetlands. Recurring instances of the destruction of the diminutive *Halophila* species and associated habitat areas indicate that State and Federal regulatory mechanisms are not adequate to protect *Halophila*.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The existence of the species in a very limited range increases the potential for extinction from stochastic events. Natural disasters such as hurricanes could easily diminish entire populations and a significant percentage of the species. Seagrass beds that are in proximity to inlets are especially vulnerable to storm surge from hurricanes and severe storm events.

Critical Habitat

Section 4(a)(3) of the ESA, as amended, requires that, to the maximum extent prudent and determinable, the Secretary shall designate any habitat considered critical to the survival of a species that is listed as endangered or threatened concurrently with such a listing. Because the analyses required for proposing critical habitat differ from those of a listing proposal, the additional analyses could delay a listing. Therefore, NMFS has decided to proceed with the listing proposal now and will proceed with the designation of critical habitat in a separate proposed rule.

NMFS believes that this action is consistent with the intent of the 1982 amendments to the ESA: "The committee feels strongly, however, that, where the biology relating to the status of the species is clear, it should not be denied the protection of the Act because of the inability of the Secretary to complete the work necessary to designate critical habitat." H. Rep. No. 567, 97th Cong. 2d sess. 19 (1982).

Proposed Determination

NMFS believes that the available data support the proposed threatened classification for Johnson's seagrass. NMFS has determined that it is likely that this condition is caused by a number of factors specified under section 4(1)(a) of the ESA.

Classification

The 1982 Amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 829 (6th cir., 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of NEPA (48 FR 4413; February 6, 1984).

As noted in the Conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of the species. Therefore, the economic analysis requirements of E.O. 12291 and the Regulatory Flexibility Act are not applicable to the listing process. Similarly, listing actions are not subject to the requirements of E.O. 12612.

This proposed rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

References

Eiseman, N.J. and C. McMillan. 1980. A new species of seagrass, *Halophila johnsonii*, from the Atlantic coast of Florida. Aquat. Bot. 9:15–19.

Kenworthy, W.J. and S. Dipiero. 1990. The distribution, abundance and ecology of *Halophila johnsonii*, *Halophila decipiens* and other seagrasses in the lower Indian

River, Florida. Annual report for FY 90 to the Office of Protected Resources. NMFS. Silver Spring, MD.

Kenworthy, W.J. 1992. Protecting fish and wildlife habitat through an understanding of the minimum light requirements of subtropical-tropical seagrasses of the Southeastern United States and Caribbean Basis. Ph.D. dissertation, N.C. State University, Raleigh. 258 pp.

Kenworthy, W.J. 1993. The Distribution, Abundance, and Ecology of *Halophila johnsonii* Eiseman in the Lower Indian River, Florida. Final Report to the Office of Protected Resources. NMFS. Silver Spring, MD.

List of Subjects

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine Mammals, Transportation.

Dated: September 9, 1993.

Gary Matlock,

Acting Deputy Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, 50 CFR parts 222 and 227 are proposed to be amended as follows:

PART 222—ENDANGERED SPECIES

1. The authority citation for part 222 is revised to read as follows:

Authority: 16 U.S.C. 1531 et seq.

2. The heading for part 222 is revised to read as set forth above.

§§ 222.51–222.59 (Subpart F) [Reserved]

3. Part 222 is amended by adding a new subpart F, *Endangered Marine Plants*, consisting of reserved §§ 222.51–222.59.

PART 227—THREATENED SPECIES

4. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 et seq.

5. The heading for part 227 is revised to read as set forth above.

6. Section 227.4 is amended by adding paragraph (i) to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(i) Johnson's seagrass (*Halophila johnsonii*).

7. Part 227 is amended by adding a new subpart E to read as follows:

* * * * *

Subpart E—Threatened Marine Plants

Sec.
227.81 Prohibitions.
227.82 Exceptions.

Subpart E—Threatened Marine Plants

§ 227.81 Prohibitions.

Except as provided in § 227.82, the prohibitions of section 9(a)(2) of the Act (16 U.S.C. 1538) relating to endangered plants apply to any species of plant enumerated in § 227.4.

§ 227.82 Exceptions.

The exceptions of section 10 of the Act (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, and the provisions of regulations issued under the Act relating to endangered species (such as 50 CFR part 22, subpart C—Endangered Fish or Wildlife Permits), also apply to threatened species of plants enumerated in § 227.4 of this part. This section supersedes other restrictions on the applicability of 50 CFR part 222, including, but not limited to, the restrictions specified in §§ 222.2(a) and 222.22(a). Any general provisions that may be issued for the protection of marine plants under part 222, subpart F shall apply to plants enumerated in § 227.4 of this part.

[FR Doc. 93–22508 Filed 9–14–93; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 177
Wednesday, September 15, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1944

RIN 0575-AB47

Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its Farm Labor Housing (LH) Loan and Grant Regulations. The proposed rule changes the basic rules of the Labor Housing Regulations concerning packaging fees. These revisions are proposed to initiate the use of loan and grant funds to defray costs in packaging the development of an application for a nonprofit group or a public body.

DATES: Comments must be submitted on or before November 15, 1993.

ADDRESSES: Submit written comments in duplicate to the Chief, Regulation Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this publication will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mary Fox, Loan Specialist, Special Authorities Branch, Multi-Family Housing Processing Division, Farmers Home Administration, USDA, room 5337—South Agriculture Building, Washington, DC 20250, telephone (202) 720–1606.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rulemaking action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost of prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States enterprises to compete with foreign based enterprises in domestic or import markets. This action is not expected to substantially affect budget outlay or affect more than one Agency or be controversial. The net result is to provide better service to rural communities and foster eligible applicant's greater use of the LH program.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0045 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This proposed rule does not revise or impose any new information collection requirement from those approved by OMB.

Civil Justice Reform

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order.

Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900 subpart B must be exhausted prior to filing suit.

Background

The Housing and Community Development Act of 1987 amended Section 501 of the Housing Act of 1949 to allow the Secretary to require that packaging fees for public and private nonprofit applicant organizations be included as an authorized development cost.

This rule change clarifies the use and amount of loan/grant funds for the payment of packaging assistance. The assistance is limited to reimbursement of packaging services provided by in-house personnel or by another nonprofit organization with experience in housing or community development.

Consistent with sound business practices, payments for assistance from the proceeds of loan/grant funds will be limited and documented in a services contract. If the services are performed by in-house personnel, there should be an FmHA approved plan for their assistance and documentation of when that assistance was performed.

It should be noted that these fees are paid only when the labor housing application is funded and the loan and/or grant agreement executed.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under Number 10.405, Farm Labor Housing Loans and Grants, and as provided for in 7 CFR, part 1940 subpart J, is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

List of Subjects in 7 CFR Part 1944

Farm labor housing, Grant programs—Housing and community development, Loan programs—Housing and community development, Migrant labor, Nonprofit organizations, Public housing, Rent subsidies, and Rural housing.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

2. Section 1944.158 is amended by revising paragraph (i) to read as follows:

§ 1944.158 Loan and grant purposes.

* * * * *

(i) Provide loan/grant funds to enable a nonprofit group or public body to pay fees for technical assistance received from a nonprofit organization, with housing and/or community development experience, to assist the nonprofit applicant entity in the formation or incorporation and development and packaging of its loan/grant docket and project, as well as any legal, architectural, engineering, technical, and professional fees incurred in the formation or incorporation of the nonprofit applicant entity.

(1) Fees can also be provided to pay the nonprofit applicant entity for packaging of its own loan/grant docket and project, but not to include the formation and incorporation of the entity.

(2) The amount to be paid for packaging the docket and project should not exceed 1% of the FmHA total loan and/or grant or whatever is reasonable and typical for the area.

(3) Related project costs as listed in § 1944.169 of this subpart are not included as a part of the fee for packaging of the loan/grant docket and project.

* * * * *

Dated: June 30, 1993.

Bob Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 93–22496 Filed 9–14–93; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AGL–13]

Proposed Alteration of Jet Route J–34

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would change the description of Jet Route J–34 located between the Badger, WI, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC), the Grand Rapids, MI, Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME), and the Carleton, MI, VORTAC. The proposed change to the description would remove the reference to the radials from the navigational aids (NAVAIDS) and allow aircraft to navigate direct. This proposed rule would not affect the current alignment of the jet route. This action would improve navigation and simplify routings.

DATES: Comments must be received on or before November 8, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL–500, Docket No. 93–AGL–13, Federal Aviation Administration, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AGL–13." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of J–34 by removing the reference to the radials from the NAVAIDS and allow aircraft to navigate direct. Amending the description of J–34 would improve navigation by designating the Grand Rapids, MI, (GRR) VOR/DME as the turning point for aircraft transiting over the Badger, WI, (BAE) VORTAC to deviate south to the Carleton, MI, (CRL) VORTAC. This action would simplify the routings along that segment of the jet route. This proposed rule would not alter the current alignment of the jet route. Jet routes are published in paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The jet route listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–34 [Revised]

From Hoquiam, WA, via Olympia, WA; Moses Lake, WA; Helena, MT; Billings, MT; Dupree, SD; Redwood Falls, MN; Nodine, MN; Dells, WI; Badger, WI; Grand Rapids, MI; Carleton, MI; Dryer, OH; Bellaire, OH; INT Bellaire 133° and Kessel, WV, 276° radials; Kessel; to INT Kessel 097° and Armel, VA, 292° radials.

* * * * *

Issued in Washington, DC, on September 7, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–22547 Filed 9–14–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–000]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

September 9, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of informal conference.

SUMMARY: The Federal Energy Regulatory Commission (Commission) will be holding an informal conference pursuant to the Notice of Informal Conferences issued on March 10, 1993 (58 FR 14530, March 18, 1993). The purpose of the conference is to receive a briefing from Working Group 5 on its progress toward a consensus approach to common transaction point codes.

DATES: Thursday, September 23, 1993, beginning at 1:30 p.m.

ADDRESSES: Federal Energy Regulatory Commission, Hearing Room 1, 810 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1283.

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0666.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Take notice that Commission staff will convene an informal conference on Thursday, September 23, 1993. The purpose of the conference is to receive a briefing from Working Group 5 on its progress toward a consensus approach to common transaction point codes.

The conference will begin at 1:30 p.m. on September 23, 1993. It will be held at: Federal Energy Regulatory Commission, Hearing Room 1, 810 First Street, NE., Washington, DC 20426.

All interested persons are invited to attend. For additional information contact Marvin Rosenberg at (202) 208–1283 or Brooks Carter at (202) 208–0666.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22484 Filed 9–14–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 840, 842, and 843

Availability of Petition To Initiate Rulemaking; Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; State Inspection and Enforcement Authority, Federal Inspection and Enforcement Authority

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Extension of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior is extending until October 18, 1993, the public comment period on a petition for rulemaking submitted by the Interstate Mining Compact Commission. This will provide more time for all interested parties to analyze the complex and significant issues presented in this petition and better provide meaningful comments.

DATES: *Written Comments:* OSM will accept written comments on the petition until 5 p.m. Eastern Standard Time on October 18, 1993.

ADDRESSES: *Written Comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol St., Washington, DC; or mail to the Office of Surface Mining

Reclamation and Enforcement, Administrative Record, 1951 Constitution Avenue, NW., room 660 NC, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Daniel Stocker, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240: Telephone: 202–208–2550.

SUPPLEMENTARY INFORMATION: On August 17, 1993 (58 FR 43494), OSM published in the **Federal Register** a petition for rulemaking submitted by the Interstate Mining Compact Commission requesting that Federal regulations at 30 CFR parts 840, 842 and 843 be amended to address the oversight role of OSM in States where a regulatory program approved by the Secretary of the Interior is in effect. The petition focuses on the treatment of citizen complaints alleging violations at surface coal mining and reclamation operations and on citizen complaints alleging that a State permitting decision does not conform to applicable regulatory program requirements.

The comment period for the petition was originally scheduled to close on September 16, 1993. However, an extension was requested in order to provide more time in which to comment on the petition. That extension request has been granted for an additional 30 days. Comments will not be accepted until 5 p.m. Eastern Standard Time on October 18, 1993.

Dated: September 10, 1993.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 93–22518 Filed 9–14–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Parts 913, 917, and 935

Illinois, Kentucky, and Ohio Permanent Regulatory Programs; Revegetation Responsibility Period; Augmentative Practices

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period on proposed amendments; proposed clarification of OSM policy.

SUMMARY: In the past, OSM has either disapproved or taken no action on proposed State program amendment provisions that would have specified that areas reclaimed following the removal of siltation structures and associated diversions and roads are not subject to a revegetation responsibility period and bond liability period separate from that of the permit area or increment thereof served by such facilities. However, in response to State program amendments recently proposed by Illinois, Kentucky, and Ohio, and concerns raised by other parties, OSM is announcing its intention to revise its policy so as to allow the approval of State program amendments of this nature. OSM is now seeking comment on this proposed policy clarification and, more specifically, whether the three State program amendment proposals now under consideration may be approved as being consistent with the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) and its implementing regulations.

This document sets forth the times and locations that the proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on October 15, 1993. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on October 12, 1993 at a location to be determined after evaluation of the requests received. Requests to present oral testimony at the hearing must be received on or before 4 p.m. local time on September 27, 1993.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand-delivered to one of the OSM Field Offices listed below or to W. Hord Tipton, Acting Director, Office of Surface Mining Reclamation and Enforcement, room 258, 1951 Constitution Avenue, NW., Washington, DC 20240.

Copies of the State programs, the proposed amendments, and all written comments received in response to this document will be available for review at the following addresses, Monday through Friday, 9 a.m. to 4 p.m. local time, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendments by contacting the appropriate OSM Field Office(s) listed below.

Illinois

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 511 West Capitol Avenue, Suite 202, Springfield, Illinois 62704, Telephone: 217–492–4495

Illinois Department of Mines and Minerals, 300 West Jefferson Street, Suite 300, Springfield, Illinois 62791, Telephone: 217–782–4970

Kentucky

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503–2922, Telephone: 606–233–2894

Kentucky Department for Surface Mining Reclamation and Enforcement, #2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: 502–564–6940

Ohio

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: 614–866–0578

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: 614–265–6675

FOR FURTHER INFORMATION CONTACT: Dennis Rice, Branch of State Programs, 202–208–2829.

SUPPLEMENTARY INFORMATION:

I. Background on State Programs
II. Discussion of Proposed Amendments
III. Discussion of Proposed OSM Policy
IV. Public Comment Procedures
V. Procedural Determinations

I. Background on State Programs

A. Illinois

The Secretary of the Interior conditionally approved the Illinois program on June 1, 1982. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.11, 913.15, 913.16, and 913.17.

B. Kentucky

The Secretary of the Interior conditionally approved the Kentucky regulatory program effective May 18, 1982. Background information on the permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

C. Ohio

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of Proposed Amendments

A. Illinois

By letter dated June 22, 1992 (Administrative Record No. IL–1192), Illinois submitted a proposed program amendment consisting of revisions to a number of its approved regulations. OSM announced receipt of the proposed amendment in the August 18, 1992, **Federal Register** (57 FR 37127), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on September 17, 1992. Since no one requested an opportunity to testify at a public hearing, the hearing scheduled for September 14, 1992, was cancelled.

By letter dated April 27, 1993 (Administrative Record No. IL–1207), Illinois submitted revisions to its proposed amendment in response to concerns raised by OSM in letters dated September 2, 1992, and October 2, 1992 (Administrative Record Nos. IL–1204 and IL–1205, respectively), and in response to comments received from other governmental agencies and individuals. OSM announced receipt of the revised amendment in the May 17, 1993, **Federal Register** (58 FR 28804), and, in the same notice, reopened the public comment period and again provided an opportunity for a public hearing. The public comment period closed on June 16, 1993. As with the previous submittal, no one requested an opportunity to testify at a public hearing; therefore, the hearing scheduled for June 11, 1993, was cancelled.

The proposed amendment includes revisions to §§ 1816.116(a)(2)(C) and 1816.116(a)(2)(C) of title 62 of the Illinois Administrative Code (IAC) to further define normal husbandry practices and other activities that will not restart the revegetation responsibility period. The amendment also includes a document explaining how the State intends to interpret and implement these rules. This policy document specifies that Illinois will consider the reseeding of areas from which temporary features such as sedimentation ponds, roads, and diversions have been removed after vegetation is established on the surrounding area to be nonaugmentative. In this notice, OSM is reopening the comment period only on this provision of the proposed policy document with regard to removal of sedimentation ponds and associated structures such as roads and diversions.

B. Kentucky

This amendment consists of proposed revisions to section 1(7) of the Kentucky Administrative Regulations (KAR) at 405 KAR 16:200 and 18:200. By letter dated June 28, 1991 (Administrative Record No. KY–1059), Kentucky submitted these revisions as part of a larger rulemaking. OSM announced receipt of the proposed amendment in the July 22, 1991, **Federal Register** (56 FR 33398), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on August 21, 1991. Since no one requested an opportunity to testify at a public hearing, no hearing was held.

By letter dated January 22, 1992 (Administrative Record No. KY–1107), Kentucky revised the proposed amendment in response to changes made during its promulgation process. OSM announced receipt of the revised amendment in the April 13, 1992, **Federal Register** (57 FR 12775), and, in the same notice, reopened the public comment period and again provided an opportunity for a public hearing. The public comment period closed on May 13, 1992. As with the previous submittal, no one requested an opportunity to testify at a public hearing; therefore, no hearing was held.

OSM subsequently announced its decision on most provisions of the proposed amendment in the June 9, 1993 **Federal Register** (58 FR 32283). However, in the same notice, OSM stated at 58 FR 32285 that it was deferring a decision on section 1(7)(b) of 405 KAR 16:200 and 18:200 until additional opportunity for public comment was provided in a separate **Federal Register** notice. The document being published today satisfies this commitment.

Like the corresponding Federal regulations at 30 CFR 816/817.116 (c)(1) and (c)(2), proposed section 1(7) of 405 KAR 16:200 and 18:200 requires that the revegetation responsibility period begin after the last augmented seeking, fertilizing, irrigating or other work and continue for a minimum of 5 years. However, proposed subsection 1(7)(b) would exempt haul roads, areas from which sedimentation ponds and associated diversions have been removed, and disposal areas for accumulated sediment and sedimentation pond embankment material from the full revegetation responsibility period, provided vegetation established on all these areas has been in place at least 2 years before final bond release.

In this notice, OSM is reopening the comment period only for the provisions discussed above; i.e., 405 KAR 16:200 section 1(7)(b) and 18:200 section 1(7)(b) with regard to areas from which sedimentation ponds and associated areas have been removed.

C. Ohio

By letter dated February 11, 1993 (Administrative Record No. OH–1831), Ohio submitted proposed Program Amendment Number 61 concerning augmentative practices. OSM announced receipt of this amendment in the April 1, 1993, **Federal Register** (58 FR 17173) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on May 3, 1993. Since no one requested an opportunity to provide testimony at a public hearing, the scheduled hearing was cancelled.

By letter dated June 11, 1993 (Administrative Record No. OH–1888), Ohio submitted additional revisions to this proposed amendment. OSM announced receipt of the revised amendment in the July 6, 1993, **Federal Register** (58 FR 36177), and, in the same notice, reopened the public comment period and again provided an opportunity for a public hearing. The public comment period closed on July 21, 1993.

In this amendment, Ohio proposes to revise section 1501:13–9–15(F) of the Ohio Administrative Code (OAC) to clarify when replanting will not be considered an augmentative practice and will not restart the revegetation responsibility period. In paragraph (F)(6), Ohio is proposing to exempt areas reseeded following the removal of sedimentation control structures and areas disturbed to facilitate removal of these structures. Paragraph (F)(7) would require that permanent vegetation on all areas initially planted under paragraph (F)(6) be seeded a minimum of 12 months prior to submission of a request for phase III bond release.

In this notice, OSM is reopening the comment period only for the provisions discussed above; i.e., OAC 1501:13–9–15(F) (6) and (7) as originally submitted on February 11, 1993, and revised on June 11, 1993 with regard to removal of sedimentation ponds and associated areas.

III. Discussion of Proposed OSM Policy

On May 8, 1984 (finding 3.b., 49 FR 19472–73), OSM disapproved a proposed Missouri amendment somewhat similar to the Illinois, Kentucky, and Ohio amendments now under consideration. The proposed Missouri amendment would have clarified that roads, sediment ponds, diversions and small stockpiles of soil and overburden associated with such areas where reclamation was delayed would not be subject to a revegetation responsibility period distinct from that applicable to the permit area as a whole. In the finding disapproving this amendment, OSM stated that the Federal rules on reclamation of roads and siltation structures require that the areas occupied by such structures be reclaimed in accordance with 30 CFR 816.111 through 816.116, and that these rules provide no exceptions for small areas. "Thus, it would be inconsistent with the Act to allow areas as discrete as sediment ponds and roads to be considered part of larger areas for purposes of the liability period although the initial seeding, fertilization and irrigation of those areas will be delayed as much as three years." 49 FR 19473.

OSM seeks comment on whether this finding represents the best interpretation of the Act and regulations. Specifically, OSM is interested in whether Congress, in enacting section 515(b)(20) of SMCRA, intended to restart the revegetation responsibility period every time a small portion of the permit area requires reseeding or replanting. Section 515(b)(2) provides that the revegetation responsibility period for surface coal mining and reclamation operations shall commence "after the last year of augmented seeding, fertilizing, irrigation, or other work" needed to assure revegetation success. In the absence of any indication of Congressional intent in the legislative history, the Director is considering interpreting this requirement as applying to the increment or permit area as a whole, not individually to those lands within that area upon which revegetation is delayed solely because of their use in support of the reclamation effort of the planted area. Such an interpretation would not be entirely new. As implied in the preamble discussion of 30 CFR 816.46(b)(5), which prohibits the removal of ponds or other siltation structures until two years after the last augmented seeding, planting of the sites from which such structures are removed need not itself be considered an augmented seeding necessitating an extended or separate liability period (48 FR 44036–39, September 26, 1983).

One primary purpose of the revegetation responsibility period is to ensure that the mined area has been reclaimed to a condition capable of supporting the desired permanent vegetation. Achievement of this purpose will not be adversely affected by the proposed amendments since, in almost all cases, OSM expects that the lands involved will be relatively small in size and either widely dispersed or narrowly linear in distribution. Also, the delay in establishing revegetation on many of these sites is due not to reclamation deficiencies or the facilitation of mining, but rather to the regulatory requirement that ponds and diversions be retained and maintained to control runoff from the planted area until the revegetation is sufficiently established to render such structures unnecessary for the protection of water quality.

In addition, the areas affected likely would be no larger than those which could be reseeded (without restarting the revegetation responsibility period) in the course of performing normal husbandry practices, as that term is defined in 30 CFR 816.116(c)(4) and 817.116(c)(4) and explained in the preambles to those rules (53 FR 34636, 34641; September 7, 1988; 52 FR 28012, 28016; July 27, 1987). Areas this small would have a negligible impact on any evaluation of the permit area as a whole. Most importantly, the proposed interpretation is unlikely to adversely affect the regulatory authority's ability to make a statistically valid determination as to whether a diverse, effective permanent vegetative cover has been successfully established in accordance with the appropriate revegetation success standards. From a practical standpoint, it is usually difficult to identify precisely where such areas are located in the field once revegetation is established in accordance with the approved reclamation plan.

However, nothing in this interpretation of section 515(b)(20) of SMCRA should be construed as exempting such lands from meeting the revegetation requirements of section 515(b)(19) of SMCRA prior to final bond release. As required by 30 CFR 816.46(b)(6) and 816.150(f)(6), when situation structures and roads are removed, the land on which they were located must be regraded and revegetated in accordance with the reclamation plan and the requirements of 30 CFR 816.111 through 816.116.

The State program amendments now under consideration for OSM approval under this policy change would allow the revegetation responsibility period for areas initially planted following the removal of sedimentation ponds and associated structures and facilities which have been retained for a portion of the revegetation responsibility period to support reclamation of and/or provide access to an otherwise revegetated site to coincide with the revegetation responsibility period for the remainder of the increment or permit area.

OSM is now seeking comment on whether State program amendment provisions, which would specify that areas reclaimed following the removal of situation structures and associated diversions and roads are not subject to a revegetation responsibility period and bond liability period separate from that of the permit area or increment thereof served by such facilities, can be approved through the State program amendment process as being no less stringent then SMCRA and no less effective than the Federal regulations, or whether national rulemaking is necessary. Commenters are encouraged to address each category (sedimentation ponds, roads, and diversions) separately, provide input on any other classes of disturbances, structures or facilities which may be treated similarly, and indicate whether OSM should place limits on the extent to which these categories may be treated in this fashion or whether such determinations should be left to the discretion of the regulatory authority in keeping with section 101(f) of SMCRA, which vests the States with the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface coal mining and reclamation operations.

IV. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comment on whether the identified provisions of the amendments proposed by Illinois, Kentucky, and Ohio, as discussed in Parts II and III above, satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the pertinent State programs. OSM is also seeking comment on the proposed policy change discussed in Part III above. Commenters should be specific as to whether their

comments pertain to the general policy change or a particular State program amendment.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the OSM offices listed under **ADDRESSES** will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing.

Persons wishing to comment at a public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on September 27, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

If a public hearing is held, it will continue until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM offices listed under **ADDRESSES** by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or the appropriate Field Office Director. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

V. Procedural Determinations

Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the review required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this proposed rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this proposed rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 et seq.

Regulatory Flexibility Act

The Department of the Interior has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittals which are the subject of this proposed rule are based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this proposed rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this proposed rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Parts 913, 917, and 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 9, 1993

W. Hord Tipton

Acting Director.

[FR Doc. 93-22519 Filed 9-14-93; 8:45 am]

BILLING CODE 4310-05-M

National Park Service

36 CFR Part 7

RIN 1024-AB82

Commercial Traffic on U.S. Highway 191 Through Yellowstone National Park

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking is intended to clearly define the management and regulation of commercial traffic on U.S. Highway 191 through Yellowstone National Park. U.S. Highway 191 has historically been accorded treatment different from other roads in the park, and as a federally funded highway it is maintained within Yellowstone by the State of Montana under the provisions of a Special Use Permit. The proposed rulemaking will, in part, exempt the section of U.S. Highway 191 within Yellowstone National Park from the general prohibition on the use of the National Park System roads by commercial vehicles. It will delete the special regulation establishing the speed limit on U.S. Highway 191 within Yellowstone, which is no longer necessary since the authority of the Superintendent to designate speed limits upon all park roads is currently established in general regulation 36 CFR 4.21(b). The designated speed limit on U.S. Highway 191 will continue to be 55 m.p.h. unless further information develops in the future that strongly indicates that a lower speed limit is in the best interest of public safety. The special regulation establishing the current fee schedule for commercial traffic within Yellowstone will be eliminated and the Superintendent will be provided the discretion to require

permits for commercial vehicles traveling within or through the park, to establish terms and conditions of such permits, and to establish and adjust fees for such use annually based on current administrative costs. Under existing conditions, there is no intention to require a permit for routine commercial traffic traveling on U.S. Highway 191 through the park. The proposed rule will prohibit the transportation of hazardous materials on park roads, including U.S. Highway 191 within Yellowstone, except in limited circumstances.

DATES: Written comments, suggestions, or objections will be accepted until November 15, 1993.

ADDRESSES: Comments should be directed to: Superintendent, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, Wyoming 82190.

FOR FURTHER INFORMATION CONTACT: Dan R. Sholly, Chief Ranger, P.O. Box 168, Yellowstone National Park, Wyoming 82190, Telephone: 307–344–2101.

SUPPLEMENTARY INFORMATION:

Background

These regulations are proposed by the National Park Service to define the management and regulation of commercial traffic on U.S. Highway 191 within Yellowstone National Park. U.S. Highway 191 passes through the northwest corner of Yellowstone National Park for approximately twenty-two miles. It is a federally funded highway and is maintained within Yellowstone by the State of Montana under the provisions of a Special Use Permit issued by the National Park Service (Yellowstone National Park).

The wagon road which eventually became U.S. Highway 191 was constructed through Yellowstone in 1910 with the approval of the Secretary of the Interior at the sole expense of Gallatin County, Montana. The road was constructed to facilitate travel and commerce between residents in the southern portion of Gallatin County and the county seat located in Bozeman, Montana. Park records indicate that on its completion, the seventeen miles of road within the park were excluded from the existing prohibition against automobile travel within the park. Although automobile travel was not allowed within the park until 1915, the following memorandum of May 31, 1913, states:

> Automobiles will be allowed to travel over the wagon road between Gallatin Station, Yellowstone National Park, and the town of Yellowstone [West Yellowstone], Montana, of which seventeen miles lie wholly within the park.

The Superintendent's annual report for 1913 and 1914 states, in part:

> This is the only road in the park on which motor propelled vehicles are allowed and it is not a part of the regular tourist route.

This distinction between U.S. Highway 191 and the remainder of the park roads was further clarified in the early regulations governing automobile traffic in the park, which first appeared in 1916 and contained the following reference to travel on U.S. 191:

> 2. These regulations and schedules do not apply to automobiles passing over the county road in the northwest corner of the park en route to the town of Yellowstone [West Yellowstone], Montana.

The intent to exempt U.S. Highway 191 from the general regulations related to commercial vehicles which govern other park roads is indicated in § 5.4 of title 36 of the Code of Federal Regulations chapter 1 (1992) which states that the commercial transportation of passengers by motor vehicles except as authorized under a contract or permit from the Secretary or his authorized representative is prohibited in * * * Yellowstone (prohibition does not apply to non-scheduled tours as defined in § 7.13 of this chapter, nor to that portion of U.S. Highway 191 traversing the northwest corner of the park) * * *

The use of U.S. Highway 191 has since expanded to include interstate travel, both private and commercial, between Montana and Idaho, and it serves as a link between major east/west and north/south interstate highway systems. However, local traffic, both commercial and non-commercial, remains the predominate use of U.S. Highway 191.

From its inception, the purpose, historical use, and management of U.S. Highway 191 indicate that the highway was constructed, regulated, and maintained as a connecting route between Bozeman and West Yellowstone, Montana, for the principal purposes of commerce and convenience and only incidentally for access to Yellowstone National Park. A small portion of the commercial vehicle traffic between Bozeman and West Yellowstone, Montana, involves the transportation of hazardous materials, primarily gasoline. It is the intent of the National Park Service to continue to allow such transportation when it is necessary for access to lands within or adjacent to the park including West Yellowstone, or in emergency situations as determined by the park Superintendent.

Under the proposed regulation, the transportation of hazardous materials on park roads, including U.S. Highway 191 within the park boundary, will be prohibited. However, the National Park Service may continue to allow such transportation on park roads when it is necessary to provide access to otherwise inaccessible lands within or contiguous to the park, or in emergency situations as determined by the park Superintendent.

In response to significant public interest in the management and regulation of commercial traffic on U.S. Highway 191 within Yellowstone National Park, the park conducted three public meetings, as follows:

September 4, 1987—Big Sky, Montana
September 29, 1987—West Yellowstone, Montana
September 30, 1987—Bozeman, Montana

Following the public meetings, the record was left open for written comments until October 15, 1987. Public input was also received during review of two environmental assessments prepared for regulation of commercial traffic. Those reviews occurred in March, 1990 and in October and November, 1991. Input received during the public meetings, comments received thereafter, and continued National Park Service review of the issues are reflected in this proposed rule.

Existing Conditions

All commercial traffic is currently allowed on U.S. Highway 191 within Yellowstone National Park.

According to statistics provided by the Montana Department of Highways, the average daily traffic (ADT) count by section on U.S. Highway 191 at Milemarker 31, the northern boundary of Yellowstone National Park, has increased from 995 vehicles in 1981 to 2060 vehicles in 1991. During this eleven year period, the ADT count for commercial traffic at the same location has increased from 165 vehicles in 1981 to 407 vehicles in 1991. During the eleven year period, commercial traffic has comprised 17% of total traffic on U.S. Highway 191 through the park.

By comparison, statistics provided by the National Park Service indicate that annual park visitation has increased from 2.54 million visitors in 1981 to 3.19 million visitors in 1991. The parkwide ADT count on all park roads combined, excluding U.S. Highway 191, has increased from 2256 vehicles in 1981 to 2765 vehicles in 1991. Non-recreational traffic, with includes trades people, delivery trucks, and non-NPS

government officials having business in the park, and Cooke City, Montana residents and related commercial vehicles that have "pass-through" status, has comprised 4% of the total traffic during this same period.

Two studies (Anderson and Anderson, 1986; and National Park Service, 1988) indicate that "hazardous cargos" (U.S. Department of Transportation definition) comprise 7–14% of the commercial traffic, or 1–2% of the total traffic, on U.S. Highway 191 within Yellowstone National Park. The majority of this traffic consists of fuel deliveries between Bozeman, Montana, and Idaho Falls, Idaho.

Conclusion

Based on recent available data, the impact of commercial traffic on U.S. Highway 191 within Yellowstone National Park is not sufficient to compel the National Park Service to preclude commercial traffic on U.S. Highway 191. The National Park Service recognizes the potential hazard posed by the transportation of hazardous materials through the park and will take actions to prohibit such cargoes. The proposed regulation would ban all commercial vehicles carrying hazardous materials that require placarding or marine pollutants that require marking according to U.S. Department of Transportation regulations from traveling U.S. Highway 191 through Yellowstone National Park unless such transportation is necessary for access to lands within or adjacent to the park, where access is not otherwise available, or in emergency situations as determined by the park Superintendent.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this proposed regulation to the address noted at the beginning of this rulemaking.

Drafting Information

The principal authors of this proposed rulemaking are Assistant Chief Ranger Michael B. Murray, and West District Ranger Robert Seibert, Yellowstone National Park.

Paperwork Reduction Act

The collections of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0026. The information will be used to document and authorize special uses of public land that are otherwise restricted. Permits are necessary to determine whether a proposed activity is authorized by law and to evaluate the potential effects on park resources. Response is required to obtain a benefit in accordance with 36 CFR 7.13.

Public reporting burden for this information is estimated to average one-half hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, National Park Service, 800 N. Capitol Street, Washington, DC 20002; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Compliance With Other Laws

The National Park Service prepared two environmental assessments for regulation of commercial traffic on U.S. Highway 191. The first was released for public review in 1990. Since that assessment did not fully analyze alternative routes, impacts to commodity distribution, and other economic factors, a revised environmental assessment was prepared. The latter assessment was made available for public review October 16, 1991 through December 1, 1991. On July 31, 1992, the National Park Service signed a Finding of No Significant Impact (FONSI) for the proposal, which would allow commercial traffic on U.S. Highway 191, but prohibit the transportation of hazardous materials requiring placarding through Yellowstone National Park. Copies of these Environmental Assessments are available from the Chief Ranger's Office at the above address.

The Service has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193; February 19, 1981).

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601*et seq.*) which became effective January 1, 1981, the Service has determined that these proposed regulations will not have a significant economic effect on a substantial number of small entities, nor will they require the preparation of a regulatory analysis. The proposed regulations would impose no significant costs on any class or group of small entities. This conclusion is based on the fact that no existing uses are being curtailed, except for the proposed prohibition on a very small percentage of vehicles which are carrying hazardous materials.

The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Section 7.13 is amended revising paragraph (a), removing and reserving paragraph (c), and revising the heading of paragraph (f) to read as follows:

§ 7.13 Yellowstone National Park.

(a) *Commercial vehicles.* (1) Notwithstanding the prohibition of commercial vehicles set forth in § 5.6 of this chapter, commercial vehicles are allowed to operate on U.S. Highway 191 in accordance with the provisions of this section.

(2) The Superintendent may require a permit and establish terms and conditions in accordance with § 1.6 of this Chapter for the operation of a commercial vehicle on a park road. The Superintendent may charge a fee for permits in accordance with a fee schedule established annually.

(3) The transporting on park roads, including U.S. Highway 191, of any substance or combination of substances, including any hazardous substance, hazardous material, or hazardous waste that requires placarding or any marine pollutant that requires marking, as defined in 49 CFR subtitle B, is prohibited; provided, however, that the Superintendent may issue permits for the transportation of such substance or combination of substances, including hazardous waste, in emergencies, and shall issue permits when such transportation is necessary for access to lands within or adjacent to the park area to which access is otherwise not available.

(4) The operator of a motor vehicle transporting any hazardous substance,

hazardous material, hazardous waste, or marine pollutant in accordance with a permit issued under this section is not relieved in any manner from complying with all applicable regulations in 49 CFR subtitle B, or with any other State or Federal laws and regulations applicable to the transportation of any hazardous substance, hazardous material, hazardous waste, or marine pollutant.

(5) Operating without, or violating a term or condition of, a permit issued in accordance with this section is prohibited. In addition, violating a term or condition of a permit may result in the suspension or revocation of the permit.

* * * * *

(c) [Removed and Reserved]

* * * * *

(f) *Commercial passenger-carrying vehicles.* * * *

Dated: July 27, 1993.

Herbert S. Cables, Jr.,

Acting Director, National Park Service.

[FR Doc. 93–22480 Filed 9–14–93; 8:45 am]

BILLING CODE 4310–70–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT9–1–5490 & MT13–1–5693; FRL–4729–9]

Clean Air Act Approval and Promulgation of PM_{10} Implementation Plan for Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes full approval of the State implementation plan (SIP) submitted by the State of Montana to achieve attainment of the national ambient air quality (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). The SIP was submitted by Montana to satisfy certain federal requirements for an approvable nonattainment area PM_{10} SIP for Missoula. EPA is also proposing approval of the Missoula City-County Air Pollution Control Program, except several rules regarding emergency procedures, permitting, open burning, wood-waste burners, new source performance standards, hazardous air pollutant standards, and variances. EPA will propose separate action on these rules when the State fulfills its commitments. If the State fails to fulfill its commitments, EPA will take appropriate action. Further, EPA is declining to take action on Missoula's odor provisions.

DATES: Comments on this proposed action must be received in writing by October 15, 1993.

ADDRESSES: Comments should be addressed to Amy Platt, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405; and Montana Department of Health and Environmental Sciences, Air Quality Bureau, Cogswell Building, Helena, Montana 59620–0901.

FOR FURTHER INFORMATION CONTACT: Amy Platt at (303) 293–1769.

SUPPLEMENTARY INFORMATION:

I. Background

The Missoula, Montana area was designated nonattainment for PM_{10} and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (Nov. 6, 1991); 40 CFR 81.327 (Missoula and vicinity). The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of part D, title I of the Act.[2] The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM_{10} nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this proposal and the supporting rationale. In this rulemaking action on the Montana moderate PM_{10} SIP for the Missoula nonattainment area, EPA is proposing to apply its interpretations considering the specific factual issues presented. Thus, EPA will consider any timely submitted comments before taking final action on this proposal.

Those States containing initial moderate PM_{10} nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modelling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM_{10} nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM_{10} by June 30, 1992 (see section 189(a)). Such States also must submit contingency measures by November 15, 1993 that become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM_{10} NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13543–44.

II. Today's Action

The Governor of Montana submitted the Missoula PM_{10} SIP on June 4, 1992, and requested that EPA take action on the June 4, 1992 submittal, together with the August 20, 1991 submittal (described below) as the entire Missoula PM_{10} SIP. Except as noted below, EPA is proposing approval of the Missoula City-County Air Pollution Control Program as adopted by the State of

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401 *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM_{10} nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

Montana on June 28, 1991 and submitted to EPA by Montana's Governor on August 20, 1991, with amendments submitted by the Governor in the Missoula PM_{10} SIP on June 4, 1992. EPA is proposing approval of the Missoula City-County Air Pollution Control Program regulations except the following provisions (as explained below): Chapter IX—Subchapter 4, Emergency Procedures; Subchapter 11, Permit, Construction & Operation of Air Contaminant Sources; Subchapter 13, Open Burning; Subchapter 14, Rule 1407, Wood-Waste Burners, Rule 1423, Standard of Performance for New Stationary Sources (NSPS), and Rule 1424, Emission Standards for Hazardous Air Pollutants (NESHAPs); and Chapter X, Variances.

To address deficiencies (except the variances issue) identified by EPA, the State took commitments through the public hearing process on November 23, 1992, and submitted the commitments to EPA as additional tasks to be completed to correct the deficiencies in the Missoula and statewide SIP (a more detailed discussion of these commitments can be found in the Technical Support Document (TSD) for this notice). None of the rules associated with these commitments has an impact on the attainment demonstration, credited control strategies in the Missoula PM_{10} SIP, or other federal Clean Air Act SIP requirements for the Missoula moderate PM_{10} nonattainment area due to EPA on November 15, 1991. Therefore, EPA will take separate action on these identified deficient subchapters of Chapter IX of the Missoula City-County Air Pollution Control Program when these commitments are fulfilled, and also will address the variances chapter at that time. If the State fails to fulfill its commitments, EPA will take appropriate action.

Further, EPA is declining to take action on Chapter IX, Subchapter 14: Rule 1427, Control of Odors in Ambient Air. These odor provisions do not have a reasonable connection to the NAAQS-related air quality goals of the Clean Air Act.

The remaining rules of the program are being proposed for approval in today's action as part of the PM_{10} SIP.

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–66). In today's action, EPA is proposing to grant approval of those elements of the Missoula PM_{10} plan that were due on November 15, 1991, and submitted by the State on June 4, 1992. EPA believes that the Missoula plan meets those applicable requirements of the Act.

Since the Missoula PM_{10} SIP was not submitted by November 15, 1991, as required, EPA made a finding of failure to submit pursuant to section 179 of the Act and notified the Governor in a letter dated December 16, 1991. See 57 FR 19906 (May 8, 1992). After the Missoula PM_{10} SIP was submitted on June 4, 1992, EPA found the submittal complete pursuant to section 110(k)(1) of the Act and notified the Governor accordingly in a letter dated December 11, 1992. This completeness determination corrected the State's failure and turned off the sanctions clock under section 179 of the Act.

A. Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[3] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see Section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1992). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

To entertain public comment on the implementation plan for Missoula, the State of Montana, after providing adequate notice, held a public hearing on June 28, 1991, for the local air pollution control program, and hearings were held on January 24, March 20, and November 23, 1992, to address the Missoula PM_{10} SIP. Following the public hearings, the local air pollution control plan and the Missoula PM_{10} SIP were adopted by the State. The submittal for the local air pollution control program was signed by the Governor on August 20, 1991, and received by EPA on August 26, 1991 as a proposed revision to the SIP. In a letter to the State dated December 4, 1991, EPA identified deficiencies with the local program. Some of these deficiencies were addressed with the Missoula PM_{10} SIP, which was submitted by the Governor to EPA on June 4, 1992. Commitments to correct outstanding deficiencies were signed by the Governor on November 30, 1992, and received by EPA on December 7, 1992. EPA believes it is appropriate to propose approval of this SIP even though deficiencies are still outstanding because the deficiencies do not affect the attainment demonstration, any of the control strategies adopted by the State, or other federal Clean Air Act SIP requirements for the Missoula moderate PM_{10} nonattainment area due to EPA on November 15, 1991. EPA will continue to track the State's progress in correcting the deficiencies to assure that they are completed. A detailed description of the Missoula City-County regulations and the deficiencies that EPA identified is contained in the TSD for this action.

The SIP revisions were reviewed by EPA to determine completeness in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. The submittals were found to be complete and letters dated December 4, 1991 and December 11, 1992 were forwarded to the Governor indicating the completeness of the submittals and the next steps to be taken in the review process. EPA proposes to approve the Montana PM_{10} SIP submittals for Missoula, as dated August 20, 1991 and June 4, 1992, and invites public comment on the action.

2. Accurate Emission Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emission inventory also should include a comprehensive, accurate, and current inventory of allowable emissions in the area. Because the submission of such inventories is necessary to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emission inventories must be received with the demonstration submission (see 57 FR 13539).

Missoula's base year emission inventory was developed for November 1986 through March 1987. This winter-spring time period was chosen because these months are traditionally when Missoula experiences the highest PM_{10} levels and exceedances of the 24-hour standard. The results were segregated into winter and spring emissions. For the winter period, area sources

[3] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

accounted for 91.6% of the PM_{10} emissions in the inventory area, with re-entrained road dust contributing 47.3% and residential wood burning contributing 44.3%. Louisiana-Pacific Corporation's particle board manufacturing facility, the largest point source located in the grid area, contributed 4.9%. For the spring period, re-entrained road dust accounted for 81.5% of the total emissions, residential wood burning contributed 15.5%, and the Louisiana-Pacific source contributed only 1.7%.

Although Stone Container Corporation is located outside the nonattainment area, the chemical mass balance study identified its recovery boilers as PM_{10} sources. The emission inventory indicated that Stone Container emits 4332.1 lbs. of PM_{10} per day.

EPA is proposing to approve the emission inventory because it is accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Act.[4] For further details see the TSD.

3. RACM (Including RACT)

As noted, the initial moderate PM_{10} nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–45 and 13560–61).

Five sources/source categories were identified as contributing to the PM_{10} nonattainment problem in Missoula. In the following table, an outline is presented on these sources/source categories, their control measures and associated emissions reduction credit in the 24-hour attainment and maintenance demonstrations, and effective dates.

Source	Control	PM_{10} emissions reduction	Effective
Re-entrained road dust.	Missoula County Rule 1401 (7):		6/28/91.
	Sanding & chip sealing standards and	36%	
	Street sweeping and flushing requirements	34%	
	Missoula County Rule 1401 (9)		3/20/92.
	Liquid de-icer requirements	85%	
	Combined controls	62% or 17,962 lbs/day	
Residential wood combustion.	Missoula County Rule 1428: Regulation for solid fuel burning devices.	(no credit taken)	6/28/91 with amendments effective 3/20/92.
Prescribed burning	Missoula County Rule 1310 (3): Regulation for prescribed wildland open burning.	(no credit taken)	6/28/91.
Industry	Permit modifications:		
	Reduced allowable PM_{10} emissions from Stone Container recovery boiler #5.	9% or 50.8 tpy fewer allowable PM_{10} emissions.	1/23/92.
	Reduced allowable PM_{10} emissions from Louisiana-Pacific particle board dryers.	72% or 274.4 tpy fewer allowable PM_{10} emissions.	1/23/92.
Motor vehicle exhaust	Federal tailpipe standards	10.9% (1988 through 1994 time period)	Ongoing due to fleet turnover.
		1.0% (1995 through 1997 time period)	

A more detailed discussion of the individual source contributions, their associated control measures (including available control technology) and an explanation of why certain available control measures were not implemented, can be found in the TSD. EPA has reviewed the State's documentation and concluded that it adequately justifies the control measures to be implemented. The implementation of Montana's PM_{10} nonattainment plan for Missoula will result in the attainment of the PM_{10} NAAQS by December 31, 1994. By this notice EPA is proposing to approve the Missoula PM_{10} plan's control strategies as satisfying the RACM, including RACT, requirement.

[4] EPA issued guidance on PM_{10} emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 PM_{10} SIP Development Guideline. The guidance provided in this document appears to be consistent with the revised Act.

4. Demonstration

As noted, the initial moderate PM_{10} nonattainment areas must submit a demonstration (including air quality modelling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or the State must show that attainment by December 31, 1994 is impracticable (see section 189(a)(1)(B) of the Act). The General Preamble sets out EPA's guidance on the use of modelling for PM_{10} moderate area attainment demonstrations (see 57 FR 13539). Montana conducted an attainment demonstration using receptor modelling (CμB) and rollback modelling analysis for Missoula. The 24-hour PM_{10} NAAQS is 150 micrograms/cubic meter (μg/m³), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 μg/m³ is equal to or less than one (see 40 CFR 50.6). The annual PM_{10} NAAQS is 50 μg/m³, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 μg/m³ (lid.)

The demonstration for Missoula indicates that the 24-hour PM_{10} NAAQS will be attained by 1995[5] at 142.1 μg/m³, and it is maintained in future years. Although the design concentration for the annual standard is below the NAAQS and an attainment demonstration was not necessary (i.e., Missoula is in attainment for the annual standard), the State never the less performed an attainment demonstration for the annual NAAQS. The

[5] The Clean Air Act calls for attainment by December 31, 1994. Section 188(c)(1). EPA interprets the State's demonstration as providing for attainment by January 1, 1995. EPA is proposing to approve the State's demonstration on the basis of the de minimis differential between the two dates. The State should promptly inform EPA if EPA has in any manner misinterpreted the date by which the State has demonstrated attainment in the Missoula nonattainment area.

demonstration indicated that the annual concentration is 45.3 μg/m³ by 1995, showing continued attainment of the annual PM_{10} NAAQS. The demonstration also showed that the PM_{10} NAAQS will be maintained in future years by predicting a 24-hour design concentration of 145.2 μg/m³, and an annual design concentration of 46.2 μg/m³ by 1998. The control strategies used to achieve these design concentrations are summarized in the section titled "RACM (including RACT)." For a more detailed description of the attainment demonstration and the control strategies used, see the TSD for this notice.

5. PM_{10} Precursors

The control requirements that are applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors, unless EPA determines such sources do not contribute significantly to PM_{10} levels over the NAAQS in that area (see section 189(e) of the Act). The General Preamble contains guidance addressing how EPA intends to implement section 189(e) (see 57 FR 13539–40 and 13541–42). An analysis of air quality and emissions data for the Missoula nonattainment area indicates that exceedances of the NAAQS are attributable chiefly to direct particulate emissions from re-entrained road dust and residential wood burning (i.e., area sources). Neither the emission inventory nor the CMB analysis for Missoula revealed any major stationary sources of PM_{10} precursors. Consequently, EPA is proposing to find that major sources of precursors of PM_{10} do not contribute significantly to PM_{10} levels in excess of the NAAQS. The consequences of this proposed finding are to exclude these sources from the applicability of PM_{10} nonattainment area control requirements. Further discussion of the analyses and supporting rationale for EPA's proposed finding are contained in the TSD accompanying this notice. Note that while EPA is proposing to make a general finding for this area, today's proposed finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. The EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Quantitative Milestones and Reasonable Further Progress

The PM_{10} nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). The State of Montana's PM_{10} SIP indicates that the Montana Department of Health and Environmental Sciences (MDHES) and the Missoula City-County Health Department (MCCHD) will submit to EPA a milestone report consistent with federal guidelines by this date. For the initial PM_{10} moderate nonattainment areas, the emissions reduction progress made between the SIP submittal (due date of November 15, 1991) and the attainment date of December 31, 1994 (46 days beyond the November 15, 1994 milestone date) will satisfy the first quantitative milestone. The de minimis timing differential makes it administratively impracticable to require separate milestone and attainment demonstrations. See generally 57 FR 13539.

To monitor the progress of the road dust control rules, a report will be completed on the type and amount of de-icing and sanding material applied, the number of applications of de-icing and sanding materials, the dates of application of each material, and where and when the street sweeping and flushing occurred during the winter season. The sanding material test results for the percent silt and durability also will be submitted.

All exceedances of the PM_{10} standard will be evaluated and a determination made as to the source of the exceedance. Changes in the air quality program to prevent further exceedances and a timetable for implementation will be developed. Any other EPA requirements for RFP reports will be incorporated as necessary.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions also must contain a program to provide for enforcement of control measures and other elements in the SIP (see section 110(a)(2)(C)).

The specific control measures contained in the SIP are addressed above in Section 3, "RACM (including RACT)." The Missoula air pollution control regulations, as included in the SIP, are legally enforceable by MCCHD. There are civil penalties, which increase with each violation, for noncompliance with the solid fuel burning device regulation. Violation of any other provision, regulation or rule enforced under the program results in a criminal offense punishable by a fine.

The Missoula City-County Air Pollution Control Program and the associated local regulations are also enforceable by the MDHES, if the MCCHD fails to administer the program. Since the program has been approved by the Montana Board of Health and Environmental Sciences (MBHES) in accordance with Section 75–2–301 of the Montana Clean Air Act and effectuated by a MBHES order, and since the MDHES can enforce MBHES orders, the MDHES has independent enforcement powers. Enforcement provisions are found in the Clean Air Act of Montana, Sections 75–2–401–429, Montana Code Annotated.

The emission limits for Louisiana-Pacific are enforceable by the MDHES through air quality permit #2303–M with a final modification date of March 20, 1992. Stone Container's emission limits are enforceable by the MDHES through air quality permit #2589–M with a final modification date of November 25, 1992. Section 75–2–401 of the Montana Clean Air Act allows the MDHES to seek civil penalties for a violation of a permit limitation. Administrative Rules of Montana (ARM) 16.8.1112 allows the MDHES to revoke a permit for a violation of a permit limitation. These regulations are contained in the ARM 16.8.101 through 16.8.1602 and violations of these rules are punishable by civil penalties in an amount up to $10,000 per day and criminal penalties in an amount up to $1,000 per day.

If a State relies on a local government for the implementation of any plan provision, then, according to section 110(a)(2)(E)(iii) of the Act, the State must provide necessary assurances that the State has responsibility for ensuring adequate implementation of such plan provision. A State would have responsibility to ensure adequate implementation when, for example, the State has the authority and resources to implement the provision and the local entity has failed to do so.

The Missoula City-County Air Pollution Control Program was established in accordance with the requirements of Section 75–2–301 of the Montana Clean Air Act, as amended (1991). A revised version of the air pollution control regulations was approved by the Missoula City-County

Air Pollution Control Board on April 24, 1991, and on June 28, 1991 the MBHES issued a board order approving these regulations. A stipulation between the MDHES and the Missoula City-County Air Pollution Control Board that delineates responsibilities and authorities between the MDHES and the local authorities was signed April 29, 1991. The regulations, board order, and stipulation were submitted to EPA as a modification to the Montana SIP.

The State also submitted a State Attorney General's opinion interpreting the authority of the MDHES to enforce any state and local air quality provisions if a local air quality program fails to do so. In practice, the MBHES issues a board order when it approves a local program or amendments to a program. Since the Montana Clean Air Act authorizes the MDHES to enforce board orders issued by the MBHES, the MDHES has the authority to assume jurisdiction over, and implement, a local program so approved. However, the Montana Clean Air Act also requires a hearing before the MBHES before such an assumption of jurisdiction and authority can be taken.

The Missoula City-County rules are in effect now, as are the State's permit modifications for Stone Container and Louisiana-Pacific. The State of Montana has a program that will ensure that the measures contained in the Missoula PM_{10} SIP are adequately enforced. EPA believes that the State's and Missoula's existing air enforcement program will be adequate. The TSD for this notice contains further information on enforceability requirements, responsibilities, and a discussion of the personnel and funding intended to support effective implementation of the control measures.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures. See generally 57 FR 13510–12 and 57 FR 13543–44. These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon EPA's determination that the area has failed to make RFP or attain the PM_{10} NAAQS by the applicable statutory deadline. The Missoula nonattainment area SIP contains steps to be taken if attainment of the PM_{10} standard is not achieved; however, for the reasons described below, these steps do not constitute a satisfaction of the contingency measures requirement.

The SIP calls for another CMB source apportionment study to be conducted to determine the significant source contribution causing nonattainment. It is assumed that the most significant contributor would be one of the following: Residential wood combustion, re-entrained road dust, industrial sources, or forestry slash burning. For each source, several control strategies are suggested for further evaluation.

Since the SIP does not provide for any of these measures to take effect without further action should EPA determine that Missoula has failed to achieve RFP or to attain the PM^{10} standard by December 31, 1994, EPA is taking no action at this time on the Missoula contingency measures. The State has until November 15, 1993 to submit its contingency measures.

III. Implications of Today's Action

EPA is proposing to approve the PM_{10} SIP submitted to EPA on June 4, 1992 for the Missoula, Montana nonattainment area. Among other things, the State of Montana has demonstrated that the Missoula moderate PM_{10} nonattainment area will attain the PM_{10} NAAQS by December 31, 1994.

EPA is also proposing to approve the Missoula City-County Air Pollution Control Program, as submitted on August 20, 1991 and June 4, 1992, except the following sections: Chapter IX: Subchapter 4, Emergency Procedures; Subchapter 11, Permit, Construction & Operation of Air Contaminant sources; Subchapter 13, Open Burning; Subchapter 14, Rule 1407, Wood-Waste Burners, Rule 1423, Standard of Performance for New Stationary Sources, and Rule 1424, Emission Standards for Hazardous Air Pollutants; and Chapter X: Variances. EPA will propose separate action on these sections when the State fulfills its commitments. If the State fails to fulfill its commitments, EPA will take appropriate action. Further, EPA is declining to take action on Subchapter 14: Rule 1427, Control of Odors in Ambient Air. These odor provisions do not have a reasonable connection to the NAAQS-related air quality goals of the Clean Air Act.

As noted, additional submittals for the initial moderate PM_{10} nonattainment areas (i.e., nonattainment New Source Review program requirements and contingency measures) are due independently of the submittal addressed in today's action. EPA will determine the adequacy of any such submittal as appropriate.

IV. Request for Public Comments

The EPA is requesting comments on all aspects of today's proposal. As indicated at the outset of this notice, EPA will consider any comments received by October 15, 1993.

V. Executive Order (EO) 12291

Under Executive Order 12291, this action is not "Major." OMB has exempted this rule from the requirements of section 3 of E.O. 12291.

VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600, *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 12, 1993.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 93–22570 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–60–P

40 CFR Part 52

[NM-16-2-5957; FRL-4729-1]

Conditional Approval and Promulgation of Implementation Plan; State of New Mexico Inspection and Maintenance (I/M) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This action proposes to conditionally approve a revision to the New Mexico State Implementation Plan (SIP) for the attainment of National Ambient Air Quality Standard for carbon monoxide (CO) in the Albuquerque area. This revision provides for the adoption and implementation of a vehicle Inspection and Maintenance (I/M) program meeting all requirements of the EPA regulations, published in the **Federal Register** on November 5, 1992, concerning vehicle I/M programs. EPA is conditionally approving this SIP revision under the Clean Air Act (CAA), as amended in 1990. The proposed conditional approval is based on a commitment by the Governor to the timely adoption and implementation of an I/M program meeting all requirements of the I/M regulation, and upon submission of a schedule of implementation. A full SIP revision including legal authority to implement the program is required by November 15, 1993. This action also proposes in the alternative certain actions EPA will take if a full SIP revision is not submitted by November 15, 1993.

DATES: Comments must be received in writing on this proposed action on or before October 15, 1993.

ADDRESSEES: Comments should be submitted to the EPA at the address indicated below. Copies of the State's submittal and other relevant information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day by contacting Chief, Planning Section (6T-AP), Air Programs Branch, Air, Pesticides, & Toxics Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 655-7214; or Environmental Health Department, Vehicle Pollution Management Division, 1500 Broadway, NE., Albuquerque, New Mexico 87102, Telephone (505) 764-1770.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E.; Air Programs Branch, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655-7247.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act Amendments of 1990 require States to make changes to improve existing I/M programs or implement new programs. Section 182(a)(2)(B) required any marginal or worse ozone nonattainment area with an existing I/M program that was part of a SIP, or any area that was required previously by the CAA to have an I/M program, to immediately submit a SIP revision to bring the program up to the level of past EPA guidance or to what had been committed to previously in the SIP, whichever was more stringent. All carbon monoxide (CO) nonattainment areas were also subject to this requirement to improve existing or previously required programs to this level. In addition, under section 182(b)(4) all moderate and above ozone nonattainment areas must implement a basic I/M program, regardless of previous requirements.

In addition, EPA was directed to publish updated guidance for State I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. All areas required by the CAA to have an I/M program were to incorporate this guidance into the SIP. Serious and worse ozone areas with populations of above 200,000 and CO nonattainment areas with design classifications above 12.7 ppm and populations of 200,000 or more, in addition to metropolitan statistical areas with populations of 100,000 or more in the northeast ozone transport region, were required to meet the EPA guidance for "enhanced" I/M programs. These areas were required to submit a SIP revision to incorporate an enhanced I/M program by November 15, 1992. The State of New Mexico and the Albuquerque/Bernalillo County Air Quality Control Board are required to implement a basic I/M program in Albuquerque.

Basis for Conditional Approval

EPA believes conditional approvals are appropriate in this case because the State could not be expected to begin developing an I/M program meeting the requirements of the CAA and the I/M regulation until the I/M regulation was adopted as a final rule, which occurred on November 5, 1992. EPA does believe that States can adopt revised I/M program plans within one year of the EPA's final rule.

As a condition of the EPA's proposed conditional approval, the I/M regulation requires that by November 15, 1993, a complete SIP revision be submitted which contains all of the elements in the implementation schedule, including authorizing legislation and implementing regulations. The proposed conditional approval in this action should not be interpreted as an approval of the program design features. In order to be considered complete and fully approvable, the 1993 submittal must include an analysis of the program using the most current EPA mobile source emission model demonstrating that the program meets the applicable performance standard, among other features.

I/M Regulation Requirements

Requirements for I/M programs were published in the **Federal Register** on November 5, 1992, under 40 CFR part 51, subpart S, (I/M Regulation). The I/M Regulation required each State that must implement an I/M program to submit by November 15, 1992, a SIP revision including two elements: a commitment from the Governor or his designee to the timely adoption and implementation of an I/M program meeting all requirements of the I/M regulation, and a schedule of implementation.

State Submittal

The State Governor submitted a committal SIP to EPA on November 5, 1992, for the Albuquerque nonattainment area in New Mexico. The Albuquerque/Bernalillo County Air Quality Control Board is authorized by the New Mexico State laws to plan, implement, and enforce all air quality provisions of the State and Federal statutes, and the Board adopted the committal SIP prior to the Governor's submittal. EPA designated Albuquerque as a moderate nonattainment area for CO with a design value of 11.2 ppm below 12.7 ppm. The State of New Mexico and the Board are required to implement a program meeting, at a minimum, the basic I/M program requirements in Albuquerque. A public hearing on this submittal was held by the Board on September 9, 1992, and October 7, 1992, and subsequently the Board adopted the committal SIP on October 7, 1992. The submittal includes a commitment to the timely adoption and implementation of a basic I/M program in the area meeting all requirements of the I/M regulations and the CAA, and a schedule of implementation which includes submission of a final full scale I/M program SIP revision by November 15, 1993.

Proposed Action

EPA is proposing to conditionally approve the New Mexico (Albuquerque) I/M committal SIP under section 110(k)(4) for the Albuquerque area. This proposed conditional approval is based on review and evaluation of the Governor's submissions of November 5, 1992, as commitments that the Board and State of New Mexico will submit a full I/M SIP revision including the legal authority to EPA no later than November 15, 1993. As indicated at the outset of this document, EPA will consider any comments from all parties received by October 15, 1993.

This proposal is also intended to clarify provisions of the CAA under sections 179(a), (b), and 110(c). EPA is required to take certain actions concerning deficient SIPs, nonsubmittals, and failure to comply with the schedule provided in the committal SIPs. If the State fails to adopt and submit the required regulations and legislative authority for the full SIP submittal which is due on November 15, 1993, EPA proposes in alternative to disapprove the commitment as failing to comply with section 110(k)(4). If the State fails to adopt or meet other applicable milestones in the commitment SIP schedule prior to EPA's final action on this proposal, EPA may disapprove the committal SIP as failing to comply with section 110(k)(4). This is because EPA believes New Mexico could not meet the November 15, 1993, submission date if it fails to meet the milestones included in the schedule.

If EPA takes final conditional approval on the commitment, the State must meet its commitment to adopt full I/M rules by November 15, 1993, and submit these rules to EPA within the time specified in its schedule. Once EPA has conditionally approved this commitment, if the State fails to adopt or submit the enabling authority and required rules to EPA by November 15, 1993, this approval will become a disapproval upon EPA notification of the State by a letter. At this time, this commitment will no longer be part of the approved Albuquerque nonattainment area SIP. EPA subsequently will notify the State and publish a notice in the notice section of the **Federal Register**, indicating that the committal SIP has been disapproved and removed from the SIP. If the State adopts and submits the required legislation and rules to EPA within the applicable time frame, the conditionally approved commitment will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA approves the subsequent submittal those newly approved rules will become a part of the SIP.

In addition, if after considering comments on the proposal, EPA issues a final disapproval for any reason cited above, or if the conditional approval is converted to a disapproval, the sanctions clock under section 179(a) will begin. This clock will begin at the time EPA issues a final disapproval or notifies the State by letter that a conditional approval has been converted to a disapproval. If the State does not submit a SIP, and EPA does not approve the SIP on which the disapproval was based within 18 months of the disapproval, EPA must impose one of the sanctions under section 179(b)—highway funding restrictions or the offset sanction. Also, the final disapproval triggers the Federal implementation plan requirement under section 110(c). Finally, pursuant to section 110(m), EPA has discretionary authority to impose sanctions at any time after a final disapproval.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals of SIP submittals under section 110 and 301 subpart I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing or has committed to impose in the future. Therefore, because the Federal SIP approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

If conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, the EPA certifies that such a disapproval will not have a significant impact on a substantial number of small entities because it does not remove existing State requirements nor does it substitute a new Federal requirement.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 30, 1993.

Joe D. Winkle,

Acting Regional Administator.

Title 40, part 52, of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—[AMENDED]

1.The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart GG—New Mexico

2. A new § 52.1619 is added to read as follows:

§ 52.1619 Identification of plan—conditional approval.

(a) Revisions to the plan identified in § 52.1620 were submitted as specified in paragraph (a)(1) of this section.

(1) Revisions to the New Mexico State Implementation Plan (SIP) for motor vehicle inspection and maintenance Committal SIP as adopted by the Albuquerque-Bernalillo County Air Quality Control Board on October 7, 1992, were submitted by the Governor on November 5, 1992.

(i) Incorporation by reference.

(A) Board adoption/approval of October 7, 1992.

(ii) Additional material.

(A) A committal letter from the Governor dated November 5, 1992.

[FR Doc. 93–22571 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 721

[OPPTS–50582I; FRL–4570–2]

2,5-Dimercapto-1,3,4-thiadiazole, Alkyl Polycarboxylate; Proposed Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance based on receipt of new data. The data indicate that the substance will not present an unreasonable risk to health.

DATES: Written comments must be received by EPA by October 15, 1993.

ADDRESSES: All comments must be sent in triplicate to: TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99 401 M St., SW., Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS–50582I. Unit III. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 15, 1990 (55 FR 33296), EPA issued a SNUR establishing significant new uses for 2,5-dimercapto-1,3,4-thiadiazole, alkyl polycarboxylate. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Proposed Revocation

EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this proposed rule. Further background information for the substance is contained in the rulemaking record referenced below in Unit IV.

PMN Number P–88–1460

Chemical name: (generic) 2,5-Dimercapto-1,3,4-thiadiazole, alkyl polycarboxylate.
CAS number: Not available.
Effective date of revocation of section 5(e) consent order: January 4, 1993.
Basis for revocation of section 5(e) consent order: The order was revoked based on test data submitted under the terms of the consent order. Based on the Agency's analysis of the submitted data, EPA found for purposes of TSCA section 5 that this substance will not present an unreasonable risk of injury to human health and concludes that further regulation under section 5 is not warranted at this time.
Toxicity testing results: An Ames study and micronucleus test were both negative. The oral LD50 is greater than 5 g/kg. The no-observed adverse effect level in the 28–day repeated dose oral study in rats is 50 mg/kg/day. At higher doses (250 and 1,000 mg/kg/day) there were mild effects to the liver and kidney, specifically hypertrophy and microscopic lesions.
CFR citation: 40 CFR 721.2460.

II. Background and Rationale of Proposed Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit I. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for this substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes final, EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

III. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

IV. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS–50582 (P–88–1460). This record includes information considered by the Agency in developing this proposed rule and includes the test data that form the basis for this proposal.

V. Regulatory Assessment Requirements

EPA is proposing to revoke the requirements of § 721.2460. Any costs or burdens associated with this rule will be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: September 7, 1993

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.2460 [Removed]

2. By removing § 721.2460.

[FR Doc. 93–22565 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 721

[OPPTS–50589A; FRL–4570–5]

Ethane, 1,1-Dichloro-1-fluoro- ; Proposed Modification of Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to modify a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance based on a request to modify the SNUR and EPA's previous response to comments for a similar situation in a proposed SNUR.

DATES: Written comments must be received by EPA by October 15, 1993.

ADDRESSES: All comments must be sent in triplicate to: TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS–50589A. Unit IV. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 17, 1991 (56 FR 15784), EPA issued a SNUR establishing significant new uses for ethane, 1,1-dichloro-1-fluoro- (P–88–1303, P–88–2177, and P–90–212). Based on a request to modify the SNUR and EPA's previous response to comments for a similar situation in a proposed SNUR, EPA is proposing to modify this SNUR.

I. Background

EPA is proposing to modify the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. Further background information for the substance is contained in the rulemaking record.

PMN Numbers P–88–1303, P–88–2177, and P–90–212

Chemical name: Ethane, 1,1-dichloro-1-fluoro-.

CAS number: 1717–00–6.

Basis for modification to SNUR: EPA received a petition to modify the SNUR for this substance from a group of insulation board manufacturers and suppliers. EPA was asked to clarify if producers of rigid foam insulation made from this substance could be considered processors and subject to the recordkeeping requirements of § 721.125(c). Based on the fact that, in producing rigid foam insulation, this substance becomes encapsulated in the polyisocyanurate foam but does not undergo a chemical reaction, producers and distributors of such foam could be considered processors of the substance. Section 721.125(c) states: "Records documenting the names and addresses (including shipment destination address, if different) of all persons outside of the site of manufacture, importation, or processing to whom the manufacturer, importer, or processor directly sells or transfers the substance; the date of each sale of transfer; and the quantity of the substance sold or transferred on such date." EPA concurs with the modification request that such recordkeeping is overly broad and burdensome for purposes of this SNUR which is based on an exposure-based finding. EPA will eliminate the recordkeeping requirement of § 721.125(c) in the modified SNUR. In the **Federal Register** of February 6, 1992 (57 FR 4576), EPA reached the same conclusion in response to comments for the final rule for sulfurized alkylphenol. Consult that preamble for further explanation on EPA's rationale concerning recordkeeping requirements for § 721.125(c) for SNURs based on the exposure based finding.

CFR citation: 40 CFR 721.3200.

II. Objectives and Rationale of Proposing Modification of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health or environmental effects of the substance, and EPA identified recordkeeping requirements necessary to enforce this rule. The basis for such findings is discussed in the rulemaking record for this SNUR. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated. In light of the petition to modify the SNUR and EPA's response to a similar situation, EPA has determined that the recordkeeping requirement of § 721.125(c) is unnecessary to enforce the rule. The proposed modification of SNUR provisions for this substance designated herein is consistent with that determination.

III. Rulemaking Record

The record for the rule which EPA is proposing to modify was established at OPPTS–50589. This record includes information considered by the Agency in developing this proposed rule.

IV. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential version of the comments that EPA can place in the public file.

V. Regulatory Assessment Requirements

EPA is proposing to modify the requirements of § 721.3200 by eliminating one of the recordkeeping requirements. Any costs or burdens associated with this rule will be reduced when the rule is modified. Therefore, EPA finds that no additional assessments of costs or burdens are necessary under Executive Order 12291,

the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: September 8, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2635(c).

2. In § 721.3200 by revising paragraph (b)(1) to read as follows:

§ 721.3200 Ethane, 1,1-dichloro-1-fluoro-.

* * * * *

(b) * * *

(1) *Recordkeeping requirements:* The recordkeeping requirements as specified in § 721.125(a), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

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[FR Doc. 93–22566 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 721

[OPPTS–50591D; FRL–4570–6]

Methane, Bromodifluoro-; Proposed Modification of Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to modify a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance based on a modification to the TSCA section 5(e) consent order regulating that substance.

DATES: Written comments must be received by EPA by October 15, 1993.

ADDRESSES: All comments must be sent in triplicate to: TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS–50591D. Unit III. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 25, 1991 (56 FR 19228), EPA issued a SNUR establishing significant new uses for methane, bromodifluoro- (P–89–1093). Because of the modification to the consent order for this substance, EPA is proposing to modify this SNUR.

I. Proposed Modification

EPA is proposing to modify the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. Further background information for the substance is contained in the rulemaking record referenced below in Unit IV.

PMN Number P–89–1093

Chemical name: Methane, bromodifluoro-.
CAS number: Not available.
Effective date of section 5(a) SNUR: September 28, 1990.
Basis for modification to SNUR: After the section 5(e) consent order and the SNUR were issued, EPA received a developmental toxicity study in rats and rabbits, a 28–day repeated exposure inhalation toxicity study in rats, and a cardiac sensitization study in dogs for the substance. Based on the results of these tests, the PMN submitter petitioned the Agency to remove additional testing requirements and to modify the use restrictions contained in the order. EPA recognizes that a modification to the existing use restrictions contained in the order are consistent with the Agency's policy of promoting the use of substitutes believed to present low risks to human health as well as reduced stratospheric ozone depletion potential relative to the halons being phased out.

Nonetheless, the Agency believes that the ozone depletion potential and hazard concerns presently associated with the PMN substance, although reduced relative to the halons for which it is intended to substitute, warrant certain use restrictions and required hazard communication language associated with the substance when distributed in commerce. As a result, EPA has allowed additional uses in the 5(e) consent order modification and is proposing to allow those additional uses in paragraphs (a)(2)(i) and (ii) of the SNUR.

EPA also notified the PMN submitter that, based on the results of the above mentioned data submitted on the PMN substance, and on chronic and neurotoxic data on structurally analogous fluorocarbons reviewed by the Agency subsequent to the effective date of the 5(e) consent order, the 90–day study with functional observational battery, motor activity, and neuropathology specified in the testing section of the 5(e) consent order was no longer required. There are no longer any hazard communication requirements in the SNUR or the corresponding 5(e) consent order for neurotoxicity. A 2–year two-species oral bioassay is still recommended to characterize potential carcinogenicity.
CFR citation: 40 CFR 721.4820.

II. Background and Rationale for Proposed Modification of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health and environmental effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit IV. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

In light of data received for the substance and data received for an analogous substance, which indicate that a 90–day study with functional observational battery, motor activity, and neuropathology is no longer necessary, the submitter petitioned, and EPA determined, that the test trigger requirement and use restriction was no longer appropriate and hence, was unnecessary to protect human health. The section 5(e) order modification eliminated the testing requirement and allowed additional uses. The proposed modification of SNUR provisions for this substance designated herein is consistent with the modification of the section 5(e) order.

III. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential version of the comments that EPA can place in the public file.

IV. Rulemaking Record

The record for the rule which EPA is proposing to modify was established at OPPTS–50591. This record includes information considered by the Agency in developing the rule and includes the modification to the consent order that forms the basis for this proposal.

V. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with the rule, EPA estimates that the cost for submitting a significant new use notice would be between $7,198 and $8,170, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. In addition, EPA estimates that the cost of recordkeeping requirements for ongoing uses is $583 per year. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by the rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070–0012), Washington, DC 20503.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: September 8, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2635(c).

2. In § 721.4820 by revising paragraph (a)(2)(i) and (a)(2) (ii) to read as follows:

§ 721.4820 Methane, bromodifluoro-.

(a) * * *

(2) * * *

(i) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(v), (g)(1)(vi), (g)(1)(vii), (g)(1)(ix), (g)(2)(ii), (g)(2)(iii), and (g)(5). In addition, the following statements shall appear on the label and MSDS: This substance may cause cardiotoxicity. Evacuate area before the concentration of this substance in the area reaches 1 percent. Residential use is prohibited due to cardiotoxic dangers. General consumer use is prohibited, with the exception of outdoor automotive use and outdoor marine use. Following discharge and evacuation, use protective gear (self-contained breathing apparatus) before reentering an area in which the airborne concentration of this substance exceeds 1 percent.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (Use in portable fire extinguishers intended for consumer use except for outdoor automotive use and outdoor marine use; use in fire extinguisher units with an Underwriters Laboratory (UL) rating of less than 5BC; use in other than rechargeable fire extinguisher units; use in occupied areas from which personnel cannot be evacuated before the concentration of the substance exceeds 1 percent or egress cannot occur within 30 seconds; or use without protective gear (self-contained breathing apparatus) being made available in the event that, following discharge of the substance and evacuation of the area, personnel must reenter an area in which the airborne concentration of the substance exceeds 1 percent.)

* * * * *

[FR Doc. 93–22567 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[GC Docket No. 92–52; DA 93–1064]

Reexamination of the Policy Statement on Comparative Broadcast Hearings

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission previously adopted a further notice of proposed rulemaking proposing to amend its regulations concerning procedures on transfer and assignment applications to require that successful applicants in comparative broadcast hearings held

their stations for at least three years, instead of the current one-year requirement. By order of the Acting General Counsel the comment and reply dates have been extended one month. The intended effect of this action is to give members of the public additional time to comment on the Commission's proposals.

DATES: Comments must be filed on or before October 13, 1993; reply comments must be filed on or before October 28, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David S. Senzel, Office of General Counsel (202) 632–7220.

SUPPLEMENTARY INFORMATION:

Order

RM–7739; RM–7740; RM–7741

Adopted: August 31, 1993
Released: September 1, 1993

1. Before the Commission for consideration is a Request for Extension of Time, filed August 19, 1993, by Media Access Project (MAP).

2. On August 12, 1993, the Commission issued a further notice of proposed rulemaking in this proceeding. Reexamination of the Policy Statement on Comparative Broadcast Hearings, 58 FR 44484 (Aug. 23, 1993). The Commission proposed to amend 47 CFR 73.3597(a)(1) to require that successful applicants in comparative proceedings operate their stations for three years before they would become eligible to transfer them. The further notice established a comment date of September 13, 1993, and a reply date of September 28, 1993. MAP requests that the deadline for filing comments and reply comments in this proceeding be extended one month.

3. MAP asserts that the brief filing period specified in this proceeding coincides with strict statutory deadlines mandated by the 1992 Cable Act for other rulemakings. MAP contends that this conflict places an undue burden on interested groups such as MAP at a time of year when personnel shortages tend to occur. The public interest would be served by granting the requested extension.

4. Accordingly, *it is ordered*, Pursuant to the authority delegated under 47 CFR 0.251(b), that good cause having been shown, the Request for Extension on Time, filed August 19, 1993, by Media Access Project is granted.

4. *It is further ordered*, That the Comment Date in this proceeding is extended to October 13, 1993; and the Reply Date is extended to October 28, 1993.

Federal Communications Commission.

Renée Licht,

Acting General Counsel.

[FR Doc. 93–22469 Filed 9–14–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 572

[Docket No. 88–07; Notice 6]

RIN 2127–AD73

Anthropomorphic Test Dummy; Side Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking proceeding.

SUMMARY: This notice terminates rulemaking regarding the possible specification of alternative test dummies in Standard No. 214, *Side Impact Protection*. Information available to NHTSA indicates the need for a substantially broader technical base to justify further rulemaking. While NHTSA is continuing its biomechanical research, this rulemaking is being terminated because it does not appear that sufficient data will be available in the near future.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Backaitis, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4912.

SUPPLEMENTARY INFORMATION: In October 1990, NHTSA amended Standard No. 214 *Side Impact Protection*, to add performance requirements and procedures for dynamically testing passenger cars. Under the new requirements and procedures, the ability of a passenger car to provide the desired improved protection is determined by measuring the crash forces experienced by the thoracic and pelvic regions of a specified side impact dummy (SID) in a full-scale crash test. NHTSA indicated at the time of the October 1990 final rule that if ongoing studies demonstrated that two alternative dummies, BioSID and/or EuroSID, compared satisfactorily to SID, the agency would consider proposing those dummies as alternative devices in the future.

On December 27, 1991, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) to request comments on the desirability and need for specifying alternative dummies in Standard No. 214, and to obtain relevant technical data which could be used to support development of a possible Notice of Proposed Rulemaking (NPRM). NHTSA received 14 comments in response to the ANPRM. Comments were summarized by the agency and are available in Docket No. 88–07, Notice 4.

Commenters generally agreed that an improved dummy other than the SID is needed for improved side impact protection evaluation and certification. However, there was a great divergence of opinion as to the most appropriate eventual successor dummy to the SID. The majority of U.S. and Japanese respondents supported the development and use for certification of a single improved side impact dummy, but not its use as an alternative to the SID. Most commenters urged the consolidation of existing side impact dummies and the development of a single world-wide dummy most representative of humans. Commenters stated that such a dummy should reflect the latest biomechanical knowledge and promote international harmonization for common use in world markets. Commenters also believed that use of more than one dummy would permit selective manipulation of test results and would not be in the interests of occupant safety.

Most European respondents supported the use of alternative dummies, favoring the use of the EuroSID over the BioSID, with which they have not had any experience. According to Transport and Road Research Laboratory, the EuroSID–1 will become mandatory in the European side impact regulation as of October 1, 1995. Only Volkswagen advocated the use of the SID and EuroSID–1 as reciprocal alternatives being equally acceptable for certification in Europe and the U.S.

Commenters also raised issues relating to equivalency between the dummies. Commenters generally agreed that equivalence for TTI(d) might be difficult to establish between various dummy types. Commenters also stated that the dummies have different impact sensitivities, and that it is doubtful the differences can be successfully resolved. Advocates for Auto and Highway Safety stated that it would support approximate equivalence, as long as an alternative dummy had greater biofidelity and could monitor more injury potentials than the SID.

There was general agreement among the commenters that EuroSID–1 and the BioSID have higher levels of biofidelity than the SID. However, there was also

concern that certain other limitations would diminish the benefits of using a dummy with a higher level of biofidelity. NHTSA was urged to define biofidelity and the methods to evaluate it.

All respondents agree that the capability of a dummy to make measurements that would permit the detection of additional potential injuries was desirable. However, there was no consensus, beyond the measurement of chest compression, on which measurements were really needed and which were merely desirable.

In limited testing, as reported by several commenters, the repeatability, reproducibility, and durability of the two alternative dummies appear to be adequate under the test conditions evaluated. However, commenters stated that further testing was needed to assure that comparable repeatability is demonstrated under all impact conditions. Most respondents urged NHTSA to initiate an extensive test program to resolve these issues.

The need for harmonization was supported or implied by most commenters. However, there was no agreement on how harmonization should be accomplished. A single, internationally developed dummy appeared to be the preference of the majority.

After reviewing these comments, NHTSA has decided to terminate rulemaking on the use of alternative dummies in side impact compliance testing. The comments and available evidence indicate that available technical data are not sufficient to resolve the many outstanding issues regarding the suitability of the EuroSID or BioSID for side impact certification. Further research is needed on equivalency, biofidelity, repeatability, and the need for measurement of additional injury criteria.

In addition, the comments indicate support for abandoning the idea of using multiple dummies in favor of developing a single, best dummy selected on the basis of well-defined biomechanical response and acceptable performance criteria. When EuroSID becomes mandatory in Europe on October 1, 1995, the desire for harmonization would favor a decision to adopt the EuroSID–1 either as a sole dummy or as an alternative to the SID. Therefore, NHTSA has decided that a more extensive evaluation of the EuroSID–1 should be conducted to evaluate its suitability as an advanced test device, and its limitations, if any. If the EuroSID–1 proves suitable, it could become a viable candidate for harmonization. If rejected, the research could help establish the need for a single new dummy, based on the best features of the EuroSID–1 and the BioSID, or on a new concept developed from the biomechanical research findings and matching analytical tools.

NHTSA notes that the ANPRM was considered a "significant" rulemaking action under the Department of Transportation's regulatory policies and procedures, since it concerned a matter in which there is substantial public interest. However, the agency does not believe that there will be substantial public interest in this particular notice. Based upon the public comments, NHTSA believes that there is widespread agreement that further research is needed before issuing any proposal for an alternative side impact dummy.

While NHTSA is terminating this rulemaking, it emphasizes that it is continuing its biomechanical research. After the agency completes its evaluation of the existing dummies, a decision will be made as to whether the advanced dummy should be an entirely new dummy or a revision of one of the existing dummies. A candidate prototype dummy could then be developed and evaluated.

The agency encourages the industry and other interested organizations to participate and conduct their own evaluation and assessment of the available side impact dummies to establish their suitability for side impact assessment, for meeting the needs of design optimization, and for promoting international harmonization.

Issued on September 9, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–22501 Filed 9–14–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB91

Endangered and Threatened Wildlife and Plants; Determining Critical Habitat for the Colorado River Endangered Fishes: Razorback Sucker, Colorado Squawfish, Humpback Chub, and Bonytail Chub; Document Availability and Reopening of Public Comment Period

AGENCY: Fish and Wildlife Serve, Interior.

ACTION: Notice of document availability and reopening of public comment period.

SUMMARY: The Fish and Wildlife Service (Service) published a proposed rule on Friday, January 29, 1993 (58 FR 6578), to designate critical habitat for four species of endangered fishes: Razorback sucker (*Xyrauchen texanus*), Colorado squawfish (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), and bonytail chub (*Gila elegans*). In addition, the Service recently completed a biological analysis of this proposed critical habitat desgination and prepared a Biological Support Document. The Service will provide a copy of this document to interested parties upon request. The public comment period has been reopened to receive comments on the Biological Support Document and will remain open until further notice.

DATES: The original comment period extended from January 29 through April 15, 1993. The comment period is now reopened until further notice.

ADDRESSES: Requests for copies of the Service's Biological Support Document that designates critical habitat for the four species of fishes and comments concerning the content of the document should be sent to the State Supervisor, U.S. Fish and Wildlife Service, 2060 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104–5110. Comments and material received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Utah State Supervisor, at the above address, telephone (801) 975–3630.

SUPPLEMENTARY INFORMATION:

Background

On January 29, 1993, the Fish and Wildlife Service (Service) published a proposed rule (58 FR 6578) to designate critical habitat for four Colorado River fishes that are currently listed as endangered species under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*): *Razorback sucker (Xyrauchen texanus)*, Colorado squawfish (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), and bonytail chub (*Gila elegans*). The rule proposed amendment of 50 CFR 17.95, the section of the regulations that delineates critical habitat, and included maps and descriptions of the areas proposed as critical habitat for each of the four species. As part of the critical habitat designation process, the Service has held public hearings, received written oral comments on the proposed

designation, and now has prepared a Biological Support Document that details the biological analysis that the Service used in its proposal to determine critical habitat. The Service announces the availability of the Biological Support Document, notifying the public that it will furnish a copy of the document to all persons upon request.

The Service hereby reopens the public comment period on the critical habitat designation in order to receive comments pertaining to the Biological Support Document. Comments and other materials, as appropriate, may be sent to the above address.

The Service also is conducting an economic analysis of the critical habitat designation and will prepare an economic report. The biological and economic analyses will be summarized and the findings discussed in an overview document that also is in preparation. The economic report and overview document will be available to interested parties in about 60 days from the present.

After the economic analysis and overview document is completed, the Service will schedule eight public hearings. At least one of these hearings will be held in the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming to receive comments on biological and economic analyses. An additional notice will be published in the **Federal Register** in about 60 days announcing the dates and locations of the public hearings and the availability of the economic and overview documents. At that time, the Service also will announce that the public comment period will remain open an additional 60 days after the notice is published in the **Federal Register** to receive comments on the economic and overview documents.

Author

The author of this notice is Harold M. Tyus, U.S. Fish and Wildlife Service, Denver Regional Office, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225, telephone (303) 236–7398.

Authority

Authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: September 9, 1993.

Ralph O. Morgenweck,

Regional Director.

[FR Doc. 93–22511 Filed 9–14–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 177
Wednesday, September 15, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 10, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

National Agricultural Statistics Service

Floriculture Survey

Annually

Farms; Businesses or other for-profit; 17,250 responses; 9,625 hours

Larry Gambrell (202) 720–5778

Larry K. Roberson,

Deputy Department Clearance Officer.

[FR Doc. 93–22493 Filed 9–14–93; 8:45 am]

BILLING CODE 3410–01–M

Special Provisions for Fresh Fruit and Vegetable Imports Under the U.S.-Canada Free-Trade Agreement

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination of existence of conditions necessary for imposition of temporary duty on cauliflower from Canada.

SUMMARY: As required by section 301(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 ("FTA Implementation Act"), this is a notification that the necessary conditions exist with respect to United States acreage and import price criteria for cauliflower classifiable to heading 0704.10 of the Harmonized Tariff Schedule of the United States (HTS) imported from Canada to permit the Secretary of Agriculture to consider recommending to the President the imposition of a temporary duty ("snapback duty") by the United States pursuant to section 301(a) of the FTA Implementation Act, implementing Article 702 of the United States-Canada Free-Trade Agreement (FTA), Special Provisions for Fresh Fruits and Vegetables.

FOR FURTHER INFORMATION CONTACT: Howard Wetzel, Horticultural & Tropical Products Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 720–3423.

SUPPLEMENTARY INFORMATION: The FTA Implementation Act, in accordance with the FTA, authorizes the imposition of a temporary duty ("snapback duty") for a limited group of fresh fruits and vegetables when certain conditions exist. Cauliflower, classified under heading 0704.10 of the HTS is a good subject to the snapback duty provision.

Under section 301(a) of the FTA Implementation Act, two conditions must exist before imposition by the United States of a snapback duty can be considered. First, the import price of a covered Canadian fresh fruit or vegetable, for each of five consecutive working days, must be less than ninety percent of the corresponding five-year average monthly import price. This price for a particular day is the average import price of a Canadian fresh fruit or vegetable imported into the United States from Canada, for the calendar month in which that day occurs, in each of the 5 preceding years, excluding the years with the highest and lowest monthly averages.

Second, the planted acreage in the United States for the fresh fruit or vegetable must be no higher than the average planted acreage over the preceding five years, excluding the years with the highest and lowest acreage.

From July 16, to July 22, 1993, the price conditions with respect to cauliflower were met.

The most recent revision of planted acreage for cauliflower shows that this year's planted acreage is below the planted acreage over the preceding five years, excluding the years with the highest and lowest planted acreages.

Issued at Washington, DC, the 8th day September, 1993.

Philip Mackie,

Acting Under Secretary, International Affairs and Commodity Programs.

[FR Doc. 93–22545 Filed 9–14–93; 8:45 am]

BILLING CODE 3410–10–M

Commodity Credit Corporation

Upland Cotton User Marketing Certificate Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice requesting comments; extension of comment period.

SUMMARY: This document announces a 10-day extension of the public comment period for the notice requesting comments published in the **Federal Register** on August 20, 1993 (58 FR 44320) regarding the upland cotton user marketing certificate program.

DATES: Comments on the notice requesting comments must be received on or before September 30, 1993, in order to be assured of consideration.

ADDRESSES: Submit comments to: Director, Fibers and Rice Analysis Division (FRAD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), room 3754–S, PO Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Wayne Bjorlie, FRAD, ASCS, USDA, room 3754–S, PO Box 2415, Washington, DC 20013–2415 or call 202–720–7954.

SUPPLEMENTARY INFORMATION:

Background

On August 20, 1993, a notice requesting comments on the upland cotton user marketing certificate program was published in the **Federal Register**. The notice specified that comments had to be received by September 20, 1993, in order to be assured of consideration. An interested party has submitted a request for an extension of the comment period. Based upon a review of that request, it has been determined that an additional 10 days will be allowed for comment.

Notice

Notice is hereby given that the public comment period on the notice requesting comments published on August 20, 1993 (58 FR 44320), is extended to September 30, 1993.

Signed at Washington, DC, on September 7, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93-22546 Filed 9-14-93; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of an application for a second modification to scientific research permit No. 825 (P513).

Notice is hereby given that the Columbia River Inter-tribal Fish Commission (CRITFC) has applied in due form for a second modification to Scientific Research Permit No. 825 to take listed species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-222).

Permit No. 825 was issued on March 23, 1993 (58 FR 16524), amended on June 9, 1993 (58 FR 33434), and modified on August 3, 1993 as authorized by the ESA. The permit authorizes CRITFC to take listed adult and juvenile Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) for scientific research through December 31, 1997.

CRITFC is requesting authorization to tag, with Passive Integrated Transponder (PIT) tags, 3,000 listed juvenile Snake River spring/summer chinook salmon which were previously authorized to be captured and handled. This take could result in the indirect mortality of 30 additional fish. CRITFC requests half of this take for fall of 1993, and the entire take annually for the duration of the permit, through December 31, 1997.

CRITFC is also requesting authorization to capture and handle an additional 20 listed adult Snake River spring/summer chinook salmon for cryopreservation of male gametes, which could result in the indirect mortality of four of these fish. Sampling methods and times remain the same as currently authorized. CRITFC requests this take beginning 1994, and annually for the duration of the permit, through December 31, 1997.

Written data or views, or requests for a public hearing on this modification application should be submitted to the Director, Office of Protected Resources, NMFS, 1335 East-West Highway, room 8268, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above modification application are available for review by interested persons in the following offices:

Office of Protected Resources, NOAA, NMFS, 1335 East-West Highway, room 8268, Silver Spring, MD 20910 (301/713-2289); and

Environmental and Technical Services Division, NMFS, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230-5400).

Dated: September 8, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93-22509 Filed 9-14-93; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Availability of Change 2 to DoD 5025.1-I, "DoD Directives System Annual Index"

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This document is to inform the public and Government Agencies of the availability of Change 2 to DoD 5025.1-I, "DoD Directives System Annual Index," dated January 1993. It is available, at cost, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone (703) 487-4650. The NTIS accession number for Change 2 to the Index is PB93-959540.

FOR FURTHER INFORMATION CONTACT: Ms. P. Toppings, Directives Division, Correspondence and Directives Directorate, Washington Headquarters Services, Washington, DC 20301-1155, telephone (703) 697-4111.

Dated: September 10, 1993

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-22524 Filed 9-14-93; 8:45 am]

BILLING CODE 5000-04-M

Department of the Air Force

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board (SAB) Fall General Board Meeting meet from 8 a.m. to 5 p.m. on 19-21 October 1993 at Fort Lesley J. McNair, Washington, DC.

The purpose of this meeting is to provide attendees the opportunity to hear results of important SAB studies and enable members and senior Air Force leaders to become better acquainted. Additionally, the attendees will begin planning for future studies. The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR DOC. 93-22579 Filed 9-14-93; 8:45 am]

BILLING CODE 3910-01-W

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on Technology Strategy will meet from 8 a.m. to 5 p.m. on 24-25 September 1993 at the National Academy of Sciences Woods Hole Center, Woods Hole, MA.

The purpose of this meeting is to discuss and formulate a plan for the TSP to make it an effective and useful forum for cross-flow of information to senior Air Force leaders. The meeting will be closed to the public in accordance with

section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–22581 Filed 9–14–93; 8:45 am]

BILLING CODE 3910–01–W

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on Science and Technology will meet from 8 a.m. to 5 p.m. on 23–24 September 1993 at Rome Laboratory, Griffiss Air Force Base, New York.

The purpose of this meeting is to review and evaluate the Rome Laboratory C3I program(s). The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–22583 Filed 9–14–93; 8:45 am]

BILLING CODE 3910–01

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on Science and Technology will meet from 8 a.m. to 5 p.m. on 6–7 October 1993 at Wright-Patterson Air Force Base, Ohio.

The purpose of this meeting is to review and evaluate the Avionics Directorate programs. The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–22578 Filed 9–14–93; 8:45 am]

BILLING CODE 3910–01–W

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on Science and Technology will meet from 8 a.m. to 5 p.m. on 21–22 September 1993 at Wright-Patterson Air Force Base, Ohio.

The purpose of this meeting is to review and evaluate the Materials Laboratory programs. The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–22582 Filed 9–14–93; 8:45 am]

BILLING CODE 3910–01–W

USAF Scientific Advisory Board Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on Science and Technology will meet from 8 a.m. to 5 p.m. on 27–28 October 1993 at Wright-Patterson Air Force Base, Ohio.

The purpose of this meeting is to review and evaluate the Manufacturing Technology programs. The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–22580 Filed 9–14–93; 8:45 am]

BILLING CODE 3910–01–W

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet September 22–23, 1993, from 8 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to review maritime issues as they impact national security policy and requirements. The entire agenda of the meeting will consist of discussions of key issues regarding task force deliberations, intelligence, implications of national security affairs for naval force planning, and considerations for innovation in technology and surveillance. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact: J. Kevin Mattonen, Executive Secretary Panel; 4401 Ford Avenue, suite 601, Alexandria, VA 22302–0268, Telephone (703) 756–1205.

Dated: September 8, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–22059 Filed 9–14–93; 8:45 am]

BILLING CODE 3810–AE–P

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel National Security Task Force will meet September 20, 1993, from 11 a.m. to 12:30 p.m., at the Pentagon, room 4E630. This session will be closed to the public.

The purpose of this meeting is evaluate U.S. Navy requirements for National Security. The entire agenda for the meeting will consist of discussions of key issues related to global trends, future security environment, national objectives, possible contingencies and naval policies to support U.S. national interests. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and, are in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact: J. Kevin Mattonen, Executive Secretary to the Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, Phone (703) 756–1205.

Dated: September 8, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–22058 Filed 9–14–93; 8:45 am]

BILLING CODE 3810–AE–P

CNO Executive Panel; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations

(CNO) Executive Panel Domestic Issues Task Force Outbrief will meet September 27, 1993, from 11 a.m. to 12 p.m. at the Pentagon.

The purpose of this meeting is to do the final outbrief for the Task Force on Domestic Issues. Matters to be considered will consist of forecasting emerging demographic and sociological trends and their effect on the Navy of the future.

For further information concerning this meeting, contact: J. Kevin Mattonen, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302–0268, Phone (703) 756–1205.

Dated: September 7, 1993.

Michael P. Rummel,

Lieutenant Commander, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–22539 Filed 9–14–93; 8:45 am]

BILLING CODE 3810–AE–M

Board of Visitors to the United States Naval Academy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet 27 September 1993, at the U.S. Naval Academy, Annapolis, Maryland. The session, which is open to the public, will commence at 8:30 a.m. and end at 3 p.m., 27 September 1993, in the Bo Coppedge Dining Room of Alumni Hall.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy.

For further information concerning this meeting contact: Commander Craig M. Diffie, U.S. Navy, Secretary to the Board of Visitors, Office of the Superintendent, United States Naval Academy, Annapolis, MD 21402–5000, (410) 267–2402.

Dated: September 7, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–22540 Filed 9–14–93; 8:45 am]

BILLING CODE 3810–AE–M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, September 22, 1993. The hearing will be part of the Commission's business meeting which is open to the public and scheduled to begin at 1 p.m. in the Ballroom of the University of Delaware's Goodstay Center, 2700 Pennsylvania Avenue, Wilmington, Delaware.

An informal conference among the Commissioners and staff will be open for public observation at 10:30 a.m. at the same location and will include discussions of Basinwide hydrologic conditions; Roamingwood Sewer and Water Association docket water conservation condition and a status report on the Upper Delaware ice jam project.

The subjects of the hearing will be as follows:

A Proposal To Adopt the 1993 Water Resources Program

A proposal that the 1993 Water Resources Program and the activities, programs, initiatives, concerns, projections and proposals identified and set forth therein be accepted and adopted, in accordance with the requirements of Section 13.2 of the Delaware River Basin Compact.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. Holdover Project: New Jersey-American Water Company D–92–77 CP

A proposed new surface water intake to withdraw 40 million gallons per day (mgd) (based on design year 2020 projected average annual demand) from the Delaware River. The water will be treated at a proposed water filtration plant to be located just off Taylor Lane in Delran, Burlington County, New Jersey. Finished water will be conveyed via new water main construction and interconnections to other purveyors, townships, boroughs and cities located in the regional tri-county area of Burlington, Camden and Gloucester Counties, New Jersey. The proposed raw water intake will be located in Cinnaminson Township, Burlington County, approximately 4000 feet downstream of the Rancocas Creek confluence with the Delaware River and almost directly across the river from the City of Philadelphia's intake for the Baxter Water Treatment Plant at Torresdale. The intake will consist of a series of six wedge-wire type screens and two 54-inch diameter pipelines located approximately 850 feet offshore and 300 feet outside of the river's deep navigation channel. This hearing continues that of August 4, 1993.

2. U.S. Department of Justice D–83–7 CP RENEWAL–2

An application for the renewal of a ground water withdrawal project to supply up to 9.3 million gallons (mg)/30 days of water to the applicant's Otisville Federal Correctional Institution from Well Nos. PW–1, PW–2 and ES–1. Commission approval on March 23, 1988 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 9.3 mg/30 days. The project is located in the Town of Deerpark, Orange County, New York.

3. Borough of Pennington D–84–33 CP RENEWAL

An application for the renewal of a ground water withdrawal project to supply up to 6.48 mg/30 days of water to the applicant's distribution system from Well No. 7. Commission approval on August 3, 1988 was limited to five years. The applicant requests that the total withdrawal from all wells located within the Delaware River Basin remain limited to 6.48 mg/30 days. The project is located in Pennington Borough, Mercer County, New Jersey.

4. Sun Company, Inc. D–88–40 RENEWAL

An application for the renewal of a ground water withdrawal project of up to 10.11 mg/30 days of water as part of the applicant's ground water decontamination program from Well No. RW–1. Commission approval on August 3, 1988 was limited to five years. The applicant requests that the total withdrawal from the well remain limited to 10.11 mg/30 days. The project is located in the City of Philadelphia, Pennsylvania.

5. Borough of Leesport D–90–13 CP RENEWAL

An application for the renewal of a ground water withdrawal project to supply up to 6 mg/30 days of water to the applicant's distribution system from Well No. 4. Commission approval on April 25, 1990 was limited to five years. The applicant requests that the total withdrawal from all wells be increased from 6 mg/30 days to 13.5 mg/30 days. The project is located in Leesport Borough, Berks County, Pennsylvania.

6. Uwchlan Township D–91–80 CP

A project to expand the applicant's Eagleview sewage treatment plant (STP) from an average monthly flow of 0.05 mgd to 0.15 mgd, continue to serve a portion of Uwchlan Township, and discharge to Shamona Creek. The expanded STP will continue to provide advanced secondary treatment and

tertiary filtration, and will include a wetlands discharge area to further polish the treated effluent. The STP is located approximately 3,500 feet south of the intersection of U.S. Route 76 and Pennsylvania Route 100 in Uwchlan Township, Chester County, Pennsylvania.

7. Borough of Quakertown D–92–79 CP

An application for approval of a ground water withdrawal project to supply up to 10.8 mg/30 days of water to the applicant's distribution system from new Well No. 19, and to retain the existing withdrawal limit from all wells of 51.1 mg/30 days. The project is located in Quakertown Borough, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

8. Milford-Trumbauersville Area Sewer Authority D–93–18 CP

A project to expand the applicant's existing 0.5 mgd sewage treatment plant (STP) to treat an average monthly flow of 0.8 mgd. The STP will continue to provide tertiary treatment facilities and serve Trumbauersville Borough and portions of Milford Township in Bucks County, Pennsylvania. The STP is located just east of the Northeast Extension of the Pennsylvania Turnpike in Milford Township, and the treated effluent will continue to discharge to Unami Creek, a tributary of Perkiomen Creek.

9. Leidy's Inc. D–93–21

An application for approval of a ground water withdrawal project to supply up to 2.0 mg/30 days of water to the applicant's pork product processing plant from new Well No. PW–3, and to limit withdrawal from all wells to 3.45 mg/30 days. The project is located in Franconia Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

10. AMETEK, U.S. Gauge Division D–93–25 CP (D) P.A.

A ground water remediation project consisting of the proposed treatment of up to 0.13 mgd of ground water to be withdrawn via three existing wells at the applicant's industrial facility (Plant #2) located in Sellersville Borough, Bucks County, within the Southeastern Pennsylvania Ground Water Protected Area. The treatment facilities will consist of an air stripper, particulate filter, and carbon adsorption system to remove metals and volatile organic compounds. The treated effluent will be discharged to an unnamed tributary to the East Branch Perkiomen Creek in Sellersville Borough.

11. CARAC, Inc. D–93–27

An application for approval of a ground water withdrawal project to supply up to 9.5 mg/30 days of water to the Tilden Industrial Park from new Well No. 5, and to retain the existing withdrawal limit from all wells of 10.8 mg/30 days. The project is located in Tilden Township, Berks County, Pennsylvania.

12. Township of Worcester D–93–31 CP

A proposed sewage treatment plant (STP) project designed to treat an average of 60,000 gallons per day (gpd) (40,500 gpd NPDES permit limit) to serve the Berwick Place residential development and a portion of Worcester Township, Montgomery County, Pennsylvania. The plant is designed to provide advanced secondary treatment and tertiary chemical addition for nutrient removal. The STP will discharge to an unnamed tributary of Skippack Creek, a tributary of the Perkiomen Creek, via a new outfall.

13. Borough of Weatherly D–93–43 CP

A project to expand the Borough of Weatherly's existing 0.3 mgd sewage treatment (STP) plant to 0.6 mgd. The existing STP will be kept in operation while a new 0.6 mgd capacity secondary level extended aeration plant is constructed adjacent to it. The STP will continue to serve only Weatherly Borough and discharge to Black Creek, a tributary of the Lehigh River, in the Borough of Weatherly, Carbon County, Pennsylvania.

14. Connaught Laboratories, Inc. D–93–45

A project to upgrade the applicant's existing 0.15 mgd industrial wastewater treatment plant which will continue to serve both Connaught Laboratories and the Salk Institute. The project plant is located adjacent to Swiftwater Creek, to which it will continue to discharge at 0.15 mgd, in Pocono Township, Monroe County, Pennsylvania. Swiftwater Creek is a tributary in the drainage area above Special Protection Waters.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: September 7, 1993.

Susan W. Weisman,

Secretary.

[FR Doc. 93–22554 Filed 9–14–93; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Resource Contingency Program; Notice of Intent to Prepare an Environmental Impact Statement and Notice of Scoping Meetings

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice.

SUMMARY: BPA plans to prepare an environmental impact statement (EIS) on its proposal to acquire power produced by three proposed gas-fired, combined-cycle combustion turbines. The EIS will be prepared in accordance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality NEPA Regulations (40 CFR parts 1500–1508), and the Department's procedures for implementing NEPA (10 CFR part 1021). The projects include the Satsop Combustion Turbine Project located near Satsop, Washington, the CRSS Chehalis Project located near Chehalis, Washington, and the Hermiston Power Project located near Hermiston, Oregon. BPA is awarding these projects energy option agreements under the Resource Contingency Program (RCP).

Under these agreements, during an approximate two-year period, sponsors are conducting environmental studies, obtaining permits, and doing design work. BPA is preparing an EIS to assess the environmental effects of acquiring the output of the energy projects. The decision to purchase power from one or more of these projects will be made during a five year "hold period" which follows this EIS process. Energy options allow BPA to defer energy purchase decisions until more is known about resource needs. These preconstruction activities are relatively inexpensive, but time consuming. Completing these tasks will reduce the lead times of acquiring these new energy resources. If the energy is needed during the five year "hold period" the sponsors of these resources will construct, own, and operate the projects.

DATES: Interested persons are invited to participate in the scoping process for the draft EIS. A letter and a fact sheet will be sent out to interested parties on a project mailing list. This information will explain the project and how to get

additional information. The scoping meetings are planned to be open house style where project material will be available for study and BPA staff will answer questions and accept oral and written comments. In addition, there will be a formal project presentation given by the project developers. The scoping meetings will be held at the following locations on the following dates:

Elma, Washington, October 6, 1993, 6–9 p.m., Elma High School, 30 Elma-Monte Road, Elma, WA.
Hermiston, Oregon, October 12, 1993, 6:30–9 p.m., Hermiston High School, 600 South 1st, Hermison, OR.
Chehalis, Washington, October 14, 1993, 6–9 p.m., Peace Lutheran Church, 2701 Bishop, Chehalis, WA.

The meetings will be publicized by general announcement as well as by written invitation to known interested parties. Written comments are invited as well, and should be submitted by October 26, 1993, to the Public Involvement Manager at the address below. Comments received after the date will be considered to the extent practicable. Both written and oral comments will be given equal weight in the scoping process.

ADDRESSES: To have your name placed on the mailing list for this project, to submit comment letters, or to receive a copy of the Draft EIS when it becomes available, write to the Public Involvement Manager, Bonneville Power Administration—ALP, Post Office Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Rob Diffely, EIS Manager at 503–230–3796 or Mr. Charles Alton, Environmental Coordinator at 503–230–5878. You may also contact the Public Involvement Office at 503–230–3478, or toll-free 1–800–622–4519. Information may also be obtained from:

Mr. George Bell, Lower Columbia Area Manager, suite 243, 1500 N.E. Irving Street, Portland, OR 97232, 503–230–4558;
Mr. Robert N. Laffel, Eugene District Manager, room 206, 211 East Seventh Avenue, Eugene, OR 97401, 503–465–6958;
Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, 920 West Riverside Avenue, Spokane, WA 99201, 509–353–3279;
Mr. George E. Eskridge, Montana District Manager, room 307, 800 Kensington, Missoula, MT 59801, 406–329–3060;
Mr. Ronald K. Rodewald, Wenatchee District Manager, room 307, 301 Yakima Street, Wenatchee, WA 98801, 509–662–4377, extension 379;
Mr. Terence G. Esvelt, Puget Sound Area Manager, suite 400, 201 Queen Anne Avenue North, Seattle, WA 98109–1030, 206–553–4130;
Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 1520 Kelley Place, Walla Walla, WA 99362, 509–522–6225;
Ms. C. Clark Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, ID 83401, 208–523–2706,
Mr. James Normandeau, Boise District Manager, room 450, 304 North Eighth Street, Boise, ID 83702, 208–334–9137.

FOR INFORMATION ON DOE NEPA PROCEDURES OR THE STATUS OF A NEPA REVIEW CONTACT: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION: BPA is a Federal power marketing agency with statutory responsibilities to supply requested electrical power to its utility, industrial, and Federal customers in the Pacific Northwest. The 1992 Resource Program, medium load forecast (updated January 1993) projects by the year 2000 a deficit of 2,693 aMW. Because future load growth is uncertain, the 1990 and 1992 Resource Program and the Resource Programs EIS recommended that BPA acquire options on 1,050 aMW that could be called on to meet energy needs. The Resource Contingency Program (RCP) was designed to competitively acquire these energy options. The underlying need for these projects is to match actual load growth with new energy resources and keep the load/resource balance near zero.

Guided by these recommendations, BPA is awarding three energy option agreements under the RCP. Under the terms of these agreements, BPA will pay the resource developers to conduct studies, design and permit these gas-fired combustion turbines, but not to build and operate. These preconstruction activities are time-consuming but relatively inexpensive. Completing them can shorten lead times by as much as one-half and reduce the risks associated with resource development. If, at a later date, BPA determines that there is a need for power from these energy options, they can be constructed.

BPA issued a RCP solicitation in May 1992, for energy option proposals. In response to BPA's request for energy options, 64 proposals were submitted totaling 7,842 aMW.

Through an analysis of system cost, project viability, preliminary environmental evaluation and discussion with the developers, BPA proposes to sign energy options with three developers that could potentially supply BPA up to 1,081 aMW of energy. The Satsop Project is capable of providing 205 aMW, the CRSS project is capable of providing 228 aMW or 456 aMW, and the Hermiston project can provide either 205 aMW or 420 aMW. The EIS will include, at a minimum, an analysis of acquiring all 1,081 aMW of power as well as the no action alternative.

These combined-cycle, combustion turbine energy options are consistent with the resource choices in the preferred alternative of BPA's Resource Program EIS (DOE/EIS–0162); therefore, the decision whether or not BPA acquires any of these option resources would not foreclose future considerations of other potential energy resources that are identified in the preferred alternative.

Identification of Environmental Issues

All projects would be based upon combined-cycle technology and use natural gas as the primary fuel. This power plant design maximizes efficiency and minimizes air pollution emissions. Air pollution emissions would be reduced further through the combination of steam and ammonia injection systems and/or advanced combustion-turbine design technology. All option projects will meet Federal and state emission standards.

All three projects would be located on sites designated for industrial development. The Satsop project is zoned for general development and is located on the construction laydown area for Washington Nuclear Project #3. The CRSS Chehalis project is located in the Chehalis Industrial Park, and the Ida-West project is located adjacent to the J.R. Simplot potato processing plant on land zoned "heavy-industrial."

All three projects have land use issues associated with gas and electric interconnections. The Satsop project would require less than 1.6 kilometers of 230-kilovolt (kV) transmission line and a 19 kilometer gas pipeline spur. The CRSS project would require less than 1.6 kilometers of 500-kV transmission line and less than a 3 kilometer gas pipeline spur. The Hermiston project would require less than a 20 kilometer, 230-kV transmission line primarily within an existing right-of-way and less than a 6 kilometer gas pipeline spur.

All three projects have water use and discharge issues. The Satsop project proposes to use well water with discharge into the Chehalis River through an existing discharge structure. The CRSS project proposes to use primarily grey water from the city waste treatment plant. During the summer months, less than 20 percent of the water would come from either well

water or the Chehalis River. The project would discharge waste water directly back into the sewage treatment facility. The Hermiston project proposes to use water from a regional water supply project that would be piped to the site. The waste water would be discharged into the effluent waste stream from the potato processing plant and would be applied to irrigated farmland.

Issued in Portland, Oregon, on August 30, 1993.

Randall Hardy,

Administrator.

[FR Doc. 93–22555 Filed 9–14–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. ER93–923–000, et al.]

Florida Power Corp., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 8, 1993.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corporation

[Docket No. ER93–923–000]

Take notice that on September 1, 1993, Florida Power Corporation (Florida Power or the Company) tendered for filing under section 205 of the Federal Power Act three amendments to the Agreement for Supplemental Resale Service (the Agreement) between itself and Kissimmee Utility Authority (Kissimmee) and designated as FERC Rate Schedule No. 120. The amendments (a) shorten the period over which Kissimmee is required to forecast a breakdown of its requirements for base, intermediate and peaking supplemental service; (b) allow Kissimmee to reduce or eliminate the contract demand if Florida Power receives a specified rate increase, and (c) changes Kissimmee's percentage kW allocation among base, intermediate and peaking. The Company requests that the amendments be allowed to become effective on January 1, 1994.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Company

[Docket No. ER92–778–000]

Take notice that on August 30, 1993, Southern California Edison Company (Edison) tendered for filing the Letter Agreement for Services to Replace Two 230 kV circuit Breakers at T.M. Goodrich Receiving Station Between City of Pasadena and Southern California Edison Company.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Oklahoma

[Docket No. ER93–746–000]

Take notice that on August 30, 1993, Public Service Company of Oklahoma (PSO) submitted for filing a supplement to the Transmission Service Agreement between PSO and Southwestern Public Service Company (SPS) originally filed in Docket No. ER93–746–000 on June 30, 1993. The Agreement provides for PSO to deliver power and energy that SPS will sell to The Empire District Company (EDE).

A copy of the filing was served on SPS, EDE and the Oklahoma Corporation Commission.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Company

[Docket No. ER93–94–000]

Take notice that on August 19, 1993, Northeast Utilities Service Company (NU) tendered for filing an amendment in the above-referenced docket.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Services, Inc.

[Docket No. ER93–912–000]

Take notice that on August 30, 1993, Entergy Services, Inc. (Entergy Services) filed the Interchange Agreement between Municipal Electric Authority of Georgia and Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service Inc., and Entergy Services, Inc. (collectively, "Entergy"), dated as of August 1, 1993 ("Interchange Agreement"). Entergy Services states that in accordance with the Interchange Agreement, the parties will provide each other with various mutual support services, including Economy Energy, Replacement Energy, and Limited Firm Capacity and Energy. Entergy Services requests that the Interchange Agreement be made effective on October 1, 1993.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Great Bay Power Corporation

[Docket No. ER93–924–000]

Take notice that on September 1, 1993, Great Bay Power Corporation (Great Bay) tendered for filing a Tariff for Short-Term Sales, under which it will sell capacity and energy from its ownership interest in Seabrook Unit No. 1 and/or purchased power. Also filed was a list of potential customers for service under the Tariff and unexecuted Forms of Service Agreement for the Provision of Short Term Power for those customers. Great Bay requests an effective date of November 1, 1993 for the Tariff.

Great Bay states copies of the filing were served on the potential customers listed in the Tariff and on their associated state public utility commissions.

Comment date: September 22, 1993, in accordance with Standard Paragraph E end of this notice.

7. New York State Electric & Gas Corporation

[Docket No. ER93–926–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on September 2, 1993, tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12 (1993), as an Initial Rate Schedule, an agreement with Vermont Public Power Supply Authority (VPPSA). The agreement provides for the sale of 2 MW of electric generating capacity and associated energy by NYSEG to VPPSA. Service under this agreement is schedule to commence on November 1, 1993.

NYSEG served copies of the filing upon the New York State Public Service Commission, the Vermont Public Service Board, VPPSA, the Town of Hardwick Electric Department, the Village of Hyde Park Electric Department, the Village of Ludlow Electric Light Department and the Village of Stowe Water and Light Department.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Company

[Docket No. ER93–910–000]

Take notice that on August 30, 1993, Southern California Edison Company (Edison) tendered for filing the Letter Agreement for Services to Replace Two 230 kV circuit Breakers at T.M. Goodrich Receiving Station Between City of Pasadena and Southern California Edison Company.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Consumers Power Company

[Docket No. ER93–911–000]

Take notice that on August 30, 1993, Consumers Power Company (Consumers Power) tendered for filing Amendment No. 1 to its Wholesale for Resale Electric Service Agreement dated January 1, 1990 for service to Alpena Power Company (Alpena). Amendment No. 1 provides for a second delivery point and for a new monthly charge to recover Consumers Power's costs related to adding that second delivery point for Alpena.

Copies of the filing were served upon Alpena and the Michigan Public Service Commission.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. The Montana Power Company

[Docket No. ER93–596–000]

Take notice that on August 31, 1993, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 an amendment to its original filing of a Firm Capacity and Energy Sales Agreement Between The Montana Power Company and Sierra Pacific Power Company; and a Firm Capacity and Energy Sales Agreement Between The Montana Power Company and PacifiCorp. This amended filing provides a change in the energy rate ceiling specified within the Agreements.

Copies of the filing were served upon Sierra Pacific Power Company and PacifiCorp.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER93–568–000]

Take notice that on August 31, 1993, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Rate Schedule constituting an agreement for the delivery of energy between JFK Cogeneration Project and JFK International Airport.

Con Edison states that a copy of this filing has been served by mail upon KIAC Partners.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Company

[Docket No. ER93–925–000]

Take notice that on September 2, 1993, New England Power Company (NEP) submitted for filing a proposed sales contract with The Town of Shrewsbury Electric Light Plant. NEP states that the proposed contract provides for the sale of system power for the period of November 1, 1993 through October 31, 2004. The amount of capacity under the contract is initially 12 megawatts, increasing to 19 megawatts over the term of the contract. The price under the contract will not exceed NEP's full cost of service. NEP requests that the proposed tariff be made effective November 1, 1993.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Kansas Gas and Electric Company

[Docket No. ER93–653–000]

Take notice that on September 2, 1993, Kansas Gas and Electric Company (KG&E) tendered for filing an amendment to its July 9, 1993 filing in this docket concerning a change to its Federal Energy Regulatory Commission Electric Rate Schedule No. 182. KG&E states that the amendment is to reflect a change in the pricing provisions of Service Schedule SPP. The change is proposed to become effective June 1, 1993.

Copies of the filing were served upon the City of Girard, Kansas and the Kansas Corporation Commission.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER93–551–000]

Take notice that on August 31, 1993, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (hereafter jointly NSP) tendered for filing a Second Amendment to NSP's initial filing in Docket No. ER93–551–000. The amendment provides certain additional information requested by Commission Staff regarding purchase for resale provisions for Supplemental Energy sales service to Wisconsin Electric Power Company.

NSP again requests that its filing, as amended, be accepted for filing effective June 1, 1993, and requests waiver of the Commission's notice requirements in order for the rate to be accepted for filing on the date requested.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of the this notice.

15. Wisconsin Electric Power Company

[Docket No. ER93–649–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on September 2, 1993, tendered for filing an amendment of its initial submittal in this docket. The amendment contains revised pages G–3 through G–7 relating to the Negotiated Capacity service schedule. Wisconsin Electric also responded to a request from Staff to explain the relative priorities among the various service schedules.

Wisconsin Electric renews its requested effective date of July 16, 1993, sixty days after its original tender date.

Copies of the filing have been served on Wisconsin Public Service Corporation, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22485 Filed 9–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF87–552–002]

Thermo Cogeneration Partnership, L.P.; Amendment to Filing

September 9, 1993.

On August 31, 1993, Thermo Cogeneration Partnership, L.P. tendered for filing a supplement to its filing in this docket. The supplement pertains to the ownership and management structure, a net present value analysis of

CSW Ft. Lupton, Inc., an explanation of a minimum gain-chargeback provision, and other technical aspects of the qualifying facility and the steam host. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by September 29, 1993, and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestors party to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22486 Filed 9–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–14379T New Mexico–54]

United States Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

September 9, 1993.

Take notice that on September 3, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Dakota Formation underlying certain lands in the East Basin Area of the Basin Dakota Pool located in Rio Arriba and San Juan Counties, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 401,672 acres, more or less, consisting of 13.4% Fee, 6.5% state, 62.1% Federal and 18.0% Indian Lands. The recommended area is more fully described on the attached appendix.

The notice of determination also contains BLM's and the State of New Mexico's findings that the referenced portion of the Dakota Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

The recommended area encompasses 401,672 acres, more or less, consisting of 13.4% Fee, 6.5% State, 62.1% Federal and 18.0% Indian Lands described as follows:

Township 25 North, Range 4 West

Sections 1–12: All

Township 25 North, Range 5 West

Sections 1–12: All
Sections 15–20: All
Sections 21–22: N/2
Sections 29–30: All

Township 25 North, Range 6 West

Sections 1–36: All

Township 25 North, Range 7 West

Sections 1–4: All
Sections 9–16: All
Sections 21–28: All
Sections 33–36: All

Township 26 North, Range 4 West

Township 26 North, Range 5 West

Sections 1–36: All

Township 26 North, Range 6 West

Sections 1–5: All
Sections 7–36: All

Township 26 North, Range 7 West

Sections 3–10: All
Sections 13–36: All

Township 26 North, Range 8 West

Sections 1–36: All

Township 26 North, Range 9 West

Sections 1–4: All
Sections 10–14: All
Sections 24–25: All
Sections 36: All

Township 27 North, Range 4 West

Township 27 North, Range 5 West

Sections 1–36: All

Township 27 North, Range 6 West

Sections 1–15: All
Sections 24–25: All
Sections 33–36: All

Township 27 North, Range 9 West

Sections 1–30: All
Sections 32–36: All

Township 28 North, Range 4 West

Township 28 North, Range 5 West

Township 28 North, Range 6 West

Sections 7–36: All
(These are irregular Townships)

Township 29 North, Range 4 West

Township 29 North, Range 5 West

Township 29 North, Range 6 West

Township 29 North, Range 7 West

Sections 1–36: All

[FR Doc. 93–22487 Filed 9–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR93–14–000]

Humble Gas Pipeline Co.; Petition for Rate Approval

September 9, 1993.

Take notice that on September 1, 1993, Humble Gas Pipeline Company (Humble) filed a petition for rate approval pursuant to § 284.123(b)(2) of the Commission's regulations. Humble requests that the Commission approve as fair and equitable a rate of $0.72 per MMBtu plus 1.0% retainage for fuel for transportation service performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Humble affirms that it is a newly formed intrastate pipeline within the meaning of section 2(16) of the NGPA. It owns and operates an intrastate pipeline system which is comprised of what was formerly a part of Exxon Gas System, Inc., and a leased 20" line all in the State of Texas. Humble proposes an effective date of September 1, 1993.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation services. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before September 24, 1993. The petition for rate approval is on file with

the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22488 Filed 9–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–235–004]

Koch Gateway Pipeline Co., Filing of Revised Tariff Sheets

September 9, 1993.

Take notice than on September 3, 1993, Koch Gateway Pipeline Company (KGPL)[1] tendered for filing the following tariff sheet to be effective August 1, 1993:

Third Revised Volume No. 1
Fifth Revised Sheet No. 4C

KGPL states that the above referenced tariff sheet reflects a corresponding change in a publication used to calculate the Gas Commodity Index which is a part of the PL, DG and G Rate Schedules.

KGPL also states that the tariff sheet is being mailed to all interested parties listed on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's regulations. All such protests should be filed on or before September 16, 1993. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22489 Filed 9–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TC93–7–000]

Northern Natural Gas Co.; Request for Waiver of Settlement Provision

September 9, 1993.

Take notice that Northern Natural Gas Company (Northern) filed Petition for waiver of settlement provision to allow Northern additional time to file its updated Index of Large Volume Consumer Classifications (Index).

On July 31, 1979, Northern filed a Stipulation and Agreement in Docket Nos. RP76–52, *et al,* which was approved by the Commission on November 30, 1979 (Settlement). The Settlement involved Northern's curtailment plan and the priority of service categories for large volume consumers as contained in the Index. The Settlement provided that the Data Verification Committee would update the Index on August 27 of each year, with an effective date of September 27. Northern requests a waiver of the provision and an extension of time until November 15, 1993, to file the updated Index.

Any person desiring to be heard or to make a protest with reference to said tariff sheet filing should, on or before September 16, 1993, file with the Federal Energy Regulatory Commission (825 North Capitol Street, NE., Washington, DC 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22490 Filed 9–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–192–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 9, 1993.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on September 3, 1993 tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A of the filing.

Texas Eastern states that it proposes to provide open-access transportation service on the Viosca Knoll Lateral pursuant to 18 CFR part 284, subpart G under discrete Rate Schedules Viosca Knoll Firm Transportation (VKFT) and Viosca Knoll Interruptible Transportation (VKIT). Texas Eastern states it has patterned Rate Schedules VKFT and VKIT after currently effective Rate Schedules FT–1 and IT–1 which were approved by the Commission in Texas Eastern's restructuring proceeding, Docket No. RS92–11–000. Original Sheet Nos. 253E through 253H and 253I through 253K set forth, respectively, the provisions of new Rate Schedules VKFT and VKIT. The Rate Schedule VKFT and VKIT Form of Service Agreements are set forth on Original Sheet Nos. 766I through 766P and Original Sheet Nos. 766Q through 766U, respectively.

Texas Eastern states that the Commission on June 4, 1991, in Docket Nos. CP88–570–000 *et al.*, (Mobile Bay Pipeline Projects) issued its "Order Accepting in Part and Modifying in Part Offers of Settlement and Issuing Certificates" which authorized the construction and operation of the Viosca Knoll 203 facilities as described in the application, as amended, in Docket No. CP88–474–000. Texas Eastern states that completion of construction of the Viosca Knoll Lateral and the in-service date is contemplated to occur in September 1993. Costs of the Viosca Knoll Lateral are not currently reflected in Texas Eastern's rates.

Texas Eastern states that it is also proposing other revisions to its FERC Gas Tariff, Sixth Revised Volume No. 1 necessary to reflect the addition of Rate Schedules VKFT and VKIT. Second Revised Sheet Nos. 200, 211, 235 and 244 and Third Revised Sheet No. 223 revise Section 1 AVAILABILITY of Rate Schedules CDS, FT–1, PTI, IT–1 and SCT, respectively, to state that service under Rate Schedules CDS, FT–1, PTI, IT–1 and SCT is not available from capacity subject to Rate Schedules VKFT and VKIT. Second Revised Sheet No. 434 reflects a revision to Section 1.26 to include Rate Schedules VKFT and VKIT in the term "Open-access Rate Schedules." Second Revised Sheet Nos. 451, 463, 471 and 596 of Sections 3.2, 3.14, 3.14(J) and 11, respectively, have been revised to incorporate either Rate Schedule VKFT or both Rate Schedules VKFT and VKIT where necessary.

Texas Eastern states that section 15.4(B) on First Revised Sheet No. 631 has been revised to update the rate sheets listing applicable to the GRI Surcharge Provision. Revisions to section 15.5(C) and 15.6(A) on Second Revised Sheet No. 633 update the rate sheets listing applicable to the ACA Clause and reflect the addition of Rate Schedules VKFT and VKIT to the ASA, respectively.

Texas Eastern states that Second Revised Sheet Nos. 936, 937, 938 and 939 have been revised to incorporate Rate Schedule VKFT where necessary into the Form of Service Agreement for the Capacity Release Umbrella Agreement. First Revised Sheet Nos.

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[1] Formerly United Gas Pipe Line Company. While Koch Gateway Pipeline Company is the new name effective August 24, 1993. KGPL is filing under United's tariff the following tariff sheets. KGPL intends to submit a Fifth Revised Volume No. 1 for implementation of Order No. 636 services and will also contain complete name changes throughout at that time.

946, 947, 948 and 949 incorporate Rate Schedule VKFT into a specific Addendum to the Form of Service Agreement under the Capacity Release Umbrella Agreement.

Texas Eastern states that the rates which it proposes to charge are set forth on Original Sheet No. 42B. Workpapers showing the derivation of these rates are included herein as Appendix B. Texas Eastern states that these rates are based upon the estimated cost of the certificated Viosca Knoll Lateral facilities, as shown on Appendix C. Texas Eastern has utilized its settlement cost of service factors including depreciation and rate of return approved by the Commission in its "Order on Settlement" dated April 15, 1992, in Docket No. RP90–119 *et al.* Second\ Revised Sheet No. 130 includes the Applicable Shrinkage Percentage for Rate Schedules VKFT and VKIT.

Texas Eastern states that rates for Rate Schedule VKFT include a convertible Reservation Charge, whereby a maximum of $0.1139 per Dth may be charged when the Usage-1 Charge is $0.0000 and a maximum Reservation Charge of $0.0000 may be charged when the Usage-1 Charge is $0.1139. All combinations of Reservation and Usage-1 Charges will total to $0.1139 per Dth.

Texas Eastern states that use of the proposed convertible Reservation Charge concept permits Texas Eastern and its Rate Schedule VKFT customers to negotiate the level of the Reservation Charge.

Texas Eastern states that it does not propose to charge pursuant to either Rate Schedule VKFT or VKIT surcharges to recover transition costs since the gas quantities will be delivered into Texas Eastern's existing system for transportation under Texas Eastern's other rate schedules and will be charged appropriate transition costs at that time.

Texas Eastern states that in light of Order No. 636 regulations and the accompanying changes occurring in the Natural Gas industry, the proposed incremental rate treatment and incremental open-access rate schedules applicable to service on the Viosca Knoll Lateral are appropriate in the circumstances.

The proposed effective date of the tariff sheets listed on Appendix A of the filing is October 3, 1993.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. Copies of this filing were also served on Santa Fe Energy and Murphy Oil.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 16, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22491 Filed 9–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–80–000]

John J. Wheeling and Service Systems Energy; Application for Commission Determination of Exempt Wholesale Generator Status

September 9, 1993.

On September 2, 1993, John J. Wheeling, of 8204 Camelia Drive, Riverside, California 92504, and Service Systems Energy (Service Systems), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Mr. Wheeling and Service Systems propose to operate a 250MW wind-powered facility on an Indian reservation in the San Gorgonio area near Palm Springs, California. According to Mr. Wheeling, the electric energy generated by this facility will be sold exclusively at wholesale within the United States.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before September 27, 1993 and must be served on Mr. Wheeling. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22492 Filed 9–14–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4729–8]

Radiation Cleanup Regulation Subcommittee of the National Advisory Council for Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL92563, EPA gives notice of a two-day meeting, open to the public, of the Radiation Cleanup Regulation Subcommittee of the National Advisory Council for Environmental Policy and Technology's (NACEPT) Environmental Information and Assessments (EIA) Committee. Members of the public will be afforded the opportunity to submit written comments to the subcommittee and to make oral statements during a limited time set aside for that purpose. This will be the first meeting of the Radiation Cleanup Regulation Subcommittee whose mission is to provide advice to the EPA regarding the development of regulations to be applied to sites contaminated with radioactive material subject to the Atomic Energy Act and to sites covered under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The CERCLA sites include, but are not limited to federal facilities.

Discussions at the meeting will include the effects of technical feasibility and cost considerations on cleanup levels: interaction of the regulation with other statutes and ordinances, particularly those addressing land use; and methods for involving local communities in cleanup decisions at specific sites.

DATES: The public meeting will take place October 18 and 19, 1993, and will be held at the National Governors' Association Board Room, 444 North Capitol Street, Washington, DC 20001. On October 18th, the meeting will begin at 9 a.m. and end at 5 p.m. and will resume the following day, October 19, at 9 a.m. and end at 2:30 p.m.

ADDRESSES: Members of the public wishing to submit comments on the

issues discussed by the subcommittee should submit them in writing to: USEPA, Office of Radiation and Indoor Air, Criteria and Standards Division, Mailcode 6603J, 401 M Street, SW., Washington, DC 20460, ATTN: Pamela Russell. Written comments may also be submitted at the public meeting. A limited period of time for the public to present oral comments to the Radiation Cleanup Regulation Subcommittee will also be provided.

FOR FURTHER INFORMATION CONTACT: Pamela Russell, Office of Radiation and Indoor Air, Radiation Studies Division, Mailcode 6603J, 401 M Street, SW., Washington, DC 20460. For general questions or information on the meeting logistics, from outside the Washington, DC area, call EPA's toll-free Superfund/RCRA Hotline, 1–800–424–9346. In the Washington area, dial 703–412–9810. Copies of the issue paper and the agenda for the meeting can be obtained by calling the Hotline or through the Cleanup Regulation Electronic Bulletin Board, 1–800–700–STDS, outside the Washington area; locally, call 703–790–0825.

Dated: September 9, 1993.

Abby J. Pirnie,

Acting Director, Office of Cooperative Environmental Management.

[FR Doc. 93–22572 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4729–7]

Superfund Evaluation Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT); Open Meeting

Under Public Law 92463 (The Federal Advisory Committee Act), EPA gives notice of a meeting on October 4, 1993 of the Superfund Evaluation Committee. The Superfund Evaluation Committee is a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory committee to the Administrator of the EPA.

The Subcommittee will present its findings, after the conclusion of five meetings to discuss key issues affecting the reauthorization of the Superfund legislation to the Administrator. The meeting will take place in the Great Hall of the Department of Justice (DOJ) (Constitution Avenue between 9th and 10th) from 9:30–5 p.m. DOJ is a secure building and there are space restrictions: name and social security number of those wanting to attend must be submitted at least one week prior to the meetings. Federal or other picture identification will be required for entry. Interested parties may call the RCRA/Superfund Hotline at 1–800–424–9346, 703–920–9810, or 1–800–486–3323 (TDD) for copies of the materials EPA is providing to the Committee.

Written comments will be reviewed by the Committee if received one week prior to the meeting. Written comments of preferably not more than 25 pages (at least 25 copies) may be provided to the committee up until the meeting. Those interested in attending must contact Abby Pirnie (U.S. EPA 401 M St. SW. Washington, DC 20460, mail code, A101(F6) or phone, 202–260–7567, or fax, 202–260–3682.

Dated: September 7, 1993.

Abby J. Pirnie,

NACEPT Designated Federal Official.

[FR Doc. 93–22573 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4730–1]

Intent to Grant an Exclusive Patent License

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: Pursuant to 37 CFR part 404, EPA hereby gives notice of its intent to grant an exclusive, royalty-bearing, revocable license to practice the inventions described and claimed in the patents listed below, and all reexamined patents and reissued patents granted in connection with such patents, to a joint venture of The Center for the Environment and Development, located in Research Triangle Park, North Carolina and Seoul Sharp Company, Ltd., located in Seoul, South Korea.

U.S. Patent No. 5,217,511 entitled "Enhancement of Electrostatic Precipitation with Electrostatically Augmented Fabric Filtration," issued June 8, 1993, and corresponding foreign patent applications filed under the Patent Cooperation Treaty;

U.S. Patent No. 5,059,219 titled "Electroprecipitator with Alternating Charging and Short Collector Sections," issued October 22, 1991, and corresponding foreign patent applications filed in Canada, Australia and the European Patent Office;

U.S. Patent No. 4,904,283 entitled "Enhanced Fabric Filtration Through Controlled Electrostatically Augmented Dust Deposition," issued February 27, 1990;

U.S. Patent No. 4,885,139 entitled "Combined Electrostatic and Acidic Gas Removal System," issued December 5, 1989;

U.S. Patent No. 4,822,381 entitled "Electroprecipitator with Suppression of Rapping Reentrainment," issued April 18, 1989.

The announcements of these patents as being available for licensing were made in the March 21, 1990, January 10, 1992, and March 9, 1992 issues of the **Federal Register**. The proposed exclusive license will contain appropriate terms, limitations and conditions to be negotiated in accordance with 35 U.S.C. § 209 and the U.S. Government Patent Licensing Regulation at 37 CFR Part 404.

EPA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days from the date of this Notice the EPA Patent Counsel receives, at the address below, written objections to the grant, together with supporting documentation. The documentation from objecting parties having an interest in practicing the above patents should include an application for exclusive or nonexclusive license with the information set forth in 37 CFR 404.8. The EPA Patent Counsel and other EPA officials will review all written responses and then recommend to the Assistant Administrator for Research and Development, for the U.S. Environmental Protection Agency, or his or her designee, who has been delegated the authority to issue patent licenses under 35 U.S.C. 207, whether to grant the exclusive license.

DATES: Comments to this notice must be received by the EPA Patent Counsel at the address listed below on or before November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas Gorman, Patent Counsel, Office of General Counsel (LE–132K), U.S. Environmental Protection Agency, Washington, DC 20460, Telephone (202) 260–1339.

Gerald H. Yamada,

Acting General Counsel.

[FR Doc. 93–22574 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180901; FRL 4644–3]

Receipt of Application for Emergency Exemption to Use Difenoconazole; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Idaho Department of Agriculture (hereafter referred to as the "Applicant") for use of the fungicide difenoconazole (trade

name Dividend) (CAS No. 119446–68–3) to control dwarf bunt or TCK smut *Tilletia controversa* on up to 300,000 pounds of winter wheat seed in Idaho. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before September 30, 1993.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180901" should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Room 52, 6th Floor, 2800 Jefferson Davis Highway, Arlington, VA (703–308–8326).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of the fungicide, difenoconazole, available as Dividend 3FS from Ciba-Geigy Corporation, to control dwarf bunt or TCK smut on up to 300,000 pounds of winter wheat seed in Idaho. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, dwarf bunt (TCK smut) can be a very devastating fungal pathogen in winter wheat fields in Idaho. A severe infection can result in complete devastation of the wheat head and a 100 percent crop loss in some susceptible varieties. Winter snow cover in 1992, and wet 1993 spring conditions have created favorable conditions for the development of dwarf bunt disease in Idaho. According to the Applicant, no registered pesticides or alternative practices are available that will adequately control this disease. If difenoconazole is not available for use, economic losses of nearly $9 million are expected in 1993 due to yield losses in winter wheat. Under the proposed exemption, one application of Dividend 3FS would be made at the rate of 0.5 to 1.0 fluid ounce per 100 pounds of seed. The dilution rate is a minimum of 16 ounces of water using a standard slurry or mist-type seed treater.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) (40 CFR 166.34 (a)(1)). Difenoconazole is a new chemical. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Idaho Department of Agriculture.

Dated: August 25, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–22297 Filed 9–14–93; 8:45 am]
BILLING CODE 6560–50–F

[AMS-FRL–4729–5]

Announcement of Fuel Economy Retrofit Device Evaluation for the Fuelon Power Gasoline Fuel Additive

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Fuel Economy Retrofit Device Evaluation.

SUMMARY: This document announces the completion of the EPA evaluation of the "Fuelon Power" gasoline fuel additive under provisions of section 511 of the Motor Vehicle Information and Cost Savings Act. The notice also announces our findings, conclusions, and the availability of the report.

FOR FURTHER INFORMATION CONTACT: Edward Anthony Barth, Regulation Development and Support Division, Office of Mobile Sources, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone: (313) 668–4299

SUPPLEMENTARY INFORMATION:

I. Background

Section 511(b)(1) and section 511(c) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2011(b)) requires that:

(b)(1) "Upon application of any manufacturer of a retrofit device (or prototype thereof), upon the request of the Federal Trade Commission pursuant to subsection (a), or upon his own motion, the EPA Administrator shall evaluate, in accordance with rules prescribed under subsection (d), any retrofit device to determine whether the retrofit device increases fuel economy and to determine whether the representations (if any) made with respect to such retrofit devices are accurate."

(c) "The EPA Administrator shall publish in the **Federal Register** a summary of the results of all tests conducted under this section, together with the EPA Administrator's conclusions as to (1) the effect of any retrofit device on fuel economy; (2) the effect of any such device on emissions of air pollutants; and (3) any other information which the Administrator determines to be relevant in evaluating such device."

EPA published final regulations establishing procedures for conducting evaluations of fuel economy retrofit devices on March 23, 1979 [44 FR 17946].

II. Origin of Request for Evaluation, Device Descriptions and Report Identification

This evaluation of the Fuelon Power gasoline fuel additive was conducted upon the request of the Federal Trade Commission. Fuelon Power is an aftermarket gasoline fuel additive that is added to the vehicle tank by the operator when refueling the vehicle. The product consists of a proprietary blend of hydrocarbon products which are claimed to substantially reduce vehicle exhaust emissions and improve fuel economy.

Two reports were developed by EPA, the first report, "EPA Evaluation of the Fuelon Power Gasoline Fuel Additive Under section 511 of the Motor Vehicle Information and Cost Savings Act", Report Number EPA-AA-TEB–511–92–

01 contains the analysis and conclusions and consists of 22 pages including all attachments. The second report, "Emissions and Fuel Economy Effects of the Fuelon Power Gasoline Fuel Additive", Report Number EPA-AA-TEB-92-01, consists of 13 pages and completely describes EPA testing of the Fuelon Power gasoline fuel additive. This report is contained in the preceding 511 Evaluation report as an attachment.

III. Availability of Evaluation Reports

Copies of these reports may be obtained from the National Technical Information Service by using the above report numbers. Address requests to: National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, Telephone: (703) 487-4650 or FTS 737-4650

IV. Summary of Evaluation

EPA fully considered all of the information readily available for the additive. The evaluation of the Fuelon Power gasoline fuel additive was based on the information provided by the manufacturer with the additive, related literature, and the results of the EPA confirmatory testing of the additive.

Two typical vehicles were tested at EPA's Motor Vehicle Emission Laboratory. The basic test sequence included 1,000 miles of mileage accumulation, duplicate Federal Test Procedures (FTP), and duplicate Highway Fuel Economy Tests (HFET). This test sequence was conducted both without and with the Fuelon Power additive in the test vehicle's fuel.

The overall conclusion from the testing and evaluation is that the Fuelon Power gasoline fuel additive did not significantly reduce vehicle emissions or improve fuel economy for either the FTP or HFET.

The additive clearly did not reduce vehicle exhaust emissions nor produce the large—greater than 15 percent—fuel economy benefits claimed by the manufacturer. Therefore, users of the Fuelon Power gasoline additive are unlikely to realize either an emissions or fuel economy benefit in actual driving. Vehicle operation and performance were unchanged by the additive.

Dated: September 8, 1993.

Michael H. Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93-22569 Filed 9-14-93; 8:45 am]

BILLING CODE 6560-50-P

[OPPTS-44601; FRL-4643-6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on sodium cyanide (CAS No. 143-33-9) submitted pursuant to a testing consent order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for sodium cyanide were submitted by DuPont Chemicals pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on August 9, 1993. The submission describes a LC_{50} study with the Northern Bobwhite using water borne exposure and a LC_{50} study with the mallard using water borne exposure. This chemical is used in the heap leach process for mining.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS-44601). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center, also known as, TSCA Public Docket Office, Rm. E-G102, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: September 1, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93-22568 Filed 9-14-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4729-4]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity to Comment Regarding the City of Independence, MO

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding the City of Independence, Missouri.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act ("Act"). EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a Proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On September 16, 1993, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551-7630, the following Complaint:

In the Matter of the City of Independence, Missouri, EPA Docket No. VII-93-H-0001 and VII-93-W-0001.

The Complaint proposes a penalty of One Hundred Twenty-Five Thousand Dollars ($125,000) for failing to comply

with certain conditions of its National Pollutant Discharge Elimination System permit concerning the acceptance and treatment of wastes hauled to its Rock Creek waste water treatment plant under contract.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by the City of Independence, Missouri is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this notice.

Dated: September 3, 1993.

William W. Rice,

Acting Regional Administrator.

[FR Doc. 93–22575 Filed 9–14–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

September 7, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0161.

Title: Section 73.61, AM directional antenna field strength measurements.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 1,847 recordkeepers; 19.232 hours average burden per recordkeeper; 35,522 hours total annual burden.

Needs and Uses: Section 73.61 requires that each AM station using directional antennas make field strength measurements as often as necessary to insure proper directional antenna system operation. Stations not having approved sampling systems make field strength measurements every three months. Stations with approved sampling systems must make field strength measurements as often as necessary. Also, all AM stations using directional antennas must make partial proofs of performance as often as necessary. The data is used by FCC Staff in field inspections/investigations and by AM licensees with directional antennas to ensure that adequate interference protection is maintained between stations and to ensure proper operation of antennas.

OMB Number: 3060–0326.

Title: Section 73.69, Antenna monitors.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of response: On occasion reporting requirement.

Estimated Annual Burden: 20 responses; 1.5 hours average burden per response; 30 hours total annual burden.

Needs and Uses: Section 73.69(c) requires AM station licensees with directional antennas to file an informal request to operate without required monitors with the Engineer in Charge of the radio district in which the station is located when conditions beyond the control of the licensee prevent the restoration of an antenna monitor to service within the allowed period. Section 73.69(d)(1) requires that AM licensees with directional antennas request and obtain temporary authority to operate with parameters at variance with licensed values when an authorized antenna monitor is replaced pending issuance of a modified license specifying new parameters. Section 73.69(d)(5) requires AM licensees with directional antennas to submit an informal request for modification of license to the FCC within 30 days of the date of antenna monitor replacement. Station licensees must operate in accordance with station licenses.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–22473 Filed 9–14–93; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

September 7, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0165.

Title: Part 41 Franks, § 41.31, Records to be Maintained and Reports to be Filed.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Frequency of Response: Recordkeeping requirement and on occasion reporting requirement.

Estimated Annual Burden: 68 recordkeepers; 6 hours average burden per recordkeeper; 408 hours total annual burden.

Needs and Uses: Section 210 of the Communications Act of 1934, as amended, requires that common carriers subject to the Act maintain records to reflect the name, address, etc., of persons holding telephone or telegraph franks, so as to enable the Commission and/or carriers to compile, if needed, reports in this area. Though the Commission is not currently requiring the actual periodic reporting of this data, it is information which should continue to be maintained in case the need arises to assure that the franking privileges are being adequately policed by the companies themselves. Section 41.31 of the Commission's rules implements Section 210 of the Communications Act of 1934. This

information helps to ensure that franks are being addressed fairly. Failure to have the information recorded would prohibit the Commission from being able to respond to complaints and from generally being able to police the activity.

OMB Number: 3060–0147.

Title: Section 64.804, Extension of Unsecured Credit for Interstate and Foreign Communications Services to Candidates for Federal Office.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Frequency of Response: Semi-annual reporting requirement.

Estimated Annual Burden: 26 responses; 8 hours average burden per response; 208 hours total annual burden.

Needs and Uses: Collection of this information is required by statute—Section 401 of the Federal Election Campaign Act of 1971, Public Law 92–225. Section 64.804 of FCC rules, requires communications common carriers with operating revenues exceeding $1 million who extend unsecured credit to a political candidate or person on behalf of such candidate for Federal office to report, twice a year, data including due and outstanding balances. This information is used by the agency to monitor the extent of credit extended to candidates for Federal office.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–22474 Filed 9–14–93; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1964]

Petition for Reconsideration of Action in Rulemaking Proceeding

September 9, 1993.

Petition for reconsideration has been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in room 239, 1919 M Street, NW. Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed September 30, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4 (b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of section 4(g) of the Cable Television Consumer Protection Act of 1992 (MM Docket No. 93–8)

Number of Petitions Filed: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–22472 Filed 9–14–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement No. 403]

Cooperative Agreements for National Programs to Strengthen Comprehensive School Health Programs and Prevent Health Problems Among Youth; Amendment

A notice announcing the availability of Fiscal Year 1994 funds for cooperative agreements for National Programs to Strengthen Comprehensive School Health Programs and Prevent Health Problems Among Youth was published in the **Federal Register** on September 3, 1993. The notice is amended as follows:

On page 46974, third column, under the heading "Eligible Applicants", the first paragraph is amended to read: "Eligible applicants are national organizations and national minority organizations that are health, education, and social service agencies that are private, nonprofit, professional, or voluntary. Eligible applicants must have organizational capacities and experience to assist state and local education agencies, institutions of higher education, and/or other relevant agencies in preventing behaviors that place young people at risk for HIV infection, STDs, and other important health problems. Eligible organizations must also have affiliate offices, organizations, or constituencies in a minimum of 10 states and territories."

All other information and requirements of the September 3, 1993, **Federal Register** notice remain unchanged.

Dated: September 9, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–22510 Filed 9–14–93; 8:45 am]

BILLING CODE 4160–18–P

Food and Drug Administration

[Docket No. 93D–0287]

"Guidance Document for Lead in Shellfish;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Guidance Document for Lead in Shellfish." This document was developed in response to requests from various State public health and environmental agencies. This document addresses lead, a contaminant that is of particular concern to the agency and to State authorities. The information provided in this guidance document should assist State and local decisionmakers in addressing the local or regional problems with lead in shellfish. This information will also be useful in determining the need to issue consumption advisories or to close harvesting waters when shellfish harvested from particular waters are found to be contaminated.

ADDRESSES: Submit written requests for single copies of this guidance document (free of charge) to the Food and Drug Administration, Policy Guidance Branch (HFS–416), 200 C St. SW., Washington, DC 20204. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your request. The guidance document is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gregory M. Cramer, Center for Food Safety and Applied Nutrition (HFS–416), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–3888.

SUPPLEMENTARY INFORMATION: FDA has prepared a guidance document on lead in shellfish entitled, "Guidance Document for Lead in Shellfish," in response to requests from various State public health and environmental agencies. This document will assist State and local decisionmakers in addressing the public health significance of lead in shellfish and in evaluating the need for issuance of consumption advisories or to close harvesting waters when shellfish

harvested from particular waters are found to be contaminated.

In the **Federal Register** of February 26, 1993 (58 FR 11609), the agency announced the availability of four other guidance documents on elemental contaminants in shellfish, "Guidance Document for Arsenic in Shellfish," "Guidance Document for Cadmium in Shellfish," "Guidance Document for Chromium in Shellfish," and "Guidance Document for Nickel in Shellfish."

The guidance document that is the subject of this notice provides public health information about lead, how to sample shellfish in preparation for testing for lead, procedures for analyzing for lead contamination, consumption and exposure assessments, and a summary of the toxicological and adverse effects of lead. Guidance is provided on how tolerable levels of shellfish consumption or contamination might be determined.

FDA plans to develop additional guidance documents to address other contaminants present in shellfish and finfish that are of public health significance.

Dated: September 9, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–22512 Filed 9–14–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–93–3665]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 8, 1993.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Applications for Housing Assistance (FR–3466).

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The information collected is needed to enable the project owner to tentatively determine the family's eligibility, determine the unit size, screen applicants and assess the effectiveness of the marketing strategy outlined in the Affirmative Fair Housing Marketing Plan.

Form Number: None.

Respondents: Individuals or households and businesses or other for-profit.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	54,714		1		.05		2,735

Total Estimated Burden Hours: 2,735.

Status: New.

Contact: James J. Tahash, HUD, (202), 708–3944, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 7, 1993.

Proposal: Loan Guarantee Program, Amendment to Section 108, 24 CFR Part 570.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: The information collection is needed to review applications from State and local governments. It is used to evaluate information submitted in compliance with section 108 Loan Guarantee Program of the National Affordable Housing Act of 1990.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: Annually and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	100		1		88.65		8,865
Recordkeeping	100		1		44.00		4,400

Total Estimated Burden Hours: 13,265.

Status: Reinstatement.

Contact: Paul D. Webster, HUD, (202) 708–1871, Angela Antonelli, OMB, (202) 395–6880.

Dated: August 31, 1993.

Proposal: Nehemiah Housing Opportunity Grants Program (FR–3438).

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Under the Nehemiah Housing Opportunity Program, HUD is authorized to make grants to non-profit organizations to enable them to provide second mortgages to families purchasing homes that are constructed or substantially rehabilitated.

Form Number: None.

Respondents: Individuals or households, State or local Governments, and non-profit institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	136		Varies		Varies		5,032

Total Estimated Burden Hours: 5,032.

Status: Revision.

Contact: Joan Morgan, HUD, (202) 708–2676, Angela Antonelli, OMB, (202) 395–6880.

Dated: August 30, 1993.

Proposal: HOPE for Elderly Independence Program.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: The purpose of this program is to provide supportive services for frail elderly residents in the community. They will be able to receive services in their homes. The information is needed to apply for funds and evaluate the effectiveness of the demonstration.

Form Number: None.

Respondents: Individuals or Households and States or Local Government.

Frequency of Submission: Quarterly and Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
PHA applications	100		1		14		1,400
Budget formats	25		1		3		75
Quarterly program reports	25		3		1.5		113
Annual program reports	25		1		3		75
Tenant applications	1,500		1		4		6,000

Total Estimated Burden Hours: 7,663.

Status: Reinstatement.

Contact: Gwen Carter, HUD, (202) 708–3887, Angela Antonelli, OMB, (202) 395–6880.

Dated: August 31, 1993.

Proposal: Freedom of Information Act (FOIA) of 1986.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Third Party Tracers use forms HUD–57002 and 57003 to verify unpaid distributive share payments and unearned mortgage insurance premiums found on FOIA listings for Mutual Mortgage Insurance (MMI) loans paid off from 1977 through two years ago.

Form Number: HUD–57002 and 57003.

Respondents: Individuals or households; businesses or other for-profit; and non-profit institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	10		1,000		.1		1,000

Total Estimated Burden Hours: 1,000.

Status: New.

Contact: Ken Tucker, HUD, (202) 708–2438, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 8, 1993.

Proposal: Survey of Tenants in Certain Properties With HUD-Held and Foreclosed Mortgages.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The Department is required to preserve the number of units which are occupied by low- or moderate-income persons at the time of assignment or foreclosure, whichever is greater. HUD must also inquire as to the income levels of unassisted tenants for whom information is not available.

Form Number: None.

Respondents: Individuals or households, businesses or other for-profit, and Federal agencies or employees.

Frequency of Submission: Other.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey of currently HUD-held inventory	9,881		1		.05		494
Unit owners	85		1		.50		43

Total Estimated Burden Hours: 537.

Status: Extension.

Contact: James J. Tahash, HUD, (202) 708–3944, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 8, 1993.

Proposal: Draw Request.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Form HUD–9746A is used by homebuyers and contractors to request construction draws for rehabilitation work that has been completed.

Form Number: HUD–9746A.

Respondents: Businesses or other for-profit.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–9746A	4,000		5		1.5		30,000

Total Estimated Burden Hours: 30,000.

Status: Revision.

Contact: Kenneth L. Crandall, HUD, (202) 708–2720, Angela Antonelli, OMB, (202) 395–6880.

Dated: September 8, 1993.

[FR Doc. 93–22506 Filed 9–4–93; 8:45 am]
BILLING CODE 4210–01–M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket N–93–3661; FR–3566–N–02]

Task Force on Occupancy Standards in Public and Assisted Housing

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of public hearings.

SUMMARY: The Task Force on Occupancy Standards in Public and Assisted Housing was established on December 31, 1992 in accordance with the provisions of section 643 of the Housing and Community Development Act of 1992 (Pub. L. 102–550) and the Federal Advisory Committee Act (FACA) (5 U.S.C. app 2). The Task Force's charter was published in the **Federal Register** on January 7, 1993 at 58 FR 3039. The Task Force was created to review all rules, policy statements, handbook and technical assistance memoranda issued by the Department on the standards and obligations governing residency in public and assisted housing; and make recommendations in its final report to HUD and Congress for the establishment of reasonable criteria for occupancy, so that HUD could revise its standards, regulations, and guidelines to provide accurate and complete guidance to owners and managers of federally assisted housing. The **Federal Register** on July 12, 1993 at 58 FR 37501 announced that three public hearings were to be held by the Task Force following the dissemination to the public of its draft report. This notice to confirm the dates and locations of those hearings at which the public can offer comments on the Task Force's Preliminary Report and other federally assisted housing related issues.

FOR FURTHER INFORMATION CONTACT: Laurence D. Pearl, Office of Fair Housing and Equal Opportunity, room 5226, Department of Housing and Urban Development, 451 Seventh Street, SW. Washington, DC 20410. Telephone: (202) 708–0288 (voice) or (TDD) (202) 708–0113. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Time and Place

The public hearings will be held on Tuesday, September 21, 1993 at the San Antonio Housing Authority, 818 South Flores Street, San Antonio, TX; Monday, September 27, 1993 at the Harbor Point Community Center, 270 Mount Vernon Street, Dorchester, MA; and Friday, October 1, 1993 at the Center Park Community Center, 2121 26th Avenue, South, Seattle, WA. The public hearings will be held each of the three days from 10 a.m. to 8 p.m. with several breaks planned.

Providing Comments at the Public Hearings

Individuals who want to provide comments at the hearings should write or call the HUD Offices of Fair Housing and Equal Opportunity in San Antonio, TX, Boston, MA or Seattle, WA with the following information:

(1) Name, address and telephone number.

(2) The name of the group or organization the speaker represents, if any.

(3) The issue to be discussed (for example, the application process, notices in plain language).

(4) Preferred time for speaking (morning, afternoon, early evening or evening).

(5) If you are a person with a mental or physical disability, information about reasonable accommodations you may need to attend and speak at the hearing.

The three HUD Offices' addresses and telephone numbers appears at the end of this notice.

Individuals who are given time to provide testimony will be notified of their selection and the anticipated time for their presentation. The Task Force will use a panel format to receive testimony. The Task Force will try to give time to speak to everyone who wants to comment. Walk-ins will be accommodated but must register the day of the hearing to be placed on the roster. But, because of limited time, the Task Force may not be able to schedule time for everyone. Individuals and organizations may provide written testimony at the hearings. If written testimony is offered by a speaker, one copy should be submitted at the time of

check in. The written testimony should include a cover sheet which lists the person's name and organization, if any; address and telephone number; location and date of the public hearing. If possible, the Task Force recommends that speakers bring at least fifteen written copies of their testimony during the public hearing. The Task Force recognizes that not everyone will be able to meet this request. Written comments to the Task Force Preliminary Report may also be offered at the hearing, or mailed to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500 by November 1, 1993.

Dated: September 7, 1993.

Bonnie Milstein,

Chair, Task Force on Occupancy Standards in Public and Assisted Housing.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

HUD Office Addresses and Telephone Numbers

San Antonio Office, Washington Square, 800 Dolorosa, San Antonio, TX 78207–4563, Telephone No. (210) 229–6885.

Boston Regional Office, Room 308, Thomas P. O'Neill, Jr. Federal Bldg., Causeway Street, Boston, MA 02222–1092, Telephone No. (617) 565–5304.

Seattle Regional Office, Suite 200, Seattle Federal Office Bldg, 909 1st Avenue, Seattle, WA 98104–1000, Telephone No. (206) 220–5170.

[FR Doc. 93–22507 Filed 9–17–93; 8:45 am]

BILLING CODE 4210–28–M

INFORMATION SECURITY OVERSIGHT OFFICE

National Industrial Security Program Policy Advisory Committee; Meeting

Notice is hereby given that the National Industrial Security Program Policy Advisory Committee (NISPPAC) will meet September 30, 1993, from 1 p.m. to 3 p.m., in room 105 of the National Archives Building, Seventh Street and Pennsylvania Avenue, NW, Washington, DC. This notice is required by the Federal Advisory Committee Act (5 U.S.C. App. 2) and implementing regulation 41 CFR 101–6.

The purpose of this meeting is to discuss matters of policy with respect to the National Industrial Security Program (NISP). The agenda for this meeting will include discussion on the effective implementation of the NISP, general discussion on the goals of the NISPPAC, and its by-laws.

This meeting will be open to the public. However, due to space limitations and access procedures, the names and telephone numbers of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than September 28, 1993. Written statements from the public will be accepted in lieu of an opportunity for comment.

For further information, contact Steven Garfinkel, Director, ISOO, 750 17th Street, NW., suite 530, Washington, DC 20006, telephone (202) 634–6150.

Dated: September 10, 1993.

Steven Garfinkel,

Director, Information Security Oversight Office.

[FR Doc. 93–22616 Filed 9–14–93; 8:45 am]

BILLING CODE 6820–AF–M

DEPARTMENT OF THE INTERIOR

Geological Survey

CHIM Evaluation Consortium; Cooperative Research and Development Agreement

AGENCY: Geological Survey, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with CHIM Evaluation Consortium (CHIMEC), a consortium of minerals exploration companies. The purpose of the CRADA is to evaluate and test the CHIM electrochemical exploration method to determine its applicability to minerals exploration. Part of this research will involve testing of a newly developed USGS CHIM electrode. Any other organization from the minerals exploration industry interested in pursuing the possibility of a CRADA for similar kinds of activities should contact the USGS.

DATES: This notice is effective September 15, 1993.

ADDRESSES: Information on the proposed CRADA is available to the public upon request at the following location:

U.S. Geological Survey; Chief, Branch of Geochemistry; P.O. Box 25046; Denver Federal Center, MS–973; Denver, Colorado 80225–0046.

FOR FURTHER INFORMATION CONTACT: Dr. David Smith of the U.S. Geological Survey, Branch of Geochemistry, at the address given above, telephone (303) 236–1800, no later than 30 days from the publication of this notice.

SUPPLEMENTARY INFORMATION: An organization interested in a similar CRADA should be able to provide access to sites with known mineralization and having potential for maximizing the return of CHIM research conducted there. It is desirable that their sites have well-defined zones of mineralization, of known type, defined by drilling and other exploration tools, and that other geochemical tests have been, or will be, made at the site.

Selection of an organization to participate in this CRADA will be based on the types and variety of potential test sites available from the industry organization, the degree of scientific cooperation to be provided, and total resources to be made available that will contribute directly to advancing the CHIM research program of the USGS.

Benjamin A. Morgan,

Chief Geologist.

[FR Doc. 93–22543 Filed 9–14–93; 8:45 am]

BILLING CODE 4310–13–M

Bureau of Land Management

[WY–980–4340–04]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plat of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 55N., R. 69W.,
accepted September 7, 1993

If protests against a survey, as shown on the above plat, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s).

This plat will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 2515 Warren Ave., Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the

protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plat represents a dependent resurvey.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: September 7, 1993.

John P. Lee,

Chief, Branch of Cadastral Survey.

[FR Doc. 93–22536 Filed 9–14–93; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

Niobrara Scenic River Advisory Commission Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Niobrara Scenic River Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: October 12, 1993; 10 a.m. until 3 p.m.

ADDRESSES: Cherry County Court House, Main Street, Valentine, Nebraska.

Agenda topics include a summary review of the comments received by the National Park Service in response to the June newsletter; an update and discussion on the status of the draft management plan for the Niobrara Scenic River by the National Park Service planning team; the opportunity for public comment; and a proposed agenda, date, time, and location for the next meeting.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chair at the beginning of the meeting. In order to accomplish the agenda for the meeting, the Chair may want to limit or schedule public presentations.

The meeting will be recorded for documentation and a summary in the form of minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the Commission members. Copies of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverways in O'Neill, Nebraska.

FOR FURTHER INFORMATION CONTACT: Warren Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763–0591, (402) 336–3970.

SUPPLEMENTARY INFORMATION: The Commission was established pursuant to Public Law 102–50, section 5. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters pertaining to the development of a management plan and on the management and operation of the 40-mile and 30-mile segments of the Niobrara River designated by section 2 of Public Law 102–50 which lie outside the boundary of the Fort Niobrara National Wildlife Refuge and that segment of the Niobrara River from its confluence with Chimney Creek to its confluence with Rock Creek.

Dated: September 2, 1993.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 93–22481 Filed 9–14–93; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–643 (Final)]

Defrost Timers From Japan; Institution of Antidumping Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–643 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of defrost timers, provided for in subheading 9107.00.40 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–205–3181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of defrost timers from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on January 19, 1993, by Paragon Electric Co., Inc., Two Rivers, WI.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on December 22, 1993, and a public version will be issued

thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 11, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 27, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 3, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is January 5, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is January 20, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 20, 1994. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: September 10, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–22560 Filed 9–14–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–349]

Change of Commission Investigative Attorney

In the Matter of certain diltiazem hydrochloride and diltiazem preparations.

Notice is hereby given that, as of this date, John M. Whealan, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of Juan S. Cockburn, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: September 9, 1993.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 93–22561 Filed 9–14–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–464 (Final)]

Sparklers From the Peoples' Republic of China; Final Critical Circumstances Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution of a final critical circumstances investigation and scheduling of procedures for that determination.

SUMMARY: The Commission hereby gives notice of the institution of a final critical circumstances investigation No. 731–TA–464 (Final) under section 735(a) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether critical circumstances exist by reason of imports from China of sparklers, provided for in subheading 3604.10.00 of the Harmonized Tariff Schedule of the United States.

EFFECTIVE DATE: September 10, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen McLaughlin (202–205–3095), Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1993, the Department of Commerce notified the Commission of an amendment to its final determination of sales at less than fair value and outstanding antidumping order, in accordance with a remand from the Court of International Trade in the above-referenced case. 58 FR 40624 (July 29, 1993). The amended final determination includes an affirmative critical circumstances determination as to Jiangxi Native Products Import & Export Corp. and all other exporters of sparklers, excluding Guangxi Native Products Import & Export Corp. and Hunan Native Products Import & Export Corp. In their original final determination, Commerce had made a negative determination on critical circumstances.

The original petition was filed on July 2, 1990, by Elkton Sparkler Co., North East, MD and Diamond Sparkler Co., Youngstown, OH. Suspension of liquidation was ordered on December 17, 1990. Commerce made its original final determination regarding sales of imports at LTFV and no critical circumstances effective April 26, 1991. The Commission made its original final determination on June 11, 1991. On May 7, 1993, the Court (CIT) affirmed the results of remand in this case.

The Commission requested import data from the U.S. Customs Service regarding imports of sparklers from China, and particularly those produced by Jiangtxi, during the 90 day period for which retroactive duties may be assessed (September 17 to December 17, 1990) and the 90 day period immediately prior to that time (June 17 to September 16, 1990). By letter dated August 30, 1990, the U. S. Customs Service responded to the Commission's request. The Customs Service indicated that total import volume of sparklers from China declined from September 17, 1990 to December 17, 1990, compared with the prior 90 day period. In addition, Customs indicated that sparklers manufactured or produced by Jiangtxi were not imported during either period.

The Customs Service has also informed the Commission that there are

no unliquidated entries of sparklers from China dating from the period September 17, 1990–December 17, 1990. Thus there are no unliquidated entries upon which retroactive duties could be assessed.

Entries of Appearance

Entries of appearance must be filed within seven calendar days of the date of publication of this notice.

Waiver of Commission Rules

Unless an interested party enters their appearance and objects within seven calendar days of the date of publication of this notice, the Commission intends to waive rules 207.21–25 regarding staff reports, hearings, and briefs of parties for this investigation. 19 CFR 207.21–25.

Written Submissions

Any written submissions by interested parties on the merits must be filed with the Commission no later than 14 days from the date of publication of this notice in the **Federal Register**.

The Commission will issue a final determination by the end of the 75-day investigative period, October 12, 1993.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20(b) of the Commission's rules.

Issued: September 10, 1993.

By order of the Commission.

Donna Koehnke,

Secretary.

[FR Doc. 93–22562 Filed 9–14–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–350]

Initial Determination Terminating Respondent on the Basis of Settlement Agreement

In the Matter of certain sputtered carbon coated computer disks and products containing same, including disk drives.

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: Conner Peripherals, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on September 8, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: September 8, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–22563 Filed 9–14–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731–TA–636 and 637 (Final)]

Stainless Steel Wire Rod From Brazil and France; Revised and Supplementary Schedule

AGENCY: United States International Trade Commission.

ACTION: Revised and supplementary schedule for the subject investigations.

EFFECTIVE DATE: September 3, 1993.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: On August 2, 1993, the Commission instituted the subject investigations together with investigation No. 731–TA–638 (Stainless Steel Wire Rod from India) and established a schedule for its conduct (**Federal Register**, August 18, 1993, 58 FR 43908). Subsequently, the Department of Commerce extended the date of its final determinations for Brazil and France from October 11, 1993, to December 20, 1993 (**Federal Register**, August 24, 1993, 58 FR 44660). Accordingly, the Commission's determinations for Brazil and France will be postponed until after Commerce's final determinations, and supplemental briefs pertaining thereto may be filed on or before January 3, 1994. The Commission's schedule will otherwise stay coincident with Inv. No. 731–TA–638 and remain as previously published.

For further information see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: September 7, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–22564 Filed 9–14–93; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work

Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on September 30, 1993, at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–4215A and B, Washington, DC. The meeting is open to the public and will begin at 9 a.m.

At this meeting, the Advisory Committee will receive the report of its Fall Protection work group and will provide OSHA with recommendations regarding the development of an interim policy for uniform enforcement of fall protection requirements.

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs, at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chairman of the Advisory Committee. Individuals with disabilities who wish to attend the meeting should contact Tom Hall, at the address indicating below, if special accommodations are needed.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone 202–219–8615. An official record of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC this 10th day of September, 1993.

David C. Zeigler,

Acting Assistant Secretary of Labor.

[FR Doc. 93–22584 Filed 9–14–93; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreements for the "Arts Plus" Initiative

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of from 8 to 12 separate Cooperative Agreements to qualified nonprofit arts organizations in partnership with public schools, to support projects of three years duration. The projects must focus on dance, theater, musical theater, or opera education, and must help move the arts toward inclusion as a basic element of preK -12 education. The funding period of the Cooperative Agreements is anticipated to be from approximately August 1994 to approximately August 1997. Funding for these projects will be in a range from approximately $50,000 to $150,000 total for the three years. Each recipient of a Cooperative Agreement will be required to satisfy a matching requirement on a 1-to-1 basis in non-Federal funds. Eligibility to apply is limited to arts organizations that are a dance theater, or musical theater, or opera organization or company. Arts presenters are also eligible as applicants if they exhibit the following characteristic: A presenting organization selects artists and companies, engages them to perform or exhibit, pays them a fee, and brings them together with general audiences. Presenting organizations provide performance and exhibition opportunities necessary to the existence of many artists. In addition, presenting organizations must present paid professional artists to the general public in a balanced seasonal format, and employ full-time paid professional administrative staff whose primary responsibility is presenting professional artists. Those interested in receiving the Solicitation package should reference Program Solicitation PS 94–01 in their written request and include two (2) self-addressed labels. Questions should be addressed to the Arts in Education Program at (202) 682–5426. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 94–01 is scheduled for release approximately November 1, 1993 with proposals due January 19, 1994.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Contracts Division, room 217, 1000 Pennsylvania Avenue., NW., Washington, DC 20506.

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 93–22541 Filed 9–14–93; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 23, 1993, through September 2, 1993. The last biweekly notice was published on September 1, 1993.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the

expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By October 15, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: August 5, 1993.

Description of amendment requests: The amendment would change the frequency of several channel functional tests for the reactor protection system and the engineered safety feature actuation system instrumentation from once per month to quarterly. The additional information is provided in support of the licensee's proposal to also extend the surveillance frequencies for the automatic actuation logic for safety injection, containment isolation, containment spray, main steam line isolation, and recirculation from monthly to quarterly. This amendment request supersedes an amendment request dated December 28, 1992, published in the **Federal Register** on February 3, 1993 (58 FR 6994).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

Standard 1—Involve a significant increase in the probability or consequences of an accident previously evaluated.

Increasing the surveillance interval for RPS and ESFAS instrumentation has two principle effects with opposing impacts on core melt risk. The first impact is a slight increase in core melt frequency that results from the increased unavailability of the instrumentation in question. The unavailability of the tested instrumentation components is translated to result in a failure of the reactor to trip, an Anticipated Transient Without Scram, or a failure of the appropriate engineered safety features to actuate when required. The opposing impact is the corresponding reduction in core melt frequency that would result due to the reduced exposure of the plant to test induced transients.

Representative fault tree models were developed for Palo Verde and the corresponding core melt frequency increases and decreases were quantified in CEN-327-A and CEN-327-A, Supplement 1. The NRC Staff found that changes in the RPS unavailabilities that result from extending the surveillance test intervals from 30 days to 90 days were not considered to be significant. Estimates of the reduction in scram frequency from the reduction in test-induced scrams and the corresponding reduction in core melt frequency were found acceptable. Extended surveillance intervals were found to result in a net reduction in core melt risk. Operation of the facility in accordance with this proposed amendment, therefore, will not involve a significant increase in the probability or consequence of an accident previously evaluated.

Standard 2—Create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment request does not involve any changes in equipment and will not alter the manner in which the plant will be operated. For this reason, this amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

Standard 3—Involve a significant reduction in a margin of safety.

The margin of safety is not significantly reduced. There are no changes to the equipment or plant operations. The changes to [plant protection system] PPS setpoints and allowable values, while nonconservative, are not significant. The only impact of this change is the development of a more appropriate balance between increased core melt risk due to slightly increased equipment unavailability and reduced core melt risk due to a reduction in plant exposure to test-induced transients. Implementation of the proposed change is expected to result in an overall improvement in safety due to the fact that reduced testing intervals will result in fewer inadvertent reactor trips and less frequent actuation of ESFAS components. The conclusions of the accident analyses in the [Palo Verde Nuclear Generating Station] PVNGS [Updated Final Safety Analysis Report] UFSAR remain valid and the safety limits continue to be met.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: August 20, 1993.

Description of amendment request: The proposed amendment would modify Technical Specification 3/4.4.5, Steam Generators, to add as an alternative to tube plugging, the repair of steam generator tubes that have indications of degradation. Babcock & Wilcox Nuclear Service Company (B&W) has developed a repair methodology that allows degraded steam generator tubes to be repaired by sleeving and remain in service. The design and installation methodology account for tube mechanical and structural aspects, water chemistry, metallurgical aspects, and thermal/hydraulic considerations, as well as allowing for subsequent inspections of the tube and sleeve. This methodology is documented in Topical Report BAW-2045PA, Revision 1.

Basis for proposed no significant hazards consideration determination As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Final Safety Analysis Report conservatively evaluated a double-ended rupture of a steam generator tube. A severed tube with a mechanical sleeve installed in it has been shown by tests to have mechanical strength at least as great as that of a new tube. Thus a sleeve tube is no more likely to rupture than any other tube in the steam generator.

Tube sleeves are designed to accommodate all loads that any steam generator tube may experience due to normal plant conditions and all anticipated transients specified for the steam generator.

A sleeved tube is functionally equivalent to an unsleeved tube except for less effective heat transfer due to the air gap and a slight pressure drop due to the primary flow restriction. These differences would be insignificant to the performance of the steam generator in any accident situation.

The sleeves are structurally equivalent to the steam generator tubes.

There is no increase in the possibility for increased fatigue loadings. There is not possibility for the sleeve to become dislodged from its plugging location and enter the RCS flow path. The sleeving process results in the deformation of the sleeve into the steam generator tube in at least one end of the sleeve. This process ensures that the sleeve remains locked in to its mating tube once the kinetic weld has been completed.

The plant safety analysis for tube plugging bounds tube sleeving.

Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The only equipment affected by sleeving is the steam generator. The most severe malfunction of a steam generator is a tube rupture. The consequences of a ruptured sleeve are no greater than the consequences of a ruptured tube. Sleeving does not increase the probability of a steam generator failure because the sleeved tube has been shown to be mechanically stronger than an unsleeved tube. Thus, a steam generator with sleeved tubes would perform in the same manner as one without sleeved tubes, and there is no risk of a new or different accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed revision to the Sheeron Harris Technical Specifications to permit the installation of tube sleeves does not reduce the margin of safety as presently defined in BASES section 3/4.4.5. The analysis for the proposed tube sleeve design (based on B&W Nuclear Services Company Report BAW-2045PA, Revision-1) demonstrates that the structural integrity of the RCS is maintained. Design of the tube sleeve considers mechanical/structural aspects, water chemistry and metallurgical aspects as well as thermal/hydraulic considerations.

The integrity of steam generator tubes is in fact enhanced by the installation of sleeves due to increased vibration stability margin and the ability to bridge over imperfections and degradations.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: S. Singh Bajwa

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: August 27, 1993.

Description of amendment request: The proposed changes will revise the Technical Specifications to support the elimination of the reactor coolant resistance temperature detector (RTD) bypass system and the substitution of RTDs mounted in thermowells that extend directly into the reactor coolant system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will not change the RCS temperature or temperature related setpoints. The new thermowell RTD system will supply the same temperature measurements as the manifold RTD system. Total response time for temperature related setpoints will remain unchanged. The Overtemperature Delta-T reactor trip and Overpower Delta-T reactor trip will function in the same manner to terminate DNB-related transients.

The process protection circuitry that is being modified will use the same style qualified printed circuit cards that have been used a SHNPP. The process control circuitry, with electronic isolation from the process protection circuitry, will use a Westinghouse designed and qualified circuit card to implement the median signal select function. The new thermowell RTD system will be more resistant to the effects of RTD failures because no operator action is necessary to defeat erroneous control T-avg and control Delta-T channel inputs, as is the case with the manifold RTD system. The thermowells that will be welded into the RCS are similar to other thermowells that are already installed and will meet applicable ASME codes. The probability and consequences of thermowell failure or leakage are bounded by the analysis of the current system. The probability of leakage is reduced due to the elimination of significant footage of RCS pressure boundary piping and valves. Therefore, there will be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The protection or control systems will not be significantly changed. A thermowell failure is similar to a bypass loop failure. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

This change does not affect any safety limit or limiting safety system setpoint or the total delay inherent in the temperature monitoring system. In addition, the total allowances specified in the Technical Specifications for instrument channel accuracies are being met. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: S. Singh Bajwa

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: May 13, 1993

Description of amendment request: The proposed amendment would revise Technical Specification 3/4.6.1.7, Containment Purge Ventilation System, to allow the simultaneous opening of the miniflow purge supply and exhaust valves for habitability and ALARA purposes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) A significant increase in the probability or consequences of an accident previously evaluated.

The proposed change was evaluated with respect to the consequences in the first few seconds of a LOCA, i.e. from the beginning of the accident until the miniflow purge system is isolated. A conservative analysis demonstrated that the radiological releases through the miniflow purge system would be very small.

The largest additional dose calculated with conservative assumptions was less than 4 rem thyroid dose at the Byron Station site boundary and less than 5 rem thyroid dose at the Braidwood Station site boundary. This additional dose was added to the LOCA doses previously calculated and reported in Chapter 15 of the UFSAR. The new dose total remains well within the limits of 10CFR100. It should be noted that there is significant margin between the thyroid doses and the 300 rem guideline specified in 10CFR100.

Simultaneous opening of the 8-inch containment purge supply and exhaust isolation valves does not increase the probability of an accident previously evaluated. Component and system performance will not be adversely affected since equipment and system design criteria continue to be met. The isolation valves do

not initiate any accident discussed in the FSAR. The containment isolation signals which automatically close the 8-inch isolation valves are not affected by the proposed change.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report is not created. The proposed change is in the operation of the system an not in the design of the equipment. The containment isolation signal received by the 8-inch containment purge system is unchanged and the closure time assumed for the isolation valves are also unaffected by this change.

The change in operation of the 8-inch containment purge system does not create new or different accidents. The initiation of postulated accidents does not depend on the 8-inch containment purge system. The proposed operation does not create a different accident from any previously evaluated because the purge system will continue to be isolated by the containment isolation signal.

(3) Involve a significant reduction in a margin of safety.

The margin of safety as defined in the basis of the Technical Specifications is not significantly reduced by the change in the miniflow purge system operation. All acceptance criteria with respect to fuel, RCS pressure boundary, and containment integrity continue to be met.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: June 29, 1993.

Description of amendment request: The proposed amendment would revise the Technical Specifications to incorporate the requirements of the revised 10 CFR Part 20 which becomes effective January 1, 1994. These changes are: (1) adding definitions for controlled area, deep dose equivalent, dose equivalent, high radiation area, and restricted area; revising definitions for member of the public and unrestricted area; (2) reducing the curie content limit of the primary water storage tank and updating the radioactive effluent holdup tank limit reference; (3) relocating certain information in Section 5; (4) revising high radiation area controls; (5) extending the Radioactive Effluent Release Report submittal frequency from semiannual to annual; (6) revising radiation monitoring instrumentation requirements; and (7) making editorial changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the definitions, radioactive effluent holdup tank limits and location of previous 10CFR20 requirements do not impact previously evaluated accidents because there is no change in the types and amounts of effluents that will be released. There will be no increase in individual or cumulative occupational radiation exposures. The proposed changes to the high radiation area controls provide more controls for enhanced exposure monitoring; they do not change the effluents or exposures.

Relocating information to the Offsite Dose Calculation Manual (ODCM) and the editorial changes are administrative in nature. The proposed changes do not reduce the requirements of any Technical Specification requirement. The changes provide consistency and improve readability. The information deleted from Section 5 is covered in more detail in the ODCM. Therefore, the level of control is maintained.

Changing the frequency of submitting the Radiological Effluent Release Report from semiannual to annual is consistent with the revised requirements of 10CFR50.36a. The change does not adversely impact the ability to meet applicable regulatory requirements related to liquid and gaseous effluents. The report is a historical record of station effluents and has no impact on the actual release process. The NRC will continue to receive the same information, only on a different, approved schedule.

The changes to the radiation monitor setpoints are consistent with the monitoring requirements of the applicable accident (fuel handling accident) described in Chapter 15 of the UFSAR. The setpoints and revised table note provide more specific requirements.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes in radiation monitoring instrumentation requirements are more specific. Calculations were performed to determine the appropriate setpoints based on the current plant design and operation. The changes provide better control over the instrumentation.

The remaining proposed changes have no effect on the probability of an accident. The changes are administrative in nature and do not affect plant design or operation. There is no change to the types and amounts of effluent that will be released, nor is there an increase in individual or cumulative occupational radiation exposures.

C. The proposed changes do not involve a significant reduction in a margin of safety.

Reducing the activity limit for the primary water storage tank from 2000 curies to 10 curies is conservative. The 10 curie limit, which would apply to all unprotected outside tanks is within the revised limits in 10CFR20. Compliance with the limits of 10CFR20.1301 (revised) will be demonstrated by operating within the limits of 10CFR50 Appendix I, and 40 CFR 190.

The proposed changes to the radiation monitoring instrumentation provide additional controls over the current requirements. The instrumentation continues to meet the requirements described in the bases. The bases themselves are unchanged.

The remaining changes are editorial and have no effect on the margin of safety for any Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: August 18, 1993.

Description of amendment request: The licensee has proposed to incorporate an additional Technical Specification to require that the 480 VAC motor control center (MCC) 5 and its automatic bus transfer (ABT) scheme be operable during Modes 1, 2, 3, and 4.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to incorporate an additional LCO [limiting condition for operation] requiring MCC-5 and its associated ABT scheme be operable in Modes 1 through 4 does not involve any physical modifications to the unit, nor does it alter the manner in which the electrical distribution system is operated. Incorporation of the proposed change will impose an additional restriction on the operation of the Haddam Neck Plant.

The proposed change to permit testing of certain features of the MCC-5 ABT scheme does not involve any credible failure modes which would result in a design basis accident. During the testing, MCC-5 would remain energized from the preferred 480 VAC power supply.

Testing is not expected to measurably increase the probability of losing MCC-5. The probability of losing the preferred power source during the 30 minute interval that the ABT may be inoperable is very low. Moreover, the loss of MCC-5 is not expected to directly lead to a reactor trip. For example, only if the semi-vital power automatic transfer to MCC-12 additionally failed would all semi-vital AC power be lost. The result would be tripping of the main feedwater pumps and a loss of feedwater event. However, the probability of testing the MCC-5 ABT scheme coincident with the loss of MCC-5's preferred power supply, and failure of the semi-vital AC automatic transfer is insignificant. Likewise, other contributors, such as a total loss of instrument air owing to a loss of MCC-5, are events of low probability. There would be no measurable impact on the loss of feedwater probability.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change to incorporate an additional LCO requiring MCC-5 and its associated ABT scheme be operable in Modes 1 through 4 does not involve any physical modifications to the unit, nor does it alter the manner in which the electrical distribution system is operated. Incorporation of the proposed change will impose an additional restriction on the operation of the Haddam Neck Plant.

During the testing of the ABT scheme associated with MCC-5, the alternate 480 VAC power supply to MCC-5 will not be automatically available should a loss of offsite power occur, although the preferred 480 VAC power source will remain available. This situation is similar to a condition currently allowed by the Haddam Neck Technical Specifications, having an emergency diesel generator unavailable due to testing. Also, the proposed change to permit the MCC-5 ABT scheme to be unavailable for 30 minutes during testing is bounded by the ability to have an emergency diesel generator unavailable for 72 hours.

Should the proposed testing find the ABT scheme to be in a failed condition, the action statement would allow up to 72 hours to effect repairs and to restore the MCC-5 ABT scheme to an operable status, provided MCC-5 remains powered by an operable emergency diesel generator. Again, this is equivalent to having one emergency diesel generator inoperable at present for up to 72 hours, given a failure of the emergency diesel generator, before performing a plant shutdown.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed change to incorporate an additional LCO requiring MCC-5 and its associated ABT scheme be operable in Modes 1 through 4 does not involve any physical modifications to the unit, nor does it alter the manner in which the electrical distribution system is operated.

Incorporation of the proposed change will impose an additional restriction on the operation of the Haddam Neck Plant.

The proposed change to permit on-line testing of the ABT scheme associated with MCC-5 does not impact the physical protective boundaries, nor does it affect the performance of any safety system. The proposed change does affect the reliability and availability of MCC-5. The improvement in the reliability of MCC-5 (between 2.5E-2 and 4E-2 decrease in failure probability) more than compensates for the increase in unavailability due to testing of the ABT scheme associated with MCC-5 (5E-4 to 3E-3 increase for weekly testing). Also, the proposed change will have an insignificant impact (less than 3E-9) on the frequency of a core melt scenario. This potential increase would be more than offset by the decrease due to improved reliability gained by on-line testing.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50 92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: August 18, 1993.

Description of amendment request: The licensee has proposed to modify the Technical Specifications to permantly remove the ability for the Haddam Neck Plant to operate with three loops while in MODES 1 or 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is to the technical specifications only and cannot be an initiating event for any previously analyzed accident. As such, the change does not affect the probability of occurrence of the previously evaluated accidents. This license amendment request will permanently remove the ability to operate with three loops in operation in MODES 1 or 2, which is a more restrictive condition.

Plant operation and plant equipment important to safety are not affected by the proposed change. The offsite radiological releases from design basis accidents have been evaluated and will not be increased from this change.

As such, there will be no effect on the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Deleting all the references to three-loop operation will not change the allowed plant conditions or plant response sufficiently to create an accident of a different type than any previously evaluated. Three-loop operation was not allowed in MODES 1 or 2 during Cycle 17 due to the lack of large- and small-break LOCA [loss of coolant accident] analyses for the zircaloy-clad fuel. Current plant procedures prohibit three-loop operation in MODES 1 or 2. The impact of the prohibition of three-loop operation on the plants design basis analysis has been reviewed. There is no possibility of a malfunction of a different type than previously analyzed.

3. Involve a significant reduction in a margin of safety.

The review of the non-LOCA and large-break LOCA analysis has shown that the consequences have not been adversely affected. The three-loop accident analyses have been deleted from the Haddam Neck Plant's UFSAR [Updated Final Safety Analysis Report] Chapter 15 and the plant

procedures currently prohibit three-loop operation in MODES 1 or 2. The proposed change has no impact on any of the protective boundaries.

The proposed change does not change the intent of any technical specifications other than prohibiting three-loop operation during MODES 1 and 2. The change does not impact the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: July 29, 1993.

Description of amendment request: The proposed amendment would modify the Fermi 2 Technical Specifications (TS) to reflect implementation of the new revision to 10 CFR Part 20. This affects numerous TS which reference 10 CFR Part 20 or reflect terminology or definitions contained in 10 CFR Part 20. It also affects those TS related to dose and radiological effluent limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change to revise 10CFR20 references to recognize the new section numbers, definitions to ensure consistency with 10CFR20, and administrative controls for record keeping to maintain compliance with the new Part 20, does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not impact the operation or design of any plant structures, systems or components. As a result, this proposed change cannot increase the probability or the consequences of any accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not affect the plant design or operation. As a result, this proposed change cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety.

The proposed changes do not affect the plant design or operation. The changes will not increase the amounts or change the types of effluents that may by released offsite, nor do they significantly increase individual or cumulative occupational radiation exposures. These changes only ensure compliance with revised 10CFR20. With respect to the change in the measurement distance for high radiation areas, this is a conservative change which requires measurements to be made at a closer distance to the source of radiation. These changes do not alter any of the requirements or responsibility for protection of the public and employees against radiation hazards. As a result, these changes cannot reduce a margin of safety.

The proposed change to the liquid and gaseous release rate requirements does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revisions will not result in a significant change to the types or amounts of effluents released nor will there be an increase in individual or cumulative radiation exposures. In addition, these changes do not impact the operation or design of any plant structures, systems, or components. Therefore, it can be concluded that the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not affect the plant design or operation nor do they result in a change to the configuration of any equipment. There will be no significant change in types or increase in the amount of effluents released off-site. As a result, this proposed change cannot create the possibility of a new or different kind of accident from any previously evaluate.

(3) Involve a significant reduction in a margin of safety.

The proposed revisions do not involve any significant change in the types or increase in the amount of effluents released off-site. The proposed changes do not involve any actual change in the methodology used in the control of radioactive wastes or radiological environmental monitoring. For liquid effluents, the basis of the new limits is 10 times 50 mrem per year, which is the same as the previously basis of 500 mrem/year. For gaseous effluents, the proposed change will incorporate into the Technical Specifications the currently used compliance criteria. The methodology that will be used in the control of radioactive effluents and calculation of effluent monitor setpoints will result in the same effluent release rate as the current methodology now being used. Therefore, these changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226

NRC Project Director: William M. Dean, Acting

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 5, 1993.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) by moving the requirements for loose-part detection to the Updated Final Safety Analysis Report (UFSAR). This action is related to the Commission's program for restructured Standard Technical Specifications and is requested based on the interim Policy Statment criteria to be utilized in determining which requirements need to be governed by Technical Specifications (see 52 FR 3788 published February 6, 1987).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change relocates Loose-Part Detection Instrumentation requirements from the TS to the UFSAR consistent with the NRC interim Policy Statement on Technical Specification Improvements. Criterion 1 of the Policy Statement indicates that the TS should include installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary. This criterion is intended to ensure that the TS control those instruments specifically installed to detect excessive reactor coolant system leakage. This criterion is not interpreted to include instrumentation used to detect precursors to reactor coolant pressure boundary leakage (e.g., Loose-Part Detection Instrumentation). The proposed change does not affect any material condition of the plant that could directly contribute to causing or mitigating the effects of an accident. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change will not involve any design change. The proposed change will not alter the operation of the plant or the manner in which it is operated. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will relocate Loose-Part Detection Instrumentation requirements from the TS to the UFSAR. The proposed change will have no adverse impact on the reactor coolant system pressure boundary nor will any other protective boundary or safety limit be affected. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: Harry Rood (Acting)

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 5, 1993.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) for the Containment Spray System (CSS) to clarify the requirements for Applicability in Mode 4 and to increase the testing interval for verifying that each containment spray nozzle is unobstructed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change that modifies the footnote defining the CSS Applicability during Mode 4 does not affect any design basis accidents. The CSS is maintained available to mitigate the effects of a LOCA [loss-of-coolant accident] or MSLB [main steamline break] and also to provide a mechanism for removing iodine from the containment atmosphere under post-LOCA conditions. However, at the reduced temperatures and pressures associated with the latter portion of Mode 4, the probability and consequences of the events identified above are greatly reduced. In addition the Containment Cooling Systems [sic] is required to be operable in Mode 4 per LCO [Limiting Condition for Operation] 3.6.2.2 and is available to provide depressurization and cooling of containment.

Increasing the CSS spray unobstructed nozzle test interval from 5 years to 10 years does not affect any design basis accident. Performing this surveillance provides assurance that spray coverage of the containment during an accident has not degraded and based on the passive design of the nozzles, testing at 10 year intervals is considered adequate.

Therefore, based on the above the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

No new accident initiators or failure modes are created by modification to the footnote associated with CSS Mode 4 Applicability or by extending the CSS nozzle test interval. In addition the proposed change will not alter the operation of the plant or the manner in which it is operated. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will involve no adverse impacts on the protective boundaries, safety limits or margins to safety. The modification concerning CSS Mode 4 Applicability is consistent with the current licensing bases and extending the CSS nozzle surveillance test is in agreement with NUREG-1432 "Standard Technical Specifications Combustion Engineering Plants" and NUREG-1366 "Improvements of Technical Specifications Surveillance Requirements". Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: Harry Rood (Acting)

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 5, 1993.

Description of amendment request: The proposed amendment would revise the Technical Specifications to change the frequency from once per 31 days to once per 92 days for the Control Element Assembly (CEA) freedom of movement testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The intent of the CEA movement surveillance test is to detect CEAs which are stuck out of the core, and to demonstrate that each CEA can move freely within a small range. The current Waterford 3 Technical Specification 31 day surveillance interval was based on "Standard Technical Specifications for Combustion Engineering Pressurized Water Reactors", NUREG-0212, which in turn established the interval based on engineering judgment. Operating experience has demonstrated that this surveillance is not a principal method for detecting stuck CEAs. As indicated in NUREG-1366, in most instances where control rods (CEAs) were found to be mechanically inoperable they were discovered during control rod drop timing tests performed during startup physics testing or when the rods were withdrawn from the core during plant startup.

Industry data on control rod drive system reliability indicates an extremely low mechanical failure rate. Electrical problems with these systems, in general, do not prevent insertion of a control rod into the core when the reactor trip breakers are open. The Waterford 3 Updated Final Safety Analysis Report (UFSAR), Chapter 15 Accident Analysis assumes the most reactive CEA is stuck in the fully withdrawn position on a reactor trip. As discussed above, other means of detecting stuck CEAs in normal use make operation with an undetected stuck CEA improbable. Therefore, this proposed change does not involve a significant increase in the probability of or consequences of any accident previously evaluated.

No new accident initiators are created by the extended test interval. A single CEA stuck in the fully withdrawn position and CEA misoperation events have been previously analyzed in the Waterford 3 UFSAR Chapter 15 Accident Analysis. Additionally, the change will not alter operation of the the plant or the manner in which it is operated. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not significantly affect the probability of a CEA failing to perform its safety function assumed in the safety analysis (i.e. insertion into the core). The change is in agreement with the CEA exercising frequency required by the "Standard Technical Specifications Combustion Engineering Plants", NUREG-1432 Revision 0 and with the recommendations of "Improvements of Technical Specifications Surveillance Requirements", NUREG-1366. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: Harry Rood (Acting)

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: May 3, 1993.

Description of amendment request: The proposed amendments would change Plant Hatch, Units 1 and 2, Technical Specifications (TS) to conform with the amended NRC regulations as noticed in the **Federal Register** (57 FR 39353) dated August 31, 1992. The proposed changes would revise the frequency of reporting the quantity of each of the principal radionuclides released to the unrestricted areas in liquid and gaseous effluents from semiannual to annual. Such reporting at Plant Hatch is currently made on a semiannual basis in the Semiannual Radioactive Effluent Release Report.

In addition, the licensee has requested that the above changes, along with others submitted earlier, be issued by the NRC staff in one amendment for each of the Hatch units. The earlier submittals were: (1) Relocation of Radiological Effluent Technical Specifications (RETS), dated September 21, 1992, and (2) Technical Specifications Affected by The New 10 CFR Part 20 Requirements, dated October 14, 1992, as supplemented March 26, 1993.

By letters dated December 2, 1992, and June 10, 1993, the NRC staff requested additional information regarding the new 10 CFR 20 requirements. By letters dated January 15 and July 30, 1993, the licensee responded to the staff's requests for additional information.

The NRC staff had previously published two separate **Federal Register** notices for the above submittals. The first regarding RETS and the second regarding the new 10 CFR 20 requirements were published on April 14, 1993 (58 FR 19481).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 52.92(c). The NRC staff's review is presented below.

The proposed changes are administrative in nature and do not involve any change to the design or method of operation of any plant equipment used to mitigate the consequences of an accident. Also, the proposed changes do not alter the assumptions of the Final Safety Analysis Report (FSAR) accident analyses. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed changes. Since the FSAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes, and the effectiveness of the radiological control program is not reduced. Therefore, the staff has concluded that the proposed changes would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: David B. Matthews

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: July 28, 1993.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to incorporate the new requirements of 10 CFR Part 20. The request includes changing the release rate limits for gaseous and liquid effluent, the monitoring and reporting requirements, the definitions and the record retention requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve any increase in the probability of occurrence or consequences of an accident previously evaluated because there will be no change in the types or amounts of effluent that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes are administrative in nature and will not change the types or amounts of effluents that will be released.

(3) Operation of the facility in accordance with the proposed amendment would not involve any reduction in a margin of safety. Maintaining the current instantaneous gaseous release rate limits and the liquid effluent release limit based on an annual dose of 500 mrem (basis for the old 10 CFR Part 20, Appendix B criteria) are acceptable. Compliance with the new 10 CFR Part 20 limits will be demonstrated by operating within the limits of 10 CFR Part 50, Appendix I and 40 CFR Part 190.

The proposed changes will not increase the probability or consequences of any previously analyzed accident, introduce any new or different kind of accident, or reduce any existing margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: John N. Hannon

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: July 28, 1993.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to incorporate the new requirements of 10 CFR Part 50. The request includes changing the reporting frequency of the Radioactive Material Release Report and the 10 CFR 50.59 reporting of the facility changes, tests, and experiments. Other changes include the frequency of the Offsite Dose Assessment Manual

(ODAM) and the reporting of the safety and relief valve challenges.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve any increase in the probability of occurrence or consequences of an accident previously evaluated because the changes only affect reporting.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes are administrative in nature and do not alter the operation of any plant systems.

(3) Operation of the facility in accordance with the proposed amendment would not involve any reduction in a margin of safety. The changes do not alter any plant systems or their operation. The changes are administrative in nature.

The proposed changes will not increase the probability or consequences of any previously analyzed accident, introduce any new or different kind of accident, or reduce any existing margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: John N. Hannon

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: August 23, 1993.

Description of amendment request: The proposed amendment would revise the Cooper Nuclear Station (CNS) Technical Specifications to modify the licensee's organizational structure by creating the management position of "Vice President - Nuclear." The titled position Vice President - Nuclear will assume all the functions and responsibilities of the previous titled position of Nuclear Power Group Manager.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation

The proposed change in the titled position of the Vice President - Nuclear is administrative in nature. The functions and responsibilities of previous position of Nuclear Power Group Manager will be performed by the new position of Vice President - Nuclear. This is solely a title change to the position identified in the Technical Specifications. The description, job function, and responsibilities of the position remain the same. This position title change in the organization does not affect plant design or operation, nor does it affect the way any systems, structures, or components are operated or maintained. The individual filling this position is qualified to perform the assigned tasks and responsibilities. Also, this proposed change does not alter the conditions or assumptions in any of the Updated Safety Analysis Report (USAR) accident analyses. Since the USAR accident analyses remain bounding, the consequences previously evaluated are not adversely affected by the proposed change. Therefore, it can be concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed License Amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Evaluation

The proposed Technical Specification revision changes the position title of the Nuclear Power Group Manager to the Vice President - Nuclear. This titled position change only affects a title in the organizational structure for the District. All responsibilities for this position remain as described in the Technical Specifications for management activities and they will continue to be performed by a qualified individual. This change does not affect the design or operation of any system, structure, or component in the plant, and is considered to be [an] administrative change. Accordingly, no new failure modes have been defined for any plant system or component important to safety, nor has any new limiting failure been identified as a result of the proposed change. Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Evaluation

This proposed change to the Technical Specifications is in the Administrative Controls Section, specifically a title change in the organizational structure. The Nuclear Power Group Manager position is being changed to Vice President - Nuclear. All responsibilities for this position remain as described in the Technical Specifications for management activities and they will continue to be performed by a qualified individual. The proposed change does not adversely impact the plant's ability to meet applicable regulatory requirements. The proposed change does not alter any administrative controls, nor does the proposed change involve any physical alterations to the plant, and does not affect any plant safety parameters or setpoints. Therefore, this proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: Harry Rood (Acting)

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: March 30, 1993; superseded August 27, 1993. This notice supersedes the notice published on April 28, 1993 (58 FR 25860) in its entirety.

Description of amendment request: The proposed amendment would revise Technical Specifications 4.8.1.1.2.e and f. The changes would replace the current requirement to perform a hot Loss of Off-Site Power test following the 24-hour full power emergency diesel generator (EDG) run during shutdown with a requirement to perform a hot restart EDG test following a full load diesel run of greater than 2 hours in any operating condition. The proposed changes are consistent with NUREG-1434, "Standard Technical Specifications - General Electric Plants, BWR/6."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed

amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Regulatory Guide 1.108, Rev. 1, states the performance of a Loss of Off-site Power test (Technical Specification 4.8.1.1.2.e.4) immediately following the 24 hour run demonstrates that the Diesel Generator can start in the prescribed time when the Diesel Generator is at its normal operating temperature. The Loss of Off-site Power test will be performed at standby conditions to provide assurance that the Diesel Generator is capable of responding to a Loss of Off-site Power as assumed in the accident analysis. The purpose of performing the Loss of Off-site Power test immediately following the 24 hour run is to demonstrate the hot restart capability of the diesel generator at full load temperature conditions. However, establishing full load temperature conditions with other than a 24 hour run (i.e., with at least a 2 hour full power run) provides the necessary initial conditions for the hot restart test. Demonstrating diesel generator hot restart capability, without loading the engine, does not invalidate or reduce the effectiveness of the hot restart test, because normal operating temperatures are achieved prior to demonstrating hot restart capability. The proposed method of establishing full load temperature conditions has been previously reviewed by the NRC and found to be an acceptable alternative to the 24 hour run. This test may be performed in any plant condition since its performance at power will have no adverse effect on plant operations. The reliability of the diesel generators is not affected by these changes. Therefore, the probability of a diesel generator failure when required to actuate during an accident is not increased due to these changes.

Diesel generator design and function remain as previously analyzed. Their response during accident conditions are not affected by these changes. Therefore, no significant increase in the probability or consequences of an accident previously evaluated results from these changes.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

This request does not involve a physical change in any system configuration and no new operating configurations are introduced. The proposed surveillances are consistent with current requirements. These changes will not result in any net reduction in testing and will not affect Diesel Generator reliability. This test may be performed in any plant condition since its performance at power will have no adverse effect on plant operations. Therefore, these changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

Allowing the diesel generators to reach full temperature conditions by other than the 24 hour run required by Technical Specification 4.8.1.1.2.e.8 has been found to be acceptable by the NRC staff as satisfying the intent of Regulatory Guide 1.108, Rev. 1, Position C.2.a(5) for conducting the hot restart test following the 24 hour load test. These changes will not result in any net reduction in testing and will not affect diesel generator reliability, as the hot restart test will be preceded by at least a 2 hour full power run to ensure that the diesel generators are at normal operating temperatures. This test may be performed in any plant condition since its performance at power, will have no adverse effect on plant operations. As proposed, these changes will adequately demonstrate the diesel generator's functional capability at full load temperature conditions, thus ensuring the designed margin of safety in the diesel generator's ability to start and accept the required loads in the prescribed time. Therefore, these changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: July 29, 1993.

Description of amendment request: The licensee proposes to revise the Millstone Unit No. 3 Technical Specifications by expanding the limiting condition of operation (LCO) for Technical Specification 3.6:6.1 to delineate the equipment necessary to comprise an operable supplementary leak collection and release system (SLCRS); expanding the LCO for Technical Specification 3.7.9 to denote the equipment necessary to comprise an operable auxiliary building filter system (ABFS) and to state that the action statements of Technical Specification 3.6.6.1 must be met when an ABFS is declared inoperable; substituting the term "secondary containment boundary" for the term "annulus" in Technical Specification Surveillance 4.6.6.1.d.3; clarifying the areas represented by the term secondary containment boundary in Bases Section 3/4.6.6.1; rewriting Bases Section 3/4.6.6.1 to expand the basis for the SLCRS LCO, action statements, and surveillance requirements; revising Bases Section 3/4.7.9 to be consistent with the proposed revision to Technical Specification 3.7.9; and replace the phrase "a halogenated hydrocarbon refrigerant" in Technical Specification Surveillances 4.6.1.1.f, 4.7.7.g and 4.7.9.f with the phrase "an acceptable."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The rationale for this conclusion is:

(a) The proposed change to delineate the equipment required to comprise an operable SLCRS in the LCO for technical Specification 3.6.6.1 would impose an additional restriction on the operation of Millstone Unit No. 3.

To support these changes, NNECO has proposed to revise Bases Section 3/4.6.6.1 The proposed changes to Bases Section 3/4.6.6.1 will provide a more informative discussion on the basis for the LCO, action statements, and surveillance requirements

(b) The proposed change to replace the term "annulus" with the term "secondary containment boundary" in Technical Specification Surveillance 4.6.6.1.d.3 in conjunction with the proposed change to clarify the areas included within the secondary containment boundary in Bases Section 3/4.6.6.1 would permit Millstone Unit No. 3 to operate with the potential for the upper elevations of the enclosure building to be at a slightly positive pressure....

...Containment leakage scenarios are a very small contributor to the total acceptable public risk for Millstone Unit No. 3, and no credit is taken for secondary containment or filtration in evaluating such scenarios. Additionally, the most likely containment leakage scenarios do not involve high levels of volatile iodine species, and since the filters do not treat noble gases, the importance of filters is somewhat reduced In regard to the design bases LOCA analyses, the SRP conclusion that Millstone Unit No 3 have "reasonable assurance" that 10CFR100 limits will be met is still valid. This is based on the very low probability that unfiltered leakage from the top of the enclosure building would be of significance A significant release via that pathway would require the simultaneous occurrence of the following low probability conditions: 1) high levels of volatile iodine species airborne in containment; 2) containment leakage into the

enclosure building; 3) bypass of the SLCRS ductwork intakes in the mid-level of the enclosure building as activity rises to the upper elevation; 4) leakage pathways to the environment in the upper levels of the enclosure building; 5) lack of significant plateout via such leakage paths; and 6) the proper meteorological conditions (e.g., at least a 50 degree Fahrenheit temperature differential between outside and inside air) such that a positive pressure might exist. The combined probability of such conditions is so low that it need not be considered in a determination of "reasonable assurance."

(c) The proposed change to delineate the equipment necessary to comprise an operable ABFS in the LCO for Technical Specification 3.7.9, and the proposed change to require compliance with the action statements of Technical Specification 3.6.6.1 when an ABFS is declared inoperable in the action statements for Technical Specification 3.7.9 will impose additional restrictions on the operation of Millstone Unit No. 3. The proposed revision to Bases Section 3/4.7.9 will ensure that the basis and the LCO for Technical Specification 3.7.9 are consistent with each other.

(d) The proposal to replace the phrase "a halogenated hydrocarbon refrigerant" denoted in Technical Specification Surveillances 4.6.1.1.f, 4.7.7.g, and 4.7.9.f with the phrase "an acceptable" will not change any of the acceptance criteria for the charcoal filter leak rate test. The changes are being proposed to permit Millstone Unit No. 3 to cope with the future ban of certain halogenated hydrocarbons. Because the changes will not impact the assumed efficiency of the charcoal filters, the calculated dose consequences of any postulated accident will not be affected.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not compromise the ability of the SLCRS and ABFS to mitigate the consequences of an accident. Also, the proposed changes do not involve any physical alterations to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in a margin of safety. The rationale for this conclusion is the same as that presented above for item 1 of this section and is not repeated here.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: July 16, 1993.

Description of amendment request: The amendment would revise the Technical Specifications (TS) contained in Appendix A of the Operating Licenses to allow one of the required on-shift Senior Reactor Operator (SRO) positions to be combined with the required Shift Technical Advisor position. This proposed change from a dedicated STA position to a dual-role SRO/STA position is in accordance with the recommendation in the NRC's "Policy Statement on Engineering Expertise on Shift," issued on October 28, 1985, and transmitted to all power reactor licensees and applicants by NRC Generic Letter 86-04, "Policy Statement on Engineering Expertise on Shift," dated February 13, 1986.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Implementation of the proposed changes will not involve any physical changes to plant systems, structure, or components (SSC), or the manner in which these SSC are operated, maintained, modified, tested, or inspected. Therefore, the proposed use of the dual-role SRO/STA position does not increase the probability of an accident previously evaluated.

The consequences of an accident previously evaluated could be affected by the performance of the individual filling the dual-role SRO/STA position. However, implementation of the proposed changes will result in personnel with enhanced operational knowledge being assigned to perform the STA function of providing accident assessment expertise, and analyzing and responding to off normal occurrences when needed. The NRC's stated preference in the October 28, 1985, "Policy Statement on Engineering Expertise on Shift," indicates that the NRC has concluded that the individual filling the dual-role SRO/STA position may perform these functions better than a non-licensed individual filling the STA position even when the SRO/STA is concurrently functioning as one of the required shift SROs. Furthermore, implementation of the proposed changes will not affect the staffing or qualification of the fire brigade members. Therefore, the proposed TS changes do not increase the consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed TS changes will not involve physical changes to plant SSC, or the addition of new SSC. Furthermore, implementation of the proposed changes will not adversely affect the manner in which plant SSC are operated, maintained, modified, tested, or inspected. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The margin of safety is not affected because the STA and fire brigade leader positions will be filled by appropriately qualified personnel and shift staffing required by TS Table 6.2.2-1 and 10 CFR 50.54(m)(2) will continue to be maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street. Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Michael L. Boyle, Acting

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: August 20, 1993.

Description of amendment request: The licensee proposes to modify the Technical Specifications surveillance requirements for the Standby Gas Treatment System (SGTS) Charcoal Filter Deluge System. The licensee is planning to modify the actuation mechanism for the deluge system from automatic to manual actuation. Existing TS surveillance requirement 4.14.A.7.a requires a simulated automatic

actuation test of the SGTS fire suppression spray system once 18 eighteen months. The licensee proposed to change TS 4.14.A.7.a to require a manual activation test of the SGTS fire suppression spray system every 18 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the modification and the TSCR do not affect any transient or accident evaluations. The existing simulated automatic actuation test and the proposed manual test is or will be performed with the associated SGTS line out of service. The system's hydraulic performance is unaffected by the modification. The manually actuated system will result in an increase in response time to a charcoal filter fire. The increase in response time does not affect the consequences of the fire because response time is not a critical factor item due to the slow-developing, non-flaming characteristics of this type of fire. In addition, the redundant SGTS train is unaffected by the charcoal fire because it is separated from the affected train by a 2 foot thick concrete wall.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated because no accident precursors are introduced by either the TSCR or the modification.

3. The proposed changes do not involve a significant reduction in a margin of safety because the system's design will not be degraded as a result of either the modification or the TSCR.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: August 26, 1993.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Table 4.1-2 to provide a one-time extension of the current surveillance interval for calibration of the pressure switches which sense main turbine control valve fast closure. The 18-month surveillance interval for these pressure switches with the 25 percent extension allowed by TS 4.0.B.1 expires on October 18, 1993. The amendment would extend the surveillance interval until the 1993 fall maintenance outage, currently scheduled to start on October 23, 1993. This would allow the calibrations to be performed during the outage and thereby reduce radiation dose and eliminate the potential for an inadvertent reactor scram while the pressure switches are being calibrated.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with the proposed amendment would not involve a significant hazards consideration, as defined in 10 CFR 50.92, since the proposed changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

None of the accidents evaluated in Chapter 14 of the FSAR [Final Safety Analysis Report] are affected by the surveillance interval extension. However, one of the FSAR Chapter 14 transients, generator load rejection without bypass, takes credit for the pressure switches affected by this proposed amendment. This transient is described in FSAR Section 14.5.2.1 and the results are shown in figures 14.5-14 through 25. This limiting transient, evaluated for the current operating cycle in the Supplemental Reload Licensing Report, assumes a reactor scram is initiated by the turbine control valve oil pressure trip signal.

To affect this transient analysis, the pressure switches must fail to actuate within the assumed time. The instrument drift analysis for Reactor Protection System, including pressure switches 94PS-200A, B, C, D, evaluated the extension of the surveillance interval to 30 months (24 months plus the allowable 25%). Field calibration data for identical switches were used to determine the maximum expected drift. During the last outage, the four pressure switches were calibrated to actuate between 598 and 610 psig. The maximum expected drift was then added to the highest calibrated pressure (610 psig) and subtracted from the lowest calibrated pressure (598 psig). All four pressure switches remained within the specified range of 500 to 850 psig. Since the switch setpoints remain within Technical Specification limits, the pressure switches would be expected to actuate within the time assumed in the analysis.

A load rejection event is a function of the off-site power grid reliability. Therefore, the extension to the surveillance interval does not increase the probability of this event.

2. Create the possibility of a new or different kind of accident from those previously evaluated.

The pressure switches will perform their intended safety function. Since the maximum expected drift does not exceed Technical Specification limits, the pressure switches would be expected to actuate within the time assumed in the transient analysis. Therefore, the proposed extension to the surveillance interval does not create the possibility of a new or different type of accident.

3. Involve a significant reduction in the margin of safety as defined in the basis for Technical Specifications.

The pressure switches detect loss of the electro-hydraulic control system oil pressure within the specified range. The purpose of calibrating the pressure switches is to verify the trip level setting is between 500 and 850 psig.

The proposed extension to the pressure switch surveillance calibration interval does not change the operation of the switches or change the ability of the pressure switches to perform their intended function. The requested extension is less than a 1% increase in the surveillance interval. This minimal extension to the surveillance interval should not have an affect on the drift characteristics of the pressure switches.

The next surveillance interval will begin upon completion of this surveillance. Therefore, this proposed extension does not involve a significant reduction in the margin of safety as defined in the basis for Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: August 6, 1993.

Description of amendment request: The proposed changes modify Section 4.2.1, "Aquatic Monitoring," of the Environmental Protection Plan by incorporating the requirements of a revised incidental take statement. The National Marine Fisheries Service issued a revised biological opinion on May 14, 1993, which included a revised incidental take statement. The revision extends the sea turtle monitoring period and the frequency of the monitoring.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes would increase the time frame and, after a station related mortality, the frequency of sea turtle monitoring and reporting requirements in the Environmental Protection Plan (Appendix B to the facility operating license). The changes are administrative in nature and would in no way affect the initial conditions, assumptions, or conclusions of the Salem Generating Station, Units 1 and 2, accident analyses. In addition, the proposed changes would not affect the operation or performance of any equipment assumed in the accident analyses. Based on the above information, we conclude that the proposed changes would not significantly increase the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are administrative in nature and would in no way impact or alter the configuration or operation of the facilities and would create no new modes of operation. We therefore conclude that the proposed changes would not create the possibility of a new or different kind of accident.

3. Will not involve a significant reduction in a margin of safety.

As indicated in the discussion of Criterion 1, the changes are administrative in nature and would in no way affect plant or equipment operation or the accident analyses. We therefore conclude that the proposed changes would not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: August 6, 1993.

Description of amendment request: This amendment request changes the technical specifications to provide for a separate action if the Accumulator cannot meet the requirements of the Limiting Condition for Operation due to boron concentration. The allowed outage time to restore boron concentration is changed from one hour to 72 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change to the applicability is an administrative change for clarity. The proposed change to the allowed outage time for one accumulator inoperable as a result of the boron concentration outside the required values does not alter the plant configuration or operation. The boron concentration of the accumulators is considered only during the recirculation phase of the analyzed accidents. One accumulator outside the required concentration limits will have no effect on available Emergency Core Cooling System water and an insignificant effect on core subcriticality during core reflood, switchover from cold leg to hot leg recirculation injection, or sump pH. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident.

The proposed change in allowed outage time does not require physical alteration to any plant system or change the method by which any safety-related system performs its function. It provides uniformity with the latest specifications per NUREG-1431, Standard Technical Specifications - Westinghouse Plants. Therefore, the proposed change will not increase the possibility of a new or different kind of accident from any accident previously identified.

3. Involve a significant reduction in a margin of safety.

The proposed change to the Applicability is an administrative change for clarity. The proposed change in allowed outage time for one accumulator inoperable as a result of the boron concentration outside of the required values does not alter the manner in which safety limits, limiting safety system setpoints, or limiting conditions for operation are determined. The boron concentration of the accumulators is considered only during the recirculation phase of the analyzed accidents and the contribution of one accumulator is small when its volume is compared with the total volume of the Reactor Coolant System and the Refueling water storage tank. One accumulator outside the allowed concentration limits will have no effect on available Emergency Core Cooling System water and an insignificant effect on core subcriticality during core reflood, switchover from cold leg to hot leg recirculation injection, or pH. Therefore, this change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Michael L. Boyle, Acting

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: June 18, 1993.

Description of amendment request: The proposed amendment would divide Figure 5.1.1-1 into Figure 5.1.1-1a which depicts the geographical areas for calculating liquid effluents and Figure 5.1.1-1b depicting the Exclusion area around the reactor and the area for calculating gaseous effluents.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed separation of Technical Specification Figure 5.1.1-1, into Figure 5.1.1-1a and 5.1.1-1b, and the revision of the

appropriate sections of the Technical Specifications which refer to these figures, are clarifications to the geographical areas utilized when computing dose calculations resulting from liquid and gaseous effluents. This change is requested to resolve the inconsistency between the Technical Specification and the licensing basis in the Updated Safety Analysis Report (USFAR) along with the guidance given by the NRC in NUREG-0133 "Preparation of Radiological Effluent Technical Specifications for Nuclear Power Plants." This change does not affect any plant systems, nor could it affect possible initiating events for accidents previously evaluated, or any system functional requirements. Additionally, the proposed changes have no effect on accident conditions or assumptions. Based upon the above, the proposed change could not increase the probability or consequences of any accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

As stated above, the proposed change is a clarification, which does not increase the possibility of any new or different kind of accident since it does not affect the reactor coolant pressure boundary or other plant systems or structures which could inititate a new or different kind of accident. This clarification will also not impact any system functional requirements nor plant maintenance or operability requirements in such a manner that could initiate a new or different kind of accident. Consequently, no new failure modes are introduced as a result of the proposed changes.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The change does not involve a signifcant reduction in the margin of safety because it is a clarification to resolve the inconsistency between the Technical Specifications and the licensing basis in the USAR Figures 2.1-3 and 2.1-4, along with the NRC's guidance in NUREG-0133. Therefore, the proposed change does not reduce the margin of safety as defined in the basis for any Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John N. Hannon

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: June 25, 1993.

Description of amendment request: The proposed amendment would revise the Plant Operations Review Committee (PORC) composition and quorum description, present the membership composition through a set of requirements defining the necessary level of training and qualifications required, change from position specific management titles to functional titles, change the term "designated alternate" to "designee," and remove the requirements in Specification 6.5.2.5 to have the, Nuclear Safety Review Committee meetings "at least once per calendar quarter during the initial year of operation following fuel loadings and."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

These changes are administrative in nature only. The change to the Plant Operations Review Committee (PORC) composition Specification provides statements defining the requirements for committee membership, including the necessary training and qualifications. The membership requirements provide for representation from selected plant functional review areas, together with provisions permitting the Plant Manager to expand the membership, thereby enhancing the interdisciplinary review function of the PORC. The disciplines listed within the Specification correspond to the plant functional areas found in the BWR Standard Technical Specifications, but have been renamed to reflect the generic disciplines identified in ANSI N18.1. Overall PORC membership qualifications are maintained as a result of the proposed changes.

The revision in the number of PORC personnel from nine to "at least six but not more than eleven" provides for supplementation of the committee membership to broaden the experience base. The lower bound of six is a result of eliminating a requirement for duplication of a specific discipline (Health Physics), removing the requirement for Licensing representation, and recognizing that the PORC Chairman could be drawn from among the members instead of being an additional individual, as at present. The upper bound of eleven helps to ensure the continuity of reviews. Also, the qualifications and requirements for membership have been clearly specified. The quorum requirements have been modified to ensure that at least a majority of the members will be present at all meetings, regardless of the total number of members specified to make up the PORC at any given time.

The proposed changes to the other Section 6 Specifications to replace the specific management position titles with functional titles in no way reduces the authority or confuses the responsibilities for safe operation of the plant by management personnel since the functional titles used within the Technical Specifications will be correlated against the current position-specific titles listed within plant administrative procedures and the USAR. This will continue to make it clear as to which specific positions are responsible for the overall plant nuclear safety and unit operations.

The editorial changes are being made to avoid confusion between similar terms and eliminate a no longer needed stipulation. Therefore, they are strictly administrative and have no bearing on the probability or consequences of an accident.

These administrative changes by their nature do not impact accident initiation or mitigation sequences, or other assumptions contained in the safety analyses, nor do they affect the Technical Specifications that preserve safety analysis assumptions. Additionally, these changes do not modify the physical design and/or operation of the plant. Therefore, they cannot possibly impact the probability or consequences of any previously analyzed accidents.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

These changes are administrative in nature only. No physical alterations of plant configuration or changes to setpoints or operating parameters are proposed. No material procedural changes are proposed. The proposed language does not significantly alter the overall requirements for PORC membership, while preserving the quorum requirements and providing for cross-disciplinary reviews to be performed by the various disciplines represented on the Committee. Replacing the specific management position titles with functional titles cannot confuse organizational position responsibilities since the USAR and plant administrative procedures will continue to make it clear as to which specific positions are responsible for the overall plant nuclear safety and unit operations.

The editorial changes are strictly administrative and are being made to avoid confusion between similar terms and eliminate a no longer needed stipulation. Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The changes being proposed are administrative in nature and do not relate to

or modify the margin of safety defined in and required to be maintained by the Technical Specifications. The deletion of the position-specific composition list of the PORC membership and it's replacement by a set of requirements defining the necessary level of training and qualifications (i.e., the technical, operational, and management experience required) will not decrease the effectiveness of this organization. The PORC will continue to provide cross-disciplinary reviews of the operational, maintenance, design and safety issues addressed in their charter. This proposed change preserves reviews in selected plant functional areas while maintaining a varied PORC membership composition. Administrative controls contained within the USAR and plant administrative procedures are in place to control the membership of the PORC and to specify management lines of authority.

This amendment request also proposes to utilize functional management titles rather than position-specific titles for selected management positions. These functional management positions will be clearly identified and cross-referenced to the corresponding position-specific titles within plant procedures and the USAR. Therefore, distinct, unambiguous lines of authority and responsibility will continue to exist and be delineated. The editorial changes avoid confusion between similar terms and eliminate an obsolete requirement.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Public Service Electric & Gas Company, Docket No. 50-311, Salem Nuclear Generating Station, Unit 2, Salem County, New Jersey

Date of amendment request: August 4, 1993, and supplemented by letter dated August 24, 1993.

Brief description of amendment request: This amendment would modify the Technical Specification for the A.C. power sources, on a one-time basis, to allow connection of two new 500/13.8 kv transformer bus sections as part of the Salem switchyard project. It would also modify the emergency diesel generator testing requirements during the action statement entries.Date of publication of individual notice in **Federal Register:** September 1, 1993 (58 FR 46250)

Expiration date of individual notice: October 1, 1993.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket No. 50-318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of application for amendment: July 16, 1993

Brief description of amendment: The amendment revises Technical Specifications (TSs) 3/4.2, "Power Distribution Limits," and 3/4.3, "Instrumentation," to relax the requirements for the number and distribution of operable in-core detectors for the remainder of Operating Cycle 10. The in-core detectors are required to verify that the core power distribution is consistent with the safety assumptions used in the safety analyses and to protect the current power distribution TS limits. The changes also apply penalties to the values measured by the in-core detectors prior to their comparison with TS limits to assure that the TS limits monitored by the in-core detectors will continue to be valid.

Date of issuance: August 23, 1993.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 158.

Facility Operating License No. DPR-69: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 22, 1993 (58 FR 39253)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: June 11, 1993.

Brief description of amendment: The amendment revises Technical Specification Surveillance Requirement 4.1.1.1.1 pertaining to the determination of shutdown margin by adding an "and"

at the end of 4.1.1.1.1.d, and changes the reference to 4.1.1.1.1.e in Surveillance Requirement 4.1.1.1.2 to read 4.1.1.1.d.

Date of issuance: August 31, 1993.
Effective date: August 31, 1993.
Amendment No. 39.
Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39048).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: May 18, 1993.

Brief description of amendment: The amendment changes the Haddam Neck Technical Specifications to allow a relaxation in the pressurizer safety valve setpoint tolerance to +3% from +1%. This +3% tolerance is used for the "as found" acceptance criterion for additional valve testing.

Date of issuance: September 2, 1993.
Effective date: September 2, 1993.
Amendment No.: 163.
Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 23, 1993, (58 FR 34073) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 2, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: May 19, 1993.

Brief description of amendment: The amendment revises the Technical Specifications (TS) to reflect staff positions and improvements to the TS in response to Generic Letter 90-06, "Resolution of Generic Issue 70, 'Power-Operated Relief Valve and Block Valve Reliability,' and Generic Issue 94, 'Additional Low-Temperature Overpressure Protection for Light Water Reactors.'≥

Date of issuance: September 2, 1993.
Effective date: September 2, 1993.
Amendment No.: 164.
Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 9, 1993 (58 FR 32380) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 2, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: March 29, 1993, as supplemented April 29, 1993.

Brief description of amendment: This amendment revises the surveillance interval in Table 4.2.2, Item 2, "Partial Movement of All Control Rods (Minimum of 6 In)" from once "Every Two Weeks" to once "Every 92 Days."

Date of issuance: August 31, 1993.
Effective date: August 31, 1993.
Amendment No.: 157.
Facility Operating License No. DPR-20. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 12, 1993 (58 FR 28054) The supplemental letter submitted April 29, 1993, provided clarifying information only and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: March 23, 1993.

Brief description of amendment: The amendment revises the submittal frequency of the Radioactive Effluent Release Report from semiannual to annual in accordance with a change to 10 CFR 50.36a. The amendment also changes the provisions for written delegation of approval of plant procedure changes by the Plant Manager.

Date of issuance: August 27, 1993.
Effective date: August 27, 1993, with full implementation within 30 days.
Amendment No.: 91.
Facility Operating License No. NPF-43. Amendment revises the Technical Specifications
Date of initial notice in **Federal Register:** May 12, 1993 (58 FR 28055) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: July 13, 1993.

Brief description of amendments: The amendments revise the boron concentration limits within the refueling Water Storage Tank and within the Cold Leg Accumulators in order to support the safe operation of McGuire Unit 2 Cycle 9 and subsequent cycles.

Date of issuance: August 26, 1993.
Effective date: August 26, 1993.
Amendment Nos.: 138 and 120.
Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 23, 1993 (58 FR 39581) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 26, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: December 30, 1992, as supplemented March 12 and June 8, 1993.

Brief description of amendments: The amendments revise the Appendix A Technical Specifications (TS) relating to steam generator (SG) tubing. The amendments permit sleeving of SG tubes at the tube support plate and tube sheet regions in accordance with the process performed by the vendor Westinghouse Electric Corporation. TS 4.4.5.4 has been revised to reflect the sleeving option and to make minor editorial corrections.

Date of issuance: August 30, 1993.
Effective date: As of date of issuance and to be implemented within 60 days of issuance.
Amendment Nos.: 176 and 56.
Facility Operating License Nos. DPR-66 and NPF-73: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 6, 1993 (58 FR 17912) and July 7, 1993 (58 FR 36433) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 30, 1993.
No significant hazards consideration comments received: No.
Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: April 12, 1993.
Brief description of amendment: The amendment reduces the minimum flow limit for the Auxiliary and Fuel Handling Building Ventilation System from 118,810 cubic feet per minute (cfm) to 100,580 cfm. The amendment also removes the reference to flow recorder FR-151, one of three instruments that measures flow in the system, from the Technical Specifications.
Date of issuance: September 2, 1993.
Effective date: September 2, 1993.
Amendment No.: 177.
Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 9, 1993 (58 FR 32383) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 2, 1993.
No significant hazards consideration comments received: No.
Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: July 2, 1993.
Brief description of amendment: The amendment allows a one-time deviation from the requirement in Technical Specification (TS) 6,9.3.2 that the operating limit minimum critical power ratio (OLMCPR) be calculated in accordance with the latest approved version of NEDE-24011-P-A, "General Electric Standard Application for Reactor Fuel." The deviation consists of a footnote added to TS 6.9.3.2 that states that the .04 minimum critical power ratio (MCPR) penalty for misoriented fuel bundles does not apply to the remainder of Cycle 5 fuel load. The amendment permits River Bend to be operated for the remainder of Cycle 5 with an OLMCPR of 1.18 rather 1.22.
Date of issuance: August 24, 1993.
Effective date: August 24, 1993.
Amendment No. 67.
Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 22, 1993 (58 FR 39257) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 24, 1993.
No significant hazards consideration comments received: No.
Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: July 2, 1993.
Brief description of amendment: The amendment revises the frequency for submittal of the Radioactive Effluent Release Reports from semiannual to annual and extends the preparation period from 60 days to 90 days. Additionally, the listed reference for acceptable calculation methods is changed from Regulatory Guide 1.109, "Calculation of Annual Doses to Man from Routine Releases of Reactor Effluents for the Purpose of Evaluating Compliance with 10 CFR Part 50, Appendix I," Revision 1, October 1977, to NUREG-0133, "Preparation of Radiological Effluent Technical Specifications for Nuclear Power Plants."
Date of issuance: August 27, 1993.
Effective date: August 27, 1993.
Amendment No.: 68.
Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 22, 1993 (58 FR 39255) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1993.
No significant hazards consideration comments received: No.
Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: May 12, 1993.
Brief description of amendment: The amendment would delete the surveillance requirement for environmental monitors from the Technical Specifications (TS). A previous amendment relocated the surveillance requirement for the environmental monitors to the offsite dose calculation manual (ODCM), but through an administrative error, the surveillance requirement was not deleted from TS Table 4.1-3, "Minimum Frequencies for Checks, Calibrations and Testing of Miscellaneous Instrumentation and Controls."
Date of issuance: August 23, 1993.
Effective date: August 23, 1993.
Amendment No.: 142.
Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39053) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 1993.
No significant hazards consideration comments received: No.
Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: April 8, 1993.
Description of amendment request: The proposed amendment revises TS Figure 2.1-1, Reactor Core Safety Limit—Four Loops in Operation, to correct non-conservative curves.
Date of issuance: August 24, 1993.
Effective date: August 24, 1993.
Amendment No.: 24.
Facility Operating License No. NPF-86. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34082). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 24, 1993.
No significant hazards consideration comments received: No.
Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: May 14, 1993 (Reference LAR 93-02).

Brief description of amendments: The amendments revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to revise TS 3.3.1, "Reactor Trip System Instrumentation," regarding the reactor protection system (RPS). The amendments correct a typographical error in Table 3.3.1, Action 26, by adding the words "the next," to clearly state that a total of 12 hours is allowed to perform maintenance.

Date of issuance: August 31, 1993.

Effective date: August 31, 1993.

Amendment Nos.: 82 and 81.

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39057) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 31, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: October 19, 1992, as supplemented March 5, 1993.

Brief description of amendment: The amendment revised Technical Specifications (TS) Section 4.6.A.2 (Emergency Power System Periodic Tests) to change the frequency of emergency diesel generator (EDG) capacity testing to accommodate operation on a 24-month fuel cycle. In addition, TS Section 4.6.A.2 and its associated Bases were revised to add an EDG overload testing requirement and to clearly specify the EDG ratings. These changes followed the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle."

Date of issuance: August 31, 1993.

Effective date: August 31, 1993.

Amendment No.: 138.

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 12, 1992 (57 FR 53789) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: June 28, 1993.

Brief description of amendment: The amendment revises Technical Specification 4.7.A.2.f to eliminate the requirement to perform a Type A, B, or C leak rate test following the completion of planned repairs to sections of Core Spray system minimum flow lines (3≥-W23-152-7A, B) during the fall 1993 maintenance outage.

Date of issuance: August 30, 1993.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 196.

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39060) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: April 23, 1993.

Brief description of amendment: This amendment revises TS 3.11.2.8 and Surveillance Requirement 4.11.2.8 for Radioactive Effluents Venting or Purging to allow the containment drywell to be vented through the hardened torus vent following Type A Integrated Leakage Rate Testing.

Date of issuance: August 30, 1993.

Effective date: August 30, 1993.

Amendment No.: 58.

Facility Operating License No. NPF-57: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 26, 1993 (58 FR 30200) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Public Service Electric & Gas Company, Docket No. 50-272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of application for amendment: April 24, 1992, and supplemented by letter dated February 2, 1993.

Brief description of amendment: The amendment reduces the required minimum safety injection flow rates, increases the maximum allowed emergency core cooling system (ECCS) pump runout flow rates, modifies the acceptance criteria for ECCS pump performance, and updates the Bases section.

Date of issuance: August 31, 1993.

Effective date: As of date of issuance and shall be implemented prior to restart from the eleventh refueling outage, currently scheduled to begin on October 2, 1993.

Amendment No.: 143.

Facility Operating License No. DPR-70: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 2, 1992 (57 FR 40219) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 31, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: October 15, 1990, as supplemented March 8, 1991, November 30, 1992, and July 13, 1993.

Brief description of amendment: The amendment would remove Containment Isolation Valve Table 3.6-1 from the Technical Specifications. The Appendix J waiver requests contained in the November 30, 1992, letter will be addressed at a later date.

Date of issuance: August 30, 1993.

Effective date: August 30, 1993.

Amendment No.: 54.

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 12, 1990 (55 FR 51186) The October 15, 1990, March 8, 1991, November 30, 1992, and July 13, 1993, supplements provided information that did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in aSafety Evaluation dated August 30, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: April 23, 1992, as supplemented by August 6, 1993.

Brief description of amendment: This amendment revises the snubber visual inspection schedule in the Technical Specifications (TS) by replacing it with an alternate visual inspection schedule as recommended by Generic Letter (GL) 90-09, "Alternate Requirements for Snubber Visual Inspection Intervals and Corrective Actions," dated December 11, 1990.

Date of issuance: August 30, 1993.

Effective date: August 30, 1993.

Amendment No.: 53.

Facility Operating License No. DPR-18: Amendment revised Appendix A Technical Specifications of Facility Operating License DPR-18.

Date of initial notice in **Federal Register:** December 9, 1992 (57 FR 58250) The August 6, 1993, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 1993

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: March 1, 1993 (TS 93-03).

Brief description of amendments: The amendments increase the maximum voltage limit specified in the Technical Specifications resulting from a full-load rejection surveillance test of the emergency diesel generators.

Date of issuance: August 27, 1993.

Effective date: August 27, 1993.

Amendment Nos.: 170 - Unit 1 160—Unit 2.

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** April 14, 1993 (58 FR 19487) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1992.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: December 15, 1992.

Brief description of amendment: The amendment revises Technical Specification (TS) Table 4.2.5 SRM/IRM Surveillance Requirement for "Detector Not Fully Inserted" "trip function" by replacing "Note 6" under calibration, with "N/A."

Date of issuance: August 25, 1993.

Effective date: August 25, 1993.

Amendment No.: 136.

Facility Operating License No. DPR-28. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34097) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 25, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Virginia Electric and Power Company, et al., Docket No. 50-339, North Anna Power Station, Unit No. 2, Louisa County, Virginia

Date of application for amendment: December 4, 1992.

Brief description of amendment: This amendment allows a reduction in the measured reactor coolant system flow rate to accommodate the systems effects associated with increasing steam generator tube plugging.

Date of issuance: August 30, 1993.

Effective date: August 30, 1993.

Amendment No.: 152.

Facility Operating License No. NPF-7: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 7008) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: April 8, 1993.

Brief description of amendments: These amendments separate the containment recirculation spray subsystems into two containment recirculation spray trains consistent with standard Technical Specifications.

Date of issuance: September 2, 1993.

Effective date: September 2, 1993.

Amendment Nos.: 172, 153.

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 12, 1993 (58 FR 28063) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 2, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: March 15, 1993, as supplemented April 21, 1993.

Brief description of amendments: These amendments eliminate the specific main control room and the emergency switchgear room air conditioning chillers identification from the Technical Specifications, and specify a time limit to restore one of the two inoperable chillers to operable status.

Date of issuance: September 1, 1993.

Effective date: September 1, 1993.

Amendment Nos. 182, 182.

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39060) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 1, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 22, 1992

Brief description of amendment: This amendment revises Technical Specifications Sections 4.0.3 and 4.0.4 and associated Bases on the applicability of surveillance requirements in accordance with the guidance of Generic Letter 87-09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements."

Date of issuance: August 27, 1993

Effective date: August 27, 1993

Amendment No.: 67

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 9, 1993 (58 FR 32392) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 27, 1993

No significant hazards consideration comments received: No.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Dated at Rockville, Maryland, this 8th day of September 1993.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 93-22392 Filed 9-14-93; 8:45 am]

BILLING CODE 7590-01-F

[Docket No. 50–461]

Illinois Power Co., (Clinton Power Station, Unit No. 1); Exemption

I

The Illinois Power Company (the licensee), is the holder of Facility Operating License No. NPF–62 which authorizes operation of the Clinton Power Station (CPS), Unit 1, at a steady-state power lever not in excess of 2894 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in DeWitt County, Illinois. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

II

In its letters dated February 17 and April 16, 1993, the licensee applied for partial exemptions from the Commission's regulations. The subject exemptions are from the requirements in Appendix J to 10 CFR part 50 that: (1) The third Type A test of each 10-year interval be conducted when the plant is shut down for the 10-year plant inservice inspection; and (2) all containment penetrations be leak rate tested every two years.

III

An exemption request included in the licensee's February 17, 1993, submittal was for a partial exemption from the requirement of 10 CFR part 50, Appendix J, Section III.D.1.(a). This Section requires, in part, that "* * * a set of three Type A tests shall be performed, at approximately equal intervals during each 10-year service period. The third test of each set shall be conducted when the plant is shutdown for the 10-year plant inservice inspections." The licensee proposes to perform the three Type A tests at approximately equal intervals within each 10-year period, with the third test of each set conducted as close as practical to the end of the 10-year period. However, there would be no required connection between the Appendix J 10-year interval and the inservice inspection 10-year interval.

The 10-year plant inservice inspection (ISI) is the series of inspections performed every 10 years in accordance with Section XI of the ASME Boiler and Pressure Vessel Code and Addenda as required by 10 CFR 50.55a. The licensee performs the ISI volumetric, surface, and visual examinations of components and system pressure tests in accordance with 10 CFR 50.55a(g)(4) throughout the 10-year inspection interval. The major portion of this effort is presently being performed every 18 months during the refueling outages. As a result, there is no extended outage in which the 10-year ISI examinations are performed.

There is no benefit to be gained by the coupling requirement cited above in that elements of the CPS ISI program are conducted through each 10-year cycle rather than during a refueling outage at the end of the 10-year cycle. Consequently, the subject coupling requirement offers no benefit either to safety or to the economical operation of the facility.

Moreover, each of these two surveillance tests (i.e., the Type A tests and the 10-year ISI program) is independent of the other and provides assurances of different plant characteristics. The Type A test assures the required leak-tightness to demonstrate compliance with the guidelines of 10 CFR part 100. The 10-year ISI program provides assurance of the integrity of the structures, systems, and components as well as verifying operational readiness of pumps and valves in compliance with 10 CFR 50.55a. There is no safety-related concern necessitating their coupling in the same refueling outage. Accordingly, the staff finds that application of the regulation is not necessary to achieve the underlying purpose of the rule.

On this basis, the staff finds that the licensee has demonstrated that there are special circumstances present as required by 10 CFR 50.12(a)(2). Further, the staff also finds that the uncoupling of the Type A tests from the 10-year ISI program will not present an undue risk to the public health and safety.

In their letter dated April 16, 1993, the licensee requested a one-time partial exemption from the requirements of 10 CFR part 50, Appendix J, Sections III.B.1.(b), III.B.3 and III.D.2 for the Type B testing of the inclined fuel transfer system (IFTS) penetration 1MC–4. The leakage rate for this penetration is required to be measured according to the method prescribed in 10 CFR part 50, Appendix J, Paragraph III.B.1.(b). The Type B test(s) shall be performed at least once every 24 months in accordance with Paragraph III.D.2.(a), and the results shall be added to the combined leakage rate for all penetrations and valves subject to Types B and C tests to verify that the total combined leakage rate is less than the acceptance criteria identified in Paragraph III.B.3. The licensee's proposal is for a one-time partial exemption, for CPS operating cycle 5, from the Type B testing requirements for the IFTS containment penetration as a result of the potential inability to perform a valid Type B local leak rate test (LLRT) on the penetration two-ply bellows assembly.

After completing a review of the facts provided in Information Notice 92–20, "Inadequate Local Leak Rate Testing," issued on March 3, 1992, the licensee

determined that there was only one bellows assembly at CPS used in a similar application, IFTS containment penetration 1MC–4. Due to the design and configuration of this containment penetration bellows assembly, the current method for performing Type B testing on the bellows assembly may be inadequate. The possibility exists that separation of the two plies of the bellows may not be sufficient to allow air flow to any crack locations such that the current method of performing the Type B test (pressurization between the two plies of the bellows) may not challenge 100% of the area of the two-ply bellows constituting the containment barrier(s). The licensee is, therefore, evaluating a number of options to provide a valid, reliable Type B test on the subject penetration. These options include replacing the bellows assembly with one that could be tested in accordance with 10 CFR part 50, appendix J, and developing an alternative means of testing the penetration which meets the requirements of appendix J.

The licensee has investigated the option of replacing the bellows assembly with one that can be tested in accordance with appendix J. The best design is one which can be installed without disassembling the IFTS tube and removing the upper pool shutoff valve (located just upstream of the blind flange to which the bellows assembly is attached). A bellows assembly design has been identified which does not require any piping disassembly; however, the bellows would require an ASME "N" stamp and the lead time for procurement and fabrication is expected to be about one year. Based on this lead time it will not be possible to replace the bellows assembly during the next refueling outage; currently scheduled to begin in September 1993.

The licensee is also evaluating the use of a special test box which can be installed over the IFTS containment penetration bellows assembly to permit performance of an acceptable local leak rate test (minimum pathway) of the assembly. A vendor has been identified who can design and fabricate a test fixture for the testing of 1MC–4. The box would be made in two or more pieces of stainless steel and would be temporarily attached for the test and then removed upon completion. However, the box is very large (46 inches inside diameter and 27.5 inches in height) and the probability of safely securing and making the box leak tight at the test pressure could prove to be difficult. The licensee further states that the work scope for the upcoming refueling outage has already been established and fixed. The impact to the outage schedule and the cost resulting from attempting to utilize a test box in testing the bellows assembly would be significant. Additional time would have to be scheduled for installation and removal of the test box. The potential radiation exposure associated with the test box installation and removal is also a consideration. In addition, based on the uncertainties associated with the capabilities of the proposed test box, it is not clear that use of the test box will provide the most accurate or useful results.

The licensee has decided that it would not be prudent to quickly implement either of the options described until an in-depth design review of the options can be completed. This review would consider all aspects of the problem, including an evaluation of the cost of replacement vice the risks of a temporary fix. The proposed exemption would, therefore, provide the licensee with the time needed to complete a thorough review. Although the requested exemption would permit the licensee to not complete a valid Type B test of the IFTS penetration until the fifth refueling outage (RF–5), the licensee is confident that significant leakage from the bellows assembly can still be identified as discussed below.

Until review of Information Notice 92–20, the licensee believed the design of the bellows assembly permitted Type B testing to be performed on the penetration in compliance with the requirements of Appendix J. Notwithstanding, the licensee believes the bellows assembly has shown to be acceptably leak tight and that significant degradation can continue to be detected by testing and inspection. A recent visual examination of the bellows assembly outer surface was performed and no signs of degradation were found. The last LLRT performed on containment penetration 1MC–4 indicated a leakage of 21.36 sccm. While the licensee recognizes that these test results may be questionable, they believe they reflect the relative leakage rate of the penetration. ILRT test results to date have all been well within the acceptance criteria (except for a technical problem experienced during RF–3). During the next refueling outage, the licensee will continue to test the bellows assembly as previously tested, will maintain an acceptance criteria of less than 100 sccm per assembly, and will perform a thorough examination of the outer bellows surface. In addition, as a final assurance, the integrity of the bellows will be confirmed as part of the ILRT to be performed during the outage.

The staff has determined that the currently scheduled testing (both LLRT and ILRT), as well as the planned visual examination of the bellows assembly during the next refueling outage, and the historically low associated test leakage provide sufficient justification to support a one-time partial exemption from the Type B testing requirements for containment penetration 1MC–4 until the fifth refueling outage. The staff also agrees that the licensee has made a good faith effort to comply with the requirements of 10 CFR part 50, Appendix J, for the IFTS containment penetration and has, therefore, demonstrated that there are special circumstances present as required by 10 CFR 50.12(a)(2). Furthermore, the staff finds that delaying the completion of a valid Type B test on penetration 1MC–4 until the fifth refueling outage will not present an undue risk to the public health and safety.

IV

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a), these exemptions as described in Section III are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest and hereby grants the exemptions with respect to the requirements of 10 CFR part 50, appendix J, Paragraphs III.D.1.(a), III.B.1.(b), III.B.3, and III.D.2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of these exemptions will have no significant impact on the environment (58 FR 31549).

Dated at Rockville, Maryland, this 7th day of September 1993.

For the Nuclear Regulatory Commission

John A. Zwolinski,

Acting Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–22517 Filed 9–17–93; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Commission Visit

September 9, 1993.

Notice is hereby given that on September 19, through September 22, 1993, members of the Commission and certain advisory staff personnel will visit the mailing operations and/or manufacturing facilities/printing plants of Billy Graham Associates, Cowles Media, Mackay Envelope, Northwest Airlines and Zip Sort in Minneapolis, Minnesota. Visits will also take place at Gage Lettershop Services in Howard Lake, Minnesota; Fingerhut in St. Cloud,

Minnesota; and Quebecor Printing in St. Paul, Minnesota. In addition, members of the Commission and certain advisory staff personnel will meet with representatives of A National Alliance for a FAIR Postal Policy in Minneapolis, Minnesota.

A report of the visits will be on file in the Commission's Docket Room. For further information contact Charles L. Clapp, Secretary of the Commission at 202–789–6840.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 93–22483 Filed 9–14–93; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release 34–32858; International Series Release No. 580; File No. 600–20]

Self-Regulatory Organizations; International Securities Clearing Corporation; Filing a Request for Extension of Temporary Registration as a Clearing Agency

September 9, 1993.

Notice is hereby given that on August 23, 1993, the International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission") an application, pursuant to section 19(a) of the Securities Exchange Act of 1934 ("Act"),[1] extend ISCC's temporary registration as a clearing agency for a period of twenty-four months or such longer period as the Commission deems appropriate.[2] The Commission is publishing this notice to solicit comments on the request for extension of registration from interested persons.

On May 12 1989, the Commission granted the application of ISCC for registration as a clearing agency, pursuant to sections 17A and 19(a) of the Act,[3] and rule 17Ab2–1(c) thereunder, on a temporary basis for a period of eighteen months.[4] At that time, the Commission granted to ISCC a temporary exemption from compliance with section 17A(b)(3)(C) of the Act,[5] which requires fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. Since that time, the Commission has extended ISCC's temporary registration through November 30, 1993.[6]

One of the primary reasons for ISCC's registration as a clearing agency was to enable it to provide for the safe and efficient clearance and settlement of international securities transactions by providing links to centralized, efficient processing systems in the United States and in foreign financial institutions. ISCC continues to develop its capacity to offer these services,[7] but at present, business conditions in the international securities markets have not yet adequately challenged ISCC's linkage agreements with foreign financial institutions to permit ISCC to be permanently registered as a clearing agency.

ISCC has a current exemption from section 17A(b)(3)(C) of the Act due to ISCC's limited participant base. ISCC has represented to the Commission that it believes it still does not have a meaningful participant base, with only twenty of the thirty-two ISCC members currently using ISCC services.[8] Since this is an increase of only sixteen active members since ISCC's initial temporary registration, ISCC believes that granting "fair representation" to these active members in accordance with section 17A(b)(3)(C) of the Act would allow these members inordinate control over the process for nominating and selecting members of the ISCC Board of Directors. ISCC therefore requests an extension of the exemption from section 17A(b)(3)(C) of the Act as part of the extension of ISCC's temporary registration.[9]

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act.[10] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the application and all written comments will be available for inspection at the Commission's Public Reference Room 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to the File No. 600–20 and should be submitted by October 15, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22526 Filed 9–14–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32856; File No. SR–CBOE–93–31]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Installation of Stock Order Entry Terminals at Options Trading Posts

September 9, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 21, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to install at one or more trading posts on the equity options floor automated order-entry terminals whereby options market-makers may enter orders to buy or sell stocks underlying the options in which they make markets. These terminals will provide front-end input for automated order routing and/or execution systems such as the DOT System of the New York Stock Exchange, Inc. ("DOT System") or the MAX System of the Chicago Stock Exchange, Inc. ("MAX System"). Stock orders entered in such terminals will be for the purposes of managing risks associated with options market-making activities. Such terminals will not be used to make

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[1] 15 U.S.C. 78s(a) (1988).

[2] Letter from Karen Saperstein, General Counsel, ISCC, to Christine Sibille, Attorney, Division of Market Regulation, Commission (August 17, 1993) ("Registration Letter").

[3] 15 U.S.C. 78q–1 and 78s(a) (1988).

[4] Securities Exchange Act Release No. 26812 (May 12, 1989), 54 FR 21691 (May 19, 1989).

[5] 15 U.S.C. 78q–1(b)(3)(C) (1988).

[6] Securities Exchange Act Release Nos. 28606 (November 16, 1990), 55 FR 47976; and 30005 (November 27, 1991), 56 FR 63747.

[7] For example, ISCC recently established a data transmission link with Euroclear Systems. Securities Exchange Act Release No. 32564 (June 30, 1993), 58 FR 36722.

[8] Registration Letter, note 2, supra. Six of these members use ISCC's link with the London Stock Exchange and three members use ISCC's link with CEDEL. One member is testing ISCC's link with Euroclear, and fourteen members have expressed interest in using this link. Sixteen members use ISCC's Global Clearance Network Service with Citibank. See Securities Exchange Act Release No. 29841 (October 18, 1991), 56 FR 55960 (Order approving Global Clearance Network Service).

[9] Id.

[10] 15 U.S.C. 78s(a)(1) (1988).

[11] 17 CFR 200.30–3(a)(16) (1992).

markets in the underlying stocks themselves. Initially, the Exchange intends to install a limited number of order-entry terminals at selected trading posts. Based upon its experience with these terminals, the Exchange may add additional order-entry terminals at other posts on the floor. The installation of order-entry terminals at option trading posts represents an expansion of the use of stock terminals previously approved by the Commission,[1] pursuant to which stock price and quotation information terminals have been installed at trading posts, and order-entry terminals have been permitted in member firm booths at the side of the floor. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit stock order-entry computer terminals to be located at trading posts on the equity options trading floor in order to facilitate the entry of orders to buy or sell underlying stocks by options market-makers as a means of managing risks associated with their options market-making activities. Heretofore, stock terminals located at options trading posts on the Exchange's trading floor have only been used to obtain current stock prices and quotation information; stock order-entry terminals have been located off the trading floor in market members' booths. According to the Exchange, expanding the functionality of computer terminals at the posts to encompass stock order entry will permit market-makers to more efficiently assume positions in underlying stocks to hedge the risks of options positions assumed in connection with their market-making activities, since it will no longer be necessary for stock orders to be communicated from the trading posts to a booth or other off-floor location for further transmission to a stock order execution facility (e.g., the DOT System or the MAX System). Stock order entry terminals proposed to be placed at equity options trading posts will be used for order entry only and will not be used to make two-sided markets in stocks. Orders entered through these terminals will be monitored by the CBOE for compliance with all applicable Exchange and SEC rules and regulations.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) of the Act in particular by facilitating the ability of market-makers to fulfill their market-making obligations, thereby removing impediments to and perfecting the mechanism of a free and open market and protecting investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–31 and should be submitted by October 6, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22529 Filed 9–14–93; 8:45 am]

BILLING CODE 8010–01–M

[1] See Securities Exchange Act Release No. 21858 (March 18, 1985), 50 FR 11774 (order approving use of Instinet terminals on CBOE options trading floor) ("Exchange Act Release No. 21858"); Securities Exchange Act Release No. 22110 (June 3, 1985), 50 FR 24344 (order approving use of stock order-entry terminals on AMEX options trading floor) ("Exchange Act Release No. 22110").

[2] 17 CFR 200.30–3(a)(12) (1992).

[Investment Company Act Rel. No. 19693; 811–6003]

GMO Investment Trust; Application

September 9, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: GMO Investment Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Application seeks an order declaring that it has ceased to be an investment company under the Act.

FILING DATE: The application on Form N–8F was filed on August 30, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 4, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or,

for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 40 Rowes Wharf, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified management investment company organized as a Massachusetts business trust. On April 6, 1990, applicant filed a notification of registration pursuant to section 8(a) of the Act, and a registration statement pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on January 10, 1991, and applicant commenced its initial public offering on January 15, 1991.

2. On March 11, 1993, the sole holder of beneficial interest of applicant gave notice of his desire to redeem all his shares and transfer such proceeds to the GMO Short Term Income Fund. As of March 25, 1993, the interest of applicant's sole beneficial shareholder was liquidated and shares were purchased on his behalf in an account established with GMO Short Term Income Fund. The total amount of the distribution was $3,240,345.30.

3. Prior to liquidation, applicant's assets consisted of two repurchase agreements and an Australian Bank Bill. The repurchase agreements matured on March 25, 1993, for cash at the maturity value of such securities. The Australian Bank Bill was sold on the open market on March 22 at fair market value.

4. Expenses incurred in connection with the liquidation of applicant consist of legal and accounting fees in the amount of approximately $8,700. Grantham, Mayo, Van Otterloo & Co., applicant's investment adviser, assumed all of the liquidation expenses.

5. At a meeting held on July 8, 1993, applicant's board of trustees authorized the filing of this application to effect the termination of the applicant as an investment company.

6. Applicant has no debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22532 Filed 9–14–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19694; 812–8472]

Nations Fund, Inc., et al.; Application for Exemption

September 9, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Nations Fund, Inc. ("Nations Fund"), Nations Fund Trust ("Nations Trust"), and all existing and future series thereof (collectively, the "Funds"); NationsBank of North Carolina, N.A. ("NationsBank"), and any entity controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with NationsBank that serves as investment adviser to the Funds or to any investment company or portfolio thereof hereinafter referenced (the "Adviser"); and any future investment companies and series thereof that are advised by NationsBank or by any entity controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with NationsBank (collectively, with the Funds the "Portfolios").

RELEVANT ACT SECTIONS: Exemptive relief requested pursuant to section 17(d) and Rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting the Portfolios to pool their uninvested cash balances in one or more joint accounts (the "Account"), and to use the daily balance of the Account to enter into one or more repurchase agreements having a maturity of not more than seven days.

FILING DATE: The application was filed on June 22, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 4, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Nations Fund, Inc. and Nations Fund Trust, One Exchange Place, 53 State Street, Boston, Massachusetts 02109; and NationsBank of North Carolina, N.A., One NationsBank Plaza, T39–5, 101 South Tryon Street, Charlotte, North Carolina 28255.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or C. David Messman, Branch Chief, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Nations Fund and Nations Trust both are registered, open-end management investment companies. Nations Fund currently consists of five series, and Nations Trust currently consists of 23 series.

2. NationsBank acts as investment adviser to all of the series of Nations Fund and Nations Trust. The Boston Company Advisors, Inc. is the administrator for all series of Nations Fund and Nations Trust. Funds Distributor, Inc. is the distributor of all series of Nations Fund and Nations Trust.

3. Each Fund has a custodial relationship with NationsBank of Texas, N.A., Provident National Bank, or Boston Safe Deposit and Trust Company, but any of the Portfolios may use another custodian or a sub-custodian selected and qualified under section 17(f) of the Act (collectively, the "Custodians") if they deem it in their best interest to do so.

4. On any given day, each of the Portfolios has, or may be expected to have, cash balances held by its Custodian, which otherwise would not be invested in portfolio securities by the

Adviser at the end of the trading day. Ordinarily, the Adviser would invest such cash in short-term investments authorized by the Portfolio's investment policy to earn additional income for the Portfolio. Applicants propose to establish with their respective Custodians one or more Accounts, which will be used exclusively to pool excess cash of the Portfolios participating in such Account to purchase one or more repurchase agreements.

5. Under the proposed arrangement, each repurchase transaction would be entered into by the Adviser calling one of the previously approved counterparties of repurchase agreements, indicating the size of the desired repurchase transaction, and negotiating the rate of interest. Master repurchase agreements with the approved counterparties establish minimum collateral levels, the securities eligible to be held as collateral, and the maximum term of a transaction. To facilitate repurchase transactions and to help obtain more attractive rates, the Custodian may enter into third-party arrangements for custody of assets and collateral securities with other qualified banks. The term of a repurchase transaction would typically be overnight (or over a holiday or weekend) and in no event more than seven days.

6. After the size of a repurchase transaction has been agreed to, the Custodian would be notified and, prior to releasing funds, would be required to verify that eligible collateral securities of sufficient value had been received. These securities would be either (a) wired to the account of the Custodian (or third-party custodian) at the appropriate Federal Reserve Bank, or (b) physically transferred to a segregated account of the Custodian (or third-party custodian).

7. All joint repurchase transactions would be effected in accordance with the established standards and procedures of the Funds and with the guidelines set forth in Investment Company Act Release No. 13005 (Feb. 2, 1983). If necessary, the Portfolios would modify their systems and standards to comply with any positions the SEC or its staff may take with respect to repurchase agreements by rule, interpretive release, no-action letter, any release adopting any new rule, or any release adopting any amendments to any existing rule.

8. Applicants believe the proposed Account would have the following benefits for the Portfolios:

(a) The Portfolios would collectively save significant fees and expenses by reducing the number of transactions in which they would engage, compared with the number of transactions the Portfolios would engage in through separate accounts;

(b) Under normal market conditions, it is possible to negotiate a rate of return on large repurchase agreements that is greater than the rate of return that can be negotiated for small repurchase agreements. Thus, the Portfolios would benefit from a greater rate of return than would be available for repurchase agreements negotiated individually by each Portfolio;

(c) The reduction in the number of trade tickets written by each counterparty to a repurchase agreement will simplify the transaction for the parties involved and reduce the opportunities for errors.

Applicants' Legal Conclusions

1. Each Portfolio, by participating in the proposed Account, and the Adviser, by managing the proposed Account, could be deemed to be joint participants in a transaction within the meaning of section 17(d), and the proposed Account could be deemed to constitute a joint enterprise or other type of joint arrangement within the meaning of rule 17d–1. Furthermore, under the definition of "affiliated person" set forth in section 2(a)(3), each of the applicants could be deemed an affiliated person of each other applicant.

2. Applicants represent that the proposed method of operating the Account would not result in any conflicts of interest among any of the Portfolios, or between a Portfolio and an Adviser. Applicants also have determined that there does not appear to be any basis upon which to predicate greater benefits to one Portfolio than to another, because the daily uninvested cash balance of any one Portfolio on any given day is neither a function of the size of the Portfolio nor the particular securities in which it invests, but is rather a function of other factors, such as portfolio management decisions, shareholder purchases and redemptions or the timing of settlement of trades. Although the Adviser would gain some benefit through administrative convenience and some possible reduction in clerical costs, the primary beneficiaries would be the Portfolios and their shareholders, because the Account would provide a more efficient and productive way of administering daily investment transactions.

3. Applicants believe that it would be desirable to permit participation by future Portfolios without the necessity of applying for an amendment to the requested order. Future Portfolios would be required to participate in the Account on the same terms and conditions as the existing Funds.

4. Applicants believe that, because the Account will invest in repurchase agreements that (a) typically will have an overnight, over-the-weekend or holiday duration, and in no event will have a duration in excess of seven days, (b) by their nature are held to maturity, and (c) have no trading market, the value of the repurchase agreements held in the Account would be best reflected by the amortized cost method of valuation.

5. Rule 17d–1(b) under the Act provides that, in passing upon applications under rule 17d–1, the SEC will consider whether each party's participation in the proposed joint arrangement is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants believe that, for the reasons set forth above and in light of the conditions set forth below, the criteria for issuance of an order under section 17(d) of the Act and rule 17d–1 thereunder are met.

Applicants' Conditions

Applicants will operate the Account subject to the following conditions:

1. The Account will be established as one or more separate cash accounts on behalf of the Portfolios at the Custodian. The Portfolios may deposit daily all or a portion of their uninvested net cash balances into the Account.

2. Cash in the Account will be invested solely in repurchase agreements (which typically will have an overnight or over-the-weekend duration, and in no event will have a duration of more than seven days), collateralized by suitable U.S. Government obligations (i.e., obligations issued or guaranteed as to principal or interest by the Government of the United States or by any of its agencies or instrumentalities), and satisfying the uniform standards set by the Portfolios for such investments.

3. All repurchase agreements entered into by the Account will be valued on an amortized cost basis. Each Portfolio that relies upon rule 2a–7 will use the average dollar weighted maturity of such repurchase agreements for the purpose of computing the Portfolio's average portfolio maturity with respect to the portion of its assets held in such Account.

4. In order to ensure that there will be no opportunity for one Portfolio to use any part of a balance of the Account credited to another Portfolio, no

Portfolio will be allowed to create a negative balance in the Account for any reason, although each Portfolio will be permitted to draw down its *pro rata* share of the entire balance at any time. Each Portfolio's decision to invest through the Account will be solely at the Portfolio's option, and no Portfolio will be obligated to invest through, or to maintain any minimum balance in, the Account. In addition, each Portfolio will retain the sole rights of ownership of any of its assets, including interest payable on such assets, invested in the Account. Each Portfolio's investment in the account will be documented daily on the books of the Portfolio as well as on the respective Custodian's books.

5. Each Portfolio will participate in the income earned or accrued in the Account, including all investments held by such Account, on the basis of the percentage of the total amount in such Account on any day represented by its share of such Account.

6. The Adviser will administer, manage and invest the cash balance in the Account in accordance with the terms of its management contracts with the Portfolios, and will not collect any additional or separate fee for the administration of the Account.

7. The Portfolios and the Adviser will enter into an agreement to govern the arrangements in accordance with the foregoing representations.

8. The administration of the Account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

9. The board of each Portfolio participating in the Account will evaluate the Account arrangements annually and will authorize the continued participation of the Portfolio in the Account only if it determines that there is a reasonable likelihood that such continued participation will benefit the Portfolio and its shareholders.

10. Substantially all repurchase transactions will have an overnight, over-the-weekend or over a holiday maturity, and in no event will a transaction have a maturity of more than seven days.

11. The Account will not be distinguishable from any other accounts maintained by a Portfolio with its Custodian except that cash from the various Portfolios will be deposited in the Account on a commingled basis. The Account will not have any separate existence with indicia of a separate legal entity. The sole function of the Account will be to provide a convenient way of aggregating individual transactions that would otherwise require daily management and investment by each Portfolio of its cash balances.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22531 Filed 9–14–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19697; 812–8326]

Piper Funds Inc., et al.; Application for Exemption

September 9, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Piper Funds Inc. (formerly Piper Jaffray Investment Trust Inc.) ("Piper Funds"), and any future series thereof, and Piper Global Funds Inc. ("Piper Global"), and any future series thereof.

RELEVANT ACT SECTIONS: Conditional, amended order requested under section 6(c) granting an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d), and rule 22c–1.

SUMMARY OF APPLICATION: Applicants seek to amend a prior order that permitted certain investment companies to assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares, and to waive the CDSC under certain circumstances. The amended order would permit applicants to expand the circumstances under which they may waive the CDSC, and clarify certain provisions of the prior order.

FILING DATE: The application was filed on March 25, 1993, and amended on June 22, 1993, and September 8, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 4, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Piper Jaffray Tower, 222 South Ninth Street, Minneapolis, Minnesota 55402.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicants are open-end diversified management investment companies organized under the laws of the State of Minnesota. Piper Funds has one class of capital stock that is offered in twelve separate series, and Piper Global has one class of capital stock that is offered in one series. Three of Piper Funds' series are money market funds that offer shares to the public at their net asset value with no sales charge. The other nine Piper Funds' series and Piper Global's series are non-money market funds that offer shares at their net asset value plus a front-end sales charge in connection with transactions involving less than $500,000, or such other amount as agreed to from time to time by applicants and Piper Jaffray Inc. (the "Distributor"). No front-end sales charge is imposed in connection with purchases of $500,000 or more.

2. Piper Capital Management Incorporated (the "Adviser") serves as the investment adviser for applicants. The Distributor serves as the principal underwriter for applicants.

3. Pursuant to an order issued in 1990 and amended in 1991 (the "Existing Order"),[1] applicants and certain other investment companies may impose a CDSC in connection with redemptions of shares purchased without the imposition of a front-end sales charge within twenty-four months following their purchase (the "CDSC Period"). The CDSC is equal to a specified percentage of the lesser of the net asset value of such shares at the time of purchase or at the time of redemption. Currently, the CDSC percentage ranges from 0.2 percent to 1 percent, depending on the investment company.

4. Under the Existing Order, the Funds may waive the CDSC in connection with redemptions of shares. (a) Made by (i) Piper Jaffray Companies

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[1] Investment Company Act Release Nos. 17482 (May 9, 1990) (notice) and 17522 (June 6, 1990) (order); Investment Company Act Release Nos. 18288 (Aug. 26, 1991) (notice) and 18322 (Sept. 24, 1991) (order).

Inc., its subsidiaries, outside counsel to applicants, and the following persons associated with such entities: (A) Officers, directors, and partners; (B) employees and retirees; (C) sales representatives; (D) spouses and children under the age of 21 of any such persons; and (E) any trust, pension, profit-sharing, or other benefit plan for any of the persons set forth in (A) through (D); (ii) investment advisory clients of the Adviser, and its affiliate, Piper Trust Company; and (iii) sales representatives of broker-dealers who have entered into sales agreements with the Distributor and their spouses and their children under the age of 21; and (b) in the event of (i) the death or disability of the shareholder, as "disability" is defined in section 72(m)(7), provided that the shareholder, at the time of death or disability, held the shares as an individual, a joint tenant with right of survivorship, or a tenant in common; (ii) a lump sum distribution from an employee benefit plan qualified under section 401(a) of the Internal Revenue Code (the "Code"), an individual retirement account under section 408(a) of the Code, or a simplified employee pension plan under section 408(k) of the Code; (iii) systematic withdrawals from any such plans if the shareholder is at least 59½ years old; (iv) a tax-free return of the excess contribution to an individual retirement account under section 408(a) of the Code; (v) involuntary redemptions effected pursuant to applicants' right to liquidate shareholder accounts whose aggregate net asset value is below the minimum required; or (vi) purchased through an investment executive of the Distributor to the extent such purchases are funded by the proceeds from the sale of shares of any mutual fund other than a money market fund, provided there was no deferred sales load, fee, or other charge imposed in connection with such sale.

5. Under the Existing Order, no CDSC is imposed on exchanges of shares among the investment companies covered by such order in accordance with rule 11a–3 of the Act. In addition, applicant provides a *pro rata* credit paid by the Distributor for any CDSC paid in connection with redemption of Fund shares followed by a reinvestment in any Fund charging a front-end sales load, provided that such reinvestment occurs within 30 or 120 days, depending on the Fund, of the redemption.

6. Applicants request an amended order on behalf of themselves and any open-end registered investment companies formed in the future which are advised by the Adviser and offered at net asset value plus a front-end sales charge, and which are offered in the same "group of investment companies," as defined in rule 11a–3 (collectively, the "Funds"). The amended order would continue to permit the imposition and waiver of the CDSC as provided in the Existing Order and would permit the waiver of the CDSC in the following additional circumstances: (a) Lineal ancestors and descendants of investment advisory clients of the Adviser and its affiliate, Piper Trust Company; (b) participants in investment companies which are advised by the Adviser and exempt from registration under the Act pursuant to section 2(b) of the Act; (c) all employees of broker-dealers who have entered into sales agreements with the Distributor, and spouses and children under the age of 21 of such employees; (d) employee benefit plans containing an actively maintained qualified cash or deferred arrangement under section 401(k) of the Code; (e) custodial accounts under section 403(b)(7) of the Code, also known as tax-sheltered annuities; and (f) trust companies and bank trust departments using funds over which they exercise exclusive discretionary investment authority and which are held in a fiduciary, agency, advisory, custodial, or similar capacity. In addition, in the event a 401(k) plan of an employer has purchased shares in any Fund (other than a money market fund) during any calendar quarter, the CDSC will be waived upon redemption of shares purchased during the same quarter by any other employee benefit plan of such employer that is a qualified plan under section 401(a) of the Code. Any waiver or reduction of a CDSC will be uniformly applied to all offerees of a particular class of shares.

7. Applicants also seek to clarify that the amount of the CDSC charged pursuant to the Existing Order is merely the maximum CDSC that may be charged. Applicants further seek to clarify that the Funds may establish breakpoints in the CDSC schedule so that shareholders who hold shares for a specified period of time or invest a specified amount will receive a reduction or a waiver of the maximum permitted CDSC. The Funds may decide to discontinue the CDSC temporarily or permanently in the future. Any such changes will not be effective until set forth in the applicable Fund's prospectus. In addition, such changes will not affect any outstanding shares, provided that any changes that result in a benefit to shareholders (e.g., that result in reduced fees) may affect such outstanding shares. Applicants also seek to clarify that they may determine, with respect to certain waiver categories permitted under the proposed order, to cease such waiver, provided that such a change will not affect purchases of Fund shares made prior to disclosure of such change in the applicable prospectus. Finally, applicants seek to clarify that twenty-four months is merely the maximum CDSC Period.

Applicants' Condition

If the requested order is granted, applicants agree that they will comply with the provisions of proposed rule 6c–10 under the Act as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22528 Filed 9–14–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19698; 812–8204]

SEI Liquid Asset Trust, et al.; Application for Exemption

September 9, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION. Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: SEI Liquid Asset Trust, SEI Tax Exempt Trust, SEI Cash+Plus Trust, SEI Index Funds, SEI Institutional Managed Trust, SEI International Trust, The Capitol Mutual Funds, FFB Lexicon Funds, The ONE[R] GROUP[SM] (the "Trusts"), SEI Financial Management Corporation ("SFM" or the "Administrator"), and SEI Financial Services Company ("SFS" or the "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Trusts to (a) issue and sell multiple classes of shares representing interests in the same portfolio of securities, and (b) assess and, in certain circumstances, waive a contingent deferred sales charge ("CDSC") on redemptions of certain shares. Applicants also request such exemptive relief on behalf of any existing or future registered open-end investment companies for which SFM, SFS, or any person directly or indirectly controlling, controlled by, or under

common control with SFM or SFS serves or may serve as principal underwriter or Administrator, and whose shares are divided into two or more classes with differing voting rights and expense allocations and /or that employs CDSC in a manner substantially similar to that described in the application.[1]

FILING DATE: The application was filed on December 7, 1992 and amended on February 22, 1993 and September 2, 1993. By letter dated September 9, 1993, applicants' counsel stated that an additional amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 30, 1993, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. The Trusts, c/o CT Corporation, 2 Oliver Street, Boston, Massachusetts 02109; SFM and SFS, 680 East Swedesford Road, Wayne, Pennsylvania 19087; with a copy to Richard W. Grant, Esq., Morgan, Lewis & Bockius, 2000 One Logan Square, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Staff Attorney at (202) 272–7648, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

[1] There are no other existing investment companies that currently intend to rely on any relief granted to applicants other than those named as parties to the application. Other investment companies may, in the future, rely on the order granting exemptive relief so long as such future investment companies determine to issue multiple classes of shares and/or impose a CDSC in accordance with the representations and conditions in the application.

Applicants' Representations

A. Current Pricing System

1. Each of the Trusts is an open-end management investment company registered under the Act. SFM and SFS are wholly-owned subsidiaries of SEI Corporation. SFM serves as each Trust's shareholder servicing agent and transfer agent, and provides general management services to each Trust in its capacity as Administrator of the Trust. These services may include overall management, regulatory reporting, dividend disbursing agent, reporting to the trustees on portfolio performance, and providing all necessary office space, equipment, personnel, and facilities. SFS, a registered broker-dealer, serves as each Trust's principal underwriter pursuant to separate distribution agreements. Separate investment advisory fees are paid by each Trust to independent investment advisers that are not affiliated with SFM or SFS.

2. Pursuant to an existing order, certain of the applicants are authorized to issue five classes of shares, each of which may be charged incremental transfer agency fees directly attributable to such class.[2]

3. Under the existing order, the Trusts may offer one class of shares in connection with a distribution plan adopted pursuant to rule 12b–1 ("Rule 12b–1 Plan"), with a fee of up to .30% of the average daily net assets of the class. The Rule 12b–1 Plan provides that such class bears the cost of its distribution expenses as provided in a budget approved annually and reviewed quarterly by the Trust's board of trustees (the "Trustees"). The expenses subject to reimbursement are limited to (a) the cost of preparing, producing, and delivering prospectuses, shareholder reports, sales literature, and other materials for distribution to potential shareholders; (b) the costs of complying with state and federal securities laws pertaining to distribution of shares; (c) advertising; and (d) expenses incurred in connection with the promotion and sale of shares (collectively, "Budgeted Expenses"). Under the existing order, the Trusts also may issue three classes of shares that are identical to the first class except that the applicable Rule 12b–1 Plan may provide for an additional distribution fee for distribution-related shareholder services. The Trusts also are authorized to issue a class of shares that is identical to the other four classes except that it is not subject to a Rule 12b–1 Plan.

[2] Investment Company Act Release Nos. 17878 (Nov. 27, 1990) (notice) and 17915 (Dec. 24, 1990) (order) amending Investment Company Act Release Nos. 17144 (Sept. 20, 1989) (notice) and 17169 (Oct. 18, 1989) (order). If granted, the order requested by the application will supersede these prior orders.

B. The Variable Pricing Proposal

1. Applicants propose to amend the current multiple class structure to enable each Trust to offer investors the option to purchase either (a) shares with a conventional front-end sales load and, in certain instances, subject to a distribution fee ("Class A shares" or the "Front-End Option"); or (b) shares subject to a CDSC and a higher distribution fee ("Class B shares" or the "Deferred Option"), in addition to their current class structure (the "Variable Pricing System"). Further, under the proposed Variable Pricing System, applicants may from time to time create one or more additional classes of shares, the terms of which may differ from the classes currently offered.

2. Under the Front-End Option, investors may purchase Class A shares at net asset value plus a front-end sales load. The sales load generally will be reduced for larger purchases and under a right of accumulation or other discount purchase plans. In addition, Class A shareholders of certain Trusts will be subject to a distribution fee under a Rule 12b–1 Plan that currently is not expected to exceed .75% of each portfolio's net assets. The distribution fee may include a service fee.[3]

3. Under the Deferred Option, Class B shares would be sold at net asset value without the imposition of a sales load at the time of purchase, but subject to a CDSC, as discussed below. Class B shares also would be subject to a distribution fee under a Rule 12b–1 Plan that would compensate SFS for its services and expenses in distributing each portfolio's shares, including Budgeted Expenses and service fees. It is currently expected that such distribution fee, combined with any service fees, would not exceed 1.00% of each portfolio's net assets. The 1.00% fee is expected to be a combination of a .75% distribution fee under a Rule 12b–1 Plan and a .25% service fee, but, whatever level of fees are established, such fees shall be consistent with the NASD's Rules of Fair Practice.

4. Class B shares may convert to Class A shares after expiration of the period for which a CDSC is imposed, and thereafter be subject to the lower rule 12b–1 fee of the Class A shares. For purposes of calculating the holding period required for conversion, Class B shares would be deemed to have been

[3] The term "service fee" has the same meaning as used in the amendment to Article III, Section 26 of the Rules of Fair Practice of the NASD. See Exchange Act Release No. 30897 (July 7, 1992).

issued on the date on which the issuance of such Class B shares occurred or, for Class B shares obtained through an exchange or a series of exchanges, the date on which the issuance of the original Class B shares occurred. All Class B shares in a shareholder's account that were purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares will be considered to be held in a separate sub-account. Each time any Class B shares in the shareholder's account convert to Class A shares, a *pro rata* portion of the Class B shares then in the sub-account also will convert to Class A shares.

5. From time to time each Trust may create additional classes of shares, the terms of which may differ from the Class A and Class B shares only in the following respects: (a) Any such class may bear different distribution and servicing fees in conjunction with a Rule 12b–1 Plan; (b) any such class may be offered in conjunction with a non-rule 12b–1 shareholder services plan ("Shareholder Services Plan") with payments made to financial institutions; (c) any such class may bear different designations; (d) any such class will have exclusive voting rights with respect to any Rule 12b–1 Plan adopted exclusively with respect to such class, except as provided in condition 16 as set forth below; (e) any such class may have conversion and/or exchange features that conform to the description of such privileges for Class A and Class B shares; and (f) any such class may bear any of the incremental expenses listed in condition 1(a), *infra* ("Class Expenses").

6. Under a Rule 12b–1 Plan, SFS would make payments to financial institutions which either have entered into a sales agreement with SFS with respect to the distribution of shares or a service agreement whereby such financial institution would provide certain services to their customers who beneficially own shares. Under a Sharehold Services Plan, a Trust would enter into a service agreement whereby such financial institution would provide certain services to their customers who beneficially own shares. In the event that a Trust adopts both a Rule 12b–1 Plan and a Shareholder Services Plan, services provided under one plan will augment or replace, rather than duplicate, services provided under the other plan.

7. Under the proposed Variable Pricing System, all expenses incurred by a portfolio will be allocated among the various classes of shares based on the net assets of the portfolio attributable to each class, except that each class's net asset value and expenses will reflect the expenses associated with that class's Rule 12b–1 Plan (if any), expenses associated with a Shareholder Services Plan (if any), and any Class Expenses. Because of the higher distribution fee and any other expenses that may be attributable to a class, the net income attributable to and the dividends payable on one class will be lower than the net income attributable to and the dividends payable on another class.

8. Currently, shares of one class of portfolio of a Trust may be exchanged at net asset value for the same class of shares of other portfolios of such Trust. It is contemplated that Class B shares of a portfolio of a Trust will be exchangeable only for Class B shares of the other portfolios of such Trust, including Class B shares of money market funds. Class A shares of a portfolio which is not a money market fund will be exchangeable only for Class A shares of the other portfolios of such Trust, including Class A shares of money market funds, and for shares of other Trusts which do not impose a CDSC. Class A shares of a portfolio which is a money market fund will be exchangeable for other Class A shares at net asset value plus the applicable front-end sales load. In addition, shares of a class in which an investor is no longer eligible for participation may be exchanged for shares of a portfolio in which that investor is eligible to participate. All exchange privileges will comply with rule 11a–3 under the Act.

9. Some of the additional classes will be offered only to certain institutional offerees (the "Institutional Classes"). The offerees of the shares of Class A, Class B, and additional classes other than the Institutional Classes (collectively, the "Direct Investor Classes") will not overlap with the offerees of the Institutional Classes. The Institutional Classes will be offered exclusively to the following five limited categories of investors: (a) Benefit plans; (b) defined contribution retirement plans maintained by the Trusts' investment advisers or their affiliates for the benefit of their employees; (c) banks or insurance companies purchasing shares for their own accounts; (d) registered investment companies not affiliated with SFM or with any investment adviser of the Trusts; and (e) endowment funds of non-profit organizations.

10. The benefit plans in category (a) will have several common features. Among these features are total assets in excess of $5 million or such other amounts as the Trusts may establish, a separate trustee for the plan who is vested with investment discretion as to plan assets, certain limitations on the ability of plan beneficiaries to access their plan investments without incurring adverse tax consequences, and such other characteristics as the Trusts may establish.[4] Applicants will exclude individual retirement accounts and retirement plans of self-employed persons. It is possible that the Trusts' investment advisers may serve as investment adviser to some of these plans.

11. The retirement plans in category (b) will consist of qualified defined contribution plans maintained by the Trusts' investment advisers or their affiliates for the benefit of their employees pursuant to section 401(a) of the Internal Revenue Code. The assets of such plans are held in trust by a trustee and beneficiaries have limited pre-retirement access to the assets.

12. Like category (a), the entities in categories (c), (d), and (e) will have in common the essential features of substantial assets under management and investment decision-making by institutional management on behalf of the entity with respect to the purchase of additional classes of the Trusts. Banks and insurance companies typically employ professional staff to manage the investment of cash assets, and portfolio managers make investment decisions on behalf of investment companies. Likewise, an endowment fund of a non-profit organization is professionally managed and individual donors to such endowment funds exercise no investment discretion on behalf of the endowment fund, nor would such an individual donor consider a direct investment in shares of a Fund as an investment alternative in lieu of a donation. Thus, no possibility exists that an individual investor would be able to use these entities as a conduit for individual investing in the Institutional Class shares.

13. Because the offerees of the Direct Investor Classes do not fall within any of the categories of the Institutional Classes, offerees of the Direct Investor Classes will be ineligible to purchase shares of the Institutional Classes. Conversely, investors in categories (a) and (b) may face legal obstacles that would prevent them from purchasing shares of the Direct Investor Class, and investors in categories (c), (d), and (e), who otherwise could purchase Direct Investor Class shares, will be directed to purchase shares of the Institutional

[4] The $5 million minimum asset requirement for entities in (a) assures that the category of investors are of sufficient size to prevent plans from being conduits for individual investing.

Classes by the securities dealer, as required by applicants' compliance procedures.

C. The Proposed CDSC

1. Applicants also request an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act, and rule 22c–1 thereunder, to permit the Trusts to assess and, under certain circumstances, waive a CDSC on redemptions of certain shares of the Trusts. The amount of any CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents such percentage of the net asset value of the shares at the time of redemption.

2. No CDSC will be imposed on any shares issued prior to the date of the order granting the exemptive relief. No CDSC will be imposed on (a) redemptions of shares purchased more than seven years prior to redemption (the "CDSC Period"), (b) shares derived from the reinvestment of distributions, or (c) amounts representing an increase in the value of a shareholder's account due to capital appreciation. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing capital appreciation, next, of shares representing reinvestment of dividends and capital gain distributions, and finally, of shares held by the shareholder for the longest period of time. This will result in the CDSC being imposed at the lowest possible rate. Redemption requests placed by shareholders who own both Class A and Class B shares of a portfolio would be satisfied first by redeeming the shareholder's Class A shares, unless the shareholder has made a specific election to redeem Class B shares.

3. Each of the Trusts is requesting the ability to waive the CDSC for one or more of the following occurrences: (a) On redemptions following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986, as amended (the "Code"), of a shareholder if redemption is made within one year of death or disability of a shareholder; (b) in connection with a lump-sum or other distribution following retirement or, in the case of an IRA or Keogh Plan or a custodial account pursuant to section 403(b)(7) of the Code, after attaining age 59½ (or as an alternative after attaining age 70½), and any redemption which results from a tax-free return of an excess contribution pursuant to section 408(d) (4) or (5) of the Code or from the death or disability of the employee; (c) in connection with redemptions of shares purchased by officers, directors or trustees, and employees of the Trusts, the investment advisers to the Trusts and their affiliated entities, the Distribution and its affiliated entities, and by members of the immediate families of such persons; (d) in connection with redemptions of shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Trust; (e) in part, in connection with redemptions by large accountholders; (f) in connection with redemptions effected by advisory accounts managed by the investment advisers to the Trusts or their affiliated entities; (g) in connection with redemptions by tax-exempt employee benefit plans that result from the enactment or promulgation of any law or regulation pursuant to which continuation of the investment in the Trusts would be improper; and (h) in connection with redemptions effected by registered investment companies in connection with the combination of the investment company with a Trust by merger, acquisition of assets, or by any other transaction. If the Trusts waive or reduce the CDSC, such waiver or reduction will be uniformly applied to all offerees in the class specified.

4. If the trustees of a Trust that has been waiving or reducing its CDSC decide not to waive or reduce such CDSC any longer, the disclosure in that Trust's prospectus will be appropriately revised. Any shares purchased prior to the termination of such waiver or reduction would be entitled to a waiver or reduction of the CDSC as provided in a Trust's prospectus at the time of the purchase of such shares.

5. Each of the Trusts may provide a *pro rata* credit for any CDSC paid in connection with a redemption of shares from a Trust followed by a reinvestment in the Trust effected within 365 days, or a shorter period, of the redemption. The credit will be paid by SFS.

Applicants' Legal Analysis

1. Applicants request an exemptive order to the extent that the proposed issuance and sale of multiple classes of shares representing interests in the Trusts might be deemed: (a) To result in the issuance of a "senior security" within the meaning of section 18(g) and thus be prohibited by section 18(f)(1); and (b) to violate the equal voting provisions of section 18(i).

2. Applicants believe that the proposed Variable Pricing System would better enable the Trusts to meet the competitive demands of today's financial services industry. The proposed arrangement would permit the Trusts to facilitate both the distribution of their securities and provide investors with a broader choice as to the method of purchasing shares without assuming excessive accounting and bookkeeping costs or unnecessary investment risks. Investors also would be able to benefit from the additional safety and stability resulting from their ability to invest in established, sizeable investment funds. Moreover, to the extent that fixed costs would be spread over a greater number of shares than they otherwise would be, applicants maintain that owners of each class of shares may be relieved of a portion of the fixed costs normally associated with mutual funds since they would be spread over a greater number.

3. Applicants believe that the proposed allocation of expenses and voting rights relating to the rule 12b–1 plans, shareholder servicing plans, and Class Expenses in the manner described is equitable and would not discriminate against any group of shareholders. In addition, such arrangements should not give rise to any conflict of interest because the rights and privileges of each class of shares are substantially identical and the interests of the shareholders with respect to distribution fees would be adequately protected since the rule 12b–1 plans for each class will conform to the requirements of the rule.

4. Applicants believe that the proposed Variable Pricing System does not raise any of the legislative concerns that section 18 of the Act was designed to address. The Variable Pricing System will not increase the speculative character of the shares of the Trusts. The proposed arrangement does not involve borrowing, nor will it affect the Trusts' existing assets or reserves. Nothing in the Variable Pricing System suggests that it will facilitate control by holders of any class of shares.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Trust and be identical in all respects, except as set forth below. The only differences among the classes of shares of a Trust will relate solely to: (a) The method of financing certain Class Expenses that may be imposed upon a particular class of shares and which are limited to (i) incremental transfer agent fees identified by the transfer agent as being attributable to a specific class of shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and

proxies to current shareholders of a specific class of shares; (iii) blue sky registration fees incurred by a class of shares; (iv) federal registration fees incurred by a class of shares; (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; (vii) trustees' fees incurred as a result of issues relating to one class of shares; and (viii) any other incremental expenses subsequently identified that should be properly allocated to one class of shares which shall be approved by the Commission pursuant to an amended order; (b) the impact of different Rule 12b–1 Plan (if any), or Shareholder Services Plan (if any) payments made by a particular class of shares which will be borne solely by shareholders of such class; (c) the fact that classes will vote separately with respect to the Trust's Rule 12b–1 Plan and Shareholder Services Plan, except as provided in condition 16 below; (d) the fact that only certain classes will have a conversion feature; (e) the different exchange privileges of the classes of shares; and (f) the designation of each class of shares of a Trust.

2. The Trustees of each of the Trusts, including a majority of the independent Trustees, will approve the Variable Pricing System. The minutes of the meetings of the Trustees of each of the Trusts regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Variable Pricing System will reflect in detail the reasons for the Trustees' determination that the Variable Pricing System is in the best interests of both the Trust and its shareholders.

3. On an ongoing basis, the Trustees of the Trust, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Trust for the existence of any material conflicts among the interests of the various classes of shares. The Trustees, including a majority of the independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Administrator and the Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Administrator, the Distributor, and the Trust's investment adviser at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

4. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of Trustees of the particular Trust including a majority of the Trustees who are not interested persons of the Trust. Any person authorized to direct the allocation and disposition of monies paid or payable by the Trust to meet Class Expenses shall provide to the Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

5. The Trustees of the Trust will receive quarterly and annual statements concerning Rule 12b–1 Plan and Shareholder Services Plan expenditures complying with paragraph (b)(3)(ii) of Rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any Rule 12b–1 Plan or Shareholder Services Plan fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties.

6. If any class will be subject to a Shareholder Services Plan, such Shareholder Services Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to Rule 12b–1, except that shareholders need not enjoy the voting rights specified in Rule 12b–1.

7. Dividends paid by a Trust with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that expenditures associated with any Rule 12b–1 Plan or Shareholder Services Plan relating to a particular class will be borne exclusively by such class and any designated Class Expenses will be borne exclusively by the affected class.

8. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of income and expenses among the various classes has been reviewed by an expert (the "Independent Examiner"). The Independent Examiner has rendered a report to the applicants, which has been provided to the staff of the SEC, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Trust that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The workpapers of the Independent Examiner with respect to such reports, following request by the Trusts (which the Trusts agree to make), will be available for inspection by the SEC staff upon the written request for such workpapers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "Special Purpose" report on the "Design of a System," as described in SAS No. 44 of the AICPA. The ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of income and expenses among the various classes of shares and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition (8) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, or an ongoing basis at least annually in the ongoing reports referred to in condition (8) above. Applicants will take immediate corrective measures if this representation is not concurred in by the Independent Examiner or appropriate substitute Independent Examiner.

10. The prospectuses for each portfolio of the Trusts will contain a statement to the effect that a financial institution and any other person entitled to receive compensation for selling or servicing shares of the Trust may

receive different compensation with respect to one particular class of shares over another in the Trust.

11. The Distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular inventors. Applicants will require all persons selling shares of the Trusts to agree to conform to these standards. Such compliance standards will require that all investors eligible to purchase shares of the Institutional Classes be sold only shares of the Institutional Classes, rather than any other class of shares offered by the Trust.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Trusts with respect to the Variable Pricing System will be set forth in guidelines which will be furnished to the Trustees.

13. Each Trust will disclose the respective expenses, performance data, distribution arrangements, services, fees, initial sales loads, deferred sales loads, and exchange privileges applicable to each class of shares other than the Institutional Classes in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Institutional Classes will be offered solely pursuant to a separate prospectus(es). The prospectus(es) for the Institutional Classes will disclose the existence of the Trust's other classes and will identify the entities eligible to purchase such shares, and the prospectuses for the Trust's other classes will disclose the existence of the Institutional Classes and will identify the persons eligible to purchase shares of such class. Each Trust will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Trust as a whole generally and not on a per class basis. Each Trust's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Trust. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares, except the Institutional Classes. Advertising materials reflecting the expenses or performance data for the Institutional Classes will be available only to those persons eligible to purchase such Institutional Classes. The information provided by applicants for publication in any newspaper or similar listing of the Trust's net asset value and public offering price will present each class of shares, except the Institutional Classes, separately.

14. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Trusts may make pursuant to a Rule 12b–1 Plan or Shareholder Services Plan in reliance on the exemptive order.

15. Any class of shares with a conversion feature (the "Purchase Class") will convert into another class of shares (the "Target Class") on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

16. If a Trust implements any amendment to its Rule 12b–1 Plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The Trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into the Target Class. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class (the "New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class shares will convert into New Target Class shares. The New Target Class and New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Trustees reasonably believe will not be subject to federal taxation. In accordance with condition 3, any additional cost associated with the creation, exchange, or conversion of the New Target Class or New Purchase Class shall be borne solely by the Administrator, the Distributor, and the Trust's investment adviser. The Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

17. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22527 Filed 9–14–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19695; 812–8216]

The Society Funds, et al.; Application for Exemption

September 9, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: The Society Funds, The Highmark Group, The Parkstone Group of Funds, Conestoga Family of Funds, The ASO Outlook Group, The Sessions Group, American Performance Funds, The Coventry Group, BB&T Mutual Funds Group, and any other registered investment companies for which The Winsbury Company Limited Partnership ("Winsbury"), or any person directly or indirectly controlling, controlled by, or under common control with Winsbury (the "Winsbury Affiliates"), now or in the future serves as principal underwriter and for which the Advisers (as defined below), or any person directly or indirectly controlling, controlled by, or under common control with the Advisers (the "Adviser Affiliates"), now or in the future serve as investment adviser (the "Funds"); Society Asset Management, Inc., Clay Finlay, Inc., The Bank of California, N.A., First of America Investment Corporation, Meridian Investment Company, AmSouth Bank, N.A., National Bank of Commerce, Bank One,

Arizona, N.A., First National Bank of Omaha, BancOklahoma Trust Company, AMR Investment Services, Inc., Boatmen's Trust Company, Amcore Capital Management, Inc., Analytical Risk Management, Ltd., and Branch Banking and Trust Company (the "Advisers"); Winsbury; and The Winsbury Service Corporation ("Winsbury Service").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) for an exemption from the provisions of sections 12(d)(1)(A) and 17(a), and pursuant to section 17(d) and rule 17d–1 to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants seek a conditional order to permit non-money market series (the "Non-Money Market Series") of a Fund to utilize the cash reserves that have not been invested in portfolio securities ("Uninvested Cash") to purchase shares of one or more of the money market series (the "Money Market Series") of such Fund.

FILING DATE: The application was filed on December 14, 1992, and amended on May 11, 1993 and September 1, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 4, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Charles H. Hire, Baker & Hostetler, 65 East State Street, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Society Funds ("Society") is a registered open-end management investment company organized as a Massachusetts business trust. Society offers shares in ten series, three of which are Money Market Series and seven of which are Non-Money Market Series. Society Asset Management, Inc. is the investment adviser for each of Society's series other than the International Growth Portfolio, whose investment adviser is Clay Finlay, Inc.

2. The Highmark Group ("Highmark") is a registered open-end management investment company organized as a Massachusetts business trust. Highmark offers shares in eight series, five of which are Money Market Series and three of which are Non-Money Market Series.[1] Merus Capital Management, a division of The Bank of California, N.A., is the investment adviser for each of Highmark's series. The Bank of California, N.A. also provides sub-administrator, sub-transfer agency and sub-accounting services to each of the Highmark series.

3. The Parkstone Group of Funds ("Parkstone") is a registered open-end management investment company organized as a Massachusetts business trust. Parkstone offers shares in fourteen series, three of which are Money Market Series and eleven of which are Non-Money Market Series. First of America Investment Corporation is the investment adviser for each of the Parkstone series. Ivory & Sime International, Inc. and Ivory & Sime plc are sub-investment advisers for the Parkstone International Discovery Fund series.

4. Conestoga Family of Funds ("Conestoga") is a registered open-end management investment company organized as a Massachusetts business trust. Conestoga offers shares in seven series, three of which are Money Market Series and four of which are Non-Money Market Series. Meridian Investment Company is the investment adviser of each of the Conestoga series.

5. The ASO Outlook Group ("ASO") is a registered open-end management investment company organized as a Massachusetts business trust. ASO offers shares in eight series, three of which are Money Market Series and five of which are Non-Money Market Series.[2] AmSouth Bank, N.A. is the investment adviser for each of the ASO series.

6. The Sessions Group ("Sessions") is a registered open-end management investment company organized as an Ohio business trust. Sessions offers twelve series, three of which are Money Market Series and nine of which are Non-Money Market Series. National Bank of Commerce is investment adviser to four of the Sessions series, including one Money Market Series. Bank One, Arizona, N.A. is the investment adviser to four of the Sessions series, including one Money Market Series. First National Bank of Omaha is investment adviser to four of the Sessions series, including one Money Market Series.

7. American Performance Funds ("American") is a registered open-end management investment company organized as a Massachusetts business trust. American offers shares in seven series, two of which are Money Market Series and five of which are Non-Money Market Series. BancOklahoma Trust Company ("BancOklahoma") is the investment adviser for each of the American series other than the Cash Management Fund, a Money Market Series whose investment adviser is AMR Investment Services, Inc. ("AMR"). AMR also serves jointly with BancOklahoma as investment adviser to American's other Money Market Series.

8. The Conventry Group ("Coventry") is a registered open-end management investment company organized as a Massachusetts business trust. Conventry currently offers shares in five series, two of which are Money Market Series and three of which are Non-Money Market Series.[3] Amcore Capital Management is the investment adviser for each of the Coventry series, except one Money Market Series whose investment adviser is Boatmen's Trust Company.

9. BB&T Mutual Funds Group ("BB&T") is a registered open-end management investment company organized as a Massachusetts business trust. BB&T offers shares in six series, one of which is a Money Market Series and five of which are Non-Money Market Series. Branch Banking and Trust Company is the investment adviser for each of the BB&T series.

10. Winsbury, a broker-dealer registered under the Securities Exchange Act of 1934, is the principal underwriter and administrator for each of the Funds. Winsbury is entitled to receive fees for administrative services

[1] Four additional Non-Money Market Series have been registered and have effective registration statements but currently are not being offered to the public.

[2] Three additional Non-Money Market Series have been registered and have effective registration statements but currently are not being offered to the public.

[3] One additional Non-Money Market Series has been registered and has an effective registration statement but currently is not being offered to the public. Analytical Risk Management, Ltd. is the investment adviser for such series.

based on a percentage of net assets from each of the Funds.

11. Winsbury Service, an Ohio corporation under common ownership with Winsbury, provides transfer agency and fund accounting services to each of the Funds. Winsbury Service is entitled to receive fees from each of the Funds for serving as transfer agent based primarily on the number of shareholders of each Fund, and for providing accounting services based upon a percentage of the Funds' net assets.

12. Each of the Advisers received an investment advisory fee from the series that they advise based upon a percentage of net assets of such series. The Bank of California, Bank One, Arizona, N.A., First National Bank of Omaha, and Boatmen's Trust Company also receive fees based upon a percentage of net assets of the series that they advise for acting as custodians for such series. The Bank of California receives fees based upon a percentage of net assets from the Highmark series for performing sub-administrative and sub-accounting services.

13. The Non-Monday Market Series of each Fund invest in a variety of debt and/or equity securities. The Money Market Series of each Fund seek current income, liquidity, and capital preservation by investing in short-term money market instruments such as U.S. Government securities, bank obligations, commercial paper, municipal obligations, or repurchase agreements secured by Government securities.

14. Each Non-Money Market Series has, or may be expected to have, Uninvested Cash in its custodian bank which may be invested directly in individual short-term money market instruments, or may not otherwise be invested in any portfolio securities. This Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions, dividend payments, and new monies received from investors.

15. Applicants seek an order that would permit the Non-Money Market Series of a Fund to utilize Uninvested Cash to purchase shares of one or more of the Money Market Series of such Fund and the Money Market Series of a Fund to sell their shares to, and to redeem their shares from, the Non-Money Market Series of such Fund.[4] The Uninvested Cash held by an individual Non-Money Market Series at any particular time may not be large enough generally to make economical direct investments in money market instruments. However, by investing Uninvested Cash in Money Market Series, the Non-Money Market Series will reduce their transaction costs, create more liquidity, enjoy greater returns on the Uninvested Cash, and further diversify their holdings.

16. Under the proposal, no sales charge, contingent deferred sales charge, rule 12b–1 fee, or other underwriting or distribution fee will be charged by a Money Market Series or any underwriter with respect to purchases of shares of such Money Market Series made with Uninvested Cash, or upon the redemption of such shares. In order to avoid duplicative management fees, Winsbury, Winsbury Service, the Advisers, and their respective affiliates will reduce their fees charged to a Non-Money Market Series by the amount that such service providers received as a result of the Non-Money Market Series' investments in the Money Market Series, to the extent that such fees are based upon the Non-Money Market Series' assets invested in shares of the Money Market Series.

17. To ensure that the Non-Money Market Series will not exert any undue influence in the voting process for any matter submitted to a vote by the shareholders of a Money Market Series, the Non-Money Market Series will vote their shares of the Money Market Series in proportion to the vote by all other shareholders of such Money Market Series. The Non-Money Market Series will purchase and redeem shares of the Money Market Series at the same time and price, and will receive dividends and bear expenses, on the same basis as all other shareholders of the Money Market Series.

18. Applicants also request relief that would permit the Non-Money Market Series to invest Uninvested Cash in, and hold shares of, a Money Market Series in excess of the percentage limitations set forth in section 12(d)(1)(A). The value of the shares held by a Non-Money Market Series, however, will be limited as follows: (a) Each Non-Money Market Series will be permitted to invest Uninvested Cash in, and hold shares of, a Money Market Series only to the extent that, (i) the Non-Money Market Series' aggregate investment in the Money Market Series does not exceed the greater of 5% of such Non-Money Market Series' total net assets or $2.5 million, and (ii) the Non-Money Market Series' aggregate investment in all investment companies (including all Money Market Series) does not exceed 10% of such Non-Money Market Series total net assets; and (b) no single Non-Money Market Series will be permitted to own more than 3% of the outstanding shares of any single Money Market Series or any other investment company.

Applicant's Legal Conclusions

1. Under section 6(c), the SEC may exempt any person or transaction from any provision of the Act or any rule thereunder to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants seek relief under section 6(c) for an exemption from section 12(d)(1)(A) and so that the exemption granted from section 17 applies to a class of transactions, rather than to a single transaction. Applicants state that the proposed transactions meets the standards for relief under section 6(c) because they will allow applicants to reduce their transaction costs, create more liquidity, enjoy greater returns on the Uninvested Cash, and further diversify their holdings.

2. Section 12(d)(1)(A) sets certain limits on an investment company's ability to invest in the shares of another investment company. Section 12(d)(1) is intended to protect an investment company's shareholders from undue influence over portfolio management through the threat of large scale redemptions, the acquisition of voting control, the layering of sales charges and advisory fees, and the creation of a complex structure that dissuades a shareholder from ascertaining the true value of the subject security. None of those perceived abuses is created by applicant's proposal.

3. Section 17(a) makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell any security to, or purchase any security from, such investment company. The series of a Fund may be deemed to be affiliated persons of each other by virtue of being under common control because each Fund has one board of trustees, one principal underwriter and

[4] Prior to submission of this application, certain of the applicants had participated in such activity. Those applicants were advised by the SEC staff that in the staff's opinion purchases and sales of Money Market Series shares between the Non-Money Market Series and the Money Market Series violated section 17 of the Act. Applicants have discontinued such practice pending an exemptive order of the Commission. Any exemptive relief will only be prospective in its application.

administrator, one accountant, and in some instances, one investment adviser and one transfer agent.

4. Section 17(b) permits the SEC to exempt a transaction from the provisions of section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.[8]

5. Section 17(d) of the Act and rule 17d–1 thereunder, in the absence of an order granted by the Commission, prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or other joint arrangement in which any such registered company, or a company controlled by such registered company is a participant. Under rule 17d–1, the Commission may permit a proposed joint transaction if participation by a registered investment company is consistent with the provisions, policies, and purposes of the Act and not on a basis less advantageous than that of other participants.

6. Applicants submit that the terms of the proposed transactions are fair and reasonable, consistent with the policies and purposes of the Act, and do not present the possibility for overreaching because the Non-Money Market Series will purchase and redeem shares of the Money Market Series at net asset value and there will be no imposition of double management or administrative costs. Applicants also state that the proposed transactions meets the standards for relief under section 6(c) because they will allow applicants to reduce their transaction costs, create more liquidity, enjoy greater returns on the Uninvested Cash, and further diversify their holdings.

Applicants' Conditions

1. Each of the Money Market Series will calculate its net asset value in accordance with rule 2a–7 under the Act.

2. The shares of the Money Market Series of the Funds sold to and redeemed from the Non-Money Market Series of such Funds will not be subject to a sales load, redemption fee, or distribution fee under a plan adopted in accordance with rule 12b–1.

3. Winsbury, Winsbury Service, the Winsbury Affiliates, the Advisers, and the Adviser Affiliates will reduce their fees charged to each Non-Money Market Series of a Fund by an amount (the "Reduction Amount") equal to the net asset value of the Non-Money Market Series' holdings in any Money Market Series of a Fund times the rate at which advisory, administrative, and other fees are charged by Winsbury, Winsbury Service, the Winsbury Affiliates, the Advisers, and the Adviser Affiliates to such Money Market Series (excluding amounts that could have been charged but were waived), provided that such fees are based on a percentage of the Money Market Series' net assets.

4. If Winsbury, Winsbury Service, the Winsbury Affiliates, the Advisers or the Adviser Affiliates waive any portion of their Non-Money Market Series fees or bear any portion of the expenses of a Non-Money Market Series (an "Expense Waiver"), the adjusted fees for the Non-Money Market Series (gross fees minus Expense Waiver) will be calculated without reference to the Reduction Amount. Adjusted fees will then be reduced by the Reduction Amount. If the Reduction Amount exceeds adjusted fees, Winsbury, Winsbury Service, the Winsbury Affiliates, the Advisers, or the Adviser Affiliates will reimburse the appropriate Non-Money Market Series in an amount equal to such excess.

5. Each of the Non-Money Market Series of a Fund will be permitted to invest Uninvested Cash in, and hold shares of, a Money Market Series of such Fund only to the extent that: (a) The Non-Money Market Series' aggregate investment in the Money Market Series does not exceed the greater of 5% of the Non-Money Market Series' total net assets, or $2.5 million; and (b) the Non-Money Market Series aggregate investment in all investment companies (including all Money Market Series) does not exceed 10% of such Non-Money Market Series' total net assets. No Non-Money Market Series of a fund will be permitted to own more than 3% of the total outstanding voting stock of any Money Market Series of such Fund or of any other investment company. For purposes of these limitations, each series of a Fund will be treated as a separate investment company. Accordingly, a single Non-Money Market Series' investments and share ownership of a particular Money Market Series will not be aggregated with the Non-Money Market Series' investments and share ownership of any other series within the same Fund for purposes of determining whether the foregoing limitations have been satisfied.

6. The Non-Money Market Series will vote their shares of each of the Money Market Series in the same proportion as the votes of all other shareholders in such Money Market Series.

7. The Non-Money Market Series of a Fund will purchase and redeem shares of each of the Money Market Series of such Fund as of the same time and at the same price, and will receive dividends and bear their proportionate share of expenses on the same basis as other shareholders of such Money Market Series. A separate account will be established in the shareholder records of each of the Money Market Series for each of the acquiring Non-Money Market Series.

8. Any Non-Money Market Series fees reduced or reimbursed in connection with the purchase and sale of shares of the Money Market Series of the Funds as described herein will be reduced or reimbursed for all time, and will not be subject to recoupment by Winsbury, Winsbury Service, the Winsbury Affiliates, the Advisers, the Advisers Affiliates, and by any future service providers at a later date.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22530 Filed 9–14–93; 8:45 am]

BILLING CODE 8010–01–M

[8] The policies of the Non-Money Market Series will be amended, as necessary, or a proposal to amend such policies will be submitted to the shareholders of the Non-Money Market Series, where appropriate, to permit such series to purchase and redeem shares of the Money Market Series.

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 3, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49100
Date filed: August 30, 1993

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 27, 1993
Description: Application of Air Serve, Inc., pursuant to section 401(d)(3) of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing interstate and overseas charter air transportation.

Docket Number: 49101
Date filed: August 30, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 27, 1993
Description: Application of Air Serve, Inc., pursuant to section 401(d)(3) of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing foreign charter air transportation.

Docket Number: 49103
Date filed: August 31, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 28, 1993
Description: Application of Cherokee Air, Ltd., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit to engage in on-demand charter foreign air transportation between Marsh Harbour, Abaco, Commonwealth of the Bahamas and Miami, Fort Lauderdale, West Palm Beach, and Fort Pierce, Florida, in the United States

Docket Number: 49105
Date filed: September 1, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 29, 1993
Description: Application of Allcanada Express Limited d/b/a Allcanada Express, pursuant to section 402 of the Act and subpart Q of the Regulations, requests a Foreign Air Carrier Permit to engage in the charter air transportation of property and mail between any point or points in Canada and any point or points in the United States.

Docket Number: 49107
Date filed: September 2, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 30, 1993
Description: Application of American Airlines, Inc. pursuant to section 401 of the Act and subpart Q of the Regulations applies for renewal of its certificate for Route 550, authorizing scheduled foreign air transportation of persons, property, and mail between the coterminal points Seattle, Washington, and Portland, Oregon, and the coterminal points Tokyo and Osaka, Japan.

Docket Number: 49112
Date filed: September 2, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 30, 1993
Description: Application of Air Wisconsin Airlines Corporation pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to engage in interstate and overseas air transportation of persons, property and mail.

Docket Number: 49114
Date filed: September 3, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 1, 1993
Description: Application of Continental Micronesia, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, requests renewal of the Guam/Saipan-Naha authority in its Route 171 certificate for a period of five years.

Docket Number: 48001
Date filed: September 3, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 20, 1993
Description: Application of Evergreen International Airlines, Inc., pursuant to Rule 410 of the Rules of Practice of the Department, applies for an emergency exemption from the condition on its certificate for Route 638, as amended by DOT Notices dated May 10, 1993, June 9, 1993, July 7, 1993 and August 5, 1993, that requires it to commence service between New York, New York, and Beijing, China, on or before September 8, 1993.

Docket Number: 46352
Date filed: August 31, 1993
Due Date for Answers, Conforming Applications, Motion to Modify Scope: September 28, 1993
Description: Fifth Amendment to Application of Air Aruba, N.V., pursuant to section 402 of the Act and subpart Q of the Regulations, moves to amend the foreign air carrier permit to serve Baltimore, Maryland.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 93–22550 Filed 9–14–93; 8:45 am]
BILLING CODE 4910–62–P

Office of the Secretary

[Notice 93–19]

Senior Executive Service Performance Review Boards (PRB); Membership

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental Performance Review Boards (PRB) established by DOT under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Glenda M. Tate, Director of Personnel, and Executive Secretary, DOT Executive Resources Board, (202) 366–4088.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 4312 requires that each agency implement a performance appraisal system making senior executives accountable for organizational and individual goal accomplishment. As part of this system, 5 U.S.C. 4314(c) requires each agency to establish one or more PRBs, the function of which is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the final rating authority relative to the performance of the senior executive.

The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, DC, on September 3, 1993.

Jon H. Seymour,
Assistant Secretary for Administration.

Nominations for Performance Review Boards Fiscal Year 1993 Performance Appraisal Cycle

Office of the Secretary

Roberta D. Gabel, Assistant General Counsel for Environmental, Civil Rights and General Law, Office of the Secretary
Donald H. Horn, Assistant General Counsel for International Law, Office of the Secretary
Paul M. Geier, Assistant General Counsel for Litigation, Office of the Secretary
George W. McDonald, Director, Office of Programs and Evaluation, Office of the Secretary
Shelton Jackson, Deputy Director, Office of Economics, Office of the Secretary
Edward P. Oppler, Deputy Director, Office of International Aviation, Office of the Secretary
Angelo P. Picillo, Deputy Director, Office of Administrative Services and Property Management, Office of the Secretary
Linda M. Higgins, Director, Office of Acquisition and Grant Management, Office of the Secretary
Cynthia C. Rand, Director, Office of Information Resource Management, Office of the Secretary
Jerry Hawkins, Director of Personnel and Training, Federal Highway Administration
John C. Horsley, Deputy Assistant Secretary for Governmental Affairs, Office of the Secretary.

United States Coast Guard

RADM James M. Loy, Chief, Office of Personnel & Training, United States Coast Guard
RADM David E. Ciancaglini, Chief, Office of Command, Control and Communications, United States Coast Guard
RADM William J. Ecker, Chief, Office of Navigation Safety and Waterway Safety, United States Coast Guard
RADM Gerald F. Woolever, Chief, Office of Acquisition, United States Coast Guard
Diana L. Zeidel, Deputy Associate Administrator for Administration, Federal Highway Administration
John P. Eicher, Director, Office of Program Management Support, Federal Highway Administration
Linda M. Higgins, Director, Office of Acquisition and Grant Management, Office of the Secretary
Jerry Hawkins, Director of Personnel and Training, Federal Highway Administration
Jane Garvey, Deputy Administrator, Federal Highway Administrator.

Federal Aviation Administration

Thomas C. Accardi, Director, Flight Standards Service, Federal Aviation Administration
Arnold Aquilano, Associate Administrator for Airway Facilities, Federal Aviation Administration
Joaquin Archilla, Deputy Director, System Maintenance Service, Federal Aviation Administration
Joan W. Bauerlein, Director, Office of International Aviation, Federal Aviation Administration
Theodore R. Beckloff, Regional Administrator, Southern Region, Federal Aviation Administration
Dorothy H. Berry, Deputy Assistant Administrator for Human Resource Management, Federal Aviation Administration
Carolyn C. Blum, Associate Administrator for Contracting and Quality Assurance, Federal Aviation Administration
Rodman D. Bourne, Manager, Automation Software Division, Federal Aviation Administration
Anthony J. Broderick, Jr., Associate Administrator for Regulation and Certification, Federal Aviation Administration
John H. Cassady, III, Deputy Chief Counsel, Federal Aviation Administration
Marcos Costilla, Jr., Manager, Airway Facilities Division, New England Region, Federal Aviation Administration
Lawrence Covington, Deputy Director, Office of Budget, Federal Aviation Administration
Loni R. Czekalski, Deputy Director, FAA Technical Center, Federal Aviation Administration
Clyde M. DeHart, Jr., Regional Administrator, Southwest Region, Federal Aviation Administration
James S. Dillman, Assistant Chief Counsel Litigation Division, Federal Aviation Administration
Kay Frances Dolan, Director, Office of Personnel, Federal Aviation Administration
Arlene I. Feldman, Regional Administrator, New England Region, Federal Aviation Administration
Garrome P. Franklin, Deputy Regional Administrator, Central Region, Federal Aviation Administration
Darlene Freeman, Associate Administrator for Aviation Safety, Federal Aviation Administration
Norman T. Fujisaki, Deputy Director, Operations Research Service, Federal Aviation Administration
Margaret M. Gilligan, Chief of Staff, Federal Aviation Administration
Brooks C. Goldman, Deputy Associate Administrator, for Aviation Standards, Federal Aviation Administration
Theron A. Gray, Assistant Administrator for Information Technology, Federal Aviation Administration
Jackie L. Gregory, Deputy Assistant Administrator for Civil Aviation Security, Federal Aviation Administration
James E. Haight, Regional Administrator, Central Region, Federal Aviation Administration
Charles H. Huettner, Deputy Associate Administrator for Aviation Safety, Federal Aviation Administration
Frederick M. Isaac, Regional Administrator, Northwest Mountain Region, Federal Aviation Administration
DeWitte T. Lawson, Jr., Regional Counsel, Western Pacific Region, Federal Aviation Administration
Ruth A. Leverenz, Director, Office of Budget, Federal Aviation Administration
Louise E. Maillett, Director, Office of Environment and Energy, Federal Aviation Administration
Duane J. Mason, Manager, Airway Facilities Division, Great Lakes Region, Federal Aviation Administration
Homer C. McClure, Associate Administrator, Aeronautical Center, Federal Aviation Administration
Herbert R. McLure, Assistant Administrator for Human Resource Management, Federal Aviation Administration
Lynne A. Osmus, Director, Office of Civil Aviation, Security Operations, Federal Aviation Administration
Michael E. Perie, Program Manager for Advanced Automation, Federal Aviation Administration
Daniel J. Peterson, Regional Administrator, Eastern Region, Federal Aviation Administration
Edward J. Phillips, Regional Administrator, Great Lakes Region, Federal Aviation Administration
Charles R. Pinkerton, Manager, Airway Facilities Division, Southern Region, Federal Aviation Administration
William H. Pollard, Associate Administrator for Air Traffic, Federal Aviation Administration
Martin T. Pozesky, Associate Administrator for System Engineering and Development, Federal Aviation Administration
Carol S. Rayburn, Manager, Flight Standards Division, New England Region, Federal Aviation Administration
Fanny Rivera, Deputy Assistant Administrator for, Information Technology, Federal Aviation Administration
Stanley Rivers, Director, Systems Maintenance Service, Federal Aviation Administration
H. Ann Rosenwald, Director, Office of Human Resource Development, Federal Aviation Administration
Raymond A. Salazar, Manager, FAA Center for Management, Federal Aviation Administration
Carl B. Schellenburg, Regional Administrator, Western-Pacific Region, Federal Aviation Administration
Jacqueline L. Smith, Regional Administrator, Alaskan Region, Federal Aviation Administration
Quentin S. Taylor, Deputy Associate Administrator for Airports, Federal Aviation Administration
George W. Terrell, Manager, Maintenance Engineering Division, Federal Aviation Administration
Alvin L. Thomas, Program Director for Weather and Flight, Service Systems, Federal Aviation Administration
John E. Turner, Associate Administrator for National, Airspace System Development, Federal Aviation Administration
Leon C. Watkins, Assistant Administrator for Civil Rights, Federal Aviation Administration
James W. Whitlow, Assistant Chief Counsel General Legal, Services Division, Federal Aviation Administration
William H. Williams, Jr., Director, Office of Aviation Systems Standards, Federal Aviation Administration
Winifred Woodward, Deputy Regional Administrator, Southern Region, Federal Aviation Administration
Melvin M. Yoshikami, Manager, Airway Facilities Division, Northwest Mountain Region, Federal Aviation Administration
Jane H. Bachner, Director, Office of Economic Analysis, Federal Railroad Administration
Nan K. Harlee, Associate Administrator for Marketing, Maritime Administration
Jerry A. Hawkins, Director, Office of Personnel and Training, Federal Highway Administration
Mark L. Gerchick, Chief Counsel, Federal Aviation Administration.

Federal Highway Administration,

George S. Moore, Jr., Associate Administrator for Administration, Federal Highway Administration
Thomas J. Ptak, Regional Administrator, San Francisco, California, Federal Highway Administration
Madeleine S. Bloom, Director, Office of Policy Development, Federal Highway Administration
John P. Eicher, Director of Program Management Support, Federal Highway Administration
Dorothy H. Berry, Deputy Assistant Administrator for, Human Resource Management, Federal Aviation Administration
Theodore A. McConnell, Chief Counsel, Federal Highway Administration.

Federal Railroad Administration

S. Mark Lindsey, Chief Counsel, Federal Railroad Administration

Raymond J. Rogers, Associate Administrator for Administration, Federal Railroad Administration
Philip Olekszyk, Deputy Associate Administrator for Safety, Federal Railroad Administration
James T. McQueen, Associate Administrator for Railroad Development, Federal Railroad Administration
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
Sally Hill Cooper, Associate Administrator for Policy, Federal Railroad Administration.

National Highway Traffic Safety Administration

Barry I. Felrice, Associate Administrator for Rulemaking, National Highway Traffic Safety Administration
Adele L. Derby, Associate Administrator for Regional Operations, National Highway Traffic Safety Administration
William A. Boehly, Associate Administrator for Enforcement, National Highway Traffic Safety Administration
John Womack, Senior Assistant Chief Counsel, National Highway Traffic Safety Administration
Jerry Hawkins, Director of Personnel and Training, Federal Highway Administration
Jane Garvey, Deputy Administrator, Federal Highway Administration.

Federal Transit Administration

Kevin E. Heanue, Director, Office of Environment and Planning, Federal Highway Administration
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
Rose A. McMurray, Associate Administrator for Management and Administration, Research and Special Programs Administration
Philip Olekszyk, Deputy Associate Administrator for Safety, Federal Railroad Administration
Thomas R. Hunt, Associate Administrator for Administration, Federal Transit Administration
Peter G. Halpin, Director of Communications and External Affairs, Federal Transit Administration
Michael P. Huerta, Associate Deputy Secretary, Office of the Secretary.

Maritime Administration

Reginald A. Bourdon, Associate Administrator for Policy, and International Affairs, Maritime Administration
Richard E. Bowman, Associate Administrator for Maritime Aids, Maritime Administration
Harlan T. Haller, Associate Administrator for Shipbuilding and Ship Operations, Maritime Administration
Nan K. Harlee, Associate Administrator for Marketing, Maritime Administration
John L. Mann, Jr., Deputy Associate Administrator for Administration, Maritime Administration
Robert J. Patton, Deputy Chief Counsel, Maritime Administration
James McQueen, Associate Administrator for Railroad Development, Federal Railroad Administration
Jerry Hawkins, Director of Personnel and Training, Federal Highway Administration
Sharon Brooks, Director, Office of External Affairs, Maritime Administration.

Research and Special Programs Administration

Katherine E. Collins, Director, Office of Budget, Office of the Secretary
Philip S. Coonley, Director, Office of Administration, Volpe National Transportation Systems Center, Research and Special Programs Administration
Arnold L. Levine, Director, Office of International Transportation and Trade, Office of the Secretary
Rose A. McMurray, Associate Administrator for Management and Administration, Research and Special Programs Administration
Patricia D. Parrish, Director, Office of Management Planning, Office of the Secretary
Cynthia C. Rand, Director, Office of Information Resource Management, Office of the Secretary
Alan I. Roberts, Associate Administrator for Hazardous Materials Transportation, Research and Special Programs Administration
George W. Tenley, Jr., Associate Administrator for Pipeline Safety, Research and Special Programs Administration
Frank F.C. Tung, Deputy Director, Volpe National Transportation Systems Center, Research and Special Programs Administration
Jane F. Garvey, Deputy Administrator, Federal Highway Administration.

Office of the Inspector General

Katherine Briffin, Assistant Inspector General for Inspections, Department of Defense
Eileen Boyd, Assistant Inspector General for Civil and Administrative Remedies, Department of Health and Human Services
Joyce Fleischman, Deputy Inspector General, Department of Interior
Chris Greer, Assistant Inspector General for Audits, Department of Housing and Urban Development
Edward F. Hefferon, Deputy Inspector General, General Services Administration
Jacquelyn K. Howard, Assistant Inspector General for Management and Policy, Department of Housing and Urban Development
Steve McNamara, Acting Assistant Inspector General for Audit Services, Department of Education
Everett Mosely, Deputy Assistant Inspector General for Auditing, Department of Agriculture
Jane Tebutt, Assistant Inspector General for Management and Policy, Department of Health and Human Services
Michael Zimmermen, Deputy Inspector General, Department of Commerce.

[FR Doc. 93–22482 Filed 9–14–93; 8:45 am]
BILLING CODE 4910–62–P

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on General Aviation and Business Airplane Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss general aviation and business airplane issues.

DATES: The meeting will be held on October 19, 1993 at 9 a.m. Arrange for oral presentations by October 12, 1993.

ADDRESSES: The meeting will be held at the Air Line Pilots Association Headquarters, rooms 804/805, 1625 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Mr. John Colomy, Aircraft Certification Service (ACE–110), 601 East 12th Street, Kansas City, Missouri, telephone (816) 426–6930.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on October 19, 1993, at the Air Line Pilots Association Headquarters, 1625 Massachusetts Avenue, NW., Washington, DC 20036. The agenda for the meeting will include:

- Opening Remarks.
- Review of Action Items.
- Status Reports from the Accelerated Stalls, Fuel Indicators, and FAR/JAR Harmonization Working Groups.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by October 12, 1993, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director or by bringing copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on September 3, 1993.

John R. Colomy,

Assistant Executive Director for General Aviation and Business Airplane Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 93-22549 Filed 9-14-93; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Lucas County, OH

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Lucas County, Ohio.

FOR FURTHER INFORMATION CONTACT: Herman Rodrigo, Planning and Program Development Manager, Federal Highway Administration, 200 N. High Street, room 328, Columbus, Ohio 43215, Telephone: (614) 469-2408.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Ohio Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to replace the I-280 bascule bridge, also known as the Craig Memorial Bridge, over the Maumee River in Lucas County, Ohio.

Replacement of this bridge is considered necessary to reduce traffic congestion and modal conflicts. The replacement structure needs to provide connectivity to the area highway system, as well as provide access to area industrial activities.

Alternatives under consideration include: (1) Taking no action; (2) constructing a new bridge or tunnel on the existing alignment; and (3) constructing a new bridge or tunnel on a new alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held at various sites in the project area in February and October of 1994. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 2, 1993.

Fred J. Hempel,

Division Administrator, Columbus.

[FR Doc. 93-22542 Filed 9-14-93; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[Emergency Order No. 15, Notice No. 4]

Amendment of Emergency Order No. 15

The Federal Railroad Administration (FRA) issues this notice to amend Emergency Order No. 15 (Order) in response to comments received from petitioners who have requested an administrative review of the Order and FRA's further study of alternative remedial measures.

The Emergency Order was issued July 26, 1991, published in the **Federal Register** on July 31, and required that trains operated by the Florida East Coast Railway Company sound trainborne audible warning devices when approaching highway-rail grade crossings.

On August 6, FRA received the first petition requesting review of the Order and began an informal conference process with affected parties. That process permitted petitioners to submit arguments for modification or withdrawal of the Order. See 49 CFR 211.47. As part of that process, FRA provided petitioners a set of proposed remedial options, which, if implemented, would result in exemption from the requirements of the Order. The comment period on those options ended on January 15, 1993. Issuance of this notice concludes the conference process.

After review of the comments, FRA has decided to amend the performance specifications for various of the proposed remedial options in certain respects. This notice explains how FRA is responding to the comments offered by petitioners and amends the "Relief" section of the Order accordingly.

I. Discussion of Comments

In September of 1992, FRA issued draft performance specifications for full highway-rail grade crossing barriers, traffic divisional islands, and temporary crossing closures. FRA announced its intention that, once the specifications were finalized, compliance with these standards would exempt a grade crossing from the requirements of the Order.

By the end of the comment period on January 15, 1993, FRA had received responses from eight petitioners: The cities of Hollywood, Jupiter, North Miami Beach and West Palm Beach; Martin County; Project Whistle Stop (PWS); John A. Cavalier, Jr.; and the Florida East Coast Railway (FEC).

Funding

The most common concern among the petitioners was funding the remedial measures. Four commenters raised this issue. Martin County estimated that the cost per crossing would be approximately $85,000. As a result of this expense, they argued the "* * * proposed restrictions are too severe and do not represent the stated intent of providing an avenue for relief * * *." FRA consulted with Federal and State highway officials when it prepared the specifications. Retaining the level of safety afforded by the use of train horns was the central issue discussed. Protecting lives was given more consideration than cost. FRA hoped that less expensive alternatives would be available, and is still hopeful that less costly means of implementing these measures will develop as experience is gained.

Other petitioners addressed the question of who should pay. Hollywood rejected the remedial measures "until such time as the FRA identifies a proper and acceptable funding source other than the City of Hollywood and other affected cities * * *."

West Palm Beach mistakenly interpreted Federal and State statutes as requiring that such improvements "* * * be paid from federal and state funds." Federal statutes do not require that highway-rail crossing safety improvements be paid with Federal or State funds. Whether Federal highway safety or other State funds are used is a decision to be made by the Florida Department of Transportation. The use of Federal highway safety funds would require the concurrence of the Federal Highway Administration (FHWA).

Similarly, the Town of Jupiter argued that Federal law requires that the Federal government "significantly participate with the costs for upgrading

crossings." FRA is not familiar with such a requirement. FRA has no funds which could be used for such purposes.

Jupiter suggested that FEC participate in the funding of necessary remedial measures other than closings. This is a decision which can only be made by FEC.

Quiet Zones

The issue of "quiet zones" was addressed by two petitioners, FEC and PWS. FEC opposes quiet zones, asserting it would be too complicated for locomotive engineers to keep track of zone limits. However, one reason FRA proposed quiet zones was a concern for the difficulty engineers would have if exemptions to the Emergency Order were granted by individual crossing. As explained in Conference Notice No. Seven, a zone of sufficient length would assure that the locality would in fact realize an absence of train horns. Conversely, to establish quiet zones only at political boundaries, as FEC proposed, would unnecessarily impact crossings where train horns are not a problem, for example, in rural locations. We believe the half mile minimum to be a compromise between what is reasonable and what is practical. It is not reasonable to require more, nor is it practical to settle for less.

PWS stated that quiet zones were not needed, but provided no rationale. PWS went on to state that some jurisdictions are so small they would not have control over a track segment long enough to establish a zone. FRA recognizes that jurisdictions may need to coordinate to create zones, but sees no other option.

Finally, PWS argued that if quiet zones are established the use of train horns should be banned for the full day, and not just 10 p.m. to 6 a.m. The concept of a 24-hour ban in designated zones is reasonable. If the remedial measures are properly implemented for four-quadrant gates, median barriers or one-way streets fully gated, FRA believes that a 24-hour ban could be consistent with the intent of the Emergency Order. FRA notes, however, that there may need to be a change in Florida law before local jurisdictions have the authority to establish 24-hour bans.

Four-quadrant Gates

PWS and FEC also opposed four-quadrant gates. The addition of exit gates is designed to prevent circumvention of the entrance gates by impatient or misinformed motorists.

PWS questioned the need for a median barriers if four-quadrant gates are to be used. Medians are specified to deter attempts to circumvent the entrance gates before the descent of the exit gates. The exit gates are delayed to allow motorists on the crossing to move clear before all the gates descend. FRA agrees that four-quadrant gates are unnecessary if the standard gates with medians, as detailed in the performance specifications FRA is adopting, are installed.

PWS has suggested leaving unpaved the space between opposing highway lanes over the tracks to prevent motorists from driving around downed gates. FRA is not convinced it would be any less costly to remove the pavement between lanes than to erect median barriers. In addition, this space is often too narrow to serve as a barrier to deter motorists from driving around the gate. Since an unpaved gap would also not be as easy to see as a median barrier, it could trap motorists if the gap was inadvertently entered.

The FEC opposed four-quadrant gates as an alternative to train horns, because they believed that "without the intimidation factor provided by an audible warning device, they [intoxicated or speeding motorists] are much more likely to crash through them [lowered gates] and into the path of an oncoming train." Available data do not support the FEC's statement. FRA reviewed 82 reports prepared by Florida law enforcement officers regarding FEC nighttime crossing accidents, including 63 cases where the driver either drove around or through the gates. Five of the 50 accidents (10 percent) occurred when the motorist drove through a gate while bans were in effect. In the remaining 45 cases the driver drove around the gates. Of the 13 no-ban incidents, three (23 percent) resulted from the driver going through a gate. The percentage of drivers involved in accidents going through gates, versus around them, did not increase during the ban period. Most drivers who have had accidents at crossings have slowed sufficiently to negotiate the crossing without going through the gates. The percentage of drivers failing to stop, or oblivious to the gates, did not increase. FRA therefore believes that additional gates with a median barrier would prevent the vast majority of motorists from attempting to beat the train.

In a related communication, the Florida Department of Transportation has suggested that "loop detectors" be used to preclude the closure of exit gates if a highway vehicle is present in the exit lanes. The FRA concurs in this suggestion and the specification for Alternative Remedial Measure #3 was therefore rewritten.

Longer Gate Arms

One petitioner proposed "that where there is a two lane road * * * that the two gates be extended, no more than forty feet, which would have the effect of completely blocking traffic from entering the crossing." The petitioner suggested that, "[t]his would have the same effect as a four-quadrant crossing * * * and would be far less expensive." Engineering personnel worry that that approach could trap motorists on the tracks when gates close. Four-quadrant gates are designed to close the entrance lane(s), and then, after a delay allowing motorists on the crossing to exit, to close the exit lane(s).

In a related suggestion, PWS proposes that "the street should be made one way and the arm long enough to prevent vehicles from going around from the incoming side." This is a valid suggestion. The FRA and the Florida Department of Transportation have prepared a set of specifications, similar to those already presented in Conference Notice #7, addressing this additional option. See the Performance Specifications.

Terminating Rail Service

PWS suggested another remedial measure, *i.e.*, shutting down rail operations on tracks where less than seven trains per week operate. However, no alternatives for moving freight were offered. Under most circumstances, rail transport is safer and more economical than moving freight over our nation's highways. Increased highway congestion would also put added wear on public roads. Further, by definition, this measure would eliminate train horns at a particular crossing less than once per day, obviously not the problem which these proceedings are attempting to address. Lastly, 80 percent of the FEC highway-rail crossings which were impacted by whistle bans in 1989 were on the FEC mainline with considerably more than one train per day. Substantially more than half of the remaining 20 percent, though not mainline, have more than one train per day. The impact of this alternative on the "whistle problem" would be minimal. The legal, logistical and transportation problems it would create would be out of proportion.

Pedestrian Traffic

FEC recommends that "any signs indicating * * * closure should clearly indicate that the crossing is closed to both vehicular and pedestrian traffic." FRA agrees and will accordingly modify Note #2 of the Implementation Notes. See Performance Specifications.

FEC also recommends that "the specifications should ensure adequate safeguards to prevent pedestrians * * * from entering the railroad's right of way." FEC offers no suggestion as to what would be "adequate." FRA would have no objection to the establishment of further safeguards for pedestrians. However, it appears that current arrangements are adequate. All potential whistle ban crossings on the FEC are equipped with gates, lights and a bell. The bell is intended to warn pedestrians of the impending presence of a train.

From 1980 through 1992, the FEC reported 19 pedestrian incidents at highway-rail crossings. Of these, six occurred while bans were effective. (Three of the six resulted in a death.) The following table shows the number of such incidents, by year.

'80	'81	'82	'83	'84	'85	'86	'87	'88	'89	'90	'91	'92
1	4	1	0	1	1*	1	2*	1/1*	1/1*	1*	1	2

Ban in effect (1/1 indicates one with ban in effect, one without).

These data neither support nor refute the effectiveness of train horns as a pedestrian warning device. Pedestrian incidents have occurred before, during and after the whistle bans. The use of a second audible warning device (a train's horn), has not made an appreciable difference for pedestrians. The bell, flashing lights and gates, provide adequate warning for pedestrians.

Signs

One individual recommends that signs be placed at each crossing notifying motorists of the $1,500 fine for violating a state statute by going around lowered gates. The FRA supports this concept, though we will not require such a sign in the revised specifications. This should remain a local option. We would caution that any traffic control sign is of little value unless the statute is enforced. If it is enforced, experience shows word will spread quickly.

Whistle Boards

PWS recommends that the FEC "install ground markers for the engineer to know when to blow the train horn." Such markers are commonly referred to as "whistle boards," and in Florida, because of State statutes, would be installed 1,500 feet from each crossing on each approach to the crossing. It has not been alleged that FEC locomotive engineers are forgetting to sound their trains' horns. Should this become a problem, this option would remain open to the FEC.

Excessive Use of Train Horn

PWS has implied that locomotive engineers continue to sound the horn even after the locomotive has entered upon the highway-rail crossing, and that this practice should be curtailed, unless "the engineer thinks it will do some good." Most railroad operating rules, and FRA's Order, require that the last sounding of the train's horn for each crossing be "prolonged until the lead locomotive has passed through the crossing." This practice was established, and is continued, in an effort to reduce the number of incidents in which a highway motor vehicle runs into the side of the train. (More than a quarter of all crossing collisions occur when the highway user strikes the train.) In most of these, 67 percent, the lead unit (usually the locomotive) is struck. Overlooked in PWS's assertion is that many FEC crossings are closer together than 1,500 feet. As an engineer crosses over one crossing, he frequently is already sounding the horn for the next. Closing crossings is the best solution to this problem.

Highway Intersection, Defined

PWS has suggested that the definition of an intersection, whether major or minor, be predicated on the number of traffic lanes. The proposed specifications distinguished intersections based on the presence or absence of turn lanes. PWS provided no rationale for its recommended change. FRA defers to the State and Federal engineering personnel with whom we consulted in preparing those specifications and retains the original definitions.

The Manual on Uniform Traffic Control Devices (MUTCD)

PWS recommends that the MUTCD "develop plans for placement of gates at all types of crossings." The MUTCD, in accordance with Part 1A–2 of the MUTCD:

> * * * sets forth the basic principles that govern the design and usage of traffic control devices.
>
> * * * * *
>
> The Manual presents traffic control device standards for all streets and highways open to public travel regardless of type or class or the governmental agency having jurisdiction.

However, the Manual specifically leaves design and placement to local engineering personnel:

> The responsibility for the design, placement, operation and maintenance of traffic control devices rests with the governmental body or official having jurisdiction. 1A–3
>
> Traffic control devices shall be placed only by the authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic. 1A–3.1
>
> The decision to use a particular device at a particular location should be made on the basis of an engineering study of the location. Thus, while this Manual provides standards for design and application of traffic control devices, the Manual is not a substitute for engineering judgment. 1A–4

The MUTCD is not a design manual. The PWS recommendation that the MUTCD predefine all possible scenarios and site plans is not within the scope of the MUTCD, nor is it realistic.

Implementation Not Always Possible

PWS accurately observes that some highway-rail grade crossings are configured in ways that make it impossible to implement the provisions of the proposed specifications, short of crossing closure. This is especially true when the road and track closely parallel, resulting in a short entrance road into the crossing. Certainly, prohibiting use of a train's horn would only exacerbate an already dangerous situation.

Exceptions

One individual requested that exception criteria be defined which would allow "local authorities to resolve problems with certain crossings that require special measures." This is too vague and open-ended to include in the specifications or remedial options. However, FRA will remain open to requests for exceptions which are forwarded with the positive endorsement of the Florida Department of Transportation.

Low Highway Traffic

Another commenter requested that exceptions be granted for crossings with low highway traffic. In most cases, such a crossing should be closed. However, the FRA will remain open to requests for exceptions which are forwarded with the positive endorsement of the Florida Department of Transportation.

Automated Horn System (AHS)

Two cities have expressed an interest in installing automated horns at grade crossings. A mid-west firm known as Railroad Consulting Services, Inc. is experimenting with a prototype Automated Horn System. It is presently working with the Union Pacific Railroad and the city of Gering, Nebraska. The AHS consists of horns permanently mounted at the crossing facing each direction of highway approach. The horns are activated by trains as they enter upon track circuits, as are flashing lights and gates, and continue to sound a set pattern until the train reaches the highway.

The effort underway in Nebraska is innovative and experimental. FRA has encouraged this initiative and is formally monitoring progress, though no FRA sanction is needed. There are some technical difficulties with the devices and some questions still remain unanswered, in the opinion of the FRA, but none so far appear insurmountable.

FRA is not yet prepared to endorse the use of the AHS along the FEC right-of-way until further results have been received from the Nebraska experiment.

Availability of Data

One commenter stated that they have not been able to obtain the data used in FRA's analysis. All the data used in the original analysis and in subsequent reviews are available to the public on request. We are aware of no unfilled requests for data. Summary data were made available during and immediately following the opening meeting of the conference process, September 13, 1991. Subsequent publications, *e.g.*, Conference Notice #3, Florida's Train Whistle Ban, 2nd Edition, September 1992, included a variety of summary and detail data. Other requesters, including some of those responding to Conference Notice #7, have received massive listings of data from FRA's accident files. Requests for specific data should be addressed to the Federal Railroad Administration, RRS–23, 400 7th Street SW., Washington, DC, 20590. There may be a nominal fee. It is recommended that a requester call, (202) 366–0533, to discuss a request prior to writing.

Indemnification

FEC has stated their opposition "to the substitution of audible warning devices with unproven alternatives. * * * FRA should not permit the substitution of any alternative unless it is shown through adequate study to be equally effective." FEC's comments are without force; the proffered alternatives are adaptations of measures whose effectiveness is well known. Indeed, most of the alternatives will improve crossing safety during daytime and twilight operations, as well as during the night.

Regarding the proposed alternative of nighttime closure of a crossing, the community would assume the responsibility for closing each crossing so configured each evening. FEC locomotive engineers would have to assume from 10 p.m. to 6 a.m. that each crossing was closed. FEC has requested that communities "be required to indemnify FEC for any liability resulting from accidents at such crossings during the hours in question." Such an action by FRA would be well beyond the safety mission of this agency and the scope of this proceeding.

Unrelated Issues

PWS raised a myriad of rail related issues that are not affected by, nor do they impact on, whistle bans. These included the adequacy of current crossing installations, speed of trains, blockage of crossings by trains, rail car covers and hazardous materials shipments. We have not responded to these concerns. PWS may address them separately to the FRA outside the confines of this proceeding.

Also, a few commenters, including PWS, have again challenged original data and arguments which were addressed in FRA's original report, the Order, Conference Notices #3 and #7, and the 2nd Edition. The FRA is not willing to reargue these points.

Two commenters cited a newspaper story which reports a rise in crossing-related accident statistics of 28 percent since the bans were lifted. The FRA is not aware of the basis for this number. This number does not reconcile with information available to the FRA. In fact, in the year prior to the Order, the FEC reported 23 nighttime accidents at "impacted" crossings. In the year following, through July 25, 1992, FEC experienced only 10 nighttime accidents at the same crossings. This is a reduction of 57 percent.

Preliminary data for the State of Florida indicate that the state enjoyed a reduction of 16.4 percent in accidents and 74 percent in fatalities in 1992 versus 1991. This reduction is largely attributable to the gains achieved along the FEC right-of-way.

A Technical Meeting

Two commenters have requested that a technical representative of the FRA attend an "informational hearing." The purpose would be to have "an open discussion of the alternative remedial measures" so that "residents" will develop a better understanding of "the technicalities involved in order to stop whistle blowing * * *."

The FRA believes that the remedial measures are sufficiently detailed. The sort of discussion proposed would more appropriately involve State, County and City transportation planners and engineering personnel.

II. Amendment to Emergency Order No. 15

The "Relief" section of Emergency Order No. 15 is amended as follows:

Relief

The FEC has indicated that it does not intend to seek relief from this Order. However, the local jurisdictions impacted by this Order have indicated that they desire a mechanism whereby they can take action that would ensure that the Order's effectiveness would be lifted with regard to particular crossings where certain alternative measures are adopted. Some of those jurisdictions petitioned for review of the Order, which triggered a conference process under 49 CFR 211.47. As a result of that conference process, FRA has decided that a local jurisdiction may obtain relief from the impact of this Order by properly adopting one or more remedial measures (as set forth in the specifications below) at a highway-rail crossing or, where required, at a number of highway-rail crossings in a "quiet zone," and so notifying the Florida Department of Transportation (FDOT) [1] and the FEC in writing. FDOT must then certify whether the requirements of the relevant performance specifications have been met. Fourteen days after written notification has been sent from FDOT to the Docket Clerk, FRA, and to FEC, the impacted crossings may be considered exempt from the requirements of this Order.

Performance Specifications for Alternative Remedial Measures

Definitions

The following definitions pertain to these specifications:

Low Traffic Volume Streets: Any street carrying less than 2,000 vehicles per day.

[1] Notification to FDOT should be sent to: Manager, Rail Office, Florida Department of Transportation, 605 Suwannee St., Tallahassee, FL, 32399–0450. Notification to the FEC should be sent to: Vice President-Transportation, Florida East Coast Railway Co., P.O. Drawer 1048, St Augustine, FL, 32084. Notification to FRA's docket clerk should be sent to: Docket Clerk, Federal Railroad Administration, 400 Seventh St., SW., room 8201, Washington, DC, 20590.

Major intersection: Any intersection where traffic volume justifies the use of separate turn lanes.

Median barrier: Any device designed to prevent the intentional or accidental incursion of a vehicle into opposing lanes, *e.g.*, a Jersey Barrier.

Median curb: A curb, either mountable or non-mountable, which defines a median.

Minor intersection: An intersection where traffic volumes do not require the use of separate turn lanes.

MUTCD: Manual on Uniform Traffic Control Devices (1988 Edition), Federal Highway Administration, U.S. Department of Transportation.

Non-mountable (barrier) curb: A steep-faced curb 9–12 inches high intended to prevent intentional incursion by a vehicle into a defined area.

Quiet zone: A segment of railroad of not less than one-half mile (2,640 feet) in length on which all at-grade crossings are, in keeping with these specifications, closed during nighttime hours (10 p.m. to 6 a.m.), equipped with four-quadrant gates, equipped with gates with median barriers, or located on one-way streets are fully gated.

Traffic separator: A traffic island or median designed to guide traffic around an obstacle or to direct traffic in a particular direction.

Specifications

1. Permanent Closure of the Highway-Rail Crossing: Eliminate the at-grade crossing through permanent closure of the street or highway or through grade separation (overpass or underpass).

2. Nighttime Closure of the Highway-Rail Crossing: Close the crossing to highway traffic during nighttime hours subject to the following conditions:

a. The closure system must completely block highway traffic from entering the crossing.

b. Activation and deactivation of the system will be the responsibility of the county or municipality responsible for the street or highway, which must undertake to reliably discharge this duty such that the crossing is closed continuously during the hours of 10 p.m. to 6 a.m.

c. The crossing must be part of a quiet zone, as defined in these specifications.

d. The system must be reasonably tamper and vandal proof.

e. MUTCD standards must be met for any barricades and signing used in the nighttime closure of the facility. Signing for alternate routes must also be included.

3. Four-Quadrant Gate System: Install sufficient gates at a crossing to fully block highway traffic from entering a crossing when the gates are lowered, subject to the following conditions:

a. Approaches on both sides of the highway-rail crossing will be separated with medians with non-mountable curbs or traffic separators. Such median construction will include energy dissipaters and median striping as required by MUTCD.

b. Any median construction will extend at least 200 feet or to a major intersection, which ever is less. All major intersections must be a minimum of 100 feet from the highway-rail crossing. Any minor intersections within 200 feet of the crossing will be closed to crossing traffic.

c. At low traffic volume streets, median curbs with vertical delineators (rubber pipes and low curbing) between opposing lanes may be used in place of non-mountable curbs or traffic separator.

d. The maximum length of a gate arm will not exceed 40 feet.

e. Gate timing for full closure systems should be based on these suggested times:

Step	Inc.	Time
Lights start flashing	0	Sec.
Entrance gates start down.	3–5	Do.
Entrance gates fully lowered.	9–15	Do.
Exit gates start down	4–6	Do.
Exit gates fully lowered.	9–15	Do.

Exit gates will be equipped with a presence detection loop located between the outside track and the exit gate arm. This loop will raise or prevent the lowering of the exit gate arm if an automobile is detected within the loop. The loop or loops will be of sufficient size and number to detect an automobile in all exit lanes.

f. The gap between the end of a lowered gate and the median will be less than one foot.

g. Four-quadrant gates will not be an option where traffic signal pre-emption exists.

h. The crossing must be part of a quiet zone, as defined in these specifications.

i. The system must be reasonably tamper and vandal proof.

j. General principles of the AASHTO Roadside Design Guide regarding median barrier construction will be adopted where applicable.

4. Gates with Median Barriers: Install median barriers at a crossing which prevent highway traffic from driving around lowered gates subject to the following conditions:

a. Approaches on both sides of the highway-rail crossing will be separated with median barriers. Any barrier so constructed will include markers as required by the MUTCD, and also energy dissipaters.

b. Median barriers will extend at least 200 feet or to a major intersection, whichever is less. All major intersections must be a minimum of 100 feet from the highway-rail crossing. Any minor intersections within 200 feet of the crossing will be closed to crossing traffic.

c. The maximum length of a gate arm will not exceed 40 feet.

d. The gap between the end of a lowered gate and the median barrier will be less than one foot.

e. The crossing must be part of a quiet zone, as defined in these specifications.

f. The system must be reasonably tamper and vandal proof.

g. General principles of the AASHTO Roadside Design Guide regarding median barrier construction will be adopted where applicable.

5. One-Way Pairing of Adjacent Streets: Adjacent streets would be made into one-way pairs and gates modified or relocated to completely block he approaching lanes of traffic, subject to the following conditions:

a. Streets to be made into one-way pairs should ideally be no more than one city block (300'–500') apart. Cross streets connecting the one-way pairs should be no more than one city block from each side of the crossings in Central Business Districts, nor more than one-quarter mile from each side of the crossings in suburban areas.

b. Lane capacities of both streets should be approximately the same.

c. Preferably, the gate arms on the approach side of the crossings should be extended to within one foot of the left edge of pavement. The left edge of the pavement on the approach side in this configuration will include a non-mountable curb extending at least 200 feet or to a major intersection, whichever is less. Alternatively, the gate mechanisms on the far side of the crossings may be relocated to the left side of the approach lanes, and the gate arms sized to provide a maximum of one foot between the tips of the gate arms when in the lowered position.

d. The maximum length of a gate arm will not exceed 40 feet.

e. Two two-lane roadways one-way in the same direction may be paired with a single intervening multi-lane undivided roadway in the opposite direction provided all other conditions are met.

f. Both crossings of a one-way pair must be part of a quiet zone, as defined in these specifications.

g. Signing for one-way streets shall be in conformance with the MUTCD.

Implementation Notes

The following statements reflect the desire and intent of parties to the conference with respect to application of the above specifications.

1. In regard to the full closure of highway-rail crossings, the FDOT and the FEC have expressed a willingness to discuss financial assistance for closing any highway-rail crossing impacted by this Emergency Order.

2. If a crossing is selected for nighttime closing, alternate highway traffic routes should be identified, and signs erected in accordance with the MUTCD and applicable FDOT and local standards informing pedestrians and the motoring public that the streets will be closed from 10:00 pm until 6:00 am and that alternate routes must be used.

3. Any crossing equipped with a four-quadrant gate system or with gates and median barriers should also be equipped with constant warning time devices.

4. All gate arms should be equipped with strobe lights located on the centerline of each driving lane when the gates are lowered. The strobe lights will be activated when the gates begin to lower. Florida DOT and local jurisdictions should carefully monitor the effect of these strobe lights on vehicle drivers after the gates have been lowered.

5. Illumination (street lighting) of these highway-rail crossings is encouraged.

This amendment is effective from the date of issue of this notice.

Issued in Washington, DC, on August 31, 993.

Jolene M. Molitoris,

Administrator.

[FR Doc. 93–22535 Filed 9–14–93; 8:45 am]

BILLING CODE 4910–06–P

Federal Transit Administration

FTA Sections 3 and 9 Grant Obligations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1993, Public Law 102–338, contains a provision requiring the Federal Transit Administration (FTA) to publish an announcement in the **Federal Register** every 30 days of grants obligated pursuant to sections 3 and 9 of the Federal Transit Act, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management and State Programs Division, Office of Capital and Formula Assistance, Department of Transportation, Federal Transit Administration, Office of Grants Management, 400 Seventh Street, SW., room 9305, Washington, DC 20590, (202) 366–2053.

SUPPLEMENTARY INFORMATION: The Section 3 program provides capital assistance to eligible recipients in three categories: Fixed guideway modernization, construction of new fixed guideway systems and extensions, and bus purchases and construction of bus related facilities. The section 9 program apportions funds on a formula basis to provide capital and operating assistance in urbanized areas. Section 9 grants reported may include flexible funds transferred from the Federal Highway Administration to the FTA for use in transit projects in urbanized areas. These flexible funds are authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) to be used for highway or transit purposes. Pursuant to the statute FTA reports the following grant information.

SECTION 3 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Washington Metropolitan Area Transit Authority (WMATA), Washington, DC–MD–VA.	DC–03–0026–00	$14,110,772	08/27/93
Tri-County Commuter Rail Authority, West Palm Bch-Boca Raton-Delray Bch, FL ..	FL–03–0123–00	4,639,938	08/06/93
Indiana Department of Transportation, Indiana	IN–03–0064–00	4,204,687	08/19/93

SECTION 9 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Santa Barbara Metropolitan Transit District, Santa Barbara, CA	CA–90–X571–00	$1,928,359	08/10/93
Greater Bridgeport Transit District, Bridgeport-Milford, CT	CT–90–X230–00	888,496	08/19/93
Washington Metropolitan Area Transit Authority (WMATA), Washington, DC–MD–VA.	DC–90–X019–01	27,752,100	08/27/93
Tri-County Commuter Rail Authority, West Palm Bch-Boca Raton-Delray Bch, FL ..	FL–90–X211–01	4,242,276	08/06/93
City of High Point, High Point, NC	NC–90–X151–00	468,412	08/18/93
City of Greensboro, Greensboro, NC	NC–90–X154–00	1,218,331	07/28/93
Capital District Transportation Authority, Albany-Schenectady-Troy, NY	NY–90–X256–00	1,400,000	08/20/93
City of Rome, V.I.P. Transportation, Utica-Rome, NY	NY–90–X265–00	142,976	08/19/93
Capital Metropolitan Transportation Authority, Austin, TX	TX–90–X271–00	4,683,082	07/30/93
Potomac and Rappahannock Transportation Commission, Virginia	VA–90–X098–00	920,000	08/25/93

Issued on: September 10, 1993.

Edward R. Fleischman,

Director, Office of Capital and Formula Assistance.

[FR Doc. 93–22551 Filed 9–14–93; 8:45 am]

BILLING CODE 4910–57–M

National Highway Traffic Safety Administration

[Docket No. 93–39; Notice 2]

General Motors Corp.; Grant of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standards

General Motors Corporation ("GM") of Warren, Michigan, petitioned for a temporary exemption from four Federal motor vehicle safety standards for a passenger car that is electrically powered ("GMEV"). The basis of the petition was that an exemption would facilitate the development and field evaluation of low-emission motor vehicles.

Notice of receipt of the petition was published on June 4, 1993, and an opportunity afforded for comment (58 FR 31784). This notice grants the petition.

Petition was made on behalf of the GMEV, a 2-passenger vehicle based upon the design of the recent GM Impact experimental car. GM asked for an exemption of 1 year (October 1993–94) so that it may manufacture and distribute a fleet of 50 GMEVs for field evaluation. This evaluation is necessary to obtain data related to customer usage patterns and field experience with electric vehicles, and to obtain technical data related to vehicle performance under real world conditions. The GMEVs will not be sold, but will be "provided to private individuals for use and evaluation, and demonstrated to public officials, utility companies and the media * * *."

GM has designed the GMEV to comply with all Federal motor vehicle safety standards, but will be unable to conduct all the testing necessary to confirm compliance of the GMEV to certain aspects of some standards. Thus, GM argued that the exemptions it requested would not unreasonably degrade the safety of the vehicles.

The standards for which GM requested exemption were:

Standard No. 108, Lamps, Reflective Devices, and Associated Equipment. GM originally petitioned for temporary exemption from the photometric requirements for headlamps and rear lamp assemblies. However, on August 11, 1993, it informed NHTSA that further testing indicated full compliance with the requirements, and that a temporary exemption would not be needed.

Standard No. 201, Occupant Protection in Interior Impact. Although the GMEV has been designed to conform to this standard, GM has not conducted testing to determine whether the requirements of S3.1 *Instrument panels* will be met at the right designated seating position. GM believes that testing would confirm compliance, and notes that if a noncompliance was indicated, "there would be no unreasonable degradation in safety especially because the GMEV will have a passenger side air bag to provide protection in this area of the instrument panel."

Standard No. 203, Impact Protection for the Driver From the Steering Control System.

Standard No. 208, Occupant Crash Protection. The GMEV will have a crash protection system comprised of a 3-point manual lap and shoulder belt restraint and a supplemental restraint system of air bags for both seating positions. This system has been designed to comply to Standard No. 208, but because of the limited fleet of vehicles, GM will not be able to perform all the barrier crash testing necessary to evaluate all occupant restraint system performance requirements. Limited barrier impact testing indicates conformance. If complete testing should indicate a noncompliance, GM believes that it would be "slight in degree and would not be a level of safety degradation that approaches unreasonableness."

If conformance with Standard No. 208 is demonstrated, the GMEV would not be subject to Standard No. 203. However, since GM cannot yet demonstrate conformance to Standard No. 208, it requested exemption from Standard No. 203 as well.

Petitioner argued that granting the exemption would be in the public interest and consistent with the National Traffic and Motor Vehicle Safety Act because the data derived "would facilitate the development of vehicles which would fully comply with FMVSS and satisfy the numerous requirements of potential buyers." It noted that the production and sale of zero-emission vehicles "is widely believed to be desirable as a means to potentially improve the air quality in many areas of the United States."

No comments were received on the petition.

With the advent of legislation in California and elsewhere that mandate sales of zero-emission vehicles beginning in the 1998 model year, it is desirable that government support the efforts of manufacturers to produce products that meet requirements intended to improve air quality. The petitioner's belief that it may already conform to Standard Nos. 201 and 208 supports a temporary exemption from these standards, particularly since GM has requested an exemption for a period of time that is less than the maximum authorized by law. The dual air bags afford assurance that a reasonable degree of protection has been provided. As for Standard No. 203, petitioner initially made no argument, but on August 11, 1993, submitted its views that the GMEV driver air bag in the steering hub ought to provide protection equivalent to that afforded by compliance with Standard No. 203. As this is the basis of NHTSA's exemption from Standard No. 203 for those vehicles meeting the automatic protection requirements of Standard No. 208, the agency concurs with this argument. The petition for exemption from Standard No. 108 has been mooted by petitioner's letter informing NHTSA that compliance has been achieved.

Accordingly, in consideration of the foregoing, NHTSA finds that a temporary exemption will facilitate the development and field evaluation of a low-emission motor vehicle, be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act, and will not unreasonably degrade the safety of the vehicle that it covers. General Motors Corporation is hereby granted NHTSA Exemption No. 93–4, expiring October 1, 1994, for its GMEV only, from S3.1 of 49 CFR 571.201 Motor Vehicle Safety Standard No. 201 *Occupant Protection in Interior Impact*, S5.1 of 49 CFR 571.203 *Impact Protection for the Driver from the Steering Control System*, and S5 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection.*

Authority: 15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 9, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–22502 Filed 9–14–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Department Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Friday, October 1, 1993, at 9 a.m. at the Hyatt Regency Hotel, 2 Fountain Plaza, Buffalo, New York 14202.

FOR FURTHER INFORMATION CONTACT:

Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Assistant Secretary (Enforcement), room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington DC 20220. Tel.: (202) 622–0220.

SUPPLEMENTARY INFORMATION: The preliminary agenda to be considered at the meeting is as follows:

1. The Customs Modernization Act and Informed Compliance Legislation.

2. The Commissioner's August 30, 1993 memorandum to broker/entry filers.

3. Status of the North American Free Trade Agreement.

4. Customs budget, staffing and resources.

5. The Committee recommendations to Secretary of the Treasury Bentsen.

6. Formation of the Customs reorganization team and development of a work plan for restructuring.

7. Report from the Customs Trade Ombudsman.

8. Enforcement Update.

9. Other new business.

The agenda may be supplemented or otherwise amended prior to the meeting date.

The meeting is open to the public; however, it is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give advance notice. In order to be admitted to the meeting, contact Ms. Theresa Manning at (202) 622–0220 no later than Friday, September 24, 1993.

John W. Mangels,

Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 93–22515 Filed 9–14–93; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Cooperative Studies Evaluation Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) as amended, by section 5(c) of Public Law 94–409 that a meeting of the Cooperative Studies Evaluation Committee will be held at the Boston Park Plaza Hotel and Towers, 64 Arlington Street, Boston, MA, October 19–20, 1993. The session on October 19 is scheduled to begin at 7:30 a.m. and end at 5:30 p.m. and on October 20 from 7:30 a.m. to 5 p.m. The meeting will be for the purpose of reviewing six new clinical trials, two on cardiovascular diseases; one on chronic obstructive pulmonary disease; one on dysphagia from stroke; one on tardive dyskinesia; one on prostate cancer and the progress of two on-going studies on immunization for pneumonia and on epilepsy.

The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public up to the seating capacity of the room from 7:30 a.m. to 8 a.m. on both days to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. Ping Huang, Coordinator, Cooperative Studies Evaluation Committee, Department of Veterans Affairs, Washington, DC (202–535–7154), prior to October 12, 1993.

The meeting will be closed from 8 a.m. to 5:30 p.m. on October 19, 1993 and from 8 a.m. to 5 p.m. on October 20, 1993, for consideration of specific proposals in accordance with provisions set forth in section 10(d) of Public Law 92–463, as amended by section 5(c) of Public Law 94–409, and 5 U.S.C. 552b(c)(6). During this portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research protocols, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: August 26, 1993.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–22537 Filed 9–14–93; 8:45 am]

BILLING CODE 8320–01–M

Wage Committee; Meetings

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463, gives notice the meetings of the VA Wage Committee will be held on:

Wednesday, October 13, 1993, at 2 p.m.
Wednesday, October 27, 1993, at 2 p.m.
Wednesday, November 10, 1993, at 2 p.m.
Wednesday, November 24, 1993, at 2 p.m.
Wednesday, December 8, 1993, at 2 p.m.
Wednesday, December 22, 1993, at 2 p.m.

The meetings will be held in room 1161, Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Under Secretary for Health on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, and as cited in U.S.C. 552b(c) (2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, room 1161, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: August 26, 1993.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–22538 Filed 9–14–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 177
Wednesday, September 15, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES INTERNATIONAL TRADE COMMISSION
[USITC SE-93-27]

TIME AND DATE: September 21, 1993 at 9:30 a.m.

PLACE: Room 101, 500 E Street S.W. Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Certain Recombinantly Produced Human Growth Hormones (Docket Number 1750).
5. Outstanding action jackets—
   1. GC-93-101, APO breach in an investigation under Title VII of the Tariff Act of 1930.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205-2000.

Issued: September 11, 1993.

Donna R. Koehnke,
Secretary.

[FR Doc. 93-22709 Filed 9-13-93; 4:28 pm]
BILLING CODE 7020-02-P

Corrections

Federal Register
Vol. 58, No. 177
Wednesday, September 15, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ACTION

45 CFR Parts 1207 and 1208

Senior Companion/Foster Grandparent Income Eligibility

Correction

In proposed rule document 93-21374 beginning on page 46602 in the issue of Thursday, September 2, 1993, make the following corrections:

1. On page 46602, in the third column, in **DATES**, in the second line, "October 18, 1994" should read "October 18, 1993".

2. On page 46603, in the third column, in paragraph 4, after the first bullet, "income with" should read "income when".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Parts 323 and 328

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110, 112, 116, 117, 122, 230, 232 and 401

Clean Water Act Regulatory Programs

Correction

In rule document 93-20530 beginning on page 45008 in the issue of Wednesday, August 25, 1993, make the following corrections:

1. On page 45008, in the first column, in **EFFECTIVE DATE:**, in the second line, "[Insert 30 days from the publication in the **Federal Register**]." should read "September 24, 1993."

§ 323.2 [Corrected]

2. On page 45036, in the second column, in § 323.2(d)(3)(iii), in the last line, "August 25, 1993." should read "August 25, 1996."

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER93-907-000, et al.]

Pennsylvania Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 93-21949 beginning on page 47439 in the issue of Thursday, September 9, 1993, on page 47439, in the third column, in 4. **Portland General Electric Co.**, docket number "EL93-133-000" should read "ER93-133-000".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-4210-06; MTM 82330]

Proposed Withdrawal and Opportunity for Public Meeting; Montana

Correction

In notice document 93-18447 beginning on page 41289 in the issue of Tuesday, August 3, 1993, on page 41290, in the first column, in land description T. 37 N., R. 1 E., in Sec. 2, "5 to 8" should read "5 and 6".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150-AD30

Day Firing Qualification Courses for Tactical Response Team Members, Armed Response Personnel, and Guards at Category I Licensees

Correction

In rule document 93-21129 beginning on page 45781 in the issue of Tuesday, August 31, 1993, make the following corrections:

1. On page 45781, in the first column in **EFFECTIVE DATE**, "February 28, 1993" should read "February 28, 1994".

§ 73.46 [Corrected]

2. On page 45785, in § 73.46(i)(1), in the first line, "November 29, 1993" should read "May 31, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 24

[T.D. ATF-338; Re: Notice No. 746]

Change in the Frequency of Filing Reports of Bonded Wine Premises Operations and Wine Excise Tax Returns (92F030P)

Correction

In rule document 93-8420 beginning on page 19062 in the issue of Monday, April 12, 1993, make the following corrections:

§ 24.273 [Corrected]

1. On page 19064, in the second column, in § 24.273(a)(1), in the third line, insert ")" after "May 12, 1993,".

2. On the same page, in the same column, in § 24.273(a)(2), in the fourth line, insert ",)" after "May 12, 1993".

BILLING CODE 1505-01-D

federal register

Wednesday
September 15, 1993

Part II

Department of the Interior

Bureau of Indian Affairs

Mission Valley Power Utility; Power Rate Adjustments; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Mission Valley Power Utility, Montana; Power Rate Adjustments

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs has been informed that the Bonneville Power Administration (BPA) has raised its wholesale power rates by 15.7 percent (preference customer priority firm rate). The increase, which will go into effect October 1, 1993, for a two year period, is applicable to BPA's utility customers purchasing wholesale power. Accordingly, the Bureau of Indian Affairs (BIA) is giving final Notice that local rates at Mission Valley Power (MVP) will be adjusted to reflect the increased costs of power purchased from the BPA. Currently, BPA supplies the MVP's wholesale power requirements. The rate increase will impact the energy rate of the various rate classes, including demand rate for the small commercial and large commercial rate classes, and the horsepower charge for the irrigation class. The $11.00 basic charge for the residential and the #2 general class will remain unchanged, but the kilowatt hours included in the basic charge will decline slightly.

DATES: The effective date of the BPA rate increase is October 1, 1993. MVP will adjust its rates effective on the date of this publication, or on October 1, 1993, which ever date occurs last.

ADDRESSES: Written comments on the rates should be sent to Stanley Speaks, Portland Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Avenue, Portland, Oregon 97232–4169.

FOR FURTHER INFORMATION CONTACT: Bureau of Indian Affairs; Attention: Stanley Speaks, Area Director, Portland Area Office, 911 NE. 11th Avenue, Portland, Oregon 97232–4169, (503) 231–6178; or Bill Rauch, General Manager of Mission Valley Power, P.O. Box 890, Polson, Montana 59860–0890, (406) 833–5361, or 1–800–832–3758 (In-State Watts).

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301; the Act of August 7, 1946, c. 802, section 3 (60 Stat. 895; 25 U.S.C. 385c); the Act of May 25, 1948, (62 Stat. 269); and the Act of December 23, 1981, section 112 (95 Stat. 1404).

This notice of power rate adjustment and related information is published under the authority delegated to the Commissioner of Indian Affairs and the Deputy Commissioner of Indian Affairs, by the Secretary of the Interior in Secretarial Order No. 3150, Section 7b, and in accordance with 25 CFR 175.13, which provides for the adjustment of electric power rates to reflect changes in the cost of purchased power or energy.

The Notice of the rate increase was published in the **Federal Register** (Volume 58, Number 102, Friday, May 28, 1993). The affected public and interested parties were provided the opportunity to submit written comments during the 30-day period subsequent to May 28, 1993. No comments were received during this comment period.

On July 2, 1993, the BPA announced a 15.7 percent increase in its preference customer priority firm rate. More than a third of the increase is due to BPA's increased obligation for fish and wildlife under the Endangered Species Act and the Northwest Power Planning and Conservation Act. Other factors cited by BPA as the cause for the increase include the need to add new power resources in the Northwest and the need to replace revenues drained by severe and unusual events, such as the drought and low aluminum prices. The previous MVP rate increase, published in the **Federal Register**, Volume 58, No. 12, January 21, 1993, reflected a power rate adjustment based on the increased cost of power from Montana Power Company (MPC). The MPC cost increase was authorized under the company's FERC license.

The BPA last raised its rates in 1991 by 2.7 percent. In the 10-year period since 1983, BPA rates have increased by less than 9 percent. The BPA rate also provides a mechanism for further rate adjustment of up to 10 percent if, during the next two years, the agency's financial reserves fall below the level needed to assure full payment on its debt.

The newly declared 15.7 percent increase in wholesale power rates represents an increase of approximately $759,000 in revenue, necessary to cover the increased wholesale costs. The increase will be distributed among MVP's various rate classes and will take effect on October 1, 1993.

Table No. 1 shows the new retail rates by class.

TABLE NO. 1.—CHANGES TO RETAIL RATES BY RATE CLASSES

	Present	New	Increase in charge
Residential:			
Basic Charge	$11.00	$11.00	$0.00
(Includes KWH)	137	127	.....
Energy Charge/KWH	$0.04385	$0.04709	$0.003240
#2 General	$11.00	$11.00	$0.00
(Includes KWH)	116	109	.....
Energy Charge/KWH	$0.05170	$0.05495	$0.003250
Irrigation:			
Horsepower Charge (/HP)	$10.30	$10.84	$0.54
Energy Charge/KWH	$0.03450	$0.03590	$0.00140
Small & Large Commercial:			
Basic Charge	None	None	.....
Minimum Charge/Month	$38.00	$38.00	$0.00
Demand Charge/Month	3.80	4.34	$0.54
Energy Charge/KWH:			
First 18,000 KWH	$0.04155	$0.04255	$0.001000
Over 18,000 KWH	$0.03338	$0.03538	$0.002000

Notice of the final rate, along with a table illustrating the rate increases and their impact on retail rates, will be published in local newspapers within the MVP service area. A household mailer to each MVP customer will detail the specific rate impacts per rate class.

Dated: September 8, 1993.

James D. Cain, Jr.,

Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 93–22500 Filed 9–14–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Wednesday
September 15, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Flathead Indian Irrigation Project; Operation and Maintenance Charges; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Flathead Indian Irrigation Project, Montana; Operation and Maintenance Charges

AGENCY: Bureau of Indian Affairs, Department of Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs has established an increase of $.65 per acre in the assessment rate for operating and maintaining the Flathead Indian Irrigation Project. The new assessment rate is $18.45 per acre.

DATES: The operation and maintenance rate will become effective upon publication of this final Notice in the **Federal Register**, and will remain in effect until changed by further notice.

ADDRESSES: Written comments on the rates should be sent to Stanley Speaks, Portland Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Avenue, Portland, Oregon 97232–4169.

FOR FURTHER INFORMATION CONTACT: Stanley Speaks, Portland Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Avenue, Portland, Oregon 97232–4169. Telephone number (503) 231–6702.

SUPPLEMENTARY INFORMATION: This notice sets forth final changes to the irrigation operation and maintenance charges and a proposed special assessment for the Flathead Indian Irrigation Project, St. Ignatius, Montana. These charges are made pursuant to the authority contained in the Act of April 4, 1910, c. 140, sections 1 and 2 (36 Stat. 272), as amended, 25 U.S.C. 385; 25 CFR part 171.

This final Notice of change in the irrigation operation and maintenance rates is published under the authority delegated to the Commissioner of Indian Affairs and the Deputy Commissioner of Indian Affairs by the Secretary of the Interior in Secretarial Order Number 3150, Section 7b, and in accordance with 25 CFR, title 25, § 171.1, which authorizes the Area Director to fix and announce irrigation operation and maintenance assessment rates for the Flathead Indian Irrigation Project for calendar year 1994 and subsequent years.

The purpose of this final Notice is to announce an increase in the assessment rate commensurate with estimates of the normal irrigation operation and maintenance costs on the Flathead Indian Irrigation Project. Normal irrigation operation and maintenance is defined as all routine activities involved in delivering irrigation water. The assessment increases from $17.80 to $18.45 per acre, an approximate 3.7 percent increase. The rate applies to all irrigated lands served by the Flathead Irrigation Project during the 1994 irrigation season and subsequent years.

The Notice of the proposed operation and maintenance assessment rate, and a proposed special assessment, was published in the **Federal Register** (Volume 59, Number 107, Monday, June 7, 1993). Interested parties were provided 30 days to submit comments on the proposed changes. No comments were received.

The proposed special assessment was not adopted after consideration at local meetings held specifically to discuss the special assessment.

Payment

The irrigation operation and maintenance charges on the trust and non-District lands become due on April 1 of each year. The lands within an Irrigation District will be billed bi-annually, May 31 and November 30 of each year.

Interest and Penalty Fees

Interest and penalty fees will be assessed, where required by law, on all delinquent irrigation operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, title 4, part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, § 3.8, Debt Collection Procedures. Interest and a penalty for each month, or fraction thereof, will added to all assessments on lands in non-Indian ownership which remain unpaid 60 days after the due date. (Indian lands will not be assessed a penalty.) No water shall be delivered to any farm unit until all irrigation charges have been paid.

Dated: September 8, 1993.

James D. Cain, Jr.,

Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 93–22498 Filed 9–14–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Wednesday
September 15, 1993

Part IV

Department of the Interior

Bureau of Indian Affairs

Mission Valley Power Utility, MT; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Mission Valley Power Utility, Montana

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (Bureau) has been informed that the Montana Power Company (MPC) is proposing to raise its wholesale power rates from 2.5 percent to 5.0 percent. Accordingly, the Bureau is giving notice that it proposes that local retail power rates at Mission Valley Power (MVP) will be adjusted to reflect the increased costs of wholesale power purchased from MPC's Kerr Dam Hydroelectric Facility. The MPC increase will go into effect on September 1, 1993. It is the Bureau's intent to increase MVP retail rates on, or as soon as possible, after that date.

DATES: The effective date of the adjusted MPC wholesale power rate increase is September 1, 1993. The Bureau proposes that MVP adjust its retail power rate to account for increased power costs on September 1, 1993, or upon the date of publication of final Notice in the **Federal Register**, whichever is later.

ADDRESSES: Interested parties may submit comments to BIA; Attention: Stanley Speaks, Area Director, Portland Area Office, 911 NE. 11th Avenue, Portland, Oregon 97232–4169. Comments should be submitted within 30 days of the date of this publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Indian Affairs; Attention: Mr. Stanley Speaks, Area Director, Portland Area Office, 911 NE., 11th Avenue, Portland, Oregon 97232–4169, (503) 231–6702; Bill Rauch, General Manager of Mission Valley Power, P.O. Box 890, Polson, Montana 59860–0890, (406) 833–5361, or 1–800–823–3758 (In-State Watts).

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301; the Act of August 7, 1946, c. 802, section 3 (60 Stat. 895; 25 U.S.C. 385c); the Act of May 25, 1948 (62 Stat. 269); and the Act of December 23, 1981, section 112 (95 Stat. 1404).

This Notice of proposed retail power rate adjustment and related information is published under the authority delegated to the Commissioner of Indian Affairs and the Deputy Commissioner of Indian Affairs by the Secretary of the Interior in Secretarial Order No. 3150, section 7b, and in accordance with 25 CFR 175.13, which provides for the adjustment of electric power rates to reflect changes in the cost of purchased power or energy. This adjustment is the result of an increase in the wholesale electric power rates charged by MPC, one of three sources of electric power marketed by MVP. Pursuant to the Federal Energy Regulatory Commission license for the Kerr Dam Hydroelectric Facility, MPC is allowed to adjust its wholesale electric power rates annually based on the Consumer Price Index (CPI–U). The MPC wholesale proposed rate increase is anticipated to fall between 2.5 percent and 5.0 percent. Therefore, the Bureau is considering a range of potential rate increases pending MPC's release of the final wholesale rate on August 3, 1993.

The following table illustrates potential CPI–U increases, mills/kwh increases, and the potential increase in annual cost of wholesale power purchased from MPC.

PROJECTED EFFECT OF MONTANA POWER COMPANY WHOLESALE POWER RATE INCREASE ON MISSION VALLEY POWER RETAIL POWER RATES BASED ON 1992 POWER PURCHASES

Projected percent increase in CPI–U		2.5%	3.0%	4.0%	5.0%
1992 MPC Purchase (Mwh)	81,793				
9/92 MPC Rate (mills/kwh)	14.57				
9/93 MPC Rate = 3.5 + (8.5 (Index/Base)) Mills/kwh		14.85	14.90	15.01	15.12
Mills/kwh Increase in MPC Rate		0.28	0.33	0.44	0.55
Dollar Increase (Mills Increase Net MPC kwh available)		$18,956	$22,341	$29,788	$37,234

Depending on the CPI–U adjustment implemented, the increased revenue necessary to cover the wholesale cost of purchased power will be allocated to the various MVP retail rate classes.

FUTURE ACTION: The Bureau and MVP will publish a final retail power rate Notice once MPC has issued its final wholesale power rate increase. Notice of the final retail rate will be placed in the **Federal Register** and also in local newspapers within the MVP service area. A household mailer to each MVP customer will detail the specific rate impacts per rate class.

Dated: September 8, 1993.

James D. Cain, Jr.,

Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 93–22499 Filed 9–14–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Wednesday
September 15, 1993

Part V

Department of Transportation

Coast Guard

33 CFR Part 156

Requirements for Cargo Lightering Operations; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 156

[CGD 90-052]

RIN 2115-AD68

Requirements for Cargo Lightering Operations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the applicability sections of its safety and pollution prevention regulations to make it clear that regulations issued under section 311(j) of the Federal Water Pollution Control Act (FWPCA) apply to offshore lightering operations. This rulemaking also establishes what constitutes acceptable evidence of compliance with these requirements. This rule will clarify the applicability of Coast Guard pollution prevention regulations to offshore lightering.

EFFECTIVE DATE: October 15, 1993.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street, SW., room 3406, Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: LT Jonathan Burton, Office of Marine Environmental Protection (G-MEP), (202) 267-0426.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal person involved in drafting this document is Ms. Joan Tilghman, Project Manager and Project Counsel, Oil Pollution Act (OPA 90) Staff.

Regulatory History

In 1984, the Coast Goard promulgated a lightering rule which required both the delivering and receiving vessels engaged in an offshore lightering operation, where the lightering cargo was destined for a port or place subject to the jurisdiction of the U.S., to have a valid Certificate of Inspection (COI) or, alternatively, either a Certificate of Compliance or a Tank Vessel Examination Letter (TVEL) (49 FR 11170, March 26, 1984). The intended effect of this rule was to impose the same regulatory requirements on offshore lightering as those imposed on vessels and facilities engaged in similar operations in the navigable waters of the U.S. and the contiguous zone.

On January 5, 1993, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Requirements for Cargo Lightering" in the **Federal Register** (58 FR 452), proposing to amend 33 CFR parts 151, 155, and 156 to make it clear that regulations issued under section 311(j) of the FWPCA (33 U.S.C. 1321(j)) apply to offshore lightering operations. The NPRM also proposed to establish standards for compliance with the regulations. The Coast Guard received 12 letters commenting on the proposal. A public hearing was not requested, and one was not held.

After careful review of the NPRM and the comments, the Coast Guard has determined that the scope of the NPRM was broader than required. In this final rule, the Coast Guard is amending only 33 CFR part 156, subpart B. Section 156.200 specifically will require vessels lightering offshore to comply with lightering rules in 33 CFR part 156, subpart A, and by reference, the applicable sections of parts 151, 153, 155, 156, and 157.

Background and Purpose

Section 3715(a) of 46 U.S.C. authorizes the Coast Guard to regulate lightering operations occurring in the marine environment involving oil or hazardous material, if the lightered cargo is destined for a port or place subject to the jurisdiction of the U.S. Section 4115(d) of OPA 90 (Pub. L. 101-380) amended 46 U.S.C. 3715(a) by adding three new requirements for these lightering operations. As amended, 46 U.S.C. 3715(a) requires the delivering and receiving lightering vessels to meet five conditions.

The old requirements, which remain in effect, are that the transfer be conducted consistent with regulations prescribed by the Secretary; and that, at the time of transfer, both the delivering and receiving vessel have on board a COI, Certificate of Compliance, or TVEL as would have been required under 46 U.S.C. 3710 or 3711 had the transfer taken place in a port or place subject to the jurisdiction of the U.S.

The OPA 90 provisions add three more conditions for transfers. First, at the time of transfer, each vessel must have on board a Certificate of Financial Responsibility (COFR) as would have been required under section 1016 of OPA 90 (33 U.S.C. 2716) had the transfer taken place in a port or place subject to the jurisdiction of the U.S.

Second, at the time of transfer, each vessel must have on board evidence that it is operating in compliance with section 311(j) of the FWPCA. Section 311(j) requires, in part, the owner or operator of a tank vessel to prepare and submit a vessel response plan (VRP). Also, the Coast Guard issues removal and pollution prevention regulations under authority of this provision.

Third, each vessel must operate in compliance with 46 U.S.C. 3703a concerning tank vessel construction standards. Section 3703a requires double hulls on most newly built tankers, and sets out a phase-in schedule for implementing this requirement.

The purpose of this rule is to clarify the applicability provisions of the pollution prevention regulations, to reflect the COFR requirements, and to define what constitutes "evidence" that the vessel is operating in compliance with section 311(j). Title 46 U.S.C. 3715(a) and 33 CFR 156.210(a)(3) add requirements for vessels engaged in lightering to have a COFR and a VRP on board at the time of transfer.

The rules establishing the requirements for COFRs, VRPs, and double hulls are the subjects of separate rulemakings. The VRP interim final rule (IFR), requiring response plans for certain vessels which carry oil in bulk as cargo and additional requirements for certain vessels operating in Prince William Sound, Alaska, was published by the Coast Guard on February 5, 1993 (58 FR 7376). The IFR to implement the double hull requirements was published on August 12, 1992 (57 FR 36222). An NPRM covering vessel COFR requirements was published on September 26, 1991 (56 FR 49006). Until a final rule is published, vessels engaged in lightering must hold a COFR, as would have been required had the transfer taken place in the navigable waters of the U.S., meeting the existing requirements in 33 CFR part 130. It should be noted that a delivering vessel not actually entering the navigable waters of the U.S., but conducting offshore lightering operations where the cargo is to be offloaded in a port or place subject to the jurisdiction of the U.S., is required to obtain a COFR under existing part 130 because that vessel is viewed as if it were using the navigable waters of the U.S.

Discussion of Comments and Changes

The Coast Guard received five comments supporting the proposed rule. One of these five comments agreed with the rule, but also indicated that the Coast Guard not only must require vessels engaged in lightering to have

VRPs on board as evidence of compliance with section 311(j), but also must require them to be in compliance with the VRP requirements for transfer operations. The Coast Guard agrees that certain vessels conducting lightering operations must be in compliance with VRP requirements for transfer operations, but believes this matter has been addressed under the VRP IFR. The IFR establishes shipboard spill mitigation planning requirements for vessels carrying oil as cargo. (See 33 CFR 155.1035(c), 155.1040(d), and 155.1045(d).) These procedures must include planning for mitigating or preventing a discharge or substantial threat of a discharge resulting from ship-to-ship and internal ship transfers.

Another comment disagreed with the new definition of "marine environment" in part 156, subpart B because the definition omits the clause "beyond the baseline from which the territorial sea is measured." The comment indicated that as proposed, barge-to-ship transfers of oil and hazardous materials, while the ship is tied up at a dock, would be subject to the lightering requirements for pre-arrival notices. The language to which the comment refers does not appear in the definition of "marine environment," but rather in the "Applicability" provision of 33 CFR part 156, subpart B (§ 156.200). The Coast Guard did not intend to alter the applicability of subpart B by removing that language and has replaced it in this final rule.

Another comment indicated that the new definition of marine environment in § 156.205 includes waters superadjacent to the Outer Continental Shelf (OCS), parts of which go beyond 200 miles, and requested clarification on whether and under what authority the Coast Guard intends to regulate lightering operations beyond 200 miles. The authority to regulate activities in the marine environment arises from 46 U.S.C. 3715. The definition of "marine environment" used in this rulemaking was taken directly from 46 U.S.C. 2101(15) and is consistent with the existing regulatory definition.

Since 1984, § 156.200 has stated specifically that it applies in the marine environment beyond the baseline from which the territorial sea is measured. Section 156.205(b) has defined "marine environment" to include the waters over the OCS of the U.S., which encompasses the waters superadjacent to the OCS beyond the baseline from which the territorial sea is measured. This rulemaking does not change the application of the lightering requirements regarding the OCS.

This comment also stated that the rule is not clear on whether the pre-arrival notification requirement in § 156.215 should be made to the nearest Captain of the Port (COTP) or the COTP in control of the port of destination. The Coast Guard did not print the full text of § 156.215 in the NPRM. Reading the amendment with the existing text, it is clear that the pre-arrival notice must be to the COTP nearest to the location of the lightering operation.

The same comment indicated that the provision prohibiting the receiving vessel from bringing its cargo ashore unless both the delivering and receiving vessels meet all of the regulatory requirements will place a burden on the receiving vessel to ensure that the delivering vessel is in compliance. Under 46 U.S.C. 3715(a), both the delivering and receiving vessels must be in compliance with section 311(j) of the FWPCA and the regulations issued under it as a condition of allowing the oil to be discharged in a port or place under the jurisdiction of the U.S. Thus, in order to unload the oil in port, the receiving vessel should ensure that the delivering vessel is in compliance. The Coast Guard is without authority to delete or alter this statutory requirement.

One comment stated that the Coast Guard should issue regulations under the Port and Tanker Safety Act of 1978 regarding minimum safe operating conditions, the prevention of spills, and equipment for responding to a spill. The comment further indicated that although the U.S. Coast Guard published an NPRM in 1979 regarding wave height, wind speed, and minimum visibility, it did not publish another notice on lightering until 1983. In 1983, the Coast Guard published a supplemental notice of proposed rulemaking (SNPRM), which the comment stated was "radically reduced in scope" from the NPRM.

According to this comment, the SNPRM did not address sea state, wave height, weather, and other similar factors, as the statute required. The comment claims that, in effect, the Coast Guard left offshore lightering beyond the territorial sea largely unregulated. The comment concluded that even if the Coast Guard reduced the regulation of lightering because of the decrease in lightering levels since 1979, this reason is no longer applicable because the volume of oil lightered off the coast of the U.S. has increased dramatically since 1984. The comment argued that the dangers posed by the volume of oil lightered today create similar risks and warrant similar regulations as the dangers posed by the amount of oil lightered in 1979.

The Coast Guard agrees that sea state, wave height, weather, and other similar factors are important considerations for the regulation of offshore lightering. However, the purpose of this rulemaking is to clarify the applicability of existing lightering regulations, and the comment's concerns are beyond the scope of the rulemaking. The Coast Guard will consider the suggestions raised in the comment and may proceed with a separate rulemaking at a later date.

Two comments questioned the applicability of an exemption from these rules. Specifically, the comments asked whether the public vessel exemption would be available to any vessels participating in transfer operations involving public vessels, or only to the public vessel engaged in a transfer operation. The Coast Guard intended to leave undisturbed the exemption for operations involving public vessels already in 33 CFR part 156, subpart B.

One comment said that the proposed rule was inapplicable to supply vessels engaged in oil and gas extractive operations, reasoning that section 5209(b) of the Coast Guard Authorization Act of 1992 declared offshore supply vessels (OSVs) not to be "tank vessels" for the purposes of any law. The Coast Guard agrees. This rule will not apply to OSVs exempted under the Coast Guard Authorization Act.

Three comments stated that lightering requirements should not apply to vessels and barges or "vessels of opportunity" engaged in oil spill response that transfer recovered oil as part of their response operations. Another comment said that the regulations should not apply to emergency lightering operations to secure the safety of a ship "in marine peril."

Under § 156.217, the delivering and receiving vessel in a lightering operation each would have to maintain an approved VRP on board, if the VRP IFR requires. However, the Coast Guard's VRP IFR excludes the owner or operator of a vessel defined as a "vessel of opportunity" from submitting a written plan and exempts other vessels under specified conditions. Therefore, the Coast Guard is revising § 156.217(a)(2) of this rule to make it clear that if a vessel is exempt from the VRP requirements, it does not have to have a VRP to satisfy the lightering requirements. However, most vessels engaged in oil lightering operations in the marine environment beyond the baseline from which the territorial sea is

measured will be required to have a VRP under Coast Guard regulations.

Two comments also requested an exemption for vessels engaged in lightering as part of a spill response or in an emergency. The Coast Guard recognizes that unforeseen circumstances sometimes may make it necessary to seek exceptions from the application of these rules. Therefore, it is adding a paragraph to these rules (33 CFR 156.210(c)) to provide for requesting an exception in appropriate circumstances.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

Vessels currently lightering in the marine environment already are required by 33 CFR 156.210 to have a COI or a TVEL. To receive and maintain a valid COI or TVEL, vessels must be in compliance with 33 CFR parts 151, 155, 156, and 157. Because lightering vessels already must document, with a Declaration of Inspection, that they comply with operating requirements applicable to lightering, and tank vessels are required by a separate rulemaking to have a VRP, the Coast Guard anticipates no new costs associated with showing evidence of compliance with section 311(j) of the FWPCA. The requirement to have a COFR is imposed by statute. Therefore, this rule will not result in annual costs of $100 million or more; will have no significant adverse effects on competition, employment, or other aspects of the economy; and will not result in a major increase in costs and prices.

Small Entities

This rule imposes no new requirements on businesses, whether small or large entities. The purpose of these rules is to clarify the applicability of existing provisions in the CFR which contain ambiguous language regarding offshore lightering operations; and also to establish what constitutes acceptable evidence of compliance with these lightering provisions. The requirements and their enforcement will remain unchanged, although the Coast Guard believes that the regulated community will find the amended regulations easier to understand. The evidence of compliance consists of documents that are already required under existing regulations or statutes. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection of information requirements. However, it only adds the submission of a new piece of data to a report required by 33 CFR 156.215, "Prearrival notices." This required report is incorporated into an approved collection of information (Office of Management and Budget (OMB) control number 2115–0539).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This rule clarifies that pollution prevention regulations do apply to vessels lightering in the marine environment when the cargo lightered is destined for a port or place subject to the jurisdiction of the U.S. The Coast Guard intends these regulations to provide uniform, national standards for conducting lightering operations throughout the marine environment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule will not result in significant impact on the quality of the human environment, as defined by the National Environmental Policy Act, because the rule is administrative in nature. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 156

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 156 as follows:

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

1. The authority citation for part 156 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715(b); sec. 2, E.O. 12777, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

2. Section 156.200 is revised to read as follows:

§ 156.200 Applicability.

This subpart applies to each vessel to be lightered and the service vessel engaged in a lightering operation in the marine environment beyond the baseline from which the territorial sea is measured when the oil or hazardous material lightered is destined for a port or place subject to the jurisdiction of the U.S. This subpart does not apply to lightering operations involving public vessels. These rules are in addition to the rules of subpart A of this part, as well as the rules in the applicable sections of parts 151, 153, 155, 156, and 157 of this chapter.

3. In paragraph (b) of § 156.205, the definition for *marine environment* is revised to read as follows:

§ 156.205 Definitions.

* * * * *

Marine environment means—

(1) The navigable waters of the United States;

(2) The waters of an area over which the United States asserts exclusive fishery management authority; and

(3) The waters superadjacent to the Outer Continental Shelf of the United States.

4. In § 156.210, paragraph (a)(3) is redesignated as paragraph (a)(4), and paragraphs (a)(3) and (c) are added to read as follows:

§ 156.210 General.

(a) * * *

(3) The delivering and receiving vessels have on board at the time of transfer, evidence that each vessel is operating in compliance with section 311(j) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)) and applicable regulations issued under the authority of section 311(j) in the form of a Declaration of Inspection as required by § 156.150 and a vessel response plan if required under part 155 of this chapter.

Note: Under 46 U.S.C. 3715, the delivering and receiving vessels must have on board at the time of transfer, a Certificate of Financial Responsibility that would be required if the transfer had taken place in a location subject to the jurisdiction of the U.S. Regulations concerning Certificates of Financial Responsibility for vessels using the navigable waters of the U.S. are in part 130 of this chapter.

* * * * *

(c) In an emergency, the COTP, upon request, may authorize a deviation from any rule in this part if the COTP

determines that its application will endanger persons, property, or the environment.

5. In § 156.215, paragraph (a)(3) is revised to read as follows:

§ 156.215 Pre-arrival notices.

(a) * * *

(3) The number of transfers expected and the amount of cargo expected to be transferred during each transfer;

* * * * *

Dated: July 28, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–22443 Filed 9–14–93; 8:45 am]

BILLING CODE 4910–14–M

federal register

Wednesday
September 15, 1993

Part VI

The President

Executive Order 12863—President's Foreign Intelligence Advisory Board

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Federal Register
Vol. 58, No. 177
Wednesday, September 15, 1993

Presidential Documents

Title 3—

The President

Executive Order 12863 of September 13, 1993

President's Foreign Intelligence Advisory Board

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to enhance the security of the United States by improving the quality and effectiveness of intelligence available to the United States, and to assure the legality of activities of the Intelligence Community, it is ordered as follows:

PART I. ASSESSMENT OF INTELLIGENCE ACTIVITIES

Section 1.1. There is hereby established within the White House Office, Executive Office of the President, the President's Foreign Intelligence Advisory Board (PFIAB). The PFIAB shall consist of not more than 16 members, who shall serve at the pleasure of the President and shall be appointed by the President from among trustworthy and distinguished citizens outside the Government who are qualified on the basis of achievement, experience and independence. The President shall establish the terms of the members upon their appointment. To the extent practicable, one-third of the PFIAB at any one time shall be comprised of members whose term of service does not exceed 2 years. The President shall designate a Chairman and Vice Chairman from among the members. The PFIAB shall utilize full-time staff and consultants as authorized by the President. Such staff shall be headed by an Executive Director, appointed by the President.

Sec. 1.2. The PFIAB shall assess the quality, quantity, and adequacy of intelligence collection, of analysis and estimates, and of counterintelligence and other intelligence activities. The PFIAB shall have the authority to review continually the performance of all agencies of the Federal Government that are engaged in the collection, evaluation, or production of intelligence or the execution of intelligence policy. The PFIAB shall further be authorized to assess the adequacy of management, personnel and organization in the intelligence agencies. The heads of departments and agencies of the Federal Government, to the extent permitted by law, shall provide the PFIAB with access to all information that the PFIAB deems necessary to carry out its responsibilities.

Sec. 1.3. The PFIAB shall report directly to the President and advise him concerning the objectives, conduct, management and coordination of the various activities of the agencies of the Intelligence Community. The PFIAB shall report periodically, but at least semiannually, concerning its findings and appraisals and shall make appropriate recommendations for the improvement and enhancement of the intelligence efforts of the United States.

Sec. 1.4. The PFIAB shall consider and recommend appropriate action with respect to matters, identified to the PFIAB by the Director of Central Intelligence, the Central Intelligence Agency, or other Government agencies engaged in intelligence or related activities, in which the advice of the PFIAB will further the effectiveness of the national intelligence effort. With respect to matters deemed appropriate by the President, the PFIAB shall advise and make recommendations to the Director of Central Intelligence, the Central Intelligence Agency, and other Government agencies engaged in intelligence and related activities, concerning ways to achieve increased effectiveness in meeting national intelligence needs.

PART II. OVERSIGHT OF INTELLIGENCE ACTIVITIES

Sec. 2.1. The Intelligence Oversight Board (IOB) is hereby established as a standing committee of the PFIAB. The IOB shall consist of no more than four members appointed from among the membership of the PFIAB by the Chairman of the PFIAB. The Chairman of the IOB shall be appointed by the Chairman of the PFIAB. The Chairman of the PFIAB may also serve as the Chairman of the IOB. The IOB shall utilize such full-time staff and consultants as authorized by the Chairman of the PFIAB.

Sec. 2.2. The IOB shall:

(a) prepare for the President reports of intelligence activities that the IOB believes may be unlawful or contrary to Executive order or Presidential directive;

(b) forward to the Attorney General reports received concerning intelligence activities that the IOB believes may be unlawful or contrary to Executive order or Presidential directive;

(c) review the internal guidelines of each agency within the Intelligence Community that concern the lawfulness of intelligence activities;

(d) review the practices and procedures of the Inspectors General and General Counsel of the Intelligence Community for discovering and reporting intelligence activities that may be unlawful or contrary to Executive order or Presidential directive; and

(e) conduct such investigations as the IOB deems necessary to carry out its functions under this order.

Sec. 2.3. The IOB shall, when required by this order, report to the President through the Chairman of the PFIAB. The IOB shall consider and take appropriate action with respect to matters identified by the Director of Central Intelligence, the Central Intelligence Agency or other agencies of the Intelligence Community. With respect to matters deemed appropriate by the President, the IOB shall advise and make appropriate recommendations to the Director of Central Intelligence, the Central Intelligence Agency and other agencies of the Intelligence Community.

Sec. 2.4. The heads of departments and agencies of the Intelligence Community, to the extent permitted by law, shall provide the IOB with all information that the IOB deems necessary to carry out its responsibilities. Inspectors General and General Counsel of the Intelligence Community, to the extent permitted by law, shall report to the IOB, at least on a quarterly basis and from time to time as necessary or appropriate, concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive order or Presidential directive.

PART III. GENERAL PROVISIONS

Sec. 3.1. Information made available to the PFIAB, or members of the PFIAB acting in their IOB capacity, shall be given all necessary security protection in accordance with applicable laws and regulations. Each member of the PFIAB, each member of the PFIAB's staff and each of the PFIAB's consultants shall execute an agreement never to reveal any classified information obtained by virtue of his or her services with the PFIAB except to the President or to such persons as the President may designate.

Sec. 3.2. Members of the PFIAB shall serve without compensation but may receive transportation expenses and per diem allowance as authorized by law. Staff and consultants to the PFIAB shall receive pay and allowances as authorized by the President.

Sec. 3.3. Executive Order No. 12334 of December 4, 1981, as amended, and Executive Order No. 12537 of October 28, 1985, as amended, are revoked.

William J. Clinton

THE WHITE HOUSE,
September 13, 1993.

[FR Doc. 93–22743
Filed 9–14–93; 10:58 am]
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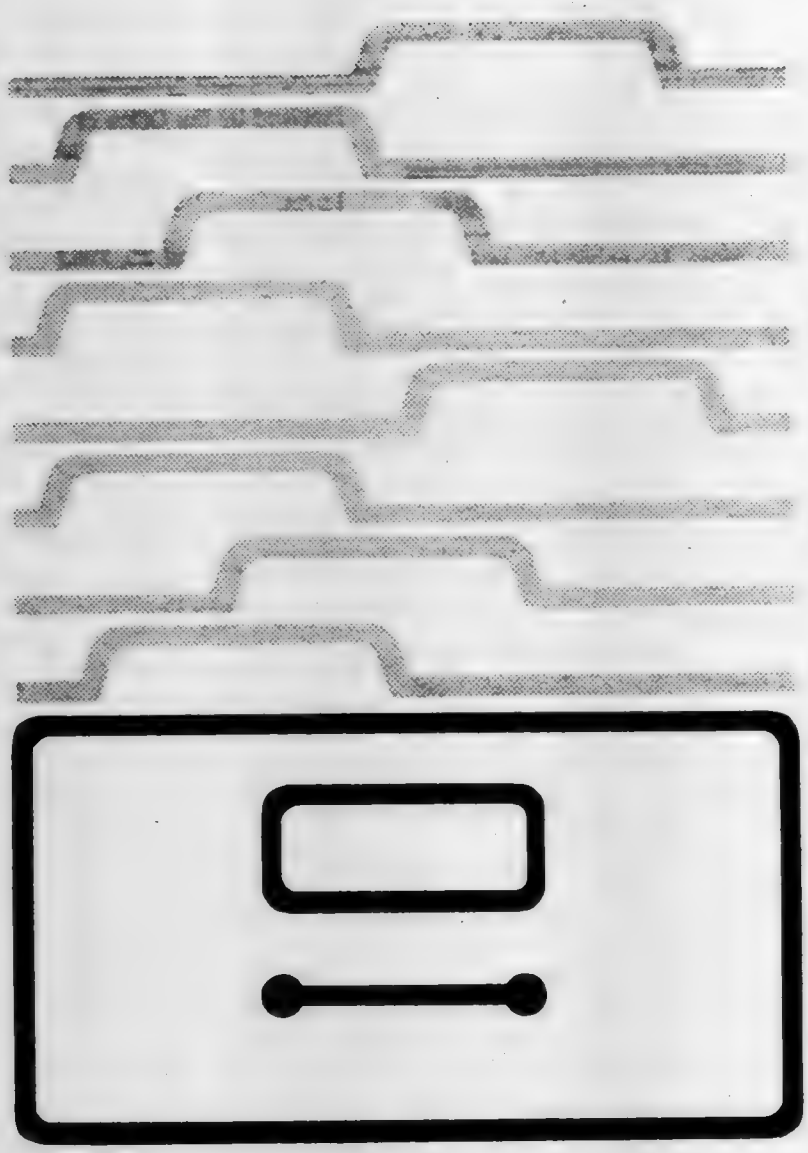

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in the Code of Federal Regulations (CFR)

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SUPPLEMENT: Revised January 1, 1993

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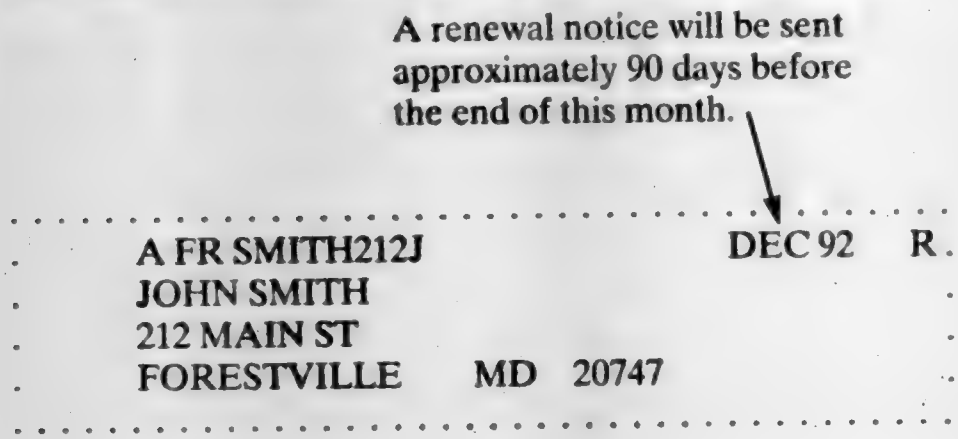

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

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Federal Register
Vol. 58, No. 178
Thursday, September 16, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 93–022–2]

Brucellosis Ring Test

AGENCY: Animal and Plant Health Inspection Service, USDA

ACTION: Final rule.

SUMMARY: We are amending the regulations pertaining to brucellosis ring tests in Class Free States or areas. Currently, Class Free States or areas must conduct brucellosis ring tests at least four times per year at approximately 90-day intervals and ensure that every commercial dairy herd is included in at least three of the four tests. We are requiring instead that Class Free States or areas conduct as many brucellosis ring tests per year as are necessary to ensure that every commercial dairy herd is tested at least twice per year at approximately 6-month intervals. We have determined that the current requirement is no longer necessary to ensure adequate brucellosis surveillance in Class Free States or areas, and that the amended regulations will reduce testing requirements without increasing the risk of the interstate spread of brucellosis.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. M.J. Gilsdorf, National Brucellosis Epidemiologist, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 731, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–4918.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine in order to help prevent the interstate spread of brucellosis. Under the regulations, States or areas classified as Class Free (meaning there are no cattle herds under quarantine for brucellosis and there is no known uncontrolled foci of brucellosis in any other species of domestic livestock) must conduct brucellosis ring tests (BRT) at least four times per year at approximately 90-day intervals.

On July 13, 1993, we published in the **Federal Register** (58 FR 37665–37666, Docket No. 93–022–1) a proposal to amend the regulations by requiring Class Free States or areas to conduct only as many BRT's per year as are necessary to ensure that every commercial dairy herd is tested at least twice per year at approximately 6-month intervals.

We solicited comments concerning our proposal for a 30-day comment period ending August 12, 1993. We received one comment in favor of the proposed rule from a national veterinary medical association. Their response also made suggestions regarding issues outside the scope of the proposed rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Only State and Federal animal health agencies will be affected by this rule; it will have no effect on the private sector. Animal health officials will need to collect and test milk samples at least twice per year instead of at least four times per year. These agencies do not charge for collecting and testing the samples.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. Executive Order 12372.

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78, subpart A, is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 78.1, in the definition of *Class Free State or area*, paragraph (a)(1) is revised to read as follows:

§ 78.1 Definitions.

* * * * *

Class Free State or area.

* * * * *

(a) *Surveillance*—(1) *Brucellosis ring test.* The State or area shall conduct as many brucellosis ring tests per year as

are necessary to ensure that all herds producing milk for sale are tested at least twice per year at approximately 6-month intervals.

* * * * *

Done in Washington, DC, this 9th day of September 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-22665 Filed 9-15-93; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 42

[Public Notice 1865]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended; Immigrants Subject to Numerical Limitations

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: This final rule is a followup to Interim Rule 1499, published at page 51170, FR 56, October 10, 1991. The Interim Rule amended part 42 of title 22, Code of Federal Regulations, to implement amendments to the Immigration and Nationality Act (INA) made by the provisions of sections 121, 152, and 162 of the Immigration Act of 1990 (IMMACT '90), Pub. L. 101-649. IMMACT '90 sections 121 and 152 relate to special immigrants designated as employment-based fourth preference immigrants. Section 152 provides for the extension of special immigrant status to certain employees, and their family members, of the Consulate General at Hong Kong. Section 162 concerns necessary conforming amendments. The new regulations contained in the Interim Rule will continue to retain the effective date of October 1, 1991.

EFFECTIVE DATE: This final rule is effective September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20522-0113, (202) 663-1204.

SUPPLEMENTARY INFORMATION: Sections 121 and 162 of the IMMACT '90 relate to the provisions of INA 101(a)(27)(D) which primarily had exempted from numerical limitations certain classes of aliens designated as special immigrants. Prior to IMMACT '90, a special immigrant visa applicant would only have to satisfy the consular officer that he or she met the criteria for the specific class described in INA 101(a)(27). With the exception of two classes (returning residents and certain expatriates), IMMACT '90 designated all other special immigrant classes as employment-based fourth preference immigrants, thus subjecting such immigrants for the first time to numerical restrictions and the requirement of filing for petitions. IMMACT '90 section 162 made necessary conforming amendments.

IMMACT '90 section 152 relates to the extension of special immigrant status to certain employees of the Consulate General in Hong Kong and their family members. As a result of the changes made by section 152, the regulations at 22 CFR 42.25 were redesignated as § 42.32(d)(2) and revised to reflect those changes. Interim Rule 1499, published in the **Federal Register** at 56 FR 51170, October 10, 1991, invited interested persons to submit comments concerning the amendments therein. No comments were received.

PART 42—[AMENDED]

1. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104; 8 U.S.C. 1101 note; 8 U.S.C. 1153.

2. Accordingly, the Interim Rule's regulations and effective date of October 1, 1991 at 56 FR 51170 are adopted without changes.

Dated: September 3, 1993.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 93-22627 Filed 9-15-93; 8:45 am]

BILLING CODE 4710-06-M

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22 CFR Part 42

[Public Notice 1862]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended; Immigrants Subject to Numerical Limitations

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: This final rule is a followup to Interim Rule 1513, published at page 55077, FR 56, October 24, 1991. The Interim Rule amended part 42 of title 22, Code of Federal Regulations, to implement changes made to the Immigration and Nationality Act (INA), and by the provisions of section 2 of the "Armed Forces Immigration Adjustment Act of 1991", Public Law 102-110. New § 42.32(d)(7) provides regulatory provisions for a new special immigrant class which benefits certain members of the Armed Forces. The regulation contained in the Interim Rule will continue to retain the effective date of November 29, 1991.

EFFECTIVE DATE: This final rule is effective September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20522-0113, (202) 663-1204.

SUPPLEMENTARY INFORMATION: Section 2 of Public Law 102-110 amended the Immigration and Nationality Act to confer special immigrant status on members and honorably separated former members of the United States Armed Forces under certain criteria. The Interim Rule authorizes consular officers to accord fourth preference classification on such members and former members upon receipt of a petition which has been approved by the Immigration and Naturalization Service. Interim Rule 1513, published in the **Federal Register** at 56 FR 55077, October 24, 1991, invited interested persons to submit comments concerning the amendments therein. No comments were received.

PART 42—[AMENDED]

1. Authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104; 8 U.S.C. 1101 note.

2. Accordingly, the Interim Rule's regulations and effective date of November 29, 1991 at 56 FR 55077, part 42, are adopted without changes.

Dated: September 3, 1993.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 93-22628 Filed 9-15-93; 8:45 am]

BILLING CODE 4710-06-M

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22 CFR Part 42

[Public Notice 1863]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended; Numerical Limitations

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: This final rule is a followup to Interim Rule 1491, published at page 49675, FR 56, October 1, 1991. The Interim Rule amended part 42 of title 22, Code of Federal Regulations, to

implement statutory amendments to the Immigration and Nationality Act (INA), made by the Immigration Act of 1990 (IMMACT '90), Pub. L. 101–649. Sections 101, 111, 112, 121 and 162(b)(1)(E) of IMMACT '90 restructured INA 203. Most of the changes to the regulations in the Interim Rule are editorial and relate primarily to numerical designations and citations. IMMACT '90 sections 101 and 121 amended the INA by separating family-related immigration from employment-related immigration and created new preference classes. These changes required the transfer of several regulations from subpart C of this part to subpart D, which more appropriately relates to immigrants subject to numerical limitations. In addition, the regulation at 22 CFR 42.21 was amended to add language benefiting spouses of deceased U.S. citizens entitled to immediate relative status. The regulations published with Interim Rule 1491 will continue to retain the effective date of October 1, 1991.

EFFECTIVE DATE: This final rule is effective September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20522–0113, (202) 663–1204.

SUPPLEMENTARY INFORMATION: Sections 101, 111, 112, 121 and 162(b)(1)(E) of IMMACT '90 restructured section 203 of the INA. Those changes in turn affected part 42, title 22 of the Code of Federal Regulations. Consequently, former §§ 42.24–42.27 in subpart C were redesignated as §§ 42.32(d) (1) through (4) and transferred to subpart D, which pertains to aliens subject to numerical ceilings; subpart D was substantially restructured because of the additional classes relating to immigrants subject to numerical limitations formerly listed in subpart C. Sections 42.34, 42.35 and 42.36 were deleted from subpart C as no longer falling within the criteria of immigrants not subject to numerical limitations. In addition, the imposition of a petition requirement under INA 204, as amended by IMMACT '90 section 162(b)(1)(E), on certain special immigrant classes vests the Immigration and Naturalization Service with the responsibility for determining that the alien qualifies as a special immigrant. Prior to the IMMACT '90 such responsibility was vested in the consular officer. Interim Rule 1491, published in the **Federal Register** at 56 FR 49675, October 1, 1991, invited interested persons to submit comments concerning the amendments therein. No comments were received.

PART 42—[AMENDED]

1. Authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104; 8 U.S.C. 1101 note.

2. Accordingly, the Interim Rule's regulations and effective date of October 1, 1991 at part 42, FR 49675 are adopted without changes.

Dated: September 3, 1993.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 93–22629 Filed 9–15–93; 8:45 am]

BILLING CODE 4710–06–M

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22 CFR Part 42

[Public Notice 1864]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended; Miscellaneous Amendments

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: This final rule is a followup to Interim Rule 1490, published at page 49678, FR 56, October 1, 1991. The Interim Rule amended part 42 of title 22, Code of Federal Regulations, to implement statutory revisions to the Immigration and Nationality Act (INA) made by the Immigration Act of 1990 (IMMACT '90), Pub. L. 101–649. Most of the amendments are editorial. In addition to the editorial changes, the Interim Rule revised a substantive procedure in § 42.83 for initiating action to terminate the registration of an alien entitled to an immigrant status. The regulations contained in the Interim Rule, § § 42.11 through 42.83, will continue to retain the effective date of October 1, 1991.

EFFECTIVE DATE: This final rule is effective September 16, 1993.

FOR FURTHER INFORMATION CONTACT:. Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20522–0113, (202) 663–1204.

SUPPLEMENTARY INFORMATION: Except for the regulations in subpart C, relating to individual classes of aliens, subpart D, relating to special immigrants under INA 101(a)(27)(D), and subpart F, relating to numerical controls and priority dates, the Interim Rule contains all other regulations in part 42 which was affected by the Immigration Act of 1990. The majority of those changes are editorial and reflect statutory provisions mandated by Public Law 101–649.

Interim Rule 1490, published in the **Federal Register** at 56 FR 49678, October 1, 1991, invited interested persons to submit comments concerning the amendments therein. No comments were received.

PART 42—[AMENDED]

1. Authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104; 8 U.S.C. 1101 note.

2. Accordingly, the Interim Rule's regulations and effective date of October 1, 1991 at 56 FR 49678 are adopted without changes.

September 2, 1993.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 93–22630 Filed 9–15–93; 8:45 am]

BILLING CODE 4710–06–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

[Rulemaking No. 102]

Exchange-Visitor Program

AGENCY: United States Information Agency.

ACTION: Notice of final rule; correction.

SUMMARY: The Agency issued a final rule on March 19, 1993 at 58 FR 15180–15220. This notice corrects several inadvertent administrative errors which appeared in the final rule.

DATES: March 19, 1993.

ADDRESSES: Stanley S. Colvin, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547, (202) 619–6829.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547, (202) 619–6829.

SUPPLEMENTARY INFORMATION: On March 19, 1993 the Agency published final regulations governing the administration of the Exchange Visitor Program, 58 FR 15180–15220. Upon its review of the published regulations, the Agency discovered several inadvertent typographical and other administrative

errors. The purpose of this notice is to correct those errors.

R. Wallace Stuart,
Acting General Counsel.

List of Subjects in 22 CFR Part 514

Cultural Exchange Programs.

PART 514—[AMENDED]

Accordingly, the United States Information Agency is correcting the final rule published March 19, 1993, as follows:

1. The *Supplementary Information* section dealing with Subpart B: Specific Program Provisions, which appears at 58 FR 15185, is corrected in the third column, in the first complete paragraph, by deleting the reference to 8 CFR 274.1(j) and inserting in lieu thereof "8 CFR 274a.1(j)."

2. The *Supplementary Information* section dealing with Subpart C: Status of Exchange Visitors, which appears at 58 FR 15193, is corrected by deleting the words "in INS adjudication" in the third full paragraph in the third column.

§ 514.20 [Amended]

3. Section 514.20(j)(1), appearing at 58 FR 15202, is corrected by deleting "§ 514.43(c)" in the last full line of the paragraph, and inserting in lieu thereof, "§ 514.43(b)".

4. The heading of § 514.20 Short-term scholars, appearing at 58 FR 15203, is corrected to read "§ 514.21 Short-term scholars."

§ 514.22 [Amended]

5. Section 514.22(d)(1)(iv), which appears at 52 FR 15204 is corrected by deleting the word "of" before the word "evaluation", and adding the word "of" before the word "each".

§ 514.27 [Amended]

6. Section 514.27(b)(2), which appears at 58 FR 15209, is corrected by deleting the word "Will" before the words "be able".

7. Section 514.27(e)(1), which appears at 58 FR 15209, is corrected by adding the words "as described in paragraph (b) of this section" after the word "training" and before the word "is".

§ 514.44 [Amended]

8. Section 514.44(a)(2), appearing at 58 FR 15212, is corrected by deleting the word "national" in the last line of the paragraph, and inserting in lieu thereof, the word "public."

9. Section 514.44(f)(4)(iv), appearing at 58 FR 15213, is corrected by deleting the word "Board" in the last line of the paragraph, and inserting in lieu thereof, the word "Branch."

[FR Doc. 93–22585 Filed 9–15–93; 8:45 am]
BILLING CODE 8230–01–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 23

Final Revision to the Office of Justice Programs, Criminal Intelligence Systems Operating Policies

AGENCY: Office of Justice Programs, Justice.

ACTION: Final rule.

SUMMARY: The regulation governing criminal intelligence systems operating through support under title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, is being revised to update basic authority citations and nomenclature, to clarify the applicability of the regulation, to define terms, and to modify a number of the regulation's operating policies and funding guidelines.

EFFECTIVE DATE: September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Olga R. Trujillo, Acting General Counsel, Office of Justice Programs, 633 Indiana Ave., NW., room 1268, Washington, DC 20531, Telephone (202) 307–0790.

SUPPLEMENTARY INFORMATION: The rule which this rule supersedes had been in effect and unchanged since September 17, 1980. A notice of proposed rulemaking for 28 CFR part 23, was published in the **Federal Register** on February 27, 1992, (57 FR 6691).

The statutory authorities for this regulation are section 801(a) and section 812(c) of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, (the Act), 42 U.S.C. 3782(a) and 3789g(c). 42 U.S.C. 3789g (c) and (d) provide as follows:

Confidentiality of Information

Sec. 812 • • •

(c) All criminal intelligence systems operating through support under this title shall collect, maintain, and disseminate criminal intelligence information in conformance with policy standards which are prescribed by the Office of Justice Programs and which are written to assure that the funding and operation of these systems furthers the purpose of this title and to assure that such systems are not utilized in violation of the privacy and constitutional rights of individuals.

(d) Any person violating the provisions of this section, or of any rule, regulation, or order issued thereunder, shall be fined not to exceed $10,000, in addition to any other penalty imposed by law.

This statutory provision and its implementing regulation apply to intelligence systems funded under title I of the Act, whether the system is operated by a single law enforcement agency, is an interjurisdictional intelligence system, is funded with discretionary grant funds, or is funded by a State with formula grant funds awarded under the Act's Drug Control and System Improvement Grant Program pursuant to part E, subpart 1 of the Act, 42 U.S.C. 3751–3759.

The need for change to 28 CFR part 23 grew out of the program experience of the Office of Justice Programs (OJP) and its component agency, the Bureau of Justice Assistance (BJA), with the regulation and the changing and expanding law enforcement agency need to respond to criminal mobility, the National drug program, the increased complexity of criminal networks and conspiracies, and the limited funding available to State and local law enforcement agencies. In addition, law enforcement's capability to perform intelligence database and analytical functions has been enhanced by technological advancements and sophisticated analytical techniques.

28 CFR part 23 governs the basic requirements of the intelligence system process. The process includes—

1. Information submission or collection
2. Secure storage
3. Inquiry and search capability
4. Controlled dissemination, and
5. Purge and review process

Information systems that receive, store and disseminate information on individuals or organizations based on reasonable suspicion of their involvement in criminal activity are criminal intelligence systems under the regulation. The definition includes both systems that store detailed intelligence or investigative information on the suspected criminal activities of subjects and those which store only information designed to identify individuals or organizations that are the subject of an inquiry or analysis (a so-called "pointer system"). It does not include criminal history record information or identification (fingerprint) systems.

There are nine significant areas of change to the regulation:

(1) Nomenclature changes (authority citations, organizational names) are included to bring the regulation up to date.

(2) Definitions of terms (28 CFR 23.3(b)) are modified or added as appropriate. The term "intelligence system" is redefined to clarify the fact that historical telephone toll files, analytical information, and work

products that are not either retained, stored, or exchanged and criminal history record information or identification (fingerprint) systems are excluded from the definition, and hence are not covered by the regulation; the terms "interjurisdictional intelligence system", "criminal intelligence information", "participating agency", "intelligence project", and "validation of information" are key terms that are defined in the regulation for the first time.

(3) The operating principles for intelligence systems (28 CFR 23.20) are modified to define the term "reasonable suspicion" or "criminal predicate". The finding of reasonable suspicion is a threshold requirement for entering intelligence information on an individual or organization into an intelligence data base (28 CFR 23.20(c)). This determination, as well as determinations that information was legally obtained (28 CFR 23.20(d)) and that a recipient of the information has a need to know and a right to know the information in the performance of a law enforcement function (28 CFR 23.20(e)), are established as the responsibility of the project for an interjurisdictional intelligence system. However, the regulation permits these responsibilities to be delegated to a properly trained participating agency which is subject to project inspection and audit (28 CFR 23.20 (c), (d), (g)).

(4) Security requirements are established to protect the integrity of the intelligence data base and the information stored in the data base (28 CFR 23.20(g)(1) (i)–(vi)).

(5) The regulation provides that information retained in the system must be reviewed and validated for continuing compliance with system submission criteria within a 5-year retention period. Any information not validated within that period must be purged from the system (28 CFR 23.20(h)).

(6) Another change continues the general prohibition of direct remote terminal access to intelligence information in a funded intelligence system but provides an exception for systems which obtain express OJP approval based on a determination that the system has adequate policies and procedures in place to insure that access to system intelligence information is limited to authorized system users (28 CFR 23.20(i)(1)). OJP will carefully review all requests for exception to assure that a need exists and that system integrity will be provided and maintained (28 CFR 23.20(i)(1)).

(7) The regulation requires participating agencies to maintain back-up files for information submitted to an interjurisdictional intelligence system and provide for inspection and audit by project staff (28 CFR 23.20(h)).

(8) The final rule also includes a provision allowing the Attorney General or the Attorney General's designee to authorize a departure from the specific requirements of this part, in those cases where it is clearly shown that such waiver would promote the purposes and effectiveness of a criminal intelligence system while at the same time ensuring compliance with all applicable laws and protection for the privacy and constitutional rights of individuals. The Department recognizes that other provisions of federal law may be applicable to (or may be adopted in the future with respect to) certain submitters or users of information in criminal intelligence systems. Moreover, as technological developments unfold over time in this area, experience may show that particular aspects of the requirements in this part may no longer be needed to serve their intended purpose or may even prevent desirable technological advances. Accordingly, this provision grants the flexibility to make such beneficial adaptations in particular cases or classes without the necessity to undertake a new rulemaking process. This waiver authority could only be exercised by the Attorney General or designee, in writing, upon a clear and convincing showing (28 CFR 23.20 (o)).

(9) The funding guidelines (28 CFR 23.30) are revised to permit funded intelligence systems to collect information either on organized criminal activity that represents a significant and recognized threat to the population or on criminal activity that is multi-jurisdictional in nature.

Rulemaking History

On February 27, 1992, the Department of Justice, Office of Justice Programs, published a notice of proposed rulemaking in the **Federal Register** (57 FR 6691).

The Office of Justice Programs received a total of eleven comments on the proposed regulation, seven from State agencies, two from Regional Information Sharing Systems (RISS) program fund recipients, one from a Federal agency, and one from the RISS Project Directors Association. Comments will be discussed in the order in which they address the substance of the proposed regulation.

Discussion of Comments

Title—Part 23

Comment: One commentor suggested reinserting the word "Operating" in the title of the regulation to read "Criminal Intelligence Systems Operating Policies" to reflect that the regulation applies only to policies governing system operations.

Response: Agreed. The title has been changed.

Applicability—Section 23.3(a)

Comment: A question was raised by one respondent as to whether the applicability of the regulation under § 23.3(a) to systems "operating through support" under the Crime Control Act included agencies receiving any assistance funds and who operated an intelligence system or only those who received assistance funds for the specific purpose of funding the operation of an intelligence system.

Response: The regulation applies to grantees and subgrantees who receive and use Crime Control Act funds to fund the operation of an intelligence system.

Comment: Another commentor asked whether the purchase of software, office equipment, or the payment of staff salaries for a criminal intelligence system would constitute "operating through support" under the Crime Control Act.

Response: Any direct Crime Control Act fund support that contributes to the operation of a criminal intelligence system would subject the system to the operation of the policy standards during the period of fund support.

Comment: A third commentor inquired whether an agency's purchase of a telephone pen register or computer equipment to store and analyze pen register information would subject the agency or its information systems to the regulation.

Response: No, neither a pen register nor equipment to analyze telephone toll information fall under the definition of a criminal intelligence system even though they may assist an agency to produce investigative or other information for an intelligence system.

Applicability—Section 23.3(b)

Comment: Several commentors questioned whether information systems that are designed to collect information on criminal suspects for purposes of inquiry and analysis, and which provide for dissemination of such information, qualify as "criminal intelligence systems." One pointed out that the information qualifying for system submission could not be

"unconfirmed" or "soft" intelligence. Rather, it would generally have to be investigative file-based information to meet the "reasonable suspicion" test.

Response: The character of an information system as a criminal intelligence system does not depend upon the source or categorization of the underlying information as "raw" or "soft" intelligence, preliminary investigation information, or investigative information, findings or determinations. It depends upon the purpose for which the information system exists and the type of information it contains. If the purpose of the system is to collect and share information with other law enforcement agencies on individuals reasonably suspected of involvement in criminal activity, and the information is identifying or descriptive information about the individual and the suspected criminal activity, then the system is a criminal intelligence system for purposes of the regulation. Only those criminal intelligence systems that receive, store and provide for the interagency exchange and analysis of criminal intelligence information in a manner consistent with this regulation are eligible for funding support with Crime Control Act funds.

Comment: One respondent asked whether the definition of criminal intelligence system covered criminal history record information (CHRI) systems, fugitive files, or other want or warrant based information systems.

Response: No. A CHRI system contains information collected on arrests, detention, indictments, informations or other charges, dispositions, sentencing, correctional supervision, and release. It encompasses systems designed to collect, process, preserve, or disseminate such information.

CHRI is factual, historical and objective information which provides a criminal justice system "profile" of an individual's past and present involvement in the criminal justice system. A fugitive file is designed to provide factual information to assist in the arrest of individuals for whom there is an outstanding want or warrant. Criminal intelligence information, by contrast, is both factual and conjectural (reasonable suspicion), current and subjective. It is intended for law enforcement use only, to provide law enforcement officers and agencies with useful information on criminal suspects and to foster interagency coordination and cooperation. A criminal intelligence system can have criminal history record information in it as an identifier but a CHRI system would not contain the suspected criminal activity information contained in a criminal intelligence system.

This distinction provides the basis for the limitations on criminal intelligence systems set forth in the operating policies. Because criminal intelligence information is both conjectural and subjective in nature, may be widely disseminated through the interagency exchange of information and cannot be accessed by criminal suspects to verify that the information is accurate and complete, the protections and limitations set forth in the regulation are necessary to protect the privacy interests of the subjects and potential subjects of a criminal intelligence system.

Comment: Another commentor asked whether a law enforcement agency's criminal intelligence information unit, located at headquarters, which authorizes no outside access to information in its intelligence system, would be subject to the regulation.

Response: No. The sharing of investigative or general file information on criminal subjects within an agency is a practice that takes place on a daily basis and is necessary for the efficient and effective operation of a law enforcement agency. Consequently, whether such a system is described as a case management or intelligence system, the regulation is not intended to apply to the exchange or sharing of such information when it takes place within a single law enforcement agency or organizational entity. For these purposes, an operational multi-jurisdictional task force would be considered a single organizational entity provided that it is established by and operates under a written memorandum of understanding or interagency agreement. The definition of "Criminal Intelligence System" has been modified to clarify this point. However, if a single agency or entity system provides access to system information to outside agencies on an inquiry or request basis, as a matter of either policy or practice, the system would qualify as a criminal intelligence system and be subject to the regulation.

Comment: A commentor questioned whether the proposed exclusion of "analytical information and work products" from the definition of "Intelligence System" was intended to exclude all dissemination of analytical results from coverage under the regulation.

Response: No. The exceptions in the proposed definition of "Intelligence System" of modus operandi files, historical telephone toll files and analytical information and work products are potentially confusing. The exceptions reflect types of data that may or may not qualify as "Criminal Intelligence Information" depending on particular facts and circumstances. Consequently, these exceptions have been deleted from the definition of "Intelligence System" in the final rule. For example, analytical information and work products that are derived from unevaluated or bulk data (i.e. information that has not been tested to determine that it meets intelligence system submission criteria) are not intelligence information if they are returned to the submitting agency. This information and its products cannot be retained, stored, or made available for dissemination in an intelligence system unless and until the information has been evaluated and determined to meet system submission criteria. The proposed definition of "Analytical Information and Work Products" in § 23.3(b) has also been deleted.

To address the above issues, the definition of "Intelligence System" has been modified to define a "Criminal Intelligence System or Intelligence System" to mean "the arrangements, equipment, facilities, and procedures used for the receipt, storage, interagency exchange or dissemination, and analysis of criminal intelligence information."

Comment: Several commentors raised questions regarding the concept of "evaluated data" in the definition of "Criminal Intelligence Information", requesting guidance on what criteria to use in evaluating data. Another questioned whether there needed to be an active investigation as the basis for information to fall within the definition and whether information on an individual who or organization which is not the primary subject or target of an investigation or other data source, e.g. a criminal associate or co-conspirator, can qualify as "Criminal Intelligence Information."

Response: The definition of "Criminal Intelligence Information" has been revised to reflect that data is evaluated for two purposes related to criminal intelligence system submissions: (1) To determine that it is relevant in identifying a criminal suspect and the criminal activity involved; and (2) to determine that the data meets criminal intelligence system submission criteria, including reasonable suspicion of involvement in criminal activity. As rewritten, there is no requirement that an "active investigation" is necessary. Further, the revised language makes it clear that individuals or organizations who are not primary subjects or targets can be identified in the criminal intelligence information, provided that

they independently meet system submission criteria.

Comment: One commentor requested clarification of the role of the "Project" in the operation of an intelligence system, i.e. is the project required to have physical control (possession) of the information in an intelligence system or will authority over the system (operational control) suffice?

Response: Operational control over an intelligence system's intelligence information is sufficient. The regulation seeks to establish a single locus of authority and responsibility for system information. Once that principle is established, the regulation permits, for example, the establishment of remote (off premises) data bases that meet applicable security requirements.

Operating Principles—Section 23.20(c)

Comment: One respondent took the position that "Reasonable Suspicion", as defined in § 23.20(c), is not necessary to the protection of individual privacy and Constitutional rights, suggesting instead that information in a funded intelligence system need only be "necessary and relevant to an agency's lawful purposes."

Response: While it is agreed that the standard suggested is appropriate for investigative or other information files maintained for use by or within an agency, the potential for national dissemination of information in intelligence information systems, coupled with the lack of access by subjects to challenge the information, justifies the reasonable suspicion standard as well as other operating principle restrictions set forth in this regulation. Also, the quality and utility of "hits" in an information system is enhanced by the reasonable suspicion requirement. Scarce resources are not wasted by agencies in coordinating information on subjects for whom information is vague, incomplete and conjectural.

Comment: The prior commentor also criticized the proposed definition of reasonable suspicion for its specific reference to an "investigative file" as the source of intelligence system information, the potential inconsistency between the concepts of "infer" and "conclude" as standards for determining whether reasonable suspicion is justified by the information available, and the use of "reasonable possibility" rather than "articulable" or "sufficient" facts as the operative standard to conclude that reasonable suspicion exists.

Response: The reference to an "investigative file" as the information source has been broadened to encompass any information source. The information available must provide a basis for the submitter to "believe" there is a reasonable possibility of the subject's involvement in the criminal activity or enterprise. The concept of a "basis to believe" requires reasoning and logic coupled with sound judgment based on experience in law enforcement rather than a mere hunch, whim, or guess. The belief that is formed, that there is a "reasonable possibility" of criminal involvement, has been retained because the proposed standard is appropriately less restrictive than that which is required to establish probable cause.

Operating Principles—Section 23.20(d)

Comment: Section 23.20(d) prohibits the inclusion in an intelligence system of information obtained in violation of Federal, State, or local law or ordinance. Would a project be potentially liable for accepting, maintaining and disseminating such information even if it did not know that the information was illegally obtained?

Response: In addition to protecting the rights of individuals and organizations that may be subjects in a criminal intelligence system, this prohibition serves to protect a project from liability for disseminating illegally obtained information. A clear project policy that prohibits the submission of illegally obtained information, coupled with an examination of supporting information to determine that the information was obtained legally or the delegation of such authority to a properly trained participating agency, and the establishment and performance of routine inspection and audit of participating agency records, should be sufficient to shield a project from potential liability based on negligence in the performance of its intelligence information screening function.

Operating Principles—Section 23.20(h)

Comment: One commentor requested clarification of the "periodic review" requirement in § 23.20(h) and what constitutes an "explanation of decision to retain" information.

Response: The periodic review requirement is designed to insure that system information is accurate and as up-to-date as reasonably possible. When a review has occurred, the record is appropriately updated and notated. The explanation of decision to retain can be a variety of reasons including "active investigation", "preliminary review in progress", "subject believed still active in jurisdiction", and the like. When information that has been reviewed or updated and a determination made that it continues to meet system submission criteria, the information has been "validated" and begins a new retention period. The regulation limits the retention period to a maximum of five years without a review and validation of the information.

Operating Principles—Section 23.20(i)

Comment: One commentor requested a definition of "remote terminal" and asked how OJP would determine whether "adequate policies and procedures" are in place to insure the continued integrity of a criminal intelligence system.

Response: A "remote terminal" is hardware that enables a participating agency to input into or access information from a project's criminal intelligence database without the intervention of project staff. While the security requirements set forth in § 23.20(g)(1)–(5) should minimize the threat to system integrity from unauthorized access to and the use of system information, special measures are called for when direct remote terminal access is authorized.

The Office of Justice Programs will expect any request for approval of remote terminal access to include information on the following system protection measures:

1. Procedures for identification of authorized remote terminals and security of terminals;
2. Authorized access officer (remote terminal operator) identification and verification procedures;
3. Provisions for the levels of dissemination of information as directed by the submitting agency;
4. Provisions for the rejection of submissions unless critical data fields are completed;
5. Technological safeguards on system access, use, dissemination, and review and purge;
6. Physical security of the system;
7. Training and certification of system-participating agency personnel;
8. Provisions for the audit of system-participating agencies, to include: file data supporting submissions to the system; security of access terminals; and policy and procedure compliance; and
9. Documentation for audit trails of the entire system operation.

Moreover, a waiver provision has been added to ensure flexibility in adapting quickly to technological and legal changes which may impact any of the requirements contained in this regulation. See § 23.20(o).

Comment: Related to the above discussion, another commentor asked whether restrictions on direct remote terminal access would prohibit remote

access to an "index" of information in the system.

Response: Yes. The ability to obtain all information directly from a criminal intelligence system through the use of hardware based outside the system constitutes direct remote terminal access contrary to the provisions of § 23.20(i)(1), except as specifically approved by OJP. Thus, a hit/no hit response, if gleaned from an index, would bring a remote terminal within the scope of the requirement for OJP approval of direct remote terminal access.

Comment: One commentor pointed out that the requirement for prior OJP approval of "modifications to system design" was overly broad and could be read to require that even minor changes be submitted for approval. The commentor proposed a substitute which would limit the requirement to those modifications "that alter the system's identified goals in a way contrary to the requirements of (this regulation)."

Response: While it is agreed that the language is broad, the proposed limitation is too restrictive. The intent was that "modifications to system design" refer to "major" changes to the system, such as the nature of the information collected, the place or method of information storage, the authorized uses of information in the system, and provisions for access to system information by authorized participating agencies. This clarification has been incorporated in the regulation. In order to decentralize responsibility for approval of system design modifications, the proposed regulation has been revised to provide for approval of such modifications by the grantor agency rather than OJP. A similar change has been made to § 23.20(j).

Operating Principles—Section 23.20(n)

Comment: Several commentors expressed concern with the verification procedures set forth in § 23.20(n). One suggested that file information cannot "verify" the correctness of submissions but instead serves to "document" or "substantiate" its correctness. Another proposed deleting the requirements that (1) files maintained by participating agencies to support system submissions be subject to the operating principles, and (2) participating agencies are authorized to maintain such files separately from other agency files. The first requirement conflicts with the normal investigative procedures of a law enforcement agency in that all information in agency source files cannot meet the operating principles, particularly the reasonable suspicion and relevancy requirements. The important principle is that the information which is gleaned from an agency's source files and submitted to the system meet the operating principles. The second requirement has no practical value. At most, it results in the creation of duplicative files or in submission information being segregated from source files.

Response: OJP agrees with both comments. The word "documents" has been substituted for "verifies" and the provisions subjecting participating agency source files to the operating principles and authorizing maintenance of separate files have been deleted. Projects should use their audit and inspection access to agency source files to document the correctness of participating agency submissions on a sample basis.

Funding Guidelines—Section 23.30(b)

Comment: One commentor asked: Who defines the areas of criminal activity that "represent a significant and recognized threat to the population?"

Response: The determination of areas of criminal activity focus and priority are matters for projects, project policy boards and member agencies to determine, provided that the additional regulatory requirements set forth in § 23.30(b) are met.

Monitoring and Auditing of Grants—Section 23.40(a)

Comment: One commentor asked: "Who is responsible for developing the specialized monitoring and audit of awards for intelligence systems to insure compliance with the operating principles"?

Response: The grantor agency (the agency awarding a sub-grant to support an intelligence system) shall establish and approve a plan for specialized monitoring and audit of sub-awards prior to award. For the BJA Formula Grant Program, the State agency receiving the award from BJA is the grantor agency. Technical assistance and support in establishing a monitoring and audit plan is available through BJA.

Information on Juveniles

Comment: Can intelligence information pertaining to a juvenile who otherwise meets criminal intelligence system submission criteria be entered into an intelligence database?

Response: There is no limitation or restriction on entering intelligence information on juvenile subjects set forth in Federal law or regulation. However, State law may restrict or prohibit the maintenance or dissemination of such information by its law enforcement agencies. Therefore, State laws should be carefully reviewed to determine their impact on this practice and appropriate project policies adopted.

Executive Order 12291

These regulations are not a "major rule" as defined by section 1(b) of Executive Order No. 12291, 3 CFR part 127 (1981), because they do not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Regulatory Flexibility Act

These regulations are not a rule within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. These regulations, will not have a "significant" economic impact on a substantial number of small "entities," as defined by the Regulatory Flexibility Act.

Paperwork Reduction Act

There are no collection of information requirements contained in the regulation.

List of Subjects in 28 CFR Part 23

Administrative practice and procedure, Grant programs, Intelligence, Law enforcement.

For the reasons set out in the preamble, title 28, part 23 of the Code of Federal Regulations is revised to read as follows:

PART 23—CRIMINAL INTELLIGENCE SYSTEMS OPERATING POLICIES

Sec.
23.1 Purpose.
23.2 Background.
23.3 Applicability.
23.20 Operating principles.
23.30 Funding guidelines.
23.40 Monitoring and auditing of grants for the funding of intelligence systems.

Authority: 42 U.S.C. 3782(a); 42 U.S.C. 3789g(c).

§ 23.1 Purpose.

The purpose of this regulation is to assure that all criminal intelligence systems operating through support under the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq.*, as amended (Pub. L. 90–351, as amended by Pub. L. 91–644, Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–430, Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–157, Pub. L. 98–473, Pub. L. 99–570, Pub. L. 100–690, and Pub. L. 101–647), are utilized in conformance with the privacy and constitutional rights of individuals.

§ 23.2 Background.

It is recognized that certain criminal activities including but not limited to loan sharking, drug trafficking, trafficking in stolen property, gambling, extortion, smuggling, bribery, and corruption of public officials often involve some degree of regular coordination and permanent organization involving a large number of participants over a broad geographical area. The exposure of such ongoing networks of criminal activity can be aided by the pooling of information about such activities. However, because the collection and exchange of intelligence data necessary to support control of serious criminal activity may represent potential threats to the privacy of individuals to whom such data relates, policy guidelines for Federally funded projects are required.

§ 23.3 Applicability.

(a) These policy standards are applicable to all criminal intelligence systems operating through support under the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq.*, as amended (Pub. L. 90–351, as amended by Pub. L. 91–644, Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–430, Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–157, Pub. L. 98–473, Pub. L. 99–570, Pub. L. 100–690, and Pub. L. 101–647).

(b) As used in these policies: (1) *Criminal Intelligence System* or *Intelligence System* means the arrangements, equipment, facilities, and procedures used for the receipt, storage, interagency exchange or dissemination, and analysis of criminal intelligence information; (2) *Interjurisdictional Intelligence System* means an intelligence system which involves two or more participating agencies representing different governmental units or jurisdictions; (3) *Criminal Intelligence Information* means data which has been evaluated to determine that it: (i) Is relevant to the identification of and the criminal activity engaged in by an individual who or organization which is reasonably suspected of involvement in criminal activity, and (ii) meets criminal intelligence system submission criteria; (4) *Participating Agency* means an agency of local, county, State, Federal, or other governmental unit which exercises law enforcement or criminal investigation authority and which is authorized to submit and receive criminal intelligence information through an interjurisdictional intelligence system. A participating agency may be a member or a nonmember of an interjurisdictional intelligence system; (5) *Intelligence Project* or *Project* means the organizational unit which operates an intelligence system on behalf of and for the benefit of a single agency or the organization which operates an interjurisdictional intelligence system on behalf of a group of participating agencies; and (6) *Validation of Information* means the procedures governing the periodic review of criminal intelligence information to assure its continuing compliance with system submission criteria established by regulation or program policy.

§ 23.20 Operating principles.

(a) A project shall collect and maintain criminal intelligence information concerning an individual only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity.

(b) A project shall not collect or maintain criminal intelligence information about the political, religious or social views, associations, or activities of any individual or any group, association, corporation, business, partnership, or other organization unless such information directly relates to criminal conduct or activity and there is reasonable suspicion that the subject of the information is or may be involved in criminal conduct or activity.

(c) *Reasonable Suspicion* or *Criminal Predicate* is established when information exists which establishes sufficient facts to give a trained law enforcement or criminal investigative agency officer, investigator, or employee a basis to believe that there is a reasonable possibility that an individual or organization is involved in a definable criminal activity or enterprise. In an interjurisdictional intelligence system, the project is responsible for establishing the existence of reasonable suspicion of criminal activity either through examination of supporting information submitted by a participating agency or by delegation of this responsibility to a properly trained participating agency which is subject to routine inspection and audit procedures established by the project.

(d) A project shall not include in any criminal intelligence system information which has been obtained in violation of any applicable Federal, State, or local law or ordinance. In an interjurisdictional intelligence system, the project is responsible for establishing that no information is entered in violation of Federal, State, or local laws, either through examination of supporting information submitted by a participating agency or by delegation of this responsibility to a properly trained participating agency which is subject to routine inspection and audit procedures established by the project.

(e) A project or authorized recipient shall disseminate criminal intelligence information only where there is a need to know and a right to know the information in the performance of a law enforcement activity.

(f)(1) Except as noted in paragraph (f)(2) of this section, a project shall disseminate criminal intelligence information only to law enforcement authorities who shall agree to follow procedures regarding information receipt, maintenance, security, and dissemination which are consistent with these principles.

(2) Paragraph (f)(1) of this section shall not limit the dissemination of an assessment of criminal intelligence information to a government official or to any other individual, when necessary, to avoid imminent danger to life or property.

(g) A project maintaining criminal intelligence information shall ensure that administrative, technical, and physical safeguards (including audit trails) are adopted to insure against unauthorized access and against intentional or unintentional damage. A record indicating who has been given information, the reason for release of the information, and the date of each dissemination outside the project shall be kept. Information shall be labeled to indicate levels of sensitivity, levels of confidence, and the identity of submitting agencies and control officials. Each project must establish written definitions for the need to know and right to know standards for dissemination to other agencies as provided in paragraph (e) of this section. The project is responsible for establishing the existence of an inquirer's need to know and right to know the information being requested either through inquiry or by delegation of this responsibility to a properly trained participating agency which is subject to routine inspection and audit procedures established by the project. Each intelligence project shall assure that the following security requirements are implemented:

(1) Where appropriate, projects must adopt effective and technologically advanced computer software and hardware designs to prevent unauthorized access to the information contained in the system;

(2) The project must restrict access to its facilities, operating environment and documentation to organizations and personnel authorized by the project;

(3) The project must store information in the system in a manner such that it cannot be modified, destroyed, accessed, or purged without authorization;

(4) The project must institute procedures to protect criminal intelligence information from unauthorized access, theft, sabotage, fire, flood, or other natural or manmade disaster;

(5) The project must promulgate rules and regulations based on good cause for implementing its authority to screen, reject for employment, transfer, or remove personnel authorized to have direct access to the system; and

(6) A project may authorize and utilize remote (off-premises) system data bases to the extent that they comply with these security requirements.

(h) All projects shall adopt procedures to assure that all information which is retained by a project has relevancy and importance. Such procedures shall provide for the periodic review of information and the destruction of any information which is misleading, obsolete or otherwise unreliable and shall require that any recipient agencies be advised of such changes which involve errors or corrections. All information retained as a result of this review must reflect the name of the reviewer, date of review and explanation of decision to retain. Information retained in the system must be reviewed and validated for continuing compliance with system submission criteria before the expiration of its retention period, which in no event shall be longer than five (5) years.

(i) If funds awarded under the Act are used to support the operation of an intelligence system, then:

(1) No project shall make direct remote terminal access to intelligence information available to system participants, except as specifically approved by the Office of Justice Programs (OJP) based on a determination that the system has adequate policies and procedures in place to insure that it is accessible only to authorized systems users; and

(2) A project shall undertake no major modifications to system design without prior grantor agency approval.

(j) A project shall notify the grantor agency prior to initiation of formal information exchange procedures with any Federal, State, regional, or other information systems not indicated in the grant documents as initially approved at time of award.

(k) A project shall make assurances that there will be no purchase or use in the course of the project of any electronic, mechanical, or other device for surveillance purposes that is in violation of the provisions of the Electronic Communications Privacy Act of 1986, Public Law 99–508, 18 U.S.C. 2510–2520, 2701–2709 and 3121–3125, or any applicable State statute related to wiretapping and surveillance.

(l) A project shall make assurances that there will be no harassment or interference with any lawful political activities as part of the intelligence operation.

(m) A project shall adopt sanctions for unauthorized access, utilization, or disclosure of information contained in the system.

(n) A participating agency of an interjurisdictional intelligence system must maintain in its agency files information which documents each submission to the system and supports compliance with project entry criteria. Participating agency files supporting system submissions must be made available for reasonable audit and inspection by project representatives. Project representatives will conduct participating agency inspection and audit in such a manner so as to protect the confidentiality and sensitivity of participating agency intelligence records.

(o) The Attorney General or designee may waive, in whole or in part, the applicability of a particular requirement or requirements contained in this part with respect to a criminal intelligence system, or for a class of submitters or users of such system, upon a clear and convincing showing that such waiver would enhance the collection, maintenance or dissemination of information in the criminal intelligence system, while ensuring that such system would not be utilized in violation of the privacy and constitutional rights of individuals or any applicable state or federal law.

§ 23.30 Funding guidelines.

The following funding guidelines shall apply to all Crime Control Act funded discretionary assistance awards and Bureau of Justice Assistance (BJA) formula grant program subgrants, a purpose of which is to support the operation of an intelligence system. Intelligence systems shall only be funded where a grantee/subgrantee agrees to adhere to the principles set forth above and the project meets the following criteria:

(a) The proposed collection and exchange of criminal intelligence information has been coordinated with and will support ongoing or proposed investigatory or prosecutorial activities relating to specific areas of criminal activity.

(b) The areas of criminal activity for which intelligence information is to be utilized represent a significant and recognized threat to the population and:

(1) Are either undertaken for the purpose of seeking illegal power or profits or pose a threat to the life and property of citizens; and

(2) Involve a significant degree of permanent criminal organization; or

(3) Are not limited to one jurisdiction.

(c) The head of a government agency or an individual with general policy making authority who has been expressly delegated such control and supervision by the head of the agency will retain control and supervision of information collection and dissemination for the criminal intelligence system. This official shall certify in writing that he or she takes full responsibility and will be accountable for the information maintained by and disseminated from the system and that the operation of the system will be in compliance with the principles set forth in § 23.20.

(d)(1) Where the system is an interjurisdictional criminal intelligence system, the governmental agency which exercises control and supervision over the operation of the system shall require that the head of that agency or an individual with general policymaking authority who has been expressly delegated such control and supervision by the head of the agency:

(i) Assume official responsibility and accountability for actions taken in the name of the joint entity, and

(ii) Certify in writing that the official takes full responsibility and will be accountable for insuring that the information transmitted to the interjurisdictional system or to participating agencies will be in compliance with the principles set forth in § 23.20.

(2) The principles set forth in § 23.20 shall be made part of the by-laws or operating procedures for that system. Each participating agency, as a condition of participation, must accept in writing those principles which govern the submission, maintenance and dissemination of information included as part of the interjurisdictional system.

(e) Intelligence information will be collected, maintained and disseminated primarily for State and local law enforcement efforts, including efforts involving Federal participation.

§ 23.40 Monitoring and auditing of grants for the funding of intelligence systems.

(a) Awards for the funding of intelligence systems will receive specialized monitoring and audit in

accordance with a plan designed to insure compliance with operating principles as set forth in § 23.20. The plan shall be approved prior to award of funds.

(b) All such awards shall be subject to a special condition requiring compliance with the principles set forth in § 23.20.

(c) An annual notice will be published by OJP which will indicate the existence and the objective of all systems for the continuing interjurisdictional exchange of criminal intelligence information which are subject to the 28 CFR part 23 Criminal Intelligence Systems Policies.

Laurie Robinson,

Acting Assistant Attorney General, Office of Justice Programs.

[FR Doc. 93–22614 Filed 9–15–93; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 47

RIN 2900–AE27

Reporting Health Care Practitioners to State Licensing Boards

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document sets forth the policy of the Department of Veterans Affairs (VA) for reporting physicians, dentists, and other health care professionals to State licensing boards under authority of the act captioned "Veterans' Administration Health-Care Amendments of 1985" (the Act) and other authority. The intended effect of this policy is to cooperate with State licensing boards for the purpose of promoting better health care.

EFFECTIVE DATE: September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Susan J. Brennan (10A2), Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420.

SUPPLEMENTARY INFORMATION: VA has had a longstanding practice of reporting to State licensing boards any separated licensed health care professional whose clinical practice so significantly failed to meet generally accepted standards of clinical practice as to raise reasonable concern for the safety of patients. More recently, the Act, among other things, established a mandate for VA to conduct a program to report to State licensing boards any separated licensed health-care professional (a) who was fired or who resigned following the completion of a disciplinary action relating to such individual's clinical competence, (b) who resigned after having had such individual's clinical privileges restricted or revoked, or (c) who resigned after serious concerns about such individual's clinical competence have been raised but not resolved. VA's longstanding practice and its Congressional mandate are compatible and the purpose of this part is to establish a final rule reflecting that it is the policy of the VA to report separated health care professionals to State licensing boards consistent with its longstanding practice and its Congressional mandate.

The following are examples of actions that meet the criteria for reporting: (a) Significant deficiencies in clinical practice such as lack of diagnostic or treatment capability, errors in transcribing, administering or documenting medications, inability to perform clinical procedures considered basic to the performance of one's occupation, performing procedures not included in one's clinical privileges in other than emergency situations; (b) patient neglect or abandonment; (c) mental health impairment sufficient to cause the individual to behave inappropriately in the patient care environment or to provide unsafe patient care; (d) physical health impairment sufficient to cause the individual to provide unsafe patient care; (e) substance abuse when it affects the individual's ability to perform appropriately as a health care provider or in the patient care environment; (f) falsification of credentials; (g) falsification of medical records or prescriptions; (h) theft of drugs; (i) inappropriate dispensing of drugs; (j) unethical behavior (such as sexual misconduct toward a patient); (k) mental, physical, sexual, or verbal abuse of a patient (examples of patient abuse include intentional omission of care, willful violation of a patient's privacy, willful physical injury, intimidation, harassment, or ridicule); and (l) violation of research ethics.

Executive Order 12291 and Regulatory Flexibility Act

Executive Order 12291 requires the Department to prepare and publish an initial regulatory impact analysis for any proposed major rule. A major rule is defined as any regulation that is likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department has determined that this final rule does not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. Based on experience for purposes of this Order, it is anticipated that a relatively insignificant number of health care professionals would be reported under this final rule (significantly less than one percent). Under these circumstances, the final rule would have little direct effect on the economy or on Federal or State expenditures. Consequently, the Department has concluded that a regulatory impact analysis is not required.

Also, the Secretary certifies that this final rule does not have a significant economic impact on a substantial number of small entities, and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980. Under the circumstances explained above, the VA does not anticipate that a substantial number of small entities would be significantly affected by the final rule.

There are no applicable Catalog of Federal Domestic Assistance program numbers.

List of Subjects in 38 CFR Part 47

Health professions.

Approved: May 20, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR is amended by adding a new part 47 to read as follows:

PART 47—POLICY REGARDING REPORTING HEALTH CARE PROFESSIONALS UNDER AUTHORITY OF PUBLIC LAW 99–166 AND 38 U.S.C. 501

Subpart A—General Provisions

Sec.

47.1 Definitions.
47.2 Purpose.

Subpart B—Reporting Under Authority of Pub. L. 99–166 and 38 U.S.C. 501.

47.3 Reporting to State licensing boards.

Authority: Pub. L. 99–166, 99 Stat. 941; 38 U.S.C. 501.

Subpart A—General Provisions

47.1 Definitions.

(a) *Act* means section 204 of the act captioned "Veterans Administration Health-Care Amendments of 1985" (Pub. L. 99–166, 99 Stat. 941).

(b) *Dentist* means a doctor of dental surgery or dental medicine legally authorized to practice dental surgery or medical dentistry by a State (or any individual who, without authority, holds himself or herself out to be so authorized).

(c) *Other health care professional* means an individual other than a physician or dentist who is licensed or otherwise authorized by a State to provide health care services (or any individual who, without authority, holds himself or herself out to be so licensed or authorized).

(d) *Physician* means a doctor of medicine or osteopathy legally authorized to practice medicine or surgery by a State (or any individual who, without authority, holds himself or herself out to be so authorized).

(e) *State* means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands and any other territories or possessions of the United States.

(f) *State Licensing Board* means, with respect to a physician, dentist or other health care practitioner in a State, the agency of the State which is primarily responsible for the licensing of the physician, dentist or practitioner to provide health care services.

(g) *Generally accepted standards of clinical practice* means reasonable competence in the clinical aspects of one's responsibilities, as well as the moral and ethical behavior necessary to carry out those responsibilities.

(h) *Separated licensed health care professional* means a licensed health care professional who is no longer on VA rolls, regardless of whether the individual left voluntarily or involuntarily and regardless of the reason why the individual left.

(Authority: Pub. L. 99–166, 99 Stat. 941; 38 U.S.C. 501.)

§ 47.2 Purpose.

VA has had a longstanding practice of reporting to state licensing boards any separated licensed health care professional whose clinical practice so significantly failed to meet generally accepted standards of clinical practice as to raise reasonable concern for the safety of patients. More recently, the Act, among other things, established a mandate for VA to conduct a program to report to state licensing boards any separated licensed health-care professional who was fired or who resigned following the completion of a disciplinary action relating to such individual's clinical competence, who resigned after having had such individual's clinical privileges restricted or revoked, or who resigned after serious concerns about such individual's clinical competence have been raised but not resolved. VA's longstanding practice and its Congressional mandate are compatible and the purpose of this Part is to reflect that it is the policy of VA to report separated health care professionals to state licensing boards consistent with its longstanding practice and its Congressional mandate.

(Authority: Pub. L. 99–166, 99 Stat. 941; 38 U.S.C. 501.)

Subpart B—Reporting Under Authority of Public Law 99–166 and 38 U.S.C. 501

§ 47.3 Reporting to State licensing boards.

VA will report to state licensing boards any separated licensed health-care professional in accordance with its longstanding policy and its Congressional mandate which are both specified in § 47.2 of this Part. The following are examples of actions that meet the criteria for reporting:

(a) Significant deficiencies in clinical practice such as lack of diagnostic or treatment capability, errors in transcribing, administering or documenting medications, inability to perform clinical procedures considered basic to the performance of one's occupation, performing procedures not included in one's clinical privileges in other than emergency situations;

(b) Patient neglect or abandonment;

(c) Mental health impairment sufficient to cause the individual to behave inappropriately in the patient care environment or to provide unsafe patient care;

(d) Physical health impairment sufficient to cause the individual to provide unsafe patient care;

(e) Substance abuse when it affects the individual's ability to perform appropriately as a health care provider or in the patient care environment;

(f) Falsification of credentials;

(g) Falsification of medical records or prescriptions;

(h) Theft of drugs;

(i) Inappropriate dispensing of drugs;

(j) Unethical behavior (such as sexual misconduct toward a patient);

(k) Mental, physical, sexual, or verbal abuse of a patient (examples of patient abuse include intentional omission of care, willful violation of a patient's privacy, willful physical injury, intimidation, harassment, or ridicule); and

(l) Violation of research ethics.

(Authority: Pub. L. 99–166, 99 Stat. 941; 38 U.S.C. 501.)

[FR Doc. 93–22504 Filed 9–15–93; 8:45 am]
BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 185

[OPP–260053A; FRL–4645–4]

RIN No. 2070–AB78

Reinstatement of Food Additive Regulations for Benomyl, Mancozeb, Phosmet, and Trifluralin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reinstatement of Regulations.

SUMMARY: On July 14, 1993, EPA published in the **Federal Register** a final rule revoking certain food additive regulations (58 FR 37862). Consistent with its statement in the final rule, EPA decided to stay the revocations only for such time as would be necessary to rule on petitions requesting a further stay of the effectiveness of the final rule. EPA signed a stay document on August 27, 1993. However, due to an administrative error, the stay document was not published in the **Federal Register** as intended. By this document, EPA is implementing the August 27, 1993 stay action by reinstating the food additive regulations inadvertently removed from the Code of Federal Regulations. EPA is allowing 15 days for public comment on the petitions requesting a further stay of the final rule.

DATES: The effective date of this regulation is August 30, 1993. Any affected person may submit comments on the stay requests summarized in this document on or before October 1, 1993.

ADDRESSES: Comments, identified by the document control number, OPP-260053A, may be submitted to: the Public Response and Program Resources Branch, Field Operations Division (H7506C), Environmental Protection Agency, 401 M st., SW., Washington, DC 20460. In person, comments may be submitted to, and materials related to this document may be reviewed in, the Public Docket and Freedom of Information Section, Field Opeartions Division, Office of Pesticide Programs, Enviromental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, Telephone: 703-305-5805. The docket is open from 8 a.m. to 4:30 p.m., Monday through Friday, except for legal holidays. Certain information may be subject to section 10 to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Inquiries regarding these materials may be directed to the docket staff at the telephone number given above.

FOR FURTHER INFORMATION CONTACT: Lisa Engstrom, Special Review Branch

(H7508W), Special Review and Reregistration Division, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460; Office location and telephone number: 3rd Floor, Westfield Building, 2800 Jefferson Davis Hwy., Arlington, VA, Telephone: 703-308-8031.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 14, 1993 (58 FR 37862), EPA issued a final rule removing the food additive regulations for benomyl (raisins and processed tomato products), mancozeb (raisins, bran of wheat), phosmet (cottonseed oil), and trifluralin (spearmint oil, peppermint oil) based on the determination that these food additive regulations are inconsistent with the Delaney Clause as set forth in section 409(c)(3) of the Federal Food, Drug, Cosmetic Act (FFDCA) (21 U.S.C. 348(c)(3)). In that document EPA, pursuant to its discretionary authority, set an effective date of August 30, 1993, for the revocation of the food additive regulations affected by that document.

Any person adversely affected was given a 30-day opportunity to: (1) File written objections to the order; (2) file a written request for an evidentiary hearing on the objection; and (3) file a petition for a stay of the effective date of the order. EPA stated that if any petition for a stay were received, it would exercise its discretionary authority under section 409(e) of the FFDCA and stay the August 30, 1993 effective date of the order as to the particular food additive regulations for which the stay was sought for such time as is required to review and make a determination on the stay petition(s).

The National Agricultural Chemical Association (NACA) submitted objections and a petition to stay the effective date of the revocation of all of the food additive regulations affected by the final rule. EPA also received separate objections and petitions to stay the revocation of the benomyl (DuPont), mancozeb (DuPont and The Mancozeb Task Force), and trifluralin (DowElanco) food additive regulations. In addition, DuPont filed a request for a hearing on whether benomyl concentrates and induces cancer, and DowElanco filed a request for a hearing on whether trifluralin induces cancer.

Outlined below are summaries of the petitions to stay the effective date of the July 14, 1993 order that EPA received. Full copies of the stay requests may be viewed or ordered from the OPP Docket under the document control number OPP-260053A, subject to limitations of FIFRA section 10(g).

In sum, the bases for the requests are that the registrants of each pesticide and NACA will suffer irreparable harm if a stay is not granted, the registrants' and NACA's objections to the revocation of each tolerance are not frivolous and are being pursued in good faith, sound public policy supports granting a stay of the effective date of the revocations, and a delay will not affect public health or other public interests.

Specifically, NACA argues that, as discussed in its objections, staying the effective date of the final order revoking the tolerances is appropriate because the Order is so procedurally and substantively flawed, it anticipates that EPA will be required to "cure [the] defects by withdrawing the Order, and promulgating a new Order providing an appropriate opportunity for notice and comment." NACA and the registrants argue that the APA, the United States Constitution, and EPA regulations require EPA to issue a proposed rule revoking the tolerances and requesting comments on the revocations, and no previous publications satisfy this requirement. In addition, they argue that EPA should determine whether a pesticide concentrates in a processed ready to eat food and should publish regulations discussing the criteria for determining whether a pesticide induces cancer, before it makes the "induces cancer" determination. NACA and the registrants also raise issues particular to each tolerance and argue that each issue should be resolved before finding that a pesticide induces cancer. NACA and the registrants argue that these are legitimate and significant, legal and science issues and good public policy demands that these issues be resolved before the revocations can or should be made effective.

NACA and the registrants also contend that they, growers, processors, and the general public will suffer irreparable injury from the impact resulting from a revocation of the tolerances and from labeling each pesticide as a pesticide that "induces cancer." They argue that these revocations will result in "considerable confusion" in the marketplace and, as a result, will cause replacement of the affected pesticides for uses not necessarily identified in the revocation order. NACA and the registrants maintain that the end result will generally be the use of less effective and more highly toxic pesticides, an increase of pest resistance, and a cost increase for certain commodities. In addition, NACA and the registrants argue that because EPA has stated in public notices that use of the pesticides in question pose no more than a negligible risk, a delay resulting from a stay is not outweighed by any public health or other public interest.

In accordance with its statement in the final rule, on August 27, 1993, EPA signed a stay of the effective date of the revocations pending review of the stay requests. However, due to an administrative error, the stay document was not published in the **Federal Register** as intended. As a result, the food additive regulations were removed from the Code of Federal Regulations on August 30, 1993.

EPA by this document is implementing the stay action by reinstating the food additive regulations that were inadvertently removed on August 30, 1993. This action is based on EPA's discretionary authority under section 409(e) of the FFDCA to stay the effective date of a final order. These rules are reinstated only for such time as the stay of the July 14, 1993 order, which is granted herein, is in effect. Once EPA has completed its review of the stay requests, it will publish a document in the **Federal Register** announcing a decision on the requests. If EPA denies the stay requests pertaining to any of the affected regulations, the revocation of that regulation will become effective upon publication in the **Federal Register**.

Thus, EPA is publishing this document to implement the stay action by reinstating the food additive regulations that were inadvertently removed. Until otherwise acted upon by EPA, the Code of Federal Regulations text will continue to include the full text of the food additive regulations for benomyl (raisins and processed tomato products), mancozeb (raisins, bran of wheat), phosmet (cottonseed oil), and trifluralin (spearmint oil, peppermint oil).

List of Subjects in 40 CFR Part 185

Environmental protection, Administrative practice and procedure, Food additives, Pesticides and pests, Reporting and recordkeeping requirments.

Dated: September 13, 1993.

Victor J. Kimm,

Acting Assitant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 185 is amended as follows:

PART 185—[AMENDED]

1. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

2. By reinstating §§ 185.350, 185.3950, and 185.5900, as follows:

§ 185.2500 Benomyl.

Tolerances of 50 parts per million are established for combined residues of the fungicide benomyl (methyl-1-(butylcarbamoyl)-2-benzimidazolecarbamate) and its metabolites containing the benzimidazole moiety (calculated as benomyl) in raisins and concentrated tomato products when present therein as a result of application of the fungicide to growing grapes and tomatoes.

§ 185.3950 N-(Mercaptomethyl)phthalimide S-(O,O-dimethyl phosphorodithioate) and its oxygen analog.

Tolerances are established for residues of the insecticide *N*-(mercaptomethyl)phthalimide *S*-(*O,O*-dimethyl phosphorodithioate) and its oxygen analog *N*-(mercaptomethyl)phthalimide *S*-(*O,O*-dimethyl phosphorothioate) in the following processed food when present therein as a result of application of the insecticide to growing cotton.

Food	Parts per million
Cottonseed oil	0.2

§ 185.5900 Trifluralin.

Tolerances are established for residues of the herbicide trifluralin in or on peppermint oil and spearmint oil at 2 parts per million when present therein as a result of application of the herbicide to the growing crops.

§ 185.6300 [Amended]

3. Section 185.6300 *Zinc ion and maneb coordination product* is amended to reinstate at the end of the section the first entry for raisins, "28 parts per million in raisins" and to reinstate the phrase ", and wheat" in the second entry for bran, "20 parts per million in the bran of barley, oats, rye, and wheat."

[FR Doc. 93-22754 Filed 9-14-93; 3:48 pm]

BILLING CODE [illegible]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6995

[OR-943-4210-06; GP3-243; OR-19014, OR-19113, OR-19115]

Partial Revocation of the Executive Orders Dated December 12, 1917, and Secretarial Order Dated December 12, 1917; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes two Executive orders and one Secretarial order insofar as they affect 240 acres of Revested Oregon and California Railroad Grant Lands withdrawn for the Bureau of Land Management's Powersite Reserve Nos. 659 and 661, and Waterpower Designation No. 14. This action will open 240 acres to such forms of disposition as may by law be made of Revested Oregon and California Railroad Grant Lands. The revocation and opening are needed to permit a land exchange. The lands have been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208-2965, 503-280-7162.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Executive Order dated December 12, 1917, which established Powersite Reserve No. 659, is hereby revoked insofar as it affects the following described land:

Willamette Meridian

T. 17 S., R. 8W.,
Sec. 9, NW¼NE¼.

The area described contains 40 acres in Lane County.

2. The Executive Order dated December 12, 1917, which established Powersite Reserve No. 661, is hereby revoked insofar as it affects the following described land:

Willamette Meridian

T. 8 S., R. 6 W.,
Sec. 17, NW¼NE¼ and NW¼.

The area described contains 200 acres in Polk County.

3. The Secretarial Order dated December 12, 1917, which established Waterpower Designation No. 14, is hereby revoked insofar as it affects the following described lands:

Willamette Meridian

T. 8 S., R. 6 W.,
Sec. 17, NW¼NE¼ and NW¼.
T. 17 S., R. 8 W.,
Sec. 9, NW¼NE¼.

The areas described aggregate 240 acres in Lane and Polk Counties.

4. At 8:30 a.m. on October 18, 1993, the lands described above will be opened to such forms of disposition as may be law be made of Revested Oregon and California Railroad Grant Lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m. on October 18, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: August 30, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93-22590 Filed 9-15-93; 8:45 am]

BILLING CODE 4310-33-M

43 CFR Public Land Order 6996

[AK-932-4210-06; AA-17965]

Partial Revocation of Executive Order No. 4257, Dated June 27, 1925; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive Order insofar as it affects approximately 78 acres of public land withdrawn for use by the Coast Guard, Department of Transportation, for the Mountain Point Lighthouse. The land is no longer needed for the purpose for which it was withdrawn. This action also opens the land for selection by the State of Alaska, if such land is otherwise available. If not selected by the State, the land will be subject to Public Land Order No. 5180, as amended.

EFFECTIVE DATE: September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1988), it is ordered as follows:

1. Executive Order No. 4257, dated June 27, 1925, which withdrew lands for lighthouse purposes, is hereby revoked insofar as it affects the following described land:

Copper River Meridian

Located within T. 59 S., R. 79 E., described as Tracts A and B of U.S. Survey No. 1722, excluding the following parcel:

Beginning at a point on low water line of Wrangell Narrows, approximately 300 feet southerly from the center of Mountain Point Beacon, at approximate

Latitude 56°44.3' N., Longitude 132°57.3' W;

Thence West, 300 feet;

Thence North, approximately 600 feet to an intersection with the low water line of Wrangell Narrows;

Thence southeasterly and southerly along the low water line of Wrangell Narrows to the point of beginning. This parcel contains approximately 2 acres.

The area described contains approximately 78 acres.

2. Subject to valid existing rights, the land described above is hereby opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988) or section 906(b) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(b) (1988).

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the land described above, for a period of ninety-one (91) days from the date of publication of this order, if such land is otherwise available. Any of the land described herein that is not selected by the State of Alaska will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

4. At 10 a.m. on December 16, 1993, the land described above will be opened to location and entry under the United States mining laws for metalliferous minerals, pursuant to the terms of 30 U.S.C. 49(a) (1988), subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable laws. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: August 20, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93-22641 Filed 9-15-93; 8:45 am]

BILLING CODE 4310-JA-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[PR Docket 91-2; FCC 93-412]

Private Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Private Radio Bureau has adopted a Memorandum Opinion and Order in response to a Petition for Reconsideration filed by Larry M. Warner on behalf of John Calvin Kemmer, inter vivos trust. Warner's petition requests that Kemmer's IVDS applications, all of which were submitted to the Commission late for the filing windows concerned, be accepted *nunc pro tunc* for consideration. This action denies the petition of Warner and, in the interest of administrative efficiency, also variously denies and dismisses other Petitions for Reconsideration of certain IVDS-related staff decisions that do not arise from the GEN Docket 91-2 proceeding.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Marc S. Martin, (202) 632-7175, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Private Radio Bureau's Memorandum, Opinion and Order, FCC 93-412, adopted August 20, 1993; and released September 3, 1993. The full text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street, NW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, 1919 M Street, room 246, Washington, DC 20554, telephone (202) 857-3800.

Summary of Memorandum Opinion and Order

1. On January 16, 1992, the Commission adopted a Report and Order, 57 FR 8272 March 9, 1992 (Report), in this proceeding that, among other things, established a frequency allocation and service rules for IVDS. The purpose of the Report was to make available an allocation of radio spectrum that licensees could use to provide a variety of radio-based interactive services to the public. In response to six petitions which requested reconsideration of certain aspects of the Report, a Memorandum Opinion and Order, 57 FR 36372 (MO&O), variously granted and dismissed those requests. Following the adoption of the MO&O, two Petitions for Reconsideration and two requests for clarifications were filed concerning decisions taken in GEN Docket No. 91-2. The Second Memorandum Opinion and Order (2d MO&O), adopted April 13, 1993, 58 Fed. Reg. 25951 April 29, 1993, among other things, granted the request for clarification filed by the law firm of Keller and Heckman and ordered a minor change in the IVDS rules to clarify that trusts are eligible for IVDS station licenses.

2. In denying the petition of Warner, the Commission noted that the petition did not specify the decision contained in the 2nd MO&O for which petition was filed. Because the petition concerns a trust that filed IVDS applications for several markets, it did not appear that Warner contested the decision in the 2nd MO&O that clarified that trusts are eligible entities for IVDS licenses. In addition, the petition did not request reconsideration of the decision to not re-open the previously closed IVDS filing windows. Rather, the petition appeared to be merely one of several mechanisms employed by Warner to have Kemmer's late-filed IVDS applications accepted despite the fact that they were not timely filed.

3. The Warner petition did not proffer any supportive reasoning that suggested why Kemmer's late-filed IVDS applications should be accepted. The Commission noted that the mere fact that its rules were amended to clarify that trust applications may be filed is not a basis for accepting untimely trust applications for previously closed windows. In addition, the Commission noted that Kemmer chose not to file during the three previous IVDS filing windows as a trust or in any other capacity. Further, prior to filing the petition, neither Warner nor Kemmer chose to address the issue of the eligibility of trusts as parties to the GEN Docket 91-2 proceeding. Accordingly, the Commission denied the Warner petition. In the interest of administrative efficiency, the Commission also variously denied and dismissed certain Petitions for Reconsideration of certain staff decisions that did not arise from the GEN Docket 91-2 proceeding.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93-22600 Filed 9-15-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

[PR Docket No. 91-36; FCC 93-410]

Federal Preemption of State and Local Laws Concerning Amateur Operator Use of Transceivers Capable of Reception Beyond the Amateur Service Frequency Allocations

AGENCY: Federal Communications Commission.

ACTION: Declaratory ruling.

SUMMARY: The Commission has adopted a declaratory ruling that states that

certain local and state laws are preempted by federal law where such laws prohibit the mere possession of certain amateur service transceivers that are capable of receiving frequencies assigned by the Commission for, among other things, police use. This action is necessary to prevent overly broad scanner laws from frustrating the federal goals of facilitating and encouraging amateur service activities. This action only protects the legitimate operations of amateur licensees and does not apply to narrowly tailored state and local laws that prohibit the use of such radios for criminal purposes, such as the flight from law enforcement.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Marc S. Martin, (202) 632–7175, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Declaratory Ruling, FCC 93–410, adopted August 20, 1993; and released September 3, 1993. The full text of this Declaratory Ruling is available for inspection and copying during normal business hours in the FCC Reference Center, room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, 1919 M Street, room 246, Washington, DC. 20554, telephone (202) 857–3800.

Summary of Declaratory Ruling

1. In this proceeding, the American Radio Relay League (ARRL) filed a petition for a declaratory ruling requesting that the Commission preempt certain state and local laws that prohibit the possession of transceivers that have the capability of, among other things, receiving police radio frequencies (hereafter "scanner laws"). In its petition, ARRL makes two arguments in support of preemption. First, it states that amateur service transceivers typically allow for incidental reception of adjacent frequencies in order to, among other things, ensure the adequate reception of the entire amateur radio service band. Second, ARRL contends that amateur operators have special needs for out-of-band reception, and that the marketplace has long recognized this by offering transceivers that accommodate these needs. Therefore, according to ARRL, such scanner laws have the potential to frustrate the legitimate uses of amateur radio stations by licensed operators. The vast majority of comments and reply comments in this proceeding were in favor of the subject ARRL petition.

2. The Commission noted that there are approximately 600,000 amateur stations in the United States, many of which are used in mobile operations. Therefore, the Commission agreed with ARRL that while such scanner laws are not directed specifically at amateur operators, their effect is to prevent such licensees from using their equipment for authorized amateur transmissions and reception on amateur frequencies. Therefore, the Commission stated that such scanner laws are preempted by federal law. The Commission's preemption decision only protects the legitimate operations of amateur licensees and does not apply to narrowly tailored state and local laws that prohibit the use of such radios for criminal purposes, such as the flight from law enforcement.

List of Subjects in 47 CFR Part 97

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–22599 Filed 9–15–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS–100; Amdt. 192–69]

RIN AB–49

Gas Detection and Monitoring in Compressor Station Buildings

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule requires that each compressor building in a gas pipeline compressor station have a fixed gas detection and alarm system by September 16, 1996, unless the building has at least 50 percent of its upright side area permanently open, or is in an unattended field compressor station of 1,000 horsepower or less. The history of reported incidents at compressor stations shows a potential for leaking gas to accumulate undetected inside compressor buildings. The purpose of the gas detection and alarm systems is to detect mixtures of gas in air and warn persons before a mixture reaches the flammable range.

EFFECTIVE DATE: This amendment takes effect October 18, 1993.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 366–2392, regarding changes to safety standards, or the Dockets Unit, (202) 366–4453, for copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1982, a compressor engine in a compressor station operated by the Trunkline Gas Company in Bonicord, Tennessee began leaking natural gas. The gas accumulated and exploded in the building that housed the compressor. Three workers in the building were killed, two others were injured, and the building was severely damaged.

The National Transportation Safety Board (NTSB) investigated the accident. In its report of the investigation, issued July 14, 1983, NTSB concluded that the building's ventilation system, which had adjustable vent louvers, had been set in a position that allowed leaking gas to accumulate in the building. Also, NTSB found that the operator had not equipped the building with a gas detection and alarm system, although it had scheduled one for installation. After the investigation, NTSB made the following Safety Recommendation to RSPA:

> Amend 49 CFR 192.173, regarding compressor station building ventilation systems equipped with restrictive devices, to require the installation of gas detection equipment that will alert employees to hazardous gas accumulations and automatically open fully all restrictive devices when accumulations of gas are detected. (Class II, Priority Action) (P–83–20)

As a result of the NTSB recommendation, RSPA considered the need for safety regulations governing fixed gas detection and alarm systems in compressor buildings. We reviewed reports of incidents at compressor stations that operators had submitted under 49 CFR part 191. A significant number of these incidents appeared to involve gas leakage inside compressor buildings. Based on this finding and the Bonicord accident, we concluded that the history of incidents involving compressor buildings showed a potential for harm to pipeline workers that safety regulations could reduce.

We published an Advance Notice of Proposed Rulemaking (ANPRM) (53 FR 10906, April 4, 1988) concerning the problem of leaking gas accumulating in compressor buildings. We sought comments on alternatives to reduce the potential for personal injury and property damage. NTSB's recommendation was among these alternatives.

Thirty-six persons submitted comments on the ANPRM. More than 75

percent of these commenters supported the first alternative in the ANPRM. This alternative was to require operators to install gas detection and alarm systems in compressor buildings. Our analysis of the comments and the alternatives in the ANPRM also supported the first alternative. We decided, therefore, that fixed gas detection and alarm systems would provide the most practical and effective means to reduce the potential for harm from leaking gas accumulating in compressor buildings.

Following publication of the ANPRM, we published a notice of proposed rulemaking (NPRM) (55 FR 30724, July 27, 1990) regarding fixed gas detection and monitoring in compressor buildings. We proposed to establish a new gas pipeline safety standard, § 192.736, "Compressor stations: Gas detection." This new standard would require operators to install a gas detection and alarm system in each compressor building that has 50 percent or more of its wall area enclosed. The system would have to be designed to warn persons entering or in the building of any hazardous accumulation of gas in the building. Also, under the proposed standard, operators would have to maintain the system to function properly and periodically test its performance.

Comments on NPRM

We received letters from 23 persons commenting on the NPRM. The distribution of these commenters is as follows:

State agency	1
Federal agency	2
Standards organization	1
Testing laboratory	1
Pipeline trade association	2
Pipeline operator	16

General comments. The majority of commenters either supported the proposed rule or did not protest it. A minority, however, saw no need to change the current rules, but did not oppose the concept of the proposal. These commenters said a single accident provides an insufficient basis for rulemaking. They also said the current part 192 rules are adequate because they allow operators flexibility to decide the best method for safe operations.

We do not find the arguments against rulemaking persuasive. The Bonicord accident was merely the first to call public attention to the need for fixed gas detection and alarm systems at compressor buildings. The RSPA record of gas pipeline accidents is replete with reported accidents involving fires and explosions at compressor stations. Viewed together, these accidents show a significant potential for harm that compliance with the final rule can diminish.

As for the adequacy of current rules, we reported in the NPRM that more than 75 percent of the comments on the ANPRM supported the installation of gas detection and alarm systems for safety. Yet, the record of this proceeding shows that up to 20 percent of gas pipeline compressor buildings do not have such systems in place. We believe this statistic confirms that the current part 192 rules are not adequate to ensure safe operation of compressor buildings.

Adjustable vents. NTSB, one of the two Federal agencies that commented on the NPRM, stated that the proposed rule was deficient because it did not address adjustable vents. NTSB essentially repeated its recommendation set forth above. It said that in compressor buildings with adjustable vents, gas detection and alarm systems should open the vents fully when sensors detect a hazardous accumulation of gas. According to NTSB, this opening would prevent small amounts of gas from accumulating to an explosive mixture. Regarding our concern (expressed in both the ANPRM and NPRM) that automatic vent opening would interfere with fire suppressants, NTSB said there would not be any interference if, after opening, the vents shut when the fire suppression system starts.

As we stated in the NPRM, the comments we received on the ANPRM suggested that operators commonly do not install gas detection and alarm systems that automatically open vent louvers upon detection of a significant accumulation of gas. Some commenters considered such systems impractical and unreliable. Others said the automatic ventilation feature is not easy to install. It requires a separate power line unaffected by the emergency shutdown system, and explosion-proof electrical equipment to guard against accidental ignition.

We also pointed out in the NPRM that the comments on the ANPRM supported our reservations about the automatic-venting aspect of NTSB's recommendation. Our primary concern was that automatic, fully open, rapid ventilation could hinder the use of the most efficient or effective fire suppression systems (e.g., Halon, CO_2) in compressor buildings. These systems operate best in enclosed environments. Another concern was that the benefit of an automatic system would be limited to small leaks, since large leaks could overcome the venting capacity. In view of the added installation costs of the systems, their potentially adverse effect on fire suppressants, the lack of use history data, and their limited usefulness, this final rule does not require that operators install automatic venting systems.

Alarm setting. Two pipeline operators commented that the words, "hazardous accumulations of gas," in proposed § 192.736(a) were too vague or indefinite. They suggested the rule require monitoring for the presence of gas in air at concentrations not exceeding 25 percent of the lower explosive limit (LEL) of the gas. Upon further consideration, we agree that the proposed language is not specific enough to assure that alarms will be set to warn persons of accumulating gas well before it becomes a flammable mixture. Twenty-five percent of LEL is widely used as a maximum setting to actuate alarms for this purpose. For example, under 49 CFR 193.2819, this setting applies to alarms connected to gas detection systems at liquefied natural gas (LNG) plants. In addition, almost all operators who reported installing gas detection systems said they link them to alarms that actuate at 15 to 30 percent of the LEL of natural gas, and then to emergency shutdown devices that actuate at 50 to 75 percent of LEL. Given this common practice in the industry and the existing RSPA rule for LNG plants, we believe that adopting the commenters' suggested change would be in the interest of safety. We also believe existing settings that are above 25 percent of LEL can be adjusted readily to the new level. Therefore, the final rule requires that alarms be set to actuate at concentrations of gas in air of not more than 25 percent of LEL.

Building design. The New York Public Service Commission (NYPSC) suggested that we designate the final rule as § 192.171(f) instead of § 192.736 as proposed. This change would put the final rule among the requirements in part 192 governing the design of compressor stations. We did not adopt this comment because the final rule governs the monitoring of compressor buildings, not their design.

Detailed specifications. The Minerals Management Service (MMS) of the United States Department of the Interior thought the language of the proposed rule was too general to be effective. MMS suggested we adopt the standards in 30 CFR 250.123(b)(9) instead. These standards apply to gas and fire detection systems on offshore production platforms. They are more specific than § 192.736 regarding the types of gas detection systems that may be used and where sensors must be placed. Nevertheless, the available pipeline

safety data do not suggest that the type and placement of gas systems in compressor buildings are matters in need of more detailed RSPA safety requirements.

Furthermore, a careful comparison shows that the MMS standards contain exceptions that are not in § 192.736. In particular, the MMS standards require gas detection systems only in areas that are inadequately ventilated, while § 192.736 requires gas detection and alarm systems without regard to the adequacy of ventilation in a building. Also, unlike § 192.736, the MMS standards allow gas odorant to serve as an alternative to gas detection and alarm systems in continuously staffed areas. Section 192.736 requires gas detection and alarm systems in buildings handling odorized gas to warn personnel of accumulating gas before they enter the building. We believe the record of this proceeding shows that these exceptions in the MMS standards are not appropriate for compressor buildings covered by § 192.736. Therefore, we did not adopt the MMS comment.

. *Downtime.* One pipeline operator suggested the words, "continuously monitored," in proposed § 192.736(a) should be deleted to permit periodic system replacements or repairs. We did not intend to disallow these functions. Nor did we intend for operators to install redundant systems so that monitoring might continue during the downtime for maintenance. The final rule excepts the time necessary for maintenance.

Frequency of system tests. In the NPRM, we proposed to require that operators maintain their gas detection and alarm systems to function properly (proposed § 192.736(b)). We also proposed to emphasize in the rule that operators must include performance tests as part of that maintenance. Although we did not propose a specific frequency of testing, we sought comments on whether the final rule should set a minimum frequency. This issue drew the most comments of all the issues commenters raised about the NPRM. Most commenters suggested minimum testing frequencies, ranging from weekly to annually. They especially preferred the latter frequency, because it is the minimum frequency at which operators must test remote control shutdown devices installed in compressor stations (§ 192.731(c)). In contrast, a few pipeline operators and a trade association thought the proposed maintenance rule was broad enough to require testing without including it in the language of the rule. These commenters essentially argued that maintenance would not be adequate to assure a properly functioning system unless it included periodic performance tests. One operator and a trade association urged us to allow operators to decide the appropriate test intervals for their systems. They said operators need this discretion because instruments and devices are not alike in all systems and operating conditions vary among stations.

We agree that operators should have discretion in deciding how frequently to test their systems. Gas detection and alarm systems and operating conditions vary. A uniform minimum test frequency may not be suitable for every operator's system. In addition, the available safety data do not suggest that testing frequencies now in use are inadequate.

We also agree with those commenters who said that periodic performance tests are essential to an adequate maintenance program for fixed gas detection and alarm systems. Because testing is essential but is not conventionally included within the concept of maintenance, we believe the final rule should explicitly require testing. Thus, we have adopted the final rule as proposed in regard to testing.

The New York Public Service Commission recommended that we establish a weekly inspection interval for gas detection and alarm systems. We do not believe a uniform, periodic inspection interval is appropriate for the same reasons we did not adopt a uniform testing frequency.

Hazardous liquid pipelines. NTSB also thought the NPRM was deficient because we did not propose to establish a rule in 49 CFR part 195 for hazardous liquid pipelines that would be comparable to proposed § 192.736. In the ANPRM we said, "The Department's safety standards for hazardous liquid pipelines require that pump station buildings (which present risks similar to those presented by gas compressor station buildings) be constructed to include both ventilation and devices warning occupants of the presence of hazardous vapors (49 CFR 195.262(a))." (See 53 FR 10906.) We realize that, unlike § 192.736, the rule in § 195.262(a) does not apply to buildings in existence when the rule took effect, but the two rules are comparable. As part of our continuing effort to make parts 192 and 195 consistent where appropriate, we will examine the need to apply § 195.262(a) to all pump station buildings.

Lead time for compliance. In the NPRM, we proposed to allow operators 2 years after publication of a final rule to install gas detection and alarm systems. Operators could use this time for planning and to obtain equipment, electrical contractors, and, where necessary, a power line.

Several pipeline operators and a trade association said that 2 years was not enough time to complete the work. Some operators have many old stations in which to install systems. These commenters also argued that 2 years would not permit orderly budgeting and scheduling of work.

Commenters suggested alternatives of 3 and 5 years as a reasonable period to fulfill the installation requirements of the final rule. In view of the comments, we believe that 3 years is a more appropriate period for achieving compliance than 2 years. Therefore, the final rule requires operators to have their gas detection and alarm systems operational not later than 3 years from today.

Processing plants. A pipeline operator asked us to clarify that the term "compressor building" does not include buildings that house compressors in gas processing plants. The compressor buildings to which the proposed rule applies are those in gas compressor stations used in the transportation of gas by pipeline. These are the same compressor stations that the current part 192 rules cover under §§ 192.729 through 192.735. Such compressor stations are normally not found in gas processing plants. For clarity, the final rule refers to compressor buildings in compressor stations.

Unattended field compressor stations of 1,000 horsepower or less. About half the industry commenters suggested we except unattended field compressor stations of 1,000 horsepower or less from the final rule. These stations typically are temporary installations in rural areas. They are designed to operate without the attendance of personnel. Operators may move the station several times over the life of the compressor, which usually is mounted on skids for that purpose. Upon each move, operators construct a new building to house the compressor. The areas in which operators use these stations usually have no electricity available from a public utility to power a gas detection and alarm system. The commenters argued that under these conditions it is not practical to install fixed gas detection and alarm systems in the buildings.

The commenters also argued that because the stations are not attended during normal operation, there is limited risk to personnel. To support this position, they noted that under § 192.167(a), unattended field compressor stations of 1,000

horsepower or less are not required to have emergency shutdown systems. They said that personnel are aware of the potential for hazardous accumulations of gas in field compressor buildings and use portable gas detectors. One commenter recommended we require additional ventilation in the buildings instead of fixed gas detection and alarm systems.

In light of these comments, we have reexamined the need to require operators to provide additional protection against the threat of hazardous accumulations of gas in unattended field compressor stations of 1000 horsepower or less. Based on the comments in this proceeding and the experience of our field enforcement staff, we believe the potential risk to personnel is less at these stations than at the larger permanent ones. The buildings are smaller and provide fewer places for any leaking gas to accumulate, making ventilation and the use of hand-held gas detectors more effective. The fact that personnel are not routinely present at these small stations also reduces the potential for harm.

We have also looked at whether the proposed rule is appropriate for the small field stations. Because operators would have to install a fixed system each time they move such a station, the cost of compliance would be out of proportion to the size of the station. If electricity is not available from a local utility, which the commenters suggest is often the case, operators would have to use power from other sources to run the systems. These alternative sources are not practical at remote unattended field locations, because no one is routinely present to maintain a gas generator, batteries need recharging often, and solar energy is suitable only in sunny regions.

We conclude, therefore, that for the small field stations, the proposed rule is unnecessary. Thus, the final rule excepts unattended field compressor stations of 1,000 horsepower or less.

Wall area. A pipeline operator questioned the significance of applying the proposed rule only to buildings with 50 percent or more of their wall area enclosed. This commenter said gas accumulation is more dependent upon a building's shape or ventilation than the percentage of wall area enclosed. The commenter suggested we apply the proposed rule to any building in which a hazardous accumulation of gas could occur.

Our decision to limit the proposed rule to buildings with 50 percent or more of wall area enclosed was based on the common practice in the industry regarding the installation of gas monitoring systems in compressor buildings. In response to the ANPRM, the Interstate Natural Gas Association of America (INGAA) polled its members and found that they commonly do not install gas detection and alarm systems in semi-enclosed buildings. INGAA defined these buildings as buildings with an enclosed wall area that is less than 50 percent of the total wall area. In such semi-enclosed buildings, natural ventilation minimizes the concern about hazardous accumulations of leaking gas.

Restating this aspect of the final rule in performance terms, as the commenter suggested, would not adequately accomplish the objective of the proposed rule. The science of determining whether leaking gas could accumulate to a hazardous level in a building, considering its shape and ventilation system, is problematic. Thus, with performance language, we could have great difficulty confirming or challenging an operator's decision not to install a gas detection and alarm system. Also, an incorrect decision by the operator could expose personnel and property to an unexpected, unnecessary risk. Thus, the final rule continues the specification approach used in the NPRM.

Because of possible confusion over the meaning of "wall area enclosed," we have revised the language of the final rule to exclude any building constructed so that "at least 50 percent of its upright side area is permanently open." Under this revised language, if a rectangular-shaped building has only three outside walls, the side without a wall is still part of the building's upright side area. Vertical windows and doors are part of upright side area. But, if they can be closed, they would not qualify as permanently open area, even if normally left open. The roof of a lean-to is not upright side area. We believe this new language is a clearer statement of what we intended the 50-percent test to cover in the proposed rule.

Advisory Committee Review

We presented the NPRM for consideration by the Technical Pipeline Safety Standards Committee (TPSSC) at a meeting in Washington, DC on February 20, 1991. The TPSSC is RSPA's statutory advisory committee for gas pipeline safety. It comprises 15 members, representing industry, government, and the public, who are technically qualified to evaluate gas pipeline safety. The TPSSC's report on the NPRM is available in the docket of this proceeding.

The TPSSC voted unanimously to find the proposed rule technically feasible, reasonable, and practicable on condition that (1) the final rule excepts unattended field compressor stations of 1,000 horsepower or less; and (2) if the final rule prescribes a test frequency, it is the frequency at which remote control shutdown devices must be tested under § 192.731(c). The TPSSC's rationale for these conditions resembled the views of commenters who argued for similar changes to the proposed rule, as discussed above. The final rule meets both conditions; it excepts the small field stations and does not prescribe a frequency for performance testing.

Rulemaking Analyses

E. O. 12291 and DOT Regulatory Policies and Procedures. Operators have installed gas detection and alarm systems in a large number of compressor buildings during construction. In addition, many operators are retrofitting their remaining compressor buildings with such systems. The American Gas Association (AGA) estimated that operators have equipped 80 percent of their compressor buildings with gas detection and alarm systems. Retrofitting the remaining 20 percent would cost between $6 and 12 million, AGA said. INGAA's retrofitting estimate also fell in this range.

The actual cost of complying with the final rule should be less than these industry estimates. The estimates were based on the NPRM and do not reflect exclusion from this final rule of unattended field compressor stations of 1,000 horsepower or less. Also, since many operators are already retrofitting their compressor buildings, the cost they would have incurred to do so over the next 3 years in the absence of the final rule cannot fairly be attributed to the final rule. Unfortunately, our data do not allow us to estimate the amount of either of these cost reductions.

Compared with the work already done or planned, the effort needed to install gas detection and alarm systems in the remaining compressor buildings to which the final rule applies is not large. We believe the potential threat to personnel warrants the additional expenditure. Preventing only one compressor station accident involving deaths, injuries, and serious property damage could result in savings greater than the cost of retrofitting the remaining buildings. For instance, one recent compressor station incident resulted in property damage of $4,000,000. Although leaking natural gas was not a factor in that incident, the high property damage is indicative of the value of compressor station property. Had the incident involved several deaths and injuries, total damages would have been far greater.

Therefore, this final rule is not major under Executive Order 12291 (46 FR 13193, February 19, 1981). Also, it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

Regulatory Flexibility Act. Small entities that operate gas pipeline systems almost always receive gas from their suppliers in a state ready for further transportation without additional compression. Consequently, small entities are unlikely to have compressor buildings that are subject to the final rule. Therefore, I certify under section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this final rule will not have a significant economic impact on a substantial number of small entities.

E. O. 12612. We have analyzed this final rule under the criteria of Executive Order 12612 (52 FR 41685, October 30, 1987). We find it does not warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 192

Alarms, Compressors, Gas detectors, Pipeline safety.

For the reasons set forth above, RSPA hereby amends 49 CFR part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. Section 192.736 is added to read as follows:

§ 192.736 Compressor stations: Gas detection.

(a) Not later than September 16, 1996, each compressor building in a compressor station must have a fixed gas detection and alarm system, unless the building is—

(1) Constructed so that at least 50 percent of its upright side area is permanently open; or

(2) Located in an unattended field compressor station of 1,000 horsepower or less.

(b) Except when shutdown of the system is necessary for maintenance under paragraph (c) of this section, each gas detection and alarm system required by this section must—

(1) Continuously monitor the compressor building for a concentration of gas in air of not more than 25 percent of the lower explosive limit; and

(2) If that concentration of gas is detected, warn persons about to enter the building and persons inside the building of the danger.

(c) Each gas detection and alarm system required by this section must be maintained to function properly. The maintenance must include performance tests.

Issued in Washington, DC, on September 10, 1993.

Rose A. McMurray,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 93–22552 Filed 9–15–93; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 081993B]

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure of the Harpoon category fishery.

SUMMARY: NMFS closes the fishery for Atlantic bluefin tuna conducted by vessels permitted in the Harpoon category and fishing for large medium and giant Atlantic bluefin tuna. Closure of this segment of the fishery is necessary because it has been determined that the annual quota for this category has been attained.

EFFECTIVE DATE: The closure is effective from 0001 hours local time on September 18, 1993, through December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Kevin B. Foster at 508–281–9260, or Aaron E. King at 301–713–2347.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971–971h) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction appear at 50 CFR part 285.

Section 285.22(b) of the regulations provides for an annual quota of 53 metric tons (mt) of large medium and giant Atlantic bluefin tuna to be harvested from the Regulatory Area by vessels permitted in the Harpoon category. In addition, on August 25, 1993, (58 FR 44776), pursuant to authority under § 285.22(f), 7 mt from the reserve was transferred to the Harpoon category for economic and biological data collection purposes. The Assistant Administrator for Fisheries, NOAA (AA) is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The AA is further authorized under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the category of gear subject to the quotas.

Based on landings reports, the AA has determined that the quota of Atlantic bluefin tuna allocated for the Harpoon category will be attained as of September 17, 1993. Fishing for, catching, possessing or landing large medium and giant Atlantic bluefin tuna by vessels in the Harpoon category must cease at 0001 hours September 18, 1993.

Classification

This action is taken under the authority of 50 CFR 285.20, and is taken in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

16 U.S.C. 971 *et seq.*

Dated: September 10, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–22619 Filed 9–10–93; 4:48 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 58, No. 178
Thursday, September 16, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1786

Discounted Prepayments on REA Electric Loans

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to allow electric borrowers to prepay their REA notes at a discounted present value. The new subpart establishes policies and procedures to implement the provisions of the Rural Electrification Administration Improvement Act of 1992, and will provide application guidelines to REA borrowers who wish to prepay REA loans at a discounted present value.

DATES: Comments concerning this proposed rule must be received by REA or bear a postmark or its equivalent no later than October 18, 1993.

ADDRESSES: Submit written comments to William E. Davis, Director, Program Support Staff, U.S. Department of Agriculture, Rural Electrification Administration, room 2234-S, 14th and Independence Avenue, SW., Washington, DC 20250–1500. REA requests an original and three copies of all comments (7 CFR part 1700). All comments received will be made available for inspection at room 2234-S (address as above) between 8:30 a.m. and 5 p.m. (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Patrick Shea, Financial Analyst, Program Support Staff, at the address listed above, telephone number (202) 720–0736.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this proposed rule:

(1) Will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule;

(2) Will not have any retroactive effect; and

(3) Will not require administrative proceedings before any parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

This action does not fall within the scope of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of that Act, a portion of the information collection and recordkeeping requirements contained in this proposed rule have been approved by OMB under control number 0572–0088. The uncleared portion of the information collection requirements have been submitted to OMB for review. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, NEOB, Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA loans from coverage under this Order.

Background

REA is proposing to add a new subpart F to part 1786 to implement Public Law 102–428 cited as the Rural Electrification Administration Improvement Act of 1992. Section 2 of Public Law 102–428 amended Section 306B of the Rural Electrification Act of 1936 (RE Act)(7 U.S.C. 901 *et seq.*) to enable a borrower of REA electric loans to prepay its REA direct and insured loans at the lesser of: (A) The outstanding principal balance of the loan or; (B) the present value of the loan discounted from the face value of each payment at maturity at the rate established by the Administrator. The discount rate applicable to the prepayment of a loan shall be the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to the remaining term of the loan. Before this new legislation was enacted a direct or insured loan made under the Act could not be sold or prepaid at a value that was less than the outstanding principal balance on the loan.

A prior law (Pub. L. 99–509) allowed for a prepayment of REA electric and telephone loans at a discounted present value, but that prepayment had to take place prior to October 1, 1987. Only twenty-nine REA electric borrowers took advantage of that prepayment law. Later, another amendment (Pub. L. 101–624) was passed allowing borrowers that had merged with one of the twenty-nine previous borrowers of electric loans who had prepaid, to prepay at a discounted present value. This prepayment had to take place within one year of the merger. This new law (Pub. L. 102–428) is less restrictive than the prior laws and does not have any

deadline or expiration date. The regulations implementing the prior prepayment programs required that borrowers prepay all of their outstanding REA debt obligations and agree not to apply for any additional REA financial assistance, unless they first repaid the amount of the discount, plus interest.

Public Law 102–428 allows borrowers who prepay at a discount to remain eligible for REA financial assistance, other than direct or insured loans, including rural development loans and grants and loan guarantees. Borrowers may prepay at a discount all, or a portion of, outstanding REA debt provided the loan funds were advanced prior to May 1, 1992, or have been advanced for not less than two years. Borrowers may apply for direct or insured loans 120 months after the date of the most recent prepayment. During the 120-month period, the Administrator may consider providing such a loan if: (1) The loan is necessary to assure repayment of, or to protect, the security for any outstanding Government direct loans, insured loans, or loan guarantees (as defined herein, such direct loans, insured loans, and loan guarantees are those made by the United States, acting through the Administrator, pursuant to Sections 4, 305, and 306 of the RE Act, and thus do not include loans and loan guarantees made pursuant to other authority—e.g., the Farm Credit Act); or (2) the borrower's system has suffered severe physical plant related damage due to conditions beyond its control and the borrower is unable to obtain financing to restore the system from non-REA sources (including the Federal Emergency Management Agency) and is unable to borrow from private sources. This new law also allows those borrowers who prepaid under the prior laws to remain eligible for financial assistance under the RE Act in the same manner as other borrowers who may take advantage of this new law, subject to certain conditions. The most important of these requires that those borrowers who prepaid at a discount based on the average rate on utility bonds bearing a rating of "Aa" as set forth in Moody's Public Utility News Reports pay the difference between that discount and the amount of discount that would have been allowed using the discount rate specified in this regulation which is based on the cost of funds to the U.S. Treasury at the time of prior prepayment plus interest on said difference from the date of that prepayment.

Finally, this regulation sets out the procedure for borrowers who wish to take advantage of this prepayment program.

List of Subjects in 7 CFR Part 1786

Accounting, Administrative practice and procedure, Electric utilities.

For reasons set forth in the preamble, REA proposes to amend Title 7 of the Code of Federal Regulations to add a new subpart F to 7 CFR part 1786 to read as follows:

PART 1786—PREPAYMENT OF REA GUARANTEED AND INSURED LOANS TO ELECTRIC AND TELEPHONE BORROWERS

Subpart F—Discounted Prepayments on REA Electric Loans

Sec.

1786.150 Purpose.
1786.151 Definitions and rules of construction.
1786.152 Prepayments of REA loans.
1786.153 Discounted present value.
1786.154 Qualified Notes.
1786.155 Eligible borrower.
1786.156 Application procedure.
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1786.158 Terms and conditions of prepayment agreement.
1786.159 Outstanding loan documents.
1786.160 Existing wholesale power contracts.
1786.161 Loan fund audit.
1786.162 Records.
1786.163 Approvals.
1786.164 Restrictions to additional REA financing.
1786.165 Borrowers who prepaid under this part prior to October 21, 1992.

Subpart F—Discounted Prepayments on REA Electric Loans

Authority: 7 U.S.C. 901 *et seq.*; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23, Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

§ 1786.150 Purpose.

This subpart sets forth the policies and procedures of REA whereby borrowers may prepay, with private financing or internally generated funds, outstanding REA Notes evidencing electric loans at the discounted present value of the REA Notes, pursuant to the provisions of section 306(B) of the RE Act as amended by Public Law 102–428, 106 Stat. 2183, adopted October 21, 1992.

§ 1786.151 Definitions and rules of construction.

(a) *Definitions.* As used in this subpart:

Administrator means the Administrator of the Rural Electrification Administration (REA).

Borrower means any organization which has an outstanding note(s) evidencing electric loans made by REA, or has previously prepaid such notes under subparts C and E of this part.

Closing shall mean the closing of the prepayment of the Qualified Notes prescribed by the prepayment agreement.

Closing date shall mean any business day identified as such by the Government in its notice delivered to the Company pursuant to § 1786.158.

Construction Fund Account means the Cash—Construction Fund—Trustee Account, maintained by the borrower pursuant to the terms of the outstanding REA Loan Contract.

Direct loan means a loan made pursuant to section 4 of the RE Act.

Discounted present value shall have the meaning set forth in § 1786.153.

Distribution borrower means a borrower that sells electric power and energy at retail in rural areas.

Electric loan means a Direct loan or an Insured loan made for the purpose of furnishing electric energy to persons in rural areas.

Government means the United States of America, acting through the Administrator of the Rural Electrification Administration.

Insured loan means a loan made pursuant to Section 305 of the RE Act.

Lien accommodation means the sharing of the government's (REA's) lien on property, usually all property, covered by the lien of the REA Mortgage.

Loan guarantee means a loan guarantee under Section 306 of the RE Act.

Power supply borrower means a borrower that sells or intends to sell electric power at wholesale to distribution or power supply borrowers pursuant to REA wholesale power contracts.

Prepayment agreement shall have the meaning set forth in § 1786.158.

Qualified Notes shall have the meaning set forth in § 1786.154.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

REA means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

REA Loan Contract means the agreement, as amended. supplemented, or restated from time to time, between a borrower and REA providing for loans or loan guarantees pursuant to the RE Act.

REA Mortgage means collectively those mortgages and security agreements made by and among the borrower, the Government, and third

parties, if appropriate securing indebtedness evidencing electric loans or loan guarantees made pursuant to the RE Act.

Rural development loans means loans or grants made pursuant to Rural development programs.

Rural development programs means loan or grant programs under the authority of the Administrator pursuant to Sections 313, 501, and 502 of the RE Act.

Supplemental lender means a private lender whose loan to the borrower is secured by the REA mortgage.

Tax exempt financing means borrowing evidenced by bonds, notes and other evidence of indebtedness the income of which is excluded from gross income for the purposes of Chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C ch. 1).

(b) *Rules of construction.* Unless the context shall otherwise indicate, the terms defined in § 1786.151 (a) include the plural as well as the singular, and the singular as well as the plural. The words "herein," "hereof" and "hereunder", and words of similar import, refer to this subpart as a whole.

§ 1786.152 Prepayments of REA loans.

An electric loan made under the RE Act shall not be sold or prepaid at a value that is less than the outstanding principal balance, except that, on request of a borrower, an electric loan made under the RE Act, or a portion of such a loan, that was advanced before May 1, 1992, or has been advanced for not less than 2 years, shall be prepaid by the borrower at the lesser of the outstanding principal balance of the loan or the discounted present value thereof.

§ 1786.153 Discounted present value.

(a) The discounted present value shall be calculated by summing the present values of all remaining payments on all Qualified Notes to be prepaid according to the following formula and adjusted as provided in paragraph (b) of this section if tax exempt financing is used.

Present Value =

$$\sum_{k=1}^{n} \frac{P_k}{\prod_{i=1}^{k}\left[1.0+\left(\frac{D1_i}{365}+\frac{D2_i}{366}\right)I\right]}$$

Where:

The Greek letter, Sigma (Σ) means the sum of the following terms.

The Greek letter, Pi (Π) means the product of the following terms.

P_k = Total payment, including interest due on the K^{th} payment date following the prepayment date.

n = Total number of remaining payment dates.

$D1_i$ = Number of days in the i^{th} payment period that are in a non-leap year (365-day year).

$D2_i$ = Number of days in the i^{th} payment period that are in a leap year (366-day year).

I = The discount rate applied to each transaction will be ascertained by using data specified in the "Federal Reserve Statistical Release" (H.15 (519)), which is published each Monday. The availability of release will be announced when the information is available on (202) 452-3206. See adjustment for tax exempt refinancing at paragraph (b) of this section. The specific discount rate will be based on the discount rate(s) specified in the "Treasury Constant Maturities" section of this publication *eight working days* prior to the closing and will be interpolated from that information as follows:

Remaining maturity of REA loan:		Treasury Constant Maturities
At least	But less than	
# years	# years	
0	2	1-year
2	3	2-year
3	4	3-year
4	5	(1)
5	6	5-year
6	7	(2)
7	8	7-year
8	9	(3)
9	10	(3)
10	11	10-year
11	30	(4)
30	35	30-year

Notes: (1) The arithmetic mean between the 3-year and 5-year Treasury Constant Maturities; i.e., if 3-year rate is 3.00% and the 5-year rate is 4.00% then the rate used would be 3.5%.

(2) The arithmetic mean between the 5-year and 7-year Treasury Constant Maturities computed as above.

(3) A straight line interpolated rate between the 7-year rate and the 10-year rate. (See formula below)

(4) A straight line interpolated rate between the 10-year note and the 30-year Bond using the following formula:

$$I = B + \frac{((C - E)(A - B))}{(F - E)}$$

Where:

I = The discount rate interpolated from the cost of money to the Treasury.

A = The Treasury rate for the most recently published maturity greater than the borrowers remaining maturity. i.e., (if the note to be prepaid has a maturity of more than 10 years then this rate is the 30-year Treasury rate)

B = The Treasury rate for the most recently published maturity less than the borrowers remaining maturity. i.e., (if the note to be prepaid has a maturity of more than 10 years then this term is the 10-year Treasury rate)

C = The remaining full years to maturity of the borrowers note. Drop all fractions of a year and use the remaining full years.

E = The published Treasury term in years for the published term less than the remaining term in years to maturity of the borrowers note. i.e., (if the note to be prepaid has remaining years to maturity between 10 and 30 years then this term would be 10).

F = the published Treasury term in years for the published term greater than the remaining term in years to maturity of the borrowers note, i.e., (if the note to be prepaid has remaining years to maturity between 10 and 30 years then this term would be 30).

Note: The percentage terms used in the above formula will be truncated to two decimal places. For the purpose of the terms A, B, E, and F above the published Treasury rate and term shall mean the Treasury Constant Maturities from the Federal Reserve Statistical Release for 7 years, 10 years, and 30 years.

(b)(1) In the event that the borrower prepays a loan under paragraph (a) of this section using direct or indirect tax exempt financing, the discount shall be adjusted to ensure that the borrower receives a benefit that is no greater than the benefit the borrower would receive if the borrower used financing that was not tax exempt. The borrower shall certify in writing whether the financing will be tax exempt.

(2) The discount rate established in paragraph (a) of this section shall be adjusted by subtracting from that rate the difference between the state and local bonds interest rate in the most recently published Federal Reserve Statistical Release from the most recently published A utility rate in that publication. The following formula will be used:

$$I_t = I - (A - T_e)$$

Where:

I_t = The tax exempt adjusted discount rate.

I = The discount rate for taxable refinancing.

A = The single A utility rate most recently published with the "Federal Reserve Statistical Release."

T_e = The state & local bonds interest rate most recently published with the "Federal Reserve Statistical Release."

Note: The I, term calculated above as the tax exempt adjusted discount rate will be substituted for the I term in the Present Value formula in paragraph (a) of this section. If the result of the above adjustment results in the borrower prepaying more than the principal outstanding on the note to be prepaid, the principal amount outstanding will be the required prepayment. See § 1786.152.

§ 1786.154 Qualified Notes.

An eligible borrower may prepay Qualified Notes hereunder at the discounted present value. A Qualified Note is a note evidencing an REA electric loan, all advances of which were made prior to May 1, 1992, or for not less than 2 years prior to the date of prepayment. See § § 1786.155(d) and 1786.158 (h) and (j).

§ 1786.155 Eligible borrower.

To be eligible to prepay an electric loan hereunder, the borrower must be in compliance with the following:

(a) The borrower shall be current on all payment obligations on outstanding loans made or guaranteed by REA. For the purpose of determining eligibility for prepayment, a default by a power supply borrower from which a distribution borrower purchases wholesale power shall not be considered a default by the distribution borrower;

(b) There shall exist no material defaults under the borrower's REA Loan Contract and Mortgage;

(c) The borrower shall not have had any indebtedness representing loans made or guaranteed by REA restructured;

(d) The borrower shall have expended all funds advanced pursuant to the REA Loan Contract for the purposes for which such funds were advanced. A borrower will not be eligible to prepay hereunder if it has any funds advanced pursuant to the REA Loan Contract in its Construction Fund Account; and

(e) The borrower shall be current on all obligations under any wholesale power contract with an REA financed power supply borrower.

§ 1786.156 Application procedure.

Any borrower seeking to prepay Qualified Notes under this subpart should apply to the appropriate REA Regional Director or the Director of the Power Supply Division not less than 60 days prior to the projected closing date. The application shall provide the following:

(a) Borrower's REA designation;

(b) Borrower's name and address;

(c) A certified copy of a resolution of the board of directors of the borrower that the borrower wishes to enter into a prepayment agreement providing for the prepayment of all or a portion of its Qualified Notes;

(d) Listing of each Qualified Note to be prepaid by loan designation, REA account number, advance date, maturity date, original amount, and outstanding balance;

(e) Evidence that the borrower has the ability to obtain the financing necessary to prepay its Qualified Notes listed in paragraph (d) of this section and identification of the source of financing and the need if any of obtaining a lien accommodation from REA; and

(f) Such additional information as the Administrator may request.

§ 1786.157 Approval of applications.

(a) The applications will ordinarily be reviewed and, the borrower will be notified promptly as to whether its application has been approved. If the application has not been approved, the borrower will be informed as to the reasons. If the application is approved the borrower shall thereafter be provided with a prepayment agreement for execution, and a closing will be scheduled pursuant to the terms of the prepayment agreement.

(b) The Administrator may limit the number of applications approved and closings scheduled from time to time, taking into account, among other matters, administrative considerations of the REA.

§ 1786.158 Terms and conditions of prepayment agreement.

Upon receipt of a satisfactory application, REA shall provide to the borrower for its execution a prepayment agreement, in form and substance satisfactory to REA which may include the following:

(a) Provide for the prepayment of one or more Qualified Notes from time to time, but no more than two closings may be scheduled in any calendar year unless a third closing is for the prepayment of all outstanding electric loans of the borrower;

(b) Set forth procedures and forms pursuant to which the borrower will notify REA not less than 60 days nor more than 90 days before a prepayment. The notice will identify the REA Qualified Note(s) and a requested closing date, which shall be a scheduled monthly or quarterly payment date;

(c) Reserve to the Administrator the right to reschedule closing dates to meet administrative considerations;

(d) Set forth closing requirements identifying the location and manner of payment, and all documentation and information to be delivered at closing, including opinions of counsel and certificates from the borrower;

(e) Provide for notice to be given by REA to the borrower not more than 8 nor less than 3 business days before scheduled closing date of the amount to be paid at closing which shall include all accrued interest and the discounted present value of the Qualified Notes to be prepaid;

(f) Provide for notice of the 120 month period during which the borrower's eligibility for direct or insured loans will be restricted;

(g) Set forth representations and warranties;

(h) Require the borrower to prepay each Qualified Note specified in full;

(i) Require the borrower to identify the source of the financing that will be used directly or indirectly to refinance the Qualified Notes. If the source is other than internally generated funds, the borrower must certify in writing whether such financing will be tax exempt, and if tax exempt financing will be used, furnish all information on the terms and conditions of the financing as REA may require;

(j) Require the borrower to rescind the unadvanced balance of all outstanding electric loans as of the date of its application for prepayment;

(k) Require the borrower, if it is a party to a wholesale power contract with a power supply borrower, to provide the Administrator with such assurances as the Administrator may require that it is in compliance with and will continue to comply with its obligation to such power supply borrower;

(l) Provide REA, if the Administrator determines it necessary, with security for all outstanding rural development loans and amendments to any outstanding rural development loan agreements in form and substance satisfactory to REA;

(m) Prescribe remedies for violating the terms and conditions of the prepayment agreement;

(n) Provide for termination by REA of the right for the borrower to prepay thereunder;

(o) Provide evidence that any approvals required from any supplemental lender have been obtained; and

(p) Set forth such other terms and conditions as the Administrator shall deem appropriate.

§ 1786.159 Outstanding loan documents.

(a) Except as expressly provided in this subpart, the borrower shall comply with all provisions of its REA Loan

Contract, its outstanding notes issued to REA, and the REA Mortgage.

(b) Nothing in this subpart shall affect any rights of supplemental lenders under the REA Mortgage, or other creditors of the borrower.

(c) Nothing in this subpart shall prohibit a borrower from making prepayments of any loans pursuant to the RE Act in accordance with the terms thereof.

§ 1786.160 Existing wholesale power contracts.

(a) If the borrower is a party to a wholesale power contract with a power supply borrower financed pursuant to the RE Act the Administrator may require that the borrower and the power supply borrower enter into a supplement to the outstanding wholesale power contract providing substantially as follows:

So long as any of the notes evidencing secured loans of the power supply borrower are outstanding, the borrower will not, without the approval in writing of the power supply borrower and the Administrator, take or suffer to be taken any steps for reorganization or to consolidate with or merge into any corporation, or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired. The power supply borrower will not unreasonably withhold or condition its consent to any such, reorganization, consolidation, or merger, or to any such sale, lease or transfer (or any agreement therefor) of assets. The power supply borrower will not withhold or condition such consent except in cases where to do otherwise would result in rate increases for the other members of the power supply borrower or impair the ability of the power supply borrower to repay its secured loans in accordance with their terms. Notwithstanding the foregoing, the borrower may take or suffer to be taken any steps for reorganization or to consolidate with or merge into any corporation or to sell, lease or transfer (or make any agreement therefor) all or a substantial portion of its assets, whether now owned or hereafter acquired without the power supply borrower's consent, so long as the borrower shall pay such portion of the outstanding indebtedness on the power supply borrower's notes as shall be determined by the power supply borrower with the prior written consent of the Administrator and shall otherwise comply with such reasonable terms and conditions as the Administrator and power supply borrower may require either:

(1) To eliminate any adverse effect that such action seems likely to have on the rates of the other members of the power supply borrower, or

(2) To assure that the power supply borrower's ability to repay the secured loans and other obligations of the power supply borrower in accordance with their terms is not impaired.

(b) Any payment owed under clause (1) in paragraph (a) of this section which represents a portion of the power supply borrower's indebtedness on notes shall be paid by the borrower directly to the holders of such notes for application by them as prepayments in accordance with the loan documents relating thereto.

§ 1786.161 Loan fund audit.

In the event that a borrower shall prepay all its outstanding electric loans REA shall have the right to audit within six (6) months of closing transactions involving the REA Construction Fund Account established and maintained by the borrower pursuant to the terms of the REA Loan Contract and to inspect all books, records, accounts, and other documents and papers of the borrower. Should REA determine that the borrower has made disbursements of funds advanced pursuant to the REA Loan Contracts which do not comply with the requirements thereof, the borrower shall be required to pay the REA an amount equal to the difference between the amount which the borrower prepaid hereunder with respect to such advances, and the amount which the borrower would otherwise have been required to return to the REA as a result of noncompliance if the borrower had not prepaid such advances, plus interest. (See 7 CFR Part 1721, Post—Loan Policies and Procedures for Insured Electric Loans.)

§ 1786.162 Records.

(a) If a borrower with outstanding rural development loans, shall prepay all outstanding electric loans, the records of such borrower, including records relating to rural development loans, shall be subject to the auditing procedures prescribed in 7 CFR part 1773, for so long as such rural development loans remain outstanding. REA reserves the right to review the records of the borrower relating to rural development loans to determine if the borrower is in compliance with REA guidelines.

(b) Borrowers who prepay all loans made or guaranteed by REA and are considering applying for other financial assistance pursuant to the RE Act are encouraged to file the end-of-year operating report, REA Form 7.

§ 1786.163 Approvals.

The borrower shall be responsible for obtaining all approvals necessary to consummate the transaction as required by the prepayment agreement, including such approvals as may be required by regulatory bodies and other lenders.

§ 1786.164 Restrictions to additional REA financing.

(a) No borrower that prepays its electric loan at a discount as provided hereunder may apply for or receive direct or insured loans during the 120 months from the most recent closing date, except at the discretion of the Administrator. During the 120 month period the Administrator may consider providing a direct or insured loan if:

(1) It is necessary to assure repayment of or to protect the security for any outstanding Government direct loans, insured loans, or loan guarantees; or

(2) The borrower's system has suffered severe physical plant related damage due to conditions beyond its control and the borrower is unable to obtain financing to restore the system from non-REA sources, including the Federal Emergency Management Agency, and is unable to borrow from private sources.

(b) Upon expiration of the 120 months, such borrowers may apply for direct or insured loans in the same manner as other borrowers provided that such borrowers may not apply for direct or insured loans for facilities, construction of which commenced prior to the expiration of the 120 months.

(c) Borrowers that prepay their direct or insured REA loans under this subpart remain eligible for certain types of financial assistance under the RE Act, including loan guarantees and rural development loans.

§ 1786.165 Borrowers who prepaid under this part prior to October 21, 1992.

(a) A borrower that had prepaid, prior to the date of enactment of Public Law 102–428 (106 Stat. 2183) on October 21, 1992, at a discount rate as provided at part 1786, subpart C:

(1) Shall not be eligible except as stated in § 1786.164(a), to apply for or receive direct or insured loans during the 180-month period beginning on the date of the prepayment; and

(2) Shall not be eligible to apply for or receive direct or insured loans from REA until the borrower has repaid to the REA the sum of:

(i) The amount (if any) by which the discount the borrower received by reason of the prepayment exceeds the discount the borrower would have received had the discount been based on the cost of funds to the Department of the Treasury as calculated at § 1786.153 of this subpart at the time of the prepayment; and

(ii) Interest on the amount described in paragraph (a)(2)(i) of this section for the period beginning on the date of the prepayment and ending on the date of the repayment, at a rate equal to the

average annual cost of borrowing by the Department of the Treasury. This rate will be calculated first on the date of prepayment and at one year intervals from that date based on the same U.S. Treasury issues published in the Federal Reserve Statistical Release closest to that date. The Treasury rate of interest to be applied for each year will be the rate for the Treasury issue of comparable maturity to the number of years from the prepayment date to the repayment date and at one year intervals thereafter.

(b) Effect on existing agreements. If a borrower and the Administrator have entered into an agreement with respect to a prepayment occurring before October 21, 1992, this section (§ 1786.165) shall supersede any provision in the agreement relating to the restoration of eligibility for loans under the RE Act.

(c) Borrowers who prepaid prior to October 1, 1987, will have to meet the requirements of paragraph (a)(2) of this section to be eligible for assistance under the RE Act in the same manner as other borrowers with respect to loan guarantees and the rural development loans.

(d) During the 180 month period described in paragraph (a)(1) of this section the Administrator may consider providing an insured loan, if, the conditions described in § 1786.164(a) exist.

(e) Borrowers may not apply for direct or insured loans for facilities, construction of which commenced prior to the expiration of the 180 month period described in paragraph (a)(1) of this section.

Dated: September 9, 1993.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

NOTE: This appendix will not appear in the Code of Federal Regulations.

Appendix A to This Proposed Rule—Federal Reserve Statistical Release and Sample Interpolation

Sample for Information Only

FEDERAL RESERVE STATISTICAL RELEASE

These data are released each Monday. The availability of the release will be announced when the information is available on (202) 452–3206.

H.15 (519)

For immediate release February 16, 1993

SELECTED INTEREST RATES

[Yields in percent per annum]

Instruments	1993 Feb 8	1993 Feb 9	1993 Feb 10	1993 Feb 11	1993 Feb 12	Week ending Feb 12	Week ending Feb 5	1993 Jan
Federal funds (effective)[1 2 3]	2.94	2.90	2.88	2.97	2.95	2.95	3.15	3.02
Commercial paper[3 4 5]								
1-month	3.14	3.13	3.14	3.14	3.16	3.14	3.16	3.21
3-month	3.18	3.18	3.18	3.19	3.19	3.18	3.21	3.25
6-month	3.27	3.27	3.27	3.28	3.27	3.27	3.31	3.35
Finance paper placed directly[3 4 6]								
1-month	3.17	3.17	3.18	3.19	3.21	3.18	3.20	3.25
3-month	3.27	3.28	3.28	3.29	3.28	3.28	3.29	3.32
6-month	3.21	3.21	3.22	3.23	3.22	3.22	3.22	3.29
Bankers acceptances (top rated)[3 4 7]								
3-month	3.05	3.08	3.08	3.05	3.05	3.06	3.09	3.14
6-month	3.15	3.18	3.20	3.15	3.15	3.17	3.18	3.23
CDs (secondary market)[3 8]								
1-month	3.07	3.08	3.08	3.08	3.09	3.08	3.08	3.14
3-month	3.10	3.13	3.13	3.13	3.11	3.12	3.14	3.19
6-month	3.23	3.22	3.26	3.27	3.24	3.24	3.26	3.33
Eurodollar deposits (London)[3 9]								
1-month	3.06	3.00	3.00	3.00	3.06	3.03	3.05	3.09
3-month	3.13	3.13	3.13	3.13	3.13	3.13	3.18	3.22
6-month	3.25	3.25	3.25	3.31	3.25	3.26	3.29	3.37
Bank prime loan[2 3 10]	6.00	6.00	6.00	6.00	6.00[P]	6.00	6.00	6.00
Discount window borrowing[2 11]	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00
U.S. government securities								
Treasury bills								
Auction average[3 4 12]								
3-month	2.94					2.94	2.97	3.06
6-month	3.09					3.09	3.10	3.17
1-year						3.32		3.52
Auction average (investment)[12]								
3-month	3.00					3.00	3.04	3.13
6-month	3.18					3.18	3.19	3.27
Secondary market[3 4]								
3-month	2.92	2.93	2.94	2.92	2.93	2.93	2.92	3.00
6-month	3.09	3.10	3.13	3.09	3.09	3.10	3.10	3.14
1-year	3.30	3.34	3.36	3.31	3.30	3.32	3.26	3.35
Treasury constant maturities[13]								
1-year	3.43	3.47	3.50	3.44	3.43	3.45	3.41	3.50
2-year	4.16	4.20	4.27	4.20	4.20	4.21	4.19	4.39
3-year	4.64	4.72	4.79	4.72	4.70	4.71	4.70	4.93
5-year	5.49	5.55	5.63	5.58	5.57	5.56	5.55	5.83
7-year	5.93	5.98	6.06	6.02	6.00	6.00	5.98	6.26
10-year	6.37	6.41	6.40	6.37	6.35	6.38	6.40	6.60

SELECTED INTEREST RATES—Continued

[Yields in percent per annum]

Instruments	1993 Feb 8	1993 Feb 9	1993 Feb 10	1993 Feb 11	1993 Feb 12	Week ending Feb 12	Week ending Feb 5	1993 Jan
30-year	7.18	7.20	7.26	7.15	7.13	7.18	7.21	7.34
Composite								
Over 10 years (long term)[14]	6.94	6.96	7.02	6.98	6.97	6.97	6.98	7.17
Corporate bonds								
Moody's seasoned								
AAA	7.77	7.76	7.76	7.74	7.71	7.75	7.78	7.91
BAA	8.49	8.49	8.52	8.50	8.44	8.49	8.50	8.67
A-utility[15]					7.85	7.85	7.88	8.13
State & local bonds[16]				5.97		5.97	6.04	6.16
Conventional mortgages[17]					7.75	7.75	7.80	8.02

1. The daily effective federal funds rate is a weighted average of rates on trades through N.Y. brokers.
2. Weekly figures are averages of 7 calendar days ending on Wednesday of the current week; monthly figures include each calendar day in the month.
3. Annualized using a 360-day year or bank interest.
4. Quoted on a discount basis.
5. An average of offering rates on commercial paper placed by several leading dealers for firms whose bond rating is AA or the equivalent
6. An average of offering rates on paper directly placed by finance companies.
7. Representative closing yields for acceptances of the highest rated money center banks.
8. An average of dealer offering rates on nationally traded certificates of deposits.
9. Bid rates for Eurodollar deposits at 11 a.m. London time.
10. One of several base rates used by banks to price short-term business loans.
11. Rate for the Federal Reserve Bank of New York.
12. Auction date for daily data; weekly and monthly averages computed on an issue-date basis.
13. Yields on actively traded issues adjusted to constant maturities. Source: U.S. Treasury.
14. Unweighted average of rates on all outstanding bonds neither due nor callable in less than 10 years.
15. Estimate of the yield on a recently offered, A-rated utility bond with maturity of 30 years and call protection of 5 years; Friday quotations
16. Bond Buyer Index, general obligation, 20 years to maturity, mixed quality; Thursday quotations.
17. Contract interest rates on commitments for fixed-rate first mortgages. Source: FHLMC.

Note: Weekly and monthly figures are averages of business days unless otherwise noted.

Description of the Treasury Constant Maturity Series

Yields on Treasury securities at constant maturity are interpolated by the U.S. Treasury from the daily yield curve. This curve, which relates the yield on a security to its time to maturity, is based on the closing market bid yields on actively traded Treasury securities in the over-the-counter market. These market yields are calculated from composites of quotations reported by five leading U.S. Government securities dealers to the Federal Reserve Bank of New York. The constant maturity yield values are read from the yield curve at fixed maturities, currently 1, 2, 3, 5, 7, 10, and 30 years. This method provides a yield for a 10-year maturity, for example, even if no outstanding security has exactly 10 years remaining to maturity.

Sample for Information Only

SAMPLE INTERPOLATION

INTEREST RATE AND DEBT SERVICE

RTB Loans for the week of: 02/16/93
10-Yr Treasury Constant Maturity: 6.38%
30-Yr Treasury Constant Maturity: 7.18%

Loan Term	Amort. Period	Interest Rate	Debt Service	Payment/$1,000
13	11	6.50%	12.744%	$10.62
14	12	6.53%	12.036%	$10.03
15	13	6.58%	11.460%	$9.55
16	14	6.62%	10.980%	$9.15
17	15	6.66%	10.560%	$8.80
18	16	6.70%	10.200%	$8.50
19	17	6.74%	9.900%	$8.25
20	18	6.78%	9.636%	$8.03
21	19	6.82%	9.408%	$7.84
22	20	6.86%	9.204%	$7.67
23	21	6.90%	9.024%	$7.52
24	22	6.94%	8.880%	$7.40
25	23	6.98%	8.748%	$7.29
26	24	7.02%	8.628%	$7.19
27	25	7.06%	8.532%	$7.11
28	26	7.10%	8.436%	$7.03
29	27	7.14%	8.364%	$6.97
30	28	7.18%	8.304%	$6.92
31	29	7.18%	8.208%	$6.84
32	30	7.18%	8.124%	$6.77

INTEREST RATE AND DEBT SERVICE—Continued

RTB Loans for the week of: 02/16/93
10-Yr Treasury Constant Maturity: 6.38%
30-Yr Treasury Constant Maturity: 7.18%

Loan Term	Amort. Period	Interest Rate	Debt Service	Payment/$1,000
33	31	7.18%	8.052%	$6.71
34	32	7.18%	7.992%	$6.66
35	33	7.18%	7.932%	$6.61

DATE	30-YEAR RATE	10-YEAR RATE
01/11/93	7.38%	6.57%
01/19/93	7.43%	6.68%
01/25/93	7.31%	6.59%
02/01/93	7.23%	6.46%
02/08/93	7.21%	6.40%
02/16/93	7.18%	6.38%

[FR Doc 93-22623 Filed 9-15-93; 8:45 am]

BILLING CODE 3410-15-F

DEPARTMENT OF JUSTICE

28 CFR Part 58

Qualifications for Trustees

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice is proposing to amend the qualifications required for membership on panels of trustees and for appointment as a standing trustee. In addition, the Department is proposing to make certain technical amendments to 28 CFR part 58.

DATES: Written comments must be submitted on or before October 18, 1993.

ADDRESSES: Please submit written comments to the General Counsel, Executive Office for the United States Trustees, 901 E Street, NW., room 780, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Patrick Tinker, Attorney-advisor, telephone (202) 307-1399. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The United States Trustees ("U.S. Trustees") appoint private trustees to serve in bankruptcy cases filed under title 11 of the United States Code. Pursuant to 28 U.S.C. 586(d), the Attorney General is required to prescribe by rule qualifications for membership on panels from which the U.S. Trustees appoint trustees to serve in specific bankruptcy cases filed under chapter 7 of the Bankruptcy Code (11 U.S.C. 701-766). In addition, the Attorney General is required to prescribe by rule qualifications for appointment as a standing trustee in cases filed under chapters 12 and 13 of the Bankruptcy Code (11 U.S.C. 1201-1231, 1301-1330). The qualifications prescribed by the Attorney General pursuant to 28 U.S.C. 586(d) are found at 28 CFR 58.3, 58.4. The proposed rule amends these qualifications by adding a requirement that the applicant have three years of either bankruptcy experience or experience as a fiduciary. In addition, the proposed rule clarifies that the U.S. Trustees have authority not only to establish panels of trustees in the first instance, but also to revise and periodically reconstitute such panels. Last, the proposed rule sets forth certain technical amendments to 28 CFR part 58.

The information collection requirements contained in this proposed rule have been forwarded to the Office of Management and Budget, under the provisions of the Paperwork Reduction Act, for review and clearance.

List of Subjects in 28 CFR Part 58

Bankruptcy, Trusts and trustees.

For the reasons set forth in the preamble, the Department of Justice proposes to amend 28 CFR part 58 as follows:

PART 58—REGULATIONS RELATING TO THE BANKRUPTCY REFORM ACT OF 1978

1. The authority citation for part 58 is revised to read as follows:

Authority: 28 U.S.C. 509, 510, 586.

2. Section 58.1 is amended by revising paragraph (a) to read as follows:

§ 58.1 Authorization to establish panels of private trustees.

(a) Each U.S. Trustee is authorized to establish, revise, and periodically reconstitute a panel of private trustees (the "panel") pursuant to 28 U.S.C. 586(a)(1).

* * * * *

3. Section 58.3 is revised to read as follows:

§ 58.3 Qualification for membership on panels of private trustees.

(a) To be eligible for appointment to the panel and to retain eligibility therefor, an individual must possess the qualifications described in paragraph (b) of this section in addition to any other statutory qualifications. A corporation or partnership may qualify as an entity for appointment to the private panel. However, each person who, in the opinion of the U.S. Trustee and the Director, performs duties as trustee on behalf of a corporation or partnership must individually meet the standards described in paragraph (b) of this section.

(b) In order to qualify for membership on the panel, a person must:

(1) Possess integrity and good moral character;

(2) Be physically and mentally able to satisfactorily perform a trustee's duties;

(3) Be courteous and accessible to all parties with reasonable inquiries or comments about a case for which such individual is serving as private trustee;

(4) Be free of prejudices against any individual, entity, or group of individuals or entities that would interfere with unbiased performance of a trustee's duties;

(5) Be unrelated by affinity or consanguinity within the degree of first cousin to any employee of the Executive Office for United States Trustees, or to any employee of the office of the U.S. Trustee for the district in which he or she is applying;

(6)(i) Be a member in good standing of the bar of the highest court of a state or of the District of Columbia;

(ii) Be a certified public accountant;

(iii) Hold a bachelor's degree from a full four-year course of study (or the equivalent) of an accredited college or university (accredited as described in Part II, Section III of Handbook X118 promulgated by the United States Office of Personnel Management) with a major in a business-related field of study or at least 20 semester-hours of business-related courses; or hold a master's or doctoral degree in a business-related field of study from such a college or university; or

(iv) Have equivalent experience as deemed acceptable by the U.S. Trustee;

(7)(i) Have a minimum of three years of bankruptcy experience that includes representation of parties in cases filed under title 11 of the United States Code or experience in the discovery and liquidation of estate assets in such cases, and demonstrate good knowledge of federal bankruptcy laws, rules and procedures; or

(ii) Have a minimum of three years of experience as a fiduciary, which includes, but is not limited to, service as executor, administrator, or guardian in the probate of estates, service as trustee, receiver, custodian, surety, or service in any other capacity in which property or funds are collected, held, and disbursed for the benefit of others; and

(8) Submit an application under oath, in the form prescribed by the Director, to the U.S. Trustee for the district in which appoint is sought.

4. Section 58.5 is amended by revising the last sentence to read as follows:

§ 58.5 Non-discrimination in appointment.

* * * Each U.S. Trustee shall be guided by the policies and requirements of Executive Order 11478 of August 8, 1969, as amended, relating to equal employment opportunity in the Federal Government, section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16), section 15 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 633a), section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the regulations of the Department of Justice relating to discrimination on the basis of handicap (28 CFR part 39), and the regulations of the Office of Personnel Management relating to equal employment opportunity (5 CFR part 720).

Dated: September 3, 1993.

Janet Reno,

Attorney General.

[FR Doc. 93–22592 Filed 9–15–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

RIN–720–AA19

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Improved Dependents' Dental Plan

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements the Civilian Health and Medical Program for the Uniformed Services. The proposed rule establishes an expanded dental program for dependents of active duty members of the Uniformed Services. The amendment specifically describes: the enhanced benefit structure; enrollment and eligibility requirements; premium cost-sharing; and benefit payment levels. We believe the provisions of this amendment will provide military families with the high quality of care they desire at an affordable price.

DATES: Written comments must be received on or before October 18, 1993.

ADDRESSES: Forward to Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

FOR FURTHER INFORMATION CONTACT: David E. Bennett, Office of Program Development, OCHAMPUS, Aurora, Colorado 80045–6900, telephone (303) 361–1094.

SUPPLEMENTARY INFORMATION: The Basic Dependents' Dental Plan was implemented on August 1, 1987, allowing military personnel to voluntarily enroll their dependents in a dental health care program that includes diagnostic and preventative benefits, as well as simple restoration services. Under this program, DoD shares the cost of the premium with the military sponsor. Although the program was viewed as a major step in benefit enhancement for military families, with enrollment levels reaching as high as 60 percent, there were still complaints that the enabling legislation was too restrictive in scope and that there should be expansion of services to better meet the needs of the military family.

Congress responded to these concerns by authorizing the Secretary of Defense to develop and implement an Improved Dependents' Dental Plan (The Defense Authorization Act for Fiscal Year 1993, Pub. L. 102–484, section 701, Revisions to Dependents' Dental Program Under CHAMPUS). The provisions of this Act specified the expanded benefit source, as well as maximum monthly premiums for members and their families. Cost-sharing levels for the expanded benefits were left up to the discretion of the Secretary of Defense after consultation with the other administering Secretaries.

Coverage/Benefits

Under the current Basic Dependents' Dental Program, coverage is limited to two categories of dental benefits: (1) Diagnostic, oral examination, preventive services and palliative emergency care paid at the lower of the actual charge or 100 percent of the insurer's determined allowable charge; and (2) basic restorative services of amalgam and composite restorations and stainless steel crowns for primary teeth, and dental appliance repairs paid at 80 percent of the allowable charge. Payment to a participating provider is considered payment in full, less the 20 percent cost-share of the allowable charge for restorative services. Nonparticipating providers are paid the same amounts; however, the beneficiary is responsible for the amount of the charge for all services above the allowable charge, except when the dental plan is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calendar days.

Under the Improved Dependents' Dental Plan, Congress has authorized a broad range of dental services, the payment levels of which are based on actuarial projections and budgeted program costs. The enhanced plan includes those services currently offered under the Basic Dependents' Dental Plan (examinations, x-rays, cleanings, sealants, fillings) along with the following expanded benefit categories and payment levels:

Covered benefits	Payment levels (percent)
• Sealants	80
• Endodontics (root canal treatment)	[1] 50
• Periodontics (treatment of gum disease)	[1] 50
• Oral Surgery (extractions)	[1] 50
• Prosthodontics (bridges and dentures)	50
• Orthodontics (braces)	50
• Crowns and Casts	50

[1] The government cost-share will not be less than 50 percent of the insurer's determined allowable charges for these categories of dental services.

Preventative and diagnostic services will continue to be paid at 100 percent of the insurer's allowable charge, with the exception of sealants which will now be paid at the 80 percent level. Basic restorative services will also remain at the current level (80 percent of the allowable). The beneficiary or sponsor will be responsible for the difference between the insurer's allowable charge and the established payment level for each category of

benefit. This cost-share amount will represent the beneficiary's or sponsor's total liability when dealing with participating providers.

The new benefit program will also be limited by an annual maximum amount of not less than $1000 per beneficiary for non-orthodontic dental care and not less than a $1000 lifetime limit per beneficiary for orthodontia.

Enrollment

The Basic Dependent's Dental Plan will terminate upon implementation of the improved plan. The effective date of this change is 30 days from date of publication of the final rule in the **Federal Register**. Enrollment in the Improved Dependents' Dental Plan will be automatic for all active duty families in the United States, Puerto Rico, Guam and the U.S. Virgin Islands, whose military sponsors are known to have at least 24 months remaining in service, and for those dependents currently enrolled in the Basic Dependents' Dental Plan regardless of their sponsors' remaining time in service. Enrollment criteria for sponsors outside the continental United States remains unchanged.

Those who intend to remain in the service for 24 or more months, whose families are not automatically enrolled in the new plan, may enroll them at their military personnel office by completing DD Form 2494, Uniformed Services Active Duty Dependent Dental Plan (DDP) Enrollment Election. DS Form 2494–1, Supplemental Uniformed Services Active Duty Dependent Dental Plan (DDP) Enrollment Form, should be used when dependents are residing in two or more physically separate locations.

Service members who want to remove their families from the new plan may do so during the one-month period before the date on which the expanded plan goes into effect, and for 4 months after the beginning date. They will receive a full refund of all premiums deducted, so long as the program has not been used following the implementation date. Use of the new plan during the disenrollment period will constitute acceptance of the plan by the military sponsor and his or her family. Once the new plan is used, the family cannot be disenrolled, and the premiums will not be refunded.

Premium Payments

Monthly premiums for the new plan are $9.65 for a single member, and $19.30 for two or more family members. Payroll deductions for the new premiums will begin a month prior to the starting date of the expanded benefit. These premium rates were selected to maximize benefits while at the same time maintaining an approximate 60 percent government/40 percent sponsor cost-share specified in congressional reports and meet appropriated budget levels. These premiums will remain in effect for a minimum of 16 months. There will be no reductions in premiums for enlisted members in pay grades E–4 and below.

Regulatory Procedures

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would result in an annual effect on the national economy of $100 million or more, or which would have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This proposed rule is not a major rule under Order 12291. The changes set forth in this proposed rule are minor revisions to existing regulation. In addition, this proposed rule will have very minor impact and will not significantly affect a substantial number of small entities. In light of the above, no regulatory impact analysis is required.

We also certify that this proposed rule has been reviewed under the provisions of the October 23, 1991, Executive Order on Civil Justice Reform. This proposed rule meets all applicable standards provided in that executive order.

This proposed rule does not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511.)

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military personnel.

Accordingly, 32 CFR, part 199, is proposed to be amended as follows:

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1079, 1086.

2. Section 199.13 is proposed to be amended as follows:

a. By removing paragraphs (c)(5)(v) and (c)(5)(vi); (e)(2)(iii); and (e)(3)(iii).

b. By redesignating paragraphs (c)(5)(vii) as (c)(5)(v); (e)(2)(iv), (e)(2)(v), (e)(2)(vi), and (e)(2)(vii) as (e)(2)(viii), (e)(2)(ix), (e)(2)(x), and (e)(2)(xi); and (e)(3)(iv) and (e)(3)(v) as (e)(3)(v) and (e)(3)(vi).

c. Paragraph (b) by adding definitions "endodontics," "oral surgery," "orthodontics," "periodontics," "prosthodontics," and "sealants" and placing them in alphabetical order; by adding paragraphs (e)(2)(i)(B)(4); (e)(2)(iii), (e)(2)(iv), (e)(2)(v), (e)(2)(vi), and (e)(2)(vii); (e)(3)(iii) and (e)(3)(iv); and (e)(3)(vii).

d. By revising the section heading; paragraphs (c)(3) and (c)(4); (e)2)(i)(C); (e)(2)(ii); (e)(3)(i) and (e)(3)(ii); and newly redesignated (e)(3)(v) and (e)(3)(vi); (f)(1)(vi) and (f)(1)(vii) introductory text; (g)(2) and (g)(3) introductory text.

§ 199.13 Dependents' dental plan.

* * * * *

(b) * * *

Endodontics. The etiology, prevention, diagnosis, and treatment of diseases and injuries affecting the dental pulp, tooth root, and periapical tissue as further defined in paragraph (e) of this section.

* * * * *

Oral Surgery. Surgical procedures performed in the oral cavity as further defined in paragraph (e) of this section.

Orthodontics. The supervision, guidance, reduction, correction, and elimination of an existing malocclusion and its sequelae as further defined in paragraph (e) of this section.

* * * * *

Periodontics. The examination, diagnosis, and treatment of diseases affecting the supporting structures of the teeth as further defined in paragraph (e) of this section.

* * * * *

Prosthodontics. The diagnosis, planning, making, insertion, adjustment, relinement, and repair of artificial devices intended for the replacement of missing teeth and associated tissues as further defined in paragraph (e) of this section.

* * * * *

Sealants. A resinous material designed for application on the occlusal surfaces of specified teeth to seal the surface irregularities to prevent ingress of oral fluids, food, and debris.

(c) * * *

(3) *Enrollment*

(i) *Basic active duty dependents' dental benefit plan.* The dependents, dental plan is effective from August 1, 1987, up to the date of implementation of the Improved Active Duty Dependents' Dental Benefit Plan.

(A) *Initial enrollment.* Eligible dependents of members on active duty

status as of August 1, 1987 are automatically enrolled in the Active Duty Dependents' Dental Plan, except where any of the following conditions apply:

(*1*) Remaining period of active duty at the time of contemplated enrollment is expected by the active duty member or the Uniformed Service to be less than two years, except that such members' dependents may be enrolled during the initial enrollment period for benefits beginning August 1, 1987 provided that the member has at least six months remaining in the initial enlistment term. Enrollment of dependents is for a period of 24 months, subject to the exceptions provided in paragraph (c)(5) of this section.

(*2*) Active duty member has completed an election to disenroll his or her dependents from the Basic Active Duty Dependents' Dental Benefit Plan.

(*3*) Active duty member has only one dependent who is under four years of age as of August 1, 1987, and the member does not complete an election form to enroll the child.

(B) *Subsequent enrollment.* Eligible active duty members may elect to enroll their dependents for a period of not less than 24 months, provided there is an intent to remain on active duty for a period of not less than two years by the member and the Uniformed Service.

(C) *Inclusive family enrollment.* All eligible dependents of the active duty member must be enrolled if any are enrolled, except that a member may elect to enroll only those dependents who are remotely located from the member (e.g., a child living with a divorced spouse or a child in college).

(ii) *Improved active duty dependents' dental benefit plan.* The expanded dependents' dental plan is effective 30 days from the date of publication of the final rule in the **Federal Register**. The Basic Active Duty Dependents' Dental Benefit Plan terminates upon implementation of the improved plan.

(A) *Initial enrollment.* Enrollment in the Improved Active Duty Dependents' Dental Benefit Plan will be automatic for all eligible dependents of active duty members known to have at least 24 months remaining in service, and for those dependents currently enrolled in the Basic Dependents' Dental Benefit Plan regardless of the military member's remaining time in service unless the active duty member elects to disenroll his or her dependents during the one-time disenrollment option period (one-month period before the date on which the expanded plan goes into effect, and for 4 months after the beginning date). Those active duty members who intend to remain in the service for 24 months or more, whose dependents are not automatically enrolled, may enroll them at their military personnel office by completing the appropriate Uniformed Services Active Duty Dependents' Dental Plan Enrollment Election Form.

Note: Use of the new plan during the one-time disenrollment option period by a dependent currently enrolled in the Basic Dependents' Dental Benefit Plan, constitutes acceptance of the plan by the military sponsor and his or her family. Once the new plan is used, the family cannot be disenrolled, and the premiums will not be refunded.

(B) *Subsequent enrollment.* Eligible active duty members may elect to enroll their dependents for a period of not less than 24 months, provided there is an intent to remain on active duty for a period of not less than two years by the member and the Uniformed Service.

(C) *Inclusive family enrollment.* All eligible dependents of the active duty member must be enrolled if any are enrolled, except that a member may elect to enroll only those dependents who are remotely located from the member (e.g., a child living with a divorced spouse or a child in college).

(D) *Enrollment Period.* Enrollment of dependents is for a period of 24 months except when:

(*1*) The dependent's enrollment is based on his or her current enrollment in the Basic Active Duty Dependents' Dental Benefit; or

(*2*) One of the conditions for disenrollment in paragraph (c)(5) of this section is met.

(*4*) *Beginning dates of eligibility.*

(i) *Basic active duty dependents' dental benefit plan.*

(A) *Initial enrollment.* The beginning date of eligibility for benefits is August 1, 1987.

(B) *Subsequent enrollment.* The beginning date of eligibility for benefits is the first day of the month following the month in which the election of enrollment is completed, signed, and received by the active duty member's Service representative, except that the date of eligibility shall not be earlier than September 1, 1987.

(ii) *Improved active duty dependents' dental benefit plan.*

(A) *Initial enrollment.* The beginning date of eligibility for benefits is October 18, 1993.

(B) *Subsequent enrollment.* The beginning date of eligibility for benefits is the first day of the month following the month in which the election of enrollment is completed, signed, and received by the active duty member's Service representative, except that the date of eligibility shall not be earlier than the first of the month following the month of implementation of the expanded benefit.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(B) * * *

(*4*) Sealants once per lifetime per tooth (01351).

(C) *Emergency services.* Emergency services, including palliative treatment of dental pain (09110), professional consultation (09310), professional visits (09440), drugs (09610 and 09630), and postsurgical complications (09930).

* * * * *

(ii) *Restorative.* Benefits may be extended for basic restorative services of amalgam, composite restorations, and crowns when performed directly by dentists or dental hygienists, or under orders and supervision by dentists, as authorized under paragraph (f) of this section. These services are defined (subject to the dental plan's exclusions, limitations, and benefit determination rules as adopted by OCHAMPUS) using the American Dental Association, Council on Dental Care Programs' Code on Dental Procedures and Nomenclature as follows:

(A) Amalgam restorations, including polishing of one to four or more surfaces for primary and permanent teeth and included within the range of 02110 and 02161.

(B) Silicate restorations (02210).

(C) Resin restorations (subject to accepted dental practice) of one to four surfaces and included within the range of 02330 and 02335.

(D) Metallic onlay (02540).

(E) Crowns and casts within the range of 02740 and 02810.

(F) Recementation of inlay (02910) and crown (02920).

(G) Stainless steel crowns for primary (02930) and permanent teeth (02931), with resin window (02933).

(H) Prefabricated resin crown (02932).

(I) Crown buildup/substrate (02950).

(J) Pin retention in addition to restoration (02951).

(K) Cast post and core in addition to crown (02952 and 02954).

(L) Temporary crown (02970).

(M) Crown repair (02980).

(iii) *Endodontic services.* Benefits may be extended for those dental services involved in treatment of diseases and injuries affecting the dental pulp, tooth root, and periapical tissue to include therapeutic pulpotomy/pulpectomy, root canal therapy when performed directly by dentists as authorized under paragraph (f) of this section. These services are defined (subject to the dental plan's exclusions, limitations,

and benefit determination rules as adopted by OCHAMPUS) using the American Dental Association, Council on Dental Care Programs' Code on Dental Procedures and Nomenclature as follows:

(A) Pulp cap (excluding final restoration) (03120).

(B) Therapeutic pulpotomy/pulpectomy (03220).

(C) Root canal therapy (excluding final restoration) included within the range of 03310 and 03330.

(D) Apexification/recalcification (03350).

(E) Apicoectomy/periradicular surgery included within the range of 03410 and 03426.

(F) Retrograde filling (03430).

(G) Root amputation (3450).

(H) Hemisection (not including root canal therapy) (3920).

(iv) *Periodontic services.* Benefits may be extended for those dental services involved in prevention and treatment of diseases affecting the supporting structures of the teeth to include periodontal prophylaxis, gingivectomy or gingivoplasty, gingival curettage, etc., when performed directly by dentists as authorized under paragraph (f) of this section. These services are defined (subject to the dental plan's exclusions, limitations, and benefit determination rules as adopted by OCHAMPUS) using the American Dental Association, Council on Dental Care Programs' Code on Dental Procedures and Nomenclature as follows:

(A) Gingivectomy or gingivoplasty (04210 and 04211).

(B) Gingival curettage (04220).

(C) Gingival flap procedure (04240).

(D) Crown lengthening (04249).

(E) Mucogingival surgery (04250)

(F) Osseous surgery (04260 and 04265).

(G) Guided tissue regeneration (04268).

(H) Soft tissue graft procedures (04270 and 04271).

(I) Periodontal root planing (04341)

(J) Periodontal prophylaxis (04910).

(K) Unscheduled dressing change (04920).

(v) *Prosthodontic services.* Benefits may be extended for those dental services involved in making, insertion, adjustment, relinement, and repair of artificial teeth and associated tissues to include removable complete and partial dentures, fixed crowns and bridges when performed directly by dentists as authorized under paragraph (f) of this section. These services are defined (subject to the dental plan's exclusions, limitations, and benefit determination rules as adopted by OCHAMPUS) using the American Dental Association, Council on Dental Care Programs' Code on Dental Procedures and Nomenclature as follows:

(A) Complete dentures (05110 and 05120).

(B) Immediate dentures (05130 and 05140).

(C) Partial denture included within the range 05211 and 05214.

(D) Adjustment of complete and partial dentures included within the range 05410 and 05422.

(E) Repair of dentures included within the range 05510 and 05660.

(F) Rebasing and relining of complete and partial dentures included within the range 05710 and 05721.

(G) Relining of complete and partial dentures included within the range 05730 and 05761.

(H) Temporary complete and partial-stayplate dentures included within the range 05810 and 05821.

(I) Tissue conditioning for dentures (05850 and 05851).

(J) Pontic included within the range 06210 and 06242.

(K) Onlay (6540).

(L) Retainer-cast metal for acid etch bridge (06545).

(M) Crowns included within the range 06750 and 06792.

(N) Recement of bridge (06930).

(O) Post and core in addition to bridge retainer (06970 and 06972).

(P) Retainer crown buildup (06973).

(Q) Bridge repair (06980).

(vi) *Orthodontic services.* Benefits may be extended for those dental services involved in the reduction or elimination of an existing malocclusion through the use of orthodontic procedures and devices when performed directly by dentists as authorized under paragraph (f) of this section to include in-process orthodontia. These services are defined (subject to the dental plan's exclusions, limitations, and benefit determination rules as adopted by OCHAMPUS) using the American Dental Association, Council on Dental Care Programs' Code on Dental Procedures and Nomenclature as follows:

(A) Radiographs (00290 and 00340)

(B) Diagnostic casts (00470).

(C) Removable and fixed appliance therapy (minor and interceptive treatment) included within the range 08110 and 08370.

(D) Comprehensive orthodontic treatment (transitional and permanent dentition) included within the range 08460 and 08580.

(E) Treatment of atypical or extended skeletal case (08650).

(F) Post treatment stabilization (08750).

Note: Coverage of in-process orthodontia is limited to services rendered on or after the date of enrollment in the expanded dependents' dental plan.

(vii) *Oral surgery services.* Benefits may be extended for basic surgical procedure of the extraction, reimplantation, stabilization and repositioning of teeth, alveolopasties, incision and drainage of abscesses, suturing of wounds, biopsies, etc., when performed directly by dentists as authorized under paragraph (f) of this section. These services are defined (subject to the dental plan's exclusions, limitations, and benefit determination rules as adopted by OCHAMPUS) using the American Dental Association, Council on Dental Care Programs' Code on Dental Procedures and Nomenclature as follows:

(A) Tooth extractions (07110 and 07120).

(B) Root removal—exposed roots (07130)—included in procedure 07110.

(C) Surgical removal of erupted tooth (07210).

(D) Removal of impacted teeth included within the range 07220 and 7240.

(E) Surgical removal of residual tooth roots (07250).

(F) Oral antral fistula closure (07260).

(G) Tooth reimplantation and/or stabilization of accidentally evulsed or displaced tooth and/or alveolus (07270).

(H) Alveoloplasties (07310 and 07320).

(I) Removal of exostosis—maxilla or mandible (07470).

(J) Incision and drainage of abscess (07510).

(K) Suturing of wounds included within the range 07910 and 07912.

(L) Excision of pericoronal gingiva (07971).

(M) Surgical exposure of impacted or unerupted tooth for orthodontic reasons (07280).

(N) Surgical exposure of impacted or unerupted teeth (07281).

(O) Surgical repositioning of teeth (07290).

(P) Transseptal fiberotomy (07291).

* * * * *

(3) * * *

(i) *Diagnostic, preventive, and emergency palliative services.* Enrolled dependents of active duty members or their sponsors are responsible for the payment of only those amounts which are for services rendered by nonparticipating providers of care which exceed the equivalent of the statewide or regional prevailing fee levels as established by the insurer, except in the case of sealants where the dependents or their sponsors will also be responsible for payment of 20 percent of the insurer's determined

allowable amount. Where the dental plan is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calendar days, the dental plan will reimburse the dependent, or sponsor, or the nonparticipating provider selected by the dependent within 35 miles of the dependent's place of residence at the level of the provider's usual fees less 20 percent of the insurer's allowable amount for sealants.

(ii) *Restorative services.* Enrolled dependents of active duty members or their sponsors are responsible for payment of 20 percent of the amounts determined by the insurer for services rendered by participating providers of care, or 20 percent of these amounts plus any remainder of the charges made by nonparticipating providers of care, except in the case of crowns and casts where the dependents or their sponsors will be responsible for payment of 50 percent of the insurer's determined allowable amount. Where the dental plan is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calendar days, dependents or their sponsors are responsible for payment of 20 percent (50 percent in case of crowns and casts) of the charges made by nonparticipating providers located within 35 miles of the dependent's place of residence.

(iii) *Endodontic, periodontic, and oral surgery services.* Enrolled dependents of active duty members or their sponsors are responsible for payment of not more than 50 percent of the amounts determined by the insurer for services rendered by participating providers of care, or not more than 50 percent of these amounts plus any remainder of the charges made by nonparticipating providers of care. Where the dental plan is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calendar days, dependents or their sponsors are responsible for payment of not more than 50 percent of the charges made by nonparticipating providers located within 35 miles of the dependent's place of residence.

(iv) *Prosthodontic and orthodontic services.* Enrolled dependents of active duty members or their sponsors are responsible for payment of 50 percent of the amounts determined by the insurer for services rendered by participating providers of care, or 50 percent of these amounts plus any remainder of the charges made by nonparticipating providers of care. Where the dental plan is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calendar days, dependents or their sponsors are responsible for payment of 50 percent of the charges made by nonparticipating providers located within 35 miles of the dependent's place of residence.

(v) *Services "by report".* Enrollment of active duty members or their sponsors are responsible for payment of these services in accordance with their relationship to the otherwise authorized benefit procedures. For example, home visit charges which occur primarily for the purpose of rendering restorative services require payment of 20 percent, while a home visit for purposes of dental prophylaxis does not require payment of the 20 percent except for sealants. Payment of any remaining amount in excess of the prevailing charge limits established by the insurer would be required for services rendered by nonparticipating providers in either of the examples given, subject to the exceptions for dependent lack of access to participating providers as provided in paragraphs (e)(3)(i) through (e)(3)(iv) of this section. The contracting dental insurer may recognize a "by report" condition by providing additional allowance to the primary covered procedure instead of recognizing or permitting a distinct billing for the "by report" service.

(vi) *Amounts over the dental insurer's established allowance for charges.* It is the responsibility of the dental plan insurer to determine allowable charges for the procedures identified as benefits of this plan. All Benefits of the plan are based on the insurer's determination of the allowable charges, subject to the exceptions for lack of access to participating providers as provided in paragraphs (e)(3)(i) through (e)(3)(iv) of this section.

(vii) *Maximum coverage amounts.* Enrolled dependents of active duty members are subject to an annual maximum coverage amount for non-orthodontic dental benefits and a lifetime maximum coverage amount for orthodontia as established by the Secretary of Defense or designee.

* * * * *

(f) * * *

(1) * * *

(vi) *Participating provider.* An authorized provider may elect to participate and accept the fee or charge determinations as established and made known to the provider by the dental plan insurer. The fee or charge determinations are binding upon the provider in accordance with the dental plan insurer's procedures for participation. The authorized provider may not participate on a claim-by-claim basis. The participating provider must agree to accept within one day a request for appointment, beneficiaries in need of emergency palliative treatment. Payment to the participating provider is based on the lower of the actual charge or the insurer's determination of the allowable charge. Payment is made directly to the participating provider, and the participating provider may only charge the beneficiary the percent cost share of the insurer's allowable charge for those benefit categories as specified in paragraphs (e)(2)(i) through (e)(2)(iv) of this section, in addition to the charges for any services not authorized as benefits.

(vii) *Nonparticipating provider.* An authorized provider may elect for all beneficiaries not to participate and request the beneficiary or sponsor to pay any amount of the provider's billed charge in excess of the dental plan insurer's determination of allowable charges. Neither the government nor the dental plan insurer shall have any responsibility for any amounts over the allowable charges as determined by the dental plan insurer, except where the dental plan insurer is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calendar days. In such instances of the nonavailability of a participating provider, the nonparticipating provider located within 35 miles of the dependent's place of residence shall be paid his or her usual fees, less the percent cost share for those benefit categories specified in paragraphs (e)(2)(i) through (e)(2)(iv) of this section.

* * * * *

(g) * * *

(2) *Benefit payments made to a participating provider.* When the authorized provider has elected to participate in accordance with the arrangement and procedures established by the dental plan insurer, payment is made based on the lower of the actual charge or the insurer's determination of the allowable charge. Payment is made directly to the participating provider as payment in full, less the percent cost share of the insurer's allowable charge for those benefit categories specified in paragraphs (e)(2)(i) through (e)92)(iv) of this section.

(3) *Benefit payments made to ■ nonparticipating provider.* When the authorized provider has elected not to participate in accordance with the

arrangement and procedures established by the dental plan, payment is made by the insurer based on the lower of the actual charge or the insurer's determination of the allowable charge. The beneficiary is responsible for payment of a percent cost share of the insurer's allowable charge for those benefit categories specified in paragraphs (e)(2)(i) through (e)(2)(iv) of this section. Where the dental plan is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calendar days, dependents or their sponsors are responsible for payment of a percent cost share of the charges made by nonparticipating providers located within 35 miles of the dependent's place of residence as specified in paragraphs (e)(2)(i) through (e)(2)(iv) of this section.

* * * * *

Dated: September 10, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–22596 Filed 9–15–93; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

34 CFR Part 607

RIN 1840–AB78

Strengthening Institutions Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to revise the regulations governing the Strengthening Institutions Program. These proposed regulations are needed to improve the functioning of the program and to implement changes made to the program's authorizing statute, title III, part A, of the Higher Education Act of 1965 (HEA), by the Higher Education Amendments of 1992 (1992 Amendments) (Pub. L. 102–325).

DATES: Comments must be received on or before October 18, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Louis J. Venuto, United States Department of Education, 400 Maryland Avenue, SW., Regional Office Building 3, room 3042, Washington, DC 20202–5250.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Louis J. Venuto. Telephone: (202) 708–8839. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Strengthening Institutions Program provides grants to institutions of higher education to improve their academic programs, institutional management, and fiscal stability. The purpose of the program is to increase the self-sufficiency of participating institutions and to strengthen their capacity to make a substantial contribution to the higher education resources of the nation.

The Strengthening Institutions Program is an important part of implementing the National Education Goals. Specifically, the program addresses Goal 5, that every adult American will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship, by expanding educational opportunities for students who attend the institutions that receive assistance under this program.

Summary of Major Changes

These proposed regulations do not incorporate all the statutory changes resulting from the Higher Education Amendments of 1992. The Secretary will incorporate these conforming changes in the final regulations. Rather, these proposed regulations include only (1) interpretations of certain statutory phrases used, but not explained, in the 1992 amendments; and (2) changes in rules and procedures for the program not required by statute. Commenters are requested to direct their comments to the interpretations and changes in these proposed regulations.

Section 607.3 What is an enrollment of needy students?

Under section 312(b)(1)(A) of the HEA, an institution must have "an enrollment of needy students" to qualify as an eligible institution under the Strengthening Institutions Program. Under section 312(c) of the HEA, an institution has an enrollment of needy students if (1) at least 50 percent of its degree students receive need based student financial assistance; or (2) a substantial percentage of its students receive Pell Grants. However, an institution that does not satisfy this requirement can nevertheless qualify as an eligible institution if the Secretary waives this requirement under section 352(a) of the HEA.

Prior to the Higher Education Amendments of 1992, section 352(a) of the HEA required the Secretary to waive the "needy student requirement" if the institution satisfied any one of the six criteria set forth in sections 352(a) (1) through (6). As a result of the 1992 Amendments, the Secretary now has discretion to waive the needy student requirement if the institution satisfies any one of the six criteria listed in that section. These criteria are incorporated in § 607.3(b) of the program regulations.

The criteria for waiving the needy student eligibility requirement are listed in § 607.3(b) of the current regulations. The Secretary finds waiver options one and two to be sufficiently explicit. The Secretary believes, however, that waiver options three through six could be made more explicit. The Secretary seeks public comment on how to clarify the language of these criteria.

Section 607.3(b)(3) of the current regulations permits the Secretary to waive the needy student enrollment requirement if an institution can demonstrate that it substantially increases higher education opportunities for low-income students who are also educationally disadvantaged, underrepresented in higher education, or minorities. The Secretary is considering quantifying this requirement by requiring that an applicant demonstrate that its enrollment of these students has increased by 200 or at least 20 percent, whichever is greater, at the end of three years in order to get this waiver. The Secretary requests public comment on this proposal. The Secretary also solicits comment on whether an institution could automatically satisfy this requirement if these students constitute at least 50 percent of an institution's total enrollment.

Section 607.3(b)(4) of the current regulations permits the Secretary to waive the needy student enrollment requirement if an institution can demonstrate that it substantially increases the higher education opportunities for individuals who reside in an area that is not included in a "metropolitan statistical area" and who are unserved by postsecondary institutions. The Secretary is considering quantifying this requirement by requiring that an applicant demonstrate that its enrollment of these students has increased by 200 or at least 20 percent, whichever is greater, at the end of three years. The Secretary requests public comment on this proposal. The Secretary also solicits comment on whether an institution could automatically satisfy this requirement if

these students constitute at least 50 percent of an institution's total enrollment.

The remaining two waiver criteria are future oriented in that an applicant for each waiver must demonstrate that it will increase the higher education opportunities for certain types of students if the Secretary grants a waiver. The Secretary is considering the following with regard to handling those waiver requests.

The institution would be required to provide a plan for increasing, during the next three years, its enrollment of subject students by some number or percent that would be the same for all institutions, and either maintain or put in place special programs and services designed to support these students. If an applicant for a waiver has applied for and received a waiver under these criteria in a previous year, the Secretary would base his decision to grant another waiver, in part, on whether the institution did what it said it was going to do to get the previous waiver. The Secretary requests comment on these proposals.

Section 607.4 What are low educational and general expenditures?

Under section 312(b)(1)(B) of the HEA, an institution must have average education and general expenses per full-time equivalent undergraduate student that are low in comparison to the average education and general expenses per full-time equivalent undergraduate student of institutions offering similar instruction to qualify as an eligible institution under the Strengthening Institutions Program. However, an institution that fails to meet this requirement can nevertheless qualify as an eligible institution if the Secretary chooses to waive this requirement under section 352(b) of the HEA. The conditions under which the Secretary may waive this requirement are contained in § 607.4(c) of the program regulations. The Secretary requests comment on a proposal to limit waivers of the education and general expenditure eligibility requirements under § 607.4 to institutions that do not obtain waivers of the enrollment of needy student requirement.

Section 607.8 What is a comprehensive development plan and what must it contain?

The Secretary proposes to revise this section to reduce the present nine elements of the comprehensive development plan to four elements. The Secretary has found that some of the current elements of the plan have not been particularly useful in evaluating an applicant's strategy for achieving growth and self sufficiency by strengthening its academic programs, institutional management, and fiscal stability.

Section 607.10 What activities may and may not be carried out under a grant?

The Secretary proposes to revise the allowable and unallowable activities for development grants. These changes will provide more guidance to grantees on the proper use of grant funds.

Section 607.11 What must be included in individual development grant applications?

The Secretary proposes to revise this section to provide that an application for a development grant must include a description of any activities that were funded under previous development grants awarded under the Strengthening Institutions or Special Needs Program that expired within five years of when the development grant will begin and the institution's justification for not completing the activities under the previous grant, if grant funds are requested to continue or complete the activities. This change was made to clarify that the grants identified are development grants. This change was also made to clarify that this requirement only relates to development grants that expired within five years of when the grant will begin and not to grants that expired prior to this time.

Section 607.12 What must be included in cooperative arrangement grant applications?

The Secretary proposes to revise the application procedure for cooperative arrangement grants to require members of the cooperative to select one of its members to be legally responsible for (1) the use of all grant funds; and (2) ensuring that the project is carried out by the group in accordance with Federal requirements. The Secretary has proposed this change to clarify who among the members of the cooperative has these legal responsibilities.

The proposed change to § 607.12 would in no way alter the "grantee" status of each member of the cooperative. Each individual member would remain a grantee under the program for the purposes of determining priority for a new grant and for any other purpose.

Section 607.13 How many applications for a development grant may an institution submit?

The Secretary proposes to revise this section to provide that in any fiscal year an institution may submit only one application for an individual development grant *or* one application for a cooperative arrangement grant. Currently, institutions may submit an individual development grant application and a cooperative arrangement grant application.

Requiring applicants to choose whether to apply for an individual development grant or a cooperative arrangement grant will clarify the intended purposes of these grants. A cooperative arrangement grant is intended to help each participating institution meet the goals and objectives of its comprehensive development plan better and at a lower cost than if the institution were awarded an individual development grant. Each applicant for a cooperative arrangement grant must explain why participation in a cooperative arrangement grant will enable it, at lower cost, to meet the goals and objectives of its plan than if it received an individual development grant. As a result, the Secretary believes it is not reasonable to allow an applicant to apply for an individual development grant if the grant activities are better carried out under a cooperative arrangement grant.

Section 607.20 How does the Secretary choose applications for funding?

Section 313(b) of the HEA, as amended by the Higher Education Amendments of 1992, provides that the Secretary shall give priority to applicants who are not already receiving a grant under this part. The Secretary has proposed § 607.20(b) to implement this change. As a consequence of this provision, an institution that is a grantee under a planning grant, an individual development grant, or cooperative arrangement development grant during a fiscal year will not have priority in the awarding of new development grants in that year vis-a-vis institutions that were not grantees.

Section 607.22 What are the selection criteria for development grants?

The Secretary proposes to revise the selection criteria for development grants. Specifically, the Secretary would revise the selection criteria and the maximum number of points for the quality of the applicant's comprehensive development plan, implementation strategy, evaluation plan, and budget. The Secretary believes that the proposed selection criteria and point values better reflect the purposes of the program.

Section 607.24 How does the Secretary use an applicant's performance under a previous development grant when awarding a development grant?

The Secretary proposes a new § 607.24. Under this proposed section, if the Secretary determines that an applicant did not successfully achieve the goals and objectives it set for itself under a previous development grant under the Strengthening Institutions or Special Needs Programs, the Secretary could refuse to award a new development grant, or could impose special conditions on the receipt of a new grant. However, before determining that an applicant did not successfully achieve the goals and objectives of its previous development grant, the Secretary would informally allow the institution to demonstrate that it met those goals and objectives.

Section 607.25 What priority for funding does the Secretary provide?

The Secretary proposes to add a new § 607.25 to give priority to an application for a cooperative arrangement grant that is geographically and economically sound, or will benefit the institutions applying for the grant. Currently, this priority is contained improperly in § 607.23. For a discussion of how the Secretary will administer the priority, commenters are directed to 34 CFR 75.105(c)(1) of the Education Department General Administrative Regulations (EDGAR).

Section 607.31 How does a grantee maintain its eligibility?

Section 315(b) of the HEA requires an applicant for a continuation award to demonstrate that it is making progress towards the goals described in its comprehensive development plan. The Secretary interprets section 315(b) of the HEA to require a grantee to demonstrate that the institution is making "substantial progress" toward achieving the objectives stated in its application, including, if appropriate, those objectives relating to institutionalizing practices and improvements developed under the grant. This interpretation would be included in § 607.31 of the program regulations.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small institutions of higher education receiving Federal funds under this program. However, the regulations would not have a significant economic impact on these small institutions because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 607.12, 607.11, and 607.22 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

Institutions are eligible to apply for grants under these proposed regulations. The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to average 27 hours per response for 500 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Secretary's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3042, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Secretary in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 607

College and universities, Grant program-education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.031A—Strengthening Institutions Program)

Dated: September 10, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend part 607 of title 34 of the Code of Federal Regulations as follows:

PART 607—STRENGTHENING INSTITUTIONS PROGRAM

1. The authority citation for part 607 is revised to read as follows:

Authority: 20 U.S.C. 1057–1059c, 1066–1069f, unless otherwise noted.

2. Section 607.1 is revised to read as follows:

§ 607.1 What is the Strengthening Institutions Program?

The purpose of the Strengthening Institutions Program is to provide grants to eligible institutions of higher education to improve their academic programs, institutional management, and fiscal stability in order to increase their self-sufficiency and strengthen their capacity to make a substantial contribution to the higher education resources of the Nation.

(Authority: 20 U.S.C. 1057)

3. Section 607.6 is revised to read as follows:

§ 607.6 What regulations apply?

The following regulations apply to the Strengthening Institutions Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs), except 34 CFR 75.128(a)(2) and 75.129(a) in the case of applications for cooperative arrangements.

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 607.

(Authority: 20 U.S.C. 1057)

4. Section 607.7 is amended by removing the word "Project" from the list of items in paragraph (a), and by removing the definition of "Strengthening Program" and revising the definition of "Activity" in paragraph (b) to read as follows:

§ 607.7 What definitions apply?

* * * * *

(b) * * *

Activity means an action that is incorporated into an implementation plan designed to meet one or more objectives. An activity is a subpart of a project and has its own budget that is approved to carry out the objectives of that subpart.

* * * * *

5. Section 607.8 is revised to read as follows:

§ 607.8 What is a comprehensive development plan and what must it contain?

(a) A comprehensive development plan is an institution's strategy for achieving growth and self-sufficiency by strengthening its—

(1) Academic programs;

(2) Institutional management; and

(3) Fiscal stability.

(b) The comprehensive development plan must include the following:

(1) An analysis of the strengths, weaknesses, and significant problems of the institution's academic programs, institutional management, and fiscal stability.

(2) A delineation of the institution's goals for its academic programs, institutional management, and fiscal stability, based on the outcomes of the analysis described in paragraph (b)(1) of this section.

(3) Measurable objectives related to reaching each goal and timeframes for achieving the objectives.

(4) Methods and resources that will be used to institutionalize practices and improvements developed under the proposed project.

(Authority: 20 U.S.C. 1066)

6. Section 607.10 is amended by revising paragraphs (b) and (c) to read as follows:

§ 607.10 What activities may and may not be carried out under a grant?

* * * * *

(b) *Development grants—allowable activities.* Under a development grant, except as provided in paragraph (c) of this section, a grantee shall carry out activities that implement its comprehensive development plan and hold promise for strengthening the institution. Activities that may be carried out include, but are not limited to—

(1) Faculty development that provides faculty with the skills and knowledge needed to—

(i) Develop academic support services, including advising and mentoring students;

(ii) Develop academic programs or methodology, including computer-assisted instruction, that strengthen the academic quality of the institution; or

(iii) Acquire terminal degrees that are required to obtain or retain accreditation of an academic program or department;

(2) Funds and administrative management that will improve the institution's ability to—

(i) Manage financial resources in an efficient and effective manner; and

(ii) Collect, access, and use information about the institution's operations for improved decisionmaking;

(3) Developing and improving academic programs that enable the institution to—

(i) Develop new academic programs or new program options that show promise for increased student enrollment;

(ii) Provide new technology or methodology to increase student success and retention or to retain accreditation; or

(iii) Improve curriculum or methodology for existing academic programs to stabilize or increase student enrollment;

(4) Acquiring equipment for use in strengthening management and academic programs to achieve objectives such as those described in paragraphs (b)(2) and (b)(3) of this section;

(5) Establishing or increasing the joint use of facilities such as libraries and laboratories to—

(i) Eliminate the distance and high cost associated with providing academic programs and academic support; or

(ii) Provide clinical experience that is part of an approved academic program at off-campus locations; or

(6) Developing or improving student services to provide—

(i) New or improved methods to deliver student services, including counseling, tutoring, and instruction in basic skills; or

(ii) Improved strategies to train student services personnel.

(c) *Development grants—unallowable activities.* A grantee may not carry out the following activities or pay the following costs under a development grant:

(1) Activities that are not included in the grantee's approved application.

(2) Activities that are inconsistent with any State plan for higher education that is applicable to the institution, including, but not limited to, a State plan for desegregation of higher education.

(3) Activities or services that relate to sectarian instruction or religious worship.

(4) Activities provided by a school or department of divinity. For the purpose of this provision, a "school or department of divinity" means an institution, or a department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter into some other religious vocation or to prepare them to teach theological subjects.

(5) Developing or improving non-degree or non-credit courses other than basic skills development courses.

(6) Developing or improving community-based or community services programs, unless the program provides academic-related experiences or academic credit toward a degree for degree students.

(7) Purchase of standard office equipment, such as furniture, file cabinets, bookcases, typewriters, or word processors.

(8) Payment of any portion of the salary of a president, vice president, dean, or equivalent officer at an institution to fill a position under the grant such as project coordinator or activity director.

(9) Costs of organized fund-raising, including financial campaigns,

endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions.

(10) Costs of student recruitment such as advertisements, literature, and college fairs.

(11) Services to high school students.

(12) Instruction in the institution's standard courses as indicated in the institution's catalog.

(13) Costs for health and fitness programs, transportation, and day care services.

(14) Student activities such as entertainment, cultural, or social enrichment programs, publications, social clubs, or associations.

(15) Activities that are operational in nature rather than developmental in nature.

(Authority: 20 U.S.C. 1057, 1069c)

7. Section 607.11 is amended by revising paragraph (c) to read as follows:

§ 607.11 What must be included in individual development grant applications?

* * * * *

(c) A description of any activities that were funded under previous development grants awarded under the Strengthening Institutions or Special Needs Program that expired within five years of when the development grant will begin and the institution's justification for not completing the activities under the previous grant, if grant funds are requested to continue or complete the activities;

* * * * *

(Authority: 20 U.S.C. 1066)

8. Section 607.12 is amended by adding a new paragraph (b)(4) to read as follows:

§ 607.12 What must be included in cooperative arrangement grant applications?

* * * * *

(b) * * *

(4) The name of the applicant for the group that is legally responsible for—

(i) The use of all grant funds; and

(ii) Ensuring that the project is carried out by the group in accordance with Federal requirements.

(Authority: 20 U.S.C. 1066, 1069)

9. Section 607.13 is revised to read as follows:

§ 607.13 How many applications for a development grant may an institution submit?

In any fiscal year, an institution of higher education may—

(a) Submit an application for an individual development grant; or

(b) Be part of a cooperative arrangement application.

(Authority: 20 U.S.C. 1057, 1069)

10. Section 607.20 is revised to read as follows:

§ 607.20 How does the Secretary choose applications for funding?

(a) The Secretary evaluates an application on the basis of the criteria in—

(1) Sections 607.21 and 607.23 for a planning grant; and

(2) Sections 607.22, 607.23, and 607.25 for a development grant.

(b) With regard to applicants that satisfy the requirements of paragraph (d) of this section, for each fiscal year, the Secretary awards development grants to applicants that are not, or were not, grantees under this part during the fiscal year, before the Secretary awards a development grant to any applicant that is or was a grantee under this part during the fiscal year.

(c)(1) The Secretary awards up to 100 points for the criteria in § 607.21 and up to 100 points for the criteria in § 607.22.

(2) The maximum possible score for each complete criterion is in parentheses.

(d)(1) The Secretary considers funding an application for a planning grant that scores at least 50 points under § 607.21.

(2) The Secretary considers funding an application for a development grant that—

(i) Scores at least 50 points under § 607.22;

(ii) Is submitted with a comprehensive development plan that satisfies all the elements required of such a plan under § 607.8; and

(iii) In the case of an application for a cooperative arrangement grant, demonstrates that the grant will enable each eligible participant to meet the goals and objectives of its comprehensive development plan better and at a lower cost than if each eligible participant were funded individually.

(Authority: 20 U.S.C. 1057–1059, 1066–1069f)

11. Section 607.22 is revised to read as follows:

§ 607.22 What are the selection criteria for development grants?

The Secretary uses the following criteria to evaluate applications for development grants:

(a) *Quality of the applicant's comprehensive development plan.* (Total: 30 points) The extent to which—

(1) The strengths, weaknesses, and significant problems of the institution's academic programs, institutional management, and fiscal stability are clearly and comprehensively analyzed and result from a process that involved major constituencies of the institution. (12 points);

(2) The goals for the institution's academic programs, institutional management, and fiscal stability are realistic and based on comprehensive analysis. (5 points);

(3) The objectives stated in the plan are measurable, related to institutional goals, and, if achieved, will contribute to the growth and self-sufficiency of the institution (5 points);

(4) The plan clearly and comprehensively describes the methods and resources the institution will use to institutionalize practices and improvements developed under the proposed project, including, in particular, how operational costs for personnel, maintenance, and upgrades of equipment will be paid with institutional resources (8 points).

(b) *Quality of activity objectives.* (Total: 10 points) The extent to which the objectives for each activity are—

(1) Realistic and defined in terms of measurable results (5 points); and

(2) Directly related to the problems to be solved and to the goals of the comprehensive development plan (5 points).

(c) *Quality of implementation strategy.* (Total: 25 points) The extent to which—

(1) The implementation strategy for each activity is comprehensive (10 points);

(2) The rationale for the implementation strategy for each activity is clearly described and is supported by the results of relevant studies or projects (10 points); and

(3) The timetable for each activity is realistic and likely to be attained (5 points).

(d) *Quality of key personnel.* (Total: 10 points) The extent to which—

(1) The past experience and training of key professional personnel are directly related to the stated activity objectives (7 points); and

(2) The time commitment of key personnel is realistic (3 points).

(e) *Quality of project management plan.* (Total: 10 points) The extent to which—

(1) Procedures for managing the project are likely to ensure efficient and effective project implementation (5 points); and

(2) The project coordinator and activity directors have sufficient authority to conduct the project effectively, including access to the president or chief executive officer (5 points).

(f) *Quality of evaluation plan.* (Total: 10 points) The extent to which—

(1) The data elements and the data collection procedures are clearly

described and appropriate to measure the attainment of activity objectives and to measure the success of the project in achieving the goals of the comprehensive development plan (5 points); and

(2) The data analysis procedures are clearly described and are likely to produce formative and summative results on attaining activity objectives and measuring the success of the project on achieving the goals of the comprehensive development plan (5 points).

(g) *Budget.* (Total: 5 points) The extent to which the proposed costs are necessary and reasonable in relation to the project's objectives and scope.

(Authority: 20 U.S.C. 1057–1059, 1066–1069f)

§ 607.23 [Amended]

12. Section 607.23 is amended by removing paragraph (c), and redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

13. A new § 607.24 is added to subpart C to read as follows:

§ 607.24 How does the Secretary use an applicant's performance under a previous development grant when awarding a development grant?

(a)(1) In addition to evaluating an application under the selection criteria in § 607.22, the Secretary evaluates an applicant's performance under any previous development grant awarded under the Strengthening Institutions and Special Needs Programs that expired within five years of the year when the development grant will begin.

(2) The Secretary evaluates whether the applicant fulfilled, or is making substantial progress toward fulfilling, the goals and objectives of the previous grant, including, but not limited to, the applicant's success in institutionalizing practices developed and improvements made under the grant.

(3) The Secretary bases the evaluation of the applicant's performance on information contained in—

(i) Performance and evaluation reports submitted by the applicant;

(ii) Audit reports submitted on behalf of the applicant; and

(iii) Other information obtained by the Secretary, including reports prepared by the Department.

(b) If the Secretary initially determines that the applicant did not fulfill the goals and objectives of a previous grant or is not making substantial progress towards fulfilling those goals and objectives, the Secretary affords the applicant the opportunity to respond to that initial determination.

(c) If the Secretary determines that the applicant did not fulfill the goals and objectives of a previous grant or is not making substantial progress towards fulfilling those goals and objectives, the Secretary may—

(1) Decide not to fund the applicant; or

(2) Fund the applicant but impose special grant terms and conditions, such as specific reporting and monitoring requirements.

(Authority: 20 U.S.C. 1066)

14. A new § 607.25 is added to Subpart C to read as follows:

§ 607.25 What priority does the Secretary use in awarding cooperative arrangement grants?

Among applications for cooperative arrangement grants, the Secretary gives priority to proposed cooperative arrangements that are geographically and economically sound, or will benefit the institutions applying for the grant.

(Authority: 20 U.S.C. 1057, 1069)

15. Section 607.31 is revised to read as follows:

§ 607.31 How does a grantee maintain its eligibility?

(a) A grantee shall maintain its eligibility under the requirements in § 607.2, except for § 607.2(a) (1) and (2), for the duration of the grant period.

(b) The Secretary reviews an institution's application for a continuation award to ensure that—

(1) The institution continues to meet the eligibility requirements described in paragraph (a) of this section; and

(2) The institution is making substantial progress toward achieving the objectives set forth in its grant application including, if applicable, the institution's success in institutionalizing practices and improvements developed under the grant.

(Authority: 20 U.S.C. 1057–1059b, 1066–1069f)

[FR Doc. 93–22607 Filed 9–15–93; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG44

Disability Due to Impaired Hearing

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations regarding the definition of disability due to impaired hearing. This proposed amendment is necessary because the current regulation has been interpreted as overly broad with respect to determinations of service connection. The intended effect of this amendment is to limit the regulation to a definition of disability due to impaired hearing without implying that it determines whether or not a disability is service-connected.

DATES: Comments must be received by VA on or before October 18, 1993. Comments will be available for public inspection until October 26, 1993. This change is proposed to be effective 30 days after the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until October 26, 1993.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: 38 CFR 3.385, entitled "Determination of service connection for impaired hearing," currently states that hearing loss will not be service-connected when it meets certain pure tone and speech recognition criteria. The criteria are specified as thresholds for the frequencies of 500, 1000, 2000, 3000, and 4000 Hertz all less than 40 decibels with at least three of those thresholds 25 decibels or less, and speech recognition scores using the Maryland CNC Test 94 percent or better. This section was published as a final rule in the **Federal Register** on April 3, 1990 (55 FR 12348–9) and made effective May 3, 1990.

In a recent decision the U.S. Court of Veterans Appeals noted that 38 CFR 3.385 is negative in both tone and application in that it states when service connection will not be established without determining when service connection will be established. The court also noted that the regulation "mixes apples and oranges" by using criteria for hearing loss to determine service connection rather than degree of disability.

We propose to correct these shortcomings by amending 38 CFR

3.385 to establish a standard for determining whether, for VA purposes, a disability due to impaired hearing exists. If such a disability does exist, whether or not it is service-connected is a separate determination governed by the provisions of 38 CFR 3.303–3.344. Although we are proposing to restate the pure tone and speech recognition criteria for the sake of clarity, this constitutes no substantive change to the criteria contained in the current regulation. These changes will clearly limit the regulation to a definition of disability due to impaired hearing, and no longer suggest that the rule governs service connection once a disability has been established. We are proposing corresponding changes to the title of § 3.385.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual impact on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: July 22, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is proposed to be amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.385 is revised to read as follows:

§ 3.385 Disability due to impaired hearing.

For purposes of applying the laws administered by VA, impaired hearing will be considered to be a disability when the auditory threshold in any of the frequencies 500, 1000, 2000, 3000, or 4000 Hertz is 40 decibels or greater; or when the auditory thresholds for at least three of the frequencies 500, 1000, 2000, 3000, or 4000 Hertz are 26 decibels or greater; or when speech recognition scores using the Maryland CNC Test are less than 94 percent.

[FR Doc. 93–22505 Filed 9–15–93; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

Defense Federal Acquisition Regulation Supplement; Restrictions on Food, Clothing, Fabrics, Specialty Metals and Hand or Measuring Tools

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for public comments.

SUMMARY: The Defense Acquisition Regulations Council is proposing changes to the Defense FAR Supplement to apply exceptions to the restriction on the acquisition of foreign hand and measuring tools and to remove duplicative language on agreements with foreign governments.

DATES: Comments on the proposed DFARS rule should be submitted in writing to the address shown below on or before October 18, 1993 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to the Defense Acquisition Regulations Council, ATTN: IMD 3D139, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301–3062. FAX (703) 697–9845. Please cite DFARS Case 92–D020 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DFARS 225.70 language on restrictions on purchases of foreign hand or measuring tools does not fully utilize the exceptions provided in Section 8005 of Public Law 102–172, for the acquisition of hand and measuring tools. Under current DFARS, only the exception for small purchases applies. Certain other exceptions which are applicable to restriction on food, clothing, fabrics, and specialty metals, should also apply to hand or measuring tools. The most significant of which is the exception for acquisitions by vessels in foreign waters.

B. Regulatory Flexibility Act

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it applies only to contracts entered into overseas, where competition from domestic small businesses is limited. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 93–610 in correspondence.

C. Paperwork Reduction Act

The proposed rule does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR parts 225 and 252 be amended as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and FAR Subpart 1.3.

PART 225—FOREIGN ACQUISITION

225.7002 [Amended]

2. Section 225.7002 is amended by revising the section title to read: "225.7002 Restrictions on food,

clothing, fabrics, speciality metals, and hand or measuring tools."

3. Section 225.7002–1 is amended by adding paragraph (c) as follows:

225.7002–1 Restrictions.

* * * * *

(c) Do not acquire hand or measuring tools that were not produced in the United States or its possessions.

4. Section 225.7002–2 is amended by revising paragraphs (a), (d), and (i) to read as follows:

225.7002–2 Exceptions.

* * * * *

(a) Any of the items in 225.7002–1 (a) or (b), if the Secretary concerned, or designee, determines that they cannot be acquired when needed in a satisfactory quality and sufficient quantity grown or produced in the United States or its possessions at U.S. market prices.

* * * * *

(d) Acquisitions of those supplies listed in FAR 25.108(d)(1), unless the supplies are hand or measuring tools.

* * * * *

(i) Purchases of specialty metals and chemical warfare protective clothing when the acquisition furthers an agreement with a qualifying country (see 225.872).

5. Section 225.7002–4 is amended by adding an introductory paragraph before paragraph (a), and by adding paragraph (d) to read as follows:

225.7002–4 Contract clauses.

Unless an exception is known to apply—

* * * * *

(d) Use the clause at 252.225–7015, Preference for Domestic Hand or Measuring Tools, in all solicitations and contracts over $25,000 calling for delivery of hand or measuring tools.

225.7003 [Removed and Reserved]

6. Section 225.7003 is removed and reserved.

225.7003–1 [Removed]

7. Section 225.7003–1 is removed.

225.7003–2 [Removed]

8. Section 225.7003–2 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. Section 252.225–7012 is amended to revise paragraph (b)(1) to read as follows:

252.225–7012 Preference for certain domestic commodities.

* * * * *

(b) * * *

(1) To supplies listed in FAR 25.108(d)(1), or other supplies for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

* * * * *

10. Section 252.225–7015 is amended by revising the introductory paragraph to read as follows:

252.225–7015 Preference for domestic hand or measuring tools.

As prescribed in 225.7002–4(d), use the following clause:

* * * * *

[FR Doc. 93–22576 Filed 9–15–93; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 173, 174 and 180

[Docket No. HM–201; Notice No. 93–15]

RIN 2137–AB40

Detection and Repair of Cracks, Pits, Corrosion, Lining Flaws, Thermal Protection Flaws and Other Defects of Tank Car Tanks

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: RSPA is proposing revisions to the Hazardous Materials Regulations (HMR) that would require the development and implementation of Quality Assurance Programs (QAP) at facilities that build and repair tank cars; require the use of non-destructive testing (NDT) techniques in lieu of the current periodic hydrostatic pressure tests for fusion welded tank cars to more adequately detect critical cracks; require thickness measurements of tank cars; allow the continued use of tank cars with reduced shell thicknesses; revise the inspection and test intervals for tank cars; and clarify the inspection requirements relating to tank cars prior to and during transportation. These actions are necessary to increase the confidence that critical tank car defects will be detected. The intended effect of these actions is to enhance the safe transportation of hazardous materials in tank cars.

DATES: Comments must be received on or before March 16, 1994.

ADDRESSES: Address comments to the Dockets Unit, (DHM–30), Research and Special Programs Administration, Department of Transportation, Washington, DC 20590–0001. Commenters should submit five copies identifying the docket and NPRM number. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The location of the Dockets Unit is in Room 8421 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Public dockets may be reviewed between the hours of 8:30 a.m., and 5 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Phil Olekszyk, (Telephone 202–366–0897), Deputy Associate Administrator for Safety, RRS–2, FRA, 400 Seventh Street SW., Washington DC 20590, Thomas A. Phemister, (Telephone 202–366–0635), Trial Attorney, Office of Chief Counsel, RCC–30, FRA, 400 Seventh Street SW., Washington, DC 20590 or James H. Rader, (Telephone 202–366–0510), Hazardous Materials Division, Federal Railroad Administration, RRS–12, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

On December 8, 1987, the Research and Special Programs Administration (RSPA) issued an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** under Docket HM–201 entitled "Detection and Repair of Cracks, Pits, Corrosion, Lining Flaws, Thermal Protection Flaws and Other Defects of Tank Cars" (52 FR 46510). The ANPRM solicited comments on the types of repairs that are likely to lead to non-detectable cracks and on non-destructive testing (NDT) techniques that are appropriate to find these and other cracks. The ANPRM also asked for comments on post-weld heat treatment and on techniques to repair cracks, pits, corrosion, lining flaws, thermal protection flaws and other defects without causing collateral damage. RSPA and the Federal Railroad Administration (FRA) hoped that the commenters would offer suggestions for rule changes to incorporate additional NDT techniques to qualify tank cars for further use.

In response to petitions for reconsideration under Docket HM–201B (55 FR 422, January 5, 1990 and 55 FR 39000, September 24, 1990), RSPA and FRA indicated that the issue of the minimum tank car shell thickness would be fully considered in this NPRM (*see* Shippers; Use of Tank Car Tanks With Localized Thin Spots; Corrections and Response to a Petition for

Reconsideration, 55 FR 39000 (September 11, 1990)). Commenters to that rule questioned RSPA and FRA's clarification that the part 179 requirement is the minimum tank car shell thickness. This NPRM addresses the comments received and proposes minimum service life shell thickness requirements and measures to ensure that those limits are observed. It also proposes to substitute NDT inspection procedures for existing hydrostatic testing requirements on all tank cars other than DOT Class 107 tank cars and on those few riveted tank cars remaining in service.

RSPA and FRA received 14 comments in response to the ANPRM from members of the various industries that own, lease, transport, or use tank cars. Following is a summary of the written comments:

1. What types of tank car repairs are likely to lead to undetected cracks (e.g., grinding, arc gouging, welding)?

Commenters stated that it is unlikely proper repairs would lead to undetected (or undetectable) cracks. The repair procedures most likely to lead to cracking are weld undercuts and jacking and pressing to restore the tank shell and head contour. Commenters suggested that in order to properly repair tank cars, companies must strictly adhere to stringent quality assurance programs, process control and personnel qualifications.

2. How effective is post weld heat treatment in reducing crack growth of existing cracks or the formation of new cracks?

Most commenters stated that post weld heat treatment is not effective in retarding growth in existing cracks, although it is effective in inhibiting the formation of new cracks by reducing residual stresses, increasing metal ductility and softening the heat affected zone near the weld.

3. What inspection techniques (e.g., ultrasonic, magnetic particle, acoustic emission and radioscopic) are appropriate to detect small cracks, pits, corrosion, lining flaws, thermal protection flaws and other defects?

Most commenters stated that all of the above techniques, alone or in combination, are reliable and each has its own inherent advantages and degree of sensitivity. The orientation and type of defect, as well as the characteristics of the material in which the defect exists, dictate the proper inspection procedure. Commenters suggested that adherence to good NDT techniques, procedures, and personnel qualifications are important to detect defects. Commenters supported the following NDT methods—

—Dye penetrant testing for surface flaws;
—Radiography testing for subsurface flaws;
—Magnetic particle testing for surface and some subsurface flaws;
—Ultrasonic testing for surface and subsurface flaws;
—Acoustic emission testing for targeting potential defective areas that will require further inspection;
—Enhanced visual imagery for surface flaws (e.g., fiberscopes and borescopes);
—Spark testing for lining flaws; and
—Infrared scanning for thermal protection flaws.

4. What techniques are appropriate to repair small cracks, pits, corrosion, lining flaws, thermal protection flaws, and other defects, without causing collateral damage?

Commenters stated that appropriate techniques for repairing small cracks, pits, and corrosion are contained in the Association of American Railroads (AAR) Manual of Standards and Recommended Practices, Specifications for Tank Cars, Specification M–1002. Repairs of lining and thermal protection flaws can be accomplished by following the manufacturer's instructions.

5. For small cracks, pits, corrosion, lining flaws, thermal protection flaws, and other defects, what alternatives to defect repair are appropriate (e.g., special handling, special train placement, and more frequent reinspection)?

Commenters stated that the only real alternative is more frequent inspection and tests.

A. Adequacy of the Hydrostatic Test

The history of the hydrostatic test predates the Department's regulations and its purpose was to find leaks associated with tank shell plates and loose rivets and to detect metal deformations (i.e., distress) in areas of reduced wall thickness. The early tank cars were of riveted or forge welded construction and the test was effective in finding imperfections associated with riveted joints, nozzles, tank anchors, and reinforcements. In the 1930s, tank car manufacturers started building fusion welded tank cars and hydrostatic tests were universally applied to these tank cars as well.

Practically all pressure vessels are given a final hydrostatic test at the time of construction. Such a test stresses the vessel with the goal of detecting flaws that can lead to crack initiation or shell deformation. If no imperfections are found, the integrity of the pressure vessel is verified. Hydrostatic testing is also required for highway cargo tanks, cylinders, portable tanks, pipelines, and stationary storage vessels. Normally, the test pressure for tank cars is the greater of 1.3 times or 133 percent of the maximum allowable working pressure (MAWP) of the tank; or, 133 percent of the maximum pressure used for loading and unloading product; or, the minimum pressure prescribed for the tank in the Federal specification (*see* 49 CFR 173.31(a)(14)).

Although widely accepted, a hydrostatic test does have notable limitations, particularly with respect to detecting fatigue cracks that are not yet extensive enough to fail at the pressures used in hydrostatic testing. For this reason, hydrostatic testing is most commonly paired with a 100 percent visual inspection of the tank shell to improve the probability of finding significant cracks.

On January 18, 1992, at Dragon, Mississippi a tank car loaded with liquefied petroleum gas split apart at a circumferential weld seam as the train began to pull out of a siding. The car was not overdue for any periodic tests or inspections. In an investigation following the Dragon incident, FRA and the National Transportation Safety Board (NTSB) subjected seven tank cars with known cracks to a hydrostatic test. (See Inspection and Testing of Railroad Tank Cars, Special Investigation Report NTSB/SIR–92–05, National Transportation Safety Board, 1992.) None of the tests showed any indication that a crack was present. In the same investigation, cracks in the circumferential welds were discovered in 39 other tank cars built to the same design. These tank cars had all passed a hydrostatic test within the last 10 years, thirteen of them within the last year, and yet radiographic and ultrasonic testing showed cracks ranging from 8.89 to 142.24 cm (3.5 to 56 inches) in length. The results of these findings parallel similar investigations where FRA found defects in tank cars that were not detected in the transportation system nor at the time of the hydrostatic test. In one recent accident, on March 25, 1992, at Kettle Falls, Washington, a tank car failed on its first post-test loaded move, one month after successfully passing the required visual inspection and the hydrostatic pressure test.

In a response to a letter from the NTSB, the Railway Progress Institute (RPI) estimated that, of the 121,000 tank cars owned or operated by RPI members, about 14,400 are hydrostatically tested each year. The RPI stated that, other than a small number of failures because of leaking seals and other components, they were

not aware of any tank cars that had failed a hydrostatic pressure test because of structural defects. Also in response to a similar letter from the NTSB, the AAR replied that tank cars appear to pass the required hydrostatic tests despite the presence of major flaws in the tanks.

Based on the ineffectiveness of the hydrostatic test in detecting significant fatigue cracking in tank cars resulting from severe loadings, stress risers, and welding defects, RSPA and FRA no longer consider the hydrostatic pressure test part of the optimum way to qualify fusion welded tank cars for continued service. This notice proposes non-destructive inspections and tests for the continued qualification of tank cars. The agencies believe that if such non-destructive tests were mandated, an incident like the one in Dragon, Mississippi might not have happened. This notice does not, however, propose to remove the requirement to perform a hydrostatic pressure test prior to certification of the tank car (e.g., *see* 179.100–18). This initial hydrostatic test substantiates the integrity of the new welded joints.

B. NDT Techniques

RSPA is proposing to require that the bottom shell of fusion welded tank cars be inspected periodically by appropriate NDT techniques, such as magnified visual imagery, ultrasonic, radiographic, magnetic particle, and dye penetrant testing methods, in lieu of hydrostatic pressure tests. In addition to the structural integrity test of all bottom shell welded attachments and of the circumferential and longitudinal welds in the bottom shell area using one of the NDT techniques, RSPA proposes to retain the requirement, now in § 173.31, for a complete visual inspection of the entire tank car, inside and out.

Such inspections may entail the removal of portions of the tank jacket when the cars are so equipped. The amount of jacket removal is dependent upon the inspection and test method employed. For example, an external inspection and test of the bottom shell may employ an industrial fiberscope that only requires inspection ports, whereas ultrasonic tests in the same areas could require complete removal of the tank jacket.

RSPA and FRA recognize that NDT techniques will be refined in the future to provide greater precision in measurement and improved ability to characterize defects. Even today, however, NDT techniques reveal considerably more about defects resulting from the severe loading conditions applied to tank cars than the current hydrostatic test. Like any testing, NDT depends on properly qualified inspectors and expert interpretation of test results. As a rule, tank car facilities using dye penetrant, magnetic particle, radiography, and enhanced visual imagery can expect about 90 per cent reliability in detecting flaws, with ultrasound somewhat lower due to the extra knowledge and skill required to interpret results. (See Reliability of Nondestructive Inspections, Final Report, San Antonio Air Logistics Center Report SA–ALC/MME 76–6–38–1, Lockheed-Georgia Company, Marietta, GA, December, 1978.) At this time, the reliability of acoustic emissions testing is not sufficient to include that NDT method in this rulemaking proposal. Even with a perfect system, some defects would remain hidden and, thus, FRA does not predict that the use of NDT techniques will always find every possible flaw in a tank car. Overall, FRA expects NDT to be 80–85 percent effective in finding significant defects. Based on the previous discussion, this is a considerable improvement over the current procedure.

With this in mind, and in keeping with the recommendations of the NTSB, RSPA and FRA will be working with the AAR Tank Car Committee to (1) conduct root cause analysis, such as defining the nature of cracking, typical loading spectra expected on the tank in actual service, crack initiation sites and mechanisms and a crack growth model; (2) determine the allowable flaw size using failure/acceptance criteria; (3) propose modifications to tank car design, such as multiple load paths and the use of materials that provide a reduced rate of crack propagation combined with high residual strength; and, (4) require the arrangement of design details, like bottom discontinuities, to reduce stress concentration points. The results of these efforts will be realized in the years ahead, but RSPA and FRA believe that NDT techniques are sufficiently advanced and dependable that the need for their use is demonstrated for tank cars.

C. Bottom Shell

Because defects are known to exist outside of the area currently defined as the "bottom shell," such as those in the attachment welds of bottom discontinuities, RSPA proposes to revise the current definition of the bottom shell by enlarging the area from 61 cm (two feet) to 122 cm (four feet) on each side of the longitudinal center line of the tank. RSPA and FRA consider this enlarged area more appropriate to qualify the tank for further use.

D. Inspection and Test Intervals

The existing periodic test requirements for tank cars list over 70 different DOT specifications (*see* the table in § 173.31(c)). Typically, tank cars have a 10-year periodic test interval, although most new tank cars used in Class 8 (corrosive) service are subject to a periodic test every 5 years up to age 10, then every 3 years up to age 22, and then every year. This is known as the 5–3–1 periodic test interval. Five DOT class tank cars (DOT–103ALW, DOT–104W, DOT–111A60W1, DOT–111AW1, and DOT–111A100W3) have a 20-year periodic test interval, based on relief granted under a petition submitted by the American Petroleum Institute in 1970 (35 FR 7120, May 5, 1970). These tank cars are in service 20 years before their first periodic test. After the 20 year inspection and test, the tank cars are inspected every 10 years (i.e., a 20–10 periodic test interval).

After reviewing the periodic test intervals and the commodities authorized in each tank, FRA found several inconsistencies:

(1) Prior to publication of a final rule under Docket HM–181 ("Performance-Oriented Packaging Standards; Changes to Classification, Hazard Communication, Packaging, and Handling Requirements Based on UN Standards and Agency Initiative," 55 FR 52402; December 21, 1990), the regulations authorized several different DOT Specification tank cars for the same material. For example, sodium hydroxide liquid or solution (Class 8) and carbolic acid (Division 6.1) are authorized in DOT 111A60W1 or 111A60W2 tank cars. If a shipper uses a new DOT 111A60W1 tank car, the tank car has a 20–10 periodic test interval; and, if the shipper uses a new DOT 111A60W2 tank car, the tank car has a 5–3–1 test interval.

(2) For some corrosive materials, the regulations specify a 5–3–1 interval based on the authorized tank specification, regardless of the rate at which the material corrodes the tank car shell.

(3) The DOT 105A500W tank car requires an inspection and test every 2 years when in chlorine service, but every 10 years when used in other hazardous materials service.

(4) The current periodic test intervals do not adequately consider the effects of fatigue on the car structure for the creation of cracks and other flaws or the proper inspection intervals to detect flaws before they reach a critical size.

These inconsistencies were compounded by certain revisions adopted under Docket HM–181 because shippers have more latitude to choose specification tank cars for specific hazardous materials, including Class 8 (corrosive) materials (*See* 55 FR 52402, 52443, December 21, 1990). In short, shippers may choose to use tank cars with a 20–10 periodic test interval even though the materials are corrosive to the tank. RSPA and FRA believe that the current approach, basing the periodic test interval on the tank specification, may lead to more frequent releases of hazardous materials through the tank shell from cracks and corrosion. As discussed below, there is a need to revise the existing periodic inspection and test intervals for tank cars and to base them on factors such as service environment, structural fatigue, crack propagation, and corrosion.

E. Inspection Intervals, Materials Not Corrosive to the Tank

Based on data collected thus far, FRA finds that cracks may reach a critical size adjacent to welds and welded attachments on the bottom shell within about 400,000 miles of railroad service (*see* "Owners of Railroad Tank Cars; Emergency Order Requiring Inspection and Repair of Stub Sill Tank Cars," 57 FR 41799 September 11, 1992). In meetings leading to the development of FRA's Emergency Order No. 17 (57 FR 41799, September 11, 1992), RPI noted that establishing the fatigue life of a structure such as a tank car required consideration of many factors, among them the commodity carried, the typical routing of the tank car, the length of the trip, accumulated mileage, and the design characteristics of the tank car, including the material used to construct it. RPI says, and AAR agrees, that the best single factor, by far, is accumulated mileage. RSPA and FRA agree that, given the current state of knowledge and the results of both research and the analysis of material gathered in this and similar proceedings, mileage is the most dependable general predictor of the onset of the effects of fatigue.

Common protocols for NDT (including Collins, J.A., Failure of Materials in Mechanical Design, ©1981, John Wiley & Sons Inc., New York, p. 299) allow for two opportunities to inspect an item before predicted failure. This helps ensure against premature failure. Because tank cars travel an average of about 18,000 miles per year, an inspection and test interval of 10 years allows the recommended two inspections, with a safety factor. For the sake of efficiency, and to increase safety margins for most cars, FRA and RSPA propose to implement this 10-year inspection and test interval starting at what would otherwise be the next scheduled tank hydrostatic pressure test. This 10-year interval coincides with Rule 88 B.1. in the AAR's Field Manual of Interchange Rules. For 20–10 tank cars within the initial 20-year periodic hydrostatic test interval (i.e., Class DOT 103W, 104W, 111A60W1, 111A100W1, and 111A100W3 tank cars), it is proposed that the next inspection and test date be the date of publication of this rule, plus one-half of the remaining years to what would otherwise be the next scheduled tank hydrostatic test. After that the tank would be inspected at a 10-year interval. RSPA and FRA believe that the proposed uniform approach to tank car inspection and test is fair, safe, and enforceable.

FRA realizes, however, that some tank cars can travel in excess of the 18,000 mile annual average and, by doing so, the tank cars may reach 200,000 miles of railroad service before their first periodic inspection and 400,000 before their second. Because car owners can keep track of car miles traveled and FRA and RSPA, as a practical matter, cannot; because there are no distinguishing markings for high mileage tank cars; and because all tank cars have at least the potential to become high mileage tank cars, car owners are reminded that the proposals in this notice do not prohibit inspection and test intervals shorter than those mandated. Owners with high mileage cars should inspect their tank cars more frequently than the regulatory period proposed here and are encouraged to do so, by marking the tank car with the revised due date.

F. Inspection and Test Intervals, Materials Corrosive to the Tank

For corrosive materials in non-lined or non-coated tank cars, an inspection and test interval would be based on the lower of the corrosion rate of the tank shell or the fatigue life of the tank structure as discussed above. In this notice, FRA has developed an interval to ensure that the calculated thickness of the tank at the next inspection and test will not fall below the allowable minimum wall thickness. The inspection and test interval in this case is calculated by subtracting the actual thickness (measured at the time of construction or any subsequent inspection and test) from the allowable minimum thickness and then dividing that difference by the hazardous material's corrosion rate on the tank. As the shell thickness corrodes throughout the service-life of the tank, the inspection and test interval becomes more frequent. The test interval may not exceed ten years. Tank car operators may defer inspection and test costs by using tanks with thicker than minimum shells, by constructing tanks with a material that resists corrosion, or by using linings or coatings. If a lining or coating is used, there is no requirement in this notice for calculating the inspection and test interval based on corrosion, although inspection and testing of the lining or coating will be required as discussed below. Linings include glass and lead; coatings include organic, aluminum, and zinc materials. As a guide in determining the corrosion rate on the tank, owners of tank cars may refer to the National Association of Corrosion Engineers (NACE) Standard: "Test Method Laboratory Corrosion Testing of Metals For the Process Industries."

RSPA proposes to remove Table 1 and related footnotes from § 173.31 (c) and to move the inspection and test requirements to new subpart F of part 180.

G. Lining and Coating Inspections and Tests

RSPA proposes inspection and test requirements for tank cars with linings and coatings. This would ensure that the lining or coating is in proper condition for the transportation of hazardous materials. Since 1987, the Department's hazardous materials incident database shows that there have been 23 incidents involving lining or coating failures on tank cars that resulted in the release of hazardous material. As proposed, owners of lined or coated tank cars must determine the periodic inspection interval and inspection technique for the lining and coating, based on the owner's knowledge of the material used. The owner must also maintain all supporting documentation used to make such a determination, such as the lining or coating manufacturer's recommended inspection interval and inspection technique, at the owner's principle place of business. The supporting documentation used to make such inspection interval determinations and the inspection technique must be made available to FRA upon request.

H. Safety System Inspections

The HMR require tank cars used for transporting flammable gases and ethylene oxide to have thermal protection systems, consisting of either a thermal blanket or a thermal coating. In June 1991, General American Transportation Corporation (GATX) began an investigation into the thermal integrity of certain tank cars modified

with a "thermal blanket" to protect the tank car and the commodity within it from fire. The purpose of GATX's investigation was to determine if the thermal blanket on the top of the car remained in place after a period of several years. GATX found that the thermal blanket receded from the top of some tank cars, especially when the thermal blanket was not held in place with wire mesh or banding. Shortly after GATX's investigation, the AAR informed owners of tank cars about the findings reported by GATX. The AAR also began to investigate the extent of thermal integrity loss on tank cars by surveying several tank car owners. The results of the AAR's investigation are not complete, but preliminary data indicate that some owners have reported thermal integrity losses on some tank cars.

RSPA and FRA have stated on numerous occasions, including in a **Federal Register** publication, that if a tank car no longer meets the applicable specification, it may no longer be represented as meeting the specification, such as by marking the tank "DOT" (49 CFR 171.2(c)). For example, if there is a sufficient loss of thermal protection on a tank car, such that the tank car will no longer survive the pool and torch fire performance standard prescribed in § 179.105–4, the tank car may no longer be represented as a thermally protected tank car. Safety systems, that is, systems built into the car, may deteriorate after years of use. In addition to thermal protection, these systems include the manner in which a tank car was fabricated and maintained, the integrity of a tank head puncture resistance systems, and the coupler vertical restraint system, after years of use.

RSPA is proposing to add explicit requirements for the inspection of thermal protection systems, tank head puncture resistance systems, coupler vertical restraint systems, and devices used to protect discontinuities. If, after an inspection, one or more of these systems do not conform to the applicable specification requirements contained in part 179, renewal or repair of the system would be necessary to continue the qualification of the tank car. In this notice, RSPA is not proposing the use of any specific inspection method for thermal protection systems, although jacket removal, jacket inspection ports, infrared inspection techniques, and thermography are options to ensure their integrity. Nothing in the proposed regulation would preclude a tank car owner from marking a tank as meeting a less stringent specification, such as re-marking a Class DOT 112J tank car to a DOT 112S or 112A tank specification when the tank car no longer conforms to the Class DOT 112J standard, or when the tank car owner chooses not to inspect the thermal protection system when the product intended for transport in the tank car does not require such a system.

I. Minimum Shell Thickness

Under the current HMR, the only requirement for measuring tank car thickness is at the time of construction or after a repair involving the removal of metal. When a metal plate is first formed into a rolled "hoop" that will become part of the tank shell, it must be the thicker of the dimension specified in a chart summarizing specification requirements (e.g., § 179.101(a) or § 179.201–1(a)) or the result of a calculation that includes the required bursting pressure, the inside diameter of the tank and the tensile strength of the material from which the shell is formed (e.g., § 179.100–6(a)). If a repair involving the removal of metal is made, the regulations, stated broadly, permit the removal of 0.158 cm (1/16-inch) over a localized area. (See § 173.31(a)(11) for more detail.) The proposals in this notice recognize that tank car shell thickness tends to degrade over time. In addition, and enabled by enhanced inspection and test procedures, the proposals in this notice clarify both a standard for new construction and a definite service life shell thickness requirement for all areas of the tank shell and heads.

Commenters to an earlier rulemaking on localized thin spots under HM–201B submitted a table entitled "Allowable Thickness Reduction from Minimum Prescribed Thickness of Carbon Steel Tank Car Tanks," prepared by the AAR, allowing shell thickness below the part 179 construction standard in certain areas. In addition, the AAR subsequently submitted additional data in a report in support of its table. (see Johnson and Phillips, Study of Railroad Tank Car Thickness Minimums, Report # RA–12–3–56, AAR-RPI Railway Tank Car Safety Research and Test Project, 1989, Chicago, IL). Many commenters endorsed the AAR table and, except as noted below, RSPA and FRA also concur with the AAR table.

The major differences between the allowable tank car thickness reductions in the AAR table and the proposals contained in this NPRM are as follows:

(1) The AAR table applied only to carbon steel tank cars; this NPRM expands the concept to tank cars constructed of other materials. In a letter dated March 29, 1989 to the Administrator of RSPA, the AAR explained that limited research on carbon steel was the basis for their recommendation. Although the AAR research was on carbon steel, the physical properties of stainless steel and manganese-molybdenum steel support similar standards. RSPA and FRA propose to include aluminum and nickel tank cars as well because these cars are mounted on a car structure (i.e., a center sill); and therefore, the transmission of any load (e.g., inertia, buff, draft, and vertical coupler loads) is through the sill structure and not the tank. Tank anchors on aluminum and nickel cars transfer some stresses to the tank car shell through single ended impacts, although these shell stresses are less than those encountered on tanks that form part of the car structure (i.e., stub sill tank cars). This notice proposes a conservative limit on the amount of reduced shell thickness in these stressed areas to ensure an acceptable level of safety.

(2) The AAR table did not cover nickel clad tank cars. This notice proposes to include those tank cars because they conform to the part 179 standards for carbon steel cars, but with an added nickel clad [liner] in the interior of the tank car to inhibit corrosion.

(3) The table submitted by the AAR and this NPRM differ on the definition of a permissible "localized area of thickness reduction." The AAR table would have limited the localized area to a 60.96 cm (24 inches) perimeter. This notice proposes to allow localized areas of thickness reduction to have a total cumulative surface perimeter not exceeding 182.88 cm (72 inches), consistent with the current provisions in § 173.31(a)(11)(iv). In the HM–201 rulemaking on localized shell reductions, RSPA and FRA explained that the AAR requirement to limit the maximum reduction in shell thickness perimeter to 60.96 cm (24 inches) is unduly restrictive, and this proposal follows that explanation. (see "Shippers; Use of Tank Cars with Localized Reductions in Shell Thickness;" 54 FR 8336, 8337, February 28, 1989).

J. Damage-tolerance Fatigue Evaluations

The FRA has found that the tank shell and the attachment welds in the bottom shell, generally the area within four feet of the bottom centerline, are susceptible to fatigue cracking due to repeated loading conditions. Stress concentrations in the tank shell may cause the formation of small cracks that may not be detected, even at the next inspection and test. Long cracks stand a

greater chance of detection, but cracks are short during most of their existence and, unless the inspector knows where to search for such defects, they may never be found. RSPA and FRA consider that knowledge of inspection and test methods, the sensitivity of the inspection and test technique, the minimum detectable crack depth and length, and the locations on the tank car that are likely to receive high combined loadings are essential for reliable crack detection.

In an investigation of the structural integrity of certain dual-diameter tank cars, FRA found that the bottom shell of these tank cars was susceptible to fatigue cracking. In this investigation, FRA required the owners of dual-diameter cars to inspect a sample of each design for defects using NDT techniques (*see* Owners of Railroad Tank Cars, Railroads; Emergency Order Requiring Inspection and Repair of Dual Diameter Tank Cars, 57 FR 11900 April 7, 1992.

In its previously noted 1992 report on the inspection and testing of tank cars, NTSB disclosed that many defects are not routinely detected while tank cars are in service in the transportation system and that defects may suddenly grow to a critical size and lead to failure of the tank car. The NTSB recommended in this investigation that FRA and RSPA promulgate requirements for the periodic inspection and tests of tank cars to help ensure the detection of cracks before the cracks propagate to a critical length. Such requirements would establish inspection and test intervals based on the defect size detectable by the inspection and test method used and on the stress level and crack propagation characteristics of the structural component.

"Damage-tolerance" means the ability of a structure to maintain adequate residual strength in a damaged condition. Damage-tolerance assumes that flaws exist in the structure and that the design of the structure is such that these flaws will not grow to a critical size and cause catastrophic failure to the structure within a specified period of time. In simplified terms, damage-tolerance recognizes that there are some components of a structure that can be damaged without adversely affecting the structure's ability to perform, i.e., a mildly dented fender on a car; that there are some components that can be damaged without seriously hampering the ability of the structure to perform essential activities, e.g., a broken door window on an automobile, or a single burned-out head lamp; and that there are some components that continually wear and, at some point, are no longer capable of sustaining the ability of the structure to perform, e.g., the wearing-out of tires, or the wearing of engine bearings. RSPA and FRA concur with the thrust of the NTSB's recommendation relating to improved procedures for periodic inspection and testing of railroad tank cars. In fact, many NDT techniques are currently applied under other inspection and test programs mandated by RSPA and FRA.

RSPA also proposes to allow a person to use an alternative inspection and test procedure or interval based on a damage-tolerance fatigue evaluation, when the evaluation is examined by the AAR Tank Car Committee and approved by FRA's Associate Administrator for Safety.

FRA anticipates that some tank car owners will reduce inspection and test costs by proposing an inspection and test procedure or interval on a damage-tolerance approach that incorporates: (1) In-service inspection and test using techniques such as ultrasonic or acoustic emission; (2) sampling of individual designs with a 100 percent inspection and test of the design if a crack is found; (3) inspection and test intervals unique to each tank car component; and, (4) inspection and test intervals based on the degree of risk a material poses (i.e., high risk materials have shorter inspection and test intervals than those with low risks).

K. Quality Assurance Programs (QAP)

RSPA is proposing to require that each tank car facility establish Quality Assurance Programs (QAP) to help prevent and detect non-conformities during the manufacturing, repair, or inspection and test process. A tank car facility would be defined as a facility that requires certification under appendix B of the AAR Specifications for Tank Cars.

The NTSB recommended, in a report following their investigation of an incident involving a tank car of butadiene, on September 8, 1987, in New Orleans, Louisiana, that FRA establish quality control requirements for tank car manufacturers and tank car repair shops sufficient to ensure that actions taken by persons in those entities conform to Federal regulations and with conditions established in the AAR criteria for approval of a tank car facility to manufacture, repair, or modify rail tank cars. (see Butadiene release and fire from GATX 55996 at the CSX terminal junction interchange, New Orleans, LA, September 8, 1987, NTSB/HZM–88/01, National Transportation Safety Board, 1988.) The NTSB further recommended that FRA require tank car repair shops to develop and maintain current written procedures to guide their employees in performing work on tank cars and that the repair shops train their employees on those procedures. This proposal reflects the findings of the NTSB in their investigation.

The proposed QAP requirements would require each tank car manufacturing or repair facility to develop procedures that have the means to detect any nonconformity in the manufacturing, maintenance, or repair process and that have the means to prevent its recurrence. Furthermore, the proposed Quality Assurance Program must ensure that the finished product conforms to the requirements of the applicable specification and the regulations in the HMR. Interested persons may find useful information in developing their QAP in the 1991 edition of the AAR Specifications for Quality Assurance, M–1003.

At a minimum, QAPs must have the following elements—

(1) Authority and responsibility for those in charge of the quality assurance program;

(2) An organizational chart showing the interrelationship between managers, engineers, purchasing, construction, inspection, testing, and quality control departments;

(3) Procedures that ensure that the latest applicable drawings, design calculations, specifications, and instructions are used in manufacture, inspection, and testing;

(4) Procedures to ensure that the fabrication and construction materials received are properly identified and documented;

(5) A description of the manufacture, inspection, and testing program so that an inspector can determine the period of specific inspections and test;

(6) Monitoring and control of suitable processes and product characteristics during production;

(7) Procedures for the correction of imperfections found by the inspector;

(8) Provisions indicating that the requirements of the AAR Specifications for Tank Cars apply;

(9) Qualification of personnel performing ultrasonic, radiographic, dye penetrant, magnetic particle, or other non-destructive test inspections and tests according to Appendix W of the AAR Specifications for Tank Cars;

(10) Qualifications of personnel performing magnified visual imagery inspections (including fiber optic, borescope, and videoimagescope systems). Under these requirements, the examiner must have the capability to consistently and repetitively find flaws under test conditions. Furthermore, the

requirements must include visual acuity where detectability (minimum size of a flaw that an examiner can find); resolution (minimum distance at which two flaws may be seen separately); and contrast sensitivity (minimum detectable thickness change [convolutions] over a surface area) further define the qualifications of the visual examiner;

(11) Procedures for evaluating the inspection and test technique employed, including the accessibility of the area and the sensitivity of the inspection and test technique and minimum detectable crack length;

(12) Procedures for the periodic calibration and measurement of inspection and test equipment;

(13) A system for the maintenance of records, inspections, tests and the interpretation of inspection and test results;

(14) Procedures to ensure that only personnel qualified for each non-destructive inspection and test perform that particular operation; and

(15) Written procedures for their employees to ensure that the work performed on the tank car conforms to the applicable DOT or AAR specification and the AAR approval for the tank car. Persons interested in including tank cars built to Canadian or Mexican specifications are asked to discuss the issue in their comments to this docket.

RSPA and FRA do not consider the proposal for a mandatory QAP to create an undue burden because each tank car facility that performs welding on the tank during any fabrication, alteration, conversion, or repair must already have a QAP to obtain "certified" status as an AAR approved shop.

A one year transition period is proposed for the development of the QAP and the written procedures that guide employees performing work on tank cars. Commenters are asked to submit alternative implementation schedules, with supporting justification, in response to this NPRM.

II. Overview

The proposal in this NPRM potentially affects most of the Parts of the Hazardous Materials Regulations. To aid those persons reviewing this NPRM, this Overview is included along with the Review by Section; it is intended to make further review easier by sketching the relationships between the various parts of the HMR as they are potentially affected by the proposals contained in this notice. This Overview does not treat each proposed change in detail and, therefore, interested persons are advised to read this entire notice for a more complete understanding of the changes that would be made by adoption of the rule proposed here.

The definitions in part 171 would be augmented by defining the area included in the term "bottom shell."

Part 172 contains the hazardous materials table (HMT) with section references and special provisions. Amendments to sections directly affecting tank cars in this notice are mirrored in the special provisions to the hazardous materials table.

Part 173 contains requirements for shippers; the primary impact of this NPRM would be on the standards for qualifying, maintaining, and using tank cars now found in § 173.31. The guidelines for selecting the right tank car for the commodity to be transported would stay in proposed part 173; the requirements for the pre-trip inspection that makes certain that a tank car is in proper condition for transportation would be moved to part 174; and the periodic testing requirements now in § 173.31(c) would be moved to part 180.

Requirements specific to the railroad transportation of hazardous materials are found in part 174. The proposals in this docket would move the current § 173.31(b), containing requirements for "examination before shipping" to a new § 174.68.

Essentially all of the Federal requirements for building and repairing tank cars are now in part 179. Regulations pertaining to new construction would remain in part 179 and regulations for on-going repairs, inspections, and tests would be moved to a newly created subpart F of part 180 Such a move is patterned on and indeed parallels efforts by other agencies within DOT to separate the rules for building a container for hazardous materials from the rules on keeping it safe during its useful life.

The following table lists the proposed paragraphs or sections and, where applicable, the corresponding paragraph or section contained in the current HMR. In some cases, the cross references are to provisions which are similar to, but not identical with current provisions.

New section	Old section
173.31(a)(1)	173.31(a).
173.31(a)(2)	173.31(a)(4) [except 4th and 5th sentence].
173.31(b)(1)(i)	173.31(a)(5) [except 2d sentence].
173.31(b)(1)(ii)	173.31(a)(6) [except "Effective November 15, 1990" beginning of 1st sentence].
173.31(b)(2)(i)	173.31(a)(12).
173.31(b)(2)(ii)	173.31(a)(15).
173.31(c)	173.31(a)(7) [except "Effective July 1, 1991" beginning of 1st sentence].
173.31(d)	173.31(a)(14).
173.31(e)	173.31(a)(17).
173.31(f)	173.31(a)(3).
173.319(e)	173.31(c)(13).
174.68(a)	173.31(b)(1), (2), and (3).
174.68(b)	173.24b(b).
179.7	
180.501	
180.503	
180.505	
180.507	
180.507(a)	173.31(a)(1).
180.507(b)(1), (2), (3), and (4)	173.31(a)(2), (8), (9), and (10).
180.509	
180.509(a)(2)	173.31(c)(10).
180.509(a)(3)	173.31(c)(8).
180.509(b)(3)	173.31(a)(16).
180.509(b)(4)	173.31(c)(9).
180.509(b)(5)	173.31(e).

New section	Old section
180.509(d)(6)..	173.31(c)(14).
180.509(f)	173.31(a)(11).
180.509(g)	173.31(a)(11) and (f).
180.509(h)(2)..	173.31(c)(6).
180.511	
180.511(a)	173.31(c)(3).
180.513	173.21(f) and 179.6.
180.515	173.31(c)(7).
180.517	173.31(c)(8).
180.517(b)	173.31(c)(8).
180.519	173.31(d).

III. Review by Section

Part 171

Section 171.8. As currently defined, "bottom shell" means

that portion of a tank car tank surface, excluding the head ends of the tank car tank, that lies within two feet, measured circumferentially, of the bottom longitudinal center line of the tank car tank.

FRA learned from its experience with Emergency Order No. 16 and other field investigations that welding flaws may exist outside of the currently defined area. Experience with finite element analysis and the mapping of stress concentrations in the tank structure under various loading conditions also shows that concentrated stresses appear outside the currently defined area. If the proposals in this notice become final regulations, the definition of the "bottom shell" would be revised to include an additional 61 cm (2 feet) on each side of the center line. The FRA believes that by thus increasing the width, inspections of the bottom shell will more completely encompass the high-stressed areas of the tank.

Part 172

Section 172.101. In the HMT, special provision "B41," appearing in column (7) of the entries for "benzyl chloride," "fluorosulfonic acid," and "titanium tetrachloride" would be removed. Also, HMT special provision "B43," appearing in column (7) of the entries for "carbon dioxide, refrigerated liquid," "hydrogen chloride, refrigerated liquid," and "vinyl fluoride, inhibited" would be removed.

Section 172.102. Special provisions "B41" and "B43" would be removed because they are unnecessary. The inspection and test intervals (i.e., 5–3–1) specified in special provision "B41" and the non-destructive tests requirements specified in special provision "B43" would be incorporated into the proposed Subpart F of Part 180.

Part 173

Section 173.31. This section would be completely revised and entitled "Use of Tank Cars," and reorganized for clarity. The provisions would not be substantially changed. Current paragraph (a) would remain in this section. In paragraph (b) pre-trip inspection and securement requirements would be moved to part 174 and referenced in this section. Paragraph (c) containing certain periodic test and inspection requirements would be moved to subpart F of part 180.

Proposed paragraph (a)(1) is current § 173.31(a) revised to correspond to the language in the HMR for cargo tanks and portable tanks (see §§ 173.32c(a) and 173.33(a)). The section would also include "AAR" specifications since the use of these tank cars for hazardous materials service is authorized in the HMR (see §§ 173.241 and 173.242). When these tank cars are used for the transportation of hazardous materials, the tank cars must meet the minimum specification for new construction as required by the AAR.

Proposed paragraph (a)(2) is current § 173.31(a)(4). The fourth sentence in current § 173.31(a)(4) would be removed since it is essentially the same as the second sentence in the same paragraph. The fifth sentence would be removed since it is essentially the same as the prohibited marking requirements in § 172.303(a).

Proposed paragraph (a)(3) would provide that no person may fill a tank car with a hazardous material when the car is overdue for periodic inspection and test. This provision will allow the movement of tank cars containing the residue of a hazardous material to a tank car facility for inspection and test. This paragraph was proposed in Docket HM–166X as § 173.31(b)(4) (56 FR 37505, August 7, 1991). It is consistent with provisions allowing similar movements for cargo tanks, portable tanks, and multi-unit tank car tanks (see §§ 173.31(d)(10), 173.32c(c), and 173.33(a)(3) respectively).

Proposed paragraph (a)(4) is added to reinforce the inspection requirements that must be fulfilled before a tank car of hazardous materials is offered for transportation. In this notice, RSPA proposes to move the requirements in the current § 173.31(b)(1)(2) and (3) to a new section 174.68.

Proposed paragraph (b)(1)(i) is current § 173.31(a)(5). The proposed paragraph would be revised by removing the reference to the compliance date, now past, for equipping DOT-specification tank cars not transporting hazardous materials with shelf couplers.

Proposed paragraph (b)(1)(ii) is current § 173.31(a)(6). The proposed paragraph would be revised by removing the reference to the compliance date, now past, for equipping non-DOT specification tank cars transporting hazardous materials with shelf couplers.

Proposed paragraph (b)(2)(i) is current § 173.31(a)(12). Proposed paragraph (b)(2)(ii) is current § 173.31(a)(15). The latter provisions would be simplified by using the term "poisonous by inhalation" (see § 171.8) in place of the defining criteria.

Proposed paragraph (c) is current § 173.31(a)(7). The requirements would be revised by removing the reference to the compliance date, now past, for welding air brake equipment support attachments to pads instead of directly to the tank shell.

Proposed paragraph (d) is current § 173.31(a)(14). The proposed paragraph would be revised by changing the term "uninsulated" to "non-insulated." Proposed paragraph (e) is current § 173.31(a)(17). The provision would be simplified by using the current definition of "poisonous by inhalation" (see § 171.8) in place of the defining criteria.

Proposed paragraph (f) is current § 173.31(a)(3). The paragraph would be simplified by removing the specific "DOT" Class references and by explaining that any tank of the same class with a higher tank test pressure than the tank authorized in the HMR may be used. The paragraph would also be simplified by specifying the hierarchy of the letters in the specification marking that describe

special protective systems (e.g., "J" for thermally protected, jacketed cars, "T" for thermally protected, non-jacketed cars; "S" for cars with head shields but without thermal protection; and "A" for cars without protective systems).

Section 173.319. Paragraph (a)(4)(iii) is revised by removing the parenthetical reference. Current paragraph 173.31(c)(13) is redesignated as proposed paragraph § 173.319 (e). Proposed paragraph (e) would be revise for clarity and units of measurements would conform to current SI nomenclature. Furthermore, this notice proposes to change the term "stencilling" to "marking" for consistency with the terminology used throughout the HMR.

Part 174

Section 174.68. Proposed paragraph (a) is current § 173.31 (b) (1), (2), and (3). To determine if a "tank and safety appurtenances and fittings are in proper condition for the safe transportation of the lading" this section would be expanded to clarify and define the areas on the tank, safety appurtenances, and fittings needing pre-trip shipper inspection.

Proposed paragraph (b) refers to the requirement in §§ 173.24(b) and (f) that package (including tank car) closures be so designed and closed that there is no identifiable release of hazardous materials into the environment and would establish the rebuttable presumption of an improper inspection under § 174.68(a)(4) if closures are found in less than a tool-tight condition during transportation. Current § 173.31(b)(1) requires that "the shipper (offeror) must determine to the extent practicable, that * * * fittings are in proper condition * * *" FRA's experience in enforcing § 173.31(b)(1) is that, when a tank car is discovered during transportation with a loose closure, the offeror will argue that the car was inspected and that all "practicable" steps were taken to tighten the fittings. This argument ignores the clear requirement in § 173.24 that packages and fittings be designed and closed to prevent releases under conditions normally incident to transportation. As proposed in this notice, the inspection requirement in § 174.68 would be directly related to the design and operation requirements in § 173.24. RSPA and FRA believe that this alignment of the regulations will clarify requirements and that, by fostering compliance with safety standards, the proposal will improve hazardous materials transportation safety.

Part 179

Section 179.2. This section would be amended by adding a definition for "Tank car facility." A tank car facility means an entity that manufactures, repairs, inspects, or tests tank cars to ensure that the tank cars conform to Parts 179 and 180 of the regulations; it is an entity that effects the certificate of construction of the tank car or verifies that the tank car conforms to the specification.

Section 179.7. This section would be added to require tank car facilities to have a Quality Assurance Program.

Paragraph (a) would state the performance standard for the program. Paragraph (b) would require that the QAP have certain minimum requirements, as discussed in more detail earlier in this preamble under the subject heading "K. Quality Assurance Programs." Paragraph (c) would require tank car facilities to ensure that only personnel qualified for a particular non-destructive inspection and test perform that operation. Paragraph (d) would require each tank car facility to have written procedures, covering inspection, fabrication, and repair operations as appropriate, for their employees. Paragraph (e) would cross-reference the training requirements in subpart H of part 172. Section 172.702 requires that a hazmat employer, shall train each of its hazmat employees. A hazmat employer includes a person who represents, sells, offers, reconditions, tests, repairs, or modifies a packaging as qualified for the use in the transportation of hazardous materials (e.g., marking the tank car with the letters "DOT"). See definitions in § 171.8. Proposed paragraph (f) would specify the compliance date by which tank car facilities must have a quality assurance program and written procedures in effect.

Part 180

Subpart F of part 180. This subpart would contain the qualification and maintenance requirements for tank cars. The section headings, sections, and many paragraphs are similar to those for cargo tanks, currently found in Subpart E of Part 180.

Section 180.501. Paragraph (a) would specify the applicability of the proposed Subpart. Paragraph (b) would specify that any person who performs a function required by Subpart F of Part 180 must perform that function according to the regulations.

Section 180.503. This section proposes to define certain terms used throughout the subpart. For simplicity, the section makes applicable the terms currently used in Parts 171 and 179 for the construction of tank cars.

Section 180.505. This section proposes to require each tank car facility performing repair work to have a quality assurance program based on that proposed in § 179.7 for new car construction.

Section 180.507. This section would contain continuing qualifications for existing tank cars that are no longer authorized for new construction, such as a DOT 113A175W tank car. Proposed paragraph (a) is essentially current § 173.31(a)(1) except that it would be revised to include non-specification tank cars that are currently authorized for the transportation of hazardous materials. Proposed paragraphs (b) (1), (2), (3), and (4) are current § 173.31(a) (2), (8), (9), and (10).

Section 180.509. This section would specify the requirements for the periodic inspection and test of tank cars. Proposed paragraph (a)(1) would require each tank car facility to evaluate the tank according to the "Acceptable results of inspections and tests" as prescribed in proposed § 180.511. Paragraph (a)(2) would require marking each tank car passing a periodic inspection and test to indicate the date of inspection and test and the inspection and test due dates according to new § 180.515. This paragraph is similar to current § 173.31(c)(10). Proposed paragraph (a)(3) would require a written report for each tank car after it successfully passes an inspection and test. The report would contain with details of the inspections and tests conducted, the defects found, and the methods employed to repair them. The report must conform to the details specified in new § 180 517. This report is similar to current § 173.31(c)(8).

Proposed paragraph (b) would specify unusual conditions that may require an inspection and tests of tank cars, similar to § 173.32b(e) for portable tanks and § 180.407(b) for cargo tanks. Proposed paragraph (b)(1) would require an inspection and test if the tank shows evidence of abrasion, corrosion, cracks, dents, distortions, defects in welds, or any other condition unsafe for transportation. Proposed paragraph (b)(2) would require an inspection and test if the tank was in an accident and "damaged to the extent that may adversely affect its lading retention capability" (e.g., large dent or gouge in the tank shell). Proposed paragraph (b)(3) would be added to require an inspection and test if transferring the tank into or out of service that was corrosive to the tank. This paragraph is similar to the current requirements in §§ 173.31(a)(16), 173.32(i), and 180.407(b)(2) for tank car tanks, portable

tanks, and cargo tanks. Proposed paragraph (b)(4) would require an inspection and test if work was done on the tank that required welding, riveting, hot or cold forming, etc. This paragraph is similar to current § 173.31(c)(9). Proposed paragraph (b)(5) would require an inspection and test if the tank was involved in a fire. This paragraph is similar to current § 173.31(e) except that this proposal reflects that the fire repair requirements are now in § 180.513. Proposed paragraph (b)(6) would require an inspection and test, of either a single tank car or a design of tank cars, if required by FRA, based on probable cause. This paragraph is analogous to § 173.32(j) and § 180.407(b)(5) for portable tanks and cargo tanks, respectively. Probable cause may include an inspection and test where FRA discovers a crack in a welded area, a wheel burn, or a large dent or bulge in the tank shell; it may also include a group of cars of a given design if FRA discovers problems apparently related to cars of that design.

Proposed paragraph (c) would specify the frequency with which inspections and tests must be performed on tank cars. Proposed paragraph (c)(1) would specify the requirements for the inspection and hydrostatic test of DOT Class 107 tank cars and riveted tank cars. As noted above, the hydrostatic test is still effective for these tanks since it will detect loose rivets and areas of metal distress. Proposed paragraph (c)(2) would require an inspection for thermal integrity of DOT Class 113 tank cars in place of the inspection and testing requirements in subpart F of part 180. This paragraph cross-references the requirements in § 173.319(e). Proposed paragraph (c)(3) would specify the inspection and test requirements for fusion welded tank cars. The intervals would vary depending upon whether or not the tank was lined or coated and upon whether or not the car was transporting materials corrosive to the tank. This will ensure that the tank shell thickness does not degrade below the minimum shell thickness proposed in the NPRM before the next inspection and test cycle. For linings and coatings, this proposal would require a tank car facility to inspect the lining or coating based on the inspection and test intervals and techniques established by the owner. The owner must establish an inspection interval and test technique based on the manufacturer's recommendations or the owner's knowledge of the life-expectancy of the lining or coating.

Proposed paragraph (d) would specify the manner for conducting visual inspection required for each tank car. This section is similar to § 180.407 (d) and (e) for cargo tanks. Proposed paragraph (d)(1) would require an inspection of the tank internally and externally for abrasion, corrosion, cracks, dents, distortions, defects in welds, or any other conditions unsafe for transportation. Proposed paragraph (d)(2) would require the inspection of all piping, valves, fittings, and gaskets for corrosion and any other condition unsafe for transportation. Proposed paragraph (d)(3) would require an inspection for missing or loose bolts, nuts, or other elements. Proposed paragraph (d)(4) would require an inspection for all closures on the tank for proper securement and to prevent leaks in transportation. The tank car facility would also inspect the protective housings for proper securement. Proposed paragraph (d)(5) would require an inspection of the markings on the tank car for legibility. Proposed paragraph (d)(6) would require an inspection of the seats on excess flow valves. This paragraph is current § 173.31(c)(14).

Proposed paragraph (e) would require a structural integrity inspection and test on all circumferential and longitudinal welds and welded attachments on the bottom of the tank (122 cm [4 feet] on each side of the bottom tank centerline) using one or more non-destructive test methods.

Proposed paragraph (f) would require thickness measurements to determine that the tank is not below the minimum shell thickness proposed in the NPRM. This section is similar to current § 173.31(a)(11), but would expand the requirement beyond localized areas of reduced thickness to the full tank shell.

Proposed paragraph (g) would specify the minimum shell thickness reductions based on FRA research and comments received. This paragraph is a combination of current §§ 173.31(a)(11) and 173.31(f). Proposed paragraph (g)(i) would allow thickness reductions on carbon steel, stainless steel, aluminum, nickel, and manganese-molybdenum steels. Proposed paragraph (g)(ii) would specify the minimum shell and head thickness reductions for uniform and localized areas, provided:

(a) The cumulative surface perimeter of a localized area does not exceed 182.88 cm (72 inches);

(b) Any reduction in the shell thickness does not effect the structural strength of the tank;

(c) The tank car is not an "inner" tank for Class DOT 115;

(d) The tank car is not a Class DOT 103 or 104 tank car having an inside diameter greater than 243.84 cm (96 inches); and

(e) The tank car is not a Class DOT 111 in ethylene oxide service.

Proposed paragraph (h)(1) would require the inspection of the safety systems on the tank, such as thermal protection systems, tank head puncture resistance systems, and coupler vertical restraint systems, to ensure their integrity. Proposed paragraph (h)(2) would require the inspection and test of re-closing pressure relief devices (safety valves). This paragraph is current § 173.31(c)(6).

Proposed paragraph (i) would require an inspection and test of the lining and coating on the tank according to the owner's determinations.

Proposed paragraph (j) would require a leakage pressure test of the tank and appurtenances. This paragraph is similar to § 180.407(h).

Proposed paragraph (k) would allow an alternative inspection and test procedure, based on a damage-tolerance fatigue evaluation, if examined by the AAR Tank Car Committee and approved by the Associate Administrator for Safety FRA.

Proposed paragraph (l) would specify the compliance date for the new inspection and test requirements.

Section 180.511. This section would specify the acceptable results of inspections and tests. Proposed paragraph (a) would establish an acceptable visual inspection as one that shows no structural defect that may cause the tank to fail (including leak) before the next inspection and test interval. This paragraph is similar to current § 173.31(c)(3).

Proposed paragraph (b) would establish an acceptable structural integrity inspection and test as one that shows no structural defect that may initiate crack growth and cause the tank to fail before the next inspection and test interval, such as a propagating crack in a circumferential weld or welded attachment.

Proposed paragraph (c) would establish an acceptable service life shell thickness. An acceptable test is one that shows no areas of the tank below the minimum shell or head thickness allowable.

Proposed paragraph (d) would establish an acceptable safety system inspection, (e.g., thermal protection) as one that shows the systems conform to part 179. For example, the thermal protection system must be inspected to determine that the tank car has sufficient thermal integrity and the tank head puncture resistance system and support brackets must be inspected to ensure that they are secure and conform to the specification.

Paragraph (e) would establish an acceptable inspection and test for lining and coatings as one that shows no holes or degraded areas.

Paragraph (f) would establish an acceptable inspection and test for a leakage pressure test as one that shows no indications of leakage in any product piping, fitting, or closure.

Paragraph (g) would establish an acceptable hydrostatic test (for DOT Class 107 tank cars and riveted tank cars) as one that shows no leakage in the tank. Since there are very few Class DOT 107 tank cars and riveted tanks subject to this hydrostatic test requirement (approximately 137 Class DOT 107s and 120 riveted tank cars), this NPRM proposes that owners follow the hydrostatic test requirements that were in effect on [insert date final rule is published in the **Federal Register**].

Section 180.513. This section would specify that tank repairs must conform to the requirements of Appendix R of the AAR Specifications for Tank Cars. This paragraph is current §§ 173.31(f) and 179.6. Based on the comments received to the ANPRM, RSPA and FRA believe that the requirements for repair in the AAR Specifications for Tank Cars are acceptable for the detection and repair of cracks, pits and corrosion.

Section 180.515. This section would specify the marking requirements for tank cars after a successful tank inspection and test. This paragraph is similar to current §§ 173.31(c) (7) and (10), 179.100–21, and 179.200–25.

Section 180.517. This section would specify the reporting and record retention requirements after a tank has successfully completed its required inspection and test. This section is similar to current § 173.31(c)(8). Proposed paragraph (a) would require the tank owner retain the certificate of construction of the tank car (AAR form 4–2) and related documentation certifying that the tank conforms to the specification. The owner shall retain the documents for the period of ownership. Upon a change in ownership, Section 1.3.15 of the AAR Specifications for Tank Cars requires the transfer of these documents to the new owner. Proposed paragraph (b) would specify the inspection and test reporting requirements. This paragraph is current § 173.31(c)(8) revised to conform with § 180.417(b) for cargo tanks.

Section 180.519. This is current § 173.31(d). The paragraph is revised by changing the title "TABLE II," to read "TABLE I." The references to the table in the section would also be changed to reflect the new title.

IV. Regulatory Analysis and Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

This proposed rule does not meet the criteria specified in section 1(b) of Executive Order 12291 and, therefore, is not a major rule. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation is available for review in the Docket.

B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Hazardous Materials Transportation Act (HMTA) contains an express preemption provision (49 App. U.S.C. 1804(a)4)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) The designation, description, and classification of hazard materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

This proposed rule concerns design, manufacturing, repairing, and other requirements for packages represented as qualified for use in the transportation of hazardous materials.

If adopted as final, this rule would preempt any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" (*see* 49 CFR 107.202(d)) as the Federal requirements.

The HMTA (49 App. U.S.C. 1804(a)5)) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance. RSPA requests comments on what the effective date of Federal preemption should be for the requirements in this proposed rule that concern covered subjects. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

Based on limited information concerning the size and nature of the entities likely to be affected by this proposed rule, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposal.

D. Paperwork Reduction Act

The information collection requirements contained in proposed §§ 179.7, 180.507, 180.509, and 180.517 are being submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, Attention: Desk Officer for the Department of Transportation. Comments must reference the title of this notice, "Detection and Repair of Cracks, Pits, Corrosion, Lining Flaws, Thermal Protection Flaws and other Defects of Tank Car Tanks."

E. Regulatory Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

V. List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Oil, Reporting and recording requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Oil, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, and Reporting and recordkeeping.

In consideration of the foregoing, title 49, Chapter I of the Code of Federal Regulations, would be amended as set forth below:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, and 1818; 33 U.S.C. 1321; 49 CFR part 1.

2. In § 171.8, the definition of "Bottom shell" would be revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Bottom shell means the portion of the tank car surface, excluding the tank heads, that lies within 122 cm (four feet) measured circumferentially from the bottom longitudinal center line of the tank.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

3. The authority citation for part 172 would continue to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, and 1808; 33 U.S.C. 1321; 49 CFR part 1, unless otherwise noted.

§ 172.101 [Amended]

4. In § 172.101, in the Hazardous Materials Table, the following changes would be made:

a. For the entries "Benzyl chloride", "Fluorosulfonic acid", and "Titanium tetrachloride", in Column (7), Special Provision "B41," would be removed.

b. For the entries "Carbon dioxide, refrigerated liquid", "Hydrogen chloride, refrigerated liquid", and "Vinyl fluoride inhibited", in Column (7), Special Provision "B43" would be removed.

§ 172.102 [Amended]

5. In § 172.102, in paragraph (c)(3), Special Provisions "B41" and "B43" would be removed.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

6. The authority citation for part 173 would continue to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1806, 1807, 1808, and 1817; 49 CFR part 1, unless otherwise noted.

7. Section 173.31 would be revised to read as follows:

§ 173.31 Use of Tank Cars.

(a) *General.* (1) No person may offer a hazardous material for transportation in a tank car unless the tank car meets the applicable specification and packaging requirements of this subchapter or, when this subchapter authorizes the use of an "AAR" specification tank car, the applicable specification of the AAR Specifications for Tank Cars.

(2) Tank cars and appurtenances may be used for the transportation of any commodity for which they are authorized. Tank cars proposed for a commodity service other than authorized, must be approved for such service by the Association of American Railroads' Committee on Tank Cars. Transfer of a tank car from one authorized service to another may be made only by the owner or with the owner's authorization.

(3) No person may fill a tank car overdue for a periodic inspection or test with a hazardous material. Any tank car marked as meeting a DOT specification and any non-specification tank car transporting a hazardous material must have a periodic inspection and test conforming to § 180.509 of this subchapter.

(4) No person may offer a hazardous material for transportation in a tank car unless the tank car passes the inspection requirements of § 174.68 of this subchapter.

(b) *Safety Systems*—(1) *Coupler vertical restraint.* Each tank car used for transportation of hazardous material must be equipped with a coupler vertical restraint system that meets the requirements of § 179.14 of this subchapter.

(2) *Pressure relief devices.* (i) Pressure relief devices on tank cars must be of a type and design approved by the AAR Committee on Tank Cars and be constructed of metal not subject to deterioration by the lading.

(ii) Except for shipments of chloroprene, inhibited, in Class DOT 115 tank cars, tank cars used for materials meeting the definition for Division 6.1 liquids, Packing Group I or II, Class 2 gases, or Class 3 or 4 liquids, must have self-closing pressure relief devices. However, a tank car built before January 1, 1991, and equipped with a non-closing pressure relief device may be used to transport a Division 6.1 or Class 4 liquid if the liquid is not poisonous by inhalation. Unless otherwise specifically provided in this subchapter, frangible discs may not have breather holes.

(c) *Attachments.* No railroad tank car, regardless of its construction date, may be used for the transportation in commerce of any hazardous material unless the air brake equipment support attachments of such tank car conform to the standards for attachments set forth in §§ 179.100–16 and 179.200–19, as in effect on November 16, 1990.

(d) *Tank car test pressure.* A tank car used for the transportation of a hazardous material must have a tank test pressure equal to or greater than the greatest of the following:

(1) Except for shipments of carbon dioxide, anhydrous hydrogen chloride, vinyl fluoride, ethylene, or hydrogen, 133 percent of the sum of lading vapor pressure at the reference temperature of 46 °C (115 °F) for non-insulated tank cars or 41 °C (105 °F) for insulated tank cars plus static head, plus gas padding pressure in the vacant space of a tank car;

(2) 133 percent of the maximum loading or unloading pressure, whichever is greater;

(3) The minimum pressure prescribed by the specification in part 179 of this subchapter; or

(4) The minimum test pressure prescribed for the specific hazardous material in the applicable packaging section in subpart F or G of this part.

(e) *Interior heater coils.* Tank cars used for materials poisonous by inhalation may not have interior heater coils.

(f) *Tank car alternatives.* Unless otherwise specifically provided in this part:

(1) When this subchapter designates a specific specification tank car, the same class tank car with a higher marked test pressure also may be used.

(2) When the tank car specification delimiter is an "A," offerors may also use tank cars with a delimiter "S," "J" or "T."

(3) When the tank car specification delimiter is an "S," offerors may also use tank cars with a delimiter "J" or "T."

(4) When a tank car specification delimiter is a "T" offerors may also use tank cars with a delimiter of "J."

(5) When a tank car specification delimiter is a "J," offerors may not use any other specification delimiter.

8. A new paragraph (e) would be added to § 173.319 to read as follows:

§ 173.319 Cryogenic liquids in tank cars.

* * * * *

(e) *Special requirements for Class DOT–113 tank cars.* (1) A class DOT–113 tank car need not be periodically pressure tested; however, each shipment must be monitored to determine the average daily pressure rise in the tank car. If the average daily pressure rise during any shipment exceeds 20.68 Kpa (3 psi) per day, the tank must be tested for thermal integrity prior to any subsequent shipment.

(2) *Thermal integrity test.* When required by paragraph (e)(1) of this section, either of the following thermal integrity tests may be used:

(i) *Pressure rise test.* The pressure rise in the tank may not exceed 34.47 kPa (5 psi) in 24 hours. When the pressure rise test is performed, the absolute pressure in the annular space of the loaded tank car may not exceed 75 microns of mercury at the beginning of the test and may not increase more than 25 microns during the 24-hour period; or

(ii) *Calculated heat transfer rate test.* The insulation system must be performance tested as prescribed in 179.400–4 of this subchapter. When the calculated heat transfer rate test is performed, the absolute pressure in the annular space of the loaded tank car may not exceed 75 microns of mercury at the beginning of the test and may not increase more than 25 microns during the 24-hour period. The calculated heat transfer rate in 24 hours may not exceed:

(A) 120 percent of the appropriate standard heat transfer rate specified in § 179.401–1 of this subchapter, for DOT–113A60W and DOT–113C120W tank cars;

(B) 122.808 joules (0.1164 Btu/day/lb.) of inner tank car water capacity, for DOT–113A175W tank cars;

(C) 345.215 joules (0.3272 Btu/day/lb.) of inner tank car water capacity, for DOT–113C60W and 113D60W tank cars; or

(D) 500.09 joules (0.4740 Btu/day/lb.) of inner tank car water capacity, for DOT–113D120W tank cars.

(3) A tank car that fails a test prescribed in paragraph (e)(2) of this section must be removed from hazardous materials service. A tank car that was removed from hazardous materials service because it failed a test prescribed in paragraph (e)(2) of this section may not be used to transport a hazardous material until it conforms with all applicable requirements of this subchapter.

(4) Each frangible disc must be replaced every 12 months, and the replacement date must be marked on the car near the pressure relief valve information.

(5) Pressure relief valves and alternate pressure relief valve must be tested every five years. The start-to-discharge pressure and vapor tight pressure requirements for the pressure relief valves must be as specified in § 179.401–1 of this subchapter. The alternate pressure relief device values specified in § 179.401–1 of this subchapter for the DOT–113C120W tank car apply to the DOT–113D120W tank car.

PART 174—CARRIAGE BY RAIL

9. The authority citation for part 174 would continue to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, and 1808; 49 CFR 1.53(e), 1.53, App. A to part 1.

10. Section 174.68 would be added to read as follows:

§ 174.68 Inspection requirements prior to transportation.

(a) No person may offer a tank car containing a hazardous material or a residue of a hazardous material for transportation unless that person determines that the tank car is in proper condition and safe for transportation. As a minimum, each person offering a tank car for transportation must inspect:

(1) The tank shell and heads for abrasion, corrosion, cracks, dents, distortions, defects in welds, or any other condition that makes the tank car unsafe for transportation;

(2) The piping, valves, fittings, and gaskets for corrosion and other conditions that make the tank car unsafe for transportation;

(3) For missing or loose bolts, nuts, or elements that make the tank car unsafe for transportation;

(4) All closures on tank cars and determine that the closures and all fastenings securing them are properly tightened in place by the use of a bar, wrench, or other suitable tool;

(5) Protective housings for proper securement;

(6) The pressure relief device, including a careful inspection of the frangible disc in non-closing pressure relief devices, for corrosion or damage that may alter the intended operation of the device;

(7) Each tell-tale indicator after filling and prior to transportation to ensure the integrity of the frangible disc;

(8) The external thermal protection system, tank head puncture resistance system, coupler vertical restraint system, and other safety systems for conditions that make the tank car unsafe for transportation;

(9) The required markings on the tank car for legibility; and

(10) The periodic inspection date markings to ensure that the inspection and test intervals are within the prescribed intervals.

(b) Closures on tank cars are required, under this subchapter, to be designed and closed so that, under conditions normally incident to transportation, there will be no identifiable release of a hazardous material to the environment. Accordingly, in any action brought to enforce this section, the lack of securement of any closure to a tool-tight condition, detected at any point, will establish a rebuttable presumption that a proper inspection was not performed by the offeror of the car as required by § 174.68(a)(4). That presumption may be rebutted only by evidence establishing that the car was subjected to abnormal treatment, e.g., a derailment or vandalism.

PART 179—SPECIFICATIONS FOR TANK CARS

11. The authority citation for part 179 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, and 1808; 49 CFR part 1, unless otherwise noted.

§ 179.1 [Amended]

12. In § 179.1, in paragraph (c), the section reference "§ 173.31" would be revised to read "§ 180.507".

13. In § 179.2, the following definition would be added, in the appropriate alphabetical order, to read as follows:

§ 179.2 Definitions and abbreviations.

* * * * *

Tank car facility means an entity that manufactures, repairs, inspects, or tests tank cars to ensure that the tank cars conform to this part and part 180 of this subchapter, that alters the certificate of construction of the tank car, or that verifies that the tank car conforms to the specification.

14. Section 179.7 would be added to read as follows:

§ 179.7 Quality assurance program.

(a) At a minimum, each tank car facility shall have a Quality Assurance Program, approved by the AAR, that—

(1) Ensures the finished product conforms to the requirements of the applicable specification and regulations of this subchapter;

(2) Has the means to detect any nonconformity in the manufacturing, repair, or testing of the tank car; and,

(3) Prevents non-conformities from recurring.

(b) At a minimum, the quality assurance program must have the following elements—

(1) Statement of authority and responsibility for those persons in charge of the quality assurance program.

(2) An organizational chart showing the interrelationship between managers, engineers, purchasing, construction, inspection, testing, and quality control departments.

(3) Procedures that ensure that the latest applicable drawings, design calculations, specifications, and instructions are used in manufacture, inspection, testing, and repair.

(4) Procedures to ensure that the fabrication and construction materials received are properly identified and documented.

(5) A description of the manufacturing, inspection, and testing program so that an inspector can determine specific inspection and test intervals.

(6) Monitoring and control of suitable processes and product characteristics during production.

(7) Procedures for the correction of imperfections.

(8) Provisions indicating that the requirements the AAR Specifications for Tank Cars, M–1002, apply.

(9) Qualification requirements of personnel performing ultrasonic, radiographic, acoustic emission, dye penetrant, magnetic particle, or other non-destructive inspections and tests.

(10) Qualification requirements of personnel performing magnified visual imagery inspections (including fiber optic, borescope, and videoimagescope systems). Under these requirements, the examiner must have the capability to consistently and repetitively find flaws under test conditions. Furthermore, the requirements must include visual acuity criteria where detectability (minimum size of a flaw that an examiner can find); resolution (minimum distance at which two flaws may be seen separately); and contrast sensitivity (minimum detectable thickness change [convolutions] over a surface area) further define the qualifications of the examiner.

(11) Procedures for evaluating the inspection and test technique employed, including the accessibility of the area and the sensitivity of the inspection and test technique and minimum detectable crack length.

(12) Procedures for the periodic calibration and measurement of inspection and test equipment.

(13) A system for the maintenance of records, inspections, tests, and the interpretation of inspection and test results.

(c) Each tank car facility shall ensure that only personnel qualified for each non-destructive inspection and test perform that particular operation.

(d) Each tank car facility shall establish written procedures for their employees to ensure that the work performed on the tank car conforms to the specification and the AAR approval for the tank car.

(e) Each tank car facility shall train its employees in accordance with subpart H of part 172 of this subchapter on the program and procedures specified in paragraph (b) of this section to ensure quality.

(f) *Date of conformance.* After January 1, 1995, no tank car facility may manufacture, repair, inspect, or test tank cars subject to requirements of this subchapter, unless it is operating in conformance with a Quality Assurance Program and written procedures required by paragraphs (a) and (b) of this section.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

15. The authority citation for part 180 would continue to read as follows:

Authority: 49 U.S.C. 1803; 49 CFR part 1.

16. A new subpart F would be added to part 180 to read as follows:

Subpart F—Qualification and Maintenance of Tank Cars

Sec.

180.501 Applicability.
180.503 Definitions.
180.505 Quality assurance program.
180.507 Qualification of tank cars.
180.509 Requirements for inspection and test of specification tank cars.
180.511 Acceptable results of inspections and tests.
180.513 Repairs, alterations, conversions, and modifications.
180.515 Markings.
180.517 Reporting and record retention requirements.
180.519 Periodic retest and reinspection of tank cars other than single-unit tank car tanks.

Subpart F—Qualification and Maintenance of Tank Cars

§ 180.501 Applicability.

(a) This subpart prescribes requirements, in addition to those contained in parts 107, 171, 172, 173, and 179 of this subchapter, applicable to any person who manufactures, fabricates, marks, maintains, repairs, inspects, or services tank cars to ensure that the tank cars are in proper condition for transportation.

(b) Any person who performs a function prescribed in this part shall perform that function in accordance with this part.

§ 180.503 Definitions.

The definitions contained in §§ 171.8 and 179.2 apply to this subchapter.

§ 180.505 Quality assurance program.

The quality assurance program requirements of § 179.7 of this subchapter apply.

§ 180.507 Qualification of tank cars.

(a) Each tank car marked as meeting a "DOT" specification or any other tank car used for the transportation of a hazardous material must meet the requirements of this subchapter or the applicable specification to which the tank was constructed.

(b) *Tank car specifications no longer authorized for construction.* (1) Tanks prescribed in the following table are authorized for service provided they conform to all applicable safety requirements of this subchapter:

Specification prescribed in the current regulations	Other specifications permitted	Notes
105A200W	105A100W	1
105A200ALW	105A100ALW	1
105A300W	ICC–105, 105A300	.....
105A400W	105A400	.....
105A500W	105A500	.....
105A600W	105A600	.....
106A500X	ICC–27, BE–27, 106A500	.....
106A800X	106A800	.....
107A * * *		2

Note 1: Tanks built as Specification DOT 105A100W or DOT 105A100ALW may be altered and converted to DOT 105A200W and DOT 105A200ALW.

Note 2: The test pressures of tanks built in the United States prior to January 1, 1956, may be increased to conform to Specification 107A, except that tanks built before 1941 are not authorized. Original and revised test pressures must be indicated and may be shown on a plate attached to the bulkhead of the car.

(2) For each tank car conforming to and used under an exemption issued before October 1, 1984, which authorized the transportation of a cryogenic liquid in a tank car, the owner or operator, if not the owner, shall remove the exemption number stenciled on the tank car and stamp the tank car with the appropriate Class DOT–113

specification followed by the applicable exemption number. For example: DOT–113D60W–E * * * * (asterisks to be replaced by the exemption number). The owner or operator marking a tank car in this manner shall retain on file a copy of the last exemption in effect during the period the tank car is in service. No person may modify a tank car marked under this paragraph unless the modification is in compliance with an applicable requirement or provision of this subchapter.

(3) Specification DOT–113A175W, DOT–113C60W, DOT–113D60W, and DOT–113D120W tank cars may continue in use, but new construction is not authorized.

(4) Class DOT 105A and 105S tank cars, constructed of ASTM A212B steel to ASTM A300 low temperature requirements, authorized under DOT E–3992 may continue in service, but new construction is not authorized.

§ 180.509 Requirements for inspection and test of specification tank cars.

(a) *General.* (1) Each tank car facility shall evaluate the tank car according to the requirements specified in § 180.511.

(2) Each tank car that successfully passes a periodic inspection and test must be marked as prescribed in § 180.515.

(3) A written report as specified in § 180.517(b) must be prepared in English for each tank car that is inspected and tested under this section.

(b) *Conditions requiring inspection and test of tank cars.* Without regard to any other periodic inspection and test requirement, tank cars must have an inspection and test according to this section if:

(1) The tank car shows evidence of abrasion, corrosion, cracks, dents, distortions, defects in welds, or any other condition that makes the tank car unsafe for transportation.

(2) The tank car was in an accident and damaged to an extent that may adversely affect its lading retention capability.

(3) The tank car is transferred into or out of a service that is corrosive to the tank.

(4) Repair(s), modification(s), or conversion of the tank car is performed requiring welding, riveting, caulking of rivets or hot or cold forming to restore tank car contour.

(5) The tank bears evidence of damage caused by fire.

(6) The Associate Administrator for Safety, FRA, so requires it based on the existence of probable cause that a tank car or a class or design of tank cars may be in an unsafe operating condition.

(c) *Frequency of inspection and tests.* Each tank car shall have an inspection and test according to the requirements of this paragraph.

(1) For Class 107 tank cars and tank cars of riveted construction, the tank car must have a hydrostatic pressure test and visual inspection conforming to the requirements in effect on [insert date final rule is published in the **Federal Register**] for the tank specification.

(2) For Class DOT 113 tank cars, see § 173.319(e) of this subchapter.

(3) For fusion welded tank cars, each tank car must have an inspection and test conforming to paragraphs (d) through (k) of this section—

(i) For cars transporting materials not corrosive to the tank, every 10 years for the tank and service equipment (i.e., filling and discharge, venting, safety, heating, and measuring devices).

(ii) For non-lined or non-coated tank cars transporting materials corrosive to the tank, an interval based on the following formula, but in no case shall the interval exceed 10 years for the tank and 5 years for service equipment.

$$i = \frac{t_1 - t_2}{r}$$

where:

i means the inspection and test interval

t_1 means the actual thickness

t_2 means the allowable minimum thickness under paragraph (g) of this section

r means the corrosion rate per year

(iii) For lined or coated tank cars transporting materials corrosive to the tank, every 10 years for the tank, 5 years for the service equipment, and an interval based on the owner's determination for the lining or coating, but not greater than every 10 years.

(A) Each owner of a tank car equipped with a lining or coating shall determine the periodic inspection interval and test technique for the lining or coating. The owner must maintain all supporting documentation used to make such a determination, such as the lining or coating manufacturer's recommended inspection interval and test technique, at the owner's principal place of business.

(B) The supporting documentation used to make such inspection and test interval determinations and technique must be made available to FRA upon request.

(d) *Visual inspection.* At a minimum, each tank car facility must visually inspect the tank externally and internally as follows:

(1) An internal inspection of the tank shell and heads for abrasion, corrosion, cracks, dents, distortions, defects in welds, or any other condition that makes the tank car unsafe for transportation, and except in the areas where insulation or a thermal protection system precludes it, an external inspection of the tank shell and heads for abrasion, corrosion, cracks, dents, distortions, defects in welds, or any other condition that makes the tank car unsafe for transportation;

(2) An inspection of the piping, valves, fittings, and gaskets for indications of corrosion and other conditions that make the tank car unsafe for transportation;

(3) An inspection for missing or loose bolts, nuts, or elements that make the tank car unsafe for transportation, and replacing or tightening those found missing or loose;

(4) An inspection of all closures on the tank car for proper securement in a tool tight condition and an inspection of the protective housings for proper securement;

(5) An inspection of excess flow valves having threaded seats for tightness; and

(6) An inspection of the required markings on the tank car for legibility.

(e) *Structural integrity inspections and tests.* At a minimum, each tank car facility shall inspect the tank car for structural integrity as specified in this section. The structural integrity inspection and test shall include all circumferential and longitudinal welds within the area of the bottom shell and all attachments welded to the bottom shell by one of the following inspection and test methods to determine that the welds are in proper condition:

(1) Dye penetrant test

(2) Radiography test

(3) Magnetic particle test

(4) Ultrasonic test

(5) Enhanced visual imagery (e.g., fiberscopes and borescopes)

(f) *Thickness tests.* (1) Each tank car facility shall measure the thickness of the tank car shell, heads, sumps, domes, and nozzles on each tank car by using a device capable of accurately measuring the thickness to within ±0.051 mm (±0.002 inch).

(2) After repairs, alterations, conversions or modifications of a tank car that results in a reduction to the tank car shell thickness, the tank car facility shall measure the thickness of the tank car shell in the area of reduced shell thickness.

(g) *Service life shell thickness allowance.* (1) A tank car found with a thickness below the required minimum thickness after forming for its specification, as stated in Part 179 of this subchapter, may continue in service if:

(i) Construction of the tank car shell and heads is from carbon steel, stainless steel, aluminum, nickel, or manganese-molybdenum steel; and

(ii) Any reduction in thickness of the tank shell or head is no more than that provided in the following tables:

UNIFORM SHELL THICKNESS REDUCTIONS

Location	Class DOT 103, 104, 111, and 115 tank cars (see notes)	Class DOT 105, 109, 112, and 114 tank cars (see notes)
Top of the tank car.	3.17 mm (1/8 inch).	0.79 mm (1/32 inch).
Bottom shell .	1.58 mm (1/16 inch).	0.79 mm (1/32 inch).

LOCALIZED SHELL THICKNESS REDUCTIONS

Location	Class DOT 103, 104, 111, and 115 tank cars (see notes)	Class DOT 105, 109, 112, and 114 tank cars (see notes)
Top of the tank car.	4.76 mm (3/16 inch).	1.58 mm (1/16 inch).
Bottom shell .	1.58 mm (1/16 inch).	1.58 mm (1/16-inch).

Notes:

[1] The cumulative perimeter for localized reductions may not exceed a 182.88 cm (72 inches) perimeter.

[2] Any reduction in the tank car shell does not affect the structural strength of the tank car so that the tank car shell no longer conforms to Section 6.2 of the Association of American Railroads Specifications for Tank Cars.

[3] 3Applies only to the outer shell for DOT Class 115 tank cars.

[4] For DOT Class 103 and 104 tank cars, the inside diameter may not exceed 243.84 cm (96 inches).

[5] No Class DOT 111A tank car with a reduced shell thickness may be used for the transportation of ethylene oxide.

(h) *Safety system inspections.* At a minimum, each tank car facility must inspect:

(1) Tank car thermal protection systems, tank head puncture resistance systems, coupler vertical restraint systems and systems used to protect discontinuities (i.e., skid protection and protective housings) to ensure their integrity.

(2) Reclosing pressure relief devices by:

(i) Removing the safety relief device from the tank car for inspection; and,

(ii) Testing the safety relief device with air or gas to ensure that it conforms to the start-to-discharge pressure for the specification or commodity in this subchapter.

(i) *Lining and coating inspections and tests.* At a minimum, each tank car facility must inspect the lining or coating installed on the tank car according to the inspection interval and test technique established by the owner (as required by paragraph (c)(3)(iii) of this section).

(j) *Leakage pressure test.* (1) At a minimum, each tank car facility shall perform a leakage pressure test on the tank fittings and appurtenances. The leakage pressure test must include product piping with all valves and accessories in place and operative, except that during the pressure test the tank car facility shall remove or render inoperative any venting devices set to discharge at less than the test pressure. Test pressure must be maintained for at least 5 minutes. Leakage test pressure must not be less than 50% of the tank test pressure.

(2) Interior heater systems must be tested hydrostatically at 200 psi (1379 kPa) and must show no signs of leakage.

(k) *Alternative inspection and test procedures.* (1) In lieu of the other requirements of this section, a person may use an alternative inspection and test procedure or interval based on a damage-tolerance fatigue evaluation, when the evaluation is examined by the Association of American Railroads Tank Car Committee and approved by the Associate Administrator for Safety, Federal Railroad Administration.

(2) *Compliance date.* Each tank car shall have an inspection and test conforming to this section no later than the date the tank car requires a periodic hydrostatic pressure test (i.e., the marked due date on the tank car for the hydrostatic test). For tank cars on a 20-year periodic hydrostatic pressure test interval (i.e., Class DOT 103W, 104W, 111A60W1, 111A100W1, and 111A100W3 tank cars), the next inspection and test date is the midpoint between [insert date of publication of this rule] and the remaining years until the tank would have had a hydrostatic pressure test. After that, the tank car must be inspected and tested at 10-year intervals.

§ 180.511 Acceptable results of inspections and tests.

Provided it conforms with other applicable requirements of this subchapter, a tank car is qualified for use if it successfully passes the following the inspections and tests conducted in compliance with this subpart:

(a) *Visual inspection.* A tank car successfully passes the visual inspection when the inspection shows no structural defect that may cause leakage from or failure of the tank before the next inspection and test interval.

(b) *Structural integrity inspection and tests.* A tank car successfully passes the structural integrity inspection and test when it shows no structural defect that may initiate crack growth and cause failure of the tank before the next inspection and test interval.

(c) *Service life shell thickness.* A tank car successfully passes the service life shell thickness inspection when the tank shell and heads show no thickness reduction below that allowed in § 180.509(g) of this part.

(d) *Safety system inspection.* A tank car successfully passes the safety system inspection when each thermal protection system, tank head puncture resistance system, coupler vertical restraint system, and system used to protect discontinuities (e.g., breakage grooves on bottom outlets and protective housings) on the tank car conform to this subchapter.

(e) *Lining and coating inspections and tests.* A tank car successfully passes the lining and coating inspection and test when the lining or coating shows no evidence of holes or degraded areas.

(f) *Leakage pressure test.* A tank car successfully passes the leakage pressure test when all product piping, fittings and closures show no indication of leakage.

(g) *Hydrostatic test.* A Class 107 tank car or a riveted tank car successfully passes the hydrostatic test when it shows no leakage, distortion, excessive permanent expansion, or other evidence of weakness that might render the tank car unsafe for transportation service.

§ 180.513 Repairs, alterations, conversions, and modifications.

In order to repair tank cars, the tank car facility must comply with the requirements of appendix R of the AAR Specifications for Tank Cars.

§ 180.515 Markings.

(a) Each tank car facility shall mark the inspection and test date and the due date for the next inspection and test on the tank near the DOT specification number. A tank car facility may consolidate the dates for each visual inspection, safety system inspection, lining and coating inspection or test, leakage inspection and test, and structural integrity inspection and test on the tank when the inspection and test and the inspection and test due dates are the same.

(b) The tank car facility must comply with the marking requirements of appendix C of the AAR Specifications for Tank Cars.

(c) Converted tank cars must have the new specification and conversion date permanently marked in letters and

figures at least 0.952 cm (3/8-inch) high on the outside of the manway nozzle or the edge of the manway nozzle flange on the left side of the car. The marking may have the last numeral of the specification number omitted (e.g., "DOT 111A100W" instead of "DOT 111A100W1").

(d) When pressure tested within six months of installation and protected from deterioration, the test date marking of a safety relief device is the installation date on the tank car.

§ 180.517 Reporting and record retention requirements.

(a) *Certification and representation.* Each owner of a specification tank car shall retain the certificate of construction (AAR Form 4–2) and related papers certifying that the manufacture of the specification tank car identified in the documents in accordance with the applicable specification. The owner shall retain the documents throughout the period of ownership of the specification tank car and for one year thereafter. Upon a change of ownership, the requirements of Section 1.3.15 of the AAR Specifications for Tank Cars apply.

(b) *Inspection and test reporting.* Each tank car that is inspected as specified in § 180.509 must have a written report, in English, prepared according to this paragraph. The owner must retain a copy of the inspection and test reports until successfully completing the next inspection and test of the same type. The inspection and test report must include the following:

(1) Type of inspection and test performed (a checklist is acceptable);

(2) The results of each inspection and test performed;

(3) Owner's reporting mark;

(4) DOT Specification;

(5) Inspection and test date (month and year);

(6) Location of defects found and method used to repair each defect;

(7) The name and address of the tank car facility and the signature of inspector.

§ 180.519 Periodic retest and inspection of tank cars other than single-unit tank car tanks.

(a) *General.* Unless otherwise provided in this subpart, tanks designed to be removed from cars for filling and emptying and tanks built to specification DOT 107A**** and their safety relief devices must be retested periodically as specified in Retest Table 1 of paragraph (b) of this section. Retests may be made at any time during the calendar year the retest falls due.

(b) *Pressure test.* (1) Each tank, except as provided in paragraph (b)(8) of this section, must be subjected to the specified hydrostatic pressure and its permanent expansion determined. Pressure must be maintained for 30 seconds and as much longer as may be necessary to secure complete expansion of the tank. The pressure gauge must permit reading to an accuracy of 1 percent. The expansion gauge must permit reading of total expansion to an accuracy of 1 percent. Expansion must be recorded in cubic centimeters. Permanent volumetric expansion must not exceed 10 percent of total volumetric expansion at test pressure and tank must not leak or show evidence of distress.

(2) Each tank, except tanks to specification DOT 107A, must also be subjected to interior air pressure test of at least 100 psi under conditions favorable to detection of any leakage. No leaks may appear.

(3) Safety relief valves must be retested by air or gas, must start to discharge at or below the prescribed pressure and must be vapor tight at or above the prescribed pressure.

(4) Frangible discs or fusible plugs must be removed from the tank and visually inspected.

(5) Tanks must be retested as specified in Retest Table 1 of this paragraph before return to service after repairs involving welding or heat treatment.

RETEST TABLE 1

Specification	Retest interval—years		Retest pressure—p.s.i.		Safety relief valve pressure—p.s.i.	
	Tanks	Safety relief devices [4]	Tank hydrostatic expansion [3]	Tank air test	Start-to-discharge	Vapor tight
DOT 27	5	2	500	100	375	300
106A500	5	2	500	100	375	300
106A500X	5	2	500	100	375	300
106A800	5	2	800	100	600	480
106A800X	5[1]	2	800	100	600	480
106A800NCI	5	2	800	100	600	480
107A****	[1]5	[1]2	([2])	None	None	None
110A500–W	5	2	500	100	375	300
110A600–W	5	2	600	100	500	360
110A800–W	5	2	800	100	600	480
110A1000–W	5	2	1,000	100	750	600
BE–27	5	2	500	100	375	300

[1] If DOT 107A**** tanks are used for transportation of flammable gases, one frangible disc from each car must be burst at the interval prescribed. The sample disc must burst at a pressure not exceeding the marked test pressure of the tank and not less than 7/10 of the marked test pressure. If the sample disc does not burst within the prescribed limits, all discs on the car must be replaced.

[2] The hydrostatic expansion test pressure must at least equal the marked test pressure.

[3] See § 180.519(d)(8).

[4] Safety relief valves of the spring-loaded type on tanks used exclusively for fluorinated hydrocarbons and mixtures thereof which are free from corroding components may be retested every 5 years.

(6) The month and year of test, followed by a "V" if visually inspected as described in paragraph (d)(8) of this section, must be plainly and permanently stamped into the metal of one head or chime of each tank passing test; for example, 1–60 for January 1960. On DOT 107A**** tanks, the date must be stamped into the metal of the marked end, except that if all tanks mounted on a car have been tested, the date may be stamped into the metal of a plate permanently applied to the bulkhead on the "A" end of the car. Dates of previous

tests and all prescribed markings must be kept legible.

(7) *Written reports.* Retests of tanks and safety relief devices must be reported by the person making tests to the owner of the tank. Reports must show registered identifying mark and serial number, pressure to which tested, date and place of test, and by whom tested. Reports of the latest retest must be retained by the owner until the next retest has been accomplished and recorded.

(8) Tanks of DOT 106A and DOT 110A–W (§§ 179.300, 179.301, 179.302 of this subchapter) specifications used exclusively for transporting fluorinated hydrocarbons and mixtures thereof, and which are free from corroding components, may be given a periodic complete internal and external visual inspection in lieu of the periodic hydrostatic retest. Visual inspections shall be made only by competent persons.

Acceptance or rejection of a tank must be based upon the methods used for cylinders in CGA Pamphlet C–6, and the results must be recorded on a suitable data sheet, the completed copies of which must be kept by the owner as a permanent record. The information to be recorded and checked on these data sheets are: Date of inspection (month and year followed by a "V" to indicate visual inspection); DOT specification number; tank identification (registered symbol and serial number, date of manufacture and ownership symbol); type of protective coating (painted, etc., and statement as to need for refinishing or recoating); conditions checked (leakage, corrosion, gouges, dents or digs, broken or damaged chime or protective ring, fire, fire damage, internal condition); and disposition of tank (returned to service, returned to manufacturer for repair, or scrapped).

Issued in Washington, DC, on September 8, 1993, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93–22373 Filed 9–15–93; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 5 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico for review by the Secretary of Commerce (Secretary). Written comments are requested from the public.

DATES: Written comments must be received on or before November 12, 1993.

ADDRESSES: Comments should be sent to the Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702. Copies of Amendment 5, which includes a regulatory impact review/initial regulatory flexibility analysis, a Supplemental Environmental Impact Statement, and a minority report submitted by four Council members which objects to most of the amendment measures may be obtained from the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that a council-prepared fishery management plan or amendment be submitted to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving an amendment, immediately publish a notice that the document is available for public review and comment. The Secretary will consider public comment in determining approvability of the amendment.

Amendment 5 proposes to:

(1) Impose a three-year moratorium on additional participants in the reef fish trap fishery;

(2) Require each fish trap or string of traps to be marked with a floating buoy;

(3) Require that fish traps be returned to port at the completion of the tending vessel's trip;

(4) Increase the minimum allowable size of red snapper, currently 13 inches (33.0 cm), in one-inch increments every other year commencing January 1, 1994, until the minimum allowable size is 16 inches (40.6 cm), effective January 1, 1998;

(5) Require all finfish, other than bait and oceanic migratory species, possessed in the exclusive economic zone (EEZ) to be maintained with head and fins intact through landing;

(6) Close Riley's Hump, southwest of Dry Tortugas, Florida, to all fishing during May and June of each year;

(7) Create special management zones (SMZs) in the EEZ off Alabama in which fishing for reef fish would be limited to hook-and-line gear having no more than three hooks per line and to spearfishing gear; and

(8) Add the establishment or modification of SMZs, and the gear allowed in each, to the management measures that may be adjusted via a framework regulatory adjustment procedure.

Although comments are requested on all measures contained in Amendment 5, the Secretary is particularly inviting comments on the proposed SMZs. Specific issues of concern will be indicated in the preamble of the proposed rule.

Proposed regulations to implement Amendment 5 are scheduled for publication within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 10, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management National Marine Fisheries Service.

[FR Doc. 93–22669 Filed 9–13–93; 3:08 pm]

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Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Mosquito-Fly Timber Sale, Idaho Panhandle National Forests, Shoshone County, ID; Intent To Prepare Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The notice is hereby given that J.W. Associates Inc., under contract to the Forest Service, is gathering information in order to prepare an Environmental Impact Statement (EIS) for a proposal to harvest timber, build roads and grant road access to Plum Creek Timber Company private lands in the Mosquito-Fly area. This area is located approximately 20 air miles east-southeast of Avery, Idaho, on the Avery Ranger District. The proposed timber harvest and road construction are proposed within the Mosquito-Fly Roadless Area (#1–150).

DATES: Two public meetings/open houses will be held. The first will occur during the initial public comment period. The second meeting will occur following the release of the Draft Environmental Impact Statement. These meetings will be announced in the local newspaper and by written notification to those on the project mailing list. Written comments concerning the scope of the analysis must be received on or before November 1, 1993.

ADDRESSES: Send written comments to Jessica Wald, J.W. Associates Inc., 2006 Broadway, suite 305, Boulder, CO 80302.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be directed either to the Forest Service contact, Andy Schmidt, Avery Ranger District, HC Box 1, Avery, Idaho, 83802–9702, Phone: (208) 245–4517, or to Jessica Wald, J.W. Associates Inc., Phone: (303) 447–1308.

SUPPLEMENTARY INFORMATION: These management activities would be administered by the Avery Ranger District of the Idaho Panhandle National Forests in Shoshone County, Idaho. The EIS is being prepared by J.W. Associates Inc. with input from the Forest Service. Representatives from both J.W. Associates Inc. and the Forest Service will be available for comment during scoping and preparation of the EIS. The Forest Service will issue the Record of Decision. The District Ranger, Allen Chrisman, is the responsible official.

The EIS will tier to the Forest Plan (September 1987) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) for achieving the desired future condition for this area. The purpose and need for the proposed action is to (1) determine how to grant access to Plum Creek Timber Company private land and if the Forest Service should share in the cost of these roads; (2) improve growth and yield of the desired species and size in the study area; (3) foster forest regulation by moving toward an even age class distribution and; (4) provide for the area's share of the Allowable Sale Quantity.

The process used in preparing the Draft EIS will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies.

J.W. Associates Inc., together with the Forest Service, invites written comments and suggestions on the issues and management opportunities in the area being analyzed. Comments should be sent to J.W. Associates Inc. within 45 days from the date of this publication in the Federal Register.

Preliminary issues have been identified and include the following:

Wildlife

a. The impact of the proposed action and developed alternatives to wildlife habitat,

b. The potential impact to biodiversity especially concerning mature and old growth tree stands dependent wildlife species, and interior forested habitat.

Water Quality/Fisheries

a. The potential for an increase in total sediment yield in streams and the associated impacts to fish and other beneficial uses,

b. The potential decrease in stream channel stability due to changes in the runoff peak and volume and the associated impacts to fish habitat,

c. The potential impact to bull trout.

Timber/Silviculture

a. The potential for maintaining or improving the area's growth and yield of timber.

Roadless

a. The impact to the Mosquito-Fly Roadless Area.

Recreation

a. The impact to additional dispersed recreation opportunities, including hiking and hunting.

b. The potential for any adverse effects on the recreational use of the St. Joe River.

Visual Quality

a. The potential for reductions in the visual quality at sensitive viewpoints and along major roads.

b. The potential for reductions in the visual quality for recreationists.

The Forest Plan provides the overall guidance for management activities in the potentially affected area through its Goals, Standards and Guidelines, and Management Area direction. The potentially affected area is within the following Management Areas:

Management Area 1: Consists of lands designated for timber production. The management goal is to provide for long-term growth and production of commercially valuable wood products on those lands that are suitable for timber production;

Management Area 4: Consists of lands designated for timber production within identified big game winter range. The goal is to provide winter forage to support existing and projected big game populations through scheduled timber harvest and permanent forage areas;

Management Area 5: Consists of lands designated for elk winter range. The management goals are to provide

sufficient habitat for existing and projected big game populations through permanent forage areas;

Management Area 6: Consists of lands designated for timber production within identified elk summer range. The management goals are to provide high quality elk summer habitat and production of wood products, through road management and scheduling of harvest activities;

Management Area 9: Consists of areas of non-forest lands or lands not capable of timber production. Management goals are to maintain and protect existing improvements and resource productive potentials and meet visual quality objectives;

Management Area 12: Consists of areas within Wild and Scenic River corridors. The goal is to manage the rivers with their immediate environments to preserve their free flowing condition for the benefit and enjoyment of present and future generations.

A range of alternatives will be considered. One of these will be the "no-action" alternative, in which the existing roadless character of the Mosquito-Fly roadless area would be maintained in its present state and timber harvest and associated road building on Forest Service land would be deferred. Other alternatives will examine various plans for timber harvest, road construction, and access to Plum Creek Timber Company lands. These alternatives will vary by location of harvest, harvest level, and harvest method to achieve the purpose of the proposed action. Additionally, an alternative transportation plan will be developed to examine the possibility of reduced road construction.

J.W. Associates Inc. will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. This will include an analysis of the effects of alternatives on the roadless character of the area affected. In addition, the EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

Public participation will be important during the analysis. People may visit with J.W. Associates Inc., or Forest Service officials, at any time during the analysis. Forest Service officials will remain available for consultation following publication of the Final EIS and prior to the decision. Two periods of time, however, are specifically identified for the receipt of comments on the analysis. The two public comment periods are during the scoping process, initiated with the publication of this announcement, and during the review of the Draft EIS (April–May, 1994).

During the scoping process, J.W. Associates Inc., along with the Forest Service, is seeking information and comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action.

The Draft EIS (DEIS) is expected to be available for public review in April, 1994. The public comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. All of the comments received will be analyzed and considered by J.W. Associates Inc. in preparing the Final EIS (FEIS). The FEIS is scheduled to be completed by August, 1994. The FEIS will include responses to received comments. The Avery District Ranger, who is the Forest Service's responsible official for this EIS, will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented by the Forest Service in a Record of Decision.

The Forest Service believes it is important to give reviewers notice, at this early stage, of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts, *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to J.W. Associates Inc. at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

The Alaska National Interest Lands Conservation Act (ANILCA) of December 20, 1980 (94 Stat. 2371) has national application and provides that, subject to terms and conditions of the Secretary of Agriculture, the owners of non-Federal land within the National Forest System shall be provided adequate access to their land.

To assist J.W. Associates Inc. and the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

Dated: September 10, 1993.

Allen Chrisman,

District Ranger, Avery Ranger District, Idaho Panhandle National Forests.

[FR Doc. 93–22668 Filed 9–15–93; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

East Wenatchee Watershed, WA; Notice of Intent to De-authorize Federal Funding

AGENCY: Soil Conservation Service.

ACTION: Notice of intent to de-authorize federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the intent to De-authorize Federal funding for the East Wenatchee Watershed project, Douglas County, Washington.

FOR FURTHER INFORMATION CONTACT: Lynn A. Brown, State Conservationist, Soil Conservation Service, W. 316 Boone Avenue; Suite 450, Spokane, Washington 99201–2348, telephone 509–353–2337.

SUPPLEMENTARY INFORMATION: A determination has been made by Lynn A. Brown that the proposed works of improvement for the East Wenatchee Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be de-authorized for the project. Information regarding this determination may be obtained from Lynn A. Brown, State Conservationist, at the above address and telephone number. East Wenatchee Watershed, Washington. Notice of Intent to De-authorize Federal Funding.

No administrative action on implementation of the proposed de-authorization will be taken until 60 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: September 3, 1993.

Lynn A. Brown,

State Conservationist.

[FR Doc. 93-22602 Filed 9-15-93; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Conference on Research Issues for Improving Coverage of the Homeless Population in the 2000 Census; Notice of Meeting

The Census Bureau is giving notice of a conference entitled, "Towards Census 2000: Research Issues for Improving Coverage of the Homeless Population." The conference will convene on September 28, 1993, at 1 p.m. and will adjourn at 5 p.m. On September 29 the conference will convene at 8:30 a.m. and adjourn at 4 p.m. The conference will be held at the Holiday Inn-National Airport, 1489 Jefferson Davis Highway, Arlington (Crystal City), Virginia. Conference registration begins at 12 noon.

The Census Bureau is conducting research on fundamental changes for the 2000 census to improve the accuracy of the census while containing cost. One area of research is ways to improve the coverage of the homeless population. The Census Bureau is seeking input for possible methodologies for improving the count of the homeless population in the next census.

The Census Bureau has invited representatives of national homeless coalitions who are familiar with homeless research issues, researchers who have conducted area studies of the homeless population, and data users to speak and participate at the conference.

The tentative agenda for the conference is: (1) Opening Remarks; (2) Towards Census 2000: Research Issues; (3) Exploring A Service-Based Methodology—Washington, DC, Metropolitan Area Drug Study: DC*MADS: A Comprehensive Study; Types of Services to Include; and Unduplicating Those Who Use Multiple Services; (4) Discussion of Recent Local Area Studies; (5) Availability of Administrative Records; (6) Definitions and Data Needs, and (7) Closing Remarks.

This meeting is open to the public; however, seating is limited. Please contact Pat Ellis on (301) 763-1186 by September 21 if you plan to attend. Brief periods will be set aside for public comment and questions. The conference will be audio recorded. Those persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least 3 working days before the meeting.

This conference is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids also should be directed to the Census Bureau contact person named below by September 21.

Persons wishing additional information regarding this meeting or who wish to submit written statements may contact Sandra Lucas, Year 2000 Research and Development Staff, Bureau of the Census, room 3525-3, Washington, DC 20233. Telephone (301) 763-4283—TDD (301) 763-4944.

Dated: September 10, 1993.

Harry A. Scarr,

Acting Director, Bureau of the Census.

[FR Doc. 93-22654 Filed 9-15-93; 8:45 am]

BILLING CODE 3510-07-P

Minority Business Development Agency

Business Development Center Applications: Manhattan, NY

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first Budget period (12 months) is estimated as $192,700 in Federal funds, and a minimum of $34,005 in non-Federal (cost sharing) contribution, from March 1, 1994 to February 28, 1995. Cost-sharing contributions, may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Manhattan, New York SMA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state, local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points).

An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods.

MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and the Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

Applicants are notified that if they incur any costs prior to an award being made they do so solely at their own risk of not being reimbursed by the Government. Applicants are notified that notwithstanding any verbal assurance that they may have received, there is no obligation on the part of DoC to cover pre-award costs.

If an application is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DoC.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full
2. A negotiated re-payment schedule is established and at least one payment is received; or
3. Other arrangements satisfactory to DoC are made.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

Notification must be provided that all non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or is presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Public Law 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards. False information on the application can be grounds for denying or terminating funding.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF–LLL, the "Disclosure of Lobbying Activities" (if applicable) is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

15 CFR part 28 is applicable and prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a specific contract, grant, or cooperative agreement. Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and, when applicable, the SF–LLL, "Disclosure of Lobbying Activities," are required.

Notification must be provided that recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DoC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DoC in accordance with the instructions contained in the award document.

CLOSING DATE: The closing date for application is October 18, 1993.

Applications must be postmarked on or before October 18, 1993.

The mailing address for submission is:

ADDRESSES: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, rm. 3720, New York, New York 10278, Area Code/Telephone Number: (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: John F. Iglehart, Regional Director, New York Regional Office at (212) 264–3263.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above New York address.

(Catalog of Federal Domestic Assistance, 11.800 Minority Business Development)

Dated: September 8, 1993.

William R. Fuller,

Deputy Regional Director, New York Regional Office.

[FR Doc. 93–22624 Filed 9–15–93; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[I.D. 091393A]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

The Western Pacific Fishery Management Council's Bottomfish Advisory Review Board (BARB) will hold a public meeting on September 13, 1993, beginning at 5 p.m., at the office of the Western Pacific Regional Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI.

The BARB will discuss and possibly make recommendations to the Council regarding a request for reissuance of a Hoomalu Zone limited entry permit.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Dated: September 13, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–22670 Filed 9–13–93; 3:08 pm]

BILLING CODE 3510–22–P

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit (P420C).

SUMMARY: Notice is hereby given that Permit No. 801 issued to J. Ward Testa, Ph.D. and Michael Castellini, Ph.D., Institute of Marine Science, University of Alaska, on October 16, 1992 (57 FR 48512, 10/26/92), has been modified. The modification becomes effective upon publication in the **Federal Register**.

ADDRESSES: The Permit, as modified, and associated documents are available upon written request or by appointment in the Permits Division, Office of Protected Resources, NMFS, 1335 East-West Hwy., Suite 7324, Silver Spring, MD 20901 (301/713–2289); and Director, Alaska Region, National Marine Fisheries Service, Federal Annex, P.O. Box 21668, Federal Building, Juneau, AK 99802 (907/586–7221).

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the subject Scientific Research Permit authorized harassment of up to 3200 Weddell seals (*Leptonychotes weddellii*), 30 each of crabeater seals (*Lobodon carcinophagus*), leopard seals (*Hydrurga leptonyx*), Ross seals (*Ommatophoca rossii*), Antarctic fur seal (*Arctocephalus gazella*) and southern elephant seal (*Mirounga leonina*), and import specimens from McMurdo Sound, Antarctica.

The Permit has been modified to expand the research protocol on animals already authorized. No increase in the total take authority is authorized. Of the 1200 Weddell seals authorized, (1) 650 adults be tagged with subcutaneous transponders of which 20 may have satellite tags (SLTDRs) attached to their pelage, 20 may be injected with oxytocin (intramuscularly) to extract milk up to three times, and 50 may have a vibrissa clipped, a claw marked and clipped, and up to 3 blubber biopsies taken; (2) 30 pups may have one vibrissa clipped once, a claw marked once (not pulled) and blubber biopsies taken up to 3 times, 300 pups may be weighed, blood sampled and have body fat determined once, and 40 pups may be captured, tagged and released up to 2–3 times; and (3) 30 each of crabeater, leopard, Ross, and Southern elephant seals may be weighed, blood sampled, have a vibrissa clipped, a claw clipped, and a blubber biopsy sample taken. Unused samples will be curated at the University of Alaska Museum.

The application and accompanying documentation satisfy the issuance criteria for scientific research permits. The requested activities are consistent with the purposes and policies of the Marine Mammal Protection Act. The research will further a bona fide scientific purpose that does not involve unnecessary duplication of other research.

Dated: September 10, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–22631 Filed 9–15–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Membership of the Defense Logistics Agency (DLA) Performance Review Board (PRB)

September 13, 1993.

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice of membership of the DLA PRBs.

SUMMARY: This notice announces an amendment to the members of the PRBs of the Defense Logistics Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The original PRB was published in the **Federal Register** on 16 July 1993.

The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance awards and performance to the Director, Defense Logistics Agency.

EFFECTIVE DATE: 13 September 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert W. Johnson, Employee Development Specialist, Workforce Effectiveness and Development Division, Defense Logistics Agency, Department of Defense, Cameron Station, Alexandria, VA (703) 274–6049 or 274–6039.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the PRBs. They will serve a 1-year renewable term, effective 13 September 1993.

Initial PRB

Mr. A. C. Ressler, Staff Director, Civilian Personnel
Mr. Robert P. Scott, Deputy, Defense Contract Management Command
Ms. Christine Gallo, Deputy Assistant Director, Policy and Plans—vice
Mr. James J. Grady, Jr., Deputy Executive Director, Supply Operations

2nd Level Review

Mr. Karl Kabeiseman, General Counsel
Mr. Richard J. Connelly, Comptroller
Mr. Gary S. Thurber, Executive Director, Contracting.

A.C. Ressler,

Executive Director (Human Resources).

[FR Doc. 93–22664 Filed 9–15–93; 8:45 am]

BILLING CODE 3620–01–M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Future Naval Forces Task Force will meet September 30, 1993, from 11 a.m to 12:30 p.m., at the Pentagon, room 4E630. This session will be closed to the public.

The purpose of this meeting is to evalute U.S. Navy requirements for Future Naval Forces. The entire agenda for the meeting will consist of discussions of key issues related to recommended platform developments and operational concepts for future naval forces. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and, are in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: J. Kevin Mattonen, Executive Secretary to the CNO

Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302–0268, Phone (703) 756–1205.

Dated: September 9, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–22637 Filed 9–15–93; 8:45 am]

BILLING CODE 3810–AE–P

Performance Review Board Membership

Pursuant to 5 U.S.C. 4314(c)(4), the Department of the Navy (DON) announces the appointment of members to the DON's numerous Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of the annual SES performance appraisal prepared by the senior executive's immediate and second level supervisor; to make recommendations to appointing officials regarding acceptance or modification of the performance rating; and to make recommendations for monetary performance awards. Composition of the specific PRBs will be determined on an ad hoc basis from among individuals listed below:

Akin, M.G. Mr.
Allard, D.C. Dr.
Allen, T.W. Mr.
Altwegg, D.M. Mr.
Andriani, C. Mr.
Arnold, B.H. Mr.
Ashe O.R. Mr.
Bailey, D.C. Mr.
Baker, A.D. Mr.
Bisson, A.E. Dr.
Bizup, J.A. Mr.
Blatstein, I.M. Mr.
Blickstein, I.N. Mr.
Boecker, D. RADM
Brooke, R.K. Mr.
Brown, J.G. Ms.
Buonacoursi, P. Mr.
Burnett, R.A. Capt
Cammack, E.G. Mr.
Camp, J.R. Mr.
Carberry, V.S. Mr.
Cataldo, P.R. Mr.
Cate, J.P. Mr.
Claman, J.S. RADM
Clark, C.C. Ms.
Cocchiola, M.J. Mr.
Coffey, T. Dr.
Coffman, W.R. Mr.
Commons, G.L. Ms.
Comstock, E.T. Mr.
Conte, A.V. Mr.
Cook, W.J. Mr.
Cuddy, J.V. Mr.
Czelusniak, D.P. Mr.
Davis, J.R. Dr.
Decorpo, J.J. Dr.
Deprete, A. Mr.
Desalme, J.W. Mr.
Diederich, F.W. Mr.
Dillon, B.L. Mr.
Dilworth, G. Mr.
Ditrapani, A.R. Mr.
Dixson, H.L. Mr.
Doak, R.E. Mr.
Doherty, L.M. Ms.
Donalson, E.L. Mr.
Douglass, T.E. Mr.
Draim, R.P. Mr.
Duddleston, R.J. Mr.
Durham, D.L. Dr.
Earner, W.A. RADM
Elliott, R.D. Mr.
Everett, D. Mr.
Faurot, P.R. Mr.
Felton, R.M. Mr.
Firebaugh, M. RADM
Fisher, B.F. Mr.
Fisher, P.D. Mr.
Fisher, R.E. Mr.
Fitzgerald, R. Mr.
Ford, F.B. Mr.
Forssell, A.G. Mr.
Foxwell, H.H. Mr.
Gaffney, P.G. Capt
Gay, B.H. Ms.
Geiger, C.G. Mr.
Goldschmidt, J.X. Mr.
Gordon, R.E. Dr.
Greene, J.B. RADM
Griffith, D.O. Mr.
Grossman, J.C. Mr.
Guenther, J.J. Mr.
Guertin, J.R. Dr.
Gunderson, E.K. Dr.
Haas, R.L. Mr.
Haaland, S. Mr.
Hallex, R.A. Mr.
Hamilton, F.X. MajGen
Hammes, M.C. Mr.
Handel, T.H. Mr.
Hannah, B.W. Mr.
Hardman, J.W. Mr.
Harman, D.P. Mr.
Harrison, R.G. RADM
Harshbarger, E. RADM
Hartwig, E.O. Mr.
Hathaway, D.L. Mr.
Hauenstein, W.H. Mr.
Haut, D.G. Mr.
Haynes, R.S. Mr.
Hearney, R.D. MajGen
Henry, M.G. Mr.
Herd, J.H. Mr.
Hickman, D.E. RADM
Hicks, S.N. Mr.
Hildebrandt, A.H. Mr.
Honigman, S.S. The Honorable
Hood, J.T. RADM
Huchting, G.A. RADM
Hunt, W. Mr.
Jack, R.D. Mr.
Jenkins, H.W. MajGen
Johnson, P.J. Mr.
Johnston, R.B. LGen
Jones, R.G. RADM
Junker, B.R. Mr.
Kallmeyer, T. Mr.
Kaskin, J.D. Mr.
Keightley, G.E. Mr.
Keller, R.B. Mr.
Kill Kelley, J.L. Mr.
Kiss, R.K. Mr.
Knudsen, R. Dr.
Kobitz, N. Mr.
Kolb, R.C. Dr.
Kotzen, P.S. Ms.
Kreitzer, L.P. Mr.
Kuesters, J.J. Mr.
Laughton, K. RADM
Leach, R.A. Mr.
Leboeuf, G.G. Mr.
Lefande, R.A. Dr.
Letow, A.M. Mr.
Lindahl, W.J. Mr.
Lockard, J.A. RADM
Lopata, F.A. Mr.
Lundberg, L. Mr.
Lynch, J.G. Mr.
Manthorpe, W.H. Mr.
Marsh, J.W. Mr.
Martin, R.J. Mr.
Masciarelli, J.R. Mr.
Matteo, D.A. Mr.
Mattheis, W.G. Mr.
McBurnett, G. Ms.
McGadney, R.L. Mr.
Meador, L.M. Mr.
Meletzke, D.M. Ms.
Merritt, M.M. Mr.
Meserole, M. Mr.
Messere, E.L. Mr.
Miller, G.O. Mr.
Miller, K.E. Mr.
Milligan, R.D. RADM
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Mitchell, R.G. Mr.
Montgomery, H.E. Mr.
Morris, W.R. RADM
Munsell, E.L. Ms.
Murphy, P.M. Mr.
Nathan, H.J. Mr.
Nedrow, R.D. Mr.
Nemfakos, C.P. Mr.
Nickell J.R. Mr.
Oden, L.N. RADM
Olsen, M.A. Ms.
Panek, R.L. Mr.
Paulk, R.D. Ms.
Payne, T.H. Mr.
Pelaez, M.Y. RADM
Pennisi, R.A. Mr.
Peters, R.K. Ms.
Phelps, F.A. Mr.
Porter, D.E. Mr.
Powers, B.F. Mr.
Price, R.W. Mr.
Quade, W.A. Mr.
Quester, K.A. Mr.
Rath, B.B. Dr.
Rathjen, R.A. Mr.
Reese, H.E. Mr.
Reese, W. Dr.
Renfro, J.G. Mr.

Riggs, R.K. Mr.
Roark, J.E. Mr.
Robenhymer, F.D. Mr.
Robinson, B.B. Dr.
Robinson, W.M. Mr.
Rojas, R.R. Mr.
Rossi, D.A. Mr.
Roth, A.J. Mr.
Ruble, D. RADM
Saalfeld, F.E. Dr.
Sansone, W.T. Mr.
Savitsky, W.D. Mr.
Schaefer Jr., W.J. Mr.
Schneider, P.A. Mr.
Schultz, R.E. Mr.
Schuster, J.G. Mr.
Shaffer, R.L. Mr.
Sharn, C.F. Dr.
Shearer, R.T. Mr.
Shepard, J.J. Mr.
Sheridan, F.L. Mr.
Shipway, J.F. RADM
Shoup, F.E. Dr.
Silva, E.A. Dr.
Sinsky, J.A. Dr.
Somoroff, A. Dr.
Spalding, G.R. Mr.
Steele, R.H. Mr.
Sterns, F.S. Mr.
Stone, T.E. RADM
Storey, R.C. Mr.
Strohsahl, G. RADM
Thomas, R.O. Mr.
Thompson, R.H. Mr.
Thornett, R.W. Mr.
Tiebout, R.A. MajGen
Tinston, W.J. RADM
Tisone, A.A. Mr.
Traister, R. RADM
Turnquist, C.J. Mr.
Tweeddale, J.W. Dr.
Uhler, D.G. Mr.
Vaughn, R.S. Mr.
Verkoski, J.E. Mr.
Wagner, G.F.A. Capt
Wessel, P.R. Mr.
Westerhout, G. Dr.
Whalen, J.R. Mr.
Whiteway, R.N. Dr.
Whitman, E.C. Dr.
Wilcox, H.J. Mr.
Williams, R.D. RADM
Willoughby, W.J. Mr.
Winglass, R.J. MajGen
Winkler, G.M. Dr.
Winokur, R.S. Mr.
Wisely, H.D. RADM
Witter, R.C. RADM
Wrout, G. Mr.
Wyant, F.E. Mr.
Young, S.D. Ms.
Zanfagna, P.E. Mr.
Zdankiewicz, E. Mr.
Zimet, E. Mr.
Zimmerman, D.G. Mr.
Zornetzer, S.F. Mr.

Dated: September 8, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-22588 Filed 9-15-93; 8:45 am]

BILLING CODE 3810-AE-P

DEPARTMENT OF EDUCATION

National Education Goals Panel; News Conference

AGENCY: National Education Goals Panel: Education.

ACTION: Notice of news conference.

SUMMARY: This notice announces the date and location of a forthcoming news conference to release the 1993 Report of the National Education Goals Panel. This notice also invites the public to attend the news conference and describes the functions of the Panel.

DATES: September 30, 1993 from 10 a.m. to 12 p.m.

ADDRESSES: JW Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC 20004. The E Street (E and 14th) entrance to the hotel is accessible for the disabled.

FOR FURTHER INFORMATION CONTACT: Ruth Chacon, 1850 M Street, NW., suite 270, Washington, DC 20036. Telephone: (202) 632-0952. Those needing assistance for people with disabilities should call the JW Marriott Hotel at (202) 393-2000. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 626-2655.

SUPPLEMENTARY INFORMATION: The National Education Goals Panel was created to monitor and report annually to the President, Governors and Congress on the progress of the nation toward meeting the six National Education Goals set in 1990. The 1993 Report is a comprehensive compilation of data delineating progress toward the goals.

The news conference is open to the public.

Dated: September 13, 1993.

Ann V. Bailey,

Committee Management Officer, U.S. Department of Education.

[FR Doc. 93-22632 Filed 9-15-93; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Record of Decision; Decommissioning of Eight Surplus Production Reactors at the Hanford Site, Richland, WA

AGENCY: Department of Energy.

ACTION: Record of decision; decommissioning of eight surplus production reactors at the Hanford Site, Richland, Washington.

SUMMARY: The Department of Energy has considered the environmental impacts, benefits and costs, and institutional and programmatic needs associated with the decommissioning of eight surplus production reactors at the Hanford Site, Richland, Washington. Based on this review, the Department of Energy has decided on safe storage followed by deferred one-piece removal of these eight surplus production reactors at the Hanford Site. The Department of Energy intends to complete this decommissioning action consistent with the proposed Hanford cleanup schedule for remedial actions included in the Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement). Therefore, the safe storage period would be for less than the 75-year time frame outlined in the Final Environmental Impact Statement, Decommissioning of Eight Surplus Production Reactors at the Hanford Site, Richland, Washington (DOE/EIS-0119F, December 1992). Also, the Department of Energy intends to evaluate the priority of this decommissioning action relative to Comprehensive Environmental Response, Compensation, and Liability Act and Resource Conservation and Recovery Act remediation of the past practice units in the 100 Area being conducted under the Tri-Party Agreement. Should this decision prove to be inconsistent with subsequent Comprehensive Environmental Response, Compensation, and Liability Act and Resource Conservation and Recovery Act decisions, the Department of Energy will re-evaluate the appropriateness of proceeding with this course of action on an Operable Unit-by-Operable Unit basis. Until decommissioning is initiated, the Department of Energy will continue to conduct routine maintenance, surveillance, and radiological monitoring activities to ensure continued protection of the public and the environment during the safe-storage period.

FOR FURTHER INFORMATION CONTACT: For further information on the Final Environmental Impact Statement, contact Michael Talbot, Acting Director, Office of Communications, Richland Operations Office, U.S. Department of Energy, Richland, Washington, 99352 Telephone: (509) 376-7501. For further information on the Department of Energy National Environmental Policy Act process, contact Carol M. Borgstrom, Director, Office of NEPA Oversight (EH-25), Office of Environment, Safety and Health, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 586-4600 or (800) 472-2756.

SUPPLEMENTAL INFORMATION: The Department of Energy prepared this

Record of Decision pursuant to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act (40 CFR parts 1500–1508, December 15, 1987) and Department of Energy regulations implementing the National Environmental Policy Act (10 CFR part 1021). This Record of Decision is based on the Department of Energy Final Environmental Impact Statement for the Decommissioning of Eight Surplus Production Reactors at the Hanford Site, Richland, Washington (DOE/EIS–0119F).

The Hanford Site manufactured nuclear materials for the Nation's defense programs for over 40 years. To assist in this nuclear materials production, nine water-cooled, graphite-moderated plutonium-production reactors were constructed along the Columbia River by the U.S. Government at the Hanford Site near Richland, Washington, between the years 1943 and 1963. Eight of these reactors (B, C, D, DR, F, H, KE, and KW), operated between the years 1944 and 1971, have been retired from service. These reactors have been declared surplus by the Department and are available for decommissioning. The ninth reactor, N-Reactor, is in transition to deactivation. The N-Reactor is not available for decommissioning at the present time and is not within the scope of the Final Environmental Impact Statement or this Record of Decision. The Department will prepare appropriate environmental documentation when N-Reactor becomes available for decommissioning. The Department has nominated the B-Reactor for inclusion in the National Register of Historic Places in accordance with the opinion of the Washington State Historic Preservation Officer and the provisions of 36 CFR part 800, "Protection of Historic and Cultural Properties." On April 3, 1992, the National Park Service entered the Reactor in the National Register.

Today, the primary mission of the Hanford Site is environmental restoration. On May 15, 1989, the Department of Energy, the U.S. Environmental Protection Agency and the Washington State Department of Ecology signed an agreement to remediate radioactive and chemical waste at the Hanford Site. This agreement is the Hanford Federal Facilities Agreement and Consent Order, commonly known as the Tri-Party Agreement. The purpose of the proposed decommissioning activity at the eight reactor facilities is to isolate any remaining radioactive, mixed or hazardous waste in a manner that will ensure environmental impacts remain at an acceptable level, especially potential health and safety impacts to the public.

Analysis of the existing environment and the potential environmental impacts associated with decommissioning of the eight surplus production reactors is presented in the Final Environmental Impact Statement for Decommissioning Eight Surplus Production Reactors at the Hanford Site, Richland, Washington.

In March, 1989, the Department of Energy issued a Draft Environmental Impact Statement (DOE/EIS–0119D) to analyze the impacts of the proposed action. Comments received during the public and agency review process of the Draft Environmental Impact Statement did not require the Department to modify any alternatives, to develop and evaluate any new alternatives, or to supplement, improve, or modify its analyses of the decommissioning alternatives. Therefore, the Department prepared and distributed an Addendum to the Draft Environmental Impact Statement in accordance with 40 CFR 1503.4(c). The Addendum (December 1992) states the Department of Energy's response to issues raised by commentors. The Draft Environmental Impact Statement and the Addendum constitute the Final Environmental Impact Statement (DOE/EIS–0119F) under the provisions of the Council on Environmental Quality regulations (40 CFR 1503.4(c)). The Notice of Availability of the Final Environmental Impact Statement was published in the **Federal Register** on January 15, 1993 (58 FR 4690). In addition to the proposed action of safe storage followed by deferred one-piece removal, the document discusses a no-action alternative for continuation of surveillance, monitoring and maintenance activities; an immediate one-piece removal alternative; a safe storage followed by deferred dismantlement alternative; and an in-situ decommissioning alternative. The proposed action and alternatives are described further below.

Alternatives Considered

1. Proposed Action: The proposed action is safe storage followed by deferred one-piece removal. The proposed action consists of a safe storage period during which surveillance, monitoring, and maintenance are continued, followed by transport of each reactor block, intact on a tractor-transporter, from its present location in the 100 Area to the 200 West Area for disposal (a distance of about 5 to 14 miles, depending on the reactor location relative to the disposal site). Contaminated materials associated with the fuel storage basins would also be removed for disposal in the 200 West Area, along with contaminated equipment and components associated with the reactors. Uncontaminated portions of the fuel storage basin would be removed to provide access for the tractor-transporter. Other uncontaminated structures and equipment would be demolished and placed in landfills in the vicinity of the reactor sites. During preparation for safe-storage, building components and structures would be repaired as needed to ensure the safety and security of the facility during the safe-storage period. Building security, radiation monitoring, and fire detection systems would be upgraded to provide safety, security, and surveillance as long as required. The total cost for safe storage followed by deferred one-piece removal of all eight reactors was estimated to be about $235 million in 1990 dollars. Occupational radiation doses were estimated to be about 51 person-rem for this alternative; short-term public radiation doses were estimated to be near zero. A hypothetical safe storage period of 75 years was used to estimate additional radiological inventory decay and surveillance and maintenance costs. Of the possible accidents associated with the proposed action, only the scenario involving the accidental dropping of a reactor block during transport was analyzed in detail because this scenario would yield the largest potential radiological consequences. This scenario would involve atmospheric resuspension of graphite powder that would cause an estimated population dose of 300 person-rem, which would most likely produce no health effect. Near-term ecological impacts would be minimal because the area under consideration has already been disturbed as a result of other radioactive waste management activities and nuclear facility operations.

2. No Action: The no-action alternative is to continue the present action of routine surveillance, monitoring, and maintenance of the reactor structures for an indefinite period. These activities are the same as those required by safe-storage followed by deferred one-piece removal. Over the 100-year analysis period considered in the Environmental Impact Statement (and over any subsequent 100-year period), the cost to continue the present action was estimated to be approximately $44 million in 1990 dollars. The occupational radiation dose over the first 100-year period for surveillance, monitoring, and

maintenance was estimated to be about 24 person-rem; short-term public radiation doses were estimated to be near zero. At the end of the 100-year surveillance, monitoring and maintenance period, decommissioning would still be required and subsequent environmental impacts would be similar to those from the other alternatives discussed.

Also considered was a second no-action alternative: doing nothing further, which would include the closure of the facilities and the discontinuation of all related activities. This no-action alternative was not analyzed in detail, because it would not: (1) Properly isolate the remaining contaminated materials in the facility from the environment, (2) provide any maintenance or repair of the structures and (3) make any other provisions for protection of human health and safety.

3. Immediate One-Piece Removal: Immediate one-piece removal involves transportation of each reactor block, intact on a tractor-transporter, from its present location in the Hanford 100 Area to the Hanford 200 West Area for disposal. The reactor block includes the graphite core, the thermal and biological shields, and the concrete base. Contaminated portions of the associated fuel storage basins would also be removed and disposed of in the 200 West Area, along with other contaminated equipment and components in buildings that house the reactors and fuel storage basins. Uncontaminated portions of the fuel storage basins would then be removed to provide access for the tractor-transporter. Other uncontaminated structures would be salvaged if usable or demolished and placed in waste areas at or near the reactor sites. The total cost for immediate one-piece removal of all eight reactors was estimated to be about $228 million 1990 dollars. Occupational radiation doses were estimated to be about 159 person-rem for this alternative, and short-term public radiation doses were estimated to be near zero. Under a postulated accident (dropped reactor block scenario, discussed above), population dose would be approximately the same as the dose evaluated for the proposed action. Near-term ecological impacts would be minimal because the area under consideration has already been disturbed as a result of other radioactive waste management activities and nuclear facility operations.

4. Safe Storage Followed by Deferred Dismantlement: Safe storage followed by deferred dismantlement means a safe-storage period during which surveillance, monitoring, and maintenance are continued, followed by piece-by-piece dismantlement of each reactor, and transport of radioactive waste to the 200 West Area for disposal. Activities during preparation for safe storage and during the safe storage period are approximately the same as those in the safe storage followed by deferred one-piece removal alternative. At the end of the safe storage period, each reactor block would be disassembled piece-by-piece, and all contaminated equipment and components would be packaged and transported to the 200 West Area for disposal. Contaminated portions of the associated fuel storage basins, along with contaminated equipment and components, would also be removed for disposal in the 200 West Area. Uncontaminated structures and equipment would be demolished and placed in landfills in the vicinity of the reactor sites. The total cost for safe storage followed by deferred dismantlement of all eight reactors was estimated to be about $311 million in 1990 dollars. Occupational radiation doses were estimated to be about 532 person-rem for this alternative; short-term public radiation doses were estimated to be near zero. A safe-storage period of 75 years was used to estimate additional radiological inventory decay and surveillance and maintenance costs. Of the accidents postulated for this alternative, a severe weather accident (storm) during dismantlement and a rail car accident involving fire during transport of radioactive wastes to the burial ground were determined to have the largest potential radiological consequences. If these accidents were to occur they would result in a maximum population dose of 300 person-rem from the severe weather scenario and 800 person-rem from the rail car accident (i.e., each scenario would most likely produce no health effect). Ecological impacts would be minimal because much of the area under consideration has already been disturbed as a result of radioactive waste management activities and nuclear facility operations.

5. In-Situ Decommissioning: In-situ decommissioning involves preparing each reactor block for covering with a protective mound and engineered barrier and constructing the mound and barrier. Surfaces within the facility would be painted with a fixative to ensure retention of contamination during subsequent activities. Roofs, superstructures, and concrete shield walls would be removed down to the level of the top of the reactor block. Structures surrounding the shield walls would be demolished and left in place. Voids, piping and other channels of access would be back-filled with grout/gravel or similar material to ensure isolation of the reactor from the environment. Finally, the reactor block, its adjacent shield walls, and the spent fuel storage basin, together with the contained radioactivity, gravel, and grout, would be covered to a depth of at least five meters with a mound containing earth and gravel and topped with an engineered barrier designed to limit water infiltration to 0.1 centimeter per year. Riprap on the sides of the mounds would ensure structural stability of the mounds and mitigate the impacts of any flood that might reach the reactors. The total cost of in-situ decommissioning of all eight reactors was estimated to be about $193 million in 1990 dollars. Occupational radiation doses were estimated to be about 33 person-rem for this alternative, and short-term public radiation doses during the decommissioning period were estimated to be near zero. No accident scenarios which would result in a radiological release were postulated for this alternative. Near-term ecological impacts would be minimal because the area under consideration has already been disturbed as a result of other radioactive waste management activities and nuclear facility operations. The mounds and subsequent monitoring systems would be maintained for an institutional control period of at least 100 years.

Decision

Based on its review of the environmental impacts, of total project cost, and of the results of the public review process, the Department has decided on safe-storage of the eight reactors followed by deferred one-piece removal. Because the environmental impacts of the alternatives do not offer a strong basis for selection, the Department also considers this to be one of three environmentally preferable alternatives. This selection is consistent with both the Department of Energy's preferred alternative in the Final Environmental Impact Statement and the Tri-Party Agreement. The Department proposes to complete the decommissioning of the eight surplus production reactors, consistent with related activities scheduled under the Hanford Tri-Party Agreement. The Department intends to integrate and prioritize this decision with the related Comprehensive Environmental Response, Compensation, and Liability Act or Resource Conservation and Recovery Act remediation activities scheduled under the Tri-Party Agreement. Should this

decommissioning decision eventually be shown to be inconsistent with subsequent remediation decisions, the Department of will reevaluate the appropriateness and timing of proceeding with this decision on an operable unit-by-operable unit basis.

The environmental impacts of the alternatives do not offer a strong basis for selection among the alternatives (see Table 1). Although there are apparent differences in occupational radiation dose among the alternatives, all of the estimated doses are small and no occupational cancer fatalities would be expected for any of the alternatives. The action alternatives would result in very similar environmental impacts. Estimated radiation doses and impacts from drinking water from a hypothetical well drilled near a waste disposal site were low for all of the action alternatives. Estimated radiation doses and impacts from potential accidents were also low for all action alternatives. Impacts associated with long-term population dose estimates for the action alternatives would be essentially the same and small.

TABLE 1.—FACTORS CONSIDERED IN SELECTING A DECOMMISSIONING ALTERNATIVE.[a]

Decommissioning alternative	Occupational radiation dose (person-rem)	Occupational cancer fatalities	Total cost (millions of 1990)	Population dose over 10,000 years[b] (person-rem)	Population cancer fatalities over 10,000 years	Maximum well dose[c] (rem/yr)
No action (continue present action)	24	0	44	50,000	20	1.2
Immediate one-piece removal	159	0	228	1,900	1	0.04
Safe storage followed by deferred one-piece removal	51	0	235	1,900	1	0.04
Safe storage followed by deferred dismantlement	532	0	311	1,900		10.04
In situ decommissioning	33	0	193	4,700	2	0.03

[a] Quantities are for all eight reactors. Costs are for 100 years.
[b] The Department of Energy used a conversion factor of 400 cancer deaths per one million person-rem.
[c] This is the maximum dose rate to a person drinking water from a well drilled near the waste disposal site at any time up to 10,000 years.

The No Action Alternative would result in greater radiation doses from drinking water from a hypothetical well drilled near a reactor site than any of the action alternatives. The impacts associated with long-term population dose for the No Action Alternative would also be greater than for any of the action alternatives.

The Department did not select the No Action Alternative or the In-Situ Decommissioning Alternative because neither of these alternatives would remove the reactor cores from the 100 Area; removal of the reactor cores from the vicinity of the Columbia River was favored by the majority of the commentors, and because of the increased long-term and drinking water impacts as compared to the action alternatives.

The Department does not prefer the Safe Storage Followed by Deferred Dismantlement Alternative because it would result in a higher occupational radiation dose and because the costs would be substantially higher than costs of other action alternatives and provide no commensurate additional benefits. Safe Storage Followed by Deferred One-Piece Removal consistent with the time frame of the Tri-Party Agreement would result in removal of the reactor cores on a schedule that would be somewhat delayed from the 12-year schedule for immediate one-piece removal. While the majority of commentors prefer immediate one-piece removal, leaving the reactors in place during the safe storage period would pose no significant environmental risks. The slightly higher total cost for Safe Storage Followed by Deferred One-Piece Removal as compared with Immediate Removal is attributable to surveillance and maintenance costs during the safe storage period. The cost differential would be reduced by the reduction in the safe storage period from the 75 years used in the analysis. In choosing safe storage followed by deferred one-piece removal, the Department considered the priority of this proposed action relative to other remedial actions the Department may need to conduct at the Hanford Site.

Environmentally Preferred Alternative: The Department of Energy regards the Safe Storage Followed by Deferred Dismantlement, Safe Storage Followed by One-Piece Removal, and Immediate One-Piece Removal Alternatives as equally favorable based solely on the evaluation of environmental impacts. Therefore, the selected alternative is also identified as one of the environmentally preferred alternatives.

Environmental Impacts and Mitigation Measures: The environmental impacts associated with the selected action include consequences related to routine and non-routine conditions. Modeling assumptions and accident scenarios used in this evaluation are considered conservative by the Department of Energy. The analyses were conducted in such a manner that the calculated environmental impacts would exceed those actually expected or experienced. In assessing the radiological consequences from postulated accidents for this selected course of action, for example, it was assumed that the reactor block drops from the tractor-transporter, crushing one edge. As a result, it was assumed that approximately 1% of the total block volume (about 10 cubic meters) will be reduced to a fine powder, of which approximately 1% would be resuspended by wind for an 8-hour period before recovery operations stabilize the material. These assumptions and values are very conservative when compared to values provided by the U.S. Environmental Protection Agency for fugitive emissions from a number of industries in the United States. These assumptions are not intended to be predictions of actual future consequences.

Environmental impacts associated with the selected course of action could result from decommissioning actions; accidents during decommissioning actions; and long-term, post-decommissioning releases of radionuclides from the disposal of low-level radioactive waste. Occupational radiation doses were estimated at 51 person-rem for the decommissioning of all eight surplus production reactors, and public radiation doses during the decommissioning period were estimated to be nearly zero. Radiological consequences to the general public from a postulated accident (dropped reactor block scenario discussed above) were assessed. It was determined that the

dose to the maximally exposed individual would be 80 millirem, and the population dose would be 300 person-rem. No adverse health effects would be expected from such an exposure. Long-term radiological releases to the ground water from the 200 Area disposal site and associated consequences were also calculated. It was estimated that the population dose from this long-term release would be about 1,900 person-rem over a postulated 10,000-year period (This same population would receive 9 billion person-rem from natural radiation sources over the 10,000-year time frame.). It was also assumed that loss of institutional control occurs after 100 years, and that the Hanford Site is used for other purposes. Maximum individual doses to persons that might drink water from wells drilled near the waste disposal site over a 10,000-year period were calculated, assuming dilution, to be approximately 0.04 rem per year. Also, a full garden scenario in which it was assumed that an individual would use contaminated water from a well that intercepts all of the contamination leached from one reactor for irrigation, livestock and drinking water was assessed. Based on extremely conservative assumptions for this scenario, it was estimated that an individual using a well located 5 kilometers from the 200 West Area disposal site would receive a lifetime (70 years) dose of 95 rem (The estimated probability that this individual would die from cancer induced by this radiation dose would be about 510^{-2} (or 1 chance in 20)), with the maximum dose occurring at 6,160 years following disposal. Migration of radioactive waste from the 200 West Area disposal site to the Columbia River is estimated to result in an inconsequential maximum lifetime dose of 1.110^{-5} rem to an individual living along the River.

Ecological impacts from the preferred alternative would be minimal because much of the area under consideration has been previously disturbed as a result of past radioactive waste management activities. Temporary disturbance of wildlife would occur resulting from activities required to prepare the reactor buildings for decommissioning. Additional temporary ecological impacts may occur as a result of local excavation to obtain soil for backfilling the 100 Areas after removal of the surplus reactors.

Adverse environmental impacts that can be mitigated would include impacts resulting from occupational radiation doses, disruption of land areas, and migration of chemicals and radionuclides caused by water infiltration through waste disposal sites. The principle of maintaining radiation exposures as low as reasonably achievable will be applied in every phase of engineering planning that deals with radioactive material. All workers engaged in decommissioning activities will be required to wear dosimeters to detect excess radiation doses. All radiation zones will be monitored and approved before workers will be allowed to enter. Protective shields, remotely operated tools and contamination control envelopes will be employed when appropriate. Sites used for backfill soil, dirt and gravel will be surveyed for archeological resources and endangered or threatened species, and will be rehabilitated once the proposed action is complete. Water migration through the waste disposal sites will be mitigated by the installation of a multi-layer, engineered barrier consisting of a capillary layer of fine-textured soil underlain by an impervious layer of soil/bentonite clay.

Socioeconomic impacts are caused primarily by the influx (or egress) of workers required by the project. The maximum number of workers required onsite at any one time for any decommissioning alternative is 100. This number is less than 1% of the workers presently on the Site and would produce negligible socioeconomic impacts.

Resources committed to the decommissioning of the Hanford surplus reactors would include the land on which the reactors now stand, the land required for low-level waste disposal for the one-piece removal alternative, and for the energy necessary to carry out the alternative.

The Department of Energy nominated the B-Reactor for inclusion in the National Register of Historic Places in accordance with the opinion of the Washington State Historic Preservation Officer and the provisions of 36 CFR part 800, "Protection of Historic and Cultural Properties." On April 3, 1992, the National Park Service entered the B-Reactor in the National Register. Specific actions to mitigate the cumulative impacts of decommissioning on the historic preservation of B-Reactor will be determined later in accordance with 36 CFR Part 800. Actions to preserve this historic resource may include extensive recordation by photographs, drawings, models, exhibits and written histories, and may also include preservation of some portions of the B-Reactor for display on or near its present location or at some other selected location.

Conclusion

The Department of Energy has considered the short- and long-term environmental impacts, costs, results of the public hearing process, and the priority of this proposed action relative to other remedial actions being conducted at the Hanford Site for decommissioning the eight surplus reactors. The Department of Energy has decided to decommission the reactors by safe-storage followed by one-piece removal in coordination with other actions at Hanford, and consistent with environmental standards applicable at the time the action is taken. The Department of Energy will continue to evaluate the benefits of measures to avoid or minimize environmental impacts associated with this decision.

Issued at Washington, DC, this 10th day of September, 1993.

Thomas P. Grumbly

Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 93–22667 Filed 9–14–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. ER93–870–000, et al.]

Boston Edison Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 9, 1993.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ER93–870–000]

Take notice that on August 16, 1993, Boston Edison Company (Boston Edison) filed a letter agreement between it and New England Power Company (NEP) under which Boston Edison agreed to replace at NEP's expense two cables located in the tunnel under the Fore River and used by Boston Edison to serve NEP. The cables will be owned by Boston Edison and extend from Edgar Station in Weymouth to Quincy. NEP has agreed to reimburse Boston Edison for the costs of replacing the cables as determined according to a formula attached to the letter agreement and capped at $190,000.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Second Imperial Geothermal Company

[Docket No. QF92–53–002]

On August 25, 1993, Second Imperial Geothermal Company (Applicant),

Building One, Suite 255, 4000 Kruse Way Place, Lake Oswego, Oregon 97035, submitted for filling an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the small power production facility will be located approximately two miles south of the town of Heber, in Imperial County, California. The Commission originally certified the facility as a 30.4 MW qualifying geothermal small power production facility, *Second Imperial Geothermal Company*, 59 FERC ¶ 62,031 (1992). On November 25, 1992, applicant filed a notice of self-recertification to reflect, among other things, an increase in the facility's maximum net power production capacity to 34.9 MW. The instant request for recertification is due to a change in the ownership of the facility and, by reference to the above November 25, 1992, notice of self-recertification, an increase in its maximum net power production capacity to 34.9 MW.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Atlantic City Electric Company

[Docket No. ER93-927-000]

Take notice that on September 3, 1993, Atlantic City Electric Company (AE) tendered for filing as an initial Rate Schedule an Agreement for Installed Capacity Credit Transactions between Philadelphia Electric Company (PE) and AE dated August 27, 1993. This contract sets forth the terms under which AE will sell PJM installed capacity credits to PE. In order to maximize the economic advantages to both AE and PE, AE requests that the Commission waive its customary notice period and permit this Agreement to become effective on September 3, 1993.

AE states that a copy of this filing has been served by mail upon PE, the NW Jersey Board of Regulatory Commissioners and the Pennsylvania Public Utility Commission.

Comment date: September 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. The United Illuminating Company

[Docket No. ER93-918-000]

Take notice that on August 31, 1993, The United Illuminating Company (UI) filed:

1. Interconnection Agreement Between The United Illuminating Company and McCallum Enterprises I Limited Partnership ("MELP") (Attachment 1); and

2. Shelton Plant Operations Agreement Between The United Illuminating Company and McCallum Enterprises I Limited Partnership (Attachment 2).

UI has also requested a disclaimer of jurisdiction with respect to the Derby Plant Operations Agreement and a License Agreement between UI and MELP. UI requests that the filings be made effective as of October 19, 1987.

Copies of the filing have been set to the affected customer and to the Connecticut Department of Public Utility Control.

Comment date: September 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Gas and Electric Company

[Docket No. ER93-919-000]

Take notice that on September 1, 1993, Pacific Gas and Electric Company (PG&E) tendered for filing an agreement entitled "Special Facilities Agreement for Transmission Facilities for the Interconnection of NCPA's 225 Kw McKays Project" (Special Facilities Agreement) between the Northern California Power Agency (NCPA) and PG&E.

The Special Facilities Agreement has been entered into pursuant to the (NCPA) and PG&E Interconnection Agreement P&E Rate Schedule FERC No. 142. The Special Facilities Agreement sets forth the rate, terms and conditions under which PG&E will design, install, own, operate and maintain the facilities for the interconnection of a new hydroelectric project owned by NCPA. PG&E proposes to charge NCPA a capital advance and monthly Cost of Ownership Charge, with the later based on the special facilities rate filed with the California Public Utilities Commission (CPUC) for transmission-level, customer-financed facilities. PG&E has asked to automatically adjust this rate to track changes authorized by the CPUC, limited by a monthly rate cap of 0.5% of the installed cost of the facilities.

Copies of this filing have been served upon NCPA and the CPUC.

Comment date: September 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Central Vermont Public Service Corporation

[Docket No. ER93-302-000]

Take notice that on August 20, 1993, Central Vermont Public Service Corporation tendered for filing additional cost justification relating to service provided pursuant to an Option Power Sales Agreement between the filing utility and the State of Vermont Department of Public Service. According to the filing utility, the Vermont Department of Public Service desires continued service under the terms and conditions of the agreement.

Comment date: September 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-22611 Filed 9-15-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP93-701-000, et al.]

Black Marlin Pipeline Co., et al.; Natural Gas Certificate Filings

September 9, 1993.

Take notice that the following filings have been made with the Commission:

1. Black Marlin Pipeline Company

[Docket No. CP93-701-000]

Take notice that on September 2, 1993, Black Marlin Pipeline Company (Black Marlin), 1400 Smith Street, Houston, Texas 77002 filed a request with the Commission in Docket No. CP92-701-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to authorize the replacement of a 16-inch meter tube with a 12-inch meter tube at the Union Carbide Texas City Delivery Point, under Black Marlin's blanket certificate issued in Docket No. CP89-2115-000, all as more fully set forth in the request which is open to public inspection.

Black Marlin states that it would replace a 16-inch meter tube with a 12-inch meter tube at the Union Carbide Texas City Delivery Point and the average quantity through this point would be 35,000 Mcf/d.

Comment date: October 25, 1993, in accordance with Standard paragraph G at the end of this notice.

2. Colorado Interstate Gas Company

[Docket No. CP93–684–000]

Take notice that on August 27, 1993, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP93–684–000 a request pursuant to § 157.205 of the Commission's Regulations to construct a sales tap to deliver natural gas to Thermo Cogeneration Partnership, L.P. (Thermo) in Weld County, Colorado under CIG's blanket certificate issued in Docket No. CP83–21–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG proposes to install a tap on its existing eight-inch lateral line in Weld County, Colorado to deliver natural gas to Thermo, on an interruptible basis, for use in a cogeneration facility, under CIG's TI–1 Rate Schedule. CIG states that the facility would be designed to deliver up to 60,000 Mcf of natural gas per day and that measurement would be provided by Thermo. Further, CIG states that the proposed delivery facility would have only a minor effect on CIG's peak day and annual deliveries since the transportation service would initially be provided on an interruptible basis. CIG states that the estimated cost of the facilities is $7,000.

Comment date: October 25, 1993, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP93–699–000]

Take notice that on September 1, 1993, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP93–699–000 for permission and approval to abandon a natural gas transportation service for Columbia Gas Transmission Corporation (Columbia), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests permission and approval to abandon, effective March 1, 1993, a firm transportation service rendered to Columbia under Rate Schedule X–35. Natural states that Rate Schedule X–35 provides for Columbia to make available on a firm basis up to 12,500 Mcf of natural gas per day from West Cameron Blocks 146 and 181, offshore Louisiana for transportation and redelivery for the account of Columbia to an interconnection of facilities between Natural and Columbia Gulf Transmission Company (Columbia Gulf) at the Texaco Henry Plant located in Vermilion Parish, Louisiana for subsequent redelivery by Columbia Gulf to Columbia.

Natural states that by letter dated November 9, 1992, Columbia informed Natural of Columbia's election to terminate the transportation agreement effective March 1, 1993. Natural requests a March 1, 1993 effective date for the abandonment of service under Rate Schedule X–35 to alleviate Columbia's concern that it would be liable to pay Natural demand charges after the March 1, 1993 date.

Comment date: September 30, 1993, in accordance with Standard Paragraph F at the end of this notice.

4. Trunkline Gas Company and Tennessee Gas Pipeline Company

[Docket No. CP93–698–000]

Take notice that on September 1, 1993, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251 and Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed an application with the Commission in Docket No. CP93–698–000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon exchange services between Trunkline and Tennessee, all as more fully set forth in the application which is open to public inspection.

Trunkline and Tennessee specifically request authority to abandon exchange services pursuant to two exchange agreements dated October 25, 1962, and May 1, 1972. It is stated that the October 25, 1962, agreement is embodied in Trunkline's Rate Schedule X–4 of its FERC Gas Tariff, and Tennessee's Rate Schedule X–15 of Tennessee's FERC Gas Tariff, and the May 1, 1972, agreement is embodied in Trunkline's Rate Schedule E–5 of its FERC Gas Tariff, and Rate Schedule X–34 of Tennessee's FERC Gas Tariff.

It is also stated that the October 25, 1962, agreement allowed Applicants to exchange gas at interconnections in Harris County, Texas, and Bolivar County, Mississippi. When either Trunkline or Tennessee was confronted with an emergency on its system which could be alleviated by deliveries of gas from the other's system, either party could request emergency deliveries at two interconnection points, not to exceed 200,000 Mcf per day.

It is asserted that, under the May 1, 1972, agreement Trunkline received quantities of gas purchased by Trunkline and Tennessee from Tenneco Oil Company at South Timbalier Block 196, Offshore Louisiana. Trunkline transported the gas onshore and delivered it to Tennessee at the existing interconnection between the Applicants' facilities near Centerville, St. Mary Parish, Louisiana. Tennessee redelivered Trunkline's share of the gas to Trunkline at the existing interconnection between their facilities near Kinder, Jefferson Davis Parish, Louisiana.

Trunkline and Tennessee have stated that by letter dated May 13, 1993, Trunkline and Tennessee mutually agreed to terminate both exchange agreements.

Comment date: September 30, 1993, in accordance with Standard Paragraph F at the end of this notice.

5. Phillips Petroleum Company and Prima Exploration, Inc., et al.

[Docket No. CP93–702–000]

Take notice that on September 2, 1993, Phillips Petroleum Company (Phillips), 6330 W. Loop South, P.O. Box 1967, Houston, Texas 77251–1967 and Prima Exploration, Inc. (Prima), 7800 East Union Avenue, Suite 605, Denver, Colorado, 80237 [1] jointly filed in Docket No. CP93–702–000, an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act requesting permission and approval for Phillips to abandon a storage service and related facilities in Summit County, Utah and for authorization for Prima to acquire the facilities and to continue to provide the storage service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Phillips states that it is selling 21 producing leases in Montana, North Dakota, South Dakota, Wyoming and Utah to Prima pursuant to an agreement dated June 18, 1993, as modified by an August 4, 1993, letter agreement. Phillips further states that one of the leases, the Fork A Lease in Summit County, Utah, includes the Bridger Lake Field from which Phillips provides a storage service, which was certificated by the Commission in Docket No. CP78–

[1] Prima is a joint venture of four independent exploration and production companies, Prima Exploration, Inc., the operator; Vegas Production Company; Gunlikson Petroleum, Inc.; and Petroro Corporation.

388–000,[2] for Questar Pipeline Company (Questar). Accordingly, Phillips requests permission and approval to abandon the storage service it provides to Questar and related facilities by transfer to Prima, and Prima requests authorization to continue to provide the storage service to Questar and to acquire the related facilities.

Phillips states that the related facilities consist of a metering station, dehydrator and heater, 425 feet of 4-inch lateral pipeline and an injection well, the Fork "A" No. 5 well, located in Summit County, Utah. Phillips asserts that no gas has been injected into the facilities since April of 1984 and that less than 500,000 Mcf of working gas remains in storage.

Comment date: September 30, 1993, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22610 Filed 9–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–14380T Texas–149]

Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

September 10, 1993.

Take notice that on September 7, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Austin Chalk Formation, underlying a portion of Brazos County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 3 and consists of the entire E.M. Millican Survey, A–40.

The notice of determination also contains Texas' findings that the referenced portion of the Austin Chalk Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22613 Filed 9–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–109–005]

Williams Natural Gas Co.; Compliance Filing

September 10, 1993.

Take notice that on September 1, 1993, Williams Natural Gas Company (WNG) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Substitute Eighteenth Revised Sheet No. 9
Substitute Fifth Revised Sheet No. 119

The proposed effective date of these tariff sheets is November 1, 1993.

WNG states that Substitute Eighteenth Revised Sheet No. 9 is filed to make clear that the GRI Charge will not apply to gathering only services. WNG states that Substitute Fifth Revised Sheet No. 119 is filed to make clear that the Reservation Charge under Rate Schedule FTS will not apply to volumes transported only on the gathering system(s).

WNG states that a copy of its filing was served on all parties in this docket and on all jurisdictional customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before September 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22612 Filed 9–15–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4730–5]

Oklahoma; Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

[2] *Phillips Petroleum Company*, 7 FERC ¶ 61,058 (1979).

ACTION: Notice of tentative determination on application of Oklahoma for full program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Oklahoma applied for a determination of adequacy under section 4005 of RCRA. EPA has reviewed Oklahoma's MSWLF application and has made a tentative determination that all portions of Oklahoma's MSWLF permit program are adequate to assure compliance with the revised MSWLF Criteria. Oklahoma's application for program adequacy determination is available for public review and comment.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has scheduled a public hearing on this determination and will hold the hearing if a sufficient number of people express interest in participating in the hearing by writing the Region or calling the contact given below by October 18, 1993. If a public hearing is held, it will take place on the date given in the "DATES" section. The Region will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the "CONTACTS" section.

DATES: All comments on Oklahoma's application for a determination of adequacy must be received by the close of business on October 18, 1993. If a public hearing is held, it will be scheduled for November 1, 1993, in Oklahoma City, Oklahoma. State of Oklahoma officials will participate in the hearing, if held by EPA.

ADDRESSES: Copies of Oklahoma's application for adequacy determination are available during normal business hours for inspection and copying at the following addresses: Oklahoma Department of Environmental Quality (ODEQ), Solid Waste Management Service, 1000 Northeast Tenth Street, Oklahoma City, Oklahoma, Mr. R. Fenton Rood, 405–271–7159; U.S. EPA Region 6 Library, 1445 Ross Avenue, Dallas, Texas, Paul Thomas, 214–655–6707. Written comments should be sent to U.S. EPA Region 6, Becky Weber (6H-H), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Paul Thomas, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, 214–655–6707.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an adequate program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of Oklahoma

On August 10, 1993, Oklahoma submitted an application for adequacy determination. EPA has reviewed Oklahoma's application and has tentatively determined that all portions of Oklahoma's Subtitle D program will ensure compliance with the revised Federal Criteria.

On July 1, 1993, the Oklahoma Department of Environmental Quality (ODEQ) proposed new solid waste regulations, (Chapter 510, Section 252, Municipal Solid Waste Landfill Regulations). These regulatory amendments are currently undergoing the formal rule adoption process at the State level and are expected to be finalized by November 15, 1993. The proposed amendments will revise the State regulations to reflect the requirements in 40 CFR part 258.

Oklahoma's liner design is consistent with the Federal Criteria. Oklahoma's proposed regulations require the use of the composite liner consistent with 40 CFR part 258. Alternative liner designs

may be used with ODEQ approval so long as the design prevents an impact on groundwater as indicated by a statistically significant elevation over background of any parameter monitored in the detection monitoring program (ie: constituents consistent with 40 CFR part 258, appendix I). EPA believes that the Oklahoma regulation is equal to or exceeds the requirements as stated in 40 CFR part 258. Additionally, Oklahoma's proposed final cover requirements are a minimum of 24" of earthen material that has a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than 1 X 10^{-5} cm/sec, whichever is less, with a 12" erosion layer of topsoil capable of sustaining plant growth. Oklahoma's proposed regulations do not allow new or lateral expansions of municipal solid waste landfill units to be constructed in wetlands.

EPA has tentatively determined that Oklahoma's application, including the proposed amendments, is consistent with the Federal Criteria. EPA will make a final determination of adequacy after the amendments have been adopted by the State.

The public may submit written comments on EPA's tentative determination until October 18, 1993. Copies of Oklahoma's application are available for inspection and copying at the location indicated in the "ADDRESSES" section of this notice. If there is sufficient public interest, the Agency will hold a public hearing on its tentative determination on November 1, 1993, at 10 a.m. at the Oklahoma Department of Environmental Quality in Oklahoma City, Oklahoma. Comments can be submitted as transcribed from the discussion of the hearing or in writing at the time of the hearing.

EPA will consider all public comments on its tentative determination received during the public comment period and during the public hearing, if held. Issues raised by those comments may be the basis for a determination of inadequacy for Oklahoma's program. EPA's final determination notice will include a summary of the reasons for the final determination and a response to all major comments.

Oklahoma has not asserted jurisdiction within the exterior boundaries of Indian country in its application for adequacy determination. Accordingly, this approval does not extend to lands within Indian country in Oklahoma. Until EPA approves a State or Tribal MSWLF permitting program in Oklahoma for any part of "Indian Country," as defined in 18 U.S.C. 1151, the requirements of 40 CFR part 258 will, after October 9, 1993, automatically apply to that area. Thereafter, the requirements of 40 CFR part 258 will apply to all owners/operators of MSWLFs located in any part of "Indian Country" that is not covered by an approved State or Tribal MSWLF permitting program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: September 9, 1993.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 93–22650 Filed 9–15–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4730–9]

South Carolina: Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of adequacy to fully approve the State of South Carolina's municipal solid waste landfill permit program.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility.

South Carolina applied for a determination of adequacy under section 4005 of RCRA. EPA Region IV reviewed South Carolina's MSWLF application and proposed a determination that South Carolina's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. After consideration of all comments received regarding the tentative determination of adequacy, EPA is today issuing a final determination of adequacy for South Carolina's MSWLF program.

EFFECTIVE DATE: The determination of adequacy for the State of South Carolina shall be effective on September 16, 1993.

FOR FURTHER INFORMATION CONTACT: EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, Attn: Ms. Patricia S. Zweig, mail code 4WD-RCRA, telephone 404–347–2091.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as

amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

B. State of South Carolina

On June 22, 1993, the State of South Carolina submitted a final application for adequacy determination for their MSWLF permit program. On August 3, 1993, EPA published a tentative determination of adequacy for all portions of South Carolina's program. Further background on the tentative determination of adequacy appears at 58 FR 41274, (August 3, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment and the tentative date of a public hearing on the application. There were no requests for a public hearing during the public comment period. Therefore, Region IV of EPA and the State of South Carolina hereby cancel and will not hold the public hearing that was tentatively scheduled for 7 p.m. on September 20, 1993, in Columbia, South Carolina.

The State of South Carolina has the authority to issue permits that incorporate the requirements of the Revised Federal MSWLF Criteria to all MSWLFs in the State, with the exception of those located on Tribal Lands.

The EPA has determined that the State of South Carolina's statutes and administrative regulations provide for a state-wide comprehensive program of solid waste management including specific provisions for public participation, compliance monitoring and enforcement.

C. Public Comment

One commenter maintained that use of the draft State/Tribal Implementation Rule (STIR) as guidance is a violation of the Administrative Procedure Act (APA) requirements that a rule must go through notice and opportunity for comment. EPA does not believe that it is violating any requirements in the APA for notice and comment for a rulemaking. The Agency is not utilizing the draft STIR as a regulation which binds either the Agency or the States. Instead, EPA is using the draft STIR as guidance for evaluating State permit programs and maintains its discretion to approve State programs utilizing the draft STIR and/or other criteria which assures compliance with 40 CFR part 258.

In addition, members of the public have an opportunity to comment on the essential criteria by which EPA assures the adequacy of State MSWLF permit programs because the Agency discusses the criteria for approval of a State permit program when it publishes each tentative determination notice in the **Federal Register**. The Agency set forth the minimum requirements for an adequate permit program in the tentative determination notice for approval of the State of South Carolina's permit program. 58 FR 41274, 41275 (August 3, 1993).

D. Decision

After reviewing the public comments submitted in response to the tentative decision, I conclude that South Carolina's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, South Carolina is granted approval for all portions of its MSWLF permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's program are already in effect as a matter of State law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: September 9, 1993.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 93–22651 Filed 9–15–93; 8:45 am]

BILLING CODE 6560–60–F

[FRL–4730–8]

Tennessee: Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of adequacy to fully approve the State of Tennessee's municipal solid waste landfill permit program.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste

Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility.

Tennessee applied for a determination of adequacy under section 4005 of RCRA. EPA Region IV reviewed Tennessee s MSWLF application and proposed a determination that Tennessee's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. After consideration of all comments received regarding the tentative determination of adequacy, EPA is today issuing a final determination of adequacy for Tennessee's MSWLF program.

EFFECTIVE DATE: The determination of adequacy for the State of Tennessee shall be effective on September 16, 1993.

FOR FURTHER INFORMATION CONTACT: EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, Attn: Ms. Patricia S. Zweig, mail code 4WD-RCRA, telephone 404–347–2091.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

B. State of Tennessee

On May 17, 1993, the State of Tennessee submitted a final application for adequacy determination for their MSWLF permit program. On August 5, 1993, EPA published a tentative determination of adequacy for all portions of Tennessee's program. Further background on the tentative determination of adequacy appears at 58 FR 41768, (August 5, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment and the tentative date of a public hearing on the application. There were no requests for a public hearing during the public comment period. Therefore, Region IV of EPA and the State of Tennessee hereby cancel and will not hold the public hearing that was tentatively scheduled for 6 p.m. on September 23, 1993, in Nashville, Tennessee.

The State of Tennessee has the authority to issue permits that incorporate the requirements of the Revised Federal MSWLF Criteria to all MSWLFs in the State, with the exception of those located on Tribal Lands.

The EPA has determined that the State of Tennessee's statutes and administrative regulations provide for a state-wide comprehensive program of solid waste management including specific provisions for public participation, compliance monitoring and enforcement.

C. Public Comment

One commenter maintained that use of the draft State/Tribal Implementation Rule (STIR) as guidance is a violation of the Administrative Procedure Act (APA) requirements that a rule must go through notice and opportunity for comment. EPA does not believe that it is violating any requirements in the APA for notice and comment for a rulemaking. The Agency is not utilizing the draft STIR as a regulation which binds either the Agency or the States. Instead, EPA is using the draft STIR as guidance for evaluating State permit programs and maintains its discretion to approve State programs utilizing the draft STIR and/or other criteria which assures compliance with 40 CFR part 258.

In addition, members of the public have an opportunity to comment on the essential criteria by which EPA assures the adequacy of State MSWLF permit programs because the Agency discusses the criteria for approval of a State permit program when it publishes each tentative determination notice in the **Federal Register**. The Agency set forth the minimum requirements for an adequate permit program in the tentative determination notice for approval of the State of Tennessee's permit program. 58 FR 41768, 41769, 41770 (August 5, 1993).

D. Decision

After reviewing the public comments submitted in response to the tentative decision, I conclude that Tennessee's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Tennessee is granted approval for all portions of its MSWLF permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's program are already in effect as a matter of State law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: September 9, 1993.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 93–22652 Filed 9–15–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4730–4]

Trade and Environment Committee, National Advisory Council for Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

DATE AND TIME: Wednesday, September 29, 1993, from 10 a.m. to 5.30 p.m. and Thursday, September 30, 1993, from 9 a.m. to 4 p.m.

LOCATION: National Governors' Association Hall of the States, room 333, 444 North Capitol Street, Washington, DC.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–563, EPA gives notice of a two-day planning meeting of the Trade and Environment Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues and the Trade and Environment Committee addresses the linkages between trade and environment policy.

Discussion at the meeting will center around the formation of a Subcommittee on Competitiveness, Trade and Environment to advise the EPA Administrator on competitiveness, trade and environment policy issues. The Subcommittee will be looking broadly at the impact of domestic and international environmental policy and regulations on U.S. competitiveness and will initially focus on the section 811 requirements of the Clean Air Act. The purpose of the meeting is to provide an opportunity for discussion and comments on the Clean Air Act section 811 draft interagency report as well a identify key issue to addressed by the Subcommittee.

Topics to be discussed during the meeting:

1. Clean Air Act Section 811 draft interagency report to Congress.
2. Industry Report on Section 811.
3. Sectoral Overview of Competitiveness, Trade and Environment issues.
4. Identification of key issues on competitiveness, trade and environment to be addressed by the Subcommittee.

Members of the public are encouraged to submit written comments suggesting projects for the Subcommittee. Written comments can be submitted by mail. Any written comments received before Thursday, September 23, 1993, will be distributed to Committee members for consideration. Scheduling constraints preclude oral comments from the public during the meeting.

ADDRESSES: Written comments should be sent to: Jan McAlpine (A101F6), Office of Cooperative Environmental Management, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jan McAlpine, Staff Director, Global Environment and Trade Staff, Direct line (202) 260–2477, Secretary's line (202) 260–6891.

Dated: September 10, 1993.

Jan McAlpine,

Staff Director, Global Environment and Trade Staff.

[FR Doc. 93–22617 Filed 9–15–93; 8:45 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Privacy Act of 1974; Amendment of Systems of Records

AGENCY: Export-Import Bank of the United States.

ACTION: Notice of Amendment.

SUMMARY: The Export-Import Bank of the United States is publishing an amendment to its Systems of Records.

EFFECTIVE DATE: September 16, 1993.

ADDRESSES: Export-Import Bank of the United States, Washington, DC 20571.

FOR FURTHER INFORMATION CONTACT: Helene H. Wall, Vice President, Administrative & Management Services, Export-Import Bank of the United States, Washington, DC 20571, Telephone (202) 566–8111.

SUPPLEMENTARY INFORMATION: The Export-Import Bank's System of Records have been amended as follows:

EIB–22 and EIB–24

SYSTEM MANAGER(S) AND ADDRESS:

"Administrative Officer" has been changed to "Vice President—Administrative and Management Services".

NOTIFICATION PROCEDURE:

"Administrative Officer" has been changed to "Vice President—Administrative and Management Services".

RECORDS ACCESS PROCEDURES:

In accordance with the U.S. Office of Personnel Management's (OPM) Federal Personnel Manual chapter 732, subchapter 7–5, "Safeguarding and Handling Investigative Files", persons wanting a copy of their own OPM investigative file maintained by Eximbank, must comply with the following Privacy Act procedure:

Send a signed letter specifying name, date/place of birth, Social Security number, home address, location of present or former Federal employment, and any other pertinent data to: FOI/P, OPM–FIPC, PO Box 618, Boyers, PA 16018–0618.

For other types of access requests: Same as Notification.

RECORD SOURCE CATEGORIES:

Investigations received from Federal investigative agencies and correspondence generated by other departments and agencies containing information from employers, references, schools, neighbors, police, credit agencies and other Federal investigative agencies.

Helene H. Wall,

Vice President, Administrative and Management Services.

[FR Doc. 93-22593 Filed 9-15-93; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL COMMUNICATIONS COMMISSION

Electronic Filing Trial

September 2, 1993.

By Order released April 15, 1993, FCC 93-174, 58 FR 21405, April 21, 1993 the Commission modified its rules concerning signatures on private radio applications to permit those applicants to sign their applications by any symbol executed or adopted by the applicant with intent that such symbol be a signature. The Commission also delegated to the Private Radio Bureau authority to establish filing procedures by public notice that would allow applications to be "signed" by computer-generated impulses.

The Industrial Telecommunications Association (ITA), a Commission-certified frequency coordinator, has requested the Bureau to take an intermediate step towards electronic filing. Under ITA's proposal, applicants will have the option to transmit their electronically signed frequency coordination applications to ITA either through electronic mail (E-Mail), electronic data interchange (EDI), or facsimile. After reviewing and coordinating the applications, ITA would print out a hard copy of the applications, assign them a common file number from a block of numbers issued by the Bureau, and forward a hard copy of applications and appropriate fee to the designated filing location.

At present, ITA proposes that the new procedures apply only to applications from existing licensees in the Special Industrial, Petroleum, Telephone Maintenance, Film and Video Production, and Relay Press Radio Services as well as from existing 800/900 MHz licensees for whom ITA is authorized to conduct frequency advisory services.

The Bureau has reviewed ITA's proposal and believes that the Commission would gain valuable experience through a trial of ITA's proposal as the Commission moves toward a fully electronic filing process. The Bureau is also satisfied with ITA's procedures for ensuring the authenticity and validity of the applications that are sent to ITA electronically. Accordingly, the Bureau intends to put ITA's proposal into effect for a six-month trial period commencing Wednesday, September 8, 1993. At the conclusion of the trial period, the Bureau will consider making the test permanent.

For further information, contact Judy Dunlap at (717) 337-1321. For information regarding ITA's electronic frequency coordination procedures, contact Ms. Cynthia T. Chappell, Senior Vice President, ITA, 1110 N. Glebe Road, Suite 500, Arlington, Virginia 22209; Tel.: (703) 528-5115; FAX: 524-1074; or E-Mail: MCI Mailbox 604-8930.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93-22598 Filed 9-15-93; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL LABOR RELATIONS AUTHORITY

Senior Executive Service; Performance Review Board

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the Performance Review Board.

DATES: September 16, 1993.

FOR FURTHER INFORMATION CONTACT: James M. Cheskawich, Director of Personnel and EEO, Federal Labor Relations Authority, 607 14th Street, NW., Washington, DC 20424-0001, (202) 482-6690, extension 440.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations, to the appointing authority relative to the performance of the senior executive.

The following persons will serve on the FLRA's Performance Review Board:

Solly Thomas, Office of the Executive Director, FLRA

Marjorie K. Thompson, Office of the General Counsel, FLRA

Godfrey D. Dudley, Equal Employment Opportunity Commission

Gloria Joseph, National Labor Relations Board

Thomas Lanphear, Merit Systems Protection Board

James M. Cheskawich,

Director of Personnel & EEO, Office of Administration.

[FR Doc. 93-22594 Filed 9-15-93; 8:45 am]

BILLING CODE 6727-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Bunnys Adventure and Cruise Shipping Company Limited Hanseatic Tours Reisedienst G.m.b.H.

c/o Golden Bear Travel Agency, as agent, 16 Digital Drive, Suite 100, P.O. Box 6115, Novato, California 94958-6115

Vessel: HANSEATIC

Dated: September 10, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93-22622 Filed 9-15-93; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Hanseatic Tours Reisedienst G.m.b.H.

c/o Golden Bear Travel Agency, as agent; 16 Digital Drive, Suite 100, P.O. Box 6115, Novato, California 94958-6115

Vessel: HANSEATIC

Dated: September 10, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93-22621 Filed 9-15-93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Fifth Third Bancorp, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 5, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Fifth Third Bancorp, Cincinnati, Ohio; to acquire The Tristate Bancorp, Cincinnati, Ohio, and thereby indirectly acquire First Financial Savings Association, F.A., Cincinnati, Ohio, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. Upon consummation of the proposal, First Financial Savings Association, F.A. will be merged into The Fifth Third Bank, Cincinnati, Ohio, a wholly-owned bank subsidiary of the Applicant pursuant to the OAKAR amendment of FIRREA.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. The Colonial BancGroup, Inc., Montgomery, Alabama; to acquire First AmFed Corporation, Huntsville, Alabama, and thereby indirectly acquire First American Federal Savings & Loan, Huntsville, Alabama, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the State of Alabama.

Board of Governors of the Federal Reserve System, September 10, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-22645 Filed 9-15-93; 8:45 am]

BILLING CODE 6210-01-F

First Bank System, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 5, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Bank System, Inc., Minneapolis, Minnesota; to engage *de novo* through its subsidiary, FBS Information Services Corporation, St. Paul, Minnesota, in data processing and data transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y through the ownership, installation, operation and maintenance of automatic teller machines at 7-Eleven stores in Kansas, Missouri, and Utah.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Commerce Bancshares, Inc., Lincoln, Nebraska; to engage *de novo* in making loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 10, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-22646 Filed 9-15-93; 8:45 am]

BILLING CODE 6210-01-F

Hocking Valley Bancshares, Inc., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for

processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than October 8, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Hocking Valley Bancshares, Inc., Athens, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Hocking Valley Bank of Athens Company, Athens, Ohio.

Board of Governors of the Federal Reserve System, Septmber 10, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-22647 Filed 9-15-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CRADA 93-007]

Cooperative Research and Development Agreement

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), National Center for Environmental Health, announces the opportunity for potential collaborators to enter into a Cooperative Research and Development Agreement (CRADA) to develop and/or improve kits for use in the separation, detection, and quantification of protease inhibitors in natural and biotechnological products. The collaborator and CDC will jointly perform research aimed at the development of improved techniques for separating protease inhibitors from other biologicals which includes affinity chromatography (or other appropriate system) to achieve specificity, sensitivity, accuracy and precision, ruggedness, and low cost.

It is anticipated that inventions which may arise from this CRADA will be jointly owned. The collaborator(s) with whom the CRADA is made will have an option to negotiate an exclusive or non-exclusive royalty-bearing license.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. There is a single restriction in this exchange: CDC MAY NOT PROVIDE FUNDS to the other participants in a CRADA. This opportunity is available until 30 days after publication of this notice. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

FOR FURTHER INFORMATION CONTACT:

Technical

Elizabeth R. Barnhart, Ph.D., or Gary Myers, Ph.D., Special Activities Branch, Environmental Health Laboratory Sciences, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F25, Atlanta, GA 30341, telephone (404) 488–4126, telefax (404) 488–4192.

Business

Elizabeth R. Barnhart, Ph.D., Technology Transfer Representative, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F25, Atlanta, GA 30341, telephone (404) 488–4126, telefax (404) 488–4192.

SUPPLEMENTARY INFORMATION: CDC has identified peptide contaminants in a food supplement that was implicated in an epidemic of disease and death. The peptides belong to a family of enzymically coproduced bioactive molecules with broad antiprotease competence. Economically feasible means of quantification of the total is not commercially available.

The CDC will provide technical expertise, consultation and guidance, reference samples, analytical support, and product evaluation and field testing.

The collaborator will furnish expertise in protease inhibitor affinity techniques, materials, and large-scale production of a prepackaged separatory apparatus with reagents.

Applicant submissions will be judged according to the following criteria:

1. Thoroughness of the analytic approach and research plan;
2. Adequacy and technical capabilities of the staff to develop the desired technique and product;
3. Ability to develop, produce, market, and support commercial analytical chemical merchandise;
4. Evidence of scientific credibility; and
5. Facility to complete the CRADA in a timely fashion.

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act: Public Law 99–502.

The responses must be made to: Elizabeth R. Barnhart, Ph.D., Technology Transfer Coordinator, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F25, Atlanta, GA 30341.

Dated: September 9, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–22626 Filed 9–15–93; 8:45 am]

BILLING CODE 4160–18–P

The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC), Announces the Following Meeting

Name: Poverty-Associated Mental Retardation (PAMR) Prevention Technical Assistance Workshop for Planning Grant Recipients.

Time and Dates: 9 a.m.–5 p.m., October 21–22, 1993.

Place: Days Hotel at Lenox, 3377 Peachtree Road, NE, Atlanta, Georgia 30326.

Status: Open.

Purpose: The workshop will convene a group of recipients of CDC PAMR Prevention Planning Grants with the primary purpose of providing technical assistance as they plan programs to prevent poverty-associated mental retardation. The workshop is not designed to provide general information on mental retardation or on prevention of PAMR.

Supplemental Information: Seven of every 1,000 ten-year-old children have mild mental retardation, and three of every 1,000 have more serious mental retardation. Poor children, especially those whose mothers have less than a high school education, are at risk for cognitive delay of as much as one standard deviation of IQ (15 points) at age three. Studies such as the Infant Health and Development Program and the Carolina Abecedarian Project have proven that an intensive early health and development intervention can prevent or reduce as much as two-thirds of PAMR. CDC is actively

involved in research and planning to help states develop a community-based program to prevent PAMR.

Contact Person for Additional Information: Mike Vanchiere, Program Analyst, Developmental Disabilities Branch, Division of Birth Defects and Developmental Disabilities, NCEH, CDC, Mailstop F–15, 4770 Buford Highway, NE, Atlanta, Georgia 30341–3724, telephone 404/488–7360.

Dated: September 10, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–22625 Filed 9–15–93; 8:45 am]

BILLING CODE 4160–18–M

Social Security Administration

Privacy Act of 1974; Report of New Routine Uses

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: Addition of three new routine uses to a system of records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), we are issuing public notice of our intent to add new routine uses to the system of records entitled "Earnings Recording and Self-Employment Income System, HHS/SSA/OSR, 09–60–0059." We invite public comment on this publication.

DATES: The proposed routine uses will become effective as proposed, without further notice on October 18, 1993, unless we receive comments on or before that date that would warrant our preventing the changes from taking effect.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, Room 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Hanna, Social Insurance Specialist, Confidentiality and Disclosure Branch, Division of Technical Documents and Privacy, Office of Regulations, Office of Policy, Social Security Administration, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 410–966–7077.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Routine Uses

We propose to add three routine uses to the system of records shown above. The proposed routine uses are necessary to implement recent legislation governing the disclosure of information by SSA to the United Mine Workers of America (UMWA) Combined Benefit Fund (Benefit Fund) and to the coal industry operators who contribute to that Fund (assigned operators).

Subtitle C of title XIX of Pub. L. 102–486, the "Coal Industry Retiree Health Benefit Act of 1992," added as a new subtitle J of the Internal Revenue Code (IRC), 26 U.S.C. 9701–9721, requires certain coal industry operators to pay annual premiums consisting of the health benefit, death benefit and unassigned beneficiaries' premiums of eligible beneficiaries (i.e., certain retired miners and their family members) to the Benefit Fund. The Secretary of Health and Human Services is to determine which operators are responsible for premiums involving approximately 120,000 eligible beneficiaries. The Secretary has received a list of these beneficiaries from the UMWA and will assign each one who is able to be assigned under the criteria of section 9706 of the IRC to an operator who will pay the premiums. These assignments will be based on the retired miners' work histories.

After the Secretary determines who the responsible operators are for the eligible beneficiaries, notification will be given to both the Benefit Fund trustees and to the assigned operators pursuant to section 9706(e) of the IRC. As authorized by section 9706(f) of the IRC, each operator may then request a detailed earnings history of the retired miner assigned to that operator and a review of the assignment by the Secretary. To the extent that the information to be disclosed constitutes "return information" (as defined by subsection 6103(b)(2)(A) of the IRC), it will be disclosed in accordance with section 6103 of the IRC in conjunction with section 9706 of the IRC.

To enable SSA to disclose this information in compliance with the Privacy Act, we are adding the following three new routine uses (#27, #28 and #29) to the Earnings Recording and Self-Employment Income System.

27. The identity of each coal industry assigned operator determined to be responsible for annual premiums, and the names and Social Security numbers of eligible beneficiaries with respect to whom the operator is identified, may be disclosed to the trustees of the United Mine Workers of America Combined Benefit Fund pursuant to section 9706(e)(1) of the IRC as added by the Coal Industry Retiree Health Benefit Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (codified at IRC 9706 (e) and (f) (1992)).

28. The names and Social Security numbers of eligible beneficiaries who have been assigned to a coal industry assigned operator and a brief summary of the facts related to the basis for such assignments may be disclosed to the coal industry assigned operator determined to be responsible for that individual's annual premiums payable to the United Mine Workers of America Combined Benefit Fund pursuant to section 9706(e)(2) of the IRC as added by the Coal Industry Retiree Health Benefit Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (codified at IRC 9706 (e) and (f) (1992)).

29. Detailed information from an individual's earnings record may be disclosed to the coal industry assigned operator determined to be responsible for that individual's annual premiums payable to the United Mine Workers of America Combined Benefit Fund pursuant to section 9706(f)(1) of the IRC as added by the Coal Industry Retiree Health Benefit Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (codified at IRC 9706 (e) and (f) (1992)).

II. Compatibility of Proposed Routine Uses

We are proposing the changes discussed above in accordance with the Privacy Act (5 U.S.C. 552a (a)(7), (b)(3), and (e)(11)) and our disclosure regulation (20 CFR part 401).

The Privacy Act permits us to disclose information about individuals without their consents for a routine use, i.e., where the information will be used for a purpose that is compatible with the purpose for which we collected the information. We believe that disclosure pursuant to Federal law meets the compatibility requirement for routine uses under the Privacy Act. The proposed disclosures described above meet this compatibility criterion, because they are required by law.

III. Effect of the Proposal on Individual Rights

As discussed above, the proposed disclosures are required by Federal law. They will enable the Secretary of Health and Human Services to notify coal industry assigned operators and the trustees of the Benefit Fund regarding the premium assignments of the eligible beneficiaries. This will ensure that eligible beneficiaries receive the benefits to which they are entitled under the Benefit Fund. SSA will follow all statutory and regulatory requirements for disclosure. Therefore, we do not anticipate that the disclosures will have any unwarranted effect on the privacy or other rights of individuals.

IV. Other Changes

In republishing this routine use, we have also made several changes to correct some minor technical and typographical errors.

Dated: September 3, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

09-60-0059

SYSTEM NAME:

Earnings Recording and Self-Employment Income System, HHS/SSA/OSR

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Systems, 6401 Security Boulevard, Baltimore, MD 21235

Social Security Administration, Office of Systems Requirements, 6401 Security Boulevard, Baltimore, MD 21235

Social Security Administration, Office of Central Records Operations, Metro West Building, 300 North Greene Street, Baltimore, MD 21201.

Records also may be located at contractor sites (contact the system manager at the address below for contractor addresses), and in the program service centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who has been issued a Social Security number (SSN) and who may or may not have earnings under Social Security; or any person requesting, reporting, changing and/or inquiring about earnings information; or any person having a vested interest in a private pension fund.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records of every SSN holder, his/her name, date of birth, sex, and race/ethnic data and a summary of his/her yearly earnings and quarters of coverage; special employment codes (i.e., self-employment, military, agriculture, and railroad); benefit status information; employer identification (i.e., employer identification numbers and pension plan numbers); minister waiver forms (i.e., forms filed by the clergy for the election or waiver of coverage under the Social Security Act (the Act)); correspondence received from individuals pertaining to the above-mentioned items; the replies to such correspondence; and pension plan information (i.e., nature, form, and amount of vested benefits).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 205(a) and 205(c)(2) of the Act, the Federal Records Act of 1950 (64 Stat. 583), and the Employee Retirement Income Security Act of 1974 (Pub. L. 93-406).

PURPOSE(S):

This system is used for the following purposes:

- As a primary working record file of all SSN holders;
- As a quarterly record detail file to provide full data in wage investigation cases;
- To provide information for determining amount of benefits;
- To record all incorrect or incomplete earnings items;
- To reinstate incorrectly or incompletely reported earnings items;
- To record the latest employer of a wage earner;
- For statistical studies;
- For identification of possible overpayments of benefits;
- For identification of individuals entitled to additional benefits;
- To provide information to employers/former employers for correcting or reconstructing earnings records and for Social Security tax purposes;
- To provide workers and self-employed individuals with earnings statements or quarters of coverage statements;
- To provide information to Health and Human Services (HHS) Office of the Inspector General for auditing benefit payments under Social Security programs;
- To provide information to the National Institute for Occupational Safety and Health for epidemiological research studies required by the Occupational Health and Safety Act of 1974;
- To assist the Social Security Administration (SSA) in responding to general inquiries about Social Security, including earnings or adjustments to earnings, and in preparing responses to subsequent inquiries; and
- To store minister waivers, thus preventing erroneous payment of Social Security benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. To employers or former employers, including State Social Security administrators, for correcting and reconstructing State employee earnings records and for Social Security purposes.

2. To the Department of the Treasury for:

(a) Investigating the alleged forgery, or unlawful negotiation of Social Security checks; and

(b) Tax administration as defined in 26 U.S.C. 6103 of the Internal Revenue Code (IRC).

3. To the Railroad Retirement Board (RRB) for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment.

4. To the Department of Justice (DOJ) (Federal Bureau of Investigation and United States Attorneys) for investigating and prosecuting violations of the Act.

5. To a contractor for the purpose of collating, evaluating, analyzing, aggregating or otherwise refining records when the SSA contracts with a private firm. (The contractor shall be required to maintain Privacy Act safeguards with respect to such records.)

6. To the Department of Energy for its study of low-level radiation exposure.

7. To a congressional office in response to an inquiry from the congressional office made at the request of the subject of a record.

8. To the Department of State for administering the Act in foreign countries through services and facilities of that agency.

9. To the American Institute of Taiwan for administering the Act in Taiwan through services and facilities of that agency.

10. To the Department of Veterans Affairs (DVA) Regional Office for administering the Act in the Philippines through services and facilities of that agency.

11. To the Department of Interior for administering the Act in the Trust Territory of the Pacific Islands through services and facilities of that agency.

12. To State audit agencies for auditing State supplementation payments and Medicaid eligibility considerations.

13. To DOJ, a court or other tribunal, or another party before such tribunal when:

(a) SSA, any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components,

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA

determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information that is subject to the disclosure provisions of the IRC (26 U.S.C. § 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

14. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by sections 459 and 461 of the Act.

15. Information necessary to adjudicate claims filed under an international Social Security agreement that the United States has entered into pursuant to section 233 of the Act may be disclosed to a foreign country that is a party to that agreement.

16. To Federal, State, or local agencies (or agents on their behalf) for the purpose of validating SSNs used in administering cash or noncash income maintenance programs or health maintenance programs (including programs under the Act).

17. Tax return information (e.g., information with respect to net earnings from self-employment, wages, payments of retirement income that has been disclosed to SSA and business and employment addresses) may be disclosed, upon written request, to officers and employees of a Federal, State or local agency for purposes of, and to the extent necessary in, determining an individual's eligibility for, or the correct amount of, benefits under certain programs listed in section 6103(l)(7) of the Internal Revenue Code (IRC). These programs are:

(a) Aid to families with dependent children provided under a State plan approved under part A of title IV of the Act;

(b) Medical assistance provided under a State plan approved under title XIX of the Act;

(c) Supplemental security income benefits provided under title XVI of the Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law (Pub. L.) 93–66);

(d) Any benefits provided under a State plan approved under title I, X, XIV, or XVI of the Act (as those titles apply to Puerto Rico, Guam and the Virgin Islands);

(e) Unemployment compensation provided under a State law described in section 3304 of the IRC;

(f) Assistance provided under the Food Stamp Act of 1977; and

(g) State-administered supplementary payments of the type described in section 1616(a) of the Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93–66).

18. Tax return information (e.g., information with respect to net earnings from self-employment, wages, payments of retirement income that has been disclosed to SSA and business and employment addresses) may be disclosed, upon written request, to appropriate officers and employees of a State or local child support enforcement agency in accordance with 26 U.S.C. 6103(l)(8) for purposes of, and to the extent necessary in:

(a) Establishing and collecting child support obligations from individuals who owe such obligations, and

(b) Locating those individuals under a program established under title IVD of the Act (42 U.S.C. 651ff).

19. The fact that a veteran is or is not eligible for retirement insurance benefits under the Social Security program may be disclosed to the Office of Personnel Management (OPM) for its use in determining a veteran's eligibility for a civil service retirement annuity and the amount of such annuity.

20. Employee and employer name and address information may be disclosed to DOJ (Immigration and Naturalization Service) for the purpose of informing that agency of the identities and locations of aliens who appear to be illegally employed.

21. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an Agency function relating to this system of records.

22. Information derived from this system may be disclosed to OPM for the purpose of computing civil service annuity offsets of civil service annuitants with military service or the survivors of such individuals pursuant to provisions of section 307 of Pub. L. 97–253.

23. Nontax return information that is not restricted from disclosure by Federal law may be disclosed to the General Services Administration and the National Archives and Records Administration for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984.

24. Disclosure of tax return information will be made to OPM, upon OPM's written request, for the purpose of administering the Civil Service and Federal Employees Retirement Systems in accordance with Chapters 83 and 84 of Title 5, United States Code.

25. To the Rehabilitation Services Administration (RSA) for use in its program studies of, and development of enhancements for, State vocational rehabilitation programs. These are programs to which applicants or beneficiaries under titles II and/or XVI of the Act may be referred. Data released to RSA will not include any personally identifying information (such as names or SSNs).

26. Upon written request, SSA will disclose tax return information to the VA for purposes of, and to the extent necessary for determining eligibility for, or the amount of, benefits under the following programs:

(a) Any needs-based pension provided under chapter 15 of title 38, United States Code, or under any law administered by the Secretary of Veterans Affairs;

(b) Parents' dependency and indemnity compensation provided under section 1315 of title 38, United States Code;

(c) Health-care services furnished under sections 1710(a)(1)(I), 1710(a)(2), 1710(b), and 1712(a)(2)(B) of title 38, United States Code; and

(d) Compensation paid under chapter 11 of title 38, United States Code, at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule.

The tax return information which may be disclosed under this paragraph includes wages, net earnings from self-employment, payments of retirement income which have been disclosed to SSA and businesses and employment addresses, except that information on payments of retirement income will not be disclosed for use with respect to programs described in subparagraph (d).

27. The identity of each coal industry assigned operator determined to be responsible for annual premiums, and the names and Social Security numbers of eligible beneficiaries with respect to whom the operator is identified, may be disclosed to the trustees of the United Mine Workers of America Combined Benefit Fund pursuant to section 9706(e)(1) of the IRC as added by the Coal Industry Retiree Health Benefit Act of 1992, Pub. L. 102–486, 106 Stat. 2776

(codified at 26 U.S.C. 9701–9721 (1992)).

28. The names and Social Security numbers of eligible beneficiaries who have been assigned to a coal industry assigned operator and a brief summary of the facts related to the basis for such assignments may be disclosed to the coal industry assigned operator determined to be responsible for that individual's annual premiums payable to the United Mine Workers of America Combined Benefit Fund pursuant to section 9706(e)(2) of the IRC as added by the Coal Industry Retiree Health Benefit Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (codified at 26 U.S.C. 9701–9721 (1992)).

29. Detailed information from an individual's earnings record may be disclosed to the coal industry assigned operator determined to be responsible for that individual's annual premiums payable to the United Mine Workers of America Combined Benefit Fund pursuant to section 9706(f)(1) of the IRC as added by the Coal Industry Retiree Health Benefit Act of 1992, Pub. L. 102–486, 106 Stat. 2776 (codified at 26 U.S.C. 9701–9721 (1992)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained as paper forms, correspondence in manila folders on open shelving, paper lists, punchcards, microfilm, magnetic tapes, and discs with online access files.

RETRIEVABILITY:

Records in this system are indexed by SSN, name, and employer identification number.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the HHS Information Resources Management Manual, Part 6, Automated Information Systems Security Program Handbook. This includes maintaining the magnetic tapes and discs within an enclosure attended by security guards. Anyone entering or leaving this enclosure must have a special badge issued only to authorized personnel.

For computerized records electronically transmitted between Central Office and field office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal-oriented transaction matrix, and an audit trail. All microfilm and paper files are accessible only by authorized personnel who have a need for the information in the performance of their official duties.

Expansion and improvement of SSA's telecommunications systems has resulted in the acquisition of terminals equipped with physical key locks. The terminals also are fitted with adapters to permit the future installation of data encryption devices and devices to permit the identification of terminal users.

RETENTION AND DISPOSAL:

All paper forms and cards are retained until they are filmed or are entered on tape and their accuracy is verified. Then they are destroyed by shredding. All tapes, discs, and microfilm files are updated periodically. The out-of-date magnetic tapes and discs are erased. The out-of-date microfilm is shredded.

SSA retains correspondence 1 year when it concerns documents returned to an individual, denials of confidential information, release of confidential information to an authorized third party and undeliverable material, for 4 years when it concerns information and evidence pertaining to coverage, wage, and self-employment determinations or when the statute of limitations is involved, and permanently when it affects future claims development, especially coverage, wage, and self-employment determinations. Correspondence is destroyed, when appropriate, by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Pre-Claims Requirements, Office of Systems Requirements, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record pertaining to him/her by providing his/her name, signature and SSN or, if the SSN is not known, name, signature, date and place of birth, mother's maiden name and father's name to the address shown under system manager and by referring to this system. (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and prevent delay.)

An individual requesting notification of records in person need not furnish any special documents of identity. Documents he/she would normally carry on his/her person would be sufficient (e.g., credit cards, driver's license, or voter registration card). An individual requesting notification via mail or telephone must furnish a minimum of his/her name, date of birth, and address in order to establish identity, plus any additional information specified in this section. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Also, requesters should reasonably specify the record contents they are seeking. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Also, requesters should reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD SOURCE CATEGORIES:

SSN applicants, employers and self-employed individuals; DOJ (including the Immigration and Naturalization Service); the Department of the Treasury (Internal Revenue Service); an existing system of records maintained by SSA, the Master Beneficiary Record (09–60–0090); correspondence, replies to correspondence, and earnings modifications resulting from SSA internal processes.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 93–22653 Filed 9–15–93; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–93–3652; FR–3525–N–01]

Multifamily Property Disposition; State Housing Finance Agency Demonstration Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of demonstration program.

SUMMARY: This Notice announces a demonstration program for the purpose of developing innovative methods for disposing of HUD-owned multifamily projects in a manner that furthers the Department's mission to provide decent and affordable housing, and to do so in a cost effective manner. Under the

demonstration, HUD will enter into agreements with State housing finance agencies (SHFAs) to undertake the responsibility for the management and disposition of a limited number of HUD-owned projects. The results of the demonstration are expected to show innovative and cost effective solutions to the problem of the growing inventory of distressed multifamily housing, and will help the Department determine whether to utilize SHFAs, on a permanent basis, in its property disposition program.

DATES: Comment due date: October 18, 1993. The Department anticipates that the demonstration will begin on November 15, 1993, but will publish a Notice announcing the effective date and any revisions to the program as a result of the public comments.

ADDRESSES: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Development, 451 Seventh Street SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Audrey Hinton, Deputy Director, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–3555; TDD (202) 708–4594. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

Statutes that govern the management and disposition of HUD-owned properties are primarily contained in section 203 of the Housing and Community Development Amendments of 1978 (1978 Act). Section 203 has been amended by the Congress on a few occasions, beginning in 1987 and as recently as 1990. (See section 181 of the Housing and Community Development Act of 1987, section 1010 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, and section 579 of the Cranston-Gonzalez National Affordable Housing Act. HUD's regulations implementing section 203 are contained in 24 CFR part 290. Those regulations were recently amended, through public notice and comment rulemaking procedures. The final rule was published on August 17, 1993 (58 FR 43708).

The goals of the property disposition legislation are set out in section 203(a) of the 1978 Act. Essentially, the Department is charged with finding cost-effective, reasonable alternatives for preserving the nation's supply of affordable, decent rental housing. While the goals are clear, circumstances have evolved over recent years that make achievement of the goals an arduous task. For one thing, the volume of projects that have come into the HUD-owned inventory has increased substantially over the last several years. This is attributable to a range of factors, including downturns in the economy, changes in the tax code, and faulty underwriting practices.

Second, the process of assuring that low- and moderate-income tenants will reside in decent, affordable housing often requires choosing disposition methods from among relatively costly alternatives. Today, more than ever before, there is a need for innovative and effective methods to meet the challenge.

Third, while the magnitude of the challenge has grown substantially, HUD's resources have been unable to keep pace. The Department must use limited resources in a manner that produces the greatest impact.

In this general climate, it is not only sensible, but imperative, that the Department reach out to state and local agencies that have the willingness and capacity to join in the effort to advance the property disposition program.

II. Participation of State Agencies

A number of Federal housing statutes iterate Congressional support for the general notion that the Department should work with and be supportive of the efforts of local governments (as well as the private sector) in seeking to meet the goals of Federal housing legislation. For example, one can find such a statement in the Declaration of National Housing Policy, which is contained in section 2 of the Housing Act of 1949. Yet, a much more recent and particularly relevant expression of Congressional intent was provided in 1987, when the Congress enacted section 184 of the Housing and Community Development Act of 1987. This section authorized HUD to conduct a demonstration, under which the Department and SHFAs would work together to dispose of properties, and that would contain a coinsurance financing mechanism.

Over the ensuing years efforts to implement such a program never came to fruition. Although some interest was expressed by some SHFAs, various factors proved prohibitive. Moreover, as discussed earlier, property disposition was in a state of flux, and the concept of coinsurance became increasingly disfavored.

Very recently, the Department, which has maintained a steady dialogue with State and local agencies, determined that a viable property disposition demonstration could be undertaken with SHFAs, under the demonstration authority contained in Title V of the Housing and Urban Development Act of 1970.

Under the demonstration, the Department will enter into agreements with SHFAs that have demonstrated the capacity to participate. The demonstration will be capped by the aggregate number of units (i.e., 5000) contained within projects managed and/or disposed of by participating agencies, and limited to a five-year period. If, within the five-year period, HUD's evaluation of the ongoing program supports the advantages of a larger unit ceiling, the Department will increase the cap accordingly. HUD has decided not to impose a ceiling on the number of units that can be allocated to a particular agency, as doing so might prove arbitrary or unduly limiting in any given circumstance. Instead, HUD will allocate units to agencies, taking into account such factors as the size of the HUD-owned inventory in the particular agency's jurisdiction and HUD's estimate of the capacity of that agency to operate under the program.

Capacity varies among SHFAs, and some may only be interested in, or capable of, providing financing in concert with a property disposition. On the other hand, a few may demonstrate that they have the necessary amount of expertise and resources to engage in a range of activities, including financing, managing and disposing of HUD-owned properties. The written agreement executed by HUD and a participating SHFA will reflect the understanding of the parties concerning the rights, duties and responsibilities of each under the demonstration.

HUD has already engaged in some discussions with several SHFAs, and received an indication of interest from the Massachusetts Housing Finance Agency, Illinois Housing Development Authority, New York Housing Finance Agency, and the District of Columbia Housing Financing Agency. Whether and to what extent any one of these agencies ultimately participates in the program will be determined by HUD in a threshold decision on each agency's ability to participate, and the specific

provisions set out in each agreement that addresses the scope and nature of the duties to be performed. For example, the Massachusetts HFA has indicated its interest in providing a broad range of services.

Additional SHFAs are welcome to contact the Department, and to submit proposals, if interested in participating in the program.

III. Scope of the Program

Under the demonstration, the SHFA will identify a project or projects, within the HUD-owned inventory, and demonstrate how it can assist HUD in the management and/or disposition of the project(s). The agreement entered into between the Department and the SHFAs will spell out specific duties and responsibilities of the parties. The methods employed by SHFAs (or even by a single SHFA) may vary among different projects, subject only to statutory limitations and the agreement.

The agreement will, among other matters, define, in a global manner, specific tasks that the SHFA will undertake and how these tasks would be carried out. The agreement will reflect such matters as the following:

(1) The specific approach or approaches that the SHFA will take, including the depth and breadth of its proposed activities, to demonstrate its ability to assist HUD in disposing of HUD-owned properties;

(2) The specific project, or projects, within the geographical jurisdiction of the SHFA, that the SHFA will work with under the demonstration (*Note:* While a single "master" agreement will be executed, HUD envisions that project-specific supplements may be annexed to the agreement);

(3) Milestones for completion of the various tasks identified; and

(4) The nature of and extent to which HUD shall monitor the activities of the SHFA.

The demonstration program is designed to afford the SHFAs broad latitude in handling the proposed inventory. SHFAs selected to participate in the program will have been selected for the very reason that each brings valuable experience and insights into the realm of financing, managing, and/or preserving affordable multifamily housing. The Department wants to encourage the use of innovative techniques under this demonstration. Accordingly, SHFAs may perform any of a broad number of roles, such as financiers, tax credit allocators, administrators, insurers, developers, and/or project managers. Possibly, SHFAs will engage in subcontracting in conjunction with management and sales responsibilities.

Also, SHFAs will be afforded a range of financing tools for accomplishing sales, including the possibility of financing some project sales with HUD (fully or partially) insured mortgage financing. Section 8 subsidies are also expected to be available under the program. Yet, HUD is hopeful that SHFAs will be able to meet the "affordable rent" provisions contained in the property disposition statutes by using sale methods that comport with the affordable rent requirements in the absence of a Section 8 subsidy. For example, devices that could be employed by local governments to keep rents affordable, in accordance with statutory requirements, include the use of tax abatement, tax exempt financing, tax credits, and secondary financing.

Finally, HUD is interested in SHFA plans in relation to a project after it has been sold without retention of a contractual relationship to the Department (e.g., based on a Section 8 subsidy contract, and/or insured financing). While the Department routinely relies on such legal instruments as deed restrictions to assure continuous compliance with affordable housing requirements, the questions arises to what extent and in what manner SHFAs will monitor ongoing compliance by a project owner.

HUD plans to monitor, evaluate, and report on the efforts of participants in this program no later than within five years of the date of publication of this Notice. However, HUD may elect to conduct a preliminary evaluation at an earlier time, if, for example, it finds that the 5,000 unit cap on the program is inadequate. Ultimately, HUD will seek to formalize, by rulemaking, components of the program that prove to be effective in achieving the objectives of the property disposition program.

IV. Other Matters

Any information collections that may be required under this demonstration program will not add any additional burden than that already approved for the multifamily property disposition program by the Office of Management and Budget under the Paperwork Reduction Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

The General Counsel, as the designated official under Executive Order 12612, Federalism, has determined that this rule will not have a substantial, direct effect on the States or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. Any terms and conditions imposed by HUD on States that may acquire projects under the demonstration will be statutory requirements under section 203 of the Housing and Community Development Amendments of 1978. Such requirements will be clearly the intent of Congress, and therefore no further review is necessary or appropriate.

HUD has determined that this demonstration will not have a significant impact on family formation, maintenance, and general well-being within the meaning of Executive Order 12606, The Family, because it does not affect the eligibility of families for admission into multifamily housing projects that may be disposed of under the demonstration.

Dated: September 3, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–22672 Filed 9–15–93; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–03–4350–09; G3–407]

Limitations of Off-Highway Motorized Vehicle Use to Existing Roads and Trails

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice is hereby given to limitations of off-highway motorized vehicle use on public lands.

SUMMARY: Notice is hereby given relating to the use of off-highway vehicles on certain lands in accordance with the authority and requirements of Executive Order 11644 and 11989, and regulations contained in 43 CFR part 8340.

The following lands under the administration of the Bureau of Land Management are changed from existing open designation and are hereby

redesignated limited to designated roads and trails due to the presence of three rare plant species, *Mentzelia mollis, Astragalus mulfordiae* and *Amsinckia carinata*. All species are Federal candidates being considered for listing under the Endangered Species Act. Off-highway vehicle activity will cause considerable adverse effects upon these rare plants and their habitat. The purpose of this limitation is to protect the fragile habitat on which these species grow from damage by motor vehicles. Roads and trails will be appropriately signed to indicate their designated status for use by motor vehicles.

The areas affected by the designations are managed by the Malheur Resource Area of the Vale District in Malheur County, Oregon.

These designations are published as final, and are in effect from the date of publication of this **Federal Register** Notice until such time that changes in resource management warrant modifications.

FOR FURTHER INFORMATION CONTACT: Ralph Heft, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918, (Telephone 503 473–3144).

SUPPLEMENTARY INFORMATION: Limited Designations—Eight-hundred eighty acres in three geographical areas will be designated limited to designated roads and trails. These areas include the following:

Succor Creek Area

T.22S. R 46E.
Sec. 32 SWSE—40 acres
T.23S. R 46E.
Sec. 17 SWSE—40 acres
Sec. 31 SESE and SWSE—80 acres
Sec. 32 SWSW and SESW—80 acres

South Alkali Area

T.18S. R 45E.
Sec. 4 NENE—40 acres
T.17S. R.45E.
Sec. 27 SWSW, NWSW, and SENW—120 acres
Sec. 33 SESE, NESE, and SENE, and NENE—160 acres
Sec. 34 SESE and SWSE—80 acres
Sec. 35 SWSW and NWSW—80 acres

Harper Area

T.20S. R. 41E.
Sec. 14 SESW—40 acres
Sec. 15 NESE—40 acres
Sec. 36 NENE and SENE—80 acres.

The designations become effective upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the Vale District Manager. Information and maps of the above areas are available at the Bureau of Land Management, Vale District Office, 100 Oregon Street, Vale, Oregon 97918, telephone (503) 473–3144.

James E. May,
District Manager.

[FR Doc. 93–22620 Filed 9–15–93; 8:45 am]
BILLING CODE 4310–33–M

Bureau of Land Management

[UTU–69479]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease UTU–69479 for lands in San Juan County, Utah, was timely filed and required rentals and royalties accruing from April 1, 1993, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease UTU–69479 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective April 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Robert Lopez,
Chief, Minerals Adjudication Section.

[FR Doc. 93–22589 Filed 9–15–93; 8:45 am]
BILLING CODE 4310–DQ–M

[CA–050–282–3110–10–B008; CACA 32932]

Realty Action; Shasta County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; disposal of public lands in Shasta County, California through exchange.

SUMMARY: The following described public lands are being considered for exchange to Roseburg Resources Company, under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Note: Not all lands identified below may be involved in the exchange. Some may be deleted to eliminate possible conflicts that could arise during processing. The final selection of properties will be made to achieve comparable values between the offered and selected lands.

M.D.M., T. 33 N., R.2 E.,
Sec. 3, NE¼SW¼
Sec. 8, SW¼, W½SE¼, NE¼SE¼
Sec. 9, E½NE¼, SW¼NE¼, N½SE¼, SW¼SE¼, E½SW¼, SE¼NW¼
Sec. 10, N½NW¼, SW¼NW¼
Sec. 17, NW¼NE¼, N½NW¼, SW¼NW¼.

Containing 960 acres, more or less.

In exchange for these lands, the Federal Government would acquire private land within the Sacramento River Management Area.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire historic riparian habitat for wildlife and fisheries enhancement, and recreation opportunities, and to block up public lands along the Sacramento River. This proposed exchange is consistent with Bureau planning for the lands involved.

Lands to be transferred from the United States will be evaluated in accordance with the National Environmental Protection Act, and will be subject to the following reservations, terms and conditions:

(1) A reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 945).

(2) Any authorized land uses, such as rights-of-ways, will be identified as prior existing rights.

This notice, as provided in 43 CFR 2201.1(b), shall segregate the public lands that are being considered for this exchange. These lands were previously segregated for exchange by CA 31254; this notice supersedes that action. By publication of this notice, those vacant, unappropriated and unreserved public lands described above are segregated from settlement, location, and entry under the public lands and minerals laws. The segregative effect shall terminate upon issuance of patent, or upon publication in the **Federal Register** of a termination of the segregation, or two years from the date of this notice, whichever occurs first.

EFFECTIVE DATE: The public is invited to comment on the proposed exchange on or before November 1, 1993. Comments may be sent to the Area Manager, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002.

FOR FURTHER INFORMATION CONTACT: Patricia Cook, Realty Specialist, at the address above.

Mark Morse,
Area Manager.

[FR Doc. 93–22643 Filed 9–15–93; 8:45 am]
BILLING CODE 4310–40–M

[CA-050-09-2300-02-B069; CACA-20789]

Realty Action; Tehama County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Recreation and Public Purposes (R&PP) Act classification; Tehama County, California.

SUMMARY: The following public lands in Tehama County, California have been examined and found suitable for classification for lease and or conveyance to the County of Tehama under provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The County of Tehama proposes to use the lands for recreation purposes which include an archery range.

Mount Diablo Meridian

T.27N., R.3W., Section 2
Lots 1, 2, and S2NE.
Containing 160 acres more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. The lease and or conveyance, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. S 3409 Act of 11/9/1921 Right-of-way to the State of California for Highway 36.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Redding Resource Area, Redding, California.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease and conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

DATES: On or before November 1, 1993, interested persons may submit written comments regarding the proposed lease/conveyance or classification of the lands to the Area Manager, Redding Resource Area Office, 355 Hemsted Drive, Redding, California 96002. Any adverse comments will be reviewed by the State Director.

Dated: August 31, 1993.

Michael V. Truden,

Acting Area Manager.

[FR Doc. 93-22642 Filed 9-15-93; 8:45 am]

BILLING CODE 4310-40-M

[ID-060-01-3110-10-D001; IDI-29531]

Realty Action; Exchange of Public and Private Lands in Idaho County, ID; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to notice of realty action, IDI-29531; exchange of public and private lands in Idaho County, Idaho. Original notice of realty action was published in the **Federal Register** on July 29, 1993 (Vol. 58, No. 144, page 40673).

Correction

In notice document 93-18083 appearing on page 40673 of the issue of Thursday, July 29, 1993, make the following corrections:

On page 40673, in the 2nd column in the public lands description under T. 30 N., R. 3 E., sec. 35, add SE¼SW¼ and W½SE¼. Under T. 26 N., R. 2 E., sec. 5, add NW¼SW¼. Under T. 26 N., R. 2 E., add sec. 7, NW¼NE¼, NE¼NW¼ and sec. 20, NE¼SW¼. The total acreage for the public lands should read 1030.28 acres in Idaho County, Idaho.

On the same page and same column, under the private lands description add T. 31 N., R. 3 W., sec. 27, a portion of lot 1. The total acreage of the private lands should read 677.70 acres in Lewis and Idaho Counties, Idaho.

Dated: September 8, 1993.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 93-22638 Filed 9-15-93; 8:45 am]

BILLING CODE 4310-GG-M

[OR-128-93-4210-04; GP3-400; OROR-45001]

Notice of Realty Action; Exchange of Public and Private Lands in Curry County, OR

The following described land in the Coos Bay District, Myrtlewood Resource Area, have been determined to be suitable for disposal by exchange under Section 206 of the *Federal Land Policy and Management Act of 1976*, 43 U.S.C. 1716:

Township 37 South, Range 14 West, Willamette Meridian
Section 7 NE¼NW¼.
Comprising 40.00 acres, more or less, of public land in Curry County, Oregon.

In exchange for this land, the United States will acquire the following described land from Western Bank, Trustee under the Testamentary Trust of H.W. Crook, deceased:

Township 37 South, Range 14 West, Willamette Meridian,
Section 11 SE¼SE¼
Section 12 E½SW¼, and SW¼SW¼.
Comprising 160.00 acres, more or less, of private land in Curry County, Oregon.

The purpose of this exchange is to consolidate land patterns and acquire the non-federal lands which have high public values for threatened plant habitat, wildlife habitat, and recreation. The public interest will be served by completing the exchange.

The lands to be exchanged have been appraised. The values are approximately equal; full equalization of the values will be achieved by payment to the United States by Western Bank of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following:

1. Reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All other valid existing rights, including but not limited to any right-of-way, easement, or lease of record.

Publication of this notice segregates the public land from the operation of the public land laws and mineral laws for a period of two (2) years from the date of first publication.

Further information concerning the exchange, including the appropriate environmental and review documents, is available for review at the Coos Bay District Office, Myrtlewood Resource area, in North Bend, Oregon.

For a period of 45 days from the date of first publication, interested parties may submit comments to BLM Coos Bay District, Myrtlewood Resource Area, attention: Area Manager, 1300 Airport Lane, North Bend, Oregon, 97459.

Dated: September 3, 1993.

Melvin Chase,

District Manager.

[FR Doc. 93-22636 Filed 9-15-93; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–694123

Applicant: National Institutes of Health, National Cancer Institute, Frederick, MD.

The applicant requests a renewal of their permit to take, import and purchase in interstate and foreign commerce blood, semen, skin biopsy, organ and other tissue samples from many endangered and threatened mammals held in captivity for scientific genetic research. Live animals will be purchased occasionally in interstate commerce. No animals will be intentionally captured or harmed during any part of the research; all tissue sampling techniques are non-life threatening.

PRT–782689

Applicant: University of Wisconsin, Madison, WI.

The applicant requests a permit to import approximately 35 blood samples and 35 skin biopsies taken from wild cotton-up tamarins (*Saquinus oedipus oedipus*) to be collected in a cooperative program with the Instituto Nacional de los Recursos Naturales Renovables y del Ambiente, Columbia for research purposes.

PRT–781857

Applicant: F.M. Driscoll, Kelso, WA.

The applicant requests a permit to import 2 captive-hatched males and 4 captive-hatched females white-eared pheasants (*Crossoptilon crossoptilon*) from Robert Ian Henderson, Stockfield-On-Tyne, England, to obtain new breeding stock for enhancement of propagation and survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 13, 1993.

Joan Canfield,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–22635 Filed 9–15–93; 8:45 am]

BILLING CODE 4310–55–M

Meeting of Great Lakes Panel on Nonindigenous Species

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Great Lakes Panel on Nonindigenous Species (Great Lakes Panel), a committee of the Aquatic Nuisance Species Task Force. A number of subjects will be discussed during the meeting including: an update on the implementation of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990; the Intentional Introductions Policy Review draft Report to Congress and the draft Ruffe Control Program; implementation of the Information/Education Strategy; a presentation on the International Joint Commission's "Ecosystem Framework"; status of State initiatives in ANS Prevention and Control; and new issues/policy positions.

DATES: The Great Lakes Panel will meet from 8:30 a.m. to 4 p.m. on Friday, October 8, 1993.

ADDRESSES: The Great Lakes Panel meeting will be held at the Radisson Hotel, 505 West Superior Street, Duluth, Minnesota.

FOR FURTHER INFORMATION CONTACT: Kathe Glassner-Shwayder, Great Lakes Commission, the Argus II Building, 400 Fourth Street, Ann Arbor, Michigan, at (313) 665–9135.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Great Lakes Panel on Nonindigenous Species established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, Room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the Great Lakes Commission, the Argus II Building, 400 Fourth Street, Ann Arbor, Michigan 48103 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: September 8, 1993.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 93–22675 Filed 9–15–93; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint styled *United States* v. *Arthur Belanger et al.*, Civil Action No. 91–0288–1, was filed in the United States District Court for the Western District of Missouri on March 29, 1991. On July 16, 1993 a consent decree was lodged with the Court in settlement of the allegations in the complaint. The proposed consent decree settles the government's claims set forth in the complaint pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C. 9604, 9607, for the recovery of costs incurred by the United States during a removal action undertaken in response to releases of hazardous substances from the B & B Salvage located in Warrensburg Missouri. The complaint alleged, among other things, that the defendants either owned or operated a facility at which hazardous substances were disposed of, or arranged for disposal of hazardous substances at such a facility, and that the United States incurred costs in response to the release of hazardous substances from the Site.

Under the terms of the proposed consent decree, the defendants agree to pay the United States the sum of $1,215,880 for past response costs incurred by the government at the Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Arthur Belanger et al.*, D.J. Ref. 90–11–2–226B.

The proposed consent decree may be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree

may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $21.50 (25 cents per page reproduction costs) payable to Consent Decree Library. The proposed Consent Decree may also be reviewed at the Environmental Protection Agency, Office of Regional Counsel, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and the Office of the United States Attorney, 549 Grand Avenue, Kansas City, Missouri 64106.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-22591 Filed 9-15-93; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC. 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue NW., Washington, DC. 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process: Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202-219-5263 (this is not a toll-free number).

Regarding the Complaint Process: Questions regarding the complaint process for the H-1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202-219-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H-1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 9th day of September 1993.

Robert A. Schaerfl,

Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS, APPROVED ATTESTATIONS, AUGUST 1, 1993 TO AUGUST 31, 1993

CEO-name/facility name/address	State	Approval date
Charles C. Colvert, Shelby Medical Ctr., 1000 First Street North, Alabaster 35007, 205-664-5736	AL	08/18/93
Arthur K. Gross, Kingman Regional Medical Ctr., 3269 Stockton Hill, Rd., Kingman 86401, 602-757-0600	AZ	08/12/93
Ms. Barbara L. Brown, The Village Green Nursing Home, Phoenix 85014, 602-264-5274	AZ	08/13/93
Ms. Mary Starmann Harrison, St. Luke's Medical Ctr., 1800 E. Van Buren, Phoenix 85006, 602-251-8336	AZ	08/20/93
Mr. Pat Wilson, Safford Care Ctr., 1933 Peppertree Drive, Safford 85546, 602-428-4910	AZ	08/31/93
Mr. Ephraim Barsam, Nursing Management Services (USA) Inc., Los Angeles 90067, 310-553-6024	CA	08/02/93
Mr. Vincent Guinan, St. Vincent Medical Ctr., 2131 West Third Street, Los Angeles 90057, 213-484-7033	CA	08/02/93
Not complete, Little Company of Mary Pavillo, 4320 Maricopa Street, Torrance 90503, 310-543-5900	CA	08/03/93
Suwaran Brar, White Cap Nursing Agency, 2500 Marconi Avenue, #108, Sacramento 95821, 916-484-0144	CA	08/05/93
Mr. Janee M. Waldo, Baywood Convalescent Hosp., 550 Patterson Boulevard, Pleasant Hill 94523, 510-939-3400	CA	08/05/93
Ms. Nancy P. Villalba, Prime-American Nursing Source, 17199 W. Bernardo Dr. #108, San Diego 92127, 619-674-4714.	CA	08/09/93
Mr. Restie F. Payo, Nurse of Wellbeat, Inc., 629 Eremland Drive, Covina 91723, 818-332-4449	CA	08/11/93
Mr. Robert Gold, Los Bano Community Hospital, 520 West "I" Street, Los Banos 93635, 209-826-0591	CA	08/11/93

DIVISION OF FOREIGN LABOR CERTIFICATIONS, APPROVED ATTESTATIONS, AUGUST 1, 1993 TO AUGUST 31, 1993—Continued

CEO—name/facility name/address	State	Approval date
Kuldeep S. Brar, STAT Medical Services, Inc., 6430 Sunset Boulevard, Hollywood 90028, 213–465–1135	CA	08/13/93
Mr. Thomas G. Neff, St. Mary Desert Valley Hospit, 18300 Highway 18, Apple Valley 92307, 619–242–2311	CA	08/18/93
Mr. Santi J. Rogers, Porterville Developmental Ctr., c/o Primerica Nursing HCS, Delano 93215, 209–782–2250	CA	08/18/93
Mr. William Gamboa, Healthcare Management, 632 East Yosemite Avenue, Madera 93638, 209–673–5149	CA	08/23/93
Mr. William Gamboa, Merced Manor, 1255 B Street, Merced 95340, 209–723–3814	CA	08/23/93
Ms. Anni Chung, Self-Help for the Elderly, 407 Sansome Street, Suite 300, San Francisco 94111, 415–982–9181	CA	08/23/93
Mr. William Gamboa, La Sierra Care Ctr., 2424 M Street, Merced 95340, 209–723–4224	CA	08/23/93
Mr. William Gamboa, Merced Living Care Ctr., 510 West 26th Street, Merced 95340, 309–723–2911	CA	08/23/93
Mr. William Gamboa, Madera Rehab. & Conval. Ctr., 517 South A Street, Madera 93638, 209–673–9228	CA	08/23/93
Mr. William Gamboa, Auburn Gardens Conval. Hosp., 260 Racetrack Street, Auburn 95604, 916–885–7051	CA	08/23/93
Mr. Eduardo H. Manalo, International Medical Recruiters, Inc., San Diego, 92139, 619–267–0553	CA	08/23/93
Mr. William Gamboa, Colony Park Care Center, 159 East Orangeburg Avenue, Modesto 95350, 209–526–2911	CA	08/23/93
Mr. Richard P. Blinn, Fairoaks Healthcare Ctr., The Hillhaven Corporation, Carmichael 95608, 916–944–4312	CA	08/26/93
Mr. Richard P. Blinn, Hillhaven San Francisco, The Hillhaven Corp., San Francisco 94109, 415–673–8405	CA	08/26/93
Mr. Robert J. Myers, Pleasanton Conval. Hospital, 300 Neal Street, Pleasanton 94566, 510–462–2400	CA	08/31/93
Ms. Alberta Brasfield, J.B. Johnson Nursing Ctr., Urban Shelters & Health Care Systems, DC 20001, 202–289–7715	DC	08/02/93
Mr. Ephraim Barsam, Nursing Management Services (USA) Inc., St. Petersburg 33713, 813–321–2411	FL	08/02/93
Mr. Brian Keeley, Baptist Hospital of Miami, 8900 North Kendall Drive, Miami 33176, 305–273–2323	FL	08/02/93
Epifania L. Ramos, STAT Care Health Services, 540 Northwest 165th St., Rd., North Miami 33169, 305–944–0971	FL	08/04/93
Mr. Edwin Brown, Florida Community Health Ctr., 5601 Corporate Way, Suite 320, West Palm Beach 33407, 407–684–0600.	FL	08/19/93
Ms. Miriam Cosio, Hialeah Hospital, 651 East 25th Street, Hialeah 33013, 305–693–6100	FL	08/19/93
Mr. Gerard M. J. Beaudoin, T.L.C. St. Petersburg, Inc., 1735 Ninth Street S., St. Petersburg 33705, 813–821–8868	FL	08/19/93
Mr. Denny DeNarvaez, Florida Medical Ctr. Hospital, 5090 West Oakland Park Blvd., Fort Lauderdale 33313, 305–735–6000.	FL	08/19/93
Mr. Richard P. Blinn, Titusville Nursing & Conval., The Hillhaven Corporation, Titusville 32796, 407–269–5720	FL	08/26/93
Mr. Donald A. Anderson, Everglades Memorial Hospital, 200 South Barfield Highway, Pahokee 33476, 407–924–5200	FL	08/31/93
Ms. Joan B. Holt, Lakeshore Heights Nursing Ctr., 1293 Dawsonville Hwy., Gainesville 30503, 404–536–3391	GA	08/05/93
Mr. John A. Drew, Athens Regional Med. Ctr., 1199 Prince Avenue, Athens 30606, 706–549–9977	GA	08/31/93
Joanne T. Jurkovic, Mercy Health Care and Rehab., 19000 South Halsted, Homewood 60430, 708–957–8200	IL	08/02/93
Ms. Malka Mermelstein, Lake Front Healthcare Ctr., 7618 N. Sheridan, Chicago 60626, 312–743–7711	IL	08/02/93
Charlotte Kohn, Birchwood Plaza Nursing and Rehab. Ctr., Chicago 60626, 312–274–4405	IL	08/03/93
Lucille R. Engelsman, Pershing Convalescent Home, 3900 S. Oak Park Avenue, Stickney 60402, 708–484–7543	IL	08/03/93
Carolyn A. Lofland, Rolling Hills Manor, 3615 16th Street, Zion 60099, 708–746–8382	IL	08/03/93
Peter Friedell, Jackson Park Hospital and Medical Ctr., Chicago 60649, 312–947–7500	IL	08/03/93
Mr. Michael H. Fritz, The Carle Foundation Hospital, 611 West Park, Urbana 61801, 217–383–3311	IL	08/05/93
Mr. Robert Rutkowski, South Suburban Hospital, 17800 S. Kedzie Avenue, Hazel Crest 60429, 708–799–8009	IL	08/05/93
Ms. Susan Kim, Caring Professionals, Inc., 7144 N. Kostner Avenue, Lincolnwood 60646, 708–677–8022	IL	08/09/93
Mr. Morris Esformes, Bourbonnais Terrace, 133 Mohawk Drive, Bourbonnais 60914, 815–937–4790	IL	08/11/93
Mr. Morris Esformes, Lake Park Center, 919 Washington Park, Waukegan 60085, 708–623–9100	IL	08/16/93
Mr. John Harper, South Shore Hospital, 8012 S. Crandon Avenue, Chicago 60617, 312–768–0810	IL	08/30/93
Mr. Tali Tzur, Royal Terrace Healthcare Ctr., Inc., McHenry 60050, 815–344–2600	IL	08/30/93
Ms. Donna Beck Sprinkle, Mid America Conval. Ctr., 4920 N. Kenmore, Chicago 60640, 312–769–2700	IL	08/31/93
Ms. Linda Shyavitz, Sturdy Memorial Hospital, Inc., 211 Park Street, Attleboro 02703, 508–222–5200	MA	08/05/93
Vito Munaco, Qualicare Nursing Home, 695 East Grand Boulevard, Detroit 48207, 313–925–5655	MI	08/03/93
Vito Munaco, Alpha Annex Nursing Home, 609 East Grand Boulevard, Detroit 48207, 313–923–8262	MI	08/03/93
Mr. Delmon Esh, Bethany Care Ctr., 42235 C.R. 390, Bloomingdale 49026, 616–521–3303	MI	08/09/93
Vito Munaco, Alpha Manor Nursing Home, 440 East Grand Boulevard, Detroit 48207, 313–579–2900	MI	08/11/93
Mr. John E. Barrett, Jr., Great Lakes Reg. Rehab. Hosp., 22401 Foster Winter Drive, Southfield 48075, 313–569–1500	MI	08/30/93
Mr. Morris Esformes, Cedars Health Care, 6406 The Cedars Court, Cedars Hills 63016, 314–285–1777	MO	08/11/93
Mr. Morris Esformes, Ramona Villa Healthcare Ctr., Ltd., Kansas City 64154, 816–436–8575	MO	08/12/93
Mr. Morris Esformes, Creve Couer Healthcare Ctr., 12705 Olive Blvd., Creve Couer 63141, 314–434–8361	MO	08/13/93
Mr. Morris Esformes, North Shore Convalescent Ctr., 610 Prigge Road, St. Louis 63135, 314–741–8393	MO	08/16/93
Ms. Frances Messer, Carver Living Ctr., 321 East Carver Street, Durham 27704, 919–471–3558	NC	08/03/93
Thomas E. Ford, Brian Center Nursing Care, 3000 Halston Lane, Raleigh 27610, 919–231–6045	NC	08/05/93
George Nye, Vespers Nursing Home, 1000 College Street, Wilkesboro 28697, 919–838–4141	NC	08/05/93
Mr. Richard P. Blinn, Hillhaven Sunnybrook Conval., Hillhaven Corporation, Raleigh 27610, 919–231–6150	NC	08/30/93
Mr. Merle Wiesel, Cedar Oaks Care Ctr., 1311 Durham Avenue, South Plainfield 07080, 908–287–9555	NJ	08/02/93
Mr. Michael P. Duffy, Essex County Hospital Ctr., 125 Fairview Avenue, Cedar Grove 07009, 201–228–3660	NJ	08/02/93
Mr. Thomas Goldman, Bayshore Community Hospital, 727 N. Beers Street, Holmdel 07733, 908–739–5936	NJ	08/03/93
C. Beth Kelly, Lakewood Nursing Ctr., 285 River Avenue, Lakewood 08701, 908–901–7791	NJ	08/03/93
Yvonne Klock, Water's Edge Convalescent Ctr., 512 Union Street, Trenton 08611, 609–393–8622	NJ	08/04/93
Mr. Nathan Fishman, Plaza Nursing & Conval. Ctr., 456 Rahway Avenue, Elizabeth 07202, 908–354–1300	NJ	08/25/93
Mr. Lloyd R. Currier, Christ Hospital, 176 Palisade Avenue, Jersey City 07306, 201–795–8355	NJ	08/26/93
Daniel P. Leahey, Terence Cardinal Cooke Health Care, New York 10028 212–360–3620	NY	08/02/93
Krishanan Bhatia, Victory Memorial Hospital, 699 92nd Street, Brooklyn 11228, 718–630–1286	NY	08/03/93
Ms. Carol Raphael, Visiting Nurse Service of New York Home Care, New York 10021, 212–794–9200	NY	08/04/93
Mr. Miguel Fuentes, Jr., Bronx-Lebanon Special Care, Ctr., Inc., Bronx 10456, 718–579–7000	NY	08/05/93
Mr. Gilbert Perlow, Daughters of Jacob Geriatric Ctr., Bronx 10455, 718–293–1500	NY	08/11/93
Michael Redenite, South Nassau Communities Hospital, Oceanside 11572, 516–763–3838	NY	08/22/93

DIVISION OF FOREIGN LABOR CERTIFICATIONS, APPROVED ATTESTATIONS, AUGUST 1, 1993 TO AUGUST 31, 1993—Continued

CEO–name/facility name/address	State	Approval date
Mr Charles Miller, Augustana Lutheran Home, 1680 60th St., Brooklyn 11204, 718–232–2114	NY	08/24/93
Mr. Ramond W. Acker, Hospital Corporation of White County, Inc., Sparta 38583, 615–738–9211	TN	08/18/93
Brenda Chung, Nightangale Services, 6220 Westpark, Suite 220, Houston 77057, 713–780–0697	TX	08/02/93
Ms. Bemeice Hill, Terrell Care Ctr., 204 West Nash Street, Terrell 75160, 214–563–7668	TX	08/18/93
Mr George H. McCoy, St. Croix Hospital, 4007 Est. Diamond Ruby, St. Croix 00820, 809–778–6311	VI	08/23/93
Total attestations—87.		

[FR Doc. 93–22663 Filed 9–15–93; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting Cancellation

ACTION: Notice of cancellation of meeting.

SUMMARY: Notice is hereby given that the September 23rd and 24th, 1993 meeting of the National Commission For Employment Policy, has been cancelled. Notice of the meeting had been previously published in the **Federal Register** of September 8, 1993 (58 FR 47295). The Commission will announce when the next meeting will be held.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street NW., suite 300, Washington, DC 20005, (202) 724–1545.

Signed at Washington, DC, this 10th day of September 1993.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 93–22662 Filed 9–15–93; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. Date: October 4, 1993
   Time: 9 a.m. to 5 p.m.
   Room: 526
   Program: This meeting will exchange views on ways by which the Public Humanities Projects Program can more fully meet the mission of the Division of Public Programs—to engage all Americans in the study of human history and culture through the humanities. Interested members of the public are welcome to attend.
2. Date: October 7, 1993
   Time: 9 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review Editions and Translations Program applications in Music, Philosophy and History of Science, submitted to the Division of Research Programs, for projects beginning after April 1, 1994.
3. Date: October 13, 1993
   Time: 9 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review Editions Program applications in Literature, submitted to the Division of Research Programs, for projects beginning after April 1, 1994.
4. Date: October 14–15, 1993
   Time: 8:30 a.m. to 5 p.m.
   Room: 415
   Program: This meeting will review applications for Humanities Projects in Media program during the September deadline, submitted to the Division of Public Programs, for projects beginning after January 1, 1994.
5. Date: October 15, 1993
   Time: 9 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review Editions Program applications in History, submitted to the Division of Research Programs, for projects beginning after April 1, 1994.
6. Date: October 18, 1993
   Time: 9 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review Translations Program application in Arabic, Persian, and Asian Studies, submitted to the Division of Research Programs, for projects beginning after April 1, 1994.
7. Date: October 21–22, 1993
   Time: 8:30 a.m. to 5 p.m.
   Room: 415
   Program: This meeting will review applications submitted to Humanities Projects in Media program during the September deadline, submitted to the Division of Public Programs, for projects beginning after January, 1994.
8. Date: October 28, 1993
   Time: 9 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review Translations Program applications in History and Anthropology, submitted to the Division of Research Programs, for projects beginning after April 1, 1994.

9. Date: October 28–29, 1993
Time: 8:30 a.m. to 5 p.m.
Room: 415
Program: This meeting will review applications submitted to Humanities Projects in Media program during the September deadline, submitted to the Division of Public Programs, for projects beginning after January 1, 1994.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 93–22674 Filed 9–15–93; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering.

Date and time: October 7–8, 1993, 9:30 a.m.–5 p.m., Thursday, October 7, 8:30 a.m.–12 Noon, Friday, October 8.

Place: National Science Foundation, 1800 G Street, NW., room 540, Washington, DC 20550.

Type of meeting: Open.

Contact Person: Dr. William S. Butcher, Advisory Committee for Engineering, room 1126, National Science Foundation, Washington, DC 20550. Telephone: (202) 357–9571.

Minutes: Dr. William S. Butcher at the above address.

Purpose of meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering programs and activities.

Agenda: Discussion on issues, opportunities and future directions for the Engineering Directorate; discussion of Engineering Directorate budget situation as well as other items.

Dated: September 13, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–22660 Filed 9–15–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 4–5, 1993; 8 a.m. to 5 p.m.

Place: Arizona State University, Tempe, AZ.

Type of Meeting: Closed.

Contact Person: Dr. Loretta J. Inglehart, Program Director, National Facilities and Instrumentation, Division of Materials Research, room 408, National Science Foundation, 1800 G. St. NW., Washington, DC 20550. Telephone: (202) 357–9789; FAX (202) 357–7959.

Purpose of Meeting: To provide advice and recommendations concerning the proposal submitted to NSF requesting continued financial support for the Center for High Resolution Electron Microscopy (CHREM).

Agenda: To review and evaluate the proposal for the continued operation of CHREM.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c), a(4) and (6) of the Government in the Sunshine Act.

Dated: September 13, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–22659 Filed 9–15–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Division of Undergraduate Education.

Date and Time: October 3, 1993; 7:30 p.m. to 9 p.m., October 4, 1993; 8:30 a.m. to 5 p.m., October 5, 1993; 8:30 a.m. to 5 p.m., October 6, 1993; 8:30 a.m. to 5 p.m., October 7, 1993; 8:30 p.m. to 5 p.m.

Place: National Science Foundation, 1110 Vermont Avenue, NW., Washington, DC 20005.

Type of Meeting: Closed.

Contact Person: Dr. Terry Woodin, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1666.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Teacher Preparation Collaboratives Reverse Site Panel Meeting.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 13, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–22658 Filed 9–15–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences.

Date and Time: October 7–8, 1993, 8:30 a.m. to 5 p.m. each day.

Place: Room 536, NSF, 1800 G Street NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. H. Jean Thiebaux, Program Director, DMS, room 339, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone (202) 357–3453.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Collaborative Research in Geosciences, Geography, and Mathmatical sciences proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature; including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 13, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–22661 Filed 9–15–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Twenty-First Water Reactor Safety Information Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Twenty-First Water Reactor Safety Information Meeting will be held on October 25–27, 1993, 8:30 a.m. to 5 p.m., in the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The Water Reactor Safety Information Meeting is held annually. The purpose of this meeting is to review progress and technical accomplishments in research programs. The meeting includes papers and discussions covering the status of research programs. The meeting is international and includes participation by personnel from U.S. Government laboratories, various research firms and independent laboratories, reactor

vendors, utilities, universities, and a number of foreign countries. This meeting is sponsored by the NRC and conducted by the Brookhaven National Laboratory.

The preliminary agenda for the Twenty-First Meeting includes 17 sessions on the following topics; Severe Accident Research, Primary System Integrity, Advanced Reactor Research, Thermal Hydraulics, Aging Research, Products and Applications, Advanced Control System Technology, Advanced Instrumentation and Control Hardware, and Human Factors Research. Commissioner Forrest J. Remick of NRC and Prof. Leonid A. Bolshov, Director of the Russian Academy of Sciences, Institute of Nuclear Safety, will open the meeting.

Attendees may register at the meeting or may register in advance by contacting Susan Monteleone, Brookhaven National Laboratory, Department of Nuclear Energy, Building 130, Upton, NY 11973, Telephone (516) 282–7235, or Christine Bonsby, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–3618.

Dated at Rockville, Maryland, this 9th day of September 1993.

For the Nuclear Regulatory Commission.

Alois J. Burda,

Deputy Director, Financial Management, Procurement and Administration Staff, Office of Nuclear Regulatory Research.

[FR Doc. 93–22644 Filed 9–15–93; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF STATE

[Public Notice No. 1866]

Shipping Coordinating Committee Assembly and Associated Bodies; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1 p.m. on Wednesday, October 6, 1993, in room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the 18th Session of the Assembly, the 17th Extraordinary and the 71st session of the Council, and the Special one day Joint session of the Maritime Safety and Marine Environment Protection Committees of the International Maritime Organization (IMO) which are scheduled during the period October 22 through November 5, 1993, at IMO Headquarters in London. The purpose of the meeting is to discuss the papers received and to draft U.S. positions.

Among other things, the items of particular interest are:

Reports of the IMO Committees

Reports on diplomatic conferences

Work program and budget for 1994–1995

Proposed amendments to various conventions

Members of the public may attend the meeting up to the capacity of the room. Interested persons may seek information by writing: Mr. Gene F. Hammel, U.S. Coast Guard Headquarters (G–CI), 2100 Second Street SW., room 2114, Washington, DC 20593–0001 or by calling: (202) 267–2280.

Dated: September 9, 1993.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 93–22640 Filed 9–15–93; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

September 10, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0021
Form Number: CF 3499
Type of Review: Reinstatement
Title: Application and Approval to Manipulate, Examine, Sample or Transfer Goods
Description: Customs Form 3499 is prepared by importers or consignees as an application to request examination, sampling, repacking or transfer of merchandise under Customs supervision. The form is also an application for the manipulation of merchandise in a bonded warehouse and abandonment or destruction of merchandise.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 2,290
Estimated Burden Hours Per Respondent: 6 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 13,740 hours
OMB Number: 1515–0136
Form Number: None
Type of Review: Reinstatement
Title: Establishment of a Manufacturing Warehouse
Description: An application to establish a manufacturing warehouse is made to the district director for the port in which the premises are located. The application must provide the size, location, type of manufacture to be conducted and the kinds of materials to be stored and used therein.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 3
Estimated Burden Hours Per Respondent: 3 hours
Frequency of Response: On occasion
Estimated Total Reporting Burden: 9 hours
Clearance Officer: Ralph Meyer (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 93–22656 Filed 9–15–93; 8:45 am]

BILLING CODE: 4820–02–P

Advisory Committee to the National Center for State and Local Law Enforcement Training; Meeting

AGENCY: Advisory Committee to the National Center for State and Local Law Enforcement Training, Treasury.

ACTION: Notice of meeting.

SUMMARY: The agenda for this meeting includes: Opening remarks by the Director of the Federal Law Enforcement Training Center and Committee Co-chairs; training program development updates on Hate/Bias Crimes, The GREAT program, Airborne Counterdrug Operations Training; and status of initiatives—OATO/OSL, Operation Alliance, Military Liaison, and Drug Development Training Program.

DATES: September 21, 1993.

ADDRESSES: Federal Law Enforcement Training Center, Building 94, Glynco, GA 31524.

FOR FURTHER INFORMATION CONTACT: Hobart M. Henson, Director, National Center for State and Local Law

Enforcement Training, Federal Law Enforcement Training Center, Glynco, GA 31524.

Dated: September 8, 1993.

Hobart M. Henson,

Director, National Center for State and Local Law Enforcement Training.

[FR Doc. 93–22657 Filed 9–15–93; 8:45 am]

BILLING CODE 4810–32–M

[Treasury Directive Number: 15–56]

Delegation of Authority Under the Counterfeit Deterrence Act of 1992

September 7, 1993 .

1. *Delegation.* Pursuant to the authority vested in the Assistant Secretary (Enforcement) by Treasury Order (TO) 105–11, the Director, United States Secret Service, is hereby delegated all responsibilities and authorities to perform the functions of the Assistant Secretary (Enforcement) with respect to 18 U.S.C. 504, as amended by the Counterfeit Deterrence Act of 1992 (subtitle E of title XV of Public Law 102–550), including:

a. The promulgation of regulations concerning color illustrations of selected U.S. currency; and

b. The establishment of a system (pursuant to 18 U.S.C. 504) which ensures that the legitimate use of electronic methods used for the acquisition, recording, retrieval, transmission or reproduction of any obligation or other security, and retention of such reproductions, by businesses, hobbyists, press or others is not unduly restricted.

In performing these functions, the Director, or designee, shall, when appropriate, consult with the Advanced Counterfeit Deterrence Steering Committee. Any regulations shall be issued in accordance with the procedures set forth in Treasury Directive 28–01, "Preparation and Review of Regulations."

2. *Redelegation.* The Director, United States Secret Service, may redelegate this authority in writing to the Deputy Director or any Assistant Director of the United States Secret Service.

3. *Authority.* TO 105–11, "Delegation of Authority Under the Counterfeit Deterrence Act of 1992," dated June 9, 1993.

4. *Office of Primary Interest.* Office of the Assistant Secretary (Enforcement).

Ronald K. Noble,

Assistant Secretary (Enforcement).

[FR Doc. 93–22655 Filed 9–15–93; 8:45 am]

BILLING CODE 4810–25–P

Customs Service

[T.D. 93–73]

Extension of Saybolt, Inc., Customs Gauger Approval and Laboratory Accreditations to the Site Located in Wilmington, North Carolina

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of the extension of Saybolt, Inc., Customs gauger approval and accreditation to include their Wilmington, North Carolina facility.

SUMMARY: Saybolt, Inc., of Kenilworth, New Jersey, a Customs approved gauger and accredited laboratory under Section 151.13 of the Customs Regulations (19 CFR 151.13), has been given an extension of its Customs gauger approval and laboratory accreditations to include the Wilmington, North Caroline Site. Specifically, the extension given to the Wilmington site will include the approval to gauge petroleum and petroleum products, organic compounds in bulk and liquid form and animal and vegetable oils; and accreditations to perform the following laboratory analyses: API Gravity, sediment and water, water by distillation, sediment by extraction, distillation characteristics, Reid vapor pressure, Saybolt universal viscosity, percent weight of sulfur, xylene content of mixed xylenes and percent composition by weight of benzene, toluene and xylenes.

SUPPLEMENTARY INFORMATION: Part 151 of the Customs Regulations provides for the acceptance at Customs Districts of laboratory analyses and gauging reports for certain products from Customs accredited commercial laboratories and approved gaugers. Saybolt, Inc., a Customs-approved commercial gauger and accredited laboratory, has applied to Customs to extent its Customs gauger approval and certain laboratory accreditations to its Wilmington, North Carolina facility. Review of the qualifications of Saybolt, Inc., Wilmington site shows that the extension is warranted and, accordingly, has been granted.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Chief, Technical Branch, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave., NW., Washington, DC 20229 (202–927–1060).

Dated: September 13, 1993.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 93–22671 Filed 9–15–93; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Training Program With the Newly Independent States: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) announces a competitive grants program for non-profit organizations to develop training programs in (1) local government and public administration, (2) business administration and business development, (3) rule of law and (4) independent media development for the following countries: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

Interested applicants are urged to read the complete **Federal Register** announcement before addressing inquiries to the Office or submitting their proposals.

After the deadline for submitting the proposal, USIA officers may not discuss this competition in any way with applicants until final decisions are made.

ANNOUNCEMENT NUMBER: The Announcement Number is E/P–94–7. Please refer to this number in all correspondence or telephone calls to the Agency.

DATES: Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, November 19, 1993. Faxed documents will not be accepted, nor will documents postmarked November 19, 1993 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grant activity should begin after April 1, 1994.

ADDRESSES: You must submit the original and 14 copies of the proposal, as indicated in the application checklist included in the Application Package. The original and two copies should

contain all applicable TABS. The rest of the copies should contain TABS A through D only. Please submit before the application deadline to: U.S. Information Agency, REF: Citizen Exchange: Commonwealth Training Program, Competition E/P–94–7, Office of Grants Management (E/XE), 301 Fourth Street, SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations, institutions should contact Molly Raymond, Division Chief for Russia/Eurasia Programs, Office of Citizen Exchanges (E/PN), room 216, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone: 202–619–5326. To request a complete Application Package, including all necessary forms and guidelines for preparing proposals and specific budget preparation information, please mail your request or fax (202) 619–4350.

Note: A separate announcement for training programs with Central and Eastern Europe will be forthcoming.

This NIS Training Competition has been designed to respond to specific training needs identified by the participating countries. Please read it carefully to determine which projects qualify with what geographic areas.

Overview of the Newly Independent States (NIS) Training Program

USIA is interested in proposals that encourage the growth of democratic institutions in the NIS. The main areas are local government and public administration; rule of law; business management; and media.

The projects may include: Internships; study tours; short-term, non-technical training; consultations; and extended, intensive workshops taking place in the United States or in the countries listed in this announcement.

In Russia, preference will be given to projects in the Urals, Siberia and the Russian Far East.

We encourage applicants to design creative training programs aimed at non-English speakers both for in-country as well as for U.S.-based training projects.

USIA is interested in proposals whose design takes into account the need for ongoing sharing of information and training. Examples include: "train the trainers" models; the creation of indigenous training centers; plans to create professional networks or professional associations to share information.

Note: While this competition may fund programs in which American universities work with NIS counterparts, it is not intended to be a university linkage program. Such programs are funded by USIA's Office of Academic Programs (E/A) and proposals whose purpose is to exchange faculty or otherwise support direct academic links should be submitted under the E/A RFP for the University Linkage Programs.

Local Government and Public Administration

USIA is interested in proposals for training programs that foster effective administration of local and regional governments.

Programs in Public Administration for Kazakhstan will not be accepted.

Proposals are encouraged for the following themes/topics which have been requested by USIS posts in Ukraine and Russia:

- Russia: Projects with former party schools which have become personnel (or "cadre") training centers and are attempting to adapt training to requirements of public administration in a market economy.
- Ukraine: Priority will be given to programs on such themes as: setting up a civil service and the concept of merit-based recruitment; the relationship between government and business; how to create a business-friendly environment through local laws and practices; the American practice for combatting corruption in law enforcement officials; governmental budgeting process; and taxation. Some Ukrainian partner institutions might include the Institute of Public Administration in Kiev, the Lviv Management Institute, the International Management Institute in Kiev.

Rule of Law

Proposals that do not overlap or duplicate USAID-funded projects will be considered. For further information please contact the Office of Citizen Exchange (E/PN), as indicated above.

Business Administration and Development

USIA will consider projects in Business Administration and Development for all NIS countries except Russia. Preference will be given to projects in the Central Asian countries.

USIA's definition of business development and administration is broad. It includes: small business development, economic privatization and agri-business development, including food distribution systems or the role of family farms. USIA is interested in projects that strengthen university business departments and provide management training for people already in the work place. In addition, the following USIS posts have expressed interest in the following specific themes:

- Kazakhstan: Proposals that would offer "train the trainers" models, business simulations and programs that would assist fledgling business institutes in the country with the basics of market economics and entrepreneurship; projects that will strengthen institutional and professional relationships with such institutions as the Kazakhstan Academy of Management, the Kazakhstan Institute of Management and Economics, or the University of Kazakhstan. Projects outside of Almaty are also encouraged.
- Ukraine: Proposals are encouraged on the following themes: Business ethics; entrepreneurship; how to start a small business; how to promote business; and business curriculum development.

Independent Media Development

Special consideration will be given to projects in media development, especially for Ukraine, with priority on training that takes place in the United States. USIA is interested in media training proposals that focus on journalistic training, management of media organizations, fostering independent media. Journalism training in basic skills and concepts could include: effective writing, investigative reporting, objectivity, the clear labeling of editorials and opinion pieces, intellectual property issues and ethics.

Media management training (both print and electronic) should focus on management of media as a business: management techniques, desk top publishing, advertising, marketing, distribution, personnel, public relations, and the financial benefits and pitfalls of journalistic advocacy. USIS posts in the following countries have indicated their priority themes:

- Georgia: Proposals in media training that include a U.S.-based internship for six to eight weeks for print and TV journalists. The participants would be selected directly by the U.S. Embassy.
- Ukraine: The following topics have priority: ethics in journalism; straight news reporting; marketing and advertising in print and broadcast media.

Programmatic Considerations

Pursuant to the Bureau's authorizing legislation, programs must maintain a nonpolitical character and should be balanced and representative of the diversity of American political, social and cultural life.

USIA will give careful consideration to proposals that demonstrate:

(1) In-depth, substantive knowledge of the issues of concern to these countries;

(2) First-hand connections with the institutions in the country and a commitment to continue the institutional relationship after the completion of the grant period;

(3) The capacity to organize and manage the exchange, including appropriate orientation for the participants, handling of all pre-departure arrangements and coordination of the program in the United States. Specific arrangements will vary by country; please consult USIS posts before preparing proposals.

Institutions should present a detailed work plan, including a reasonable time table; a description of all phases in the project; and implementation (day-to-day handling of logistics and management of the delegation).

Materials Development

USIA encourages the development of written materials in Russian, Ukrainian, or other local languages to enhance the training programs. Organizations should canvas their own resources and, to the extent possible, use already translated material.

If not already available, glossaries of specialized terms in the fields of public administration, business, rule of law and media should be developed in Russian, Ukrainian and, if feasible, other local languages.

In developing written materials, consideration should be given to their wider use, beyond the immediate training program at hand. USIA is interested in organizations' ideas on how to "reuse" specialized materials by providing them to universities, libraries or other institutions for use by a larger audience.

Other Program Considerations

Consultation with USIS or American Embassy staff in the development of a training proposal is encouraged. In some countries the Embassies play an active role from participants' selection to topics and program content. As noted above, applicants should consult the USIS office at the U.S. Embassies before submitting proposals.

Selection of Participants: A project proposal should clearly describe the type of person who will participate in the program and the reasons for participation. The process used to identify prospective candidates should be described (e.g., nominations from employers, open competition, applications, interviews, etc.).

Grantee institutions are expected to develop the initial slates of candidates. However, USIS and American Embassies retain the right to make the final choice and to accept or deny participants recommended by the grantee institution. In some cases the USIS office may wish to control selection completely. Again, as noted above, consultation with USIS officers is encouraged before drafting a proposal.

Cost Sharing

A proposal's cost-effectiveness—including in-kind contributions and ability to keep administrative costs low—is a major consideration in the review process. Cost-sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E—Cost Sharing and Matching and should be described in the proposal. In the event that the Recipient does not provide the minimum amount of cost-sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

Funding

The decision to submit a proposal should not be taken lightly. Competition for USIA funding is always keen and this program is among the most highly competitive. The selection of grantee institutions will depend on program substance; cross-cultural sensitivity; the applicant's familiarity with the substantive issues in the grant proposal; and proven ability to carry out the program successfully. Since USIA grant assistance constitutes only a portion of the total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. Cost sharing is strongly recommended; it indicates a commitment on the part of the prospective grantee institution to the project.

Proposals for less than $200,000 will receive preference. Organizations with less than four years of successful experience in managing international exchange programs are limited to grants of $60,000.

All participants are covered under the terms of a USIA-sponsored health insurance policy. The premium is paid directly to the insurance company by USIA.

The following program and administrative items are eligible for consideration for funding:

1. International and domestic air fares; transit costs; ground transportation costs.

2. Per diem. Organizations should use the published federal per diem rates for the individual American cities as well for the NIS cities included in the proposal. Please keep in mind that the per diem rates in the NIS can be significantly reduced if in-country expenses are cost-shared with partner institutions.

3. Escort-Interpreters. Interpretation for delegations is provided by the State Department's Language Services Division. USIA grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $140/day per diem for each State Department interpreter, as well as home-program-home air transportation of $400 per interpreter and any U.S. travel expenses during the program itself. Salary expenses are covered separately and are not part of a grantee's budget proposal.

4. Books and cultural allowances. Participants are entitled to a one-time book allowance payment of approximately $200; a cultural allowance of $150 is also allowed per participant. Accompanying staff do not get these benefits. Escort interpreters are reimbursed for actual expenses incurred for accompanying participants to cultural events.

5. Consultants. Consultants from outside the grantee organizations may be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250/day. Subcontracting organizations may also be used. The written agreement between the prospective grantee and subcontractor must be included in the proposal. Principal administrative responsibility must reside with prospective grantee institutions, not subcontractors or consultants.

6. Materials development. Proposals may contain costs to purchase, develop and translate material for participants. Grant funds may not be used to purchase equipment.

7. Room rental, generally not to exceed $250/day.

8. One working meal per project. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner. The number of invited guests may not exceed number of participants by more than factor of two.

9. Travel allowances of $70 each way for each participant which will be used

for incidental expenditures incurred during international travel.

10. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits and other direct and indirect costs, per detailed instructions in the Application Package.

Note: Unlike previous competitions, this RFP does not place a cap on administrative costs.

11. Audit Requirements:

The Recipient's proposal shall include the cost of an audit that:

a. Complies with the requirements of OMB circular No. 1–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;

b. Complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and

c. Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

a. Preparation of basic financial statements, and other accounting services; and

b. Preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the Application Package. Incomplete proposals will not be considered.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals are reviewed by USIS posts and by USIA's Office of European Affairs and the Office of Contracts. Proposals may also be reviewed by the Agency's Office of the General Counsel.

Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant award resides with USIA's contracting officer.

The award of any grant is subject to the availability of funds.

The Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of grant, all preparation and submission costs are at the applicant expense. USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will review proposals based on their conformance with the objectives of the RFP and on the following criteria:

1. *Quality of Program Idea:* The proposal should exhibit originality, substance, and relevance to USIA's mission.

2. *Program Planning and Ability to Achieve Program Objectives:* The proposal should clearly show how the grantee institution will meet the program's objectives. The proposal should include a detailed agenda and work plan that illustrate logistical capacity. The project content should be substantive and the planned execution realistic.

3. *Institutional Ability/Record:* Interested institutions should demonstrate their potential for program excellence and/or provide documentation of successful programs. If an organization is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements from past Agency grants, as determined by USIA's Office of Contracts (M/KG), will be considered. Pertinent evaluation results of previous projects are part of this assessment.

4. *Thematic and Area Expertise:* Proposals should reflect the institution's expertise in the subject area and should address the specific issues of concern facing the countries involved in the project.

5. *Project Personnel:* Personnel's thematic and logistical expertise should be relevant to the proposed program. Resumes should be suited to the specific proposal and no longer than two pages each.

6. *Cross-Cultural Sensitivity:* Proposals should show evidence of sensitivity to historical, linguistic, and other cross-cultural factors, as well as appropriate knowledge of the geographic area, and should show how this sensitivity will be used in practical aspects of the program, such as pre-departure orientations or briefing of American hosts.

7. *Multiplier Effect/Follow-On Activities:* Proposed programs should strengthen long-term mutual understanding, to include maximum sharing of information and establishment of long-term institutional and individual ties. Proposals should also reflect an institutional commitment for continued exchange activity beyond the term of the USIA grant.

9. *Cost-Effectiveness/Cost-Sharing:* The overhead and administrative components should be kept as low as possible. Costs to USIA per exchange participant should be reasonable, and all items proposed for USIA funding must be necessary and appropriate to achieve the program's objectives. Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution.

9. *Project Evaluation:* Proposals should include a plan to evaluate the project's success.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about February 14, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: September 10, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–22586 Filed 9–15–93; 8:45 am]

BILLING CODE 8230–01–M

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on September 16 in room 600, 301 4th Street, SW., Washington, DC from 10 a.m. to 11:30 a.m.

The Commission will meet with Mr. Donald Hamilton, Director, USIA's Office of American Republics, and Mr. Christopher Snow, former Public Affairs

Officer, USIS Tel Aviv, to discuss public diplomacy in Latin America and the Middle East.

FOR FURTHER INFORMATION CONTACT: Please call Gloria Kalamets, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: September 13, 1993.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 93–22666 Filed 9–15–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 178
Thursday, September 16, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 Fed. Reg. 46674, Thursday, September 2, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Tuesday, September 14, 1993.

CHANGE IN THE MEETING:

Open Session

Item No. 3. Extension of Management Directives 713 and 714 (Federal Sector Affirmative Employment) to October 1, 1994 has been removed from the Agenda

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: September 13, 1993.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 93–22740 Filed 9–14–93; 10:40 am]

BILLING CODE 6750–06–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 Fed. Reg. 46674, Thursday, September 2, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Tuesday, September 14, 1993.

CHANGE IN THE MEETING: The Closed Session of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: September 14, 1993.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 93–22825 Filed 9–14–93; 3:32 pm]

BILLING CODE 6750–06–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, September 21, 1993, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Recapitalization Schedule for the Bank Insurance Fund; Adequacy of the Bank Insurance Fund and Savings Association Insurance Fund Assessment Rates.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3111 (Voice); (202) 942–3132 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: September 14, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–22822 Filed 9–14–93; 3:29 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Thursday, September 23, 1993 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Americans for Robertson, Inc.—Final Repayment Determination and Proposed Statement of Reasons (LRA #335) (continued from the meeting of September 16, 1993).

Advisory Opinion 1993–16: Nora Schwartz on behalf of Blue Cross of California.

Advanced Notice of Proposed Rulemaking on Commission Responsibilities Under the National Voter Registration Act.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 93–22821 Filed 9–14–93; 3:29 pm]

BILLING CODE 6715–01–M

Corrections

Federal Register
Vol. 58, No. 178
Thursday, September 16, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

Defense Federal Acquisition Regulation Supplement; Restriction on Machine Tools and Powered and Non-powered Valves

Correction

In proposed rule document 93-21666 beginning on page 47243 in the issue of Wednesday, September 8, 1993, make the following correction:

On page 47243, in the first column, under **DATES:**, in the fourth and fifth lines, "(insert 30 days after publication)" should read "October 8, 1993".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6989

[AK-932-4210-06; AA-51033]

Revocation of Executive Order No. 6546, Dated January 2, 1934; Alaska

Correction

In rule document 93-16717 appearing on page 38083 in the issue of Thursday, July 15, 1993, in the 3d column, in the 12th line, "4 94 acres." should read "4.94 acres.".

BILLING CODE 1505-01-D

federal register

Thursday
September 16, 1993

Part II

Department of Education

Early Education Program for Children With Disabilities; Notice

DEPARTMENT OF EDUCATION

Early Education Program for Children With Disabilities

AGENCY: Department of Education.

ACTION: Notice of Final Funding Priorities for Fiscal Years 1994 and 1995.

SUMMARY: The Secretary announces priorities for fiscal years 1994 and 1995 under the Early Education Program for Children with Disabilities. The Secretary takes this action to focus Federal financial assistance on an identified national need for the development and implementation of effective practices to enhance services to children with disabilities, birth through age eight, and their families. These priorities build the capacity of individuals and agencies to effect change with this population of children and their families.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Gail Houle, U.S. Department of Education, 400 Maryland Avenue SW., room 4613, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–9045. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

SUPPLEMENTARY INFORMATION: This notice contains four funding priorities intended to advance the purpose of the Early Education Program for Children with Disabilities. The purpose of the program is to provide Federal financial assistance (a) to address the special needs of children with disabilities, birth through age eight, and their families; and (b) to assist State and local entities in expanding and improving programs and services for these children and their families. These priorities support projects for model demonstration, outreach, model inservice training, and a research institute.

Through the provision of improved services and better trained service providers, these priorities support National Education Goal 1 by assisting young children with disabilities to begin school ready to learn.

On June 23, 1993 the Secretary published a notice of proposed priorities in the **Federal Register** (58 FR 34178).

Note: This notice of final priorities does not solicit applications. A notice inviting applications under this program is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, eight parties submitted comments. An analysis of the comments and of the changes in a priority since publication of the notice of the proposed priorities follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

General

Comment: Several commenters asked the Department to consider expanding the competitive priority under all the priorities to include projects that address the unique needs of young children with specific disabilities, such as attention deficit disorder and significant speech and motor disabilities.

Discussion: The Secretary recognizes the importance of conducting research and developing and disseminating models for children with different kinds of disabling conditions who require early intervention, special education, or related services, including children with attention deficit disorder and children with significant speech and motor disabilities. Children with these disabilities who meet the eligibility requirements of the program could certainly be included within models funded under these absolute priorities. However, the Secretary believes that due to recent legislative initiatives and a dearth of replicable models, it is most important to focus particular attention at this time on the populations and areas described in the competitive priorities.

Changes: None.

Comment: One commenter recommended an increase in funding and an increase in the number of awards to be made under all priorities.

Discussion: In announcing proposed priorities, the Secretary does not establish funding levels for the projects or provide information about the number of awards to be made under each priority. Information about funding levels and number of awards is provided in the notice inviting applications for specific competitions.

Changes: None.

Comment: One commenter recommended that the Secretary establish an additional absolute priority designed to demonstrate effective ways to change the delivery of early childhood services from segregated settings to integrated, inclusive, natural environments.

Discussion: Funds are not sufficient to establish an additional absolute priority. Further, the Secretary believes that the established priorities encourage effective ways to change the delivery of services from segregated to integrated environments.

Changes: None.

Comment: One commenter recommended adding to both the Model Demonstration Projects for Young Children With Disabilities priority and the Outreach Projects for Young Children With Disabilities priority, a competitive priority that addresses appropriate and successful least restrictive environment practices for young children with disabilities.

Discussion: The Secretary believes that the language in each of the priorities is sufficient in addressing appropriate and successful least restrictive environment practices for young children with disabilities.

Changes: None.

Comment: One commenter recommended that priorities for funding specifically indicate that research and training projects must address the social issues of inclusion, particularly in the case of children with sensory impairments.

Discussion: The Secretary recognizes the importance of social issues related to inclusion practices. Models that address the social issues of inclusion could certainly be funded under these priorities. However, the Secretary does not believe it necessary to add specific language that requires research and training projects to address the social issues of inclusion.

Changes: None.

Proposed Absolute Priority 1—Model Demonstration Projects for Young Children With Disabilities

Comment: One commenter (1) recommended that language in the priority requiring information about children's characteristics (including disability, diagnosis, functioning level) be deleted because the language perpetuates many of the problems in labeling of young children, (2) recommended requiring more information about outcomes for children without disabilities who would be involved in project activities, (3) contended that the priority language related to evaluation emphasized quantitative methods and did not include qualitative methods, and (4) contended that the priority language

emphasized developing replicable models rather than developing effective systems change procedures.

Discussion: The Secretary believes that the benefits of requiring information about children's characteristics far outweigh any potential disadvantages. For example, it would be impossible to judge the appropriateness of particular intervention strategies for particular children in the absence of information about the children for whom the model was developed.

Regarding the second and third recommendations, the priority sets minimum requirements for outcome and evaluation data. The Secretary does not believe that requiring more information about child outcomes and additional evaluation data of all projects is appropriate. However, the minimum requirements set in the priority may be expanded to provide data on children who are developing typically and to include qualitative evaluation approaches, if these are pertinent to the successful operation of the model. In the past, many model developers have supplemented quantitative methods with qualitative methods that have produced useful information for potential adopters.

Finally, the Secretary recognizes the value of supporting projects that develop effective systems change procedures. Recently, some demonstration projects have incorporated systems change efforts as project components. The priority, as proposed, does not preclude model development in the area of systems change.

Changes: None.

Proposed Absolute Priority 2—Outreach Projects for Young Children With Disabilities

Comment: One commenter recommended that the priority include an additional competitive preference that addresses the need for collaborative, multi-disciplinary team training approaches to personnel development.

Discussion: The Secretary recognizes the importance of disseminating collaborative, multi-disciplinary team training approaches to personnel development. Applications to disseminate these types of models could certainly be submitted to address the areas described in either of the competitive priorities.

Changes: None.

Comment: One commenter recommended that no minimum award amount be specified to applicants because many outreach programs have access to other funds.

Discussion: In announcing proposed priorities, the Secretary does not establish funding levels for projects. Information regarding funding levels is provided in the notice inviting applications for a specific competition. However, these levels are presented as a range; they are stated as estimates only; and the Secretary would consider applications requesting less funding.

Changes: None.

Proposed Absolute Priority 3—Early Childhood Model Inservice Training Projects

Comment: One commenter recommended that the priority be amended to emphasize that training models include goals and activities related to diversity, cultural competence, and cultural sensitivity.

Discussion: Although there is language in the background section of the priority to this effect, the Secretary believes the language should be included in the priority section as well.

Changes: The Secretary has added to the priority, language requiring projects to include goals, objectives, and activities to ensure that personnel participating in the training acquire skills to work effectively with children and families who are members of cultural, linguistic, and racial minority groups.

Proposed Absolute Priority 4—Early Childhood Research Institute on Integration

Comment: One commenter recommended that the priority (1) focus on infants and toddlers, as well as children three through five years of age; (2) include a component on family issues related to integrated services, and (3) include an emphasis on early literacy skills of preschool-aged children with disabilities.

Discussion: Although conducting research related to providing services to infants and toddlers with disabilities in natural and integrated environments is important, the Secretary believes that expanding the focus of the Institute to include infants and toddlers would unduly strain the available resources. The Secretary believes that the language of the priority does not preclude a component on family issues or early literacy skills.

Changes: None.

Comment: One commenter recommended that (1) the focus of the priority include six-through-eight year-olds, as well as three-through-five year-olds, (2) the Institute be required to disseminate the results of its activities broadly, and (3) the Institute be required, as a part of its dissemination activities, to collaborate with technical assistance, training, and dissemination projects supported by the Office of Special Education Programs.

Discussion: Although conducting research related to providing services to six-through-eight year-olds with disabilities in integrated environments is important, the Secretary believes that expanding the focus of the Institute to include these children would unduly strain the available resources. However, in evaluating the effectiveness of certain interventions or strategies, it may be appropriate for the Institute to conduct follow-up investigations of children as they enter the early elementary grades in school. The Secretary agrees that the results and products of the Institute's activities should be disseminated broadly and that its dissemination activities should be coordinated with other projects supported by the Office of Special Education Programs. However, the Secretary does not believe it is necessary to add to the priority language requiring broad dissemination. In fact, the program regulations in 34 CFR 309.34 require that all projects supported under the Early Education Program for Children with Disabilities disseminate their findings and products broadly.

Changes: None.

Comment: One commenter (1) recommended that the priority require the Institute to develop and use methodologies that facilitate inclusion, with research directed to cost benefit analyses, staff requirements, and administrative arrangements; (2) stated that the priority offered no flexibility for emergent designs using qualitative methodology; and (3) addressed the number of institutes funded, stating that funding only one institute may disallow the participation of certain researchers.

Discussion: The Secretary believes that the priority allows for the kinds of research activities suggested by the commenter's first and second recommendations. Regarding the third issue, while the Secretary is unable to fund more than one institute due to constraints on available funds, all eligible applicants are allowed to apply for the award, and the evaluation of each application is based on the selection criteria in the program regulations.

Changes: None.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet any one of the following priorities. The Secretary funds

under this competition only applications that meet these absolute priorities:

Absolute Priority 1—Model Demonstration Projects for Young Children With Disabilities

Background: This priority supports projects that develop, implement, evaluate, and disseminate new or improved approaches for serving young children with disabilities (infants, toddlers, and children ages birth through eight) and their families. Projects supported under this priority are expected to be major contributors of models or components of models for service providers and for outreach projects under the program.

The Secretary anticipates funding projects for a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. Projects supported for an initial three-year period may be eligible for an additional two years of funding to field test the viability of their models at other site locations.

In determining whether to continue funding for the fourth and fifth years of the project period, the Secretary, in addition to applying the requirements of 34 CFR 75.253(a), considers the recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day site visit, are to be performed during a project's third year and may be included in that year's annual evaluation required under 34 CFR 75.590. The three-plus-two-year funding period is expected to determine whether models yielding positive results at an original site can be successfully replicated at other locations.

Priority: A model demonstration project considered for funding under this priority must—

(a) Address a specific service problem or issue;

(b) Address specific components or strategies and the rationale—based on theory, research, or evaluation—for those components or strategies;

(c) Delineate a specific population of children—i.e., by age, disability, diagnosis, level of functioning, and membership in a special population, if appropriate—and their families;

(d) Produce detailed procedures and materials that enable others to replicate the model as implemented at the original site;

(e) As appropriate, develop and evaluate the model in integrated, age-appropriate settings that facilitate the interaction between project participants and their peers without disabilities, including models developed for use in homes or in hospital settings (such as neonatal intensive care units); and

(f) Evaluate the model at the original model development site and—if approved for funding beyond the initial three years of the project period—at other sites to determine whether the model can be adopted by other sites and yield similar positive results. In its evaluation, a project must use multiple outcome measures to determine the effectiveness of the model and its component strategies, including measures of multiple, functional child and family outcomes, other indices of the effects of the model, and cost data associated with implementing the model.

In determining whether to continue a project for the fourth and fifth years of the project period, in addition to considering factors in 34 CFR 75.253(a), the Secretary considers the following:

(a) The degree to which the model developed by the project is, or would be by the end of year three, designed soundly and replicable by other agencies, and provides state-of-the-art interventions for the target population.

(b) The extent to which dissemination of the model would meet a significant or unique service need in other geographic locations.

(c) The degree to which the project has initially produced compelling, quantifiable evidence of the effectiveness of the model as implemented at the original development site.

(d) Availability of funding for the model from sources other than the Early Education Program for Children with Disabilities to support the operation of the model at the original development site during years four and five.

(e) The extent to which the project has documented the commitment of other agencies not affiliated with the original project to adopt its model and participate in evaluation of the model during years four and five of the project period.

(f) The extent to which the project has sound plans for aiding in replication and for evaluating its model at replication sites during years four and five of the project period.

A project that applies for funding for the fourth and fifth years must set aside in its budget for the third year funds to cover costs associated with the services to be performed by the review team appointed by the Secretary to evaluate the project in the third year. These funds are estimated to be approximately $4,000.

Competitive Priority: Within absolute priority 1, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet the following competitive priority. The Secretary awards up to 10 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

Projects designed to develop, implement, evaluate, and disseminate models that (1) incorporate the appropriate use of assistive technology to enhance services to young children with disabilities; or (2) address the unique needs of young children with low incidence disabilities, such as deaf-blindness.

Absolute Priority 2—Outreach Projects for Young Children With Disabilities

Background: This priority supports projects that build the capacity of educational and other agencies to adopt and implement proven models—including inservice training models—or components of those models based on specific needs. At this time States are striving to provide improved services to young children with disabilities (infants, toddlers, and children ages birth through eight) and their families. Thus, State agencies and local service agencies need information about and assistance in accessing the range of available, successful practices, curricula, and products.

The models or components of models selected for outreach needs have not been developed through this program. Projects may disseminate and help replicate multiple models or components of models that were not developed by the applicant. To enhance the visibility of the model or model components and to increase the impact of outreach activities, projects are encouraged to select sites in multiple States.

For projects planning to conduct outreach activities in multiple States, the plan of operation should only include plans concerning specific sites and activities for the initial year. During the first year of outreach funding, the contractor for the early childhood technical assistance development system funded under section 623(c) of the Individuals with Disabilities Education Act (IDEA) will contact States regarding outreach projects funded under this priority. The contractor will assist States and projects in matching needs with projects' resources. Outreach projects will use the information provided by States to propose plans for years two and three of the project period. These proposed plans will be finalized during negotiation of grant

awards for years two and three of the project period.

Priority: An outreach project considered for funding under this priority must—

(a) Disseminate information about and assist in replicating a proven model or models—or proven components of models—that provide or improve services for young children with disabilities and their families;

(b) Coordinate its dissemination and replication activities with the lead agency for Part H of the IDEA for early intervention services or the State educational agency for special education, as well as with relevant technical assistance, information, and personnel development networks within the State;

(c) Include approaches relevant to programming in natural or least restrictive environments; effective involvement of families in the design, implementation, and evaluation of project activities; and interagency coordination if multiple agencies are involved in the provision of services;

(d) Ensure that the model or components of models are consistent with Part B and Part H of IDEA, are state-of-the-art, match the needs of the proposed sites, and have recent unambiguous evaluation information supporting their effectiveness;

(e) Employ activities that include, but need not be limited to, public awareness, product development and dissemination, site development, training, and technical assistance;

(f) Describe the effects of model components (e.g., expected costs, needed personnel, staff training, equipment) on potential users, sequence of model implementation activities, and criteria for selecting cooperating sites; and

(g) Evaluate the outreach activities to determine their effectiveness. The evaluation must include measures of types and numbers of sites where outreach activities are conducted, number of persons trained, types of follow-up activities, number of children and families served at the site where models were adopted or adapted, child and family progress, and changes in the model made by sites.

Competitive Priority: Within absolute priority 2, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet the following competitive priority. The Secretary awards up to 10 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

Projects that provide evidence that they are designed to build the capacity of educational and other agencies to adopt and implement proven models or components of models that (1) address the needs of groups of infants, toddlers, or young children with disabilities and their families from cultural, linguistic, or racial minority groups; or (2) address the unique needs of young children with low incidence disabilities, such as deaf-blindness.

Absolute Priority 3—Early Childhood Model Inservice Training Projects

Background: This priority supports capacity building projects that develop, demonstrate, evaluate, and disseminate inservice training models and accompanying materials. The purpose of these models is to prepare professionals and paraprofessionals to provide, coordinate, or enhance early intervention, special education, and related services. These services will target infants, toddlers, and preschool-aged children with disabilities, birth through eight years of age, and their families, including children with disabilities who may be from cultural, linguistic, or racial minority groups.

Priority: A model inservice training project considered for funding under this priority must—

(a) Identify the target population to be trained, including their roles and responsibilities, and the national needs addressed by the model;

(b) Delineate a conceptual framework upon which the training model is to be based, including the changes in personnel roles and responsibilities and the skills needed to implement the new roles or responsibilities;

(c) Identify the content of training and the format for delivery of training and other activities of the model;

(d) Develop and demonstrate an inservice training model for professionals, paraprofessionals, or both, who are currently providing services to infants, toddlers, and preschool-aged children with disabilities and their families, or to those individuals who through retraining could provide those services;

(e) Include goals, objectives, and activities to ensure that personnel participating in the training acquire skills to work effectively with children and families who are members of cultural, linguistic, and racial minority groups;

(f) Include within the model an array of follow-up and support activities that ensure that personnel participating in the training acquire the skills being taught and use that knowledge in meeting the service needs of young children with disabilities and their families;

(g) Coordinate with the State agencies responsible for the Comprehensive System of Personnel Development (CSPD) under Part H or Part B of IDEA, and arrange for credit to be granted to trainees by appropriate agencies, organizations, or institutions of higher education; and

(h) Evaluate the inservice training model through direct assessment of participants' skills following the training and, after a period of time, include some direct observation measures of trainees in the service setting using standardized observational rating techniques.

Competitive Priority: Within absolute priority 3, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet the following competitive priority. The Secretary awards up to 10 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

Projects that provide evidence that they will develop, demonstrate, evaluate, and disseminate models that (1) incorporate collaborative, multi-disciplinary, team training approaches to personnel development; or (2) focus on paraprofessionals and address their unique training needs.

Absolute Priority 4—Early Childhood Research Institute on Integration

Background: This priority supports an Early Childhood Research Institute to (1) identify administrative, attitudinal and programmatic barriers to integrating young children with disabilities three through five years of age in preschool, day care, and other programs; (2) develop and test strategies that are designed to overcome those barriers; (3) identify and test approaches to service delivery that are designed to maximize the combined effects of special education and related services, individualized planning and instruction, developmentally appropriate practice, and organized interactions between children with disabilities and peers without disabilities in integrated settings; and (4) conduct preliminary studies to identify strategies that are likely to facilitate the participation of young children with disabilities and their families in the broader array of services and events available in the community, including social and recreational activities accessed by all families with young children.

To address these issues, the Institute will conduct a program of research consisting of studies carried out at the service delivery level (preschool, day care, and other service settings), at the community level, and at the systems level. The Secretary requires the Institute to coordinate its research activities with other relevant efforts sponsored by the Office of Special Education Programs, including State-wide Systems Change Projects and research institutes supported under the Program for Children and Youth with Severe Disabilities (Part C of the Individuals with Disabilities Education Act).

The Secretary anticipates funding one cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the Institute for the fourth and fifth years of the project period, the Secretary, in addition to applying the requirements of 34 CFR 75.253(a), considers the recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day visit to the project, are to be performed during the last half of the Institute's second year and may be included in that year's annual evaluation required under 34 CFR 75.590.

Priority: The Early Childhood Research Institute considered for funding under this priority must—

(a) Conduct a program of research that addresses the issues identified above;

(b) Identify specific interventions or strategies that will be investigated;

(c) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the interventions or strategies that will be studied, the research methods and instrumentation that will be used, and the specific target populations and settings that will be studied;

(d) Collect, analyze, and report a variety of descriptive and outcome data, including (1) specific information on the settings, the service providers, the children and families targeted by the project (e.g., age, disability, level of functioning and membership in a special population, if appropriate), and (2) multiple, functional outcome data for the children and families who are the focus of the interventions or strategies;

(e) Conduct the research in typical, integrated school and community settings;

(f) Conduct the research using methodological procedures that are designed to produce unambiguous findings regarding the effects of the interventions or strategies, as well as any findings on interaction effects between particular strategies and particular characteristics of participants or settings. These findings will be rendered through appropriate sample selection and adequate sample size to permit use of the findings in policy analyses;

(g) Design the research activities in a manner that is likely to lead to improved services for children with disabilities and their families, including those who are members of cultural, linguistic, or racial minority groups;

(h) Develop and field test a variety of products that can be used for training and technical assistance activities with policymakers, administrators, community leaders, parents, and service providers that are likely to facilitate the integration of young children with disabilities and young children without disabilities;

(i) Coordinate research activities with other relevant efforts sponsored by the Office of Special Education Programs, including State-wide Systems Change Projects and research institutes supported under the Program for Children and Youth with Severe Disabilities (Part C of IDEA); and

(j) Provide research training and experience for at least 10 graduate students annually.

In determining whether to continue the Institute for the fourth and fifth years of the project period, in addition to considering factors in 34 CFR 75.253(a), the Secretary considers the following:

(a) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Institute.

(b) The degree to which the Institute's research designs and methodological procedures demonstrate the potential for producing significant new knowledge and products.

In order to apply for funding for years four and five, the Institute must set aside in its budget for the second year, funds to cover costs associated with the services to be performed by the review team appointed by the Secretary to evaluate the project in the second year. These funds are estimated to be approximately $4,000.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: 34 CFR part 309.

Program Authority: 20 U.S.C. 1423.

(Catalog of Federal Domestic Assistance Number: Early Education Program for Children with Disabilities 84.024)

Dated: September 10, 1993.

Andrew Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93-22608 Filed 9-15-93; 8:45 am]

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Federal Register

Thursday
September 16, 1993

Part III

Department of Education

Early Education Program for Children With Disabilities; Inviting Application for New Awards for the Fiscal Year (FY) 1994; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.024]

Early Education Program for Children With Disabilities; Notice Inviting Application for New Awards for the Fiscal Year (FY) 1994

Purposes of Program: The purpose of the program is to provide Federal financial assistance (a) to address the special needs of children with disabilities, birth through age eight, and their families; and (b) to assist State and local entities in expanding and improving programs and services for these children and their families.

The competitions announced by this notice support National Education Goal 1 by assisting young children with disabilities to begin school ready to learn.

Eligible Applicants: Public agencies and nonprofit private organizations may apply under these competitions. In addition, profitmaking organizations are eligible to apply for Early Childhood Model Inservice Training Projects.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 85, and 86; and (b) The regulations for this program in 34 CFR part 309.

Priorities: The priorities in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**, apply to this competition.

EARLY EDUCATION PROGRAM FOR CHILDREN WITH DISABILITIES

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Early Childhood Demonstration Projects (CFDA 84.024B).	1/10/94	3/12/94	$1,040,000	$120,000–140,000	$130,000	8	Up to 60.
Outreach Projects (CFDA 84.024D).	1/05/94	3/07/94	2,000,000	120,000–140,000	130,000	15	Up to 36.
Model Inservice Training Projects (CFDA 84.024P).	12/29/93	2/28/94	1,300,000	120,000–140,000	130,000	10	Up to 36.
Early Childhood Research Institute on Integration (CFDA 84.024K).	1/10/94	3/12/94	750,000	750,000	750,000	1	Up to 60.

Applications Available: October 20, 1993.

Note: The Department is not bound by any estimates in this notice.

For Applications: To request an application, telephone (202) 205–8485. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

For Further Information Contact: Gail Houle, U.S. Department of Education, 400 Maryland Avenue, SW., room 4613, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–9045. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

Program Authority: 20 U.S.C. 1423.

Dated: September 10, 1993.

Andrew Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93–22609 Filed 9–15–93; 8:45 am]

BILLING CODE 4000–01–M

federal register

Thursday
September 16, 1993

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing

24 CFR Part 200 et al.

Appraisals and Property Valuation; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 204, 206 and 267

[Docket No. R-93-1626; FR-3027-P-01]

RIN 2502-AF25

Appraisals and Property Valuation

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish minimum standards for (1) real estate appraisals made by staff, fee or contract appraisers in determining the maximum insurable mortgage amount in most HUD/FHA single family (one-to-four family) and multifamily transactions, and (2) the selection of appraisers by mortgagees. It would distinguish those appraisals that may be performed by State licensed appraisers from those that must be performed by State certified appraisers.

DATES: Comment due date: November 15, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this Notice to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Facsimile (FAX) are not acceptable. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Single family programs: Morris Carter, Director of the Single Family Development Division, room 9270, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone, voice: (202) 708–2720; (TDD) (202) 708–4594. (These are not toll-free numbers.)

Multifamily programs: Linda Cheatham, Director, Office of Insured Multifamily Development, room 6134, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone, voice: (202) 708–3000; (TDD) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Information Collection

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. Public reporting burden for the collection of information requirements contained in this rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

II. Background

The Department proposes to change its requirements with respect to the appraisal of both single family [1] and multifamily properties that are financed by mortgages insured by HUD/FHA under the National Housing Act (NHA).

There are two reasons for these changes. First, Congress has enacted legislation during the past three years that clearly points the direction which Federal agencies must follow to improve the quality of real property appraisals in federally related transactions. Title XI of Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), among other things, directs certain federal agencies which oversee financial institutions to adopt regulations governing the performance and use of appraisals in such transactions. In addition, the Department of Housing and Urban Development Reform Act of 1989 added section 202(e) to the NHA (12 U.S.C. 1708(e)) to require that the appraisal of all property securing an FHA-insured mortgage be performed in accordance with generally accepted appraisal standards and be prepared by a licensed or certified Appraiser. This latter requirement resembles the FIRREA mandate regarding appraisals for mortgage loans made by federally regulated financial institutions on or after December 31, 1992. Along with these legislative reforms, the Department proposes to implement another, quite different statutory addition. The Cranston-Gonzalez National Affordable Housing Act amended section 202(e) of the NHA to provide that single family Direct Endorsement (DE) lenders may select the appraiser for a given property evaluation and that the selection may include a corporate entity or other institution as well as an individual. That section also provides that an appraiser may enlist the assistance of other persons in performing the appraisal, but must maintain close supervision and accept ultimate responsibility for the result.

Second, apart from various legislative changes, this rulemaking reflects that HUD has been reevaluating the effectiveness of its current system of assigning single family property appraisers from fee panels. Experience has not shown to the Department's satisfaction that the delay and other administrative problems attendant with the use of a fee panel are justified by a commensurate benefit to the quality of appraisals. HUD is continuing to study the advisability of the panel system and for the present, although its use would be considerably diminished by these proposed changes, it would be retained for limited purposes as discussed below.

In light of these various considerations, the Department is proposing fundamental changes to its requirements for the appraisal (or whenever traditional comparison-based appraisal is not appropriate, a real estate consultation estimate) of both single and multifamily properties. Currently, HUD has a variety of approaches to standards for appraisers and appraisals, based to some extent on inherent differences between title I, title II single family, and title II multifamily programs. Approaches are very different, too, within the various multifamily programs because of particular statutory requirements.

For a single family mortgage insured under title II of the NHA, the appraised value of the home is typically a major factor in determining the maximum insurable amount. Appraisers are currently selected in either of two ways: The appraiser is assigned by HUD from a local fee panel of FHA approved independent appraisers, or the mortgagee may use one of its employees if both the mortgagee and the employee are approved for DE processing of

[1] In this preamble, the term "single family" is used synonymously with "1-to-4 family residential property;" each term also includes a manufactured home lot.

mortgage insurance applications. HUD admits only individuals to the panels; organizations are not empaneled. After section 202(e) was added to the NHA, the Department issued Mortgagee Letter 89–31, which requires that all fee and DE staff appraisers must meet State requirements in States with licensing or certification requirements. The appraisals themselves are governed by standards set out in HUD Handbook 4150.1 Rev. 1, "Valuation Analysis for Home Mortgage Insurance."

In many instances, HUD recognizes a Certificate of Reasonable Value issued by the Department of Veterans Affairs (VA) as evidencing compliance with HUD requirements for the design and construction of a single family property to be offered as security for an FHA insured mortgage loan. This would continue to be the case if VA appraisal requirements follow the provisions of FIRREA. The underlying principle of recognition matches that in § 267.3(c)(1) of this proposed rule. It should be noted that VA, for its part, could not recognize an appraisal performed for HUD/FHA purposes in any instance when the mortgagee had responsibility for selecting the appraiser as would be permitted under § 267.5. For VA purposes, lenders do not have such latitude, since 38 U.S.C. 1831 requires that each appraiser be assigned on a rotational basis from a fee panel selected and maintained by VA. Clearly, the legislative objective embodied in section 1831 does not yield to the existing policy of reciprocity between the two agencies.

In contrast to single family programs which basically address the financing of individual occupant-owned residences, multifamily programs are directed toward investment properties, primarily rental housing. The financing of income producing multifamily projects depends to a considerable extent upon the estimated net operating income resulting from gross rental income adjusted for vacancy and collection loss less operating expense and taxes, and the appraisal of such properties involves many considerations, e.g., economic life, market capitalization rates, mortgage interest rates, debt service rates, and rates of return on equity.[2] In the case of multifamily properties, HUD uses its staff or a contract appraiser for purposes of the appraisal and appraisal review, which are performed in accordance with Supplemental Standards contained in HUD Handbook 4465.1 Revision 2, Valuation Handbook for Multifamily Mortgage Insurance and other program guidelines.

Congress, moreover, has called for the use of different appraisal methods among FHA's multifamily programs, specifying for some a value approach based on economic soundness, while stating for others that financing must be measured in terms of an acceptable risk considering, among other things, replacement cost. The appraisal process becomes still more complex when subsidies are involved, and if the project will be financially sustained by any degree of government contribution, the appraiser must perform a real estate consultation to ascertain the mortgage amount which constitutes an acceptable risk in accordance with policies and instructions set forth in HUD Handbooks for the specific program and type of property concerned. Multifamily appraising is performed either by HUD staff or by qualified appraisers under contract to HUD.

Title I programs involve another, quite different approach to valuation. Appraisals play no role in determining the maximum insurable loan amount for smaller loans under the title I property improvement loan program, and only a limited role for the title I manufactured home loan program, since loans of both types are primarily character loans approved on the basis of the borrower's credit, rather than on the value of the security. Effective November 18, 1991, an appraisal is necessary for most property improvement loans which exceed $15,000 singly or in combination with other property improvement loans, since the borrower's equity in the property must be at least equal to the loan amount(s).[3] (See 24 CFR 201.20(a)(3).) The appraisal process in such cases is comparable to that for a single family purchase money mortgage insured under title II.

If the loan involves only the purchase of a manufactured home lot, the valuation process is also similar to a title II appraisal. If it involves a lot sold in combination with the purchase of a manufactured home, the appraised value of the lot is but one determinant of the maximum insurable loan amount which consists of the appraised value of the lot and unit together. Valuation of the lot involves real property, and thus resembles appraisal under title II, while valuation of the unit (including pad and hookup facilities) is performed under contract between HUD and an independent appraisal service for the benefit of the lender. Depending on whether it is new or existing, the value of the unit is based respectively on either dealer invoice or the adjusted values published by the National Automobile Dealers Association (NADA), using comparable sales as needed. Thus, title I appraisals of manufactured homes are more analogous to the appraisal of moveable non-residential personal property, such as an automobile, than to the appraisal of real property. HUD has concluded that the intent of section 202(e) is to require appraisal standards only for real property, not for personal property.

The new part 267 would therefore be limited in the extent of its applicability under the title I program to appraisals of homes securing either property improvement loans over $15,000 or manufactured home lots. Whenever an appraisal is required, it would be governed by the provisions of this proposed rule.

The Department has recently made a decision to require appraisals of single family properties held by the Secretary for disposition. These valuations, however, are different from the appraisal of a typical 1–4 family property in both objective and approach. Their purpose is not to determine the adequacy of the security for a loan, but to guide the Department in its judgment as to a reasonable price at which to offer a property. They represent an amount based initially on current market values as indicated by comparable sales, but adjusted to facilitate sale within 90 days by taking into consideration such factors as the local real estate market conditions and the Department's ability to dispose of property within the 90 day time frame. The process of pricing disposition properties involves an exchange of information and views between HUD and the appraiser and is characterized by a fair amount of flexibility. Furthermore, it has been described in issuances furnished to HUD Field Offices as well as those individuals and institutions concerned with the sale of Secretary-held properties. No purpose would be served by reiterating the process; therefore the proposed rule would not apply to cases involving HUD

[2] This description is necessarily general in nature and focuses on the more traditional FHA programs, such as those under sections 207 and 223(f) of the NHA, as well as mortgage insurance for manufactured home courts. Other multifamily programs raise special valuation problems. Thus, section 232 (nursing homes, intermediate care facilities and board and care facilities) requires a breakout of proprietary income, and section 242 (hospitals) is processed by the Department of Health and Human Services, pursuant to its special expertise, in accordance with standards set by that agency. Additionally, HUD administers programs such as sections 221(d) (3) and (4), section 213 (cooperatives) and group practice facilities under title XI which involve mortgage financing that must be based on replacement cost rather than value.

[3] An appraisal is not needed if the loan is originated by or on behalf of a governmental institution to provide housing assistance to a low or moderate income family.

property disposition. (See proposed § 267.1 below.)

III. Description of the Proposed Changes

The substance of changes affecting FHA appraisals would be contained in a new part 267 which includes §§ 267.1 through 267.6, with conforming amendments in parts 200, 203 and 206.

The single family appraisal provisions would be based largely on regulations issued pursuant to title XI of FIRREA by the Federal Financial Institution Regulatory Agencies (The Federal Deposit Insurance Corporation, Federal Reserve Board, Office of Thrift Supervision, National Credit Union Administration and Office of the Comptroller of the Currency) and the Resolution Trust Corporation (RTC), e.g., the final rule of the Board of Governors of the Federal Reserve System published on July 5, 1990, 55 FR 27762 (referred to as the "FIRREA regulations" in this discussion). In carrying out their responsibilities under title XI of FIRREA, these Federal Financial Institution Regulatory Agencies (FFIRA) together with the RTC have sought as their goal to develop uniform regulations regarding the appraisal requirements for federally related transactions. However, HUD's proposal and the regulations adopted by the FFIRA in conjunction with RTC have several differences in their principal provisions:

1. De minimis Test

None of the FFIRA requires a State certified or licensed appraiser for real estate-related transactions that involve less than a specified loan amount, such as $50,000. HUD would not recognize such a *de minimis* test, hence there will be cases for which HUD requires an appraisal when other agencies do not. If for any reason another agency nevertheless requires an appraisal performed in accordance with FIRREA standards, that appraisal would be accepted in the case of a one-to-four family dwelling as being in compliance with this part 267.

2. Use of Appraisers in Non-residential Property Transactions

The FFIRA provide extensively for appraisals of non-residential properties. They generally did not distinguish among different kinds of properties (e.g., single family, multifamily residential and non-residential) in their standards, which needed to cover the broad range of real estate-related financial transactions made by federally regulated depository institutions. HUD, on the other hand, deals with a limited number of insurance programs for specific kinds of real estate, and has determined that some differences in approach are appropriate depending on the nature of the program. Non-residential mortgages involving hospitals are excluded entirely from coverage of the proposed rule as explained below. Some multifamily residential mortgages would not be subject to all the provisions applicable to mortgages on single family homes. The differing treatment for these mortgage programs is explained below.

A section-by-section analysis follows, beginning with part 267.

Section 267.1 Applicability

This section would require that an appraisal must comply with part 267 if the maximum insurable mortgage or loan amount under any FHA program is based in whole or in part on a property appraisal. Certain exceptions are listed: (1) Insured mortgages which finance the sale of HUD-owned property pursuant to section 223(c) of the NHA and (2) title I manufactured home loans other than lot loans or combination loans, for reasons previously discussed. Also excluded are insured mortgages for hospitals, since such mortgages are processed by the Department of Health and Human Services. Although not specifically named here, certain additional types of mortgages insured under FHA programs would not be covered by part 267 because a property appraisal does not play any role in the determination of the maximum insurable mortgage amount. An example would be "streamlined" refinancing of insured single family loans pursuant to section 223(a)(7) of the NHA.

Finally, with respect to the scope of part 267, the reader should note that certification and licensing have a limited applicability to HUD staff appraisers. The Department does not interpret the Reform Act as covering the activities of HUD employees who conduct either desk or field reviews of appraisals prepared by others, and part 267 does not apply to such activities. However, in addition to their review responsibilities, HUD staff members sometimes perform appraisals on multifamily projects that will be covered by FHA insured mortgages. It is the Department's view that those of its employees who prepare and sign the appraisal report should be certified.* Congress, which could have provided an exemption for federal employees and did not, has directed in section 142 of the Reform Act that the Secretary establish uniform, generally accepted standards for the appraisal of all property securing mortgages insured by FHA. One aspect of those standards is the accreditation of individuals who perform the appraisals. The legislative message is clear: The quality of appraisals, regardless of who performs them, is an essential concern in resolving problems of the mortgage lending industry, and the appropriate means of accomplishing this objective is through a system of certification and licensing established and administered by the individual states. Although HUD appraisers must already meet the Department's well-established criteria for competence and experience, it is important that their professional standards correlate with those of the private sector. For this reason, HUD staff appraisers should be State accredited.

The professional qualifications of Department employees are typically the subject matter of an internal directive rather than a substantive rule. However, the decision to exempt review appraisers and the decision to cover HUD staff have significance for the public at large and both are being published for public comment.

For example, based on the rulemaking record, HUD might reconsider its position and require that its staff appraisal reviewers be certified and/or licensed. Such a change could have implications for non-HUD personnel, including individuals such as DE underwriters who review and sometimes amend appraisal reports on behalf of the mortgagees for whom they work.

Also, by its decision to require State accreditation for staff appraisers, the Department does not intend that a HUD employee be certified for every jurisdiction in which he or she may appraise property. Certification by any one state would suffice, even though the employee may be assigned to perform an appraisal on property located elsewhere. The Department expects that implementation of FIRREA with uniform testing standards and monitoring by the Appraisal Subcommittee will result in consistently high, comparable standards among the various jurisdictions. Consequently, there would be little benefit in duplicating the delay and expense of qualifying employees in each of those states where they may occasionally perform appraisals.

Section 267.2 Definitions

Among the defined terms are the following:

*Certification is the only consideration for HUD review appraisers, since HUD staff does not usually review single family appraisals where licensure is sufficient.

Appraisal. The proposed definition is in two parts. The first part, stated in terms of market value, follows the definition used by nineteen federal agencies prior to enactment of FIRREA, and now found in the FIRREA regulations.[5] Following this common definition will further an identity of interpretation with respect to the underlying process of determining market value and will encourage consistency among the appraisals themselves. The second part of the definition covers in broad terms the use of replacement cost.

Client. This definition is based on the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Foundation.

Complex one-to-four family residential property appraisal. The proposed rule would follow section 1113 of FIRREA, which allows the use of a State licensed appraiser for one-to-four family residential property appraisals, "unless the size and complexity requires a State certified appraiser." A complex appraisal is one in which the property itself, the form of ownership, or the market conditions are atypical. Thus the age and extent of improvements, architectural style, lot size, neighboring land use, potential environmental hazard liability, and the nature of the property interest, e.g., a complicated leasehold or a restricted fee, are factors which weigh upon the question of complexity. This list is far from exhaustive and is for illustration purposes only.

Consultation, Feasibility analysis, and *Market analysis.* These definitions would follow essentially those set forth in USPAP.

Market value. The definition proposed in § 267.2 is used in connection with mortgage lending by a number of government agencies,[6] lending institutions and others, and appears in the FIRREA regulations. The definition contemplates consummation of the sale by a specified date and passing of title from seller to buyer under the open and competitive conditions requisite to a fair transaction. Reference to market value is intended generally to provide a reliable measure of the economic potential of property involved in the transaction. Again, the Department believes that adopting a definition with widespread uniformity would encourage consistency in appraisal results.

When applying the definition of market value to one-to-four family residential properties, appraisers would need to adjust the data on comparables to allow for special or creative financing or for sales concessions, although no adjustment would be necessary for costs that are normally paid by the seller as a result of custom or law in a given market area. Such arrangements are usually readily identifiable since they appear as seller contributions in virtually all transactions within the area. Adjustment for special or creative financing could be made by comparing the indicated sale price with financing terms offered by a third party financial institution that is not involved in the property or transaction. An adjustment should not be calculated as a rote dollar-for-dollar allowance for the financing or concession amount; rather the size of each adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.[7]

Mortgage and mortgagee. The definition of "mortgage," which incorporates definitions in current regulations for both single and multifamily programs, would include a loan authorized for insurance under the NHA. In FHA regulations the term "loan" is often used to denote an unsecured loan or a loan secured by a junior mortgage. A "mortgagee" would be defined as the originator of a mortgage and could therefore be a Title I lender or loan correspondent.

One-to-four family residential property. This definition would include a manufactured home lot in addition to property with one-to-four family dwelling units.

Replacement cost. This term, which would follow the definition in HUD Handbook 4010.1, represents the Secretary's estimate of the construction cost of the property or project when the proposed improvements are completed. The replacement cost could include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Secretary. For rehabilitation proposals, the replacement cost estimate would include the "as is" value of the property before rehabilitation, plus the cost of rehabilitation and appropriate carrying and financing charges.

State. This definition would follow that contained in section 204(a) of FIRREA.

State certified appraiser. This classification would apply to appraisers who are recognized by the States as being more knowledgeable about, and experienced in, appraisals than are licensed appraisers. Section 1116 of FIRREA provides that each State will adopt standards and procedures, consistent with the purposes of Title XI, for obtaining recognition as a State certified appraiser. To be consistent with title XI, each State must require that its certified appraisers satisfy, at a minimum, the criteria for certification issued by the Appraisal Qualifications Board of the Appraisal Foundation. Moreover, no State may certify an appraiser under title XI unless that individual passes an examination, administered by the State, that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraisal Foundation. Since the criteria mentioned are minimums, a State may establish additional certification criteria if it deems appropriate.

If, on the other hand, the policies, practices or procedures of a State are determined by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council to be inconsistent with title XI of FIRREA (See § 267.4(c)(3)), HUD would establish additional standards applicable to FHA transactions. This remedial role would extend to the criteria governing appraiser qualification. Thus, if the Appraisal Subcommittee were to find that the appraiser certification criteria of a given State are inadequate for specified reasons, an individual certified by that State would qualify for HUD programs as a State certified appraiser only if the individual complies with all State-imposed criteria together with other standards imposed by the Department.

State licensed appraiser. A State may elect to adopt licensing criteria that are less rigorous than certification criteria. However, the FIRREA regulations make it clear that the licensing criteria must be adequate to protect financial and public policy interests. The States are obliged to establish criteria ensuring that licensed appraisers have the experience and training needed to perform appraisals that comply with this part.

Moreover, the Appraisal Subcommittee may find that a State's

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[5] The proposed regulations are based in part on rules adopted pursuant to FIRREA by the agencies represented on the FFIRA and the RTC. See, for example, the final rule adopted by the Board of Governors of the Federal Reserve System, 55 FR 27762, July 5, 1990.

[6] See 49 CFR part 24, "Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs."

[7] This paragraph regarding comparables is taken from the standard definition of "market value" used by the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal National Mortgage Association ("FNMA"), and OTS, among others.

criteria are inadequate and not in compliance with the requirements of title XI. As in the case of State certified appraisers, only if the Department were to impose additional remedial requirements would it be possible for the appraiser to qualify.

Section 267.3 Transactions Requiring a State Certified or Licensed Appraiser

Under this section, an FHA insured mortgage transaction might require an appraisal by either a State certified appraiser or by a State licensed appraiser, or it might require no appraisal at all.

General certification, as defined by the Appraisal Qualifications Board of the Appraisal Foundation, would be required for the appraiser of every multifamily property regardless of value because of the complexity of multifamily valuations in general. In addition, General or Residential certification would be required for the appraiser of any one-to-four family residential property when the loan amount is $1,000,000 or more. At present, this limit is a theoretical one since statutory limits on the size of FHA-insured single family mortgages are all currently under this amount. Certification would also be required for the appraiser of any complex one-to-four family residential property, as previously defined, regardless of value. Licensing would be required for the appraiser of any one-to-four family residential property which does not qualify as complex when the loan amount is less than $1,000,000. Of course, when a licensed appraiser is called for, a certified appraiser might be employed instead. Neither a certified nor licensed appraiser would be required if the property were being sold by the Secretary from HUD's property disposition inventory or if it involved the sale of a manufactured housing unit, as contrasted with the site on which the unit would be placed because such transactions are excluded from the scope of proposed party 267.

For single family transactions, one obvious question is how does a mortgagee about to assign an appraiser know whether certification or licensing is appropriate? Is the appraisal going to be complex? Before hiring an appraiser, must the mortgagee assess the situation to determine the qualifications that an appraiser will need to complete the assignment? As a general rule, it would be reasonable for the mortgagee to assign a State licensed appraiser, on the assumption that the appraisal of one-to-four family residential property will not prove to be complex, unless information to the contrary were readily available. Often the loan application will furnish sufficient information for making this decision.

If a licensed appraiser discovers during the assignment that the appraiser is complex or outside the appraiser's expertise, then he or she would be required to disclose this situation to the mortgage and take action to remedy the deficiency. A certified appraiser could be employed instead or the licensed appraiser could complete the appraisal and have a certified appraiser review and co-sign the appraisal report.

Paragraph (c) explains that for single family programs, an appraisal satisfying the requirements of another federal agency that has adopted FIRREA standards would comply with part 267. For multifamily programs, however, such is not the case.

Section 267.4 Appraisal Standards

(a) *Minimum standards.* In enacting section 202(e) of the NHA, Congress was responding to problems in the appraisal industry which were identified by the House committee on Government Operations during a series of hearings,[8] and which are mentioned repeatedly in the legislative history of title XI of FIRREA.[9] Section 202(e) instructs the Department to prescribe standards for the performance of appraisals of all property to be insured by FHA. The law states further that those standards must, at a minimum, require appraisers' work to be in writing and in conformance with generally accepted appraisal standards such as those promulgated by the Appraisal Standards Board of the Appraisal Foundation and titled the Uniform Standards of Professional Appraisal Practice (USPAP), as amended by HUD requirements set forth in Supplemental Standards.

HUD is empowered to set additional standards. Thus, § 267.5 as proposed, would set forth not only HUD's standards based upon USPAP, but also certain additions which the Department has determined to be appropriate and necessary with respect to HUD-related single family property transactions. These additional requirements would be similar to the appraisal standards promulgated by the FFIRA (see the rule of the board of Governors of the Federal Reserve System at 55 FR 27762, published July 5, 1990). Supplemental standards relating to multifamily programs would continue to be found in various Department issuances such as Handbooks, notices and memoranda.

It should be noted that this proposed rule does not reproduce USPAP in whole or in part, since it was published in the **Federal Register** in connection with the FIRREA regulations, 55 FR 53610, December 31, 1990, and should be readily available to the appraisers and mortgagees who would be subject to the requirements of this rule.

Accordingly, HUD proposes to adopt the following twelve additional standards.

(1) The first standard would set forth the requirement for compliance with USPAP, and clarify that the Departure Provision [10] in the USPAP is inapplicable to appraisals conducted in connection with FHA single family mortgage insurance transactions. The Department believes that the Departure Provision provides for appraisal services which formulate a result different from the appraisal contemplated by section 202(e) of the NHA and title XI of FIRREA. For example, in accordance with the Departure Provision and consistent with current USPAP requirements, a letter opinion might be produced that is silent about trends of rents,vacancies, or overbuilding. Explanatory comments on the USPAP regarding the Departure Provision cite examples of when the Departure Provision might apply; [11] however, for purposes of this proposed rule, those examples do not constitute FHA appraisals. The Department believes that adherence to the Departure Provision could result in the omission of data that should be included in determining and reporting the value of property in connection with FHA related transactions and has therefore determined that the Departure Provision would not apply to such appraisals. It is essential in this context to distinguish between the Departure Provision, which HUD does not recognize, and the use of Supplemental Standards authorized by USPAP. HUD adheres to the latter, particularly with respect to various multifamily programs, by issuing in the form of Handbooks, Notices, and memoranda, instructions which are

[8] House Comm. on Government Operations, Impact of Appraisal Problems on Real Estate Lending, Mortgage Insurance, and Investment in the Secondary Market, H.R. 99–891, 99th Cong., 2d Sess. (1986).

[9] See, e.g., 135 Cong. Rec. S4004 (daily ed. April 17, 1989) (statement of Sen. Dodd); H.R. Rep. No. 100–1001, 100th Cong. 2d Sess. pt. 1, at 19, 21–26; 133 Cong. Rec. H10709 (daily ed. Nov. 20, 1987) (statement of Rep. Barnard); 132 Cong. Rec. H3452 (daily ed. June 6, 1986) (statement of Rep. Barnard).

[10] The Departure Provision enables appraisers to "perform an assignment that calls for something less than or different from the work that would otherwise be required by the (USPAP)."

[11] These examples include introducing into evidence during a judicial proceeding a one page summary that incorporates by reference an appraiser's file or preparing a brief update of a previously prepared appraisal.

used to promulgate various requirements that supplement USPAP.

(2) Under the second standard on disclosure of competency, an appraiser would be required to have the appropriate knowledge and experience that will be required to complete an assignment competently. If such knowledge and experience were initially lacking, the appraiser would have to disclose in the appraisal both this fact and the steps taken to comply with the Competency Provision in the USPAP.

(3) The third standard, market value or replacement cost, as appropriate, both defined in § 267.2, would be required to be documented by the appraiser in the appraisal report or real estate consultants report for a single family or multifamily property. The market value definition was developed by FNMA and FHLMC with the input of numerous professional appraisal organizations and has two purposes: First, it clarifies for the appraiser that the market value approach must not include an allowance for favorable financing, going concern value, or a special value for a specific user; second, it assures that each party to a transaction has the information necessary to understand the determination of value. HUD's rule would also point out that market value cannot exceed replacement cost (see § 267.2(1)).

(4) The fourth standard relating to appropriate information to be provided in the appraisal would iterate the legislative mandate that all appraisals must be in writing. The standard would also require that an appraisal be sufficiently descriptive for a client, user or reviewer to ascertain readily the estimated value and the rationale for that estimate. The appraisal would have to comply with all provisions of the proposed rule and this could be easily and reliably accomplished by use of required forms. In practice, the Department expects that the Uniform Residential Appraisal Report would be used in virtually all single family valuations. For multifamily projects, the appraiser's or consultant's report would need to be on the forms specified in the rule. However, regardless of its format, the report would need to be readily understandable by a third party and must reflect the complexity of the appraisal so that the reader can independently judge its adequacy giving consideration to the characteristics of the property appraised.

(5) This standard relating to sales history would enable the reader of an appraisal report to compare an appraiser's opinion of a property's market value with recent sales prices. In addition to giving the reader a basis upon which to evaluate the accuracy of the subject property appraisal, it would also assist in identifying recent trends in market prices. For instance, a sales history might identify a single sale or a series of sales at artificially inflated prices. A sales history covering one year would be required for a one-to-four family residential property and three years or longer (more than three years may be needed to examine the last arms-length transaction) would be required for all property involving five or more dwelling units. The longer term is appropriate for multifamily property in view of (i) the typically slower turnover of such properties and (ii) the fact that larger loan amounts are generally involved with greater individual risk to the insurance fund.

(6) With respect to revenues, expenses, and vacancies under standard number 6, an appraisal should disclose current income produced by a property if the property will continue to be used to generate income after the transaction is consummated. Note, however, that only current revenues, expenses, and vacancies for such property are relevant. The appraisal should be based upon income that can realistically be earned under current market and economic conditions (in light of revenues being earned on comparable properties), rather than upon estimated or projected income that cannot be supported by current market conditions. It is important to examine unusual or atypical data. For example, if an appraiser reports a high current vacancy rate, he or she would have to ascertain the reason and determine whether it is apt to recur. If so, the lender might need to impose a special condition on the loan.

(7) Standard number 7, marketing period, would require the appraiser to employ a marketing period that is reasonable in light of both a given property's characteristics and the general market conditions, and to disclose the assumptions used. An appraiser's opinion of market value would depend in part on the appraiser's estimate of how long a given piece of property will remain for sale. For instance, an appraisal using a long marketing period is likely to produce a higher market value than would an appraisal using a shorter marketing period. This information would better enable the reader to use the appraisal properly.

(8) With respect to trend analysis under standard number 8, an appraisal should inform the reader of any market trends, regardless of whether the trend reflects rising or declining values. Such trends might include, for example, increasing vacancy rates, greater use of sales or rent concessions, declining sales prices, or other objective and measurable factors. Identification of negative trends is particularly important for the underwriter. Trends might be indicated by market activity for the subject property, such as listings, options, or sales agreements and activity of this nature should be disclosed. Note, however, that while the appraiser should indicate observed market trends as a part of the appraisal report, a trend should not be factored into the estimate of value. See the preceding discussion of standard (6).

(9) Standard number 9, prohibited influences, requires that an appraisal be performed without pressure, express or implied, from someone interested in a specific value. In a similar vein, the appraisal must not be influenced by perceptions about the neighborhood surrounding the property on the part of either the appraiser or his or her employer. This is especially important with regard to the neighborhood's racial/ethnic or socioeconomic composition. The Fair Housing Act and HUD regulations (24 CFR 100.135) specifically prohibit discrimination in the performance of real estate appraisals.

The purpose of the appraisal is to reach an independent, objective valuation of the property, not to lend credibility to a questionable underwriting decision or to buttress the bargaining position of one or more parties to the transaction. Accordingly, every appraisal covered by this proposed rule would have to include a certification to the effect that employment of the appraiser was not conditioned, expressly or impliedly, upon the appraisal having established a specific value or range of values, or upon perceptions of the surrounding neighborhood on the part of the appraiser. Similarly, an appraiser's future employment prospects should not be influenced by whether the appraisal results in a particular value, nor should the appraiser's employment and compensation be based on whether a loan application is approved, as this, too, would exert pressure on an appraiser to render whatever appraisal is necessary for the loan to be approved. It is essential to avoid apparent, as well as actual conflicts of interest. Thus, appraisers who are employed by a mortgagee should not be supervised by the mortgagee's loan officers or by a member of its underwriting, investment or collection departments.

In addition, any instruction or suggestion by a mortgagee that an independent appraiser reconsider his or her report must be documented by the mortgagee, and, if the report is consequently modified, by the appraiser who should indicate the amount of, and basic for the change. In the event the appraiser is unwilling to modify the appraisal, the mortgagee must so indicate in the loan file. If the mortgagee then decides to modify the appraised value on its own initiative, the mortgagee's employee who makes that decision must: In a multifamily case, sign the appraisal report and accept responsibility for the appraisal; in a single family case, indicate the change and the basis for it on a separate form prescribed by HUD for that purpose.[12]

When the appraisal is performed by an employee of the mortgagee, any material modification of the original appraisal report should be documented and justified by whoever is responsible for the change just as though the appraiser were independent.

(10) Standard number 10, self-contained appraisals, would require an appraisal to contain all information necessary to enable the reader to understand the basis of the appraiser's opinion. The appraisal should not reference material that is difficult for the reader to obtain; rather it should enable the reader to understand the conclusion that was reached without having to research other documents. That conclusion, moreover, would have to be reasonable in light of the information set forth in the appraisal report. These requirements would encourage the appraiser to obtain all relevant data and present it when issuing an opinion of value.

(11) Standard number 11 concerns the description of the property being appraised. A legal description of the property would have to be included together with, or as a part of, the appraisal report in order to avoid any confusion that may arise from less precise identification. This requirement would enable a reader to compare the description in the appraisal with that in the loan documents, and for this purpose the description contained in the deed would be sufficient. The legal description would be required in addition to, and not in lieu of, the identification required under USPAP, which calls for any combination of legal description, address, map reference, survey or map copy, property sketch and/or photograph that identifies the particular property.

[12] See Mortgagee Letter 91-43, September 16, 1991.

(12) Standard number 12, use of recognized appraisal approaches, describes the valuation method applicable to most HUD single family programs and those HUD multifamily programs based on value rather than replacement cost. This standard would require that an appraiser address the recognized approaches to market value required by the Secretary in the case of a single family property, as well as in the case of a multifamily property under a multifamily program using value rather than replacement cost. If, in the judgment of the appraiser, one or more approaches is not appropriate, then the appraiser would be required to explain a decision to use a particular approach. This proposed requirement is intended to produce appraisals which have benefitted from the appraiser's consideration and (where appropriate) reconciliation of all the required recognized approaches to determining market value, in order to test and improve accuracy. Disclosure that an approach was not used with an explanation should help the reader in evaluating the adequacy of the appraisal.

The standard also addresses multifamily replacement cost programs (and mortgage insurance for single family properties under section 220) by indicating that the mortgage amount must be an acceptable risk based upon the estimated replacement cost.

(b) *Unavailability of information.* Of course some of the information that is described by USPAP or this proposed rule as a necessary part of the appraisal report could, on occasion, be unavailable. For example, historic rents will not exist for a building under construction at the time of appraisal. The appraisal should inform its reader of any material information that is unavailable and the reason why.

(c) *Additional standards.* (1) The standards to be required by this proposed regulation are minimum standards to be met by every appraisal. Mortgagees would be permitted to adopt additional standards applicable to their respective underwriting practices if the additions are reasonable, appropriate and consistent with HUD standards.

(2) HUD could impose additional requirements whenever the Appraisal Subcommittee determines that a State's policies, practices, and procedures regarding licensing or certification are inconsistent with title XI of FIRREA or its implementing regulations, or whenever the Appraisal Subcommittee under its statutory waiver authority has granted a waiver of appraiser qualification requirements to a State or a portion of a State.

(3) Changes to the USPAP made after the date of publication of this Notice of Proposed Rulemaking would not apply to FHA transactions until the Department has had an opportunity to consider a given change and its consequences for HUD programs. The Department would therefore defer adoption of a change to USPAP for a period of 90 days following the date the change is approved by the Appraisal Standards Board of the Appraisal Foundation as indicated on its notice to members and subscribers. If, at the end of that period, the Department has not announced otherwise, it would be deemed to have adopted the change. On the other hand, the Department could, before the end of the period, indicate by **Federal Register** publication that it is giving further consideration to the change and could invite public comment on the question of its adoption by HUD.

Section 267.5 Selection of Appraisers by Mortgagees; Appraiser Independence

Paragraph (a) *Selection method.* Methods of selection differ among various HUD program areas. This paragraph generally outlines those differences.

Paragraphs (b) *Staff appraisers* and (c) *Mortgagees, staff and fee appraisers; conflict of interest.* An appraiser's goal should be to produce an objective opinion about the market value of a property. This objectivity could be compromised if the appraiser is involved in the transaction. If, for example, he or she were to have either a direct or indirect interest in the property appraised, the fairness of the appraisal would be compromised in appearance and perhaps in reality. A direct interest would involve ownership or lease of the property. A typical indirect interest would arise if an appraiser were to own property adjacent to the property being appraised or if the appraiser were employed by an entity related to the buyer or seller of the property being appraised. The indirect interest would extend to any property whose value is likely to be affected by the appraisal. An interest could also be nonpecuniary such as the desire to help an associate obtain a loan. The appraiser would not be permitted to have any direct interest in the property being appraised, and is permitted an indirect interest only by reason of his or her employment, subject to any stated limitations imposed on the employing mortgagee.

The Department particularly wishes to call attention of the commenting public to two somewhat controversial provisions based upon recent

legislation. First, the proposed rule would implement section 322 of the Cranston-Gonzalez National Affordable Housing Act (which amends section 202(e) of the National Housing Act) by allowing Direct Endorsement mortgagees to contract for appraisal services from sources chosen at the discretion of the mortgagee and by permitting a corporation or partnership, as well as a sole proprietorship, to contract to perform the appraisal. The proposed rule would make clear that there could be no financial tie or business affiliation between the mortgagee and the appraiser, whether the latter be an individual or an institution (except that in the case of Direct Endorsement processing, a lender could rely upon staff appraisers if the lender's appraisal operations are independent of its loan production activities).

The Department is especially interested in public comment on its effort to carry out the provisions of section 322. Various organizations and individuals have already expressed widely divergent opinions about that section and its possible consequences. Some expressions of opinion are already matters of record, as for example, the statement of the House Committee on Appropriations in its report on H.R. 2519, directing the Department to disregard as an unsound underwriting practice the pertinent provision of section 322 and to "* * * continue to assign an appraiser for each property to be insured by the FHA." H.R. Rep. No. 102–94, 102d Cong., 1st Sess., p. 29 (1991).

Second, amended section 202 of the National Housing Act permits a corporation or partnership as well as a sole proprietorship to contract for the appraisal. The proposed rule, however, states that while the contracting party can be an organization, the individual appraiser who performs and signs the report would be personally responsible for the thoroughness, accuracy and objectivity of the appraisal, a responsibility the Department has determined is shared with the employing appraisal organization. Moreover, the mortgagee would be responsible for insuring that the appraiser is qualified for the assignment, has the necessary HUD directives, instructions and other guidance and is in all respects familiar with HUD requirements, policies and procedures relating to appraisals. The Department proposes to hold the appraiser(s), the appraisal organization and the DE mortgagee all accountable for a poor or fraudulent appraisal.

Paragraph (d) *Fee appraisers for one-to-four family properties.* While a number of practical considerations, such as experience and availability, would play a role in the selection of the appraiser for a single family property, there are two threshold requirements that the appraiser would have to satisfy. First, he or she would need to be either State licensed or certified, as circumstances dictate. Second, at the time of selection he or she would need to be registered with the appropriate HUD Field Office in accordance with the following procedures.

For its programs that involve one-to-four family dwellings, HUD proposes to establish a nationwide Appraisal Roster of acceptable appraisers and appraisal organizations with whom lenders can contract. For an appraiser to be placed on this Roster:

1. The appraiser would apply to each of the HUD Offices having jurisdiction over the areas where he or she will practice. An appraiser practicing in more than one jurisdiction would register with the Field Office for each jurisdiction of practice. Thus, while each Field Office would independently examine the appraiser's qualifications and decide his or her eligibility to perform appraisals within its sphere of authority, information showing which jurisdiction(s) have registered the appraiser would be maintained on a nationwide basis. HUD proposes to charge a registration fee to defray its costs.[13]

2. At the time of requesting registration, the appraiser would need to possess and show evidence of a current license or certification by a state whose qualification standards are recognized by the Appraisal Subcommittee.

3. At the time of requesting registration, the appraiser would need to possess and provide evidence that he or she holds a measure of insurance coverage against errors and omissions that is acceptable under standards to be prescribed by HUD.

4. The appraiser would need to include, as part of the request for registration, a signed certification that he or she is knowledgeable of FHA appraisal requirements and policies and that he or she has not defaulted on an FHA-insured loan or caused HUD to pay a insurance claim on his or her behalf within the last three years. An appraiser complying with these requirements would be assigned a HUD identification number in order to be identified in HUD's automated processing system, the Computerized Home Underwriting Management System (CHUMS). This CHUMS identification number and system of registration would enable HUD to monitor the work of appraisers (through field reviews of appraisals and other checks) and to withdraw registration from appraisers who, in the judgment of one or more HUD Offices, have performed poor quality or fraudulent appraisals. Appraisers would be registered for one year. Sixty days before the anniversary date of registration, the appraiser would have to submit a written request for re-registration with a current update of the information presented at initial registration, along with a fee for re-registration. An individual or entity whose integrity, professional competence or past business conduct is unacceptable in the judgment of the Field Office would not be registered or re-registered. Furthermore, HUD would report any appraiser withdrawn from the Roster for poor quality or fraudulent appraisals to the appropriate state licensing and certifying agency for its appropriate action.

HUD does not propose, at this time, to dissolve or terminate its existing fee panels of appraisers for individual Field Offices, since non-DE approved lenders would not be able to contract with appraisers selected by the mortgagee rather than HUD, and some DE lenders may wish to continue using the fee panel. In addition to selection from a fee panel, the rule would also permit HUD to assign appraisers at its discretion when the mortgagee is not permitted to, or does not wish to, select an appraiser from the Roster or use a staff appraiser. HUD proposes to continue to regulate the appraisal fee charged to borrowers in FHA single-family transactions. See § 267.5(g).

Paragraph (e) *Contract appraisers and real estate consultants for multifamily properties.* This provision covers HUD contracts for services in support of multifamily mortgage insurance (Delegated Processing and Technical Disciplines). These contracts are awarded pursuant to the Federal Acquisition Regulation (48 CFR Ch. I) and provide HUD with a means of obtaining multifamily appraisals.

Under paragraph (f), *Assistance of others,* the appraiser would be able to engage or accept the services of other persons when conducting the appraisal, but the appraiser would have to directly supervise all work performed and be fully accountable for the product, as reflected by the appraiser's signature which must appear on the appraisal

[13] While the amount of the fee may change and would not be specified in the rule, an initial fee of $200 is contemplated. For re-registration, the fee would be $50. Fees for both registration and re-registration would apply in each jurisdiction where the applicant does business.

report. The State certified or licensed appraiser who signs the report would be required to certify that he or she personally inspected both the property being appraised and the properties used as comparables. This requirement would be of particular significance if the report were being provided by a corporation or partnership, rather than by an individual.

Finally, paragraph (h), *Transfer of appraisal between mortgagees*, would permit a Direct Endorsement mortgagee to accept an appraisal prepared for another mortgagee but not for the mortgagor. The mortgagee accepting the appraisal would review the appraisal report and incorporate in the case file an express finding that the appraisal complies with this part 267 and other HUD requirements. Note that appraisal materials and reports may not be transferred between mortgagees when multifamily programs are involved.

Section 267.6 Professional Association Membership: Competency, Nondiscrimination and Lender Reporting

(a) *Membership in appraisal organizations.* The legislative history of title XI evidences an intent to prohibit discrimination against appraisers solely on the basis of membership or lack of membership in a particular appraisal organization.[14] This rule would prohibit any mortgagee from basing the decision to hire or retain an appraiser solely on whether the individual or firm is a member of an appraisal organization. Non-membership in a professional organization does not reflect on an appraiser's competence or character. Moreover, mortgagees should focus on the qualifications of the particular appraiser rather than the credentials of a professional organization if the appraiser is a member.

(b) *Discrimination prohibited.* The proposed rule would prohibit discrimination in the selection of an appraiser on the basis of race, color, religion, national origin, sex, age or handicap. In accordance with HUD regulations at 24 CFR 121.2, each mortgagee would be required to report annually on the total number of appraisals ordered for FHA transactions.[15] As part of the report, the mortgagee would include a determination of the number of appraisals that were performed by minority persons or females. It may, therefore, be necessary for mortgagees, when contracting with appraisal organizations, to agree that such data will be furnished to the mortgagee in a timely manner. The data would pertain only to the individuals signing appraisal reports and not to others who might have provided assistance as permitted by the proposed rule. All such information would be kept available at HUD Headquarters for a reasonable period of time (three years is contemplated) to enable public inspection. Submission dates for this information will vary with the many parties involved, and filing will for that reason occur at differing times throughout the year, but the Department intends to publish periodic notices in the **Federal Register** reminding interested persons that the data, brought up to date, may be inspected and copied at an identified Headquarters office.

(c) *Competency.* Not all appraisers are competent to perform every type of appraisal. For example, an appraiser who is experienced in appraising single-family properties may not possess the expertise to appraise a multifamily project. The mortgagee should look beyond an individual's designation or affiliation to determine if he or she has the experience and training needed to perform the appraisal. If the mortgagee in a single family program contracts with an organization rather than an individual, the contract would have to obligate the organization to assure that the individual appraiser is competent, although including such an obligation among the contract provisions would not of itself discharge the mortgagee from responsibility if the mortgagee knew, or should reasonably have known, that the particular appraiser was not competent.

The proposed competency provision is not intended to prohibit an individual from appraising a type of property with which he or she is not familiar. An appraiser who is unfamiliar with the type of property involved could still perform the appraisal, but only in accordance with the terms of USPAP. Similarly, an individual who is not State certified or State licensed could assist in the preparation of an appraisal, but only if he or she is directly supervised by the State licensed or State certified appraiser, whichever the case calls for, and the appraisal report is approved and signed by a State certified or State licensed appraiser. In this circumstance, the approving appraiser bears the same responsibility for, and relationship to, the product of one who is not experienced in the particular type of work (or who is not accredited by the State) as does an appraiser who uses the assistance of other persons. See the previous discussion of § 267.5(f).

Finally, it should be noted that the rule would make certain conforming changes to parts 200, 204 and 206.

Part 200—Introduction

In part 200, the requirements under HUD's lead-based paint program would be revised to enable any appraiser registered with the Department in accordance with part 267 to inspect the property for a lead paint hazard, as is necessary when the dwelling was constructed prior to 1978. Section 200.810(b) presently calls for a "fee panel or direct endorsement appraiser" in this context. This is a simple conforming amendment.

Part 204—Coinsurance

Section 204.3, which currently specifies "staff or fee appraisers" would be changed to reflect the proposed standards of part 267. This is a simple conforming amendment.

Part 206—Home Equity Conversion Mortgage Insurance

The amendment to part 206 reflects the fact that an appraisal is not used to establish a maximum insurable amount for a mortgage insured under the home equity conversion mortgage (reverse mortgage) insurance demonstration program. Instead, the appraisal is used to set an upper limit on the "maximum claim amount" for the mortgage; the maximum claim amount is then used as one factor in determining the "principal limit," which effectively determines how much the mortgagor can borrow. Because there is no reason to distinguish the actual appraisal process for reverse mortgages from the process for a mortgage to finance a house purchase, the proposed rule would amend the definition of "maximum claim amount" to require that appraised value be determined by an appraisal performed in accordance with proposed part 267.

Other Matters

Proposed Financial Agency Appraisal Rule

On June 4, 1993 (58 FR 31878) the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision solicited comments on proposed amendments to the agencies' regulations regarding appraisals of real estate, adopted pursuant to title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

[14] See e.g., House Banking Committee Report at 484; see also H.R. Conf. Rep. No. 101-222, 101st Cong., 1st Sess., p. 457 (1989).

[15] See in this regard 24 CFR part 121.

The proposed amendments would increase to $250,000 the threshold level at or below which appraisals are not required pursuant to title XI, expand and clarify existing exemptions to the title XI appraisal requirement, and identify additional circumstances when appraisals are not required under title IX. In addition, the proposal would amend existing requirements governing appraisal content and appraiser independence.

The agencies are proposing these amendments as a result of experience gained from implementing their appraisal regulations.

The Department, in developing a final rule, will be taking into consideration any amendments to title XI regulations developed as a consequence of this June 4, 1993 or other proposed rules and will address, in its final rule, the comments the Federal financial agencies as well as those of the public with respect to the relationship between title XI and this rule.

Executive Order 12291

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order 12291, issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Section 202(e) of the National Housing Act requires the Department to establish standards for performing appraisals in connection with FHA transactions and to distinguish those transactions that require State certified appraisers from those that require State certified or licensed appraisers. This regulation is in response to this statutory requirement. The Department anticipates that the proposed regulatory changes would cause a slight increase in the cost of FHA transactions. Weighed against these increased costs should be savings to the insurance funds produced by better loan documentation that enables the Department to improve its risk evaluation and avoid potential losses.

Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibiliy Act, 5 U.S.C. 605(b), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The eligibility and performance requirements proposed by this rule are consistent with requirements already established by other government agencies for lender eligibility. Accordingly, the economic impact of this rule would be minimal, and would affect small and large entities equally.

Environmental Impact

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. (42 U.S.C. 4332) The Finding of No Significant Impact is available for public inspection and copying Monday through Friday, 7:30 a.m. until 5:30 p.m. in the office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

HUD's Semiannual Agenda

This rule was listed under Office of Housing as sequence number 1419 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24404) under Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. The rule is limited to imposing additional eligibility and performance requirements on private lenders. The only point of policy proposing in part 267 with even an indirect implication for Federal-state relationships is the decision that a HUD appraiser should be subject to the certification requirements of any one state, but not necessarily other states in which he or she is assigned to perform appraisals. As explained previously, the standards of various jurisdictions developed pursuant to FIRREA should result in a reasonably uniform level of competence, and qualifying HUD employees in every jurisdiction would involve many dollars and staff hours spent on a largely duplicative effort. For purposes of section 142 of the Reform Act, certification by any one state should therefore be sufficient. In reaching this conclusion, HUD parallels OMB's decision with FIRREA that:

> Federal employees who choose to become State-licensed or certified real estate appraisers need only be licensed or certified in one State or territory to perform real estate appraisal duties as Federal employees in all States and territories.[16]

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potential significant impact on family formation, maintenance and general well-being, and, thus is not subject to review under the Order. No significant change in existing HUD policies or programs, as those policies related to family concerns, will result from promulgation of this rule.

Public Reporting Burden

The information collection requirements contained in this proposed rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. The Department estimates that 8,200 institutions will be affected by these recordkeeping requirements. Each FHA transaction is expected to require, on average, 15 minutes for review and recordkeeping. The total reporting burden is estimated to be 205,000 hours, as calculated below, which represents less than one percent of total annual FHA reporting burden. In accordance with 5 CFR 1320.21, the following table discloses the Department's estimated burden for each collection of information in the proposed rule.

[16] OMB Bulletin 92-06, March 16, 1992.

	Number of respondents	×	Annual frequency	×	Estimated average number of hours per response	=	Total annual burden hours
Total FHA mortgagees	8,200		100		.25		205,000

These figures are based on projections for single family programs only; it is not expected that multifamily programs would impose any additional information collection burden as a result of this rulemaking.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 204

Mortgage insurance.

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 267

Appraisals, Property valuation, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department proposes to amend 24 CFR parts 200, 204, and 206, and to add a new part 267, as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 would be revised to read as follows:

Authority: 12 U.S.C. 1701–1715z–18a; 12 U.S.C. 3535(d). Subpart T is issued under 12 U.S.C. 1701s, 1715z–11; and 42 U.S.C. 3543. Subpart U is issued under 42 U.S.C. 3543. Subpart V is issued under 12 U.S.C. 1701s, 1715z–11; and 42 U.S.C. 3544.

2. Section 200.810(b) would be revised to read as follows:

§ 200.810 Single family insurance and coinsurance.

* * * * *

(b) *Appraisal.* The appraiser, who shall be listed on the HUD Appraiser Roster under § 267.5(d)(2) of this chapter, shall, when appraising a dwelling constructed prior to 1978, inspect the dwelling for defective paint surfaces.

* * * * *

PART 204—COINSURANCE

3. The authority citation for 24 CFR part 204 would be revised to read as follows:

Authority: 12 U.S.C. 1715z–9, 1715(b); 42 U.S.C. 3535(d).

4. Section 204.3(b) would be revised to read as follows:

§ 204.3 Authority to determine eligibility.

* * * * *

(b) In making the determination set forth in this section the mortgagee shall utilize an appraiser who meets the requirements of part 267 of this chapter and mortgage credit examiners and inspectors approved by the Commissioner.

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

5. The authority citation for 24 CFR part 206 would be revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–20; 42 U.S.C. 3535(d)).

6. Section 206.3 would be amended by adding at the end of the definition of "Maximum claim amount" the following sentence:

§ 206.3 Definitions.

* * * * *

Maximum claim amount means * * *. Appraised value shall be determined by an appraisal performed in accordance with part 267 of this chapter.

* * * * *

PART 267—APPRAISALS AND PROPERTY VALUATION

7. A new part 267 would be added to read as follows:

Sec.
267.1 Applicability.
267.2 Definitions.
267.3 Transactions requiring a State certified or State licensed appraiser.
267.4 Appraisal standards.
267.5 Selection of appraisers by mortgagees; appraiser independence.
267.6 Professional association membership; competency, nondiscrimination and lending reporting.

Authority: 12 U.S.C. 1708(e) 1715b; 42 U.S.C. 3535(d).

§ 267.1 Applicability.

(a) *General rule.* If the maximum insurable amount for a mortgage insured under any program covered by this Subchapter is based in whole or in part upon the value of security as determined by an appraisal, the appraisal must comply with this part 267.

(b) *Exceptions.* This part does not apply:

(1) If title to the property is held by the Secretary and a determination of value is needed for disposition of the property;

(2) To appraisal of manufactured homes for purposes of § 201.10 of this chapter;

(3) To appraisals of one-to-four family dwellings for purposes of property improvement under title I of the National Housing Act if the total principal balance of the loan (including any other improvement loan on the property) does not exceed $15,000 (fifteen thousand dollars); however, notwithstanding the amount of the loan, an appraisal is not needed if the loan is originated by or on behalf of a governmental institution in order to provide housing assistance to a low or moderate income family;

(4) If the insured mortgage is secured by a hospital.

§ 267.2 Definitions.

(a) *Acceptable risk* means that a project's net operating income covers the mortgage debt service requirement and provides an appropriate return to the owner's equity, and that the mortgage does not exceed the appropriate percentage of estimated replacement cost, and any other supplemental standards concerning particular programs contained in handbooks and other directives.

(b) *Appraisal* means a written report independently and impartially prepared by a qualified appraiser setting forth an opinion as to:

(1) The market value of an adequately described property as of a specific

date(s), which statement is supported by the presentation and analysis of relevant market information and, in the case of a multifamily project requiring economic soundness, is in accordance with the supplemental standards as set forth in the Department's appraisal instructions, or

(2) In the case of any one-to-four family residential property or multifamily project which is not based on a determination of economic soundness, *appraisal* means replacement cost, which shall be estimated by HUD staff or by an appraiser under contract with HUD to perform a real estate consultation, as provided in § 267.5(e).

(c) *Appraisal Foundation* means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(d) *Appraisal Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(e) *Client* means any party for whom an appraiser performs a service.

(f) *Complex one-to-four family residential property appraisal* means an appraisal in which the nature of the property, the form of ownership, or the market conditions are atypical.

(g) *Consultation or consultancy* means the act or process of providing information, analysis of real estate data, and recommendations or conclusions on diversified problems in real estate, other than estimating value. *Consultant*, which refers to an appraiser performing a real property consultation for HUD, means the person who provides such information, analysis, and recommendations or conclusions.

(h) *Economic soundness* refers to a project that has had its underwriting risk analyzed on the basis of three approaches to value.

(i) *Feasibility analysis* means a study of the cost-benefit relationship of an economic endeavor.

(j) *Fee appraiser* means an individual or organization which performs appraisals, inspections or valuation consultation services in return for an agreed-upon fee.

(k) *Market analysis* means a study of real estate market conditions for a specific type of property.

(l) *Market value* means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, provided that the price is not affected by stimulus. Implicit in this definition is the consummation of a sales of a specified date and the passing of title from seller to buyer under conditions whereby:

(1) Buyer and seller are typically motivated;

(2) Both parties are well informed or well advised, and acting in what they consider their own best interests;

(3) A reasonable time is allowed for sales exposure in the open market;

(4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale. Market value cannot exceed replacements cost, i.e., the reasonable estimated cost of replacing the property.

(n) *Mortgage* means a mortgage as defined in this Chapter, or a loan authorized for insurance under the Nation Housing Act.

(o) *Mortgagee* means the originator of a mortgage and includes a lender holding a Title I contract of insurance and a Title I loan correspondent.

(p) *Multifamily project* or *multifamily property* means a project containing five or more family units (or in the case of a mortgage to be insured under section 220 of the NHA, two or more rental units), a nursing home, an intermediate care facility or a board and care home. The term also includes a manufactured home court or park as provided in § 207.33 of this chapter.

(q) *One-to-four-family residential property* means a manufactured home lot or real property upon which is located a structure containing not less than one, nor more than four, dwelling units (or 11 units for a mortgage to be insured under subpart A of part 220 of this chapter), including, four purposes of a mortgage to be insured under part 201 or § 203.50 of this chapter, a structure that will contain such units after rehabilitation.

(r) *Replacement cost* means the Secretary's estimate of the construction cost of the property or project when the proposed improvements are completed. The replacement cost may include the land, the proposed physical improvements, utilities within the boundaries of the land, architect's fees, taxes, interest during construction, and other miscellaneous charges incident to construction and approved by the Secretary. For rehabilitation proposals, the replacement cost estimate includes the "as is" value of the property before rehabilitation, plus the cost of rehabilitation and appropriate carrying and financing charges.

(s) *State* means any State of the United States, any territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(t) *State certified appraiser* means any individual who has satisfied the requirements for certification in a State which has adopted criteria that currently meet or exceed the minimum certification criteria issued by the Appraiser Qualifications Board of the Appraisal Foundation. The State criteria must include a requirement that the individual has achieved a satisfactory grade on a State-administered examination that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualifications Board of the Appraisal Foundation. Furthermore, if the Appraisal Subcommittee has issued a finding that the policies, practices, or procedures of the State are inconsistent with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), an individual must comply with any additional standards for State certified appraisers imposed by the Department under § 267.4(c)(3)

(u) *State licensed appraiser* means any individual who has satisfied the requirements for licensing in a State which has adopted criteria that currently meet or exceed the minimum licensing criteria issued by the Appraiser Qualifications Board of the Appraisal Foundation. The State criteria must include a requirement that the individual has achieved a satisfactory grade on a State-administered examination that is consistent with, and equivalent to, the Uniform State Licensing Examination issued or endorsed by the Appraiser Qualifications Board of the Appraisal Foundation. Furthermore, if the Appraisal Subcommittee has issued a finding that the policies, practices, or procedures of the State are inconsistent with title XI of FIRREA, an individual must comply with any additional standards of State licensed appraisers imposed by the Department under § 267.4(c)(3).

§ 267.3 Transactions requiring a State certified or State licensed appraiser.

(a) *Appraisal by either a State certified or State licensed appraiser.* Every appraisal shall be performed by either a State certified appraiser or a State licensed appraiser, except as provided in paragraph (b) of this section. With respect to HUD employees, this requirement is satisfied whether or not the property is located in the certifying or licensing State. All

appraisers shall comply with HUD policies and procedures as set forth in the Department's handbooks and other issuances, whether or not a State-certified or State-licensed appraiser is required.

(b) *Appraisal by a State certified appraiser only.* An appraisal shall be prepared by a State certified appraiser if it is:

(1) Required in connection with a loan in an amount of one million dollars ($1,000,000) or more, or a mortgage on a multifamily property; or

(2) A complex one-to-four family residential property appraisal.

(c) *Recognition of appraisals not governed by this part.* (1) An appraisal of a one-to-four family residential property prepared in accordance with standards prescribed under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) and in response to the requirements of any Federal Financial Institution Regulatory Agency or the Resolution Trust Corporation will comply with this part.

(2) Notwithstanding the requirements of any other Federal agency, a multifamily property appraisal must comply with this part.

§ 267.4 Appraisal standards

(a) *Minimum standards.* Each appraisal or real estate consultation shall, at a minimum:

(1) Conform to the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundational in the case of both single family and multifamily appraisals. With respect to HUD single family property transactions the Departure Provision of the USPAP shall not apply. with respect to multifamily appraisals the Department may add requirements in accordance with the Supplementary Standards Provision of USPAP.

(2) Disclose any steps taken that were necessary or appropriate to comply with the Competency Provision of the USPAP.

(3) Be based on market value or replacement cost, as set forth in the relevant section of the National Housing Act.

(4) Provide appropriate information as follows:

(i) The report shall:

(A) In the case of one-to-four family residential property appraisals, be written and presented in either narrative format or on the Uniform Residential Appraisal Report form;

(B) Apply, for multifamily appraisals, USPAP Standard 2, Real Estate Appraisal Reporting; except that under the Supplemental Standards Provision of USPAP, reports by appraisers or consultants shall be in writing using the following forms:

(*1*) HUD–92264, HUD–92264NH or HUD–92264B, with attachments as required;

(*2*) Trial form HUD–92264A.

(ii) The report shall clearly state the market value or estimated replacement cost for the subject property with an explanation of how it was determined. The explanation shall be sufficiently descriptive to enable the reader to understand the rationale for the estimate.

(iii) The report shall provide detail and depth of analysis that reflect the complexity of the property appraised.

(5) Analyze and report in reasonable detail all prior sales of the property being appraised that occurred within the following time periods:

(i) For a one-to-four family residential property, one year preceding the date when the appraisal is prepared; and

(ii) for all other property, three years preceding the date when the appraisal is prepared, or beyond three years if necessary to include the last arms-length transaction.

(6) Analyze and report data on current revenues, expenses, and vacancies for the property if it currently is, and will continue to be, income-producing.

(7) Analyze and report a reasonable marketing period for the subject property.

(8) Analyze and report on current market conditions and trends that will affect income or the absorption period, to the extent they affect the value of the property.

(9) Include in the certification required by USPAP a statement that the appraisal or consultation assignment was not based on a requested minimum valuation, a specified valuation or range of values, or upon approval of the loan. The certification shall also include a statement that the racial/ethnic or socioeconomic composition of the neighborhood surrounding the property in no way affected the appraisal determination.

(10) Contain sufficient supporting documentation with all pertinent information reported so that the appraiser's logic, reasoning, judgment, and analysis in arriving at a conclusion indicate to the reader the reasonableness of the value reported or the consulting recommendations or conclusions provided.

(11) Includes a legal description of the real estate being appraised in addition to the description required by USPAP.

(12) Follow a reasonable valuation method that:

(i) For a one-to-four family residential property appraisal, except an appraisal with respect to a mortgage to be insured under part 220 of this chapter, addresses the direct sales comparison, income, and cost approaches to market value required by the Secretary, reconciles or explains any differences those approaches yield in determining the value of the property in question, and gives the reason(s) for rejecting each approach that was not used.

(ii) For a multifamily appraisal, when the program involved is based on market value rather than replacement cost, addresses the direct sales comparison; income, and cost approaches to market value, reconciles or explains any differences those approaches yield in determining value of the property in question, and gives the reason(s) for rejecting each approach that was not used. For valuation consultant services under replacement cost programs, the mortgage amount must be an acceptable risk based upon the estimated replacement cost, and supplemental standards in HUD handbooks and other program directives.

(b) *Unavailable information.* If information required by this section is not available, that fact shall be disclosed and explained in the appraisal report.

(c) *Additional standards.* (1) The Direct Endorsement lender may adopt generally, or may impose in specific cases, such additional standards as are reasonable, appropriate, and consistent with the Secretary's requirements for the appraisal of single family properties.

(2) For multifamily programs, the appraiser must follow the requirements of this § 267.4 as supplemented by HUD processing instructions which comprise Supplemental Standards authorized in accordance with USPAP.

(3) The Department may, in instances where the Appraisal subcommittee has determined that the policies, practices, and procedures of a State are inconsistent with Title XI of FIRREA, impose such additional requirements as may be appropriate.

(4) A change to USPAP will not be adopted by HUD until the Department has had an opportunity to consider its applicability and consequences for HUD programs. Adoption will be deferred for a period of 90 days following its approval by the Appraisal Foundation, or such longer period as the Department may announce. At the end of that period, if the Department has not announced otherwise, the change will be deemed to have been adopted by HUD.

(5) The Department may, in instances where the Appraisal Subcommittee has

determined that the requirements of FIRREA may be waived in accordance with 12 U.S.C. 3348(b), impose such additional requirements as may be appropriate.

§ 267.5 Selection of appraisers by mortgagees; appraiser independence.

(a) *Selection method.* The method of selecting the appraiser depends upon the program involved.

(1) For a one-to-four family property mortgage insured under title II of the National Housing Act, the appraiser may be:

(i) Employed on the staff of the Direct Endorsement mortgagee or selected by the mortgagee, provided the appraiser is listed on the Appraiser Roster provided for in this § 267.5; or

(ii) Assigned by HUD from membership on its fee panels. The criteria in paragraph (d) of this section govern the selection of the appraiser.

(2) For a multifamily property mortgage insured under title II of the National Housing act, the appraiser or consultant may be:

(i) A member of HUD staff; or

(ii) An appraiser or consultant under contract with HUD.

The criteria in paragraph (e) of this section govern the selection of the appraiser.

(3) For a property improvement loan insured under title I of the National Housing Act, unless otherwise provided, the appraiser shall be selected in accordance with part 201 of this chapter and related HUD issuances.

(4) For a manufactured home loan under title I of the National Housing Act, the appraiser shall be selected in accordance with the terms and conditions of a contract negotiated between HUD and the institution performing the appraisal.

(b) *DE Staff appraisers.* An appraiser who is a staff employee of a Direct Endorsement mortgagee shall be independent of the loan officers and the loan production operations of the mortgagee.

(c) *Mortgagees, staff and fee appraisers: conflicts of interests.* A mortgagee must avoid conflicts of interest and other relationships which affect, either in reality or in appearance, the credibility of the appraisal. The mortgagee may not:

(1) Contract with an appraiser or appraisal organization, i.e., fee appraiser, to perform appraisals, if the mortgagee owns, is owned by, is affiliated with or has a financial interest in the appraiser or appraisal organization; or

(2) Contract with an appraiser or appraisal organization to perform an appraisal of a property, if the building or seller of the property owns, is owned by, is affiliated with, or has a financial interest in the appraiser or appraisal organization. A fee appraiser may not have any interest, direct or indirect, in the property being appraised. A DE staff appraiser may not have any direct interest, financial or otherwise, in the property being appraised, and is permitted an indirect interest only by reason of his or her employment by a lender that has its appraisal operations isolated from its other activities in accordance with paragraph (b) of this section.

(d) *Fee appraisers for one-to-four family residential property—*

(1) *General rule for Direct Endorsement cases.* If the mortgage is to be processed by Direct Endorsement, the fee appraiser contracting with the mortgagee to perform appraisal services may be either an individual or a corporation, partnership, or sole proprietorship which the mortgagee has chosen at its sole discretion, provided that:

(i) The individual who performs the appraisal is either State certified or State licensed as required under § 267.3;

(ii) The appraiser is registered with the appropriate HUD Field Office and has a current HUD identification number in accordance with this paragraph (d);

(iii) The appraiser is not, at the time of his or her selection by the mortgagee, debarred, suspended, or in any other way disqualified from participating in HUD programs; and

(iv) The mortgagee accepts full responsibility for the accuracy, integrity and thoroughness of the appraisal. This provision does not relieve the appraiser from a concurrent responsibility with the mortgagee.

(2) *Appraiser Roster.* HUD will maintain a nationwide listing on an Appraisal Roster of appraisers that are qualified to perform appraisals in connection with one-to-four family residential property mortgage insurance programs. Listing on the Roster does not indicate a warranty or endorsement by HUD of any appraiser or appraisal, and § 200.145(c) of part 200 of this chapter applies to each appraisal performed in accordance with this part. To be eligible for selection under HUD's one-to-four family residential property programs, an appraiser shall be listed on the Roster. Each applicant for listing or periodic relisting must provide evidence that he or she:

(i) Holds a current certification or license from a State whose qualification standards are in compliance with title XI of FIRREA, as determined by the Appraisal Subcommittee;

(ii) Holds an acceptable measure of insurance coverage against errors and omissions;

(iii) Is knowledgeable about HUD/FHA appraisal requirements and policies;

(iv) Is not, at the time of application, listed on HUD's Credit Alert System;

(v) Is not, at the time of application, debarred, suspended or in any other way disqualified from participating in HUD programs; and

(vi) Has paid a listing fee, and when required a relisting fee, each such fee to be in an amount to be determined by the Secretary.

(3) *Removal from the Roster.* HUD may remove the appraiser from the Roster at any time for cause. Cause includes, but is not limited to, significant deficiencies in appraisals, failure to maintain standing as a State certified or State licensed appraiser, failure to maintain adequate insurance coverage against errors and omissions and prosecution for committing or attempting to commit fraud, misrepresentation or some other offense that may reflect on the applicant's character and integrity to perform as an appraiser. Such removal shall not be governed by the procedures of part 24 of this title. An appraiser shall, however, be subject to other sanctions in accordance with part 24 of this title.

(4) *Fee panels.* If a mortgage is not processed through the Direct Endorsement procedure, the appraiser will be assigned by HUD from a fee panel or otherwise designated by HUD. A mortgagee using the Direct Endorsement procedure may also request HUD to assign an appraiser from a fee panel or otherwise.

(e) *Contract appraisers and consultants for multifamily properties.* Appraisers and consultants performing services under HUD contracts for Delegated Processing and Technical Discipline assignments will be selected on the basis of criteria and procedures set forth in the solicitation, pursuant to the Federal Acquisition Regulation, 48 CFR Ch. I.

(f) *Assistance of others.* In conducting an appraisal, the appraiser may use the assistance of individuals who do not qualify to perform appraisals under this part. Such individuals shall be under the direct supervision of the appraiser. The appraiser shall personally inspect the property being appraised as well as all properties used as comparables, and shall certify in the appraisal report that he or she has personally performed or directly supervised all work in regard to the appraisal and has personally

inspected the appraised property and the properties used as comparables.

(g) *Appraisal fees and charges.* The appraisal fee charged to the borrower or other party shall be reasonable. If not specified by agreement between HUD and the mortgage or title I lender, the fee may be prescribed by rule or other HUD issuance.

(h) *Transfer of appraisals between mortgagees.* With respect to one-to-four family residential family properties only, a Direct Endorsement mortgagee may accept an appraisal that was prepared for another mortgagee by an appraiser selected in accordance with this section, provided that the appraisal was performed in accordance with this part and that the mortgagee accepting the appraisal has:

(1) Adopted appraisal review procedures in accordance with this part;

(2) Reviewed the appraisal report under its review procedures;

(3) Found the appraisal to be acceptable; and

(4) Documented its review and finding in writing and has included a copy of that documentation in the HUD case binder submitted for endorsement.

(i) *Non-transferability of multifamily property appraisals.* Appraisal materials and reports may not be transferred between mortgagees with respect to properties involved in multifamily program transactions.

§ 267.6 Professional association membership: competency, nondiscrimination and lender reporting.

(a) *Membership in appraisal organizations.* A State certified appraiser or State licensed appraiser may not be excluded from consideration for an assignment solely because of membership or lack of membership in a particular appraisal organization.

(b) *Discrimination prohibited.* In the selection of an appraiser, there shall be no discrimination on the basis of race, color, religion, national origin, sex, age or handicap.

(1) Each mortgagee or other institution or individual who conducts or contracts for appraisals under HUD programs shall monitor data, and on the basis of its monitoring shall report annually to the Department on the number of appraisals which it has had performed (i) by staff appraisers; (ii) by fee panel appraisers; and (iii) by appraisers whose services it has contracted for; or (iv) by any combination of persons in the described categories; during the reporting year. The report, which is in furtherance of the purpose stated in 24 CFR 121.1, shall disclose how many of the appraisals were performed by minority and by female appraisers. A minority appraiser is one who is: Hispanic, Hispanic black, non-Hispanic black, Asian/Pacific Islander, Asian Indian American, or American Indian/ Alaskan Native.

(2) Each HUD approved mortgagee, title I lender and title I loan correspondent shall submit the data described in paragraph (b)(1) of this section as part of the mortgagee's annual request for reapproval. Each institution or individual who performs underwriting as a Delegated Processor or who performs Technical Disciplines, but who is not approved by HUD, shall submit the data not later than the anniversary date of the agreement with HUD which determines that party's responsibilities.

(3) The data shall be submitted to the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0050, where it will be available for public inspection during regular business hours.

(c) *Competency.* Although appraisers performing appraisals with respect to HUD programs must be either State licensed or certified, as appropriate, an appraiser shall not be considered competent or suitable solely by reason of having been licensed or certified by a State. Every determination of competency shall be based upon the appraiser's individual qualifications and character and upon his or her experience and educational background as they relate to a particular appraisal assignment.

Dated: August 19, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

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Thursday
September 16, 1993

Part V

Department of Transportation

Coast Guard

46 CFR Parts 10 and 12

Five-Year Term of Validity for Certificates of Registry and Merchant Mariner's Documents; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 12

[CGD 91-211]

RIN 2115-AD92

Five-Year Term of Validity for Certificates of Registry and Merchant Mariner's Documents

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing regulations to implement the provisions of the Oil Pollution Act of 1990 (OPA 90) that require certificates of registry (CORs) and merchant mariner's documents (MMDs) to be renewed every 5 years. A 5-year renewal period will allow the Coast Guard to ensure that vessel personnel continue to be qualified to operate a vessel safely. A schedule is proposed for renewing existing CORs and MMDs. Proposed user fees for COR and MMD renewal transactions also are included.

DATES: Comments must be received on or before November 15, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 91-211), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

Comments on collection of information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: James W. Cratty, Project Manager, Oil Pollution Act (OPA 90) Staff, (202) 267-6742, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91-211) and the specific section of this proposal to which each comment applies, and give a reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. A person wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "**ADDRESSES**." The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are James W. Cratty, Project Manager, and Jacqueline L. Sullivan, Project Counsel, OPA 90 Staff.

Background and Purpose

The Coast Guard issues certificates of registry (CORs) under the authority of 46 U.S.C. chapters 71 and 75. CORs are issued to provide registry of staff officers for service in positions such as pursers, medical doctors, and professional nurses. The Coast Guard issues merchant mariner's documents (MMDs) under the authority of 46 U.S.C. chapters 73 and 75. MMDs authorize individuals to work in different capacities on deck and in the engine and steward's departments on seagoing vessels over 100 gross tons. The MMD, with an appropriate endorsement, also identifies qualified tankermen.

Section 4102(b) of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380) amends 46 U.S.C. 7107 by limiting the term of a COR to 5 years. Section 4102(c) of OPA 90 amends 46 U.S.C. 7302 by establishing the same limited term for MMDs. The Conference Report on OPA 90 (H.R. Conf. Rep. No. 101-653) explains that a 5-year renewal period will allow the Coast Guard to ensure that vessel personnel continue to be qualified to operate a vessel safely.

The Ominbus Budget Reconciliation Act of 1990 amended 46 U.S.C. 2110 to require the Coast Guard to establish and collect user fees for services it provides under subtitle II of title 46, United States Code, including the issuance and renewal of CORs and MMDs. A final rule was published in the **Federal Register** (58 FR 15228; March 19, 1993) entitled "User Fees for Marine Licensing, Certificate of Registry and Merchant Mariner Documentation" (CGD 91-002), but it did not establish fees for COR and MMD renewals. The fees for COR and MMD renewals are addressed in this notice of proposed rulemaking (NPRM).

Sections 4101 (a) and (b) of OPA 90 also amend 46 U.S.C. 7101 and 7302, respectively, to require every person who applies for the issuance or renewal of a license, COR, or MMD to have a chemical test for dangerous drugs. For ease of review, the Coast Guard is issuing a separate NPRM in the **Federal Register** on the chemical testing requirements for renewal of licenses, CORs, or MMDs. However, one final rule will be issued combining the requirements for chemical testing and regulations for the terms of validity for licenses, CORs, and MMDs. As required by OPA 90, the Coast Guard also is developing an NPRM addressing National Driver Register record and criminal record review that will become part of the license, COR, and MMD renewal process.

Discussion of the Proposed Amendments

The procedures proposed for renewal of CORs and MMDs are patterned after those already established for renewal of licenses (46 CFR part 10). Renewal requirements are similar to qualification standards for original issuance of CORs, MMDs, and endorsements to MMDs. The basic renewal process for CORs and MMDs set out in the proposed amendments involves the following factors:

1. *Professional requirements.* Medical doctors and professional nurses must present evidence of holding a valid medical license to be registered as staff officers. The same requirements would apply for renewals.

Staff officers seeking a chief purser, purser, or senior assistant purser COR are not required to present recent evidence of shipboard experience for original issuance of a COR, and the Coast Guard finds there is no compelling reason to require proof of service for renewal of these CORs.

With respect to MMDs with qualified ratings, sea time and related service are valuable indicators of continued proficiency. The term "qualified rating" is defined in 46 CFR 12.01-6 to mean

various categories of able seaman, qualified member of the engine department, tankerman, or a lifeboatman endorsement on an MMD. Sea service enables mariners to maintain a working familiarity with the skills necessary to work within the industry. The proposed proficiency requirement for renewal of an MMD endorsed with a qualified rating is at least 1 year of sea service during the past 5 years of one of the following substitutes:

(a) Successful completion of a comprehensive, open-book test covering topics of both general and technical knowledge for each qualified rating endorsed on the MMD.

(b) Successful completion of a refresher training course approved for each qualified rating endorsed on the MMD.

(c) Evidence of employment in a position closely related to the operation, construction, or repair of vessels (either deck or engineer as appropriate) for at least 3 years during the past 5 years.

An applicant for original issuance of an entry level MMD (i.e., an MMD not endorsed with a qualified rating) is not required to show service experience. Therefore, the proposed regulations provide for renewal of an entry level MMD without a sea service requirement.

2. *Physical requirements.* There are no physical requirements for the issuance of CORs and entry level MMDs, and none will be required for renewal by this proposed regulation. However, there are physical requirements for the original issuance of all MMD qualified rating endorsements, except lifeboatman. The Coast Guard is proposing that renewal of an MMD endorsement will require compliance with the same physical requirements as the initial issuance.

3. *Renewal of expired MMDs with qualified ratings.* CORs and MMDs will be valid for 5 years. These credentials are not valid for use after the expiration date. The expiration date of an MMD is not extended by the addition of endorsements, unless the MMD is also renewed.

The proposed regulations provide that an expired MMD with qualified ratings may be renewed up to 12 months after expiration without the necessity of retaking an examination for each endorsement. This proposal is intended to minimize costs to the mariner who would otherwise have to take all of the examinations for an expired MMD endorsed with qualified ratings.

A mariner who fails to renew an expired MMD within 12 months of expiration must demonstrate continued proficiency by completing an approved refresher course or by passing the complete examination for each qualified endorsement sought. This provision is not necessary for renewal of expired CORs or MMDs with no qualified rating endorsements because no examination is required to acquire these credentials.

4. *Concurrent renewal of licenses, CORs, and MMDs.* Current Coast Guard practice is to allow renewal of licenses no more than 12 months in advance of the expiration date. Because many license holders and all staff officers have MMDs, the requirements for COR and MMD renewals will increase the number of credentials that mariners will have to renew. To lessen the burden and inconvenience on merchant mariners who must renew more than one credential, the Coast Guard proposes to allow concurrent renewal of all merchant mariner credentials whenever possible regardless of when they expire. For example, an MMD may be renewed when an accompanying license is raised in grade. All renewal requirements for each license, COR, and MMD must be satisfied. The Coast Guard solicits comments on concurrent renewals of merchant mariner credentials.

5. *Renewal by mail.* The proposed regulations provide the opportunity to renew CORs and MMDs by mail. The process of renewing CORs and MMDs by mail will be similar to the process now used for license renewals.

6. *Expiration of existing CORs and MMDs.* The Coast Guard estimates the total number of CORs ever issued to staff officers to be several hundred thousand. The Coast Guard also has issued approximately 1.3 million MMDs since they came into use in 1937. The Coast Guard anticipates that the total pool of active mariners who will seek renewal of CORs and MMDs to be approximately 90,000.

Section 4102(d) of OPA 90 limits the term of validity of all existing CORs and MMDs and provides for staggered expirations over a 5-year span. The statutory language provides that CORs and MMDs issued before August 18, 1990 expire on the day they would have expired if they had been issued for a term of 5 years and been renewed at the end of each succeeding 5-year period. This avoids the problems that would have been encountered if all CORs and MMDs expired at the same time. If this language is interpreted so that the 5-year period began on August 18, 1990, the date OPA 90 was enacted, documents would have expired at a time when no review and renewal procedures were in place. Mariners with such an expired document could not continue working, placing a tremendous burden on both individual mariners and the maritime industry. The Coast Guard interprets the statutory language to include an additional 5-year renewal cycle to avoid such a harsh result. Therefore, in this proposed rule, a mandatory 5-year renewal period would begin on the effective date of these regulations.

Pending the development of these proposed procedures for renewal of CORs and MMDs, the Coast Guard has been issuing CORs and MMDs that are valid for a period of 5 years since March 1991. In addition, the Coast Guard has been renewing some existing CORs and MMDs along with other transactions.

This NPRM proposes a schedule for expiration of all existing CORs and MMDs that were issued without expiration dates. The expiration date for an existing COR or MMD issued without an expiration date is calculated by referring to the issue year and adding time blocks in 5-year increments up to the year falling between 1994 and 1998, inclusive. The month and day of expiration are the same as the month and day of issuance. For example, an MMD issued on July 12, 1971, will expire on July 12, 1996. Charts to aid in computing existing COR and MMD expiration dates are provided in proposed §§ 10.811 and 12.02–29 of this NPRM.

7. *MMD renewal with inactive endorsements.* An applicant for renewal of an MMD endorsed with qualified ratings who is unwilling or otherwise unable to meet the professional or physical requirements for the endorsement may renew the MMD without that endorsement. In these cases, as long as the application remains valid, the qualified rating may be reendorsed on the MMD if the applicant meets the requirements for renewal and pays the issuance fee for the endorsed MMD.

8. *User Fees.* As required under 46 U.S.C. 2110, the Coast Guard proposes to establish fees for renewing CORs and MMDs. To determine the fees for the services provided in this proposal, the Coast Guard reviewed the license renewal procedures in 46 CFR part 10. The COR and MMD renewal process generally will be similar to the process currently established for licenses, and the proposed fees for COR and MMD renewals are similar to the fee requiremetns for license renewals.

Adjustments of fees to accommodate changes in the cost of providing services are permitted under 46 U.S.C. 2110. The Coast Guard will review the renewal fees annually during its review of other licensing and merchant mariner documentation user fees and will revise the fees when costs change because of

inflation, deflation, or changes in the way services are provided.

Consistent with procedures for other licensing and merchant mariner documentation user fees, the Coast Guard proposes that fees be paid prior to receiving a particular service. The Coast Guard incurs costs each time an individual is provided a service, regardless of the result achieved by the individual. Collecting fees in advance ensures that payments are received for services provided, even though some applicants may not complete the entire renewal process. For some renewals, there may be up to three identifiable phases in the overall process: evaluation of the application, examination of the applicant, and issuance of the COR or MMD. The Coast Guard proposes to establish fees for each of these phases to facilitate effective fee collections. Repeating a phase would result in a new fee. The fees proposed for each of the three phases are discussed in the following paragraphs.

(a) *Evaluation fees.* The evaluation phase begins when the Coast Guard receives a renewal application package. This phase involves review of the renewal application form, updating files, searching Coast Guard and other government records, making verifications, and conducting follow-up telephone calls. The evaluation phase is completed when the Coast Guard determines whether an applicant meets all the prerequisite renewal requirements. The evaluation fee would be paid when the individual submits the application package to the Coast Guard.

Applicants for renewal of medical doctor and professional nurse CORs need only present evidence of a valid license as physician, surgeon, or registered nurse and complete an application form. Applicants for renewal of chief purser, purser, senior assistant purser, or junior assistant purser CORs do not have to present evidence of meeting current professional requirements. Because evaluation of applications for renewal of CORs is minimal, the Coast Guard proposes no fee for evaluations of these applications.

Applicants for renewal of an entry level MMD (i.e., with no qualified rating endorsements) do not have to meet any professional requirements. The Coast Guard proposes no fee for evaluation of an application for renewal of an entry level MMD because there is minimal processing of the application prior to issuance of the renewed MMD.

The evaluation of an application for renewal of an MMD endorsed with a qualified rating is similar to the evaluation required for renewal of a lower level license. The proposed evaluation fee for these MMDs is $45, which is the same fee proposed for evaluation of an application for renewal of a lower level license. An application for renewal of an MMD that is endorsed with more than one qualified rating will be considered one evaluation with a single evaluation fee of $45.

Individuals who apply for renewal of a license, a COR, or an MMD with a qualified rating at different times must pay the fees associated with each renewal transaction. However, the evaluation fee for a license renewal will also include the cost of evaluating an MMD endorsed with qualified ratings, if the applications for renewal are submitted at the same time. By allowing these renewal activities to be covered under a single evaluation fee, the Coast Guard seeks to encourage holders of multiple merchant mariner's credentials to renew all of their credentials at the same time whenever possible.

(b) *Examination fees.* Renewal of CORs and entry level MMDs do not involve written examinations. However, renewal of MMDs that are endorsed with qualified ratings may involve either an open-book exercise or a complete written examination, if the recent service requirements cannot be met. An open-book exercise may be required if the MMD is renewed within 12 months of its expiration. An applicant for renewal of an expired MMD that is beyond the 12-month grace period could be required to complete a written examination covering each qualified rating sought. Open-book exercises and written examinations would have a fee of $40.

The examination phase of the renewal process usually involves scheduling, proctoring and grading the examination, and notifying the applicant of results. Payment of the examination fee is required on or before the test date if the examination is administered at an Regional Examination Center (REC). Under existing Coast Guard policy, examination fees are to be paid at least 1 week prior to the examination date for examinations administered by Traveling Examination Teams at locations other than a REC. If the applicant misses taking a scheduled examination, the Coast Guard would allow rescheduling without an additional fee as long as the individual's application remains valid.

For a single application, the Coast guard also proposes to charge only one examination fee of $40, even when more than one exercise or examination is required so long as the application remains valid, and provided an issuance has not occurred. Once an MMD is renewed, a separate examination cycle will begin anew and appropriate fees will become payable. If, for enhancement of employment opportunities or some other reason, the mariner desires to submit subsequent applications or receive separate MMD endorsement renewal issuances, additional evaluation, examination, and issuance fees will apply.

(c) *Issuance fees.* The issuance phase of the renewal process includes preparation of forms and review and signature of documents by appropriate Coast Guard REC personnel. Issuance of CORs and MMDs in the renewal process involves time and costs similar to the original issuance process. Because the issuance of renewals is similar to original issuance, the issuance fee will be the same for all categories of licenses, CORs, and MMDs—$35. Applicants for renewal of multiple merchant mariner's credentials will be charged $35 for each license, COR, and MMD renewed. The issuance fee must be paid before the credential is issued.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11304; February 26, 1979). A draft Regulatory Evaluation is available in the docket for inspection or copying where indicated under "**ADDRESSES.**" The following information is taken from the draft regulatory evaluation.

1. *Government/Coast Guard costs.* Government and Coast Guard costs attributable to implementing renewal requirements for merchant mariner credentials would be primarily incurred by the 17 Coast Guard RECs. These costs would consist of evaluating renewal applications, administering examinations, and issuing renewed CORs and MMDs. Projections of costs and impacts for renewal of CORs and MMDs are based upon the calculations of current merchant marine licensing and documentation program costs using information from a workload analysis study, hourly standard rates provided in the Coast Guard Standard Rate Instruction (COMDTINST 7310), and the Coast Guard Staffing Standards Manual (COMDTINST M5312.11A).

The Coast Guard calculates the projected personnel and associated infrastructure costs for COR and MMD renewal activities to be approximately $1.23 million annually, which will be offset by approximately $1.16 million annually in user fees. User fee receipts will be deposited in the general fund of the U.S. Treasury as offsetting receipts

of the Department of Transportation and ascribed to Coast Guard activities.

2. *Costs to the public.* The Coast Guard estimates a total pool of 1,500 active staff officers and 88,500 active MMD holders who may seek renewal of CORs and MMDs. One-fifth of the total pool is expected to renew each year, resulting in 300 COR and 17,700 MMD renewals annually. Because the renewal process occurs once every 5 years, total costs can be divided by 5 to determine an annualized cost. Costs incurred by merchant mariners seeking renewal of CORs and MMDs will consist of user fees, photographs for MMDs, physical examinations, and time spent in the actual renewal process itself. This aggregate cost represents the highest average amount a mariner may expect to pay. However, variations in fees and renewal requirements will result in significantly lower costs for many mariners. The costs estimates are as follows:

	Total cost	Annualized
Individual Mariner	$278.84	$55.77
Whole Pool Impact	25,095,600	5,019,120

3. *Benefits.* Direct and societal benefits resulting from periodic renewal of CORs and MMD may be substantial. This renewal process will eventually include three additional regulatory initiatives implementing OPA 90 to ensure continuing qualification of merchant mariners: (1) criminal record reviews, (2) national driver register checks, and (3) chemical drug testing.

All merchant mariners play a crucial and responsible role in the safe operation of a vessel. It is imperative that merchant mariners know that they are going to sea with a competent crew and that other vessels are operated by equally competent mariners. This rulemaking will protect the employees, employer, marine environment, and the general public. Some of the direct benefits will include the following:

a. Potentially fewer groundings, accidents, losses of property, and releases of hazardous materials into the marine environment.

b. Potentially fewer personal injuries to shipping company employees.

There is insufficient historical data to quantify the benefits of this proposal. However, should this program manage to save even two lives per year at $2.5 million per statistical life saved (which recent research shows is a reasonable estimate of people's willingness-to-pay for safety), its benefits would exceed its cost. If maritime accidents were reduced even by a small percentage, savings would accrue to the maritime industry through lower repair and medical costs and to the public through environmental protection.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The proposal identifies individual applicants for issuance and renewal of CORs and MMDs as responsible for payment of issuance and renewal fees to the Coast Guard. Some firms in the maritime industry may now voluntarily pay employees' fees associated with obtaining CORs and MMDs. Some firms might choose to pay some or all of their employees' additional fees which would result from this rulemaking. However, the proposal does not require any firms to pay for document issuance or document renewal fees in lieu of the application, in whom the proposal vests responsibility. Some small entities—for example, the 355 United States inland barge operators with fleets of 10 or fewer barges—are not and will not be required to incur costs for applicant renewals of CORs and MMDs.

Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other similar requirements.

This rulemaking proposal contains collection of information requirements in §§ 10.209 and 12.02–27. The following particulars apply:

DOT No: 2115.
OMB Control No.: 2115–0514.
Administration: U.S. Coast Guard.
Title: Five-year Term of Validity for Certificates of Registry and Merchant Mariner's Documents.
Need for Information: Sections 7107 and 7302 of title 46, United States Code mandate the Secretary to limit the term of a COR and MMD to 5 years.
Proposed Use of Information: This information is used by the Coast Guard licensing officer at a REC. It is used to determine the applicant's qualification to receive or continue to hold a COR or MMD.
Frequency of Responses: Every 5 years.
Burden Estimated: The Coast Guard estimates the total annual burden on merchant mariners will be 15,261 hours per year.
Respondents: The regulatory impact will fall on those approximately 18,000 respondents.
Forms: Application for Original, Supplemental or Duplicate Merchant Mariner's Document CG–719B and Application for License as Officer, Operator or Staff Officer CG–866.
Average Burden Hours per Respondent: The average burden hours per respondent is 0.83 hours (50 minutes) per respondent.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under "ADDRESSES."

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. Section 2.B.2.1 of that instruction excludes administrative actions and procedural regulations and policies which clearly do not have any environmental impacts. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects

46 CFR Part 10

Fees, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Fees, Reporting and recordkeeping requirements, Seamen.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR parts 10 and 12 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for part 10 continues to read as follows:

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2103, 7701; 49 CFR 1.45, 1.46; Section 10.107 also issued under the authority of 44 U.S.C. 3507.

2. Section 10.109 is amended by adding paragraph (d)(3) to read as follows:

§ 10.109 Fees.

* * * * *

(d) * * *

(3) For renewal of a Certificate of Registry:

(i) For evaluation for renewal of a certificate of registry, no fee.

(ii) For issuance of a renewed certificate of registry, $35.

* * * * *

3. Section 10.202 is amended by revising the section heading and paragraphs (a), (b), and (c) to read as follows:

§ 10.202 Issuance of licenses and certificates of registry.

(a) Applications for original licenses, original certificates of registry, raises of grade, extensions of route, or endorsements must be current and up-to-date with respect to service and the physical examination, as appropriate. Physical examinations and approved applications are valid for 12 months.

(b) Any person who is found qualified under the requirements set forth in this part is issued an appropriate license or certificate of registry valid for a term of 5 years from date of issuance.

(c) A license or certificate of registry is not valid until signed by the applicant and the OCMI (or the OCMI's designated representative).

* * * * *

§ 10.203 [Amended]

4. The table in § 10.203 is amended by changing the first word in the heading of column 5 from "Experiment" to "Experience".

5. Section 10.209 is amended by removing "and," at the end of paragraph (e)(3)(i)(D) and by removing the period at the end of paragraph (e)(3)(i)(E) and adding in its place "; and", revising the section heading and paragraphs (a), (b), (e)(2), (e)(3)(i) introductory text, (e)(3)(i)(A) and (B), (e)(3)(iii), and (f), and adding paragraphs (c)(5), (d)(4), and (e)(3)(i)(F) to read as follows:

§ 10.209 Requirements for renewal of licenses and certificates of registry.

(a) *General.* Except as provided in paragraph (g) of this section, an applicant for renewal of a license or certificate or registry shall establish possession of all of the necessary qualifications before the issuance of a renewal of a license or certificate of registry.

(1) Each application must be on a Coast Guard furnished form and accompanied by the evaluation fee set out in § 10.109. An approved application is valid for 12 months.

(2) The applicant may apply in person at any Regional Examination Center listed in § 10.105 or may renew the license or certificate of registry by mail under paragraph (e)(3) of this section.

(3) The applicant shall submit the license or certificate of registry to be renewed. A photocopy may be submitted instead of the actual license or certificate.

(b) *Fitness.* No license or certificate of registry will be renewed if it has been suspended without probation or revoked as a result of action under part 5 of this chapter, or facts that would render a renewal improper have come to the attention of the Coast Guard.

(c) * * *

(5) An applicant for renewal of a medical doctor or professional nurse certificate or registry shall, in addition to meeting the requirements of paragraphs (a) and (b) of this section, present a currently valid appropriate license as physician, surgeon, or registered nurse issued under the authority of a State or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia. This medical license will be returned to the applicant. A certified copy may be presented instead of the actual medical license.

(d) * * *

(4) Physical examinations of staff officers are not required for renewal of certificates of registry.

(e) * * *

(2) *Concurrent renewal of licenses, certificates of registry, and merchant mariner's documents.* An applicant may renew a license, a certificate of registry, and a merchant mariner's document at the same time. An applicant for concurrent renewal of a license, a certificate of registry, and a merchant mariner's document shall satisfy the individual renewal requirements and pay the applicable fees required by §§ 10.109 and 12.02–18 of this chapter for each license, certificate of registry, or merchant mariner's document being renewed. However, only one evaluation fee is required for an applicant who concurrently renews more than one credential in a single transaction.

(3) *Renewal by mail.* (i) An applicant may renew a license or certificate of registry by mail by submitting an application to the Coast Guard office that issued the license or certificate or registry or holds the applicant's file. The following documents must be submitted:

(A) A properly completed application on a Coast Guard furnished form and the evaluation fee required by § 10.109;

(B) The expired license or certificate of registry to be renewed; or, if it has not expired, a photocopy of the license or certificate, including the back and all attachments;

* * * * *

(F) If the applicant desires to renew a medical doctor or professional nurse certificate of registry by mail, a certified copy of a currently-valid, appropriate license as physician, surgeon, or registered nurse, issued under the authority of a State or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia.

(ii) * * *

(iii) Upon receipt of the renewed license or certificate of registry, the applicant shall sign it in order to validate the license or certificate.

(f) *Reissuance of expired license or certificate of registry.* (1) Whenever an applicant applies for reissuance of a license more than 12 months after expiration, the applicant shall demonstrate continued professional knowledge by completing an approved course, or by passing the complete examination for that license. The examination may be oral-assisted if the expired license was awarded on an oral exam. The fees listed in § 10.109 apply to these exams. In the case of an expired radio officer's license, the license may be reissued upon presentation of a valid first- or second-class radiotelegraph operator license issued by the Federal Communications Commission.

(2) An applicant applying for reissuance of a certificate of registry more than 12 months after expiration shall meet renewal requirements and pay the appropriate fees for renewal of the certificate, as provided for in §§ 10.109. There are no additional requirements for certificates of registry that are expired for more than 12 months.

* * * * *

6. Section 10.805 is amended by adding paragraph (f) to read as follows;

§ 10.805 General requirements.

* * * * *

(f) A certificate of registry is valid for a term of 5 years from the date of

issuance. Procedures for renewing certificates of registry are found in § 10.209. The expiration date of an existing certificate of registry issued without an expiration date shall be determined in accordance with § 10.811.

7. Section 10.811 and Table 10.811 are added to read as follows:

§ 10.811 Expiration of existing certificates of registry.

The expiration year of a certificate of registry issued without an expiration date is calculated by adding 5-year increments to the issuance date of the certificate of registry, up to the first applicable year falling between 1994 and 1998, inclusive. The day and month of expiration are the same as that of issuance. Table 10.811 is provided as an aid for calculating the expiration date of a certificate of registry issued without an expiration date. A certificate of registry is not valid for use after the expiration date calculated under this section, but may be renewed in accordance with the requirements of § 10.209.

TABLE 10.811.—EXPIRATION OF CERTIFICATES OF REGISTRY ISSUED WITH NO EXPIRATION DATE [1]

Expiration Year	1998	1997	1996	1995	1994
Issue Year	1993	1992	1991	1990	1989
Do	1988	1987	1986	1985	1984
Do	1983	1982	1981	1980	1979
Do	1978	1977	1976	1975	1974
Do	1973	1972	1971	1970	1969
Do	1968	1967	1966	1965	1964
Do	1963	1962	1961	1960	1959
Do	1958	1957	1956	1955	1954
Do	1953	1952	1951	1950	1949
Do	1948	1947	1946	1945	1944
Do	1943	1942	1941	1940	1939
Do	1938	1937	.....	.....	.....

[1] Find the year in which the certificate of registry was issued (Issue year), then move up the column to find the Expiration year. Month and day of expiration correspond to the month and day of issue.

PART 12—CERTIFICATION OF SEAMEN

8. The authority citation for part 12 continues to read as follows:

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2103, 2110, 7301, 7701; 49 CFR 1.46.

9. Section 12.02–9 is amended by adding paragraph (e) to read as follows:

§ 12.02–9 Application for documents.

* * * * *

(e) Approved applications are valid for 12 months.

10. Section 12.02–15 is revised to read as follows:

§ 12.02–15 Oath requirement.

An applicant for a merchant mariner's document for any rating shall take an oath before an Officer in Charge, Marine Inspection, or other official authorized to give such oath, or a commissioned officer of the Coast Guard authorized to administer oaths under 10 U.S.C. 936 or 14 U.S.C. 636, that the applicant will faithfully and honestly perform all the duties required of the applicant by law and carry out all lawful orders of the applicant's superior officers on shipboard. Such an oath remains binding for all subsequent merchant mariner's documents issued to that person unless specifically renounced in writing.

11. Section 12.02–17 is amended by revising paragraph (b) to read as follows:

§ 12.02–17 Rules for the preparation and issuance of documents.

* * * * *

(b) Upon determining that the applicant satisfactorily meets all requirements for the document and any endorsements requested, the Officer in Charge, Marine Inspection, shall issue the appropriate document to the applicant. A merchant mariner's document is valid for a term of 5 years from the date of issuance. The expiration date of a merchant mariner's document is placed on the face of the document.

* * * * *

12. Section 12.02–18 is amended by adding paragraph (a)(7) to read as follows:

§ 12.02–18 Fees.

(a) * * *

(7) For renewal of a merchant mariner's document:

(i) For evaluation for renewal of a merchant mariner's document endorsed with a qualified rating, $45.

(ii) For evaluation for renewal of a merchant mariner's document when submitted with a license where a renewal evaluation fee already applies, no additional fee.

(iii) For evaluation for renewal of a merchant mariner's document without a qualified rating endorsement, no fee.

(iv) For administration of an examination or open-book exercise if required under § 12.02–27, $40.

(v) For issuance of a renewal or reissuance of a merchant mariner's document, $35.

* * * * *

13. Section 12.02–27 is added to read as follows:

§ 12.02–27 Requirements for renewal of a merchant mariner's document.

(a) *General.* Except as provided in paragraph (g) of this section, an applicant for renewal of a merchant mariner's document shall establish possession of all of the qualifications necessary before issuance of a renewal of a merchant mariner's document.

(1) Each application must be on a Coast Guard furnished form and accompanied by the evaluation fee established in § 12.02–18. An approved application is valid for 12 months.

(2) The applicant may apply in person or by mail to any Regional Examination Center listed in § 10.105.

(3) The expiration date of a merchant mariner's document issued without an expiration date is determined in accordance with § 12.02–29.

(b) *Fitness.* No merchant mariner's document will be renewed if it has been suspended without probation or revoked as a result of action under part 5 of this chapter, or facts that would render a renewal improper have come to the attention of the Coast Guard.

(c) *Professional requirements.* (1) In order to renew a merchant mariner's document endorsed with a qualified rating, the applicant shall pay the

appropriate fees set out in § 12.02–18 and meet one of the following criteria:

(i) Present evidence of at least 1 year of sea service during the past 5 years.

(ii) Pass a comprehensive, open-book exercise covering the general subject matter contained in appropriate sections of this part.

(iii) Present evidence of completion of an approved refresher training course.

(iv) Present evidence of employment in a position closely related to the operations, construction, or repair of vessels (either deck or engineer as appropriate for the endorsement) for at least 3 years during the past 5 years.

(2) There are no professional requirements for renewal of a merchant mariner's document that is not endorsed with any qualified ratings.

(d) *Physical requirements.* An applicant for renewal of a merchant mariner's document endorsed with a rating that has physical requirements for original issuance shall meet the same physical requirements for renewal of the endorsed document.

(e) *Special circumstances.*—(1) *Grace period.* Except as provided in this paragraph, a merchant mariner's document may not be renewed more than 12 months after it has expired. To obtain a reissuance of the merchant mariner's document, an applicant shall comply with the requirements of paragraph (f) of this section. When an applicant's merchant mariner's document has expired during a time of service with the Armed Forces and there was no reasonable opportunity for renewal, including by mail, this 12-month grace period may be extended. The period of military service following the date of merchant mariner's document expiration that precluded renewal may be added to the 12 month grace period. The 12 month grace period, and any extension, does not affect the expiration date of the document. A merchant mariner's document, and any endorsements that it contains, is not valid for use after the expiration date.

(2) *Concurrent renewal of licenses, certificates of registry, and merchant mariner's documents.* An applicant may renew a license, certificate of registry, and merchant mariner's document at the same time. An applicant for concurrent renewal shall satisfy the individual renewal requirements for each document or endorsement and pay applicable fees required by §§ 10.109 and 12.02–18 of this chapter for each license, certificate of registry, or merchant mariner's document being renewed. However, only one evaluation fee is required for an applicant who renews his or her license, certificate of registry, and merchant mariner's document in a single transaction.

(3) *Renewal by mail.* Applications for renewal of merchant mariner's documents by mail may be sent to any Coast Guard Regional Examination Center.

(f) *Reissuance of expired merchant mariner's documents.* Whenever an applicant applies for reissuance of a merchant mariner's document endorsed with a qualified rating more than 12 months after expiration, the applicant shall demonstrate continued professional knowledge by completing an approved course, or by passing the complete examination for each qualified rating for which reissuance is sought. The appropriate fees listed in § 12.02–18 apply to these exams. An applicant applying for reissuance of a merchant mariner's document without any qualified rating endorsements more than 12 months after expiration shall meet the requirements for renewal of the merchant mariner's document.

(g) *Renewal of merchant mariner's document with endorsements.* An applicant for renewal of a merchant mariner's document that is endorsed with qualified ratings, who is unwilling or otherwise unable to meet the requirements of paragraphs (c) or (d) of this section, may renew the merchant mariner's document without the qualified ratings. The ratings may be reendorsed within 12 months by satisfying the renewal requirements in paragraphs (c) and (d) of this section and paying the appropriate fees set out in § 12.02–18.

14. Section 12.02–29 and Table 12.02–29 are added to read as follows:

§ 12.02–29 Expiration of existing merchant mariner's documents.

The expiration year of a merchant mariner's document issued without an expiration date is calculated by adding 5-year increments to the issuance date of the document, up to the first applicable year falling between 1994 and 1998, inclusive. The day and month of expiration are the same as that of issuance. Table 12.02–29 is provided as an aid for calculating the expiration date of a document issued without an expiration date. These merchant mariner's documents shall be renewed in accordance with the requirements of § 12.02–29. A merchant mariner's document is not valid for use after its expiration date.

TABLE 12.02–29.—EXPIRATION OF MERCHANT MARINER'S DOCUMENTS ISSUED WITH NO EXPIRATION DATE[1]

Expiration year	1998	1997	1996	1995	1994
Issue year	1993	1992	1991	1990	1989
Do	1988	1987	1986	1985	1984
Do	1983	1982	1981	1980	1979
Do	1978	1977	1976	1975	1974
Do	1973	1972	1971	1970	1969
Do	1968	1967	1966	1965	1964
Do	1963	1962	1961	1960	1959
Do	1958	1957	1956	1955	1954
Do	1953	1952	1951	1950	1949
Do	1948	1947	1946	1945	1944
Do	1943	1942	1941	1940	1939
Do	1938	1937			

[1] Find the year in which the merchant mariner's document was issued (issue year), then move up the column to find the Expiration year. Month and day of expiration correspond to the month and day of issue.

Dated: September 9, 1993.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93-22577 Filed 9-15-93; 8:45 am]

BILLING CODE 4910-14-M

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federal register

Thursday
September 16, 1993

Part VI

The President

Memorandum of September 11—Streamlining the Bureaucracy

Proclamation 6589—Commodore John Barry Day, 1993

Proclamation 6590—Gold Star Mother's Day

Proclamation 6591—Minority Enterprise Development Week, 1993

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Filed
Bill

Federal Register
Vol. 58, No. 178
Thursday, September 16, 1993

Presidential Documents

Title 3—

The President

Memorandum of September 11, 1993

Streamlining the Bureaucracy

Memorandum for Heads of Departments and Agencies

Consistent with the National Performance Review's recommendation to reduce the executive branch civilian work force by 252,000, or not less than 12 percent, by the close of fiscal year 1999, I hereby direct each head of an executive department or agency to prepare, as a first step, a streamlining plan to be submitted to the Director of the Office of Management and Budget not later than December 1, 1993.

The streamlining plans shall be prepared in accordance with the following:

1. Each executive department's and agency's plans should address, among other things, the means by which it will reduce the ratio of managers and supervisors to other personnel, with a goal of reducing the percentage who are supervisors or managers in halving the current ratio within 5 years.

2. The streamlining plans should be characterized by (a) delegation of authority, (b) decentralization, (c) empowerment of employees to make decisions, and (d) mechanisms to hold managers and employees accountable for their performance.

3. Each plan shall address ways to reduce overcontrol and micromanagement that now generate "red tape" and hamper efficiency in the Federal Government. Each streamlining plan should also propose specific measures to simplify the internal organization and administrative processes of the department or agency.

4. The streamlining plans should further seek to realize cost savings, improve the quality of Government services, and raise the morale and productivity of the department or agency.

5. All independent regulatory commissions and agencies are requested to comply with the provisions of this memorandum.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 11, 1993.

[FR Doc. 93-22878
Filed 9-15-93; 11:40 am]
Billing code 3110-01-P

Presidential Documents

Proclamation 6589 of September 13, 1993

Commodore John Barry Day, 1993

By the President of the United States of America

A Proclamation

During its War for Independence, our Nation faced a great and proven sea power. The young Continental Navy, which had been established by the Continental Congress in October 1775, was only a fraction of the size of the British fleet. Nevertheless, the small American naval force not only achieved several key victories during the War but also established a tradition of courageous service that continues to this day. On this occasion, we honor the memory of one of America's first and most distinguished naval leaders, Commodore John Barry.

After immigrating to the United States from Ireland, John Barry became a successful shipmaster in Philadelphia. He was also an enthusiastic supporter of American independence, and when the Revolutionary War began, he readily volunteered for service and became one of the first captains of the Continental Navy.

Captain Barry served bravely and with distinction throughout the course of the War. While commanding the brig LEXINGTON, he captured the British sloop EDWARD in April 1776. This victory marked the first capture in battle of a British vessel by a regularly commissioned American warship. Later in 1776, he led a raid by four small boats against British vessels on the Delaware River and seized a significant quantity of supplies meant for the British Army. Seven years later, Captain Barry participated in the last American naval victory of the War, leading the frigate ALLIANCE against HMS SYBILLE in March 1783.

Serving as a volunteer artillery officer in December of that year, Captain Barry participated in General George Washington's celebrated campaign to cross the Delaware River, which led to victory at the Battle of Trenton.

Captain Barry continued to serve our country after the end of the Revolution, helping to make the American victory a meaningful and enduring one. Active in Pennsylvania politics, he became a strong supporter of the Constitution, which was ratified by the State Assembly on December 12, 1787. In June 1794, President George Washington appointed him as commander of the new frigate USS UNITED STATES, one of six that were built as part of a permanent American naval armament. For the remaining years of his life, Commodore Barry helped to build and lead the new United States Navy, commanding not only USS UNITED STATES but also "Old Ironsides," USS CONSTITUTION.

Commodore John Barry died on September 13, 1803, but his outstanding legacy of service is carried on today by all the brave and selfless Americans who wear the uniform of the United States Navy.

The Congress, by House Joint Resolution 157, has designated September 13, 1993, as "Commodore John Barry Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 13, 1993, as Commodore John Barry Day. I invite all Americans to observe this day with appropriate ceremonies and activities in honor of those individuals, past and present, who have served in the United States Navy.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of September, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-22883
Filed 9-15-93; 11:46 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 6590 of September 13, 1993

Gold Star Mother's Day

By the President of the United States of America

A Proclamation

To become a parent is one of life's greatest joys. We devote ourselves to our children, investing our hopes and dreams in them and protecting them so that they may have a better life than we have had. There is probably no greater pain, therefore, than the loss of a child. None of us expects to outlive our children, and when mortal hands rob us of our posterity, the loss is devastating.

Every Gold Star Mother has experienced this pain. As much as the soldiers themselves, these brave women know the meaning of sacrifice for country. Long after a slain soldier is laid to rest, that young man or woman's mother will remember her loss every day for the rest of her life. When a mother bids farewell to a child in uniform, she begins to serve her country in her own private way, worrying that her child will be in harm's way and that this young man or woman, in whom she has invested so much love and care, may pay the ultimate price on the battlefield. And when the unthinkable does happen, the Gold Star Mother must carry the wounds within her heart forever.

We have a sacred duty to remember the devotion of Gold Star Mothers. Like the brave soldiers who have lain down their lives in defense of our freedoms, their mothers have earned our deepest honor and sympathy, having sacrificed so much for America, yet continuing to give of themselves to ensure that the ideals of freedom and democracy live on for future generations. Their losses and their contributions can be no greater, and our obligation to them cannot be measured.

To pay fitting tribute to these women, the Congress, by Senate Joint Resolution 115 on June 23, 1936 (49 Stat. 1895), designated the last Sunday in September as "Gold Star Mother's Day" and authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 26, 1993, as Gold Star Mother's Day. I call on all government officials to display the United States flag on government buildings on this solemn day. I additionally urge the American people to display the flag and to hold appropriate meetings in their homes, places of worship, or other suitable places, as public expression of the sympathy and the respect that our Nation holds for its Gold Star Mothers.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of September, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-22984
Filed 9-15-93; 11:48 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 6591 of September 13, 1993

Minority Enterprise Development Week, 1993

By the President of the United States of America

A Proclamation

The national observance of Minority Enterprise Development Week is a decade-old tradition in which Americans of all races and ethnic groups convene to recognize and promote the achievements of more than one million minority business owners and entrepreneurs who support this Nation's continued economic growth. During Minority Enterprise Development Week, Americans also honor the many diligent minority business advocates in government and the corporate sector whose constant pursuit of excellence keeps our economy strong.

Minority-owned businesses are valuable assets for America. Each year, minority business enterprises return valuable resources to their communities in the form of taxes and provide wages and employment for thousands—particularly for minority workers. Each day, successful minority entrepreneurs fulfill an even more vital function by serving as teachers, mentors, and models for young Americans who are our business and civic leaders of tomorrow.

There is room in the free enterprise system for anyone who has the skill and the determination to compete. Therefore, it is fitting that we encourage all Americans to participate in business enterprise, create their own wealth, and promote the general welfare. Minority business women and men have proven time and again that they possess the talent and dedication required for success. By improving the availability of capital sources for business starts and expansions in the minority community, by increasing access to state-of-the-art information resources for minority business owners, by promoting the minority entrepreneur's entrance into new domestic and international markets, and by opening all doors to economic progress for minority citizens, all of American society will benefit.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim the week of October 3 through 9, 1993, as Minority Enterprise Development Week. I heartily encourage the people of the United States to commemorate this important event with appropriate ceremonies and celebrations.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of September, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93–22889
Filed 9–15–93; 11:49 am]
Billing code 3195–01–P

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Vol. 59, No. 178

Thursday, September 16, 1993

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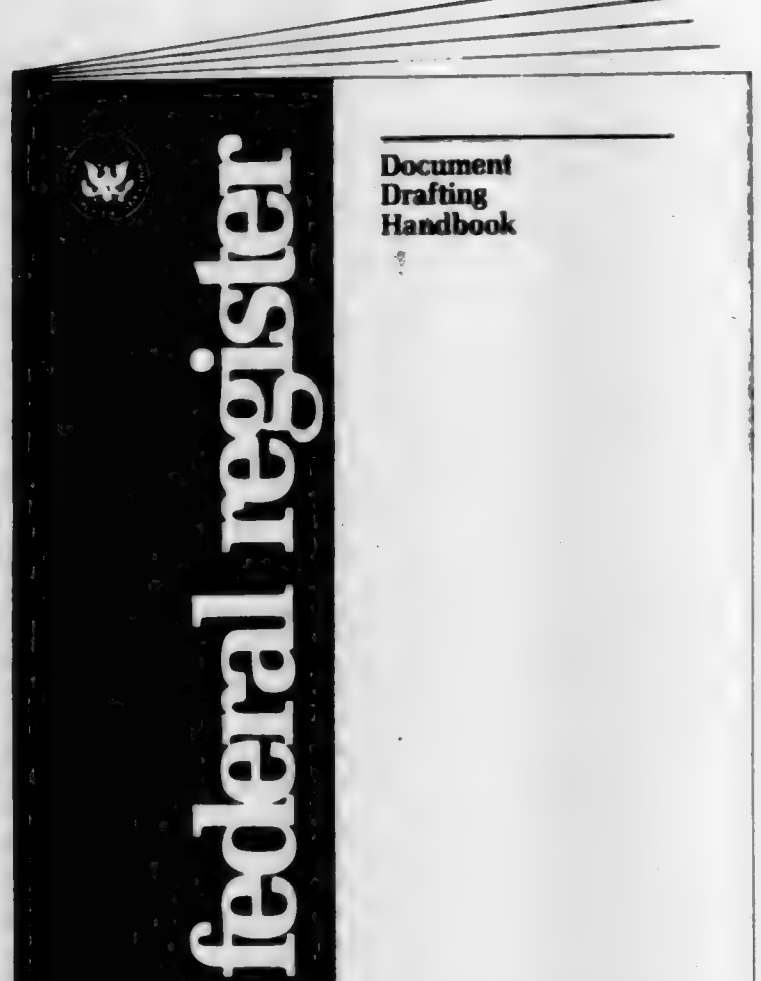

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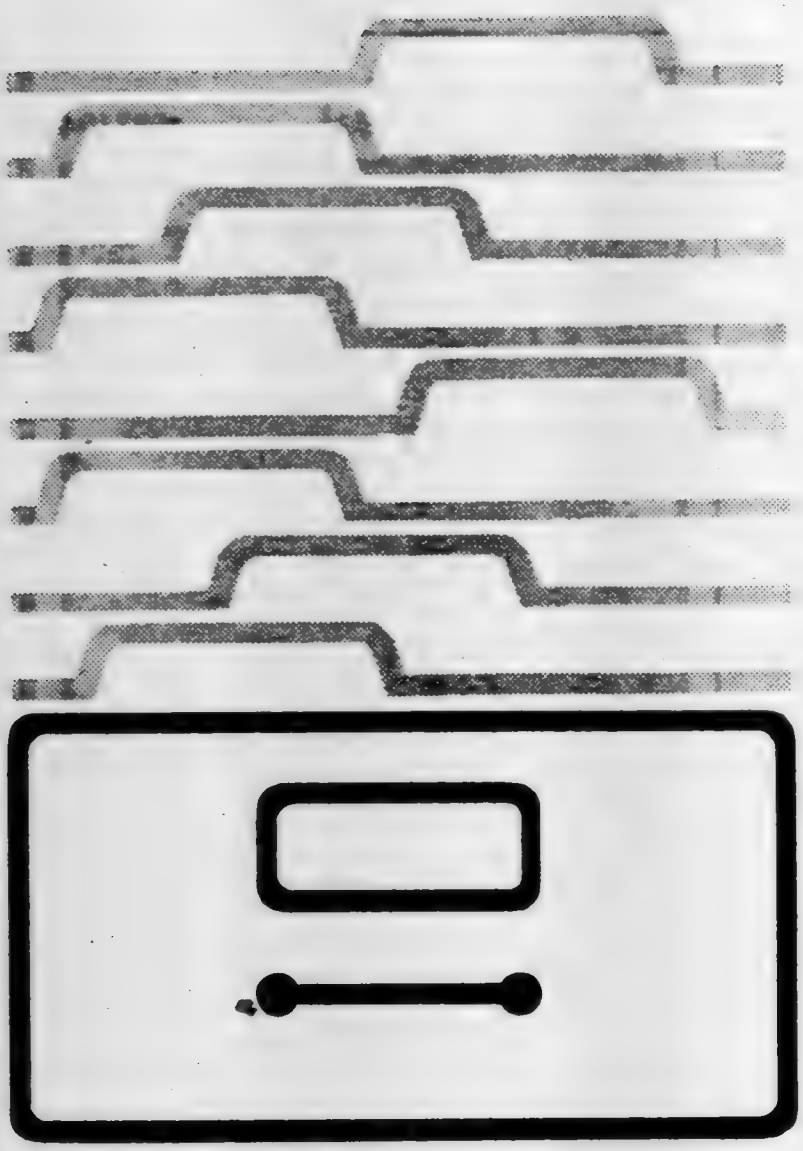

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Federal Register
Vol. 58, No. 179
Friday, September 17, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

[No. LS-93-003]

RIN 0581-AA91

Changes in Fees for Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing the grading and certification of meats, prepared meats, and meat products by increasing the hourly fee rate for voluntary Federal meat grading and acceptance services. The hourly fees will be adjusted by this final rule to reflect the increased cost of providing service and ensure that the Federal meat grading program is operated on a financially self-supporting basis as required by law.

EFFECTIVE DATE: The final rule is effective September 19, 1993.

FOR FURTHER INFORMATION CONTACT: Larry R. Meadows, Chief, Meat Grading and Certification Branch, 202/720-1246.

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

This final rule was reviewed under the USDA procedures established to implement Executive Order 12291 and was classified as a nonmajor, final rule pursuant to section 1(b) (1), (2), and (3) of that Order. Accordingly, a regulatory impact analysis is not required.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have preemptive effect with respect to any State or local laws, regulations, or policies that do not conflict with this rule. It is not intended to have a retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

Effect on Small Entities

This action was reviewed under the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), wherein the Administrator of the Agricultural Marketing Service determined that this final rule will not have a significant economic impact on a substantial number of small entities. The changes in the hourly fee rates are necessary to recover the costs of providing voluntary Federal meat grading and acceptance services. The program has significantly increased the use of office automation equipment which, when combined with administrative document reductions, have helped maintain operating efficiency.

Additionally, the program is continuing to evaluate its field structure for additional cost savings. Consequently, the unit cost of meat grading and acceptance services to the industry remains approximately $0.0011 per pound.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act do not apply to this rulemaking as it does not require the collection of any information or data. However, recent program administrative changes will significantly reduce the number of billing documents sent to applicants, which should create substantial timesavings during their reconciliation process.

Background

The Secretary of Agriculture is authorized by the Agricultural Marketing Act (AMA) of 1946, as amended, 7 U.S.C. 1621 *et seq.*, to provide voluntary Federal meat grading and acceptance services to facilitate the orderly marketing of meat and meat products and to enable consumers to obtain the quality of meat they desire. The AMA also provides for the collection of fees from users of Federal meat grading and acceptance services that are approximately equal to the cost of providing these services. The hourly fees for service are established by equitably distributing the projected annual program operating costs over the estimated hours of service—revenue hours—provided to users of the service. Program operating costs include salaries and fringe benefits of meat graders, supervision, travel, training, and all administrative costs of operating the program. Employee salaries and benefits account for approximately 80 percent of the total budget. Revenue hours include base hours, premium hours, and service performed on Federal legal holidays. As program operating costs change, the hourly fees must be adjusted to enable the program to remain financially self-supporting as required by law. The program last changed the hourly fee rate structure in April of 1992.

In fiscal year 1993, the program experienced a congressionally mandated 3.7 percent salary increase for Federal employees effective January 10, 1993, a projected nonsalary, inflationary cost of 4.0 percent, and additional overhead costs of $30,000 to cover the program's share of unbudgeted administrative overhead. Together these cost increases are anticipated to total $452,000. Such costs are more than the program can absorb and remain viable. To control costs in fiscal year 1993, the program is: (1) Developing and implementing the Total Quality Management/Continuous Improvement Process philosophy into all Meat Grading and Certification (MGC) Branch activities, (2) reducing management costs by significantly increasing use of office automation equipment and changing certain administrative procedures which, when combined, are expected to reduce paperwork and the associated recordkeeping by approximately 60 percent, (3) continuing to evaluate field structure for ways to reduce operating overhead. Additionally, the program remains committed to increasing intermittent and cross-utilized personnel usage for less than full-time positions whenever practicable.

Uncontrollable costs thrust upon the program by such factors as governmentwide salary increases, inflation, changes in employee entitlements and additional administrative overhead costs will continue to create substantial operating deficits. Such operating deficits can only be balanced by adjusting the hourly fee-rate charged to users of the service. Any further reduction in personnel, services, or supervisory infrastructure beyond those already planned would have a detrimental effect on the program's ability to offer

uniform, nationwide meat grading and acceptance services.

Comments

On June 11, 1993, the Agency published in the **Federal Register** (58 FR 32616) a proposed rule to increase the fees for Federal meat grading and certification services. This proposed rule was published with requests for comments as a means of providing full public participation in the rulemaking process. Comments were requested by July 12, 1993. During the 30-day comment period, the Agency received one comment from an industry trade association.

Discussion of Comments

The commenter expressed concern over the necessity of our current fee increase. The commenter generally suggested that administrative and overhead costs be reduced and better controlled through greater efficiency and better use of existing program resources.

The Agency recognizes the need for and importance of providing efficient and cost-effective grading and certification services. The last four fee raises in June 1986, July 1989, May 1990, and April 1992, along with our current proposal, would equal an average annualized increase of 4.1 percent per year. Considering that inflation averaged approximately 4.1 percent each of the last 7 years, the Agency is providing a cost-effective service.

The commenter urged more progress be made in the areas of services, personnel staffing, and supervisory infrastructure to control costs.

The Agency continually reviews all areas of program operations to ensure that efficient and cost-effective service is maintained. Another method of evaluating the value of program services is to determine the average cost per pound of providing them. The program's average cost per pound for providing meat grading and certification services to the industry is approximately $.0011 per pound, which is very reasonable.

Concerning personnel staffing, the program, since the last fee increase in April 1992, achieved further staffing reductions primarily through attrition. However, in response to urgent needs in specific locations, the program hired five new qualified meat graders. By hiring in specific locations, the program was able to avoid the normal relocation costs associated with filling such vacancies and thereby achieved approximately $150,000 in relocation cost savings.

Concerning supervisory infrastructure, the completion of a major field reorganization will further reduce supervisory and management positions. The reorganization, which began in 1991 with the closure of one regional office, concludes this year with the closure of another and reduces the program to one regional office. This major reorganization will result in over $980,000 savings annually. Further, the program was able to collocate one area office with another program activity, which resulted in additional savings for the industry. Finally, the program continues to explore every available opportunity to cross-utilize other program personnel and use intermittent employees in order to offer the most cost-efficient service possible. Without the cost-cutting measures implemented by the program, fee increases much larger than those requested would have been necessary.

In view of the foregoing considerations, the Agency will increase the base hourly rate for commitment applicants for voluntary Federal meat grading and acceptance services from $34.00 to $35.20. A commitment applicant is a user of the service who agrees, by commitment or agreement memorandum, to the use of meat grading and acceptance services for 8 consecutive hours per day, Monday through Friday, between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The base hourly rate for noncommitment applicants for voluntary Federal meat grading and acceptance services will increase from $36.40 to $37.60 and will be charged to applicants who utilize the service for 8 consecutive hours or less per day, Monday through Friday, between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The premium hourly rate for all applicants will increase from $42.00 to $43.20, and will be charged to users of the service for the hours worked in excess of 8 hours per day, between the hours of 6 a.m. and 6 p.m., and for hours worked from 6 p.m. to 6 a.m., Monday through Friday, and for any time worked on Saturday and Sunday, except on legal holidays. The holiday rate for all applicants will increase from $68.00 to $70.40, and will be charged to users of the service for all hours worked on legal holidays.

The Agricultural Marketing Act of 1946 requires that fees approximately cover the cost of services provided under the meat grading and certification program. The Agency is responsible for operating the meat grading and certification program in a prudent manner. Since January 11, 1993, when the government-wide salary and benefit increases became effective, the program's hourly fee rate has not been sufficient to recover the cost of providing such services. Therefore, the Agency must act to increase fees and reduce operating losses as soon as possible.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not delaying the effective action until 30 days after publication of this final rule in the **Federal Register**. Therefore, this final rule will be effective on September 19, 1993.

List of Subjects in 7 CFR Part 54

Food grades and standards, Food labeling, Meat and meat products.

Accordingly, 7 CFR part 54 is amended as follows:

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for part 54 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, secs. 203, 205, as amended; 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622 and 1624).

§ 54.27 [Amended]

2. Section 54.27(a), the third sentence is amended by revising "$36.40" to read "$37.60", "$42.00 to read "$43.20", and "$68.00" to read "$70.40".

3. Section 54.27(b), the second sentence is amended by revising "$34.00" to read "$35.20", "$42.00 to read "$43.20", and "$68.00" to read "$70.40".

Dated: September 13, 1993.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 93–22763 Filed 9–16–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 932

[Docket No. FV93–932–1IFR]

Olives Grown in California; Establishment of Grade and Size Requirements for Olives Authorized for Limited Use Styles During the 1993–94 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes the use of smaller sized olives in the production of limited use styles during the 1993–94 crop year and establishes minimum grade and size

requirements for such olives in the order's rules and regulations. Olives used in limited use styles are too small to be desirable for use as whole or whole pitted canned olives because their flesh-to-pit ratio is too low. However, they are satisfactory for use in the production of limited use styles. This action will help the California olive industry meet the increasing market needs of the food service industry by making smaller olives available for use in the production of limited use styles and improve returns to growers. This action was unanimously recommended by the California Olive Committee (committee), which works with the Department of Agriculture (Department) in administering the marketing order program for olives grown in California.

DATES: This action becomes effective August 1, 1993. Comments which are received by October 18, 1993 will be considered prior to issuance of a final rule.

ADDRESSES: Written comments concerning this interim final rule should be submitted in triplicate to the Docket Clerk, F&V Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. All comments submitted will be made available for public inspection in the above office during regular business hours. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and vegetable Division, AMS, USDA, P.O. Box 96456, room 2526–S, Washington, DC 20090–6456; telephone (202) 720–8139, or, Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487–5901.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 932 (7 CFR part 932), as amended, regulating the handling of olives grown in California, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that 5 handlers of California olives will be subject to regulation under the order during the current season, and there are approximately 1,350 olive producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Most but not all of the olive producers may be classified as small entities. None of the olive handlers may be classified as small entities.

Nearly all of the olives grown in the United States are produced in California. The growing areas are scattered throughout California with most of the commercial production coming from inland valleys. In 1990, about 77 percent of the production came from the San Joaquin Valley and 23 percent from the Sacramento Valley. California olives are primarily used for canned ripe whole and whole pitted olives which are eaten out of hand as hors d'oeuvres or used as an ingredient in cooking and in salads. The canned ripe olive market is essentially a domestic market. Very few shipments of California olives are exported.

Olive production has fluctuated from a low of 24,200 tons during the 1972–73 crop year to a high of 168,500 tons during the 1992–93 crop year. The committee indicated that 1991–92 production totalled about 63,260 tons. The various varieties of olives produced in California have alternate bearing tendencies with high production one year and low the next. Preliminary estimates of 1992–93 production total approximately 163,500 tons. It is too early to estimate 1993–94 production. However, based on past production and marketing experience, the committee believes that handlers will need smaller sized olives during the 1993–94 crop year to meet market requirements for limited use styles of canned olives for the 1993–94 year. Absent this action, olives which are smaller than those authorized for whole and whole pitted canning uses would have to be disposed of by handlers into non-canning uses such as crushing into oil.

Paragraph (a)(3) of § 932.52 of the order provides that processed olives smaller than the sizes prescribed for whole and whole pitted styles may be used for limited uses if recommended by the committee and approved by the Secretary. Until October 1, 1991, paragraph (a)(3) also prescribed minimum sizes, by variety group, which could be authorized for use in the production of limited use styles by the Secretary.

Effective October 1, 1991, certain non-canning size disposition requirements specified in § 932.51(a)(3) and minimum sizes authorized for limited use specified in § 932.52(a)(3) of the marketing order were suspended. The committee may now recommend the use of olives for limited uses that are smaller than those previously permitted under the order. Minimum size and grade requirements may be recommended annually by the committee and approved by the Secretary. The sizes authorized herein are the same as those established for the 1992–93 crop year. The minimum sizes which could previously be authorized for limited uses were established in a

1971 amendment to the marketing order. Olives smaller than the prescribed minimum sizes which could be authorized for limited uses had to be disposed of for less profitable non-canning uses such as crushing for oil. Returns to producers are lower on smaller fruit used for such purposes. The use of smaller sized olives for limited use styles has been authorized in all but two crop years since the order was instituted in 1965.

Since the 1971 amendment, there have been substantial changes within the olive industry. In spite of the annual limited use authorization, in recent years the industry has not been able to meet market needs for its products, especially the limited use styles used primarily by the food service industry. The demand for processed olives and for limited use styles is expected to continue to increase. At the same time, the industry has not been able to increase production to meet market needs for canned ripe olives.

The committee conducted a study during the 1990–91 crop year to determine the feasibility of utilizing smaller sized olives in the production of limited use styles and to determine which sizes could be efficiently processed into such styles. All olive handlers within the industry participated in the study. All handlers reported that smaller sizes can be efficiently processed into limited use styles. Advanced technology in the form of better processing equipment is currently available. The new technology allows handlers to process smaller olives into limited use styles more efficiently than was possible in the past.

This action will help growers and handlers to meet the growing market requirements for limited use style olives based upon current conditions. The size requirements allow the use of sizes which would otherwise have to be disposed of for non-canning use. In turn, growers should receive a larger return from such olives.

By a mail ballot vote ending June 15, 1993, the committee unanimously recommended establishment of grade and size regulations during the 1993–94 crop year pursuant to paragraph (a)(3) of § 932.52 of the order. The grade requirements are the same as established in recent seasons. The specific sizes for the variety groups are the minimum sizes which are deemed desirable for use in the production of limited use styles at this time. As in past years, permitting the use of the smaller olives in the production of limited use styles allowed handlers to take advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives. Handlers will be able to market more olives than would be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the available olive supplies and facilitate market expansion, thereby increasing returns to growers. In the absence of this action, the smaller fruit would have to be disposed of for less profitable, non-canning uses.

Section 8(e) of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for olives under a domestic marketing order, imported olives must meet the same or comparable requirements. This action allows smaller olives for limited use styles under the marketing order. Thus, a corresponding change is needed in the olive import regulation. Such a change will be addressed in a separate rulemaking action.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities and that the proposal will benefit both producers and handlers of California olives.

After consideration of all relevant matter presented, including information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This rule relieves handling requirements, and to be of maximum benefit for the 1993–94 crop year should be effective by August 1; (2) olive handlers are aware of this action which was unanimously recommended by the committee; (3) there is no special preparation required by affected handlers; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 932.153 is revised to read as follows:

[**Note:** This section will appear in the Code of Federal Regulations.]

§ 932.153 Establishment of grade and size requirements for processed 1993–94 crop year olives for limited uses.

(a) *Grade.* On and after August 1, 1993, any handler may use processed olives of the respective variety group in the production of limited use styles of canned ripe olives if such olives were processed after July 31, 1993, and meet the grade requirements specified in paragraph (a)(1) of § 932.52 as modified by § 932.149.

(b) *Sizes.* On and after August 1, 1993, any handler may use processed olives in the production of limited use styles of canned ripe olives if such olives were harvested during the period August 1, 1993, through July 31, 1994, and meet the following requirements:

(1) The processed olives shall be identified and kept separate and apart from any olives harvested before August 1, 1993, or after July 31, 1994.

(2) Variety Group 1 olives, except the Ascolano, Barouni, or St. Agostino varieties, shall be of a size which individually weigh at least 1/105 pound: *Provided*, That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/105 pound.

(3) Variety Group 1 olives of the Ascolano, Barouni, or St. Agostino varieties shall be of a size which individually weigh at least 1/180 pound: *Provided*, That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/180 pound.

(4) Variety Group 2 olives, except the Obliza variety, shall be of a size which individually weigh at least 1/205 pound: *Provided*, That not to exceed 35 percent of the olives in any lot or sublot may be smaller than 1/205 pound.

(5) Variety Group 2 olives of the Obliza variety shall be of a size which individually weigh at least 1/180 pound: *Provided*, That not to exceed 35 percent of the olives in any lot or sublot may be smaller than 1/180 pound.

Dated: September 13, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–22700 Filed 9–16–93; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 944

[Docket No. FV93–944–1IFR]

Olives Imported Into the United States; Authorization to Import Smaller Sized Olives for Limited Uses and Establishment of Minimum Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes the importation of certain bulk olives into the United States to be used in the production of limited use styles of olives such as wedges, halves, slices, or segments. Such olives will not be required to meet the minimum size requirements established for olives used in the production of whole and whole pitted canned ripe olives. This rule establishes alternative minimum size requirements for such olives during the 1993–94 season. This rule also updates the Federal-State inspection office address list contained in the import regulation. This action is required under section 8e of the Agricultural Marketing Agreement Act of 1937 to bring the olive import regulation into conformity with the requirements established under the California olive marketing order.

DATES: This action becomes effective August 1, 1993. Comments which are received by October 18, 1993 will be considered before the issuance of any final rule.

ADDRESSES: Written comments concerning this rule should be submitted in triplicate to the Docket Clerk, F&V Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, or by faxogram at (202) 720–5698. All comments submitted will be made available for public inspection in the above office during regular business hours. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–8139, or Terry Vawter, California Marketing Field Office, Fruit and Vegetable division, AMS, USDA, 2202 Monterey Street, suite 102–B, Fresno, CA 93721, telephone (209) 487–5901.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, which provides that whenever certain specified commodities, including olives, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. There are approximately 25 importers of olives subject to the olive import regulation. Small agricultural service firms, which would include olive importers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $3,500,000. The majority of olive importers may be classified as small entities.

Canned ripe olives, and bulk olives for processing into canned ripe olives, imported into the United States must meet certain minimum grade and size requirements specified in *Olive Regulation 1* (7 CFR 944.401). All canned ripe olives are required to be inspected and certified prior to importation (release from custody of the United States Custom Service), and all bulk olives for processing into canned ripe olives must be inspected and certified prior to canning. "Canned ripe olives" means olives in hermetically sealed containers and heat sterilized under pressure, of two distinct types, "ripe" and "green-ripe", as defined in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR 52.3751–52.3764). The term does not include Spanish-style green olives. Any lot of olives failing to meet the import requirements may be exported or disposed of under the supervision of the Processed Products Branch of the Fruit and Vegetable Division, with the costs of certifying the disposal of the olives borne by the importer. Any person may import up to 100 pounds (drained weight) of canned ripe olives or bulk olives exempt from these grade and size requirements.

This interim final rule modifies paragraph (b)(12) of the olive import regulation (7 CFR 944.401(b)(12)) to authorize the importation of bulk olives which do not meet the minimum size requirements established for olives for whole and whole pitted uses to be used in the production of limited use styles for the 1993–94 season which begins August 1, 1993. This rule also establishes size regulations for such olives in paragraph (b)(12).

Import regulations issued under the Act are based on regulations established under Federal marketing orders to regulate domestically produced products. The grade and size requirements contained in the olive import regulation are based on those in effect for olives grown in California under Marketing Order No. 932. This action reflects a recommendation by the California Olive Committee (committee) to change the requirements for olives for limited use styles grown in California. The committee works with the Department in administering the marketing order program for California olives.

Paragraph (a)(3) of § 932.52 of the California olive marketing order provides that processed olives smaller than the sizes prescribed for whole and whole pitted styles may be used for limited uses if recommended by the committee and approved by the Secretary. The sizes are specified in terms of minimum weights for individual olives in various size categories by variety groups. This is to recognize the different sizing characteristics of the individual varieties and types of California olives. Olives used in limited use styles are too small to be desirable for use as whole or whole pitted canned olives because their flesh-to-pit ratio is too low. However, they are satisfactory for use in the production of limited use styles.

By a mail ballot ending on June 15, 1993, the committee unanimously recommended to authorize establishment of minimum sizes for use in the production of limited use styles during the 1993–94 season. These minimum sizes would be the same as those established for the 1992–93 season. The sizes are specified in terms of minimum weights for individual olives in various variety groups and are the same for both domestic and imported olives. An extra category is continued in the import regulation to apply comparable requirements for varieties not grown domestically. The minimum sizes are as follows:

Variety Group I, except the Ascolano, Barouni, or St. Agostino varieties	1/105 pound
Variety Group I of the Ascolano, Barouni, or St. Agostino varieties	1/180 pound
Variety Group 2, except the Obliza variety	1/205 pound
Variety Group 2 of the Obliza variety	1/180 pound
Olives not identifiable as to variety or variety group	1/205 pound

Each of the categories includes a 35 percent tolerance for olives weighing less than the specified minimum size.

This action is necessary because section 8e of the Act provides that when domestically produced olives are regulated under a Federal marketing order, imported olives must meet the same or comparable grade, size, quality, and maturity requirements. Thus, authorizing the use of smaller sized California olives in the production of limited use styles and establishing size regulations for such olives requires that the same or comparable regulations be issued for imported bulk olives. Domestic requirements for California olives are being revised in a separate rulemaking action.

Permitting the use of smaller olives in the production of limited use styles will allow importers to take better advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives. Importers will be able to import and market more olives than would be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the available olive supply and facilitate market expansion. In the absence of this action, the smaller fruit could not be imported for limited uses, and would have to be disposed of for less profitable, non-canning uses under the supervision of the inspection service or exported.

A change in paragraph (c) to be implemented indefinitely, updates the list of regional inspection offices listed in the import regulation. The change reflects consolidation of the Southeastern and Central offices into the Eastern Regional Office and the relocation of the Western Regional Office.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information available it is found that this action, as set forth below, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to implementing this action, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This relaxation provides importers the opportunity to import additional supplies of olives to meet market needs for limited use styles; (2) no useful purpose would be served by providing preliminary notice before implementation; and (3) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this interim final rule.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 944.401 is amended by revising paragraph (b)(12) and by amending paragraph (c) by revising the office and telephone listing and address to read as follows:

[**Note:** This section will appear in the Code of Federal Regulations.]

§ 944.401 Olive Regulation 1.

* * * * *

(b) * * *

(12) Imported bulk olives when used in the production of canned ripe olives must be inspected and certified as prescribed in this section. Imported bulk olives which do not meet the applicable minimum size requirements specified in paragraphs (b)(2) through (b)(11) of this section may be imported during the period August 1, 1993, through July 31, 1994, for limited use, but any such olives so used shall not be smaller than the following applicable minimum size:

(i) Whole ripe olives of Variety Group 1, except the Ascolano, Barouni, or St. Agostino varieties, of a size that not more than 35 percent of the olives, by count, may be smaller than 1/105 pound (4.3 grams) each.

(ii) Whole ripe olives of Variety Group 1 of the Ascolano, Barouni, or St. Agostino varieties, of a size that not more than 35 percent of the olives, by count, may be smaller than 1/180 pound (2.5 grams) each.

(iii) Whole ripe olives of Variety Group 2, except the Obliza variety, of a size that not more than 35 percent of the olives, by count, may be smaller than 1/205 pound (2.2 grams) each.

(iv) Whole ripe olives of Variety Group 2 of the Obliza variety of a size that not more than 35 percent of the olives, by count, may be smaller than 1/180 pound (2.5 grams) each.

(v) Whole ripe olives not identifiable as to variety or variety group of size that not more than 35 percent of olives, by count, may be smaller than 1/205 pound (2.2 grams) each.

(c) * * *

Office and Telephone

Eastern Regional Office, 800 Roosevelt Road, Building A, suite 380, Glen Ellyn, IL 60137, (708) 790–6937, 6938, or 6939;

Western Regional Office, 2202 Monterey Street, suite 102–C, Fresno, CA 93721, (209) 487–5891.

Application for inspection of processed bulk olives shall be made not less than 3 days prior to use in the production of canned ripe olive. Such application shall be made through the following office:

Western Regional Office, 2202 Monterey Street, suite 102–C, Fresno, CA 93721, (209) 487–5891.

* * * * *

Dated: September 13, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–22699 Filed 9–16–93; 8:45 am]

BILLING CODE 3410–02–P

RAILROAD RETIREMENT BOARD

20 CFR Part 360

RIN 3220–AB00

Employee Responsibilities and Conduct

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby removes regulations on "Employee Responsibilities and Conduct," because those provisions are now obsolete.

EFFECTIVE DATE: This regulation is effective September 17, 1993.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4945, TDD (312) 751–4201.

SUPPLEMENTARY INFORMATION: Part 360 of the Board's regulations contains regulations promulgated pursuant to the Ethics in Government Act of 1978 and the implementing regulations issued by the Office of Personnel Management (OPM). Subsequent events have rendered part 360 obsolete. Effective October 1, 1989, the Office of Government Ethics (OGE), which had previously been a part of OPM, was given separate agency status. The Ethics Reform Act of 1989 (Pub. L. 101–194, as amended) amended the Ethics in Government Act of 1978. Pursuant to the 1989 Act, as amended, OGE is the "supervising ethics office" for the executive branch. Additionally, Executive Order 12731 of October 17, 1990, directed OGE to promulgate a single, comprehensive set of standards of ethical conduct for executive branch employees.

OGE has issued regulations governing executive branch employees on all of the subject areas covered in part 360. More specifically, Subpart A of part 360 deals with Executive Personnel Financial Disclosure Requirements. On April 7, 1992 (57 FR 11800), OGE issued comprehensive executive branch financial disclosure regulations which are now codified at 5 CFR part 2634. Subpart B of part 360 deals with Employee Standards of Conduct. On August 7, 1992, OGE published new Standards of Ethical Conduct for Employees of the Executive Branch (57 FR 35006) which became effective February 3, 1993 and are now codified at 5 CFR part 2635. The regulations in part 2635 supersede individual agency regulations governing employee standards of conduct. Finally, subpart C of part 360 deals with Post-Employment Conflict of Interest. More comprehensive regulations implementing the Government-wide post-employment statute, 18 U.S.C. 207, are codified at 5 CFR parts 2637 and 2641.

Because this rule simply removes regulations which are now clearly out of date, public comment was not considered necessary and, thus, this rule was not published in proposed form.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 360

Conflict of interests, Government employees.

PART 360—EMPLOYEE RESPONSIBILITIES AND CONDUCT [REMOVED AND RESERVED]

For the reasons set out in the preamble, part 360 of subchapter F of chapter II of title 20 of the Code of Federal Regulations, consisting of subparts A, B, and C, is hereby removed and reserved.

Dated: September 10, 1993.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 93–22808 Filed 9–16–93; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

Industry and Small Business Participation; Notice of Public Meetings on Nutrition Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meetings.

SUMMARY: The Food and Drug Administration (FDA) is announcing three forthcoming meetings for industry and small business on the rules for implementing the Nutrition Labeling and Education Act of 1990 (the NLEA) that FDA issued in January of 1993.

DATES: The meetings will be held on Monday, September 20, 1993, 8 a.m. to 12 p. m. in Burlingame, CA; Wednesday, September 22, 1993, 8 a.m. to 12 p. m. in Arlington Heights, IL; and Thursday, September 23, 1993, 1 p.m. to 5 p.m. in Philadelphia, PA.

ADDRESSES: The meetings will be held at the following locations:

September 20, 1993: Holiday Inn Crowne Plaza, San Francisco Airport, 600 Airport Way, Burlingame, CA.

September 22, 1993: Woodfield Hilton, Euclid Ave. and Rohling Rd., Arlington Heights, IL.

September 23, 1993: Social Security Auditorium, 3d and Spring Garden Sts., Philadelphia, PA.

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Office of Small Business, Scientific and Trade Affairs (HF–51), Food and Drug Administration, 5600 Fishers Lane Rockville, MD 20857, 301–443–6776.

For Pacific Regional Registration Information: Mark Roh, Pacific Region, Small Business Assistance Program, Food and Drug Administration, Federal Office Bldg., rm. 526, United Nations Plaza, San Francisco, CA 94102, 415–556–2263 or FAX 415–556–2822.

For Mid-West Regional Registration Information: Joe L. Petty, Mid-West Region, Small Business Assistance Program, Food and Drug Administration, 20 North Michigan Ave., rm. 550, Chicago, IL. 312–353–9400; or

For Mid-Atlantic Regional Registration Information: Theresa A. Holmes, Mid-Atlantic Region, Office of Public Affairs, Food and Drug Administration, United States Customhouse, 2d and Chestnut Sts., Philadelphia, PA 19106, 215–597–0837.

There will be seating limitations and advance registration is required. Registration should include the name, firm name, address, and telephone number of all attendees. There is no registration fee for this meeting.

SUPPLEMENTARY INFORMATION: FDA holds industry enchange meetings to disseminate information on timely issues and to get industry's views on these issues. The meetings announced in this notice have been organized by FDA's Office of the Commissioner, the Office of Regulatory Affairs, the Center for Food Safety and Applied Nutrition, and the Office of Small Business, Scientific and Trade Affairs. The purpose of these meetings is to answer the food industry's questions on the regulations that FDA issued in January implementing the NLEA (Pub. L. 101-535).

Dated: September 14, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-22818 Filed 9-14-93; 3:53 pm]

BILLING CODE 4160-01-F

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21 CFR Part 172

[Docket No. 93F-0015]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame as a sweetener in frostings, toppings, fillings, glazes, and icings for precooled baked goods. This action is in response to a petition filed by Regu-Tech Associates, Inc.

DATES: Effective September 17, 1993; written objections and requests for a hearing by October 18, 1993.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Owen Fields, Center for Food Safety and Applied Nutrition (HFS-207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9523.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 12, 1993 (58 FR 13604), FDA announced that a food additive petition (FAP 3A4355) had been filed by Regu-Tech Associates, Inc., 158 West Boston Post Rd., Mamaroneck, NY 10543-3605. The petition proposed that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame as a sweetener in frostings, toppings, fillings, glazes, and icings for precooled baked goods.

Having evaluated data in the petition and other relevant material, the agency concludes that the proposed use of the food additive is safe, and that the regulations should be amended as set forth below. Because the new uses, as proposed by the petitioner, include the previously regulated use in § 172.804(c)(18), which allows the use of aspartame in fillings of prebaked cookies, FDA is revising § 172.804(c)(18) to permit the additional uses authorized by this order.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before October 18, 1993, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 is revised to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 379e).

2. Section 172.804 is amended by revising paragraph (c)(18) to read as follows:

§ 172.804 Aspartame.

* * * * *

(c) * * *

(18) Frostings, toppings, fillings, glazes, and icings for precooled baked goods.

* * * * *

Dated: September 9, 1993.

Catherine W. Carnevale,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93-22679 Filed 9-16-93; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 177

[Docket No. 91F-0066]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of an ultra-filtration membrane consisting of a zirconium oxide membrane containing up to 5 percent yttrium oxide on a porous aluminum oxide support, for use in food processing. This action responds to a petition filed by ALCOA Separations Technology, Inc., Aluminum Co. of America.

DATES: Effective September 17, 1993; written objections and requests for a hearing by October 18, 1993.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 15, 1991 (56 FR 11223), FDA announced that a food additive petition (FAP 1B4254) had been filed by ALCOA Separations Technology, Inc., Aluminum Co. of America proposing that § 177.2910 *Ultra-filtration membranes* (21 CFR 177.2910) be amended to provide for the safe use of an ultra-filtration membrane consisting of a zirconium oxide membrane containing up to 5 percent yttrium oxide on a porous aluminum oxide support, for use in food processing. Because of a change in ownership, the current petitioner is Membralox Products Group, U.S. Filter Corp., 181 Thorn Hill Rd., Warrendale, PA 15086–7527.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed use of the food additive is safe. Thus, the agency concludes that 21 CFR 177.2910 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before October 18, 1993, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 is revised to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.2910 is amended by revising the introductory text and by adding new paragraph (a)(3) to read as follows:

§ 177.2910 Ultra-filtration membranes.

Ultra-filtration membranes identified in paragraphs (a)(1), (a)(2), and (a)(3) of this section may be safely used in the processing of food, under the following prescribed conditions:

(a) * * *

(3) Ultra-filtration membranes that consist of an aluminum oxide support that is coated with zirconium oxide (CAS Reg. No. 1314–23–4) containing up to 5 percent yttrium oxide (CAS Reg. No. 1314–36–9).

* * * * *

Dated: September 8, 1993.

Catherine W. Carnevale,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–22680 Filed 9–16–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 821

[Docket No. 91N–0296]

Medical Devices; Device Tracking; Extension of the Comment Periods

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; extension of comment periods.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 15, 1993, the comment periods provided by two final rules that published in the **Federal Register** of August 16, 1993. The documents are entitled: "Medical Devices; Device Tracking; Opportunity for Comments" and "Medical Devices; Illustrative and Designated Lists for Device Tracking." FDA is taking this action in response to a request for extensions of both comment periods.

DATES: Written comments by October 15, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 16, 1993 (58 FR 43442), FDA issued a final rule entitled "Medical Devices; Device Tracking; Opportunity for Comments" announcing that the revised proposed rule became the final rule on November 29, 1992, and provided the opportunity for interested parties to comment on this final rule by September 15, 1993. In a separate document entitled "Medical Devices; Device Tracking" FDA suspended the effective date of the final rule on device tracking until August 29, 1993, and made other technical corrections (58 FR 43442).

FDA issued another final rule in the **Federal Register** of August 16, 1993 (58 FR 43451), entitled, "Medical Devices; Illustrative and Designated Devices for Device Tracking," that further amended the tracking regulations by adding devices to the lists of tracked devices contained in the regulation. FDA solicited comments on this rule by September 15, 1993.

FDA has received a request from a device manufacturer's association for 60-day extensions of the comment periods for these two final rules so that the association's membership will have

sufficient time to consider and comment on them. FDA agrees in part with the request and is extending both comment periods for 30 days. Accordingly, the comment periods for these final rules are extended to October 15, 1993. However, the medical device tracking final rule became effective on August 29, 1993, and this extension of the comment period does not affect the obligation of manufacturers to have tracking systems in place.

Interested persons may on or before October 15, 1993, submit to the Dockets Management Branch (address above) written comments regarding these final rules. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 14, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-22819 Filed 9-14-93; 3:53 pm]

BILLING CODE 4160-01-F

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2606 and 2617

Rules for Administrative Review of Agency Decisions; Standard Terminations of Single-Employer Plans; Correction

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Interim rule; correction.

SUMMARY: This document corrects the interim rule published Tuesday, August 24, 1993 (58 FR 44738), which amended the PBGC's regulations governing administrative review of agency decisions and standard terminations of single-employer plans to provide for modification of certain of the deadlines in those regulations in the event of a major disaster. This action is needed to correct certain errors.

EFFECTIVE DATE: August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Renae R. Hubbard, Special Counsel, Office of the General Counsel (Code 22000), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-1958 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The interim rule that is the subject of these corrections amended parts 2606 and 2617 of the PBGC's regulations, Rules for Administrative Review of Agency Decisions and Standard Terminations of Single-Employer Plans, to provide disaster victims with relief from certain deadlines imposed by these regulations.

As published, the proposed rule contains certain errors which are in need of correction. Accordingly, the publication on August 24, 1993 of the interim rule, which was the subject of FR Doc. 93-20600, is corrected as follows:

1. On page 44738, in the third column, in the nineteenth line of the second paragraph, after "notice" insert ", or with respect to whom the office of the service provider, bank, insurance company, or other person maintaining the information necessary to file the request for reconsideration or appeal is in such an area".

2. On page 44739, in the second column, in the first line, after "sponsor" insert ", or the office of the service provider, bank, insurance company, or other person maintaining the necessary records,".

3. On page 44739, in the second column, in the sixteenth line of the fourth full paragraph, after "relieving" insert "aggrieved persons of".

§ 2606.4 [Corrected]

4. On page 4470, in the first column, in § 2606.4(b)(1), in the fifth line, after "area" insert ", or with respect to whom the office of the service provider, bank, insurance company, or other person maintaining the information necessary to file the request for reconsideration or appeal is within a designated disaster area".

§ 2617.25 [Corrected]

5. On page 44470, in the second column, in § 2617.25(a) (2) (i), in the sixth line, after "administrator" insert ", or the office of the service provider, bank, insurance company, or other person maintaining the information necessary to issue the notices of plan benefits required by § 2617.23 or to file the standard termination notice required by this section,".

§ 2617.28 [Corrected]

6. On page 44740, in the third column, in § 2617.28(f)(4)(i), in the sixth line, after "administrator" insert ", or the office of the service provider, bank, insurance company, or other person maintaining the information necessary to complete the distribution of plan assets,".

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93-22806 Filed 9-16-93; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of proposed amendment.

SUMMARY: OSM is announcing its decision to approve, with certain exceptions and additional requirements, a proposed amendment to the Utah permanent regulatory program (Utah program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists primarily of changes to provisions of the Utah program pertaining to backfilling and grading performance standards and the reclamation of highwalls. The amendment is primarily intended to clarify the Utah regulations regarding highwall retention under the Utah approximate original contour alternative, and add regulations regarding highwall retention at underground mines that have operated continuously from before the effective date of SMCRA to the present.

EFFECTIVE DATE: September 17, 1993.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette NW., suite 1200, Albuquerque, NM 87102; Telephone (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program.
II. Submission of Proposed Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Effect of Director's Decision.
VII. Procedural Determinations.

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program for the regulation of coal exploration and coal mining and reclamation operations on non-Federal

and non-Indian lands. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and an explanation of the conditions of approval, is in the January 21, 1981, **Federal Register** (46 FR 5899). Actions taken subsequent to approval of the Utah program are codified at 30 CFR 944.15, 944.16, and 944.30.

II. Submission of Proposed Amendment

By letter dated April 30, 1992 (administrative record No. UT–758), Utah submitted to OSM a proposed amendment to the Utah program pursuant to SMCRA, 30 U.S.C. 1201–1328, and the Federal regulations at 30 CFR Chapter VII (the Federal regulations). Utah submitted the proposed amendment in response to a January 9, 1991, letter that OSM sent to Utah in accordance with 30 CFR 732.17(c) (administrative record No. UT–607). The provisions of the Utah Coal Mining Rules that Utah proposed to amend are: Utah Administrative Rule (Utah Admin. R.) 645–100–200, definition of "highwall;" Utah Admin. R. 645–301–553, 553.100 and 130, backfilling and grading; Utah Admin. R. 645–301–553.210 and 220, spoil and waste; Utah Admin. R. 645–301–553.260, refuse piles; Utah Admin. R. 645–301–553.510, 520, and 521, previously mined areas; and Utah Admin. R. 645–301–553.620 through 655, approximate original contour (AOC).

OSM published a notice in the June 2, 1992, **Federal Register** (57 FR 23181), announcing receipt of the amendment and inviting public comment on its adequacy (administrative record No. UT–767). The public comment period closed July 2, 1992.

During its review of the amendment, OSM identified concerns regarding Utah Admin. R. 645–301–553.130, regrading requirements and the static safety factor for retained highwalls; Utah Admin. R. 645–301–553.510, 520, and 521, backfilling and grading of previously mined areas; Utah Admin. R. 645–301–553.650, highwall retention criteria; and Utah Admin. R. 645–301–553.651, allowable height and length standards for retained highwalls. OSM notified Utah of the concerns by letter dated September 10, 1992 (administrative record No. UT–779).

By letter dated September 30, 1992, Utah responded by submitting additional explanatory information and a revised amendment (administrative record No. UT–788). Utah proposed to revise Utah Admin. R. 645–301–553.130 and 523, requirements for highwall and highwall remnant stability and demonstrations by the operator of stability and safety; Utah Admin. R. 645–301–553.510, 520, and 521, backfilling and grading of previously mined areas; and Utah Admin. R. 645–301–553.650 and 652, AOC highwall retention criteria.

OSM announced receipt of the revised amendment in the December 9, 1992, **Federal Register** (57 FR 58171), and, in the same notice, reopened and extended the public comment period and provided opportunity for a public hearing on the adequacy of the amendment considering the additional materials submitted (administrative record No. UT–807). The comment period closed December 24, 1992.

III. Director's Findings

After a thorough review, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, with certain exceptions and additional requirements, that the proposed amendment as submitted by Utah on April 30, 1992, and as revised by it on September 30, 1992, is not inconsistent with SMCRA and the Federal regulations.

1. Nonsubstantive Revisions to Utah's Regulations

Utah's proposed revisions to the following previously-approved regulations are nonsubstantive in nature and consist of minor editorial, punctuation, and codification changes. Corresponding Federal provisions, if any exist, are listed in parentheses:

Utah Admin. R. 645–100–200 (30 CFR 701.5), definition of "highwall;"
Utah Admin. R. 645–301–553.100 (30 CFR 816.102(a)), backfilling and grading of disturbed areas;
Utah Admin. R. 645–301–553.130 (30 CFR 816.102(a)(3)), 1.3 static safety factor;
Utah Admin. R. 645–301–553.620 (30 CFR 816.102(k)(3)(iii)), incomplete elimination of highwalls in previously mined areas;
Utah Admin. R. 645–301–553.630 and .631 (30 CFR 816.102(k)(3) and (k)(3)(i)), required regulatory authority approval for mountaintop removal operations;
Utah Admin. R. 645–301–553.632 and .633 (30 CFR 816.102(k)(1) and (2)), AOC variance criteria; and
Utah Admin. R. 645–301–553.655, exemption from obtaining a variance from AOC requirements.

The proposed revisions to these previously-approved Utah regulations are nonsubstantive in nature, and the Director finds that these proposed Utah regulations are not inconsistent with SMCRA and the Federal regulations. The Director approves these proposed rules.

2. Utah Admin. R. 645–301–553, Placement of Material in Road and Portal Pad Embankments Located on the Downslope

Utah proposes to delete the phrase "[f]or the purposes of underground coal mining and reclamation activities" from existing Utah Admin. R. 645–301–553, which allows the placement of material in road and portal pad embankments on the downslope as long as (1) the material used and the embankment design comply with Utah Admin. R. 645–301–500 through 700 (Utah's engineering, geology, and hydrology performance standards), and (2) and the material is moved and placed in a controlled manner. The effect of this proposed deletion is that this rule would now allow surface as well as underground mining operations to place material in road and portal pad embankments located on the downslope as long as the applicable Utah engineering, geology, and hydrology performance standards are met, and the material is moved and placed in a controlled manner.

There is no current Federal counterpart provision to this State provision. However, prior to a Federal rulemaking action on May 24, 1983 (48 FR 23356), that took effect on June 23, 1983, the Federal regulations did contain a provision at former 30 CFR 826.12(a)(2) pertaining to operations on steep slopes. Former 30 CFR 826.12(a)(2) was substantively similar to proposed Utah Admin. R. 645–301–553 to the extent that it also allowed the placement of material in road embankments located on the downslope, as long as the material used and embankment design complied with the requirements of 30 CFR 816.150 through 816.180 or 817.150 through 817.180, and the material was moved and placed in a controlled manner.

Former 30 CFR 826.12(a)(2) was promulgated as part of the permanent program regulations on March 13, 1979 (44 FR 14902, 15454) to respond to comments received by OSM on the proposed permanent program regulations, which were published on September 18, 1978 (43 FR 41662, 41925). Specifically, certain commenters were concerned the language originally proposed at 30 CFR 826.12(a), which prohibited the placement of spoil, waste materials, or debris on the downslope in steep-slope areas, would prohibit the construction of access and haul roads into permit areas because spoil could not be placed on the downslope, and road fills could not be constructed. Stating that it agreed that haul roads are essential for access

to the mine area, OSM added the language at former 30 CFR 826.12(a)(2) to clarify that 30 CFR 826.12(a)(1) (originally proposed as 30 CFR 826.12(a)) did not prohibit the construction of access and haul roads (44 FR 14902, 15290–15291, March 13, 1979).

On May 24, 1983 (48 FR 23356), OSM promulgated a final rule that, among other things, moved the prohibitions of former 30 CFR 826.12(a)(1) to 30 CFR 816.107(b) for surface mining activities and to 30 CFR 817.107(b) for underground mining activities. In the same rulemaking action, OSM deleted former 30 CFR 826.12(a)(2) from the regulations. OSM provided its rationale for deleting former 30 CFR 826.12(a)(2) in the proposed rule published on June 21, 1982 (47 FR 26754). OSM reasoned that the provision was not necessary and could be removed from the rules because roads are structures, and the prohibitions of former 30 CFR 826.12(a)(1) (current 30 CFR 816.107(b) and 817.107(b)) concern only such materials as spoil and debris (47 FR 26754, 26765, June 21, 1982). In other words, the former 30 CFR 826.12(a)(2) was not necessary because the prohibitions of former 30 CFR 826.12(a)(1) (current 30 CFR 816.107(b) and 817.107(b)) were never meant to prohibit the construction of access and haul roads.

The Director finds that Utah's proposed revision to Utah Admin. R. 645–301–553 is not inconsistent with the rationale OSM set forth in the above-cited rulemaking regarding the deletion of former 30 CFR 826.12(a)(2) (47 FR 26754, 26765, June 21, 1982). The Director interprets the State provision at proposed Utah Admin. R. 645–301–553 in a manner consistent with the rationale set forth in this former rulemaking. That is, the Director interprets the State provision as merely clarifying that nothing in the approved Utah State program, including Utah Admin. R. 645–302–234.200 (counterpart provision to former 30 CFR 826.12(a)(1), current 30 CFR 816.107(b) and 817.107(b)), prohibits the construction of access and haul roads.

The Director notes that the State provision at proposed Utah Admin. R. 645–301–553 differs from the former Federal regulation at 30 CFR 826.12(a)(2) in two respects. However, neither of these differences makes the proposed rule less stringent than SMCRA or less effective than the Federal regulations. The first difference is that the State provision, unlike the former Federal provision, applies to placement of material not only in road embankments, but also in portal pad embankments located on the downslope. In a final rule **Federal Register** notice dated December 13, 1982, the Secretary previously approved Utah's portal pad embankment provision included in the current proposed rule as being consistent with former 30 CFR 826.12(a) (47 FR 55672, 55674). The second difference is that the State provision, unlike the former Federal provision, is not limited to steep-slope mining areas. Utah's regulation of nonsteep-slope mining areas is not inconsistent with 30 CFR 816.107(b) and 817.107(b) or any other Federal regulations.

Based upon the interpretation and analysis above, the Director interprets the State provision to mean that nothing in the Utah regulations, either at Utah Admin. R. 645–302–234.200 or at Utah Admin. R. 645–301–553, is meant to prohibit the construction of access and haul roads or the construction of portal pads, either in steep-slope, or in nonsteep-slope areas, as long as the material is moved and placed in a controlled manner and applicable performance standards are met. On this basis, the Director (1) finds that proposed Utah Admin. R. 645–301–553 is not inconsistent with the Federal regulations and (2) approves the proposed rule.

3. Proposed Amendment Provisions Dealing With Exceptions to SMCRA's Requirement for the Elimination of all Highwalls

(A) Background Information

(1) *SMCRA's requirement to eliminate highwalls.* Section 515(b)(3) of SMCRA requires that all mined land be backfilled and graded and returned to AOC. Section 515(b)(3) also expressly requires that to achieve AOC, all highwalls must be eliminated. The statutory requirement to eliminate all highwalls is implemented in the Federal regulations at 30 CFR 816.102(a)(2) and 817.102(a)(2). The legislative history of SMCRA reveals that "the elimination of highwalls [and the] return of the land to [AOC] * * * are among the standards critical to the elimination of the worst effects of coal surface mining." *In re Permanent Surface Min. Regulation Litigation*, 620 F. Supp. 1519, 1573 (D.D.C. 1985) (*quoting* H.R. Rep. No. 218, 95th Cong., 1st Sess. 85 (1977), U.S. Code Cong. & Admin. News, 1977, 621).

The following excerpts from the legislative history are informative:

> The Senate amendment provided a variance to the [AOC] and backfilling highwalls completely for a wide range of post mining land uses. In addition, if "sound engineering technology" indicated that the highwall could not be completely backfilled, then the operator would have been required to reduce the highwall to the maximum extent consistent with "sound engineering technology" and develop a revegetation plan that is "reasonably calculated" to screen the remaining highwall within 5 years. H.R. 2 included no such provision.
>
> Conferees agreed on a modified variance to the [AOC] standard which requires that *all highwalls are to be completely backfilled in every instance.* * * * Conferees did not adopt the "sound engineering technology" provision of S. 7.
>
> H.R. Rep. No. 95–493, 95th Cong., 1st Sess. 108–109 (1977) (emphasis added).
>
> H.R. 25 required the elimination of "depressions" and this language, which was a holdover from a very early draft of the bill, causes some confusion. *What is crucial is the elimination of (1) highwalls, and (2) spoil piles in all cases, with no exceptions.*
>
> H.R. Rep. No. 94–1445, 94th Cong., 1st Sess. 8, n. 3 (1976) (emphasis added).

Numerous court decisions have also emphasized the importance of highwall elimination to SMCRA's regulatory scheme. *See e.g. National Wildlife Federation* v. *Lujan*, 733 F. Supp. 419 (D.D.C. 1990); *In re Permanent Surface Mining Litigation*, 620 F. Supp. 1519 (D.D.C. 1985); *In re Permanent Surface Mining Regulation Litigation*, 21 ERC 1193 (D.D.C. 1984). *See also River Processing, Inc.*, 76 IBLA 129 (1983), *aff'd. River Processing, Inc.* v. *Clark*, No. 83–316 (E.D. Ky. May 2, 1985); *Grafton Coal Co., Inc.*, 3 IBSMA 175, 88 I.D. 613 (1981); *Tollage Creek Elkhorn Mining Co.*, 2 IBSMA 341, 87 I.D. 570 (1980).

(2) *Exceptions to SMCRA's requirement for elimination of all highwalls.* There are three specific exceptions to SMCRA's requirement for elimination of all highwalls that have been recognized by OSM, either in the Federal regulations or in State programs. Those three exceptions are referred to in this document as (1) previously mined areas; (2) continuously mined areas; and (3) the AOC alternative.

(a) *Previously mined areas.* The only exception to SMCRA's requirement for complete elimination of all highwalls allowed under the Federal regulations concerns remining operations on previously mined areas. See 30 CFR 816.106, 817.106, and 819.19. The approved Utah program also allows an exception to the requirement for complete elimination of all highwalls for previously mined areas. See Utah Admin. R. 645–301–553.500.

(b) *Continuously mined areas.* Although the Federal regulations do not contain a counterpart provision, OSM has previously approved in certain State programs another exception to the requirement to eliminate all highwalls,

the exception for continuously mined areas. This exception applies only to pre-SMCRA underground mines that have operated continuously from before the effective date of SMCRA (August 3, 1977) to the present. OSM has previously approved such exceptions for the States of Kentucky and West Virginia. Utah now proposes to add this type of an exception to their State program. The proposed Utah exception for continuously mined areas is discussed in detail below at finding No. 3(B).

(c) *AOC alternative to highwall elimination (AOC alternative).* OSM has also recognized a third exception to the requirement to eliminate all highwalls, the AOC alternative. In addition to Utah, the only other State to allow this alternative is New Mexico (45 FR 86459, December 31, 1980). The Utah AOC alternative is found at Utah Admin. R. 645–301–553.650. In this amendment, Utah proposes to modify this alternative. The current proposals regarding the Utah AOC alternative are discussed in detail below at finding No. 3(C).

(B) Utah Admin. R. 645–301–553.510, .520, and .521, Continuously Mined Areas

At Utah Admin. R. 645–301–553.510, 520, and 521, Utah proposes an exception from the requirement for complete highwall elimination for underground mining operations that created highwalls prior to August 3, 1977, the effective date of SMCRA, and continued operations thereafter where the volume of all reasonably available spoil is demonstrated in writing to the Utah Division of Oil, Gas and Mining (Division) to be insufficient to completely backfill the reaffected or enlarged highwall. Under these amended provisions, such highwalls would have to be eliminated to the maximum extent technically practical using all reasonably available spoil.

The Federal backfilling and grading regulations at 30 CFR 817.106(a), (b), and (b)(1) allow an exception from the requirement for complete highwall elimination for underground mining operations that remine highwalls in previously mined areas, which means land affected by surface coal mining operations prior to August 3, 1977, the effective date of SMCRA, that have not been reclaimed to the standards of SMCRA. See 58 FR 3466 (January 8, 1993). These regulations allow for the incomplete elimination of such highwalls where the volume of all reasonably available spoil is insufficient to completely backfill the reaffected or enlarged highwall.

Utah's proposed rules differ from the Federal regulations in that Utah proposes to extend the exception for incomplete highwall elimination to underground mining operations where the highwall was created prior to August 3, 1977, but continued to be used thereafter.

The Director has approved similar proposed regulations for Kentucky and West Virginia (52 FR 49398, 49399, December 31, 1987; 56 FR 21304, 21330–21331, May 23, 1990). Utah's proposed rules and Kentucky's and West Virginia's approved rules address the situation of operators attempting to reclaim face-up entry areas that were created prior to the passage of SMCRA. Many of these face-up entry areas have been in existence for many years and the earthen material necessary to eliminate the face-up entry is either no longer available or has been completely revegetated and its handling and use would cause new environmental damage and disruption. This problem is unique to underground mines where highwall areas do not move with the coal removal operations (as with surface mines) but exist in a static state for many years. The problem is not encountered in surface mines where post-SMCRA operations are continually creating new highwalls rather than extracting coal from pre-SMCRA highwall areas.

In passing SMCRA, Congress addressed the surface impacts of underground mining and surface extraction of coal in a generally similar manner, but it did provide for important differences. In section 516 of SMCRA, Congress affirmatively established certain performance standards applicable to underground mines and incorporated by reference other performance standards at section 515. One of the performance standards incorporated by reference, section 515(b)(3), requires highwall elimination. However, section 516(b)(10) also charges that the Secretary shall make such modifications in the requirements imposed by this subparagraph as are necessary to accommodate the distinct difference between surface and underground coal mining.

For the Kentucky and West Virginia provisions, the Director exercised his authority as the Secretary's designee to consider these distinct differences between surface and underground mines and approved them. The Director reasoned that the provisions provided equitable treatment for pre-SMCRA mines that have operated continuously since before the effective date of SMCRA. They also afford the same variance from AOC requirements as is provided in 30 CFR 817.106 for remining sites where operation of a pre-SMCRA mine has been interrupted and mining was begun again at the sites after the effective date of SMCRA.

For the same reasons discussed above for the Kentucky and West Virginia proposed rules, the Director finds that Utah's proposed rules at Utah Admin. R. 645–301–553.510, .520, and .521 are not inconsistent with the Federal regulations at 30 CFR 817.106(a), (b), and (b)(1) or any other requirements of the Federal regulations or SMCRA, insofar as they apply to underground mining operations that operated prior to August 3, 1977, and have continuously operated since that time. On this basis, the Director approves the proposed rules. However, with respect to continuously mined areas, the Director wishes to emphasize that the exception to the requirement to completely eliminate all highwalls should, like the similar exception for previously mined areas, be narrowly construed and should ensure that the highwall is removed to the maximum extent technically practical. See 48 FR 41720, 41729 (September 16, 1983). Thus, for example, where an underground mining operation has been continuously mined since before the effective date of SMCRA (August 3, 1977) and contains both pre- and post-SMCRA face-up or portal areas, this exception must be understood as applying *only* to the pre-SMCRA face-up areas. Any post-SMCRA portal areas within the same mining operation must comply with the requirement to completely eliminate all highwalls. The Director interprets Utah's proposed exception for continuously mined areas in this limited fashion.

(C) Utah Admin. R. 645–301–553.650, AOC Alternative to Highwall Elimination (AOC Alternative)

The Utah AOC alternative to SMCRA's requirement for the complete elimination of all highwalls was approved by the Secretary of the Interior on December 13, 1982 (47 FR 55672, 55673). Prior to December 13, 1982, Utah had submitted two earlier proposals for an AOC alternative, both of which were rejected by OSM. See 45 FR 70481, 70485–70486 (October 24, 1980) and 46 FR 5899, 5901–5902 (January 21, 1981). In the rulemakings concerning the Utah AOC alternative, OSM made it clear that such an alternative was allowable only where unique topographic conditions existed that caused a conflict between SMCRA's requirement for achieving AOC and the requirement for the complete elimination of all highwalls. OSM

reasoned that while SMCRA repeatedly and consistently requires the elimination of highwalls, it also requires the mined area to be restored to AOC. Thus, when certain unique topographic conditions exist, such as when the area to be mined has natural cliff-type features, these apparently contradictory statutory requirements must be harmonized in a reasonable manner. OSM repeatedly emphasized that the AOC alternative must be treated as a carefully limited exception to SMCRA's requirement to eliminate highwalls. The proposed amendments to Utah's AOC alternative are discussed in detail below.

(1) Requirement for regulatory authority approval of the AOC alternative. Existing Utah Admin. R. 645–301–553.650 requires an operator to obtain Utah's approval for any highwalls that the operator wishes to retain in the postmining landscape. Utah proposes to revise Utah Admin. R. 645–301–553.650 to indicate that a retained highwall will be considered to be consistent with AOC requirements and will not require a variance from the AOC requirements where the operator establishes that the highwall is in compliance with the highwall retention criteria at Utah Admin. R. 645–301–553.651 through .655. Whereas the existing rule requires the operator to obtain Utah's approval of any highwalls proposed to be retained, the revised rule would only require the operator to "establish" that the retained highwall meets the criteria of Utah Admin. R. 645–301–553.651 through 655.

Although there are no Federal regulations that directly correspond to Utah's proposed rules, there are certain Federal regulations that are analogous in that they address procedures for AOC determinations by the regulatory authority. For instance, the Federal regulations at 30 CFR 816.102(k)(3)(ii) and 817.102(k)(1) allow a postmining slope to vary from AOC if approval is obtained from the regulatory authority in accordance with 30 CFR 785.16. These Federal regulations differ from Utah's proposed rule in that the Federal regulations address a variance from AOC while Utah's proposed rule addresses a variance from the requirement to eliminate highwalls. However, these Federal regulations are pertinent in that they set forth a process that the regulatory authority is required to follow in making AOC determinations.

While proposed Utah Admin. R. 645–301–553.650 would require an operator to establish that a highwall could be retained because it would be in compliance with Utah's AOC alternative requirements, the proposed rule does not explicitly state that the operator would submit this documentation to Utah, and Utah would make a written decision on it. Moreover, there is at least one criterion which an operator must establish before obtaining approval to retain a highwall under the AOC alternative that is not specifically included in proposed Utah Admin. R. 645–301–553.650. That criterion is the stability requirement at proposed Utah Admin. R. 645–301–553.523 (discussed in further detail in finding No. 3(D) below).

The analogous Federal regulations at 30 CFR 816.102(k)(3)(ii) and 817.102(k)(1) explicitly require operators to obtain the regulatory authority's approval for determinations relating to AOC. Because Utah's proposed rule at Utah Admin. R. 645–301–553.650 does not explicitly require operators to obtain Utah's approval of retained highwalls, the Director finds that the proposed rule is inconsistent with the Federal regulations at 30 CFR 816.102(k)(3)(ii) and 817.102(k)(1). The Director does not approve proposed Utah Admin. R. 645–301–553.650 and requires Utah to revise it to require that, prior to obtaining Utah's approval for highwalls to be retained, the operator must establish and Utah must find in writing that any proposed highwall will comply with the AOC criteria at Utah Admin. R. 645–301–553.651 through 655 and the stability requirement at Utah Admin. R. 645–301–553.523.

(2) Utah Admin. R. 645–301–553.651, height and length requirements of retained highwalls. At Utah Admin. R. 645–301–553.651, Utah proposes that in order for a retained highwall to be considered to be consistent with AOC, the highwall cannot be significantly greater in length than any natural cliff-like escarpments removed or physically altered by the mining process and cannot be significantly greater in height than existing cliffs in the surrounding area.

Utah's proposed rule sets a standard for the length of a retained highwall that is based upon the length of natural cliffs or escarpments that are disturbed by the mining operation. This differs from Utah's proposed highwall height standard that is based upon the height of undisturbed cliffs or escarpments in the surrounding area.

The length component of proposed Utah Admin. R. 645–301–553.651 is not inconsistent with section 515(b)(3) of SMCRA, which requires mining operations to restore the land to AOC. However, the height component of proposed Utah Admin. R. 645–301–553.651 is inconsistent with the assumptions upon which the Secretary previously based his approval of Utah's AOC alternative. Although the term "surrounding area" is unchanged from the existing rule that the Secretary approved as part of the Utah AOC alternative, it is clear from the preamble discussions of the existing rule that the Secretary approved Utah's AOC alternative only for those cases where the retained highwall actually resulted in AOC (45 FR 70481, 70485–70486, October 24, 1980; and 46 FR 5899, 5901–5902, January 21, 1981). Proposed Utah Admin. R. 645–301–553.651 would allow retained highwalls to have heights that were not necessarily comparable with those of cliffs or escarpments that were replaced or disturbed by the mining operations. Because the proposed rule would allow the retention of highwalls that were significantly greater in height than those replaced or disturbed by the mining operations, it would result in a condition that was not AOC. This is not in accordance with the approved Utah AOC alternative and is less stringent than section 515(b)(3) of SMCRA, which requires mining operations to restore the land to AOC.

For these reasons, the Director finds that proposed Utah Admin. R. 645–301–553.651 is not in accordance with the Secretary's approval of the Utah AOC alternative and is less stringent than section 515(b)(3) of SMCRA. The Director does not approve the proposed rule because it would allow the height of retained highwalls to be based upon the height of undisturbed cliffs or cliff-like escarpments in the surrounding area, rather than the height of cliffs or cliff-like escarpments that were replaced or disturbed by the mining operations. The Director requires Utah to submit a proposed amendment for highwall retention and AOC at Utah Admin. R. 645–301–553.651 restricting the height of retained highwalls to the height of cliffs or cliff-like escarpments that were replaced or disturbed by the mining operations.

(3) Utah Admin. R. 645–301–553.652, replacement of a preexisting cliff or similar natural premining feature with a retained highwall, and date of applicability of these rules. At Utah Admin. R. 645–301–553.652, Utah proposes that in order for a retained highwall to be consistent with AOC requirements, the retained highwall must replace a preexisting cliff or similar natural premining feature and resemble the structure, composition, and function of the natural cliff it replaces or enhances.

As discussed in finding No. 4(b)(i) of the October 24, 1980, **Federal Register**

(45 FR 70481, 70486), the Secretary found in his decision on Utah's originally proposed AOC alternative that the mandate of section 515(b)(3) of SMCRA to restore the land to AOC with all highwalls eliminated contains an inherent contradiction when it is applied to specific areas of Utah with its natural benches and steep topography. In such terrain, the elimination of highwalls would not restore the land to AOC, since the original contour was a natural cliff that was similar in its contour to highwall. The Secretary decided to harmonize these apparently contradictory requirements by approving the Utah AOC alternative as a carefully limited exception to SMCRA's requirement for highwall elimination for the above-described situations. See 45 FR 70481, 70485–70486 (October 24, 1980); 46 FR 5899, 5901–5902 (January 21, 1981); 47 FR 55672, 55673 (December 13, 1982).

After the Secretary's approval of the Utah AOC alternative, the Utah Board of Oil, Gas and Mining interpreted the AOC alternative to allow the retention of highwalls when no similar natural features existed in the disturbed area prior to mining. On January 9, 1991, OSM sent a letter to Utah in accordance with 30 CFR 732.17 notifying Utah that the Board's interpretation was inconsistent with the assumptions upon which the Secretary based his approval of the Utah AOC alternative. OSM stated:

> Since the Utah rule as interpreted by the Board no longer meets Federal requirements, the State program must be amended to restore consistency with SMCRA. Specifically, the State must require that all highwalls created or affected by a mining operation be eliminated except to the extent that they qualify for the remining exemption or replace natural features of a similar nature. Any residual highwalls must closely resemble natural premining features in size, form and function.
>
> Also, in the February 12, 1990, decision in *NWF* v. *Lujan*, the U.S. District Court for the District of Columbia ruled that regulations which contradict a statutory provision cannot be considered as being of any effect for any portion of the time they existed (Mem. Op. at 35–42). Therefore, since highwall elimination is a fundamental requirement of SMCRA, the amendment must include a provision stating that its requirements apply to all highwalls created or affected after [August 3, 1977,] the effective date of SMCRA.

Therefore, in this 30 CFR part 732 notification, OSM addressed the requirements for Utah (1) to submit a State program amendment that allowed highwalls to be retained pursuant to the Utah AOC alternative only when they replaced natural features of a similar nature and closely resembled natural premining features in size, form, and function, and (2) to make such highwall retention requirements applicable to all highwalls created or reaffected after August 3, 1977. OSM addresses those two requirements separately below.

(a) *Replacement of a preexisting cliff or similar natural premining feature with a retained highwall.* The Director finds that proposed Utah Admin. R. 645–301–553.652, which allows highwalls to be retained only if they replace a preexisting cliff or similar natural premining feature, is in accordance with the Secretary's approval of the Utah AOC alternative and section 515(b)(3) of SMCRA, which requires operators to restore the AOC of the land.

(b) *Applicability date.* On November 6 and 7, 1991, Utah met with OSM and discussed this highwall retention issue (administrative record No. UT–693). In response to the 30 CFR part 732 letter, Utah on April 30, 1992, submitted the proposed amendment to the highwall retention and reclamation rules at Utah Admin. R. 645–100–200 and 645–103–553. through 553.655 that are the subject of this **Federal Register** notice. In accordance with its interpretation of discussions at the November 6 and 7, 1991, meeting, Utah proposed that it would not apply the proposed rules requiring the backfilling and grading of highwalls to mine sites or structures for which reclamation had been initiated prior to the date Utah's proposed rules are put into effect.

On September 10, 1992, OSM sent to Utah an issue letter for this proposed amendment in which it reconsidered its position for the date of applicability of Utah's proposed highwall retention and reclamation rules. OSM stated that incomplete highwall elimination by Utah mining operations would be allowed pursuant to the currently approved Utah AOC alternative only if prior to June 2, 1992, the date of OSM's proposed rule **Federal Register** notice for the amendment, final backfilling and grading was completed and the bond was released under phase I requirements in accordance with the State counterpart of section 519(c)(1) of SMCRA.

On September 30, 1992, Utah resubmitted the proposed highwall retention amendment and indicated only that it had "taken note" of OSM's comments regarding the applicability date for the proposed rules.

Although OSM has seriously considered the alternate applicability dates discussed in the November 6 and 7, 1991, meeting and the September 10, 1992, issue letter, it now, after further review and analysis, reaffirms, with clarification and slight modification, its original position for an applicability date of August 3, 1977, as stated in the January 9, 1991, 30 CFR part 732 letter to Utah. OSM believes that August 3, 1977, is the appropriate applicability date, as was stated in the January 9, 1991, letter. However, since the Utah program did not contain an approved AOC alternative prior to December 13, 1982 (47 FR 55672, 55673), the applicability date for proposed Utah Admin. R. 645–301–553.652, which explicitly limits the Utah AOC alternative, cannot be any earlier than that date. Accordingly, OSM is requiring that the added provision at Utah Admin. R. 645–301–553.652 have an applicability date of December 13, 1982. The applicability date of Utah Admin. R. 645–301–553.652 is the same as the applicability date of the AOC alternative itself and the requirements of Utah Admin. R. 645–301–553.652 must apply to any highwall retained pursuant to the Utah AOC alternative.

Prior to December 13, 1982, the Utah program did not contain an approved AOC alternative. Therefore, no such alternative to the requirement to completely eliminate all highwalls was available to Utah operators prior to December 13, 1982. Accordingly, unless a particular highwall qualified for the Utah exception for remining operations on previously mined areas (currently at Utah Admin. R. 645–301–553.500), the approved Utah program required the elimination of all highwalls between the dates of August 3, 1977, and December 13, 1982.

The Director believes that an applicability date of December 13, 1982, for proposed Utah Admin. R. 645–301–553.652 is not only allowed by, but is mandated by SMCRA. As discussed in finding No. 3(A) above, SMCRA's requirement for the elimination of all highwalls was deemed by Congress to be one of the law's most essential environmental protection performance standards. Accordingly, any exception from this requirement must be carefully limited in scope. The Utah AOC alternative that OSM approved on December 13, 1982, was approved based upon that understanding.

The Director does not believe that this determination regarding the applicability date of December 13, 1982, constitutes retroactive rulemaking because the requirements of Utah Admin. R. 645–301–553.652, if not explicitly stated in the Utah program prior to submission of this amendment, were implicitly part of the Utah program since the time the Utah AOC alternative was first approved by OSM. As

discussed in finding Nos. 3(A) and 3(C) above, OSM has consistently maintained that this AOC alternative is limited to circumstances where SMCRA's AOC requirement is actually in conflict with SMCRA's requirement to eliminate all highwalls. Obviously, that situation does not arise unless the disturbed area contains premining features that resemble cliffs or highwalls. If the premining topography of a mine does not contain such features, then the AOE alternative has no application. An operator who fails to completely eliminate a highwall under such circumstances violates both SMCRA's AOE requirement and its requirement to eliminate all highwalls. Any applicability date of proposed Utah Admin. R. 645–301–553.652 subsequent to December 13, 1982, would allow Utah operators to violate two of SMCRA's most essential environmental protection performance standards.

Even if this decision regarding the applicability date of Utah Admin. R. 645–301–553.652 could be construed to be retroactive rulemaking, it is in accordance with case law regarding retroactivity. See e.g. *Bradley* v. *Richmond School Board*, 416 U.S. 696, 94 S.Ct. 2006, 40 L.Ed.2d 476 (1974). *See also Bowen* v. *Georgetown University Hosp.*, 488 U.S. 204, 109 S.Ct. 468, 102 L.Ed.2d 493 (1988). By explicitly requiring that a retained highwall replace a preexisting cliff or similar premining feature and resemble the structure, composition, and function of the natural cliff it replaces, proposed Utah Admin. R. 645–301–553.652 does nothing more than clarify what was always a necessary precondition before a Utah operator could take advantage of the Utah AOC alternative previously approved by OSM. Accordingly, the present amendment is distinguishable from the regulation at issue in *United States* v. *Shelton Coal Corp.*, 647 F. Supp. 264 (W.D. Va. 1986), *Aff'd.* 829 F.2d 1336 (4th Cir. 1987), where the court found that an OSM regulation could not be applied retroactively because it constituted a change in settled law. Instead, the present amendment is more like the regulation at issue in *United States* v. *Lambert Coal Co.*, 649 F. Supp. 1470 (W.D. Va. 1986), *aff'd* 28 ERC 1871 (4th Cir. 1988), where the court found that retroactive application of an OSM regulation was permissible "because the new regulation [did] not overrule or change the prior regulations." *United States* v. *Lambert Coal Co.*, 649 F. Supp. at 1474.

For these reasons, the Director finds that Utah's proposal to not apply proposed Utah Admin. R. 645–301–553.652 to the approved Utah AOC alternative until it is put into effect in the Utah program is inconsistent with the basis of the Secretary's approval of the Utah AOC alternative and is less stringent than section 515 of SMCRA. Therefore, the Director does not approve Utah's applicability date for its proposed rule at Utah Admin. R. 645–301–553.652. With regard to proposed Utah Admin. R. 645–301–553.652, the requirements of OSM's January 9, 1991, 30 CFR Part 732 letter still stand. Thus, the Director will interpret the Utah provision at Utah Admin. R. 645–301–553.652 as having an applicability date of December 13, 1982. In addition, the Director requires Utah to submit an amendment stating that the requirement at proposed Utah Admin. R. 645–301–553.652 has an applicability date of December 13, 1982, and applies to any highwall retained pursuant to the AOC alternative.

(4) *Utah Admin. R. 645–301–553.653, modifications to retained highwalls restoring cliff-type habitats required by premining flora and fauna.* At Utah Admin. R. 645–301–553.653, Utah proposes to require that a retained highwall will be considered to be consistent with AOC where the operator establishes, in addition to other requirements, that the retained highwall is modified if necessary to restore cliff-type habitats required by the flora and the fauna existing prior to mining.

The additional criteria at proposed Utah Admin. R. 645–301–553.653 for obtaining approval of an AOC alternative to SMCRA's requirement to eliminate highwalls provide clarity for Utah's program.

There are no direct counterparts to proposed Utah Admin. R. 645–301–553.653 in the Federal regulations or SMCRA. The Director finds that this proposed rule is not inconsistent with the Federal permanent program performance standards for surface and underground mining activities at 30 CFR Parts 816 and 817, which set forth backfilling and grading requirements for both surface and underground mining operations; with section 515(b)(2) of SMCRA, which requires operators to restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses; and with section 515(b)(3) of SMCRA, which requires operators to restore the AOC of the land. The Director approves Utah's proposed rule.

(5) *Utah Admin. R. 645–301–553.654, compatibility of retained highwalls with the approved postmining land use and visual attributes of the area.* At newly-created Utah Admin. R. 645–301–553.654, Utah proposes to require that a retained highwall will be considered to be consistent with AOC where the operator establishes that the retained highwall is compatible with both the visual attributes of the area and the approved postmining land use.

The visual attribute requirement exists at Utah Admin. R. 645–301–553.652, and Utah proposes to delete it there and incorporate it at new Utah Admin. R. 645–301–553.654. The Secretary approved this requirement on December 13, 1982 (47 FR 55672), as part of Utah's AOC alternative.

The proposed requirement that the retained highwall be compatible with the approved postmining land use has a general counterpart in the Federal regulations at 30 CFR 784.15, which addresses operator reclamation plans and compatibility of reclaimed lands for postmining land uses. Also, section 515(b)(2) of SMCRA requires that affected lands be restored to a condition capable of supporting the uses that it was capable of supporting prior to mining, or higher or better uses, and section 515(b)(3) requires backfilling and grading operations to achieve an ecologically sound land use compatible with the surrounding region.

The Director finds that proposed Utah Admin. R. 645–301–553.654 is not inconsistent with the Federal regulations at 30 CFR 784.15 and sections 515(b) (2) and (3) of SMCRA. The Director approves Utah's proposed rule.

(D) Utah Admin. R. 645–301–553.500 and .523, Highwalls in General; 1.3 Static Safety Factor and Alternative Stability Criteria

At Utah Admin. R. 645–301–553.523, Utah proposes to require that any operator wishing to leave in the postmining landscape a highwall remnant or a retained highwall, whether in connection with a previously mined area, a continuously mined area, or the AOC alternative, must demonstrate to the Division that the highwall remnant or retained highwall would not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and prevent slides. Under the proposed rule, an operator could, in lieu of the 1.3 static safety factor and slide prevention criterion, propose an alternative stability criterion for the Division's approval that would demonstrate that the highwall remnant or retained highwall is stable and does not pose a hazard to the public health and safety.

The Federal regulations at 30 CFR 816.102(a)(3) and 817.102(a)(3) require that disturbed areas be backfilled and

graded to achieve a postmining slope that does not exceed either the angle of respose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides. The Federal regulations at 30 CFR 816.106(b)(3) and 817.106(b)(3) require that any highwall remnant on a remined area shall be stable and not pose a hazard to the public health and safety or to the environment. These regulations also require the operator to demonstrate, to the satisfaction of the regulatory authority, that the highwall remnant is stable. Stability requirements are especially important in steep-slope areas where instability can create very serious environmental and public health and safety problems. *See* 44 FR 14902, 15291 (March 13, 1979).

With three exceptions, proposed Utah Admin. R. 645–301–553.500 and .523 have requirements that are consistent with the Federal regulations at 30 CFR 816.102(a)(3), 817.102(a)(3), 816.106(b)(3), and 817.106(b)(3).

The first exception is that Utah titles section Utah Admin. R. 645–301–553.500 as "[p]reviously mined areas" even though subsection Utah Admin. R. 645–301–553.523 addresses highwall remnants or retained highwalls in connection with continuously mined areas and the AOC alternative, as well as highwalls in connection with previously mined areas. The Director finds that Utah's proposed Utah Admin. R. 645–301–553.523 is less effective than the Federal regulations at 30 CFR 816.106 and 817.106 in the respect that the title for proposed Utah Admin. R. 645–301–553.500 is inconsistent with the content of proposed Utah Admin. R. 645–301–553.523 and could cause misinterpretation of the latter rule. In addition, as applied to the AOC alternative, since the stability criteria are placed in a separate section, it is not clear that such criteria specifically apply to highwalls retained in accordance with the AOC alternative.

The second exception is that proposed Utah Admin. R. 645–301–553.523, with respect to any alternative highwall stability criterion proposed by an operator and approved by Utah, requires that a highwall remnant or retained highwall be stable and not pose a hazard to the public health and safety. The Federal regulations at 30 CFR 816.106(b)(3) and 817.106(b)(3) require that, in addition to the public health and safety, the highwall remnant or retained highwall must not pose a hazard to the environment. The Director finds that Utah's proposed Utah Admin. R. 645–301–553.523 is less effective than the Federal regulations at 30 CFR 816.106(b)(3) and 817.106(b)(3) in the respect that it would allow Utah to approve alternative stability criteria that could pose a hazard to the environment.

The third exception for proposed Utah Admin. R. 645–301–553.523 is that an operator deciding not to propose to Utah an alternative highwall stability criterion must ensure any highwall remnant or retained highwall does not exceed the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and prevent slides. Utah's inclusion of the phrase "angle of repose" is inappropriate in this context. As generally defined, the phrase "angle of repose" applies only to loose unconsolidated materials. See A Dictionary of Mining, Mineral, and Related Terms, U.S. Department of the Interior, Bureau of Mines (1968). Therefore, unless the geologic strata exposed in the highwall face are composed of such materials, the phrase has no relevance in the context of a highwall remnant or retained highwall. The Director finds that Utah Admin. R. 645–301–553.523 is less effective than the Federal regulations at 30 CFR 816.102(a)(3) and 817.102(a)(3) in the respect that the phrase "not to exceed either the angle of repose or such lesser slope as is necessary to" confuses the rule's meaning and could cause misinterpretation of the rule.

In addition, the Director emphasizes that, in all cases, the Federal regulations at 30 CFR 816.102(a)(3) and 817.102(a)(3) require the backfill material at the base or against a highwall to have a minimum long-term static safety factor of 1.3 and prevent slides. The Director recognizes that a highwall remnant extending above the backfill material does not have to achieve the 1.3 minimum long-term static safety factor. However, the Federal regulations at 30 CFR 816.106(b)(3) and 817.106(b)(3) require (1) that any highwall remnant be stable and not pose a hazard to the public health and safety or to the environment and (2) that an operator demonstrate to the satisfaction of the regulatory authority that the highwall remnant is stable.

At Utah Admin. R. 645–301–553.523, Utah uses both the terms "highwall remnant" and "retained highwall" with respect to the applicability of an alternative stability criterion. While Utah does not define the term "retained highwall" in its rules, it does define the term "highwall remnant" as meaning "[t]hat portion of highwall that remains after backfilling and grading of a remaining permit area." Utah's definition of "highwall remnant" is identical to the Federal definition at 30 CFR 701.5. Therefore, the Director interprets Utah's proposed term "retained highwall" to be analogous to the term "highwall remnant" and understands that any alternative stability criterion proposed by an operator to Utah will apply only to that portion of highwall that remains after backfilling and grading, and not the backfill material at the base of or against the highwall.

Provided the terms "highwall remnant" and "retained highwall" are interpreted in this analogous fashion with respect to an alternative stability criterion, the Director finds proposed Utah Admin. R. 645–301–552.523 to be no less effective than the Federal regulations at 30 CFR 816.102(a)(3), 817.102(a)(3), 816,106(b)(3), and 817.106(b)(3).

For the reasons discussed above, the Director does not approve proposed Utah Admin. R. 645–301–553.500 and .523 and requires Utah to (1) eliminate the inconsistency between the title "previously mined areas" at Utah Admin. R. 645–301–553.500 and the content of subsection Utah Admin. R. 645–301–553.523, which addresses not only highwall remnants in areas that were previously mined, but also highwall remnants and retained highwalls in connection with continuously mined areas and the AOC alternative, and to otherwise amend their program to clarify that the stability criteria of proposed Utah Admin. R. 645–301–553.523 apply to the AOC alternative at Utah Admin. R. 645–301–553.650, (2) revise Utah Admin. R. 645–301–553–523 to specify that, in addition to the public health and safety, the highwall remnant or retained highwall must not pose a hazard to the environment, and (3) revise Utah Admin. R. 645–301–553.523 to delete the phrase "not to exceed either the angle of repose or such lesser slope as is necessary to."

IV. Summary and Disposition of Comments

1. Public Comments

In response to the request for public comments, OSM received one comment on the portion of the proposed Utah amendment dealing with an exception for continuously mined areas to the requirement to completely eliminate highwalls. The commenter supported this portion of the amendment and urged OSM to approve it.

The commenter cited two decisions of the United States District Court for the District of Columbia as holding that SMCRA's provisions, and, specifically, SMCRA's grading and highwall

elimination requirements, cannot be applied retroactively. The commenter further cited two decisions of the Interior Board of Surface Mining and Reclamation Appeals for the same proposition.

The commenter also stated that the proposed amendment was in accordance with congressional direction, as set forth in section 516(a) of SMCRA, 30 U.S.C. 1266(a), to consider the distinct differences between surface and underground coal mining operations when promulgating rules and regulations directed toward the surface effects of underground mining operations.

The commenter further stated that section 516(b)(2) of SMCRA, 30 U.S.C. 1266(b)(2), provides a distinct and separate requirement for face-up areas, which requires only that an operator seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine working when no longer needed for the conduct of mining operations.

Finally, the commenter stated that OSM has approved similar provisions in West Virginia, Kentucky, and Virginia. As addressed in finding No. 3(B) above, the Director has found that this portion of the Utah amendment is not inconsistent with the SMCRA or the Federal regulations. While the Director is approving this portion of the Utah amendment, he disagrees with certain arguments raised by the commenter. Set forth below are the Director's responses to each of the commenter's arguments.

The commenter stated that section 516(b)(2) of SMCRA, 30 U.S.C. 1266(b)(2), provides a distinct and separate requirement for face-up areas and requires only that an operator seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine working when no longer needed for the conduct of mining operations. The commenter's suggestion that an operator need only comply with section 516(b)(2) of SMCRA to meet SMCRA's environmental protection performance standards for face-up areas is incorrect. Subsection (b)(10) of the same section of SMCRA makes clear that the environmental performance standards established under section 515 must be met by underground operators, in addition to the performance standards set forth at section 516. One of the many performance standards established by section 515 is the requirement for complete elimination of highwalls. See section 515(b)(3). Moreover, the elimination of highwalls was one of the standards Congress felt was critical to the elimination of the worst effects of coal mining. See e.g., *National Wildlife Federation* v. *Lujan*, 733 F. Supp. 419, 442 (D.D.C. 1990).

The commenter cited the decision of the United States District Court for the District of Columbia in *In Re: Surface Mining Litigation*, 452 F. Supp. 327, 339 (D.D.C. 1978) as holding that "absent an explicit and unmistakable command to the contrary, SMCRA's statutory provisions cannot be applied retroactively." The Director disagrees with the commenter's interpretation of this case. The decision involved a section of the interim program regulations unrelated to the issue of highwall retention, 30 CFR 710.11, dealing with design criteria for pre-existing structures and facilities. The court did not require operators to dismantle preexisting structures and facilities to meet the specific design criteria of the interim regulations.

However, the court emphasized that the performance standards must be met and clarified that such structures and facilities would have to be reconstructed if they did not meet the performance standards. Thus, the case stands for the proposition that structures and facilities existing prior to SMCRA must meet performance standards, even though they may not be required to comply with specific design criteria, of the interim program. The requirement to completely eliminate highwalls is a performance standard. Accordingly, this case does not support the commenter's argument.

The commenter also cited another decision by the same court, *In Re: Permanent Surface Mining Regulation Litigation*, 21 ERC 1193 (D.D.C. 1984), as holding "that Congress did not intend for the grading and highwall elimination requirements of section 515(b)(3) to encompass pre-existing highwalls." Clearly, the "pre-existing highwalls" to which the court referred were those highwalls in existence and abandoned without being reclaimed prior to the effective date of SMCRA, August 3, 1977. See e.g. *In Re: Permanent Surface Mining Regulation Litigation*, 620 F. Supp. 1519, 1572 (D.D.C. 1985). See also *National Wildlife Federation* v. *Lujan*, 773 F. Supp. 419, 439–441 (D.D.C. 1990). It is thus apparent that the court's decision cited by the commenter has no application to a continuously mined area. That situation simply was not contemplated by the court. Moreover, OSM does not interpret its rules governing remining in previously mined areas to apply to continuously mined areas. "[W]here there are continuous operations under a permit, this is not a remining situation. * * * these special remining rules do not apply to operations in areas where there has been past compliance with the Act [SMCRA] or there is a continuing responsibility under the Act" (47 FR 51316, 51320, November 12, 1982). See also 58 FR 3466, 3467 (January 8, 1993).

The commenter also stated that "[e]ven before the district court's decision, the Interior Board of Surface Mining Appeals held that highwall elimination requirements could not be applied retroactively," citing *Cedar Coal Co.*, 1 IBSMA 145 (April 20, 1979) and *Miami Springs Properties*, 2 IBSMA 399 (December 23, 1980). The commenter's argument regarding these two Board decisions is misplaced. Neither one of these Board decisions held that SMCRA's highwall elimination requirements could not be applied retroactively.

Both of these Board decisions interpreted a provision of the interim program standards governing backfilling and grading requirements at 30 CFR 715.14. Both decisions emphasized that operators were required to comply with the backfilling and grading performance standards of the interim program, despite the fact that their operations preceded SMCRA. However, the Board interpreted an operator's duty to comply with the requirements of 30 CFR 715.14(b)(1)(ii),which demanded the complete elimination of highwalls in remining situations, as conditioned upon whether disturbance of the pre-existing highwall caused an adverse physical impact.

Although OSM at one time adopted this "adverse physical impact" standard and incorporated it into the permanent program regulations (48 FR 41720, September 16, 1983), OSM later suspended (50 FR 257, January 3, 1985), and then removed (51 FR 41734, November 18, 1986), the adverse physical impact standard from the permanent program regulations in response to a court order entered pursuant to a joint motion by parties in the case of *In Re: Permanent Surface Mining Regulation Litigation*, Docket No. 79–1144 (D.D.C. December 3, 1984). In its November 18, 1986, rulemaking, OSM made clear that the two Board decisions relied upon by the commenter, despite previous interpretations to the contrary, have no application to the backfilling and grading requirements of the permanent program regulations, as modified therein. See 51 FR 41734, 41735 (November 18, 1986). OSM explained that the permanent program regulations, as modified, require an operator engaged in remining operations to eliminate the preexisting highwall to the maximum extent practical whenever the highwall is reaffected or enlarged. It is

thus not necessary for the remining operation to have an adverse physical impact upon a pre-existing highwall before the operator is required to eliminate the highwall to the maximum extent practical.

Thus, despite the commenter's arguments to the contrary, the Board decisions cited by the commenter do not hold that highwall elimination requirements cannot be applied retroactively. Moreover, as discussed above, OSM does not interpret its provisions governing remining operations as encompassing continuously mined areas. See 47 FR 51316, 51320 (November 12, 1982).

The Director does agree with two points made by the commenter. First, the Director acknowledges that OSM has approved similar provisions to the Utah proposal in Kentucky (52 FR 49398, December 31, 1987), and West Virginia (56 FR 21304, May 23, 1990). Indeed, the Director has discussed the rationale for approving the Kentucky and West Virginia provisions at length in finding No. 3(B). However, contrary to the commenter's assertion, the Director has not approved similar provisions in Virginia.

The Director further agrees with the commenter's statement that the proposed amendment is in accordance with congressional direction, as set forth in section 516(a) of SMCRA, 30 U.S.C. 1266(a), to consider the distinct differences between surface and underground coal mining operations when promulgating rules and regulations directed toward the surface effects of underground mining operations. Once again, the Director discusses this at length in finding No. 3(B).

2. Agency Comments

Pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(11)(i), the Director solicited comments from the Administrator of the Environmental Protection Agency (EPA), the Secretary of Agriculture, and various other Federal agencies with an actual or potential interest in the Utah program.

By letters dated June 4, 1992, and November 2, 1992, the Army Corps of Engineers responded that the proposed changes to the Utah program were satisfactory to that agency (administrative record Nos. UT–768 and UT–798).

By letter dated May 28, 1992, the Bureau of Land Management responded that it reviewed the proposed amendment for impacts to the effective management of Federal coal resources and found no conflicts (administrative record No. UT–765).

By letters dated May 19, 1992, and November 2, 1992, the Bureau of Mines responded that it had no comments on the proposed amendment (administrative record Nos. UT–763 and UT–799).

By letter dated November 4, 1992, the Fish and Wildlife Service responded that it found nothing of significant concern in the proposed amendment (administrative record No. UT–804).

By letter dated June 2, 1992, the Soil Conservation Service responded that it had no specific comments (administrative record No. UT–766).

By telephone conversation on June 18, 1992, the U.S. Forest Service (USFS) stated that it did not have any concerns relative to USFS interests (administrative record No. UT–769).

By letter dated July 10, 1992, the Mine Safety and Health Administration (MSHA) expressed concern over a potential conflict of MSHA's regulations with Utah's refuse pile rules that Utah included in the amendment but did not propose to revise (administrative record No. UT–772). In particular, MSHA was concerned because Utah Admin. R. 645–301–553.250 does not mention refuse pile requirements that are included in MSHA's regulations at 30 CFR 77.215(h). MSHA recommended that a statement regarding the MSHA requirements be added to Utah's rules.

MSHA's regulation at 30 CFR 77.215(h) addresses compaction, slope, and minimum safety factor for refuse piles. OSM's regulation at 30 CFR 816.83 requires that refuse piles meet the requirements of 30 CFR 77.214 and 77.215.

Utah Admin. R. 645–301–260 incorporates by reference the refuse pile requirements of Utah Admin. R. 645–301–536.900. The referenced rule, which Utah did not submit as part of the amendment, does require that refuse piles meet the requirements of MSHA's regulations at 30 CFR 77.214 and 30 CFR 77.215. Therefore, although Utah does not mention MSHA's 30 CFR 77.215(h) requirements in Utah Admin. R. 645–301–250, Utah does incorporate them by reference at Utah Admin. R. 645–301–553.260 and 536.900. On this basis, it is not necessary for the Director to require Utah to revise its program in response to MSHA's comment.

By a second letter dated January 13, 1993, MSHA commented that Utah's September 30, 1992 revised proposed amendment did not appear to conflict with any current MSHA regulations (administrative record No. UT–814). MSHA also quoted proposed Utah Admin. R. 645–301–553.523 noting that Utah's requirements are more stringent than title 30 of the Code of Federal Regulations, which includes both MSHA and OSM's regulations. MSHA further stated that other parts of the amendment concerning grading, drainage, and contour restoration did not appear to be in conflict with title 30 of the Code of Federal Regulations. The Director does not agree with MSHA's assessment that proposed Utah Admin. R. 645–301–553.523 is more stringent than title 30 of the Code of Federal Regulations. As discussed in finding No. 3(D) above, the Director is requiring Utah to amend proposed Utah Admin. R. 645–301–553.523 to be consistent with the Federal regulations at 30 CFR 816.102(a)(3), 817.102(a)(3), 816.106(b)(3), and 817.106(b)(3).

3. State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments from the SHPO and ACHP for all amendments that may have an effect on historic properties. By letters dated May 14, 1992, and October 21, 1992, the Director solicited comments from these offices (administrative record Nos. UT–760 and UT–792). By letter dated May 21, 1992, the Utah State Historic Preservation Office responded that it has previously concurred with OSM's recommendations for the project and had no additional comment at that time (administrative record No. UT–764). The ACHP did not comment on the proposed amendment.

4. U.S. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) and the Clean Air Act, as amended, (42 U.S.C. 7401 et seq.). EPA gave written concurrence with the proposed amendment by letter dated November 17, 1992 (administrative record No. UT–805).

EPA noted that (1) Utah Admin. R. 645–301–553.220 allows for the placement of spoil in the area outside the mined-out surface area, (2) Utah Admin. R. 645–301–553.260 allows for the disposal of coal processing waste and underground development waste in the mined-out surface area, and (3) the activities described in the aforementioned rules and in Utah Admin. R. 645–301–553.631 (mountaintop removal) could fall under the category of mine wastes discharged

into waters of the United States for the primary purpose of waste disposal but with the effect of fill.

EPA further noted that the Clean Water Act (CWA) requires that all point source discharges of pollutants into waters of the United States comply with water quality standards and technology-based requirements implemented through an EPA or State issued National Pollutant Discharge Elimination System (NPDES) permit. These standards shall be such as to protect the public health or welfare, enhance the quality of water, and serve the purposes of the CWA. In addition, a permit for dredge and fill may be required under section 404 of CWA.

The Director acknowledges EPA's statements.

EPA concurred with the proposed amendment and found that Utah's proposed rule revisions demonstrate the legal authority, administrative capability, and technical conformity with NPDES regulations necessary to maintain water quality standards promulgated under the CWA, as amended (33 U.S.C. 1251 et seq.).

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and additional requirements, the proposed amendment that Utah submitted on April 10, 1992, and revised on September 30, 1992.

As discussed in finding No. 3(C)(1), the Director does not approve proposed Utah Admin. R. 645–301–553.650 and requires Utah to revise it to require that, prior to obtaining Utah's approval for highwalls to be retained, the operator must establish and Utah must find in writing that any proposed highwall will comply with the AOC criteria at Utah Admin. R. 645–301–553.651 through 655 and the stability requirement at Utah Admin. R. 645–301–553.523.

As discussed in finding No. 3(C)(2), the Director does not approve proposed Utah Admin. R. 645–301–553.651 and requires Utah to revise it to restrict the height or retained highwalls to the height of cliffs and cliff-like escarpments that were replaced or disturbed by the mining operations.

As discussed in finding No. 3(C)(3), the Director (1) does not approve Utah's proposal to not apply proposed Utah Admin. R. 645–301–533.652 until it is put into effect in the Utah program, and (2) requires Utah to revise proposed Utah Admin. R. 645–301–553.652 to state that it has an applicability date of December 13, 1982, and applies to any highwall retained pursuant to the AOC alternative.

As discussed in finding No. 3(D), the Director approves Utah Admin. R. 645–301–553.500 and .523 and requires Utah to (1) eliminate the inconsistency between the title "previously mined areas" at Utah Admin. R. 645–301–553.500 and the content of subsection Utah Admin. R. 645–301–553.523, which addresses not only highwall remnants in areas that were previously mined, but also highway remnants and retained highwalls in connection with continuously mined areas and the AOC alternative, and to otherwise amend their program to clarify that the stability criteria of proposed Utah Admin. R. 645–301–553.523 apply to the AOC alternative at Utah Admin. R. 645–301–553.650, (2) revise Utah Admin. R. 645–301–553.523 to specify that, in addition to the public health and safety, a highwall remnant or retained highwall must not pose a hazard to the environment, and (3) revise Utah Admin. R. 645–301–553.523 to delete the phrase "not to exceed either the angle of repose or such lesser slope as is necessary to."

Except as noted, the Director approves the rules with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 944, which codify decisions concerning the Utah program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Effect of Director's Decision

Under section 503 of SMCRA, 30 U.S.C. 1253, a State may not exercise jurisdiction over surface coal mining and reclamation operations unless it has a State program approved by the Secretary. Similarly, 30 CFR 732.17 requires a State to submit any alteration of an approved State program to OSM for approval. The Federal regulation at 30 CFR 732.17(g) provides that no change in the law or regulations that make up a State program shall take effect for purposes of a State program until approved by OSM as an amendment.

This prohibits a State from making any unilateral change in its approved State program. Any change in a State program is not enforceable by the State until approved by OSM. In oversight of the Utah program, the Director will recognize only the statutes, regulations, and other materials approved by OSM, together with any consistent implementing policies, directives, and other materials, and will require that Utah enforce only such provisions.

VII. Procedural Determinations

1. Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary, and OMB regulatory review is not required.

2. Executive Order 12278

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 10, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below.

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding new paragraph (w) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(w) With the exceptions of (1) Utah Admin. R. 645–301–553.650, the requirement for regulatory authority approval of Utah's AOC alternative; (2) Utah Admin. R. 645–301–553.651, the height and length requirements of retained highwalls; and (3) Utah Admin. R. 645–301–553.652, replacement of a pre-existing cliff or similar natural premining feature with a retained highwall and the date of applicability of those rules, the following revisions to the Utah Administrative Rules, as submitted to OSM on April 30, 1992, and revised on September 30, 1992, are approved effective September 17, 1993.

645–100–200	Definition of "Highwall."
645–301–553	Contemporaneous Reclamation for Backfilling and Grading.
645–301–553.100	Backfilling and Grading of Disturbed Areas.
645–301–553.130	Static Safety Factor.
645–301–553.510, .520, and .521	Backfilling and Grading of Previously Mined Areas.
645–301–553.523	Static Safety Factor and Alternative Stability Criteria.
645–301–553.620	Incomplete Elimination of Highwalls in Previously Mined Areas.
645–301–553.630 and .631	Required Regulatory Authority Approval for Mountaintop Removal Operations.
645–301–553.632 and .633	AOC Variance Criteria.
645–301–553.652	Replacement of a Pre-existing Cliff or Similar Natural Premining Feature With a Retained Highwall.
645–301–553.653	Modifications to Retained Highwalls Restoring Cliff-Type Habitats Required by Premining Flora and Fauna.
645–301–553.654	Compatibility of Retained Highwalls With the Approved Postmining Land Use and Visual Attributes of the Area.
645–301–553.655	Exemption From Obtaining a Variance From Approximate Original Contour Requirements.

3. Section 944.16 is amended by adding new paragraphs (a), (b), (c), and (d) to read as follows:

§ 944.16 Required program amendments.

* * * * *

(a) By November 16, 1993, Utah shall submit a proposed amendment for highwall retention and approximate original contour (AOC) at Utah Admin. R. 645–301–553.650 to require that, prior to obtaining Utah's approval for highwalls to be retained, the operator must establish and Utah must find in writing that any proposed highwall will comply with the approximate original contour criteria at Utah Admin. R. 645–301–553.651 through 655 and the stability requirement at Utah Admin. R. 645–301–553.523.

(b) By November 16, 1993, Utah shall submit a proposed amendment for highwall retention and approximate original contour at Utah Admin. R. 645–301–553.651 restricting the height of retained highwalls to the height of cliffs or cliff-like escarpments that were replaced or disturbed by the mining operations.

(c) By November 16, 1993, Utah shall submit a proposed amendment stating that its requirement at Utah Admin. R. 645–301–553.652 has an applicability date of December 13, 1982, and applies to any highwall retained pursuant to the approximate original contour alternative.

(d) By November 16, 1993, Utah shall submit a proposed amendment for Utah Admin. R. 645–301–553.523 (1) eliminating the inconsistency between the title "previously mined areas" at Utah Admin. R. 645–301–553.500 and the content of subsection Utah Admin. R. 645–301–553.523, and clarifying that the stability criteria of proposed Utah Admin. R. 645–301–553.523 apply to the AOC alternative at Utah Admin. R. 645–301–553.650, (2) specifying that a highwall remnant or retained highwall must not pose a hazard to the environment, and (3) deleting the phrase "not to exceed either the angle of repose or such lesser slope as is necessary to".

* * * * *

[FR Doc. 93–22676 Filed 9–16–93; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

[MB–42–F]

RIN 0938–AF13

Medicaid Program; Qualified Family Members

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: Under the Aid to Families with Dependent Children (AFDC) program, certain States may elect to limit the number of months of benefits provided to families who are eligible by

reason of the unemployment of the principal wage earner. This final rule ensures that States that exercise this option continue to provide Medicaid to qualified family members beyond the time when AFDC ends solely because of the State's election of a time limit. This final rule conforms the regulations with sections 1902(a)(10)(A)(i)(V) and 1905(m) of the Social Security Act, as added by section 401(d) of the Family Support Act of 1988.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Richard Coyne, (410) 966–4458.

SUPPLEMENTARY INFORMATION:

I. Background

In general, under the Medicaid program, title XIX of the Social Security Act (the Act), individuals who are eligible for certain public assistance programs—for example, Aid to Families with Dependent Children (AFDC) under Part A of title IV of the Act and Supplemental Security Income (SSI) under title XVI of the Act—are eligible for medical assistance as members of a categorically needy group. Similarly, unless expressly provided for by statute, an individual's loss of eligibility for AFDC or SSI benefits may terminate that individual's classification as categorically needy. As a consequence, the individual's Medicaid eligibility may also be terminated. (Title XIX of the Act requires coverage of certain categorical groups other than cash assistance recipients. In addition, title XIX provides States with various options to provide Medicaid coverage to additional categorical groups. Hence, cessation of receipt of AFDC or SSI need not necessarily result in an individual's loss of Medicaid.)

On August 17, 1992, we published in the **Federal Register** (57 FR 36968) a proposed rule that would extend Medicaid eligibility to certain individuals whose AFDC eligibility is terminated because a State imposes a time limit on AFDC cash benefits available to a family with an unemployed principal wage earner. Under the AFDC program, States provide cash assistance to certain families that meet the eligibility criteria. In accordance with section 407 of the Act, until October 1, 1990, States had the option to provide AFDC assistance to two-parent families when the principal wage earner was unemployed. These families were eligible for Medicaid by virtue of their eligibility for AFDC. Effective October 1, 1990, under section 401 of the Family Support Act of 1988 (Pub. L. 100–485), all States are required to furnish AFDC to these families. However, States which had not previously chosen to provide benefits to these families are permitted to deny AFDC cash payments to a family that has received AFDC on the basis of the unemployment of the principal wage earner in at least 6 months out of the preceding 12 months. The October 1, 1990, date does not apply to Guam, Puerto Rico, American Samoa, and the Virgin Islands where the effective date is October 1, 1992.

Section 401(d) of the Family Support Act of 1988 also added new sections 1902(a)(10)(A)(i)(V) and 1905(m) to title XIX, which define "qualified family member" and require State plans to make Medicaid available to qualified family members. Section 1905(m)(1) of the Act defines a "qualified family member" as an individual (other than a qualified pregnant woman or child, as defined in section 1905(n) of the Act) who is a member of a family that would be receiving aid under the State plan under Part A of title IV pursuant to section 407 if the State had not exercised its option under section 407(b)(2)(B)(i) of the Act to limit the number of months it will pay AFDC to a family with an unemployed principal wage earner.

Section 401(d) of the Family Support Act of 1988 also contains a sunset provision, which terminates the requirement that States provide Medicaid to qualified family members effective October 1, 1998. The statute states that no individual may be a qualified family member for any period after September 30, 1998.

II. Provisions of the Proposed Rule and Public Comments Received

In the August 1992 proposed rule, we proposed to revise 42 CFR part 435, Subpart B, Mandatory Coverage of the Categorically Needy and Special Groups, by adding a new § 435.119. This section provides for mandatory categorical eligibility for qualified family members and defines a qualified family member. (We proposed to redesignate existing § 435.119 under undesignated subheading, "Mandatory Coverage of Adoption Assistance and Foster Care Children" as new § 435.145 under the same undesignated subheading.)

Section 1905(m) of the Act defines "a qualified family member" as a member of a family that would be receiving AFDC cash benefits based on the unemployment of the principal wage earner had the State not chosen to place a time limit on those benefits, but excludes from the definition those family members who would be eligible as qualified pregnant women or qualified children as defined in section 1905(n) of the Act. To simplify the administration of the program, we proposed to modify the definition. In the proposed rule, we defined "qualified family member" as any member of a family that would be receiving AFDC cash benefits based on the unemployment of the principal wage earner had the State not chosen to place a time limit on those benefits, whether or not those individuals would be eligible as qualified pregnant women or qualified children. We based our proposal to modify the definition on two authorities: (1) The authority of section 1902(a)(19) of the Act, which allows for safeguards to ensure that Medicaid care and services will be provided in a manner consistent with simplicity of administration and the best interests of recipients, and (2) the Secretary's authority to publish rules and regulations necessary to the efficient administration of the programs under the Social Security Act, 42 U.S.C. 1302.

Under our proposed definition, an individual may receive Medicaid as a qualified pregnant woman, as a qualified child, or as a qualified family member. Qualified pregnant women, qualified children and qualified family members are all mandatory eligibility groups and all are eligible for the same scope of services under the State Medicaid plan (section 1902(a)(10)(B)). Because the statutory exception is a distinction without a difference, we believe that this interpretation of the statutory definition is clearer, simpler, and therefore, easier to administer. In our proposal, we specifically invited public comment on this proposed definition. We received one timely response and that response contained favorable comments on this definition.

Under existing § 435.916 and § 435.930, States are required to redetermine eligibility when circumstances change and must continue to provide Medicaid until the recipient is found ineligible. We have interpreted this requirement for redetermination, in accordance with the decision in *Stenson* v. *Blum*, 476 F. Supp 1331 (S.D. N.Y. 1979), *affirmed* 628 F. 2d 1345, *cert. denied*, 449 U.S. 885 (1980), to mean determining whether the individual is eligible on any basis. Therefore, we proposed to provide that when an individual ceases to meet the definition of qualified family member, the State is required to determine if the individual is eligible under any other group before terminating his or her Medicaid eligibility. Pregnant women and children who have been considered

qualified family members but who also meet the eligibility requirements as qualified pregnant women or qualified children (as well as low-income pregnant women, infants and children and medically needy individuals) will be discovered at this time.

In the proposed rule, we noted that the parenthetical provision of § 435.116(a)(1) and the provisions of § 435.116(a)(2) are not effective while section 401(d) of Public Law 100–485 is in effect; that is, until October 1, 1998. These two provisions refer to any State AFDC plan that does not include an AFDC unemployed parent program. Until October 1, 1998, all States will be required to include such a program in their AFDC State plans. Consequently, the provisions are not effective until that date. The pregnant women to whom these provisions apply are eligible under the mandatory coverage provisions of § 435.116(a)(3) and Public Law 100–485.

We proposed to revise the title of § 435.116 to read, "Qualified pregnant women and children who are not qualified family members."

We proposed to amend 42 CFR part 436, which contains the eligibility provisions applicable to Guam, Puerto Rico, and the Virgin Islands. Those geographical areas are not subject to the SSI provisions, but rather participate in the cash assistance programs (title X, Aid to the Blind; title XIV, Aid to the Permanently and Totally Disabled; title XVI, Aid to the Aged, Blind, and Disabled). We proposed to make corresponding changes to § 436.120 to revise the title to read "Qualified pregnant women and children who are not qualified family members". We also proposed to add a new § 436.121 entitled, "Qualified family members", which contains provisions essentially identical to those in new § 435.119 with one exception. The statute provides a later effective date for implementation of these provisions in American Samoa, Guam, Puerto Rico and the Virgin Islands. Consequently, the provisions of §§ 435.119 (for American Samoa) and 436.121 are effective October 1, 1992.

III. Provisions of this Final Rule

We are adopting the August 1992 proposed rule as a final rule with minor technical revisions to clarify the applicable periods of the regulations.

IV. Paperwork Reduction Act

Sections 435.119 and 436.121 of this final rule contain information collection requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3504, et seq.). The information collection requirements concern State plan amendments that must be completed by States. The reporting burden for the collection of information required in § 435.119 and § 436.121 is estimated to be one hour per State plan amendment. A notice will be published in the **Federal Register** when approval is obtained.

V. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. 12291 criteria for a "major rule;" that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5. U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if this rule has a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that has fewer than 50 beds and is located outside a Metropolitan Statistical Area.

We estimate the Medicaid program expenditures as a result of conforming these regulations to the statute to be as follows:

ESTIMATED COST ($ IN MILLIONS)

	FY 93	FY 94	FY 95	FY 96	FY 97
Federal	90	100	110	120	130
State	70	75	85	90	100

Although we anticipate increased costs to Federal and State governments as indicated above, we believe that these costs will have a beneficial effect on families. We expect increased health care coverage for families as a result of the implementation of these regulations.

Costs as a result of these final regulations will be incurred regardless of the promulgation of these regulations. The provisions of this rule merely conform the regulations to the legislative provisions of sections 1902(a)(10)(A)(i)(V) and 1905(m) of the Act, as added by section 401(d) of the Family Support Act of 1988. Therefore, we have not prepared an analysis under E.O. 12291.

We have determined, and the Secretary certifies, that these final regulations will not have significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or an analysis of effects on small rural hospitals.

List of Subjects

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 436

Aid to Families with Dependent Children, Grant programs—health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

A. 42 CFR part 435 is amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, THE DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The title of § 435.116 is revised to read as follows:

§ 435.116 Qualified pregnant women and children who are not qualified family members.

§ 435.145 [Redesignated from § 435.119]

3. Section 435.119 is redesignated as new § 435.145 under the undesignated centerheading, Mandatory Coverage of Adoption Assistance and Foster Care Children.

4. New § 435.119 is added under a new undesignated centerheading, Mandatory Coverage of Qualified Family Members to read as follows:

Mandatory Coverage of Qualified Family Members

§ 435.119 Qualified family members.

(a) *Definition.* A *qualified family member* is any member of a family, including pregnant women and children eligible for Medicaid under § 435.116 of this subpart, who would be receiving AFDC cash benefits on the basis of the unemployment of the principal wage earner under section 407 of the Act had the State not chosen to place time limits on those benefits as permitted under section 407(b)(2)(B)(i) of the Act.

(b) *State plan requirement.* The State plan must provide that the State makes Medicaid available to any individual who meets the definition of "qualified family member" as specified in paragraph (a) of this section.

(c) *Applicability.* The provisions in this section are applicable in the 50 States and the District of Columbia from October 1, 1990, through September 30, 1998. The provisions are applicable in American Samoa from October 1, 1992, through September 30, 1998.

B. 42 CFR part 436 is amended as set forth below:

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

1. The authority citation for part 436 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The title of § 436.120 is revised to read as follows:

§ 436.120 Qualified pregnant women and children who are not qualified family members.

3. A new § 436.121 is added to read as follows:

§ 436.121 Qualified family members.

(a) *Definition.* A *qualified family member* is any member of a family, including pregnant women and children eligible for Medicaid under § 436.120 of this subpart, who would be receiving AFDC cash benefits on the basis of the unemployment of the principal wage earner under section 407 of the Act had the State not chosen to place time limits on those benefits as permitted under section 407(b)(2)(B)(i) of the Act.

(b) *State plan requirement.* The State plan must provide that the State makes Medicaid available to any individual who meets the definition of "qualified family member" as specified in paragraph (a) of this section.

(c) *Applicability.* The provisions in this section are applicable from October 1, 1992, through September 30, 1998.

(Catalog of Federal Domestic Assistance Program No. 93.778—Medical Assistance Program)

Dated: May 5, 1993.

William Toby,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: July 6, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–22747 Filed 9–16–93; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–67; RM–8114]

Radio Broadcasting Services; Globe, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 247C3 for Channel 247A at Globe, Arizona, and modifies the construction permit for Station KRXS (FM) to specify operation on the higher powered channel, as requested by Linda C. Potyka. (See 58 FR 17818, April 6, 1993.) Coordinates for Channel 247C3 at Globe are 33–17–37 and 110–50–09. With this action, the proceeding is terminated.

EFFECTIVE DATE: October 25, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–67, adopted August 27, 1993, and released September 9, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 247A and adding Channel 247C3 at Globe,

Federal Communications Commission

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–22686 Filed 9–16–93; 8:45 am]

BILLING CODE 6712–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1832

Contractor Financing Payments

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This notice formalizes in the NASA FAR Supplement (NFS) the authority given in the Federal Acquisition Regulation (FAR) to make contract financing payments in less than 30 days. The change to the NFS provides that flexibility for NASA contracts in those cases where it is determined to be in the best interest of the Government.

EFFECTIVE DATE: September 17, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Le Cren, (202) 359–0444.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subject in 48 CFR Part 1832

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR part 1832 is amended as follows:

1. The authority citation for 48 CFR part 1832 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1832—CONTRACT FINANCING

2. Section 1832.906 is added to read as follows:

1832.906 Contract financing payments.

It is NASA's policy to make contract financing payments on the 30th day after the designated billing office has received a proper request. However, as authorized at FAR 32.906(a), the due date for making contract financing payments for a specific contract may be earlier than the 30th day, but not earlier than 7 days, after the designated billing office has received a proper request, provided that:

(a) The contractor provides consideration whose value is determined to be greater than the cost to the United States Treasury of interest on funds paid prior to the 30th day, calculated using the Current Value of Funds Rate published annually in the **Federal Register** (subject to quarterly revision);

(b) Approval is obtained from the installation procurement officer with concurrence from the installation Financial Management Officer; and

(c) The contract file is adequately documented to state what consideration was received and show how the consideration was valued.

[FR Doc. 93–22801 Filed 9–16–93; 8:45 am]

BILLING CODE 7510–01–M

Proposed Rules

Federal Register
Vol. 58, No. 179
Friday, September 17, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–126–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require modification of the automatic speed brake control circuit. This proposal is prompted by a report of failure of a hydraulic pressure line to a landing gear truck tilt cylinder, which resulted in inadvertent deployment of the automatic speed brake. The actions specified by the proposed AD are intended to prevent inadvertent in-flight operation of the automatic speed brake system.

DATES: Comments must be received by November 10, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–126–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kristin Larson, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1760; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–126–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–126–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In July 1989, a transport category airplane was involved in an accident in Sioux City, Iowa, resulting in the deaths of 110 passengers and one crewmember. The National Transportation Safety Board (NTSB) identified the catastrophic disintegration of the stage 1 fan disk of one of the engines as a probable cause of the accident. The resulting debris damaged the hydraulic systems that power the flight controls, resulting in the loss of virtually all control capability.

Following the accident, the Administrator of the Federal Aviation Administration convened a Systems Review Task Force (SRTF) to investigate means for enhancing airplane survivability following damage to fully powered flight control systems. The SRTF formed working groups to perform these investigations for specific airplane models to determine what actions could be effective in protecting other transport category airplanes with powered flight control systems from similar engine or systems failures.

The SRTF working group assigned to review Boeing Model 747 series airplanes has completed its review of the Model 747 design, including existing service bulletins, and has issued a report recommending incorporation of one of the modifications described in a Boeing Model 747 service bulletin. A copy of the report is contained in the Rules Docket for this AD action.

One of the existing service bulletins, Boeing Service Bulletin 27–2066, Revision 1, dated August 20, 1971, was issued in response to a report of failure of a hydraulic pressure line to a landing gear truck tilt cylinder on a Model 747 series airplane, which resulted in inadvertent in-flight extension of the speed brakes. Previously, the hydraulic pressure line to a landing gear truck tilt cyclinder had failed, causing the loss of system pressure. During a subsequent landing, hydraulic fluid was forced out of the associated tilt cylinders, which allowed cavitation in the cylinders on the following takeoff as the trucks rotated to the tilted position. During the next landing approach, the automatic speed brake system was armed and the flaps were extended. As the airplane attitude changed during flap extension, the cavitated tilt cylinders allowed the landing gear trucks to move out of the fully tilted position and initiated automatic speed brake extension. The flight crew promptly retracted the speed brakes. This condition, if not corrected, could result in inadvertent in-flight operation of the automatic speed brake system.

The FAA has reviewed and approved Boeing Service Bulletin 27–2066,

Revision 1, dated August 20, 1971, that describes procedures for modification of the automatic speed brake control circuit. This modification entails reworking the landing gear primary and alternate logic modules and adding airplane wiring to connect hydraulic system pressure switch inputs to the modules. Accomplishment of this modification will prevent operation of the primary or alternate tilt relays unless either hydraulic system number 1 is pressurized and both left and right body gear trucks are in the untilted position, or hydraulic system number 4 is pressurized and both left and right wing gear trucks are in the untilted position.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the automatic speed brake control circuit. The actions would be required to be accomplished in accordance with the service bulletin described previously. This proposed action is one of several rulemaking actions based on the recommendations of the SRTF Working Groups. The FAA is continuing to review the SRTF recommendations and may consider further rulemaking.

There are approximately 98 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 56 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 12 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost for required parts would be minimal. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $36,960, or $660 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 93–NM–126–AD.

Applicability: Model 747 series airplanes; as listed in Boeing Service Bulletin 27–2066, Revision 1, dated August 20, 1971; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent in-flight operation of the automatic speed brake system, accomplish the following:

(a) Within 5,000 hours time-in-service after the effective date of this AD, modify the automatic speed brake control circuit in accordance with Boeing Service Bulletin 27–2066, Revision 1, dated August 20, 1971.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 10, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–22737 Filed 9–16–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–127–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require modification of the ram air turbine (RAT) system wiring. This proposal is prompted by a report of chatter occurring during takeoff and landing in the RAT airspeed switch relay. The actions specified by the proposed AD are intended to prevent the inability to maintain hydraulic system power in the event that power is lost in both engines.

DATES: Comments must be received by November 10, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kristin Larson, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1760; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–127–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In July 1989, a transport category airplane was involved in an accident in Sioux City, Iowa, resulting in the deaths of 110 passengers and one crewmember. The National Transportation Safety Board (NTSB) identified the catastrophic disintegration of the stage 1 fan disk of one of the engines as a probable cause of the accident. The resulting debris damaged the hydraulic systems that power the flight controls, resulting in the loss of virtually all control capability.

Following the accident, the Administrator of the Federal Aviation Administration convened a Systems Review Task Force (SRTF) to investigate means for enhancing airplane survivability following damage to fully powered flight control systems. The SRTF formed working groups to perform these investigations for specific airplane models to determine what actions could be effective in protecting other transport category airplanes with powered flight control systems from similar engine or systems failures.

The SRTF working group assigned to review Boeing Model 767 series airplanes has completed its review of the Model 767 design, including existing service bulletins, and has issued a report recommending incorporation of one of the modifications described in a Boeing Model 767 service bulletin. A copy of the report is contained in the Rules Docket for this AD action.

One of the existing service bulletins, Boeing Service Bulletin 767–29–0021, Revision 4, dated May 12, 1988, was issued in response to a report of chatter occurring during takeoff and landing in the ram air turbine (RAT) airspeed switch relay on a Model 767 series airplane. The RAT provides hydraulic power for the flight controls in the event that power is lost in both engines. Investigation of the RAT automatic deployment wiring system revealed that a sneak circuit can cause the airspeed switch relay to chatter during takeoff and landing when the airplane speed is greater than 80 knots and the airplane is on the ground. The wiring that allows this sneak circuit is installed as a secondary system for the ground test of the RAT deployment system. The sneak circuit causes excessive cycling and reduces the expected operating life of the relay. If the switch becomes inoperative and stuck in the open position, the RAT will not automatically deploy. This condition, if not corrected, could result in the inability to maintain hydraulic system power in the event that power is lost in both engines.

The FAA has reviewed and approved Boeing Service Bulletin 767–29–0021, Revision 4, dated May 12, 1988, that describes procedures for modification of the RAT system wiring. This modification entails replacing the RAT airspeed switch, capping and stowing a wire between the RAT airspeed switch and the air/ground relay, and performing a functional test of the RAT deployment system. Accomplishment of this modification will eliminate the sneak circuit that causes excessive cycling of the RAT airspeed switch relay.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the RAT system wiring. The actions would be required to be accomplished in accordance with the service bulletin described previously. This proposed action is one of several rulemaking actions based on the recommendations of the SRTF Working Groups. The FAA is continuing to review the SRTF recommendations and may consider further rulemaking.

There are approximately 90 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 53 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost for required parts would be minimal. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $10,203, or $193 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 93–NM–127–AD.

Applicability: Model 767 series airplanes; as listed in Boeing Service Bulletin 767–29–0021, Revision 4, dated May 12, 1988; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability to maintain hydraulic system power in the event that power is lost in both engines, accomplish the following:

(a) Within 4,000 hours time-in-service after the effective date of this AD, replace the ram air turbine (RAT) airspeed switch; cap and stow the wire between the RAT airspeed switch and the air/ground relay; and perform a functional test of the RAT deployment system; in accordance with Boeing Service Bulletin 767–29–0021, Revision 4, dated May 12, 1988.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 10, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–22738 Filed 9–16–93; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–4731–1]

Outer Continental Shelf Consistency Update #1 For Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking; consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section the Clean Air Act Amendments of 1990, the applicable requirements for certain areas for Air Pollution from OCS Activities. The portion of the OCS air regulation that is being updated pertains to the requirements for OCS sources for which the State of Florida will be the designated COA. This action proposes to incorporate the requirements contained in "State of Florida Requirements Applicable to OCS Sources" (August 20, 1993). Proposed changes to these requirements are discussed below.

DATES: Comments on the proposed updates must be received on or before October 18, 1993.

ADDRESSES: Comments must be mailed (in duplicate if possible) to the U.S. Environmental Protection Agency, Region IV, Air, Pesticides, and Toxics Management Division, 345 Courtland Street, NE, Atlanta, GA 30365. (Attn: R. Scott Davis). Docket: The docket is available for public inspection and copying Monday through Friday during regular business hours at the following locations:

EPA Air Docket, Attn: Docket No. A–93–31, Environmental Protection Agency, 401 M Street SW., Washington D.C. 20460, Room M–1500.

Region IV Library, Environmental Protection Agency, 345 Courtland Street NE., Atlanta, GA 30365.

FOR FURTHER INFORMATION CONTACT: R. Scott Davis, Air, Pesticides, and Toxics Management Division, U.S. EPA Region IV, 345 Courtland Street NE., Atlanta, GA 30365. Telephone (404) 347–5014.

SUPPLEMENTARY INFORMATION:

Docket

Although the initial OCS rulemaking was determined to be subject to the requirements of section 307(d) of the Clean Air Act (General Provision Relating to Administrative Proceedings and Judicial Review), this proposed rulemaking is not subject to those requirements, nor are any rulemakings that are undertaken to update the OCS requirements to maintain consistency with onshore requirements, pursuant to section 328(a)(1). Supporting information used in developing the proposed notice and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–31 (see **ADDRESSES**).

Background

On September 4, 1992, EPA promulgated 40 CFR part 55 [1], which established requirements to control air pollution from OCS sources in order to comply with federal and state ambient air quality standards and the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the states except those located in the Gulf of Mexico west of 87.5 degrees longitude, approximately west of the Florida/Alabama state border. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent (NOI); and (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This Notice of Proposed Rulemaking is being proposed in response to the receipt of a NOI, submitted by Chevron USA Production Company on June 25, 1993, and represents the first update of part 55 for the State of Florida. The NOI includes general company information, a description of the proposed facility, estimated potential air emissions, emissions points, fuels, air pollution controls, and any proposed operating limitations. Public comments received in writing within 30 days of publication of this notice will be considered by EPA before promulgation of the final updated rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. In updating 40 CFR part 55, EPA reviewed the state rules for inclusion in part 55 to ensure that they comply with the attainment or maintenance of federal or state ambient air quality standards or

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources (40 CFR 55.1). EPA has also evaluated the rules to ensure they are not arbitrary or capricious (40 CFR 55.12 (e)). In addition, EPA has excluded administrative or procedural rules.[2]

EPA Evaluation and Proposed Action

In today's notice EPA proposes to incorporate the rules applicable to sources for which the State of Florida will be the COA. These rules include revisions to existing rules that already apply to OCS sources and are a result of the recodification and renumbering of Florida air regulations (Adopted 9/25/92) and the adoption of amendments to other existing air regulations:

Florida Administrative Code—Department of Environmental Protection. The following sections of Chapter 17:

4.020 Definitions (Adopted 7/11/93)
4.021 Transferability of Definitions (Adopted 8/31/88)
4.030 General Prohibitions (Adopted 8/31/88)
4.040 Exemptions (Adopted 8/31/88)
4.050 Procedure to Obtain Permit; Application, except (4)(b) through (4)(k) and 4(q) (Adopted 7/11/93)
4.070 Standards for Issuing or Denying Permits; Issuance; Denial (Adopted 3/28/91)
4.080 Modification of Permit Conditions (Adopted 3/19/90)
4.090 Renewals (Adopted 7/11/93)
4.100 Suspension and Revocation (Adopted 8/31/88)
4.110 Financial Responsibility (Adopted 8/31/88)
4.120 Transfer of Permits (Adopted 3/19/90)
4.130 Plant Operation—Problems (Adopted 8/31/88)
4.160 Permit Conditions, except (16) and (17) (Adopted 7/11/93)
4.210 Construction Permits (Adopted 8/31/88)
4.220 Operation Permits for New Sources (Adopted 8/31/88)
4.520 Definitions (Adopted 7/11/90)
4.530 Procedures (Adopted 3/19/90)
4.540 General Conditions for all General Permits (Adopted 8/31/88)
210.100 Purpose and Scope (Adopted 2/9/93)
210.200 Definitions (Adopted 2/9/93)
210.300 Permits Required (Adopted 9/25/92)
210.400 Emission Estimates (Adopted 9/25/92)
210.500 Air Quality Models (Adopted 9/25/92)
210.550 Stack Height Policy (Adopted 9/25/92)
210.650 Circumvention (Adopted 9/25/92)
210.700 Excess Emissions (Adopted 9/25/92)
210.980 Severability (Adopted 9/25/92)
212.100 Purpose and Scope (Adopted 2/2/93)
212.200 Definitions (Adopted 2/2/93)
212.300 Sources Not Subject to Prevention of Significant Deterioration or Nonattainment Requirements (Adopted 9/25/92)
212.400 Prevention of Significant Deterioration (Adopted 2/2/93)
212.410 Best Available Control Technology (BACT) (Adopted 9/25/92)
212.500 New Source Review for Nonattainment Areas (Adopted 2/2/93)
212.510 Lowest Achievable Emission Rate (LAER) (Adopted 9/25/92)
212.600 Source Specific New Source Review Requirements (Adopted 9/25/92)
212.700 Source Reclassification (Adopted 9/25/92)
256.100 Declaration and Intent (Adopted 10/20/86)
256.200 Definitions (Adopted 10/20/86)
256.300 Prohibitions (Adopted 8/26/87)
256.450 Open Burning Allowed (Adopted 6/27/91)
256.600 Industrial, Commercial, Municipal and Research Open Burning (Adopted 8/26/87)
256.700 Open Burning Allowed (Adopted 11/23/88)
272.200 Definitions (Adopted 9/25/92)
272.300 Ambient Air Quality Standards (Adopted 9/25/92)
272.500 Maximum Allowable Increases (Prevention of Significant Deterioration) (Adopted 9/25/92)
272.750 DER Ambient Test Methods (Adopted 9/25/92)
273.200 Definitions (Adopted 9/25/92)
273.300 Air Pollution Episodes (Adopted 9/25/92)
273.400 Air Alert (Adopted 9/25/92)
273.500 Air Warning (Adopted 9/25/92)
273.600 Air Emergency (Adopted 9/25/92)
296.200 Definitions (Adopted 6/11/93)
296.310 General Particulate Emission Limiting Standards (Adopted 2/2/93)
296.320 General Pollutant Emission Limiting Standards, except (2) (Adopted 2/2/93)
296.330 Best Available Control Technology (BACT) (Adopted 2/2/93)
296.400 Specific Emission Limiting and Performance Standards (Adopted 2/2/93)
296.500 Reasonably Available Control Technology (RACT)—Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_x) Emitting Facilities (Adopted 2/2/93)
296.700 Reasonably Available Control Technology (RACT)—Particulate Matter, except (2)(f) (Adopted 2/2/93)
296.800 Standards of Performance for New Stationary Sources (NSPS) (Adopted 6/11/93)
296.810 National Emission Standards for Hazardous Air Pollutants (Adopted 6/11/93)
297.100 Purpose and Scope (Adopted 12/2/92)
297.200 Definitions (Adopted 6/11/93)
297.310 General Test Requirements (Adopted 12/2/92)
297.330 Applicable Test Procedures (Adopted 12/2/92)
297.340 Frequency of Compliance Tests (Adopted 12/2/92)
297.345 Stack Sampling Facilities Provided by the Owner of an Air Pollution Point Source (Adopted 12/2/92)
297.350 Determination of Process Variables (Adopted 12/2/92)
297.400 EPA Methods Adopted by Reference (Adopted 12/2/92)
297.401 EPA Test Procedures (Adopted 6/11/93)
297.411 DER Method 1 (Adopted 12/2/92)
297.412 DER Method 2 (Adopted 12/2/92)
297.413 DER Method 3 (Adopted 12/2/92)
297.414 DER Method 4 (Adopted 12/2/92)
297.415 DER Method 5 (Adopted 12/2/92)
297.416 DER Method 5A (Adopted 12/2/92)
297.417 DER Method 6 (Adopted 12/2/92)
297.418 DER Method 7 (Adopted 12/2/92)
297.419 DER Method 8 (Adopted 12/2/92)
297.420 DER Method 9 (Adopted 12/2/92)
297.421 DER Method 10 (Adopted 12/2/92)
297.422 DER Method 11 (Adopted 12/2/92)
297.423 DER Method 12—Determination of Inorganic Lead Emissions from Stationary Sources (Adopted 12/2/92)
297.424 DER Method 13 (Adopted 12/2/92)
297.440 Supplementary Test Procedures (Adopted 6/11/93)
297.450 EPA VOC Capture Efficiency Test Procedures (Adopted 6/11/93)
297.500 Continuous Emission Monitoring Requirements (Adopted 6/11/93)
297.520 EPA Performance Specifications (Adopted 6/11/93)
297.570 Test Report (Adopted 12/2/92)
297.620 Exceptions and Approval of Alternate Procedures and Requirements (Adopted 6/11/93)

The following rule is proposed to be deleted from the State of Florida requirements applicable to OCS sources. It will be superseded by the provisions of another rule.

2.700 Stationary Point Source Emission Test Procedures (Adopted 8/30/89). (Replaced by provisions of Chapter 17–297, Stationary Sources—Emissions Monitoring, Adopted 12/2/92)

Administrative Requirements

A. Executive Order 12291 (Regulatory Impact Analysis)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." Small entities

[2] Upon delegation the onshore area will use its administrative and procedural rules as onshore. In those instances where EPA does not delegate authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14 (c)(4).

include small businesses, organizations, and governmental jurisdictions.

As was stated in the final regulation, the OCS rule does not apply to any small entities, and the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the rule.

The EPA certifies that this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final OCS rulemaking dated September 4, 1992, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 35012 *et seq.* and has assigned OMB control number 2060–0249. This consistency update does not add any further requirements.

List of Subjects in 40 CFR Part 55

Administrative practice and procedures, Air pollution control, Outer Continental Shelf, Ozone, Sulfur oxides, Nitrogen dioxide, Particulate matter, Hydrocarbons, Nitrogen oxides, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, Permits.

Dated: September 1, 1993.

Patrick M. Tobin,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, part 55, is to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraph (e)(6)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.

* * * * *

(e) * * *

(6) * * *

(i) * * *

(A) State of Florida Requirements Applicable to OCS Sources, August 20, 1993.

* * * * *

3. Appendix A to CFR part 55 is proposed to be amended by revising paragraph (a)(1) under the heading Florida to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

Florida

(a) * * *

(1) The following requirements are contained in State of Florida Requirements Applicable to OCS Sources, August 20, 1993:

Florida Administrative Code—Department of Environmental Protection. The following sections of Chapter 17:

4.020 Definitions (Adopted 7/11/93)
4.021 Transferability of Definitions (Adopted 8/31/88)
4.030 General Prohibitions (Adopted 8/31/88)
4.040 Exemptions (Adopted 8/31/88)
4.050 Procedure to Obtain Permit; Application, except (4)(b) through (4)(k) and 4(q) (Adopted 7/11/93)
4.070 Standards for Issuing or Denying Permits; Issuance; Denial (Adopted 3/28/91)
4.080 Modification of Permit Conditions (Adopted 3/19/90)
4.090 Renewals (Adopted 7/11/93)
4.100 Suspension and Revocation (Adopted 8/31/88)
4.110 Financial Responsibility (Adopted 8/31/88)
4.120 Transfer of Permits (Adopted 3/19/90)
4.130 Plant Operation—Problems (Adopted 8/31/88)
4.160 Permit Conditions, except (16) and (17) (Adopted 7/11/93)
4.210 Construction Permits (Adopted 8/31/88)
4.220 Operation Permits for New Sources (Adopted 8/31/88)
4.520 Definitions (Adopted 7/11/90)
4.530 Procedures (Adopted 3/19/90)
4.540 General Conditions for all General Permits (Adopted 8/31/88)
210.100 Purpose and Scope (Adopted 2/9/93)
210.200 Definitions (Adopted 2/9/93)
210.300 Permits Required (Adopted 9/25/92)
210.400 Emission Estimates (Adopted 9/25/92)
210.500 Air Quality Models (Adopted 9/25/92)
210.550 Stack Height Policy (Adopted 9/25/92)
210.650 Circumvention (Adopted 9/25/92)
210.700 Excess Emissions (Adopted 9/25/92)
210.980 Severability (Adopted 9/25/92)
212.100 Purpose and Scope (Adopted 2/2/93)
212.200 Definitions (Adopted 2/2/93)
212.300 Sources Not Subject to Prevention of Significant Deterioration or Nonattainment Requirements (Adopted 9/25/92)
212.400 Prevention of Significant Deterioration (Adopted 2/2/93)
212.410 Best Available Control Technology (BACT) (Adopted 9/25/92)
212.500 New Source Review for Nonattainment Areas (Adopted 2/2/93)
212.510 Lowest Achievable Emission Rate (LAER) (Adopted 9/25/92)
212.600 Source Specific New Source Review Requirements (Adopted 9/25/92)
212.700 Source Reclassification (Adopted 9/25/92)
256.100 Declaration and Intent (Adopted 10/20/86)
256.200 Definitions (Adopted 10/20/86)
256.300 Prohibitions (Adopted 8/26/87)
256.450 Open Burning Allowed (Adopted 6/27/91)
256.600 Industrial, Commercial, Municipal and Research Open Burning (Adopted 8/26/87)
256.700 Open Burning Allowed (Adopted 11/23/88)
272.200 Definitions (Adopted 9/25/92)
272.300 Ambient Air Quality Standards (Adopted 9/25/92)
272.500 Maximum Allowable Increases (Prevention of Significant Deterioration) (Adopted 9/25/92)
272.750 DER Ambient Test Methods (Adopted 9/25/92)
273.200 Definitions (Adopted 9/25/92)
273.300 Air Pollution Episodes (Adopted 9/25/92)
273.400 Air Alert (Adopted 9/25/92)
273.500 Air Warning (Adopted 9/25/92)
273.600 Air Emergency (Adopted 9/25/92)
296.200 Definitions (Adopted 6/11/93)
296.310 General Particulate Emission Limiting Standards (Adopted 2/2/93)
296.320 General Pollutant Emission Limiting Standards, except (2) (Adopted 2/2/93)
296.330 Best Available Control Technology (BACT) (Adopted 2/2/93)
296.400 Specific Emission Limiting and Performance Standards (Adopted 2/2/93)
296.500 Reasonably Available Control Technology (RACT)—Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_x) Emitting Facilities (Adopted 2/2/93)
296.700 Reasonably Available Control Technology (RACT)—Particulate Matter, except (2)(f) (Adopted 2/2/93)
296.800 Standards of Performance for New Stationary Sources (NSPS) (Adopted 6/11/93)
296.810 National Emission Standards for Hazardous Air Pollutants (Adopted 6/11/93)
297.100 Purpose and Scope (Adopted 12/2/92)
297.200 Definitions (Adopted 6/11/93)
297.310 General Test Requirements (Adopted 12/2/92)
297.330 Applicable Test Procedures (Adopted 12/2/92)
297.340 Frequency of Compliance Tests (Adopted 12/2/92)

297.345 Stack Sampling Facilities Provided by the Owner of an Air Pollution Point Source (Adopted 12/2/92)
297.350 Determination of Process Variables (Adopted 12/2/92)
297.400 EPA Methods Adopted by Reference (Adopted 12/2/92)
297.401 EPA Test Procedures (Adopted 6/11/93)
297.411 DER Method 1 (Adopted 12/2/92)
297.412 DER Method 2 (Adopted 12/2/92)
297.413 DER Method 3 (Adopted 12/2/92)
297.414 DER Method 4 (Adopted 12/2/92)
297.415 DER Method 5 (Adopted 12/2/92)
297.416 DER Method 5A (Adopted 12/2/92)
297.417 DER Method 6 (Adopted 12/2/92)
297.418 DER Method 7 (Adopted 12/2/92)
297.419 DER Method 8 (Adopted 12/2/92)
297.420 DER Method 9 (Adopted 12/2/92)
297.421 DER Method 10 (Adopted 12/2/92)
297.422 DER Method 11 (Adopted 12/2/92)
297.423 DER Method 12 - Determination of Inorganic Lead Emissions from Stationary Sources (Adopted 12/2/92)
297.424 DER Method 13 (Adopted 12/2/92)
297.440 Supplementary Test Procedures (Adopted 6/11/93)
297.450 EPA VOC Capture Efficiency Test Procedures (Adopted 6/11/93)
297.500 Continuous Emission Monitoring Requirements (Adopted 6/11/93)
297.520 EPA Performance Specifications (Adopted 6/11/93)
297.570 Test Report (Adopted 12/2/92)
297.620 Exceptions and Approval of Alternate Procedures and Requirements (Adopted 6/11/93)

[FR Doc. 93–22755 Filed 9–16–93; 8:45 am]
BILLING CODE [illegible]

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

45 CFR Part 1180

Institute of Museum Services; Technical Assistance Grants

AGENCY: Institute of Museum Services, NFAH.

ACTION: Proposed regulations.

SUMMARY: The Institute of Museum Services issues proposes regulations relating to a program of Federal financial assistance for technical assistance grants to support training and implementation in museums. The proposed regulations implement the Museum Services Act. They state eligibility, conditions and other terms for the administration of the Technical Assistance Grants.

DATES: Comments must be received on or before October 18, 1993.

ADDRESSES: Comments should be addressed to Linda Bell, Institute of Museum Services, room 510, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, Telephone: (202) 606–8539.

SUPPLEMENTARY INFORMATION:

General Background

The Museum Services Act ("the Act" which is title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976 and amended in 1980, 1982, 1984, 1985, and 1990). The purpose of the Act is stated in section 202 as follows:

> It is the purpose of the Museum Services Act to encourage and assist museums in their educational role in conjunction with formal systems of elementary, secondary, and post secondary education and with programs of non-formal education for all age groups: to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage and to ease the financial burden borne by museums as a result of their increasing use by the public.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museums Services Board and Director.

The Act provides that the National Museum Services Board shall consist of fifteen members appointed for fixed terms by the President with the advice and consent of the Senate. The Chairman of the Board is designated by the President from the appointed members. Members are broadly representative of various museum disciplines, including those relating to science, history, technology, art, zoos, and botanical gardens; of the curatorial, educational, and cultural resources of the United States; and of the general public. The Board has the responsibility for establishing the general policies of the Institute. The Director is authorized, subject to the policy direction of the Board, to make grants under the Act to museums. IMS is an independent agency placed in the National Foundation on the Arts and the Humanities (National Foundation). Public Law 101–512 Nov. 5, 1990. The Act lists a number of illustrative activities for which grants may be made, including assisting museums to improve their operations. Training and implementation provided by the Technical Assistance Grants are intended to help museums improve their operations.

List of Subjects in 45 CFR Part 1180

Government contracts, Grant programs-education, Museums, Non-profit organizations, Reporting and recordkeeping requirements.

Accordingly, the Institute of Museum Services proposes to add subpart F of chapter IX of title 45 of the Code of Federal Regulations as set forth below.

PART 1180—[AMENDED]

1. The authority citation for part 1180 continues to read as follows:

Authority: 20 U.S.C. 961 *et seq.* unless otherwise noted.

2. Subpart F of 45 CFR part 1180 is added to read as follows:

Subpart F—Technical Training and Implementation Grants to Museums

§ 1180.78 Technical training and implementation grants to museums.

(a) *Purpose of program.* The Director of the Institute of Museum Services makes two-part grants under this subpart to assist those who work in museums (paid or volunteer) to obtain training in technical areas of museum operations and to implement the training to improve museum services to the public.

(b) *Eligibility.*

(1) To be eligible to apply for a grant under this supbart, a museum must:

(i) Be a public or private nonprofit institution that is organized on a permanent basis for essentially educational or aesthetic purposes; and

(ii) Care for, and own or use tangible objects, whether animate or inanimate, and exhibit these objects to the public on a regular basis through facilities which it owns or operates, and

(iii) Have at least one staff member, whether paid or unpaid, whose primary responsibility is the acquisition, care or exhibition to the public of objects owned or used by the museum; and

(iv) Be open and providing museum services to the general public on a regular basis; and

(v) Be located in one of the fifty States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or Palau (until its compact of free association is approved.)

(2) A museum must have an operating budget for the fiscal year immediately preceding the deadline to which the museum applies of no more than $250,000 exclusive of non-cash support.

(3) Museum includes (but is not limited to) the following institutions if they satisfy the provisions of this section: (i) Aquariums and zoological parks; (ii) botanical gardens and arboretums; (iii) nature centers; (iv) museums relating to art, history (including historic buildings and sites); natural history, science and technology, planetariums, and specialized subject.

(4) A museum that receives a grant for training and implementation under this subpart for a fiscal year may not receive

another grant under this subpart for the same or subsequent fiscal years.

(5) Preference for funding will be given to a museum that has not received any grants from the Institute within two years of the deadline to which it applies over funding for a museum that has received a grant from the Institute within two years of application.

(c) *Applicability of other regulations.* The following sections in part 1180 do apply to grants for training and implementation under this subpart: §§ 1180.3(d), 1180.4, 1180.5 (c) through (e), 1180.6, 1180.10, 1180.11 (a) and (b), 1180.16(b), 1180.30 through 1180.34, 1180.36, 1180.37, 1180.39, 1180.42 through 1180.44, 1180.47, 1180.48, 1180.51 through 1180.57, part 1183, part 1185.

(d) *Application requirements.*

(1) An applicant under this subpart must submit an application in such time and such manner, and containing such information, as requested by the Institute.

(2) An applicant must submit with its application financial information for its most recently completed fiscal year for which satisfactory information is available and projected financial information for the fiscal year(s) that includes the time of the grant period.

(e) *Procedures and criteria for review of applications.*

(1) To evaluate applications and determine the amount of their awards, the Institute rates competitive applications under the criteria stated in paragraph (e)(2) of this section. Normally, these applications are evaluated by field reviewers, panels of experts, or both. The director may also use technical experts in the review of applications.

(2) This paragraph sets forth the criteria the Institute uses in evaluating and reviewing applications for technical training and implementation grants under this subpart. Evaluators are instructed to use only these criteria in the evaluation of these applications.

(i) Does the museum demonstrate its importance to the community it serves?

(ii) Is the type of training requested appropriate to the purpose or mission of the museum?

(iii) Are the costs requested to obtain the training reasonable and necessary?

(iv) Is the training needed at the museum?

(v) Is the staff member(s) (paid or volunteer) identified to receive the training the appropriate person(s) within the museum's organizational structure?

(vi) Does the individual(s) identified for training demonstrate at least a two-year commitment to the museum field?

(vii) Does the museum demonstrate a commitment to implement the training?

(f) Allowable costs.

(1) A museum may use a grant under this subpart for expenses to obtain training in areas of museum operations and for activities to implement the training.

(2) Funds may be used to pay for registration or tuition fees for training courses or workshops. (Individual(s) may use the grant funds to pay for a course that is part of a degree-granting program only for non-credit such as to audit the course.) Funds are generally not intended to support attendance at association annual meetings unless a specific training session or workshop is part of the meeting (or as a pre or post conference activity).

(3) Funds may be used for travel to and from training activities and expenses incurred during travel, such as housing and meals.

(4) Funds may be used to purchase instructional materials.

(5) Funds may not be used to pay the salary of the person(s) receiving the training. The time the staff member(s) expends to obtain the training and to implement the training is considered a matching, in-kind contribution to the grant activities.

(6) Funds may not be used for consulting fees. (In special cases where training is not available otherwise, the Institute may consider an individually designed training agenda that includes the use of a consultant clearly serving as a trainer to the applicant in specific areas of museum operations.)

(7) Funds may be used to purchase supplies, materials, and equipment for areas of museum operations for which training was received.

(8) Funds may support additional travel as needed to implement training (e.g. travel to libraries, archives, etc. to document collections).

(g) *Conditions of participation.* Following the completion of the training activity the museum must submit an implementation plan to the Institute for review before implementation funds are released. The implementation must indicate the time frame for implementation activities, the personnel involved, the activities to be completed, where the activities will take place, and the costs for implementing the plan.

(h) *Form of assistance; limitation of amount.*

(1) The Director makes payments to a museum under this subpart in advance.

(2) The amount of the grant to a museum will be determined by the Director, in accordance with the policy direction of the Board, regarding the maximum amount available for each part of the grant. The amount of the grant will be subject to the availability of funds.

(i) *Reporting requirements.* The museum receiving a grant for training and implementation under this subpart must submit a final financial and narrative report that evaluates the success of the applicant in meeting the stated goals and any plans to continue activities in the area of training.

(j) *Limitation on number of applications.* A museum may submit only one application for each deadline.

(k) *Duration of grant.*

(1) Grants made under this subpart generally permit the grantee to use the funds for a period of up to 24 months from the start of the grant period. The grantee may use grant funds during the period specified in the grant document unless the grant is suspended or terminated.

(2) If the grantee needs additional time to complete the grant, the grantee may apply for an extension of the grant period without additional funds. The Director may approve this extension at his or her discretion.

Linda Bell,

Acting Director.

[FR Doc. 93-22639 Filed 9-16-93; 8:45 am]

BILLING CODE 7036-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 91-346, FCC 93-380]

Intelligent Networks

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking addresses third party access to local exchange carrier (LEC) intelligent networks. Mediated access means that a third party can gain access to the LEC network for limited purposes, but is prevented from engaging in exercises that might compromise network reliability. The notice proposes that mediated access be serially implemented. It proposes to begin with access at the service management system, and then to examine whether such access should be offered at centralized databases, and finally at the switch. The notice is a first step toward ensuring the development and deployment of interfaces needed to facilitate secure, cost-effective third party access to LEC IN capabilities that will foster the open evolution of the public switched network.

DATES: Comments must be filed by November 1, 1993. Reply comments are due by December 1, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marian Gordon, Common Carrier Bureau, (202) 632–1294.

SUPPLEMENTATY INFORMATION:

Background

In 1991, the Commission initiated a Notice of Inquiry to open public debate on the interrelationship of Open Network Architecture (ONA) with emerging network design. 56 FR 65721 (December 1991). In the inquiry, the Commission sought to explore ways in which future local exchange networks could be developed that would be as open, responsive, and procompetitive as possible, consistent with other public interest goals, such as ensuring network reliability and avoiding the imposition of uneconomic costs.

Summary of Notice of Proposed Rulemaking

This is a summary of the Commission's Notice of Proposed Rulemaking, adopted August 3, 1993, and released August 31, 1993. The full text of this Commission item is available for inspection and copying during normal business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1991 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, 2100 M Street, NW., suite 140, Washington, DC 20037.

The Commission has proposed that mediated access to Tier 1 LEC Intelligent Networks be made available to third parties. Mediated access means that a third party can gain access to the LEC network for limited purposes, but is prevented from engaging in exercises that might compromise network reliability.

The Committee has proposed to require that Tier 1 LECs implementing intelligent networks offer third parties mediated access to the intelligent network through LEC Service Management Systems twelve months from the release of an Order requiring such access. Mediated access through LEC Service Management Systems appears to offer third parties new flexibility for service creation, and could be especially valuable to smaller third parties with limited resources and technological sophistication. In addition, it appears to pose minimal risk to network reliability.

The Commission also proposed to pursue serial implementation of mediated access, beginning with access at the Service Management System, followed by mediated access at centralized databases, and then at the switch. For each implementation step, the Commission seeks to generate specific information on the technical feasibility of providing third parties access to IN capabilities, as well as the implications of such access for network reliability.

Finally, the Commission has proposed to encourage market trials to learn more about third party demand for open access to IN and how such access might lead to new service applications. As the cost of developing the means for third party IN access could be quite high, such information appears important in assessing whether potentially sizable investments in opening intelligent networks to third parties are justified on public policy grounds.

Ordering Clause

Pursuant to sections 1, 4, 201–205, and 218 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 201–205, 215, 218, the Commission gives notice of the proposed regulatory changes described above.

List of Subjects in 47 CFR 64

Communications common carriers, Computer technology, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–22687 Filed 9–16–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC–93–21]

RIN 2125–AD18

Parts and Accessories Necessary for Safe Operation; Protection Against Shifting or Falling Cargo

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Commercial Vehicle Safety Alliance (CVSA) has petitioned the FHWA to replace the current static breaking strength requirement for cargo tiedown assemblies with a working load limit requirement. The FHWA is proposing to amend Securement systems, of the Federal Motor Carrier Safety Regulations (FMCSRs). The proposed amendment would require the aggregate working load limit of the tiedown assemblies used to secure an article against movement in any direction to be at least ½ the weight of the article secured. In addition, a table of working load limits would be added to provide motor carriers with a means of determining the number of tiedown assemblies required.

DATES: Written comments must be received on or before November 1, 1993.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–93–21, Room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Standards, HCS–10, (202) 366–2981; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On September 23, 1971, the FHWA published the final rule on safe loading of motor vehicles (36 FR 18862). The final rule required the use of tiedown assemblies having, either individually or in the aggregate, a minimum static breaking strength at least 1½ times the weight of the articles they secure. Petitions to change the rule were soon submitted, however. The petitioners requested that the rule be replaced with a requirement that the aggregate working load limit be equal to the weight of the article being secured. Several of the petitioners indicated that the reference to static breaking strength was inappropriate when applied to chain. Chain is sold on the basis of working load limits, which are approximately one-fourth of the minimum static breaking strength and one-half of the Proof Test (applied to a product to determine manufacturing defects). This provides a safety factor of 4 to 1 for most grades and types of chain. The FHWA therefore replaced the

breaking strength provision with a requirement that the working load limit for tiedown assemblies be equal to the weight of the article being secured (37 FR 12640, June 27, 1972).

In response to a petition for reconsideration from the American Trucking Associations (ATA), the FHWA published an NPRM requesting comments on the minimum strength requirements on November 25, 1972 (37 FR 25053). The ATA argued that the reference to aggregate rated working load called for much stronger tiedown devices than necessary to secure the cargo. The ATA believed that a length of chain complying with the aggregate rated working load criterion would be at least four times as strong as one that complied with the breaking strength criterion. The ATA also indicated that the use of working load was inappropriate as the standard for assemblies constructed of materials other than chain and that there were no "universally accepted industrial standards for rating working loads of equipment used to tie down cargo * * *."

All of the commenters to the November 25, 1972, NPRM supported the use of breaking strength instead of working load as the criterion for tiedown assemblies. The FHWA therefore amended the rule on the minimum strength of tiedown assemblies on March 29, 1973 (38 FR 8162). The amendment required the aggregate static breaking strength of the tiedown assemblies used to secure an article against movement in any direction to be 1½ times the weight of the article. Under the amended rule, chain used as a component of a tiedown assembly had to conform to the requirements of the National Association of Chain Manufacturers (NACM) "Welded Chain Specifications," which are applicable to all types of chain, while steel strapping had to conform to Federal Specification No. QQ–S–781.

CVSA Petition

On October 29, 1990, the CVSA petitioned the FHWA to change the criterion from "static breaking strength" to "working load limit." The CVSA contends the static breaking strength of a tiedown assembly is a rating that incorporates no safety factor, though the rule itself does include such a factor. The CVSA also believes the use of working load limits will make the tiedown regulations easier to understand, use, and enforce. The petitioner contends that "working load limit" is the strength criterion commonly used by the chain, cordage, wire rope, and web sling industries and that the term is widely known in the trucking industry. The use of the working load limit would thus promote direct correlation between the rule and the capabilities labeled on or indicated by load securement equipment.

The CVSA proposes that the first sentence of § 393.102(b) be amended to read "Except for integral securement devices * * * the aggregate working load limit of the tiedown assemblies used to secure an article against movement in any direction must be at least ½ times the weight of that article." Since the minimum working load limit would be ½ the weight of the article and not 1½ times the weight of the article, the proposed change from static breaking strength to working load would not increase or decrease the number of tiedown assemblies required.

The working load limit of a tiedown assembly is generally between ¼ and ⅓ of the static breaking strength of the tiedown. If the working load is ⅓ of the static breaking strength, the CVSA proposal is equal to the current rule. Where the working load limit is ¼ of the static breaking strength, the number of tiedown assemblies required will generally be equal to the current rule after rounding-up to an integer value.

In considering the CVSA petition, the FHWA reviewed the June 27, 1972, amendment allowing the use of working load limits in the tiedown assembly strength requirements (37 FR 12640), and the March 29, 1973, decision to return to static breaking strength (38 FR 8162). The FHWA believes the concerns raised during the previous efforts to use working load limits are no longer at issue. The CVSA petition proposes the same number of tiedown assemblies as required by the current rule. The strength of chain is generally expressed by the working load limit, and industry standards for determining working load limits for other tiedown assembly components are more uniform than the standards of 20 years ago. In addition, the CVSA petition includes tables of working load limits for chain, synthetic webbing, wire rope, and cordage (fiber rope) which the FHWA proposes to include in § 393.102.

The FHWA proposes to include requirements that chain, webbing, wire rope, and cordage used by motor carriers meet tiedown industry manufacturing standards. These industry standards would be incorporated by reference into § 393.102. With regard to steel strapping, the FHWA is proposing that Federal Specification No. A–A–880, Strapping, Steel Flat and Seals, (May 13, 1980) be incorporated by reference. Currently § 393.102 references Federal Specification No. QQ–S–781 which has been cancelled. The FHWA believes it is necessary to update its requirements for steel strapping used in cargo securement and that Federal Specification No. A–A–880 is an appropriate standard.

The FHWA proposes to create a new section, § 393.7, Matter incorporated by reference, to provide the language of incorporation required by 1 CFR part 51, as well as to include information on the availability of documents incorporated by reference. After review of the comments to this rulemaking, and a determination that the incorporation by reference is necessary for the final rule, the FHWA would submit the appropriate documents to the Director of the Federal Register for approval in accordance with 5 U.S.C. 522(a) and 1 CFR part 51. Upon approval of the Director of the Federal Register, the FHWA would incorporate these documents in § 393.102, and include information on the availability of the document in § 393.7(b).

Deletion of Effective Date From § 393.102

In addition to addressing the CVSA petition, the FHWA proposes to delete § 393.102(g) Effective date, which states "this section is effective on October 1, 1973." That date has passed, and the FHWA does not believe the proposed amendment will require inclusion of the effective date in § 393.102.

Request for Public Comments

The FHWA requests public comment on the proposed regulations. Although the CVSA asked the FHWA to include a requirement that tiedown assembly materials be marked with the working load limit, the proposed regulatory language does not address this issue. The FHWA seeks comments as to whether a requirement that tiedown assembly materials be marked with a working load limit is necessary. Would a requirement that the chain, webbing, wire rope, and cordage used by motor carriers meet the tiedown industry manufacturing standards be sufficient? Are the tiedown assembly industry standards on markings adequate?

The FHWA notes that the working load limits in the Cordage Institute's standards are not equal to ⅓ of the breaking strength. The working load limits for cordage vary between 1/10 and 1/7 of the breaking strength. If cordage is used to secure cargo, motor carriers would have to use more than twice as much cordage to satisfy § 393.102(b). The FHWA requests comments on the extent to which motor carriers use cordage to secure cargo, the types of

cargo secured by cordage, and the economic impact the proposed change would have on such motor carrier operations.

In addition, the wire rope strength ratings in the Wire Rope Technical Board's standards do not provide the working load limits for wire ropes. The standards provide the "nominal strength" for different types of wire rope. The CVSA's petition proposed that the working load limit be ¼ of the nominal strength (or the nominal strength multiplied by a design factor of ⅓ and the "termination efficiency," 0.75). The FHWA requests comments on the best method for determining the working load limit for wire rope.

The FHWA is particularly interested in comments from motor carriers as to whether the proposed amendment would help in determining the number of tiedown assemblies required to secure cargo. Commenters are encouraged to discuss any difficulties they may experience in understanding or applying the proposed requirements and recommendations for additional information (such as working load limits for steel strapping) to be included in the tables of working load limits.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has considered the impact of this document and has determined that it is not a major rulemaking action within the meaning of Executive Order 12291 and not a significant rulemaking under the regulatory policies and procedures of the Department of Transportation. The proposed rulemaking would amend § 393.102(b) of the Federal Motor Carrier Safety Regulations by requiring that the aggregate working load limits of the tiedown assemblies used to secure cargo be at least ½ times the weight of the article being secured. The total number of tiedown assemblies required by the proposal would generally be the same number required under the current rule. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency has evaluated the effects of this rulemaking on small entities. As previously stated, the proposed rulemaking would amend § 393.102(b) of the Federal Motor Carrier Safety Regulations by requiring that the aggregate working load limits of the tiedown assemblies used to secure cargo be at least ½ times the weight of the article being secured. The total number of tiedown assemblies required by the proposal would generally be the same number required under the current rule. Based on the evaluation, the FHWA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The proposal in this document does not contain information collection requirements (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulatory Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 393

Highway safety, Incorporation by reference, Motor carriers, Motor vehicle safety.

Issued on: September 13, 1993.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is proposing to amend part 393 of title 49, Code of Federal Regulations, as set forth below.

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

1. The authority citation for 49 CFR part 393 is revised to read as follows:

Authority: 49 U.S.C. 3102; 49 U.S.C. app. 2505; 49 CFR 1.48.

2. A new § 393.7 is added to subpart A of part 393 to read as follows:

§ 393.7 Matter incorporated by reference.

(a) *Incorporation.* Part 393 includes references to certain matter or materials. The text of the materials is not included in the regulations contained in part 393. The materials are hereby made a part of the regulations in part 393. The Director of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version approved by the Director of the Federal Register and specified in the regulation are incorporated. Material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**.

(b) *Availability.* The materials incorporated by reference are available as follows:

(1) [Reserved]

(2) Federal specifications of the General Services Administration. Information and copies may be obtained by writing to: General Services Administration, Specifications Office, Seventh and D Streets, SW., Washington, DC 20407.

(3) Specifications of the National Association of Chain Manufacturers. Information and copies may be obtained

by writing to: National Association of Chain Manufacturers, P.O. Box 3143, York, Pennsylvania 17402–0143.

(4) Specifications of the Web, Sling and Tiedown Association. Information and copies may be obtained by writing to: Web, Sling and Tiedown Association, Inc., 710 East Ogdon Avenue, suite 113, Naperville, Illinois 60563.

(5) Manuals of the Wire Rope Technical Board. Information and copies may be obtained by writing to: Wire Rope Technical Committee, P.O. Box 849, Stevensville, Maryland 21666.

(6) Standards of the Cordage Institute. Information and copies may be obtained by writing to: Cordage Institute, 42 North Street, Hingham, Massachusetts 02043.

(7)–(9) [Reserved]

(10) All of the materials incorporated by reference are available for inspection at:

(i) The Department of Transportation Library, 400 Seventh Street, SW., Washington, DC 20590 in room 2200. These documents are also available for inspection and copying as provided in 49 CFR part 7, appendix D; and

(ii) The Office of the Federal Register in Washington, DC.

3. Section 393.102 is amended by revising paragraph (b) and removing paragraph (g) as follows:

§ 393.102 Securement systems.

* * * * *

(b) *Tiedown assemblies.* Except for integral securement devices of containers designed for the transportation of containerized, intermodal cargo which conform to the rules in § 393.100(e), the aggregate working load limit of the tiedown assemblies used to secure an article against movement in any direction must be at least ½ times the weight of the article.

(1) *Steel strapping.* Steel strapping used as a component of a tiedown assembly must conform to the requirements of Federal Specification No. A–A–880, Strapping, Steel Flat and Seals, May 13, 1980. (See § 393.7(b) for information on the availability of this document.) Steel strapping which is not marked with a working load limit shall be considered to have a working load limit equal to ⅓ of the minimum breaking strength listed in the specification. Steel strapping that is one inch wide or wider must have at least two pairs of crimps in each seal and when an end-over-end lap joint is formed, it must be sealed with at least two seals.

(2) *Chain.* Chain used as a component of a tiedown assembly must conform to the requirements of the June 15, 1990, edition of the National Association of Chain Manufacturers' Welded Steel Chain Specifications applicable to all types of chain. (See § 393.7(b) for information on the availability of this document.)

(3) *Webbing.* Webbing used as a component of a tiedown assembly must conform to the requirements of the 1991 edition of the Web, Sling and Tiedown Association's Recommended Standard Specification for Synthetic Webbing Tiedowns. (See § 393.7(b) for information on the availability of this document.)

(4) *Wire rope.* Wire Rope used as a component of a tiedown assembly must conform to the requirements of the August 1981 edition of the Wire Rope Technical Board's Wire Rope Users Manual. Wire rope which is not marked with a working load limit, shall be considered to have a working load limit equal to ¼ of the nominal strength listed in the Users Manual. (See § 393.7(b) for information on the availability of this document.)

(5) *Cordage.* Cordage, either synthetic or natural, used as a component of a tiedown assembly, must conform to the applicable Cordage Institute rope specifications listed: C1, Double Braided Nylon Rope Specifications, DBN–1/94; SRS–1, Sisal Rope Specifications, Three-Strand Laid Construction, May, 1979; PRS–1, Polyester Rope Specifications, Three- and Eight Strand Standard Construction, May, 1979; MRS–1, Manila Rope Specifications, Three-Strand Laid Construction, May 1979; NRS–1, Nylon Rope Specifications, Three- and Eight-Strand Standard Construction, May 1979; P/PRS–1, Polypropylene Rope Specifications, Three- and Eight-Strand Standard Construction, May, 1979; CRS–1, Polyester/Polypropylene Composite Rope Specifications, Three- and Eight-Strand Standard Construction, May 1979. (See § 393.7(b) for information on the availability of these documents.)

(6) *Table of working load limits.* The working load limits listed below are to be used when the tiedown material is not marked with the working load limit. Tiedown materials marked for working load limits which differ from the table, shall be considered to have a working load equal to the value for which they are marked.

TABLE OF WORKING LOAD LIMITS (WLL)

Chain WLL in pounds (kg)

Size Inch (mm)	Grade 3 Proof coil	Grade 4 High test	Grade 7 Transport	Grade 8 Alloy
¼ (7)	1300 (580)	2600 (1180)	3150 (1430)	3500 (1950)
5/16 (8)	1900 (860)	3900 (1770)	4700 (2130)	5100 (2310)
⅜ (10)	2650 (1200)	5400 (2450)	6600 (2990)	7100 (3200)
7/16 (12)	3500 (1590)	5800 (2630)	8750 (3970)	.....
½ (13)	4500 (2040)	9200 (4170)	11300 (5130)	12000 (5400)
⅝ (16)	6900 (3130)	11500 (5220)	15800 (7170)	18100 (8200)
Chain marks	PC	HT	T	A
	3	4	7	8
	30	40	70	80

Synthetic webbing WLL		Wire Rope (6 X 37, fiber core) WLL		Cordage (manila rope) WLL	
Width Inch (mm)	WLL pounds (kg)	Diameter Inch (mm)	WLL pounds (kg)	Diameter Inch (mm)	WLL pounds (kg)
1¾ (45)	1750 (795)	¼ (7)	1400 (640)	⅜ (10)	122 (60)
2 (50)	2000 (910)	5/16 (8)	2100 (950)	7/16 (11)	176 (80)
3 (75)	3000 (1360)	⅜ (10)	3000 (1360)	½ (13)	264 (120)
4 (100)	4000 (1815)	7/16 (11)	4100 (1860)	⅝ (16)	496 (220)

Synthetic webbing WLL		Wire Rope (6 X 37, fiber core) WLL		Cordage (manila rope) WLL	
Width inch (mm)	WLL pounds (kg)	Diameter inch (mm)	WLL pounds (kg)	Diameter inch (mm)	WLL pounds (kg)
		½ (13)	5300 (2400)	¾ (20)	695 (310)
		⅝ (16)	8300 (3770)	1 (25)	1160 (520)
		¾ (20)	10900 (4940)		
		⅞ (22)	16100 (7300)		
		1 (25)	20900 (9480)		

* * * * *

[FR Doc. 93–22793 Filed 9–16–93; 8:45 am]

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INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1160, 1162, and 1166[1]

[Ex Parte No. 55 (Sub-No. 86)]

Revision of Licensing Forms and Corresponding Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Commission proposes additional revisions to the motor property carrier licensing application form (Form OP–1(T)) previously proposed at 57 FR 37761 (August 20, 1992). This supplemental proposal would revise the commodity descriptions used to define authority to transport certain groups of hazardous materials and would implement a compliance certification requirement for applicants that seek to exclude all hazardous materials from their operating authorities.

These supplemental revisions are intended to reinforce the Commission's interest in the safety fitness and insurance compliance profiles of the motor property carriers it regulates and to accommodate recent revisions to the U.S. Department of Transportation's (DOT) commodity classification regulations.

DATES: Comments are due October 18, 1993.

ADDRESSES: Send comments (an original and 10 copies), referring to Ex Parte No. 55 (Sub-No. 86), to Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Suzanne Higgins O'Malley or Beryl Gordon (202) 927–5610 (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: In August 1992, the Commission issued a notice of proposed rulemaking (NPR) in this proceeding, inviting public comments on a proposal to replace the comprehensive Form OP–1 licensing application with six transportation mode-specific application forms and to adopt corresponding revisions to the Commission's licensing regulations. In particular, we proposed to spell out the safety compliance obligations of carriers that have not yet received a safety fitness rating from DOT or may never receive such a rating because they are exempt from DOT's safety oversight. We have evaluated the comments received in response to the NPR and intend to adopt the licensing forms and regulatory changes, including those changes related to safety fitness certification, substantially as proposed.

In the interim, however, several matters have emerged that can most effectively be addressed by further revisions to the proposed Form OP–1(T) for motor property carrier authority as discussed below. None of the supplemental revisions proposed here requires further amendment to the regulations set forth in the prior NPR.

In late 1990 and 1991, DOT adopted significant revisions to its Hazardous Materials Regulations at 49 CFR parts 171 through 180.[2] As pertinent to this proceeding, effective October 1, 1993, the revised DOT regulations will reclassify certain commodities in a manner that will place them in different hazardous materials categories and thus change their required minimum levels of public liability insurance coverage. To the extent that the reclassifications affect minimum levels of financial responsibility required to transport certain commodities, they generally provide that: (1) Some commodities previously classified as non-hazardous (requiring $750,000 in public liability coverage) will be considered "consumer-type" hazardous materials (requiring $1,000,000 in public liability coverage); and (2) some commodities previously classified as "consumer-type" hazardous materials will be considered "ultra-hazardous" materials (requiring $5,000,000 in public liability coverage).

Since the initial NPR was issued in this proceeding last August, the Commission has received numerous inquiries from existing carriers seeking advice on how, if at all, they will be able to adjust their motor property carrier operating authorities to reflect the DOT commodity reclassifications and to ensure that they can continue to transport the reclassified commodities. Typically, these inquiries have involved motor carriers that have either all or limited classes of hazardous materials excluded from their operating authority and, as a result of DOT's commodity reclassifications, soon will find themselves in a situation where their authorities no longer reflect the full range of commodities they actually transport.

The concerns raised by carriers affected by the impending commodity reclassifications also have suggested the need for the Commission to revisit the issue of commodity classifications as used in standard operating authority service descriptions—particularly the standard hazardous materials service descriptions. Currently the Commission follows a three-tiered, commodity-based hazardous materials licensing policy that reflects the three minimum levels of public liability coverage prescribed in the DOT and Commission insurance regulations at 49 CFR 387.9 and 1043.2, respectively.

This licensing policy involves the use of complex, commodity-specific descriptions to define service to those "consumer hazardous" commodities that require public liability coverage of $1 million. Carriers that opt to service

[1] As originally announced in the notice of proposed rulemaking in this proceeding, 57 FR 37761 (August 20, 1992), this proceeding also embraced revisions to the Commission's List of Forms at 49 CFR part 1003 to reflect conversion to the mode-specific application forms proposed here. In List of Forms, 8 I.C.C.2d 770 (1992), however, the Commission subsequently discontinued publication in the Code of Federal Regulations of the List of Forms. We have revised the scope of this proceeding accordingly.

[2] Docket Nos. HM–181, *et al.*, Performance-Oriented Packaging Standards; Changes to Classification, Hazard Communication, Packaging and Handling Requirements Based on UN Standards and Agency Initiative, 55 FR 52402 (December 21, 1990); revisions and response to petitions for reconsideration, 56 FR 66124 (December 20, 1991).

such commodities—but to exclude "ultra-hazardous" commodities from their authorities—receive a commodity-specific service description with the standard exclusion: "except classes A and B explosives; Poison A; liquefied compressed gas or compressed gas; highway route controlled quantity radioactive materials as defined in 49 CFR 173.403; or hazardous substances transported in cargo tanks, portable tanks, or hopper type vehicles with capacities in excess of 3,500 water gallons."

This description originally was developed to conform to the Commission's insurance regulations at 49 CFR 1043.2(b)(2) which, in turn, track DOT's prescribed schedule of insurance limits. Despite the consistency of this approach, the referenced commodity description has proved cumbersome and confusing to many applicants. In any event, this description, as of October 1, 1993, will present the further disadvantage of not accurately reflecting the financial responsibility levels associated with DOT's reclassified commodity categories.

To ensure that the Commission's hazardous materials commodity descriptions continue to reflect the range of commodities carriers may transport and the corresponding levels of public liability coverage that carriers must maintain, we propose to replace the commodity-based references in certain hazardous materials service descriptions with a more generic reference to the minimum levels of public liability coverage that pertain to various hazardous materials service categories. This will also ensure that the Commission's regulations are consistent with DOT's revised commodity categories.

The proposal also would require applicants that seek to exclude all hazardous materials from their commodity service descriptions to certify that they will not transport any commodities requiring public liability coverage in excess of the minimum $750,000 level as provided by Commission and DOT regulations governing financial responsibility.

Under the proposed revised approach, applicants for motor property carrier operating authority would be asked to specify the extent, if any, to which they intend to transport hazardous materials. Applicants for general commodities authority, for example, would be asked to indicate (through use of a check box) the hazardous materials exclusion appropriate to their operations and would be apprised specifically of the corresponding public liability obligation.

- General commodities (except hazardous materials).

Note: Requires $750,000 in public liability coverage and granted only if the applicant expressly certifies at [prescribed portion of this form] that it will not transport any hazardous materials.

- General commodities.

Note: Requires $5,000,000 in public liability coverage.

- General commodities (except those commodities requiring minimum levels of financial responsibility of $5,000,000 under the regulations at 49 CFR 387.9 and 49 CFR 1043.2(b)(2) as of October 1, 1993).

Note: Requires $1,000,000 in public liability coverage.

Similarly, those applicants that define their service descriptions in terms of more limited standard transportation commodity code (STCC) groups or other commodity descriptions also will be required specifically to designate the extent, if any, to which they intend to transport hazardous materials and will be apprised of their corresponding public liability coverage obligations on the application form.

This revised approach to defining hazardous materials service potential would eliminate use of cumbersome, commodity-based references in operating authorities. It would also ensure that commodity service descriptions are less vulnerable to being rendered obsolete or ineffectual by subsequent DOT commodity reclassifications or other regulatory changes. Further, use of October 1, 1993, as a base reference date in those commodity descriptions involving "consumer-type" hazardous materials (requiring $1,000,000 in public liability coverage) would render such authorities sufficiently flexible to accommodate any subsequent revisions to either DOT or the Commission's insurance regulations.

In addition, we anticipate that the revised hazardous materials commodity descriptions will encourage applicants to acquire a full understanding of the financial responsibility limits and safety compliance requirements associated with their proposed services before developing their requests for authority.

To further assist applicants in understanding their obligations to maintain adequate levels of financial responsibility under the revised hazardous materials commodity descriptions proposed, the revised Form OP–1(T) will include the cautionary advice:

Most general commodities operations or services to STCC groups involve the transportation of at least some commodities classified by DOT as "consumer-type" hazardous materials that require a minimum of $1,000,000 in public liability coverage. It is highly unlikely that a carrier with general commodities authority or authority to serve one or more STCC groups realistically could exclude all hazardous materials from its service range.

This advisory would be cross-referenced with a certification provision applicable to those applicants that nonetheless seek to exclude all hazardous materials from their authorities. The certification, requiring an affirmative response from all such applicants, would provide:

If applicant seeks to and properly can restrict its operations against service to *all* hazardous materials (a limited service range requiring a minimum level of public liability coverage—$750,000), you must respond affirmatively to the following certification:

Under the authority here or any operating authority already held, applicant will not transport any commodities requiring public liability coverage in excess of $750,000 as provided by the Interstate Commerce Commission and U.S. Department of Transportation regulations governing financial responsibility (codified respectively at 49 CFR 1043.2 and 49 CFR 387.9).

_____YES

(**Note:** If applicant requires additional information to determine whether the commodities it intends to serve are subject to financial responsibility requirements in excess of the minimum levels set forth in ICC and DOT regulations, refer to the provisions governing hazardous materials in the Federal Motor Carrier Safety Regulations at 49 CFR parts 170 through 189, particularly the Hazardous Materials Table at 49 CFR part 172, or contact DOT at (202) 366–6121.)

The proposed revised approach to defining hazardous materials, as well as the accompanying clarifying and cautionary certification, should encourage awareness among applicants concerning the Federal Motor Carrier Safety Regulations and the hazardous materials classification standards—both implemented and administered by DOT. Consistent with this goal, the revised application will include expanded references to DOT resources that can assist applicants in determining the hazardous classification of the commodities they intend to transport and in understanding their corresponding safety compliance obligations with respect to such matters as public liability coverage limits, annual registration requirements, and

future hazardous materials permitting obligations.[3]

We anticipate that this more extensive cross-referencing of hazardous materials safety compliance obligations will reinforce the collaborative roles of the Commission and DOT in overseeing the safe operation of those hazardous materials carriers they regulate respectively. We further anticipate that the proposed revised hazardous materials commodity descriptions and the measures to ensure financial responsibility and general safety compliance will encourage a more focused understanding among applicants of their involvement in and obligations under hazardous materials transportation.

The Commission also announces implementation of a petition mechanism in response to the specific concerns of those existing carriers that will find their authorities no longer adequate to provide for the full range of their transportation services after the DOT reclassifications take effect October 1, 1993. Effective September 1, 1993, the agency's Office of Public Assistance will have available a suggested format for petitions to modify authorities that will be affected by the impending commodity reclassifications. Such petitions will be entertained without a filing fee and will be processed on an expedited basis by the Commission.

Most carriers seeking to update their authorities to conform with commodity reclassifications will need to either: (1) Remove a hazardous materials exclusion or partial exclusion (in situations where a particular commodity transported has been moved into a classification requiring higher financial responsibility requirements); or (2) move from a full hazardous materials exclusion to a partial exclusion (allowing for service to "consumer-type" hazardous materials that previously were classified as non-hazardous). Carriers seeking guidance in preparing petitions to modify their authorities in response to the commodity reclassifications may contact the Office of Public Assistance at (202) 927–7597.

We emphasize that this simplified petition process is available only to those carriers affected by DOT's commodity reclassification measures, and is not to be used as a generic device for adjusting the hazardous materials scope of operating authorities. As always, existing carriers that may seek to revise the hazardous materials service descriptions in their authorities to respond to new service opportunities or expanded markets can do so using the standard licensing procedures.

Environmental and Energy Considerations

We preliminarily conclude that this proposal will not significantly affect either the quality of the human environment or the conservation of energy resources. We specifically invite parties to comment on these issues.

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (RFA), the Commission is required to examine specifically the impact of a proposed action on small businesses and small organizations. In the prior NPR, 57 FR 37761 (August 20, 1992), we preliminarily concluded that the proposed revision to the licensing forms and corresponding changes to the application regulations would have a positive impact on such entities. The revisions to proposed Form OP–1(T) recommended here are not expected to alter in any way the impact of this proposed action on small businesses or small organizations. For reasons amplified below, however, we revise the preliminary RFA conclusion to reflect a corrected understanding of how Commission actions should be assessed under RFA standards.

We continue to believe that the proposed revised application forms and corresponding regulations will result in significant cost savings, simplified administrative processes, and expedited licensing procedures. Each of these anticipated changes will inure to the benefit of all licensing applicants, a significant portion of which are small entities within the scope of the RFA. Under the RFA, however, a positive finding that a proposed or final rule is likely to have a significant economic impact on a substantial number of small entities should be made only if the involved action meets both the significance and substantiality tests of the standard. Further, a positive finding requires that the agency conduct and publish a formal regulatory flexibility analysis of its intended action.

Although we adhere to the view that the revised application format will benefit the large number of small businesses that are within the Commission's applicant pool, upon further evaluation we do not find that the economic impact on such entities of the simplified forms will be sufficiently significant to merit a positive RFA finding. Benefits associated with the more focused, more explanatory, mode-specific forms largely relate to administrative and interpretive savings intended to streamline the licensing process. The proposed revisions nonetheless will produce only incidental benefits to individual applicants that, given the breadth of operating authority typically granted by the Commission, are likely to file only a single licensing request in their commercial lifetime. Accordingly, a realistic assessment of the expected magnitude of this proceeding on small businesses compels us to revise our prior positive finding under the RFA and, instead, to conclude that our proposal—although beneficial from the perspective both of the Commission and the carriers we regulate—does not have the potential for significant economic impact contemplated by the RFA.

Pursuant to 5 U.S.C. 605(b), we, therefore, conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. No new regulatory requirements are imposed, directly or indirectly, on such entities. The purpose and anticipated effect of the revised application forms and corresponding rule revisions is to reduce regulatory burdens. The economic impact on small entities, if any, will be to reduce licensing costs, but is not likely to be significant within the meaning of the RFA. Because this represents a reversal of our prior preliminary RFA assessment, we specifically invite interested persons to comment on this matter as it relates to the proposed revised hazardous materials licensing policy announced here and all other aspects of this proposal.

Paperwork Reduction Analysis

Our prior notice of proposed rulemaking in this proceeding was submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). On September 18, 1992, OMB approved use of the six revised application forms through September 30, 1995. OMB's notice of approval

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[3] As provided in the Hazardous Materials Transportation Uniform Safety Act of 1990, Pub. L. 101–615 (HMTUSA), DOT has implemented an annual registration and fee system applicable to any person who transports or causes to be transported a fairly broad range of specified hazardous materials. Docket No. HM–208, Hazardous Materials Transportation; Registration and Fee Assessment Program, 57 FR 30620 (July 9, 1992); clarification, 57 FR 33416 (July 28, 1992); editorial revisions, 57 FR 37900 (August 21, 1992); further interpretation, 57 FR 48739 (October 28, 1992); technical revision, 58 FR 12543 (March 5, 1993).

In addition, DOT has proposed a hazardous materials permitting requirement, also mandated by HMTUSA, applicable to motor carriers transporting the more volatile categories of hazardous materials. FHWA Docket No. MC–92–6, Federal Motor Carrier Safety Regulations; Transportation of Hazardous Materials, notice of proposed rulemaking, 58 FR 33418 (June 17, 1993).

indicated that use of the mode-specific application forms would result in an estimated savings of 18,490 reporting hours annually. This, in part, reflected our conclusion that the estimated burden hours for completing Form OP–1(T) would be reduced from 4 hours to 3 hours per filing.

The further revisions to Form OP–1(T) proposed here are not expected to affect this estimate in any way. To the extent that the revised hazardous materials commodity descriptions and expanded advisories on the proposed form will assist applicants in defining the scope of their operations and their corresponding compliance obligations, it is possible that the estimated burden hours may be even further reduced for some applicants.

In any event, this supplemental NPR will be submitted to OMB as an advisory measure. Inasmuch as the further revisions proposed here are not expected to affect the estimated burden hours in the OMB inventory, we will not seek further approval of Form OP–1(T). Nor will we seek extension of the authorization period for the proposed forms that concludes on September 30, 1995.

Supplemental comments concerning the accuracy of this burden estimate as it may be affected by the further revisions proposed here or suggestions for reducing the burden should be directed to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 3120–0079), Washington, DC 20503.

List of Subjects

49 CFR Part 1160

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Maritime carriers, Motor carriers.

49 CFR Part 1162

Administrative practice and procedure, Maritime carriers, Motor carriers.

49 CFR Part 1166

Administrative practice and procedure, Maritime carriers, Motor carriers.

It is ordered:

1. We invite the comments of interested persons on the proposed revisions to Form OP–1(T) as originally proposed in the notice of proposed rulemaking served August 19, 1992, as supplemented in this notice.

2. Comments are due October 18, 1993.

Decided: September 7, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–22760 Filed 9–16–93; 8:45 am]

BILLING CODE 7035–01–P

Notices

Federal Register
Vol. 58, No. 179
Friday, September 17, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of loans to the Government of Poland ("Borrower") as part of A.I.D.'s development assistance program. The proceeds of these loans will be used to finance infrastructure and shelter projects for low-income families in Poland. At this time, the Government of Poland has authorized A.I.D. to request proposals from eligible lenders for a loan under this program of $10 Million U.S. Dollars (U.S. $10,000,000). The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Poland

Project: 180–HG–001—$10,000,000
Loan Guaranty No: 180–HG–001 A01
Attention: Ms. Malgorzata Bukowska, Ministry of Finance, Swietokrzyska 12, 00–916 Warsaw, Poland
Telefax No.: 48–2–226–6544 (preferred communication)
Telephone No.: 48–2–694–5250

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids to the Borrower's representative by Tuesday, October 5, 1993, 12 noon Eastern Standard Time. Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Ms. Sonia Hammam, Regional Housing and Urban Development Officer, USAID/Warsaw, Box #5010, APO AE 09213–5010 (Street address: c/o American Embassy, Aleje Ujazdowskie 29/31, USAID/Warsaw, Poland) Telefax No.: 48–2–628–7486 (preferred communication) Telephone No.: 48–2–628–3041, Ext. 2091 or 48–2–625–0060

Mr. David Grossman/Mr. Peter Pirnie, Agency for International Development, Office of Housing and Urban Programs, PRE/H, room 401, SA–2, Washington, DC 20523–0214, Telex No.: 892703 AID WSA, Telefax No.: 202/663–2552 (preferred communication), Telephone No.: 202/663–2548/2530

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $10 million.
(2) *Term:* 30 years.
(3) *Trust Structure:* The Government of Poland will not issue promissory notes evidencing the loan. In lieu of the issuance of promissory notes, the Government of Poland will enter into a loan agreement with the lender, which loan agreement will be deposited into a Trust held by The Riggs National Bank of Washington, DC. The Trust will issue Certificates evidencing interests in the loan agreement. The Certificates will be directly guaranteed by A.I.D. and will be freely transferable to lenders eligible to receive an A.I.D. guaranty.
(4) *Grace Period:* Ten years grace on repayment of principal. During grace period, semi-annual payments of interest only. Semi-annual payments of principal and interest over the remaining 20-year life of the loan on the basis of semi-annual equal payments of principal.
(5) *Interest Rate:* Variable interest rates are requested.
  (a) *Variable Interest Rate:* To be based on the 6-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to convert to fixed rate. A variable rate should be adjusted weekly.
(6) *Prepayment:*
  (a) Offers should include options for prepayment and mention prepayment premiums, if any.
  (b) Federal statutes governing the activities of A.I.D. require that the Borrower use an amount in local currency equivalent to the proceeds of A.I.D.-guaranteed loans to provide affordable shelter and related infrastructure and services to below median-income families. In the extraordinary event that the Borrower materially breaches its obligation to comply with this requirement, A.I.D. reserves the right, among its other rights and remedies, to accelerate the loan.
(7) *Fees:* Offers should specify the placement fees and other expenses, including A.I.D. fees, Paying and Transfer Agent fees, out of pocket expenses, etc. Lenders are requested to include all legal fees (including legal fees in connection with the establishment of the Trust described above) in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan.
(8) *Closing Date:* Estimated 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Mr. Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, room 401, SA–2,

Washington, DC 20523–0214, Telephone: 202/663–2530.

Dated: September 13, 1993.

Michael G. Kitay,

Assistant General Counsel, Bureau for Private Enterprise, Agency for International Development.

[FR Doc. 93–22749 Filed 9–16–93; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act; Proposed Revision of an Existing System of Records.

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of proposed revision of an existing system of records.

SUMMARY: The U.S. Department of Agriculture is giving notice that it proposes to revise its Privacy Act System of Records, USDA/FNS–3, Claims Against Food Stamp Recipients—USDA/FNS–3.

DATES: This revision will become effective on November 16, 1993, unless modified by a subsequent notice to incorporate comments received from the public. To be assured of consideration, comments must be received by the contact person listed below on or before October 18, 1993.

ADDRESSES: Comments should be addressed to James I. Porter, Supervisor, Issuance and Accountability Section, State Administration Branch, Program Accountability Division, Food Stamp Program, 3101 Park Center Drive, Room 905, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Joseph M. Scordato, Food and Nutrition Service Privacy Act Officer, Room 308, 3101 Park Center Drive, Alexandria, Virginia 22302. Telephone (703) 305–2760.

SUPPLEMENTARY INFORMATION: On October 7, 1991 (at 56 FR 50552), the Food and Nutrition Service (FNS) published a Notice of a revision to the system of records entitled USDA/FNS–3, Claims Against Food Stamp . Recipients. The revision was effective December 6, 1991. As discussed in the Notice, the system of records was revised in order to meet certain requirements for conducting a test of the effectiveness of referring recipient claims to the Internal Revenue Service (IRS) for offset against refunds of Federal income taxes. The public is referred to that Notice for a complete discussion of the system of records.

This Notice adds one routine use to USDA/FNS–3 and revised another routine use so that FNS can fully comply with an IRS requirement for agencies participating in the tax refund offset program. That requirement is to certify that none of the claims referred to the IRS for tax offset is collectible from current or past Federal or United States Postal Service (USPS) employees through salary offset pursuant to 5 U.S.C. 5514(a)(1). FNS will meet the IRS requirement by following a two-step process. First, claims submitted by State agencies for tax offset will be matched against Department of Defense (DoD) records of Federal (civilian and military) employees and USPS records of USPS employees. Second, the lists obtained from such matching will be used to delete the associated claims from lists of claims prior to actual referral to the IRS for tax intercept. FNS may also initiate additional actions to collect claims voluntarily through State agencies and from salaries of identified employees and as appropriate. In addition, this Notice clarifies that disclosure of an individual record from the system to a Congressional office is contingent on a written request from the individual.

This Notice makes several other revisions to the system of records related to the additional uses for the records. Two record source categories are added, DoD and the USPS. The public is also advised about an additional category of records, individuals' employing agencies (Federal and/or USPS), if any. Finally, because FNS anticipates that some records will be maintained on paper, this Notice revises the current system of records with respect to how records are stored and the safeguards for them.

Authority for salary offset is 5 U.S.C. 5514(a). FNS plans to test this procedure under authority of section 17(b) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2020(e)), and is incorporating appropriate instructions about this test in a separate **Federal Register** Notice.

Signed at Washington, DC, on September 9, 1993.

Mike Espy,

Secretary.

USDA/FNS–3

SYSTEM NAME:

Claims Against Food Stamp Recipients—USDA/FNS.

* * * * *

1. The following paragraph is amended by adding a new sentence following the first sentence to read as follows:

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * The information in the system also includes identification of individuals' Federal and/or United States Postal Service (USPS) employing agencies, if any. * * *

* * * * *

2. The following paragraph is amended by redesignating current routine uses (2) and (3) as routine uses (3) and (4), respectively; by adding a new routine use (2); and by revising the newly redesignated uses (3) and (4). The new and revised uses and routine use (1), which is unchanged and is the only other routine use, read as follows:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Referral to the IRS for collection of claims from tax refunds; (2) referral to the Department of Defense (DoD) and the USPS to identify Federal and USPS employees owing claims, and to delete any such claims from lists of claims which will be used for Federal income tax refund offset. (3) Referral may be made to State agencies for such purposes as updating claims files, collecting claims, and for fiscal reporting. Referral may also be made to Federal agencies and the USPS for additional collection action. (4) Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the written request of the individual.

* * * * *

3. The following paragraph is amended by adding a new sentence to the end of the paragraph to read as follows:

STORAGE:

* * * Some records may also be maintained on paper.

* * * * *

4. The following paragraph is amended by adding a new sentence to the end of the paragraph to read as follows:

SAFEGUARDS:

* * * Paper records will be segregated and physically secured in locked cabinets.

* * * * *

5. The following paragraph is amended by adding a new sentence to the end of the paragraph to read as follows:

RECORD SOURCE CATEGORIES:

* * * Information in this system also comes from DoD and USPS files of individuals who are currently employed by or who are receiving pensions and

other payments from Federal agencies and the USPS.

[FR Doc. 93-22698 Filed 9-16-93; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018-AB43

Federal Subsistence Regional Advisory Councils; Meetings

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

DATES AND PLACES: Meetings of the Federal Subsistence Regional Advisory Councils (Councils) will be held at 9 a.m. on the dates and in each Alaska location as follows:

Region 1, Southeast—Sitka, Centennial Hall—10/7/93
Region 2, Southcentral—Anchorage, Holiday Inn—9/15/93
Region 3, Kodiak/Aleutians—Kodiak, Buskin River Inn—9/23/93
Region 4, Bristol Bay—Naknek, Bristol Bay Borough Assembly—10/1/93
Region 5, Yukon-Kuskokwim Delta—Bethel, KVNA Building—10/7/93
Region 6, Western Interior—McGrath, Takusko House—9/30/93
Region 7, Seward Peninsula—Nome, Bering Straits Boardroom—10/1/93
Region 8, Northwest Arctic—Kotzebue, AK Technical Center—9/24/93
Region 9, Eastern Interior—Fairbanks, Captain Bartlett Motel—10/7/93
Region 10, North Slope—Barrow, North Slope Borough Building—9/21/93

SUMMARY: This notice informs the public of forthcoming Council meetings. The public is invited to attend and participate in Council proceedings and provide comments to the Councils on upcoming subsistence matters.

SUPPLEMENTARY INFORMATION: Councils have been established in accordance with section 805 of the Alaska National Interest Lands Conservation Act (16 U.S.C. § 3115), and 36 CFR §§ 242.10 and 242.11 and 50 CFR §§ 100.10 and 100.11, to advise the Federal Government on matters related to the subsistence taking of fish and wildlife resources on public lands in Alaska. The Councils operate in accordance with the provisions of the Federal Advisory Committee Act.

The following agenda items will be discussed at Council meetings:

(1) Introduction of Council members and guests
(2) New business
  a. Election of officers
  b. Introduction of Council Charter
  c. Role of Councils in the Federal Subsistence Management Program
  d. Public comment period
  e. Identification of regional subsistence issues
  f. Development of proposals to change subsistence regulations for the taking of wildlife.

FOR FURTHER INFORMATION CONTACT: Interim Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Richard S. Pospahala, Office of Subsistence Management, 1011 East Tudor Road, Anchorage, AK 99503; telephone (907) 786-3447. For questions specific to National Forest System lands, contact Norman R. Howse, Assistant Director Subsistence, USDA, Forest Service, P.O. Box 21628, Juneau, Alaska 99802-1628, telephone (907)-586-8890.

Dated: September 3, 1993.

Ronald B. McCoy,

Interim Chair, Federal Subsistence Board.

[FR Doc. 93-22604 Filed 9-16-93; 8:45 am]

BILLING CODE 4310-55-P

Forest Service

Southern Region; Exemption From Appeal of Salvage Timber Sale Project on the Daniel Boone National Forest, Berea Range District

AGENCY: Forest Service—USDA.

ACTION: Notice; exemption of decision from administrative appeal.

SUMMARY: Pursuant to 36 CFR 217.4(a)(11), the Regional Forester for the Southern Region has determined that good cause exists and notice is hereby given to exempt from administrative appeal the decision to salvage dead and dying trees that were blown down or heavily damaged by high winds accompanying severe thunderstorms on the Berea Ranger District of the Daniel Boone National Forest. If not salvaged quickly, these trees will be rendered unmerchantable as sawtimber and would present potential obstacles to fire control within an area of hazardous fire conditions.

EFFECTIVE DATE: September 17, 1993.

FOR FURTHER INFORMATION CONTACT: Questions about this exemption should be directed to Jean P. Kruglewicz, Southern Region, Forest Service—USDA, 1720 Peachtree Road NW., Atlanta, GA 30367 (404) 347-4867.

SUPPLEMENTARY INFORMATION: On June 4, 1993, a line of severe thunderstorms and high winds passed through the Berea Ranger District of the Daniel Boone National Forest. Approximately 100 acres of land suitable for timber production have been damaged from the thunderstorms and high winds. The project area is approximately five miles north of McKee, KY.

The area of damage is within Management Area 7, as defined by the Daniel Boone National Forest Land and Resource Management Plan. Management direction for Management Area 7 is to optimize growing potential by using high to medium intensity practices for yellow and white pine and medium to low intensity practices for upland and cove hardwoods. The damage is concentrated in three areas. One area of ten acres contains cove hardwoods, and the other two areas of 65 and 15 acres contain upland hardwoods including oak and poplar. Existing roads would be used to access the damaged forest areas and soils in this area are stable. The proposed salvage is consistent with Management Area 7's direction for protecting the forest from insect and disease outbreaks, and wildfires.

The damaged areas contain trees that are of high quality for timber products. The timber production potential of the dead and damaged trees will deteriorate due to insect attacks. Also, the area of damage is in the vicinity of the largest arson fire on the District this year. The fuels added by the dead and dying trees, and the potential hindrance to fire control operations of the large woody debris scattered on the forest floor present a significant risk of additional wildfire occurrences as the fall fire season approaches.

An environmental analysis is currently underway to study ways to salvage the dead and heavily damaged trees to minimize impacts to the areas, forest resources and restore a healthy forest. The environmental analysis document and biological evaluation being prepared will disclose the effects of the proposed action on the environment, document public involvement, and address any issues raised by the public. Given the present condition of the damaged timber the need for action is critical. Any delay will result in a loss of merchantable timber and present an increased opportunity for a wildfire situation.

Dated: September 10, 1993.

Janice H. McDougle,

Acting Deputy Regional Forester.

[FR Doc. 93-22736 Filed 9-16-93; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AB43

Subsistence Management for Federal Public Lands in Alaska; Game Management Unit 23

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to regulatory authority found at 50 CFR 100.19 and 36 CFR 242.19, the Federal Subsistence Board (Board) has closed subsistence Dall sheep (sheep) hunting for a portion of Unit 23 for the remainder of the 1993–1994 regulatory year, and, has closed sheep harvest on all public lands in the remainder of Unit 23 for the period of August 10–31, 1993. Recent aerial surveys of Unit 23 indicated that adult sheep numbers have continued to decline over the past three year period and lamb recruitment remains below levels needed to stabilize a downward population trend. The Board has implemented temporary closure actions in Unit 23 to assure the continued viability of sheep populations.

EFFECTIVE DATE: August 10, 1993.

FOR FURTHER INFORMATION CONTACT: Interim Chair, Federal Subsistence Board, c/o Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska, 99503; telephone (907) 271–2306. National Park Service, P.O. Box 1029, Kotzebue, Alaska, 99752; telephone (907) 442–3890.

SUPPLEMENTARY INFORMATION: As empowered by regulatory authority at 50 CFR 100.10(a) and 100.19(b), and 36 CFR 242.10(a) and 242.19(b), the Board has closed public lands in Unit 23 south and east of the Noatak River and west of the Cutler and Redstone Rivers (excluding the upper Noatak River Canyon) and including the Igichuk Hills (that area west of the Noatak River and south of Noatak Village) to all sheep hunting for the 1993–1994 regulatory year. In addition, the Board has closed public lands in the remainder of Unit 23 to all sheep hunting from August 10–31, 1993.

Prior to this closure, the National Park Service staff in Kotzebue worked closely with the State of Alaska to monitor Unit 23 sheep numbers, collect pertinent age/sex population data, and assess biological and environmental factors which would indicate whether closure of the sheep season for any or all of Unit 23 was warranted. The State of Alaska has already undertaken similar action to close the State hunting seasons in corresponding portions of Unit 23 for the 1993–1994 regulatory year.

The Board received public comments from a hearing in Kotzebue, Alaska, held on July 26, 1993 to discuss sheep survey results and the current status and trends of the Unit 23 sheep population. Public participants supported proposed measures to close and restrict sheep hunting in Unit 23 in the manner in which the Board has acted. Consequently, in consideration of information before it, the Board has directed closures of sheep hunting in Unit 23, as specified above, in order to assure the continued viability of area sheep populations.

Ronald B. McCoy,

Interim Chair, Federal Subsistence Board.

Robert W. Williams,

Deputy Regional Forester, USDA-Forest Service.

[FR Doc. 93–22605 Filed 9–16–93; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AB43

Subsistence Management for Federal Public Lands in Alaska; Game Management Units 9 (D) and 23

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to regulatory authority found at 50 CFR 100.19 and 36 CFR 242.19, the Federal Subsistence Board (Board) has closed subsistence hunting for caribou on all public lands in Unit 9(D) and Unit 10 for the remainder of the 1993–1994 regulatory year. The Southern Alaska Peninsula caribou herd endemic to these Units has suffered a decline from more than 10,000 animals in 1983 to a present estimate of less than 2000 animals. Calf recruitment since the 1980's has not exceeded adult mortality, and continued hunting pressure would threaten the continued viability of the herd.

EFFECTIVE DATE: August 10, 1993.

FOR FURTHER INFORMATION CONTACT: Interim Chair, Federal Subsistence Board, c/o Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska, 99503; telephone (907) 271–2306. Izembek National Wildlife Refuge, P.O. Box 127, Cold Bay, Alaska, 99571; telephone (907) 532–2445.

SUPPLEMENTARY INFORMATION: As empowered by regulatory authority at 50 CFR 100.10(a) and 100.19(b), and 36 CFR 242.10(a) and 242.19(b), the Board has enacted a temporary closure of the season for subsistence taking of caribou on all public lands in Unit 9(D) and Unit 10. Prior to the Broad closure, the Fish and Wildlife Service worked with the State of Alaska to monitor population trends and develop management objectives for the Southern Alaska Peninsula caribou herd. Overgrazing and low calf recruitment have resulted in a continuing downward trend in the status of the herd. Consequently, the State of Alaska closed State controlled caribou hunting seasons in Unit 9(D) and Unit 10 in an Emergency Order issued July 14, 1993.

A public hearing was held in Cold Bay, Alaska on August 3, 1993 to obtain comments on a proposed caribou hunting closure. In addition, Fish and Wildlife Service staff visited other affected communities to obtain further public comment. Public support of the closure was mixed but most individuals were either neutral or supported the proposed Board action. In consideration of information at hand, and to assure the continued viability of the Southern Alaska Peninsula caribou herd, the Board has closed caribou hunting on public lands in all of Unit 9(D) and Unit 10.

Ronald B. McCoy,

Interim Chair, Federal Subsistence Board

Robert W. Williams,

Deputy Regional Forester, USDA-Forest Service.

[FR Doc. 93–22606 Filed 9–16–93; 8:45 am]

BILLING CODE 4310–55–P–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a portable tool box to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 18, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 16, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (58 FR 38364) of the proposed addition of this tool box to the Procurement List. Comments were received from the current contractor for this tool box. The contractor indicated that it is a small business that has been producing the tool box for the Government for the past four years. The contractor stated that the tool box is a complicated one that is not easily produced. In claiming that addition of the tool box would have an adverse impact on it, the contractor indicated that it subcontracts some assembly operations to two organizations which employ people with disabilities.

The contract for this tool box represents a very small percentage of the contractor's annual sales. The Committee does not consider a sales loss at this level to constitute severe adverse impact, even when the fact that the contractor has been a continuing supplier of the tool box is taken into consideration. The nonprofit agency proposed to produce this tool box is already producing other tool boxes for the Government under the Committee's program. The central nonprofit agency involved in this action has inspected the nonprofit agency and certified that it is capable of producing this tool box. The Government activity which buys the tool box declined an opportunity to inspect the nonprofit agency based on its familiarity with the nonprofit agency's performance in producing the other tool boxes. Consequently, the Committee considers the nonprofit agency capable of producing the tool box.

The contractor did not provide information which would indicate whether the Committee's action would cause any loss of employment for people with disabilities employed by its subcontractors. The addition of the tool box to the Procurement List will create jobs for people with severe disabilities. In these circumstances, the Committee feels that this definite creation of jobs outweighs any possible loss of employment by people employed by subcontractors which would not be guaranteed of retaining their subcontracts even if the contractor continued to produce the tool box.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to produce the commodity, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Tool Box, Portable
5140–00–651–7676

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 93–22802 Filed 9–16–93; 8:45 am]
BILLING CODE 6820–33–P

Procurement List Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities, military resale commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: October 18, 1993.

ADDRESSES: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 9, June 25, July 9, 16 and 30, 1993, the Committee for Purchase from People Who Are Blind or Severely Disabled published notices (58 FR 18378, 34425, 36944, 38364, 39527 and 40800) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, military resale commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities, military resale commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities, military resale commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities, military resale commodities and services.

3. The action will result in authorizing small entities to furnish the commodities, military resale commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities, military resale commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities, military resale commodities and services are hereby added to the Procurement List:

Commodities

Refill, Ballpoint Pen, Stick, Rubberized
7510–01–357–6831
7510–01–357–6832
7510–01–357–6833
7510–01–357–6834
7510–01–357–6835
7510–01–357–6836

Ballpoint Pen, Stick, Rubberized Barrel
7520–01–357–6839
7520–01–357–6840
7520–01–357–6841
7520–01–357–6842
7520–01–357–6843
7520–01–357–6844

Military Resale Commodities

Sweatshirt, Recruit, USMC
M.R. 640
M.R. 641
M.R. 642
M.R. 643
M.R. 644
Sweatpants, Recruit, USMC
M.R. 645
M.R. 646
M.R. 647
M.R. 648
M.R. 649

Services

Grounds Maintenance, Bristol Veterans USARC, 2501 Ford Road, Bristol, Pennsylvania
Grounds Maintenance, Philadelphia Memorial USARC, 2838–98 Woodhaven Road, Philadelphia, Pennsylvania
Janitorial/Custodial, U.S. Army Reserve Center and AMSA #32, Van Nuys, California
Janitorial/Custodial, Federal Building, 123 Fourth Street, SW., Albuquerque, New Mexico
Janitorial/Custodial, Defense National Stockpile Depot, Hoyt Avenue, Binghamton, New York
Janitorial/Custodial for the following Fargo, North Dakota locations: Federal Building and U.S. Courthouse, 655 First Avenue North, Federal Building and U.S. Post Office, 657 Second Avenue North
Mailroom Operation, U.S. Army Research Laboratory, 405 Arsenal Street, Watertown, Massachusetts
Operation of Postal Service Center, Building C, room 206, Offutt Air Force Base, Nebraska

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 93–22803 Filed 9–16–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 18, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following commodities and services have been proposed for addition to the Procurement List for production by the nonprofit agency listed:

Commodities

Pad, Writing Paper
7530–01–273–3755
7530–01–207–4353
7530–01–207–4354
7530–01–207–4355
7530–01–207–4356
Nonprofit Agency: The Association for the Blind and Visually Impaired of Greater Rochester, Inc., Rochester, New York

Services

Grounds Maintenance, Naval Weapons Station, Japanese Gardens, Wright Circle Picnic Area and Building 2006, Yorktown, Virginia, Nonprofit Agency: Lewis B. Puller Center, Inc. Gloucester, Virginia
Janitorial/Custodial, U.S. Courthouse, Constitution Ave. & 3rd Street, NW., Washington, DC, Nonprofit Agency: The Chimes, Inc. Baltimore, Maryland

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 93–22804 Filed 9–16–93; 8:45 am]

BILLING CODE 6820–33–P

COMMODITY FUTURES TRADING COMMISSION

Minneapolis Grain Exchange: Proposed Amendments to Frozen Shrimp Futures Contract Regarding Deliverable Species, Species-Related Price Differentials Applicable to Deliveries, and Location Price Differential Applicable to Futures Contract Deliveries in New York

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule amendments.

SUMMARY: The Minneapolis Grain Exchange ("MGE") has submitted proposed amendments to its frozen shrimp futures contract. The primary proposed amendments would change the schedule of price differentials applicable to deliverable shrimp species and size-count ranges; add four species of white shrimp to the list of deliverable species; eliminate delivery of shrimp falling within the size-count range of 61–70 per pound; and make shrimp located within the New York City delivery area deliverable at par rather than at the existing seven-cent-per-pound premium.

In accordance with section 5a(a)(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposed amendments are of major economic significance. On behalf of the Commission, the Division is requesting comment on this proposal.

DATES: Comments must be received on or before October 18, 1993.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the proposed amendments to the MGE frozen shrimp futures contract.

FOR FURTHER INFORMATION CONTACT: Frederick V. Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone (202) 254–7303.

SUPPLEMENTARY INFORMATION: The existing terms of the futures contract provide for the delivery of four species of white shrimp: Penaeus (P.) vannamei, P. occidentalis and P. setiferus originating in Western Hemisphere countries; and P. chinensis (also known as P. orientalis) originating in the Peoples Republic of China. Currently the futures contract designates the par delivery unit as 5,000 pounds of shrimp of the above-noted Western Hemisphere species that fall within the size-count range of 41–50 per pound, with the P. chinensis species of the same size-count range being deliverable at a discount of 20 cents per pound.

The contract's terms also provide for delivery of the shrimp of the above-noted four species in size-count ranges other than 41–50 per pound at specified fixed price differentials.

The futures contract also currently provides for the delivery of shrimp at par in MGE-approved warehouses located within 50 miles of the city limits of Miami or Tampa, Florida or Brownsville, Texas. In addition, delivery may be made in MGE-approved warehouses within 50 miles of the city limits of New York City at a premium of seven cents per pound and within 50 miles of the city limits of Los Angeles, California at a discount of seven cents per pound.

The proposed amendment would reduce the existing premiums and increase the existing discounts applicable to the delivery of shrimp falling within the specified non-par size-count ranges for the designated par delivery species and to the delivery of the specified non-par species in all deliverable size-count ranges. The proposed amendments would delete P. setiferus as a designated par delivery shrimp species by establishing a discount of 20 cents per pound for the delivery of this species in the size-count range of 41–50 per pound. The proposed amendments would also eliminate delivery of shrimp in the size-count range of 61–70 per pound for all deliveries species.

The existing par delivery specifications and premiums and discounts for delivery of the various size-count ranges between size-count 31 and size-count 60 shrimp per pound for each of the currently deliverable species, and the proposed amended differentials for these size-counts, are summarized in the following table.

Species and size-count range	Dollars per pound	
	Current	Proposed
P. vannamei and P. occidentalis:		
31–35	+1.05	+.40
36–40	+.45	+.15
41–50	par	par
51–60	−.50	−.65
P. setiferus:		
31–35	+1.05	+.40
36–40	+.45	par
41–50	par	−.20
51–60	−.50	−.90
P. chinensis:		
31–40	+.35	par
41–50	−.20	−.35
51–60	−.75	−1.00

In addition, the proposed amendments would add the following four species of white shrimp to the list of deliverable species at the indicated price differentials: P. stylirostris (West Coast white shrimp), a Western hemisphere species, which would be designated as a par delivery species and be deliverable at the same proposed price differentials for the size-count ranges noted above for P. vannamei and P. occidentalis; P. schmitti (Southern white shrimp), a Western Hemisphere species, which would be deliverable at the same proposed size-count differentials noted above for P. setiferus; and P. penicillatus (redtail prawn) and P. merguiensis, two species of Eastern Hemisphere white shrimp, which would be deliverable at the same proposed price differentials for the size-count ranges noted above for P. chinensis.

The proposed amendments would permit delivery of shrimp within 50 miles of the city limits of New York City at par, rather than the existing premium of seven cents per pound. The other existing delivery points and locational price differentials would not be affected by the proposals.

The MGE intends to make the proposed amendments effective for the March 1994 contract month and all subsequently listed contract months.

The MGE indicates that the proposed amendments will enhance the extent to which the futures contract's terms reflect cash market conditions. The MGE indicates that the proposed amendments will improve the contract's correspondence with the cash market by incorporating differences observed in cash market value between deliverable shrimp species and size-counts, making certain commercially important species of shrimp deliverable, and refining the existing price differentials for non-par deliveries. The MGE also believes that the proposed amendments will improve the hedging and pricing utility of the contract.

The Commission is requesting comments specifically with respect to (1) the extent to which the proposed price differentials for deliverable species and size-count ranges, and the proposal to permit delivery within 50 miles of the city limits of New York City at par, reflect commonly observed commercial price differences; and (2) the impact of the proposed amendments on the level of economically deliverable supplies at the contract's delivery points during the delivery months traded under the futures contract (March, June, September and December).

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the amendments can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 254–6314.

Materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on September 13, 1993.

Gerald Gay,

Director.

[FR Doc. 93–22800 Filed 9–16–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Littoral Warfare/ Amphibious Warfare will meet on October 4 and 5, 1993. The meeting will be held at the Marine Corps Base, Camp Pendleton, California. The meeting will commence at 7 a.m. and terminate at 4 p.m. on October 4; and commence at 8 a.m. and terminate at 4 p.m. on October 5, 1993. All sessions of the meeting will be closed to the public.

The purpose of the meeting is provide the Department of the Navy with (1) an assessment of the capabilities and readiness of the U.S. Navy and Marine Corps to effectively conduct littoral and amphibious warfare operations, and (2) recommendations for technological investments that can improve performance while reducing risk to Marine and Naval forces. The agenda will include briefings and discussions related to the projected operating environment for the year 2000; operational concepts; assessments of C4I; shallow water mine countermeasures; ship-to-shore movement (surface and air); fire support, including close air support; battle space dominance; and logistics.

These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander R. C. Lewis, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (703) 696–4870.

Dated: September 14, 1993.

Patrick W. Kelley,

Capt, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 93–22853 Filed 9–16–93; 8:45 am]

BILLING CODE 3810–AE–P

DEPARTMENT OF ENERGY

Continuation of a Public Scoping Meeting for the Proposed York County, Pennsylvania, Cogeneration Facility

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice.

SUMMARY: Notice is hereby given that DOE will convene a public scoping meeting as a continuation of the meeting held on August 19, 1993, with regard to the preparation of an Environmental Impact Statement (EIS) to assess the environmental effects of the construction and operation of a proposed coal-fired cogeneration facility in North Codorus Township, York County, Pennsylvania. **Federal Register** notification of the Department of Energy's intent to prepare an EIS in compliance with the National Environmental Policy Act (NEPA) and conduct the initial public scoping meeting for the proposed cogeneration facility was published on July 29, 1993 (58 FR 40631). In response to the degree of public interest in this proposed Federal action, and to ensure that all individuals who wish to speak are accommodated, the public scoping meeting will be continued at the location, date, and time provided in the section of this Notice entitled SCOPING MEETING. The period for receipt of written comments is also extended.

The purpose of this Notice is to invite continued public participation and to solicit public comments on the proposed scope and content of the EIS in order to ensure that the full range of issues related to this proposal is addressed. Written comments or suggestions to assist DOE in identifying significant environmental issues and the appropriate scope of the EIS will also be considered in preparing the draft EIS and should be postmarked by November 5, 1993. Written comments postmarked after that date will be considered to the degree practicable.

ADDRESSES: Written comments or suggestions on the scope of the EIS or questions concerning the project, should be directed to: Dr. Suellen A. Van Ooteghem, Environmental Project Manager, U.S. Department of Energy, Morgantown Energy Technology Center (METC), P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 284–5443.

Envelopes should be labeled "Scoping for the York EIS."

FOR FURTHER INFORMATION CONTACT: For general information on the EIS process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, Tel. (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: The proposed Federal action is for DOE to provide cost-shared financial assistance to York County Energy Partners, L.P. (YCEP) for the design, construction, and operation of a 250 Megawatt-electric circulating fluidized boiler facility, known as the York County Energy Partners cogeneration facility, to be located adjacent to the P.H. Glatfelter Company paper mill in York County, Pennsylvania. Additional information, including background and need for the proposed action, description of the proposed facility, alternatives, identification of environmental issues, and the NEPA scoping process, was provided in the **Federal Register** notice of July 29, 1993 (58 FR 40631).

Scoping Meeting

A public scoping meeting will be held at the location, on the date, and at the time indicated below. This scoping meeting will be informal, with a presiding officer designated by DOE who will establish procedures governing the conduct of the meeting. Information regarding the proposed project and the EIS preparation process was presented at the scoping meeting of August 19, 1993, and will not be repeated at this scoping meeting. However, printed copies of materials distributed at the previous meeting will be available to attendees.

The purpose of this scoping meeting is for agencies, organizations, and the general public to have the opportunity to present oral comments or suggestions with regard to the range of actions, alternatives, and impacts to be considered in the EIS. The meeting will not be conducted as an evidentiary hearing, and those who choose to make statements may not be cross-examined by other speakers. To ensure that everyone who wishes to speak has a chance to do so, five minutes will be allotted to each speaker. Requests to speak in advance of the scoping meeting will not be honored. Individuals will be invited to speak in the following order:

1. The first speakers to be called will be those individuals who had registered to speak on August 19, 1993, but who

were not present when their names were called. These individuals will be invited to speak in the same order that their names appeared on the registration list on August 19, 1993.

2. The second group of speakers will be those individuals who did not speak or yield their time on August 19, 1993, and who request to speak at the meeting by registering in person on the evening of October 5, 1993. Registration will commence at 6 p.m. These speakers will be called on the basis of "first come, first served." If the meeting is continued to the evening of October 6, 1993, no additional registration to speak will be accepted on that date. When the registration list has been exhausted, the presiding officer may, as time permits, call upon the audience for any other persons who desire to speak and who have not already done so.

3. A third group of speakers will be called if, and to the extent that, time permits. This last group will include individuals who have already spoken or yielded their time on August 19, but who believe they have additional information that is relevant to the range of issues to be considered in the EIS, and who register in person on the evening of October 5, 1993.

Oral and written comments will be given equal weight by DOE, including all of the comments received on or after August 19, 1993. Written comments may be submitted after the scoping meeting, but should be postmarked by November 5, 1993, and forwarded to Dr. Suellen A. Van Ooteghem, Environmental Project Manager, Morgantown Energy Technology Center, as provided in the **ADDRESSES** section of this Notice. Written comments postmarked after that date will be considered to the degree practicable.

The meeting is scheduled as follows:

DATES: Tuesday, October 5, 1993.

TIME: 7 p.m. (Registration will commence at 6 p.m.)

PLACE: Old Main Building, York Fairgrounds, 334 Carlisle Avenue, York, PA 17404, (717) 848–2596.

IF NECESSARY, THE SCOPING MEETING MAY BE CONTINUED on Wednesday, October 6, 1993, at the same Time and Place as noted above.

Complete transcripts of the public scoping meeting will be available as described in the **Federal Register** notice of July 29, 1993 (58 FR 40631).

Those interested parties who do not wish to present or submit comments or suggestions during the scoping process, but who would like to receive a copy of the Draft EIS when it is prepared, should notify Dr. Suellen A. Van Ooteghem, Environmental Project Manager, Morgantown Energy Technology Center, at the address given in the ADDRESS section of this Notice.

Signed in Washington, DC, this 13th day of September 1993, for the United States Department of Energy.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 93–22770 Filed 9–16–93; 8:45 am]

BILLING CODE 6450–01–P

Award Based on Acceptance of a Non-Competitive Application Alliance To Save Energy

AGENCY: U.S. Department of Energy (DOE).

SUMMARY: DOE, Office of Management and Resources, Energy Efficiency and Renewable Energy, through the Philadelphia Support Office, announces that, pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14(f), DOE intends to award a grant to the Alliance to Save Energy (ASE). The anticipated overall objective of this project entitled "Assessing the Role of Behavior as a Demand Side Management (DSM) Measure" is to conduct research to assist DSM planners in understanding the "human" barriers that prevent widespread DSM acceptance.

SUPPLEMENTARY INFORMATION: The grant of $75,000 will partially fund the ASE's study entitled "Assessing the Role of Behavior as a DSM Measure."

The project term of this grant shall be thirty-six (36) months from the effective date of award.

DOE support of that activity would enhance the public benefit to be derived and DOE knows of no other entity that is conducting or planning to conduct such an effort. This effort is suitable for non-competitive financial assistance and is not eligible for financial assistance under a recent, current, or planned solicitation.

FOR FURTHER INFORMATION CONTACT: Anthony P. Pontello, Philadelphia Support Office, U.S. Department of Energy, Suite 501, 1880 J.F. Kennedy Boulevard, Philadelphia, PA 19103–7483, (215) 656–6951.

Issued in Chicago, Illinois, on September 8, 1993.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 93–22771 Filed 9–16–93; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance: Montana College of Mineral Science and Technology

AGENCY: Department of Energy, Idaho Operations Office.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.7(b)(2)(i) it plans to issue a non-competitive award of funding and support under Grant DE–FG07–93ID13271 to Montana College of Mineral Science and Technology to establish a multi-purpose science laboratory for use by rural junior and senior high school students, as well as teachers.

FOR FURTHER INFORMATION CONTACT: Carol L. Bruns, Contract Specialist, (208) 526–1534; U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, MS 1221, Idaho Falls, ID 83401–1562.

SUPPLEMENTARY INFORMATION: DOE and its predecessor agencies have each recognized the need to embrace science education as a vital component of their mission. EM–522's Environmental Literacy Program has two goals: (1) Promote EM-wide educational and career opportunities, and (2) increase the general public's knowledge of science and environmental issues involved in EM cleanups. The 1977 DOE Organization Act authorizes activities necessary to ensure that the Nation has an adequate scientific and technical workforce in energy related research and production fields. The grant award will be for one year with an estimated total cost of $60,000.00. No cost-sharing is included in this grant. Statutory authority for this award can be found in Public Law 95–224 the "Federal Grant and Cooperative Agreement Act of 1977".

Procurement request number: 07–93ID13271.000.

Dated: September 3, 1993.

Dolores J. Ferri,

Director, Contracts Management Division.

[FR Doc. 93–22777 Filed 9–16–93; 8:45 am]

BILLING CODE 6450–01–M

Chicago Operations Office, New York Support Office; Noncompetitive Financial Assistance Award to the National Association of State Energy Officials

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office, through the New York Support Office, announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7 (b)(2), DOE intends to award a grant to the National Association of State Energy Officials (NASEO). The award is part of DOE efforts to support

deployment projects. The objective of this project is to update the Alternative Motor Fuels National Inventory.

SUPPLEMENTARY INFORMATION: The National Association of State Energy Officials is an umbrella organization which represents State and Territorial energy offices in the nation. In the normal course of its business, NASEO routinely polls and collects demographic data on a wide variety of energy topics from these sources. In particular, the NASEO Alternative Fuels Committee has collected and continues to collect relevant data on alternative fuels and alternative fuel vehicles in the nation. In addition, NASEO has formed a partnership with the Association of State Energy Research and Technology Transfer Institutions (ASERTTI) whose members include the New York State Energy Research and Development Authority, Iowa State University Engineering Center, and the like. The purpose of this partnership is to share information in a coordinated fashion among the members of ASERTTI and NASEO.

The grant application is being accepted by DOE because DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other organization that is conducting or planning to conduct this type of effort. The project period for the award is 12 months, expected to begin in September 1993. DOE plans to provide funding in the amount of $50,000.

FOR FURTHER INFORMATION CONTACT: Charles F. Baxter, U.S. Department of Energy, New York Support Office, 26 Federal Plaza, rm. 3437, New York, New York 10278–0068, (212) 264–1021.

Issued in Chicago, Illinois, on September 8, 1993.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 93–22775 Filed 9–16–93; 8:45 am]

BILLING CODE 6450–01–M

National Alternative Fuel Vehicle Teleconference, Pennsylvania Energy Office; Award Based on Acceptance of an Unsolicited Application

AGENCY: U.S. Department of Energy (DOE).

SUMMARY: DOE, Office of Management and Resources, Energy Efficiency and Renewable Energy, through the Philadelphia Support Office, announces that, pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14(f), DOE intends to award a cooperative agreement to the Pennsylvania Energy Office to conduct a National Alternative Fuel Vehicle (AFV) Teleconference. The anticipated overall objective of this project is to develop and implement a National AFV Teleconference.

SUPPLEMENTARY INFORMATION: The agreement of $100,000 will fund the Pennsylvania Energy Office to conduct a National AFV Teleconference.

The term of this cooperative agreement shall be for a twelve (12) month project period.

DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity that is conducting or planning to conduct such an effort. This effort is suitable for non-competitive financial assistance and is not eligible for financial assistance under a recent, current, or planned solicitation.

FOR FURTHER INFORMATION CONTACT: Anthony P. Pontello, Philadelphia Support Office, U.S. Department of Energy, Suite 501, 1880 J.F. Kennedy Boulevard, Philadelphia, PA 19103–7483, (215) 656–6951.

Issued in Chicago, Illinois, on September 8, 1993.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 93–22774 Filed 9–16–93; 8:45 am]

BILLING CODE 6450–01–M

City of Philadelphia—Clean Cities Award Based on Acceptance of a Non-Competitive Application;

AGENCY: U.S. Department of Energy.

SUMMARY: DOE, Office of Management and Resources, Energy Efficiency and Renewable Energy, through the Philadelphia Support Office, announces that, pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14(f), DOE intends to award a grant to the City of Philadelphia under DOE's Clean Cities Program. The anticipated overall objective of the project is to encourage the use of alternative fuel vehicles (AFVs) in urban regions and to increase awareness on the advantages and issues involved with using AFVs.

SUPPLEMENTARY INFORMATION: The grant of $50,000 will partially fund the Public Information Component of the City's Clean City Program.

The project term of this grant shall be twenty-four (24) months from the effective date of award.

DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity that is conducting or planning to conduct such an effort. This effort is suitable for non-competitive financial assistance and is not eligible for financial assistance under a recent, current, or planned solicitation.

FOR FURTHER INFORMATION CONTACT: Anthony P. Pontello, Philadelphia Support Office, U.S. Department of Energy, suite 501, 1880 J.F. Kennedy Boulevard, Philadelphia, PA 19103–7483, (215) 656–6951.

Issued in Chicago, Illinois, on September 8, 1993.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 93–22776 Filed 9–16–93; 8:45 am]

BILLING CODE 6450–01–M

School District of Philadelphia; Award Based on Acceptance of a Non-Competitive Application

AGENCY: U.S. Department of Energy (DOE).

SUMMARY: DOE, Office of Management and Resources, Energy Efficiency and Renewable Energy, through the Philadelphia Support Office, announces that, pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14(f), DOE intends to award a grant to the School District of Philadelphia. The anticipated overall objective is to implement the Partnership in Energy/Environmental Technology (PEET) program to enhance energy technology dissemination in education.

SUPPLEMENTARY INFORMATION: The grant of $20,000 will partially fund three School District activities; a utility-sponsored training workshop on "Do-It-Yourself" energy projects, student research and on-site training activities related to four PSO-funded programs, and EPACT-related research.

The term of this grant shall be twenty-four (24) months from the effective date of award.

DOE support of the activity would enhance the public benefits to be derived and DOE knows of no other entity that is conducting or planning to conduct such an effort. This effort is suitable for non-competitive financial assistance and is not eligible for financial assistance under a recent, current, or planned solicitation.

FOR FURTHER INFORMATION CONTACT: Anthony P. Pontello, Philadelphia Support Office, U.S. Department of Energy, suite 501, 1880 J.F. Kennedy Boulevard, Philadelphia, PA 19103–7483, (215) 656–6951.

Issued in Chicago, Illinois, on September 8, 1993.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 93–22775 Filed 9–16–93; 8:45 am]

BILLING CODE 6450–01–M

Society of Automotive Engineers (SAE); Award Based on Acceptance of a Non-Competitive Application

AGENCY: U.S. Department of Energy (DOE).

SUMMARY: DOE Office of Management and Resources, Energy Efficiency and Renewable Energy, through the Philadelphia Support Office, announces that, pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14(f), DOE intends to award a grant to the Society of Automotive Engineers (SAE). The anticipated overall objective is to organize and conduct the 1993 Alternative Fuels TOPical TEChnical (TOPTEC) meeting series.

SUPPLEMENTARY INFORMATION: The grant of $85,000 will partially fund the 1993 Alternative Fuels TOPTEC meeting series to college and university faculty and students.

The term of this grant shall be twelve (12) months from the effective date of award.

DOE support of the activity would enhance the public benefits to be derived and DOE knows of no other entity that is conducting or planning to conduct such an effort. This effort is suitable for non-competitive financial assistance and is not eligible for financial assistance under a recent, current, or planned solicitation.

FOR FURTHER INFORMATION CONTACT: Anthony P. Pontello, Philadelphia Support Office, U.S. Department of Energy, Suite 501, 1880 J.F. Kennedy Boulevard, Philadelphia, PA 19103–7483, (215) 656–6951.

Issued in Chicago, Illinois, on September 8, 1993.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 93–22773 Filed 9–16–93; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance; University of Idaho

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office (DOE–ID), announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2)(i), it intends to award a new start Grant Number DE–FG07–93ID13220 to the University of Idaho. This new grant is the result of an unsolicited proposal (Number U9300028). The objective of the project is to develop a process to magnetically control the deposition of metals utilizing gas plasma. The Federal Domestic Catalog Number is 81.087, Renewable Energy Research & Development.

FOR FURTHER INFORMATION CONTACT: Dallas L. Hoffer or Kathleen M. Stallman, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, MS 1221, Idaho Falls, Idaho 83401–1562, (208) 526–0014 or (208) 526–7038 respectively.

SUPPLEMENTARY INFORMATION: The statutory authority for the proposed award is Public Law 93–577, as amended, Federal Nonnuclear Energy Research and Development Act of 1974. The acceptance of this unsolicited proposal is justified under 10 CFR 600.7(b)(2)(i). In order for a "non-competitive" financial assistance award to be made, the project, as proposed, must meet one or more of the listed selection criteria. For this proposal, subparagraph (D) applies, "The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications." DOE has no recent, current, or planned solicitations under which this would be eligible. The proposed process would use commercially available plasma "guns" to generate a plasma/metal stream. The plasma stream is columnated and directed using magnetic forces to deposit metal without the generation of waste. The grant will be conducted in three phases: Phase I would be the development of an equation set describing the plasma stream from the exit of the "gun" to the point of impact and determining the mechanical and economic feasibility of the concept; Phase II would involve the generation of the design specification; and Phase III would be the construction and testing of a laboratory prototype. A milestone in Phase I would be a decision point as to the theoretical feasibility of the process. This award will be for five to six years at a total estimated value of $1.2M. No mandatory cost-sharing is included in this grant.

Dated: September 3, 1993.

Dolores J. Ferri,

Director, Contracts Management Division.

[FR Doc. 93–22778 Filed 9–16–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 2519–003 Maine]

Central Maine Power Co.; Availability of Draft Environmental Assessment

September 13, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major new license for the North Gorham Project, located on the Presumpscot River, in Cumberland County, Maine and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the environmental impacts of the existing project and has concluded that approval of the project, with appropriate mitigation or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 2519 to all comments. For further information, please contact Kelly Schaeffer, Environmental Coordinator, at (202) 219–0231.

Lois D. Cashell

Secretary.

[FR Doc. 93–22722 Filed 9–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2482–018 New York]

Niagara Mohawk Power Corp.; Availability of Environmental Assessment

September 13, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of license to leave in place, as a permanent project feature, a substantial portion of a cofferdam. Niagara Mohawk Power Corporation

constructed the temporary cofferdam for the purpose of diverting water to facilitate significant rehabilitation of the existing Sherman Island Dam. The cofferdam is comprised of 13 cells, approximately 60 feet in diameter with arc cells between them. The arc cells are approximately 10 feet across. The Sherman Island Development of the Hudson River Project is located in the Hudson River in Warren and Saratoga Counties, New York. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. Alternatives were evaluated to determine the effects on the environment of removing the cofferdam or leaving portions of the structure in place. In the EA, the staff concludes that leaving portions of the cofferdam below the reservoir elevation would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's Offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93-22723 Filed 9-16-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER93-934-000, et al.]

Western Resources, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 10, 1993.

Take notice that the following filings have been made with the Commission:

1. Western Resources, Inc.

[Docket No. ER93-934-000]

Take notice that on September 7, 1993, Western Resources, Inc. (WRI) tendered for filing a proposed change to its Federal Energy Regulatory Commission Electric Service Tariff No. 234. WRI states the purpose of the change is to extend the term of the existing Electric Power Supply Contract between WRI and the City of Hillsboro, Kansas. The change is proposed to become effective November 10, 1993.

Copies of the filing were served upon the City of Hillsboro and the Kansas Corporation Commission.

Comment date: September 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Dutchess County Resource Recovery Agency

[Docket No. QF83-390-001]

On September 2, 1993, Dutchess County Resource Recovery Agency (Applicant), 41 Sand Dock Road, Poughkeepsie, New York 12601-5444 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the biomass-fueled small power production facility is located at Sand Dock Road, Poughkeepsie, New York. The Commission originally certified the facility as a qualifying cogeneration facility, 25 FERC ¶ 62,088 (1983). The instant certification is requested as a small power production facility with certain design modifications resulting in an increase in the maximum net electric power production capacity to 7.5 MW. The modified facility is expected to be operational by November 15, 1993.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Mississippi Power Company

[Docket No. ER93-921-000]

Take notice that on September 1, 1993, Mississippi Power Company tendered for filing a revision of the rates included in its FERC Electric Service Tariff, First Revised Volume No. 1. The revised rates would increase revenues from jurisdictional sales by $3,567,236 based on the 12-month period ending December 31, 1994. The charge per delivery point, the Kw charge, the Kwh charges, and the primary discount have been increased.

The Company estimates the rate of return on its properties devoted to serving its wholesale all requirements customers to be 6.9555% from revenues which it would receive under the existing rates during the 12-month period ending December 31, 1994. The Company states that such return would be increased to 9.0447% with the increased revenue under the tendered rates.

Posting of the filing has been accomplished with the public utility's jurisdictional customers and the Mississippi Public Service Commission.

Comment date: September 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Central Vermont Public Service Corporation

[Docket No. ER93-932-000]

Take notice that on September 7, 1993, Central Vermont Public Service Corporation (Central Vermont or the Company) tendered for filing an agreement with the Village of Hardwick Electric Department, Village of Morrisville Water and Light Department and Village of Stowe Water and Light Department (together the Villages) for the provision of Transmission and Interconnection Service (the Agreement).

This Agreement provides for the provision of transmission and interconnection service to the Villages across the Company's interconnection with the so-called "Morrisville-Johnson Intertie" at the Johnson Bus. The arrangement is for a term of ten (10) years from the date that service commences unless otherwise agreed to or as provided for in the Agreement. Service is not expected to commence until sometime in 1994.

This Agreement is part of a comprehensive settlement of issues surrounding the reliability of the provision of service to the Villages by Green Mountain Power Corporation and the Villages. That settlement, including this Agreement, is before the FERC in *Re: Green Mountain Power Corporation*, FERC Docket No. ER92-330-000 (Phase II). Central Vermont is not a party to that dispute and is not involved in that proceeding.

In order to provide service under this Agreement, both Central Vermont and the Villages will have to install facilities to allow for the provision of service. These facilities are also referenced in the filing in FERC Docket No. ER92-330-000 (Phase II). Due to the significant cost and lead times necessary to develop such facilities, Central Vermont hereby requests waiver of the Commission's one hundred and twenty (120) day notice requirement.

Comment date: September 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Central Maine Power Company

[Docket No. ER93-704-000]

Take notice that on September 7, 1993, Central Maine Power Company (CMP) tendered for filing proposed amendments to its power sales tariff filing currently pending approval before the Federal Energy Regulatory Commission.

The amendments provide additional support for certain aspects of the proposed tariff in accordance with requirements outlined by the

Commission in correspondence, dated August 6, 1993. Additional support is provided under the following categories of the proposed tariff:

(1) Derivation of the Demand Charge Ceiling;

(2) Clarification of Additional Charges; and

(3) Clarification of Termination Clause.

Copies of the amended filing were served upon all parties as shown on the official service list maintained by the Secretary in this proceeding.

Comment date: September 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Electric Power Company

[Docket No. ER93-649-000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on September 3, 1993, tendered for filing an amendment of its initial submittal in this docket. The amendment contains revised pages G-3 through G-7 relating to the Negotiated Capacity service schedule. Wisconsin Electric also responded to a request from Staff to explain the relative priorities among the various service schedules.

Wisconsin Electric renews its requested effective date of July 16, 1993, sixty days after its original tender date.

Copies of the filing have been served on Wisconsin Public Service Corporation, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: September 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER93-933-000]

Take notice that on September 7, 1993, Pacific Gas and Electric Company (PG&E) tendered for filing a notice of termination of two parts of the Interconnection Agreement (IA) between PG&E and Sierra Pacific Power Company, PG&E Rate Schedule FERC No. 72.

Pursuant to Section 1 of Appendix B to the IA, capacity service terminated on December 31, 1989. As a result of this termination, both Section 1 of Appendix B and Service Schedule 1 of Appendix A to the IA are no longer operative. Consequently, in accordance with § 35.13 of the Commission's regulations, 18 CFR 35.15, this notice of termination of these two parts of the rate schedule is being submitted to the Commission.

Copies of this filing were served on SPP, the Northern California Power Agency and the California Public Utilities Commission.

Comment date: September 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Power, Inc.

[Docket No. ER93-930-000]

Take notice that on September 2, 1993, Entergy Power, Inc. (Entergy Power), tendered for filing an Amendment to a unit power sale agreement between Entergy Power and Northeast Texas Electric Cooperative, Inc. Entergy Power states that the purpose of the Amendment is to delete a confidential provision and also to provide that amendments are subject to the approval of the Rural Electrification Administration. Entergy Power requests waiver of the Commission's notice requirements in that the Amendment be made effective on August 16, 1993.

Comment date: September 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Minnesota Power & Light Company

[Docket No. ER93-929-000]

Take notice that on September 1, 1993, Minnesota Power & Light Company (Minnesota Power) tendered for filing an Amendment to its Negotiated Capacity Option Agreement with Wisconsin Power & Light Company (WP&L). Minnesota Power requests an effective date on November 1, 1993.

Copies of this filing have been served upon WP&L, the Minnesota Public Utilities Commission and the Public Service Commission of Wisconsin.

Comment date: September 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR. Doc. 93-22727 Filed 9-16-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP93-704-000, et al.]

National Pipeline Co., et al.; Natural Gas Certificate Filings

September 10, 1993.

Take notice that the following filings have been made with the Commission:

1. National Pipeline Company

[Docket No. CP93-704-000]

Take notice that on September 7, 1993, National Pipeline Company (National), 301 South Harwood Street, Dallas, Texas 75201, filed an application with the Commission in Docket No. CP93-704-000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a transportation service for Natural Gas Pipeline Company of America (Natural) and the affiliated facilities which were authorized in Docket No. CP71-272 [1], all as more fully set forth in the application which is open to public inspection.

National proposes to abandon a natural gas transportation service under its FERC Rate Schedule T-4 for Natural. National transports Natural's gas via National's Line OFF-1, which consists of approximately 35 miles of 18-inch pipe between the Fashing Treating Plant in Atascosa County, Texas, to an interconnection with Natural's 16-inch pipeline in Live Oak County, Oklahoma. National proposes to abandon interstate transportation service via Line OFF-1 and to operate Line OFF-1 as an intrastate pipeline or on an open-access section 311(a) basis. National states that Natural desires to terminate the transportation agreement upon the expiration of the primary term of the agreement on December 16, 1993.

Comment date: October 1, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. National Pipeline Company

[Docket No. CP93-705-000]

Take notice that on September 7, 1993, National Pipeline Company (National), 301 South Harwood Street, Dallas, Texas 75201, filed an application with the Commission in Docket No. CP93-705-000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a

[1] See order at 49 FPC 371 (1973).

transportation service for Natural Gas Pipeline Company of America (Natural) and abandon the related pipeline facilities which were authorized in Docket No. CP71–274[2], all as more fully set forth in the application which is open to public inspection.

National proposes to abandon two natural gas transportation services under its FERC Rate Schedule T–1 and T–3 for Natural. National transports Natural's gas under Rate Schedule T–1 via National's Line 1A, which consists of approximately 0.85 miles of 6-inch pipe between the Warren Petroleum Corporation's Carter-Knox Gasoline Plant in Stephens County, Oklahoma, and an interconnection with Natural's 20-inch pipeline in Grady County, Oklahoma. National transport Natural's gas under Rate Schedule T–3 via National's Line 1B, which consists of approximately 3.7 miles of 6-inch between an interconnection of two gathering lines owned by Chevron U.S.A. Inc. in the Rush Spring Field and an interconnection with Natural's 20-inch pipeline in Grady County, Oklahoma.

National also proposes to abandon Lines 1A and 1B by sale to Associated Natural Gas, Inc., which intends to operate these facilities as intrastate pipelines.

Comment date: October 1, 1993, in accordance with Standard Paragraph F at the end of this notice.

3. Williams Natural Gas Company

[Docket No. CP93–709–000]

Take notice that on September 7, 1993, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93–709–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Arkla Energy Resources Company (AER), which was authorized in Docket No. G–898, all as more fully set forth in the application on file with the Commission and open to public inspection.

WNG proposes to abandon the transportation service carried out under the terms of a transportation agreement dated September 6, 1949, as amended, on file with the Commission as WNG's Rate Schedule X–4 and AER's Rate Schedule XT–26. It is stated that WNG and AER have mutually agreed to the abandonment and that there would be no adverse impact on any customers resulting from the abandonment. It is further stated that WNT notified AER in a letter dated September 30, 1992, of WNG's intention to terminate the transportation service.

Comment date: October 1, 1993, in accordance with Standard Paragraph F at the end of this notice.

4. ANR Pipeline Company

[Docket No. CP89–2195–002]

Take notice that on August 31, 1993, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–2175–002 a petition to amend the exiting authorization issued in Docket No. CP89–2175–000, as amended on rehearing, to reflect revisions to an agreement in which ANR would acquire property interests in jurisdictional facilities currently owned by Arkla Energy Resources Company (AERCo) and Mississippi River Transmission Corporation (MRT), as provided by section 7(c) of the Natural Gas Act, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

ANR states that in earlier orders in this proceeding, (61 FERC ¶61,004, issued on October 1, 1992); 63 FERC ¶61,215, issued on May 20, 1993), the Commission approved the acquisition by ANR from AERCo and MRT of an undivided property interest in certain jurisdictional facilities owned by AERCo and MRT, but conditioned the authorization to eliminate receipt and delivery point restrictions, rejected the parties' request for pregranted reacquisition and abandonment of the interests in the event of automatic reversion to AERCo and MRT of the conveyed interests under certain specified conditions and also placed ANR at-risk for the costs associated with the acquired facilities in the event that all of the capacity is not subscribed under firm 10-year contracts at the time it files to include the cost of these facilities in its rates.

ANR indicates that, consistent with the Commission orders, the parties have agreed to revise the proposed transaction. It is indicated that the purchase price would be reduced from $125,000,000 to $91,100,000 as of December 31, 1992, to be adjusted to reflect any additions, depreciation, sales, leases and retirements prior to closing. ANR also indicates that ANR would not acquire an undivided interest in AERCo's Arkoma Basin gathering facilities in a 12-county area of the Arkoma Basin, but would be provided access to these areas through additional transmission receipt point flexibility and the use of pools.

ANR also states that to implement the Commission's directives as to receipt point access, the parties have agreed to permit ANR access to the following:

(1) All existing receipt points on the ANR facility interests which connect with the facilities of ANR or any third parties;

(2) All future receipt points on the ANR facility interests which connect with the facilities of any third parties;

(3) Pools which feed the ANR facility interests from interconnections with AERCo or MRT gathering facilities or third parties;

(4) The same rights as AERCo's and MRT's Rate Schedule FT customers to use interconnections between the ANR facility interests and AERCo's or MRT's gathering facilities;

(5) New taps to be constructed at ANR's request on any of the ANR facility interests located in the 12-county Arkoma Basin, on Line AC in Oklahoma or on the Transark Pipeline.

ANR also points out that, in a recent order issued August 2, 1993, 64 FERC ¶61,161, the Commission clarified that the at-risk conditions imposed in its earlier orders were not intended to impose a rigid formula which requires firm ten year contracts for all of the capacity constructed. ANR also notes that the Commission clarified that pipelines will be free to demonstrate in a section 4 proceeding that the costs of the facilities that it seeks to include in rates will produce just and reasonable rates to its customers. ANR requests that the imposition of an at-risk condition in the October 1, 1992, order be clarified in accordance with the Commission's recent pronouncement in the August 2, 1993, order and that ANR is free to satisfy the at-risk condition in its upcoming rate case consistent with such clarification.

Comment date: October 1, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Arkla Energy Resources Company and Mississippi River Transmission Corporation

[Docket No. CP89–2173–002]

Take notice that on August 31, 1993, Arkla Energy Resources Company (AERCo), P.O. Box 21734, Shreveport, Louisiana 71151, and Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, together referred to Applicants, jointly filed in Docket No. CP89–2173–002 a petition to amend the existing authorization issued in Docket No. CP89–2173–000, as amended on rehearing, to reflect a reduced purchase price by ANR Pipeline Company (ANR) and a revision of the assets in which interests are to be acquired by ANR, as

[2] See order at 49 FPC 371 (1973).

provided by section 7(b) of the Natural Gas Act, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Applicants state that in earlier orders in this proceeding, (61 FERC ¶ 61,004 (1992); 63 FERC ¶ 61,215 (1993), the Commission approved that abandonment by sale to ANR of an undivided property interest in certain jurisdiction facilities owned by AERCo and MRT, but conditioned the authorization to eliminate receipt and delivery point restrictions and rejected the parties' request for pregranted reacquisition and abandonment of the interests in the event of automatic reversion to AERCo and MRT of the conveyed interests under certain specified conditions.

It is stated that in its orders, the Commission recognized that, by imposing these conditions on the transactions, the Commission had altered the bargain struck by the parties and the parties might have to renegotiate certain aspects of the agreement, such as the purchase price. Applicants indicate that consistent with the Commission orders, the parties have agreed to revise the proposed transaction. It is indicated that the purchase price would be reduced from $125,000,000 to $91,100,000 as of December 31, 1992, to be adjusted to reflect any additions, depreciation, sales, leases and retirements prior to closing. Applicants also indicate that ANR would not require an undivided interest in AERCo's gathering facilities in a 12-county area of the Arkoma Basin, but would be provided access to these areas through additional transmission receipt point flexibility and the use of pools.

Applicants also state that to implement the Commission's directives as to receipt point access, Applicants propose to permit ANR access to the following:

(1) All existing receipt points on the ANR facility interests which connect with the facilities of ANR or any third parties;

(2) All future receipt points on the ANR facility interests which connect with the facilities of any third parties;

(3) Pools which feed the ANR facility interests from interconnections with AERCo or MRT gathering facilities or third parties;

(4) The same rights as AERCo's and MRT's Rate Schedule FT customers to use interconnections between the ANR facility interests and AERCo's or MRT's gathering facilities;

(5) New taps to be constructed at ANR's request on any of the ANR facility interests located in the 12-county Arkoma Basin, on Line AC in Oklahoma or on the Transark Pipeline.

Comment date: October 1, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protests is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-22716 Filed 9-16-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-631-000]

Colockum Transmission Company, Inc.; Notice of Filing

September 13, 1993.

Take notice that Colockum Transmission Company, Inc. (Colockum), on September 7, 1993, tendered for filing on behalf of itself and PacifiCorp additional information relating to an Agreement dated December 21, 1992 between Colockum and PacifiCorp that was tendered for filing with the Commission on May 4, 1993.

This Agreement contemplates the exchange of capacity for energy, and involves no form of income for either party. Pursuant to the Agreement, PacifiCorp agrees to deliver firm energy to Colockum at a rate of exchange of 1947 kilowatt-hours of energy per kilowatt of capacity.

Copies of the amended filing were served upon Public Utility No. 1 of Chelan County, the Washington Utilities and Transportation Commission and the Oregon Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 27, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-22719 Filed 9-16-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER93–397–002 and ER93–398–002]

Ocean State Power and Ocean State Power II; Notice of Filing

September 13, 1993.

Take notice that on September 2, 1993 Ocean State Power and Ocean State Power II tendered for filing its compliance filing pursuant to the Commission's letter order dated August 4, 1993, in the above-referenced dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 27, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22725 Filed 9–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–712–000]

PSI Energy, Inc.; Notice of Filing

September 13, 1993.

Take notice that PSI Energy, Inc. (PSI) and the City of Logansport, Indiana on September 8, 1993, tendered for filing amended Service Schedules and additional supporting information to the FERC Filing in Docket No. ER93–712–000 to comply with a FERC staff request.

Copies of the filing were served on the City of Logansport, Indiana and the Indiana Utility Regulatory Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 27, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22720 Filed 9–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–938–000]

Southwestern Electric Power Co., Public Service Company of Oklahoma; Filing

September 13, 1993.

Take notice that on September 9, 1993, Southwestern Electric Power Company and Public Service Company of Oklahoma (Companies) submitted for filing a Firm Transmission Tariff and a Coordination Transmission Service Tariff.

The proposed Tariffs set forth the rates, terms and conditions at which the Companies will provide certain transmission services for Electric Utilities (as that term is defined in the Tariff).

Copies of the filing have been served upon the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Oklahoma Corporation Commission and the Public Utility Commission of Texas. The Companies request an effective date for the Tariffs of November 8, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 27, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22726 Filed 9–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–616–000]

Tennessee Gas Pipeline Co.; Notice Of Site Visit

September 13, 1993.

The staff of the Federal Energy Regulatory Commission will conduct a site visit of the facilities proposed in the Conesville Lateral Project on September 28 and 29, 1993. The facilities are in Guernsey, Muskingum, and Coshocton Counties, Ohio. Anyone planning to attend must provide their own transportation. For further information, contact Ms. Laura Turner at (202) 208–0916.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22724 Filed 9–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–683–000]

Western Resources, Inc., Notice of Filing

September 13, 1993.

Take notice that on September 9, 1993, Western Resources, Inc. (WRI) tendered for filing an amendment to its May 28, 1993 filing in this docket. The filing provides explanation and information in response to the Commission's August 10, 1993 Letter Order issued by the Director, Division of Applications. The filing also requests final Commission approval of new service Agreements which were negotiated between the Kansas Electric Power Cooperative, Inc. (KEPCo) and WRI and between KEPCo and WRI's wholly-owned subsidiary Kansas Gas and Electric Company, all which became effective June 1, 1993.

Copies of the filing were served on KEPCo and the Kansas Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such notions or protests should be filed on or before September 27, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22718 Filed 9–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–849–000]

Western Resources, Inc.; Notice of Filing

September 13, 1993.

Take notice that on September 8, 1993, Western Resources, Inc. (WRI) tendered for filing an amendment to its August 10 1993 filing in this docket. The filing provides new supporting workpapers for the Participation Power Agreement between WRI's wholly-owned subsidiary Kansas Gas and Electric Company and Midwest Energy, Inc. (MWE) and a new calculation of the annual effect of the associated transmission charge from WRI to MWE.

Copies of the filing were served on MWE and the Kansas Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 27, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22721 Filed 9–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–523–000]

Western Resources, Inc.; Filing

September 13, 1993.

Take notice that on August 26, 1993, Western Resources, Inc. tendered for filing an amendment to its original filing filed in this docket on March 31, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 27, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22717 Filed 9–16–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket PP–96]

Application for a Presidential Permit by Boise Cascade Corporation

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Application for presidential permit.

SUMMARY: The Boise Cascade Corporation (Boise), a Delaware corporation, has applied to the Department of Energy (DOE) for a Presidential permit to construct, connect, operate, and maintain electric transmission facilities across the international border between the United States and Canada pursuant to Executive Order No. 10485, as amended.

DATES: Comments, protests or requests to intervene must be submitted on or before October 18, 1993.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FE Docket Number PP–96, should appear clearly on the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Officer) 202–586–4708 or Lise Howe (Program Attorney) 202–586–2906.

SUPPLEMENTARY INFORMATION: The construction, connection, operation, and maintenance of facilities at the international border of the United States for the transmission of electrical energy is prohibited in the absence of a Presidential permit pursuant to Executive Order No. 10485, as amended by Executive Order No. 12038.

On July 12, 1993, Boise applied to the DOE for a Presidential permit to construct, connect, operate, and maintain a 115-kilovolt (kV) transmission line crossing the U.S. international border. Boise has indicated in its application that it does not plan to connect this line to corresponding electrical facilities in Canada at this time.

Boise, in cooperation with Minnesota Power & Light Company (MP&L), proposes to dismantle 0.1 miles of an existing single-circuit 115-kV international transmission line which crosses the Rainy River between International Falls, Minnesota, and Fort Francis, Ontario, Canada. This line will be replaced, on the same center line and over the same distance, by two, 115-kV circuits which will occupy the same support structures, with one exception, that one existing support structure on the Minnesota side of the river will be replaced. One of the two 115-kV circuits crossing the Rainy River will be owned and operated by Boise. The second circuit will be owned and operated by MP&L and is the subject of a separate Presidential permit application. That application by MP&L was noticed in the **Federal Register** on August 23, 1993, (58 FR 44508).

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with Section 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests should be filed directly with David G. Gadda, Associate General Counsel, Legal Department, Boise Cascade Corporation, one Jefferson Square, P.O. Box 50, Boise, Idaho 83728–0001.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; or that it has or represents an interest which may be directly

affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE that the issuance of the Presidential permit will not adversely impact the reliability of the U.S. electric power supply system.

NEPA Process

Before a Presidential permit may be issued or amended, the environmental impacts of the proposed DOE action must be evaluated pursuant to the National Environmental Policy Act of 1969 ("NEPA"). The NEPA compliance process is a cooperative, non-adversarial process including members of the public, state governments, and the federal government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Should a public proceeding be necessary in order to comply with NEPA, notice of such activities and information on how the public can participate in those activities will be published in the **Federal Register**, local newspapers, and public libraries and/or reading rooms in the vicinity of the electric transmission facilities.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on September 13, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs Fossil Energy.

[FR Doc. 93–12779 Filed 9–16–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

Acid Rain Permits

[FRL 4731–2]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permits.

SUMMARY: The U.S. Environmental Protection Agency [EPA] is issuing five-year Acid Rain permits, according to the Acid Rain Program regulations (40 CFR part 72), to the following 6 utility plants: Cayuga, Gibson, R Gallagher, and Wabash River in Indiana; B L England in New Jersey; and Muskingum River in Ohio.

FOR FURTHER INFORMATION CONTACT: *For B L England:* Gerry DeGaetano at (212) 264–6685. Air and Waste Management Division, EPA Region 2, Jacob J. Javitz Federal Bldg., 26 Federal Plaza, room 500, New York, NY 10278.

For plants in Indiana: Patrick Gimino at (312) 353–8651. Air and Radiation Division, EPA Region 5, 77 West Jackson Blvd. (A–18J), Chicago, IL 60604.

For Muskingum River: Allan Batka at (312) 353–7316, at the EPA Region 5 address above.

Dated: September 13, 1993.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 93–22791 Filed 9–16–93; 8:45 am]

BILLING CODE 6560–50–P

[ER-FRL–4624–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 30, 1993 Through September 3, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–BOP–D80022–PA, Rating EC2, Philadelphia, PA. Metropolitan Detention Center (MDC), Construction and Operation, City of Philadelphia, PA.

Summary: EPA expressed environmental concerns due to potential impacts from hazardous waste and noise, air quality, and public safety concerns. Additional Information on these issues is necessary to allow for a full assessment.

ERP No. D–BOP–K80031–HI, Rating EC2, Honolulu, HI Federal Detention Center (FDC), Construction and Operation, City of Honolulu, Island of Oahu, HI.

Summary: EPA expressed environmental concerns associated with potential hazardous substances contamination and encouraged Bureau of Prisons (BOP) to undertake a thorough hazardous substances site characterization prior to site selection. EPA also expressed concerns regarding water quality protection requirements under the Clean Water Act. BOP should coordinate its water quality protection measures with the Hawaii Department of Health.

ERP No. D–COE–G39027–LA, Rating EC2, Louisiana Coastal Wetlands Comprehensive Restoration Plan, Implementation and Funding, several Parishes, LA.

Summary: EPA expressed environmental concerns regarding this document's lack of a holistic Louisiana wetland plan which would include a sediment management strategy, demonstration projects, and possible wetlands creation with dredged material.

ERP No. D–FRC–G05047–AR, Rating LO, River Mountain Pumped Storage Hydroelectric Project, FERC No. 10455, Construction, Operation and Maintenance, License, Logan County, AR.

Summary: EPA had no objections to the licensing of the River Mountain pumped storage hydroelectric project provided the additional mitigation measures identified by the FERC staff are applied as license conditions.

ERP No. DS–AFS–L65099–ID, Rating EC2, Cuddy Mountain Roadless Area, Grade/Dukes Timber Sale and Road Construction, New Information concerning Additional Modifications to the Blend Alternative, Implementation, Payette National Forest, Washington and Adams Counties, ID.

Summary: EPA expressed environmental concerns regarding the sale's potential impact on water quality. Given the significant increase in timber harvest activity in the Cuddy Mountains area the final supplemental EIS should expand discussions on cumulative water quality impacts for Grade Creek, Dukes Creek, and Brownlee Creek.

Final EISs

ERP No. F–BLM–K03006–CA, Cajon Crude Oil Pipeline Project, Construction, Operation and Transportation, from the Santa Barbara Channel and the San Joaquin Valley to the Los Angeles Basin, Granting of Right-of-Way Permit, San Bernardino and Los Angeles Counties, CA.

Summary: EPA expressed environmental concerns about project adverse impacts to water resources and water supplies which could result from oil spills and pipeline construction and operation.

ERP No. F-COE-E30000-SC, Myrtle Beach (Known as the Grand Strand) Shoreline Protection Project, Beach Erosion Protection, Implementation, Horry and Georgetown Counties, SC.

Summary: EPA suggested that consideration of cumulative impacts associated with beach nourishment projects be factored into subsequent interagency planning.

ERP No. F-FHW-D40246-PA, PA-33 Extension, US 22 Interchange in Bethlehem Township to I-78 Interchange in Lower Saucon Township, Funding, and COE Section 404 Permit, Northampton County, PA.

Summary: EPA had no objections to the proposed project.

ERP No. F-FHW-F40310-MN, MN-Trunk Highway-212 Construction, Cologne to MN-Trunk Highway-5/I-494 in Eden Prairie, Funding and Section 404 Permit, Carver and Hennepin Counties, MN.

Summary: EPA continued to express environmental concerns for the proposed action, especially the wetland mitigation plan.

ERP No. F-USN-K11101-GU, US Navy Facilities Relocation and Development, from the Republic of the Philippines to the Territory of Guam, Implementation and COE Section 404 Permit, GU.

Summary: EPA requested that the Navy Record of Decision address hazardous waste minimization, toxic release inventory reporting, and future NEPA documentation required to accommodate Guam relocation activities.

Dated: September 14, 1993.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93-22744 Filed 9-16-93; 8:45 am]

BILLING CODE: 6560-50-U

[ER-FRL-4624-6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075.

Weekly receipt of Environmental Impact Statements Filed September 06, 1993 Through September 10, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930313, FINAL EIS, COE, OH, Cleveland Harbor Navigation Channels Maintenance, Confined Disposal Facility (Site 10B 15 Year) Construction and Use, Lake Erie, Cuyahoga River, Cuyahoga County, OH, Due: October 18, 1993, Contact: Timothy Daly (716) 879-4171.

EIS No. 930314, DRAFT EIS, COE, OR, Barney Reservoir Expansion Project, Increasing Municipal Water Supply on the Middle Fork of the North Fork Trash River and Section 404 Permit Issuance, Washington County, OR, Due: November 01, 1993, Contact: David Kurkoski (503) 326-6094.

EIS No. 930315, DRAFT EIS, UAF, AZ, Williams Air Force Base (AFB) Disposal and Reuse, Implementation, Permit and Approval, City of Mesa, Maricopa County, AZ, Due: November 01, 1993, Contact: Ltc. Gary Baumgartel (210) 536-3869.

EIS No. 930316, DRAFT EIS, AFS, CA, NY, CA, NV, Interagency Motor Vehicle Use Plan (IMVUP) Revision, Implementation, Acquisition for Land within the Inyo National Forest and Bishop Resource Area, Inyo, Madera, Tulare and Mono Counties CA and Esmeralda and Mineral Counties, NV, Due: November 09, 1993, Contact: Ernie DeGraff (619) 873-2439.

Amended Notices

EIS No. 930204, DRAFT EIS, FHW, WI, Lake Arterial Extension, WI-TH-31 to Layton Avenue, Funding and Possible COE Section 404 Permit, Kenosha, Racine and Milwaukee Counties, WI, Due: October 05, 1993, Contact: Thomas J. Fudaly (608) 264-5940. Published FR 06-25-93—Review period extended.

EIS No. 930277, DRAFT EIS, AFS, ID, Fourmile Timber Sale, Timber Harvesting and Road Construction, Payette National Forest, New Meadow Ranger District, Adam County, ID, Due: October 15, 1993, Contact: Mike Balboni (208) 634-0629. Published FR 08-20-93—Review period extended.

EIS No. 930278, DRAFT EIS, AFS, ID, Freight Landing Timber Sale, Timber Harvesting and Road Construction/ Reconstruction, Payette National Forest, McCall Ranger District, Idaho County, ID, Due: October 15, 1993, Contact: Mike Balboni (208) 634-0629. Published FR 08-20-93—Review period extended.

EIS No. 930302, FINAL SUPPLEMENT, DOE, CA, Petroleum Production at Maximun Efficient Rate, Naval Petroleum Reserve No. 1 Continued Operation, Updated Information, Elk Hills, Kern County, CA, Due: October 04, 1993, Contact: James C. Killen (805) 763-6038. Published FR 09-03-93—Due Date Correction.

Dated: September 14, 1993.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93-22745 Filed 9-16-93; 8:45 am]

BILLING CODE: 6560-50-U

[OPPTS-59970; FRL-4640-2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 11 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 93-164, June 28, 1993.

Y 93-165, 93-166, 93-167, July 1, 1993.

Y 93-168, 93-169, 93-170, 93-171 July 12, 1993

Y 93-172, 93-173, 93-174, August 1, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center, (NCIC) ETG-102 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 93-164

Manufacturer. Eastman Kodak Company.

Chemical. (G) Condensation product of a urethane dimer and a substituted phenylacrylate ester.

Use/Production. (S) Water-thinned baking finishes for metals. Prod. range: Confidential.

Y 93–165

Manufacturer. Confidential.
Chemical. (G) Long oil alkyd.
Use/Production. (S) Interior architectural finishes. Prod. range: Confidential.

Y 93–166

Manufacturer. Confidential.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (S) Fiberglass reinforced plastics for boats, automative body parts, simulated marble. Prod. range: Confidential.

Y 93–167

Manufacturer. Confidential.
Chemical. (G) Short oil alkyd.
Use/Production. (S) Baked metal coatings. Prod. range: Confidential.

Y 93–168

Manufacturer. Confidential.
Chemical. (G) Polyester polyol
Use/Production. (S) Printing ink resin. Prod. range: 113,000–431,000 kg/yr.

Y 93–169

Manufacturer. Henkel Corporation.
Chemical. (G) Polyester.
Use/Production. (S) Printing ink resin. Prod. range: 1,500,000–1,700,000 kg/yr.

Y 93–170

Manufacturer. Lilly Industries, Inc.
Chemical. (G) Polymer of benzenedicarboxylic acid, alkanetriol, vegetable oil and fatty acids, and phenolic resin.
Use/Production. (S) Industrial liquid paints. Prod. range: 50,000–205,000 kg/yr.

Y 93–171

Manufacturer. Essex Specialty Products.
Chemical. (G) Silanated urethane polymer.
Use/Production. (S) Polymer used in sealant manufacture. Prod. range: Confidential.

Y 93–172

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Alkyd resin.
Use/Production. (S) Industrial air-dry coatings for metal substrates. Prod. range: Confidential.

Y 93–173

Manufacturer. Confidential.
Chemical. (G) Polyol ester.
Use/Production. (G) Dehydration agent. Prod. range: Confidential.

Y 93–174

Importer. MTC America, Inc.
Chemical. (S) Poly (propylene glycol), 1,3 butanediol, 2-ethyl-2-(hydroxymethyl) 1,3-propanediol with tolylene 2,4-diisocyanate and *E*-caprolactam.
Use/Import. (S) Two component black urethane coating. Import range: Confidential.

Dated: August 30, 1993.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–22788 Filed 9–16–93; 8:45 am]
BILLING CODE 6560–50–F

[OPPTS–59971; FRL–4647–4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 14 such PMN(s) and provides a summary of each.

DATES: Close of review periods:
Y 93–175, August 4, 1993.
Y 93–176, 93–177, 93–178, 93–179, 93–180, 93–181, 93–182, 93–183, 93–184, 93–185, 93–186, 93–187, 93–188, August 7, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), ETG–102 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 93–175

Manufacturer. Henkel Corporation.
Chemical. (G) Polyester.
Use/Production. (S) Plasticizer for polyvinyl chloride resin. Prod. range: 500,000–750,000 kg/yr.

Y 93–176

Manufacturer. H. B. Fuller Company.
Chemical. (G) Alkenoic alkyl esters, 2-methyl-2-propenoic acid and polymer; salt.
Use/Production. (S) Thickener. Prod. range: Confidential.

Y 93–177

Manufacturer. H. B. Fuller Company.
Chemical. (G) Alkenoic alkyl esters, 2-methyl-2-propenoic acid polymer; salt.
Use/Production. (S) Thickener. Prod. range: Confidential.

Y 93–178

Manufacturer. H. B. Fuller Company.
Chemical. (G) Alkenoic alkyl esters, 2-methyl-2-propenoic acid polymer; salt.
Use/Production. (S) Thickener. Prod. range: Confidential.

Y 93–179

Manufacturer. H. B. Fuller Company.
Chemical. (G) Alkenoic alkyl esters, 2-methyl-2-propenoic acid polymer; salt.
Use/Production. (S) Thickener. Prod. range: Confidential.

Y 93–180

Manufacturer. H. B. Fuller Company.
Chemical. (G) Alkenoic alkyl esters, 2-methyl-2-propenoic acid polymer; salt.
Use/Production. (S) Thickener. Prod. range: Confidential.

Y 93–181

Manufacturer. H. B. Fuller Company.
Chemical. (G) Alkenoic alkyl ester, 2-methyl-2-propenoic acid polymer; salt.
Use/Production. (S) Thickener. Prod. range: Confidential.

Y 93–182

Manufacturer. H. B. Fuller Company.
Chemical. (G) Alkenoic alkyl ester, 2-methyl-2-propenoic acid polymer; salt.
Use/Production. (S) Thickener. Prod. range: Confidential.

Y 93–183

Manufacturer. H. B. Fuller Company.
Chemical. (G) Alkenoic alkyl ester, 2-methyl-2-propenoic acid polymer; salt.
Use/Production. (S) Thickener. Prod. range: Confidential.

Y 93–184

Manufacturer. H. B. Fuller Company.

Chemical. (G) Alkenoic alkyl ester, 2-methyl-2-propenoic acid polymer; salt.
Use/Production. (S) Thickener. Prod. range: Confidential.

Y 93–185

Manufacturer. H. B. Fuller Company.
Chemical. (G) Alkenoic alkyl ester, 2-methyl-2-propenoic acid polymer; salt.
Use/Production. (S) Thickener. Prod. range: Confidential.

Y 93–186

Manufacturer. H. B. Fuller Company.
Chemical. (G) Alkenoic alkyl ester, 2-methyl-2-propenoic acid polymer; salt.
Use/Production. (S) Thickener. Prod. range: Confidential.

Y 93–187

Manufacturer. H. B. Fuller Company.
Chemical. (G) Alkenoic alkyl ester, 2-methyl-2-propenoic acid polymer; salt.
Use/Production. (S) Thickener. Prod. range: Confidential.

Y 93–188

Manufacturer. H. B. Fuller Company.
Chemical. (G) Alkenoic alkyl ester, 2-methyl-2-propenoic acid polymer; salt.
Use/Production. (S) Thickener. Prod. range: Confidential.

Dated: September 7, 1993.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–22789 Filed 9–16–93; 8:45 am]
BILLING CODE 6560–50–F0

[OPPTS–59972; FRL–4647–5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 11 such PMN(s) and provides a summary of each.

DATES: Close of review periods:
Y 93–189, 93–190, 93–191, August 9, 1993.
Y 93–192, August 10, 1993.
Y 93–193, August 17, 1993.
Y 93–194, August 19, 1993.
Y 93–195, August 23, 1993.
Y 93–196, 93–197, 93–198, August 31, 1993.
Y 93–199, September 6, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), ETG–102 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 93–189

Manufacturer. Confidential.
Chemical. (G) Acrylic polymer.
Use/Production. (G) Mineral dispersant. Prod. range: 35,000–350,000 kg/yr.

Y 93–190

Manufacturer. The Chromoline Corporation.
Chemical. (S) Polyvinyl alcohol acetalized with *N*-(2-C_1,3-dioxane-2yl)-ethyl)-4-styrylpyridinium bromide.
Use/Production. (S) Photocross linkable polymer for photostencil or photo-imaging systems. Prod. range: 580–1,160 kg/yr.

Y 93–191

Importer. Weatherly Incatlanata.
Chemical. (G) Polymer of divinylbenzene and ethylvinylbenzene.
Use/Import. (G) Polymeric resins for compound use as an adsorbant fofor VOC control, resinis continuously recycle VOC's. Import range: Confidential.

Y 93–192

Importer. Confidential.
Chemical. (G) Styrene copolymer.
Use/Import. (G) Plastic modifier and compatibilizer. Import range: Confidential.

Y 93–193

Manufacturer. Confidential.
Chemical. (G) Segment polyurethane-urea.
Use/Production. (S) Polymer for fiber production. Prod. range: Confidential.

Y 93–194

Manufacturer. Confidential.
Chemical. (G) Blocked polyester polyurethane.
Use/Production. (G) Component of coating with open use. Prod. range: 60,000–100,000 kg/yr.

Y 93–195

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Polybutylene phthalate copolymer.
Use/Production. (G) Polymer for extrusion, coatings, and adhesives. Prod. range: Confidential.

Y 93–196

Manufacturer. The Dow Chemical Company.
Chemical. (G) Thermoplastic polyurethane elastomer resin.
Use/Production. (S) Injection molding of plastic articles and extrusion of plkastic profiles. Prod. range: Confidential.

Y 93–197

Manufacturer. The Dow Chemical Company.
Chemical. (G) Thermoplastic polyurethane elastomer resin.
Use/Production. (S) Injection molding of plastic articles and extrusion of plastic profiles. Prod. range: Confidential.

Y 93–198

Manufacturer. Confidential.
Chemical. (G) Alkyl carboxylic acid-alkyl methacrylate copolymer, ammonia salt.
Use/Production. (S) Formulation waterborne coating for metal surfaces. Prod. range: Confidential.

Y 93–199

Manufacturer. Confidential.
Chemical. (G) Isophthalic acid acid, trimelltic anhydride, aliphatic glycols and polyol polymer.
Use/Production. (G) Coating binder. Prod. range: Confidential.

Dated: September 7, 1993.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–22790 Filed 9–16–93; 8:45 am]
BILLING CODE 6560–50–F

[OPPTS–59325; FRL–4643–1]

Certain Chemicals; Application of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for exemption, provides a summary, and requests comments on the appropriateness of granting these exemptions.

DATES:

Written comments by:
T 93–21, August 28, 1993.

ADDRESSES: Written comments, identified by the document control number "(OPPTS–59325)" and the specific TME number should be sent to: Document Control Office, (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099, Washington, DC., 20460, (202) 260–1532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St. SW., Washington, DC., 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC) ETG–102 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

T–93–21

Close of Review Period. September 11, 1993.

Manufacturer. Confidential.

Chemical. (S) Sodium perthiocarbonate.

Use/Production. (G) Oil field additive.

Dated: August 30, 1993.

Frank V. Caesar,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–22783 Filed 9–16–93; 8:45 am]
BILLING CODE 6560–50–F

[OPPTS–51821; FRL–4640–3]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 103 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 93–935, 93–936, July 25, 1993.
P 93–937, July 26, 1993.
P 93–938, 93–939, 93–940, July 25, 1993.
P 93–941, 93–942, July 26, 1993.
P 93–943, July 27, 1993.
P 93–944, July 26, 1993.
P 93–945, 93–946, 93–947, July 27, 1993.
P 93–948, 93–949, July 28, 1993.
P 93–950, August 10, 1993.
P 93–951, July 28, 1993.
P 93–952, 93–954, August 1, 1993.
P 93–955, July 31, 1993.
P 93–956, 93–957, 93–958, 93–959, August 1, 1993.
P 93–960, August 2, 1993.
P 93–961, August 1, 1993.
P 93–962, 93–963, August 2, 1993.
P 93–964, August 1, 1993.
P 93–965, 93–966, August 4, 1993.
P 93–967, August 3, 1993.
P 93–969, August 2, 1993.
P 93–970, August 11, 1993.
P 93–971, 93–972, 93–973, 93–974, 93–975, 93–976, 93–977, 93–978, 93–979, 93–980, 93–981, August 4, 1993.
P 93–982, August 2, 1993.
P 93–983, 93–984, 93–985, August 4, 1993.
P 93–986, August 7, 1993.
P 93–988, 93–989, 93–990, 93–991, 93–992, 93–993, 93–994, 93–995, August 8, 1993.
P 93–996, 93–997, 93–998, 93–999, 93–1000, 93–1001, 93–1002, August 9, 1993.
P 93–1003, July 10, 1993.
P 93–1004, 93–1005, 93–1006, 93–1007, 93–1008, 93–1009, 93–1010, August 9, 1993.
P 93–1011, August 10, 1993.
P 93–1012, 93–1013, August 9, 1993.
P 93–1014, 93–1015, 93–1016, 93–1017, 93–1018, 93–1019, 93–1020, August 10, 1993.
P 93–1021, August 16, 1993.
P 93–1022, 93–1023, 93–1024, 93–1025, 93–1026, 93–1027, August 11, 1993.
P 93–1028, 93–1029, 93–1030, August 14, 1993.
P 93–1031, 93–1032, 93–1033, 93–1034, 93–1035, 93–1036, 93–1037, 93–1038, 93–1039, August 15, 1993.
P 93–1040, August 16, 1993.

Written comments by:

P 93–935, 93–936, June 25, 1993.
P 93–937, June 26, 1993.
P 93–938, 93–939, 93–940, June 25, 1993.
P 93–941, 93–942, June 26, 1993.
P 93–943, June 27, 1993.
P 93–944, June 26, 1993.
P 93–945, 93–946, 93–947, June 27, 1993.
P 93–948, 93–949, June 28, 1993.
P 93–950, July 11, 1993.
P 93–951, June 28, 1993.
P 93–952, 93–954, July 2, 1993.
P 93–955, July 1, 1993.
P 93–956, 93–957, 93–958, 93–959, July 2, 1993.
P 93–960, July 3, 1993.
P 93–961, July 2, 1993.
P 93–962, 93–963, July 3, 1993.
P 93–964, July 2, 1993.
P 93–965, 93–966, July 5, 1993.
P 93–967, July 4, 1993.
P 93–969, July 3, 1993.
P 93–970, July 12, 1993.
P 93–971, 93–972, 93–973, 93–974, 93–975, 93–976, 93–977, 93–978, 93–979, 93–980, 93–981, July 5, 1993.
P 93–982, July 3, 1993.
P 93–983, 93–984, 93–985, July 5, 1993.
P 93–986, July 8, 1993.
P 93–988, 93–989, 93–990, 93–991, 93–992, 93–993, 93–994, 93–995, July 9, 1993.
P 93–996, 93–997, 93–998, 93–999, 93–1000, 93–1001, 93–1002, July 10, 1993.
P 93–1003, June 10, 1993.
P 93–1004, 93–1005, 93–1006, 93–1007, 93–1008, 93–1009, 93–1010, July 10, 1993.
P 93–1011, July 11, 1993.
P 93–1012, 93–1013, July 10, 1993.
P 93–1014, 93–1015, 93–1016, 93–1017, 93–1018, 93–1019, 93–1020, July 11, 1993.

P 93–1021, July 17, 1993.
P 93–1022, 93–1023, 93–1024, 93–1025, 93–1026, 93–1027, July 12, 1993.
P 93–1028, 93–1029, 93–1030, July 15, 1993.
P 93–1031, 93–1032, 93–1033, 93–1034, 93–1035, 93–1036, 93–1037, 93–1038, 93–1039, July 16, 1993.
P 93–1040, July 17, 1993.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51821]" and the specific PMN number should be sent to: Document Control Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099, Washington, DC., 20460, (202) 260–3532.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC., 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), ETG–102 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 93–935

Manufacturer. Minnesota Mining and Manufacturing Co..
Chemical. (S) Methacrylic acid isooctylacrylate zinc oxide aizoctyl thioglyciolate azodiisobutyronitrile.
Use/Production. (G) Adhesive. Prod. range: Confidential.
Toxicity Data. Skin irritation: slight (rabbit). Skin sensitization: negative (guinea pig).

P 93–936

Manufacturer. Henkel Corporation.
Chemical. (G) Aliphatiic amine adducts.
Use/Production. (G) Water based epoxy curing agent. Prod. range: Confidential.

P 93–937

Manufacturer. Pi-Tech, Inc.
Chemical. (S) Butanolato oligo oxyethyene hydroxy acetate.
Use/Production. (S) Non volatile coalescent for latex coatings. Prod. range: Confidential.

P 93–938

Manufacturer. Confidential.
Chemical. (G) Polyester urethane polymer.
Use/Production. (G) Adhesive for flexible substrates. Prod. range: Confidential.

P 93–939

Manufacturer. Confidential.
Chemical. (G) Cyclic aliphatic polyester.
Use/Production. (G) Polyester intermediate. Prod. range: Confidential.

P 93–940

Manufacturer. Confidential.
Chemical. (G) Modified acrylic polymer.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93–941

Importer. Confidential.
Chemical. (S) .
Use/Import. (G) Dyes for fibers. Import range: Confidential.
Toxicity Data. Acute oral: LD50 > 1,000 mg/kg (rat). Mutagenicity: positive.

P 93–942

Importer. Powdertech Corporation.
Chemical. (S) Fatty acids, dehydrated castor-oil, polymers with benzoic acid, acrylate, glycerol, 2-hydroxyethyl acrylate, 2-hydroxyethyl methacrylate, iso bu methacrylate, linseed oil, methacrylic acid, pentaerythritol, phthalic anhydride and styrene.
Use/Import. (S) Coating resin of carrier particles for controlling resistance of the particles for electrographic. Import range: 1,500–3,000 kg/yr.

P 93–943

Manufacturer. Exxon Chemical Company.
Chemical. (S) 2-Amino-2-methyl propanoic acid, potassium salt potassium 2-amino-2-methyl propionate 2-aminoisobutyric acid, potassium salt aminoisobutyric acid, potassium salt.
Use/Production. (S) Scrubbing for gas C_{O2} emissions in industry scrubbing produced natural and associated gas in oil fields. Prod. range: Confidential.
Toxicity Data. Acute oral: LD50 3,333 mg/kg (rat). Eye irritation: moderate (rabbit). Skin irritation: slight (rabbit). Mutagenicity: negative. Skin sensitization: positive (guinea pig).

P 93–944

Importer. Confidential.
Chemical. (G) Acrylic polymer, ammonium salt.
Use/Import. (S) Thickner for pigment prints on fibers. Import range: 500–1,000 kg/yr.

P 93–945

Importer. Xerox Corporation.
Chemical. (G) Styrene/acrylates polymer.
Use/Import. (G) Component in reprographic developers. Import range: Confidential.

P 93–946

Importer. Xerox Corporation.
Chemical. (G) Styrene/acryloyl/ acrylates polymer.
Use/Import. (G) Component in reprographic developers. Import range: Confidential.

P 93–947

Manufacturer. Xerox Corporation.
Chemical. (G) Polyester resin.
Use/Production. (G) Component xerographic toners. Prod. range: Confidential.
Toxicity Data. Acute oral: LD50 > 5.0 g/kg (rat). Acute Static: LC50 96h 1,000 mg/l (rainbow trout). Eye irritation: none (rabbit).

P 93–948

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyamine polymer.
Use/Production. (G) Open, nondispersive use as an energy production chemical. Prod. range: Confidential.

P 93–949

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyamine polymer.
Use/Production. (G) Open, nondispersive use as an energy production chemical. Prod. range: Confidential.

P 93–950

Manufacturer. Confidential.
Chemical. (G) Polyurethane prepolymer salt.
Use/Production. (G) A destructive use polyurethane intermediate. Prod. range: Confidential.

P 93–951

Manufacturer. Confidential.
Chemical. (G) Polyurethane salt.
Use/Production. (G) Open, nondispersive use as a polyurethane surface coating. Prod. range: Confidentiakl.

P 93–952

Importer. Tioxide Specialties LTD.
Chemical. (S) Di-*N*-butoxy titanium bis (2,4 pentanedionate).
Use/Import. (S) Cross-linking agent for silicone sealants. Import range: Confidential.

P 93–954

Manufacturer. Goldschmidt Chemical Corporation.

Chemical. (G) Acrylated polysiloxane.
Use/Production. (G) Contained and nondispersive, open use. Prod. range: Confidential.

P 93–855

Importer. Ciba-Geigy Corporation.
Chemical. (G) Formaldehyde, polymer with substituted phenols, glycidyl ether.
Use/Import. (G) Binder for substances for electronic component assembly. Import range: Confidential.

P 93–856

Manufacturer. Confidential.
Chemical. (G) Polyurethane resin.
Use/Production. (S) Spray applied coatings. Prod. range: 40,000–120,000 kg/yr.
Toxicity Data. Eye irritation: Slight (rabbit).

P 93–857

Manufacturer. Confidential.
Chemical. (G) Polyurethane resin.
Use/Production. (S) Spray applied coatings. Prod. range: 40,000–120,000 kg/yr.

P 93–858

Manufacturer. Confidential.
Chemical. (G) Blocked aliphatic polyurethane oxime-aliphatic polyurethane oxime-blocked aliphatic polyurethane prepolymer.
Use/Production. (G) Additive for sealants and adhesivess in open, nondispersive use. Prod. range: Confidential.

P 93–859

Manufacturer. Confidential.
Chemical. (G) Hindered alkyl-substituted phenolic antioxidant.
Use/Production. (G) Foam additive. Prod. range: Confidential.
Toxicity Data. Acute oral: LD50 > 2,000 mg/kg (rat). Acute dermal: LD50 > 2.0 g/kg (rabbit). Eye irritation: Slight (rabbit). Skin irritation: Slight (rabbit).

P 93–860

Manufacturer. KMG Minerals, Inc.
Chemical. (S) Reaction product between mica and silane, triethoxy (3-oxiranylmethoxy)propyl)-this silane will be referred to as glycidoxy silane in the rest of this PMN.

P 93–861

Manufacturer. The P. D. George Company.
Chemical. (S) Soybean oil; heat-reactive phneolic resin; phenol; para-tert buty phenol paraformaldehyde.
Use/Production. (S) Insulating varnish for coating of electrical equipment. Prod. range: 15,000 kg/yr.

P 93–862

Manufacturer. Henkel Corporation.
Chemical. (G) Alkyl polyamide.
Use/Production. (G) Thermoplastic resin, for use in ink and adhesive applications. Prod. range: Confidential.

P 93–863

Importer. Confidential.
Chemical. (G) Isothiazolinone.
Use/Import. (G) Preservative. Import range: Confidential.
Toxicity Data. Acute oral: LD50 224 mg/kg (rat). Acute dermal: LD50 > 400 mg/kg (rat). Acute Static: EC50 > 1. mg/l (Daphnia magna). Eye irritation: Strong (rabbit). Skin irritation: Negligible (rabbit). Mutagenicity: Negative. Skin sensitization: Positive (guinea pig).

P 93–864

Manufacturer. Confidential.
Chemical. (S) Brominated polystyrene.
Use/Production. (G) Polymer additive. Prod. range: Confidential.
Toxicity Data. Acute oral: LD50 > 5,000 mg/kg (rat). Eye irritation: Slight (rabbit).

P 93–865

Manufacturer. H.B. Fuller Company.
Chemical. (G) Polymer of an epoxide-terminated polyether, fatty acide C_{18}–unsaturated reaction products with polyamines, and an alkylpolyamine.
Use/Production. (S) Curing agent. Prod. range: Confidential.

P 93–866

Importer. Ciba-Geigy Corporation.
Chemical. (G) Formaldehyde, polymer with substituted phenols.
Use/Import. (G) Binder for substrates for electronic conmponent assembly. Import range: Confidential.

P 93–867

Manufacturer. G E Silicones.
Chemical. (S) Siloxanes and silicones, DiMe, Me 2(7-oxabiscyclo(4,o) hept-3-yl)ethyl,.
Use/Production. (S) Dehesive coating on paper and film substrates. Prod. range: 35,000–45,000 kg/yr.

P 93–868

Importer. AKZO Resins.
Chemical. (G) Polyester resin.
Use/Import. (S) Vehicle for toners used in electric photographic copiers. Import range: Confidential.

P 93–870

Importer. DNP (America), Inc.
Chemical. (G) *N*-Amino-pyridone.
Use/Import. (S) Colorant in thermal transfer ink film. Import range: 100–500 kg/yr.
Toxicity Data. Acute oral: LD50 >2,000 mg/kg (rat). Acute dermal: LD50 >2,000 mg/kg (rat). Eye irritation: none (rabbit). Skin irritation: Negligible (rabbit).

P 93–871

Manufacturer. Confidential.
Chemical. (G) Isocyanate-terminate polyether polyurethane.
Use/Production. (G) Adhesive coreactant. Prod. range: Confidential.

P 93–872

Importer. Confidential.
Chemical. (G) Acrylic copolymer.
Use/Import. (G) Paint. Import range: Confidential.

P 93–873

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (S) Final product synethesis. Prod. range: 300,000–600.000 kg/yr.

P 93–874

Manufacturer. Sanncor Industries, Inc.
Chemical. (G) Polyurethane based on polyisocyanate, polyols and polyamines.

P 93–875

Manufacturer. Sanncor Industries, Inc.
Chemical. (G) Polyurethane.

P 93–876

Manufacturer. Sanncor Industries, Inc.
Chemical. (G) Polyurethane.

P 93–877

Manufacturer. Sanncor Industries. Inc.
Chemical. (G) Polyurethane.

P 93–878

Manufacturer. Sanncor Industries, Inc.
Chemical. (G) Polyurethane based on polyisocyante, polyols and polyamines.

P 93–879

Manufacturer. Sanncor Industries, Inc.
Chemical. (G) Polyurethane based on polyisocyanate, and polyols.

P 93–880

Manufacturer. Sanncor Industries, Inc.
Chemical. (G) Polyurethane based on polyisocyanate.

P 93–881

Manufacturer. Sanncor Industrial, Inc.
Chemical. (G) Polyurethane.

P 93–882

Manufacturer. MTM Hardwicke, Inc.
Chemical. (S) *M*-Chlorobenzaldehyde.
Use/Production. (S) Intermediate for the manufacture of loratadine. Prod. range: 25,000–50,000 kg/yr.

P 93-983

Manufacturer. MTM Hardwicke, Inc.

Chemical. (S) *M*-Chlorobenzyl alcohol.

Use/Production. (S) Intermediate for the manufacture of loratadine. Prod. range: 25,000–50,000 kg/yr.

P 93-984

Manufacturer. Confidential.

Chemical. (G) Polyurethane resin.

Use/Production. (S) Spray applied coating. Prod. range: 480,000–720,000 kg/yr.

P 93-985

Manufacturer. Confidential.

Chemical. (G) Polyurethane resin.

Use/Production. (S) Spray applied coatings. Prod. range: 480,000–720,000 kg/yr.

P 93-986

Manufacturer. BASF Corporation.

Chemical. (G) *N,N'*–Alkanediyl bis(*N*-(hetero)- formamide.

Use/Production. (G) Stabilizer for plastics. Prod. range: Confidential.

P 93-988

Importer. E. I. duPont de Nemours & Company.

Chemical. (G) Sodium salt of alkylheteromonocyclicthione.

Use/Import. (G) Water repellant surface treatment. Import range: Confidential.

P 93-989

Importer. Confidential.

Chemical. (G) Diethanolamine salt of phosphated polycaprolactone.

Use/Import. (G) Dispersant. Import range: Confidential.

Toxicity Data. Acute oral: LD50 > 2,000 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/kg (rat). Eye irritation: None (rabbit). Skin irritation: Negligible (rabbit). Skin sensitization: positive (guinea pig).

P 93-990

Manufacturer. Confidential.

Chemical. (G) Amine-salted polyester resin.

Use/Production. (S) Spray applied coating. Prod. range: 120,000–240,000 kg/yr.

P 93-991

Manufacturer. Confidential.

Chemical. (G) Amine-salted polyester resin.

Use/Production. (S) Spray applied coatings. Prod. range: 120,000–240,000 kg/yr.

P 93-992

Manufacturer. Minnesota Mining And Manufacturing Co.

Chemical. (G) Substituted hydrazone.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 93-993

Manufacturer. Minnesota Mining And Manufacturing Co.

Chemical. (G) Modified vinyl pyridine polymer.

Use/Production. (G) Film coating additive. Prod. range: Confidential.

P 93-994

Manufacturer. Confidential.

Chemical. (G) Polyurethane modified polyester resin.

Use/Production. (S) Low profile additive to controla shrinking of sheet metal compounds. Prod. range: Confidential.

P 93-995

Manufacturer. Confidential.

Chemical. (G) Polyurethane modified polyester resin.

Use/Production. (S) Low profile additive to control shrinkage of sheet compounds. Prod. range: Confidential.

P 93-996

Manufacturer. Confidential.

Chemical. (G) Modified polymer of alkenoic esters and styrene.

Use/Production. (G) Component of coating with open use. Prod. range: 64,000 kg/yr.

P 93-997

Manufacturer. Confidential.

Chemical. (G) Modified polymer of alkenoic esters and styrene.

Use/Production. (G) Component of coating with open, use. Prod. range: 64,000 kg/yr.

P 93-998

Manufacturer. Confidential.

Chemical. (G) Modified polymer of alkenoic esters and styrene.

Use/Production. (G) Component of coating with open use. Prod. range: 64,000 kg/yr.

P 93-999

Manufacturer. Confidential.

Chemical. (G) Modified polymer of alkenoic esters and styrene.

P 93-1000

Manufacturer. Confidential.

Chemical. (G) Modified polymer of alkenoic esters and styrene.

Use/Production. (G) Component of coating with open use. Prod. range: 64,000 kg/yr.

P 93-1001

Manufacturer. Confidential.

Chemical. (G) Modified polymer of alkenoic esters and styrene.

Use/Production. (G) . Prod. range: 64,000 kg/yr.

P 93-1002

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyanate, polyols and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 93-1003

Manufacturer. Sanncor Industries. Inc..

Chemical. (G) Polyurethane based on polyisocyanate. polyols and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 93-1004

Manufacturer. Sanncor Industries, Inc..

Chemical. (G) Polyurethane based on polyisocyanate, polyols and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 93-1005

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyante, polyols and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 93-1006

Manufacturer. Sanncor Industries, Inc.

Chemical. (G) Polyurethane based on polyisocyante, polyols and polyamines.

P 93-1007

Manufacturer. Confidential.

Chemical. (G) olyyurethane based on polyisocyante, polyols and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 93-1008

Manufacturer. Confidential.

Chemical. (G) Polyurethane based on polyisocyante, polyols and polys and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 93-1009

Manufacturer. Confidential.

Chemical. (G) Polyurethane based on polyisocyante, polyols, and polyamines.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

P 93-1010

Manufacturer. Morton International, Inc.

Chemical. (S) Methyl alkyl componud.

Use/Production. (S) Organometallic source for the deposition of compounfsemiiconductor film. Prod. range: 100–1,000 kg/yr.

P 93–1011

Importer. BASF Corporation.
Chemical. (G) Self-crosslining butadine styrene copolymer.
Use/Import. (S) Binder for nonwovens. Import range: Confidential.

P 93–1012

Manufacturer. Confidential.
Chemical. (G) Acrylate functional polyurethane resin.
Use/Production. (G) Industrial coating for open, nonsdispersive use. Prod. range: Confidential.

P 93–1013

Importer. Dow Corning corporation.
Chemical. (S) Siloxanes and silicones, di-Me, 5-hexenyl Me.
Use/Import. (S) Silicone release coating. Import range: Confidential.

P 93–1014

Manufacturer. Confidential.
Chemical. (G) Substituted aryl sulfonic acid.
Use/Production. (G) Additive for refinery hydrocarbons. Prod. range: Confidential.

P 93–1015

Importer. Unichema North America.
Chemical. (G) Coco ethyl glucoside ester.
Use/Import. (G) Dispersive use - surface active agent. Import range: Confidential.

P 93–1016

Importer. Unichema North America.
Chemical. (G) Tallow ethyl glucoside ester.
Use/Import. (G) Dispersion use - surface active agent. Import range: Confidential.

P 93–1017

Importer. Unichema North America.
Chemical. (G) C_{10} ethyl glucoside ester.
Use/Import. (G) Dispersive use - surface active agent. Import range: Confidential.

P 93–1018

Importer. Unichema North America.
Chemical. (G) C_{12} ethyl glucoside esterr.
Use/Import. (G) Dispersive use - surface active agent. Import range: Confidential.

P 93–1019

Importer. Unichema North America.
Chemical. (G) C_{14} ethyl glucoside ester.

P 93–1020

Importer. Unichema North America.
Chemical. (G) Oleyl ethyl glucoside ester.
Use/Import. (G) Dispersive use - surface active agent. Import range: Confidential.

P 93–1021

Manufacturer. Texaco Inc..
Chemical. (G) Product produced from the liquifaction of a slury of tire polymers in oil to produce a hydrocarbon stream primarily in the range of C_{20} to C_{50} contining up to 18% carbon black of boiling range of 535 32%F.
Use/Production. (S) Gasification feedstock (thermal conversion to Co & H_2) distillation to fuel asphalt extender. Prod. range: 230,000 kg/yr.

P 93–1022

Manufacturer. Confidential.
Chemical. (G) Polyether polyurethane.
Use/Production. (G) Clothing, adhesive patches, gloves. Prod. range: Confidenttial.

P 93–1023

Importer. Reichhold Chemicals, Inc.
Chemical. (G) Polyester polyurethane.
Use/Import. (G) Polyurethane for adhesive. Import range: Confidential.

P 93–1024

Manufacturer. Confidential.
Chemical. (G) Amindoamine ester quat.
Use/Production. (S) Fabric softener, hair conditioner. Prod. range: Confidential.

P 93–1025

Manufacturer. Confidential.
Chemical. (G) Amidoamine ester quat.
Use/Production. (S) Fabric softener, hair conditioner. Prod. range: Confidential.

P 93–1026

Manufacturer. Confidential.
Chemical. (G) Amidoamine ester quat.
Use/Production. (S) Fabric softener, hair conditioner. Prod. range: Confidential.

P 93–1027

Manufacturer. Confidential.
Chemical. (G) Amidoamine.
Use/Production. (S) Fabric softener, hair conditioner. Prod. range: Confidential.

P 93–1028

Manufacturer. Confidential.
Chemical. (G) Cycloaliphatic diamine.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 93–1029

Manufacturer. Confidential.
Chemical. (S) Alkoxylated alkylphenol.
Use/Production. (G) Gasoline additive (intermediate). Prod. range: Confidential.

P 93–1030

Importer. Confidential.
Chemical. (G) Polyol resin.
Use/Import. (G) Ingredient for copier toner and copier developer. Import range: Confidential.

P 93–1031

Manufacturer. Confidential.
Chemical. (G) Poly amine poly amide.
Use/Production. (S) Fiberglass lubricant. Prod. range: Confidential.

P 93–1032

Manufacturer. Amoco Chemical Company.
Chemical. (G) Polyphthalamide.
Use/Production. (G) Manufacture of molded parts, polymer intermediate extruded shapes. Prod. range: Confidential.

P 93–1033

Importer. Evode-Tanner, Inc.
Chemical. (G) Prepolymer of polyester resin and aromatic isocanate.
Use/Import. (S) Reactive hot melts for automobile industry and textiles industry. Import range: 10,000–20,000 kg/yr.

P 93–1034

Importer. Evode-Tanner, Inc.
Chemical. (G) Prepolymer of polyester resin and aromatic isocyanate.
Use/Import. (S) Reactive hot melts for automobile industry and textiles industry. Import range: 10,000–20,000 kg/yr.

P 93–1035

Importer. Evode-Tanner, Inc..
Chemical. (G) Prepolymer of polyester resin and aromatic isocyanate.
Use/Import. (S) Reactive hot melts for automobile industry and textiles industry. Import range: 10,000–2,000 kg/yr.

P 93–1036

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Polyurethane resin.
Use/Production. (G) Hot melt adhesive. Prod. range: Confidential.

P 93–1037

Manufacturer. Confidential.
Chemical. (S) Phenol, 4,4'–(1,3-phenylenebis(1-methylethylidene))bis- (9CI).
Use/Production. (G) Phenolic intermediate. Prod. range: Confidential.

P 93–1038

Importer. Ciba-Geigy Corporation.

Chemical. (G) Cyclohexane, 5-isoyanato-1-(isocyanatomethyl)-1,3,3-trimethyl-homopolymer.

Use/Import. (S) Resin component for soldermask for production on printed wiring boards. Import range: Confidential.

P 93–1039

Manufacturer. American Polymers Corporation.

Chemical. (G) Aliphatic polyurethane coating.

Use/Production. (S) Waterproofing coating substrate coating. Prod. range: Confidential.

P 93–1040

Manufacturer. Confidential.

Chemical. (G) Polyester urethane polymer.

Use/Production. (G) Adhesive for flexible substrates. Prod. range: Confidential.

Dated: September 13, 1993.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–22787 Filed 9–16–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Approved by the Office of Management and Budget

September 9, 1993.

The following information collection requirements have been approved by the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, (44 U.S.C. 3507). For further information, contact Judy Boley, Federal Communications Commission, (202) 632–0276.

OMB No.: 3060–0057

Title: Specialized Mobile Radio System (SMRS) End User Survey A new survey has been approved for use through 10/31/93.

OMB No.: 3060–0084

Title: Ownership Report for Noncommercial Educational Broadcast Station

Form No.: FCC 323–E. The approval on FCC 323–E has been extended through 4/30/96. The November 1990 edition with the previous OMB expiration date of 4/30/93 will remain in use until updated forms are available.

OMB No.: 3060–0107

Title: Private Radio Application for Renewal, Reinstatement and/or Notification of Change to License Information

Form No.: FCC 405–A. A revised application form FCC 405–A has been approved for use through 5/31/96. The current edition of the form is June 1993.

OMB No.: 3060–0443

Title: Conditional Temporary Authorization to Operate a Part 90 Radio Station

Form No.: FCC 572–C. The approval on FCC 572–C has been extended through 5/31/96. The June 1990 edition with the previous OMB expiration date of 5/31/93 will remain in use until updated forms are available.

OMB No.: 3060–0061

Title: Annual Report of Cable Television Systems, Schedule A

Form No.: FCC 325. The approval on FCC 325 has been extended through 4/30/96. The Schedule A for Year 1992 with the previous OMB expiration date of 4/30/93 will remain in use until updated forms are available.

OMB No.: 3060–0009

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License

Form No.: FCC 316. A revised application form FCC 316 has been approved for use through 4/30/96. The June 1987 edition with the previous OMB expiration date of 4/30/90 will remain in use until revised forms are available.

OMB No.: 3060–0130

Title: Private Fixed, Mobile, and Radiolocation Services, Supplementary Information to FCC Form 574

Form No.: FCC 574–B. The approval on FCC 574–B has been extended through 8/31/96. The October 1982 edition with the previous OMB expiration date of 9/30/87 will remain in use until updated forms are available.

OMB No.: 3060–0139

Title: Request for Antenna Height Clearance and Obstruction Marking and Lighting Specifications

Form No.: FCC 854. A revised request form FCC 854 has been approved for use through 8/31/96. The May 1992 edition with the previous OMB expiration date of 4/30/95 will remain in use until revised forms are available.

William F. Caton,

Acting Secretary.

[FR Doc. 93–22746 Filed 9–16–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC–362]

Announcement of Cooperative Agreement to the Pan American Health Organization

Summary

The Centers for Disease Control and Prevention (CDC), announces the availability of funds for fiscal year (FY) 1993 for a sole source cooperative agreement with the Pan American Health Organization (PAHO) to identify improved methods of reaching and sustaining high immunization coverage, interrupting disease transmission, and improving vaccine preventable diseases surveillance for the Americas. Approximately $160,000 will be available in FY 1993 to support this project. It is expected the award will begin on September 30, 1993, for a 12-month budget period within a 3-year project period. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

The purpose of this cooperative agreement is to stimulate high-quality operational and applied research to improve diagnosis, surveillance, and prevention of vaccine preventable diseases in the region of the Americas.

The CDC will collaborate in the design of research protocols, the analysis and interpretation of data generated from each project, and in the preparation of reports and manuscripts. The CDC will also provide other technical assistance in support of each project, as needed.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under sections 301(a) and 307 of the Public Health Service Act (42 U.S.C. 241(a) and 242l), as amended.

Eligible Applicant

Assistance will be provided only to PAHO for this project. No other applications are solicited. The Program Announcement and application kit have been sent to PAHO.

PAHO is the most appropriate and qualified agency to conduct the activities under this cooperative agreement because:

A. PAHO coordinates international health activities for countries and territories of the Americas. Their access to member states and their public health programs is unique in this region.

B. The proposed program is strongly supportive of and directly related to the achievement of PAHO and CDC/National Immunization Program research and development programs in vaccine preventable diseases and surveillance.

Executive Order 12372 Review

The application is not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 93.185, Immunization Research, Demonstration, Public Information, and Education, Training, and Clinical Skills Improvement Projects.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Program Announcement Number 362 and contact Eddie Wilder, Senior Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–16, Atlanta, Georgia 30305, telephone (404) 842–6805.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the SUMMARY may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: September 13, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–22733 Filed 9–16–93; 8:45 am]

BILLING CODE 4160–18–P

Food and Drug Administration

[Docket No. 93F–0297]

Hoechst Celanese Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hoechst Celanese Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *N*-[4-(aminocarbonyl)phenyl]-4-[[1-[[(2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)amino]carbonyl]-2-oxopropyl]azo]benzamide (C.I. Pigment Yellow 181) as a colorant for all polymers.

DATES: Written comments on the petitioner's environmental assessment by October 18, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3B4393) has been filed by Hoechst Celanese Corp., 500 Washington St., Coventry, RI 02816. The petition proposes to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of *N*-[4-(aminocarbonyl)phenyl]-4-[[1-[[(2,3-dihydro-2-oxo-1H-benzimidazol-5-yl)amino]carbonyl]-2-oxopropyl]azo]benzamide (C.I. Pigment Yellow 181) as a colorant for all polymers.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4 (b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before October 18, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 7, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–22678 Filed 9–16–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0276]

Petrolite Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Petrolite Corp., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethoxylated primary linear alcohols of greater than 10 percent ethylene oxide by weight having molecular weights of 390 to 7,000 for use as components of food packaging adhesives.

DATES: Written comments on petitioner's environmental assessment by October 18, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch

(HFA–305), Food and Drug Administration, rm 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B4390) has been filed by Petrolite Corp., 369 Marshall Ave., St. Louis, MO 63119–1897. The petition proposes to amend the food additive regulations to provide for the safe use of ethoxylated primary linear alcohols of greater than 10 percent ethylene oxide by weight having molecular weights of 390 to 7,000 for use as components of food packaging adhesives.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before October 18, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: September 7, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–22677 Filed 9–16–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0330]

Drug Export; Novantrone (Mitoxantrone Hydrochloride) Concentrate for Injection, 2 mg/mL, 10 mg/vial

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Immunex Corp. has filed an application requesting approval for the export of the human drug Novantrone (mitoxantrone hydrochloride) Concentrate for Injection, 10 mg/vial, to the United Kingdom (for transshipment to Belgium, Luxembourg, and the Netherlands) and to Germany (for transshipment to Austria).

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Immunex Corp., 51 University St., Seattle, WA 98101, has filed an application requesting approval for the export of the human drug Novantrone (mitoxantrone hydrochloride) Concentrate for Injection, 10 mg/vial, to the United Kingdom (for transshipment to Belgium, Luxembourg, and the Netherlands) and to Germany (for transshipment to Austria). The firm has approval for Novantrone Concentrate for Injection in the following sizes: 20 mg/vial, 25 mg/vial, and 30 mg/vial. Novantrone is an antineoplastic agent indicated in the treatment of advanced breast cancer, non-Hodgkin's lymphoma, and adult acute non-lymphocytic leukemia. The application was received and filed in the Center for Drug Evaluation and Research on August 24, 1993, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 27, 1993, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: September 2, 1993.

Charma A. Konnor,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 93–22742 Filed 9–16–93; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Meeting of an Ad Hoc Subcommittee of the National Deafness and Other Communication Disorders Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of an ad hoc subcommittee of the National Deafness and Other Communication Disorders Advisory Council on September 16, 1993. The meeting will be held as a telephone conference call in room 430, 6120 Executive Boulevard, Rockville, Maryland.

The meeting will be open to the public from 8:30 a.m. to adjournment at approximately 12:30 p.m. The meeting is being held to discuss concept clearance of "Communication Disorders Subsequent to Congenital Toxoplasmosis Infection: A Population-Based Study."

Further information concerning the meeting may be obtained from Ms. Anne Summer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, 9000 Rockville Pike, Building 31, room 3C02, Bethesda, Maryland 20892, 301–402–0495. A summary of the meeting and roster of the members may also be obtained from her office. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Ms. Sumner.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communication Disorders)

Dated: September 9, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–22688 Filed 9–16–93; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, September 10,1993.

Copies of the information collection requests may be obtained by calling the PHS Reports Clearance Officer on (202) 690–7100.

1. HHS/Payment Management System Forms—0937–0200–The Payment Management System (PMS) is used to make advance or reimbursement payments to grantees. It serves in place of the SF–270. The PMS–272 is used to monitor cash advances made to grantees and to collect disbursement data. It serves in place of the SF–272. Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organization; Number of Respondents: 11,000; Number of Responses per Respondent: 3.26; Average burden per Response: 4.25 hours; Estimated Annual Burden: 152,220 hours.

2. Studies of Immunotoxicity in Occupational Groups—New—A number of chemicals to which U.S. workers are potentially exposed have been found to be immunotoxic. The data collected in these studies may assist in recommendations regarding the safe level of exposure to specific chemicals of interest and in formulating guidelines for risk assessments of potential immunotoxins based on the extrapolation of animal data to humans. Respondents: Individuals or households; Number of Respondents: 600; Number Of Responses per Respondent: 1; Average Burden per Response: .5 hour; Estimated Annual Burden: 300 hours.

3. National Survey of Ambulatory Surgery—New—The National Survey of Ambulatory Surgery will provide detailed information on the socio-demographics of ambulatory surgery, the volume of various procedures, and the diagnoses of persons being treated in hospital-based and freestanding ambulatory surgery centers. These data will be available in written reports and on public tapes. Respondents: Businesses or other for-profit, Non-profit institutions, Number of Respondents: 285; Number of Responses per Respondent: 619; Average Burden per Response: .1418 hour; Estimated Annual burden: 25,000 hours.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: September 13, 1993

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93–22748 Filed 9–16–93; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–92–3369; FR–3180–N–02]

Community Development Block Grant; Program for Indian Tribes and Alaskan Native Villages; Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Community Development Block Grant Program for Indian tribes and Alaskan native villages for Fiscal Years 1991 and 1992. The announcement contains the names and addresses of the award winners and the amounts of the awards.

DATES: September 17, 1993.

FOR FURTHER INFORMATION CONTACT: Bruce Knott, Director, Housing Development Division, Office of Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0596. The TDD number for the hearing impaired is (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to provide financial assistance to Indian tribes and Alaskan native villages.

The awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on April 7, 1992, at 57 FR 11852. Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards as set forth at the end of this notice.

Dated: September 10, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

Grantee	Grant No.	Amount
Region V		
Florida:		
Miccosukee Tribe of Indians of Florida, PO Box 44021, Miami, FL 33144	B-92-SR-12-0101	$300,000.00
Seminole Tribe of Florida, 6073 Stirling Road, Hollywood, FL 33024	B-92-SR-12-0201	300,000.00
Maine:		
Indian Township, Passamaquoddy Tribe, PO Box 301, Princeton, ME 04668	B-91-SR-23-0101	240,059.00
Michigan:		
Grand Traverse Band of Ottawa and Chippewa Indians, Route 1 Box 135, Suttons Bay, MI 49682	B-91-SR-26-0201	300,000.00
Lac Vieux Desert Band of Chippewa Indians, PO Box 446-Choate Road, Watersmeet, MI 49969	B-92-SR-26-0501	300,000.00
Minnesota:		
Bois Forte Reservation, PO Box 16, Nett Lake, MN 55772	B-91-SR-27-0101	300,000.00
Leech Lake Reservation, Tribal Council, Route 3 Box 100, Cass Lake, MN 56633	B-91-SR-27-0201	300,000.00
Prairie Island Tribal Council, 5750 Sturgeon Lake, Welch, MN 55089	B-91-SR-27-0301	$300,000.00
White Earth Reservation Tribal Council, P.O. Box 418, White, Earth, MN 56591	B-91-SR-27-0601	276,941.00
	B-92-SR-27-0601	23,059.00
Total Grant		300,000.00
Mississippi:		
Mississippi Band of Choctaw Indians, P.O. Box 39350, Philadelphia, MS 39350	B-92-SR-28-0101	300,000.00
New York:		
Seneca Nation of Indians, P.O. Box 1490 Route 438, Irving, NY 14081	B-92-SR-36-0201	300,000.00
North Carolina:		
Eastern Band of Cherokee Indians, P.O. Box 445, Cherokee, NC 28719	B-92-SR-37-0101	300,000.00
Wisconsin:		
Bad River Chippewa Tribe, P.O. Box 39, Odanah, WI 54861	B-91-SR-55-0101	300,000.00
Forest County Potawatomi Community, P.O. Box 345, Crandon, WI 54520	B-92-SR-55-0201	200,000.00
Lac Courte Oreilles Band of Lake Superior Ojibwa Indians, Route 2 Box 2700, Hayward, WI 54843	B-91-SR-55-0401	300,000.00
Red Cliff Band of Lake Superior Chippewa, P.O. Box 529, Bayfield, WI 54814	B-92-SR-55-0701	300,000.00

The location of grant files and contact person for any information regarding Region V grants listed above is: Issac Pimentel, Director, Housing and Community Development Division, Office of Indian Programs, Chicago Regional Office, 77 West Jackson Blvd., Chicago, Illinois 60604, Telephone (312) 353-1683.

Region VI		
Oklahoma:		
Apache Tribe, P.O. Box 1220, Anadarko, OK 73005	B-92-SR-40-0010	384,761.00
Caddo Tribe, P.O. Box 487, Binger, OK 73009	B-92-SR-40-0011	400,000.00
Cherokee Nation, PO Box 948, Tahlequah, OK 74465	B-91-SR-40-0007	700,000.00
Cheyenne-Arapaho, PO Box 38, Concho, OK 73022	B-92-SR-40-0003	500,000.00
Chickasaw Nation, PO Box 1548, Ada, OK 74820	B-92-SR-40-0007	700,000.00
Creek Nation, PO Box 580, Okmulgee, OK 74447	B-92-SR-40-0012	700,000.00
Choctaw Nation, PO Box 1210, Durant, OK 74702	B-91-SR-40-0001	700,000.00
Comanche Tribe, PO Box 908, Lawton, OK 83502	B-91-SR-40-0005	418,500.00
Kaw Tribe, PO Box 50, Kaw City, OK 74641	B-91-SR-40-0009	355,826.00
Kickapoo Tribe, PO Box 70, McLoud, OK 74851	B-92-SR-40-0009	400,000.00
Miami Tribe, PO Box 1326, Miami, OK 74355	B-91-SR-40-0006	400,000.00
Osage Nation, 627 Grandview, Pawhuska, OK 74056	B-91-SR-40-0002	404,000.00
Otoe-Missouria Tribe, Route 1, Box 62, Red Rock, OK 74651	B-92-SR-40-0008	271,865.00
Ponca Tribe, Box 2, White Eagle, Ponca City, OK 74601	B-91-SR-40-0010	392,214.00
	B-92-SR-40-0001	7,786.00
Total grant		400,000.00
Sac & Fox Nation, Route 2, Box 246, Stroud, OK 75079	B-92-SR-40-0004	445,603.00
Seneca-Cayuga Tribe, PO Box 1283, Miami, OK 74355	B-91-SR-40-0004	400,000.00
Seminole Nation, PO Box 1498, Wewoka, OK 74884	B-92-SR-40-0002	500,000.00
Tonkawa Tribe, PO Box 70, Tonkawa, OK 74653	B-92-SR-40-0006	384,762.00
Wichita Tribe, PO Box 729, Anadarko,OK 73005	B-91-SR-40-0008	400,000.00
Wyandotte Tribe, PO Box 250, Wyandotte, OK 74370	B-91-SR-40-0003	400,000.00
Iowa Tribe of KS & NE, Route 1, Box 58-A, White Cloud, KS 66094	B-91-SR-20-0001	400,000.00
Sac & Fox Nation of KS, Rural Route 1, Box 60, Reserve, KS 66434	B-92-SR-20-0001	400,000.00
Louisiana:		
Chitimacha Tribe, PO Box 661, Charenton, LA 80523-6691	B-91-SR-22-0001	351,460.00
Missouri:		
Eastern-Shawnee Tribe, PO Box 350, Seneca MO 64865	B-92-SR-40-0005	160,223.00
Texas:		
Alabama-Coushattta Tribe of Texas, Route 3, Box 640, Livingston, TX 77351	B-92-SR-48-0001	400,000.00

The location of grant files and contact persons for any information regarding the grants listed above is: Jules Valdez, Oklahoma City Office, Indian Programs Division, 200 N.W. 5th, Oklahoma City, OK 73102-3202, Telephone (405) 231-5968.

Region VIII		
Montana:		
Assiniboine & Sioux Tribes, PO Box 1027, Poplar, MT 59255	B-91-SR-30-0005	773,298.00

INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM—Continued

Grantee	Grant No.	Amount
Blackfeet Tribe, PO Box 850, Browning, MT 59417	B-91-SR-30-0004	800,000.00
Chippewa Cree Tribe, PO Box 544, Box Elder, MT 59521	B-91-SR-30-0002	500,000.00
Fort Belknap Tribe, PO Box 66, Harlem, MT 59526	B-91-SR-30-0001	800,000.00
Northern Cheyenne Tribe, PO Box 128, Lame Deer, MT 59043	B-92-SR-30-0003	800,000.00
Salish & Kootenai Tribes, PO Box 38, Pablo, MT 59855	B-92-SR-30-0005	800,000.00
Nebraska:		
Omaha Tribe, Macy, NE 68039	B-92-SR-31-0002	358,950.00
North Dakota:		
Devils Lake Sioux Tribe, Fort Totten, ND 58335	B-91-SR-38-0002	739,260.00
Three Affiliated Tribes HC 3 Box 2, New Town, ND 58763	B-91-SR-38-0001	800,000.00
Turtle Mountain Band of Chippewa Indians, PO Box 900, Belcourt, ND 58316	B-92-SR-38-0003	120,492.00
South Dakota:		
Cheyenne River Sioux Tribe, PO Box 590, Eagle Butte, SD 57625	B-91-SR-46-0007	350,000.00
Sisseton-Wahpeton Sioux Tribe, PO Box 509, Agency Village, SD 57262	B-92-SR-46-0006	800,000.00
Yankton Sioux Tribe, PO Box 261, Marty, SD 57361	B-92-SR-46-0004	600,000.00
Wyoming:		
Northern Arapahoe Tribe, PO Box 396, Fort Washakie, WY 82514	B-9-SR-56-0001	397,442.00
	B-92-SR-56-0001	402,558.00
Total grant		800,000.00
Shoshone Tribe, PO Box 538, Fort Washakie, WY 82514	B-92-SR-56-0002	800,000.00
Utah:		
Ute Indian Tribe, PO Box 190, Fort Duchesne, UT 84026	B-92-SR-49-0001	400,000.00
Southern Ute Tribe, PO Box 737, Ignacio, Colorado 81137	B-92-SR-08-0001	$400,000.00

The location of grant files and contact person for any information regarding the grants listed above is: Frank Padilla, Chief, Housing and Community Development Branch, Office of Indian Programs, 1405 Curtis Street, Denver, Colorado 80202–2349, Telephone (303) 844–6481.

Region IX		
Hualapai, PO Box 179, Peach Springs, AZ 86434	B-91-SR-04-0819	393,847.00
Kaibab-Paiute, H.C. 65 Box 2, Fredonia, AZ 86022	B-91-SR-04-0841	215,362.00
Navajo Nation, PO Box 308, Window Rock, AZ 86515	B-91-SR-04-0877	413,000.00
	B-92-SR-04-0877	1,740,000.00
Total grant		2,153,000.00
Tohono O'Odham, PO Box 837, Sells, AZ 85634	B-91-SR-04-0931	1,672,113.00
	B-92-SR-04-0931	967,987.00
Total grant		2,640,100.00
White Mountain, PO Box 700, Whiteriver, AZ 85941	B-91-SR-04-0817	631,250.00
Yavapai Prescott, 530 E. Merritt, Prescott, AZ 86301	B-91-SR-04-0871	520,500.00
Gila River, PO Box 97, Sacaton, AZ 85247	B-92-SR-04-0849	962,275.00
Salt River, Route 1 Box 216, Scottsdale, AZ 85256	B-92-SR-04-0872	357,491.00
Imminent Threat Grantees—Arizona		
Havasupai, PO Box 10, Supai, AZ 86435	B-92-SR-04-2504	42,725.00
San Carlos, PO Box O, San Carlos, AZ 85550	B-92-SR-04-2503	22,815.00
California:		
Manzanita, PO Box 1302, Boulevard, CA 91905	B-91-SR-06-0851	257,594.00
Santa Ynez, PO Box 517, Santa Ynez, CA 93460	B-91-SR-06-0808	720,500.00
Jamul, PO Box 612, Jamul, CA 91935	B-92-SR-06-0911	600,853.00
Rincon, PO Box 68, Valley Center, CA 92082	B-92-SR-06-0867	211,600.00
New Mexico:		
San Juan Pueblo, PO Box 1099, San Juan Pueblo, NM 87566	B-91-SR-35-0809	285,840.00
Sandia Pueblo, PO Box 6008, Bernalillo, NM 87044	B-91-SR-35-0906	810,000.00
Zuni Pueblo, PO Box 339, Zuni, NM 87327	B-91-SR-35-0896	710,879.00
Laguna Pueblo, PO Box 194, Laguna, NM 87026	B-92-SR-35-0868	1,082,677.00
Zia Pueblo, General Delivery, San Ysidro, NM 87327	B-92-SR-35-0845	786,600.00
Imminent Threat Grantees—New Mexico		
Tesuque Pueblo, Route 11 Box 1, Santa Fe, NM 87501	B-92-SR-35-2502	62,924.00

The location of grant files and contact person for any information regarding the grants listed above is: Gerald C. Hammon, Indian Programs Office, Two Arizona Center, 400 North 5th Street, Phoenix, AZ 85004–2361, Telephone (602) 379–4197.

Nevada:		
Battle Mountain, PO Box 138–13, Battle Mountain, NV 89820	B-91-SR-32-0807	803,348.00
Duckwater Indian, PO Box 68, Duckwater, NV 89314	B-92-SR-32-0815	443,800.00
Pyramid Lake Paiute, PO Box 256, Nixon, NV 89424	B-92-SR-32-0864	784,500.00
Reno-Sparks, 98 Colony Rd, Reno, NV 89502	B-91-SR-32-0878	719,452.00
Washoe-Dressle, 919 HWY 395 South, Cardnerville, NV 89410	B-92-SR-32-0869	704,666.00
Yerington Paiute, 171 Campbell Lane, Yerington, NV 89447	B-92-SR-32-0869	662,230.00

INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM—Continued

Grantee	Grant No.	Amount
Imminent Threat Grantees—Nevada		
Duck Valley In., PO Box 219, Owyhee, NV 89832	B-91-SR-32-2006	16,050.00
California:		
Berry Creek Rancheria, 1779 Mitchell Avenue, Oroville, CA 95965	B-92-SR-06-0927	591,602.00
Big Pine Indian, Box 700, Big Pine, CA 93513	B-91-SR-06-0831	653,000.00
Big Sandy Rancheria, PO Box 337, Auberry, CA 93602	B-92-SR-06-0882	399,546.00
Blue Lake Rancheria, PO Box 428, Blue Lake, CA 95525	B-92-SR-06-0892	329,144.00
Cedarville Rancheria, PO Box 126, Cedarville, CA 96013	B-92-SR-06-0903	414,216.00
Chico Rancheria, 3006 Esplanade, Suite G, Chico, CA 95922	B-91-SR-06-0918	676,793.00
Colusa Rancheria, PO Box 8, Colusa, CA 95932	B-91-SR-06-0813	602,323.00
Coyote Valley, PO Box 39, Redwood Valley, CA 95470	B-92-SR-06-0824	810,000.00
Hoopa Valley, PO Box 1348, Hoopa, CA 95546	B-91-SR-06-0884	896,540.00
Karok Tribe, PO Box 1016, Happy Camp, CA 96039	B-92-SR-06-0917	730,000.00
Pit River, PO Box Drawer 1570, Burney, CA 96013	B-92-SR-06-0904	295,789.00
Robinson Rancheria, PO Box 1119, Nice, CA 95464	B-91-SR-06-0891	332,077.00
Rohnerville Rancheria, PO Box 108, Eureka, CA 95502	B-92-SR-06-0823	116,750.00
Smith River Rancheria, PO Box 239, Smith River, CA 95567	B-91-SR-06-0887	797,845.00
Smith River Rancheria, PO Box 239, Smith River, CA 95567	B-92-SR-06-2005	15,000.00
Susanville Rancheria, Drawer U, Susanville, CA 96130	B-91-SR-06-0861	705,761.00
Table Bluff Rancheria, PO Box 519, Loleta, CA 95551	B-92-SR-06-0916	478,625.00
Trinidad Rancheria, PO Box 630, Trinidad, CA 95570	B-91-SR-06-0890	513,926.00
Tule River, PO Box 589, Porterville, CA 93258	B-92-SR-06-0914	796,702.00
Grindstone Rancheria, PO Box 63, Elk Creek, CA 95939	B-91-SR-06-0805	200,000.00
Yurok Indian, 517 Third St., Suite 21, Eureka, CA 95501	B-91-SR-06-2004	35,000.00

The location of grant files and contact person for any information regarding the grants listed above is: Bob Barth, Program Manager, Outstationed HUD OIP Office, 450 Golden Gate Avenue, P. O. Box 36003, San Francisco, CA 94102-3448.

Region X		
Jamestown S'Klallam Tribe, 305 Old Blyn Highway, Sequim, WA 98382	B-91-SR-53-0019	325,000.00
Muckleshoot Tribe, 39015-172nd SE, Auburn, WA 98002	B-92-SR-53-0001	235,000.00
Nisqually Tribe, 4820 She-Nah-Num Dr. SE, Olympia, WA 98503	B-92-SR-53-0006	110,200.00
Puyallup Tribe, 2002 E. 28th St., Tacoma, WA 98404	B-92-SR-53-0003	324,815.00
Shoalwater Bay Tribe, PO Box 130, Tokeland, WA 98590	B-91-SR-53-0016	325,000.00
Skokomish Tribe, N 80 Tribal Center Rd., Shelton, WA 98584	B-91-SR-53-0018	325,000.00
Squaxin Island Tribe, W 81, Highway 108, Shelton, WA 98584	B-92-SR-53-0005	325,000.00
Tulalip Tribes, 6700 Totem Beach Rd., Marysville, WA 98404	B-92-SR-53-0012	325,000.00
Upper Skagit Tribe, 2284 Community Plaza, Sedro Woolley, WA 98284	B-91-SR-53-0014	270,974.00
	B-91-SR-53-0014	54,026.00
Total grant		325,000.00
Imminent Threat Grantees—Washington		
Lummi Tribe, 2616 Kwina Rd., Bellingham, WA 98226	B-91-SR-53-0001	130,026.00
Oregon:		
Conf. Tribes of Siletz Reservation, PO Box 429, Siletz, OR 97380	B-91-SR-41-0004	325,000.00
Coquille Tribe, PO Box 1435, Coos Bay, OR 97420	B-92-SR-41-0005	325,000.00

The location of grant files and contact person for any information regarding the grants listed above is: Jeanne McArthur, U.S. Dept. of Housing and Urban Development, Office of Indian Programs, Seattle Federal Office Building, 909 First Avenue, Suite 200, Seattle, WA 98104-1000, Telephone (206) 220-5271.

Alaska:		
Akiachak IRA Council, PO Box 70, Akiachak, AK 99551	B-92-SR-02-0030	280,747.00
Aleut Community of St. Paul Island, St. Paul Island, AK 99660	B-92-SR-02-0019	500,000.00
Angoon Community Association, PO Box 138, Angoon, AK 99820	B-91-SR-02-0001	110,000.00
Birch Creek Village Council, General Delivery, Birch Creek, AK 99740	B-91-SR-02-0064	354,551.00
Chenega Bay IRA Council, PO Box 8079, Chenega Bay, AK 99574	B-92-SR-02-0020	400,275.00
Chignik Lagoon, Village Council, PO Box 57, Chignik, AK 99565	B-92-SR-02-0033	84,522.00
Chitina Village Council, PO Box 31, Chitina, AK 99566	B-92-SR-02-0072	395,538.00
Dot Lake, Traditional Council, PO Box 2272, Dot Lake, AK	B-91-SR-02-0035	102,088.00
	B-92-SR-02-0035	194,577.00
Total Grant		296,665.00
Emmonak Tribal Council, PO Box 126, Emmonak, AK 99581	B-91-SR-02-0061	500,000.00
Gambell IRA Council, PO Box 99, Gambell, AK 99742	B-92-SR-02-0034	500,000.00
Kake IRA Council, P.O. Box 316, Kake, AK 99830	B-92-SR-02-0049	281,312.00
Mentasta Village Council, P.O. Box 6019, Mentasta, AK 99780	B-92-SR-02-0070	392,538.00
Nililchik Traditional Council, P.O. Box 39070, Nililchik, AK 99639	B-91-SR-02-0058	170,630.00
Nondalton Tribal Council, General Delivery, Nondalton, AK 99640	B-92-SR-02-0062	258,098.00
Ruby Native Council, P.O. Box 90, Ruby, AK 99768	B-91-SR-02-0027	36,009.00
Sitka Tribe of Alaska, 456 Katlian Street, Sitka, AK 99835	B-91-SR-02-0051	270,230.00
Tanana Chiefs Conference, Inc., 122 First Avenue, Fairbanks, AK 99701	B-92-SR-02-0046	500,000.00

INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM—Continued

Grantee	Grant No.	Amount
Toksook Bay, Traditional Council, Nelson Island, Toksook Bay, AK 99637	B-91-SR-02-0018	111,217.00
	B-92-SR-02-0018	333,653.00
Total grant		444,870.00
Yak Tat Kwaan, Inc., P.O. Box 416, Yakutat, AK 99689	B-91-SR-02-0007	120,000.00

The location of grant files and contact person for any information regarding the grants listed above is: Colleen Craig, Community Development Division, 222 W. 8th Avenue, #64, Anchorage, AK 99513-7537, Telephone (907) 271-3669.

All grants were made under the authority of 24 CFR

[FR Doc. 93-22751 Filed 9-16-93; 8:45 am]

BILLING CODE 4210-32-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-93-1917; FR-3350-N-49]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Air Force*: John Carr, Realty Specialist, HQ-AFBDA/BDR, Pentagon, Washington, DC 20330-5130; (703) 696-5569; *GSA*: Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 208-0619; *Dept. of Agriculture*: Marsha Pruitt, Realty Officer, USDA, South Bldg. Rm 1566, 14th and Independence Ave. SW, Washington, DC 20250; (202) 447-3338; (These are not toll-free numbers).

Dated: September 10, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 9/17/93

Suitable/Available Properties

Buildings (by State)

California

30 Dormitories
Norton Air Force Base
San Bernardino Co: San Bernardino CA 92409-
Landholding Agency: Air Force-BC
Property Number: 199320048
Status: Excess
Base closure Number of Units: 30

Comment: ranging in size from 4330 sq. ft. to 25,723 sq. ft., 1-story concrete block, scheduled to be vacated 9/94

35 Administrative Bldgs.
Norton Air Force Base
San Bernardino Co: San Bernardino CA 92409-
Landholding Agency: Air Force-BC
Property Number: 199320049
Status: Excess
Base closure Number of Units: 35
Comment: ranging in size from 1750 sq. ft. to 261,700 sq. ft., 1-story concrete block including offices, admin. and hq. maint. facilities, scheduled to be vacated 9/94

4 Training Facilities
Norton Air Force Base
San Bernardino Co: San Bernardino CA 92409-
Landholding Agency: Air Force-BC
Property Number: 199320050
Status: Excess
Base closure Number of Units: 4
Comment: ranging in size from 4600 to 29380 sq. ft., 1-story concrete block classrooms, scheduled to be vacated 9/94.

53 Warehouses
Norton Air Force Base
San Bernardino Co: San Bernardino CA 92409-
Landholding Agency: Air Force-BC
Property Number: 199320051
Status: Excess
Base closure Number of Units: 53
Comment: ranging in size from 9000 sq. ft. to 293,574 sq. ft., 1-story concrete block warehouses, scheduled to be vacated 9/94

28 Commercial Bldgs.
Norton Air Force Base
San Bernardino Co: San Bernardino CA 92409-
Landholding Agency: Air Force-BC
Property Number: 199320052
Status: Excess
Base closure Number of Units: 28
Comment: ranging in size from 400 sq. ft. to 129000 sq. ft., 1-story concrete block including stores, child care centers, clinics, dining facilities, scheduled to be vacated 9/94.

21 Maintenance Facilities
Norton Air Force Base
San Bernardino Co: San Bernardino CA 92409-
Landholding Agency: Air Force-BC
Property Number: 199320053
Status: Excess
Base closure Number of Units: 21
Comment: ranging in size from 2942 sq. ft. to 625,145 sq. ft., 1-story concrete block including maintenance, storage, and headquarters facilities, scheduled to be vacated 9/94

8 Recreation Bldgs.
Norton Air Force Base
San Bernardino Co: San Bernardino CA 92409-
Landholding Agency: Air Force-BC
Property Number: 199320054
Status: Excess
Base closure Number of Units: 8
Comment: ranging in size from 3000 sq. ft. to 25,358 sq. ft., 1-story concrete block including library, golf bldgs., gym, recreation/bowling/youth centers, sched. to be vacated 9/94

Colorado

3 Bldgs.
Former U.S. Forest Service Admin. Site
Fox Lane
Beaulah Co: Pueblo CO 81023-
Landholding Agency: GSA
Property Number: 549330002
Status: Excess
Comment: 1100 sq. ft. 2-story house, 600 sq. ft. 1-story house and 1800 sq. ft. garage, most recent use—classroom, storage, residence
GSA Number: 7–GR–CO–525

Minnesota

Eric & Laura Brittain—Cabin
Section 18 Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320004
Status: Unutilized
Comment: 708 sq. ft., 2-story, needs repair, most recent use—recreation cabin, endangered species habitat, off-site use only

Kenneth Krienke—House
Govt Lots 7, 8, 9 & 10 Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320005
Status: Unutilized
Comment: 2288 sq. ft., 2-story, most recent use—residence, endangered species habitat, off-site use only

Kenneth Krienke—Garage/Shed
Govt Lots 7, 8, 9, & 10 Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320006
Status: Unutilized
Comment: 3840 sq. ft., 1-story pole bldg., earth flooring, endangered species habitat, off-site use only

Kenneth Krienke—Shed
Govt Lots 7, 8, 9, & 10 Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320007
Status: Unutilized
Comment: 126 sq. ft., 1-story, needs repair, most recent use—fish cleaning shed, endangered species habitat, off-site use only

Lundeen—House
Govt Lot 14 Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320008
Status: Unutilized
Comment: 1440 sq. ft., 2-story, wood frame, needs roof replaced, eagle habitat, most recent use—summer residence, off-site use only

Lundeen—Shed
Govt Lot 14 Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320009
Status: Unutilized
Comment: 64 sq. ft., 1-story, eagle habitat, most recent use—fish cleaning shed, off-site use only

Lundeen—Garage
Govt Lot 14 Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320010
Status: Unutilized
Comment: 192 sq. ft., 1-story, needs repair, eagle habitat, most recent use—garage, off-site use only

Lundeen—Cabin (North)
Govt Lot 14 Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320011
Status: Unutilized
Comment: 960 sq. ft., 2-story, eagle habitat, most recent use—summer residence, off-site use only

Lundeen—Cabin (South)
Govt Lot 14 Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320012
Status: Unutilized
Comment: 960 sq. ft., 2-story, eagle habitat, most recent use—summer residence, off-site use only

Army Reserve Center
301 Lexington Ave. South
New Prague Co: LeSueur MN 56071-
Landholding Agency: GSA
Property Number: 549330003
Status: Excess
Comment: 4316 sq. ft. brick veneer and concrete block office and training bldg. and a 1170 sq. ft. maintenance shop on 3.82 acres of land leased by the City
GSA Number: 2–D–MN–558

Pennsylvania

Storage & Maint. Facility
1200 Airport Road
Hopewell Co: Beaver PA 15001-
Landholding Agency: GSA
Property Number: 549330004
Status: Excess
Comment: 44157 sq. ft., 1-story concrete block bldg. (inadequate heating) and 19 acres of land, easements for pipelines and public utilities
GSA Number: 4–L–PA–766

Land (by State)

Minnesota

Bike Trail
Minneapolis Co: Hennepin MN 55417-
Location: Located along the Bureau of Mines eastern boundary
Landholding Agency: GSA
Property Number: 549330005
Status: Excess
Comment: long strip of land consisting of approximately 2 acres, property is not accessible by motor vehicle
GSA Number: 2–I–MN–544–A

Unsuitable Properties

Buildings (by State)

Arkansas

Bldg. 12, Cass Job Corps Cntr
Hwy 23
Ozark Co: Franklin AR 72949-
Landholding Agency: Agriculture
Property Number: 159320013
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Minnesota

Daryll Schwieger—Cabin Co: Itasca MN
Landholding Agency: Agriculture
Property Number: 159320002
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

Kenneth Krienke—Cabin Co: Itasca MN
Landholding Agency: Agriculture

Property Number: 159320003
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration

[FR Doc. 93–22673 Filed 9–16–93; 8:45 a.m.]
Billing Code 4210–29–F

Office of the Assistant Secretary for Administration

[Docket No. D–93–984; FR–3546–D–02]

Amendment of Redelegation of Procurement Authority

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of amendment of redelegation of procurement authority.

SUMMARY: The redelegation of procurement authority published in the **Federal Register** on December 7, 1992 at 57 FR 57841 (Docket No. D–92–984; FR–3341–D–01) is amended to allow for the redelegation of small purchase authority to Regional employees for the specific use of the Governmentwide Commercial Credit Card System.

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, room 5262, 451 Seventh Street, SW., Washington, DC 21410, (202) 708–0294. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: HUD's redelegation of procurement authority is being amended to decentralize the granting of credit card purchasing authority from Headquarters to each Region.

Accordingly, the redelegation of authority published in the **Federal Register** on December 7, 1992 at 57 FR 57841 (Docket No. D–92–984; FR–3341–D–01) is amended to add a new subparagraph (b)(5) to section A, Amendment of Redelegation of Authority, Paragraph 3 (Paragraph 2 was renumbered as Paragraph 3 in the Amendment of Redelegation of Procurement Authority published on March 11, 1993 at 58 FR 13496 (Docket No. D–93–1020; FR–3439–D–01), as follows:

(5) Regional employees for small purchases (FAR Subpart 13.5) using the Governmentwide Commercial Credit Card system, in accordance with the Department's directives governing credit card purchasing.

Authority: 41 U.S.C. 414(2); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 26, 1993.

Herbert G. Persil,

Acting Assistant Secretary for Administration.

[FR Doc. 93–22750 Filed 9–16–93; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–068–02–4930–10–4503]

Emergency Closure of Public Lands; California

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Emergency closure of certain public lands to motorized vehicle use in the Juniper Flats Area of San Bernardino County, California for a period of two years.

SUMMARY: In accordance with title 43, Code of Federal Regulations, §§ 8364.1 and 8341.2, notice is hereby given that all the below listed lands and roads located therein administered by the Bureau of Land Management (BLM) have been closed to all motorized vehicle use; except for BLM operation and maintenance vehicles, law enforcement vehicles and other vehicles specifically authorized by an authorized officer of the Bureau of Land Management; and except for the list of routes administered by the BLM which are identified below, which will be signed as "open".

This closure affects ALL of the public lands and roads located within the following lands of the Juniper Flats/ Cottonwood Creek area of San Bernardino County, located to the north of the San Bernardino National Forest, to the east of Deep Creek Road, to the west of Grapevine Canyon Road and to the south of Tussing Ranch Road:

San Bernardino Meridian

T. 3 N., R. 2 W.
Secs. 2, 3, 4, 5, 6, 7, and 8.
T. 3 N., R. 3 W.
Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.
T. 4 N., R. 2 W.
Secs. 26, 27, 28, 29, 31, 32, 33, 34, and 35.
T. 4 N., R. 3 W.
Secs. 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, and 35.
A total of approximately 17,000 acres.

This closure affects only public lands. County roads and segments of closed roads through private lands are unaffected. The designated open public lands routes to street-legal and non street-legal motorized use (including "greensticker" vehicles) are:

(1) The access road to the San Bernardino National Forest that runs south and east from the private lands of Bowen Ranch and back and forth on Forest Service lands (3N59A), on approximately 1.7 miles of public land roads in Sections 11 and 12 of T. 3 N., R. 3 W and Sections 7 and 8 of T. 3 N., R. 2 W.

(2) The access road that runs southwesterly off of 3N59A towards the Hot Springs along Deep Creek in the San Bernardino National Forest, on approximately .2 miles of public land roads in the SE quarter of the SW quarter and the SW quarter of the SE quarter in Section 11 of T. 3 N., R. 3 W.

(3) The access road that runs generally easterly off of Deep Creek Road to Japatul/Juniper Flats Road, on approximately 5 miles of public land roads in Sections 7, 8, 9, 10, and 11 of T. 3 N., R. 3 W.

In addition, the following routes are designated open on public lands to street-legal motorized use only:

(4) Japatul/Juniper Flats Road (SV104), on public lands in Sections 25, 26 and 35 of T. 4 N., R. 3 W. and Sections 2, 3, and 11 in T. 3 N., R. 2 W.

(5) The access road to the hanggliding area that runs west off of Japatul Road, on approximately 2 miles of public land roads in Sections 26 and 27 of T. 4 N., R. 3 W.

(6) The access road to the camping area that runs west off of Japatul Road, on approximately 1.5 miles of public land roads in Sections 34 and 35 of T. 4 N., R. 3 W.

(7) Grapevine Canyon Road (4N16), through public lands in Sections 26 and 35 of T. 4 N., R. 2 W. and Section 2 of T. 3 N., R. 2 W.

(8) "Coxey" Truck Road east of Arrastre Canyon, southeast off of Bowen Ranch Road, through public lands in Section 31 of T. 4 N., R. 2 W. and Section 5 of T. 3 N., R. 2 W.

(9) Oak Springs Road, southeast off of Bowen Ranch Road to Oak Springs, through public lands in Section 1 of T. 4 N., R. 3 W. and Sections 6, 7, and 8 of T. 4 N., R. 2 W.

San Bernardino County maintained roads in the area are open to street-legal motorized use only, and are not affected by this closure. This includes:

(1) Bowen Ranch Road, through public lands in Section 31 of T. 4 N., R. 2 W. and Sections 1, 11, and 12 of T. 3 N., R. 3 W.

DATES: The emergency closure action goes into effect September 17, 1993 and will remain in effect for 2 years or until formal motor vehicle route planning and designation has been completed for this area in accordance with title 43, Code of

Federal Regulations 8342.2, whichever comes first; or until the Authorized Officer determines it is no longer needed. This closure may be extended at the authorizing officer's discretion if formal route designation has not yet occurred.

SUPPLEMENTARY INFORMATION: This emergency closure is required to mitigate the impacts of unregulated street-legal and non street-legal motorized vehicle use in a Class "L" limited use area as designated in the California Desert Conservation Area Plan (1980), as amended. This area includes resources of high cultural sensitivity, important populations of wildlife including upland game birds, generally shallow, fragile soils, and a unique transmountain vegetative regime comprised of several ecotones that represent a complex transitional area between desert and mountain types. Part of the area was designated an ACEC (Area of Critical Environmental Concern) to protect these resources. Historic recreation use has caused considerable adverse impacts to these sensitive resources, including: excessive soil erosion and loss, vegetative damage, riparian area degradation, destruction of range management fences, and water quality impacts, especially at the springs in the area. Increasing recreation use has occurred over the last three years in the area, causing additional concern. This closure will also facilitate management of permitted uses, including recreation uses, and allow motorized access to the Forest Service OHV trail network while protecting surrounding resources.

PENALTIES: Failure to comply with this closure is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Tim Read of the Barstow Resource Area (619–256–3591). Maps of the closure area and affected roads will be posted at the closest Hesperia, Lucerne Valley, and Apple Valley Post Offices to the area, and may also be obtained from the Barstow Resource Area, 150 Coolwater Lane, Barstow, CA 92311.

Dated: September 10, 1993.

Karla K.H. Swanson,

Area Manager.

[FR Doc. 93–22692 Filed 9–16–93; 8:45 am]

BILLING CODE 4310–40–M

[ID–050–4333–02]

Emergency Closure of Public Land (Western Portion of the Shoshone BLM District)

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Closure of public land to off-road motorized travel.

SUMMARY: Notice is hereby given that effective immediately certain public land located in the western portion of the Shoshone BLM District is closed to off-road motorized travel. The closed area is bounded and generally described as follows:

That portion of Idaho Department of Fish and Game Unit 45, west of the Bliss-Hill City road, north of the old King Hill Highway, south of the Idaho Power double pole power line, and east of King Hill Creek.

All public land administered by the Bureau of Land Management within the above described area is closed to off-road motorized vehicle use from the date of the notice until May 1, 1994.

Exemptions from this closure may be approved by the Authorized Officer. Exemptions may be approved for federal, state, and local government personnel on official duty, emergency service personnel including medical, search and rescue, utility services, and other licensed or permitted individuals.

The described area is experiencing high concentrations of mule deer hunters. Past hunting activity has resulted in off-road motorized vehicle use which has opened tracks and caused excessive soil erosion during snowmelt or seasonal rains. The purpose of the closure is to protect natural resources from excessive soil erosion caused by disturbances from off-road vehicle use.

The authority for this closure is 43 CFR 8364.1. The closure will remain in effect until May 1, 1994.

FOR FURTHER INFORMATION CONTACT: Robert D. Cordell, Bennett Hills Resource Area Manager, P.O. Box 2–B, Shoshone Idaho 83352, telephone (208) 886–7251.

Dated: September 10, 1993.

Mary C. Gaylord,

District Manager.

[FR Doc. 93–22712 Filed 9–16–93; 8:45 am]

BILLING CODE 4310–GG–M

[NM–060–4340–02]

Closure and Restriction Order: Roswell Resource Area Bat Hibernacule

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Bat Hibernacula Seasonal Closure.

SUMMARY: Pursuant to 43 CFR 8364.1, all Bureau of Land Management (BLM) caves in the Roswell Resource Area identified as bat hibernation sites (hibernacula) are seasonally closed to entry. With the exception of essential search and rescue, or other emergency or administrative operations for cave resources protection and administration, 10 caves containing hibernation sites, and other caves that may be identified in the future as hibernacula, are closed seasonally during the hibernation season, to all visitation, from November 1 to April 15.

Known affected caves are listed below:

Big-Eared Cave
Crockett's Cave
Feather Cave
Malpais Madness Cave
Torgac (Torgoc/Pillar) Caves
Corn Sinkhole Cave
Crystal Caverns
Fort Stanton Cave
Martin-Antelope Gyp Cave Complex
Tres Ninos Cave

The purpose of the closure is to protect bat species and their habitat during the critical hibernation period. Any person who fails to comply with this closure and restriction order, under 43 CFR 8364.1, may be subject to the penalties provided in regulations at 43 CFR 8360.0–7: a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

DATES: This action is effective October 1, 1993.

ADDRESSES: The Federal Cave Resources Protection Act of 1988 prohibits disclosure of cave locations. Information pertaining to the above closure and restriction will be available at the BLM Roswell Resource Area and Roswell District offices in Roswell, New Mexico.

FOR FURTHER INFORMATION CONTACT: Saundra L. Allen, Area Manager, BLM Roswell Resource Area, P.O. Drawer 1857, Roswell, New Mexico 88202–1857, (505) 624–1790.

SUPPLEMENTARY INFORMATION: Caves in the Roswell Resource Area are particularly attractive to bats for hibernation because they offer an optimum yet narrow range of temperature and other microclimatical variables required for successful hibernation. Research has indicated that all bat species are extremely susceptible and sensitive to human disturbance during hibernation, and that the continuance of recreational trips during the hibernation season is detrimental to the survival of bat species.

Known species that use the above caves for hibernation are:

Plecotus townsendii (Western Big-Eared Bat)
Myotis ciliolabrum (Small-Footed Myotis)
Myotis lucifugus (Little Brown Bat)
Myotis velifer ssp. (Cave Bat)
Eptesicus fuscus (Big Brown Bat)
Pipestrellus hesperus (Western Pipestrelle)
Pipistrellus subflavus (Eastern Pipestrelle)

A permanent seasonal closure policy, from November 1 to April 15, pertaining to all Roswell Resource Area winter bat hibernacula, both currently known and future discoveries, will be written. Existing cave management plans will be amended to reflect this policy. This policy will be addressed in the Roswell Resource Area Resource Management Plan.

Dated: September 10, 1993.

John H. Whiting,

Acting District Manager.

[FR Doc. 93–22713 Filed 9–16–93; 8:45 am]

BILLING CODE 4310–FB–M

[CA–920–4110–02; CACA 3049]

Notice of Revocation of the Bodie Known Geothermal Resource Area; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of revocation.

SUMMARY: Pursuant to the authority vested in the Secretary of the Interior by section 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), and delegations of authority in 235 Departmental Manual 1.1 L, and Secretarial Orders 3071 and 3087, the following described lands in the Bodie Known Geothermal Resource Area are revoked in their entirety.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Sean E. Hagerty, Bureau of Land Management, California State Office, Division of Mineral Resources, 2800 Cottage Way, Sacramento, California 95825, (916) 978–4735.

Bodie Known Geothermal Resource Area

Mt. Diablo Meridian

T. 4 N., R. 26 E.,
Sec. 33, all.

The area described contains 640 acres more or less.

The subject lands will be made available to the first qualified applicant under the regulation appearing in 43 CFR part 3210 beginning with the first calendar month following the date of this notice.

Dated: September 10, 1993.

Robert M. Anderson,

Deputy State Director, Mineral Resources.

[FR Doc. 93–22710 Filed 9–16–93; 8:45 am]

BILLING CODE 4310–40–M

[CA–066–03–4333–02]

Notice of Closure and Restrictions on Public Land in Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure of public vehicle entry on Public Lands.

SUMMARY: Notice is hereby given for the purpose of closure to vehicle entry to minimize environmental impacts resulting from vehicle usage on the public lands identified in the notice. This closure will include all lands within T5S, R4W, sec. 26, SBBM. An exception to this closure is the use of motor vehicles on the four routes of travel in this section of public land as identified in the November 1992, South Coast Resource Management Plan. This closure will not apply to emergency response agencies conducting official business or to land or resource management agencies conducting studies under permit from the Bureau of Land Management, U.S. Fish and Wildlife Service, California Department of Fish and Game, City of Canyon Lake, Riverside County and any local agency charged with the management of the water in Canyon Lake.

ORDER: Effective on July 1, 1993 and will remain in effect until rescinded or modified by the authorized officer. 1. All lands within T5S, R4W, sec. 26, SBBM shall be closed to all vehicle entry except as indicated in summary, and shall remain closed until thirty (30) days after the record of decision of the South Coast Resource Management Plan has been signed. Establishing the four (4) routes of travel in the section of public land as identified in the November, 1992, South Coast Resource Management Plan as the only designated route of travel in this section or until rescinded or modified by the authorized officer. Authority for this use restriction may be found in 43 CFR 8341.2. Violations of this closure are punishable by a fine not to exceed $10,000 and/or 12 months imprisonment.

SUPPLEMENTARY SUMMARY: The purpose of this order is to prohibit all unauthorized vehicle use within T5S, R4W, sec. 26, SBBM. Vehicle use in this area poses a significant threat to wildlife habitat (including the endangered species Stephen's Kangaroo Rat). Soil and vegetative resources. In addition the indiscriminate use of vehicles is causing a proliferation of vehicle routes in the area.

EFFECTIVE DATE: This closure is effective on July 1, and expires upon notification of the authorized officer.

FOR FURTHER INFORMATION CONTACT: Joan Oxendine, Chief of Resources, Palm Springs-South Coast Resource Area, P.O. Box 2000, North Palm Springs, CA 92258–2000. (619) 251–0812.

Dated: September 9, 1993.

Julia Dougan,

Area Manager.

[FR Doc. 93–22714 Filed 9–16–93; 8:45 am]

BILLING CODE 4310–40–M

[CA–940–4210–06; CACA 28855]

Opening of Land in a Proposed Withdrawal; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The temporary 2-year segregation of a proposed withdrawal of 4,766.53 acres of public lands, 1,361.04 acres of public domain reserved minerals, and 396.60 acres of National Forest System lands for protection of the lands for the proposed Auburn Dam and Reservoir and its facilities expires on October 17, 1993, by operation of law. The public lands will be open to surface entry and mining, and the public domain reserved minerals and the National Forest System lands will be open to mining. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, room E–2845, Sacramento, California 95825, 916–978–4820.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register**, 56 FR 52052, October 17, 1991, as corrected by 56 FR 58122, November 15, 1991, and 56 FR 61046, November 29, 1991, which (1) segregated the public land described therein for up to 2 years from settlement, sale, location, or entry under the general land laws, including the mining laws, (2) segregated the public domain reserved minerals from location and entry under the mining laws, and (3) segregated the National Forest System lands from location and entry under the United States mining laws.

The 2-year segregation expires October 17, 1993. The withdrawal application will continue to be processed unless it is canceled or denied.

At 10 a.m. on October 18, 1993, the public lands described in the aforementioned Federal Register notices will return to being open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on October 18, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on October 18, 1993, the public lands, the public domain reserved minerals, and the National Forest System lands described in the aforementioned Federal Register notices will return to being open to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriations of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Since the lands covered under this proposed withdrawal are still being considered for withdrawal by the applying agency, new withdrawal applications and further segregation may encumber these lands prior to the effective date of this notice. Therefore, all locators are responsible for enduring that the lands opened under this notice are free of other withdrawal applications and that the requirements of applicable law are met.

Dated: September 8, 1993.

Nancy J. Alex,

Chief Lands Section.

[FR Doc. 93–22365 Filed 9–16–93; 8:45 am]

BILLING CODE 4310–40–M

[UT–040–03–4212–14, UTU–63375]

Utah; Notice of Realty Action

SUMMARY: The following described public land in Kane County, Utah has been examined and identified as suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713) at not less than fair market value. The following parcels of land will be sold to Kanab City using non-competitive (direct) sale procedures (43 CFR 2711.3–3): Salt Lake Meridian, Utah T. 43 S., R. 6 W., sec. 23, S½SE¼SE¼, sec. 26, lots 7, 8, S½SE¼NE¼, NE¼SW¼, E½SE¼, encompassing 240.37 acres. The lands will not be offered for at least sixty (60) days after the publication of this notice. Publication of this notice in the **Federal Register** segregates the public land from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent, or two hundred seventy (270) days from the date of the publication, whichever occurs first.

THE TERMS AND CONDITIONS APPLICABLE TO THE SALE ARE: 1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The patent would be subject to a 10 foot wide water pipeline right-of-way, UTU–51384.

DATES/ADDRESSES: For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Cedar City District Manager, Bureau of Land Management, 176 East DL Sargent Drive, Cedar City, Utah 84720. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Concerning the lands and the terms and conditions of the sale, **CONTACT** Michael Noel, Environmental Specialist, Kanab Resource Area, 318 North 100 East, Kanab, Utah 84741, (801) 644–2672.

Dated: September 10, 1993.

Gordon R. Staker,

District Manager.

[FR Doc. 93–22711 Filed 9–16–93; 8:45 am]

BILLING CODE 4310–DQ–M

[MT–060–03–4410–02]

West HiLine Resource Management Plan Amendment; Liberty and Toole Counties, Montana; Supplement to the Notice of Intent

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Supplement to the notice that the West HiLine Resource Management Plan will be amended by the Great Falls Resource Area, Great Falls, Montana.

SUMMARY: This notice supplements the "Notice that the West HiLine Resource Management Plan will be Amended" that the Bureau of Land Management published in the **Federal Register**, Volume 58, No. 164, page 45117, August 26, 1993.

This supplement notes that the public scoping meetings for the amendment, identified in the August 26, 1993 notice, will not fulfill the public meeting requirements for withdrawal proposals under 43 CFR part 2310.3–1. The BLM will hold public meetings on the draft amendment and environmental impact statement in the summer of 1994 which will also fulfill the public meeting requirements for withdrawal proposals under 43 CFR 2310.3–1.

FOR FURTHER INFORMATION CONTACT: Richard L. Hopkins, Area Manager, Great Falls Resource Area, 812 14th. St. N., Great Falls, MT 59401, 406–727–0503.

Dated: September 8, 1993.

David L. Mari,

District Manager.

[FR Doc. 93–22739 Filed 9–16–93; 8:45 am]

BILLING CODE 4310–DN–M

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for Solidago houghtonii (Houghton's goldenrod) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the threatened *Solidago houghtonii* (Houghton's goldenrod). This plant species occurs on Federal, state, municipal, and private lands in nine Michigan counties on or near Lakes Huron and Michigan and at one site in Genessee County, New York. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before

October 18, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111; telephone 612–725–3276. Written comments and materials regarding the plan should be addressed to Zella E. Ellshoff, Regional Botanist, at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Zella E. Ellshoff at the above address and telephone number.

SUPPLEMENTARY INFORMATION:

Background

Restoring a endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's (Service's) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Solidago houghtonii is found in the United States in eight Michigan counties on the shores of Lakes Huron and Michigan, one Michigan county slightly inland, and one New York county. The principal causes for decline of this species are development of the species' limited lakeshore habitat and the overuse of these areas for recreational activities, particularly off-road vehicles. Recovery efforts will focus on actions necessary to conserve known occurrences, maintain ecosystem processes, and enable each occurrence to be naturally self-sustaining. These actions include, but are not limited to, protecting sites, surveying habitat, monitoring occurrences, disseminating current information, and conducting biosystematic research.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority

The authority of this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 10, 1993.

Marvin E. Moriarty,

Regional Director.

[FR Doc. 93–22735 Filed 9–16–93; 8:45 am]

BILLING CODE 4310–55–M

Notice of Availability of a Draft Recovery Plan for Sedum Integrifolium ssp. Leedyi (Leedy's Roseroot) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the threatened *Sedum intergrifolium* ssp. *leedyi* (Leedy's roseroot). This plant is endemic to southeastern Minnesota and western New York and occurs in six known populations—two on state-owned property and four on privately-owned land. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before October 18, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056; telephone 612–725–3276. Written comments and materials regarding the plan should be addressed to Zella E. Ellshoff, Regional Botanist, at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Zella E. Ellshoff at the above address and phone number.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Sedum integrifolium ssp. *leedyi* is found only in two counties in Minnesota on cool, moderate cliffs and in two counties in New York on lakeside cliffs. This taxon is an isolated subspecies of a species with three other subspecies which occur in the western United States. The two disjunct areas of occurrence of *Sedum integrifolium* ssp. *leedyi* suggest the taxon is a relict of a formerly more widespread Pleistocene flora. Threats to the taxon include its disjunct occurrences, low numbers, off-site influences, and on-site disturbances. Recovery efforts will focus on actions necessary to conserve the three privately-owned Minnesota populations and a comparably sized and self-sustaining portion of the main New York population. These actions include, but are not limited to: Conducting research on biosystematics, ecology, habitat, and genetics; developing and

implementing a conservation easement program; establishing and maintaing a genetic bank; establishing funding for conservation actions; monitoring occurrences; providing public education; and surveying habitat.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 10, 1993.

Marvin E. Moriarty,

Regional Director.

[FR Doc. 93-22734 Filed 9-16-93; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the bureau's clearance officer at the phone number listed blow. Comments and suggestions on the requirement should be made within 30 days directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1028-0050), Washington DC 20503, telephone 202-395-7340.

Title: Map Requirements Survey
OMB Approval Number: 1028-0050
Abstract: OMB Circular A-16 mandates coordination of mapping and digital cartographic data activities financed in whole or in part by Federal funds, to reduce duplication of effort and facilitate effective coordination of mapping programs. The U.S. Geological Survey uses the collected information to determine priorities for effective production management.
Bureau Form Number: None
Frequency: Biennially
Description of Respondents: State and local governments
Estimated Completion Time: 37 hours
Annual Responses: 25
Annual Burden Hours: 925 hours
Bureau Clearance Officer: Geraldine A. Wilson, 703-648-7309

Dated: August 18, 1993.

Allen H. Watkins,

Chief, National Mapping Division.

[FR Doc. 93-22809 Filed 9-16-93; 8:45 am]

BILLING CODE 4310-31-M

Minerals Management Service

Outer Continental Shelf (OCS) Advisory Board—Policy Committee; Notice and Agenda for Meeting

The Policy Committee of the OCS Advisory Board will meet Wednesday, October 20 and Thursday, October 21, 1993, at the Hyatt Regency Reston, Reston Town Center, 1800 Presidents Street, Reston, Virginia (703) 709-1234.

The agenda will cover the following principal subjects:

Wednesday, October 20:
- —Administration's Energy Outlook and Its Implications for the OCS for the Next 10 Years, Including the Domestic Energy Initiative
- —Congressional Committee Reorganization, Legislation, and Appropriations Update
- —Regional Directors Panel

Thursday, October 21:
- —OCS Legislative Subcommittee
- —MMS Selected Issue Update
- —OCS Policy Committee Sand and Gravel Report
- —Safety and Environmental Management Program for OCS Operations and Facilities
- —Operations Update: Ohmsett, Oil Pollution Act Implementation, In Situ Burn in Newfoundland
- —Committee Roundtable

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the Policy Committee. Such requests should be made no later than October 8, 1993, to the Office of OCS Advisory Board Support, Minerals Management Service, 381 Elden Street, MS-4110, Herndon, Virginia 22070, Attention: Terry Holman.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, call Terry Holman at (703) 787-1211.

Minutes of the Policy Committee meeting will be available for public inspection and copying at the Minerals Management Service in Herndon, Virginia. This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law No. 92-463, 5 U.S.C. appendix 1, and the Office of Management and Budget's Circular No. A-63, Revised.

Dated: September 8, 1993.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 93-22741 Filed 9-16-93; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Hamilton Grange National Memorial, New York City, NY; Extension of Document Review Comment Period

In accordance with section 102(c) of the National Environmental Policy Act of 1969 and customary procedures, the National Park Service has placed on review the draft General Management Plan and draft Environmental Impact Statement for Hamilton Grange National Memorial in New York City, New York.

The document was initially made available on April 29, 1993, for a 60-day period of review and comment through June 30, 1993. By notice placed on June 2, 1993 the comment and review period was extended through August 13, 1993. This notice extends the comment period through October 14, 1993.

For a copy of the draft document, or further information contact Superintendent, Manhattan Sites, National Park Service, 26 Wall Street, New York, New York 10005.

Dated: September 10, 1993.

John C. Reed,

Acting Regional Director.

[FR Doc. 93-22762 Filed 9-16-93; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Notice of Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation in Ash Grove Cement Company. Its address is 8900 Indian Creek Parkway, Suite 600, Overland Park, KS 66210. It is a Delaware corporation.

2. Wholly-owned subsidiaries which will participate in the operations are:

Ash Grove Materials Corp., a Delaware corporation
Precision Packaging Corp., Arkansas corporation
Materials Packaging Corp., a Tennessee corporation

B. 1. Parent corporation and address of principal office: Liebovich Bros., Inc., 2116 Preston Street, Rockford, IL 61102.

2. Wholly owned companies which will participate in the operations, and States of incorporation:

Corporation	State of incorporation
Liebovich Bros. National Sales Corp.	Illinois.
Liebovich Structural Fabricating Co.	Illinois.
Liebovich Steel & Aluminum Co.	Illinois.
Precision Grinding & Stress Relieving Co.	Illinois.
Liebovich Custom Fabricating Co.	Illinois.
Liebovich Scrap & Machinery Co..	Illinois.
Good Metals Inc.	Illinois.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 93-22758 Filed 9-16-93; 8:45 am]

BILLING CODE 7035-01-M

[No. 41086]

American Trucking Associations; Petition for Declaratory Order; Single State Insurance Registration

AGENCY: Interstate Commerce Commission.

ACTION: Institution of declaratory order proceeding.

SUMMARY: The Commission is instituting a proceeding under 5 U.S.C. 554(e) to determine whether certain State actions are inconsistent with the Commission's rules governing State registration of motor carriers. The Commission is acting in view of evidence suggesting that States may be in violation of 49 CFR 1023.2(a), 1023.4(c)(4), and 1023.4(g). This action is part of the Commission's continuing effort to clarify its regulations and facilitate smooth operation of the registration system. The Commission is providing interested persons an opportunity to participate in the proceeding and is inviting their comments.

DATES: Comments by interested persons are due October 4, 1993. The Commission does not intend to issue a service list. Replies will not be permitted.

ADDRESSES: The original and 10 copies of comments identified as such and referring to No. 41086 must be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927-5610, or Kenneth Schwartz, (202) 927-5316. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: In a decision served May 18, 1993, in Single State Insurance Registration, 9 I.C.C.2d 610 (1993), the Commission adopted regulations replacing the multi-State registration system, known as the "bingo card" program, with a simplified, base-State insurance registration system. The Commission acted in accordance with the mandate of section 4005 of the Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102-240, which substantially amended 49 U.S.C. 11506—Registration of Motor Carriers by a State. Under the new regulations, carriers must—

(1) File proof of insurance with a single participating registration State,

(2) Pay fees to that State to be allocated among all participating States in which the carrier operates, and

(3) Keep in each of their vehicles a copy of a receipt issued by their registration State.

As pertinent here, the statute and the Commission's regulations provide, in essence, that a State is eligible to participate as a registration State and to receive fee revenue under the program only if, as of January 1, 1991, it charged or collected a fee for a vehicle identification stamp or a number pursuant to the provisions of the previous registration system. See 49 U.S.C. 11506(c)(2)(D) and 49 CFR 1023.2(a). Also as pertinent here, the statute and the regulations provide, in essence, that the per vehicle fee each pertinent participating State charges must equal the fee, not to exceed $10, that such State collected or charged as of November 15, 1991. The statute and the regulations also indicate that the charging or collection of any fee not in accordance with the new fee system shall be deemed to be a burden on interstate commerce. See 49 U.S.C. 11506(c)(2)(B)(iv) and 11506(c)(2)(C), and 49 CFR 1023.4(c)(4) and 1023.4(g).

On August 27, 1993, the American Trucking Associations (ATA) filed a petition requesting the Commission to determine that certain State actions are inconsistent with the above-cited statutory and regulatory requirements. Specifically, ATA alleges, first, that Kentucky has commenced participating in the new registration program even though, in view of facts alleged and interpreted by ATA, Kentucky is not eligible to participate. ATA alleges, second, that Texas is ignoring the requirement that fees be frozen as of November 15, 1991, and is charging all carriers an across-the-board fee of $10. ATA points to the Commission's determination that States must continue to observe reciprocity agreements that had the effect of reducing carriers' fees. See Single State Insurance Registration, supra, 9 I.C.C.2d 617-619. As a third point, ATA contends that several participating States are attempting to raise fees beyond the levels that they charged based on reciprocity agreements under the previous registration system. Acknowledging that registration States may face difficulties in determining the actual fees carriers previously paid to other States, ATA recommends a Commission order requiring participating States to allow carriers to submit evidence as to the fees they paid to participating States in 1991.

ATA contends that the involved issues are purely legal, and it argues that the Commission thus may issue a decision without seeking public comment. It argues that thousands of carriers and truck drivers are in jeopardy of fines and penalties.

We agree with ATA that uncertainty and controversy exist. On the other hand, we believe that the Commission would benefit from comment from interested persons, including the States of Texas and Kentucky. Nevertheless, it is clear that expeditious resolution of the issues presented is in the best interest of all carriers, States, and other interested persons. Therefore, we will institute a declaratory order proceeding and provide interested persons an opportunity to participate. We will allow only 15 days from publication of this notice for interested persons to file comments, and we will not accept replies. We encourage persons that are in agreement with one another to submit joint filings. Also, we advise persons that they may adopt the submissions of others by reference without submitting duplicate pleadings.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A declaratory order proceeding is instituted to consider the issues raised in this proceeding.

2. Comments are due October 4, 1993.

Decided: September 9, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-22814 Filed 9-16-93; 8:45 am]

BILLING CODE 7035-01-P

[Docket No. AB–290; Sub-No. 131X]

Norfolk and Western Railway Co.; Abandonment Exemption; Between Oak Hill and Lochgelly, WV

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon its 3.7-mile line of railroad between milepost WL–2.5 at Oak Hill and milepost WL–6.2 at Lochgelly, WV.[1]

NW has certified that:

(1) No local traffic has moved over the line for at least 2 years;

(2) There is no overhead traffic on the line;

(3) No formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and

(4) The requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 17, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by September 27, 1993.[4] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 7, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: F. Blair Wimbush, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA) by September 22, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 10, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–22759 Filed 9–16–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6; Sub-No. 27X]

The Denver and Rio Grande Western Railroad Co.; Abandonment Exemption; In El Paso County, CO

The Denver and Rio Grande Western Railroad Company (DRGW) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon a 1.78-mile portion of its Manitou Branch rail line from milepost 75.26, at or near the Colorado Springs rail station, to milepost 77.04, at or near the end of the track, in El Paso County, CO.

DRGW has certified that:

(1) No local traffic has moved over the line for at least 2 years;

(2) Any overhead traffic on the line can be rerouted over other lines;

(3) No formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and

(4) The requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 17, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 1152.29[3] must be filed by September 27, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 7, 1993, with: Office of the Secretary, Case

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicant, in its verified notice, indicated a proposed consummation date of October 18, 1993. Because the verified notice was not filed until August 30, 1993, consummation should not have been proposed to take place prior to October 19, 1993. Applicant's representative has confirmed that the correct consummation date is on or after October 19, 1993.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

DRGW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by September 22, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 8, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–22757 Filed 9–16–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–12; Sub–No. 156X]

Southern Pacific Transportation Co; Discontinuance of Trackage Rights Exemption; In Orange County, CA

Southern Pacific Transportation Company (SPT) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments and Discontinuances to discontinue trackage rights over a 2.99-mile section of the Anaheim Branch line owned by the Union Pacific Railroad Company (UP) in Orange County, CA.[1] The line extends from milepost 15.51, at or near UP rail station ATSF Crossing, to milepost 18.50, at or near UP rail station Fullerton.

SPT has certified that:

(1) No local traffic has moved over the line for at least 2 years;

(2) Overhead traffic has been rerouted over other lines;

(3) No formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and

(4) The requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.[2]

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 17, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues[3] and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)[4] must be filed by September 27, 1993. Petitions to reopen must be filed by October 7, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.[5]

A copy of any petition filed with the Commission should be sent to applicant's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, room 846, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by September 22, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental and historic preservation conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 10, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–22756 Filed 9–16–93; 8:45 am]

BILLING CODE 7035–01–M

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[1] The section of line over which SPT seeks to discontinue service is embraced in a line that UP seeks to abandon in a petition for exemption filed on July 29, 1993, in Docket No. AB–33 (Sub-No. 80X). SPT's trackage rights over the rest of the line involved in Docket No. AB–33 (Sub-No. 80X) were discontinued under an exemption notice filed in Docket No. AB–12 (Sub-No. 121X) which was served and published in the **Federal Register** on March 7, 1988 (53 Fed. Reg. 7250–7251).

[2] SPT did not file an Environmental or Historic report, which it argues are not required in this instance. In any event, however, SPT incorporates by reference the reports submitted by UP in Docket No. AB–33 (Sub-No. 80X).

[3] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[4] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[5] Because this is only a discontinuance proceeding, there is no need to provide for the trail use/rail banking or public use conditions routinely provided for in abandonment proceedings.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1627–93]

Closure of Temporary Asylum Interview Office In Los Angeles, California

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

EFFECTIVE DATE: The effective date of this notice is August 20, 1993.

FOR FURTHER INFORMATION CONTACT: Marianne Kilgannon-Martz, Asylum Officer, Office of International Affairs, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Attention: ULLICO, Third Floor, Telephone (202) 633–1024.

SUMMARY: This notice advises the public of the closure of the asylum interviewing site in the Federal Building at 300 N. Los Angeles Street, Los Angeles, California. All asylum applicants from the Los Angeles metropolitan area should appear at the Anaheim location for their scheduled interviews and direct all necessary mail to the Anaheim address. This notice provides information regarding the permanent site.

BACKGROUND: In 1991, INS announced that it had established seven asylum offices located in Newark, NJ; Arlington, VA; Miami, FL; Houston, TX; Chicago, IL; Los Angeles and San Francisco, CA (56 Federal Register 50810, October 9,

1991). A temporary interviewing site was maintained in the Federal Building at 300 N. Los Angeles Street, Los Angeles, California pending the establishment of a permanent location in the Los Angeles area. The permanent site was located in Anaheim in October 1992. The present mailing and street address of the Asylum Office serving the Los Angeles area is provided below.

Anaheim, California

[Mailing address]
P.O. Box 65015
Anaheim, California 92815–5015
[Street address]
290 S. Anaheim Blvd.
Anaheim, California 92805

Applicants reading in the Los Angeles metropolitan area should appear for their scheduled interviews at the above address.

Dated: September 1, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93–22761 Filed 9–16–93; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decisions, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

Maryland
MD930042 (Sept. 17, 1993)
New York
NY930043 (Sept. 17, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Maryland
MD 930006 (Feb. 19, 1993)

Volume II

Arkansas
AR930001 (Feb. 19, 1993)
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KS930023 (Jul. 02, 1993)
KS930025 (Jul. 02, 1993)
KS930026 (Jul. 16, 1993)
KS930028 (Aug. 28, 1993)
Michigan
MI930001 (Feb. 19, 1993)
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TX930018 (Feb. 19, 1993)

Volume III

Arizona
AZ930001 (Feb. 19, 1993)
Idaho
ID930001 (Feb. 19, 1993)
ID930003 (Feb. 19, 1993)
ID930004 (Feb. 19, 1993)
Montana
MT930010 (Aug. 6, 1993)
Oregon
OR930001 (Feb. 19, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 10th day of September 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–22553 Filed 9–16–93; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–28,722]

Anchor Woven Label Co., Alcoa, Tennessee; Affirmative Determination Regarding Application for Reconsideration

On August 27, 1993, the Amalgamated Clothing & Textile Workers' Union (ACTWU) requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on July 30, 1993 and published in the **Federal Register** on August 17, 1993 (58 FR 43656).

The union claims that the company closed the plant and has begun importing woven labels.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 10th day of September 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93–22730 Filed 9–16–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28, 802]

Digital Equipment Corp., Buffalo, New York; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Digital Equipment Corporation, Buffalo, New York. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–28, 802; Digital Equipment Corporation, Buffalo, New York (September 9, 1993)

Signed at Washington, DC, this 10th day of September, 1993.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 93–22729 Filed 9–16–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,853]

H.W. Jan Enterprises, Inc., South River, New Jersey; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 12, 1993 in response to a worker petition which was filed on behalf of workers at H.W. Jan Enterprises, Incorporated, South River, New Jersey.

H.W. Jan Enterprises, Incorporated is out of business. H.W. Jan Enterprises, Incorporated worked primarily for After Five a manufacturer of ladies' dresses and After Five closed permanently. Efforts to develop further information to complete the investigation and to make a determination for eligibility under section 221 of the Trade Act of 1974 have proved to be unsuccessful. Since no further information is available to complete the investigation in this case, the investigation has been terminated.

Signed at Washington, DC, this 10th day of September 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–22728 Filed 9–16–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28, 799, et al.]

Termination of Investigation

In the matter of [TA–W–28, 799] IMC–AGRICO Co. (formerly IMC Fertilizer, Inc.), Kingsford Mine, Bartow, Florida; [TA–W–28, 799A] IMC–AGRICO Co. (formerly IMC Fertilizer, Inc.), 4-Corners Mine, Bartow, Florida

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 21, 1993 in response to a worker petition which was filed on behalf of workers at IMC-Agrico Company, Bartow, Florida.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 3rd day of September 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-22731 Filed 9-16-93; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of August 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,577; United Technologies Corp., Pratt & Whitney Aircraft, East Hartford, CT

TA-W-28,578; United Technologies Corp., Pratt & Whitney Aircraft, North Haven, CT

TA-W-28,825; Edel-Brown Co., Inc., Everett, MA

TA-W-28,579; United Technologies Corp., Pratt & Whitney Aircraft, Rocky Hill, CT

TA-W-28,580; United Technologies Corp., Pratt & Whitney Aircraft, Middletown, CT

TA-W-28,581; United Technologies Corp., Pratt & Whitney Aircraft, Cheshire, CT

TA-W-28,582; United Technologies Corp., Pratt & Whitney Aircraft, Southington, CT

TA-W-28,820; Mine Safety Appliance, Esmond, RI

TA-W-28,788; Schindler Elevator Corp., Hydraulic and Architectural Products Plant, Gettysburg, PA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-28,661; Rich Tool & Dies Co., Scarborough, ME

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-28,849; Trimac Transportation Services (Western), Inc. Riddle, OR

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-28,830, TA-W-28,831; Winters Industries, A Division of Kaiser Aluminum, Canton, OH and Alliance, OH

The investigation revealed that criterion (1) and criterion (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,774; Exxon Chemical Co, Bayway Chemical Plant, Linden, NJ

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

TA-W-28,843; July Fashions II Division of Leslie Fay, Tuscarora, PA

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification.

TA-W-28,858; Magnetek Century Electric, Inc., El Paso, TX

The workers' firm does not provide an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-28,827; The Carborundum Co., Monofrax Refractories Div., Falconer, NY

The investigation revealed that criterion (1) and criterion (3) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations

TA-W-28,772; Hillin-Simon Oil Co., Midland, TX

A certification was issued covering all workers separated on or after June 3, 1992.

TA-W-28,846; Liberty Optical, Newark, NJ

A certification was issued covering all workers separated on or after June 21, 1992.

TA-W-28,749; Dowty Silcofab, Fairport Harbor, OH

A certification was issued covering all workers separated on or after March 1, 1993.

TA-W-28,850 & TA-W-28,850A; Russ Togs, Inc., Long Island City, NY and New York, NY

A certification was issued covering all workers separated on or after June 22, 1992.

TA-W-28,794; Oxford of Alma, Inc., Alma, GA

A certification was issued covering all workers separated on or after May 28, 1992.

TA-W-28,904; Oxford of Alma North, Alma, GA

A certification was issued covering all workers separated on or after July 26, 1992.

TA-W-28,826; Eagle Knitting Mills, Inc., Waupun, WI

A certification was issued covering all workers separated on or after June 17, 1992.

TA-W-28,812; Wilkes Barre Apparel, Wilkes Barre, PA

A certification was issued covering all workers separated on or after June 17, 1992.

TA-W-28,824; Forster Manufacturing Co., Inc., Mallawamkeag, ME

A certification was issued covering all workers separated on or after June 11, 1992.

TA-W-28,642; Duchess Footwear Corp., South Berwick, ME

A certification was issued covering all workers separated on or after April 23, 1992.

TA-W-28,844; Parsons Industrial Diamond, West Hartford, CT

A certification was issued covering all workers producing diamond CBN and PCD tools and related administrative staff separated on or after June 15, 1992.

I hereby certify that the aforementioned determinations were

issued during the month of August 1993. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 7, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–22732 Filed 9–16–93; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL COMMISSION ON MANUFACTURED HOUSING

Meeting

AGENCY: National Commission on Manufactured Housing.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 101–625, as amended, the National Commission on Manufactured Housing announces a forthcoming meeting of the Commission.

DATES: September 21, 1993, 7 p.m.–9 p.m., Committee Sessions; September 22, 1993, 8:30 a.m.–5 p.m., Full Commission Meeting; September 23, 1993, 8:30 a.m.–3 p.m., Full Commission Meeting.

ADDRESSES: Radisson Plaza Hotel at Mark Center, 5000 Seminary Road, Alexandria, VA 22311. (703) 845–1010.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Manufactured Housing, 301 N. Fairfax Street, suite 110, Alexandria, VA 22314 (703) 603–0440.

Type of Meeting: Open.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 93–22805 Filed 9–16–93; 8:45 am]

BILLING CODE 6820–EA–M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Application Received Under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 13, 1993. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357–7817

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. *Applicant*

Diane McKnight, Cathy Tate, Paul von Guerard, Harry House, Andrew Fountain, Bruce Vaughn, U.S. Geological Survey, 3215 Marine St., Boulder, CO 80303.

Activity for Which Permit Requested

The USGS–WRD scientists are conducting a study of the hydrology of Canada Stream, and other streams in the Taylor Valley. Canada Stream is located within site of Special Scientific Interest No. 12, Canada Glacier, Lake Fryxell, Taylor Valley, Victorialand. In 1990/91 a continuously-recording stream gage station was installed on Canada Stream. This year (1993/94) USGS–WRD personnel will continue to operate and maintain the gage and to collect water quality samples along the stream. These activities will use the designated paths and all other constraints will be followed.

Location

Canada Glacier, Lake Fryxell, Taylor Valley and Victorialand.

Dates: October 1, 1993–February 1, 1994.

Thomas F. Forhan,

Permit Office, Division of Polar Programs.

[FR Doc. 93–22701 Filed 9–16–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–245, 50–336; License Nos. DPR–21, DPR–65]

Northeast Utilities, (Millstone Nuclear Power Station); Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by separate Petitions dated August 21, 1993, Carmela V. Marien and Marianne W. Nariccio (Petitioners) have requested that the Executive Director for Operations expedite an immediate investigation and take accelerated enforcement action against Northeast Utilities for willful violation of the employee protection provisions of 10 CFR 50.7. As grounds for these requests, the Petitioners assert that they have been retaliated against for engaging in protected activities consisting of raising concerns regarding a computer system to be used in the execution of the licensee's fitness for duty program.

The requests are being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The requests have been referred to the Director of the Office of Enforcement. By letters dated September 10, 1993, the Deputy Director of the Office of Enforcement advised the Petitioners that their request that the NRC undertake an immediate investigation would be considered as part of the Director's review of the Petitions themselves. As provided by § 2.206, appropriate action will be taken on these requests and the Petitions within a reasonable time.

Copies of the Petitions are available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 10th day of September 1993.

For The Nuclear Regulatory Commission.

Joseph R. Gray,

Deputy Director, Office of Enforcement.

[FR Doc. 93–22765 Filed 9–16–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-219]

GPU Nuclear Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 165 to Facility Operating License No. DPR-16 issued to GPU Nuclear Corporation (the licensee), which revised the Technical Specifications for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey. The amendment is effective as of the date of issuance.

The amendment revises Technical Specification 5.2.A to change the current containment drywell design pressure of 62 psig to the new design pressure of 44 psig. Related changes to Technical Specification Bases are also revised. Unrelated changes to the Bases of Technical Specifications 3.4 and 3.5 were also made.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 8, 1991 (56 FR 37732). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (58 FR 47768).

For further details with respect to the action see: (1) The application for amendment dated July 22, 1991, as supplemented February 14, 1992, August 19, 1992, and July 12, 1993, (2) Amendment No. 165 to License No. DPR-16, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 13th day of September 1993.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Senior Project Manager, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93-22764 Filed 9-16-93; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Disaster Relief; Correction

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of disaster relief in response to Midwestern flood; Correction.

SUMMARY: This document corrects the notice of disaster relief in response to Midwestern flood (FR Doc. 93-20601) published Tuesday, August 24, 1993 (58 FR 44741), which provides relief from certain PBGC deadlines and penalties to persons affected by the current flood in the midwestern states. As published, the notice contains errors which are in need of correction. Accordingly, the following corrections are made:

1. On page 44741, in the second column, in the twelfth line of the first full paragraph, after "business" insert ", or for which the office of a service provider, bank, or insurance company maintaining information necessary to meet the applicable deadlines,".

2. On page 44741, in the second column, in the eighteenth line of the first full paragraph, after "area" insert ", or with respect to whom the office of the service provider, bank, insurance company, or other person maintaining the information necessary to file the request for reconsideration or appeal is within such an area".

3. On page 44741, in the second column, in the eighth line of the second full paragraph, after "charges" remove "still apply".

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93-22807 Filed 9-16-93; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32864; File No. SR-Amex-92-28]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by American Stock Exchange, Inc. Relating to Arbitration

September 10, 1993.

I. Introduction

On August 19, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend its rules and procedures governing the administration of arbitration. On February 1, 1993, the Amex submitted to the Commission Amendment No. 1 to the proposed rule change which clarified the language to be included in all pre-dispute arbitration agreements with respect to class actions.[3] The Amex states that the proposed amendments codify modifications to the Uniform Code of Arbitration ("Uniform Code") already approved by the Securities Industry Conference on Arbitration ("SICA").[4]

The proposed rule change, together with Amendment No. 1, was published for comment in Securities Exchange Act Release No. 32067 (March 30, 1993), 58 FR 17918 (April 6, 1993). No comments were received on the proposal.

II. Description of the Proposals

The Amex proposes to amend its arbitration rules concerning, among other things, class action claims, pre-dispute arbitration clauses, the duty of members to arbitrate, discovery procedures in simplified arbitration cases, and interest accrual on awards. The specific proposed amendments are described more fully below.

Proposed Rule 600(d), relating to class actions, would provide that class

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] See letter from Janice M. Stroughter, Director of Hearings and Special Counsel, Amex, to Betsy Prout, Staff Attorney, Commission, dated November 5, 1992.

[4] SICA is comprised of a representative from each self-regulatory organization ("SRO") that administers an arbitration program, a representative of the securities industry, and four representatives of the public. The SROs that administer an arbitration program are the New York, American, Boston, Cincinnati, Chicago, Pacific, and Philadelphia Stock Exchanges, the Chicago Board Options Exchange, the National Association of Securities Dealers, and the Municipal Securities Rulemaking Board.

actions are ineligible for submission to arbitration. The proposal would enable brokerage customers to pursue class action claims against their broker-dealers in court notwithstanding any arbitration agreement they might have signed. The proposed Rule also provides that any claim filed by a member or members of a putative or certified class action is ineligible for arbitration at the Exchange if the claim is encompassed by a putative or certified class action filed in federal or state court, or is ordered by a court to a non-self-regulatory organization arbitration forum for class-wide arbitration. However, the proposed Rule provides that such claims are eligible for arbitration in accordance with proposed Rule 600(a) or pursuant to the parties' contractual agreement, if any, if a claimant demonstrates that it has elected not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

At the same time, the proposed rule would specify that no member, allied member, member organization and/or person associated with a member or member organization should seek to enforce any agreement to arbitrate against a customer that has initiated in court a putative class action or is a member of a putative or certified class with respect to any claims encompassed by the class action unless and until:

(1) The class certification is denied;

(2) The class is decertified;

(3) The customer is excluded from the class by the court; or

(4) The customer elects not to participate in the putative or certified class action or, if applicable, has complied with any condition for withdrawing from the class prescribed by the court.

Proposed Rule 427 would require that all new pre-dispute arbitration agreements with customers include a statement regarding the ineligibility of class actions for submission to arbitration.

Proposed Rule 600(a) would restate the language found in Article VIII of the Exchange's Constitution which sets forth the duty of members to arbitrate disputes arising in connection with business conducted among themselves or with customers. The Amex states that this amendment is proposed in order to conform the Amex rules with the Uniform Code adopted by the Amex in 1980. Proposed Rule 600(c) would allow the Exchange to refer claims arising out of transactions in a readily identifiable market to the forum for that market when the claimant so consents.

The Amex also proposes to revise its simplified arbitration procedures. Currently, Exchange Rule 621 does not specifically provide a mechanism for resolving pre-hearing matters in simplified proceedings, i.e., in those cases where the amount in dispute is less than $10,000. The Amex is proposing to amend this rule to provide that in simplified proceedings, if a hearing is demanded or consented to, the General Provision Governing a Pre-Hearing Proceeding under Rule 607 would apply. If, however, a hearing is not demanded or consented to, shorter discovery periods would apply. Specifically, proposed Rule 621(h)(iii) would provide that, in cases of simplified arbitration, if no hearing is demanded or consented to, all requests for document production should be submitted in writing to the Director of Arbitration within ten business days of notification of the identity of the arbitrator selected to decide the case, and that the requesting party should serve simultaneously its requests for document production on all parties. Any response or objection to the requested document production would have to be served on all parties and filed with the Director of Arbitration within five business days of receipt of the requests for production. Pursuant to the proposed rule, the selected arbitrator would resolve all requests under Rule 621(h)(iii) on the papers submitted.

The Amex proposes to amend Rule 618 governing the payment of interest on awards. Currently, all awards bear interest from the date of the award and must be paid within thirty days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. Amended Rule 618 would require that interest accrue on awards from the date of the award only if the award is not paid within the required 30-day period or if the award is the subject of a motion to vacate which is denied, or as specified by the arbitrators in the award.

The Amex proposes to amend its rules concerning certain procedural matters. First, Rule 602 would classify individuals who are registered under the Commodities Exchange Act or who are members of a registered futures association or any commodities exchange as being from the securities industry for purposes of classification of arbitrators. Second, Rule 602(f) would clarify the time limitations applicable to any party wishing to exercise a peremptory challenge by providing that a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within five business days of notification of the identity of the persons named under Rule 602(e) (Notice of Selection of Arbitrators), 607(d) (Pre-Hearing Conference), or 607(e) (Decisions by Selected Arbitrator), whichever comes first. Next, Rule 608(d) would clarify the arbitrators' authority to proceed, at their discretion, with an arbitration when a party fails to appear at a continuation of a hearing. Finally, Rule 612 would clarify that arbitrators are empowered to take appropriate action to obtain compliance with any ruling by the arbitrators. The Amex states that such action may include the assessment of fees or costs, preclusion of documents or witnesses, and making disciplinary referrals.

The Amex states that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) [5] in particular, in that it is designed to promote just and equitable principles of trade and protect investors and the public interest by improving the administration of an impartial forum for the resolution of disputes relating to the securities industry.

III. Discussion

The Commission has considered the Exchange's proposed rule change and finds that, for the reasons set forth below, the proposals are consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, the requirements of section 6(b)(5) of the Act. Section 6(b)(5) of the Act requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. The Commission believes that, because these proposed rules should aid in the just resolution of disputes between investors and broker-dealers, the proposal should further the objectives of section 6(b)(5) of the Act. The Commission also believes, for the reasons set forth below, that the proposed rule change furthers the public interest by improving the speed and efficiency of the arbitration process.

The Commission believes that the Amex's proposed rule relating to class action claims is an important initiative to protect investors and the public interest. In the past, individuals who attempted to certify class actions in litigation were subject to the enforcement of their separate arbitration contracts by their broker-dealers. Without access to class actions in appropriate cases, both investors and broker-dealers have been put to the

[5] 78 U.S.C. 78f(5) (1988).

expense of wasteful, duplicative litigation. The proposed rule would prevent this practice. In addition, proposed Amex Rule 427 will ensure that arbitration agreements clearly state that class action claims are specifically outside the scope of arbitration contracts entered into by members. Moreover, the Commission believes that, it is appropriate to amend Amex Rule 600 to restate the duty of members to arbitrate certain disputes, as specified in Article VIII of the Amex Constitution.

Based on the above, the Commission believes that the Amex's proposal to amend Rules 600 and 427 to permit certified class actions to proceed in court, while allowing individual claimants who elect not to participate in the class, or who withdraw from the class, to arbitrate should increase customer confidence in the markets and promote the efficient resolution of disputes for both investors and broker-dealers.

The Commission believes that the proposed amendment to Rule 600(c), which would permit the Amex to refer, with the claimant's consent, arbitration claims which arise in a readily identifiable market to the arbitration forum for that market should provide for a more efficient allocation of claims among the various SROs. This, in turn, should result in a more efficient allocation of the Exchange's arbitration resources and a more timely resolution of the parties' disputes.

The Commission believes that the Amex's amendments to Rule 621(h) should improve the Amex's simplified arbitration procedures by establishing clear procedures for discovery requests and document production, and should therefore assist in the fair resolution of arbitration cases involving small claims. The proposed amendment to Rule 621 would require that the requesting party, rather than the Exchange, serve all parties simultaneously with any requests for document production. The Commission believes that the proposal should save administrative time and costs while continuing to ensure that all parties receive adequate notice concerning requests for documents.

The Commission also believes the proposed amendments to Rule 618, which governs the payment of interest on awards, should improve the procedures for administering arbitration proceedings. Because the proposal generally would require the payment of awards within thirty days of receipt of the award, the proposal is designed to allow a reasonable period of time for administrative processing of award payments without the payment of interest. At the same time, the proposal should provide an incentive for the paying party to comply with the payment of the award within thirty days. As a result, the Commission believes that the proposal should encourage prompt payment of arbitration awards and increase investor confidence in the arbitration process.

The Commission also believes that it is appropriate for the rule to continue to require that all monetary awards be paid within thirty days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. This provision should preserve the paying party's ability to seek review of the award in court while postponing temporarily the payment of that award under the requirements of the Amex's rule. Conversely, because the proposal provides that an award shall bear interest from the date of the arbitration award if the award was the subject of a motion to vacate that is denied by a court, the proposal should help to protect the payee's interest in the receipt of an arbitration award without unreasonable or unjustifiable delay.

Finally, the Commission believes that it is appropriate to allow arbitrators discretion in awarding interest on the payment of awards. This provision should help the arbitrators to design an award that fully, fairly and promptly compensates a party for economic damages incurred.

The Commission believes that the proposed amendment to Rule 602, which will classify an individual who is registered under the Commodities Exchange Act or is a member of a registered futures association or any commodities exchange or is associated with any such person as being from the securities industry, for the purposes of classification of arbitrators, is consistent with the Act. the Commission believes that this amendment should promote impartial and knowledgeable decision in the arbitration of disputes between investors and broker-dealers.

The Commission also believes that the proposed amendment to Rule 602(f), Peremptory Challenge, should clarify the time requirements for the exercise of peremptory challenges in arbitration proceedings. Because amended Rule 602(f) would provide that parties who wish to exercise peremptory challenges must follow the procedures set forth in the rule following the notification of person named under Amex Rule 602(e), 607(d), or 607(e), whichever occurs first, the proposal should provide parties with clear guidelines regarding the time limitations applicable to peremptory challenges. As a result, the proposed rule changed should contribute to the prompt resolution of the parties' disputes.

Moreover, the Commission believes that the proposed amendment to Rule 608(d), Failure to Appear, should improve the efficiency and speed of arbitration. Because this amendment would clarify the authority of arbitrators to proceed with an arbitration if a party, after due notice, fails to appear at the continuation of a hearing session, the proposal should eliminate unnecessary delays in the arbitration proceedings and should assist in the prompt resolution of arbitration claims.

Finally, the Commission believes that the amendment to Amex Rule 612 should clarify the arbitrators' authority to enforce their rulings. As noted above, the Amex arbitrators may, for example, in order to obtain compliance, assess fees or costs, preclude the late submission of documents or witnesses, or make disciplinary referrals. The Commission believes that it is appropriate to amend Rule 612 to affirm the arbitrators' authority to take appropriate action to obtain compliance with any of their rulings and to provide that such interpretations and actions to obtain compliance are final and binding on the parties. The Commission believes that the amendment to Rule 612 should raise customer confidence in the arbitration process by assuring that those individuals who utilize the Amex's arbitration forum comply with the arbitrators' rulings.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[6] that the above-mentioned proposed rule change be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22693 Filed 9–16–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Boston Stock Exchange, Inc.

September 10, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Charter Medical Corp.

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[6] 15 U.S.C. 78s(b)(2) (1988).

[7] 17 CFR 200.30–3(a)(12) (1991).

Common Stock, $.24 Par Value (File No. 7–11244)
RJR Nabisco Holding Corp.
Dep. Shs. Rep. 1/100 shares of Series B Cum. Pfd. Stock No Par Value (File No. 7–11245)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 1, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22707 Filed 9–16–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Chicago Stock Exchange, Inc.

September 10, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Equity Residential Properties Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11246)
Gabelli Equity Trust, Inc.
Rights, No Par Value (File No. 7–11247)
IBM Corporation
Depository Shares (7½% Pfd-A) No Par Value (File No. 7–11248)
National Standard Company
Common Stock, $.01 Par Value (File No. 7–11249)
Salomon Brothers 2008 Worldwide Dollar Government Term Trust, Inc.
Common Stock, $.001 Par Value (File No. 7–11250)
Voyageur Colorado Insured Municipal Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–11251)
Espirito Santo Financial Holding
American Depositary Shares (Each ADS Rep. 1 Ord. $10 Par Value (File No. 7–11252)
Georgia Power Company
ADJ Rate Pfd-A 93, No Par Value (File No. 7–11253)
PIMCO Commercial Mortgage Securities Trust, Inc.
Common Stock, $.001 Par Value (File No. 7–11254)
ROC Communities, Inc.
Common Stock, $.01 Par Value (File No. 7–11255)
Town & Country Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11256)
United States Filter Corporation
Common Stock, $.01 Par Value (File No. 7–11257)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 1, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22706 Filed 9–16–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

September 10, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Aon Corp.
8% Cum. Prep. Pfd. Stock, $1.00 Par Value (File No. 7–11258)
AT&T Capital Corp.
Common Stock, $.01 Par Value (File No. 7–11259)
Bear Stearns Co.'s, Inc.
Depositary Shares (rep. 1/8 sh. 7.60A% Cum. Pfd. Stock, Ser. C) (File No. 7–11260)
Beverly Enterprises, Inc.
$2.75 Cum. Conv. Exch. Pfd. Stock, $1.00 Par Value (File No. 7–11261)
Camden Property Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11262)
Crestar Financial Corp.
Common Stock, $5.00 Par Value (File No. 7–11263)
Eckerd Corp.
Common Stock, $.01 Par Value (File No. 7–11264)
Equity Residential Properties Trust, Inc.
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11265)
Excel Realty Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–11266)
Motor Coach Industries International, Inc.
Common Stock, $.01 Par Value (File No. 7–11267)
Municipal Partners Fund II
Common Stock, $.001 Par Value (File No. 7–11268)
Nuveen Insured Premium Municipal Fund 2
Shares of Beneficial Interest, $.01 Par Value (File No. 7–11269)
Reading & Bates Corp.
$1.625 Conv. Pfd., $1.00 Par Value (File No. 7–11270)
Shanghai Petrochemical Co. Ltd.
American Depositary Shares (rep. 100 Cl. H shrs., RMB $1.00 Par Value (File No. 7–11271)
Southwestern Property Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–11272)
United Meridian Corp.
Common Stock, $.01 Par Value (File No. 7–11273)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 1, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-22705 Filed 9-16-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32861; File No. SR-NASD-93-49]

Self-Regulatory Organizations; Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Bond Quotation Data Service Fees

September 10, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 1, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes the following fee structure for the receipt of quotation and summary transaction information on high yield bonds included in the NASD's Fixed Income Pricing System ("FIPS") via securities information vendors ("Bond Quotation Data Service" or "BQDS"). All of the following is an addition to section 16 of Part VIII of Schedule D to the NASD's By-Laws.

Schedule D

Part VIII

16. Fixed Income Pricing System ("FIPS")

* * * * *

d. Bond Quotation Data Service ("DQDS")

1. Full BQDS

The charge to be paid by the subscriber for each interrogation or display device receiving Full BQDS information is $50 per month. Full BQDS information includes the bids and offers of all FIPS participants registered in each FIPS security, the inside bid/ask quotation for each FIPS security, and hourly summary transaction information on FIPS securities.

2. Limited BQDS

The charge to be paid by the subscriber for each interrogation or display device receiving Limited BQDS information is $5 per month. Limited BQDS information includes the inside bid/ask quotation for each FIPS security and hourly summary transaction information on FIPS securities.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On March 19, 1993, the Commission approved an NASD proposal to establish and operate FIPS, an electronic facility that collects, processes, and disseminates real-time, firm quotations for 30 to 50 of the most liquid high yield bonds.[1] FIPS also requires members to report all over-the-counter ("OTC") transactions in high yield bonds. In addition, the system disseminates hourly summary transaction reports on FIPS securities that provide the high and low execution prices and the accumulated trading volume for each FIPS security during the preceding hour. The NASD's service that disseminates combined quotation and summary transaction information in FIPS securities to securities information vendors for retransmission to their terminal subscribers is called the Bond Quotation Data Service or BQDS.

To formulate the FIPS fee structure, the NASD and its subsidiary corporations conducted a thorough analysis of the anticipated revenues and costs of operating FIPS. These revenue and cost assumptions were based upon forecasts and projections of the number of market participants likely to participate in FIPS, the likely demand for quotation and transaction information generated by FIPS, the volume of OTC transactions in high yield bonds, and the "start-up" and recurring costs associated with FIPS, among other things. Concurrent with the submission of this filing, the NASD submitted a separate proposal governing other FIPS fees assessed solely on NASD members.[2]

The Bond Quotation Data Service is patterned after the NASD's National Quotation Data Service which provides inside bid/ask and last sale information for securities traded in the Nasdaq Stock Market. Specifically, BQDS provides for a feed of quotation and summary transaction information in FIPS securities for access by market data vendors for dissemination to their terminal subscribers. The level of BQDS charges varies depending upon whether the subscriber receives "Full BQDS information" or "Limited BQDS information." "Full BQDS information" includes the bids and offers of all FIPS participants registered in each FIPS security, the inside bid/ask quotation for each FIPS security, and hourly summary transaction information on FIPS securities. "Limited BQDS information" includes the inside bid/ask quotation for each FIPS security and hourly, summary, transaction information on FIPS securities. In particular, the charge to be paid by a subscriber for each interrogation or display device receiving Full BQDS information is $50 per month. The charge for Limited BQDS information is $5 per month per device.

The NASD will endeavor to periodically review the FIPS fee structure, including BQDS fees, in light of the utilization of the system, the costs of past and future enhancements to the system, the costs of operating the system, the volume of OTC transactions in high yield bonds, and the demand for FIPS quotation and transaction information, among other things. These reviews will ensure that the BQDS fees are properly related to the costs associated with operating FIPS.

The NASD believes that the proposed rule change is consistent with section 15A(b)(5) of the Act. Section 15A(b)(5) requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls. Specifically, the BQDS fee structure and the schedule for other FIPS fees reflect a thorough analysis by the NASD in connection with the use and operation of FIPS are properly related to the development and operational costs of FIPS. Moreover, the NASD will periodically review the BQDS fee structure to ensure that the fees are reasonable and equitably allocated.

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[1] See Securities Exchange Act Release No. 32019 (March 19, 1993), 57 FR 10428 (order approving File No. SR-NASD-92-45) ("FIPS Approval Order").

[2] Securities Exchange Act Release No. 32843 (September 3, 1993).

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 8, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

[3] 17 CFR 200.30–3(a)(12) (1989).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93–22702 Filed 9–16–93; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–32860; International Series Release No. 581; File No. SR–NASD–93–50]

Self-Regulatory Organizations; Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc., Relating to Extension of the Nasdaq International Service Pilot Program

September 10, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 1, 1993 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change as amended, from interested persons.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD hereby files a proposed rule change pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder, to extend for two years (i) the pilot term of the Nasdaq International Service ("Service") and (ii) the effectiveness of certain rules ("International Rules") that are unique to the Service. This rule change does not entail any modification of the International Rules. The present authorization for the Service and the International Rules expires on October 11, 1993.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Through this rule change, the NASD proposes to extend for two years the pilot operation of the Service and the effectiveness of the International Rules governing broker-dealers' access to and use of the Service. The existing pilot operation was authorized by the Securities and Exchange Commission's ("SEC" or "Commission") approval of File No. SR–NASD–90–33 on October 11, 1991;[2] the Service itself was launched on January 20, 1992. The Service supports an early trading session running from 3:30 a.m. to 9 a.m. E.T. on each U.S. business day ("European Session") that overlaps the business hours of the London financial markets. Participation in the Service is voluntary and is open to any authorized NASD member firm or its approved broker-dealer affiliate in the U.K. A member participates as a Service market maker either by staffing its trading facilities in the U.S. or the facilities of its approved affiliate during the European Session. At present, the universe of Service market makers consists of three approved affiliates of NASD members that quote continuous markets in various Nasdaq National Market securities during the European Session.

As noted above, the NASD is seeking to extend the pilot term for two more years. During this period, the NASD plans to reevaluate the Service's operation and consider possible enhancements to broaden market-maker participation. For example, the NASD will provide the variable opening feature—which enables a Service market maker to participate during specified segments rather than the entire European Session—in conjunction with implementing the new technology being developed for the Nasdaq Stock Market.[3] It is anticipated that this will occur during the second half of 1995.

The NASD acknowledges that implementation of the variable opening feature of the Service has been deferred beyond the original 1993 target date. This result is attributable to substantial commitments of staff resources to the

[1] On September 1, 1993, the NASD submitted Amendment No. 1 to the proposed rule change explaining the deferred implementation of the variable opening feature of the Service. See *infra* note 3 and accompanying text.

[2] Securities Exchange Act Release No. 29812 (October 11, 1991), 56 FR 52082 ("Initial Approval Order").

[3] The variable opening feature was approved by the Commission on June 16, 1993. See Securities Exchange Act Release No. 32471 (June 16, 1993), 58 FR 33965. However, the NASD will not implement this feature until the second half of 1995.

technology migration for the Nasdaq Stock Market. This migration encompasses a new communications network and hardware platform as well as the next generation of the Nasdaq Workstation PC. Additionally, the functionality necessary for the variable opening has been incorporated into the requirements of the new technology. Accordingly, it was determined that staff resources should not be diverted from migration projects in order to enhance the existing technology that supports the Service, which technology will be rendered obsolete in the second half of 1995.

In sum, the NASD views the Service as a significant experiment in expanding potential opportunities for international trading via systems operated by The Nasdaq Stock Market, Inc. Accordingly, the NASD believes that this pilot operation warrants an extension to permit possible enhancements that will increase the Service's utility to the investment community.[4]

The NASD believes that the proposed rule change is consistent with sections 11A(a)(1) (B) and (C) and 15A(b)(6) of the Act. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, broader availability of information with respect to quotations for securities, and the execution of investor orders in the best market through the use of advanced data processing and communications techniques. Section 15A(b)(6) requires, among other things, that the NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The NASD believes that the proposed extension of the Service and the International Rules is fully consistent with these statutory provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[4] Assuming that the pilot term is extended, the NASD will continue to supply the Commission with the statistical reports prescribed in the initial approval order at six month intervals. See Initial Approval Order *supra* note 2.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 8, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22703 Filed 9–16–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32863; File No. SR–NASD–93–39]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Composition of Extended Hearing Committees in Disciplinary Proceedings

September 10, 1993.

On July 28, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") and amended on August 3, 1993,[1] a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[2] and Rule 19b–4 thereunder.[3] The proposal amends Article II, section 6(c) of the NASD Code of Procedure ("Code") to clarify that former Market Surveillance Committee members are eligible for service on the Extended Hearing Committees.

Notice of the proposed rule change, together with the substance of the proposal as amended, was provided by the issuance of a Commission release (Securities Exchange Act Release No. 32718, August 4, 1993) and by publication in the **Federal Register** (58 FR 42590, August 10, 1993). No comment letters were received. This order approves the rule change, as amended.

Pursuant to Article II, section 4 of the NASD Code,[4] if an NASD disciplinary hearing is expected to involve extensive testimony or complex evidence the matter may be designated for an Extended Hearing. Article II, section 6(c) of the Code requires the appointment of an Extended Hearing Committee to hear a matter so designated.[5] Section 6(c) provides that persons eligible to serve on such Committees are current or former members of the District Business Conduct Committee or the Board of Governors.

While the NASD's rules generally treat the Market Surveillance Committee as the equivalent of a District Business Conduct Committee,[6] section 6(c) does

[1] See letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn J. Notelovitz, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, dated August 2, 1993.

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4 (1992).

[4] NASD Manual, Code of Procedure, Article II, sec. 4, (CCH) ¶ 3024.

[5] NASD Manual, Code of Procedure, Article II, sec. 6, (CCH) ¶ 3026.

[6] See, e.g., Article I, section 2(b) of the Code which defines the term "Committee" to mean either

not expressly qualify a current or former member of the Market Surveillance Committee for service on an Extended Hearing Committee. In order to correct this apparent oversight, the NASD has proposed amending section 6(c) to recognize that service on the Market Surveillance Committee qualifies an individual for service on an Extended Hearing Committee.

The Commission believes that the proposed rule change is consistent with the provisions of section 15A(b)(8)[7] of the Act in that the change enhances the NASD's disciplinary procedures contributing to the procedural fairness required by the section. By amending subsection 6(c) of the Code to permit former members of the Market Surveillance Committee to serve on Extended Hearing Committees, the NASD will have a larger pool of potential panel members which should contribute to the expeditious handling of such matters.

The Commission does not believe that the rule change will result in any burden on competition that it is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR–NASD–93–39, be, and hereby is approved, effective immediately.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22704 Filed 9–16–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32868; File No. SR–NYSE–93–33]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Changes in Auxiliary Closing Procedures for Expiration Days and Extension of the Pilot Procedures

September 10, 1993.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 8, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to revise the auxiliary closing procedures on expiration days by changing the deadlines for entry and cancellation of certain market-at-the-close ("MOC") orders and for imbalance publications in the pilot stocks to 3:40 p.m. and to extend the pilot for such procedures until October 31, 1994.

The Exchange has requested accelerated approval of the proposed rule change to allow the auxiliary closing procedures to be in place in time for the expiration of stock options and index products on September 17, 1993 and to allow the pilot program to continue on an uninterrupted basis through October 1994.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Special procedures regarding the entry of MOC orders on expiration Fridays were originally adopted in 1986 for quarterly triple expiration of derivative instrument products.[4] Since November 1988, these procedures have been used for each monthly expiration and apply to the so-called "pilot stocks" (the 50 most highly capitalized S&P 500 stocks and any component stocks of the major Market Index that are not included in this group of 50).[5] In April 1992, the Exchange modified the pilot procedures for handling MOC orders in all stocks on expiration Fridays.[6] In March 1993, the Exchange extended the expiration Friday auxiliary closing procedures to days on which end of calendar quarterly index expiration ("QIX") options expire.[7]

The current procedures require that MOC orders in any stock related to a strategy involving derivative index products be entered for execution by 3 p.m. and that no cancellation or reduction of any MOC order in any stock take place after 3:45 p.m. The Exchange is now proposing to modify these procedures to move the cut-off times described above to 3:49 p.m. In addition, Floor brokers representing orders related to a strategy involving derivation index products must indicate their MOC interest to the specialist by 3:40 p.m. However, a Floor broker who is handling a working order that is not derivative-related may continue to work that order until just before the close, and if so instructed by his or her customer, may turn the unfilled balance over to

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the District Business Conduct Committee or the Market Surveillance Committee, or an Extended Hearing Committee.

[7] 15 U.S.C. 78o–3 (1988).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] A complete description of the NYSE's expiration Friday auxiliary closing procedures and the proposed modifications to those procedures are attached as Exhibit A, "Information Memo," to File No. SR–NYSE–93–33.

[4] Expiration Friday is the trading day, usually the third Friday of the month, when some stock index futures, stock index options and options on stock index futures expire or settle concurrently. Triple expirations are the four times a year during the months of March, June, September, and December when all stock index futures, stock index options, options on stock index futures and individual equity options expire.

[5] The NYSE auxiliary closing procedures for expiration Fridays were initially approved by the Commission on a pilot basis for a one-year period beginning in November, 1988 and extending through October, 1989. The pilot has since been extended each year between October 1989 through October, 1993 on a one-year pilot basis. See Securities Exchange Act Release Nos. 26293 (November 17, 1988), 53 FR 47599; 26408 (December 29, 1988), 54 FR 343 (approving File No. SR–NYSE–88–37); 27448 (November 16, 1989), 54 FR 48343 (approving File No. SR–NYSE–89–38); 28564 (October 22, 1990), 55 FR 43427 (approving File No. SR–NYSE–90–49); 29871 (October 28, 1991), 56 FR 30004 (Approving File No. SR–NYSE–91–31); and 31386 (October 30, 1992), 57 FR 52814 (approving File No. SR–NYSE–92–30) ("1992 Approval Order"). See also note 11, infra.

[6] In April 1992, the Commission approved the Exchange's modified pilot MOC procedures on a temporary accelerated basis for the April 1992 expiration Friday. See Securities Exchange Act Release No. 30570 (April 10, 1992) 57 FR 13399 (April 16, 1992) (notice of filing and order granting partial accelerated approval to File No. SR–NYSE–92–09). Thereafter, the Commission approved those modifications for all expiration Fridays during the pilot period. See Securities Exchange Act Release No. 30680 (May 8, 1992), 57 FR 20720 (May 14, 1992) (order approving File No. SR– NYSE–92–09). See also note 11, infra.

[7] See Securities Exchange Act Release No. 32066 (March 30, 1993), 58 FR 17630 (April 5, 1993) (approving File No. SR–NYSE–93–16) ("QIX Auxiliary Closing Procedures Approval Order").

the specialist for execution at the market at the close.

For the pilot stocks, in addition to the change in cut-off times for order entry and cancellation described above, the Exchange is proposing a single publication of imbalances of 50,000 shares or more as soon as practicable after 3:40 p.m. This would replace the current practice of publishing such imbalances at 3 p.m., 3:30 p.m. and 3:45 p.m. The Exchange believes that this would enable market participants to gain a more accurate picture of the buying and selling interest in MOCs at expiration. After 3:40 p.m., MOC orders in the pilot stocks would be entered only to offset a published imbalance. The entry of MOC orders after 3:40 p.m. to establish or liquidate position related to a strategy involving derivative instruments would not be permitted even if such orders might offset published imbalances.

The auxiliary procedures utilized for expiration days have been approved as a pilot on a yearly basis and are due to expire on October 31, 1993. These procedures have been effective in minimizing excess volatility on the close of expiration days. The Exchange believes the procedures described above should be extended to October 31, 1994.

The Exchange continues to believe, however, that concerns about excess market volatility that may be associated with the expiration or settlement of derivative index products would be most appropriately addressed if the expiration or settlement value of all such products were based on the NYSE opening rather than the closing price on the last business day prior to the expiration or settlement of the product.

2. Statutory Basis

The basis under the Act for this proposed rule change is section 6(b)(5), which requires that rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–33 and should be submitted by October 8, 1993.

IV. Discussion

The Commission finds that the NYSE's proposal to amend its auxiliary closing procedures on expiration days by changing the deadlines for entry and cancellation of certain MOC orders to 3:40 p.m. and for imbalance publications in the pilot stocks as soon as practicable after that time, in addition to extending the pilot for such procedures through October 1994, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act.[8] Section 6(b)(5) requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market, and to protect investors and the public interest. For the reasons set forth below, the Commission believes that the NYSE proposal furthers the objectives of section 6(b)(5) of the Act.

The NYSE's auxiliary closing procedures have been utilized on quarterly expiration Fridays dating back to September 1986. The Commission has extended these procedures to all expiration Fridays (monthly and quarterly expirations) on a yearly pilot basis since 1988.[9] These procedures resulted from efforts by the Commission and the self-regulatory organizations to address stock market volatility associated with the expiration of index derivative products traded in conjunction with the underlying component stocks as part of index derivative related trading strategies.

In our 1992 Approval Order, the Commission extended the NYSE's MOC pilot program procedures through October 31, 1993 and requested that the NYSE provide the Commission with specific data by July 31, 1993, detailing the NYSE's experience with the pilot program and containing an analysis of the effectiveness of the expiration Friday procedures in reducing volatility. Specifically, the Commission requested data covering expiration Fridays from October 1992 through June 1993. The Commission requested that the report include: (1) The names of the pilot stocks and the imbalance (if any) at 3:30 p.m. and at the close for those stocks that had an imbalance of MOC orders of 50,000 shares or more at 3 p.m.; (2) the names of the stocks and the imbalance (if any) at the close for those stocks that did not have an imbalance at 3 p.m., but, due to cancellations, had imbalances of 50,000 shares or more at 3:30 p.m.; and (3) for those stocks with an imbalance of 50,000 shares or more at 3 or 3:30, the names of the stocks where the imbalance changed from one side of the market (sell or buy) to the other side (buy or sell) due to cancellations of MOC orders; (4) for all pilot stocks, all MOC order imbalances (of any size) as of 4 p.m.; (5) the change in price of the closing transactions from the previous trade for all pilot stocks; (6) the change in price of the closing transactions from the price of transactions at 4 p.m. (if there were no transactions precisely at 4 p.m., the NYSE was to use the price from the transaction effected closest in time to 4 p.m.) for all pilot stocks; and (7) for each pilot stock, the number of shares in MOC orders submitted by 3 p.m. that were cancelled for any reason prior to the close. The Commission also stated that the report should include: (1) The change in the Dow Jones Industrial Average ("DJIA") at the close on each

[8] 15 U.S.C. 78f(b)(5) (1988).

[9] See supra notes 4–6.

expiration Friday; (2) opening prices and daily trading ranges of the pilot stocks on expiration Fridays, as well as the following Mondays; (3) price volatility as measured by the change in price from the last regular way trade to the closing price, including historical data analyzing price volatility at the close prior to the implementation of the prohibition on cancelling MOC orders after 3:45 and the other MOC procedures. Finally, in our QIX Auxiliary Closing Procedures Approval Order, the Commission requested that the Exchange also include in its report all of the above requested data for QIX expiration days which expire at the end of a calendar quarter. The Commission requested that the NYSE provide the Commission with a report by June 1, 1993 which should have covered expirations through March, 1993, and that the NYSE provide the Commission with a follow-up report no later than July 31, 1993, which was to cover expirations from April through June, 1993.

The NYSE submitted a report to the Commission on July 7, 1993.[10] The report covers expiration Fridays for the period November 1992 to March 1993. For that period, the NYSE reports that 83 stocks had closing imbalances of 50,000 shares or greater, and of those 83 stocks, MOC orders in 37, or 44.6%, were effected at no change in price from the previous regular way trade; 33, or 39.8% were effected at a variation of one-eighth point, 9, or 10.8%, were effected at a variation of one-quarter point; and 1, 2 and 1 were effected at respective variations of three-eighths point, one-half point and five-eighths point (respective percentages were 1.2%, 2.4% and 1.2%).

The report discusses the change from closing prices on expiration Fridays to opening prices on the following Monday for stocks with 50,000 shares or greater imbalances at the close. Of the 83 stocks with such imbalances, the NYSE states that 46 (55%) opened within ⅛ point of the closing prices, 73% opened within ¼ point. The Exchange, therefore, states that it does not appear that closing prices for such stocks have a significant impact on opening prices on the next trading day.

The NYSE report also discusses the changes in MOC procedures that were put into effect in April, 1992, which prohibit cancellations or reductions of MOC orders (except for bona fide errors) after 3:45 p.m. The NYSE states that the average number of shares on imbalance at the close for the five months prior to April 1992 was 2,991,000, while the average imbalance for April through June 1992 was 2,418,100 (equalling 19% lower in the months where MOC order cancellations were prohibited after 3:45). For the period November 1992 through March 1993, the report states that the average number of shares on imbalance was 1,813,300. According to the Exchange, this represents a decline of 604,300 shares or 25% as compared to April through June 1992. The report also states that, for both stocks and shares, imbalances consistently declined from the initial imbalance publication after 3 p.m. to 4 p.m. For example, in December 1992, there were 52 pilot stocks with (buy) imbalances of 50,000 shares or more for a total imbalance of 14,275,200 shares. By 4 p.m., only 25 stocks had a buy imbalance of 50,000 shares or greater, for a total of 3,222,100 shares, while one stock had a sell imbalance of 81,700 shares. This data represents a 50% reduction for number of stocks and a 77% reduction for shares.

With respect to QIX expiration procedures, the Exchange states that a review of MOC data from March 31, 1993 shows that price volatility as measured by the change in price from the last regular way trade to the closing trade averaged .08 point per QIX pilot stock. As to imbalances, there were 3 QIX pilot stocks with imbalances of 50,000 shares or more at 3 p.m., 10 at 3:30 p.m. and 14 at 3:45 p.m.[11] There was only one QIX pilot stock with a 50,000 shares or more imbalance at the close.

As noted above, pursuant to the NYSE pilot program, the auxiliary closing procedures for expiration Fridays and QIX expiration days (cumulatively, "expiration days") place limitations on MOC order-entry with regard to orders related to any strategy involving an expiring derivative index product. The auxiliary closing procedures also restrict the cancellation of MOC orders and provide for the dissemination of MOC order imbalances of 50,000 shares or more in certain pilot securities. The present proposal would change the MOC order-entry cut-off time from 3 p.m. to 3:40 p.m. for orders related to an index derivative trading strategy and change the time for prohibiting cancellation of MOC orders from 3:45 to 3:40, in addition to extending the pilot procedures, as modified, for a one year pilot period through October 1994. MOC order cancellations for bona fide errors would continue to be accepted. The NYSE's dissemination of MOC order imbalances in the pilot stocks and the end of month calendar quarter pilot stocks would occur as soon as practicable after 3:40 p.m., rather than after 3, 3:30 and 3:45 p.m. Once a publication of an imbalance in a pilot stock has been made, any MOC orders subsequently entered in such pilot stock will be accepted only to trade on the opposite side of the market in relation to such published imbalance. The entry of an MOC order to establish or liquidate positions related to a strategy involving derivative instruments, however, would not be permitted even if such orders might offset published imbalances.

The Commission believes that the proposed changes to the auxiliary closing procedures should enable market participants to gain a more accurate picture of the buying and selling interest in MOC orders at expiration. The Commission continues to believe that, by requiring early submission of MOC orders and disseminating significant imbalances (50,000 shares or more) in certain specified stocks, the NYSE should be able to attract contra-side interest to help alleviate imbalances caused by the liquidation of stock positions related to index derivative product trading strategies. In this regard, the NYSE's most recent report concerning expiration Friday volatility and the expiration Friday closing procedures indicates that the procedures have worked relatively well and may have resulted in more orderly markets at the close on expiration Fridays.

The Commission believes, however, that the proposed rule change may help to improve the current MOC procedures by establishing a simultaneous MOC order entry and MOC order cancellation time of 3:40 p.m., and by providing a single MOC order imbalance dissemination as soon as practicable after 3:40 p.m. These changes may make the dissemination imbalance more reflective of actual investor interest in a particular stock, primarily because the MOC orders included in those imbalances may not be cancelled thereafter, except in cases of bona fide

[10] See letter from Robert McSweeney, Senior Vice President, Market Surveillance, New York Stock Exchange, Inc. to Sharon Lawson, Esq., Assistant Director, Division of Market Regulation, Securities and Exchange Commission, dated July 6, 1993.

[11] On expiration Fridays, the MOC order imbalance dissemination procedures apply to the "pilot stocks," which are the fifty highest weighted stocks underlying the S&P 500 index, and any of the stocks underlying the Major Market Index not included in that group. On QIX settlement days, the same auxiliary closing procedures are used, except the MOC order imbalance dissemination procedures apply to the end of month calendar quarter pilot stocks, which are the fifty highest weighted S&P 500 stocks, any component stocks of the Major Market Index not included in this group, and the ten highest weighted stocks of the S&P MidCap 400 Index (except for QIX on the MidCap 400, the S&P MidCap 400 Index options currently expire at the opening on expiration Fridays).

errors. Moreover, the Commission believes that 3:40 may be an appropriate cut-off time for MOC order entry and cancellation because, while relatively near the close, there still should be sufficient time for the NYSE to attract contra-side interest to help alleviate imbalances caused by liquidations related to expiring index contracts. The revised MOC procedures appear to balance the need to provide the investing public with timely and reliable notice of expiration-related order flow at the close with the need to avoid unduly infringing on legitimate trading strategies.

The Commission is approving an extension of the pilot program through October 1994, with the proposed modifications discussed herein. As long as some index derivative products continue to expire based on closing stock prices on expiration Fridays, the Commission agrees with the NYSE that such procedures are necessary to provide a mechanism to handle the potential large imbalances that can be engendered by firms unwinding index derivative related positions. During the pilot extension, the Commission expects the NYSE to continue to monitor closely the effectiveness of the procedures, and to submit a report with all of the same data previously requested for prior periods,[12] with appropriate modifications to allow for the changes in cut-off times and the single 3:40 imbalance dissemination. The report should cover all expirations through June 1994, and must be submitted to the Commission no later than July 31, 1994,[13] along with a proposed rule change which should either request an additional extension of the pilot program or permanent approval of the pilot procedures.

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof. This will permit the procedures to continue on an uninterrupted basis, and will allow the NYSE to implement the modified time frames for entry and cancellation of MOC orders and dissemination of imbalances on the September 17, 1993 expiration. Further, on September 3, 1993, the NYSE issued an Information Memo to its members notifying them, subject to Commission approval, of the upcoming changes to the expiration Friday procedures for the September 17, 1993 expiration.[14] Finally, although modified by this order, special auxiliary closing procedures have been utilized by the NYSE since 1986, and the procedures are intended to reduce excessive market volatility at the close.

It is therefore ordered, pursuant to section 19(b)(2)[15] that the proposed rule change is hereby approved on a pilot basis through October 31, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22769 Filed 9–16–93; 8:45 am]

BILLING CODE 8010–01–M

[12] See 1992 Approval Order, supra note 4.

[13] The Commission notes that this request for information is not exclusive and that the NYSE should add any additional data and analysis to the report in order to assess the effectiveness of the procedures in reducing excess market volatility on expiration Fridays.

[14] See supra note 3.

[15] 15 U.S.C. 78s(b)(2) (1988).

[16] 17 CFR 200.30–3(a)(12) (1991).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 13, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Salomon Brothers 2008 Worldwide Dollar Government Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–11237)

Equity Residential Properties Trust
Common Stock, $.01 Par Value (File No. 7–11238)

United States Filter Corporation
Common Stock, $.01 Par Value (File No. 7–11239)

Household International, Inc.
Depositary Shares Representing 1–40th of a share of 7.35% Cum. Pfd. Stock (File No. 7–11240)

RJR Nabisco Holdings Corporation
Depositary Shares each representing 1–100th of a shares Cum. Pfd Stock (File No. 7–11241)

PIMCO Commercial Mortgage Securities Trust, Inc.
Common Stock, $.001 Par Value (File No. 7–11243)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22766 Filed 9–16–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25879]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 10, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 4, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Fuel Gas Company, et al. (70–8251)

National Fuel Gas Company ("NFG"), 30 Rockefeller Plaza, New York, New

York 10112, a registered holding company, National Fuel Gas Distribution Corporation ("Distribution"), 10 Lafayette Square, Buffalo, New York 14203, a gas utility subsidiary company of NFG, and National Fuel Gas Supply Corporation ("Supply"), National Fuel Resources, Inc. ("Resources"), Seneca Resources Corporation ("Seneca"), and Empire Exploration, Inc. ("Empire"), each of 10 Lafayette Square, Buffalo, New York 14203, each a wholly-owned non-utility subsidiary company of NFG (each subsidiary a "Covered Subsidiary", collectively, "Covered Subsidiaries"), have filed a declaration under section 12(b) of the Act and rule 45 thereunder.

NFG proposes to provide guarantees, through December 31, 1998, for a total of up to $500 million of certain obligations of the Covered Subsidiaries, not to exceed the following amounts outstanding at any given time for each Covered Subsidiary: Distribution—$350 million; Supply—$50 million; Resources—$50 million; Seneca—$50 million; and Empire—$10 million. It is stated that the guarantees will not exceed five years' duration.

It is also stated that the guarantees include the guarantee of obligations associated with:

(1) Gas transportation agreements entered into with pipelines by shippers such as Distribution and Supply;

(2) Gas purchase agreements entered into by suppliers with gas marketers such as Resources;

(3) Gas sales agreements entered into by retail and wholesale suppliers with gas marketers such as resources or producers such as Empire and Seneca (Distribution may also become involved in the wholesale marketing of gas and thus might also make these contracts); and

(4) Any and all other agreements between parties not affiliated with the NFG system and any one or a combination of the Covered Subsidiaries relating to the transportation, storage or supply of natural gas.

In addition, the Covered Subsidiaries may, from time to time, enter into partnership agreements or joint venture relationships with third parties wherein the entity so formed would undertake activities relating to the transportation, storage or supply of natural gas. Accordingly, NFG and the Covered Subsidiaries also seek authority for NFG to provide a parent guarantee to the extent of the Covered Subsidiary's obligations undertaken as part of such a partnership or joint venture. NFG states that, to the extent that the entry into a partnership or joint venture involves a jurisdictional event, NFG and/or any one or all of the Covered Subsidiaries will seek further Commission authorization to enter into such partnership or joint venture.

NFG will pay no fees, expenses or penalties associated with any of the guarantees. NFG will, however, as guarantor assume the obligations of the Covered Subsidiary upon a payment default. In the event of default, the Covered Subsidiary would be responsible to repay NFG for any payments NFG, as guarantor, must make on behalf of the Covered Subsidiary plus any interest expense (at the highest incremental interest rate NFG must pay for borrowing through the NFG system money pool) or other expenses incurred or paid by NFG as guarantor.

Jersey Central Power & Light Company (70–8267)

Jersey Central Power & Light Company ("JCP&L"), 300 Madison Avenue, Morristown, New Jersey 07962–1911, a public-utility subsidiary company of General Public Utilities Corporation, a registered holding company, has filed an application under sections 9(a) and 10 of the Act.

By order dated June 14, 1988 (HCAR No. 24664), the Commission, among other things, authorized JCP&L to sell and lease back its 8.37% undivided ownership interest ("Ownership Interest") in the Merrill Creek Reservoir Project located in Harmony Township, New Jersey ("Merrill Creek"). JCP&L's 8.37% Ownership Interest represents an entitlement to releases from about 4,000 acre feet of reservoir storage capacity. JCP&L states that its entitlements to Merrill Creek reservoir releases are substantially in excess of its current and projected requirements for the foreseeable future. By order dated April 8, 1993 (HCAR No. 25785), the Commission authorized JCP&L to sublease a portion of its excess capacity to a nonaffiliate for use in a cogeneration project in Logan Township, New Jersey.

JCP&L now proposes to sublease an additional portion of its storage capacity to Northampton Water Supply, Inc. or an affiliate thereof ("Northampton"), pursuant to a new sublease agreement ("New Sublease"). Northampton will use such capacity for a cogeneration project to be located in Northampton, Pennsylvania.

Under the terms of the New Sublease, Northampton would lease from JCP&L, on an annual basis, 135 acre feet of such storage capacity ("Committed Capacity"), as well as an additional 135 acre feet of storage capacity not then utilized by JCP&L, if required by Northampton for make-up water purposes ("Standby Capacity"). JCP&L would, however, be permitted to sell or lease the Standby Capacity to a third party, subject to Northampton's right of first refusal.

The New Sublease will have an initial term of 25 years, commencing in 1995, subject to Northampton's right to renew the New Sublease for a term and at prices to be negotiated at the time of expiration of the New Sublease, provided neither JCP&L nor its affiliates then require the Committed Capacity or Standby Capacity. The rental payments for the Committed and Standby Capacity have been structured to at least equal, during the term of the New Sublease on a present value basis, a pro rata portion of JCP&L's rent payments to the lessor of Merrill Creek. JCP&L intends to apply the rental payments for the Committed and Standby Capacity to its rental obligations under the lease agreement or for other general corporate purposes.

Semi-annual rental payments for the Committed Capacity would commence on July 30, 1995 at the rate of $55,000, increasing over the term of the New Sublease to $177,500 in 2019. To the extent that it utilized the Standby Capacity in any year, Northampton would pay JCP&L additional semi-annual rentals beginning at $55,000 on July 30, 1996 and increasing to $177,500 in 2020. If in any year Northampton utilized in excess of 270 acre feet of storage capacity, the rental payments for the Standby Capacity in that year would be increased ratably. In addition, Northampton would pay its pro rata share of JCP&L's Merrill Creek pumping costs, operation and maintenance and certain other expenses, and JCP&L's related depreciation charges. Northampton would also agree to pay $20,000 to JCP&L to cover JCP&L's transaction costs in connection with entering into the New Sublease.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22694 Filed 9–16–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19705; File No. 812–8478]

The Equitable Life Assurance Society of the United States, et al.; Application for Exemption

September 10, 1993.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Equitable Life Assurance Society of the United States ("Equitable") and Separate Account A of The Equitable Life Assurance Society of the United States (the "Separate Account").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account under a group variable annuity contract (the "Equi-Vest Contract").

FILING DATE: June 29, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on October 5, 1993 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants: c/o Mary P. Breen, Vice President and Counsel, The Equitable Life Assurance Society of the United States, 787 Seventh Avenue, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, or Michael V. Wible, Special Counsel at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Equitable is a stock life insurance company that has been in business since 1859. Equitable is the depositor and principal underwriter of the Separate Account.

2. The Separate Account was originally registered under the Act as a management investment company. Since December 18, 1987, the Separate Account has been organized as a unit investment company. The Separate Account is used to fund benefits under the Equi-Vest Contract and certain other contracts, certificates or agreements. The Separate Account is divided into subaccounts ("Investment Funds"), each of which invests solely in the shares of one of the corresponding portfolios of The Hudson River Trust, a management investment company registered under the Act.

3. Certificates under the Equi-Vest Contract may be used to fund individual retirement annuities ("IRAs"), including those established from qualified plan distributions or after-tax contributions to a non-qualified ("NQ") annuity.

4. Equitable deducts from a participant's account value for an IRA certificate an administrative charge equal to the lesser of $30 or 2% of such account value (adjusted to include any withdrawals made during that year) for the first two contract years and $30 for each contract year thereafter. For NQ certificates, the administrative charge is the lesser of $24 or 2% for the first two contract years and $24 for each contract year thereafter. Equitable has reserved the right, upon 90 days advance written notice to participants, to increase the administrative charges if actual administrative costs increase, but the charge is guaranteed never to exceed $65 annually subject to applicable law. Applicants represent that these annual charges are not greater than the cost of administering the Equi-Vest Contract for one year.

5. Equitable also will assess each Investment Fund of the Separate Account with a daily asset charge at an effective annual rate of .25% for administrative expenses associated with the Equi-Vest Contract. Applicants do not expect that the total revenues from this charge together with the annual administrative charge will exceed the expected costs of the administrative services rendered.

6. No front-end sales charge is collected or deducted at the time contributions are made. A contingent deferred sales charge ("Withdrawal Charge") will be assessed against certain withdrawals. The Withdrawal Charge is 6% of the amount deemed attributable to withdrawn contributions which have been made in the current and five prior contract years. Contributions will be withdrawn in the order they were made. Under certain circumstances, a Withdrawal Charge will not be assessed. The amounts obtained from this charge will be used to defray sales expenses including commissions and other promotional or distribution expenses associated with printing and distribution of prospectuses and sales literature. The Withdrawal Charge may be insufficient to cover all distribution expenses relating to the Equi-Vest Contract. In that event, if a profit is realized from the mortality and expense risk charge, all or a portion of the mortality and expense risk charge might be viewed as providing for a portion of these distribution costs.

7. Equitable's current practice is to deduct a charge for premium taxes from the amount applied to provide an annuity benefit. Equitable has reserved the right to deduct any such charge from contributions or from amounts withdrawn or surrendered. Equitable does not expect to profit from this charge.

8. Equitable deducts from a participant's account value a charge of $25 for each direct transfer of amounts under a certificate to a third party or exchange of a certificate for another contract or certificate issued by another carrier. Equitable has reserved the right to increase this fee to a maximum of $65 for each direct transfer or exchange. Applicants represent that this charge is not greater than the cost of effecting a third party transfer or exchange.

9. Equitable proposes to deduct from the Separate Account a daily asset charge for mortality and expense risks at an effective annual rate of 1.10%. The charge is .60% for mortality risks and .50% for expense risks. This charge, combined with the daily administrative charge of .25%, is guaranteed not to exceed an effective annual rate of 1.35% and cannot be increased.

10. Equitable assumes a mortality risk by its contractual obligation to pay a death benefit, upon an annuitant's death, in either a lump sum or in the form of an annuity payment option. The death benefit is the greater of (i) the annuity account value as of the date Equitable receives proof of death, or (ii) the total value of all contributions made (less any applicable taxes) adjusted for total withdrawals. Equitable also assumes a mortality risk by its contractual obligation to make annuity payments for the entire life of the annuitant under guaranteed fixed annuity options involving life contingencies. Equitable assumes an additional mortality risk by its contractual guarantees related to annuity purchase rates. Equitable has reserved the right, however, to change the actuarial basis for the tables of guaranteed annuity payments at any time after the fifth anniversary of the date on which the participant is enrolled under the group annuity contract and no earlier than five years

from the date of the last change thereafter. Finally, Equitable assumes a mortality risk by its contractual obligation to waive the contingent deferred sales charge upon payment of the death benefit.

11. Equitable assumes an expense risk because the administrative charges may be insufficient to cover actual administrative expenses. Equitable commits itself throughout the life of the Equi-Vest Contract to pay all expenses, without limit as to amount, relating to the administration of the Equi-Vest Contract and the Separate Account. Although Equitable has reserved the right to increase the annual administrative charge, any such increase will not result in a recovery of the expense already incurred.

12. If the administrative charges and the mortality and expense risk charge are insufficient to cover the expenses and costs assumed, the loss will be borne by Equitable. Conversely, if the mortality and expense risk charge proves more than sufficient, the excess will be profit to Equitable. Equitable expects a profit from the mortality and expense risk charge.

Applicants' Legal Analysis and Conditions

1. Sections 26(a)(2)(C) and 27(c)(2) prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments are deposited with a qualified trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services. Applicants request exemptions from sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the deduction of the mortality and expense risk charge from the assets of the Separate Account under the Equi-Vest Contract.

2. Applicants state that they have reviewed publicly available information regarding products of other companies taking into consideration such factors as: Guaranteed minimum death benefits; the existence of guaranteed annuity purchase rates; market sector; current charge levels; the existence of charge level guarantees; and the manner in which charges are imposed. Based upon this review, Applicants have concluded that the mortality and expense risk charge is within the range of charges determined by industry practice for comparable products. Applicants will maintain at their principal office, and make available on request to the Commission or its staff, a memorandum setting forth in detail the variable annuity products analyzed and the methodology, and results of, Equitable's comparative review.

3. The contingent deferred sales charge may be insufficient to cover all distribution costs. In that event, if a profit is realized over time from the mortality and expense risk charge, all or a portion of the mortality and expense risk charge might be viewed as providing for a portion of these distribution costs. Notwithstanding the foregoing, Equitable has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and investors. The basis for such conclusion is set forth in a memorandum which will be maintained by Equitable at its principal office and will be available on request to the Commission or its staff.

4. Equitable also represents that the Separate Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the Act.

Conclusion

Applicants submit that, for all of the reasons stated herein, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the Act meet the standards set out in section 6(c). Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22768 Filed 9–16–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19700; 811–3698]

Financial Tax-Free Money Fund, Inc.; Application

September 10, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Financial Tax-Free Money Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the Act.

FILING DATE: The application was filed on August 12, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 5, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 7800 East Union Avenue, suite 800, Denver, CO 80237.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272–2190, or Robert A. Robertson, Branch Chief, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management company organized as a corporation under the laws of the State of Colorado. On March 23, 1983, applicant registered under the Act as an investment company and filed a registration statement under the Securities Act of 1933 to register its shares. The registration statement was declared effective on June 23, 1983, and applicant's initial public offering commenced immediately thereafter.

2. On January 20, 1993, applicant's board of directors approved a plan to reorganize applicant as the INVESCO Tax-Free Money Fund series (the "INVESCO Fund"), a new series of INVESCO Money Market Funds, a Maryland Corporation. Applicant's investment adviser is INVESCO Group, Inc. Accordingly, the board also made the findings required by rule 17a–8

under the Act.[1] On April 13, 1993, applicant filed definitive proxy materials with the Commission relating to the proposed reorganization. Applicant's shareholders approved the reorganization at an annual shareholders meeting held on May 24, 1993.

3. Pursuant to the plan of reorganization, applicant transferred all of its assets and liabilities to the INVESCO Fund on July 1, 1993 in exchange for shares of the INVESCO Fund equal to the number of applicant's shares outstanding immediately prior to the transfer. Applicant distributed the INVEST Fund shares it received to its shareholders in exchange for their common stock in applicant. Each shareholder received the number of shares in the INVESCO Fund equal to the number of shares the shareholder held in applicant. No brokerage commissions were incurred in this reorganization.

4. All expenses of the reorganization, including the costs of preparing, printing and distributing the proxy materials, will be borne by applicant or the INVESCO Fund. As of the date of the application, applicant has paid a total of $29,942 in connection with the reorganization, consisting of expenses for blue sky registration, solicitation, printing, mailing, auditing and other miscellaneous costs.

5. As of the date of the application, applicant had no assets, debts or liabilities, and was not a party to any litigation or administrative proceeding.

6. Applicant has filed a statement of intent to dissolve and articles of dissolution with the Secretary of State of Colorado.

7. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–22708 Filed 9–16–93; 8:45 am]

BILLING CODE 8010–01–M

[1] Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

[Release No. IC–19704; File No. 812–8300]

Hartford Life Insurance Co., et al.; Application

September 10, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Hartford Life Insurance Company ("Hartford") and Separate Account VL I of Hartford Life Insurance Company (the "Account") (together, the "Applicants").

RELEVANT 1940 ACT SECTIONS AND RULES: Order requested under section 6(c) of the Act exempting Applicants from section 27(a)(3) of the Act and Rule 6e–3(T)(b)(13)(ii) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit them to issue flexible premium variable life insurance policies that provide for a front-end sales load on premium payments made in any given year up to a maximum amount and no sales charge on premiums in excess of that amount.

FILING DATE: The Application was filed on March 5, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on October 5, 1993 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 200 Hopmeadow Street, Simsbury, CT 06089.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, at (202) 272–3046 or Michael Wible, Special Counsel, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Hartford is a stock life insurance company originally organized under the laws of Massachusetts in 1902 and subsequently redomiciled to Connecticut. It is owned by Hartford Fire Insurance Company which is a subsidiary of ITT Corporation. The Account was established by Hartford on September 21, 1992 pursuant to the laws of Connecticut. The Account is a separate account within the meaning of the Act and is registered under the Act as a unit investment trust.

2. The Policies are flexible premium variable life insurance contracts. Prior to issue, the Policyowner will choose the level of periodic premium payments desired ("Scheduled Premiums"), within a range determined by Hartford based on a variety of factors including the face amount of the Policy, the insured's sex (except where unisex rates apply), age at issue and risk classification. The Policyowner may elect to pay the Scheduled Premiums at the predetermined interval and may pay other premiums of at least $50 ("Unscheduled Premiums") at any time.

3. Beginning on the date that the Policy is effective (the "Policy Date") and continuing for a period of one to ten years, as selected by the Policyowner, Hartford will guarantee that the Policy will not lapse if the Policyowner pays the Scheduled Premiums when due. If Scheduled Premiums are not paid, the Policy will stay in force as long as the Policy Surplus exceeds the indebtedness under the Policy. Policy Surplus for the first year will be zero. Thereafter, the Policy Surplus will be the account value minus the "target account value" for the previous policy year, calculated as of the last day of the previous policy year. The target account value will be the value necessary to guarantee the benefits shown in the Policy. Once determined for a given year, the Policy Surplus will remain constant for the entire policy year. After the guarantee period, the Policyowner may change the Scheduled Premiums to any level desired and the Policy will not lapse as long as the cash surrender value of the Policy less indebtedness is sufficient to cover the monthly deductions under the Policy. During the Guarantee Period, the death benefit under the Policy will be no less than the initial face amount as long as certain Scheduled Premiums are paid or are provided for by favorable investment performance.

4. The Policies provide for a front-end sales load that will be based on the

amount of Scheduled Premiums for the Policy, the Guarantee Period selected by the Policyowner and any Unscheduled Premiums paid. The maximum front-end sales load will be 50% of premiums paid during the first policy year, 11% of premiums paid during years two through ten, and 3% of premiums paid in policy years eleven and beyond. No front-end sales load will be imposed on premiums that exceed the Guideline Annual Premium and, during the first Policy year, no front-end sales load will be imposed on premiums that exceed the Scheduled Premium (if it is less than the Guideline Annual Premium) "the Maximum Sales Load Premium").

5. If a Policy lapses or is surrendered within the first nine years, a contingent deferred sales charge ("CDSC") will be assessed against the account value of the Policy prior to the lapse or surrender. The amount of the CDSC for the first policy year will be established by Hartford and will decrease by an equal amount each Policy Year until it reaches zero during the tenth Policy Year. The level of the CDSC will vary based on the first year Scheduled Premium and the length of the Guarantee Period. Generally, the shorter the Guarantee Period, the lower the CDSC. The maximum first year CDSC as a percentage of the first year Scheduled Premium will be assessed on Policies with a ten year Guarantee Period and with a first year Scheduled Premium less than or equal to a Guideline Annual Premium. The actual schedule of Surrender Charges for a Policy will be set forth in the Policy.

6. Applicants represent that the aggregate of the front-end sales load and the CDSC assessed in connection with a Policy will not exceed sales load limitations specified in Rule 6e–3(T)(b)(13)(i)(A). Specifically, the total sales load under a Policy will not exceed 180% of the Guideline Annual Premium, or nine percent of the sum of the Guideline Annual Premium that would be paid over a twenty year period or the life expectancy of the insured if it is less than twenty years. If a Policy is surrendered during the first two policy years, the Policyowner may be entitled to a refund of some of the front-end sales load or CDSC. The refund will be equal to the excess, if any, of the actual front-end sales load and CDSC assessed under the Policy over: the sum of 30% of aggregate payments less than or equal to one Guideline Annual Premium plus 10% of aggregate payments greater than one but not more than two Guideline Annual Premiums; and 9% of payments in excess of two Guideline Annual Premiums.

Applicants' Legal Analysis

1. Section 27(a)(3) of the Act provides that the amount of sales charge deducted from any of the first twelve monthly payments on a periodic payment plan certificate by any registered investment company issuing such certificates, or any depositor or underwriter for such company, may not exceed proportionately the amount deducted from any other such payment, and that the amount deducted from any subsequent payment may not exceed proportionately the amount deducted from any other subsequent payment. Rule 6e–3(T)(b)(13)(ii) provides an exemption from section 27(a)(3) provided that the proportionate amount of sales charge deducted from any payment does not exceed the proportionate amount deducted from any prior payment, unless an increase is caused by reductions in the annual cost of insurance or reductions in sales load for amounts transferred to a variable life insurance policy from another plan of insurance.

2. Under the Policy's sales load structure, no front-end sales load will be deducted from premiums paid in any given year in excess of the Maximum Sales Load Premium. Thus, according to Applicants, a Policyowner could pay a premium in any given Policy Year from which no front-end sales load deduction is made, then pay the Scheduled Premium in the next Policy Year from which a front-end sales load will be deducted. Applicants state that this scenario would appear to give rise to a violation of the so-called "stair-step" provisions in sections 27(a)(3) of the Act. Moreover, the exemption provided by Rule 6e–3(T)(b)(13)(ii) does not appear to apply to this situation.

3. Applicants submit that the premiums up to the Maximum Sales Load Premium serve different purposes and have higher levels of sales expenses associated with them than premiums in excess of such Maximum Sales Load Premium ("Excess Premium"). The Premiums up to the Maximum Sales Load Premium will be applied primarily to guarantee policy benefits. Excess Premiums will increase the investment element of the Policy. When analyzed separately, the front-end sales load chargeable to premiums up to the Maximum Sales Load Premium will comply with Rule 6e–(T)(b)(13)(ii) and the front-end sales load chargeable to Excess Premiums will remain level (at zero) and never increase.

4. Applicants state that Hartford could impose the higher front-end sales load equally on all premium payments up to the maximum permitted limits. Applicants submit that such an arrangement would be to the detriment of Policyowners, however, because Policyholders benefit from the absence of a front-end sales load in connection with Excess Premiums.

5. Applicants submit that the sales load structure in the policy is designed to give Policyowners flexibility with respect to premium payments while permitting Hartford to deduct only those charges deemed necessary to support the benefit guarantees under the Policies. Applicants contend that the deduction of a front-end load on only the premiums paid up to the Maximum Sales Load Premium does not implicate the policy concerns that underlie the stair-step provisions of section 27(a)(3) of the Act.

Conclusion

For the reasons stated above, Applicants submit that the requested exemptions, in accordance with the standards of section 6(c) of the Act, are consistent with the protection of Policyowners and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22767 Filed 9–16–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–19702; 812–8482]

Investors Life Insurance Co. of Nebraska et al.; Application for Exemption

September 10, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of application for exemptions under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Investors Life Insurance Company of Nebraska ("Investors"), Investors Life Separate Account D ("Separate Account D"), and North American Management ("NAM").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) from sections 26(a)(2) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit them to deduct a mortality and expense risk charge from the assets of Separate Account D, which funds individual flexible premium variable annuity contracts.

FILING DATES: The application was filed on July 7, 1993 and amended on September 8, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 5, 1993, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Investors Life Insurance Company of Nebraska, One Midland Plaza, Sioux Falls, South Dakota 57193.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Counsel, at (202) 504–2802, or Michael V. Wible, Special Counsel, at (202) 272–2026, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Investors was incorporated in 1961 in Nebraska, and was redomesticated to South Dakota in 1977. Investors is licensed to do business in 49 states and the District of Columbia. Investors is a subsidiary of Midland National Life Insurance Company, which, in turn, is a subsidiary of Sammons Enterprises, Inc.

2. Separate Account D was established by Investors as a separate account under South Dakota law on April 30, 1993 pursuant to a resolution of Investors' Board of Directors. Separate Account D is registered under the 1940 Act as a unit investment trust. The assets of Separate Account D are owned by Investors, but are held separately from Investors's other assets and are not chargeable with liabilities incurred in any other business operation of Investors (except to the extent that assets in Separate Account D exceed the reserves and other liabilities of Separate Account D). The income, capital gains, and capital losses incurred on the assets of Separate Account D are credited to or charged against the assets of Separate Account D, without regard to the income, capital gains, or capital losses arising out of any other business that Investors may conduct.

3. Separate Account D will invest in shares of one or more of the investment portfolios of the Fidelity Variable Insurance Products (VIP) Fund or the Fidelity VIP Fund II (the "Funds"). These Funds are diversified, open-end management investment companies, and are advised by Fidelity Management and Research Company. The assets of each portfolio of a Fund are separate from the others, and each portfolio has separate investment objectives and policies. As a result, each portfolio operates as a separate investment fund, and the investment performance of one portfolio has no effect on the investment performance of any other portfolio. Separate Account D has a number of investment divisions, each of which invests solely in shares of a specific portfolio of a Fund.

4. NAM will serve as the distributor and principal underwriter of the individual flexible premium variable annuity contracts (the "Contracts") to be issued by Separate Account D. NAM is registered as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers, Inc.

5. The Contracts may be purchased on a non-tax qualified basis, or they may be purchased and used in connection with retirement plans or individual retirement accounts that qualify for favorable federal income tax treatment. The Contracts may be purchased with a monthly premium payment of at least $100 (for a Contract purchased and used in connection with a tax-deferred 403(b) annuity), and $2000, for the initial premium payment on any other contract. Subsequent premium payments must be at least $50. The owner of the Contract can allocate premiums to one or more investment divisions of Separate Account D, or to Investors' general account. Under the Contracts, the annuitant may receive annuity payments that are either fixed in amount or variable, and that last for a fixed duration or for life.

6. Each contract year, Investors will deduct a contract maintenance charge of $33. This charge will be deducted from the contract value at the end of each contract year prior to the maturity date of the Contract (and upon a full surrender on any date other than a contract anniversary) to compensate Investors for the administrative services that it provides to Contract owners. Investors also deducts a daily administrative expense charge from the assets of each investment division of Separate Account D. This charge is equal to an effective annual rate of .15% of the net assets of each such investment division. Investors does not anticipate making any profit from the contract maintenance charge or the daily administrative expense charge. Investors will monitor its administrative expenses and the proceeds of those charges at least annually to ensure compliance with Rule 26a–1 under the 1940 Act. Investors guarantees that neither the annual contract maintenance charge nor the daily administrative expense charge will increase during the life of the Contract.

7. To cover its expenses of distributing the Contracts, Investors assesses a contingent deferred sales charge of up to 7% of the premiums withdrawn on certain full surrenders or partial surrenders of Contract value. The applicable percentage charge declines by one percent each year that the Contract is in effect, and is not imposed in the seventh Contract year and later. To the extent that this sales charge proves to be insufficient to recover all distribution expenses, the deficiency will be met from Investors' surplus, which may be, in part, derived from the mortality and expense risk charges. Investors do not anticipate that the continent deferred sales charges will generate sufficient funds to pay the cost of distributing the Contracts.

8. Investors proposes to assess a daily charge to compensate it for bearing certain mortality and expense risks in connection with the Contracts. This charge is equal to an effective annual rate of 1.25% of the value of the net assets in Separate Account D. Of that amount, approximately .85% is attributable to mortality risks, and approximately .40% is attributable to expense risks. Investors guarantees that the mortality and expense risk charge will never increase. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on Investors. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to Investors. Investors currently anticipates making a profit from this charge.

9. The mortality risk borne by Investors arises from its contractual obligation to make payments (determined in accordance with the tables and other provisions contained in the Contract) regardless of how long all annuitants or any individual annuitant may live. This undertaking assures that neither an annuitant's own longevity, nor an improvement in general life expectancy, will adversely affect the annuity payments that the annuitant

will received under the Contract. Investors also incurs a mortality risk in connection with its guarantee to pay a death benefit equal to the greater of the following: (a) The contract value or (b) the sum of all premiums paid less any prior withdrawals.

10. The expense risk assumed by Investors is the risk that Investors' actual administration costs will exceed the amount recovered through the administrative and contract maintenance charges.

11. Investors currently imposes no charge for the first fifteen transfers in a contract year, but imposes a $25 charge for each transfer thereafter. However, Investors reserves the right to impose the $25 charge after the fourth transfer in a contract year. Investors do not anticipate making any profit from this charge. No charges are currently made for federal, state, or local taxes, although Investors may deduct such taxes from Separate Account D in the future.

Applicants' Legal Analysis

1. Applicants request an exemption from sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction under the Contracts of the mortality and expense risk charge from the assets of Separate Account D. Section 27(c)(2) of the 1940 Act prohibits any registered investment company issuing periodic payment plan certificates, and any depositor of or underwriter for such company, from selling any such certificate unless, among other things, the proceeds of all payments on such certificates (excluding sales load) are held by a qualified trustee or custodian under an indenture or agreement containing, in substance, the provisions required by section 26(a)(2) and 26(a)(3) for trust indentures of unit investment trusts. Among the provisions required to be included in such an indenture or agreement is the proviso in section 26(a)(2)(C) that permits the trustee or custodian to deduct from the assets of the trust as an expense only bookkeeping and other administrative services charges not exceeding such reasonable amount as the Commission may prescribe.

2. Applicants submit that Investors is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the charge of 1.25% under the Contracts made for mortality and expense risks is consistent with the protection of investors because it is a reasonable and proper insurance charge. The mortality and expense risk charge is a reasonable charge to compensate Investors for the risks that (a) annuitants under the Contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the Contracts, (b) the Contract value will be less than the death benefit, and (c) administrative expenses will be greater than the amounts derived from the administrative charges.

3. Investors represents that the charge of 1.25% per annum for mortality and expense risks assumed under the Contracts is within the range of industry practice for comparable annuity products. This representation is based upon Investors' analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Investors will maintain at its home office, available to the Commission, a memorandum setting forth in detail the products analyzed in the xou4se of, an the methodology and results of, its comparative survey.

4. Applicants acknowledge that the contingent deferred sales charge may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed by the Commission as being offset by distribution expenses not reimbursed by the sales charge. Investors has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit Separate Account D and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Investors at its home office and will be available to the Commission.

5. Investors also represents that Separate Account D will only invest in management investment companies which undertake, in the event such company adopts a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees), a majority of who are not interested persons of the company, formulate and approve any plan under Rule 12b–1.

Conclusion

Applicants request exemptions from sections 26(a)(2) and 27(c)(2) to the extent necessary to permit them to deduct on a daily basis a charge equal to 1.25% annually of the assets of Separate Account D attributable to the Contracts for the assumption of mortality and expense risks described herein. For the reasons set forth above, Applicants believe that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22695 Filed 9–16–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19701; 812–8290]

John Hancock Asset Allocation Fund, et al.; Notice of Application

September 10, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: John Hancock Asset Allocation Fund, John Hancock Cash Management Fund, John Hancock Employer Trust, John Hancock Growth Fund, John Hancock Limited Term Government Fund, John Hancock Sovereign Bond Fund, John Hancock Sovereign Investors Fund, Inc., John Hancock Strategic Series, John Hancock Special Equities Fund, John Hancock Tax Exempt Income Fund, John Hancock Tax Exempt Series Fund, John Hancock Technology Series, Inc., John Hancock World Fund (the "Hancock Funds"), Freedom Investment Trust, Freedom Investment Trust II, Freedom Investment Trust III (the "Freedom Funds"), any existing or future series of the Hancock Funds and the Freedom Funds, John Hancock Advisers, Inc. (the "Adviser"), John Hancock Broker Distribution Services, Inc. ("Broker Services"), and Freedom Distributors Corporation (together with Broker Services, the "Co-Distributors").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 18(f)(1), 18(g), and 18(i) of the Act.

SUMMARY OF APPLICATION: Applicants seek an amendment to a prior order that permits applicants (a) to issue and sell three classes of shares representing interests in the same portfolios of securities, and (b) to assess a contingent deferred sales charge ("CDSC") on certain redemptions of the shares of one of the classes, and to waive the CDSC in certain cases (the "Prior Order").[1] The requested amendment would permit (a)

[1] Investment Company Act Release Nos. 18921 (Sept. 1, 1992) (notice) and 18984 (Sept. 29, 1992) (order).

the issuance of an unlimited number of classes of shares with different sales load and service and distribution fee structures, and (b) the imposition of certain additional class-related expenses on such classes. Applicants request that any relief granted pursuant to the application also apply to any registered investment company established or acquired in the future, including any series thereof, for which the Adviser or any affiliate controlling, controlled by, or under common control with the Adviser acts as investment adviser or distributor (together with the Hancock Funds and the Freedom Funds, the "Funds"). Any such future Funds will be subject to the representations and conditions set forth in the application.

FILING DATES: The application was filed on March 1, 1993, and amended on June 17, 1993. By supplemental letter dated September 8, 1993, counsel, on behalf of applicants, agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 5, 1993 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 101 Huntington Avenue, Boston, Massachusetts 02199–7603.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3922 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each of the Funds is a Massachusetts business trust, with the exception of John Hancock Sovereign Investors Fund, Inc. and John Hancock Technology Series, Inc., which are Maryland corporations. The Funds are open-end management investment companies registered under the Act. The Adviser provides investment advisory and management services to the Funds. Broker Services acts as principal underwriter for the Hancock Funds. The Co-Distributors act as principal underwriters for the Freedom Funds.

2. Applicants seek to amend the Prior Order to permit the Funds (a) to issue an unlimited number of classes of shares (including the classes approved by the Prior Order); and (b) to differentiate among the classes (including the classes approved by the Prior Order) in the following respects: Any such class (i) may be subject to a rule 12b–1 plan and/or a non-rule 12b–1 shareholder services plan (a "Shareholder Services Plan") (such Shareholder Services Plan, together with a rule 12b–1 plan, the "Plans") and may make different payments pursuant to such Plans ("Plan Payments") (and any other costs relating to obtaining shareholder approval of a rule 12b–1 plan for such class, or an amendment to such plan); (ii) may bear different class expenses, as described below; (iii) may bear a different name or designation; (iv) may or may not have voting rights related to any Plan affecting a specific class of shares; (v) may have different exchange privileges; (vi) may have different conversion features; and (vii) may bear any other incremental expenses subsequently identified that should be properly allocated to such class which shall be approved by the Commission pursuant to an amended order (the "Multiple Class System"). Shares of different classes would be sold under different sales arrangements including, for example, with a front-end sales charge, subject to a CDSC, or at net asset value.[2]

3. Classes of a Fund may be subject to a rule 12–1 plan and/or a Shareholder Services Plan. Under a Shareholder Services Plan, the Fund (or a Co-Distributor) will enter into servicing agreements with affiliated and unaffiliated financial institutions, broker-dealers, and securities professionals ("Service Organizations") capable of providing support services to their customers for whom such Service Organizations beneficially own shares of the Funds offered pursuant to such a Plan. The provision of services under a Shareholder Services Plan will augment (and not be duplicative of) the services to be provided to a Fund by the Adviser, the Co-Distributors, the transfer agent, and by the party which provides custody and recordkeeping services to a Fund.

4. The Prior Order permits the Funds to issue and sell three classes of shares representing interests in the same portfolios of securities, and to assess a CDSC on certain redemptions. The Prior Order authorizes the Funds to offer shares with a front-end sales load and rule 12b–1 distribution and service fees ("Class A" shares); shares subject to a CDSC, a rule 12b–1 service fee, and a higher rule 12b–1 distribution fee ("Class B" shares); and shares sold without any rule 12b–1 distribution plan, CDSC, or front-end sales load ("Class C" shares). Class C shares may be offered to the following investors ("Institutional Investors"):

(a) Unaffiliated benefit plans, such as qualified retirement plans, other than individual retirement account and self-employed retirement plans, with total assets in excess of $10 million or such other amounts as the Funds may establish and with such other characteristics as the Funds may establish;

(b) Tax-exempt retirement plans of the Adviser and its affiliates, including the retirement plans of the Adviser's affiliated brokers;

(c) Unit investment trusts ("UITs") sponsored by Broker Services, and Freedom Principal Return Trust, a UIT sponsored by two indirect wholly owned subsidiaries of John Hancock Mutual Life Insurance Company;

(d) Banks and insurance companies purchasing for their own accounts;

(e) Investment companies not affiliated with the Adviser; and

(f) Endowment funds of non-profit organizations.

5. The Funds may, in the future, offer classes of shares in addition to Class A and Class B shares that are designed to meet the specific investment needs of non-institutional investors (together with Class A and Class B shares, "Non-Institutional Shares"). In addition to Class C shares, applicants may, in the future, offer other classes of shares with attributes designed to meet the specific investment needs of a particular category of Institutional Investor (together with Class C shares, "Institutional Shares"). Applicants also may offer classes of shares to institutions not included in the categories of Institutional Investors, such as corporations, foundations, and financial institutions, designed to meet

[2] Applicants state that the application filed in connection with the Prior Order is incorporated by reference in the present application, except to the extent that any of its representations and conditions are inconsistent with the representations and conditions of the present application.

the needs of such institutions ("Financial Shares").

6. Only Institutional Investors will be eligible to invest in Institutional Shares. All other investors will be eligible to invest solely in Class A, Class B, other Non-Institutional Shares, and/or Financial Shares. Applicants may choose not to make a particular class of Institutional Shares available to one or more categories of Institutional Investors. If no class of Institutional Shares is made available to a particular category of Institutional Investor, Institutional Investors in this category will be permitted to purchase Non-Institutional Shares and/or Financial Shares. However, no Institutional Investor that is eligible to invest in any class of Institutional Shares will be permitted by applicants to invest in any class of Non-Institutional Shares or Financial Shares. Accordingly, there will be no overlap between the investors eligible to invest in Institutional Shares and investors eligible to invest in Non-Institutional Shares and Financial Shares of a Fund or series thereof.

7. Each class of shares generally may be exchanged for shares of a class with similar characteristics in another Fund. Shares of any class of a Fund, including a class with a CDSC feature, may be exchanged for shares of certain money market funds that do not impose a CDSC and may not be subject to a Plan ("Money Market Exchange Shares"). For purposes of imposing any applicable CDSC on Money Market Exchange Shares (and applying any applicable conversion feature), the period during which the shareholder held the exchanged shares would be counted, except that a Fund may elect not to count the period during which the shareholder held the Money Market Exchange Shares. All such exchanges will be allowed only between Funds that are within the same "group of investment companies" as defined in rule 11a–3 under the Act. However, exchanges may, at the discretion of the Fund's trustees or directors (collectively, the "Trustees") be permitted among dissimilar classes should a shareholder cease to be eligible to purchase shares of the original class by reason of a change in the shareholder's status. All permitted exchanges will comply with rule 11a–3 under the Act.[3]

[3] Applicants do not intend, upon initial implementation of the Multiple Class System with respect to any Fund, to offer to Class A or Class B shareholders who become eligible to purchase Class C shares the privilege of exchanging their existing Class A or Class B shares for Class C shares. After implementation of the Multiple Class System, such shareholders will not be permitted to purchase any additional Class A or Class B Shares (except through the reinvestment of dividends and distributions).

8. A conversion feature will automatically convert shares of one class (the "Purchase Class") to shares of another class with different features (the "Target Class") after the expiration of a specified period, subject to terms disclosed in a Fund's then-current prospectus. All conversions will be done at net asset value without the imposition of any sales load, fee, or other charge, so that the value of each shareholder's account immediately before conversion will be the same as the value of the account immediately after conversion. After conversion, the Target Class will be subject to an asset-based sales charge and/or service fee, if any, that in the aggregate are lower than the asset-based sales charge and service fee to which Purchase Class were subject prior to the conversion.

9. For purposes of the conversion, all Purchase Class shares in a shareholder's account that were acquired through the reinvestment of dividends and other distributions paid in respect of such shares (and which had not yet converted) will be considered to be held in a separate sub-account ("Dividend Purchase Shares"). Each time any Purchase Class shares in the shareholder's account converted, an equal portion of Dividend Purchase Shares then in the sub-account will also convert and will no longer be considered held in the sub-account. The portion will be determined by the ratio that the shareholder's converting Purchase Class shares bears to the shareholder's total Purchase Class shares subject to the conversion feature but excluding Dividend Purchase Shares.

10. Any conversion will be subject to the continuing availability of an opinion of counsel or a private letter ruling from the Internal Revenue Service to the effect that the conversion did not constitute a taxable event under federal income tax law. Conversion might be suspended if such an opinion or ruling were no longer available.

11. Under the Multiple Class System, certain expenses may be attributable to a Fund, but not to a particular series thereof. All such expenses will be borne by each class on the basis of the relative aggregate net assets of the classes, except in the case of a Fund that has series, in which case they will first be allocated among series, based on the relative aggregate net assets of such series, and then borne on that basis by each series without regard to class. Expenses that are attributable to a particular series, but not to a particular class thereof, will be borne by each class on the basis of the relative aggregate net assets of the classes.

12. A class of shares may be permitted to bear expenses that are directly attributable to such class ("Class Expenses"). In addition to Plan Payments, Class Expenses may include any or all of the following expenses:

(a) Transfer agency fees (including the incremental cost of monitoring the CDSC) attributable to a specific class of shares;

(b) Printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements to current shareholders of a specific class;

(c) Commission registration fees incurred by a specific class;

(d) Administrative personnel and services required to support the shareholders of a specific class (including, but not limited to, maintaining telephone lines and personnel to answer shareholders' inquiries about their accounts or about the Funds);

(e) Litigation or other legal expenses relating to a specific class of shares;

(f) Trustee fees or expenses incurred as a result of issues relating to a specific class; and

(g) Accounting expenses relating to a specific class.

13. Because of the Plan Payments and Class Expenses that may be borne by each class, the net income attributable to and the dividends payable on each class may be different from the net income attributable to and the dividends payable on the other classes. Dividends paid to each class will, however, be declared and paid on the same days and at the same times and, except as noted with respect to the Plan Payments and Class Expenses, will be determined in the same manner and will be paid in the same amount. Except for those Funds or series which are money market funds (which maintain a constant net asset value per share) the net asset value per share of the classes will vary.

Applicants' Legal Analysis

1. Applicants request an amendment to the Prior Order exempting them from the provisions of sections 18(f)(1), 18(g), and 18(i) of the Act to the extent that the proposed issuance and sale of an unlimited number of classes of shares representing interests in the Funds might be deemed to result in a "senior security" within the meaning of section 18(g); to be prohibited by section 18(f)(1); and to violate the equal voting provisions of section 18(i).

2. Applicants assert that the number of classes authorized in the Prior Order may not adequately address the variety of marketing situations and investor needs that the Funds will face in an increasingly competitive marketplace. Applicants state that it would be desirable for the Funds to have the authority to issue an unlimited number of classes of shares to address these situations and needs as they develop, thus remaining competitive.

3. Applicants assert that the proposed Multiple Class System does not create the potential for the abuses that section 18 of the Act was designed to redress. The Multiple Class System will not increase the speculative character of the shares of the Funds. The Multiple Class System does not involve borrowings, will not affect the Funds' existing assets or reserves, and does not involve a complex capital structure.

4. Applicants state that the proposed allocation of Class Expenses and voting rights in the manner described is equitable and would not discriminate against any group of shareholders. Investors purchasing shares offered in connection with a Plan and receiving services provided under such Plan would bear costs associated with such services, and would receive the added benefits of economies of scale and portfolio management advantages that may result from combining retail and institutional investors' assets in a single, larger portfolio. Conversely, investors purchasing shares that would not be covered by a Plan would not be burdened with such expenses and, in addition, would have no need for voting rights with respect to a rule 12b–1 plan. These investors, similarly, would benefit from economies of scale and portfolio management advantages.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund or a series, and be identical in all respects, except as set forth below. The only differences among the classes of share of the same Fund or series will relate solely to:

(a) The method of financing certain Class Expenses, which may include any or all of the following expenses determined by the trustees to be attributable to a specific class of shares: (i) Transfer agency fees (including the incremental cost of monitoring the CDSC) attributable to a specific class of shares; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements to current shareholders of a specific class; (iii) Commission registration fees incurred by a specific class; (iv) the expense of administrative personnel and services required to support the shareholders of a specific class; (v) litigation or other legal expenses relating to a specific class of shares; (vi) Trustee fees or expenses incurred as a result of issues relating to a specific class; and (vii) accounting expenses relating to a specific class;

(b) Expenses payable by a class pursuant to a Plan with respect to such class;

(c) The voting rights related to any Plan effecting a specific class of shares;

(d) Conversion features;

(e) Exchange privileges; and

(f) Class designations. Any additional incremental expenses not specifically identified above which are subsequently identified and determined to be properly applied to one class of shares shall not be so applied unless and until approved by the Commission.

2. The Trustees of the Funds, including a majority of the non-interested Trustees, will approve the Multiple Class System. The minutes of the meetings of the Trustees of the Funds regarding the deliberation of the Trustees concerning, and their approval of, the Multiple Class System will reflect in detail the reasons for the Trustees' determination that the proposed Multiple Class System is in the best interests of both the Funds and their respective shareholders.

3. The initial determination of Class Expenses that will be applied to a class and any subsequent changes thereto will be reviewed and approved by a vote of the Board of Trustees, including a majority of the non-interested Trustees. Any persons authorized to direct the application and disposition of monies paid or payable by the Fund to meet Class Expenses shall provide to the Board of Trustees, and the Trustees shall review at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. Any distributor will adopt compliance standards as to when each class of shares may be sold to particular investors. Applicants will require all persons selling shares of the Funds to conform to such standards. Such compliance standards will require that all investors eligible to purchase Institutional Shares will be sold only Institutional Shares, and all investors eligible to purchase Non-Institutional Shares or Financial Shares will be sold only Non-Institutional Shares or Financial Shares.

5. The Shareholder Services Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

6. On an ongoing basis, the Trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the classes of shares. The Trustees, including a majority of the non-interested Trustees, will take such action as is reasonably necessary to eliminate any such conflicts that may develop. The adviser and the distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the adviser or the distributor, each at its own cost, will remedy such conflict up to and including establishing a new registered management investment company.

7. The Trustees will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as amended from time to time. In these statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the non-interested Trustees in the exercise of their fiduciary duties.

8. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charges and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

9. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a Shareholder Services Plan) that would increase materially the amount that may

be borne by the shares of a Target Class under the plan, existing Purchase Class shares will stop converting into the Target Class unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The Trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into the Target Class. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class will convert into New Target Class. New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Trustees reasonably believe will not be subject to federal taxation. In accordance with condition 6 any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shall be borne solely by the adviser and the distributor. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

10. Dividends paid by a Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be paid in the same amount, except that Plan Payments and any Class Expenses will be borne exclusively by that class.

11. The methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper allocation of expenses among the classes have been reviewed by an expert (the "Expert"). The Expert has rendered a report to the applicants filed with the application as Exhibit C that such methodology and procedures are adequate to ensure that such calculations and applications will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and applications are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and applications are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following a request by the Funds (which the Funds agree to provide), will be available for inspection by the Commission's staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" as defined and described in SAS No. 44 of the AICPA, and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

12. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition 11 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 11 above. Applicants agree to take immediate corrective action if this representation is not concurred in by the Expert or appropriate substitute Expert.

13. The prospectuses of each Fund will include a statement to the effect that any person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

14. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Funds with respect to the Multiple Class System will be set forth in guidelines which will be furnished to the Trustees.

15. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares other than Institutional Shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Institutional Shares will be offered solely pursuant to a separate prospectus. The prospectus for Institutional Shares will disclose the existence of the Fund's other classes, and the prospectus for the Fund's other classes will disclose the existence of Institutional Shares and will identify the persons eligible to purchase Institutional Shares. The Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares, except Institutional Shares. Advertising materials reflecting the expenses or performance data for Institutional Shares will be available only to those persons eligible to purchase Institutional Shares. The information provided by applicants for publication in any newspaper or similar listing of the Fund's net asset value and public offering price will present each class of shares, except Institutional Shares, separately.

16. Applicants acknowledge that the grant of the amendment to the Prior Order requested by the application will not imply Commission approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to the rule 12b–1 plans or Shareholder Services Plans in reliance on the exemptive order.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22697 Filed 9–16–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19703; File No. 812–8480]

Pacific Mutual Life Insurance Company, et al.

September 10, 1993.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Pacific Mutual Life Insurance Company ("Pacific Mutual"), PFAMCo Variable Annuity Separate Account (the "Separate Account"), and Pacific Equities Network ("PEN") (collectively referred to herein as "Applicants").

RELEVANT 1940 ACT SECTION: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction from the assets of the Separate Account of the mortality and expense risk charges imposed under certain individual flexible premium deferred variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on June 30, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on October 5, 1993, and should be accompanied by a proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Sharon A. Cheever, Pacific Mutual Life Insurance Company and Pacific Equities Network, 700 Newport Center Drive, Newport Beach, California 92660.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, or Michael V. Wible, Special Counsel, on (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. Pacific Mutual is a mutual life insurance company organized under the laws of the State of California. It was authorized to conduct business as a life insurance company on January 2, 1868, as Pacific Mutual Life Insurance Company of California, and was reincorporated under its present name on July 22, 1936.

2. The Separate Account was established by Pacific Mutual on June 28, 1993. The Separate Account is currently divided into eleven sub-accounts (the "Variable Accounts"). Each Variable Account will invest exclusively in shares of a corresponding variable portfolio of PFAMCo Funds (the "Fund"). Pacific Financial Asset Management Corporation ("PFAMCo") serves as Investment Adviser to the Fund.

3. PEN will be the principal underwriter of the Contracts. PEN is a wholly-owned subsidiary of Pacific Financial Holding Company, which is a wholly-owned subsidiary of Pacific Mutual.

4. The Contracts are available for purchase as non-tax qualified retirement plans by individuals. The Contracts are also eligible for use in connection with tax qualified retirement plans that meet the requirements of Sections 401 and 408 of the Internal Revenue Code of 1986, as amended (the "Code"). The Contracts are not available for use in connection with tax qualified retirement plans under Section 403(b) unless otherwise approved by Pacific Mutual. The minimum initial premium for the purchase of a Contract is $25,000. Thereafter, the Contract Owner may choose the amount and frequency of premium payments, except that the minimum subsequent premium is $5,000. Pacific Mutual may reduce the minimum premium requirements under certain circumstances, such as for group or sponsored arrangements.

5. If the annuitant dies during the accumulation period, Pacific Mutual will pay a death benefit to the beneficiary. The death benefit under the Contract is equal to the accumulated value as of the end of the valuation period in which due proof of death and instructions regarding payment are received at their Variable Annuity Center.

6. There is no sales charge, contingent deferred sales charge, or surrender charge under the Contract.

7. Pacific Mutual deducts a monthly administrative charge equal to .000125 multiplied by a Contract's accumulated value, which will be deducted monthly during the accumulation period, beginning on the monthly anniversary following the contract date, during the accumulation period. This charge is equivalent to an annual rate of 0.15% of a Contract's accumulated value. The purpose of this charge is to reimburse Pacific Mutual for the expenses associated with administration of the Contracts and operation of the Separate Account. Pacific Mutual does not expect to profit from this charge.

8. During the accumulation period, an annual fee of $30, will be deducted at the end of each contract anniversary to cover the costs of maintaining records for the Contracts. The fee will be assessed to each Account in proportion to the Contract's accumulated value in each Variable Account. Upon annuitization or a full withdrawal, the charge will be pro-rated for the portion of the contract year during which the Contract was in force. This charge is currently waived on Contracts for which the initial premium is $100,000 or more, although Pacific Mutual reserves the right to impose the charge on such Contracts in the future. Pacific Mutual does not expect to profit from this charge.

9. Pacific Mutual assesses a premium tax charge to reimburse itself for premium taxes that it incurs on behalf of the Contract Owner. This charge usually will be deducted upon annuitization or upon full withdrawal if premium taxes are incurred and are not refundable. Partial withdrawals, including scheduled withdrawals, may be subject to a premium tax charge if a premium tax is incurred on the withdrawal by Pacific Mutual and is not refundable. Pacific Mutual reserves the right to deduct premium taxes when due.

10. Pacific Mutual may charge the Variable Accounts or deduct from accumulated value or premiums amounts for federal, state, or local income taxes incurred by Pacific Mutual that are attributable to the Separate Account and its Variable Accounts, or to the operations of Pacific Mutual with respect to the Contracts, or that are attributable to payment of premiums or acquisition costs under the Contracts. No such charge is currently assessed.

11. Pacific Mutual may reduce or waive the amount of the administrative charge and contract maintenance fee for a Contract where the expenses associated with the administrative and maintenance costs of the Contract are reduced for reasons such as the amount of initial premium payment, the amounts of projected premium

payments, or that the Contract is sold in connection with a group or sponsored arrangement. Pacific Mutual may also reduce or waive the administrative charge and maintenance fee on Contracts sold to the directors or employees of Pacific Mutual or any of its affiliates or to trustees of the Fund. Pacific Mutual will only reduce or waive such charges and fees where the costs associated with administering and maintaining the Contract are reduced.

12. Pacific Mutual will deduct a daily charge from the assets of each Variable Account for mortality and expense risks assumed by Pacific Mutual under the Contracts. The charge is equal to an annual rate of 1.25% of the average daily net assets of each Variable Account. This amount is intended to compensate Pacific Mutual for certain mortality and expense risks Pacific Mutual assumes in offering and administering the Contracts and in operating the Separate Account. The 1.25% charge consists of approximately 0.35% for expense risk and 0.90% for mortality risk.

13. Applicants state that the expense risk under the contract is the risk that Pacific Mutual's actual expenses in issuing and administering the Contracts and operating the Variable Accounts will be more than the charges assessed for such expenses. Applicants also state that the mortality risk borne by Pacific Mutual is the risk that the persons on whose life annuity payments depend (each an "Annuitant"), as a group, will live longer than Pacific Mutual's actuarial tables predict.

14. Applicants submit that if the asset charge proves to be insufficient to cover the actual cost of the mortality and expense risk undertakings, Pacific Mutual will bear the loss. Conversely, if the deduction is more than sufficient, Pacific Mutual will realize a profit that will be available for any proper corporate purpose. Applicants submit that although Pacific Mutual may ultimately realize a profit from the charge to the extent it is not needed to meet the actual expenses incurred, the aggregate charge is guaranteed and will never be increased.

15. Pacific Mutual guarantees that the charge for mortality and expense risks will not increase, that the maintenance fee shall not exceed $30, and the administrative charge shall not exceed an annual rate of 0.15% of a Contract Owner's Accumulated Value. Applicants represent that Pacific Mutual also guarantees that annuity payments will not be affected by a change in mortality experience that results in the payment of greater annuity income than assumed under the annuity options in the Contract.

Applicants' Legal Analysis

1. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act requires that all payments received under a periodic payment plan certificate be held by a qualified trustee or a custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except for the payment of a fee, not exceeding such reasonable amount as the Commission may prescribe, for bookkeeping and other administrative services.

2. Pacific Mutual asserts that it is entitled to reasonable compensation for its assumption of mortality and expense risks, and Applicants represent that the level of the mortality and expense risk charge imposed is within the range of industry practice for comparable annuity products. Applicants state that this representation is based upon their analysis of publicly available information regarding comparable contracts of other companies, taking into consideration the particular annuity features of the comparable contracts, including such factors as: annuity purchase options and rate guarantees, other contract charges, the frequency of charges, the administrative services performed by the companies with respect to the contracts, the distribution methods, the market for the contracts, investment options under the contracts, and the tax status of the contracts. Applicants represent that they will maintain at their Variable Annuity Center, and make available to the Commission, a memorandum setting forth in detail the comparable variable annuity products analyzed and the methodology, and results of, Applicants' comparative review.

3. According to the Applicants, costs related to the distribution of the Contracts will be paid from Pacific Mutual's General Account assets, which may include any ultimate profit derived from the mortality and expense risk charge imposed. In such circumstances, a portion of the mortality and expense risk charge imposed might be viewed as providing for a portion of the costs relating to distribution of the Contracts. Notwithstanding the foregoing, Pacific Mutual has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Separate Account and the Contract Owners. Among other things, Pacific Mutual has taken into consideration that the no sales load is imposed with respect to the Contracts. The basis for Pacific Mutual's conclusion is set forth in a memorandum which will be maintained by Pacific Mutual in its Variable Annuity Center and will be available to the Commission.

4. Pacific Mutual represents that if the Separate Account invests in any open-end management investment companies that have adopted a plan under Rule 12b–1 under the 1940 Act, the Separate Account will invest only in such companies that have undertaken to have such plans formulated and approved by the particular company's board of directors, a majority of the members of which will not be "interested persons" of such company within the meaning of section 2(a)(19) of the 1940 Act.

Conclusion

Applicants submit that for all the reasons and upon the facts set forth above, their request for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22696 Filed 9–16–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before October 18, 1993. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:
Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3d Street, SW., 5th Floor, Washington, DC 20416. Telephone: (202) 205–6629.
OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503
Title: Training Workshop Evaluation
Form No.: 1591
Frequency: On Occasion
Description of Respondents: Clients Attending Workshops
Annual Responses: 40,000
Annual Burden: 10,000.

Dated: September 10, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93–22684 Filed 9–16–93; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 99000090]

KOKO Capital Co., L.P.; Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1990)) by KOKO Capital Company, L.P., 116 Radio Circle, Mt. Kisco, New York 10549, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et. seq.), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and partners of the Applicant will be as follows:

Name	Title or position	Percent of ownership
General Partner:		
Kisco Capital Corporation, 116 Radio Circle, Mt. Kisco, New York 10549.	General Partner	1.00
James A. Kohlberg, 158 Mills Road, Purdy's, New York 10578.	President/Director, Owner of Kisco Capital Corporation (The Corporate General Partner).	100.00
Walter W. Farley, 122 Buckingham Road, Upper Montclair, New Jersey 07043.	Vice President/Director	0
Limited Partner:		
Jerome Kohlberg, Jr., Crow Hill Road, Mt. Kisco, New York 10549.	Limited Partner	99.00

Jerome Kohlberg, Jr., will own 100 percent of the Limited Partnership interest.

The Applicant, a Delaware limited partnership, is expected to begin operations with $5,000,000 of private capital and will be a source of equity capital and long-term loan funds for qualified small business concerns. The Applicant intends to conduct its business activities in the State of New York, primarily in the Northeast and Middle Atlantic sections of the United States, and thereafter, throughout the United States.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the existing company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in New York State and Delaware.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 8, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–22683 Filed 9–16–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 93–65; Notice 1]

Receipt of Petition for Determination That Nonconforming 1969 Volkswagen 119 "Beetle" Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1969 Volkswagen 119 "Beetle" passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1969 Volkswagen 119 "Beetle" that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is October 18, 1993.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and

after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 (of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Champagne Imports, Inc. of Landsdale, Pennsylvania (Registered Importer No. R–90–009), has petitioned NHTSA to determine whether 1969 Volkswagen 119 "Beetle" passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1969 Volkswagen 119 "Beetle" that was manufactured for importation into and sale in the United States and certified by its manufacturer, Volkswagenwerk A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner stated that it carefully compared the non-U.S. certified version of the 1969 Volkswagen 119 "Beetle" to its U.S. certified counterpart, and found that the two vehicles are substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1969 Volkswagen 119 "Beetle", as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1969 Volkswagen 119 "Beetle" is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 101 *Controls and Displays*, 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, and 212 *Windshield Mounting*.

Petitioner also contends that the non-U.S. certified Volkswagen 119 "Beetle" is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of either a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3) (A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 10, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–22799 Filed 9–16–93; 8:45 am]

BILLING CODE 4910–59–M

Highway Safety Programs; Model Specifications for Devices to Measure Breath Alcohol

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice amends the Model Specifications for evidential breath testing devices published in 1984 and updates the list of conforming products. Recent trends indicate that the states are lowering the alcohol levels that indicate drunk driving (e.g., "zero tolerance" laws for underage offenders) Moreover, these specifications address comments received in response to a Department of Transportation Notice of Proposed Rulemaking published in the Federal Register on December 15, 1992 (57 FR 59382). The Model Specifications and the Conforming Products List set forth below reflect new lower evaluation thresholds for devices to measure breath alcohol, to better reflect the range of critical measurements during actual use.

DATES: This notice becomes effective October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Mayer, Office of Alcohol and State Programs, NTS–21, National Highway Traffic Safety Administrator, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–9825.

SUPPLEMENTARY INFORMATION: On December 14, 1984 (49 FR 48854), the National Highway Traffic Safety Administration (NHTSA) issued a notice converting the mandatory standards for breath alcohol test devices (38 FR 30459) to Model Specifications for such devices. The Notice indicated that the Agency would continue to test evidential breath testers (EBTs) and would release its findings to provide States which choose not to conduct their own testing with adequate information upon which to base their purchasing decisions.

Since publication of the Model Specifications in 1984 (49 FR 48855), States have been moving toward a lowering of alcohol levels which indicate drunk driving and enacting new laws targeting youthful offenders (i.e., "zero tolerance" laws).

On December 15, 1992, the U.S. Department of Transportation (DOT) published Notices of Proposed Rulemaking (NPRMs) proposing rules to implement the "Omnibus Transportation Employee Testing Act of 1991," which requires alcohol testing programs in aviation, motor carrier, rail, and mass transit industries in the interest of public safety. The Research and Special Programs Administration (RSPA) has proposed similar regulations for the pipeline industry. In general, the proposed rules would prohibit covered employees from performing safety-sensitive functions when test results indicate a breath alcohol concentration (BAC) of 0.04 or greater. Slightly different consequences would apply with respect to an employee having a BAC of 0.02 or greater but less than 0.04. If the NPRMs are adopted as final rules, transportation workers in safety-sensitive positions will be tested at lower alcohol (commercial motor vehicle drivers are already subject to DWI standards at ≥0.04).

DOT received comments in response to the rulemaking actions recommending that if NHTSA's Model Specifications are to be used for the transportation workplace alcohol testing programs, then the Model Specifications should be consistent with the requirements of the rules.

In light of the trend toward lowering alcohol levels and to address the comments received in response to DOT's NPRMs, NHTSA has decided to revise its Model Specifications by lowering the BACs at which instruments are evaluated.

Under the earlier specifications, EBTs were evaluated for precision and accuracy at 0.000, 0.050, 0.101, and 0.151 BAC, and tests for operation of the devices at various conditions of operation were performed at 0.101 BAC. The Specifications below establish evaluations for precision and accuracy at 0.000, 0.202, 0.040, 0.080, and 0.160 BAC, and evaluations at various conditions of operation at 0.080. Tests for acetone interference will also be conducted at 0.020 BAC. NHTSA is also expanding its definition of alcohol to better reflect State laws and the capabilities of testing devices.

These revisions will assist the States and local communities by providing a centralized qualification test program for breath-testing devices designed to collect evidence in law enforcement programs. The Model Specifications are not intended to replace the current qualification programs required in certain States for this equipment or to directly regulate the manufacture of EBTs. However, some States may wish to make use of this program in addition to setting their own requirements. While the agency is not imposing these Model Specifications on State and local governments, NHTSA encourages each State to consider adopting them.

Procedures

Testing of EBTs submitted by manufacturers to these Model Specifications will continue to be conducted by the DOT Volpe National Transportation Systems Center (VNTSC). Procedures for submitting instruments for evaluation have not changed. Tests will continue to be conducted semi-annually or as necessary. Manufacturers wishing to submit EBTs for testing must apply to NHTSA for a test date (Office of Alcohol and State Programs (OASP), NTS-21, NHTSA, 400 Seventh Street SW., Washington, DC 20590). Normally, at least 30 days will be required from the date of notification until the test can be scheduled. One week prior to the scheduled initiation of the test program, the manufacturer will deliver the device to be tested to VNTSC, DTS 75, Kendall Square, Cambridge MA 02142. The manufacturer shall be responsible for ensuring that its device is operating properly and is in proper calibration. If the manufacturer wishes to submit a duplicate, backup instrument, it may do so. The Operator's Manual and the Maintenance Manual will be delivered with the EBT, to VNTSC, with specifications and drawings which fully describe the device. Proprietary information will be respected. (See 49 CFR part 512, regarding the procedure by which NHTSA will consider claims of confidentiality.)

The manufacturer will have the right to check the EBT between arrival in Cambridge and the start of the test and to ensure that the EBT is in proper calibration, but will have no access to it during the tests. Any malfunction of the EBT which results in failure to complete any of the tests satisfactorily will result in a finding that it does not conform to the Model Specifications. If the EBT fails to conform, it may be resubmitted for testing.

On the basis of these results, NHTSA will continue to periodically publish a Conforming Products List (CPL), identifying the EBTs that meet the performance criteria set forth in these Model Specifications.

In anticipation of the publication of this notice and DOT's final rules to implement the Omnibus Transportation Employee Testing Act of 1991, NHTSA invited manufacturers currently known to produce EBTs to submit their instruments for evaluation utilizing these amended specifications. Instruments provided by the manufacturers have been evaluated under these Model Specifications, and this notice includes, as Appendix A, a revised CPL. This CPL identifies those instruments found to conform with the Model Specifications, as amended by this notice. It also identifies those instruments that meet the Model Specifications detailed in 49 FR 48854 (December 14, 1984).

Retesting of instruments will continue to be conducted when necessary. NHTSA intends to modify and improve these Model Specifications as new data and improved test procedures become available. (The test procedures may be altered in specific instances, if necessary, to meet unique design features of an EBT.) If these Model Specifications are modified, notification will be provided in the **Federal Register**. If NHTSA determines that retesting to the modified specification is necessary, a manufacturer whose equipment is listed on the CPL will be notified to resubmit the equipment for testing to the modified specification only. Also, if at any time a manufacturer wishes to change the design of an EBT currently on the CPL, the manufacturer shall submit the proposed changes to OASP for review. Based on this review, a determination will be made regarding whether retesting is required. Guidance to manufacturers on considerations governing this decision is given in Appendix B.

OASP will continue to be the point of contact for information about acceptance testing and field performance of equipment already on the list. When it is available, NHTSA requests that the State and local agencies provide both acceptance and field performance data to OASP. Information from users will be used to: (1) Help NHTSA determine whether EBTs continue to perform according to the NHTSA Model Specifications and (2) ensure that field use does not indicate excessive breakdown or maintenance problems.

If information gathered indicates that an instrument on the CPL is not performing in accordance with the Model Specifications, NHTSA will direct VNTSC to conduct a special investigation. This study may include visits to users and additional tests of the instrument obtained from the open

market. If the investigation indicates that the instruments actually sold on the market are not meeting the Model Specifications, then the manufacturers will be notified that the instrument may be dropped from the list. In this event the manufacturer shall have 30 days from the date of notification to reply. Based on the VNTSC investigation and any data provided by the manufacturer, NHTSA will decide whether the instrument should remain on the list. Upon resubmission, the manufacturer must submit a statement describing what has been done to overcome the problems which led to the dropping of the instrument in question from the list.

This notice addresses comments received by DOT in response to its NPRMs on The Omnibus Transportation Employee Testing Act of 1991 published in the **Federal Register** on December 15, 1992. The changes to the Model Specifications for evidential breath testers contained in this notice become effective on the date noted above. If any person believes NHTSA should reconsider the changes made in this notice, that person may submit a petition for reconsideration. The petition shall be submitted to the Administrator, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590. It is requested, but not required, that 10 copies be submitted. The petition must be received by the date noted above and contain a brief statement of the basis for the petition. The statement may not exceed 15 pages in length, but necessary attachments may be appended to the submission without regard to the 15 page limit. The filing of a petition will not stay the effective date of this notice.

In accordance with the foregoing, the Model Specifications for performance testing of EBTs are set forth below.

Authority: 23 U.S.C. 402, 403, 408, 410; delegations of authority at 49 CFR 1.50 and 501.

Michael B. Brownlee,

Associate Administrator for TSP.

Model Specifications for Evidential Breath Testers

1. Purpose and Scope

These specifications establish performance criteria and methods for testing of evidential breath testers (EBTs). EBTs measure the alcohol content of deep lung breath samples with sufficient accuracy for evidential purposes. These specifications are intended primarily for use in the conformance testing of EBTs.

2. Classification

2.1 Mobility

2.1.1 Mobile Evidential Breath Testers

EBTs that are designed to be transported to non-fixed operational sites in the field.

2.1.2 Nonmobile Evidential Breath Testers

ETBs that are designed to be operated at a fixed location.

2.2 Power Source

2.2.1 Battery Powered Evidential Breath Testers

ETBs that are powered by batteries.

2.2.2 AC Powered Evidential Breath Testers

ETBs that are powered from the AC power lines.

3. Definitions

3.1 Alcohol—The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.

3.2 BAC, BrAC—Blood alcohol concentration: grams of alcohol per 100 milliliters blood or grams of alcohol per 210 liters of breath in accordance with the Uniform Vehicle Code, Section 11–903(a)(5).[1] BrAC is often used to indicate that the measurement is a breath measurement. In these Model Specifications, concentration units of test samples are referred to as BAC units and are grams of alcohol per 210 liters of air.

3.3 Conformance Tests

Tests performed to check the compliance of a product with these specifications.

3.4 Standard Deviation

An indication of measurement precision of the EBT in a test, expressed as follows:

$$\text{Standard deviation} = [\text{Sum}\ (X_i - X_m)^2/(N-1)]^{1/2}$$

where X_i = a single measurement result
X_m = the average of the measurements
N = the number of measurements made in the test.

3.5 Systematic Error

An indication of the accuracy of the ETB in a test.

$$\text{Systematic error} = [(X_m - \text{test BAC})/\text{test BAC}]\ 100$$

3.6 Calibrating Unit (CU)

A device that produces an alcohol-in-air test sample of known concentration that meets the Model Specifications for Calibrating Units (49 FR 48865).

3.7 BASS

Breath Alcohol Sample Simulator. A device which provides an alcohol-in-air test sample with known and adjustable alcohol concentration profile, flow rate, and air composition at 34° centigrade. (See NBS Special Publication 480–41, July 1981 [2] for a description of a BASS unit suitable for use in Test 4.)

4. Test Methods and Requirements

Each of the tests below requires 10 measurements to three decimal places made at 0.080 BAC or other specified BAC using the ETB being evaluated. Procedures specified by the manufacturer will be followed. Unless otherwise specified, the tests will be performed in the absence of drafts and at prevailing normal laboratory temperature, humidity, and barometric pressure. Ethyl alcohol will be used to prepare the test samples in this Model Specifications. A CU of the type which uses aqueous alcohol solutions thermostated at 34° C and a ratio of headspace concentration to liquid concentration of 0.000393 (see 49 FR 48865) will be used to provide the BAC samples. The CU shall be capable of delivering 10 complete vapor samples with alcohol depletion of not more than 1%. Human breath will be used to drive the CU. (For Test 4, the BASS device will be used.) Performance requirements are indicated in square brackets. [SE=systematic error, SD=standard deviation].

4.1 Test 1 Precision and Accuracy.

Test at each specified BAC.

Test 1.1: 0.020 BAC [SE≤ ±0.005 BAC; SD≤0.0042]

Test 1.2: 0.040 BAC [SE≤ ±0.005 BAC; SD≤0.0042]

Test 1.3: 0.080 BAC [SE≤ ±0.005 BAC; SD≤0.0042]

Test 1.4: 0.160 BAC [SE≤ ±0.008 BAC; SD≤0.0042]

The following test is information for potential users only.

There is no performance requirement.

Test 1.5: 0.300 BAC.

4.2 Test 2. Acetone Interference.

Test at 0.020 BAC with the specified amount of acetone added to the CU solution.[3] Replace the solution if acetone depletion is indicated during the test. [SE≤ ±0.005 BAC; SD≤0.0042]

Test 2.1: 70 microliters acetone per 500 ml solution.

Test 2.2: 115 microliters acetone per 500 ml solution.

4.3 Test 3. Blank Reading.

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[1] Available from National Committee on Uniform Traffic Laws and Ordinances, 405 Church Street, Evanston, IL 60201.

[2] Available from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

[3] The amounts of acetone have been specified on the basis of an experimentally determined water to air partition factor of 365 to 1 at 34° C to yield a sample of acetone in air at concentrations of 0.3 mg/l and 0.5 mg/l.

Test at 0.000 BAC. The tester shall use his or her own breath for this test and he or she may not consume alcohol for a period of 48 hours prior to this test or smoke for a period of 20 minutes prior to this test. The tester shall verify that the volume of each breath sample delivered is at least two liters. [SE≤ ±0.005 BAC with no single result greater than 0.005 BAC].

4.4 Test 4. Breath Sampling (Alternate test in Appendix C may be used).

Prepare the BASS solutions so that the BAC of each of the three segments of the simulated breath sample increases from 0.048, to 0.072, to 0.080. Use compressed breathing air to drive the samples. If the EBT is sensitive to carbon dioxide at concentrations found in human breath (5%), the driver gas will contain this gas at that concentration. Use a spirometer to measure sample volumes and, if necessary, place the EBT in a glove box to make that measurement. Perform three tests at each of the following volume-time combinations [SE≤ ±0.005 BAC; SD≤0.0042]

	Volume of each segment (liters)	Time of each segment (seconds)
Test 4.1	0.67	3.3
Test 4.2	0.67	2
Test 4.3	2	4

4.5 Test 5. Input Power.

If the EBT is powered by nominal voltages of 120 volts AC or 12 volts DC, condition the device for one half hour at the appropriate input voltage specified below, then test at that voltage. Monitor the input power with a voltmeter accurate to ±2% of full scale in the range used and readjust the voltage, if necessary. [SE≤ ±0.005 BAC; SD≤0.0042]

Test 5.1: 108 VAC
Test 5.2: 123 VAC
Test 5.3: 11 VDC
Test 5.4: 15 VDC.

4.6 Test 6. Ambient Temperature.

Use a temperature chamber controllable to ±1°C. Soak the EBT at the specified temperature for 1 hour before each test, then test at that temperature [SE≤ ±0.005 BAC; SD≤0.0042].

Test 6.1: 20°C
Test 6.2: 30°C

The following portion of Test 6 is applicable to hand held EBTs and is for information to potential users only. Soak hand-held EBT at specified temperature for one hour before each test, then test at that temperature. Operate the CU outside of the temperature chamber, if necessary, to ensure that it remains at normal operating temperature. There is no performance requirement.

Test 6.3: 10°C
Test 6.4:35°C

4.7 Test 7. Vibration Stability.

Use a programmable shake table with sufficient power to drive the weight of the EBT to be tested. Through each of its three major axes, subject the EBT to simple harmonic motion of the specified amplitude and frequency. Sweep through each frequency range in 2.5 minutes, then reverse sweep to the starting frequency in 2.5 minutes. After vibration, test the EBT. [SE≤ ±0.005 BAC; SD≤0.0042]

Frequency range (Hertz)	Amplitude (inches, peak to peak)
10 to 30	.030
30 to 60	.015

4.8 Test 8.

Electrical Safety Inspection. Examine the EBT for protection of the operator and person being tested from electrical shock. Examine for proper use of input power fuses, and verify that there are no exposed male connectors or conducting surfaces at high potential. Determine that overheating does not occur during operation and that fire hazards do not exist.

APPENDIX A—CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES

Manufacturer and model	Mobile	Nonmobile
Alcohol Countermeasures System, Inc., Port Huron, MI:		
Alert J3AD*	X	X
BAC Systems, Inc., Ontario, Canada:		
Breath Analysis Computer*	.....	X
CAMEC Ltd., North Shields, Tyne and Ware, England:		
IR Breath Analyzer*	X	X
CMI, Inc., Owensboro, KY:		
Intoxilyzer Model:		
200	X	X
1400	X	X
4011*	X	X
4011A*	X	X
4011AS*	X	X
4011AS–A*	X	X
4011AS–AQ*	X	X
4011 AW*	X	X
4011A27–10100*	X	X
4011A27–10100 with filter*	X	X

APPENDIX A—CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Nonmobile
5000*	X	X
5000 (w/Cal. Vapor Re-Circ.)*	X	X
5000 (w/3/8" ID Hose option)*	X	X
5000CD	X	X
5000 (CAL DOJ)*	X	X
5000VA	X	X
PAC 1200*	X	X
S–D2*	X	X
Decator Electronics, Decator, IL:		
Alco-Tector model 500*	.....	X
Intoximeters, Inc., St. Louis, MO:		
Photo Electric Intoximeter*	.....	X
GC Intoximeter MK II*	X	X
GC Intoximeter MK IV*	X	X
Auto Intoximeter*	X	X
Intoximeter Model:		
3000*	X	X
3000 (rev B1)*	X	X
3000 (rev B2)*	X	X
3000 (rev B2A)*	X	X
3000 (rev B2A) w/ FM option*	X	X
3000 (Fuel Cell)*	X	X
3000 D*	X	X
3000 DFC*	X	X
Alcomonitor*	.....	X
Alco-Sensor III	X	X
Alco-Sensor IV	X	X
RBT III	X	X
BRT III–A	X	X
RBT IV	X	X
Komyo Kitagawa, Kogyo, K.K.:		
Alcolyzer DPA–2*	X	X
Breath Alcohol Meter PAM 101B*	X	X
Life-Loc, Inc., Wheat Ridge, CO:		
PBA 3000–P*	X	X
Lion Laboratories, Ltd., Cardiff, Wales, UK:		
Alcolmeter Model:		
AE–D1*	X	X
SD–2*	X	X
EBA*	X	X
Auto-Alcolmeter*	.....	X
Luckey Laboratories, San Bernadino, CA:		
Alco-Analyzer Model:		
1000*	.....	X
2000*	.....	X
National Draeger, Inc., Pittsburgh, PA:		
Alcotest Model:	X	X
7010*	X	X
7110*	X	X
7410*	X	X
Breathalzyer Model:		
900*	X	X

APPENDIX A—CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Nonmobile
900A*	X	X
900BG*	X	X
National Patent Analytical Systems, Inc., Mansfield, OH:		
BAC DataMaster[2]	X	X
BAC DataMaster-Transportable	X	X
Omicron Systems, Palo Alto, CA:		
Intoxilyzer Model:		
4011*	X	X
4011AW*	X	X
Plus 4 Engineering, Minturn, CO:		
5000 Plus4*	X	X
Siemans-Allis, Cherry Hill, NJ:		
Alcomat*	X	X
Alcomat F*	X	X
Smith and Wesson Electronics, Springfield, MA:		
Breathalyzer Model:		
900*	X	X
900A*	X	X
1000*	X	X
2000*	X	X
2000 (non-Humidity Sensor)*	X	X
Stephenson Corp.:		
Breathalyzer 900*	X	X
U.S. Alcohol Testing, Inc./Protection Devices, Inc., Rancho Cucamonga, CA:		
Alco-Analyzer 1000	.....	X
Alco-Analyzer 2000	.....	X
Alco-Analyzer 2100	X	X
Verax Systems, Inc., Fairport, NY:		
BAC Verifier*	X	X
BAC Verifier Datamaster*	X	X
BAC Verifier Datamaster II*	X	X
(23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501.8		

*Instruments marked with an asterisk (*) meet the Model Specifications detailed in 49 FR 48854 (December 14, 1984) (i.e., instruments tested at 0.000, 0.050, 0.101, and 0.151 BAC.) Instruments not marked with an asterisk meet the Model Specifications detailed in this notice (i.e., instruments tested at 0.000, 0.020, 0.040, 0.080, and 0.160 BAC.)

APPENDIX A—CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer and model	Mobile	Nonmobile

[1] During this reporting period, Intoximeters, Inc. provided VNTSC a modified Alcomonitor, the "Alcomonitor CC", for evaluation. In addition to a redesigned cabinet, a function has been added to permit the user to alter program sequencing and printing options via a desk-top computer. Because these modifications do not affect precision or accuracy, and since it is essentially the same as the approved device, the "Alcomonitor CC" does not require a separate listing on the CPL.

[2] During this reporting period, National Patent Analytical Systems, Inc., provided VNTSC with a BAC DataMaster having an internal keyboard. The addition of a keyboard, whether internal or external, does not affect precision and accuracy and does not require a separate listing on the CPL. Therefore the model designation "BAC DataMaster", for the purposes of the CPL, includes all such instruments, whether or not they have a keyboard.

Appendix B—Guidelines for Re-testing of Modified EBT

Manufacturers contemplating revisions to an EBT which is currently listed on the Conforming Products List (CPL) are advised that the revision may affect the status of the device on the CPL. It may or may not be necessary to retest the revised EBT. The manufacturer should inform NHTSA of the contemplated change so that a judgment can be made. The following lists the type of information NHTSA uses in determining the necessity to retest an instrument, and is provided as guidance to manufacturers:

- Manufacturer and Model Name.
- Nature and reason for change.
- Scope of change (e.g., will existing devices be retrofitted? Will the change apply to some users but not others?).
- Will the change affect performance of the device as regards the Model Specifications? (Precision and accuracy, acetone interference, blank reading, linearity, sampling efficiency, low or high temperature operation, low or high input power operation, mobile operation, electrical safety).
- Will the change alter performance with regard to the possibility of chemical or electrical interference or unusually high relative humidity?
- How will the changes be documented for the benefit of the user? (e.g., will the changes be documented in service bulletins and/or service manuals? If not, why not?).

If necessary for clarity, drawings of the current and changed device may also be helpful in NHTSA's deliberations.

If, upon review of information provided by a manufacturer, it is determined that re-testing is not warranted, a statement to that effect will be included in the next scheduled CPL update.

Appendix C—Alternate Breath Sampling Test

Select eight human subjects who are in good health. Their oral temperatures prior to the start of testing shall be between 97.0°F and 99.5°F.

Divide the subjects into two groups of four. The target BAC range for group 1 shall be from 0.04 to 0.10. The target BAC range for group 2 shall be from 0.10 to 0.20. In order to obtain a distribution of BACs, each subject shall be given a different amount of alcohol to drink. As a rough guide to dose vs. peak resultant BAC, and based on ingestion of a 100 proof beverage, a body weight of 160 lbs., and a 2 hour drinking period, 3 oz. of beverage should produce a BAC of 0.04; 6 oz. should produce a BAC of 0.10; and 8 oz. should produce a BAC of 0.15.

Blood samples taken shall be either from a vein in the arm or from capillaries in the fingertip. Non-alcoholic swabs shall be used to prepare the skin surface. If fingertip blood is to be taken, a 90-minute waiting period will be observed before beginning breath sample testing and if venous blood is to be taken, a 120-minute period will be observed. No subject may smoke during the 20-minute period before testing begins.

Use the EBT to measure the subject's breath, then take a blood sample, then measure the subject's breath again. Allow no more than five minutes between the taking of the first and second breath sample.

The blood samples shall be analyzed within 72 hours of being taken and at least two alcohol determinations shall be made on each sample. A reference sample of known BAC in the range 0.05 to 0.15 shall be prepared by the analyzing laboratory. Five determinations of the reference sample shall be made concurrently with the analysis of the human subject blood samples. The SD of the reference sample analysis shall not exceed 0.005 BAC and the SE shall not exceed ±5% of the known BAC.

Calculate the average blood result and the average breath result for each subject. Label each average blood result X_i (i=1 to 8 for each of the subjects, in ascending order of BAC). For each such result X_i, label the companion average breath result Y_i.

Calculate X_H, the average of the three highest blood results, and X_L, the three lowest. For the three highest blood results, and for the three lowest blood results, calculate the companion averages of the breath results, Y_H and Y_L.

Calculate X_M, the average of the eight blood results, and Y_M, the average of the eight breath results.

On graph paper, plot the points corresponding to (X_M, Y_M), (X_H, Y_H), (X_L, Y_L), and the eight points (X_i, Y_i).

Draw a straight line, the blood-breath correlation line, through the point (X_M, Y_M) and parallel to the line joining the points (X_L, Y_L) and (X_H, Y_H).

At X=0.100 on the blood-breath correlation line, mark points on the perpendicular at Y=−0.020 and another at Y=+0.020. Draw a line through each of these points, the negative bias and positive bias lines, parallel to the blood-breath correlation line. Requirements:

1. The value on the Y axis which corresponds to the point X=0.100 shall lie at or between 0.080 and 0.100.

2. At least seven of the eight averaged breath results shall lie within the area between the positive and negative bias lines.

[FR Doc. 93–22792 Filed 9–15–93; 11:52 am]
BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 179
Friday, September 17, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

DATE AND TIME: Tuesday, September 21, 1993 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

Open to the Public

Matters to be considered

1. *Pride in Public Service*

The Commission will present the Pride in Public Service Award to September's recipient.

2. *Voluntary Standards/International Affairs Activities*

The Staff will brief the Commission on voluntary standards and international affairs activities carried out by staff during the first half of calendar year 1993.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: September 14, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–22938 Filed 9–15–93; 1:42 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

DATE AND TIME: Thursday, September 23, 1993, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

Closed to the Public

Matter to be Considered

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: September 14, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–22939 Filed 9–15–93; 1:42 pm]

BILLING CODE 6355–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:40 p.m. on Tuesday, September 14, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Reports of the Office of Inspector General.

Matters relating to the probable failure of certain insured depository institutions.

Recommendation relating to the cross-guaranty provisions of the Federal Deposit Insurance Act.

Recommendation concerning an administrative enforcement proceeding.

Application of First Hawaiian Bank, Honolulu, Hawaii, for consent to temporarily relocate its main office from 161 South King Street to 1132 Bishop Street, both sites within Honolulu, Hawaii, and to return to the South King Street location upon completion of construction of a new banking facility.

In calling the meeting, the Board determined, on motion of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Mr. John F. Downey, acting in the place and stead of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: September 15, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–22937 Filed 9–15–93; 1:32 pm]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 10:00 a.m., Wednesday, September 22, 1993.

PLACE: Board Room Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED

Portions Open to the Public: The Board will consider the following:

1. FHLBank System Reports
   A. Monthly Financial Report
   B. Monthly Membership Report
2. Affordable Housing Program (AHP)
   A. AHP Second Round Applications
   B. AHP Award Modifications
3. Modification of Definition of "Deposits in Banks or Trust Companies"
4. Proposed Revision to the Finance Board's Private Sector Adjustment Factor ("PSAF") Methodology

Portions closed to the Public: The Board will consider the following:

1. Approval of the August Board Minutes
2. FHLBank Use of the Borrowing Capacity Available Under the 20:1 Leverage Rule
3. REFCorp Mitigation and Proposed Revisions to the Financial Management Policy
4. 1994 Preliminary FHLBank System Budget
5. FHLBank Presidents' Compensation Plan—1994
6. Board Management Issues

The above matters are exempt under one or more of section 552b(c)(6) and (9)(A) and (B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93–22922 Filed 9–15–93; 1:29 pm]

BILLING CODE 6725–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Thursday, September 23, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–22965 Filed 9–15–93; 2:53 am]

BILLING CODE 6210–01–P

Corrections

Federal Register
Vol. 58, No. 179
Friday, September 17, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-2300-02; GP3-357; OR-44583]

Order Providing for Opening of Lands; Oregon

Correction

In notice document 93-21474 appearing on page 46986 in the issue of Friday, September 3, 1993, make the following corrections:

1. In the first column, under **Willamette Meridian**, in T. 35 S., R. 24 E., in Sec. 14, insert ";" after "SE¼".

2. In the same column, in the same T. and R., in Sec. 24, "NW¼SW¼;" should read "NW¼NW¼;".

3. In the same column, in T. 35 S., R. 25 E., in Sec. 17, remove "lots".

4. In the second column, in T. 36 S., R. 24 E., in Sec. 1, in the second line, "expecting" should read "excepting".

5. In the same column, under **Willamette Meridian**, in T. 36 S., R. 25 E., in Sec. 8, remove "lots".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-2300-02; GP3-344; OR-45118]

Order Providing for Opening of Lands; Oregon

Correction

In notice document 93-21476 beginning on page 46986 in the issue of Friday, September 3, 1993, make the following correction:

On page 46987, in the first column, in T. 35 S., R. 33 E., in Sec. 27, in the second line, "SE¼NW¼," should read "SW¼NW¼,".

BILLING CODE 1505-01-D

federal register

Friday
September 17, 1993

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Funding Availability for Historically Black Colleges and Universities Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–3659; FR–3540–N–01]

Funding Availability for Historically Black Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1993.

SUMMARY: This NOFA announces up to $4.5 million of FY 1993 funding for the Historically Black Colleges and Universities (HBCU) Program plus any recaptured funds from prior appropriations. In the body of this document is information concerning the following:

a. The purpose of the NOFA and information regarding available amounts, objectives, eligibility and selection criteria;

b. Application processing, including how and when to apply and how selections will be made; and

c. A checklist of steps and exhibits involved in the application process.

DATES: No applications will be accepted after 4:30 pm on December 1, 1993. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. A "FAX" will not constitute delivery.

ADDRESSES: FOR AN APPLICATION KIT CONTACT: Sylvester C. Angel, Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., room 7255, Washington, DC, 20410–3500. Requests must be in writing and may be sent to this address or may be made by facsimile machine to the following number: (202) 708–3363. The TDD number for the hearing impaired is (202) 708–2565. (This is not a toll-free number.) When requesting an application kit, please refer to document FR–3540, and provide your name, address (including zip code), and telephone number (including area code).

FOR FURTHER INFORMATION CONTACT: Dr. James Turk, Office of Technical Assistance, Department of Housing and Urban Development, 451 7th Street, SW., room 7253, Washington, DC 20410. Telephone Number: (202) 708–3176. The TDD number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The control number for information described in this document is 2535–0084.

I. Purpose and Substantive Description

Purpose

This program is designed to assist HBCUs to expand their role and effectiveness in addressing community development in their localities. For the purposes of this program, the term "locality" includes any city, county, town, township, parish, village, or other general political subdivision of a State within which an HBCU is located. An HBCU located in a metropolitan statistical area (MSA), as established by the Office of Management and Budget, may consider its locality to be one or more of these entities within the entire MSA. The nature of the locality for each HBCU may, therefore, differ depending on its location.

Objectives

The objectives of this program are:

1. To help HBCUs expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development, consistent with the purposes of title I of the Housing and Community Development Act of 1974; and

2. To help HBCUs address the needs of their locality(ies) while furthering the following HUD values:

- A Commitment to Community;
- A Commitment to Family;
- A Commitment to Economic Lift;
- A Commitment to Strengthen Individual Rights and Responsibilities.
- A Commitment to Reduce Spatial Segregation by Race and Income.

Applicants must address objective 1 by successfully demonstrating how the proposed activities will expand the role of the HBCU in meeting local community economic development and/or housing needs while furthering HUD's priorities identified in objective 2.

A. Authority

This program is authorized under section 107(b)(2) of the Housing and Community Development Act of 1974 (the 1974 Act), which was added by section 105 of the HUD Reform Act of 1989. The program is governed by regulations contained in 24 CFR 570.201 through 207, 24 CFR 570.400, 570.404 and 24 CFR part 570, subparts A, C, J, K and O.

B. Allocation Amounts and Form

This notice announces HUD's intention to award up to $4.5 million (from FY 93 appropriation plus any additional recaptured funds from prior appropriations) to fund HBCU projects. The maximum amount awarded to any applicant will be $500,000. The awards will be made in the form of grants.

C. Eligibility

1. *Eligible applicants.* Only HBCUs as determined by the Department of Education in 34 CFR 608.2 in accordance with that Department's responsibilities under Executive Order 12677, dated April 28, 1989, are eligible to submit applications.

2. *Eligible activities.* Activities that may be funded under this NOFA are those activities eligible for CDBG funding. They are listed in 24 CFR 570.21 through 570.206, copies of which will be included in the application kit. Basic eligible activities include acquisition and disposition of real property, construction of low- and moderate-income housing and commercial enterprises to benefit low- and moderate-income neighborhood residents, public facilities and improvements, rehabilitation assistance, special economic development activities, planning and other activities. Those applicants planning to use funds for the provision of public services are bound by the statutory requirement that not more than 15% of the total grant amount be used for public service activities.

Activities which are ineligible for funding are listed in 24 CFR 570.207. Additionally, an activity which otherwise is eligible under 24 CFR 570.201–206 may not be funded if State or local law requires that it be carried out by a governmental entity.

For several years, under the technical assistance grants authority of section 107 of the 1974 Act, HBCUs have been funded to provide technical assistance to units of general local government to increase the effectiveness of such

entities in planning, developing and administering assistance under the CDBG program. While HBCUs continue to be eligible to compete for such technical assistance grants, the HBCU program to be funded under this Notice is not limited to the provision of technical assistance, but may include planning and implementation of the broader range of CDBG-eligible activities to provide opportunities for growth and development resulting in tangible economic uplift and improved living conditions for resident families in the locality of the HBCU. Activities that are not eligible under the CDBG program are not eligible under this program. Ineligible activities are listed at 24 CFR 570.207. Eligible activities and their requirements are found at 24 CFR 570.200 through 570.206. Such activities may include:

a. Identifying specific needs for affordable housing and increasing housing opportunities for low- and moderate-income persons throughout the locality;

b. Providing adequate infrastructure to support housing and economic development;

c. Meeting environmental review requirements to permit economic growth;

d. Supporting community design projects with amenities to improve living conditions and to create a climate which invites investment;

e. Forming partnerships with the State and local government to address the physical, social and economic needs of the community in a comprehensive manner;

f. Developing programs that provide a continuum of care for the homeless;

g. Working with local groups and organizations to combat discrimination in housing, mortgage credit and insurance, and to further fair housing;

h. Promoting opportunities for the creation and expansion of small businesses and minority enterprises;

i. Providing technical assistance and opportunities for homeownership;

j. Providing assistance to preserve the inventory of low-income housing in the locality through rehabilitation and preservation efforts; and

k. Promoting opportunities for training and employment of low income residents in connection with HUD and other Federally-assisted projects and activities.

3. *Environmental review.* Prior to HUD's determination and notification of successful applicants, HUD will perform an environmental review of proposed projects in each high ranking application to the extent required in accordance with 24 CFR part 50. If the environmental review is not satisfactory, HUD reserves the right to adjust the ranking or select lower ranking applications. The grantee is not authorized to proceed with any activity requiring environmental review until the applicant receives notification from HUD that the project has been approved.

In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501), HUD will not approve applications for any activities that would be located or carried out in the Coastal Barrier Resources System.

D. Selection Criteria/Ranking Factors

An applicant must demonstrate that it meets the objectives of this HBCU program by scoring at least 12 points on ranking factor 1 (addressing the objectives) in order to qualify for funding. Applicants must also receive a minimum score of 70 points in total to be considered eligible for funding. Activities which are not eligible for funding under this program (see 24 CFR 570.207) will not be funded. If more than 50 percent of the amount requested in the application is for ineligible activities, the application will not be funded.

Applications for funding under this Notice will be evaluated competitively, and awarded points based on the factors identified below. The Department will rank the applications in descending order according to score. Applications meeting the minimum threshold requirements will be funded in rank order, until all available funds have been obligated, or until there are no acceptable applications.

Negotiations. After all applications have been rated and ranked and a determination of successful applicants has been made, HUD requires that all successful applicants participate in negotiations to determine the specific terms of the Statement of Work and grant budget. In cases where HUD cannot successfully conclude negotiations, awards will not be made. In such instances, HUD may elect to offer an award (in an amount not to exceed the amount of remaining funds available for the competition) to the next highest ranking applicant and proceed with negotiations as described above.

Optional match. Although match is not required to qualify for funding, the Department wishes to stress that applicants that evidence a commitment of matching funds, in accordance with Ranking Factor 4.b., below, are eligible for more rating points than those not having a match. The maximum number of rating points an applicant can receive for matching funds is 7 points out of the 100 point total. Applicants having a cash match will receive a higher number of points than those only providing in-kind services or not providing any match for program activities. Matching funds may be in the form of cash and/or in-kind goods or services.

Ranking factors. The factors set forth below will be used by the Department to evaluate applications. Each application must contain sufficient information to be reviewed for its merits. The score of each factor will be based on the qualitative and quantitative aspects demonstrated for each factor in an application. The factors, and the maximum number of points for each factor (out of a total of 100 points), are as follows:

1. *Addressing the objectives.* (maximum points: 20)

The extent to which the applicant addresses the objectives of this program is examined by this factor. Applicants must address objective i. by successfully demonstrating how the proposed activities will expand the role of the HBCU in meeting local community economic development and/or housing needs while furthering HUD's priorities identified in objective ii.

1. The objectives of this program are:

i. To help HBCUs expand their role and effectiveness in addressing community development needs in their localities, including neighborhood revitalization, housing, and economic development, consistent with the purposes of the 1974 Act; and

ii. To help HBCUs address the needs of their localities in meeting the following HUD values:

- A Commitment to Community;
- A Commitment to Family;
- A Commitment to Economic Lift;
- A Commitment to Strengthen Individual Rights and Responsibilities.
- A Commitment to Reduce Spatial Segregation by Race and Income.

b. In rating this factor, the Department will consider:

i. The extent to which the applicant demonstrates that the proposed activities and program will expand its role and effectiveness in addressing community development needs in its locality(ies), in accordance with the objective specified in section I.D.1.a.i. of this NOFA, above; and

ii. The extent to which the applicant demonstrates that the proposed activities will further one or more of the HUD values specified in section I.D.1.a.ii. of this NOFA, above.

2. *Substantial impact in achieving objectives.* (maximum points: 25)

The extent to which the applicant demonstrates that the proposed activities would have a substantial

impact in achieving the objectives in sections I.D.1.a.i. and ii of this NOFA, above, is examined by this factor. In rating this factor the Department will consider:

a. The extent to which the applicant demonstrates how the proposed activities will address high priority needs in each locality's community development plan or program, or Comprehensive Housing Affordability Strategy (CHAS) under 24 CFR part 91 if the activity is housing related.

b. The extent to which the applicant demonstrates how the proposed activities will make a substantial contribution to achieve local community development objectives.

3. *Special needs of applicant or locality.* (maximum points: 10)

The extent to which the applicant demonstrates that the locality has special needs which will be addressed or met by the proposed activities, particularly with respect to benefitting low- and moderate-income persons, including minorities, is examined by this factor. In evaluating this factor, HUD will consider the urgency of the special need in the locality, particularly with respect to low- and moderate-income persons, including minorities.

4. *Technical and financial feasibility and match.* (maximum points: 25)

The extent to which the applicant demonstrates the technical and financial feasibility for achieving the objectives, including local support for the activities proposed to be carried out in the locality and any matching funds proposed to be provided from sources other than the applicant is examined by this factor. In rating this factor, the Department will consider:

a. The extent to which the applicant demonstrates the technical feasibility for achieving the objectives within the program period proposed;

b. The extent to which the applicant demonstrates the financial feasibility and local support for the activities to be carried out in the locality, as evidenced by the commitment, from sources other than the applicant, of matching funds, staffing, services, or other in-kind resources. (Applicants that evidence such a commitment of matching funds are eligible to receive a higher score than those not having a match. See the discussion under the heading Optional Match in this section I.D., above.)

5. *Capacity.* (maximum points: 20)

The extent to which the applicant demonstrates the capacity to carry out satisfactorily the proposed activities in a timely fashion, including satisfactory performance in carrying out any prior HUD-assisted projects or activities, is examined by this factor. In rating this factor, the Department will consider:

a. The extent to which the applicant's proposed management plan:

i. Clearly delineates staff responsibilities and accountability for all work required;

ii. Presents a work plan with a clear and feasible schedule for conducting all project tasks; and

iii. Presents a reasonable and adequate planned budget as reflected in the budget-by-task and supporting rationale and justification for the budget.

b. The extent to which the applicant demonstrates the recent and relevant work experience of the staff proposed to undertake the activities described in the Statement of Work.

c. The extent to which the applicant can demonstrate that its past and current projects funded by HUD and/or other Federal or private sector sources are or have been completed on schedule and have or are meeting goals established for addressing local needs.

d. The extent to which the applicant demonstrates the proposed program manager's capacity, background and experience to carry out the proposed activities in a satisfactory and timely fashion, as evidenced by recent work experience in managing projects of the same or similar size, dollar amount, and types of activities as those proposed in the application.

II. Application Process

A. Obtaining and Submitting Applications

For an application kit contact: Sylvester C. Angel, Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., room 7253, Washington, DC 20410. Requests must be in writing and may be sent to this address or may be made by facsimile machine to the following number: (202) 708–3363. The TDD number for the hearing impaired is (202) 708–2565. (This is not a toll-free number.) When requesting an application kit, please refer to document FR–3540, and provide your name, address (including zip code), and telephone number (including area code).

Application kits will be available no later than 30 days from the date of publication of this Notice. Applicants are advised to request an application kit before preparing and submitting their response to this NOFA.

For Further Information Contact: Dr. James Turk, Office of Technical Assistance, Department of Housing and Urban Development, 451 7th Street, SW., room 7253, Washington, DC 20410. Telephone Number: (202) 708–3176. The TDD number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers.)

B. Application Deadline

An application for funding under this Notice must be received by 4:30 pm on November 16, 1993 in room 7255 of the HUD Headquarters Building. Complete instructions for submission of the application are contained in the application kit. An application received after the deadline date will not be given funding consideration.

III. Checklist of Application Submission Requirements

A. Document Submissions

Each application must include an original and three copies of the following documents:

1. *Standard Form 424* (Request for Federal Assistance) signed by the Chief Executive Officer of the HBCU submitting the application.

2. *Statement of Work.* All applicants must submit with their application a Statement of Work which clearly identifies the activities to be undertaken with funds available under this NOFA, and the locality(ies) where the activities will take place. Activities should be broken out in accordance with CDBG activity designations as specified in the CDBG Handbook of Eligible Activities (24 CFR 570.201–570.206). The Statement of Work must incorporate all eligible activities proposed in the application and detail how the proposed work will be accomplished. Following a task-by-task format, the Statement of Work must:

a. Provide a brief description of each program task and sub-task that will be undertaken with HUD funds;

b. Provide a brief description of each program task and sub-task to be carried out with non-HUD funds which are critical to the project;

c. Indicate the sequence in which the tasks are to be performed noting areas of work which must be performed simultaneously;

d. State the intermediate and end products to be developed by task and sub-task;

e. Provide a framework for, and be consistent with, the Project Management Plan requirements; and

f. Identify the locality(ies) assisted by the activities.

3. *Project Management Plan.* All applicants are required to submit with the application a Project Management System Baseline Plan (441.1) and

accompanying narrative which describes the specific Statement of Work tasks/sub-tasks to be performed, the financial elements of the grant, and the projected timeframe for completing each task and sub-task.

a. The narrative shall:

i. Describe the planned schedule for accomplishing each task;

ii. Identify steps and milestones in the work process required for completing each task;

iii. Identify the period of time needed to accomplish each step/milestone expressed in terms of calendar dates; and

iv. List the staff, financial, and other resources allocated to each task/activity.

b. The HUD 441.1 shall show:

i. Budgeted costs of work by task over the life of the award; and

ii. The planned project schedule that traces, by reporting period, the task and sub-task start dates, periods of work in progress, and completion dates.

4. *Summary Budget* for both the Federal share and non-Federal share of funds for the project.

5. *SF 424B*, Assurances and other required certificates.

6. *SF 424A*, Budget Information for non-construction programs and/or *SF 424C* Budget Information for Construction Programs.

7. *Audit information.* A copy of the HBCU's most recent audit specifying that the applicant's accounting system meets the requirements of OMB Circulars A–21 and A–110 or letter from the Chief Financial Officer of the applicant's organization stipulating they are in compliance with the requirements of OMB Circulars A–21 and A–110.

8. *Local approval.* This program is designed to assist HBCUs to expand their role and effectiveness in addressing community development in their locality(ies). The term locality will differ for each HBCU, depending on its location. It includes any city, county, town, township, parish, village, or other general political subdivision of a State within which the HBCU is located. An HBCU located in a metropolitan statistical area, as established by the Office of Management and Budget, may consider its locality to be one or more of these entities within the entire area.

Since eligible activities must take place in a locality, each local government where an activity is to take place must approve the activity and state that the activity is not inconsistent with its community development plan or program. This approval and finding must accompany each application and may take the form of a letter by the chief executive officer of the locality or resolution by the legislative body of the locality.

9. If matching funding is to be provided, a letter from the Chief Executive Officer of the locality, corporation or other entity providing the match certifying as to the type, amount, and timing of the match.

10. *Level of effort budget analysis (HUD 40079).* A successful applicant will be required to submit a Level of Effort Budget Analysis (HUD 40079) which identifies the staff and other resources needed to conduct each of the work activities, by Task and Sub-task, identified in the Statement of Work. The HUD 40079 should be accompanied by a narrative which provides the rationale for the staff utilization, project organization, travel and other resources allocated to each task and sub-task.

IV. Corrections to Deficient Applications

Immediately after the deadline for submission of applications, applications will be screened to determined whether all items were submitted. If the applicant fails to submit certain technical items, or the application contains a technical mistake, such as an incorrect signatory, the Department shall notify the applicant in writing that the applicant has 14 calendar days from the date of the written notification to submit the missing item, or correct the technical mistake. If the applicant does not submit the missing item within the required time period, the application will be ineligible for further processing.

The 14-day cure period pertains only to non-substantive technical deficiencies or errors. Technical deficiencies relate to items that:

1. Are not necessary for HUD review under selection criteria/ranking factors; and

2. Would not improve the substantive quality of the proposal.

V. Other Matters

(a) Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

(b) Federalism, Executive Order 12612

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government. Specifically, the NOFA solicits HBCU applicants to expand their role in addressing community development needs in their localities and does not impinge upon the relationships between the Federal government, and State and local governments.

(c) Family, Executive Order 12606

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this document does not have potential for significant impact on family formation, maintenance, and general well-being. The notice only solicits HBCUs to apply for funding to address community development needs in their locality. Any impact on the family will be indirect and beneficial in that better planning of community development needs should result.

(d) Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

(e) Section 102 HUD Reform Act; Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basic upon which assistance was provided or denied. This material,

including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(f) Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquires to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics, (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(g) Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d); 24 CFR 570.404.

Dated: September 3, 1993.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 93–22753 Filed 9–16–93; 8:45 am]

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federal register

Friday
September 17, 1993

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71 and 91
Alteration of the Denver Class B Airspace Area, CO; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 91

RIN 2120–AE46

[Airspace Docket No. 91–AWA–3]

Alteration of the Denver Class B Airspace Area; CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the Denver, CO, Class B Airspace Area to coincide with the scheduled opening date of the new Denver International Airport. The new Denver International Airport will replace the Denver Stapleton International Airport. This action will enable air traffic control (ATC) to provide terminal ATC service to turbojet aircraft in Class B airspace throughout transition to and from the en route structure. The lateral limits of the Class B airspace area will extend to 30 nautical miles from Denver International Airport to provide an area in which ATC can provide control services throughout critical maneuvering phases of flight operations in the terminal area. The upper limits of the Class B airspace area will increase to 12,000 feet mean sea level (MSL). This action will enhance air traffic procedures and simplify visual flight rules (VFR) transient operations outside the Class B airspace area. An objective of this action is to increase safety substantially while accommodating the legitimate concerns of airspace users.

EFFECTIVE DATE: 0701 UTC, December 19, 1993.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

Background

Airspace reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "Terminal Control Area" (TCA) and replace it with the designation "Class B airspace." This change in terminology is reflected in this rule. On May 21, 1970, the FAA published amendment No. 91–78 to part 91 of the Federal Aviation Regulations (FAR) that provided for the establishment of Class B airspace areas (35 FR 7782). The Class B Airspace Area program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements. The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military, or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under VFR and controlled aircraft operating under instrument flight rules (IFR). The establishment of Class B airspace areas provides a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of Class B airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft. To date, the FAA has established a total of 29 Class B airspace areas.

Suspension of Certain Aircraft Operations From the Mode C Transponder Requirement

On June 21, 1988, the FAA published a final rule which required aircraft to have Mode C equipment when operating within 30 nautical miles of any designated Class B airspace area primary airport from the surface up to 10,000 feet MSL, excluding those aircraft not certificated with an engine-driven electrical system, balloons, or gliders (53 FR 23356).

On December 5, 1990, the FAA published Special Federal Aviation Regulation (SFAR) No. 62 which suspends, until December 30, 1993, certain provisions of the regulation requiring the installation and use of automatic altitude-reporting (Mode C) transponders (55 FR 50302). SFAR No. 62 provides access to specified airports within 30 miles of a Class B airspace area primary airport (Mode C veil) for aircraft without Mode C transponders.

Paragraph (7), section 2, of SFAR No. 62 identifies airports within a 30-nautical-mile radius of the Denver Stapleton International Airport where aircraft not equipped with Mode C transponders can operate at and below 1,200 feet above ground level (AGL): (1) Within a 2-nautical-mile radius, or, if directed by ATC, within a 5-nautical-mile radius, of a listed airport; and (2) along the most direct and expeditious routing, or a routing directed by ATC between that airport and the outer boundary of the Mode C veil, consistent with established traffic patterns, noise abatement procedures, and safety.

The designation of Denver International Airport as a Class B airspace area-primary airport will create a new Mode C veil located within a 30-nautical-mile radius of Denver International Airport. Consequently, the FAA is adding 13 airports to paragraph 7, section 2 of SFAR No. 62. These airports, located approximately 25 to 30 miles from Denver International Airport and outside the Denver Stapleton Mode C veil, are:

(1) Air Dusters Inc., Airport, Roggen, CO,
(2) Bijou Basin Airport, Byers, CO,
(3) Bowen Farms No. 1 Airport, Littleton, CO,
(4) Chaparral Airport, Byers, CO,
(5) Dead Stick Ranch Airport, Kiowa, CO,
(6) Horseshoe Landings Airport, Keenesburg, CO,
(7) Kostroski Airport, Franktown, CO,
(8) Lemons Private Strip Airport, Boulder, CO,
(9) Reid Ranches Airport, Roggen, CO,
(10) Singleton Ranch Airport, Byers, CO,
(11) Sky Haven Airport, Byers, CO,
(12) Tri-County Airport, Erie, CO,
(13) Westberg-Rosling Farms Airport, Roggen, CO.

Additionally, the FAA is removing five airports from paragraph 7, section 2, of SFAR 62 because they are located beyond the Denver International Airport Mode C veil. These airports are:

(1) Athanasiou Vally Airport, Blackhawk, CO,
(2) Flying J Ranch Airport, Evergreen, CO,
(3) Marshdale STOL, Evergreen, CO,
(4) Meyer Ranch Airport, Conifer, CO,
(5) Vance Brand Airport, Longmont, CO.

User Group Participation

The alteration of the Denver Class B Airspace Area is the product of discussions with a broad representation of the aviation community. In conjunction with this action, the FAA will continue to work with local user groups to ensure that the Class B airspace area is efficacious for all users by identifying any adjustments or modifications that appear necessary. Through joint FAA and user cooperation, any problems that arise can

then be identified and corrective action taken when necessary.

This Class B airspace configuration has been developed through substantial public participation. Informal airspace meetings were held in the Denver area September 11–13, 1990, to allow local aviation interests and airspace users an opportunity to provide input regarding alteration of the Denver Class B Airspace Area. Fourteen written comments were received from private citizens, local government agencies, user groups, and local airport authorities during the public comment period following the informal airspace meetings.

The Denver Ad Hoc Airspace Committee, representing a cross section of the aviation community, was formed; technical assistance and support were supplied by the FAA Northwest Mountain Region. Following the informal meetings and extensive coordination with the airspace user groups, the FAA prepared a proposed TCA configuration. This configuration was published in a Notice of Proposed Rulemaking (NPRM) on August 26, 1992 (57 FR 38724). The NPRM was published prior to the effective date of the Airspace Reclassification Final Rule, and, as stated earlier, under Airspace Reclassification TCA's will become Class B airspace. The coordinates in the proposal were North American Datum 27; however, these coordinates have been updated to North American Datum 83. Class B airspace designations are published in Paragraph 3000 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298, July 6, 1993). The Class B airspace area listed in this document will be published subsequently in the Order.

Discussion of Comments

The FAA received 27 comments in response to the NPRM. The FAA has considered these comments in adopting this final rule.

All commenters supported the alteration of the Denver Class B Airspace Area to coincide with the opening of the new Denver International Airport; 21 commenters suggested some minor changes.

The Helicopter Association International (HAI) expressed concern about raising the upper limits of the Class B airspace area above 10,000 feet MSL without VFR routes or flyways. It indicated that most helicopters use the lower levels of airspace because they are not pressurized and lack oxygen equipment. Arguing that the proposed Class B airspace area configuration would exclude or present an undue hardship on helicopter operations, the HAI recommended that the FAA coordinate with all the Denver Class B Airspace Area users before imposing a rule that would exclude or present an undue hardship on a particular segment of the industry.

The FAA agrees with HAI concerning VFR flyways. VFR flyways have been developed with the assistance of a local users group and will be published on the reverse side of the Denver VFR Terminal Area Chart.

One commenter opposed raising the ceiling from 10,000 to 12,000 feet MSL (and erroneously assumed the FAA was extending the outer boundary of the Class B airspace area from 40 to 60 miles), calling the proposed Class B airspace area too large and, therefore, overly restrictive. He suggested limiting the ceiling to 10,000 feet and the outer boundary to 40 miles in diameter. He stated that a smaller Class B airspace area would be more desirable to users and that fewer ATC procedures imposed on the users would be more beneficial.

The FAA disagrees with the commenter. The FAA is modifying the Denver Class B Airspace Area to encompass airspace from the surface or higher within a 30-mile radius of the Denver International Airport up to and including 12,000 feet MSL. The FAA believes that this action will provide the highest degree of safety while preserving the most efficient use of the available terminal airspace.

Nine commenters suggested, in an effort to increase safety and reduce Class B airspace area infractions, relocating the proposed center of the Denver Class B Airspace Area to the Mile High Very High Frequency Omnidirectional Range (VOR). They also suggested raising the floor of the area defined by the 10- and 20-nautical-mile rings and the Denver VOR 156° and 090° radials from 8,000 to 9,000 feet MSL.

The FAA cannot accommodate these suggestions. Relocating the center of the Class B airspace area to the Mile High VOR would impact the FAA's ability to provide simultaneous parallel instrument landing system (ILS) approaches to three parallel runways. The floors were established to contain IFR procedures at Denver International Airport in Class B airspace, and raising the floors would place these operations outside the Class B airspace.

Several commenters, including the Colorado Pilots Association and the Aircraft Owners and Pilots Association, claimed that the Class B airspace area configuration lacked visual references or prominent landmarks for VFR navigation around the Denver Class B Airspace Area. Also, they requested that access routes in the form of transition routes and flyway routes be developed to accommodate the VFR user.

The FAA has, to the extent practical, used geographical landmarks and coordinates to delineate the boundaries of the Class B Airspace Area. When the new Denver Class B Airspace Area becomes effective, the current VFR Terminal Area Chart will become obsolete for navigational purposes. The FAA will issue a new VFR Terminal Area Chart to be used for navigational purposes within the Class B airspace area. To assist the flying public, the flyway chart on the Denver VFR Terminal Area Chart will contain the VFR landmarks published on the existing VFR Terminal Area Chart, additional VFR landmarks, recommended VFR flyways, and recommended altitudes.

One commenter suggested that the floor of the Class B airspace area north of the Denver International Airport, Area J, be raised from 7,000 to 8,000 feet MSL and that the floor of Area N be raised from 8,000 to 9,000 or 10,000 feet MSL. The commenter stated that these altitude changes would allow obstruction clearance from a tower located between the Firestone Airport and Platte Valley Airport. He also suggested that the outer boundary limits of the Class B Airspace Area be reduced from 30 to 25 nautical miles, with a further reduction to 20 nautical miles between the Denver VOR 090° and 270° radials. Finally, the commenter stated that the Class B airspace area configuration conflicts with the instrument approach procedures into Fort Collins-Loveland Airport and creates a likelihood of inadvertent penetration into the Class B airspace area during instrument training and proficiency flights.

The FAA disagrees. The instrument approach procedures into the Fort Collins-Loveland Airport are below the floor of the Class B airspace area. The FAA also has determined that the tower located between the Firestone Airport and Platte Valley Airport does not impose a substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft. The FAA extended the boundary of the Class B airspace area to 30 miles only in areas necessary to ensure that turbojets enter and exit through the top of the Class B airspace area. The western boundary was adjusted to allow additional airspace for VFR operation outside Class B airspace. The FAA believes that the floors of Areas J and N will allow aircraft sufficient obstruction clearance

from the tower located between Firestone Airport and Platte Valley Airport.

The City and County of Denver (the City) objected to the proposed cutouts to the inner 10-nautical-mile core of the Class B airspace area, specifically Areas B, C, and D. For Area B, Denver requested that the floor of the cutout for Buckley Air National Guard Base (Buckley) be reduced from 7,500 to 7,200 feet MSL. It also requested that Gun Club Road of the east side of Buckely be used as the boundary of the cutout and that the edge be extended directly along the east edge of the residential development north of Sand Creek to the interchange of Gun Club Road and Interstate 70. The City indicated that this would still enable VFR arrivals and departures on Buckley's runway 14, standard arrival and departure patterns to the west of the base, and a teardrop arrival onto runway 32 from the south in the absence of positive control. The City claimed that using these landmarks would reduce the width of the cutout to the east and allow a partial divergence of 7.5° for departures from Denver International Airport's runway 17R. The City also claimed that this angle, when coupled with a similar departure divergence to the east, increases the departure capacity on runway 17R by virtue of establishing a 15° divergence capability.

The City also recommended that language in the final rule address revocation of the airspace in Area C. It indicated that its recommendation was based on the foreseeable closure of Aurora Airpark and that appropriate language in this final rule would eliminate the need for future rulemaking to reevaluate the airspace. The City recommended that, during the interim between this final rule and the closure of Aurora, the width of the east boundary be reduced to an area that more adequately represents its limited use, and that aircraft arriving and departing Aurora Airpark be required to use the north-south access. It also recommended that after Aurora closes, the severed area should then be incorporated into Area A, which extends from the surface to 12,000 feet MSL.

The City objected to providing a cutout for Front Range Airport (FTG) and requested that Area D be eliminated by extending the Class B airspace area down to the surface of Area D. It expressed concern about an anticipated high level of student training activity at FTG and the proposed operations of a cargo carrier that will be moving its base to FTG. The City also claimed a potential conflict between westbound aircraft departing FTG and northbound aircraft arriving at the new Denver International Airport because FTG traffic has approximately 2 miles to turn inside the Area D cutout. The City cited a need for positive control at all times and stated that the airspace in Areas A and C should extend upward from the surface to and including 12,000 feet MSL.

Further, the City stated that the potential still exists within the Class B airspace area for a catastrophic consequence, such as a midair collision, because the distance between Denver International Airport's runway 35R and FTG's runway 8L is only 4 nautical miles. It claims that by comparison, the closest runway ends at Dallas/Ft. Worth International Airport and Dallas Love Field are 7.5 nautical miles.

The FAA disagrees with the City's recommendation on providing language in this final rule that would revoke airspace in Area C should the Aurora Airport close in the foreseeable future. This issue will require the appropriate rulemaking action to modify the Class B airspace for that area.

The FAA considered all comments in the adoption of the final Class B airspace area design. The City's suggestions for altering Area B's boundary are not adopted in this final rule. The FAA disagrees with the City's claims that there will be a potential conflict between westbound aircraft departing FTG and northbound aircraft arriving at the new Denver International Airport. The FAA believes that the design of the Class B airspace and the operational procedures utilized for aircraft arriving northbound to Denver International will contain those aircraft in the Class B airspace without conflict with nonparticipating aircraft operating in the underlining airspace, including those aircraft departing westbound from FTG.

The FAA believes that the final Class B airspace area design promotes the safe and efficient use of airspace while satisfying ATC requirements. The FAA determined that lowering the altitude of Area B will impact Buckley's mission in its role in national defense, as stated in the NPRM. The elimination of Areas C and D would require operators at the Aurora Air Park and FTG to obtain an air traffic clearance to operate in and out of those airports. In the case of instrument flight rules departures, pilots would be required to contact the Denver Tower to obtain a clearance, along with a release time and a clearance void time. Because of the length of time the released airspace would have to be protected, the FAA determined that pilots would encounter lengthy delays if the City's suggestions were adopted. Arriving aircraft could also experience delays, depending on traffic at the Denver International Airport. Further, since Denver submitted its comments, the FAA has learned that the cargo carrier will not be moving its base operations to FTG. The FAA, however, will continue to monitor air traffic activity at FTG.

The Colorado Army National Guard requested that the floor of Area C be raised from 6,200 feet MSL to either 6,300 or 6,500 feet MSL, or that the northern boundary of Area C be moved south, but no farther than 2 miles south of I–70, to allow the floor of Area C to be at least 6,300 feet MSL. It stated that the additional altitude would allow a significant increase in the margin of safety for its aircraft departing eastbound during night operations. It further stated that the lighting system of a 306-foot tower in the southeast portion of Area C has a history of faulty operation and that a pilot unfamiliar with the area, transitioning at 6,200 feet MSL, may be at substantial risk.

The FAA agrees and is establishing the floor of Area C at 6,500 feet MSL to enhance obstruction clearance for VFR aircraft traversing underneath the floor of Area C.

Additional commenters suggest that the base altitude for Area B be lowered from 7,500 to 7,200 feet MSL, that Area D be eliminated and incorporated into Area A, and that Area C be eliminated or reduced in size.

The FAA cannot support these suggested modifications of the Class B airspace area. The floor of the Class B airspace area was established to contain IFR procedures at Denver International Airport in the Class B airspace area. The FAA believes that the floor of the Class B airspace area in Areas B, C, and D south of Denver International Airport, will allow ample airspace for safe aircraft operations in the vicinity of Buckley Air National Guard (ANG) Base and provide obstruction clearance.

The Soaring Society of America (SSA) and Collegiate Soaring Association suggested that the southern Class B airspace area boundary be realigned to coincide with Colorado Highway 86 between Castle Rock and I–25 on the west through Franktown, Elizabeth, and Kiowa, CO. The Association stated that a cutout for Areas L and M would reduce the Class B airspace area radius by 5 nautical miles and would enhance safety by making it easier for pilots to avoid inadvertent incursions into the Class B airspace area. The SSA requested that the FAA maintain the current "Wave Window" Letters of

Agreement to allow high altitude wave soaring.

The FAA believes that the alteration of the southern boundary is not necessary and that this area allows ample visual landmarks for uncontrolled VFR traffic to avoid the Denver Class B airspace boundary. The FAA will continue, however, to support the designated soaring areas through Letters of Agreement between the soaring organizations. This action will allow the soaring organizations to proceed without disrupting their operations and will continue to serve the general aviation community.

In sum, the FAA will alter the Class B airspace area as proposed in the NPRM, except the Area C floor will be raised to 6,500 feet.

Three-Letter Airport Identifier

In the preamble of the NPRM, the FAA used the three-letter designation "DEN" to identify Denver Stapleton International Airport and "DVX" to identify the new airport, Denver International Airport. In addition, the VOR facility was identified as "Watkins." The term "Watkins VOR" has been replaced with the term "Denver VOR."

In a joint letter dated August 28, 1992, the airport planner of the New Denver Airport Office and the regional director of the Air Transport Association requested that the FAA retain the three-letter location designation—DEN—to identify the new airport and the VOR facility. To support their request, they argued that printing new baggage tags would impose a financial burden if the new airport was not permanently assigned the DEN identifier, and flight planning would be affected only minimally, if at all, by reassigning the DEN designator to the new airport.

In response to their request, the FAA determined that the location identifier for Denver Stapleton International Airport—DEN—will be reassigned to the new airport and will replace DVX when the new airport opens. Further, the location identifier for the Denver VORTAC (DEN) will be reassigned to the Denver VOR, which will be commissioned when the airport opens. The Denver VORTAC will be decommissioned at the same time.

The Rule

These amendments to parts 71 and 91 of the Federal Aviation Regulations (FAR) modify the Class B airspace area at Denver to coincide with the establishment of the new Denver International Airport. The Denver International Airport will replace the Denver Stapleton International Airport. This alteration will better serve the users, as well as the FAA, by providing airspace configured to contain the new procedures that will be implemented at Denver. The FAA has determined that modifying the Class B airspace area to coincide with the relocation of the new Denver International Airport is in the interest of flight safety and will result in a greater degree of protection for the greatest number of people during flight in the terminal area. The alteration is depicted on the attached chart.

The modified configuration considers the present terminal area flight operations and terrain as follows:

1. The inner core of the Class B airspace area includes airspace 10 nautical miles from the Denver VOR from the surface to and including 12,000 feet MSL. There are cutouts for five airports in the inner core of the Class B airspace area: Aurora, Buckley ANG Base, Front Range, Heckendorf, and Brighton Van Aire. The floor of the Class B airspace area in these areas varies from 6,500 to 7,500 feet MSL. This airspace will contain instrument approach and departure procedures for Denver International Airport and allow adequate airspace for operations at the above airports without affecting aircraft transitioning to final approach visually or on radar vectors for an instrument approach into Denver International Airport. Bromley Lane depicts the northern boundary of the inner core of the Class B airspace area. The vertical limit of the entire Class B airspace area will be 12,000 feet MSL.

2. The intermediate area includes airspace between 10 and 20 nautical miles from the Denver VOR, including airspace extending west to Wadsworth Boulevard and Colorado Highway 287 and bounded, in part, on the north by Colorado Highway 7 and on the south by Hampden Avenue. The intermediate area contains subarea floors that vary from 6,000 to 8,000 feet MSL. This airspace will provide a stepdown profile to contain aircraft in the radar traffic pattern transitioning to the final approach course from their downwind and base legs for the primary airport. It also will provide airspace for departures transitioning to the en route environment.

3. The outer area, between the 20- and 30-nautical-mile radius from the Denver VOR, contains floors varying from 8,000 to 10,000 feet MSL. This airspace will provide an area to contain aircraft during climb and descent profiles to transition between the terminal and en route structure, and it will allow VFR aircraft to circumnavigate the Class B airspace area. Arriving turbojet and turboprop aircraft will enter terminal airspace from four designated areas. The configuration of the outer area is designed to allow sufficient airspace for departures while allowing arriving aircraft to be vectored and sequenced to the final approach courses. This configuration also will preserve airspace below the Class B airspace area for nonparticipating aircraft.

The preceding summary of the alteration of the Class B airspace configuration identifies that airspace that is necessary to contain large turbojet aircraft operations at the Denver International Airport. ATC will provide control and separation services to all flights within the airspace boundaries. Furthermore, ATC authorization is required for aircraft operations within that airspace. Modifying this Class B airspace area will enhance the safety of flight within the congested airspace overlying the Denver metropolitan area by facilitating the separation of controlled and uncontrolled flight operations.

The FAA is amending SFAR No. 62 by adding 13 airports located within a 30-nautical-mile radius of the Denver International Airport. The FAA is removing five airports from paragraph 7, section 2, of SFAR No. 62 because they are located beyond the Denver International Airport Mode C veil. This action will allow operators, without Mode C transponders, access to the airports listed in paragraph 7, section 2, of SFAR No. 62.

Paperwork Reduction Act

There are no requirements for information collection associated with this rule requiring approval from the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1990 (Pub. L. 96–511).

Regulatory Evaluation Summary

Introduction

Executive Order 12291 established the requirement that, within the extent permitted by law, a Federal regulatory action may be undertaken only if the potential benefits to society for the regulation outweigh the potential costs to society. In response to this requirement, and in accordance with Department of Transportation policies and procedures, the FAA has estimated the anticipated benefits and costs of the rulemaking action. The results are summarized in this section. For more detailed economic information, see the full regulatory evaluation contained in the docket.

Benefit-Cost Analysis

The final rule will extend the lateral limits of the Denver Class B airspace

area to 30 nautical miles from the Denver International Airport to provide an area in which ATC can provide services throughout critical maneuvering phases of flight operations in the terminal area. The new Denver International Airport is replacing Denver Stapleton International Airport.

This rule will raise the upper limits of the class B airspace area from 11,000 to 12,000 feet MSL. In addition, this final rule will extend the lateral limits of the Class B airspace area from 20 to 30 nautical miles from Denver International Airport. To a lesser extent, the rule will also eliminate Class B airspace by 4 nautical miles in the western boundaries.

The final rule will enhance aviation safety by lowering the risk of midair collisions through ATC's increased capability to separate all aircraft in terminal airspace in and around the Denver area, while accommodating the legitimate concerns of airspace users.

Costs

The FAA has determined that modification to the Denver Class B Airspace Area will impose costs of $195,000 on the FAA to revise the aeronautical charts of the Denver area. No costs will be imposed on aircraft operators.

Costs to the FAA

The final rule will not impose any additional administrative cost on the FAA for either personnel or equipment. The additional operations workload generated by the final rule will be absorbed by current personnel and equipment resources in place at the Denver International Airport. The final rule will require neither any additional air traffic controllers nor any additional radar control or handoff positions at the Denver International Airport.

Another potential cost to the FAA associated with the final rule is the revision of aeronautical charts to reflect the change of the airspace to the Denver Class B Airspace Area. Typically, the revisions of aeronautical charts is done on a routine 6-month schedule, and any revisions would be considered a normal cost of doing business. However, the implementation date of the Denver Class B Airspace Area does not fall in the routine charting cycle. As a result, a special printing must be made to reflect the new Class B airspace area. The FAA estimates that the one-time cost of this off-cycle printing, which includes changing the printing plates, is $195,000.

Costs to Aircraft Operators

In terms of aircraft operators, the final rule will not impose any additional cost in the form of avionics equipment. The final rule will not adversely impact aircraft operators who operate under IFR, primarily large air carriers, business jets, commuters, and air taxis.

The final rule could, however, potentially impact aircraft operators who routinely operate under VFR, primarily operators of small GA airplanes and other GA aircraft operators such as glider pilots and balloonists. Potential costs to aircraft operators without Mode C transponders have already been accounted for by the Mode C rule. The potentially affected GA aircraft operators are assumed to already have the other types of avionics equipment (such as operable two-way radio) required for entering a Class B airspace area. The only aircraft without Mode C transponders would be aircraft not originally certificated with an engine-driven electric system, or which have not subsequently been certified with such a system installed. Costs to these types of aircraft have already been accounted for by the Mode C rule.

As a result of the final rule, segments of the Class B airspace area lateral boundaries will be expanded from 20 to 30 nautical miles, and floors will range from 8,000 to 10,000 feet MSL in the outer area of the Class B airspace area. This configuration will allow GA airplane operators, glider pilots, and balloonists to circumnavigate the Denver Class B Airspace Area in a manner that would require little deviation from current flying practices. Operators will be permitted to operate beneath the floors in the expanded segments of the Class B airspace area lateral boundaries primarily to the east of Denver International Airport. The final rule will not have an adverse impact on GA student pilots because they rarely fly in airspace above 10,000 feet MSL. In nearly all instances, a floor of 10,000 feet MSL is considered to be sufficient space to allow GA student pilots to conduct their flying underneath the expanded segments of the Class B airspace area lateral boundaries.

Because the existing floors (primarily to the west of Denver International Airport) take into account high terrain, sufficient airspace for sports parachutists to conduct jumps would still be available without Class B airspace area involvement. Thus, balloonists and ultra-light and sailplane operators will not be significantly affected by the final rule. Letters of agreement are expected to be executed, where advisable, to ensure minimum effect on these operators.

Benefits

The final rule is expected to generate benefits primarily in the form of enhanced safety to the aviation community and the flying public. These benefits, for instance, will take the form of reduced risk of aviation fatalities and property damage as the result of a lowered risk of midair collisions.

The alteration of the Denver Class B Airspace Area will create more controlled airspace by increasing the ceiling from 11,000 to 12,000 feet MSL and extending, from 20 to 30 nautical miles, the northern, southern, and eastern lateral boundaries. Because the nature of this rule is proactive, or to prevent a safety problem from developing, the potential safety benefits are extremely difficult to quantify in monetary terms.

In this case, the potential safety problem derives from an increased complexity (or density) of aircraft operations in the vicinity of the present ceiling and lateral boundaries of the Denver Class B Airspace Area. As a result of this increased complexity, the regulatory airspace will be expanded in the aforementioned areas of the Class B airspace area. In the past, safety has been maintained in the vicinity of the existing Denver Class B Airspace Area, in the face of steady activity growth, by procedural measures and aircraft metering changes. These measures have been successful in the past, as evidenced by a record of no midair collisions in the Class B airspace area. However, the FAA believes that these measures may not be adequate in the future. Without historical evidence of midair collisions in the Denver Class B Airspace Area, estimating the probability of a potential occurrence in the absence of this final rule cannot be determined with a reliable degree of certainty. In the absence of this final rule, aviation safety in the Denver Class B Airspace Area could deteriorate significantly, increasing the potential for catastrophic consequences, such as a midair collision between a large air carrier airplane and a GA airplane. This action is intended to significantly reduce the risk of those consequences, thereby enhancing aviation safety.

The final rule will also generate benefits by eliminating four nautical miles of Class B airspace west of the Jefferson County airport. The reduction in Class B airspace is intended to provide two types of benefits. First, the rule will reduce the distance aircraft operators flying under VFR will have to travel to circumnavigate the Class B

airspace area without concerns related to high terrain. The existing floor in this section of airspace is 7,000 feet MSL, which requires that nonparticipating aircraft pilots be very vigilant in flying over high terrain areas. VFR operators will be able to fly at higher altitudes when this section is removed from the Denver terminal airspace. Second, the rule will align areas near and in the Class B airspace area with better visual landmarks so that aircraft operators flying under VFR can stay clear of the Class B airspace area.

It is important to note that the Mode C and TCAS rules currently in effect share the same objective of lowering the risk of a midair collision as the alteration of the Denver Class B Airspace Area. Consequently, the safety benefits of this final rule and the Mode C and TCAS rules are inseparable and cannot be estimated independently of each other.

Conclusions

The benefits of the rule will be primarily in the form of enhanced safety to the aviation community and the flying public. The one-time cost of the rule will be $195,000 to revise the aeronautical charts for the Denver area. This cost will be borne solely by the FAA. The FAA could eliminate this cost by printing the charts during the routine printing-cycle, but this would entail delaying the opening of Denver International Airport. The cost of this delay would be considerably higher than $195,000. The FAA willingly incurs this charting cost to facilitate the opening of the new Denver International Airport. Thus, the FAA contends that this rule is cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review final rules which may have "a significant economic impact on a substantial number of small entities." The small entities which could be potentially affected by the implementation of this final rule are unscheduled operators of aircraft for hire owning nine or fewer aircraft.

Only those unscheduled aircraft operators without the capability to operate under IFR conditions will be potentially impacted by this final rule. The FAA believes that all of the potentially impacted unscheduled aircraft operators are already equipped to operate under IFR conditions. This is because such operators fly regularly in airports where radar approach control services have been established. Therefore, the FAA believes this final rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The final rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries because the rule will neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign).

Federalism Implications

The regulation adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Assessment, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A final regulatory evaluation of this rule, including a Regulatory Flexibility Determination and Trade Impact Assessment, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 71 and 91 of the Federal Aviation Regulations (14 CFR parts 71 and 91) as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 3000—Subpart B—Class B Airspace

* * * * *

ANM CO B Denver, CO [Revised]
Denver International Airport (Primary Airport)
(lat. 39°51'38" N., long. 104°40'24" W.)
Denver VOR
(lat. 39°46'44" N., long. 104°39'36" W.)
Heckendorf Airport
(lat. 39°57'48" N., long. 104°44'57" W.)
Boundaries

Area A. That airspace extending upward from the surface to and including 12,000 feet MSL beginning at the intersection of Bromley Lane and the 10-mile arc of the Denver VOR, thence clockwise along the 10-mile arc until the Denver 090° radial, extending west on the Denver 090° radial until Imboden Mile Road, thence south along Imboden Mile Road until I–70, extending west along I–70 until intercepting the 10-mile arc of the Denver VOR, extending clockwise along the 10-mile arc until Bromley Lane, and thence east along Bromley Lane to the point of beginning; excluding that airspace within a 1-mile radius of Heckendorf Airport.

Area B. That airspace extending upward from 7,500 feet MSL to and including 12,000 feet MSL within a 10-mile radius of the Denver VOR, bounded on the north by I–70 and bounded on the east by a line parallel to and 2 miles east of the Buckley Air National Guard Base Runway 14/32 centerline.

Area C. That airspace extending upward from 6,500 feet MSL to and including 12,000 feet MSL within a 10-mile radius of the Denver VOR bounded on the north by I–70, bounded on the east by Imboden Mile Road, and bounded on the west by a line parallel to and 2 miles east of Buckley Air National Guard Base Runway 14/32 centerline.

Area D. That airspace extending upward from 7,000 feet MSL to and including 12,000 feet MSL within a 10-mile radius of the Denver VOR bounded on the north by the Denver 090° radial and bounded on the west by Imboden Mile Road.

Area E. That airspace extending upward from 8,000 feet MSL to and including 12,000 feet MSL beginning at the Denver VOR 025° radial 15-mile DME fix, extending northeast

along the Denver 025° radial until intercepting the Denver VOR 20-mile arc, extending clockwise along the 20-mile arc until I–25, thence north along I–25 until Hampden Avenue, extending west along Hampden Avenue until Wadsworth Boulevard, thence north along Wadsworth Boulevard and Colorado Highway 287 until Colorado Highway 7, extending east along Colorado Highway 7 to I–25, thence north along I–25 until intercepting the Denver VOR 20-mile arc, extending clockwise along the 20-mile arc until intercepting the Denver VOR 329° radial, thence southeast along the Denver VOR 329° radial until intercepting the 15-mile arc, extending counterclockwise along the 15-mile arc until I–70 thence east along I–70 until intercepting the 10-mile arc, extending counterclockwise along the 10-mile arc until the Denver VOR 090° radial, extending east on the Denver 090° radial until intercepting the Denver 15-mile arc, and thence counterclockwise to the point of beginning.

Area F. That airspace extending upward from 7,000 feet MSL to and including 12,000 feet MSL between the 10- and 15-mile radius of the Denver VOR, bounded on the north by the Denver VOR 025° radial and bounded on the south by the Denver VOR 090° radial.

Area G. That airspace extending upward from 6,000 feet MSL to and including 12,000 feet MSL beginning at the Denver VOR 329° radial 10-mile fix, extending northwest on the Denver 329° radial until the 15-mile arc, thence clockwise along the 15-mile arc until the Denver 025° radial, extending south on the 025° radial until the 10-mile arc, and extending counterclockwise on the 10-mile arc until Bromley Lane, and thence west along Bromley Lane until the Denver VOR 10-mile arc thence to the point of beginning; including that airspace within a 1-mile radius of Heckendorf Airport.

Area H. That airspace extending upward from 7,000 feet MSL to and including 12,000 feet MSL between the 10- and 15-mile radius of the Denver VOR, bounded on the north by the Denver 329° radial and bounded on the south by I–70.

Area J. That airspace extending upward from 7,000 feet MSL to and including 12,000 feet MSL between the 15- and 20-mile radius of the Denver VOR, bounded on the west by the Denver VOR 329° radial and bounded on the east by the Denver VOR 025° radial.

Area K. That airspace extending upward from 10,000 feet MSL to and including 12,000 feet MSL beginning at the intersection of Hampden Avenue and I–25, extending south along I–25 until intercepting the Denver VOR 30-mile arc, extending clockwise along the 30-mile arc until a point 3 miles south of Waterton, CO (lat. 39°26'25" N., long. 105°05'42" W.) extending north to Waterton and Canyon Road (lat. 39°29'40" N., long. 105°05'42" W.), extending north along Canyon Road (Colorado Highway 75) until Wadsworth Boulevard, extending north along Wadsworth Boulevard until Hampden Avenue and extending east along Hampden Avenue to the point of beginning.

Area L. That airspace extending upward from 9,000 feet MSL to and including 12,000 feet MSL between the 20- and 30-mile radius of the Denver VOR bounded on the west by I–25 and bounded on the east by the Denver VOR 156° radial.

Area M. That airspace extending upward from 10,000 feet MSL to and including 12,000 feet MSL between the 20- and 30-mile radius of the Denver VOR, bounded on the north by the Denver VOR 025° radial and bounded on the south by the Denver VOR 156° radial.

Area N. That airspace extending upward from 8,000 feet MSL to and including 12,000 feet MSL between the 20- and 30-mile radius of the Denver VOR, bounded on the west by the Denver VOR 329° radial and bounded on the east by the Denver VOR 025° radial.

Area P. That airspace extending upward from 10,000 feet MSL to and including 12,000 feet MSL beginning at the Denver VOR 329° radial 20-mile DME fix, extending counterclockwise along the Denver VOR 20-mile arc until I–25, extending south along I–25 until Colorado Highway 7, thence west along Colorado Highway 7 until Colorado Highway 287, thence north along Colorado Highway 287 until intercepting the Denver VOR 30-mile arc, extending clockwise along the 30-mile arc until the Denver VOR 329° radial, and extending southeast along the Denver VOR 329° radial to the point of beginning.

* * * * *

PART 91—[AMENDED]

3. The authority citation for 14 CFR part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

4. Special Federal Aviation Regulation No. 62, section 2, paragraph (7) is revised to read as follows:

Special Federal Aviation Regulation No. 62—Suspension of Certain Aircraft Operations from the Transponder with Automatic Pressure Altitude Reporting Capability Requirement

* * * * *

Section 2. * * *

(7) Airports within a 30-nautical-mile radius of the Denver International Airport.

Airport name	Arpt ID	Alt. (AGL)
Air Dusters Inc., Airport, Roggen, CO.	49CO	1,200
Bijou Basin Airport, Byers, CO.	CD17	1,200
Boulder Municipal Airport, Boulder, CO.	1V5	1,200
Bowen Farms No. 1 Airport, Littleton, CO.	CO98	1,200
Bowen Farms No. 2 Airport, Strasburg, CO.	3CO5	1,200
Carrera Airpark Airport, Mead, CO.	93CO	1,200
Cartwheel Airport, Mead, CO.	0CO8	1,200
Chaparral Airport, Byers, CO.	CO18	1,200
Colorado Antique Field Airport, Niwot, CO.	8CO7	1,200
Comanche Livestock Airport, Strasburg, CO.	59CO	1,200
Dead Stick Ranch Airport, Kiowa, CO.	18CO	1,200
Frederick-Firestone Air Strip Airport, Frederick, CO.	CO58	1,200
Frontier Airstrip Airport, Mead, CO.	84CO	1,200
Horseshoe Landings Airport, Keenesburg, CO.	CO60	1,200
Hoy Airstrip Airport, Bennett, CO.	76CO	1,200
J & S Airport, Bennett, CO.	CD14	1,200
Kostroski Airport, Franktown, CO.	43CO	1,200
Kugel-Strong Airport, Platteville, CO.	27V	1,200
Land Airport, Keenesburg, CO.	CO82	1,200
Lemons Private Strip Airport, Boulder, CO.	CO10	1,200
Lindys Airpark Airport, Hudson, CO.	7CO3	1,200
Parkland Airport, Erie, CO.	7CO0	1,200
Pine View Airport, Elizabeth, CO.	02V	1,200
Platte Valley Airport, Hudson, CO.	18V	1,200
Rancho De Aereo Airport, Mead, CO.	05CO	1,200
Reid Ranches Airport, Roggen, CO.	7CO6	1,200
Singleton Ranch Airport, Byers, CO.	68CO	1,200
Sky Haven Airport, Byers, CO.	CO17	1,200
Spickard Farm Airport, Byers, CO.	5CO4	1,200
Tri-County Airport, Erie, CO.	48V	1,200
Westberg-Rosling Farms Airport, Roggen, CO.	74CO	1,200
Yoder Airstrip Airport, Bennett, CO.	CD09	1,200

* * * * *

Issued in Washington, DC, on September 14, 1993.

David R. Hinson,

Administrator.

Appendix-Denver International Airport, Class B Airspace

Note: This Appendix will not appear in the Code of Federal Regulations.

BILLING CODE 4910–13–M

DENVER INTERNATIONAL AIRPORT
CLASS B AIRSPACE
(NOT TO BE USED FOR NAVIGATION)

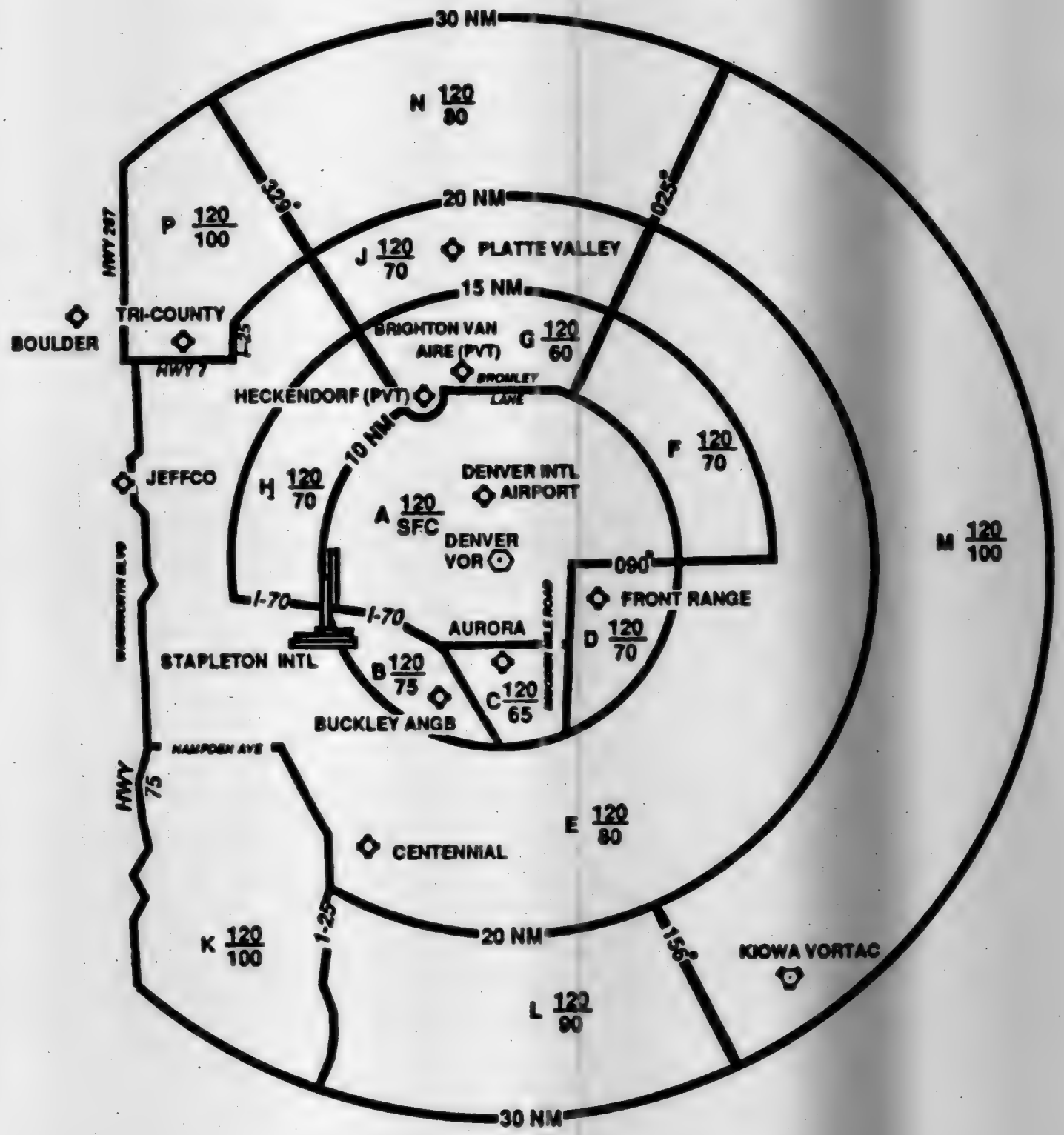

Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Branch
ATP-220

[FR Doc. 93-22796 Filed 9-14-93; 2:38 pm]
BILLING CODE 4910-13-C

federal register

Friday
September 17, 1993

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 32

Addition of Eight National Wildlife Refuges to the List of Open Areas for Hunting, Three to the List for Sport Fishing and Pertinent Refuge-Specific Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AB25

Addition of Eight National Wildlife Refuges to the List of Open Areas for Hunting, Three to the List for Sport Fishing and Pertinent Refuge-Specific Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to add eight national wildlife refuges (NWR(s)) to the lists of open areas for migratory game bird hunting, upland game hunting, and/or big game hunting, three NWRs to the list for sport fishing and pertinent refuge-specific regulations for those activities. The Service has determined that such uses will be compatible with and, in some cases, enhance the purposes for which each refuge was established. The Service has further determined that this action is in accordance with the provisions of all applicable laws, is consistent with principles of sound wildlife management, and is otherwise in the public interest by providing additional recreational opportunities of a renewable natural resource. In addition, these regulations are consistent with the new format which reorganizes all hunting and fishing regulations under one part.

DATES: Comments must be received on or before October 4, 1993.

ADDRESSES: Address comments to: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, U.S. Fish and Wildlife Service, Division of Refuges, MS 670 ARLSQ, 1849 C Street, NW., Washington, DC 20240; Telephone: 703–358–1744.

SUPPLEMENTARY INFORMATION: National wildlife refuges are generally closed to hunting and sport fishing until opened by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the purpose(s) for which the refuge was established, and that funds are available for development, operation, and maintenance of a hunting or fishing program. The action must also be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound wildlife management, and must otherwise be in the public interest. This rulemaking opens eight refuges to hunting and three to sport fishing. All of the hunting and fishing programs included in this openings document have refuge-specific hunting or fishing regulations which are included in this rulemaking.

This rulemaking will also include Little Pend Oreille National Wildlife Refuge in the alphabetical listing under § 32.67 *Washington* as open to big game hunting without refuge-specific regulations. This refuge was opened to deer hunting in 1989 but was inadvertently delisted in last year's Code of Federal Regulations.

Department of the Interior policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is the purpose of this proposed rulemaking to seek public input regarding the proposed opening of the refuges cited below to hunting or fishing. Accordingly, interested persons may submit written comments concerning this proposal to the Assistant Director—Refuges and Wildlife (Address above) by the end of the comment period. All substantive comments will be considered by the Department prior to issuance of a final rule.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act of 1966, as amended (NWRSAA) (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (RRA) (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the NWRSAA authorizes the Secretary to permit the use of any areas within the National Wildlife Refuge System (Refuge System) for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access, when he determines that such uses are compatible with the purposes for which each refuge was established. The Service administers the Refuge System on behalf of the Secretary. The RRA gives the Secretary additional authority to administer refuge areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purposes for which the refuges were established. In addition, prior to opening refuges to hunting or fishing under this Act, the Secretary is required to determine that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

In preparation for these openings, the refuge units have included in their "openings packages" for Regional review and approval from the Washington Office the following documents: A hunting/fishing plan; an environmental assessment; a Finding of No Significant Impact (FONSI), or an Environmental Impact Statement and Record of Decision; a section 7 evaluation or statement that no endangered or threatened species exist on the refuge; a letter of concurrence from the affected States; and refuge-specific regulations, as provided herein. From a review of the totality of these documents, and for each refuge unit specifically, the Secretary determines that the opening of the areas to migratory game bird hunting, upland game hunting, big game hunting and sport fishing are compatible with the principles of sound wildlife management and will otherwise be in the public interest.

In accordance with the NWRSAA and the RRA, the Secretary has also determined that these openings for hunting and fishing are compatible and consistent with the primary purposes for which each of the refuges listed below was established, and that funds are available to administer the programs. The hunting and fishing programs will be generally within State and Federal (migratory game bird) regulatory frameworks. A brief description of the hunting and fishing programs follows:

Alamosa NWR is located in the San Luis Valley in south-central Colorado, 3 miles southeast of the City of Alamosa. It is administered as part of the Alamosa/Monte Vista National Wildlife Refuge Complex. The refuge is 11,169 acres in size and consists primarily of Rio Grande River bottomland. This large mountain valley at an elevation of 7,500 feet is an important waterfowl production area in spite of its southern location. The refuge is an important waterfowl breeding area with about 3,000 ducks and 200 geese produced annually. This refuge provides important migrational habitat for 500 to 700 sandhill cranes and up to 90 bald eagles. Colonial waterbird nesting colonies exist on the refuge and can include 750 white-faced ibis, black-crowned night herons, and snowy and cattle egret nests. The sport fishing program would open the southern portion of the refuge, about 5 miles, along the Rio Grande River to fishing from July 1 through September 30

annually in accordance with State of Colorado fishing regulations regarding species, bag and possession limits and methods. All fish species present would be open to fishing. No special refuge permit would be required. The fishing program would not be open during spring, early summer, or fall in order to protect waterfowl migration and production habitat. The designated fishing season would not significantly affect waterfowl production. The river does not have a high value for brood production and has little use by waterbirds during this time. A Section 7 consultation was conducted with a finding that the fishing program is not likely to adversely affect any threatened or endangered species. An environmental assessment concluded that no significant impact to the human environment would occur if the fishing program was instituted. The estimated cost for the fishing program is $1,000 and includes labor for informing the public with signing, answering questions, and extra law enforcement patrols. Once the fishing program is established, annual operating costs are estimated at approximately $700. This cost can be easily met with current refuge funding. Therefore, it is determined that for FY 94 funds are available for the development, operation, and maintenance of the program pursuant to the Refuge Recreation Act.

Browns Park National Wildlife Refuge is located in an isolated mountain valley in extreme northwestern Colorado. It lies along both sides of the Green River, entirely within Moffat County, 25 miles below Flaming Gorge Dam. It contains 13,455 acres of river bottomland and adjacent beachland. The winters are unusually mild for mountainous country, thereby providing winter haven for wildlife. There are three distinct land types on the refuge: (1) Steep, rocky mountain slopes, (2) alluvial beachlands, and (3) conglomerate sedimentary river bottomlands. Numerous species of ducks and Great Basin Canada geese nest on the refuge. The waterfowl population swells by the thousands during the spring and fall migrations. Wading birds, shorebirds, and a variety of raptors also use the refuge during various seasons. Resident species include mule deer, pronghorn antelope, rabbits, and sage grouse. Elk and bighorn sheep occasionally visit the refuge. Species having threatened or endangered status include the bald eagle, peregrine falcon, Colorado River squawfish, humpback chub, and bonytail chub. The mission of the refuge is to preserve, restore and manage a portion of the Green River and associated ecosystems for optimum wildlife resources and to provide compatible human benefits associated with its wildlife and wildlands. The refuge proposes to open to the hunting of elk. The refuge is already open to the hunting of waterfowl, cottontail rabbit and mule deer. Aerial surveys indicate increasing numbers of elk are using the refuge during the fall and winter months. Up to 200 elk were observed on the refuge during the winter of 1991–92. A separate compatibility determination has concluded that the hunting of elk would be compatible with the purposes for which the refuge was established. Furthermore, the elk population is not anticipated to be detrimentally impacted by the proposed hunt, because the refuge in included within two separate big game State Management Units which are subject to limited draw only. A separate section 7 evaluation under the Endangered Species Act has been done and a finding made that the program would not adversely affect any threatened or endangered species. An environmental assessment was done with a finding of no significant impact to the human environment. The initial cost for this hunt is approximately $1,000 and includes extra labor for informing the public with signing, writing an information sheet, answering questions and for extra law enforcement. Once established, the operating costs of the hunt are estimated at about $700 annually, which is well within the refuge's operational budget and, thus, there are sufficient funds available for the development, operation, and maintenance of this program as required by the Refuge Recreation Act.

Cypress Creek NWR, located in southern Illinois, was established as an inviolate sanctuary, or for any other management purpose, for migratory birds and for the conservation of wetlands. The refuge is one component in the Cache River Wetlands system which, when fully acquired, will include nearly 60,000 acres. The refuge, as acquired to date, consists of approximately 3,800 acres of bottomland hardwood forests associated with riverine wetlands. The parcels which make up the refuge lend themselves well to hunting, especially for waterfowl and upland game such as bob-white quail, cottontail rabbit, squirrel, mourning dove and white-tailed deer. These species are considered the target species for the refuge hunting plan. The hunting program objectives provide a minimum of 200–500 hunter use days on applicable areas opened to hunting. These areas have been determined to be compatible with refuge purposes and objectives and that are in conformance with State regulations. The hunting program will also integrate species specific recommendations for management as determined by the various resource agencies involved in the project. Specifically, the hunt program will control the large build-up of wintering populations of Canada geese. Without such control, large goose build-ups are inevitable and could interrupt existing distribution strategies that have been agreed upon by State and flyway groups. Also, the white-tailed deer populations must be controlled to ensure disease free herds and to facilitate the reforestation project on the refuge. Additionally, the hunt program would provide public opportunities for outdoor recreation. An environmental assessment was completed with a finding of no significant impact to the human environment. A section 7 consultation resulted in a finding that the program would not adversely affect any threatened or endangered species. In addition, a separate compatibility determination concluded that the program would be compatible with the primary purposes of the refuge. Funding for the hunting program will be a part of the refuge's operation and maintenance fund which is approximately $250,000 annually. It is anticipated that the hunting program will require one man-month (refuge wildlife biologist) at a cost to the Service of $3,640 annually. Therefore, it is determined that there are sufficient funds available for the development, operation, and maintenance of the program as required by the Refuge Recreation Act.

Meredosia NWR comprises 2,216 acres of Meredosia Island, Meredosia Lake, and floodplain habitat. The refuge proposes to open to sport fishing in designated areas of the refuge. Historically known for waterfowl habitat, this refuge is located in Cass and Morgan Counties, Illinois, nine miles south of Beardstown and immediately north of Meredosia, Illinois. The refuge was established in 1973 as an inviolate sanctuary for waterfowl. Prior to this establishment, the lands had been used (since 1922) as a hunt club and waterfowl sanctuary. The refuge rests on the river floodplain and consists of 1,802.3 acres of floodplain forest, 150 acres in most soil units, 161 acres of former cropland in various stages of natural regeneration, 72 acres in cropland and 25.5 acres of meadow. There are 5.2 miles of river

bank and lake shore habitat. Sport fishing activities will occur primarily at the southern end of the refuge on recently acquired land. Sport fishing is made compatible with the established refuge purposes by closing migratory bird use areas to the public during critical periods. Sport fishing is an opportunity that will facilitate the revival of the Meredosia wetland complex as a multi-purpose natural area available for public use. One of the objectives of the refuge is to provide environmental education and other compatible public use opportunities to the public. The refuge could provide excellent opportunities for people to experience and appreciate a river floodplain ecosystem. These public initiatives will be set into motion whenever permission is granted for the sport fishing program. A separate compatibility determination concluded that the program would be compatible with the primary purposes of the refuge. An environmental assessment resulted in a finding of no significant impact to the human environment. In addition, a section 7 consultation under the Endangered Species Act concluded that the program would not adversely affect any threatened or endangered species. The minimal staff effort and associated administrative costs required to facilitate a sport fishing program on the refuge will cause no administrative conflicts with refuge operations and are sufficient to develop, operate, and maintain the program. This program is, therefore, in compliance, with the Refuge Recreation Act.

Driftless Area NWR was established in October 1989 to protect the endangered Iowa Pleistocene snail and the threatened northern wild monkshood plant. These two species along with other rare snails and plants, are found almost exclusively on certain cool, moist, shaded slopes and cliffs, many of which are called algific talus slopes. The refuge proposes that limited upland game and big game hunting and sport fishing be allowed on designated areas of the refuge. The refuge consists of approximately 506 acres of scattered parcels in three northeast Iowa counties. As planned, the refuge may expand to include tracts in southwest Wisconsin, southeast Minnesota and northwest Illinois. Casual hunting and sport fishing were allowed on these lands prior to its establishment as a refuge. All limited hunting and fishing would occur away from the algific talus slopes where the rare species occur, and in designated buffer zones where no rare species are located. The refuge units to be opened for hunting are relatively small, 204 and 209 acres, and have sufficient off-slope buffer zones where hunter use is compatible. The specific areas to be opened for hunting are the Howard Creek Unit and the Fern Ridge Unit in Clayton County. The units opened to fishing will be the Fern Ridge Unit and Steele's Branch Unit in Clayton County. The sites are not expected to receive heavy use as they are not located near large population centers. Species available for hunting include white-tailed deer, cottontail rabbit, eastern grey squirrel, eastern fox squirrel, woodchuck, raccoon, opossum, coyote, red fox, grey fox, wild turkey, ring-necked pheasant, grey partridge, ruffed grouse, woodcock, American crow and rock dove. Because of extraordinarily high deer densities, the potential for detrimental impact on the endangered species through browsing and trampling is high. A section 7 consultation has been completed, with concurrence by the Rock Island Ecological Services Field Office, indicating that these activities will not adversely affect the listed species. A separate compatibility determination was completed with stipulations regarding seasons, hunting restrictions, firearms, the use of horses, and facilities. With the stipulations, it was determined that the proposed hunting and fishing activities would be compatible with the conservation of the rare species. An environmental assessment concluded that there would be no significant impact on the human environment. No additional funding or staffing will be needed to administer the program. Occasional law enforcement patrols will be conducted concurrent with other management functions. There are sufficient funds and personnel, therefore, to develop, operate, and maintain this program as required by the Refuge Recreation Act.

Patuxent Wildlife Research Center (Center) is a 12,800 acre facility located approximately between Baltimore, Maryland and Washington, DC, in Anne Arundel and Prince Georges counties, Maryland. The Patuxent River roughly bisects the property. The area proposed for hunting of migratory game birds, upland game and big game (deer) consists of a 8,100 acre tract, known as the North Tract, which was transferred to the Center by the U.S. Army in 1991. Long-term wildlife research studies of migratory birds, environmental contaminants and endangered species are the primary purposes and objectives of the North Tract. The North Tract comprises a large contiguous forest (approximately 6,400 acres) in the coastal plain of Central Maryland. This forest is directly connected to the large forested acreage of the original Patuxent Wildlife Research Center, Beltsville Agricultural Research Center, NASA Goddard Space Flight Center, National Park Service and Secret Service tracts to the south and west. Together these largely forested lands constitute the largest (20,000+ acres) contiguous forest or "greenway" in the coastal plain of Maryland. The proposed hunting program on the North Tract would be managed to provide the public with a high quality wildlife oriented activity and an opportunity to explore the Nation's valuable and renewable wildlife resources. Only harvestable surpluses of animals will be taken. Wildlife populations will not be allowed to experience overall decline by the conduct of sport hunting, with the exception of deer. Deer populations may be reduced to maintain the carrying capacity of their habitat. Prior to the transfer of the North Tract to the Center, this area was open to the public for hunting for over 30 years. The proposed hunts would ensure that wildlife levels and good conservation management principles are followed. The hunting program will be so carefully controlled that locations and numbers of hunters in the field will be known at the Hunting Control Point. Participants in approved public use activities will be required to check in with Hunting Control so potential conflicts are avoided. A separate Section 7 consultation under the Endangered Species Act was completed with a finding of no adverse affect on any threatened or endangered species. An environmental assessment concluded that the program would have no significant impact on the human environment. A compatibility determination also found that the program would be compatible with the primary purposes of the refuge. Funding to continue public hunting on the North Tract will be provided exclusively by hunting permit fees. There are, therefore, sufficient funds to develop, operate, and maintain the program in compliance with the Refuge Recreation Act.

Wallkill River NWR is located in the Townships of Wantage, Vernon and Hardyston in Sussex County, New Jersey and Warwick Township in Orange County, New York. The refuge was established, in large part, to serve as a key link in New Jersey's planned Greenway system for the northern part of the State. The refuge includes approximately nine miles of the Wallkill River. The Wallkill River bottomlands of Sussex County, New Jersey, are one of the few, high quality waterfowl

concentration areas remaining in the northwestern portion of the State. It is also unique as a wildlife habitat due to its expansive wetlands and great diversity of species it supports, including nineteen of the State's listed threatened and endangered species. The refuge lies within two physiographic provinces—the Appalachian Valley and Ridge Province—which encompass the Kittatinny Mountain Range to the west and the Highland Ridge System Province to the east. The Wallkill bottomlands have been farmed and mined for decades. The refuge will protect 4,200 acres of freshwater wetlands and 3,300 acres of adjacent upland when acquisition is completed. Wetland habitat types include 1,600 acres of palustrine forest, 1,500 acres of emergent marsh, 600 acres of wet meadow, 400 acres of scrub-shrub marsh, and 100 acres of open water. Upland habitat types include 2,500 acres of agricultural land and 800 acres of mixed hardwood. Resident wildlife is composed of a variety of game and non-game species of birds, mammals, fish and amphibians. Furbearers include beaver, muskrat, mink, and raccoon. Black bear and bobcat are also known to occur occasionally on the refuge. The refuge proposes to open hunting of deer in designated areas of its properties. Deer are abundant throughout the refuge. State deer biologists estimate a deer density of approximately 35 deer per square mile in Sussex County's Deer Management Zone 2, of which Wallkill is a part. This is slightly higher than the Statewide mean pre-season density of 31 deer per square mile. The deer population in the area is stable at the present time. The number of hunters expected to use the area is relatively small and should not have any significant impact on the wildlife populations on the refuge. As determined in a separate compatibility determination, hunting of deer is compatible with the purposes for which the refuge was established. A separate section 7 consultation under the Endangered Species Act was completed with a finding that the program would have no adverse affect on any threatened or endangered species. An environmental assessment found that the program would have no significant impact on the human environment. Initial costs to open the refuge to hunting are estimated to be about $7,000 including the cost of administering the first hunting season. Costs will decrease in subsequent years, with an anticipated annual operating cost of about $4,700. There are, therefore, sufficient funds available with the annual operating budget of $178,300 to conduct this hunt. There are, accordingly, sufficient funds to develop, operate, and maintain the program pursuant to the Refuge Recreation Act.

Des Lacs NWR is located in northwest North Dakota, approximately 50 miles north of Minot and 90 miles east of the Montana state line. The long, narrow riverine refuge extends 26 miles in length from the Canadian border to 8 miles south of Kenmare, North Dakota. The refuge includes all of the main water areas and adjacent uplands along this stretch of the Des Lacs valley in Burke and Ward Counties. The topography is characterized by adjacent grass uplands descending a hundred feet into the river valley interspersed with numerous wooded draws and coulees. The refuge consists of 19,544 acres, including 13,600 acres of upland, 5,014 acres of open water, 700 acres of marsh, and 230 acres of wooded coulees. The refuge was established in 1935 as a breeding ground for migratory birds and other wildlife. The refuge is an important waterfowl breeding and migration area in the Prairie Pothole Region. An average of 4,000–5,000 ducks and 50–150 Giant Canada geese are produced annually. Resting use during fall migration is significant with a peak of 200–300,000 snow geese and up to 50,000 ducks using the refuge. The Des Lacs Hunting Plan was completed in 1985 and currently allows the hunting of white-tailed deer. This proposed opening would add the hunting of upland game birds, rabbits and fox to that plan. Populations of upland game birds, rabbits and fox are sufficient in all but the most severe winter weather conditions, to sustain refuge objectives of maintaining viable populations of these species of resident wildlife. The proposed timing of the hunts would avoid conflicts with other refuge objectives because: (1) All waterfowl would have left the refuge due to all wetlands freezing over; (2) virtually no endangered species will be present in the area except for an occasional bald eagle or peregrine falcon, because their primary food source, waterfowl, are not present; and (3) use of refuge roads for wildlife observation is virtually non-existent due to winter weather and poor road conditions due to snow drifts. A separate section 7 consultation under the Endangered Species Act was completed which determined that the program would have no adverse affect on any threatened or endangered species. A compatibility determination found that the proposed hunt program is compatible with the primary purposes of the refuge. An environmental assessment was completed on the program with a finding of no significant impact to the human environment. The estimated initial cost for this hunt is $1,000 and includes labor for additional signing, administration and law enforcement. Once the hunt becomes established, annual operating costs are estimated at $500. These new costs can be met readily with current funding levels and are sufficient to develop, operate, and maintain the program in compliance with the Refuge Recreation Act.

J. Clark Salyer NWR, is located along the Souris River in Bottineau and McHenry Counties of north-central North Dakota. The 58,693 acre refuge extends from the Manitoba border southward for approximately 45 miles. The entire refuge lies within an area which was once Glacial Lake Souris. The surrounding area is old lake bottom with extremely flat topography and a high density of temporary wetlands. While a primary objective of the refuge is waterfowl production, the area has a very diverse population of other bird species. More than 250 species have been noted, including sharp-tailed grouse, Swainson's hawks, a wide variety of waterbirds, and relatively rare small birds such as Sprague's pipits and Baird's and LeConte's sparrows. Endangered or threatened species such as the bald eagle, peregrine falcon and piping plover have been recorded. White pelicans are present on the refuge all summer, while thousands of sandhill cranes, tundra swans and snow geese use the refuge as a feeding and resting area during migration. White-tailed deer, red fox, coyote, raccoon, mink, muskrat, beaver, porcupine and striped skunk are abundant. It is proposed that the refuge open itself to fox hunting. The refuge is already open to upland game hunting of pheasant, partridge, grouse and turkey. Red fox populations have adapted well to an environment modified by agricultural activity and their populations are higher than historical level. Red fox are a major cause of duck nest loss and kill many nesting hens on the refuge and other parts of the Prairie Pothole Region of North America. The fox populations have remained high in the State despite liberal hunting and trapping regulations. Opening the refuge to fox hunting would fulfill a demand for predator hunting in the winter and achieve management objectives in harvesting surplus animals. A separate section 7 consultation under the Endangered Species Act found that the program would not adversely affect any

threatened or endangered species. A compatibility determination found that the hunt program would be compatible with the primary purposes of the refuge. In addition, an environmental assessment found that the program would present no significant impact to the human environment. The hunt can be administered along with other refuge hunts and activities with little or no added costs. Therefore, there are sufficient funds to develop, operate, and maintain this program and in compliance with the Refuge Recreation Act.

Eastern Shore of Virginia NWR, was established in August 1984, and is located at the southern terminus of the Delmarva Peninsula in Northampton County, Virginia. At present, the refuge encompasses 548 acres, 57 of which lie to the west of Route 13 and the remaining 491 lie to the east of this highway. The refuge proposes to open a big game (white-tailed deer) hunt. Five hunting zones totaling 500 acres will be open for public deer hunting. Permits will be required and will specify conditions for each type of hunt in each of the five hunting zones. One of the primary objectives of the refuge is to maintain healthy populations of wildlife. Deer populations are now at or above carrying capacity of the refuge habitat. Over or under harvest will be prevented by annual adjustments to the hunting program. The number of hunt days, the hunt zones, and the numbers of hunters per zone can be increased or decreased. This hunting plan initiates deer hunting as a means of keeping deer populations in balance with refuge habitat, while also providing public outdoor recreation benefits. Hunting has been found to be compatible with the primary purpose of the refuge. A separate section 7 consultation under the Endangered Species Act found that the program would not adversely affect any threatened or endangered species. In addition, an environmental assessment found that the program would present no significant impact to the human environment. There are sufficient funds to develop, operate, and maintain this program and, accordingly, this hunt program would be in compliance with the Refuge Recreation Act.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. It is estimated that opening these refuges to hunting and fishing will generate substantially less than $100 million.

With respect to small entities, this rule will have a positive aggregate economic effect on small businesses, organizations, and governmental jurisdictions. The openings will provide recreational opportunities and generate economic benefits that may not now exist, and will impose no new costs on small entities. While the number of small entities likely to be affected is not known, the number is judged to be small. Moreover, the added cost to the Federal Government of law enforcement, posting, and other actions needed to implement activities under this rule will be considerably less than the income generated from the implementation of these hunting and sport fishing programs. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), environmental assessments have been prepared for these openings. Based upon the Environmental Assessments, the Service issued Findings of No Significant Impact with respect to the openings. Section 7 evaluations were prepared pursuant to the Endangered Species Act. These documents are available for public inspection and copying in room 670, 4401 North Fairfax Drive, Arlington, Virginia, or by mail, at the address listed in the section **ADDRESSES** above.

Duncan L. Brown, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, part 32 of chapter I of title 50 of the Code of Federal Regulations is amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

§ 32.7 [Amended]

2. Section 32.7 is amended by adding alphabetically "Cypress Creek National Wildlife Refuge" and "Meredosia National Wildlife Refuge" under Illinois; "Driftless Area National Wildlife Refuge" under Iowa; "Patuxent Wildlife Research Center" under Maryland; "Wallkill River National Wildlife Refuge" under New Jersey; "Eastern Shore of Virginia National Wildlife Refuge" under Virginia; and "Little Pend Oreille National Wildlife Refuge" under Washington.

3. Section 32.25 *Colorado* is amended by adding text to paragraph D. of the Alamosa National Wildlife Refuge; and by adding text to paragraph C. of Browns Park National Wildlife Refuge to read as follows:

§ 32.25 Colorado.

* * * * *

Alamosa National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. The fishing season is July 1 through September 30.

2. Fishing activity is limited to daylight use only.

* * * * *

Browns Park National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of mule deer and elk is permitted on designated areas of the refuge subject to the following conditions:

1. Elk hunting shall be governed by State hunting rules and regulations specific to the taking of elk within the State of Colorado.

2. Two safety and buffer zones will be closed to hunting to protect the refuge and private facilities, as identified by the refuge manager as those areas closed to the hunting of mule deer and cottontail rabbit.

* * * * *

4. Section 32.32 *Illinois* is amended by adding Cypress Creek National Wildlife Refuge and Meredosia National Wildlife Refuge to the alphabetical listing to read as follows:

§ 32.32 Illinois.

* * * * *

Cypress Creek National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory birds is permitted on designated areas of the refuge subject to the following conditions:

1. Boats, decoys and blinds must be removed from the refuge at the conclusion of each day's hunt.

2. Only goose hunting is allowed in the area known as the "Ducks Unlimited Area."

3. Hunters must check in and out of the refuge each day of hunting.

B. Upland Game Hunting. Hunting of bobwhite quail, rabbit, raccoon, opossum, coyote, red fox and grey fox is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters must check in and out of the refuge each day of hunting.

2. No hunting after sunset is permitted.

C. Big Game Hunting. Hunting of whitetailed deer is permitted on designated areas of the refuge subject to the following condition: Hunters must check in and out of the refuge each day of hunting.

D. Sport Fishing. [Reserved]

* * * * *

Meredosia National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the Meredosia National Wildlife Refuge subject to the following conditions:

1. Fishing is permitted from February 16 through October 15 on all refuge waters, from boat or from the bank.

2. From October 16 through February 15, fishing is permitted south of Carver Lake by foot access only.

3. Fishing is allowed during daylight hours only.

* * * * *

5. Section 32.34 *Iowa* is amended by adding Driftless Area National Wildlife Refuge to the alphabetical listing to read as follows:

§ 32.34 Iowa.

* * * * *

Driftless Area National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of upland game is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only between November 1 and the close of State established seasons, or January 15, whichever comes first.

C. Big Game Hunting. Hunting of whitetailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted only between November 1 and the close of State established seasons, or January 15, whichever comes first.

2. Hunting is restricted to archery and muzzleloader use only.

3. Construction or use of permanent blinds, platforms or ladders is not permitted.

4. All stands must be removed from the refuge at the end of the day's hunt.

5. Hunting in areas posted "Closed Area" is strictly prohibited.

6. Firearms are permitted only during an open hunting season.

7. Horses or other hoofed animals are prohibited.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge.

* * * * *

6. Section 32.39 *Maryland* is amended by adding Patuxent Wildlife Research Center to the alphabetical listing to read as follows:

§ 32.39 Maryland.

* * * * *

Patuxent Wildlife Research Center

A. Hunting of Migratory Game Birds. Hunting of migratory birds is permitted on designated areas of the Center subject to the following conditions:

1. Seasonal permit is required.

2. A fee is required for issuance of a seasonal permit.

3. The use of a retriever is mandatory on any impounded waters. Retrievers shall be of the traditional breeds, such as Chesapeake Bay, Golden, etc.

4. Dogs observed running loose or unattended in unauthorized areas shall be subject to seizure by law enforcement officers.

B. Upland Game Hunting. Hunting of upland game is permitted on designated areas of the Center subject to the following conditions:

1. Seasonal permit is required.

2. A fee is required for issuance of a seasonal permit.

3. Hunting of upland game is suspended during the firearm deer season.

4. Hunters must wear in a conspicuous manner on head, chest and back, a minimum of 400 square inches of solid-colored hunter orange clothing or material.

5. Dogs observed running loose or unattended in unauthorized areas shall be subject to seizure by law enforcement officers.

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the Center subject to the following conditions:

1. Seasonal permit is required.

2. A fee is required for issuance of a seasonal permit.

3. Validation of hunter safety proficiency test is required.

4. Dogs are not permitted.

5. No hunting with black powder handguns will be permitted.

6. Possession of rifled slug or pumpkin ball is permitted only during the firearm deer season. Use of buckshot is strictly prohibited.

7. Only shotguns loaded with rifled slug or pumpkin ball and black powder rifles, 40 caliber or larger, with not less than 60 grains of black powder or equivalent in Pyrodex, shall be used for hunting deer during the firearm deer season.

8. During the firearm deer season, the use of bow and arrow is prohibited.

9. Hunting of upland game is suspended during the firearm deer season.

10. Hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material. Bow hunters must follow this requirement when moving to and from the deer stand, but are not required to wear hunter orange when positioned to hunt.

11. Only portable deer stands with safety belts are permitted. Safety belts must be worn while in the stand.

D. Sport Fishing. [Reserved]

7. Section 32.49 *New Jersey* is amended by adding the alphabetical listing of Wallkill River National Wildlife Refuge to read as follows:

§ 32.49 New Jersey.

* * * * *

Wallkill River National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of whitetailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Refuge hunting hours are concurrent with State hunting hours. Hunters may enter the refuge no earlier than two hours before shooting time and leave no later than one hour after the end of shooting hours.

2. Hunters must wear in a conspicuous manner at least 400 square inches of hunter orange on their person.

3. Only portable tree stand may be used and must be removed from the refuge each day.

D. Sport Fishing. [Reserved]

8. Section 32.66 *Virginia* is amended by adding the alphabetical listing of Eastern Shore of Virginia National Wildlife Refuge to read as follows:

§ 32.66 Virginia.

* * * * *

Eastern Shore of Virginia National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Only shotguns, 20 gauge or larger, loaded with buckshot, and bow and arrow are permitted.

3. Dogs are not permitted.

4. Only portable tree stands may be used and must be removed at the end of each hunt day.

5. Shotgun hunters must wear, in a conspicuous manner, on head, chest, and back, a minimum of 400 square inches of solid-colored orange clothing or material.

D. Sport Fishing. [Reserved]

* * * * *

9. Section 32.53 *North Dakota* is amended by adding text to paragraph B. of Des Lacs National Wildlife Refuge; and by adding text to paragraph B. of J. Clark Salyer National Wildlife Refuge to read as follows:

§ 32.53 North Dakota.

* * * * *

Des Lacs National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of ring-necked pheasants, sharp-tailed grouse, gray partridge, cottontail rabbit, jackrabbits, snowshoe hares and fox is permitted on designated areas of the refuge subject to the following conditions:

1. Only nontoxic shot or falconry may be used.

2. Upland game birds and rabbit shotgun season is from December 1 through the end of the State season.

3. The upland game bird and rabbit falconry season is from December 1 through March 31.

* * * * *

J. Clark Salyer National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of pheasant, partridge, grouse, turkey and fox is permitted on designated areas of the refuge subject to the following conditions:

1. Fox hunting opens annually on the day following the close of the regular firearms deer season and closes on March 31.

2. Fox hunting is closed from 1/2 hour after sunset until 1/2 hour before sunrise.

* * * * *

10. Section 32.67 *Washington* is amended by adding the alphabetical listing of Little Pend Oreille National Wildlife Refuge to read as follows:

§ 32.67 Washington.

* * * * *

Little Pend Oreille National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge.

D. Sport Fishing. [Reserved]

* * * * *

Dated: August 11, 1993.

Richard N. Smith,

Acting Director.

[FR Doc. 93–22633 Filed 9–16–93; 8:45 am]

BILLING CODE 4310–55–P

federal register

Friday
September 17, 1993

Part V

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for June 1993

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–53168; FRL–4636–5]

Premanufacture Notices; Monthly Status Report for JUNE 1993

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for June 1993.

Nonconfidential portions of the PMNs and exemption request may be seen in the TSCA Noncofidential Information Center (NCIC) ETG–102 at the address below between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

ADDRESSES: Written comments, identified with the document control number "[OPPTS–53168]" and the specific PMN and exemption request number should be sent to: Document Control Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099, Washington, DC 20460, (202) 260–1532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC., 20460, (202) 260–3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during June; (b) PMNs received previously and still under review at the end of June; (c) PMNs for which the notice review period has ended during June; (d) chemical substances for which EPA has received a notice of commencement to manufacture during June; and (e) PMNs for which the review period has been suspended. Therefore, the June 1993 PMN Status Report is being published.

Dated: September 7, 1993.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

Premanufacture Notice Monthly Status Report for June 1993

I. 147 Premanufacture notices and exemption requests received during the month:

PMN No.

P 93–1079 P 93–1080 P 93–1081 P 93–1082
P 93–1083 P 93–1084 P 93–1085 P 93–1086
P 93–1087 P 93–1088 P 93–1089 P 93–1090
P 93–1091 P 93–1092 P 93–1093 P 93–1094
P 93–1095 P 93–1096 P 93–1097 P 93–1098
P 93–1099 P 93–1100 P 93–1101 P 93–1102
P 93–1103 P 93–1104 P 93–1105 P 93–1106
P 93–1107 P 93–1108 P 93–1109 P 93–1110
P 93–1111 P 93–1112 P 93–1113 P 93–1114
P 93–1115 P 93–1116 P 93–1117 P 93–1118
P 93–1119 P 93–1120 P 93–1121 P 93–1122
P 93–1123 P 93–1124 P 93–1125 P 93–1126
P 93–1127 P 93–1128 P 93–1129 P 93–1130
P 93–1131 P 93–1132 P 93–1133 P 93–1134
P 93–1135 P 93–1136 P 93–1137 P 93–1138
P 93–1139 P 93–1140 P 93–1141 P 93–1142
P 93–1143 P 93–1144 P 93–1145 P 93–1146
P 93–1147 P 93–1148 P 93–1149 P 93–1150
P 93–1151 P 93–1152 P 93–1153 P 93–1154
P 93–1155 P 93–1156 P 93–1157 P 93–1158
P 93–1159 P 93–1160 P 93–1161 P 93–1162
P 93–1163 P 93–1164 P 93–1165 P 93–1166
P 93–1167 P 93–1168 P 93–1169 P 93–1170
P 93–1171 P 93–1172 P 93–1173 P 93–1174
P 93–1175 P 93–1177 P 93–1178 P 93–1179
P 93–1180 P 93–1181 P 93–1182 P 93–1183
P 93–1184 P 93–1185 P 93–1186 P 93–1187
P 93–1189 P 93–1190 P 93–1191 P 93–1192
P 93–1193 P 93–1194 P 93–1195 P 93–1196
P 93–1197 P 93–1198 P 93–1200 P 93–1206
P 93–1207 P 93–1208 P 93–1209 P 93–1210
P 93–1211 P 93–1212 P 93–1213 P 93–1214
P 93–1215 P 93–1216 P 93–1217 P 93–1218
P 93–1219 P 93–1220 Y 93–0156 Y 93–0157
Y 93–0158 Y 93–0159 Y 93–0160 Y 93–0161
Y 93–0162 Y 93–0163 Y 93–0164 Y 93–0165
Y 93–0166 Y 93–0167 Y 93–0170

II. 223 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

P 84–0660 P 84–0704 P 85–0619 P 85–0941
P 86–0066 P 86–1315 P 86–1648 P 87–0323
P 88–0998 P 88–0999 P 88–1937 P 88–1938
P 88–1980 P 88–1982 P 88–1984 P 88–1985
P 88–2484 P 88–2518 P 89–0632 P 89–0650
P 89–0721 P 89–0775 P 89–0957 P 89–0958
P 89–0959 P 89–0963 P 89–1038 P 89–1058
P 90–0158 P 90–0263 P 90–0372 P 90–0550
P 90–0558 P 90–0564 P 90–0581 P 90–0608
P 90–1358 P 90–1422 P 90–1527 P 90–1564
P 90–1592 P 90–1840 P 91–0043 P 91–0572
P 91–0619 P 91–0659 P 91–0689 P 91–0818
P 91–0826 P 91–0914 P 91–0915 P 91–0939
P 91–0940 P 91–0941 P 91–1009 P 91–1010
P 91–1014 P 91–1015 P 91–1131 P 91–1206
P 91–1210 P 91–1324 P 91–1386 P 91–1394
P 91–1409 P 92–0003 P 92–0031 P 92–0032
P 92–0033 P 92–0048 P 92–0129 P 92–0314
P 92–0343 P 92–0344 P 92–0477 P 92–0478
P 92–0606 P 92–0649 P 92–0714 P 92–0787
P 92–0804 P 92–0919 P 92–1003 P 92–1125
P 92–1222 P 92–1255 P 92–1294 P 92–1295
P 92–1296 P 92–1298 P 92–1307 P 92–1308
P 92–1324 P 92–1337 P 92–1345 P 92–1352
P 92–1357 P 92–1364 P 92–1369 P 92–1489
P 92–1503 P 92–1504 P 93–0014 P 93–0017
P 93–0040 P 93–0066 P 93–0067 P 93–0068
P 93–0094 P 93–0122 P 93–0123 P 93–0124
P 93–0126 P 93–0168 P 93–0177 P 93–0184
P 93–0185 P 93–0186 P 93–0187 P 93–0188
P 93–0189 P 93–0190 P 93–0204 P 93–0212
P 93–0213 P 93–0214 P 93–0215 P 93–0227
P 93–0250 P 93–0251 P 93–0252 P 93–0253
P 93–0254 P 93–0255 P 93–0256 P 93–0257
P 93–0277 P 93–0282 P 93–0307 P 93–0313
P 93–0314 P 93–0315 P 93–0316 P 93–0339
P 93–0343 P 93–0352 P 93–0353 P 93–0360
P 93–0362 P 93–0364 P 93–0374 P 93–0375
P 93–0418 P 93–0438 P 93–0480 P 93–0483
P 93–0498 P 93–0505 P 93–0507 P 93–0512
P 93–0532 P 93–0533 P 93–0553 P 93–0555
P 93–0561 P 93–0568 P 93–0572 P 93–0578
P 93–0603 P 93–0627 P 93–0633 P 93–0637
P 93–0652 P 93–0658 P 93–0698 P 93–0699
P 93–0701 P 93–0718 P 93–0720 P 93–0721
P 93–0722 P 93–0723 P 93–0724 P 93–0725
P 93–0726 P 93–0731 P 93–0732 P 93–0733
P 93–0734 P 93–0735 P 93–0761 P 93–0832
P 93–0853 P 93–0854 P 93–0855 P 93–0856
P 93–0857 P 93–0858 P 93–0880 P 93–0881
P 93–0896 P 93–0936 P 93–0937 P 93–0941
P 93–0955 P 93–0959 P 93–0964 P 93–0989
P 93–1022 P 93–1025 P 93–1026 P 93–1027
P 93–1028 P 93–1039 P 93–1043 P 93–1047
P 93–1053 P 93–1054 P 93–1057 P 93–1069
P 93–1070 P 93–1071 Y 93–0109

III. 163 Premanufacture notices and exemption request for which the notice review period has ended during the month. (Expiration of the notice review period does not signify that the chemical has been added to the Inventory).

PMN No.

P 88–1999 P 88–2000 P 88–2001 P 90–0261
P 90–0262 P 91–0107 P 91–0108 P 91–0109
P 91–0110 P 91–0111 P 91–0112 P 91–0113
P 91–0242 P 91–0243 P 91–0244 P 91–0245
P 91–0246 P 91–0247 P 91–0248 P 91–0503
P 91–0548 P 91–0701 P 92–0031 P 92–0032
P 92–0033 P 92–0217 P 92–0471 P 92–0776
P 92–0777 P 93–0317 P 93–0318 P 93–0476
P 93–0577 P 93–0624 P 93–0625 P 93–0626
P 93–0628 P 93–0629 P 93–0630 P 93–0631
P 93–0632 P 93–0634 P 93–0635 P 93–0636
P 93–0638 P 93–0639 P 93–0640 P 93–0641
P 93–0642 P 93–0643 P 93–0644 P 93–0645
P 93–0646 P 93–0647 P 93–0648 P 93–0649
P 93–0650 P 93–0651 P 93–0653 P 93–0654
P 93–0655 P 93–0656 P 93–0657 P 93–0658
P 93–0659 P 93–0660 P 93–0661 P 93–0662
P 93–0663 P 93–0664 P 93–0665 P 93–0666
P 93–0667 P 93–0668 P 93–0669 P 93–0670
P 93–0671 P 93–0672 P 93–0673 P 93–0674
P 93–0675 P 93–0676 P 93–0677 P 93–0678
P 93–0679 P 93–0680 P 93–0681 P 93–0682
P 93–0683 P 93–0684 P 93–0685 P 93–0686
P 93–0687 P 93–0688 P 93–0689 P 93–0690
P 93–0691 P 93–0692 P 93–0694 P 93–0695
P 93–0696 P 93–0697 P 93–0700 P 93–0702
P 93–0703 P 93–0704 P 93–0705 P 93–0706

P 93-0707 P 93-0708 P 93-0709 P 93-0710 P 93-0730 P 93-0736 P 93-0737 P 93-0738 Y 93-0150 Y 93-0151 Y 93-0152 Y 93-0153
P 93-0711 P 93-0712 P 93-0713 P 93-0714 P 93-0739 P 93-0740 P 93-0741 P 93-0742 Y 93-0154 Y 93-0155 Y 93-0156 Y 93-0157
P 93-0715 P 93-0716 P 93-0717 P 93-0719 P 93-0743 P 93-0744 P 93-0745 P 93-0746 Y 93-0158 Y 93-0159 Y 93-0160 Y 93-0161
P 93-0722 P 93-0723 P 93-0724 P 93-0725 Y 93-0142 Y 93-0143 Y 93-0144 Y 93-0145 Y 93-0162 Y 93-0163 Y 93-0164
P 93-0726 P 93-0727 P 93-0728 P 93-0729 Y 93-0146 Y 93-0147 Y 93-0148 Y 93-0149

IV. 117 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture.

PMN No.	Identity/Generic Name	Date of Commencement
P 83-1131	G Salt of alpha olefin /2,5- furandione polymer	April 28, 1993.
P 85-0718	G Polyol polyacrylate	March 17, 1993.
P 85-1331	Naphthalene, 1,2,3,4-tetrahydro(1-phenylethyl)	June 19, 1987.
P 90-0017	G Acrylate-capped polyurethane diol	May 5, 1993.
P 90-0559	1-(1-methylbutoxy)-4-benzenamine hydrochloride	November 6, 1991.
P 90-1358	Cyclohexanecarbonitrile, 1,3,3-trimethyl-5-oxo-	November 15, 1991.
P 90-1840	G Aromatic aminoether	November 19, 1992.
P 90-1925	G Hydroxy terminated polyacrylate	April 21, 1993.
P 90-1973	G Alkoxylated aliphatic alcohol, monostearate	March 30, 1993.
P 91-0339	G Polyurethane polymer	May 18, 1993.
P 91-0412	G Polyurethane polymer	April 16, 1993.
P 91-0431	G Isophthalic alkyd resin	April 20, 1993.
P 91-0674	G Rosin ester phenolic modified	April 20, 1993.
P 91-0776	G Alkyl dicarboxylic acid monoester, strontrium salt	April 14, 1993.
P 91-0921	G Urethane modified alkyd resin	April 20, 1993.
P 91-0922	G Maleic imide modified rosin phenolic resin	April 20, 1993.
P 91-0994	G Diisocyanate trimer, reaction product with polyether polyol	March 30, 1993.
P 91-1087	G Polyurethane resin	April 20, 1993.
P 91-1190	G Substituted dichlorobenzothiazole	May 4, 1993.
P 91-1191	G Substituted dichlorobenzothiazole	May 4, 1993.
P 92-0173	G Dibasic acid glycol polyester	April 15, 1993.
P 92-0267	G Halogenated alkyl nitrile	April 15, 1993.
P 92-0341	Ethane,-1,1,1-trifluoro	July 16, 1992.
P 92-0518	G Fluorinated copolymer	April 28, 1993.
P 92-0688	G Quaternary ammonium salt of fluorinated alkyl-aryl amide	September 6, 1992.
P 92-0719	G Rosin-modified hydrocarbon resin	March 30, 1993.
P 92-0748	G Non-bromo substituted alkene	April 14, 1993.
P 92-0812	G Starch ester	April 26, 1993.
P 92-0822	G Polyimide precursor solution	March 29, 1993.
P 92-0835	Fatty acids, C_{18}-unsaturated, dimer polymer with a dibasic acid, ethylenediamine and diamines	April 18, 1993.
P 92-0991	G Trisubstituted naphthalene sulfonic acid	May 6, 1993.
P 92-0999	Formaldehyde, polymer with (1,1'-biphenyl)-4-ol and phenol	April 30, 1993.
P 92-1004	G Amine phosphate	April 14, 1993.
P 92-1073	G Poly ether polyamine	April 15, 1993.
P 92-1076	G Sulfonated fatty acid salt	April 15, 1993.
P 92-1077	G Sulfonated fatty acid salt	April 15, 1993.
P 92-1092	G Functional, styrenated, (meth) acrylic copolymer solution	April 3, 1993.
P 92-1093	G Functional methacrylic copolymer solution	April 3, 1993.
P 92-1094	G Functional (meth) acrylic copolymer solution	April 3, 1993.
P 92-1136	G Aqueous epoxy functional silane	April 8, 1993.
P 92-1280	G Styrenated acrylate methacrylate polyester	April 21, 1993.
P 92-1281	G Styrenated acrylate/methacrylate polymer	April 20, 1993.
P 92-1340	G Substituted azo benzenesulfonic derivative, cobaltcomplex	April 8, 1993.
P 92-1384	G Acrylic polymer	April 30, 1993.
P 92-1386	G Acryloc polymer	April 22, 1993.
P 92-1436	G Polyurethane, trimethylamine salt	March 28, 1993.
P 92-1471	G Acryate copolymer salt; vinyl copolymer	May 4, 1993.
P 92-1492	G Styrene-acrylic polymer	April 23, 1993.
P 93-0027	G Polyurethane based on polyisocyanate, polyols and polyamines	April 17, 1993.
P 93-0050	G Polyol acetal	April 17, 1993.
P 93-0059	G 3-[Amine substituted-4-[hydroxyalkoxy]phenyl]azo] benzenesulfonate, salt	April 26, 1993.
P 93-0087	G Acrylic polymer	April 12, 1993.
P 93-0106	2-Ethyl hexyl ester of rapeseed fatty acids	May 4, 1993.
P 93-0117	Copolyester of terephthalic acid, isophthalic acid, dodecanedioic acid and 1,4-butanediol	April 4, 1993.
P 93-0133	G Modified diphenylmethane diisocyanate	May 13, 1993.
P 93-0138	G Propanenitrile, 3-(alkylene)	April 6, 1993.
P 93-0139	G 1-Propanamine, 3(alkyloxy)	April 8, 1993.
P 93-0140	G Propanenitrile, 3-amino-*N*-(alkyloxy)propyl)	April 8, 1993.
P 93-0141	G 1,3-Propanediamine, *N*-(3-(alkoxy)propyl)	April 8, 1993.
P 93-0142	G 1,3-Propanediamine, *N*-(3-(alkyloxy)propyl),acetates	April 22, 1993.

IV. 117 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE.—Continued

PMN No.	Identity/Generic Name	Date of Commencement
P 93–0182	G Formaldehyde, polymer with (chloromethyl)oxirane and methylphenol, reaction products with acrylic acid and an anhydride	April 20, 1993.
P 93–0221	G *N*-Alkylaniline	May 6, 1993.
P 93–0222	G Alkylnitrosobenzeneamine	May 4, 1993.
P 93–0241	G Polyalkylphenols, polymer with formaldehyde	April 27, 1993.
P 93–0247	G Polysulfide polymer modified with phenolic resins	April 15, 1993.
P 93–0249	G Vinyl chloride copolymer	April 17, 1993.
P 93–0261	G Aliphate aromatic ester do-polymer	April 22, 1993.
P 93–0265	Manganese tungsten titanium brown rutile	March 19, 1993.
P 93–0281	G Salt of modified styrene maleic anhydride copolymer	April 20, 1993.
P 93–0283	G Pyrazolotriazol derivative	May 2, 1993.
P 93–0284	G Thiomorpholine dioxide derivative	May 2, 1993.
P 93–0286	G Polyester polyol	March 24, 1993.
P 93–0292	Benzenamine, 2-(phenylsulfonyl)-	May 3, 1993.
P 93–0293	1*H*-Indole-5-sulfonia acid, 2-phenyl-, monosodium salt	April 26, 1993.
P 93–0296	G Acrylic copolymer	March 31, 1993.
P 93–0301	G Olefin methacrylate polymer	April 29, 1993.
P 93–0340	1,3-Benzenedicarboxylic acid, 5-sulfo-, monosodiumsalt; 1,4-enzenedicarboxylic acid; 1,3-benzenedicarboxylic acid; 1,2 ethanediol; 1,3 ropanediol, 2,2-dimethyl	April 21, 1993.
P 93–0343	Nitrobenzoic acid, octyl ester	May 7, 1993.
P 93–0355	Fatty acids, tall oil, compd. with 9-octadecen-1-amine,)*Z*)-	May 6, 1993.
P 93–0357	G Substituted aniline	April 9, 1993.
P 93–0358	G Substituted anline	April 13, 1993.
P 93–0377	Titanium IV tetrakis tridecanolate	April 26, 1993.
P 93–0378	Zirconium IV tetrakis tridecanolato	April 26, 1993.
P 93–0379	Titanium IV tetrakis ethoxylated butanolato	April 28, 1993.
P 93–0380	Zirconium IV tetrakis ethoxylated butanolato	April 28, 1993.
P 93–0382	G Sulfo substituted heterocyclic derivative	May 2, 1993.
P 93–0395	G Alcohol propoxylate	April 28, 1993.
P 93–0407	G 2-Substituted benzothiazole	April 21, 1993.
P 93–0408	G 3-(3-Substituted)-2-((3-substituted)thio)-benzothiazolium hydroxide, inner salt	April 16, 1993.
P 93–0413	G Methacrylate/acrylate/styrene copolymer	May 5, 1993.
P 93–0424	G Adipic acid polymer with 1,4-butanediol, 1,6-hexane diol, neopentyl glycol,isophthalic acid, polymerwith 1,6-hexane diol, neopentyl glycol, glycol of 1,3-butadiene homopolymer, alkyl amine, 2,4,4-trim ethyl hexamethylene diisocyanate, 3,5,5-trimethyl,3-isocyanatomethyl cyclohexyl isocyanate and propanoic acid, 3-hydroxy-2- (hydroxy methyl) 2-methyl, adduct with *N,N* diamine adipamide	May 17, 1993.
P 93–0440	G Reaction product of branched aliphatic alcohol, diethylene glycol, hathalic acid, dimer acid, tall oil fatty acid, petroleum by product	April 29, 1993.
P 93–0453	Titanium IV tetrakis tridecanolato, adduct 2 moles of tris tridecyl hosphate	May 1, 1993.
P 93–0454	Zirconium IV Tetrakis tridecanolato, adduct 2 moles of tris tridecyl phosphate	May 1, 1993.
P 93–0460	G Polyamide	May 7, 1993.
P 93–0467	G Polyaminoamide-epichlorohydrin resin	May 7, 1993.
P 93–0475	G Lignin, kraft, reaction product with tall oil fatty acids, C_{21} dicarboxylic acid and ethyleneamines	April 30, 1993.
Y 90–0017	G Acrylic polymer	June 25, 1991.
Y 90–0261	G Acrylic polymer salt	May 7, 1993.
Y 91–0163	G Polyurethsane resin	April 20, 1993.
Y 91–0164	G Phthallic alkyd resin	April 12, 1993.
Y 92–0174	G Non-volatile acrylic copolymer	March 24, 1993.
Y 93–0017	G Styrene-acrylic copolymer	March 30, 1993.
Y 93–0037	G Alkyl acrylate - maleate copolymer dispersion	April 22, 1993.
Y 93–0049	G Acrylic polymer	May 12, 1993.
Y 93–0052	G Dimethyl carbonate, polymer with poly(oxyalkylene)monomethyl ether	May 8, 1993.
Y 93–0053	G Sorbitol hexakis(poly (oxyalkylene)ether (terminal OH), polymner with bis(2-(2-methoxy-1-propoxy)-1-alkyl)carbonate	May 8, 1993.
Y 93–0060	G Saturated copolyester	April 29, 1993.
Y 93–0064	G Polyester, polymer with polyisocyanatoalkanes, and polyaminoalkanes	April 21, 1993.
Y 93–0065	G Carboxylic polybutadiene	April 12, 1993.
Y 93–0067	G Ethylene copolymer	April 20, 1993.
Y 93–0070	G Styrenated acrylic graft copolymer wth fumaric resin, amine salt	April 19, 1993.
Y 93–0071	G Styrenated acrylic graft copolymer with fumaric resin, amine salt	April 19, 1993.
Y 93–0075	G Morpholine form ion exchange resin	May 3, 1993.
Y 93–0088	G Polyether/polyester urethane	May 3, 1993.
Y 93–0091	G Unsaturated polyester polymer	May 3, 1993.
Y 93–0095	G Crosslinked polyol	May 10, 1993.

V. 21 Premanufacture notices for which the period has been suspended.

PMN No.

P 93–0014 P 93–0282 P 93–0364 P 93–0438
P 93–0578 P 93–0637 P 93–0652 P 93–0696
P 93–0699 P 93–0718 P 93–0720 P 93–0721
P 93–0731 P 93–0732 P 93–0733 P 93–0734
P 93–0735 P 93–0758 P 93–0759 P 93–0761
P 93–0896

[FR Doc. 93–22786 Filed 9–16–93; 8:45 am]
BILLING CODE 6560–50–F

federal register

Friday
September 17, 1993

Part VI

Department of the Interior

Bureau of Indian Affairs

Tribal Consultation on Indian Education Topics; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Consultation on Indian Education Topics

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of tribal consultation meetings.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) will conduct consultation meetings to obtain oral and written comments concerning potential issues in Indian education programs. The potential issues which will be set forth in a tribal consultation booklet to be issued prior to the meetings are as follows:

1. Indian School Equalization Formula (ISEF) Study
2. Improved Accountability Measures/ Indicators of School Quality
3. Alaska Native Education
4. Public Law 101–301 "Miscellaneous Indian Law Amendments" (Includes Construction Funds)
5. Exceptional Education Regulations
6. Alternative Funding Methods for Construction of Indian Schools

DATES: October 13, 15, 18, and 20, 1993 for all locations listed. Several of the dates and locations were scheduled to coincide with meetings of various Indian education organizations. All meetings will begin at 8 a.m. and continue until 3 p.m. (local time). Written comments concerning the consultation items must be received no later than November 10, 1993.

ADDRESSES:

Location	Local contact	Telephone
October 13, 1993		
1. North Dakota, Bismarck.	Jim Davis ...	701/477–6471
2. Alaska, Anchorage.	Robert Pringle.	907/271–4115
October 15, 1993		
1. Minnesota, Bemidji.	Betty Walker	612/373–1090
2. Arizona, Phoenix.	Mike Smith, Rosella Lawrence.	602/562–3557
October 18, 1993		
1. New Mexico, Albuquerque.	Val Cordova	505/766–3034
2. Montana, Billings.	Larry Parker	406/657–6375
3. Oklahoma, Oklahoma City.	Jim Baker ...	405/945–6051
4. Washington, Spokane.	Van Peters .	503/230–5682
October 20, 1993		
1. New Mexico, Gallup.	Larry Holman.	505/786–6150
2. Tennessee, Nashville.	Kimberly Marciano.	703/235–3233
3. Nevada, Reno.	Fayetta Babby.	916/978–4680

Written comment should be mailed, to be received, on or before November 10, 1993, to the Bureau of Indian Affairs, Office of Indian Education Programs, MS 3512 MIB, 1849 C Street NW., Washington, DC 20240, Attn: Dr. John Tippeconnic; or, may be hand delivered to room 3512 at the same address.

FOR FURTHER INFORMATION CONTACT: John Tippeconnic or Jim Martin at the above address or call 202/208–6123 or 208–3550.

SUPPLEMENTARY INFORMATION: The meetings are a follow-up to similar meetings conducted by the BIA since 1990. The purpose of the consultation, as required by 25 U.S.C. 2010(b), is to provide Indian tribes, school boards, parents, Indian organizations and other interested parties with an opportunity to comment on potential issues raised during previous consultation meetings or being considered by the BIA regarding Indian education programs. A consultation booklet for the October meetings is being distributed to Federally recognized Indian tribes, Bureau Area and Agency Offices and Bureau-funded schools. The booklets will also be available from local contact persons and at each meeting.

Dated: September 9, 1993.

Ron Eden,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 93–22794 Filed 9–16–93; 8:45 am]

BILLING CODE 4310–02–P–M

federal register

Friday
September 17, 1993

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 61

Renewal of Flight Instructor Certificates; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. 27184; Notice No. 93–11]

RIN 2120–AF13

Renewal of Flight Instructor Certificates

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Federal Aviation Regulations (FAR) governing the renewal of flight instructor certificates; specifically, to permit holders of flight instructor certificates to renew their certificates by completing an approved number of hours of ground or flight instruction, or both, in an approved flight instructor refresher course (FIRC). The proposed amendment addresses concerns identified by the Aircraft Owners and Pilots Association (AOPA) in a petition for exemption. This action is intended to provide an equivalent level of safety while reducing the financial burden placed on individual flight instructors.

DATES: Comments must be submitted on or before October 18, 1993.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 27184, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27184. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal Holidays.

FOR FURTHER INFORMATION CONTACT: John Lynch, Regulations Branch (AFS–850), General Aviation and Commercial Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267–8150.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Comments relating to the economic, environmental, energy, or federalism impacts that might result from adoption of the proposals contained in this notice are also invited. Substantive comments should be accompanied by actual and anticipated cost impact statements, as appropriate. Comments should identify the regulatory docket number and be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before action is taken on the proposed amendments. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must submit with those comments a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket Number ____." The postcard will be date stamped and mailed to the commenter.

Availability of This Notice

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should request from the above office a copy of Advisory Circular 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

This proposal to amend the specific number of hours of instruction that holders of flight instructor certificates must complete in an approved FIRC to renew their certificates is based on a petition for exemption from AOPA. The FAA believes, however, that rulemaking is necessary to permit holders of flight instructor certificates to renew their certificates by attending an approved FIRC of fewer hours of ground or flight instruction, or both, than the 24 hours currently required by the FAR. Therefore, the FAA has determined that the appropriate response to the AOPA's petition for exemption is to propose a change to the existing regulations. The FAA has concluded that this proposal would maintain a current level of safety and is appropriate in light of the recent advances in instructional technology and training techniques. In addition, the FAA has determined that this proposal would benefit the aviation community as a whole and as such is initiating this notice of proposed rulemaking.

Discussion

The AOPA petitioned the FAA for exemption from § 61.197(c) of the FAR to permit holders of flight instructor certificates to renew their certificates by attending an approved FIRC of 16 hours of ground or flight instruction, or both, in lieu of the current 24 hours required by § 61.197(c). AOPA fully describes its rationale in the petition for exemption published at the end of this notice.

The FAA agrees with the petitioner's rationale. There is a need to streamline current FIRCs to provide for a condensed weekend renewal program. The majority of certificated flight instructors maintain personal or professional responsibilities such that weekend renewal is a needed option for the maintenance of their certificate. The recent advances in instructional technology and training techniques more than compensate for a reduction in classroom time requirements. The innovative and interactive educational programs, such as the AOPA's "Trigger Tapes" and "Operation Airspace" facilitating learning at the application level, allow for a reduction in the amount of hours that holders of flight instructor certificates must complete in an approved FIRC to renew their certificates while maintaining the current level of safety.

The FAA has determined that if the option to specify the number of hours of instruction through an FAA approval as part of the approved renewal program is adopted there would be substantial benefits to the aviation community; specifically, it would eliminate the burden of the longer 24 hour course, mitigate the current decline in instructional resources, and offer financial advantages to individual flight instructors. For example, approval of AOPA's 16 hour course would allow a 1 day reduction in travel expenses to individual flight instructors saving an average per diem cost of $100.

The AOPA petition for exemption was published in the **Federal Register** on March 17, 1993 (58 FR 14466). The FAA received two comments on the petition of which both comments voiced support. After review of the petition and the submitted comments, the FAA has concluded that while the petition has considerable merit, AOPA is not unique in its position. Therefore, the FAA has initiated this notice of proposed rulemaking in response to AOPA's petition for exemption.

Proposed Rule

The FAA agrees with the intent of the AOPA petition for exemption. This proposal integrates the concepts of the petitioner's request and the FAA's views on how to accomplish these objectives while maintaining safety and cost effectiveness. The proposal set forth in this NPRM would allow for approval of the number of hours of instruction that holders of flight instructor certificates must complete in an FAA approved FIRC to renew their certificate.

International Civil Aviation Organization and Joint Aviation Regulations

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because flight instructor certification requirements have no bearing on flight operations internationally.

Paperwork Reduction Act Approval

This proposed amendment will not change the reporting requirements. Therefore, in accordance with the Paperwork Reduction Act of 1980. (Pub. L. 96–511), there are no additional requirements for information collection associated with this proposed rule.

Economic Evaluation

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if benefits to society for each regulatory change outweigh potential costs. Accordingly, the FAA makes the following preliminary economic evaluation of this proposal. Based on the results of its investigation, the FAA has concluded that this proposal is cost-beneficial.

This section contains the benefits and cost analyzed in the preliminary regulatory evaluation. In addition, it includes an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act and an international trade impact assessment.

Current holders of flight instructor certificates may renew their certificates if they successfully complete an approved flight instructor refresher course consisting of not less than 24 hours of ground or flight instruction, or both. The FAA has determined, however, that recent advances in instructional technology and training techniques allow for a reduction in the number of required instruction hours without compromising safety. The FAA will develop the standards and recommended number of hours required for an approved FIRC. This will be done to ensure that a high level of safety is maintained.

The estimated benefits of the proposed rule are the cost savings from the reduction in required instructional hours and travel expenditures for the affected flight instructors. For example, approval of AOPA's 16 hour course would allow a 1 day reduction in travel expenses to individual flight instructors: assuming an average per diem cost of $100 and that two-thirds of the annual average of 20,000 flight instructors renewing their certificates through FIRCs would have to travel out of town, the industry could realize an annual savings of $1.3 million in per diem travel expenses. There also would be a reduction in foregone earnings. Assuming a flight instructor earns $20 per hour and provides 4 to 8 hours of instruction, per day, the reduction in foregone earnings would be between $1.6 million and $3.2 million annually. In addition, the FAA believes that individual flight instructors would realize a savings in the cost of the FIRC by the reduction in the number of required instruction hours. The FAA welcomes any comments on this issue.

There would be no incremental costs associated with this proposed rule since the number of instruction hours required in a FIRC would be relaxed. The FAA has concluded that there would be no degradation of safety as any reduction in instructional hours would be the result of advances in instructional technology and training techniques. The FAA believes that it is the content of the FIRC, not the specific number of hours of instruction in that FIRC, that is important to safety. Therefore, the FAA has concluded that the proposed rule is cost-beneficial.

International Trade Impact Analysis

This proposed rule would have a negligible impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the U.S. The proposed rule primarily affects certificated flight instructors, not businesses involved in the sale of aviation products or services.

Regulatory Flexibility Determination

The proposed rule would not have a significant economic impact, positive or negative, on small entities. Flight instructors, rather than small entities, would be affected by this proposed rule. Where a flight instructor is also the sole proprietor of a small business, and exercises the privileges of his or her certificate in operations that are incidental to that business, the proposed rule would have a negligible impact.

Federalism Impact

The proposals contained herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Conclusion

This notice proposes to amend § 61.197(c) of the FAR by permitting holders of flight instructor certificates to renew their certificates by completing an approved number of hours of ground or flight instruction, or both, in an approved flight instructor refresher course.

For the reasons discussed in the preamble, and based on the findings in the initial Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposed rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is not considered significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For this reason, it has been determined that the expected economic impact of the proposed amendment is so minimal that a full Regulatory Evaluation is not warranted.

List of Subjects in 14 CFR Part 61

Flight instructors.

The Proposed Amendment

Accordingly, part 61 of the Federal Aviation Regulations (14 CFR part 61) is proposed to be amended as follows:

PART 61—CERTIFICATION; PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 is revised to read as follows:

Authority: 49 U.S.C. Appendix 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

2. Section 61.197 is amended by revising paragraph (c) as follows:

§ 61.197 Renewal of flight instructor certificates.

* * * * *

(c) He or she has successfully completed, within 90 days before the

application for the renewal of his or her certificate, an approved flight instructor refresher course consisting of ground or flight instruction, or both.

Issued in Washington, DC, on September 13, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

[FR Doc. 93-22817 Filed 9-16-93; 8:45 am]

BILLING CODE 4910-13-M

federal register

Friday
September 17, 1993

Part VIII

Federal Communications Commission

47 CFR Part 64

Expanded Interconnection With Local Telephone Company Facilities; Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 91-141; FCC 93-378]

Expanded Interconnection With Local Telephone Company Facilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In September 1992, the Commission adopted the Special Access Order, requiring Tier 1 local exchange carriers (LECs), excluding NECA pool members, to offer expanded interconnection for special access to all interested parties, thereby permitting competitors and high volume users to terminate their own transmission facilities at LEC central offices. In the Second Reconsideration Order, the Commission reconsidered *de novo* the fresh look policy adopted in the Special Access Order, clarified and expanded its requirements concerning the application of nonrecurring charges, modified the requirement for tariffing virtual collocation arrangements, and specified certain standards that must be met for a connection charge rate structure to be considered reasonable. This final rule implements the Commission's Second Reconsideration Order.

DATES: The final rule is effective November 16, 1993 at 12:01 a.m.

The provisions setting forth the requirements for fresh look, and the provisions setting forth the requirements for nonrecurring charges, must be complied with October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Suzanne M. Tetreault, (202) 632-6374, or Linda H. Haller, (202) 632-1298.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Memorandum Opinion and Order on Reconsideration, adopted August 3, 1993, and released September 2, 1993. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800.

Paperwork Reduction Act

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3225, New Executive Office Building, Washington, DC 20503, (202) 395-4814. For further information, contact Judy Boley, Federal Communications Commission, (202) 632-7513.

Please note: The Commission has requested expedited review of this collection by October 1, 1993 under the provisions of 5 CFR 1320.18.

Title: Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141.

Action: New collection.

Respondents: Business or other for-profit.

Frequency of response: One-time collection with each required tariff filing.

Estimated Annual Burden: 16 responses; 15 hours average burden per response.

Needs and Uses: In the Second Memorandum Opinion and Order on Reconsideration in CC Docket No. 91-141 (released September 2, 1993), the Commission reconsidered *de novo*, and adopted a modified version of, the "fresh look" policy adopted in the Commission's Report and Order FCC 92-440, 57 FR 54323 (11/18/92), 7 FCC Rcd 7369 (1992), in that docket. The September 2 Order also clarified and expanded earlier Commission requirements concerning the neutral application of nonrecurring charges, modified the requirements for tariffing virtual collocation arrangements, and specified certain standards that must be met for a carrier's connection charge rate structure to be considered reasonable. The Order requires local exchange carriers (LECs) to make tariff filings to provide public notice of the start of the "fresh look" period at each of their offices where expanded interconnection is implemented. LECs must also file tariff revisions to implement the modified fresh look rules. LECs must make tariff revisions to bring their tariffs into compliance with the requirements concerning nonrecurring charges no later than October 18, 1993. LECs must revise their connection charge tariffs if they do not satisfy the standards set forth in the Order. Finally, LECs may choose to revise their virtual collocation tariffs to reflect the less extensive tariffing requirements adopted on reconsideration.

Summary of the Order

1. In September 1992, the Commission adopted an order requiring Tier 1 local exchange carriers (LECs), excluding NECA pool members, to offer expanded interconnection for special access to all interested parties, permitting competitors and high volume users to terminate their own transmission facilities at LEC central offices.[1] Eighteen parties filed petitions that together request reconsideration of all significant aspects of that decision. This Order reconsidered only certain particularly time-sensitive issues. Other issues raised by the petitions for reconsideration will be addressed in a later order.

"Fresh Look"

2. In the Special Access Order, the Commission adopted a limited "fresh look" policy that would cap the charges a LEC may impose on certain customers who terminate long-term LEC special access arrangements. In the Second Reconsideration Order, the Commission found that there was sufficient notice to permit adoption of a fresh look requirement, and reexamined the fresh look issues *de novo*.

3. The Commission concluded that there is a need for a limited fresh look opportunity to allow eligible LEC customers to assess the new alternatives available in a more competitive market. The Commission found that adoption of the fresh look policy set forth in the Order is a lawful exercise of its authority under sections 201 through 205 of the Communications Act, and does not constitute an unlawful abrogation of contract or an unlawful rate prescription, as some parties alleged.

4. The Commission concluded that only arrangements for terms of three years or longer, entered into on or before September 17, 1992, should be eligible for the fresh look option. Fresh look does not permit a LEC to cancel a long-term arrangement that a customer wishes to continue.

5. The fresh look period will be triggered when the first expanded interconnection arrangement is operational in a particular central office

[1] Expanded Interconnection with Local Telephone Company Facilities, Report and Order, FCC 92-440, 57 FR 54323 (11/18/92), 7 FCC Rcd 7369 (1992) (Special Access Order), *appeal pending sub nom. Bell Atlantic Corp. v. FCC*, No. 92-1619 (D.C. Cir., filed November 25, 1992). On December 18, 1992, the Commission released a *sua sponte* reconsideration order reducing the number of offices at which the LECs must initially implement expanded interconnection. Expanded Interconnection with Local Telephone Company Facilities, Memorandum Opinion and Order, 8 FCC Rcd 127 (1992) (First Reconsideration Order).

or other location. Expanded interconnection is deemed operational when an interconnector takes the specific access expanded interconnection cross-connect element. The fresh look option will then be available for a period of 180 days.

6. The Commission also required that LECs provide public notice of the initiation of the first look period in each central office or location. LECS are required to file with the Commission, within five business days of the date on which the first expanded interconnection arrangement becomes operational in an office or other location, a tariff transmittal stating that the fresh look period will begin to run as of the date that such notice is filed with the Commission.

7. Finally, if the customer gives notice during the 180 day period that it intends to terminate its arrangement with the LEC in order to take service from an interconnector, the customer is entitled to application of a fresh look limit on termination charges, even if it does not actually terminate service under the long-term arrangement with the LEC until after the 180 day period has expired. The interconnector that the customer intends to take service from, however, must make a request for interconnection during the fresh look period. The customer may, of course, give notice that it intends to interconnect directly with the LEC under our expanded interconnection regulations. In addition, the customer must actually terminate service under its arrangement with the LEC within ninety days after the interconnection arrangement is operational in order to be eligible for the fresh look limitation on termination charges.

8. The Commission also established a further fresh look period for mixed use facilities (special access facilities used to carry both special access and switched traffic) when the first switched transport expanded interconnection arrangement becomes operational at a LEC location. This additional fresh look period will apply only to LEC mixed use circuits covered by arrangements of three years or more, entered into on or before September 17, 1992. This further fresh look period will be subject to the same terms as the fresh look period triggered when expanded interconnection for special access becomes operational.

9. The Commission did not require the LECs to eliminate all termination liabilities under fresh look, but required that such liabilities be limited as follows. Notwithstanding any termination charges provided for in the applicable LEC tariffs, when fresh look applies, the LEC may not charge more than the difference between (1) the amount the customer has already paid and (2) any additional charges that the customer would have paid for service if the customer had originally taken a shorter term arrangement corresponding to the term actually used, plus interest to be calculated at the IRS rate for tax refunds, compounded daily. Interest rates are to be adjusted to reflect changes in the IRS interest rate and will apply to the balances due under the recalculation as they would have accrued over time. If the actual term of service taken does not coincide exactly with a service term offered by the LEC, the charges for the service used are to be calculated at the rates applicable at the time the service term began, for the longest term commitment that the customer would have completed. The charge for the period beyond that term is to be calculated pro rata at the rates applicable to the completed term. This order only sets the maximum termination liabilities that may be imposed, and is not intended to increase any termination liabilities that may be below this level.

Nonrecurring Reconfiguration Charges

10. In the Special Access Order, the Commission required that LECs apply nonrecurring reconfiguration charges in a neutral manner that does not differentiate based on whether the customer chooses to use interconnector or LEC facilities for special access service unless there are specific, identifiable cost differences. The Commission expanded upon that requirement in the Second Reconsideration Order. The Commission ordered that, first, in order to ensure just, reasonable, and nondiscriminatory rates, all nonrecurring charges applicable to customers shifting to an interconnector's services are to be set no higher than cost-based levels. Such charges are to reflect only the costs incurred for the particular type of reconfiguration being implemented. In addition, the difference between the charges applicable when a customer shifts to an interconnector's services and those applicable when a customer reconfigures its service with the LEC must be cost-based. Thus, if a LEC waives nonrecurring reconfiguration charges for LEC special access or transport services, it must not charge customers who reconfigure in order to take service pursuant to an expanded interconnection arrangement more than an amount reflecting the difference between the costs of the two different types of reconfigurations.

11. In order to implement these principles, the Commission made the following change in the application of its price cap rules. For those nonrecurring charges that apply to the reconfiguration or rearrangement of special access services, the presumption of lawfulness generally accorded to within-band, within-cap rates under our price cap rules will not apply. The LECs are to file tariff revisions implementing these standards as soon as possible, but in no event later than October 18, 1993.[2]

Virtual Collocation

12. In the Special Access Order, the Commission required LECs to make virtual collocation generally available in their tariffs throughout any study area in which they had negotiated an individual virtual collocation arrangement with an interconnector or provided intrastate virtual collocation. In the Special Access First Reconsideration Order, the Commission narrowed the scope of that requirement to require that virtual collocation be tariffed initially only in the subset of LEC facilities designated for implementation of expanded interconnection.

13. In the Second Reconsideration order, the Commission concluded that if a LEC negotiates an individual interstate special access virtual collocation arrangement with an interconnector, it need not make that virtual collocation arrangement generally available in the full subset of LEC locations designated for collocation in the study area. Instead, the LEC only must make the arrangement available to other parties in the actual LEC location involved. In addition, if a LEC offers an intrastate virtual collocation arrangement, it need not file an interstate tariff offering virtual collocation in the full subset of LEC locations designated for collocation in the study area. Instead, it can offer virtual collocation but rather only in the actual LEC locations in which it offered the intrastate arrangement.

14. These virtual collocation requirements do not affect the obligation of a LEC to tariff interstate virtual collocation where it has been granted an exemption from the physical collocation tariffing requirement. Therefore, when a LEC has been granted a space exemption in a specific location, the LEC must file a virtual collocation tariff for that location. In addition, a LEC that has been granted an exemption based on state action must file an interstate

[2] This tariff filing date is subject to the Commission obtaining expedited approval from the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

virtual collocation tariff for special access covering all of the exempt LEC locations in the subset of offices designated for collocation. Thus, this rule does not apply to virtual collocation offerings made in lieu of physical collocation under the exemptions for lack of space or state action. As a result, in the case of a LEC central office covered by the state exemption where the LEC also has a separate individually negotiated special access virtual collocation arrangement, the LEC must file a general interstate virtual collocation tariff pursuant to the state exemption, as well as tariff the individually negotiated virtual collocation arrangement.

Connection Charge Rate Structure

15. In the Special Access Order, the Commission did not impose detailed rate structure requirements, but allowed the LECs to establish reasonable disaggregated rate subelements for connection charges for expanded interconnection, except that it required the LECs to establish a cross-connect element that applies uniformly to both physical and virtual collocation. The Commission in the Second Reconsideration Order specified certain standards that must be met in order for a rate structure to be considered reasonable. First, the rate structures used by each LEC are to reflect cost causation principles, i.e., the manner in which costs are incurred in providing expanded interconnection services. In addition, the LECs are to unbundle their rate structures, in order to ensure that interconnectors are not forced to pay for services that they do not need.

Ordering Clauses

16. Accordingly, *it is ordered*, pursuant to authority contained in sections 1, 4, 201–205, and 214 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, and 214, that part 64 of the Commission's Rules are amended as set forth in the Amendatory text.

17. *It is further ordered*, That the rules and requirements set forth herein are adopted.

18. *It is further ordered*, That the petitions for reconsideration and clarification of the Special Access Order are granted to the extent discussed herein.

19. *It is further ordered*, That the Petition of MFS Communications Company, Inc. for Expedited Decision of "Fresh Look" Issues is denied.

20. *It is further ordered*, That except as specifically noted below, the policies, rules, and requirements adopted herein shall be effective sixty days after publication in the **Federal Register**.

21. *It is further ordered*, That the provisions setting forth the requirements for fresh look, and the provisions setting forth the requirements for nonrecurring reconfiguration charges, shall be effective thirty days after publication of this Order in the **Federal Register**.[3]

[3] This effective date is subject to OMB approval pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

List of Subjects in 47 CFR Part 64

Communications common carriers, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 64 of title 47 of the Code of Federal Regulations is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 225, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 225 unless otherwise noted.

2. Section 64.1401 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 64.1401 Expanded interconnection.

* * * * *

(c) In addition to the obligations imposed by paragraph (b) of this section, the local exchange carriers specified in paragraph (a) of this section shall offer expanded interconnection for interstate special access through virtual collocation in a local exchange carrier location in which:

* * * * *

[FR Doc. 93–22857 Filed 9–16–93; 8:45 am]

BILLING CODE 6712–01–M

Friday
September 17, 1993

Part IX

Federal Communications Commission

47 CFR Parts 61 et al.
Expanded Interconnection With Local Telephone Company Facilities; Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61, 64, 65, and 69

[CC Docket No. 91-141; FCC 93-379]

Expanded Interconnection With Local Telephone Company Facilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is requiring Tier 1 local exchange carriers (LECs), except NECA pool members, to provide expanded interconnection for switched transport to all interested parties. This will permit competitive access providers, interexchange carriers, and interested users to terminate their own switched access transmission facilities at LEC locations, including central offices, serving wire centers, tandem switches, and certain remote nodes. LECs must tariff expanded interconnection for switched transport through physical collocation, although the parties remain free to negotiate satisfactory virtual collocation arrangements. In conjunction with these measures, the Commission grants Tier 1 LECs additional switched transport pricing flexibility in the form of zone density pricing, and volume and term discounts.

DATES: The final rules are effective November 16, 1993, at 12:02 a.m.

The provisions requiring interconnectors that wish the November 18, 1993 LEC tariff filings to include LEC locations in addition to those already designated for collocation in the Special Access proceeding to request those locations by October 18, 1993 must be complied with October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Suzanne M. Tetreault, (202) 632-6374, or Linda H. Haller, (202) 632-1298.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order and Third Notice of Proposed Rulemaking[1] in CC Docket No. 91-141, adopted August 3, 1993, and released September 2, 1993. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800.

[1] This summary addresses only the Report and Order. A separate summary of the Notice of Proposed Rulemaking will be published.

Paperwork Reduction Act

Public reporting burden for the collection of information is estimated to average 125 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, Paperwork Reduction Project, Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Summary of the Order

1. The Commission concluded that expanded interconnection for the provision of interstate switched transport service will produce substantial public interest benefits that outweigh prospective drawbacks. The Commission found that enhanced competition in the interstate access market should increase access providers' incentives for efficiency and encourage deployment of advanced technologies facilitating new and innovative services. It also concluded that expanded interconnection should provide additional service choices to access customers that value redundancy and route diversity. In addition, it should increase access providers' responsiveness to customers in the provision of current services. The Commission therefore required Tier 1 local exchange carriers (LECs), other than NECA pool members, to implement expanded interconnection for switched transport as described below. The interconnection policies and requirements for special access, as well as the LEC pricing requirements for special access expanded interconnection, apply to switched transport expanded interconnection except as indicated to the contrary in this Order.

2. The Commission required LECs to file tariffs for interstate switched transport expanded interconnection on November 18, 1993, with a scheduled effective date of February 15, 1994. The prohibition on interconnectors' use of interstate special access expanded interconnection offerings to connect their transmission facilities with the LEC's interstate switched services (ratcheting) will be eliminated when LEC tariffs offering expanded interconnection for switched transport become effective.

Interconnection Architecture

3. The Commission required the LECs subject to the Order to make physical collocation available to all interested parties subject to two limited exceptions. The LECs must offer expanded interconnection for switched transport through physical collocation at all locations included in the subset of offices subject to expanded interconnection, except for locations covered by a space or state decision exemption. The LEC must file a virtual collocation tariff that covers the locations (within the subset) that are exempt from the physical collocation requirement.

4. The Commission also will apply the same standards for special access virtual collocation to expanded interconnection for interstate switched transport. Interconnectors using virtual collocation arrangements for switched transport are permitted to designate the LEC transmission equipment dedicated to their use, as well as monitor and control their circuits terminating in LEC facilities. Interconnector-designated equipment used for switched transport must meet applicable fire and safety codes, and interconnectors must bear any additional costs reasonably incurred by the LECs as a result of the interconnector's choice of equipment. In providing virtual collocation for switched transport, LECs must install, maintain, and repair interconnector equipment under the same time intervals and with the same failure rates that apply to the performance of similar functions for comparable LEC equipment.

5. To provide a foundation for evaluating possible complaints, LECs must keep records and file reports annually with the Common Carrier Bureau on the installation, maintenance, and repair times for comparable LEC and interconnector equipment and circuits. The Commission expects LECs and interconnectors to carefully consider the Network Reliability Council's recommendations to the industry, as well as comply with any subsequent Commission rules on network reliability, so that both interconnectors and LECs take necessary steps to safeguard network reliability.

6. The two grounds for exemption from the physical collocation requirement that the Commission authorized in the Special Access Order (lack of physical space and state adoption of an order favoring virtual collocation or allowing LECs to choose

between virtual and physical collocation for intrastate special access expanded interconnection) shall apply to switched transport as well. The LEC locations for which the Commission has granted exemptions from the physical collocation requirement based on space considerations automatically will be exempt from the physical collocation tariffing requirement for the provision of expanded interconnection for interstate switched transport. Thus, an LEC will not have to file physical collocation tariffs for offices where the LEC already has been granted a space exemption. If other central offices, serving wire centers, remote nodes, or tandem offices not covered by the existing exemption orders lack adequate space for physical collocation, LECs must request a space exemption for the applicable location. The LEC, however, must file a virtual collocation tariff for any location that is granted a space exemption. LECs for which the Commission granted exemption requests based on state regulation in the special access proceeding will be exempt from the physical collocation requirement for switched transport expanded interconnection to the extent of the exemption for special access. There will not be a second opportunity for state regulatory action qualifying LECs for the state exemption.

7. In addition to the requirement that LECs generally tariff virtual collocation for offices exempt from the physical collocation requirement, there are two situations in which LECs must offer virtual collocation. First, as with special access, LECs may negotiate virtual collocation arrangements with interested parties regardless of whether the LEC's general expanded interconnection tariff is for physical collocation, or for virtual collocation pursuant to a state exemption. As is the case with special access, pursuant to the Second Reconsideration Order adopted today, if an LEC negotiates a switched transport virtual collocation arrangement with an interconnector, it must make that virtual collocation arrangement available to other parties in the actual LEC location involved. The LEC, however, need not make that virtual collocation arrangement available in the entire subset of offices where expanded interconnection is being implemented.

8. Furthermore, if an LEC offers an intrastate virtual collocation arrangement, it must file interstate tariffs offering virtual collocation in the actual LEC locations in which it offers the intrastate arrangement. Under these circumstances, the LEC need not make virtual collocation available in the full subset of LEC locations designated for implementation of expanded interconnection.

9. These virtual collocation requirements do not affect the obligation of an LEC to tariff interstate virtual collocation when it has been granted an exemption from the physical collocation tariffing requirement. Therefore, when an LEC has been granted a space exemption in a specific location, the LEC must file a virtual collocation tariff for that location. In addition, an LEC that has been granted an exemption based on state action must file an interstate virtual collocation tariff for switched transport covering all of the exempt LEC locations in the subset of offices designated for collocation. In the case of an LEC central office in an exempt state where the LEC also has an individually negotiated interstate switched transport virtual collocation arrangement, the LEC must file a general interstate virtual collocation tariff in conjunction with the state exemption, as well as the individually negotiated virtual collocation tariff.

Availability of Expanded Interconnection

10. Only Tier 1 LECs, other than NECA pool members, are required to provide expanded interconnection for interstate switched transport. If an exchange in which interstate expanded interconnection is offered is sold by a Tier 1 LEC to a Tier 2 LEC, the Tier 2 LEC must honor the arrangement and accept new expanded interconnection customers in that office.

11. LECs must offer expanded interconnection for switched transport to all interested parties that wish to terminate their own switched transport access transmission facilities at LEC premises, including competitive access providers (CAPs), interexchange carriers (IXCs), and end users. LECs must provide expanded interconnection for switched transport to AT&T and other parties already located in buildings containing an LEC central office under the same terms and conditions established for such parties in the Special Access Order. CAPs and other interconnectors will not at this time be required to provide reciprocal expanded interconnection for interstate switched transport.

Standards for Interconnection Arrangements

12. The Commission required LECs to allocate central office space on a first-come, first-served basis. In addition, LECs must provide virtual collocation when space for physical collocation is exhausted. LECs are permitted to include in their tariffs reasonable restrictions on warehousing of unused space by interconnectors.

13. LECs subject to this Order must provide expanded interconnection for switched transport in central offices and serving wire centers identified below. In the Special Access Order, the Commission originally required LECs to provide expanded interconnection for special access in all central offices and serving wire centers (SWCs). On reconsideration, however, the Commission reduced the requirement to a subset of offices designated jointly by LECs and interconnectors.[2] The Commission required LECs to offer expanded interconnection for switched transport in the same LEC locations in which special access expanded interconnection has been tariffed as of the date that the switched transport expanded interconnection tariffs are filed.

14. Interconnectors that wish the LEC tariffs filed November 18, 1993 to offer expanded interconnection for switched transport at LEC locations in addition to those already designated for collocation in the special access proceeding must request those locations by October 18, 1993. These requests should be limited to locations at which interconnectors intend to seek interconnection within the twelve months following the effectiveness of the expanded interconnection tariffs for switched transport. Interconnectors also may request expanded interconnection at additional LEC locations between October 18, 1993 and February 15, 1994.

15. LECs must file any tariff revisions necessary to respond to these requests 45 days after receipt of such a request, effective on 45 days notice. Requests received after October 18, 1993, but on or before November 18, 1993, shall be deemed to have been made on November 18, 1993. As a result, tariff revisions responding to any requests received during this period will not become effective before February 15, 1994 (the date that expanded interconnection will be available in the LEC locations included in the November 18, 1993 filing). If the notice period for the November 18, 1993 switched transport expanded interconnection tariff filing is extended to 120 days, the notice period for the tariff revisions covering additional offices shall also be extended for a comparable period. LECs also must include in their November 18, 1993 tariffs a procedure for adding LEC locations where expanded interconnection will be offered in

[2] Special Access First Reconsideration Order, 8 FCC Rcd at 128–29, ¶¶ 7–18.

response to *bona fide* requests from interconnectors received after the initial expanded interconnection tariffs become effective. The tariffs must provide that tariff revisions adding LEC locations will be filed within 45 days of receipt of a *bona fide* request, to be effective upon 45 days notice. At no time are LECs permitted to assess a nonrecurring charge upon interconnectors that submit *bona fide* requests for additional locations to cover the costs of surveying those locations for space availability.

16. LECs must tariff expanded interconnection for switched transport at all tandems housed in buildings containing LEC end offices or SWCs where expanded interconnection already has been tariffed. In addition, LECs must provide expanded interconnection for switched transport in all other tandem offices (e.g., stand-alone tandems or tandems collocated with LEC central offices or SWCs where expanded interconnection has not been tariffed) upon a *bona fide* request. The procedures set forth above for central offices and SWCs will apply to the tariffing of expanded interconnection in tandem offices in response to *bona fide* requests.

17. Upon a *bona fide* request, LECs must provide expanded interconnection at remote nodes/switches that serve as rating points for switched transport and that have the necessary space and technical capabilities. Interconnectors requesting expanded interconnection at remotes, and LECs that provide it, must follow the procedures set forth above for central offices and SWCs. The LEC requirement to provide expanded interconnection applies only to remote nodes/switches that can route outgoing interexchange access traffic to interconnectors and in which interconnectors can route terminating traffic to the LECs. LECs are not required to enhance remote nodes/switches or to build additional space to accommodate interconnection at these locations.

18. The Commission required LECs to provide an interconnection point or points as close as reasonably possible to the LEC location (i.e., central office, SWC, tandem, or remote node). The interconnection points must be the same points for both switched and special access. In addition, interconnection points must be physically accessible by both the LEC and interconnectors on nondiscriminatory terms. In the Special Access Order, the Commission required LECs to provide at least two separate points of entry to LEC facilities for purposes of expanded interconnection whenever there are at least two entry points for LEC cable. After reviewing LEC tariff filings, however, in the Special Access Tariff Order, the Common Carrier Bureau concluded that the original Special Access Order does not address instances where there are two or more LEC entry points but all but one are a capacity. The Bureau found that in that situation, it would be unreasonable to require the LEC to rearrange its facilities to permit an interconnector access to two entry points until this issue is reviewed on reconsideration. The Commission found that the entry point standard for switched transport should be treated the same as that for special access pending reconsideration of this issue in the special access portion of this proceeding. Therefore, the Commission promulgated the same rule for switched transport expanded interconnection as for special access, but the Commission waives the application of that rule pending reconsideration of the special access order on this issue. Accordingly, pending such reconsideration, LECs must provide at least two separate points of entry to LEC facilities for purposes of expanded interconnection whenever there are at least two entry points for LEC cable, unless all but one of the LEC entry points are filled to capacity, in which case an interconnector would be entitled to only one entry point. Following reconsideration of the two-entry point standard for special access expanded interconnection, LECs will be subject to the same rule for switched transport expanded interconnection as that prescribed in the special access reconsideration order. Even if a LEC has more than two entry points for its own cable, it does not have to offer more than two points of entry to interconnectors.

19. The Commission limited expanded interconnection for switched transport to transmission equipment. LECs are not required to provide collocation for enhanced services, customer premises, or other non-transmission equipment. LECs will not be required to allow interconnectors to collocate switches in LEC locations.

20. In the Special Access Order, the Commission required LECs to provide, where reasonably feasible, special access expanded interconnection for microwave facilities. After reviewing LEC tariff filings, however, in the Special Access Tariff Order, the Common Carrier Bureau concluded that microwave interconnection is sufficiently interconnector-specific to warrant tariffing of microwave expanded interconnection for special access on an individual case basis (ICB) in response to *bona fide* requests and granted a blanket waiver of the tariffing requirements for microwave collocation contained in the Special Access Order, pending reconsideration. The Commission found that microwave interconnection for switched transport should be treated the same as that for special access pending reconsideration of the microwave issue in the special access portion of the proceeding. Therefore, while special access reconsideration is pending on this issue, LECs must provide in their tariffs that they will establish ICB arrangements in response to *bona fide* requests. Any ICB arrangements for microwave interconnection must be tariffed, and made available to others at that LEC location. Once a LEC has multiple customers for microwave interconnection at a LEC location, it must revise its tariff to make a generic offering for that location. Following reconsideration, LECs will be required to tariff expanded interconnection for switched transport for microwave facilities in the same manner prescribed for special access.

21. LECs are not required to provide expanded interconnection for switched transport for non-fiber optic cable facilities (e.g., coaxial cable). Interconnection of non-fiber optic cable facilities should be permitted only upon Common Carrier Bureau approval of a showing that such interconnection would serve the public interest in a particular case.

Expanded Interconnection Pricing and Rate Structure

22. The Commission adopted the same basic rate structure rules for expanded interconnection for transport that it adopted in the Special Access Order, subject to the modifications adopted in the Special Access Second Reconsideration Order. Thus, connection charges (including the cross-connect element) for switched transport expanded interconnection services will not be formally unbundled from transmission charges. Instead, the LECs are to establish new connection charge elements for switched transport expanded interconnection. The Commission required that the same basic rate structure be used for both switched transport and special access expanded interconnection.

23. Many of the connection charge elements that the LECs have created for special access expanded interconnection also should be appropriate for switched transport expanded interconnection arrangements, because the same LEC functionalities are used. In such cases,

the LECs should use a single rate element for both special access and switched transport expanded interconnection. To the extent that new connection charges must be created to reflect additional LEC services involved in providing switched transport expanded interconnection, the LECs should create additional rate elements.

24. In addition, in the Special Access Second Reconsideration Order, the Commission specified certain standards that must be met in order for an expanded interconnection rate structure to be considered reasonable. Those standards will be applied to expanded interconnection for switched transport as well. Thus, the rate structure for expanded interconnection for switched transport must reflect cost causation principles, i.e., the manner in which costs are incurred, in providing expanded interconnection services. The LECs are also to unbundle their rate structures so that interconnectors can purchase only those services that they need.

25. The Commission adopted the same rules for establishing initial connection charge rate levels that it adopted in the Special Access Order. Thus, the Commission required the LECs to develop and justify consistent methodologies for deriving the direct cost of providing similar types of offerings, including expanded interconnection services covered by the connection charge elements. It also required the LECs to justify any deviations from uniform overhead loadings that they propose for pricing connection charges, although it did not specify a particular methodology in advance. Under this approach, if a LEC proposes to price connection charges to reflect fully distributed overhead loadings, we will compare such loadings to the overhead loadings used for other services and require justification for any differences.

26. Differences in connection charges as between special and switched transport expanded interconnection must be cost-justified. Differences in cross-connect charges based on whether interconnected services are connected at end offices, SWCs, or tandem offices must also be cost-justified. Where cost differences are minimal, however, the LEC will have the option to use averaged pricing, for the sake of simplicity. We also require that LECs must have a cost justification for any connection charges that vary based on the number or type of interconnected circuits.

27. When the same facilities are used to provide expanded interconnection for both special and switched access, such that the LEC incurs no additional costs, the LEC may impose only one charge for the use of those facilities. To the extent that additional facilities or services are involved, however, the interconnector may be charged for additional connection charge subelements.

28. The Commission will exclude changes in connection charges from price cap review, at least for an initial period. It designated expanded interconnection for switched transport services covered by connection charges as services that are excluded from the LEC's price cap baskets.

29. The Commission found that the transport interconnection charge serves the function of a contribution charge for expanded interconnection for switched transport, and found that there is no need to create a separate contribution charge.

30. The Commission adopted the same tariffing standards for expanded interconnection for switched transport as for expanded interconnection for special access, as modified on reconsideration. Specifically, the cross-connect element is to be generally available at study-area-wide averaged rates, and other features of physical and virtual collocation offerings are to be provided under uniform rates, terms, and conditions for each central office. Under virtual collocation, however, central office electronic equipment dedicated to an interconnector's use may be provided pursuant to individually negotiated tariff provisions, but such rates, terms, and conditions must be tariffed and made available to other similarly situated interconnectors in the same location on a nondiscriminatory basis.

LEC Switched Transport Pricing Flexibility

31. The Commission granted the LECs additional flexibility in the form of density zone pricing, and volume and term discounts. Zone pricing will be permitted, as for special access, when expanded interconnection first becomes operational in a study area. Volume and term discounts generally will be permitted when either 100 DS1-equivalent cross-connects have been taken in the "zone 1" offices in the study area, or an average of 25 DS1-equivalent cross-connects per zone 1 office have been taken. The Commission reserved the question of broader pricing and rate structure flexibility for future proceedings.

Density Zone Pricing

32. LECs with operational switched transport expanded interconnection arrangements implemented in compliance with the Commission's rules will be permitted to set rates for entrance facilities, direct-trunked, and tandem-switched transport that are averaged within zones, but differ between zones. Density zone pricing also will be applicable to dedicated signalling transport. Density zone pricing will not, however, be applied to the transport interconnection charge. The LEC will be responsible for ensuring that its density zone pricing tariff for transport does not become effective before switched transport expanded interconnection is actually operational. A switched transport expanded interconnection offering will be deemed operational for this purpose when an interconnector has taken the expanded interconnection cross-connect element for switched transport, or used facilities collocated pursuant to the Commission's expanded interconnection rules to interconnect with LEC-provided switched transport services. The Commission clarified that an interconnector will be deemed to have taken the cross-connect element when it has ordered the cross-connect and the LEC has provided this service.

33. The Commission required that the LECs use the same density zones for both special access and switched transport. To the extent that LECs use the same density zones already in place for their special access services, the Commission will not require that they file density pricing zone plans in advance of filing tariff changes. Where a LEC is establishing density zones for the first time, however, the guidelines set forth in the Special Access Order for defining density zones will apply. In such cases, the LEC must file and obtain advance approval of its plan, including illustrative tariff pages, as was required for the implementation of zone pricing for special access. As with special access, once a plan is approved, the LEC may file implementing tariff revisions on 31 days notice. In order to reduce administrative burdens and the potential that density zone tariffs could become effective prematurely, the LECs are not to file tariff revisions more than 31 days before their interconnection offering becomes operational. It shall be the responsibility of the LEC to ensure that its density pricing zone tariff does not become effective before expanded interconnection is actually operational in the affected study area.

34. The Commission adopted price cap rules with pricing bands at both the service category and zone levels. The Commission required that price cap LECs implementing density zone pricing for transport create two subindexes in each of the density zones,

one for tandem-switched transport rates, and another for direct-trunked transport, entrance facilities, and dedicated signalling transport. Thus, for instance, if a LEC created three density zones, it would establish six new subindexes for transport: one in each zone for the service category containing direct-trunked transport, entrance facilities, and dedicated signalling transport, and one in each zone for the tandem-switched transport service category. The initial level of each of the subindexes will be set at the pre-existing level of rates at the time density pricing transport tariffs become effective.

35. Price cap LECs will be permitted to raise rates in each zone by up to 5% annually, or lower them by up to 10%, relative to the price cap index applicable to the traffic-sensitive services basket, without triggering any of the additional cost justification or advance notice requirements of the price cap rules. The weighted average of all rates in the same service category, however, will still be subject to the pricing bands for that service category. Thus, for instance, the weighted average of all tandem-switched transport rates could not be raised by more than 2%, or lowered by more than 5%, adjusted for the price cap index, without additional justification.

36. The Commission created a similar system for LECs subject to rate of return regulation that implement expanded interconnection. In the case of these LECs, the Commission will permit the rates for the same services in different zones to diverge by a maximum of 15% in the first year that these tariff revisions are in effect, 30% in the second year, and 45% in the third year.

37. The Commission declined in this proceeding to tie together direct-trunked and tandem-switched transport rates in the way that one party requested. The Commission found that issue to be more appropriately resolved in its proceeding on transport rate structure and pricing, where the relationship among the prices of various transport rate elements is to be addressed. In the Transport Order, the Commission required price cap LECs to put direct-trunked and tandem-switched transport rates into separate service categories with separate pricing bands. The Commission did not in this Order make any change in the price cap treatment of those services.

Volume and Term Discounts

38. The Commission will allow the LECs to offer reasonable volume and term discounts on entrance facilities and interoffice facilities, including pricing that reflects speeds greater than DS3. LECs will be permitted to offer volume and term discounts, however, only when the conditions set forth below have been satisfied.

39. Subject to the tariff filing date and notice period set out below, LECs will be permitted to implement volume and term discounts on their transport rates in a study area only when one of the following conditions has been met: (1) 100 DS1-equivalent switched transport cross-connects have been taken in the "zone 1" offices [3] in the study area; or (2) an average of 25 DS1-equivalent switched transport cross-connects per zone 1 office have been taken. In the unlikely event that interconnectors take expanded interconnection in zone 2 offices in a particular study area before either of the conditions described above is met, the Commission will consider granting waivers to allow cross-connects taken in zone 2 offices to be counted toward satisfaction of these requirements. Petitioners must demonstrate, however, that grant of such a waiver would not undermine the policies set forth in this Order, and would be in the public interest. The Commission delegated authority to the Chief, Common Carrier Bureau to act on such requests for waiver. The LECs also may implement volume and term discounts in study areas without any zone 1 offices after 5 DS1-equivalent cross-connects have been taken in the study area. In the event that a LEC has not implemented density zone pricing, and therefore has no zone 1 offices, volume and term discounts will be permitted in a study area when interconnectors have taken at least 100 DS1-equivalent cross-connects for the transmission of switched transport traffic in offices in the study area. The Commission delegated authority to the Chief, Common Carrier Bureau, to act on requests for waivers of this requirement. The Bureau shall grant waivers to the extent that a party clearly demonstrates that the specific characteristics of a study area warrant a deviation from this general rule.

40. LECs will be permitted to file tariffs reflecting volume and term discounts no sooner than December 1, 1993. Transport volume and term discounts, when offered by the LECs, will constitute new services under the Commission's price cap rules. Accordingly, tariffs implementing such discounts must satisfy the cost showing requirements for new services. Tariffs are to be filed on 120 days notice, rather than the usual 45 days. It shall be the responsibility of the LEC to ensure that its volume and term discount tariffs do not become effective before the conditions set forth above concerning the number of cross-connects taken have been satisfied. The Commission stated that LECs will not be permitted to increase the transport interconnection charge to offset revenues lost through the offering of volume and term discounts. The Commission stated that the price cap new service rules will not allow for such an increase, and that it did not find such an offsetting increase to be appropriate.

Other Issues

41. In the companion Special Access Second Reconsideration Order, the Commission established a 180 day fresh look period for mixed use facilities (special access facilities over which both special access and switched transport services are provided) when the first switched transport expanded interconnection arrangement becomes operational in an office. This additional fresh look period is governed by the terms set out in the Special Access Second Reconsideration Order. Among other things, it applies *only* to LEC shared use circuits covered by arrangements with terms of three years or more entered into on or before September 17, 1992, the date on which the Special Access Order was adopted.

42. In the companion Special Access Second Reconsideration Order, the Commission specified that all nonrecurring reconfiguration charges paid by interconnectors or their customers must be set no higher than cost-based levels. In addition, the difference between the charges applicable when a customer shifts to an interconnector's services and those applicable when a customer reconfigures its service with the LEC must be cost-based. Those requirements set forth in the Special Access Second Reconsideration Order will be applicable to any nonrecurring reconfiguration charges that the LECs apply to switched transport services. As with special access, no presumption of lawfulness will apply to changes made in the nonrecurring charges that apply when customers reconfigure their switched access services. LECs whose tariffs are not already in compliance are to file tariff revisions implementing these standards for switched transport as soon as possible, but in no event later than November 18, 1993.

43. The customer of record for switched access should be billed for and pay the interconnection charge. The LECs, in assessing interconnection charges, are required to use a procedure similar to the current procedures for

[3] "Zone 1" offices are the offices classified by the LECs under their density zone pricing plans as having the highest traffic density.

billing shared use of facilities for switched and special access. The interconnector would pay the applicable interconnection charge for switched transport on a per-minute basis, plus a pro rata share of any applicable contribution charge that may in the future be implemented for special access.

44. Where an IXC uses a CAP's services, the CAP may order switched access in its own name, in which case the CAP would pay the interconnection charge. Alternatively, the CAP could order switched access in the IXC's name, acting as the IXC's agent, or the IXC may order switched access directly. Where the CAP orders access as an agent for an IXC, the IXC will be considered the switched access customer of record, and will pay the interconnection charge. If, however, the CAP does not deliver its customers' traffic to the LEC in a form that identifies the individual customer, such as on separately identifiable circuits or groups of circuits, then the CAP will be the switched access customer and will pay the interconnection charge.

45. The Commission will require PIU reporting, because the LECs lack jurisdictional information for terminating traffic. The customer of record for switched access must make such reports to the LEC. In cases where an end user may be the switched access customer, however, the IXC providing service to that end user must report PIUs, since the end user may not have the necessary information.

Implementation Schedule and Information Reporting

46. Tier 1 LECs, except NECA pool members, must file expanded interconnection tariffs for switched transport consistent with the requirements of this Order no later than November 18, 1993, on ninety days notice, to be effective February 15, 1994. As required in the Special Access First Reconsideration Order, LEC tariffs must include a procedure for adding LEC locations upon receiving a *bona fide* request from an interconnector. In particular, LEC tariffs must provide that tariff revisions adding LEC locations in which expanded interconnection for switched transport is offered will be filed within 45 days of a *bona fide* request, to be effective upon 45 days notice.

47. Interconnectors that wish the LEC tariffs filed November 18, 1993 to offer expanded interconnection for switched transport at LEC locations in addition to those already designated for collocation in the special access portion of this proceeding, must request those locations by October 18, 1993. Interconnectors also may request expanded interconnection at additional LEC locations between October 18, 1993 and February 15, 1994.

48. Consistent with the Commission's requirements for special access, if an interconnector requests expanded interconnection for switched transport at a LEC location where the LEC has not already been granted an exemption based on lack of space, the LEC may file a petition for a space exemption at the same time that it files its initial tariffs for that location. The initial tariffs do not have to offer physical collocation in the LEC locations subject to a space exemption request. If the Commission denies an exemption request based on space availability, a LEC must file tariff revisions within fourteen days, effective on fifteen days notice, to make physical collocation available at those locations, except that this procedure will not apply to the extent that it would make the tariff provisions for the LEC locations involved effective prior to the effective date of the remainder of the expanded interconnection tariff filing. In such cases, the necessary tariff revisions are to become effective at the same time as the remainder of the expanded interconnection filing. LEC initial tariffs are to offer physical collocation in all locations not covered by an exemption request based on space availability, unless an exemption based on state regulation or the lack of space has already been granted.

49. LECs whose tariffs are not already in compliance with the requirements concerning nonrecurring reconfiguration charges for switched transport are to file tariff revisions implementing those requirements as soon as possible, but in no event later than November 18, 1993.

50. The Commission required the seven Regional Bell Operating Companies and GTE to file reports that identify (1) the parties using expanded interconnection for switched transport in their service territories; and (2) the LEC locations in which they are interconnected. LECs must file these reports annually for the first four years after their initial interstate expanded interconnection tariffs become effective. The Chief, Common Carrier Bureau, will determine the format and specific information to be provided in these reports.

51. Regarding preemption, the Commission reached the same conclusion for switched transport that it did for special access. It adopted the same measures taken in the Special Access Order to minimize the potential conflict between differing federal and state expanded interconnection policies. These include application of the state exemption from the physical collocation requirement. In addition, if a LEC offers both interstate and intrastate expanded interconnection using either physical or virtual collocation, it should provide collocation in a manner that satisfies both federal and state requirements. The Commission stated that, as in special access expanded interconnection, it expects LECs and interconnectors to negotiate reasonable mechanisms to avoid double payment for LEC expanded interconnection. For example, if under a state physical collocation program, an interconnector has paid the full cost of space preparation, the Commission does not expect additional interstate charges to be applied unless further work is required to permit interstate expanded interconnection.

Regulatory Flexibility Act

52. In the Phase I Notice, the Commission certified that the proposed rule changes would not have a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. The Commission also stated that to the extent that a PIU reporting requirement would apply to small entities, it would not have a significant economic impact on a substantial number of small business entities. Neither the Chief Counsel for Advocacy of Small Business Administration nor any other commenting party disagreed with the Commission's analysis. The Secretary shall send a copy of this Report and Order, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 605(b) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*

Ordering Clauses

53. Accordingly, *it is ordered*, Pursuant to authority contained in sections 1, 4(i), 201–205, and 214(d) of the Communications Act of 1934, as amended, 47 U.S.C. 151(i), 154, 201–205, and 214(d), that parts 61, 64, 65, and 69 of the Commission's Rules are amended as set forth in the amendatory text.

54. *It is further ordered*, That the policies, rules, and requirements set forth herein are adopted.

55. *It is further ordered*, That all LECs subject to this order shall file tariffs offering switched transport expanded interconnection by November 18, 1993, with an effective date of February 15, 1994.

56. *It is further ordered*, That the Chief, Common Carrier Bureau is delegated the authority specified herein to act upon implementation details pertaining to expanded interconnection for switched transport and LEC pricing flexibility.

57. *It is further ordered*, That except as specifically noted below, the policies, rules, and requirements adopted herein shall be effective sixty days after publication in the **Federal Register**.

58. *It is further ordered*, That the provisions requiring interconnectors that wish the November 18, 1993 tariff filings to include expanded interconnection for switched transport at LEC locations in addition to those already designated for collocation in the special access proceeding to request those locations by October 18, 1993 shall be effective thirty days after publication in the **Federal Register**.

59. *It is further ordered*, That the Alabama Public Service Commission's Request to File Out-of-Time Comments and the Motion to Accept Late-Filed Reply Comments of WilTel, Inc., are granted.

List of Subjects

47 CFR Parts 61 and 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 65

Administrative practice and procedure, Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 61 of title 47 of the Code of Federal Regulations is amended as follows:

PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.38 is amended by revising paragraph (b)(4) to read as follows:

§ 61.38 Supporting information to be submitted with letters of transmittal.

* * * * *

(b) * * *

* * * * *

(4) For a tariff that introduces a system of density pricing zones, as described in § 69.123 of this chapter, the carrier must, before filing its tariff, submit a density pricing zone plan including, *inter alia*, documentation sufficient to establish that the system of zones reasonably reflects cost-related characteristics, such as the density of total interstate traffic in central offices located in the respective zones, and receive approval of its proposed plan.

* * * * *

3. Section 61.47 is amended by adding new paragraph (h)(3) to read as follows:

§ 61.47 Adjustments to the SBI; pricing bands.

(h) * * *

* * * * *

(3) Those local exchange carriers subject to price cap regulation that have established density pricing zones pursuant to § 69.123 of this chapter shall use the methodology set forth in paragraphs (a) through (d) of this section to calculate a separate subindex in each zone for an aggregated category consisting of direct-trunked transport, entrance facilities, and dedicated signalling transport, and another separate subindex in each zone for tandem-switched transport. Notwithstanding paragraph (e) of this section, the annual pricing flexibility for each of these subindexes shall be limited to an annual increase of five percent or an annual decrease of ten percent, relative to the percentage change in the PCI for the traffic-sensitive services basket, measured from the last day of the preceding tariff year.

* * * * *

4. Section 61.49 is amended by revising paragraph (k) to read as follows:

§ 61.49 Supporting information to be submitted with letters of transmittal for tariffs of carriers subject to price cap regulation.

* * * * *

(k) For a tariff that introduces a system of density pricing zones, as described in § 69.123 of this chapter, the carrier must, before filing its tariff, submit a density pricing zone plan including, *inter alia*, documentation sufficient to establish that the system of zones reasonably reflects cost-related characteristics, such as the density of total interstate traffic in central offices located in the respective zones, and receive approval of its proposed plan.

Part 64 of title 47 of the Code of Federal Regulations is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 225, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 225 unless otherwise noted.

2. Section 64.1401 is amended by redesignating paragraphs (d) through (f) as paragraphs (f) through (h), respectively; redesignating paragraphs (b) and (c) as paragraphs (c) and (d); adding new paragraphs (b) and (e); and revising the following redesignated paragraphs: Introductory text of paragraph (c), paragraphs (c)(1) and (2), the introductory text of paragraph (d), and paragraphs (f), (g)(1) and (2), and (h) to read as follows:

§ 64.1401 Expanded interconnection.

* * * * *

(b) The local exchange carriers specified in paragraph (a) of this section shall offer expanded interconnection for interstate switched transport services:

(1) In their central offices that are classified as end offices or serving wire centers, as well as at all tandem offices housed in buildings containing such carriers' end offices or serving wire centers for which interstate switched transport expanded interconnection has been tariffed;

(2) Upon *bona fide* request, in tandem offices housed in buildings not containing such carriers' end offices or serving wire centers, or in buildings containing the carriers' end offices or serving wire centers for which interstate switched transport expanded interconnection has not been tariffed; and

(3) Upon *bona fide* request, at remote nodes/switches that serve as rating points for interstate switched transport and that are capable of routing outgoing interexchange access traffic to interconnectors and in which interconnectors can route terminating traffic to such carriers. No such carrier is required to enhance remote nodes/switches or to build additional space to accommodate interstate switched transport expanded interconnection at these locations.

(c) The local exchange carriers specified in paragraph (a) of this section shall offer expanded interconnection for interstate special access and switched transport services through physical collocation, except that they may offer virtual collocation instead of physical collocation, upon approval by the Commission, under the following circumstances:

(1) At an individual local exchange carrier location, if that location lacks physical space to accommodate physical collocation;

(2) For new customers at an individual local exchange carrier location, if the space available for physical collocation has been exhausted. Local exchange carriers shall not withdraw their offering of physical collocation for existing customers due to space limitations, absent extraordinary circumstances; or

* * * * *

(d) In addition to the obligations imposed by paragraph (c) of this section, the local exchange carriers specified in paragraph (a) of this section shall offer expanded interconnection for interstate special access services through virtual collocation in any local exchange carrier location in which:

* * * * *

(e) In addition to the obligations imposed by paragraph (c) of this section, the local exchange carriers specified in paragraph (a) of this section shall offer expanded interconnection for interstate switched transport services through virtual collocation in any local exchange carrier location in which:

(1) The carrier is providing intrastate switched transport expanded interconnection through virtual collocation, or

(2) The carrier negotiates interstate switched transport virtual collocation arrangements with one or more interconnectors.

(f) For purposes of this subpart, physical collocation means an offering that enables interconnectors;

(1) To place their own equipment needed to terminate basic transmission facilities, including optical terminating equipment and multiplexers, within or upon the local exchange carrier's buildings,

(2) To use such equipment to connect interconnectors' fiber optic systems or microwave radio transmission facilities (where reasonably feasible) with the local exchange carrier's equipment and facilities used to provide interstate special and switched access services,

(3) To enter the local exchange carrier's buildings, subject to reasonable terms and conditions, to install, maintain, and repair the equipment described in paragraph (f)(1) of this section, and

(4) To obtain reasonable amounts of space in local exchange carrier locations for the equipment described in paragraph (f)(1) of this section, allocated on a first-come, first-served basis.

(g) For purposes of this subpart, virtual collocation means an offering that enables interconnectors:

(1) To designate or specify equipment needed to terminate basic transmission facilities, including optical terminating equipment and multiplexers, to be located within or upon the local exchange carrier's buildings, and dedicated to such interconnectors' use,

(2) To use such equipment to connect interconnectors' fiber optic systems or microwave radio transmission facilities (where reasonably feasible) with the local exchange carrier's equipment and facilities used to provide interstate special and switched access services, and

* * * * *

(h) Under both physical collocation offering and virtual collocation offerings for expanded interconnection of fiber optic facilities, local exchange carriers shall provide:

(1) An interconnection point or points at which the fiber optic cable carrying an interconnectors' circuits can enter each local exchange carrier location, provided that the local exchange carrier shall designate interconnection points as close as reasonably possible to each location; and

(2) At least two such interconnection points at any local exchange carrier location at which there are at least two entry points for the local exchange carrier's cable facilities.

3. Section 64.1402 is amended by revising paragraph (c) to read as follows:

* * * * *

(c) Interconnectors shall not be allowed to use interstate special access expanded interconnection offerings to connect their transmission facilities with the local exchange carrier's interstate switched services until that local exchange carrier's tariffs implementing expanded interconnection for switched transport have become effective.

Part 65 of title 47 of the Code of Federal Regulations is amended as follows:

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

1. The authority citation for part 65 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 218, 403, 48 Stat. 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 65.702 is amended by revising the second sentence in paragraph (b) to read as follows:

§ 65.702 Measurement of interstate services earnings

* * * * *

(b) * * * The access service categories shall be: an aggregated category consisting of Special Access, § 69.113, and Contribution Charges for Special Access Expanded Interconnection, § 69.122; Connection Charges for Expanded Interconnection, § 69.121; Common Line, §§ 69.104–69.105; and an aggregated category consisting of Line Termination, § 69.106, Intercept, § 69.108, Local Switching, § 69.107, Transport, §§ 69.110–69.112, 69.124, 69.125, and Information, § 69.109. * * *

* * * * *

Part 69 of title 47, Code of Federal Regulations, is amended as follows:

PART 69—ACCESS CHARGES

1. The authority citation for part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.110 is amended by revising paragraph (e) and adding new paragraphs (f), (g), and (h) to read as follows:

§ 69.110 Entrance facilities

* * * * *

(e) Except as provided in paragraphs (f), (g), and (h) of this section, telephone companies shall not offer entrance facilities based on term discounts or volume discounts for multiple DS3s or any other service with higher volume than DS3 through October 31, 1995.

(f) Except in the situations set forth in paragraphs (g) and (h) of this section, telephone companies may offer term and volume discounts in entrance facilities charges within each study area used for the purpose of jurisdictional separations, in which interconnectors have taken either:

(1) At least 100 DS1-equivalent cross-connects for the transmission of switched traffic (as described in § 69.121(a)(1) of this chapter) in offices in the study area that the telephone company has assigned to the lowest priced density pricing zone (zone 1) under an approved density pricing zone plan as described in §§ 61.38(b)(4) and 61.49(k) of this chapter; or

(2) An average of at least 25 DS1-equivalent cross-connects for the transmission of switched traffic per office assigned to the lowest priced density pricing zone (zone 1).

(g) In study areas in which the telephone company has implemented density zone pricing, but no offices have been assigned to the lowest price density pricing zone (zone 1), telephone companies may offer term and volume discounts in entrance facilities charges within the study area when

interconnectors have taken at least 5 DS1-equivalent cross-connects for the transmission of switched traffic (as described in § 69.121(a)(1) of this chapter) in offices in the study area.

(h) In study areas in which the telephone company has not implemented density zone pricing, telephone companies may offer term and volume discounts in entrance facilities charges when interconnectors have taken at least 100 DS1-equivalent cross-connects for the transmission of switched traffic (as described in § 69.121(a)(1) of this chapter) in offices in the study area.

3. Section 69.111 is amended by adding new paragraphs (i), (j), and (k) to read as follows:

§ 69.111 Tandem-switched transport and tandem charge

* * * * *

(i) Except in the situations set forth in paragraphs (j) and (k) of this section, telephone companies may offer term and volume discounts in tandem-switched transport charges within each study area used for the purpose of jurisdictional separations, in which interconnectors have taken either:

(1) At least 100 DS1-equivalent cross-connects for the transmission of switched traffic (as described in § 69.121(a)(1) of this chapter) in offices in the study area that the telephone company has assigned to the lowest priced density pricing zone (zone 1) under an approved density pricing zone plan as described in §§ 61.38(b)(4) and 61.49(k) of this chapter; or

(2) An average of at least 25 DS1-equivalent cross-connects for the transmission of switched traffic per office assigned to the lowest priced density pricing zone (zone 1).

(j) In study areas in which the telephone company has implemented density zone pricing, but no offices have been assigned to the lowest priced density pricing zone (zone 1), telephone companies may offer term and volume discounts in tandem-switched transport charges within the study area when interconnectors have taken at least 5 DS1-equivalent cross-connects for the transmission of switched traffic (as described in § 69.121(a)(1) of this chapter) in offices in the study area.

(k) In study areas in which the telephone company has not implemented density zone pricing, telephone companies may offer term and volume discounts in tandem-switched transport charges when interconnectors have taken at least 100 DS1-equivalent cross-connects for the transmission of switched traffic (as described in § 69.121(a)(1) of this chapter) in offices in the study area.

4. Section 69.112 is amended by redesignating paragraph (f) as paragraph (i), revising paragraph (e), and adding new paragraphs (f), (g), and (h) to read as follows:

§ 69.112 Direct-trunked transport

* * * * *

(e) Except as provided in paragraphs (f), (g), and (h) of this section, telephone companies shall not offer direct-trunked transport rates based on term discounts or volume discounts for multiple DS3s or any other service with higher volume than DS3 through October 31, 1995.

(f) Except in the situations set forth in paragraphs (g) and (h) of this section, telephone companies may offer term and volume discounts in direct-trunked transport charges within each study area used for the purpose of jurisdictional separations, in which interconnectors have taken either:

(1) At least 100 DS1-equivalent cross-connects for the transmission of switched traffic (as described in § 69.121(a)(1)) in offices in the study area that the telephone company has assigned to the lowest priced density pricing zone (zone 1) under an approved density pricing zone plan as described in §§ 61.38(b)(4) and 61.49(k) of this section; or

(2) An average of at least 25 DS1-equivalent cross-connects for the transmission of switched traffic per office assigned to the lowest priced density pricing zone (zone 1).

(g) In study areas in which the telephone company has implemented density zone pricing, but no offices have been assigned to the lowest priced density pricing zone (zone 1), telephone companies may offer term and volume discounts in direct-trunked transport charges within the study area when interconnectors have taken at least 5 DS1-equivalent cross-connects for the transmission of switched traffic (as described in § 69.121(a)(1) of this chapter) in offices in the study area.

(h) In study areas in which the telephone company has not implemented density zone pricing, telephone companies may offer term and volume discounts in direct-trunked transport charges when interconnectors have taken at least 100 DS1-equivalent cross-connects for the transmission of switched traffic (as described in § 69.121(a)(1) of this chapter) in offices in the study area.

* * * * *

5. Section 69.121 is amended by revising the introductory text of paragraph (a) and paragraph (a)(1) to read as follows:

§ 69.121 Connection charges for expanded interconnection.

(a) Appropriate connection charge subelements shall be established for the use of equipment and facilities that are associated with offerings of expanded interconnection for special access and switched transport services, as defined in part 64, subpart N of this chapter. To the extent that the same equipment and facilities are used to provide expanded interconnection for both special access and switched transport, the same connection charge subelements shall be used.

(1) A cross-connect subelement shall be established for charges associated with the cross-connect cable and associated facilities connecting the equipment owned by or dedicated to the use of the interconnector with the telephone company's equipment and facilities used to provide interstate special or switched access services. Charges for the cross-connect subelement shall not be deaveraged within a study area that is used for purposes of jurisdictional separations.

* * * * *

6. Section 69.123 is amended by revising the heading, revising paragraphs (a) and (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d), to read as follows:

§ 69.123 Density pricing zones for special access and switched transport.

(a) Telephone companies may establish a reasonable number of density pricing zones within each study area that is used for the purposes of jurisdictional separations, in which at least one interconnector has taken the subelement of connection charges for expanded interconnection described in § 69.121(a)(1) of this chapter. Only one set of density pricing zones shall be established within each study area, to be used for the pricing of both special and switched access pursuant to paragraphs (c) and (d) of this section.

* * * * *

(c) Notwithstanding § 69.3(e)(7) of this chapter, in study areas in which at least one interconnector has taken a cross-connect, as described in § 69.121(a)(1) of this chapter, for the transmission of interstate special access traffic, telephone companies may charge rates for special access subelements of DS1, DS3, and such other special access services as the Commission may designate, that differ depending on the zone in which the service is offered, provided that the charges for any such service shall not be deaveraged within any such zone.

(1) A special access service subelement shall be deemed to be offered in the zone that contains the telephone company location from which the service is provided.

(2) A special access service subelement provided to a customer between telephone company locations shall be deemed to be offered in the highest priced zone that contains one of the locations between which the service is offered.

(d) Notwithstanding § 69.3(e)(7) of this chapter, in study areas in which at least one interconnector has taken a cross-connect, as described in § 69.121(a)(1) of this chapter, for the transmission of interstate switched traffic, or is using collocated facilities to interconnect with telephone company interstate switched transport services, telephone companies may charge rates for subelements of direct-trunked transport, tandem-switched transport, entrance facilities, and dedicated signalling transport that differ depending on the zone in which the service is offered, provided that the charge for any such service shall not be deaveraged within any such zone. Telephone companies may not, however, charge rates for the interconnection charge that differ depending on the zone in which the service is offered.

(1) A switched transport service subelement shall be deemed to be offered in the zone that contains the telephone company location from which the service is provided.

(2) A switched transport service subelement provided to a customer between telephone company locations shall be deemed to be offered in the highest priced zone that contains either of the locations between which the service is offered.

* * * * *

[FR Doc. 93–22944 Filed 9–16–93; 8:45 am]

BILLING CODE 6712–01–M

federal register

Friday
September 17, 1993

Part X

Department of the Interior

Bureau of Land Management

Montana; Lewistown District Advisory Council Meeting

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-060-4830-12]

District Advisory Council Meeting; (Montana)

The Lewistown District Advisory Council will meet on September 20, 1993 at 10 a.m. in the Lewistown District Office, Lewistown, Montana.

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: District advisory council meeting.

SUMMARY: The Lewistown District Advisory Council will meet on September 20, 1993 at 10 a.m. in the Lewistown District Office, 1160 Airport Road, Lewistown, Montana. The agenda will include:

1. Discussing implementation of the Upper Missouri National Wild and Scenic River Management Plan Update.
2. Touring potential river acquisition and development sites.
3. Discussing the proposed rangeland reform package.

FOR FURTHER INFORMATION CONTACT: David L. Mari, District Manager, Bureau of Land Management, Box 1160, Lewistown, Montana 59457.

SUPPLEMENTAL INFORMATION: The meeting will be open to the public and interested persons may make oral comments at the conclusion of the meeting or may file written comments for the council's consideration. Members of the public must provide their own transportation to all portions of this meeting. Those wishing to make oral comments must notify the District Manager, Bureau of Land Management, Box 1160, Lewistown, Montana 59457. The Lewistown District Advisory Council is authorized under section 309 of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1739.

Dated: September 7, 1993.

David L. Mari,

District Manager.

[FR Doc. 93-22966 Filed 9-16-93; 8:45 am]

BILLING CODE 4310-DN-M

federal register

Friday
September 17, 1993

Part XI

The President

Proclamation 6592—National Hispanic Heritage Month, 1993

Executive Order 12864—United States Advisory Council on the National Information Infrastructure

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Federal Register
Vol. 58, No. 179
Friday, September 17, 1993

Presidential Documents

Title 3—

The President

Proclamation 6592 of September 15, 1993

National Hispanic Heritage Month, 1993

By the President of the United States of America

A Proclamation

One of our Nation's greatest strengths is its vast diversity. The mosaic of races, ethnicities, and religious groups that comprise America provides us with a powerful energy and an ability to see the world from many viewpoints. Since our country's inception, Hispanic Americans have always been an integral part of this great mosaic. Indeed the history, culture, and traditions of America are greatly influenced by the contributions of those individuals who have their origins in Spain and Latin America.

While the impact of the Hispanic culture is manifest in our Nation's customs and traditions, this legacy continues on beyond the pages of history. Today, Hispanic Americans continue to make important contributions to our society. It would be impossible to think of American Government, business, industry, Armed Forces, agriculture, science, sports, and the arts without noting the presence and full participation of Hispanic Americans. Ellen Ochoa, who has served America proudly as our first Hispanic woman astronaut; Cesar Chavez, whose lifelong passion and commitment uplifted the lives of millions of agricultural workers; Secretary of Housing and Urban Development Henry Cisneros and Secretary of Transportation Federico Peña; Master Sergeant Roy P. Benavidez, who won the Medal of Honor for his service in Vietnam; and millions of other Hispanic Americans whose hard work keeps our Nation moving—all of these patriotic Americans draw their heritage from the rich Hispanic culture.

Many of the traditions that Americans hold so dear are deeply rooted in the Hispanic American values of a strong sense of family, devotion to religious beliefs, and dedication to liberty and democracy. Committed dearly to these precious ideals, Hispanic Americans are helping all of us to uphold the legacy of our democratic society.

America is an ongoing experiment—an unfinished work. There is much for all of us still to accomplish in order to ensure a brighter and more peaceful world for our children. I know that Hispanic Americans, always conscious of the traditions of their forebears, will continue to work with Americans of every racial, religious, and ethnic background to confront our Nation's health, housing, educational, and human rights concerns. The principles that are such a part of the Hispanic American tradition will serve all of our people well as we strive to address the challenges that the future holds for us.

To commemorate the Hispanic American contributions to our Nation, the Congress, by Public Law 90–498 of September 17, 1968, as amended, has authorized and requested the President to issue annually a proclamation designating the month beginning September 15 and ending October 15 as "National Hispanic Heritage Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the month beginning September 15, 1993, and ending October 15, 1993, as National Hispanic Heritage Month. I call upon the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of September, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-23017
Filed 9-15-93; 4:57 pm]
Billing code 3195-01-P

Presidential Documents

Executive Order 12864 of September 15, 1993

United States Advisory Council on the National Information Infrastructure

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2) ("Act"), and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established in the Commerce Department the "United States Advisory Council on the National Information Infrastructure" ("Council"). The Council shall consist of not more than 25 members to be appointed by the Secretary of Commerce ("Secretary").

(b) The Secretary shall appoint from among the members of the Council officials to serve as chairperson(s) or vice-chairperson(s) of the Council as he shall deem appropriate.

Sec. 2. *Functions.* (a) The Council shall advise the Secretary on matters related to the development of the National Information Infrastructure. The National Information Infrastructure shall be the integration of hardware, software, and skills that will make it easy and affordable to connect people with each other, with computers, and with a vast array of services and information resources.

(b) The Council shall advise the Secretary on a national strategy for promoting the development of a National Information Infrastructure. Issues that the Council may address include, but are not limited to:

(1) the appropriate roles of the private and public sectors in developing the National Information Infrastructure;

(2) a vision for the evolution of the National Information Infrastructure and its public and commercial applications;

(3) the impact of current and proposed regulatory regimes on the evolution of the National Information Infrastructure;

(4) national strategies for maximizing the benefits of the National Information Infrastructure, as measured by job creation, economic growth, increased productivity, and enhanced quality of life;

(5) national strategies for developing and demonstrating applications in areas such as electronic commerce, agile manufacturing, lifelong learning, health care, government services, and civic networking;

(6) national security, emergency preparedness, system security, and network protection implications;

(7) national strategies for maximizing interconnection and interoperability of communications networks;

(8) international issues associated with the National Information Infrastructure;

(9) universal access; and

(10) privacy, security, and copyright issues.

(c) The chairperson(s) may, from time to time, invite experts to submit information to the Council and may form subcommittees of the Council to review specific issues.

Sec. 3. *Administration.* (a) The heads of executive agencies shall, to the extent permitted by law, provide to the Council such information as it may require for the purpose of carrying out its functions.

(b) Members of the Council shall serve without compensation but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law, including 5 U.S.C. 5701–5707 and section 7(d) of the Act, for persons serving intermittently in government service.

(c) The Department of Commerce shall provide the Council with administrative services, facilities, staff, and other support services necessary for the performance of its functions.

Sec. 4. *General.* (a) Notwithstanding any other Executive order, the functions of the President under the Act that are applicable to the Council, except that of reporting to Congress, shall be performed by the Secretary in accordance with guidelines that have been issued by the Administrator of General Services.

(b) The Council shall exist for a period of two years from the date of this order, unless the Council's charter is subsequently extended prior to the aforementioned date.

(c) Members of the Council and its subcommittee shall not be considered special government employees for any purpose or for purposes of 18 U.S.C. 201–203, 205, 207–209, and 218–219.

William J. Clinton

THE WHITE HOUSE,
September 15, 1993.

[FR Doc. 93–23039
Filed 9–16–93; 10:59 am]
Billing code 3195–01–P

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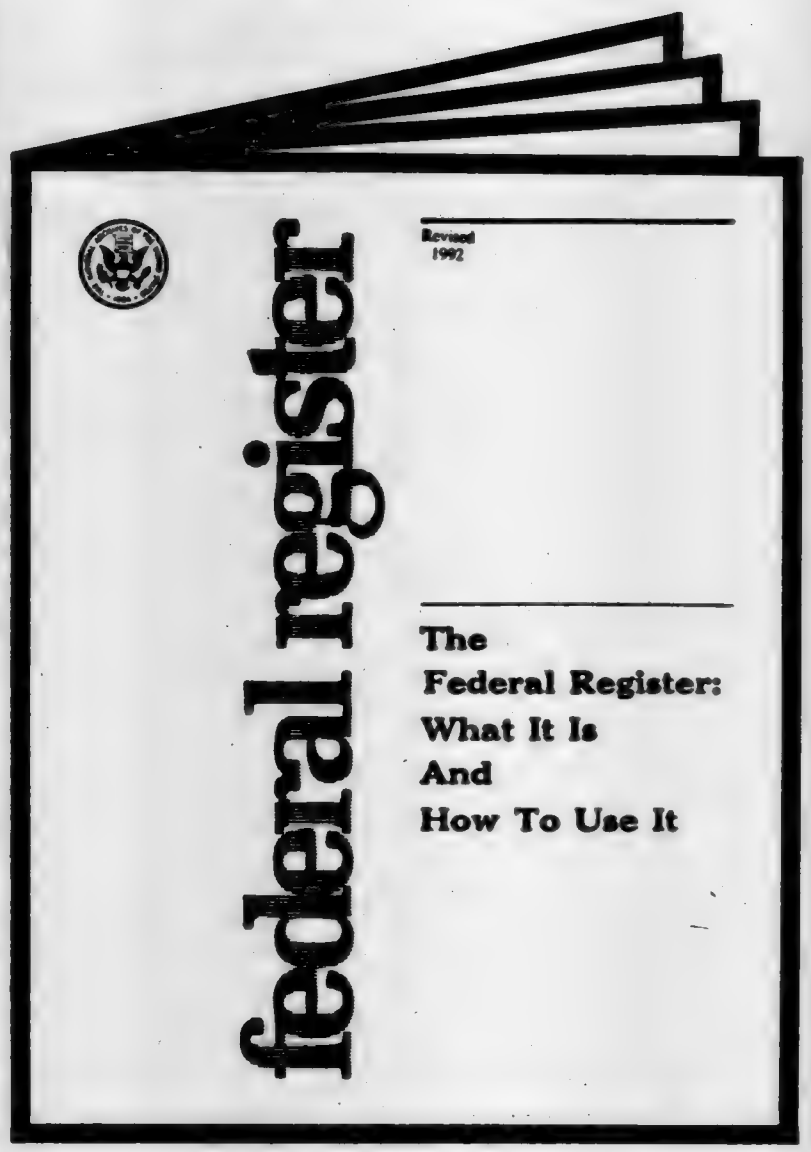

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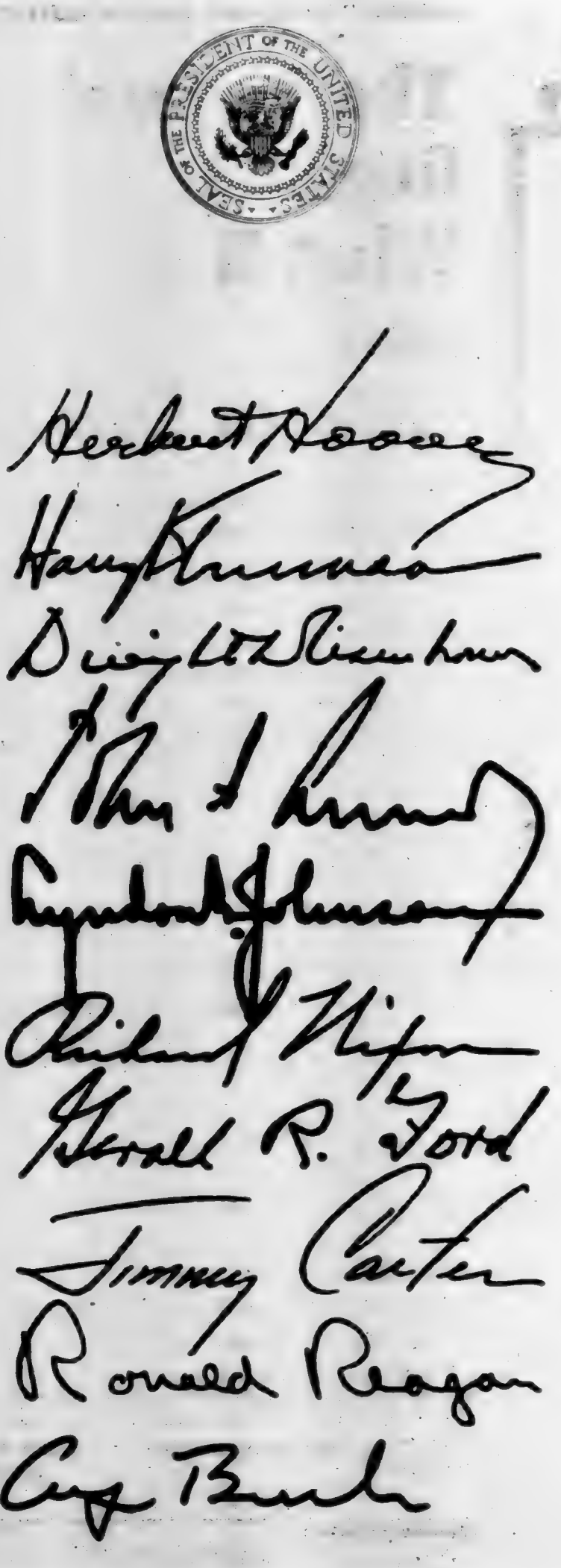

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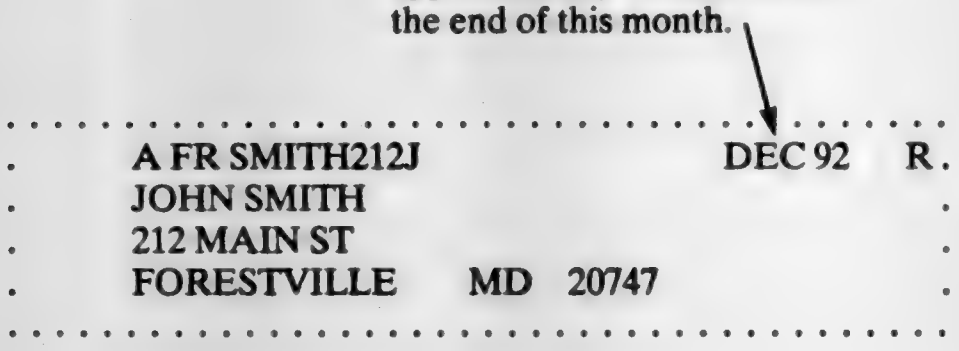

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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 58, No. 180
Monday, September 20, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 204, 211, 223, 223a, 235, 251, 252, 264, 274a, 299, 316, and 334

[INS No. 1381R-93]

RIN 1115-AD32

Establishment of Form I-551, Alien Registration Receipt Card, as the Executive Form of Registration for Lawful Permanent Residence

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the regulations of the Immigration and Naturalization Service (the Service) by terminating the validity of the old Alien Registration Receipt Card, Form I-151, and establishing the current Alien Registration Receipt Card, Form I-551, as the exclusive registration card for the use of lawful permanent resident aliens. This rule further provides the procedures by which a lawful permanent resident alien in possession of a Form I-151 or a prior alien registration document such as Form AR-3 or AR-103 may replace that document with the current Form I-551. This rule will remove from circulation fraudulent or obsolete versions of the Alien Registration Receipt Card and provide all lawful permanent resident aliens with one document that is universally recognized as evidence of their status.

EFFECTIVE DATES: The effective date of the amendments to part 264 (that portion of the rule affecting the application procedures) is October 20, 1993. The effective date of the amendments to parts 204, 211, 223, 223a, 235, 251, 252, 274a, 299, 316, and 334 is September 20, 1994.

FOR FURTHER INFORMATION CONTACT: Gerald Casale, Senior Immigration Examiner, Immigration and Naturalization Service, room 7122, 425 I Street NW., Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION:

Background

In a notice of proposed rulemaking on May 28, 1993, at 58 FR 31000-31003, the Service announced its intention to amend Title 8 of the Code of Federal Regulations. The amendments are necessary to enhance the security of Service documents that evidence identity and eligibility for employment and public benefits for aliens in lawful permanent resident status, and to replace the confusing multiplicity of documents with one secure document that is widely recognized as definitive evidence of resident status. The proposed regulatory changes and the Service's reasons for adopting them were discussed in detail in the proposed rule. All interested parties were invited to submit comments on the proposed amendments; and due consideration was given to all of the comments received.

Analysis of Comments

The Service received thirty-six comments in response to the proposed rule. Eight commenters expressed unqualified approval of the changes on the grounds that they will curtail the use of fraudulent cards and thereby reduce the abuse of publicly financed social services by illegal aliens. Most of the other commenters identified themselves as representatives of alien rights advocacy groups and offered several reservations or objections to various elements of the proposed rule. The specific topics raised by the commenters are summarized and analyzed below.

The Expiration of the Form I-151 Card

Several commenters took issue with the expiration of Alien Registration Receipt Cards which they claim were understood to be valid indefinitely. However, no statutory authority precludes the Service from requiring the updating of Alien Registration Receipt Cards. On the contrary, the Immigration and Nationality Act provides the Attorney General with authority to issue "an alien registration receipt card in such form or manner and at such time as shall be prescribed under regulations issued * * *." 8 U.S.C. 1304(d). Since regulations are subject to change with proper notice, the fact that the I-151 and its predecessor forms had previously been recognized for a number of years in no way limits the Attorney General's authority to regulate the validity of alien registration documents. Indeed, a Government agency which issues an identity document should only recognize the validity of that document for as long as it is deemed consistent with sound public policy to do so. The Service has determined that it is no longer sound public policy to recognize Alien Registration Receipt Cards that predate the use of the Form I-551.

The Replacement Card Fee

A number of commenters suggested that the Service has no authority to impose a fee for the replacement cards. Many of their letters claimed that the card replacement program will not provide a "service or thing of value" incident to a voluntary act. Although few of these commenters questioned the benefits that flow from possessing valid evidence of lawful permanent resident status, many nevertheless asserted that charging a fee is improper because the new card would merely restore proof which the rule itself takes away. The underlying argument of many of these commenters appears to be that the Service should not be permitted to impose a processing fee for the new card unless it can demonstrate additional benefits beyond those which the affected parties enjoyed immediately prior to this rule. However, no basis for this alleged burden of proof has been shown. In any case, the benefits to aliens who comply with this rule have been amply detailed in the supplementary information section of the proposed rule.

Some commenters claimed that the rule would be unfair to those resident aliens who derive no current benefit from their status on account of their withdrawal from employment, international travel, etc. These commenters appear to confuse the benefits which flow from an alien's status as a lawful permanent resident, such as an alien's continuing right to live and work in the United States, with the ability to exercise those benefits by having valid evidence of resident status.

It is the evidence of lawful permanent resident status in the form of the Alien Registration Receipt Card which permits an alien to take advantage of benefits such as employment authorization and the ability to travel to and from the United States.

In the increasingly rare instance where a resident alien has no need for valid evidence of legal status, this rule does not strip that person of permanent resident status; it merely invalidates the use of an obsolete document which denoted such status. Any alien who is unable to make a timely application for a valid Alien Registration Receipt Card during the grace period of the replacement program can apply for one voluntarily at any time afterward.

Several commenters took issue with the amount of the fee to be charged for processing the Form I–90 Application to Replace Alien Registration Card. Currently set at $70, many argued that it should be reduced. However, no factual evidence was submitted in support of this proposal. The current fee structure is based on an analysis of overall costs of administering the program. The $70 fee was imposed only after notice and public comment, 56 FR 12647 (March 27, 1991), and was not challenged. This same fee has been charged for all I–90 card replacement applications for over two years.

One writer expressed the belief that the card replacement program is merely a scheme to enrich the agency with fees while burdening its own staff with more paperwork. There was no empirical information offered to support this claim. The replacement program does indeed require, at least temporarily, more work on application adjudication and card production, and more personnel to carry it out. The application fees are calculated to cover the costs of this process. Consequently, the service expects no net income as a result of this program. However, the Service does expect this program to save time in the future because the establishment of Form I–551 as the only valid evidence of lawful permanent resident alien status will lead to greater efficiencies in carrying out the Service's employer sanctions and inspections programs.

The Ten-Year Expiration Date

Some commenters proposed that if the replacement card program is implemented the new cards should be valid indefinitely, and not expire in ten years as do all other Form I–551 cards currently issued. While this suggested approach would appear, on its face, to conserve time and resources, the Service's experience with Alien Registration Receipt Cards that have become obsolete or compromised over the course of time, have led us to the opposite conclusion.

In recent years the technology employed by counterfeiters on one hand and law enforcement agencies on the other has continually advanced. In order for the Service to keep its lead in maintaining the integrity of immigrant identity documents, their periodic revision will be required. It is also foreseeable that continuing improvements in the machine-readable features of Form I–551 cards will advance the technology to expedite applications for various public benefits. It is common practice among other federal and state agencies to require the periodic renewal of other identity cards, e.g., automobile operator licenses, U.S. passports, and voter registration cards.

The Timing of the Final Rule

Two commenters suggested that the Service should refrain from adopting a new rule pending the outcome of two lawsuits. One commenter opined that the injunction issued in *Espindola* v. *INS*, Civ. No. S–92–1871 (E.D. Cal. 1992) enjoining the Service from accepting I–151 replacement card applications filed pursuant to the **Federal Register** Notice issued by the Service on June 26, 1992, effectively bars the Service from promulgating this rule.

The pending lawsuits challenge the legality of the card replacement program as announced by the Service's **Federal Register** Notice dated June 2, 1992. One of the stated reasons for the issuance of the injunction to which the one commenter referred was to address the fact that the prior "green card" replacement program had not been promulgated in accordance with the Administrative Procedures Act (APA). The publication of this rule establishes a "green card" replacement program independent of the one announced in the June 26, 1992 **Federal Register** Notice and resolves the issue of APA compliance.

The Effectiveness of Form I–551 as a Control for Fraud

The substantial incidence of fraud connected with the I–151 card and previous alien resident registration documents has already been outlined in the proposed rule. Eight commenters approved of the prospect that the rule would curtail use of fraudulent cards or the procurement of publicly financed social services by illegal aliens. One letter cited incidents of persons who used the easily counterfeited Form I–151 cards to assume multiple identities in order to defraud Government benefit programs.

Several others suggested that the current incidence of fraud is insufficient to justify the expense and inconvenience of the card replacement program. However, no factual analysis was offered by any except two commenters who inferred, from recent detections of some counterfeit Form I–551 cards, that use of the current version would not prevent fraud. Notwithstanding the lengths to which some criminals will go to try to counterfeit any Alien Registration Receipt Card in circulation, the fact remains that the current Form I–551 is far more fraud-resistant than the I–151 and its predecessor forms.

Two commenters suggested that the proposed rule would inconvenience lawful permanent resident aliens in order to distinguish them from illegal aliens. While there may be some inconvenience involved, the objectives more than justify it. All law-abiding members of a political community, citizens included, are subject to comparable inconveniences and material sacrifices in order that laws for the general welfare may be upheld. For example, anyone who owns or operates an automobile is familiar with the requirements of registration and licensure. The ten-year renewal interval of the Form I–551 is no more frequent than that required for a United States passport, and far less frequent than the cycles required for the renewal of driver licenses or voter registration in many jurisdictions.

The Impact on the Employer Sanctions Program

One commenter asserted that the proposed rule would penalize an employer who had mistakenly enrolled an alien who had shown fraudulent documents. He did not, however, explain how the replacement program would produce such a result. On the contrary, the rule will relieve employers of the burden of sifting through a multiplicity of different Alien Registration Receipt Cards. The preamble to the proposed rule explicitly exempted employers from liability for verifying the authenticity of Alien Registration Receipt Cards accepted in good faith from employees hired prior to the effective date of this rule.

The Impact on Naturalization Applications

Two commenters noted that permanent resident aliens who opt to defer applying for a replacement Form I–551 in order to pursue naturalization risk a period during which their status

might be considered "uncertain" if their naturalization application is not approved before their current "green card" expires.

If the alien applies for naturalization in a timely manner, such a risk would be minimal given the one-year grace period before the termination of the validity of all Alien Registration Receipt Cards other than the Form I–551. Should an alien's application not be adjudicated before the expiration date of his or her Alien Registration Receipt Card, there will be no uncertainty in the alien's status—he or she will remain a lawful permanent resident alien. The only change will be that he or she will no longer have valid evidence of that status. In the event that the naturalization application of a lawful permanent resident alien subject to this rule is denied, that alien may still apply for a replacement Form I–551 card at any time.

In-Person Filing versus Filing by Mail

Citing various inconveniences associated with in-person filing of the Form I–90 replacement application for some of the affected resident aliens, several commenters advocated that they be given the option of filing the Form I–90 by mail. According to two commenters these burdens include lengthy travel into cities in which Service offices are located, where they face the prospect of urban crime. In some cases, physical frailty was also mentioned as a consideration. In support of their position, several commenters cited current Service regulations which allow mail-in filings of Form I–131 (Application for Travel Document) and Form I–90 by certain special agricultural workers (SAW's). One commenter proposed an alternative option of mailing or taking the application to a local office of a member of Congress.

Filing of Form I–90 applications by mail to obtain the new resident card would be contrary to Service policy and the purposes of this rule. Such an application must be accompanied by the Form I–89, Card Data Collection Form, which is a security document used to create the new I–551 Alien Registration Receipt Card; on it the applicants place their signature, fingerprint, and photograph, all in the presence of a Service employee who confirms that the applicant is the same person to whom those identifiers pertain. To permit the filing of these identifying features without a personal appearance by the applicant would expose the process to the very fraud and abuse which the replacement program is designed to curb.

The suggested example of Form I–90 applications which may be filed by mail under the SAW program is a misleading one, since those applicants are still required to appear in person at some point in order to execute the Form I–89. Similarly, aliens who have obtained a travel document through a Form I–131 application by mail are normally also called on to show an immigration inspector their Alien Registration Receipt Card when they seek readmission to the United States at a port of entry.

Under 8 CFR 264.5(a) of this rule, aliens whose advanced age or physical disability make it impossible for them to travel to the Service office having jurisdiction over their place of residence may be granted a waiver of the photograph, in person or I–89 execution requirements. Moreover, such persons may arrange for the assistance of the Service's outreach personnel in the processing of their Form I–90 application at or near their homes.

As to the proposal to allow filing of Form I–90 applications with local Congressional offices, the Service has no authority to delegate its regulatory responsibilities to the Legislative branch. Moreover, the Service lacks any means to impose secure and uniform filing procedures on independent Congressional offices.

Publicity and Grace Period

Several commenters asserted that under this alien registration receipt card replacement program the time interval allowed before invalidation of the old cards should be longer than one year; they generally felt that more publicity is needed to ensure adequate notice and information. Some cited a lack of telephone access to Service representatives to answer inquiries at some local offices.

The one-year period provided for compliance with this rule is a liberal allowance; no commenter has shown why it should be considered inadequate. Many persons affected by this rule are evidently aware of its requirements, having already responded to the previous program notice of June 1992. The Service intends to widely publicize the requirements of the new alien registration receipt card replacement program. The Service will also engage in an extensive outreach program which may include processing at remote locations to ensure that aliens have the opportunity to comply with this rule.

Other Issues

Since the publication of the proposed rule, some areas requiring correction or clarification have arisen. The May 28, 1993 proposed rule inadvertently proposed to remove certain sections which should have been retained and/or redesignated. The final rule corrects these errors. First, the reference to Form "I–90" in 8 CFR 264.1(b) should not be removed. In the final rule, a pending I–90 application shall be considered temporary evidence of registration. Second, 8 CFR 264.1(c)(1) regarding replacement of registration by nonimmigrants should not be removed. Accordingly, the final rule retains paragraph (c)(1), removes paragraph (c)(2), and redesignates paragraph (c)(3) as (c)(2) in § 264.1. Instructions for the filing and processing of Form I–90 applications, formerly contained in 8 CFR 264.1, paragraphs (c)(2)(iii) through (c)(2)(vi) and inadvertently omitted from section 264.5 of the proposed rule, are restored in paragraph 264.5 (e) and (f) of the final rule.

The last sentence of 8 CFR 264.5(a) of the proposed rule is removed because it duplicates information contained in 8 CFR 264.5(e)(3)(ii).

The final rule clarifies any potential confusion concerning the meaning of the second sentence of 8 CFR 264.5(c) regarding other filings by permanent residents. By revising paragraph (c) into two paragraphs, (c)(1) and (c)(2), the final rule makes it clear that (1) a permanent resident must apply on the Form I–90 to replace an obsolete edition of the alien registration card, and that (2) a permanent resident alien may seek to replace any edition of the alien registration card for any other reason not specified in the regulation (e.g., the photograph on an alien's current alien registration receipt card no longer resembles that of the bearer). The reference in 8 CFR 211.1(b)(3) to compliance with the requirements of 8 CFR 264.1(c) has been amended in accordance with the changes of this final rule to require compliance with 8 CFR 264.5.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers for these

collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 211

Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 223

Aliens, Students, Surety bonds.

8 CFR Part 223a

Immigration, Refugees, Reporting and recordkeeping requirements.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 251

Air carriers, Airmen, Aliens, Maritime carriers, Reporting and recordkeeping requirements, Seamen.

8 CFR Part 252

Air carriers, Airmen, Aliens, Maritime carriers, Reporting and recordkeeping requirements, Seamen.

8 CFR Part 264

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

8 CFR Part 316

Citizenship and naturalization, International Organizations, Reporting and recordkeeping requirements.

8 CFR Part 334

Citizenship and naturalization, International Organizations, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 204—IMMIGRANT PETITIONS

1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186A, 1255; 8 CFR part 2.

2. Section 204.1 is amended by revising paragraph (g)(1)(vii) to read as follows:

§ 204.1 General information about relative petitions.

* * * * *

(g) * * *

(1) * * *

(vii) The petitioner's Form I–551, Alien Registration Receipt Card, or other proof given by the Service as evidence of lawful permanent residence. Photocopies of Form I–551 or of a Certificate of Naturalization or Certificate of Citizenship may be submitted as evidence of status as a lawfully permanent resident or United States citizen, respectively.

* * * * *

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

3. The authority citation for part 211 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257.

§ 211.1 [Amended]

4. In § 211.1, paragraph (b)(1) is amended in the heading by removing the words "I–151 or".

5. Section 211.1 is amended by revising paragraph (b)(3) to read as follows:

§ 211.1 Visas.

* * * * *

(b) * * *

(3) *Waiver of visas.* An immigrant alien returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad who satisfies the district director in charge of the port of entry that there is good cause for his or her failure to present an immigrant visa, Form I–551, or reentry permit may, upon application on Form I–193, Application for Waiver of Passport and/or Visa, be granted a waiver of that requirement. A resident alien who is returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad not exceeding one year and who cannot present Form I–551 because of its loss must file a Form I–90, Application to Replace Alien Registration Card, in duplicate, with the district director having jurisdiction over the port of entry who may in his or her discretion grant or deny without appeal a waiver of the required immigrant visa, reentry permit, or Form I–551. Filing the Form I–90 in such a case will serve not only as an application for replacement but also as an application for waiver of passport and visa, without the obligation to file a separate Form I–193. An alien who is granted a waiver through a filing of Form I–90 under this section shall, after admission into the United States, comply with the requirements of 8 CFR 264.5.

* * * * *

6. In § 211.1, paragraph (b)(4) is amended by removing the term "I–151/".

7. In § 211.1, paragraph (c) is amended by removing the term "I–151 or".

§ 211.3 [Amended]

8. Section 211.3 is amended by removing the term "I–151 or" from the section heading and wherever it appears in that section.

§ 211.5 [Amended]

9. In § 211.5, paragraph (a) is amended by removing the term "I–151," from the third sentence.

10. In § 211.5, paragraph (b) is amended by removing the term "I–151," from the last sentence.

PART 223—REENTRY PERMITS

11. The authority citation for part 223 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1186a, 1203.

§ 223.1 [Amended]

12. Section 223.1 is amended by revising the phrase "(Form I–151 or I–551, AR–3, or AR–103)" in the second sentence to read: "(Form I–551)"; and by removing the term "I–151 or" from the third and fourth sentences.

PART 223a—REFUGEE TRAVEL DOCUMENT

13. The authority citation for part 223a is revised to read as follows:

Authority: 8 U.S.C. 1103, 1181, 1182, 1186a, 1225, 1226, 1227, 1251, and Protocol Relating to the Status of Refugees (TIAS 6577).

§ 223a.4 [Amended]

14. Section 223a.4 is amended by removing the term "Form I–151 or" from the second sentence.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

15. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252.

§ 235.9 [Amended]

16. Section 235.9 is amended in paragraph (b)(1) by removing the term "Form I–151 or" from the second sentence.

PART 251—ARRIVAL MANIFESTS AND LISTS: SUPPORTING DOCUMENTS

17. The authority citation for part 251 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1221, 1281, 1282.

§ 251.1 [Amended]

18. In § 251.1, paragraph (c)(1) is amended by removing the term "I–151 or".

19. In § 251.1, paragraph (c)(3) is amended by:

a. Revising the phrase "to him" to read: "to him or her";

b. Revising the phrase "on his" to read: "on his or her"; and by

c. Revising the phrase "which he" to read: "which he or she".

PART 252—LANDING OF ALIEN CREWMEN

20. The authority citation for part 252 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1184, 1258, 1281, 1282.

21. In § 252.1, paragraph (b)(1) is amended by revising the term "I–151" to read: "I–551".

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

22. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1301–1305.

§ 264.1 [Amended]

23. In § 264.1, paragraph (b) is amended by removing the Form Number and Class references for forms "I–102", "I–174", and "I–695" from the listing of forms.

24. Section 264.1 is amended by removing paragraph (c)(2); and redesignating paragraph (c)(3) as (c)(2).

§ 264.2 [Amended]

25. Section 264.2 is amended by:

a. Removing from the first sentence of paragraphs (c)(1)(vii) and (c)(2)(ix) the phrase, "to Form I–90" and inserting in lieu thereof "on the application form".

b. Revising the section heading and paragraphs (c)(1)(i) and (c)(2)(i) to read as follows:

§ 264.2 Application for creation of record of permanent residence.

* * * * *

(c) * * *

(1) * * *

(i) A completed Form I–485, with the fee required in 8 CFR 103.7(b)(1) and any initial evidence required on the application form and in this section.

* * * * *

(2) * * *

(i) A completed Form I–485, with the fee required in 8 CFR 103.7(b)(1) and any initial evidence required in this application form and in this section.

* * * * *

26. Section 264.5 is added to read as follows:

§ 264.5 Application for a replacement Alien Registration Card.

(a) *General.* An application for a replacement alien registration card must be filed on Form I–90 with the initial evidence required on the application form and with the fee specified in 8 CFR 103.7(b)(1); except that no fee is required for an application filed pursuant to paragraphs (b)(7) through (b)(9) of this section, or paragraphs (d)(2) or (d)(4) of this section.

(b) *Permanent residents required to file.* A permanent resident shall apply for a replacement alien registration card:

(1) When the previous card has been lost, stolen, or destroyed;

(2) When the existing card will be expiring within six months;

(3) When the existing card has been mutilated;

(4) When the bearer's name or other biographic information has been legally changed since issuance of the existing card;

(5) When the applicant is taking up actual residence in the United States after having been a commuter, or is a permanent resident taking up commuter status;

(6) When the applicant has been automatically converted to permanent resident status;

(7) When the previous card was issued but never received;

(8) When the bearer of the card reaches the age of 14 years, unless the existing card will expire prior to the bearer's 16th birthday; or

(9) If the existing card bears incorrect data on account of Service error.

(c) *Other filings by a permanent resident.*

(1) A permanent resident shall apply on Form I–90 to replace a prior edition of the alien registration card issued on Form AR–3, AR–103, or I–151.

(2) A permanent resident may apply on Form I–90 to replace any edition of the alien registration card for any other reason not specified in paragraphs (b) and (c)(1) of this section.

(d) *Conditional permanent residents required to file.* A conditional permanent resident whose card is expiring shall apply to remove the conditions on residence on Form I–751. A conditional permanent resident shall apply on Form I–90:

(1) To replace a card that was lost, stolen, or destroyed;

(2) To replace a card that was issued but never received;

(3) Where the prior card has been mutilated;

(4) Where the prior card is incorrect on account of Service error; or

(5) Where his or her name or other biographic data has changed since the card was issued.

(e) *Application process*—(1) *Accompanying documents*—(i) *Photographs.* An I–90 application must be filed with two color photographs meeting the specifications on the application form.

(ii) *Prior evidence of alien registration.* An I–90 application filed under paragraph (b) (2), (3), (4), (5), (8), or (9) of this section must include the prior Alien Registration Receipt Card or other evidence of permanent residence or commuter status.

(iii) *Evidence of name or other biographic change.* An I–90 application filed under paragraph (b)(4) of this section must include the order, issued by a court of competent jurisdiction, changing the applicant's name, or with the applicant's marriage certificate. An application to change other biographic data on a card must include documentary evidence conclusively establishing the new data.

(iv) *Fingerprint chart.* An I–90 application filed under paragraph (b)(8) of this section must be filed with a completed Form FD–258 Fingerprint Chart.

(2) *Filing*—(i) *Where to file.* An I–90 application shall be filed by the applicant, in person, at the Service office that has jurisdiction over his or her place of residence, except for those applicants filing an I–90 pursuant to paragraph (b)(6) of this section, who shall file the application with the Director of the Service Center having jurisdiction over his or her place of residence. If the applicant's place of residence is outside the United States and there is no Service office in that foreign country, the application shall be filed by the applicant, in person, at the American Consulate with jurisdiction over his or her place of residence.

(ii) *Data collection form.* An applicant must execute the signature and fingerprint blocks of Form I–89, Data Collection Form, at a Service office when filing an I–90 application.

(3) *Miscellaneous*—(i) *Interview.* An applicant may be required to appear before an immigration officer or consular officer and be interviewed under oath concerning eligibility.

(ii) *Waiver of requirements.* The Service may waive the photograph, in person filing, and I–89 execution requirements of this section in cases of

confinement due to advanced age or physical infirmity.

(f) *Decision.* If an application is denied, the applicant shall be notified of the reasons for denial. No appeal shall lie from this decision.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

27. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

28. Section 274a.2 is amended by revising paragraph (b)(1)(v)(A)(5) to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *

(b) * * *

(1) * * *

(v) * * *

(A) * * *

(5) Alien Registration Receipt Card, INS Form I–551;

* * * * *

§ 274a.12 [Amended]

29. In § 274a.12, paragraph (a)(1) is amended by removing the term "Form I–151 or" from the first sentence; and by revising the phrase "the individual's work authorization" to read: "the bearer's work authorization".

PART 299—IMMIGRATION FORMS

30. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

§ 229.1 [Amended]

31. Section 299.1 is amended by removing the entry for Form I–151 from the listing of forms.

PART 316—GENERAL REQUIREMENTS FOR NATURALIZATION

32. The authority citation for part 316 continues to read as follows:

Authority: 8 U.S.C. 1103, 1181, 1182, 1443, 1447, 8 CFR part 2.1.

§ 316.4 [Amended]

33. In § 316.4, paragraph (a)(2) is amended by revising the term, "Forms I–551, or I–151" to read: "Form I–551".

PART 334—APPLICATION FOR NATURALIZATION

34. The authority citation for part 334 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443.

§ 334.2 [Amended]

35. In § 334.2, paragraph (a) is amended by removing the term "or Form I–151" from the last sentence.

Dated: September 10, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93–22890 Filed 9–15–93; 11:51 am]

BILLING CODE 4410–01–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 613, 614, 620, 621, and 627

RIN 3052–AB32

Organization; Eligibility and Scope of Financing; Loan Policies and Operations; Disclosure to Shareholders; Accounting and Reporting Requirements; Title V Conservators and Receivers

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts final regulations on accounting for high-risk assets. The final regulations update existing accounting and reporting requirements, promote consistency with industry practices pertaining to problem loan accounting and reporting issues, and ensure that the regulatory requirements and standards remain consistent with those of generally accepted accounting principles (GAAP). Among other changes, the final regulations revise the loan performance categories to eliminate the term "nonperforming" and the categories of "other high-risk loans" and "other restructured and reduced rate loans." The definitions of the revised loan performance categories clarify the required reporting treatment of problem loans to improve the utility of disclosures to shareholders and the FCA and obviate potential conflicting interpretations of problem loan classification among reporting institutions. Subpart C of the final regulation contains a "sunset" type of provision that states that Farm Credit System (System) institutions will no longer have to comply with this subpart once they implement the provisions of Statement of Financial Accounting Standards (SFAS) No. 114, issued by the Financial and Accounting Standards Board (FASB) [1]. Technical and conforming changes are made throughout the agency's regulations.

EFFECTIVE DATE: These final regulations shall become effective on December 31, 1993, or upon the expiration of 30 days after publication, during which either or both Houses of Congress are in session, whichever is later. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

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or

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SUPPLEMENTARY INFORMATION:

I. Background

On March 13, 1986, the FCA adopted its current regulations on Accounting and Reporting Requirements, 12 CFR part 621 (See 51 FR 8661). These regulations were developed in large part to set requirements and standards for institutions to use in accounting for high-risk assets and disclosing loan performance characteristics.

Part 621 contained specific standards for nonperforming loan categories, which include nonaccrual, formally restructured, other restructured and reduced rate, and other high-risk loans. The impetus for using the nonperforming designation and various nonperforming categories came from guidelines issued by the Securities and Exchange Commission (SEC) in the early 1980's through their Guide 3—"Statistical Disclosure by Bank Holding Companies." The FCA used the terms "nonperforming loans" and "nonperforming assets" (nonperforming loans and acquired property) in part 621 because the terms were widely used by the financial services industry, and their use by the System would promote consistency in reporting and financial disclosures.

Since FCA's regulations were issued in 1986, the SEC has revised Guide 3. Diverse problem loan accounting practices have emerged within the financial services industry due, at least partially, to varying regulatory interpretations of problem loan accounting. The FCA has attempted to

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[1] Statement of Financial Accounting Standards No. 114, *Accounting by Creditors for Impairment of a Loan*, an amendment of FASB Statement Nos. 5 and 15, dated May 1993.

develop interpretive guidance for problem loan accounting that would achieve consistency and uniformity in reporting among System institutions and comparability with the financial services industry. However, the FCA believes that further regulatory guidance is necessary to maintain consistency with the latest industry practices.

A. History of the Current Rulemaking

Prior to developing a revised approach to problem loan accounting in part 621, the FCA sought public comment through an advance notice of proposed rulemaking (ANPRM). See 57 FR 58997 (December 14, 1992). In general, all commenters supported FCA's efforts to update and revise the accounting and reporting requirements relating to reporting and disclosure of problem loan assets. The FCA considered the 22 comment letters received in response to the ANPRM in developing a proposed rule, which was published for public comment in the **Federal Register** (58 FR 32071) on June 8, 1993.

B. The Proposed Regulation

To promote comparability of financial disclosures of problem loans by System institutions with similar disclosures by other financial institutions prepared in accordance with SEC's revised Guide 3 and other regulatory guidance, the FCA proposed to amend part 621 as it pertained to performance categories and related issues. The proposed amendments developed specific standards and reporting requirements for certain loan performance categories, including nonaccrual, formally restructured, and loans 90 days past due still accruing interest. The proposed regulations also eliminated the terms "nonperforming loans and/or assets" and instead referred to one of three "performance" categories. Finally, the proposed regulations clarified issues regarding the rule of aggregation, application of payments on nonaccrual loans, criteria for returning loans to accrual status, and accounting for the allowance for loan losses and chargeoffs.

II. General Comments and Accounting Developments

A total of 21 comment letters were received on the Accounting and Reporting regulations at 12 CFR part 621. Comments were received from the Farm Credit Council (FCC), Price Waterhouse (PW), the American Institute of Certified Public Accountants (AICPA), the Federal Agricultural Mortgage Corporation, the Baltimore and Western Farm Credit banks (FCBs), 10 direct lender associations (ACAs) in the Baltimore district, and two ACAs in the Columbia district. No other written comments were received from any of the associations, although the Western associations adopted a resolution endorsing their bank's letter as a group. On July 21, 1993, FCA staff met with representatives of the System and PW, who elaborated on their written comments discussed below.

In addition, the FCA Board and senior management held six "FCA/Association Meetings" in early 1993 [2]. During the course of these meetings, association board chairmen and chief executive officers (CEOs) brought up a number of concerns regarding the ANPRM and anticipated proposed rule on high-risk asset accounting issues.

A. General Comments

All commenters supported elimination of the nonperforming designation and the performance categories of "Other High Risk" and "Other Restructured or Reduced Rate," and felt these were very positive changes that would result in disclosure of loan information consistent with other financial institutions. Other than technical changes and/or clarifications, which are discussed in the section-by-section analysis below, there were two prevalent concerns addressed in the comment letters.

The first concern was that placing specific accounting and reporting guidelines on problem loans in the regulations may result in Regulatory Accounting Practices (RAP) that are different from GAAP. These commenters asserted that GAAP for high-risk assets is a rapidly changing environment, as is evidenced by recently adopted SFAS No. 114, which amends FASB Statement Nos. 5 and 15. (See discussion, *infra*.) They argued that since amending regulations might take a considerable amount of time, a change in GAAP could result in non-GAAP regulations until the regulations can be revised. The commenters further suggested that if a RAP situation results, in the worst case, the System's external auditors would render a qualified opinion on the System's financial statements.

The second concern, expressed primarily by the FCC and the banks, was that the specificity of the proposed rules would limit the System institutions' ability to apply judgment in the accounting for high-risk assets. To provide more flexibility, the commenters urged the FCA to use less formal agency issuances such as bookletters, examiner guidance, or call report instructions to provide detailed accounting and reporting guidance and interpretations of GAAP rather than regulations. In this regard, the FCC, supported by other System commenters, recommended that the FCA eliminate all or most of subpart C (§§ 621.6 through 621.10) from the proposed regulations, and issue examination guidance or interpretations of GAAP in a bookletter format, similar to the regulatory approach of the Office of the Comptroller of the Currency (OCC). The FCC felt a bookletter format was preferable to a regulation because it allows for more judgment to be used by an institution, in special circumstances.

While System institutions must prepare and issue financial statements in accordance with GAAP, circumstances could occur in the future that would cause the FCA to require disclosure or reporting in addition to what is required under GAAP. However, such an action would only be taken after appropriate analysis of all the facts and circumstances and would be based on an evaluation of what is needed for effective regulation of System institutions to ensure their safe and sound operation.

The application of GAAP to a particular area is not always well defined. Until recently, GAAP has not always provided specific or extensive authoritative guidance in the area of high-risk asset accounting and reporting. The FCA continues to believe that, while by no means the only method, promulgating regulations in areas not specifically addressed by GAAP can be an effective method of promoting consistent accounting and reporting by System institutions. In this regard, the FCA believes that the final regulations will improve the consistency of System financial disclosures and comparability with the financial services industry's current approach to accounting and reporting for high-risk assets. If, however, GAAP subsequently provides further guidance and direction in an area where FCA regulations have been promulgated, it is important for the FCA to be responsive to the changes in GAAP. The FCA believes that it can act in a timely fashion to address any inconsistencies between its regulations and GAAP, should the need arise.

Three commenters suggested that the FCA convene a negotiated rulemaking to develop high-risk accounting regulations. The FCA believes that

[2] FCA/Association meetings were held February 23rd in Kansas City, Missouri; February 25th in Dallas, Texas; March 16th in Columbus, Ohio; March 18th in Atlanta, Georgia; March 23rd in Sacramento, California; and March 25th in Denver, Colorado.

negotiated rulemaking, while a useful adjunct to the conventional rulemaking procedure in some situations, is not appropriate at this stage of the rulemaking process for this regulation. From the comments received in response to the ANPRM and the proposed rule, as well as from comments during meetings with System institutions, the FCA has received a broad range of views concerning high-risk asset accounting issues. It is unlikely that a negotiated rulemaking held this late in the high-risk asset accounting rulemaking process would result in more complete information for the FCA's use in formulating these accounting regulations. Of course, the decision not to use negotiated rulemaking in this situation is in no way intended to discourage ongoing public participation in the formulation of regulatory policy in the future regarding accounting treatment of high-risk assets.

B. Accounting Developments

The issuance of SFAS No. 114 will significantly change high-risk asset accounting in the financial services industry. Subsequent to FCA publication of the proposed rule to amend 12 CFR part 621, the FASB issued SFAS No. 114 addressing accounting for impaired loans. This new accounting standard deals with loan valuation and income reporting issues that will have a significant impact on the requirements of 12 CFR part 621. SFAS No. 114 provides guidance and direction in the area of establishing and maintaining a valuation allowance on specifically identified impaired loans. This statement will affect the final regulation adopted herein in the following ways.

First and most importantly, SFAS No. 114 introduces the concept of an "impaired" loan and provides specific requirements for the recognition, measurement, accounting, and disclosure of impaired loans. This brings into question how the concept of nonaccrual loans and related areas (i.e., disclosure, income recognition, and reinstatement criteria on nonaccrual loans) will fit into the loan impairment framework.

Second, this statement amends SFAS No. 15, Accounting by Debtors and Creditors for Troubled Debt Restructurings, by requiring a creditor to measure future loans that are restructured in a troubled debt restructuring (that involves a modification of terms) in accordance with SFAS No. 114. As a result, this may change the performance category for restructured loans contained in the regulation as now adopted. SFAS No. 114 also revises the accounting for in-substance foreclosures by requiring that a collateral-dependent loan be classified as acquired property only if the lender has taken possession of the collateral. SFAS No. 114 is effective for fiscal years beginning after December 15, 1994, with earlier application allowed.

III. Adoption of Final Regulation With Sunset Provision

When System institutions implement SFAS No. 114, much of 12 CFR part 621, subpart C, Loan Performance and Valuation Assessment, as now adopted, will be outdated or in conflict with the new standard. However, many implementation issues concerning SFAS No. 114 have yet to be resolved. As a result, several efforts are currently underway by the FCA, System institutions, other financial institution regulators, and the FASB to address these issues. After considering various options, the FCA has determined that the most appropriate course of action at this time is to adopt as a final rule 12 CFR part 621 largely as proposed, with certain technical changes. (See the section-by-section analysis, *infra*).

In response to the impending implementation of SFAS No. 114, the FCA is including a sunset type of provision in § 621.11 of subpart C. Section 621.11 provides that the requirements of subpart C will no longer apply to a System institution when it implements the provisions of SFAS No. 114. In conjunction with this change, § 621.5 on Accounting for the allowance for loan losses and chargeoffs, has been moved from proposed subpart C to subpart B of the final regulation. The FCA believes that this approach will come closest to achieving the objectives of enhancing consistency within the System, comparability with the financial services industry, and accommodating the changing GAAP environment. Moreover, this change will allow the FCA sufficient time to fully assess the impact of SFAS No. 114 and to provide any necessary additional guidance in the area of high-risk asset accounting.

IV. Section-by-Section Discussion of Changes

A. Subpart A—Purpose and Definitions

Commenters suggested that two of the definitions contained in proposed § 621.2 be revised slightly to reflect current GAAP. The FCA agrees with these recommended changes and, as a result, has revised the definition of "material" to be consistent with the one contained in Statement of Financial Accounting Concepts No. 2, Qualitative Characteristics of Accounting Information.

Similarly, the word "holding" has been deleted from the definition for "net realizable value" in order to be consistent with the current GAAP position that holding costs are period costs. Finally, a definition for "recorded investment" has been added to the definition section to accommodate the substitution of the term "recorded investment" for the term "principal" in § 621.8.

B. Subpart B—General Rules

Proposed § 621.5, Accounting for the allowance for loan losses and chargeoffs, has been moved from subpart C to subpart B to prevent its elimination as subpart C is phased out with the implementation of SFAS No. 114. Section 621.5 addresses general requirements for maintaining an allowance for losses in accordance with SFAS No. 5, Accounting for Contingencies. These general requirements are not likely to be affected by SFAS No. 114. Similarly, requirements for recording chargeoffs are not addressed by SFAS No. 114, and will, therefore, remain in § 621.5. However, § 621.5 (d)(1) and (d)(2), which deals with earned but uncollected interest income in current and prior fiscal years, may be affected by the implementation of SFAS No. 114 and have, therefore, been added to § 621.8.

C. Subpart C—Loan Performance and Valuation Assessment

The final regulation has been amended to accommodate the implementation of SFAS No. 114 by System institutions whether they choose early implementation or choose to implement on the mandatory date set by the FASB, i.e., the first fiscal year beginning after December 15, 1994. Therefore, § 621.11, Exceptions, has been added to the final regulation which states that the requirements of subpart C will not apply to any institution after the date upon which SFAS No. 114 becomes mandatory with respect to such institution, and shall not apply to any institution that implements the provisions of SFAS No. 114 before the mandatory implementation date.

In the future, the FCA may choose to provide guidance and direction on the implementation of SFAS No. 114, or set new disclosures, accounting and reporting requirements in any number of different formats, to include but not be limited to new regulations or bookletters. In the absence of further regulatory direction, System institutions

must continue to prepare their financial statements in accordance with GAAP.

1. Section 621.6—Performance Categories and Other Property Owned

The public comment letters unanimously supported elimination of "other high risk" and "other restructured and reduced rate" loan performance categories and the term "nonperforming," and encouraged FCA to implement these changes as soon as possible. The same commenters also urged the FCA to eliminate § 621.6, and utilize other less formal means, such as bookletters, to communicate accounting guidelines so as to permit more timely responses to accounting industry changes. The FCA declines this suggestion and adopts § 621.6, generally as proposed, for the reasons stated above.

The FCC stated that judgment is a crucial component of loan performance and high-risk asset accounting determinations and urged the FCA to include a comment in the regulation on the use of judgment in determining the treatment and classification of high-risk assets. The FCA agrees that judgment is crucial to applying loan performance definitions and applying accounting treatment to these assets, but declines to insert such language in the regulation because this concept is already implicit in the final regulation. Whenever decisions are made on high-risk asset accounting issues, the FCA fully expects institution personnel to fully consider all facts and circumstances and to thoroughly document their decisions.

The FCC commented that the proposed regulations require all loans to be categorized as described in proposed § 621.6, but do not provide a category for loans that are performing as agreed. The FCA agrees with the commenter's concern that *all* assets are not necessarily categorized as described in § 621.6, and the final regulation language is amended to clarify that it is high-risk assets that should be assigned the various performance categories.

The FCC suggested that the word "collection" be substituted for the word "payment" in proposed § 621.6(a)(1) to clarify that collection of the principal and interest could occur over the term of the loan and need not occur on a specified contractual payment date. The FCA accepts this clarifying point and has revised the regulation language to read, "Collection of any amount of outstanding principal and all past and future interest accruals, considered over the full term of the asset is not expected." The FCA also reinserted the phrase "all past and future" before the words "interest accruals" to clarify that no change from the existing regulations is intended.

The commenters were concerned that if § 621.6(a)(1) was narrowly interpreted, loans could be classified nonaccrual when a scheduled contractual payment of principal or interest is not expected to be made in accordance with the payment schedule. To avoid an inappropriate GAAP treatment, the commenters suggested modifying the regulatory language slightly. FCA did not intend for the regulation to be so narrowly interpreted, and considers it unlikely that the final regulation, which uses the same language as the existing regulation, would be so narrowly interpreted by an institution as to cause an inconsistency with GAAP. Consequently, the suggestion was not accepted.

Commenters suggested that misunderstandings could be reduced by adding language to proposed § 621.6(a)(2) to exclude loans with chargeoffs associated with a troubled debt restructuring from the nonaccrual criteria. In response to this comment, the FCA added language to exclude those loans with prior chargeoffs that were taken as part of a formal restructuring of the loan. Such loans will not necessarily meet the criteria for nonaccrual unless they also meet one of the other criteria.

One commenter recommended that proposed § 621.6(a)(3)(ii) be modified to explicitly indicate that legal action taken to collect a loan allows the loan to be considered "in process of collection," provided: (a) The loan is adequately secured (either by tangible collateral and/or an acceptable guarantor); and (b) collection is proceeding in due course, and is expected to result in full payment or a restoration of the loan to a current status within 180 days of original maturity, as is required by the Federal Reserve System Guidelines. The FCA agrees with the Federal Reserve's position but determined additional language was not necessary because this criteria is already covered in other portions of this section. The final regulation requires that loans in bankruptcy or subject to other legal action meet all the criteria for "in process of collection." Being subject to a pending legal proceeding is not, in itself, sufficient to qualify a loan as "in process of collection."

One commenter proposed that consumer loans and loans secured by 1 to 4 family residential properties should be exempted from nonaccrual requirements in § 621.6(a)(3) to be consistent with Federal Reserve System Guidelines. In fact, the Federal Reserve System Guidelines state that "Consumer loans and loans secured by 1 to 4 family residential properties on which principal or interest is due and unpaid for 90 days or more are not required to be placed in nonaccrual status. Nevertheless, such loans should be subject to other alternative methods of evaluation to assure that the bank's net income is not materially overstated." The FCA believes that few System borrowers would actually fall into this category. Moreover, all System loans should be subject to the same regulatory guidelines in order to achieve consistency in reporting and disclosing high-risk assets.

Also, with respect to § 621.6(a)(3)(ii), the FCC asserted that the definition of a loan in process of collection requires that "There must be documented evidence that collection in full of amounts due and unpaid is expected within a reasonable time period, not to exceed 90 days, or a maximum of 180 days from the date that payment was due." is too specific and restrictive. The FCC stated that this requirement would not permit management to use sound judgment in assessing whether a loan is collectible or should be classified as nonaccrual. They further maintained that other financial regulatory agencies have no similarly restrictive written guidelines.

The FCA has not deleted the "reasonable time period" requirement in the final regulation. The FCA believes that the specificity of the 180-day rule is needed to achieve uniformity in reporting and, therefore, a definition for a reasonable time period is essential. FCA believes that, generally, if no loan payments have been received within 180 days, it creates doubt as to collectibility in full of all principal and interest. Therefore, any loan that is over 180 days delinquent is considered to be in severe default, and § 621.6(a)(3)(ii) requires it to be classified nonaccrual. This is not inconsistent with the OCC guidelines for national banks, which define "in process of collection" as a period of time not to exceed 30 days, with an exception if payment is expected in the immediate future.

In further support of the FCC's recommendation to delete the definition of a reasonable time period, the FCC also contends that, under the borrower rights provisions of the Farm Credit Act of 1971, as amended (the Act), it may take longer than 180 days in certain circumstances to collect a particular payment even though the principal and interest on that loan are fully collectible. In response, the FCA notes that while the borrower rights provisions relate primarily to credit administration and loan management decisions on problem

loans, accounting practices should measure and reflect proper credit administration practices and not dictate them. The borrower's right to restructure a loan does not require the institution to do anything that would change the accounting treatment of such a loan, unless such loan became a troubled debt restructuring under SFAS No. 15. The institution should not decide to restructure solely to prevent a loan from being categorized as nonaccrual, but should also consider restructuring as a means to achieve a reasonable repayment plan with the borrower.

Commenters also suggested deleting the reference to 90 days in proposed § 621.6(a)(3)(ii). The FCA has accepted this recommendation due to the potential ambiguity and misunderstanding that may result from having two numbers apply to the same requirement. The final regulation is amended to read, "There must be documented evidence that collection in full of amounts due and unpaid is expected to occur within a reasonable time period, not to exceed 180 days from the date that payment was due."

In proposed § 621.6(a)(3)(ii), the commenters suggested inserting the language "or other credible documentation of the borrower's intention" between "borrower's agreement" and "to complete." The FCA believes this change would allow institutions to circumvent the credit administration practice of obtaining the borrower's acknowledgement and commitment to completing certain actions to repay the loan in full or bring the loan to current status. The commitment to repay a loan is strongest with a written agreement and is essential; therefore, the FCA declines to change the proposed regulation language.

In the proposed regulations, the FCA had deleted proposed § 621.6(d)(2), which describes collateral for loans which have been "in-substance foreclosed" and transferred to other property owned, with recognition of appropriate losses. This term has become obsolete as evolving GAAP maintains that a loan for which foreclosure is probable should continue to be accounted for as a loan rather than being reclassified as an acquired property. This change is consistent with the policies of other financial industry regulators who eliminated the term in their recent "Interagency Policy Statement [3]."

[3] Joint Statement issued by the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Reserve Board, and Office of Thrift Supervision on June 10, 1993.

Finally, the FCC believes it is important to include in the final rule, the "di minimus" concept relative to a loan's past-due status. The FCC requested the same language, as in the existing regulation, be added to § 621.6(c)(2). The FCA agrees with the concept of the "di minimus" level in that immaterial amounts necessary to bring a loan to current status should not automatically cause the loan to be considered contractually past due. However, the FCA also believes that System institutions should be able to exercise reasonable judgment in establishing internal policies and procedures to deal with this issue rather than the FCA imposing specific requirements. As a result, the FCA decided not to include this provision in the final regulations.

2. Section 621.7—Rule of Aggregation

While agreeing with FCA's focus on the independent credit risk of a particular loan, the FCC stated that the provisions of proposed § 621.7(a) were too restrictive because they require all loans to a borrower to be designated as "nonaccrual" when one loan is classified nonaccrual. In particular, the FCC objected to the requirement of proposed § 621.7(a)(1) that a loan be fully guaranteed in order for it to be considered an "independent credit risk." In response to this concern, the final regulation substitutes "substantially" for "fully," as suggested by the FCC. The FCA interprets the term "substantial" to mean 80 percent or more guaranteed, provided that all the terms, including interest accrual, of the guarantee are being met.

However, guaranteed loans may still be subject to the provisions of § 621.6, depending on the terms of the guarantee. In general, transfer to nonaccrual status should occur when it becomes clear that the institution will have to rely on the guarantee for repayment. In such cases, accrual of interest should stop at the point in time when the guarantor can no longer be expected to cover interest accruals under the guarantee.

Contrary to the FCC comments on § 621.7(a)(2)(ii), when a nonaccrual loan is cross-collateralized with other loans to the same borrower, each of the loan's repayment (as originally agreed or through liquidation) is interrelated and, therefore, the loans must be classified nonaccrual.

The FCC also suggested eliminating proposed § 621.7(a)(2)(iii) because it was too broad. The FCA has not eliminated this provision because it is intended to provide consistency between the single credit criteria in the lending limit attribution rules (defined in § 614.4358 of this chapter) and the independent credit criteria in the accounting rules.

One commenter requested that the requirement in § 621.7(c) for a re-evaluation of the credit risk be limited to an evaluation of loans by System lenders. This change was not made because the FCA believes that when any of the borrower's loans are determined to be nonaccrual, it is important for the System lender to re-evaluate its credit risk with that borrower.

3. Section 621.8—Application of Payments on Nonaccrual Loans; Income Recognition

The FCC requested several technical changes to this area of the proposed regulation. In § 621.8(a), they suggested replacing the term "principal" with the term "recorded investment" as per GAAP. The FCA agrees that this change is reasonable, and has added a definition of "recorded investment" in § 621.2(j) as well.

Regarding § 621.8(b)(2), the FCC suggested that the regulation be modified to require that payment come from "an expected source of repayment or other reliable sources" instead of "a source of repayment detailed in the plan of collection," as proposed. While the source of payment is not the only indicator of collectibility of the loan, the FCC's recommendation makes the criterion broader and takes some of the emphasis away from the plan to collect the loan. The FCA believes a plan to collect the loan should be dynamic and should be modified according to the circumstances. In order to recognize interest income that comes from unanticipated sources, such as liquidation of collateral, an institution would simply need to update its records to reflect anticipated reliable sources of repayment in the future. Therefore, no change was made to this section in the final regulation.

Commenting on proposed § 621.8(b)(3), the FCC asserted that either curing the delinquency or establishing a repayment pattern to cure the delinquency should be sufficient to keep the loan in cash basis. The FCC also suggested combining paragraphs (b)(3) and (b)(4) together. The FCA has accepted this suggestion and merged the two paragraphs into § 621.8(b)(3) because it provides institutions with additional flexibility in recognizing income on loans where borrowers were making good faith efforts to resolve their problems. In addition, the revision is

consistent with other financial institution regulators' recently issued Interagency Policy Statement on Nonaccrual Loans [4].

4. Section 621.9—Reinstatement to Accrual Status

In proposed § 621.9, the FCC commented that the introductory phrase "When the factors that caused a loan to be transferred to nonaccrual status no longer exist * * *" should not be considered an additional criterion for transferring a loan back to accrual status. The FCA did not intend for this to be a threshold criterion for determining a loan's reinstatement and has deleted this language to clarify the final regulation. However, the factors that caused a loan to be transferred to nonaccrual status should be considered in the overall analysis of whether to transfer a loan back to accrual status and should be evaluated by the institution in determining whether to reinstate a loan to accrual status.

The FCC also commented that the requirement in proposed § 621.9(a) to bring a loan current through repayment of principal and interest in order to transfer it out of nonaccrual status is too stringent, since it would mean that a renewed or reamortized loan would never be eligible for reinstatement. It is not the FCA's position that a renewed or reamortized loan could never be reinstated to accrual status. However, any loan that is in nonaccrual status must show performance (i.e., repayment) in order to be reinstated. Therefore, no change has been made to this paragraph of the final regulation.

Section 621.9(b) of the final regulation requires prior chargeoffs to be recovered (except for troubled debt restructures) before a loan may be reinstated to accrual status. This language was added to clarify the FCA's position on recovering prior chargeoffs, and, in particular, to make it clear that loans restructured under SFAS No. 15 are excluded from this provision.

Proposed § 621.9(b), was renumbered as § 621.9(c), and the phrase "willingness or" was added to the final regulation before "ability" in order to clarify that the borrower must not only be able but also willing to repay the loan.

Finally, the FCC commented that the repayment requirements set forth in proposed § 621.9(c) were too rigid and that some loans may not be considered nonaccrual under GAAP. The FCA does not agree, and has not made any changes to this paragraph other than to renumber it as § 621.9(d). This paragraph was included in the proposed regulations in response to concerns raised during meetings held between the FCA and associations in early 1993. During these meetings, many associations requested that specific repayment requirements be included in the regulations to provide clear criteria for transferring a "performing" loan to accrual status. Any perceived rigidity of this provision is alleviated by the FCA's use of the word "generally" before the sustained performance criteria are listed, and the expectation that institutions will use their judgment in measuring sustained performance. Section 621.9(d) formalizes a prevailing System practice that the FCA finds acceptable, reasonable, and consistent with GAAP.

5. Section 621.10—Monitoring of Performance Categories and Other Property Owned

As proposed, § 621.10 requires institutions to perform a quarterly review of all loans to determine whether they have been appropriately assigned to performance categories, and to determine the collectibility of accrued but uncollected interest income. The FCC agreed that timely review of the portfolio is essential, but did not believe that either a quarterly review, or a review of all loans, is necessary. The FCA believes that a system of internal controls, which includes an adequate loan review process, should provide the institution with the data necessary to evaluate its portfolio. Further, a quarterly review of the high-risk loan portfolio is needed to accurately evaluate performance status as well as the collectibility of accrued but uncollected interest income. Quarterly evaluation is both necessary and prudent to ensure proper disclosure in the quarterly and annual financial statements. The final regulations have been modified to clarify that quarterly review and reporting is only required for high-risk assets, as identified through an institution's internal review process, while annual disclosure in the management discussion and analysis section of the annual report to shareholders is required for the balance of loans which represent "potential credit risks."

D. Subpart D—Report of Condition and Performance

No comments were received on this subpart. No changes have been made to the proposed rule.

E. Subpart E—Reports Relating to Securities Activities of the Federal Agricultural Mortgage Corporation (Farmer Mac)

The FCA only received comments from Farmer Mac on this provision. In general, Farmer Mac viewed the proposed regulations as a significant improvement and clarification of its FCA reporting requirements, but suggested certain modifications for further clarification.

With respect to proposed § 621.20(a), Farmer Mac noted that it might be difficult to make an FCA filing "contemporaneously" with a late-day SEC filing because the FCA is located outside Washington, DC. The FCA accepts Farmer Mac's suggestion that the required copies of SEC filings be allowed to be filed with the FCA on the next business day if necessary.

Proposed § 621.20(b) was designed to require filing with the FCA of offering circulars or other information in securities transactions where Farmer Mac is not required to file with the SEC under the Securities Act of 1933. In its comments, Farmer Mac suggested that, for improved clarity, this provision should distinguish between securities guaranteed by Farmer Mac under each of its two programs. In addition, Farmer Mac pointed out that the proposed language would require no FCA filing for its "Linked Portfolio" transactions, where it (or a subsidiary) is the buyer of guaranteed securities and thus prepares no offering circular or information statement. Further, Farmer Mac expressed concern that proposed § 621.20(b) might require filing of information regarding subordinate securities, which Farmer Mac does not guarantee, and information which is prepared and distributed by third parties rather than Farmer Mac.

To address these concerns, the FCA has revised proposed § 621.20(b) to clarify that filings should be made regarding securities that are either issued or guaranteed by Farmer Mac. Specific reference is made to securities backed by qualified loans under section 8.0(9)(A) and (9)(B) of the Act. With respect to securities backed by qualified loans as defined in section 8.0(9)(B) of the Act (Farmer Mac II securities), Farmer Mac will normally be required to provide summary information on a quarterly basis in conjunction with the report of condition and performance filed pursuant to § 621.11.

In regards to proposed § 621.20, Farmer Mac questioned the extent of its "correspondence" with the SEC and the Treasury Department that must be filed with the FCA. The FCA has clarified

[4] Ibid.

this paragraph to require copies of all substantive correspondence between Farmer Mac and the two agencies relating to securities activities or regulatory compliance. Under paragraph (c), non-substantive transmittal letters accompanying SEC filings, for example, would not be required to be filed with the FCA. On the other hand, the FCA has particular interest in interpretive rulings of the SEC or the Treasury Department that bear on Farmer Mac's ongoing business activities and would expect that such correspondence be filed in the quarter in which it occurred.

V. Conforming Amendments

The conforming amendments are adopted as proposed, except as follows.

The term "nonaccrual" is replaced in §§ 611.1130, 614.4512, 614.4514, 614.4516, 614.4520 and 614.4517 by "noninterest-earning." This synonymous substitution for the term nonaccrual is being made to ensure regulatory continuity in anticipation of the implementation of SFAS No. 114, which will affect the continuing utility of the nonaccrual description.

Those parts of the FCA regulations where the phrase "nonperforming loans" was proposed to be deleted and replaced by the phrase "nonaccrual, formally restructured, and loans 90 days past due still accruing interest" are revised in the final regulation by substituting the phrase "high-risk assets" instead. This substitution was made in order to prevent confusion when the sunset provision of subpart C becomes effective, and the performance categories are no longer defined. This does not imply any change in the FCA's position on the use of performance categories prior to an institution's implementation of SFAS No. 114, and will be clarified when the full effects of SFAS No. 114 are known.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 613

Aged, Agriculture, Banks, banking, Civil rights, Credit, Fair housing, Marital status discrimination, Religious discrimination, Rural areas, Sex discrimination, Signs and symbols.

12 CFR Part 614

Agriculture, Banks, banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 621

Accounting, Agriculture, Banks, banking, Penalties, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 627

Agriculture, Banks, banking, Claims, Rural areas.

For the reasons stated in the preamble, parts 611, 613, 614, 620, 621, and 627 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

1. Part 621 is revised to read as follows:

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

Subpart A—Purpose and Definitions

Sec.
621.1 Purpose and applicability.
621.2 Definitions.

Subpart B—General Rules

621.3 Application of generally accepted accounting principles.
621.4 Audit by qualified public accountant.
621.5 Accounting for the allowance for loan losses and chargeoffs.

Subpart C—Loan Performance and Valuation Assessment

621.6 Performance categories and other property owned.
621.7 Rule of aggregation.
621.8 Application of payments and income recognition on nonaccrual loans.
621.9 Reinstatement to accrual status.
621.10 Monitoring of performance categories and other property owned.
621.11 Exceptions.

Subpart D—Report of Condition and Performance

621.12 Applicability and general instructions.
621.13 Content and standards—general rules.
621.14 Certification of correctness.

Subpart E—Reports Relating to Securities Activities of the Federal Agricultural Mortgage Corporation

621.20 Form and content.

Authority: Secs. 5.17, 8.11 of the Farm Credit Act; 12 U.S.C. 2252, 2279aa–11.

Subpart A—Purpose and Definitions

§ 621.1 Purpose and applicability.

This part sets forth accounting and reporting requirements to be followed by all banks, associations, and service organizations chartered under the Act; the Federal Farm Credit Banks Funding Corporation; and, where specifically indicated, the Federal Agricultural Mortgage Corporation. The requirements set forth in this part are of both general and specific applicability. Certain requirements focus on areas of financial condition and operating performance that are of special importance for generating, presenting, and disclosing accurate and reliable information.

§ 621.2 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) *Accrual basis of accounting* means the accounting method in which expenses are recorded when incurred, whether paid or unpaid, and income is reported when earned, whether received or not received.

(b) *Borrowing entity* means the individual(s), partnership, joint venture, trust, corporation, or other business entity, or any combination thereof, that is primarily obligated on the loan instrument.

(c) *Generally accepted accounting principles* means that body of conventions, rules, and procedures necessary to define accepted accounting practices at a particular time, as promulgated by the Financial Accounting Standards Board (FASB) and other authoritative sources recognized as setting standards for the accounting profession in the United States. Generally accepted accounting principles include not only broad guidelines of general application but also detailed practices and procedures that constitute standards by which financial presentations are evaluated.

(d) *Generally accepted auditing standards* means the standards and guidelines adopted by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA) to govern the overall quality of audit performance.

(e) *Institution* means any bank, association, or service organization chartered under the Act; the Federal Farm Credit Banks Funding Corporation, and where specifically noted, the Federal Agricultural Mortgage Corporation.

(f) *Loan* means any extension of credit or lease that is recorded as an asset of a reporting institution, whether made directly or purchased from another lender. The term "loan" includes, but is not limited to:

(1) Loans originated through direct negotiations between the reporting institution and a borrower;

(2) Purchased loans or interests in loans, including participation interests, retained subordinated participation interests in loans sold, and interests in

pools of subordinated participation interests that are held in lieu of retaining a subordinated participation interest in loans sold;

(3) Contracts of sale; notes receivable; and

(4) Other similar obligations and lease financing.

(g) *Material* means the magnitude of an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or misstatement.

(h) *Net realizable value* means the net amount the lender would expect to be realized from the acquisition and subsequent sale or disposition of a loan's underlying collateral. Generally, net realizable value is equal to the estimated selling price in the ordinary course of business, less estimated costs of acquisition, completion, and disposal.

(i) *Qualified public accountant* means a person who:

(1) Holds a valid and unrevoked certificate, issued to such person by a legally constituted State authority, identifying such person as a certified public accountant;

(2) Is licensed to practice as a public accountant by an appropriate regulatory authority of a State or other political subdivision of the United States;

(3) Is in good standing as a certified and licensed public accountant under the laws of the State or other political subdivision of the United States in which is located the home office or corporate office of the institution that is to be audited;

(4) Is not suspended or otherwise barred from practice as an accountant or public accountant before the Securities and Exchange Commission (SEC) or any other appropriate Federal or State regulatory authority; and

(5) Is independent of the institution that is to be audited. For the purposes of this definition the term "independent" shall have the same meaning as under the rules and interpretations of the AICPA.

(j) *Recorded investment* means the face amount of the loan increased or decreased by applicable accrued interest and unamortized premium, discount, finance charges, or acquisition costs, and may also reflect a previous direct write-down of the investment.

Subpart B—General Rules

§ 621.3 Application of generally accepted accounting principles.

Each institution shall:

(a) Prepare and maintain, on an accrual basis, accurate and complete records of its business transactions as necessary to prepare financial statements and reports, including reports to the Farm Credit Administration, in accordance with generally accepted accounting principles, except as otherwise directed by statutory and regulatory requirements;

(b) Prepare its financial statements and reports, including reports to the shareholders, investors, boards of directors, institution management and the Farm Credit Administration, in accordance with generally accepted accounting principles, except as otherwise directed by statutory and regulatory requirements; and

(c) Prepare and maintain its books and records in such a manner as to facilitate reconciliation with financial statements and reports prepared from them.

§ 621.4 Audit by qualified public accountant.

(a) Each institution shall, at least annually, have its financial statements audited by a qualified public accountant in accordance with generally accepted auditing standards.

(b) The qualified public accountant's opinion of each institution's financial statements shall be included as a part of each annual report to shareholders.

(c) If an institution disagrees with the opinion of a qualified public accountant required by paragraph (b) of this section, the following actions shall be taken immediately:

(1) The institution shall prepare a brief but thorough written description of the scope and content of the disagreement, noting each point of disagreement and citing, in all cases, the specific provisions of generally accepted accounting principles and generally accepted auditing standards upon which the institution's position in the disagreement is based;

(2) A copy of the institution's final description of the disagreement shall be given to the accountant who provided the opinion with which the institution disagrees;

(3) The accountant shall have 10 business days to develop and provide a brief but thorough final response to the institution's description of the disagreement, including all items believed to be incorrect or incomplete, and citing, in all cases, the specific provisions of generally accepted accounting principles and generally accepted auditing standards upon which the accountant's position in the disagreement is based;

(4) Both the institution's final description of the disagreement and the accountant's final response to it shall be included in the institution's annual report to shareholders directly following the accountant's opinion of the institution's financial statements; and

(5) The institution shall immediately notify the Chief Examiner, Farm Credit Administration, of any disagreement with its accountant and shall furnish the Farm Credit Administration with the written documentation required by paragraphs (c) (1) through (4) of this section.

(d) If an institution selects a qualified public accountant to audit its financial statements and provide an opinion thereon for its annual report who is different from the accountant whose opinion appeared in the institution's most recent annual report, the following items shall be sent to the Farm Credit Administration no later than 15 days after the end of the month in which the change took place and shall be included in the institution's annual meeting information statement and annual report to shareholders for the year in which the change of accountants took place:

(1) The name and address of the accountant whose opinion appeared in the institution's most recent annual report to shareholders;

(2) A brief but thorough statement of the reasons the accountant selected for the most recent annual report was not selected for the current annual report. If the change resulted from a disagreement with the accountant, the statement shall describe the institution's disagreement with the accountant's opinion and the accountant's final response to the institution's disagreement prepared pursuant to paragraph (c) of this section; and

(3) The identification of the highest ranking officer, committee of officers, or board of directors, as appropriate, that recommended, approved, or otherwise made the decision to change qualified public accountants.

§ 621.5 Accounting for the allowance for loan losses and chargeoffs.

Each institution shall:

(a) Maintain at all times an allowance for loan losses that is adequate to absorb all probable and estimable losses that may reasonably be expected to exist in the loan portfolio.

(b) Develop, adopt, and consistently apply policies and procedures governing the establishment and maintenance of the allowance for loan losses which, at a minimum, conform to the rules, definitions, and standards set forth in this part and any other applicable requirements.

(c) Charge-off loans, wholly or partially, as appropriate, at the time they are determined to be uncollectible.

(d) Ensure that when an institution or the Farm Credit Administration determines that the value of a loan or other asset recorded on its books and records exceeds the amount that can reasonably be expected to be collectible, or when the documentation supporting the recorded asset value is inadequate, the institution shall immediately charge off the asset in the amount determined to be uncollectible. If the amount determined to be uncollectible by the institution is different from the amount determined to be uncollectible by the Farm Credit Administration, the institution shall charge off such amount as the Farm Credit Administration shall direct.

Subpart C—Loan Performance and Valuation Assessment

§ 621.6 Performance categories and other property owned.

Each institution shall employ the following practices with respect to categorizing high-risk loans and loan-related assets. No loan shall be put into more than one performance category. At a minimum, loans meeting the criteria for both nonaccrual and another performance category shall be classified as nonaccrual.

(a) *Nonaccrual loans.* A loan shall be considered nonaccrual if it meets any of the following conditions:

(1) Collection of any amount of outstanding principal and all past and future interest accruals, considered over the full term of the asset, is not expected;

(2) Any portion of the loan has been charged off, except in cases where the prior chargeoff was taken as part of a formal restructuring of the loan; or

(3) The loan is 90 days past due and is not both adequately secured and in process of collection.

(i) A loan is considered adequately secured only if:

(A) It is secured by real or personal property having a net realizable value sufficient to discharge the debt in full; or

(B) It is guaranteed by a financially responsible party in an amount sufficient to discharge the debt in full.

(ii) A loan is considered in process of collection only if collection efforts are proceeding in due course and, based on a probable and specific event, are expected to result in the prompt repayment of the debt or its restoration to current status. There must be documented evidence that collection in full of amounts due and unpaid is expected to occur within a reasonable time period, not to exceed 180 days from the date that payment was due. The commencement of collection efforts through legal action, including bankruptcy or foreclosure, or through collection efforts not involving legal action, including ongoing workouts and reamortizations, do not, in and of themselves, provide sufficient cause to keep a loan out of nonaccrual status. If full collection of the debt or its restoration to current status is dependent upon completion of any action by the borrower, the institution must obtain the borrower's written agreement to complete all such actions by the specific dates set forth in agreement.

(b) *Formally restructured loans.* A loan is considered formally restructured if it meets the "troubled debt restructuring" definition set forth in Statement of Financial Accounting Standards No. 15, Accounting by Debtors and Creditors for Troubled Debt Restructurings, as promulgated by the FASB.

(c) *Loans 90 days past due still accruing interest.*

(1) Loans 90 days past due still accruing interest means loans that are 90 days or more contractually past due, and that are both adequately secured and in process of collection, as described in this section.

(2) A loan shall be considered contractually past due when any principal repayment or interest payment required by the loan instrument is not received on or before the due date. A loan shall remain contractually past due until it is formally restructured or until the entire amount past due, including principal, accrued interest, and penalty interest incurred as the result of past due status, is collected or otherwise discharged in full.

(d) *Other property owned* means any real or personal property, other than an interest-earning asset, that has been acquired as a result of full or partial liquidation of a loan, through foreclosure, deed in lieu of foreclosure, or other means.

§ 621.7 Rule of aggregation.

(a) When one loan to a borrower is placed in nonaccrual, an institution must immediately evaluate whether its other loans to that borrower, or related borrowers, should also be placed in nonaccrual. All loans on which a borrowing entity, or a component of a borrowing entity, is primarily obligated to the reporting institution shall be considered as one loan unless a review of all pertinent facts supports a reasonable determination that a particular loan constitutes an independent credit risk and such determination is adequately documented in the loan file.

(1) A loan shall be considered an independent credit risk if a substantial portion of the loan is guaranteed as to principal and interest by a government agency.

(2) Other loans shall be considered independent credit risks if and so long as:

(i) The primary sources of repayment are independent for each loan;

(ii) The loans are not cross-collateralized; and

(iii) The principal obligors are different person(s) and/or entity(ies). Related loans will not be considered independent credit risks if the operations of a related borrower are so financially interdependent with the borrower's operations that the economic survival of one will materially affect the economic survival of the other, determined in accordance with § 614.4358(a)(2) of this chapter.

(b) If the evaluation required by paragraph (a) of this section results in a determination that the borrower's other loans with the institution do not represent an independent credit risk, and full collection of such loans is not expected, then all of the borrower's loans must be aggregated and classified as nonaccrual. If such other loans represent an independent credit risk and are fully collectible, then they may remain in their current performance category.

(c) When an institution becomes aware that a borrower has a loan that has been classified nonaccrual by any other lender, the institution must re-evaluate the credit risk in its loan to the borrower and then determine whether an independent credit risk exists.

§ 621.8 Application of payments and income recognition on nonaccrual loans.

Each institution shall employ the following practices with respect to application of cash payments on nonaccrual loans:

(a) If the ultimate collectibility of the recorded investment, in whole or in part, is in doubt, any payment received on such loan shall be applied to reduce the recorded investment to the extent necessary to eliminate such doubt.

(b) Once the ultimate collectibility of the recorded investment is no longer in doubt, payments received in cash on such loan may qualify for recognition as interest income if all of the following characteristics are met at the time the payment is received:

(1) The loan does not have a remaining unrecovered prior chargeoff

associated with it, except in cases where the prior chargeoff was taken as part of a formal restructuring of the loan;

(2) The payment received has come from a source of repayment detailed in the plan of collection;

(3) The loan, after considering the payment, is not contractually past due more than 90 days and is not expected to become 90 days past due, or a repayment pattern has been established that reasonably demonstrates future repayment capacity.

(c) The institution shall employ the following practices with respect to earned but uncollected interest income on loans, leases, contracts, and similar assets that are determined not to be fully collectible:

(1) Earned but uncollected interest income that was accrued in the current fiscal year and is determined to be uncollectible shall be reversed from interest income; and

(2) Earned but uncollected interest income that was accrued in prior fiscal years and is determined to be uncollectible shall be charged off against the allowance for loan losses.

§ 621.9 Reinstatement to accrual status.

A loan may be reinstated to accrual status, when each of the following criteria are met:

(a) All contractual principal and interest due on the loan is paid and the loan is current;

(b) Prior chargeoffs are recovered, except for troubled debt restructures;

(c) No reasonable doubt remains regarding the willingness and ability of the borrower to perform in accordance with the contractual terms of the loan agreement; and

(d) Reinstatement is supported by a period of sustained performance in accordance with the contractual terms of the note and/or loan agreement. Sustained performance will generally be demonstrated by 6 consecutive monthly payments, 4 consecutive quarterly payments, 3 consecutive semi-annual payments, or 2 consecutive annual payments.

§ 621.10 Monitoring of performance categories and other property owned.

(a) Each institution shall:

(1) Account for, report, and disclose to shareholders, investors, boards of directors, and the Farm Credit Administration all material items with respect to performance categories and other property owned in accordance with the rules and definitions set forth in this part and any other applicable requirements;

(2) In accordance with § 620.5(g)(1)(iv)(A) of this chapter, disclose to shareholders, investors, boards of directors, and the Farm Credit Administration the nature and extent of significant potential credit risks within the loan portfolio, or other information that could adversely impact performance of the loan portfolio in the near future;

(3) Develop, adopt, and consistently apply policies and procedures governing performance categories and other property owned, which, at a minimum, conform to the definitions, rules, and standards set forth in this part and such other requirements and procedures as may be required by the Farm Credit Administration;

(4) Review the loan portfolio at least quarterly to ensure that all high-risk loans have been assigned the appropriate performance category; and

(5) Review all high-risk loans in the loan portfolio at least quarterly to determine the collectibility of accrued but uncollected income, if any.

(b) Measures taken to enhance the collectibility of a loan shall not be deemed to relieve an institution of the requirement to monitor and evaluate the loan for the purpose of determining its performance status.

§ 621.11 Exceptions.

Subpart C shall not apply to any Farm Credit System institution after the date upon which SFAS No. 114, Accounting by Creditors for Impairment of a Loan, becomes mandatory with respect to such institution and shall not apply to any Farm Credit System institution that implements the provisions of SFAS No. 114 before the mandatory implementation date. Pursuant to the Financial Accounting Standards Board, although early implementation is encouraged, SFAS No. 114 shall be effective for financial statements for fiscal years beginning after December 15, 1994. Copies of SFAS No. 114 may be obtained by writing the Financial Accounting Standards Board of the Financial Accounting Foundation at 401 Merritt 7, P.O. Box 5116, Norwalk, Connecticut 06856–5116, or by calling (203) 847–0700.

Subpart D—Report of Condition and Performance

§ 621.12 Applicability and general instructions.

(a) Each institution, including the Federal Agricultural Mortgage Corporation, shall prepare and file such reports of condition and performance as may be required by the Farm Credit Administration.

(b) Reports of condition and performance shall be filed four times each year, and at such other times as the Farm Credit Administration may require. The reports shall be prepared on the accrual basis of accounting and shall fairly represent the financial condition and performance of each institution at the end of, and over the period of, each calendar quarter, provided that such additional reports as may be necessary to ensure timely, complete, and accurate monitoring and evaluation of the affairs, condition, and performance of Farm Credit institutions may be required, as determined by the Chief Examiner, Farm Credit Administration.

(c) All reports of condition and performance shall be filed with the Farm Credit Administration, Office of Examination, 1501 Farm Credit Drive, McLean, Virginia, 22102–5090.

§ 621.13 Content and standards—general rules.

Each institution, including the Federal Agricultural Mortgage Corporation, shall prepare reports of condition and performance:

(a) In accordance with all applicable laws, regulations, standards, and such instructions and specifications and on such media as may be prescribed by the Farm Credit Administration;

(b) In accordance with generally accepted accounting principles and such other accounting requirements, standards, and procedures as may be prescribed by the Farm Credit Administration; and

(c) In such manner as to facilitate their reconciliation with the books and records of reporting institutions.

§ 621.14 Certification of correctness.

Each report of financial condition and performance filed with the Farm Credit Administration shall be certified as having been prepared in accordance with all applicable regulations and instructions and to be a true and accurate representation of the financial condition and performance of the institution to which it applies. The reports shall be certified by the officer of the reporting institution named for that purpose by action of the reporting institution's board of directors. If the board of directors of the institution has not acted to name an officer to certify the correctness of its reports of condition and performance, then the reports shall be certified by the president or chief executive officer of the reporting institution.

Subpart E—Reports Relating to Securities Activities of the Federal Agricultural Mortgage Corporation

§ 621.20 Form and content.

(a) The Federal Agricultural Mortgage Corporation (Corporation) shall provide the Office of Secondary Market Oversight with three copies of any filings made with the SEC pursuant to the Securities Act of 1933 or the Securities and Exchange Act of 1934. Such copies shall be filed with the FCA no later than 1 business day after any SEC filing.

(b) The Corporation shall make the following filings with the Office of Secondary Market Oversight for securities either issued or guaranteed by the Corporation that are not registered under the Securities Act of 1933.

(1) Three copies of any offering circular, private placement memorandum, or information statement prepared in connection with the securities offering shall be filed with the Office of Secondary Market Oversight at or before the time of the securities offering.

(2) For securities backed by qualified loans as defined in section 8.0(9)(A) of the Act, the Corporation shall file one copy of the following within 1 business day of the finalization of the transaction:

(i) The private placement memoranda for securities sold to investors; and

(ii) The pooling and servicing agreement when the security is purchased by the Corporation as authorized by section 8.6(g) of the Act.

(3) For securities backed by qualified loans as defined in section 8.0(9)(B) of the Act, the Corporation shall provide summary information on such securities issued during each calendar quarter in the form prescribed by the Office of Secondary Market Oversight. Such summary information shall be provided with each report of condition and performance filed pursuant to § 621.11, and at such other times as the Office of Secondary Market Oversight may require.

(c) The Corporation shall file with the Office of Secondary Market Oversight copies of all substantive correspondence between the Corporation and the Securities and Exchange Commission and the Department of the Treasury relating to securities activities or regulatory compliance. Such correspondence should be filed no later than the date of filing of the report of condition and performance for the calendar quarter in which the correspondence was received or sent.

(d) The Corporation shall promptly notify the Office of Secondary Market Oversight if it becomes exempt or claims exemption from the filing requirements of the Securities and Exchange Act of 1934.

PART 611—ORGANIZATION

2. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act; 12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003 and 1004.

Subpart E—Transfer of Authorities

§ 611.515 [Amended]

3. Section 611.515 is amended by removing the words "nonperforming loans and related assets," and adding, in their place, the words "high-risk assets and other property owned," in paragraph (b)(6)(ii)(E).

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

4. Section 611.1122 is amended by removing the words "nonperforming loans and related assets" and adding, in their place, the words "high-risk assets and other property owned," in the second sentence of paragraph (e)(6)(iii); and by revising paragraph (e)(9) to read as follows:

§ 611.1122 Requirements for mergers or consolidations.

* * * * *

(e) * * *

(9) A presentation for each constituent association regarding its policy on accounting for loan performance, together with the number and dollar amount of loans in all performance categories, including those categorized as high-risk assets.

* * * * *

Subpart H—Rules for Inter-System Fund Transfers

§ 611.1130 [Amended]

5. Section 611.1130 is amended by removing, respectively, the words "nonaccrual" and "acquired property," and adding, in their respective places, the words "noninterest-earning" and "other property owned," in paragraph (b)(4)(iii).

Subpart N—Conservators and Conservatorships of Banks and Associations

§ 611.1182 [Amended]

6. Section 611.1182 is amended by removing the reference "§ 621.12" and adding in its place "§ 621.14" in the second sentence of paragraph (c).

Subpart O—Special Reconsideration of Mergers

§ 611.1197 [Amended]

7. Section 611.1197 is amended by removing the words "nonperforming loans and related assets," and adding, in their place, the words "high-risk assets and other property owned," in paragraph (b)(6)(ii)(E).

Subpart P—Termination of Farm Credit Status—Associations

§ 611.1225 [Amended]

8. Section 611.1225 is amended by removing the words "nonperforming loans and related assets" and adding, in their place, the words "high-risk assets and other property owned," in paragraph (t)(2).

§ 611.1240 [Amended]

9. Section 611.1240 is amended by removing the reference "§ 621.2(a)(21)," and adding in its place "§ 621.2(i)," in the second sentence of paragraph (c).

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

10. The authority citation for part 613 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 5.9, 5.17 of the Farm Credit Act; 12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2243, 2252; 42 U.S.C. 3601 *et seq.*; 15 U.S.C. 1691 *et seq.*; 12 CFR part 202, 24 CFR parts 100, 109, and 110.

Subpart B—Eligibility To Borrow From Farm Credit Banks, Agricultural Credit Banks, Production Credit Associations, Agricultural Credit Associations and Federal Land Credit Associations

§ 613.3045 [Amended]

11. Section 613.3045 is amended by removing the words "performing loans" and adding, in their place, the words "loans that are current as to both principal and interest that are" in paragraph (c)(3)(i).

PART 614—LOAN POLICIES AND OPERATIONS

12. The authority citation for part 614 continues to read as follows:

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act; 12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5; sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart C—Bank/Association Lending Relationship

§ 614.4130 [Amended]

13. Section 614.4130 is amended by removing the words "(as defined in 12 CFR 621.2(a)(20))" in paragraph (a).

Subpart N—Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal

§ 614.4512 [Amended]

14. Section 614.4512 is amended by removing the words "a loan as a nonperforming asset;" and adding, in their place, the words "a loan classified as a high-risk asset;" in paragraph (c)(2) and removing the word "nonaccrual" and adding in its place, the words "noninterest-earning asset" in paragraph (e)(1).

§ 614.4514 [Amended]

15. Section 614.4514 is amended by removing the word "nonaccrual" and adding, in its place, the words "a noninterest-earning" in the first sentence of paragraph (d).

§ 614.4516 [Amended]

16. Section 614.4516 is amended by removing the word "nonaccrual" and adding, in its place, the words "a noninterest-earning" in paragraph (b)(2).

§ 614.4517 [Amended]

17. Section 614.4517 is amended by removing the word "nonaccrual" and adding, in its place, the words "noninterest-earning" in paragraph (a)(5).

§ 614.4520 [Amended]

18. Section 614.4520 is amended by removing the words "in nonaccrual status" and adding, in their place, the words "a noninterest-earning asset" in the first sentence of paragraph (a).

§ 614.4522 [Amended]

19. Section 614.4522 is amended by revising the heading for paragraph (a)(1) to read "Acquired real estate."; by removing the words "acquired property" and adding, in their place, the words "acquired real estate" in paragraph (b), the first sentence of paragraphs (c)(3) and (c)(4) and paragraph (e); and by removing the words "acquired property, or any portion of such real estate," and adding, in their place, the words "acquired real estate, or any portion of such property," in the introductory text of paragraphs (c) and (d).

PART 620—DISCLOSURE TO SHAREHOLDERS

20. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act; 12 U.S.C. 2252, 2254, 2279aa–11; sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart A—General

§ 620.1 [Amended]

21. Section 620.1 is amended by removing the words "loans properly identifiable as "nonperforming" as defined in § 621.2(a)(17) of this chapter." and adding, in their place, the words "adversely classified loans." in the second sentence of paragraph (i).

§ 620.2 [Amended]

22. Section 620.2 is amended by removing the reference "§ 621.12" and adding in its place "§ 621.14" in paragraph (b)(1).

Subpart B—Annual Report to Shareholders

23. Section 620.5 is amended by removing the reference "§ 621.9(c) and (d)" and adding in its place "§ 621.4(c) and (d)" in paragraph (l); by removing the reference "§ 621.2(a)(21)" and adding in its place "§ 621.2(i)" in paragraph (m)(1); and by revising paragraphs (f)(1)(i)(F) and (g)(1)(iv)(A) to read as follows:

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(F) Other property owned.

* * * * *

(g) * * *

(1) * * *

(iv) * * *

(A) An analysis of high-risk assets and loan performance categories, to include, but not limited to, a discussion of the nature and extent of significant potential credit risks within the loan portfolio, or other information that could adversely impact performance of the loan portfolio in the near future;

* * * * *

Subpart C—Quarterly Report to Shareholders

§ 620.10 [Amended]

24. Section 620.10 is amended by removing the reference "§ 621.12" and adding in its place "§ 621.14" in paragraph (e)(1).

Subpart D—Association Annual Meeting Information Statement

§ 620.21 [Amended]

25. Section 620.21 is amended by removing the reference "§ 621.9(c) and (d)" and adding in its place "§ 621.4(c) and (d)" in paragraph (f).

26. Subpart F is revised to read as follows:

Subpart F—Annual Report of Condition of the Federal Agricultural Mortgage Corporation

§ 620.40 Content, timing, and distribution of Federal Agricultural Mortgage Corporation's annual report of condition.

(a) The Federal Agricultural Mortgage Corporation shall prepare and publish an annual report of its condition that is equivalent in content to the annual report to shareholders required by section 14 of the Securities and Exchange Act of 1934.

(b) The Corporation shall distribute the annual report of condition to its shareholders within 120 days of its fiscal year-end.

(c) Upon receiving a request for an annual report of condition, the Corporation shall promptly mail or otherwise furnish to the requestor a copy of the most recent annual report described in this section.

(d) The Corporation shall file three copies of the annual report of condition with the Farm Credit Administration's Office of Secondary Market Oversight within 120 days of its fiscal year-end.

PART 627—TITLE V CONSERVATORS AND RECEIVERS

27. The authority citation for part 627 continues to read as follows:

Authority: Secs. 4.2, 5.9, 5.10, 5.17, 5.51, 5.58 of the Farm Credit Act; 12 U.S.C. 2183, 2243, 2244, 2252, 2277a, 2277a–7.

Subpart C—Conservators and Conservatorships

§ 627.2785 [Amended]

28. Section 627.2785 is amended by removing the reference "§ 621.12" and adding in its place "§ 621.14" in the second sentence of paragraph (c).

Dated: September 9, 1993.
Curtis M. Anderson,
Secretary, Farm Credit Administration Board.
[FR Doc. 93–22525 Filed 9–17–93; 8:45 am]
BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ASW–27]

Establishment of Class D Airspace: Alice, TX; Corpus Christi, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Naval Auxiliary Landing Field (NALF) Orange Grove, Alice, TX; NALF Waldron, Corpus Christi, TX; and Naval Outlying Landing Field (NOLF) Cabaniss, Corpus Christi, TX. The United States Navy operates a control tower at each of these locations with an associated airport traffic area (ATA). Airspace reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "airport traffic area" and eliminate those ATA's not already designated to become Class D airspace. As a result, the requirement for two-way radio communication with the control towers at NALF Orange Grove, NALF Waldron, and NOLF Cabaniss would lapse. This action is intended to provide adequate Class D airspace to perpetuate the existing two-way radio communication requirement at these locations.

EFFECTIVE DATE: 0901 U.T.C., November 11, 1993.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–624–5531.

SUPPLEMENTARY INFORMATION:

History

On July 20, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Alice, TX, and Corpus Christi, TX, was published in the **Federal Register** (58 FR 38734). Airspace reclassification, which becomes effective September 16, 1993, will eliminate those airport traffic areas (ATA) not already designated to become Class D airspace. The ATA of Alice, TX, and Corpus Christi, TX, are not already designated to become Class D airspace. As a result, the requirement for two-way radio communication with the control tower at NALF Orange Grove, NALF Waldron, and NOLF Cabaniss would lapse. The notice proposed to establish adequate Class D airspace to perpetuate the existing two-way radio communication requirement at these locations.

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice action.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class D airspace at Naval Auxiliary Landing Field (NALF) Orange Grove, Alice, TX; NALF Waldron, Corpus Christi, TX; and Naval Outlying Landing Field (NOLF) Cabaniss, Corpus Christi, TX, to perpetuate the existing two-way radio communication requirement.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000: General

* * * * *

ASW TX D Alice, TX [New]

Orange Grove NALF, TX
(lat. 27°54'04" N., long. 98°03'06" W.)
Navy Orange Grove TACAN
(lat. 27°53'43" N., long. 98°02'33" W.)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 4.7-mile radius of NALF Orange Grove and within 1.0 mile each side of the 129° radial of the Orange Grove TACAN extending from the 4.7-mile radius to 5.2 miles southeast of the airport and within 1.0 mile each side of the 320° radial of the Orange Grove TACAN extending from the 4.7-mile radius to 5.1 miles northwest of the airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX D Corpus Christi, TX [New]

Waldron NALF, TX
(lat. 27°38'01" N., long. 97°18'47" W.)

That airspace extending upward from the surface to and including 2,000 feet MSL within a 3.5-mile radius of Waldron NALF, excluding that airspace within the Corpus Christi International Airport, TX, Class C airspace and excluding that airspace within the Corpus Christi NAS, TX, Class D airspace. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX D Corpus Christi, TX [New]

Cabaniss NOLF, TX
(lat. 27°42'01" N., long. 97°26'04" W.)

That airspace extending upward from the surface to but not including 1,200 feet MSL within a 4.4-mile radius of Cabaniss NOLF, excluding that airspace within the Corpus Christi International Airport, TX, Class C airspace, and excluding that airspace within the NALF Waldron Class D airspace, and excluding that airspace west of a line between lat. 27°38'15" N., long. 97°28'40" W.

and lat. 27°41'30" N., long. 97°28'40" W. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX, on September 9, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–22904 Filed 9–17–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 91

[Docket No. 24456; Amendment No. 91–234]

Airspace Reclassification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correcting amendment.

SUMMARY: This action amends the Airspace Reclassification final rule promulgated on December 17, 1991, regarding minimum altitudes to be maintained by certain types of aircraft in Class D airspace when entering a traffic pattern or approaching to land on a runway served by an instrument landing system (ILS), or by any airplane approaching to land on a runway served by a visual approach slope indicator (VASI). This action is necessary to ensure that the operating rules continue as intended on September 16, 1993, the implementation date of Airspace Reclassification.

EFFECTIVE DATE: This amendment is effective September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. White or Ms. Melodie M. DeMarr, Air Traffic Rules Branch (ATP–230), Airspace-Rules and Aeronautical Information Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1991, the FAA published the Airspace Reclassification final rule (56 FR 65638) which, among other things, changed the wording of many operating rules by replacing the existing airspace terminology with the new classes of airspace. These changes become effective September 16, 1993.

Prior to September 16, 1993, FAR § 91.129, "Operations at airports with operating control towers," contained requirements for minimum altitudes to be maintained for certain types of aircraft when approaching an airport to enter the airport traffic area and traffic pattern or approaching a runway served by the ILS or, by any airplane, when approaching a runway served by a VASI. The Airspace Reclassification final rule amended § 91.129 by eliminating references to the "airport traffic area," which no longer exists after September 16, 1993, and by replacing references to operation at "airports with operating control towers" with operations in Class D airspace. Inadvertently, § 91.129(e)(3), as amended under the Airspace Reclassification final rule, requires only large and turbine-powered aircraft to remain at or above the glide slope while approaching to land on a runway served by a VASI in Class D airspace until a lower altitude is necessary for a safe landing. Prior to the promulgation of the Airspace Reclassification rule all aircraft were required to remain at or above the glide slope to meet this requirement.

The Rule

This action enhances the safety of certain aircraft operations in Class D airspace and continues the intent of the regulation which existed prior to September 16, 1993, by making § 91.129(e)(3) applicable to all aircraft. Specifically, this rule amends § 91.129(e)(3) requiring all aircraft approaching to land on a runway served by a VASI to maintain an altitude at or above the glide slope until a lower altitude is necessary for safe landing. I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable because immediate corrective action is required in the interest of flight safety. The FAA finds good cause pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than thirty days in order to promote flight safety.

The FAA has determined that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety.

The Amendment

Accordingly, 14 CFR part 91, in effect as of September 16, 1993, is amended as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 stat. 1180); 42 U.S.C. 4321 *et seq;* E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Section 91.129 is amended by revising the introductory text to paragraph (e), and paragraphs (e) (1) through (3) to read as follows:

§ 91.129 Operations in Class D airspace.

* * * * *

(e) Minimum Altitudes. When operating to an airport in Class D airspace, each pilot of—

(1) A large or turbine-powered airplane shall, unless otherwise required by the applicable distance from cloud criteria, enter the traffic pattern at an altitude of at least 1,500 feet above the elevation of the airport and maintain at least 1,500 feet until further descent is required for a safe landing;

(2) A large or turbine-powered airplane approaching to land on a runway served by an instrument landing system (ILS), if the airplane is ILS equipped, shall fly that airplane at an altitude at or above the glide slope between the outer marker (or point of interception of glide slope, if compliance with the applicable distance from cloud criteria requires interception closer in) and the middle marker; and

(3) An airplane approaching to land on a runway served by a visual approach slope indicator shall maintain an altitude at or above the glide slope until a lower altitude is necessary for a safe landing.

* * * * *

Issued in Washington, DC, on September 15, 1993.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 93–22960 Filed 9–15–93; 2:35 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 93N–0270]

Public Information; Availability of Agreements Signed by the Food and Drug Administration's Office of Criminal Investigations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to exempt written agreements and memoranda of understanding (MOU's) entered into by FDA's Office of Criminal Investigations from certain public information requirements. The current regulations require that all agreements and MOU's signed by FDA and other departments, agencies, and organizations be placed on public display and published in the **Federal Register**. However, these regulations were issued prior to the creation of the Office of Criminal Investigations. The agency believes that disclosure of all written agreements and MOU's entered into by this office could reveal confidential investigative techniques or disclose guidelines for investigations that may interfere with law enforcement. This action is being taken to prevent such disclosure.

DATES: Effective on September 20, 1993. Comments by October 20, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Terrell L. Vermillion, Office of Criminal Investigations (HFC–300), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–294–4030.

SUPPLEMENTARY INFORMATION: FDA is amending § 20.108 (21 CFR 20.108), which requires that all written agreements and understandings signed by FDA and other departments, agencies, and organizations be available for public review in FDA's Freedom of Information Public Room and also published in the **Federal Register**. This amendment exempts written agreements entered into by FDA's Office of Criminal Investigations from these display and publication requirements. Elsewhere in this issue of the **Federal Register**, § 20.108 is being amended to exempt cooperative work-sharing agreements between FDA and State or local governments from full-text publication in the **Federal Register**.

The existing regulation, which has been in effect since 1977, was intended to publicize agreements between FDA and other organizations or agencies that were of general interest to regulated industry, consumers, and professional associations. The regulation was codified prior to the creation of the Office of Criminal Investigations and could not anticipate the particular type of agreements to which FDA may, because of the work of that Office, become a party. The Office of Criminal Investigations expects that certain MOU's with other law enforcement agencies will constitute or contain information that should not be available for public disclosure because disclosure would reveal confidential investigative techniques or disclose guidelines for investigations when such disclosure could reasonably be expected to risk circumvention of the law. Such information is exempt from public disclosure under the Freedom of Information Act (5 U.S.C. 552(b)(7)(E)), and 21 CFR 20.64(e) and 45 CFR 5.68(e).

Accordingly, FDA is amending § 20.108 to avoid the inadvertent display or publication of information whose disclosure could interfere with law enforcement. In the future, MOU's and other agreements signed by FDA with respect to activities of the Office of Criminal Investigations will be exempt from the mandatory display and publication requirements of § 20.108. Instead, the availability of these memoranda and agreements for public disclosure will be determined on a case-by-case basis in response to requests under the Freedom of Information Act after review to determine whether the agreement or particular portions of the agreement should be withheld in accordance with the Freedom of Information Act exemptions for certain law enforcement records. Because the Office of Criminal Investigation is currently negotiating a variety of agreements with other law enforcement agencies, FDA has determined that the automatic and mandatory display and publication provisions of § 20.108 will interfere with the ability of the agency to enter into certain MOU's. In accordance with § 10.40(c)(4)(ii), therefore, the Commissioner of Food and Drugs finds that there is good cause for this amendment to become effective immediately. Under § 10.40(e), an opportunity for comment on this final rule is being provided. Interested persons may on or before October 20, 1993, submit to the Dockets Management Branch (address above) written comments regarding this final rule. Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. After reviewing any comments received, the agency will determine whether this amendment should be modified or revoked.

List of Subjects in 21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 20 is amended as follows:

PART 20—PUBLIC INFORMATION

1. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101, of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–30u–5, 300aa–1); 5 U.S.C. 552; 18 U.S.C. 1905.

2. Section 20.108 is amended by adding a new paragraph (d) to read as follows:

§ 20.108 Agreements between the Food and Drug Administration and other departments, agencies, and organizations.

* * * * *

(d) Agreements and understandings signed by officials of FDA with respect to activities of the Office of Criminal Investigations are exempt from the requirements set forth in paragraphs (b) and (c) of this section. Although such agreements and understandings will not be put on display in FDA's Freedom of Information Public Room or published in the **Federal Register**, these agreements will be available for disclosure in response to a request from the public after deletion of information that would disclose confidential investigative techniques or procedures, or information that would disclose guidelines for law enforcement investigations if such disclosure could reasonably be expected to risk circumvention of the law.

Dated: September 3, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–22864 Filed 9–17–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 20

[Docket No. 86N–0180]

Public Information; Amendment to Exempt Certain Memoranda of Understanding From Full-Text Publication in the Federal Register

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its public information regulation requiring publication in the **Federal Register** of written agreements and understandings between FDA and other departments, agencies, and organizations. FDA is exempting from publication in the **Federal Register** the full text of certain memoranda of understanding's (MOU's) that are cooperative work-sharing agreements between FDA and State or local government agencies. In place of publication of the full text of such MOU's and agreements, FDA will publish in the **Federal Register** periodically, but not less than once every 2 years, a notice listing all such MOU's and agreements currently in effect between FDA and State or local government agencies. The entire text of all such MOU's and agreements will continue to be published in FDA's Compliance Policy Guides Manual (CPG Manual) and is available from the Division of Federal-State Relations, Food and Drug Administration, rm. 12–07, 5600 Fishers Lane, Rockville, MD 20857. The listed MOU's are available for public examination in the office of the Freedom of Information Staff, Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice listing all MOU's that are cooperative work-sharing agreements currently in effect between FDA and State or local government agencies.

EFFECTIVE DATE: October 20, 1993.

FOR FURTHER INFORMATION CONTACT: Glenn Johnson, Division of Federal-State Relations (HFC–152), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3360.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 3, 1974 (39 FR 35697), FDA announced that the complete text of all MOU's executed by the agency would be published in the **Federal Register** for public review. FDA subsequently codified that policy at 21 CFR 4.108 (39 FR 44602 at 44651, December 24, 1974), which was recodified at 21 CFR 20.108 (42 FR 15553 at 15625, March 22, 1977). FDA took this action because, between 1948 and 1974, the agency had entered into many international agreements with foreign countries and numerous MOU's and agreements with other Federal Government agencies. At that time, there was widespread interest on the part of consumers, industry, professional groups, associations, educators, and other government agencies in the text of such memoranda and agreements.

In the **Federal Register** of June 3, 1986 (51 FR 19851), FDA proposed to amend 21 CFR 20.108(c) to exempt certain MOU's between FDA and State or local government agencies from the requirement that the full text of all agreements and understandings be published in the **Federal Register**. In place of the full-text publication of such agreements, FDA proposed to publish periodically, but not less than once every 2 years, a notice in the **Federal Register** listing all MOU's and agreements that are in effect between FDA and State and local agencies that are cooperative work-sharing agreements.

Agreements between FDA and State or local agencies that are work-sharing arrangements are intended to promote efficient use of agency resources and to coordinate responses to emergencies (e.g., recalls). Such agreements memorialize ongoing efforts of federal and State officials to conserve resources, to more efficiently utilize personnel and equipment, to exchange information of mutual concern in a timely manner, and, to the extent possible, to reduce duplicative inspectional activities.

In its proposal to amend § 20.108(c), FDA noted that there is rarely a significant difference between the MOU entered into with one State and the MOU the agency enters into with another State. FDA concluded that there was little useful purpose served by continued publication in the **Federal Register** of the full text of agreements whose purpose and scope are essentially similar.

The complete text of any MOU or agreement will continue to be available for public examination in FDA's Freedom of Information Public Room (address above). A copy of the full text of any MOU or agreement is available from the contact person in the Division of Federal-State Relations (address above). Further, FDA will continue to publish the full text of these MOU's and agreements in the agency's CPG Manual. FDA currently updates the CPG Manual quarterly and publishes a notice of availability of the updated index to the CPG Manual in the **Federal Register**. A listing of all State and local MOU's is included in the index. In addition, FDA will publish, on a regular basis, and at least once every 2 years, a list of all MOU's and agreements that are in effect between FDA and State or local government agencies that are cooperative work-sharing agreements. FDA is publishing such a notice elsewhere in this issue of the **Federal Register**.

Interested persons were given 60 days to submit written comments regarding the proposal. The agency received comments from two trade associations and one individual.

The following is a summary of the comments and FDA's responses:

1. A comment observed that the wording used in proposed paragraph (c) does not limit the exemption from full-text publication of MOU's to certain MOU's that are work-sharing agreements with State or local government agencies. The comment suggested that the exemption proposed may be more extensive than FDA intended.

FDA agrees with the comment. In the final rule, FDA is specifying that the exemption from full-text publication of an MOU or agreement applies only to work-sharing MOU's and agreements between FDA and State or local government agencies.

2. Comments alleged that failure to publish the complete text of new or substantially changed MOU's would deny the public an opportunity to evaluate and comment on the efficacy of these arrangements or the capabilities of the participating State agencies.

The agency believes these comments misinterpret the nature of these agreements. Cooperative work-sharing agreements executed by FDA and State or local agencies are not the subject of rulemaking. Such arrangements are management tools intended to enhance the ability of both State and federal officials to allocate resources efficiently in protection of the public health. By the time they are made public, these MOU's and agreements are finalized, signed documents. The participating agencies have already determined the capabilities of the respective governmental units before these MOU's and agreements are executed.

Because these arrangements between FDA and State or local agencies in no way alter the legal responsibilities of the parties to the agreement or change any of the regulations and standards with which regulated industry must comply, there is no legal requirement that such work-sharing arrangements be published in their full text for public comment.

3. Comments objected to the proposal to publish "periodically, but not less than once every 2 years," a notice in the **Federal Register** listing all MOU's and agreements currently in effect between FDA and State or local agencies. The comments said that the mere listing of all such agreements in effect and the 2-year time frame between such notices do not provide sufficient or timely information to the interested public and

regulated community. One comment said that the best interests of the public would not be served if the MOU's proposed to be exempt from full-text publication were not published in their entirety in the **Federal Register**. Other comments agreed with the proposed rule and said that exempting certain MOU's from full-text publication would help reduce the size of the too voluminous **Federal Register**. Another comment stated that FDA's policy of making MOU's available to the public should be codified in the amended regulation.

In response to these comments, FDA offers these clarifications. FDA is required by regulation (21 CFR 20.108(a)) to have all written agreements and understandings signed by FDA with other departments, agencies, and organizations available for public disclosure. FDA is also required by regulation (21 CFR 10.90(d)) to include all formal agreements and MOU's in the public file on agreements established by the Freedom of Information Staff under 21 CFR 20.108(b). Neither of these regulations is affected by this final rule. Accordingly, the agency's policy of making all written agreements available for public dissemination and the agency's obligation under its regulations to place such agreements in the public file are not being changed by this amendment to § 20.108(c).

The amendment to § 20.108(c) merely modifies the mechanism by which certain MOU's and agreements of limited scope are made available to the public. The entire text of all MOU's and agreements will continue to be available in the agency's Freedom of Information Public Room. FDA also will continue to publish the full text of all current MOU's and agreements between FDA and State or local government agencies in the CPG Manual. The CPG Manual is available for public disclosure under 21 CFR 20.107. Any person who wishes to have a full text version of a particular MOU between FDA and a State or local government agency may obtain a copy from the Division of Federal-State Relations (address above). In addition, the index of the agency's CPG Manual is updated quarterly and a copy of the index is available at cost from the Freedom of Information Staff pursuant to 21 CFR 20.26. (See the **Federal Register** of April 21, 1988, 53 FR 13165.)

FDA believes that the public interest is served through efficient and effective use of public funds. The agency has concluded, after review of all the above comments, that exempting certain MOU's and agreements of limited scope and limited public interest from full-text publication in the **Federal Register** will help conserve scarce agency resources without any significant reduction of information being made available to the public about the agency's activities.

Accordingly, FDA is adopting the regulation to amend 21 CFR 20.108(c) as proposed, with clarifying changes.

List of Subjects in 21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 20 is amended as follows:

PART 20—PUBLIC INFORMATION

1. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 5 U.S.C. 552; 18 U.S.C. 1905.

2. Section 20.108 is amended by revising paragraph (c) to read as follows:

§ 20.108 Agreements between the Food and Drug Administration and other departments, agencies, and organizations.

* * * * *

(c) All such agreements and understandings shall be published in the **Federal Register**, except those agreements and memoranda of understanding between FDA and State or local government agencies that are cooperative work-sharing agreements. In lieu of publication of the complete text of these agreements and understandings, FDA will publish in the **Federal Register** periodically, but not less than once every 2 years, a notice listing all such agreements and memoranda of understanding currently in effect between FDA and State or local government agencies.

Dated: September 3, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–22863 Filed 9–17–93; 8:45 am]

BILLING CODE 4160–01–F

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 201

[A.I.D. Regulation 1]

Identification of Principal Geographic Codes

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: In action memoranda dated October 31, 1991 and March 30, 1992, the Deputy Secretary of State determined that certain countries, formerly considered "Non-Free World" under a 1961 Presidential determination, be made eligible for foreign assistance procurement. As a result, the list of countries ineligible for foreign assistance procurement now contained in Regulation 1 is incorrect. A change is necessary to provide a current and accurate country listing.

EFFECTIVE DATE: September 20, 1993.

FOR FURTHER INFORMATION CONTACT: Arthur J. Laemmerzahl, FA/PPE, room 1600I, SA–14, Agency for International Development, Washington, DC 20523, Telephone (703) 875–1310.

SUPPLEMENTARY INFORMATION: Section 201.11(b)(4) is amended to show that the only countries remaining outside of Code 899 "Free World" are Afghanistan, Libya, Vietnam, Cuba, Cambodia, Laos, Iraq, Iran, North Korea, Syria, and the People's Republic of China. Under the countries excepted from Code 941, the following are added: Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Byelarus, Croatia, Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, Macedonia, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovak Republic, Slovenia, Ukraine, Kazakhstan, Kyrgyzstan, Mongolia, Taiwan, Tajikistan, Turkmenistan, and Uzbekistan.

The Agency has determined that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule for purposes of Executive Order 12291 and has been submitted to OMB in accordance with the Executive Order.

List of Subjects in 22 CFR Part 201

Commodity procurement, Foreign aid, Grant programs—foreign relations, Loan programs—foreign relations.

Accordingly, 22 CFR Part 201 is amended as follows:

1. The authority citation for Part 201 continues to read as follows:

Authority: Sec. 621 Foreign Assistance Act of 1961, as amended, 75 Stat. 445 (22 U.S.C. 2381).

Subpart B—Conditions Governing the Eligibility of Procurement Transactions for A.I.D. Financing

2. Section 201.11(b)(4) is revised to read as follows:

§ 201.11 Eligibility of commodities.

* * * * *

(b) * * *

(4) *Identification of principal Geographic Code Numbers.* The A.I.D. Geographic Code Book sets forth the official description of all Geographic Codes used by AID in authorizing or implementing documents to designate authorized source countries or areas. The following are summaries of the principal codes:

Code 000—"The United States": The United States of America, any state(s) of the United States, the District of Columbia, and areas of U.S. associated sovereignty, including commonwealths, territories, and possessions.

Code 899—"Free World": Any area or country, except the cooperating country itself and the following countries: Afghanistan, Cambodia, Cuba, Iran, Iraq, Laos, Libya, North Korea, People's Republic of China, Syria, and Vietnam.

Code 935—"Special Free World": Any area or country in the Free World, including the cooperating country.

Code 941—"Selected Free World": The United States and any independent country in the Free World except the cooperating country itself and the following: Albania, Andorra, Angola, Armenia, Austria, Australia, Azerbaijan, Bahamas, Bahrain, Belgium, Bosnia and Herzegovina, Bulgaria, Byelarus, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Kazakhstan, Kuwait, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia[1], Malta, Moldova, Monaco, Mongolia, Montenegro[1], Netherlands, New Zealand, Norway, Poland, Portugal, Qatar, Romania, Russia, San Marino, Saudi Arabia, Serbia[1], Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Taiwan[1], Tajikistan, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom Uzbekistan, Vatican City.

* * * * *

[1] Has the status of a "Geopolitical Entity: rather than an Independent Country.

Dated: August 19, 1993.

John F. Owens,

Procurement Executive.

[FR Doc. 93-22810 Filed 9-17-93; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 930809-3209]

RIN 0648-AE12

Sea Turtle Conservation; Restrictions Applicable to Fishery Activities

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: NMFS issues this interim rule to require participants in the bottom trawl fishery for summer flounder to use an approved turtle excluder device (TED) in any net that is rigged for fishing. TED-use is required in the waters off Virginia and North Carolina from 37°05′ N. latitude (Cape Charles, Virginia) southward to 33°35′ N. latitude (North Carolina-South Carolina border). NMFS may require observers on summer flounder vessels operating inside and outside of this area. The intended effect of this action is to allow the summer flounder bottom trawl fishery to continue while providing adequate protection to endangered and threatened sea turtles.

DATES: This rule is effective October 20, 1993. Comments on this interim rule must be submitted by October 20, 1993.

ADDRESSES: Requests for a copy of the environmental assessment for this interim rule and comments on this rule should be addressed to Dr. William Fox, Jr., Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator (301/713-2319), Charles A. Oravetz, Chief, Protected Species Program, NMFS Southeast Region (813/893-3366), or Doug Beach, Chief, Protected Species Program, NMFS Northeast Region (508/281-9291).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.* (ESA). According to the 1990 report on the decline of sea turtles, published by the National Academy of Sciences, incidental capture in shrimp trawls is by far the leading cause of human-induced mortality to sea turtles in the water, but collectively, activities in non-shrimp fisheries, which include the summer flounder bottom trawl fishery, constitute the second largest source.

NMFS has taken action to require the use of TEDs in the bottom trawl fishery for summer flounder from 37°05′ N. latitude (Cape Charles, Virginia) southward to 33°35′ N. latitude (North Carolina-South Carolina border), referred to as the "summer flounder fishery-sea turtle protection area" and to require vessels to carry an observer, if requested to do so. These requirements were initially effective November 15, 1992, through December 15, 1992 (57 FR 53603, November 12, 1992), were extended from December 16, 1992, through January 14, 1993 (57 FR 60135, December 18, 1992), were modified and extended from January 7, 1993, through February 8, 1993 (58 FR 4088, January 13, 1993), and were extended from February 10, 1993, through April 10, 1993 (58 FR 5884, February 16, 1993). The specific requirements, their background and rationale, comments and responses to comments, and summaries of pertinent biological opinions were included in the cited **Federal Register** publications and are not repeated here.

Recent Events

NMFS has determined that there is a need to reestablish the TED-use requirement by participants in the summer flounder bottom trawl fishery in the waters off Virginia and North Carolina from Cape Charles, Virginia, south to the North Carolina-South Carolina border. This interim requirement is intended to protect sea turtles until NMFS issues a permanent comprehensive rule governing all bottom trawl fisheries from Florida through Delaware Bay. NMFS may propose permanent comprehensive requirements this fall, receive public comments, and make a final decision on the requirements early next year. This fall, NMFS also expects to approve an improved TED for bottom trawl nets that was developed in cooperation with the North Carolina Division of Marine Fisheries and several fishermen permitted to use experimental TEDs.

This interim rule will remain in effect until a final rule is issued or unless NMFS determines that it should be modified or that other action is

required, based on comments received on this rule or on events in the fishery.

Both NMFS and the State of North Carolina have monitored sea turtle strandings in the summer flounder fishery-sea turtle protection area. There were 15 strandings in the protection area during the last action (February 10, 1993, through April 10, 1993). Twelve loggerheads stranded on ocean beaches in the area where TED-use was required, between Oregon Inlet and the Virginia-North Carolina border, during that 2-month period. Reports as of February 1, 1993, indicated there have been 132 strandings since September 1, 1992, from New Jersey, through Cape Lookout, North Carolina (the approximate fall and winter range of the summer flounder fishery). NMFS and U.S. Coast Guard enforcement personnel have conducted boardings of trawlers subject to the TED-use requirement since November 15, 1992. Through April 10, 1993, one violation of the TED-use requirement has been alleged.

Comments on NMFS' February 10, 1993, Action To Extend the TED-Use Requirement

One comment was received from the Center for Marine Conservation (CMC), which supported a permanent TED-use requirement in the fishery from Cape Charles, Virginia, to the southern border of North Carolina, and opposed the reduction of the area to Oregon Inlet, North Carolina. Further, CMC supported an observer requirement on summer flounder vessels north to Cape Cod, Massachusetts, and observers in all fisheries in order to determine the full extent of sea turtle and fishery interactions.

Response: NMFS' February 10, 1993, action to move the northern boundary south to Oregon Inlet and to maintain it there was based on available data regarding turtle distribution. The current interim action reestablishes a TED-use requirement from Cape Charles, Virginia, through North Carolina. During the fall and early winter, NMFS expects increased risks to sea turtles as summer flounder fishery activity increases and sea turtles migrate south through this area. NMFS is not extending the TED-use requirement north of Cape Charles until it further evaluates fishery-sea turtle interactions.

Under this interim rule, NMFS may place observers on summer flounder vessels operating inside and outside of the summer flounder fishery-sea turtle protection area. NMFS intends to collect information on this fishery's interactions with sea turtles north of Cape Charles, Virginia; NMFS may require observers in other fisheries under future permanent regulations.

Sea Turtle Conservation Measures

This interim rule reestablishes the requirement that owners and operators of summer flounder bottom trawlers in offshore waters south of Cape Charles, Virginia, to the North Carolina-South Carolina border, use an approved TED in each net that is rigged for fishing in the summer flounder fishery-sea turtle protection area. This area is all offshore waters seaward of the COLREGS (International Regulations for Preventing Collisions at Sea, 1972) demarcation line, bounded on the north by a line along 37°05′ N. latitude (Cape Charles) and bounded on the south by a line along 33°35′ N. latitude (North-Carolina-South Carolina border).

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this interim rule is necessary to conserve sea turtles. The Assistant Administrator has further determined that incidental takings of sea turtles during summer flounder bottom trawling are unauthorized unless those takings are consistent with the applicable biological opinions and associated incidental take statements. A biological opinion on the impacts of the summer flounder bottom trawl fishery managed under the Fishery Management Plan for Summer Flounder Fishery (FMP) and Amendment 2 to the FMP was issued on August 10, 1992; that incidental take statement allows for the documented lethal take of 18 sea turtles; three in any combination of Kemp's ridley, hawksbill, green, or leatherback sea turtles, and 15 loggerhead turtles.

Supplemental biological opinions were prepared for the February 10, 1993, action and for this action. NMFS has authorized a take, by death or injury, of one endangered Kemp's ridley, hawksbill, green, or leatherback turtle, or three loggerhead turtles during the effective period of this action.

This rule will require summer flounder trawlers, whether operating inside or outside of the summer flounder fishery-sea turtle protection area, to carry an observer if selected by the Director, NMFS Southeast Region, or the Director, NMFS Northeast Region. NMFS will cooperate with the North Carolina Division of Marine Fisheries in the placement of observers. If observer reports or other information indicate that the authorized incidental take level is met or exceeded, NMFS will take other necessary measures to protect turtles.

Classification

The Assistant Administrator has determined that this interim rule is necessary to provide adequate protection to endangered and threatened sea turtles, and is consistent with the ESA and other applicable law.

This action does not require a regulatory impact analysis under E.O. 12291 because it is not a major rule.

The Assistant Administrator prepared an environmental assessment (EA) for the final rule to protect sea turtles (57 FR 57348, December 4, 1992). A supplemental EA prepared for previous identical actions concludes that there will be no significant impact on the human environment. A copy of the EA is available (see **ADDRESSES**).

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Virginia and North Carolina. These determinations were submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. Neither this interim rule nor the ESA preclude a state from adopting more stringent sea turtle protection measures.

The Assistant Administrator finds there is good cause to waive prior notice and opportunity for comment under section 553(b)(B). The Assistant Administrator finds that a prior notice and comment period is unnecessary, impracticable, and contrary to the public interest because any further delay would likely result in significant takings of sea turtles, and such takings could jeopardize the continued existence of some species of sea turtles, or could require the closure of the fishery. Furthermore, additional notice and comment for this interim rule is unnecessary because this action is identical to previous actions, there is a 30-day delayed effective date, and comments have already been received and answered in previous similar actions. Further comments on this action are invited and NMFS will consider changes to the provisions of this rule.

Because neither section 553 of the Administrative Procedures Act (APA) nor any other law requires that general notice of proposed rulemaking be published for this action, under section 603(b) of the Regulatory Flexibility Act, an initial regulatory flexibility analysis is not required.

This rule does not contain policies with federalism implications sufficient

to warrant preparation of a federalism assessment under E.O. 12612.

This rule also does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

List of Subjects

50 CFR Part 217

Endangered and threatened species, Exports, Fish, Imports, Marine mammals, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: September 15, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

For the reasons set forth in the preamble, 50 CFR parts 217 and 227 are amended as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1531–1544; and 16 U.S.C. 742a *et seq.*, unless otherwise noted.

2. In § 217.12, definitions for *Summer flounder, Summer flounder fishery-sea turtle protection area* and *Summer flounder trawler* are added in alphabetical order, to read as follows:

§ 217.12 Definitions.

Summer flounder means the species *Paralichthys dentatus.*

Summer flounder fishery-sea turtle protection area means all offshore waters, bounded on the north by a line along 37°05′ N. latitude (Cape Charles, Virginia) and bounded on the south by a line along 33°35′ N. latitude (North Carolina-South Carolina border).

Summer flounder trawler means any vessel that is equipped with one or more bottom trawl nets, and that is capable of, or used for, fishing for flounder, or whose on-board or landed catch of flounder is more than 100 pounds (45.4 kg).

* * * * *

PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

4. In § 227.72, paragraphs (e)(2)(iii) and (e)(4)(iii)(D) are added to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(2) * * *

(iii) *Gear requirement—summer flounder trawlers.* (A) *TED requirement.* Except as provided in paragraph (e)(2)(iii)(B) of this section, any summer flounder trawler in the summer flounder fishery-sea turtle protection area must have an approved TED (as defined in § 217.12 of this subchapter) installed in each net that is rigged for fishing. A net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to any trawl door or board, or to any tow rope, cable, pole or extension, either on board or attached in any manner to the summer flounder trawler.

(B) *Monitoring.* Summer flounder trawlers must carry onboard a NMFS-approved observer if requested upon written notification from the Director, Southeast Region, NMFS, or the Director, Northeast Region, NMFS, sent to the address specified for the vessel in either the NMFS or state fishing permit application, or to the address specified for registration or documentation purposes, or upon written notification otherwise served on the owner or operator of the vessel. Owners and operators must comply with the terms and conditions specified in such written notification. All NMFS-approved observers will report any violations of this section, or other applicable regulations and laws; such information may be used for enforcement purposes.

(C) *Additional sea turtle conservation measures.* The Assistant Administrator may impose other such restrictions upon summer flounder trawlers as he or she deems necessary or appropriate to protect sea turtles and ensure compliance, pursuant to the procedures of paragraph (e)(6) of this section. Such measures may include, but are not limited to, a requirement to use TEDs in areas other than summer flounder fishery-sea turtle protection area, a requirement to use limited tow-times, and closure of the fishery.

* * * * *

(4) * * *

(iii) * * *

(D) For summer flounder bottom trawlers fishing in the summer flounder fishery-sea turtle protection area, a large-mesh webbing may be attached outside of the webbing flap to prevent chaffing on downward shooting TEDs, if it does not interfere or otherwise restrict the turtle escape opening.

* * * * *

[FR Doc. 93–22942 Filed 9–15–93; 3:30 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 180
Monday, September 20, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1710

Long-Range Financial Forecasts of Electric Borrowers

AGENCY: Rural Electrification Administration, DLB.

ACTION: Proposed rule; DLB extension of comment period.

SUMMARY: On August 20, 1993, the Rural Electrification Administration (REA) published a proposed rule to amend its pre-loan regulations for electric loans to clarify the requirement that borrowers submit to REA a long-range financial forecast as part of an application for a loan, loan guarantee, or lien accommodation. In response to requests from members of the public, REA is extending the comment period on this regulation.

DATES: Written comments must be received by REA or carry a postmark or equivalent by October 20, 1993.

ADDRESSES: Written comments should be addressed to Sue Arnold, Management Analyst, Program Support Staff, U.S. Department of Agriculture, Rural Electrification Administration, room 2230–S, 14th Street and Independence Avenue SW., Washington, DC 20250–1500. REA requires a signed original and three copies of all comments (7 CFR 1700.30(e)). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER IFNROMATION CONTACT: Sue Arnold, Management Analyst, U.S. Department of Agriculture, Rural Electrification Administration, room 2230–S, 14th Street & Independence Avenue SW., Washington, DC 20250–1500. Telephone: 202–720–0736. FAX: 202–720–4120.

SUPPLEMENTARY INFORMATION: On August 20, 1993, at 58 FR 44288, the Rural Electrification Administration (REA) published a proposed amendment to 7 CFR part 1710 to clarify the requirements for long-range financial forecasts of electric borrowers. The proposed rule had a 30-day period for public comments. Because of requests from the public for more time to prepare responses, REA is extending this public comment period by 30 days. The new comment period will expire on October 20, 1993.

Dated: September 14, 1993.

Robert Peters,

Acting Administrator.

[FR Doc. 93–22896 Filed 9–17–93; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–93–501]

Energy Conservation Program for Consumer Products: Test Procedures for Furnaces/Boilers, Vented Home Heating Equipment, and Pool Heaters

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking; rescheduling of public hearing.

SUMMARY: The Department of Energy (DOE or the Department), published a proposed rule on August 23, 1993, entitled "Test Procedures for Furnaces/Boilers, Vented Home Heating Equipment and Pool Heaters" (58 FR 44538). The Energy Policy and Conservation Act, as amended, requires DOE to administer an energy conservation program for certain major household appliances and commercial equipments. Due to requests from Gas Appliance Manufacturers Association, DOE has decided to reschedule the hearing. This notice announces a new public hearing date that was previously scheduled for Monday, September 20, 1993.

DATES: Written comments in response to this document must be received by December 9, 1993.

Oral views, data, and arguments may be presented at the public hearing to be held on Monday, November 15, 1993. Requests to speak at the hearing must be received by the Department no later than 5 p.m., Thursday, November 4, 1993. Ten (10) copies of statements to be given at the public hearing must be received by the Department no later than 5 p.m., Wednesday, November 10, 1993.

ADDRESSES: Written comments and request to speak at the public hearing are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, "Test Procedures for Furnaces/Boilers, Vented Home Heating Equipment, and Pool Heaters," (Docket No. EE–RM–93–501), Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0561.

The hearing will begin at 9:30 a.m., and will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC.

Requests may be hand delivered to such address between the hours of 8 a.m., and 4 p.m., Monday through Friday, except Federal holidays. Requests should be labeled "Furnaces, Vented Home Heating Equipment, and Pool Heaters Test Procedures," (Docket No. EE–RM–93–501), both on the document and on the envelope.

Copies of the transcript of the public hearing and public comments received may be read and/or photocopied at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

Allan R. Hoffman,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 93–23072 Filed 9–17–93; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–22–92]

RIN 1545–AR10

Dividends Received Deduction Holding Period Reduced for Periods Where Risk of Loss Diminished; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of public hearing.

SUMMARY: This document contains a correction to the notice of public hearing (FI–22–92), which was published in the **Federal Register**, Thursday, August 26, 1993 (58 FR 45080). This notice relates to proposed regulations that would determine when a taxpayer must reduce its holding period of stock for purposes of the dividends received deduction because it has diminished its risk of loss by holding a position in substantially similar or related property.

FOR FURTHER INFORMATION CONTACT: Richard G. Larkins, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of public hearing that is the subject of this correction relates to proposed regulations under section 246(c)(4)(C) of the Internal Revenue Code.

Need for Correction

As published, the notice of public hearing (FI–22–92) contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of public hearing (FI–22–92), which was the subject of FR Doc. 93–20513 is corrected as follows:

On page 45081, column 1, under the heading **DATES:**, second line, the language "on Wednesday, September 28, 1993," is corrected to read "on Tuesday, September 28, 1993,".

Jacquelyn B. Burgess,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–22815 Filed 9–17–93; 8:45 am]

BILLING CODE 4830–01–P

26 CFR Part 48

[PS–7–93]

RIN 1545–AR38

Tax-Free Exports of Vaccines

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the export of certain vaccines. The proposed regulations reflect and implement certain changes made by the Omnibus Budget Reconciliation Act of 1987. The proposed regulations affect vaccine manufacturers.

DATES: Written comments and requests for a public hearing must be received by November 19, 1993.

ADDRESSES: Send submissions to: CC:CORP:T:R (PS–7–93), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:CORP:T:R (PS–7–93), Internal Revenue Service, room 5228, 1111 Constitution Ave., NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Frank Boland, (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Vaccine Injury Compensation Trust Fund (the Fund) compensates individuals who are injured as a result of the administration of certain vaccines. Revenue for the Fund is provided by a manufacturers tax (section 4131) on these vaccines. The tax, as originally enacted, was in effect only from 1988 through 1992, but the Omnibus Budget Reconciliation Act of 1993 applied the tax to vaccine sales after August 10, 1993.

Section 4221(a)(2) provides generally that articles otherwise subject to a manufacturers tax may be sold tax free for export or for resale for export. However, with respect to the vaccine tax, sales for export are exempt from tax only if the use of the exported vaccine meets the requirements of any applicable excise tax regulations. Also, section 4132(c)(2) provides that section 4221(a)(2) does not apply to any vaccine shipped to a possession of the United States.

Individuals eligible to make claims against the Fund include (1) any person vaccinated in the United States and (2) any person vaccinated outside the United States if at the time of the vaccination the person was (i) a U.S. citizen serving abroad as a member of the Armed Forces or otherwise as an employee of the United States or (ii) a dependent of a U.S. citizen. Non-U.S. citizens vaccinated in foreign countries generally are not eligible to receive compensation from the Fund.

Explanation of Provisions

Proposed § 48.4221–3(e) generally allows tax-free sales of vaccines for export. A corresponding credit or refund is permitted under proposed § 48.6416(b)(2)–2. To prevent untaxed vaccines from being administered to persons who are eligible for compensation from the Fund, the United States generally is not allowed to make tax-free purchases for export or obtain a credit or refund of the vaccine tax paid with respect to the exported vaccine.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed rules. If a public hearing is scheduled, notice of the time and place for the hearings will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Frank Boland, Office of the Assistant Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service. However, other personnel from the IRS and the

Treasury Department participated in their development.

List of Subjects in 26 CFR Part 48

Excise taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 48 is proposed to be amended as follows:

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Paragraph 1. The authority citation for part 48 is amended by adding the following citations:

Authority: 26 U.S.C. 7805 * * *

Section 48.4221–3(e) also issued under 26 U.S.C. 4221(a).

Section 48.6416(b)(2)–2(b) also issued under 26 U.S.C. 6416(b).

Par. 2. Section 48.4221–3 is amended by adding paragraph (e) to read as follows:

§ 48.4221–3 Tax-free sale of articles for export, or for resale by the purchaser to a second purchaser for export.

* * * * *

(e) *Vaccines.* The exemption provided by section 4221(a)(2) applies after August 10, 1993, to the tax imposed on vaccines by section 4131, but only if—

(1) The vaccine is sold by the manufacturer after August 10, 1993; and

(2) In the case of vaccine sold to, or sold for resale to, the United States or any of its agencies or instrumentalities, the United States or such agency or instrumentality notifies the manufacturer that the vaccine is intended for uses other than the vaccination of persons described in 42 U.S.C. 300aa-11(c)(1)(B)(i)(II) (relating to certain U.S. citizens who are vaccinated outside the United States).

Par. 3. Section 48.6416(b)(2)–2 is amended by:

1. Revising the heading to paragraph (b).
2. Designating the text of paragraph (b) following the heading as paragraph (b)(1).
3. Adding a heading to newly designated paragraph (b)(1).
4. Revising the first sentence of newly designated paragraph (b)(1).
5. Adding paragraph (b)(2).
6. The revisions and additions read as follows:

§ 48.6416(b)(2)–2 Exportations, uses, sales, and resales included.

* * * * *

(b) *Exportation of tax-paid articles—*(1) *In general.* Subject to the limitations of section 6416(b)(2) and paragraph (b)(2) of this section, tax paid under chapter 31 or 32 on the sale of any article will be considered to be an overpayment under section 6416(b)(2)(A) if the article is exported by any person. * * *

(2) *Rule for exportation of vaccines.* Paragraph (b)(1) of this section applies to tax paid under section 4131 on the sale of a vaccine, but only if the sale by the manufacturer occurs after August 10, 1993, and, in the case of vaccine sold to the United States or any of its agencies or instrumentalities, the condition of § 48.4221–3(e)(2) is satisfied.

* * * * *

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 93–22816 Filed 9–17–93; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 601

[IA–85–91]

RIN 1545–AQ18

Appeals Functions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed amendments to statement of procedural rules and notice of public hearing.

SUMMARY: This document proposes to amend the Statement of Procedural Rules relating to how a taxpayer may appeal, without going to court, adjustments affecting a taxpayer's tax liability. This document clarifies, updates, reorders, and revises the existing rules.

DATES: Written comments, requests to speak and outlines of oral comments to be presented at the public hearing scheduled for November 23, 1993, must be received by November 4, 1993.

ADDRESSES: Send submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:T:R (IA–85–91), room 5228, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:DOM:CORP:T:R (IA–85–91), room 5228, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. The public hearing will be held in room 2615, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cheryl Revier at telephone (202) 401–5202 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this proposed amendment is not subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) because it concerns information collected during an administrative action.

Background

Statements of Procedural Rules inform the public of the procedures to be followed by a government agency and the public in their dealings with each other. Government agencies are required to file Statements of Procedural Rules in the **Federal Register** by the Administrative Procedure Act of 1946, 5 U.S.C. 552(a)(1)(c). The Statement of Procedural Rules for the Appeals function of the Internal Revenue Service is codified in § 601.106 of title 26 of the Code of Federal Regulations.

This document concerns the subpart of the Statement of Procedural Rules that describes how a taxpayer may appeal, without going to court, adjustments affecting a taxpayer's tax liability. These adjustments generally result from letters from the Internal Revenue Service, office interviews or field examinations. The appeal is made to the taxpayer's local Appeals Office of the Internal Revenue Service, which is independent of the local District Director, Service Center/Compliance Center Director, or Assistant Commissioner (International) that made the adjustments.

This document, for the most part, simply clarifies, updates, and reorders the existing rules. However, this document also changes the rules in § 601.106(b)(4) prescribing the information that a taxpayer provides to initiate an appeal (the protest rules). This document also revises the rules in § 601.106(e)(3) for disposition and settlement of cases docketed in the Tax Court to reflect Rev. Proc. 87–24, 1987–1 C.B. 720.

These rules are procedural, and, therefore, are exempt from the general notice of rulemaking requirements (5 U.S.C. 553(b)(3)(A)). However, public comment is being sought on the procedural rules because of the change in the protest rules. Comments are particularly sought on the protest rules to ensure they are both simple and effective.

Explanation of Provision

Information That a Taxpayer Provides To Initiate an Appeal

Presently, the information a taxpayer must provide to initiate an appeal varies

depending on which Internal Revenue Service function has proposed the adjustments to the taxpayer's tax liability. Under the proposed general protest rule, the information would not vary in this manner.

Under proposed § 601.106(b)(4) the information to be provided to initiate an appeal varies only with the dollar amount of the adjustments to the taxpayer's liability. If the proposed change in tax for the period is not more than $25,000, a "small case request" is used to initiate an appeal. For greater amounts, a "protest" is used to initiate the appeal. (In certain cases described in § 601.106(b)(4)(iii)(C) involving $25,000 or less, however, a protest was required under the old rules and continues to be required.) A small case request should indicate the unagreed adjustments and provide the reasons for the disagreement. Generally, more detail and formality is required in a protest than in a small case request. In addition to the items in a small case request, a protest should provide the taxpayer's view of any disputed facts. The protest should also provide references to any materials the taxpayer would like to bring to Appeal's attention in support of the reasons for disagreement. Complete protest requirements are described in Publication 5, the Internal Revenue Service publication concerning taxpayers' appeal rights and protest rules.

Disposition and Settlement of Cases Docketed in the Tax Court

Rev. Proc. 87–24, 1987–1 C.B. 720, facilitates the effective use of Appeals in Tax Court cases and the earlier development and disposition of such cases either by settlement or by trial. These rules are now fully reflected in § 601.106(e)(3).

Among other items, the following items have been clarified or have been updated in the statement of procedural rules to reflect current Appeals practice:

- Certain references to offices or positions have been changed to reflect various reorganizations within the Service.
- The positions to whom settlement authority in Appeals has been or could be delegated are clarified by specific references to the Chief, an Associate Chief, or a Team Chief in the Appeals office and to other employees specifically delegated such authority.
- The list of items for Appeals' subject matter jurisdiction is updated to include, among others, the following items: (1) Any tax that is subject to the deficiency procedures; (2) partnership items that are adjusted or readjusted; (3) offers in compromise under section 7122 of the Internal Revenue Code; (4) abatement of interest under section 6404(e)(1) of the Internal Revenue Code; and (5) any other disputed tax issues that the Internal Revenue Service determines are administratively appealable.
- The regulations clarify that Appeals' may accept jurisdiction of the following docketed cases: (1) Cases for which Appeals issued the notice of deficiency, liability, or other determination, and (2) cases for which the Employee Plans/Exempt Organization function issued such notice after all petitioned issues were considered by Appeals.
- The regulations make clear that Appeals' authority does not extend to include issues designated for litigation by Chief Counsel.
- Because the technical advice procedures are published annually in a revenue procedure the technical advice rules have been removed from these regulations. See, Rev. Proc. 93–2, 1993–1 I.R.B. 50.
- The procedure for settlement of docketed cases is clarified to provide that no settlement of a docketed case is binding on either the government or the taxpayer until it is entered as a decision.
- The procedure for transferring a case to another Appeals office is updated to reflect that a case may be transferred to relieve the taxpayer of hardship.

Proposed Effective Dates

In general, the rules will be effective on the date of publication of the final rules in the **Federal Register**. The rules in § 601.106(b)(4), which describe how a taxpayer initiates an appeal, will be effective 60 days after the date of publication of the final rules in the **Federal Register**. However, if the letter (or other information enclosed with the letter) offering the taxpayer the opportunity to appeal refers to rules predating the rules in § 601.106(b)(4), then the taxpayer may follow either the old rules or new rules.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these rules, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these proposed amendments will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed amendments are adopted as final, consideration will be given to any written comments that are timely submitted (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety.

A public hearing will be held on Tuesday, November 23, 1993, at 10 a.m. in room 2615, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC. The rules of § 601.601(a)(3) of the Statement of Procedural Rules apply to the public hearing.

Any person who has submitted timely written comments, and who desires to present oral comments at the public hearing on the proposed amendments, should submit, not later than November 4, 1993, a request to speak and an outline of the oral comments to be presented at the hearing stating the time the person wishes to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Service Building before 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after the outlines are received from persons testifying. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these rules is Cheryl Revier, Office of Field Services, National Director of Appeals, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service participated in their development.

List of Subjects in 26 CFR Part 601

Administrative practice and procedure, Freedom of information, Reporting and recordkeeping requirements, Taxes.

Proposed Amendments to the Statement of Procedural Rules

Accordingly, 26 CFR part 601 is proposed to be amended as follows:

PART 601—STATEMENT OF PROCEDURAL RULES

Paragraph 1. The authority citation for part 601 is revised to read as follows:

Authority: 5 U.S.C. 301 and 552 and 26 U.S.C. 7805. Section 601.801 issued under Sec. 163(b)(5) of the Revenue Act of 1978, Pub. L. 96–600, 92 Stat. 2811.

Par. 2. The authority citations located at the end of sections 601.105, 601.106, 601.405, and 601.9000 are removed.

Par. 3. The authority citations for subparts E and H are removed.

Par. 4. Section 601.106 is amended as follows:

1. Paragraphs (a) through (f) are revised.
2. Paragraph (g)(1) is revised.
3. Paragraph (h) is amended by:
a. Redesignating the text of paragraph (h)(1) as paragraph (h)(1)(i).
b. Adding paragraph headings for (h)(1) and newly designated paragraph (h)(1)(i).
c. Redesignating the text of paragraph (h)(2) as paragraph (h)(1)(ii) and revising it.
d. Redesignating the text of paragraph (h)(3) as paragraph (h)(2)(i).
e. Adding headings for newly designated paragraphs (h)(2) and (h)(2)(i).
f. Adding the word "original" immediately before the word "disposition" in newly designated paragraph (h)(2)(i).
g. Redesignating the text of paragraph (h)(4) as paragraph (h)(2)(ii).
h. Adding a heading to newly designated paragraph (h)(2)(ii).
4. Paragraph (i) is revised.
5. The revised and added provisions read as follows:

§ 601.106 Appeals functions.

(a) *General*—(1) *Purpose.* Appeals is the administrative appeals office of the Internal Revenue Service. Its purpose is to resolve tax controversies without litigation, to the extent possible. Appeals is to approach these controversies in a fair and impartial manner to both the taxpayer and the government.

(2) *Authorization*—(i) *For the Appeals function.* Appeals authority on non-docketed cases has been delegated by the Commissioner while Appeals authority on docketed cases has been delegated by the Chief Counsel.

(ii) *For an Appeals office.* Each region contains Appeals offices with local office facilities within the region. An Appeals office has jurisdiction over cases originating in the office of any District Director, Service Center/ Compliance Center Director, or the Assistant Commissioner (International) situated in the region, or in any case in which jurisdiction has been transferred to the region. A taxpayer residing or located outside the United States uses the facilities of the Washington, DC, Appeals Office of the Mid-Atlantic Region or any other Appeals office that the taxpayer specifies when initiating the appeal.

(iii) *For settlement by Appeals personnel.* Unless settlement authority has been delegated to other employees, settlements with a taxpayer must be approved by the Chief, an Associate Chief, or a Team Chief in the Appeals office.

(3) *Subject matter jurisdiction; in general.* Appeals offices have exclusive settlement jurisdiction and final authority within the Internal Revenue Service for the determination of the following types of tax liability and other items—

(i) Federal income tax, estate tax (including extensions for payment under section 6161(a)(2) of the Internal Revenue Code), gift tax, generation-skipping transfer tax, or miscellaneous excise taxes under chapter 41, 42, 43, 44, or 45 of subtitle D of the Internal Revenue Code, all of which are subject to the deficiency procedures (Chapter 45 was repealed for oil removed on or after August 23, 1988.);

(ii) Any other tax which is subject to the deficiency procedures;

(iii) Employment tax or certain miscellaneous excise tax under subtitle D of the Internal Revenue Code (which are not subject to the deficiency procedures except as noted in paragraph (a)(3)(i)(A) of this section);

(iv) Liability for additions to the tax, additional amounts, and assessable penalties provided under chapter 68 of the Internal Revenue Code (collectively referred to in this section as penalties);

(v) The initial or continuing recognition of the tax exempt or foundation status of an organization;

(vi) The initial or continuing determination of employee plan qualification under subchapter D of chapter 1 of the Internal Revenue Code;

(vii) The adjustment or readjustment of partnership items;

(viii) Offers in compromise under section 7122 of the Internal Revenue Code;

(ix) Abatement of interest under section 6404(e)(1) of the Internal Revenue Code; and

(x) Any other disputed tax issues that the Internal Revenue Service determines are administratively appealable.

(4) *Limitations on authority.* The authority described in paragraphs (a)(2) and (a)(3) of this section does not include the authority to:

(i)(A) Consider any case involving the qualification of an employee plan or the tax exempt or foundation status of an organization if such consideration has already been given in a National Office ruling or technical advice (but only to the extent the case involves qualification or the tax exempt or foundation status). In such a case the decision of the National Office is final. The plan or organization has no right of administrative appeal to Appeals or elsewhere;

(B) If a case is already under Appeals' jurisdiction and Appeals' proposed disposition is contrary to either a National Office ruling concerning tax exempt or foundation status, or a National Office technical advice concerning either qualification or tax exempt or foundation status (issued before the case went to Appeals), the Appeals determination is not final. In such a case Appeals' proposed disposition will be submitted to the Assistant Commissioner (Employee Plans and Exempt Organizations) through the Office of the Regional Director of Appeals. However, in a section 521 case, the proposed disposition will be submitted to the Associate Chief Counsel (Domestic) through the Office of the Regional Director of Appeals. The decision of the Assistant Commissioner or the Associate Chief Counsel will be followed by Appeals;

(ii) Consider any case that was docketed under section 6110 of the Internal Revenue Code concerning the public inspection of written documents or section 7428, 7476, 7477 (repealed after December 31, 1984) or 7478 of the Internal Revenue Code concerning declaratory judgements;

(iii) Eliminate the fraud penalty in a tax year or period for which criminal prosecution against the taxpayer (or related taxpayer involving the same transaction) has been recommended to the Department of Justice for a willful attempt to evade or defeat tax, or for a willful failure to file a return, except upon the recommendation or concurrence of Counsel. Similarly, an Appeals office has no authority to eliminate the fraud penalty in a tax year or period that relates to or affects the year or period described in this paragraph (a)(4)(iii);

(iv) Consider any case in which a recommendation for criminal prosecution is pending, except with the concurrence of Counsel;

(v) Determine alcohol, tobacco, and certain other excise tax liability under subtitle E of the Internal Revenue Code or under subchapter D, chapter 78 of subtitle F of the Internal Revenue Code,

insofar as subchapter D relates to taxes imposed under subtitle E;

(vi) Consider a Trust Fund Recovery Penalty case (formerly referred to as a 100 percent penalty case) if the assessment is to be made because of Chief Counsel's request to support a third-party action in a pending refund suit. See Rev. Proc. 84–78, 1984–2 C.B. 754;

(vii) Consider any case solely involving the failure or refusal to comply with the tax laws because of moral, religious, political, constitutional, conscientious, or similar grounds; or

(viii) Consider an issue or a case that is designated for litigation by Chief Counsel.

(b) *Appeal rights of the taxpayer*—(1) *In general.* The Appeals process is initiated at the request of the taxpayer. The procedures for initiating an appeal are described below.

(2) *When an organization, rather than each member, is treated as the taxpayer.* Labor unions, trade associations, and other organizations whose members' dues have been disallowed as a deduction to each member because the organization spent amounts for lobbying, promoting or defeating legislation, political campaigning, or for propaganda related to those activities, are afforded rights of administrative appeal similar to those rights afforded to taxpayers generally.

(3) *Situations in which a taxpayer may request an appeal*—(i) *Letter proposing adjustments.* A taxpayer may request an appeal in any case in which a District Director, Service Center/ Compliance Center Director, or the Assistant Commissioner (International) has issued a letter proposing adjustments (commonly referred to as the 30 day letter) concerning an item described in paragraph (a)(3) of this section. (The taxpayer will be informed of the right to an administrative appeal in this letter.)

(ii) *After issuance of a statutory notice of deficiency.* A taxpayer who has been issued a statutory notice of deficiency (commonly referred to as the 90 day letter) will not be granted a conference by Appeals during the 90 day period (150 day period if the notice is addressed to a person outside the United States) following the mailing of the notice if the taxpayer had a conference or was offered a conference prior to the issuance, unless unusual circumstances exist.

(iii) *Penalties.* Certain chapter 68 penalties that have been assessed may be appealed before payment is made. (These penalties may also be appealed after payment is made but before the filing of a claim for refund.) This post-assessment appeal procedure applies to all but the following chapter 68 penalties—

(A) Penalties that are not subject to a reasonable cause or reasonable basis determination (e.g., the penalty for failure to pay estimated income tax under section 6655 of the Internal Revenue Code);

(B) Penalties that are subject to the deficiency procedures of subchapter B of chapter 63 of the Internal Revenue Code (e.g., the accuracy-related penalty and the fraud penalty under sections 6662 and 6663 of the Internal Revenue Code, respectively). Taxpayers have the right to appeal these penalties prior to assessment;

(C) Penalties that are subject to an administratively granted pre-assessment appeal procedure (such as that provided in § 1.6694–2(a)(1) of this chapter);

(D) The penalties provided in sections 6700 and 6701 of the Internal Revenue Code for promoting abusive tax shelters, and for aiding and abetting, respectively. These penalties are subject to the procedural rules of section 6703 of the Internal Revenue Code which provides for an extension of the period of collection of the penalty when a person pays not less than 15 percent of the amount of such penalty; and

(E) The Trust Fund Recovery Penalty (formerly referred to as the 100 percent penalty) provided under section 6672 of the Internal Revenue Code. The taxpayer generally has the opportunity to appeal this penalty prior to assessment.

(4) *Initiation of an appeal*—(i) *General rules.* An appeal is initiated by filing a protest. See paragraph (b)(4)(iii) of this section for a simplified procedure for small cases.

(ii) *Contents of a protest.* A protest provides the reasons in writing why the taxpayer does not agree with the disputed adjustments to tax liability. In addition, a protest should contain identifying information, which is described in the letter (or in other information enclosed with the letter) that offers the taxpayer the opportunity to appeal. Examples of items that should be in a protest are as follows:

(A) If the disagreement concerns factual matters, the protest should include a statement in writing of the taxpayer's view of the facts. Factual matters concern, for example, evidence of the date when income was received and the existence of records proving the payment of an expense.

(B) If the disagreement concerns whether or how an item should be taxed, the protest should include a reason or reasons in writing for the taxpayer's position. Such disagreements concern, for example, whether the law requires that certain proceeds be included in gross income. The reasoning may be based simply on what the taxpayer believes is logical and fair. Inclusion of references to supporting authorities such as the Internal Revenue Code, Treasury regulations, court cases, revenue rulings and revenue procedures will facilitate consideration of the appeal. Reference may also be made to Internal Revenue Service publications.

(iii) *Small case request*—(A) *In general.* If the total amount (described in paragraph (b)(4)(iii)(B) of this section) is not more than $25,000 for any tax period, the taxpayer may initiate an appeal by requesting Appeals consideration, indicating the unagreed adjustments to tax liability and stating the reason for disagreement. A taxpayer may provide any additional information that he or she feels is pertinent.

(B) *Total amount defined*—(1) *In general.* The total amount includes the entire amount of additional tax and penalties proposed by the Internal Revenue Service, not just the portion of additional tax or penalties that the taxpayer disputes. The total amount also includes the entire amount of a refund or credit claimed by the taxpayer. Where the Service determines that an overassessment was made, the total amount is the amount proposed by the Internal Revenue Service. Interest is not included in any of these amounts.

(2) *Offer in compromise.* In an offer in compromise, the total amount includes the assessed tax, penalties, and interest sought to be compromised.

(3) *Penalties.* In the case of penalties that are assessed before a taxpayer is given the opportunity to dispute the penalties (a post-assessment penalty case), the total amount is the amount of the disputed penalties for any tax period.

(C) *Subjects always requiring a protest.* A protest is required to obtain Appeals consideration in all employee plan and exempt organization cases. (If corporate or individual returns are adjusted in connection with employee plan or exempt organization cases, these returns are not subject to this paragraph (b)(4)(iii)(C).) A protest is also required in all partnership and S corporation cases.

(iv) *Where to file a protest or a small case request.* Filing instructions are in the letter (or in other information enclosed with the letter) that offers the taxpayer the opportunity to appeal. The receiving office will review the protest or small case request for the purpose of deciding whether further development

or action is required prior to referring the case to Appeals.

(c) *Nature of Appeals' proceedings*—(1) *In general.* Appeals' proceedings are informal. Testimony is not taken under oath, although matters alleged as facts may be required to be submitted later in the form of affidavits, or declared to be true under penalties of perjury.

(2) *Presentation of new information at Appeals*—(i) *Newly discovered information.* If newly discovered evidence is presented to Appeals in a case pending in non-docketed status, Appeals may send the new information to the originating function (the District Director, Service Center/Compliance Center Director, or Assistant Commissioner (International)) for consideration and comment.

(ii) *Withheld information.* A taxpayer cannot withhold information from the District Director, Service Center/Compliance Center Director, or Assistant Commissioner (International) and expect to present it for the first time before Appeals at a conference in non-docketed status. If such information is presented to Appeals, generally, the case will be returned to the originating function for reconsideration.

(3) *Taxpayer representatives.* Taxpayers may represent themselves or may designate a qualified representative to act for them. If a taxpayer engages a representative to present the appeal, the taxpayer and representative must follow the practice and conference procedures in Treasury Department Circular 230 as amended (31 CFR part 10), and in subpart E of this part.

(d) *Consideration of cases by Appeals*—(1) *In general.* Appeals will follow the law and the recognized standards of legal construction in determining facts and applying the law. Appeals will determine the correct amount of the tax with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination between taxpayers.

(2) *Factors considered by Appeals.* Appeals will ordinarily consider the relative merits of the opposing views in light of the hazards which would exist if the case was litigated. However, no settlement will be made based upon the nuisance value of the case to either party. If the taxpayer makes an unacceptable settlement proposal under circumstances indicating a good faith attempt to reach an agreement on a basis that is fair to both the Government and the taxpayer, then, generally, the Appeals officer should indicate to the taxpayer the kind of settlement that the officer would recommend for acceptance. Appeals may defer action on, or may decline to settle, certain cases or issues in order to achieve greater uniformity and enhance overall voluntary compliance with the tax laws.

(3) *Making a taxpayer's return.* In cases under Appeals jurisdiction, the Appeals official has the authority to make and subscribe to a return under the provisions of section 6020 of the Internal Revenue Code where a taxpayer fails to make a required return.

(4) *When an Appeals officer's proposed settlement is not approved.* An Appeals officer may recommend acceptance of the taxpayer's proposal of settlement, or may recommend other action favorable to the taxpayer. However, as stated in paragraph (a)(2)(iii) of this section, generally, settlements with a taxpayer must be approved by the Chief, an Associate Chief, or a Team Chief in the Appeals office. If the Appeals officer's recommendation is disapproved in whole or in part by a reviewing officer, then, generally, the reviewing officer will advise the taxpayer of the decision and will offer the taxpayer a conference (with the reviewing officer), which the taxpayer may accept by written confirmation. However, a conference will not be offered if the interest of the Government would be injured by delay, as, for example, in a case involving the imminent expiration of the period of limitations or the dissipation of assets.

(5) *Related taxpayer.* The District Director, the Service Center/Compliance Center Director, and the Assistant Commissioner (International) are responsible for assembling the return of a related taxpayer for an examination. Ordinarily, a case concerning a related taxpayer is not requested from the examining office by Appeals unless this action is necessary to ensure consistency. If the action is necessary, Appeals contacts the examining office to determine what action should be taken by both offices. Appeals may assume jurisdiction in a related taxpayer case with the concurrence of the related taxpayer after the examining office has completed any necessary action. The related taxpayer does not have to file a protest. If the need for assuming jurisdiction over a related taxpayer case becomes apparent after a conference has been held, Appeals may contact the related taxpayer. In the absence of any objection, Appeals assumes jurisdiction after requesting that the examining office complete action on the case.

(6) *Assistance from Counsel*—(i) *In general.* Appeals may use Counsel as a resource on non-docketed cases when advice is needed concerning the hazards of litigation, interpretation of law, or evaluation of evidence. This advice will be provided through informal arrangements between each Counsel and Appeals office.

(ii) *Counsel attendance at conference.* Appeals generally does not ask Counsel to attend settlement conferences. However, in certain cases Counsel may attend an appeals settlement conference. For example, Counsel may attend a conference for a case involving the fraud penalty for which criminal prosecution against the taxpayer (or a related taxpayer involving the same transaction) has been recommended to the Department of Justice for a willful attempt to evade or defeat tax, or for a willful failure to file a return.

(iii) *Technical advice from the National Office*—(A) *Definition.* Technical advice means advice or guidance as to the interpretation and proper application of internal revenue laws, related statutes, and regulations, to a specific set of facts, furnished by the National Office upon Appeals' request in connection with the processing and consideration of a non-docketed case. It is furnished as a means of assisting Internal Revenue Service personnel in closing cases and establishing and maintaining consistent holdings in the various regions. It does not include memoranda on matters of general technical application furnished to Appeals where the issues are not raised in connection with the consideration and handling of a specific taxpayer's case.

(B) *Procedures for technical advice.* General procedures for technical advice are found in § 601.105(b)(5). In addition, the technical advice rules are not applicable to an appeal of penalties described in paragraph (b)(3)(iv) of this section.

(e) *Settlement of a case before Appeals*—(1) *In general; new issue.* During consideration of a case, the Appeals office should neither reopen an issue as to which the taxpayer and the office of the District Director, Service Center/Compliance Center Director, or Assistant Commissioner (International) are in agreement, nor raise a new issue, unless the ground for such action is a substantial one and the potential effect upon the tax liability is material. If Appeals raises a new issue, the taxpayer or the taxpayer's representative should be so advised and should be offered an opportunity for discussion before taking any formal action, such as the issuance of a statutory notice of deficiency (commonly referred to as the 90 day letter).

(2) *Case not docketed in the Tax Court*—(i) *Agreed issues.* If settlement of some or all of the issues is reached with the taxpayer by Appeals, the taxpayer

will be requested to sign the appropriate agreement form for the agreed issue or issues.

(ii) *Unagreed Issues*—(A) *In general*—*(1) Case subject to the deficiency procedures.* To the extent that the taxpayer does not agree with a proposed deficiency, a statutory notice of deficiency (commonly referred to as the 90 day letter) will be issued by Appeals as prescribed in sections 6212 and 6861 of the Internal Revenue Code. (The statutory notice is issued for deficiencies in income, estate, gift, generation-skipping transfer, or certain miscellaneous excise taxes (under chapter 41, 42, 43, 44, or 45 of the Internal Revenue Code). Each Chief, Associate Chief, or Team Chief of an Appeals office is authorized to issue the statutory notice of deficiency. The taxpayer may file a petition with the U.S. Tax Court for a redetermination of the deficiency. The petition must be filed within 90 days (150 days if the notice is addressed to a person outside of the United States) after the statutory notice of deficiency is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day).

(2) Case not subject to the deficiency procedures. If the unagreed case is not subject to the deficiency procedures, the case and its administrative file will be forwarded to the appropriate Internal Revenue Service function with instructions to take action on the unagreed tax liability determined by Appeals.

(B) *Refund claimed by a Taxpayer.* If a claim for refund is disallowed in full or in part by Appeals and the taxpayer does not sign Form 2297, Waiver of Statutory Notification of Claim Disallowance, Appeals will issue a statutory notice of claim disallowance.

(3) *Case docketed in Tax Court*—(i) *Appeals jurisdiction*—(A) *In general.* Except in unusual cases, a docketed case is referred by Counsel to Appeals to reach a settlement with the taxpayer (even if Appeals issued the statutory notice of deficiency). If Appeals has the case under consideration at the time it is docketed, then it retains the case. See Rev. Proc. 87–24, 1987–1 C.B. 720.

(B) *Period of jurisdiction*—*(1) Deficiency of more than $10,000.* Appeals has exclusive jurisdiction of a docketed case involving a deficiency of more than $10,000 per period (including taxes and penalties) as long as Appeals believes there is a reasonable likelihood of settlement, or until the case appears on a trial calendar. Counsel may extend the period of Appeals consideration of the case when it appears on the trial calendar.

(2) Deficiency of $10,000 or less. In general, Appeals has exclusive jurisdiction of a docketed case involving a deficiency of $10,000 or less per period (including tax and penalties) for a period of six months, except that jurisdiction ends one month before the trial calendar call. In a Small Tax Case (S case), Appeals' jurisdiction ends 15 days before the trial calendar call. Appeals and Counsel may agree to extend the period of consideration. A case is designated as an S case by the Court upon request of the petitioner and includes the letter S as part of the docket number. An S case is given expeditious consideration.

(C) *Exclusive jurisdiction.* In general, Appeals has sole settlement authority over docketed cases referred to, or retained by, Appeals pursuant to these procedures until the case is returned to Counsel. However, a case or an issue in a case may be reserved by Counsel. Upon request, Appeals will return a case to Counsel to allow adequate trial preparation. Whenever a docketed case is returned to Counsel, sole authority to try or to settle the case will revert to Counsel, unless Counsel and Appeals agree that settlement authority over some or all of the issues will be retained by Appeals. Thus, in some situations Counsel will prepare a case for trial while Appeals simultaneously negotiates for a settlement.

(D) *Transfer of jurisdiction to and from Counsel.* By agreement between Counsel and Appeals, any docketed case (or portions thereof) may be transferred from Counsel to Appeals or from Appeals to Counsel, notwithstanding the fact that the case was previously considered by the receiving function. This authority is to be utilized to promote more efficient disposition of the case.

(E) *Assisting Counsel.* For cases or issues over which Counsel has jurisdiction, Appeals may assist Counsel with settlement negotiations, with trial preparation, or at trial.

(F) *Coordination of settlements in related cases.* Unless both offices agree that the offer is acceptable, no settlement offer will be accepted by Appeals if there is a related case in Counsel. (Related cases may involve different tax years of the same taxpayer or different taxpayers engaging in a similar transaction.) Disagreements between Appeals and Counsel on whether the offer should be accepted will be resolved by the Regional Counsel, with the advice and assistance of the Regional Director of Appeals and the Deputy Regional Counsel (Tax Litigation).

(ii) *Agreed issues.* If some or all of the issues in a docketed case are settled by the taxpayer and Appeals, Appeals generally prepares a document reflecting settlement of these issues. The agreement is recorded in a decision document or stipulation of settlement. This document stipulates to the agreed deficiency or overpayment (or to the disposition of agreed issues if less than all issues are agreed) and is signed by the taxpayer. Appeals forwards the document, along with any necessary computations, to Counsel who signs and files the document with the Tax Court. If the court signs the document, it is entered as a decision of the court (or, if the settlement resolves only some of the issues in the case, as a part of the record of the case). No settlement of a docketed case is binding on either the taxpayer or the government until it is entered as a decision (or filed as part of the record in the case).

(iii) *Unagreed issues.* To the extent issues in a docketed case remain unsettled after consideration and conference in Appeals, the case will be returned to Counsel.

(f) *Transfer of a case to another Appeals office*—(1) *Non-docketed case*—(i) *Routine.* An Appeals office may transfer jurisdiction in a non-docketed case to an office that is closer to the taxpayer's residence or place of business if the taxpayer's books and records are available there.

(ii) *Hardship.* An Appeals office may transfer jurisdiction in a non-docketed case to another office to relieve the taxpayer of hardship. The request is made to the transferring office which will determine whether hardship exists. If hardship exists, the transfer will be made if the taxpayer's books and records are available to the receiving office, and if both offices agree that the transfer is not an attempt to obtain a more favorable resolution of the disputed issues.

(iii) *Special situations.* From time to time special transfer rules will be published in the Internal Revenue Manual for certain types of cases.

(iv) *Approval needed.* Transfers within a region for reasons other than those listed in paragraphs (f)(1)(i), (ii) and (iii) of this section must be approved by both the transferring and receiving Regional Directors of Appeals. If the directors cannot agree, the proposed transfer may be referred to the National Director of Appeals for decision.

(2) *Docketed case*—(i) *In general.* A docketed case under Appeals jurisdiction will be transferred to the Appeals office serving the locality designated by the Tax Court for trial

unless that locality is Washington, DC. Docketed cases set for a Tax Court trial should be transferred to the Washington, DC, office only if the taxpayer resides in the area and the books and records are available there. Otherwise the case should be transferred to the Appeals office serving the taxpayer's residence or place of business.

(ii) *Special situations.* From time to time special transfer rules will be published in the Internal Revenue Manual for certain types of docketed cases.

(iii) *Approval needed.* Transfers within a region for reasons other than those listed in paragraphs (f)(2)(i) and (ii) of this section must be approved by both the transferring and receiving Regional Directors of Appeals. If the directors cannot agree, the proposed transfer may be referred to the National Director of Appeals for decision.

(iv) *Coordination with Counsel.* All transfers of docketed cases must be coordinated with Counsel.

(g) *Limitation on the jurisdiction and function of Appeals*—(1) *Overpayment of more than $1,000,000.* If Appeals determines that there is an overpayment of income, estate, generation-skipping transfer, gift or certain miscellaneous excise taxes (under chapter 41, 42, 43, 44, or 45 of the Internal Revenue Code), including penalties and interest, in excess of $1,000,000, such determination will be reviewed by the Joint Committee on Taxation. See § 601.108.

* * * * *

(h) * * * (1) *Closed with mutual concessions*—(i) *Service initiated opening.* * * *

(ii) *Taxpayer initiated opening.* Under certain unusual circumstances favorable to the taxpayer, such as retroactive legislation, a case not docketed in the Tax Court and closed by Appeals on the basis of concessions made by both Appeals and the taxpayer may be reopened upon written application from the taxpayer, and only with the approval of the Regional Director of Appeals. The processing of an application for a tentative carryback adjustment or a claim for refund or credit for an overassessment (for a year involved in the prior closing) attributable to a claimed deduction or credit for a carryback provided by law, and not included in a previous Appeals determination, does not constitute a reopening requiring approval. A subsequent assessment of an excessive tentative allowance also does not constitute such a reopening. The National Director of Appeals may authorize, in advance, the reopening of similar classes of cases if legislative enactments or compelling administrative reasons require such advance approval.

(2) *Closed without mutual concessions*—(i) *Service initiated opening.* * * *

(ii) *Taxpayer initiated opening.* * * *

(i) *Effective dates.* In general, the rules will be effective on the date of publication of the final rules in the **Federal Register**. The rules in § 601.106(b)(4), which describe how a taxpayer initiates an appeal, will be effective 60 days after the date of publication of the final rules in the **Federal Register**. However, if the letter (or other information enclosed with the letter) offering the taxpayer the opportunity to appeal refers to rules predating the rules in § 601.106(b)(4), then the taxpayer may follow either the old rules or new rules.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 93–22685 Filed 9–17–93; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

Range Management; Grazing and Livestock Use and Grazing Fees

AGENCY: Forest Service, USDA.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: On August 13, 1993, at 58 FR 43202, part V, the Forest Service published an advance notice of proposed rulemaking to be codified at 36 CFR part 222, Range Management; Grazing and Livestock Use and Grazing Fees. The Department of Agriculture gave notice of its intention to revise Forest Service range management regulations to improve administration of permits, to place greater emphasis on stewardship of the rangeland resource, to manage the rangeland resource using an ecological approach, to change the system used to determine the fees for grazing of privately owned livestock on national forests and grasslands in the west, and to achieve greater consistency between the grazing management regulations of the Forest Service and the Bureau of Land Management. The intended effect is to provide for healthy, sustainable rangeland ecosystems on National Forest System lands. The public comment period was to expire on September 13, 1993. The public, in addition to the Western governors, has asked for more time to respond and comment on rangeland reform. In response, the Forest Service in cooperation with the Bureau of Land Management, is extending the public comment period until October 20, 1993.

DATES: Written comments must be received in writing and postmarked no later than October 20, 1993.

ADDRESSES: Send written comments to Director, Range Management Staff (2200), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Jerry W. McCormick, Range Management Staff, (202) 205–1746.

Dated: September 15, 1993.

Mark A. Reimers,

Acting Chief.

[FR Doc. 93–22956 Filed 9–17–93; 8:45 am]

BILLING CODE 3410–11–M

POSTAL SERVICE

39 CFR Part 265

Release of Information

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule modifies current regulations for the disclosure of a postal customer's address information in those situations when it is needed for service of legal process. The format for requesting such information, currently a suggested format, will become mandatory. The proposed format will eliminate the need for requesters to use two different formats—one for requesting a boxholder's street address and another for requesting a customer's new address. Additionally, the proposed format incorporates a warning notice of the criminal penalties for submitting false information; deletes the requirement for a description of the nature of the litigation and alerts postal personnel that the requested information is provided by the Postal Service at no charge. Other changes are being made to clarify the intent of current policy.

DATES: Comments on the proposed rule must be received on or before October 20, 1993.

ADDRESSES: Comments may be mailed to: United States Postal Service, Records Office, 475 L'Enfant Plaza SW., room 8831, Washington, DC 20260–5240.

Comments also may be delivered to room 8831 at the above address between 8:15 a.m. and 4:45 p.m., Monday through Friday. Comments received also

may be inspected during the above hours in room 8831.

FOR FURTHER INFORMATION CONTACT: Betty E. Sheriff, Records Office (202–268–2924).

SUPPLEMENTARY INFORMATION: The Postal Service proposes to require that individuals use the format shown at the end of this proposed rule when submitting requests for either a boxholder's street address, or a waiver of the fee for a customer's change of address, when that information is needed for the purpose of serving legal process. Current Postal Service regulations suggest use of the format referenced in § 265.6(d)(6)(ii) to request the release of boxholder information authorized by that paragraph. Other formats have been permitted as long as all of the required information was provided. This has resulted in a proliferation of formats, placing an increased administrative burden on post offices, which affects costs borne by postal customers. First, in processing requests in differing formats, postal personnel must spend extra time verifying that the requests contain the necessary information regarding the litigation to determine whether the request is proper and complete. Second, the formats used by some requesters ask for information (such as verification of a customer's current mailing address) even though they are not entitled to that information. Third, Postal Service regulations at § 265.6(d) (1) and (2) provide that the fee for processing a request for change of address information (normally $3.00) is waived when the new or temporary address is needed for service of legal process. In some cases, however, post office personnel may be unaware of this waiver provision and refuse to process these requests without payment.

A standardized format has the advantages of (1) lessening the administrative burden on post offices by allowing quicker processing and return, (2) combining into one format requests for both boxholder and change of address information, and (3) alerting personnel processing the requests that the information is provided free of charge.

The Postal Service proposes to dispense with the requirement that requesters provide a brief description of the nature of the litigation in which process will be served. A number of requesters have complained that disclosure of the nature of the litigation may in some instances violate the privacy of postal customers. For example, it has been suggested that the requirement to inform the Postal Service that the nature of the action involves indebtedness may violate the confidentiality provisions of the Fair Credit Reporting Act.

List of Subjects in 39 CFR Part 265

Disclosure of information, Postal Service.

For the reasons set out in this document, the Postal Service proposes to amend 39 CFR part 265 as follows:

PART 265—DISCLOSURE OF INFORMATION

1. The authority citation for part 265 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

2. Paragraph (d)(5) introductory text of § 265.6 is revised to read as follows:

§ 265.6 Availability of records.

* * * * *

(d) * * *

(5) *Post office boxholder information.* There is no charge for processing requests for information from Form 1093, Application for Post Office Box or Caller Service. Information from Form 1093 will be provided only as follows:

* * * * *

3. The last sentence of paragraph (d)(5)(i) of § 265.6 is revised to read as follows:

§ 265.6 Availability of records.

* * * * *

(d) * * *

(5) * * *

(i) * * * When the postmaster is unable to determine whether a business use is involved, the request must be referred to the Chief Field Counsel for advice.

* * * * *

4. Section 265.6(d)(6) introductory text is revised to read as follows:

§ 265.6 Availability of records.

* * * * *

(d) * * *

(6) *Exceptions.* When specifically referred to elsewhere in the regulations in this part, the following exemptions defined the additional circumstances in which particular information will be disclosed or fees waived:

* * * * *

5. Section 265.6(d)(6)(ii) and the undesignated paragraph and NOTE following it are revised to read as follows:

§ 265.6 Availability of records.

* * * * *

(d) * * *

(6) * * *

(ii) To a person empowered by law to serve legal process, or the attorney for a party in whose behalf service will be made, or a party who is acting *pro se,* upon receipt of written information in the standard format appearing at the end of this section that specifically includes all of the following:

(A) A certification that the name or address is needed and will be used solely for service of legal process in connection with actual or prospective litigation;

(B) A warning, which follows verbatim the warning appearing in the standard format at the end of this section, to notify the requester of the criminal penalties for the submission of false information in order to obtain address information;

(C) A citation to the statute or regulation which empowers the requester to serve process, if the requester is other than the attorney for a party in whose behalf service will be made, or a party who is acting *pro se*—except a corporation acting *pro se* must cite a statute;

(D) The names of all known parties to the litigation;

(E) The court in which the case has been or will be commenced;

(F) The docket or other identifying number, if one has been issued; and

(G) The capacity in which the individual is to be served, e.g., defendant or witness. By submitting such information, the requester certifies that it is true.

The Postal Service requires use of the standard format appearing at the end of this section when requesting address information for the service of process under paragraph (D)(6)(ii) of this section. The request must contain all of the required information, including the warning notice. If the request lacks any of the required information or a proper signature, the postmaster will return it to the requester specifying the deficiency.

Note: The term *pro se* means that a party is not represented by an attorney, but is representing himself.

* * * * *

6. The Required Format appearing at the end of § 265.6 is revised to read as follows:

§ 265.6 Availability of records.

* * * * *

(g) * * *

BILLING CODE 7710-12-M

(Proposed Format Referenced at § 265.6(d)(6)(ii))

(LETTERHEAD)

Postmaster

City, State, ZIP Code

Date _____

Request for Change of Address or Boxholder Information Needed for Service of Legal Process

Please furnish the new address or the name and street address (if a boxholder) for the following:

Name: _____

Address: _____

NOTE: The name and last known address are required for change of address information. The name, if known, and post office box address are required for boxholder information.

The following information is provided in accordance with 39 CFR 265.6(d)(6)(ii). There is no fee for providing boxholder information. The fee for providing change of address information is waived in accordance with 39 CFR 265.6(d)(1) and (2) and corresponding Administrative Support Manual 352.44a and b.

1. Capacity of requester (e.g., process server, attorney, party representing himself): _____

2. Statute or regulation that empowers me to serve process (not required when requester is an attorney or a party acting *pro se* - except a corporation acting *pro se* must cite statute): _____

3. The names of all known parties to the litigation: _____

4. The court in which the case has been or will be heard: _____

5. The docket or other identifying number if one has been issued: _____

6. The capacity in which this individual is to be served (e.g. defendant or witness): _____

WARNING

The submission of false information either (1) to obtain and use boxholder information for any purpose other than the service of legal process in connection with actual or prospective litigation or (2) to avoid payment of the fee for change of address information could result in criminal penalties including a fine of up to $10,000 or imprisonment of not more than 5 years, or both (Title 18 U.S.C. Section 1001).

I certify that the above information is true and that the address information is needed and will be used solely for service of legal process in connection with actual or prospective litigation.

Signature _____ Address _____

Printed Name _____ City, State, ZIP Code _____

FOR POST OFFICE USE ONLY

___ No change of address order on file.
___ Not known at address given.
___ Moved, left no forwarding address.
___ No such address.

NEW ADDRESS or BOXHOLDER'S NAME and STREET ADDRESS

_____

_____

_____

POSTMARK

BILLING CODE 7710-12-C

Stanley F. Mires,
Chief Counsel, Legislative.
[FR Doc. 93–22852 Filed 9–17–93; 8:45 am]
BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI15–01–5753; AMS-FRL–4730–6]

Approval and Promulgation of Implementation Plan; Michigan

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to conditionally approve a revision to the Michigan State Implementation Plan (SIP) for the attainment of National Ambient Air Quality Standards for ozone. This revision provides for the adoption and implementation of a vehicle inspection/maintenance (I/M) program meeting all requirements of EPA regulations, published in the **Federal Register** on November 5, 1992, concerning vehicle I/M programs (I/M Regulation). EPA is conditionally approving this SIP revision pursuant to section 110(k)(4) of the Clean Air Act. The proposed conditional approval is based on a November 16, 1992, SIP submittal which contained a commitment by the Governor's designee to the timely adoption and implementation of an I/M program meeting all the requirements of the I/M regulation, a schedule for implementation of the required program, and evidence of a hearing on the commitment. A full SIP revision including legal authority to implement the program is required by November 15, 1993. This action also proposes in the alternative certain actions EPA will take if a full SIP revision is not submitted by November 15, 1993.

DATES: Comments on this proposed action must be received in writing by October 20, 1993. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments on this rulemaking should be addressed to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the requested SIP revision, technical support documents and public comments received are available at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Brad J. Beeson, Environmental Engineer, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4779.

Anyone wishing to come to Region 5 offices should first contact Brad J. Beeson.

SUPPLEMENTARY INFORMATION:

I. Clean Air Act Requirements

The Clean Air Act as amended in 1990 (CAA or Act) requires States to make changes to improve existing I/M programs or implement new ones. Section 182(a)(2)(B) required any marginal or worse ozone nonattainment area with an existing I/M program that was part of a SIP, or any area that was required previously by the Act to have an I/M program, to immediately submit a SIP revision to bring the program up to the level required in past EPA guidance or to what had been committed to previously in the SIP, whichever was more stringent. All carbon monoxide nonattainment areas were also subject to this requirement to improve existing or previously required programs to this level. In addition, all ozone nonattainment areas classified as moderate or worse must implement a basic I/M program, regardless of previous requirements.

In addition, Congress directed EPA in section 182(a)(2)(B) to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The States were to incorporate this guidance into the SIP for all areas required by the Act to have an I/M program.

Pursuant to these requirements the State of Michigan is required to submit a SIP submittal that includes a commitment to the timely adoption and implementation of a basic I/M program in the Detroit, Ann Arbor, Port Huron, Grand Rapids, Holland-Zeeland, and Muskegon nonattainment areas. The submittal must also include a commitment to make the necessary corrections to the existing Detroit I/M program.

II. I/M Regulation Requirements

On November 5, 1992, (57 FR 52950) EPA published a final regulation establishing the I/M requirements, pursuant to section 182 of the CAA. The I/M regulation requires each State that must implement an I/M program to submit to EPA by November 15, 1992, a SIP revision including three elements: a commitment from the Governor or his/her designee to the timely adoption and implementation of an I/M program meeting all the requirements of the I/M regulation, a schedule of implementation, and evidence that a public hearing was held on the commitment.

III. State Submittals

The State of Michigan submitted a committal SIP on November 16, 1992. A public hearing on this submittal was held by the State on November 10, 1992, in Lansing, Michigan. The submittal includes a commitment to the timely adoption and implementation of an I/M program in the Detroit, Ann Arbor, Port Huron, Grand Rapids, Holland-Zeeland, and Muskegon nonattainment areas meeting all the requirements for basic I/M as contained in the I/M regulation and the Act, and a schedule of implementation.

The submittal also includes a commitment to make the necessary corrections to the existing Detroit I/M program. A more detailed analysis of the State's submittal is contained in the EPA's technical support document dated June 10, 1993, which is available from the Region 5 office listed in the "**ADDRESSES**" section.

IV. Basis for Conditional Approval

EPA believes conditional approvals are appropriate in this case because the State could not be expected to begin developing an I/M program meeting the requirements of the Act and the I/M regulation until the I/M regulation was adopted as a final rule, which occurred on November 5, 1992. EPA believes that States can adopt revised I/M program plans within one year of EPA's final rule. As a condition of EPA's proposed approval, the I/M regulation requires that, by November 15, 1993, a complete SIP revision be submitted which contains all of the elements in the implementation schedule, including authorizing legislation and implementing regulations. The proposed conditional approval in this action should not be interpreted as an approval of the program design features. In order to be considered complete and fully approvable, the 1993 submittal must include an analysis of the program using the most current EPA mobile source emission model demonstrating that the program meets the applicable

performance standard, among other features.

V. Statement of Approvability

Under the authority of the Governor, the Michigan Department of Natural Resources submitted a SIP revision to satisfy the requirements of the I/M regulation to the EPA on November 16, 1992. The Agency has reviewed this submittal and proposes to conditionally approve it under section 110(k)(4), on the condition that the I/M program is adopted and implemented according to the commitments and schedule contained in the SIP submittal. The submittal specifies that Michigan has committed to adopt the necessary I/M regulations to meet the requirement of EPA's I/M rule and to submit a final SIP to EPA by November 15, 1993.

If the State fails to submit the required regulations and legislative authority for the full SIP submittal which is due on November 15, 1993, EPA proposes in the alternative to disapprove the commitment as failing to comply with section 110(k)(4). If the State fails to adopt legislative authority or meet other applicable milestones in the commitment SIP schedule prior to EPA's final action on this proposal, EPA may disapprove the commitment as failing to comply with section 110(k)(4). This is because EPA believes that the State may not be able to meet the November 15, 1993 submission date if it fails to meet the milestones included in the schedule.

If EPA takes final conditional approval on the commitment, the State must meet its commitment to adopt and submit legal authority by November 15, 1993. Once EPA has conditionally approved this committal, if the State fails to adopt or submit the enabling authority and required rules to EPA by November 15, 1993, final approval will become a disapproval upon EPA notification of the State by letter. At that time, this commitment will no longer be a part of the approved nonattainment area SIPs. EPA subsequently will publish a notice to this effect in the notice section of the **Federal Register** indicating that the commitment has been disapproved and removed from the SIP. If the State adopts and submits the required legislation and rules to EPA within the applicable time frame, the conditionally approved commitment will remain part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA approves the subsequent submittal, those newly approved rules will become a part of the SIP.

If, after considering comments on the proposal, EPA issues a final disapproval or if the conditional approval is converted to a disapproval, the sanctions clock under section 179(a) will begin. This clock will begin at the time EPA issues the final disapproval or at the time EPA notifies the State by letter that a conditional approval has been converted to a disapproval. If the State does not submit and EPA does not approve the rule on which the disapproval was based within 18 months of the disapproval, EPA must impose one of the sanctions under section 179(b)—highway funding restrictions or the offset sanction. In addition, the final disapproval starts the 24 month clock for the imposition of section 110(c) Federal Implementation Plan. Finally, under section 110(m) EPA has discretionary authority to impose sanctions at any time after a final disapproval.

Procedural Background

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirement of section 3 of Executive Order 12291 for a period of 2 years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals under sections 110 and 301, subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, EPA certifies that it is does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. See *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

If EPA issues a final disapproval or the conditional approval is converted to disapproval under section 110(k) of the CAA based upon the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing State requirements nor does it substitute a new Federal requirement.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Nitrogen oxide, Ozone, Particulate matter, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 3, 1993.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 93–22913 Filed 9–17–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[WI30–01–5745; AMS–RL–4730–7]

Approval and Promulgation of Implementation Plan; Wisconsin

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to conditionally approve a revision to the Wisconsin State Implementation Plan (SIP) for the attainment of National Ambient Air Quality Standards for ozone. This revision provides for the adoption and implementation of a vehicle inspection/maintenance (I/M) program meeting all the requirements of the United States Environmental Protection Agency (U.S. EPA) regulations, published in the **Federal Register** on November 5, 1992, concerning vehicle I/M programs. The U.S. EPA is conditionally approving this SIP revision pursuant to section 110(k)(4) of the Clean Air Act. The proposed conditional approval is based on a November 18, 1992, SIP submittal, amended on January 19, 1993, which

contained a commitment by the Governor's designee to the timely adoption and implementation of an I/M program meeting all the requirements of U.S. EPA's I/M regulations, a schedule for implementation of the required program, and evidence of a hearing on the commitment. A full SIP revision including legal authority to implement the program, is required by November 15, 1993. This action also proposes in the alternative certain actions U.S. EPA will take if a full SIP revision is not submitted by November 15, 1993.

DATES: Comments on this proposed action must be received in writing by October 20, 1993. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments on this rulemaking should be addressed to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the requested SIP revision, technical support documents and public comments received are available at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John M. Mooney, Environmental Protection Specialist, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6043.

Anyone wishing to come to Region 5 offices should contact John M. Mooney first.

SUPPLEMENTARY INFORMATION:

I. Clean Air Act Requirements

The Clean Air Act as amended in 1990 (CAA or Act) requires States to make changes to improve existing I/M programs or implement new ones. Section 182(a)(2)(B) requires States to submit SIP revisions for any ozone nonattainment area which has been classified as marginal, pursuant to section 181(a) of the CAA with an existing I/M program that was part of a SIP, or any area that was required previously by the Act to have an I/M program, to immediately submit a SIP revision to bring the program up to the level required in past U.S. EPA guidance or to what had been committed to previously in the SIP, whichever was more stringent. All carbon monoxide nonattainment areas were also subject to this requirement to improve existing or previously required programs to this level. In addition, all ozone nonattainment areas classified as moderate or worse must implement a basic I/M program, regardless of previous requirements.

In addition, Congress directed U.S. EPA in section 182(a)(2)(B) to publish updated guidance for state I/M programs, taking into consideration findings of the Administrator's audits and investigations of these programs. The States were to incorporate this guidance into the SIP for all areas required by the Act to have an I/M program.

Pursuant to these requirements the State of Wisconsin is required to submit a SIP submittal that includes a commitment to the timely adoption and implementation of an enhanced I/M program in the Milwaukee, Kenosha, and Racine nonattainment areas and a commitment to the timely adoption and implementation of a basic I/M program in the Sheboygan nonattainment area.

II. I/M Regulation Requirements

On November 5, 1992, (57 FR 52950) the U.S. EPA published a final regulation establishing the I/M requirements, pursuant to section 182 of the CAA. The regulation requires each State that must implement an I/M program to submit to U.S. EPA by November 15, 1992, a SIP revision including three elements: a commitment from the Governor or his/her designee to the timely adoption and implementation of an I/M program meeting all the requirements of the I/M regulation, a schedule of implementation, and evidence that a public hearing was held on the commitment.

III. State Submittals

The State of Wisconsin submitted a committal SIP on November 18, 1992. A public hearing on this submittal was held by the State on January 12 and 13, 1993, in Madison, Wisconsin. The submittal includes a commitment to the adoption and implementation of an I/M program in the Milwaukee, Kenosha, Racine, and Sheboygan nonattainment areas meeting all the requirements for I/M, as contained in the I/M regulation and the Act, and a schedule of implementation. A more detailed analysis of the State's submittal is contained in the U.S. EPA's technical support document dated June 14, 1993, which is available from the Region 5 office listed above.

IV. Basis for Conditional Approval

The U.S. EPA believes conditional approval is appropriate in this case because the State could not be expected to begin developing an I/M program meeting the requirements of the Act and the I/M regulation until the I/M regulation was adopted as a final rule, which occurred on November 5, 1992. The U.S. EPA believes that States can adopt revised I/M program plans within 1 year of the U.S. EPA's final rule. As a condition of the U.S. EPA's proposed approval, the I/M regulation requires that, by November 15, 1993, a complete SIP revision be submitted which contains all of the elements in the implementation schedule, including authorizing legislation and implementing regulations. The proposed conditional approval in this action should not be interpreted as an approval of the program design features. In order to be considered complete and fully approvable, the 1993 submittal must include an analysis of the program using the most current U.S. EPA mobile source emission model demonstrating that the program meets the applicable performance standard, among other features.

V. Statement of Approvability

Under the authority of the Governor, the Wisconsin Department of Natural Resources submitted a SIP revision to satisfy the requirements of the I/M regulation to the U.S. EPA on November 18, 1992. This submittal was amended by the State on January 19, 1993. The Agency has reviewed this submittal and is proposing to approve it pursuant to section 110(k)(4) of the CAA, on the condition that the I/M program is adopted and implemented according to the commitments and schedule contained in the SIP submittal. The submittal specifies that Wisconsin has committed to adopt the necessary I/M regulation to meet the requirements of the U.S. EPA's I/M rule and to submit a final SIP to the U.S. EPA by November 15, 1993.

If the State fails to submit the required regulations and legislative authority for the full SIP submittal which is due on November 15, 1993, the U.S. EPA proposes in the alternative to disapprove the commitment as failing to comply with section 110(k)(4). If the State fails to adopt legislative authority or meet other applicable milestones in the commitment SIP schedule prior to the U.S. EPA's final action on this proposal, the U.S. EPA may disapprove the commitment as failing to comply with section 110(k)(4). This is because U.S. EPA believes that the State may not

be able to meet the November 15, 1993, submission date if it fails to meet the milestones included in the schedule.

If the U.S. EPA takes final conditional approval on the commitment, the State must meet its commitment to adopt and submit legal authority by November 15, 1993. Once the U.S. EPA has conditionally approved this committal, if the State fails to adopt or submit the enabling authority and required rules to the U.S. EPA by November 15, 1993, final approval will become a disapproval upon U.S. EPA notification of the State by letter. At that time, this commitment will no longer be a part of the approved nonattainment area SIPs. The U.S. EPA subsequently will publish a notice to this effect in the notice section of the **Federal Register** indicating that the commitment has been disapproved and removed from the SIP. If the State adopts and submits the required legislation and rules to the U.S. EPA within the applicable time frame, the conditionally approved commitment will remain part of the SIP until the U.S. EPA takes final action approving or disapproving the new submittal. If the U.S. EPA approves the subsequent submittal, those newly approved rules will become a part of the SIP.

If after considering comments on the proposal, the U.S. EPA issues a final disapproval or if the conditional approval is converted to a disapproval, the sanctions clock under section 179(a) will begin. This clock will begin at the time the U.S. EPA issues the final disapproval or at the time the U.S. EPA notifies the State by letter that a conditional approval has been converted to a disapproval. If the State does not submit and the U.S. EPA does not approve the rule on which the disapproval was based within 18 months of the disapproval, the U.S. EPA must impose one of the sanctions under section 179(b)—highway funding restrictions or the offset sanction. In addition, the final disapproval starts the 24 month clock for the imposition of a section 110(c) Federal Implementation Plan. Finally, under section 110(m) the U.S. EPA has discretionary authority to impose sanctions at any time after a final disapproval.

Procedural Background

This action has been classified as a table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived table 2 and 3 SIP revisions (54 FR 2222) from the requirement of section 3 of Executive Order 12291 for a period of 2 years. The U.S. EPA has submitted a request for a permanent waiver for table 2 and table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on the U.S. EPA's request.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., the U.S. EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, The U.S. EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Conditional approvals under sections 110 and 301, subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the U.S. EPA certifies that it is does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids U.S. EPA to base its actions concerning SIPs on such grounds. See *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

If EPA issues a final disapproval or the conditional approval is converted to disapproval under section 110(k) of the CAA based upon the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, the U.S. EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, the U.S. EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing State requirements nor does it substitute a new Federal requirement.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Motor vehicle pollution, Nitrogen oxide, Ozone, Particulate matter, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 3, 1993.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 93–22912 Filed 9–17–93; 8:45 am]

BILLING CODE 6560–60–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 4, 1780, and 4100

[WO–220–4320–02–24 1A]

RIN 1004–AB89

Department Hearings and Appeals Procedures; Cooperative Relations; Grazing Administration—Exclusive of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Advance notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Department of the Interior is reopening the comment period on its advance notice of proposed rulemaking (ANPR) pertaining to the management of public rangelands administered through the Bureau of Land Management (BLM). Public comment on the ANPR is invited and will be considered in the development of the proposed rule.

DATES: Comments on this advance notice of proposed rulemaking must be submitted in writing by October 20, 1993. Comments received or postmarked after this date may not be considered in the issuance of the proposed rule.

ADDRESSES: Send comments on this advance notice of proposed rulemaking to Director (200), Bureau of Land Management, P.O. Box 65800, Washington, DC 20035–9998. Comments will be available for public review at the Division of Legislation and Regulatory Management, room 5555–MIB, Bureau of Land Management, U.S. Department of the Interior, 1849 C Street NW., Washington, DC 20240, during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mark W. Stiles, Regulations Analyst, Division of Legislation and Regulatory Management, Bureau of Land Management, (202) 208–4256.

SUPPLEMENTARY INFORMATION: An ANPR pertaining to the implementation of portions of the Department of the Interior's proposal to reform management of public rangelands was originally published in the August 13, 1993, **Federal Register** (58 FR 43208).

The comment period on the original ANPR closed September 13, 1993. As a result of requests made by a variety of interests, the Department is reopening the comment period on the ANPR for an additional 30 days. In conjunction with the rangeland reform proposal, the BLM, in cooperation with the U.S. Department of Agriculture—Forest Service, is preparing an environmental impact statement (EIS). The comment period on the scope of the EIS is reopened through a notice published elsewhere in today's **Federal Register**. Comments received on the scope of the EIS will be made part of the administrative record of the proposed rule and will be considered along with comments on this ANPR in the preparation of the proposed rule.

The ANPR published in the August 13, 1993, **Federal Register** included a detailed description of the Department's rangeland reform proposal, including preliminary regulatory text. Persons wishing to comment on the ANPR during the reopened comment period are referred to the August 13, 1993, **Federal Register**.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–22945 Filed 9–17–93; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 80–286; FCC 93–435]

Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Proposed interim rule.

SUMMARY: The Federal Communications Commission has adopted a Notice of Proposed Rulemaking (Notice) proposing to adopt an interim jurisdictional separations rule applicable to the Universal Service Fund (USF). The rule would remain in effect for a two-year period, during which time the Commission intends to initiate and pursue a rulemaking addressing a broad range of issues related to the USF. The interim rule is necessary to avoid excessive growth in the USF during the two-year interim period. The Notice proposes two alternative methods for controlling USF growth during the interim period: an indexed threshold for USF assistance or an indexed cap on the total USF level. The intended effect of adopting an interim rule is to moderate USF growth during the interim period while continuing to provide adequate support to local exchange carriers most in need of USF assistance.

DATES: Comments must be filed on or before October 6, 1993 and reply comments must be filed on or before October 15, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Common Carrier Bureau, Accounting and Audits Division, (202) 632–7500.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. This Notice of Proposed Rulemaking ("Notice") focuses upon proposed interim rule changes involving the Universal Service Fund ("USF"). For the specific and limited purpose of moderating USF growth, we propose interim modifications of our USF high cost assistance mechanisms.[1] Those interim modifications would remain in effect for a limited time period while we pursue a rulemaking on a broad spectrum of USF issues.

2. As we discuss briefly below, we believe that the time has arrived to re-examine the USF mechanisms to determine whether changes need to be made in the current rules in order to serve our underlying public policy goals most effectively. We therefore intend to propose, in the near future, broader changes in the USF rules contained in part 36 of our rules. At this time, we refer the general issue to changes in the part 36 rules governing the USF, as well as the specific interim issues raised in this Notice, to the Federal-State Joint Board in this proceeding. We intend to issue a further notice of proposed rulemaking, addressing possible permanent changes in the part 36 USF rules, within the next few months.

3. We expect that a full examination of USF issues will be extremely complex, both in terms of balancing various public policy concerns and in terms of analyzing extensive data regarding current and proposed USF mechanisms. Due to the complexity of the issues and the time consuming nature of that task, the USF rulemaking may continue for a significant length of time. We are concerned that continuing under the current rules during the pendency of that proceeding would exacerbate problems with the USF mechanisms. Specifically, we fear that further unchecked growth in the USF could work at cross-purposes with our eventual reformulation of the USF and its high cost support mechanisms.

4. In this Notice, we propose to adopt interim measures to moderate growth of the USF during the pendency of our broader USF rulemaking. These measures would be implemented through the adoption of interim part 36 rules of specific and limited duration. The interim rules would be in place for a two-year period, beginning on January 1, 1994.[2] We believe that two years should be sufficient to conclude a rulemaking on the full range of USF issues. We are referring the issue of appropriate interim part 36 USF rules to the Federal State Joint Board for evaluation and recommendation.

5. We request comment upon two basic alternative approaches for the interim USF rules, as discussed below. In addition, we invite comment proposing other alternatives for moderating growth in the overall size of the USF during the interim period.

6. New USF tariffs generally go into effect at the beginning of each year; it therefore would be desirable to have new interim USF rules in place by January 1, 1994. For that reason, and because we are proposing interim rules of limited duration, we are setting a relatively short comment cycle. Comments will be due on October 6, 1993, and reply comments will be due on October 15, 1993.

II. Background

A. A Brief History of the Universal Service Fund

7. In 1984, the Federal State Joint Board recommended, and we adopted, new rules creating the USF in order to preserve and promote universal telephone service.[3] The USF functions by allowing local exchange carriers ("LECs") with a high cost per loop[4] to

[1] Part 36, Subpart F of our rules. 47 CFR 36.601 through 36.641 (1992).

[2] If our full USF rulemaking is concluded and new rules can be placed in effect before the expiration of the two-year interim period on January 1, 1996, the interim rules proposed in this notice would be replaced by the new permanent rules.

[3] Amendment of part 67 of the Commission's Rules and Establishment of a Joint Board, 98 FCC2d 781 (1984).

[4] The basis for a LEC study area's receipt of high cost assistance is its "average unseparated loop cost per working loop," 47 CFR 36.631 (1992), a term which is defined in 47 U.S.C. 36.622 (1992). Hereinafter in this Notice we shall refer to such cost as "cost per loop."

The cost per loop for a study area is calculated by dividing the total unseparated loop costs within that study area by the study area's total number of working loops. 47 CFR 36.622(b) (1992). Total unseparated loop costs include the return component, depreciation expense, maintenance

Continued

allocate a portion of that cost to the interstate jurisdiction,[5] thus allowing the states to establish lower local exchange rates in those areas. Eligibility for high cost assistance from the USF is assessed separately for each LEC study area, and the threshold for such assistance is 115 percent of the national average cost per loop.[6]

8. The USF rules contain a sliding scale, pursuant to which the highest cost study areas receive a greater degree of assistance than study areas whose cost per loop is only slightly above the threshold. Although all study areas with costs per loop in excess of the threshold receive high cost assistance from the USF, study areas with the highest costs per loop are able to allocate the greatest percentage of those costs to interstate.[7]

9. We determined that the USF should be phased in over an eight-year transition period.[8] Implementation began in 1986, with ⅛ of the total USF amount calculated for that year collected from interexchange carriers and distributed to LECs with high cost study areas. Beginning in 1993, USF payments by interexchange carriers and USF assistance to high cost LECs are at the full support level.

10. In 1987, the Joint Board recommended that we shift USF assistance from large study areas to smaller study areas. The Joint Board determined that small LECs are in greater need of assistance than large LECs.[9] Moreover, the Joint Board predicted that the recommended targeting would decrease the overall size of the USF.[10] We therefore adopted the Joint Board's recommendation for retargeting USF assistance.[11] Under the revised rule, effective January 1, 1988, USF assistance per loop was reduced for large study areas and increased for small study areas.[12]

B. Need for Interim Action

11. Growth in the USF has been pronounced during the past eight years. If the USF had been fully phased-in in 1986, the first year of the USF transition, the fund total would have been approximately $445 million;[13] in 1993, at the conclusion of the transition period, the USF total is at least $704 million,[14] and possibly more.[15]

12. The full-transition amount of the USF has thus increased by approximately $260 million since 1986, a total percentage increase of nearly 60 percent and an annualized percentage increase of approximately seven percent. We are concerned about the substantial increase in the burden upon interstate telecommunications attributable to growth in the USF. Moreover, we believe that a legitimate issue exists as to whether USF growth of this magnitude is essential to carry out our original intent to further universal telephone service through a system of assistance to high cost study areas.

13. In addition to the overall size of the USF, we also are troubled by the wide fluctuations in the rate of USF growth from year to year. While in some years growth in the USF has been minimal, in other years the fund has increased more than ten percent over the prior year.[16] During the past five years, the rates of annual USF growth have ranged from approximately one percent to more than 19 percent.[17]

14. The pronounced increase in the full-transition level of the USF and the erratic pattern of growth in the fund raise important questions regarding the USF support mechanisms contained in our rules. We therefore believe that the time has arrived to re-examine the USF high cost assistance mechanism, both in terms of the total size of the USF and the effectiveness of the fund's current targeting of high cost assistance. We intend to initiate a rulemaking addressing those issues in the very near future.

15. During our rulemaking on the full panoply of USF issues, we shall address the erratic nature of USF growth which has taken place under the current rules. For the present, however, there is no explanation for past surges in the USF level. Consequently, we can have no confidence that similar pronounced increases in the USF will not occur even as we are in the process of studying and revising the high cost mechanisms. For that reason, we believe it is appropriate to consider interim rules to hold USF growth to a moderate rate during the pendency of our rulemaking.

16. Adopting interim measures to moderate USF growth while we study and revise the fund's assistance mechanisms will enhance our ability to revise the current rules without harm to the fund, carriers contributing to it, or the carriers in greatest need of high cost assistance. Interim rules designed to address the USF growth rate will prevent excessive USF increases that could work at cross-purposes to our efforts to revise the high cost support mechanisms. In addition, interim rules that moderate USF growth could also moderate the effect upon individual carriers of eventual retargeting of USF assistance.

17. We therefore propose the adoption of interim rules, as discussed below, that would remain in effect for two years[18] while we undertake a revision of the USF assistance mechanisms. Moreover, we emphasize that we do not intend, at this time, to resolve the issue of whether the rate of USF growth should be subject to permanent indexing or control. In this Notice, we propose only to implement interim rules to prevent excessive growth in the USF during the pendency of a full USF rulemaking.

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expense, and corporate operations expenses attributable to certain subcategories of cable and wire facilities and circuit equipment. 47 CFR 36.621 (1992). We shall refer to the total unseparated loop costs as "total loop costs."

[6] See 47 CFR 36.631 (1992). The amount of a LEC's total loop costs which are allocated to the interstate jurisdiction under the USF rules is in addition to the regular interstate allocations of such costs under our general separations rules. For most of the facilities considered part of loop investment, 25 percent of their costs are allocated to the interstate jurisdiction pursuant to a gross allocation factor. 47 CFR 36.154 (1992).

[8] 47 CFR 36.631 (1992).

[7] See note 12, infra.

[8] MTS/WATS Market Structure and Amendment of part 67 of the Commission's Rules, 50 FR 939 (1985). See also "Recommended Decision and Order," MTS and WATS Market Structure/ Amendment of part 67 of the Commission's Rules and Establishment of a Joint Board, 2 FCCRcd 2324, 2334 (1987) at ¶ 88. During the final year of the transition period, the full support level is in effect.

[9] "Recommended Decision and Order," MTS and WATS Market Structure/Amendment of part 67 of the Commission's Rules and Establishment of a Joint Board, 2 FCC Rcd 2324, 2334, ¶ 86 (1987).

[10] *Id.* at 2333, ¶ 75.

[11] MTS and WATS Market Structure/Amendment of part 67 of the Commission's Rules and Establishment of a Joint Board, 2 FCC Rcd 2953 (1987).

[12] For study areas with 200,000 or fewer loops, the additional interstate allocation of loop costs is 65 percent of such costs between 115 and 150 percent of the national average and 75 percent of such costs in excess of 150 percent of the national average. 47 CFR 36.631(c) (1992). For study areas with greater than 200,000 loops, the additional interstate allocation allowed under our rules is ten percent of loop costs between 115 and 160 percent of the national average, 30 percent of such costs between 160 and 200 percent of the national average, 60 percent of such costs between 200 and 250 percent of the national average, and 75 percent of all such costs in excess of 250 percent of the national average. 47 CFR 36.631(d) (1992).

[13] Monitoring Report, CC Docket No. 87–339, at 74 (May 1993).

[14] *Id.*

[15] Data submitted by the National Exchange Carrier Association ("NECA") in CC Docket No. 93–123 (filed July 21, 1993) indicates that the total level of payments into the USF during 1993 will be approximately $741 million.

[16] See Monitoring Report, *supra*, at 74. Our calculations of the USF growth rates are based upon the data for projected USF payments at full transition.

[17] *Id.*

[18] The interim rules could be replaced by new rules in less than two years if we complete the broader USF rulemaking ahead of the anticipated two-year time frame. *See* discussion, *supra* at note 2.

III. Alternative for Interim Rules

18. Our primary objective in considering the adoption of interim changes in our USF rules is to moderate growth in the overall size of the fund. Nonetheless, while we believe that it is important to control USF growth as we evaluate and revise the current high cost mechanisms, we are concerned about the effect of any interim measures upon carriers and study areas most in need of assistance. To the extent possible, we want to avoid substantial decreases in the assistance provided to extremely high cost study areas.

19. We are proposing two basic approaches for ensuring reasonable USF growth: an indexed threshold for USF assistance and an indexed cap on the total level of the USF. We request comment comparing the effectiveness of the proposed approaches in moderating USF growth during the two-year interim period. We also seek comment regarding the likely effects of the two approaches upon recipients of high cost assistance. Finally, we invite comment proposing other alternatives for moderating growth in the overall size of the USF during the interim period.

A. Indexed Threshold for USF Assistance

20. One means of moderating the rate of USF growth over the next two years would be to determine each year's nationwide average cost per loop by indexing the prior year's average cost per loop to the rate of growth in the average cost per loop for non-price-cap carriers. This would have the effect of indexing the USF threshold to the growth in cost per loop for non-price-cap LECs. In recent years, the growth in the cost per loop for the carriers which are not currently subject to price caps has exceeded considerably the growth in average cost per loop for all LECs.[19] We expect that the recent implementation of price caps may further increase that cost disparity, as price cap carriers seek to exert greater control over their costs in response to the regulatory incentives inherent in price cap regulation. Thus, indexing the threshold for high cost assistance could prevent, during the interim period, increases in USF growth due in part to the differing regulatory incentives of price cap and non-price-cap LECs.

21. More important, we believe that indexing the threshold for assistance could avoid significant adverse effect upon the highest cost study areas most in need of support while accomplishing our intended goal of moderating USF growth. Assuming that the rate of growth in the cost per loop for non-price-cap carriers continues to exceed the nationwide average growth rate for all LECs, the proposed indexed threshold would be higher than the threshold for assistance calculated under our existing rules. Consequently, we expect that the use of this proposed method would cause the USF to grow less rapidly than under the current rules. At the same time, the dollar increase in the threshold would be fairly small and thus would affect primarily study areas whose costs are only slightly above the current threshold. The highest cost study areas would not experience a significance decrease in USF assistance in relation to the prior year. We seek comment upon the effectiveness of the indexed assistance threshold in achieving our stated goals.

B. Indexed Cap on Total USF Level

22. The second potential approach for limiting USF growth on an interim basis would be to cap the current level of the USF and allow the fund to grow at a moderate rate. The rate could either be predetermined at the outset or established by the selected of an appropriate indexing factor. We propose, for this option, to use as an indexing factor the rate of growth in national total working loops.[20] The annual USF cap would be derived by applying the rate of growth in total working loops to the prior year's USF level.

23. We believe that using the rate of growth in total working loops as the index factor for total USF growth could constitute a reasonable approach for several reasons. First, the rates of growth in total working loops have been moderate and reasonably consistent over the past few years. Data filed by NECA in support of its annual tariff filings indicate growth in total nationwide loops[21] ranged from two to 3.6 percent from 1984 to 1991, the most recent year for which data are available. All of those rates of increase, and the associated dollar amounts, are moderate enough to fulfill our goal of avoiding large increases in the USF during the two-year interim period while our full-scale USF rulemaking is in progress. In addition, because the rates of growth in the total number of working loops have not varied to any extreme degree during recent years, this would offer assurance that during the two-year interim period we could avoid the erratic surges in USF levels which have occurred under the current rules.

24. In order to determine whether use of the cap would be required in a given year, it would first be necessary to calculate the total USF amount using the existing rules and compare that total with the indexed USF cap for that year. If the existing rules produced a total USF no greater than the capped amount, no further action would be necessary. If, however, the USF total calculated under the existing rules exceeded the indexed USF cap, the next step would be to adjust the individual USF payments so that the total payments would equal the capped level. We wish to consider two alternative means of implementing an indexed cap for the USF.

25. The first alternative method would involve calculating what the USF assistance level for each recipient carrier would have been under the current rules and then adjusting each recipient's support proportionately to achieve the level of the indexed cap. The second method would require adjusting the threshold amount for high cost assistance to a level producing a total USF at the indexed cap level. In practice, this method would involve adjusting the nationwide average cost per loop so that total USF assistance would equal the indexed USF cap. As with the indexed threshold method discussed earlier, this second approach could have the advantage of ensuring that the highest cost study areas do not experience a significant decrease in support.

26. We do not expect that either of these methods would have a significant adverse impact upon those small LECs most in need of USF assistance. We seek comment upon the effect which each of these two means of implementing the indexed cap approach would have on recipients of high cost assistance. in addition, we invite comment upon the overall effectiveness of the indexed cap method in controlling USF growth during the two-year interim period.

IV. Procedural Matters

A. Ex Parte

27. This is a non-restricted notice and comment rulemaking proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.[22] In addition, under the modified *ex parte* proceedings adopted in this proceeding,

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[19] The cost per loop for LECs not subject to price caps has grown from $256 to $334 since the inception of the USF program. This is an average annual growth rate of 3.9 percent. For the same period, the nationwide average cost per loop has grown from $213 to $234, an annual growth rate of only 1.4 percent.

[20] As defined in 47 CFR 36.611(a)(8) (1992).

[21] For USF purposes. See 47 CFR 36.611(a)(8) (1992).

[22] *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a) (1992).

no written *ex parte* presentation shall be made during the fifteen day period immediately preceding a Joint Board meeting, nor shall any oral *ex parte* presentation be made during the seven days preceding a Joint Board meeting.[23]

B. Regulatory Flexibility

28. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act.[24] Because of the nature of local exchange and access service, the Commission has concluded that small telephone companies are dominant in their fields of operation and therefore are not "small entities" as defined by that act.[25] The Secretary shall send a copy of this Order and Notice of Proposed Rulemaking, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of that act.[26]

C. Date for Comment

29. We invite comment on the proposals set forth above. Interested parties must file initial comments on or before October 6, 1993 and reply comments on or before October 15, 1993. To file formally in this proceeding, interested parties must file an original and four copies of all comments. If interested parties want each Commissioner to receive a personal copy of their comments, they must filed an original plus nine copies.

30. Interested parties should send comments to: Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Downtown Copy Center, room 640, 1990 M Street, NW., Washington, DC 20036. We also ask that parties send a copy of their comments to each member of the Federal State Joint Board and its staff, as indicated in the attached service list. Comments will be available for public inspection during regular business in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

V. Ordering Clauses

31. Accordingly, *It is ordered* that, pursuant to Sections 1, 4(i), 4(j), and 403 of the Communications Act of 1934, as amend, 47 U.S.C. 151, 154(i), 154(j), and 403, *Notice is hereby given of* proposed interim amendments to part 36, subpart F of the Commission's Rules, 47 CFR 36, subpart F, as described in the Notice of Proposed Rulemaking.

32. *It is further ordered,* pursuant to section 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 410(c), that the issue of permanent changes in the Commission's Part 36 USF rules, 47 CFR 36.601 through 36.641 (1992), shall be and hereby is referred to the Federal State Joint Board established in this proceeding.

33. *It is further ordered,* pursuant to section 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. 410(c), that the issues relating to interim amendments of the Commission's part 36 USF rules, 47 CFR 36.601 through 36.641 (1992), as described in this Notice of Proposed Rulemaking, shall be and hereby are referred to the Federal State Joint Board established in this proceeding for a recommended decision.

List of Subjects in 47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform system of accounts.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Federal-State Joint Board Service List

Honorable James H. Quello, Chairman, Federal Communications Commission, 1919 M Street, NW., room 802, Stop 0106, Washington, DC 20554

Honorable Dennis J. Nagel, Commissioner, Iowa Utilities Board, Lucas State Office Bldg., Des Moines, Iowa 50319

Honorable Lilo K. Schifter, Commissioner, Maryland Public Service Commission, 6 St. Paul Centre, Baltimore, Marland 21202

Honorable Sharon L. Nelson, Chairman, Washington Utilities and Transportation Commission, Chandler Plaza Building, 1300 South Evergreen Park Drive, SW., Olympia, Washington 98504–7250

Honorable Andrew C. Barrett, Commissioner, Federal Communications Commission, 1919 M Street, NW., room 826, Stop 0105, Washington, DC 20554

Honorable Ervin S. Duggan, Commissioner, Federal Communications Commission, 1919 M Street, NW., room 832, Stop 0104, Washington, DC 20554

Ronald Choura, Chairman, Federal-State Joint Board Staff, Michigan Public Service Commission, 6545 Mercantile Way, Lansing, Michigan 48910

Ann Dean, Maryland Public Service Commission, 6 St. Paul Centre, Baltimore, Maryland 21202

Sandra Makeeff, Iowa Utilities Board, Lucas State Office Bldg., Des Moines, Iowa 50319

Teresa Pitts, Washington Utilities and Transportation Commission, Chandler Plaza Building, 1300 South Evergreen Park Drive, SW., Olympia, Washington 98504–7250

Sam Loudenslager, Arkansas Public Service Commission, 1000 Center Street, P.O. Box C–400, Little Rock, Arkansas 72203

Thomas McCabe, Florida Public Service Commission, 101 East Gaines Street, Fletcher Building, Tallahassee, Florida 32399–0850

Dean Evans, California Public Service Commission, 505 Van Ness Avenue, room 4004, San Francisco, California 94102

Elton Calder, Georgia Public Service Commission, 162 State Office Bldg., 244 Washington Street, SW., Atlanta, Georgia 30334

Joel B. Shifman, Maine Public Utilities Commission, State House Station #18, Augusta, Maine 04333

Paul Pederson, Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102

Michael P. Gallagher, New Jersey Board of Public Utilities, 2 Gateway Center, Newark, New Jersey 07102

Fred Sistarenik, New York Public Service Commission, 3 Empire State Plaza, Albany, New York 12223

Mary Steel, North Carolina Utilities Commission, Box 29510, Raleigh, North Carolina 27626–0510

Rowland Curry, Texas Public Utility Commission, 7800 Shoal Creek Blvd., Suite 400N, Austin, Texas 78757

Deborah A. Dupont, Accounting and Audits Division, Common Carrier Bureau, Federal Communications Commission, 2000 L Street, NW., room 257, Stop 1600E2, Washington, DC 20554

Charles W. Needy, Accounting and Audits Division, Common Carrier Bureau, Federal Communications Commission, 2000 L Street, NW., room 257, Stop 1600E5, Washington, DC 20554

Gary Seigel, Accounting and Audits Division, Common Carrier Bureau, Federal Communications Commission, 2000 L Street, NW., room 812, Stop 1600E5, Washington, DC 20554

Robert Hall, Accounting and Audits Division, Common Carrier Bureau, Federal Communications Commission, 2000 L Street, NW., room 812, Stop 1600E5, Washington, DC 20554

Robert Loube, Public Service Commission of the District of Columbia, 450 Fifth St., NW., Washington, DC 20001

Charles Gray, National Association of Regulatory Utility Commissioners, 1102 ICC Building, Constitution Ave. & 12th St., NW., P.O. Box 684, Washington, DC 20044

[FR Doc. 93–23045 Filed 9–17–93; 8:45 am]

BILLING CODE 6712–01–M

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[23] Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, 89 FCC2d 36 (1982).

[24] 5 U.S.C. 601(3).

[25] *See* MTS and WATS Market Structure, 93 FCC2d 241, 338–39 (1983).

[26] 5 U.S.C. 603(a).

47 CFR Part 73

[MM Docket No. 93–243, RM–8314]

Radio Broadcasting Services; Park Rapids, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Roger Paskvan proposing the allotment of Channel 223A to Park Rapids, Minnesota, as that community's second FM broadcast service. The channel can be allotted to Park Rapids without a site restriction at coordinates 46–55–20 and 95–03–30. Canadian concurrence will be requested for this allotment.

DATES: Comments must be filed on or before November 1, 1993, and reply comments on or before November 16, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Harry F. Cole, 1901 L Street, NW., suite 250, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–243, adopted August 20, 1993, and released September 9, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–22858 Filed 9–17–93; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 58, No. 180
Monday, September 20, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Economic Data from Shrimp Fishermen in the U.S. Gulf of Mexico.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New.

Burden: 100 hours.

Number of Respondents: 100.

Avg Hours Per Response: 1 hour.

Needs and Uses: Proposed regulatory changes dealing with shrimp bycatch issues will alter the economic behavior of Gulf of Mexico shrimp fishermen. Data from this economic survey of shrimp fishermen will be used to test and calibrate a vessel budget simulation model that will be used to generate shrimp fishermen cost and returns data. The information will be used by fishery resource managers in developing, implementing, and monitoring fishery management plans for this fishery.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271. Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: September 9, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–22953 Filed 9–17–93; 8:45 am]

BILLING CODE 3510-CW-F

Agency Information Collection Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Economic Development Administration (EDA)

Title: Employment Data of Recipient or Other Party Connected with EDA Assistance

Agency Form Number: ED–525

Number: OMB Number: 0610–0021

Type of Request: Extension

Burden: 400 hours with 100 respondents and an average response time of 4 hours

Needs and Uses: This EDA form is used to obtain data that is analyzed by EDA program managers to determine compliance with title VI of the Civil Rights Act of 1964, section 112 of Public Law 92–65, which prohibits discrimination against handicapped individuals

Affected Public: Grant recipients who received monies under the EDA Public Works Program

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a Benefit

OMB Desk Officer: Gary Waxman, (202) 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 14, 1993.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 93–22959 Filed 9–17–93; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

Electronics Technical Advisory Committee; Partially Closed Meeting

A meeting of the Electronics Technical Advisory Committee will be held October 6, 1993, 9 a.m., Herbert C. Hoover Building, room 1617–M–2, 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electronics equipment or technology.

Agenda

General Session

1. Opening Remarks and Introductions.
2. Review of ETAC Membership.
3. Discussion of ETAC Chairmen's Report.
4. Discussion of Calendar of Events.
5. Update on COCOM negotiations.
6. Presentations by the Public.
7. Review of Export Control Policy Issues.
8. Discussion of Commodity Jurisdiction Issues.

Executive Session

9. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials or comments at least one week before the meeting to the address listed below:

Ms. Lee Ann Carpenter, Technical Advisory Committee Unit, BXA/EA,

room 1621, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: September 13, 1993.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 93–22951 Filed 9–17–93; 8:45 am]

BILLING CODE 3510–DT–M

[Docket Nos. 2103–02 and 2104–05]

Denial of Privileges

In the Matter of: Goh Sian Lake, a/k/a Alex Goh, individually and doing business as Cheras Plaza Sdn. Bhd. and Tok Peng Chua, Respondents.

Summary

Pursuant to the August 11, 1993, recommended Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is attached hereto and affirmed by me, Goh Sian Lake, a/k/a Alex Goh individually and doing business as Cheras Plaza Sdn. Bhd., and Tok Peng Chua a/k/a Douglas Chua and Chua Tok Peng (hereafter Respondents) and all successors, assignees, officers, partners, representatives, agents, and employees are hereby denied for a period of twenty years from the date hereof all privileges of participating directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Export Administration Regulations (15 CFR parts 768–799).

Order

On August 11, 1993, the ALJ entered his Recommended Decision and Order in the above-referenced matter. The Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Decision and Order of the ALJ.

This constitutes final agency action in this matter.

Dated: September 10, 1993.

Barry Carter,

Acting Under Secretary for Export Administration.

Decision and Order on Default

In the Matter of: Goh Sian Lake, a/k/a Alex Goh, individually and doing business as Cheras Plaza Sdn. Bhd.[1] and Tok Peng Chua, Respondents.

Appearance for Respondent:

Mr. Goh Sian Lake also known as Alex Goh, individually and doing business as Cheras Plaza Sdn. Bhd., 26 Jalan Mt. Erskine, Penang, Malaysia

and

Mr. Tok Peng Chua also known as Douglas Chua and Chua Tok Peng, 17 Jalan Peria, Kuala Lumpur, Malaysia

Appearance for Agency: Thomas C. Barbour, Esq., U.S. Department of Commerce, Office of Chief Counsel for Export Administration, room H3839, 14th & Constitution Avenue, NW., Washington, DC 20230.

Preliminary Statement

On February 20, 1992, the Office of Export Enforcement, United States Department of Commerce (the Department or Agency) issued separate charging letters against Goh Sian Lake, a/k/a Alex Goh (Goh)[2] individually and doing business as Cheras Plaza Sdn. Bhd. (Cheras Plaza), and Tok Peng Chua (Chua),[3] under the authority of the

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[1] The caption appears as amended *sua sponte*. Although Cheras Plaza Sdn. Bhd. (Cheras Plaza) thus far has been listed in this consolidated proceeding as a Respondent in its own right, under Case No. 2103–03, the record reveals that Cheras Plaza actually is not a separate party but, rather, at all times merely has been but another identity form, or alias, for Respondent Goh Sian Lake, also known as Alex Goh (Goh). Accordingly, the relevant charging letter, in summarizing contentions, did not allege that Cheras Plaza, as such, had committed any violations, all such substantive allegations having been directed only against Goh. Also, proof of separate service of a charging letter on Cheras Plaza has not been received. Accordingly, while Goh may have used the Cheras Plaza name in his activities considered herein, the record provides no grounds—procedural or central—for continuing to treat Cheras Plaza as a separate entity apart from Goh. Therefore, the above docket number previously assigned hereby is revoked and, hereinafter, all references to Cheras Plaza merely will be made in the context of its status as an additional identity for Goh. As represented in Agency Counsel's April 2, 1993, Motion for Default Order, Cheras Plaza, in any event, no longer is in business. The August 5, 1993, Order issued herein consolidating these proceedings and holding Goh, Cheras Plaza and Chua in default hereby is amended to conform with the above conclusions. Accordingly, only Goh and Chua, as they variously are known, are in default.

[2] The August 5, 1993, Order consolidating the cases against the Respondents herein also found them to be in default for failure to answer the charging letters served upon them. The conclusion that Goh was in default was based upon the following undisputed evidence: As indicated in Agency Counsel's April 2, 1993, Motion for Default Order, it was determined only more than a year after the relevant February 1992 charging letter was issued that it, in fact, had been served upon Goh in Malaysia on or about March 6, 1992. A copy of the charging letter, sent by registered mail on that date to Goh's last known address, in Penang, Malaysia, was returned marked "Unclaimed." The Foreign Commercial Officer (FCS) at the United States Embassy, Kuala Lumpur, Malaysia, reported by cable that a year later, on March 8, 1993, he had visited the Penang address attributed to Goh where he had found three wood and corrugated steel structures, the center one being most likely occupied by Goh. Although the door to the center building was locked and the neighbors at the adjoining structures did not know the name of the occupant, evidence that it still was inhabited included the daily delivery there of an English language newspaper; neighbors' reports that the man who lived there left in the mornings and returned in the evenings; and a 1992 white pages telephone directory listing for Goh Sian Lake at that address. While numerous telephone calls to the number shown were unanswered, the Postmaster at the Penang General Post Office confirmed to the FCS Officer that mail to the address in question would be delivered there. From the above, noting that the copy of the charging letter sent by registered mail to Goh at the Penang address had been returned "unclaimed;" that § 788.4(b) of the Regulations provides that service of a charging letter may be made "(b)y mailing a copy by registered * * * mail addressed to the Respondent at his last known address;" and that, under § 788.4(d) of the Regulations, "(t)he date of service of a charging letter shall be the date of its delivery, or of its attempted delivery if delivery is refused," I accepted Agency Counsel's evidence that the Respondent had been duly served by registered mail on or about March 6, 1992, and that he had refused service of same. Since Goh has not answered the charging letter for months beyond the 30 days permitted for same under § 788.7(a) of the Regulations and has not filed acknowledgment or made any other submission in connection therewith, pursuant to § 788.8(a) of the Regulations, I issued the above August 5 Order holding him in default.

[3] The August 5 Order, upon the following undisputed facts, also held Chua to be in default: As set forth in Agency Counsel's June 18, 1993, Submission on Service, the Department, having received from a former neighbor a new address for Chua in Kuala Lumpur, Malaysia, on May 6, 1993, forwarded the February 1992 charging letter to him at that location. In late May, the envelope was returned to the Department, marked "unclaimed." Postal markings on the back and front of the envelope indicate that service was attempted to be made on or about May 22, 1993, but that Chua refused to claim the letter. As with Goh, the FCS Officer, in April 1993, found a listing for Chua at the relevant address in the 1992 Kuala Lumpur telephone directory. For the reasons noted above in connection with the service of the charging letter on Goh, and pursuant to §§ 788.4(b) and (d) of the Regulations, described above, I concluded that

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Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1992, and Pub. L. 103–10, March 27, 1993)) (the Act), and the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1992)) (the Regulations). The allegations in the above charging letters relate to the same facts and issues adjudicated by the then-Acting Under Secretary for Export Administration on March 25, 1993, in the *Matter of Peter Burger, et al.*[4] In *Burger*, two conspiracies in violation of the Act and Regulations were found. While the relevant charging letters alleged that Goh and Chua were engaged as co-conspirators in the activities found unlawful in *Burger*, they were not joined as Respondents in that matter because, to Agency Counsel's knowledge at the time, it had not been possible to obtain jurisdiction by locating and serving them in southeast Asia with the relevant charging letters. Now, by Motion for Default Order, dated April 2, 1993, and June 18, 1993, Submission on Service, Agency Counsel has provided proofs of service on these Respondents and, accordingly, seeks judgments on default against Goh and Chua, respectively. In so doing, Agency Counsel principally relies on arguments made in connection with the earlier consolidated proceeding in *Burger*. In *Burger*, as here, the Department has alleged that Goh unlawfully participated in both schemes, while Chua was active only in the second conspiracy. These charging letters collectively allege:

1. Allegations Relating to Goh

That between approximately November 6, 1987, and April 7, 1988, Goh, individually and doing business as Cheras Plaza, Kuala Lumpur, Malaysia, conspired with Burger, individually, and in his capacity as agent for both Helling, Hamburg, Germany, and IBC, Luxembourg, Luxembourg, to acquire 60 U.S.-origin Tektronix workstations in Malaysia by misrepresenting the end-use and the end-user of the workstations to the Malaysian distributor to the U.S. manufacturer; that Goh, accordingly, obtained the workstations by the methods described above and, in accordance with instructions received from Burger, was instrumental in their reexport from Malaysia without obtaining from the Department the prerequisite reexport authorization that he knew, or should have known, was required by § 774.1 of the Regulations. Therefor, for conspiring with Burger, in the latter's individual capacity and as agent, to violate the Act and the Regulations, Goh violated § 787.3(b) of the Regulations.

That in connection with the above conspiracy, on April 7, 1988, Goh was instrumental in the reexport of 60 U.S.-origin Tektronix workstations without obtaining from the Department the reexport authorization required by § 774.1 of the Regulations. By causing conduct prohibited by the Act and the Regulations, Goh is alleged to have violated § 787.2 of the Regulations. Further, for his role in reexporting the U.S.-origin workstations while knowing that such conduct was violative of the Act and/or the Regulations, Goh violated § 787.4(a) of the Regulations.

2. Allegations Relating to Goh and Chua

That between about August 31, 1988, and November 25, 1988, a second conspiracy occurred participated in by Goh;[5] Chua, also known as Douglas Chua; Burger, individually and as agent for Helling and IBC, joined and abetted by co-conspirators Ming Kit Hui, also known as Charles Hui, individually and doing business as Hunter Computer Systems, Limited, Hong Kong (herein collectively referred to as Hui); Emily Lim, also known as Lim Sook Poh, individually and doing business as Wellpool Corporation, Kuala Lumpur, Malaysia (herein collectively referred to as Wellpool); Perry Chen, individually and doing business as Dyna Computer, Inc., San Jose, California (herein collectively referred to as Chen); and Kenneth Lam, an employee of Hunter.[6] Chua allegedly was employed during that period by both Hunter and Wellpool. The purpose of this later conspiracy was for Goh, as instructed by Burger, to obtain for Burger, IBC and Helling, a U.S.-origin ProQuip rigid disk certifier and Tektronix color graphic workstations and to export those commodities contrary to the Regulations. It is charged that in carrying out this conspiracy, the above-named parties filed with the Department and application for a validated export license that contained false and misleading statements of material fact; attempted to export from the United States a ProQuip rigid disk certifier contrary to the Regulations; and exported a Tektronix workstation from the United States without the validated export license required by § 772.1 of the Regulations. By so conspiring to violate the Act and Regulations, including prescribed licensing requirements, Goh and Chua each violated § 787.3(b) of the Regulations.

That, in furtherance of the second alleged conspiracy, on about November 9, 1988, the conspirators submitted to the Department an application for a validated export license to export a ProQuip rigid disk certifier to Wellpool in Malaysia, which application, also signed by Lim as Wellpool's Managing Director, falsely represented that Wellpool was the intended end-user of the equipment when, in fact, it was not. In so doing, Goh and Chua, as members of the conspiracy, each violated § 787.5(a) of the Regulations by making false and misleading statements of material fact to a United States agency in connection with the preparation, submission or use of an export control document.

That as part of the above second conspiracy, on about November 20, 1988, Kenneth Lam exported a Tektronix color graphics workstation from the United States to Hong Kong without obtaining from the Department the validated export license required by § 772.1(b) of the Regulations. By exporting this workstation in a manner contrary to the Act and Regulations, Goh and Chua, as members of the conspiracy, each violated § 787.6 of the Regulations; and

That, on about November 25, 1988, also in furtherance of the second conspiracy, Goh and Chua, as members of the conspiracy, each violated § 787.3(a) of the Regulations when Chen, aided by Chua, made effort to violate the Act and Regulations by attempting to export the ProQuip equipment to Canada while knowing that the equipment was intended for immediate reexport from Canada and that the Department had denied their previously-filed application for a

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Chua was served with a copy of the charging letter on or about May 22, 1993, the date when he refused to claim the charging letter sent to his last known address. Although less than the 30 day period provided in § 788.7(a) of the Regulations for respondents to answer duly-served charging letters had passed when Agency Counsel, citing the unlikelihood that answer would be filed, submitted his June 10 motion for default judgment, when the August 5 Order was issued, well over 60 days had passed since Chua had refused service of the charging letter. As no answer, acknowledgment or other submission has been received from Chua concerning the charging letter, pursuant to § 788.8(a) of the Regulations, the August 5 Order held that he, too, was in default.

[4] 58 FR 18368 (April 9, 1993). In *Burger, supra*, the Respondents were Peter Burger (Burger), individually and as agent for both International Business Connections (IBC) and Helling KG (Helling); Helling; and IBC. Each Respondent for the violations found were denied all export privileges for a period of 20 years commencing March 25, 1993, the date of the Acting Under Secretary's Final Decision and Order.

[5] The Department did not allege that Goh used the Cheras Plaza identity in the second conspiracy.

[6] On March 4, 1993, the Department withdrew the charging letters previously issued against Respondents Hui, Lam, Lim and Wellpool, respectively, in Cases Nos. 2104–01 through 2104–04, inclusive, because of the continued unlikelihood that it would be able to locate and serve them in southeast Asia.

validated export license to ship such equipment from the United States to Wellpool in Malaysia. In addition, because their conspirators had purchased and transported that equipment while knowing that to do so was violative of the Act and Regulations, Goh and Chua each violated § 787.4(a) of the Regulations.

By Order, dated August 5, 1993, as amended in footnote 1, above, I consolidated for further proceeding Cases Nos. 2103–02 and 2104–05 involving, respectively, Goh and Chua and, as noted, found those Respondents to be in default for having failed to answer the charging letters which, under the Regulations, had been duly served on them. Since, as also noted, this decision involves the same factual circumstances as *In the Matter of Peter Burger, et al., supra*, Agency Counsel relies upon arguments previously submitted in connection with that consolidated matter. Accordingly, this Decision in large part follows my February 24, 1993, Recommended Decision in *Burger*, affirmed by the Acting Under Secretary which, in turn, reflected Agency Counsel's able May 6 and July 13, 1992, Submissions in *Burger*, including the uncontradicted evidentiary exhibits presented therewith. Agency Counsel's April 2 and June 18, 1993, Submissions in connection with Goh and Chua also have been carefully considered.

Facts

A. The First Conspiracy—Goh

On October 22, 1987,[7] Compuser Datentechnik GmbH (Compuser), Hamburg, Germany, ordered 60 workstations from Tektronix GmbH, the Hamburg-based German distributor for Tektronix Inc., Beaverton, Oregon, subsequently advising Tektronix on October 26 that the order was to be delivered to Helling KG at an address also in Hamburg. On October 27, Tektronix GmbH advised Compuser of an extension in the delivery date and that two new models could be substituted for the initially-ordered workstations.[8] This letter also gave notice that the workstations were being purchased for resale and that the final recipient was not yet known. Tektronix, concerned about Helling's resale of the workstations to unknown end-users, attempted to conclude the transaction by using an individual validated license, rather than its distribution license. On November 25, Helling canceled the deal.

However, on November 8, Goh, of Cheras Plaza, Kuala Lumpur, Malaysia, placed an order with Sime Darby Systems, a Tektronix distributor in that city, for an order of Tektronix workstations nearly identical to that which Compuser originally had given to Tektronix GmbH in Hamburg. As Agency counsel indicates, it is particularly significant here that Cheras Plaza's banker, Compagnie Luxembourgeoise De La Dresdner Bank AG, in Luxembourg, as correspondence reveals, made payment pursuant to instructions received from IBC, and that the letter of credit for the transaction identified IBC as the applicant.[9]

After further communications between Sime Darby and Goh, during which Goh represented that the Tektronix workstations were to be used in a Malaysian government project, the workstations were delivered to Goh in Malaysia in two separate shipments. On February 13 and March 19, 1988, respectively, Sime Darby sent two telexes in connection with these shipments to the Luxembourg bank requesting that the bank "advise the applicant International Business Co." of the shipment of the computers from the United States to Malaysia.

In an interview with the Royal Malaysian Police, described in a September 27, 1989, letter from that organization to the U.S. Customs Attache, Singapore, Goh related that at the end of 1987, Peter Burger of IBC, "an old friend," had met with Goh in Kuala Lumpur and asked that Goh supply 50 Tektronix terminals, which Goh, accordingly, ordered from Sime Darby. When, the terminals arrived in Kuala Lumpur in late March 1988, they were turned over to Burger who reexported them. Goh told the police that he had acted only on commission, that the transaction has been between Sime Darby and IBC, Luxembourg, and that, according to Burger, the purchasing had been done in Malaysia because it was cheaper.

Agency Counsel argues that Goh's statement to the Malaysian Police, coupled with his story to Sime Darby to convince that Company of the legitimacy of his order, establish the existence of a conspiracy between Goh and Burger, as an agent of IBC, to obtain and to reexport controlled U.S.-origin goods without authorization from the Department.

Agency Counsel also points out that Helling's involvement in this transaction was demonstrated in two ways. First, Helling had tried to obtain for unnamed end-users the same Tektronix workstations that Goh later was able to procure for Burger in Malaysia, and that Goh had engaged in the transaction with Sime Darby only after the failure of negotiations between Helling and Tektronix GmbH. Second, a Dun and Bradstreet Ltd. report prepared on International Business Connections SA (IBC, SA) stationery identified that Company's directors as Harold Neisse, Ingeborg Neisse and Nathanael Ries. That report also indicated that while IBC, SA, incorporated in 1985, had no employees and little financing, the cost of the purchased workstations exceeded $1 million dollars (U.S.). Additional information concerning Helling, submitted by Agency Counsel, reveals that Nathanael Riess is Helling's managing director; that Harald Neisse is chief of bookkeeping for Helling[10] and is married to Ingeborg Neisse.

From the above evidence, Agency Counsel argues persuasively that Helling, having been unable to purchase the Tektronix workstations directly from that manufacturer because of its insistence on following the export licensing requirements, used IBC as a facade for Helling's principals in order to procure those same terminals. The workstations involved are controlled for national security reasons and the submitted evidence establishes Goh's responsibility as co-conspirator for each of the unlawful acts alleged in the charging letter issued against him.

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[7] All dates hereinafter are within 1987 unless stated to be otherwise.

[8] In this period, and in the weeks that followed, a series of meetings were held in Europe and the United States concerning this order. Of particular significance was an October 27, 1987, meeting at Helling's offices, attended by representatives of Tektronix, an official of Compuser, and at which Helling was represented by a Mr. Neisse. Neisse later was more fully identified in the record as Harald Neisse, chief of bookkeeping for Helling and one of the three principals of IBC. The Tektronix memorandum describing that October 27 meeting indicated that it was at that meeting that Tektronix officials became aware that, while some of the ordered equipment might be used by Helling for academic purposes in its institute for training and continued education, Helling actually intended that most of the Tektronix equipment to be purchased would be for resale. The Tektronix officials' subsequent difficulties in discovering to whom Helling planned to resell its equipment caused that manufacturer to become cautious in its approach to the transaction.

[9] Compagnie Luxembourgeoise is a wholly-owned subsidiary of Dresdner Bank AG, Frankfurt, Germany. Dresdner Bank AG, Hamburg, served as Helling's bank.

[10] Harald Neisse first was identified above in connection with the original unsuccessful Hamburg transaction in connection with his attendance at the October 27, 1987, meeting with Tektronix and Compuser officials where he appeared as Helling's representative. As indicated by Agency Counsel from the record, "Harald" is the German spelling for "Harold," as that name appeared in the list of IBC's principals.

B. The Second Conspiracy—Goh and Chua

On September 6, 1988, ProQuip, Inc., Santa Clara, California, provided a series of price quotations for a ProQuip burnisher, glide tester, rigid disk certifier and other related equipment in response to a late August 1988 request by Charles Hui, managing director of Hunter Computer Systems, Inc., Hong Kong. On September 9, Hunter sent ProQuip a purchase order for the equipment.

The above transaction followed a September 2, 1988, fax, the top of which indicates that it was sent from "Helling KG Hamburg." In that fax, Burger sent instructions to Goh regarding payment for the ProQuip equipment and also provided technical specifications concerning three Tektronix workstations he wanted Goh to purchase. Agency Counsel emphasizes that, in this fax, Burger specified that payment for the final 70 percent balance to become due on the ProQuip items would be made after "arrival at final (unidentified) destination." The fax specified that "Direkt (sic) shipment from Hong Kong/ or New Territories accepted. (by Aeroflot)."

On September 12, 1988, Goh originated the transfer of $68,144 (U.S.), representing a 25 percent downpayment for the ProQuip equipment, from the Hong Kong branch of the Desdner Bank to ProQuip's account at the Bank of California.

Additional documents regarding the ProQuip transaction establish that, on September 19, ProQuip communicated to Hunter that, if the goods were going to the People's Republic of China (PRC), then Wellpool Corporation, a Malaysian company, could not be the ultimate consignee for the equipment. Noting that if they applied for an export license with Wellpool as the ultimate consignee, Hunter would not be authorized to reexport the equipment to the PRC without written advance approval from the U.S. government. Therefore, ProQuip suggested that time could be saved by obtaining the PRC End-User Certificate at once so that the country of ultimate destination could be shown in ProQuip's application. Nonetheless, Hunter obtained a Standard Form ITA–629P signed by Hui Ming Kut, Managing Director of Hunter, as the purchaser, and, as ultimate consignee, by Emily Lim, SP, as Managing Director of Wellpool.

In early November 1988, Hunter replaced ProQuip as the exporter of the ProQuip equipment with Dyna Computer, San Jose, California. According to a statement given by Kim Cheong Fung (also known as Sammy Fung) to special agents of the Department's Office of Export Enforcement,[11] Hui had told him that the ProQuip equipment would not be shipped directly to Malaysia by ProQuip, as immediate exporter, but rather that the equipment would go from ProQuip to Dyna Computer, and then to Malaysia. This was because ProQuip had advised that they had to have a PRC end-user's statement before they could apply for an export license. Hui had chosen Dyna Computer because he and Perry K. Chen, Dyna's president, were good friends and as everything that Hunter received from the United States has been shipped by Dyna.

On November 23, 1988, Dyna Computer was orally advised that its application for an export license for the equipment in question had been rejected. On a theory that it was easier to obtain a Canadian export license, Dyna Computer immediately attempted to export the equipment to Malaysia through Canada by sending the goods there through Colin Trading Company, Vancover, British Columbia. Chua who, as noted, had brought Goh and Hui together and otherwise had been active in promoting this transaction, and Colin Trading Company's president, Kia Sai Wee (also known as Colin Ong), had been friends and business partners in Malaysia and Singapore years before.

While discussions concerning the ProQuip equipment were in progress, Hunter also ordered from Dyna Computer the three Tektronix workstations referenced in Burger's above September 2, 1988, fax to Goh. On November 20, 1988, Kenneth Lam, one of the two engineers hired by Hunter to train in the United States on the ProQuip equipment, carried one of the Tektronix workstations out of the United States without an export license.[12]

The Government's Complaint for Forfeiture, filed with the United States District Court, Northern District of California, alleged that on about November 23, 1988, special agents of the U.S. Department of Commerce, in executing a search warrant at Dyna's premises, seized the remaining Tektronix equipment along with records indicating that Dyna had purchased the Tektronix equipment on Hunter's behalf and at Hunter's request. The special agents also seized a check in the amount of $22,000 (U.S.) drawn upon Chua's account, Chau there being described as an agent of Wellpool. These funds were to repay Dyna Computer for its loan in that amount to Hunter to enable Hunter to complete the purchase of the ProQuip equipment.[13]

The complaint further alleged that on November 25, 1988, the ProQuip equipment was seized and two individuals were detained as they delivered the equipment and shipping documents to a special agent acting in undercover capacity at a freight shipper in San Bruno, California. These documents included a Shipper's Export Declaration in which Dyna Computer had declared that the ultimate consignee for the ProQuip equipment to be the Colin Trading Company. Rejecting a claim later filed by Chua, the U.S. District Court granted forfeiture of the ProQuip equipment.

Fung, in his above statement to the special agents, also referred to Burger and IBC in connection with the ProQuip transaction. When, in mid-to-late September 1988, the deposit for the equipment had been received, Hui told Fung that it had been sent from West Germany; that Hunter would buy the equipment for Goh and then send it to Malaysia where Goh would claim it. Goh had told Fung that the West German company he worked for was IBC, headed by Peter Burger. Fung stated that he knew that IBC was in West Germany because when it was necessary to fax papers to that Company, Hunter employees had to use than 049 code for West Germany. Fung also related that the money to buy the ProQuip equipment had been forwarded by telegraphic transfer from West Germany. Chua, too, in a November 25, 1988, statement to special agents, related that he had seen faxed correspondence between Hui and Helling, which he identified as a West German company. Chau stated that this had caused him to believe that the equipment ultimately would be sent to West Germany.

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[11] Fung, employed by Hui at Hunter, actively represented that Company in this transaction both in Asia and in the United States. He arrived in California on November 4, 1988, having been sent there by Hui in the accompany of Tok Peng Chua, also known as Douglas Chua, an agent of Wellpool who introduced Goh and Hui as business associates. Chua thereafter played an active role on Hunter's behalf in promoting this transaction, serving also principally as an agent for Hunter. In dispatching Fung to the United States, Hui directed him that, while in the U.S., he always should refer to Chua as Alex Goh.

[12] As related by Fung in his above statement, the two other Tektronix workstations similarly were to be taken out of the United States by Lawrence Chung, the other engineer hired by Hunter to be trained in the U.S., and by Chung's wife, who had accompanied him. Chen, however, not having been paid for those units, would not release them.

[13] In November 1988, Hunter had paid ProQuip the entire outstanding balance of $90,000, effectuated by two checks. One from the account of Chua, as agent of Wellpool, and the other, in the amount of $22,000 drawn from Dyna's account.

C. Conclusions

From Agency Counsel's evidence, incorporation herein my conclusions concerning other of the instant Respondents' co-conspirators as set forth in the *Matter of Peter Burger, et al., supra,* and particularly noting that Goh, in this September 1989 statement, admitted to the Royal Malaysian Police with respect to the first conspiracy that he had obtained the Tektronix workstations at the request of Burger of IBC and that Burger had reexported them after receiving the equipment from Goh;[14] that the entire second conspiracy had involved obtaining, exporting, or attempting to export, the ProQuip and Tektronix equipment referenced in the September 1988 fax Burger had sent Goh from Helling's premises; and that Fung and Chua, in their respective statements to the authorities describing the second conspiracy, had implicated therein not only themselves, but Burger, Helling, IBC and Goh, I find, as alleged in the February 20, 1992, charging letters, that Goh has committed one violation of § 787.2, one violation of § 787.3(a) two violations of § 787.3(b), two violations of § 787.4(a), one violation of § 787.5(a) and one violation of § 787.6, for a total of eight violations of the Regulations.

From Agency Counsel's uncontradicted evidence, I further conclude that Chua has committed one violation of § 787.3(a), one violation of § 787.3(b), one violation of § 787.4(a) one violation of § 787.5(a), and one violation of § 787.6, for a total of five violations of the Regulations. Each of the above violations by Goh and Chua concerns commodities controlled for reasons of national security under section 5 of the Act.

Because of the seriousness of the violations here established, I accept Agency Counsel's recommendation that Goh and Chua, the Respondents herein, each be denied export privileges for twenty years and, accordingly, issue the following recommended Order:

It is ordered that, For a period of twenty years from the date of the final action by the United States Department of Commerce, Respondents

Goh Sian Lake also known as Alex Goh, individually and doing business as Cheras Plaza Sdn. Bhd., 26 Jalan Mt. Erskine, Penang, Malaysia
and

Tok Peng Chua also known as Douglas Chua and Chua Tok Peng, 17 Jalan Peria, Kuala Lumpur, Malaysia

and all successors, assignees, officers, partners, representatives, agents, and employees of each of the above Respondents hereby are denied all privileges of participating, directly or indirectly, in any manner of capacity, in any transaction involving commodities or technical data exported from the United States in hole or in part, or to be exported, or that are otherwise subject to the Regulations.

I. Participation prohibited each Respondent in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

II. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm corporation, or business organization with which the respective Respondents are now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

III. All outstanding individual validated export licenses in which the Respondents appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of the Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited, to, distribution licenses, hereby are revoked.

IV. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

V. This Order is affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Dated: August 11, 1993.

Robert M. Schwarzbart,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by Section 13(c) of the Act, submissions must be received in the Office of the Acting Under Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, room H–3898B, 14th and Constitution Avenue, NW., Washington, DC 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Acting Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

Certificate of Mailing

I certify that I have sent the attached document by first class U.S. mail, postage prepaid, to the following persons:

Mr. Goh Sian Lake, also known as Alex Goh, individually and doing business as Cheras Plaza Sdn. Bhd., 26 Jalan Mt. Erskine, Penang, Malaysia
and

[14] The evidence also shows that the type and quantity of the Tektronix equipment purchased for Burger by Goh corresponded to that which Helling and had backed off from buying directly from that manufacturer in Hamburg when Tektronix, concerned about the ultimate destination, insisted upon complying with the Regulations as they related to export licensing.

Mr. Tok Peng Chua, also known as Douglas Chua and Chua Tok Peng, 17 Jalan Peria, Kuala Lumpur, Malaysia
Thomas C. Barbour, Esq., U.S. Department of Commerce, Office of Chief Counsel for Export Administration, room H3839, 14th and Constitution Avenue, NW., Washington, DC 20230

Dated: August 11, 1993.

Williemae Waddell,

Docket Clerk.

[FR Doc. 93–22952 Filed 9–17–93; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Order No. 642]

Grant of Authority; Establishment of a Foreign-Trade Zone, Fairbanks, AK; (Fairbanks Customs Port of Entry)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Fairbanks Industrial Development Corporation (the Grantee), an Alaska non-profit corporation, has made application (Filed 4–2–92, FTZ Docket 8–92, 57 FR 12797, 4/13/92) to the Board, requesting the establishment of a foreign-trade zone at sites in the Fairbanks, Alaska area in and adjacent to the Fairbanks Customs port of entry; and,

Whereas, notice inviting public comment has been given in the **Federal Register** and the Board has found that the requirements of the Act and Board's regulations are satisfied, and that approval subject to an activation limit is in the public interest;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 195, at the sites described in the application, subject to the Act and the Board's regulations, including section 400.28, and subject to a 2,000-acre activation limit.

Signed at Washington, DC, this 31st day of August 1993.

Foreign-Trade Zones Board.

Ronald H. Brown,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–22955 Filed 9–17–93; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 651]

Grant of Authority; Establishment of a Foreign-Trade Zone, Fort Worth, Texas, Area (Dallas-Fort Worth Customs Port of Entry Area)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Alliance Corridor, Inc. (the Grantee), a Texas non-profit corporation, has made application (filed 11–6–91, FTZ Docket 83–91, 57 FR 1451, 1–14–92) to the Board, requesting the establishment of a foreign-trade zone at sites in the Fort Worth, Texas area, in and adjacent to the Dallas-Fort Worth Customs port of entry; and,

Whereas, notice inviting public comment has been given in the **Federal Register** and the Board has found that the requirements of the Act and the Board's regulations are satisfied, and that approval subject to an activation limit is in the public interest;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 196, at the sites described in the application, subject to the Act and the Board's regulations, including section 400.28, and subject to a 2,000-acre activation limit.

Signed at Washington, DC, this 31st day of August 1993.

Foreign-Trade Zones Board.

Ronald H. Brown,

Secretary of Commerce, Chairman and Executive Officer

Attest:

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 93–22954 Filed 9–17–93; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–588–815]

Gray Portland Cement and Clinker From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 21, 1993, the Department of Commerce published the preliminary results of review of the antidumping duty order on gray portland cement and clinker from Japan. The review covers one manufacturer/exporter of the merchandise to the United States, and the period October 31, 1990, through April 30, 1992.

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioners, we held a public hearing on June 4, 1993. Based on our analysis of the comments received, and the correction of clerical errors, we have changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: September 20, 1993.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Pam Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone, (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On April 21, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 21442) the preliminary results of review of the antidumping duty order on gray portland cement and clinker from Japan (56 FR 21658; May 10, 1991) for the period October 31, 1990, through April 30, 1992. On July 14, 1993, the Department requested additional information from Onoda Cement Co., Ltd. (Onoda), regarding the service stations it operates in the home market.

The respondent submitted that information on August 2, 1993, after which the petitioners submitted factual information and comments regarding the service stations. The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The products covered by this review are gray portland cement and clinker from Japan. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material produced when manufacturing cement, has no use other than grinding into finished cement. Microfine cement was specifically excluded from the antidumping duty order. Gray portland cement is currently classifiable under the harmonized tariff schedule (HTS) item number 2523.29, and clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under item number 2523.90 as "other hydraulic cements."

The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioners, the Ad Hoc Committee of Southern California Producers of Gray Portland Cement (petitioners), and from the respondent, Onoda.

Comment 1: Petitioners argue that Onoda is not entitled to a difference in merchandise (difmer) adjustment for the cost difference between the U.S. model (Type I) and home market model (Type N). They argue that Onoda has failed to meet the criteria for a difmer adjustment that was articulated in the Department's Policy Bulletin No. 92.2 and in other antidumping cases. That criterion is that respondents are entitled to difmer adjustments only if they show that the difference in cost between the two models is attributable to the difference in physical characteristics of the merchandise. Evidence on the record, petitioners argue, demonstrates that the difmer adjustment which Onoda has reported is largely attributable to differences in efficiencies between Onoda's various production facilities, and not to cost differences associated with the physical characteristics of the merchandise.

Onoda argues that it followed the exact same procedure in preparing its difmer adjustment in this segment of the proceeding as it did in the less-than-fair-value (LTFV) investigation. Onoda notes that during the LTFV investigation, the Department verified the difmer, and granted the difmer adjustment in calculating the dumping margin. Furthermore, Onoda observes that the Department said in the Final Determination of Sales at Less Than Fair Value that it was satisfied that Onoda had reasonably tied cost differences to physical differences (see Final Determination of Sales at Less than Fair Value; Gray Portland Cement and Clinker from Japan, 56 FR 12156, at 12161, March 22, 1991). Thus, according to Onoda, there is no reason for the Department to not grant the adjustment in this review. However, should the Department decline to grant the full difmer adjustment, Onoda argues that the Department should at least grant a difmer adjustment for the cost differences of the material inputs.

Department's Position: We disagree with petitioners and agree with Onoda. Though Onoda's plants may have different efficiencies, the evidence on record does not establish that any differences in efficiencies are the source of the cost differences identified by Onoda. Moreover, as noted in the LTFV investigation, the differences in the productions process (*e.g.*, amount and duration of heat) result in merchandise with different physical characteristics. (See Gray Portland Cement and Clinker, supra, at 12161). Thus, we allow Onoda's claim for difmer.

Comment 2: Petitioners argue that the Department should compare Type II cement sold in the United States to Type N cement sold in the home market, rather than to constructed value. They argue that Type N cement meets the criteria of such or similar merchandise as provided in the statute at section 771(16), and that the statute requires the Department to use such or similar merchandise rather than constructed value whenever possible. Furthermore, because the difference in variable cost of manufacture (VCOM) between Type II and Type N is less than 20 percent, Type N is not disqualified from comparison to Type II under the Department's 20 percent difmer test.

Onoda argues that Type N should be rejected as a model match because its content of tricalcium aluminate is greater than eight percent, whereas the tricalcium aluminate content of Type II is less than eight percent. Onoda notes that, as a result, Type N cannot be used in applications requiring moderate sulfate resistance as can Type II. Type N is, therefore, not "similar" merchandise for use in determining FMV.

Department's Position: We agree with petitioners. It is the Department's policy to use sales rather than cost information in calculating FMV whenever possible. In this case, the such or similar category properly consists of all models of Onoda gray portland cement, within the class or kind of the order, sold in the home market. Therefore, we are required to consider Type N as a possible comparison model, as well as all other models of Onoda's cement in the same such or similar category.

In a memorandum to the file dated December 17, 1992 (model match memorandum), the Department analyzed each of the models Onoda sold in the home market to determine which, if any, could serve as a model match. We wrote the model match memorandum after having elicited information from Onoda on its home market models of cement, and after having consulted with the National Institute of Standards and Technology. We have determined that Type M cement and low heat super cement are not sufficiently similar to Type II to serve as a comparison model because they fail to pass the Department's twenty percent difference in merchandise test (see the Department's preliminary results analysis memorandum dated April 7, 1993, the Department's memorandum to the file dated September 3, 1993, and the Department's final results analysis memorandum).

In the model match memorandum, we rejected Type N and Type H as model matches solely because of the high levels of tricalcium aluminate (see pages 3 and 4 of the model match memorandum). However, we no longer believe that the tricalcium aluminate content should be determinative in the model match selection. Though Type II and Types N and H do not have identical uses, the statute requires only that a home market model be like, not identical to, the U.S. model in purposes for which used for the home market model to be similar.

Faced with a choice of either Type N or Type H, we determine that Type N is more similar to Type II than is Type H. We base this determination on the physical characteristics and uses of the two models. Onoda's November 12, 1992, submission contains information which shows that the Blaine fineness and compressive strength of Type II is closer to the Blaine fineness and compressive strength of Type N than to those of Type H. Because of these characteristics, Type II and Type N are

both used in general construction and civil engineering projects, whereas Type H is used in high rise construction where high early strength development is needed. Moreover, though both Type N and Type H have a VCOM difference with Type II of less than 20 percent of the total cost of manufacture of Type II, the VCOM difference between Type N and Type II is smaller than the VCOM difference between Type H Type II (see the Department's final results analysis memorandum).

Our determination is that Type N is the most similar model to Type II within the class or kind of merchandise. Therefore, we have used it as the model match for Type II in these final results.

Comment 3: Petitioners argue that the Department should strike from the record the information on Onoda's type M cement which Onoda submitted after the deadline for submitting new, unsolicited information. They argue that the Department's regulations at 19 CFR 353.31(a)(3) require that these data be rejected.

Department's Position: We agree. Since publication of the preliminary results, we returned to Onoda all submissions made after December 15, 1992, that contain new, unsolicited information regarding Type M cement. We also allowed Onoda time to purge those submissions of new information. Onoda has resubmitted those documents without the new information, and they have bee admitted to the record.

Comment 4: Petitioners argue that the Department erred in counting Onoda's costs for operating its distribution warehouses throughout Japan as a direct expense. Onoda reported these costs under the variable name SSLH. They argue that during the LTFV investigation the Department determined the SSLH field to be primarily overhead costs, and denied making a movement adjustment or direct selling expense adjustment for them. As Onoda reported the same types of costs under SSLH in this review as it did during the LTFV investigation, petitioners argue that the Department should again deny the adjustment as a movement or direct expense. Furthermore, as the expense are primarily overhead expenses, petitioners urge the Department not to consider them as indirect selling expenses as was done in the LTFV investigation. Petitions argue that as overhead costs, they should be included in the computation of Onoda's cost of manufacture for calculating Onoda's cost of production (COP) and constructed value. Even if the Department counts them as indirect selling expenses, petitioners assert they should still be included in the COP. Finally, petitioners argue that these overhead costs should not have been deducted from the home market price for purposes of the COP test.

Onoda argues that the Department was correct in treating its service station costs as direct expenses because of the decision of the Court of International Trade (CIT) in *Nihon Cement Co., Ltd.* v. *United States*, Slip Op. 93–80 (May 25, 1993). In that case, the CIT held that if the cement was "merely residing in the service stations 'incident to bringing' the cement from one location to the other, the expenses must be considered as movement expenses." The CIT also noted that several factors in the administrative record supported the implication that the service stations functioned as transfer points rather than as warehouses for storing cement. Onoda contends that none of these factors have changed since the LTFV investigation. Thus, the costs reported under SSLH should be considered movement expenses. Furthermore, counting them as part of cost of manufacture would be an error because manufacturing expenses cannot be incurred after the product has left the production facility.

Department's Position: After publication of the preliminary results of review, the Department sent to Onoda a questionnaire eliciting further information on the service stations. Our analysis of Onoda's response convinces us that the service stations should be classified as warehouses for purposes of antidumping analysis.

Our determination is based on a combination of factors. First, Onoda virtually always ships the cement to the service stations prior to the date of sale. Onoda said in its August 2, 1993, response (at 7), "Onoda only keeps enough cement in each service station to meet the anticipated needs of its customers," and (at 11) "Onoda ships cement to the service stations based on the estimated amount of cement that will be required to fill future orders." Thus, Onoda puts aside its cement in the service stations (albeit for a short period of time) until Onoda receives an order. Therefore, we conclude that the cement does not reside in the service station "incident to bringing" it from Onoda's facilities to a predetermined location. Second, Onoda failed to distinguish the physical structure of the service stations from the storage facilities it has at its plants to store the cement before shipment to the service stations. Onoda described them both as "silos." Third, some of the service stations have repacking facilities, repacking being a typical warehouse function. Fourth, notwithstanding Onoda's description of the service stations as "transfer points" to transfer cement from one mode of transportation to another, some cement is shipped in and out of service stations via the same mode of transportation. Finally, Onoda does sometimes transfer cement from one mode of transportation to another without the benefit of service stations. These factors convince us that the service stations do function as warehouses for storing cement.

We agree with Onoda that because the cement is already fully processed before it reaches the service station, the service station expenses cannot be considered part of the cost of manufacture. Rather, in accordance with our standard practice, and consistent with our determination to consider the service stations warehouses, we have included the SSLH field in the pool of home market indirect selling expenses.

Finally, because we consider the field SSLH to consist of indirect selling expenses, we have added them to the COP, and have not deducted them from the home market price for purposes of the cost test.

Comment 5: Petitioners argue that the Department should resort to the use of best information available (BIA) for the price of Onoda's sales to unrelated customers made through related affiliates in the home market because, in defiance of the standard questionnaire, Onoda failed to report the prices to the first unrelated customer. Furthermore, petitioners assert that the Department erred in describing the volume of such sales as "not a significant percentage of home market sales" in its preliminary analysis memorandum, and hence not requiring Onoda to report them. Petitioners contend that not requiring a respondent to report the price to the first unrelated customer would allow a respondent to circumvent an antidumping duty order by selling to its related affiliates a low prices, and having them sell to related end-users at high prices.

Onoda argues that its pricing policy toward all of its distributor customers, whether related or unrelated, is identical. Onoda argues that the price that it charges a distributor customer is the price which the distributor charges to its customer, minus a standard mark-up at a fixed percentage. Thus, Onoda concludes that all of its sales to its distributors (which form the vast majority of Onoda's home market customers) are at arm's-length. Onoda contends that it submitted this argument in its questionnaire response, and that the Department evidently accepted it,

because despite repeated urging from the petitions, the Department did not request that Onoda provide details of sales made by its related distributors to unrelated end-users. Thus, Onoda argues that it has provided all requested information. Furthermore, Onoda contends that because the pricing policy toward all distributors, whether related or unrelated, is the same, the possibility for manipulation of prices is non-existent.

Department's Position: The use of BIA is not warranted in a situation where, as here, there are sufficient home market sales of comparable merchandise to unrelated customers to calculate an FMV for every month of the review period. However, where a respondent makes an argument that particular sales are arm's-length transactions, the Department should conduct an analysis to determine the accuracy of the respondent's claim, and consider using such sales in the calculation of FMV. Therefore, since publication of the preliminary results, we have conducted an analysis of Onoda's sales to related distributors because Onoda reported sales to related distributors in response to the Department's request that Onoda submit sales to all customers that it believes to be arm's-length. We conducted our analysis by first calculating a weighted-average price for sales to unrelated and related customers. We performed these calculations across the entire 18 months of the review period. This is the methodology the Department used in the Final Results of Antidumping Duty Administrative Review; Antifriction Bearings (Other Than Tapered Roller Bearings) from France, et al., 58 FR 39729, at 39770, July 26, 1993. We then compared the weighted-average prices of sales to related customers to the weighted-average price of sales to unrelated customers.

The price comparisons revealed that the weighted-average price to related distributors was lower than the weighted-average price to unrelated distributors. Thus, we determine that sales to related distributors were not at arm's-length. Therefore, for these final results of review, as in the preliminary results, we have included only sales from Onoda to unrelated customers in the calculation of FMV.

Comment 6: Petitioners argue that the Department erred in the preliminary results in making an adjustment to Onoda's FMV for the costs of scrapping distribution terminals and disposal of obsolete equipment used in the loading of cement. They argue that these expenses are overhead expenses, and not selling expenses, and should be included in the cost of manufacture in the calculation of COP and constructed value.

Onoda argues that the costs of scrapping distribution terminals and disposal of obsolete equipment used in the loading of cement are unrelated to the cost of manufacturing cement. The Department counted these expenses as indirect selling expenses during the LTFV investigation and in the preliminary results of this review, and should do so for the final results of this review as well.

Department's Position: We agree with Onoda. The scrapping of distribution terminals and the disposal of obsolete equipment (most of which was used at the service stations) are not related to the manufacture of cement, and clearly cannot be part of the cost of manufacture. For these final results of review, we have classified these costs as indirect selling expenses because they are incurred in connection with Onoda's service stations which we have determined to be warehouses (see our response to comment 4).

Comment 7: Petitioners argue that the Department had no statutory authority to make an adjustment to Onoda's FMV for presale movement expenses. Thus, the Department erred in making this adjustment in the preliminary results.

Onoda argues that the Department has consistently deducted presale movement expenses from FMV, and that this practice was recently upheld in the CIT's decision on the appeal of the LTFV determination in this case (*Nihon Cement Co., Ltd.* v. *United States*, Slip Op. 93–80 (May 25, 1993) (Nihon)).

Department's Position: We agree with Onoda. It is the Department's practice to make adjustments in the home market for pre-sale movement expenses. As Onoda notes, this practice was upheld by the CIT in *Nihon*. Thus, we have made this adjustment in the final results of this review.

Comment 8: Petitioners argue that the U.S. movement expenses (computer variable name USMOVEE) to transport cement from the U.S. port to Lone Star Northwest's U.S. plant should be included in their entirety in the calculation of U.S. further manufacturing costs (variable name USFURMNE). In the preliminary results, the Department included in USFURMNE only USMOVEE multiplied by the ratio of (1) the U.S. COM to (2) the sum of home market COM plus U.S. COM. Petitioners cite and submit portions of a computer program entitled "Model Steel Program" issued in another antidumping case as an example of a program in which we calculated USFURMNE as they suggest, and argue that we should follow that approach consistently in all investigations and administrative reviews.

Onoda argues that the petitioners' view was rejected by the Department in the LTFV investigation, and should be rejected here as well. Onoda notes that the Department's questionnaire makes clear that transportation costs to a U.S. plant should be considered part of material costs. Thus, in Onoda's view, the transportation costs from the U.S. port to the U.S. plant should be allocated in their entirely to the Japanese side of the equation. Furthermore, Onoda notes that the "Model Steel Program" which petitioners cite cannot be relied on as a statement of the Department's practice because it was used only for generating preliminary determinations, and not final determinations. Furthermore, Onoda observes that the program has been modified in each case to fit the specific facts of each investigation.

Department's Position: The Department most recently addressed this issue in the Final Results of Antidumping Duty Administrative Review; Stainless Steel Hollow Products from Sweden (57 FR 21389; May 20, 1992). In that notice we said:

> We believe that all costs incurred after a product has arrived in the U.S. should be attributed to the U.S. production costs; thus, we have included repackaging and freight from the U.S. port to the U.S. plant as elements in the further manufacturing or assembly costs. Therefore, we also included any profit associated with them in our calculation of U.S. profit to be allocated to further U.S. value added.

Our policy has not changed since publication of that notice. Accordingly, we have changed our calculations for these final results to include freight from the U.S. port to the U.S. plant in the U.S. further manufacturing costs and in the profit allocation.

Comment 9: Petitioners argue that Lone Star Northwest's expenses for transporting ready-mix from its U.S. plant to its customers should be included in the cost of U.S. further manufacturing and in the allocation of Onoda's profit or loss on further manufactured sales.

Onoda argues that these post-production costs are not manufacturing costs because they are incurred after the further manufacturing has taken place. Moreover, these delivery costs are clearly selling expenses, and should therefore not be added to the value of the ready mix for purposes of the profit allocation.

Department's Position: In Stainless Steel Hollow Products from Sweden,

supra, the Department determined that freight costs from the U.S. plant to the U.S. customer for a further-manufactured product is not part of U.S. value added because they are costs incurred after all further manufacture is completed and all further value is added. Accordingly, as we did in Stainless Steel Hollow Products, we have deducted the freight from the U.S. plant to the U.S. customer from U.S. price as a movement expense, but have not included any associated profit in the U.S. value-added calculation.

Comment 10: Petitioners argue that the Department erred in the preliminary results by deducting from U.S. price only a portion of the cost of transporting ready-mix from the U.S. manufacturing plant to the customer.

Department's Position: We agree and have corrected this error in these final results of review. Furthermore, as noted in the summary of this notice, we corrected other clerical errors for these final results of view. These changes are described in the Department's final results analysis memorandum.

Comment 11: Petitioners argue that a commission paid by Onoda to Onoda Northwest, a wholly-owned subsidiary, should be included in the calculation of U.S. commissions. They argue that the commission is clearly at arm's-length because the commission that Onoda pays to Mitsui and Co., Ltd. (Mitsui), an unrelated company, for transportation services is higher than the commission Onoda pays to Onoda Northwest. Furthermore, Onoda has admitted that the Commission is directly related to the sales. Therefore, in accordance with the Department's standard practice, the commission should be deducted from U.S. price.

Onoda argues that the evidence which petitioners cite which purportedly demonstrates that the commission is at arm's-length is meaningless because the services provided by Mitsui are different from the services provided by Onoda Northwest. More importantly, the actual expenses incurred by Onoda Northwest on behalf of Onoda have all been included as part of the indirect selling expenses.

Department's Position: We agree with Onoda that because Mitsui and Onoda Northwest perform different services, we cannot rightly conclude, by comparing the respective rates of the two commissions, that the commission paid to Onoda Northwest is at arm's-length. In the absence of evidence that the commissions are at arm's length, we regard them as an intracompany transfer, and we have not deducted them from U.S. price. As in the preliminary results, however, we have deducted as indirect selling expenses all expenses incurred by Onoda Northwest on behalf of Onoda cement.

Comment 12: Petitioners argue that commission payments made to Mitsui Japan should be deducted in their entirety from Onoda's U.S. price.

Onoda argues that the actual "commission" is the net amount which passes from the Onoda corporate family (*i.e.*, Onoda and Lone Star Northwest) to the Mitsui corporate family, and that the sequence and composition of the payments have no bearing on the value of the commission. Thus, Onoda argues that in the preliminary results the Department correctly calculated the amount of U.S. commissions.

Department's Position: We agree with Onoda. In a sales/distribution situation where there are two payments and two corporate families, what is relevant is the entire payment from one corporate family to the other. Thus, for these final results, as in the preliminary results, we have included both halves of the transaction in calculating the commission payment to Mitsui.

Comment 13: Petitioners argue that the Department erred in calculating the "value added" through further manufacturing by annualizing Lone Star Northwest's costs. They argue that the statute at section 772(e) (3) and the regulations at 19 CFR 353.41(e)(3) require that the "value added" calculation be based on only those costs incurred after importation of the merchandise and before its sale. They further argue that the deduction of annualized costs from actual sales prices and the ensuing comparison to a monthly FMV results in skewed price comparisons.

Onoda argues that sales of cement tend to be seasonal, but that costs tend to be incurred essentially evenly over the course of the year. In order properly to match costs to sales, Onoda argues that it is necessary to annualize costs. Moreover, Onoda asserts that this approach was recently upheld by the CIT in *Nihon*.

Department's Position: We agree with Onoda. Where sales of covered merchandise tend to be seasonal, the Department may consider annualizing costs in order to prevent distortion of per unit charges and adjustments. During the LTFV investigation, the Department determined that Lone Star Northwest's fixed costs were sufficiently high that they could affect the per metric ton cost of ready-mix and concrete (see Final Determination of Sales at Less than Fair Value; Gray Portland Cement and Clinker from Japan, 56 FR 12156, March 22, 1991, at 12165). Thus, we annualized Lone Star Northwest's costs. This methodology was upheld by the CIT in *Nihon*. Nothing on the record of this review indicates that Lone Star Northwest's sales patterns are any different in this review than they were during the LTFV investigation. Thus, we have annualized Lone Star Northwest's costs for these final results as we did for the preliminary results.

Comment 14: Petitioners argue that the Department erred in two ways in its calculation of the consumption tax to be added to U.S. price as required by 772(d)(1)(C). First, it should have calculated the tax by applying the tax rate to the FOB port of export price, rather than to the gross unit price. Second, it should have made a determination of how much of the home market tax was passed through to consumers, and added only the equivalent amount to the U.S. price. Correcting these two errors would, petitioners allege, bring the calculation into conformity with the CIT's decisions in *Zenith Electronics Corp.* v. *United States*, 633 F.Supp. 1, 382, 1,394–1,402 (CIT 1986) *appeal dismissed* 875 F.2d 291 (Fed. Cir. 1989), and *Zenith Electronics Corp.* v. *United States*, Appeals 92–1043, –1044, –1045, –1046 (Fed. Cir. 1993) (*Zenith II*).

Onoda argues that petitioners' methodology would artificially create dumping margins, and would violate the Department's central goal of achieving tax neutrality. Onoda also argues that petitioners' argument regarding the requirement to measure "pass through" has been rejected by the Department in the past because the relevant CIT decision is not binding in other cases, and because the issue is on appeal. The argument should be rejected here as well. Furthermore, Onoda argues that the methodology the Department used in the preliminary results also artificially increases dumping margins. The Department should add to U.S. price the absolute amount of consumption tax paid on home market sales because doing so is consistent with the *Zenith II* court's interpretation of the statute, and achieves the Department's goal of maintaining tax neutrality. This is the method the Department has used in very recent post-*Zenith* cases.

Petitioners argue that Onoda's suggested approach violates the statute by adding to the U.S. price an amount which exceeds the amount "not collected by reason of the exportation of the merchandise" (19 CFR 353.41(d)(iii)). Moreover, Onoda's suggested approach is contrary to the decision of the Court of Appeals for the Federal Circuit (CAFC) in *Zenith II*. There, the CAFC said that "tax

neutrality" is not the objective of the statute. Petitioners also contend that any "multiplier effect" which may exist is purely the fault of the respondent. Citing the language of *Zenith II*, petitioners argue that the multiplier effect does not create a dumping margin where one does not exist.

Department's Position: We disagree with petitioner, and agree with respondent. On March 19, 1993, the CAFC, in affirming the decision of *Zenith II*, ruled that section 772(d)(1)(C) of the Tariff Act provides for an addition to U.S. price to account for taxes that the exporting country would have assessed on the merchandise had it been sold in the home market, and that section 773(a)(4)(B) of the Tariff Act does not allow circumstance of sale adjustments to FMV for differences in taxes. Accordingly, we have changed our practice, and will no longer calculate a hypothetical tax on the U.S. product, but will, for the time being, add to the U.S. price the absolute amount of tax on the comparison merchandise sold in the country of exportation. By adding the amount of home market tax to U.S. price, absolute dumping margins are not inflated or deflated by differences in taxes included in FMV and those included in U.S. price.

In addition, we will propose a change in 19 CFR 353.2(f)(2) to provide that we calculate weighted-average dumping margins by dividing the aggregated dumping margins, calculated as described above, by the aggregated U.S. prices net of taxes. This change would result in weighted-average dumping margin rates that are neither inflated nor deflated on account of our methodology of accounting for taxes paid in the home market but rebated or not collected by reason of exportation. We are in the process of drafting this proposed change, and we will begin the rule-making process as soon as possible.

As is evident from the preceding description, in implementing the CAFC's ruling, the Department intends to make every effort to ensure that price comparisons remain undistorted. The CAFC clearly did not intend for tax adjustments to result in skewed comparisons, and we disagree with petitioners' argument that the Court did not intend that our comparisons be tax-neutral. Fair comparisons are a primary statutory objective, as is consistency with U.S. international obligations. In this regard, we note that Article 2.6 of the GATT Antidumping Code, in requiring fair price comparisons, calls for allowance to be made for "differences in taxation, and for the other differences affecting price comparability."

We impose no limitation on consumption taxes added to U.S. price, based on the incidence of such taxes in the home market, because the statute requires no such limitation. We are not following *Zenith* v. *United States*, 633 F. Supp. 1382 (CIT 1986), *appeal dismissed*, 875 F.2d 291 (Fed. Cir. 1989), and its progeny with respect to this issue, because we do not agree with that decision and have appealed this issue to the CAFC in *Daewoo* v. *United States*, Fed. Cir. Nos. 92–1552–62. The CIT has upheld our position that the statute does not require a measurement of "tax pass-through" in *Federal-Mogul Corp.* v. *United States*, Slip Op. 93–17 (CIT, Feb. 4, 1993).

Comment 15: Petitioners argue that the Department erred in adding to U.S. price an amount for additional revenue paid to Lone Star Northwest by an unrelated customer as an estimate of additional duties which may be due on imports of Onoda cement. Petitioners claim that the statute at 772(d)(1) addresses what kind of duties may be added to U.S. price. Since the duties at issue are neither import duties rebated or not collected upon export or countervailing duties, as specified by the statute, petitioners conclude that they may not be added to U.S. price.

Onoda argues that it has never claimed that these payments were actual duties. Rather, they are additional compensation to Lone Star Northwest, and are required under the sales agreement with the customer. Onoda argues that they are an integral part of the U.S. price. As such, Onoda asserts that they must be added to the gross price in calculating the dumping margin.

Department's Position: We agree with Onoda. The payments at issue here are not actual duties. They are additional compensation to Lone Star for Onoda cement based on estimates of additional duties which may be incurred by Lone Star on imports of cement from Onoda, its related Japanese parent. As such, they must be added to U.S. price to reflect the entire payment Onoda received for the cement.

Comment 16: Petitioners argue that Onoda's home market rebates and discounts should be deducted from the home market price for purposes of the cost test, and that the rebates and discounts should not have been included in the calculation of COP. They also argue that Onoda's home market credit and inventory carrying costs should not be deducted from the home market price for purposes of the cost test, and should be included in the COP.

Department's Position: We agree with petitioners regarding rebates and discounts. Because rebates and discounts are adjustments to price, they should not be included in the calculation of the COP. We disagree with petitioners regarding credit and inventory carrying costs. In our Final Determination of Sales at Less than Fair Value; Certain All-Terrain Vehicles from Japan, 54 FR 4864, 4868 (January 31, 1989), we said:

> When we calculate COP pursuant to section 773(b) of the Act, we are only interested in determining the actual costs incurred to produce the merchandise under investigation.
>
> Because we are not comparing COP to United States sales, there is no need to measure the actual differences that may or may not exist between home market or third country selling expenses and U.S. selling expenses. Therefore, the methodology which leads us to impute interest expenses when making fair value comparisons is simply not present when calculating COP.

Because Onoda's credit and inventory carrying costs are imputed costs, they should not be included in COP. Therefore, for these final results of review, we have not included discounts, rebates, inventory carrying costs, or credit in the COP, and have not included them in the home market price compared to COP.

Comment 17: Onoda argues that the profit netback payment that it receives from its channel one sales should be added to its U.S. price. The netback is paid to Lone Star Northwest pursuant to a contract with its channel one customer. Onoda argues that it would make no economic sense for Lone Star Northwest to sell the cement without the expectation of receiving the profit netback. The profit netback is just as much part of the selling price as is the initial price paid by the customer, and in other cases the Department has recognized that payments may come in multiple installments. Furthermore, Onoda notes that in the LTFV investigation the Department considered and rejected petitioners' argument that the profit netback should be treated as rent rather than additional revenue. Onoda also argues that, should the Department decide not to add the profit netback to U.S. price, it should at least add it to the real estate rent that Lone Star Northwest receives from the channel one customer.

Petitioners argue that the Department was correct in denying this adjustment because the petitioners presented conclusive and unrefuted factual information that the additional rent

referenced in the lease agreement was real estate rent, and not additional revenue to Lone Star Northwest for the purchase of Onoda cement.

Department's Position: The evidence submitted by the petitioners in this review was sufficient to convince us that the profit netback was intended as real estate rent, rather than economic rent. Therefore, in these final results of review, as in the preliminary results of review, we have not made an addition to the U.S. price of the channel one customer for the profit netback. However, in these final results of review, unlike in the preliminary results of review, we have added the amount of the profit netback to the real estate rent that Lone Star Northwest receives from its channel one customer.

Comment 18: Onoda argues that the Department erred in the preliminary results by recalculating Lone Star Northwest's general and administrative costs to include interest on certain loans taken out by Lone Star Northwest that were not used for either the sale or manufacture of the subject merchandise. Onoda argues that to include such loans violates the Department's regulation. At 19 CFR 353.41(e)(3), which says that in value-added cases the Department will reduce the U.S. price by "* * * the cost of material, fabrication, and other *expenses incurred in such production or assembly*" (emphasis added). Onoda also contends that the Department's past practice supports their position. It cites Sweaters, Wholly or in Chief Weight of Man Made Fiber from the Republic of Korea, 55 FR 32659, 32667 (August 10, 1990), in which the Department excluded a respondent's interest expense incurred for financing activities which were distinct from its manufacturing operations.

Petitioners argue that Onoda is incorrect in arguing that the loans never supported Lone Star Northwest's production or sales. Petitioners contend that, were the Department to accept Onoda's argument, it would be inconsistent with its prior practice in which it recognized the fungible nature of financing.

Furthermore, petitioners note that the CIT upheld the Department's treatment of these interest payments in *Nihon*.

Department's Position: In our Final Determination of Sales at Less Than Fair Value; Gray Portland Cement and Clinker (56 FR 12156, 12166, March 22, 1991), we said that we would include the interest on these loans in the calculation of U.S. value added costs because we recognize the fungible nature of financing. The Department continues to recognize the fungible nature of financing. Furthermore, as petitioners note, the CIT upheld our treatment of these loans in *Nihon*. Accordingly, we have included them in the U.S. value added computation in this review.

Comment 19: Onoda argues that for its Type II U.S. sales during the last 12 months of the review period the Department should use the constructed value data from the first six months of the review period (rather than BIA) because Onoda produced no Type II cement during the last 12 months. Onoda points our that this information was provided to the Department in its cost questionnaire response.

Petitioners argue that the Department should use Type N as the comparison model. Thus, petitioners argue that whether Onoda did or did not report constructed value information for its Type II cement is moot.

Department's Position: For these final results of review, we have used Type N as the comparison model to Type II (see our response to comment 2 above). Thus, Onoda's argument is moot.

Comment 20: Onoda argues that the Department should include in its calculation of the antidumping margin sales that were made after the review period ended but for which the merchandise entered during the review period. Citing section 751(a)(2) of the Tariff Act, it argues that the Department has the statutory authority to assess margins on entries rather than sales, and that the legislative history demonstrates that it was the intent of Congress for the Department to do so. Furthermore, the Department has already done so in other cases. Failure to do so here would result in some of Onoda's entries never being liquidated correctly because Customs does not liquidate partial entries.

Petitioners contend that the Department should deny Onoda's request. They argue that the Department's Antidumping Manual makes clear that the date of sale controls which sales are to be included in a review. Similarly, petitioners point to the Advance Notice of Proposed Rulemaking, 56 FR 63,696 (December 5, 1991), which states the Department's determination that in an exporter's sales price situation, it is the date of sale, and not the date of entry, that controls which sales will be included in an administrative review. Furthermore, in Portable Electric Typewriters from Japan, 56 FR 56,393, 56,396 (comment 5) (November 5, 1991), the Department said it would not adopt a date of entry approach in an ongoing proceeding.

Department's Position: Our preferred methodology in reviewing ESP transactions is to review sales, rather than entries, due to the lag between entry dates and sale dates that typically is endemic to ESP transactions. If we were to set the paramaters of ESP reviews based on entry dates, we would be precluded from completing our reviews in a timely manner because the review would have to be conducted after all relevant sales were made. While Onoda may have the relevant sales data available in conjunction with the entries during the period of review, unless Onoda could provide such data consistently from review to review, the potential for missed sales or the double-counting of sales exists. Thus, in these final results of review, as in the preliminary results of review, we have reviewed all sales made during the review period, rather than all shipments entered during the review period. In this case, there is no risk that Customs will treat the transactions as partial entries because we plan to issue appraisement instructions that will result in the collection of all relevant dumping duties during the period of review. Any sales made pursuant to entries in this review period which occurred after the close of the period will be reviewed in the next administrative review.

Final Results of Review: Based on our analysis of comments received, and the correction of clerical errors, we have determined that a final margin of 13.6 percent exists for Onoda for the period October 31, 1990, through April 30, 1992.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Onoda will be 13.6 percent; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise. In May 25, 1993, the CIT in *Floral Trade Council* v. *United States,* Slip Op. 93–83, and *Federal*

Mogul Corporation and the Torrington Company v. *United States*, Slip Op. 93–83, determined that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping orders for the purposes of establishing cash deposits in all current and future administrative reviews. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical error or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 63.73 percent, the "all others" rate established in the final notice of LTFV investigation by the Department (56 FR 12156).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) or 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act and § 353.22 of the Department's regulations.

Dated: September 8, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–22947 Filed 9–17–93; 8:45 am]

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[A–570–822]

Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 20, 1993.

FOR FURTHER INFORMATION CONTACT: Bill Crow, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0116.

FINAL DETERMINATION: We determine that certain helical spring lock washers from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination on April 26, 1993, (58 FR 26115, April 30, 1993), the following events have occurred:

On May 5, 1993, the Department of Commerce (the Department) sent respondent a verification agenda. On May 10, 1993, respondent, Hangzhou Spring Washer Plant (HSWP) requested a public hearing. The Department verified responses in China from May 19 through 27, 1993. The Department issued its verification reports on June 14, 1993. Petitioner, Shakeproof Industrial Products Division of Illinois Tool Works, Inc., and respondent submitted case briefs on June 19 and 21, 1993, respectively. Because both of these submissions contained new information, we removed them from the record and instructed both parties to resubmit them. On June 22, 1993, HSWP requested a postponement of the final determination. On June 23, 1993, HSWP submitted a new computer diskette with corrections based on verification findings. On June 25, 1993, the Department postponed the final determination until no later than September 13, 1993. Petitioner submitted a case brief in proper form dated July 2, 1993, and respondent submitted its case brief in proper form on July 6, 1993. Petitioner and respondent submitted rebuttal briefs on July 8 and 9, 1993, respectively. A public hearing was held on July 16, 1993; at that hearing the Department gave the interested parties an opportunity to comment on the recent final determination of sales at less than fair value in the investigation of Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof from the People's Republic of China (58 FR 37908, July 14, 1993) (*CDIW*).

On July 22, 1993, petitioner submitted comments on the Department's *CDIW* final determination. Respondent filed comments on *CDIW* on July 23, 1993. On July 30, 1993, respondent replied to certain comments made by petitioner in its July 22 submission. On August 3, 1993, petitioner countered respondent's remarks. On August 23, 1993, petitioner commented on the factor data contained in an August 3, 1993, cable from the American Consulate in Bombay. Respondent commented on this cable on August 24, 1993.

Scope of Investigation

For purposes of this investigation, certain helical spring lock washers (HSLWs) are circular washers of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screw or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper. The lock washers subject to this investigation are currently classifiable under subheading 7318.21.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 1992, through September 30, 1992.

Separate Rates

At the preliminary determination, we did not calculate a separate rate for HSWP, but instead assigned one rate for

all producers/exporters in the PRC based on best information available (BIA). We reached this preliminary decision because we were concerned about the possibility of control exercised by the People's Congresses and their administrative boards over HSWP. We were also concerned about HSWP's sales to domestic trading companies, which constituted a substantial portion of HSWP's overall U.S. sales during the POI.

Until the final antidumping determination in *CDIW*, we had not distinguished exporters on the basis of ownership when applying a separate rates test. That is, ownership, *per se*, had not precluded an exporter from receiving a separate rate. In *CDIW*, we reconsidered this policy and determined that central government ownership provides the central government with the opportunity to manipulate prices, whether or not it has taken advantage of this opportunity during the period of investigation. Thus under *CDIW*, regardless of whether the separate rate criteria set forth in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20588, May 6, 1991) (*Sparklers*) have been met, entities owned by the central government are not eligible for rates separate from each other. A corollary of the *CDIW* holding is that all potential respondents owned by the central government must reply to antidumping questionnaires so that we may calculate a weighted-average dumping margin for these, by definition, centrally-controlled entities. Thus, while *CDIW* rejects individual separate rates for centrally-owned enterprises under any conditions, and requires the use of best information available absent full cooperation from all centrally-owned entities, it is not directly applicable to enterprises owned by regional governments in the PRC or locally-owned collectives.

The mechanics of central government ownership establish the presumption of an opportunity for direct control by the government of the enterprise. The company in *CDIW*, for example, is owned by a government ministry. Because the opportunity for central government control over enterprises owned by regional governments, or collectively at a local level, is less than the opportunity for central government control over enterprises owned by the central government, we have concluded that there are situations in which a Sparklers' test would be appropriate. We are not prepared, however, to accept that multiple enterprises are independent of each other when such enterprises are owned by the same regional or local government (or collective). Thus, in order to qualify for the application of a Sparklers' test, all relevant entities owned by a given governmental jurisdiction must cooperate in our investigation. If those enterprises cooperate, we will use the Sparklers' criteria to establish if they, as a group, are entitled to a single weighted-average dumping margin different from the margin calculated for centrally-owned enterprises.

As stated in the Sparklers determination, we will issue separate rates if a respondent can demonstrate both a *de jure* and *de facto* absence of central control. Evidence supporting, though not requiring, a finding of *de jure* absence of central control would include: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments devolving central control of export trading companies. Evidence supporting a finding of *de facto* absence of central control with respect to exports would include: (1) Whether each exporter sets its own export prices independently of the government and other exporters; and (2) whether each exporter can keep the proceeds from its sales.

Unlike the situation in the *CDIW* investigation, HSWP is not, nor has ever been, a state-owned enterprise. Verification revealed no history of either central or provincial intervention in HSWP's business operations. We have determined to treat all collective enterprises owned by the same local residents as related parties. In this case, the only exporter owned by the residents of the locality, HSWP, is cooperating. Consequently, we have determined to apply the Sparklers criteria to HSWP in order to test its independence from the central government and from other exporters.

HSWP's legal status as outlined in the PRC regulations indicates that there is a *de jure* absence of central-government control. Our findings at verification indicate that HSWP operates in a manner which constitutes *de jure* absence of central government control, because: (1) There is an absence of restrictive stipulations associated with this individual exporter's business and export licenses; and, (2) HSWP has always operated as a decentralized company. According to the documentation submitted by respondent, the ownership of the collective enterprise is distinguished from state-owned enterprises. We found no evidence that HSWP is subject to the central government's manipulation of prices.

The documentation of the internal election process and the examination of normal business relations with local government officials reveal that HSWP operates with a high degree of *de facto* autonomy. HSWP's charter article on government regulations is a standard element of PRC corporate documentation referring to the company's general legal obligations; we found no evidence that the charter language was used by the government to control HSWP's business operations. As with charters in most countries, the language of this article is merely a requirement that an enterprise abide by the laws and regulations of the PRC, not an instrument for direct administrative control of the company's business. We found no evidence contradicting HSWP's explanations that it operates with *de facto* absence of central government control with respect to its exports. Furthermore, we found no indication that the relationship between HSWP and the PRC trading companies were not at arms-length. We have no evidence to contradict that HSWP had control over its financial resources, including the right to reinvest profits. While HSWP did not maintain a hard currency bank account for its foreign earnings during the POI, our findings at verification indicated that it did have access to foreign exchange based on its earnings through a foreign exchange reserve fund held by the Bank of China in HSWP's name. The existence of some bank restrictions on hard currency earnings are not unusual in many banking systems, including those of market economies. Convertability of a nation's currency as an indicator of NME status does not translate into a factor for considering the use of separate rates.

We therefore determine that HSWP meets the Sparklers criteria. HSWP is the sole producer/exporter of HSLWs for Xinjie Township. We are therefore calculating a margin for the entire township based on HSWP's response. This margin will apply to HSWP's self-managed exports to the United States and to sales of its merchandise which are exported by the non-PRC trading companies whose POI sales were examined at verification. For a detailed discussion of this decision, see the memorandum dated September 13, 1993, from Barbara R. Stafford to Joseph A. Spetrini.

Best Information Available

The PRC government's only submission in this investigation was the limited discussion of the HSLW

industry submitted on December 7, 1992. The PRC government did not supply the consolidated questionnaire response requested for all producers/exporters other than Hangzhou. Therefore, we are using BIA to calculate the margin for all other exporters from the PRC. As BIA, we are using the highest single margin calculated in the petition, a margin of 128.63 percent.

Fair Value Comparisons

To determine whether sales of HSLWs from the PRC to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on purchase price for sales made directly to unrelated parties prior to the date of importation into the United States, in accordance with section 772(b) of the Act. We used purchase price as defined in section 772 of the Act, because the subject merchandise was sold to unrelated parties in the United States prior to importation into the United States, and because exporter's sales price methodology was not indicated by other circumstances.

We calculated purchase price based on packed, CIF port or undelivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, and marine insurance. HSWP reported amounts for foreign inland freight based on services provided by PRC shipping firms. For foreign inland expenses from HSWP to port, we calculated a surrogate charge using a June 1992 cable from the U.S. Embassy in India from the Sulfanilic Acid from the PRC investigation. HSWP reported amounts for ocean freight based, in part, on services provided by shipping companies based in the PRC. For the portion of the shipment expenses from Ningbo, PRC to Hong Kong provided by PRC state-owned transportation, we are calculating a separate charge using a rate schedule provided by the U.S. Consulate in Bombay on August 3, 1993. HSWP reported amounts for marine insurance charged by a state-owned PRC insurance company. Since the premiums charged are based on a percentage of the U.S. dollar value of the merchandise, in a schedule which is similar to those used in market economies, we are deducting this amount from the U.S. price. Since surrogate country information was not available for the marine insurance expense, we used the reported U.S. dollar charges for this expense. (See Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China (Sulfanilic Acid from the PRC), 57 FR 29705, July 6, 1992). The premiums are based on the U.S. dollar value of the sales. The proprietary formula used to establish these insurance premiums (see the July 14, 1993, HSWP verification report at 22), is nearly identical to those used to set premiums by market-economy insurance firms for commercial shipments to the United States (see for example, the August 8, 1991, UPM/Repola Oy verification report in the antidumping duty investigation of Certain Groundwood Paper from Finland, at 26).

Section 773(c)(1) of the Act provides that the Department shall determine FMV using a factors of production methodology if (1) the merchandise is exported from a nonmarket economy country (NME), and (2) the information does not permit the calculation of FMV using home market prices, third country prices, or constructed value under section 773(a) of the Act. In every antidumping duty investigation conducted by the Department to date involving the PRC, the PRC has been treated as an NME. (See, e.g., Final Determination of Sales at Less Than Fair Value: Chrome-Plated Lug Nuts from the People's Republic of China (Chrome-Plated Lug Nuts from the PRC), 56 FR 46153 (September 10, 1991). In this case, none of the parties to this proceeding has suggested that the PRC is no longer an NME. We have determined that the PRC HSLW industry is not an market-oriented industry (MOI) and have determined that the inputs used by the HSLW producers which are sourced in the PRC are not purchased at market prices (See General Issues Comment 1). Therefore, in accordance with section 773(c) of the Act, the Department is required to determine FMV on the basis of factors of production utilized in producing the subject merchandise, as valued in a surrogate country.

At verification, HSWP demonstrated that a portion of its self-managed sales inadvertently had been omitted from the U.S. sales listing reported to the Department. As BIA, we are applying the highest margin calculated for a single sale, based on the correctly-reported transactions, to the quantity of unreported sales and weighting that margin into the total margin calculation.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the NME country, and that are significant producers of comparable merchandise. The Department has determined that India and Pakistan are most comparable to the PRC in terms of overall economic development, based on per capita gross national product (GNP), the national distribution of labor, and growth rate in per capita GNP. India is a significant producer of comparable merchandise and has been selected as the preferred surrogate country for purposes of calculating the factors of production used in producing the subject merchandise. (See the Department of Commerce's October 16, 1992, Office of Policy memorandum to David Binder.)

We valued the factors of production in accordance with the hierarchy for preferred input values set forth in the notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China, 57 FR 21058 (May 18, 1992). We stated that we would first use factor values based on publicly available published information (PI) concerning our first choice surrogate country, second we would use unpublished information (e.g., information provided by the U.S. Embassy) from the first choice surrogate, third, we would used PI from second choice surrogates, and so on until we had found appropriate values for each input. We have used Pakistani values when necessary, as discussed below. In this investigation, encountered factor value information from preferred surrogate countries the accuracy of which is obviously questionable. In addition, we have found that values from our preferred sources are not always available for each factor. Accordingly, we have developed a practice of collecting information on factor values from different sources to use as a check on, and supplement to, our preferred factor values.

In this investigation, we considered several elements in selecting the public information used to value the factors of production, including, but not limited to: (1) whether the source was a published document, (2) whether the source contained the most current information available, (3) the degree of similarity between NME producers and surrogate country producers, and (4) the degree of similarity between the NME factor's physical characteristics and those of the surrogate commodities as described in the source literature.

In evaluating the reliability of PI from India and the other surrogates, we

considered, among other things: information supplied by the U.S. Embassies in India and Pakistan, information available from the public records of other investigations of products from the PRC, and information from relevant periodicals (e.g., Monthly Statistics of the Foreign Trade of India). In some instances where the range of Indian factor values indicated that some or all of the values were questionable, we used supplemental sources as an external reference point to help us select the appropriate value. If we were able to obtain more current PI than was submitted by the parties, we relied on the more current information.

We calculated FMV based on factors of production reported by respondent. The factors used to produce HSLWs include materials, labor, and energy.

To value the production materials, green carbon steel wire rod and zinc used in plating, we used imported prices obtained from the Monthly Statistics of the Foreign Trade of India, Volume II—Imports, December 1991 (1991 Indian Import Statistics). We adjusted the factor values to the POI using wholesale price indices of India (WPI) as published in the International Financial Statistics by the International Monetary Fund (IMF) to account for inflation.

To value the chemicals used in HSLW manufacture, hydrochloric acid, caustic soda solution and sodium nitrate, we used the 1991 Indian Import Statistics. We then adjusted the factor values to the POI using WPI published by the IMF to account for inflation.

To value the plating chemicals, potassium chromate, potassium aluminum, barium carbonate, hydrogen fluoride, nitric acid, caustic soda solution, hydrogen chloride, 4-Methylamine, sodium sulfide, and sodium carbonate, we used the 1991 Indian Import Statistics. To value sodium hydroxide, we used all the import values for solid sodium hydroxide (at or near 100 percent) contained in the 1991 Indian Import Statistics, and adjusted the value to represent the 70.75 percent purity which respondent reported as a factor of production. For sulfuric acid, we used a December 1991 cable from the U.S. Embassy in Pakistan. To value trisodium phosphate, we used the Monthly Statistics of the Foreign Trade of India, December 1987 (1987 Indian Import Statistics). For all plating chemical values, we adjusted the factors to the POI using WPI published by the IMF to account for inflation.

To value the packing materials, paper cartons, plastic bags, adhesive tape, wood brackets, wood pallets, packing strips, and iron nails, we used import statistics obtained from the 1991 Indian Import Statistics. We then adjusted the factor values to the POI using WPI published by the IMF to account for inflation.

To value lubricating oil, we used the 1991 Indian Import Statistics. We then adjusted the factor value to the POI using WPI published by the IMF to account for inflation.

To value the energy inputs, steam coal and electricity (for both the manufacture of HSLWs and the plating process), and fuel oil (for the manufacture of HSLWs only), we used the third quarter 1992 edition of Energy Prices and Taxes, published by the International Energy Agency. To value water (for both the manufacture of HSLWs and the plating process), we used the December 1991 cable from the U.S. Embassy in Pakistan, because we required factor data that corresponded to the measure in which water was reported. We adjusted the energy factor values to the POI using WPI published by the IMF to account for inflation.

To value foreign inland freight-rail, we used a December 1989 cable from the U.S. Embassy in India from the 1987–1988 Administrative Review of Cotton Shop Towels from the PRC (Final Results, 56 FR 4040, February 1, 1991). To value foreign inland freight-trucking, we used the June 1992 cable from the U.S. Embassy in India from the Sulfanilic Acid from the PRC investigation. We adjusted the rail foreign inland freight values to the POI using WPI published by the IMF to account for inflation. The cable containing the trucking rate was contemporaneous with the POI. To value foreign inland freight-shipping, we used an August 3, 1993, cable from the U.S. Consulate in Bombay, India (the August 3, 1993, cable), using WPI published by the IMF to account for inflation.

To value labor costs, we used the International Labor Office's 1992 Yearbook of Labor Statistics. To determine the number of hours in a workday in India, we used the Country Reports: Human Rights Practices for 1990. We then adjusted the labor values to the POI using WPI published by the IMF to account for inflation.

To value factory overhead, we used the August 3, 1993, cable. To value selling, general and administrative expenses, and profit, we used the statutory minima of 10 percent and 8 percent, respectively.

Verification

As provided in section 776(b) of the Act, we verified the information used in reaching our final determination in Hangzhou PRC, from May 19 through May 25, 1993.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from the PRC. Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist if:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In determining knowledge of dumping, we normally consider margins of 15 percent or more sufficient to impute knowledge of dumping under section 735(a)(3)(A)(ii) for exporters sales price sales, and margins of 25 percent or more for purchase price sales. (See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy, 52 FR 24198, June 29, 1987). Since the final margin for HSLWs from HSWP is above 25 percent, we determine in accordance with section 735(a)(3)(A)(ii) of the Act that knowledge of dumping existed for HSLWs from the PRC.

Under 19 CFR 353.16(f)(1), we normally consider the following factors in determining whether imports have been massive: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. In order to determine whether imports have been massive over a relatively short period of time, we examined the shipments of HSWP's self-managed U.S. sales made in the month the petition was filed and the five following months, to the six-month period immediately prior to the filing of the petition, in accordance with 19 CFR 353.16(g). Our analysis of the imports of HSLWs from HSWP showed that the volume of imports from the base period to the comparison period increased by more than 15 percent. (See 19 CFR 353.16(f)(2).) Based on this analysis, we determine that imports of HSLWs from HSWP were massive over a relatively short period of time. Based on our analysis, therefore, we determine that

critical circumstances exist for imports of HSLWs from HSWP.

Because the BIA margin for all other PRC producers and exporters of HSLWs is greater than 25 percent, we are imputing knowledge of dumping for all other producers and exporters of HSLWs. Because the Department did not receive responses to its questionnaire from the PRC government on behalf of all producers and exporters, we have relied upon BIA for determining whether there have been massive imports of HSLWs from all other producers and exporters in the PRC. As BIA we are making the adverse assumption that such imports were massive over a relatively short period of time in accordance with section 735(a)(3)(B) of the Act. There is no evidence on the record that seasonal trends apply to the subject merchandise. Therefore, based on our analysis, we determine that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of HSLWs from all other producers and exporters of HSLWs in the PRC.

Interested Party Comments

General Issues

Comment 1. Petitioner argues that the PRC is an NME and that the PRC HSLW industry is not a MOI. Petitioner contends that since the Department did not find a MOI in its preliminary determination and no subsequent information was submitted, there is no new information to illustrate that the HSLW industry is a MOI. Petitioner maintains that the PRC HSLW industry is not a MOI because: (1) HSWP provided no evidence to illustrate that there is no government involvement in setting prices or amounts to be produced; (2) the PRC HSLW industry has a significant proportion of state-owned enterprises, (3) during the POI, HSWP purchased and used exclusively PRC steel and purchased water and electricity from government-owned and operated utility companies; and (4) HSWP provided no evidence that its labor costs were based on market forces and are, therefore, unaffected by PRC government subsidies.

Respondent does not agree with the Department's decision that the HSLW industry in the PRC is not a MOI. Respondent maintains that there is substantial evidence that the HSLW industry in the PRC operates in a market economy, not the least of which is the fact that HSWP has for some time purchased its predominant raw material, steel wire rod, solely from market country suppliers. Respondent also argues that it, the largest PRC HSLW manufacturer, purchases its other raw materials, such as chemicals and supplies, from independent collectively-owned, or foreign sources. However, HSWP maintains that it has neither the resources nor the relationships to compile such information from all other HSLW manufacturers, and is therefore unable to demonstrate such facts with respect to those manufacturers. Respondent maintains that the Department is deciding that the lockwasher industry is a non-market industry when the members of the industry and the government exhibit an absence of centralized communication and information. According to HSWP, the absence of such centralized information-sharing is a hallmark of a market-oriented industry.

DOC Position. We agree with petitioner. As outlined in the amended final determination in the investigation of Chrome-Plated Lug Nuts from the PRC, the Department considers three criteria in establishing whether an industry in a non-market economy should be classified as market-oriented: (1) for merchandise under investigation, there must be virtually no government involvement in setting prices or amount to be produced (e.g., state-required production or allocation of production of the merchandise, whether for export or domestic consumption in the non-market economy, would be an almost insuperable barrier to finding a market-oriented industry); (2) the industry producing the merchandise under investigation should be characterized by private or collective ownership (there may be state-owned enterprises in the industry but substantial state ownership would weigh heavily against finding a market-oriented industry); and (3) market-determined prices must be paid for all significant inputs, whether material or non-material (*e.g.*, labor and overhead), and for an all but insignificant proportion of all inputs accounting for the total value of the merchandise under investigation. For example, an input price will not be considered market-determined if the producers of the merchandise under investigation pay a state-set price for the input or if the input is supplied to the producers at government direction. Moreover, if there is any state-required production in the industry producing the input, the share of state-required production must be insignificant.

As recorded in a January 19, 1993, memorandum from David Binder to Richard Moreland, the Department has determined that the PRC lock washer industry does not have MOI status. Regarding the first criterion, the record is not sufficient to determine the degree and nature of control exercised in the entire lock washer industry by the central and regional government bodies of the PRC. Regarding the second criterion, the December 7, 1992, PRC Embassy submission indicated that a significant portion of total PRC production comes from state-owned factories, a factor indicating "substantial state ownership." Regarding the third criterion, the PRC submissions neither stated nor documented that market-determined prices are paid for all significant inputs.

While HSWP may now be purchasing its supply of wire rod solely from market-economy countries, the Department verified that this was not the case during the POI; in fact, purchases from market-economy countries were the rare exception, not the rule. Without the full cooperation of the PRC government, HSWP's comments regarding the independence of its domestic sources and its characterization of industry relationships cannot be examined, let alone affirmed.

Comment 2. Petitioner argues that HSWP does not meet the *de jure* and *de facto* criteria enunciated in Sparklers, and therefore, HSWP does not warrant a separate rate. Petitioner asserts that there is no factual information on the record to support HSWP's assertion that it sets its own prices. Petitioner maintains that no price lists or any other forms of written confirmation were offered at verification to establish that the prices for HSWP's exports sold to PRC trading companies were different from the prices of other producers to trading companies. Furthermore, petitioner maintains that the statements that the prices are market-driven mean nothing more than prices are adjusted to reflect factor costs and other changes. Petitioner contends that HSWP should have reported U.S. sales to PRC trading companies jointly with these trading companies reporting their sales to the U.S. customer. Petitioner maintains that, absent such new reporting, the only U.S. sales information completely verified was that which HSWP supplied for self-managed sales to the United States and that such limited reporting does not prove that HSWP's prices are independently set from those of other producers.

Petitioner argues that the fact that HSWP did not have its own bank account denominated in hard currency "alone limits the independence of a company." Petitioner also maintains that the lack of a hard currency bank account restricted HSWP's ability to import factor inputs and to otherwise conduct its business affairs. According

to petitioner, because the convertability of currency is a primary factor which the Department considers in determining NME status of a country, convertability of currency should also be significant in determining the independence of a company for separate rates.

In addition, without the reporting of U.S. sales by PRC trading companies to their U.S. customers and by the other producers and exporters of the subject merchandise, petitioner argues that the Department cannot determine whether HSWP sets its own export prices independent of the government and other exporters. HSWP is the only producer or exporter in the PRC that cooperated with the Department in this investigation.

Petitioner maintains that the policy set forth in the final determination of *CDIW* directly relates to the separate rates issue in this investigation. Petitioner argues that HSWP's status as a locally-owned collective enterprise represents a situation which the Department has not considered before, but which reflects the presence of state control. Petitioner maintains that the PRC government, by not cooperating on behalf of the many other producers and exporters of HSLWs, has determined the scope of the investigation by limiting the coverage to only one respondent. Petitioner goes further to suggest a four-step model for determining the appropriateness of separate rates in any NME investigation where there is significant state ownership of either producers or exporters.

First, the petitioner suggests that the Department should consider the extent of state ownership of enterprises in the industry. Significant state ownership should act as a presumption against using separate rates. Second, petitioner suggests that the Department should consider the extent of cooperation by the PRC government to demonstrate how the industry operates and that full government cooperation on behalf of the industry is necessary to determine whether there is *de jure* and *de facto* independence by any given exporter. Third, petitioner suggests that the Department should consider the extent to which the enterprises under investigation should show that they are importing significant amounts of raw materials instead of employing state-controlled or state-influenced inputs. Fourth, petitioner states that the Department should consider the extent to which the enterprise is free to set prices both for direct export sales and domestic sales which are subsequently exported. Petitioner maintains that absolute control of foreign exchange proceeds is an integral element of this fourth criteria. Petitioner maintains that HSWP has not met any of these suggested criteria and, therefore, does not warrant a calculated separate rate.

Respondent argues that it has met the *de jure* and *de facto* criteria enunciated in Sparklers, and therefore warrants a separate rate. Respondent maintains that its detailed verified documentation and interviews regarding actual business operations demonstrate how it operates in a manner which constitutes *de jure* absence of central government control, because: (1) There is an absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) it has always operated as a decentralized company. Respondent maintains that the relationships examined at verification demonstrate that it operates with *de facto* absence of central government control with respect to its exports because: (1) Each exporter sets its own export prices independently of the government and other exporters; and, (2) it can keep the proceeds from its sales. Respondent contends that the practices examined at verification indicate that PRC trading companies do not exercise direct control over its pricing or marketing decisions.

Respondent maintains that it is able to demonstrate the absence of central government interference which petitioner believes can be exerted through coordinated pricing of merchandise between it and state-owned manufacturers or state-owned trading companies, because it has provided at verification the prices charged by it to domestic trading companies. Respondent maintains that this and other internal documents, such as company journals, on the record can be reviewed to confirm that it does not coordinate its pricing with or through PRC trading companies, and thus is not indirectly centrally controlled.

Respondent argues that it has always had access to the foreign funds it earned through a foreign exchange reserve fund maintained on behalf of it. Respondent states that it was able to make any foreign purchases it wished using funds it has acquired from exporting its products. Respondent explains that the foreign exchange used for the purchase of imported materials is normally taken from reserves which it has acquired from its export revenue. Additional foreign currency is purchased from the foreign exchange swap center. Respondent maintains that a change in PRC law in May 1993, permits it to maintain a hard currency bank account for their earnings on foreign sales, and that this new provision merely changes the status of the bank account from a reserve fund held in the name of HSWP to a bank account held by HSWP.

Respondent maintains that it is an independent legal and economic entity which is responsible for its own profits and losses. Respondent maintains that its license and charter are similar to articles of incorporation in the United States. Respondent identified only two occasions under PRC corporate law where a license can be revoked: (1) For violations of the business laws; and (2) if an enterprise declares bankruptcy. License renewal is accomplished by filling out a form and paying "a small fee." Respondent maintains that the remaining profits are distributed according to the determinations of its management. Additionally, it contends that it is free to determine what to produce, where to sell, and what price to charge for its products. Specifically, respondent states that both short- and long-term management and business decisions are made by the director, and that these decisions are not subject to review by any other entity or organization.

Respondent maintains that because, from its inception, it has never been a state-owned entity, no decentralizing legislative enactments were ever required. Respondent contends that under the governing corporation law, the 22,000 members of the Xinjie village own it, and that the management and employees of the plant are given control of the plant's operation through the local corporation law approval process.

Respondent maintains that each PRC trading company is responsible for its own financial performance and is accountable specifically for profits and losses, each deciding if and where to sell lockwashers and other products. Respondent maintains that the only relationship between itself and the PRC trading companies consists of arm's-length sales contracts, negotiated for profitable business. Respondent maintains that no information concerning the independent pricing decisions made by the PRC trading companies is available to it, and therefore, it cannot report information concerning the disposition of trading companies' sales proceeds, the trading companies' profit calculations, the disposition of such profits, the trading companies' exportation decisions, or their relationships with customers.

Respondent maintains that the policy enunciated in *CDIW* should have no effect on the separate rates issue in this investigation. It argues that it has never been a state-owned or centrally-controlled enterprise. Respondent argues that the regulations provided to

the Department under which it is governed in the PRC provide only for corporate and tax laws which govern the operations of the enterprise in its day-to-day operations, but that such regulations cannot be construed to evidence central government control.

DOC Position. We agree with respondent. We have determined that the exact circumstances underlying the policy enunciated in *CDIW* regarding state-owned companies do not apply to HSWP, and therefore, have applied the Sparklers test in determining whether to grant HSWP a separate rate. Based on the application of the Sparklers criteria to the facts concerning HSWP, we have decided to calculate a rate based on HSWP's reported data separate from other PRC exporters. Please see the "Separate Rates" section above for a discussion of this decision and the September 13, 1993, memorandum from Barbara R. Stafford to Joseph A. Spetrini.

Comment 3. Petitioner argues that the Department should use the highest margin rate, as BIA, for HSWP sales through PRC trading companies which have not participated in the investigation. Petitioner maintains that HSWP has two types of export sales: Self-managed sales (which were verified), and sales to domestic trading companies. Petitioner further argues that the PRC trading companies would continue to sell HSLWs produced by HSWP using the separate rate and that there would be no penalty for non-cooperation.

Respondent argues that it has shown in its verified submissions that it has no control over sales by PRC trading companies. Respondent contends that officials from its largest trading company purchaser have stated that sales transactions are at arm's-length and that it has no knowledge of the ultimate destination of sales of subject merchandise to trading companies. Respondent argues that it should not be penalized for the non-cooperativeness of the trading companies because it has no control over the exports of HSLWs by trading companies. Respondent maintains that if HSWP is granted a separate rate, only exports by HSWP will be afforded that rate and that PRC trading companies will be assigned the "all other" rate.

DOC Position. We agree with respondent. HSWP was not informed of the final destination of the majority of its sales to PRC trading companies. Even for those sales where the final destination was known, the price between HSWP and the domestic trading company cannot be used to calculate a margin. These sales were denominated in Renminbei (RMB), and are therefore not considered to be market prices by the Department. Because we are not required to examine all sales to the United States pursuant to 19 CFR 353.42(b), we have excluded these sales from our analysis. HSWP reported that it could not force PRC trading companies to report their sales to the United States, but did report the aggregate volume of their sales to domestic trading companies. It was the responsibility of the trading companies to report their U.S. sales. No PRC trading company appeared before the Department either individually or under the auspices of the PRC government's consolidated response to the Department's questionnaire. Therefore, we are applying the petition rate as BIA to all other producers and exporters, including the PRC trading companies to which HSWP sells its merchandise.

Comment 4. Petitioner argues that because HSWP reported no direct or indirect credit expenses on its U.S. sales, the Department should make an adjustment for imputed credit based on HSWP's average interest rates on its loans. Petitioner maintains that HSWP reports no payment date for some of its U.S. sales and that these sales should be treated as having a zero price.

Petitioner argues that the Department should calculate a warehousing expense for the period after the packing since it was discovered at verification that HSWP packs HSLWs seven days prior to shipment.

Petitioner further argues that, because the production of HSLWs is capital intensive, a reasonable surrogate value of the capital costs must be included in the Department's margin calculations which do not represent PRC costs (*i.e.*, cost estimates that were provided in the petition or comparable costs in the surrogate country). Petitioner maintains that the expense for factory equipment and depreciation that HSWP reported in U.S. dollars is based on PRC costs and not based on surrogate country values. Petitioner contends that HSWP's G&A expenses do not include depreciation of capital equipment.

Respondent argues that the Department should not consider petitioner's suggested additional expenses for credit, warehousing and depreciation because these expenses would be double counted. Respondent maintains that the Department did not make any adjustments for warehousing, commission or credit expenses in past cases because surrogate selling, general and administrative (SG&A) expenses was used. Furthermore, respondent maintains that a surrogate factory overhead, under standard accounting practices, includes depreciation expenses. Respondent argues that because the Department uses an overall surrogate factory overhead amount, the actual values of components of its factory overhead are irrelevant.

DOC Position. We agree with respondent. First, the Department does not make circumstance of sale adjustments in the margin calculations using a NME factors of production analysis. Second, we are calculating aggregate SG&A expenses based on Indian factory SG&A expenses which are a percentage of all costs, inclusive of any factory depreciation. It would be redundant to separately calculate and apply depreciation expenses for capital equipment.

Comment 5. Petitioner argues that the Department should use the highest margin rate for those U.S. sales which have uncorrected errors.

Respondent argues that the clerical errors found in the sales fields reported in the U.S. sales database should be corrected. Respondent maintains that the Department should accept the clerical corrections because the Department was notified of these corrections prior to the commencement of verification.

DOC Position. We disagree with petitioner. All of the transaction-specific errors discovered at verification are of such a nature that they can be easily corrected by the Department based on the information provided by respondent at verification, as these are primarily clerical errors, not errors of substantial omission or obfuscation.

Comment 6. Respondent argues that the Department should accept three U.S. sales that were discovered prior to the commencement of verification and resubmit the sales documents for the record of this investigation.

Petitioner argues that the Department should not accept any more sales documentation and must use the margin in the petition, as BIA, for all sales that were not reported timely to the Department.

DOC Position. We agree, in part, with petitioner. However, we are not using the BIA methodology suggested by petitioner. Because respondent identified its omissions at the outset of verification, we are applying instead, the highest non-aberrational margin calculated for a single sale based on the correctly reported transactions to the quantity of unreported sales and weighting that margin into the total margin calculation.

Comment 7. Petitioner argues that the Department should use BIA to value steel wire rod. Petitioner contends that HSWP reported production on only

green rod, and that at verification it was discovered that HSWP was using both steel wire and green rod. Petitioner further argues that the Department should use BIA based on the petition because HSWP's wire rod information was not submitted timely and there is no other information on record to value the difference between wire and green rod. Petitioner suggests that the Department use the petition to determine the cost differential between processed wire and green rod, and to increase FMV by that amount to account for the inclusion of processed wire as a factor. Petitioner recommends allocating this increased cost using the most adverse assumption that the higher priced processed wire was consumed in manufacturing HSLWs for only the "self-managed" U.S. sales.

Respondent argues that steel wire cannot be used in the production of HSLWs which have a section width which is greater than the wire. Respondent maintains that the steel wire is only purchased to produce the smallest sizes of HSLWs and that if the Department should choose to include steel wire as a factor of production, it should only be used for the smallest sizes (*i.e.*, sizes No. 4, No. 6, No. 8, and No. 10). Furthermore, respondent argues that any steel wire factor included in the FMV calculation should be adjusted to reflect the fact that the processed wire does not need to undergo all of the processing steps outlined for green wire rod. Respondent maintains that the acid treatment through annealing steps are unnecessary when steel wire is used and the Department should remove all factors relating to the annealing steps (*i.e.*, factory overhead, labor, profit, and any associated raw material charges).

DOC Position. We disagree, in part, with petitioner. We noted at verification during the inspection of the current inventory that almost all of the raw steel was green wire rod. This indicates that the processed wire purchased for production during the POI is no longer being purchased. We are making the adverse assumption that this is a result of HSWP's verified declining sales and shipments to the United States resulting from this investigation.

We are not making the most adverse assumption that all of the POI processed wire consumption should be allocated to the "self-managed" U.S. sales alone. Because this element was not reported to the Department, there is no way to trace which steel input was used for the production of specific merchandise sold to the United States during the POI. However, because we found at verification that steel had been used to produce the subject merchandise and because HSWP failed to report this in a timely fashion, we are increasing FMV by the cost differential contained in the petition. Since both "self-managed" and trading company sales were of the same standards and specifications, we are allocating the increased cost over all sales to the United States during the POI.

Comment 8. Petitioner argues that the Department should use BIA to value plating plant results. Petitioner maintains that several issues were not addressed regarding the plating plant data. These issues are: (1) There was no discussion of rejects; (2) there was no indication of the number of workers used for quality control or labor used in packing and transporting; and (3) the distance between the plating plant and HSWP was not provided. Petitioner states that it was concerned about the Department selecting one plating company to determine the factor inputs used. Petitioner contends that even though the data from one plant was verified, the Department should use data for all the plating plants, and when there is not complete data the Department should use information contained in the petition as BIA. Petitioner asserts that in order to account for rejects, which should be subtracted from total HSLW plated, the Department should use a factor of one percent, as reported in petition, as BIA. Petitioner maintains that this figure should be used to increase proportionally the factor inputs per MT (or per kilogram) of finished HSLWs.

Respondent argues that the Department should accept the verified plating company's factors as representative of plating factors for all plated HSLWs sold by HSWP. Respondent contends that the verified plating company is its largest plating subcontractor and, because of this, it obtained information from that company. Furthermore, respondent maintains that the distance between it and the plating plant was provided in its April 6, 1993, submission.

DOC Position. We disagree with petitioner. Because the plating contractor verified was the primary plater for HSWP, we consider it representative of the total plating subcontracted by HSWP to unrelated third parties. Reporting an even larger set of data for all plating activities would have been burdensome for both the respondent and the Department.

Comment 9. Petitioner argues that the Department should use BIA to value the packing factors. Petitioner maintains that because HSWP officials admitted that many of the values, for both units and weight of the packing factors reported to the Department, were incorrect, the Department should use the higher of the BIA rate in the petition (*i.e.*, two percent of the total manufacturing cost) or the highest packing rate based on verification. Petitioner states that HSWP did not make uniform corrections for packing expenses. Petitioner maintains that at verification, Department officials made specific calculations of packing costs for each type of HSLW, and that these changes (*e.g.*, adhesive tape, packing strips, etc.) were not included in the corrections.

Respondent argues that the Department should use its factors of production in valuing packing costs for its margin calculations. Respondent states that the Department's verification report does not find it to have incorrectly reported its packing factors; rather, the report states that the errors were not in the numerical weights of the factors, but only clerical errors in the description of the factors. Respondent contends that the verified weights to value the factors were correct. Respondent maintains that petitioner is incorrect in stating that there are uniform corrections to be made because: (1) The Department stated in the verification report that it might use a size-specific carton weight to create size-specific packing factors; and, (2) the Department did not find the 22 Kg per carton weight to be incorrect.

DOC Position. We disagree with petitioner. The errors found at verification were the results of a miscommunication regarding the number of inputs and the weight of those inputs, which were confused by respondent in its reporting of packing costs. We are accepting the reported 22 kilogram per box median value used to allocate packing costs as "representative" because the segregation and allocation of size-specific values would have been unduly burdensome to respondent considering the relatively small portion of total production cost which packing factors represent.

Comment 10. Petitioner argues that critical circumstances should be found for imports of the subject merchandise. Petitioner states that the quantities shipped during the three months immediately preceding the filing of the petition (*i.e.*, June through August) were massive (greater than 15 percent) as compared with the three months following the filing (*i.e.*, October through December). Petitioner maintains that shipments during the October through December period were more than 15 percent greater than for the June through August period. Petitioner maintains that a three month period is

not an appropriate period and that a longer period should be used because in December 1991 there was a threat of retaliation by the U.S. Trade Representative against the PRC under section 301 of the Trade Act of 1974 as possible retaliation and HSLWs were specifically included in the target list. Petitioner also concludes that import data from late 1991 and early 1992 was distorted because of the initial mid-February 1993 timing of the possible preliminary determination in this case; because shipments after December were potentially subject to suspensions of liquidation, importers and exporters acted accordingly. Petitioner concludes that the "safe period" was only October through December 1992 and that there is no seasonality to the HSLW business.

DOC Position. We used a six-month comparison base period from March through August 1992 to compare with shipment data for the period from September 1992 through February 1993. Please see "Critical Circumstances" section above.

Factors of Production

Comment 1. Respondent argues that there are problems with the public information which had been proposed in the preliminary determination team concurrence memorandum (TCM) for valuing green wire rod as a factor of production. Respondent maintains in the case brief that the Department should use the average unit value of HTSUS subcategories 7213.41, 7213.49, and 7213.50 of the Indian import statistics, stating that these were most similar to the steel types used by HSWP in the production of lockwashers.

Petitioner in its case brief maintains that subcategory 7213.50 covers wire rod "comparable to the wire rod used by HSWP." This subcategory covers bars and rods containing greater than 0.6 percent carbon, hot-rolled in wound coils. In the rebuttal brief, petitioner amends its recommendation to agree with respondent's use of subcategories 7213.41, 7213.49 and 7213.50, but then also recommends the possible inclusion of subcategories 7314.50 and 7314.60.

DOC Position. With the exception of petitioner's request to include subcategories 7314.50 and 7314.60, petitioner's and respondent's latest positions are the same. The subcategories 7314.50 and 7314.60, however, are for wire rod which is not coiled. We verified that the inputs used for HSWP's production lines were in coils. Since the product experts of both petitioner and respondent are now in general agreement on which 7213 subcategories are most similar to the subject merchandise, we are using subcategories 7213.41, 7213.49 and 7213.50 to value the steel wire rod used by HSWP.

Comment 2. Respondent maintains that the Department may wish to consider the propriety of using import figures from individual countries listed in the Indian import statistics as source countries for steel wire rod because the Department in past cases has refused to include pricing information from any country which has been found to be selling in the United States at prices below fair market value. Respondent notes that antidumping duty investigations have recently been filed against steel wire rod from Brazil, Canada, Japan, and Trinidad and Tobago.

Petitioner also argues that the Department should not use the statistics for steel wire rod imports into India from countries which are currently under investigation for dumping.

DOC Position. We disagree with petitioner and respondent. First, the International Trade Commission (ITC) has already ruled in its preliminary determination, that no injury or threat of injury is presented by imports of wire rod from Trinidad and Tobago; therefore, the investigation of wire rod from Trinidad and Tobago has been terminated. Second, as regards the remaining named countries, no order has been issued, therefore, there is no basis for examining whether imports from those countries should be excluded.

Comment 3. Petitioner argues that the Department should not consider the value of steel wire rod imports into India because India has been found to have an International Price Reimbursement Scheme (IPRS). Petitioner maintains that this is a form of subsidization for domestic production of steel wire rod. (See Final Affirmative Countervailing Duty Determination: Steel Wire Rope from India, 56 FR 46285 (September 11, 1991)). Petitioner maintains that since it provided a quotation for green wire rod produced in India in its December 14, 1992, submission, that price should be used in determining FMV.

Respondent maintains that if the Department decides that it must reject the Indian steel import prices, then the only information remaining on the record is the actual price paid by HSWP for imported steel wire rod, and the unprocessed green wire rod price reported in the petition. Respondent maintains that the price quote from an Indian steel mill which petitioner reported in its December 14, 1992, submission, is neither information relating to an actual sale, nor is it PI, and that the Department must therefore disregard this quote.

DOC Position. We disagree with petitioner. Petitioner's argument misses the mark because the IPRS rebate is paid on purchases of domestically produced wire rod, and we are using the price of imported wire rod to value this factor. Therefore, we are continuing to use Indian Import statistics.

Comment 4. Petitioner maintains that the Indian import statistics undervalue the price of domestic Indian steel, claiming that the price of Indian steel has traditionally been above world market prices.

Petitioner maintains that the value of domestic Indian steel is comparable to the combined value of the import, i.e., the total of import CIF value plus the Indian duties. Petitioner maintains that if Indian values were lower than this combined cost, there would be few, if any, imports. Since the contrary appears to be the case, petitioner argues that the Department should add the import duties levied by Indian Customs to the CIF values reported in the Monthly Statistics of the Foreign Trade of India, Volume II-Imports, published by the Directorate Generale of Commercial Intelligence and Statistics of the Indian Ministry of Commerce. Petitioner recommends using as a source the CEN-CUS publication of Indian duties.

Respondent maintains that petitioner's claim of undervaluation of the steel wire rod factor by using Indian import statistics is incorrect. It maintains that the theory that import prices must be undervalued, otherwise the product would not be imported into India, is based on faulty logic, because petitioner would like the Department to believe that an import is always less expensive than its domestic competition. Respondent maintains that there are many reasons for trading a product besides price, including a buyer's desire to have multiple sources, shortage of domestic like product, geographic market location within the country, company transfers, quality considerations, and non-price considerations such as service and business development.

Respondent agrees with petitioner that, based on the Indian import statistics under review, Indian steel prices are well above world market prices, including those of the PRC and the United States. Respondent maintains that if the Department decides not to use Indian import statistics to value green steel wire rod, it should rely either on the actual price for such inputs purchased by HSWP from market economy producers or on

the price quote contained in the petition.

DOC Position. We disagree with petitioner. Consistent with our past practice, we recommend not adding the Indian import duties to the values reported in the published Indian import statistics. We are not adding duties to the imported price because those duties would have been rebated upon export of the finished product (i.e. HSLWs). (See, for example, June 22, 1992, concurrence memorandum for the final determination in the investigation of Sulfanilic Acid from the PRC, at 9.)

Comment 5. Respondent maintains that the Department should value the steel wire rod factor using the prices paid by HSWP for imports of the factor from market economies, particularly South Korea.

Petitioner quotes the Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China, 56 FR 55271, (October 25, 1991), to maintain that "where the Department stated that '[w]here an input was sourced from a market economy country and paid for in a market economy currency' it was consistent with Section 7331(c)(4) of the Act to use 'the actual price paid for the input in calculating FMV.'" Petitioner, however, did not address further the use of HSWP's imported steel prices in its case or rebuttal brief.

DOC Position. We disagree with respondent. As noted in the June 14, 1993, verification report at pages 27 and 28, the amount of South Korean steel wire rod purchased during the POI was "very small * * *. Also, since the South Korean steel was inventoried in 9/92, it is unlikely that it would have been used in POI production." Therefore, we have used the cost differential contained in the petition to increase FMV. (See General Issues Comment 7).

Comment 6. Petitioner maintains that the technology of PRC steel mills is so different from that of some the countries whose wire rod imports into India form the statistical basis for evaluating the wire rod factor that the Department should not use the 1991 Indian import statistics from Japan or Brazil. Petitioner cites to the Conference Report, Omnibus Trade and Competitiveness Act of 1988, Rpt. at 591 (100th Cong., 2nd Sess.), which states that:

> Commerce should seek to use, if possible, data based on production of the same general class or kind of merchandise using similar levels of technology and at similar levels of volume as the producers subject to investigation.

Respondent contends that petitioner's quotation from the Conference Report is discretionary in its terms and applicable to the subject merchandise, not to raw material factors. Therefore, respondent contends that it is difficult to discern how the quotation from the Conference Report relates to PRC, Japanese or Brazilian steel mills.

DOC Position. We agree with respondent. We are not in a position to analyze the technology employed by all possible sources of imports of raw materials used to produce merchandise subject to an antidumping duty investigation. Petitioner has not argued that the subject merchandise produced in India is of a different class or kind of merchandise than that produced in the PRC, and that the Indians produce it using a different level of technology. Moreover, we have already determined that India is the appropriate surrogate, based, in part, on the fact that India is a significant producer of HSLWs. (See Factors of Production Comment 7). Therefore, we have used the 1991 Indian import statistics to value wire rod.

Comment 7. Petitioner maintains that because U.S. imports of the subject merchandise from India have declined over the past several years, we should not accept India as a "Significant Exporter" of HSLWs. Petitioner cites from the legislative history of the statute, H.R. Rep. No. 576, 100th Cong., 2d Sess. 590 (1988), which states that "[t]he term 'significant producer' includes any country that is a significant net exporter and, if appropriate, Commerce may use a significant net exporting country in valuing factors."

Respondent maintains that petitioner misinterprets the legislative history concerning this issue and that petitioner is applying the statute to the wrong type of merchandise. Respondent argues that the statute in no way requires the Department to use only significant net export countries because: (1) The term "includes" is not one of exclusion and therefore, does not limit the Department in any way; (2) the language of the final clause "may use a significant net exporting country makes clear the Congressional intent that the use of a net exporting country is discretionary, not mandatory; and, (3) there is no requirement that the surrogate country must be a significant net exporter to the United States.

DOC Position. We disagree with petitioner. We are continuing to use India as the primary surrogate country and Pakistan as the secondary surrogate country in evaluating factors for HSLWs. As stated in the Department of Commerce's October 16, 1992, Office of Policy memorandum to David Binder, India is a significant producer of the subject merchandise. Production, rather than exportation, is a determinative criterion for surrogate selection.

Comment 8. Petitioner argued that the Department should not consider the value of steel wire rod imports into India from countries such as the former Czechoslovakia which it considers to be an NME.

DOC Position. We agree with petitioner. Since section 773(c) of the Act requires the factors of production to be valued in a market economy country, we are not using NME prices for inputs. Therefore, we have not included Indian imports of steel wire rod from the former Czechoslovakia in calculating FMV.

Comment 9. Petitioner argues that the Department should not consider the value of steel wire rod imports into India from Canada, because the low value of these imports suggests that these are lower quality merchandise which may not meet the specifications for steel wire rod used in manufacturing HSLWs.

DOC Position. We are continuing to use imports of steel wire rod into India from Canada in determining the surrogate value. A lower price range alone does not indicate whether the merchandise is in or out of specifications. The prices from the different market economies from which India imported steel wire rod vary greatly; if we were to eliminate the lowest prices, we would also need to remove the highest prices, such as those for imports from the UK. We note that petitioner objected to respondent's requests that the Department reconsider use of Indian import statistics for certain chemicals (see Comment 16, below) when the resulting values were too high in the respondent's view. Petitioner states that the use of one set of PI was "to provide consistency and predictability." According to petitioner, "[t]o pick and choose the lowest price each time based on previous case documents and from different countries defeats the essential rationale of the approach." We believe that to pick and choose the highest price, or to ignore the lowest prices, also would defeat the essential rationale of the surrogate value approach.

Comment 10. Petitioner argues that purchase power parity (PPP) comparisons show India to be less comparable to China than other potential surrogate countries. Petitioner maintains that the Department should use PPP measured by per capita gross domestic product (GDP) to adjust labor

rates to reflect comparable purchasing power for the most comparable surrogate country.

Respondent argues that such a PPP adjustment runs counter to present Department policy. Respondent also maintains that it is illogical. Respondent maintains that since purchasing power relates to local prices, adjusting wage rates or GDP to reflect variances in purchasing power, would require the acceptance of domestic PRC prices. Respondent therefore maintains that, since the Department has deemed PRC prices to be unusable for valuing factors, such an adjustment cannot be made.

DOC Position. We disagree with petitioner. Because petitioner did not submit the documentation necessary for us even to consider calculating a PPP adjustment in a timely matter, this issue is moot. We will use Indian surrogate values and adjust for inflation.

Comment 11. Petitioner maintains that the value of an input as priced in the NME, when converted to a dollar value, should be the "benchmark" value; *i.e.*, the NME value should function as a price floor. When the values from surrogate countries are below the value as priced with the NME, then the NME prices should be used to value the factors of production. Petitioner therefore questions the use of Indian surrogate values for steel wire rod and for electricity rates.

Respondent states that it finds petitioner's argument rather intriguing. Respondent states, however, that the statute does not provide for choosing only those surrogate prices which are higher than respondent's actual prices. According to respondent, it would be more than happy to have all of its factors valued at HSWP's actual costs. Respondent states that the Department should disregard petitioner's request to use only those surrogate prices which are higher than its actual costs of purchasing an input in RMB in the PRC.

DOC Position. We disagree with petitioner. We are not using NME prices for inputs because the statutory requirement is to value the factor quantities using the prices in the surrogate market-oriented country.

Comment 12. Respondent maintains that the Department should not both use CIF import prices and calculate a separate transportation cost for PRC inland freight. Respondent maintains that the Department normally relies on FOB import values when using import statistics to value factors. Respondent argues that if the Department continues to rely on CIF prices, it must either adjust those prices downward before calculating a surrogate transportation cost or it should use the CIF value without then adding on a separately calculated surrogate transportation cost.

Petitioner argues that the Department has already addressed and rejected the use of FOB prices. Petitioner maintains that because section 773(c) of the Act requires the factors of production to be valued in a surrogate country, the use of CIF import prices are necessary, together with transportation costs to make the full cost one delivered to the producer. Petitioner cites to the amended final determination in Chrome-Plated Lug Nuts from the PRC, to show that the Department values the good in the surrogate country, delivered to the customer, since movement charges would not be rebated upon exportation.

DOC Position. We disagree with respondent. We have used CIF values for import data and calculated the cost for transporting merchandise from port of entry to the factory. The CIF value of merchandise is the cost of the merchandise from the exporting country to the port of entry. This value does not include the cost of transporting the input to the factory. The CIF value represents the value of an input prior to inland delivery. Since the factor data we use represents the cost of an input delivered to HSWP's factory, we will calculate the transportation costs from HSWP's suppliers to HSWP's factory. This is fully consistent with the Department's practice. See Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Poland, 58 FR 37205 (July 9, 1993).

Comment 13. Respondent, believing the Indian import statistics to contain Indian customs charges, maintains that the Department should adjust the price of steel wire rod to remove any taxes, surcharges, or duties paid upon importation into India. Respondent maintains this is similar to the treatment of surrogate values in the Amendment to Final Determination of Sales at Less than Fair Value: Chrome-Plated Lug Nuts from the PRC, 57 FR 15052, 15054 (April 24, 1993).

Petitioner asserts that respondent's argument for adjusting the price of steel wire rod to remove taxes, surcharges, or duties is vague. Petitioner maintains that by using import statistics, no taxes, duties, or surcharges would be included.

DOC Position. We agree with petitioner. Item 3 on page 4 of the introductory notes of the Monthly Statistics of the Foreign Trade of India, Volume II—Imports, published by the Directorate Generale of Commercial Intelligence and Statistics of the Indian Ministry of Commerce, states that "[t]he statistics are based on declarations made by Importers in bills of entry as subsequently checked by customs authorities."

The Indian import statistics which we are using consist of CIF values as declared on the bill of entry, and not on delivered, duty-inclusive prices. Thus, there is no need to remove taxes or duties from the values reported in the published Indian import statistics, as these do not reflect the addition of taxes, surcharges or duties.

Comment 14. Respondent maintains that the Department should not adjust the 1991 Indian import statistics for steel wire rod to account for inflation. It argues that the lag time between purchase and production means that the wire rod used during the POI to make HSLWs was acquired "well before the POI."

Petitioner asserts that even assuming the lead times argued by respondent are correct, the import figures for steel and all other import items involve similar time from purchase to delivery. Petitioner argues that the Department must presume that any steel imported into India was ordered four to six months before the date of entry. According to petitioner, respondent has given no reason why the international purchase takes less time than its own domestic purchase; petitioner argues it should take even longer.

DOC Position. We disagree with respondent. We are continuing to adjust the 1991 steel wire rod value to account for inflation. It is the Department's consistent practice to value factors at the time of the POI. Since the value we used are from 1991, we inflated them to the POI. Cost considerations during the POI are considered the crux of a responding company's decision making, including the pricing of its merchandise.

Comment 15. Petitioner maintains that the Department should follow the following hierarchy in applying PI to value factors: (1) First priority should be given to prices paid by the NME manufacturer for items imported from a market economy country; (2) second priority should be given to prices in the primary surrogate country of domestically produced or imported materials; (3) third priority should be given to prices in one or more secondary surrogate countries reported by the industry producing subject merchandise in the secondary country or countries; and (4) fourth priority should be given to prices in one or more secondary surrogate countries from sources other than the industry producing the subject merchandise. Petitioner states that this ranking of sources reflects the

Department's desire to use, to the greatest extent possible, factor prices in a single surrogate country.

Petitioner argues that applying these priorities would have six results. First, it argues that the priorities result in selecting India as the only surrogate country at a comparable level of economic development which is a producer of the subject merchandise. Although petitioner keeps open the possibility of determining that India is not a significant net exporter, it notes that no other potential surrogate country exported HSLWs to the United States since 1989.

Second, it argues that a result would be the inclusion of duty and taxes when using import values. Third, it maintains that the priorities result in the use of CIF import values into the surrogate country. Fourth, it argues that surrogate values are intended to reflect a mill price, not a price delivered to a customer. Fifth, it argues that the priorities should result in using Indian import values whenever these are available. It states that respondent has no basis for rejecting certain Indian import values simply because those are "too high." Sixth, it maintains that all prices should be adjusted for inflation. Where prices are "dated," which petitioner defines as more than five years old, petitioner urges rejecting the values.

DOC Position. We disagree, in part, with petitioner's conclusionary arguments. First, the selection of surrogate countries for factors analysis and the selection of specific public information to value factors of production are two separate issues. We have articulated a rationale for our public information hierarchy in the notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China, 57 FR 21058 (May 18, 1992).

Second, as regards petitioner's conclusions, we believe that any analysis should result in selecting India as the primary surrogate country at a comparable level of economic development which is a producer of the subject merchandise. We are continuing to use India as the primary surrogate country and Pakistan as the secondary surrogate country in evaluating factors for HSLWs. As stated in the October 16, 1992, Department of Commerce's Office of Policy memorandum to David Binder, India is a significant producer of the subject merchandise. Production, rather than exportation, is a determinative criterion for surrogate selection.

We disagree that a result would be the inclusion of duty and taxes when using import values. (See Factors of Production Comment 4). We do agree that any system of priorities should result in the use of CIF import values into the surrogate country. We have determined that the price should be the price to the customer inclusive of delivery from the source (Indian factory if domestically produced, port if imported) to the Indian producer of HSLWs.

We agree that any system of priorities should result in using Indian import values whenever these are available, as these values are in a contemporary PI source. We agree that rejecting certain Indian import values simply because those are "too high" is potentially overly subjective, but would add that so is rejecting certain values simply because they are "too low." Last, we agree that all prices should be adjusted for inflation, but we do not agree that prices are "dated," if more than five years old. If five year old PI is the only PI available, we must use it. (See Sulfanilic Acid from the PRC at Comment 2). When we used PI values attributable to a period prior to the POI, we have inflated the values to the POI. (See Factors of Production Comment 14).

Comment 16. Petitioner argues in its case brief that the data from the Official Directory of the State Exchange of India should be the source for estimating SG&A expenses; specifically petitioner recommends relying on one of the companies profiled in the Directory, Guest Keen Williams. On August 23, 1993, petitioner amended its argument based on the data transmitted to the Department by the U.S. consulate in Bombay. Petitioner states that it believes that since the SG&A expenses reported for Forbes Gokak Ltd. contained in the cable are greater than the statutory minimum of 10 percent used in determining constructed value, pursuant to section 773(e)(1)(B) of the Act, the Department should rely on Forbes Gokak Ltd.'s rate in determining FMV.

Respondent argues in its case brief that the Department should use the industry averages from the Reserve Bank of India Bulletin to determine SG&A expenses in determining FMV both for HSWP and for the processing done at HSWP's unrelated plating subcontractor. Respondent argues that the Department should not use the average of the data from the two companies outlined in the Official Directory of the State Exchange of India because one of those firms, Guest Keen Williams, Ltd. produces merchandise not comparable to HSLWs; has a completely different set of technology, and is a company beset with problems

On August 24, 1993, respondent submitted its reaction to the possible use of data transmitted to the Department by the U.S. consulate in Bombay. Respondent states that it believes that the SG&A expenses reported for Forbes Gokak Ltd. are clearly out of line with the industry-wide SG&A expense figure derived from the data in the Reserve Bank of India Bulletin. Respondent maintains that using the data from a single firm can skew the margin. Respondent maintains that since Forbes Gokak Ltd. is an affiliate of the largest conglomerate in India, and its reported profit is one percent, there is a strong suggestion that financial transfers to the corporate parent are included in SG&A expenses rather than reported as profits and then transferred to the corporate parent. Respondent also asserts that the fact that Forbes Gokak Ltd.'s SG&A expenses are twice the size of its overhead figure is a anomaly when compared to the data in the Reserve Bank of India Bulletin. Finally, respondent argues that the figures reported by Forbes Gokak Ltd. appear to be nothing more than rough estimates given as anecdotal information in a telephone conversation.

DOC Position. We agree in part with petitioner's August 23, 1993, comments. Neither the Reserve Bank of India Bulletin data nor the company-specific data from the Official Directory of the State Exchange of India which we considered at the preliminary determination are definitively tied to the production of India HSLW's. The cable data from the U.S. consulate in Bombay indicates that Forbes Gokak is the only major producer of HSLWs in India. As such, its data is the best surrogate to apply in constructing the factor value for HSWP's FMV.

In determining the SG&A expenses for the plating plant, the Department is using the statutory minimum of 10 percent, because the most accurate data from the Reserve Bank of India Bulletin which represents the Indian metal and chemical industry results in a percentage less than the statutory minimum of 10 percent.

Comment 17. Respondent argues in its case brief that the Department should use the industry averages from the Reserve Bank of India Bulletin to determine overhead expenses in calculating FMV both for HSWP and for the processing done at HSWP's unrelated plating subcontractor. Respondent argues that the Department should not use the average of the data from the two companies outlined in the

Official Directory of the State Exchange of India because one of those firms, Guest Keen Williams, Ltd., produces merchandise not comparable to HSLWs; has a completely different set of technology, and is a company beset with problems.

On August 24, 1993, respondent submitted its reaction to the possible use of data transmitted to the Department by the U.S. consulate in Bombay regarding overhead expenses. Respondent herein states that it believes that since the overhead expenses reported for Forbes Gokak Ltd. are clearly in line with the industry-wide SG&A expense figure derived from the data in the Reserve Bank of India Bulletin, the use of Forbes Gokak's overhead rate seems reasonable.

On August 23, 1993, petitioner submitted its reaction to the possible use of data transmitted to the Department by the U.S. consulate in Bombay. Petitioner states that it believes that since no detailed information on comparable equipment costs in a market economy country has been provided in the investigation, the rate of depreciation and the ratio of depreciation transmitted by the cable from the U.S. consulate in Bombay are not applicable. Petitioner maintains that the overhead rate reported for Forbes Gokak Ltd. should be applied to the total materials, labor and energy costs.

DOC Position. We agree in part with petitioner's August 23, 1993, comments and respondent's August 24, 1993, comments. Neither the Reserve Bank of India Bulletin data nor the company-specific data from the Official Directory of the State Exchange of India which we considered at the preliminary determination are definitively tied to the production of India HSLW's. The cable data from the U.S. consulate in Bombay indicates that Forbes Gokak is the only major producer of HSLWs in India. As such, its data is the best surrogate to apply in constructing the factor value for HSWP's FMV.

In determining the overhead for the plating plant, the Department is relying on the data from the Reserve Bank of India Bulletin, since the industry includes chemical production, and the plating plant deals almost exclusively with chemical processing.

Comment 18. On August 23, 1993, petitioner submitted its comments on the possible use of data transmitted to the Department by the U.S. consulate in Bombay regarding profit. Petitioner herein states that because the percent of profit reported by the Indian producer is less than the statutory minimum, the statutory minimum of eight percent must be applied to the sum of general expenses and costs, pursuant to section 773(e)(1)(B)(ii) of the Act.

DOC Position. We agree with petitioner and will calculate profit of eight percent of total production cost for HSWP and of total plating cost for the plating subcontracting.

Comment 19. On August 23, 1993, petitioner submitted its reaction to the possible use of data transmitted to the Department by the U.S. consulate in Bombay regarding transportation costs. Petitioner herein states that it believes that the transportation costs appear to be a composite of freight rates for truck, rail, ship and/or barge. Petitioner states that since these rates do not appear to apply to export costs, the Department should use the cable schedule to value the domestic transportation costs of HSWP in the PRC, but not to determine ocean freight and handling costs on exports. Petitioner assumes that the exchange rate for the POI will be used and that no other adjustments are required since the rates are "representative rates" which petitioner interprets to mean not related to a specific period of time.

On August 24, 1993, respondent submitted its reaction to the possible use of data transmitted to the Department by the U.S. consulate in Bombay. Respondent herein states its understanding that the transportation rates supplied in the latest cable will be used only for transportation types which do not have specific rates on the record in this investigation, and that if any type of transportation already has specific rates, then those specific rates will be used for the final determination.

DOC Position. We agree in part with petitioner's August 23, 1993, comments and respondent's August 24, 1993, comments. We are using the aggregate rates supplied in the August 3, 1993, cable from our consulate in Bombay, India for those values for which no specific rate exists on the record, such as transportation by river of steel inputs from domestic plants in the PRC to HSWP. We are also calculating a separate charge using a rate schedule provided by the U.S. consulate in Bombay on August 3, 1993, for the portion of the shipment from Ningbo to Hong Kong by PRC state-owned transportation. We will adjust these rates downward to account for inflation since the POI.

Comment 20. Before the preliminary determination, we were considering 1991 Indian import subcategory 2806 with a value of Indian rupees (Rs) 53.064/Kg to value hydrochloric acid. Adjusted for inflation, the value was Rs 58.081/kg. During the briefing process, respondent questioned the use of Indian import statistics for this factor. Respondent believes that this import price is extraordinarily high. Respondent urges the Department to use the value reported in March 1991 cable in the investigation of Chrome-plated Lug Nuts from the PRC. Respondent also refers the Department to the Chemical Marketing Reporter, a U.S. weekly newspaper, which reports hydrochloric acid on the U.S. spot market during the POI at prices much closer to the value reported in the investigation of Chrome-plated Lug Nuts from the PRC. Respondent cites the Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the Republic of Hungary (Sulfanilic Acid from the Republic of Hungary), 57 FR 48293, 48206 (Oct. 22, 1992) to argue that in those instances where one possible surrogate value was obviously questionable by virtue of being very different from an alternative surrogate value, the Department should use "supplemental sources to determine which of these two numbers (is) the most reasonable."

Respondent also maintains that the plating chemical "hydrogen chloride" refers to the same industrial hydrochloric acid used in the production process. Respondent asserts that the Department classify both the production and plating chemical as "hydrochloric acid" and apply a surrogate price specifically based on quotes for "hydrochloric acid."

Petitioner maintains that issues such as purity and concentration have not been properly addressed in distinguishing between the Indian import value and the Pakistani data relayed by cable. Petitioner objects to mixing values from different surrogate countries in general and objects specifically to respondent's argument here because petitioner asserts that the respondent has not indicated any reason for the questionable nature of the Indian import value other than comparing it with a lower available factor value. Petitioner asserts that if the Department determines that it is appropriate to use Indian import values, then it should stay with India, particularly as petitioner maintains Pakistan has not been shown to be a producer of HSLWs. Petitioner asserts that the Department should use prices for items with the nomenclature "hydrochloric acid" and "hydrogen chloride" and use the average of the two prices.

DOC Position. We have examined the prices in this cable from our consulate in Pakistan, which shows the price in Pakistani Rupees per kilogram (PRs/kg). We have also examined the recommended source for contemporary

U.S. spot market prices. The value derived from the India import statistics is not over 1000 percent higher than the values reported in either alternative source, because the value must first be multiplied by 31 percent, the concentration of hydrochloric acid in the solution actually employed in making HSWP's lock washers. This step had not been clearly indicated in the TCM for the preliminary determination, and respondent may have overlooked this aspect of the calculation. We believe that in this particular instance, the divergence of the Indian import value is not so significantly different from other indicators, both contemporary world market prices and Indian domestic prices, that we would have no other choice but to rely on the data reported in the investigation of Chrome-plated Lug Nuts from the PRC, adjusted for inflation. We agree with respondent that the type of industrial application of a solution of hydrogen chloride is more closely reflected in the pricing of "hydrochloric acid," and are using the import values under the nomenclature "hydrochloric acid."

Comment 21. At the preliminary determination, we considered using 1991 Indian import subcategory 2815.12.00 to evaluate "caustic soda;" these import statistics are for Soda Lye (NaOH in aqueous solution), adjusted for inflation. We also considered using 1991 Indian import subcategory 2815.11, which is for solid sodium hydroxide (NaOH) where HSWP reported "sodium hydroxide" *per se*. We considered using the value for all solid NaOH (*i.e.*, at or near 100 percent) adjusted for inflation. In its April 6, 1993, submission, Hangzhou reported that the Sodium Hydroxide it was reporting was only 70.75 percent pure; we considered multiplying the import value by this percentage before applying it to the factor quantity.

In its case brief, respondent states that as reported in its March 16, 1993, submission the concentration of caustic soda for lockwasher production is 30 percent and for plating is 15 percent.

Respondent suggests using a weighted average of the one liquid and two solid forms listed in the Indian Import statistics as the basis for both "caustic soda" and "sodium hydroxide."

Petitioner does not object to using Indian import statistics for subcategory 2815.12 for caustic soda in aqueous solution. Petitioner states that because this is for the chemical in solution and no concentration levels are shown in the Indian data, no further adjustments should be made to the import value.

DOC Position. We note that both the HSLW platers and the India Import statistics specifically refer to NaOH by the two terms "soda lye" and "sodium hydroxide." The differences between the soda lye used in the production process and in the plating process, and the highly concentrated sodium hydroxide formula also used for a different plating step, include such elements as purity, form, and consistency. We believe using the two specific import categories reflects any such outstanding differences in physical characteristics. We are using category 2815.12.00 specifically for caustic soda solution, so that the dilution reported is reflected in the lower price. Where a 15 percent solution of caustic soda is used, the price reported for category 2815.12.00 is used; where a 30 percent solution of caustic soda is used, the per-unit value for category 2815.12.00 is doubled. Where HSWP reported "sodium hydroxide" *per se*, we are using subcategory 2815.11.01, which is for solid sodium hydroxide (at or near 100% NaOH), where a 70.75 percent concentration has a value of Rs 98.549/kg, adjusted for inflation.

Comment 22. Respondent believes that the Department should have requested a spot price from the U.S. embassies in India and Pakistan to value potassium chromate, since U.S. spot prices were less than a third of the Indian import statistics for subheading 2841.50.09 for "other dichromates."

Petitioner disagrees with respondent, stating that respondent's arguments are lacking any specific reasons for disqualifying the values suggested in the preliminary TCM.

DOC Position. We agree with petitioner. First, we *did* cable our Embassy in India to request all possible surrogate values for material inputs on March 17, 1993. However, the U.S. Embassy did not supply us with the chemical prices in India. Moreover, the Indian import statistics we considered at the preliminary determination, and which we are using in this final determination, are both public and published information. Respondent did not submit alternative public information until well after the deadline established by the Department in the record of this investigation.

Comment 23. For sodium nitrate, potassium aluminum, and barium chromate, respondent states that it was unable to obtain other information on prices other than the Indian import statistics the Department had considered at the preliminary determination. Furthermore, for 4-methylamine, sodium sulfide, and sodium carbonate, respondent states that it believes that the Indian import values the Department was considering to use at the preliminary determination are an accurate reflection of the price ranges of the chemicals on the international market.

DOC Position. We agree with respondent. We have used the 1991 Indian import statistics to value sodium nitrate, potassium aluminum, barium chromate, 4-methylamine, sodium sulfide, and sodium carbonate, as it was the only PI source.

Comment 24. Respondent objects to the Department's earlier consideration of Indian import subheading 2826.19.09 for "other fluorides" to value hydrogen fluoride. Respondent points out that the Indian import statistics break out hydrogen fluoride under subcategory 2811.11.00. The resulting value, adjusted for inflation, is Rs 56.63/kg.

Petitioner states that it defers to the Department's determination over which 1991 Indian import category is proper.

DOC Position. We agree with respondent and have used subcategory 2811.11.00 to value hydrogen fluoride.

Comment 25. At the preliminary determination, we considered using 1991 Indian import subcategory 2808.00.01 with a value, adjusted for inflation, of Rs 40.482/kg to value nitric acid. Respondent maintains that the Department should use the price of nitric acid as contained in the March 1991 cable from Pakistan in the Chrome-Plated Lug Nuts from the PRC investigation.

Petitioner disagrees with respondent's objections, stating that respondent's arguments are lacking any specific reasons for disqualifying the values suggested in the preliminary TCM.

DOC Position. We disagree with respondent. We afforded all interested parties sufficient time to submit PI for the record. No such information was offered in a timely manner. The Indian import statistics are a primary source of published public information, while cables are a secondary source of public information. We therefore are using the 1991 Indian import value, adjusted for inflation in accordance with our preferred PI hierarchy.

Comment 26. Respondent argues that the Department should not use the 1991 Indian Import Statistics to value sulfuric acid. Respondent suggests that the Department instead use the December 1991 cable from Pakistan. Respondent believes that this import price is extraordinarily high. Respondent urges the Department to use the value reported in the December 1991 cable in the investigation of Sulfanilic Acid from the PRC. Respondent also refers the Department to the Chemical Marketing Reporter, a U.S. weekly newspaper, which reports sulfuric acid on the U.S.

spot market during the POI at prices much closer to the value reported in the investigation of Sulfanilic Acid from the PRC.

Petitioner disagrees with respondent's objections, stating that respondent's arguments are lacking any specific reasons for disqualifying the values suggested in the preliminary TCM.

DOC Position. The Sulfanilic Acid from the Republic of Hungary determination indicates that, in those instances where one possible surrogate value was obviously questionable by virtue of being very different from an alternative surrogate value, the Department should use "supplemental sources to determine which of these two numbers (is) the most reasonable." We have examined the prices in this cable from our consulate in Pakistan, which shows the price no higher than 4.00 PRs/kg; adjusting for inflation, the price would be 4.90 PRs/kg. We have also examined the recommended source for contemporary U.S. spot market prices. The value derived from the India import statistics is over 1000 percent higher than the values reported in either alternative source. We believe that in this particular instance, the divergence of the Indian import value is so significantly different from both contemporary world market prices and Indian domestic prices that we will rely on the data reported in the investigation of Sulfanilic Acid from the PRC, adjusted for inflation.

Comment 27. At the preliminary determination, the closest 1991 Indian import category we could find under phosphates was "sodium triphosphate," (subcategory 2835.31.00) in order to value trisodium phosphate. In its case brief, respondent maintains that trisodium phosphate is a totally different chemical compound which is imported under subcategory 2835.23. Because no imports were recorded in the 1991 Indian Import Statistics for this subcategory, respondents maintain that we should use the value reported in the March 1991 Pakistani cable in the Chrome-Plated Lug Nuts from the PRC investigation.

Petitioner maintains that the Department should first seek to obtain a domestic value in India. According to petitioner, only if Indian values are not available should a non-HSLW producer, surrogate country value be used.

DOC Position. We examined earlier Indian import statistics. We found that in December 1987, India imported trisodium phosphate under subcategory 2835.23. First, the contemplated use of 1991 Indian subcategory 2835.31 at the preliminary determination was in error, as this category is for sodium triphosphate and the chemical we must value is trisodium phosphate. However, respondent did not submit any PI on this chemical prior to the briefing process. In addition, the source which respondent would have us use is not a published document. We therefore are using the 1987 Indian import category 2835.23, adjusted for inflation.

Comment 28. At the preliminary determination, we considered using subcategory 4819.10 for "cartons and cases of corrugated paper and paperboard," and adjusting for inflation. Respondent maintains that the price that was used for corrugated cardboard boxes in the investigation of Chrome-Plated Lug Nuts from the PRC is a better value to use in establishing FMV for HSWP. Respondent maintains that the value using 1991 Indian import statistics is more than 600 percent larger than the value used for the largest box in the Chrome-Plated Lug Nuts from the PRC investigation.

Petitioner disagrees with respondent's objections, stating that respondent's arguments are lacking any specific reasons for disqualifying the values suggested in the preliminary TCM. Petitioner notes that in the Chrome-Plated Lug Nuts from the PRC investigation, while different types of cartons were used, the one most comparable to those used to pack HSLWs were the largest sizes.

DOC Position. We disagree with respondent. We are using 1991 Indian import statistics, category 2806, adjusted for inflation. First, respondent did not submit any PI on this chemical prior to the briefing process. Second, the source which respondent would have us use is not a published document. Lastly, we believe that in this particular instance, the divergence of the Indian import value from the one other indicator is not so significant that we must rely on the other source.

Comment 29. For plastic bags, respondent states that it believes that the Indian import value the Department was considering to use at the preliminary determination is representative of what an Indian producer of HSLWs would pay. Respondent states that an alternative source listed in the preliminary TCM, a cable used in the investigation of Sulfanilic Acid from the PRC, is for bags of a size and use not appropriate for valuing the bags used by HSWP to pack lockwashers.

DOC Position. We agree with respondent and have valued plastic bags using the 1991 Indian Import Statistics.

Comment 30. Respondent notes that the Department should consider the consumption of adhesive tape noted at verification in determining the cost of tape per metric ton of lockwashers produced in the POI in establishing FMV.

DOC Position. We agree with respondent and have valued adhesive tape using the correct amount verified.

Comment 31. For wood pallets and wood brackets, respondent states that it believes that the Indian import value the Department was considering to use at the preliminary determination is representative of what an Indian producer of HSLWs would pay.

DOC Position. We agree with respondent and have used the 1991 Indian Import Statistics to value wood pallets and wood brackets.

Comment 32. For lubricating oil, respondent states that it believes that the Indian import value the Department was considering to use at the preliminary determination is representative of what an Indian producer of HSLWs would pay.

DOC Position. We agree with respondent and have used the 1991 Indian Import Statistics to value lubricating oil.

Comment 33. For light fuel oil, respondent states that it believes that the value the Department was considering to use at the preliminary determination, taken from the third quarter 1992 edition of Energy Prices and Taxes, published by the International Energy Agency, is representative of fuel oil prices in India.

DOC Position. We agree with respondent and have used the 1992 Energy Prices and Taxes to value light fuel oil.

Comment 34. For electricity and coal, respondent states that it believes that the values the Department was considering to use at the preliminary determination, taken from the third quarter 1992 edition of Energy Prices and Taxes, published by the International Energy Agency, appear to be an average of electricity rates and coal prices and therefore are more reliable than a single price quotes for electricity and coal.

Petitioner believes that it is inappropriate to use the 1985 value reported in the third quarter 1992 edition of Energy Prices and Taxes, and then adjusting it upward to account for inflation. Petitioner argues that more current published public information be used, and if this is not available, the more recent alternative sources noted in the preliminary TCM should be used. These alternatives were cables from the U.S. Embassy in India sent for the Cotton Shoptowels from the PRC and the Sulfanilic Acid from the PRC investigations.

DOC Position. We agree with respondent that the prices from the publication Energy Prices and Taxes are the correct prices to use for coal and electricity, adjusted for inflation. The source is the most recent PI of the information which the Department could obtain. The Department notes that neither petitioner nor respondent timely placed public, published alternatives on the record for consideration.

Comment 35. For water, respondent states that it believes that the price transmitted by cable from the U.S. Embassy in Pakistan which the Department was considering to use at the preliminary determination is representative of water prices in Pakistan.

DOC Position. We agree with respondent. Recent cables from the first choice surrogate country, India, show a monthly charge for water, rather than a per unit value. The December 1991, cable from Pakistan, the second choice surrogate country in this investigation, shows a per unit value of in PRs per 1000 gallons. We can therefore use this as basis for valuing the consumption in units reported in this investigation.

Comment 36. For train freight rates, respondent states that it believes that the value the Department was considering to use at the preliminary determination, taken from 1989 cable from the U.S. Embassy in India sent for the Cotton Shop Towels from the PRC investigation, has been used consistently by the Department in subsequent cases, and concurs that this rate should be used unless the U.S. Embassy in India responds with an updated rate.

DOC Position. We agree with respondent; the rates reported in the August 3, 1993, cable from India appear to be an aggregate of various rates: trucking, shipping and rail. Therefore, we have used them and have adjusted them for inflation.

Comment 37. For trucking rates, respondent states that it believes that the Department was considering an incorrect method for applying the rates taken from the June 1992 cable from the U.S. Embassy sent for the Sulfanilic Acid from the PRC investigation. Respondent believes that the cable information shows a rate formula which takes into account the distance as a percentage of 1000 kilometers, so that the flat rate of 750 Rs per metric ton is pro-rated for distances less than the full 1000 kilometers up to which the rate applies.

Petitioner disagrees with respondent's objections. It believes that the cable refers not to a rate formula by actual distance, but a flat rate of 750 Rs per metric ton for all distances up to 1000 kilometers. Petitioner states that the rate applied should be the same whether respondent is reporting the use of its own, or hired, trucks. Petitioner also suggests that hauling chemicals warrants a higher rate that in the Sulfanilic Acid from the PRC cable.

DOC Position. We agree with respondent. The cable states that the rate is Rs 0.75 per kilogram for a distance up to 1000 kilometers; it then states that for one kilogram trucked 800 kilometers, the rate would be 0.083 Rs per kilogram per kilometer. This in effect means the total tonnage should be multiplied by 750 Rs/Mt multiplied by the distance trucked divided by 1000 kilometers. This is the formula we are using in applying trucking rates for purposes of the final calculation. We note that in the cable, the rate schedule was quoted for the transport from New Delhi of a chemical, namely sulfanilic acid.

Comment 38. Respondent states that it does not believe that any transportation charges should be used in calculating FMV to represent the cost of transporting HSLWs to and from the plating plant. According to respondent, expenses relating to the vehicles owned by the plating plants are included in the plating plant overhead figures calculated by the Department, and are therefore already included in the plating plant surrogate costs calculated for FMV.

Petitioner disagrees with respondent's objections. Petitioner states that some cost should be added for transporting the HSLWs between the production and plating sites, particularly since the Department only verified one of three plating facilities subcontracted by HSWP. Petitioner states that if the Department uses BIA for the other two plants, adding freight costs separately would not be appropriate.

DOC Position. We agree with respondent. We should not calculate a separate transportation cost for bringing the HSLWs to and from the plating plants because the cost is already included in factory overhead.

Comment 39. Respondent states that it believes that the rates in the Yearbook of Labour Statistics (1992) and the Country Report on Human Rights Practices for 1990 are representative of the wage rates of workers at an Indian lockwasher production facility. Respondent asserts, however, that the Department should only apply skilled and unskilled labor rates to HSWP's workers. According to respondent, neither HSWP nor the plating company maintain records in the normal course of business which classify workers as semi-skilled. According to respondent, neither company identified any difference between the workers which they reported to the Department as "semi-skilled" and those which they reported as "unskilled."

Petitioner disagrees with respondent's objections. Petitioner states that the Department should use three classifications but adds that the Department should adjust the values using a PPP variable.

DOC Position. We disagree with respondent. HSWP reported both its and the plating companies' labor costs using the three categories "skilled, unskilled and semi-skilled." As outlined in the HSWP verification report, in dividing their HSLW workshop employees into these categories, the company first created classification standards for the labor categories as follows: Skilled workers—those who have extensive production experience and product high quality products; supervisors—those with extensive management experience, capable of production supervision, and compiling production statistics; technician—those who have earned a technical certificate in some skill from the local labor department; semi-skilled—those with average production experience and produce average quality product; unskilled—little experience, untrained skills. As the next step in the process, the company divided its HSLWs workshop workers into these specific categories. Supervisors and technicians were reported as skilled. Any worker not specifically fitting "skilled" or "unskilled" was considered semi-skilled.

In its normal business operations, the plating plant we examined at verification uses three worker classifications. These classifications are not based on skill level but rather on years of service. The plant also included a description on how it based its reported classification of workers. The manager made a description of what skills would place a worker in a specific category and used his knowledge to classify each HSLWs plating worker as skilled, semi-skilled or unskilled. Since labor was reported broken into three categories, and since we verified these categories, we will continue to evaluate three levels of labor costs.

Continuation of Suspension of Liquidation

In accordance with sections 735(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of certain helical spring lock washers from the PRC that are entered, or withdrawn from warehouse, for

consumption on or after January 30, 1993, which is 90 days prior to the date of publication of the preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to 77.47 percent on all entries of certain HSLWs from Hangzhou Spring Washer plant and market-economy trading companies (e.g., Hong Kong companies) which sold HSWP's HSLWs to the United States during the POI. Between now and the antidumping duty order, if one is issued, we will seek the respondent's permission to release the names of the non-PRC trading companies to the public, in order to publish the most accurate duty instructions possible. If respondent does not permit the release of the trading companies' identities to the public, by the time of the order, we will apply the BIA margin of 128.63 percent to the aforementioned market trading companies. The Customs Service shall require a cash deposit or posting of a bond equal to 128.63 percent on entries of certain HSLWs from the PRC from all other producers and exporters. This suspension of liquidation will remain in effect until further notice. The estimated dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Hangzhou Spring Washer Plant (HSWP)	77.47
HSWP via Foreign Trading Company 1	77.47
HSWP via Foreign Trading Company 2	77.47
HSWP via Foreign Trading Company 3	77.47
HSWP via Foreign Trading Company 4	77.47
HSWP via Foreign Trading Company 5	77.47
All Other PRC Manufacturers, Producers and Exporters	128.63

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry within 45 days.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: September 13, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–22958 Filed 9–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–804]

Sparklers From the People's Republic of China; Termination of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: In response to a request from the respondent, Guangxi Native Produce Import and Export Corporation, Beihai Fireworks and Firecrackers Branch (Guangxi), the Department of Commerce (the Department) initiated an administrative review of the respondent on July 22, 1992 for the period December 17, 1990 through May 31, 1992. We are now terminating this review.

EFFECTIVE DATE: September 20, 1993.

FOR FURTHER INFORMATION CONTACT: Debra Crumbie or Pamela Woods, Office of Antidumping Compliance, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–3936.

SUPPLEMENTARY INFORMATION:

Background

On July 22, 1992, in accordance with 19 CFR 353.22(c), we initiated an administrative review of exports to the United States for the period December 17, 1990 through May 31, 1992 (57 FR 32521). On August 26, 1993, Guangxi, the only interested party to request a review for this period, withdrew its request.

In accordance with 19 CFR 353.22(a)(5), "the Secretary may permit a party that requests a review under paragraph (a) of this section to withdraw the request not later than ninety days after the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so."

When Guangxi requested this administrative review, Guangxi would have been eligible for a separate rate under Department practice. However, this practice was changed in Compact Ductile Iron Waterworks Fittings from the People's Republic of China (Waterworks Fittings) (58 FR 37908), where the Department held that a government-owned entity cannot receive an individual rate in future investigations or administrative reviews. Because Guangxi is a state-owned entity, Guangxi cannot receive a separate rate.

Under the circumstances, we believe that it is reasonable to extend the ninety-day time limit governing the withdrawal of requests for administrative review. Thus, in view of Guangxi's request of August 26, 1993, and the fact that no interested party other than Guangxi has requested an administrative review, the Department is terminating this review.

This termination is in accordance with 19 CFR 353.22(a)(5).

Dated: September 13, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–22957 Filed 9–17–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–557–807]

Postponement of Final Antidumping Duty Determination: Welded Stainless Steel Pipe From Malaysia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 20, 1993.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, at (202) 482–1776.

POSTPONEMENT: On September 7, 1993, Kanzen Tetsu Sdn. Bhd., the sole respondent in this investigation, requested that the Department postpone the final determination until 135 days after the date of the publication of the preliminary determination in the **Federal Register**, in accordance with section 735(a)(2)(A) of the Tariff Act of 1930 (the Act), as amended (19 U.S.C. 1673d(a)(2)(A)). We find no compelling reasons to deny the request and are, accordingly, postponing the date of the final determination until January 21, 1994.

This notice is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(b)(2).

Dated: September 9, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–22948 Filed 9–17–93; 8:45 am]

BILLING CODE 3510–DS–M

Sanctions for Violation of Administrative Protective Order

AGENCY: Import Administration, International Trade Administration.

ACTION: Notice.

SUMMARY: This is a notice of the status of an investigation into charges of the violation of an administrative protective order in an antidumping duty proceeding.

EFFECTIVE DATE: September 20, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Chief Counsel for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0916.

SUPPLEMENTARY INFORMATION: The International Trade Administration, United States Department of Commerce (ITA), wishes to remind those members of the bar who appear before it in antidumping and countervailing duty proceedings of the extreme importance of protecting the confidentiality of business proprietary information obtained pursuant to administrative protective order (APO) during the course of those proceedings. In order that the gravity with which the ITA views violations of its APO's might be better appreciated, ITA is publishing the following report on a recent allegation that the provisions of an ITA APO have been violated.

A secretary employed by a law firm allowed proprietary information protected by an APO to become available to individuals at two other law firms who were not authorized by the APO to have access to the information. No one at those two law firms actually accessed the proprietary information, and it was promptly returned to the individuals responsible for the incorrect release. Following an investigation by the ITA, the attorney responsible for supervising the secretary involved was held responsible for this violation of the APO

Because the responsible attorney was no longer practicing before the Department of Commerce, the attorney was advised that attendance at a Department seminar on administrative protective orders would be required before any future request for APO status would be granted. The attorney in question was also issued a private reprimand which warned that future violations could result in much graver sanctions. The law firm involved was required to conduct a seminar for trade partners, associates, and support staff in the firm regarding proper APO procedures.

We consider these sanctions to be appropriate for the following reasons: First, the violation appears to have been inadvertent; second, the sanctioned attorney cooperated fully with the ITA's investigation; and, third, no apparent harm resulted from the violation

Serious harm can result from the failure to properly safeguard proprietary information obtained under APO. The ITA will continue to investigate vigorously allegations that the provisions of APO's have not been faithfully observed, and is prepared to impose sanctions commensurate with the nature of the violations, including letters of reprimand, denial of access to proprietary information, or disbarment from practice before the ITA.

This notice is published pursuant to 19 CFR 354.15(e) of the Department's regulations.

Dated: September 13, 1993.

Timothy J. Hauser,

Acting Under Secretary for International Trade.

[FR Doc. 93–22950 Filed 9–17–93; 8:45 am]

BILLING CODE 3510–DS–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review filed with the Canadian section of the Secretariat on September 1, 1993.

SUMMARY: On September 1, 1993, Bethlehem Steel Export Corp., U.S. Steel, a Division of USX Corp., National Steel Corporation, Inland Steel Company, and LTV Steel Company filed a Request for Panel Review with the Canadian Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final injury determination made by the Canadian International Trade Tribunal respecting Certain Cold-rolled Steel Sheet Originating in or Exported from the United States of America. Notice of this determination was published in the Canada Gazette on August 7, 1993. The Binational Secretariat has assigned Secretariat File No. CDA–93–1904–09 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the Untied States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules, as amended.

Rule 35(2) requires each Secretary of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the Canadian Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on September 1, 1993, requesting panel review of the final injury determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is October 1, 1993);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is October 18, 1993); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: September 13, 1993.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 93–22949 Filed 9–17–93; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of application for a scientific research permit to take marine mammals (P479A).

SUMMARY: Notice is hereby given that Ms. Marsha Green, Albright College, P.O. Box 15234, Reading, PA 19612–5234, has applied in due form for a permit to take humpback whales (*Megaptera novaeangliae*) for scientific research.

DATES: Written comments must be received on or before October 20, 1993.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

Coordinator, Pacific Area Office, Southwest Region, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/955–8831).

Written data or views, or requests for a public hearing on this modification request, should be submitted to the Assistant Administrator for Fisheries, NMFS, U.S. Department of Commerce, 1335 East-West Hwy., Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of NMFS.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this modification request to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The applicant requests authorization to take (harass) up to 1200 humpback whales annually, during research activities to assess the impact of vessel traffic on the behavior of humpback whales, to study the impact of vessels on the underwater sounds made by humpback whales, and to study the communicative function of humpback sounds and the relationship of their underwater sounds to pod composition and behavior. Individual animals may be approached up to 10 times each annually. The proposed activities will be conducted in Hawaiian waters over a four-year period.

Dated: September 14, 1993.

Herbert W. Kaufman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–22851 Filed 9–17–93; 8:45 am]

BILLING CODE 3510–22–M

[File No. P319B]

Marine Mammals

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Modification of scientific research permit 655 (File No. P319B).

SUMMARY: Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Permit No. 655 has been modified.

ADDRESSES: Documents submitted in connection with the above modification are available by appointment in or by writing to the Permits Division, Office of Protected Resources, NMFS, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289); and

Director, Southeast Region, NMFS, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

SUPPLEMENTARY INFORMATION: Scientific Research Permit No. 655 issued to Randall S. Wells, Ph.D., Dolphin Biology Research Institute, c/o Mote Marine Laboratory, 708 Tropical Circle, Sarasota, Florida 34242, is modified to extend the expiration date to June 30, 1994. This modification becomes effective upon publication in the **Federal Register.**

Dated: September 14, 1993.

Herbert W. Kaufman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–22850 Filed 9–17–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Special Access and Special Regime Programs; Delay in Implementation of Bond Requirement for Participants

September 15, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs changing the implementation date for the bond requirement.

EFFECTIVE DATE: September 15, 1993.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A notice published in the **Federal Register** on August 3, 1993 (58 FR 41245) announced that Customs would implement a bond requirement for participants in the Special Access and Special Regime Programs. This requirement was to have been effective on September 17, 1993. In order to address all of the comments that have been received regarding the bond requirement, CITA is directing Customs to delay the implementation of the bond requirement until October 18, 1993.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 15, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on July 28, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to implement a bond for the Special Access and Special Regime Programs within 45 days of the publication of the

accompanying notice which set forth the specifications (published August 3, 1993).

Effective on September 15, 1993, you are directed to amend the July 28, 1993 directive to delay the implementation of the bond requirement to begin on October 18, 1993. Customs will provide importers with a 30-day grace period to post the bond.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-23018 Filed 9-17-93; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Board; Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Board, DoD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92-463, as amended by section 5 of Public Law 94-409, notice is hereby given that a closed meeting of the Defense Intelligence Agency Scientific Advisory Board has been scheduled as follows:

DATES: Wednesday and Thursday, 6-7 October 1993 (0900-1700).

ADDRESSES: Wednesday, 6 October 1993, The Defense Intelligence Analysis Center, Building 6000, Bolling Air Force Base, Washington, DC 20340-1328; Thursday, 7 October 1993, The Pentagon, Washington, DC 20340-1328.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340-1328, (202) 373-4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(I), title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical issues and advise the Director, DIA, on related scientific and technical matters.

Dated September 15, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-22872 Filed 9-17-93; 8:45 am]

BILLING CODE 5000-04-M

Defense Intelligence Agency Scientific Advisory Board; Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Board, DoD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92-463, as amended by section 5 of Public Law 94-409, notice is hereby given that a closed meeting of the Defense Intelligence Agency Scientific Advisory Board has been scheduled as follows:

DATES: Thursday, 23 September 1993 (0930-1400).

ADDRESSES: The Defense Intelligence Analysis Center, Building 6000, Bolling Air Force Base, Washington, DC 20340-1328.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340-1328, (202) 373-4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(I), title 5, of the U.S. Code and therefore will be closed to the public. The Panel will receive briefings on and discuss several current critical issues and advise the Director Military Intelligence, DIA, on related matters.

Dated: September 15, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-22873 Filed 9-17-93; 8:45 am]

BILLING CODE 5000-04-M

Defense Intelligence Agency Scientific Advisory Board; Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Board, DoD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92-463, as amended by section 5 of Public Law 94-409, notice is hereby given that a closed meeting of the Defense Intelligence Agency Scientific Advisory Board has been scheduled as follows:

DATES: Friday, 24 September 1993 (0930-1400).

ADDRESSES: The Defense Intelligence Analysis Center, Building 6000, Bolling Air Force Base, Washington, DC 20340-1328.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340-1328, (202) 373-4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(I), title 5 of the U.S. Code and therefore will be closed to the public. The Panel will receive briefings on and discuss several current critical issues and advise the Director Military Intelligence, DIA, on related matters.

Dated: September 15, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-22874 Filed 9-17-93; 8:45 am]

BILLING CODE 5000-04-M

Department of the Navy

Privacy Act of 1974; Delete and Amend Record Systems

AGENCY: Department of the Navy, DOD.

ACTION: Delete and amend record systems.

SUMMARY: The Department of the Navy proposes to delete four and amend 21 existing systems of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The deletions are effective September 20, 1993. The amendments will be effective on October 20, 1993, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken at (703) 614-2004 or DSN 224-2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the systems of records are set forth below followed by the systems of records notices published in their entirety, as amended. The amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: September 14, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS

N02060–1

SYSTEM NAME: PWC Subic Residential Telephone Billing (58 FR 10730, February 22, 1993).

Reason: System is obsolete. Activity has been disestablished and records have been destroyed.

N04410–4

SYSTEM NAME: Record of Import and Export of Foreign Made Auto Vehicles Into and Out of Australia (58 FR 10743, February 22, 1993).

Reason: System obsolete. Activity has been disestablished and records have been destroyed.

N05521–2

SYSTEM NAME: Commonwealth Pass Application Form (58 FR 10766, February 22, 1993).

Reason: System obsolete. Activity has been disestablished and records have been destroyed.

N10140–3

SYSTEM NAME: Individual Merchandise Control Record (58 FR 10813, February 22, 1993).

Reason: System obsolete. Activity has been disestablished and records have been destroyed.

AMENDMENTS

N01070–10

SYSTEM NAME:

Aviation Training Jacket *(58 FR 10700, February 22, 1993).*

CHANGES:

* * * * *

SYSTEM LOCATION:

In line three delete the word 'Command' and replace with 'Training Command squadron.' In line seven delete address and replace with 'Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041.'

* * * * *

STORAGE:

At end of entry add 'and limited access word processing equipment.'

RETRIEVABILITY:

At end of entry add 'and Social Security Number/officer file number.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Two years after completion of advanced training, files are retired to the Federal Records Center, Fort Worth, Texas for 50 years and then destroyed. An individual aviator who retires or is released from active/reserve duty may request custody of his/her file by writing to the Chief of Naval Air Training.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041.'

NOTIFICATION PROCEDURE:

In line four delete address and replace with 'Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041.'

RECORD ACCESS PROCEDURES:

In line four delete address and replace with 'Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041.'

* * * * *

N01070–10

SYSTEM NAME:

Aviation Training Jacket.

SYSTEM LOCATION:

The Aviation Training Jacket accompanies the individual student to each Naval Air Training Command squadron as he progresses in the training program. Upon completion or termination of training, the Aviation Training Jacket is forwarded to the Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All naval aviators, naval flight officers, naval flight surgeons, aviation warrant officers, and pre-commissioning training for aviation maintenance duty and aviation intelligence officers. This includes records in the above categories for individuals who do not complete prescribed training.

CATEGORIES OF RECORDS IN THE SYSTEM:

Aviation flight training, practical and academic grade scores, including pre-training aviation test battery scores.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To maintain an up-to-date student flight record and to evaluate the student's individual training progress and qualifications, including aircraft, medical and physiological qualifications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To educational institutions upon individual requests for academic transcripts.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders in metal filing cabinets and limited access word processing equipment.

RETRIEVABILITY:

Name and date of designation, completion or termination of training and Social Security Number/officer file number.

SAFEGUARDS:

Access is restricted to the individual or those who maintain training records and those who are directly involved with the individual's training or evaluation. The file cabinets containing the jackets are in command areas under normal military 24 hour security measures.

RETENTION AND DISPOSAL:

Two years after completion of advanced training, files are retired to the Federal Records Center, Fort Worth, Texas for 50 years and then destroyed. An individual aviator who retires or is released from active/reserve duty may request custody of his/her file by writing to the Chief of Naval Air Training.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041.

NOTIFICATION PROCEDURE:

The individual is informed that the Aviation Training Jacket is being maintained and has ready access to it during training. After training, he can submit written request to the Chief of Naval Air Training, 250 Lexington

Boulevard, Suite 102, Corpus Christi, TX 78419–5041.

Individual should provide name, Social Security Number or officer file number, and date of completion or termination of training. Personal visitors can provide proof of identity by military identification card, active or retired, or driver's license and some record of naval service.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041.

Individual should provide name, Social Security Number or officer file number, and date of completion or termination of training. Personal visitors can provide proof of identity by military identification card, active or retired, or driver's license and some record of naval service.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Prior educational experience, flight grades, academic grades supporting flight training, physical fitness/survival/swimming proficiency, aviation physiology training and qualifications, and birth certificate.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01070–11

SYSTEM NAME:

Flight Instruction Standardization and Training (FIST) Jacket *(58 FR 10701, February 22, 1993).*

CHANGES:

* * * * *

SYSTEM LOCATION:

In line five delete 'Naval Air Station, Corpus Christi, TX 78419–5041' and replace with '250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041.'

NOTIFICATION PROCEDURE:

Add new paragraphs 'Individuals seeking access to information about themselves contained in this system should address written inquiries to the activity where assigned or to the Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041.

Individual should provide their name, rank, and Social Security Number.'

RECORD ACCESS PROCEDURES:

In line seven delete 'Naval Air Station' and replace with '250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041.'

* * * * *

N01070–11

SYSTEM NAME:

Flight Instruction Standardization and Training (FIST) Jacket.

SYSTEM LOCATION:

The FIST jacket is located at the various Naval Air Training Commands where the individual may be assigned. Contact the Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041, to determine the location of any specific command.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All naval aviators and naval flight officers assigned to duty as instructors within the Naval Air Training Command.

CATEGORIES OF RECORDS IN THE SYSTEM:

A record of flight instruction standardization and training required of naval aviators and naval flight officers assigned duty as instructors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To ensure that the flight instructor's qualifications are current to instruct in the designated naval aircraft, both academically and physiologically. The system is used to schedule training flights, qualify and designate flight instructors, etc. This system is used by Commanding Officers and training personnel of the command to which the individual is assigned.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders in metal file cabinets.

RETRIEVABILITY:

Name, rank, and Social Security Number.

SAFEGUARDS:

Access is restricted to the individual, his commanding officer, or those involved in maintaining training records. The file cabinets containing the jackets are in command areas under normal military 24 hour security measures.

RETENTION AND DISPOSAL:

Jackets are retained in the individual's command until detachment, at which time it is given to the individual.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041.

NOTIFICATION PROCEDURE:

The individual is informed that the FIST jacket is being maintained, participates in its development and, additionally, is required to review the jacket with his instructor periodically.

Individuals seeking access to information about themselves contained in this system should address written inquiries to the activity where assigned or to the Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041.

Individual should provide their name, rank, and Social Security Number.

RECORD ACCESS PROCEDURES:

The individual is informed that the FIST jacket is being maintained, participates in its development and, additionally, is required to review the jacket with his instructor periodically. Any questions should be directed to the Chief of Naval Air Training, 250 Lexington Boulevard, Suite 102, Corpus Christi, TX 78419–5041.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or

may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Academic tests, flight performance evaluation, check flight evaluation, instructor's evaluation, command determinations, and, personal input.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01070–13

SYSTEM NAME:

Nuclear Program Interview and Screening *(58 FR 10703, February 22, 1993).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Naval Sea Systems Command (Code 08), 2531 Jefferson Davis Highway, Arlington, VA 22242–5160.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Naval Sea Systems Command (Code 08), 2531 Jefferson Davis Highway, Arlington, VA 22242–5160.'

NOTIFICATION PROCEDURE:

In line six delete 'Washington, DC 20362–5101' and replace with '2531 Jefferson Davis Highway, Arlington, VA 22242–5160.'

RECORD ACCESS PROCEDURE:

In line six delete 'Washington, DC 20362–5101' and replace with '2531 Jefferson Davis Highway, Arlington, VA 22242–5160.'

* * * * *

N01070–13

SYSTEM NAME:

Nuclear Program Interview and Screening.

SYSTEM LOCATION:

Naval Sea Systems Command (Code 08), 2531 Jefferson Davis Highway, Arlington, VA 22242–5160.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel interviewed or considered for assignment or retention in the Naval Nuclear Power Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Interview appropriation folder, interview chronology, interview index card, Navy Enlisted Nuclear Program Technical Screening Sheets, Nuclear Propulsion Officer Candidate Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To determine eligibility of individuals for the Naval Nuclear Power Program; to maintain statistical and accounting records on individuals for assignment and retention in the program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, loose leaf binders, and index card box.

RETRIEVABILITY:

Name, Navy rate (if applicable), Social Security Number, approximate date of screening or attendance at Nuclear Power School.

SAFEGUARDS:

All files in this system are stored in safes which are located in a restricted area with controlled access.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Sea Systems Command (Code 08), 2531 Jefferson Davis Highway, Arlington, VA 22242–5160.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Naval Sea Systems Command (Code 08), 2531 Jefferson Davis Highway, Arlington, VA 22242–5160.

The requester should provide full name, Navy rate (if applicable), Social Security Number, dates of attendance at Nuclear Power School Class (if applicable), or dates of service or screening.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Naval Sea Systems Command (Code 08), 2531 Jefferson Davis Highway, Arlington, VA 22242–5160.

The requester should provide full name, Navy rate (if applicable), Social Security Number, dates of attendance at Nuclear Power School Class (if applicable), or dates of service or screening.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; Bureau of Naval Personnel; U.S. Naval Academy; Naval Recruiting Command; current and/or previous commands; and Director, Naval Nuclear Propulsion.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01531–1

SYSTEM NAME:

USNA Applicants, Candidates, and Midshipmen Records *(58 FR 10717, February 22, 1993).*

CHANGES:

* * * * *

SYSTEM LOCATION:

In line two delete '580 Kingwood Street' and replace with '121 Blake Road' and in line three delete '5052' and replace with '5000.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In line two delete '580 Kingwood Street' and replace with '121 Blake Road' and in line three delete '5052' and replace with '5000.'

NOTIFICATION PROCEDURE:

In line six delete '580 Kingwood Street' and replace with '121 Blake Road' and in line seven delete '5052' and replace with '5000.'

RECORD ACCESS PROCEDURES:

In line five delete '580 Kingwood Street' and replace with '121 Blake Road' and in line six delete '5052' and replace with '5000.'

* * * * *

N01531–1

SYSTEM NAME:

USNA Applicants, Candidates, and Midshipmen Records.

SYSTEM LOCATION:

U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants and candidates for admission and Naval Academy Midshipmen.

CATEGORIES OF RECORDS IN THE SYSTEM:

Admissions records contain pre-candidate questionnaires concerning educational background, personal data, physical data, extracurricular activities, and employment; personal data; personal statements; transcripts from previously attended academic institutions; admission tests results; physical aptitude exam results; recommendation letters from school officials and others; professional development tests; interest inventory; extracurricular activities reports; reports of officer interviews; records of prior military service; and, Privacy Act disclosure forms. Nomination and appointment records include all card files of congressional offices and the names of persons whom each congressman appointed; files of candidates nominated for the following academic year; status cards, indexed by nominating source of all candidates appointed, admitted, and graduated, or resigned prior to graduation. Similar files are separately kept on foreign candidates.

Performance jackets and academic records include performance aptitude evaluations, performance grades, personal history, autobiography, record of emergency data, aptitude history, review boards records, medical excuse from duty forms, conduct records and grades, professional development tests, counseling and guidance development tests, counseling and guidance interview sheets and data forms, academic grades, class rankings, letters of commendation, training records, Oath of Office, Agreement to Serve, Privacy Act disclosure forms and other such records and information relative to the midshipmen.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 6956, 6957, 6958, 6962, and 6963; 44 U.S.C. 3101; and E.O. 9397.

PURPOSE(S):

To establish an audit trail of files which contains information on individuals as they progress from the application stage, through the admissions process, to disenrollment or graduation from the Naval Academy. Applicant's files contain information which is used to evaluate and to determine competitive standing and eligibility for appointments to the Naval Academy. Successful applicants become candidates whose files contain information to evaluate further each candidate's eligibility. Candidates' files are also used to identify candidates profiles for initiation of formal officer accession programs in conjunction with the Naval Academy admission process. Successful candidates who accept appointments become midshipmen. Midshipmen records contain personal, academic, and professional background information and are used for the management, supervision, administration, counseling, and discipline of midshipmen.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Parents and legal guardians of midshipmen for the limited purpose of counseling midshipmen who encounter academic, performance, or disciplinary difficulties.

The United States Naval Institute for the limited purpose of notifying midshipmen and their parents about benefits and opportunities provided by the United States Naval Institute.

The Naval Academy Athletic Association for the limited purpose of promoting and funding the Naval Academy Intercollegiate Athletic Program.

The United States Naval Academy Foundation for the limited purpose of sponsoring midshipmen candidates who were not admitted in previous years.

The United States Naval Academy Alumni Association for the limited purpose of supporting its activities related to the mission of the Naval Academy.

The Contract Tailor Shop for the limited purpose of scheduling appointments as required for uniform fittings.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All hard copy records are kept in file folders in secure rooms or in locked cabinets.

On-line storage is maintained on the Honeywell DPS8 mainframe in Computer Services, with line networking to VACs and interfacing with microcomputers and dial-up lines.

Off-line storage is kept on disks.

Records on magnetic tapes and hard copy data are kept in secured rooms or in locked cabinets for operator access and user pickup.

Backup magnetic tapes are kept in a vault.

RETRIEVABILITY:

Records are kept alphabetically by Company and Class. Records can be retrieved from data base by selection of any data element, i.e., name, address, alpha code, six digit candidate number, or Social Security Number, etc.

SAFEGUARDS:

Visitor control. Records are kept in locked cabinets or in secured rooms. Computer records are safeguarded through selective file access, signing of Privacy Act forms, passwords, RAM systems, program passwords, user controls, encoding and port controls. Disk and tape storage is in a secure room. Backup systems on magnetic tapes are secured in fire proof vault in Ward Hall.

RETENTION AND DISPOSAL:

On-line computer records are destroyed one year after the midshipman's class graduates or the midshipman is separated.

Performance records are retained by the Performance Officer for two years after the midshipman's class graduates, and then destroyed. Backup systems on magnetic tapes and disks are kept in secure storage and destroyed two years after the midshipman's class graduates. Files relative to midshipmen separated involuntarily, including by qualified resignation, are retained for two years after the midshipman's class graduates, or three years from the date of separation, whichever date is later, and then destroyed.

Official transcripts and records files are kept indefinitely by the Registrar on microfilm, computer files, magnetic tapes, and hard copy; admission records of unsuccessful candidates are properly destroyed after one year. Counseling and Guidance Research data are kept by the Professional Development Research Coordinator indefinitely. Nomination

and appointment files are retained for varying lengths of time.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Superintendent, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000.

Written requests should contain full name, company, class, and any personal identifier, such as a Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Superintendent, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000.

Written requests should contain full name, company, class, and any personal identifier, such as a Social Security Number.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals, midshipman, supervisors, Registrar, instructors, professors, officers, midshipman personal history/performance record, midshipman autobiography, Record of Emergency Data (NAVPERS 601–2), Statement of Personal History (DD Form 398), Aptitude History Record (Form 1610–105), Midshipman Summary Sheet, Certificate of Release or Discharge From Active Duty (DD Form 214), Military Performance Board Results, Letters of Probation, Midshipmen Performance Evaluation Reports (Form 54A), Medical Reports, Clinical Psychologist Reports, Excused Squad Chits (Form 6320/20), Conduct Card (Form 1690/91C), Letters of Commendation, Counseling and Guidance Interview and Data Records, Letters of Congressman, parents, etc., and copies of replies thereto, transcripts from high school or prior college, Review Board Records, and Record of Disclosure (Privacy Act).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01770–3

SYSTEM NAME:

Naval Academy Cemetery and Columbarium Records *(58 FR 10725, February 22, 1993).*

CHANGES:

* * * * *

SYSTEM LOCATION:

In line three delete '580 Kingwood Street' and replace with '121 Blake Road' and in line four delete '5052' and replace with '5000.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In line two delete '580 Kingwood Street' and replace with '121 Blake Road' and in line three delete '5052' and replace with '5000.'

NOTIFICATION PROCEDURE:

In line six delete '580 Kingwood Street' and replace with '121 Blake Road' and in line seven delete '5052' and replace with '5000.'

RECORD ACCESS PROCEDURES:

In line five delete '580 Kingwood Street' and replace with '121 Blake Road' and in line six delete '5052' and replace with '5000.'

N01770–3

SYSTEM NAME:

Naval Academy Cemetery and Columbarium Records.

SYSTEM LOCATION:

Security Department and Public Works Department, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those eligible to reserve a lot for future burial in the Naval Academy Cemetery. Deceased individuals interred/inured in the Naval Academy Cemetery/Columbarium.

CATEGORIES OF RECORDS IN THE SYSTEM:

State Burial Transit Permit, Application for Reimbursement of Headstone or Marker Expenses (VA Form 21–8834), Application of Standard Government Headstone or Marker for Installation in a Private or Local Cemetery (VA Form 40–1330), Lot Marker (NDW–USNA–DMC–1170/08), Columbarium Niche Cover Inscription (NDW–USNA–DMC–5370/42), U.S. Naval Academy Interment/Inurement Record (NDW–USNA–DMC–5360/43), U.S. Naval Academy Cemetery Record (NDW–USNA–DMC–1170/46), Naval Academy Foundation Order (NDW–USNA–DMC–5360/09), and correspondence to and from individuals. Specifically, information contained on the forms or correspondence may be: Full name, home address, rank, service, Social Security Number, date and place of birth, date and place of death, marital status, name of father and mother, name of next of kin and their address, telephone number, date of birth and date of death (if applicable), date and place of burial, lot number and other information relating to burial arrangements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 1481–1488; 44 U.S.C. 3101; and E.O. 9397.

PURPOSE(S):

To maintain official records of individuals holding grave site reservations and/or individuals interred/inured in the Naval Academy Cemetery or Columbarium. Records are used to respond to general inquiries from individuals holding grave site reservations, to verify eligibility of spouses of an officer or enlisted person of the Navy or Marine Corps who is interred/inured in the Naval Academy Cemetery or Columbarium.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and microfiche.

RETRIEVABILITY:

Alphabetically by last name and numerically by lot number.

SAFEGUARDS:

Records are kept in a building not open to general visiting and are maintained in an area accessible only to authorized personnel. Building is under surveillance of security personnel during non-working hours. Microfiche records are kept in the Naval Academy Archives which is not open to general

visiting and is locked during non-working hours.

RETENTION AND DISPOSAL:

Records are permanent. They are retained after the individual is deceased.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Superintendent, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000. Requests should contain name and Social Security Number of the individual concerned.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Superintendent, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual to whom it applies, the next of kin, and from the Register of the Alumni.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01850–2

SYSTEM NAME:

Physical Disability Evaluation System Proceedings *(58 FR 10727, February 22, 1993).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Physical Evaluation Board, Ballston Centre Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

In line nine delete the word 'transcripts' and replace with 'recordings.'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Filed by year of initial disability proceeding, and alphabetically by name and/or Social Security Number within that year.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In line two after 'Ballston' insert 'Centre' and at end of entry add '–1989.'

* * * * *

N01850–2

SYSTEM NAME:

Physical Disability Evaluation System Proceedings.

SYSTEM LOCATION:

Physical Evaluation Board, Ballston Centre Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy and Marine Corps personnel who have been considered by a Physical Evaluation Board for separation or retirement by reason of physical disability (including those found fit for duty by such boards).

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains medical board reports; statements of findings of physical evaluation boards; medical reports from Department of Veterans Affairs and civilian medical facilities; copies of military health records; copies of JAG Manual investigations; copies of prior actions/appellate actions/review taken in the case; recordings of physical evaluation board hearings; rebuttals submitted by the member; intra and interagency correspondence concerning the case; correspondence from and to the member, members of Congress, attorneys, and other interested members; and documents concerning the appointment of trustees for mentally incompetent service members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1216 and E.O. 9397.

PURPOSE(S):

To determine fitness for duty or eligibility for separation or retirement due to physical disability of Navy and Marine Corps personnel, by establishing the existence of disability, the degree of disability, and the circumstances under which the disability was incurred, and to respond to official inquiries concerning the disability evaluation proceedings of particular service personnel.

Used by the Office of the Judge Advocate General relating to legal review of disability evaluation proceedings; response to official inquiries concerning the disability evaluation proceedings of particular service personnel; to obtain information in order to initiate claims against third parties for recovery of medical expenses under the Medical Care Recovery Act (42 U.S.C. 2651–2653); and to obtain information on personnel determined to be mentally incompetent to handle their own financial affairs, in order to appoint trustees to receive their retired pay.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the Department of Veterans Affairs to verify information of service connected disabilities in order to evaluate applications for veteran's benefits.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and microfiche, and in some files, plastic recording discs and cassettes.

RETRIEVABILITY:

Filed by year of initial disability proceeding, and alphabetically by name and/or Social Security Number within that year.

SAFEGUARDS:

Files are maintained in file cabinets or other storage devices under the control of authorized personnel during working hours. Access during working hours is controlled by Board personnel and the office space in which the file cabinets and storage devices are located is locked after official working hours. The building in which the office is located employs security guards.

RETENTION AND DISPOSAL:

Records are permanent. They are retained by the Naval Council of Personnel Boards for six years. After that time, they are sent to the Washington National Center, 4205 Suitland Road, Suitland, MD.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Council of Personnel Boards, Ballston Centre Tower 2, 801

North Randolph Street, Arlington, VA 22203–1989.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Naval Council of Personnel Boards, Ballston Tower 2, 801 North Randolph Street, Arlington, VA 22203.

Written requests for information should contain the full name of the individual, military grade or rate, and date of Disability Evaluation System action. Written requests must be signed by the requesting individual.

For personal visits, the individual should be able to provide some acceptable identification, such as a military identification card (active duty or retired) or a driver's license.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Ballston Tower 2, 801 North Randolph Street, Arlington, VA 22203.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Military medical boards and medical facilities; Department of Veterans Affairs and civilian medical facilities; physical evaluation boards and other activities of the disability evaluation system, Naval Council of Personnel Boards, the Bureau of Medicine and Surgery; the Judge Advocate General; Navy and Marine Corps local command activities; other activities of the Department of Defense; and correspondence from private counsel and other interested persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N01900–1

SYSTEM NAME:

Naval Discharge Review Board Proceedings *(58 FR 10728, February 22, 1993).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Naval Discharge Review Board, Ballston Centre Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.

* * * * *

STORAGE:

In line one after the word 'folders;' add 'microfiche;'.

RETRIEVABILITY:

Delete entry and replace with 'Name, docket number, and/or Social Security Number.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In line two after 'Navy' insert the words 'Ballston Centre Tower 2' and at end of entry, add '–1989.'

NOTIFICATION PROCEDURE:

In line four delete the words 'Naval Discharge Review Board, Room 905, 801 North Randolph Street, Arlington, VA 22203' and replace with 'Director, Naval Council of Personnel Boards, Ballston Centre Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.'

RECORD ACCESS PROCEDURES:

In line four delete the words 'Naval Discharge Review Board, Room 905, 801 North Randolph Street, Arlington, VA 22203' and replace with 'Director, Naval Council of Personnel Boards, Ballston Centre Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.'

* * * * *

N01900–1

SYSTEM NAME:

Naval Discharge Review Board Proceedings.

SYSTEM LOCATION:

Naval Discharge Review Board, Ballston Centre Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former Navy and Marine Corps personnel who have submitted applications for review of discharge or dismissal pursuant to 10 U.S.C. 1553, or whose discharge or dismissal has been or is being reviewed by the Naval Discharge Review Board, on its own motion, or pursuant to an application by a deceased former member's next of kin.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains the former member's application for review of discharge or dismissal, any supporting documents submitted therewith, copies of correspondence between the former member or his counsel and the Naval Discharge Review Board and other correspondence concerning the case, and a summarized record of proceedings before the Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1553 and E.O. 9397.

PURPOSE(S):

Selected information is used to defend the Department of the Navy in civil suits filed against it in the State and/or Federal courts system. This information will permit officials and employees of the Board to consider former member's applications for review of discharge or dismissal and any subsequent application by the member; to answer inquiries on behalf of or from the former member or counsel regarding the action taken in the former member's case. The file is used by members of the Board for Correction of Naval Records when reviewing any subsequent application by the former member for a correction of records relative to the former member's discharge or dismissal.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The file is used by counsel for the former member, and by accredited representatives of veterans' organizations recognized by the Secretary, Department of Veterans Affairs under 38 U.S.C. 3402 and duly designated by the former member as his or her representative before the Naval Discharge Review Board.

Officials of the Department of Justice and the United States Attorneys offices assigned to the particular case.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; microfiche; plastic recording disks and recording cassettes.

RETRIEVABILITY:

Name, docket number, and/or Social Security Number.

SAFEGUARDS:

Files are kept within the Naval Discharge Review Board's administrative office. Access during

business hours is controlled by Board personnel. The office is locked at the close of business; the building in which the office is located employs security guards.

RETENTION AND DISPOSAL:

Files are permanent. They are retained in the Naval Discharge Review Board's administrative office for two years. After that time, they are sent to the Federal Records Center, 4205 Suitland Road, Suitland, MD 20409.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Council of Personnel Boards, Department of the Navy, Ballston Centre Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Ballston Centre Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Ballston Centre Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information contained in the files is obtained from the former member or those acting on the former member's behalf, from military personnel and medical records, and from records of law enforcement investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N04060–1

SYSTEM NAME:

Navy and Marine Corps Exchange Sales Control and Security Files *(58 FR 10735, February 22, 1993)*.

CHANGES:

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SYSTEM MANAGER(S) AND ADDRESS:

Delete first paragraph and replace with 'Policy Official: Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

* * * * *

N04060–1

SYSTEM NAME:

Navy and Marine Corps Exchange Sales Control and Security Files.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Customers and employees at Navy and Marine Corps Exchanges, including individuals making large dollar volume purchases and contract purchases; individuals having requested adjustments or made claims; individuals having previously passed bad checks or been apprehended for shoplifting.

CATEGORIES OF RECORDS IN THE SYSTEM:

Sales and contract records; lists, logs, or card records of individuals; claims and adjustment records; large volume purchase records; mail orders; customer special order records; customer list; correspondence; and abuser notification letters. Records of complaints and investigations of regulatory and criminal violations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To control sales, prevent and detect abuse of privileges, and determine responsibility when there are violations of regulations or criminal statutes. Information may be furnished to the Naval Criminal Investigative Service or command legal personnel for prosecution of military offenses and other administrative actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Federal Bureau of Investigation or foreign organizations for further investigation or prosecution.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic media. Manual records may be stored in file folders or microform, in file cabinets or other containers.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Access is provided on a need-to-know basis, only. Automated records are located in restricted areas accessible only to authorized persons. Manual records and computer printouts are maintained in locked or controlled access areas.

RETENTION AND DISPOSAL:

Records are retained for six years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

The system manager is the Commanding Officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the naval activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of records notices.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves should address written inquiries to the commanding officer of the naval activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of records notices.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; investigators; witnesses; and activity sales and contract records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(2), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager.

N04064–1

SYSTEM NAME:

USNA Laundry and Drycleaning Charge Account *(58 FR 10736, February 22, 1993).*

CHANGES:

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SYSTEM LOCATION:

In line two delete '580 Kingwood Street' and replace with '121 Blake Road' and in line three delete '5052' and replace with '5000.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In line two delete '580 Kingwood Street' and replace with '121 Blake Road' and in line three delete '5052' and replace with '5000.'

NOTIFICATION PROCEDURE:

In line six delete '580 Kingwood Street' and replace with '121 Blake Road' and in line seven delete '5052' and replace with '5000.'

RECORD ACCESS PROCEDURES:

In line five delete '580 Kingwood Street' and replace with '121 Blake Road' and in line six delete '5052' and replace with '5000.'

* * * * *

N04064–1

SYSTEM NAME:

USNA Laundry and Drycleaning Charge Account.

SYSTEM LOCATION:

Laundry and Drycleaning Plant, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for a charge account with the Naval Academy Laundry and Drycleaning Plant.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information is collected on Form NDW-USNA-DMH–4064/14 and includes applicant's name; Social Security Number; rank (if applicable); branch of service; home and work addresses and telephone numbers. Information required to maintain the charge account records is obtained from and/or recorded on accounts receivable ledgers, journals, charge tickets and check listings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 44 U.S.C. 3101; and E.O. 9397.

PURPOSE(S):

To establish a charge account at the Naval Academy Laundry and Drycleaning Plant. Information will be used for billing purposes by the officials and employees of the Plant.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy and magnetic minicassette tape form.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Access to building is restricted to authorized persons only. Record files are not available to personnel not requiring access in the performance of their official duties. This is routinely limited to the billing clerk processing the application and recording activity on the account. Records are secured within a locked office in a locked building on a military installation when not actually in use.

RETENTION AND DISPOSAL:

Hard copy records are retained in the current file area as long as the charge account is active. These records are then retired and kept in secured storage for two years and then destroyed. Cassette tape records are of two types, daily and journal (monthly recapitulation). These tapes are erased on a daily or monthly basis, respectively, during the preparation of the following day's or month's activity record.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual applying for the charge account, from daily laundry and drycleaning will-call tickets (charges for goods and services provided) and from records of payment by charge account holders (check listings).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N04064–2

SYSTEM NAME:

USNA Retail Customer Claim Record *(58 FR 10736, February 22, 1993).*

CHANGES:

* * * * *

SYSTEM LOCATION:

In line two delete '580 Kingwood Street' and replace with '121 Blake

Road' and in line three delete '5052' and replace with '5000.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In line two delete '580 Kingwood Street' and replace with '121 Blake Road' and in line three delete '5052' and replace with '5000.'

NOTIFICATION PROCEDURE:

In line six delete '580 Kingwood Street' and replace with '121 Blake Road' and in line seven delete '5052' and replace with '5000.'

RECORD ACCESS PROCEDURES:

In line five delete '580 Kingwood Street' and replace with '121 Blake Road' and in line six delete '5052' and replace with '5000.'

N04064–2

SYSTEM NAME:

USNA Retail Customer Claim Record.

SYSTEM LOCATION:

Laundry and Drycleaning Plant, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed claims against the Naval Academy Laundry and Drycleaning Plant and appropriation 17X4002 for cash or credit settlement for damaged or lost articles.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information is collected on Form NDW-USNA-DMH–4064/15 and includes claimant's name; Social Security Number; rank (if applicable); home and work addresses and telephone numbers; description, original cost and date of purchase of item(s) for which claim is filed, and circumstances of loss or extent of damage; claim number, disposition, and remarks by approving authority.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 44 U.S.C. 3101; and E.O. 9397.

PURPOSE(S):

To investigate claims for cash or credit settlement for damaged or lost articles.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy form.

RETRIEVABILITY:

Name of customer and date laundry was turned in for cleaning.

SAFEGUARDS:

Access to building is restricted to authorized persons only. Record files are not available to personnel not requiring access in the performance of their official duties. This is limited to the official processing of the claim and the clerk who maintains the file and prepares the administrative paperwork. Records are secured within a locked office in a locked building on a military installation when not actually in use.

RETENTION AND DISPOSAL:

Retained in the current file area for one calendar year after the close of the individual's claim. The record is then stored for one more year and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Head, Laundry and Drycleaning Plant, U.S. Naval Academy, 121 Blake Road, Annapolis, MD 21402–5000.

Requesting individuals should specify their full names. Visitors should be able to identify themselves by any commonly recognized evidence of identity. Written requests must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual who filed the claim and offices who are processing the claim.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N04066–1

SYSTEM NAME:

Bad Checks and Indebtedness Lists *(58 FR 10737, February 22, 1993).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724 (for all Navy exchanges).'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Policy Official: Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Record Holder: Director, Treasury Division (TD), 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724 (for Navy exchanges).'

NOTIFICATION PROCEDURE:

In line six delete 'Naval Station New York, Staten Island, NY 10305–5097' and replace with '3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

RECORD ACCESS PROCEDURES:

In line five delete 'Naval Station New York, Staten Island, NY 10305–5097' and replace with '3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

* * * * *

N04066–1

SYSTEM NAME:

Bad Checks and Indebtedness Lists.

SYSTEM LOCATION:

Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724 (for all Navy exchanges).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patrons of Navy exchanges who have passed bad checks; recruits who have open accounts with Navy exchanges; patrons who have made C.O.D. mail order transactions and those patrons who make authorized charge or credit purchases where their accounts are maintained on the basis of an identifying particular such as name and/or Social Security Number.

CATEGORIES OF RECORDS IN THE SYSTEM:

Bad Check System (including: Returned Check Ledger; Returned Check Report; copies of returned checks; bank advice relative to the returned check(s); correspondence relative to attempt by the Navy exchange to locate the patron and/or obtain payment; a printed report of names of those persons who have not made full restitution promptly, or who have had one or more checks returned through their own fault or negligence); Accounts Receivable Ledger, detailed by patron; C.O.D. Sales Ledger.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 6011; 80 Stat 308 and 88 Stat 393, Federal Claims Collection Act of 1966 (Pub. L. 89–508) and Debt Collection Act of 1982 (Pub. L. 97–365); and E.O. 9397.

PURPOSE(S):

To maintain an automated tracking and accounting system for individuals indebted to the Department of the Navy. Records in this system are subject to use in approved computer matching programs authorized under the Privacy Act of 1974, as amended, for debt collection purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To a commercial credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file for use in the administration of debt collection.

To a debt collection agency for the purpose of collection services to recover indebtedness owed to the Department of the Navy.

To the Internal Revenue Service (IRS) to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by Navy against the tax payer pursuant to 26 U.S.C. 6103(m)(2) and in accordance with 31 U.S.C. 3711, 3217, and 3718.

Note: Redisclosure of a mailing address from the IRS may be made only for the purpose of debt collection, including to a debt collection agency in order to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982, except that a mailing address to a consumer reporting agency is for the limited purpose of obtaining a commercial credit report on the particular taxpayer. Any such address information obtained from the IRS will not be used or shared for any other Navy purpose or disclosed to another Federal , state, or local agency which seeks to locate the same individual for its own debt collection purpose.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act of 1966 (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The disclosure is limited to information necessary to establish the identity of the individual, including name and taxpayer identification number (Social Security Number).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The media in which these records are maintained vary, but include: Magnetic tape; printed reports; file folders; file cards, and floppy and hard disks.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Locked file cabinets; supervised office spaces; supervised computer tape library which is accessible only through the computer center (entry to the computer center is controlled by a combination lock known by authorized personnel only).

RETENTION AND DISPOSAL:

Records are kept for ten years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Record Holder: Director, Treasury Division (TD), 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724 (for Navy exchanges).

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

In the initial inquiry, the requester must provide full name, Social Security Number, and the activity where they had their dealings. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

In the initial inquiry, the requester must provide full name, Social Security Number, and the activity where they had their dealings. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual; the bank involved; activity sales records; Internal Revenue Service; credit bureaus; and the Defense Manpower Data Center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N04066–2

SYSTEM NAME:

Commercial Fidelity Bond Insurance Claims *(58 FR 10738, February 22, 1993).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724 (for all Navy exchanges).'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Policy Official: Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

NOTIFICATION PROCEDURE:

In line six delete 'Naval Station New York, Staten Island, NY 10305–5097' and replace with '3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

RECORD ACCESS PROCEDURES:

In line six delete 'Naval Station New York, Staten Island, NY 10305–5097' and replace with '3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

* * * * *

N04066–2

SYSTEM NAME:

Commercial Fidelity Bond Insurance Claims.

SYSTEM LOCATION:

Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724 (for all Navy exchanges).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian and military personnel assigned to Navy exchanges, who the duly constituted authority (usually a Board of Investigation appointed by the base Commanding Officer) has established to be guilty of a dishonest act which has resulted in a loss of money, securities or other property, real or personal, for which the exchange is legally liable.

CATEGORIES OF RECORDS IN THE SYSTEM:

Equipment Loss Reports, Cash and/or Merchandise Loss Reports from Navy exchanges, including correspondence relating to losses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To render proper assistance in processing insurance claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the insurance carrier (Fidelity Bond Underwriter) to ensure appropriate coverage.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING; RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The media in which these records are maintained varies but includes file folders and ledgers.

RETRIEVABILITY:

Name, payroll number, Social Security Number, and activity.

SAFEGUARDS:

Locked file cabinets; locked offices which when open are supervised by appropriate personnel; security guards.

RETENTION AND DISPOSAL:

Records are kept for four years and then retired to the Federal Records Center, St. Louis, MO.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

In the initial inquiry the requester must provide full name, payroll or military service number and activity where they had their dealings. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Commander, Navy Exchange Service Command, Resale and Services Support Office, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

The request should contain full name, payroll or military service number and activity where they had their dealings. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual; the insurance underwriter; audit reports; investigatory reports and/or activity loss records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N04066–3

SYSTEM NAME:

Layaway Sales Records *(58 FR 10738, February 22, 1993).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724 (for all Navy exchanges).'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Policy Official: Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

Record Holder: Director, Comptroller Nonappropriated Fund Division (CNAFD), Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724. Individual record holders within the central system may be contacted through the central system record holder.'

NOTIFICATION PROCEDURE:

In line six delete 'Naval Station New York, Staten Island, NY 10305–5097' and replace with '3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

RECORD ACCESS PROCEDURES:

In line five delete 'Naval Station New York, Staten Island, NY 10305–5097' and replace with '3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

* * * * *

N04066–3

SYSTEM NAME:

Layaway Sales Records.

SYSTEM LOCATION:

Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724 (for all Navy exchanges).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patrons of Navy exchanges who buy goods on layaway.

CATEGORIES OF RECORDS IN THE SYSTEM:

Layaway tickets and layaway patron lists.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To record the selection of layaway merchandise, record payments, verify merchandise pick-up and perform sales audits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders include layaway tickets and layaway patron lists.

RETRIEVABILITY:

Name, address, Social Security Number or exchange permit number.

SAFEGUARDS:

Locked file cabinets, supervised records space.

RETENTION AND DISPOSAL:

Destroyed after two years per Navy Exchange Manual.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Record Holder: Director, Comptroller Nonappropriated Fund Division (CNAFD), Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724. Individual record holders within the central system may be contacted through the central system record holder.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

In the initial inquiry, the requester must provide full name and activity where layaway sales were transacted. A list of other offices the requester may visit will be provided after initial contact at the office listed above. At the time of personal visit, requesters must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724. The requester must provide full name and activity where layaway sales were transacted. A list of other offices the requester may visit will be provided after initial contact at the office listed above. At the time of personal visit, requesters must provide proof of identity containing the requester's signature.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N04066–4

SYSTEM NAME:

Navy Lodge Records *(58 FR 10739, February 22, 1993)*.

* * * * *

SYSTEM LOCATION:

In line three delete 'Naval Station New York, Staten Island, NY 10305–5097' and replace with '3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Policy Official: Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Record Holder: Manager, Navy Lodge Program Director, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724. Individual record holders within the central system may be contacted through the Record Holder Manager.'

NOTIFICATION PROCEDURE:

In line six delete 'Naval Station New York, Staten Island, NY 10305–5097' and replace with '3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

RECORD ACCESS PROCEDURES:

In line four delete 'Naval Station New York, Staten Island, NY 10305–5097' and replace with '3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

* * * * *

N04066–4

SYSTEM NAME:

Navy Lodge Records.

SYSTEM LOCATION:

Navy Exchange System Worldwide. Coordinator for System: Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patrons and guests authorized lodging at a Navy Exchange Navy Lodge.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reservation request; guest registration card; Navy Lodge guest folio.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To keep a record of reservations to insure orderly room assignment and avoid improper booking; to record registration and payment of accounts; to verify proper usage by eligible patrons; cash control; to gather occupancy data; to determine occupancy breakdown;

and to account for rentals and furnishings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The media in which these records are maintained vary, but include: Folio card; ledger; guest registration cards; and local copies and reports of central system reports.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Records are maintained in supervised locked files.

RETENTION AND DISPOSAL:

Records are kept for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Record Holder: Manager, Navy Lodge Program Director, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724. Individual record holders within the central system may be contacted through the Record Holder Manager.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

In the initial inquiry the requester must provide full name, Social Security Number, and location of the last Navy Lodge where they had dealings. A list of other offices the requester may visit will be provided after initial contact is made with the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records should address written inquiries to the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Requesters must provide full name, Social Security Number, and location of the last Navy Lodge where they had dealings. A list of other offices the requester may visit will be provided after initial contact is made with the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual patron and the charges he or she incurred during a visit at the Navy Lodge.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N04066–5

SYSTEM NAME:

NEXCOM Direct Mail List *(58 FR 10740, February 22, 1993).*

CHANGES:

* * * * *

SYSTEM LOCATION:

In line two delete 'Naval Station New York, Staten Island, NY 10305–5097' and replace with '3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Policy Official: Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Record Holder Manager: Deputy Commander, Marketing Communications Division (MCD), Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

NOTIFICATION PROCEDURE:

In line six delete 'Naval Station New York, Staten Island, NY 10305–5097' and replace with '3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

RECORD ACCESS PROCEDURES:

In line four delete 'Naval Station New York, Staten Island, NY 10305–5097' and replace with '3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

* * * * *

N04066–5

SYSTEM NAME:

NEXCOM Direct Mail List.

SYSTEM LOCATION:

Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All authorized customers of military resale systems who have requested receipt of promotional, informational and marketing research materials.

CATEGORIES OF RECORDS IN THE SYSTEM:

For each authorized customer: Name, address, rank, branch of service, status (active or retired), Social Security Number, pay grade, age, sex, race, number, names, and birth dates of dependents, date of sign up, telephone number (if available), account number, rotation date (if available), mailings sent to customers and responses available.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 6011; and E.O. 9397.

PURPOSE(S):

To maintain a data base which will permit the Navy Exchange Program to mail sales promotional, informational and market research materials to those authorized customers who have requested receipt of materials. The data base will also be used to define target markets among the authorized customers who sign up for the list in order to develop better merchandise assortments and services to meet the needs of the customers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are stored on computer tape in a single location.

RETRIEVABILITY:

Name, Social Security Number, address and account number.

SAFEGUARDS:

Secured and supervised facility; access restricted.

RETENTION AND DISPOSAL:

The records are retained as long as the customer wishes to receive the materials, then the records are destroyed by the Navy Resale and Services Support Office.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Record Holder Manager: Deputy Commander, Marketing Communications Division (MCD), Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records should address written inquiries to the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual authorized customer and the Department of Defense/Defense Enrollment Eligibility Reporting System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N04410–1

SYSTEM NAME:

File of Records of Acquisition, Transfer and Disposal of Privately Owned Vehicles *(58 FR 10742, February 22, 1993).*

CHANGES:

* * * * *

SYSTEM LOCATION:

In line two after 'United Kingdom' add 'PSC 806, Box 10' and replace zip code with '09418–3000.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

In line three delete 'FPO AE 09516–3000'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Policy Official: Commanding Officer, U.S. Naval Communication Station, United Kingdom, PSC 806, Box 10, FPO AE 09418–3000.

Record Holder: Chief Master at Arms Office, U.S. Naval Communication Station, United Kingdom, PSC 806, Box 10, FPO AE 09418–3000.'

NOTIFICATION PROCEDURE:

In line seven delete 'FPO AE 09516–3000' and replace with 'PSC 806, Box 10, FPO AE 09418–3000.'

RECORD ACCESS PROCEDURES:

In line six delete 'FPO AE 09516–3000' and replace with 'PSC 806, Box 10, FPO AE 09418–3000.'

* * * * *

N04410–1

SYSTEM NAME:

File of Records of Acquisition, Transfer and Disposal of Privately Owned Vehicles.

SYSTEM LOCATION:

U.S. Naval Communication Station, United Kingdom, PSC 806, Box 10, FPO AE 09418–3000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Naval personnel stationed at U.S. Naval Communication Station, United Kingdom, who own a concession vehicle in the United Kingdom.

CATEGORIES OF RECORDS IN THE SYSTEM:

Request for delivery of a motor vehicle without payment of duty, value added tax and car tax.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To maintain information on type of car, engine number, license number, year, make of car, base assigned, organization, Social Security Number, and pay grade.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Locked in CMAA Office with a 24 hour security watch.

RETENTION AND DISPOSAL:

Records are maintained as long as a person owns a concession vehicle in the United Kingdom. Records are burned as soon as vehicle is either shipped out of the U.K. or destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commanding Officer, U.S. Naval Communication Station, United Kingdom, PSC 806, Box 10, FPO AE 09418–3000.

Record Holder: Chief Master at Arms Office, U.S. Naval Communication Station, United Kingdom, PSC 806, Box 10, FPO AE 09418–3000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding Officer, U.S. Naval Communication Station, United Kingdom, PSC 806, Box 10, FPO AE 09418–3000.

The request should contain name, Social Security Number, and address of the individual concerned and should be signed. Personal visits may be made to that office, but individuals must have valid military ID or, if no longer in the military, have other valid identification such a driver's license.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding Officer, U.S. Naval Communication Station, United Kingdom, PSC 806, Box 10, FPO AE 09418–3000.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Applicable U.S. Serviceman.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05800–1

SYSTEM NAME:

Legal Office Litigation/ Correspondence Files *(58 FR 10769, February 22, 1993).*

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Associate General Counsel (Litigation), Office of the General Counsel of the Navy, 2221 Jefferson Davis Highway, Suite 1000, Arlington, VA 22244–5103.'

NOTIFICATION PROCEDURE:

In line seven delete 'Department of the Navy, Washington, DC 20360–5110.' and replace with 'Office of the General Counsel of the Navy, 2221 Jefferson Davis Highway, Suite 1000, Arlington, VA 22244–5103.'

RECORD ACCESS PROCEDURES:

In line seven delete 'Department of the Navy, Washington, DC 20360–5110.' and replace with 'Office of the General Counsel of the Navy, 2221 Jefferson Davis Highway, Suite 1000, Arlington, VA 22244–5103.'

* * * * *

N05800–1

SYSTEM NAME:

Legal Office Litigation/ Correspondence Files.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in litigation which requires Navy action.

CATEGORIES OF RECORDS IN THE SYSTEM:

Statements; affidavits/declarations; investigatory and administrative reports, including background investigations to determine suitability for service; personnel, financial, medical and business records; promotion/evaluation information; test or evaluation materials; hotline complaints and responses thereto; discovery and discovery responses; motions; orders; rulings; letters; messages; forms; reports; surveys; audits; summons; English translations of foreign documents; photographs; legal opinions; subpoenas; pleadings; memos; related correspondence; briefs; petitions; court records involving litigation; and, related matters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Department Regulations.

PURPOSE(S):

To prepare correspondence and materials for litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinets and computerized docket system.

RETRIEVABILITY:

Name of individual and the year litigation commenced.

SAFEGUARDS:

Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access is controlled by password or other user code system.

RETENTION AND DISPOSAL:

After closure, records are sent to Federal Records Center where they are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Associate General Counsel (Litigation), Office of the General Counsel of the Navy, 2221 Jefferson Davis Highway, Suite 1000, Arlington, VA 22244–5103.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the naval activity involved in the litigation or to the Office of the General Counsel of the Navy, 2221 Jefferson Davis Highway, Suite 1000, Arlington, VA 22244–5103.

Written requests should include name and date litigation was filed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the naval activity involved in the litigation or to the Office of the General Counsel of the Navy, 2221 Jefferson Davis Highway, Suite 1000, Arlington, VA 22244–5103.

Written requests should include full name and year litigation commenced.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Court records, records from the individual, personal interviews and statements, departmental records such as personnel files, medical records, State and Federal records, police reports and complaints, general correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), (k)(6), and (k)(7) as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and 3, (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

N05819–3

SYSTEM NAME:

Naval Clemency and Parole Board Files *(58 FR 10781, February 22, 1993).*

CHANGES:

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SYSTEM LOCATION:

In line two after the word 'Ballston' insert 'Centre'.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

In line two after the word 'clemency' add 'and/'.

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Name.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

In line two after 'Navy' insert the words 'Ballston Centre Tower 2' and at end of entry add '–1989.'

NOTIFICATION PROCEDURE:

In line four delete the words 'Naval Discharge Review Board, Room 905, 801 North Randolph Street, Arlington, VA 22203' and replace with 'Director, Naval Council of Personnel Boards, Ballston Centre Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.'

RECORD ACCESS PROCEDURES:

In line four delete the words 'Naval Discharge Review Board, Room 905, 801 North Randolph Street, Arlington, VA 22203' and replace with 'Director, Naval Council of Personnel Boards, Ballston Centre Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.'

* * * * *

N05819–3

SYSTEM NAME:

Naval Clemency and Parole Board Files.

SYSTEM LOCATION:

Naval Clemency and Parole Board, Ballston Centre Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members or former members of the Navy or Marine Corps whose cases have been or are being considered by the Naval Clemency and Parole Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains individual applications for clemency and/or parole, reports and recommendations thereon indicating progress in confinement or while awaiting completion of appellate review if not confined, or on parole; correspondence between the individual or his counsel and the Naval Clemency and Parole Board or other Navy offices; other correspondence concerning the case; the court-martial order and staff Judge Advocate's review; and a summarized record of the proceedings of the Board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 874(a), 952–954 and E.O. 9397.

PURPOSE(S):

The file is used in conjunction with periodic review of the member's or former member's case to determine whether or not clemency or parole is warranted. The file is referred to in answering inquiries from the member or former member or their counsel. The file is referred to by the Naval Discharge Review Board and the Board for Correction of Naval Records in conjunction with their subsequent review of applications from members or former members. The file is also used by counsel in connection with representation of members or former members before the Naval Clemency and Parole Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Files are kept within the Naval Clemency and Parole Board administration office. Access office. Access during business hours is controlled by Board personnel. The office is locked at the close of business; the building in which the office is located employs security guards.

RETENTION AND DISPOSAL:

Files are permanent. They are retained in the Naval Clemency and Parole Board's administrative office until all portions of the sentence have been completed and the discharge has been executed. After that the folders are sent to Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Council of Personnel Boards, Department of the Navy, Ballston Centre Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Ballston Centre Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Naval Council of Personnel Boards, Ballston Centre Tower 2, 801 North Randolph Street, Arlington, VA 22203–1989.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information contained in the file is obtained from the member or former member or from those acting in their behalf, from confinement facilities, from military commands and offices, from personnel service records and medical records, and from civilian law enforcement agencies or individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt under 5 U.S.C. 552a (j)(2), as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and 3, (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

N06320–2

SYSTEM NAME:

Family Advocacy Program System *(58 FR 10795, February 22, 1993)*

CHANGES:

* * * * *

SYSTEM LOCATION:

In line two delete 'Navy Department' and replace with '2300 E Street, NW,'.

* * * * *

STORAGE:

In line two delete 'punched cards'.

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Family Advocacy case records are maintained in terminal digit, color code folders at the activity four years after the last entry in the file. If there is no subsequent activity four years after closure, the records are transferred to the National Personnel Records Center, 9600 Page Boulevard, St. Louis, MO 63132–5100, where they are retained for 50 years and then destroyed. Central Registry records are retained at the Medical Information Medical System where they are cut annually and copies are maintained for three years and then destroyed.'

SYSTEM MANAGER(S) AND ADDRESS:

In line two delete 'Navy Department' and replace with '2300 E Street, NW,'.

NOTIFICATION PROCEDURE:

In line eight delete 'Navy Department' and replace with '2300 E Street, NW,' and in paragraph two,delete '23rd and 'E' Streets' and replace with '2300 E Street,'.

RECORD ACCESS PROCEDURES:

In line eight delete 'Navy Department' and replace with '2300 E Street, NW,'.

* * * * *

N06320–2

SYSTEM NAME:

Family Advocacy Program System.

SYSTEM LOCATION:

Central Registry: Chief, Bureau of Medicine and Surgery, 2300 E Street, NW, Washington, DC 20372–5120.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All beneficiaries entitled to care at Navy medical and dental facilities whose abuse or neglect is brought to the attention of appropriate authorities, and all persons reported for abusing or neglecting such beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records, investigative reports, correspondence, family advocacy, committee reports, follow-up and evaluative reports, and any other supportive data assembled relevant to suspected, at risk, and confirmed cases of family members abuse or neglect.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5132; 44 U.S.C. 3101; and E.O. 9397.

PURPOSE(S):

This system is used by officials and employees of the Department of the Navy and the Department of Defense in the performance of their official duties relative to the health and medical treatment of Department of Defense beneficiaries in naval medical and dental facilities.

This system is used by officials and employees of the Department of the Navy to collect information pertaining to the identification, evaluation, intervention, treatment, prevention and follow-up of victims and perpetrators of abuse or neglect.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Executive Branch of government in the performance of their official duties relating to the coordination of family advocacy programs, medical care, and research concerning family member abuse or neglect.

To federal, state or local government agencies when it is deemed appropriated to utilize civilian resources in the counseling and treatment of individuals or families involved in abuse or neglect or when it is deemed appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement.

To authorized officials and employees of the National Academy of Sciences, and private and public organizations and individuals for authorized health research in the interest of the federal government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

To officials and employees of federal, state, and local governments and agencies when required by law and/or regulation in furtherance of local communicable disease control, family abuse prevention programs, preventive medicine and safety programs, and other public health and welfare programs.

To officials and employees of local and state governments and agencies in the performance of their official duties relating to professional certification, licensing, and accreditation of health care providers.

To law enforcement officials to protect the life and welfare of third parties. This release will be limited to necessary information. Consultation with the hospital or regional judge advocate is advised.

When required by federal statute, by executive order, or by treaty; information will be disclosed to the individual, organization, or government agency, as necessary.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

Note: Records of identify, diagnosis, prognosis or treatment of any client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United Sates, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-3 and 290ee-3. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The 'Blanket Routine Uses' do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored in file folders, microfilm, magnetic tape, machine lists, discs, and other computerized or machine readable media.

RETRIEVABILITY:

Records are retrieved through indices and cross indices of all individuals and relevant incident data. Types of indices used include, but are not limited to: Names, Social Security Numbers, and types of incidents.

SAFEGUARDS:

Records are maintained in various kinds of filing equipment in specified monitored or controlled access rooms or areas. Public access is not permitted. Records are accessible only to authorized personnel who are properly screened and trained, and on a need-to-know basis, only.

Computer terminals are located in supervised areas, with access controlled by password or other user code system.

RETENTION AND DISPOSAL:

Family Advocacy case records are maintained in terminal digit, color code folders at the activity four years after the last entry in the file. If there is no subsequent activity four years after closure, the records are transferred to the National Personnel Records Center, 9600 Page Boulevard, St. Louis, MO 63132–5100, where they are retained for

50 years and then destroyed. Central Registry records are retained at the Medical Information Medical System where they are cut annually and copies are maintained for three years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Bureau of Medicine and Surgery, 2300 E Street, NW, Washington, DC 20372–5120, and commanding officers of medical treatment facilities. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the commanding officer of the medical treatment facility for which they received treatment or to the Chief, Bureau of Medicine and Surgery, 2300 E Street, NW, Washington, DC 20372–5120. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records. The request should contain the full name of the individual and Social Security Number of the military or civilian sponsor or guardian, date and place of treatment, and alleged reporting of incident.

The requester may visit the office of the Chief, Bureau of Medicine and Surgery, 2300 E Street, NW, Washington, DC 29372–5120, and the commanding officers of the individual medical treatment facilities to obtain information on whether or not the system contains records pertaining to him or her. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices. Armed Forces I.D. card or other type of identification bearing the picture and signature of the requester will be considered adequate proof of identity.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the medical treatment facility for which they received treatment or to the Chief, Bureau of Medicine and Surgery, 2300 E Street, NW, Washington, DC 20372–5120. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Medical and dental records and reports and information from other sources including educational institutions, medical institutions, law enforcement agencies, public and private health and welfare agencies, and witnesses.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Part of this system may be exempt under 5 U.S.C. 552a(k)(2) and (k)(5), as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and 3, (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

N12930–1

SYSTEM NAME:

Human Resources Group Personnel Records *(58 FR 10823, February 22, 1993)*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724 and at all Navy Exchanges.

Mailing addresses for Navy Exchanges are available from the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Policy Official: Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Master Record Holder: Manager, Staffing and Career Management, HRG–3, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Local Record Holder: Manager at the local Navy Exchange. Mailing addresses are available from the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

NOTIFICATION PROCEDURE:

In line six delete 'Naval Station New York, Staten Island, NY 10305–5097' and replace with '3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724,'.

RECORD ACCESS PROCEDURES:

In line six delete 'Naval Station New York, Staten Island, NY 10305–5097' and replace with '3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724,'.

* * * * *

N12930–1

SYSTEM NAME:

Human Resources Group Personnel Records.

SYSTEM LOCATION:

Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724 and at all Navy Exchanges.

Mailing addresses for Navy Exchanges are available from the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees, former civilian employees, and applicants for employment with the Navy Exchange Service Command and Navy Exchanges located worldwide. Employees who are paid from nonappropriated funds are regular full time, regular part-time, temporary full time, temporary part-time and intermittent.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel jackets, including but not limited to Personnel Information Questionnaire, Personnel Action; Certification of Medical Examination Indoctrination Checklist; Election forms for all life, health, and retirement programs, applicant participation data for each program; notice of excessive absence and tardiness and warnings; disciplinary actions; certified record of court attendance; certified copy of completed military orders for any annual duty tours with recognized reserve organizations; employee job description; tuition assistance records; examination papers and tests, if any; evidence of date of birth, where required; official letters of commendation; cash register overage/shortage records; report of hearings and recommendations relative to employee's grievances; official work performance rating; designation beneficiary for unpaid compensation; reference check records; applicant files; employee profiles; personnel security information (including copies of National Agency Check (NAC) and Naval Criminal

Investigative Service (NCIS) reports); Certificate of Standards of Conduct and Fraud, Waste and Abuse training; travel requests, travel allowance and claims record; transportation agreements; employee affidavits; privilege card application, work assignments, work performance capability, counseling records, work-related records, training records including courses, type and completion dates; and related data.

Labor and Employee Relations Records include notices of excessive absence, tardiness and warnings; disciplinary actions; unsatisfactory work performance evaluations; grievances, appeals, complaint and appeal records; reports of potential grievances and appeals; congressional correspondence; investigative reports and summaries of personnel administrative actions.

Employee Benefits Records include data relating to Quality Salary Increase, Superior Accomplishment Recognition Awards, beneficial suggestions and similar awards; and personnel listings of the aforementioned services. Election forms for all life, health, and retirement programs and claims made for those programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 29 U.S.C. 201; 29 U.S.C. 633a; 29 U.S.C. 791 and 794a; Pub. L. 93–259, Equal Employment Act of 1972; and E.O. 9397.

PURPOSE(S):

To provide a basis by which an employee or an applicant may be determined to be suitable for employment, transfer, promotion or retention in employment; for verification of employment; to provide a record of travel performed and verification that the employees received proper remuneration for the travel performed; to ensure employees received timely consideration in the processing of work/appraisals and salary increases; for recognition of accomplishments and contributions by employees, and in the processing, administration, and adjudication of discipline, grievances, complaints, appeals, litigation, and program evaluation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To appeals officers and complaints examiners of the Equal Employment Opportunity Commission for the purpose of conducting hearings in connection with employees appeals from adverse actions and formal discrimination complaints.

To a federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary.

To the National Archives and Records Administration (GSA) in records management inspection conducted under authority of 5 U.S.C. 2904 and 2906.

In response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in the pending judicial or administrative proceeding.

To officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters affecting working conditions.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3 and 290ee–3. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The Navy's 'Blanket Routine Uses' do not apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

The media in which these records are maintained vary, but include: File folders; magnetic tapes; automated minicomputer data base, disks and diskettes (hard drive); rolodex files; cardex files; ledgers; and printed reports.

RETRIEVABILITY:

Name and/or Social Security Number; employee payroll number.

SAFEGUARDS:

Locked desks in supervisor's office and also, locked cabinets in locked offices supervised by appropriate personnel; periodic system backup and microcomputer records to data cartridge, microcomputer power supply locks and/or hard drive locks; security guards.

RETENTION AND DISPOSAL:

Current employee records remain on file at the local Navy Exchange personnel office. Records on former employees are retained for one year and then forwarded to the Director, National Personnel Records Center, (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118, for retention of permanent papers and destruction of temporary papers. Applicant files are retained for six months and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Master Record Holder: Manager, Staffing and Career Management, HRG–3, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Local Record Holder: Manager at the local Navy Exchange. Mailing Addresses are available from the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724, or to the manager of the local Navy Exchange where employed.

The request should contain full name, Social Security Number, activity where last employed or where last application for employment was filed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requester must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724, or to the manager of the local Navy Exchange where employed.

The request should contain full name, Social Security Number, activity where last employed or where last application for employment was filed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requester must provide proof of identity containing the requester's signature.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; current and previous supervisors/employers; other records of the activity concerned; counseling records and comparable papers; educational institutions; applicants; applicant's previous employees; current and previous associates of the employee named by the employee as references; other records of activity investigators; witnesses; correspondents; investigative results and information provided by appropriate investigative agencies of the Federal Government.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(5) and (k)(6), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager.

N12950–3

SYSTEM NAME:

Employee Benefits Records *(58 FR 10826, February 22, 1993)*.

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724 (for all Navy Exchanges).

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Policy Official: Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Record Holder Manager: Risk Management and Workers Compensation Branch (TD2); Insurance/ Employee Benefits Branch (HRG4), Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

NOTIFICATION PROCEDURE:

In line six delete 'Naval Station New York, Staten Island, NY 10305–5097' and replace with '3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

RECORD ACCESS PROCEDURES:

In line six delete 'Naval Station New York, Staten Island, NY 10305–5097' and replace with '3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

* * * * *

N12950–3

SYSTEM NAME:

Employee Benefits Records.

SYSTEM LOCATION:

Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724 (for all Navy Exchanges).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees and former civilian employees with the Navy Exchange Service Command and Navy Exchanges located worldwide. Payroll and benefits information for current and former civilian employees of Coast Guard exchanges, clubs and messes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Leave accrual reports; earnings records; insurance records and reports regarding property damage, personal injury or death, group life, disability, medical and retirement plan records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To record contributions to benefit plans; to process all insurance claims; to calculate retirement benefits upon request of employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the insurance carriers and the U.S. Department of Labor, Bureau of Employees Compensation to process employee compensation claims.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The media in which these records are maintained vary, but include: Computer records (Local Area Network (LAN) File Server); card files; file folders; ledgers; microfiche; and printed reports.

RETRIEVABILITY:

Name and/or Social Security Number and employee payroll number.

SAFEGUARDS:

Locked file cabinets; safes; locked offices which are supervised by appropriate personnel, when open; and security guards.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

Record Holder Manager: Risk Management and Workers Compensation Branch (TD2); Insurance/ Employee Benefits Branch (HRG4), Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.'

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

In the initial inquiry the requester must provide full name, Social Security Number, activity where last employed. A list of other offices the requester may visit will be provided after initial contact is made at the office listed

above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Exchange Service Command, 3280 Virginia Beach Boulevard, Virginia Beach, VA 23452–5724.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The employee or former employee; the employee's supervisor and the employee's physician or insurance carrier's physician.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 93–22875 Filed 09–17–93; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

Proposed Finding of No Significant Impact; Proposed B-Factory (Asymmetric Electron Positron Collider)

AGENCY: U.S. Department of Energy.

ACTION: Proposed finding of no significant impact.

SUMMARY: The Department of Energy (DOE) issues this Proposed Finding of No Significant Impact (FONSI) on its proposal to construct and operate the proposed B-Factory. This proposed finding is based on the DOE B-Factory Environmental Assessment (EA), DOE/EA–0882, September 1993, which evaluates the environmental effects of construction and operation of a proposed B-Factory particle accelerator (Asymmetric Electron Positron Collider). The two alternate sites involved in the B-Factory proposal are the Stanford Linear Accelerator Center (SLAC) near Menlo Park, California, and the Cornell Electron Storage Ring (CESR) in Ithaca, New York. The B-Factory is to produce certain sub-atomic particles, known as B mesons, that are important to high-energy physicists. Based on the analyses in the EA, DOE believes that the proposed action is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.* Therefore, DOE proposes to issue a Proposed FONSI pursuant to the Council on Environmental Quality regulations implementing NEPA (40 CFR parts 1500–1508) and the DOE NEPA implementing regulations (10 CFR part 1021). This Proposed FONSI and the supporting EA are being made available for public review and comment for a period of 30 days following the date of this notice. DOE will consider comments received in making a final determination on whether to issue a FONSI or to prepare an environmental impact statement (EIS).

INVITATION TO COMMENT: DOE invites the public, including states which host these DOE facilities and Indian tribes that might be affected by the proposed action, to comment on this proposed FONSI. Please direct any comments to Mr. James K. Farley at the address presented in the following section.

In accordance with 40 CFR 1501.4(a)(2)(i) and 10 CFR 1021.322(d), DOE is making this proposed FONSI available for public review for 30 days. Copies of the EA are available upon request at the address given below. DOE will also make public comments received on this proposed FONSI available to the public. The EA and other material pertaining to this proposal are available for public review at the DOE public reading rooms listed below.

California

U.S. Department of Energy, San Francisco Operations Office, 1301 Clay Street, room 700N, Oakland, California 94612, (510) 637–1762

District of Columbia

U.S. Department of Energy, Freedom of Information Reading Room, Forrestal Building, room 1E–90, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020

New York

Newman Laboratory, Cornell University, Ithaca, New York 14853–5001, (607) 255–4951

For information on the availability of specific documents and hours of operation, please contact reading rooms at the telephone numbers provided.

DATES: Comments on the proposed FONSI should be postmarked by October 20, 1993 to ensure consideration. Comments postmarked after that date will be considered to the extent practicable.

ADDRESSES: Written comments on the proposed FONSI and requests for copies of the B-Factory EA should be directed to: James K. Farley, U.S. Department of Energy, Office of Energy Research (ER–8), 1000 Independence Avenue, SW., Washington, DC 20585, (301) 903–2314.

FOR FURTHER INFORMATION CONTACT: Requests for further information on the proposed project should be sent to: James K. Farley, U.S. Department of Energy, Office of Energy Research (ER–8), 1000 Independence Avenue, SW., Washington, DC 20585, (301) 903–2314.

For general information on the DOE NEPA review process, contact: Carol M. Borgstrom, U.S. Department of Energy, Office of NEPA Oversight (EH–25), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Proposed Action

The proposed action is to build a B-Factory at one of two locations, SLAC or Cornell, by modification of existing collider or accelerator facilities at each site. At SLAC, the existing facility is known as the Positron-Electron Colliding-Beam Storage Ring Project (PEP); at Cornell, the existing facility is called the Cornell Electron Storage Ring (CESR). Because the existing machines at each site are somewhat different, the proposed modifications would be different. Hence, the proposed action would occur at one of two alternate sites: One is for the construction and operation of a B-Factory at SLAC, referred to as PEP–II, and one for the construction and operation of a B-Factory at Cornell, designated as the CESR–B.

PEP–II Alternate Site

Construction and operation of PEP–II would involve collaboration of three DOE laboratories; SLAC, Lawrence Berkeley Laboratory (LBL), and Lawrence Livermore National Laboratory (LLNL); as well as other collaborating institutions, in the design, assembly, and testing of components and equipment for the B-Factory. No conventional construction or modification to surface buildings would be required for PEP–II. The existing conventional facilities for PEP consist of beam housings, research halls, support buildings, roads, earthwork, fencing, landscaping, electrical and mechanical utilities, and the sanitary-sewer and storm-drain systems. These existing systems and facilities have adequate capacity for PEP–II and would not

require any modifications or expansions.

The upgrade of the existing PEP collider to the PEP–II B-Factory would involve: (1) The removal and disassembly of various PEP components such as magnets, vacuum chambers, etc.; (2) the refurbishment of reusable PEP components; (3) the fabrication of new components at SLAC, LBL, LLNL, or other collaborating institutions; (4) the assembly of PEP–II components into the existing tunnels and detection facilities at SLAC; (5) minor modifications to the focusing and transport systems of the existing linear accelerator, known as the linac; and (6) disposal of some components that cannot be reused, possibly as low-level radioactive waste.

Construction of the PEP–II would begin in the latter part of 1993. Operation would begin in 1998, with an estimated operational life for experimentation of 10–15 years. During PEP–II operations, positrons and electrons would be accelerated in a linear accelerator and injected into storage rings where they would circulate in opposite directions, until they are brought together in an interaction hall of a tunnel to collide, thereby producing the B mesons for observation and study.

CESR–B Alternate Site

The upgrade of the existing CESR accelerator at Cornell to the CESR–B would involve: (1) The removal and disassembly of components of the existing CESR; (2) conventional construction to provide additional space for electrical and mechanical equipment, x-ray beam lines, and additional room for scientists, approximately 49,500 square feet of additional space; (3) conventional construction to add 2,900 square feet to the tunnel flare; (4) construction to expand existing routes of electric transmission lines; (5) reuse of some CESR components in CESR–B such as magnets, the synchrotron, and the linac; and (6) disposal of some components, possibly a few pieces as low-level radioactive waste.

Conventional construction would begin at the end of 1993, and last for one year. Component design, assembly, and construction at CESR would take 3–4 years. Operation of the CESR–B facility would begin in 1998, lasting approximately 15 years.

Alternatives

Two alternatives to the proposed action were considered: (1) No action; and (2) the construction and operation of a B-Factory at a DOE facility other than SLAC. Under the no action alternative, the B-Factory would not be built, and existing SLAC and Cornell facilities would continue to operate until the termination of their useful lifetime. At SLAC, the existing PEP facility would remain idle until new uses are determined or it is decommissioned. At Cornell, the existing CESR would continue to operate for about five years. The alternative to construct and operate a B-Factory at another DOE facility was not evaluated further in the EA due to its lack of feasibility in meeting the objectives of time, cost, and technical potential.

Environmental Impacts

The EA analyzed the impacts of constructing and operating a B-Factory at both alternate sites for effects from construction, normal operations, accidents, decontamination and decommissioning, and cumulative and long term impacts. It considered impacts to air and water quality, land use, biological resources, noise, health and safety to workers and the public, traffic, and hazardous materials usage.

For the PEP–II facility there would be no significant impacts from disassembly of components of the PEP facility and installation of reused and new components and equipment. No conventional construction or surface disturbances would occur. Impacts to air and water quality, worker health and safety, public safety, traffic, waste management systems, biological resources, and land use would be negligible.

For the CESR–B facility there would be no significant impacts from construction, component assembly, and installation of equipment. Approximately 4 acres of previously developed land adjacent to the existing facility would be disturbed during construction; no sensitive environmental resources would be impacted by the disturbance. Impacts from facility construction would include: short-term impacts to air and water quality, noise, dust, vehicle emissions, storm-water management, and waste handling and disposal, such as is normally associated with conventional construction. Impacts to worker health and safety, public health and safety, traffic, waste management systems, biological resources, and land use would be negligible.

Operation of the PEP–II would not significantly affect air and water quality, worker health and safety, public health and safety, and waste management systems. The impacts of ionizing radiation produced during operation are anticipated to be negligible. Nearly all of the radiation would be absorbed by the self-shielding copper vacuum chamber, the concrete tunnel walls, and the surrounding earth. Induced radioactivity could occur in a small number of components or devices. The number of workers that would be exposed to measurable amounts of radiation from PEP–II in the course of normal operations would not exceed 50. Based on a dose-to-risk conversion factor of $4\ 10^{-4}$ latent cancer fatalities per person-rem for adult workers, the risk of fatal cancer to the potentially exposed population of 50 workers over the 15-year operating period is less than 0.03. There are no persons residing within 0.3 km of the SLAC boundary. The population residing between 0.3 km and 0.5 km from the SLAC boundary is about 1200 people. Based on a dose-to-risk conversion factor of $5\ 10^{-4}$ latent cancer fatalities per person-rem for the whole population, the estimated latent cancer fatalities for this population over the 15-year operation of PEP–II is less than 0.002.

Operation of the CESR–B would not significantly affect air and water quality, worker health and safety, public health and safety, and waste management systems. The impacts of ionizing radiation produced during operation are anticipated to be negligible. Nearly all of the synchrotron radiation would be absorbed by the copper vacuum chamber. Expected radiation doses to radiation workers and at the site boundary are obtained by scaling from CESR operational experience. Based on an occupation risk factor of $4\ 10^{-4}$ fatal cancers/person-rem, the number of potential fatal cancers for radiation workers is 0.024, and for non-radiation workers is 0.0006. The dose to the general public over the 15-year operational life of the facility is estimated to be less than 0.1 person-rem, or less than 0.00005 fatal cancers using $5\ 10^{-4}$ fatal cancers/person-rem risk factor.

Impacts from radiological accidents would not significantly affect worker or public health and safety either at PEP–II or CESR–B. The most serious accident involving worker and/or public exposure to radiation at both alternate sites would be beam dumps from component and sub-system failures. The maximum potential dose equivalent at the PEP–II site boundary of the most serious radiation accident would be less than 0.005 mrem in a year, far below the operating limit of 10 mrem/year. For a population of 1,200, an exposure of 0.005 mrem/year results in a population dose of 0.09 person-rem over 15 years; less than $5\ 10^{-5}$ latent cancer fatalities. At CESR–B the maximum potential dose

from any foreseeable combination of accident scenarios in a year would be less than 1 mrem at the site boundary. The estimated number of potential fatal cancers in the general public from this dose is 0.00005 over the 15 year project life.

Decontamination and decommissioning (D&D) activities at PEP–II are anticipated to have negligible impacts to worker and public health and safety. Non-radiological effects would be similar to those involved in facility construction: Potential short-term effects to air and water quality, noise, dust, vehicle emissions, storm-water management, and waste handling and disposal. Radiological impacts are anticipated to be minimal through controlled storage of material with residual radioactivity and shipment to an approved low-level waste disposal facility.

No cumulative or measurable long-term environmental impacts are expected from the proposed PEP–II facility. The contributions of waste products from construction, operation, maintenance, and D&D activities would add to waste accumulation and the environmental impacts associated with disposal facilities. Their contribution to such impacts would be negligible. PEP–II operations are not expected to cause soil or groundwater activation. The radiological dose equivalent attributable to PEP–II operations would have negligible contributions to the cumulative impact of SLAC operations. There are no current or reasonably foreseeable major construction projects in the immediate vicinity of SLAC; thus, the PEP–II facility would not have any substantial effects on local offsite construction.

No cumulative or measurable long-term environmental impacts are expected from the proposed CESR–B facility. The contributions of waste products from construction, operation, maintenance, and D&D activities would add to waste accumulation and the environmental impacts associated with disposal facilities. Their contribution to such impacts would be negligible. CESR–B operations are not expected to cause soil or groundwater activation. The radiological dose equivalent attributable to CESR–B operations would have negligible contributions to the cumulative impact of radiological operations at Cornell. The only other source of radiation exposure on campus is the Ward research reactor which shares no facilities with CESR, and would not be a source of cumulative exposures to workers or the public. The cumulative radioactive exposures to the public are anticipated to be negligible. Future reasonably foreseeable actions include campus expansion to the southeast of the proposed CESR–B facility; however, such activities will not overlap with the proposed construction of CESR–B, and should not cause any cumulative effects from either construction or operations.

Proposed Determination

Based on the analyses in the EA, the DOE believes that the proposed construction and operation of a B-Factory at either SLAC or at Cornell is not a major Federal action significantly affecting the quality of the human environment within the meaning of the NEPA, and that an environmental impact statement on the proposed action is not required. DOE will make its final determination on whether to issue a FONSI or prepare an environmental impact statement after the 30-day public review period.

Issued in Washington, DC, this 14th day of September, 1993.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 93–22920 Filed 9–17–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project Nos. 9401–019, et al.]

Hydroelectric Applications [Halecrest Company, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* Approval of Plan to Compensate Jefferson Township for Community Recreation (Article 423).

Approval of Plan to Purchase Homes Adjacent to Mt. Hope Lake (Article 417).

b. *Project No:* 9401–019—Article 423, 9401–020—Article 417.

c. *Date Filed:* Article 423 and Article 417 were filed on August 4, 1993.

d. *Applicant:* Halecrest Company.

e. *Name of Project:* Mt. Hope Pumped Storage.

f. *Location:* Mt. Hope Lake, Morris County, New Jersey.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Paul Rodzianko, Executive Vice President, 627 Mt. Hope Road, Wharton, NJ 07885–2837, (201) 287–2272.

i. *FERC Contact:* Heather Campbell, (202) 219–3097.

j. *Comment Date:* October 17, 1993.

k. *Description of Project:* The Halecrest Company, licensee for the Mt. Hope Project requests approval of two plans. The first plan is to compensate Jefferson Township $1.0 million dollars to be used for design and construction of a community center as mitigation for adverse impact to recreationists in the township. The second plan is to purchase homes adjacent to Mt. Hope Lake. Please address your comments to the specific plan.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

2a. *Type of Application:* Declaration of Intention.

b. *Docket No.:* EL93–61–000.

c. *Date Filed:* July 19, 1993.

d. *Applicant:* Pristine Springs, Inc.

e. *Name of Project:* Pristine Springs Hydro (ID).

f. *Location:* Twin Falls County, Near Twin Falls, Idaho.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Nyal Hoffman, Pristine Springs, Inc., Route #1, Box 1204, Filer, ID 83328, (208) 326–5679.

i. *FERC Contact:* Hank Ecton, (202) 219–2678.

j. *Comment Date:* October 17, 1993.

k. *Description of Project:* The proposed Pristine Springs Hydro Project will consist of: (1) A 25-foot-long, 12-inch-diameter pipe which runs from an artesian well to a fish hatchery pond; (2) a 125-kilowatt Pelton wheel turbine coupled to a synchronous generator, located on a bypass pipe; (3) a 150-foot-long transmission line; and (4) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* Applicant intends to sell all energy produced to Idaho Power Company.

m. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

3a. *Type of Application:* Minor License.

b. *Project No:* 10871–001.
c. *Date Filed:* December 27, 1991.
d. *Applicant:* Robert A. Davis, III and Michael P. O'Brien.
e. *Name of Project:* Watson Mill.
f. *Location:* On South Fork Broad River in Oglethrope County, Georgia.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Robert A. Davis, III, 390 Timber Laurel Lane, Lawrenceville, GA 30243, (404) 995–0891.
i. *FERC Contact:* Charles T. Raabe (tag) (202) 219–2811.
j. *Deadline Date:* November 8, 1993.
k. *Status of Environmental Analysis:* This application is accepted for filing but is not ready for environmental analysis at this time—see attached paragraph D8.
l. *Description of Project:* The proposed project would consist of: (1) an existing 8-foot-high, 250-foot-long stone and masonry dam having a 135-foot-long spillway; (2) a reservoir having a 5-acre surface area and a 9-acre-foot storage capacity at spillway crest elevation 514 feet msl; (3) an existing canal intake structure; (4) an existing 20-foot-wide, 8-foot-deep, 1140-foot-long canal; (5) an existing penstock intake structure; (6) a new 5-foot-diameter, 65-foot-long steel penstock; (7) a new steel powerhouse containing one 675-Kw generating unit; (8) an existing 250-foot-long tailrace; (9) a new 300-foot-long underground 2.3-Kv transmission line; (10) a new switchyard, and (11) appurtenant facilities.
m. *This notice also consists of the following standard paragraphs:* A2, A9, B1, and D8.
n. *Available Locations of Applications:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at 390 Timber Laurel Lane, Lawrenceville, GA 30243, or by calling (404) 995–0891.
4a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 11429–000.
c. *Date filed:* August 12, 1993.
d. *Applicant:* Santiam Water Control District.
e. *Name of Project:* Stayton Hydroelectric Project.
f. *Location:* On the Stayton Power Canal, near the town of Stayton, in Marion County, Oregon.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Ladd G. Henderson, Manager, Santiam Water Control District, 11371 Dieckman Lane, SE., Aumsville, OR 97325–9730, (503) 769–2669.
i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.
j. *Comment Date:* November 8, 1993.
k. *Description of Project:* The applicant is examining two alternatives for the proposed project. Both alternatives would include: (1) the city of Salem's and the Santiam Water Control District's (SWCD) existing 4-foot-high Lower Bennett dam; (2) the SWCD's existing 1-mile-long Stayton Power Canal; and (3) a fish screen at the headgate to the power canal.
Alternative one would also consist of: (1) Pacific Power & Light Company's (PPL) existing non-operational, unlicensed powerhouse containing one generating unit with an installed capacity of 600 Kw; (2) PPL's existing tailrace returning water to the power canal; (3) a 100-foot-long transmission line interconnecting with an existing PPL transmission line; and (4) appurtenant facilities.
Alternative two would also consist of: (1) the construction of a new powerhouse, located just west of the existing powerhouse, containing one generating unit with an installed capacity of 645 Kw; (2) a tailrace returning water to the power canal; (3) a 100-foot-long transmission line interconnecting with an existing PPL transmission line; and (4) appurtenant facilities.
No new access roads will be needed to conduct the studies.
1. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.
5a. *Type of Application:* New License.
b. *Project No.:* 1922–008.
c. *Date Filed:* November 19, 1992.
d. *Applicant:* The City of Ketchikan, dba Ketchikan Public Utilities.
e. *Name of Project:* Beaver Falls.
f. *Location:* On Beaver Falls Creek in Ketchikan Gateway Borough, Alaska. It occupies lands within the Tongass National Forest.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Thomas W. Stevenson, General Manager, 2930 Tongass Avenue, Ketchikan, AK 99901, (907) 225–1000.
i. *FERC Contact:* Héctor M. Pérez at (202) 219–2843.
j. *Comment Date:* Sixty days from the date of issuance of this notice. (November 1, 1993)
k. *Status of Environmental Analysis:* This application is now ready for environmental analysis at this time—see attached paragraph D9.
l. *Description of Project:* The existing project consists of the Silvis Development and the Beaver Falls Development.
The Silvis Development consists of: (1) The 60-foot-high, 135-foot-long Upper Silvis Dam with a crest elevation of 1,164 feet; (2) the Upper Silvis Spillway with a crest elevation of 1,154 feet; (3) an 800-foot-long spillway channel from the Upper Silvis Spillway to Lower Lake Silvis; (4) Upper Lake Silvis with a storage capacity of 38,000 acre-feet at maximum water surface of 1,154 feet; (5) the 980-foot-long Tunnel 1; (6) a 36-inch-diameter penstock; (7) Silvis Powerhouse containing a 2,100 Kw generating unit; (8) a trapezoidal-shaped channel tailrace about 150 feet long discharging into Lower Lake Silvis; (9) a 2,900-foot-long, 5-Kv submarine cable and a 7,100-foot-long, 34.5-Kv aerial transmission line; and (10) other appurtenances.
The Beaver Falls Development consists of: (1) Lower Lake Silvis with a storage capacity of 8,052 acre-feet at maximum water surface elevation of 827 feet; (2) the 32-foot-high, 140-foot-long Lower Silvis Dam; (2) the 3-foot-high, 40-foot-long Beaver Falls Creek Diversion Dam, with 6-inch-high flashboards, about two-thirds of a mile downstream of Lower Lake Silvis; (3) an intake structure at Lower Lake Silvis; (4) the 3,800-foot-long Tunnel 2; (4) a 42-inch-diameter penstock through Tunnel 3 feeding units 3 and 4 (2,000 kW each) in Beaver Falls powerhouse; (5) a 225-foot-long, 20-inch-diameter wood stave pipe from Tunnel 2 discharging into Beaver Falls Creek just upstream of the diversion dam; (6) a 28-inch-diameter, 4,170-foot-long penstock from the diversion dam feeding unit 1 (1,000 kW) at the Beaver Falls Powerhouse (unit 2 has been decommissioned); (7) 2 tailrace channels; and (8) other appurtenances.
m. *This notice also consists of the following standard paragraph:* D9.
n. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.
6a. *Type of Application:* Revise Project Boundary.
b. *Project No.:* 2403–002.
c. *Date Filed:* July 26, 1993.
d. *Applicant:* Bangor Hydro-Electric Company.
e. *Name of Project:* Veazie Project.

f. *Location:* Penobscot River, Penobscot County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Douglas Morrell, Bangor Hydro-Electric Power Company, 33 State Street, Post Office Box 932, Bangor, ME 04401, (207) 945–5621.

i. *FERC Contact:* Anum Purchiaroni, (202) 219–3297.

j. *Comment Date:* October 22, 1993.

k. *Description of Project:* Bangor Hydro-Electric Power Company, licensee for the Veazie Project, has filed an application to revise its project boundary. The licensee proposes to modify exhibit K Sheet 1, Detail Map Reservoir. This modification is necessary to include a recently completed recreation facility. The facility is located 3,800 feet approximately upstream from the dam and 1,300 feet from the river to Rt. 178 on the south-shore of the Penobscot River. The facility consists of an access road, a boat ramp and 17 parking accommodations. The land included in the new boundary is owned by the Bangor Hydro-Electric Power Company.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

7a. *Type of Application:* Non-project use of project lands.

b. *Project No.:* 2197–016.

c. *Date Filed:* June 7, 1993.

d. *Applicant:* Yadkin, Inc.

e. *Name of Project:* Yadkin Project.

f. *Location:* On the Yadkin-Pee Dee River in Stanly, Montgomery, Davidson, and Rowan Counties, North Carolina.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Ms. Julia Larson, Yadkin, Inc., P.O. Box 576, Badin, NC 28009–0576, (704) 422–5679.

i. *FERC Contact:* Steve Hocking, (202) 219–2656.

j. *Comment Date:* October 25, 1993.

k. *Description of Project:* The licensee requests approval to allow Lake Badin Associates to build a marina north of Pennington Ferry, on Uwharrie Point in the Narrows Reservoir (Badin Lake). The proposed marina would be built in stages and may contain the following facilities: 1 boat ramp, drydock storage for up to 400 boats, 1 launch well, 1 refueling dock, up to 80 wet slips, parking for 13 trailers, parking for up to 204 cars, and other related facilities. The marina could be significantly smaller than the maximum size proposed above.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

8a. *Type of Application:* Declaration of Intention.

b. *Project No.:* EL93–59–000.

c. *Date Filed:* August 5, 1993.

d. *Applicant:* Echo Bay Alaska, Inc.

e. *Name of Project:* Alaska-Juneau Mine Conduit Facility.

f. *Location:* Sheep Creek, near Juneau, in Juneau County, Alaska.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Steven W. Silver, Esquire, Robertson, Monagle & Eastaugh, 2300 Clarendon Blvd., suite 1010, Arlington, VA 22201, (703) 527–4414.

i. *FERC Contact:* Etta Foster, (202) 219–2679.

j. *Comment Date:* October 22, 1993.

k. *Description of Project:* The proposed Alaska-Juneau Mine Conduit Facility would consist of: (1) A proposed 332 foot-high, 900 foot-long roller-compacted dam; (2) a 3,700 foot-long, 48-inch steel penstock; (3) a proposed powerhouse containing one generating unit rated at 4.9 MW; (4) a 69 Kv power line; and (5) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* Applicant proposed to supply water to an industrial facility which is a part of the A.J. Mine reconstruction.

m. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

9a. *Type of Application:* Minor License.

b. *Project No.:* 11058–001.

c. *Date filed:* November 2, 1992.

d. *Applicant:* A.L.L. Natural Resources, Inc.

e. *Name of Project:* Fitchburg Paper Mill Dam #4.

f. *Location:* On the North Nashua River, in Worcester County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* James Lane, A.L.L. Natural Resources, Inc., 29 Westminster St., Fitchburg, MA 01420, (508) 342–4029.

i. *FERC Contact:* Mary C. Golato, (202) 219–2804.

j. *Deadline for Interventions and Protests:* November 15, 1993.

k. *Status of Environmental Analysis:* This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph D8.

l. *Description of Project:* The proposed project consists of: (1) An existing granite block and concrete dam 200 feet long; (2) an existing reservoir with a surface area of 1 acre and a total storage volume of 3 acre-feet at the proposed normal maximum surface elevation of 525.6 feet NGVD; (3) a proposed powerhouse containing (a) two proposed 8-foot-diameter by 6-foot-wide overshot waterwheels, constructed of ship-grade steel, each with a maximum hydraulic capacity of 37.5 cfs (providing a combined maximum hydraulic capacity of 75 cfs) and rated at 25 kW, and (b) two proposed 25-kW generators (providing a total plant rating of 50 kW); and (4) existing and proposed appurtenant facilities.

m. *Purpose of Project:* All project energy generated would be utilized by the applicant or sold.

n. *This notice also consists of the following standard paragraphs:* A2, A9, B1, and D8.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. James Lane III, 29 Westminster St., Fitchburg, MA, (508) 342–4029.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed

project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interest person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit with be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTESTS" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

D9. Filing and Service of Response Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the

Commission within 60 days from the issuance date of this notice. (November 1, 1993 for Project No. 1922–008.) All reply comments must be filed with the Commission within 105 days from the date of this notice. (December 16, 1993 for Project No. 1922–008.)

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: September 14, 1993, Washington, DC.

Lois D. Cashell;

Secretary.

[FR Doc. 93–22839 Filed 9–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–14460T New Mexico–55]

United States Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

September 14, 1993.

Take notice that on September 13, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Pictured Cliffs Formation underlying certain lands in the Loe Area Fulcher-Kutz Pictured Cliffs Pools located in San Juan County, New Mexico, qualifies as a tight formulation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 1,902 acres, more or less, consisting of 12.6% Fee, 33.6% State, and 53.8% Federal Lands. The recommended area is described as follows:

Township 29 North, Range 12 West

Sections 15–16: All
Section 23: All

The notice of determination also contains BLM's and the State of New Mexico's findings that the referenced portion of the Pictured Cliffs Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22832 Filed 9–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–622–000, et al.]

Tennessee Gas Pipeline Co., et al.; Natural Gas Certificate Filings

September 13, 1993.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Co.

[Docket No. CP93–622–000]

Take notice that on August 6, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed rin Docket No. CP93–622–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a firm transportation service to Columbia Gas Transmission Corporation (Columbia) under Tennessee's Rate Schedule T–20, all as more fully set forth in the application on file with the Commission and open to public inspection.

No facilities are proposed to be abandoned herein.

Comment date: October 4, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. U–T Offshore System

[Docket No. CP93–693–000]

Take notice that on August 30, 1993, U–T Offshore System, (U–TOS) P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP93–693–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for authorization to abandon transportation service currently being rendered for CNG Transmission Corporation (CNG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

U–TOS proposes to terminate 36,417 Mcf per day in currently effective firm transportation service it renders for CNG according to U–TOS' Rate Schedule T–5. U–TOS also proposes to terminate 70,000 Mcf per day in associated Interruptible Overrun Transportation Service volumes rendered according to its Rate Schedule I. Service for CNG was certificated in Docket No. CP76–118 by order issued June 12, 1978, 3 FERC ¶ 61,232 (1978). U–TOS states that according to timely notice given to it by CNG's letter dated July 26, 1993, it proposes to terminate these services effective August 9, 1994—the end of the primary term of an agreement between U–TOS and CNG dated May 1, 1978, and designated as U–TOS' Rate Schedule T–5.

U–TOS states that it proposes no abandonment of facilities. U–TOS states that it anticipates no adverse impact on its supply of natural gas or transportation services as a result of the requested abandonment.

Comment date: October 4, 1993, in accordance with Standard Paragraph F at the end of this notice.

3. U–T Offshore System

[Docket No. CP93–694–000]

Take notice that on August 30, 1993, U–T Offshore System (U–TOS), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP93–694–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and the Rules and Regulations of the Federal Energy Regulation Commission (Commission), for authorization to abandon transportation service currently being rendered for United Gas Pipe Line Company (United), all as more fully set forth in the application

which is on file with the Commission and open to the public inspection.

U–TOS proposes to terminate 206,547 Mcf per day in currently effective firm transportation service it renders for United according to U–TOS' Rate Schedule T–3. U–TOS also proposes to terminate 365,500 Mcf per day in associated Interruptible Overrun Transportation Service Volumes rendered according to its Rate Schedule I. Service for United was certificated in Docket No. CP76–118 by order issued January 13, 1977, 57 FPC 199 (1977). U–TOS states that according to timely notice given to it by United's letter dated June 19, 1992, it proposes to terminate these services effective May 22, 1994—one year after the end of the primary term of an agreement between U–TOS and United dated December 1, 1977, and designated as U–TOS' Rate Schedule T–3.

U–TOS states that it proposes no abandonment of facilities. U–TOS states that it anticipates no adverse impact on its supply of natural gas or transportation services as a result of the requested abandonment.

Comment Date: October 4, 1993, in accordance with Standard Paragraph F at the end of this notice.

4. U–T Offshore System

[Docket No. CP93–695–000]

Take notice that on August 30, 1993, U–T Offshore System (U–TOS), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP93–695–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for authorization to abandon transportation service currently being rendered for Tennessee Gas Pipeline Company (Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

U–TOS proposes to terminate 38,300 Mcf per day in currently effective firm transportation service it renders for Tennessee according to U–TOS' Rate Schedule T–6. U–TOS also proposes to terminate 161,336 Mcf per day in associated Interruptible Overrun Transportation Service volumes rendered according to its Rate Schedule I. Service for Tennessee was certified in Docket No. CP76–118 by order issued June 12, 1978, 3 FERC ¶ 61,232 (1978). U–TOS states that according to timely notice given to it by Tennessee's letter dated March 31, 1993, it proposes to terminate these services effective January 5, 1995—the end of the primary term of an agreement between U–TOS and Tennessee dated May 1, 1978, and designated as U–TOS' Rate Schedule T–6.

U–TOS states that it proposes no abandonment of facilities. U–TOS states that it anticipates no adverse impact on its supply of natural gas or transportation services as a result of the requested abandonment.

Comment Date: October 4, 1993, in accordance with Standard Paragraph F at the end of this notice.

5. High Island Offshore System

[Docket No. CP93–690–000]

Take notice that on August 30, 1993, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP93–690–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for authorization to abandon transportation service currently being rendered for Tennessee Gas Pipeline Company (Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

HIOS proposes to terminate 63,619 Mcf per day in firm transportation service which it renders for Tennessee according to HIOS' Rate Schedule T–11. HIOS also proposes to terminate 266,700 Mcf per day in associated Interruptible Overrun Transportation Service volumes it renders according to its Rate Schedule I. HIOS notes that service for Tennessee was certificated in Docket No. CP75–104 by order issued March 29, 1982, 18 FERC ¶ 61,274 (1982). HIOS states that according to timely notice given to it by Tennessee's letter dated March 31, 1993, it proposes to terminate these services effective December 31, 1994—the end of the primary term of an agreement between HIOS and Tennessee dated February 15, 1978, and designated as HIOS' Rate Schedule T–11.

HIOS requests that the abandonment be conditioned upon Tennessee's remaining subject to and liable for any transition costs, exit fees, or other similar charges that are imposed as a result of HIOS' restructuring pursuant to Order Nos. 636, *et seq.* HIOS states that it proposes no abandonment of facilities in the instant application.

Comment date: October 4, 1993, in accordance with Standard Paragraph F at the end of this notice.

6. High Island Offshore System

[Docket No. CP93–691–000]

Take notice that on August 30, 1993, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP93–691–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for authorization to abandon transportation service currently being rendered for National Fuel Gas Supply Corporation (National), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

HIOS proposes to terminate 6,100 Mcf per day in firm transportation service which it renders for National according to HIOS' Rate Schedule T–14. HIOS also proposes to terminate 8,300 Mcf per day in associated Interruptible Overrun Transportation Service volumes it renders according to its Rate Schedule I. HIOS notes that service for National was certificated in Docket No. CP75–104 by order issued March 29, 1982, 18 FERC ¶ 61,274 (1982). HIOS states that according to timely notice given to it by National's letter dated July 27, 1993, it proposes to terminate these services effective August 8, 1994—the end of the primary term of an agreement between HIOS and National dated June 15, 1978, and designated as HIOS' Rate Schedule T–14.

HIOS requests that the abandonment be conditioned upon National's remaining subject to and liable for any transition costs, exit fees, or other similar charges that are imposed as a result of HIOS' restructuring pursuant to Order Nos. 636, *et seq.* HIOS states that it proposes no abandonment of facilities in the instant application.

Comment date: October 4, 1993, in accordance with Standard Paragraph F at the end of this notice.

7. High Island Offshore System

[Docket No. CP93–697–000]

Take notice that on August 31, 1993, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP93–697–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for authorization to abandon transportation service currently being rendered for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

HIOS proposes to terminate 20,500 Mcf per day in firm transportation service which it renders for Southern according to HIOS' Rate Schedule T–15.

HIOS also proposes to terminate 20,500 Mcf per day in associated Interruptible Overrun Transportation Service volumes it renders according to its Rate Schedule I. HIOS notes that service for Southern was certificated in Docket No. CP75–104 by order issued March 29, 1982, 18 FERC ¶61,274 (1982). HIOS states that according to timely notice given to it by Southern's letter dated July 12, 1993, it proposes to terminate these services effective August 18, 1994—the end of the primary term of an agreement between HIOS and Southern dated February 15, 1978, and designated as HIOS' Rate Schedule T–15.

HIOS requests that the abandonment be conditioned upon Southern's remaining subject to and liable for any transition costs, exit fees, or other similar charges that are imposed as a result of HIOS' restructuring pursuant to Order Nos. 636, *et seq.* HIOS states that it proposes no abandonment of facilities in the instant application.

Comment date: October 4, 1993, in accordance with Standard Paragraph F at the end of this notice.

8. Transcontinental Gas Pipe Line Corp.

[Docket No. CP93–707–000]

Take notice that on September 7, 1993, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP93–707–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon Compressor Station No. 5, located in Golaid County, Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Transco was authorized in Docket No. CP66–233 to construct and operate three 2,000 horsepower Clark TLA–6 compressor units, known as Compressor Station No. 5. Compressor Station No. 5 was constructed on Transco's McMullen Lateral in Goliad County, Texas in 1967. Transco states that gas supplies in that area have dwindled, and the gas flowing through the McMullen Lateral is sufficiently compressed through Compressor Station No. 30, thus not requiring the facilities of Compressor Station No. 5.

Comment date: October 4, 1993, in accordance with Standard Paragraph F at the end of the notice.

9. Natural Gas Pipeline Co. of America

[Docket No. CP93–687–000]

Take notice that on August 27, 1993, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP93–687–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon approximately 90 feet of 6-inch lateral, two 6-inch meters, and one 6-inch side tap, and one 4-inch side tap, all located in Wise County, Texas, and constructed under a budget authorization, all as more fully set forth in the application on file with the Commission and open to public inspection.

Natural proposes to abandon these facilities because they are no longer needed. As stated by Natural, the related transportation agreement, as amended expired by its own terms on May 27, 1984 and the facilities have not been used since. Natural proposes to retire and junk the lateral and meters.

Comment date: October 4, 1993, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22838 Filed 9–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–713–000]

Arkla Energy Resources Co. and Tennessee Gas Pipeline Co.; Application

September 14, 1993.

Take notice that on September 9, 1993, Arkla Energy Resources Company (AER), 525 Milam Street, Shreveport, Louisiana 71101, and Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, collectively referred to as Applicants, filed a joint application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a certificated exchange agreement, all as more fully set forth in the application on file with the Commission and open to public inspection.

AER and Tennessee have mutually agreed to terminate that exchange service. The Applicants received certificate authorization to perform the service by orders issued October 26, 1977, under AER's Rate Schedule XE–48 and Tennessee's Rate Schedule X–55. The Applicants are proposing to abandon the exchange service, stating that the service is no longer necessary or beneficial.

No facilities are proposed to be abandoned herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 5, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of

Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for AER and Tennessee to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22829 Filed 9–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–193–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 14, 1993.

Take notice that on September 9, 1993, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following proposed changes to be effective October 9, 1993:

Second Revised Sheet No. 1
First Revised Sheet No. 31
Original Sheet No. 32
First Revised Sheet No. 127
First Revised Sheet No. 198
Original Sheet No. 199

Columbia states that the foregoing tariff sheets set forth the procedures to implement the mechanism by which it proposes to recover from its wholesale customers the LNG conversion costs reviewed and recommended by the Cost Verification Committee and approved by the Commission's April 23, 1993 Order issued in Docket No. RP78–20–000 and to reimburse Shenandoah Gas Company (Shenandoah) for an equivalent amount plus applicable carrying charges.

Specifically, Columbia proposes to institute a direct bill which would recover the level of LNG conversion costs approved by the Commission and which would be payable over a twelve month period with carrying charges. These costs would be allocated to Columbia's sales customers based upon their level of Annual Entitlement Nominations as of the effective date of the proposed tariff sheets. The amounts collected would be forwarded to Shenandoah through monthly credits to its invoice, in satisfaction of the LNG conversion cost claim. Columbia's obligation under the proposed tariff provision to provide credits or reimbursement to Shenandoah would extend only to those amounts (including the carrying charges mentioned above) actually recovered by Columbia from its sales customers. Columbia will provide its customers with the option of satisfying their cost responsibility by means of a lump sum payment.

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22833 Filed 9–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–10–4–000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

September 14, 1993.

Take notice that on September 9, 1993, Granite State Gas Transmission, Inc. (Granite State), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed below containing changes in rates for effectiveness on September 10, 1993:

Thirtieth Revised Sheet No. 21
Tenth Revised Sheet No. 22

According to Granite State its out-of-cycle purchased gas adjustment filing is based on current projected gas costs and sales for the balance of the third quarter of 1993. Granite State further states that the filing reflects current gas costs for spot market purchases and changes in the rates for transportation services and other services by its upstream suppliers, Tennessee Gas Pipeline Company, Iroquois Gas Transmission System and Algonquin Gas Transmission Company as a result of the effectiveness of their filings in compliance with Order Nos. 636, et seq. in Docket Nos. RS92–17–000, RS92–23–000 and RS92–28–000.

Granite State states that copies of its filing were served on its customers Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22834 Filed 9–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–19–4–000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

September 14, 1993.

Take notice that on September 9, 1993, Granite State Gas Transmission, Inc. (Granite State), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and First Revised Volume No. 2, the revised tariff sheets listed below containing proposed changes in rates on the dates indicated:

	Proposed effective date
Second Revised Vol. No. 1:	
Twenty-First Revised Sheet No. 25.	Sept. 1, 1993.
First Revised Vol. No. 2:	
Fifth Revised Sheet No. 18.	Sept. 1, 1993.
Seventh Revised Sheet No. 28.	Sept. 1, 1993.
Fifth Revised Sheet No. 39.	Sept. 1, 1993.
Fourth Revised Sheet No. 62.	Jan. 1, 1993.
Fifth Revised Sheet No. 62.	Sept. 1, 1993.

	Proposed effective date
Fourth Revised Sheet No. 72.	Jan. 1, 1993.
Fifth Revised Sheet No. 72.	Sept. 1, 1993.

According to Granite State, it renders storage-related and other transportation services for its affiliated distribution company customers, Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities). In each case, according to Granite State, Tennessee Gas Pipeline Company (Tennessee) provides the underlying transportation service for the account of Granite State and pursuant to certificate authorizations issued by the Commission. Granite State provides the transportation services for Bay State and Northern Utilities under transportation rate schedules that mirror Tennessee's underlying transportation rate schedules. It is further said that Granite State is authorized to track rate changes as they occur in Tennessee's underlying rate schedules.

Granite State further states that the revised tariff sheets submitted herewith proposed to be effective September 1, 1993 track the changes in Tennessee's underlying transportation services resulting from the effectiveness of its restructuring compliance filing in Docket No. RS92–23–000. It is further stated that the two revised tariff sheets with a proposed effective date of January 1, 1993 correct a transportation rate which Granite State has been incorrectly tracking due to a misunderstanding of the appropriate Tennessee rate.

Granite State states that copies of its filing were served on its customers Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22835 Filed 9–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–710–000]

Koch Gateway Pipeline Co.; Request Under Blanket Authorization

September 14, 1993.

Take notice that on September 7, 1993, Koch Gateway Pipeline Company (Gateway), formerly United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP93–710–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to place into jurisdictional service a two-inch tap and meter station constructed under section 311(a) of the Natural Gas Policy Act (NGPA) and § 284.3(c) of the Commission's Regulations (18 CFR 284.3(c)) under its blanket certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Gateway states that the facilities, which are located in Gregg County, Texas, are currently used to provide section 311 transportation service for Endevco Oil and Gas Company (Endevco). Gateway further states that certification of the facilities would provide Endevco with the additional flexibility of being able to use these facilities as a delivery point on Endevco's blanket transportation agreements with Gateway.

Gateway says that it would operate the proposed facilities in compliance with 18 CFR, part 157, subpart F, and that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22827 Filed 9–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–11–001]

Koch Gateway Pipeline Co., Filing of Revised Tariff Sheets

September 14, 1993.

Take notice than on September 10, 1993, Koch Gateway Pipeline Company (KGPC) [1] tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective October 1, 1993:

Fourth Revised Sheet No. 4A
Fourth Revised Sheet No. 4B
Fourth Revised Sheet No. 4D
Fourth Revised Sheet No. 4E
Fourth Revised Sheet No. 4F
Fourth Revised Sheet No. 4G
Fourth Revised Sheet No. 4H

KGPC states that the above referenced tariff sheets reflect a pagination change from the ACA filing made August 31, 1993 and reflect no other changes.

KGPC also states that the tariff sheets are being mailed to its customers and to interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's regulations. All such protests should be filed on or before September 21, 1993. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22836 Filed 9–17–93; 8:45 am]

BILLING CODE 6717–01–M

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[1] Formerly United Gas Pipe Line Company. While Koch Gateway Pipeline Company is the new name effective August 24, 1993, KGPC is filing under United's tariff the following tariff sheets. KGPC intends to submit a Fifth Revised Volume No. 1 for implementation of Order No. 636 services and will also contain complete name changes throughout at that time.

[Docket No. TM94-1-16-001]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

September 14, 1993.

Take notice that on September 9, 1993, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective on October 1, 1993.

Second Revised Sheet Nos. 219–220
Second Revised Sheet Nos. 222–223
First Revised Sheet No. 225

National states that the purpose of this filing is to correct pagination errors made in the original filing.

National states that copies of National's filing were served on National's jurisdictional customers and on the interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of or before September 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22837 Filed 9–17–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-568-001]

Nora Transmission Co.; Application

September 14, 1993.

Take notice that on September 7, 1993, Nora Transmission Company (Nora), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed a compliance filing of the provisions of Order No. 636 in the referenced docket.

Nora states that on July 19, 1993, it filed an application in Docket No. CP93–568–000 requesting a part 284 blanket certificate which would allow Nora to engage in the sale, transportation, and assignment of natural gas as permitted for intrastate pipelines under subparts C, D, and E of part 284 of the Regulations.

Nora states that the referenced filing revises the July 19 filing to include language pertaining to the restructuring of services and includes transportation rates for firm service under Rate Schedule FTS and interruptible service under Rate Schedule ITS, and General Terms and Conditions governing restructured open access transportation.

Any person desiring to intervene or protest said filing should file an intervention or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 All protests should be filed on or before October 5, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22826 Filed 9–17–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-715-000]

Northern Natural Gas Co.; Request Under Blanket Authorization

September 14, 1993.

Take notice that on September 9, 1993, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed a prior notice request with the Commission in Docket No. CP93–715–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to install a delivery point to accommodate increased natural gas deliveries to Wisconsin Power & Light Company (WP&L) under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Northern proposes to install and operate a delivery point in Lafayette County, Wisconsin, for the delivery of 160 Mcf of natural gas per peak day and 20,702 Mcf annually to WP&L. Northern states that the proposed delivery point would cost an estimated $37,846 to install. Northern also states that the total natural gas volumes it would deliver to WP&L do not exceed the total volumes authorized prior to this request.

Northern states that the proposed delivery point is not prohibited by its existing FERC tariff and that it has sufficient capacity to accommodate the changes proposed herein.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22831 Filed 9–17–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-714-000]

Northern Natural Gas Co.; Request Under Blanket Authorization

September 13, 1993.

Take notice that on September 9, 1993, Northern Natural Gas Company (Northern), P.O. Box 1188, Houston, Texas 77251–1188 filed in Docket No. CP93–714–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate and maintain the upgrades of an existing delivery point, constructed pursuant to Part 284 Subpart B of the Commission's Regulations, as a jurisdictional facility to accommodate natural gas deliveries to Peoples Natural Gas Company, a Division of Utilicorp, Inc. (Peoples) for redelivery of natural gas to Dodge City town border station, located in Ford County, Kansas, under the authorization issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that the upgrades were necessary to provide unrestricted service to Peoples under Northern's currently effective service agreements. Northern further states that Peoples requested increased natural gas deliveries at the Dodge City TBS to provide service to the Centel Power Plant. Northern submits that it constructed the upgrades at the Dodge City TBS pursuant to section 311 of the Natural Gas Policy Act and § 284.3(c) of

the Commission's Regulations. At the time the Dodge City TBS was upgraded, Northern states that it had an application pending before the Commission in Docket No. CP91–2759–000[1], requesting a certificate of public convenience and necessity to operate and maintain the Dodge City pipeline, metering and appurtenant facilities as jurisdictional facilities. Northern states that it accepted the certificate; however, the orders did not address the upgraded facilities.

Northern states that the estimated peak day and annual volumes to be delivered to Peoples for redelivery at the upgraded delivery point are 60 MMcf and 12,000 MMcf, respectively.

Northern states that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Northern states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the changes proposed herein without detriment or disadvantage to Northern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22830 Filed 9–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–712–000]

Truckline Gas Co. and Natural Gas Pipeline Co. of America; Application

September 14, 1993.

Take notice that on September 9, 1993, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, and Natural Gas Pipeline Company of America (NGPL), 701 East 22nd Street, Lombard, Illinois 60148, hereinafter referred to as Applicants, filed in Docket No. CP93–712–000 a joint application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon three exchange services which were authorized in Docket Nos. CP75–143–000 and CP75–143–000[1] respectively, and CP78–390–000[2], jointly, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants propose to abandon specifically, the exchange agreement dated July 30, 1974, as amended, designated as Rate Schedule E–16 of Trunkline Gas Tariff and Rate Schedule X–52 of NGPL's Gas Tariff; exchange agreements "A" and "B" dated May 3, 1978, designated as Rate Schedules E–19 and E–20 of Trunkline's Gas Tariff and Rate Schedules X–100 and X–101 of NGPL's Gas Tariff. Applicants request that all exchanges be abandoned effective, December 1, 1993.

NGPL, by letter dated July 9, 1993, and Trunkline's acceptance of termination therein, mutually agreed to terminate the exchanges, effective December 1, 1993.

Applicants jointly filed in Docket No. CP93–712–000, an application for permission and approval to abandon three exchange services, with corresponding Rate Schedules E–16, E–19, and E–20 of Trunkline's Tariff; Rate Schedules X–52, X–100 and X–102 of NGPL's Tariff. Applicants request abandonment authorization for all rate schedules to be effective December 1, 1993.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 5, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–22828 Filed 9–17–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

Coal Policy Committee, National Coal Council; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Coal Policy Committee of the National Coal Council (NCC).

Date and Time: Wednesday, October 6, 1993, 11 a.m. and 3 p.m.

Place: The Ritz-Carlton Hotel, St. Louis, 100 Carndelet Plaza, Clayton, MO 63105.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5), Washington, DC 20585, Telephone: 202/586–3867.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the Meeting: The draft study on "The Export of Coal and Coal Technologies" will be presented and considered for approval. There will also be progress reports on the Council's outreach activities and the study on the "Future Direction of the Clean Coal Technology Program."

Tentative Agenda

—Call to order and opening remarks by Joseph Craft, Chairman of the Coal Policy Committee.
—Remarks by Department of Energy representative.
—Remarks by William Wahl, Chairman of the National Coal Council.
—Presentation and consideration of the draft report of the study on "The Export of Coal and Coal Technologies."
—Outreach Subcommittee report.
—Coal Technology Subcommittee report.

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[1] Northern Natural Gas Company, 59 FERC ¶ 61,052 (1992), Order on Reh'g, 64 FERC ¶ 61,161 (1993).

[1] 53 FPC 306.

[2] 4 FERC ¶ 61,245.

—Guest speaker (tentative)
—Discussion of any other business to be properly brought before the Committee.
—Public comment—10-minute rule.
—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 15, 1993.

Marcia Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93–22919 Filed 9–17–93; 8:45 am]

BILLING CODE 6450–01–M

Southeastern Power Administration

Proposed Rate Adjustment, Rate Extension, Public Hearing, and Opportunities for Public Review and Comment; Correction

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Correction.

SUMMARY: On September 8, 1993, in 58 FR 47272, Southeastern published Notice of a Proposed Rate Adjustment, Rate Extension, Public Hearing, and Opportunities for Public Review and Comment. The notice contained errors. This notice is to correct those errors.

SUPPLEMENTARY INFORMATION: On page 47273, after the dates heading it was published that written comments are due on or before October 22, 1993. The correct date is October 27, 1993. The next sentence states that a public information and comment forum will be held in Tallahassee, Florida, on October 7, 1993. The correct date is October 12, 1993. In the same paragraph the notice states that if Southeastern has not been notified by the close of business on September 30, 1993 that at least one person intends to be present at the forum, the forum will be automatically cancelled with no further notice. The correct date is October 5, 1993.

Issued at Elberton, Georgia, September 10, 1993.

John A. McAllister, Jr.,

Administrator.

[FR Doc. 93–22921 Filed 9–17–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4732–6]

Charter Extension of Certain EPA Advisory Committees

Charters for the EPA advisory committees listed below are being extended pending the completion of a comprehensive review by OMB of all Government advisory committees under the Federal Advisory Committee Act (FACA). This review is being conducted in accordance with Executive Order 12838, dated February 10, 1993, entitled "Termination and Limitation of Federal Advisory Committees" and OMB Bulletin 93–10, "Termination of Federal Advisory Committees." Pending the results of the review, renewal charters will be filed as appropriate. The following committees are being extended to the dates indicated below:

Architectural and Industrial Maintenance Coatings Negotiated Rulemaking Advisory Committee (7/31/94)
Dialogue Committee on Phosphoric Acid Wastes (9/30/94)
Environmental Financial Advisory Board (3/31/94)
Federal Facilities Environmental Restoration Dialogue (9/30/94)
Gulf of Mexico Policy Review Board (3/31/94)
Hazardous Waste Manifest Rule Negotiated Rulemaking (11/30/93)
Management Advisory Group to the Assistant Administrator for Water (3/31/94)

Dated: September 10, 1993.

Kathy Petruccelli,

Director, Management & Organization Division.

[FR Doc. 93–22891 Filed 9–17–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before November 19, 1993.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2624.

Type: New Collection.
Title: Survey of End Users of Training Materials for Course "Conducting Basic Fire Prevention Inspections."
Abstract: The Federal Emergency Management Agency, National Fire Academy will survey 100 representatives of State and local fire training institutions who have taken the course "Conducting Basic Fire Prevention Inspections." The feedback will be used by the NFA to revise materials used in the course.
Type of Respondents: State and local government.
Estimate of Total Annual Reporting and Recordkeeping Burden: 33 hours.
Number of Respondents: 100.
Estimated Average Burden Time per Response: 20 minutes.
Frequency of Response: One-time.

Dated: September 3, 1993.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 93–22915 Filed 9–17–93; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–1002–DR]

Indiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA–1002–DR), dated September 9, 1993, and related determinations.

EFFECTIVE DATE: September 9, 1993.

FOR FURTHER INFORMATION CONTACT:
Paulene C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20247, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 9, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Indiana, resulting from severe storms and flooding on August 16–17, 1993, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Indiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added to a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Philip N. Zaferopulos of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Indiana to have been affected adversely by this declared major disaster:

The counties of Clay, Parke, Putnam, Vermillion, and Vigo for Individual Assistance.

(Catalog of Federal Assistance No. 83.516, Disaster Assistance)

James Lee Witt,
Director.

[FR Doc. 93–22917 Filed 9–17–93; 8:45 am]
BILLING CODE 6718–02–M

[FEMA–1000–DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATES: September 9, 1993.

FOR FURTHER INFORMATION CONTACT:
Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993.

The county of Reno for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,
Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–22916 Filed 9–17–93; 8:45 am]
BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; FMG/CSAV/NAV Cooperative Working Agreement et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011298–004
Title: FMG/CSAV/NAV Cooperative Working Agreement
Parties: Compania Sud Americana de Vapores, Flota Mercante Grancolombiana, Naviera Interamericana S.A.
Synopsis: The proposed amendment changes and clarifies the withdrawal provisions of the Agreement.

Agreement No.: 224–004048–002
Title: Jacksonville Port Authority/Puerto Rico Maritime Shipping Authority
Parties: Jacksonville Port Authority, Puerto Rico Maritime Shipping Authority
Synopsis: The proposed amendment provides for an increase in terminal use fees and extends the term of the Agreement.

By Order of the Federal Maritime Commission.

Dated: September 14, 1993.

Joseph C. Polking,
Secretary.

[FR Doc. 93–22844 Filed 9–17–93; 8:45 am]
BILLING CODE 6730–01–M

[Petition No. P67–93]

Petititons for Temporary Exemption From Electronic Tariff Filing Requirements; Petition of European & General Shipping, Inc.; Filing of Petition

Notice is hereby given of the filing of a petition by the above named petitioner, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing deadlines of the Commission's ATFI System.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than September 20, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on Mr. Alan Dee, President, European & General Shipping, Inc., 8300 NW. 53rd Street, suite 308, Miami, Florida 33166.

Copies of the petitions are available for examination at the Washington, DC Office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,
Secretary.

[FR Doc. 93–22846 Filed 9–17–93; 8:45 am]
BILLING CODE 6730–01–M

[Petition Nos. P68–93 and P69–93]

Filing of Petitions for Temporary Exemption From Electronic Tariff Filing Requirements; World Tariff Services, Inc. on Behalf of Kin Bridge Express U.S.A., Inc.; Inter-American Freight Conference Puerto Rico and U.S. Virgin Island Area and the Inter-American Freight Conference Area River Plate/Puerto Rico and U.S. Virgin Islands Area/River Plate

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from ATFI filing deadlines.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than September 23, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on the following:

P68–93—Mr. Kenneth Witkowski, World Tariff Services, Inc., 800 N. Capitol Street, NW., suite 1407, Washington, DC 20001

P69–93—Jeffrey F. Lawrence, Esq., Sher & Blackwell, 1255 23rd Street, NW., suite 500, Washington, DC 20037–1194

Copies of the petitions are available for examination at the Washington, D.C. office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–22845 Filed 9–17–93; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84G–0257]

Enzyme Technical Association; Withdrawal of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of three enzyme preparations that are the subject of a petition (GRASP 3G0016) requesting that the use of certain enzyme preparations derived from animal, plant, and microbial sources be affirmed as generally recognized as safe (GRAS) for use in food. The three enzyme preparations are lipase derived from pancreatic tissue, amylase derived from pancreatic tissue, and amylase derived from unmalted barley extract.

FOR FURTHER INFORMATION CONTACT: Linda S. Kahl, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9523.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 12, 1973 (38 FR 9256), FDA announced that a petition (GRASP 3G0016) had been filed by the Ad Hoc Enzyme Technical Committee (now the Enzyme Technical Association (ETA)), c/o Miles Laboratories, Inc., 1127 Myrtle St., Elkhart, IN 46514. This petition requested that the agency affirm that the following enzyme preparations are GRAS for use in food:

(1) Animal-derived enzyme preparations: catalase (bovine liver); lipase, animal; pepsin; rennet; rennet, bovine; and trypsin.

(2) Plant-derived enzyme preparations: bromelain; malt; and papain.

(3) Microbially-derived enzyme preparations: *Aspergillus niger*, var. (lipase, catalase, glucose oxidase, and carbohydrase); *Bacillus subtilis*, var. (carbohydrase and protease mixtures); *Rhizopus oryzae* (carbohydrase); and *Saccharomyces* species (carbohydrase).

The petition was subsequently amended by notices published in the **Federal Register** of June 12, 1973 (38 FR 15471), proposing affirmation that microbially derived enzyme preparations (carbohydrase, lipase, and protease) from *A. oryzae* are GRAS for use in food; in the **Federal Register** of August 29, 1984 (49 FR 34305), proposing affirmation that the enzyme preparations ficin, obtained from species of the genus *Ficus* (fig tree), and pancreatin, obtained from bovine and porcine pancreas, are GRAS for use in food; and in the **Federal Register** of June 23, 1987 (52 FR 23607), proposing affirmation that the enzyme preparation protease from *A. niger* is GRAS for use in food. In the June 23, 1987, notice, FDA also noted that the petitioner asserts that pectinase enzyme preparation from *A. niger* and lactase enzyme preparation from *A. niger* are included under carbohydrase enzyme preparation from *A. niger*, and that invertase enzyme preparation from *Saccharomyces cerevisiae* and lactase enzyme preparation from *Kluyveromyces marxianus* are both included under carbohydrase enzyme preparation from *Saccharomyces* species. The agency further noted that, therefore, pectinase enzyme preparation from *A. niger*, lactase enzyme preparation from *A. niger*, invertase enzyme preparation from *S. cerevisiae*, and lactase enzyme preparation from *K. marxianus* are considered to be part of the petition.

In addition, in letters to the agency dated December 21, 1984, and September 20, 1985, the petitioner asserted that malt (as previously listed) included extracts from germinated and ungerminated (unmalted) barley.

By letter dated June 1, 1993, ETA requested that the following enzyme preparations be withdrawn from the petition without prejudice to a filing in a future petition: (1) Lipase derived from pancreatic tissue (i.e., pancreatin used for its lipase activity), (2) amylase derived from pancreatic tissue (i.e., pancreatin used for its amylase activity), and (3) amylase derived from unmalted barley extract. In view of ETA's request, any future action by FDA on GRASP 3G0016 will not include a determination of the GRAS status of the three enzyme preparations listed above.

Dated: September 10, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–22820 Filed 9–17–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 86N–0180]

Public Information; List of All Memoranda of Understanding and Agreements Between FDA and State or Local Government Agencies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of all memoranda of understanding (MOU's) that are cooperative work-sharing agreements currently in effect between FDA and State or local government agencies. FDA is publishing the list to provide information to the public on these agreements. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule exempting such MOU's from full-text publication in the **Federal Register**. The full text of any of the listed MOU's continues to be available from FDA on request.

ADDRESSES: Submit written requests for single copies of any of the listed MOU's to the Division of Federal-State Relations (HFC–150), Food and Drug Administration, rm. 12–07, 5600 Fishers Lane, Rockville, MD 20857. Requests should be identified with the Compliance Policy Guide (CPG) number and title of the document. The listed MOU's are also available for public examination in the office of the Freedom of Information Staff, Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Glenn Johnson, Division of Federal-State Relations (HFC–152), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3360.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule exempting from publication in the **Federal Register** the full text of those MOU's that are cooperative work-sharing agreements between FDA and State or local government agencies. In lieu of the full-text publication of such MOU's, FDA will publish periodically, but not less than once every 2 years, a notice listing all such MOU's currently in effect.

Accordingly, to implement the policy established in that final rule, FDA is publishing its first periodic list of those MOU's that are cooperative work-sharing agreements currently in effect between FDA and State or local government agencies. The list is extracted from the index to "Chapter 57—MOU's—State" in FDA's CPG's manual. Under 21 CFR 20.26, the complete index to that manual is available at cost from FDA's Freedom of Information Staff (address above).

CPG Number	Title
7157.01	MOU with *New Mexico* Department of Health and Environment and *New Mexico* Department of Agriculture Regarding Coordination of Information and Work-Sharing in Monitoring Pesticide Residues and Mycotoxins in Food and Animal Feed Commodities (FDA–225–88–4002)
7157.02	MOU with *Kansas* State Board of Agriculture Regarding Inspection of Medicated Feed-Manufacturing Establishments (FDA–225–82–4002)
7157.03	MOU with *Washington* State Department of Agriculture Regarding Inspection and Grading of Grain, Rice, and Pulses (FDA–225–81–4000)
7157.04	MOU with the *Illinois* Attorney General Regarding Development and Implementation of Appropriate Sanctions Concerning Fraud and Deception Involving Foods, Drugs, Devices, and Cosmetics (FDA–225–83–4000)
7157.05	MOU with *District of Columbia*, Department of Consumer and Regulatory Affairs Concerning Public Health Emergencies, Coordination of Consumer Complaint Investigations, Joint Training Efforts, Analytical Assistance, and Mutual Exchange of Inspectional Information (FDA–225–84–4000)
7157.06	MOU with the *Minnesota* Department of Agriculture Regarding Cooperative Surveillance Over Food and Medicated Feed (FDA–225–76–4001)
7157.07	MOU with the *Wisconsin* Department of Agriculture Regarding Cooperative Surveillance Over Foods (FDA–225–76–4000)
7157.08	MOU with the *Wisconsin* Department of Agriculture, Trade and Consumer Protection Regarding Investigations of Findings of Drug Residues in Tissue Samples of Swine (FDA–225–78–4007)
7157.09	MOU with the *Virginia* Board of Pharmacy for the Inspection of Drug Manufacturers, Wholesalers, and Distributors (FDA–225–78–4002)
7157.10	MOU with the *West Virginia* Health Department Relating to the Inspection of the Food Processing Industry (FDA–225–76–4011)
7157.11	MOU with *West Virginia* Department of Agriculture Concerning Regulatory Activities Related to Inspection of Food Storage and Medicated Feed Industries (FDA–225–76–4008)
7157.12	MOU with the *Virginia* Department of Agriculture and Consumer Services Regarding the Inspection of the Food Processing and Storage Industries (FDA–225–76–4004)
7157.13	MOU with the *Maryland* Department of Health and Mental Hygiene Regarding the Inspection of Food Processing and Storage Industries (FDA–225–75–4073)
7157.14	CAP with the *Kentucky* Cabinet for Human Resources, Department for Health Services Regarding Milk and Food Sanitation, Food Economics, Cosmetics, and Pesticides (FDA–225–79–4002)
7157.15	MOU with *Virginia* Department of Health Concerning Inspection of the Crabmeat Industry (FDA–225–76–4005)
7157.16	MOU with the *Allegheny County*, Pennsylvania Health Department Concerning Coordination of Inspection of Food Processing, Storage, and Service Facilities, and Interstate Carrier Support Facilities (FDA–225–78–4000)
7157.17	MOU with the *Maine* Department of Agriculture, Food and Rural Resources Regarding the Coordination of Joint Efforts in Monitoring Pesticide and Industrial Chemical Residues in Foods (FDA–225–90–4002)
7157.18	MOU with *Florida* Department of Agriculture and Consumer Services Regarding Activities Related to the Regulation of Milk, Foods, Medicated Feeds, and Pesticides (FDA–225–85–4002)
7157.19	MOU with the *Nebraska* Department of Agriculture Regarding Inspections, Investigations, and Analytical Findings Related to Food and Animal Feed Firms (FDA–225–85–4001)
7157.20	MOU with the *California* Department of Health Services Regarding Inspections, Investigations, Recalls and Emergencies, Training, and Sharing Information (FDA–225–89–4006)
7157.21	MOU with the *Kansas* Department of Health and Environment Regarding the Inspections, Investigations, and Analytical Findings Related to Food and Drug Firms (FDA–225–86–4002)
7157.22	MOU with the *New Jersey* Department of Health Regarding Inspections of Drug Firms, Investigations of Drug Related Health Frauds, Analysis of Drug Samples, and Imposition of Regulatory Sanctions (FDA–225–86–4001)

CPG Number	Title
7157.23	MOU with the *Pennsylvania* Department of Health Regarding the Inspection of Drug, Device, and Cosmetic Manufacturers, Wholesalers, and Distributors (FDA–225–75–4071)
7157.24	MOU with the *Delaware* Board of Pharmacy Concerning Regulatory Activities Relating to the Inspection of Drug Manufacturers, Wholesalers, and Distributors (FDA–225–76–4007)
7157.25	MOU with *Missouri* Regarding Food Inspection, Monitoring of Industry Recalls, Disaster Investigations, HIV Related Issues, and Exchange of Inspectional and Analytical Information (FDA–225–86–4000)
7157.26	MOU with the *Alabama* Department of Agriculture and Industries Regarding Regulation of Wholesale Food Storage Warehouses, Disasters, Recalls, and Exchange of Information (FDA–225–89–4004)
7157.27	MOU with the *Pennsylvania* Department of Agriculture Regarding Regulatory Activities Relating to the Inspection of Food Processing and Storage Facilities (FDA–225–77–4000)
7157.28	MOU with the *Texas* Department of Health Regarding the Regulation of Foods and Drugs (FDA–225–87–4001)
7157.29	MOU with the *Delaware* Department of Agriculture, *Maryland* Department of Agriculture, *Pennsylvania* Department of Agriculture, *Virginia* Department of Agriculture and Consumer Services, *West Virginia* Department of Agriculture, and USDA, Food Safety and Inspection Service, Northeastern and Southeastern Regional Offices Regarding Regulatory Investigations Involving Drug, Pesticide, and Industrial Chemical Residues in Animal Feeds and in Meat and Poultry (FDA–225–76–4002)
7157.30	MOU with the *Florida* Department of Health and Rehabilitative Services Regarding Cooperation in Consumer Protection Activities Such as Foods, Drugs, Medical Devices, Cosmetics, and Radiation Emitting Electronic Products (FDA–225–87–4002)
7157.31	MOU with the *Illinois* Department of Public Health Concerning the Monitoring and Investigation of Foodborne Illnesses (FDA–225–80–4001)
7157.32	MOU with the *Oklahoma* Department of Health and the *Oklahoma* Department of Agriculture Concerning Joint Efforts for the Coordination of Information in Monitoring Pesticide Residues and Mycotoxins in Food and Animal Feed Commodities (FDA–225–88–4001)
7157.33	MOU with the *California Department of Food and Agriculture Regarding Monitoring and Enforcement for Pesticide Residues in Raw Agriculture Commodities (FDA–225–89–4005)*
7157.34	MOU with the *Arkansas* Department of Health and the *Arkansas* State Plant Board Regarding Monitoring Pesticide Residues and Mycotoxins in Food and Animal Feed (FDA–225–89–4007)
7157.35	MOU with the *Texas* Department of Health; *Texas* Department of Agriculture; and *Texas* Agricultural Experiment Station, Office of the Texas State Chemist Regarding the Cooperation, Coordination and Sharing of Pesticide Monitoring Data Concerning Residues in Raw and Processed Agricultural Products (FDA–225–90–4001)
7157.36	MOU with the *Ohio* Department of Health Regarding Sharing of Information About Levels of Pesticides in Grade A Milk, Milk Products, Grade A Goat Milk, and Goat Milk Products (FDA–225–90–4000)
7157.37	MOU with the *Connecticut* Department of Consumer Protection Regarding the Coordination of Joint Efforts in Monitoring Pesticide and Industrial Chemical Residues in Foods (FDA–225–90–4003)
7157.38	Agreement with the State of *New York* Department of Agriculture and Markets Regarding Coordination of Communications and Work-Sharing to Ensure Prompt and Effective Food-Related Consumer Protection Services (FDA–225–90–4004)
7157.39	MOU with the Commonwealth of *Kentucky* State Board of Pharmacy Regarding Investigations of Drug Distributors Involving Violations of the Prescription Drug Marketing Act of 1987 (PDMA) (FDA–225–90–4006)
7157.40	MOU with *Rhode Island* Department of Health Regarding the Coordination of Joint Efforts in Monitoring Pesticide and Industrial Chemical Residues in Foods (FDA–225–90–4005)
7157.41	MOU with *Georgia* Department of Agriculture and *USDA*, Food Safety and Inspection Service Regarding Regulatory Investigations Involving Drug, Pesticide, and Toxic Chemical Residues in Animal Feeds and in Meat Tissues (FDA–225–91–4000)
7157.42	MOU with the *National Association of State Departments of Agriculture* In Order to Provide a Coordinated Structure for the Conduct of Public Education Programs Regarding the Safety and Wholesomeness of the United States Food Supply (FDA–225–91–4005)
7157.43	MOU with *Washington* State Department of Agriculture Regarding Coordination of Information and Work-Sharing in Monitoring Pesticide Residues in Food and Animal Feed Commodities (FDA–225–91–4001)
7157.44	CAP with *Tennessee* Department of Agriculture Regarding a Cooperative Work and Information Sharing Program to Include Milk and Food Sanitation, Food Economics, Cosmetics, and Pesticides (FDA–225–88–4003)
7157.45	MOU with *Wyoming* Department of Agriculture Regarding the Inspection of Food, Drug and Medical Device Firms (FDA–225–92–4001)
7157.46	MOU with *Utah* Department of Agriculture Regarding the Inspection of Food, Drug and Medical Device Firms (FDA–225–92–4006)
7157.47	MOU with State of *Arkansas* Attorney General and *Arkansas* Department of Health Regarding the Inspection of Foods, Drugs, Devices and Cosmetics (FDA–225–92–4004)

CPG Number	Title
7157.48	MOU with *Colorado* Department of Health and *Colorado* Department of Law Regarding Inspections of Food, Drug, Cosmetic and Medical Device Firms (FDA–225–92–4005)
7157.49	MOU with *Michigan* Department of Agriculture Regarding Inspections, Investigations, and Analytical Findings Relating to Food Firms (FDA–225–92–4000)
7157.50	MOU with *Minnesota* Department of Agriculture Regarding the Inspection of Food and Medicated Feed Firms (FDA–225–92–4008)
7157.51	MOU with *South Carolina* Department of Agriculture Regarding the Inspection of Food and Drug Firms (FDA–225–92–4007)
7157.52	MOU with *Alabama* Department of Public Health Regarding Inspections, Investigations, and Analytical Findings Relating to Food Firms (FDA–225–92–4009)
7157.53	MOU with *Tennessee* Department of Agriculture Regarding Inspections of Food, Animal Feed, Cosmetic, Medical Device, and Drug Firms (FDA–225–92–4011)
7157.54	MOU with *Oklahoma* Attorney General and *Oklahoma* Department of Health Regarding Fraud and Deception Involving Foods, Drugs, Devices and Cosmetics (FDA–225–92–4010)

The list of MOU's is being made available under § 20.108(c).

Dated: September 3, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–22865 Filed 9–17–93; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

[PN 2111]

Program Announcement for Grants for Nursing Education Opportunities for Individuals From Disadvantaged Backgrounds for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1994 will be accepted for Grants for Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds as authorized by section 827, title VIII of the Public Health Service (PHS) Act, as amended by the Nurse Education and Practice Improvement Amendments of 1992, title II of Public Law 102-408, Health Professions Education Extension Amendments of 1992, dated October 13, 1992.

The Administration's budget request for FY 1994 includes $5.193 million for Grants for Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds. Total continuation support recommended is approximately $1.9 million. It is anticipated that approximately $3.203 million will be available to support 15 competing awards averaging approximately $170,000 each.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. In FY 1993, HRSA reviewed 74 applications for Grants for Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds. Of those applications, 45 percent were approved and 55 percent were disapproved. Eight projects, or 24 percent of the approved applications, will be funded in FY 1993.

Eligibility

Public and nonprofit private schools of nursing and other public or nonprofit private entities are eligible for grant support.

Purpose

Section 827 of the Public Health Service Act authorizes grants to increase opportunities for individuals from disadvantaged backgrounds to pursue a nursing education. Students who may have an associate degree in nursing would be eligible to receive funding under this section if they are financially, educationally or culturally disadvantaged.

To implement this program in FY 1994 in a timely manner, an existing definition of "an individual from a disadvantaged background" is being used (42 CFR 57.2904). For purposes of Grants for Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds in FY 1994, "an individual from a disadvantaged background" is one who: (1) Comes from an environment that has inhibited the individual from obtaining the knowledge, skills, and abilities required to enroll in and graduate from a school of nursing; or (2) comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of Census, adjusted annually for changes in the Consumer Price Index, and multiplied by a factor to be determined by the Secretary for adaptation to this program.

The following income figures determine what constitutes a low income family for purposes of Grants for Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds for FY 1994.

Size of parents' family [1]	Income level [2]
1	$ 9,419
2	12,202
3	14,523
4	18,596
5	21,930
6 or more	24,648

[1] Includes only dependents listed on Federal income tax forms.

[2] Adjusted gross income for calendar year 1992, rounded to $100.

Grants may be awarded to eligible applicants to meet the costs of special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds:

1. By identifying, recruiting and selecting such individuals;
2. By facilitating the entry of such individuals into schools of nursing;
3. By providing counseling or other services designed to assist such individuals to complete successfully their nursing education;
4. By providing, for a period prior to the entry of such individuals into the regular course of education at a school of nursing, preliminary education designed to assist them to complete successfully such regular course of education;
5. By paying such stipends as the Secretary may determine for such individuals for any period of nursing education;
6. By publicizing, especially to licensed vocational or practical nurses, existing sources of financial aid available to persons enrolled in schools of nursing or who are undertaking training necessary to qualify them to enroll in such schools; and
7. By providing training, information or advice to the faculty of such schools with respect to encouraging such individuals to complete the programs of nursing education in which the individuals are enrolled.

The period of Federal support should not exceed 3 years.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy

People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The national or special local need which the particular project proposes to serve;
2. The potential effectiveness of the proposed project in carrying out such purposes;
3. The administrative and managerial capability of the applicant to carry out the proposed project;
4. The adequacy of the facilities and resources available to the applicant to carry out the proposed project;
5. The qualifications of the project director and proposed staff;
6. The reasonableness of the proposed budget in relation to the proposed project; and
7. The potential of the project to continue on a self-sustaining basis after the period of grant support.

These criteria were established in fiscal year 1990 after public comment (54 FR 46130, dated November 1, 1989).

Application Requests

Requests for grant application materials and questions regarding grants policy and business management issues should be directed to: Ms. Sandra Bryant, Grants Management Specialist (D–19), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6915 FAX: 443–6343.

Completed applications should also be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Mary S. Hill, Ph.D., Chief, Nursing Education Practice, Resources Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 9–36, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6193 FAX: 443–8586.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance number is 0915–0060.

The deadline date for receipt of applications is December 1, 1993. Applications will be considered to be "on time" if they are either:

(1) Received on or before the established deadline date, or

(2) Sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

This program, Grants for Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds, is listed at 93.178 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: August 2, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–22812 Filed 9–17–93; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Cancer Institute; Amended Notice of Meetings of the National Cancer Advisory Board and its Subcommittees

Notice is hereby given of a change in the meetings of the National Cancer Advisory Board, National Cancer Institute, and its Subcommittees, September 20–21, 1993, which was published in the **Federal Register** (58 FR 47150) on September 7, 1993.

In addition to the full Board meeting and the subcommittee meetings announced in the above notice, a meeting of the Subcommittee for Evaluation of the National Cancer Program will be held on September 21 in Conference Room 10, 6th Floor, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public from 1:30 pm to approximately 4:30 pm to discuss its purpose and to define organizational plans in order to accomplish its mission. Attendance by the public will be limited to space available.

Dated: September 15, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–23059 Filed 9–17–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–967–4230–08–P]

Notice for Publication, AA–6677–A, Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Koniag, Inc., Regional Native Corporation for approximately 1,571.48 acres. The lands involved are in the vicinity of the Native village of Larsen Bay, Alaska.

U.S. Survey No. 380, Alaska

Seward Meridian, Alaska

T. 29 S., R. 29 W.,
Secs. 18–20, 24–26, 30 and 36.
T. 29 S., R. 30 W.,
Secs. 13 and 14.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal Government or regional corporation, shall have until October 20, 1993 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart

E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 93-22797 Filed 9-17-93; 8:45 am]

BILLING CODE 4310-JA-P-M

[AK-967-4230-06]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Ouzinkie Native Corporation. The lands involved are in the vicinity of Afognak Bay, Alaska.

Serial No.	Approximate land description	Acreage
AA-8688-A	T. 24 S., R. 19 W., Seward Meridian, Alaska.	12
	T. 24 S., R. 21 W., Seward Meridian, Alaska.	180

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror. Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal government, or regional corporation, shall have until October 20, 1993 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 93-22798 Filed 9-17-93; 8:45 am]

BILLING CODE 4310-JA-P

[AK-967-4230-06 P]

Notice for Publication AA-8679-D, Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(b), will be issued to Shaan Seet Incorporated for approximately 165.50 acres. The lands involved are in the vicinity of Craig, Alaska.

Copper River Meridian, Alaska

T. 73 S., R. 82 E.,
Secs. 19, 29 and 33.
T. 74 S., R. 82 E.,
Sec. 16.
T. 75 S., R. 81 E.,
Sec. 12.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Juneau Empire. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until October 20, 1993 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 93-22795 Filed 9-17-93; 8:45 am]

BILLING CODE 4310-JA-P

[WO-220-4320-03-24 1A]

Grazing Administration, Rangeland Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement; reopening of scoping.

SUMMARY: The U.S. Department of the Interior through the Bureau of Land Management (BLM) gives notice of the reopening (EIS) that is being developed on rangeland management reform, including future rulemakings. The EIS is being developed pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, with the cooperation of the Forest Service, U.S. Department of Agriculture.

DATES: Written comments on the scope of the EIS will be accepted until October 20, 1993. Comments postmarked after this date may not be used in preparing the Draft EIS but will be considered in subsequent actions related to the EIS. Comments received after September 13, 1993, the conclusion of the previous scoping period, through the date of this notice, will be considered along with all scoping comments and comments received in response to this and prior notices.

ADDRESSES: Scoping comments should be sent to: Michael J. Penfold, Assistant Director, Land and Renewable Resources, Bureau of Land Management, P.O. Box 65800, Washington, DC 20035-9998. When submitting comments, please identify whether they relate to the BLM's Advance Notice of Proposed Rulemaking (published separately in today's **Federal Register**, or are scoping comments to be considered in developing the Draft EIS.

FOR FURTHER INFORMATION CONTACT: Write to the above address or call Jim Fox at (202) 452-7740.

SUPPLEMENTARY INFORMATION: The U.S. Department of the Interior and the Bureau of Land Management (BLM), in cooperation with the U.S. Department of Agriculture and the Forest Service are developing a proposal for reform of public rangeland management policies and practices. These agencies administer livestock grazing on approximately 170 million acres and 100 million acres of public rangelands, respectively. The proposal involves policy and regulatory changes in the BLM's and the Forest Service's rangeland management programs, intended to improve ecological conditions on BLM-managed and Forest Service-managed rangelands while providing for sustainable development. The BLM is preparing an EIS to analyze the social, economic and environmental effects of the rangeland management reform proposal. The Forest Service is a cooperating agency in the preparation of the EIS as it relates to determining the grazing fee and rangeland reform on National Forests and Grasslands.

On August 13, 1993, the BLM published in the **Federal Register** (58 FR 43234) a notice of intent to prepare an environmental impact statement on rangeland management reform. That

notice reopened the comment period on the scope of the EIS that was originally established in a notice of intent to prepare an EIS published in the **Federal Register** on July 13, 1993 (58 FR 37745). As a result of requests from a variety of interested parties the BLM is reopening the comment period on the scope of the EIS for a period of 30 days. Persons interested in providing comments on the scope of the EIS are referred to the August 13, 1993, **Federal Register** for a detailed description of the rangeland reform proposal and preliminary issues and alternatives to be considered.

As part of the overall rangeland reform proposal the BLM will propose to amend regulations regarding various aspects of grazing administration. An advance notice of proposed rulemaking (ANPR) was published in the August 13, 1993, **Federal Register** (58 FR 43208). The comment period for the ANPR is also being reopened for an additional 30 days through an announcement published elsewhere in today's **Federal Register**. After review of the comments on this notice of intent and the ANPR, the BLM will release a Draft EIS and proposed regulations. The release of those documents, planned for this winter, will be followed by a public comment period of at least 45 days.

Denise Meridith,

Deputy Directory.

[FR Doc. 93–22946 Filed 9–17–93; 8:45 am]

BILLING CODE 4310–84–M

[OR–030–03–4410–03: G3–393]

Notice of Intent To Amend the Northern Malheur Management Framework Plan

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of intent to conduct a planning amendment.

SUMMARY: The Vale District of the Bureau of Land Management intends to conduct an amendment of the Northern Malheur Management Framework Plan (MFP) in relation to the Leslie Gulch Area of Critical Environmental Concern (ACEC). During development of alternatives for management of the ACEC, several alternatives were identified which if selected would require amending the MFP. The issues are related to inholding acquisition, livestock grazing, mineral development and wild horses as they pertain to management of the relevant and important values of the ACEC.

The 11,900 acre Leslie Gulch ACEC is located 50 miles south of Ontario, Oregon and adjoins the east side of the Owyhee Reservoir.

An alternative management analysis of the ACEC is available for public review upon request for 30 days from the date of this notice. This analysis and public comment will be used to refine the issues and develop a proposed amendment and environmental assessment. The proposed amendment and environmental assessment should be available for public review in December 1993 for 90 days. A proposed decision incorporating public comments should be available for public review in March 1994. A final decision is expected in June 1994 after a 30 day protest period and 60 day state and local government consistency review of the proposed decision. It is not anticipated there will be any public meetings or hearings, all comments are expected to be in writing.

The plan amendment and environmental assessment will be prepared by an interdisciplinary team which is expected to be made up of a range conservationist, botanist, soil conservationist, geologist, recreation planner, and wildlife biologist.

Anyone interested in participating during the public review process of this planning amendment may participate by requesting to be added to the mailing list.

FOR FURTHER INFORMATION CONTACT: Ralph Heft, Malheur Resource Area Manager, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918, (Telephone 503 473–3144).

James E. May,

District Manager.

[FR Doc. 93–22813 Filed 9–17–93; 8:45 am]

BILLING CODE 4310–33–M

[UT–040–03–4410–02]

Resource Management Plan; Escalante and Kanab Resource Areas, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Escalante and the Kanab Resource Areas of the Cedar City District are undertaking a resource-management planning effort and Environmental Impact Statement (EIS) scheduled for publication in draft in 1994. The public is invited to provide nominations for Areas of Critical Environmental Concern (ACECs) as outlined in 43 CFR 1610.7–2. Nominations should include a map of the ACEC nomination, along with descriptive material addressing the values to be protected. The public is also invited to nominate potential Wild and Scenic Rivers. Maps or a description of specific streams for study by the team should accompany Wild and Scenic River nominations. Any member of the public with information regarding the character and extent of coal or interest in the development of coal in the Kaiparowits, Kolob, Johns Valley, or Alton coal fields is hereby requested to forward information or statements of interest to the Bureau of Land Management (BLM) Cedar City District Office contact listed below. Members of the public with information regarding the application of Coal Unsuitability Criteria (43 CFR Part 3461) are requested to forward information to the BLM Cedar City District Office contact listed below. Additionally, decisions such as those regarding oil and gas leasing categories, OHV designations, land disposals and exchanges, ecosystem health and biodiversity, protection of threatened and endangered species, grazing management categories, and others will be made. All information collected from this announcement or analysis conducted using this information is subject to public review and comment.

DATES: Members of the public with any pertinent information should contact the BLM Cedar City District Office contact listed below or submit the information in writing by October 20, 1993 to ensure its consideration in the Management Situation Analysis and Alternative Formulation.

FOR FURTHER INFORMATION CONTACT: Pete Wilkins, Team Leader, Bureau of Land Management, Cedar City District Office, 176 E. D L Sargent Dr., Cedar City, Utah 84720, telephone (801) 586–2401, fax (801) 865–3058.

SUPPLEMENTARY INFORMATION: The Resource Management Plans (RMPs) produced will replace existing Escalante, Paria, Vermilion, and Zion Management Framework Plans (MFPs) and the Garfield and Antimony portions of the Cedar/Beaver/Garfield/Antimony RMP, 1986. Planning will be conducted of 2.5 million Federal acres administered by the Bureau of Land Management in western Kane and Garfield Counties, west of the Capitol Reef National Park and the Glen Canyon Recreation Area in Utah.

The RMP will incorporate the principles of ecosystem-based management. One important component of ecosystem-based management is cooperative ecosystem-based management with other Federal, State, and private land managers. Ecosystem-based management will be coordinated with Zion National Park, Bryce Canyon National Park, Capitol Reef National Park, the Glen Canyon National Recreation Area, the Dixie National

Forest, BLM Arizona Strip District, BLM Dixie Resource Area, BLM Beaver River Resource Area, the Coral Pink Sand Dunes State Park, and the Kodachrome Basin State Park. This RMP effort will analyze data on three ecosystem levels: The ecoregion (Colorado Plateau); the landscapes (Grand Staircase, Kaiparowits Plateau, Escalante Canyons, and Southern High Plateaus); and the population/species ecosystem levels. Any member of the public with information regarding the structure, composition, processes and functions of any of these ecosystems may submit such information to the BLM Cedar City District Office contact listed above. Ecosystem analysis will also consider man's role in determining present and future conditions and future needs for sustainable economies and healthy ecosystems.

Formal public participation will be requested again for review of the Draft RMP/EIS (1994) and proposed RMP/Final EIS (1995). Notice of the availability of these documents will be published at the appropriate times.

The Bureau of Land Management has prepared a mailing list. Those already on the list have been receiving periodic updates and will continue to be on the list after publication of this notice. Others not currently on the list may be added by submitting a letter of interest to the BLM Cedar City District Office contact listed above.

The RMP will be developed by an interdisciplinary team composed of BLM resource specialists. The team will have a team leader and specislists represented by range conservationists, wildlife biologists, soil scientists, realty specialists, recreation/wilderness specialists, geologists, hydrologists, archaeologists, and other specialists.

James M. Parker,

State Director.

[FR Doc. 93–22894 Filed 9–17–93; 8:45 am]

BILLING CODE 4310–DQ–M

[UT–050–03–4210–05]

Plan Amendment; House Range Resource Area, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Plan amendment.

SUMMARY: The proposed plan amendment and associated environmental assessment for the House Range Resource Management Plan (HRRMP) identifies the following public lands suitable for sale to George C. Douglas:

Salt Lake Meridian

T. 12S., R. 18 W.,
Sec. 12, E½NW¼SW¼, NE¼SW¼SW¼, NE¼SE¼SW¼SW¼, and SW¼SW¼NW¼SE¼.

Containing 35 acres in Juab County.

DATES: The protest period for the proposed plan amendment will commence with the date of publication of this notice. Protests must be submitted on or before October 20, 1993.

FOR FURTHER INFORMATION CONTACT: Rex Rowley, House Range Resource Area Manager, 35 East 500 North, Utah 84631 (801) 743–6811.

SUPPLEMENTARY INFORMATION: This plan amendment would allow the House Range Resource Area to sell the identified public land at fair market appraisal value to George C. Douglas pursuant to section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750, 43 U.S.C. 1713), and title 43 CFR part 2710 of the Federal Regulations. The plan amendment is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with provisions of 43 CFR 1610.5–2. Protests must contain at a minimum the following information:

- The name, mailing address, telephone number, and interest of the person filing the protest.
- A statement of the issue or issues being protested.
- A statement of the part or parts being protested and a citing of pages, paragraphs, maps, etc., of the protested plan amendment, where practical.
- A copy of all documents addressing the issue(s) submitted by the protester during the planning process or a reference to the date when the protester discussed the issue(s) for the record.
- A concise statement as to why the protester believes the BLM State Director's decision is incorrect.

Protests must be received by the Director of the Bureau of Land Management (760), MS 406 LS, 1849 C Street NW., Washington, DC 20240, within 30 days after the publication of this Notice of Availability for the plan amendment.

G. William Lamb,

Acting State Director.

[FR Doc. 93–22895 Filed 9–17–93; 8:45 am]

BILLING CODE 4310–DQ–M

Fish and Wildlife Service

Availability of Draft Recovery Plan for the Pohakuloa Plants (Haplostachys Haplostachys and Stenogyne Angustifolia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for *Haplostachys haplostachya* and *Stenogyne angustifolia*. These species are only known to occur on the island of Hawaii, Hawaii. All 14 known populations of *H. haplostachya*, and 7 of the 9 known populations of *S. angustifolia* are restricted to Pohakuloa Training Area (PTA), a military training installation located in the saddle between Mauna Loa, Mauna Kea, and Hualalai. Only two populations of *H. haplostachya* number more than 100 individuals. No estimates of population sizes are available for *S. angustifolia*.

DATES: Comments on the draft recovery plan must be received on or before November 19, 1993 to receive consideration by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: U.S. Fish and Wildlife Service, Pacific Islands Office, P.O. Box 50167, Honolulu, Hawaii 96850 (Building address: 300 Ala Moana Boulevard, Room 6307, Honolulu, Hawaii 96813) (Telephone: 808/641–2749), and University of Hawaii, Hilo Library, 200 West Kawihi St., Hilo, Hawaii 96720–4091 (Telephone: 808–933–3346). Requests for copies of the draft recovery plan and written comments and materials regarding the plan should be addressed to Robert P. Smith, Field Supervisor of the Pacific Islands Office at the Honolulu address given above. Comments and materials received are available upon request for public inspection, by appointment, during normal business hours at the above Honolulu address.

FOR FURTHER INFORMATION CONTACT: Karen Rosa, Fish and Wildlife Biologist, at the Honolulu address given above.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystem is a primary goal of the Service's endangered species

program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States, its Territories and Commonwealths. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The species being considered in this recovery plan are *Haplostachys haplostachya* and *Stenogyne angustifolia*. *Haplostachys* and *Stenogyne* are two of four endemic genera within the mint family (Laminaceae). Both species were formerly much more widespread throughout the Hawaiian Islands. The species distribution included populations on Maui, Kauai, Hawaii, and Molokai (for *S. angustifolia*) and a variety of habitat types. Introduced animals and land clearing for agriculture over the past 200 years have altered these forests so extensively that little primary habitat remains. *H. haplostachya* was described in 1862, and *S. angustifolia* was described in the mid-1800's. However, both species were considered to be extinct until their rediscovery at PTA in 1977. Browsing by introduced goats and sheep, rooting by feral pigs, competition with alien plants, trampling by hunters and military personnel, and fire are now the major threats to the species' survival. Other threats are introduced insect predators and pathogens.

Haplostachys haplostachya is represented by 14 populations, all of which occur at PTA. *Stenogyne angustifolia* is represented by nine populations, seven of which are located at PTA. One population occurs at Puu Anahulu, and one population at Waikoloa. Until the proper genetic analyses are conducted, population estimates are difficult to make because of the importance of vegetative reproduction. However, only two populations of *H. haplostachya* are believed to be comprised of more than 100 individuals. The areas of emphasis for recovery actions are the population sites located at PTA, Puu Anahulu, and Waikoloa on the island of Hawaii. In addition, the recovery plan emphasizes establishing new populations on Maui, Kauai, and Molokai (for *S. angustifolia*).

Recovery efforts will focus on protection of all extant individuals from pigs, goats, sheep, alien plant species, fire, insect predators and pathogens, propagation of genetically suitable plants to augment the existing populations, and establishment of new populations in suitable habitat areas.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Notice: *Haplostachys haplostachya* and *Stenogyne angustifolia*, availability of the draft recovery plan.

Dated: September 13, 1993.

William E. Martin,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 93–22854 Filed 9–17–93; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Docket Nos. AB–145X, AB–55 (Sub–No. 475X)]

The Carrollton Railroad Company—Abandonment Exemption—In Carroll County, KY; CSX Transportation, Inc.—Discontinuance Exemption—In Carroll County, KY

The Carrollton Railroad Company (Carrollton), as owner, and CSX Transportation, Inc. (CSXT), as lessee,[1] have filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances* for Carrollton to abandon and CSXT to discontinue service over approximately 1.72 miles of rail line between Milepost OCR–7.51 and Milepost OCR–9.23 at Carrollton, Carroll County, KY.

Carrollton and CSXT have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment and discontinuance of service shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 20, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by September 30, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 12, 1993, with: Office of the Secretary, Case Control Branch,

[1] Carrollton is a wholly owned subsidiary of CSXT. Both carriers are part of CSX Transportation, a unit of CSX Corporation.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment (SEE) in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicants' representative: Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicants have filed an environmental report which addresses the effects of the abandonment and discontinuance of service, if any, on the environmental and historic resources. SEE will issue an environmental assessment (EA) by September 24, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 10, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–22879 Filed 9–17–93; 8:45am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated July 9, 1992, and published in the **Federal Register** on July 22, 1992 (57 FR 32566), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Pholcodine (9314)	I
Alphacetylmethadol (9603)	I
Methylphenidate (1724)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium powdered (9639)	II
Opium granulated (9640)	II
Oxymorphone (9652)	II
Phenazocine (9715)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

A registered manufacturer did file a written request for a hearing with respect to the registration of the Penick Corporation. The firm subsequently withdrew its request for a hearing on May 7, 1993. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, Section 1301.54(e), the Director hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: September 13, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–22843 Filed 9–17–93; 8:45 am]

BILLING CODE 4410–09–M

Immigration and Naturalization Service

[INS No. 1629–93; AG Order No. 1789–93]

RIN 1115–AC30

Extension of Designation of Somalia Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice extends, until September 17, 1994, the Attorney General's designation of Somalia under the Temporary Protected Status program provided for in section 244A of the Immigration and Nationality Act (Act). Accordingly, eligible aliens who are nationals of Somalia, or who have no nationality and who last habitually resided in Somalia, may re-register for Temporary Protected Status and extension of employment authorization. This re-registration is limited to persons who already registered for the initial period of Temporary Protected Status, which ended on September 16, 1992, and who re-registered for the second period which ends on September 17, 1993.

EFFECTIVE DATE: This designation is effective on September 18, 1993, and will remain in effect until September 17, 1994. Re-registration procedures become effective on September 20, 1993, and will remain in effect until October 20, 1993.

FOR FURTHER INFORMATION CONTACT: Ronald Chirlin, Senior Immigration Examiner, Immigration and Naturalization Service, room 7123, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: Under section 244A of the Act, as amended by section 302(a) of Public Law 101–649 and section 304(b) of Public Law 102–232 (8 U.S.C. 1254a), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible aliens who are nationals of a foreign state designated by the Attorney General, or who have no nationality and who last habitually resided in that state. The Attorney General so designates a state, or a part thereof, upon finding that the state is experiencing ongoing armed civil strife, environmental disaster, or certain other extraordinary and temporary conditions that prevent nationals or residents of the country from returning in safety.

Effective on September 16, 1991, the Attorney General designated Somalia for Temporary Protected Status for a period of 12 months, 56 FR 46804. The Attorney General extended the designation of Somalia under the Temporary Protected Status program for an additional 12 months until September 17, 1993, 57 FR 32232.

This notice extends the designation of Somalia under the Temporary Protected Status program for an additional 12 months, in accordance with sections 244A(b)(3) (A) and (C) of the Act. This notice also describes the procedures with which eligible aliens who are nationals of Somalia, or who have no nationality and who last habitually resided in Somalia, must comply in applying for continuation of Temporary Protected Status.

Notice of Extension of Designation of Somalia Under Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244A of the Immigration and Nationality Act, as

amended, and pursuant to sections 244A(b)(3) (A) and (C) of the Act, I have determined that, as a result of the continued armed conflict in that nation, there still exist extraordinary and temporary conditions in Somalia that prevent aliens who are nationals of Somalia, and aliens having no nationality who last habitually resided in Somalia, from returning to Somalia in safety. I have further determined that permitting nationals of Somalia, and aliens having no nationality who last habitually resided in Somalia, to remain temporarily in the United States is not contrary to the national interest of the United States. Accordingly, it is ordered as follows:

(1) The designation of Somalia under section 244A(b) of the Act is extended for an additional 12-month period from September 18, 1993, to September 17, 1994.

(2) I estimate that there are approximately 350 nationals of Somalia, and aliens having no nationality who last habitually resided in Somalia, who have been granted Temporary Protected Status and who are eligible for re-registration.

(3) A national of Somalia, or an alien having no nationality who last habitually resided in Somalia, who received a grant of Temporary Protected Status during the initial period of designation from September 16, 1991, to September 16, 1992, and who re-registered for the second period which ends on September 17, 1993, must comply with the re-registration requirements contained in 8 CFR 240.17, which are described in pertinent part in paragraphs (4) and (5) of this notice.

(4) A national of Somalia, or an alien having no nationality who last habitually resided in Somalia, who previously has been granted Temporary Protected Status, must re-register by filing a new Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on September 20, 1993, and ending on October 20, 1993, in order to be eligible for Temporary Protected Status during the period from September 18, 1993, until September 17, 1994. Late re-registration applications will be allowed for "good cause" pursuant to 8 CFR 240.17(c).

(5) There is no filing fee for the Form I–821 filed as part of the re-registration application. The fee prescribed in 8 CFR 103.7(b)(1) will be charged for the Form I–765, filed by an alien requesting employment authorization pursuant to the provisions of paragraph (4) of this notice. An alien who does not request employment authorization must file Form I–821 together with Form I–765 for information purposes, but in such cases both Form I–821 and Form I–765 will be without fee.

(6) Pursuant to section 244A(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before September 17, 1994, the designation of Somalia under the Temporary Protected Status program to determine whether the conditions for designation continue to exist. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

(7) Information concerning the Temporary Protected Status program for nationals of Somalia, and aliens having no nationality who last habitually resided in Somalia, will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated September 14, 1993.

Janet Reno,

Attorney General.

[FR Doc. 93–22849 Filed 9–17–93; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last publication. These entries may include new collections, revisions, extensions, or reinstatements, if applicable. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

- The Agency of the Department issuing this recordkeeping/reporting requirement.
- The title of the recordkeeping/reporting requirement.
- The OMB and/or Agency identification numbers, if applicable.
- How often the recordkeeping/reporting requirement is needed.
- Whether small businesses or organizations are affected.
- An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
- The number of forms in the request for approval, if applicable.
- An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements included in each notice may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items included in each notice should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

New

Employment and Training Administration

Dislocated Worker Program Customer Satisfaction Survey

One-time survey

Individuals or households

1,640 respondents; 10 minutes per response; 273 total hours

This information collection will be used to assess programs under title III of the Jobs Training Partnership Act (JTPA), as amended. Findings will be used to establish a baseline to monitor program performance and to prepare appropriate policy responses.

Signed at Washington, DC this 15th day of September, 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–22961 Filed 9–17–93; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Installation of Boilers at College Park, MD; Tentative Decision To Issue Permit

AGENCY: National Archives and Records Administration.

ACTION: Notice of tentative determination, opportunity to request a public hearing, and opportunity to submit written comments.

SUMMARY: The National Archives and Records Administration gives notice that the Maryland Department of the Environment has made a tentative decision to issue a Permit to Construct to NARA to install four natural gas/No. 2 oil-fired boilers at the National Archives at College Park (Archives II), in College Park, Maryland. Public comment is solicited at this time.

FOR FURTHER INFORMATION CONTACT: The Maryland Department of the Environment at (410) 631–3230, or Marvin Shenkler of NARA at (301) 713–6500.

SUPPLEMENTARY INFORMATION: NARA has been notified that the Maryland Department of the Environment, Air and Radiation Management Administration, has completed its review of NARA's application for a Permit to Construct to install four natural gas/No. 2 fuel oil-fired boilers rated at 16.7 million BTU/hour at the National Archives at College Park (Archives II) facility. The plant will be located at 8601 Adelphi Road, College Park, Maryland, In Prince Georges County.

The Department has made a tentative decision to issue the Permit to Construct and is now ready to receive public comment on the application. Copies of the application, the proposed permit limitations and conditions, and other supporting documents are available for public inspection. Ask for Docket #26–93 at the Maryland Department of the Environment, Air and Radiation Management Administration, 2500 Broening Highway, Baltimore, MD 21224, or the Prince Georges County Public Library, Hyattsville Branch, 6530 Adelphi Road, Hyattsville, MD 20782, during normal business hours.

Interested persons may submit written comments on the issuance of a Permit to Construct for the equipment and/or request a public hearing. Written comments must be submitted to the Department no later than October 20, 1993. Requests for a public hearing must be submitted in writing and must be received by the Department no later than September 30, 1993. All requests for a public hearing and written comments must be directed to the attention of Ms. Caryn Coyle, Office of the Director, Air and Radiation Management Administration, 2500 Broening Highway, Baltimore, MD 21224.

Dated: September 14, 1993.

James C. Megronigle,

Assistant Archivist for Management and Administration.

[FR Doc. 93–22898 Filed 9–17–93; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL INDIAN GAMING COMMISSION

Approval of Class III Tribal Gaming Ordinance

AGENCY: National Indian Gaming Commission.

ACTION: Notice of approval; contents of class III tribal gaming ordinance.

SUMMARY: The purpose of this notice is to inform the public of the approval of the Tonto Apache Tribe's class III gaming ordinance. This notice contains the approval letter signed by the Chairman of the National Indian Gaming Commission and the contents of the ordinance as approved.

FOR FURTHER INFORMATION CONTACT: Susan Carletta at (202) 632–7003 ext. 34, or by facsimile at (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (the Commission). Section 2710(d)(2)(B) of the IGRA as implemented by 25 CFR 522.8 (58 FR 5811 (January 22, 1993)), requires the Commission to publish, in the **Federal Register**, the contents of an approved class III ordinance and the Chairman's order of approval.

Anthony J. Hope,

Chairman.

National Indian Gaming Commission

September 3, 1993.

Jeri Johnson,

Chairperson, Tonto Apache Tribe, Tonto Apache Reservation, Payson, AZ 85541

Dear Chairperson Johnson: This letter responds to your request to review and approve the tribal gaming ordinance submitted on July 26, 1993 and amended on August 26, 1993 for the Tonto Apache Tribe. This letter constitutes such approval under the Indian Gaming Regulatory Act (IGRA).

Under the IGRA and the regulations of the National Indian Gaming Commission (NIGC), the Chairman is directed to review ordinances with respect to the requirements of that Act and the implementing regulations. Thus, the scope of the Chairman's review and approval is limited to the requirements of the IGRA and the NIGC regulations. Such approval does not constitute approval of specific games.

The NIGC expects to receive the applications for key employees and primary management officials under 25 CFR 556.5 (as published in the **Federal Register** on January 22, 1993, at 58 FR 5813). Provisions other than those required under the IGRA or the NIGC regulations that may be included in a tribal ordinance are not subject to review and approval.

It is important to note that the gaming ordinance is approved for gaming only on Indian lands as defined in the IGRA.

Thank you for submitting the ordinance of the Tonto Apache Tribe for review and approval. The NIGC staff and I look forward to working with you and your Tribe in implementing the IGRA.

Sincerely yours,

Anthony J. Hope,

Chairman.

Tonto Apache Tribe

Tonto Apache Reservation #30

Payson, Arizona 85541

Telephone 474–5000 or 474–2068

Fax: 474–9125

Resolution 36–93 of the Governing Body of the Tonto Apache Indian Tribal Council Adopting a Gaming Ordinance

Whereas, the Tonto Tribe and the State of Arizona have entered into a Tribal-State Compact for purposes to authorizing and regulating gaming on the Tonto Apache Indian reservation; and

Whereas, the Tonto Apache Tribe has engaged a management-development company to commence construction of a gaming facility; and

Whereas, the Tribal-State Compact has certain requirements, such as the establishment of a gaming commission, which need to be implemented to authorize gaming and carry out the duties and responsibilities set-forth in the Compact; and

Whereas, National Indian Gaming Regulatory Commission regulations also require the adoption and approval of a gaming ordinance; and

Whereas, the gaming ordinance is based upon a model ordinance suggested by the National Indian Gaming Commission, with some changes to incorporate requirements of the Tribal-State Compact.

Now Therefore be it Resolved, That the Tonto Apache Tribal Council hereby adopts the gaming ordinance attached hereto as Exhibit "A".

Certification

I, the undersigned, hereby certify that the Tribal Council of the Tonto Apache Tribe, at Payson, Arizona is composed of five (5) members of whom 4 were present at a Special Meeting held on this 26th day of July, 1993; and that this foregoing Resolution was

duly adopted by the affirmative vote of 4 members of the Tribal Council.

Jeri Johnson,
Chairperson.
Melton Campbell,
Vice-Chairman.
Howard Burdette, Sr.,
Council Member.
Casilda Johnson,
Council Member.
David Kenny Davis,
Council Member.
Attest:
Nancy Campbell,
Executive Secretary.

Tonto Apache Tribe Gaming Ordinance

I. Purpose

The Tonto Apache Tribal Council (hereinafter "Tribe"), empowered by the Tribe's Constitution to enact ordinances, hereby enacts this Ordinance in order to set the terms for class II and class III gaming operations on Tribal lands.

II. Establishment of the Tonto Apache Gaming Commission

There is hereby established a Tonto Apache Gaming Commission composed of three members. Each member shall serve a three year term, except that the initial term of two of the members will be for one and two years in order to provide for a staggered three year term. Each member shall be appointed by the Chairperson of the Tribal Council and confirmed by a majority vote of the Tribal Council. The Commission shall meet as often as deemed necessary as determined by a majority of the Commission members. All Commission action shall be taken by resolution based upon a majority vote of the Commission.

III. General Powers and Duties.

The Commission shall:

1. License all gaming employees, gaming facility operators, management contractors, and manufacturers and suppliers of gaming devices and gaming services pursuant to the terms of this Ordinance and the Compact entered into between the Tribe and the State of Arizona (hereinafter "Compact").

2. Conduct or cause to have conducted background checks on any and all employees, management contractors, gaming facility operators and manufacturers and suppliers of gaming devices.

3. Keep any and all records as required by this Ordinance, the National Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*), and the Compact.

4. Exercise its best efforts to obtain compliance with this Ordinance, the National Indian Gaming Regulatory Act and the Compact.

5. Consistent with the terms and provisions of this Ordinance and the Compact, establish a procedure and conduct hearings on license revocations, suspensions, and denials.

6. Consistent with the terms and provisions of this Ordinance and the Compact establish a procedure and conduct hearings on gaming customer complaints.

7. Consistent with the terms of the Compact, establish a Tribal gaming office consisting of a director and inspectors.

8. Report any violations of this Ordinance, the Compact or the National Indian Gaming Regulatory Act to appropriate authorities.

9. Establish a code of gaming offenses, fines and punishment to protect against cheating and other gaming offenses which may impair the integrity of the gaming enterprise.

10. Implement all requirements of this Ordinance, the Compact and the National Indian Gaming Act.

11. Monitor and provide oversight of the Gaming management contractor.

IV. Regulatory Power

The Tonto Apache Gaming Commission shall have the authority to promulgate and adopt such rules and regulations as it may deem appropriate to perform the powers and duties set forth in Article III. All rules and regulations shall not take effect until approved by the Tribal Council of the Tonto Apache Tribe.

V. Per Diem

Commission members shall be paid a per diem of $40.00 per meeting up to two hours in length and a per diem of $65.00 for any meeting in excess of two hours.

VI. Gaming Authorized

A. Class II gaming as defined in the Indian Gaming Regulatory Act, P.L. 100–477, 25 U.S.C. Section 2703(7)(A) ("IGRA") and by the regulations promulgated by the National Indian Gaming Commission at 25 CFR 502.3 (as published in the **Federal Register** at 57 FR 12382–12393, April 9, 1992) is hereby authorized.

B. Class III gaming as defined and permitted in the Tribal-State Compact entered into between the State of Arizona and the Tonto Apache Tribe is hereby authorized.

VII. Ownership of Gaming

The Tribe shall have the sole propriety interest in and responsibility for the conduct of any gaming operation authorized by this ordinance.

VIII. Use of Gaming Revenue

A. Net revenues from class II gaming shall be used only for the following purposes: to fund Tribal government operations and programs; provide for the general welfare of the Tribe and its members; promote Tribal economic development; donate to charitable organizations; or help fund operations of local government agencies.

B. If the Tribe elects to make per capita payments to Tribal members, it shall authorize such payments only upon approval of a plan submitted to the Secretary of the Interior under 25 U.S.C. 2710(b)(3).

IX. Audit

A. The Tribe shall cause to be conducted annually an independent audit of gaming operations and shall submit the resulting audit reports to the National Indian Gaming Commission.

B. All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of $25,000.000 annually, except contracts for professional legal and accounting services, shall be specifically included within the scope of the audit that is described in subsection A. above.

X. Protection of the Environment and Public Health and Safety

All gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety in accordance with the Uniform Building Code as may be in effect at the time of construction.

XI. Licenses for Key Employees and Primary Management Officials

The Tribe shall ensure that the policies and procedures set out in this section are implemented with respect to key employees and primary management officials employed at any gaming enterprise operated on Indian lands:

A. *Definitions*

For the purposes of this section, the following definitions apply:

1. *Key employee means:*

(a) A person who performs one or more or the following functions:

(1) Bingo caller;
(2) Counting room supervisor;
(3) Chief of security;
(4) Custodian or gaming supplies or cash;
(5) Floor manager;
(6) Pit boss;
(7) Dealer;
(8) Croupier;
(9) Approver of credit; or
(10) Custodian of gambling devices including persons with access to cash and accounting records within such devices;
(11) Any employee required to be licensed by the Compact;

(b) If not otherwise included, any other person whose total cash compensation is in excess of $30,000 per year; or

(c) If not otherwise included, the four most highly compensated persons in the gaming operation.

2. *Primary management official means:*

(a) The person having management responsibility for a management contract;

(b) Any person who has authority:

(1) To hire and fire employees; or

(2) To set up working policy for the gaming operation; or

(c) The chief financial officer or other person who has financial management responsibility.

(d) Any management person who is subject to a background check pursuant to the terms of the Compact.

B. *Application Forms*

1. The following notice shall be placed on the application form for a key employee or a primary management official before that form is filled out by an applicant:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The

information will be used by Tonto Apache Gaming Commission and the National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties.

The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to hire you in a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

2. Existing key employees and primary management officials shall be notified in writing that they shall either:

a. Complete a new application form that contains a Privacy Act notice; or

b. Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

3. The following notice shall be placed on the application form for a key employee or a primary official before that form is filled out by an applicant.

A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by a fine or imprisonment. (U.S. Code, title 18, section 1001.)

4. The Tribe shall notify in writing existing key employees and primary management officials that they shall either:

a. Complete a new application form that contains a notice regarding false statements; or

b. Sign a statement that contains the notice regarding false statements.

C. *Background Investigations*

1. The Tribe shall request from each primary management official and from each key employee all of the following information:

a. Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);

b. Currently and for the previous 5 years: Business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;

c. The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (1)(b) of this section;

d. Current business and residence telephone numbers;

e. A description of any existing and previous business relations with Indian tribes, including ownership interests in those businesses;

f. A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

g. The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

h. For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;

i. For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within 10 years of the date of the application, the name and address of the court involved and the date and disposition;

j. For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (1)(h) or (1)(i) of this section, the criminal charge, the name and address of the court involved and the date of disposition;

k. The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

l. A current photograph;

m. Any other information the Tribe deems relevant;

n. Fingerprints consistent with procedures adopted by the Tribe according to 25 CFR 522.2(h); and

o. Any other information the State of Arizona may need for purposes of certification of the key employee or management official pursuant to the Compact.

2. The Tribe, pursuant to the terms of the Compact and this ordinance, shall conduct an investigation sufficient to make a determination under subsection D. below. In conducting a background investigation, the Tribe or its agent shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

D. *Eligibility Determination*

The Tribe, in conjunction with the State pursuant to the terms of the Compact, shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation. If the Tribe determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a tribal gaming operation shall not employ that person in a key employee or primary management official position.

E. *Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission*

1. When a key employee or primary management official begins work at a gaming operation authorized by this ordinance, the Tribe shall forward to the National Indian Gaming Commission a completed application for employment and conduct the background investigation and make the determination referred to in subsection D of this section for all class II gaming key employees and primary management officials. All key employees or primary management officials applications related to class III gaming shall be forwarded to the State of Arizona in compliance with the Compact for employment certification. If a key employee or primary management official is employed or responsible for class II and class III gaming, then applications shall be submitted to both the National Indian Gaming Commission and the State of Arizona for purposes of conducting a background investigation and determinations referred to in Section D of this section.

2. The Tribe shall forward the report referred to in subsection F of this section to the National Indian Gaming Commission within 60 days after an employee begins work or within 60 days of the approval of this ordinance by the Chairman of the National Indian Gaming Commission.

3. The gaming operation shall not employ as a key employee or primary management official a person who does not have a license after 90 days.

F. *Report to the National Indian Gaming Commission*

1. Pursuant to the procedures set out in subsection E of this section, the Tribe shall prepare and forward to the National Indian Gaming Commission an investigative report on each background investigation. An investigative report shall include all of the following:

a. Steps taken in conducting a background investigation;

b. Results obtained;

c. Conclusions reached; and

d. The bases for those conclusions.

2. The Tribe shall submit, with the report, a copy of the eligibility determination made under subsection D of this section.

3. If a license is not issued to an applicant, the Tribe:

a. Shall notify the National Indian Gaming Commission; and

b. May forward copies of its eligibility determination and investigative report (if any) to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Records System.

4. With respect to key employees and primary management officials, the Tribe shall retain applications for employment and reports (if any) of background investigations for inspections by the Chairman of the National Indian Gaming Commission or his or her designee for no less than three (3) years from the date of termination of employment.

G. *Granting a Gaming License*

1. If, within a thirty (30) day period after the National Indian Gaming Commission receives a report, the National Indian Gaming Commission notifies the Tribal Gaming Commission that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a

primary management official for whom the tribe has provided an application and investigative report to the National Indian Gaming Commission, the Tribe may issue a license to such applicant. All gaming licenses for Class III employees shall be issued pursuant to the terms of the Compact.

2. The Tribal Gaming Commission shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the 30-day period under paragraph G.1. of this section until the Chairman of the National Indian Gaming Commission receives the additional information.

3. If, within the thirty (30) day period described above, the National Indian Gaming Commission provides the Tribe with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the Tribe has provided an application and investigative report to the National Indian Gaming Commission, the Tribe shall reconsider the application, taking into account the objections itemized by the National Indian Gaming Commission. The Tribe shall make the final decision whether to issue a license to such applicant. Any final decision with respect to Class III applicants shall be made in accordance with the terms and conditions of the compact.

H. *License Suspension*

1. If, after the issuance of a gaming license, the Tribe receives from the National Indian Gaming Commission or the State of Arizona, reliable information indicating that a key employee or a primary management official is not eligible for employment under subsection E. above, the Tribe shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

2. The Tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

3. After a revocation hearing, the Tribe shall decide to revoke or to reinstate a gaming license. The Tribe shall notify the National Indian Gaming Commission and the State of Arizona, pursuant to the terms of the compact, of its decision.

XII. License Locations

The Tribe shall issue a separate license to each place, facility, or location on Indian lands where gaming is conducted under this ordinance.

[FR Doc. 93–22715 Filed 9–17–93; 8:45 am]

BILLING CODE 7565–01–M

NATIONAL SCIENCE FOUNDATION

Division of Environmental Biology; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meetings.

Name: Advisory Panel for Ecological Studies.

Date & Time: October 14 & 15, 1993, 8 a.m.–5 p.m. each day.

Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203.

Contact Person: Dr. Richard Dame, Program Director, Ecological Studies, room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. Telephone: (202) 357–9734.

Agenda: To review and evaluate Ecosystem Studies proposals as part of the selection process for awards.

Name: Advisory Panel for Ecological Studies.

Date & Time: October 12–15, 1993, 8:30 a.m.–5:00 p.m. each day.

Place: Room 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203.

Contact Person: Dr. Scott L. Collins, Program Director, Ecological Studies, room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. Telephone: (202) 357–9734.

Agenda: To review and evaluate Ecology proposals as part of the selection process for awards.

Name: Advisory Panel for Systematic and Population Biology.

Date & Time: October 20–22, 1993, 8 a.m.–5 p.m. each day.

Place: Bethune Room, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203.

Contact Person: Dr. E. Jane Harrington, Program Director, Systematic and Population Biology, room 635, Division of Environmental Biology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. Telephone: (202) 357–9588.

Agenda: To review and evaluate Systematic Biology proposals as part of the selection process for awards.

Name: Advisory Panel for Systematic and Population Biology.

Date & Time: October 20–22, 1993, 8 a.m.–5:30 p.m. each day.

Place: Room 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203.

Contact Person: Dr. Mark W. Courtney, Program Director, Systematic and Population Biology, room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. Telephone: (202) 357–9728.

Agenda: To review and evaluate Population Biology proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 15, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–22869 Filed 9–17–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Mathematical and Physical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 7, 1993, 8:30 a.m.–6 p.m., October 8, 1993, 8:30 a.m.–4:30 p.m.

Place: National Science Foundation, room 1242, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Judith S. Sunley, Executive Officer, MPS, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357–9742.

Minutes: May be obtained from the contact person listed above.

Meeting Purpose: To provide advice and recommendations on development of MPS strategic planning mechanisms; provide advice on the appropriateness of current disciplinary boundaries; evaluate the current MPS interfaces with academia and industry; and advise on methods of achieving overall program excellence in MPS.

Agenda:

October 7

A.M.—
- Introductory Remarks
- MPS Strategic Plan Development

P.M.—
- Further Strategic Planning Issues
- MPS Interface/Dialog with Academic Community
- Response of Advisory Committee to MPS Strategic Plan

October 8

A.M.—
- MPS Interfaces with Industry
- MPS Interfaces with other Agencies

P.M.—
- Advisory Committee Deliberations
- Closing Discussion.

Dated: September 14, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–22867 Filed 9–17–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Physiology and Behavior; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following two meetings of the Advisory Panel for Physiology and Behavior (#1160.)

1. *Date and Time:* October 7–8, 1993; 8 a.m. to 5 p.m. each day
Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA
Type of Meetings: Part-Open
Contact Persons: Dr. Elvira Doman and Dr. Barbara Zain, Program Directors, Integrative Animal Biology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. Telephone: (202) 357–7975.
Agenda: Closed session:

Thursday, October 7 from 8:30 a.m. to 4 p.m. and Friday, October 8 from 8:30 a.m. to 12 p.m. and 1 p.m. to 5 p.m.—review and evaluate integrative animal biology proposals as part of the selection process for awards.

Open session:

Thursday, October 7 from 4 to 5 p.m.—Dr. Thomas E. Brady, Deputy Division Director, IBN will discuss budget figures, research trends and opportunities in Integrative Animal Biology.

Friday, October 8 from 12 to 1 p.m.—Dr. Michael H. Melner will conduct a seminar on research carried out in his lab.

1. *Date and Time:* October 12–14, 1993; 8 a.m. to 5 p.m. each day
Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA
Contact Person: Dr. Sharon B. Emerson, Program Director, Ecological and Evolutionary Physiology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22203. Telephone: (202) 357–7975.
Agenda: Closed session:

October 12 and 14th, from 8 a.m. to 5 p.m. and October 13 from 8 a.m. to 12 p.m. and 1 p.m. to 5 p.m.—review and evaluate functional and physiological ecology proposals as part of the selection process for awards.

Open session:

Wednesday, October 13 from 12 to 1 p.m.—Dr. Thomas E. Brady, Deputy Division Director, IBN and Dr. Mary E. Clutter, Assistant Director, BIO will discuss research trends and opportunities in Ecological and Evolutionary Physiology.

Minutes: May be obtained from the contact persons listed above.
Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 14, 1993.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 93–22866 Filed 9–17–93; 8:45 am]
BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communications Research and Infrastructure (NRCI); Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Networking and Communications Research.
Date and Time: October 13–15, 1993; 8:30 am to 5 pm.
Place: Room 416, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.
Type of Meeting: Closed.
Contact Person: Mr. Donald Mitchell, NCRI, National Science Foundation, room 416, Washington, DC 20550 (202 357–9717).
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposals submitted for the Network Access Point Manager, Routing Arbiter, Regional Network Providers, and Very High Speed Backbone Network Services Provider for NSFNET and the NREN (sm) Program Solicitation.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 15, 1993.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 93–22868 Filed 9–17–93; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Public Service Electric & Gas Co.; Environmental Assessment and Finding of No Significant Impact

[Docket Nos. 50–272 and 50–311]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–70 and DPR–75, issued to Public Service Electric and Gas Company, et al. (PSE&G or the licensee) for Salem Nuclear Generating Station (SNGS), Units 1 and 2, located in Salem County, New Jersey.

Environmental Assessment

Identification of the Proposed Action

By letter dated June 17, 1993 (NLR–N93098), PSE&G requested an emergency license amendment to reflect changes to the Updated Final Safety Analysis Report (UFSAR) for Salem, Units 1 and 2. The request concerned changes to the current licensing basis requirements to address a potential single failure identified in the rod control system (RCS). Investigation of an RCS failure during startup of Salem Unit 2 had determined that a single failure in the RCS may result in a single rod control cluster assembly (RCCA) withdrawal or an asymmetric RCCA withdrawal event. The current UFSAR analysis for single RCCA withdrawal at power indicates that localized Departure From Nucleate Boiling (DNB) would result. This was acceptable because UFSAR Sections 4.3 and 15.3.5.1 describe single RCCA withdrawal events as requiring multiple failures in the RCS for a single RCCA withdrawal to occur. If a single failure can cause a single RCCA withdrawal or an asymmetric RCCA withdrawal, the requirements of 10 CFR part 50, appendix A, General Design Criterion (GDC) 25, Protection System Requirements for Reactivity Control Malfunctions, which states, "The protection system shall be designed to assure that specified acceptable fuel design limits are not exceeded for any single malfunction of the reactivity control systems such as accidental withdrawal (not ejection of dropout) of control rods," are not met.

The licensee proposes to change the UFSAR by assuming the probability of occurrence of event has increased because only a single failure in the RCS is necessary for the event to occur. Salem-specific analysis of the event has shown that DNB limits would not be exceeded.

Need for Proposed Action

The revision of the licensing basis for the rod control system and the resultant change in the accident analysis is required to demonstrate continued compliance with the regulations.

Environmental Impact of the Proposed Action

The proposed changes to the UFSAR, Sections 4.3 and 15.3.5.1, would include an analysis of the core response, assuming a single failure of the RCS

with a resultant single or multiple asymmetric RCCA withdrawal event. The staff has concluded that such changes would not adversely affect plant safety or the health and safety of the public. Because the change in the assumption concerning RCS failures is from multiple failures to a single failure, the probability of this event has theoretically increased. However, the calculated consequences of the event have decreased because the DNB limits of the fuel are not exceeded. No changes are being made in the types or amount of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential non-radiological impacts, the proposed changes involve systems located within the restricted area, as defined in 10 CFR part 20. They do not affect non-radiological plant effluents and have no other environmental impact.

Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative would be to deny the requested amendments. This would not reduce the environmental impacts of plant operation.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Salem Nuclear Generating Station, Units 1 and 2, dated April 1973.

Agencies and Persons Contacted

The NRC staff reviewed the licensee's request and consulted the State of New Jersey regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for license amendments dated June 17, 1993. This letter is available for public inspection at the Commission's Public Document Room, the Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC 20555, and the local public document room located at the Salem Free Public Library, 112 West Broadway, Salem, Jersey 08079.

Dated at Rockville, Maryland, this 13th day of September 1993.

James C. Stone,

Acting Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–22877 Filed 9–17–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32888; File No. 265–18]

Market Transactions Advisory Committee; Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of the Securities and Exchange Commission ("Commission") Market Transactions Advisory Committee ("Committee").

SUMMARY: This is to give notice that the Securities and Exchange Commission Market Transactions Advisory Committee will meet on October 18, 1993, in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, DC, beginning at 10 a.m. The meeting will be open to the public. This notice also serves to invite the public to submit written comments to the Committee.

ADDRESSES: Written comments should be submitted in triplicate and should refer to File No. 265–18. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Jack Drogin, Division of Market Regulation at (202) 272–2775, or Ari Burstein, Division of Market Regulation at (202) 504–2933; Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app 10a, the Securities and Exchange Commission Market Transactions Advisory Committee hereby gives notice that it will meet on October 18, 1993, in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, DC, beginning at 10 a.m. The meeting will be open to the public.

The Committee was formed under section 17A(f) of the Securities Exchange Act of 1934. The Committee's responsibilities include assisting the Commission in identifying State and Federal laws that may impede the safe and efficient clearance and settlement of securities transactions and in advising the Commission on the use of the Commission's authority under the Market Reform Act of 1990 to adopt uniform federal rules regarding the transfer and pledge of securities.

The purpose of the meeting will be to discuss the progress of the Committee's subgroups and to plan the continued progression of the Committee's work. In addition, the Committee will discuss the status of the project to revise article 8 of the Uniform Commercial Code undertaken by the National Conference of Commissioners on Uniform State Laws.

Dated: September 14, 1993.

Jonathan G. Katz,

Advisory Committee Management Officer.

[FR Doc. 93–22880 Filed 9–17–93; 8:45 am]

BILLING CODE 8010–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Undergraduate Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Division of Undergraduate Education.

Date and Time: October 14, 1993; 8 a.m. to 5 p.m.; October 31, 1993; 6 p.m. to 9 p.m.; November 1, 1993; 8 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA. 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Susan Hixson, Program Director, Dr. Stanley Pine, Program Director, National Science Foundation, 1800 G Street NW., Washington, DC 20550, Telephone: (202) 357–7051.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Systemic Changes in the Undergraduate Chemistry Curriculum Panel Meeting.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5

U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93-22870 Filed 9-17-93; 8:45 am]

BILLING CODE 7555-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32875; File No. SR-Amex-93-08]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc., and Granting Accelerated Approval to Amendment Nos. 1, 2, 3, and 4 to the Proposed Rule Change, Relating to the Trading of Options on the Morgan Stanley Cyclical and Consumer Indexes and Long-Term Options on a Reduced Value Cyclical and Consumer Indexes

September 13, 1993.

I. Introduction

On March 8, 1993, the American Stock Exchange ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposal to list and trade index options on the Morgan Stanley & Co., Inc. ("Morgan Stanley") Cyclical and Consumer Indexes ("Indexes").

Notice of the proposed rule changes were published for comment and appeared in the **Federal Register** on May 12, 1993.[3] The Amex amended the proposal on June 11, 1993,[4] July 8, 1993,[5] July 23, 1993,[6] and September 10, 1993.[7] No comments were received on the proposed rule change. This order approves the proposal as amended.

II. Description of the Proposal

A. Introduction

The Exchange is proposing to list and trade options on the Cyclical and Consumer Indexes, developed by Morgan Stanley. The Cyclical Index is comprised of 29 stocks traded on the New York Stock Exchange, Inc. ("NYSE"), and 1 stock from the National Market System ("NMS") tier of the National Association of Securities Dealers, Inc. ("NASD") Automated Quotation ("NASDAQ") system. The Consumer Index is comprised solely of thirty NYSE-traded stocks. The Amex also proposes to list either long-term options on the full value of the Indexes or long-term options on a reduced value of the Indexes that will be computed at one-tenth of such value ("Cyclical and Consumer LEAPS" or "Indexes LEAPS").[8] Cyclical and Consumer LEAPS will trade independently of and in addition to the regular options on the Cyclical and Consumer Indexes traded on the Exchange.

B. Cyclical Index

The Cyclical Index is designed to measure the performance of stocks in industries that are highly sensitive to movements in the economic business cycle. The Index consists of 30 securities of highly capitalized companies, representing 25 separate industries, and will be calculated using an "equal-dollar weighting" methodology.[9] As of June 4, 1993, the level of the Cyclical Index was at 275.47.

As of June 4, 1993, the market capitalizations of the individual stocks in the Cyclical Index ranged from a high of $26.9 billion to a low of $1.61 billion, with the mean and median being $7.33 billion and $5.68 billion, respectively. The market capitalization of all the stocks in the Index was $220.162 billion. The total number of shares outstanding for the stocks in the Index ranged from a high of 488.1 million to a low of 34.5 million shares (the mean and median number of shares outstanding are 144 million and 105.2 million, respectively). The average price per share of the stocks in the Index, for a six-month period between December 1992 and May 1993, ranged from a high of $83.101 to a low of $14.494.[10] In addition, the average daily trading volume of the stocks in the Index, for the same six-month period, ranged from a high of 2.25 million shares per day to a low of 81,300 shares per day, with the mean and median being 491,000 and 345,000 shares, respectively. Lastly, no one stock comprised more than 4.89% of the Index's total value and the percentage weighting of the three largest issues in the Index accounted for 13.14% of the Index's value.

C. Consumer Index

The Consumer Index is designed to track the performance of consumer-oriented, stable, conservative industries. The Index is comprised of 30 companies, representing 20 different industries, whose products and services enjoy relatively stable consumer and business demand over the economic business cycle. The Index is calculated using an "equal-dollar weighting" methodology.[11] As of June 4, 1993, the level of the Consumer Index was at 194.67.

As of June 4, 1993, the market capitalizations of the individual stocks in the Consumer Index ranged from a high of $61.19 billion to a low of $3.3 billion, with the mean and median being $17 billion and $10.7 billion, respectively. The market capitalization of all the stocks in the Index was $510.4 billion. The total number of shares outstanding for the stocks in the Index ranged from a high of 2.29 billion to a low of 38.4 million shares (the mean and median number of shares outstanding are 422.9 million and 222.4

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1993).

[3] See Securities Exchange Act Release No. 32276 (May 6, 1993, 58 FR 28073).

[4] On June 11, 1993, the Amex filed Amendment No. 1 to the proposal to provide for certain standards to be used in conjunction with the maintenance of the Indexes. See letter from Ellen T. Kander, Special Counsel, Derivative Securities, to Richard Zack, Branch Chief, Division of Market Regulation, SEC, dated June 11, 1993 ("Amendment No. 1").

[5] On July 8, 1993, the Amex filed Amendment No. 2 to the proposal undertaking to ensure that at all times, no fewer than 90% of the stocks comprising the Cyclical and Consumer Indexes will be eligible for options listing in accordance with Exchange Rule 915. See letter from Ellen T. Kander, Special Counsel, Derivative Securities, Amex, to Richard Zack, Branch Chief, Division of Market Regulation, dated July 8, 1993 ("Amendment No. 2").

[6] On July 23, 1993, the Exchange filed Amendment No. 3 to the proposal concerning semi-annual review and rebalancing procedures for the Indexes. Specifically, the Amex amendment requires: (1) At least 90% of the component stocks of each Index to maintain an average daily trading volume of at least 75,000 shares; and (2) if the top five stocks in either Index represent over one-third of that Index's value, rebalancing of such Index would be required on the expiration Friday in the nearest upcoming month on the March cycle. See letter from Ellen T. Kander, Special Counsel, Derivative Securities, Amex, to Richard Zack, Branch Chief, Division of Market Regulation, SEC, dated July 23, 1993 ("Amendment No. 3").

[7] On September 10, 1993, the Exchange filed Amendment No. 4 to the proposal concerning eligibility requirements. Specifically, the Amex amendment requires that before a stock is included in either of the indexes: (1) The stock must have a minimum market value of at least US$75 million; and (2) stock must have an average monthly trading volume in the U.S. markets over the previous six-month period of not less than 500,000 shares. See letter from Claris McGrath, Special Counsel, Amex, to Sharon Lawson, Assistant Director, Division of Market Regulation, dated September 10, 1993 ("Amendment No. 4").

[8] LEAPS is an acronym for Long-Term Equity Anticipation Securities.

[9] See *infra* Section II.E. entitled "Calculation of the Index" for a description of this calculation method. See also Securities Exchange Act Release No. 31245 (September 28, 1992), 57 FR 45844.

[10] The total average daily trading price per share for the Cyclical Index was $48.976 while the median average daily trading price was $48.826.

[11] See *infra* Section II.E. entitled "Calculation of the Index" for a description of this calculation method. See also Securities Exchange Act Release No. 31245 (September 28, 1992), 57 FR 45844.

million, respectively). The average price per share of the stocks in the Index, for a six-month period between December 1992 and May 1993, ranged from a high of $111.164 to a low of $25.461.[12] In addition, the average daily trading volume of the stocks in the Index, for the same six-month period, ranged from a high of 3.312 million shares per day to a low of 55,400 shares per day, with the mean and median being 812,000 and 515,000 shares, respectively. Lastly, no one stock comprised more than 4.17% of the Index's total value and the percentage weighting of the three largest issues in the Index accounted for 12.04% of the Index's value.

D. Maintenance

The Cyclical and Consumer indexes will be maintained by Morgan Stanley. Morgan Stanley may change the composition of the Indexes at any time to properly reflect the conditions existing in the industry sectors represented and to ensure that the component securities continue to represent the applicable industry segments and the applicable maintenance standards, as discussed below.[13] In addition Morgan Stanley will advise the Exchange regarding the handling of unusual corporate actions which may arise from time to time. Routine corporate actions (*e.g.*, stock splits, routine spinoffs, etc.) which require straightforward index divisor adjustments will be handled by Exchange staff without consultation with Morgan Stanley. All stock replacements and unusual divisor adjustments caused by the occurrence of extraordinary events such as dissolution, merger, bankruptcy, non-routine spinoffs or extraordinary dividends will be made by Exchange staff in consultation with Morgan Stanley. All stock replacements and the intended index handling of non-routine corporate actions will be announced at least ten business days in advance of such effective change, whenever practicable. As with all options currently trading on the Amex, the Exchange will make this information available to the public through dissemination of an information circular.

E. Eligibility Standards for the Inclusion of Component Stocks in the Indexes

Exchange Rule 901C specifies criteria for the inclusion of stocks in an index on which options will be traded on the Exchange. Specifically, Rule 901C states that an index must have a minimum of five stocks, and any index with less than 25 component stocks may not include stocks traded on the Amex.[14] In addition, the proposal amends Exchange Rule 901C to require that at least 90% of the stocks comprising each Index be eligible for options listing in accordance with the Exchange's options listing standards.[15]

In choosing among stocks that meet the minimum criteria set forth in Rule 901C, Morgan Stanley will focus only on stocks that are traded either on the NYSE, Amex (subject to the limitations of Rule 901C), or traded through NASDAQ–NMS. In addition, Index components must have: (1) a minimum market value of at least U.S. $75 million, and (2) an average monthly trading volume in U.S. markets over the previous six month period of not less than 500,000 shares.[16] The Exchange will also adopt semi-annual review procedures to ensure that 90% of the component stocks in each Index maintains an average daily trading volume of at least 75,000 shares.[17]

F. Calculation of the Index

The Amex will calculate the values for both the Cyclical and Consumer Indexes. The Indexes will be calculated using an "equal dollar" weighting methodology designed to ensure that each of the component securities are represented in approximately "equal" dollar amounts in the Indexes. The Exchange believes that this method of calculation is important since there is a great disparity in the size and capitalization among the component companies of the Indexes.[18] In addition, according to Amex and Morgan Stanley, using a price-weighted method to calculate the Indexes is not preferred since the price of the component stocks can fluctuate significantly as a result of corporate actions, rather than as a result of stock performance, causing the relative weightings of the stocks within the Index to fluctuate significantly.

In calculating the "equal dollar" weighting of component stocks, the Amex, using closing prices on December 31, 1991, established portfolios of Cyclical and Consumer Index stocks representing investments of $333,333 in the stocks (to the nearest whole share) of each of the companies in each index.[19] The value of each Index equals the current market value (*i.e.*, based on U.S. primary market prices) of the sum of the assigned number of shares of each of the stocks in the Index portfolios divided by the Index divisor. Both the Cyclical and Consumer Index divisors were initially calculated to yield benchmark values of 200.00 on December 31, 1991. Each year thereafter, following the close of trading on the third Friday of December, each Index portfolio will be adjusted or "rebalanced" by changing the number of shares of each component stock so that each company is again represented in "equal" dollar amounts.[20] If necessary,

[12] The total average daily trading price per share for the Consumer Index was $49.932 while the median average daily trading price was $51.406.

[13] The criteria employed by Morgan Stanley in the substitution of component stocks of either Index consists of an analysis of the size of the company, the liquidity, the size of its float, as well as other technical and fundamental factors regarding the company. Following the completion of this analysis (which usually will be completed in three days), a decision will then be made to select a particular company as a substitute component. The Control Group at Morgan Stanley will correspondingly be informed of the company to be deleted and the company to be added to the particular Index, and will then promptly place that stock on the firm's Restricted List. The Amex will accordingly be duly informed by Morgan Stanley of the adjustment. See letter from Robin Roger, Counsel, Morgan Stanley, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated August 18, 1993 ("Monitoring Letter").

[14] The Cyclical and Consumer Indexes as currently constituted do not include Amex-traded stocks.

[15] See Amendment No. 2, *supra* note 5. The Amex's options listing standards, found in Rule 915, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7,000,000; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months.

[16] See Amendment No. 4, *supra* note 7.

[17] See Amendment No. 3, *supra* note 6. The Exchange's eligibility criteria for the Indexes further requires: (1) No American Depositary Receipts ("ADRs") as components for the Indexes; (2) component stocks in either Index number at least 25; and (3) the industry groups represented by the component stocks in either Index number at least 20. See Amendment No. 1, *supra* note 4.

[18] For example, as of June 4, 1993, Ford Motor Company had a market capitalization of $26.9 billion with 488 million shares outstanding, while Maytag Corporation had a market capitalization of $1.6 billion with 106 million shares outstanding, in the case of the Cyclical Index. In addition, WalMart Stores, Inc. had a market capitalization of $61.1 billion with 2.3 billion shares outstanding, while W.W. Grainer, Inc. had a market capitalization of $3.3 billion with 52.5 million shares outstanding, in the case of the Consumer Index.

[19] The Index weights (both at the initiation of the Indexes and at each rebalancing) for each component stock included in the Indexes is 3.33%. For example, at the last rebalancing on December 18, 1992, each component stock included in the Indexes had an index weight of 3.33%.

[20] Rebalancing for each Index will generally occur in December immediately after the close of trading on "expiration Friday." At this time, each component comprising the Indexes will again represent an equal dollar weighting of 3.33%. At any time between annual December rebalancings, if the top five stocks in either Index represent in the aggregate more than 33.33% of that index's value, Morgan Stanley will rebalance such index on the expiration Friday in the nearest upcoming month on the March cycle. See Amendment No. 3, *supra* note 6.

Continued

a divisor adjustment will be made to ensure continuity of the Indexes' values. The newly adjusted portfolios then become the basis for each Index's value on the first trading day following the yearly adjustment.

The number of shares of component stocks in each Index's portfolio will remain fixed between annual reviews except in the event of certain types of corporate actions such as the payment of an extraordinary cash dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks, or a merger, consolidation, dissolution or liquidation of an issuer of a component stock, in which case the number of shares of that security in the portfolio may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action.

In the event of a stock replacement in either of the Indexes, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the stock of a new component, to the nearest whole share. In addition, the divisors will be adjusted, if necessary, to ensure Index continuity. Similar to other stock index values published by the Exchange, the value of the Indexes will be calculated by Amex continuously and disseminated on a real-time basis to market information vendors via the Options Price Reporting Authority ("OPRA").[21]

The index settlement value for purposes of settling options on the Cyclical Index and Consumer Index will be calculated based upon the opening prices of the component securities pursuant to the normal opening procedures of the primary exchange where the securities are traded on Expiration Friday.[22] In the case of securities traded through the NASDAQ system, the first reported sale price will be used. As trading begins in each of the Index's component securities, its opening sale price is then captured for use in the calculation. Once all of the component stocks have opened, the index settlement value is determined. If any of the component stocks do not open for trading on the last trading day before expiration, then the prior day's last sale price will be used in the calculation.

G. Contract Specifications

The proposed options on the Indexes will be cash-settled, European-style options.[23] Standard options trading hours (9:30 a.m. to 4:15 p.m. New York time) will apply to the contracts. Under Amex Rule 903C, the Exchange intends to list up to three near calendar months and two additional calendar months in three month intervals in the December cycle. The Amex also proposes 2½ point strike price intervals for near-the-money series, *i.e.*, within 10 points above or below the current index value. The Exchange also intends to list LEAPS that expire 12 to 36 months from listing on the full value of the Cyclical and Consumer Indexes or on a reduced value of such Indexes, computed at one-tenth of the value of the full value of either Index. The current and closing Index value for reduced value Cyclical and Consumer LEAPS will be computed by dividing the value of the full value Index by 10 and rounding the resulting figure to the nearest one-hundredth. For example, an Index value of 187.46 for the Consumer Index would be 18.75 for the Consumer LEAPS and 187.43 would become 18.74.

The reduced value LEAPS will have a European-style exercise and will be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures. The strike price interval for the reduced value LEAPS will be no less than $2.50 instead of $5.00. In addition, strike price interval, bid/ask differential and price continuity rules will not apply to the trading of LEAPS until their time to expiration is less than twelve months.[24]

The options on the Indexes will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). Since options on the Indexes will settle based upon the opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index options series will normally be the second to the last business day before expiration (normally a Thursday).

H. Classification of the Indexes as Broad-Based

The Amex has requested that the Indexes be classified as broad-based.[25] In support of this request, the Amex states that the Indexes consist of 30 securities each representing at least 20 different industry group.[26] In order to ensure that these Indexes remain representative of a broad spectrum of cyclical and consumer companies and that stocks with low trading volumes are not included in the Indexes, the Amex has proposed, as set forth in Section II.E above, that, in addition to meeting the minimum criteria in Rule 901C, stocks in the indexes must have a minimum market capitalization of $75 million, have an average monthly trading volume in U.S. markets over the previous six months of not less than 500,000 shares, and that 90% of the stocks in the indexes maintain an average daily trading volume of 75,000 shares. Moreover, the Exchange has also imposed an additional requirement requiring no fewer than 90% of the stocks comprising each Index be eligible for options listing in accordance with Rule 915.[27]

I. Position and Exercise Limits, Margin Requirements, and Surveillance

The proposal provides that Amex Rules that are applicable to the trading of options on broad-based indexes will apply to the trading of options on the Cyclical or Consumer Indexes. Specifically, the Exchange rules governing margin requirements,[28]

Moreover, the Exchange will notify its members whenever the Indexes are rebalanced, regarding the adjusted number of shares of each component and any divisor adjustments by preparing and distributing an Information Circular. *See infra* note 44 and accompanying text.

[21] Specifically, the Amex will disseminate over Network B to market-data vendors the values of the Indexes based on the most recently reported prices of the component stocks in the Indexes at 15-second intervals during regular Amex trading hours.

[22] Expiration Friday is the one Friday each month, including the four quarterly expirations, on which at least some stock index derivative instruments expire. Specifically, Expiration Fridays are on the third Friday of each month.

[23] A European-style option can be exercised only during a specified period before the option expires.

[24] See Securities Exchange Act Release No. 25041 (October 16, 1987), 52 FR 40006.

[25] The Exchange believes that the Cyclical Index and Consumer Index are broad-based indexes under Amex Rule 900C(b)(1).

[26] The represented industry groups in the Cyclical Index are: (1) Aerospace; (2) Aluminum; (3) Automobiles; (4) Automobile Parts; (5) Building Materials; (6) Chemicals; (7) Conglomerates; (8) Defense; (9) Electrical Equipment; (10) Electronics (instrumentation); (11) Electronics (semi-conductor); (12) Heavy Duty Trucks and Parts; (13) Household Furnishings and Appliances; (14) Machinery; (15) Manufacturing; (16) Metals; (17) Miscellaneous; (18) Money Center Banks; (19) Paper and Forest Products; (20) Publishing; (21) Railroads; (22) Retail; (23) Steel; (24) Transportation; and (25) Trucking.

The represented industry groups in the Consumer Index are: (1) Alcoholic Beverages; (2) Beverages (soft drink); (3) Computer Software & Services; (4) Containers; (5) Cosmetics; (6) Electrical Equipment; (7) Foods; (8) Food Wholesalers; (9) Health Care Diversified; (10) Health Care Drugs; (11) Household Products; (12) Housewares; (13) Major Regional Banks; (14) Medical Products & Supplies; (15) Paper & Forest Products; (16) Restaurants; (17) Retail (drug stores); (18) Retail (food chains); (19) Retail (general merchandise); and (20) Tobacco.

[27] See Section II.E., supra.

[28] Pursuant to Amex Rule 462(d)(2)(D)(iii), the margin requirements for options on the Cyclical or

position and exercise limits,[29] and trading halt procedures[30] that are applicable to the trading of broad-based options will apply to options traded on the Indexes.

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the full value Indexes and reduced value Indexes. These procedures include complete access to trading activity in the underlying securities. The Intermarket Surveillance Group Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Indexes.[31] In addition, pursuant to a Surveillance Agreement entered into between the Amex and Morgan Stanley, the Exchange shall have the right to review trading account information in the possession of Morgan Stanley regarding Morgan Stanley, its affiliates and customers, pertaining to the stocks comprising the Indexes.

Morgan Stanley has also created special procedures to prevent material, non-public information from being improperly used by the research, sales and trading divisions of the firm in connection with the maintenance of the Indexes. Specifically, these "Chinese Wall" procedures prohibit proprietary trading by the firm or trading by an employee in anticipation of an adjustment in the Indexes. The particular stock or stocks that are to be replaced and substituted will be placed on Morgan Stanley's "Restricted List" for two business days (*i.e.*, trading prohibition period) in order to allow for the information to be disseminated to the public.[32] Morgan Stanley further represents that it will initiate an internal investigation of any improprieties involving an adjustment to either of the Indexes and comply with the rules of the New York Stock Exchange, Inc. regarding such investigations.

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[33] The Commission finds that the trading of options on the Cyclical and Consumer Indexes, including full value and reduced value LEAPS, will serve to protect investors, promote the public interest, and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risks associated with the economic business cycle (Cyclical Index) and consumer-oriented industries (Consumer Index). The Commission also believes that the trading of options on the Indexes and LEAPS on those Indexes will allow investors holding positions in some or all of the underlying securities in the Index to hedge the risks associated with their portfolios more efficiently and effectively. Moreover, the Commission believes that Cyclical and Consumer LEAPS (traded at one-tenth the value of the Cyclical and Consumer Indexes) will serve the needs of retail investors by providing them with the opportunity to use a long-term option to hedge their portfolios from long-term market moves at a reduced cost.[34]

The trading of options on the Cyclical and Consumer Indexes and on a reduced value of such Indexes, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the Amex adequately has addressed these concerns.

A. Indexes Design and Structure

The Commission finds that it is appropriate and consistent with the Act to classify the Cyclical and Consumer Indexes as broad based, and thus to permit Exchange rules applicable to the trading of broad-based index options to apply to the index options on the Cyclical and Consumer Indexes. Specifically, the Commission believes it is consistent with the Act to designate the Indexes as broad-based because the Indexes reflect a substantial segment of the U.S. equity market, in general, and stocks in industries that are highly sensitive to movements in the economic business cycle (Cyclical Index) and the performance of consumer-oriented industries (Consumer Index), in particular.

First, the stocks comprising each Index are actively-traded, highly-capitalized, and widely distributed. As of June 4, 1993, the market capitalizations of the individual stocks in the Cyclical Index ranged from a high of $26.9 billion to a low of $1.61 billion, with the mean and median being $7.33 billion and $5.68 billion, respectively. Moreover, as of June 4, 1993, the market capitalizations of the individual stocks in the Consumer Index ranged from a high of $61.19 billion to a low of $3.3 billion, with the mean and median being $17 billion and $10.7 billion, respectively.[35] Second, although the Cyclical and Consumer Indexes are designed to measure particular economic characteristics, the Indexes include stocks of companies from a broad range of industry groups. For example, the Cyclical Index represents

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Consumer Indexes will be: (1) for each short options position, 100% of the current market value of the options contract plus 15% of the underlying aggregate index value, less any out-of-the-money amount, with a minimum requirement of the options premium plus 10% of the underlying index value; and (2) for long positions, 100% of the options premium paid.

[29] Pursuant to Amex Rules 904C and 905C, respectively, the position and exercise limits proposed for the options on the Indexes will be 25,000 contracts on the same side of the market with no more than 15,000 of such contracts in the series with the nearest expiration month.

[30] Amex Rule 918C(b) sets forth the Exchange's policy regarding trading halts and suspensions. Specifically, trading in broad-based index options will be halted or suspended when trading has been halted or suspended in the primary markets for any combination of underlying stocks accounting for such minimum percentage of the index, as established by the Exchange pursuant to this Rule. The factors set forth in Rule 918C(b) for halting or suspending trading include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index value; or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[31] The ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990.

[32] Once a decision has been made to add or delete a component stock from either Index, the Morgan Stanley employee or employees with knowledge of such decision will be prohibited from trading in the securities of that company from the time the employee or employees began contemplating the adjustment, until the component company is removed from Morgan Stanley's Restricted List by the Control Group (ordinarily this is two business days to allow for dissemination to the public).

[33] 15 U.S.C. 78f(b)(5) (1982).

[34] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option or warrant proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options on the Cyclical and Consumer Indexes will provide investors with a hedging vehicle that should reflect the movement in the economic business cycle and stable, consumer industries, respectively. The Commission also believes that these options will provide investors with a means by which to make investment decisions or gain exposure regarding the economic business cycle and consumer industries, allowing them to establish positions in a cost effective manner.

[35] See discussion in Sections II.B. and II.C., *supra*.

25 different industries ranging from aerospace to trucking, while the Consumer Index represents 20 different industries ranging from beverages to electrical equipment.[36] Third, as of June 4, 1993, no one stock comprised more than 4.89% of the Cyclical Index's total value and the percentage weighting of the three largest issues in the Cyclical Index accounted for 13.14% of its value, while in the case of the Consumer Index, as of June 4, 1993, no one stock comprised more than 4.17% of the Index's total value and the percentage weighting of the three largest issues in the Index accounted for 12.04% of its value. Fourth, the Index selection and maintenance criteria will serve to ensure that the Indexes maintain their broad representative sample of stocks in their respective industries. Accordingly, the Commission believes it is appropriate to classify the Cyclical and Consumer Indexes as broad based.

The Commission also believes that the proposed eligibility standards set forth in Section II.E. above will ensure that stocks with low capitalizations, small public float,[37] and low trading volumes are not included in the Indexes, that no individual or group of securities will comprise a large percentage of the Index's weighting,[38] and that a broad spectrum of industrial sectors will continue to be represented in these Indexes.

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the component stocks of the Indexes significantly minimize the potential for manipulation of either Index. First, the overwhelming majority of the stocks that comprise each Index are actively traded.[39] Second, the market capitalizations for the stocks comprising each Index are very large and are considered to be U.S. "blue-chip" companies.[40] Third, although the Indexes are only comprised of 30 stocks, no one particular stock or group of stocks dominates the Indexes.

In addition, the Commission does not believe that the fact that the Indexes are equal dollar weighted instead of market weighted or price weighted results in the Indexes being readily susceptible to manipulation. Because the use of an equal dollar-weighting method could give securities with relatively small floats or prices a greater weight in the Indexes than if the Indexes were capitalization-weighted or price-weighted, the Commission has been concerned that this calculation method could make the Indexes more readily susceptible to manipulation. The Amex, however, has developed several composition and maintenance criteria for the Indexes that the Commission believes will minimize the possibility that the Indexes could be manipulated through trading in less actively traded securities or securities with smaller prices or floats.

First, the Amex's proposal requires that at least 90% of the component stocks of the Indexes must be eligible for standardized options trading pursuant to Amex Rule 915. The Commission believes that this requirement will ensure that the Indexes will be almost entirely made up of stocks with large public floats that are actively traded, thus reducing the likelihood that the Indexes could be manipulated by abusive trading in smaller stocks in the Indexes.[41] Second, the proposal provides that only stocks with an average monthly trading volume of not less than 500,000 shares over the previous six months will be eligible for inclusion in the Indexes. This trading requirement is considerably higher than the requirement contained in the options listing standards for individual equity options. Third, the proposal also requires that at least 90% of the component stocks of the Indexes maintain an average daily trading volume of no less than 75,000 shares. The Commission believes that this requirement will further ensure that the component companies are actively-traded and liquid securities. Fourth, the Commission believes that the annual rebalancing of the Indexes will serve to reduce the susceptibility of such Indexes to manipulation by bringing the component stocks back to equal weighting, while retaining the advantage of a constant dividend yield for ease of premium calculation. Through annual rebalancing, any "overweight" stock[42] will be brought back into line with the other stocks, thus ensuring that less capitalized stocks do not become excessively weighted. In addition, the Amex, in conjunction with Morgan Stanley, has adopted procedures to ensure that, if at any time between annual rebalancings, the top five stocks in either Index represent more than one-third of that Index's value, then the Index will be rebalanced by Morgan Stanley on the expiration Friday in the nearest upcoming month on the March cycle. The Commission believes that these procedures will help to prevent any one stock or group of stocks from dominating either Index. Lastly, the proposal requires the indexes have at least 25 component stocks and that 20 representative industry groups comprise the Indexes consistent with applicable capitalization and liquidity requirements.

The Commission notes that market integrity and customer protection concerns are raised when a broker-dealer, such as Morgan Stanley, is involved in the development and maintenance of a stock index that underlies an exchange-traded derivative product. Specifically, the Commission is concerned that the close involvement of a broker-dealer may result in the broker-dealer possessing significant informational advantages that could potentially be misused. For several reasons, however, the Commission believes that the Amex has adequately addressed this concern with respect to options on the Cyclical and Consumer Indexes.

First, as noted above, the Surveillance Agreement provides that the Amex shall have the right to review trading account information in the possession of Morgan Stanley regarding Morgan Stanley accounts, accounts of its employees, affiliates and customers pertaining to the stocks involved in an adjustment to either of the Indexes. The Commission believes that access to this information is necessary for the Amex to adequately detect and deter any trading abuses that may occur due to Morgan Stanley's close involvement with the Indexes. Second, the calculation of each Index is to be calculated and disseminated by the Amex so that neither Morgan

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[36] *See supra* note 26.

[37] The public float for the stocks comprising the Cyclical and Consumer Indexes are very large. As of June 4, 1993, the public float in the case of the Cyclical Index ranges from a low of 41.2 million shares (Rohm & Hass) to a high of 490.2 million (Ford Motor Company), while the Consumer Index public float ranges from a low of 25 million shares (Int'l Flavors & Fragrances) to a high of 1.35 billion shares (WalMart).

[38] No single security or group of securities dominates either Index. In particular, as of June 4, 1993, the largest weighted stock in the Cyclical Index comprises 4.89% of the Index (while the top three companies comprise 13.14%), and the largest weighted stock in the Consumer Index comprises 4.17% (while the top three comprise 12.04%). *See* Sections II.B. and II.C., *supra*.

[39] The mean and median average trading volumes for the Cyclical and Consumer Indexes over a six-month period (December 1992—May 1993) are 491,000 and 345,000 shares, and 812,000 and 515,000 shares, respectively.

[40] The mean and median capitalization for companies comprising the Cyclical and Consumer Indexes are $7.3 billion and $5.6 billion, and $17 billion and $10.7 billion, respectively.

[41] *See supra* note 40.

[42] A stock would be "overweight" if its weight in either Index would be greater than the average weight of all of the stocks in the Index. This would occur, for example, if the price of a component stock significantly increased relative to the other stocks in the Index during a particular time period prior to rebalancing.

Stanley nor any other party will be in receipt of the values prior to the public dissemination value. Third, stock replacements and substitutions and unusual divisor adjustments caused by the occurrence of extraordinary events such as dissolution, merger, bankruptcy, non-routine spinoffs, or extraordinary dividends, will be made by Exchange staff in consultation with Morgan Stanley.[43] All stock replacements and substitutions and divisor adjustments due to non-routine corporate actions will be announced at least ten business days in advance of the effective change by the Amex through the dissemination of an information circular. The Commission believes that these procedures will help to ensure that Morgan Stanley does not have any time advantage concerning advance knowledge of any modifications to the Indexes. Finally, the Exchange's existing surveillance procedures for stock index options will apply to the options on the Indexes and should provide the Amex with adequate information to detect and deter trading abuses that may occur. Accordingly, the Commission believes the procedures developed by the Amex will serve to reduce the likelihood that Morgan Stanley, its affiliates, employees and customers, could take advantage of material non-public information concerning the Indexes and that, if such action did occur, it could be readily detected.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Cyclical Index and Consumer Index options (including full value and reduced value Cyclical and Consumer LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because options on the Indexes and corresponding LEAPS will be subject to the same regulatory regime as the other standardized options currently traded on the Amex, the Commission believes that adequate safeguards are in place to ensure the protection of investors trading these products.

Finally, the Amex has developed procedures to ensure that investors are adequately notified of any changes due to the annual rebalancing of the Indexes. In particular, the Amex represents that it will send informational circulars to its members notifying them of any changes to the Indexes as a result of the annual rebalancing.[44] In addition, the Amex has stated that it will include a description of the equal dollar weighting methodology in all its promotional and marketing materials for the Indexes.[45] The Commission believes these procedures should help to avoid any investor confusion, while providing important information about the special characteristics of the Indexes.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation. In this regard, the Amex and the NYSE and NASD, which are the primary markets for all of the Indexes' component stocks, are members of the Intermarket Surveillance Group ("ISG"), which provides for the exchange of all necessary surveillance information.[46] Further, as noted above, the Surveillance Agreement between the Amex and Morgan Stanley provides that the Amex shall have the right to review trading account information pertaining to the stocks involved in an adjustment to either of the Indexes in the possession of Morgan Stanley regarding Morgan Stanley, its employees, affiliates, and customers.

D. Market Impact

The Commission believes that the listing and trading of Cyclical Index and Consumer Index options, including full value and reduced value Index LEAPS on the Amex will not adversely impact the underlying securities markets. First, as described above, due to the "equal-dollar" weighting method, no one stock or group of stocks dominates the Index. Second, because 90% of the stocks comprising the Index must be accounted for by stocks that meet the options listing standards in addition to the other heightened quantitative standards discussed above, the component securities generally will be actively-traded, highly capitalized stocks. Third, the 25,000 contract position and exercise limits (with no more than 15,000 contracts in the nearest term series) will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because options on the Indexes and their corresponding LEAPS will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States. Lastly, the Commission believes that settling expiring Cyclical Index and Consumer Index options (including full value and reduced value Index LEAPS) based on the opening prices of component securities is reasonable and consistent with the Act because it may contribute to the orderly unwinding of Index option positions upon expiration.[47]

The Commission finds good cause for approving Amendment Nos. 1, 2, 3, and 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because such amendments are designed to reduce the likelihood that the Indexes could be susceptible to manipulation by strengthening the maintenance criteria by which component stocks are included in the Indexes. Therefore, the Commission believes it is consistent with section 6(b)(5) of the Act to approve Amendment Nos. 1, 2, 3, and 4 to the Amex proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1, 2, 3, and 4. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

[43] Routine corporate actions, such as stock splits, which require straightforward index divisor adjustments will be handled by Amex staff without consultation with Morgan Stanley.

[44] See letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated August 19, 1993.

[45] *Id.*

[46] See *supra* note 31.

[47] See Securities Exchange Act Release No. 31330 (October 16, 1992), 57 FR 48406.

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–93–08 and should be submitted by October 12, 1993.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and section 6(b)(5) of the Act, in particular.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[48] that the proposed rule change (SR–Amex–93–08), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[49]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22908 Filed 9–17–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32887; File No. SR–CBOE–93–28]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Bids and Offers for Stocks, Warrants, and Other Non-Option Securities, and Priority and Preference of Such Bids and Offers

September 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 22, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Rule 30.12, which defines bids and offers for stocks, warrants, and other non-option securities, and Rule 30.13, which establishes rules of priority and precedence for such bids and offers, in order to make these rules conform more closely to the comparable rules of certain other stock exchanges. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to conform CBOE's rules pertaining to bids and offers for stocks, warrants, and other non-option securities more closely to comparable rules of certain other stock exchanges by eliminating from CBOE's stock rules certain provisions that trace their origins to CBOE's options rules, but, according to the Exchange, are not reflected in the stock rules of other exchanges. The Exchange claims that this will permit CBOE's market in these securities to be conducted in the same manner as the markets of other exchanges, thereby enhancing CBOE's ability to compete with other markets. Specifically, it is proposed to amend Interpretation and Policy .01 under Rule 30.12 to provide that notwithstanding the provision of Rule 7.4 that prohibits orders in which a member, non-member joint venture participant, or non-member broker-dealer has an interest from being accepted in the limit order book, no such prohibition shall apply to orders for stocks warrants, UIT interests, and other non-option securities. The Exchange believes that this will conform the rules of CBOE to the rules of other stock exchanges, which do not prohibit orders of members or other broker-dealers, other than the specialist himself, from being held in the specialist's limit order book.[1] Rule 7.4 will continue to prohibit orders for options from members and other broker-dealers from being accepted in the options limit order book.

It is also proposed to amend Rule 30.13 in order to eliminate the provision of subparagraph (f)(1) that gives bids and offers in the limit order book priority over bids and offers in the trading crowd at the same price. Here, too, the Exchange claims that Rule 30.13 differs from the rules of certain other exchanges,[2] which do not provide for book priority except to the extent the limit order book is entitled to participate with brokers on parity in stated percentages of unpaired orders at the opening[3] and except that a specialist must give precedence to orders in his limit order book before executing at the same price orders for an account in which he has an interest.[4] The Exchange believes that CBOE Rule 30.14(d) is comparable to AMEX Rule 108(d) and will not be affected by the proposed amendment. CBOE Rule 8.80(c)(7) governing Designated Primary Market Makers (DPMs) will continue to give booked orders priority over the proprietary orders of the DPM who represents orders in the book. Accordingly, the Exchange believes that the effect of the proposed amendments, taken together with other CBOE rules not proposed to be amended, will be to provide the same degree of priority to orders in the limit order book as is provided by the rules of other exchanges. As with the proposal to amend Rule 30.12, the Exchange states that this amendment does not affect the priority given to options orders in the limit order book pursuant to Rule 6.45.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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[48] 15 U.S.C. 78s(b)(2) (1982).

[49] 17 CFR 200.30–3(a)(12) (1993).

[1] See, *e.g.*, New York Stock Exchange, Inc. Rule 104; American Stock Exchange, Inc. ("AMEX") Rules 170 and 190.)

[2] See, *e.g.*, AMEX Rule 126.

[3] See, *e.g.*, AMEX Rule 108(d).

[4] See, *e.g.*, AMEX Rule 155.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–28 and should be submitted by October 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22885 Filed 9–17–93; 8:45 am]

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[8] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–32892; File No. SR–CBOE–93–32]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Position Limits for Broad-Based Index Options

September 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 21, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is clarifying its Rule 24.4 relating to position limits for broad-based index options. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to clarify CBOE Rule 24.4, which establishes position limits for broad-based index options. Rule 24.4(a)(i) currently describes the position limits only for certain options on the Standard and Poor's ("S&P") 100 and S&P 500 Indexes. However, the Exchange believes that Rule 24.4(a)(i) is intended to apply to all broad-based index options traded on the Exchange except as otherwise provided in Rule 24.4.[1] Other broad-based index options that have been approved for trading on the Exchange—specifically, the Financial Times-Stock Exchange ("FT–SE") 100 Index and the FT–SE 200 Eurotrack Index—are subject to the same position limits as those in Rule 24.4(a)(i) (*i.e.*, 25,000 contracts on the same side of the market, of which no more than 15,000 contracts can be in option series with the nearest expiration date).[2] CBOE therefore proposes to delete from Rule 24.4(a)(i) the limiting reference to S&P 100 and S&P 500 index options to make clear that, except as may otherwise be specified in Rule 24.4, all broad-based index options are subject to the position limits described above.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it will permit trading in index options to take place on the Exchange pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes an interpretation with respect to the meaning, administration or enforcement of an existing rule, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e)(1) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule

[1] CBOE Rule 24.4 separately establishes position limits for options of the Russell 2000 Index and certain options on the S&P 100 and 500 Indexes. In particular, options on the Russell 2000 Index are subject to the position limits specified in Rule 24.4(a)(ii), and A.M.-settled, European-style options on the S&P 500 and quarterly index expiration ("QIX") options on the S&P 100 and 500 indexes are subject to the provisions of Rule 24.4 (b) and (c). None of these provisions are affected by this proposal.

[2] See Securities Exchange Act Release No. 29722 (September 23, 1991), 56 FR 49807 (order approving index options based on the FT–SE 100 Index); Securities Exchange Act Release No. 30462 (March 11, 1992), 57 FR 9290 (order approving index options based on the FT–SE 200 Eurotrack Index).

change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–32 and should be submitted by October 12. 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22886 Filed 9–17–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32897; File No. SR–CHX–93–20]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc., Relating to Amendments to its Equity Transaction Charges

September 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 31, 1993, as subsequently amended on September 13, 1993,[1] the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to waive Exchange transaction fees on trades done with non-standard settlements.[2] The Exchange proposes the following amendments to its Transaction Fee Schedule:[3]

Transaction Fee Schedule

Round Lots/Mixed Lots: 45 cents per 100 shares; $100.00 maximum per trade.

Odd Lots: 35 cents per trade; $400.00 maximum monthly fee.

The above fees include all applicable trade recording fees, as set out in the Midwest Clearing Corporation (MCC) "Services and Schedule of Charges" bulletin, relating to floor executed trades.

The above fees shall not apply to transactions in Tape B eligible issues for firms sending orders in Tape B eligible issues to the Exchange Floor through December 31, 1993.

The above fee for Round Lots/Mixed Lots shall not apply to transactions done with non-standard settlements.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed change is to waive Exchange transaction fees on trades done with non-standard settlements in order to remain price competitive and attract block trading.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable fees and other charges among members using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

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[3] 17 CFR 200.30–3(a)(12 (1992).

[1] See letter from David T. Rusoff, Attorney, Foley & Lardner, to Diana Luka-Hopson, Branch Chief, Commission, dated September 8, 1993. Amendment No. 1 clarified the specific additions and deletions to the proposed rule change.

[2] The Exchange stated that a "non-standard settlement" trade is a trade that does not settle regular way, as defined in CHX Article XX, Rule 9(b). CHX Article XX, Rule 9(b) defines a regular way trade as a trade with delivery on the fifth full business day following the day of the contract.

[3] With respect to the following schedule, italicizing indicates new material.

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–93–20 and should be submitted by October 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22881 Filed 9–17–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32859; File No. SR–DTC–91–6]

Self-Regulatory Organizations; The Depository Trust Co.; Withdrawal of a Proposed Rule Change Relating to Expansion of DTC's International Institutional Delivery System to Include Foreign Exchange Transactions

September 10, 1993.

On October 10, 1991, The Depository Trust Company ("DTC") filed a proposed rule change (File No. SR–DTC–91–6) with the Securities and Exchange Commission ("Commission") under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Under the proposal, DTC would expand its International Institutional Delivery ("IID") System to include foreign exchange transactions. The Commission published notice of the proposal in the **Federal Register** on November 21, 1991.[2] On September 7, 1993, DTC withdrew the proposal.[3]

For the Commission by the Division of Market Regulation, pursuant to delegated authority. [4]

[FR Doc. 93–22876 Filed 9–17–93; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 29944 (November 14, 1991), 56 FR 58720.

[3] Letter from Karen G. Lind, Associate Counsel, DTC, to Richard C. Strasser, Attorney, Division of Market Regulation, Commission, dated September 7, 1993.

[4] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–32884; File No. SR–MBS–93–06]

Self-Regulatory Organizations; MBS Clearing Corporation; Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Rebate to Participants

September 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 1, 1993, the MBS Clearing Corporation ("MBS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MBS–93–06) as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes a rebate of $1 million to MBS participants. Each participant will receive its pro rata share of the above amount based on its contribution to volume-related revenues in the first six months of 1993.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish a rebate of $1 million to MBS participants. Each participant will receive its pro rata share of the above amount based on its contribution to volume related revenues in the first six months of 1993. As an alternative to reducing fees, MBS has determined that an interim rebate is more appropriate at this time. MBS states that the rebate is possible because of the current level of MBS's fees and the heavy trading volume over the past two years.

MBS believes that the proposed rule change is consistent with section 17A(b)(3)(D) of the Act,[2] and the rules and regulations thereunder, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBS does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

MBS has not solicited written comments with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder, because the proposed rule change establishes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 15 U.S.C. 78q–1(b)(3)(D) (1988).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBS. All submissions should refer to File No. SR–MBS–93–06 and should be submitted by October 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22882 Filed 9–17–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32890; File No. SR–NYSE–93–19]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Relating to Dissemination of Enhanced Message for Certain Trading Halts

September 14, 1993.

I. Introduction

On March 25, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the message disseminated by the NYSE during a regulatory halt for dissemination of news due to related security. On August 3, 1993, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 32499 (June 23, 1993), 58 FR 34838 (June 29, 1993). No comments were received on the proposal. This order approves the proposed rule change, including Amendment No. 1.

II. Description of the Proposal

The NYSE proposes to amend its policy relating to the message disseminated during a regulatory trading halt[4] due to news pending regarding conditions in a related security.[5] The current message disseminated during a regulatory halt resulting from conditions in a related security is "news pending." The NYSE proposes to amend this message to add "related security" to the news pending message.[6]

The dissemination of information regarding regulatory trading halts is required by the CTA Plan,[7] which provides that whenever the primary market for any eligible security, in the exercise of its regulatory functions, halts or suspends trading in such security because the primary market has determined that there are matters relating to such security or the issuer thereof which have not been adequately disclosed to the public, or that there are regulatory problems relating to such security which should be clarified before trading therein is permitted to continue, the primary market shall promptly notify each other Participant in the Plan which conducts trading in such security and the Processor,[8] by wire or voice communication, of such halt or suspension and the reasons therefor. The resulting halt or suspension is referred to as a regulatory halt.[9]

The NYSE proposes to enhance the message disseminated during certain regulatory halts caused by conditions in a related security. The Exchange states that when a call is made for redemption of a related convertible preferred or debt security, it may result in forced conversions into the common stock that could have a significant dilutive effect on the common stock. In such situations, the message currently disseminated is "news pending." However, the Exchange believes that the lack of specificity of such a message could cause investors to speculate that the news may be broader in scope and significance and could cause volatility in industry-related stocks. Accordingly, the NYSE proposes to add "related security" to the news pending message. The Exchange believes that enhancing information regarding a halt should alleviate the uncertainty in the marketplace caused by the current message.

The NYSE believes that the proposal is consistent with section 6(b)(5) of the Act, which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The NYSE believes that the proposal would further these ends by enhancing the information available to investors during certain trading halts.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of sections 6(b)(5) and 11A(a)(1)(C)(iii) of the Act.[10] Section 6(b)(5) requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. Section 11A(a)(1)(C)(iii) states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from Brian M. McNamara, Managing Director, Market Surveillance, NYSE, to Diana Luka-Hopson, Branch Chief, Commission, dated July 29, 1993. Amendment No. 1 clarified the text of the proposed message.

[4] A "Regulatory Halt," as defined by the Consolidated Tape Association ("CTA") Plan, occurs:

(w)henever the primary market for any Eligible Security, in the exercise of its regulatory functions, halts or suspends trading in such Security because such primary market has determined (i) that there are matters relating to such Security or the issuer thereof which have not been adequately disclosed to the public, or (ii) that there are regulatory problems relating to such Security which should be clarified before trading therein is permitted to continue.

See Restatement of Restated Plan Submitted to Securities and Exchange Commission Pursuant to Rule 17a–15 under the Securities Exchange Act of 1934, March 1, 1990, amended March 1, 1992, p. 50.

[5] The Exchange stated that since the proposal is not creating a new halt condition, an amendment to the CTA Plan is not required. Telephone conversation between Betsy Minkin, Regulatory Development, Project Manager, NYSE, and Louis A. Randazzo, Attorney, Commission, on July 28, 1993.

[6] The Exchange stated that the exact message would state "related security". This message would be followed by the current "news pending" message. See Amendment No. 1, supra note 3.

[7] The CTA Plan is a joint industry plan governing the consolidated transaction reporting system. The parties to the CTA Plan are as follows: American Stock Exchange, Boston Stock Exchange, Chicago Board Options Exchange, Chicago Stock Exchange (formerly Midwest Stock Exchange), Cincinnati Stock Exchange, National Association of Securities Dealers, NYSE, Pacific Stock Exchange and Philadelphia Stock Exchange. See CTA Plan, supra note 4 at 3 and 4.

[8] The Securities Industry Automation Corporation ("SIAC") has been engaged to serve as the initial recipient and processor ("Processor") of last sale prices reported to it for inclusion in the consolidated tape. See CTA Plan, supra note 4 at 9.

[9] See CTA Plan, supra note 4 at 50.

[10] 15 U.S.C. 78f(b)(5) and 78k–1(a)(1)(C)(iii) (1988).

with respect to quotations for and transactions in securities. For the reasons set forth below, the Commission believes that the NYSE's proposal to enhance the message disseminated during a regulatory trading halt due to conditions in a related security furthers the objectives of sections 6(b)(5) and 11A(a)(1)(C)(iii).

The dissemination of material information regarding a security is crucial to the ability of investors to make informed investment decisions. Recognizing the importance of disseminating information with respect to trading halts in certain securities, as stated above, the CTA Plan imposes notification obligations upon the primary market whenever a regulatory halt occurs.[11]

The Commission believes that the NYSE proposal to enhance information disseminated during certain regulatory trading halts is a reasonable measure which should ensure that information affecting the price of certain securities is accurate and is available to brokers, dealers and investors. In this regard, the proposed message is consistent with the NYSE's obligations under the CTA Plan, which requires the Exchange to disseminate information regarding the reason for a regulatory halt. The Commission also believes that disseminating a message clarifying that a regulatory halt in a security is due to conditions in a related security should contribute to the maintenance of an efficient market by providing investors with an opportunity to adequately evaluate a security based upon enhanced information.

The Commission agrees with the NYSE that, during a regulatory halt in a security resulting from conditions in a related security, the NYSE's proposed message should clarify the reason for the halt, which in turn, should reduce investor speculation that the news pending is broader in scope and may effect all industry-related securities. Thus, an enhanced message disclosing that the halt is due to activity in a related security may help to decrease the volatility in industry-related securities caused by lack of information as to the reason for the halt.

The Commission finds good cause for accelerated approval of Amendment No. 1 to the proposed rule change prior to the thirtieth day after publication of notice of filing thereof. The NYSE's original proposal was published in the **Federal Register** for the full statutory period and no comments were received.[12] Amendment No. 1 is a single modification to the proposal that makes certain clarifying adjustments but leaves its overall structure unchanged.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file No. SR–NYSE–93–19 and should be submitted by October 12, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change, including Amendment No. 1 on an accelerated basis, (SR–NYSE–93–19) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22892 Filed 9–17–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32871; File No. SR–NYSE–93–15]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving a Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Listing of Regular and Long-Term Options on the NYSE Utility Index

September 13, 1993.

I. Introduction

On March 9, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to provide for the listing and trading of index options on the NYSE Utility Index ("Utility Index" or "Index"). The proposed rule change was published for comment in Securities Exchange Act Release No. 32438 (June 9, 1993, 58 FR 33290 (June 16, 1993). No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

II. Description of Proposal

A. General

The NYSE proposes to trade options on the Utility Index, a stock index developed by the NYSE and comprised of all the utilities stocks listed on the NYSE. The NYSE also proposes to list long-term options on the Index. Long-term Index options will trade independent of and in addition to regular Index options traded on the Exchange. In 1982, the Exchange sought and obtained Commission approval to list and trade options on the Index.[3] The Exchange, however, never commenced listing Utility Index options for trading on the Exchange.

B. Composition of the Index

The Index contains all the NYSE-listed companies (presently totaling 187 companies) falling within the five industries (electric services, gas services, telecommunications, water supply companies, and multi-service companies[4]) that the NYSE categories as the utilities sector of the stock market.[5] The Exchange will use a capitalization-weighted method to calculate the Index.[6] As of May 28, 1993, the Index was at 223.43.

As of May 28, 1993, the market capitalizations of the individual stocks in the Index ranged from a high of $33.33 billion to a low of $10.46

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[11] See CTA Plan, supra, note 4 at 50.

[12] See Securities Exchange Act Release No. 32499 (June 23, 1993), 58 FR 34838 (June 29, 1993).

[13] 15 U.S.C. 78s(b)(2) (1988)

[14] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1993).

[3] See Securities Exchange Act Release No. 19264 (November 22, 1982), 47 FR 53981 ("1982 Approval Order").

[4] The NYSE, for purposes relating to the Index, defines a multi-service company as a company that provides more than one type of utility service (*i.e.*, gas and electric) or provides a type of service that is unique to the utilities industry, although the company is not a direct provider of utility services (*i.e.*, steam boiler inspection company). Telephone conversation between Michael A. Walinskas, SEC, Staff Attorney and Gary Katz, NYSE, Director, Option Products, July 30, 1993.

[5] Ten of the 187 companies, comprising 3.78% of the weight of the Index, are foreign companies listed for trading in the form of American Depositary Receipts ("ADRs").

[6] See infra Section D entitled "Calculation of the Index" for a description of this calculation method.

million, with the mean and median being $2.700 billion and $1.100 billion, respectively. The market capitalization of all the stocks in the Index was $504.86 billion. The total number of shares outstanding for the stocks in the Index ranged from a high of 945.40 million shares to a low of 3.58 million shares. The average price per share of the stocks in the Index, for a six-month period between December and May 1993, ranged from a high of $85.26 to a low of $.22.[7] In addition, the average daily trading volume of the stocks in the Index, for the same six-month period, ranged from a high of 2.53 million shares per day to a low of 2,872 shares per day, with the mean and median being 149,497 and 86,953 shares, respectively. Lastly, no one stock comprised more than 5.98% of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 22.79% of the Index's value. The percentage weighting of the lowest weighted stock was .0018% of the Index and the percentage weighting of the five smallest issues in the Index accounted for .06% of the Index's value.

C. Maintenance

The Index will be maintained by the NYSE. The NYSE will change the composition of the Index when necessary to ensure that the Index represents all of the utilities sector stocks listed on the NYSE. The Exchange will adjust the Index as utilities sector stocks become listed on, or delisted from, the Exchange, as well as for stock splits or reverse splits, stock dividends, reorganizations, recapitalizations, and similar events, upon their occurrence.

D. Calculation of the Index

The Index will be calculated using a capitalization-weighting methodology. The market value of each stock is obtained by multiplying its current price by the number of shares listed. The aggregate market value, the sum of the individual market values, is then expressed in relation to the base period market value, which has been adjusted for capitalization changes over time. The base value was set at 100 on December 21, 1965. The index is calculated and disseminated every fifteen seconds to market information vendors.

The Index value, for purposes of settling outstanding Index options contracts upon expiration, will be calculated based upon the regular way opening sale prices for each of the Index's component stocks on the last trading day prior to expiration.[8] Once all of the component stocks have opened, the value of the Index will be determined and that value will be used as the final settlement value for expiring Index options contracts. If any of the component stocks do not open for trading on the last trading day before expiration, then the prior trading day's (*i.e.*, Thursday's) last sale price will be used in the Index calculation. In this regard, before deciding to use Thursday's closing value of a component stock for purposes of determining the settlement value of the Index, the NYSE will wait until the end of the trading day on expiration Friday.[9]

E. Contract Specifications

The proposed options on the Index will be cash-settled, European-style options.[10] Standard options trading hours (9:30 a.m. to 4:15 p.m. New York time) will apply to the contracts. The Exchange intends to list up to three near-term calendar months and two additional calendar months in three month intervals in the March cycle.[11] The Exchange also intends to list long-term options series, having up to thirty-six months to expiration, on the Utility Index. Strike price interval, bid/ask differential, and price continuity rules will not apply to the trading of long-term Index options until their time to expiration is less than twelve months.[12]

The options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). Since options on the Index will settle based upon the opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).[13]

Position limits for the Index option and long-term Index options will be set at no more than 45,000 contracts on the same side of the market, provided that no more than 25,000 of such contracts are in series in the nearest expiration month.[14] Exercise limits will be set at 25,000 contracts.[15]

Exchange rules applicable to the Utility Index options will be identical to the rules applicable to other broad-based index options for purposes of trading rotations, halts, and suspensions,[16] exercise cut-off times,[17] delivery and payment obligations,[18] and margin treatment.[19] Strike price intervals for Utility Index options will be $5.00.[20]

F. Surveillance

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in Utility Index options and long-term Index options. These procedures include complete access to trading activity in the underlying securities.

III. Commission Findings and Conclusions

The Commission has reviewed the proposal to list and trade Utility Index options. As discussed below, the Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Index is broad-based, the proposed options are designed to reduce the potential for manipulation, and the proposal to list and trade Utility Index options is consistent with the NYSE's obligation to promote investor protection.[21] The Commission finds that

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[7] Hudson Corporation is the component company that has the lowest ($.22 per share) price, comprising .002% of the Index as of May 28, 1993. The component company having the next lowest price is Tucson Electric Power Company, at $3.01 per share, and comprising .10% of the Index as of May 28, 1993.

[8] See Exchange Act Release No. 25804 (June 15, 1988), 53 FR 23474. See also note 13, supra and accompanying text. Because the Index options expire on a Saturday and the settlement value will normally be based on Friday opening prices, the last trading date of a particular Utility Index option will be two business days prior to the Saturday expiration date.

[9] For purposes of the daily dissemination of the Index value, if a stock included in the Index has not opened for trading, the NYSE will use the closing value of that stock on the prior trading day when calculating the value of the Index, until the stock opens for trading.

[10] A European-style option can be exercised only during a specified period before the option expires.

[11] See NYSE Rule 703.

[12] See NYSE Rule 703, Supplementary Material .20(a)(ii).

[13] See Exchange Act Release No. 25804, supra note 8.

[14] See NYSE Rule 704.

[15] See NYSE Rule 705.

[16] See NYSE Rule 717.

[17] See NYSE Rule 780.

[18] See NYSE Rule 782.

[19] See NYSE Rule 431.

[20] See NYSE Rule 703, Supplementary Material .30.

[21] The NYSE is a member of the Intermarket Surveillance Group ("ISG"), which was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 28, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The Commission understands that the ISG Agreement, as amended,

the trading of options on the Index will permit investors to participate in the price movements of the 187 securities on which the Index is based. Further, trading of options on the Index will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with their portfolios. Accordingly, the Commission, believes the Utility Index options will provide investors with an important trading and hedging mechanism that should reflect accurately the overall movement of stocks in the utilities segment of U.S. equity securities. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of Utility Index options will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets.[22]

The trading of options on the Utility Index, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the NYSE has addressed these concerns adequately.

A. Index Design and Structure

The Commission finds that the Utility Index is a broad-based index, and thus it is appropriate to permit Exchange rules applicable to the trading of broad-based index options to apply to the Index options. Specifically, the Commission believes the Index is broad-based because it reflects a substantial segment of the U.S. equities market, in general, and utilities sector securities, in particular. First, the Index consists of 187 relatively actively traded domestic and foreign utilities securities.[23] Second, no one particular stock or group of stocks dominates the Index. Specifically, no one stock comprises more than 5.98% of the Index's total value and the percentage weighting of the five largest issues in the Index accounts for 22.79% of the Index's value. Third, the overwhelming majority of the stocks that comprise the Index are actively traded, with a mean and median average daily trading volume of 149,497 and 86,953 shares, respectively.[24] Fourth, the market capitalizations of the stocks in the Index are very large, ranging from a high of $33.33 billion to a low of $10.46 million as of May 28, 1993, with the mean and median being $2.700 billion and $1.100 billion, respectively. Fifth, the Index is comprised of stocks representing a diverse industry group of securities, including a rather balanced grouping of companies separately engaged in the provision of (or support in provision of) one or more of the following services: Electric; natural gas; telecommunications; and water supply.[25] Sixth, 168 out of 187 of the component stocks in the Index, comprising 99.15% of the weighting of the Index, currently are eligible for options trading.[26] Finally, the Commission believes that, as discussed below, existing mechanisms to monitor trading activity in those securities will help deter as well as detect illegal trading activity involving the index option.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Utility Index options (including long-term Index options), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options will be subject to the same regulatory regime as the other standardized options currently traded on the NYSE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Utility Index options.

C. Surveillance

The Commission generally believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[27] In this regard, the NYSE, which currently is the primary market for all of the Index's component securities, is a member of the Intermarket Surveillance Group ("ISG"), which provides for the exchange of all necessary surveillance information.[28]

D. Market Impact

The Commission believes that the listing and trading of Utility Index options, including long-term Index options on the NYSE, will not adversely impact the underlying securities markets. First, as described above, the

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covers investigations and inquiries regarding trading activity in Utility Index options and component securities.

[22] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new option or warrant proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options on the Utility Index will provide investors with a hedging vehicle that should reflect the overall movement of utilities stocks. The Commission also believes that these options will provide investors with a means by which to make investment decisions in the utilities equity market, allowing them to establish positions or increase existing positions in utilities stocks in a cost effective manner.

[23] See generally, Securities Exchange Act Release No. 29994 (November 26, 1991), 56 FR 63536 (order designating the PSE Technology Index as broad-based index rather than a narrow-based index).

[24] In addition, for the six-month period between February and July 1992, all of the companies within the Index had an average daily trading volume greater than 147,800 shares per day.

[25] As of May 28, 1993, the allocation of industries by number of companies and weighting in the Index was as follows: Electric Companies, 70 Companies, comprising 35.71% of the Index weight; Natural Gas Companies, 56 companies comprising 9.64% of the Index weight; Telecommunications Companies, 25 companies comprising 42.90% of the Index weight; Water Supply Companies, 5 companies comprising .30% of the Index weight; Multi-Service Companies, 31 companies comprising 11.45% of the Index weight. The Commission notes, in addition to containing a large number of component securities, that if the Index did not represent a diverse group of utilities industries it may have decided differently the issue of whether the Index is broad-based.

[26] The NYSE's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) The public float must be at least 7,000,000; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. See NYSE Rule 715, Supplementary Material .10.

[27] See Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849.

[28] See supra note 21. If the NYSE were to change the composition of the Index so that greater than 20% of the value of the Index was represented by ADRs whose underlying securities were not subject to an effective surveillance sharing arrangement with the NYSE, then it would be difficult for the Commission to reach the conclusions reached in this order and the Commission would have to determine whether it would be suitable to continue to trade options on the Index.

Index is broad-based and comprised of 187 stocks with no one stock dominating the Index. Second, as noted above, the stocks contained in the Index have relatively large capitalizations and are relatively actively traded. Third, the 45,000 contract position and 25,000 exercise limits will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States. Fifth, existing NYSE stock index options rules and surveillance procedures will apply to Utility Index options.

Lastly, the Commission believes that settling expiring Utility Index options based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing expiring index options for exercise settlement purposes based on opening prices rather than closing prices may help reduce adverse effects on the securities underlying options on the Index.[29]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[30], that the proposed rule change (SR–NYSE–93–15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22909 Filed 9–17–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32889; File No. SR–PSE–93–21]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Charges for Late Filing of SIPC Reports

September 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 16, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to amend its rules to establish a charge for the late filing of SIPC–6 and SIPC–7 reports by member organizations for which the Exchange is Designated Examining Authority ("DEA"). The Exchange proposes the following amendments:[1]

¶ 3405—Financial Reports

Rule 2.12(a)—No change.

Rule 2.12(b)*(1)*—No change.[2]

Rule 2.12(b)(2). Each member organization shall file with the Exchange a Form SIPC–6 or Form SIPC–7 pursuant to the Securities Investor Protection Act of 1970. Any member organization that fails to file such Form in a timely manner shall be subject to a later filing charge as follows:

Number of calendar days late	Amount of Charge
1–30	$200.00
31–60	$400.00
61–90	$800.00

Provided, however: (1) if a member organization files its Form SIPC–6 or Form SIPC–7 after its receipt of SIPC's final late notice, but files within five business days after its receipt of SIPC's final late notice, such member organization shall be subject to a fine pursuant to Rule 10.13; and (2) if a member organization fails to file its Form SIPC–6 or Form SIPC–7 within five business days after its receipt of SIPC's final late notice, such member organization shall be subject to formal disciplinary action pursuant to Rule 10.4.

Commentary: .01 A member organization that files its Form SIPC–6 or Form SIPC–7 more than 90 days late but before its receipt of SIPC's final late notice will be subject to a late charge of $800.

.02 Repeated or aggravated failure to file a Form SIPC–6 and/or Form SIPC–7 will be referred to the Ethics and Business Conduct Committee for appropriate disciplinary action.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing a graduated charge schedule for the late filing of certain SIPC–6 and SIPC–7 reports that are required to be filed with the Exchange[3] pursuant to PSE Rule 2.12(a); Section 17(a) of the Act;[4] and Section 14 of the Securities Investor Protection Act of 1970 ("SIPA").[5] The Exchange is proposing these charges in order to defray its administrative costs relating to late SIPC reporting and to encourage applicable member organizations to comply with the requirements of SIPA in a timely manner.

The proposed schedule of charges is as follows: $200 if the report is filed 1–30 calendar days after SIPC's prescribed deadline; $400 if 31–60 calendar days; and $800 if 61–90 calendar days.[6] The schedule, however, would be subject to the following four qualifications: First, a member organization that files its Form SIPC–6 or Form SIPC–7 more than 90 days late, but before its receipt of SIPC's final late notice, would be subject to a late charge of $800. Second, if a member organization files its Form SIPC–6 or Form SIPC–7 after its receipt of SIPC's final late notice, but files within five business days after its receipt of SIPC's final late notice, such member organization would be subject to a fine pursuant to Rule 10.13 (the Exchange's

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[29] Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376.

[30] 15 U.S.C. 78s(b)(2) (1988).

[31] 17 CFR 200.30–3(a)(12) (1993).

[1] With respect to the following language, italicizing indicates new material.

[2] The PSE proposes to renumber current PSE Rule 2.12(b) to 2.12(b)(1).

[3] The Exchange submits these reports, in turn, to the Securities Investor Protection Corporation ("SIPC"). See 15 U.S.C. 78hhh (Examining Authority Functions); see also 15 U.S.C. 78iii(a) (Functions of Self-Regulatory Organization—Collection Agent).

[4] 15 U.S.C. 78q(a) (1988).

[5] 15 U.S.C. 78jjj (1988).

[6] The PSE stated that the proposed charges are identical to those applicable to the late filing of FOCUS reports. See PSE Rule 2.12(b). See also Securities Exchange Act Release No. 32510 (June 24, 1993), 58 FR 35491 (July 1, 1993).

Minor Rule Plan). Third, if a member organization fails to file such Form within five business days after its receipt of SIPC's final late notice, such member organization would be subject to formal disciplinary action pursuant to Rule 10.4. Finally, a member organization's repeated or aggravated failure to file a Form SIPC–6 and/or SIPC–7 will be referred to the Ethics and Business Conduct Committee for appropriate disciplinary action.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if the finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–93–21 and should be submitted by October 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22888 Filed 9–17–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32891; File No. SR–PHLX–93–29]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Proposing to Amend PHLX Rule 1014

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 9, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PHLX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b–4 of the Act, proposes to amend PHLX Rule 1014. The proposed rule change would enable newly registered equity options specialist units ("New Units") in equity options classes newly listed on the Exchange ("New Options Classes") to execute 50% of the contracts in transactions where the New Unit is on parity with one registered options trader ("ROT"), and 40% of the contracts in a transaction where the New Unit is on parity with two or more ROTs. The enhanced specialist parity split would be effective for a six month period following the start-up of trading of the newly listed options class.[1] The text of the proposed rule change is available at the Office of the Secretary, the PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PHLX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

To encourage the creation of New Units, the Exchange proposes amending Rule 1014 entitled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders." Specifically, the Exchange proposes adding new commentary section .18 to Rule 1014 to provide an incentive for New Units to trade New Options Classes. When a New Unit is on parity with ROTs in a New Options Class, the New Unit will be entitled, for a period of six months following commencement of trading in such New Options Class, to the following enhanced specialist participation in any parity trade: (1) 50% where there is one ROT on parity; and (2) 40% where there are two or more ROTs on parity.

The Exchange believes that this proposal should encourage New Units to make tight and liquid markets in attracting order flow to the PHLX at the inception of trading in New Options Classes that may be subject to multiple listings battles among the various exchanges.

The proposal will be available to any New Unit, which could be formed by current PHLX ROTs or specialists so long as a new broker-dealer firm is

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[1] On August 17, 1992, the Exchange filed a similar proposal pursuant to which all specialists would have received the enhanced parity split contained in this proposal, however, the enhanced parity split in that proposal would have applied indefinitely to all options listed on the Exchange after July 15, 1992 and all multiply traded options listed on the Exchange as of July 15, 1992. See File No. SR–PHLX–92–19. The PHLX has notified the Commission of its intention to withdraw File No. SR–PHLX–92–19. Conversation between William Uchimoto, General Counsel, PHLX, and Richard Zack, Branch Chief, Division of Market Regulation, Commission, June 10, 1993.

established. The proposal also will be confined solely to New Options Classes. Therefore, classes that are leased or otherwise transferred from an existing specialist unit to a New Unit are not covered by the proposed rule.

To provide immediate encouragement for members and others to form new equity options specialist units, the Exchange shall authorize any New Unit that trades its first New Options Class or Classes on or after June 16, 1993, to be subject to the enhanced specialist parity split rule for six months following the effective date of the proposed rule change, should the Commission decide to approve the proposed rule change. Additionally, the Exchange's Allocation, Evaluation and Securities Committee ("Committee") may extend such enhanced parity split beyond the initial six month period upon petition by the New Unit and a determination by the Committee that such extension is consistent with the promotion of just and equitable principles of trade and the public interest. The Committee, after granting such extension, may at any time terminate such enhanced parity split for any particular New Options Class if the Committee determines that such action is consistent with the promotion of just and equitable principles of trade and the public interest.

The Exchange believes that the proposed rule change is consistent with section 6 of the Act in general, and with section 6(b)(5), in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, promote just and equitable principles of trade, and protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–93–29 and should be submitted by October 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22887 Filed 9–17–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32883; File No. SR–Phlx–93–24]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 1, No. 2, and No. 3 to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4 to Proposed Rule Change Relating to the Adoption of a Registration Requirement and Fee for Qualified Registered Representatives

September 14, 1993.

On June 8, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a registration requirement and a registration fee for qualified Registered Representatives ("RR").

On June 21, 1993, the Phlx submitted Amendment No. 1 to the proposed rule change in order to clarify the qualification standard for RRs.[3] On July 7, 1993, the Phlx submitted Amendment No. 2 to the proposed rule change to retitle Exchange Rule 604.[4] On August 5, 1993, the Phlx submitted Amendment No. 3 to the proposed rule change to clarify that the rule's qualification standard would be satisfied by an equivalent predecessor of the Series 7 examination/registration.[5] On August 9, 1993, the Phlx submitted Amendment No. 4 to the proposed rule change to add a reference to the provision which defines an equivalent predecessor of the Series 7 examination/registration.[6]

The proposed rule change, together with Amendments No. 1, No. 2 and No. 3, was published for comment in Securities Exchange Act Release No. 32692 (July 29, 1993), 58 FR 41535 (August 4, 1993). No comments were received on the proposal. This order approves the proposed rule change, including all four amendments.

At present, the Phlx does not have any rules specifically governing the employment of RRs. The Exchange proposes to amend Phlx Rule 604 in order to adopt a registration requirement and a registration fee for qualified RRs.[7] A qualified RR would be defined as any person who maintains an effective Series 7 "Full Registration/General Securities Representative" registration, or an equivalent predecessor of that examination/registration, with the National Association of Securities

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[2] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s (b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated June 15, 1993 ("Amendment No. 1").

[4] See letter from Edith Hallahan, Attorney, Market Surveillance, Phlx, to Beth Stekler, Attorney, Division of Market Regulation, SEC, dated June 23, 1993 ("Amendment No. 2").

[5] See letter from Edith Hallahan, Attorney, Market Surveillance, Phlx, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated July 27, 1993 ("Amendment No. 3").

[6] See letter from Edith Hallahan, Attorney, Market Surveillance, Phlx, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated August 4, 1993 ("Amendment No. 4").

[7] Phlx Rule 604 currently governs "Termination of Employment." Under this proposal, that rule would be expanded in scope and retitled "Registration and Termination of Registered Representatives." See Amendment No. 2, *supra*, note 4.

Dealers' ("NASD") Central Registration Depository ("CRD").[8]

Under this proposal, every qualified RR associated with a Phlx member or member organization would be required to register with the Exchange by designating the "PHLX" box on his or her Uniform Application for Securities Industry Registration or Transfer (Form U–4). According to the Phlx, the purpose of this registration requirement is to establish an express qualification standard for RRs and to improve the Exchange's ability to monitor compliance with its rules.

The Phlx also proposes to impose a fee of $8.00 for the initial registration of each qualified RR and for the maintenance or transfer of such registration. This fee would be payable by the member or member organization that employs the qualified RR. The Exchange intends to use the proceeds from the registration fee to offset the regulatory costs associated with the maintenance of a fair and orderly market. In the Phlx's view, such regulatory costs have risen due to increased trade volume, more sophisticated trading technology and automated surveillance capabilities, and the growth of the Phlx as a primary market.

The Phlx states that the proposed rule change is consistent with section 6(b) of the Act and, in particular, with section 6(b)(5) in that the registration requirement is designed to protect investors and the public interest, as well as to promote just and equitable principles of trade. The Phlx also states that the proposed registration fee is consistent with section 6(b)(4) in that it provides for the equitable allocation of reasonable dues, fees or charges among the Exchange's members and issuers and other persons using its facilities. In this regard, the Exchange notes that its proposal is similar to a registration requirement and fee imposed by the Pacific Stock Exchange ("PSE"),[9] and that registration fees also are imposed by the American Stock Exchange ("Amex"), Chicago Board Options Exchange ("CBOE"), New York Stock Exchange ("NYSE") and the NASD.[10]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[11] In particular, the Commission believes the proposal is consistent with the requirement under section 6(b)(5) that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest; and with the requirement under section 6(b)(4) that the rules of an exchange provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities.

For the reasons set forth below, the Commission believes that the proposed rule change will protect investors and the public interest by establishing a registration requirement and qualification standard for RRs and by providing the Exchange with adequate resources to carry out its regulatory oversight program. First, the Commission notes that the Phlx's registration requirement will serve as a minimum qualification standard. Only RRs who have successfully completed the Series 7 examination, or an equivalent predecessor thereof, will be qualified to register with the Phlx.[12] The Commission previously has permitted the Phlx to use such examinations to verify the qualifications of RRs.[13] Accordingly, the Commission believes that this proposal will make it explicit, as well as easier for the Exchange to surveil, that no person can serve as an RR associated with a Phlx member or member organization, and thus solicit and/or handle public customer business in securities, unless that person has demonstrated the necessary knowledge, skills and abilities.[14]

Furthermore, the Commission has concluded that the registration fee itself is equitable and reasonable. The Phlx has indicated that a substantial proportion of the regulatory work done by its staff serves the purpose of maintaining a fair and orderly market in securities traded on the Exchange;[15] and that the cost of its oversight program has risen in recent years, due to such developments as increased trade volume, more sophisticated trading technology and automated surveillance capabilities, and the growth of the Phlx as a primary market. Given that RRs, and the members and member organizations that employ them, benefit from the Phlx's efforts to maintain a fair and orderly market, the Commission does not believe that it is unfair for the Phlx to ask them to pay a minimal fee to help offset the costs of its regulatory oversight program.

Finally, the Commission notes that many of the other self-regulatory organizations presently charge a fee for the initial registration of each RR and for the maintenance or transfer of such registration.[16] After extensive review, the Commission cannot conclude that the Phlx's fee is unreasonable either in and of itself, or in comparison to other exchanges.[17] In fact, the Commission believes that approval of this proposed rule change should aid the Phlx in fulfilling its compliance and regulatory responsibilities under the Act, which will benefit all market participants.

The Commission finds good cause for approving Amendment No. 4 prior to the thirtieth day after the date of publication of notice of filing thereof. Amendment No. 4 merely adds a reference to an NASD provision which defines certain language use in Phlx Rule 604. Amendment No. 4 makes no changes to the substance of the Phlx's

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[8] See Amendment No. 4, *supra*, note 6. As noted therein, the NASD Manual, Schedules to the By-Laws, Schedule C, Part III, Section 2(a)(ii) sets forth each examination/registration which is an equivalent predecessor of the Series 7. *Id.* The Phlx expects this qualification standard will cover the vast majority of personnel associated with a Phlx member or member organization who solicit and/or handle public customer business in securities (whether equities or options). Telephone conversation between Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on September 2, 1993.

[9] See Securities Exchange Act Release Nos. 29954 (November 18, 1991), 56 FR 59315 (November 25, 1991) (File No. SR–PSE–91–37) ("1991 PSE Release"); and 31425 (November 9, 1992), 57 FR 54271 (November 17, 1992) (File No. SR–PSE–92–31) ("1992 PSE Release").

[10] See, e.g., Securities Exchange Act Release Nos. 28794 (January 17, 1991), 56 FR 2964 (January 25, 1991) (File No. SR–Amex–90–36) ("1991 Amex Release"); 28479 (September 27, 1990), 55 FR 40496 (October 3, 1990) (File No. SR–CBOE–90–26); 32342 (May 20, 1993), 58 FR 30208 (May 26, 1993) (File No. SR–NASD–93–33). For further discussion of NYSE registration fees, see 1991 PSE Release, *supra*, note 9.

[11] 15 U.S.C. 78f(b) (1988).

[12] See Amendment No. 4, *supra*, note 6.

[13] See Securities Exchange Act Release No. 23685 (October 6, 1986) 51 FR 36621 (October 14, 1986) (File No. SR–Phlx–86–31).

[14] In addition to the benefit to investors described above, the Commission also finds that Rule 604, as amended, will not impose any significant new costs on RRs themselves. To the extent that RRs already are required to pass a qualification examination and to file a Form U–4 for entry into the CRD, the only additional step an RR will have to take under this proposed rule change is designating the "PHLX" box on his or her Form U–4.

[15] Telephone conversation between Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on September 2, 1993.

[16] See *supra*, notes 9–10 and accompanying text.

[17] The Phlx is proposing to impose a registration fee of $8.00. This is comparable in amount to the PSE's registration fee, which was $10.00 when it was approve by the Commission, *see*, 1991 PSE Release, *supra* note 9, but which subsequently has been reduced to $5.00 see 1992 PSE Release, *supra*, note 9. In contrast, the Phlx's fee is substantially lower than those imposed by the primary markets. See *supra* note 10. For instance, the Amex charges $40.00 for an initial RR registration; $20.00 to maintain such a registration; $25.00 to transfer an RR registration; and $15.00 to terminate one. See 1991 Amex Release, *supra*, note 10.

registration rule. Finally, the original proposal and Amendments No. 1, No. 2 and No. 3 were published for the full statutory period, and no comments were received on any aspect of the proposal.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 4 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to Amendment No. 4 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Avenue, NW., Washington, DC 20549. Copies of such filings will also be available at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–93–24 and should be submitted by October 12, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–Phlx–93–24) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22910 Filed 9–17–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19707; 812–8304]

Alex. Brown Cash Reserve Fund, Inc., et al.; Application

September 13, 1993.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Alex. Brown Cash Reserve Fund, Inc., Flag Investors Telephone Income Fund, Inc., Flag Investors International Trust, Total Return U.S. Treasury Fund, Inc., Flag Investors Emerging Growth Fund, Inc., Flag Investors Quality Growth Fund, Inc., Managed Municipal Fund, Inc., Flag Investors Intermediate Term Income Fund, Inc., Flag Investors Value Builder Fund, Inc., and North American Government Bond Fund, Inc., and all similar investment companies and portfolios thereof that may be advised, administered, or distributed in the future by Alex. Brown & Sons Incorporated ("Alex. Brown"), Armata Financial Corp. ("Armata"), or their respective affiliates and that impose a front-end load (collectively, the "Funds"), Alex. Brown, and Armata.

RELEVANT ACT SECTIONS: Exemptions requested pursuant to section 6(c) from sections 2(a) (32), 2(a) (35), 22(c) and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Funds to impose a contingent deferred sales charge ("CDSC") on certain shares, and to waive the CDSC under certain circumstances.

FILING DATE: The application was filed on March 8, 1993 and amended on June 18, 1993. In a letter dated August 16, 1993, applicants' counsel has stated that an additional amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 8, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 135 East Baltimore Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, at (202) 272–3030, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each Fund is an open-end management investment company, organized as a Maryland corporation, except Flag Investors International Trust, which is organized as a Massachusetts business trust. Alex. Brown and Armata are registered broker-dealers. Alex. Brown serves as a distributor for all classes and series of the Funds, except for certain classes of Total Return U.S. Treasury Fund, Inc., Managed Municipal Fund, Inc., and North American Government Bond Fund, Inc., for which Armata serves as distributor. (Alex. Brown and Armata, as applicable, are each referred to as the "Distributor.")

2. Each Fund, other than North American Government Bond Fund, Inc., has a class of shares designated as its "Flag Investors" class and each such class is identified by the inclusion of "Flag Investors" in its name (collectively, the "Flag Investors Classes"). Three of the Funds, Total Return U.S. Treasury Fund, Inc., Managed Municipal Fund, Inc., and Flag Investors Value Builder Fund, Inc., also offer "Flag Investors Class B Shares" ("Class B Shares") that differ from the shares of the Flag Investors Classes only in their respective distribution arrangements.

3. The Flag Investors Classes shares are offered with a maximum sales charge of 4.5% and bear a rule 12b–1 fee of .25%. The sales charge is reduced at various break points, with no front-end sales charge on share purchases of $1 million or more. In 1991, applicants received an order that allows a CDSC to be imposed on share purchases of $1 million or more in the event of redemption of such shares within 24 months following the purchase, at a rate equal to .50%.[1] Prior to the 1991 Order, a redemption fee was imposed on substantially the same terms as the CDSC and retained by the respective Fund. At that time, the prospectus for each of the Flag Investors Classes stated that, if approved by the SEC, a CDSC would be imposed and paid to the Distributor instead of the redemption fee, on the same terms and conditions.

4. The Class B Shares, which are offered in the same prospectus as the Flag Investors Class Shares, are designed to offer an alternative to investors. The Class B Shares are offered with a front-end sales charge of 1.5% on all sales of less than $1,000,000 and have a rule 12b–1 fee of .60%. At present, there generally is a 1% fee on redemptions of Class B Shares for a period of four years, and the respective

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[18] 15 U.S.C. 78s(b)(2) (1988).

[19] 17 CFR 200.30–3(a)(12) (1991).

[1] Alex. Brown Cash Reserve Fund, Inc., *et al.*, Investment Company Act Release No. 18261 (July 8, 1991) (notice) and (Aug. 7, 1991) (order) ("1991 Order").

Fund retains that fee. There is no sales charge or redemption fee on purchases of $1 million or more. The prospectuses offering the Class B Shares state that, if approved by the Commission, a CDSC would be imposed and paid to the Distributor instead of the redemption fee, on the same terms and conditions.

5. Applicants propose to substitute for the present redemption fee on Class B Shares a CDSC arrangement similar to the one permitted by the 1991 Order. No CDSC will be imposed on Class B Shares until the effective date of an order granting such requested relief, and no CDSC will be imposed on any Class B Shares issued before the date of such order, although such shares will still be subject to the redemption fee described above. The requested relief would be in addition to, but would not supersede, the 1991 Order, and would not authorize any CDSC arrangements other than those described in the application and in the 1991 Order.

6. Under the proposed CDSC arrangement, a CDSC will be imposed on Class B Shares included in purchases of less than $1,000,000 that are redeemed within four years after the end of the calendar month in which the purchase order was accepted. The amount of the CDSC will be 1% of the lesser of the net asset value of the shares redeemed or the total cost of such shares. The CDSC will be deducted from the redemption proceeds otherwise payable to the shareholder and will be retained by the Distributor. No CDSC will be imposed when the shareholder redeems shares representing amounts attributable to increases in the value of an account above the net cost of the investment due to increases in the net asset value per share; shares acquired through reinvestment of income dividends or capital gain distributions; or shares held for more than four years after the end of the calendar month in which the purchase order was accepted.

7. In determining whether a CDSC is payable, it will be assumed that shares, or amounts representing shares, that were not subject to a CDSC are redeemed first and that other shares or amounts were then redeemed in the order purchased; and that for redeemed shares that were acquired in exchange for Class B Shares of another Fund, the fourth year period would relate back to the initial purchase of Fund shares. No CDSC would be imposed on exchanges of Class B Shares to purchase Class B Shares of another Fund and such exchanges would be effected in compliance with rule 11a–3 under the Act.

8. The CDSC may be waived for (a) redemption of shares of shareholders who die or become disabled within the meaning of section 72(m)(7) of the Internal Revenue Code of 1986, as amended; and (b) redemptions effected pursuant to each Fund's right to liquidate a shareholder's account if the aggregate net asset value of shares held in the account is less than the effective minimum account size.

9. Applicants also seek to amend the 1991 Order to include the following additional categories of shareholders as to whom the CDSC regarding the Flag Investors Shares would be waived: (a) Qualified retirement plans, banks, bank trust departments and registered investment advisory companies affiliated with Alex. Brown or Armata, acting in a fiduciary or advisory capacity for individual, institutional or trust accounts, that have purchased $1 million or more of Flag Investors Classes shares; (b) directors of any of the Funds, directors and employees (and their immediate families) of Alex. Brown, Armata, Participating Dealers and their respective affiliates; and (c) participants in a Flag Investors fund payroll savings plan program. Applicants have instituted suitability standards and other procedures to ensure that the waiver groups identified in this paragraph are not offered and do not purchase Class B Shares.

Applicant's Condition

If the requested exemptive relief is granted, applicants expressly agree that they will comply with proposed rule 6c–10 under the Act (including any modifications that are proposed prior to the adoption of the rule) until such rule is adopted, and after such adoption will comply with such rule in the form in which it is in effect from time to time.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–22848 Filed 9–17–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19709; 812–8544]

Goldman, Sachs and Co.; Application

September 14, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Goldman, Sachs & Co.

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act to amend an existing order granting an exemption from section 17(a).

SUMMARY OF APPLICATION: An existing order permits applicant to engage in principal transactions with portfolios of any registered investment company of which applicant is an affiliated person of an affiliated person solely because of its sub-advisory relationship with other portfolios of that series investment company. Applicant seeks to amend the existing order to permit applicant to engage in these transactions with any non-series investment company or any portfolio of a series investment company of which applicant is an affiliated person of an affiliated person solely because of its sub-advisory relationship with another registered investment company or portfolio under common control with the investment company or portfolio engaging in the principal transaction.

FILING DATE: The application was filed on August 23, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 12, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 85 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. On May 11, 1993, the SEC issued an order (the "Existing Order") [1] exempting applicant and THE ONE GROUP (the "Fund") from section 17(a)

[1] Investment Company Act Release Nos. 19410 (Apr. 15, 1993) (notice) and 19470 (May 11, 1993) (order).

of the Act to permit portfolios of the Fund to engage in principal transactions with applicant and any other securities dealer that may be deemed to be an affiliated person of an affiliated person of such portfolios solely because of sub-advisory relationships with other portfolios of the Fund. The Existing Order also permits applicant to engage in principal transactions with portfolios of any future registered investment company of which applicant is an affiliated person of an affiliated person solely because of its sub-advisory relationship with other portfolios of that series investment company.

2. Applicant seeks to amend the Existing Order to request additional exemptive relief to permit applicant to engage in principal transactions with any non-series investment company or any portfolio of any series investment company in respect of which applicant may be deemed to be an affiliated person of an affiliated person solely because of a sub-advisory relationship with another registered investment company or portfolio of a registered investment company that may be considered to be under common control with the investment company or portfolio with which applicant would engage in principal transactions.

3. Goldman Sachs would not engage in principal transactions with any portfolio for which any affiliated person of Goldman Sachs serves as sub-adviser. In addition, Goldman Sachs would not engage in principal transactions with any portfolio of a registered investment company where Goldman Sachs or any affiliated person thereof is an affiliated person of (a) the portfolio engaging in the principal transaction, (b) the investment adviser of that portfolio, or (c) any officer, trustee/director, or employee of such registered investment company.

Applicant's Legal Analysis

1. Section 17(a) makes it unlawful for any affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, to sell securities to the company or to purchase securities from the company. Section 2(a)(3) defines "affiliated person" of another person to include, among other things, any person directly or indirectly controlling, controlled by, or under common control with, such other person, and if such person is an investment company, any investment adviser thereof.

2. Section 17(b) provides for SEC approval of a proposed affiliated transaction that would be otherwise prohibited by section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the transaction is consistent with the policy of each registered investment company concerned, and the transaction is consistent with the general purposes of the Act. Section 6(c) provides that the SEC may exempt any transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. As applicants stated in the Original Application, the portfolios of the Fund might be deemed to be under common control within the section 2(a)(3) definition of "affiliated person." Thus, each portfolio might be deemed to be an affiliated person of each other portfolio of the Fund, and each sub-adviser of a portfolio may be deemed to be an affiliated person of an affiliated person of any of the Fund's portfolios that it does not advise. The Original Application further noted that each such sub-adviser, as an affiliated person of each portfolio it advises and as an affiliated person of an affiliated person of each other portfolio, may be prohibited by section 17(a) from engaging in principal transactions with any of the portfolios. Consequently, applicant and the Fund requested and obtained the Existing Order.

4. Applicant believes that the relief granted under the Existing Order could be viewed as not extending to principal transactions with a non-series investment company in respect of which applicant may be an affiliated person of an affiliated person solely because of a sub-advisory relationship with (a) another non-series investment company, or (b) a portfolio of a series investment company which may be considered under common control with the non-series company with which applicant would engage in principal transactions. In addition, the Existing Order could be viewed as not extending to portfolios of a series investment company in respect of which applicant may be considered an affiliated person of an affiliated person solely because of a sub-advisory relationship with another investment company or portfolio thereof that may be deemed to be under common control with the portfolio of the registered investment company with which applicant would engage in principal transactions. Applicant believes the requested amended order is necessary to permit it to enter into sub-advisory relationships with registered investment companies and portfolios thereof that are part of a fund "complex" or that are otherwise under common control with other registered investment companies and their portfolios without prejudicing such other registered companies and portfolios by virtue of precluding them from transacting with applicant.

5. Applicant contends that the requested relief is in substance identical to the relief granted by the Existing Order and presents no new issues of law and no materially different facts than were presented in the application in connection with the Existing Order. Accordingly, applicant believes that the requested amended order satisfies the standards under sections 6(c) and 17(b).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-22893 Filed 9-17-93; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2678]

Commonwealth of Virginia; Declaration of Disaster Loan Area

Chesterfield, Dinwiddie, and Prince George Counties, the Independent Cities of Colonial Heights, Hopewell, and Petersburg, as well as the contiguous counties of Amelia, Brunswick, Charles City, Goochland, Greensville, Henrico, Nottoway, Powhatan, Surry, and Sussex and the Independent City of Richmond, in the Commonwealth of Virginia, constitute a disaster area as a result of damages caused by tornadoes which occurred on August 6, 1993. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 12, 1993 and for economic injury until the close of business on June 10, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

	Percent
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.625
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 267812 and for economic injury the number is 803000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 10, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–22899 Filed 9–17–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice No. 1867]

Advisory Committee to the United States Section International Commission for the Conservation of Atlantic Tunas; Partially Closed Meeting

The Advisory Committee to the United States Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT) will meet on October 14 and 15, 1993, at the Silver Spring Plaza Holiday Inn, 8777 Georgia Avenue, Silver Spring, Maryland. The October 14, 1993 session will be open to the interested public and will begin at 9:30 a.m. The Committee will review the decisions reached at the 1991 and 1992 ICCAT meetings, highlight ongoing scientific preparations, and identify outstanding issues for the 1993 annual ICCAT meeting.

The Advisory Committee will also meet in closed session beginning at 9:30 a.m. on October 15. The session will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States negotiating position to be taken at the upcoming ICCAT annual meeting in Madrid, Spain, November 8–12, 1993. The members of the Advisory Committee will examine various options for the U.S. negotiating position at the November meeting, and these considerations must necessarily involve a review of classified materials. Accordingly, the determination has been made to close this portion of the meeting pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. I and 5 U.S.C. 552b(c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. Brian S. Hallman, Deputy Director, Office of Marine Conservation (OES/OMC), room 5806, U.S. Department of State, Washington, 20520–7818. Mr. Hallman can be reached by telephone on (202) 647–2335 or by FAX on (202) 736–7350.

Date: September 1, 1993.

R. Tucker Scully,

Acting Deputy Assistant Secretary, Oceans Affairs.

[FR Doc. 93–22811 Filed 9–17–93; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Norwood Memorial Airport, Norwood, MA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure map for Norwood Memorial Airport, as submitted by the Norwood Airport Commission under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150, is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Norwood Memorial Airport under part 150, in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before March 2, 1994.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure map and of the start of its review of the associated noise compatibility program is September 3, 1993. The public comment period ends on October 22, 1993.

FOR FURTHER INFORMATION CONTACT: John C. Silva, Federal Aviation Administration, New England Region, Airports Division, ANE–602, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure map submitted for Norwood Memorial Airport is in compliance with applicable requirements of part 150, effective September 3, 1993. Further, FAA is reviewing a proposed noise compatibility program for that airport, which will be approved or disapproved on or before March 2, 1994. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such map to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted a noise exposure map that is found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or proposes, for the introduction of additional noncompatible uses.

The Norwood Airport Commission submitted to the FAA on July 13, 1993, a noise exposure map, descriptions, and other documentation which were produced during the Airport Noise Compatibility Planning (part 150) study at Norwood Memorial Airport from December 1985 to July 1993. It was requested that the FAA review this material as the noise exposure map, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure map and related descriptions submitted by Norwood Memorial Airport. The specific maps considered were Figure 7–1, Baseline Existing Noise Exposure Map: 1987, Figure 7–2, Baseline Future Noise Exposure Map: 1992, and Figure 7–5, Forecast Noise Exposure Map: 1992 (With Noise Compatibility Program) along with the supporting documentation in "FAR Part 150 Noise Exposure Map and Documentation". The FAA has determined that the maps for Norwood Memorial Airport are in compliance with applicable requirements. This determination is

effective on September 3, 1993. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure map to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted the map, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 or FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Norwood Memorial Airport, also effective on September 3, 1993. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before March 2, 1994. The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure map, the FAA's evaluation of the map, and the proposed noise compatibility program are available for examination at the following locations:

Norwood Memorial Airport, Airport Manager's Office, Ammon Terminal, Norwood Memorial, MA 03103

Federal Aviation Administration, New England Region, Airports Division, ANE–602, 12 New England Executive Park, Burlington, Massachusetts 01803–5299

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts, on September 3, 1993.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 93–22905 Filed 9–17–93; 8:45 am]

BILLING CODE 4910–13–M

Availability of Draft Environmental Impact Statement (DEIS) for the Establishment of an Instrument Landing System (ILS) on Runway 11 at Newark International Airport, Newark, NJ

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of availability of Draft Environmental Impact Statement (DEIS).

SUMMARY: The Federal Aviation Administration (FAA) is issuing this Notice to advise the public, local, State and Federal agencies, and all other interested parties of the availability of a Draft Environmental Impact Statement (DEIS), which assesses the potential effects of constructing and operating an Instrument Landing System (ILS) facility on Runway 11 at Newark International Airport, Newark, New Jersey. The DEIS has been prepared in accordance with the National Environmental Policy Act of 1969. The purpose of this proposed action is to reduce delays to the aircraft and passengers utilizing Newark International Airport and to provide more efficient use of the existing runways.

ADDRESSES: Comments on the DEIS may be submitted in writing and may be mailed or hand delivered to the FAA at the following address: Mr. Herbert Ross (AEA–401), Assistant Manager, Airway Facilities Division, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hom of the Federal Aviation Administration at (718) 553–1508, or Mr. Errol Francis of the Federal Aviation Administration at (718) 553–1158.

SUPPLEMENTARY INFORMATION: An FAA evaluation concluded that the installation of an ILS on Runway 11 at Newark International Airport would reduce aircraft and passenger delays and provide for greater efficiency in the use of the existing runways. The FAA, in cooperation with the Port Authority of New York and New Jersey (PANYNJ), began the preparation of an Environmental Assessment (EA) for an Instrument Landing System/Microwave Landing System (ILS/MLS).

A public hearing was held on September 19, 1991 to receive comments regarding the Draft Environmental Assessment (EA) for the proposed Runway 11 ILS/MLS at Newark International Airport; and a Notice of Intent to prepare an Environmental Impact Statement (EIS) was published in the **Federal Register** by the FAA on March 29, 1993 inviting comments. Both verbal and written comments were received. Comments from the public hearing and those arising from the publication of the Notice of Intent have been incorporated into the DEIS. An MLS is no longer part of the proposed action.

Several alternatives to the proposed action were evaluated in the DEIS, including: Shifting the demand to other airports; restricting aircraft operations during peak operating hours; installing a precision instrument landing system on another runway; and no action.

An analysis of both the function of the ILS and the data used to develop the Environmental Assessment led to the recommendation to prepare an Environmental Impact Statement (EIS) for the proposed installation of an ILS on Runway 11 at Newark International Airport. The analysis also shows that this project is separate from the current EIS that is being studied for the Expanded East Coast Plan (EECP). The Runway 11 precision approach is not considered a component of the EECP, rather it is a stand alone project needed to reduce operating delays to Newark International Airport. Thus, the need to

prepare a separate EIS is reasonable and appropriate.

Comments on the DEIS are invited from Federal, State, and local agencies, and all other interested parties, and should be directed to the FAA at the addresses provided above. All comments received or postmarked within 45 days from the date of publication of the Environmental Protection Agency's (EPA) Notice of Availability of the DEIS in the Federal Register will be considered in the preparation of the Final Environmental Impact Statement.

The DEIS is available for public review at the following locations: (1) Cranford Public Library, 224 Walnut Avenue, Cranford, New Jersey (contact the Head Librarian); (2) Elizabeth Public Library, 11 South Broad Street, Elizabeth, New Jersey (contact the Head Librarian); (3) Newark Public Library, 5 Washington Street, Newark, New Jersey (contact the Head Librarian); (4) Air Traffic Control Tower, room 112, Tower Road, Newark International Airport (ask for Mr. Lucious Riley).

To obtain a copy of the DEIS, submit a written request to: Mr. Thomas Hom (AEA–451.3), Supervisor, Navaids/Visaids/Weather Section, Airway Facilities Division, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

Issued in Jamaica, New York, on September 13, 1993.

Herbert Ross,

Assistant Manager, Airway Facilities Division, FAA Eastern Region.

[FR Doc. 93–22907 Filed 9–17–93; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE–93–42]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 11, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 13, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 20853
Petitioner: United Air Lines
Sections of the FAR Affected: 14 CFR 121.99 and 121.351
Description of Relief Sought: To extend Exemption No. 3122 to allow United Airlines to continue to operate its airplanes in extended overwater operations in the Western Atlantic, Caribbean Sea, and the Gulf of Mexico with one high frequency radio and one long-range navigation system.

Docket No.: 26012
Petitioner: Federal Express Corporation
Sections of the FAR Affected: 14 CFR 121.583(a)
Description of Relief Sought: To extend Exemption No. 5129 to allow Federal Express to continue to transport medical personnel assigned to Project Orbis (a Douglas DC–8 flying eye hospital, which operates throughout the world) without complying with the passenger carrying requirements specified in part 121 of the FAR.

Docket No.: 27340
Petitioner: Mr. William Orr
Sections of the FAR Affected: 14 CFR 65.77
Description of Relief Sought: To allow the petitioner to take the airframe and powerplants test without having the required 30 months of practical experience concurrently performing the duties appropriate to both the airframe and powerplants ratings and relief from the works "satisfactory to the Administrator" as it appears in § 65.77.

Docket No.: 27357
Petitioner: Mr. Robert E. Bartow
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow petitioner to serve as a pilot in part 121 air carrier operations after his 60th birthday.

Docket No.: 27405
Petitioner: British Airways
Sections of the FAR Affected: 14 CFR 129.18(a)
Description of Relief Sought: To allow British Airways to operate its Concorde aircraft in the U.S. without the Traffic Alert and Collision Avoidance System (TCAS) installed until July 1, 1994.

Docket No.: 27411
Petitioner: Elliott Beechcraft of Omaha, Inc.
Sections of the FAR Affected: 14 CFR 91.109 (a) and (b)(3)
Description of Relief Sought: To allow the petitioner's part 135 instructors to provide initial and recurrent flight training and simulated instrument flight training in Beech Baron aircraft, equipped with a functioning throwover control wheel, for the purpose of maintaining part 135 Pilot-in-Command qualifications. Additionally, the petitioners part 135 check airmen would be allowed to conduct part 135 flight tests under simulated instrument conditions in said aircraft.

Dispositions of Petitions

Docket No.: 21780
Petitioner: Civil Air Patrol
Sections of the FAR Affected: 14 CFR 61.118
Description of Relief Sought/Disposition: To extend Exemption No. 4042 to continue to permit the members of the Civil Air Patrol to be reimbursed for fuel, oil, and maintenance costs that are directly related to the performance of official search and rescue missions. *Grant, September 3, 1993, Exemption No. 4042E.*

Docket No.: 26302

Petitioner: Flight Safety International
Sections of the FAR Affected: 14 CFR 135.293, 135.297, 135.299, 135.337 and part 121 appendix H
Description of Relief Sought/ Disposition: To extend Exemption No. 5241 to continue to permit Flight Safety International to offer contract pilot simulator training, instructors and check airmen to part 135 certificate holders who operate turbojet/turboprop aircraft, including turbine-powered rotorcraft. *Grant, September 8, 1993, Exemption No. 5241C.*

Docket No.: 27147
Petitioner: Bulldog Airlines, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought: To allow Bulldog Airlines, Inc. to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, September 8, 1993, Exemption No. 5739.*

Docket No.: 27263
Petitioner: Southern Air Transport
Sections of the FAR Affected: 14 CFR 121, appendix H
Description of Relief Sought/ Disposition: To allow CAE, Inc. to train Southern Air Transport's initial cadre of B–747 pilots and flight engineers in an initial, transition, upgrade, differences, and recurrent training in an approved simulator using an approved advanced simulator training program, for a 6 month period, without CAE instructors meeting the employment requirements of appendix H. *Partial Grant, September 7, 1993, Exemption No. 5736.*

Docket No.: 27327
Petitioner: Midway Aviation
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought: To allow petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135. *Grant, September 8, 1993, Exemption No. 5738.*

Docket No.: 27437, 27438, 27440
Petitioner: Northwest Airlines, Atlantic Southwest Airlines, and Crown Airways
Sections of the FAR Affected: 14 CFR 121.417 (c)(1)(i), (c)(1)(ii), and (d)
Description of Relief Sought: To allow the petitioners additional time to conduct and record crewmember training of an approved fire fighting drill using protective breathing equipment as required, until December 31, 1993. *Grant, September 1, 1993, Exemption No. 5735.*

[FR Doc. 93–22902 Filed 9–17–93; 8:45 am]
BILLING CODE 4910–13–M

Air Traffic Procedures Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from October 18 through October 21, 1993, from 9 a.m. to 5 p.m each day.

ADDRESSES: The meeting will be held at the Department of Transportation, (rooms 8236–8238), 400 7th Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy E. Halpin, Executive Director, ATPAC, Air Traffic Rules and Procedures Service, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held from October 18 through October 21, 1993, at the Department of Transportation, (rooms 8236–8238), 400 7th Street, SW., Washington, DC.

The agenda for this meeting will cover: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than October 15, 1993. The next quarterly meeting of the FAA ATPAC is planned to be held from January 10–14, 1994, in San Diego, CA. Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on September 10, 1993.

Timothy E. Halpin,
Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 93–22906 Filed 9–17–93; 8:45 am]
BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at T.F. Green State Airport, Warwick, RI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge at T.F. Green State Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 20, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Alan M. Gilstein, Treasurer of the Rhode Island Airport Corporation at the following address: T.F. Green State Airport, 2000 Post Road, Warwick, Rhode Island.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Rhode Island Airport Corporation under § 158.23 of part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Soldan, Airports Program Specialist, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238–7614. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at T.F. Green State Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 27, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Rhode Island Airport Corporation was substantially complete within the requirements of § 158.25 of part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than November 26, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: February 1, 1994
Proposed charge expiration date: October 31, 2015
Total estimated PFC revenue: $118,227,058
Brief description of proposed project:

Impose and Use Projects

Terminal Building Demolition
Construct Terminal Access Road
Terminal Leasehold Acquisition
Construct Interim Terminal Facility
Construct Terminal Building
Construct Apron; Taxiways; Drainage; Utilities
Construct Pedestrian Walkways & Drainage
Landscaping
Install Guidance Signs
VOR Modifications
Construct Storm Water Retention System
Construct Deicing and Glycol Retention System
Construct Perimeter Service Road

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the T.F. Green State Airport, 2000 Post Road, Warwick, Rhode Island 02886.

Issued in Burlington, Massachusetts, on September 9, 1993.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 93–22903 Filed 9–17–93; 8:45 am]

BILLING CODE 4910–13–M

Research and Special Programs Administration

Office of Hazardous Materials Safety; Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment must be received on or before October 5, 1993.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Modification of exemption
9637–X	Connelly Containers, Inc., Bala-Cynwyd, PA (See Footnote 1).	9637
10180–X	Convenience Marine Products, Inc., Grand Rapids, MI (See Footnote 2).	10180

(1) To modify exemption to provide for transportation of poison B, n.o.s. material, classed as Division 6.1, in non-reusable, triple-wall corrugated fiberboard bulk boxes securely mounted to wood pallet base.

(2) To modify exemption to manufacture, mark and sell cylinders similar to DOT specification 39 without relief device to be charged with chlorotetrafluoroethane, classed as Division 2.2.

Application No.	Applicant	Parties to exemption
6484–P	InterTrans Services, Inc., Monmouth Beach, NJ.	6484
6530–P	Standard Welders Supply Co., Memphis, TN.	6530
7891–P	Albright & Wilson Americas, Ashland, VA.	7891
8445–P	ENSCO, Inc., El Dorado, AR.	8445
9723–P	ENSR Operations, Canton, OH.	9723
9953–P	ZENECA Specialty Inks, Winston-Salem, NC.	9953
10001–P	Barclay Company, Mason City, IA.	10001
10040–P	ZENECA Inc., Wilmington, DE.	10040
10441–P	Broco Environmental, Inc., Rialto, CA.	10441
10441–P	Midwest Environmental Transport, Inc., Fairfield, OH.	10441
10647–P	Wilbur-Ellis Company, Fresno, CA.	10647
10866–P	McClure Industries, Inc., Portland, OR.	10866
11043–P	Hazmat Environmental Group, Inc., Buffalo, NY.	11043
11055–P	Hazmat Environmental Group, Inc., Buffalo, NY.	11055
11077–P	Olin Corporation, Stamford, CT.	11077

This notice of receipt of applications for modifications of exemptions and for party to an exemption is published in

accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on September 13, 1993.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 93–22840 Filed 9–17–93; 8:45 am]

BILLING CODE 4910–60–M

Research and Special Programs Administration, Office of Hazardous Materials Safety

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before (30 days after publication).

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11098–N	Alcan Smelters and Chemicals Ltd., Montreal, CN.	49 CFR 49 CFR 173.242	To authorize the transport of (aluminum dross) substances which in contact with water emit flammable gases, solid, n.o.s. UN 2813 classed as Division 4.3 in vented rail box car. (Mode 2.)
11099–N	AMKO Service Co., Gnadenhutten, OH.	49 CFR 173.302(c), 173.34(e)	To authorize acoustic emission retesting of DOT-Specification 3A and 3AA compressed gas cylinders (trailer tubes). (Modes 1, 2, and 3.)
11103–N	Space Systems/Loral, Palo Alto, CA.	49 CFR 107.302, CFR 49	To authorize the transport of GOES I Satellite containing propellant/pressurant tanks pressurized with nitrogen or helium classed as Division 2.2 (Mode 1.)
11104–N	Great Lakes Chemical Corp., El Dorado, AR.	49 CFR 173.314(c)	To authorize the shipment of bromine chloride, classed as Division 2.3, Hazard Zone B in 105A500W rail cars. (Mode 2.)
11105–N	Gulf States Paper Corp., Demopolis, AL.	49 CFR 174.67(i)+(j)	To authorize chlorine filled tank cars to remain connected during unloading without the physical presence of an unloader. (Mode 2.)
11106–N	E.P. Spray System, East Hanover, NJ.	49 CFR 173.306	To manufacture, mark, and sell a specially designed system for use in an aerosol can containing 40 percent compressed air used to spray water base products or other nonflammable liquids to be shipped as essentially nonregulated. (Mode 1.)
11107–N	Teledyne McCormick Selph, Hollister, CA.	49 CFR 173.56(b)	To authorize the transport of explosive devices, classed as Division 1.1 mounted on aluminum trays with anti-static plastic bags overpacked in UN 4C1 plywood/wood boxes. (Mode 1.)
11109–N	Matson Navigation Company, Inc., San Francisco, CA.	49 CFR 176.170(b)	To authorize an exemption from the 11,023 pound weight limit on explosives, classed as Division 1.5, transported in freight containers longer than 20 feet an cargo vessel. (Mode 3.)
11110–N	United Parcel Service Co. (UPSCO), Louisville, KY.	49 CFR 49 CFR 175.75(a)(2)	To authorize the transportation of certain hazardous materials classed as D Division 1.4, Class 3, Division 6.1 and Class B when loaded an inaccessible location aboard an aircraft in quantities exceeding those authorized. (Modes 4 and 5.)
11111–N	Great Lakes Chemical Corp., El Dorado, AR.	49 CFR 173.315	To authorize the transport of hydrogen bromide, anhydrous, classed as Division 2.3, Hazard Zone C material shipped in MC–330 tank with a minimum design pressure of 375 psig. (Mode 1.)
11114–N	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.34(e)(15)(i)(ii)	To authorize retesting of DOT 3A and 3AA specification cylinders on a 15 year cycle in lieu of the required 10 year cycle. (Modes 1, 2, 3, 4, and 5.)

Note: Notice of Application No. 11056–N Matheson Gas that appeared on page 38459 of the **Federal Register** for July 16, 1993, should have appeared as "To authorize an alternate testing method for DOT-Specification 3A and 3AA cylinders containing less than 150 lbs. of phosgene, classed as Division 6.1."

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on September 13, 1993.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 93–2284 Filed 9–17–93; 8:45 am]

BILLING CODE 4910–60–M

[Preemption Determination No. PD–4(R) (Docket No PDA–6(R))]

California Requirements Applicable to Cargo Tanks Transporting Flammable and Combustible Liquids

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of administrative determination of preemption by RSPA's Associate Administrator for Hazardous Materials Safety.

APPLICANT: Nalco Chemical Co. (Nalco).

STATE LAWS AFFECTED: California Vehicle Code (VC), Division 14.7 (sections 34000–34102), and California Code of Regulations (CCR), title 13, chapter 6, article 3 (sections 1160–1168) and article 6 (sections 1190–1197).

APPLICABLE FEDERAL REQUIREMENTS: Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180.

MODE AFFECTED: Highway.

SUMMARY: The HMTA preempts California's requirement for an annual inspection of cargo tanks and portable tanks used to transport flammable and combustible liquids, as that requirement is applied and enforced, because any wait for the arrival of State inspectors from another location constitutes an "unnecessary" delay. California's requirement for an annual registration, as applied and enforced, is not preempted because there is no evidence that this requirement creates any delays separate from the wait for an inspection to be conducted. No decision is reached as to whether the HMTA preempts California's registration fees, since no party has contended that the fees are inequitable or used for purposes other than those related to the transportation of hazardous materials. This decision does not consider, and does not affect, State motor vehicle inspection and registration requirements that apply to all commercial vehicles.

The HMTA does not preempt California's statute authorizing design and construction standards for cargo tanks and portable tanks used to transport flammable and combustible liquids, because there is no evidence that California enforces design and construction requirements, with respect to tanks meeting DOT specifications, that are not substantively the same as requirements in the HMR.

When applied to DOT specification cargo tanks and portable tanks, the following State marking requirements are preempted by the HMTA because they are not substantively the same as requirements in the HMR: (1) That a metal identification plate be affixed to any tank for which such a plate is not required by the HMR (13 CCR 1195); (2) that a "CT number" be marked on the tank or on a metal identification plate on the tank (13 CCR 1194); and (3) that a certification label be affixed to the tank and a registration certificate be carried in a waterproof holder permanently attached to portable tanks (VC 34044 and 13 CCR 1193). No decision is reached with regard to the requirement that the remote secondary control for internal valves be clearly labeled (13 CCR 1197), in the absence of any evidence that Nalco or any other party submitting comments is directly affected by this requirement.

This decision does not address similar California registration, inspection and certification requirements applicable to vehicles and tanks used to transport hazardous wastes. However, these requirements are subject to the same preemption provisions in the HMTA, and the general principles discussed in this decision apply.

This decision will become RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time. If a petition for reconsideration of this decision is filed within 20 days of service, the action by RSPA's Associate Administrator for Hazardous Materials Safety on a petition for reconsideration will be RSPA's final decision.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone 202–366–4400.

SUPPLEMENTARY INFORMATION:

I. Background

A. Application for Preemption Determination

In July 1992, Nalco applied for a determination that the HMTA preempts certain California laws and regulations applicable to cargo tanks and portable tanks transporting flammable and combustible liquids (generally referred to herein as "cargo tank requirements"). As discussed more fully below, Nalco contends that California's cargo tank requirements improperly (1) give State officials discretion to establish tank specifications different from Federal standards; (2) mandate additional markings on cargo tanks and portable tanks that are not "substantively the same" as the markings required by the HMR; and (3) cause diversions of traffic and unnecessary delays in the transportation of hazardous materials.

On August 21, 1992, RSPA published a Public Notice and Invitation to Comment on Nalco's application. 57 FR 38081. That Notice set forth the text of Nalco's application in which Nalco restates and expands upon an earlier, June 1990 application for an inconsistency ruling. That previous application, designated RSPA Docket No. IRA–53, had been returned to Nalco following the enactment of the 1990 amendments to the HMTA which provided additional standards for preemption under the HMTA and replaced RSPA's procedures for issuing inconsistency rulings with a statutorily-authorized process for making determinations of preemption.

Besides Nalco, four commenters to Docket No. IRA–53 expressed their view that California's cargo tank requirements were inconsistent with the HMTA and the HMR: National Tank Truck Carriers, Inc. (NTTC), Chemical Waste Transportation Institute (CWTI), Hazardous Materials Advisory Council (HMAC), and Union Pacific Railroad Co. The California Highway Patrol (CHP) had filed comments opposing Nalco's application in IRA–53, and California's Department of Health Services had submitted comments in response to arguments by CWTI and Union Pacific that similar, but separate, California requirements for transporters of hazardous wastes are also inconsistent with the HMTA and the HMR. Nalco's July 1992 application "recommend[s] that the principles expressed in this ruling be sufficiently general to answer questions regarding those similar requirements." 57 FR 38085.

The August 21, 1992 Public Notice indicated that the comments submitted in IRA–53 had been placed in Docket No. PDA–6(R) and would be considered on Nalco's July 1992 application for a preemption determination "to the extent relevant and appropriate under the revised preemption provisions in * * * the HMTA." 57 FR 38083. At the same time, RSPA specified that further comments should be limited to the issue of whether the California cargo tank

requirements are preempted by the HMTA.

Following publication of the Public Notice, further comments were submitted by Nalco, NTTC, CWTI, the 3M Transportation Department, CHP, and the California Department of Toxic Substances Control (which now administers the State's Hazardous Waste Haulers Act).

B. California's Cargo Tank Requirements

California has incorporated in its regulations "to the extent specified" the October 1, 1988 version of 49 CFR parts 171–179. 13 CCR 1160.2(a). This includes the HMR's provisions on hazard classification (13 CCR 1160.5), packaging (13 CCR 1163(b)), marking (13 CCR 1161.3), labeling (13 CCR 1161.2), placarding (13 CCR 1162), and shipping papers (13 CCR 1161, 1161.1). CHP represents that 13 CCR 1160.2(b) "authorizes/allows intra- and interstate carriers to comply with the most current edition of 49 CFR," and also that CHP has proposed an amendment to its regulations that would incorporate the most recent edition of 49 CFR parts 171–179.

As challenged in Nalco's original application in Docket IRA–53, California's cargo tank requirements applied to "any container having a volumetric capacity in excess of 120 gallons that is used for the transportation of flammable liquids or combustible liquids," with certain exceptions such as a vehicle's own fuel compartment and specified agricultural equipment. VC 34003–34006. A 1992 amendment to VC 34003 retained the language quoted but excluded additional categories of tanks from the cargo tank requirements: (1) Tanks "meeting the requirements of Title 49 of the Code of Federal Regulations, with a volumetric capacity of less than 500 gallons used to transport flammable or combustible liquids," other than portable tanks carrying an inhalation hazard; (2) tanks smaller than 500 gallons designated by DOT as "single trip" or "nonreusable" containers; (3) empty tanks (with less than 120 gallons of residue); and (4) certain DOT specification intermodal portable tanks transported within 25 miles of a loading facility.

In addition, these requirements do not apply to tanks containing flammable and combustible liquids that are hazardous wastes. California Health & Safety Code (H&SC) 25163(d). However, California has a similar, but separate, registration, inspection and certification program covering transporters of hazardous wastes. See H&SC Article 6.5 (sections 25167.1–25169.3), and 22 CCR Chapter 12, Article 1 (sections 66263.10–66263.18). Although this decision does not directly address California's requirements for transporters of hazardous wastes, the principles discussed below are applicable to the extent that the requirements are the same.

Insofar as they are relevant to Nalco's application, the cargo tank requirements are summarized as follows:

—*Design and construction*—CHP is authorized to adopt regulations on the design, construction and structural safety of tanks used to transport flammable and combustible liquids and, "[t]o the extent permitted by federal law," the stability of tank vehicles. VC 34019(a). For "intrastate shipments," CHP must incorporate DOT "standards concerning interstate shipments." VC 34019(b).

—*Registration*—Cargo and portable tanks used to transport flammable and combustible liquids on California highways must be annually registered with CHP. VC 34100. CHP registers a tank and assigns a cargo tank identification number (CT number) on receipt of an application and payment of the applicable fee. 13 CCR 1190.1(a). A temporary 10-day registration allows a non-California tank to enter the State to be inspected and registered. 13 CCR 1190.1(b). The annual registration fee is $50.00, or $65.00 for cargo tanks which have vapor recovery systems. VC 34045; 13 CCR 1191. The fees collected must be "used for the support of the cargo tank inspection and registration program," except for amounts transferred to the State Air Pollution Control Fund to cover the costs of administering the certification of cargo tanks with vapor recovery systems. VC 34045.5; H&SC 41962(f). CHP is authorized to enter into agreements with other States or Federal agencies having comparable programs "for the purposes of reciprocity in registration and certification." VC 34120.

—*Inspection*—A tank must be inspected once a year, and within 30 days of notification by CHP. 13 CCR 1192. See also VC 34060. Cargo tanks with vapor recovery systems also must pass a separate inspection, conducted by CHP at the same time. 13 CCR 1192(c). CHP is authorized to conduct inspections "at terminals, yards, or similar places, * * *" VC 34064, as well as on public highways. Registration may be denied, revoked or suspended for a failure to "make available the cargo tank for inspection * * * upon reasonable notice." VC 34042(d), 34061(c).

—*Marking and Certification*—The registration and inspection process includes several specific marking requirements:

(1) A tank must have a "metal identification plate permanently attached to the tank or to a supporting member"—which may be the "manufacturer's certification plate required by 49 CFR 178.340.10(b)." 13 CCR 1195(a).

(2) The CT number must either be marked on the tank itself or stamped on the manufacturer's plate. 13 CCR 1194.

(3) When the tank is registered and passes the CHP inspection, a certification label is affixed to the tank. VC 34044, 13 CCR 1193(a). This certification is valid for a year. 13 CCR 1193(a). A separate paper certificate also is issued, and "carried with the tank vehicle * * *. On portable tanks, the certificate shall be placed in a weatherproof holder permanently attached to the tank." 13 CCR 1193(b). CHP may order the removal of this certificate if the tank's registration is revoked or suspended, or if the tank is found not to comply with CHP or DOT regulations. VC 34062–63. A "tank vehicle" may not be operated in California which does not have this certificate of compliance "affixed to the cargo tank." VC 34101.

(4) The remote secondary operating control for internal valves must be labeled "Emergency Valve Control." 13 CCR 1197.

II. Preemption Under the HMTA

The HMTA was enacted in 1975 to give the Department of Transportation greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 App. U.S.C. 1801. It "replace[d] a patchwork of state and federal laws and regulations * * * with a scheme of uniform, national regulations." *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n*, 909 F.2d 352, 353 (9th Cir. 1990). The HMR have been promulgated in accordance with the HMTA's direction that the Secretary of Transportation "issue regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce." 49 App. U.S.C. 1804(a)(1).

"[U]niformity was the linchpin in the design of the [HMTA]," including the 1990 amendments to that statute. *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). Congress believed that uniform regulations promote safety in the

transportation of hazardous materials, specifically finding in 1990 that:

(3) Many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) Because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) In order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

49 App. U.S.C. 1801 note.

Unless otherwise authorized by Federal law or unless a waiver of preemption is granted by DOT, the HMTA explicitly preempts "any requirement of a State or political subdivision thereof or Indian tribe" if

(1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement of [the HMTA] or of any regulation issued under [the HMTA] is not possible,

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of [the HMTA] or the regulations issued under [the HMTA], or

(3) It is preempted under section 105(a)(4) [49 App. U.S.C. 1804(a)(4), describing five "covered subject" areas] or section 105(b) [49 App. U.S.C. 1804(b), dealing with highway routing requirements] * * *

49 App. U.S.C. 1811(a).

The first two of these paragraphs set forth the "dual compliance" and "obstacle" criteria which RSPA had applied in issuing inconsistency rulings prior to the 1990 amendments to the HMTA. While advisory in nature, these inconsistency rulings were "an alternative to litigation for a determination of the relationship of Federal and State or local requirements" and also a possible "basis for an application * * * [for] a waiver of preemption pursuant to section 112(b) of the HMTA." Inconsistency Ruling (IR) No. 2, Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas and Liquefied Propane Gas, etc. 44 FR 75566, 76657 (Dec. 20, 1979). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

The third paragraph, 49 App. U.S.C. 1811(a)(3), refers to 49 App. U.S.C. 1804(a)(4), which provides that a non-Federal requirement in any of five "covered subject" areas is preempted unless it is "substantively the same as" a requirement in the HMTA or the HMR (or the non-Federal requirement is "otherwise authorized by Federal law"). These covered subjects are:

(i) The designation, description, and classification of hazardous materials.

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In a final rule published in the **Federal Register** on May 13, 1992 (57 FR 20424, 20428), RSPA defined "substantively the same" to mean "conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis*, changes are permitted." 49 CFR 107.202(d).

The HMTA also provides that (1) any fee imposed by a State, political subdivision or Indian tribe "in connection with the transportation of hazardous materials * * *" must be equitable and "used for purposes related to the transportation of hazardous materials, * * *" 49 App. U.S.C. 1811(b); (2) certain motor vehicle transporters of hazardous materials must file a registration statement with DOT, 49 App. U.S.C. 1805(c), and/or obtain a safety permit from DOT, 49 App. U.S.C. 1805(d); and (3) as clarified in a further 1992 amendment, State forms and procedures for registration and permitting of motor vehicles which transport hazardous materials must conform to regulations to be issued by DOT based on recommendations of a State and local government working group. 49 App. U.S.C. 1819(e), as amended by Public Law 102–508, sec. 507, 106 Stat. 3312 (Oct. 24, 1992).

With respect to these provisions on registration and permitting, at present, the only final regulations issued by DOT are those implementing the Federal registration requirement. 49 CFR part 107, subpart G. However, RSPA has declared that,

This registration regulation has no preemptive effect. It does not impair the ability of States, local governments or Indian tribes to impose their own fees or registration or permit requirements on intrastate, interstate or foreign offerors or carriers of hazardous materials.

57 FR at 30636.

The HMTA authorizes any directly affected person to apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted by the HMTA. 49 App. U.S.C. 1811(c)(1). This administrative determination replaced RSPA's process for issuing inconsistency rulings. The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing which were delegated to the Federal Highway Administration. 49 CFR 1.53(b). Under RSPA's regulations, preemption determinations are issued by RSPA's Associate Administrator for Hazardous Materials Safety. 49 CFR 107.209(a).

Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under statutes other than the HMTA unless it is necessary to do so in order to determine whether a requirement is "otherwise authorized by Federal law." A State, local or Indian tribe requirement is not "otherwise authorized by Federal law" merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F.2d at 1581 n.10.

In making determinations regarding preemption under the HMTA, RSPA is guided by the principles and policy set forth in Executive Order No. 12,612, entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. The HMTA contains express preemption provisions, which RSPA has implemented through its regulations.

III. Discussion

Since Nalco first formally challenged the cargo tank requirements in 1990, California has made a number of amendments to the applicable laws and regulations, most recently on March 4,

1993. The changes to 13 CCR include some, but not all, of the items that CHP states it has proposed.

One proposed change which CHP discusses, but which has not yet been made, is to update the edition of 49 CFR that is incorporated in the cargo tank requirements. However, a State's failure to refer to the current form of the HMR does not result in automatic preemption of the non-Federal requirements. RSPA previously has recognized the practical difficulty that States encounter in keeping pace with changes to the HMR. IR–19, Nevada Public Service Commission Regulations Governing Transportation of Hazardous Materials, 52 FR 24404, 24410 (June 30, 1987); IR–31, Louisiana Statutes and Regulations on Hazardous Materials Transportation, 55 FR 25572, 25580 (June 21, 1990). As RSPA has stated:

> If a change to the HMR results in a direct conflict with a state requirement, the HMR would control as soon as the HMR change becomes effective. However, there is no basis for a wholesale preemption of state regulations which contain slightly outdated state incorporations by reference or adoptions of the HMR as state requirements.

IR–19, 52 FR at 24410–11.

Accordingly, this decision addresses the challenged cargo tank requirements, in their current form, under the HMTA's preemption provisions in 49 App. U.S.C. 1811(a).

A. Cargo Tank Design and Construction Standards

The HMR authorize only certain specification cargo tanks and portable tanks for transporting flammable liquids in bulk. 49 CFR 173.242–173.243. (See also former 49 CFR 173.119, with which carriers may comply until October 1, 1996. 49 CFR 171.14(b)(6)). A combustible liquid may be transported in "nonspecification" cargo tanks meeting the general packaging regulations in the HMR (*e.g.*, strong, tight, leakproof packagings). 49 CFR 173.150(f) (see also former 49 CFR 173.118a). Nonetheless, RSPA understands that combustible liquids are often shipped in cargo tanks and portable tanks which meet DOT specifications for transporting flammable liquids.

Nalco contends that the provision in VC 34019 for CHP to "adopt reasonable regulations" for cargo tank design, construction and structural safety is invalid because it "authorizes specifications in addition to the federal rules." It argues that, "[t]o the extent the California requirements for tanks vary at all from the federal rules, they are statutorily preempted." NTTC concurs, stating that this discretion adds to the obstacles faced by an interstate carrier of flammable or combustible liquids.

Nalco alleges that CHP "inspectors are applying some unknown standard to determine the adequacy" of tanks carrying combustible liquids. Its argument concerning the requirement in 13 CCR 1195 for a metal identification plate on each tank is addressed as a marking specification below. Otherwise, neither Nalco nor any other party cites any instance where CHP has imposed specific design or construction requirements different from, or in addition to, those in the HMR.

CHP states that its authority to adopt design and construction standards for cargo tanks and portable tanks has been used only to allow the continued use within the State of "grandfathered" tanks, approved before California first adopted the HMR's design specifications for cargo tanks in 1984. CHP asserts that, until RSPA exercises jurisdiction over "intrastate" highway transportation, its regulations fill the existing gap in the HMR. It stresses that the current form of VC 34019 requires CHP to incorporate, for "intrastate shipments in this state, * * * any new United States Department of Transportation standards concerning interstate shipments."

Currently, the HMR govern all highway transportation of hazardous materials by interstate carriers, and highway transportation of the following by intrastate carriers: hazardous wastes, hazardous substances, flammable cryogenic liquids in cargo tanks and portable tanks, and marine pollutants. 49 CFR 171.1(a)(3), as amended in 57 FR 52930, 52934 (Nov. 5, 1992). To carry out the 1990 amendments to the HMTA, RSPA has issued a notice of proposed rulemaking to extend the application of the HMR to all intrastate commerce. 58 FR 36920 (July 9, 1993); corrections, 58 FR 38111 (July 15, 1993). Under the proposed rule, except with respect to the four categories already subject to the HMR at all times, the HMR would not apply to bulk packagings transported by intrastate motor carriers until October 1, 1996, on the condition that the State had specifically authorized the bulk packaging to be used within the State. 58 FR at 36923–24. Thus, until that date (if RSPA's proposed rule were issued without change), there remains a limited area where California retains authority to prescribe design and construction standards for a bulk packaging to transport a flammable or combustible liquid so long as that packaging is not marked with a DOT specification identification.

The HMTA preempts any State requirement that concerns the "design, manufacturing, fabrication * * * of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials," 49 App. U.S.C. 1804(a)(4)(B)(v), and which is not substantively the same as the requirements in the HMR. This means that, when the HMR apply, California may not add requirements which RSPA has not imposed. The State may not apply differing design and construction requirements to cargo tanks and portable tanks marked as meeting the requirements of a DOT specification, even if used by an intrastate carrier. Nor may California apply differing design and construction requirements to non-DOT specification cargo tanks and portable tanks used by (a) an interstate carrier to transport combustible liquids or (b) an intrastate carrier to transport hazardous wastes, hazardous substances, or marine pollutants that are subject to the HMR.

Accordingly, CHP may apply its differing design, construction and structural safety requirements to cargo tanks and portable tanks used by intrastate carriers (but not to intrastate traffic of an interstate carrier), for commodities other than the four categories specified in 49 CFR 171.1(a)(3), so long as these tanks are not marked as meeting a DOT specification. Assuming that CHP acts in this limited manner, there is no California requirement on this "covered subject." No information has been provided to indicate that California has attempted to exceed this limited area where the HMR do not apply and are not invoked. And in the limited area where the HMR do not apply, there is no issue of "dual compliance" with conflicting State and Federal requirements, nor any situation where VC 34019, as enforced or applied, is an "obstacle" to the accomplishment and execution of the HMTA and the HMR.

As applied to non-DOT specification cargo tanks of intrastate carriers, used for commodities other than those specified in 49 CFR 171.1(a)(3), the tank design, construction and structural safety requirements issued under the authority of VC 34019 are not preempted by the HMTA.

B. Marking and Certification Requirements

California has four types of marking requirements for cargo tanks and portable tanks transporting flammable and combustible liquids. Since these requirements concern the "marking * * * of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation

of hazardous materials," 49 App. U.S.C. 1804(a)(4)(B)(v), each of these requirements is preempted by the HMTA unless it is "substantively the same as" the requirements in the HMTA and the HMR.

In each case, CHP offers a rationale for the requirement. At the same time, CHP states that it is withholding enforcement of these parts of its regulations, pending repeal which it has proposed. However, CHP has enforced these requirements in the past, and they were not repealed in March 1993 when other changes were made to the cargo tank requirements. The manner in which a non-Federal requirement is applied or enforced is relevant to determining whether that requirement is an "obstacle to the accomplishment and execution of" the HMTA and the HMR, 49 App. U.S.C. 1811(a)(2), as discussed below. However, the HMTA does not indicate that RSPA should abstain from finding preemption when the non-Federal requirement concerns a covered subject, even though a State has temporarily stopped its enforcement of that requirement.

1. Metal Identification Plate

Each of the specifications for portable tanks in the HMR requires a metal identification plate setting forth various information such as the manufacturer, specification number, design or test pressure, serial number, capacity and weight. *E.g.*, 49 CFR 178.251–7(a) (Specifications 56 and 57 portable tanks). Specifications in the HMR for cargo tanks require a specification plate and, in most cases, a separate name plate. *E.g.*, 49 CFR 178.345–14 (Specifications DOT 406, DOT 407 and DOT 412 cargo tanks); see also 49 CFR 178.340–10 (under which new Specifications MC 306, MC 307 and MC 312 cargo tanks may be built).

Non-specification tanks permitted for the transportation of combustible liquids need only be marked, labeled and placarded in accordance with the general requirements in 49 CFR part 172, subparts D–F. There is no requirement that they bear any specification or identification plate, although they may do so for "identification, warranty and liability purposes," as represented by CHP. However, the fact that a certain procedure or practice may not be prohibited by the HMR does not mean that a non-Federal entity may require that procedure or practice. If so, "substantively the same as" would mean nothing more than an ability to comply with both Federal and non-Federal requirements at the same time. The HMTA preempts any non-Federal requirement concerning a covered subject that goes beyond the requirements of the HMR, even when the non-Federal requirement merely mandates something left to the carrier's discretion under the HMR.

CHP defends its requirement for this metal plate on two grounds: "(1) To provide shippers with proper information on materials of construction and design pressure * * * and (2) as a unique identifier for inspection and enforcement control purposes." However, the requirement mandates information which the HMR do not require and prescribes a specific identification system rather than relying on existing forms of identification (*e.g.*, serial numbers on portable tanks and on the vehicles of cargo tanks). The requirement in 13 CCR 1195 that non-DOT specification tanks must be "equipped with a metal identification plate permanently affixed to the tank or to a supporting member" clearly goes beyond—and is not substantively the same as—the HMR. For that reason, it is preempted by the HMTA.

2. Marking CT Number on Tank or Identification Plate

California argues that its requirement that the CT number be marked on the tank or a metal identification plate, in 13 CCR 1194, as well as the requirement for a certification label on the tank, in 13 CCR 1193, "are not covered subjects (i.e., 'hazardous materials transportation markings'), rather they are control markings similar to vehicle license plate and VIN numbers."

However, the covered subjects include both the "marking * * * of hazardous materials," and the "marking * * * of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials." 49 App. U.S.C. 1804(a)(4)(B)(ii), (v). License plates and VIN numbers (as well as evidence of motor vehicle inspections) are placed on the motor vehicle, not on the tank which constitutes the package or container of hazardous materials.

This requirement to mark the CT number on the tank or a metal plate goes beyond, and is not substantively the same as, the marking requirements in the HMR. Accordingly, 13 CCR 1194 is preempted by the HMTA.

3. Certification Label and Certificate

CHP argues that a "certification sticker * * * is a necessary form of control to ensure compliance with California's hazardous materials regulations (including the HMR) and the annual CHP inspection program." It asserts that "a readily visible control (sticker)" is needed to

> minimize delays in intra- and interstate commerce by making tanks that have already been inspected readily identifiable. Without some form of control (i.e., sticker) we would be stopping and inspecting every tank on every trip into California.

At the same time, CHP indicates that it has modified its enforcement policies to allow carriers to carry the paper certificate as evidence of registration and inspection, rather than affixing the certification label to the tank itself.

RSPA understands CHP's desire to require the best manner of indicating that a tank is currently registered, at the least inconvenience to the carrier. Nonetheless, the marking requirements of 13 CCR 1993, VC 34044 and VC 34101 go beyond, and are not substantively the same as, the HMR. The certification label required to be placed on the tank, and the certificate that must be carried in a waterproof holder on portable tanks, are additional markings on the package itself—and not on the motor vehicle—as evidence of inspection. As with the requirement to display or mark the CT number on the tank, discussed above, the requirement to affix the certification label to the tank is preempted by the HMTA. Since the requirement to affix the certification label on the tank is preempted, the provisions for removal by CHP, in VC 34062–63, are also preempted.

4. Emergency Valve Control (EVC) Marking

CHP states that "California has, for many years, required that the remote closure controls be plainly marked to further enhance the safe loading and unloading of hazardous materials and to provide emergency response personnel a guide for finding and identifying the EVC." On that basis, in rulemaking docket No. HM–183, CHP recommended that RSPA add a similar requirement to the HMR, without success. CHP represents that it "will again petition RSPA concerning this matter in hopes of gaining a national standard for EVC marking requirement * * *."

Although it argues that this is "an operational marking" rather than a "hazard warning" marking, CHP appears to acknowledge that 13 CCR 1197 requires a specific marking on the hazardous materials package, which would be subject to preemption if not substantively the same as the requirements in the HMR. As with the other marking requirements challenged here, CHP states that it is withholding enforcement and has recommended repeal of this provision. Nalco asserts that any marking is a covered subject

when it is "unique to hazardous materials packaging and (is) intended to convey information unique to hazardous materials in transportation."

However, CHP also states, and Nalco does not contest, that Nalco is not affected by this requirement because its tanks are not equipped with emergency valve controls, and consequently they are not required to be marked. Nalco contends that it is challenging California's "program in its entirety," and

> Any person directly affected by a State program may bring that program to DOT's attention in an application for a preemption determination under 49 CFR part 107. * * * In addition, through the public processes on this application, several other parties directly affected by the State's program have expressed their opposition to that program.

As discussed in Part II, above, 49 App. U.S.C. 1811(c) provides that a person who is "directly affected by any requirement of a State, or political subdivision or Indian tribe may apply * * * for a determination of whether that requirement is preempted * * *." (Emphasis supplied.) This language imposes a standing requirement that is more strict than RSPA previously applied in issuing inconsistency rulings. See, *e.g.*, IR–11, Ogdensburg Bridge & Port Authority, etc., 49 FR 46647 (Nov. 27, 1984). The statute looks to the specific requirement(s) challenged by the applicant—or put in issue by the State, local government or Indian Tribe. It does not authorize RSPA to consider other parts of a "program" which do not impose any requirement on the applicant.

The issue of whether a person is "directly affected" by a State, local or Indian tribe requirement is, of course, completely separate from the legal capacity of that person to seek a determination that the non-Federal requirement is preempted by the HMTA. See PD–2(R), Illinois Environmental Protection Agency's Uniform Hazardous Waste Manifest, 58 FR 11176, 11181–82 (Feb. 23, 1993), reaffirming that associations or groups, such as CWTI, may challenge non-Federal requirements that directly affect individual members of the association.

At this time, it is unnecessary for RSPA to decide whether the applicant (as opposed to other commenting parties) must demonstrate standing as to each non-Federal requirement it challenges. Here, Nalco does not contradict CHP's statement that none of Nalco's tanks is required to be marked to show the emergency valve control, under 13 CCR 1197, and there is no evidence that any party submitting comments is directly affected by this requirement.

Accordingly, no decision is reached as to whether the HMTA preempts the requirement in 13 CCR 1197 for marking the emergency valve control.

C. Registration and Inspection Requirements

The focus of Nalco's preemption application, and most of the comments on it, is California's program for inspecting cargo tanks and portable tanks transporting flammable and combustible liquids. As explained in section I.B., above, this inspection is linked to California's annual registration and certification of cargo tanks and portable tanks. Registration may be denied, revoked or suspended for a failure to make a cargo tank or portable tank available for inspection "on reasonable notice." VC 34042(d), 34061(c). The certificate of compliance is issued only when the tank passes inspection. 13 CCR 1193(a).

Since it is possible for carriers to comply with the California registration and inspection requirements as well as the HMR, these State requirements are not preempted under the "dual compliance" standard in 49 App. U.S.C. 1811(a)(1). Preemption depends on whether California's application and enforcement of its registration and inspection requirements "create[] an obstacle to the accomplishment and execution of (the HMTA) and (the HMR)." 49 App. U.S.C. 1811(a)(2). No decision is reached as to whether the HMTA preempts California's registration fee, since no party has contended that the fees are inequitable or used for purposes other than those related to the transportation of hazardous materials. See 49 App. U.S.C. 1811(b).

In its final comments, Nalco reiterates that it does not challenge "State enforcement of federal regulations." However, it objects to "the delays and additional provisions California has imposed that go beyond enforcement of nationally-uniform rules." In June 1990, Nalco alleged that shipments often had to wait "until the [CHP] administrative office in Sacramento * * * transmits its instructions" to the CHP field office, and then "until it is convenient for the California State inspector to get there, conduct his own inspection, and apply his own marking to the tank and issue his certificate of compliance." An affidavit by a Nalco employee attested to delays of two weeks or more before tanks were inspected. Allegedly, these delays required Nalco to hold "filled incoming tanks" from Texas and Illinois plants at Nalco's Carson, California plant "pending the State's ability to make the inspection, thereby delaying delivery to customers."

In its July 1992 application, Nalco states that:

> Processing improvements and pre-payment options have speeded the issuance of instructions to the field * * *, but unnecessary delays still are encountered in the field with both flammable and combustible liquids, and the delays have been compounded by inspector[s'] schedules, vacations and sick leave * * *. The situation has improved, but still remains unnecessary and in conflict with section 177.853.

Nalco also states that its thorough cleaning of tanks between loads "invariably removes the California sticker, CT marking, and weatherproof pouch, which cannot be reapplied by the company but must await another visit from an inspector before that tank may be used again."

Supporting Nalco's application, NTTC characterizes California's cargo tank requirements as a "prenotification" program. It agrees that a delay "to perform a safety check on a hazmat-laden vehicle in transit must be presumed to be 'necessary' and would be totally consistent with the provisions of the HMR." However, NTTC asserts that the requirement to make the cargo tank "available for inspection"—presumably "at the convenience of the state"—distinguishes California's requirements from roadside inspections under the Motor Carrier Safety Act and from annual inspections of California-domiciled vehicles. NTTC concludes:

> The practical impact of this requirement is that many bulk containers (either loaded or empty) entering California must—firsthand—be delivered to a site other than its intended destination; and, scheduled to be at that site at a time and date certain.
>
> NTTC believes that such diversion and scheduling leads to delays which are "unnecessary" and thus violate 49 CFR 177.853(a).

NTTC also states that the "call and demand" nature of common carriage means that management may "be unaware that a given vehicle, dispatched from a given terminal at a given time, is destined for California." However, "[t]hat vehicle will be delayed and/or diverted until (at least) California's paperwork is completed and fees are paid." NTTC also points to the possibility that other states will adopt similar requirements, so that "the 'diversion/delay' scenario will be repeated, endlessly."

HMAC argues that States should follow consistent and uniform systems for vehicle registration, and that California should petition DOT for a rulemaking proceeding to implement a

uniform registration program. It also comments that unnecessary delays result from the requirements of a written application, and a site visit, for inspection. 3M believes that the California inspection requirements are unnecessary, redundant and excessive. It alleges that the program is so expensive that, for a period of time, it shifted to drums for shipments to California.

Union Pacific cites waits of up to five days for inspections at its intermodal ramps, as well as problems with CT stickers coming off. It objects to the lack of "specific written guidelines or regulations" on the time within which an inspection must be performed, and the appearance that "[t]he rules vary with every inspector." Union Pacific also states that certain inspectors would permit tanks to be "taken to destination and unloaded before inspection." In Los Angeles, however, it states that it was told that "our tanks will have to sit at the ramp loaded until [the inspector] has time to come and inspect the equipment. With his workload, that is about once a week."

CWTI's comments allude to "a disturbing trend among states to enact registration, inspection, and certification requirements for vehicles transporting hazardous materials, including waste," and complains that "[n]one of the inspection programs reciprocally recognize the inspections and certifications of the other jurisdictions." CWTI asserts that the impacts of the hazardous waste registration and inspection program are the same as the cargo tank requirements, including delays of two to three days for an inspection; that advance notice for scheduling inspections amounts to prenotification; and that diversions from normal routes must be made to reach inspection stations.

CWTI also alleges that "the inspections are directed at the mechanical features of trucks (i.e., brakes, suspension, tires)," and attaches to its comments the cover page and table of contents of a CHP Vehicle Equipment Inspection Guide, which it implies is the basis for CHP's inspection of cargo tank trucks. It contends that the CHP inspections "follow the inspection protocol outlined in 49 CFR chapter III, subchapter B, appendix G," but that California's failure to recognize inspections conducted by other States violates the following section of the Motor Carrier Safety Act:

> A periodic inspection of a commercial motor vehicle in accordance with the Federal standards established under subsection (b) of this section or in accordance with a [State] program described in subparagraph (B) or (C) of subsection (d)(1) of this section which is in effect and being enforced shall be recognized as adequate in every State for the period of such inspection. The provisions of this subsection shall not be deemed to prohibit a State from making random inspections of commercial motor vehicles.

49 App. U.S.C. 2509(e).

CWTI further asserts that inspecting cargo tank trucks that have a valid registration and inspection from another State is in conflict with 49 CFR 396.17, as well as FHWA's Motor Carrier Safety Assistance Program (MCSAP) requiring States to enforce laws and regulations which have the same effect as the Federal Motor Carrier Safety Regulations (FMCSR) and the HMR.

In response, CHP stresses that it is enforcing the HMR for uniform compliance. It denies that unnecessary delays exist, and it cites statutory and regulatory changes as well as modifications in its inspection and registration procedures. CHP asserts that it has reduced the inconvenience to the truck operator; it contends that its current inspection procedure is no more burdensome than a roadside inspection under the Motor Carrier Safety Act and takes only 30 or 40 minutes if no violations are found. It states that it has created inspection stations at four port-of-entry (POE) locations on main highways near the California border, and it plans to add two more POE inspection locations; an out-of-State tank can be inspected on arrival at a POE with no advance notice, 24 hours a day, six days a week. According to CHP, "[p]resently, the majority of inspections of out-of-state-based equipment are being performed at the POE facilities thus eliminating the need for carriers to 'schedule' an inspection."

CHP further indicates that, when inspection at a POE is not practicable, a 10-day temporary registration is available to allow a carrier to enter California and deliver its load without having to wait (or be diverted) for an inspection. It states that its "temporary registration procedures no longer require the carrier to complete any application prior to or during the inspection, only to arrange for payment of the inspection fee and arrange/schedule the inspection." It indicates that the fee may be paid "by FAX, telegraphic money order, or even by telephone if the carrier maintains a positive fee account balance. * * * CHP is in the process of making it possible for carriers to pay the fees at the POE facility." According to CHP, "the only case where we have withheld registration for an interstate carrier is when carriers refuse to make the tanks available for inspection, or more importantly, the tanks do not meet either federal or state (grandfathered) design requirements."

CHP further states that it tries to make its inspection at the carrier's convenience, at virtually any location within the State, including the carrier's terminal, loading or unloading facilities, rest areas, truck stops and tank cleaning facilities "throughout California if the carrier provides sufficient lead time." It notes that an increase in the number of inspectors, coupled with the statutory change which excludes smaller cargo tanks from these requirements, should reduce delays. (CHP represents that registration and inspection are no longer required for any of the tanks to which Nalco referred in the affidavit accompanying its original 1990 application. CHP does not dispute, however, Nalco's statement that it has other tanks that remain subject to California's cargo tank requirements.)

In light of its new procedures, CHP contends that the delays which do occur, including changes in routes that carriers make for their own convenience, are reasonable and not unnecessary, when considered in light of the number of violations detected during inspection. "The CHP believes that the [HMTA] and HMR do allow for a reasonable delay of hazardous materials shipments to perform inspections, and that such delays are prudent given the nature of the product." With respect to CWTI's argument that California fails to recognize other States' inspections, CHP notes that the recent enactment of VC 34120 authorizes it to enter into reciprocal agreements with other States or Federal agencies having a "comparable" program.

The main argument of "unnecessary" delay, raised by Nalco and other comments, stems from the command in 49 CFR 177.853(a) that:

> All shipments of hazardous materials shall be transported without unnecessary delay, from and including the time of commencement of the loading of the cargo until its final discharge at destination.

RSPA explained its concerns about unnecessary delay in three early inconsistency rulings. In IR–2, above, 44 FR at 75571, discussing the requirement to obtain a permit for each shipment of liquefied natural gas or liquefied propane gas, RSPA stated:

> The manifest purpose of the HMTA and the Hazardous Materials Regulations is safety in the transportation of hazardous materials. Delay in such transportation is incongruous with safe transportation. Given that the materials are hazardous and that their transportation is not risk-free, it is an important safety aspect of the transportation

that the time between loading and unloading be minimized.

In IR–3, Boston Rules Governing Transportation of Certain Hazardous Materials, etc., 46 FR 18918, 18921 (March 26, 1981), concerning restrictions on the use of city streets by trucks carrying hazardous materials, RSPA found that:

> The mere threat of delay may redirect commercial hazardous materials traffic into other jurisdictions that may not be aware of or be prepared for a sudden, possibly permanent, change in traffic patterns.

And in IR–6, Covington, Kentucky Ordinance Governing Transportation of Hazardous Materials, etc., 48 FR 760, 765 (Jan. 6, 1983), involving a city requirement to provide an advance notification of the intent to transport "dangerous and hazardous substances" within city limits, RSPA stated:

> Since safety risks are "inherent in the transportation of hazardous materials in commerce" (49 [App.] U.S.C. 1801), an important aspect of transportation safety is that transit time be minimized. This precept has been incorporated in the HMR at 49 CFR 177.853, which directs highway shipments to proceed without unnecessary delay, and at 49 CFR 174.14, which directs rail shipments to be expedited within a stated time frame.

Accordingly, several types of non-Federal requirements have been found to be inconsistent with the HMTA and the HMR on the basis that they create a potential for unnecessary delay, including the advance notification of hazardous materials shipments, *e.g.*, IR–6, above; time-consuming permitting processes with no definite decision dates, *e.g.*, IR–19, above, aff'd, IR–19(A), Decision on Appeal, 53 FR 11600 (April 7, 1988); and route, time, and weather limitations on travel, *e.g.*, IR–32, Montevallo, Alabama Ordinance on Hazardous Waste Transportation, 55 FR 36736 (Sept. 8, 1990).

On the other hand, non-Federal registration and inspection requirements, by themselves, do not inevitably have the potential for unnecessary delay proscribed in 49 CFR 177.853(a). While RSPA has not previously considered State and local registration programs (as opposed to safety permit requirements), it has encouraged States and local governments to adopt and enforce the requirements in the HMR, "through both periodic and roadside spot inspections." Waiver of Preemption Determination No. 1, New York City Fire Department Regulations Concerning Pickup/Delivery of Flammable and Combustible Liquids and Flammable and Combustible Gases, 57 FR 23278, 23295 (June 2, 1992).

Under this rationale, a "walk-around type of inspection" at the loading or unloading facility, required by Rhode Island of trucks carrying liquefied natural gas and liquefied propane gas, was found similar to "federal inspection requirements" in the FMCSR, and not inconsistent with the HMR. IR–2, above, 44 FR at 75572. Illinois' inspections of trucks carrying spent nuclear fuel, "based on the Federal regulations, not on additional or different state requirements," took only 20 minutes to an hour and were "not the sort of significant restriction which the Department considers to be inconsistent with the HMTA." IR–17, Illinois Fee on Transportation of Spent Nuclear Fuel, 51 FR 20926, 20929 (June 6, 1986), aff'd, IR–17(A), Decision on Appeal, 52 FR 36200 (Sept. 25, 1987).

RSPA has emphasized that inspections "to assure compliance with Federal or consistent requirements are themselves consistent." IR–20, Triborough Bridge and Tunnel Authority Regulations, etc., 52 FR 24396, 24398 (June 30, 1987); accord, IR–27, Colorado Regulations on Transportation of Radioactive Materials, 54 FR 16326, 16330 (April 21, 1989). RSPA has rejected the argument that provisions to stop and inspect transport vehicles "are inconsistent because they can cause delays in transportation," and has stated:

> Because all state and local inspection and enforcement provisions have a tendency to cause some delay in transportation, that delay does not per se cause those provisions to be inconsistent. Also, isolated instances of improper enforcement (e.g., misinterpretation of regulations) do not render such provisions inconsistent.

IR–31, above, 55 FR at 25584.

However, none of RSPA's prior rulings has agreed to conditions that require a loaded vehicle to wait hours, or even days, before proceeding. For example, in IR–2, RSPA discussed the effect of Rhode Island's prohibition against transportation of liquefied natural gas (LNG) or liquefied propane gas (LPG) during rush hours (7–9 a.m. and 4–6 p.m.), as follows:

> Even if the Rhode Island rule is applied in such a way that it only requires that carriers of LPG and LNG park during rush hours, for four hours a day during weekdays[,] such transportation cannot take place within the State. In a such case trucks operating within the State will be required to stop during rush hours, and trucks from adjoining States will not be permitted to enter Rhode Island during those hours. * * * [This] would result in significant delays in transportation.

44 FR at 75571. For this reason, RSPA found that "[t]he delay that results from the Rhode Island Rule is unnecessary * * *." *Id.*

In IR–6, RSPA found that delay would be unnecessary if a truck driver had to stop enroute to provide advance notification of travel through a city:

> The prospect of large numbers of vehicles loaded with * * * hazardous materials piling up at key locations in the surrounding jurisdictions while their drivers attempt to get through to the Covington Fire Department suggests that Covington's attempt to increase safety could operate to its neighbor's detriment. If the approach taken by Covington were deemed an appropriate local activity, it would be no less so for Covington's neighbors, etc., to the point where a carrier would have to stop at every town line on its route.

48 FR at 765.

Nalco challenges California's registration requirement as part of a "program in its entirety," and NTTC seems to believe that registration amounts to a prohibited prenotification requirement. However, neither they nor any other party has controverted CHP's statements that there is no delay in obtaining either a regular or temporary registration. While registration may be denied or revoked for failure to make a cargo tank or portable tank available for inspection, VC 34042(d), 34061(c), there is no evidence that delays are involved in either obtaining registration—separate from undergoing the required inspection—or completing a trip because of the absence of a registration. And no party has indicated that any shipment has been delayed or refused entry into California solely for nonpayment of the registration fee, as distinguished from delays attributable to arranging for or conducting the required inspection. See IR–17, above, 51 FR at 20929, concerning Illinois' fee on transportation of spent nuclear fuel ("no shipment has been delayed or denied entry into Illinois for non-payment of the fee").

The application and enforcement of California's registration requirement has not been shown to cause unnecessary delay in the transportation of hazardous materials. On this basis, the HMTA does not preempt this registration requirement.

Nalco indicates that CHP's recent changes have reduced, but not eliminated, delays, which "have been compounded by [an] inspector's schedules, vacations and sick leave." CHP admits that delays still occur. Inspection at a POE, without any need for advance notice or arrangement, is available only on four to six routes into California, and only six days of the week. If inspection is not possible at a POE, the carrier must notify CHP and

arrange for an inspection, and then wait for an inspector to arrive. As CHP states:

> When alternate inspection arrangements are required, [CHP] requests (if at all possible) three working days lead time to * * * ensure a CHP inspector is available for inspection at an optimum location and time * * *. [T]he CHP makes every reasonable effort to conduct the inspection on limited notice, often within hours of the inspection request, at a convenient location along the carrier's intended route.

Even if a temporary registration allows the cargo tank or portable tank to be unloaded before an inspection, any wait for the arrival of an inspector still causes an unnecessary delay in the transportation of hazardous materials, since the residue in the tank remains hazardous. See 49 CFR 172.514(b)(1).

In these circumstances, a vehicle containing hazardous materials must stop in transit and wait for the arrival of an inspector. This type of delay is considered unnecessary, because it substantially increases the time flammable and combustible liquids are in transportation, increasing exposure to the risks of the hazardous materials, without corresponding benefit. CHP may, as it claims, make "every reasonable effort to conduct the inspection on limited notice, often within hours of the inspection request, at a convenient location along the carrier's intended route." However, a delay of hours or days waiting for the arrival of an inspector from another location is far different from the minimal increase in travel time when an inspection is actually being conducted, or the vehicle is waiting its "turn" for an inspector to finish inspecting another vehicle that arrived earlier at the same facility—such as a State weighing facility, a POE, other locations where roadside safety inspections are conducted, and terminal facilities where cargo tanks and portable tanks are located at the time of inspection.

In prior inconsistency rulings where the time involved in conducting an inspection was considered reasonable—or not "unnecessary"—there was no indication that the required inspection increased the travel time for a vehicle carrying hazardous materials by any more than the time necessary for the inspection itself. None of the situations involved in these rulings forced a loaded vehicle to wait in transit for hours, or even days, for an inspector to arrive. In a similar manner, an inspection at a carrier's terminal or storage yard involves little more time than conducting the inspection itself. These types of roadside and periodic inspections are far different than situations where tanks loaded with flammable and combustible liquids must be held for inspection for two to three days (according to CWTI) or as long as five days (according to Union Pacific).

Therefor, the HMTA preempts California's inspection requirement because, as applied and enforced, that requirement causes unnecessary delays and is an obstacle to the accomplishment and execution of the HMR. California is free, and is encouraged, to conduct inspections of cargo tanks and portable tanks at POEs, other roadside inspection locations, and terminals. However, it may not require an inspection as a condition of travelling on California's roads when the inspection cannot be conducted without delay because an inspector must come to the place of inspection from another location.

CWTI's remaining arguments do not provide a basis for finding preemption. The requirement to recognize other States' vehicle inspections, in the Motor Carrier Safety Act (49 App. U.S.C. 2509(e)), has not been incorporated in the HMTA or the HMR, and the HMTA does not grant DOT the authority to make determinations of preemption under other statutes. Moreover, this provision does not appear to apply to the inspection of cargo tanks and portable tanks themselves, as contrasted with the mechanical and safety systems of the vehicles, such as brakes, lights and tires. FHWA's MCSAP program and regulations are also not part of the HMR, and they provide no basis for RSPA to find that the HMTA preempts California's inspection requirement.

On the other hand, 49 CFR 396.17 is part of the FMCSR and has been incorporated in the HMR. 49 CFR 177.804. However, that regulation simply makes clear that certain inspections will meet the requirement for annual inspection:

> Vehicles passing roadside or periodic inspections performed under the auspices of any State government or equivalent jurisdiction or the FHWA, meeting the minimum standards contained in appendix G of this subchapter, will be considered to have met the requirements of an annual inspection for a period of 12 months commencing from the last day of the month in which the inspection was performed, except as provided in § 396.23(b)(1) [concerning mandatory State inspection programs which FHWA finds to be as effective as 49 CFR 396.17].

49 CFR 396.17(f). An impossibility of "dual compliance," with both the non-Federal requirement and a provision in the FMCSR which has been incorporated in the HMR, is necessary for the non-Federal requirement to be preempted in this situation. 49 CFR 390.9, as discussed in IR–2, above, 44 FR at 75568. There is no indication that a transporter of flammable or combustible liquids in tanks cannot comply with this regulation as well as California's registration and inspection requirements.

IV. Ruling

For the reasons stated above, the HMTA preempts California's requirement in VC 34060 and 13 CCR 1192 for an annual inspection of cargo tanks and portable tanks transporting flammable and combustible liquids. As that requirement is currently applied and enforced, the instances when a vehicle must wait, or a portable tank must be held, for the arrival of a State inspector from another location create unnecessary delays in violation of 49 CFR 177.853(a), and the requirement is an obstacle to the accomplishment and execution of the HMR. Similarly, the HMTA preempts (1) VC 34042(d) and 34061(c), which provide that the failure to make a cargo tank or portable tank available for inspection is a ground for denial, suspension or revocation of registration, and (2) 13 CCR 1193, requiring that cargo tanks and portable tanks transporting flammable and combustible liquids pass an inspection to be certified.

In the absence of any evidence that the application and enforcement of California's registration requirement in VC 34100 and 13 CCR 1190.1 cause delays in the transportation of hazardous materials, the HMTA does not preempt this requirement. No decision is reached as to whether the HMTA preempts the registration fee in VC 34045 and 13 CCR 1191, because no party has contended that the fees are inequitable or used for purposes other than those related to the transportation of hazardous materials. This decision has not considered, and does not affect, State motor vehicle inspection and registration requirements that apply to all commercial vehicles. Only California's requirements applicable to cargo tanks and portable tanks used to transport flammable and combustible liquids have been considered herein.

The HMTA does not preempt VC 34019, in the absence of any evidence that California enforces design and construction requirements, for cargo tanks and portable tanks meeting DOT specifications, that are not substantively the same as requirements in the HMR.

The following requirements to mark cargo tanks and portable tanks transporting flammable and combustible liquids are preempted by the HMTA because these requirements fall within

the HMTA's covered subject areas and they are not substantively the same as the requirements of the HMTA and the HMR: (1) 13 CCR 1195, that a metal identification plate be affixed to any tank for which such a plate is not required by the HMR; (2) 13 CCR 1194, that a "CT number" be marked on the tank or on a metal identification plate; and (3) VC 34044, 34101 and 13 CCR 1193, that a certification label be affixed to the tank and that a registration certificate be carried in a waterproof holder permanently attached to a portable tank, together with the provisions for removal of the certification label in VC 34062–63.

No decision is made as to 13 CCR 1197, requiring that the remote secondary control for internal valves be clearly labeled, because there was no evidence presented to indicate that the applicant or any commenter is directly affected by this requirement.

V. Petition for Reconsideration/Judicial Review

In accordance with 49 CFR 107.211(a), "[a]ny person aggrieved" by this decision may file a petition for reconsideration within 20 days of service of this decision. Any party to this proceeding may seek review of RSPA's decision "by the appropriate district court of the United States * * * within 60 days after such decision becomes final." 49 App. U.S.C. 1811(e).

This decision will become RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 App. U.S.C. 1811(e).

If a petition for reconsideration of this decision is filed within 20 days of service, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will be RSPA's final decision. 49 CFR 107.211(d).

Issued in Washington, DC on September 10, 1993.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93–22842 Filed 9–17–93; 8:45 am]

BILLING CODE 4910–60–P

Aviation, Marine and Land Radionavigation Users Conferences

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of conferences.

SUMMARY: Aviation, Marine and Land Radionavigation Users Conferences will be conducted in Washington, DC, on November 9 and 10, 1993; in Columbus, Ohio, on November 30, 1993; and in Seattle, Washington, on December 2, 1993. The purpose of the conferences is to provide users and suppliers of radionavigation equipment with the opportunity to comment on current plans and policies for Federally provided systems which satisfy aviation, marine, and land radionavigation requirements.

DATE, TIME AND PLACE: November 9 and 10, 1993, beginning at 9 a.m. in the main auditorium at the Federal Aviation Administration; 800 Independence Ave, SW.; Washington, DC. The November 9 session will focus primarily on marine and land requirements. The November 10 session will focus primarily on aviation requirements. November 30, 1993, beginning at 9 a.m. at the Ohio Department of Transportation; Division of Aviation; 2829 W. Dublin-Granville Rd; Columbus, Ohio, and December 2, 1993 at the Seattle Hilton; Sixth and University Streets; Seattle, Washington. The November 30 and December 2 conferences will focus on aviation, marine, and land requirements.

FOR FURTHER INFORMATION CONTACT: For registration contact Volpe National Transportation Systems Center; Conference Office (DTS–930); Attn: Radionavigation User Meetings; 55 Broadway; Cambridge, MA 02142–1093; Tel: 617–494–2686.

SUPPLEMENTARY INFORMATION: Each day the meeting will open with an overview of the Federal radionavigation planning process, the Federal Radionavigation Plan, and current plans and policies for Federally operated radionavigation systems. This information relates to the selection of a future mix of radionavigation systems as required by the Federal Radionavigation Plan. An opportunity will be provided for organizations or individuals representing the users and suppliers of radionavigation systems to participate in the meeting and to have their comments heard by representatives of the Federal Aviation Administration, U.S. Coast Guard, Research and Special Programs Administration, Maritime Administration, Federal Highway Administration, and other government agencies participating in the conference.

Issued in Washington, DC on September 10, 1993.

George Tenley,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 93–22615 Filed 9–17–93; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

September 13, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Special Request: The Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve the information collection request described below by October 29, 1993, in order to meet requirements of this presidentially-directed program. All comments must be received by close of business October 22, 1993.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: New

Form Numbers: ATF F 7CR (5310.16)

Type of Review: New collection

Title: Application for License (Collector of Curios and Relics)

Description: This form is used by the public when applying for a Federal firearms license to collect curios and relics in interstate and foreign commerce. The information requested on the form establishes eligibility for the license.

Respondents: Individuals or households

Estimated Number of Respondents: 6,000

Estimated Burden Hours Per Respondent: 15 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 1,500 hours

Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive

Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–22911 Filed 9–17–93; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

September 13, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0096
Form Numbers: ATF F 5130.12 (1689)
Type of Review: Extension
Title: Beer for Exportation
Description: Untaxpaid beer may be removed from a brewery for exportation without payment of the excise taxes normally due. In order that this will be accomplished, and for ATF to monitor such transactions, brewers complete ATF F 5130.12 (1689). This form monitors exports on ships and aircraft or to military bases. The form is certified by U.S. Customs and ensures that untaxpaid beer does not reach domestic markets.
Respondents: Businesses or other for-profit, small businesses or organizations
Estimated Number of Respondents: 392
Estimated Burden Hours Per Respondent: 1 hour, 39 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 38,808 hours
OMB Number: 1512–0133
Form Numbers: ATF F 5400.8
Type of Review: Extension
Title: Explosives Delivery Record
Description: This information collection activity is used to verify distributor's compliance with Federal law and regulations, thereby documenting the flow of explosives in commerce; and as a tracing to prevent misuse and traffic in stolen explosives.
Respondents: Individuals or households, businesses or other for-profit, small businesses or organizations
Estimated Number of Recordkeepers: 1,000
Estimated Burden Hours Per Recordkeeper: 2 hours, 30 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping Burden: 2,500 hours
OMB Number: 1512–0357
Form Numbers: ATF REC 5170/6
Type of Review: Extension
Title: Wholesale Dealers Applications, Letterheads and Notices Relating to Operations (Variations in Format or Preparation of Records)
Description: To ascertain that the revenue is not placed in jeopardy and protection of the revenue. Affects wholesale liquor dealers.
Respondents: Businesses or other for-profit, small businesses or organizations
Estimated Number of Recordkeepers: 1,029
Estimated Burden Hours Per Recordkeepers: 30 minutes
Frequency of Response: Other
Estimated Total Recordkeeping Burden: 515 hours
OMB Number: 1512–0494
Form Numbers: ATF REC 5530/3
Type of Review: Extension
Title: Liquors and Articles from Puerto Rico or the Virgin Islands
Description: Information collection requirements for persons bringing nonbeverage products into the United States from Puerto Rico and the Virgin Islands is necessary for the verification of claims for drawback of distilled spirits taxes paid on such products.
Respondents: Businesses or other for-profit, small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 20
Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour
Frequency of Response: Monthly and Quarterly
Estimated Total Reporting/ Recordkeeping Burden: 120 hours
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–22940 Filed 9–17–93; 8:45 am]

BILLING CODE 4810–31–M

Public Information Collection Requirements Submitted to OMB for Review

September 13, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550–0071
Form Number: None
Type of Review: Extension
Title: Mutual Holding Companies
Description: The information collections described herein will apply to a class of companies known as "mutual holding companies" and to their subsidiaries. The collections are necessary (i) to facilitate review of transactions that present risks, and (ii) monitor activities that present special risks.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 52
Estimated Burden Hours Per Respondent: 2 hours, 51 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 285 hours
Clearance Officer: Colleen Devine (202) 906–6025, Office of Thrift Supervision, 2nd Floor, 1700 G Street, NW., Washington, DC 20552.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–22941 Filed 9–17–93; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 180
Monday, September 20, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, September 23, 1993, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, and Subject

1—Office of Engineering and Technology—Title: Amendment of the Commission's Rules to Establish New Personal Communications Service (GEN Docket No. 90–314, RMs–7140, RM–7125 and RM–7618). Summary: The Commission will consider adoption of a *Second Report and Order* concerning allocation of spectrum and associated service rules to implement personal communications service at 2 GHz.

2—Office of Engineering and Technology—Title: Amendment of the Commission's Rules to Establish New Personal Communications Service (GEN Docket No. 90–314; PP–6 thru PP–10, PP–12, PP–13, PP–15 thru PP–20, PP–26, PP–27, PP–41 thru PP–52, PP–54 thru PP–68, PP–70, PP–72 thru PP–78). Summary: The Commission will consider adoption of a *Third Report and* Order concerning requests for pioneer's preference related to personal communications service at 2 GHz.

3—Common Carrier—Title: Simplification of the Depreciation Prescription Process (CC Docket No. 92–296). Summary: The Commission will consider adoption of a *Report and Order* concerning the process used to prescribe depreciation rates.

4—Common Carrier—Title: Amendments of Parts 32 and 64 of the Commission's Rules to Account for Transactions Between Carriers and Their Nonregulated Affiliates. Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* concerning the federal accounting requirements for transactions between carriers and their nonregulated affiliates.

5—Private Radio; Common Carrier—Title: Implementation of Title VI of the Omnibus Budget Reconciliation Act of 1993. Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* concerning the regulatory treatment of mobile services, including personal communications service, under revised Section 332 of the Communications Act.

6—Private Radio—Title: Co-Channel Protection Criteria for Part 90, Subpart S Stations Operating Above 800 MHz (PR Docket No. 93–60, RM–8028). Summary: The Commission will consider adoption of a *Report and Order* concerning protection criteria and co-channel station separation distances for all 800/900 MHz stations operating under Subpart S of Part 90.

7—Office of Plans and Policy—Title: Implementation of Section 309(j) of the Communications Act—Competitive Bidding. Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* concerning use of competitive bidding to select licensees, pursuant to Section 309(j) of the Communications Act.

8—Mass Media—Title: Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992—Horizontal and Vertical Ownership Limitations (MM Docket No. 92–264). Summary: The Commission will consider adoption of a *Second Report and Order* concerning the vertical and horizontal cable systems ownership limits.

9—Mass Media—Title: Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992—Video Programming Distribution and Carriage (MM Docket No. 92–265). Summary: The Commission will consider the adoption of rules to implement the provisions of the 1992 Cable Act regarding prohibited practices associated with the negotiation of programming carriage agreements.

10—Mass Media—Title: Network Television Financial Interest and Syndication Rules (MM Docket No. 90–162). Summary: The Commission will consider adoption of a *Memorandum Opinion and Order* responding to petitions for reconsideration of its Report and Order regarding the network television financial interest and syndication rules.

11—Mass Media—Title: Broadcast Television Commercial Time Regulation. Summary: The Commission will consider adoption of a *Notice of Inquiry* reviewing the commercial time practices of broadcast television stations and the need for additional regulations or policies related thereto.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632–5050

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–23114 Filed 9–16–93; 3:30 pm]

BILLING CODE 6712–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, September 23, 1993.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Pittsburg & Midway Coal Mining Co.*, Docket No. CENT 91–196, etc. (Issues include whether the judge erred in finding that Pittsburg & Midway did not violate 30 CFR 77.1104 and that its violation of 30 CFR 77.400(a) was not of a significant and substantial nature.)

2. *Braithwaite v. Tri-Star Mining, Inc.*, Docket No. WEVA 91–2050–D. (Issues include whether the judge erred in finding that Tri-Star discriminated against Braithwaite in violation of 30 U.S.C. 815(c).)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 93–23124 Filed 9–16–93; 4:00 pm]

BILLING CODE 6735–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting Notice

TIME AND DATE: The Legal Services Corporation Board of Directors will meet September 29, 1993. The meeting will commence at 10:00 a.m. and continue until all business has been concluded.

PLACE: The Legal Services Corporation, 730 First Street, NE., The Board Room, Washington, DC 20002, (202) 336–8800.

BOARD OF DIRECTORS MEETING: [1]

STATUS OF MEETING: *Open,* except that a portion of the meeting will be closed pursuant to a vote of a majority of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board will consider and vote on approval of the draft minutes of the

[1] It was announced previously the Board would consider the matters set forth below at a meeting scheduled for September 11, 1993. However, due to lack of a quorum, these matters will be considered by the Board at its September 29, 1993 meeting.

executive session held on June 28, 1993. The Board will hear and consider the report of the General Counsel on litigation to which the Corporation is, or may become, a party. Further, the Board will consult with the Inspector General on internal personnel, operational and investigative matters as well as conduct his annual performance assessment. Finally, the Board will consult with the President on internal personnel and operational matters as well as conduct his annual performance assessment. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2)(5), (6), (7), and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(a), (d), (e), (f), and (h)][2]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, NE., Washington, DC. 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of June 28, 1993 Meeting.
3. Presentation by Directors of Corporation-Funded Programs in the State of Missouri Regarding the Legal Needs of the Indigent in Missouri.
4. Chairman's and Members' Reports.
5. Consideration of Proposed Resolution Modifying the Service Arrangement Under the Corporation's Retirement Plan.
6. Consideration of Proposed Revisions to 45 C.F.R. Part 1602.
7. Consideration of Operations and Regulations Committee Report.
8. Consideration of Office of the Inspector General Oversight Committee Report.
9. Consideration of Provision for the Delivery of Legal Services Committee Report.
10. Consideration of Audit and Appropriations Committee Report.
11. Consideration of Whether to Release to a Third Party a Copy of the June 17, 1993 Memorandum of the Corporation's General Counsel to the Committee on the Possible Use of Punitive Damage Awards, or Portions Thereof, for the Provision of Civil Legal Services to the Indigent.
12. President's Report.
13. Inspector General's Report.

CLOSED SESSION:

14. Consultation by Board with the Inspector General on Internal Personnel, Operational and Investigative Matters.
15. Consideration of Annual Assessment of Job Performance of the Corporation's Inspector General.
16. Consultation by Board with the President on Internal Personnel and Operational Matters.
17. Consideration of Annual Assessment of Job Performance of the Corporation's President.
18. Consideration of the General Counsel's Report on Pending Litigation to which the Corporation is, or May Become, a Party.
19. Approval of Minutes of Executive Session Held on June 28, 1993.

OPEN SESSION: (Resumed)

20. Consideration of Other Business.

CONTACT PERSON FOR INFORMATION:
Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: September 16, 1993.

Patricia D. Batie,
Corporate Secretary.

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS SUMMARY OF FUTURE MEETING LOCATIONS AND RELATED INFORMATION FOR 1993[1]

Meeting Date[3]	Hotel	Cut-off Date[2] for Reservations
Sept. 9–11, 1993.	Hilton Plaza Inn, One East 45th Street, Kansas City, MO 64111, (816) 756–1720.	8/8/93.
Oct. 24–25, 1993.	Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001, (202) 628–2100.	10/2/93 [Lodging Only].
Dec. 5–6, 1993.	The Westin Hotel, Renaissance Center, Detroit, MI 48243, (313) 568–8000.	11/4/93.

[1] As much advance notice as is practicable will be provided the public of changes to the Board's meeting schedule for the remainder of 1993, should such changes become necessary.

[2] Meetings held in Washington, DC, will be held at the Legal Services Corporation. Hotels listed that are located in the Washington metropolitan area will be used for lodging only.

In keeping with current practice, the Legal Services Corporation will continue to make available to the public the hotel rates obtained by the Corporation. Where hotels have agreed to this arrangement, reservation deadlines (i.e., cut-off dates) for the public are noted above. "N/A" indicates the hotel did not accommodate our request for a public block. "BOSA" indicates that rooms at the rate extended to LSC will be made available to the public based on space availability.

[3] There were no meetings of the Board of Directors or its standing committees scheduled during the months of July and November 1993 at the time this board book was prepared.

[FR Doc. 93–23103 Filed 9–16–93; 2:27 pm]

BILLING CODE 7050–01–M

[2] As to the Board's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Board meeting(s).

Corrections

Federal Register

Vol. 58, No. 180

Monday, September 20, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 48-93]

Foreign-Trade Zone 40—Cleveland, OH; Application for Subzone, Mr. Coffee, Inc., Facilities (Appliances/ Coffeemakers) Bedford Heights, OH

Correction

In notice document 93-22318 appearing on page 47858 in the issue of Monday, September 13, 1993, in the second column, in the second full paragraph, beginning in the second line from the bottom, "(to October 8, 1993)" should read " to November 29, 1993".

BILLING CODE 1505-01-D

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 936

[No. 93-66]

Community Support Requirements for Insurance Company and Credit Union Members of the Federal Home Loan Bank System

Correction

In proposed rule document 93-21366 beginning on page 46569 in the issue of Thursday, September 2, 1993, make the following corrections:

1. On page 46570, in the second column, in the last paragraph, in the third line, "revised" should read "reviewed".

2. On page 46573, in the first column, in paragraph 22, in the tenth line, "regulator's" should read "regulators' ".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AF17

Federal Employees Health Benefits Program; Coverage of Temporary Employees

Correction

In rule document 93-22339 beginning on page 47823 in the issue of Monday, September 13, 1993, in the third column, under **FOR FURTHER INFORMATION CONTACT**, the telephone number should read "606-0191".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-24-AD; Amendment 39-8677; AD 93-17-06]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped with General Electric CF6-45/50 Series Engines

Correction

In rule document 93-21059 beginning on page 45831 in the issue of Tuesday, August 31, 1993, make the following corrections:

1. On page 45831, in the second column, the Amendment number should read as set forth above.

2. On the same page, in the same column, in **DATES**, in the third line, "747-6A2083" should read "747-76A2083".

3. On the same page, in the same column, in **ADDRESSES**, in the fifth line, "98124-207" should read "98124-2207".

BILLING CODE 1505-01-D

federal register

Monday
September 20, 1993

Part II

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

September 1, 1993.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status of seven rescission proposals and 12 deferrals contained in six special messages for FY 1993. These messages were transmitted to Congress on October 1, and December 30, 1992, and on February 26, March 16, April 20, and June 4, 1993.

Rescissions (Attachments A and C)

As of September 1, 1993, seven rescission proposals totaling $356.0 million had been transmitted to the Congress. The funds associated with these proposed rescissions were never withheld from obligation. Congress approved four of the Administration's rescission proposals in Public Law 103–50, the Supplemental Appropriations Act of 1993, which was signed into law on July 2, 1993. A total of $206.3 million was rescinded by that measure. Attachment C shows the status of the FY 1993 rescission proposals.

Deferrals (Attachments B and D)

As of September 1, 1993, $2,627.1 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1993.

Information From Special Messages

The special messages containing information on the rescission proposal and deferrals that are covered by this cumulative report are printed in the **Federal Registers** cited below:

57 FR 46730, Friday, October 9, 1992
58 FR 3368, Friday, January 8, 1993
58 FR 16324, Thursday, March 25, 1993
58 FR 17298, Thursday, April 1, 1993
58 FR 27192, Thursday, May 6, 1993
58 FR 33164, Tuesday, June 15, 1993

Leon E. Panetta,
Director.

Attachments

BILLING CODE 3110–01–M

ATTACHMENT A

STATUS OF FY 1993 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President.....	356.0
Rejected by the Congress.....	-149.8
Amount rescinded by the Supplemental Appropriations Act.....	-206.2
Currently before the Congress.....	0

ATTACHMENT B

STATUS OF FY 1993 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President.....	4,467.5
Routine Executive releases through August 1, 1993 (OMB/Agency releases of $1,847.5 million partially offset by cumulative positive adjustment of $7.1 million).....	-1,840.4
Overturned by the Congress.....	---
Currently before the Congress.....	2,627.1

ATTACHMENT C
Status of FY 1993 Rescission Proposals – As of September 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
INDEPENDENT AGENCIES:								
Board for International Broadcasting								
Israel relay station	R93–1		180,000	4–20–93	*		180,000	P.L. 103–50
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R93–2 1/		13,000	6–4–93	*			
Homeownership and opportunity for people everywhere grants	R93–3 1/		100,000	6–4–93	*			
DEPARTMENT OF JUSTICE								
Legal Activities								
Assets forfeiture fund	R93–4	20,000		6–4–93	*		20,000	P.L. 103–50
DEPARTMENT OF TRANSPORTATION								
Federal Aviation Administration								
Operations	R93–5	3,100		6–4–93	*		3,100	P.L. 103–50
Grants–in–aid for airports	R93–6 1/		36,750	6–4–93	*			
Coast Guard								
Operating expenses	R93–7	3,150		6–4–93	*		3,150	P.L. 103–50
TOTAL RESCISSIONS		26,250	329,750		0		206,250	

* Funds were never withheld from obligation.

1/ Congress acted on the Administration's FY 1993 rescission proposals in P.L. 103–50 and is not expected to consider these items further.

ATTACHMENT D

ATTACHMENT D
Status of FY 1993 Deferrals – As of September 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 9–1–93
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D93–1	492,736		10–1–92					
	D93–1A		1,492,774	12–30–92	1,349,551			7,125	643,085
Foreign military financing grants	D93–8	1,487,000		12–30–92	130,550				1,356,450
Foreign military financing program	D93–9	149,200		12–30–92	141,946				7,254
Agency for International Development									
Demobilization and transition fund	D93–2	13,750		10–1–92	5,750				8,000
International disaster assistance, executive	D93–10	63,823		2–26–93	61,397				2,426
Sub–Saharan Africa disaster assistance, executive	D93–11	67,188		2–26–93	67,188				0
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D93–3	364,582		10–1–92	33,151				331,431
Expenses, brush disposal	D93–4	40,241		10–1–92					
	D93–4A		5,835	12–30–92					
	D93–4B		8	3–16–93					46,084
Timber salvage sales	D93–12	222,994		2–26–93	20,000				202,994
DEPARTMENT OF DEFENSE – CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D93–5	2,175		10–1–92	955				1,220

ATTACHMENT D
Status of FY 1993 Deferrals – As of September 1, 1993
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/ Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 9–1–93
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D93–6	7,267		10–1–92					
	D93–6A		50	4–20–93					7,317
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund	D93–7	10,123		10–1–92					
	D93–7A		47,761	12–30–92	37,000				20,884
TOTAL, DEFERRALS		2,921,080	1,546,428		1,847,488	0		7,125	2,627,145

[FR Doc. 93–22823 Filed 9–17–93; 8:45 am]
BILLING CODE 3110–01–C

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List August 18, 1993

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–019–00001–1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869–019–00002–0)	17.00	¹ Jan. 1, 1993
4	(869–019–00003–8)	5.50	Jan. 1, 1993
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1992. The CFR volume issued July 1, 1989, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

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Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920

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Rules and Regulations

Federal Register
Vol. 58, No. 181
Tuesday, September 21, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[DA-93-20]

Milk in the Chicago Regional Marketing Area; Revision of Supply Plant Shipping Percentages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Revision of rules.

SUMMARY: This action revises certain provisions of the Chicago Regional milk order for the month of September 1993. The action reduces the shipping percentages for pooling individual supply plants to 2 percent of receipts and the shipping percentage for units of supply plants to 5 percent of receipts. The revision is made in response to a request by Central Milk Producers Cooperative, a federation of cooperatives that represent producers who supply the market. The action is necessary to prevent uneconomic shipments of milk from supply plants to distributing plants.

EFFECTIVE DATE: Amendment number 1 is effective September 1, 1993.

Amendment number 2 is effective September 1, 1993, through September 30, 1993.

Amendment number 3 is effective October 1, 1993.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1366.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Revision of Supply Plant Shipping Percentage: Issued August 3, 1993; published August 9, 1993 (58 FR 42258).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This action would also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This revision of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. If adopted, this action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended, provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of § 1030.7(b)(5) of the Chicago Regional order.

Statement of Consideration

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found and determined that the supply plant shipping percentages should be lowered to 2 percent of receipts for individual supply plants and 5 percent of receipts for supply plant units during September 1993.

Currently, the order provides that individual supply plants must ship at least 5 percent of their milk receipts to other plants to qualify as pool plants while a unit of supply plants must ship at least 10 percent of total receipts for pooling purposes during the months of September through December. During other months the shipping standards are 3 percent for individual plants and 6 percent for a unit of plants.

(With regard to the current supply plant shipping standards, it is noted that the 1993 annual Code of Federal Regulations specifies shipping standards of 1 percent for individual plants and 4 percent for a supply plant unit for the months of September through December. Such shipping percentages are the result of a revision published on December 27, 1991 (56 FR 66753). Such revision was to be applicable for only one month but was inadvertently shown in the annual Code of Federal Regulations as still being in effect.)

The Chicago order provides that the Market Administrator may adjust the shipping standards for individual plants and units of plants by up to 2 percentage points. The order also provides that the Director of the Dairy Division may increase the shipping standards by up to 5 percentage points or decrease the shipping standards by up to 10 percentage points. The adjustments can be made to encourage additional milk shipments or to prevent uneconomic shipments.

The revision was requested by Central Milk Producers Cooperative (CMPC), a federation of cooperative associations that represent a substantial number of the producers who supply the market. CMPC contends that a reduction of the shipping percentages is necessary to prevent uneconomic shipments of milk from distant supply plants solely for pooling purposes.

Based on supply and sales estimates, CMPC requested that the Market Administrator reduce the shipping percentage by 2 percentage points for the month of August. A reduction to 1

percent of receipts for supply plants and 4 percent for units of supply plants has been issued by the Market Administrator for August.

CMPC indicated that in order to make the most efficient use of available milk supplies, as much as possible of nearby milk supplies will be utilized, with reliance on distant supplies only on days when nearer milk supplies have been exhausted. For the month of September, CMPC indicates that such efficiencies can only be realized if the shipping standards for individual plants and units of supply plants are reduced to 2 and 5 percent of receipts, respectively.

In view of the supply/demand relationship for the market, the supply plant shipping percentages should be reduced for September 1993. A reduction of the shipping percentages will contribute to orderly marketing in that costly and inefficient shipments of milk from distant supply plants will not be necessary. Thus, dairy farmers who have supplied the market will continue to have their milk pooled under the order. It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to public interest in that:

(a) This revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the month of September;

(b) This revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this issue. No opposing views were received.

Therefore, good cause exists for making this revision effective less than 30 days from date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1030

Milk marketing orders.

For reasons set forth in the preamble, part 1030 of chapter X of title 7 of the Code of Federal Regulations is amended as follows:

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. The authority for 7 CFR part 1030 continues to read as follows:

Authority: Secs. 1–19, 49 Stat. 31, as amended (7 U.S.C. 601–674).

§ 1030.7 [Amended]

2. Effective September 1, 1993, through September 30, 1993, the introductory text of § 1030.7(b) is amended by changing the "1 percent" to "2 percent" and by changing the "4 percent" to "5 percent".

3. Effective October 1, 1993, the introductory text of § 1030.7(b) is amended by changing the "2 percent" to "5 percent" and by changing the "5 percent" to "10 percent".

Dated: September 14, 1993.

W.H. Blanchard,

Director, Dairy Division.

[FR Doc. 93–22897 Filed 9–20–93; 8:45 am]

BILLING CODE 3410-02-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Nonmanufacturer Rule Waiver Procedures; Small Business Size Regulations

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is establishing a final rule regarding waivers of a requirement of the Small Business Act commonly referred to as the "Nonmanufacturer Rule" for classes of products (class waivers). Waivers of the Nonmanufacturer Rule allow small business regular dealers to supply the product of any domestic manufacturer or processor on a small business set-aside or SBA 8(a) Program procurement. Section 8(a)(17) (A) and (B) of the Small Business Act sets forth the Nonmanufacturer Rule and provisions which allow the Administrator to waive the requirements of that Rule for classes of products.

EFFECTIVE DATE: September 21, 1993.

FOR FURTHER INFORMATION CONTACT: James Parker, Procurement Analyst, Office of Procurement Policy and Liaison, 202/205–6465.

SUPPLEMENTARY INFORMATION: On November 15, 1988, the enactment of Public Law 100–656 incorporated into the Small Business Act the previously existing SBA requirement that recipients of small business set-aside or SBA 8(a) Program contracts for manufactured products that are not the actual manufacturers (nonmanufacturers) be themselves small business regular dealers. This legislation specifies that regular dealers may only provide the product of domestic small business manufacturers or processors on small business set-asides and 8(a) procurements. This requirement is commonly known as the Nonmanufacturer Rule. Section 303(h) of Public Law 100–656 provided for the Administrator of the SBA to grant a waiver of the Nonmanufacturer Rule for a product or class of products for which there are no small business manufacturers or processors in the Federal market. The requirement that a small business supplier provide the product manufactured or processed by a domestic small business concern in a contract set-aside for small business or under an SBA 8(a) Program contract is found in SBA regulations 13 CFR 121.906(b) and 121.1106(b).

On June 15, 1989, Public Law 101–37 renumbered the elements in the Nonmanufacturer Rule and added the requirement that a small business concern shall be a small business concern under the numerical size standard for the Standard Industrial Classification Code assigned to the contract solicitation on which the offer is being made. Further, on November 15, 1990, Public Law 101–574 further modified the wording of the waiver provision to allow the Administrator to waive the requirement for any class of products for which there are no small businesses "available to participate in the Federal procurement market." (It also added a provision which allows the Administrator to waive the requirements of the Nonmanufacturer Rule after reviewing a determination by a contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications, including period of performance, required of an offeror on a solicitation. This final rule does not deal with solicitation-specific waivers. Such waivers are the subject of a proposed rule published elsewhere in today's **Federal Register**.)

The publication of this final rule regarding waivers of the Nonmanufacturer Rule for classes of products follows the publication of Notices of Proposed Rule Making (NPRM) in the **Federal Register** on May 17, 1990 (55 FR 20467) and on December 18, 1990 (55 FR 51913–51916).

Overview of Public Comments

The NPRM of December 18, 1990 modified the NPRM of May 17, 1990, to incorporate comments received as a result of that NPRM and reflected a change in designation of the official within the Agency with the responsibility for handling waivers. In addition, SBA received five comments on the second NPRM.

The first commentor, a petroleum supplier, supported the procedures set forth in the December 18 NPRM, but

wanted them extended to the Small Disadvantaged Business Program established under section 1207 of Public Law 99–661 so that all minority firms could benefit from them.

Regarding the petroleum supplier's comment, the SBA cannot extend the procedures as recommended since Public Law 99–661 applies to a program administered by the Department of Defense. The SBA does not have the authority to unilaterally direct the Department of Defense to comply with SBA procedures.

The second commentor was a minority dealers association. The minority dealers association's first comment was in support of the proposed response time of 45 days for class waivers.

The minority dealers association's second comment questioned whether the proposed definition of "class of products" should be based on Product and Service Codes.

The minority dealers association's third comment was that in emergency situations, SBA should grant waivers based upon a certification by a small business that it had conducted a search for the required product and was unable to locate a manufacturer or processor.

The minority dealers association's fourth comment was that section 210 of Public Law 101–574 requires the SBA Administrator to grant waiver based on the contracting officer's determination.

Regarding the minority dealers association's first comment, no response is necessary.

Regarding the minority dealers association's second comment, the definition of "class of products" provided in the December 1990 NPRM was thought to be the best definition at the time of publication. However, SBA's experience in processing waivers, and the comments to the proposed rule, has led to a change in the definition of "class of products" from one based on the Federal Procurement Data System's Product and Service Codes (PSC) to one based on the Office of Management and Budget's Standard Industrial Classification (SIC) Code system. The SBA has determined that the product definitions within the individual PSCs are too broad and cause difficulty when defining "class of products." The SBA has found that the individual subdivisions within the four-digit SIC codes are more definitive than product descriptions listed in the PSC. The SBA has also determined that the general public, small businesses, and contracting officers are more familiar with and have greater access to information on the SIC code system.

Regarding the minority dealers association's third comment, the SBA cannot adopt this comment because the wording of the statute requires that a waiver be denied if even one manufacturer is available to participate in the Federal procurement market. In addition, it is unreasonable to expect that a small business has the resources to search the entire Federal procurement market.

Regarding the minority dealers association's fourth comment, rules relating to waivers of products on specific solicitations based on a contracting officer's determination are not part of this final rule.

The third commentor was the United States General Services Administration (GSA). GSA's first comment was to recommend clarification of what information in the Federal Procurement Data System SBA "deems relevant," and clarification of the terms "last calendar year," "last year," and "past year."

GSA's second comment recommended clarification of requirements for a five-day expedited procedure and requested the complete address for submission of waiver requests.

Regarding GSA's first comment, the language of the rule has been clarified in each of the areas requested. In reaching decisions to grant waivers, the SBA will consider any information that demonstrates the presence of a small manufacturer or processor available to participate in the Federal procurement market. The basis for this information may include, but is not limited to, information in the SBA's Procurement Automated Source System (PASS), information in the Thomas Register, information obtained through the Commerce Business Daily, and information which the SBA obtains from other Federal procuring agencies and from industry associations. Based on experience in processing waiver requests, the SBA has decided that two years, or 24 months, is the most reasonable time period to survey the Federal procurement market to determine whether a firm should be considered "available to participate." Accordingly, each reference to the year or years in the Federal market now reads "in the 24 months prior to the request for waiver."

Regarding GSA's second comment, the expedited procedure and the address to hand-carry requests are included in the text.

The fourth commentor was the United States Department of the Treasury. Treasury's first comment was that the procedures requiring a waiver denial if one small business manufacturer exists may create a monopolistic situation leading to noncompetitive pricing and that a change be adopted to require at least two small business manufacturers or processors before declining a waiver.

Treasury's second comment was that there may be cases where the small manufacturer may not be able to meet either the time or quantity requirements of a solicitation, in which cases a waiver should be granted.

Treasury's third comment was that waivers should be established for several years to provide for stability in procurement planning.

Regarding Treasury's first comment, the statute allows a waiver to be granted when "no small business is available * * *." The SBA interprets the wording of the statute to mean that a waiver cannot be granted if at least one such business exists.

Regarding Treasury's second comment, as stated previously, rules relating to waivers of products on specific solicitations based on a contracting officer's determination are not part of this final rule.

Regarding Treasury's third comment, no change is considered necessary since class waivers are generally for an indefinite period of time, subject to periodic review by the SBA.

The fifth commentor requested that the regulations be expanded to include medical, pharmaceutical and surgical supplies as a class of products.

Regarding this comment, the SBA believes that such products are covered within the definition of classes of products and that waivers can be granted for them, within specific SIC codes, if found to be warranted.

Section by Section Review

Section 121.2101 describes the underlying policy of the statute that allows the SBA to waive the Nonmanufacturer Rule for any class of products where there are no small manufacturers or processors available to participate in the Federal procurement market and to grant waivers of the Rule on a solicitation by solicitation basis.

Section 121.2102 provides definitions of pertinent terms used in these rules, including "class of products," "contracting officer," "Federal procurement market," "Nonmanufacturer Rule," "person," "procuring agency," and "United States."

Section 121.2103 sets forth the statutory standard that must be met to justify issuing a waiver for a class of products (class waivers).

Section 121.2104 describes the procedures to be followed in requesting and granting waivers for classes of

products and establishes that the average processing time is 45 working days. An expedited procedure for granting waivers for classes of products is also described where there is a compelling or urgent reason.

Section 121.2105 describes the procedures which SBA will follow in terminating waivers for classes of products (class waivers) if and when small business manufacturers or processors become available to participate in the Federal procurement market. The procedure includes an announcement in the **Federal Register** by SBA of its intent to terminate a waiver, requesting public comment regarding the proposed termination.

Section 121.2106 describes the list of waived classes of products, where the list may be found, and how to obtain a copy of the list.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act (55 U.S.C. 601, et al.) and the Paperwork Reduction Act (45 U.S.C. 601, ch. 35)

Based on experience to date, the SBA anticipates that the number of requests for class waivers will not exceed 60 annually. Since there are literally millions of procurement actions each year, the SBA considers that these requests are not significant in number, and are not expected to approach the threshold of $100 million. Therefore, the SBA has determined that this rule does not constitute a major rule for the purposes of Executive Order 12291.

The SBA certifies that this rule will have no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For purposes of compliance with the Regulatory Flexibility Act, 55 U.S.C. 601, et al., SBA certifies that this rule has no significant economic effect on a substantial number of small entities, since SBA estimates the number of requests will not exceed 60 annually.

The SBA certifies that this final rule will not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 13 CFR Part 121

Nonmanufacturer rule waiver, Small business size regulations, Small businesses.

For the reasons set forth above, subpart B of part 121 of title 13, Code of Federal Regulations (CFR), is amended as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c); and Public Law 102–486, 106 Stat. 2776, 3133.

Subpart B—[Amended]

2. Subpart B of part 121 is amended by adding an undesignated center heading and §§ 121.2101 through 121.2106 to read as follows:

Waivers of the Nonmanufacturer Rule for Classes of Products

Sec.

121.2101 Policy.
121.2102 Definitions.
121.2103 Conditions Justifying Waivers for Classes of Products.
121.2104 Procedures for Requesting and Granting Class Waivers.
121.2105 Termination of a Class Waiver.
121.2106 Classes of products for which waivers have been previously granted by SBA.

Waivers of the Nonmanufacturer Rule for Classes of Products

§ 122.2101 Policy.

(a)(1) Section 8(a)(17)(B) of the Small Business Act, 15 U.S.C. 637(a)(17)(B), was amended by section 303(h) of the Business Opportunity Development Reform Act of 1908, Public Law. 100–656. It was also amended by section 210 of the Small Business Administration Reauthorization Act of 1991, Public Law 101–574. These statutory provisions provide that an otherwise qualified supplier of a product that is not the actual manufacturer (nonmanufacturer) under consideration for a small business set-aside or SBA 8(a) Program contract shall:

(i) Be primarily engaged in the wholesale or retail trade;

(ii) Be a small business concern;

(iii) Be a regular dealer as defined by the Walsh-Healey Public Contracts Act; and

(iv) Represent that it will supply the product of a domestic small business manufacturer or processor.

(2) This requirement is known as the Nonmanufacturer Rule (see 13 CFR 121.906 and 121.1106).

(b) Recognizing that these requirements may be impossible for some qualified small business dealers to meet for certain products, Public Law 100–656 added to the Small Business Act a provision which allows the Administrator of the SBA to waive the requirement for any class of products (class waivers) for which there are no small business manufacturers or processors available to participate in the Federal market.

§ 121.2102 Definitions.

(a) *Available to participate* in the context of the Federal market means contractors that have been awarded or have performed on a contract or contracts to supply a specific class of products to the Federal government within the past 24 months from the date of the request for waiver, either directly or through a dealer, or who have offered on a solicitation for that class of products within that timeframe.

(b) *Class of products* is an individual subdivision within a four-digit Industry Number as established by the Office of Management and Budget in the Standard Industrial Classification (SIC) Manual. For example, the four-digit Industry Number for electronic computers is 3571, and a subdivision within 3571 is personal computers. Therefore, personal computers is a class of products that could be researched for potential waiver of the Nonmanufacturer rule.

(c) *Contracting officer* as used in this part is the same as that defined by the Federal Acquisition Regulation (FAR 2.101) except that it excludes SBA 8(a) Program contracting officers.

(d) *Federal market* means acquisitions by the Federal government from offerors located in the entire geographic United States, except that SBA may consider the Federal market for a particular class of products to be a more geographically restricted market area if it is demonstrated that the class of products is not supplied on a national basis. An example would be where the practical aspects of providing an item create a geographic limitation on competition.

(e) *Nonmanufacturer Rule* means the requirement set forth in 13 CFR 121.906 and 121.1106 that a contractor under a small business set-aside or 8(a) contract be a small business under the applicable size standard and provide its own product or that of another domestic small business manufacturing or processing concern.

(f) *Person* is an individual, partnership, corporation, association, or other business entity.

(g) *Procuring agency* is a Federal agency empowered by law to obligate funds for the purpose of obtaining supplies or services on behalf of the government, and that is making the small business set-aside award or offering a contract to the SBA for award under the 8(a) Program.

(h) *United States* includes the 50 states, the territories and possessions of the United States, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

§ 121.2103 Conditions justifying waivers for classes of products.

(a) A waiver for a class of products (class waiver) is justified when there are no small business manufacturers or processors available to participate in the Federal procurement market for that class of products.

(b) When considering the market area for a product, the SBA presumes that the entire geographic United States is the relevant Federal market area, unless it is clearly demonstrated that a class of products cannot be procured on a national basis. This presumption may be particularly difficult to overcome in the case of manufactured products, since such items typically have a market area encompassing the entire United States.

(c) When considering geographic segmentation of a Federal market, the SBA will not necessarily use market definitions dependent on airline radius or political or SBA regional boundaries. Market areas typically follow established transportation routes rather than jurisdictional borders. As appropriate, the SBA may examine the following factors, among others, for a class of products in cases where geographic segmentation is urged:

(1) Whether perishability affects the area in which the product can practically be sold;

(2) Whether transportation cost are high as a proportion of the total value of the product so as to limit the economic distribution of the product;

(3) Whether there are legal barriers to transportation of the item;

(4) Whether a fixed, well-delineated boundary exists for the purported market area and whether this boundary has been stable over time; and

(5) Whether a small business, not currently selling in the defined market area, could potentially enter the market from another area and supply the market at a reasonable price.

§ 121.2104 Procedures for requesting and granting class waivers.

(a) The SBA may, at its own initiative, examine a class of products for possible waiver of the Nonmanufacturer Rule.

(b) Any interested person, business, association, or Federal agency may submit a request for a waiver for a particular class of products. Requests should be addressed to the Associate Administrator for Procurement Assistance, Small Business Administration, Washington, DC 20416 or hand-carried to the Office of Procurement Assistance, suite 8800, 409 3rd Street SW., Washington, DC.

(c) Requests for a waiver of a class of products need not be in any particular form However, requests should include a definitive statement of the class of products to be waived and the class' Standard Industrial Classification (SIC) code found in the Standard Industrial Classification Manual and as much information as possible on the requestor's efforts to identify small business manufacturers or processors for that class.

(d) There are three steps in the SBA's process of reviewing requests, researching for potential sources, and granting or denying class waivers. After each step, if small business manufacturers or processors are found and confirmed by the SBA to be in the Federal procurement market, the request for waiver will be denied. The requestor will then be notified and provided the names, addresses, and telephone numbers of the sources found. The three steps in SBA's review of waiver requests include:

(1) The SBA will examine the request and any information it deems necessary to make an informed decision. Potential sources of information include, but are not limited to, SBA's Procurement Automated Source System (PASS), the Thomas Register and information obtained through contacts with industry associations and organizations and Federal procuring activities and agencies.

(2) The SBA will publish notices in the Commerce Business Daily and the **Federal Register** seeking information on small business manufacturers or processors and announcing a notice of intent to waive the Nonmanufacturer Rule for that class of products. The public will be allowed a 15-day comment period.

(3) If no small business sources are identified, the SBA will publish a notice in the **Federal Register** stating that no small business sources were found and that a waiver of the Nonmanufacturer Rule for that class of products has been granted. The average processing time for waivers of the Nonmanufacturer Rule for classes of products is 45 working days, unless the procedure outlined in paragraph (e) of this section is invoked.

(e) An expedited procedure for issuing a waiver for classes of products may be used for emergency situations. The expedited procedure may be used only when the contracting officer provides a determination to the Associate Administrator for Procurement Assistance that the procurement is proceeding under the authority of FAR 6.302–2 for "unusual and compelling urgency," or provides a determination materially the same as one of unusual and compelling urgency. Under the expedited procedure, if a small business manufacturer or processor is not identified by a PASS search, the SBA will grant the waiver for the class of products and then publish a notice in the **Federal Register**. The notice will state that a waiver has been granted, and solicit public comment for future procurements.

(f) The decision by the Associate Administrator for Procurement Assistance to grant or deny a waiver is the final administrative ruling by the SBA.

(g) A waiver of the Nonmanufacturer Rule for classes of products has no time limitation or duration. SBA will, however, periodically perform a review of existing class waivers to the Nonmanufacturer Rule. The intent of the review is to determine if small business manufacturers or processors have become available to participate in the Federal procurement market for the waived classes of products. The process which the SBA will use in reviewing such waivers is similar to the process for initially granting waivers and will include reviews of SBA's Procurement Automated Source System (PASS), the Thomas Register, and information from industry associations and organizations and procuring activities and agencies. Sources sought notices will be published in the Commerce Business Daily. However, SBA may terminate a class waiver, at any time if a small business manufacturer or processor is identified, in accordance with § 121.2105.

§ 121.2105 Termination of a class waiver.

(a) Upon receipt by the SBA of evidence that a small business manufacturer or processor exists in the Federal market for a waived class of products, the waiver shall be terminated by the Associate Administrator for Procurement Assistance. This evidence may be discovered by the SBA during a periodic review of existing waivers or may be brought to the SBA's attention by other sources.

(b) The SBA will announce its intent to terminate a waiver for a class of products through the publication of a notice in the **Federal Register**, asking for comments regarding the proposed termination.

(c) Unless public comment reveals that no small business manufacturer or process in fact exists for the class of products in question, SBA will publish a final Notice of Termination in the **Federal Register**.

§ 121.2106 Classes of products for which waivers have been previously granted by SBA.

A listing of classes of products for which waivers of the Nonmanufacturer

Rule have been granted will be maintained in SBA's Procurement Automated Source System (PASS). A list of such waivers may also be obtained by contacting the Office of Procurement Assistance at the Small Business Administration, Washington, DC 20416, or at the nearest SBA Regional Office.

Dated: June 5, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–22900 Filed 9–20–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 27433; Amdt. No. 1563]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERP criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air), Standard instrument approaches, Weather.

Issued in Washington, DC on September 10, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . *Effective November 11, 1993*

Tuscaloosa, AL, Tuscaloosa Muni, VOR or TACAN RWY 4, Amdt. 11
Tuscaloosa, AL, Tuscaloosa Muni, VOR or TACAN RWY 22, Amdt. 13
Tuscaloosa, AL, Tuscaloosa Muni, NDB RWY 4, Amdt. 10
Tuscaloosa, AL, Tuscaloosa Muni, ILS RWY 4, Amdt. 13
St. George, AK, New St. George, NDB/DME–A, Orig.
Valdosta, GA, Valdosta Regional, RADAR–1, Orig., CANCELLED
Kailua-Kona, HI, Keahole-Kona International, LOC RWY 17, Amdt. 6
Kailua-Kona, HI, Keahole-Kona International, VOR/DME or TACAN RWY 17, Amdt. 3
Kailua-Kona, HI, Keahole-Kona International, LOC BC RWY 35, Amdt. 8
Kailua-Kona, HI, Keahole-Kona International, VOR or TACAN RWY 35, Amdt. 6
Kailua-Kona, HI, Keahole-Kona International, ILS/DME RWY 17, Amdt. 9
Rocky Mount, NC, Rocky Mount-Wilson, NDB RWY 4, Amdt. 7
Rocky Mount, NC, Rocky Mount-Wilson, ILS RWY 4, Amdt. 14
Borger, TX, Borger/Hutchison County, NDB RWY 35, Orig., CANCELLED
Houston, TX, Houston Intercontinental, ILS RWY 26, Amdt. 14
Lamesa, TX, Lamesa Muni, NDB RWY 16, Amdt. 2
Lamesa, TX, Lamesa Muni, NDB RWY 34, Amdt. 3
Levelland, TX, Levelland Muni, NDB RWY 17, Amdt. 2
Levelland, TX, Levelland Muni, NDB RWY 35, Amdt. 1

. . . *Effective October 14, 1993*

Oxford, CT, Waterbury-Oxford, NDB RWY 18, Amdt. 5
Oxford, CT, Waterbury-Oxford, NDB RWY 36, Amdt. 6
Oxford, CT, Waterbury-Oxford, ILS RWY 36, Amdt. 10
Oxford, CT, Waterbury-Oxford, VOR/DME RNAV RWY 18, Amdt. 5
Chicago/Romeoville, IL, Lewis University, VOR RWY 9, Amdt. 1
Rockford, IL, Greater Rockford, VOR RWY 13, Amdt. 4
Rockford, IL, Greater Rockford, LOC BC RWY 19, Amdt. 15
Rockford, IL, Greater Rockford, NDB RWY 1, Amdt. 25
Rockford, IL, Greater Rockford, ILS RWY 7, Orig.
Rockford, IL, Greater Rockford, ILS RWY 1, Amdt. 28
Rockford, IL, Greater Rockford, RADAR–1, Amdt. 7
Atlantic, IA, Atlantic Muni, NDB RWY 12, Amdt. 9
Detroit, MI, Berz-Macomb, VOR–A, Orig.
Detroit, MI, Berz-Macomb, NDB RWY 22, Orig.
Marshall, MI, Brooks Field, VOR RWY 28, Amdt. 13
Utica, MI, Berz-Macomb, VOR–A, Amdt. 2, CANCELLED
Utica, MI, Berz-Macomb, NDB RWY 22, Amdt. 4, CANCELLED
Oshkosh, NE, Garden County, NDB RWY 12, Orig.
Akron, OH, Akron-Canton Regional, RADAR–1, Amdt. 21
Cleveland, OH, Cuyahoga County, LOC BC RWY 5, Amdt. 9
Cleveland, OH, Cuyahoga County, NDB RWY 23, Amdt. 7
Cleveland, OH, Cuyahoga County, ILS RWY 23, Amdt. 11
Sherman/Denison, TX, Grayson County, VOR/DME–A, Amdt.
Sherman/Denison, TX, Grayson County, NDB RWY 17L, Amdt. 7
Melfa, VA, Accomack County, VOR/DME RWY 3, Orig.
Melfa, VA, Accomack Co, VOR/DME RWY 3, Amdt. 6, CANCELLED
Antigo, WI, Langlade County, NDB RWY 16, Amdt. 3
Waupaca, WI, Waupaca Muni, NDB RWY 30, Amdt. 4

. . . *Effective September 25, 1993*

North Myrtle Beach, SC, Grand Strand, ILS RWY 23, Amdt. 10

[FR Doc. 93–23094 Filed 9–20–93; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27451; Amdt. No. 1564]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

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FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments require making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control approaches, Standard instrument, Incorporation by reference (1) navigation.

Issued in Washington, DC on September 10, 1993.

Thomas C. Accárdi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective	State	City	Airport	FDC No.	SIAP
07/22/93	KS	WINDFIELD/ARKANSAS.	STROTHER FIELD	FDC 3/3981	VOR RWY 35 ORIG... THIS IS AN EDITORIAL CORRECTION
08/27/93	TX	FORT WORTH	FORT WORTH SPINKS	FDC 3/4844	RNAV RWY 35 AMDT 1...
08/27/93	TX	FORT WORTH	FORT WORTH SPINKS	FDC 3/4845	ILS RWY 35 ORIG...
08/30/93	FL	MIAMI	MIAMI INTL	FDC 3/4874	LOC RWY 30, AMDT 5A...
08/30/93	FL	MIAMI	MIAMI INTL	FDC 3/4875	NDB RWY 9L, AMDT 1...
08/30/93	FL	MIAMI	MIAMI INTL	FDC 3/4876	ILS RWY 12, AMDT 2...
08/30/93	FL	MIAMI	MIAMI INTL	FDC 3/4877	ILS RWY 9L, AMDT 27A...
08/30/93	TN	FAYETTEVILLE	FAYETTEVILLE MUNI	FDC 3/4880	NDB RWY 19, AMDT 3...
08/30/93	TN	FAYETTEVILLE	FAYETTEVILLE MUNI	FDC 3/4881	VOR/DME RWY 1, ORIG...
08/30/93	TN	FAYETTEVILLE	FAYETTEVILLE MUNI	FDC 3/4882	SDF RWY 19, AMDT 2...
08/31/93	NY	GLENS FALLS	WARREN COUNTY	FDC 3/4903	VOR/DME RWY 19 AMDT 6...
08/31/93	NY	GLENS FALLS	WARREN COUNTY	FDC 3/4904	ILS RWY 1 AMDT 3...
09/01/93	CO	GREELEY	GREELEY–WELD COUNTY.	FDC 3/4928	ILS RWY 9 AMDT 3...
09/01/93	CO	GREELEY	GREELEY–WELD COUNTY.	FDC 3/4929	NDB RWY 9 AMDT 1...
09/01/93	CO	GREELEY	GREELEY–WELD COUNTY.	FDC 3/4931	VOR OR TACAN–A AMDT 7...
09/01/93	NY	GLENS FALLS	WARREN COUNTY	FDC 3/4917	DEP PROC/TKOF MINS...
09/01/93	NY	MONTICELLO	MONTICELLO	FDC 3/4942	VOR/DME RWY 1 AMDT 2...

Effective	State	City	Airport	FDC No.	SIAP
09/02/93	NY	NEWBURGH	STEWART INTL	FDC 3/4950	RNAV RWY 27 AMDT 1...
09/02/93	NY	NEWBURGH	STEWART INTL	FDC 3/4951	VOR OR TACAN RWY 27 AMDT 3...
09/02/93	NY	NEWBURGH	STEWART INTL	FDC 3/4953	RNAV RWY 16 AMDT 2...
09/03/93	CO	ASPEN	ASPEN-PITKIN COUNTY/SARDY FIELD.	FDC 3/4979	VOR/DME-C AMDT 4...
09/03/93	NY	NORWICH	LT. WARREN EATON	FDC 3/4975	VOR/DME-A AMDT 3...
09/03/93	NY	NORWICH	LT. WARREN EATON	FDC 3/4976	RNAV RWY 19 AMDT 1...
09/03/93	OK	CUSHING	CUSHING MUNI	FDC 3/4968	NDB RWY 35 AMDT 3A...
09/08/93	AK	SAVOONGA	SAVOONGA	FDC 3/5032	VOR/DME RWY 23 ORIG-A...
09/08/93	NJ	MORRISTOWN	MORRISTOWN MUNI	FDC 3/5027	NDB RWY 23 AMDT 6A...
09/08/93	NJ	TETERBORO	TETERBORO	FDC 3/5026	VOR/DME-A AMDT 1...
09/08/93	NJ	TETERBORO	TETERBORO	FDC 3/5033	VOR/DME RNAV RWY 24 ORIG...

[FR Doc. 93-23095 Filed 9-20-93; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Illinois Abandoned Mine Land Reclamation Plan (hereinafter referred to as the Illinois AMLR Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment was initiated by Illinois and pertains to revisions to the Illinois Abandoned Mined Lands and Water Reclamation Act (State Act), 20 ILCS 1920/1.01-3.08 (formerly Ill. Rev. Stat. 1991, ch. 96 1/2, pars. 8001.01-8003.08), and to revisions to Illinois' regulations at title 62, Illinois Administrative Code (IAC), part 2501. The amendment is intended to meet the requirements of title IV of SMCRA and the Federal regulations.

EFFECTIVE DATE: September 21, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement, 511 West Capitol Avenue, Suite 202, Springfield, Illinois 62704, Telephone: (217) 492-4495.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program.
II. Submission of Amendments.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Illinois Program

Title IV of SMCRA established an Abandoned Mine Land Reclamation (AMLR) program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. As enacted in 1977, lands and waters eligible for reclamation were those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there was no continuing reclamation responsibility under State or Federal law. The AML Reclamation Act of 1990 (Pub. L. 101-508, title IV, subtitle A, Nov. 5, 1990, effective Oct. 1, 1991) amended SMCRA, 30 U.S.C. 1231 et seq., to provide changes in the eligibility of project sites for AML expenditures. Title IV of SMCRA now provides for reclamation of certain sites where the mining occurred after August 3, 1977. These include interim program sites where bond forfeiture proceeds were insufficient for adequate reclamation and sites affected any time between August 4, 1977, and November 5, 1990, for which there were insufficient funds for adequate reclamation due to the insolvency of the bond surety. Title IV provides that a State with an approved AMLR program has the responsibility and primary authority to implement the program.

The Secretary of the Interior approved the Illinois AMLR Plan on June 1, 1982. Information pertinent to the general background of the Illinois AMLR Plan submission, as well as the Secretary's findings and the disposition of comments, can be found in the June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning Plan amendments are identified at 30 CFR 913.25.

The Secretary adopted regulations at 30 CFR part 884 that specify the content requirements of a State reclamation plan and the criteria for plan approval. The regulations provide that a State may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope of major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision.

II. Submission of Amendments

By letter dated July 2, 1993 (Administrative Record No. IL-600-AML), the Illinois Abandoned Mined Lands Reclamation Council (Council) submitted a proposed amendment to the Illinois AMLR Plan on its own initiative, as provided for by 30 CFR 884.15. Illinois revised section 2.11 of the State Act, added new section 2.12 to the State Act, and added new section 2501.37 to the Council's regulations at 62 IAC part 2501.

OSM announced receipt of the proposed amendment in the July 19, 1993, **Federal Register** (58 FR 38543) and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on August 18, 1993.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR part 884 are the Director's findings concerning the proposed amendment to the Illinois program submitted on July 2, 1993. Any revisions not specifically addressed below meet the requirements of title IV of SMCRA and the Federal regulations.

1. Section 2.11—Non-Coal Reclamation

Illinois is proposing to revise section 2.11 of the State Act to extend the Council's authority from August 14, 1994, to August 31, 1999, for making non-coal reclamation expenditures.

Section 409(a) of SMCRA authorizes reclamation of those non-coal sites which could endanger life and property,

constitute a hazard to the public health and safety, or degrade the environment. The Director finds the proposed revision at section 2.11 to be in compliance with the requirements of section 409(a) of SMCRA.

2. Section 2.12—Statement of Reclamation

Illinois is proposing to add new section 2.12 to the State Act to require that the Council, following reclamation, file a Notice of Reclamation in the Office of the Recorder in the county in which the reclaimed land lies. The requirement applies to all lands where reclamation is completed after July 1, 1991.

The Federal rules at title IV of SMCRA contain no comparable provision. However, the Director finds the proposed regulation at section 2.12 to be consistent with the provisions of title IV of SMCRA.

3. 62 IAC 2501.37—Notice of Reclamation

Illinois is proposing to add new section 2501.37 to the Illinois Administrative Code to implement section 2.12 of the State Act. The proposed regulation requires that Council file a Notice of Reclamation subject to certain provisions.

The Federal regulations at 30 CFR 884.13 require that the State describe the policies and procedures to be followed in conducting the reclamation program. The Director finds the proposed regulation at 62 IAC 2501.37 to be consistent with the Federal regulations at 30 CFR 884.13.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the July 19, 1993, **Federal Register** (58 FR 38543) ended on August 18, 1993. No comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 884.14(a)(2), comments were solicited from various Federal agencies with an actual or potential interest in the Illinois program. No comments were received.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.). Although the Director has determined that this amendment contains no provisions in these categories, the EPA concurred without comment.

V. Director's Decision

Based on the above findings, the Director is approving the program amendment to the Illinois AMLR Plan submitted by Illinois on July 2, 1993.

The Federal rules at 30 CFR part 913 concerning the Illinois program are being amended to implement the Director's decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12291

On March 30, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State and Tribal abandoned mine land reclamation plans and revisions thereof. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of title IV of SMCRA (30 U.S.C. 1231–1243) and the Federal regulations at 30 CFR parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior [516 DM 6, appendix 8, paragraph 8.4B(29)].

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 et seq.

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 14, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 913.25, a new paragraph (e) is added to read as follows:

§ 913.25 Approval of abandoned mine land reclamation plan amendments.

* * * * *

(e) The Illinois Abandoned Mine Land Reclamation Plan amendment submitted on July 2, 1993, is approved effective September 21, 1993.

[FR Doc. 93–22860 Filed 9–20–93; 8:45 am]
BILLING CODE 4310–05–M

30 CFR Part 914

Indiana Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of proposed amendments to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 93–4) consists of revisions to Indiana's Surface Coal Mining and Reclamation Statute (IC 13–4.1) concerning a "no more stringent" provision, and the Indiana bond pool. The amendment implements revisions to the Indiana Code (IC) contained in the 1993 Senate Enrolled Act (SEA) 374, and is intended to revise the Indiana program to be no less stringent that SMCRA.

EFFECTIVE DATE: September 21, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

By letter dated April 19, 1993 (Administrative Record Number IND–1228), the Indiana Department of Natural Resources (IDNR) submitted proposed amendment 93–4 to the Indiana program concerning statutes enacted by Indiana under SEA 374 during the 1993 Indiana Legislative Session. The amendment includes changes to the "no more stringent" provision at IC 13–4.1–1–5, and Indiana's bond pool provisions at IC 13–4.1–6.5–8(d).

By letter dated June 4, 1991 (Administrative Record Number IND–0894), Indiana submitted proposed changes to the Indiana program enacted under SEA 46. SEA 46 was enacted during the 1991 legislative session and, among other changes, added a "no more stringent" clause at IC 13–4.1–1–5. On December 13, 1991 (56 FR 64998), OSM announced that it did not approve the proposed language at IC 13–4.1–1–5. In that same notice, OSM also codified at 30 CFR 914.16(g), a requirement that Indiana must either delete its proposed provisions at IC 13–4.1–1–5 concerning the "no more stringent" provision, or amend IC 13–4.1–1–5 to comply with SMCRA and the Federal regulations. The amended language in amendment 93–4 at IC 13–4.1–1–5 is intended to comply with the required amendment codified at 30 CFR 914.16(g).

By letter dated March 18, 1988 (Administrative Record Number IND–0559), the IDNR submitted proposed changes to the Indiana program under SEA 231. SEA 231 was enacted during the 1988 legislative session and, among other things, added IC 13–4.1–6.5 to the Indiana program with the purpose of establishing a surface coal mining reclamation bond pool. On April 20, 1992 (57 FR 14350), OSM approved the proposed bond pool provisions with the exception of IC 13–4.1–6.5–8(d) which was not approved. In the currently proposed amendment, Indiana is deleting the language at IC 13–4.1–6.5–8(d) which was not approved by OSM.

OSM announced receipt of the proposed amendment in the May 17, 1993, **Federal Register** (58 FR 28806), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on June 16, 1993. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program.

1. IC 13–4.1–1–5 "No More Stringent" Provision

Indiana proposes to amend this provision by adding a new subsection 5(a) and revising the existing language in subsection 5(b). As amended, the provision reads as follows:

(a) It is the purpose of this article to establish requirements that are no more stringent than those required to meet the Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201–1328).

(b) Neither the director nor the commission shall adopt a rule under this article that is more stringent than corresponding provisions under the Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201–1328).

Prior to the current amendment, IC 13–4.1–1–5 stated the following:

Neither the director nor the commission may enforce the following: (1) A rule adopted under this article that is more stringent than corresponding provisions under the Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201–1328); (2) a condition of a permit that was imposed under this article or under a rule that is unenforceable under this section.

OSM has approved State program provisions similar to proposed subsection 5(a). For example, the approved Illinois program at article I, section 1.02(c) states that it is the purpose of the Illinois Act to establish requirements that are no more stringent than those required to meet SMCRA.

The applicable criteria for approval or disapproval of an amendment, is the same as that for approval or disapproval of the original State program (30 CFR 732.17(h)(10)). That criteria, as set forth in 30 CFR 732.15(a), provides that the amendment or the program must:

provide(s) for the State to carry out the provisions and meet the purposes of the Act and this Chapter within the State and that the State's laws and regulations are in accordance with the provisions of the Act and consistent with the requirements of the Chapter.

This language merely restates the standards set in section 503(a) of the Act, 30 U.S.C. 1253.

The terms consistent with and in accordance with have been defined at 30 CFR 730.5 to mean:

(a) With regard to the Act, the State laws and regulations are no less stringent than, meet the minimum requirements of, and include all applicable provisions of the Act.

(b) With regard to the Secretary's regulations, the State laws and regulations are no less effective than the Secretary's regulations in meeting the requirements of the Act.

State programs, then, must consist of a statute and regulations that are no less stringent than SMCRA and no less effective than SMCRA's implementing regulations. For simplicity, this standard is referred to as "no less stringent." State regulatory programs may be more stringent with regard to land use, environmental controls, and regulation of surface mining, see SMCRA 505(b), 30 U.S.C. 1255(b) and 30 CFR 730.11, at the State's discretion; but the minimum requirement remains "no less stringent than" the Federal statute.

Subsection 5(a) is a general purpose declaration of Indiana's intent to establish requirements that are no more stringent than SMCRA. Subsection 5(b) is the enabling legislation of the "no more stringent" provision. Proposed subsection 5(b) provides that neither the director of IDNR nor the Natural Resources Commission (NRC) shall adopt a rule under IC 13–4.1 (the Indiana surface coal mining and reclamation statutes) that is more stringent than corresponding provisions under SMCRA. SMCRA establishes the minimum standards which State programs must meet. State programs and program provisions may be more stringent than SMCRA without being construed as inconsistent and unacceptable by the Secretary (SMCRA 505(b)), but State programs and program provisions are not required to be more stringent. As discussed above, a provision which prohibits promulgation of rules which are more stringent than SMCRA and the implementing Federal regulations cannot be construed as being inconsistent with SMCRA. In fact, several States have prohibited the promulgation of "more stringent" provisions.

The currently proposed amendment at IC 13–4.1–1–5 differs significantly from the previously existing language which was not approved by OSM. OSM has approved State programs containing provisions which (1) limit a State's authority to promulgate rules more stringent than corresponding Federal rules, or (2) stipulate that State requirements corresponding to Federal requirements invalidated by a court of competent jurisdiction shall be considered similarly invalid. Indiana's previously existing language at IC 13–4.1–1–5, however, was far broader and much more nebulous in that the language prohibited the enforcement (rather than just the promulgation) of more stringent rules without defining that term, delineating how such a determination was to be made, or limiting it to provisions invalidated by judicial order. Thus, every State provision which differs in any way from the Federal rules could and probably would have been challenged each time the State took an enforcement action or imposed a permit condition. Under these circumstances, it would have been virtually impossible to determine what is included in the Indiana program at any one time (56 FR 64996, December 13, 1991).

The previously existing language was not approved by OSM because the language would subvert the program approval and amendment processes established in section 503 of SMCRA and 30 CFR parts 730, 731, and 732. The provision would have accomplished de facto program changes without first affording an opportunity for the public and other interested parties to either comment or file objections, and without obtaining prior OSM approval as required by 30 CFR 732.17(g). (See 56 FR 64996 (December 13, 1991) for the complete discussion of OSM's findings concerning the previously existing language).

The currently proposed language at IC 13–4.1–1–5 does not contain the flaws of the previously existing language as discussed above. Rather, the currently proposed language provides that new rules shall not be adopted which are more stringent than corresponding provisions of SMCRA. As discussed above, such provisions have been approved by OSM in other State programs because provisions which prohibit the adoption of rules which are more stringent than corresponding provisions of SMCRA do not render those programs less stringent than SMCRA nor less effective than the Federal regulations. In addition, if Indiana believes that some of their existing rules are more stringent than their Federal counterparts, the State has the right under SMCRA and 30 CFR Part 732 to propose revisions and deletions (56 FR 64997). If, after agency review and opportunity for public comment, the Director agrees that such revisions and deletions are not inconsistent with or less stringent than the corresponding Federal requirements, the Director will approve them.

The Director finds that the proposed amendments at IC 13–4.1–1–5 are no less stringent than SMCRA and no less effective than the Federal regulations. 30 CFR 914.16(g) requires that Indiana either delete its previously proposed provisions at IC 13–4.1–1–5 concerning the no more stringent than provision, or amend IC 13–4.1–1–5 to comply with SMCRA and the Federal regulations (56 FR 64996, December 13, 1991). Indiana has satisfied that requirement in this amendment.

2. IC 13–4.1–6.5–8(d) Bond Pool Fees

Indiana is proposing to delete subsection 8(d) in its entirety. The deleted language provided that if the Indiana bond pool is maintained at an acceptable percentage of the bond pool's liability as determined by the director of IDNR after consultation with the bond pool committee, payments due under section IC 13–4.1–6.8–8 shall be suspended for any operator who has made payments to the bond pool for at least five years. The language of subsection 8(d) was part of a proposed amendment concerning the Indiana bond pool submitted to OSM on March 18, 1988 (Administrative Record Number IND–0559), under Senate Enrolled Act (SEA) 231. On April 20, 1992 (57 FR 14350), OSM approved the proposed bond pool provisions with the exception of IC 13–4.1–6.5–8(d).

Section 509(c) of SMCRA and the Federal regulations at 30 CFR 800.11(e) require that any alternative bonding system (such as a bond pool) provide substantial economic incentive for the operator to comply with all reclamation provisions, one of which is the completion of reclamation and final release of performance bond. Under subsection 8(d), payments into the bond pool would have been suspended provided that the operator has made payments for at least five years and the pool is in good financial condition. This suspension of payments, however, removes most financial incentive for the operator to achieve final bond release because there would then be no cost associated with perpetually holding land in a condition that is less than complete reclamation. Therefore, the Director determined subsection 8(d) to be less stringent than section 509(c) of SMCRA and less effective than the Federal regulations at 30 CFR 800.11(e) because it would have removed the economic incentive for the permittee to comply with all reclamation provisions.

The Director finds, for the reasons cited above, that the deletion of the language at subsection 8(d) does not render the Indiana program less stringent than SMCRA nor less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The U.S. Fish and Wildlife Service (FWS) expressed concern that the proposed "no more stringent" amendment may result in losses of pre-mining fish and wildlife

habitat. FWS noted that some Federal regulations are fairly general (e.g., approximate original contour, highest and best use, replacement of pre-mining wildlife habitat). FWS stated that such generality in these Federal regulations is required because they cannot be expected to address wildlife habitat characteristics that are site-specific with regard to wetlands, riparian areas, and other unique habitats. The proposed amendment, FWS contends, could preclude rulemakings under the Indiana program for the protection of fish and wildlife habitat unless a counterpart rule is specifically stated in the Federal regulations. As an example, FWS stated that it may be desirable to adopt a rule requiring pre-mining wetlands to be restored to their original elevations. Since no counterpart Federal regulation exists, such a rule could be contested under the "no more stringent" concept.

In response, the Director agrees that the Federal regulations do not in all cases provide specific provisions on how to, for example, achieve AOC, or replace specific pre-mining wildlife habitat. As the FWS pointed out, this is because the Federal regulations can't address the specifics of each pre-mining topographic site or wildlife habitat. The Federal regulations do, however, specifically require that AOC be recreated and that pre-mining fish and wildlife habitats be restored or replaced. The "no more stringent" provision cannot be used as an excuse to avoid compliance with a general Federal regulation. Indiana must, when faced with a general Federal regulation, devise rules which, in Indiana, will be effective in meeting the Federal regulation. A proposed Indiana rule cannot be deemed more stringent than a non-existent specific Federal counterpart if it is needed to achieve compliance with a general Federal regulation.

Public Comments

The public comment period and opportunity to request a public hearing was announced in the May 17, 1993, **Federal Register** (58 FR 28806). The comment period closed on June 16, 1993. Several comments were received, but no one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

Indiana State Senator Maurice E. Doll, the Indiana Coal Council, Inc., and the National Coal Association commented in support of the amendment to IC 13–4.1–1–5, the "no more stringent" provision. As discussed in Finding 1 above, the Director is approving the amendment to IC 13–4.1–1–5.

F.K. Harris commented in opposition to Indiana's "no more stringent" provision at IC 13–4.1–1–5. Specifically, Ms. Harris expressed concern that the "no more stringent" provision will be applied retroactively by the regulatory authority, or interpreted by the Indiana courts to apply retroactively. Ms. Harris stated that in Illinois the courts have interpreted the words "shall not adopt" to mean "shall not enforce" relative to Illinois' "no more stringent" provision. Ms. Harris contends that the Indiana courts will interpret the Indiana "no more stringent" law the same way.

In response, the Director has determined (Finding 1 above) that the proposed language of Indiana's "no more stringent" provision is no less stringent than SMCRA and no less effective than the Federal regulations. This finding does not, however, approve retroactive application of the provision. To the contrary, any existing Indiana provision which is deemed by Indiana to be more stringent than the Federal regulations must be enforced as approved by OSM until properly amended by adhering to the State program amendment process under 30 CFR 732.17. This process applies whether the program is changed on its face or as to its application. De facto program changes without first obtaining prior OSM approval are prohibited by 30 CFR 732.17(g).

The Illinois court decision to which Ms. Harris referred is *Consolidation Coal Co.* v. *The Department of Mines and Minerals*, 160 Ill. App. 3d. 677; 513 N.E. 2d 9 (Ill. App. 5 Dist. 1987). In that decision, the court held that section 1.02 of the Illinois Act declaring legislative intention to establish requirements no more stringent than the Federal requirements, was a bar to enforcement of sections 3.10 and 3.20 of the Illinois Surface Mining Act, which provide that surface coal miners must comply with State water pollution guidelines. These guidelines were more stringent than the corresponding Federal guidelines. The court did not address whether the water pollution guidelines were in existence prior to the approval of the "no more stringent" language in the Illinois program on June 1, 1982. Nevertheless, even if one argues that this one State court may have interpreted a "no more stringent" provision to apply retroactively, the decision is not binding on Indiana courts and, it is OSM's position that a State provision prohibiting the promulgation of requirements that are more stringent than corresponding Federal requirements cannot be used to prohibit enforcement of previously approved requirements that are deemed to be more stringent.

Ms. Harris also expressed concern that the "no more stringent" provision will be used to prevent the passage of measures to protect Indiana citizens from blasting damage. In response, the Director notes that SMCRA at section 515(b)(15) provides, among other things, that the regulations promulgated by the regulatory authority shall include provisions to limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent (i) injury to persons, and (ii) damage to public and private property outside the permit area. It is important to note that SMCRA focused the provision on the physical conditions of the blasting site. Both the Federal airblast regulations at 30 CFR 816.67(b) and the maximum allowable ground vibration regulations at 816.67(d) specify that, if necessary to prevent blasting-related damage, the regulatory authority shall specify limits lower than those specified in the Federal regulations. Therefore, if it is determined that lower airblast or ground vibration limits are necessary in Indiana to prevent blasting related injuries or damage, the "no more stringent" provision cannot be used to block the promulgation of such rules or the implementation of such permit conditions. Such a rule or permit condition would not be more stringent than SMCRA, because it would be required to meet SMCRA's minimum standard of preventing injury to persons and damage to public or private property caused by blasting.

The Director notes that the approved Indiana program at 310 IAC 12–5–36 contains counterparts to the Federal regulations discussed above. That is, the Indiana rules authorize the regulatory authority to specify lower maximum allowable airblast levels, and to reduce the maximum allowable ground vibration beyond those specified at 310 IAC 12–5–36 if necessary to prevent blasting-related damage. These Indiana rules are consistent with the Indiana statutory requirements at IC 13–4.1–10–2(3).

S. Zell and A. Marshall commented in opposition to Indiana's "no more stringent" provision at IC 13–4.1–1–5. Specifically, Ms. Zell stated the following:

(1) The "no more stringent" provision is inconsistent with SMCRA;

(2) State regulations may have to be more stringent than the Federal regulations if State-specific conditions and circumstances warrant (A. Marshall also made this comment);

(3) The State may change its interpretation or enforcement of existing

rules, or refuse to use its authorized discretion, if it believes that current interpretation or enforcement, or use of its discretion, would be more stringent than required by SMCRA; and

(4) The "no more stringent" provision will prohibit active public participation.

In response, and as discussed in Finding 1 above, the Director has determined that Indiana's "no more stringent" provision is no less stringent than SMCRA. These commenters also referred to the Federal blasting regulations at 30 CFR 816.61 through 816.68 as an example of where more stringent Indiana rules may be needed to prevent blasting-related damage. As discussed in response to the comments from Ms. Harris, this "no more stringent" provision does not prevent Indiana from adopting rules which contain standards different from counterpart Federal regulations if such rules are needed (because of Indiana's specific conditions and circumstances) to actually meet the minimum requirements of SMCRA.

If the State changes its interpretation of an approved rule, and the new interpretation differs from a plain language reading of the rule, or the rule as interpreted by OSM in the **Federal Register** approval notice of that rule, then the new interpretation constitutes a program change. In accordance with 30 CFR 732.17(g) all program changes must be submitted to OSM for review and approval.

A "no more stringent" standard cannot be employed as a means to prevent or hinder public participation in a State's rulemaking process. Nor can a "no more stringent" standard be employed to prevent or hinder public participation in the regulatory process. Despite the existence of a "no more stringent" standard in a State program, the public continues to have the right to appeal to OSM any adverse State decision regarding rulemaking or enforcement of the State program. A "no more stringent" provision is a method which is employed by some States to help assure that surface coal mining regulatory standards are not more strict than necessary to meet the standards of SMCRA.

V. Director's Decision

Based on the findings above, the Director is approving Indiana's program amendment number 93–4 as submitted by Indiana on April 19, 1993. The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. Consistency of State and Federal standards is required by SMCRA.

As discussed in Finding 1 above, this amendment satisfies the requirements of 30 CFR 914.16(g). Therefore, the Director is revising the Federal regulations to remove these requirements.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 et seq.

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 14, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

2. In § 914.15, paragraph (xx) is added to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(xx) The following amendment (Program Amendment Number 93–4) to the Indiana program as submitted to OSM on April 19, 1993, is approved, effective September 21, 1993: IC 13–4.1–1–5 concerning the "no more stringent"

provision; and the deletion of IC 13–4.1–6.5–8(d) concerning bond pool fees.

§ 914.16 [Amended]

3. In § 914.16, paragraph (g) is removed and reserved.

[FR Doc. 93–22862 Filed 9–20–93; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles/Long Beach Regulation 93–009]

Security Zone Regulations; Ports of Los Angeles/Long Beach, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a Security Zone in the Territorial Waters south of Santa Cruz Island in the vicinity of Yellow Bluff. The zone is needed to safeguard national defense assets against destruction/loss/injury from sabotage or other subversive acts, accidents, or causes of a similar nature while undergoing operational testing. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at midnight on October 2, 1993 and terminates at midnight on October 15, 1993.

FOR FURTHER INFORMATION CONTACT: Capt. J.B. Morris at 310–980–4429.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent (further) destruction/loss/injury to national defense assets involved in operational testing.

Drafting Information

The drafters of this regulation are Capt. J.B. Morris, Captain of the port, Los Angeles-Long Beach and Capt. B. Weule, Eleventh Coast Guard District Legal Officer.

Discussion of Regulation

The operations requiring this regulation will begin on October 3, 1993. This Security Zone is necessary to ensure the security and safety of national defense assets during operational testing. Entry into the zone may be allowed if testing permits and there are no hazards to transiting vessels or test equipment. Requests to enter the zone should be addressed to the Coast Guard patrol vessel(s) on scene or the representative of the Captain of the Port Los Angeles-Long Beach embarked in the M/V McGAW.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart D of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T1148 is added to read as follows:

§ 165.T1148 Security Zone: Pacific Ocean, California.

(a) *Location.* The following area is a Security Zone: The Territorial Waters south of Yellow Bluff; bounded by on the north by Santa Cruz island, on the south by latitude 33–56N, on the east by longitude 119–34W, and on the west by longitude 119–41W.

(b) *Effective date.* This regulation becomes effective at midnight on October 2, 1993, and terminates at midnight on October 15, 1993.

(c) *Regulations.* In accordance with the general regulations in 165.33 of this part, no person may swim, skin dive or scuba dive in the waters within the Security Zone, and no vessel may enter, remain in, or transit the Security Zone without the permission of the Captain of the Port. Section 165.33 also contains other general requirements.

Dated: September 7, 1993.

J.E. Terveen,

Commander, U.S. Coast Guard, Alternate Captain of the Port, Los Angeles/Long Beach.

[FR Doc. 93–23089 Filed 9–20–93; 8:45 am]
BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Pittsburgh Regulation 93–007]

Safety Zone Regulations; Ohio River, From Mile 88.0 to Mile 90.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending the duration of a safety zone which was established on the Ohio River from mile 88.0 to mile 90.0 to control vessel traffic in the regulated area during the demolition of a bridge at mile 89.0. This extension is needed because the demolition has fallen behind schedule and is not complete. The regulation will restrict general navigation in the regulated area during demolition for the safety of vessels transiting the area.

EFFECTIVE DATES: This regulation was effective at 8 a.m. on August 17, 1993 and will now terminate at 8 p.m. on September 24, 1993.

FOR FURTHER INFORMATION CONTACT: LT John Meehan, Operations Officer, Captain of the Port, Pittsburgh, Pennsylvania at (412) 644–5808.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are LT John Meehan, Project Officer, Marine Safety Office, Pittsburgh, Pennsylvania and LCDR A.O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the demolition of the bridge has fallen behind schedule. Since the delay was not anticipated, there was insufficient time to publish a notice of proposed rulemaking before the original regulation expired. The Coast Guard deems it to be in the public's best interest to issue regulations without waiting for a comment period. The removal operation, which is now partially completed, has significantly reduced the structural integrity of the

remaining bridge spans. This has created a hazardous situation for vessels operating near the bridge, and an immediate extension of navigation restrictions is needed to ensure the safety of vessels transiting the area.

Background and Purpose

The Captain of the Port issued a safety zone regulation which restricted traffic in the area of the Wheeling Terminal Railroad Bridge located at mile 89.0 on the Ohio River on July 16, 1993. The bridge is no longer an active bridge and is in the process of being removed. In order to remove the bridge's several spans, the bridge is being demolished with explosives. These explosions create an obvious hazard to vessels transiting the area. This demolition has been occurring in stages with various spans being removed one at a time. The main span was demolished on August 17, 1993. After the explosives on this span were detonated, the steel and other debris from the bridge fell into the sailing line of the Ohio River, creating an unsafe condition for vessels. The contractor immediately commenced clearing operations, but unexpected lift equipment breakdowns and problems associated with the failure of several explosive charges to properly detonate substantially delayed the removal of bridge debris from the channel. Accordingly, explosive charge demolitions planned for the remaining left and right bank spans have lagged significantly behind schedule. The termination date of September 3, 1993 originally established for this safety zone regulation will pass before all the span demolitions are completed. Since it would be unsafe for vessels to attempt to transit the area during the remaining span demolitions, it is necessary to amend the original safety zone regulation to incorporate a revised termination date of September 24, 1993. For the remaining period that this safety zone is in effect, the Captain of the Port will disseminate information as to when traffic may proceed without restriction through Broadcast Notice to Mariners and other means. Traffic will be permitted to proceed without restriction except during the actual demolition of the spans. These restrictions will last approximately 4 hours each. The remaining spans of the bridge are tentatively scheduled to be demolished on August 31, 1993, September 8, 1993, and September 10, 1993. These spans are not over the sailing line.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal due to the relatively short duration of actual traffic restrictions and the relatively small size of the area regulated.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an environmental impact statement is not necessary because the regulation is categorically excluded from further environmental documentation under section 2.B.2.c. of Commandant Instruction M16475.1B.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Records and recordkeeping, Security measures, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.T0262 is amended by revising paragraph (b) to read as follows:

§ 165.T0262 Safety Zone: Ohio River.

* * * * *

(b) *Effective dates.* This regulation becomes effective at 8 a.m. on August 17, 1993 and will terminate at 8 p.m. on September 24, 1993.

* * * * *

Dated: September 3, 1993.

M.W. Brown,

Commander, U.S. Coast Guard, Captain of the Port, Pittsburgh, Pennsylvania.

[FR Doc. 93–23088 Filed 9–20–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–4732–8]

Territory of Guam Petition for Exemption From the Diesel Fuel Sulfur Requirement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of direct final decision.

SUMMARY: On May 7, 1993, the Governor of Guam submitted a petition requesting that the U.S. Territory of Guam be considered for an exemption from the sulfur content requirement for motor vehicle diesel fuel, as specified in sections 211 (i) and (g) of the Clean Air Act, as amended (Act). This action is a direct final decision that grants an exemption to Guam from the diesel fuel sulfur content requirement of sections 211 (i) and (g) of the Act. The exemption is based on EPA's finding that it is unreasonable to require persons in Guam to comply with the sulfur content requirement due to Guam's unique geographical, meteorological and economic factors, as well as other significant local factors.

This action is being taken without prior proposal because EPA believes that this final decision is noncontroversial and because the effect of this rulemaking is limited to the Territory of Guam.

EFFECTIVE DATES: This action will be effective on November 21, 1993, unless received by October 22, 1993, that someone wishes to submit adverse or critical comments. If notice of intention to submit adverse comments is received, EPA will publish in the **Federal Register** timely notice withdrawing this action and a subsequent notice requesting comment on Guam's petition. Please direct all correspondence to the addresses shown below.

ADDRESSES: Comments or notice of intent to submit adverse or critical comments should be submitted (in duplicate if possible) to both dockets with a copy forwarded to Ms. Mary T. Smith, Director, Field Operations and Support Division (6406J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

Copies of information relevant to this petition are available for inspection in public docket A–93–33 at the Air Docket (LE–131) of the EPA, room M–1500, 401 M Street SW., Washington,

DC 20460, (202) 260–7548, between the hours of 8:30 a.m. to noon and 1:30 p.m. to 3:30 p.m. Monday through Friday. A duplicate public docket, R9–GU–93–1, has been established at U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1224, and is available between the hours of 8 a.m. to 12 p.m. and 1 p.m. to 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Whitney Trulove-Cranor, Environmental Protection Specialist, Plans and Program Section, Field Operations and Support Division (6406J), 401 M Street SW., Washington, DC 20460, (202) 233–9036.

SUPPLEMENTARY INFORMATION:

I. Introduction

This notice describes EPA's action to approve as a direct final decision Guam's request for exemption from the diesel sulfur content requirement of section 211 of the Act and those related sections of EPA's motor vehicle diesel fuel regulations (40 CFR part 80). The remainder of this notice is divided into eight parts. Section II provides the background for this action. Section III summarizes the contents of the petition by the Governor of Guam. Section IV discusses other relevant issues regarding this decision. Section V presents EPA's proposed final action and underlying rationale. Finally, sections VI through IX address EPA's statutory authority, regulatory designation and economic impacts.

II. Background

Section 211(i)(1) of the Act makes it unlawful, effective October 1, 1993, for any person to manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce motor vehicle diesel fuel which contains a concentration of sulfur in excess of 0.05 percent (by weight), or which fails to meet a cetane index minimum of 40 (or, alternatively, contains no more than 35 percent aromatics). Section 211(g) makes it unlawful, effective October 1, 1993, for any person to introduce or cause or allow the introduction into any motor vehicle of diesel fuel which such person knows or should know contains a concentration of sulfur in excess of the standard or fails to meet the cetane index minimum. Section 211(i)(3) establishes the sulfur content for fuel used in the certification of heavy-duty diesel vehicles and engines. Section 211(i)(4) requires the Administrator to take final action on any petition filed under section 325,[1] which seeks exemption from the requirements of section 211(i), within 12 months of the date of such petition.

Section 325 of the Act provides that upon application by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Administrator may exempt any person or source in such territory from various requirements of the Act, including sections 211 (i) and (g). Such exemption may be granted if the Administrator finds that compliance with such requirements is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant.

III. Petition for Exemption

On May 7, 1993, the Honorable Joseph F. Ada, Governor of the Territory of Guam, submitted a petition to exempt motor vehicle diesel fuel in Guam from the sulfur content requirements of sections 211(i)(1) and 211(g)(2) of the Act, and the EPA regulations promulgated at 40 CFR part 80. The petition is based on geographical, meteorological, air quality, and economic factors unique to Guam.

If granted, the exemption would apply to all persons in Guam subject to the prohibitions of sections 211(i)(1) and 211(g)(2) of the Act and the diesel fuel requirements in 40 CFR part 80. The exemption would apply to all persons who manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce motor vehicle diesel fuel, or who introduce diesel fuel into motor vehicles, in Guam. Guam is not requesting an exemption from the minimum cetane requirement for motor vehicle diesel fuel as set forth in sections 211(i)(1) and 211(g)(2).

The following discussion summarizes the contents of the petition.

A. Geography and Location of Guam

Guam is a U.S. Territory and the southern-most island in the Marianas Archipelago, on the southern extension of the undersea Honshu Ridge. Guam is located roughly 3,700 miles west-southwest of Honolulu and 1,550 miles south of Tokyo. Guam is a small island, measuring approximately 28 miles long and between 4 and 8.5 miles wide, with a total land area of approximately 209 square miles. There are no nearby land masses downwind of Guam within 1000 kilometers (600 miles) that could be affected by emissions from sources on the island.

Guam is composed of two distinct geologic areas of about equal size. The northern region is a high coralline limestone plateau rising up to 850 feet above sea level. The southern region is mountainous, of volcanic origin, with elevations of 700 to 1,300 feet. Separating north from south is a narrow waist which is quite low, being generally less than 200 feet in elevation.

Guam has a population of 133,152. There are approximately 140 miles of primary paved roads and approximately 330 miles of local streets. As of 1991, there were 735 diesel fueled motor vehicles registered in Guam.

B. Climate, Meteorology and Air Quality

Guam has a tropical climate and an average annual rainfall of approximately 98 inches. Temperatures range from approximately 60 to 90 degrees Fahrenheit. Consistent trade winds prevail from the northeast and southeast quadrants of the island over 90% of the time. The easterly trade winds are the strongest and most constant throughout the dry season when sustained wind speeds of 15 to 25 mph are very common. This meteorology combined with its geographic location, have a beneficial impact on the island's air quality.

At the present time, Guam is in attainment with all primary national ambient air quality standards (NAAQS), with the exception of sulfur dioxide in two areas. One area is defined by a circle 3.5 kilometers in radius around the Piti Power Plant. The other area is defined by a circle 3.5 kilometers around Tanguisson. Both of these areas are designated nonattainment for sulfur dioxide as a result of monitored and modeled exceedances of the ambient sulfur dioxide standards in the 1970's prior to implementing changes to power generation facilities. The petition claims that Guam's air quality has improved in recent years as the result of elimination of certain power generation facilities and their replacement by newer, cleaner units, as well as the updating of existing large facilities. Guam believes that the area around Piti, in particular, is now in attainment for sulfur dioxide and is in the process of collecting data for a petition for redesignation. As for the nonattainment area around Tanguisson,

[1] Section 211(i)(4) mistakenly refers to exemptions under section 324 of the Act ("Vapor Recovery for Small Business Marketers of Petroleum Products"), while the proper reference is to section 325. Congress clearly intended to refer to section 325, as shown by the language used in section 211(i)(4), and the United States Code citation used in section 806 of the Clean Air Act Amendments of 1990, Public Law No. 101–549. Section 806 of the Amendments, which added paragraph i to section 211 of the Act, used 42 U.S.C. 7625–1 as the United States Code designation for section 324. This is the proper designation for section 325 of the Act. Also see 136 Cong. Rec. S17236 (daily ed. October 26, 1990) (statement of Sen. Murkowski).

there are no plans to petition for redesignation. However, this nonattainment area only includes two small villages and a U.S. Air Force Annex, none of which attract significant vehicle traffic.

Information provided to the Agency subsequent to the petition indicates that on an annual basis, the diesel-fueled vehicles on Guam are estimated to emit less than 0.1% of the maximum potential sulfur dioxide emissions from other sources on Guam, given the current sulfur content of diesel fuel used in motor vehicles.[2] Therefore, Guam's continued use of diesel fuel with a maximum sulfur content of 0.6% by weight is not expected to have any significant impact on the ambient air quality status of Guam, including the status of the two areas designated as nonattainment for sulfur dioxide, because of the minimal contribution by motor vehicles to the sulfur dioxide levels.

C. Economic Factors

Guam's remote location and resource-poor economy result in the need to import raw materials and consumer goods, including fuel oil, at unusually high transportation costs. The island has no known oil resources and no operating refinery. Oil companies supplying Guam import diesel from four foreign sources: Singapore, Indonesia, Australia and the Philippines. Essentially all of the island's petroleum products are refined in Singapore. Oil companies in Singapore do not presently refine diesel fuel that meets the 0.05% sulfur requirement and have indicated that Guam's diesel demand is not large enough to justify the multi-million dollar investment that would be necessary to do so. Consequently, low sulfur fuel would have to be imported from the U.S. mainland.

The petition states that it could conceivably cost Guam fuel suppliers between $14,500,000 and $22,300,000 annually to comply with the low-sulfur standard. This high cost of compliance is due to several factors: additional transportation costs associated with importing fuel from the mainland; construction of new storage facilities needed to segregate low sulfur and high sulfur fuel, and also to store larger quantities of fuel since shipments would be less frequent and possibly less reliable coming from the mainland;[3] and the higher purchase price of low sulfur fuel. All fuel suppliers state that these costs would be passed on to Guam's diesel fuel consumers, who already pay between $1.47 to $1.58 a gallon, one of the highest rates in the U.S. Yet Guam residents earn incomes well below the national average.[4] Guam estimates that, if it is forced to import low-sulfur diesel fuel from the U.S. mainland, the cost per gallon of diesel fuel would increase by 30–46 cents (compared to the estimated 3 to 5 cents per gallon increase to meet the low-sulfur diesel requirement in the mainland).

D. Environmental Factors

The Government of Guam requires operating permits that limit the sulfur content of diesel-fuel for electric generating units to 0.6 percent by weight or less. This obligation limits the importation of No. 2 diesel fuel for all diesel fuel needs to the 0.6 percent or less level. Information derived from proprietary data supplied by the oil companies on Guam shows that No. 2 diesel fuel imports during 1992 had a sulfur content in the range of 0.39 percent to 0.50 percent (by weight) and the cetane index was in the range of 48 to 55. If this exemption is granted, motor vehicles would continue to use diesel fuel with a sulfur content less than 0.6 percent by weight.

As of 1991, there were only 735 diesel-fueled vehicles registered with the Motor Vehicle Division of Guam, representing approximately 1% of the total vehicle population on Guam. The small amount of sulfur dioxide emitted from these vehicles, as noted in section B above, is dispersed by the island's trade winds and presents no health risk nor causes any air quality standard to be exceeded.

IV. Other Issues

EPA addressed several other issues in the American Samoa decision[5] and is addressing them here in a manner consistent with its earlier decision.

Issue: Sale of Certified Engines

EPA believes that the prohibition against the sale of uncertified engines in Guam (as in American Samoa) should continue to apply. Beginning with model year 1994, some heavy-duty diesel engines probably could be equipped with devices which will be adversely impacted by the level of sulfur in diesel fuel allowed by the exemption being granted today, but it is possible that some emissions benefits can still be accrued. If the use of high-sulfur diesel fuel causes vehicles equipped with aftertreatment devices to emit certain pollutants at higher levels than would be emitted from such engines without the aftertreatment devices, the Agency may consider, among other things, allowing the sale of certified engines without the affected devices. As expressed in the American Samoa exemption, the Agency believes such decisions should be made on a case-by-case basis upon receipt of evidence to support those decisions.

Issue: Exemption From Tampering

EPA believes that a blanket waiver from the tampering prohibition for model year 1994 and later heavy-duty engines would allow tampering in situations where such tampering may result in an increase in emissions. For example, removal of an emissions related device that is not affected by the high sulfur fuel or is rendered less effective but not inoperative by the high-sulfur fuel would increase emissions over what would have occurred in the absence of tampering.

Nevertheless, some model year 1994 and later heavy-duty engines may be built with after-treatment devices that may be rendered inoperative by the use of diesel fuel with sulfur content exceeding 0.05% (by weight). The exercise of enforcement discretion may be appropriate to allow the removal of such after-treatment devices. However, EPA shall not allow tampering with an emissions control device that has been or is likely to be rendered less effective, but not rendered inoperative, as a result of the use of higher sulfur fuel unless there is evidence that it may actually cause an increase in certain pollutants as discussed above.

Issue: Warranty Exemption

The Agency acknowledges that vehicles which were certified with low sulfur diesel fuel may be unable to meet federal emissions standards if they are fueled on high sulfur diesel fuel. However, EPA believes an exemption from the general warranty provisions of section 207 is unnecessary to protect manufacturers from unreasonable warranty recoveries by purchasers. The emission defect warranty requirements under section 207(a) of the Act require an engine manufacturer to warrant that the engine shall conform at the time of

[2] Memo from Ed Settle, R.W. Beck and Associates, July 1, 1993. This organization does permit applications for major sulfur dioxide sources on Guam and is working on the maintenance plan for the redesignation request of the Cabras-Piti nonattainment area.

[3] Shipping time from the U.S. mainland to Guam is approximately 18 days; 36 days round-trip. Ships from Singapore to Guam only require 8 days.

[4] In 1988, Guam's per capita income ranked below all fifty states at $7,174. The national average per capita income for 1988 was $16,480.

[5] The Agency granted American Samoa's petition for an exemption from the diesel sulfur requirements on July 20, 1992. 57 FR 32010.

sale to applicable emission regulations and that the engine is free from defects which cause the engine to fail to conform with applicable regulations for its useful life. In practice, this warranty is applicable to a specific list of emissions and emissions related engine components.

It has been consistent EPA policy that misuse and/or improper maintenance of a vehicle or engine by the purchaser, including misfueling, may create a reasonable basis for denying warranty coverage for the specific emissions and emissions related engine components affected by this misuse. In this case, while use of fuel exempted from the sulfur content limitation cannot be considered "misfueling", it will have the same adverse effect on emissions control components. Thus, EPA believes that where the use of noncomplying diesel fuel will have an adverse impact on the emissions durability of specific engine parts or systems, such as a trap oxidizer or other after-treatment devices, the manufacturer will have a reasonable basis for denying warranty coverage on that part or other related parts. However, as has consistently been EPA's policy, those components not adversely affected by the misfueling should continue to receive full emissions warranty coverage. In any event, the number of engines likely to be covered in Guam, and the potential for excessive costs or disputes, are extremely small. EPA will expeditiously consider manufacturers' suggestions for remedies to these situations on a case-by-case basis as they occur.

Issue: Recall Liability

Heavy-duty engine manufacturers are responsible for recalling and repairing engines that do not comply with emission requirements for their useful lives. The EPA tests engine classes to determine whether engines comply with applicable emission standards when properly used and maintained. Under section 207(c), if a substantial number of engines in a specific engine class do not comply when tested, that entire class can be recalled. If a situation arose in which an engine fueled with noncomplying diesel fuel were included in an EPA in-use compliance test program, EPA would determine, on a case-by-case basis, if the noncompliance were the result of the use of noncomplying diesel fuel. If it were determined that the noncomplying diesel fuel was the cause of the engine's failure to meet the applicable emission standards, that fact would be considered before seeking a recall of the class. Given the fact that only high-sulfur diesel fuel (over 0.05% by weight) will be used in vehicles in Guam, just as in American Samoa, the Agency does not intend to use test results (emissions levels) from those vehicles to show noncompliance by those engines for the purpose of recalling an engine class. In cases in which it was determined that the overall class was subject to recall, however, individual engines would not be excluded from repair on the basis of the fuel used. Manufacturers are responsible for repairing any engine in the recalled class regardless of its history of tampering or malmaintenance. The situation that would occur in Guam is no different and thus the manufacturers should remain liable for performing recall repairs on these engines when required.

V. Final Action

Because of its remote location and lack of internal petroleum supplies and refining capability, Guam must rely on the importation of diesel fuel and other petroleum products for use in motor vehicles and non-road sources. The refineries currently supplying Guam's diesel fuel needs do not have the capability to produce diesel fuel that meets the sulfur requirement of sections 211(i) and (g) of the Act, and have indicated that Guam's diesel demand is not large enough to justify the multi-million dollar investment that would be necessary to produce 0.05% sulfur diesel fuel. Consequently, Guam would have to import low sulfur fuel from the U.S. mainland.

Guam currently does not obtain any petroleum products from the mainland. The cost of importing low-sulfur diesel fuel from the mainland would add 30–46 cents to the cost per gallon of diesel fuel in Guam. Transportation and fuel costs would rise significantly. In addition, if stationary sources continue to use high-sulfur diesel, importing low-sulfur diesel fuel would require the costly construction of separate storage facilities. Even if Guam were to import low-sulfur diesel fuel for all its diesel fuel needs, new storage facilities would be necessary to store larger quantities of fuel since shipments would be less frequent and possibly less reliable coming from the mainland as explained previously in this document.

By requiring Guam to comply with the sulfur requirement of sections 211(i) and 211(g), a major economic burden would be placed on the persons on Guam with little or no environmental benefit. Although Guam has two areas that are designated nonattainment for sulfur dioxide, various control strategies have been implemented which EPA believes will result in at least one of these areas reaching attainment for ambient sulfur dioxide standards by 1996.[a] Thus, Guam is in the process of preparing a petition for redesignation for this area. Despite the possibility that the use of high-sulfur diesel fuel may cause increased particulate sulfate emissions in diesel vehicles equipped with trap systems or oxidation catalysts, any increase in sulfate particulates emitted by such vehicles would be dispersed by the island's easterly trade winds and would present a minimal threat to public health or the environment. Because of the small number of diesel vehicles on Guam and the current sulfur content restrictions Guam imposes on diesel fuel, granting this exemption would not likely lead to future problems in maintaining compliance with any National Ambient Air Quality Standards, including sulfur dioxide.

The Environmental Protection Agency's final action is to exempt the Territory of Guam from compliance with the sulfur content requirements for diesel fuel under sections 211(i)(1) and (g)(2) of the Act, and EPA's motor vehicle diesel fuel regulations at 40 CFR part 80. This action does not exempt Guam from the minimum cetane index requirement or the alternative aromatic level requirement in these sections of the Act or EPA regulations. The Agency believes that compliance with the sulfur requirement is unreasonable given the substantial increased costs to persons on Guam and the minimal benefits to Guam's air quality. These impacts would be the direct result of geographical, meteorological and economic factors unique to the Territory of Guam.

This action is being taken without prior proposal because EPA believes that the decision to exempt Guam from the diesel fuel sulfur requirements is noncontroversial and anticipates no significant adverse comments on this action.

In a petition involving very similar factors, EPA exempted American Samoa from these same diesel fuel requirements (56 FR 58243, November 18, 1991). Consistent with this decision, the EPA has decided to approve the exemptions requested by Guam as a direct final decision.

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[a] On October 19, 1992, Guam submitted a petition to the EPA requesting that proposed electric generating units on Guam be exempted from several nonattainment area requirements applicable to the Cabras-Piti area, which is one of the sulfur dioxide nonattainment areas on Guam. EPA has proposed to grant the exemption (58 FR 13579, March 12, 1993) on the condition that, within three years from the effective date of the waiver, Guam shall submit to the EPA a request for redesignation of this area to attainment for the sulfur dioxide NAAQS.

The public should be advised that this action will be effective November 22, 1993, unless EPA receives notice by October 21, 1993, that someone wishes to submit adverse or critical comments. If such notice is received, this action will be withdrawn. If it is withdrawn, EPA will publish a notice announcing its withdrawal before the effective date provided in today's notice. A second notice will then request comments on a proposed decision regarding Guam's request.

This procedure allows the opportunity for public comment and opportunity for oral presentation of data as required under section 307(d) of the Act. This procedure also provides an expedited procedure for final action where a decision is not expected to be controversial and no adverse comment is expected. In the event this decision is not finalized by the October 1, 1993 effective date for the low sulfur fuel requirements, EPA will regard Guam as a low priority for enforcement of the diesel sulfur requirement, pending the final decision on Guam's petition.

VI. Statutory Authority

Authority for the action described in this notice is in section 325(a)(1) (42 U.S.C. 7625–1(a)(1)) of the Clean Air Act, as amended.

VII. Administrative Designation and Regulatory Analysis

Under Executive Order (E.O.) 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement to prepare a regulatory impact analysis. The decision announced today alleviates any potential adverse economic impacts in Guam and is not a regulation or rule as defined in E.O. 12291. Therefore, no regulatory impact analysis has been prepared.

VIII. Impact on Small Entities

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it is required to certify that a regulation will not have a significant adverse economic impact on a substantial number of small business entities. Today's decision is not a rulemaking. Furthermore, the action eases requirements otherwise applicable to affected entities. Thus, it will not result in a significant adverse impact on a substantial number of small business entities.

IX. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

Dated: September 13, 1993.

Carol M. Browner,

Administrator.

[FR Doc. 93–23063 Filed 9–20–93; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–40

[FPMR Amendment G–102]

Transportation of Household Goods

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation contains revised policy concerning the period household goods rate tenders, submitted under the centralized household goods program, will be in effect and updates organizational references. The regulation will enhance the use of electronic data interchange for tender filing and certain other administrative requirements.

EFFECTIVE DATE: September 21, 1993.

FOR FURTHER INFORMATION CONTACT: Carla Young, Travel and Transportation Management Branch (6FBX), 913–236–2510.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 101–40

Freight, Government property management, Moving of household goods, Office relocation, Transportation.

For reasons set forth in the preamble, 41 CFR part 101–40 is amended as follows:

1. The authority citation for part 101–40 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)).

PART 101–40—TRANSPORTATION AND TRAFFIC MANAGEMENT

Subpart 101–40.2—Centralized Household Goods Traffic Management Program

2. Section 101–40.202 is revised to read as follows:

§ 101–40.202 The General Services Administration household goods tender of service (TOS) agreement.

As part of the centralized household goods traffic management program, GSA has developed a master household goods tender of service (TOS) agreement. This agreement establishes carrier service and performance standards which participating carriers agree to provide. Commercial carriers desiring to participate in this program must enter into individual TOS agreements with GSA, acting on behalf of executive agencies. Carriers that desire to enter into a TOS agreement or agencies desiring additional information should contact the General Services Administration, Travel and Transportation Management Branch (6FBX), 1500 East Bannister Road, Kansas City, MO 64131.

3. Section 101–40.203–1 is revised to read as follows:

§ 101–40.203–1 Household goods rate tenders.

GSA will accept or reject household goods carriers' rate tenders (see § 101–40.306) on behalf of executive agencies. Executive agencies shall reject rate tenders not submitted in accordance with this subpart 101–40.2. Household goods carriers' TOS agreements and individual rate tenders covering interstate and intrastate shipments shall be submitted to the Chief, Travel and Transportation Management Branch (6FBX). (See § 101–40.101–1.) Rate tenders shall be effective for a 12-month period beginning October 1 of each year unless a shorter period is prescribed by the Chief, 6FBX. To qualify under the centralized household goods traffic management program, these tenders must be submitted in accordance with instructions issued by the Chief, 6FBX.

Dated: July 13, 1993.

Roger W. Johnson,

Administrator of General Services.

[FR Doc. 93–22976 Filed 9–20–93; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF THE INTERIOR

43 CFR Part 2

Records and Testimony

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This document updates the current list of field offices of the Office of Hearings and Appeals in paragraph 3 of appendix B—Bureaus and Offices of the Department of the Interior, 43 CFR part 2, to reflect changes which have been effected heretofore. It removes the words "(Indian Probate)" in the titles of Administrative Law Judge in listed field offices concerned and reflects changes of address of listed field offices in Knoxville,TN, Phoenix, AZ, Twin Cities, MN, Albuquerque, NM, and Oklahoma City, OK.

EFFECTIVE DATE: September 21, 1993.

FOR FURTHER INFORMATION CONTACT: Frances A. Patton, (703) 235–3810.

SUPPLEMENTARY INFORMATION: Since this is an action reflecting agency management and changes of titles and addresses of field offices which have previously been effected, the proposed rulemaking process is determined to be unnecessary and impractical.

List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Classified information, Freedom of Information, Privacy.

Therefore, under authority of the Secretary of the Interior contained in 5 U.S.C. 301, paragraph 3 of appendix B—Bureaus and Offices of the Department of the Interior, 43 CFR part 2, is amended as follows:

PART 2—[AMENDED]

1. The authority citation for Part 2 continues to read:

Authority: 5 U.S.C. 301, 552, and 552a; 31 U.S.C. 9701; and 43 U.S.C. 1460, unless otherwise noted.

Appendix B—[Amended]

2. Paragraph 3 of Appendix B—Bureaus and Offices of the Department of the Interior, 43 CFR Part 2, is amended by removing the words "(Indian Probate)" in the titles of Administrative Law Judge in the third through seventh listed offices, and by changing addresses of the listed field offices in Knoxville, TN, Phoenix, AZ, Twin Cities, MN, Albuquerque, NM, and Oklahoma City, OK, to read as follows:

Administrative Law Judge, 710 Locust St., Federal Building, Suite 116, Knoxville, TN 37902

Administrative Law Judge, 2901 N. Central Ave., Suite 955, Phoenix, AZ 85012–2739

Administrative Law Judges, Bishop Henry Whipple Federal Building, 1 Federal Drive, rooms 674 and 688, Fort Snelling, MN 55111

Administrative Law Judge, 1700 Louisiana N.E., Suite 220, Albuquerque, NM 87110

Administrative Law Judge, 215 Dean A. McGee Ave., room 507, Oklahoma City, OK 73102

Dated: September 3, 1993.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 93–22973 Filed 9–20–93; 8:45 am]

BILLING CODE 4310–79–M

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 814, 833, 836, and 852

VA Acquisition Regulation: Changes to Solicitation Provisions, Contract Clauses, and Their Prescriptions

RIN–2900 AC87

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing as final and without change the proposed rule published in the **Federal Register** (FR) on June 7, 1993, at 58 FR 31937. The proposed rule eliminated duplicative VA Acquisition Regulation (VAAR) coverage, made VA's regulation consistent with the Federal Acquisition Regulation (FAR), and added a prescription for a VA clause.

EFFECTIVE DATE: September 21, 1993.

FOR FURTHER INFORMATION CONTACT: Lisa Russell, Acquisition Policy Division (95A), Office of Acquisition and Material Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–5001.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Veterans Affairs identified areas of the VA Acquisition Regulation (VAAR) that required amending to make VA's regulation more consistent with the organizational structure of the Federal Acquisition Regulation (FAR). In accordance with FAR Subpart 1.304—Agency control and compliance procedures, VA is eliminating coverage that was duplicative of material contained in the FAR. Specifically, the following items are amended: Item I—VAAR 814.203–1, Mailing or delivery to prospective bidders, is revised to remove the reference to VAAR 836.302, Pre-solicitation notices. Item II—VAAR 833.1, Protests, is revised to change the location of the office designated for receipt of protest and VAAR 833.106, Solicitation provision, to change the prescription for solicitation provisions. Item III—VAAR 836.302, Pre-solicitation notices, is deleted. FAR 36.302, Presolicitation notices, adequately provides guidance for preparing and issuing presolicitation notices for construction contracts, therefore, VAAR coverage is not required. Item IV—adds a clause prescription at VAAR 836.513 for VAAR clause 852.236–87, Safety requirements. Item V–VAAR provision 852.208–70, Change in rates for public utilities, is deleted. Review of coverage at FAR 8.305, Rate increases, indicates that FAR coverage is sufficient to meet VA needs. Item VI—VAAR provision 852.214–73, Bid samples, is revised to more closely conform to FAR provision 52.214–20, Bid Samples. Item VII—VAAR provision 852.233–2, Service of protest, is deleted. FAR provision 52.233–2, Service of Protest, sufficiently meets the agency's needs. Item VIII—VAAR clause 852.236–87, Safety requirements, is revised to eliminate information that is inconsistent with FAR clause 52.236–13, Accident prevention, and change the title of the VAAR clause to Accident Prevention. One comment addressing VAAR 852.236–87, Accident Prevention, was received. The commenter did not differentiate between instructing the contractor to take corrective action and stopping the work if corrective action is not taken. Therefore, the proposed rule is converted to a final rule without further changes.

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this rule is exempt from sections 3 and 4 of Executive Order 12291, Federal Regulation.

III. Regulatory Flexibility Act (RFA)

This final rule does not have a significant economic impact on a substantial number of small entities

within the meaning of the RFA, 5 U.S.C. 601(2).

IV. Paperwork Reduction Act

The Paperwork Reduction Act does not apply to these final regulations.

List of Subjects in 48 CFR Parts 814, 833, 836, and 852

Government procurement.

Approved: September 9, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

Proposed Rule Adopted as Final Rule Without Change

Accordingly, the proposed rule amending 48 CFR Parts 814, 833, 836 and 852, which was published in 58 FR 31937 on June 7, 1993, is adopted as a final rule without change.

For the reasons set forth in the preamble, 48 CFR Parts 814, 833, 836 and 852 are amended as set forth below:

1. The authority citation for part 814 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

PART 814—SEALED BIDDING

Subpart 814.2—[Amended]

2. Subsection 814.203–1 is amended by removing the paragraph designation for paragraph (a) and removing paragraph (b).

3. The authority citation for part 833 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

PART 833—PROTESTS, DISPUTES, APPEALS

Subpart 833.1—[Amended]

4. Subpart 833.1 is amended by removing the symbol "(93B)" and adding in its place the symbol, "(95B)" wherever it appears.

5. Section 833.106 is revised to read as follows:

833.106 Solicitation provision.

The contracting officer shall insert the provision at 852.233–70, Protest Content, in solicitations other than small purchases.

6. The authority citation for part 836 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 836.3—[Removed]

7. Section 836.302 is removed.

8. Subpart 836.5, consisting of section 836.513, is added to read as follows:

Subpart 836.5—Contract Clauses

836.513 Accident prevention.

The contracting officer shall insert the clause at 852.235–87, Accident Prevention, in all solicitations that contain the clause at FAR 52.235–13, Accident prevention, or its Alternate.

9. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 852.2—[Removed]

10. Section 852.208–70 is removed.

11. Section 852.214–73 is revised to read as follows:

852.214–73 Bid Samples.

As prescribed in 814.202–4, insert the following provision:

Bid Samples (September 1993)

Any bid sample(s) furnished must be in the quantities specified in the solicitation and plainly marked with the complete lettering/numbering and description of the related bid item(s); the number of the Invitation for Bids; and the name of the bidder submitting the bid sample(s). Cases or packages containing any bid sample(s) must be plainly marked "Bid Sample(s)" and all charges pertaining to the preparation and transportation of bid sample(s) must be prepaid by the bidder. Bid sample(s) must be received at the location specified in the solicitation by the time and date for receipt of bids.

(End of Provision)

12. Section 852.233–2 is removed.

13. In section 852.236–87, the title, the introductory text, and the clause are revised to read as follows:

852.236–87 Accident prevention.

As prescribed in 836.513, insert the following clause:

Accident Prevention (September 1993)

The Resident Engineer on all assigned construction projects, or other Department of Veterans Affairs employee if designated in writing by the Contracting Officer, shall serve as Safety Officer and as such has authority, on behalf of the Contracting Officer, to monitor and enforce Contractor compliance with FAR 52.236–13, Accident Prevention. However, only the Contracting Officer may issue an order to stop all or part of the work while requiring satisfactory or corrective action to be taken by the Contractor.

(End of Clause)

[FR Doc. 93–22963 Filed 9–20–93; 8:45 am]

BILLING CODE 8320–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1807

Final Changes to NASA FAR Supplement Acquisition Planning

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA has amended the NASA FAR Supplement to increase the dollar thresholds at which a contracting officer must prepare a procurement plan. The contracting officer shall prepare a procurement plan for each negotiated procurement estimated to exceed $2,500,000.

DATES: This final rule is effective September 21, 1993.

ADDRESSES: Comments should be addressed to Ms. Deborah O'Neill, NASA Headquarters, Office of Procurement Policy (HP), Washington DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah O'Neill, telephone (202) 358–0428.

SUPPLEMENTARY INFORMATION:

Background

Previously, NASA policy required the preparation of a procurement plan for each negotiated procurement estimated to exceed a particular dollar amount. The dollar amount for Stennis Space Center, Space Station Procurement Office, and NASA Resident Office at the Jet Propulsion Laboratory was $250,000. The dollar amount above which a procurement plan had to be prepared at Ames Research Center, Goddard Space Flight Center, Headquarters Acquisition Division, Johnson Space Center, Kennedy Space Center, Langley Research Center, Lewis Research Center, and Marshall Space Flight Center was $500,000. The new threshold above which a procurement plan must be prepared is $2,500,000 for all NASA installations.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this coverage will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, whether in whole or in part, directly by NASA.

Regualtory Flexibility Act

NASA certifies that this final rule will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

Paperwork Reduction Act

This final rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Part 1807

Government procurement.

Thomas S. Luedtke,

Acting Deputy Associate Administrator for Procurement.

1. The authority citation for 48 CFR part 1807 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1807—ACQUISITION PLANNING

1807.103 [Amended]

2. In section 1807.103, paragraph (a)(1) is revised to read as follows:

1807.103 Agency-head responsibilities.

(a) *Requirement for preparation of procurement plans.* (1) Except as otherwise authorized by paragraph (a)(2) of this section, the contracting officer shall prepare a procurement plan, with the advice and assistance of the cognizant technical division, for each negotiated procurement estimated to exceed $2,500,000. The plan shall be prepared before soliciting proposals.

* * * * *

[FR Doc. 93–23102 Filed 9–20–93; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 930809–3217; I.D. 081293B]

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule.

SUMMARY: NMFS amends the regulations protecting sea turtles to allow compliance with tow-time limits as an interim alternative to the use of turtle excluder devices (TEDs) by shrimp trawlers in a 30 square mile (48.3 square km) area off the coast of North Carolina (North Carolina Restricted Area) through November 30, 1993. This area seasonally exhibits high concentrations of red and brown algae that make trawling with TEDs impracticable. This interim rule authorizes a 55-minute tow-time limit through October 31, and a 75-minute tow-time limit during November. This interim rule will allow shrimp fishermen to harvest shrimp efficiently during the remainder of the traditional shrimping season (March through November) and maintain adequate protection for sea turtles in this area.

EFFECTIVE DATE: This rule is effective September 16, 1993.

ADDRESSES: Dr. William Fox, Jr., Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910. Comments on the collection-of-information requirement subject to the Paperwork Reduction Act should be directed to the Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, Attention: Phil Williams; and to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Phil Williams, NMFS National Sea Turtle Coordinator (301/713–2319) or Charles A. Oravetz, Chief, Protected Species Program, NMFS Southeast Region (813/893–3366.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA), U.S.C. 1531 et seq. Incidental capture by shrimp trawlers has been documented for five species of sea turtles that occur in offshore waters of North Carolina. Final sea turtle conservation regulations at 50 CFR parts 217 and 227, effective December 1, 1992, require all shrimp trawlers, regardless of length, in offshore waters of the Atlantic Area, including off North Carolina, to have an approved TED installed year-round in each net rigged for fishing, unless specifically exempted.

On July 29, 1992, NMFS promulgated an interim final rule (57 FR 33452) that allowed shrimpers in the North Carolina restricted area to limit tow-times, rather than use TEDs, through August 31, 1992. NMFS' monitoring of the effects of allowing tow-time limits as an alternative to the use of TEDs in the restricted area documented no associated sea turtle mortalities. The Assistant Administrator for Fisheries, NOAA (AA), subsequently found that environmental conditions in the restricted area remained unchanged and issued an interim final rule (57 FR 40859, September 8, 1992) that extended the exemption through September 30, 1992. This allowance was extended without interruption to January 1, 1993, by consecutive 30-day notice actions and interim rules (57 FR 45986, October 6, 1992; 57 FR 52735, November 5,1992; 57 FR 57968, December 8, 1992).

Pursuant to the December 1, 1992, final rule (57 FR 57348, December 4, 1992) at 50 CFR 227.72(e)(3)(ii), the AA may allow, for period of up to 30 days, compliance with tow-time restrictions as an alternative to the TED requirement of 50 CFR 227.72(e)(2)(i) if he/she determines that the presence of algae, seaweed, debris or other special environmental conditions in a particular area make trawling with TED-equipped nets impracticable. In 1993, by consecutive 30-day notice actions effective April 12, 1993 (58 FR 19631), May 12, 1993 (58 FR 28793), June 11, 1993 (58 33219), July 13, 1993 (58 FR 38537), and August 18, 1993 (58 FR 43820), the tow-time allowance was extended through September 15, 1993, the effective date of this rule. NMFS proposed a permanent exemption on May 25, 1993 (58 FR 30007), and a discussion of special environmental conditions, an assessment of the algae problem, a history of the local fishery, and a discussion of tow times can be found there.

In response to comments received on the proposed permanent exemption, NMFS has decided to implement an interim final rule instead of a permanent exemption. NMFS' review of the North Carolina restricted area exemption program for the 1992–1993 season indicates that sea turtle mortalities do not appear to be associated with the allowance of tow times in lieu of TEDs. NMFS has reached this conclusion based on: the lack of observer-documented takes; the observed compliance with tow-time restrictions; the cooperation of the fishermen; the small number of participants in the fishery; and the local knowledge required to trawl in the restricted area without losing gear on bottom obstructions (which effectively limits entry into the fishery). These factors are discussed in previous temporary rules and in the proposed rule. NMFS is particularly concerned about possible interactions between shrimping operations and turtles during the turtle nesting season. NMFS will continue to monitor this situation during the remainder of the 1993 shrimping season.

Based on information received during the 1992–1993 season, NMFS has determined that algal concentrations may be characteristic of the restricted area or may recur in an intermittent or unpredictable pattern and, thus, render TED-use impracticable. NMFS will continue to monitor algal concentrations to determine whether these concentrations are consistently problematic or whether there are times or seasons when TEDs could be used.

NMFS is evaluating a permanent exemption or other regulatory mechanisms involving a section 10 incidental take permit under the ESA, as a long-term solution which will provide protection to sea turtles and allow the shrimp fishery to continue.

Comments Received on the Proposed Rule

Three letters with comments were received on the proposed rule: one from a group of concerned residents of Topsail Island, N.C., one from the Center for Marine Conservation (CMC), and one from the President of the Southeastern North Carolina Waterman's Association (Waterman's Association).

The Topsail Island residents commented that it is premature to make the exemption program permanent, and that NMFS should continue to gather information, while reviewing the effects of the temporary exemption program once or twice yearly, before deciding whether or not the exemption should be made permanent. CMC commented that it is premature to make the exemption permanent because: (1) It is not clear that algal concentrations are consistently problematic enough to justify a permanent exemption; (2) the effect of limited tow-times on turtles is uncertain; (3) the data are inadequate; and (4) consistent and substantial enforcement has not been present in the area. The Waterman's Association commented that: (1) The nesting season 30-minute tow-time alternative should end July 15 each year (instead of August 15) because "historically, the peak turtle nesting season is June"; (2) tow-time should run year-round, because the fall/winter shrimp season extends into Christmas or January, depending on the weather; and (3) 75-minute tow-times should prevail during winter months.

NMFS Response

NMFS agrees, in general, with the Topsail Island residents and CMC that a permanent exemption is not advisable at this time. In response, NMFS has changed the rule originally proposed in order to grant an interim exemption effective September 16, 1993.

In response to the Waterman's Association's comment that the nesting season tow-time alternative of 30 minutes is unduly restrictive and should end on July 15 each year, NMFS believes that to adequately protect nesting sea turtles and their attendant males, which gather each year off nesting beaches in the restricted area, shorter than normal tow times are prudent. Historically, most sea turtle nesting in the North Carolina restricted area has occurred between May 15 and August 15, with the greatest concentrations in June and July. NMFS is concerned about the unknown, interruptive and potentially detrimental effects of trawl capture (or multiple capture) on sea turtle mating and nesting behavior, and therefore on reproductive success. It is possible that the animals are already stressed or weakened by their courtship or nesting activities. Therefore, NMFS feels it is prudent to limit the tow-time alternative to 30 minutes. Moreover, shrimpers operating in the restricted area have testified that algal abundance necessarily limits their tow times to around 30 minutes in the summer when algal accumulations are heaviest. Since the nesting season also occurs in summer, the downward adjustment of the tow-time limit from 55 to 30 minutes from May 15 through August 15 should cause minimal hardship to the fishermen.

Contrary to the Waterman's Association's comment that a tow-time allowance should be extended year-round, previous testimony from fishermen purported that the traditional shrimping months in the restricted area are March through November. NMFS has responded accordingly by making an exemption and allowing tow-time limits in lieu of TEDs during those months. Shrimping activity and algal concentrations in the restricted area in winter months are both light, according to the shrimpers' previous testimony, and enforcement and observer reports. Hence, mandatory use of TEDs for the months of December through February should pose no hardship to fishermen and should not be considered unduly restrictive. In addition, the comment that a 75-minute tow time should be allowed during winter months is moot because NMFS has not authorized any tow-time alternative from December through February.

Sea Turtle Conservation Measures

This rule makes effective for the remainder of the traditional shrimping season, effective September 16, 1993, the policies and procedures that have been temporarily in effect in the North Carolina restricted area under previous exemptions. Specifically, under this interim rule, tow times in the North Carolina restricted area are limited to 55 minutes through October 31, 1993, and 75 minutes during November 1993. During December, January, and February, there is no tow-time alternative and the TED requirement of 50 CFR 227.72(e)(2)(i) applies. These measures should not, in the long run, significantly impact fishermen's normal trawl times, since heavy algae concentrations characteristic of the warmer months cause fishermen to voluntarily shorten tow times to approximately 15–30 minutes. When algal concentrations are light, fishermen will opt to use TEDs. Also, under this interim rule, registration with the Director, Southeast Region, NMFS (Regional Director), is required before a vessel may trawl in the restricted area, and vessels using the tow-time alternative are required to carry a NMFS-approved observer if requested to do so by the Regional Director. The observer will monitor compliance with required conservation measures, including restricted tow times, and resuscitation of any captured turtles in accordance with 50 CFR 227.72(e)(1)(i). Data collected by observers may be used for enforcement purposes. Violations of tow-time restrictions documented by North Carolina enforcement officers may be prosecuted under the ESA by the Office of the General Counsel, NMFS, Southeast Region. In addition, violators may face prosecution under State law. NMFS and North Carolina Division of Marine Fisheries (NCDMF) will jointly monitor compliance with the tow-time alternative.

Additional Sea Turtle Conservation Measures

Pursuant to the provisions of 50 CFR 227.72 (e)(3) and (e)(6), the AA may modify the required conservation measures through notification in the **Federal Register**, if necessary, to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the AA would impose any necessary additional or more stringent measures, including more restrictive tow times, synchronized tow times, or termination of the tow-time alternative, if the AA determines that:

(1) The concentration of algae no longer makes trawling with TEDs impracticable;

(2) There is insufficient compliance with the required conservation measures;

(3) Compliance cannot be monitored effectively;

(4) Significant or unanticipated levels of lethal or non-lethal takings or strandings of sea turtles had occurred in or near the North Carolina restricted area; or

(5) The incidental take level, authorized by biological opinion, of two mortalities of Kemp's ridley, green, hawksbill, or leatherback turtles, or 20 mortalities of loggerhead turtles is met or exceeded during the exemption period.

Classification

The AA has determined that this rule is consistent with the ESA and other applicable law and is not a "major rule" requiring a regulatory impact analysis under E.O. 12291.

An initial regulatory flexibility analysis (RFA) was prepared. Based on that analysis, the General Counsel of the Department of Commerce certified to the Small Business Administration that the proposed rule, if adopted in final, would not have a significant economic impact on a substantial number of small entities because it would affect significantly less than 2 percent of the vessels participating in the shrimp industry in the South Atlantic and involve less than 5 percent of the total revenues of this industry. Accordingly, preparation of a final RFA was not required.

The AA prepared an EA for this rule that concludes that the rule will have no significant impact on the human environment. A copy of the EA is available (see **ADDRESSES**) and comments on it are requested.

In the December 1, 1992, final rule that implemented sea turtle conservation regulations, NMFS concluded that, to the maximum extent practicable, the regulations were consistent with the approved coastal zone management program of North Carolina. Since this rule does not directly affect the coastal zone in a manner not already fully evaluated, a new consistency determination under the Coastal Zone Management Act is not required. Neither the ESA nor this rule precludes North Carolina from adopting more stringent sea turtle protection measures.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act, namely, registration to trawl in the North Carolina restricted area. This collection of information has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0267. The public reporting burden for this collection of information is estimated to average 7 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to NMFS or OMB (see **ADDRESSES**).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects

50 CFR Part 217

Endangered and threatened species, Exports, Fish, Imports, Marine mammals, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: September 15, 1993.

Samuel W. McKeen,

Program Management Officer, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

For the reasons set forth in the preamble, 50 CFR parts 217 and 227 are amended as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1531–1544; and 16 U.S.C. 742a et seq., unless otherwise noted.

2. In § 217.12, a new definition for *North Carolina restricted area* is added, in alphabetical order, to read as follows:

§ 217.12 Definitions.

* * * * *

North Carolina restricted area means that portion of the offshore waters bounded on the north by a line along 34°17.6′ N. latitude (Rich Inlet, North Carolina) and 34°35.7′ N. latitude (Browns Inlet, North Carolina) to a distance of 1 nautical mile seaward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972).

* * * * *

PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 et seq.

4. In § 227.72, paragraphs (e)(3)(i) and (e)(3)(ii) are revised to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(3) * * * (i) *Duration of tows.* If tow-time restrictions are utilized pursuant to paragraphs (e)(2)(ii), (e)(3)(ii), or (e)(3)(iii) of this section, a shrimp trawler must limit tow times to no more than 55 minutes from September 16, 1993 through October 31, 1993, and to no more than 75 minutes in November 1993. The tow time is measured from the time that the trawl door enters the water until it is removed from the water. For a trawl that is not attached to a door, the tow time is measured from the time the codend enters the water until it is removed from the water.

(ii) *Alternative—special environmental conditions.*—(A) The Assistant Administrator may allow compliance with tow-time restrictions, as an alternative to the TED requirement of paragraph (e)(2)(i) of this section, if he/she determines that the presence of algae, seaweed, debris or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable.

(B) *North Carolina restricted area.* From September 16, 1993, through November 30, 1993, a shrimp trawler in the North Carolina restricted area, as an alternative to complying with the TED requirement of paragraph (e)(2)(i) of this section, may comply with the tow-time restrictions set forth in paragraph (e)(3)(i) of this section. The owner or operator of a shrimp trawler who wishes to operate his or her shrimp trawler in the North Carolina restricted area any time during the period from September 16 through November 30, must register pursuant to paragraph (e)(3)(v) of this section, with registration received by the Director, Southeast Region, NMFS, at least 24 hours before the first use of such tow times. Registration may be made by telephoning (813) 893–3141 or writing to 9450 Koger Boulevard, St. Petersburg, FL 33702. The owner or operator of a shrimp trawler in the North Carolina restricted area must carry onboard a NMFS-approved observer upon written notification by the Director, Southeast Region, NMFS. Notification shall be made to the address specified for the vessel in either the NMFS or state fishing permit application, the registration or documentation papers, or otherwise served upon the owner or operator of the vessel. The owner or operator must comply with the terms and conditions specified in such written notification. All observers will report any violations of this section, or other applicable

regulations and laws; such information may be used for enforcement purposes.

* * * * *

[FR Doc. 93-22943 Filed 9-16-93; 3:43 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 181
Tuesday, September 21, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

RIN 3064–AB21

Applications and Publication Requirements

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) is proposing to revise the application and publication requirements in its regulations to conform to the definition and treatment of branch relocations in the final interagency policy statement on branch closings which is published elsewhere in this issue of the **Federal Register**. The amendments are generally technical in nature. The intended effect of this rule is to provide consistent treatment of branch relocations for application and closing purposes.

DATES: Written comments must be received by the FDIC on or before October 21, 1993.

ADDRESSES: Written comments shall be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550—17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to Room F–400, 1776 F Street, NW., Washington, DC 20429 on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898–3838). Comments will be available for inspection in Room 7118, 550—17th Street, NW., Washington, DC between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Curtis L. Vaughn, Examination Specialist, Division of Supervision (202/898–6759) or Joseph A. DiNuzzo, Senior Attorney, Legal Division (202/898–7349), Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Board hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It will not impose burdens on depository institutions of any size and will not have the type of economic impact addressed by the Act. Accordingly, the Act's requirements regarding an initial and final regulatory flexibility analysis (*Id.* at 603 & 604) are not applicable here.

The Proposed Rule

1. Definition and Treatment of Branch Relocations in the Interagency Policy Statement on Branch Closings

Section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236) (FDICIA) added a new section 42 to the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831r–1), effective upon enactment of FDICIA on December 19, 1991. The law requires each insured depository institution to give 90 days' prior written notice of any branch closing to its primary federal regulator and to branch customers, to post a notice at the branch site at least 30 days prior to closing, and to develop a policy with respect to branch closings.

The FDIC, along with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency and the Office of Thrift Supervision, have published elsewhere in this issue of the **Federal Register** a final joint policy statement on section 42 of the FDI Act. The policy statement defines a branch for purposes of section 42, clarifies what constitutes a branch closing, and provides guidance to institutions in identifying customers to be notified in the event of a branch closing.

The policy statement contains a common method of determining if a "relocation" has occurred for purposes of section 42 and makes clear that a relocation (as defined therein) does not constitute a branch closing. The policy statement distinguishes between relocations and the contemporaneous closing of one branch and opening of another. Under the policy statement a relocation has occurred if the new branch and the closed branch are within the same immediate neighborhood and the nature of the business and the customers served by the branch are substantially unaffected by the move. The policy statement explains that, generally, relocations will be found to have occurred only when short distances are involved: for example, moves across the street, around the corner, or a block or two away. Moves of less than 1,000 feet generally will be considered to be relocations. The policy statement notes that, in less densely populated areas, where "neighborhoods" extend farther and a longer move would not substantially affect the nature of the business or the customers served by the branch, a relocation may occur over significantly longer distances.

2. Proposed Revisions to Part 303

A. Applications

Section 18(d)(1) of the FDI Act (12 U.S.C. 1828(d)(1)) requires state nonmember insured banks to obtain prior written consent from the FDIC before establishing and operating a new domestic branch or moving its main office or any domestic branch from one location to another. Section 303.2 of the FDIC's regulations (12 CFR 303.2) specifies these application requirements. In essence, it requires that such banks submit a "letter form" application containing information designated in the regulation. The requirements of § 303.2 do not distinguish between applications to establish a branch and ones to relocate a branch.

As noted above, the branch closing policy statement does not apply to branch relocations (as defined therein); thus, generally, a branch closing notice is not required when a bank moves from one location to another in the same immediate neighborhood. Because there is no definition of branch relocation in § 303.2, however, a bank that intended to close one branch and, as part of the same transaction, open another branch

outside the immediate neighborhood of the closed branch may characterize the application as one for a relocation.

Aside from the publication requirements of § 303.6, discussed below, prior to the issuance of the branch closing policy statement it made no difference, for application purposes, whether such an application was designated as one to relocate a branch or to establish a new branch; both required the same information in a letter-form application. Because the branch closing policy statement provides a narrow definition of relocation, however, without a conforming definition to § 303.2, an application under § 303.2 to move a branch outside its immediate neighborhood could be characterized and considered a branch relocation application, but would be treated as a branch opening and closing under the branch closing policy statement, necessitating compliance with section 42. Because of this inconsistent and potentially confusing treatment of branch relocations, the Board is proposing to amend § 303.2 to conform to the definition of relocations in the branch closing policy statement. The revisions to § 303.2 would entail no substantive changes to the application requirements. The only changes are the inclusion in § 303.2 of the policy statement definition of branch relocation and the requirement that applications indicate whether they are to establish and operate a new branch, move a main office, relocate a remote service facility or relocate a branch other than a remote service facility.

Because main office moves are not within the scope of section 42 and the branch closing policy statement, they are not encompassed within the relocation definition and would be treated separately under § 303.2. Also, remote service facilities are deemed not to be branches under section 42; thus, they would be excluded from the new definition of branch relocations in § 303.2.

In situations where the FDIC determines that an application designated as a relocation does not qualify as a move within the same immediate neighborhood, the FDIC would notify the applicant about resubmitting (or authorizing the FDIC to redesignate) the application as one to establish and operate a new branch.

B. Publications

Section 303.6 of the FDIC's regulations (12 CFR 303.6), among other things, imposes publication and posting requirements in connection with certain applications filed with the FDIC. The proposed rule would amend §§ 303.6 (a) and (f) to conform to the definition and treatment of branch relocations in the branch closing policy statement and the above-described conforming revisions to § 303.2. It also would reduce from two to one the number of times an applicant must publish a notice to relocate a branch (other than a remote service facility). The reason for this proposed change is that upon receipt of an application designated as a relocation application the FDIC will determine whether the proposed branch move is within the same neighborhood and would affect the nature or customers of the branch. In situations where the FDIC determines that an application designated as a relocation application does not qualify as such under the new definition of relocations in § 303.2, the FDIC would notify the applicant about resubmitting (or authorizing the FDIC to redesignate) the application as one to establish and operate a new branch.

The proposed one-time notice requirement would provide the public with, among other things, the opportunity to question the characterization of the application as a branch relocation application. Because the proposed definition of relocations is narrowly drawn to encompass only moves within the "immediate neighborhood," the Board believes that continuing to require two publication requirements would be an unnecessary burden on the industry.

Consistent with the proposed revisions to the publication requirements in § 303.6, the proposed rule also would reduce from 21 to 15 days the time periods for: (1) The required posting of notice of a proposed branch relocation (as newly defined) in the public lobby of the branch; and (2) the public to comment on branch relocation applications (as newly defined).

Request for Public Comment

The Board hereby requests comment on all aspects of the proposed rule. Interested persons are invited to submit written comment during a 30-day comment period.

List of Subjects in 12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings associations.

The Board of Directors of the Federal Deposit Insurance Corporation hereby proposes to amend part 303 of title 12 of the Code of Federal Regulations as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES REQUIRED TO BE FILED BY STATUTE OR REGULATION

1. The authority citation for Part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(j), 1818, 1819 ("Seventh" and "Tenth"), 1828, 1831e, 1831o; 15 U.S.C. 1607.

2. Section 303.2 is amended by revising the section heading and introductory text of paragraph (a) to read as follows:

§ 303.2 Applications by insured state nonmember bank to establish a branch, move its main office or relocate a branch.

(a) Application by an insured state nonmember bank (except a District bank) to establish and operate a new branch [2] (including a remote service facility), to move its main office, or relocate a branch should be filed with the appropriate regional director. For purposes of this requirement, a branch relocation (other than the relocation of a remote service facility) is a move within the same immediate neighborhood that does not substantially affect the nature of the business of the branch or the customers of the branch. Under this paragraph, situations where an insured state nonmember bank closes a branch (other than a remote service facility) in one location and opens a branch in another location outside the immediate neighborhood of the closed branch are considered the establishment of a new branch and the closing of an existing branch. Applications filed under this paragraph shall indicate whether they are to establish and operate a new branch, move a main office, relocate a remote service facility or relocate a branch office other than a remote service facility. The application shall be mailed or delivered to the regional director on the date on which the notice required in § 303.6(f)(1) is published or not more than 30 days subsequent to the first required publication of notice. The application shall be in letter form and shall contain the following information:

* * * * *

3. Section 303.6 is amended by revising paragraph (a)(3), the last sentence of the introductory text of paragraph (f)(1)(ii), the heading of paragraph (f)(1)(ii)(B), paragraph (f)(2), the first two sentences of paragraph (f)(3), and the second parenthetical of

[2] The term branch includes any domestic branch or foreign branch as those terms are defined in section 3(o) of the Act, as amended (12 U.S.C. 1813(o)).

the notice in paragraph (f)(4) to read as follows:

§ 303.6 Application procedures.

(a) * * *

(3) Applications by insured nonmember banks to move their main office or relocate their branch offices, including remote service facilities;

* * * * *

(f) * * *

(1) * * *

(ii) * * * Publication of notice shall be made at least once each week on the same day for two consecutive weeks for applications to move a main office or relocate a remote service facility and once for other applications described in paragraph (a) of this section and shall be in a newspaper of general circulation in the communities referred to below:

* * * * *

(B) Applications to move a main office and relocate a branch (including a remote service facility). * * *

* * * * *

(2) *Notice by posting.* In the case of applications to move a main office or relocate a branch (including a remote service facility), in addition to the notice by publication described in paragraph (f)(1) of this section, notice of the publication shall be posted in the public lobby of the office(s) to be moved or relocated, if such public lobby exists, for at least 21 days beginning with the date of the last published notice required by paragraph (f)(1) of this section for applications to move a main office or relocate a remote service facility; and for at least 15 days beginning with the date of the publication notice required by paragraph (f)(1) of this section for applications to relocate a branch other than a remote service facility.

(3) *Comments.* Anyone who wishes to comment on an application may do so by filing comments in writing with the regional director any time before the FDIC has completed processing the application. Processing will be completed, for applications other than applications to move a main office, to relocate a remote service facility and to merge, not less than 15 days after the publication of the notice required by paragraph (f)(1) of this section or 15 days after the FDIC's receipt of the application, whichever is later; for applications to move a main office or relocate a remote service facility, not less than 21 days after the last publication or 21 days after FDIC's receipt of the application, whichever is later; for merger applications, not less than 30 days after the first publication or 30 days after FDIC's receipt of the application, whichever is later. * * *

(4) *Notice of right to comment.* * * *

* * * (main office moves and remote service facility relocations—21st, mergers—30th, other applications described in paragraph (a) of this section—15th) * * *

* * * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 10th day of August, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93-22824 Filed 9-20-93; 8:45 am]

BILLING CODE 6714-01-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Nonmanufacturer Rule Waiver Procedures; Small Business Size Regulations

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing a rule regarding waivers of a requirement of the Small Business Act commonly referred to as the "Nonmanufacturer Rule" for individual products on specific solicitations (individual waivers). Waivers of the Nonmanufacturer Rule allow small business regular dealers to supply the product of any domestic manufacturer or processor on a small business set-aside or SBA 8(a) Program procurement. Section 8(a)(17) (A) and (B) of the Small Business Act sets forth the Nonmanufacturer Rule and provisions which allow the Administrator to waive the requirements of that Rule for individual products on a specific solicitation based on a contracting officer's determination.

DATES: Comments will be accepted until October 21, 1993.

ADDRESSES: Written comments should be addressed to: Mr. Robert J. Moffitt, Associate Administrator for Procurement Assistance, Small Business Administration, 409 Third Street, SW., Mail Code 6250, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: James Parker, Procurement Analyst, Office of Procurement Policy and Liaison, 202/205-6465.

SUPPLEMENTARY INFORMATION: On November 15, 1988, the enactment of Public Law 100-656 incorporated into the Small Business Act the previously existing SBA requirement that recipients of small business set-aside or SBA 8(a) Program contracts for manufactured products that are not the actual manufacturers (nonmanufacturers) be themselves small business regular dealers. This legislation specifies that regular dealers may only provide the product of domestic small business manufacturers or processors on small business set-aside and 8(a) procurements. This requirement is commonly known as the Nonmanufacturer Rule. Section 303(h) of Public Law 100-656 provided for the Administrator of the SBA to grant a waiver of the Nonmanufacturer Rule for a product or class of products for which there are no small business manufacturers or processors in the Federal market. The requirement that a small business supplier provide the product manufactured or processed by a domestic small business concern in a contract set-aside for small business or under an SBA 8(a) Program contract is found in SBA regulations 13 CFR 121.906(b) and § 121.1106(b).

On June 15, 1989, Public Law 101-37 renumbered the elements in the Nonmanufacturer Rule and added the requirement that a small business concern shall be a small business concern under the numerical size standard for the Standard Industrial Classification Code assigned to the contract solicitation on which the offer is being made. Further, on November 15, 1990, Public Law 101-574 further modified the wording of the waiver provision to allow the Administrator to waive the requirement for any class of products for which there are no small businesses "available to participate in the Federal procurement market." It also added a provision which allows the Administrator to waive the requirements of the Nonmanufacturer Rule after reviewing a determination by a contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications, including period of performance, required of an offeror on a solicitation.

The proposed rules contained herein outline the procedures which the SBA will follow in reviewing the determinations of contracting officers which serve as the basis for such waivers. [SBA rules regarding waivers of classes of products codified at 13 CFR 121.2101, et seq., are published as a final rule elsewhere in today's **Federal Register**.]

Section By Section Review

Section 121.2201 describes the underlying policy of the statute that allows the SBA to waive the Nonmanufacturer Rule for products on specific solicitations when no small

business manufacturers or processes such products.

Section 121.2202 provides definitions of pertinent terms used in these rules, including "contracting officer," "Federal procurement market," Nonmanufacturer Rule," "person," "procuring agency," "solicitation," and "United States."

Section 121.2203 sets forth the statutory standard that must be met to justify issuing a waiver for a specific solicitation.

Section 121.2204 describes the procedures to be followed in requesting and granting waivers for specific solicitations (individual waivers).

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act (55 U.S.C. 601, et. al) and the Paperwork Reduction Act (45 U.S.C. 601, ch. 35)

Based on experience to date, the SBA anticipates that the number of requests for individual waivers will not exceed 75 annually. Since there are literally millions of procurement actions each year, the SBA considers that these requests are not significant in number, and are not expected to approach the threshold of $100 million. Therefore, the SBA has determined that this proposed rule, if promulgated as final, would not constitute a major rule for the purposes of Executive Order 12291.

The SBA certifies that this proposed rule, if promulgated as final, would have no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

For purposes of compliance with the Regulatory Flexibility Act, 55 U.S.C. 601, et. al, SBA certifies that this proposed rule, if promulgated as final, would have no significant economic effect on a substantial number of small entities, since SBA estimates the number of requests will not exceed 75 annually.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch 35, SBA certifies that this proposed rule, if promulgated as final, would impose no new reporting or record keeping requirements.

For the reasons set forth above, subpart B of part 121 of Title 13, Code of Federal Regulations (CFR), is proposed to be amended as follows:

List of Subjects in 13 CFR Part 121

Nonmanufacturer rule waiver, Small business size regulations, Small businesses.

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows;

Authority: 15 U.S.C. 632(A), 634(b), 637(a), 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

2. Subpart B of part 121 is amended by adding an undesignated center heading on §§ 121.2201 through 121.2204 to read as follows:

Waivers of the Nonmanufacturer Rule for Individual Solicitations

§ 121.2201 Policy.

(a)(1) Section 8(a)(17)(B) of the Small Business Act, 15 U.S.C. 637(a)(17)(B), was amended by Section 210 of The Small Business Administration Reauthorization Act of 1991, Public Law 101–574. It was also amended by Section 303(h) of the Business Opportunity Development Reform Act of 1988, Public Law 100–656. These statutory provisions provide that an otherwise qualified supplier of a product that is not the actual manufacturer (nonmanufacturer) under consideration for a small business set-aside or SBA 8(a) Program contract shall:

(i) Be primarily engaged in the wholesale or retail trade;

(ii) Be a small business concern;

(iii) Be a regular dealer as defined by the Walsh-Healey Public Contracts Act; and

(iv) Represent that it will supply the product of a domestic small business manufacturer or processor.

(2) This requirement is known as the Nonmanufacturer Rule (see 13 CFR § 121.906 and § 121.1106).

(b) Recognizing that these requirements may be impossible for some qualified small business dealers to meet for certain products, Pub. L. 101–574 amended the language of the Small Business Act to allow for the granting of waivers when there are no small business manufacturers or processors "available to participate in the Federal procurement market."

(c) Public Law 101–574 also recognized that while small manufacturers or processors may exist for a certain class of products, they may not be able to provide a specific product on a specific solicitation for a variety of reasons, including period of performance. A provision was added to the Small Business Act which allows the Administrator to grant waivers of the Nonmanufacturer Rule on specific solicitations (individual waivers) after reviewing a contracting officer's determination that no small business manufacturer or processor can be reasonably be expected to offer a product meeting the solicitation's specifications, including period of performance.

§ 121.2202 Definitions.

(a) *Solicitation* is an individual contract action of a procuring agency. It must be identifiable by a specific procurement number assigned by a procuring agency.

(b) Other applicable definitions are found at § 121.2102.

§ 121.2203 Condition justifying waivers for specific solicitations.

A waiver for a product in a specific solicitation (individual waiver) is justified when the Administrator reviews and accepts a contracting officer's determination that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications of a solicitation, including the period of performance.

§ 121.2204 Procedures for requesting and granting waivers for specific solicitations.

(a) Requests for waivers of the Nonmanufacturer Rule for specific solicitations need not be in any particular form but shall, at a minimum, include:

(1) A definitive statement of the specific item(s) to be waived;

(2) The solicitation number for the procurement on which the item(s) is required and a brief statement of the procurement history; and

(3) A determination by the contracting officer that there are no known small business manufacturers for the requested items. The determination must contain:

(i) A clear statement of the contracting officer's efforts to search for small business manufacturers or processors of the item(s) and the results of those efforts. This should include information from a search of the Procurement Automated Source System (PASS) and the results of discussions with small business representatives in efforts to find manufacturers. For example, the small business representatives may be members of the Office of Small and Disadvantaged Business Utilization (OSDBU) or an SBA Procurement Center Representative (PCR); and

(ii) A statement by the contracting officer that there are no known small business manufacturers for the items and that no small business manufacturer or processor can reasonably be expected to offer the required items.

(b) Requests should be addressed to the Associate Administrator for

Procurement Assistance, Small Business Administration, Washington, DC 20416, or hand-carried to the Office of Procurement Assistance, suite 8800, 409 3rd Street, SW., Washington, DC.

(c) The SBA will examine the contracting officer's determination and any other information it deems necessary to make an informed decision on the waiver request. Potential sources of information may include, but are not limited to, SBA's Procurement Automated Source System (PASS), the Thomas Register, and information from industry associations and organizations and procuring activities and agencies. If SBA's research verifies that no small business manufacturers or processors exist for the item, an individual, one-time waiver will be granted.

(d) There are three limitations to the individual waivers.

(1) The waiver applies only to the solicitation (and the subsequent contract).

(2) The waiver applies only to the specific solicitation line item(s) identified in SBA's granting letter.

(3) The waiver has no application to solicitation amendments or contract modifications outside the original scope.

(e) If a small business manufacturer or processor is found for the product in question, the waiver request will be denied.

(f) The contracting officer who requested the waiver will be informed in writing by the Associate Administrator for Procurement Assistance of the denial or approval of the request.

(g) The average processing time for waivers for specific solicitations is 15 working days. A quicker processing time may be requested by the contracting officer in the requesting document.

(h) The determination to grant or deny a waiver by the Associate Administrator for Procurement Assistance is the final administrative ruling by SBA.

Dated: June 5, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–22901 Filed 9–20–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–138–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes With Stretched Upper Decks (SUD)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require installation of an aluminum seal retainer on the bulb seal attached to the fascia panels of the escape systems on the SUD. This proposal is prompted by a report that, during deployment of an emergency evacuation slide, the slide inflated but subsequently lost air from one chamber. The actions specified by the proposed AD are intended to prevent the bulb seal from coming off the fascia panels and being ingested into the turbofans of the escape systems on the SUD, which could impede the inflation of the escape slide during an emergency situation.

DATES: Comments must be received by November 16, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–138–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jayson Claar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2784; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–138–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–138–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Recently, the FAA has received a report that, during an emergency evacuation of a Boeing Model 747 series airplane with a stretched upper deck (SUD), one escape slide inflated but subsequently lost air from one chamber. Subsequent investigation revealed that the blades on the impeller in one of the turbofans broke off and cut holes in one of the inflatable chambers on the escape slide of the SUD. (These turbofans are driven by pressurized gas and entrain air into the inflatable chambers of the escape slide.) Further investigation of this incident revealed that the bulb seal attached to the fascia panel came off and was ingested into one of the turbofans. Ingestion of the bulb seal caused the blades to break off the turbofan. After the blades broke off the turbofan, the blades damaged the seal between the

turbofan and the inflatable chambers that allowed the air in the chamber to backflow through the turbofan. This condition, if not corrected, could impede the inflation of the escape slide during an emergency situation.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–25A3056, dated July 12, 1993, that describes procedures for installation of an aluminum seal retainer on the bulb seal attached to the fascia panels of the escape systems on the SUD. This retainer will prevent the bulb seal from coming off the fascia panels and being ingested into the turbofans of the escape systems on the SUD.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require installation of an aluminum seal retainer on the bulb seal attached to the fascia panels of the escape system on the SUD. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 291 Boeing Model 747 series airplanes of the affected design having a SUD in the worldwide fleet. The FAA estimates that 30 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost of required parts would be nominal. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,600, or $220 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 93–NM–136–AD.

Applicability: Model 747 series airplanes with a stretched upper deck, all line numbers up to and including line number 981; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the bulb seal from coming off the fascia panels and being ingested into the turbofans of the escape systems on the stretched upper deck (SUD), which could impede the inflation of the escape slide during an emergency situation, accomplish the following:

(a) Within 6 months after the effective date of this AD, install an aluminum seal retainer on the bulb seal attached to the fascia panel of the escape systems on the SUD, in accordance with Boeing Alert Service Bulletin 747–25A3056, dated July 12, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 15, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–23023 Filed 9–20–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–131–AD]

Airworthiness Directives; Lockheed Model 1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Lockheed Model L–1011–385 series airplanes. This proposal would require inspection, modification, and replacement, if necessary, of the flap vane lugs. This proposal is prompted by reports of failure of flap vane lugs due to stress corrosion. The actions specified by the proposed AD are intended to prevent failure of the flap vane lugs, which could lead to separation of flap vane from the airplane and cause injury to people or damage to property on the ground.

DATES: Comments must be received by November 16, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–131–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Western Export Company, Attn: Commercial and Customer Support, Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas B. Peters, Aeronautical Engineer, Flight Test Branch, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia

30349; telephone (404) 991–3915; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–131–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–131–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports from operators who found cracking in several lugs in the flap vanes installed on Lockheed Model L–1011–385 series airplanes. In one case, the flap vane lug failed and caused the flap system to jam during retraction after takeoff; in another case, the same type of lug failure caused the flap system to jam on retraction after landing. One operator also reported that the flap vane lugs failed on one airplane during approach to a major airport, and the number 2 flap vane separated from the airplane; the flap vane landed on private property in a nearby neighborhood. The manufacturer examined the failed lugs and identified the cause of the failures to be stress corrosion, which started in the center of the flap vane lug between the upper and lower bushings. Such corrosion can weaken the lug to the point where fatigue becomes operative; this eventually can lead to the inability of the lug to sustain required loads. If the flap vane lugs cannot sustain required loads, the lugs can break completely, allowing the flap vane to separate from the airplane. This condition, if not corrected, could pose a danger to persons and property on the ground.

The FAA has reviewed and approved Lockheed TriStar L–1011 Service Bulletin 093–57–199, Revision 1, dated May 5, 1993, that describes procedures for inspecting the inboard and outboard lug of each flap vane to detect cracking and corrosion, reworking the lug bore by oversizing it, and installing new oversized sleeves. This service bulletin also describes procedures for removing corrosion within certain limits by machining the surface.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require inspection and modification of each of the 16 flap vane lugs. These actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 241 Model L–1011–385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 96 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $617,760, or $5,280 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The FAA recognizes that the proposed requirements of this AD would require a large number of work hours to accomplish. However, the compliance time specified in paragraph (a) of this proposed AD should allow ample time for the inspection to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities (i.e., "C"-checks), thereby minimizing the costs associated with special airplane scheduling.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Lockheed: Docket 93–NM–131–AD.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the flap vane lugs, which could ultimately lead to separation of the flap vane from the airplane and pose a danger to persons and property on the ground, accomplish the following:

(a) Within 1,800 flight hours after the effective date of this AD, inspect the inboard and outboard lug of each flap vane to detect cracks and corrosion, in accordance with Lockheed TriStar L–1011 Service Bulletin 093–57–199, Revision 1, dated May 5, 1993.

Note: Inspections and rework previously accomplished prior to the effective date of this AD in accordance with the original issue of Lockheed TriStar L–1011 Service Bulletin 093–57–199, dated January 21, 1988, are

considered in compliance with this paragraph and do not need to be repeated,

(b) For any lug that shows no evidence of cracks or corrosion, prior to further flight, rework the lug bore in accordance with part II of the service bulletin.

(c) If any lug has corrosion or cracking that is within the limits specified in the service bulletin, prior to further flight, accomplish the rework procedures in accordance with part III of the service bulletin.

(d) If any lug has corrosion or cracking that exceeds the limits specified in the service bulletin, prior to further flight, replace the lug with a new or serviceable part in accordance with the service bulletin.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 15, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–23024 Filed 9–20–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–ANE–12]

Airworthiness Directives; PTC Aerospace Model 91700 Passenger Oxygen System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to PTC Aerospace Model 91700 passenger oxygen system, installed in PTC Aerospace Model 881, 940, and 950 seats, installed on McDonnell Douglas DC–10 series aircraft. This proposal would require a one-time inspection to verify the proper configuration and functioning of the passenger oxygen system, and replacement, if necessary, with serviceable parts. This proposal is prompted by reports of oxygen canisters failing to activate due to the installation of incorrect pin release brackets or defective oxygen canister release pins. The actions specified by the proposed AD are intended to prevent failure of the passenger oxygen system to activate.

DATES: Comments must be received by November 22, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–12, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from PTC Aerospace, 607 Bantam Road, Litchfield, CT 06759. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7155, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–12." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–12, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of oxygen canisters not activating due to the installation of an incorrect pin release bracket or defective oxygen canister release pins on PTC Aerospace Model 91700 passenger oxygen system, installed in PTC Aerospace Model 881, 940, and 950 seats, installed on McDonnell Douglas DC–10 series aircraft. Investigation revealed that some oxygen canister release pins contained burrs that prevented the pin from releasing from the canister. In addition, some pin release brackets were installed incorrectly, preventing the lanyard from releasing the pin. This condition, if not corrected, could result in failure of the passenger oxygen system to activate.

The FAA has reviewed and approved the technical contents of PTC Service Bulletin No. 25–1233, Revision D, dated February 2, 1993, that describes procedures for a one-time inspection to verify the proper configuration and functioning of the passenger oxygen system, and replacement, if necessary, with serviceable parts.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time inspection to verify the proper configuration and functioning of the passenger oxygen system, and replacement, if necessary, with serviceable parts. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 3,000 passenger oxygen systems of the affected design in the worldwide fleet. The FAA estimates that 1,800 passenger oxygen systems installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per passenger oxygen system to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $20 per passenger oxygen system. Based on these figures, the total cost impact of the proposed AD

on U.S. operators is estimated to be $135,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

PTC Aerospace: Docket No. 93–ANE–12.

Applicability: PTC Aerospace Model 91700 passenger oxygen system, installed in PTC Aerospace Model 881, 940, and 950 seats, installed on McDonnell Douglas DC–10 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the passenger oxygen system to activate, accomplish the following:

(a) Within 15 months after the effective date of this AD, or the next seat removal, whichever occurs first, verify the proper configuration and functioning of the passenger oxygen system in accordance with PTC Aerospace Service Bulletin No. 25–1233, Revision D, dated February 2, 1993, as follows:

(1) Remove the seat bottom cushion and open the oxygen housing assembly door, Part Number (P/N) 91626, to expose the oxygen canister and lower firing system. On the Model 950 seats, remove fastening screws of the center console, P/N 98154, and rotate the console forward in addition to removing the cushion.

(2) Install an oxygen canister safety cap, Tri-Star P/N CD3, to prevent discharging of the oxygen canister.

(3) Remove the cable release assembly, P/N 91601. Verify that the assembly is the correct length, that the release pin, P/N 91587–1, is free of burrs and notches, and that the nylon cord is not worn and is free of any burn damage. If any discrepancies are found, replace with a serviceable unit.

(4) Verify installation of the correct pin release bracket, P/N 91602–1. A correct bracket has its plastic grommet located vertically above the oxygen canister release sleeve. If the bracket is found to be misaligned, replace it with a correct bracket. Verify that the position of the plastic grommet on the pin release bracket is correct. The grommet is correctly positioned when the grommet slot is aligned with the pin release bracket slot. Secure the grommet to the bracket with Devo 44044 cyanoacrylate adhesive if no adhesive is present.

(5) Reassemble the oxygen system components with the safety cap on the oxygen canister. Verify that the lanyard assembly does not touch the oxygen canister and that the nuts on the cable receptacle, P/N 91600–1, have been tightened. Verify that the oxygen system functions properly, by pulling the mask from the seat back housing and verifying that the lanyard assembly release pin, P/N 915877–1, releases from the oxygen canister. The tension required to remove the mask from the housing must not be greater than 1 pound. If the oxygen system fails to function properly, replace with a serviceable unit.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Certification Office.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on September 14, 1993.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–23021 Filed 9–20–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–ANE–07]

Airworthiness Directives; Teledyne Continental Motors (Formerly Bendix) S–20, S–1200, D–2000, and D–3000 Series Magnetos

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Teledyne Continental Motors (TCM) (formerly Bendix) S–20, S–1200, D–2000, and D–3000 series magnetos equipped with impulse couplings, that currently requires inspections for wear, and replacement, if necessary, of the impulse coupling assemblies. This action would retain the repetitive inspections for wear required by the current AD, but would also require replacement, if necessary, of riveted impulse coupling assemblies with newly designed, improved, snap ring impulse coupling assemblies. In addition, the proposed AD would require marking the magneto data plate to indicate installation of a snap ring impulse coupling assembly. Installation of snap ring impulse coupling assemblies constitutes terminating action to the inspection requirements of this AD. This proposal is prompted by the availability of an improved design for the impulse coupling assembly. The actions specified by the proposed AD are intended to prevent magneto failure and subsequent engine failure.

DATES: Comments must be received by November 22, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–07, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Teledyne Continental Motors, P.O. Box

90, Mobile, AL 36601. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, suite 210C, Atlanta, GA 30349; telephone (404) 991–3810, fax (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commentaries wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–07." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–07, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On January 4, 1983, the Federal Aviation Administration (FAA) issued AD 78–09–07 R3, Amendment 39–4533 (48 FR 1482, January 13, 1983), to require inspections for wear, and replacement, if necessary, of the impulse coupling assemblies on certain Teledyne Continental Motors (TCM) (formerly Bendix) S–20, S–1200, D–2000, and D–3000 series magnetos equipped with impulse couplings. That action was prompted by reports of numerous magneto failures. That condition, if not corrected, could result in magneto failure and subsequent engine failure.

Since the issuance of that AD, TCM has redesigned the impulse coupling assembly to include snap ring fastening technology which strengthens the cam axle and reduces wear. This improved impulse coupling assembly does not have the failure mode of the previous design. This proposed AD would retain the repetitive inspections for wear required by the current AD, but would also require replacement, if necessary, of the riveted impulse coupling assembly with newly designed, improved, snap ring impulse coupling assemblies. In addition, the proposed AD would require marking the magneto data plate to indicate installation of a snap ring impulse coupling assembly. Installation of snap ring impulse coupling assemblies constitutes terminating action to the inspection requirements of this AD.

The FAA has reviewed and approved the technical contents of TCM Mandatory Service Bulletin (SB) No. 599D, dated January 1992, that describes procedures for inspection of the impulse coupling assemblies for wear; replacement, if necessary, of the older riveted impulse coupling assembly with the newly designed, improved, snap ring impulse coupling assembly; and marking the magneto data plate to indicate installation of a snap ring impulse coupling assembly; and TCM SB No. 639, dated March 1993, that clarifies procedures for installation of impulse coupling assemblies.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 78–09–07 R3 to require repetitive inspections for wear of the impulse coupling assembly, and require replacement, if necessary, of older riveted impulse coupling assemblies with newly designed, improved, snap ring impulse coupling assemblies. The proposed AD would also require marking the magneto data plate to indicate installation of the snap ring impulse coupling assembly. Installation of snap ring impulse coupling assemblies constitutes terminating action to the inspection requirements of this AD.

The FAA estimates that approximately 130,000 magnetos of the affected design were installed on aircraft of U.S. registry. The manufacturer has advised the FAA that based on their current records, approximately 48,000 of the new design snap ring impulse couplings have already been installed. Therefore, the total population is approximately 82,000. The following is a breakdown of the estimated cost per aircraft category, utilization rate, and inspection intervals, and assuming that 41,000 magnetos are installed on commuter category aircraft, and the remaining 41,000 magnetos are installed on general category aircraft:

Commuter Category—500 Hrs./yr = 1 inspection/year @ $55/work hour ×41,000 = $4,510,000/yr

General Category—100 Hrs/yr ×5 years = 500 hours = 1 inspection @ $55/work hour ×41,000 = $4,510,000 per 5 year period. If an operator voluntarily chooses to replace the magneto rather than continuing with the inspections, the estimated total cost per magneto would be $125.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by removing amendment 39–3205, as amended by amendments 39–3253, 39–3963, and 39–4538 (48 FR 1482, January 13, 1983) and by adding a new airworthiness directive to read as follows:

Teledyne Continental Motors: Docket No. 93–ANE–07. Supersedes AD 78–09–07 R3, Amendment 39–4538.

Applicability: Teledyne Continental Motors (TCM) (formerly Bendix) S–20, S–1200, D–2000, and D–3000 series magnetos equipped with impulse couplings, installed on but not limited to piston powered aircraft manufactured by Beech, Cessna, Mooney, and Piper.

Compliance: Required as indicated, unless accomplished previously.

To prevent magneto failure and subsequent engine failure, accomplish the following:

(a) For magnetos with riveted impulse coupling assemblies, having less than 450 hours time in service (TIS) since new, or overhaul, or since last inspected, on the effective date of this AD, accomplish the following:

(1) Prior to the accumulation of 500 hours TIS since new or overhaul, inspect riveted impulse coupling assemblies for wear, and replace, if necessary, with serviceable newly designed, improved, snap ring impulse coupling assemblies, in accordance with the Detailed Instructions of TCM Mandatory Service Bulletin (SB) No. 599D, dated January 1992, and TCM SB No. 639, dated March 1993.

(2) Thereafter, at intervals not to exceed 500 hours TIS since the last inspection, inspect riveted impulse coupling assemblies for wear, and replace, if necessary, with serviceable newly designed, improved, snap ring impulse coupling assemblies, in accordance with the Detailed Instructions of TCM Mandatory SB No. 599D, dated January 1992, and TCM SB No. 639, dated March 1993.

(b) For magnetos with riveted impulse coupling assemblies, having 450 or more hours TIS since new or overhaul or since last inspected, on the effective date of this AD, or an unknown TIS on the effective date of this AD, accomplish the following:

(1) Within the next 50 hours TIS after the effective date of this AD, inspect riveted impulse coupling assemblies for wear, and replace, if necessary, with serviceable newly designed, improved, snap ring impulse coupling assemblies, in accordance with the Detailed Instructions of TCM Mandatory SB No. 599D, dated January 1992, and TCM SB No. 639, dated March 1993.

(2) Thereafter, at intervals not to exceed 500 hours TIS since the last inspection, inspect riveted impulse coupling assemblies for wear, and replace, if necessary, with serviceable newly designed, improved, snap ring impulse coupling assemblies, in accordance with the Detailed Instructions of TCM Mandatory SB No. 599D, dated January 1992, and TCM SB No. 639, dated March 1993.

(c) Installation of newly designed, improved, snap ring impulse coupling assemblies in accordance with the Detailed Instructions of TCM Mandatory SB No. 599D, dated January 1992, and TCM SB No. 639, dated March 1993, constitutes terminating action to the inspection requirements of this AD.

(d) Whenever a newly designed, improved, snap ring impulse coupling assembly is installed, mark the magneto data plate as described in paragraph 2.5 of TCM Mandatory SB No. 599D upon installation of the impulse coupling assembly.

Note: Compliance with this AD does not change the normal inspections/intervals specified in TCM maintenance/overhaul documents.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on September 8, 1993.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–23022 Filed 9–20–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–SW–15–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 206A, 206B, 206L, 206L–1, and 206L–3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (BHTI) Model 206A, 206B, 206L, 206L–1, and 206L–3 helicopters. This proposal would require a one-time inspection for cracks of tail rotor drive shaft bearing support brackets (brackets), and repair or replacement, as necessary. This proposal is prompted by reports of cracks in the bend radius of the brackets. The actions specified by the proposed AD are intended to prevent misalignment of the tail rotor drive shaft, failure of the tail rotor drive shaft system, loss of control of the tail rotor, and subsequent loss of control of the helicopter.

DATES: Comments must be received by November 5, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–15–AD, 4400 Blue Mound Road, Fort Worth, Texas 76106. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Attention Customer Support, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, bldg. 3, room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Miles, Aerospace Engineer, Rotorcraft Certification Office, FAA, Rotorcraft Directorate, Fort Worth, Texas 76193–0170, telephone (817) 624–5172, fax (817) 740–3994.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact

concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–SW–15–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–15–AD, 4400 Blue Mound Road, Fort Worth, Texas 76106.

Discussion

This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (BHTI) Model 206A, 206B, 206L, 206L–1, and 206L–3 helicopters. Field reports have been received that indicate cracks have been discovered in the bend radius of the tail rotor drive shaft bearing support brackets (brackets), part numbers (P/N) 206–030–407, 206–030–433 or 206–033–412. This was confirmed during a stock purge conducted by the manufacturer, during which several brackets of each part number were discovered to have cracks in the bend radius. This condition, if not corrected, could result in misalignment of the tail rotor drive shaft, failure of the tail rotor drive shaft system, loss of control of the tail rotor, and subsequent loss of control of the helicopter.

The FAA has reviewed and approved BHTI Alert Service Bulletin 206–92–69, dated September 29, 1992, that is applicable to BHTI Model 206A, and 206B helicopters; and, Alert Service Bulletin 206L–92–84, dated September 29, 1992, that is applicable to BHTI Model 206L, 206L–1, and 206L–3 helicopters, that describe procedures for performing a one-time dye penetrant inspection for cracks in the bend radius of all affected brackets and repair or replacement of any cracked brackets before further flight.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time dye penetrant inspection of brackets, P/N 206–033–412, 206–030–407, or 206–030–433, for cracks in the bend radius, and if cracks are found, repair or replacement of the affected brackets before further flight. Additionally, it is proposed that a one-time dye penetrant inspection be performed on all affected brackets prior to installation on a helicopter. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 5,500 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $120 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,265,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bell Helicopter Textron, Inc. (BHTI): Docket No. 93–SW–15–AD.

Applicability: Model 206A and 206B helicopters, with tail rotor drive shaft bearing support brackets (brackets), part numbers (P/N) 206–030–407 and –433, installed; and Models 206L, 206L–1, and 206L–3 helicopters, with brackets, P/N 206–033–412, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent misalignment of the tail rotor drive shaft, failure of the tail rotor drive shaft system, loss of control of the tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 100 hours' time-in-service after the effective date of this AD and prior to installing any affected brackets on a helicopter, accomplish the following:

(1) Inspect and rework brackets, P/N 206–030–407 and –433 in accordance with the accomplishment instructions of BHTI Alert Service Bulletin (ASB) No. 206–92–69, dated September 29, 1992.

(2) Inspect and rework brackets, P/N 206–033–412, in accordance with the accomplishment instructions of BHTI ASB 206L–92–84, dated September 29, 1992.

(b) If multiple cracks are found, or if a crack is found that equals or exceeds 0.10 inches in length, replace the bracket before further flight.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Southwest Region, Rotorcraft Directorate, Fort Worth, Texas 76193–0170. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from Rotorcraft Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on August 31, 1993.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–23093 Filed 9–20–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Subchapter B

[Docket No. RM93-23-000]

Project Decommissioning at Relicensing; Notice of Inquiry

September 15, 1993.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is inviting comment on a series of related questions that involve the decommissioning of licensed hydropower projects after the original license for the project has expired. Can and should the Commission consider decommissioning of a project as an alternative to issuance of a new license for it and, if so, under what circumstances and pursuant to what conditions?

The Commission is not proposing new regulations at this time, but invites comment on whether new regulations may be appropriate and, if so, what such regulations ought to provide. Alternatively, the Commission may consider issuing a statement of policy.

DATES: Initial comments are due on or before December 20, 1993, and reply comments are due no later than 30 days after the due date for initial comments.

ADDRESSES: An original and 14 copies of written comments must be filed. All filings should refer to Docket No. RM93-23-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Barry Smoler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-1269.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1379. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208-1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is inviting comment on a series of related questions that involve the decommissioning of licensed hydropower projects after the original license for the project has expired. The Commission is not proposing new regulations at this time, but invites comment on whether new regulations may be appropriate and, if so, what such regulations ought to provide. Alternatively, the Commission may consider issuing a statement of policy.

II. Background

Sections 14 and 15 of the Federal Power Act (FPA),[1] as amended by the Electric Consumers Protection Act of 1986 (ECPA),[2] provide the regulatory framework for the relicensing of hydropower projects. These statutory provisions are implemented in Parts 4 and 16 of the Commission's regulations implementing the FPA.[3]

Section 14 of the FPA provides that the United States has the right to take over a project at the expiration of its license, upon payment of the net investment of the license plus reasonable severance damages.[4]

Section 15(a)(1) of the FPA provides that, if the United States does not take over a licensed project at the end of the license term, then the Commission may issue a new license to the existing licensee or a new licensee, and that until disposition of the project the Commission shall issue an annual license to the existing licensee under the terms and conditions of the existing license.[5]

Section 15(f) of the FPA authorizes the Commission, on its own motion or upon application of any person, to issue a nonpower license whenever it determines that all or part of any licensed project should no longer be used for power purposes.[6] A nonpower

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[1] 16 U.S.C. 807 and 808.

[2] Pub. L. No. 99-495, 100 Stat. 1243.

[3] See 18 CFR Parts 4 and 16; see also Order No. 513, 54 FR 23756 (June 2, 1989), III FERC Stats. & Regs. ¶ 30,854, *on rehearing*, Order No. 513-A, 55 FR 4 (Jan. 2, 1990), 49 FERC ¶ 61,398.

[4] Section 14(b) provides as follows: (b) In any relicensing proceeding before the Commission any Federal department or agency may timely recommend, pursuant to such rules as the Commission shall prescribe, that the United States exercise its right to take over any project or projects. Thereafter, the Commission, if it does not itself recommend such action pursuant to the provisions of section 7(c) of this Part, shall upon motion of such department or agency stay the effective date of any order issuing license, except an order issuing an annual license in accordance with the proviso of section 15(a), for two years after the date of issuance of such order, after which period the stay shall terminate, unless terminated earlier upon motion of the department or agency requesting the stay or by action of Congress. The Commission shall notify the Congress of any stay granted pursuant to this subsection.

Section 14 also provides that the United States or any state or municipality can take over a licensed project at any time, upon payment of just compensation.

[5] Section 15(a)(1) provides as follows: (a)(1) That if the United States does not, at the expiration of the existing license, exercise its right to take over, maintain, and operate any project or projects of the licensee, as provided in section 14 hereof, the Commission is authorized to issue a new license to the existing licensee upon such terms and conditions as may be authorized or required under the then existing laws and regulations, or to issue a new license under said terms and conditions to a new licensee, which license may cover any project or projects covered by the existing license, and shall be issued on the condition that the new licensee shall, before taking possession of such project or projects, pay such amount, and assume such contracts, as the United States is required to do, in the manner specified in Section 14 hereof: *Provided*, That in the event the United States does not exercise the right to take over or does not issue a license to a new licensee, or issue a new license to the existing licensee, upon reasonable terms, then the Commission shall issue from year to year an annual license to the then licensee under the terms and conditions of the existing license until the property is taken over or a new license is issued as aforesaid.

[6] Section 15(f) provides as follows: (f) In issuing any licenses under this section except an annual license, the Commission, on its own motion or upon application of any licensee, person, State, municipality, or State commission, after notice to each State commission and licensee affected, and after opportunity for hearing, whenever it finds that in conformity with a comprehensive plan for improving or developing a waterway or waterways for beneficial public uses all or part of any licensed project should no longer be used or adapted for use for power purposes, may license all or part of the project works for nonpower use. A license for nonpower use shall be issued to a new licensee only on the condition that the new licensee shall, before taking possession of the facilities encompassed thereunder, pay such amount and assume such contracts as the United States is required to do, in the manner specified in section 14 hereof. Any license for nonpower use shall be a temporary license. Whenever, in the judgment of the Commission, a State, municipality, interstate agency, or another Federal agency is authorized and willing to assume regulatory supervision of the lands and facilities included under the nonpower license and does so, the Commission shall thereupon terminate the license. Consistent with

Continued

license may be issued to a new licensee only on the condition that the new licensee pay the existing licensee its net investment plus reasonable severance damages, as specified in section 14 of the FPA. A nonpower license is a temporary license which the Commission will terminate whenever it determines that another governmental agency (municipal, state, interstate, or federal) will assume regulatory authority and supervision over the lands and facilities covered by the nonpower license.[7]

Section 3 of the ECPA, "Environmental Consideration in Licensing," amended section 4(e) of the FPA to require the Commission, in its licensing activities, to give equal consideration to preserving environmental quality, including "the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), [and] the protection of recreational opportunities * * *." These considerations were "in addition to the power and development purposes for which licenses are issued * * *."[8]

ECPA also amended section 10(a) of the FPA, which stipulates the conditions on which hydropower licenses are issued, to direct that the project adopted "will be best adapted to a comprehensive plan [not only] for improving or developing a waterway or waterways for the use or benefit of interstate or foreign comment, for the improvement and utilization of water power development," but also "for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 4(e) * * *." ECPA required the Commission to consider the "recommendations of Federal and State agencies exercising administration over flood control, navigation, irrigation, recreation, cultural and other relevant resources of the State in which the project is located, and the recommendations (including fish and wildlife recommendations) of Indian tribes affected by the project." ECPA required the Commission to "solicit recommendations" from these agencies and affected Indian tribes for "proposed terms and conditions for the Commission's consideration for inclusion in the license."[9] ECPA also added section 10(j) to the FPA, which requires the Commission to consult with fish and wildlife agencies and to base fish and wildlife conditions of licenses on these agencies' recommendations unless they are found to be inconsistent with the law.[10]

Section 4(e) of the FPA requires that Commission licenses for projects located within United States reservations must include all conditions that the Secretary of the department under whose supervision the reservation falls shall deem necessary for the adequate protection and utilization of such reservation.[11] Section 18 of the FPA requires the Commission to require the licensee to provide "such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce."[12] And section 10(a)(2)(A) of the FPA requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project.[13]

More broadly, the National Environmental Policy Act of 1969 (NEPA)[14] requires the Commission to include environmental consideration in the licensing process. The NEPA review frequently culminates in attaching conditions to a license to mitigate environmental impacts. Other statutes have also been interpreted to require the Commission to consider environmental values in its decisionmaking process.[15]

Finally, section 401(a)(1) of the Clean Water Act[16] requires the license applicant to obtain, from the state in which any project discharge into navigable waters originates, certification that such discharge will comply with applicable water quality standards. State agencies sometimes attach water quality conditions to the certification, such that the project can be licensed only subject to those conditions.

Much of the legislation enumerated above was enacted subsequent to the issuance of the original licenses that are now expiring. Thus, the applicable standards for environmental review and mitigation are substantially more stringent at relicensing than they were when the project was originally licensed. In some situations, the cost of installing new project facilities (such as fish ladders or fish screens) to mitigate adverse environmental impacts, or the loss of revenue attributable to changes in project operation to mitigate adverse environmental impacts[17] (or the combined effect of new facilities and changes in operation), may render uneconomic a project that had previously been operated as an economically viable venture.

The FPA provides for the transfer of ownership of hydroelectric projects but, aside from surrenders and nonpower licenses, addresses only situations which presuppose the continued operation of existing projects. The ECPA amendments to the FPA addressed the rules governing competition at relicensing, but did not address whether the Commission's statutory mandate included the authority to compel the decommissioning of hydropower projects.

In light of this, there has been raised a threshold question of the scope of the Commission's authority at relicensing. On the one hand, the FPA contains various explicit provisions with respect to issuing new licenses, annual licenses,

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the provisions of the Act of August 15, 1953 (67 Stat. 587; 16 U.S.C. 828–828c), every licensee for nonpower use shall keep such accounts and file such annual and other periodic or special reports concerning the removal, alteration, nonpower use, or other disposition of any project works or parts thereof covered by the nonpower use license as the Commission may by rules and regulations or order prescribe as necessary or appropriate.

[7] Because of the small size of projects that hold a minor license, the Commission, pursuant to section 10(i) of the FPA, frequently waives the application of certain provisions of the FPA, including part of section 14 and all of section 15, in issuing a minor license. The Commission recently explained the effect of this waiver as follows: In order that the Commission will be able, if circumstances so warrant, to "clear the stream" (obtain removal of a project) at the end of a minor project's license term, it never waives the federal takeover provisions of Section 14 without also waiving the relicense and annual license provisions of Section 15, such that there can be no risk of a perpetual license. However, although no annual licenses are issued for such minor projects, these projects can, pursuant to other authority, continue to operate pending Commission disposition of the project.

Wisconsin Electric Power Co., 62 FERC ¶ 61,064 at p. 61,309 (1993) (footnotes omitted). As noted in that order, if the licensee has made a timely and sufficient application for renewal of the license, the licensee may continue to operate the project pursuant to the provisions of Section 9(b) of the Administrative Procedure Act, 5 U.S.C. § 558(c) (1982), which provides that the license "does not expire until the application has been finally determined by the agency." *See also* 18 CFR 16.21(a).

[8] 16 U.S.C. 797(e).

[9] 16 U.S.C. 803(a).

[10] 16 U.S.C. 803(f).

[11] 16 U.S.C. 797(e).

[12] 16 U.S.C. 811.

[13] 16 U.S.C. 803(a)(2)(A).

[14] 42 U.S.C. 4321 *et seq.*

[15] *See, e.g.*, the Endangered Species Act of 1973, 16 U.S.C. 1531–1543 (1988); the Anadromous Fish Conservation Act, 16 U.S.C. 757a–757d (1988); and the National Historic Preservation Act, 16 U.S.C. 470–470w–6.

[16] U.S.C. 1341(a)(1).

[17] A newly-imposed requirement of a minimum flow in a bypassed reach of the river, or of a run-of-river operating mode, could reduce the volume or value of the electricity generated by the project. The value of the electricity could be reduced if run-of-river operation results in some of the electricity being generated during off-peak periods instead of peak periods.

and nonpower licenses, and recommending federal takeover, but it does not explicitly authorize the Commission to require decommissioning of a project. On the other hand, implicit and inherent in the authority to issue a license would be the authority to refrain from issuing a license when the Commission, in the exercise of its administrative judgment, determines on a record that the continued operation of a licensed project, and perhaps even the continued existence of the project dam, is not in the public interest. In other words, presumably Congress intended the Commission's authority to issue licenses to operate hydroelectric projects to be discretionary, not mandatory.[18]

Beyond the legal issues associated with decommissioning, the Commission has a public policy interest in assessing at an early stage the potential issues that would need to be addressed if projects, whether on a mandatory or voluntary basis, are decommissioned.

III. Invitation for Comments

A. Issues Unique to Relicensing

1. Does the Commission have the authority to determine that no project should be operated or maintained at the site of a project whose original license has expired? May the Commission decline to issue a new license for the project without issuing an annual license or a nonpower license or recommending federal takeover?

2. Does the Commission have the authority to require the holder of an annual license to file an application to surrender it? Assuming no new application has been filed, can the Commission require the holder of an annual license to decommission the project and cease operating it?

3. Should the licensee's conduct and/or the particular circumstances of the case affect in any way the Commission's authority regarding decommissioning? For example, should it make any difference if the licensee requests or consents to project decommissioning? Should it make any difference if the decommissioning issue affects only part of a project (such as a reservoir, dam, or some other project facility)?

4. Does question no. 1 pose an implicit choice between licensee responsibility and federal takeover, i.e., an implicit choice as to who is responsible for removing project works and who should bear the cost? If the Commission required the holder of an annual license to file an application to surrender it, would the Commission be required to ensure that the annual licensee received its "net investment" in the project and reasonable severance damages?

5. Barring federal takeover or issuance of a non-power license or of a new license to a third party applicant, must an existing licensee be given a new license with whatever conditions are necessary for mitigation, enhancement, and protection of natural resources regardless of the effect of the conditions on the economic viability of the project? If such a new license were issued and the applicant declined the license, refused to comply with its terms, or indicated an intent to abandon the project, could the Commission construe the applicant/existing licensee's position as a *de facto* application to surrender the license? Could the Commission then order the decommissioning of part or all of the project (with or without removal of project facilities)?

6. If the Commission has the authority to require the holder of an annual license to file an application to surrender it, and if the Commission requires that the project be decommissioned, may the Commission require an existing licensee to install new project facilities to protect the environment, such as fish screens or fish passage facilities, as part of the decommissioning process? May the Commission require the existing licensee to remove any project facilities as part of the decommissioning process or, alternatively, to maintain certain project facilities in perpetuity as part of that process? In particular, does the Commission have the legal authority to require removal of a dam as part of that process? Would the answers to any of the above be different if only part of the project were decommissioned?

7. May the Commission issue a new license to an existing licensee that prefers to continue operating a project that is no longer economical, rather than incur the one-time cost of decommissioning the project?

8. What are the existing licensee's responsibilities with respect to decommissioning, if the existing licensee does not apply for a new license and wants to abandon the project? In such a situation, is a licensee responsible for decommissioning the project, with or without removal of facilities, at the end of the term of the license or of the project's useful life? If so, how should "useful life" be defined?

9. Assuming that project facilities removal/decommissioning is the project owner's responsibility, how should the appropriate time to begin recognition of this liability be determined in light of the fact that most projects continue to be economic when the original license expires? Would it be appropriate to impose such a requirement at the time the first new license is issued?

10. Can the Commission condition new licenses (if so requested) to require a reserve or trust fund that could be used to finance the cost of decommissioning and/or the removal of project facilities when the new license expires? If so, under what circumstances should it do so?

B. Issues at Both Original Licensing and Relicensing

11. There are licensees over which the Commission does not have ratemaking jurisdiction. Should the Commission establish accounting or other requirements and undertake to audit these entities to ensure the availability of funds for decommissioning?

12. Can and should the Commission include, in either a new or an original license, a requirement that the licensee accumulate a fund or reserve that can be used to retire or decommission the project, including removal of project facilities, at the termination of the license? Would the propriety of such a condition depend either (1) on whether there is some particular threshold of evidence in the present record indicating that project decommissioning may or would be appropriate in the future, or (2) on the agreement of the license applicant to accept such a condition in a new license?

13. What alternatives would there be to requiring individual licensees to contribute to a project-specific fund? Would it be feasible and appropriate to have a program-wide fund, funded through a collection of charges for that purpose from all licensees?

14. With respect to both a project-specific fund and a program-wide fund, what mechanisms would be used for collecting and administering the money? Would such a fund be administered by the licensees (jointly or severally), by State government

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[18] In 1989, the Commission issued a lengthy rulemaking order promulgating regulations to implement the relicense provisions of ECPA. Hydroelectric Relicensing Regulations Under the Federal Power Act, FERC Statutes & Regulations, Regulations Preambles 1986–1990, ¶ 30,684 (1989), 54 FR 23,756 (1989) (Order No. 513). In the preamble to the final rule, the Commission invoked, without much elaboration, its general and inherent authority for the proposition that it could require licensees, at the end of the license term, to file to surrender their license and to carry out the Commission's directives for vacating the site. *See* ¶ 30,684 at pp. 31,450–51. This proposition was not challenged on rehearing. Since issuance of Order No. 513, parties in individual proceedings have raised specific arguments challenging the Commission's authority in this regard. In this notice of inquire we are therefore undertaking a thorough examination of the nature and scope of our authority on relicensing to compel termination of a license and vacation of the site.

agencies, or by the Commission? Who would determine how much money to collect, and pursuant to what guidelines? Who would determine how and when to allow monies from the fund to be dispersed, and what findings would be needed to make those determinations? What accounting standards would be utilized?

C. General

15. Would it be appropriate for the Commission to propose new regulations, license articles, or a policy statement that address any of the above matters? If so, what new regulations, license articles, or policy clarification should the Commission consider?

IV. Comment Procedure

The Commission invites interested persons to submit written comments and reply comments on the matters discussed in this notice. An original and 14 copies of the written comments must be filed with the Commission no later than December 20, 1993 for initial comments, and no later than January 19, 1994 for reply comments. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM93–23–000. Commenters should reference the questions they wish to address.

Written comments will be placed in the public file of the Commission and will be available for inspection at the Commission's Public Reference Room, at 825 North Capitol St., NE., Washington, DC 20426, during regular business hours.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–23037 Filed 9–20–93; 8:45 am]

BILLING CODE 6717–01–M

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18 CFR Part 2

[Docket No. RM93–25–000]

Use of Reserved Authority in Hydropower Licenses to Ameliorate Cumulative Impacts; Notice of Proposed Policy Statement

September 15, 1993.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed policy statement.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to adopt a policy statement with respect to the use of reserved authority in licenses for hydropower projects to ameliorate the cumulative impacts of such projects in the same river basin. The Commission is inviting comments on the proposed policy statement.

DATES: Initial comments are due on or before November 5, 1993, and reply comments are due no later than 30 days after the due date for initial comments.

ADDRESSES: An original and 14 copies of written comments must be filed. All filings should refer to Docket No. RM93–25–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Barry Smoler, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 208–1269.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of the issuance. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to adopt a policy statement with respect to the use of reserved authority in licenses for hydropower projects to ameliorate the cumulative impacts of such projects in the same river basin.

II. Background

On June 17, 1993, the Commission held a roundtable discussion with a broad spectrum of organizations interested in the process for considering applications for new licenses for existing hydropower projects whose original licenses are expiring. A number of the participants at the roundtable discussion expressed concern over the cumulative impacts on the environment of multiple hydropower projects located in the same river basin. They expressed particular concern with respect to the evaluation and mitigation of such cumulative impacts when the licenses for the various projects expire at different times over a period of years, such that the relicense proceedings for these projects are not pending before the Commission for decision at the same time.

Pursuant to sections 10(a)(1) and 4(e) of the Federal Power Act (FPA), all licenses issued by the Commission under Part I of the FPA shall be for projects which are best adapted to a comprehensive plan for improving or developing the waterway for beneficial public purposes, consistent with the comprehensive development standard of section 10(a)(1).[1] The section 10(a)(1) mandate continues throughout the term of a license, and is the standard by which license amendments, whether initiated by the licensee or the Commission, are judged.[2] Under this standard, all public interest considerations,[3] including the impact on project viability, are relevant to the Commission's decisionmaking.

In each license that it issues, the Commission includes a set of standard

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[1] Section 10(a)(1), 16 U.S.C. 803(a)(1), provides that all licenses issued by the Commission under Part I of the FPA shall be for projects which: in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public purposes, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 4(e).

Section 4(e) of the FPA, 16 U.S.C. 797(e), states, in pertinent part: In deciding whether to issue any license under this Part for any project, the Commission, in addition to the power and development purposes for which licenses are issued, shall give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.

[2] *See, e.g.*, Trinity River Authority of Texas, 41 FERC ¶ 61,300 (1987); Pacific Gas & Electric Co., 46 FERC ¶ 61,249 (1989); Oroville-Wyandotte Irrigation District, 53 FERC ¶ 61,439 (1990).

[3] *See, e.g.*, Cooley v. FERC, 843 F.2d 1464, 1471–72 (D.C. Cir. 1990).

articles known as L–Forms.[4] The L–Forms contain broad reservations of the Commission's authority to require alterations in the public interest to project works and operations, after notice and opportunity for hearing.[5] The subject matter of these "reopener" articles includes the installation of additional capacity; the electric and hydraulic coordination of the project with other projects; the use, storage, and discharge from storage of project waters; the compensated use of project lands and waters for water supply, steam electric, irrigation, industrial, municipal, or similar uses; the conservation and development of fish and wildlife resources; and recreational facilities.

Most pertinent to the modification of projects to adjust to new information on cumulative impacts and comprehensive development are the articles dealing with hydraulic coordination, project water storage, and fish and wildlife resources. These articles read as follows:[6]

[Coordination] The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

[Storage] The operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public purposes, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Commission may prescribe for the purposes hereinbefore mentioned.

[Fish and Wildlife] The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of[,] such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

The use of reopener license articles has been sustained as an appropriate means for the Commission to pursue the broad public policy objectives of section 10(a)(1) of the FPA.[7]

III. Discussion

The Commission recognizes the importance of analyzing the potential cumulative impacts of multiple projects in the same river basin. This matter, however, arises in an unusual context. In one year, 1993, 167 original licenses will expire. The vast majority of those licensees have filed applications for a new license. This presents the Commission with an imperative to carefully manage and expedite the orderly processing of these applications. Thus, we perceive a need to strike a reasonable balance that maximizes, to the extent feasible, taking a meaningful hard look at the cumulative impacts in a river basin without allowing the relicensing program to bog down in unacceptable delay. Such delays could in themselves be damaging to the environment, as they would delay mitigation of adverse impacts at individual project sites.

The Commission will in any event be examining cumulative impacts in its environmental assessments (EA) and environmental impact statements (EIS). The Commission intends to prepare a number of multi-project EA's and EIS's that examine the cumulative impacts of related projects whose original licenses expire reasonably contemporaneously with each other. The Commission will also include consideration of potential cumulative impacts in its environmental analysis of individual projects. To the extent feasible and consistent with the orderly processing of pending cases, the Commission will address cumulative impacts as it issues orders on relicensing, for example by considering all related pending matters at the same time.

A question arises, however, concerning the development of thorough cumulative impact analyses for individual projects in the same river basin that are subject to original licenses that expire at fairly disparate points in time. Arguably, one solution would be to delay consideration of some applications pending the filing of others so that all issues in a river basin can be reviewed at one time. Such a solution, however, creates the same problems of delay described above. We believe that, in the context of certain applications and certain river basins, a reasonable balance can be achieved in the following manner.

If, in analyzing cumulative project impacts in the context of one or more pending relicense proceedings involving the same river basin, it becomes clear that a critical cumulative role is played by another licensed project in the basin whose license does not expire for a number of years, the Commission has identified two ways of addressing this problem. Either or both may be appropriate in particular cases. The first option involves the project whose license does not expire for a number of years. If that project's license contains reserved authority of the kind set forth in the L-Form license articles described above, then the Commission will consider the appropriateness of using its reserved authority to reopen that project's license to address the cumulative impact issue. Whether to do so, and when, would depend on such factors as the nature and seriousness of the cumulative issues involved, the number of years before the project's current license expires, and the amount of delay to the relicensing proceedings (and therefore delay to new environmental mitigation measures on relicensing) that would be occasioned by the inclusion in the analysis of information about how the other project's cumulative impacts could be addressed.

The second option involves the project or projects being relicensed. The Commission may also add to a new license a special article reserving the Commission's authority to address specific types of potential cumulative impacts in the future, in connection either with the relicense proceedings for other licensed projects in the basin or with any reopener proceedings that might be initiated prior to the expiration of the licenses for such other projects.

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[4] These L–Forms are referenced at 18 CFR 2.9 (1992), but are not reproduced in the regulations. The current set of L–Forms, dated October 31, 1975, is published at 54 FPC 1799–1928. There are 21 L–Forms, containing articles relevant to combinations of the following variables: constructed or unconstructed project; major or minor project; and project affecting (1) lands of the United States, (2) navigable waters of the United States, and/or (3) the interests of interstate or foreign commerce.

The Commission also includes in licenses "special articles," which, for example, contain requirements for post-licensing studies, consultation, and project fine-tuning with respect to specific issues that received pre-licensing analysis.

[5] Most of the articles specifically require notice and opportunity for hearing. The Commission has in any event often stated that the right to notice and opportunity for hearing is inherent in all license conditions for which there has been no final determination of an issue. See, *e.g.*, Montana Power Co., 51 FERC ¶ 61,374 (1990).

[6] See, *e.g.*, Form L–1, Terms and Conditions for License for Constructed Major Project Affecting Lands of the United States, 54 FPC 1799, 1902–04.

[7] See *Dept. of the Interior* v. *FERC*, 952 F.2d 538, 546–48 (D.C. Cir. 1992); *LaFlamme* v. *FERC*, 945 F.2d 1124, 1130 (9th Cir. 1991); *Pacific Gas & Electric Co.* v. *FERC*, 720 F.2d 78, 83–84 (D.C. Cir. 1983); *State of California* v. *Federal Power Commission*, 345 F.2d 917, 921–25 (9th Cir. 1965).

The purpose of such an article would not be to narrow the Commission's ability to address an impact issue in the context of the new license, but to put the licensee on notice of the substantial likelihood that a particular issue or issues would be revisited in connection with the analysis of other specified projects in the basin.

We recognize the importance of providing project developers and financiers as much certainty as possible when we issue a license. We will strive to do so. Consequently, to the maximum extent possible, these special conditions will be designed to describe reasonably foreseeable resource concerns that may warrant modifications of the project.

If, during the term of a project's new license, there arise cumulative impact issues potentially involving the project which the Commission did not anticipate, the Commission will have available to it the authority to examine and address such issues, pursuant to the standard L–Form "reopener" articles (discussed above) that will be added to all new licenses. Use of this general reopener authority would depend on the particular facts and circumstances presented.[8] We also stress that, as is the case with any reservation of authority in a hydroelectric license, use of the reopener authority would be subject to the statutory standards of comprehensive development set forth in section 10(a)(1) of the FPA. The Commission would use the reopener authority to adopt only such modifications to licenses as may be reasonably necessary to ameliorate cumulative impacts. The Commission would consider a variety of factors, including the sources and causes of the cumulative impacts, the costs of ameliorating them, and the ability of the various licensed projects to bear those costs.

Although reopener clauses have been used in the past, they have not routinely been used to address cumulative impact concerns. Commenting parties may, of course, suggest alternative approaches to address the cumulative impacts issue.

The Commission also welcomes comments on the financial consequences of using reopeners (both the special articles and the standard L-Form articles) to address cumulative environmental impacts.

[8] The Commission has broad authority under the FPA to require licensees to provide the Commission with data on cumulative impacts. *See* section 309 (administrative powers) of the FPA, 16 U.S.C. 825h; Pacific Gas & Electric Co., 46 FERC ¶ 61,249 (1989) at p. 61,732, *reh. denied*, 52 FERC ¶ 61,019 (1990).

IV. Comment Procedure

The Commission invites interested persons to submit written comments on the policy statement proposed in this notice. An original and 14 copies of the written comments must be filed with the Commission no later than November 5, 1993. Reply comments may be filed with the Commission no later than 30 days after the due date for initial comments. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM93–25–000.

Written comments will be placed in the public files of the Commission and will be available for inspection at the Commission's Public Reference Room, at 825 North Capitol St. NE., Washington, DC, 20426, during regular business hours.

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend part 2, chapter I, title 18 of the Code of Federal Regulations as set forth below.

By direction of the Commission.

Lois D. Cashell,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645, 42 U.S.C. 4321–4361, 7101–7352.

2. Part 2 is amended by adding § 2.22, to read as follows:

§ 2.22 Use of Reserved Authority in Hydropower Licenses to Ameliorate Cumulative Impacts.

The Commission believes that the standard "reopener" clauses currently incorporated into hydropower licenses (*see* § 2.9) reserve adequate authority to the Commission to require all licensees of projects located in the same river basin to mitigate the cumulative impacts of those projects on the river basin, including cumulative impacts that are identified after one or more of the licenses for those projects have been issued. The Commission may also include, as a condition to any new license, an article reserving the Commission's authority to require the licensee to undertake such measures as the Commission may later determine on a case-by-case basis to be reasonable and appropriate to mitigate the cumulative impacts of hydropower project operations within the same river basin or watershed. The Commission intends that such articles will describe, to the maximum extent possible, reasonably foreseeable future resource concerns that may warrant modifications of the licensed project. However, subsequent environmental analysis or changed circumstances may require reopening under the more general reopening authority that will be reserved in the standard license articles. The Commission believes that it has ample authority under the Federal Power Act to require licensees, during the term of the license, to develop and provide data to the Commission on the cumulative impacts of licensed projects located in the same river basin.

[FR Doc. 93–23036 Filed 9–20–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of comment period on proposed amendment.

SUMMARY: OSM is reopening and extending the public comment period of a proposed program amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter dated April 2, 1993 (Administrative Record No. IND–1217), Indiana submitted proposed Program Amendment Number 93–3 containing modifications to the Indiana Administrative Code (IAC) rules at 310 IAC 0.6. The proposed program amendment pertains to delegation of authority, ultimate authority, record of the director for surface mining permits, and defaults, dismissals, agreed orders and consent decrees. The amendment is intended to revise the IAC rules to implement statutory changes contained in the 1992 Senate Enrolled Act (SEA) 154. Upon review of the proposed amendments, OSM identified additional changes to the Indiana rules which had not been previously reviewed and

approved by OSM. Therefore, OSM is reopening the public comment period and inviting public comment on those changes which were not previously identified as amendments subject to public comment.

This document sets forth the times and locations that the Indiana program and the proposed amendment are available for public inspection, and the comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received on or before 4 p.m. on October 6, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, at the address listed below.

Copies of the Indiana program, the proposed amendment, and all written comments received in response to this document will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226–6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, IN 46204. Telephone: (317) 232–1547.

Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32071). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of Proposed Amendment

By letter dated April 2, 1993 (Administrative Record No. IND–1217), the Indiana Department of Natural Resources (IDNR) submitted proposed program amendment number 93–3. Program amendment 93–3 consists of proposed changes to the Indiana program 310 IAC 0.6. OSM announced receipt of the proposed amendments and invited public comment in the April 23, 1993 **Federal Register** (58 FR 21693).

Upon review of the proposed amendments, OSM identified additional changes to the rules which had not been previously reviewed and approved by OSM. The amendments which had not been previously identified in the April 23, 1993 **Federal Register** notice are identified below.

1. 310 IAC 0.6–1–2 Applicability of Rule

Subsection 2(a) is amended to provide that 310 IAC 0.6–1 controls proceedings conducted by an administrative law judge (ALJ) for the commission. The language which is being amended stated that this rule controls proceedings conducted by an ALJ for the department.

Subsection 2(b) provides that sections 8 and 12 of 310 IAC 0.6–1 do not apply if the ALJ is the commission. The previous language in this subsection was reviewed and not approved by OSM (see 56 FR 1915; January 18, 1991).

2. 310 IAC 0.6–1–9 Defaults, Dismissals, Agreed Orders, and Consent Decrees

In subsection 9(a), one subdivision (subdivision 9(a)(3)) was not previously identified as being new. Subdivision 9(a)(3) provides that the ALJ may enter a nonfinal order if the party which initiated the administrative review requests the proceeding be dismissed, and every other party joins or acquiesces in the dismissal.

Subsection 9(b) is new and provides that an ALJ shall approve an agreed order or consent decree entered by the parties if it is: (1) Clear and concise; and (2) lawful.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the review required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 et seq.

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 14, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–22861 Filed 9–20–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 920

Maryland Abandoned Mine Lands Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt and requesting comments on a proposed amendment to the Maryland Abandoned Mine Lands Reclamation Plan (hereinafter referred to as the Maryland plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment provides for two new abandoned mine lands (AML) program initiatives. One new program will allow Maryland to expend up to 30 percent of Title IV grants for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities related to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by certain eligible coal mining practices. The second new program will allow Maryland to use AML funds for reclamation and drainage abatement at certain eligible sites where the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before February 18, 1982. The proposed amendment was submitted in response to changes in the abandoned mine lands program that resulted from the Abandoned Mine Land (AML) Reclamation Act of 1990, and the Energy Policy Act of 1992.

This document set forth the times and locations that the Maryland plan and the proposed amendment to that plan are available for public inspection, the comment period during which interested persons may submit written comments on the amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on October 21, 1993, to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held at 9 a.m. on October 18, 1993. Requests to present testimony at the hearing must be received on or before 4 p.m. on October 6, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, Harrisburg Field Office at the address listed below. Copies of the Maryland plan, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Maryland Department of Natural Resources, Water Resources Administration, Bureau of Mines, 160 S. Water Street, Frostburg, Maryland 21532, Telephone: (301) 689–6104.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

The Secretary of the Interior approved the Maryland plan effective July 16, 1982. Information on the background of the Maryland plan including the Secretary's findings, and the disposition of comments can be found in the June 16, 1982, **Federal Register** (47 FR 25955–25957). Effective March 22, 1993, the Maryland Plan was amended to allow for the new acid mine drainage and abatement initiative provided under the AML Reclamation Act of 1990 (Public Law 101–508). The Secretary's findings and the disposition of comments relative to the Plan amendment can be found in the March 22, 1993, **Federal Register** (58 FR 15275–15277).

II. Discussion of Amendment

By letter dated August 19, 1993, the Maryland Department of Natural Resources, Bureau of Mines (BOM) submitted to OSM a proposed amendment to revise the Maryland Plan. The proposal would change the Plan to allow for two program initiatives made available under the AML Reclamation Act of 1990, and as further clarified under the Energy Policy Act of 1992. One new program will allow Maryland to expend up to 30 percent of Title IV grants for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities related to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by certain eligible coal mining practices. The second new program will allow Maryland to use AML funds for reclamation and drainage abatement at certain eligible sites where the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on or before February 18, 1982.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on whether the amendment proposed by Maryland satisfies the applicable plan approval criteria of 30 CFR 884.13. If the amendment is deemed adequate, it will become part of the Maryland Plan.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER**

INFORMATION CONTACT" by 4 p.m. on October 6, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**". All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES**". A written summary of each meeting will be made part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12291

On March 30, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or disapproval of State and Tribal abandoned mine land reclamation plans and revisions thereof. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the Federal regulations at 30 CFR parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior [516 DM 6, appendix 8, paragraph 8.4B(29)].

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State [or Tribal] submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State [or Tribe]. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 13, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–22859 Filed 9–20–93; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH38–1–5783; FRL–4731–5]

Approval and Promulgation of a Commitment To Adopt Rules for Reasonably Available Control Technology for Nitrogen Oxides; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is proposing to approve a revision to the ozone portion of the Ohio State Implementation Plan (SIP) that would satisfy the Clean Air Act (Act) requirements for the adoption of rules for the application of reasonably available control technology (RACT) for major stationary sources of nitrogen oxides (NO_x) in the Cincinnati-Hamilton interstate moderate ozone nonattainment area (Ohio). The Ohio portion of the interstate area includes the counties of Hamilton, Butler, Warren and Clermont. This revision was submitted by the Ohio Environmental Protection Agency (OEPA) on December 14, 1992. Under the Act, USEPA must approve or disapprove SIPs or portions of SIPs within timeframes specified in the Act; failure to do so would render USEPA in violation of the Act and would delay making approvable SIP rules federally enforceable. In this action, USEPA is proposing action, not on the rules themselves, but on a commitment by the State to submit the NO_x RACT rules at a later date.

DATES: Comments on this proposed revision and on the proposed USEPA approval must be received in writing by October 21, 1993.

ADDRESSES: Copies of this SIP revision and USEPA's analysis are available for inspection during normal business hours at the following address: (It is recommended that you contact Richard Schleyer at (312) 353–5089, before visiting the Region 5 Office): Air Enforcement Branch (AE–173), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Richard J. Schleyer, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 353–5089.

SUPPLEMENTARY INFORMATION:

I. Background

The air quality planning requirements for the reduction of NO_x emissions

through the implementation of RACT are set out in Section 182(f) of the Act. Section 182(f) requirements are described by USEPA in a notice, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation if Title I; Proposed Rule," (herein referred to as the NO_x Supplement) published November 25, 1992 (57 FR 55620). The NO_x Supplement should be referred to for further information on the NO_x requirements and is incorporated into this proposal by reference.

Section 182(f) of the Act requires States with areas designated nonattainment of the National Ambient Air Quality Standards (NAAQS) for ozone, and classified as moderate nonattainment and worse (including interstate moderate and ozone transport regions), to apply the same requirements to major stationary sources of NO_x as are applied to major stationary sources of volatile organic compounds (VOCs).[1] Section 182(b)(2)(C) requires States to submit RACT rules for major stationary sources of VOC emissions which are not covered by a control technologies guidelines (CTG) document by November 15, 1992.[2] USEPA has not issued a CTG document for any NO_x sources. States, in their RACT rules, are expected to require final installation of the actual NO_x controls by May 31, 1995, for those sources for which installation by that date is practicable (See 57 FR 55623).

Under Section 110(k)(4), the Administrator may approve a plan revision based on a commitment from the State to adopt specific enforceable measures by a specified date, but not later than one year after the date of USEPA approval of the plan revision that incorporated that commitment.[3]

II. Committal SIPs

As noted above, Section 110(k)(4) of the Act allows USEPA to accept a commitment from States to adopt portions of SIPs rather than the SIP itself. For example, USEPA may, in certain cases, accept a commitment from States to adopt NO_x RACT rules rather than the NO_x RACT rule itself. The NO_x Supplement and the memoranda of July 22, 1992, and September 16, 1992, from Deputy Assistant Administrator Michael Shapiro concerning the SIP submittals due November 15, 1992, and the memorandum dated February 2, 1993, from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, outline USEPA's criteria for acceptability of committal SIPs for the NO_x RACT rules. These criteria are:

1. A description of the reason for the committal SIP versus a full SIP submittal.
2. Documentation that credible photochemical grid modeling is not available or did not consider the effects of NO_x reductions.
3. Identification of resources to complete such modeling.
4. A schedule outlining the milestones that have been and will be achieved toward completion of NO_x RACT rules. The schedule must include a date for final submittal of rules to USEPA. The date for submitting the final rules to USEPA must be no later than twelve months after USEPA's final approval of the committal SIP.

III. State's Committal SIP

On December 14, 1992, USEPA received a revision request (letter dated December 9, 1992) to the ozone portion of Ohio's SIP, submitted by the OEPA. This revision consisted of a commitment for the adoption of rules for the application of RACT for major stationary sources of NO_x in the Cincinnati-Hamilton interstate moderate ozone nonattainment area by November 15, 1994. The Ohio portion of the interstate area includes the counties of Butler, Warren, Hamilton and Clermont. Sources that emit (or have the potential to emit) 100 tons per year (or more) of NO_x in these counties will be affected by the NO_x RACT rules.

The USEPA is proposing to approve this commitment because it meets the requirements of Section 110(k)(4) of the Act and conforms to the policy in the NO_x Supplement and the memoranda from Deputy Assistant Administrator Michael Shapiro of July 22, 1992, and September 16, 1992, and the February 2, 1993, memorandum from G.T. Helms (cited above), concerning the SIP submittals due November 15, 1992. A detailed analysis of the submittal can be found in a May 25, 1993, Region 5, technical support document.

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to USEPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[4] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. The State of Ohio held a public hearing on February 23, 1993, on the commitment to adopt NO_x RACT rules for the Cincinnati-Hamilton interstate moderate ozone nonattainment area.

2. RACT Implementation

States—including those for which USEPA approves a commitment to adopt a NO_x RACT rule—are expected to require final installation of the actual NO_x controls by May 31, 1995, for sources for which installation by that date is practicable. The NO_x Supplement contains a detailed discussion of USEPA's interpretation of the RACT requirement.

IV. Implications of Today's Action

The USEPA is proposing to approve a commitment by the State of Ohio for the adoption of NO_x RACT rule(s) as a SIP revision submitted to USEPA for the Cincinnati-Hamilton interstate moderate ozone nonattainment area in Ohio on December 14, 1992. Section 110(k)(4) of the Act provides that where USEPA takes final action to approve a commitment to submit a SIP or portion of a SIP, the State must fulfill that commitment (i.e., submit the required SIP or portion thereof) within one year following USEPA approval. If the State does not fulfill its commitment by submitting the SIP or revision to USEPA within that year, the Act requires that the SIP be disapproved. If USEPA disapproves the SIP for failing to meet the commitment, there are several additional consequences. As provided under Section 179(a) of the Act, if the State of Ohio fails to correct the deficiency[ies] that is[are] the subject of

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[1] "Major" as defined in Section 302 and Section 182(c), (d), and (e) of the Clean Air Act Amendments. For more information about what constitutes a major source, refer to Section 2 of the NO_x Supplement.

[2] The USEPA has defined RACT as being the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762; September 17, 1979).

[3] Refer to the "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990; Implementation of Title I; Proposed Rule," published November 25, 1992 (57 FR 55620) for details of this conditional approval with respect to the NO_x requirements. Additionally, the memoranda of July 22, 1992, entitled "Guidelines for State Implementation Plans (SIP) Submittals Due November 15, 1992," and a September 16, 1992, entitled "Correction of State Implementation Plan Submittals Table," from Deputy Assistant Administrator Michael Shapiro concerning the SIP submittals due November 15, 1992, also outline the general requirements for conditional approval actions, as well as USEPA's criteria for acceptability of committal SIPs for the NO_x RACT rules.

[4] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of Section 110(a)(2).

the disapproval within 18 months after a final SIP disapproval, USEPA is required to impose either the highway funding sanction or the requirement to provide two-to-one new source review offsets. If the State has not corrected its deficiency[ies] within 6 months thereafter, USEPA must impose the second sanction. Any sanction USEPA imposes must remain in place until USEPA determines that the State has come into compliance. If USEPA ultimately disapproves all or part of the SIP submittal for the Cincinnati-Hamilton interstate moderate ozone nonattainment area and the State of Ohio fails to correct the deficiency within 18 months of such disapproval, USEPA anticipates that the first sanction it would impose would be the two-to-one offset requirement. Any final disapproval would also trigger the requirement for USEPA to impose a Federal implementation plan as provided under Section 110(c)(1) of the Act.

V. Proposed Rule

USEPA is proposing to approve a SIP revision to the ozone portion of the Ohio SIP for a commitment to adopt RACT rules for major stationary sources of NO_x in the Cincinnati-Hamilton interstate moderate ozone nonattainment area. The Ohio portion of this area includes the counties of Hamilton, Butler, Warren and Clermont.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities; 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and Subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on affected small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Public comments are solicited on the requested SIP revision and on USEPA's proposal to approve. Public comments received by October 21, 1993, will be considered in the development of USEPA's final rulemaking action.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 3, 1993.

David A. Ullrich,

Acting for Regional Administrator.

[FR Doc. 93–22990 Filed 9–20–93; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 52 and 81

[CO18–1–5523; FRL–4733–1]

Clean Air Act Approval and Promulgation of PM–10 Implementation Plan for Colorado; Designation of Areas for Air Quality Planning Purposes

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this action, the EPA proposes full approval of the State implementation plan (SIP) submitted by the State of Colorado for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The SIP was submitted by the State on April 9, 1992 to satisfy certain federal requirements for an approvable nonattainment area PM–10 SIP for Canon City, Colorado.

In addition, EPA is proposing to amend the nonattainment area boundary for the Canon City nonattainment area to include the suburbs of Canon City. The revised boundary is based on information submitted with the SIP which provided a SIP equivalent demonstration showing that the revised boundary more accurately represents the Canon City airshed.

DATES: Comments on this proposed action must be received in writing by October 21, 1993.

ADDRESSES: Written comments should be addressed to: Vicki Stamper, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

Air Pollution Control Division, Colorado Department of Health, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

I. Background

Canon City, Colorado was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act (Act) upon enactment of the Clean Air Act Amendments of 1990.[1] (See 56 FR 56694, November 6, 1991.) The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts 1 and 4 of Title I of the Act. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM–10

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et. seq.*

nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's proposal and the supporting rationale. In today's rulemaking action on the Colorado moderate PM–10 SIP for the Canon City PM–10 nonattainment area, EPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, EPA will consider any timely submitted comments before taking final action on today's proposal.

Those states containing initial moderate PM–10 nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM–10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992 (see section 189(a)). Such States also must submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13543–13544.

II. Today's Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). In today's action, EPA is proposing to grant approval of the Canon City plan revision which was due to EPA on November 15, 1991 and submitted by the State on April 9, 1992. EPA believes the attainment plan for Canon City meets all of the applicable requirements of the Act.

In addition, EPA is proposing to amend the nonattainment area boundary for the Canon City nonattainment area to include the suburbs of Canon City. The revised boundary is based on information submitted with the SIP which provided a SIP equivalent demonstration showing that the revised boundary more accurately represents the Canon City airshed.

Since the Canon City PM–10 SIP was not submitted by November 15, 1991 as required by section 189(a)(2)(A) of the Act, EPA made a finding pursuant to section 179 of the Act that the State failed to submit the SIP and notified the Governor in a letter dated December 16, 1991. See 57 FR 19906 (May 8, 1992). After the Canon City PM–10 SIP was submitted on April 9, 1992, EPA found the submittal to be complete pursuant to section 110(k)(1) of the Act and notified the Governor accordingly in a letter dated June 25, 1992. This completeness determination corrected the State's deficiency and, therefore, terminated the 18-month sanctions clock under section 179 of the Act.

A. Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[2] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1992). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA 6 months after receipt of the submission.

The State of Colorado held a public hearing on December 19, 1991 to entertain public comment on the implementation plan for Canon City. The plan for Canon City was subsequently adopted by the State and submitted by the Governor by letter dated April 9, 1992 as a proposed revision to the SIP. EPA received the submittal on April 20, 1992.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness the criteria set out at 40 CFR part 51, appendix V. The submittal was found to be complete, and a letter dated June 25, 1992 was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. In today's action, EPA proposes to approve the State of Colorado's PM–10 SIP submittal for Canon City and invites public comment on the action.

2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory should also include a comprehensive, accurate, and current inventory of allowable emissions in the area. Because the submission of such inventories is a necessary adjunct to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the submission (see 57 FR 13539).

The State of Colorado submitted a winter season emissions inventory for the base year of 1990. A winter season emissions inventory was calculated because the highest PM–10 concentrations generally occur in the winter season in Canon City. The base year inventory identified area sources as the primary cause of high PM–10 concentrations, which contributed 95% of the total emissions, with re-entrained road dust from paved and unpaved roads contribution 85%, residential wood burning contributing 8%, and tailpipe emissions and coal burning stoves contributing 2%. The remaining 5% of PM–10 emissions was due to minor point sources.

[2] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

The EPA is proposing to approve the emissions inventory because it generally appears to be accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Act.[3] For further details see the Technical Support Document (TSD).

3. RACM (Including RACT)

As noted, the initial moderate PM–10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561).

The Canon City area was designated nonattainment by operation of law pursuant to section 107(d)(4)(B) of the Act because it was a former PM–10 Group I area of concern. This Group I status was based on the statistical predication of an area's probability of violating the PM–10 NAAQS (Group I areas had the strongest likelihood of violating the PM–10 NAAQS). (See 52 FR 24634, July 1, 1987; 52 FR 29385, August 7, 1987; and 55 FR 45800, October 30, 1990 for further information.) The Canon City area, in fact, has had only one exceedance in 1988 of the 24-hour PM–10 standard, which was associated with high winds and blowing dust. No violations of the PM–10 24-hour standard or the PM–10 annual standard were ever recorded in Canon City. In addition, based on the 1990 Census results, little to no growth is expected in the Canon City nonattainment area. The Canon City area is already in attainment of the PM–10 NAAQS, and the projected ambient concentrations for the attainment year of 1994 demonstrate that the area will remain in attainment of the PM–10 NAAQS.

RACM (including RACT) does not require the adoption of potentially available control measures where, for example, such measures would not expedite attainment of the PM–10 NAAQS and, therefore, are not "reasonably" available. 57 FR 13543. As indicated, no violations of the PM–10 NAAQS have been monitored in Canon City, and EPA believes that the area is currently in attainment. The adoption and implementation of potentially available control measures would not, in this particular circumstance, expedite attainment. Thus, in this somewhat unique situation where EPA believes the area currently meets the PM–10 NAAQS without the adoption of potentially available control measures, it would be unreasonable to nevertheless require such measures.

Although the State did not adopt control measures for the Canon City nonattainment area, there are several control measures that already apply in the Canon City area. First, Canon City has adopted Resolution No. 9, which is a voluntary street sanding and street sweeping control measure to reduce emissions from re-entrained road dust. Although the State has not adopted these control measures as part of the SIP, the SIP indicates that these control measures have been, and will continue to be, implemented in the Canon City nonattainment area. In addition, Colorado Regulation No. 4, which applies State-wide, requires new wood stoves to meet the emission requirements of EPA's Standards of Performance for New Residential Wood Heaters in 40 CFR 60.532(b). Lastly, Colorado Regulation No. 3, which also applies State-wide, regulates the construction and modification of new stationary sources of PM–10.[4] A more detailed discussion of these measures can be found in the TSD. These measures will help to reduce emissions from new stationary source growth and residential wood combustion, as well as from re-entrained road dust.

EPA has reviewed the State's explanation that the implementation of potentially available control measures are not "reasonably" required for attainment and maintenance of the PM–10 NAAQS in Canon City and, therefore, that RACM (including RACT) does not require such control measures. EPA believes that the Canon City nonattainment area is currently in attainment of the PM–10 NAAQS without the adoption of potentially available control measures. Accordingly, EPA is proposing to approve the Canon City nonattainment plan as meeting the requirements of RACM (including RACT). However, EPA is not proposing action on the voluntary street sanding and sweeping measure adopted by Canon City because these measures are voluntary and because the State did not include these control requirements in the SIP. In addition, EPA is not proposing action on Regulations No. 3 and 4 because EPA has previously approved these regulations in separate notices (see the TSD for further information).

4. Demonstration

As noted, the initial moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (see section 189(a)(1)(B) of the Act). Alternatively, the State must show that attainment by December 31, 1994 is impracticable.

EPA policy specifies that the preferred approach for estimating the air quality impacts of emissions of PM–10 is to use receptor modeling in combination with dispersion modeling. However, on July 5, 1990, EPA issued guidance providing that, in certain situations, it may be more appropriate to rely on a receptor model demonstration alone as the basis for the attainment demonstration (see July 5, 1990 memo to Regional Air Branch Chiefs from Robert D. Bauman, Chief of SO_2/Particulate Matter Programs Branch and Joseph Tikvart, Chief of Source Receptor Analysis Branch). Canon City met the criteria discussed in the July 5, 1990 memo to justify using receptor modeling alone and had originally planned to use this approach in its attainment demonstration. However, after further review, the State determined that the chemical mass balance (CMB) analysis used in receptor modeling would not be appropriate in Canon City because of the high concentration of geologic material on the PM–10 filters, which is difficult to differentiate from the quartz filters used for PM–10 sampling, and because there were very few high concentration filters to analyze (only two concentrations above 100 micrograms/cubic meter ($\mu g/m^3$) have been measured in Canon City since PM–10 monitoring began in 1987). Thus, the State decided to base its attainment demonstration on simple emissions rollback modeling, which involves using the ratio of the design day ambient concentration of 93 $\mu g/m^3$ to the design day emissions and projecting future concentrations. While EPA does not agree with the rationale provided by the State for using emissions rollback modeling, EPA nevertheless does

[3] The EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 PM–10 SIP Development Guideline The guidance provided in this document appears to be consistent with the revised Act.

[4] The State is required by the amended Clean Air Act to adopt a revised new source review permit program for the construction and operation of new and modified stationary sources. See section 189(a)(1)(A). This SIP revision, which was submitted by the State on January 15, 1993, was due independent of the November 15, 1991 moderate PM–10 nonattainment area SIP requirements addressed in today's action and will be addressed in a separate notice. See section 189(a)(2)(A) of the Act.

believe that emissions rollback modeling is adequate in this application. Although there is a notable degree of uncertainty in using emissions rollback modeling in a demonstration of attainment, the PM–10 ambient concentrations in Canon City measured during the last three years are so far below the PM–10 NAAQS that an adequate margin of safety is provided. Thus, EPA believes emissions rollback modeling is appropriate in this case.

As noted, EPA believes that the Canon City area is currently in attainment of the PM–10 NAAQS. Further, the attainment demonstration indicates that the NAAQS for PM–10 will be attained in 1994 in the Canon City area and maintained in future years. The 24-hour PM–10 NAAQS is 150 μg/m³, and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 μg/m³ is equal to or less than one (see 40 CFR 50.6). The annual PM–10 NAAQS is 50 μg/m³, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 μg/m³ [id.]. The demonstration predicted that the 24-hour design concentration in the attainment year of 1994 will be 104 μg/m³, thus demonstrating attainment of the 24-hour PM–10 NAAQS. The demonstration also showed that the PM–10 NAAQS will be maintained in future years by predicting a 24-hour design concentration in 1997 of 106 μg/m³. Since no violations of the annual PM–10 NAAQS have been monitored in the Canon City area and since the attainment demonstration in the Canon City PM–10 SIP clearly shows attainment and maintenance of the 24-hour PM–10 NAAQS, it is reasonable and adequate to assume that protection of the 24-hour standard will be sufficient to protect the annual standard as well. For a more detailed description of the attainment demonstration, see the TSD accompanying this notice.

5. PM–10 Precursors

The control requirements which are applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors, unless EPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in that area (see section 189(e) of the Act).

In Canon City, there has only been one monitored exceedance of the 24-hour PM–10 NAAQS, and the analysis of the air quality and emissions data for the Canon City nonattainment area indicates that the high PM–10 concentrations are generally attributable to particulate matter emissions from area sources, mainly re-entrained road dust and residential wood combustion. In addition, the emissions inventory for this area did not reveal any major stationary sources of PM–10 precursors. Consequently, EPA is proposing to find that major stationary sources of precursors of PM–10 do not contribute significantly to PM–10 levels in excess of the NAAQS. If finalized, this finding would exclude these major stationary sources from the applicability of PM–10 nonattainment area control requirements. Further discussion of the analyses and supporting rationale for EPA's proposed finding are contained in the TSD accompanying this notice. Note that while EPA is making a general finding for this area, today's finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. The EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Quantitative Milestones and Reasonable Further Progress

The PM–10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). RFP is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by Part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

In implementing the quantitative milestone and RFP provisions for this initial moderate area, EPA has reviewed the attainment demonstration for the area to determine the nature of any milestones necessary to ensure timely attainment and whether annual incremental reductions should be required in order to ensure attainment of the PM–10 NAAQS by December 31, 1994 (see section 171(1)). Because the Canon City area is already demonstrating attainment of the PM–10 NAAQS, no further reductions are necessary. Therefore, in this special circumstance, EPA believes the Canon City PM–10 SIP satisfies the quantitative milestone and RFP requirement.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The specific control measures contained in the SIP are addressed above under section 3 entitled "RACM (including RACT)." The State has not adopted any additional particulate matter control measures for the Canon City nonattainment area because the area demonstrates attainment and maintenance of the PM–10 NAAQS without the adoption of additional control measures. Thus, it was determined that potentially available control measures were not "reasonably" available and that RACM (including RACT) did not require the adoption of such measures in this case. However, as discussed in section 3 above, there are State-wide regulations that will impact the emissions of PM–10 in the Canon City nonattainment area. These regulations include Colorado Regulation No. 4, which requires all wood stoves sold after July 1, 1991 to meet the emission requirements of EPA's Standards of Performance for New Residential Wood Heaters in 40 CFR 60.532(b), and Colorado Regulation No. 3, which requires construction permits for new or modified stationary sources. EPA has previously reviewed Colorado Regulations No. 3 and 4 at the time these regulations were approved by EPA as part of the SIP, and it was determined that these regulations met the enforceability criteria of the September 23, 1987 Potter Memorandum (see the TSD for information on EPA approvals of these regulations).

The State of Colorado has a program that will ensure that the measures contained in the SIP are adequately enforced. The Colorado Air Pollution Control Division (APCD) has the authority to implement and enforce all emission limitations and control measures adopted by the State, including the requirements of any emission control regulations, the SIP, and any permit. The APCD has the authority to impose civil penalties of up to $15,000 per day per violation, as well as criminal penalties. Thus, EPA believes the State has adequate enforcement capabilities to ensure compliance with the Canon City PM–10 SIP and the State-wide regulations. The

TSD contains further information on the State-wide regulations, enforceability requirements, and a discussion of the personnel and funding intended to support effective implementation of the control measures.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures. See generally 57 FR 13510–13512 and 13543–13544. These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM–10 NAAQS by the applicable statutory deadline. The Canon City SIP did not include any contingency measures. However, as noted, the States are not required to submit the contingency measures required in section 172(c)(9), until November 15, 1993 (see 57 FR 13543 (April 16, 1992)). Consequently, Colorado will have until November 15, 1993 to submit contingency measures for the Canon City nonattainment area.

9. Revisions to the Nonattainment Area Boundary

The Canon City nonattainment area boundary as codified on November 6, 1991 (56 FR 56736) is currently defined as the city limits of Canon City in 40 CFR 81.306. However, on June 20, 1991, the State adopted a more inclusive boundary for the Canon City PM–10 nonattainment area, which included the city limits and the suburbs of Canon City (excluding the nearby towns of Florence and Williamsburg). This revised boundary was submitted with the Canon City PM–10 SIP in April of 1992. The SIP provided a demonstration showing that the revised boundary represented the reasonable Canon City airshed by considering the local topography, meteorology, and land use practices.

The information available at the time that the Canon City PM_{10} nonattainment area was promulgated did not indicate that the boundary should include the surrounding suburban areas. However, the subsequent information presented in the SIP persuasively demonstrated that the revised nonattainment area boundary submitted with the SIP more accurately represents the Canon City airshed. (See, e.g., 57 FR 56762, 56763 (November 30, 1992).) Therefore, pursuant to section 110(k)(6) of the Act, EPA is proposing to correct its error by expanding the Canon City PM_{10} nonattainment area boundary in 40 CFR 81.306 to include the surrounding suburban area of Canon City (excluding the cities of Florence and Williamsburg). The proposed legal definition of the revised Canon City nonattainment area is as follows:

Township 18S—Range 70W, All of sections 21, 22, 27, 28, 33, and 34; the E1/2, NENW, NESW, SENW, SESW quarters of sections 20, 29, 32; and the W1/2 of sections 23, 26, and 35;

Township 19S—Range 70W, All of sections 3, 4, 9, 10; E1/2, NENW, NESW, SENW, SESW quarters of sections 5 and 8; W1/2 of sections 2 and 11.

EPA is proposing to replace the boundary description currently in 40 CFR 81.306 with this revised boundary.

III. Implications of Today's Action

The EPA is proposing to approve the plan revision submitted to EPA for the Canon City nonattainment area on April 9, 1992. Among other things, the State of Colorado has adequately demonstrated that the Canon City moderate PM–10 nonattainment area will attain the PM–10 NAAQS by December 31, 1994.

As noted, additional submittals for the initial moderate PM–10 nonattainment areas are due at later dates. The EPA will determine the adequacy of any such submittal as appropriate.

EPA is also proposing to amend the nonattainment area boundary for the Canon City nonattainment area to include the suburbs of Canon City, excluding the nearby towns of Florence and Williamsburg.

IV. Request for Public Comments

The EPA is requesting comments on all aspects of today's proposal. As indicated at the outset of this notice, EPA will consider any comments received by October 21, 1993.

V. Executive Order (EO) 12291

The OMB has exempted this rule from the requirements of section 3 of EO 12291.

VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects

40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 26, 1993.

Robert L. Duprey,

Acting Regional Administrator.

[FR Doc. 93–23065 Filed 9–20–93; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201–20 and 201–39

Amendment of FIRMR Provisions To Clarify Requirements for Delegations of Procurement Authority and To Clarify Requirements for Justifications for Other Than Full and Open Competition When Using GSA Nonmandatory Schedule Contracts

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Federal Information Resources Management Regulation (FIRMR) provisions regarding delegations of procurement authority (DPAs) for acquisitions issued under the Small Business Administration's

(SBA's) 8(a) Program, and justifications for other than full and open competition when using the General Services Administration's (GSA's) nonmandatory schedule contracts. The purposes of the amendment are to clarify that the FIRMR DPA thresholds apply to acquisitions of Federal information processing (FIP) resources through SBA's 8(a) Program, and to clarify when a justification for other than full and open competition is needed when using GSA's nonmandatory schedule contracts for FIP resources. These revisions are intended to remove the confusion about DPA and nonmandatory schedule procedures and will facilitate the acquisition of FIP requirements.

DATES: Comments are due: October 21, 1993.

ADDRESSES: Comments may be mailed to GSA/KMR, 18th and F Streets, NW., room 3224, Washington, DC 20405, Attn: Anne Horth, or delivered to that address between 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Anne Horth, GSA, Regulations Analysis Division (KMR), Office of Information Resources Management Policy, 18th and F Streets, NW., room 3224, Washington, DC 20405, telephone FTS or commercial (202) 501–0960 (v) or (202) 501–0657 (tdd).

SUPPLEMENTARY INFORMATION: Questions have arisen regarding some of the FIRMR procedures when agencies use SBA's 8(a) Program or the GSA nonmandatory schedule programs for FIP acquisitions. Although these are two separate programs involving different procedures, the clarifications are being combined and published in one proposed rule.

(1) The first area of concern involves obtaining DPAs for acquisitions conducted under SBA's 8(a) Program. Confusion exists due to the fact that agencies must comply with two different statutes when using this alternative. In addition, SBA rules (13 CFR Parts 124, 311) that apply when an indefinite delivery—indefinite quantity (IDIQ) contract is involved differ from FIRMR rules governing DPAs.

The Business Opportunity Development Reform Act of 1988 (Pub. L. 100–656), which amended section 8(a) of the Small Business Act (15 U.S.C. 637(a)), established competitive thresholds for acquisitions conducted under SBA's 8(a) Program. These thresholds are $5,000,000 for acquisitions falling within the manufacturing code and $3,000,000 for other requirements. Public Law 100–656 was implemented in subpart 19.8 of the Federal Acquisition Regulation (FAR). The Brooks Act (40 U.S.C. 759) vested in the Administrator of General Services the authority and responsibility to provide for the economic and efficient acquisition of FIP resources. The Administrator redelegates this authority to Federal agencies through a regulatory delegation, a specific agency delegation, or a specific acquisition delegation. Regulatory delegation thresholds are established in the FIRMR. The current DPA regulatory threshold is $2,500,000 ($250,000 for a specific make and model specification or a requirement available from only one responsible source) for each type of FIP resource, including all optional quantities and periods over the life of the contract. The fact that the DPA regulatory thresholds differ from the competitive thresholds established by SBA causes confusion.

In addition, the SBA regulations allow an agency to use the minimum amount guaranteed in an 8(a) IDIQ contract as the basis for determining whether a requirement will be competed. This differs from the basis used for computing an amount at which a DPA is required (the total estimated amount of each type of FIP resource, including all option quantities and option periods). Because of the differences in the FAR, SBA, and FIRMR rules governing 8(a) acquisitions, questions have arisen as to when a specific acquisition delegation is required when using SBA's 8(a) Program.

When an agency acquires FIP resources, it normally must conduct an analysis of alternatives to compare and evaluate the various alternatives for satisfying its requirements. The agency may consider use of the 8(a) Program as an alternative. The fact that an agency elects the 8(a) Program as the alternative for satisfying its needs does not obviate the requirement to obtain a DPA if the value of any one type of resource (including all optional quantities and periods) exceeds the FIRMR thresholds or the specific agency delegation, if higher or lower than the FIRMR regulatory threshold. The controlling factor in deciding if a specific acquisition DPA is required for an 8(a) acquisition for FIP resources is not whether or not it will be completed under the 8(a) program, but, rather, the manner in which the requiring office specifies its requirement and the extent to which a specification is restricted. A specific acquisition DPA is required for acquisitions that exceed the lower FIRMR regulatory delegation (currently $250,000) or a specific agency delegation for (i) a requirement specified in such a manner that it can only be satisfied with a specific make and model, or (ii) a requirement that is available from only one responsible source.

For all other requirements, the higher FIRMR DPA threshold (currently $2,500,000) or any specific agency delegation applies, notwithstanding that the 8(a) competitive thresholds are higher than the regulatory delegation levels and an agency may process a FIP requirement above the regulatory delegation on a sole source basis.

It is noted that a requirement that is available from only one responsible source may not mean the same thing as a "sole source" procurement under the 8(a) program where a requirement that may be available from more than one source may be obtained without competition. With respect to the lower $250,000 delegation threshold, this would involve a situation where the requirement would only be available from the 8(a) firm. Usually in such a case, the procurement would be processed as a traditional sole source requirement rather than an 8(a) set aside.

The proposed rule will clarify that the need for DPAs is based on a combination of basic and optional periods and quantities for all acquisitions, including 8(a) IDIQ solicitations/contracts.

(2) The second area of concern involves the use of GSA's nonmandatory schedule contracts. Questions have arisen regarding the competitiveness of an acquisition when the CBD notice of intent to place an order against a GSA nonmandatory schedule contract cites a specific make and model or a single vendor. FIRMR subpart 201–39.6 contains policy on competition requirements, including specifications for specific make and model. Because the FAR contains coverage on justifications where supplies or services are available from only one responsible source, the FIRMR does not address such requirements. It has become necessary, however, to clarify the justification requirements as they relate to nonmandatory schedule acquisitions.

When an agency uses the nonmandatory schedule contracts, the acquisition is considered to be competitive if FIRMR procedures are followed. If these procedures are followed, an agency will consider various schedule contracts for satisfying its requirements. After consideration of a reasonable number of sources, one source is selected and, if the requirement is above $50,000, a CBD notice of intent to place an order is published that cites a specific make and model and a single schedule source. Publishing a specific make and model or

a schedule contractor may not mean that only one make and model or one source was considered, which would require a justification.

The controlling factor in determining if a justification for other than full and open competition is required when using the GSA nonmandatory schedules for FIP resources is the type of specification that is used to describe the needed resources. A justification is required in the following situations: (1) If the specification is stated in such a manner that only a specific make and model can meet the requirement, notwithstanding that several sources may be able to provide the resources, or (2) if the requirement is one that is available from only one responsible source.

The proposed rule will extend FIRMR coverage on justifications to situations where a requirement is available from only one responsible source and a nonmandatory schedule contract will be used, and will clarify when justifications are needed.

(3) Explanation of the proposed changes are provided below:

(a) Subsection 201–20.305–1 is amended to clarify that, notwithstanding the different FAR levels for obtaining competition, and differing SBA regulations when an IDIQ contract is used, if an agency elects to use the SBA 8(a) Program to acquire FIP resources, the FIRMR thresholds and policies apply for obtaining DPAs from GSA.

(b) Subpart 201–39.6 is amended to clarify FIRMR procedures that a justification for other than full and open competition is required when the specification used for acquiring resources can be satisfied only by (i) a specific make and model, or (ii) a requirement that is available form only one responsible source. The justification is not required unless the specifications have been limited in this manner, notwithstanding that a CBD notice of intent to place an order against a GSA nonmandatory contract cites a particular make and model and a single schedule source.

(c) Subpart 201–39.8 is being amended by adding requirements for justifications for a specific make and model or a requirement available from only one responsible source when using a nonmandatory schedule.

(4) GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. This rule is written to ensure maximum benefits to Federal agencies. This Governmentwide regulation will have little or no net cost effect on society. It is certified that this rule will not have a significant economic impact upon a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*).

(5) The Paperwork Reduction Act does not apply because the proposed changes to the FIRMR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 41 CFR Parts 201–20 and 201–39

Archives and records, Computer technology, Telecommunications, Government procurement, Property management, Records management, Federal information processing resources activities.

PART 201–20—ACQUISITION

1. The authority citation for part 201–20 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

2. Section 201–20.305–1 is amended by adding a new paragraph (d) as follows

§ 201–20.305–1 Regulatory delegations.

* * * * *

(d) (1) When an agency elects to use the Small Business Administration's 8(a) Program to acquire FIP resources, the FIRMR rules and procedures for obtaining DPAs must be followed as for other acquisitions. The agency must obtain a specific acquisition DPA for requirements that exceed the lower FIRMR regulatory delegation in § 201–20.305–1(a)(1) or a specific agency delegation for—

(i) a requirement specified in such a manner that it can only be satisfied with a specific make and model, or

(ii) a requirement that is available from only one responsible source.

(2) For all other FIP requirements to be satisfied through SBA's 8(a) program, a specific acquisition DPA is required if the amount of a requirement is above the higher DPA threshold in § 201–20.305(a)(1) or a specific agency delegation, whether issued as an 8(a) sole source or competitive procurement. These procedures must be followed, notwithstanding that the 8(a) competitive thresholds are higher than the FIRMR regulatory delegation thresholds and an agency has authority under the 8(a) program to process requirements above the regulatory delegation thresholds on a sole source basis. FIRMR DPA levels apply to 8(a) acquisitions for FIP resources whose dollar value, including all optional quantities and optional periods, exceeds the FIRMR DPA regulatory delegation thresholds or a higher or lower specific agency delegation.

PART 201–39—ACQUISITION OF FEDERAL INFORMATION PROCESSING (FIP) RESOURCES BY CONTRACTING

3. The authority citation for part 201–39 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

4. Section 201–39.600 is amended by deleting "and" at the end of paragraph (a), adding "and" at the end of (b), and adding a new paragraph (c) to read:

§ 201–39.600 Scope of subpart.

* * * * *

(c) The acquisition of FIP resources available from only one responsible source.

5. Sections 201–39.603, 201–39.603–1, and 201–39.603–2 are added to read:

§ 201–39.603 Requirements available from only one responsible source.

§ 201–39.603–1 Policy.

An acquisition for a requirement that is available from only one responsible source must be justified and approved in accordance with FAR 6.303 and 6.304.

§ 201–39.603–2 Exception.

Section 201–39.603–1 does not apply when an order for FIP resources is placed against a GSA nonmandatory schedule contract and—

(a) The statement of work or requirements documentation prepared by the technical and requirements personnel does not limit the requirement to one that is available from only one responsible source, notwithstanding the fact that when the synopsis appears in the CBD and the order is placed, a single schedule source is cited, and

(b) The procedures of § 201–39.803 regarding use of GSA nonmandatory schedule contracts are followed.

6. Section 201–39.803(a)(1) is revised to read:

§ 201–39.803–3 Procedures.

(a) * * *

(1) Justify any restrictive requirement (e.g., an "all or none" requirement, a requirement for "only new" equipment, a requirement for a "specific make and model", or a requirement available from only one responsible source); and

* * * * *

Dated: July 9, 1993.
Fred L. Sims,
Acting Assistant Commissioner for Federal Information Resources Management.
[FR Doc. 93–22977 Filed 9–20–93; 8:45 am]
BILLING CODE 6820–25–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

RIN 0991–AA66

Health Care Programs: Fraud and Abuse; Additional Safe Harbor Provisions Under the OIG Anti-Kickback Statute

AGENCY: Office of Inspector General, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed regulation is designed to set forth an expanded listing of safe harbor provisions as authorized under section 14 of the Medicare and Medicaid Patient and Program Protection Act of 1987. This new listing of proposed safe harbors delineates additional payment and business practices under Medicare and State health care programs that would be protected from criminal prosecution or civil sanctions under the anti-kickback provisions of the statute.

DATES: To assure consideration, public comments must be mailed or delivered to the address provided below by November 22, 1993. Comments are available for public inspection October 5, 1993.

ADDRESSES: Address comments in writing to: Office of Inspector General, Department of Health and Human Services, Attention: LRR–27–P, room 5246, 330 Independence Avenue, SW., Washington, DC 20201.

If you prefer, you may deliver your comments to room 5551, 330 Independence Avenue, SW., Washington, DC. In commenting, please refer to file code LRR–27–P. Comments will be available for public inspection in room 5551, 330 Independence Avenue, SW., Washington, DC on Monday through Friday of each week from 9 a.m. to 5 p.m., (202) 619–3270.

FOR FURTHER INFORMATION CONTACT:
Joel Schaer, Office of Inspector General; (202) 619–3270.

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 100–93

Section 14 of Public Law 100–93, the Medicare and Medicaid Patient and Program Protection Act of 1987, requires the promulgation of regulations specifying those payment and business practices which, although potentially capable of inducing referrals of business under the Medicare and State health care programs, would not be treated as criminal offenses under section 1128B(b) of the Social Security Act (42 U.S.C. 1320a–7b(b)) and would not serve as a basis for a program exclusion under section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)).

Congress intended that the regulations setting forth various "safe harbors" would be evolving rules that would be periodically updated to reflect changing business practices and technologies in the health care industry. As evidenced in the House Committee Report accompanying Public Law 100–93, the Committee stated that it believed that periodic public input was necessary:

> * * * to ensure that the regulations remain relevant in light of changes in health care delivery and payment and to ensure that published interpretations of the law are not impeding legitimate and beneficial activities. Accordingly, the Committee expects that the Secretary will formally re-evaluate the anti-kickback regulations on a periodic basis and, in doing so, will solicit public comments at the outset of the review process.

Initial Proposed Rulemaking

On January 23, 1989, we published a notice of proposed rulemaking setting forth various business and payment practices that we proposed to exempt from the anti-kickback statute, and the rationale for their inclusion in a listing of "safe harbor" provisions (54 FR 3088). The rulemaking proposed the establishment of safe harbors in ten broad areas: investment interests, space rental, equipment rental, personal services/management contracts, sales of practice, referral services, warranties, discounts, employees and group purchasing.

In response to the proposed rulemaking, we received over 750 public comments that included both general and broad-reaching concerns regarding the impact of these regulations. The majority of the comments received specifically addressed the ten proposed safe harbors. A summary of these comments and our analysis and response to those concerns are set out in the preamble to the final regulation that was published in the **Federal Register** on July 29, 1991 (56 FR 35952). In addition, the public comments contained several suggestions for the consideration and adoption of additional safe harbor provisions under 42 CFR 1001.952. Set forth below are seven proposed new safe harbor provisions. We invite public comment on these new provisions.

We wish to emphasize that nothing in this proposed regulation changes reimbursement rules promulgated by the Health Care Financing Administration (HCFA) or a State health care program. If a provider chooses to engage in a particular course of conduct in order to comply with these safe harbor provisions, such action may very well have reimbursement implications; however, such reimbursement is governed exclusively by HCFA or State regulations, and not by this rulemaking.

In addition, because this is simply a notice of proposed rulemaking, compliance with either the terms of this proposed rule or standards discussed in this preamble does not provide safe harbor protection at the present time. The only way to protect behavior which implicates the anti-kickback statute is compliance with a safe harbor provision which has been published in final form.

II. Provisions of the Proposed Rule

Set forth below is a description of the additional payment practices that we are proposing to exempt under § 1001.952 of our regulations and the rationale for their inclusion in this proposed rulemaking.

A. Additional Investment Interests

We are proposing three additional investment interest safe harbor provisions in § 1001.952(a) to protect payments to investors who engage in business with the entity in which they have invested.

1. Investment Interests in Rural Areas

We have been informed that many rural areas have particular problems that make it difficult for them to comply with the two 60–40 rules of the "small entity" investment interest safe harbor provision as currently set forth in §§ 1001.952(a)(2) (i) and (vi). The first 60–40 rule, known as the "60–40 investor rule," requires that no more than 40 percent of the investment interests of the entity be held by investors who are in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity. The second 60–40 rule, known as the "60–40 revenue rule," requires that no more than 40 percent of the gross revenue of the entity may come from referrals or business otherwise generated from investors. Rural areas have an especially

difficult time complying with these two standards in many cases because physicians may be the only source of capital, and they may have no alternative facility to which they can refer.

Consequently, in a third investment interest safe harbor, § 1001.952(a)(3), we are proposing to eliminate these two 60–40 rules for entities serving rural areas. This safe harbor would apply to entities located in rural areas as defined by the Office of Management and Budget and used by the Bureau of the Census. According to the 1991 Statistical Abstract of the United States, 22.5 percent of the population in 1990 reside in such areas. We are soliciting comments on the appropriateness of this definition of a rural area, and we will consider comments on how the definition could be adapted to further the intent of this proposed safe harbor. We stress, however, that the method used for designating rural areas must ensure that this safe harbor only protects entities that truly serve a rural population. One alternative would be to adopt the definition of rural area found in 42 CFR 412.62(f)(1)(ii).

We are not proposing, however, to modify any of the other six standards in the small investment interest safe harbor for rural areas that are set forth in §§ 1001.952(a)(2) (ii)–(v), (vii), and (viii). These six standards provide fundamental assurances against abuse, and we have not been apprised of any particular difficulty that rural entities are experiencing with these other standards. Therefore, we are not requesting public comments regarding the applicability of these six standards to the proposed small investment interest safe harbor for rural areas.

In place of the 60–40 *investor* rule we are proposing a more flexible standard that will still assure that referring sources, physicians in particular, are not inappropriately selected as investors. We are proposing to require the entity to make a bona fide offer of the investment interest to any individual or entity irrespective of whether such prospective investor is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity. In other words, the entity may comply with this first standard by offering the opportunity for investment in a good faith, nondiscriminatory manner to any individuals or entities who are potential sources of capital.

Although we are eliminating the 60–40 *revenue* rule, we remain concerned that a sham joint venture structure could be established that does not intend to serve the rural area in which it is located. Consequently, we are proposing to incorporate a standard that would require that at least 85 percent of the dollar volume of the entity's business in the previous fiscal year or previous 12 month period must be derived from the service of persons who reside in a rural area. In the case of an entity that has not yet been in business for 12 months, compliance with this standard will be determined by examining the composition of the entity's business over the entire period of its existence.

2. Investment Interests in Ambulatory Surgical Centers

In a fourth investment interest safe harbor, § 1001.952(a)(4), we are proposing to protect payments to investors in ambulatory surgical centers (ASCs) who are surgeons who refer patients directly to the ASC and perform surgery themselves on these referred patients.

As stated in the preamble of the original set of safe harbor provisions published on July 29, 1991 (56 FR 35971):

> A special situation may exist when a physician sees a patient in his or her office, makes a referral to an entity in which he or she has an ownership interest and performs the service for which the referral is made.

This concept is often referred to as an extension of the physician's office practice. In the above situation, the physician-investor receives two payments: (1) the professional fee for furnishing the service, and (2) the profit distribution from the entity based on the program payment the entity receives that was generated from the referral. We do not consider the statute to be implicated by the first payment. However, we believe that the second payment is potentially covered by the statute.

As with any investment interest held by a potential referral source, the profit distribution provides some financial incentive to refer patients to the entity. To the extent this payment has the potential to induce physician-investors to overutilize the entity, no safe harbor protection is warranted.

In contrast, where these payments do not constitute a significant inducement to make referrals, they may merit safe harbor protection. Where the professional fee generated by a referral is substantially greater than the facility fee generated by the referral, we believe that the profit distribution payment (which results from the facility fee) does not constitute a significant improper inducement. Only where a great disparity between the facility and professional fees exists will the incremental increase in profit distribution from a referral be so small as to be inconsequential when compared to the corresponding professional fee. Therefore, we will only consider providing safe harbor protection to types of extensions of practice that receive facility fees from referrals that are greatly disparate from the professional fee generated by the referral.

Because we believe that ASCs generally fit this criterion, we have proposed a safe harbor for certain investment interests in ASCs. When a patient is referred to an ASC for surgery, there is a great disparity between the surgeon's professional fee and the ASC's facility fee. Therefore, we propose to protect the payment of profit distributions from the ASC to investors where all investors in the ASC are surgeons in a position to refer to the ASC and perform services.

This proposed safe harbor applies only to ASCs certified under 42 CFR part 416. We are not proposing to protect ASCs located on the premises of a hospital that share their operating or recovery room space with the hospital for treatment of the hospital's inpatients or outpatients.

This proposed fourth investment interest provision contains five standards. The first standard precludes an investor from being afforded better investment terms based on past or expected referrals or amount of services furnished to the entity. The second standard requires that a passive investor not be required to make referrals to the entity in order to continue as an investor. The third standard prohibits the entity or any investor from loaning funds to the investor for use in obtaining an investment interest. Standard four requires that payments not be based on referrals. Finally, the practitioner must agree to treat Medicare and Medicaid patients.

In contrast to the other investment interest safe harbors which seek to limit investment by individuals in a position to refer, this proposed ASC safe harbor only protects entities whose investment interests are held entirely by such individuals. With that distinction in mind, four of the five proposed standards have been adapted from those in the small entity safe harbor at § 1001.952(a)(2). We believe these standards provide fundamental assurances against abuse; however, we are soliciting comments on the extent to which other standards are appropriate to safeguard against potential abuse.

Further, while this proposed safe harbor only applies to ASCs certified

under 42 CFR part 416, we are also soliciting comments on whether this rationale is applicable to entities other than ASCs. Specifically, we are soliciting comments on what degree of disparity should exist between the professional fees and facility fees generated by referrals to a type of entity for that type of entity to receive safe harbor protection.

The rationale underlying this safe harbor does not extend to investment interests held by physicians who are not in a position to refer patients directly to the ASC and perform surgery. Such physicians do not receive a professional fee as a result of services performed by the entity. An example to illustrate the potential perils of protecting profit distributions to such investors would be where a non-surgeon physician investor may refer a patient to a surgeon-investor who may, in turn, refer the patient to the ASC where the surgeon-investor may perform the surgery. In this scenario, the non-surgeon investor would receive a return, through the ASC's profit distribution, for the "indirect referral" of the patient. Because of the potential for improper inducement of referrals illustrated in this example, we do not think investment interests held by non-surgeon investors merit safe harbor protection.

3. Investment Interests in Group Practices Composed Exclusively of Active Investors

We are considering promulgating a fifth investment interest safe harbor to protect payments to investors in entities composed only of active investors in a group practice. Although there may be other types of joint ventures composed exclusively of active investors which should receive safe harbor protection, we do not propose to protect them at this time. Rather, we are presently soliciting comments on how to expand this limited safe harbor provision.

This fifth investment interest safe harbor, § 1001.952(a)(5), would protect the investment interests of members of group practices that meet two prerequisites and three standards. The two prerequisites are that all the investors must meet our definition of "active investor," and all the investors must be physician members of a "group practice."

We propose to adopt the definition of group practice contained in section 1877(h)(4) of the Act (as added by section 6204(a) of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239), which restricts physicians from making referrals for clinical laboratory services to entities with which they have an ownership interest or other compensation arrangement. This definition requires (a) physician members of the group to provide substantially the full range of their services through the shared use of office space, facilities, equipment and personnel; (b) substantially all of the services of the members to be provided through the group, billed through the group, with payments received as receipts of the group; and (c) overhead expenses and income of the group to be distributed in accordance with a predetermined formula. We intend principally to protect investors who are individuals who qualify as "physicians" under this definition. However, because our definition of investor includes entities as well as individuals, our definition of group practice permits physicians to invest as a professional corporation, but only to the extent that the corporation is exclusively owned by the physicians. We are soliciting comments on the appropriateness of using this definition of "group practice" for the purposes of this safe harbor provision. One alternative would be to adopt the definition contained in the regulations implementing section 1877(h)(4) of the Act when that regulation is published in final form (see 57 FR 8588, March 11, 1992). Another alternative would be to use the definition currently set forth in 42 CFR 417.100.

The three standards in this safe harbor are derived directly from the second investment interest safe harbor in § 1001.952(a)(2). First, we are requiring that the terms of the investment interest not be preferentially given to certain physicians in the group practice based on their expected referrals. Second, the entity or another investor cannot loan or guarantee a loan to the investors to be used to obtain the investment interest. And third, the amount of return must be directly proportional to the capital invested. We are specifically inviting comments on the appropriateness of applying these standards to group practices. In particular, we are soliciting information in the types of compensation arrangements that exist within group practices, and the extent to which they create inappropriate incentives that distort the professional judgment of the members of the group.

We recognize that there may be other non-abusive joint ventures consisting exclusively of active investors. Typically, such entities are partnerships consisting of general partner investors. The general partners are involved in the day-to-day operation of the entity, and undertake personal liability. However, entities structured in this manner can have a variety of different characteristics. For example, as discussed above, the entity can be a physicians group practice where all the physicians are general partners, or the entity can be a joint venture between two other entities, such as a hospital and durable medical equipment (DME) supplier or a DME manufacturer and a DME distributor. In addition, the entity may be a subchapter S corporation instead of a partnership.

In view of the wide variety of types of entities that may warrant protection, and the varying degree of safeguards that may be warranted for different types, we are soliciting comments on whether we should protect other types of joint ventures composed exclusively of active investors, and the extent to which we should adopt the standards we have included in the second investment interest safe harbor (§ 1001.952(a)(2)). Among the areas about which we are specifically soliciting comments are the varying degree of safeguards that are needed when the general partners are entities as opposed to individuals, the extent to which such a provision should apply in the context of a subchapter S corporation or other business structure, and the extent to which protection should be afforded to these entities when they have passive investors who are not in a position to make referrals.

B. Practitioner Recruitment

We are proposing a safe harbor provision for certain payments or benefits offered by rural hospitals and entities in their efforts to recruit physicians and other practitioners to join their staffs. It has come to our attention that hospitals located in rural areas have been encountering problems in helping to attract physicians needed by the community. With this proposed safe harbor we hope to address this problem without protecting arrangements designed to channel Medicare and Medicaid business to recruiting hospitals. We have proposed to limit the safe harbor to hospitals and other entities located in "rural areas" as that term is defined in the proposed investment interest safe harbor for entities located in rural areas. We are soliciting comments on alternative geographic criteria for protecting recruitment of physicians under this safe harbor. One example may be limiting the safe harbor to recruitment of practitioners by hospitals and entities located in areas which are health professional shortage areas for the practitioner's specialty category.

We are proposing to protect recruitment activities aimed at only two

types of health care providers: (1) A practitioner who will need to relocate to a new geographic area and start a new practice, or (2) a new practitioner to assist him or her in starting a practice or specialty after completing an internship or residency program. Not covered within this safe harbor are arrangements between hospitals and physicians that are, in reality, payments to obtain the referrals of established practitioners who work at least in part at another hospital in the same area.

For the recruitment activity to be protected, we propose seven standards: (1) the arrangement and its terms must be in writing; (2) if a practitioner is leaving an established practice, the physical location of the new primary place of practice must be not less than 100 miles from the location of the established primary place of practice and at least 85 percent of the revenue of the new practice must be generated from new patients not previously seen by the practitioner at his or her former practice; (3) unless the practitioner's new primary place of practice is designated as a health professional shortage area (HPSA) for the practitioner's HPSA specialty category during the entire duration of the payments or benefits, the duration of the payments or benefits cannot exceed 3 years; (4) the entity providing the benefits cannot condition the agreement on the practitioner's referral of business to the entity; (5) the practitioner cannot be restricted from establishing staff privileges at another entity or referring business to another entity; (6) the entity cannot vary, adjust or renegotiate the amount or value of benefits based on the volume of business the practitioner generates for the entity; and (7) the practitioner must treat medicare and medicaid patients.

Hospitals would not fall within this safe harbor if they use recruitment efforts as a means of offering compensation to physicians as inducements for referrals. Thus, we do not propose to protect subsidy payments beyond the 3-year period. However, after three years, hospitals may still engage in financial relationships with these physicians that qualify under other safe harbor provisions, such as space rental, personal services/management contracts, or the safe harbor proposed below on malpractice insurance.

The one exception to the 3-year limit on payments or benefits would be where the practitioner has been recruited to a HPSA. The designated shortage would have to be in the practitioner's HPSA specialty category. In addition, in order to be exempted from the 3-year limit, the area would have to be designated a HPSA during the duration of the relationship between the entity and the practitioner.

We are also soliciting comments on how to protect payments designed to retain physicians already practicing in an area that has been designated a HPSA for the physician's specialty category.

C. Obstetrical Malpractice Insurance Subsidies

We are proposing a new safe harbor provision that would permit a hospital or other entity to pay all or part of the malpractice insurance premiums for practitioners engaging in obstetrical practice in primary care health professional shortage areas. For the purposes of this provision, "practitioner" includes a "certified nurse-midwife" as defined in section 1861(gg) of the Act. Seven standards would need to be met. The first five standards are adopted from concepts in the rural investment interest and practitioner recruitment safe harbor provisions proposed above. These standards require that: (1) the agreement must be set forth in writing; (2) at least 85 percent of the practitioner's obstetrical patients treated under the coverage of the malpractice insurance reside in the shortage area or be a part of a designated shortage area population; (3) there is no requirement that the practitioner refer any level of patients to the entity; (4) there is no restriction placed on the practitioner from establishing staff privileges at, referring patients to, or otherwise generating business for other entities; and (5) the amount of the payment may not vary based on referrals made by the practitioner to the entity.

Two additional standards are also being proposed. The sixth standard attempts to assure access to Medicaid patients seeking obstetrical care by requiring the practitioner, as a condition of safe harbor protection, to treat such patients. Finally, the seventh standard requires bona fide insurance policies to assure that this provision is not used as a mechanism to disguise improper inducements to physicians or other practitioners. Such insurance policies are regulated under State law and are exempt from antitrust and Federal Trade Commission enforcement in accordance with 15 U.S.C. 1012.

Under this proposed safe harbor provision, entities would be permitted to limit the coverage of the malpractice insurance to services performed at that entity. Although we are concerned that such restrictive policies have the effect of limiting a practitioner's professional mobility, we recognize that there are important reasons for such restrictions. Often a hospital's malpractice policy is limited to insure against misconduct on its premises. Although a hospital can provide reasonable assurances to its underwriter that it is overseeing the conduct of its medical staff, it has little ability to make any assurances of the conduct of its staff when they are working at other hospitals. Thus, the underwriter could be engaging in a much higher risk, and therefore might legitimately charge a much higher premium, if it were to provide insurance for the hospital's medical staff when it furnishes services off-site. Finally, we believe that any potential for influencing the practitioner's choice of where to practice that may result from this standard is mitigated by other standards within this proposed provision that limit the ability of the entity to use malpractice subsidies to control the stream of referrals from that practitioner.

As we noted above, nothing in this proposed rule should be construed as authorizing Medicare payment to hospitals or other institutional providers for the cost they may incur for such malpractice insurance. Any allowable costs for such insurance is governed strictly by Medicare and Medicaid rules.

We recognize the narrowness of this safe harbor provision, which is limited to malpractice subsidies for obstetrical care in HPSAs. Although the malpractice problem affects many more practitioners than those we are proposing to protect here, we remain concerned that such subsidies may lead to inappropriate incentives and loyalties created by such incentives. However, we are soliciting comments on specific, narrowly drawn circumstances where this safe harbor provision could be expanded to help assure beneficiary access to services that may be significantly affected by the cost of malpractice insurance premiums. In addition, we are soliciting views regarding the feasibility of expanding this provision to protect malpractice insurance programs that are not regulated under State law, but which are operated directly by providers.

D. Referral Agreements for Specialty Services

We are proposing to protect arrangements under which an individual or entity agrees to refer a patient to another individual or entity for specialty services in return for an agreement on the part of the party receiving the referral to refer that patient back at a certain time or under certain circumstances. For example, a primary care physician and a specialist may

agree that, when their patient reaches a particular stage of recovery, the primary care physician should resume treatment of the patient.

The first standard we are proposing clarifies what is meant by specialty services; that is, the service for which the referral is made may not be within the medical expertise of the referring individual or entity, but is within the special expertise of the other party receiving the referral. The second standard we are proposing prohibits any actual *payment* to be made between the parties for the referral. The third standard requires that the only exchange of value between the parties, with one exception to be discussed below, is the opportunity to obtain monetary remuneration directly from third-party payors or the patient, as compensation for his or her respective professional services. As the United States Court of Appeals for the First Circuit has recognized: "Giving a person an opportunity to earn money may well be an inducement to that person to channel potential Medicare payments toward a particular recipient." *United States* v. *Bay State Ambulance and Hospital Rental Service, Inc.*, 874 F.2d 20, 29 (1st Cir. 1989). Since the opportunity to generate a fee may constitute the requisite remuneration under the statute, generally speaking, we believe that the statute is implicated in many of these agreements. However, we also believe that these relationships benefit patients by assuring proper continuity of care or convenient access to a specialist in whom the primary care physician has confidence.

The one exception where we are proposing to permit remuneration between the parties is where both parties belong to the same group practice. Obviously in such situations revenues are shared between members of the group practice, and thus it appears that the referring physician receives remuneration for the referral. However, such financial benefits are an inherent part of belonging to a group practice, and therefore we are proposing to protect such remuneration.

As discussed in sections II.A.2. and B. above, we are concerned about potentially abusive combinations of physicians that are a "group practice" in name only. Consequently, we are proposing to use the same definition of group practice as we are proposing for the fourth investment interest safe harbor. This definition is the same definition of "group practice" as is contained in section 1877(h)(4) of the Act, as added by section 6204(a) of Public Law 101–239.

E. Cooperative Hospital Service Organizations

We are proposing to provide a new safe harbor provision for most cooperative hospital service organizations (CHSOs) that qualify under section 501(c)(3) of the Internal Revenue Code. Under this statute and the implementing regulation (26 CFR 1.501(e)–1)), these organizations are formed by two or more tax exempt hospitals (known as "patron-hospitals") to provide specifically enumerated services, such as purchasing, billing, and clinical services solely for the benefit of its patron-hospitals. In addition, these entities are required to distribute "all net earnings to patrons on the basis of services performed" (26 U.S.C. 501(e)(2)).

Where a health care provider engages in an activity which is specifically required by another statutory provision and the provider is afforded no discretion in the manner of compliance, such a requirement is a valid defense to an alleged violation of the anti-kickback statute. However, where the health care provider is engaging in the activity to fulfill a general statutory obligation, but is afforded discretion in the manner of compliance, such a defense is not available because the provider's choice in the method of compliance may be motivated by an intent to generate program-related business. With respect to the payments the CHSO makes to its patron-hospitals, we believe that the level of discretion given to these providers as to what payment formula to use warrants safe harbor protection. However, we specifically invite comments regarding the various types of payment formula (which comply with the Internal Revenue Service (IRS) rules) that are used, but some of which may be more abusive than others.

This proposed provision would protect payments from a patron-hospital to a CHSO to support the CHSO's operational costs and those payments from a CHSO to a patron-hospital that are required under IRS rules. This proposed provision requires as a condition of protection that the CHSO must be wholly owned by its patron-hospitals. Such a condition protects against potentially abusive joint venture arrangements that are formed under the guise of CHSOs.

To the extent a CHSO acts as a group purchasing organization or a patron-hospital obtains discounts as a result of the CHSO's activities, CHSOs and patron-hospitals must comply with the respective safe harbor provisions applicable to group purchasing organizations and discounts to be fully protected.

We are soliciting comments on the extent to which we should expand this provision to protect other similar entities specifically organized and protected under Federal or State laws.

III. Solicitation of Comments for Modifying the Sale of Practice Safe Harbor

In addition to the proposed provisions discussed above, we are soliciting comments on the desirability of modifying the existing sale of practice safe harbor set forth in § 1001.952(e) to accommodate transactions involving the rural hospital purchase of practice as part of a practitioner recruitment program.

The sale of practice safe harbor set forth in § 1001.952(e) does not protect a hospital purchasing the practice of a retiring physician. We have been informed that many rural hospitals, as part of their efforts to recruit practitioners, buy and "hold" the practice of a retiring physician, often using *locum tenens* physicians until a new physician can be recruited to replace the retiring one. We are soliciting comments on the desirability of modifying the existing sale of practice safe harbor to permit such a practice where the recruitment program complies with any safe harbor we establish to protect practitioner recruitment.

IV. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the Executive Order criteria for a "major rule," that is, that would be likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies or geographic areas; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities.

For the reasons set forth in the final rule published on July 29, 1991 (56 FR 35952), we have determined that a

regulatory impact analysis is not required. Further we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a number of small business entities. Therefore, we have not prepared a regulatory flexibility analysis.

V. Additional Information

Response to Comments

Because of the large number of comments we normally receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble of that rule.

List of Subjects in 42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicaid, Medicare.

TITLE 42—PUBLIC HEALTH

CHAPTER V—OFFICE OF INSPECTOR GENERAL—HEALTH CARE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Chapter V, Part 1001 would be amended as set forth below:

PART 1001—PROGRAM INTEGRITY—MEDICARE AND STATE HEALTH CARE PROGRAMS

1. The authority citation for part 1001 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(j), 1395u(k), 1395y(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh, and section 14 of Pub. L. 100–93.

2. Section 1001.952 would be amended by revising paragraph (a) introductory text, paragraph (a)(1) introductory text, paragraphs (a)(1)(v) and (a)(2)(viii); by adding paragraphs (a)(3) through (a)(5); by revising paragraph (a) concluding text; and by adding paragraphs (n) through (q) to read as follows:

§ 1001.952 Exceptions.

* * * * *

(a) *Investment Interests.* As used in section 1128B of the Act, "remuneration" does not include any payment that is a return on an investment interest, such as a dividend or interest income, made to an investor as long as all of the applicable standards are met within one of the following five categories of entities:

(1) If, within the previous fiscal year or previous 12 month period, the entity possesses more than $50,000,000 in undepreciated net tangible assets (based on the net acquisition cost of purchasing such assets from an unrelated entity) related to the furnishing of items and services, all of the following five standards must be met—

* * * * *

(v) The amount of payment to an investor in return for the investment interest must be directly proportional to the amount of the capital investment of that investor.

(2) * * *

(viii) The amount of payment to an investor in return for the investment interest must be directly proportional to the amount of the capital investment (including the fair market value of any pre-operational services rendered) of that investor.

(3) If the entity possesses investment interests that are held by either active or passive investors and is located in a rural area, all of the following eight standards must be met—

(i) The entity must offer equal and bona fide opportunities to acquire investment interests to individuals or entities irrespective of whether such prospective investor is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity.

(ii) The terms on which an investment interest is offered to a passive investor, if any, who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity must be no different from the terms offered to other passive investors.

(iii) The terms on which an investment interest is offered to an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity must not be related to the previous or expected volume of referrals, items or services furnished, or the amount of business otherwise generated from that investor to the entity.

(iv) There is no requirement that a passive investor, if any, make referrals to, be in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity as a condition for remaining as an investor.

(v) The entity or any investor must not market or furnish the entity's items or services (or those of another entity as part of a cross referral agreement) to passive investors differently than to non-investors.

(vi) At least 85 percent of the dollar volume of the entity's business in the previous fiscal year or previous 12-month period must be derived from the service of persons who reside in a rural area.

(vii) The entity or any investor must not loan funds to or guarantee a loan for an investor who is in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the entity if the investor uses any part of such loan to obtain the investment interest.

(viii) The amount of payment to an investor in return for the investment interest must be directly proportional to the amount of the capital investment (including the fair market value of any pre-operational services rendered) of that investor.

(4) If the entity is a certified ambulatory surgical center (ASC) under part 416 of this title, whose operating and recovery room space is dedicated exclusively to the ASC (and not a part of a hospital), and all of the investors are surgeons who are in a position to refer patients directly to the entity and perform surgery on such referred patients, all of the following five standards must be met—

(i) The terms on which an investment interest is offered to an investor must not be related to the previous or expected volume of referrals, services furnished, or the amount of business otherwise generated from that investor to the entity.

(ii) There is no requirement that a passive investor, if any, make referrals to the entity as a condition for remaining as an investor.

(iii) The entity or any investor must not loan funds to or guarantee a loan for an investor if the investor uses any part of such loan to obtain the investment interest.

(iv) The amount of payment to an investor in return for the investment interest must be directly proportional to the amount of the capital investment (including the fair market value of any pre-operational services rendered) of that investor.

(v) The practitioner must agree to treat patients receiving medical benefits or assistance under title XVIII or XIX of the Act.

(5) If the entity possesses investment interests all of which are held by active investors and all of these investors are physician members of a group practice, all of the following three standards must be met—

(i) The terms on which an investment interest is offered to the investor must not be related to the previous or expected volume or referrals of business, items or services furnished, or the amount of business otherwise generated from that investor to the entity.

(ii) The entity or any investor must not loan funds to or guarantee a loan for

the investor if the investor uses any part of such loan to obtain the investment interest.

(iii) The amount of payment to the investor in return for the investment interest must be directly proportional to the amount of the capital investment (including the fair market value of any pre-operational services rendered) of that investor.

For purposes of paragraph (a) of this section, the following terms apply. *Active investor* means an investor either who is responsible for the day-to-day management of the entity and is a bona fide general partner in a partnership under the Uniform Partnership Act or who agrees in writing to undertake liability for the actions of the entity's agents acting within the scope of their agency. *Group practice* means a group of two or more physicians that meets the definition of group practice under section 1877(h)(4) of the Act. *Investment interest* means a security issued by an entity, and may include the following classes of investments: shares in a corporation, interests or units of a partnership, bonds, debentures, notes, or other debt instruments. *Investor* means an individual or entity either who directly holds an investment interest in an entity, or who holds such investment indirectly by, including but not limited to, such means as having a family member hold such investment interest or holding a legal or beneficial interest in another entity (such as a trust or holding company) that holds such investment interest. *Passive investor* means an investor who is not an active investor, such as a limited partner in a partnership under the Uniform Partnership Act, a shareholder in a corporation, or a holder of a debt security. *Rural area* means any defined geographic area that is not a metropolitan area as defined by the Office of Management and Budget.

* * * * *

(n) *Practitioner recruitment.* As used in section 1128B of the Act, "remuneration" does not include any payment or exchange of anything of value by an entity located in rural areas (as defined in paragraph (a) of this section) in order to induce a practitioner who has been practicing within his or her current specialty for less than one year to establish staff privileges at the entity, or to induce any other practitioner to relocate his or her primary place of practice to the geographic area served by the entity, as long as all of the following seven standards are met—

(1) The arrangement is set forth in a written agreement that specifies the benefits provided by the entity, the terms under which the benefits are to be provided, and the obligations of each party.

(2) If a practitioner is leaving an established practice, the physical location of the new primary place of practice must be not less than 100 miles from the location of the established primary place of practice and at least 85 percent of the revenues of the new practices must be generated from new patients not previously seen by the practitioner at his or her former practice.

(3) The benefits are provided by the entity for a period not in excess of 3 years, and the terms of the agreement are not renegotiated during this 3 year period in any substantial aspect, unless the practitioner's new primary place of practice is designated as a health professional shortage area (HPSA) for the practitioner's specialty category during the entire duration of the relationship between the practitioner and the entity.

(4) There is no requirement that the practitioner make referrals to, be in a position to make or influence referrals to, or otherwise generate business for the entity as a condition for receiving the benefits.

(5) The practitioner is not restricted from establishing staff privileges at, referring any service to, or otherwise generating any business for any other entity of his or her choosing.

(6) The amount or value of the benefits provided by the entity may not vary (or be adjusted or renegotiated) in any manner based on the volume or value of any expected referrals to or business otherwise generated for the entity by the practitioner for which payment may be made in whole or in part under Medicare or a State health care program.

(7) The practitioner agrees to treat patients receiving medical benefits or assistance under title XVIII or XIX of the Act.

(o) *Obstetrical malpractice insurance subsidies.* As used in section 1128B of the Act, "remuneration" does not include any payment made by a hospital or other entity to another entity that is providing malpractice insurance regulated by State law, where such payment is used to pay for some or all of the costs of malpractice insurance premiums for a practitioner who engages in obstetrical practice (including a certified nurse-midwife as defined in section 1861(gg) of the Act) in primary care HPSAs, as long as all of the following eight standards are met—

(1) The payment is made in accordance with a written agreement between the entity paying the premiums and the practitioner, which sets out the payments to be made by the entity, and the terms under which the payments are to be provided.

(2) At least 85 percent of the practitioner's obstetrical patients treated under the coverage of the malpractice insurance must either—

(i) Reside in an area designated by the Secretary under part 5 of this title as having a shortage of primary medical care manpower, or

(ii) Be part of a population group designated by the Secretary under part 5 of this title as having a shortage of primary medical care manpower.

(3) There is no requirement that the practitioner make referrals to, be in a position to make or influence referrals to, or otherwise generate business for the entity as a condition for receiving the benefits.

(4) The practitioner is not restricted from establishing staff privileges at, referring any service to, or otherwise generating any business for any other entity of his or her choosing.

(5) The amount of payment may not vary based on the volume or value of any previous or expected referrals to or business otherwise generated for the entity by the practitioner for which payment may be made in whole or in part under Medicare or a State health care program.

(6) The practitioner agrees to treat obstetrical patients who receive medical assistance under title XIX of the Act.

(7) The insurance premium is calculated based on a bona fide assessment of the liability risk covered under the insurance policy.

(p) *Referral agreements for specialty services.* As used in section 1128B of the Act, "remuneration" does not include any exchange of value among individuals and entities where one party agrees to refer a patient to the other party for the provision of a specialty service payable in whole or in part under Medicare or a State health care program in return for an agreement on the part of the other party to refer that patient back at a mutually agreed upon time or circumstance as long as the following three standards are met—

(1) The service for which the referral is made is not within the medical expertise of the referring individual or entity, but is within the special expertise of the other party receiving the referral.

(2) The parties receive no payment from each other for the referral.

(3) Unless both parties belong to the same group practice as defined in paragraph (a) of this section, the only exchange of value between the parties is

the remuneration the parties receive directly from third-party payors or the patient compensating the parties for the services they each have furnished to the patient.

(q) *Cooperative hospital service organizations.* As used in section 1128B of the Act, "remuneration" does not include any payment made between a cooperative hospital service organization (CHSO) and its patron-hospital, both of which are described in section 501(e) of the Internal Revenue Code of 1986 and are tax-exempt under section 501(c)(3) of the Internal Revenue Code, where the CHSO is wholly owned by two or more patron-hospitals, as long as all of the standards are met within either of the following two categories of payments—

(1) If the patron-hospital makes a payment to the CHSO, it must be for the purpose of paying for the bona fide operating expenses of the CHSO.

(2) If the CHSO makes a payment to the patron-hospital, it must be for the purpose of paying a distribution of net earnings required to be made under section 501(e)(2) of the Internal Revenue Code of 1986.

Dated: February 17, 1993.

Bryan B. Mitchell,

Principal Deputy Inspector General.

Approved: June 28, 1993.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

[FR Doc. 93–22871 Filed 9–20–93; 8:45 am]

BILLING CODE 4150–04–M

Notices

Federal Register
Vol. 58, No. 181
Tuesday, September 21, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 93–124–1]

Availability of Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of genetically engineered organisms. The environmental assessment provides a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impact associated with conducting the field tests.

The environmental assessment and finding of no significant impact have been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
93–167–01	University of Hawaii, Manoa.	08–25–93	Lettuce plants genetically engineered to express resistance to tomato spotted wilt virus.	Hawaii.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 15th day of September 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–23048 Filed 9–20–93; 8:45 am]
BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the South Dakota Advisory Committee will be held from 9 a.m. to

8 p.m. on Friday, October 29, 1993, at the Hilton Inn, 445 Mt. Rushmore Road, Rapid City, South Dakota 57701. The purpose of the meeting is to receive information on the subject of employment discrimination against women in South Dakota.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Rae Burnette or William F. Muldrow, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 14, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–22974 Filed 9–20–93; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Special Population Censuses.

Form Number(s): SC–19, SC–19AR.

Agency Approval Number: 0607–0368.

Type of Request: Revision of a currently approved collection.

Burden: 25,417 hours.

Number of Respondents: 300,000.

Avg Hours Per Response: 5 minutes.

Needs and Uses: The special census program is a service offered and performed contractually by the Census Bureau for states, counties, and other governmental units which require current population data between decennial censuses. Since many states distribute funds based on current population statistics, many local jurisdictions use the special census data to apply for state funds. The Census Bureau also uses special census data as a part of the Bureau's local population estimates calculations. Additionally, we are requesting clearance to use the special census program to research the use of administrative records for the 2000 census. We will be collecting selected additional data from a sample of respondents in order to match this data with administrative records. The additional information collected will be complete address, telephone number, complete date of birth, and social security number.

Affected Public: Individuals or households.

Frequency: As requested.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 15, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–23084 Filed 9–20–93; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

[A–475–811 and A–588–831]

Initiation of Antidumping Duty Investigations: Grain-Oriented Electrical Steel From Italy and Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 21, 1993.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Andrew McGilvray, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1777 and 482–0108, respectively.

Initiations

The Petition

On August 26, 1993, we received a petition filed in proper form by Allegheny Ludlum Corporation, Armco, Inc., United Steelworkers of America, Butler Armco Independent Union, and Zanesville Armco Independent Union (petitioners) against Italy and by Allegheny Ludlum Corp. and United Steelworkers of America (petitioners) against Japan. In accordance with 19 CFR 353.12, petitioners allege that grain-oriented electrical steel from Italy and Japan is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioners state that they are the only U.S. producers of grain-oriented electrical steel, and that, therefore, they have standing to file the petition because they are interested parties as defined under section 771(9)(C) of the Act, and because the petition is being filed on behalf of the U.S. industry producing the product subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E) or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, the petitions, such party should file a written notification with the Assistant Secretary for Import Administration.

Scope of Investigations

The product covered by these investigations is certain grain-oriented silicon electrical steel, which is a flat-rolled alloy steel product containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.560 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7225.10.0030, 7225.30.7000, 7225.40.7000, 7225.50.8000, 7225.90.0000, 7226.10.1030, 7226.10.5015, 7226.10.5065, 7226.91.7000, 7226.91.8000, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0000, 7228.30.8050, 7228.60.6000, and 7229.90.1000. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings are dispositive.

United States Price

Italy

Petitioners based United States Price (USP) on information obtained by a consultant. The consultant had furnished U.S. price quotes for subject merchandise delivered to the United States. Petitioners calculated USP by

making deductions for ocean freight, marine insurance, U.S. duties, U.S. merchandise processing fees, and U.S. harbor maintenance fees.

Japan

Petitioners based USP on information obtained by a consultant. The consultant had furnished U.S. price quotes for subject merchandise FOB Japanese port. Petitioners calculated USP by making deductions for foreign inland freight and discounts and rebates.

Foreign Market Value

Italy

Petitioners claim that home market prices cannot be used as a basis for estimating foreign market value (FMV) because these prices are below the cost of production of ILVA S.p.A., the company that allegedly exports all of the subject merchandise to the United States from Italy. Therefore, petitioners based FMV on constructed value, pursuant to Section 773(e)(1) of the Act. Petitioners obtained from consultants prices for the subject merchandise sold, or offered for sale, in Italy.

The quoted prices in Italy were ex-factory and net of applicable taxes. Petitioners then compared these prices to a cost-of-production based on U.S. manufacturers' experience, adjusted for known differences in costs between the United States and Italy. Based on this analysis, petitioners determined that the quoted home market prices were below the cost of production.

To calculate constructed value, petitioners adjusted the average cost of manufacture for known differences in costs between the United States and Italy, using the January 1993 monthly average exchange rate published in the IMF's International Financial Statistics. The statutory minimum percentages for selling, general and administrative expenses and for profit were relied upon in the calculation. Petitioners added an amount for export packing and then deducted home market credit expenses. Because an accurate measure of credit terms for U.S. sales was unavailable, petitioners did not add U.S. credit expenses to constructed value.

The margin of dumping of grain-oriented electrical steel from Italy alleged by petitioners is 60.79 percent.

Japan

Petitioners based FMV on delivered home market prices obtained by a consultant for subject merchandise offered by two Japanese producers. Deductions were made for inland freight, rebates and promotions, advertising, warranties and guarantees, trade discounts and credit. Circumstance of sale adjustments were calculated for advertising and warranties. Petitioners deducted home market credit and added U.S. credit. Petitioners added an amount for export packing but made no adjustment for taxes, as prices were quoted exclusive of the Japanese consumption tax. Net prices were converted to dollars by using the contemporaneous exchange rates from the Federal Reserve.

Based on comparison of USP and FMV, petitioners allege dumping margins of grain-oriented electrical steel from Japan ranging from 30.91 to 32.46 percent.

Initiation of Investigations

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether a petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioners supporting the allegation.

We have examined the petitions on grain-oriented electrical steel from Italy and Japan and have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of grain-oriented electrical steel from Italy and Japan are being, or are likely to be, sold in the United States at less than fair value.

Petitioners' analysis provides reasonable grounds to believe or suspect the ILAV has made sales in the home market at prices below the cost of production. (See the September 14, 1993, Memorandum to the Director of the Office of Accounting, "Review of Cost Allegation for Grain-Oriented Electrical Steel from Italy from Italy-ILVA S.p.A.") Petitioners have compared ILVA-specific prices to the cost of production, which includes ILVA-specific data where available. Therefore, pursuant to section 773(b) of the Act, we are initiating an investigation to determine whether Italian home market sales (or third-country sales in the event that we determine that the home market is not viable) are made at prices below the cost of production.

ITC Notification

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of this action and we have done so.

Preliminary Determination by the International Trade Commission

The ITC will determine by October 10, 1993, whether there is a reasonable indication that imports of grain-oriented electrical steel from Italy and Japan are materially injuring, or threaten material injury to, a U.S. industry. Pursuant to section 733(a) of the Act, negative ITC determinations will result in the investigations being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: September 15, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–23076 Filed 9–20–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–475–812]

Initiation of Countervailing Duty Investigation: Grain-Oriented Electrical Steel From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 21, 1993.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hager, Annika O'Hara, or David Boyland, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5055, (202) 482–4198, and (202) 482–0588.

INITIATION:

The Petition

On August 26, 1993, Allegheny Ludlum Corp., Armco, Inc., United Steelworkers of America, Butler Armco Independent Union, and Zanesville Armco Independent Union (hereinafter, "petitioners") filed with the Department of Commerce ("the Department") a countervailing duty petition on behalf of the United States industry producing grain-oriented electrical steel (hereinafter, "electrical steel"). In accordance with section 701 of the Tariff Act of 1930, as amended ("the Act"), the petitioners allege that manufacturers, producers, or exporters of the subject merchandise in Italy receive countervailable subsidies.

Injury Test

Because Italy is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the

Act applies to this investigation. Accordingly, the U.S. International Trade Commission ("ITC") must determine whether imports of the subject merchandise from Italy materially injure, or threaten material injury to, a U.S. industry.

Standing

Petitioners have stated that they have standing to file the petition because they are interested parties as defined in sections 771(9)(C) and 771(9)(D) of the Act and that they have filed the petition on behalf of the U.S. industry producing the like product. If any interested party, as described in sections 771(9) (C), (D), (E), or (F) wishes to register support for, or opposition to, this petition, such party should file written notification with the Assistant Secretary for Import Administration, room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Scope of the Investigation

The products covered by this investigation are certain grain-oriented silicon electrical steel, which are flat-rolled alloy steel products containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.560 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness, as currently classifiable in the HTS under item numbers 7225.10.0000, 7225.30.7000, 7225.40.7000, 7225.50.8000, 7225.90.0000, 7226.10.1010, 7226.10.5030, 7226.10.5060, 7226.91.7000, 7226.91.8000, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0000, 7228.30.8050, 7228.60.6000, and 7229.90.1000. Although the Harmonized Tariff Schedule of the United States ("HTS") subheadings are provided for convenience and customs purposes, our written descriptions of the scope of this proceeding is dispositive.

Allegation of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations.

Initiation of a Countervailing Duty Investigation

The Department has examined the petition on electrical steel from Italy and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702 of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of electrical steel from Italy receive subsidies.

We are including in our investigation the following programs alleged in the petition to have provided subsidies to producers of the subject merchandise in Italy:

1. Equity Infusions
   (a) Equity infusions provided to Terni (a predecessor company to Ilva) in 1978, 1980 through 1982, and 1984 through 1987; and
   (b) Equity Infusions provided to Ilva from 1989 through 1991
2. Debt Forgiveness in Connection with the 1987–88 Restructuring Plan
3. Debt Forgiveness in Connection with the Transfer of Terni's assets to Ilva
4. Government Loan Guarantees
5. Preferential Financing under Law 675/77
   (a) Loans from the Ministry of Industry
   (b) IRI Bond Issue Loan
   (c) Interest Contributions
   (d) Capital Grants/Grants to Ilva
   (e) Personnel Retraining Grants
   (f) VAT Reductions
6. Interest Grants for "Indirect Debts" under Law 750/81
7. Urban Redevelopment Packages under Law 181
8. Social Security Exemptions
9. Interest Subsidies under Law 617/81
10. Interest Contributions under the Sabatini Law
11. Finsider Financing
12. Subsidized IMI Export Financing
13. National Research Plan for the Iron and Steel Industry Grant
14. Early Retirement
15. Exchange Risk Guarantee Program
16. Exemption from ILOR and IRPEG Taxes
17. ECSC Article 54 Loans
18. European Social Fund Grants
19. ECSC Redeployment Aid (Article 56(2)(b))

We are not including the following programs alleged to be benefitting producers of the subject merchandise in Italy.

1. Terni's 1990 Contribution of Assets to Ilva

After the 1988 transfer of some of its assets to Ilva (see section 3, above), Terni was left with 596.4 billion lire in assets, the same amount in liabilities, and no equity. These remaining assets were later transferred to Ilva in 1990.

Petitioners reason that either Terni revalued the assets prior to their transfer to Ilva, or Ilva received the assets at an inflated value. In either event, Terni benefitted from this asset transfer, according to petitioners. Petitioners assume that the assets were indeed written down and that the GOI covered the resulting loss incurred by Terni which did not have any capital left and, therefore, was unable to cover such write-down.

Petitioners have not shown that there is a benefit associated with the 1990 asset transfer of Terni's residual assets to Ilva. Petitioners have not provided any evidence in support of their allegation that Terni wrote down the assets and that the company was subsequently reimbursed by the GOI. We, therefore, are not including this allegation in our investigation.

2. Law 464/72 Financing

Petitioners state that Article 1 of Law 464/72 provides wage subsidies to workers laid off for specified reasons, including restructuring of industrial enterprises. Article 9 of that law provides "tax and credit measures" for enterprises engaged in conversion, reorganization, etc. when criteria with regards to the number of workers displaced are met. Under Law 464/72, a decree issued by the Ministers of Industry, Commerce and Artisanry, of the Treasury, of the State Shareholdings, and of Labor and Social Welfare specifies the measures to be extended to qualifying companies.

Petitioners maintain that, given the amount of discretion with which the Ministers listed above allocate the benefits under Law 464, it should be concluded that the benefits are directed to specific industries and that the benefits are, thus, countervailable. Petitioners also note the significant amount of financing under this program that Terni received from IMI, *i.e.*, the fluctuating loan balances from this program in 1978, as well as each of the years 1982 through 1988.

Petitioners have not provided information as to how the mere existence of ministerial discretion indicates that this program was used in favor of a particular enterprise or industry. Therefore, we are not including Law 464/72 financing in our investigation.

3. Regional Government Financing

Petitioners maintain that Terni received preferential financing from the regions of Friuli and Umbria, and from

regional lending institutions (Mediocredito Umbro, Cassa di Risparmio di Trieste, and Cassa di Risparmio di Lombardia). Petitioners maintain that these loans provided countervailable benefits due to their preferential nature and the uncreditworthiness of Terni.

Petitioners have not even alleged that the loans extended by the regional entities listed above were made pursuant to measures specific to the steel industry. We note that § 355.44b(9) of the Department's Proposed Regulations states that the Department will not investigate a loan from a government-owned bank absent allegations that the loan was provided at the direction of the government and was provided on terms inconsistent with commercial considerations. With regards to direct regional government loans, the petitioners have not alleged that this financing was a result of a program specifically benefitting the steel industry. Therefore, we are not including this financing in our investigation.

4. IMI Research Loans

According to petitioners, annual loan tranches for research and development associated with Terni's "Trest" and "Trest 2" projects provided countervailable benefits to Terni. Petitioners state that, while they cannot outline the terms of the financing provided, the program was countervailable because it (1) was provided at a subsidized rate, and (2) none of the research, to petitioners' knowledge, was made publicly available.

Petitioners have not provided information as to how this funding is specific to the steel industry. Without allegations of specificity, the fact that the research results were not disclosed to the public does not mean that the program is countervailable. Due to the lack of a specificity allegation, we are not including the IMI research loans in our investigation.

5. Subsidized Short-Term Financing

Petitioners state that Terni received short-term financing from a number of related entities: Finsider, IRI, Finsider subsidiary Istituto Ligure Interessenze Industriali e Commerciali (ILLIC), Terni's subsidiaries Terninoss and Industria Acciai Inox S.p.A. (I.A.I.). Petitioners note that the financing from IRI and ILLIC nominally matured within a year of the publication of the Annual Report in which the loans first appeared. However, according to petitioners, these were in fact long-term in nature.

(a) *Short-Term Debt from IRI*

Petitioners note that Terni had short-term debt of 15,987 and 50,893 million lire with IRI in 1987 and 1988 respectively. Petitioners claim that the balances for both years, especially the second, were relatively large (for short-term debt) and would have been difficult for Terni to repay in one year, given the company's financial circumstances. Also, since Terni was placed in liquidation by its parent in 1987, it is unlikely that IRI expected to be repaid in one year or less.

(b) *Short-Term Debt from ILLIC*

Petitioners state that short-term debt outstanding with ILLIC, a sister company, between each of the years 1978 through 1988 was in fact long-term financing. Petitioners note that, with the exception of financing through the Law 675/77 IRI bond issue, the average short-term debt balance with IRI was the largest single source of financing for Terni. Petitioners further maintain that there is no evidence to indicate that this debt was retired each year as per normal short-term debt financing. More than likely, according to petitioners, this debt was rolled-over each year. However, the retirement of the debt and its replacement each year would still not alter the fact that Terni was receiving long-term financing in the form of nominally short-term debt.

Although petitioners have argued that this short-term debt is in fact long-term debt, no evidence has been provided to support their claims. Because short-term loan benefits are allocated to the year in which they affect a company's cash flow, no benefits from short-term loans outstanding in 1978–1988 would continue to exist in our period of investigation (1992). Therefore, we are not including these loans in our investigation.

6. OECD Nuclear Energy Agency ("NEA") Financing

Terni's 1987 Annual Report indicates that NEA awarded Terni 126 billion lire for a multi-year program in innovation of energy-related materials. The NEA is an agency within the OECD whose main objective is to promote cooperation between governments of its participating countries in furthering the development of nuclear power as a safe, environmentally acceptable and economic energy source. Research and development projects are individually funded by participating member countries with the NEA acting as advisor and facilitator. Petitioners allege that NEA projects are generally one-time only and that they are funded by participating member countries.

According to petitioners, the project-by-project nature of NEA's one-time only ventures means that its programs can only target specific companies for very specific research and/or industrial construction projects. Furthermore, because recipient companies may be entitled to the exclusive use of the results of the research, depending on the negotiated agreement for the project, the grant Terni received is countervailable, according to petitioners.

Petitioners have not provided adequate information regarding their allegation that the one-time only, project-by-project nature of the financing rendered it specific to an enterprise or industry. The project-by-project nature of a program, alone, does not render it specific. Therefore, we are not including NEA financing in our investigation.

7. Monetary Revaluation under Law 72/83

Law 72/83 permitted companies to increase the book value of their assets by specified percentages depending on the year in which the assets were acquired. The Law provided that the values registered in the balance sheet following revaluation could not exceed the values actually attributable to the goods. Furthermore, the Law required the companies' Board of Directors and Board of Auditors to identify and justify in their reports the criteria used in any revaluation and to certify that the revaluation corresponded to the actual values attributable to the goods.

According to petitioners, Law 72/83 conferred countervailable benefits on Terni because (1) in light of Terni's poor financial performance throughout the period of investigation, the 1983 revaluation of Terni's assets under Law 72/83 bore little or no relation to the probable economic utility of these assets, and (2) the certifications by the independent auditors in a number of years contain statements that cast substantial doubt upon the accuracy and realism of the assets values recorded in Terni's books. Therefore, because Terni was a government-owned and heavily subsidized company, petitioners believe that it was not held to the letter of Law 72/83. According to petitioners, at a minimum, Terni violated the spirit of the law by revaluing assets that it had no reason to believe would ever be put to profitable use.

Petitioners have not provided sufficient evidence indicating that Terni was, in fact, exempted from the requirements of Law 72/83 for revaluing its assets. In addition, there is no mention in the translated portions of Terni's 1983 Annual Report that the

certifications required under Law 72/83 were not provided. Lacking such evidence, we find no basis for including this alleged subsidy in our investigation.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of this initiation.

Preliminary Determination by the ITC

The ITC will determine by October 11, 1993, whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports from Italy of electrical steel. Any ITC determination which is negative will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to 702(c)(2) of the Act and 19 CFR 355.13(b).

Dated: Septbember 15, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–23077 Filed 9–20–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–614–501]

Low Fuming Brazing Copper Rod and Wire From New Zealand; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on low fuming brazing copper rod and wire from New Zealand.

EFFECTIVE DATE: September 21, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Lorenza Olivas, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0983 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1993, the Department of Commerce ("the Department") published in the **Federal Register** (58 FR 41243) its intent to revoke the countervailing duty order on low fuming brazing copper rod and wire from New Zealand (50 FR 31368, August 5, 1985). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month.

On August 12, 1993, a domestic interested party, the Copper and Brass Fabricators Council (a trade association, the majority of whose members are domestic producers of the like product, and whose membership includes the petitioners in this proceeding), objected to our intent to revoke the order. Because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: September 15, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–23073 Filed 9–20–93; 8:45 am]

BILLING CODE 3510–DS–P

North Carolina State University et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93–017. *Applicant:* North Carolina State University, Raleigh, NC 27695-7212. *Instrument:* RHEED Oscillation System, Model RDV-48. *Manufacturer:* Staib Instrumente GmbH, Germany. *Intended Use:* See notice at 58 FR 17862, April 6, 1993. *Reasons:* The foreign instrument provides: (1) simultaneous line acquisition and dynamic line profile acquisition with a time resolution of 25 frames per second and (2) developed and demonstrated software. *Advice Received From:* National Institute of Standards and Technology, August 4, 1993.

Docket Number: 93–068. *Applicant:* Washington University, St. Louis, MO 63130. *Instrument:* Seismograph, Model STS-2. *Manufacturer:* G. Streckheisen, Switzerland. *Intended Use:* See notice at 58 FR 36397, July 7, 1993. *Reasons:* The foreign instrument provides: (1) a bandwidth of 0.003 to 5.0 Hz, (2) 140 dB dynamic range and (3) portable surface operation with self-centering capability and temperature compensation. *Advice Received From:* U.S. Bureau of Mines, March 6, 1993 (comparable case).

The National Institute of Standards and Technology and U.S. Bureau of Mines advise that: (1) The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–23080 Filed 9–20–93; 8:45 am]

BILLING CODE 3510–DS–F

Carnegie Mellon University; Notice of Decision on Application for Duty-free Entry of Scientific Instrument

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

DECISION: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

REASONS: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 93–038. *Applicant:* Carnegie Mellon University, 5000 Forbes Avenue, Pittsburgh, PA 15213-3890. *Instrument:* Gas Concentration Analyzer, Model Epison II. *Manufacturer:* Thomas Swann Instruments, United Kingdom. *Date of*

Denial without Prejudice to Resubmission: June 30, 1993.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–23081 Filed 9–20–93; 8:45 am]

BILLING CODE 3510–DS–F

Bowling Green State University, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93–041. *Applicant:* Bowling Green State University, Bowling Green, OH 43403. *Instrument:* Photoelectron Microscope, Model PM-150. *Manufacturer:* Staib Instrumente GmbH, Germany. *Intended Use:* See notice at 58 FR 27267, May 7, 1993. *Reasons:* The foreign instrument provides a photoemission microscope with: (1) magnification to 1000, (2) spatial resolution to 200 nm and (3) time resolution near 10 ms.

Docket Number: 93–046. *Applicant:* Albert Einstein College of Medicine, Bronx, NY 10461. *Instrument:* Mass Spectrometer System, Model API III-R. *Manufacturer:* Sciex, Canada. *Intended Use:* See notice at 58 FR 31509, June 3, 1993. *Reasons:* The foreign instrument provides: (1) tandem MS/MS with LC separations, (2) flow rates to 200 µl/minute and (3) sensitivity of 5.0 picomoles of MW=808 (reserpine).

Docket Number: 93–048. *Applicant:* University of Maryland Baltimore County, Baltimore, MD 21228-5398. *Instrument:* Spectrofluorimeter System, Model SF-61. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* See notice at 58 FR 34029, June 23, 1993. *Reasons:* The foreign instrument provides maximum reaction rate and a dead time of 0.8 ms with optical coupling.

Docket Number: 93–052. *Applicant:* University of Vermont, Burlington, VT 05405-0156. *Instrument:* (2) Sweeping Beam Optocators, Model S001 and (2) SS1 Interface Modules. *Manufacturer:* Selcom AB, Sweden. *Intended Use:* See notice at 58 FR 34566, June 28, 1993. *Reasons:* The foreign instrument provides diode lasers scanning at 20 Hz to measure x-y coordinates and a measurement range of 72 mm with 0.02 mm resolution.

Docket Number: 93–055. *Applicant:* LSU-Pennington Biomedical Research Center, Baton Rouge, LA 70808. *Instrument:* Xenon Flashlamp System, Model XF-10. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* See notice at 58 FR 34029, June 23, 1993. *Reasons:* The foreign instrument provides: (1) stored electrical energy to 240 J, (2) pulse lengths of 0.4 to 1.0 ms and (3) 3–lens quartz optics.

Docket Number: 93–056. *Applicant:* Duke University, Durham, NC 27708-0346. *Instrument:* Mass Spectrometer, Model JMS-SX102A with Accessories. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 58 FR 34566, June 28, 1993. *Reasons:* The foreign instrument provides: (1) resolution to 60 000, (2) continuous flow FAB and (3) a scan rate to 0.1 seconds/decade.

Docket Number: 93–057. *Applicant:* Hampden-Sydney College, Hampden-Sydney, VA 23943. *Instrument:* Electron Spin Resonance Spectrometer, Model JES-RE1X. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 58 FR 34029, June 23, 1993. *Reasons:* The foreign instrument provides a cavity Q-value of 18 000 and a S/N ratio of 400:1 for "weak pitch" samples.

The National Institutes of Health advises in its memoranda dated July 29, 1993, that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–23079 Filed 9–20–93; 8:45 am]

BILLING CODE 3510–DS–F

Georgia Institute of Technology, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93–071. *Applicant:* Georgia Institute of Technology, Atlanta, GA 30332. *Instrument:* EM31 Conductivity Meter and Model DL720 Digital Data Acquisition System. *Manufacturer:* Geonics Ltd., Canada. *Intended Use:* See notice at 58 FR 39791, July 26, 1993. *Reasons:* The foreign instrument provides: (1) measurement of groundwater contaminant plumes by measuring terrain conductivity without electrodes or ground contact, (2) electromagnetic inductive operation and (3) simultaneous measurement of plumes and buried metal. *Advice Received From:* U.S. Geological Survey, July 22, 1993 (comparable case).

Docket Number: 93–074. *Applicant:* The College of William and Mary, Virginia Institute of Marine Science, Gloucester Point, VA 23062. *Instrument:* Electronic Fish Measuring Board, Model FMB IV. *Manufacturer:* Limnoterra Atlantic, Inc., Canada. *Intended Use:* See notice at 58 FR 39791, July 26, 1993. *Reasons:* The foreign instrument provides in situ digitized logging of fish dimensions with simultaneous entry of ancillary data which can be downloaded to a PC on return from the field. *Advice Received From:* National Institutes of Health, March 4, 1993 (comparable case).

Docket Number: 93–058. *Applicant:* Louisiana State University and A&M College, Baton Rouge, LA 70803. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad 2+. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* See notice at 58 FR 34566, June 28, 1993. *Reasons:* The foreign instrument provides: (1) a sensitivity rating of 1.0×10^{-6} at low mass and 5.0×10^{-7} for high mass and (2) MS/MS capability for selectivity. *Advice Received From:* National Institutes of Health, August 19, 1993.

The U.S. Geological Survey and National Institutes of Health advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of

equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93-23078 Filed 9-20-93; 8:45 am]

BILLING CODE 3510-DS-F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 93-098. *Applicant:* Oklahoma State University, Purchasing Department, 208G Whitehurst, Stillwater, OK 74078. *Instrument:* Fabry-Perot Tandem Interferometer and Accessory. *Manufacturer:* J.R. Sandercock, Switzerland. *Intended Use:* The instrument will be used for studies of silicon nitride used to manufacture ceramic ball bearings for jet engines in order to obtain information about the surface quality of these ceramic bearings in a non-destructive way. A second objective is to study the changes in the surface scattering on bearings which have undergone different grinding procedures and polishing techniques. *Application Received by Commissioner of Customs:* August 4, 1993.

Docket Number: 93-099. *Applicant:* U.S. Geological Survey, Department of the Interior, Box 25046 MS 964, Denver Federal Center, Bldg., 25, Ent. E-14, Denver, CO 80225. *Instrument:* Automatic Spinner Magnetometer System, Model JR-5A. *Manufacturer:* Geofyzika, Czech Republic. *Intended Use:* The instrument will be used to investigate remanent magnetization of rocks and sediments to interpret from the magnetic data the variations in the ancient Earth magnetic field, correlations of rock units, variations in ancient climate, and the effects of chemical alteration on magnetic properties. *Application Received by Commissioner of Customs:* August 11, 1993.

Docket Numbers: 93-100 and 93-101. *Applicant:* University of Michigan, Department of Geological Sciences, 1006 C.C. Little Bldg., 425 E. University, Ann Arbor, MI 48109-1063. *Instruments:* (2) Used Rare Gas Mass Spectrometers and Accessories, Models VG 1200S and VG 3000. *Manufacturer:* Fisons, United Kingdom. *Intended Use:* The Model 1200S instrument will be used to measure the natural and neutron irradiation induced Ar, Ne and Xe isotopic compositions in rocks, minerals and natural fluids. The Model 3000 instrument will be used to measure the isotopic composition of helium in rocks, minerals and natural fluids. Both instruments will also be used for training graduate students for the degree of M.Sc. or Ph.D. and training graduate and undergraduate students in the principles of isotope geochemistry. *Applications Received by Commissioner of Customs:* August 12, 1993.

Docket Number: 93-102. *Applicant:* University of Arizona, Department of Chemistry, Tucson, AZ 85721. *Instrument:* Langmuir Blodgett Dipping Trough. *Manufacturer:* Riegler and Kirstein GmbH, Germany. *Intended Use:* The instrument will be used to fabricate ordered thin layers of novel organic and metal-organic molecules to study their unique optical and electronic properties for applications in nonlinear optics, optical switching, photodetection, and chemical sensing. *Application Received by Commissioner of Customs:* August 13, 1993.

Docket Number: 93-103. *Applicant:* University of Hawaii, Department of Geology and Geophysics, 2525 Correa Road, Honolulu, HI 96822. *Instrument:* Mass Spectrometer, Model VG Sector 54-30. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used for the study of the isotopic composition of Th, U, Ra, Ba, Pa, Lu, Hf, B, Cl, Re and Os in a variety of ocean and Earth sciences-related materials, especially volcanic rocks, marine sediments, coral deposits, and ocean, lake and river waters. In addition, the instrument will be used for educational purposes in Geology and Geophysics courses. *Application Received by Commissioner of Customs:* August 16, 1993.

Docket Number: 93-104. *Applicant:* Graduate Hospital, 415 S. 19th Street, Philadelphia, PA 19146. *Instrument:* Fluorescence Excitation, Four Wavelength System and Fluorescence Photometer System with Light Source. *Manufacturer:* Scientific Instruments GmbH, Germany. *Intended Use:* The instrument will be used to determine the levels of intracellular free calcium in small strips of vascular smooth muscle simultaneously with force in response to agonist activation or membrane depolarization. *Application Received by Commissioner of Customs:* August 16, 1993.

Docket Number: 93-105. *Applicant:* University of Vermont, General Clinical Research Center, Medical Center Hospital of Vermont, Burlington, VT 05401. *Instrument:* Mass Spectrometer System, Model Delta S. *Manufacturer:* Finnigan, MAT, Germany. *Intended Use:* The instrument will be used primarily to measure the stable isotope enrichment of specific amino acids in mixed skeletal muscle protein, isolated muscle proteins and plasma proteins in order to quantitate metabolism in diabetic, obese, young and aged humans. The overall objective of the experiments is the manipulation of the metabolic state of the research subject in order to better understand protein metabolism and energy expenditure and the influence pathological conditions may have on them. *Application Received by Commissioner of Customs:* August 16, 1993.

Docket Number: 93-106. *Applicant:* USDA, Northeastern Forest Experiment Station, Forest Service, 359 Main Road, Delaware, OH 43015. *Instrument:* Electron Microscope, Model JEM-1010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used in research studies examining the effects of atmospheric pollutants on forest trees. The experiments will involve exposing seedlings to a number of different pollutants (e.g., ozone, aluminum, or carbon dioxide), and tissues (roots, leaves, mycorrhizal fungi) and sampling at the end of the experiment to determine what effect pollutants had on the cellular structures. Occasionally, the instrument will be used for training high school students through an established mentorship program. *Application Received by Commissioner of Customs:* August 18, 1993.

Docket Number: 93-107. *Applicant:* Texas A&M Research Foundation, Box 3578, College Station, TX 77843. *Instrument:* Rapid Kinetics Spectrometer Accessory, Model RX 1000. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* The instrument will be used for careful control of fluid injection into an ultraviolet spectrophotometer allowing the technician to carefully add small

amounts of solutions in a very precise manner into the chamber for measurement. This research involves the study of antibody proteins and small chemical compounds and help in understanding the chemical interactions and the thermodynamics of these chemical interactions. The instrument will also be used to teach graduate and undergraduate students about biophysical techniques used in the laboratory. *Application Received by Commissioner of Customs:* August 19, 1993.

Docket Number: 93–108. *Applicant:* Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. *Instrument:* Top-Loading Compact Dilution Refrigerator System, Model Kelvinox TLM. *Manufacturer:* Oxford Instruments, Inc., United Kingdom. *Intended Use:* The instrument will be used to provide very rapid cooling of samples (from room temperature to 20 mK in only three hours) permitting measurement of many different samples on relatively short time scales. *Application Received by Commissioner of Customs:* August 18, 1993.

Docket Number: 93–109. *Applicant:* University of Utah, Geology and Geophysics Department, 717 WBB, Salt Lake City, UT 84112. *Instrument:* Mass Spectrometer, Model 252. *Manufacturer:* Finnigan MAT Inc., Germany. *Intended Use:* The instrument will be used for isotopic characterization of all varieties of earth materials, for identification of the mechanisms controlling the isotopic compositions of earth materials, and for gaining a quantitative understanding of the physico-chemical and bio-chemical processes that have produced (and are producing) the earth's atmosphere, biosphere, hydrosphere and lithosphere. In addition, the instrument will be used for laboratory exercises and research projects in several courses in the departments. *Application Received by Commissioner of Customs:* August 19, 1993.

Docket Number: 93–110. *Applicant:* University of Pennsylvania, The Wistar Institute, Room 204, 36th & Spruce Streets, Philadelphia, PA 19104-4268. *Instrument:* Electron Microscope, Model CM 100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used to study biologic tissues derived from animals used in experimental research, including amphibians, rodents and humans. Experiments will include assessment of liver and lung tissue for evidence of gene transfer using vehicles such as recombinant adenoviruses, and plasmid based systems. *Application Received by Commissioner of Customs:* August 20, 1993.

Docket Number: 93–111. *Applicant:* Medical College of Georgia, Department of Pathology, 1120 15th Street, Augusta, GA 30912. *Instrument:* Electron Microscope, Model CM 100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used for studies on diseased arteries, kidneys, lung, blood cells, fallopian tubes and nasal epithelium, as well as endothelial, smooth muscle and blood cells grown in tissue culture. In addition, the instrument will be used for educational purposes at four levels (undergraduate medical school, residency and internship, post-doctoral research and continuing education for faculty and staff). *Application Received by Commissioner of Customs:* August 20, 1993.

Docket Number: 93–112. *Applicant:* University of Florida, Department of Chemistry, 127 CRB, Gainesville, FL 32611–2046. *Instrument:* ICP Mass Spectrometer, Model MAT SOLA. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used to analyze trace elemental species in ceramic bearing materials, particularly silicon nitride ceramics and in lubricating oils used with ceramic bearings. The research will involve the development of optimized techniques for both sample introduction for the different matrices under consideration and for the determination of silicon, vanadium, chromium, yttrium, boron and other elements. *Application Received by Commissioner of Customs:* August 24, 1993.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–23082 Filed 9–20–93; 8:45 am]

BILLING CODE 3510–DS–F

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Application for Public Display Permit, Sea World, Inc. (P2Y).

SUMMARY: Notice is hereby given that an applicant has applied in due form for a permit to import a marine mammal for the purpose of public display under the Marine Mammal Protection Act of 1972 (16 USC 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. **Applicant:** Sea World, Inc., 7007 Sea World Drive, Orlando, Florida 32821.

2. **Type of Permit:** Public display.

3. **Number and Species of Animal:** One adult male killer whale (*Orcinus orca*) (Barcelona Zoo ID-"Ulysses") to be imported from the Barcelona Zoo in Barcelona, Spain, to Sea World in San Diego, California.

The arrangements and facilities for transporting and maintaining the marine mammal requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well being of the marine mammal involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, NMFS, U.S. Department of Commerce, Silver Spring, MD 20910 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 (301/713–2289);

Director, Southeast Region, NMFS, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802 (310/980–4016).

Dated: September 14, 1993.

Herbert W. Kaufman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–23027 Filed 9–20–93; 8:45 am]

BILLING CODE 3510–22–M

National Telecommunications and Information Administration

[Docket No. 930940-3240]

The National Information Infrastructure: Agenda for Action

AGENCY: National Telecommunications and Information Administration, DOC.

ACTION: Administration policy statement.

SUMMARY: On September 15, 1993, the Administration released an "Agenda for Action" for the National Information Infrastructure. The Agenda for Action describes the role of the government in promoting the development of the telecommunications and information infrastructure by the private sector, and in ensuring that all Americans have access to this infrastructure. This infrastructure will connect the nation's businesses, residences, schools, health care facilities and public information providers through advanced, interactive, high-speed networks.

DATES: Comments may be filed at any time.

ADDRESSES: Comments may be sent to: NTIA NII Office, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., room 4898, Washington, DC 20230. Comments may also be sent electronically by Internet Email to nii@ntia.doc.gov.

FOR FURTHER INFORMATION CONTACT: NTIA NII Office, (202) 273-3366 or (202) 482-1551.

Authority: 47 U.S.C. 901 *et seq.*

SUPPLEMENTARY INFORMATION:

The National Information Infrastructure: Agenda for Action

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Tab A—The National Information Infrastructure: Agenda for Action

Executive Summary

All Americans have a stake in the construction of an advanced National Information Infrastructure (NII), a seamless web of communications networks, computers, databases, and consumer electronics that will put vast amounts of information at users' fingertips. Development of the NII can help unleash an information revolution that will change forever the way people live, work, and interact with each other:

- People could live almost anywhere they wanted, without foregoing opportunities for useful and fulfilling employment, by "telecommuting" to their offices through an electronic highway;
- The best schools, teachers, and courses would be available to all students, without regard to geography, distance, resources, or disability;
- Services that improve America's health care system and respond to other important social needs could be available on-line, without waiting in line, when and where you needed them.

Private sector firms are already developing and deploying that infrastructure today. Nevertheless, there remain essential roles for government in this process. Carefully crafted government action will complement and enhance the efforts of the private sector and assure the growth of an information infrastructure available to all Americans at reasonable cost. In developing our policy initiatives in this area, the Administration will work in close partnership with business, labor, academia, the public, Congress, and state and local government. Our efforts will be guided by the following principles and objectives:

- Promote private sector investment, through appropriate tax and regulatory policies.
- Extend the "universal service" concept to ensure that information resources are available to all at affordable prices. Because information means empowerment—and employment—the government has a duty to ensure that all Americans have access to the resources and job creation potential of the Information Age.
- Act as a catalyst to promote technological innovation and new applications. Commit important government research programs and grants to help the private sector develop and demonstrate technologies needed for the NII, and develop the applications and services that will maximize its value to users.
- Promote seamless, interactive, user-driven operation of the NII. As the NII evolves into a "network of networks," government will ensure that users can transfer information across networks easily and efficiently. To increase the likelihood that the NII will be both interactive and, to a large extent, user-driven, government must reform regulations and policies that may inadvertently hamper the development of interactive applications.
- Ensure information security and network reliability. The NII must be trustworthy and secure, protecting the privacy of its users. Government action will also ensure that the overall system remains reliable, quickly repairable in the event of a failure and, perhaps most importantly, easy to use.
- Improve management of the radio frequency spectrum, an increasingly critical resource.
- Protect intellectual property rights. The Administration will investigate how to strengthen domestic copyright laws and international intellectual property treaties to prevent piracy and to protect the integrity of intellectual property.
- Coordinate with other levels of government and with other nations. Because information crosses state, regional, and national boundaries, coordination is critical to avoid needless obstacles and prevent unfair policies that handicap U.S. industry.
- Provide access to government information and improve government procurement. The Administration will seek to ensure that Federal agencies, in concert with state and local governments, use the NII to expand the information available to the public, ensuring that the immense reservoir of government information is available to the public easily and equitably. Additionally, Federal procurement policies for telecommunications and information services and equipment will be designed to promote important technical developments for the NII and to provide attractive incentives for the private sector to contribute to NII development.

The time for action is now. Every day brings news of change: new technologies, like hand-held computerized assistants; new ventures and mergers combining businesses that not long ago seemed discrete and insular; new legal decisions that challenge the separation of computer, cable, and telephone companies. These changes promise substantial benefits for the American people, but only if government understands fully their implications and begins working with the private sector and other interested parties to shape the evolution of the communications infrastructure.

The benefits of the NII for the nation are immense. An advanced information infrastructure will enable U.S. firms to compete and win in the global economy, generating good jobs for the American people and economic growth for the nation. As importantly, the NII can transform the lives of the American people—ameliorating the constraints of geography, disability, and economic status—giving all Americans a fair opportunity to go as far as their talents and ambitions will take them.

Tab B—The National Information Infrastructure: the Administration's Agenda for Action

Version 1.0

I. The Promise of the NII

Imagine you had a device that combined a telephone, a TV, a camcorder, and a personal computer. No matter where you went or what time it was, your child could see you and talk to you, you could watch a replay of your team's last game, you could browse the latest additions to the library, or you could find the best prices in town on groceries, furniture, clothes—whatever you needed.

Imagine further the dramatic changes in your life if:

- The best schools, teachers, and courses were available to all students, without regard to geography, distance, resources, or disability;
- The vast resources of art, literature, and science were available everywhere, not just in large institutions or big-city libraries and museums;
- Services that improve America's health care system and respond to other important social needs were available on-line, without waiting in line, when and where you needed them;
- You could live in many places without foregoing opportunities for useful and fulfilling employment, by "telecommuting" to your office through an electronic highway instead of by automobile, bus or train;
- Small manufacturers could get orders from all over the world electronically—with detailed specifications—in a form that the machines could use to produce the necessary items;
- You could see the latest movies, play the hottest video games, or bank and shop from the comfort of your home whenever you chose;
- You could obtain government information directly or through local organizations like libraries, apply for and receive government benefits electronically, and get in touch with government officials easily; and
- Individual government agencies, businesses and other entities all could exchange information electronically—reducing paperwork and improving service.

Information is one of the nation's most critical economic resources, for service industries as well as manufacturing, for economic as well as national security. By one estimate, two-thirds of U.S. workers are in information-related jobs, and the rest are in industries that rely heavily on information. In an era of global markets and global competition, the technologies to create, manipulate, manage and use information are of strategic importance for the United States. Those technologies will help U.S. businesses remain competitive and create challenging, high-paying jobs. They also will fuel economic growth which, in turn, will generate a steadily-increasing standard of living for all Americans.

That is why the Administration has launched the National Information Infrastructure initiative. We are committed to working with business, labor, academia, public interest groups, Congress, and state and local governments to ensure the development of a national information infrastructure (NII) that enables all Americans to access information and communicate with each other using voice, data, image or video at anytime, anywhere. By encouraging private sector investment in the NII's development, and through government programs to improve access to essential services, we will promote U.S. competitiveness, job creation and solutions to pressing social problems.

II. What Is the NII?

The phrase "information infrastructure" has an expansive meaning. The NII includes more than just the physical facilities used to transmit, store, process, and display voice, data, and images. It encompasses:

- A wide range and ever-expanding range of equipment including cameras, scanners, keyboards, telephones, fax machines, computers, switches, compact disks, video and audio tape, cable, wire, satellites, optical fiber transmission lines, microwave nets, switches, televisions, monitors, printers, and much more.

The NII will integrate and interconnect these physical components in a technologically neutral manner so that no one industry will be favored over any other. Most importantly, the NII requires building foundations for living in the Information Age and for making these technological advances useful to the public, business, libraries, and other nongovernmental entities. That is why, beyond the physical components of the infrastructure, the value of the National Information Infrastructure to users and the nation will depend in large part on the quality of its other elements:

- The information itself, which may be in the form of video programming, scientific or business data bases, images, sound recordings, library archives, and other media. Vast quantities of that information exist today in government agencies and even more valuable information is produced every day in our laboratories, studios, publishing houses, and elsewhere.
- Applications and software that allow users to access, manipulate, organize, and digest the proliferating mass of information that the NII's facilities will put at their fingertips.
- The network standards and transmission codes that facilitate interconnection and interoperation between networks, and ensure the privacy of persons and the security of the information carried, as well as the security and reliability of the networks.
- The people—largely in the private sector—who create the information, develop applications and services, construct the facilities, and train others to tap its potential. Many of these people will be vendors, operators, and service providers working for private industry.

Every component of the information infrastructure must be developed and integrated if America is to capture the promise of the Information Age.

The Administration's NII initiative will promote and support full development of each component. Regulatory and economic policies will be adopted that encourage private firms to create jobs and invest in the applications and physical facilities that comprise the infrastructure. The Federal government will assist industry, labor, academia, and state and local governments in developing the information resources and applications needed to maximize the potential of those underlying facilities. Moreover, and perhaps most importantly, the NII initiative will help educate and train our people so that they are prepared not only to contribute to the further growth of the NII, but also to understand and enjoy fully the services and capabilities that it will make available.

III. Need for Government Action To Complement Private Sector Leadership

The foregoing discussion of the transforming potential of the NII should not obscure a fundamental fact—the private sector is already developing and deploying such an infrastructure today. The United States communications system—the conduit through which most information is accessed or distributed—is second to none in speed, capacity, and reliability. Each year the information resources, both hardware and software, available to most Americans are substantially more extensive and more powerful than the previous year.

The private sector will lead the deployment of the NII. In recent years, U.S. companies have invested more than $50 billion annually in

telecommunications infrastructure—and that figure does not account for the vast investments made by firms in related industries, such as computers. In contrast, the Administration's ambitious agenda for investment in critical NII projects (including computing) amounts to $1–2 billion annually. Nonetheless, while the private sector role in NII development will predominate, the government has an essential role to play. In particular, carefully crafted government action can complement and enhance the benefits of these private sector initiatives. Accordingly, the Administration's NII initiative will be guided by the following nine principles and goals, which are discussed in more detail below:

(1) Promote private sector investment, through tax and regulatory policies that encourage innovation and promote long-term investment, as well as wise procurement of services.

(2) Extend the "universal service" concept to ensure that information resources are available to all at affordable prices. Because information means empowerment, the government has a duty to ensure that all Americans have access to the resources of the Information Age.

(3) Act as catalyst to promote technological innovation and new applications. Commit important government research programs and grants to help the private sector develop and demonstrate technologies needed for the NII.

(4) Promote seamless, interactive, user-driven operation of the NII. As the NII evolves into a "network of networks," government will ensure that users can transfer information across networks easily and efficiently.

(5) Ensure information security and network reliability. The NII must be trustworthy and secure, protecting the privacy of its users. Government action will also aim to ensure that the overall system remains reliable, quickly repairable in the event of a failure and, perhaps most importantly, easy to use.

(6) Improve management of the radio frequency spectrum, an increasingly critical resource.

(7) Protect intellectual property rights. The Administration will investigate how to strengthen domestic copyright laws and international intellectual property treaties to prevent piracy and to protect the integrity of intellectual property.

(8) Coordinate with other levels of government and with other nations. Because information crosses state, regional, and national boundaries, coordination is important to avoid unnecessary obstacles and to prevent unfair policies that handicap U.S. industry.

(9) Provide access to government information and improve government procurement. As described in the National Performance Review, the Administration will seek to ensure that Federal agencies, in concert with state and local governments, use the NII to expand the information available to the public, so that the immense reservoir of government information is available to the public easily and equitably. Additionally, Federal procurement policies for telecommunications and information services and equipment will be designed to promote important technical developments for the NII and to provide attractive incentives for the private sector to contribute to NII development.

The time for action is now. Every day brings news of change: new technologies, like hand-held computerized assistants; new ventures and mergers combining businesses that not long ago seemed discrete and insular; new legal decisions that challenge the separation of computer, cable and telephones. These changes promise substantial benefits for the American people, but only if government understands fully the implications of these changes and to work with the private sector and other interested parties to shape the evolution of the communications infrastructure.

IV. Managing Change/ Forging Partnerships

We will help to build a partnership of business, labor, academia, the public, and government that is committed to deployment of an advanced, rapid, powerful infrastructure accessible and accountable to all Americans.

Forging this partnership will require extensive inter-governmental coordination to ensure that Administration, Congressional, state and local government policy regarding the NII is consistent, coherent, and timely. It also requires the development of strong working alliances among industry groups and between government and the businesses responsible for creating and operating the NII. Finally, close cooperation will be needed between government, users, service providers, and public interest groups to ensure that the NII develops in a way that benefits the American people.

Specifically, the Administration will:
(1) Establish an interagency Information Infrastructure Task Force.

The President has convened a Federal inter-agency "Information Infrastructure Task Force" (IITF) that will work with Congress and the private sector to propose the policies and initiatives needed to accelerate deployment of a National Information Infrastructure. Activities of the IITF include coordinating government efforts in NII applications, linking government applications to the private sector, resolving outstanding disputes, and implementing Administration policies. Chaired by Secretary of Commerce Ron Brown and composed of high-level Federal agency representatives, the IITF's three committees focus on telecommunications policy, information policy, and applications.

(2) Establish a private sector Advisory Council on the National Information Infrastructure.

To facilitate meaningful private sector participation in the IITF's deliberations, the President will sign an Executive Order creating the "United States Advisory Council on the National Information Infrastructure" to advise the IITF on matters relating to the development of the NII. The Council will consist of 25 members, who will be named by the Secretary of Commerce by December 1993. Nominations will be solicited from a variety of NII constituencies and interested parties. The IITF and its committees also will use other mechanisms to solicit public comment to ensure that it hears the views of all interested parties.

(3) Strengthen and streamline Federal communications and information policy-making agencies.

In order to implement the ambitious agenda outlined in this document, the federal agencies most directly responsible for the evolution of the NII (such as NTIA, the Office of Information and Regulatory Affairs at OMB, and the FCC) must be properly structured and adequately staffed to address many new and difficult policy issues. The Administration intends to ensure that these agencies have the intellectual and material resources they need. In addition, in accord with the Vice President's National Performance Review, these agencies will make the organizational and procedural changes needed to most effectively contribute to the NII initiative.

V. Principles and Goals for Government Action

The Task Force currently is undertaking a wide-ranging examination of all issues relevant to the timely development and growth of the National Information Infrastructure. Specific principles and goals in areas where government action is warranted have already been identified and work has begun on the following matters:

1. Promote Private Sector Investment

One of the most effective ways to promote investments in our nation's information infrastructure is to introduce or further expand competition in communications and information markets. Vibrant competition in these markets will spur economic growth, create new businesses and benefit U.S. consumers.

To realize this vision, however, policy changes will be necessary:

Action: Passage of communications reform legislation. The Administration will work with Congress to pass legislation by the end of 1994 that will increase competition and ensure universal access in communications markets—particularly those, such as the cable television and local telephone markets, that have been dominated by monopolies. Such legislation will explicitly promote private sector infrastructure investment—both by companies already in the market and those seeking entry.

Action: Revision of tax policies. Tax policies are important determinants of the amount of private sector investment in the NII. The President has signed into law tax incentives for private sector investment in R&D and new business formation, including a three-year extension of the R&D credit and a targeted capital gains reduction for investments in small businesses. Both of these tax incentives will help spur the private sector investment needed to develop the NII.

2. Extend the "Universal Service" Concept to Ensure That Information Resources Are Available to All at Affordable Prices

The Communications Act of 1934 articulated in general terms a national goal of "Universal Service" for telephones—widespread availability of a basic communications service at affordable rates. A major objective in developing the NII will be to extend the Universal Service concept to the information needs of the American people in the 21st century. As a matter of fundamental fairness, this nation cannot accept a division of our people among telecommunications or information "haves" and "have-nots." The Administration is committed to developing a broad, modern concept of Universal Service—one that would emphasize giving all Americans who desire it easy, affordable access to advanced communications and information services, regardless of income, disability, or location.

Devising and attaining a new goal for expanded Universal Service is consistent with efforts to spur infrastructure development by increasing competition in communications and information markets. As noted above, competition can make low-cost, high-quality services and equipment widely available. Policies promoting greater competition in combination with targeted support for disadvantaged users or especially high-cost or rural areas would advance both rapid infrastructure modernization and expanded Universal Service.

Action: Develop a New Concept of Universal Service. To gather information on the best characteristics of an expanded concept of Universal Service, the Commerce Department's National Telecommunications and Information Administration (NTIA) will hold a series of public hearings on Universal Service and the NII, beginning by December 1993. The Administration will make a special effort to hear from public interest groups. Building on the knowledge gained from these activities, the IITF will work with the Advisory Council on the National Information Infrastructure, as well as with state regulatory commissions, to determine how the Universal Service concept should be applied in the 21st century.

3. Promote Technological Innovation and New Applications

Government regulatory, antitrust, tax, and intellectual property policies all affect the level and timing of new offerings in services and equipment—including the technology base that generates innovations for the marketplace. But technological innovations ultimately depend upon purposeful investment in research and development, by both the private sector and government. R&D investment helps firms to create better products and services at lower costs.

As noted in the Administration's February 22, 1993 technology policy statement: "We are moving to accelerate the development of technologies critical for long-term growth but not receiving adequate support from private firms, either because the returns are too distant or because the level of funding required is too great for individual firms to bear." Government research support already has helped create basic information technologies in computing, networking and electronics. We will support further NII-related research and technology development through research partnerships and other mechanisms to accelerate technologies where market mechanisms do not adequately reflect the nation's return on investment. In particular, these government research and funding programs will focus on the development of beneficial public applications in the fields of education, health care, manufacturing, and provision of government services.

Action: Continue the High-Performance Computing and Communications Program. Established by the High-Performance Computing Act of 1991, the HPCC Program funds R&D designed to create more powerful computers, faster computer networks, and more sophisticated software. In addition, the HPCC Program is providing scientists and engineers with the tools and training they need to solve "Grand Challenges," research problems—like designing new drugs—that cannot be solved without the most powerful computers. The Administration has requested $1 billion for the HPCC Program in fiscal year 1994, and is in the process of forming a "High-Performance Computing Advisory Committee," to provide private sector input on the Program.

We have also requested an additional $96 million in the FY 1994 budget to create a new component of the HPCC Program—Information Infrastructure Technologies and Applications (IITA). The Administration is working with Congress to obtain authorization to fund this effort, which will develop and apply high-performance computing and high-speed networking technologies for use in the fields of health care, education, libraries, manufacturing, and provision of government information.

Action: Implement the NII Pilot Projects Program. In its FY 94 budget, the Administration has requested funding from the Congress for NII networking pilot and demonstration projects. Under NTIA's direction, this pilot program will provide matching grants to state and local governments, health care providers, school districts, libraries, universities, and other non-profit entities. The grants will be awarded after a competitive merit review process and will be used to fund projects to connect institutions to existing networks, enhance communications networks that are currently operational, and permit users to interconnect among different networks. Funded projects will demonstrate the potential of the NII and provide tangible benefits to their communities. Equally important, they will help leverage the resources and creativity of the private sector to devise new applications and uses of the NII. The successes of the these pilot projects will create an iterative process that will generate more innovative approaches each year.

Action: Inventory NII Applications Projects. Many insights can be gained by

sharing information about how government can effectively use the NII. By the end of January 1994, the IITF will complete an inventory of current and planned government activities and will widely disseminate the results through electronic and printed means. An electronic forum is being established to encourage government and private sector contributions and comments about government applications projects.

4. Promote Seamless, Interactive, User-Driven Operation

Because the NII will be a network of networks, information must be transferable over the disparate networks easily, accurately, and without compromising the content of the messages. Moreover, the NII will be of maximum value to users if it is sufficiently "open" and interactive so that users can develop new services and applications or exchange information among themselves, without waiting for services to be offered by the firms that operate the NII. In this way, users will develop new "electronic communities" and share knowledge and experiences that can improve the way that they learn, work, play, and participate in the American democracy.

To assure interoperability and openness of the many components of an efficient, high-capacity NII, standards for voice, video, data, and multi-media services must be developed. Those standards also must be compatible with the large installed base of communications technologies, and flexible and adaptable enough to meet user needs at affordable costs. The United States has long relied on a consensus-based, voluntary standards-setting process in communications. Particularly in the area of information and communications technology, where product cycles are often measured in months, not years, the standards process is critical and has not always worked to speed technological innovation and serve end-users well. Government can catalyze this industry-driven process by participating more actively in private-sector standards-writing bodies and by working with industry to address strategic technical barriers to interoperability and adoption of new technologies.

To increase the likelihood that the NII will be both interactive and, to a large extent, user-driven, government also must reform regulations and policies that may inadvertently hamper the development of interactive applications. For example, government regulations concerning the lack of reimbursement of health care procedures may deter the growth of distance medicine applications.

Action: Review and clarify the standards process to speed NII applications.

By October 15, 1993 the Commerce Department's National Institute for Standards and Technology (NIST) will establish a panel and work with other appropriate agencies to review the government's involvement in establishing network requirements and standards with domestic and international partners. The panel, with input from the private sector and other levels of government, will consider the role of the government in the standards process and will identify opportunities for accelerating the deployment of the NII.

Action: Review and reform government regulations that impede development of interactive services and applications. The Administration will work closely with the private sector, as well as state and local governments, to identify government policies and regulations that may hinder the growth of interactive services and applications. The IITF will determine how those regulations should be changed.

5. Ensure Information Security and Network Reliability

The trustworthiness and security of communications channels and networks are essential to the success of the NII. Users must be assured that information transmitted over the infrastructure will go when and where it is intended to go. Electronic information systems can create new vulnerabilities. For example, electronic files can be broken into and copied from remote locations, and cellular phone conversations can be monitored easily. Yet these same systems, if properly designed, can offer greater security than less advanced communications channels.

Through the use of information systems, gathering, sending, and receiving a wide variety of personal information is now simple, quick, and relatively inexpensive. The use of information technologies to access, modify, revise, repackage, and resell information can benefit individuals, but unauthorized use can encroach on their privacy. While media reports often emphasize the role of modern information technology in invading privacy, technology advances and enhanced management oversight also offer the opportunity for privacy protection. This protection is especially important to businesses that increasingly transmit sensitive proprietary data through electronic means. In a climate of tough global competitiveness to gain market advantage, the confidentiality of this information can spell the difference between business success or failure.

In addition, it is essential that the Federal government work with the communications industry to reduce the vulnerability of the nation's information infrastructure. The NII must be designed and managed in a way that minimizes the impact of accident or sabotage. The system must also continue to function in the event of attack or catastrophic natural disaster.

Action: Review privacy concerns of the NII. The IITF has developed a work plan to investigate what policies are necessary to ensure individual privacy, while recognizing the legitimate societal needs for information, including those of law enforcement. The IITF has also developed a work plan to investigate how the government will ensure that the infrastructure's operations are compatible with the legitimate privacy interests of its users.

Action: Review of encryption technology. In April, the President announced a thorough review of Federal policies on encryption technology. In addition, Federal agencies are working with industry to develop new technologies that protect the privacy of citizens, while enabling law enforcement agencies to continue to use court-authorized wiretaps to fight terrorism, drug rings, organized crime, and corruption. Federal agencies are working with industry to develop encryption hardware and software that can be used for this application.

Action: Work with industry to increase network reliability. The National Communications System brings together 23 Federal agencies with industry to reduce the vulnerability of the nation's telecommunications systems to accident, sabotage, natural disaster, or military attack. And the Federal Communications Commission has an industry and user Network Reliability Council to advise it on ensuring the reliability of the nation's commercial telecommunications networks. These efforts are increasingly important as the threat posed by terrorism and computing hacking grows. The NCS will continue its work and will coordinate with the IITF. In addition, the National Security Telecommunications Advisory Committee, which advises the President in coordination with the NCS, as well as the FCC's Network Reliability Council, will coordinate with and complement the work of the Advisory Council on the National Information Infrastructure.

6. Improve Management of the Radio Frequency Spectrum

Many of the dramatic changes expected from the development of the information infrastructure will grow out of advances in wireless technologies. The ability to access the resources of the NII at any time, from anywhere in the country, will be constrained, however, if there is inadequate spectrum available.

To ensure that spectrum scarcity does not impede the development of the NII, the Administration places a high priority on streamlining its procedures for the allocation and use of this valuable resource.

Action: Streamline allocation and use of spectrum. The Administration is working with Congress to fully implement the spectrum management provisions of the Omnibus Budget and Reconciliation Act of 1993, to streamline government use of spectrum and to get spectrum to the public efficiently. These provisions will provide greater flexibility in spectrum allocation, including increased sharing of spectrum between private sector and government users, increased flexibility in technical and service standards, and increased choices for licensees in employing their assigned spectrum.

Action: Promote market principles in spectrum distribution. Further, the Administration will continue to support policies that place a greater reliance on market principles in distributing spectrum, particularly in the assignment process, as a superior way to apportion this scarce resource among the widely differing wireless services that will be a part of the NII. At the same time, the Administration will develop policies to ensure that entrepreneurs and small, rural, minority- and women-owned businesses are able to participate in spectrum auctions.

7. Protect Intellectual Property Rights

Development of an advanced information infrastructure will create unprecedented market opportunities and new challenges for our world-preeminent media and information industries. The broad public interest in promoting the dissemination of information to our citizens must be balanced with the need to ensure the integrity of intellectual property rights and copyrights in information and entertainment products. This protection is crucial if these products—whether in the form of text, images, computer programs, databases, video or sound recordings, or multimedia formats—are to move in commerce using the full capability of the NII.

Action: Examine the adequacy of copyright laws. The IITF will investigate how to strengthen domestic copyright laws and international intellectual property treaties to prevent piracy and to protect the integrity of intellectual property. To ensure broad access to information via the NII, the IITF will study how traditional concepts of fair use should apply with respect to new media and new works.

Action: Explore ways to identify and reimburse copyright owners. The IITF will explore the need for standards for the identification of copyright ownership of information products in electronic systems (e.g., electronic headers, labels or signature techniques). The Task Force will also evaluate the need to develop an efficient system for the identification, licensing, and use of work, and for the payment of royalties for copyrighted products delivered or made available over electronic information systems.

8. Coordinate With Other Levels of Governmental and With Other Bodies

Domestic: Many of the firms that will likely participate in the NII are now subject to regulation by Federal, state, and local government agencies. If the information infrastructure is to develop quickly and coherently, there must be close coordination among the various government entities, particularly with respect to regulatory policy. It is crucial that all government bodies—particularly Congress, the FCC, the Administration, and state and local governments—work cooperatively to forge regulatory principles that will promote deployment of the NII.

Action: Seek ways to improve coordination with state and local officials. The IITF will meet with state and local officials to discuss policy issues related to development of the NII. The Task Force will also seek input from the private sector and non-federal agencies as it devises proposals for regulatory reform. The Administration is committed to working closely with state and local governments in developing its telecommunications policies.

International: The NII also will develop in the context of evolving global networks. Because customers typically demand that U.S. communications providers offer services on a global basis, it is critical that the infrastructure within this country can meet international, as well as domestic, requirements.

Action: Open up overseas markets. The Administration has shown its willingness to work directly on behalf of U.S. firms to ensure that they have an equal opportunity to export telecommunications-related goods and services to potential overseas customers. For example, the Commerce Department is developing new export control policies governing computers and telecommunications equipment manufactured by U.S. firms. These changes will remove export restrictions on many of these products and permit U.S. manufacturers to enter new markets not previously available to them. The Administration will continue to work to open overseas markets for U.S. services and products.

Action: Eliminate barriers caused by incompatible standards. Equally important is the need to avoid trade barriers raised by incompatible U.S. and foreign standards or—more subtly—between the methods used to test conformance to standards. Through its participation in international standards committees, the Administration is working to eliminate or avert such barriers.

Action: Examine international and U.S. trade regulations. The IITF will coordinate the Administration's examination of policy issues related to the delivery of telecommunications services to and from the U.S., including claims by some U.S. companies that regulatory practices in foreign countries—including denial of market access for U.S. carriers and the imposition of excessive charges for completing calls from the United States—are harming the competitiveness of the industry and the costs charged to U.S. customers for service. The IITF also will reexamine U.S. regulation of international telecommunications services.

9. Provide Access to Government Information and Improve Government Procurement

Thomas Jefferson said that information is the currency of democracy. Federal agencies are among the most prolific collectors and generators of information that is useful and valuable to citizens and business. Improvement of the nation's information infrastructure provides a tremendous opportunity to improve the delivery of government information to the taxpayers who paid for its collection; to provide it equitably, at a fair price, as efficiently as possible.

The Federal government is improving every step of the process of information collection, manipulation, and dissemination. The Administration is funding research programs that will improve the software used for browsing, searching, describing, organizing, and managing information. But it is committed as well to applying those tools to the distribution of information

that can be useful to the public in their various roles as teachers, researchers, business people, consumers, etc.

The key questions that must be addressed are: What information does the public want? What information is in electronic form? By what means can it be distributed? How can all Americans have access to it? A secondary question is: How can government itself improve through better information management?

Action: Improve the accessibility of government information. IITF working groups will carefully consider the problems associated with making government information broadly accessible to the public electronically. Additionally, several inter-agency efforts have been started to ensure that the *right* information is stored and available. Finally, to help the public find government information, an inter-agency project has been formed to develop a virtual card catalogue that will indicate the availability of government information in whatever form it takes.

Action: Upgrade the infrastructure for the delivery of government information. The Federal government has already taken a number of steps to promote wider distribution of its public reports. Legislation has been enacted to improve electronic dissemination of government documents by the Government Printing Office. A number of Federal agencies have moved aggressively to convert their public information into electronic form and disseminate it over the Internet, where it will be available to many more people than have previously had access to such information. In the future, substantial improvements will be made to "FedWorld," an electronic bulletin board established by the Department of Commerce's National Technical Information Service (NTIS), which links the public with more than 100 Federal bulletin boards and information centers. These improvements will enhance FedWorld's ability to distribute to the public scientific, technical, and business-related information generated by the U.S. Government and other sources. Finally, a conference will be held in the Fall of 1993 to begin teaching Federal employees how they can use these distribution mechanisms.

Action: Enhance citizen access to government information. In June 1993, OMB prescribed new polices pertaining to the acquisition, use, and distribution of government information by Federal agencies. Among other things, the policies mandate that, in distributing information to the public, Federal agencies should recoup only those costs associated with the dissemination of that information, not with its creation or collection. Moreover, a number of inter-agency efforts are under way to afford greater public access to government information. One project seeks to turn thousands of local and field offices of various Federal agencies into Interactive Citizen Participation Centers, at which citizens can communicate with the public affairs departments of all Federal agencies.

Action: Strengthen inter-agency coordination through the use of electronic mail. To implement the National Performance Review's recommendation on expanded use of electronic mail within the Federal government, an inter-agency coordinating body has been established to incorporate electronic mail into the daily work environment of Federal workers. The group is also sponsoring three pilot projects to expand connectivity that will build a body of experience that other Federal agencies can draw on when they begin to use electronic mail.

Action: Reform the Federal procurement process to make government a leading-edge technology adopter. The Federal government is the largest single buyer of high technology products. The government has played a key role in developing emerging markets for advanced technologies of military significance; it can be similarly effective for civilian technologies. The Administration will implement the procurement policy reforms set forth in the National Performance Review report.

VI. America's Destiny is Linked to Our Information Infrastructure

The principles and goals outlined in this document provide a blueprint for government action on the NII. Applying them will ensure that government provides constructive assistance to U.S. industry, labor, academia and private citizens as they develop, deploy and use the infrastructure.

The potential benefits for the nation are immense. The NII will enable U.S. firms to compete and win in the global economy, generating good jobs for the American people and economic growth for the nation. As importantly, the NII promises to transform the lives of the American people. It can ameliorate the constraints of geography and economic status, and give all Americans a fair opportunity to go as far as their talents and ambitions will take them.

Tab C—Benefits and Applications of the National Information Infrastructure

The development of the National Information Infrastructure is not an end in itself; it is a means by which the United States can achieve a broad range of economic and social goals. Although the NII is not a "silver bullet" for all of the problems we face, it can make an important contribution to our most pressing economic and social challenges.

This infrastructure can be used by *all* Americans, not just by scientists and engineers. As entrepreneurs, factory workers, doctors, teachers, federal employees, and citizens, Americans can harness this technology to:

- Create jobs, spur growth, and foster U.S. technological leadership;
- Reduce health care costs while increasing the quality of service in underserved areas;
- Deliver higher-quality, lower-cost government services;
- Prepare our children for the fast-paced workplace of the 21st century; and
- Build a more open and participatory democracy at all levels of government.

This is not a far-fetched prediction. As shown below, our current information infrastructure is already making a difference in the lives of ordinary Americans, and we have just begun to tap its potential.

Economic Benefits

The National Information Infrastructure will help create high-wage jobs, stimulate economic growth, enable new products and services, and strengthen America's technological leadership. Whole new industries will be created, and the infrastructure will be used in ways we can only begin to imagine. Below are some of the potential benefits to the U.S. economy:

1. Increased Economic Growth and Productivity

- The Computer Systems Policy Project estimates that the NII will "create as much as $300 billion annually in new sales across a range of industries."
- The Economic Strategy Institute concluded that accelerated deployment of the NII would increase GDP by $194–$321 billion to GNP by the year 2007, and increase productivity by 20 to 40 percent.

2. Job Creation

Although there are no definitive estimates for the total number of U.S. jobs the deployment of the NII will create, it is clear that it has the potential

to create hundreds of thousands of jobs. For example:

• Industry experts believe that the Personal Communications Services industry, a new family of wireless services, could create as many as 300,000 jobs in the next 10–15 years. The development of this industry will be accelerated by the Emerging Telecommunications Technology Act, which was signed by President Clinton as part of the budget package.

3. Technological Leadership

The NII will serve as the driver for a wide variety of technologies, such as semiconductors, high-speed networking, advanced displays, software, and human/computer interfaces such as speech recognition.

This technology will be used to create exciting new products and services, strengthening U.S. leadership in the electronics and information technology sector. For example, experts envision the production of powerful computers that will be held in the palm of our hand, "as mobile as a watch and as personal as a wallet, * * *. [they] will recognize speech, navigate streets, take notes, keep schedules, collect mail, manage money, open the door and start the car, among other computer functions we cannot imagine today."

4. Regional, State, and Local Economic Development

In today's knowledge-based, global economy in which capital and technology are increasingly mobile, the quality of America's information infrastructure will help determine whether companies invest here or overseas. States and regions increasingly recognize that development of their information infrastructure is key to creating jobs and attracting new businesses:

• In May 1993, Governor Jim Hunt announced the creation of the North Carolina Information Highway, a network of fiber optics and advanced switches capable of transmitting the entire 33-volume Encyclopedia Britannica in 4.7 seconds. This network, which will be deployed in cooperation with BellSouth, GTE, and Carolina Telephone, is a key element of North Carolina's economic development strategy.

• In California's Silicon Valley, academics, business executives, government officials, and private citizens are working together to build an "advanced information infrastructure and the collective ability to use it." A non-profit organization, Smart Valley Inc., will help develop the information infrastructure and its applications. Many business applications are envisioned, including desktop videoconferencing, rapid delivery of parts designs to fabrication shops, design of chips on remote supercomputers, electronic commerce, and telecommuting.

• The Council of Great Lakes Governors has developed a regional telecommunications initiative, which includes creating an open data network as a first step towards creation of a Great Lakes Information Highway, promoting access in rural areas, developing a set of telecommunications service goals and a time table for achieving them, and developing a computerized inventory of each state's advanced telecommunications infrastructure.

5. Electronic Commerce

Electronic commerce (*e.g.*, on-line parts catalogues, multi-media mail, electronic payment, brokering services, collaborative engineering) can dramatically reduce the time required to design, manufacture, and market new products. "Time to market" is a critical success factor in today's global marketplace. Electronic commerce will also strengthen the relationships between manufacturer, suppliers, and joint developers. In today's marketplace, it is not unusual to have 12 or more companies collaborating to develop and manufacture new products.

Health Care

The NII can help solve America's health care crisis. The Clinton Administration is committed to health care reform that will ensure that Americans will never again lose their health care coverage and that controls skyrocketing health care costs. The costs of doing nothing are prohibitive:

• Since 1980, our nation's health care costs have quadrupled. Between 1980 and 1992, health expenditures shot up from 9 percent to 14 percent of GDP; under current policies, they will hit 19 percent by the year 2000. Health care cost increases will eat up more than half of the new federal revenue expected over the next four years.

• Twenty-five cents out of every dollar on a hospital bill goes to administrative costs and does not buy any patient care. The number of health care administrators is increasing four times faster than the number of doctors.

These problems will not be solved without comprehensive health care reform. Better use of information technology and the development of health care applications for the NII, however, can make an important contribution to reform. Experts estimate that telecommunications applications could reduce health care costs by $36 to $100 billion each year while improving quality and increasing access. Below are some of the existing and potential applications:

1. Telemedicine

By using telemedicine, doctors and other care givers can consult with specialists thousands of miles away; continually upgrade their education and skills; and share medical records and x-rays.

Example: In Texas, over 70 hospitals, primarily in rural areas, have been forced to close since 1984. The Texas Telemedicine Project in Austin, Texas offers interactive video consultation to primary care physicians in rural hospitals as a way of alleviating the shortage of specialists in rural areas. This trial is increasing the quality of care in rural areas and providing at least 14 percent savings by cutting patient transfer costs and provider travel.

2. Unified Electronic Claims

More than 4 billion health care claims are submitted annually from health care providers to reimbursement organizations such as insurance companies, Medicare, Medicaid, and HMOs. Moreover, there are 1,500 different insurance companies in the United States using many different claims forms. The administrative costs of the U.S. health care system could be dramatically reduced by moving towards standardized electronic submission and processing of claims.

3. Personal Health Information Systems

The United States can use computers and networks to promote self care and prevention by making health care information available 24 hours a day in a form that aids decision making. Most people do not have the tools necessary to become an active and informed participant in their own health care. As a result, far too many people (estimates range from 50 to 80 percent) entering the health care system do not really need a physician's care. Many improperly use the system by, for example, using the emergency room for a cold or back strain. Many of those who end up with serious health problems enter the health care system too late, and thus require more extensive and costly therapy. Michael McDonald, chairman of the Communications and Computer Applications in Public Health (CCAPH), estimates that even if personal health information systems were used only 25 to 35 percent of the time, $40 to $60 billion could be saved.

Example: InterPractice Systems, a joint venture of Harvard Community

Health Plan in Boston and Electronic Data Systems, has placed terminals in the homes of heavy users of health care, such as the elderly, pregnant women, and families with young children. Based on a patient's symptoms and their medical history, an electronic advice system makes recommendations to HCHP's members about using self care, talking with a doctor, or scheduling an appointment. In one instance, "an 11-year old who regularly played with the terminal heard his father complain one day of chest pains and turned to the system for help; it diagnosed the symptoms as a probable heart attack. The diagnosis was correct."

4. Computer-Based Patient Records

The Institute of Medicine has concluded that Computer-Based Patient Records are critical to improving the quality and reducing the cost of health care. Currently:

- 11 percent of laboratory tests must be re-ordered because of lost results;
- 30 percent of the time, the treatment ordered is not documented at all;
- 40 percent of the time a diagnosis isn't recorded; and
- 30 percent of the time a medical record is completely unavailable during patient visits.

Civic Networking Technology in the Public Interest

The benefits of the NII extend far beyond economic growth. As the Center for Civic Networking observed,

"A country that works smarter; enjoys efficient, less costly government, guided by a well-informed citizenry; that produces high quality jobs and educated citizens to fill them; that paves a road away from poverty; that promotes life-long learning, public life and the cultural life of our communities. This is the promise of the National Information Infrastructure."

The NII could be used to create an "electronic commons" and promote the public interest in the following ways:

1. Community Access Networks

Grass-roots networks are springing up all over the country, providing citizens with a wide range of information services. The National Information Infrastructure should expand a citizen's capacity for action in local institutions, as it must honor regional differences and the cultural diversity of America's heritage.

Example: The Heartland FreeNet in Peoria, Illinois provides a wide range of community information to the citizens of Central Illinois 24 hours a day. Topics covered include 113 areas of social services; a year long community calendar; the American Red Cross; current listings from the Illinois Job Service; resources for local businesses; and local government information. Experts in all fields from law to the Red Cross to chemical dependency volunteer their time and expertise to answer questions anonymously asked by the public.

Example: The Big Sky Telegraph began operation in 1988 as an electronic bulletin board system linking Montana's 114 one-room schools to each other and to Western Montana College. Today, the Big Sky Telegraph enables the formation of "virtual communities"—linking schools, libraries, county extension services, women's centers, and hospitals. Montana's high-school students learning Russian can now communicate with Russian students, and science students are participating in a course on "chaos theory" offered by MIT.

2. Dissemination of Government Information

The free flow of information between the government and the public is essential to a democratic society. Improvements in the National Information Infrastructure provide a tremendous opportunity to improve the delivery of government information to the taxpayers who paid for its collection; to provide it equitably, at a fair price, as equitably as possible.

Example: Some of the most powerful examples of the power inherent in information collection and dissemination come from the experience of Federal agencies. For example, the Emergency Planning and Community Right-to-Know Act of 1986 established a Toxic Release Inventory (TRI), which required industries to report their estimated total releases of toxic chemicals to the environment. The Environmental Protection Agency has used a variety of means for making the data available to the public, including a collaborative effort involving the agency, the nonprofit community, and philanthropy. This effort involved making the TRI available through an online service called RTK NET (the Right-to-Know Computer Network), operated by OMB Watch and Unison Institute. As a result of the TRI program, EPA and industry developed the "33/50" program, in which CEOs set a goal of reducing their pollution by 33 percent by 1992 and 50 percent by 1995. Because of RTK NET's success, EPA is seeking to expand the information available on the service.

3. Universal Access

The NII must be used to bring Americans together, as opposed to allowing a further polarization between information "haves" and "have nots."

Example: As part of a recent cable franchise negotiation, fiber optic cable was deployed in Harlem, where 40 percent of the residents live below the poverty line. New York City is exploring the use of interactive video conferencing between community rooms in housing projects and government offices, schools, and New York corporations. These facilities could be used to teach parenting to teenage mothers, and promote mentoring programs between inner city youth and employees of New York corporations.

Research

One of the central objectives of the High Performance Computing and Communications Initiative (HPCCI) is to increase the productivity of the research community and enable scientists and engineers to tackle "Grand Challenges," such as forecasting the weather, building more energy-efficient cars, designing life-saving drugs, and understanding how galaxies are formed.

As a result of advances in computing and networking technologies promoted by the HPCCI, America's scientists and engineers (and their colleagues and peers around the world) are able to solve fundamental problems that would have been impossible to solve in the past. U.S. researchers will continue to benefit from the HPCCI and the emerging National Information Infrastructure. Below are just a few of the ways in which this technology is being used by U.S. researchers:

1. Solving Grand Challenges

As a result of investments in high performance computers, software, and high-speed networks, researchers have access to more and more computational resources. As a result, scientists and engineers have been able to more accurately model the Earth's climate; design and simulate next-generation aircraft (the High Speed Civil Transport); improve detection of breast cancer by turning two-dimensional MRI images into three-dimensional views; and enhance the recovery of oil and gas from America's existing reservoirs.

2. Enabling Remote Access to Scientific Instruments

Because of advancements in networks and visualization software, scientists can control and share remote electron microscopes, radio telescopes, and other scientific instruments.

3. Supporting Scientific Collaboration

The Internet has allowed scientists in the United States and around the world to access databases, share documents, and communicate with colleagues. For example, one computer language was developed by 60 people in industry, government and academia over a period of 3 years with only two days of face-to-face meetings. Instead, project participants sent 3,000 e-mail messages to each other, dramatically reducing the time required to develop the language. As scientific research becomes increasingly complex and interdisciplinary, scientists see the need to develop "collaboratories," centers without walls in which "the nations' researchers can perform their research without regard to geographical location—interacting with colleagues, access instrumentation, sharing data and computational resources, [and] accessing information in digital libraries."

Life-Long Learning

Increasingly, what we earn depends on what we learn. Americans must be well-educated and well-trained if we are to compete internationally and enjoy a healthy democracy. The magnitude of the challenge we face is well-known:

- 25 percent of students nation-wide no longer complete high-school, a figure which rises to 57 percent in some large cities.
- Currently, 90 million adults in the United States do not have the literacy skills they need to function in our increasingly complex society.

The Clinton Administration has set ambitious national goals for lifelong learning. The "Goals 2000: Educate America Act" would make six education goals part of national policy: 90 percent high school graduation rate; U.S. dominance in math and science; total adult literacy; safe and drug-free schools; increased competency in challenging subjects; and having every child enter school "ready to learn." Secretary of Labor Robert Reich also has emphasized the need to move towards "new work." New work requires problem-solving as opposed to rote repetition, upgrading worker skills, and empowering front-line workers to continuously improve products and services. All of the Administration's policy initiatives (national skill standards, school-to-work transition, training for displaced workers) are aimed at promoting the transition towards high-wage, higher-value "new work."

Although technology alone cannot fix what is wrong with America's education and training system, the NII can help. Studies have shown that computer-based instruction is cost-effective, enabling 30 percent more learning in 40% less time at 30% less cost. *Fortune* recently reported that:

"From Harlem to Honolulu, electronic networks are sparking the kind of excitement not seen in America's classrooms since the space race * * *. In scores of programs and pilot projects, networks are changing the way teachers teach and students learn."

The United States has just begun to exploit the educational applications of computers and networks. Students and teachers can use the NII to promote collaborative learning between students, teachers, and experts; access on-line "digital libraries"; and take "virtual" field trips to museums and science exhibits without leaving the classroom.

Example: Headquartered in Cambridge, Massachusetts and funded by the National Science Foundation, the Global Laboratory Project links students from over 101 schools in 27 states and 17 foreign countries, including Japan, Saudi Arabia, Russia and Argentina. All over the world, students establish environmental monitoring stations to study climate change, monitor pollutants such as pesticides and heavy metals, and measure ultraviolet radiation. Students share their data over the Global Lab telecommunications network with each other and with scientists to make comparisons, conduct analyses, and gain a global perspective on environmental problems.

Example: In Texas, the Texas Education Network (TENET) now serves over 25,000 educators, and is making the resources of the Internet available to classrooms. One Texas educator from a small school district described the impact it was having on the learning experiences of children:

"The smaller districts can now access NASA, leave messages for the astronauts, browse around in libraries larger than ever they will ever be able to visit, discuss the Superconducting Supercollider project with the physicist in charge, discuss world ecology with students in countries around the world, read world and national news that appears in newspapers that are not available in their small towns, work on projects as equals and collaborators with those in urban areas, and change the way they feel about the size of their world. This will create students that we could not create otherwise. This is a new education and instruction."

As computers become more powerful and less expensive, students may eventually carry hand-held, computer-based "intelligent tutors," or learn in elaborate simulated environments. One expert predicted the following educational use of virtual reality:

"Imagine a biology student entering an immersive virtual laboratory environment that includes simulated molecules. The learner can pick up two molecules and attempt to fit them together, exploring docking sites. In addition to the three-dimensional images in the head-mounted display, the gesture gloves on his hands press back to provide feedback to his sense of touch. Alternatively, the student can expand a molecule to the size of a large building and fly around in it, examining the internal structure."

Creating a Government That Works Better & Costs Less

Vice President Gore's *National Performance Review* (NPR) provides a bold vision of a federal government which is effective, efficient and responsive. Moving from red tape to results will require sweeping changes: emphasizing accountability for achieving results as opposed to following rules; putting customers first; empowering employees; and reengineering how government agencies do their work. As part of this vision, the NPR emphasizes the importance of information technology as a tool for reinventing government:

"With computers and telecommunications, we need not do things as we have in the past. We can design a customer-driven electronic government that operates in ways that, 10 years ago, the most visionary planner could not have imagined."

The NPR has identified a number of ways in which "electronic government" can improve the quality of government services while cutting costs, some of which are described below:

1. Develop a Nationwide System to Deliver Government Benefits Electronically

The government can cut costs through "electronic benefits transfer" for programs such as federal retirement, social security, unemployment insurance, AFDC, and food stamps. For example, 3 billion Food Stamps are printed and distributed to over 10 million households. Estimates suggest that $1 billion could be saved over five years once electronic benefits for food stamps is fully implemented.

2. Develop Integrated Electronic Access to Government Information and Services

Currently, citizen access to federal government information is uncoordinated and not customer-friendly. Electronic kiosks and computer bulletin boards can result in quick response, complete information, and an end to telephone tag.

Example: Info/California is a network of kiosks in places like libraries and

shopping malls. Californians can use these touch-screen computers to renew vehicle registration, register for employment openings, and get information on 90 different subjects, such as applying for student loans or resolving tenant-landlord disputes. These kiosks have reduced the cost of job-match services from $150 to $40 per person.

3. Establish a National Law Enforcement/Public Safety Network

Whether responding to natural or technological disasters, or performing search and rescue or interdiction activities, federal, state, and local law enforcement and public safety workers must be able to communicate with each other effectively, efficiently, and securely. Currently, federal, state and local law enforcement agencies have radio systems which cannot communicate with each other because they occupy different parts of the spectrum.

4. Demonstrate and Provide Government-wide Electronic Mail

Government-wide e-mail can provide rapid communications among individuals and groups, break down barriers to information flows between and within agencies, allow better management of complex interagency projects, and permit more communication between government officials and the public.

Tab D—The Information Infrastructure Task Force

Mission

While the private sector will build and run virtually all of the National Information Infrastructure (NII), the President and the Vice President have stated clearly that the Federal government has a key leadership role to play in its development. Accordingly, the White House formed the Information Infrastructure Task Force (IITF) to articulate and implement the Administration's vision for the NII. The task force consists of high-level representatives of the Federal agencies that play a major role in the development and application of information technologies. Working together with the private sector, the participating agencies will develop comprehensive telecommunications and information policies that best meet the needs of both the agencies and the country. By helping build consensus on thorny policy issues, the IITF will enable agencies to make and implement policy more quickly and effectively.

A high-level Advisory Council on the National Information Infrastructure has been established by Executive Order to provide advice to the IITF. It will consist of representatives of the many different stakeholders in the NII, including industry, labor, academia, public interest groups, and state and local governments. The Secretary of Commerce will appoint the 25 members of the advisory committee.

The IITF is working closely with the High Performance Computing, Communications, and Information Technology (HPCCIT) Subcommittee of the Federal Coordinating Council for Science, Engineering, and Technology (FCCSET), which is chaired by the White House Office of Science and Technology Policy. The HPCCIT Subcommittee provides technical advice to the IITF and coordinates Federal research activities that support development of the National Information Infrastructure.

Membership

All the key agencies involved in telecommunications and information policy are represented on the task force. The task force operates under the aegis of the White House Office of Science and Technology Policy and the National Economic Council. Ron Brown, the Secretary of Commerce, chairs the IITF, and much of the staff work for the task force will be done by the National Telecommunications and Information Administration (NTIA) of the Department of Commerce.

Structure

To date, three committees of the IITF have been established:

(1) Telecommunications Policy Committee, which will formulate a consistent Administration position on key telecommunications issues, is chaired by Larry Irving, head of the National Telecommunications and Information Administration of the Department of Commerce. Recently, the Committee created: The Working Group on Universal Service, which will work to ensure that all Americans have access to and can enjoy the benefits of the National Information Infrastructure.

(2) Information Policy Committee, which is addressing critical information policy issues that must be addressed if the National Information Infrastructure is to be fully deployed and utilized. Sally Katzen, head of the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), chairs the Committee. The Committee has created three working groups:

The Working Group on Intellectual Property Rights, to develop proposals for protecting copyrights and other IPR in an electronic world. Bruce Lehman, head of the Patent and Trademark Office of the Department of Commerce, chairs this group.

The Working Group on Privacy, to design Administration policies to protect individual privacy despite the rapid increase in the collection, storage, and dissemination of personal data in electronic form. It is chaired by Pat Faley, Acting Director of the Office of Consumer Affairs, Department of Health and Human Services.

The Working Group on Government Information focuses on ways to promote dissemination of government data in electronic form. Bruce McConnell, OMB's Office of Information and Regulatory Affairs, chairs this group.

(3) Applications Committee, which coordinates Administration efforts to develop, demonstrate, and promote applications of information technology in manufacturing, education, health care, government services, libraries, and other areas. This group works closely with the High Performance Computing and Communications Program, which is funding development of new applications technologies, to determine how Administration policies can best promote the deployment of such technologies. Arati Prabhakar, Director of the National Institute of Standards and Technology, chairs the Committee. This Committee is responsible for implementing many of the recommendations of the Vice President's National Performance Review that pertain to information technology. So far, the Committee has created one working group: The Working Group on Government Information Technology Services (GITS) will coordinate efforts to improve the application of information technology by Federal agencies.

Tab E—United States Advisory Council on the National Information Infrastructure

- The President will sign an Executive Order creating the "United States Advisory Council on the National Information Infrastructure" to facilitate private sector input to the Information Infrastructure Task Force. The IITF, which is chaired by the Secretary of Commerce, will work with Congress and the private sector to propose the policies and initiatives needed to accelerate deployment of the NII.
- The Council will consist of not more than 25 senior-level individuals to

be named by the Secretary of Commerce this year. A chair and/or vice chair will be appointed by the Secretary from among the Council members.

- Nominations will be solicited from a variety of NII constituencies and interest groups. The IITF and its committees also will use other mechanisms to solicit public input to ensure that it hears the views of all interested parties.
- The Council will be broadly representative of the key constituencies impacted by the NII, including business, labor, academia, public interest groups, and state and local governments.
- The Council shall advise the IITF on matters related to the development of the NII, such as: the appropriate roles of the private and public sectors in NII development; a vision for the evolution of the NII and its public and commercial applications; the impact of current and proposed regulatory regimes on the evolution of the NII; privacy, security, and copyright issues; national strategies for maximizing interconnection and interoperability of communications networks; and universal access.
- The Council is expected to invite experts to submit information to the Council and form subcommittees of the Council to review specific issues.
- The Department of Commerce will act as "secretariat" for the Council, providing administrative services, facilities, staff and other support services.
- The Council will exist for two years unless its charter is extended.
- The Council will be separate from, and complementary to, the High Performance Computing Advisory Committee, which will be established to provide private sector input on the High Performance Computing and Communications Initiative.

Tab F—Administration NII Accomplishments

During its first seven months, the Clinton-Gore Administration has taken major steps to make its vision of the National Information Infrastructure a reality:

1. Freeing Up Spectrum To Create Information "Skyways"

- The President recently signed the Emerging Telecommunications Technology Act, which directs the Secretary of Commerce to transfer, over a ten-year period, at least 200 MHz of spectrum now used by federal agencies to the FCC for subsequent licensing to the private sector. It allows the FCC to use competitive bidding to grant new license assignments for spectrum.
- This will create high-tech jobs and accelerate the development of new wireless industries such as Personal Communications Services. The entire cellular industry, which has created 100,000 jobs, was created by licensing only 50 MHz of spectrum.

2. Reinventing Government

- The Administration is committed to using "electronic government" to ensure that the federal government works better and costs less.
- As part of the National Performance Review, the Vice President has identified a number of concrete ways to use information technology to cut costs and improve services, such as electronic benefits transfer; access to government information and services through electronic "kiosks"; a national law enforcement/public safety network; and electronic procurement.

3. Investing In Technology

The President's FY 1994 budget includes:

- $1.1 billion for the High-Performance Computing and Communications Initiative, including a new $100 million program to develop applications in areas such as education, manufacturing, health, and digital libraries. The House has passed legislation which would authorize these new programs; Senate action is expected in the fall of 1993.
- $50 million for NTIA grants to demonstrate the applications of the NII for non-profit institutions such as schools, hospitals, and libraries.
- $40 million for research by the Department of Energy's National Labs on the information infrastructure.

The ARPA-led Technology Reinvestment Project (TRP), funded at $472 million in FY 1993, has generated almost 3,000 proposals from the private sector, requesting a total of $8.5 billion. Many of these proposals are for technology development for the National Information Infrastructure and its applications in health care, manufacturing, electronic commerce, and education and training. The President recently endorsed increasing the funding of the TRP to $600 million for FY 1994.

4. Making Government Information More Available To Citizens

- The Office of Management and Budget issued a new policy in June (OMB Circular A–130) to encourage agencies to increase citizen access to public information.
- Also in June, the President and Vice President announced that the White House would be accessible to the public via electronic mail. The Administration is using on-line information services and the Internet to make available speeches, press briefings, executive orders, and a summary of the budget.

5. Creating the Right Environment for Private Sector Investment in the National Information Infrastructure

- The President has signed into law tax incentives for private sector investment in R&D and new business formation, including a three-year extension of the R&D credit and a targeted capital gains reduction for investments in small businesses. Both of these tax incentives will help spur the private sector investment needed to develop the National Information Infrastructure.

Larry Irving,

Assistant Secretary for Communications and Information.

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BILLING CODE 3510–60–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of a New Export Visa Arrangement for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Oman

September 15, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing export visa requirements.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the Sultanate of Oman reached agreement, effected by exchange of notes dated May 29, 1993 and July 14, 1993, to establish an export visa arrangement for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Oman and exported from Oman on and after October 1, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992).

Interested persons are advised to take all necessary steps to ensure that textile products that are entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner of Customs.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 15, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and pursuant to the Export Visa Arrangement, effected by exchange of notes dated May 29, 1993 and July 14, 1993, between the Governments of the United States and the Sultanate of Oman; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 1, 1993, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200–239, 300–369, 400–469, 600–670 and 800–899, including merged Categories 340/640, 341/641 and 347/348, produced or manufactured in Oman and exported from Oman on and after October 1, 1993 for which the Government of the Sultanate of Oman has not issued an appropriate export visa fully described below. Should additional categories, merged categories or part categories be added, the entire category(s) or part category(s) shall be included in the coverage of this arrangement on an agreed effective date.

A visa must accompany each commercial shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numerical digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO)(the code for the Sultanate of Oman is "OM"), and a six digit numerical serial number identifying the shipment; e.g., 3OM123456.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The signature of the issuing official.

4. The correct category(s), merged category(s), quantity(s) and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce Correlation and the Harmonized Tariff Schedules (HTS) shall be reported in the spaces provided within the visa stamp (e.g., "Cat. 434–210 DOZEN").

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., Categories 347/348 may be visaed as 347/348 or, if the shipment consists solely of 347 merchandise, the shipment may be visaed as "Cat. 347," but not as "Cat. 348").

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged. If the visaed invoice is deficient, U.S. Customs will not return the original document after entry, but shall provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice.

The complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa shall be provided on the textile visa document.

If the visa is not acceptable then a new correct visa must be obtained from the Government of the Sultanate of Oman, or a visa waiver may be issued by the U.S. Department of Commerce at the request of the Government of the Sultanate of Oman, and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from Oman has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S.$250 or less, do not require a visa for entry and shall not be charged to agreement levels.

A facsimile of the visa stamp and a list of Omani officials authorized to sign export visas are enclosed with this letter.[1]

The actions taken concerning the Government of the Sultanate of Oman with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register**.

Sincerely;

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–23020 Filed 9–20–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Laos

September 15, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: September 22, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 340/640 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also

[1] This material is not published with the document.

see 58 FR 17384, published on April 2, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU dated March 24, 1993, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 15, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 29, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Laos and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on September 22, 1993, you are directed to increase the current limit for Categories 340/640 to 132,500 dozen [1], as provided by the Memorandum of Understanding dated March 24, 1993 between the Governments of the United States and the Lao People's Democratic Republic.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–23019 Filed 9–20–93; 8:45 am]

BILLING CODE 3510–DR–F

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 93–4–91CD]

1991 Cable Royalty Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

SUMMARY: On September 14, 1993, all of the Phase I claimant categories to which cable royalties have been allocated in prior proceedings filed a motion requesting a partial distribution of 90% of the 1991 cable royalty fund ("1991 fund"). They maintain that in light of the fact that the 1990 Cable Royalty Proceeding ("1990 Proceeding") is scheduled to continue through December of 1993, a significant partial distribution of the 1991 Cable Royalty Proceeding ("1991 Proceeding") should not have to await the conclusion of the 1990 Proceeding and the commencement of the 1991 Proceeding.

The claimants request that the partial distribution occur when the royalties next become available for distribution on September 23, 1993 (the date the investment matures). They also advise the Tribunal that the percentage share to be distributed to each Phase I Claimant Group should be the same as that received in the 1989 Cable Royalty Proceeding ("1989 Proceeding").

The claimants note that the request for a 90% distribution should not be interpreted as an agreement that only 10% of the 1991 fund is in controversy or that distribution of the 1991 fund should be based on the awards made in the 1989 Proceeding. Each 1991 Phase I Claimant "reserves the right to seek shares of 1991 royalties for itself and for other parties which differ from those awarded in the 1989 proceeding." Finally, the claimants note that the partial distribution is requested subject to the usual condition that, "if the final 1991 percentage shares differ from the 1989 shares 'any party who has received more than its share [must] return the overpayment plus interest the payments would have earned had they remained in the fund to the proper party'."

Accordingly, the Tribunal invites comments on the request to make partial distribution of the 1991 fund prior to the commencement of the 1991 Proceeding. The Tribunal notes, however, that the claimants' request for distribution on September 23, 1993, will not be possible given the need to provide a comment period. The Tribunal will handle this matter as expeditiously as feasible.

DATES: Comments are due on October 4, 1993.

ADDRESSES: An original and five copies shall be submitted to: Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT:

Linda R. Bocchi, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009, (202) 606–4400.

Dated: September 15, 1993.

Cindy Daub,

Chairman.

[FR Doc. 93–22989 Filed 9–20–93; 8:45 am]

BILLING CODE 1410–9–M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1992.

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 7 October 1993.

Time of Meeting: 1400–1600 (2 hours).

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's C3I Issue Group members will meet with their sponsor (DISC4) to discuss the status of two sponsor-initiated studies. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–22979 Filed 9–20–93; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Emerging Technologies Task Force will meet October 7, 1993 from 10 a.m. to 11 a.m., at the Pentagon. This session will be closed to the public.

The purpose of this meeting is to do the final outbrief for the Task Force on Emerging Technologies. The entire agenda for the meeting will consist of discussions of key issues regarding technologies important for future naval operations and introducing technological innovations. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: J. Kevin Mattonen, Executive Secretary to the Executive Panel, 4401 Ford Avenue, suite 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: September 15, 1993.

Patrick W. Kelley,

Capt, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 93–23042 Filed 9–20–93; 8:45 am]

BILLING CODE 3810–AE–P

DEPARTMENT OF EDUCATION

Services for Children With Deaf-Blindness Program; Inviting Application for New Awards for Fiscal Year (FY) 1994

[CFDA No.: 84.025]

Purpose of Program: The Services for Children with Deaf-Blindness provides Federal assistance to address the special needs of infants, toddlers, children, and youth with deaf-blindness.

The competition announced by this notice supports National Education Goals 1 and 5 by assisting infants, toddlers, children, and youth who are deaf-blind to enter school ready to learn, and when they become adults, to complete in a global economy.

Eligible Applicants: Public or nonprofit private agencies, institutions, or organizations, including an Indian tribe and the Bureau of Indian Affairs of the Department of the Interior (if acting on behalf of schools operated by the Bureau for children and students on Indian reservations) and tribally controlled schools funded by the Department of the Interior, are eligible to apply for an award.

Deadline for Transmittal of Applications: December 17, 1993.

Deadline for Intergovernmental Review: February 16, 1994.

Applications Available: October 20, 1993.

Available Funds: $680,000.

Estimated Number of Awards: 4

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 307.

Priority: The priority in this notice of final priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition.

For Applications: To request an application, telephone (202) 205–8485. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

For Further Information Contact: Charles Freeman, U.S. Department of Education, 400 Maryland Avenue, SW., room 4617, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–8165. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

Program Authority: 20 U.S.C. 1422.

Dated: September 14, 1993.

Andrew Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93–22995 Filed 9–20–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Nevada Operations Office; Implementation of Noncompetitive Financial Assistance

AGENCY: Nevada Operations Office (DOE/NV), Department of Energy.

SUMMARY: DOE/NV announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2), it intends to award a grant on a noncompetitive basis to the Clark County School District (CCSD) to develop an environmental education research park which will include promotion of pollution prevention and waste minimization

DOE/NV has been aggressively developing a pollution prevention/waste minimization program. An integral part of this program is the promotion and awareness of pollution prevention opportunities. Educational outreach is an effective vehicle in meeting this goal. This program fulfills DOE/NV requirements under environmental regulations, and complies with the Secretary's interest in promoting DOE educational programs in science and engineering.

A Memorandum of Understanding has been signed between DOE and the CCSD directed at reaching national educational goals related to mathematics, science, engineering, and other related technical subjects. The purpose of this grant is to increase the number of students pursuing careers in science and science-related areas, to improve teaching in these fields, and to improve the scientific and technical literacy of Americans.

DOE/NV management envisions that the development of an environmental education park will benefit from the technical expertise it can contribute thus providing a public service to a large community affected by the DOE/NV complex. This grant to CCSD will provide technical support for the mission and programs of DOE/NV thus benefitting both organizations.

FOR FURTHER INFORMATION, CONTACT: U.S. Department of Energy, Nevada Operations Office, ATTN: Angela Colarusso, P.O. Box 98518, Las Vegas, NV 89193–8518.

SUPPLEMENTARY INFORMATION: The following areas chosen for academic pursuit include areas in which DOE has a vital interest and can provide extensive technical assistance:

- Review other desert environmental educational facilities in use by other districts. Prepare a summary for use in a master plan for the CCSD facility.
- Develop a design for the land.
- Prepare quarterly progress reports on projects that encompass costs, schedule(s) and activities accomplished, and a final report on the master plan.
- Assist in the preparation of all documentation required by federal, state, and local laws; and regulations such as environmental assessments required for development of the facility.
- Participate in periodic planning and status meetings with DOE/NV as required.

The project period for the grant is from October 1, 1993, to September 30, 1994. The total estimated cost of this award is $30,000.

Issued in Las Vegas, Nevada, on September 8, 1993.

Nick C. Aquilina,

Manager, DOE Nevada Operations Office.

[FR Doc. 93–23086 Filed 9–20–93; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Availability of the Bonneville Purchasing Instructions (BPI)

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of document availability.

SUMMARY: Copies of the BPI which establishes the procedures BPA uses in the solicitation, award, and administration of its purchases of goods and services including construction, and the Bonneville Power Assistance Instructions (BPAI) which establishes the procedures BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements) are available from BPA for $15 and $10 each, respectively.

ADDRESSES: Copies of the BPI or BPAI may be obtained by sending a check for the proper amount to the Head of the Contracting Activity, Routing AE, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621.

FOR FURTHER INFORMATION CONTACT: The Public Involvement Office, 1–800–622–4519.

SUPPLEMENTARY INFORMATION: BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from power revenues as opposed to annual appropriations. Its purchasing operations are conducted under 16 U.S.C. 832 et seq. and related statutes, pursuant to these special authorities, the BPI is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities. It is significantly different from the Federal Acquisition Regulation, and reflects BPA's private sector approach to purchasing the goods and services which it requires. The BPI is available on two 3½ inch diskettes in Microsoft's Word for Window's format in addition to the printed version. Please specify which is desired when placing the order. BPA's financial assistance operations are conducted under 16 U.S.C. 832 et seq., and 16 U.S.C. 839 et seq. The BPAI express BPA's financial assistance policy. The BPAI also comprise BPA's rules governing implementation of the principles provided in the following OMB circulars:

A–21 Cost principles applicable to grants, contracts, and other agreements within stitutions of higher education.

A–87 Cost principles applicable to grants, contracts, and other agreements with State and local governments.

A–102 Uniform administrative requirements for grants in aid to State and local governments, and the common rule.

A–110 Grants and agreements with institutions of higher education, hospitals and other nonprofit organizations.

A–12 Cost principles applicable to grants, contracts, and other agreements with nonprofit organizations.

A–128 Audits of State and local governments. BPA's solicitations include notice of applicability and availability of the BPI and the BPAI, as appropriate, for the information of offerors on particular purchases or financial assistance transactions.

Issued in Portland, Oregon, on September 3, 1993.

Randall W. Hardy,

Administrator, Bonneville Power Administration.

[FR Doc. 93–22918 Filed 9–20–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. QF93–126–000]

Birchwood Power Partners, L.P.; Amendment to Filing

September 15, 1993.

On September 9, 1993, Birchwood Power Partners, L.P., tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining to the ownership structure and technical data of the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before October 5, 1993, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–23009 Filed 9–20–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–940–000, et al.]

Boston Edison Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 14, 1993.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ER93–940–000]

Take notice that on September 10, 1993, Boston Edison Company (Edison) tendered for filing its 1992 true up to actual charges for its Station 509 Support Agreement with Cambridge Electric Light Company (Cambridge). This filing is made for informational purposes only and is made pursuant to a 1987 Settlement Agreement between Edison, Cambridge and the Town of Belmont, Massachusetts.

Edison states that it has served the filing on Cambridge and the Town of Belmont.

Comment date: September 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. The Washington Water Power Company

[Docket No. ER93–866–000]

Take notice that on September 10, 1993, The Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 an Amendment to the filing of the Agreement to the Purchase and Sale of Power between the Washington Water Power Company (WWP) and Public Utility District No. 1 of Douglas County. WWP requests that the Commission accept the Agreement for filing, effective as of July 1, 1991 and grant waiver of the prior notice requirement.

A copy of the filing was served upon Public Utility District No. 1 of Douglas County.

Comment date: September 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Consolidated Edison Company of New York, Inc.

[Docket No. ER93–640–000]

Take notice that on September 3, 1993, Consolidated Edison Company of New York, Inc. (Con Edison), in its capacity as a member system of the New York Power Pool, filed supplemental information and clarifications in response to Staff's requests regarding the PARS Facilities Agreement, which was filed with the Commission on May 10, 1993 in this docket. Con Edison renews its request for an effective date of August 1, 1993, for the reasons set forth in its May 10th filing. Con Edison states further that its served copies of this filing on the entities which were served with a May 10, 1993 filing in this docket.

Comment date: September 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Southwestern Public Service Company

[Docket No. ER93–931–000]

Take notice that on September 3, 1993, Southwestern Public Service Company (Southwestern) tendered for filing a Rate Schedule to be included in its wholesale electric rate tariff. The rate schedule is an amended list of delivery points and a contribution in aid of construction agreement between Southwestern and Lea County Electric Cooperative (Lea County). The

agreement provides for Lea County to pay Southwestern $3,992.00 for the installation of strut insulators and jumpers, as well as an additional $178 per month per delivery point for the two additional delivery points.

Southwestern has requested that the amendment become effective as of the date service commences and has requested a waiver pursuant to 18 CFR 35.11. The waiver request is supported by the agreement of Lea County.

Comment date: September 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER93–928–000]

Take notice that New England Power Company (NEP), on September 1, 1993, tendered for filing executed service agreements and certificates of concurrence for customers under NEP's FERC Electric Service Tariff, Original Volume No. 6. Tariff No. 6 provides for short-term unit sales and exchanges.

In its filing, NEP has requested that the Commission rule on whether it will assert jurisdiction over certificates of concurrences executed by municipal light departments. NEP has furthermore asked the Commission to state whether NEP's service agreements for Tariff No. 6 meet the Commission's criteria form, given its recent ruling in Docket No. PL93–2–000. Finally, NEP has requested clarification of the Commission's statement in that docket concerning filing requirements for transaction-specific data under umbrella tariffs such as NEP's Tariff No. 6.

Comment date: September 28, 1993, in accordance with Standard Paragraph E end of this notice.

6. Public Service Electric & Gas Company

[Docket No. FA91–46–001]

Take notice that on February 22, 1993, Public Service Electric & Gas Company tendered for filing its refund report in the above-referenced docket.

Comment date: September 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. South Carolina Electric & Gas Company

[Docket No. FA92–34–001]

Take notice that on May 10, 1993, South Carolina Electric & Gas Company tendered for filing its refund report in the above-referenced docket.

Comment date: September 28, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–23003 Filed 9–20–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. QF84–327–003 et al.]

Coso Finance Partners, Navy I Facility et al.; Amendment to Filing

September 15, 1993.

In the matter of Docket Nos. QF86–590–005 and QF86–591–005; Coso Energy Developers BLM Facility and Coso Power Developers Navy II Facility.

On September 10, 1993, Coso Finance Partners, Coso Energy Developers, and Coso Power Developers, tendered for filing supplements to their filings in above dockets. No determination has been made that the submittals constitute complete filings.

The supplements provide additional information pertaining to the ownership structure and the maximum net electric power production capacity of the facilities.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before October 5, 1993, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–23007 Filed 9–20–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF92–54–003]

Polk Power Partners, L.P.; Amendment to Filing

September 15, 1993.

On September 7, 1993, Polk Power Partners, L.P. tendered for filing a supplement to its filing in this docket. The supplement pertains to the ownership structure, certain confidential business and financial information, and waiver of the Commission's operating and efficiency standards. No determination has been made that the submittal constitutes a complete filing.

Any persons desiring to be heard or objecting to the granting of qualifying status should file a motion to the intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by October 6, 1993, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–23008 Filed 9–20–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–20–4–000]

Granite State Gas Transmission, Inc.; Proposed Change in Rates

September 15, 1993.

Take notice that on September 13, 1993, Granite State Gas Transmission, Inc. (Granite State), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 26, containing changes in rates for effectiveness on September 1, 1993.

According to Granite State, it has been receiving a bundled storage and delivery service from Tennessee Gas Pipeline Company (Tennessee) under

Tennessee's Rate Schedule SS–NE. Granite State further states that Tennessee, in its compliance with Order Nos. 636, et al., in Docket No. RP92–23–000, effective September 1, 1993, now provides the storage service component of former Rate Schedule SS–NE under its Rate Schedule FS–MA and the transportation delivery component under its Rate Schedule FT–A. It is further stated Granite State has been authorized to provide a storage service for its customers, Bay State Gas Company and Northern Utilities Inc., utilizing the underlying Tennessee Rate Schedule SS–NE service. According to Granite State, the revised rates on First Revised Sheet No. 26 track the changes in its Rate Schedule SS–NE to conform with the changes made by Tennessee in the underlying storage and delivery service in Tennessee's Order No. 636 compliance filing.

Granite State states that copies of its filing were served on Bay State Gas Company and Northern Utilities, Inc. and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). all such motions or protests should be filed on or before September 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–23011 Filed 9–20–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–716–000]

HNG Sulphur Mines Co.; Application

September 15, 1993.

Take notice that on September 10, 1993, HNG Sulphur Mines Company (HNGSM), a Texas corporation with an office at 950 Threadneedle, Houston, Texas 77079, filed in Docket No. CP93–716–000 pursuant to section 7 of the Natural Gas Act and part 157 and subpart G of part 284 of the Commission's regulations an application for a certificate of public convenience and necessity authorizing it to convert, construct, and operate natural gas storage and related facilities and to render firm and interruptible contract storage service, and for a blanket certificate authorizing self-implementing storage service with pregranted abandonment authority. HNG Sulphur Mines Company is a wholly-owned subsidiary of HNG Storage Company (HNG).

HNG has obtained an option to sublease two existing salt dome caverns from Union Texas Products Corporation (UTP) located in Calcasieu Parish, Louisiana. HNG is transferring the option to HNGSM who, by this application, proposes to convert the two caverns to gas storage service and to construct the necessary piping, compression, and appurtenant facilities and delivery pipelines to provide natural gas injection, storage, and withdrawal service to interstate gas markets. The delivery lines will connect, initially, to five interstate pipelines in soutwestern Louisiana. The five pipelines are Florida Gas Transmission Company, Sabine Pipe Line Company, Tennessee Gas Pipeline Company, Texas Eastern Transmission Corporation and Transcontinental Gas Pipeline Corporation.

The facility will initially provide up to 8.0 Bcf of working gas capacity and afford last day injection and withdrawal rates of 150,000 and 400,000 MMBtu per day, respectively. HNGSM is actively marketing the project and has provided over 200 sales brochures to potential customers. HNGSM is proposing open access service under an Order 636 type tariff. HNGSM has requested market based pricing for its project, similar to that granted Richfield Gas Storage System and Petal Gas Storage Company.

Any person desiring to be heard or to make any protest with reference to said petition should on or before October 6, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.7). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken on the request for a permanent certificate but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on the application if no motion to intervene is filed within the time requested herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own believes that a formal hearing is required, further notice of such hearing will be duly given.

Lois D. Cashell,

Secretary.

[FR Doc. 93–23004 Filed 9–20–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–721–000]

Northern Natural Gas Co.; Request Under Blanket Authorization

September 15, 1993.

Take notice that on September 14, 1993, Northern Natural Gas Company (Northern), P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP93–721–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to upgrade an existing delivery point to accommodate increased natural gas deliveries to the City of Virginia Department of Public Utilities (City of Virginia), under the blanket certificate issued in Docket No. CP82–401–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to upgrade an existing delivery point (Virginia #1 town border station) located in St. Louis County, Minnesota to accommodate increased natural gas deliveries to City of Virginia under Northern's currently effective service agreement with City of Virginia. It is indicated that City of Virginia has requested increased service due to the replacement of existing coal fired facilities with new natural gas fired boilers at its municipal Power Plant in order to comply with the Clear Air Act. Northern estimates increased peak day and annual volumes through the upgraded town border station of 2,200 Mcf and 766,500 Mcf, respectively. Northern estimates a cost

of upgrading the delivery point of $362,000 and indicates that the costs would be financed in accordance with the General Terms and Conditions of Northern's FERC Gas Tariff, Fourth Revised Volume No. 1.

Northern advises that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Also, Northern indicates that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the changes proposed herein without detriment or disadvantage to Northern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–23006 Filed 9–20–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–720–000]

Panhandle Eastern Pipe Line Co.; Application

September 15, 1993.

Take notice that on September 14, 1993, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP93–720–000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon a certificated field sale to K N Energy, Inc. (KN), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that it has provided a field sale service to KN under Rate Schedule F–1 which was authorized in Docket No. CP61–77. It is indicated that under Rate Schedule F–1 Panhandle sold gas to KN from the Graham No. 2–31 Lease in Texas County, Oklahoma. Panhandle states that the wells in the Graham 2–31 Lease have ceased to produce and were plugged and abandoned in 1964. It is indicated that by letter dated November 12, 1992, KN requested termination of the agreement with Panhandle. Panhandle does not request authority to abandon any facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 6, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–23005 Filed 9–20–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ94–1–4–000 and TM94–1–4–000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

September 15, 1993.

Take notice that on September 10, 1993, Granite State Gas Transmission, Inc. (Granite State) tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1 and First Revised Volume No. 2 containing changes in rates for effectiveness on October 1, 1993:

Second Revised Vol. No. 1

Thirty-First Revised Sheet No. 21
Eleventh Revised Sheet No. 22
Twenty-Second Revised Sheet No. 25
First Revised Sheet No. 27

First Revised Vol. No. 2

Fourth Revised Sheet No. 8
Second Revised Sheet No. 18A
Fifth Revised Sheet No. 29
Third Revised Sheet No. 39A
Fourth Revised Sheet No. 63
Fourth Revised Sheet No. 73

According to Granite State in its filing proposes changes in its rates for wholesale sales to its two affiliated distribution company customers, Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities) to reflect revised purchased gas costs and the revision in the Annual Charge Adjustment (ACA) effective October 1, 1993. Granite State further states that the revised sales rates also reflect in the Transportation Cost Adjustment the effect of the change in the ACA charge in the transportation rates charged by upstream pipelines for transporting gas to Granite State's system. In connection with its purchase gas cost revision, Granite State states that it has projected gas costs and sales only for the month of October, 1993, because it has been notified that its Order No. 636 compliance plan in Docket No. RS93–1–000 has been accepted for effectiveness on November 1, 1993. Granite State also states that its revised tariff sheets reflect changes in the rates for a storage service, and for storage-related and other transportation services for the revised ACA charge effective October 1, 1993.

Granite State states that copies of its filing were served on Bay State Gas Company and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before September 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-23012 Filed 9-20-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-166-000]

Panhandle Eastern Pipe Line Co.; Informal Settlement Conference

September 15, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, October 6, 1993, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) (1993).

For additional information, contact Carmen Gastilo at (202) 208-2182 or Joanne Leveque at (202) 208-5705.

Lois D. Cashell,

Secretary.

[FR Doc. 93-23010 Filed 9-20-93; 8:45 am]

BILLING CODE 6717-01-M3

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4732-5]

Federal Facility Compliance Act; Enforcement Authorities Implementation

AGENCY: Environmental Protection Agency.

ACTION: Supplementary information on how EPA will implement its new enforcement authorities granted by the Federal Facility Compliance Act which amended the Resource Conservation and Recovery Act.

The purpose of this information is to notify all Federal agencies of these new procedures and also to notify interested members of the public. The enforcement process is as follows.

On October 6, 1992, the Federal Facility Compliance Act of 1992, Public Law 102-386 (the Act), became law. This Act amends the waiver of sovereign immunity found in the Resource Conservation and Recovery Act (RCRA). The Act's legislative history indicates that its primary purpose is to ensure that Federal facilities are treated the same as private parties with regard to compliance with the requirements of RCRA. For example, the Conference Report states "[w]here EPA uses an administrative complaint pursuant to section 3008(a) to address particular types of violations detected at a private company or municipality the Administrator must use an administrative complaint to address the same types of violations at a federal facility." H.Rep. No. 102-886, 102nd Cong., 2nd Sess., p. 19 (1992). See also H.Rep. No. 102-111, 102nd Cong., 1st Sess., p.2 (1991); S.Rep. No. 102-67, 102nd Cong., 1st Sess. p.1 (1991).

The purpose of this memorandum is to provide guidance on the use of the Agency's authority to issue compliance orders to Federal agencies pursuant RCRA section 3008.[1] It supersedes the Interim Final Guidance, dated April 15, 1993.

Background

Prior to the Act's passage, EPA took RCRA enforcement actions against Federal agencies differently than against private parties. This difference was tied to the language of section 6001 of RCRA, 42 U.S.C. 6961. According to the Department of Justice's 1987 testimony before the House Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, EPA lacked the statutory authority necessary to issue administrative compliance orders pursuant to RCRA section 3008(a). EPA, thus negotiated Federal Facility Compliance Agreements with Federal facilities to bring them into compliance.

Through passage of the 1992 Act, Congress clarified that administrative order authority is available to the Administrator, and this authority has been given directly to the Administrator: "The Administrator shall initiate an administrative enforcement action against such a department * * * in the same manner and under the same circumstances as an action would be initiated against any other person." See section 102(b)(1) of the Act, 42 U.S.C. 6961(b)(2).[2] In addition, under section 103 of the Act, Congress further clarified that federal agencies are persons for purposes of RCRA. EPA now has RCRA administrative compliance order authority against Federal facilities.

I. Hearing Procedures

As quoted above from the Conference Report "[w]here EPA uses an administrative complaint pursuant to RCRA section 3008(a) to address particular types of violations detected at a private company or municipality the Administrator must use an administrative complaint to address the same types of violations at a federal facility." Upon issuance of a complaint and compliance order, the Regions should also issue a press release.

Since private parties have an opportunity to challenge that complaint using the 40 CFR part 22 procedures, the same opportunity should be available to a Federal agency. While the part 22 procedures are available, the Act also provides the recipient Federal agency with an opportunity to confer with the Administrator before an order becomes final. "No administrative order issued to such a department, agency, or instrumentality shall become final until such department, agency, or instrumentality has had the opportunity to confer with the Administrator." See section 102(b)(2), 42 U.S.C. 6961(b)(2).[3]

II. Settlement Negotiations

Settlement is encouraged in the same circumstances as with a private party. See 40 CFR 22.18. The Act also states that any voluntary resolution or settlement of such an action shall be set forth in a consent order. Cases which settle do not require a conference with the Administrator, and in settling a matter, the Respondent waives its opportunity to confer under the new Act on the settled matter. In addition, Federal parties have the same opportunity to confer with EPA as provided under 40 CFR § 22.18. As a result, after EPA issues the complaint, the respondent Federal agency may confer with the complainant under part 22 (EPA employee authorized to issue the complaint) concerning settlement whether or not the respondent requests a hearing. This part 22 opportunity to confer, however, does not affect the thirty-day deadline for filing an answer.

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[1] This guidance does not cover RCRA section 3008(h) actions against Federal agencies which will continue to be governed by 40 CFR part 24. For cases involving violations under more than one media, this guidance applies only to the RCRA portion of those violations.

[2] This contrasts with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) which provides response authority and administrative order authority to the President. In order to determine who has been delegated the authority from the President for the particular responsibilities under CERCLA, it is necessary to consult Executive Order 12580.

[3] The Administrator's obligation to provide an opportunity confer is tied only to EPA-issued orders. The Administrator will not confer with Federal agencies in receipt of state-issued orders.

just as with a private party under § 22.18(a).

Following the Federal agency's § 22.18 opportunity to confer, if EPA or the Federal agency determine that the case cannot be settled immediately consistent with the provisions and objectives of RCRA, the case will be submitted to the part 22 hearing procedures. Often, however, settlement discussions continue on a parallel track with the hearing procedures. A case against a Federal agency proceeds as would any other compliance hearing matter pursuant to part 22.

III. Opportunity To Confer Under the New Act

The new Act's "opportunity to confer" requirement would be satisfied by providing an opportunity to confer with a Regional official with properly delegated authority within a reasonable period of time following issuance of the order, but based on input from Regions and as a matter of policy, the Administrator will retain that opportunity to confer personally, as set out below. Federal agencies will have the opportunity to meet with the Administrator only after exhaustion of the part 22 procedures. Placing the conference at the end of the process will enable the Regions to proceed with their enforcement case against the Federal agency in the same manner as they do against private parties.

Conferring with the Administrator before exhaustion of the part 22 procedures would be premature, and EPA policy is that the Administrator will confer with the respondent Federal agency only after exhaustion of the part 22 procedures. Likewise, Regions should not confer with the Federal agency outside of their usual conferring opportunity as found in the part 22 procedures. In other words, each Region should use the same conference and settlement discussion procedures with Federal agencies that it uses with private parties under part 22.

Within ten (10) days of service of a final decision by the Environmental Appeals Board under 40 CFR 22.31, the Federal agency may seek further review by petitioning the Board for reconsideration under § 22.32 if it believes the Board's decision was erroneously decided. Within thirty (30) days of service of the Board's decision if no petition for reconsideration is filed or within thirty (30) days of service of the Board's final decision if a petition for reconsideration is filed, the head of the Federal agency, if it wishes to confer with the Administrator, must file a written request addressed to the Administrator to seek an opportunity to confer with the Administrator. If no written request to confer is filed within these thirty-day periods, the administrative order is final under the terms of section 102(b)(2) of the Act.

In many cases, the conference might be conducted through an exchange of letters. If the conference is handled through letters, the head of the Federal agency should serve his/her letter on the Administrator with a copy to the Director, Office of Federal Facilities Enforcement and all parties/counsel of record. In addition, the letter should specifically identify the issues which the Federal agency proposes that the Administrator consider. The head of the Federal agency should also attach copies of all prior administrative decisions and briefs in the underlying proceedings. Copies of the briefs and underlying decisions should be provided to the Director, Office of Federal Facilities Enforcement.

The head of the Federal agency, however, may prefer to request a direct meeting with the Administrator. The request for a direct conference should be served on the Administrator with a copy to the Director, Office of Federal Facilities Enforcement, and all parties/counsel of record. The request for a direct conference should specifically identify the issues which the Federal agency proposes to discuss with the Administrator, and should specifically identify who will represent the Federal agency. In addition, as part of its request for a direct conference, the head of the Federal agency should attach copies of all prior administrative decisions and briefs in the underlying proceedings. Copies of the briefs and underlying decisions should also be provided to the Director, Office of Federal Facilities Enforcement.

The parties/counsel of record may request to be present during the direct conference. This request to attend the direct conference, likewise, should be in writing and served on the Director, Office of Federal Facilities Enforcement and the parties/counsel of record. The Administrator or her designee shall notify the head of the Federal agency who requested the direct conference and the parties/counsel of record regarding her plan and arrangements for the direct conference.

Following the conclusion of the direct conference, a person designated by the Administrator will provide a written summary of the issues discussed and addressed. Copies of the written summary shall be provided to the parties/counsel of record. Ordinarily, within thirty (30) days of the conference, or within thirty (30) days following the receipt of the letter from the head of the Federal agency in the event of no direct conference, the Administrator shall issue a written decision with appropriate instruction regarding the finality of the order. This decision shall be filed with the Regional Hearing clerk and made part of the administrative case file.

If the Board referred the matter to the Administrator for decision under § 22.04(a) rather than deciding the matter itself and if the Federal agency wants to request a conference with the Administrator, the Federal agency must do so prior to the Administrator's decision.

To assure that federal agencies are aware of these procedures, Regions should draw responding agencies' attention to part 22 and this and any other relevant Agency guidance.

IV. Penalties

In the Federal Facility Compliance Act of 1992, Congress stated that "[t]he Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or imposed for isolated, intermittent, or continuing violations." See section 102(a)(3), 42 U.S.C. 6961(a)(3).

As a matter of policy, EPA will pursue penalties only from the effective date of the Act forward.[4] If violations occurred prior to the effective date and are ongoing, EPA could assess penalties for the violations from October 6, 1992 until correction of the violation.

In summary, the Federal government is liable for RCRA civil and administrative penalties just like any other person (with the exception of the effective date of the Act limitation). Since the law and the Congressional intent state that Federal agencies are liable for penalties, EPA will apply its current applicable penalty policy, presently the 1990 RCRA Civil Penalty Policy, against the Federal government for violations of RCRA in the same manner and to the same extent as against any private party.[5] The February

[4] While states also have the authority to assess penalties against Federal agencies under the Act, states are not necessarily required to use the 1990 RCRA Civil Penalty Policy, but should assess penalties in accordance with state practices. EPA encourages states to use this new authority. As is done in actions against private parties, the Agency can work with those states without administrative penalty authority to assess penalties under the Agency's authority.

[5] Because the Anti-Deficiency Act, 31 U.S.C. 1341, makes payments by federal agencies subject

Continued

12, 1991 "Policy on the Use of Supplemental Enforcement Projects" also applies in this context. Moreover, for settled cases that require compliance work, stipulated penalties should be included in the Consent Agreement and Consent Order.

V. Conclusion

EPA is issuing this final policy to assist the Regions in carrying out their RCRA enforcement program.[6] This guidance supersedes earlier guidance regarding RCRA enforcement at Federal facilities for compliance violations such as that found in the 1988 Federal Facilities Compliance Strategy. It may be necessary in the future to amend part 22 to address the issue of the requirement for the opportunity for a conference before finalizing an Environmental Appeals Board order. Should you have any concerns or questions, please have your staff call Barry Breen or Sally Dalzell at (202) 260–9801.

VI. Notice

This guidance and any internal procedures adopted for its implementation are intended solely as guidance for employees of the U.S. Environmental Protection Agency. Such guidance and procedures do not constitute rule making by the Agency and may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. The Agency may take action at variance with this guidance and its internal implementing procedures.

DATES: The Guidance was signed July 6, 1993 and was effective immediately.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on any aspect of these procedures should contact Sally Dalzell, U.S. Environmental Protection Agency (OE–2261), 401 M Street, SW., Washington, DC 20460, (202) 260–9808.

Dated: September 8, 1993.

Steven A. Herman,

Assistant Administrator, Office of Enforcement.

[FR Doc. 93–23062 Filed 9–20–93; 8:45 am]

BILLING CODE 6560–50–P

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to the appropriation funds by Congress, there might be unique payment issues that arise with regard to payment of penalties by such agencies. Under the RCRA Civil Penalty policy, the burden regarding ability to pay will reside with the Federal agency, as Respondent. If the Federal agency demonstrates that it cannot pay due to the Anti-Deficiency Act, the Regions should require that the particular Federal agency agree to request additional funds from Congress. In addition, EPA may include an acceleration clause in any payment schedule which is agreed to by the parties.

[6] The Federal Facility Compliance Act addresses more than the waiver of sovereign immunity. For example, RCRA inspections are required at all Federal facilities. EPA issued the March 17, 1993 "FY 1993 Guidance on Implementation of RCRA Inspection Requirements of the Federal Facility Compliance Act" in order to assist the Regions with these new requirements. Guidance should also be forthcoming in the near future to address other appropriate new provisions added by the Act (mixed waste, munitions, and federally-owned treatment works).

[OPPTS–00143; FRL–4646–7]

Forum on State and Tribal Toxics Action; Coordinating Committee and Projects; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meetings.

SUMMARY: The Coordinating Committee and the four Projects of the Forum on State and Tribal Toxics Action (FOSTTA) will hold two days of open meetings on the dates, and at the time and place listed below. FOSTTA, a group of state and tribal toxics environmental managers, is intended to foster the exchange of toxics-related program and enforcement information among the states/tribes and between the states/tribes and U.S. EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS). FOSTTA currently consists of the Coordinating Committee and four issue-specific Projects. The four Projects are: (1) the Chemical Information Management Project; (2) the State and Tribal Enhancement Project; (3) the Chemical Management Project; and (4) the Lead (Pb) Project.

DATES: The meetings are scheduled as follows.

1. The Coordinating Committee and all the Projects will hold meetings on October 18 and 19, 1993.

2. The four Projects will meet on October 18 from 8 a.m. to 5 p.m. and on October 19 from 8 a.m. to noon. On October 18 at 1 p.m. there will be a plenary session with a presentation by the Assistant Administrator-Designate for Prevention, Pesticides and Toxic Substances. The Coordinating Committee will meet on October 19 from noon to 3 p.m.

ADDRESSES: The meetings will be held at: The Holiday Inn, 480 King St., Alexandria VA.

FOR FURTHER INFORMATION CONTACT: By mail: Shirley Pate, Office of Compliance Monitoring (EN–342), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone (202) 260–8318, or Jim King, Office of Pollution Prevention and Toxics (TS–799), at the same address, telephone (202) 260–6581.

[FRL–4731–7]

Georgia; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of full program adequacy for State of Georgia's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility.

List of Subjects

Environmental protection.

Dated: September 15, 1993.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 93–20368 Filed 9–20–93; 8:45 am]

BILLING CODE 6560–50–F

Georgia applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Georgia's application and proposed a determination that Georgia's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. After consideration of all comments received, EPA is today issuing a final determination that the State's program is adequate.

EFFECTIVE DATE: The determination of adequacy for Georgia shall be effective on September 21, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia S. Zweig, Program Coordinator, Office of Solid Waste, Waste Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

On April 15, 1993, Georgia submitted an application for adequacy determination for their municipal solid waste landfill permit program. On August 5, 1993, EPA published a tentative determination of adequacy for all portions of Georgia's program. Further background on the tentative determination of adequacy appears at 58 FR 41767, 41768 (August 5, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment.

A public hearing was tentatively scheduled, based on sufficient public interest. As EPA Region IV received no requests for a hearing during the public comment period, the tentatively scheduled hearing has been cancelled.

EPA Region IV received one set of comments during the public comment period on the tentative determination of adequacy for Georgia. The commenter maintained that use of the draft State/Tribal Implementation Rule ("STIR") as guidance is a violation of the Administrative Procedure Act ("APA") requirements that a rule must go through notice and opportunity for comment. EPA does not believe that it is violating any requirements in the APA for notice and comment on a rulemaking. The Agency is not utilizing the draft STIR as a regulation which binds either the Agency or the States. Instead, EPA is using the draft STIR as guidance for evaluating State permit programs and maintains its discretion to approve State programs utilizing the draft STIR and/or other criteria which assures compliance with 40 CFR part 258.

In addition, members of the public have an opportunity to comment on the essential criteria by which EPA assures the adequacy of the State MSWLF permit programs because the Agency discusses the criteria for approval of a State permit program when it publishes each tentative determination notice in the **Federal Register**. The Agency set forth the minimum requirements for an adequate permit program in the tentative determination notice for approval of the State of Georgia's permit program. See 58 FR 41767, 41768 (August 5, 1993).

There are no federally recognized Indian Tribes or lands in the State of Georgia.

B. Decision

After reviewing the public comments, I conclude that Georgia's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Georgia is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements with which the regulated community must begin to comply. Nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: September 13, 1993.
Winston A. Smith,
Acting Regional Administrator.
[FR Doc. 93–23061 Filed 9–20–93; 8:45 am]
BILLING CODE: 6560–50–P

[FRL–4731–4]

Idaho; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of full program adequacy for Idaho's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by Part 258 to the extent the State/Tribal permit program allows such flexibility.

Idaho applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Idaho's application and proposed a determination that Idaho's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. After consideration of all comments received, EPA is today issuing a final determination that the State/Tribe's program is adequate.

EFFECTIVE DATE: The determination of adequacy for Idaho shall be effective September 21, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Paula vanHaagen, M/S HW–107, U.S. EPA, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–1847.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under Part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

On April 5, 1993, Idaho submitted an application for adequacy determination for Idaho's municipal solid waste landfill permit program. On May 10, 1993, EPA published a tentative determination of adequacy for all portions of Idaho's program. Further background on the tentative determination of adequacy appears at 58 FR 27568, May 10, 1993.

Along with the tentative determination, EPA announced the availability of the application for public comment. EPA offered to hold a public hearing on June 30, 1993, if a sufficient number of people requested such a hearing. There were no requests for a public hearing, so the hearing was not held.

EPA received three public comments. Two commenters support the tentative determination of adequacy. One commenter raised concerns that Idaho's application and enclosed materials do not provide guidance to permit applicants when a proposed landfill is on or near Indian lands. The commenter requested that EPA encourage Idaho to provide a mechanism that includes Indian Tribes and EPA early in the State's permitting process and to provide guidance and education to permit applicants when Indian lands are involved directly or indirectly.

EPA agrees that timely notification of a Tribe directly or indirectly affected by a proposed landfill is important. EPA also believes that the mechanism for notification of a Tribe can best be established by the Tribe and the state and local agencies involved in permitting decisions potentially affecting the Tribe. As stated in the 1984 Indian Policy, EPA supports early communication and coordination between Tribes and States or local governments. While a special mechanism for notifying Tribes is not a requirement for approving state permitting programs, Idaho has agreed to pursue coordination mechanisms with Tribes. EPA affirms its full approval of Idaho's permitting program.

As stated in the tentative determination of approval of Idaho's program, the State's program is not enforceable on Indian lands. Idaho has not asserted nor demonstrated jurisdiction within the exterior boundaries of Indian reservations in its application for adequacy determination. Accordingly, this approval does not extend to lands within Indian

reservations in Idaho. Until EPA approves a State or Tribal MSWLF permitting program in Idaho for any part of "Indian Country," as defined in 18 U.S.C. 1151, the requirements of 40 CFR part 258 will, after October 9, 1993, automatically apply to that area. Thereafter, the requirements of 40 CFR part 258 will apply to all owners/operators of MSWLFs located in any part of "Indian Country" that is not covered by an approved State or Tribal MSWLF permitting program.

B. Decision

After reviewing the public comments, I conclude that Idaho's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Idaho is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

COMPLIANCE WITH EXECUTIVE ORDER 12291: The Office of Management and Budget has exempted this notice from the requirements of Section 3 of Executive Order 12291.

CERTIFICATION UNDER THE REGULATORY FLEXIBILITY ACT: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: September 13, 1993.

Gerald A. Emison,

Acting Regional Administrator.

[FR Doc. 93–22992 Filed 9–20–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL 4731–3]

Proposed Settlement Under Section 122(h) of Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (CERCLA), as amended. Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve liabilities of three parties for costs incurred by EPA at the Duffield Avenue Trailer Site.

DATES: Comments must be provided on or before October 21, 1993.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, room 309, 26 Federal Plaza, New York, New York 10278 and should refer to: In the Matter of: Duffield Avenue Trailer Site, U.S. EPA Index No. II–CERCLA–122–93–0102.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, room 309, 26 Federal Plaza, New York, New York 10278, (212) 264–2858, Attention: Amelia Wagner.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Duffield Avenue Trailer Site which was located in Jersey City, New Jersey. Section 122(h) of CERCLA provides EPA with authority to consider, compromise, and settle certain claims for costs incurred by the United States.

The following parties are committed to participate in this settlement: North Carolina Department of Agriculture, JPS Converter and Industrial Corporation, and J.P. Stevens & Co., Inc. These three Settling Parties will pay a total of $190,000 under this agreement to reimburse EPA for response costs incurred at the Duffield Avenue Trailer Site.

A copy of the proposed administrative settlement agreement, as well as background information relating to the settlement, may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, New Jersey Superfund Branch, room 309, 26 Federal Plaza, New York, New York 10278.

Dated: September 8, 1993

William J. Muszynski,

Acting Regional Administrator

[FR Doc. 93–22991 Filed 9–20–93; 8:45 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by Public Law 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and Place: Tuesday, October 5, 1993, from 9:30 a.m. to 11:30 a.m.. The meeting will be held at Eximbank in Room 1143, 811 Vermont Avenue, NW., Washington DC 20571.

Agenda: The meeting agenda will include a discussion of the following topics: Advisory Committee Responsibility to Comment on Lundine/Key Linkages Report: Subcommittee Reports: Small Business, Banking, Insurance, Project Finance, CIS/Eastern Europe, Tied Aid; and other topics.

Public Participation: The meeting will be open to public participation; and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Loretta Carrier, room 1112, 811 Vermont Avenue, NW., Washington DC 20571, (202) 566–8893, not later than October 4, 1993. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to September 30, 1993, Loretta Carrier, room 1112, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 566–8893 or TDD: (202) 535–3913.

Further Information: For further information, contact Loretta Carrier, room 1112, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8893.

Helene H. Wall,

Vice President, Administrative & Management Services.

[FR Doc. 93–22984 Filed 9–20–93; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL RESERVE SYSTEM

First Fidelity Bancorporation, et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 12, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. First Fidelity Bancorporation, Lawrenceville, New Jersey; to acquire Greenwich Financial Corporation, Greenwich, Connecticut, through its wholly-owned bank holding company subsidiary, Northeast Bancorp, Inc., New Haven, Connecticut, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. First Fidelity will acquire Greenwich's susidiary, Greenwich Financial Savings and Loan Associatioin, which will be merged into Union Trust Company, Stamford, Connecticut.

Board of Governors of the Federal Reserve System, September 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–23098 Filed 9–20–93; 8:45 am]

BILLING CODE 6210–01–F

MSB Bancorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 7, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. MSB Bancorp, Inc., Goshen, New York; to engage *de novo* through its subsidiary, MSB Financial Services, Inc., Middletown, New York, in general insurance agency activities at the full service branch office of Middletown Savings Bank in Chester, Orange County, New York, a town with a population of less than 5,000, pursuant to § 225.25(b)(8)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–23100 Filed 9–20–93; 8:45 am]

BILLING CODE 6210–01–F

Norwest Financial, et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the

question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 12, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Lindeberg Financial Corporation, Forest Lake, Minnesota, and thereby indirectly acquire Forest Lake State Bank, Forest Lake, Minnesota.

In connection with this application, Applicant also proposes to indirectly acquire the mortgage origination business conducted by Forest Lake State Bank, Forest Lake, Minnesota, and integrate the mortgage origination business with the mortgage activities of one of its existing nonbank subsidiaries, Norwest Mortgage Inc., and thereby engage in making loans or other extensions of credit such as would be made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–23097 Filed 9–20–93; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 12, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of First National Bank of Arapahoe County, Aurora, Colorado; First National Bank of Lakewood, Lakewood, Colorado; and First National Bank of Southeast Denver, Denver, Colorado.

Board of Governors of the Federal Reserve System, September 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–23101 Filed 9–20–93; 8:45 am]

BILLING CODE 6210–01–F

Lowell T. Sherwood, Jr., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 7, 1993.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Lowell T. Sherwood, Jr., Bangor, Maine; to acquire up to an additional 15.4 percent of the voting shares of UnitedCorp, Bangor, Maine, for a total of up to 24.9 percent, and thereby indirectly acquire United Bank, Bangor, Maine.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Allen L. Samson, R. Max Samson, Dr. Barry L. Samson, and Harry E. Samson; to acquire at least 28.33 percent of the voting securities of Liberty Bank, Milwaukee, Wisconsin.

Board of Governors of the Federal Reserve System, September 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–23099 Filed 9–20–93; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CRADA 93–008]

Cooperative Research and Development Agreement; Detection of Acute Measles Virus Infection and Determination of Antibody Seroprevalence

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), National Center for Infectious Diseases, announces the opportunity for potential collaborators to enter into a Cooperative Research and Development Agreement (CRADA) for development of nucleic acid and/or recombinant protein-based diagnostic assays for the detection of acute measles virus infection and determination of antibody seroprevalence. In addition, opportunities exist for the development of vaccines effective against this group of viruses. The collaborator will design rapid new diagnostic assays in kit formation for detecting measles antigens or antibodies.

It is anticipated that inventions which may arise from this CRADA will be

licensed on a nonexclusive royalty-bearing basis to the collaborator with whom the CRADA is made.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA; CDC may provide staff, facilities, equipment, and supplies to the project. There is a single restriction in this exchange: CDC may not provide funds to the other participants in a CRADA. This opportunity is available until 30 days after publication of this notice. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

FOR FURTHER INFORMATION CONTACT:

Technical: William J. Bellini, Ph.D., Division of Viral and Rickettsial Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop G–17, Atlanta, GA 30333, telephone (404) 639–3512.

Business: Lisa Blake-DiSpigna, Technology Transfer Representative, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333, telephone (404) 639–3227.

SUPPLEMENTARY INFORMATION: Between 1989 and 1991 greater than 50,000 cases of measles and 100 measles-associated deaths occurred in the United States. This resurgence of measles disease underscores the necessity of providing a rapid diagnostic assay to distinguish measles infection from other rash-causing illnesses such as rubella and parvovirus B19. CDC has developed recombinant-expressed antigens for both vaccine and wildtype strains of measles, as well as full-length clones of relevant genes, nucleic acid sequences, probes, and monoclonal antibodies capable of distinguishing between vaccine and wildtype viruses and the possible disease sequelae.

The goal of this CRADA is to develop, evaluate, and commercialize diagnostic tests for detecting measles virus infections in humans and to develop, evaluate, and commercialize a vaccine against infections caused by measles virus. CDC will provide nucleic acid sequence information, primers, probes, and antisera to both vaccine and wildtype strains of measles virus. The collaborator will utilize its expertise in vaccine, diagnostic development, evaluation and commercialization of the products obtained.

Diagnostic test development may include characterization and expression of the antigens and production of antibodies which will be employed in serologic and/or antigen detection assays. Monoclonal antibodies produced under this CRADA will be evaluated for diagnostic purposes.

Respondents should provide evidence of expertise in the development and evaluation of vaccines, and/or diagnostic assays, evidence of experience in commercialization of vaccine products and/or diagnostics, and supporting data (e.g., publications, proficiency testing, certifications, resumes, etc.) of qualifications for the laboratory director and laboratory personnel who would be involved in the CRADA. The respondent will develop the final research plan in collaboration with CDC but should provide an outline of a research plan for review by CDC in judging applications.

Applicant submissions will be judged according to the following criteria:

1. Soundness of the analytic approach and research plan;
2. Evidence of appropriate personnel to complete the project in a timely fashion or evidence of a plan to recruit and fund personnel appropriate for the project;
3. Evidence of scientific credibility; and
4. Evidence of commitment and ability to develop an innovative design for diagnostic assays and/or vaccines.

This CRADA is proposed and implemented under the 1986 Federal Technology Transfer Act: Pub. L. 99–502.

The responses must be made to: Nancy C. Hirsch, Technology Transfer Coordinator, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333.

Dated: September 15, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–23028 Filed 9–20–93; 8:45 am]

BILLING CODE 4160–18–P

Food and Drug Administration

Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing an amendment to the notice of a meeting of the Blood Products Advisory Committee which is scheduled for September 23 and 24, 1993. This meeting was announced in the **Federal Register** of August 24, 1993 (58 FR 44683). The amendment is being made to change both the starting time of the September 23, 1993, meeting and the location for the September 23 and 24, 1993, meeting; and to remove an item from the agenda for the open committee discussion on September 23, 1993. The agenda item has been postponed for discussion until a later advisory committee meeting. Additionally, the date of the closed committee deliberations has been changed from September 24, 1993, to September 23, 1993.

FOR FURTHER INFORMATION CONTACT: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–300), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–594–6700.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 24, 1993, FDA announced that a meeting of the Blood Products Advisory Committee would be held on September 23 and 24, 1993. On page 44684, column 2, under "Date, time, and place" and "Type of meeting and contact person," and under column 3, under "Open committee discussion," portions of this meeting notice are amended to read as follows:

Date, time, and place. September 23, 1993, 10 a.m., and September 24, 8:30 a.m., Holiday Inn Bethesda, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, September 23, 1993, 10 a.m. to 10:30 a.m., unless public participation does not last that long; open committee discussion, 10:30 a.m. to 11:30 a.m.; closed committee deliberations, 11:30 a.m. to 12:30 p.m.; open committee discussion, 12:30 p.m. to 5:30 p.m.; open public hearing, September 24, 1993, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 2 p.m.

Open committee discussion. On September 23, 1993, in the morning, the committee will review the report of the Scientific Site Visit for the Laboratory of Hemostasis, Division of Hematology, Office of Blood Research and Review, Center for Biologics Evaluation and Research. In the afternoon, the committee will review the report of the FDA contract study on increasing the safety of the blood supply by screening

donors more effectively. On September 24, 1993, the committee will hear presentations on blood product transmission of Hepatitis A and other nonenveloped viruses.

Closed committee deliberation. On September 23, 1993, in the morning, the committee will review the report of the scientific site visit for the laboratory of hemostasis, Division of Hematology, Office of Blood Research and Review, Center for Biologics Evaluation and Research.

This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with the research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Dated: September 15, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–23041 Filed 9–20–93; 8:45 am]

BILLING CODE 4160–01–F

Centers for Disease Control and Prevention

HIV Prevention Community Planning Process

The Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: CDC's HIV Prevention Community Planning Process.

Time and Date: 8:30 a.m.–5 p.m., October 14, 1993.

Place: Atlanta Marriott Marquis Hotel, 265 Peachtree Center Avenue, NE., Atlanta, Georgia 30303.

Status: Open to the public, limited only by the space available. The meeting room will accommodate 200.

Summary: Beginning in fiscal year (FY) 1994, a portion of CDC's health department cooperative agreement HIV prevention funds, authorized under 301, 311, and 317 of the Public Health Service Act, will be identified and specifically designated to support HIV prevention community planning. Each recipient of funds will be required to base its application for FY 1995 funds on the results of an HIV prevention community planning process that will be undertaken and completed in FY 1994.

HIV prevention community planning is an ongoing, collaborative process in which state/local health departments, other agencies, nongovernmental organizations, and other representatives of communities and groups at risk for HIV infection work together in partnership to plan and implement HIV prevention programs that are responsive to high priority, community-validated needs within defined populations.

Purpose of Meeting: To obtain public input into CDC's proposed HIV prevention community planning process. Information from this meeting will be used by CDC in finalizing the proposed HIV prevention community planning approach for FY 1994.

This open meeting will provide an opportunity for the public to comment on CDC's draft guidance on HIV prevention community planning. Persons who wish to obtain a copy of the draft may do so after October 1, 1993, by contacting the meeting organizer listed below.

Statements by the public should be guided by the following questions:

1. Based on the experience of your agency or organization, what do you consider to be the major barriers to identifying high priority HIV prevention needs for the populations you represent/serve?

2. How can meaningful community representation be achieved in an HIV prevention community planning process?

3. How should the responsibilities of state/local health departments be defined in HIV prevention community planning?

4. What role should nongovernmental organizations play in HIV prevention community planning?

5. What lessons have been learned from other community planning and priority-setting efforts that might be applied to the HIV prevention community planning process?

Written comments regarding the above issues will be considered by CDC if received by the meeting organizer listed below no later than close of business October 21, 1993.

Public Statements: Persons interested in providing oral comments at the meeting should notify the meeting organizer listed below in writing. Such written requests must be received no later than close of business October 7, 1993, (facsimile submissions will be accepted).

All requests for making oral comments at the meeting should contain the name, address, telephone number, and any organizational affiliation of the person requesting to give oral comments.

Depending on the time available and the number of requests to present oral comments, it may be necessary to restrict the length of time for each commenter. Persons wishing to make oral statements will be notified by mail or telephone of the length of time available to the person and the approximate time on the agenda when the person's comments are scheduled to begin.

For Further Information Contact the Meeting Organizer: Professional and Scientific Associates, Inc., 2635 Century Parkway, suite 990, Atlanta, Georgia 30345, telephone (404) 633–6869, fax (404) 633–6477.

Dated: September 16, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–23158 Filed 9–20–93; 8:45 am]

BILLING CODE 4160–18–M

National Institutes of Health

Conference on "Disease Prevention Research at NIH: An Agenda for All"

Notice is hereby given of the NIH Conference on "Disease Prevention Research at NIH: An Agenda For All," which will be held October 6–8, 1993 in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. This conference is sponsored by the NIH Office of Disease Prevention and cosponsored by the Office of the Assistant Secretary for Health, the Public Health Service, the Association of Schools of Public Health, the American College of Preventive Medicine, and the Association of Teachers of Preventive Medicine.

The purpose of this conference is to chart a course for future prevention research activities at the National Institutes of Health. The extramural scientific community will address issues in prevention research through lectures and workshops.

Speakers will be asked to highlight the important research questions that require attention and to indicate innovative approaches to answering or addressing these questions. The product of this conference will be an agenda for prevention research representing the best advice of the scientific community.

The conference will focus on future research rather than on existing research efforts. The "Agenda for All" refers to the commitment to bring together all of the Institutes at NIH in planning prevention research and to include all population groups in considering the future research agenda.

The conference is supported by all NIH Institutes, Centers, and Divisions as well as by the Office of the Director. It has been planned by a committee consisting of governmental and nongovernmental organizations.

Information on the program may be obtained from: Carol Sadler, Prospect Associates, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, 301–468–MEET.

Dated: September 8, 1993.

Ruth L. Kirschstein,

Acting Director, NIH.

[FR Doc. 93–23060 Filed 9–20–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-93-1034; FR-3586-D-01]

Office of the Manager, Milwaukee Office; Designation of Succession

AGENCY: Department of Housing & Urban Development.

ACTION: Designation of succession.

SUMMARY: The Manager is designating officials who may serve as the Acting Manager during absence or vacancy in the position of the Manager.

EFFECTIVE DATE: The designation is effective August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis M. Nixon, Regional Counsel, Chicago Regional Office, Department of Housing & Urban Development, 77 West Jackson Boulevard, Chicago, Illinois 60606-6765, (312) 353-4681. (This is not a toll-free number.)

Designation

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence or vacancy in the position of the Manager, with all of the powers, functions and duties redelegated or assigned to the Manager; Provided, that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence or vacancy in the position.

1. Deputy Manager
2. Director, Housing Development Division
3. Director, Community Planning & Development Division
4. Director, Public Housing Division
5. Director, Housing Management Division
6. Director, Fair Housing & Equal Opportunity Division

This designation supersedes the designation published at Docket No. D-87-857, Federal Register Vol. 52, No. 163, dated Monday, August 24, 1987.

Authority: Delegation of Authority, 27 FR 4319 (1962); Sec. 9(c), Department of Housing and Urban Development Act, 42 U.S.C. 3531 note; and Interim Order 11, 31 FR 615 (1966).

Delbert F. Reynolds,

Manager, Milwaukee Office, 5.8C.

Joseph P. Garaffa,

Acting Regional Administrator, Regional Housing Commission, Region 5, 5S.

[FR Doc. 93-23001 Filed 9-20-93; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-93-3437; FR-3202-N-02]

Section 107 Technical Assistance Awards Program for State Community Development Block Grant (CDBG) Grantees; Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the section 107 Technical Assistance Awards Program for State Community Development Block Grant (CDBG) Grantees. The announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Jerome B. Friedman, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-3176. The TDD number for hearing impaired is (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to provide assistance to States administering non-entitlement Community Development Block Grant (CDBG) funds for small communities within their jurisdiction. The competition had the following specific objectives:

a. Assist those states whose nonentitlement localities face the most serious technical assistance needs related to the state CDBG program;

b. Build the capacity of state's recipients to more effectively meet the needs of low and moderate income persons under the state CDBG program;

c. Assist nonentitlement localities to strengthen the implementation and management of troubled economic development projects funded under the state CDBG program;

d. Develop local capacity to clear audit and monitoring findings; and

e. Develop local capacity in financial management.

The 1992 awards announced in this Notice were selected for funding in a competition announced in a Federal Register Notice published on May 29, 1992 (57 FR 22880). Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

A total of $3.0 million was awarded to 22 States administering Community Development Block Grant Programs for small localities within their jurisdiction. In accordance with section 102(a)(4)(C) of Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the Department is publishing the names, addreases and amounts of those awards as follows:

SECTION 107.—TECHNICAL ASSISTANCE AWARDS PROGRAM FOR STATE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) GRANTEES

Grantee	Amount
1. State of Arizona, Department of Commerce, 3800 N. Central, Suite 1500, Phoenix, AZ 85012	$107,307
2. State of Connecticut, Department of Housing, Community Development Division, 505 Hudson Street, Hartford, CT 06106-7106	125,000
3. State of Florida, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, FL 32399-2100	125,133
4. State of Georgia, Department of Community Affairs, Bureau of Financial Assistance, 100 Peachtree St., Suite 1200, Atlanta, GA 30303	185,000
5. State of Iowa, Department of Economic Development, 200 East Grand Avenue, Des Moines, IA 50309	125,000
6. State of Idaho, Department of Commerce, Division of Community Development, 700 West State Street, Boise, ID 83720	125,000
7. State of Illinois, Department of Commerce & Community Affairs, 620 East Adams Street, 5th Fl., Springfield, IL 62701	164,000
8. Commonwealth of Kentucky, Department of Local Government, 1024 Capital Center Drive, Frankfort, KY 40601	145,534
9. State of Louisiana, Division of Administration, Office of Community Development, P.O. Box 94095, Baton Rouge, LA 70804-9095	135,500

SECTION 107.—TECHNICAL ASSISTANCE AWARDS PROGRAM FOR STATE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) GRANTEES—Continued

Grantee	Amount
10. Commonwealth of Massachusetts, Executive Office of Communities & Development, Bureau of Small Cities, 100 Cambridge Street—18th fl., Boston, MA 02202	140,000
11. State of Maryland, Department of Housing and Community Development, 100 Community Place, Crownsville, MD 21023	125,000
12. State of Minnesota, Department of Trade and Economic Development, 150 E. Kellogg Blvd., St. Paul, MN 55101	125,000
13. State of Missouri, Department of Economic Development, CDBG Program, P.O. Box 118, Jefferson City, MO 65102	125,000
14. State of Montana, Department of Commerce, 1424 9th Avenue, Capitol Station, Helena, MT 59620	116,474
15. State of Nebraska, Department of Economic Development, Community & Rural Development Division, P.O. Box 94666, Lincoln, NE 68509	118,787
16. State of New Mexico, Department of Finance and Administration, Bataan Memorial Bldg., Suite 201, Sante Fe, NM 87503	125,000
17. State of Oregon, Economic Development Department, 775 Summer Street, NE., Salem, OR 97310	40,898
18. Commonwealth of Pennsylvania, Department of Community Affairs, Bureau of Local Government Services, P.O. Box 155, Harrisburg, PA 17108	221,500
19. State of South Dakota, Governor's Office of Economic Development, 711 East Wells Avenue, Pierre, SD 57501	125,000
20. State of Texas, Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711–3941	249,867
21. Commonwealth of Virginia, Department of Housing and Community Development, Office of Project Management, 501 North Second Street, Richmond, VA 323219	125,000
22. State of Wisconsin, Department of Development, P.O. Box 7970, Madison, WI 53707	125,000

Dated: September 14, 1993.

Mark C. Gordon,

Deputy Assistant Secretary for Operation, Community Planning and Development.

[FR Doc. 93–23002 Filed 9–20–93; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. D–93–1035; FR–3587–D–01]

Redelegation of Authority Under the Fair Housing Act

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: Under this notice, the Assistant Secretary for Fair Housing and Equal Opportunity is redelegating the authority to issue subpoenas under section 811(a) of the Fair Housing Act, in the jurisdictions covered by the *Young* v. *Cisneros* litigation, to Peter Kaplan, Director of the Office of Program Training and Technical Assistance, Office of Fair Housing and Equal Opportunity.

EFFECTIVE DATE: September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Harry L. Carey, Assistant General Counsel for Fair Housing, 451 Seventh Street SW., room 9238, Washington, DC 20410, telephone (202) 708–0570. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 30, 1989, HUD published a notice in the **Federal Register**, at 54 FR 13121, which delegated from the Secretary of HUD to the Assistant Secretary and General Deputy Assistant Secretary for Fair Housing and Equal Opportunity all the power and authority of the Secretary under the Fair Housing Act, with some exceptions. The power and authority delegated to the Assistant Secretary and General Deputy Assistant Secretary for Fair Housing and Equal Opportunity included the authority to issue subpoenas pursuant to section 811(a) of the Fair Housing Act. The General Counsel and both Deputy General Counsels were authorized to approve or disapprove the legality of these subpoenas.

Under this redelegation of authority, the Assistant Secretary for Fair Housing and Equal Opportunity is redelegating the authority to issue subpoenas under section 811(a) of the Fair Housing Act, in the jurisdictions covered by the *Young* v. *Cisneros* litigation, to Peter Kaplan, Director of the Office of Program Training and Technical Assistance. By separate redelegation, the General Counsel is redelegating the authority to approve or disapprove the legality of these subpoenas to Harry L. Carey, the Assistant General Counsel for Fair Housing and to William J. Daley, the HUD Regional Counsel for Region Six.

The Assistant Secretary for Fair Housing and Equal Opportunity retains for herself and the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity the concurrent authority to issue subpoenas under section 811(a) of the Act in these jurisdictions.

Accordingly, the Assistant Secretary for Fair Housing and Equal Opportunity redelgates the following authority:

Section A. Authority Redelegated

The Assistant Secretary for Fair Housing and Equal Opportunity redelegates the authority to issue subpoenas under section 811(a) of the Fair Housing Act, in the jurisdictions covered by the *Young* v. *Cisneros* litigation, to Peter Kaplan, Director of the Office of Program Training and Technical Assistance, Office of Fair Housing and Equal Opportunity.

Section B. No Further Redelegation

The authority granted under Section A of this redelegation may not be further redelegated pursuant to this redelegation.

Authority: 42 U.S.C. 3535(d); 42 U.S.C. 3610(a).

Dated: September 13, 1993.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 93–23000 Filed 9–20–93; 8:45 am]

BILLING CODE 4210–28–M

Office of the General Counsel

[Docket No. D–93–1036; FR–3588–D–01]

Redelegation of Authority Under the Fair Housing Act

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: Under this notice, the General Counsel is redelegating the authority to approve or disapprove the legality of subpoenas under section 811(a) of the Fair Housing Act, in the jurisdictions covered by the *Young* v. *Cisneros* litigation, to Harry L. Carey, Assistant General Counsel for Fair Housing and William J. Daley, HUD Regional Counsel for Region Six.

EFFECTIVE DATE: September 13, 1993.

FOR FURTHER INFORMATION CONTACT:

Harry L. Carey, Assistant General Counsel for Fair Housing, 451 Seventh Street SW., room 9238, Washington, DC 20410, telephone (202) 708–0570. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 30, 1989, HUD published a notice in the **Federal Register**, at 54 FR 13121, which delegated from the Secretary of HUD to the Assistant Secretary and General Deputy Assistant Secretary for Fair Housing and Equal Opportunity all the power and authority of the Secretary under the Fair Housing Act, with some exceptions. The power and authority delegated to the Assistant Secretary and General Deputy Assistant Secretary for Fair Housing and Equal Opportunity included the authority to issue subpoenas pursuant to section 811(a) of the Fair Housing Act. The General Counsel and both Deputy General Counsels were authorized to approve or disapprove the legality of these subpoenas.

Under this redelegation of authority, the General Counsel is redelegating the authority to approve or disapprove the legality of subpoenas under section 811(a) of the Fair Housing Act, in the jurisdictions covered by the *Young* v. *Cisneros* litigation, to Harry L. Carey, the Assistant General Counsel for Fair Housing and to William J. Daley, the HUD Regional Counsel for Region Six. By separate redelegation, the Assistant Secretary for Fair Housing and Equal Opportunity redelegated the authority to issue subpoenas under section 811(a) of the Fair Housing Act, in the jurisdictions covered by the *Young* v. *Cisneros* litigation, to Peter Kaplan, Director of the Office of Program Training and Technical Assistance, Office of Fair Housing and Equal Opportunity.

The General Counsel retains for himself and the Deputy General Counsels the concurrent authority to approve or disapprove subpoenas under section 811(a) of the Act in these jurisdictions.

Accordingly, the General Counsel redelegates the following authority:

Section A. Authority Redelegated

The General Counsel redelegates the authority to approve or disapprove the legality of subpoenas under section 811(a) of the Fair Housing Act, in the jurisdictions covered by the *Young* v. *Cisneros* litigation, to Harry L. Carey, the Assistant General Counsel for Fair Housing and to William J. Daley, the HUD Regional Counsel for Region Six.

Section B. No Further Redelegation

The authority granted under Section A of this redelegation may not be further redelegated pursuant to this redelegation.

Authority: 42 U.S.C. 3535(d); 42 U.S.C. 3610(a).

Dated: September 13, 1993.

Nelson A. Diaz,

General Counsel.

[FR Doc. 93–22999 Filed 9–20–93; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Revised Recovery Plan for Ozark Big-Eared Bat for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft revised recovery plan for the Ozark big-eared bat (*Plecotus townsendii ingens*) which the Service listed as endangered in 1979 (FR Vol. 44, Number 232, Nov. 30). This mammal occurs in the Ozark plateau region in northeastern Oklahoma and northwestern Arkansas. Populations are presently known from Adair, Cherokee, Delaware, and Ottawa Counties in Oklahoma and Crawford and Washington Counties in Arkansas. The Service solicits review and comment from the public on this draft plan. The original recovery plan was approved May 8, 1980.

DATES: Comments on the draft recovery plan must be received on or before October 21, 1993, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Ecological Services, 222 South Houston, Suite A, Tulsa, Oklahoma 74127; telephone (918) 581–7458. Written comments and materials regarding the plan should be addressed to Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Hensley, U.S. Fish and Wildlife Service biologist; at the above phone number or address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site-specific actions considered necessary for conservation and survival of the species, establish objective measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft revised recovery plan is the Ozark big-eared bat (*plecotus townsendii ingens*). This bat is listed as endangered because of its small population size, reduced distribution, and vulnerability to human disturbance. The area of emphasis for recovery actions is the limestone caves and forested uplands of the Ozark plateau region of northeastern Oklahoma, Northwestern Arkansas, and southwestern Missouri. Preventing human disturbance to important caves and implementation of management practices to protect the cave and forest ecosystems used by this bat are major objectives of this recovery plan.

The objective of the recovery plan is to restore the species to the point that its continued existence is no longer endangered and it can be delisted. Downlisting criteria are presented in the draft revised plan. The plan will be finalized and approved following incorporation of comments and materials received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 14, 1993.

James A. Young,

Acting Regional Director.

[FR Doc. 93-23025 Filed 9-20-93; 8:45 am]

BILLING CODE 4310-55-M

Notice of Availability of a Technical/Agency Draft Recovery Plan for Ottoschulzia Rhodoxylon (palo de rosa) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for *Ottoschulzia rhodoxylon* (palo de rosa). This endangered tree is known only from Puerto Rico and Hispaniola. Fewer than 200 individual trees are known from Puerto Rico. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 22, 1993, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the recovery plan may obtain a copy by contacting the Southeast Regional Office, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303. Written comments and materials regarding the plan should be addressed to Field Supervisor, Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials are available on request for public inspection, by appointment, during normal business hours at the above-mentioned address.

FOR FURTHER INFORMATION CONTACT: Ms. Susan R. Silander, Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851-7297).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for the downlisting or delisting of them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4 (f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comments be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This Recovery Plan is for *Ottoschulzia rhodoxylon* or palo rosa, a small evergreen tree known from only Puerto Rico and Hispaniola. In Puerto Rico fewer than 200 trees are known from thirteen populations in the Isabela/Quebradillas, Guaynabo, Cabo Rojo, Guánica, Yauco, Sabana Grande, Arecibo and San Germán municipalities. Urban, industrial and residential expansion have greatly reduced the forested area in all of these localities. Available evidence indicates that the majority of individuals have been cut in the past possibly for use as posts or for use of the species' valuable wood.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered for inclusion in the Recovery Plan.

Authority

The authority for this action is section 4 (f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: September 13, 1993.

Susan R. Silander,

Field Supervisor.

[FR Doc. 93-22980 Filed 9-20-93; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Technical/Agency Draft Recovery Plan for Aristida Portoricensis (pelos de diablo) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for *Aristida portoricensis* (pelos de diablo). This endemic, endangered grass grows on serpentine slopes and red clay soils in southwestern Puerto Rico. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 22, 1993, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the recovery plan may obtain a copy by contacting the Southeast Regional Office, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303. Written comments and materials regarding the plan should be addressed to Field Supervisor, Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials are available on request for public inspection, by appointment, during normal business hours at the above-mentioned address.

FOR FURTHER INFORMATION CONTACT: Ms. Susan R. Silander, Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851-7297).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for the downlisting or delisting of them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4 (f) of the Act, as amended in 1988, requires that public notice and an

opportunity for public review and comments be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This Recovery Plan is for *Aristida portoricensis*, a grass endemic to the serpentine-derived and red clay soils of southwestern Puerto Rico. The species was originally known from 4 sites: Cerro Las Mesas in Mayaguez; Sierra Bermeja in Cabo Rojo and Lajas; Hormigueros; and Guanajibo. Urban and commercial development eliminated the latter two populations. Residential and tourist development, mining, grazing, fire and competition from introduced grasses threaten the remaining two populations.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered for inclusion in the Recovery Plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 13, 1993.

Susan R. Silander,

Acting Field Supervisor.

[FR Doc. 93–22981 Filed 9–20–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 11, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by October 6, 1993.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

ALABAMA

Jefferson County

Miles Memorial College Historic District, 5501 Myron Massey Blvd., Fairfield, 93001031

CALIFORNIA

Orange County

Olive Civic Center, 3030 N. Magnolia Ave., Orange, 93001038

HAWAII

Honolulu County

Burningham, Thomas Alexander, House, 2849 Pali Hwy., Honolulu, 93001029

Kauai County

Hanapepe Town Lot No. 18, Hanapepe Rd. W of jct. with Ko Rd., Hanapepe, 93001033

LOUISIANA

Catahoula Parish

Spring Ridge Baptist Church, Sherwood Rd., near jct. with LA 559 and LA 124, Enterprise vicinity, 93001037

St. Mary Parish

Hanson Lumber Company Office, 10400 LA 182, Garden City, 93001034

Hanson Lumber Company Owner's House, 10407 LA 182, Garden City, 93001035

Terrebonne Parish

Montegut School, 1137 LA 55, Montegut, 93001036

West Baton Rouge Parish

Hebert House (Louisiana's French Creole Architecture MPS), 919 E. Main St., Brusly, 93001032

OREGON

Josephine County

Grants Pass G Street Historic District, Bounded by SW. G and H Sts. and 4th and 6th Sts., Grants Pass, 93001030

SOUTH DAKOTA

Custer County

Archeological Site No. 39CU70 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Custer vicinity, 93001039

Archeological Site No. 39PN376 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Custer vicinity, 93001072

Fall River County

Archeological Site No. 39FA88 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001040

Archeological Site No. 39FA90 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Hot Springs vicinity, 93001041

Archeological Site No. 39FA99 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001042

Archeological Site No. 39FA243 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001043

Archeological Site No. 39FA244 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001044

Archeological Site No. 39FA316 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001045

Archeological Site No. 39FA321 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001046

Archeological Site No. 39FA395 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001047

Archeological Site No. 39FA446 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001048

Archeological Site No. 39FA447 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001049

Archeological Site No. 39FA448 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001050

Archeological Site No. 39FA542 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001051

Archeological Site No. 39FA679 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001052

Archeological Site No. 39FA680 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001053

Archeological Site No. 39FA682 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001054

Archeological Site No. 39FA683 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001055

Archeological Site No. 39FA686 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001056

Archeological Site No. 39FA688 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001057

Archeological Site No. 39FA690 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001058

Archeological Site No. 39FA691 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001059

Archeological Site No. 39FA767 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001060

Archeological Site No. 39FA788 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001061

Archeological Site No. 39FA819 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001062

Archeological Site No. 39FA1010 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Hot Springs vicinity, 93001063

Archeological Site No. 39FA1013 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Hot Springs vicinity, 93001064

Archeological Site No. 39FA1046 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001065

Archeological Site No. 39FA1093 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Hot Springs vicinity, 93001066

Archeological Site No. 39FA1152 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Hot Springs vicinity, 93001067

Archeological Site No. 39FA1154 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Hot Springs vicinity, 93001068

Archeological Site No. 39FA1155 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Hot Springs vicinity, 93001069

Archeological Site No. 39FA1190 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Edgemont vicinity, 93001070

Archeological Site No. 39FA1204 (Prehistoric Rock Art of South Dakota MPS), Address Restricted, Hot Springs vicinity, 93001071

[FR Doc. 93–23030 Filed 9–20–93; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; The Genosensor Consortium

Notice is hereby given that, on August 20, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et seq. ("the Act"), The Genosensor Consortium ("GC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objective of the venture. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Baylor College of Medicine, Houston, TX; Beckman Instruments, Inc., Fullerton, CA; Houston Advanced Research Center, The Woodlands, TX; Genometrix, Incorporated, The Woodlands, TX; Genosys Biotechnologies, The Woodlands, TX; Laboratories for Genetic Services, Houston, TX; Microfab Technologies, Inc., Plano, TX; Massachusetts Institute of Technology, Lincoln Laboratory, Lexington, MA; and Triplex Pharmaceutical Corporation, The Woodlands, TX. The general area of planned activity is the development and transfer to industry of a revolutionary technology to support automated, low-cost DNA sequence analysis. The Houston Advanced Research Center has been chosen by GC as the administrator of the program.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–22968 Filed 9–20–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; OAS Joint Venture

Notice is hereby given that, on August 19, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et seq. ("the Act"), the Diversey Corp. has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the OAS Joint Venture ("Joint Venture") and (2) the nature and objective of the Joint Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Joint Venture are Alex C. Fergusson, Inc., Frazer, PA; BIT Manufacturing, Inc., Copperhill, TN; Chemical Specialties Manufacturers Association, Inc., Washington, DC; and Diversey Corp., Livonia, MI. The objective of the Joint Venture is to sponsor and conduct toxicological research on chemicals known as oleic acid sulfonates (EPA case #4069) and to submit the results to the U.S. Environmental Protection Agency ("EPA") in response to the Registration Notice-List D issued by the EPA in October 1989. Membership in the Joint Venture remains open, and the parties intend to file additional written notification disclosing all changes in membership to the Joint Venture.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–22969 Filed 9–20–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Petroleum Environmental Research Forum

Notice is hereby given that, on August 23, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, et seq. ("the Act"), the Petroleum Environmental Research Forum ("PERF") filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ashland Oil, Inc., has terminated its membership in PERF, and Sun Company, Inc., Marcus Hook, PA, has become a member of PERF.

No other changes have been made in either the membership or planned activities of PERF. Membership in PERF remains open and PERF intends to file additional written notification disclosing all changes in membership.

On February 10, 1986, PERF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the Federal Register pursuant to section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on April 29, 1993. A notice was published in the Federal Register pursuant to section 6(b) of the Act on June 22, 1993 (58 FR 33954).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–22967 Filed 9–20–93; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *Anchor Motor Freight, et al.*, Civil Action No. 4:89CV1999, was lodged on September 10, 1993, with the United States District Court for the Northern District of Ohio. The proposed consent decree requires five defendants in this action under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601, et seq., to reimburse the United States a total of approximately $1.4 million for certain costs incurred by the United States in connection with the Laskin/Polar Oil Superfund Site (the "Laskin Site"), located in Jefferson, Ohio. Five prior consent decrees have been entered in connection with the Laskin Site. Through entry of the 1989 consent decree in *United States* v. *Alvin F. Laskin, et al.*, CA No. 84–2035Y (N.D. Ohio), defendants paid the United States $1.47 million as partial reimbursement for certain past costs. In 1990, the United States entered into a Remedial Design/Remedial Action consent decree with certain defendants in *United States* v. *Alvin Laskin, et al.*, CA No. 4:90CV0483 (N.D. Ohio), wherein 27 defendants became obligated to conduct the remedial action at the Laskin Site and pay, along with 131 de minimis defendants, certain future oversight costs and approximately $1.38 million as partial reimbursement of additional United States' past costs. Through entry on August 27, 1993, of three consent decrees in *United States* v. *Anchor Motor Freight*, CA No. 4:89CV1999 (N.D. Ohio), ten defendants are obligated to pay the United States approximately $2.7 million as partial reimbursement for certain costs.

Each of the five Settling Defendants in the current action, *United States* v. *Anchor Motor Freight, et al.*, signed this proposed consent decree, but none has signed any of the prior consent decrees that were previously entered. Settling Defendants in this proposed consent

decree are: Consolidated Railroad Corporation, Matlack, Inc., National Forge Company, Mercer Forge Company and White Consolidated Industries, Inc. (on its own behalf and on behalf of its separately-named subsidiary, Copes Vulcan, Inc., and its former division, RP&C Valve, Inc.).

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Anchor Motor Freight, et al.* (N.D. Ohio) and DOJ Ref. No. 90–11–3–38A.

The proposed consent decree may be examined at the office of the United States Attorney, Northern District of Ohio, 600 Superior Street, Cleveland, Ohio, 44114; the Region 5 office of U.S. EPA, 77 West Jackson Blvd., Chicago, Illinois 60604–3590; and at the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005, (202) 624–0892. Copies of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy of a consent decree, please identify which consent decree is sought and enclose a check in the amount of $5.75 for the consent decree (25 cents per page reproduction costs) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–22970 Filed 9–20–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act

On March 10, 1993, a proposed consent decree in *United States* v. *Fina Oil and Chemical Company*, Civil Action No. 1:93CV–114, was lodged with the United States District Court for the Eastern District of Texas. Notice of lodging was published in the **Federal Register** on March 22, 1993. Pursuant to the proposed consent decree, Fina has agreed to pay a $450,000 civil penalty for these violations, to implement a compliance plan, and to pay stipulated penalties for future violations. By the Order of the Court this additional notice is being published to afford an opportunity for comment on the compliance plan required by the proposed decree.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive written comments relating to the proposed consent decree and compliance plan from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20530, and should refer to *United States* v. *Fina Oil and Chemical Company*, DOJ# 90–5–1–1–2527A.

The proposed consent decree and compliance plan may be examined at the offices of the United States Attorney for the Eastern District of Texas, 700 North Street, Suite 102, Beaumont, Texas 77701 and at the office of the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202 (Attention: Ralph Corley, Assistant Regional Counsel). A copy of the consent decree and compliance plan may also be examined at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. A copy of the proposed Consent Decree and compliance plan can be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please refer to the reference case and enclose a check in the amount of $6.75 (25 cents per page reproduction charge) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–22971 Filed 9–20–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Hastings Irrigation Pipe Co.*, Civil Action No. 4:CV93–3315, was lodged on September 10, 1993 with the United States District Court for the District of Nebraska. The Hastings Irrigation Pipe Co. (HIPCO) is a Nebraska corporation that owns a portion of the FAR–MAR–CO Subsite, one of seven subsites at the Hastings Ground Water Contamination Site. The portion of the FAR–MAR–CO Subsite owned by HIPCO is an operable unit where a spill of hazardous waste, 1,1,1-trichloroethane (TCA) occurred. The Environmental Protection Agency (EPA) incurred costs in investigating the TCA contamination as well as costs of overseeing a removal action, a risk assessment, and a feasibility study undertaken by HIPCO pursuant to an administrative order on consent.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Hastings Irrigation Pipe Co.*, DOJ Ref. #90–11–2–880.

The proposed consent decree may be examined at the office of the United States Attorney, 520 Federal Building 100 Centennial Mall North, Lincoln, Nebraska 68508; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–22972 Filed 9–20–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Commission on the Future of Worker-Management Relations; Hearing

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of public hearing.

SUMMARY: The Commission on the Future of Worker-Management Relations issued a notice in the **Federal Register** of June 30, 1993 (58 FR 35048) Volume 58, Number 124, as reopened in the **Federal Register** notice of July 29, 1993, (58 FR 40677) Volume 58, Number 144, requesting comments on whether the Commission should hold a hearing on issues related to the Railway Labor Act in the railroad or airline industries and their applicability to the mission statement of the Commission.

In view of the comments received, that are in the public record, and in accordance with the Federal Advisory Act (FACA) (Pub. L. 92–463, as amended), the Commission has decided

to hold a hearing on issues arising under the Railway Labor Act as they relate to the Mission Statement of the Commission. Pursuant to section 10(a) of FACA, this is to announce that the Commission will hold the hearing at the time and place shown below:

Time and Place: The hearing will be held on Wednesday, October 20, 1993 from 10 a.m. to 5 p.m. in Conference Room N–3437 A–D in the Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

Agenda: The Commission has formulated the following questions to provide guidance to interested parties as to the questions on which it particularly seeks views from interested parties at the hearing on October 20th or in written statements filed with the Commission.

1. The Railway Labor Act was originally enacted in 1926 to deal with disputes in the railroad industry; airlines were brought under the Act at a later date. Both industries, the economy, and their relative roles have changed substantially over the years. Should either industry, or both, be taken from the Railway Labor Act and placed under a general labor-management statute? With or without special provisions?

2. The Railway Labor Act mandates an arbitration process with respect to grievances through a System Board of Adjustment structure. Should the parties be free to redesign their own grievance procedure processes? In the railroads, should the private parties rather than the government pay for the system, including compensation of neutrals?

3. Should the Railway Labor Act be amended to provide for some form of mandatory arbitration after a mediation process? What form of arbitration, or who should determine among the different forms of arbitration? Or, should the parties in these industries be assured, as a matter of general public policy, of the right to self-help, that is, of the strike or the lock-out?

4. What changes, if any, should be made to the Railway Labor Act to accommodate significant employee ownership of airline equity and participation on company boards of directors?

5. Are the distinctions between "major" and "minor" disputes and the provisions for continuation of the "status quo" appropriate, or not appropriate, to the future?

6. How should any proposed changes in the Railway Labor Act, or the status of either industry under the Act, be developed? What mechanisms are possible to develop a measure of consensus?

The parties are, of course, free to comment on other issues. The Commission, however, does not believe it would be appropriate to spend time on the issues relating to the reform of the Federal Employers' Liability Act (FELA), raised by a number of comments, since a study by the National Research Council, Transportation Research Board, is forthcoming early in the new year.

Organizations or individuals who wish to testify or to present statements should advise by October 1, 1993, Mrs. June M. Robinson, Designated Federal Official, U.S. Department of Labor, room C–2318, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–9148. Those seeking to testify will be scheduled within the available time. The Commission will notify the parties or individuals to be heard of time assignments by October 8, 1993. All others may file statements that will be incorporated in the record of the Commission.

Participation: The Commission will be in session from 10 a.m. to 12 noon when it will recess for lunch and will return at 1 p.m. Seating will be available to the public on a first-come, first-served basis. Handicapped individuals wishing to attend should contact the Commission to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 11 copies to Mrs. June M. Robinson, Designated Federal Official, Commission on the Future of Worker-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–9148.

Signed at Washington, DC, this 15th day of September, 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93–23090 Filed 9–20–93; 8:45 am]

BILLING CODE 4510–22–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than October 1, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 1, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 7th day of September, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Aluminum Co of America (USWA)	Alcoa, TN	09/07/93	07/30/93	29,002	Aluminum.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Johnson & Johnson Medical, Inc. (Wkrs).	Arlington, TX	09/07/93	08/25/93	29,003	Latex Gloves.
Sigri Great Lakes Carbon (USWA)	Niagara Falls, NY	09/07/93	08/19/93	29,004	Graplite Electrodes.
Zinc Corporation of America (Co)	Bartlesville, OK	09/07/93	08/24/93	29,005	Zinc Metal.
TRW, Inc. (Wkrs)	Redondo Beach, CA.	09/07/93	08/22/93	29,006	Satellites.
Standard Products Co. (UAW)	Port Clinton, OH	09/07/93	08/24/93	29,007	Military Trucks and Parts.
PPG Industries, Inc. (ABGU)	Ford City, PA	09/07/93	08/24/93	29,008	Glass—Commercial Windows.
ABB Power T & D Co. (IUE)	Muncie, IN	09/07/93	08/02/93	29,009	Power Transformers.
Reynolds Aluminum Recycling (Wkrs)	Salt Lake City, UT	09/07/93	08/26/93	29,010	Recycle Aluminum Cans & Scrap.
Phoenix Dye Works (ACTWU)	Cleveland, OH	09/07/93	08/27/93	29,011	Yarn Dye.
OMC Systematched Parts & Accessories (Co).	Beloit, WI	09/07/93	08/30/93	29,012	Packaging & Distributing of Parts.
Lincoln Brass Works, Inc. (UAW)	Detroit, MI	09/07/93	08/16/93	29,013	Brass Control Valves.
Kogap Manufacturing Co. (Wkrs)	Medford, OR	09/07/93	08/17/93	29,014	Softwood Veneer.
Comptech (Wkrs)	Erie, PA	09/07/93	08/24/93	29,015	Coin Changer.
Imperial Wallcoverings (Wkrs)	Waterford, NY	09/07/93	08/22/93	29,016	Wall coverings.
City Auto Stamping Co., Inc. (UAW)	Toledo, OH	09/07/93	08/24/93	29,017	Auto Body Stampings.
Bocar Apparel (Wkrs)	Tunkhannock, PA	09/07/93	08/25/93	29,018	Ladies' Evening Dresses.
Abex/NWL Aerospace (Co)	Santa Maria, CA	09/07/93	07/16/93	29,019	Hydraulic Pumps & Valves for Aerospace.
Chalk-Line, Inc. (Wkrs)	Anniston, AL	09/07/93	07/27/93	29,020	Men's Outerwear and Sportswear.

[FR Doc. 93–23013 Filed 9–20–93; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–28,475]

Airfoil Forging Textron, Inc., Euclid, Ohio; Affirmative Determination Regarding Application for Reconsideration

On July 16, 1993, Local # 2562 of the United Auto Workers of America (UAW) requested administrative reconsideration of the Department's Denial Notice Regarding Eligibility To Apply for Worker Adjustment Assistance for workers at the subject firm. The Denial Notice was issued on May 17, 1993 and published in the **Federal Register** on June 15, 1993 (58 FR 33121). The Department also denied an application for administrative reconsideration on July 22, 1993 (58 FR 39234).

On July 16, 1993, the union again requested administrative reconsideration. The union claims that the company misrepresented the facts to the Department when it stated that it had no outside customers for the jet engine blades forgings.

Conclusion

After careful review of the application, I conclude that the claim is in sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this September 14, 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93–23014 Filed 9–20–93; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–28,605A]

Alcoa Electronic Packaging, Alcoa Center, Pennsylvania; Affirmative Determination Regarding Application for Reconsideration

On August 21, 1993, one of the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on July 1, 1993 and published in the **Federal Register** on July 27, 1993 (58 FR 40161).

The petitioner claims that the Department's investigation concerned itself with the research and development facility and not the Alcoa Electronic Packaging, an affiliate.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this September 14, 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93–23015 Filed 9–20–93; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–28,722]

Anchor Woven Label Company, Alcoa, TN; Revised Determination on Reconsideration

On September 10, 1993, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the former workers of the subject firm. The notice was published in the **Federal Register** on July 27, 1993 (58 FR 40161).

On September 10, 1993, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers at the subject plant.

Investigation findings show that the workers produced woven labels. Production of woven labels and employment declined in 1992 compared to 1991. All production of woven labels ceased in April, 1993.

New findings on reconsideration, however, show that in 1993 the company began to import woven labels at an increased level compared to 1992 from Canada and the Far East. The findings show that the company is now a broker and imports the same products that it previously manufactured.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that workers at Anchor Woven Label Company in Alcoa, Tennessee were adversely affected by increased imports of articles that are like or directly competitive with the woven labels previously produced at Anchor Woven Label Company in Aloca, Tennessee. In accordance with the provisions of the Act, I make the following revised determination for workers of Anchor Woven Label Company in Alcoa, Tennessee.

All workers of Anchor Woven Label Company in Alcoa, Tennessee who became totally or partially separated from employment on or after May 21, 1992 and before June 1, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this September 14, 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–23016 Filed 9–20–93; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–076]

Intent To Grant a Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Umpqua Research Company of Myrtle Creek, Oregon, a partially exclusive, royalty-bearing, revocable license to practice the invention described and claimed in U.S. Patent No. 5,176,836, entitled "Regenerable Biocide Delivery Unit." The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245, subpart 2. NASA will negotiate the final terms and conditions and grant the partially exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the partially exclusive license.

DATES: Comments to this notice must be received by November 22, 1993.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 358–2041.

Dated: September 14, 1993.

Edward A. Frankle,

General Counsel.

[FR Doc. 93–23096 Filed 9–20–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Office of Polar Programs

Permit Issued Under the Antarctic; Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On July 9, 1993 the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permit for taking/importing and entering specially protected area, was issued to Antarctic Support Associates on September 14, 1993.

Thomas Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–23046 Filed 9–20–93; 8:45 am]

BILLING CODE 7555–01–M

Proposal Review Panel in Earth Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 6–8, 1993; 9 a.m. to 5 p.m.

Place: National Science Foundation, 1800 G Street NW., Washington, DC 20550, room 1243.

Type of Meeting: Closed.

Contact Person: Dr. Leonard E. Johnson, Program Director, Division of Earth Sciences, room 602, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7721.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Continental Dynamics proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 16, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–23038 Filed 9–20–93; 8:45 am]

BILLING CODE 7555–01–M

Proposal Review Panel in Earth Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: October 4–5, 1993; 8 a.m. to 6 p.m.

Place: University of Minnesota, Minneapolis 55455, Nolte Center, room 229 (Monday) and room 140 (Tuesday).

Type of Meeting: Closed.

Contact Person: Dr. Daniel F. Weill, Program Director, Division of Earth Sciences, Room 602, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7807.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Continental Dynamics proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 16, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–23040 Filed 9–20–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR part 72—Notification of Events at Independent Spent Fuel Storage Installations (ISFSIs) and the Monitored Retrievable Storage Installation (MRS).

3. The form number if applicable: Not applicable.

4. How often is the collection required: On occasion.

5. Who will be required or asked to report: Licensees of ISFSIs and the MRS.

6. An estimate of the number of responses annually: Four.

7. An estimate of the number of hours needed annually to complete the requirement or request: 16 hours (an average of 4 hours per response).

8. An indication of whether section 3504(h) Public Law 96–511 applies: Yes.

9. Abstract: The Nuclear Regulatory Commission (NRC) proposes to amend its regulation to revise licensee reporting requirements regarding the notification of events related to radiation safety at Independent Spent Fuel Storage Installations (ISFSIs) and the Monitored Retrievable Storage Installation (MRS). This action is needed to ensure that significant occurrences at these licensed facilities are promptly reported to NRC so that the Commission can evaluate whether the licensee has taken appropriate actions to protect the public health and safety and whether prompt NRC action is necessary to address generic safety concerns. Licensee compliance with these reporting requirements would be mandatory whenever a significant event occurs.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs, (3150–0132), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 10th day of September, 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–23034 Filed 9–20–93; 8:45 am]

BILLING CODE 7590–01–M

Licensing Support System Advisory Review Panel

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The Licensing Support System Advisory Review Panel (LSSARP) will hold a meeting on October 5 and 6, 1993, at the Emerald Springs Inn, 325 East Flamingo Rd., Las Vegas, Nevada. The entire meeting will be open to the public pursuant to the Federal Advisory Committee Act (Pub. L. 94–463, 86 Stat. 770–776).

The Nuclear Regulatory Commission (NRC) established the LSSARP in 1989 to provide advice and recommendations to the NRC and to the Department of Energy (DOE) on topics, issues, and activities related to the design, development and operation of an electronic information management system known as the Licensing Support System (LSS). This system will contain information relevant to the Commission's future licensing proceeding for a geologic repository for the disposal of high-level radioactive waste. Membership on the Panel consists of representatives of the State of Nevada, a coalition of effected units of local government in Nevada, the National Congress of American Indians, a coalition of organizations representing the nuclear industry, DOE, NRC and two other agencies of the Federal government which have experience with large electronic information management systems.

The meeting will begin on October 5, 1993 at 9 a.m. and conclude at 5 p.m. It will begin again at 8:30 a.m. on October 6, 1993 and conclude at approximately 12:30 p.m. The first day's agenda will consist of briefings by NRC and DOE and discussions by the Panel members of a modified approach for the design and operation of the LSS which has been proposed by the NRC. On the second day, the Panel is planning to receive presentations by a representative of the University of Nevada at Las Vegas and by TRW on activities related to the electronic scanning and capture of information for the LSS.

Interested persons may make oral presentations to the Panel or file written statements. Requests for oral presentations should be made to the contact person listed below as far in advance as practicable so that appropriate arrangements can be made.

For further information regarding this meeting contact John C. Hoyle, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555: telephone 301–504–1968.

Dated: September 15, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–22998 Filed 9–20–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Decay Heat Removal Systems; Meeting

The ACRS Subcommittee on Decay Heat Removal Systems will hold a meeting on October 5, 1993, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, October 5, 1993–12:30 p.m. until the conclusion of business

The Subcommittee will review the proposed rule to address resolution of Generic Safety Issue–23, "Reactor Coolant Pump Seal Failure." The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentation by and hold discussions with representatives of the NRC staff, the nuclear industry, their consultants and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Paul Boehnert (telephone 301/402–8558) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: September 14, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–23037 Filed 9–20–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Mechanical Components; Meeting

The ACRS Subcommittee on Mechanical Components will hold a meeting on October 5, 1993, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, October 5, 1993—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the status of the ongoing NRC and industry activities associated with motor-operated valves, check valves, butterfly valves, and other related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and its consultants, industry, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Elpidio Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: September 14, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–23032 Filed 9–20–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Improved Light Water Reactors; Meeting

The ACRS Subcommittee on Improved Light Water Reactors will hold a meeting on October 6, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, October 6, 1993—8:30 a.m. until the conclusion of business

The Subcommittee will begin its review of the NRC staff's Safety Evaluation Report for the Electric Power Research Institute (EPRI) passive LWR Utility Requirements document. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and its consultants, EPRI representatives, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that my have occurred.

Dated: September 14, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–23033 Filed 9–20–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co.; Fermi–2; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has partially denied a request by Detroit Edison Company, (DECo licensee) for an amendment to Facility Operating License No. NPF–43 issued to the licensee for operation of the Fermi–2 facility, located in Monroe County, Michigan. Notice of Consideration of Issuance of this amendment was published in the Federal Register on September 18, 1991 (56 FR 47233).

The purpose of the licensee's amendment request was to remove completed license conditions from the Facility Operating License.

The NRC staff has concluded that the licensee's request cannot fully be granted. The licensee was notified of the Commission's denial of the proposed change by a letter.

By October 21, 1993, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to John Flynn, Esq., Detroit Edison Company, 1000 Second Avenue, Detroit, Michigan 48226, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated November 14, 1990, and (2) the Commission's letter to the licensee dated September 7, 1993.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 7th day of September, 1993.

For the Nuclear Regulatory Commission.

William M. Dean,

Acting Project Director, Project Directorate III–I, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–23035 Filed 9–20–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Retirement System; Normal Cost Percentages

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of revised normal cost percentages for employees covered by the Federal Employees Retirement System (FERS) Act of 1986.

DATES: The revised normal cost percentages are effective at the beginning of the first pay period commencing on or after October 1, 1994.

Agency appeals of the normal cost percentages must be filed no later than March 21, 1994.

ADDRESSES: Send or deliver agency appeals of the normal cost percentages to the Board of Actuaries, care of Curtis J. Smith, Associate Director for Retirement and Insurance, Office of Personnel Management, room 4A10, 1900 E Street NW., Washington, DC 20415.

Send requests for actuarial assumptions and data to the Office of the Actuary, room 4307 STOP, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: The FERS Act of 1986, Public Law 99–335, created a new retirement system for some Federal employees. Section 8423 of title 5, United States Code, as added by the FERS Act of 1986, provides for the payment of the Government's share of the cost of the retirement system under FERS. Employees' contributions are established by law and constitute only a small fraction of the cost of funding the retirement system; employing agencies are required to pay the remaining costs. The amount of funding required, known as "normal cost," is the entry age normal cost of the provisions of FERS that relate to the Civil Service Retirement and Disability Fund (Fund). The normal cost must be computed by OPM in accordance with generally accepted actuarial practice and standards (using dynamic assumptions). Subpart D of part 841 of title 5, Code of Federal Regulations, regulates how normal costs are determined.

The Board of Actuaries of the Civil Service Retirement System has changed its economic assumptions. See 5 CFR 841.405. The economic assumptions are—

	Before change (percent)	Revised (percent)
Rate of inflation	5.0	4.5
General salary increases	5.0	4.5
Interest	7.0	7.0

Based on the new economic assumptions, OPM has determined the normal cost percentage for each category of employees under § 841.403 of title 5, Code of Federal Regulations. The Government-wide normal cost percentages, including the employee contributions, are as follows:

	Percent
Members	19.1
Congressional employees	18.2
Law enforcement officers, firefighters, and employees under section 302 of the Central Intelligence Agency Act of 1964 for Certain Employees	25.6
Air traffic controllers	23.2
Military reserve technicians	12.1
Employees under section 303 of the Central Intelligence Agency Act of 1964 for Certain Employees (when serving abroad)	17.1
All other employees	12.2

Under § 841.408 of title 5, Code of Federal Regulations, these normal cost percentages are effective at the beginning of the first pay period commencing on or after October 1, 1994. This gives agencies as much time as possible to budget for changes in retirement costs.

The time limit and address for filing agency appeals under §§ 841.409 through 841.412 of title 5, Code of Federal Regulations, are stated in the **DATES** and **ADDRESSES** sections of this notice.

Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–23085 Filed 9–20–93; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32902; File No. SR–Amex–91–33]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the American Stock Exchange, Inc., Relating to an Extension and Expansion of the Pilot Program for Position Limit Exemptions for Hedged Equity Option Positions

September 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 6, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization.[1] The Commission is

[1] On September 13, 1993, the Amex amended its proposal to request an extension of the pilot program through November 17, 1993. See Letter from Claire McGrath, Special Counsel, Derivative Securities, Amex, to Richard Zack, Branch Chief,

publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend until November 17, 1993, its pilot program for position limit exemptions for hedged equity option positions ("Equity Hedge Exemption"). The Exchange also proposes to add securities convertible into the underlying stocks to be a basis for the Equity Hedge Exemption.

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In May 1988, the Commission approved a two-year pilot program by the Amex that provides for limited exemptions from applicable equity option position limits.[2] Position limits for equity positions are determined in accordance with a three-tiered system based on the number of shares of the underlying security outstanding and the underlying security's trading volume.[3] The Amex's pilot program provides for exemptions from applicable equity option position limits for accounts which have established one of the four commonly used hedged positions on a limited one-for-one basis, i.e., long stock and short call, long stock and long put, short stock and long call, and short stock and short put. The maximum position that may be established pursuant to the exemption, however, may not exceed twice the present position limit. The exemption also provides that exercise limits still correspond to position limits, such that investors are allowed to exercise, during any five consecutive business days, the number of option contracts set forth as the position limit, as well as those contracts purchased pursuant to the position limit exemption.[4]

The Exchange now requests (1) an extension of the Equity Hedge Exemption pilot program until November 17, 1993, and (2) an expansion of the securities eligible to serve as the basis for the underlying hedged positions to include securities convertible into the relevant underlying stocks.

First, with respect to extending the existing pilot program, the Exchange represents that during the period that the program has been in operation, it has monitored various aspects of the program including: (1) The types of investors using the exemption; (2) the size of the options positions held pursuant to the exemption; and (3) any customer complaints or disciplinary actions resulting from the operation of the pilot program. As anticipated when the initial pilot program was approved, the Amex represents that the hedge exemption has been utilized by institutional investors and market professionals who have found the hedge exemption very useful in offsetting the risk attendant to their stock positions. Moreover, during the period that the program has been in operation, the Exchange represents that it has not experienced any significant problems with the implementation of the pilot. Additionally, at the request of the Commission, in March 1991, the Exchange implemented several additional procedures to comprehensively monitor for intra-day equity option position limit hedge exemption violations.[5]

Second, the Exchange proposes to expand the types of securities eligible to serve as the basis for the underlying hedge positions to include securities convertible into the relevant underlying stocks. Specifically, the Exchange proposes to include economically equivalent instruments such as preferred shares and convertible bonds. In all instances, the Exchange represents that its surveillance staff will continue to review each application to determine a position's eligibility for the position limit exemption and track the positions and dollar values of the instruments. The Exchange believes that expanding the scope of the hedge exemption should increase liquidity in the equity options markets by allowing investors with long stock portfolios to hedge their risks, without increasing the possibility of market manipulation and disruption in the market for the underlying security. The maximum position permitted on the same-side-of-the-market in a particular option will remain at twice the present position limit.

The Exchange believes that the Equity Hedge Exemption pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange since it will give investors the ability to hedge their portfolios while increasing the depth and liquidity of the options marketplace, without increasing the risk of market manipulation or disruption. Therefore, the Exchange believes that the proposed rule change specifically is consistent with section 6(b)(5) of the Act which provides in pertinent part that the rules of the Exchange must be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Amex received several unsolicited requests from investors seeking to obtain exemptions from position limits by hedging their options in RJR Nabisco Holdings Corp. ("RJR") with their positions in the preferred stock of RJR.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5)

Options Branch, Division of Market Regulation, Commission, dated September 13, 1993.

[2] See Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201. The pilot program was most recently extended in April 1991. See Securities Exchange Act Release No. 29044 (April 4, 1991), 56 FR 14558.

[3] See Amex Rule 904, Commentary .09.

[4] See Amex Rule 905.

[5] See letter from Ellen T. Kander, Senior Attorney, Amex, to Thomas Gira, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated March 14, 1991.

thereunder.[6] Specifically, the Commission concludes, as it did when approving the commencement and extension of the pilot, as well as similar programs by the other options exchanges,[7] that the Amex proposal to provide for increased position and exercise limits for equity options in circumstances where those excess positions are fully hedged with offsetting stock positions will provide greater depth and liquidity to the market and allow investors to hedge their stock portfolios more effectively, without significantly increasing concerns regarding intermarket manipulations or disruptions of either the options markets or the underlying stock market.

In addition, with respect to the Exchange's proposal to expand the types of securities eligible to serve as the basis for the underlying hedge position to include convertible securities, the Commission believes such expansion is consistent with the Act because it will allow investors to use instruments that are economically equivalent to stocks more efficiently and effectively for purposes of hedging their equity options positions.[8] Specifically, because the value of a convertible security likely will fluctuate in tandem with the value of the security that it is convertible into, the Commission believes investors with positions in convertible securities should be able to hedge their positions with equity options to the same extent that investors with long or short positions in the underlying security can. Moreover, as with the original pilot program, the Commission believes the expansion of the pilot program to include convertible securities likely will enhance the depth and liquidity in the Exchange's options markets. In addition, because the pilot program still requires the positions in the convertible securities and the corresponding options to be fully hedged, the Commission believes the expansion will not significantly increase concerns regarding intermarket manipulations or disruptions of either the options markets or the underlying stock market. Lastly, the Commission notes that the Exchange's pilot program for position limit exemptions for hedged positions involved broad-based stock index options already has been expanded to include convertible securities.[9] Accordingly, the Commission believes it is appropriate and consistent with the Act to expand the pilot program to include convertible securities.

The Commission also notes that before the pilot program can be approved on a permanent basis the Amex must provide the Commission with a report on the operation of the pilot. Specifically, the Amex must provide the Commission with details on (1) the frequency with which the exemptions have been used; (2) the types of investors using the exemptions; (3) the size of the positions established pursuant to the pilot program; (4) what types of convertible securities are being used to hedge positions and how frequently convertible securities have been used to hedge; (5) whether the Exchange has received any complaints on the operation of the pilot program; (6) whether the Exchange has taken any disciplinary action against, or commenced any investigations, examinations, or inquiries concerning, any of its members for any violation of any term or condition of the pilot program; (7) the market impact, if any, of the pilot program; and (8) how the Exchange has implemented surveillance procedures to ensure compliance with the terms and conditions of the pilot program.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register so that the pilot program will not lapse. In addition, because there have been no adverse comments concerning the pilot program since its implementation and because of the importance of maintaining the quality and efficiency of the Amex's markets, the Commission believes good cause exists to approve the extension and expansion of the pilot program on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 12, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–91–33) is approved, and thereby that the Equity Hedge Exemption pilot program is extended until November 17, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23054 Filed 9–20–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32903; File No. SR–CBOE–91–44]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Extension of the Position Limit Hedge Exemption Pilot Program for Stock Index Options

September 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 18, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission")

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[6] 15 U.S.C. 78f(6)(5) (1982).

[7] The Commission has approved similar equity hedge exemption pilot programs by the Chicago Board Options Exchange ("CBOE"), New York Stock Exchange ("NYSE"), and the Philadelphia Stock Exchange ("PHLX"). See Securities Exchange Act Release Nos. 25738 (May 24, 1988), 53 FR 20201; 29436 (July 12, 1991), 56 FR 33317; and 25811 (June 20, 1988), 53 FR 23821.

[8] The Commission expects the Exchange to determine on a case-by-case basis whether an instrument that is being used as the basis for the underlying hedged position is readily convertible into the security underlying the corresponding option position. In this regard, the Commission specifically finds that an instrument which will become convertible into a security at a future date, but which is not presently convertible, is not a "convertible" security for purposes of the Equity Hedge Exemption pilot program until the date it becomes convertible. Of course, if a convertible security used to hedge an option position was called for redemption by the issuer, the security would have to be converted into the underlying security immediately or the corresponding option position reduced accordingly.

[9] See Securities Exchange Act Release No. 24556 (June 5, 1987), 52 FR 22695 (order approving File No. SR–Amex–87–16).

[10] 15 U.S.C. 78s(b)(2) (1982).

the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to extend until November 17, 1993, the Exchange's position limit hedge exemption pilot program for stock index options ("index hedge exemption program") as described in Exchange Rule 24.4, Interpretation .01.[1] The text of the proposal is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The CBOE proposes to extend the index hedge exemption pilot program through November 17, 1993. The Exchange proposes no changes to the operation or application of the pilot program, although it proposes to add paragraph (j) to CBOE Rule 24.4, Interpretation .01 to codify the pilot's expiration date to ensure that the pilot's expiration is not overlooked in the future. The CBOE notes that approximately ten customer accounts currently utilize the exemption and that the Exchange has experienced increased interest in the pilot program since it was expanded in 1989.

In 1988, the Commission approved the index hedge exemption pilot program, which allows public customers to apply for a "hedge exemption" from broad-based index option position limits.[2] Specifically, the pilot program permits the CBOE to exempt from its position limits any positions in broad-based index options traded on the Exchange that are hedged against qualified portfolios of stock. The maximum size of an exempted position, however, cannot exceed 75,000 contracts, regardless of the size of the underlying stock portfolio.

In September 1989, the Commission approved, through September 29, 1990, a revised hedge exemption program which (1) expanded the scope of the hedge exemption to permit an exemption for index options hedging portfolios short stock positions and (2) expanded the types of securities eligible to serve as the basis for the underlying hedged stock portfolio position to include convertible securities.[3] Accordingly, under the revised pilot program, qualified public customer accounts[4] with short stock positions may hedge their positions with long calls or short puts, and receive the same hedge exemption that a qualified portfolio with net long positions in common stocks would receive.

In addition, the pilot program was revised to allow securities readily convertible into stock and, in the case of convertible bonds, those that are economically convertible into common stock, to be included in qualified stock portfolios. Prior to the amendment, the pilot program considered only the value of the common stock held in the public customer's portfolio when establishing the value of the qualified stock portfolio available for hedging.

(2) Basis

The Exchange believes that the index hedge exemption pilot program provides greater depth and liquidity to the index option market and affords investors the opportunity to effectively hedge their stock portfolios without increasing the possibility of manipulation in the options or underlying stock market. The CBOE states that it has not experienced any significant problems with the operation of the pilot and will continue to monitor the effects of the index hedge exemption pilot program on the market to ensure that problems do not arise due to the increased position and exercise limits authorized by the exemption. Accordingly, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change to extend the pilot is consistent with the requirements of the Act and the rules and regulation thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) thereunder.[5] The Commission concludes, as it did when approving the commencement of the pilot, that the pilot program will allow more effective

[1] In May 1988, the Commission approved the CBOE's proposal to implement the index hedge exemption program on a one-year pilot basis. Initially, the index hedge exemption program allowed public customers (*i.e.*, customers whose trades would be eligible for placement on the CBOE's public limit order book under Exchange Rule 7.4) to apply for a "hedge exemption" from broad-based index option position limits. To qualify for a "hedge exemption," public customers, primarily large institutional investors, must hold qualified portfolios of stock. *See* Securities Exchange Act Release No. 25739 (May 24, 1988), 53 FR 20204 (order approving File No. SR–CBOE–87–25) ("Pilot Approval Order"). In September 1989, the Commission approved, through September 1990, a revised pilot program that (1) expanded the scope of the hedge exemption to include short stock positions and (2) the securities eligible to serve as the underlying basis of the hedging stock portfolio position to include securities economically equivalent to the underlying stocks, such as securities that are readily convertible into stock. *See* Securities Exchange Act Release No. 27322 (September 29, 1989), 54 FR 41899 (order approving File No. SR–CBOE–89–08) ("Pilot Extension Order").

[2] See Pilot Approval Order, *supra* note 1.

[3] See Pilot Extension Order, *supra* note 1.

[4] To be qualified, a public customer must hold a net long or short position in a portfolio of at least 20 stocks, none of which accounts for more than 15% of the value of the portfolio. In addition, the portfolio must consist of stocks from four different industry groups.

[5] 15 U.S.C. 78f(6)(5) (1982).

hedging of stock portfolios and may increase the depth and liquidity of the stock index options market without significantly increasing concerns regarding manipulation of these products or disruptions of the stock market. The program allows institutions with long or short stock portfolios (or instrument convertible into such securities) to utilize the index hedge exemption, thereby making an alternative hedging technique more available to institutions and facilitating their use of index options to hedge their portfolios, rather than financially equivalent index futures products. In addition, the Commission notes that the CBOE will continue to monitor unusual customer activity and take steps to withdraw exemptions in the event of violations.[6]

Before the pilot program can be approved on a permanent basis the CBOE must provide the Commission with a report on the operation of the pilot. Specifically, the CBOE must provide the Commission with details on (1) The frequency with which the exemptions have been used; (2) the types of investors using the exemptions; (3) the size of the positions established pursuant to the pilot program; (4) what types of convertible securities are being used to hedge positions and how frequently convertible securities have been used to hedge; (5) whether the Exchange has received any complaints on the operation of the pilot program; (6) whether the Exchange has taken any disciplinary action against, or commenced any investigations, examinations, or inquiries concerning, any of its members for any violation for any term or condition of the pilot program; (7) the market impact, if any, of the pilot program; and (8) how the Exchange has implemented surveillance procedures to ensure compliance with the terms and conditions of the pilot program.

The Commission finds good cause for approving the extension of the pilot prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit the pilot program to continue. In addition, the Commission notes that the CBOE has not experienced any significant problems with the operation of the pilot and that the Exchange will continue to monitor the effects of the index hedge exemption to ensure that no problems arise due to the increased position and exercise limits authorized by the exemption. Finally, because there have been no adverse comments concerning the pilot program since its implementation, the Commission believes good cause exists to approve the extension of the pilot program on an accelerated basis.

[6] The Commission also expects the CBOE to inform the Commission of the results of any surveillance investigations undertaken for apparent violations of the provisions of the hedge exemption rule.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 12, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CBOE–91–44) extending the index hedge exemption pilot program until November 17, 1993, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23058 Filed 9–20–93; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78s(b)(2) (1982).

[Release No. 34–32893; File No. SR–CBOE–93–12]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing of Reduced-Value Options on the Standard & Poor's 500 Stock Index

September 14, 1993.

On February 18, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow the Exchange to list and trade European-style[3] reduced-value options equal to one-tenth of the value of the Standard & Poor's ("S&P") 500 Stock Index ("SPX").[4]

Notice of the proposed rule change appeared in the **Federal Register** on March 18, 1993.[5] No comments were received on the proposal.

The CBOE proposes to amend several Exchange rules to accommodate the listing and trading of reduced-value SPX options. Specifically, the CBOE proposes to amend Exchange Rule 24.9, "Terms of Index Option Contracts," by adding Interpretation and Policy .09, which states that the current index value of the reduced-value SPX options will be one-tenth the value of the underlying index reported by the reporting authority.[6] The CBOE also proposes to amend Exchange Rule 24.9, Interpretation .01, to provide that the reduced-value SPX options shall have a strike price interval of no less than $2.50.

Except for the reduced value given to the index, all of the specifications and calculations for the reduced-value SPX options will be the same as those used for full-value SPX options. The reduced-value SPX options will trade independently of and in addition to full-size SPX options and will be subject to

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1992).

[3] A European-style option may be exercised only during a specified period prior to the expiration of the option.

[4] On June 15, 1993, the CBOE submitted a letter providing additional information about the proposed reduced-value SPX options. Among other things, the letter states that: (1) the reduced-value SPX options will trade in addition to full-value SPX options and will be aggregated with positions in full-value SPX options; (2) the current value of the SPX is calculated every fifteen seconds between the hours of 8:30 a.m. and 3:00 p.m. (Chicago time) and is disseminated continuously by the Options Price Reporting Authority ("OPRA") and, in turn, by numerous quotation vendors; (3) the CBOE will apply Exchange Rules 5.5, "Option Contracts Open for Trading," and 24.9, "Terms of Index Option Contracts," when adding and deleting strike prices for the reduced-value SPX options; and (4) the Exchange will use the surveillance procedures it presently employs in connection with full-value SPX options to monitor trading in the reduced-value SPX options. *See* Letter from Kenneth M. Rosenzweig, Schiff Hardin & Waite, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation ("Division"), Commission, dated June 14, 1993 ("June 14 Letter").

[5] See Securities Exchange Act Release No. 31993 (March 12, 1993), 58 FR 14682.

[6] The reporting authority for the SPX is the S&P Corporation. See CBOE Rule 24.1, Interpretation and Policy .01.

the same rules that presently govern the trading of Exchange index options, including sales practice rules, margin requirements, floor trading procedures and position and exercise limits. As provided in Exchange Rule 24.4(e), positions in the reduced-value SPX options will be aggregated with positions in full-value SPX options, and ten reduced-value SPX contracts will equal one full-value contract.[7]

The current index value of the SPX is calculated by the S&P Corporation every fifteen seconds between the hours of 8:30 a.m. and 3:00 p.m. (Chicago time) and is disseminated continuously by OPRA and, in turn, by numerous quotation vendors. The current index value disseminated by OPRA and quotation vendors for the reduced-value SPX options will reflect the reduced value of the proposed options.[8] The settlement procedures for the reduced-value SPX options will be the same as those provided in Exchange Rule 24.9(4) for full-value SPX options.[9]

Consistent with Exchange Rule 24.9, "Terms of Option Contracts," the CBOE proposes to list reduced-value SPX options expiring in the same quarterly cycle as full-value SPX options and to list expirations in the current and next two succeeding calendar months.[10] The CBOE proposes to amend Exchange Rule 24.9, Interpretation and Policy .01 to provide that the strike price interval for reduced-value SPX options will be no less than $2.50. In addition, the provisions of Interpretation and Policy .01 relating to the addition and deletion of strike prices will apply to the reduced-value SPX options.[11] OPRA has represented that the additional options series introduced as a result of the proposal should have no material impact on OPRA's capacity, and the CBOE has represented that both the CBOE and OPRA have the necessary systems capacity to support the new series which would result from the proposed rule change.[12]

The CBOE has indicated that the Exchange will use the surveillance procedures which it uses for full-value SPX options to monitor trading in reduced-value SPX options.[13]

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5)[14] because the proposal is designed to remove impediments to and perfect the mechanism of a free and open market. The CBOE has stated that the recent introduction of financial instruments which are linked to the SPX but have a smaller underlying value than the SPX has created a need for reduced-value hedging vehicle that can be used by market participants who trade the new SPX-linked instruments. The Commission believes that the reduced-value SPX options will benefit market participants who trade SPX-linked instruments by providing them with a hedging vehicle designed to meet their investment needs. In addition, the Commission believes that the reduced-value SPX options may benefit investors by providing them with a relatively low-cost means to hedge their portfolios. The Commission believes that the lower cost of the reduced-value SPX options should allow investors to hedge their portfolios with a smaller outlay of capital and may facilitate investor participation in the market for SPX options, which should, in turn, help to maintain the depth and liquidity of the market for SPX options, thereby protecting investors and the public interest.[15]

The Commission believes that trading in the reduced-value SPX options will not have an adverse market impact or be susceptible to manipulation. The Commission has determined previously that the SPX is a broad-based index[16] and does not believe that dividing the SPX by ten changes this determination. The reduced-value SPX options will contain the same stocks with the same weightings as the SPX and will be calculated in the same manner as the SPX (with the exception of being one-tenth the value of the SPX). Moreover, the Commission believes that any potential manipulation concerns raised by the reduced-value SPX options are minimized by the fact that positions in the reduced-value SPX options and full-value SPX options will be aggregated for position and exercise limit purposes.[17] In addition, the Commission notes that the same Exchange surveillance procedures applied to full-value SPX options will be used for the reduced-value SPX options.[18]

Because the Exchange's existing rules applicable to stock index options, including, among others, strike price interval, bid/ask differential, price continuity, sales practices rules, margin requirements, and position and exercise limits, will apply to the reduced-value SPX options, the Commission believes that the market for the reduced-value SPX options should be fair and orderly and does not raise any new customer protection concerns.

Finally, based on representations from the CBOE, the Commission believes that the CBOE and OPRA will have adequate systems processing capacity to accommodate the listing of the reduced-value SPX options.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[19] that the proposed, rule change SR–CBOE–93–12) is approved.

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[7] See June 14 Letter, *supra* note 4.

[8] See June 14 Letter, *supra* note 4.

[9] Telephone conversation between Kenneth M. Rosenzweig, Schiff Hardin & Waite, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division, Commission, on August 11, 1993. CBOE Rule 24.9(a)(4), "A.M.-Settled Index Options," provides, in part, that the last day of trading for A.M.-settled index options, including SPX options, shall be the business day preceding the last day of trading in the underlying securities prior to expiration. The current index value at expiration shall be determined on the last day of trading in the underlying securities prior to expiration by reference to the reported level of the index as derived from the first reported sale (opening) prices of the underlying securities on such day, except that the last reported sale price of such security shall be used in any case where that security does not open for trading on that day.

[10] Thus, in January the CBOE would list reduced-value SPX options that expire in January, February, March, June, September and December. When the January option expires, the Exchange would list the February, March, April, June, September and December expirations. The listing cycle would be continued in this fashion throughout the year.

[11] Interpretation and Policy .01 allows the Exchange to: (1) list four strike prices above and four strike prices below the current index price when a new series of index option contracts with a new expiration cycle is opened for trading; (2) add one or more additional strike prices when the value of the index underlying a class of index options reaches a strike price; and (3) list additional series of index option contracts up to six strike prices above and six strike prices below the current index price in unusual market conditions.

[12] *See* Memorandum from Joseph P. Corrigan, Executive Director, OPRA, to Joseph Levin, CBOE, dated February 16, 1993, and letter form Charles J. Henry, President and Chief Operating Officer, CBOE, to Sharon Lawson, Assistant Director, Division of Market Regulation, Commission, dated February 16, 1993.

[13] See June 14 Letter, *supra* note 4.

[14] 15 U.S.C. 78f(b)(5) (1964).

[15] Pursuant to section 6(b)(5) of the Act the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to an option that served no hedging or other economic function because any benefit that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[16] See Securities Exchange Act Release No. 19907 (June 24, 1983), 48 FR 30614 (order approving File No. SR–CBOE–83–8).

[17] In this regard, it is reasonable for the CBOE to count 10 reduced-value SPX option contracts as equivalent to one SPX contract for position and exercise limit purposes because the underlying value of one SPX contract is equal to the underlying value of 10 reduced-value SPX contracts.

[18] See June 14 Letter, *supra* note 4.

[19] 15 U.S.C. 78s(b)(2) (1982).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23057 Filed 9–20–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32885; File No. SR–MSE–93–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Midwest Stock Exchange, Inc., To Amend Exchange Rules Regarding the Authority of the Exchange's Floor Procedure Committee and the Composition and Authority of its Subcommittees

September 14, 1993.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 3, 1993, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[3] On August 2, 1993, the Exchange submitted to the Commission Amendment No. 1 to the proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE, pursuant to Rule 19b–4 of the Act, proposes to amend two Exchange Rules—Article IV, Rule 3 and Article XII, Rule 3—which address the authority of the Exchange's Floor Procedure Committee and the composition and authority of its subcommittees.

Specifically, the Exchange is proposing to: increase the amount of summary fines and exclusions from the trading floor which the Floor Procedure Committee,[5] its appropriately designated subcommittee,[6] or their members can impose upon the membership for decorum and other improper conduct violations; permit Floor Procedure Committee subcommittees to be made up of Exchange members who are not members of the full Floor Procedure Committee, provided that each subcommittee's chairman be a member of the full Floor Procedure Committee; and, establish two classes of decorum violations for which appropriate sanctions can be imposed. The rule change also sets out the appropriate levels of review for action taken against the membership under the proposed changes.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to increase the deterrent effect that potential fines and exclusions from the trading floor have on the membership for violations of the Exchange's decorum rules as well as for other improper conduct. The Exchange believes that the Floor Procedure Committee, on its own initiative or through its appropriate subcommittee, must be able to take fair but meaningful remedial action for conduct which is disruptive, threatening to individual safety or Exchange facilities, or otherwise demeaning to the Exchange. The current level of fines and exclusions from the trading floor do not carry a forceful deterrent effect nor do they adequately address an offending member's behavior commensurate with the type of misconduct involved.

Currently, the Floor Procedure Committee has authority to impose, as a maximum, a $500 fine and a two day exclusion from Exchange premises for improper conduct. Moreover, these maximum sanctions can only be imposed by the full Floor Procedure Committee; individual Floor Procedure Committee members are limited to imposing a summary $100 fine. Additionally, current Exchange rules do not provide for the ability to summarily exclude a member from the Exchange premises for any period of time other than by action of the full Floor Procedure Committee. As such, it is virtually impossible to take immediate summary action against a member when the threat to individual safety and Exchange facilities is greatest.

Therefore, the Exchange proposes to increase the amount of summary fines which may be imposed on the membership from $500 to $2,500, and to increase the time of exclusion from the Exchange premises from two to five full business days. Furthermore, the Exchange proposes to allow any member of the Floor Procedure Committee or a member of its appropriately designated subcommittee, with the concurrence of two other floor officials (members of the full Floor Procedure Committee and floor governors are floor officials), to fine members up to $2,500 and to exclude the offending member from the Exchange premises for the remainder of the trading day for certain more egregious, decorum violations (Class A violations).[7] Only the full Floor Procedure Committee, or the

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[20] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] As of July 8, 1993, the MSE changed its name to the Chicago Stock Exchange, Inc. See Securities Exchange Act Release Nos. 32488 (June 18, 1993), 58 FR 34284 (June 24, 1993) (File No. SR–MSE–93–13) (immediate effectiveness of proposed rule change relating to amendments to the MSE's Certificate of Incorporation and Constitution to effect a name change) and 32489 (June 18, 1993), 58 FR 34285 (June 24, 1993) (File No. SR–MSE–93–16) (immediate effectiveness of proposed rule change relating to amendments to the MSE's Rules to make conforming changes in accordance with its name change).

[4] See letter from David T. Rusoff, Attorney, Foley & Lardner, to Cheryl Evans Dunfee, Attorney, Exchange Branch, Division of Market Regulation, Commission, dated July 29, 1993. Amendment No. 1 revised the proposed language in paragraph (d) of the list of Class A violations found in Interpretation and Policy .01 to Rule 3 of Article XII of the Exchange's Rules. The amendment eliminated the language "demeaning to the status to the Exchange" and replaced it with "detrimental to the interest or welfare of the Exchange."

[5] The MSE's Floor Procedure Committee is comprised of not less than seven members (at least three of whom shall be active on the floor of the Exchange as specialists, odd-lot dealers or floor brokers) in addition to the ex-officio members. See MSE Article IV, Rule 3.

[6] The Exchange proposes to amend Article IV, Rule 3 to specify that a subcommittee of the Floor Procedure Committee shall be composed of not less than three members of the Exchange appointed by the Chairman of the Committee. The Chairman of each subcommittee shall be a member of the full Floor Procedure Committee.

[7] The Exchange proposes to designate the following as Class A violations:

a. Fighting on Exchange premises.

b. Profanity, vulgarity, or any threatening or intimidating speech or conduct directed at anybody while on Exchange premises.

c. Smoking in an undesignated area on the trading floor at any time (Second offense or thereafter).

d. Any conduct which is detrimental to the interest or welfare of the Exchange, or which endangers the personal safety of others on the Exchange premises or the operation of the machines and property of the Exchange.

appropriate subcommittee as a whole, may impose a sanction which excludes a member for up to five full business days.

In order to accomplish the above stated changes in their entirety, it is necessary to permit Floor Procedure Committee subcommittees to be composed of Exchange members who are not members of the full Floor Procedure Committee. However, the Chairman of each subcommittee shall be a member of the full Floor Procedure Committee. This change is sought in order to permit the Floor Procedure Committee to function more effectively and efficiently as a policymaking group with fewer members than it has historically had. The Floor Procedure Committee believes that it can carry out its policymaking goal and oversee its other responsibilities without having various subcommittee members involved in all aspects of Floor Procedure Committee work.

Under this proposed rule change, for example, members who are fighting on Exchange premises, a Class A violation, may be fined up to $2,500 and immediately excluded for up to the remainder of the trading day by three appropriate individuals without having to convene the entire Floor Procedure Committee to take such action. The Exchange does not believe that any one individual should unilaterally be empowered to impose fines in excess of $100 or to exclude a member from the premises. The Exchange believes that the concurrence of three appropriate individuals will ensure against arbitrary and capricious sanctions.

The Exchange is also setting out as an interpretation and policy under Article XII, Rule 3, conduct which is defined as Class A [e] and Class B [•] decorum violations. For conduct defined as a Class B violation, the Exchange will continue to permit a maximum $100 fine, which may be imposed by any member of the Floor Procedure Committee or its appropriately designated subcommittee. For Class A violations, the Exchange seeks to permit a maximum $2,500 fine and exclusion from the Exchange premises for up to the remainder of the trading day, which may be imposed by any member of the Floor Procedure Committee or a member of its appropriately designated subcommittee—with the concurrence of two other floor officials.

Finally, the proposed rule change will permit a member to appeal all actions taken pursuant to Article XII, Rule 3 (*i.e.* decorum and other improper conduct violations), other than a summary exclusion for a Class A decorum violation, to the full Floor Procedure Committee. If the Floor Procedure Committee imposes, or upholds on appeal, a sanction consisting of only a fine not in excess of $100 then the determination of the Floor Procedure Committee will be final. Otherwise the determination of the Floor Procedure Committee will be appealable to the Executive Committee. Both the Floor Procedure Committee and the Executive Committee shall be able to affirm, reverse or modify a lower determination; however, in no event shall either body be able to increase a sanction above a $2,500 fine and a five day exclusion from the Exchange premises.

Actions taken by a Floor Procedure Committee subcommittee pursuant to any other Exchange rule will be appealable only to the full Floor Procedure Committee whose determinations shall be final. All actions appealed shall be stayed until a final determination is made.

(b) The proposed rule change is consistent with the purposes and requirements of section 6(b)(6) of the Act in that it provides for appropriate discipline for violations of Exchange rules by fine or other fitting sanction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR–SE–93–15 and should be submitted by October 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23053 Filed 9–20–93; 8:45 am]

BILLING CODE 8010–01–M

[e] *See supra* note 7 for the Exchange's proposed Class A violations.

[•] The Exchange proposes to designate the following as Class B violations:

a. All violations of the Exchange's Dress Code.

b. Unwarranted excessive speed in moving about the trading floor.

c. Cabinet areas and counter tops cluttered with coats or other extraneous materials.

d. Posters or pictures which are taped on cabinets.

e. Smoking in an undesignated area on the trading floor at any time (First offense).

[Release No. 34–32901; File No. SR–NYSE–92–23]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to an Extension of the Pilot Programs for Position Limit Exemptions for Hedged Equity Option and Index Option Positions

September 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 18, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items

have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend Exchange Rule 704 (Position Limits) to extend through November 17, 1993, its pilot programs for hedge exemptions from (i) the stock option position limits (Exchange Rule 704(b)(ii)); and (ii) the broad-based index option position limits (Exchange Rule 704(c)(ii)).[2] The pilot program for equity option positions provides an automatic exemption from equity option position limits for accounts that have established one of the following commonly used hedged positions: (1) long stock and short calls; (2) long stock and long puts; (3) short stock and long calls; and (4) short stock and short puts. The NYSE proposes to expand the equity option position limit hedge exemption to include "securities readily converted into or economically equivalent to that number of shares of such stock" as the basis for the exemption.[3]

The stock index option hedge position limit exemption enables public customers of a member organization to hedge qualified stock portfolios with NYSE-traded broad-based stock index option contracts up to a maximum of 125,000 contracts without regard to the normal position limits, provided that the customer has a previously established NYSE-approved stock portfolio that (a) is comprised of common stocks, or securities readily convertible into or economically equivalent to a portfolio of common stocks, that are distributed across at least four industry groups; (b) is comprised of at least 20 stocks (or their equivalents), none of which account for more than 15% of the value of the portfolio; and (c) is carried in an account with a member organization.

The text of the proposal is available at the Office of the Secretary, NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

On March 14, 1990, the Commission approved, on a pilot basis, amendments to Exchange Rule 704 providing for (1) an exemption from equity option position limits for certain equity options positions that are fully hedged and (2) an exemption from the broad-based index option position limits for certain hedged position in broad-based index options.[4] On July 12, 1991, the Commission approved an extension of the pilot programs and an expansion of the scope of the index option hedge exemption pilot to include short positions in the underlying hedged portfolio and to allow the underlying hedged portfolio to include securities that are readily convertible into common stock.[5]

The pilot program for equity option positions provides for an automatic exemption from equity option position limits for accounts that have established one of the four most commonly used hedged positions on a limited one-for-one basis (*i.e.*, 100 shares of stock for one option contract or, in the case of an adjusted contract, the number of shares represented by the adjusted contract).[6] The exempted hedge positions are: (1) Long stock and short calls; (2) long stock and long puts; (3) short stock and long calls; and (4) short stock and short puts. The maximum total position (hedged and unhedged) that may be established pursuant to the pilot program may not exceed twice the normal position limit.

The stock index option hedge position limit exemption enables public customers of a member organization, who have obtained NYSE approval, to hedge qualified stock portfolios with up to a maximum of 125,000 NYSE-traded broad-based stock index option contracts, without regard to the normal position limits.[7] In order to use the stock index option hedge exemption, a public customer of a member organization must have a previously established NYSE-approved stock portfolio that (a) is comprised of common stocks, or securities readily convertible into or economically equivalent to a portfolio of common stocks, that are distributed across at least four industry groups, (b) is comprised of a least 20 stocks (or there equivalents), none of which account for more than 15% of the value of the portfolio, and (c) is carried in an account with a member organization, thus ensuring that the NYSE has the ability to conduct adequate surveillance of the hedged position.[8]

Under both position limit exemption pilot programs, exercise limits still correspond to position limits, such that investors are allowed to exercise, during any five consecutive business days, the number of option contracts set forth as the position limit, as well as those contracts purchased pursuant to the position limit exemption.[9]

Both pilot programs expired on January 12, 1992. Accordingly, the Exchange proposes to extend both pilot programs through November 17, 1993, and to expand the equity option hedge exemption to include "securities readily converted into or economically equivalent to that number of shares of

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[1] On June 11, 1993, the NYSE amended its proposal to extend the pilot programs through November 17, 1993, and to expand the pilot program for equity option position limits to include as the basis for the exemption securities readily converted into or economically equivalent to that number of shares of the stock. See File No. SR–NYSE–92–23, Amendment No. 1.

[2] Position limits impose a ceiling on the aggregate number of options contracts on the same side of the market that can be held or written by an investor or group of investors acting in concert. The Commission approved the NYSE's hedge position limit pilot programs for stock and index option positions on March 8, 1990. See Securities Exchange Act Release No. 27786 (March 8, 1990), 55 FR 9523 ("Pilot Approval Order"). On July 12, 1991, the Commission approved a six-month extension of the pilot programs and expanded the scope of the index option hedge pilot to include short positions in the underlying hedge portfolio and to allow the underlying hedged portfolio to include securities that are readily convertible into common stock. See Securities Exchange Act Release No. 29436 (July 12, 1991), 56 FR 33317 ("Pilot Extension Order"). Both pilot programs expired on January 12, 1992.

[3] See Amendment No. 1, *supra* note 1.

[4] See Pilot Approval Order, *supra* note 2.

[5] See Pilot Extension Order, *supra* note 2.

[6] Exchange Rule 704(b) sets forth position limits on the number of stock options on the same side of the market that an investor may control. For equity options, the position limits are 3,000, 5,500 or 8,000 contracts on the same side of the market, depending upon the trading volume and number of outstanding shares of the underlying stock.

[7] For broad-based stock index options, the position limits are 45,000 contracts on the same side of the market, with no more than 25,000 in the option series having the nearest expiration date.

[8] In addition, options established pursuant to the hedge exemption cannot be used for index arbitrage.

[9] Exercise limits prohibit the exercise by an investor or group of investors acting in concert of more than the number of options contracts specified in the position limit rule within five consecutive business days. See NYSE Rule 705.

such stock" as the basis for the exemption.[10]

The NYSE states that the Exchange's Market Surveillance Department has been monitoring the use of the exemptions to detect any abuses or violations of the programs or any attempt at manipulation. Since their inception, only two public customers have utilized the exemption. In one of those two instances, the customer requested the exemption in respect of a multiple-traded option and the request came not to the NYSE but to another options exchange.

Throughout the duration of the pilot program, the Exchange represents that it will review each exemption application to determine a position's eligibility for the exemption and to track the positions and dollar values of the portfolios. The Exchange also will monitor on a daily basis (1) the use of the exemptions to determine if the positions are being maintained in accordance with all conditions and requirements and (2) the effect of the exemptions on the market.

(b) Basis

The NYSE believes that the basis for the proposed rule change is the requirement under Section 6(b)(5) of the Act that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NYSE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NYSE has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act in order to assure uniformity in the rules of the options exchanges and to remove a competitive disparity among the rules of the options exchanges. The Exchange believes that accelerated approval of the pilot programs will enable the pilot programs to continue without unnecessary delay and will help the Exchange to maintain the quality and efficiency of its markets. With respect to the expansion of the equity option hedge exemption pilot to include securities readily converted into or economically equivalent to that number of shares of stock, the NYSE notes that the American Stock Exchange, Inc. ("Amex") and the Chicago Board Options Exchange, Inc. ("CBOE") have similar pilot programs.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder.[11] The Commission concludes, as it did when approving the commencement of the NYSE's pilot programs and similar programs by the other options exchanges,[12] that the NYSE's pilot programs will benefit investors by providing alternative hedging techniques, by allowing more effective hedging of stock portfolios, and by helping to increase the depth and liquidity of the equity options and stock index options markets without significantly increasing concerns regarding intermarket manipulations or disruptions of either the options markets or the underlying stock market. The Commission continues to believe that the NYSE's pilot programs, which are designed to permit investors to utilize additional equity and index options in conjunction with their stock portfolios, balance the benefits to be derived from increased position and exercise limits against the potential for increased market disruption and manipulation resulting from extremely large options positions.

The Commission believes, as it has found in the past,[13] that the proposal to expand the equity hedge exemption to include securities readily converted into or economically equivalent to the number of shares of stock is consistent with the Act because it will allow investors to use instruments that are economically equivalent to stocks more efficiently and effectively for purposes of hedging their equity options positions.[14] Specifically, because the value of a convertible security likely will fluctuate in tandem with the value of the security that it is convertible into, the Commission believes investors with positions in convertible securities should be able to hedge their positions with equity options to the same extent that investors with long or short positions in the underlying security can. Because the pilot program requires the positions in the convertible securities and the corresponding options to be fully hedged, the Commission believes that the expansion of the equity option hedge exemption will not significantly increase concerns regarding intermarket manipulations or disruptions of either the options markets or the underlying stock market.

The Commission believes that the Exchange's pilots may increase the depth and liquidity of the options markets by permitting investors to hedge greater amounts of stock than would otherwise be the case without the hedge exemptions. At the same time, the Commission notes that the higher position limits available by virtue of the NYSE's pilot programs have not resulted in disruptions of the underlying stock market due to their restrictions and to the NYSE's surveillance program. In this regard, the Commission notes that the NYSE will continue to monitor the use of the exemptions to determine compliance with the requirements of the exemptions and the exemptions' effects on the markets.

The Commission notes that before the pilot programs can be approved on a

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[10] *See* Amendment No. 1, *supra* note 1.

[11] 15 U.S.C. 78f(b)(5) (1982).

[12] The Commission has approved similar equity options hedge position limit exemption pilot programs by the Amex, the CBOE, and the Philadelphia Stock Exchange, Inc. ("PHLX"). *See* Securities Exchange Act Release Nos. 25738 (May 24, 1988), 53 FR 20201 and 25811 (June 20, 1988), 53 FR 23821. The Commission also has approved similar broad-based stock index options hedge position limit exemption pilot programs by the Amex, CBOE, and PHLX. See Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201 (order approving File Nos. SR-Amex-87-13, SR-CBOE-87-27, and SR-PHLX-87-32).

[13] See Securities Exchange Act Release No. 32174 (April 20, 1993), 53 FR 25687 (order approving File No. SR-PHLX-92-22).

[14] The Commission expects the Exchange to determine on a case-by-case basis whether an instrument that is being used as the basis for the underlying hedged position is readily and immediately convertible into the security underlying the corresponding option position. In this regard, the Commission specifically finds that an instrument which will become convertible into a security at a future date, but which is not presently convertible, is not a "convertible" security for purposes of the equity hedge exemption pilot program until the date it becomes convertible. Of course, if the convertible security used to hedge an option position was called for redemption by the issuer, the security would have to be converted into the underlying security immediately or the corresponding option position reduced accordingly.

permanent basis the NYSE must provide the Commission with a report on the operation of the pilots. Specifically, the NYSE must provide the Commission with details on (1) the frequency with which the exemptions have been used; (2) the types of investors using the exemptions; (3) the size of the positions established pursuant to the pilot programs; (4) what types of convertible securities are being used to hedge positions and how frequently convertible securities have been used to hedge; (5) whether the Exchange has received any complaints on the operation of the pilot programs; (6) whether the Exchange has taken any disciplinary action against, or commenced any investigations, examinations, or inquiries concerning, any of its members for any violation of any term or condition of the pilot programs; (7) the market impact, if any, of the pilot programs; and (8) how the Exchange has implemented surveillance procedures to ensure compliance with the terms and conditions of the pilot programs, including, among others, the requirement that any hedged option position be liquidated before any corresponding stock position.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to allow the NYSE's pilot programs to continue. Because there have been no adverse comments concerning the NYSE's pilot programs, or similar programs in effect at the other options exchanges,[15] and because of the importance of maintaining the quality and efficiency of the NYSE's options markets and the uniformity of rules among the options exchanges, the Commission believes good cause exists to approve the extension of the NYSE's pilot programs on an accelerated basis. In addition, the Commission finds good cause for approving Amendment No. 1 to the proposed rule change on an accelerated basis because the proposal to expand the equity option hedge exemption pilot program to include securities readily converted into or economically equivalent to that number of shares of stock is similar to other proposals approved previously by the Commission and does not raise new regulatory issues.[16]

[15] See note 9, *supra*.

[16] See Securities Exchange Act Release Nos. 32174 (April 20, 1993), 58 FR 25687 (order approving file No. SR–PHLX–92–22, expanding the PHLX's equity option hedge exemption program to include stock options hedged by 100 shares of stock or securities convertible into stock); 27326 (October 2, 1989), 54 FR 42121 (order approving File No. SR–Amex–89–20, extending and expanding the Amex's index hedge exemption pilot program to include convertible instruments in the "equivalent" positions that may be eligible to serve as the basis for the underlying exemption) and 27322 (September 29, 1989), 54 FR 41869 (order approving File No. SR–CBOE–89–08, extending and expanding the CBOE's index hedge exemption program to include in qualified stock portfolios securities readily convertible into stock and, for convertible bonds, those that are economically convertible into common stock).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 12, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (File No. SR–NYSE–92–93), is approved and, accordingly, the position limit exemption pilot programs for hedged equity and broad-based stock index options positions are extended until November 17, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23052 Filed 9–20–93; 8:45 am]

BILLING CODE 8010–01–M

[17] 15 U.S.C. 78s(b)(2) (1982).

[18] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–32908; File No. SR–PSE–91–38]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Market Maker Eligibility Standards for Participation in the Automatic Execution Feature of the Pacific Options Exchange Trading Program

September 15, 1993.

On December 12, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend the market maker eligibility standards for participation in the Automatic Execution feature ("Auto-Ex") of the Pacific Options Exchange Trading System ("POETS").[3]

The proposed rule change was noticed for comment in Securities Exchange Act Release No. 30160 (January 7, 1992), 57 FR 1780. No comments were received on the proposed rule change.

The PSE proposes to amend its market maker eligibility standards for participation in the Auto-Ex feature of POETS in the following ways. First, the PSE proposes to restrict a market maker's eligibility for Auto-Ex to only one trading post, which trading post must be within the market maker's primary appointment zone. Second, the PSE proposes to require participants who sign onto Auto-Ex to remain on the system for the duration of the trading day. The proposal provides that exemptions from this mandatory log-on requirement shall only be granted in the presence of mitigating circumstances (*e.g.*, emergency) to be determined on a case-by-case basis by two Floor Officials. Third, the PSE proposes to require a market maker who logs onto the system during an expiration week to remain on the system for the entire

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1992).

[3] On July 30, 1993, the Commission granted permanent approval of POETS. *See* Securities Exchange Act Release No. 32703 (July 30, 1993) (order approving File No. SR–PSE–92–37). POETS is a completely automated trading system comprised of an automatic execution system, an options order routing system, an on-line limit order book system, and an automatic market quote update system. Auto-Ex is the system's automatic execution feature. In Auto-Ex, an incoming eligible market or marketable limit order is priced and executed automatically at the displayed market bid or offer. A participating market maker is designated as contra-side to an Auto-Ex order. Participating market makers are assigned by Auto-Ex on a rotating basis, with the first market maker selected at random from the list of signed-on market makers.

week. Finally, the proposal provides that Auto-Ex participants will be held liable for all trades executed against them through the system while they are absent from the post or trading floor.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[4] Specifically, the Commission finds that each of the proposed modifications to the market maker eligibility requirements for participation in the Auto-Ex feature of POETS is designed to improve the integrity and operation of the POETS system, thereby contributing to the maintenance of fair and orderly markets and the protection of investors. The Commission believes that the proposal should help to ensure adequate market maker participation in Auto-Ex, which should, in turn, contribute to the effective and efficient execution of public investor orders at the best available price.

Specifically, the Commission believes that by allowing a market maker to participate in Auto-Ex at only one trading post in his primary appointment zone, the Exchange will help to ensure that the market makers who are trading an options class in person are also the market makers receiving order flow in that options class over the POETS system. As a result, and in conjunction with the PSE Rule 6.35 requirement that 75% of a market maker's trading activity occur in the class of option contracts to which his primary appointment zone extends, the Commission believes market makers may have a greater incentive to quote tighter markets because they will be assured of receiving order flow through the Auto-Ex feature of POETS at these quotes, without market makers not present in the trading crowd also receiving a substantial portion of that order flow.

Second, the Commission believes it is reasonable for the Exchange to require that a market maker remain on the system for the remainder of the trading day once he has logged onto the system. In this regard, the Commission believes the mandatory log-on requirement will help to ensure continuity in participation in the Auto-Ex feature of POETS. Without such a provision, market makers could simply withdraw from participating in Auto-Ex whenever they desired, including during volatile market conditions, thereby potentially jeopardizing the continued operation of the system.

[4] 15 U.S.C. 78f(b)(5) (1982).

Third, for similar reasons, the Commission believes it is appropriate for the Exchange to attempt to ensure substantial participation in the Auto-Ex system during expiration weeks by requiring market makers who log onto the system during an expiration week to remain on the system for the entire week.

Finally, the Commission believes it is appropriate for the Exchange to provide that Auto-Ex participants shall be liable for all trades executed against them through the system during their absence from the post or trading floor. The Commission believes that the imposition of such liability will help the Exchange to ensure that market makers are meeting their affirmative obligations to the operation of the Auto-Ex system. In sum, the Commission believes the proposed modifications to the POETS system represent a reasonable effort by the Exchange to strengthen the integrity of its automated system and, thereby, benefit public customers.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (SR–PSE–91–38) hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23051 Filed 9–20–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32900; File No. SR–PSE–92–38]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Granting Partial Approval of Proposed Rule Change Relating to the Hedge Exemption From Position and Exercise Limits for Equity Options.

September 14, 1993.

I. Introduction

On November 1, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to extend the Exchange's pilot program exempting certain hedged positions from position limits for equity options ("Hedge Pilot Program"),[3] to increase the position and exercise limits for equity and index options, to expand the Hedge Pilot Program to allow convertible securities to be used for purposes of the hedge exemption from equity option position limits, and to make certain other editorial and clarifying changes to the relevant rules.

The proposed rule change, as amended,[4] was published for notice in the **Federal Register** on May 21, 1993.[5] No comments were received on the proposed rule change.[6]

II. Description of the Proposal

The Exchange proposes to amend PSE Rule 6.8, Commentary .07 by (i) adding "securities convertible into such stock" to the securities eligible to serve as the underlying basis for the hedge exemption from position limits; and (ii) clarifying that Commentary .07 is applicable to exercise limits as well as position limits. The Exchange believes that such convertible securities are an appropriate hedge against equity options because they have the same economic interest. That is, the price of

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30–3(a)(12) (1982).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1989).

[3] On June 20, 1988, the SEC approved the Hedge Pilot Program for a two year period. See Securities Exchange Act Release No. 25811 (June 20, 1988), 53 FR 23821 ("Securities Exchange Act Release No. 25811").

[4] On December 4, 1992, the Exchange filed Amendment No. 1 to the proposed rule change to increase position and exercise limits for (i) equity options to 5,000, 10,000, and 15,000 contracts; and (ii) index options to 8,000, 12,000, and 16,000 contracts. See Letter from Michael Pierson, Senior Attorney, Market Regulation, PSE, to Thomas Gira, Branch Chief, Division of Market Regulation, Commission, dated December 4, 1992. On January 14, 1993, the Exchange filed Amendment No. 2 to the proposed rule change to increase position and exercise limits for (i) equity options to 4,500, 7,500, and 10,500 contracts; (ii) index options to 5,500, 7,500, and 10,500 contracts; and (iii) broad-based index options to 19,500 contracts. *See* Letter from Michael Pierson, Senior Attorney, Market Regulation, PSE, to Sharon Lawson, Assistant Director, Division of Market Regulation, Commission, dated January 13, 1993. On September 9, 1993, the Exchange filed Amendment No. 3 to the proposed rule change (i) clarifying the definition of "convertible security," and (ii) proposing to add a provision to its rules to allow a hedge exemption from position and exercise limits for options on broad-based indices. *See* Letter from Michael Pierson, Senior Attorney, Market Regulation, PSE, to Richard Zack, Branch Chief, Division of Market Regulation, Commission, dated September 9, 1993.

[5] See Securities Exchange Act Release No. 32310 (May 14, 1993), 58 FR 29675.

[6] This order (i) extends the Hedge Pilot Program for both equity and broad-based indexes until November 17, 1993; (ii) approves the expansion of the Hedge Pilot Program to allow convertible securities to serve as the basis for the hedge exemption from position and exercise limits applicable to equity options; (iii) approves the proposed amendment clarifying that Commentary .07 to PSE Rule 6.8 also applies to exercise limits; and (iv) approves the hedge exemption from position and exercise limits for options on broad-based indexes.

the convertible security moves with the stock and such security represents the right to receive the same security as that underlying the options.

The Exchange also proposes to add Commentary .02 to PSE Rule 7.6 allowing a customer hedge exemption from position and exercise limits for options on broad-based indices.[7] The procedures and criteria applicable to the customer hedge exemption will be the same as those set forth in Commentary .01 to the Chicago Board Options Exchange, Inc. ("CBOE") Rule 24.4.[8]

III. Discussion

As discussed below, the Commission believes that the PSE proposal is consistent with section 6 of the Act, in general, and section 6(b)(5) in particular, in that it should help remove impediments to and perfect the mechanism of a free and open market, and promote just and equitable principles of trade. Specifically, with respect to the portion of the proposed rule change expanding the Hedge Pilot Program to allow convertible securities to be used for purposes of the hedge exemption from equity option position limits, the Commission believes such expansion is consistent with the Act because it will allow investors to use instruments that are economically equivalent to stocks more efficiently and effectively for purposes of hedging their equity options positions.[9] Because the value of a convertible security likely will fluctuate in tandem with the value of the security that it is convertible into, the Commission believes investors with positions in convertible securities should be able to hedge their positions with equity options to the same extent that investors with long or short positions in the underlying security can. Additionally, since the exemption requires the positions in the convertible securities and the corresponding options to be fully hedged, the Commission believes the proposal will not significantly increase concerns regarding intermarket manipulations or disruptions of either the options markets or the underlying stock market. Lastly, the Commission notes that similar proposals have been approved for several other exchanges.[10] Accordingly, the Commission believes it is appropriate and consistent with the Act to expand the Hedge Pilot Program to include convertible securities.

With respect to the portion of the proposal allowing a hedge exemption from position and exercise limits for options on broad-based indices, the Commission also believes that this will allow investors to use equity options more efficiently and effectively to hedge positions in options on broad-based indices where the potential for manipulation is minimal and thus regulatory concerns are significantly decreased. In addition, the Commission has previously approved similar hedge exemptions for options on broad-based indices for other exchanges.[11]

With respect to the application of PSE Rule 6.8 to exercise limits, the Commission agrees that this is merely a clarifying amendment. The approval order for the Hedge Pilot Program increased position and exercise limits for exempted positions.[12] Therefore, no regulatory concerns are created as a result of this amendment.

The Commission also notes that before the Hedge Pilot Program can be approved on a permanent basis the PSE must provide the Commission with a report on the operation of the Hedge Pilot Program.[13] Specifically, the PSE must provide the Commission with details on (1) the frequency with which the exemptions have been used; (2) the types of investors using the exemptions; (3) the size of the positions established pursuant to the Hedge Pilot Program; (4) what types of convertible securities are being used to hedge positions and how frequently convertible securities have been used to hedge; (5) whether the Exchange has received any complaints on the operation of the Hedge Pilot Program; (6) whether the Exchange has taken any disciplinary action against, or commenced any investigations, examinations, or inquiries concerning, any of its members for any violation of any term or condition of the Pilot Hedge Program; (7) the market impact, if any, of the Pilot Hedge Program; and (8) how the Exchange has implemented surveillance procedures to ensure compliance with the terms and conditions of the Pilot Hedge Program.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the Hedge Pilot Program for both equity and broad-based indexes is extended until November 17, 1993, including the portions of the proposed rule change (SR–PSE–92–38) (i) allowing convertible securities to form the basis for the hedge exemption from position and exercise limits for equity options; (ii) clarifying that Commentary .07 to PSE Rule 6.8 is applicable to exercise limits as well as position limits; and (iii) allowing a hedge exemption from position and exercise limits for options on broad-based indices, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23055 Filed 9–20–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32884; File No. SR–PHLX–93–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Amendments to Floor Procedure Advice F–5, Material Changes to Terms of a Cleared Trade

September 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 23, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is

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[7] Currently the Wilshire Small Cap Index is the only broad-based index on which options trade on the PSE.

[8] The PSE will send a bulletin to its members notifying them of the procedures to be used by the PSE with respect to the hedge exemption for broad-based index options, and will send a copy of such bulletin to the Commission. Telephone conversation between Michael Pierson, Senior Attorney, Market Regulation, PSE, and Bradley Ritter, Attorney, Division of Market Regulation, Commission, on September 13, 1993.

[9] The Commission expects the Exchange to determine on a case-by-case basis whether an instrument that is being used as the basis for the underlying hedged position is readily and immediately convertible into the security underlying the corresponding option position. In this regard, the Commission specifically finds that an instrument which will become convertible into a security at a future date but which is not presently convertible, is not a "convertible" security for purposes of this proposal. Of course, if the convertible security used to hedge an options position was called for redemption by the issuer, the security would have to be converted into the underlying security immediately or the corresponding option position reduced accordingly.

[10] *See* Securities Exchange Act Release No. 32174 (April 20, 1993), 58 FR 25887 (approving File No. SR–PHLX–92–22); Securities Exchange Act Release No. 29436 (July 12, 1991), 56 FR 33317 (approving File No. SR–NYSE–91–19); Securities Exchange Act Release No. 27326 (October 2, 1989), 54 FR 42121 (approving File No. SR–AMEX–89–20); and Securities Exchange Act Release No. 27322 (September 29, 1989), 54 FR 41389 (approving File No. SR–CBOE–89–08).

[11] *See e.g.*, CBOE Rule 24.4, Commentary .01.

[12] *See* Securities Exchange Act Release No. 25811, *supra* note 3.

[13] The Commission also expects the PSE to monitor the Hedge Pilot Program as outlined below and to inform the Commission of the results of any surveillance investigations undertaken for apparent violations of the provisions of the hedge exemption rule.

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1992).

publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Rule 19b–4 of the Act, the PHLX proposes to amend Floor Procedure Advice ("Advice") F–5, "Material Changes to Terms of a Cleared Trade," to designate the Advice's current language as paragraph (a) and to add paragraph (b), which will require any person signing a correction sheet to use due diligence to confirm the correction before signing the correction sheet, including checking the appropriate floor tickets or computerized report ("run") in any case where the person has reason to believe that a sizeable error may result if appropriate corrective action is not taken. The PHLX proposes to include Advice F–5, as amended, in the Exchange's minor rule violation enforcement and reporting plan ("minor rule plan")[1] and to place Advice F–5 on a three-year rolling cycle for the imposition of fines.[2] In addition, the PHLX proposes to increase the fine schedule for violations of paragraph (a) from $50.00 to $100.00 and to impose the following fines for violations of proposed paragraph (b): $250.00 for the first occurrence; $500.00 for the second occurrence; and a sanction discretionary with the Business Conduct Committee ("BCC") for the third and subsequent occurrences.

The text of the proposed rule change is available at the office of the Secretary, PHLX, and at the Commission.

[1] The Exchange's minor rule plan is administered pursuant to PHLX Rule 970, "Floor Procedure Advices: Violations, Penalties, and Procedures."

[2] Currently, fines accrue under the Exchange's minor rule plan on a one-year rolling calendar basis, so that a second violation of the same provision within one year is subject to the next highest fine (*i.e.*, the second violation within that calendar year is treated as a second occurrence). If the violation is not repeated in that calendar year, then a subsequent violation of that provision is treated as the person's first violation. Under the three-year rolling cycle, a violation of Advice F–5 which occurs within three years of the first violation of the Advice will be treated as a second occurrence, and any violation of the Advice within three years of the previous violation of the Advice will be subject to the next highest fine. Thus, a third violation of Advice F–5 within less than three years after a fine for a second violation of Advice F–5 will be treated as a third violation of that Advice, even though more than three years may have elapsed since the first violation of Advice F–5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, Advice F–5 provides that all correction sheet submissions which change material terms of a transaction (security, price, volume, series, class and customer to firm participations) must be signed by all parties to the transaction and by a representative of the specialist unit. If one of the parties to the transaction is not present at the time the matter is being resolved, the signature of one of the Exchange's Surveillance staff is required to acknowledge the contra side's absence. The Advice states that the signature of the Surveillance staff member does not relieve any party to the trade from liability in connection with the change.

The PHLX proposes to amend Advice F–5 to emphasize that correction sheets should not be signed absent the use of due diligence to confirm the correct terms of the trade. Specifically, the Exchange proposes to amend Advice F–5 to add paragraph (b), which would require that a person signing a correction sheet make a reasonable attempt to verify the terms of the trade ticket with reference to the Exchange-provided computer "run." Recognizing that certain corrections are so minor that a fine pursuant to proposed paragraph (b) would not be warranted, the Exchange proposes to limit the imposition of a fine under proposed paragraph (b) to situations where the person signing the correction sheet has reason to believe that a sizable error may result if the terms of the correction sheet are not confirmed.

The proposed rule change will apply to all options traded on the PHLX.[3] The Exchange plans to increase the fine imposed for violations of paragraph (a) from $50.00 to $100.00. The PHLX states that the proposed increase is designed to impose a more realistic fine in view of the violation; the PHLX notes that the current $50.00 fine has been in place since 1986. In addition, the PHLX proposes to add the following fine schedule for violations of proposed paragraph (b): $250.00 for the first occurrence; $500.00 for the second occurrence; and a sanction discretionary with the BCC for the third and subsequent occurrences.

The PHLX proposes to include proposed paragraph (b), as well as paragraph (a), as amended, in the Exchange's minor rule plan. In addition, the PHLX proposes to place Advice F–5 on a three-year rolling cycle for the imposition of fines, so that repeat violations during the same three-year period would result in escalating fines.[4]

The PHLX believes that the proposal is consistent with section 6 of the Act, in general, and in particular, with section 6(b)(5), in that it is designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. Specifically, the PHLX believes that the proposed amendments to Advice F–5 should provide an incentive to improved handling of corrections to executed transactions by increasing the fee and adding a due diligence requirement, consistent with the above-stated purposes of Section 6(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of each date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

[3] Telephone conversation between Edith Hallahan, Attorney, Market Surveillance, PHLX, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation, Commission, on August 4, 1993.

[4] See note 2, *supra*.

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–93–27 and should be submitted by October 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23056 Filed 9–20–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Minneapolis/St. Paul District Advisory Council; Public Meeting

The U.S. Small Business Administration Minneapolis/St. Paul District Advisory Council will hold a public meeting at 12 noon on Friday, October 15, 1993, at the Decathlon Athletic Club, 7800 Cedar Avenue South, Bloomington, Minnesota, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Edward A. Daum, District Director, U.S. Small Business Administration, 610–C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota 55403, (612) 370–2306.

Dated: September 14, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–23050 Filed 9–20–93; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 06000006]

BancFirst Investment Corp.; Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1993)) by BancFirst Investment Corporation, 101 North Broadway, suite 200, Oklahoma City, Oklahoma 73102, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. *et seq.*), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and shareholders are:

Name	Title	Percentage of ownership
David E. Rainbolt, 101 North Broadway, Oklahoma City, OK	Chairman & Director	0
T. Kent Fetson, 101 North Broadway, Oklahoma City, OK	President & Director	0
Robert M. Neville, 101 North Broadway, Oklahoma City, OK	Vice President	0
Robert A. Gregory, 101 North Broadway, Oklahoma City, OK	Director	0
Linda D. Glass, 101 North Broadway, Oklahoma City, OK	Secretary	0
BancFirst Corporation, 101 North Broadway, Oklahoma City, OK	Parent Company	100

The applicant will begin operations with a capitalization of $2,500,000 and will be a source of equity capital and long term funds for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Oklahoma City, Oklahoma.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: September 8, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–23043 Filed 9–20–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD–056]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the Merchant Marine Personnel Advisory Committee (MERPAC). The Committee is a nineteen member Federal advisory committee that advises the Coast Guard on matters related to the training, qualification, licensing, certification and fitness of

[8] 17 CFR 200.30–3(a)(12) (1992).

seamen serving in the U.S. merchant marine.

The applications will be considered for six (06) expiring terms. The Committee consists of 19 members as follows: Ten active U.S. merchant mariners, including three deck officers, three engineering officers, two unlicensed seamen, one staff officer and one pilot; five marine educators; two shipping company managers; and two persons from the general public. Terms are expiring in the following categories: (a) Active Merchant Mariner (two positions; one deck and one engineering); (b) Certified Staff Officer (one position); (c) Marine Educator (two positions; one Maritime Academy and one Maritime Training); and (d) General Public (one position). The membership term is three years. No member may hold more than two consecutive three-year terms. Those persons that have submitted applications in the past must reapply if interested. No applications received prior to this solicitation will be considered.

The Coast Guard received a number of letters expressing concern that the inland, river and near coastal industries are not adequately represented on the committee. Interested members of these industries are encouraged to apply.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. The members of the Committee serve without compensation from the Federal Government, although travel reimbursement and per diem is provided. The Committee normally meets in Washington, DC, with subcommittee meetings for specific problems on an as-required basis.

DATES: Applications must be received no later than October 21, 1993. Application forms may be obtained by contacting the Executive Director at the address below.

ADDRESSES: Persons interested in applying should write to Commandant (G–MVP–3), room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Commander Scott J. Glover, Executive Director, Merchant Marine Personnel Advisory Committee (MERPAC), room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–0225.

Dated: September 8, 1993.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–23087 Filed 9–20–93; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Passenger Facility Charge (PFC) Applications; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Cumulative List of Passenger Facility Charge (PFC) applications previously approved; correction.

SUMMARY: This document corrects an error to the Cumulative List of PFC Applications Previously Approved, which was published on Thursday, August 12, 1993, (58 FR 43002).

FOR FURTHER INFORMATION CONTACT: Donna Taylor, Manager, Passenger Facility Charge Branch, Airports Division, 800 Independence Avenue SW., Washington, DC, 20591, telephone (202) 267–9318.

SUPPLEMENTARY INFORMATION: The Cumulative List of PFC Applications Previously Approved, which was published on August 12, 1993, (58 FR 43002), did not include the June, 1993, approvals. The June approvals include:

Lowell Johnson,

Manager, Airports Financial Assistance Division.

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED

State, application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
Alabama:					
93–02–U–00–HSV., Huntsville Intl-Carl T Jones Field, Huntsville	06/03/1993	$3	$19,022,366	09/01/1993	11/01/2008
California:					
93–03–C–00–SJC., San Jose International, San Jose	06/16/1993	3	16,245,000	08/01/1993	05/01/1997
Colorado:					
93–01–C–00–EGE., Eagle County Regional, Eagle	06/15/1993	3	572,609	09/01/1993	04/01/1998
Idaho:					
93–01–C–00–SUN., Friedman Memorial, Hailey	06/29/1993	3	188,000	09/01/1993	09/01/1997
Illinois:					
93–01–C–00–MDW., Chicago Midway, Chicago	06/28/1993	3	79,920,958	09/01/1993	08/01/2001
93–01–C–00–ORD., Chicago O'Hare International, Chicago	06/28/1993	3	500,418,285	09/01/1993	10/01/1999
Indiana:					
93–01–C–00–IND., Indianapolis International, Indianapolis	06/28/1993	3	117,344,750	09/01/1993	07/01/2005
Michigan:					
93–01–C–00–FNT., Bishop International, Flint	06/11/1993	3	32,296,450	09/01/1993	09/01/2030
Nevada:					
93–02–C–00–LAS., McCarran International, Las Vegas	06/07/1993	3	36,500,000	06/01/1993	09/01/2014
Ohio:					
93–01–C–00–TOL., Toledo Express, Toledo	06/29/1993	3	2,750,896	09/01/1993	09/01/1996
Texas:					
93–02–C–00–AUS., Robert Mueller Municipal, Austin	06/04/1993	2	6,189,300	11/01/1993	06/01/1995
Wisconsin:					
93–01–C–00–MSN., Dane County Regional-Truax Field Madison	06/22/1993	3	6,746,000	09/01/1993	03/01/1998
Wyoming:					

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date*
93-01-C-00-CPR., Natrona County International, Casper	06/14/1993	3	506,144	09/01/1993	10/01/1996
93-01-C-00-GCC., Gillette-Campbell County, Gillette	06/28/1993	3	331,540	09/01/1993	09/01/1999

[FR Doc. 93-23092 Filed 9-20-93; 8:45 am]
BILLING CODE 4910-13-M

Aviation Proceedings; Agreements Filed During the Week Ended September 10, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49117
Date filed: September 7, 1993
Parties: Members of the International Air Transport Association
Subject: TC3 Telex Mail Vote 645; R-1 to r-5 (Japan-Russian Federation fares)
Proposed Effective Date: November 30, 1993.

Docket Number: 49118
Date filed: September 7, 1993
Parties: Members of the International Air Transport Association
Subject: TC1 Reso/P 0416 dated August 6, 1993
TC1 Areawide Resos; r-1 to r-5
TC1 Reso/P 0417 dated August 6, 1993
TC1 Caribbean Resos; r-6 to r-20
TC1 Fares 0101 dated August 20, 1993—Tables
TC1 Reso/P 0418 dated August 6, 1993
TC1 Longhaul Resos; r-21 to r-69
TC1 Fares 0099 dated August 20, 1993—Tables
TC1 Reso/P 0419 dated August 6, 1993
TC1 Within South America r-70 to r-81
Proposed Effective Date: January 1, 1994.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 93-22997 Filed 9-20-93; 8:45 am]
BILLING CODE 4910-62-P

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 10, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49115
Date filed: September 7, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 5, 1993
Description: Application of Buffalo Airways, Inc., pursuant to Section 401 of the Act and Subpart Q of the Act, requests scheduled foreign air transportation of cargo and mail from Houston International Airport, Texas, to Baku Airport, Azerbaijan, via Gander, Newfoundland, and Stansted Airport, London, England. The schedule is sought only for the U.S. to Azerbaijan route; any backhaul business generated would be under the Applicant's charter authority.

Docket Number: 49116
Date filed: September 7, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 5, 1993
Description: Application of Buffalo Airways, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulation, requests a certificate of convenience and necessity to engage in foreign scheduled air transportation of property, seeking additional authority to conduct a once a week scheduled cargo flight from Kansas City International Airport, Kansas City, MO to Schithol Airport, Amsterdam, The Netherlands, with an intermediate stop at Gander, Newfoundland.

Docket Number: 49119
Date filed: September 8, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 6, 1993
Description: Application of AirTrain Corporation, pursuant to Section 401(d)(1) of the Act and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing interstate and overseas scheduled air transportation.

Docket Number: 49120
Date filed: September 10, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 8, 1993
Description: Application of World Connection Airways, Inc., pursuant to Section 401(d)(1) of the Act and Subpart Q of the Regulations, requests a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property and mail: Between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States.

Docket Number · 45651
Date filed: September 8, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 6, 1993
Description: Application of United Air Lines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for renewal of the first segment of its Certificate of Public Convenience and Necessity for Route 552 authorizing services between Spokane, Washington, and Calgary, Alberta, Canada.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 93-22996 Filed 9-20-93; 8:45 am]
BILLING CODE 4910-62-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[93-16]

FEDERAL RESERVE SYSTEM

[Docket No. R-0777]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3063-AA53

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket No. 93-157]

Branch Closings

AGENCIES: Board of Governors of the Federal Reserve System; Office of the Comptroller of the Currency, Treasury; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Joint policy statement.

SUMMARY: The Board of Governors of the Federal Reserve System (Board of Governors), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively "the agencies") have adopted a joint policy statement regarding branch closings by insured depository institutions. The policy statement provides guidance concerning the branch closing provisions of section 42 of the Federal Deposit Insurance Act (FDI Act), specifically the requirements that insured depository institutions adopt policies for branch closings and provide notices before closing any branch.

DATES: Effective September 21, 1993.

FOR FURTHER INFORMATION CONTACT: *Board of Governors:* Oliver I. Ireland, Associate General Counsel (202/452-3625), Gregory A. Baer, Senior Attorney (202/452-3236), Legal Division; Glenn E. Loney, Assistant Director (202/452-3585), Beverly C. Smith, Manager-Applications (202/452-3946), Diane Jackins, Senior Review Examiner (202/452-3946), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

OCC: Cindy L. Hausch-Booth, Licensing Policy and Systems Analyst, Bank Organization and Structure Division (202/874-5060), Sue Auerbach, Senior Attorney, Corporate Organization and Resolutions Division (202/874-5300), Letty Ann Shapiro, Community Development Specialist, Community Development Division (202/874-4930), Office of the Comptroller of the Currency.

FDIC: Robert F. Miailovich, Associate Director, Division of Supervision (202/898-6918), Curtis L. Vaughn, Examination Specialist, Division of Supervision (202/898-6759, Joseph A. DiNuzzo, Senior Attorney, Legal Division (202/898-7349).

OTS: Larry Clark, Program Manager, Compliance and Trust (202/906-5628), Supervision Policy; Kevin A. Corcoran, Assistant Chief Counsel, Corporate and Securities Division (202/906-6962), Chief Counsel's Office; Jackie Durham, Project Manager, Corporate Analysis (202/906-6712) Supervisory Operations, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background Information

Section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102-242, 105 Stat. 2236) (FDICIA) added a new section 42 to the Federal Deposit Insurance Act (FDI Act).[1] Section 42 took effect upon enactment of FDICIA on December 19, 1991. The law requires each insured depository institution to give 90 days prior written notice of any branch closing to its primary Federal regulator and to branch customers, to post a notice at the branch site at least 30 days prior to closing, and to develop a policy with respect to branch closings. The notice to the regulator must include a detailed statement of the reasons for the decision to close the branch and information in support of those reasons.

The Board of Governors (57 FR 46168, October 7, 1992), OCC (57 FR 40249, September 2, 1992), FDIC (57 FR 47657, October 19, 1992), and OTS (57 FR 44226, September 24, 1992) each proposed for comment a policy statement interpreting section 42. The agencies worked together in preparing their proposed policy statements, and the statements were therefore substantially similar. Although each of the agencies issued a separate **Federal Register** notice on its proposed policy statement, the final policy statement is a joint document.

[1] Due to an error in drafting, both section 228 and section 132 of FDICIA added a new section 39 to the FDI Act. The section 39 of the FDI Act added by section 228 of FDICIA was redesignated as section 42 of the FDI Act by section 1602 of the Housing and Community Development Act of 1992, 106 Stat. 3672, and is codified at 12 U.S.C. 1831r-1.

Summary of Final Policy Statement

The agencies are issuing a joint final policy statement to provide guidance to institutions in complying with section 42 of the FDI Act. Similar to the agencies' proposals, the policy statement defines a branch for purposes of section 42, clarifies what constitutes a branch closing, and provides guidance to institutions in identifying customers to be notified in the event of a branch closing.

Summary of Comments

The agencies received a combined total of 129 comment letters on the proposed policy statements.[2] Forty-nine letters were from FDIC-insured banks and savings associations, 39 from bank and thrift holding companies, 32 from bank and thrift industry trade groups, four from state bank supervisors, two from a trade group for state bank supervisors, one from another Federal agency, one from a city government, and one from an individual. Overall, the comments supported the proposed policy statement and the agencies' efforts to implement the branch closing statute with the least possible burden on the banking industry.

The majority of the comments focused on four areas about which the agencies had sought specific comment: the proper definition of "branch" under section 42, particularly on whether an automatic teller machine, remote service facility, or customer-bank communications terminal (collectively, an "ATM") constitutes a branch; whether relocations should be considered branch closings for purposes of section 42; whether an acquiring institution's decision not to purchase a branch from the FDIC or Resolution Trust Corporation after temporary operation of such branch during an option period should constitute a branch closing under section 42, and how customers of a branch should be identified. A description of the comments is included in the discussion of these areas below.

Discussion

1. Definition of "Branch"

The majority of comments received by the agencies focused on whether ATMs should be deemed outside the scope of the branch closing statute. Each of these

[2] In many situations persons provided the same written comment to more than one of the agencies. This total includes all comments received by all the agencies, including the same comment(s) provided by one person to more than one agency.

comments opposed subjecting the closing of ATMs to the requirements of section 42. Commenters argued that Congress could not have intended to require notice of the closing of ATMs because ATM closings do not have an adverse effect on the community; moreover, commenters argued, coverage of ATMs would discourage institutions from locating ATMs in lower income areas on an experimental basis. Commenters also stated that providing notices for ATMs would be difficult, as ATMs are frequently located in areas, such as grocery stores, over which an institution has no control; thus, commenters argued that if the owner of the property were to order the ATM closed, the institution would be unable to comply with section 42.

Several commenters noted that section 42 provides for inclusion of a notice in "regular account statements mailed to customers of the branch proposed to be closed." Assuming that each person is the customer of one branch, these commenters argued that the requirement of section 42 that notices be mailed to the customers of the branch to be closed could not have been meant to include ATMs within the definition of branch, since customer accounts are not assigned to ATMs. If, on the other hand, anyone who uses an ATM is to be considered a "customer" of the ATM, commenters noted that the bank would be required to notify persons who were not even customers of the bank, but had merely used the ATM.

Other commenters provided a further reason why an interpretation of branch that excludes ATMs would better reflect the statutory intent. If ATMs were included within the definition of branch, then converting a full service brick-and-mortar branch to an ATM, and thereby depriving the neighborhood of significant banking services, would not constitute a branch closing, since there would continue to be a "branch." If ATMs were not considered branches, such an action would constitute a branch closing and section 42 would apply.

As to what definition of "branch" should be used, one commenter stated that the common meaning of "branch" is an office where employees of the bank may be found and banking business is handled by a natural person. Several commenters noted that by using the phrase "premises of the branch" in requiring a posted notice, Congress clearly intended to cover only traditional brick-and-mortar branches, that is, those with premises. As one commenter noted, the dictionary definition of "premises" defines the term as "a tract of land with building thereon or as a building or a part of a building usually with its appurtenances (as grounds)." The commenter argued that an ATM is a fixture, and not a building. Along similar lines, a trade group recommended defining a branch as a detached, full-service facility staffed by employees.

The agencies have concluded that the appropriate definition of "branch" for purposes of section 42 is a traditional brick-and-mortar branch, and any similar banking facility, at which deposits are received or checks paid or money lent. Thus, for example, notice pursuant to section 42 would not be required for the closing of an ATM or temporary branch. Institutions that are in doubt about the coverage of a particular closing should consult the appropriate Federal banking agency.

The agencies believe that this interpretation is consistent with the intent and plain language of section 42. In enacting section 42, Congress appears to have been interested in protecting customers from the loss of full service facilities. See S. Rep. 102–167, 102d Cong., 1st Sess. 113 (1991) ("The threat of a branch closure is particularly common and pronounced in under-served, lower-income neighborhoods. Without full banking services, it is difficult for a community to attract new business and economic activity.")

An interpretation of "branch" as including only traditional brick-and-mortar branches excludes temporary branches and ATMs and thereby avoids problems with a broader definition that could not have been intended by Congress. For example, if temporary branches were to be included within the definition of "branch," costly notifications that serve no purpose would be required. As one commenter pointed out, an institution that established a temporary branch at a fair, convention, college registration or similar event would be required to remain at the (possibly vacant) site for 90 days after the event ended. In the case of such facilities, it is obvious to the institution's customers that the facility is temporary. No customer is likely to be surprised by the disappearance of such facilities, and Congress could not have intended to require a 90 day notice for institutions that were never to be opened for 90 days.

As noted in the comments, ATMs also present problems with an expansive definition, as those who use ATMs frequently do not bank with the institution that operates the ATM. Furthermore, the agencies are particularly concerned that under an interpretation that included ATMs within the definition of "branch," an institution could downgrade a brick-and-mortar branch to an ATM and not have closed a branch for purposes of section 42. Such a result would appear to be at odds with the purpose of section 42.

Interpreting section 42 to cover traditional brick-and-mortar branches is also consistent with the plain language of section 42. As noted by the commenters, the term "branch" is undefined in section 42, and is not defined elsewhere in the FDI Act. Although section 3(o) of the FDI Act does define the term "domestic branch,"[3] Congress chose not to use that term in section 42.[4] An indication of Congressional intent in the language of section 42 can be found in section 42(b)(2)(A), which requires the posting of a notice on "the premises of the branch to be closed." Thus, for purposes of section 42, a branch is something that has "premises." As noted by the commenters, premise is defined for this purpose as "a tract of land with the buildings thereon."[5] The use of this term indicates that in using the term "branch," Congress intended section 42 to apply to traditional brick-and-mortar branches—those that have "premises."

2. Relocations

The regulations of the Board of Governors and OTS each provide that an institution that proposes to relocate a branch or main office only a short distance need not submit an application seeking approval of the relocation. The two agencies' regulations and standards differ, but both rely on some consideration of the distance of the move. *See* 12 CFR 208.9 (Board); 12 CFR 545.95 (OTS).

On the other hand, neither the FDIC nor the OCC has a short-distance exception to its application requirements for branch relocation

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[3] Section 3(*o*) of the FDI Act states that a "domestic branch" includes "any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State of the United States or in any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands at which deposits are received or checks paid or money lent." 12 U.S.C. 1813(o).

[4] This is in contrast to at least one other provision of the FDI Act where Congress used the term "domestic branch" in requiring FDIC approval for certain applications. 12 U.S.C. 1828(d). Although the proposed policy statements of the Board of Governors, the OCC and the FDIC proposed that the definition of "domestic branch" be used as the definition of "branch" in section 42, the agencies believe that it is more in keeping with the language and legislative intent of the statute to use the foregoing definition of branch to implement the requirements of section 42.

[5] See Webster's Ninth New Collegiate Dictionary 928 (1988).

applications. As discussed in the proposals, section 18(d) of the FDI Act requires state nonmember banks to obtain FDIC approval before relocating a branch. Section 36 of the National Bank Act requires OCC approval before a national bank relocates a branch.

In their notices, the agencies proposed that a short-distance relocation not be considered a branch closing for purposes of section 42. All the comments received on the issue agreed that branch relocations should be deemed outside the scope of the branch closing statute. Several persons commented that relocations in the same service area or community should not be considered to be a closing. Comments received by the OCC and FDIC noted that those agencies' existing application and notice requirements for branch relocations satisfy the underlying purpose of the branch closing statute and argued that deeming the branch closing notice requirements to apply to branch relocations would be redundant with the requirements of existing law and regulations.

The final policy statement contains a common method of determining if a "relocation" has occurred for purposes of section 42 and makes clear that a relocation does not constitute a branch closing. A relocation is distinguished from the contemporaneous closing of one branch and opening of another. Under the policy statement a relocation has occurred if the new branch and the closed branch are within the same immediate neighborhood and the nature of the business and the customers served by the branch are substantially unaffected by the move. Generally, relocations will be found to have occurred only when short distances are involved: For example, moves across the street, around the corner, or a block or two away. Moves of less than 1000 feet will generally be considered to be relocations. In less densely populated areas, where "neighborhoods" extend farther and a longer move would not substantially affect the nature of the business or the customers served by the branch, a relocation may occur over significantly longer distances. Institutions that are in doubt about whether a relocation or closing has occurred should consult the appropriate federal banking agency.

The agencies have also concluded that a consolidation of branches can be treated as a relocation, as opposed to a branch closing, for purposes of section 42. Consolidation can be expected to occur after a merger, where the acquiring institution and the institution being acquired maintained branches a short distance apart.

The agencies believe that if a consolidation of branches meets the test for relocation, then the branch may be treated as having been relocated rather than closed for purposes of section 42. The agencies believe that customers have not been deprived of banking services in these situations. One commenter noted that such a consolidation would not affect the nature of the business or the customers served. Moreover, as another commenter noted, such an interpretation would avoid penalizing an institution for eliminating a costly duplication of services.

One commenter suggested that the agencies review branch relocations for institutions with less than satisfactory CRA ratings, and two commenters suggested that branch closings be subject to an application process with an opportunity for public comment. The agencies do not believe such review or comment is required by section 42.

3. Occupation of Branch During an Option Period

Section 42 applies only to branch closings by insured depository institutions. The agencies stated in their proposed policy statements that when an acquiring institution declines to exercise an option to purchase a branch and that branch is subsequently closed, the closing is, in effect, attributable to the FDIC or RTC acting as receiver and not to the institution. Thus, the agencies' proposed policy statements provided that declining to exercise an option to purchase a branch from the government during an option period does not constitute a branch closing, and this position is unchanged in the final policy statement.[6]

The agencies received 36 comments on whether the section 42 requirements should apply in this context. All supported the agencies' position that branch closing provisions should not apply in such situations involving failed depository institutions.

One issue regarding the mechanics of such options was raised by two commenters that had recently experienced mergers. They criticized the proposal because it only allowed the institution to remain in the branch during the option period, which they said was generally 30 to 90 days. These commenters pointed out that contracts with the FDIC and RTC allow the acquiring institution to remain in the branch for a period of time after the option period; this extra time allows an institution that decides not to acquire a branch to wind down its operations in an orderly way. This occupancy period generally lasts for 180 days. The joint final policy statement provides that an acquiring institution that occupies but declines to exercise an option to purchase a branch may remain in the branch during the occupancy period prescribed by the RTC or FDIC in connection with the option, up to a maximum of 180 days from the date of the failure of the bank or the expiration of the option period, whichever is later, without triggering the notice requirements in section 42.

One commenter argued that section 42 should not apply to the closing of a branch after the sale of a bank under a divestiture order issued by an agency pursuant to the prompt corrective action regime of section 38 of the FDI Act. The commenter felt that the delay in closing occasioned by section 42 could jeopardize the transaction. Another commenter asked that the agencies not apply section 42 when an institution acquires a bank in government conservatorship and closes branches in connection with the transaction. However, the agencies believe that because, in these cases, an insured depository institution and not the government (in its role as receiver of a failed institution) is closing the branches, the closing is attributable to the institution, and the agencies do not have the authority to relieve the closing institution of its obligations under section 42.

The agencies also believe that branches closed in connection with transactions involving failing institutions (including expedited mergers) are not attributable to the government. Thus, the exception explained above for branch closings in the context of a failed institution cannot be used in the failing institution context. The fact that a consolidation of branches over a short distance may be found to be a relocation and not a branch closing, however, should reduce regulatory burden with regard to failing institution transactions. That is, acquiring institutions may consolidate existing branches with branches acquired from the failing institution without having to comply with the requirements of section 42 as long as the consolidation meets the test for a relocation set forth in the policy statement.

[6] Pursuant to a typical acquisition agreement with the FDIC or RTC, the acquirer of a failed institution may temporarily operate one or more branches of the failed institution during the acquirer's option period—that is, during the period the acquirer has to decide whether it will purchase or lease the branch. (Typically, option periods under FDIC and RTC contracts range between 90 and 180 days.)

4. Determining Customers of a Branch

The commenters generally supported the agencies' proposal to permit each institution to identify a given branch's customers based on a good faith system of allocating customers among branches, and to indicate that one reasonable means of allocating customers is by where they opened their deposit or loan accounts. One commenter noted that banks have historically determined each branch's customer base by the accounts opened at the office. The final policy statement continues to allow each institution to allocate customers in a reasonable way, and further clarifies that, in certain cases, such an allocation may result in a branch not having any customers to notify in the event of a closing. In that event, only the notice to the appropriate agency and the posting of a notice on the premises would be required.

A few commenters sought further guidance in this area, but the agencies believe that each institution should be responsible for identifying customers.

5. Branch Closings as a Result of Merger, Consolidation, or Other Form of Acquisition

The agencies proposed that either party to a transaction such as a merger or consolidation could provide the notices required by section 42. Several commenters questioned who would be responsible if no notice were given. To avoid confusion and a resultant failure to provide the required notice, the final policy statement clarifies that the acquiring or resulting institution is ultimately responsible for ensuring that the required notices are given.

6. Regulatory Burden

Several letters complained about the financial and other compliance burdens imposed upon depository institutions by the requirements of section 42. The agencies are very sympathetic to this concern and, thus, have attempted to produce a policy statement that is consistent with the intent of the branch closing statute and minimizes burden to the industry. The agencies note that depository institutions are bound to comply with the explicit requirements of section 42.

7. Interruption of Service

The agencies proposed that section 42 would not apply to an interruption of service caused by an event beyond the institution's control (e.g., natural catastrophe), unless the institution closed or did not reopen the branch following the incident. A few commenters argued that the posting of the notice in cases where the branch would not reopen could mean—and would have meant in the case of branches destroyed by Hurricane Andrew—that an institution would have to post a notice amid a pile of rubble. The agencies believe that the notice should be posted whenever feasible, but acknowledge that there will be times when the posting on the premises is not practical.

Other commenters asked that the agencies find a broader range of causes of branch closing to be beyond an institution's control and thus not requiring a notice under section 42. Specifically, commenters asked that the loss of a lease be found to be beyond the institution's control. The agencies have decided not to expand the list of examples of what constitutes a condition beyond an institution's control. The agencies believe that the terms of a lease are a factor that is within an institution's control.[7]

8. Relationship to State Law

A state bankers association pointed out that state law may require branch closing notices and policies, and asked that the agencies determine that compliance with state law would satisfy section 42. The agencies do not believe that it is appropriate to analyze various state laws for this purpose, but the agencies have amended the policy statement to note: (1) If a notice provided to customers pursuant to state law contains the information required by section 42 and is provided with prior notice that is consistent with the requirements of section 42, then a second notice need not be sent; and (2) if a notice sent to a state supervisor contains the information required by section 42 and provides prior notice that is consistent with the requirements of section 42, then the institution may provide a copy of that notice to its federal regulator in lieu of a separate notice.

9. Reduction of Services

The final policy statement continues to provide that a change in services at a branch will not be considered a branch closing as long as the facility continues to constitute a branch for purposes of section 42. In this context, the agencies note that a branch that reduces its services to that of an ATM would be deemed to have closed the branch for purposes of section 42. This is because, as discussed above, for purposes of the branch closing statutes an ATM is not considered a branch.

10. Branch Closing Policy

The agencies' proposals differed with respect to their provisions regarding branch closing policies. The OCC and OTS included in their proposed policy statements a list of items that an institution might want to consider including in its policy statement; the goal was to provide guidance to institutions in adopting their policies. The Board of Governors and the FDIC did not include such a list. Because section 42 does not prescribe the contents of a branch closing policy and does not delegate to the agencies that authority, all the agencies have decided to omit any list of suggested items. Thus, the final policy statement retains the requirement of a written policy appropriate to the size and needs of the institution, but does not prescribe any suggested contents of that policy.

Policy Statement of Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Office of Thrift Supervision Concerning Branch Closing Notices and Policies

Purpose

This policy statement provides guidance to insured depository institutions concerning requirements that an institution provide prior notice of any branch closing and establish internal policies for branch closings.

Background

The Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236) (FDICIA) was enacted on December 19, 1991. Section 228 of the FDICIA adds a new section 42 to the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831r–1) that imposes notice requirements on insured depository institutions that intend to close branches.[1] The provision became effective on December 19, 1991.

The law requires an insured depository institution to submit a notice of any proposed branch closing to the appropriate Federal banking agency no later than 90 days prior to the date of the proposed branch closing. The required notice must include a detailed statement of the reasons for the decision to close the branch and statistical or

[7] The agencies recognized that institutions that entered into leases prior to enactment of FDICIA would not have been able to take the provisions of section 42 into consideration, and the agencies issued interim guidance.

[1] An insured depository institution means any bank or savings association, as defined in section 3 of the FDI Act, the deposits of which are insured by the FDIC.

other information in support of such reasons.

The law also requires an insured depository institution to notify its customers of the proposed closing. The institution must mail the notice to the customers of the branch proposed to be closed at least 90 days prior to the proposed closing. The institution also must post a notice to customers in a conspicuous manner on the premises of the branch proposed to be closed at least 30 days prior to the proposed closing.

Additionally, the law requires each institution to adopt policies regarding closings of branches of the institution.

Applicability

Section 42 applies to the closing of a "branch" by an insured depository institution. The agencies consider a "branch" for purposes of section 42 to be a traditional brick-and-mortar branch, or any similar banking facility, at which deposits are received or checks paid or money lent. Thus, for example, notice pursuant to section 42 would not be required for the closing of an ATM or temporary branch. Institutions that are in doubt about the coverage of a particular closing should consult the appropriate Federal banking agency.

An institution must file a branch closing notice whenever it closes a branch, including when the closing occurs in the context of a merger, consolidation or other form of acquisition. Transactions subject to expedited approval under the Bank Merger Act (12 U.S.C. 1828) must also file a branch closing notice. The responsibility for filing the notice lies with the acquiring or resulting institution, but either party to such a transaction may give the notice. Thus, for example, the purchaser may give the notice prior to consummation of the transaction where the purchaser intends to close a branch following consummation, or the seller may give the notice because it intends to close a branch at or prior to consummation. In the latter example, if the transaction were to close ahead of schedule, the purchaser, if authorized by the appropriate federal banking agency, could operate the branch to complete compliance with the 90-day requirement without the need for an additional notice.

The law does not apply to mergers, consolidations, or other acquisitions, including branch sales, that do not result in any branch closings. In addition, the law does not apply where a branch is relocated. For purposes of this policy statement, a branch relocation is a movement within the same immediate neighborhood that does not substantially affect the nature of the business or customers served. Generally, relocations will be found to have occurred only when short distances are involved: for example, moves across the street, around the corner, or a block or two away. Moves of less than 1000 feet will generally be considered to be relocations. In less densely populated areas, where neighborhoods extend farther and a long move would not significantly affect the nature of the business or the customers served by the branch, a relocation may occur over substantially longer distances. Institutions that are in doubt about whether a relocation or closing has occurred should consult the appropriate Federal banking agency.

Consolidations of branches are considered relocations if the branches are located within the same neighborhood and the nature of the business or customers served is not affected. Thus, for example, a consolidation of two branches on the same block following a merger would not constitute a branch closing. The same standards apply to consolidations as to relocations.

Changes of services at a branch are not considered a branch closing, provided that the remaining facility constitutes a branch (as defined herein).[2]

In addition, section 42 does not apply when a branch ceases operation but is not closed by an institution. Thus, the law does not apply to:

- A temporary interruption of service caused by an event beyond the institution's control (*e.g.*, a natural catastrophe), if the insured depository institution plans to restore branching services at the site in a timely manner;[3]
- Transferring back to the FDIC or Resolution Trust Corporation, pursuant to the terms of an acquisition agreement, a branch of a failed bank or savings association operated on an interim basis in connection with the acquisition of all or part of a failed bank or savings association, so long as the transfer occurs within the option period or within an occupancy period, not to exceed 180 days, provided in the agreement.

Notice of Branch Closing to the Agency

The law requires an insured depository institution to give notice of any proposed branch closing to the appropriate Federal banking agency no later than 90 days prior to the date of the proposed branch closing. The required notice must include the following:

- Identification of the branch to be closed;
- The proposed date of closing;
- A detailed statement of the reasons for the decision to close the branch; and
- Statistical or other information in support of such reasons consistent with the institution's written policy for branch closings.

If an institution believes certain information included in the notice is confidential in nature, the institution should prepare such information separately and request confidential treatment. The agency will decide whether to treat such information confidentially under the Freedom of Information Act (5 U.S.C. 552).

If a notice provided to a state supervisory agency pursuant to state law contains the information outlined above, then the institution may provide a copy of that notice to the appropriate federal banking agency in satisfaction of section 42, provided that the notice is filed at least 90 days prior to the date of the branch closing.

Notice of Branch Closing to Customers

The law requires an insured depository institution that proposes to close a branch to provide notice of the proposed closing to the customers of the branch. A customer of a branch is a patron of an institution who has been identified with a particular branch by such institution through use, in good faith, of a reasonable method for allocating customers to specific branches. An institution that allocates customers to its branches based on where a customer opened his or her deposit or loan account will be presumed to have reasonably identified each customer of a branch. The agencies recognize that use of this means of allocation, and perhaps others, may result in certain branches not being assigned any customers, but believe that this result is permissible so long as the means of allocation is reasonable; if such a branch is closed, then notification to the appropriate agency and posting of a notice on the branch premises will suffice. Finally, an institution need not change its recordkeeping system in order to make

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[2] The agencies note that where, after a reduction in services, the resulting facility no longer qualifies as a branch, section 42 would apply. Thus, notices of branch closing would be required if an institution were to replace a traditional brick-and-mortar branch with an ATM.

[3] Section 42 would apply, however, if the institution were closed or did not reopen the branch following the incident. Although prior notice would not be possible in such a case, the institution should notify the customers of the branch and the appropriate federal banking agency in the manner specified by section 42 to the extent possible and as soon as possible after the decision to close the branch has been made.

a reasonable determination of who is a customer of a branch.

Under section 42, an institution must include a customer notice at least 90 days in advance of the proposed closing in at least one of the regular account statements mailed to customers, or in a separate mailing. If the branch closing occurs after the proposed date of closing, no additional notice is required to be mailed to customers (or provided to the appropriate federal banking agency) if the institution acted in good faith in projecting the date for closing and in subsequently delaying the closing.

The mailed customer notice should state the location of the branch to be closed and the proposed date of closing, and either identify where customers may obtain service following the closing date or provide a telephone number for customers to call to determine such alternative sites. If a notice of branch closing provided to customers pursuant to state law contains this information, then a separate notice need not be sent, provided that the notice is sent at least 90 days prior to the closing.

Under section 42, an institution also must post notice to branch customers in a conspicuous manner on the branch premises at least 30 days prior to the proposed closing. This notice should state the proposed date of closing and identify where customers may obtain service following that date or provide a telephone number for customers to call to determine such alternative sites. An institution may revise the notice to extend the projected date of closing without triggering a new 30-day notice period.

In some situations, an institution, in its discretion and to expedite transactions, may mail and post notices to customers of a proposed branch closing that is contingent upon an event. For example, in the case of a proposed merger or acquisition, an institution may notify customers of its intent to close a branch upon approval by the appropriate Federal banking agency of the proposed merger or acquisition.

Policies for Branch Closings

The law requires all insured depository institutions to adopt policies for branch closings. Each institution with one or more branches must adopt such a policy. If an institution currently has no branches, it must adopt a policy for branch closing before it establishes its first branch. The policy should be in writing and meet the size and needs of the institution.

Each branch closing policy adopted pursuant to section 42 should include factors for determining which branch to close and which customers to notify, and procedures for providing the notices required by the statute.

Compliance

As part of each Community Reinvestment Act (CRA) examination, the Federal banking agencies will examine for compliance with section 42 of FDICIA to determine whether the institution has adopted a branch closing policy and whether the institution provided the required notices when it closed a branch. If an institution fails to comply with section 42, the appropriate federal banking agency may make adverse findings in the CRA evaluation or take appropriate enforcement action.

By order of the Board of Governors of the Federal Reserve System.

Dated: September 9, 1993.

William W. Wiles,

Secretary of the Board.

Dated: September 8, 1993.

Eugene A. Ludwig,

Comptroller of the Currency.

Dated: August 10, 1993.

Hoyle L. Robinson,

Executive Secretary, Federal Deposit Insurance Corporation.

By the Office of Thrift Supervison.

Dated: August 11, 1993.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 93–22847 Filed 9–20–93; 8:45 am]

BILLING CODE 6210–01–P, 4810–33–P, 6714–01–P, and 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Merrimac River Crossing, Sauk and Columbia Counties, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for alternative Wisconsin River crossings at Merrimac in Sauk and Columbia Counties, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ricard Madrzak, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705, telephone (608) 264–5968.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation (DOT), will prepare an Environmental Impact Statement (EIS) on a proposal to improve State Trunk Highway 113 (STH 113) crossing the Wisconsin River at Merrimac between Sauk and Columbia Counties. A free ferry provides the link between Columbia and Sauk Counties for STH 113. The ferry operates 24 hours, daily, between mid-April and December 1. The Average Daily Traffic Count (ADT) in 1988 was 900.

The length of the ferry crossing is 2,500 feet. The purpose of the project is to determine alternatives for the river crossing including: (1) Continue ferry service with a replacement vessel; (2) construct a structure with discontinuation of free ferry service. The bridge alternative will include the possibility of drivers paying a fee for limited-hours of operation by a private. Variations of each alternative will be studied as well.

Improvements to the river crossing are being considered to provide safe, dependable, and efficient travel. Important issues identified include possible impacts on: Historic and archaeological properties, economic development, and land uses.

A coordination meeting for those Federal, State, and local agencies expressing an interest is scheduled for October 1993. Letters describing the proposed action and soliciting comments will be sent to agencies that may have an interest. Several Public Informational Meetings will be held throughout the study process, the first of which will be in the fall of 1993. A Public Hearing is planned for January 1995. Public Notice will be given for the time and place of the Public Hearing.

The draft EIS will be available for public and agency review and comment prior to the Public Hearing. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 9, 1993.

Jaclyn Lawton,

Environmental Program Engineer, Madison, Wisconsin.

[FR Doc. 93–22978 Filed 9–20–93; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel; Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held October 14 and 15, 1993.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:AS:4, 901 D Street, SW., Washington, DC 20024. Telephone No. (202) 401–4128 (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on October 14 and 15, 1993 in room 240 beginning at 9:30 a.m., Aerospace Center Building, 901 D Street, SW., Washington, DC 20024.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c) (3), (4), (6), and (7) of title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Margaret Milner Richardson,

Commissioner.

Jacquelyn B. Burgess,

Certified Copy.

[FR Doc. 93–22987 Filed 9–20–93; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Development Programs Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will describe and discuss specific research and development projects and requests suggestions for agenda topics.

DATES AND TIMES: The National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on October 12, 1993, beginning at 1:30 p.m. and ending at approximately 5 p.m. The deadline for interested parties to suggest agenda topics is 4:15 p.m. on September 27, 1993. Questions may be submitted in advance regarding the Agency's research and development projects. They must be submitted in writing by October 6, 1993 to the address given below. If sufficient time is available, questions received after the October 6 date will be answered at the meeting in the discussion period. The individual, group or company asking a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by October 6 will be available at the meeting and will be mailed to requesters after the meeting.

ADDRESSES: The meeting will be held at the Ramada Inn, near Detroit Metro, 8270 Wickham Rd., Romulus, MI 48174. Suggestions for specific R&D topics as described below and questions for the October 12, 1993 meeting relating to the Agency's research and development programs should be submitted to George L. Parker, Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, room 6206, 400 Seventh St. SW., Washington, DC 20590. The fax number is 202–366–5930.

SUPPLEMENTARY INFORMATION: NHTSA intends to provide detailed presentations about its research and development programs in a series of quarterly public meetings. The purpose is to make available more complete and timely information regarding the Agency's research and development programs. At the first meeting, on April 6, 1993, NHTSA officials from the Office of Research and Development provided a summary overview of research and development projects in the areas of crashworthiness and crash avoidance. At the second meeting, held on June 23, 1993, NHTSA staff gave detailed presentations about the agency's frontal and rollover crash protection research projects, including the topics of structural integrity, door latch integrity, and glass-plastic glazing. The next meeting in this series will be held on October 12, 1993.

NHTSA requests suggestions from interested parties on the specific agenda topics. NHTSA will base its decisions about the agenda, in part, on the suggestions it receives by September 27, 1993 and the suggestions already received in response to the previous request of May 17, 1993 (93 FR 28909). Before the meeting, it will publish a notice listing the research and development topics to be discussed. NHTSA asks that the suggestions be taken from the list below and that they be limited to five, in priority order, so that the presentations at the October 12 R&D meeting can be most useful to the audience. The list does not include the topics discussed at the previous meeting on June 23, 1993.

Specific Crashworthiness R&D topics are:

- Dynamic side impact—LTVs
- Hybrid III chest deflection
- Improved safety belt design
- Upgrade fuel system integrity
- Highway traffic injury studies
- Head and neck injury research
- Thorax injury research
- Human injury simulation and analysis
- Crash test dummy component development
- Vehicle aggressivity and fleet compatibility
- Upgrade side crash protection
- Upgrade seat and occupant protection system
- Child safety research
- Electric vehicle safety

Specific Crash Avoidance R&D topics are:

- Vehicle motion environment
- Crash causal analysis
- Heavy truck antilock brake systems
- Long combination vehicle safety
- Drowsy driver monitoring
- Driver workload assessment

Specific topics from the National Center for Statistics and Analysis are:

- New data elements for FARS and NASS
- Special Crash investigations program regarding air bag performance
- Pedestrian special NASS data collection project
- Critical Outcome Data Evaluation System (CODES)—Linkage of databases on police accident

reporting and medical outcomes.

This meeting is followed on the next day by the regular quarterly NHTSA Technical Industry Meeting, which was announced on August 19, 1993 (58 FR 44206).

Questions regarding research projects that have been submitted in writing in advance will be answered as time permits. A transcript of the meeting, copies of materials handed out at the meeting, and copies of the suggestions offered by commenters will be available for public inspection in the NHTSA Technical Reference Section, room 5108, 400 Seventh Street, SW., Washington, DC 20590. Copies of the transcript will then be available at 10 cents a page, upon request to NHTSA Technical Reference Section. The Technical Reference Section is open to the public from 9:30 a.m. to 4 p.m.

NHTSA will provide technical aids to participants as necessary, during the NHTSA Industry Research and Development Meeting. Thus any person desiring assistance of "auxiliary aids" (e.g. sign-language interpreter, telecommunication devices for deaf persons (TTDs), readers, taped texts, braille materials, or large print materials and/or a magnifying device), please contact Barbara Coleman on 202/366–1537 by COB October 4, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Strombotne, Special Assistant for Technology Transfer Policy and Programs, Office of Research and Development, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–4730. Fax number: 202–366–5930.

Issued: September 15, 1993.

George L. Parker,

Associate Administrator for Research and Development.

[FR Doc. 93–22985 Filed 9–20–93; 8:45 am]

BILLING CODE 4910–59–M

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee (TPSC); Generalized System of Preferences (GSP); Notice of Special Expedited Review of Cyprus' Eligibility as a Beneficiary Developing Country Under the GSP and Deadline for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Initiation of expedited GSP review and solicitation of public comment with respect to request to suspend Cyprus from the list of beneficiary developing countries.

SUMMARY: The purpose of this notice is to announce the initiation of an expedited review to consider the suspension of Cyprus from the list of beneficiary developing countries for purposes of the GSP.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395–6971. Public versions of all documents relating to this review will be available for review by appointment with the USTR public reading room shortly following the filing deadline. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395–6186.

SUPPLEMENTARY INFORMATION: On April 30, 1993, Cyprus was placed on a watch list under the provisions of "Special 301" (19 U.S.C. 2411–2420). On June 1, the International Intellectual Property Alliance ("IIPA") filed a petition with the GSP Subcommittee of the TPSC requesting suspension of Cyprus' status as a beneficiary developing country for purposes of the GSP. The petition alleges that because Cyprus delayed the implementation of its new copyright law and suspended the penalties under its current copyright law, it does not provide adequate and effective protection of intellectual property rights and therefore is not in compliance with the eligibility criterion set forth in section 502(c)(5) of the Trade Act of 1974 (19 U.S.C. 2462(c)(5)). The IIPA's petition requests that the consideration of Cyprus' eligibility for GSP be timed to coincide with the review of Cyprus under "Special 301". In light of the developments set forth in the IIPA's petition, the TPSC has decided to accept the petition and to consider it on an expedited basis. Accordingly, this notice initiates an expedited review to consider the IIPA's request to suspend Cyprus' status as a beneficiary developing country for purposes of the GSP.

The GSP Subcommittee of the TPSC invites submissions in support of or in opposition to the matter that is the subject of this notice. The Subcommittee also invites submissions on the possible effects of suspending Cyprus' status as a beneficiary developing country for purposes of the GSP. All such submissions should conform to 15 CFR 2007.0 et. seq. Interested parties must submit an original and fourteen (14) copies of written briefs or statements, in English, in connection with this review. This will be the only opportunity to submit written comments. No public hearings are being held on this matter.

All submissions should be submitted to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee, 600 17th Street, NW., room 517, Washington, DC 20506. Comments must be received no later than 5 p.m on October 13, 1993. Information submitted in connection with the expedited review will be subject to public inspection by appointment with the staff of the USTR public reading room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. If the document contains business confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and fourteen (14) copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the document. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of every page (either "public version" or "non-confidential").

All communications with regard to this review should be addressed to: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395–6971. Questions may be directed to any member of the staff of the GSP Information Center.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 93–22988 Filed 9–20–93; 8:45 am]

BILLING CODE 3901–01–M

Thailand: Revocation of Priority Foreign Country Designation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of revocation of "priority foreign country" identification pursuant to section 182(c)(1)(A) of the Trade Act of 1974, as amended (Trade Act).

SUMMARY: On April 28, 1993, the USTR identified Thailand as a "priority foreign country" pursuant to section 182(a) of the Trade Act (19 U.S.C. 2242(a)). Since the announcement of that action, the Royal Thai Government has strengthened enforcement of

copyright and trademark rights and committed to bring Thai intellectual property laws up to world standards. In view of the actions that the Thai Government has taken and in the expectation of further progress on these issues, the USTR has decided to revoke the identification of Thailand as a "priority foreign country" under section 182(c)(1)(A) of the Trade Act (19 U.S.C. 2242(c)(1)(A)). The USTR has consequently placed Thailand on the "special 301 priority watch list" and will continue to monitor Thai actions under section 306 of the Trade Act.

EFFECTIVE DATE: Revocation of Thailand's identification as a "priority foreign country" is effective on September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Godec, Director for Southeast Asian Affairs (202) 395–6813, Gordana Earp, Deputy Assistant USTR for Intellectual Property (202) 395–6814, or Thomas Robertson, Assistant General Counsel (202) 395–6800, Office of the U.S. Trade Representative.

SUPPLEMENTARY INFORMATION: Thailand has been the subject of two section 301 investigations concerning the Thai Government's failure to enforce its copyright law and the denial of adequate and effective patent protection. The USTR initiated these investigations pursuant to petitions filed by the International Intellectual Property Alliance and the Pharmaceutical Manufacturer's Association respectively.

On December 21, 1991, the USTR determined that the Thai Government's failure to enforce its copyright law was unreasonable and a burden or restriction on U.S. commerce. The USTR also determined that as the Thai Government had taken initial steps to improve enforcement procedures and combat piracy through raids and initiation of court actions the appropriate action pursuant to section 301 was to terminate the investigation and monitor the situation under section 306 of the Trade Act.

On March 13, 1992, the USTR determined that although the Thai Government had enacted an improved patent law, the continuing deficiencies in that law and failure to provide protection for certain pharmaceutical products (pipeline protection) constituted a denial of adequate and effective patent protection. The Thai patent law and practices were found to be unreasonable and a burden or restriction on U.S. commerce. Implementation of trade action was delayed in this case and the USTR monitored actions to implement the patent law under section 306.

In early 1993, the Thai government began taking specific actions to improve the level of enforcement. These efforts continued after the USTR again identified Thailand as a "priority foreign country" on April 28, 1993. The Thai government also acted to improve regulations implementing the patent law and provided a form of "pipeline" protection for pharmaceuticals through a regulatory review process. In addition, the Thai government has made significant progress in drafting a new copyright law. During a series of consultations, the Thai Government has committed to continued enforcement efforts and to submit improved intellectual property laws to the Thai Parliament.

As a result of the Thai Government's actions and commitments, the USTR decided to revoke Thailand's identification as a "priority foreign country" and to place that country on the "special 301 priority watch list." The USTR will continue to monitor progress on the enforcement and patent issues under section 306 and work with the Thai government to improve protection and enforcement of intellectual property rights in Thailand.

Irving A. Williamson,

Deputy General Counsel, Chairman, Section 301 Committee.

[FR Doc. 93–23083 Filed 9–20–93; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register

Vol. 58, No. 181

Tuesday, September 21, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 20, 27, October 4, and 11, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 20

Monday, September 20

10:00 a.m.
Briefing on Results of 2.206 Workshop (Public Meeting)
(Contact: Chip Cameron, 301–504–1642)
1:30 p.m.
Briefing on Status of AP600 and SBWR Thermal/Hydraulic Testing (Public Meeting)
(Contact: Brian Sheron, 301–492–3500)
3:00 p.m.
Briefing on NRC Reactor Inspection Program Assessment and Planned Improvements (Public Meeting)
(Contact: Anthony Gody, Sr., 301–492–1257)

Tuesday, September 21

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 27—Tentative

Thursday, September 30

2:00 p.m.
Briefing on Requirements for Storage and Transportation Casks (Public Meeting)
(Contact: Guy Arlotto, 301–504–3326)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 4—Tentative

There are no meetings scheduled for the Week of October 4.

Week of October 11—Tentative

There are no meetings scheduled for the Week of October 11.

ADDITIONAL INFORMATION:

By a vote of 4–0 on September 14, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Briefing by Executive Branch" (CLOSED—Ex. 1) be held on September 15, and on less than one week's notice to the public.

By a vote of 4–0 on September 14, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Briefing by Executive Branch" (CLOSED—Ex. 1) be held on September 17, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION; William Hill, (301) 504–1661.

Dated: September 16, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–23250 Filed 9–17–93; 2:58 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 20, 1993.

Closed meetings will be held on Tuesday, September 21, 1993, at 10:00 a.m., Wednesday, September 22, 1993, following the 10:00 a.m. open meeting, and on Thursday, September 23, 1993, at 10:00 a.m. An open meeting will be held on Wednesday, September 22, 1993, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 21, 1993, at 10:00 a.m., will be:

Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Regulatory matter regarding financial institution.
Consideration of *amici* participation.
Opinions.

The subject matter of the open meeting scheduled for Wednesday, September 22, 1993, at 10:00 a.m., will be:

1. The Commission will hear oral argument on an appeal by Kingsley, Jennison, McNulty & Morse, Inc. a registered investment adviser, and Richard Kingsley, one of its principals, from the decision of an administrative law judge. For further information, please contact R. Moshe Simon at (202) 272–7404.

2. Consideration of whether to adopt rules 53, 54 and 57, under the Public Utility Holding Company Act of 1935. Rule 53 defines a partial safe harbor for registered holding company financing of exempt wholesale generator acquisitions, and rule 54 creates a similar safe harbor for other transactions involving companies in the registered system. Rule 57 prescribes notification (Form U–57) and reporting requirements (Form U–33–S) for foreign utility companies and their associate public-utility companies. The Commission will also consider amendments to Forms U5S and U–3A–2. For further information, please contact Karrie McMillan at (202) 504–3387.

3. Consideration of whether to publish for comment proposed amendments to rule 87 to require Commission approval for the sale of goods and services and construction rendered, directly or indirectly, both to exempt wholesale generators and foreign utility companies from, and by such entities to, other companies in the registered holding company system. For further information, please contact Karrie McMillan at (202) 504–3387.

The subject matter of the closed meeting scheduled for Wednesday, September 22, 1993, following the 10:00 a.m. open meeting, will be:

Post oral argument discussion.

The subject matter of the closed meeting scheduled for Thursday, September 23, 1993, at 10:00 a.m., will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if

any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum at (202) 272–2300.

Dated: September 14, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–23251 Filed 9–17–93; 2:58 pm]

BILLING CODE 6210–01–M

federal register

Tuesday
September 21. 1993

Part II

Federal Trade Commission

16 CFR Part 435
Mail or Telephone Order Merchandise; Final Trade Regulation Rule

FEDERAL TRADE COMMISSION

16 CFR Part 435

RIN 3084–AA19

Trade Regulation Rule; Mail or Telephone Order Merchandise

AGENCY: Federal Trade Commission.

ACTION: Final trade regulation rule.

SUMMARY: In order to correct unfair or deceptive acts or practices in the sale of telephone order merchandise, the Federal Trade Commission amends its Trade Regulation Rule "Mail Order Merchandise" (the "Mail Order Rule" or the "MOR") to include merchandise ordered by telephone; amends the MOR's definition of a "properly completed order" in credit sales of mail or telephone order merchandise to refer to the time sufficient information is received by the merchant from the consumer to process the order; and, in situations in which no shipment time is expressly represented, increases from 30 to 50 days the shipment and delay notification deadlines for orders accompanied by applications for credit. The Commission has deleted the MOR provisions creating rebuttable presumptions of non-compliance when sellers do not provide required notices or options in writing by first class mail, and do not provide a written, postage prepaid means for buyers to notify the seller regarding the decision to cancel. The title of the Trade Regulation Rule ("TRR") is now changed to "Mail or Telephone Order Merchandise," and the terms "telephone" and "mail or telephone sales" are defined.

The amended MOR requires merchants to possess a reasonable basis for any express shipment representation in soliciting the sale of telephone order merchandise and, if no time is represented, to have a reasonable basis for the implicit representation that shipment will be made within 30 days of the receipt of the consumer's properly completed order. In situations in which the merchant is unable to ship telephone order merchandise in the time expressly or implicitly represented, the amended MOR requires the merchant to notify consumers about the delay and to offer them the option of agreeing to the delay or obtaining a prompt refund. In situations in which the merchant fails to obtain the consumer's informed consent to delay or the consumer exercises the option of cancelling the order and obtaining a prompt refund, the amended MOR requires the merchant to deem the order cancelled and to make a prompt refund.

EFFECTIVE DATE: March 1, 1994.

ADDRESSES: Requests for copies of the TRR and the SBP should be sent to Public Reference Branch, room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joel N. Brewer, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–2967.

SUPPLEMENTARY INFORMATION: This notice contains the Statement of Basis and Purpose ("SBP") for the TRR, the Commission's determination that a Regulatory Analysis is unnecessary and the text of the TRR. Pursuant to Commission Rule 1.14(c), 16 CFR 1.14(c), this TRR shall be considered promulgated at 3 p.m. Eastern Standard Time ("EST") on the fourth day after this notice is published. In the event such day falls on a Saturday, Sunday or national holiday, the TRR shall be deemed promulgated at 3 p.m. EST on the following business day.

Trade Regulation Rule Concerning Mail or Telephone Order Merchandise Statement of Basis and Purpose and Regulatory Analysis

I. Introduction

A. Overview of the Rule

Since the MOR [1] was promulgated in 1975, buying by telephone has grown enormously. Although the number of telephone order transactions annually is still fewer than the number of mail order sales, the average telephone order sale is larger than the average mail order sale. Of the approximately $48 billion consumers spend each year for mail and telephone order merchandise, roughly half the value of these sales consists of merchandise ordered by telephone. Much of the business conducted by mail and telephone is conducted without difficulty. However, the record of this rulemaking establishes that many consumers encounter shipment delays, and that these delays are often lengthy. In some instances, the delays occur because the merchants lacked a reasonable basis for their express or implied shipment claims. In other instances, merchants who unexpectedly cannot ship on time fail to inform consumers adequately about the delays or fail to obtain their consent to the delays or to refund their money. In some cases, the merchants fail either to ship the telephone order merchandise or to make any refunds.

The record demonstrates that, in a significant number of transactions involving delayed shipment, merchants selling merchandise by telephone are misrepresenting, at the time of making shipment representations, that they possess and rely upon a reasonable basis for the representations. The record also demonstrates that, in a significant number of transactions, merchants are unilaterally altering a material term of the sales contract by changing the promised shipment time without the knowledge or consent of consumers. Finally, the record demonstrates that, in a significant number of transactions, although the consumers either did not agree to delayed shipment or they exercised their option to cancel the orders and obtain prompt refunds, merchants have failed to deem the orders cancelled and to make prompt refunds. In the proceedings relating to the adoption of the MOR, the Commission determined that such practices are unfair or deceptive within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1), in the context of mail order transactions, and it has concluded in this proceeding that these practices also harm consumers when committed by telephone order merchants. Further, the Commission finds that these practices have resulted in substantial consumer injury. To correct these unfair or deceptive acts or practices in the sale of telephone order merchandise, the Commission finds it necessary to amend the MOR.

The substantiation and notice requirements of the amended Rule will enable consumers purchasing merchandise by telephone to make informed purchases and cancellation decisions based on accurate and timely shipment information. By requiring merchants to substantiate their shipment representations, the amended Rule should discourage merchants from misrepresenting shipment times and implicitly misrepresenting that these shipment representations are substantiated. By measuring the time in which merchants must ship mail or telephone order merchandise from the time they receive sufficient information from consumers to process credit sales (rather than when they actually charge the accounts), the definition of a "properly completed order" in the amended Rule also will encourage merchants to provide appropriate and timely option notices to consumers

[1] The terms "Mail Order Rule" or "MOR" refer to the Trade Regulation Rule promulgated on October 22, 1975. The terms "amended Rule" and "amended MOR" mean the Rule issued today. Additionally, unless otherwise made clear by the context, any reference to the "TRR" is to the amended MOR issued today.

regardless of how they pay for the merchandise.[2]

The Commission has further amended the MOR to permit merchants who do not make express shipment claims to ship or perform the other actions required by the TRR within 50 rather than 30 days where orders are accompanied by consumer applications for credit to pay for their orders. Finally, the TRR defines "telephone" to include any direct or indirect use of the telephone to order merchandise, whether the telephone is activated by, or uses the language of, persons, machines, or both.

B. Historical Background

On September 28, 1971, the Commission initiated proceedings to adopt a trade regulation rule[3] under section 6(g) of the FTC Act, 15 U.S.C. 46(g). On January 4, 1975, after these proceedings were substantially completed, the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act ("Magnuson-Moss Act") became effective.[4] Pursuant to section 202(c)(1) of the Magnuson-Moss Act, 15 U.S.C. 57a note, the Commission promulgated the MOR on October 22, 1975, in the same manner and with the same validity as if the statute had not been enacted.[5] It became effective on February 2, 1976, and has since then remained in full force and effect.

The instant rulemaking proceeding was conducted in accordance with section 18 of the FTC Act, 15 U.S.C. 57a. On October 27, 1988, the Commission published an Advance Notice of Proposed Rulemaking ("ANPR") to solicit comment on whether to initiate a proceeding to amend the MOR to include telephone order merchandise—or merchandise ordered by any other means—and to change the definition of a "properly completed order" for credit sales.[6] To obtain information about whether a preliminary regulatory analysis pursuant to section 22 of the FTC Act, 15 U.S.C. 57b–3, would be necessary, the Commission solicited comment on whether any of the Commission's proposed amendments would have an annual effect on the economy of $100,000,000 or more, would cause a substantial change in the cost of goods or services, or would have a substantial impact on the persons regulated.[7]

Thirty-four comments were filed. Three were from direct marketing or retail merchant trade associations,[8] five from business-to-consumer and business-to-business direct marketers,[9] two from advertising agencies and advertising media.[10] seven from state consumer protection agencies,[11] one from a charity,[12] one from a consumer association,[13] and 15 from individual consumers.[14] Generally, the comments supported extending the MOR to telephone order merchandise. The comments addressing the regulatory analysis questions suggested that any effects of the proposed amendments would be minimal.

On November 28, 1989, the Commission published a Notice of Proposed Rulemaking ("NPR").[15] In the NPR, the comments received in response to the ANPR were summarized. Based on those comments, the Commission determined that a regulatory analysis was unnecessary, and certified there would be no effect under the Regulatory Flexibility Act, 5 U.S.C. 605(b).[16] The Commission also announced that the issues involved were reasonably focused and straightforward, and therefore, pursuant to Commission Rule 1.20, 16 CFR 1.20, the Commission would employ a modified version of the rulemaking procedures provided for in the Rules, 16 CFR 1.13, consisting of a single NPR and utilizing the "no designated issues" format.[17] With the commencement of the rulemaking, Henry B. Cabell was designated as the Presiding Officer ("PO") in the rulemaking.[18]

The NPR announced that although the Commission intended to consider whether the MOR should be amended to include telephone order merchandise, it had determined not to consider, as proposed in the ANPR, extending the MOR to merchandise ordered by "other means," which would reach ordering technologies yet unknown. However, the Commission determined to solicit comment on whether to adopt a definition of telephone order merchandise that would include "any direct or indirect use of the telephone to order merchandise, regardless of whether the language of the sale is that of human beings, machines, or both."[19] This definition would reach orders placed by facsimile machines or computers with telephone modems.

In the NPR, the Commission also rejected the suggestion that its proposal to extend the MOR to telephone order merchandise should apply only to consumer transactions.[20] This suggestion was based on the incorrect assertion that the MOR does not cover business-to-business mail order transactions. See Part VII, A of this SBP. The Commission also announced that it would consider amending the definition of a "properly completed order" for credit orders to mean the time a merchant receives sufficient information to charge a buyer's account. Further, the Commission solicited information about whether to afford merchants greater flexibility in shipping credit orders accompanied by an application for credit.[21] Finally, the Commission requested comment on whether it should amend the rebuttable presumptions of non-compliance when first class mail was not used to provide delay and option notices.[22]

The NPR invited written comment by January 29, 1990. In response, 33 comments were received. Comments were received from four mail or telephone order merchants,[23] two contractors to mail and/or telephone order merchants,[24] two bank credit card

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[2] In this regard, the Commission has decided to delete §§ 435.1(b)(3)(i) and (ii), which created rebuttable presumptions of non-compliance where option notices were not provided in writing by first class mail, and where a written, postage prepaid means to reply to such notices was not provided.

[3] 36 FR 19092.

[4] Pub. L. 93–637, codified at 15 U.S.C. 57a et seq. and 15 U.S.C. 2301 et seq.

[5] 40 FR 31582; 16 CFR part 435.

[6] R011006–1, A–1, pp. 43446–49. The rulemaking record in this proceeding has been designated R011006 in the Commission's Public Reference Branch. A copy of the ANPR originally appearing in 53 FR 43446 is designated document A–1, and is filed in the first volume, labeled R011006–1. There are 20 categories "A—Q," for the materials in the rulemaking record. These are contained in volumes R011006–1 through R011006–4. Section 18(b)(2)(A) of the FTC Act, 15 U.S.C. 57a(b)(2)(A), and the Commission's Rules of Practice, 16 CFR 1.10, require publication of an ANPR.

[7] R011006–1, A–1, p. 43448. Sections 22(a) and (b)(1) of the FTC Act, 15 U.S.C. 57b–3(a), (b)(1), and the Commission's Rules of Practice, 16 CFR 1.11(b), require the Commission to determine whether a preliminary regulatory analysis is needed.

[8] R011006–B–1, B–1, B–25, and B–26.

[9] R011006–B–1, B–2 through B–5, B–27.

[10] R011006–B–1, B–6 and B–7.

[11] R011006–B–1, B–8, B–9, B–23 through B–32.

[12] R011006–B–1, B–10.

[13] R011006–B–1, B–24.

[14] R011006–B–1, B–11 through B–23, B–33, and B–34.

[15] R011006–1, A–2, pp. 49060–64. Section 18(b)(1)(A) of the FTC Act, 15 U.S.C. 57a(b)(1)(A), and the Commission's Rules of Practice, 16 CFR 1.11(a), require an NPR.

[16] R011006–1, A–2, pp. 49066–67.

[17] R011006–1, A–2, pp. 49069–69.

[18] R011006–1, A–3.

[19] R011006–1, A–2, p. 49062.

[20] Id. at 49063.

[21] Id.

[22] Id.

[23] Markson Science, Inc., R011006–2, D–1; Texas Instruments Inc., R011006–2, D–2; J.C. Penney Co., Inc. (Catalogue Division), R011006–2, D–3; and Barry J. Cutler, Esq., on behalf of unnamed mail order sellers, R011006–2, D–4.

[24] Leo Burnett Company, Inc., R011006–2, E–1 ("Burnett"); and Dehart and Derr Associates, Inc., R011006–2, E–2.

companies,[25] three trade associations of mail and/or telephone order merchants,[26] one consumer,[27] five consumer and public interest organizations,[28] fifteen state and local governments,[29] and one from a non-governmental third-party dispute mediator."[30] The Commission's staff submitted for the record reprints of published materials, copies of unpublished FTC consent decrees and reports of surveys.[31]

The NPR called for notifications of interest in questioning witnesses to be filed by January 12, 1990. In response, notifications were filed by MOAA, AARP, and by DMA. Thereafter, MOAA failed to provide the PO with sufficient information to enable him to compare the similarity or dissimilarity of its interests with the other parties that filed. Thus, the PO designated only AARP and DMA as interested persons.[32]

On March 28, 1990, Margaret Kuman, an expert offered by DMA, and Drs. Donald Cox and Thomas Maronick, experts offered by Commission staff, testified. On April 19, 1990, Eugene Kordahl, an expert also offered by Commission staff, testified. All witnesses were afforded the opportunity to make an opening presentation followed by cross-examination conducted by Commission staff or DMA. After the hearings, there was a rebuttal comment period, which closed on June 15, 1990. Drs. Maronick and Cox,[33] Mr. Kordahl,[34] Commission staff[35] and AARP[36] submitted rebuttal comments.

The evidentiary record of the rulemaking consists of all comments and other written materials placed in the rulemaking record by the PO, the hearing transcripts and exhibits, and the rebuttal comments. The Commission staff summarized and analyzed the record evidence and made recommendations to the Commission to amend the MOR. This document, known as the "Staff Report," was placed on the public record on July 18, 1991.[37] On August 30, 1991, the PO placed his report (the "PO's Report") on the public record.[38]

In general, the Staff and PO Reports contain similar findings and recommendations. Both Reports generally concluded that the evidence shows, as in the context of direct marketing by mail, that: (1) There are widespread merchant failures to ship telephone order merchandise in the time represented (or, if no time was represented, within a reasonable time); (2) these failures in the shipment of telephone order merchandise are frequently attributable to merchants' failing to have a reasonable basis for their shipment representations; and (3) merchants fail to obtain the consent of consumers to delays in the shipment of their telephone orders or to make refunds for unshipped or cancelled telephone order merchandise. Based on these findings, both Reports recommended extending the substantiation, option notice and refund provisions of the MOR to telephone order merchandise.

Both Reports also found that, with respect to merchandise purchased on credit, merchants commonly do not charge consumers' accounts until the time of shipment. (Under the definition of a "properly completed order" in the MOR, the operation of the Rule does not begin until the merchant charges the account.) To ensure that the Commission's amendments to the MOR reach all unfair or deceptive acts or practices identified in the rulemaking record, the Staff and PO's Reports recommended changing the definition of a "properly completed order" for credit sales to refer to the time the merchant receives the information needed from the consumer to charge the consumer's account, instead of the time the card is actually charged.[39] Both recommended that, when the merchant does not make an express shipment representation in soliciting consumers' orders, and the orders are accompanied by an application for credit to pay wholly or partially for the order, the merchant should have 50 days rather than 30 to ship or send option notices.

Both Reports recommended defining the term "telephone" to refer to "any direct or indirect use of the telephone to order merchandise, regardless of whether the telephone is activated by, or the language used is that of human beings, machines, or both." Neither recommended amending the MOR's rebuttable presumptions of non-compliance when the merchant fails to provide delay option notices by first class mail. Finally, the PO recommended defining "mail or telephone order sales." Although a new addition, the definition flowed from the evidence in the rulemaking record, and no one objected to it during the post-record comments. Staff subsequently concurred with the PO's recommendation that it be included in the TRR.[40]

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[25] Joint comment by Master Card International and Visa U.S.A., Inc., R011006–2, EE–1.

[26] DMA, R011006–2, F–1; the Mail Order Association of America, R011006–2, F–2 ("MOAA"); and the National Retail Merchants Association ("NRMA"), R011006–2, F–3.

[27] Andrew Levitt, R011006–2, G–1.

[28] New Opportunities for Waterbury, Inc., Human Service Center, R011006–2, GG–1; National Association of Consumer Agency Administrators, R011006–2, GG–2 ("NACAA"); National Consumers League, R011006–2, GG–3 ("NCL"); the American Association of Retired Persons, R011006–2, GG–4 ("AARP"); and the National Association of Attorneys General, R011006–2, GG–5 ("NAAG").

[29] Lacy H. Thornburg, Attorney General, State of North Carolina (by Darlene Graham, Assistant Attorney General), R011006–2, H–1; Michael A. Kelley, Director, California Department of Consumer Affairs, R011006–2, H–2 ("CaDCA"); Mary W. Heslin, Commissioner of Consumer Protection (Connecticut), R011006–2, H–3; Herschel T. Elkins, Senior Assistant Attorney General, Consumer Law Section (California Department of Justice), R011006–2, H–4; William E. McVey, Assistant Attorney General, Consumer Protection Division (Massachusetts Attorney General), R011006–2, H–5; Richard Cleland, Assistant Attorney General, Consumer Protection Division (Iowa Department of Justice), R011006–2, H–6; Adrian Spratt, Assistant Attorney General (New York), R011006–2, H–7; Barry W. Reid, Administrator, Office of Consumer Affairs (Georgia), R011006–2, H–8; Susan Grant, Director, Consumer Protection Division, Northwestern (Massachusetts) District Attorney's Office, R011006–2, H–9 ("NWMaDA"); Jane Wheeler, Assistant Attorney General, Consumer Protection Unit (Oklahoma), R011006–2, H–10; Tom F. Engelhardt, Director, Consumer Fraud and Antitrust Section, Office of the (North Dakota) Attorney General, R011006–2, H–11; Richard M. Kessel, Executive Director, New York State Consumer Protection Board, R011006–2, H–12; Donald J. Hanaway, Attorney General (Wisconsin) R011006–2, H–13; Rita Sena, Assistant Attorney General, (New Mexico), R011006–2, H–14; and Arthur R. Weiss, Deputy Attorney General, Chief, Consumer Protection Division (Kansas), R011006–2, H–15.

[30] Rhonda Klein Singer, Vice President and General Counsel, The Better Business Bureau of Metropolitan New York, Inc., R011006–2, I–1.

[31] R011006–B–1, B–35 to B–82.

[32] R011006–1, A–11. AARP was advised of its designation by telephone. During this conversation, AARP advised the PO that it would not participate in the hearing.

[33] R011006–2, M–1 and M–2.

[34] R011006–2, M–3.

[35] R011006–2, M–4.

[36] R011006–3, M–5.

[37] R011006–3, N–1.

[38] R011006–3, O–1.

[39] The PO suggested revising staff's proposed definition of a "properly completed order" slightly. Staff proposed including in the definition the words "authorization from the buyer to charge the buyer's account." The PO suggested "authorization from the buyer to charge an existing charge account of the buyer" to distinguish situations where consumers are applying for credit. PO Report, R011006–3, O–1, p. 54. Staff subsequently concurred with this revision. Final Staff Recommendations, R011006, Q–1, p. 1, n.2.

[40] R011006, Q–1, pp. 22–23. The PO also recommended the following technical changes: (1) placing the definition of "telephone" in the definitions portion of the amended Rule, rather than adding a new "note 8," as suggested by staff; (2) moving notes 1–6 to a new "limited applicability" portion (to be numbered § 435.3); (3) clarifying the "effective date of the rule" language (to be numbered § 435.4); (4) changing the pronouns "he" and "his" in the Rule to gender neutral language; and (5) changing the authority recitation at the end of the amended Rule to refer to both section 18(a) of the FTC Act (as amended) and the Administrative Procedure Act. During the post-record comment period, no one objected to these proposed changes, and staff included them in its final recommendations to the Commission. Id. at 21–22. Additionally, the Commission is today

Pursuant to the Commission's Rule of Practice, 16 CFR 1.13(h), on September 10, 1991, the PO invited post-record comments on the Staff and PO's Reports, and requests for the opportunity to make an oral presentation to the Commission.[41] The period for submitting post-record comments and requesting the opportunity to make oral presentations closed on October 25, 1991. Five post-record public comments on the Staff and the PO's Reports were timely received.[42] DMA and MOAA both requested the opportunity to make oral presentations to the Commission.

On October 6, 1992, the Commission placed the staff's summary of the post-record comments and its final recommendations on the rulemaking record,[43] and scheduled oral presentations.[44] On November 3, 1992, the Commission heard oral presentations by DMA and MOAA. On November 18, 1992, after considering the rulemaking record as a whole, the Commission tentatively adopted the TRR and directed staff to draft this SBP. On March 1, 1993, the Commission tentatively voted to delete the MOR's rebuttable presumptions favoring first class mail as the means for notifying consumers about delays an their cancellation rights, and business reply mail or a postage prepaid means for consumers to cancel their orders. The Commission directed staff to include these amendments in the SBP.

C. Industry Profile

The telemarketing industry has grown enormously since the adoption of the MOR in 1975, but estimates as to its size vary. One reason for the variance is that there is no settled definition of telemarketing. Accordingly, the Commission can only estimate the size of the telemarketing industry.

Based on the Annual Guide to Telemarketing, which periodically surveys the telemarketing industry,[45] Mr. Kordahl testified about trends in the telemarketing since 1985, as follows:

[In billions of dollars]

Year	1985	1989
Total Sales (Goods and Services)	$91	$196.
Business-to-business (Goods and Services)	73	161.
Business-to-consumer (Goods and Services)	18	35.

Mr. Kordahl also testified that, while in 1985 there were 80,000 in-house telemarketing operations, by 1989 there were 405,000 such operations. Further, while 4% of all businesses engaged in telemarketing in 1985, 10% engaged in telemarketing in 1989.[46] Based on the past growth of telemarketing, Mr. Kordahl predicted that, by 1995, 42% of all American businesses would be using telemarketing and that telephone sales of goods and services to businesses and consumers would reach $562 billion.[47]

The Commission believes that the growth of the industry is related to at least the following:

(1) Technological innovations, particularly the introduction in 1960 of a bulk discounted telephone call service called Wide Area Telephone Service ("WATS"), which opened the way for high-volume outbound (originated by the merchant) low cost long-distance calling, and the introduction in 1967 of "800" inbound (originated by the consumer) WATS service.[48]

(2) The increased acceptance of the telephone as a means of shopping. In this regard, Ms. Kuman, relying both on her telemarketing experience and a survey of consumer non-store shopping attitudes and behavior commissioned by American Telephone and Telegraph Communications ("AT&T"),[49] explained that consumers, particularly those who tend to value their time, find ordering by telephone convenient.[50]

(3) The willingness of consumers to use credit cards in telephone sales. For example, Eugene Kordahl testified:

> The growth of telemarketing is facilitated by the level of credit card penetration in any given culture, for without an easy method of payment, telemarketing to the consumer market is difficult. The U.S. leads all countries in credit card penetration, with 85% of U.S. households having some capability to order merchandise by telephone and pay for it by credit card.[51]

Citing the AT&T survey, Ms. Kuman noted that, although both users and non-users of 800 numbers reported they possessed credit cards, non-users were more cautions than users about ordering merchandise sight-unseen and paying for it by credit card.[52] Among users, 68% reported that the most frequent method of payment for 800 number orders was by credit card.[53]

The various surveys in the rulemaking record indicate that consumers who order by telephone tend to pay by credit card; consumers who order merchandise by mail tend to pay by check, money order, or cash.[54] For example, the AT&T survey reported that 81% of consumers who order by mail report that they most frequently pay by check.[55] A Market Facts survey, commissioned by FTC staff and conducted in 1985, reported similar results: 67.1% of mail orders were paid by check, and 5.6% were paid by cash; while 68.1% of telephone orders were paid by credit card. Similarly, the Opinion Research Corporation ("ORC") telephone survey, a nationally projectable probability sample, also commissioned by FTC staff, reported that 62.4% of the most recent mail orders were paid by check and 3.2% were paid by cash, while 69.5% of telephone orders were paid by credit card.[56]

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making two technical changes to the TRR's preamble as follows: (1) Amending the words "in commerce" to read "in or affecting commerce" to reflect the expansion of the FTC's jurisdiction in 1975 by section 201(a) of the Magnuson-Moss Act; and (2) changing the words "an unfair or deceptive act and practice" to read "an unfair or deceptive act or practice," to parallel the language of section 5(a)(1) of the FTC Act.

[41] 56 FR 46133–34. The term "post-record" refers to the period after the closing of the evidentiary record in the rulemaking proceeding on June 15, 1990. After that date, any submission that contained new evidence was placed in the FTC's non-rulemaking public record.

[42] Representing industry were DMA, MOAA, and the National Retail Federation, respectively, R011006–4, P–1, P–3, and P–7. Comments were also received from the Office of Consumer Affairs, Montgomery County (Maryland) Government, R011006–4, P–4, and NACAA, R011006–4, P–5. CaDCA attempted to file a comment approximately one month after the filing deadline, which the PO rejected as untimely.

[43] R011006–4, Q–1.

[44] 57 FR 45998.

[45] R011006–B–1, B–44, p. 19. Direct Marketing reported data that it extracted from the 1988 Guide to Mail Order Sales by Arnold L. Fishman of Marketing Logistics. Mr. Fishman collaborates with Mr. Kordahl in preparing the Annual Guide to Telemarketing, one of the principal studies Mr. Kordahl relied on in his testimony.

[46] Kordahl, R011006–2, HX–4, pp. 5–6.

[47] Id. He also estimated that 1.3 million U.S. corporations would use telemarketing, and employ 6.2 million persons.

[48] R011006–B–1, B–52, p. 88. See PO's Report R011006–3, 0–1, pp. 11–12, F.16. (In citing the PO's Report, "F" refers to "findings.")

[49] Five consumer or industry surveys were placed in the rulemaking record. An analysis of the surveys and their methodologies was prepared by the staff in the Staff Report, R011006–3, N–1, pp. 20–35. The analysis is based on the uncontradicted evidence in the rulemaking record.

[50] R011006–2, HX–1, p. 5.

[51] R011006–2, HX–4, p. 6. Similarly, according to a Market Facts survey of consumer behavior commissioned by AARP (the "second Market Facts survey"), 72% of Americans have at least one major credit card. R011006–2, GC–4, p. 23.

[52] Kuman, R011006–2, HX–1, p. 5.

[53] Kuman, R011006–2, Tr. 11; R011006–B–1, B–38, p. 13.

[54] Similarly, NACAA commented that the consumer protection agencies from which it obtained comments said that most telephone orders are paid by credit card, whereas most mail order purchases are paid by check or money order. R011006–2, GC–2, p. 2.

[55] R011006–B1, B–35, p. 4; B–36, p. 4.

[56] R011006–B–1, B–35, p. 4. Most of the charge activity reported by consumers in the AT&T survey involved so-called "national" charge cards such as bank cards (e.g., Visa, Mastercard) or travel and entertainment cards (e.g., American Express, Diners

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According to Mr. Kordahl, in 1988, total telemarketing sales of goods and services to consumers and businesses was $170 billion.[57] Nineteen percent of this figure, or $32.4 billion, was composed of sales of goods and services to consumers.[58] Because the MOR—and the TRR issued today—apply to sales of merchandise and not services, Mr. Kordahl estimated the sales volume of goods to be 75% of this figure, or $24.3 billion.[59] Other data in the record support this estimate.[60]

II. Factual Basis for an Amended Rule

A. The Unfair or Deceptive Acts or Practices and Their Prevalence[61]

The evidence in the record includes results from relevant, methodologically sound surveys. This is the most direct evidence of the prevalence of the practices at issue. Survey evidence in this rulemaking indicates that the likelihood that merchandise will not be shipped within the time represented or, if no time is represented, within the time expected by consumers, is the same regardless of whether the merchandise is ordered by mail or by telephone. Similarly, survey evidence shows that the likelihood that delay notices will be untimely or incomplete and that refunds will be untimely are the same regardless of the method of ordering. Other evidence includes expert testimony and comments from state and local officials and others stating that the amendments are needed to address significant problems with telephone order sales.

Although merchants generally ship merchandise in a timely fashion, delays occur in a significant percentage of telephone sales. The ORC survey shows that 4.6% of consumers experienced delayed shipment of telephone order merchandise.[62] Further, the Commission finds that the length of these delays was often significant. According to expert testimony, delayed shipments of telephone order merchandise often occur because merchants lacked a reasonable basis for the express or implied shipment representations they made when they solicited the orders.[63] Further, the results of the ORC survey indicate that, in the case of telephone order merchandise, merchants who are unable to ship within the relevant time frame frequently fail to obtain the consumer's informed consent to the delay or to provide a refund.

The following parts describe the factual basis for the Commission's finding that the direct marketing practices addressed by the MOR also harm consumers when committed by telephone order merchants.

B. Evidence Regarding the Practices

1. Consumer Expectations About Shipment Time

Nearly all the consumers questioned in the ORC survey reported that they expected mail and telephone order merchandise to be shipped within a time certain. Dr. Cox's analysis of the survey results states that, of 211 mail order consumers, 194 reported some expected shipment date; of 66 telephone order consumers, 61 reported such an expectation.[64] Further, of 211 consumers who ordered or paid by mail, 117 reported that express shipment representations had been made. Of the 66 telephone order consumers, 38 reported express shipment claims had been made.[65]

Even where there were express representations, consumers formed expectations that differed somewhat from those representations.[66] But there was a close correlation between sellers' average express shipment representations and consumers' average shipment expectations for mail and telephone order merchandise. The average express shipment representation sellers made for mail orders was 29.96 days, while the average consumer expectation for shipment of such orders was 24.85 days. The average express shipment representation sellers made for telephone orders was 23.23 days, while the average consumer expectation for shipment for these telephone orders was 19.04 days.[67] These data suggest that telephone order merchants tend to promise faster shipment than mail order merchants, and that consumer expectations paralleled these representations.

Based on the foregoing, Dr. Cox calculated the number of consumers to whom no express shipment representations were made. Of 194 consumers who ordered or paid by mail and who reported some expected shipment date, 77 reported that no shipment representation had been made. When no shipment representation was made, the average consumer expectation of delivery was 20.72 days.[68] Of the 61 telephone order consumers who reported some shipment expectation, 23 reported receiving no express shipment representation. The expected shipment date in these cases was 10.71 days, almost half the expected shipment time for mail orders. Dr. Cox concluded from this that, to a statistically significant degree, when there is no express shipment representation, consumers expect telephone orders to be shipped faster than mail order merchandise.[69]

The record contains three views concerning consumers' shipment expectations for merchandise paid for

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Club). R011006–B–1, B–38, p. 13. But, this survey also shows approximately one-in-five telephone transactions involves a credit care issued by the merchant from which the merchandise was purchased.

[57] R011006–2, NX–4, p. 9.

[58] Id. at 9–10.

[59] Id. at 10.

[60] In the annual "Mail Order Top 250+" listing of the leading U.S. mail order companies, Direct Marketing reported that consumers spent $48 billion for mail and telephone order merchandise in 1988. R011006–B–1, B–44, p. 19; R011006–B–1, B–43, p. 46. These data, in conjunction with ORC survey data relating to the ratio of mail to telephone sales and the average size of telephone order sales, support a $24 billion sales volume estimate. The ORC survey indicated that the average mail order sale was approximately $70.00 compared to $140.00 for the average telephone order sale. R011006–B–1, B–35, p. 15. Accord comments from NACAA, R011006–2, GG–2, p. 3; and the attorneys general of California (R011006–2, H–4, p. 1), Massachusetts (R011006–2, H–5, p. 1), Georgia (R011006–2, H–8, p. 1), Oklahoma (R011006–2, H–10, p. 1), North Dakota (R011006–2, H–11, p. 2), and Wisconsin (R011006–2, H–13, p. 2). However, during the period of inquiry in the ORC survey—January through July 1987—almost twice as many consumers reported placing mail orders as telephone orders. Of 14,483 consumers contacted in the screener phase of the survey, 21.87% reported that they ordered most recently by mail, while 11.39% reported that they ordered by telephone. R011006–B–1, B–35, p. 5. Thus, measured in sales volume, half the $48 billion in sales reported by Direct Marketing or $24 billion, would comprise telephone order sales. Further, based on the ORC data and the annual sales figures reported by Mr. Kordahl and Direct Marketing, the Commission estimates that there were 343 million mail and 171 million telephone sales to consumers in 1988.

[61] Neither the statutory language nor the legislative history of the Magnuson-Moss Act suggests that in 1975 Congress intended to require the Commission to find as a pre-condition to rulemaking that acts or practices to be regulated are prevalent. Instead, the Act requires that the SBP include "a statement as to the prevalence of the proscribed acts or practices treated by the rule." 15 U.S.C. 57a(d)(1)(A). See Joint H.R. and S. Conf. Rep. No. 1408, 93rd Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Admin. News 7764. See also infra n. 142.

[62] Compare R011006–B–1, B–35, p. 5, Tab. II with p. 6, Tab. 5. In his analysis, Dr. Cox defined the term "telephone order" to refer to persons who both ordered and paid by telephone. He accordingly treated all persons who ordered by telephone but paid by mail as having ordered by mail. Id. at 6. This produced a 4.6% delayed shipment result. However, the definition of "telephone order" adopted by the Commission today refers only to the method of ordering, not payment. The effect of this change would be to cause the telephone order cell in the ORC survey to be increased up to 6.6%. See R011006–4, Q–4, p. 6, n. 8.

[63] Kordahl, R011006–2, HX–4, pp. 15–16.

[64] R011006–B–1, B–35, p. 6, Tab. V.

[65] Id. at Tab. VI.

[66] For example, some sellers routinely ship faster than promised, leading consumers subsequently to expect that sellers will always ship faster.

[67] R011006–2, M–2, p. 10, Tab. VI.

[68] Id.

[69] R011006–2, M–2, p. 11.

by credit card. Dr. Cox's analysis of consumer shipment expectations indicated that, regardless of whether the merchant makes express or implied shipment representations, consumers expect purchases made by credit card to be shipped much more quickly than purchases paid for by other means.[70] NCL stated that its observations are that consumer expectations for mail and telephone order merchandise are basically the same and that, regardless of the payment method, consumers generally expect to receive merchandise in six to eight weeks.[71] In contrast, DMA and Ms. Kuman suggested that because consumers can defer paying, consumers placing credit orders may expect delivery less quickly than orders paid for in other ways.[72]

The survey data and other information in the rulemaking record do not support NCL's observations or DMA's contentions about similar or slower shipment expectations for credit card purchases.[73] For example, Ms. Kuman, relying on the AT&T survey noted that consumers who order merchandise by telephone (and normally pay by credit card) do so because of convenience and speedier delivery.[74] She also stated unequivocally that, based upon her extensive experience, "there is no reason to believe customers who order by telephone expect any less prompt shipments than their mail order counterparts."[75] Similarly, DMA suggested that, although consumer perceptions about shipment may not be accurate, "[i]t may be true that consumers subjectively expect speedier delivery of merchandise ordered on the basis of credit card authorization and by telephone than they do when other forms of payment and ordering are involved."[76]

Other comments also indicated that consumers expect shipment more rapidly when shopping by telephone rather than mail. For example, the Director of CaDCA reported that consumers expect shipment more quickly when ordering by telephone. Similarly, Burnett stated that customers who order by telephone and pay by means of credit card expect delivery "in the same or less time than those ordering by mail * * *."[77] NRMA believed that "many customers choose to order by telephone because, in many instances, it is faster and more efficient. Unlike mail orders, telephone orders can often be delivered within days after a customer makes his or her request."[78]

2. Industry Shipment Practices

a. Empirical and testimonial evidence. In response to the screener questionnaire, ORC survey respondents reported late delivery approximately 14 to 15% of the time for both mail and telephone order merchandise.[79] However, some consumers incorrectly perceived the delivery was late. In his analysis of the ORC results, Dr. Cox found that 8.8% of mail orders and 18% of telephone orders that consumers thought were late were, in fact, delivered within the time expressly represented by the merchant or within 30 days if no time was represented.[80] Moreover, timely and complete delay notifications were sent to 19.7% of the mail order consumers and to 34.2% of the telephone order consumers whose orders were shipped later than the originally promised date.[81] Some consumers also elected to cancel their orders and received timely and complete refunds. In establishing which consumers experienced inappropriate shipment delays, Dr. Cox excluded from his analysis those consumers inaccurately reporting delays, those who received appropriate delay notifications, and consumers who canceled their orders and received full and timely refunds.[82]

Dr. Cox first determined that of 211 mail and 66 telephone order consumers who reported that their most recent order was delayed, 7.1% of the mail order and 7.6% of the telephone order respondents received neither merchandise nor a refund.[83] Projecting these results to the national population, Dr. Cox concluded that at any given time, there is a 1.06% probability that mail order merchandise will not be delivered or that no refund will be made. At the same time, there is a 1.04% probability that telephone order merchandise will not be delivered or that no refund will be made.[84]

The survey also identified 38 telephone order consumers who received neither merchandise nor a refund within the time promised or, if no time was promised, within 30 days.[85] Of these telephone order consumers, 50% reported not receiving any first delay notice.[86] Of the telephone order consumers who received late shipments, another 15.8% received delay notices that would be considered incomplete under the MOR's requirements.[87] In

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[70] Where an express shipment representation is made, the average credit card consumer expectation of delivery is 18.20 days. Where another form of payment is used, consumers expect delivery in 29.08 days. Where no shipment representations are made, the figures are 14.00 and 21.00 days respectively. R011006–2, M–2, p. 9, Tab. V.

[71] R011006–2, GG–3, p. 2.

[72] R011006–2, F–1, p. 12; HX–1, p. 15. DMA argued that staff and the PO improperly relied on Dr. Cox's analysis of the ORC survey, pointing to Dr. Cox's testimony that in his original analysis he did not analyze consumer expectations based on method of payment. However, Dr. Cox subsequently analyzed consumer expectations and their correlations with the method of payment in his rebuttal submission. See R011006–4, P–1, pp. 11, 13–14.

[73] This evidence includes the comments of Burnett (discussed *infra*), NWMaDA, and the Iowa Attorney General. See Staff Report, R011006–3, N–1, pp. 17–19, 41.

[74] R011006–2, HX–1, p. 3; see also R011006–2, Tr., pp. 8–9.

[75] R011006–2, HX–1, p. 9.

[76] R011006–B–1, B–1, p. 3. See also the ANPR comment of consumer William F. Pryor, who said: "One of the reasons for using the telephone to order is to reduce the delivery time. If I had known it would take 130 days, the order would not have been placed." R011006–B–1, B–33, p. 1.

[77] R011006–2, E–1, p. 2.

[78] R011006–B–1, B–26, p. 1. These and other opinions expressed by NRMA are endorsed by the American Retail Federation. R011006–B–1, B–25, p. 1.

[79] R011006–B–1, B–35, p. 5, Tab. III. These data are similar to the results of the FTC's 1985 Market Facts study (the "first Market Facts study") in which respondents stated that mail order merchandise was received late 19% of the time, compared to 16% for telephone order merchandise. R011006–B–1, B–36, p. 5.

[80] In situations in which no express shipment date was made, Dr. Cox used the MOR's implicit 30-day shipment representation to evaluate consumer reports. However, as noted supra, telephone order consumers in these situations except shipment much faster than mail order consumers. Thus, the use of the implicit 30-day shipment representation for telephone orders may have biased the results to understate the number of delays of these orders. Although consumers who ordered merchandise by telephone might have expected quite reasonably that the merchandise would arrive significantly faster than it did, because their orders arrived within 30 days, Dr. Cox did not treat these as delays. Thus, a disproportionately larger percentage of telephone order than mail order consumers were treated as incorrectly perceiving that their orders were late.

[81] R011006–B–1, B–35, p. 8, Tab. VI. The difference between these two numbers is not statistically significant at the ten percent level. To comply with the MOR, the merchant must provide the consumer with: (1) a definite revised shipment date, (2) an option to cancel the order and receive a prompt refund, and (3) a prepaid means for the consumer to exercise the option. The TRR issued today retains these requirements.

[82] See R011006–B–1, B–35, p. 6, Tab. IV; R011006–2, Tr. pp. 134–35.

[83] R011006–B–1, B–35, p. 12, Tab. VIII.

[84] R011006–B–1, B–35, p. 14, Tab. XI. The difference between 1.06% and 1.04% is not statistically significant. R011006–B–1, B–35, p. 10. In the discussion that follows, the term "refund" has the same meaning as it is given in the MOR. The term therefore includes removal of a charge from a customer's account or notification to a customer that no action will be taken that will result in a charge to the customer's account. See 16 CFR 435.2(c)(i) and (ii). This definition is retained in the TRR issued today.

[85] R011006–B–1, B–35, p. 8, Tab. V.

[86] Id. at Tab VIII.

[87] Id. Thus, in 65.8% of the transactions involving delayed shipments of merchandise ordered by telephone, sellers did not provide adequate notices

Continued

comparison, 117 mail order consumers received neither merchandise nor a refund within the time promised or, if no time was promised, within 30 days.[88] Of these mail order consumers, 54.7% reported receiving no first delay notice, and an additional 24.8% received an incomplete delay notice.[89] Projecting these findings to the national population, Dr. Cox found that the risk of late shipment without proper or timely notification of delay is 5.01% for mail orders and 4.14% for telephone orders.[90]

Based on his knowledge of the industry, Mr. Kordahl's estimates of the risk telephone order merchandise would be delayed are similar to the ORC results. In his opinion there is a 2–3% risk of delay for telephone order merchandise ordered from merchants that have separate mail and telephone operations, and a 5–10% risk of delay for telephone order merchandise purchased from merchants that integrate their operations, i.e., where the merchant does not distinguish between orders received by telephone or by mail in processing orders. Combining these two delay rates and averaging them, he stated the "risk that merchandise ordered and paid for by telephone will be delayed is between 4.4% and 8.6%, or approximately 5% and 9%."[91]

He further stated that 3% to 4% of telephone sales involve express or implied (30-day) shipment representations that the merchant fails to substantiate.[92] He said that telephone order merchants provide appropriate delay notification more frequently than the ORC survey demonstrates. However, he also pointed out that his estimated violation rates were based, in part, on his experience with merchants whom he considered to be among the most reputable and that his "merchant universe" was not nationally projectable. Accordingly, he noted that he "would expect the ORC data, which are based on consumer experiences with the general universe of merchants, to show larger violation rates."[93]

In addition to determining how often there were inappropriate or unexcused shipment delays, Dr. Cox analyzed the length of the delays. Based on the reports of the consumers surveyed by ORC whose merchandise ultimately was received but not within the time expressly promised, or within 30 days if no time was promised,[94] Dr. Cox performed a frequency distribution analysis to determine how late the merchandise was when it finally arrived.[95] Dr. Cox analyzed each consumer's report of delay depending on whether the merchant made an express shipment claim or an implied 30-day shipment claim.[96] The frequency of late deliveries was as follows:

LATE DELIVERY BY METHOD OF ORDERING

	Weeks late[97]					
	1 to 2	3 to 4	5 to 6	7 to 8	9 plus	Total
Mail	14 (24)	12 (20.7)	9 (16)	5 (8.6)	18 (31)	58
Telephone	4 (23.5)	6 (35)	1 (6)	1 (6)	5 (29)	17

Based on these results, inappropriate or unexcused delays averaged 5 weeks for telephone merchandise, and 5.38 weeks for mail order merchandise.[98]

b. Other submissions.

Numerous state attorneys general submitted comments supporting the proposed amendments to cover telephone sales.[99] While many such comments did not provide detailed statistical or other empirical bases for their conclusions or assertions, the

that would allow consumers to make informed decisions about whether to agree to delays or request refunds.

[88] Id. at Tab. V.

[89] Id. at Tab. VIII.

[90] R011006–B–1, B–35, p. 14, Tab. XI. These differences are not statistically significant. Id. at 10.

[91] R011006–2, HX–4, p. 14. According to Mr. Kordahl, approximately 80% of merchants integrate their mail and telephone fulfillment operations. Id. at 11–12.

[92] Id. at 15.

[93] Id.; see also R011006–2, TR. 150–51.

[94] Originally, 155 subjects reported experiencing delay. In his rebuttal comment, Dr. Cox analyzed the experiences of those subjects who (1) ultimately received the delayed merchandise but who (2) had not consented previously to the delays. He accordingly excluded 20 of the 155 subjects who received no merchandise (and, in seven cases, no refund either) because they canceled their orders. He excluded another 20 who did not cancel and who, after six months, never received either merchandise or refunds. He also excluded 38 subjects who agreed to the delays. Finally, he excluded four subjects because their "don't know" responses to some questions made them impossible to classify. This left 75 transactions that he analyzed.

[95] R011006–2, M–2, pp. 5–6, Tabs. I and III. Because of the scales used in the survey protocol, these delays were expressed in two-week ranges on a five point scale, i.e., "1–2 weeks," "3–4 weeks," "5–6 weeks," "7–8 weeks," and "9+ weeks."

[96] See supra, n.80.

[97] "Weeks late" refers to the number of weeks the merchandise arrived later than it was promised in the merchant's solicitation of the order or, if no time was promised, later than 30 days. The numbers in parentheses indicate percentages.

[98] Staff Report, R011006–3, N–1, p. 59, n.75 and accompanying text. Staff's estimate entailed choosing the midpoints of the two-week ranges in Dr. Cox's analysis as the average delay period for the consumers in each range.

[99] See, e.g., Mass Atty. Gen., R011006–2, H–5, p. 1; Iowa Atty. Gen., R011006–3, H–6, p. 1. See also Okla. Atty. Gen., R011006–2, H–10.

Commission believes their comments are important because they represent the views of those who, on a daily basis, deal with consumer problems at the local level. When the Commission promulgated the MOR in 1975, it relied in large measure on state attorneys general and consumer groups' reports that the failure to deliver mail order merchandise was a major source of consumer complaints and consumed much of their resources.[100]

In this rulemaking, several state law enforcement agencies reported that the failure to deliver mail and telephone order merchandise is now a major source of the consumer complaints they receive.[101] Many of the state attorneys general also reported that telephone order merchandise complaints are increasing dramatically.[102] They indicated that amending the MOR to include telephone order merchandise would directly address problems generally experienced by consumers in their states or would facilitate state responses to these problems.[103] Several state attorneys general commented that their states adopted legislation that expressly covers the sale of telephone merchandise and that such legislation has had salutary effects.[104]

In addition to the state attorneys general, state consumer protection agencies submitted comments that overwhelmingly favor amending the MOR to include sales of telephone order merchandise.[105] Like the state attorneys general, state consumer protection agencies believe amending the MOR to include telephone order merchandise will directly address the problems they encounter, including non-deliveries, delays, delays without notice, and failures to provide refunds for telephone order merchandise.[106]

In addition to state and local agencies, consumer interest groups supported and commented extensively on the proposed amendments.[107] Businesses and trade associations that submitted comments, including Burnett,[108] Markson Science, Inc.,[109] DMA,[110] MOAA,[111] MasterCard International and Visa U.S.A., Inc.,[112] expressed support for the proposed amendments for telephone sales. Most of the companies stated that providing consumers with timely and complete information about their orders and prompt refunds, if necessary, is simply good business practice. For example, MOAA stated that its members, 90% of whom receive orders by telephone, comply with the MOR by providing

[100] See, e.g., SBP, 40 FR 51582–83.

[101] For example, the New York Attorney General reported that mail and telephone order complaints constitute 41% of the complaints it handles. R011006–2, H–7, p. 1. The North Dakota Attorney General stated that 21% of its complaints are mail and telephone order merchandise complaints. R011006–2, H–11, pp. 1–2. The Pennsylvania Attorney General's Office reported that during the period 1985 to 1988, it experienced a 39% increase in complaints relating to mail and telephone order merchandise. R011006–B–1, B–8, p. 2.

[102] For example, the Iowa Attorney General reports that complaints involving telephone order merchandise, including complaints about delays in receiving telephone order merchandise far exceed complaints about mail order merchandise. R011006–2, H–6, p. 1. California's Attorney General commented that 60% of its complaints now involve telephone order merchandise. R011006–2, H–4, p. 1. Similarly, the Massachusetts Attorney General's Office stated that it has witnessed a steady increase in complaints related to telephone order merchandise, and that such complaints far outnumber complaints involving mail order merchandise. R011006–2, H–5, p. 1. Some of the telephone order merchandise complaints reported by the states include complaints about so-called "telemarketing fraud." Telemarketing fraud here appears to refer to merchandise that is offered but not shipped, or merchandise whose quality or value is materially misrepresented but is shipped. Both the NWMaDA and Iowa correctly believe that the proposed amendment would reach only the problem of unshipped telephone order merchandise. See R011006–2, H–5, p. 2; R011006–2, H–6, p. 1.

[103] The Iowa Attorney General's Office commented that a well-defined delivery rule will provide consumer protection agencies with an easily applied enforcement option. R011006–2, H–6, p. 1. The Kansas Attorney General reported problems because neither state law nor the MOR presently covers telephone sales. R011006–2, H–15, p. 2. North Carolina and Oklahoma also reported consumer problems with non-delivery and shipment delays with telephone order merchandise. R011006–2, H–1, p. 3, and R011006–2, H–10, p. 1.

[104] In response to mounting complaints, California amended its mail order statute to include telephone order merchandise, Bus. & Prof. Code 17538, 17538.3 (Ch. 337, stats. 1986), to make the statute "relevant to the entire mail-order marketplace today and for the foreseeable future." The California Attorney General's Office stated that the new legislation has benefited the public and has prevented some fraudulent operators from entering the California market. R011006–2, H–4, pp. 2, 6. Wisconsin's Attorney General also cited evidence that its telephone legislation benefits the state's consumers. R011006–2, H–13, p. 4. For example, during 1989, thirty-seven citizens received an average of over $100 each in satisfaction of their complaints concerning unshipped telephone order merchandise. Id. at 3. In 1984 New York extended its mail order statute to telephone order merchandise to reach "the growing telephone order market." New York Attorney General, R011006–2, H–7, pp. 1–2. See General Business Law 396–m (1985).

[105] See, e.g., NACAA, R011006–2, GG–2, p. 2. See also New Opportunities for Waterbury, R011006–2, GG–1, p. 1 (numerous complaints about delayed shipment without notice); Tennessee Division of Consumer Affairs, R011006–2, GG–2, p. 1 (delay, nondelivery, no notice, failure to provide refunds); State of Connecticut, Department of Consumer Affairs, R011006–2, H–3, p. 1 (nondelivery, delay and billing most common problems).

[106] For example, the New York State Consumer Protection Board and the CaDCA both supported extending the MOR to telephone order merchandise. They reported that complaints concerning mail and telephone order merchandise constitute a large percentage of their work. R011006–2, H–12, p. 1; R011006–2, H–2, p. 1. Much of CaDCA's comment was based on information from the state's leading case involving failure to ship mail and telephone order merchandise in a timely fashion. *California* versus *Dixon* (Santa Clara Superior Court No. 563321, Judgment entered 1989). R011006–2, H–2, pp. 2, 5; R011006–3, N–1, at Appendix "B." When the *Dixon* case began, California's mail-order statute did not include telephone order merchandise. The *Dixon* court found that of 337 failures to ship merchandise timely, 176 or 53% arose from orders placed by telephone, which had an average dollar value of $281. The Georgia Office of Consumer Affairs stated that its most recent figures show that complaints involving unshipped or late telephone order merchandise exceed complaints about mail order merchandise. R011006–2, H–8, p. 1. Although the mail and telephone order complaints received by the Tennessee Division of Consumer Affairs comprise only 6% of that agency's total complaints, it favors the amendments because it considers them "necessary to gain some control over what is quickly becoming an uncontrollable industry." R011006–2, GG–2, p. 1.

[107] For example, AARP commented that "[e]xpansion of the Mail Order Rule to include all telephone and credit sales is essential * * * to redress widespread consumer harm in the fast-growing telemarketing industry." R011006–2, GG–4, p. 4. AARP reported that consumers are experiencing delay and refund problems with telephone order merchandise that are similar to the problems that led to the adoption of the MOR. *Id.* at 14. Many of the 1,000 consumer complaints it receives concern the failure of companies to provide late shipment information or refunds for mail and telephone order merchandise. Id. at 17. AARP also asserted that telephone order merchants often have no reasonable basis for shipment representations that are made, and that such merchants frequently fail to provide delay notices. Id. at 14.

[108] R011006–2, E–1, p. 1.

[109] R011006–2, D–1, pp. 1–2. While Markson supported amending the MOR to include business-to-consumer sales by telephone, it did not agree that the Rule should include all business-to-business transactions. See Part VII, A of this SBP.

[110] R011006–2, F–1, p. 7.

[111] R011006–2, F–2, p. 2.

[112] R011006–2, EE–1. MasterCard International and Visa U.S.A., Inc. jointly noted that the problem of greatest concern to them is telemarketing fraud which results in losses of $200 million annually to financial institutions alone. They supported amending the MOR to include telephone sales because some telemarketing fraud consists of the failure to ship any merchandise at all and so could be reached by amending the MOR to include telephone sales. They also advocated that the Commission adopt the enforcement policy that any material misrepresentation of the identity or quality of merchandise results in a violation because it constitutes a failure to ship the advertised merchandise. R011006–2, EE–1, p. 4. The Commission did not solicit comments on this issue during this proceeding, and therefore will not address it here. The Commission notes, however, that it has previously held that it is an unfair or deceptive act or practice to ship merchandise that differs with respect to brand name, type, quantity, size, or quality from that represented in the advertising soliciting the sale. Star Office Supply Co., 77 F.T.C. 383 (1970). The Commission also has indicated that merchants who engage in these acts or practices with knowledge of the Star Office Supply decision are subject to civil penalties under section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B). See Synopsis of FTC Decisions Concerning Unordered Merchandise, approved July 9, 1980.

notices of delay and the option to cancel because it is good business to do so.[113]

3. Estimated Consumer Injury

Generally, with respect to sales of mail or telephone order merchandise the shipment of which is inappropriately delayed, although the number of business-to-consumer sales of telephone order merchandise is about half the number of mail order sales, the value of the average telephone order sale is approximately twice the value of the average mail order sale ($140 vs. $70).[114] On average, individual consumers who order by telephone and receive neither merchandise nor a refund experience greater harm than consumers who order by mail and receive the same treatment. As detailed supra, the likelihood that a consumer will receive neither merchandise nor a refund, or that merchandise will be delayed without a merchant having sent a proper delay notice, is about the same whether merchandise is ordered by mail or by telephone.

Specifically, the ORC survey indicates that there is a risk that neither merchandise nor a refund will be provided to consumers 1.06% of the time for mail orders and 1.04% of the time for telephone orders.[115] The average injury to consumers where no delivery is made is $44.40 for mail orders and $83.30 for telephone orders.[116] The survey further indicates that there is a 5.01% probability of shipment delay without adequate or timely notification of delay for mail order merchandise and a 4.14% probability for telephone order merchandise.[117] The average value of delayed mail order merchandise is $67.30; the average value of delayed telephone order merchandise is $185.45.[118]

As indicated supra, according to Direct Marketing, consumers spent approximately $48 billion for mail and telephone order merchandise in 1988. Telephone sales amounted to approximately $24.3 billion and mail order sales, $23.7 billion.[119] Based on the ORC survey finding that there is a 1.04% risk that telephone order merchandise will not be shipped, in 1988, consumers ordered telephone order merchandise worth $253 million that was not delivered. However, the actual out-of-pocket loss is probably less. According to Mr. Kordahl, 80% of telephone order merchants hold charges until they can ship, while 20% charge immediately.[120] Accordingly the Commission estimates that, in 1988, consumers paid $50.6 million for telephone order merchandise that was neither shipped nor refunded.[121] Consumers also lost the benefit of another $202.4 million worth of telephone order merchandise that was not shipped, but was not charged to their accounts. Although consumers' charge accounts were not debited, they lost the opportunity to order from more responsive merchants, and may have incurred costs to learn the status of their orders.[122]

Additionally, based on the ORC report finding that there is a 4.14% risk of untimely or inadequate notification of delay for telephone order merchandise, in 1988, the value of delayed telephone order merchandise for which there was an untimely or inadequate notification of delay was $1.006 billion. Based on the reported 5.01% risk of untimely or inadequate notification of delay for mail order merchandise, in 1988, the value of delayed mail order merchandise for which there was an untimely or inadequate notification of delay was $1.19 billion. Because consumers ultimately received this late mail and telephone order merchandise, their losses are essentially lost interest on "early" payments and opportunity costs.

Estimating the consumer injury resulting from this delayed merchandise involved first calculating the average delay reported by the ORC survey based on Dr. Cox's frequency distribution analysis of late delivery, as described supra.[123] Inappropriate or unexcused delays averaged 5 weeks for telephone merchandise and 5.38 weeks for mail order merchandise. Based on the loss of interest on these purchases at an annual interest rate of 12%, consumer losses of 1.15% for delayed telephone merchandise and 1.23% for delayed mail order merchandise are estimated. Thus, consumer losses from delayed telephone order merchandise, in 1988, totalled $11.57 million; at the same time, consumer losses from delayed mail order merchandise totalled $14.64 million.

III. Legal Basis for an Amended Rule

A. Rulemaking Authority

Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1), declares unlawful "unfair or deceptive acts or practices in or affecting commerce." Section 18(a)(1)(B), 15 U.S.C. 57a(a)(1)(B), authorizes the Commission to prescribe "rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce" and provides that "[r]ules under this subparagraph may include requirements prescribed for the purpose of preventing such acts or practices."

Although it was not promulgated through the procedures established by the Magnuson-Moss Act in 1975 and codified in section 18 of the FTC Act, by virtue of section 202(c) of the statute, the MOR has the same validity as a trade regulation rule under section 18.[124] It defines certain conduct as unfair or deceptive in the context of direct marketing by mail that the current record demonstrates is virtually identical to conduct occurring in the context of direct marketing by telephone.

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[113] R011006–2, F–2, pp. 1–2. MOAA explained that: "Catalog houses rely to a substantial extent upon repeat customers which requires the building of a customer base that trusts the seller. A failure to promptly notify customers of delayed shipments, or any other difficulties with orders, [can] only lead to disgruntled customers with a resulting loss of business." Id.

[114] See R011006–B–1, B–35, p. 15.

[115] Id., p. 14.

[116] Id

[117] Id.

[118] Id. Combining the values of the unshipped with the late merchandise, the average value of unshipped and late mail order merchandise is $70; the average value of unshipped and late telephone order merchandise is $140. Id., p. 15.

[119] Kordahl, R011006–2, HX–4, pp. 9–10.

[120] R011006–2, M–3, pp. 6–7. The ORC survey selected respondents to participate in the follow-up survey only if they reported that they paid for the order upon ordering, and only if they did not receive all the merchandise within the time originally promised. R011006–B–1, B–35, Screener Q. S2 and S6. Although it is possible that participants in the survey interpreted the screener questions in a way that led to their responding to the follow-up survey only if the charges ultimately appeared on their credit card statements, it is also possible that some interpreted the screener questions to qualify them for the follow-up survey even though the charge ultimately did not appear on their credit card statements. The Commission has accordingly adopted the conservative approach of estimating consumer out-of-pocket losses to be only 20% of the total value of the unshipped merchandise documented by the ORC survey.

[121] Comparable mail order figures can be derived from these sources. Based on the ORC survey finding that there is a 1.06% risk that mail order merchandise will not be shipped, in 1988, consumers ordered mail order merchandise worth between $277 million and $289 million that was not delivered. Based on these figures, in 1988, consumers are estimated to have spent between $201 million and $210 million on mail order merchandise that was neither shipped nor refunded.

[122] See Burnett, R011006–2, E–1, p. 2. According to the ORC survey, 31.7% of mail order purchases are paid by credit card. R011006–B–1, B–35, p. 4. Using Mr. Kordahl's estimate that 80% of merchants hold charges until shipment, the out-of-pocket costs to the 30% of consumers who order by mail and charge their orders should be adjusted downward by 80%. Although these consumers were not charged, they experienced the same opportunity losses as telephone order purchasers, as described supra.

[123] See supra n. 95 and accompanying text.

[124] See *U.S. v. JS & A Group, Inc.*, 716 F.2d 451, 455 (7th Cir. 1983).

Under section 18(e)(3)(A) of the FTC Act, 15 U.S.C. 57a(e)(3)(A), a trade regulation rule must be supported by "substantial evidence in the rulemaking record * * * taken as a whole."[125] The Commission believes that the MOR was appropriately supported when issued,[126] and the record of this proceeding includes reliable surveys, expert testimony, public comments and other evidence supporting the proposed amendments. The record contains little, if any, evidence contrary to the Commission's decision to extend the MOR to include telephone sales.[127]

B. Section 5(a)(1) Analysis

The Commission's analysis of the record is consistent with the policy statements it has issued on how it will construe the statutory language "unfair" or "deceptive"[128] and the Commission's findings supporting the promulgation of the MOR in 1975.[129] In determining what constitutes unfairness or deception, and particularly in determining what direct or implied representation an advertisement makes or what non-disclosed facts are material to consumers, the Commission may rely on extrinsic evidence, such as empirical data, or on its own expertise. *FTC* v. *Colgate-Palmolive Co.*, 380 U.S. 374 (1965); Simeon Management Corp., 87 FTC 1184, 1229–30 (1976), aff'd, 579 F.2d 1137 (9th Cir. 1976); Pfizer, Inc., 81 FTC 23, 58 (1972).

1. Deception

An express or implied performance claim capable of objective evaluation carries with it the implication that the merchant has, at the time of making the representation, such information as would under the circumstances satisfy a reasonable and prudent businessman, acting in good faith, that the representation is true. It is a basic tenet of Commission deception law that merchants should have such a "reasonable basis" for objective representations. The Commission has expoumded this tenet on numerous occasions and reviewing courts have affirmed it.[130] More specifically, express or implied claims with respect to shipment time are claims of material fact for which the seller must have a reasonable basis. *Jay Morris, Inc.*, 91 FTC 751 at 860, order modified and aff'd, 598 F.2d 1244 (2d Cir.), cert. denied, 444 U.S. 980 (1979).

In issuing the MOR, the Commission relied on surveys and other evidence to determine, in the context of direct marketing by mail, that when no express shipment representation was made, consumers expected merchandise to be shipped within 30 days after a merchant's receipt of the consumer's properly completed order.[131] Since it would be unfair or deceptive for a merchant needing more than 30 days to ship to fail to correct this 30-day perception in offering mail order merchandise to the public,[132] the Commission determined that the merchant's silence about shipment time gave rise to an implied 30-day shipment representation.[133]

The Commission's determination to adopt the MOR was based upon numerous consumer and consumer protection agency complaints that merchandise failed to arrive within the time expected, namely, within the time expressly or implied represented by the merchant. It was also based on the testimony of industry members that merchants failed to substantiate their express and implied shipment representations in many of these late shipment situations. In light of the foregoing, the Commission determined that there was a widespread failure to substantiate express and implied shipment representations.[134]

In this rulemaking, empirical data show that, as in the context of direct marketing by mail, consumers expect that merchandise ordered by telephone will be shipped within at least 30 days when no shipment representation is made.[135] As with mail order transactions, the Commission has determined that the merchant's silence gives rise to an implied 30-day shipment representation, on the grounds that it would be unfair or deceptive for a merchant who needs more than 30 days to fail to correct the consumer's expectation in this regard.[136] As might be expected, the record evidence also shows that consumers expect telephone order merchandise to be shipped in the time expressly represented.

The record of this rulemaking proceeding shows that a significant number of consumers do not receive telephone order merchandise within the time expressly or impliedly represented in the advertising soliciting telephone sales. Specifically, the ORC survey shows that 4.6% of the time consumers experience delayed shipment of telephone order merchandise.

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[125] Substantial evidence" means "such relevant evidence as a reasonable mind might accept as adequate to support conclusion." *Consolidated Edison Co.* v. *Labor Board*, 305 U.S. 197, 229 (1938); *see Consumers Union of U.S.* v. *FTC*, 801 F.2d 417, 422 (D.C. Cir. 1986) (Scalia, J.). The courts, however, have sustained agency action if it is supported by substantial evidence, even if the record also contains substantial evidence supporting the opposite conclusion. *Consolo* v. *Federal Maritime Commission*, 383 U.S. 607, 620 (1966) The Commission has previously indicated that where factual propositions underlying the determination that an act or practice is unfair or deceptive are both supported and contradicted by the evidence, the Commission would base its determination on a "preponderance" of reliable evidence. SBP for the Credit Practices TRR, 49 FR 7740, 7742 (March 1, 1984). See also SBP for the Sale of Used Motor Vehicles TRR, 49 FR 45692, 45708 (Nov. 19, 1984).

[126] *Cf. U.S.* v. *JS & A Group, Inc.*, 716 F.2d 451 (7th Cir. 1983); *U.S.* v. *Braswell, Inc.*, 1981–2 Trade Cas. (CCH) ¶ 64,325 (N.D. Ga. 1981).

[127] However, two participants contended that the TRR should not be applicable to all business-to-business transactions. See part VII, A of this SBP. Additionally, although comments and testimony were submitted in opposition to the proposal to amend the definition of a "properly completed order" in credit sales for the reasons discussed in part IV of this SBP, the Commission does not find this evidence reliable. Reliable evidence was offered supporting this change and, accordingly, a preponderance of reliable evidence supports amending the definition.

[128] Commission letter of October 14, 1983, to Hon. John D. Dingell, Chairman, Subcommittee on Oversight and Investigations, appendix to Cliffdale Associates, 103 F.T.C. 110, 174 (1984). Commission letter of December 17, 1980, to Hon. Wendell H. Ford and Hon. John C. Danforth, appendix to International Harvester Co., 104 F.T.C. 949, 1070 (1984).

[129] See SBP, 40 FR 51582 (Nov. 5, 1975). The Commission notes that in the instant rulemaking the MOR was generally regarded as a successful regulation, and no participant suggested that the MOR was no longer necessary of should be rescinded. See, e.g., R011006–B–1, B–1, p. 2.

[130] See, e.g., Fedders Corp., 85 FTC 38, 64 (1975), 529 F.2d 1398, 1400–01 (2d Cir.), cert. denied, 429 U.S. 818 (1976); National Dynamics, 82 FTC 488 (1972), 492 F.2d 1333 (2d Cir.), cert. denied, 419 U.S. 993 (1974); Pfizer, Inc., 81 FTC 23 (1972); Firestone Tire & Rubber Co., 81 F.T.C. 398 (1972), 481 F.2d 246 (6th Cir.), cert. denied, 414 U.S. 1112 (1973). Such claims may be either express or implied. Removatron International Corp., 884 F.2d 1489 (1st Cir. 1989). See also Thompson Medical Co., 104 FTC 648, 821–29, and FTC Policy Statement Regarding Advertising Substantiation, Appendix to Thompson Opinion, 104 FTC 839, 791 F.2d 1989, 194–96 (D.C. Cir. 1986), cert. denied, 479 U.S. 1086 (1987). The requirement that performance claims that are material and capable of evaluation must be substantiated can be justified on either a deception rationale, as in National Dynamics, 82 FTC at 549–50, or on an unfairness rationale, as in Pfizer, 81 FTC at 64.

[131] SBP, 40 FR 51582, 51587 (Nov. 5, 1975).

[132] The Commission has broad authority to define unfair or deceptive acts or practices. *Sperry & Hutchinson Co.* v. *FTC*, 405 U.S. 233 (1972); *National Petroleum Refiners* v. *FTC*, 482 F.2d. 672 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 951 (1974).

[133] SBP, 40 FR 51582, 51587 (Nov. 5, 1975). The Commission did not find that consumers had any single expectation regarding shipment time. Instead, the Commission found that consumer expectations varied, ranging, at the extremes, from a few days to months. Finding that few consumers expected shipment to take more than 30 days, the Commission decided in its discretion to use a 30-day period for implied shipment representations.

[134] *Id.*

[135] The Commission agrees with the PO's finding that consumers tend to expect faster shipment when they order by telephone than when they order by mail, particularly when no express shipment claims are made in soliciting the order. PO's Report, R011006–3, O–1, pp. 18, 73, conclusion 8.

[136] See also part IV, discussion of § 435.1(a)(1)(ii), infra.

According to Eugene Kordahl, an industry expert, in a substantial number of these late shipment situations merchants would not have had a reasonable basis for their shipment representations.

Finally, as in the context of direct order sales by mail, shipment representations in the sale of telephone order merchandise are material. The record shows that shipment time is particularly important to consumers who order merchandise by telephone. Further, in promulgating the reasonable basis requirements for shipment representations in the MOR (16 CFR 435.1(a)), the Commission has already determined that shipment claims are material to consumers.

2. Unfairness

In promulgating the MOR, the Commission determined that the merchant's failure to notify a buyer that shipment would not be made in the time originally promised was an unfair or deceptive act or practice. The Commission reasoned that:

> Where the seller is not able to make shipment within the applicable time he is, in effect (1) rejecting the buyer's offer by making a counteroffer, (2) seeking to alter the contract, or (3) in breach of contract. If the seller simply remains silent and ships the merchandise late or merely notifies the buyer of delay without offering the opportunity to cancel * * * the seller is attempting to impose upon the buyer a contract far different from the one the buyer thought he was entering into.[137]

In the MOR rulemaking, the Commission adopted the notification and refund provisions based on its determination that there was a widespread failure of merchants who were unable to ship within the time originally promised to obtain the consumer's informed consent to delay, or to make a prompt refund when that consent was not obtained. Specifically, §§ 435.1 (b) and (c) regulate the conduct of the seller after the consumer's offer to buy the merchandise as advertised (including the express or implied shipment terms), has been accepted by the seller.

In this rulemaking, the record demonstrates that telephone order merchants fail to notify consumers in a timely and appropriate fashion about delays and to seek consumers' consent to delays about 4.1% of the time, and fail to ship or make refunds ever about 1.04% of the time. As with mail order sales, if a seller remains silent and ships the merchandise late or merely notifies the buyer of delay without offering the opportunity to cancel, the seller is unilaterally changing the terms of the contract. The Commission holds that these acts are unfair because they cause substantial injury that consumers cannot reasonably avoid, and the practices are not outweighed by countervailing benefits to consumers or competition.

The Commission recognizes that some participants in this proceeding contend that buyers are not injured when sellers do not charge consumers' accounts prior to shipping or do not charge them at all if the merchandise is not shipped. In fact, the record shows that in a substantial number of transactions, sellers do not charge consumers' accounts until they ship the merchandise.[138] However, in issuing the MOR the Commission expressed its disagreement with the premise that consumers who have not "prepaid" are not injured, and does so again today.[139]

All consumers who face delays and who are unable to cancel their orders are the victims of unfair practices. Even when consumer accounts have not been charged, consumers incur opportunity and transaction costs. For example, consumers who have ordered from merchants who have not shipped their merchandise on time and have not provided them with revised shipping dates and the option to cancel, may lose the opportunity to purchase their merchandise more quickly elsewhere. They also may incur costs to learn the status of their orders.

Further, consumers who order by telephone reasonably rely on the merchant's shipment representations and assume that the merchant will fulfill the contract as agreed rather than unilaterally changing or breaching the contract. Consequently, they cannot reasonably avoid the injury from sellers' failures to disclose appropriate and timely delay information.

Finally, the harm to consumers is not outweighed by any corresponding benefits to consumers or merchants. There is no reason to believe that there are legitimate benefits to merchants from unilaterally changing contract terms or breaching contracts or that consumers benefit through lower prices or better quality from such practices. Indeed, unsatisfactory experiences can deter consumers from ordering by telephone from other merchants who would ship on time or properly notify them of delays. Thus, the harm to consumers also can harm competition. Prompt shipment and timely, proper notifications of delay are low cost, good business practices that encourage repeat sales.

3. Remedies

Section 18(a)(1)(B) of the FTC Act, 15 U.S.C. 57a(a)(1)(B), authorizes the Commission, in addition to issuing rules defining unfair or deceptive acts or practices, to include in its rules "requirements prescribed for the purpose of preventing such acts or practices." In fashioning any such remedy for unfair or deceptive acts or practices, the Commission must show a "reasonable relationship" between the remedy and the practice.[140] After carefully examining the record, the Commission has determined to amend the MOR to include telephone order sales. The record shows that the same types of abuses and practices that led to the MOR occur with telephone sales.

In so concluding, the Commission considered that the empirical evidence on the record showed that the rates of non-delivery, late shipments, and improper delay notifications for telephone and mail order transactions are comparable. Because direct order merchandise sales are currently regulated if they are conducted by mail, the Commission weighed whether under these circumstances it would be in the public interest to cover such direct order sales if they are transacted by telephone. The Commission addressed this issue in the course of conducting a four-part analysis to determine whether a rule is in the public interest.[141] This analysis addresse the following questions:

(1) Is the act or practice prevalent?
(2) Does significant harm exist?
(3) Will the proposed rule reduce that harm? and
(4) Will the benefits of the rule exceed its costs?[142]

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[137] SBP, 40 FR 51582 at 51589 (Nov. 5, 1975). In addition to being an unfair act or practice, the merchant's failure to disclose in its solicitation of the sale that its practice is to unilaterally change shipment times in backorder situations is deceptive.

[138] The record also shows that in a significant number of cases, accounts are charged pre-shipment. Part II of this SBP contains estimates of the economic injury from failures to ship or provide refunds at all and from unauthorized delays.

[139] See SBP, 40 FR 51582 at 51594 (Nov. 5, 1975).

[140] *FTC* v. *National Lead Co.*, 352 U.S. 419, 428–29 (1957); *Jacob Siegel Co* v. *FTC*, 327 U.S. 608 (1946). This standard is applicable to section 18(a) rulemaking. *American Optometric Ass'n* v. *FTC*, 626 F.2d 896, 911 n.8 (D.C. Cir. 1980).

[141] See SBP for the Credit Practices Rule, 49 FR 7702 (1984) and SBP for the Used Car Rule, 49 FR 45692 (1984).

[142] See SBP for the Credit Practices Rule, 49 FR at 7742 (1984) and SBP for the Used Car Rule, 49 FR at 45703 (1984). As required by section 18(d)(1)(A) of the FTC Act, 15 U.S.C. 57a(d)(1)(A), elsewhere in this SBP the Commission discusses the prevalence of the unfair or deceptive acts or practices documented by this rulemaking. See supra n.61 and accompanying text. Although the Commission believes that these questions should be asked and, to the extent possible, answered in every

For the reasons discussed below, the Commission has determined that amending the MOR to encompass telephone orders is in the public interest. First, the record demonstrates that the acts or practices under consideration occur in a significant number of transactions.[143] Although the numerical percentage of affected transactions is low, this percentage involves a large number of transactions, involving millions of dollars of sales. In addition to the empirical evidence in the record, the comments of state and local officials as well as other consumer complaint handling organizations reported that telephone sales related complaints are numerous and growing, and that these amendments are needed to address telephone sales problems.[144]

Second, the Commission finds that reliable record evidence, as detailed in part II, B, 3 of this SBP, shows that these practices cause significant harm to consumers individually and generally.

Third, the Commission is persuaded that the amendments will reduce this harm because they directly address the practices at issue. Although telephone order merchants may understand that they have duties under section 5(a)(1) of the FTC Act to make truthful and substantiated shipment claims and to fulfill contract obligations, their understanding of how to fulfill these duties may be imperfect.[145] By requiring merchants, through requirements that are enforceable by civil penalties and restitution orders, to have a reasonable basis for their express or implied shipment claims and requiring them to send option notices or prompt refunds when they cannot ship on time, the amended MOR should substantially deter the unfair or deceptive acts or practices at issue.

In reaching this conclusion, the Commission considered the argument that the empirical data showing similar problem rates for both mail and telephone sales might mean that the amendments would not be effective in reducing the harm. However, the existence of similar levels of compliance or non-compliance with the law by an uncovered segment of the industry does not mean the amendments are unnecessary where, as here, the rate of non-compliance by the uncovered segment results in significant and widespread consumer injury. Moreover, for the reasons discussed supra in this part of the SBP, the Commission has determined that adoption of the amendments likely will be effective in reducing the harm caused by the uncovered industry segment. Additionally, as discussed in part II, B, 2, b, of this SBP, numerous participants in the rulemaking, including state law enforcement officials, stated that telephone sales complaints are increasing and outstripping mail order complaints.[146]

The Commission gives significant weight to the views of state law enforcement officials who, like the Commission, confront consumer problems on a daily basis.[147] Indeed, in response to the burgeoning number of telephone-related complaints, some states have amended state mail order laws to include telephone sales. Agencies in these states suggested that these laws have been effective in deterring telephone merchants from engaging in the sorts of deceptive and unfair direct marketing practices addressed by the MOR.[148] The Commission's own experience is that merchants have increasingly engaged in the MOR's unfair or deceptive acts or practices in the sale of telephone order merchandise.

In recent years, the Commission has obtained consent decrees resolving allegations that telephone order merchandise was not timely shipped and that appropriate delay notices or refunds were not provided. For example, in *United States* v. *Network Marketing*, the Court, pursuant to section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1), entered a consent decree requiring the defendants to handle every order for telephone order merchandise as though it were an order for mail order merchandise and thus to comply with the MOR.[149] Thereafter, similar orders were obtained against mail and telephone order merchants in *United States* v. *Grabowski*,[150] and *FTC* v. *Rattner*.[151]

Nothing in the record suggests that the problems could be more efficiently addressed by case-by-case prosecution rather than by regulation. Indeed, in the absence of the MOR, the rate of problems pertaining to telephone and mail order merchandise could be much higher. The rulemaking record for the MOR demonstrated that problems associated with the industry were widespread.

The Commission's Regulatory Flexibility Act review of the MOR in 1986, based on the Damans national probability survey of small and large businesses, indicated that industry believes the MOR benefits consumers and businesses in terms of better customer relations.[152] The comments submitted in response to the ANPR and the NPR in this rulemaking also strongly support the conclusion that the MOR has been beneficial for consumers.[153]

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rulemaking, on the basis of the best evidence reasonably available, it has consistently recognized there is room for variation in the specific answers that would justify issuance of a rule depending on the circumstances of each particular rulemaking. See 49 FR at 7742, n.4; 49 FR at 45703, n.177.

[143] See Part II, B of this SBP, supra.

[144] *Id.* at 2, b.

[145] The courts have upheld the Commission's requirement that a mail order merchant who made false and unsubstantiated shipment claims prior to the issuance of the MOR must comply with "large portions" of the MOR. See *Jay Norris Corp.*, 91 FTC at 850–51. Although the Commission could proceed in a case-by-case fashion to require telephone order merchants to comply with the provisions of the MOR as well, it is more efficient to amend the MOR to apply to telephone sales.

[146] See, e.g., R011006–2, H–5, p. 1 (the Massachusetts Attorney General's Office described a steady increase in telemarketing complaints so that telephone merchandise complaints now far outnumber mail order complaints). See also R011006–2, H–6, pp. 1, 3 (Office of the Iowa Attorney General) ("[T]elemarketing is an open invitation to the many predators in the marketplace who would profit by defrauding others. This trend of abuse is unlikely to abate anytime soon and will undeniably expand."); R011006–2, H–8, p. 1 (Georgia Office of Consumer Affairs); R011006–2, H–9, p. 3 (District Attorney for the Northwest District of Massachusetts); R011006–2, H–10, p. 1 (Office of the Oklahoma Attorney General); and R011006–2, H–11, p. 2 (North Dakota Attorney General) ("The number of telephone order complaints is increasing relative to the number of mail order complaints * * * * [P]hone order merchants are in greater need of regulation than mail order merchants.").

[147] Additionally, the comments of the state law enforcement officials report experiences that are more current than the ORC survey. The fieldwork for the survey was completed in 1987.

[148] The Wisconsin Attorney General notes that its interpretation of its mail order law to cover telephone orders has had measurable consumer benefits. R011006–2, H–13, p. 2. See also comment of State of New York, Department of Law, R011006–2, H–7, pp. 1–2. The New York legislature, cognizant of the growing telephone market, amended its mail order law in 1984 to cover telephone ordered merchandise. For the text of the amendment and New York Attorney General's description of its provisions, see R011006–2, B–1, B–46. The California Attorney General reports that his state's telephone legislation has prevented some fraudulent telemarketing operators from entering the California marketplace. R011006–2, H–4, p. 2. The comment added that, although there were some barriers to entry into telephone merchandising by fraudulent operators, "We have not noticed any barriers to legitimate business or any appreciable addition of costs." Id.

[149] 86 Civ. 6927 (RJW) (S.D.N.Y. 1986), R011006–B–1, B–50.

[150] B–89–376 (WWE) (D. Conn. 1989), R011006–B–1, B–51.

[151] H–90–3217 (S.D. Tex. 1990). See Appendix B of Staff Report, R011006–3, N–1.

[152] 51 FR 1518 (1986). Comments by industry members in the rulemaking indicate that they believe the MOR's requirements embody good business practices which lead to consumer repeat purchase behavior. See, e.g., comment of MOAA, R011006–2, F–2, p. 2.

[153] "The [MOR] has served as a valuable mechanism in protecting consumers from unacceptable delay, and, at the same time, has imposed minimal compliance costs on the industry." Comment of AARP, R011006–2, GG–4, p. 4.

Although there are still violations and a continuing need for FTC enforcement efforts, this rulemaking record indicates that the MOR is beneficial.

Although the effects of the proposed amendments cannot be quantified precisely, the Commission concludes that the amendments to include telephone sales will further deter the unfair or deceptive acts or practices defined in the MOR that harm consumers. The TRR will clarify the obligations of telephone order merchants under section 5 of the FTC Act.[154] Further, the amendments ensure that current voluntary compliance with the requirements of the TRR continues.[155] In addition, the threat of possible prosecution and of the award of civil penalties should also deter conduct that is harmful to consumers. Amending the MOR to include telephone sales also will allow the Commission to apply uniform enforcement standards and remedies to both mail and telephone transactions of sellers. Often sellers do business by both means. Presently, nonconforming practices by a merchant may injure both consumers who shop by telephone and by mail, but only the mail order transactions subject the merchant to civil penalties. Thus, the Commission cannot even-handedly pursue equally injurious practices. The efficiencies from uniform standards will facilitate additional investigations and enforcement actions, which will benefit consumers.

In addition, comments from state attorneys general and state consumer protection agencies indicate that the proposed amendments will facilitate enforcement efficiency at the state level. These organizations reported difficulties in addressing unfair or deceptive acts or practices of telephone order merchants due to the MOR's failure to cover telephone order merchandise.[156]

Finally, the Commission finds that the benefits of the rule will exceed its costs. As has been noted, the proscriptions against unfair or deceptive acts or practices in section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1), would require that telephone order merchants possess a reasonable basis for shipment claims, obtain the consumer's informed consent to shipment delays, and make prompt refunds when the consumer does not consent to these delays. The amendments set forth a clear standard of conduct by which telephone order merchants may comply with section 5 of the FTC Act when unanticipated shipment delays occur. Many merchants already voluntarily comply with the MOR's requirements for their telephone orders, either because they view the requirements as sound business practice or because they consider it efficient to use the same notice, cancellation and refund practices for their telephone and mail order operations.[157] For these merchants, the telephone amendments to the MOR should impose few, if any, additional costs. Based on the record evidence, the Commission does not believe that compliance expenditures for telemarketing firms would exceed the usual and customary costs of good business practices, while the concomitant benefits to both consumers and industry members are likely to be substantial.[158]

Information provided by state law enforcement officials and consumer protection agencies indicated that state legislation extending coverage to telephone order merchandise has caused no perceptible barriers to the formation of new businesses, nor has it caused existing telemarketing firms to incur any significant new costs. California amended its mail order legislation in 1986 to include telephone order merchandise. CaDCA stated it was unaware of "any change in the cost or price of goods and services used by consumers or businesses as a result of the amendments to the [California] statute."[159] CaDCA also commented that, as a result of the state's telephone order amendment, merchant recordkeeping will be simplified, ultimately resulting in lower merchant costs.[160] The California Attorney General's office agreed with the CaDCA comment, stating that it is "not aware that barriers to entry into business have increased under the amended statute, or that costs or benefits to mail and telephone order merchants in California have changed."[161] Similarly, Wisconsin's Attorney General reported no evidence of any detrimental business effects from Wisconsin's interpretation of its mail order statute to reach telephone orders.[162]

Thus, it appears that the amendments will impose few, if any, additional costs on merchants or consumers. However, the Commission believes that these amendments will provide consumers with considerable benefits. First, the amendments will clarify the rights of consumers (and the obligations of merchants) when ordering by telephone. Both parties will know that the merchant must ship orders in the time promised, and that when the merchant cannot ship in time, it must notify the consumer and inform the consumer of the consumer's option to cancel the order. Thus, educating consumers about their rights will be simplified.[163]

Second, the amendments are likely to benefit industry members by increasing consumer confidence in the industry, thereby promoting the growth of the direct marketing industry. MOAA commented, for example, that catalog houses rely to a "substantial extent" on repeat customers, and that failure to comply with the Rule in the sale of either mail or telephone order merchandise frustrates repeat purchases.[164]

Third, as discussed previously, the amendments create uniform standards that will permit the Commission to monitor the industry and prosecute

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[154] For example, Mr. Kordahl testified that: Businesses prefer to operate in a climate of certainty, where they know what is expected of them. * * * [T]here is a value to both merchant and consumer when, at each stage in the process of retailing telemarketed goods, both have the same understanding about what is supposed to be done and when it is supposed to be done. R011006–2, HX–4, p. 20.

[155] In this regard, the Commission notes, for example, that DMA ethics guidelines encourage DMA members to comply with the MOR when shipping prepaid merchandise ordered by telephone. R011006–B–1, B–39, p. 3; R011006–2, HX–1, p. 3.

[156] The North Carolina Attorney General's Office, CaDCA, and NWMaDA all reported difficulties in enforcing consumer protection laws against unfair or deceptive telemarketing practices due to the lack of federal regulation of telephone order transactions. R011006–2, H–1, p. 3; R011006–2, H–2, p. 4. The NWMaDA also noted that because the telemarketing field is growing so rapidly, consumers can expect more problems of the type addressed by the amendments to the MOR as well as increased telephone fraud and deception. R011006–2, H–9, pp. 2–3. The Kansas Attorney General's Office argued that amending the MOR will facilitate the state's law enforcement activities. R011006–2, H–15, p. 2. The Director of the Consumer Fraud and Antitrust Section of the North Dakota Attorney General's Office contended that in 1989 the failure of the MOR to cover telephone sales caused his office to take a less aggressive stance in some cases than it otherwise would have been inclined to do. R011006–2, H–11, p. 3.

[157] According to CVN Companies, Inc., a company that provides sales solicitation services for the telemarketing industry, merchants who accept orders by both mail and telephone use the same fulfillment and backorder procedures whether an order is received by mail or telephone, R011006–B–1, B–4, p.1, and procedures to keep the customer informed on the status of their orders. Id. At 2. Accordingly, CVN concluded that the amendments should not pose any additional burden on the direct marketing industry.

[158] See comment of AARP, R011006–2, GG–4, p. 41.

[159] R011006–2, H–2, pp. 3 and 6 R011006–B–1, B–9, p. 2.

[160] R011006–2, H–2, p. 6.

[161] Id.; R011006–2, H–4, p. 2; see also New York Attorney General , R011006–2, H–7, pp. 1–3. New York also amended its mail order statute to include telephone orders in the face of little, if any, opposition from the telemarketing industry. Id.

[162] R011006–2, H–13, p. 4.

[163] See comment of NCL, R011006–B–1, B–24, p. 2. FTC staff spends considerable time advising consumers of their rights and addressing consumer complaints.

[164] R011006–2, F–2, p. 2.

violations more efficiently, which will in turn benefit consumers and competition. Currently, investigations of mail order merchants who also sell merchandise by telephone are more complicated and lengthy because FTC staff must determine the volume of both mail and telephone ordered merchandise. This is necessary because civil penalties can be based only on mail order transactions, even though the telephone order transactions also cause harm.[165] Further, the amendments will facilitate Commission efforts to seek consumer redress, where appropriate, regardless of the ordering method, under section 19 of the FTC Act, 15 U.S.C. 57b. Currently, the Commission must seek redress for consumers who order by telephone under section 13, 15 U.S.C. 53, by asking the courts to use their equitable powers. In contrast, for MOR violations, the Commission is authorized to seek redress under section 19(b), 15 U.S.C. 57b(b), which explicitly confers jurisdiction on the federal courts "to grant such relief as the court finds necessary to redress injury to consumers * * * resulting from the rule violations * * *."

In addition, the amendment could aid states' enforcement efforts where FTC rules are incorporated by reference into state law or are relied on for guidance in enforcing state law. For example, in voicing support for the amendments, the Iowa Consumer Protection Division stated that the application of clear standards to require deliveries within the a certain time frame would prove helpful. "Having a well-defined delivery rule will provide consumer protection agencies with an enforcement option which is easily applied, and may therefore serve to diminish the widespread damage caused by telemarketing fraud." [166]

Although the Commission cannot precisely quantify all the costs and benefits of the proposed amendments, the rulemaking record supports its finding that the costs will be small. Balanced against any such additional costs are the benefits to consumers, businesses and law enforcement agencies of adopting the proposed amendment. Therefore, the Commission concludes that the benefits of the amendments will exceed their costs.

Overall, the Commission finds that it is in the public interest to extend the present substantiation, delay option notice, and refund regulations for mail order sales to include telephone order sales. The specific amendments incorporating telephone sales are discussed in part IV of this SBP.

4. Economic Effect

Section 18(d)(1)(C) of the FTC Act, 15 U.S.C. 57a(d)(1)(C), requires that the Commission's SBP include a statement as to the economic effect of these amendments. This discussion is set out in the Commission's analysis of its determination that no regulatory analysis is required. See part V, B of this SBP, infra.

5. Conclusion

The original MOR defined each of the following acts or practices as an unfair or deceptive act or practice in or affecting commerce in violation of section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1):

- The failure of a merchant to have a reasonable basis for any express shipment representation in soliciting the sale of the merchandise and, if no time is represented, the failure to have a reasonable basis for the implicit representation that shipment will be made within 30 days of the receipt of the consumer's properly completed order.
- In situations in which the merchant is unable to ship the merchandise in the time expressly or implicitly represented, the failure of the merchant to notify consumers about the delay and to offer them the option of agreeing to the delay or obtaining a prompt refund.
- In situations in which the merchant fails to obtain the consumer's informed consent to delay or the consumer exercises the option of cancelling the order and obtaining a prompt refund, the failure of the merchant to deem the order cancelled and to make a prompt refund.

The record of this proceeding demonstrates that the acts or practices addressed by the MOR respecting direct marketing in the context of mail order sales harm consumers when engaged in by telephone merchants. The evidence discussed in part II, B, (1) of this SBP demonstrates that consumers expect shipment of telephone order merchandise within the time merchants expressly represent in soliciting the sales or, in the absence of any express shipment representation, within 30 days. These express or implied shipment representations are material to consumers. The evidence discussed in part II, B, (2) of this SBP demonstrates that in a significant number of cases the merchandise is not shipped within the time expressly or impliedly represented. Often in these situations the merchant initially lacked a reasonable basis for the shipment representation soliciting the sale of telephone order merchandise. The evidence discussed in part II, B, (2) of this SBP demonstrates that in a significant number of cases merchants delay shipment beyond the time expressly or impliedly represented without the knowledge or consent of consumers. They either do not notify consumers of delays at all or, if they do, they do not inform consumers as to the nature or extent of delay, or request the consumer's consent to the delay, or afford the consumer the opportunity to cancel the order and obtain a prompt refund. Finally, the evidence discussed in part II, B, (2) of this SBP demonstrates that in a significant number of cases merchants who fail to obtain the consumer's consent to delays beyond the time expressly or impliedly represented fail to deem the order cancelled and to promptly refund the consumer's money. The evidence discussed in part II, B, (3) of this SBP demonstrates that these practices cause significant harm to consumers.

After weighing the various considerations discussed in this part of the SBP, the Commission has determined that it is in the public interest to adopt the TRR.

IV. Section-by-Section Analysis

This part describes each amended section, the options considered, if any, and, where appropriate, provides guidance concerning the provisions.

Section 435.1(a)(1)

This section contains the substantiation requirements for shipment representations sellers make when soliciting orders and in providing revised shipment dates. The Commission has amended this section so that its requirements now apply to merchandise ordered by telephone as well as by mail. The Commission's reasons for amending this provision are set forth in part III, B of this SBP.

Section 435.1(a)(1)(ii)

For purposes of § 435.1(a)(1)(ii), concerning implied shipment representations, the Commission considered but rejected adopting a shorter period than 30 days for telephone orders. Because the record shows that consumers to whom no express shipment representations are made and who pay by credit card expect shipment more rapidly than consumers who pay by other means, a shorter time period for implied shipment representations for telephone orders

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[165] Staff Report, R011006–3, N–1, p. 72.

[166] R011006–2, H–6, p. 1. Although the TRR issued today is not, strictly speaking, a "delivery" rule, for the most part, requiring merchants to substantiate their shipment representations and either obtain consumers' informed consent to delayed shipments or to refund their money should ensure prompt delivery.

could be appropriate. In the interest of uniformity, however, the Commission rejected that alternative. As in the MOR proceeding, where the record showed that consumer expectations were not uniform, the Commission finds that although some consumers may expect faster shipment, few consumers would expect shipment to take longer than 30 days. Therefore, the Commission has determined to use this time period for telephone orders too.

The Commission also has amended § 435.1(a)(1)(ii) by adding a proviso giving sellers 50, rather than 30, days to perform the actions required by this part, where they have made no express shipment representations and have received orders accompanied by applications for credit to pay for the ordered merchandise. The Commission has determined that this additional time to process credit applications is consistent with consumer expectations and industry needs.

In the NPR, the Commission suggested three alternative proposals for affording merchants time to process credit applications, of which the 50-day proposal was one. The proposals were initially posited as amendments to the definition of a "properly completed order." Ultimately, the Commission determined instead to add a proviso to the end of the substantiation provision, § 435.1(a)(1)(ii). Two of the three alternatives were given no further consideration because of lack of interest by participants.[167] In contrast, many comments favored the proposal to amend the definition of a "properly completed order" to refer to the merchant's receipt of the charge information, but to permit an additional 20 days to process charges accompanied by credit applications. (This proposal is similar to California law.)[168]

Proponents of the "California rule" noted that in the absence of any shipment representation in solicitations for orders, consumers who order merchandise at the same time they apply for credit do not expect shipment as quickly as consumers whose credit is established.[169] For example, the Iowa Attorney General reported that consumers generally expect delivery to take longer when an application for credit is part of the ordering process.[170] DMA agreed, pointing out that it is natural for consumers to expect perhaps two weeks for the application to be processed before the 30-day clock would begin to run.[171]

Other comments also contended that if an order is accompanied by a credit application, the definition of a "properly completed order" should allow a seller additional shipment time. For example, Burnett noted that while larger merchants have "on-line" capabilities to check the credit-worthiness of applicants within an estimated five business days, smaller businesses may require up to 15 business days, or approximately 20 calender days.[172] DMA also commented that the technological disparity between larger and smaller merchants is particularly serious in dealing with new credit applications.[173]

Other comments opposed allowing any additional time when orders are accompanied by credit applications.[174] For example, AARP contended that allowing additional time to process orders was unnecessary. Reasoning that, because the ECOA requires creditors to respond within 30 days of receipt of a completed credit application,[175] and many creditors complete credit checks more expeditiously than 30 days, AARP stated that initial applications for credit should never expand shipment time beyond 30 days.[176]

Nothing in the rulemaking record suggests that consumers believe that credit approval and order fulfillment necessarily occur simultaneously. Indeed, common experience suggests the opposite, i.e., that in the ordinary course of business, credit has to be approved before consumers can trade on it. In the context of mail or telephone order sales, they similarly would expect their credit applications to be processed and approved before fulfillment of their orders.

The Commission finds that in the absence of any express shipment representation, consumers generally expect a merchant to take more time than normal where an order is accompanied by an application for credit. The record evidence indicates that the time needed by businesses to establish consumer credit is approximately 20 calendar days.[177] In view of consumer expectations and industry requirements in this regard, the Commission has determined that, in this limited "credit application" circumstance, sellers should have an extra 20 days to fulfill the requirements of the amended Rule when soliciting orders based on an implied 30-day shipment claim.

In contrast there is ample rulemaking evidence that, when merchants make express shipment representations, consumers expect shipment within the time expressly represented.[178] There is no evidence regarding consumer perceptions where express shipment representations are made in advertising and the merchant also offers the credit to pay for the order. But, if a merchant makes shipment time an affirmative sales point, it is reasonable for consumers to expect that the merchant will comply with the sales representation. This is particularly true where a merchant can easily correct an incomplete or ambiguous shipment representation by simply adding words to the effect that the consumer should allow additional time for processing credit applications.[179]

It is well settled that a merchant will be held liable for any reasonable interpretation of advertising that is misleading, even though other non-misleading interpretations are possible

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[167] Specifically, the Commission considered (but rejected) amending the definition to refer to the time of the merchant's receipt of the charge information: (1) Only for third-party credit situations (e.g., where the consumer uses a bankcharge or travel and entertainment card), and (2) for all charge situations, but permitting an additional two weeks or other reasonable time (rather than an extra 20 days) in credit application situations. R011006–1, A–2. p. 49066.

[168] The California statute provides: When a buyer makes an initial application for an open-end credit plan, as defined in the Federal Consumer Credit Protection Act [15 U.S.C. 1602], at the same time the goods or services are ordered, and the goods or services are to be purchased on credit, the person conducting the business shall have 50 days, rather than 30 days, to perform the actions specified in this section. Bus. & Prof. Code 17538 (c).

[169] For example, NRMA suggested that the Commission provide an additional period consistent with the so-called "California rule." R011006–3, F–3, p. 3. See also R011006–2, H–2, p. 4. NRMA also suggested that, in order to achieve "consistency" with the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. 1691(d), the Commission consider 30 instead of 20 extra days for shipment. R011006–3, F–3, p. 4. NRMA apparently reasons that because the ECOA affords the merchant 30 days to notify consumers of its disposition of their credit applications, a merchant needs 30 days to process them. However, as discussed *infra*, the record does not support this.

[170] R011006–2, H–6, p. 2.

[171] R011006–2, F–1, p. 14.

[172] R011006–2, E–1, p. 2; accord MOAA, R011006–2, F–2, p. 8; Cutler, R011006–2, D–4, p. 2.

[173] R011006–2, F–1, p. 15.

[174] State of Georgia's Office of Consumer Affairs, R011006–2, H–6, p. 2. Accord NCL, R011006–2, GG–3, p. 3.

[175] 15 U.S.C. 1691(d) (unless extended by Fed. Res. Bd. regulation).

[176] R011006–2, GG–4, pp. 24, 54. On the other hand, AARP suggested that where merchants represent that shipment shall be made in less than 30 days, applications for credit should extend the period to the full 30 days permitted by the ECOA. R011006–2, GG–4, p. 54.

[177] Burnett, R011006–2, E–1, p. 2. Accord MOAA, R011006–2, F–2, p. 8; Cutler, R011006–2, D–4, p. 2.

[178] See, e.g., Cox, R011006–2, M–2, pp. 8–11.

[179] As Georgia Office of Consumer Affairs observed: "If there is some reason that credit card orders take longer to process, then at the time of purchase, the consumer should be given a delivery date that takes this delay into consideration." R011006–2, H–6, p. 2.

or even likely.[180] Accordingly, the Commission finds that any express shipment representation that does not say otherwise reasonably will convey to consumers that the merchant has factored the credit processing time into the fulfillment time. Further, the Commission concurs with staff and the PO and finds that a merchant who offers credit and makes unqualified express shipment representations will violate the TRR if it lacks substantiation for being able to ship orders within the time represented.

Sections 435.1(b) (1) and (2)

These sections describe a merchant's obligation when it is unable to ship merchandise within the applicable time as set forth in § 435.1(a). By virtue of the amendment to paragraph (a), the notification obligations of paragraph (b) now apply to merchants who are unable to ship merchandise ordered by telephone within the time expressly or implicitly represented.

One advantage of ordering by telephone is that the seller may be able to give the buyer more up-to-date information about the availability of an item and when it would be shipped. DMA and MOAA were concerned that this information might be construed as a first option notice with a revised shipping date under § 435.1(b)(1), and that any subsequent revision to the shipping date would have to be in the form of a second option notice under § 435.1(b)(2).[181] Second notices pursuant to § 435.1(b)(2) must notify the consumer that the order will be automatically canceled unless the consumer expressly agrees to the delay; by contrast, first notices pursuant to § 435.1(b)(1) must inform the consumer that the consumer will be deemed to consent to the delay unless the consumer cancels and requests a prompt refund.

The Commission finds that when the seller, in the course of taking the order, supplies shipping information modifying the express or implied shipment representation in the solicitation of the order, and this information is communicated clearly and conspicuously and agreed to by the consumer, it will be considered part of the sales negotiations and not a delay notice under the TRR. The shipping time agreed to in these sales negotiations, rather than the time originally referred to in the solicitation, would be the time referred to in paragraph (a)(1) of § 435.1 of the TRR. Like the PO, however, the Commission is concerned that some merchants might deceptively advertise fast shipment to lure consumers into calling in orders, and then routinely negotiate for a longer shipment period than advertised.[182] The Commission agrees with the PO that merchants engaging in such practices would violate the TRR's requirement that merchants possess a reasonable basis for their express or implied shipment claims at the time of the solicitations.[183]

Section 435.1(b)(3)

The Commission has amended §§ 435.1(b)(3) (i) and (ii) of the MOR by deleting subparts (i) and (ii). These parts establish, in any action to enforce the Rule, rebuttable presumptions of non-compliance when first class mail is not used to provide notification or delay to consumers, or when business reply or postage prepaid mail is not used to provide consumers a way of exercising their options at the merchant's expense.

In originally promulgating these sections, the Commission stated: "By establishing this presumption the Commission is providing guidance and is not preventing sellers from providing other means which are of equal or superior efficacy to the means prescribed by the Rule." [184] Comments submitted in response to the ANPR, however, suggested that these presumptions were unnecessary and burdensome. Accordingly, in the NPR the Commission solicited comment on whether to change them. Specifically, the Commission invited submissions about whether other mechanisms "can be demonstrated to insure that (consumers) are provided with intelligible information that are given meaningful opportunities to exercise their options" to cancel or to consent to delayed shipment.[185]

Although there is no empirical evidence that the first class mail rebuttable presumptions have inhibited notification of delay by telephone, some industry participants nevertheless contended that the presumptions inherently made use of other notification means less desirable and burdensome to industry.[186] According to DMA, the use of the telephone as a means of solicitation, as well as a means of ordering and providing customer service, clearly has reached the point where it must be considered of equal or superior efficacy to that of other media.[187] Thus, DMA commented that the MOR should be modified to create a presumption in favor of compliance when delay notices are given by telephone. DMA believed there was no objective reason to treat a delay notice given by telephone differently from one sent by first class mail, and that it is in the interest of sellers and buyers to allow sellers to provide information in the manner they believe is the most effective.[188]

MOAA commented that telephone communication is more rapid (allowing instantaneous contact, 24 hours a day, on a year-round basis), more convenient and less time consuming.[189] It also maintained that consumers may more easily exercise their cancellation options over the telephone.[190] Additionally, MOAA stated that merchants prefer giving delay information by telephone because it eliminates the "hiatus period" that exists when mail is used to provide notice.[191]

Some consumer groups and state consumer protection agencies opposed modifying the first class mail presumptions on the grounds that: (1) The information required by 435.1(b) is too difficult to communicate by telephone; and (2) any change in the first class mail presumptions would make enforcement more difficult. For example, AARP contended that telephone notification shifts the merchant's burden to consumers: "Under the present Rule, mail-order customers receive hands-on information

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[180] See *e.g.*, *National Comm'n on Egg Nutrition* v. *FTC*, 570 F.2d 157, 161 n.4 (7th Cir. 1977), cert. denied, 439 U.S. 821 (1978); *Murry Space Shoe Corp.* v. *FTC*, 304 F.2d 270, 272 (2d Cir. 1962); *Rhodes Pharmacal Co.* v. *FTC*, 208 F.2d 382, 387 (7th Cir. 1953), aff'd, 348 U.S. 940 (1955); Ford Motor Co., 87 FTC 756, 794–95 (1976).

[181] R011006–4, F–1, p. 14 and F–3, p. 13.

[182] PO's Report, R011006–3, O–1, p. 60.

[183] Id., p. 61, F.151.

[184] SBP, 40 FR 51582, 51597 (Nov. 5, 1975).

[185] R011006–1, A–2, p. 49067.

[186] Early comments seemed to favor amending the presumptions to give telephone notifications the same status as first class mail notifications, whereas later comments favored deleting the presumptions. For example, after recommending adding telephone notification to the first class mail presumptions, MOAA later favored eliminating the presumptions altogether. Compare MOAA, R011006–2, F–2, p. 2 (the Commission should modify the existing TRR to permit merchants to give and to receive required notices by telephone) with oral presentation of David Todd, Esq. on behalf of MOAA ("We believe there should be no presumptions, positive or negative, with respect to either mail or telephone notices"). R011006–4, Q–3, p. 28–29 (Nov. 3, 1992).

[187] R011006–2, F–1, p. 10; see also MOAA, R011006–2, F–2, p. 3.

[188] R011006–2, F–1, pp. 9–10. DMA's expert witness, Margaret Kuman, stated that telephone notice is the most effective means of communicating backorder information and the need for additional time to ship. R011006–2, HX–1, pp. 11–12.

[189] R011006–2, F–2, pp. 6–7. The Commission notes there is also evidence on the record that telephone notification could be less costly than first class mail notifications. See Kordahl, R011006–2, HX–4, pp. 21–22.

[190] Id.

[191] Id.

that can be carefully considered, retained and responded to in a deliberate fashion." [183] With telephone notification, consumers must remember all of the information the seller provides, including an 800 number to call the seller back at some later time to cancel the order or to agree to late shipment, or make an immediate decision concerning cancellation during the initial phone call.

Some state attorneys general and consumer protection agencies commented that the Commission should retain the MOR's first class mail presumptions in the amended Rule because of the difficulty of otherwise proving that the notice was adequate. For example, the New York Attorney General's office stated: "We strongly urge that notification of delay continue to be required by first class mail. The option of telephone notification would present a substantial evidentiary hurdle for consumers and enforcement agencies." [184] During her testimony, DMA's expert Margaret Kuman agreed that in the hands of an unscrupulous merchant, a system of telephone notification may pit the possibly uncertain memory of a consumer against the apparently complete records of a dishonest merchant.[185] The rulemaking staff and the PO, although agreeing that the telephone could be an effective means of providing option information, observed that notification by first class mail also aids enforcement by preserving, in documents consumers can retain, a record of precisely what was communicated by the merchant. If the notice was defective, it could later be used by law enforcement agencies to prove non-compliance. Accordingly, both staff and the PO recommended retaining the first class mail presumptions.[186]

In contrast, the Bureau of Economics ("BE") staff recommended deleting the presumptions.[187] BE staff contended that the presumptions favoring first class mail are anachronistic and that the record showed that telephone notification can be superior to mail notification because of its interactive nature. Further, telephone notification may be accomplished more quickly and at lower cost. Finally, BE staff believed that law enforcement concerns about deleting the presumptions can largely be addressed by more intensive scrutiny of records of "systems and procedures" a merchant should maintain to overcome the rebuttable presumptions of non-compliance under § 435.1(d).

After reviewing the rulemaking record, the Commission concludes that no means of providing delay notification should be subject to presumptive invalidity.[188] Eliminating the first class mail presumptions removes any bias against telephone notification or other classes of mail. Merchants may not choose, without being concerned about having to overcome a presumption in any enforcement action, whatever means they believe best will achieve the requirements of the TRR to afford prompt, reliable, and intelligible notification of delay and the means for exercising, at no cost to the consumer, any cancellation option.[189] The Commission's decision to repeal the first class mail rebuttable presumptions should not, however, be viewed as a relaxation of the TRR's requirements that the seller must notify the consumer "clearly and conspicuously" of delay "within a reasonable time after the seller first becomes aware of its inability to ship," as required by § 435.1(b)(1). Nor should it be construed in any way that would frustrate the requirements of § 435.1(c) that the seller must, whenever appropriate, make a "prompt refund."

For example, a reasonable and prudent merchant acting in good faith and considering the use of third class mail will want to consider whether bulk mail, and the possibly longer time frame needed for delivery of such mail, will satisfactorily achieve the TRR's requirements to provide notice "within a reasonable time after the seller first becomes aware of its inability to ship." Further, in providing notices by whatever means, sellers should consider whether the buyers will receive them in sufficient time so that the options provided are still meaningful. For example, if notices were to reach buyers only shortly before the new revised shipping date listed in the notice or on that day, consumers would not realistically have an option to consent to the delay or to receive a prompt refund. The timing of the receipt of the option notice would have decided this question for them. Similarly, merchants who choose to use telephone notification will want to ensure that their systems are designed to satisfy the TRR's requirement in § 435.1(b)(1) "to offer *the buyer*" the option to consent to a delay or to cancel the order and receive a prompt refund. (Emphasis supplied.)

The Commission also notes that, although it is eliminating the first class mail rebuttable presumptions, other presumptions remain. Under §§ 435.1(a)(4) and 435.1(d), a merchant's failure to have "records or other documentary proof establishing its use of systems and procedures" that ensure compliance in the ordinary course of business with the various provisions of the TRR will give rise to a rebuttable presumption of non-compliance.[190]

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[183] R011006–2, GG–4, p. 37. See also NCL, R011006–2, GG–3, p. 2 (the League strongly urges the Commission to require that consumers receive timely written notice of their right to cancel or to consent to delayed shipment; it is important for consumers to be able to document in writing the terms of any agreement to which they are a party).

[184] R011006–2, H–7, p. 3. See also R011006–2, H–3, p. 5; H–6, p. 3; H–8, p. 2; H–9, p. 3; H–11, pp. 2–3.

[185] Kuman, R011006–2, Tr. 70–71. However, Ms. Kuman also challenged the idea that consumers have their written notices, Tr. 70. Nevertheless, copies of facially defective written notices that were retained by consumers have been used to establish MOR violations. Staff Report, R011006–3, N–1, p. 106, n. 146.

[186] Staff Report, R011006–3, p. 107; PO's Report, R011006–3, pp. 57–60.

[187] Final Recommendations of Gerard Butters and Lisa Daniel, R011006–4, Q–1 (May 28, 1992).

[188] The Commission considered, but rejected, an alternative proposal raised by the rulemaking staff at the November 18, 1992 Commission meeting. At that time, staff suggested amending the presumptions to apply only to first notices involving indefinite delays or delays of more than 30 days and to second notices. Staff's theory was that for these notices the information required by the Rule is more complicated and that the writing and first class mail presumptions would be especially useful for such notices, and less necessary for other notices. At the Commission's request, the staff provided a memorandum describing the record evidence about how often the different types of notices are used and the costs associated with this proposal. The staff concluded that the evidence on the costs or benefits of treating various notices differently was inconclusive and continued to recommend retaining the rebuttable presumptions. R011006–4, Q–4. BE staff submitted a memorandum indicating that it continued to support repeal of the presumptions. While agreeing that the information required by the MOR (and to be required by the amended MOR) for certain notices is complicated, BE staff argued that carefully prepared scripts and well trained staff could intelligibly communicate the required information to consumers. R011006–4, Q–5. For the reasons set forth *infra*, the Commission is rescinding these presumptions.

[189] The Commission notes that one objection to deleting the rebuttable presumptions was that it places a burden on consumers to record and retain information, such as the seller's telephone number, to exercise any of the continuing cancellation options. If, at the time the seller offers the option, it also reminds the consumer that the seller's toll-free number is contained in its catalogs or other promotional materials, the availability of such information to the consumer could be a factor the Commission would consider in determining whether the cancellation option had been meaningfully provided. Of course, in discharging its obligation to provide a prepaid means of exercising any cancellation option, a merchant cannot assume that consumers retain any promotional materials or, if they do, that the information in them is sufficiently clear and conspicuous to satisfy the merchant's obligations.

[190] In any enforcement action, § 435.1(a)(4) of the amended Rule creates a rebuttable presumption of non-compliance if a seller fails to document the existence of systems and procedures to ensure shipment of merchandise within the time expressly or impliedly represented in the advertising that solicited the sale; § 435.1(d) creates a rebuttable presumption of non-compliance if a seller fails to

Thus, under these provisions, merchants still will have the duty to demonstrate that they have systems and procedures in place that ensure compliance with the TRR. However, the presumptions do not impose any particular recordkeeping requirements. The Commission, therefore, considers inapposite DMA's comment that because telephone notifications are widely used at present, "as long as a merchant can demonstrate that systems are in place to assure compliance with the Rule, the Commission should not require onerous and unduly burdensome recordkeeping requirements."[200] The Commission is retaining §§ 435.1 (a) (4) and (d) unchanged.

The Commission expects that prudent industry members will keep records concerning their systems and procedures to rebut these presumptions in any action to enforce the TRR, particularly if they choose to use a telephone system for notification. Two industry experts commented in this proceeding on the types of records that would be either readily available or reasonable records for sellers to maintain for telephone notification systems. Although the Commission is not incorporating these suggestions into the TRR or according them preferential treatment, such records would provide useful documentation of compliance in an investigation, particularly where the merchant relied on telephone notification.

For example, Margaret Kuman testified that sellers providing telephone notifications can use a system such as Call Detail Recording, which would have much the same reliability as records of written notices. This system would indicate the script that was used (a counterpart to the text of a letter) and a record that the message was transmitted (counterpart to the record that the first class mail notice was sent). This would consist of a chronological computerized record of all calls made by the merchant, including the number from which the call was made, the called number, and how long the conversation lasted.[201] Staff's expert, Eugene Kordahl, also believed that telephone notification procedures should include a written or computer record of each contact, the identity of the parties contacted, and the results of the contact.[202]

Section 435.1(c)

This section describes when and under what circumstances sellers must provide refunds. Because of the amendments to paragraph (a) of the rule, the refund provisions of paragraph (c) now apply to telephone sales. No specific amendments to paragraph (c) were needed to accomplish this change.

Section 435.1(d)

This section states that the "failure of a respondent-seller to have records or other documentary proof establishing its use of systems and procedures which assure compliance, in the ordinary course of business, with any requirement of paragraph (b) or (c) of this section will create a rebuttable presumption that the seller failed to comply with said requirement." No changes have been made to this section. This presumption applies to telephone sales as well as mail order sales because of the amendments to paragraph (a).

Section 435.2 (a) and (b)

The Commission has amended § 435.2 by adding a definition of "mail or telephone sales" in paragraph (a) and a definition of "telephone" in paragraph (b). The PO had recommended that the Commission add the definition of "mail or telephone sales" to avoid any uncertainty about the scope of the amendments and the coverage of the TRR. This definition derives from the common understanding of what a mail order sale is (the distinction being, how the order is placed, not how it is solicited).[203]

The definition of "telephone" is the same definition that the Commission published for comment in the NPR. The NPR proposed defining "telephone" to refer "to any direct or indirect use of the telephone to order merchandise, regardless of whether the telephone is activated by, or the language used is human or machine, or both."[204] Comments opposing this amendment suggested that the Commission adopt a narrow definition to avoid discouraging the commercial development of other alternatives.[205] However, none of these comments elaborated on this point. There is nothing more than conjecture in the record to suggest that adopting the proposed definition of "telephone" will stifle or inhibit technological advancement.[206]

Because winning consumer confidence is a key ingredient in the success of any commercial innovation, the Commission does not agree that requiring merchants to ship in a timely manner, to make refunds, or to obtain the consumer's informed consent to shipping delays will discourage the development of innovative ordering technologies that use the telephone. Further, the majority of the record comments addressing the question supported the adoption of the definition.[207] The comments favored an amendment that would clearly "cover orders taken by mechanical means over the phone, orders placed by computers, and orders placed by fax transmission."[208]

Nothing in the record suggests that consumer expectations with respect to the timing of shipment would vary depending on how the telephone is activated or whether the language used for ordering is that of human beings, machines, or both. The Commission accordingly adopts the definition of "telephone," as proposed in the NPR.

Section 435.2(d)[209]

The Commission has determined that it is in the public interest to amend the MOR's definition of a "properly completed order" for credit sales. This definition provides the key to measuring when the time period for shipment begins, i.e., a merchant must ship or perform other required actions within 30 days (or another time if specified) of

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document the existence of systems and procedures to ensure compliance with §§ 435.1(b) (the delay option provisions) or § 435.1(c) (the refund provisions).

[200] R011006–2, F–1, p. 11; see also Kuman, R011006–3, HX–1, p. 11, and NRMA, R011006–2, F–3, p. 4.

[201] R011006–2, HX–1, p. 11.

[202] R011006–2, HX–4, p. 23. Mr. Kordahl also recommended that telephone operators work from a prepared script as opposed to providing information extemporaneously.

[203] PO's Report, R011006–3, O–1, p. 77. See also Final Staff Recommendations, R011006–4, Q–1, pp. 22–23. As the staff noted, the rulemaking participants understood the change to § 435.2(a) proposed in the NPR to be in accord with the PO's definition. Moreover, none of the post-record comments objected to this definition.

[204] R011006–1, A–2, p. 49062. In the ANPR the Commission had proposed an even broader definition of "telephone." However, based on comments received in response to the ANPR, the Commission proposed the narrower definition in the NPR. See part I, B of this SBP for additional information on this point.

[205] MOAA, R011006–2, F–2, pp. 11–12. See also NRMA, R011006–2, F–3, p. 3. The National Retail Federation repeated this argument in its post-record comment, R011006–4, P–7, p. 4.

[206] To the extent that, at some future time, the definition can be demonstrated to have some adverse effect on developing technologies that incorporate the telephone, an aggrieved person may petition the Commission, pursuant to section 18(g) of the FTC Act, 15 U.S.C. 57a(g), for an exemption from the TRR.

[207] Burnett, R011006–2, E–1, p. 1; see also NCL, R011006–2, GG–3, p. 3; Attorney General of North Dakota, R011006–2, H–11, p. 1; CaDCA, R011006–2, H–2, p. 8.

[208] R011006–2, H–6, p. 3 (Iowa Attorney General's Office); see also R011006–2, H–2, p. 1 (CaDCA).

[209] Paragraph (c), defining "shipment," is unchanged. Similarly, the definitions of "refund," "prompt refund," and "time of solicitation" in paragraphs (e) through (g) are unchanged.

receipt of a properly completed order. For credit orders, the MOR defines "properly completed order" as "the time at which the seller charges the buyer's account."[210] The amended Rule now defines the term, in these situations, to refer to the time the seller receives "authorization from the buyer to charge an existing account,"[211] rather than when the account is charged.

The amendment is not intended to affect when sellers process charges. Sellers still have the discretion to process charges when they choose. The amendment merely provides that the TRR's requirements are triggered at the same time as sales paid for by cash, check, or money order.

In the NPR, the Commission solicited comment on whether, with respect to credit transactions, it should amend the definition of a "properly completed order" to refer to the time a merchant receives sufficient information from the consumer to charge the consumer's account instead of referring to the time the merchant actually charges the account. This issue previously had been considered. When the Commission promulgated the MOR, representatives of the mail order industry contended that charge sales differ from cash, check, or money order sales. They stated that when the merchant fails timely to ship merchandise paid by cash, check, or money order, the consumer experiences a direct out-of-pocket loss. On the other hand, they contended that as long as the merchant does not process the charge, the order has not been "prepaid" and the consumer is not injured by untimely shipment of merchandise. The Commission disagreed, stating that because "all consumers are injured when a seller lacks a reasonable basis for his shipment representations," it is appropriate to impose the same requirements on credit sales as sales paid by cash, check, or money order.[212] The Commission indicated that in these transactions, all consumers who encounter these business practices, regardless of whether they pay by credit or otherwise, are injured by being unable "to cancel the order and obtain, where applicable, a refund or credit adjustment."[213] The Commission believed, however, that there had been insufficient opportunity to comment on a definition of a "properly completed order" that reflected this determination.[214] Thus, although the Commission found that abuses could occur in all mail order credit sales, the rule only applied to credit sales in prepaid situations, i.e., where the seller charges the account prior to shipment.

Because mail orders predominantly are paid for by check, money order, or cash, the MOR's disparate treatment of mail orders that are charged has not been a very significant issue. However, by amending the MOR to include telephone orders, the number of credit transactions affected by a "payment received" rule for credit cards becomes very substantial.[215] For example, while 20% to 30% of consumers pay for their mail orders by credit card, approximately 70% of consumers who order by telephone pay by credit card.[216] Further, the evidence in the record indicated that merchants generally do not charge a buyer's account until they are ready to ship. Thus, without amending the MOR's definition of a "properly completed order," amending the MOR to include telephone sales would result in the Rule's requirements being triggered upon receipt of the order for between 70% and 80% of mail order sales and for only 30% of telephone order sales.

Participants have suggested that, to amend the definition, the Commission must affirmatively show that merchants are purposely refraining from debiting charge accounts to avoid complying with the Rule.[217] However, as a matter of law, the Commission is not required to show improper intent to reach all instances of unfair or deceptive practices.[218]

Some participants argued against this amendment on the grounds that consumers are not injured by delays when their accounts have not been charged.[219] In here testimony, Ms. Kuman suggested that the existing definition causes no pecuniary injury to consumers as long as their credit cards are not charged because, until then, there is neither an obligation to pay nor any accruing finance charges, interest, or late charges.[220] However, the Commission has already determined that injury can occur in those circumstances because consumers can incur considerable opportunity and transaction costs.[221]

Some participants also suggested that when a merchant is silent about shipment time, a consumer who charges an order may not be injured because the consumer may expect that it will take the merchant longer to ship than when the consumer pays by cash, check or money order. Thus, they contended that because a merchant's silence gives rise to an implicit representation that shipment will take longer than orders paid for in other ways, changing the definition of a properly completed order would not address or cure any unfair or deceptive act or practice.

However, this position is contradicted by other evidence in the record. For example, Ms. Kuman testified that consumers prefer telephone ordering because of speed of delivery. Coupled with the fact that the predominant method of payment for telephone orders is credit card, she agreed that it is logical to suppose that consumers who order by credit card expect shipment as fast as anyone else.[222] Burnett, a company with extensive experience in the field of advertising and its interpretation by consumers, also commented that: "Our experience is

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[210] 16 CFR 435.2(b)(1). In contrast, where payment in the proper amount is by cash, check, or money order, receipt of a properly completed order is defined by § 435.2(b)(2) as the time the seller receives the payment and all information needed to process the order. Thus, unless a seller says otherwise in soliciting the consumer's order, the MOR does not permit a seller to wait until a buyer's check "clears" before the MOR's shipment or delay notification requirements start to run.

[211] 16 CFR 435.2(d). Section 435.2 of the original MOR was renumbered to reflect the addition of two new definitions.

[212] SBP, 40 FR 51582 at 51594 (Nov. 5, 1975).

[213] Id. Additionally, the distinction industry draws between charge sales and sales paid by check is not very clear. Logically, the industry argument would support distinguishing payment by a check that the merchant deposits immediately, from payment by a check that the merchant does not deposit immediately. The MOR makes no such distinction and the Commission has heard no complaints from industry because it fails to do so.

[214] Id.

[215] This is not to say that extending the MOR to telephone order sales without changing the definition of properly completed order would not benefit consumers. For example, in the *Dixon* case (involving shipment failures by a mail and telephone-order merchant) credit accounts were billed immediately. R011006–2, H–2, p. 3 (CaDCA).

[216] See discussion *supra*, Part I, C, (3) of this SBP.

[217] See Kuman, R011006–2, HX–1, p. 16.

[218] Intent to deceive is not a required element for a Section 5 violation. *Doherty, Clifford, Steers & Shenfield, Inc.* v. *FTC*, 392 F.2d 921, 925 (6th Cir. 1968); *Montgomery Ward & Co., Inc.* v. *FTC*, 379 F.2d 666, 670 (7th Cir. 1967); *Gimbel Bros., Inc.* v. *FTC*, 116 F.2d 578, 579 (2d Cir. 1941). In the event a respondent were to violate an FTC order, lack of willfulness or intent is no defense to an action for civil penalties. *United States* v. *Beatrice Foods Co.*, 493 F.2d 1259, 1275 (8th Cir. 1974), *cert. denied*, 420 U.S. 961 (1975); *United States* v. *J.B. Williams Co., Inc.*, 354 F. Supp. 521, 530 (S.D.N.Y. 1973).

[219] For example, Ms. Kuman said that "[b]ecause credit transactions put the customer into the position of being able to delay payment, it may be that he or she is thus less likely to expect quick delivery." R011006–2, HX–1, p. 15. See also DMA's comment, R01106–2, F–1, p. 12; and its post-record comment R011006–4, P–1, p. 11.

[220] R011006–2, HX–1, p. 17.

[221] SBP, 40 FR 51582 at 51594 (Nov. 5, 1975). As Burnett noted.

Consumers will not have use of the ordered item, may forego ordering the item from more responsive, conveniently located or non–mail/phone order sellers, and may occur costs associated with learning the status of their pending orders if they are induced to deal with a seller who has no reasonable basis for shipping within the time promised. R01106–2, E–1, p.–2.

[222] Kuman, R011006–2, Tr. 12.

that consumers believe that items ordered by telephone, and paid for by credit card, will be fulfilled by sellers in the same or less time than those items ordered by mail and paid for by check or money order.[223]

This record indicates that consumer expectations regarding shipment are keyed to when the seller receives the consumer's payment authorization and other information necessary to process the order, not to some uncertain date known only to the seller and entirely within the seller's control, i.e., the date the seller charges the consumer's account. For example, based on the ORC survey, Dr. Cox concluded, "[w]hen no shipment representation is made, consumers who * * * pay by credit card expect shipment significantly faster than consumers who pay by other means.[224]

The participants agreed that where sellers make express shipment representations, the seller's performance should be judged based on the time the seller receives the order, and not when the consumer's account is charged. Ms. Kuman, for example, couched her argument about consumer expectations only in terms of implicit shipment representations. She testified that "[n]aturally, for merchants who set forth a specified time period for shipment, shipment must be made within the time period." [225] DMA took the same position.[226] Based on the ORC survey, Dr. Cox concluded that consumers expect shipment within the general time frame expressly represented by the merchant regardless of whether they pay by credit or any other means.[227]

Consumer expectations about delay when merchants do not make express claims also are keyed to when the consumers reasonably expected the seller to have received their orders, unless they are told otherwise. There is no indication that sellers inform buyers that when they do not make express shipment claims, shipment performance is timed from when buyers' accounts are charged. The Commission's amendment makes the rule consistent with consumer expectations about how shipment time is measured.

Some industry members also opposed changing the existing definition on the grounds that it would impose burdens on the industry and on consumers. These suggestions appear to have been based, in part, on a misperception of how the changed definition would operate. Additionally, some suggested that changing the definition would lead to different (and presumably costly) behavior by prudent business persons.

For example, DMA suggested that amending the definition might impose new burdens on the industry and harm consumers. Specifically, Ms. Kuman noted that, when a seller learns that a buyer does not qualify for a credit sale (e.g., the consumer has exceeded a credit limit), the seller would need to inform the consumer. This might be difficult to accomplish quickly, and would use part of the seller's shipment time.[228] Because the change in the definition would start the 30-day "clock" immediately upon receipt of a consumer's name, address, and account number, she also posited that a prudent seller would obtain credit authorization from the merchant's bank immediately to determine whether to proceed with the transaction, and then again when shipping and debiting the account.[229]

Ms. Kuman contended that obtaining credit approval twice would be an undue burden on business.[230]

She also speculated that the possible shortening of the 30-day shipment period when buyers did not initially qualify for credit would lead sellers to debit customers' accounts as soon as they did qualify.[231] This would adversely affect consumers and businesses, she claimed, because consumers would be charged before their merchandise was shipped and sellers would suffer the ill will of consumers whose charges appear on their statements before their merchandise arrived.[232]

In making this argument, DMA assumes that if the consumer initially does not qualify for credit, the intervening time it takes to obtain credit approval (i.e., the time it takes the consumer either to reduce his or her indebtedness below the spending limit and qualify for a charge on the original charge card, or the time it takes to place a qualifying charge on another charge card) is subtracted from the 30-day shipment time.[233] This is incorrect. DMA and Ms. Kuman acknowledged that the proviso at the end of § 435.2(d) (originally numbered § 435.2(b) in the MOR) states, in pertinent part:

> That where the seller receives notice that * * * *the buyer does not qualify for a credit sale, "receipt of a properly completed order" shall mean the time at which* * * * (iii) *the seller receives notice that the buyer qualifies for a credit sale.* (Emphasis added.)[234]

DMA contended, however, that it is not clear from the proviso that when the merchant receives notice that the buyer qualifies for a credit sale, the merchant still has 30 days to ship.[235]

The merchant's obligation to ship, and the pertinent time period for shipment, commences upon "receipt of a properly completed order." [236] The

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[223] R011006–2, E–1, p. 2. See also Andrew Levitt, R011006–2, G–1, p .1.

[224] R011006–2, M–2, p. 11. For consumers who charged mail or telephone orders and received no express shipment representations, the ORC survey shows that the average consumer who charged his order expected shipment within 14 days while the average consumer who paid any other way expected shipment within 21 days, *Id.* p. 9. Further, NWMaDA reported that "advertisements often urge the consumer to call and use their credit cards . . . to assure faster delivery." R011006–2, GG–2, p. 2. See also R011006–2, H–6, p. 2 (Iowa Attorney General).

[225] R011006–2, HX–1 at 16.

[226] R011006–2, F–1, p. 13. FTC staff has taken a similar position. See, e.g., Informal staff opinion letter from Raymond L. Rhine to Ms. Tracy White, File R511979, Doc. No. 435–11 (Aug. 11, 1989). In situations where there is an express representation, the time of receipt of the order is the only practical benchmark against which to measure whether, in soliciting the consumer's order, the merchant has met its substantiation requirements. A different measurement would make an express shipment representation—and the implied representation that the merchant possesses and relies upon a reasonable basis for it—meaningless.

[227] Consumers who charged mail or telephone orders and to whom express shipment representations were made generally expected shipment within that time. These consumers reported that while the shipment representations to them averaged 22.89 days, their average shipment expectation was 18.3 days. Likewise, persons to whom express shipment representations were made and who paid by other means reported that while the shipment representation to them averaged 34.19 days, their average shipment expectation was 29.08 days. R8–11606, M–2, pp. 9–11.

[228] Because DMA conceded that it was appropriate to require merchants to ship within the time they expressly represent, R011006–2, HX–1, p. 16, its arguments against the change in definition focus on the operation of the amended Rule in situations in which the merchant makes no express shipment representation.

[229] Unless stated otherwise, the terms "authorization" and "initial authorization" in this portion of the SBP refer to the merchant's practice of obtaining credit authorization from the merchant's bank that the consumer is credit worthy. If the merchant's bank authorizes the charge, a hold is placed on the consumer's credit card account for the amount of the transaction, usually for a designated period of 30 days. If the charge is authorized by the bank and the corroborating sales draft is placed in the private payment network within the designated period, the merchant is assured that the charge will be honored. Thus, it is in the merchant's interest to obtain the initial authorization from the bank before beginning the process of fulfilling the consumer's order. See AARP, R011006–2, GC–4, pp. 25–26.

[230] R011006–2, HX–1, p. 18.

[231] Id. at 17–18.

[232] Id.; Kuman, R011006–2, Tr. 49–98.

[233] R011006–2, HX–1, p. 17.

[234] Kuman, R011006–2, Tr. 54–55.

[235] R011006–4, P–2, p. 13.

[236] The TRR mentions a "properly completed order" only in situations in which no express shipment representation is made and the so-called "30-day rule" applies. However, by implication, the Commission regards the definition of a "properly completed order" as also triggering the shipment clock in express shipment representation situations. Thus, assuming that the merchant expressly represents only that it will ship "in 8 weeks," the 8-week shipment clock does not begin to run until

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proviso at the end of § 435.2(d) means that where the buyer does not qualify for a credit sale, the order is *not* a "properly completed order" until the merchant receives notice that the buyer qualifies for a credit sale. Under this proviso, as with checks that are dishonored, when consumers do not qualify for credit, the 30-day "clock" stops running and is automatically reset when the merchant learns that the buyer qualifies for the credit sale. The resetting of the clock gives sellers 30 days to ship from the time the clock is reset.[237]

DMA's other argument is that the definition change will cause sellers to obtain authorization twice (at the time the order is received and when it is shipped), which will be burdensome. However, the record indicates that this is already a common practice. For example, Mr. Kordahl commented that businesses usually obtain authorization at the outset, and if there are delays in shipping the merchandise, again at the time of shipment.[238] Thus, the amendment is unlikely to affect the authorization practices of many sellers.

AARP suggested that DMA's double authorization burden argument may be predicated on DMA's belief that merchant liability for a charge may be affected if a merchant is required to provide a delay notice before the transaction is finally approved. Thus, merchants will want to charge consumer accounts prior to shipment to protect themselves. AARP's comment provided information supporting its conclusion that, if the merchant sends a delay notice to a customer after the merchant obtains an initial authorization, the merchant will not be adversely affected.[239] Specifically there is no reason to believe: (1) Authorization will be revoked; or (2) credit will be denied when the corroborating documents are processed through the private payment network; or (3) chargebacks will occur after a consumer's account is debited.[240] The Commission agrees that there is no reason to believe that harm to the industry occurs if sellers obtain initial credit authorizations, and then send option notices when they unexpectedly cannot ship as promised.

Finally, as noted previously, the definition change does not regulate when the merchant charges the consumer's account. The Commission doubts that the amendment would "induce" merchants to charge buyers' accounts upon the receipt of orders, as DMA suggested. The practice of holding charges until the time of shipment is widespread. As many as 80% of businesses are estimated to hold charges until they can ship the merchandise.[241] For example, MOAA commented that its members (who are very large businesses) generally delay charging a customer's account until an order is shipped.[242]

This practice appears to be a result of private contractual rules governing the credit industry.[243] MasterCard and Visa's joint comment regarding their rules for participating merchants explain how they encourage holding charges until shipment:

> [U]nder the MasterCard and VISA rules, when a cardholder uses a credit card to purchase goods, a merchant may not submit the credit card sales draft resulting from that transaction into the VISA or MasterCard system until the merchant has delivered the goods to the cardholder. The MasterCard and VISA rules further provide that a credit card sales draft must be submitted into the VISA or MasterCard system within a specified period of time (five calendar days for VISA transactions; three bank business days for MasterCard transactions) after the goods are delivered.[244]

It thus appears that any merchant who immediately places a sales draft in the private payment network before shipment breaches these private contractual rules. Finally, the record reflects that merchants are reluctant to incur consumer ill will by charging their accounts prematurely.[245] For these reasons, the Commission disagrees that changing the definition of a "properly completed order" will induce sellers to debit customers' accounts upon receipt of their orders.

Another issue raised by comments in conjunction with amending the definition of a "properly completed order" was whether the "information needed" to process the order would be defined to include the initial credit authorization by the merchant's bank.[246] DMA and MOAA commented that credit authorization should be included as part of the "information needed" to process the order, so that the 30-day "clock" would not start running until the initial bank authorization had been obtained. Further, Ms. Kuman suggested that if the initial credit authorization were necessary to make an order "properly completed," it would largely remedy the so-called "ticking clock" problem she identified, i.e., the loss of shipment time occasioned when a consumer proves to be not creditworthy.[247] On the other hand, many businesses and business representatives, consumers, and consumer protection and state agencies who supported amending the definition indicated that the information sellers need to process orders does not necessarily include the bank's initial credit authorization.[248]

As discussed supra, those opposing the amendment may not have fully considered the implications of the TRR provision denying "properly completed" status to an order accompanied by a check that is dishonored or a charge that is disqualified. As the PO noted, the reason for making bank authorization a part of the definition would be to protect the merchant in situations in which the consumer's credit is not adequate. However, this protection is already afforded the merchant by the proviso at the end of § 435.2(d), which

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the merchant receives a "properly completed order," and, in situations where the buyer's check or money order is dishonored or the buyer does not qualify for the credit sale, the proviso in § 435.2(d) would permit the merchant to ship 6 weeks after it receives notice that the buyer's check or money order has been honored or the buyer qualifies for the credit sale, or the buyer tenders cash in the proper amount.

[237] Staff Report, R0–11006–4, N–1, pp. 85–88; PO's Report, R011006–4, O–1, pp. 42–43.

[238] R011006–2, HX–6, pp. 1–3. Mr. Kordahl noted that experts in the management of credit chargebacks recommend authorizing every transaction and then re-authorizing backorders before shipment. R011006–2, M–3, Appendix "A," p. 28.

[239] R011006–2, M–6, p. 5. In support of its comment, AARP produced a Federal Reserve System staff memorandum to the Consumer Advisory Council entitled "Use of Credit Cards in Telemarketing" (Sept. 20, 1989), Id. Appendix A. It also produced a form BankCard Merchant Agreement, Id. Appendix C. AARP also cited an interview with Gerri Detweiler of Bankcard Holders of America. R011006–2, GG–4, p. 54 (Jan. 26, 1990).

[240] R011006–2, M–6, p. 54 (interview with Gerri Detweiler of Bankcard Holders of America); Appendix A (Federal Reserve System staff memorandum to the Consumer Advisory Council entitled "Use of Credit Cards in Telemarketing;" Appendix C (form BankCard Merchant Agreement).

[241] R011006–2, M–3, pp. 6–7.

[242] R011006–2, F–2, p. 8.

[243] See PO's Report finding that: "This practice is followed not so much for the consumers' benefit but to prevent chargebacks by the banks. It is expected that this practice will be followed more frequently in the future because VISA has changed its rules to reward merchants who seek authorization, make deposits, and ship, all within ten calendar days." R011006–3, O–1, p. 46, F.11S.

[244] R011006–2, EE–1, Attachment p. 2.

[245] Kordahl, R011006–2, M–3, p. 7, n.5.

[246] The NPR did not solicit comment on this particular issue. However, the suggestion and comments follow from the proposed change in the definition, and the Commission has therefore decided to address the issue here.

[247] R011006–2, HX–1, p. 17. See also DMA, R011006–2, F–1, p. 12; and MOAA, R011006–2, F–2, p. 8.

[248] R011006–3, O–1, p. 7. These include: Marketing Science, Inc., R011006–2, D–1, p. 2; Barry Cutler, R011006–2, D–4, p. 6; Burnett, R011006–2, E–1; NWMaDA, R011006–2, GG–2, p. 2; Montgomery County, Maryland, R011006–2, GG–3, pp. 1–2; NCL, R011006–3, GG–3, p. 3; AARP, R011006–3, GG–4, pp. 49–52; CaDCA, R011006–3, H–3, p. 4; Iowa Department of Justice, R011006–3, H–6, p. 2; Georgia Office of Consumer Affairs, R011006–3, H–8, p. 2; and, the New York State Consumer Protection Board, R011006–2, H–12, pp. 1–2.

stops the shipment clock if there is a denial of credit.[249]

Accordingly, nothing would be gained by having the clock start only after the seller's receipt of the bank's authorization. On the contrary, this could cause further shipment delays, to the ultimate injury of consumers. As with shipment times, merchants can control when they seek initial authorization from the merchant's bank. Thus, merchant delay in seeking authorization, whether intentional or not, would delay starting the 30-day "clock," and continue the uncertainty the amendment seeks to eliminate.[250]

Moreover, the Commission believes that the industry proposal would continue an unjustified disparity in the MOR's treatment of cash, check, and credit card transactions. Notice that a check has "cleared" is not part of the "information needed" to process an order under the MOR. If anything, the merchant's processing of credit card payments ensures payment (through the initial authorization procedure) as fast as, or faster than, the merchant's processing of the consumer's check. The speed of payment should increase as merchants use automated equipment more. AARP submitted a very detailed comment, which the Commission finds persuasive, indicating that there is virtually no time difference between credit card transaction transmittals and check clearance times.[251] By not including an initial credit authorization within the definition of a properly completed order, the Commission assures that orders are treated alike regardless of how they are paid.[252]

Similarly, the Commission disagrees with DMA that changing the definition of a "properly completed order" will have any significant adverse impact on small businesses. DMA had urged the Commission to be sensitive to the impact that the change in the definition of a "properly completed order" would have on small businesses, as compared to larger ones having direct access through computers to banks and other institutions.[253] Larger firms can process credit transactions much faster than those that must rely on manual preparation of credit documents. Similar disparities are experienced by firms that accept applications for credit. Larger firms have direct computer access to credit services while smaller ones do not.

However, the rulemaking record reflects that all businesses, including small ones, are increasingly availing themselves of electronic draft capture technology.[254] The record also reflects that merchants who process charges manually experience virtually the same 5-day clearance time for charges as they do for checks.[255] Thus, the new definition of a "properly completed order" will cause the merchant who processes credit orders no more delay in verifying or securing payment than merchants subject to the MOR experience in processing checks.[256]

In conclusion, in adopting the original definition, the Commission was necessarily concerned only with its effect on mail order sales. Because few mail order transactions were paid by credit card, it was not in the public interest to prolong the rulemaking to permit additional comment on this point. In this rulemaking, the Commission has now afforded interested parties the opportunity to comment fully on its proposal to treat credit sales the same as all other sales.[257] No persuasive evidence was adduced to indicate that circumstances have so changed that the Commission's original finding—that consumers are harmed regardless of the method of payment for the merchandise—was incorrect. Moreover, in this rulmaking, the only meaningful justification for distinguishing credit from other sales, i.e., the hypothesis that consumers who pay by credit would expect shipment to take longer than consumers who pay by other means, was not supported by the evidence.

Further, the Commission's decision to amend the MOR to include telephone sales alters the public interest considerations because of the widespread consumer practice of paying for telephone order merchandise by credit card. The record also indicates that, in delay situations, sellers generally do not process charges until they are ready to ship. Thus, amending the MOR to include telephone transactions would not regulate effectively most telephone sales if the current definition were retained.[258] In preventing unfair or deceptive acts or practices, the Commission may "effectively close all roads to the prohibited goal * * *."[259] Based on the rulemaking record as a whole, the Commission finds it is in the public interest to amend the definition of a "properly completed order" in the MOR to require charge orders to be considered properly completed upon receipt of the consumer's authorization to charge the account (along with all the other information from the consumer needed by the merchant to process the order).

Section 435.3—Limited Applicability

This section consists of six notes that previously appeared at the end of

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[240] PO's Report, R011006–3, O–1, pp. 42–43.

[250] NWMaDA, R011006–2, GG–2, p. 2. MOAA, recognizing that a merchant could suspend operation of the amended Rule's requirements indefinitely by not obtaining the credit authorization from the merchant's bank, suggested that an order should be deemed properly completed when initial authorization is received or ten days after a buyer has supplied complete information to a merchant, whichever happens sooner. R011006–2, F–2, p. 9. The rulemaking record provides no basis for introducing any additional delay into the 30-day period provided by the TRR. Given the consumer expectations documented in this proceeding, and given the fact that charge orders can be processed as fast as orders paid for in other ways, any act or practice of holding a charge order more than 30 days without obtaining the consumer's informed consent thereto is unfair or deceptive. See Staff Report, R011006–3, N–1, pp. 90–95; Final staff Recommendations, R011006–4, Q–1, p. 12.

[251] R011006–2, GG–4, pp. 32–33. To process charge slips manually, rather than electronically, takes about 5 days. Similarly, under the Expedited Funds Availability Act, 12 U.S.C. 4001 et seq. (1987), funds for most checks become available, at the latest, by the fifth business day. AARP's conclusion was shared by Mr. Cutler, who, reporting the experiences of his clients, said, "our experience shows that the time to process [third-party credit] orders is the same as for cash orders." R011006–2, D–4, p. 5.

[252] Under the TRR amendments adopted today, the consumer's authorization to the merchant to charge the consumer's account would be included as part of the information necessary to properly complete an order, while the initial authorization of the merchant's bank would not.

[253] R011006–4, P–1, p. 14.

[254] According to VISA, by December 1989, 64.9% of its sales drafts were captured electronically. For direct marketers who do not have electronic capture capabilities, telephone approval is commonplace. R011006–2, GG–4, pp. 25–26; Staff Report, R011006–3, N–1, p. 93.

[255] See AARP, R011006–2, GG–4, 24–25, 32–33.

[256] Staff Report, R011006–3, N–1, p. 94; PO's Report, R011006–3, O–1, p. 43.

[257] The Commission notes that an agency need not base its amendment of an existing rule on new evidence or changed circumstances. *Center for Science in the Public Interest* v. *Dep't of Treasury*, 797 F.2d 995 (D.C. Cir. 1986) (citations omitted). However, if it chooses to change an existing rule, it must "examine the relevant data and articulate a satisfactory explanation for its action." *Motor Vehicle Mfrs. Assoc.* v. *State Farm Mutual Ins. Co.*, 463 U.S. 29, 43 (1983). While an agency that seeks to revoke an existing rule carries

> [t]he burden * * * to justify the change from the status quo[,] that justification need not consist of affirmative demonstration that the status quo is wrong; it may also consist of demonstrating, on the basis of careful study, that there is no cause to believe that the status quo is right, so the existing rule has no rational basis to support it.

Center for Auto Safety v. *Peck*, 751 F.2d 1336, 1349 (D.C. Cir. 1985) (citations omitted).

[258] Of course, changing the definition also affects the approximately 20% of mail orders that are charged. There is no evidence that any of the participants in the rulemaking failed to understand that the proposed change in the definition of "properly completed order" would affect both telephone-order sales and mail order sales that are paid for by credit card.

[259] *FTC* v. *Ruberoid Co.*, 343 U.S. 470, 473 (1952). See also *FTC* v. *National Lead Co.*, 352 U.S. 419 (1957); *Jacob Siegel Co.* v. *FTC*, 327 U.S. 608 (1946).

§ 435.1(d). These notes describe what transactions the rule does not apply to, a statement that the Commission does not intend to preempt state law that is not inconsistent with this rule, and a savings clause. The text has not been changed.

Section 435.4—Effective Date of the Rule

This section consists of a note that previously appeared at the end of § 435.1(d). It has been revised to indicate when the amendments to the rule become effective. When the Commission tentatively adopted the amendments to the MOR on November 18, 1992, it announced that they would take effect 100 days after publication of the SBP in the **Federal Register**. However, the Commission has received requests to postpone the effective date of the amendments to avoid their becoming effective during the peak end-of-year selling season for most direct marketers. To provide business with an adequate opportunity to design and test any changes in their fulfillment procedures, the Commission has determined that the effective date will be March 1, 1994.

V. Regulatory Analysis

Under section 22 of the FTC Act, 15 U.S.C. 57b–3, the Commission must issue a final regulatory analysis in conjunction with the publication of a final rule.[260] The term "rule" does not include any amendment to a rule unless the Commission concludes: (1) That the proposed amendment will have an impact on the national economy of over $100,000,000; (2) that it will cause a substantial change in the cost or price of goods and services used by particular industries, which are supplied extensively in particular geographic regions, or which are acquired in significant quantities by the Federal, State or local governments; or (3) that the amendment will have a significant impact on the persons regulated or on consumers. For the reasons discussed infra, the Commission concludes that the proposed amendments to the MOR will have none of these effects. Accordingly, the Commission finds that no regulatory analysis is required by the FTC Act for the amendments issued today.

Under the Regulatory Flexibility Act, 5 U.S.C. 604, which addresses the effect of regulation on small businesses, the Commission must prepare and make available for public comment a final regulatory flexibility analysis at the time the Commission promulgates a final rule. This analysis must contain: (1) A succinct statement of the need for, and the objectives of, the rule; (2) a summary of the issues raised by the public comments in response to an initial regulatory flexibility analysis and the Commission's disposition of these issues; and (3) a description of each of the significant alternatives considered by the Commission to minimize any significant impact on small entities.[261] Alternatively, the Chairman can certify that the rule will not have a significant economic impact on a substantial number of small entities.[262] For the reasons discussed infra, the Commission is certifying that the amendments to the MOR adopted today will not have a significant impact on a substantial number of small entities, and therefore, a final regulatory flexibility analysis is unnecessary.

A. Background

Based on comments received in response to the ANPR and other relevant information, the Commission announced in the NPR its determination that the proposed amendments would not have an annual effect on the national economy of $100,000,000 or more; would not cause a substantial change in the cost or price of goods or services used extensively by particular industries, or supplied extensively in particular geographic regions, or acquired in significant quantities by the federal government or by state or local governments. The Commission also concluded that the proposed amendments would not have a significant negative impact upon persons subject to regulation or consumers. Accordingly, the Commission determined that neither the amendment to the MOR to include telephone order merchandise nor the proposed amendment to the definition of a "properly completed order" warranted a preliminary regulatory analysis under section 22(b)(1) of the FTC Act, 15 U.S.C. 57b–3(b)(1).

Similarly, the Commission determined that the amendments would not, if promulgated, have a significant economic impact on a substantial number of small entities. Thus, under the Regulatory Flexibility Act the Commission was not obligated to prepare an initial regulatory flexibility analysis. When the Commission made this determination, the Chairman certified this to the Chief Counsel for Advocacy of the Small Business Administration.

However, in the NPR, the Commission invited comment on its determinations regarding both statutes. It also specifically invited comment on the costs, benefits, and other effects of the proposed amendments, and, in particular, on the costs that could be incurred by small entities if the proposed amendments were adopted.[263] The comments the Commission received did not contradict the Commission's determinations that the proposed amendments would not warrant a regulatory analysis or a regulatory flexibility analysis.

B. Analysis of the Amendments' Economic Effect

1. Amending the MOR to Include Telephone Sales

As previously discussed, the Commission estimates that, in 1988, consumers paid $50.6 million for telephone order merchandise that was neither shipped nor refunded.[264] At the same time, consumers lost the benefit of another $202.4 million worth of telephone order merchandise that was not shipped, but was not charged to their accounts. Although consumers' charge accounts were not debited, these consumers were deprived of the use of the ordered merchandise and lost the opportunity to order merchandise from more responsive merchants. They also may have incurred costs associated with learning the status of their orders. Additionally, the Commission estimates that in 1988, consumer losses from delayed telephone order merchandise totalled $11.57 million.[265]

The Commission also has determined that the MOR's existence has had a positive effect on both mail and

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[260] As previously indicated, this part of the SBP also contains the Commission's estimates of the economic effect of the amendments. In this regard, the Commission is not required "to undertake a full scale economic investigation" prior to promulgating the amendments. Otherwise FTC proceedings would be inordinately delayed and relief to the consuming public would be denied. Instead, the Commission is required to consider the economic impact of the rule and "to summarize its best estimate of the impact." H.R. Rep. No. 1107, 93rd Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Admin. News 7723.

[261] Id. "Small entity" is defined by the Small Business Administration in the Small Business Size Standards, 13 CFR part 121. Under the current version of this regulation, catalog and mail order houses with annual receipts less than $12.5 million are small entities.

[262] 5 U.S.C. 605(b).

[263] R011006–1, A–2, p. 49066–67.

[264] See supra n.121 and accompanying text. Comparable mail order figures are derived as follows: In 1988, consumers spent between $201 million and $210 million on mail order merchandise that was neither shipped nor refunded, and they lost the benefit of between another $76 million and $79 million worth of mail order merchandise that, while not charged, was not shipped.

[265] Comparable losses for delayed mail order merchandise were $14.64 million. See discussion in part II, A, 3 of this SBP.

telephone order sales, because many merchants using telephone already voluntarily comply with the MOR, which reduces injury that might otherwise occur. To the extent that there is already considerable voluntary compliance, the costs to business of complying with the amended Rule will be correspondingly reduced. Additionally, to the extent that there is such voluntary compliance, it enhances consumer confidence in mail and telephone order merchants, and repeat sales of mail and telephone order merchandise. Because of industry's support for amending the MOR to cover telephone sales, it is also difficult to conclude that there could be significant costs to them.[266] Further, for the most part the direct marketing industry did not contend that the amendments to the MOR would be costly or burdensome to implement.[267] Consumers also will benefit from increased efficiency in federal and state law enforcement resulting from uniform regulation of mail and telephone orders.

Additionally, as previously explained, the Commission found that amending the MOR to include telephone order merchandise is in the public interest. In sum, the Commission concluded that:

(1) The ORC and other survey data, the expert testimony, and the comments submitted by industry, the attorneys general and consumer protection agencies all indicate that the acts or practices addressed by the MOR cause significant harm to consumers when engaged in by telephone order merchants. Further, nothing in the record suggests that the problems could be more efficiently addressed by case-by-case prosecution alone rather than by regulation.

(2) Analysis of the prevalence of telephone order problems and the nature of the injuries sustained by consumers indicates that the consumer harm is significant, whether measured solely in terms of the monetary injury to individual consumers or in terms of the injury to consumers overall.

(3) The amendments are likely to reduce the harm the Commission identified because they:

(a) Replace the general duty under section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1), to make truthful and substantiated shipping claims with rules that specifically define a merchant's obligations, which should ensure that voluntary compliance continues, as well as improve compliance by clarifying any uncertainty merchants have about their obligations;

(b) Are enforceable by civil penalties, which should have a deterrent effect and result in greater compliance; and

(c) Will allow the Commission and the states to apply uniform enforcement standards more efficiently, which will facilitate enforcement.

(4) The benefits of the amendment will exceed its costs. Many merchants already voluntarily comply with the MOR's requirements for their telephone orders because they view the requirements as sound business practice.[268] Thus, there will be little if any incremental cost to merchants or consumers of merchants complying with the amended MOR.

Further, the Commission had previously determined that the costs of complying with the MOR are small. Specifically, in the Damans survey, which was conducted in conjunction with the Commission's Regulatory Flexibility Act Review of the MOR, the Commission evaluated financial and other effects of the MOR on small businesses by comparing cost data for both large and small firms (some of which also sold telephone order merchandise).[269] The survey indicated that almost half of all small and large firms surveyed reported no incremental costs as a result of having to comply with the MOR, and that compliance expenditures of less than $500 were reported by an additional 27%.[270] Of all large and small mail and telephone order merchants surveyed, 81% of small and 65% of large businesses reported that elimination of the MOR would not alter their business practices of notifying consumers of delays.

The survey report concluded: "Most mail order firms, large and small, feel the concept of the 30-day rule is sound business practice that enhances the growth and development of a mail order business and they do not wish to have the Rule eliminated."[271] Accordingly, it appears that because most businesses generally do not distinguish between their mail and telephone order operations, the costs of extending the MOR to telephone sales would amount to little more than the small costs businesses incur in complying with the MOR generally. Balanced against the small additional costs are the benefits of increased enforcement efficiency, among other things.

2. Amending the Definition of a "Properly Completed Order"

DMA submitted the principal comment concerning the economic effects of this amendment:

(1) It contended that the amendment will impose additional costs by causing sellers to seek credit authorization twice. However, the rulemaking record indicates that most prudent merchants already seek authorization twice in backorder situations. Accordingly, it is impossible to identify additional costs that might arise from the hypothetical possibility that the change in the definition of a properly completed order would induce merchants to seek a charge authorization more than once in a delay situation.

(2) DMA also contended that the proposed change will induce merchants to debit consumers' accounts before shipment. The rulemaking record suggests such conduct would be limited. Presently, 80% of merchants hold charges in delay situations until shipment. Moreover, this practice is growing because of bank card issuer rules and incentives they provide to encourage merchants to process orders quickly and to refrain from debiting before shipment. Moreover, merchants receive better bank interchange rates when charges are held until shipment.[272] Additionally, the record suggests that merchants believe that debiting a consumer's account before shipment tends to incur consumer ill will and to affect consumer repeat purchase behavior. In short, the record provides little reason to conclude that

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[266] Final Recommendations of Gerard Butters and Lisa Daniel, R011006–4, Q–1, p. 2 (May 28, 1992).

[267] The only exceptions concerned the definitions of "telephone" and a "properly completed order," and the inclusion of business-to-business transactions in the TRR. The comments regarding the definition of "telephone" expressed concern that the definition would inhibit the development of future ordering technologies. However, the Commission does not find this unsupported argument persuasive. As to the definition of a "properly completed order," the Commission discusses the comments and the alleged costs of the amendment in part IV, in its analysis of § 435.2(d). The Commission determined that the cost arguments were unpersuasive. Moreover, to the extent there are costs attributable to the amendment to the definition of a "properly completed order," the Commission believes that the costs are outweighed by the consumer benefits that will accrue. This issue is also discussed infra in subpart C of this Part of the SBP. The issue regarding business-to-business transactions is addressed in part VII, A of the SBP.

[268] For example, Mr. Kordahl noted that businesses do not generally distinguish mail from telephone orders in their fulfillment operations, and that for these businesses, extension of the MOR to telephone order merchandise would not impose significant burdens on them. R011006–3, HX–4, pp. 11–12.

[269] R011006–B–1, B–37.

[270] Id. at 3–43, Tab. 3–34.

[271] Id. at 5, 3–37. The Commission adopted this finding in concluding its Regulatory Flexibility Act review of the MOR. Regulatory Flexibility Act Review of the Mail Order Rule, 51 FR 1516, 1517 (Jan. 14, 1986).

[272] See, e.g., PO's Report, R011006–3, O–1, p. 46, F.115.

amending the definition of a properly completed order will significantly increase business costs.

Finally, the Damans survey indicated that almost half of all small and large firms surveyed reported no incremental increase in costs as the result of having to comply with the MOR and reported only small compliance expenditures by a significant number of other small and large firms.[273] The compliance costs would include those related directly or indirectly to the MOR's definition of a "properly completed order" as it pertains to payment by check (the means most frequently used to pay for mail order merchandise). Therefore, changing the definition to treat checks and charges identically should involve little incremental cost to small businesses.[274]

VI. Effect on State and Local Laws

Section 435.3(b) of the amended MOR (originally, Note 5 of the MOR) relates to its preemptive effect. In the NPR, the Commission did not state that it was considering amending the preemption provision in the MOR, and in fact this provision has not been amended.

In § 435.3(b) the Commission explicitly preempts any provision of any state, municipal or local law, ordinance or regulation in the same regulatory area (*i.e.*, regulation relating to timely shipment of mail or telephone order merchandise or substantiation of shipment claims, appropriate and timely notification of delay, or appropriate and timely refund for unshipped mail or telephone order merchandise) that is inconsistent with the amended MOR to the extent such provision fails to provide buyers with rights equal to or greater than those rights provided them by the TRR. On the other hand, any state action that: (1) Is consistent with the TRR; (2) provides buyers greater rights than the TRR; or (3) imposes additional obligations or liabilities upon sellers, is not superseded.[275] Section 435.3(b) provides, however, that any state action that requires notification to the buyer of any right which is the same as a right created by the TRR, but does so in a language, form, or manner that is in any way different from that required by the TRR, is preempted as being in conflict with the TRR. Finally, this section contains a saving provision which preserves those parts of any state action that are not preempted.

It is well-established that federal law, including agency regulations, can expressly or impliedly supplant state law.[276] An administrative agency acting within its delegated authority can preempt state law by expressly saying so.[277] In adopting the amendments to the MOR, the Commission is exercising its delegated authority to define with specificity unfair or deceptive acts or practices under the FTC Act, and therefore may expressly supplant state law.

VII. Other Matters

A. Business-to-Business Sales

When it adopted the MOR the Commission found that "businessmen have encountered the same problems as the general public when dealing with distant mail order sellers * * *. [T]here is no compelling reason to treat them differently from other members of the consuming public."[278] In the NPR, the Commission indicated that its proposed amendments to the MOR would accordingly cover business-to-business telephone sales, and invited comment on this issue.[279]

The record reflects that businesses encounter the same problems as the general public when dealing with telephone order merchants. Mr. Kordahl testified that of 1988 sales of approximately $117.5 billion, approximately 5% of business-to-business sales, or between $470 million to $710 million, were delayed. He further testified that "[b]ased on my experience, the occurrence of shipment representations for which there was an inadequate factual basis, and of failures to provide timely or adequate notices of delay, were as frequent as their occurrence in business-to-consumer sales."[280] He stated that extending the MOR to telephone order merchandise would benefit primarily those businesses that purchase merchandise which they charge on bank credit cards.[281]

Markson Science, Inc. ("Markson") contended that while extending the MOR to credit card or cash telephone sales between businesses is appropriate, the rule should exempt transactions involving open accounts. It reasoned that in those transactions there are adequate protections for the parties.[282] Texas Instruments Inc. ("TI") opposed amending the MOR to include telephone sales between businesses because of the "impact on existing technology-based business practices, such as electronic order placement * * *."[283] The company contended that the amendment would cover the system presently in use at TI called Electronic Data Interchange ("EDI"), a system which allows for high speed delivery and for paperless transactions.[284]

Although Markson indicates that in certain transactions the contracts between businesses provide ample protection for non-timely or non-shipment problems, the evidence in this rulemaking does not indicate that adopting the TRR will alter this or place burdens on the industry.[285] Additionally, with respect to TI's concerns, the TRR does not require that information such as notification of delay be communicated by any particular means. Indeed, the elimination of the first class mail rebuttable presumptions arguably should facilitate the transmission of delay option notices and buyer responses directly by telephone or indirectly by EDI.[286] The parties also have offered no argument against the idea that, in any event, shipping information should be based on a

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[273] R011006–B–1, B–37, p. 3–43, Tab. 3–34.

[274] See also PO's Report, R011006–3, O–1, pp. 31–33. Apart from limited costs, changing the definition of a "properly completed order" will lead to better communications between merchants and consumers in delayed shipment situations. This in turn will improve prospects for repeat sales for small and large businesses alike. See Staff Report, R011006–3, N–1, pp. 120–21.

[275] This provision is similar to the provisions in a number of other TRR's, including, "Cooling-off Period for Door-to-Door Sales," 16 CFR part 429, Note 2(b); "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," 16 CFR part 436, Note 2; "Credit Practices," 16 CFR 444.5(2); "Funeral Industry Practices," 16 CFR 453.9(b); and "Used Motor Vehicle Trade Regulation Rule," 16 CFR 455.6(a)(2).

[276] See, *e.g.*, *Schneidewind* v. *ANR Pipeline Co.*, 485 U.S. 293 (1988); *Fidelity Fed. Savs. & Loan Ass'n* v. *De la Cuesta*, 458 U.S. 141 (1982).

[277] *Schneidewind* v. *ANR Pipeline Co.*, 485 U.S. at 299–300 (1988); *Fidelity Fed. Savs. & Loan Ass'n* v. *De la Cuesta*, 458 U.S. at 152–54 (1982). See also *City of New York* v. *FCC*, 486 U.S. 57, 63–64 (1988).

[278] SBP, 40 FR 51582 at 51594 (Nov. 5, 1975).

[279] R011006–1, A–2, pp. 69063–64.

[280] R011006–3, HX–4, p. 31.

[281] Eight to 12% of business-to-business transactions—or $9.4 billion to $14.1 billion in 1988 sales—involve the use of bank credit cards. Id. at 27. CaDCA's comment provided a concrete example of how business-to-consumer and business-to-business transactions can involve similar problems. Reporting on the previously cited *Dixon* case, the state consumer protection agency stated that both consumers and businesses usually ordered computer software from the defendants by telephone and that in 95% of these telephone sales, purchases were charged on bank credit cards. In many cases, these orders were never shipped and there were no refunds made. R011006–2, H–3, pp. 1–2.

[282] R011006–2, D–1, p. 2.

[283] R011006–2, D–2, p. 1.

[284] Id. at 1–2.

[285] The record indicates that the costs of complying with the amendment for business-to-business transactions should be modest and similar to the costs of complying with business-to-consumer transactions.

[286] Further, these systems' remedial provisions make it unlikely that much of a Commission enforcement presence would be necessary in business-to-business transactions. See PO's Report, pp. 66–69.

reasonable basis or that changes in agreed shipment times not be made unilaterally by the merchant. The Commission has accordingly determined not to exempt business-to-business transactions from the TRR's coverage.

B. Other Proposals

Some comments proposed expanding or restricting the MOR in various other respects. For example, some participants suggested that the C.O.D. exemption in the MOR be expanded to include so-called sales "on approval," [287] that the MOR be extended to third-party fulfillment houses,[288] that the amended MOR exempt "installed merchandise," [289] and that the amended MOR exempt local retail sales.[290] The Commission rejects these proposals, in large part because (1) the public was afforded inadequate notice to ensure full participation by affected parties; and (2) the record as developed afforded little or no basis upon which to take action, including initiating additional rulemaking.[291]

VIII. Conclusion

The Commission has determined that the TRR issued today is in the public interest because it will deter the unfair or deceptive acts or practices currently existing in sales of merchandise by telephone. In formulating the TRR, the Commission has assessed the economic impact on consumers and businesses, particular small businesses, and determined that the benefits of the TRR, taken together, outweigh the costs.

List of Subjects in 16 CFR part 435

Mail order merchandise, Telephone order merchandise, Trade Practices.

Part 435 of title 16 of the Code of Federal Regulations is revised to read as follows:

PART 435—MAIL OR TELEPHONE ORDER MERCHANDISE

Sec.
435.1 The Rule.
435.2 Definitions.
435.3 Limited Applicability.
435.4 Effective Date of the Rule.

Authority: 15 U.S.C. 57a; 5 U.S.C. 552.

§ 435.1 The rule.

In connection with mail or telephone order sales in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, it constitutes an unfair method of competition, and an unfair or deceptive act or practice for a seller:

(a)(1) To solicit any order for the sale of merchandise to be ordered by the buyer through the mails or by telephone unless, at the time of the solicitation, the seller has a reasonable basis to expect that it will be able to ship any ordered merchandise to the buyer:

(i) Within that time clearly and conspicuously stated in any such solicitation, or

(ii) if no time is clearly and conspicuously stated, within thirty (30) days after receipt of a properly completed order from the buyer, Provided, however, where, at the time the merchandise is ordered the buyer applies to the seller for credit to pay for the merchandise in whole or in part, the seller shall have 50 days, rather than 30 days, to perform the actions required in § 435.1(a)(1)(ii) of this part.

(2) To provide any buyer with any revised shipping date, as provided in paragraph (b) of this section, unless, at the time any such revised shipping date is provided, the seller has a reasonable basis for making such representation regarding a definite revised shipping date.

(3) To inform any buyer that it is unable to make any representation regarding the length of any delay unless

(i) the seller has a reasonable basis for so informing the buyer and

(ii) the seller informs the buyer of the reason or reasons for the delay.

(4) In any action brought by the Federal Trade Commission, alleging a violation of this part, the failure of a respondent-seller to have records or other documentary proof establishing its use of systems and procedures which assure the shipment of merchandise in the ordinary course of business within any applicable time set forth in this part will create a rebuttable presumption that the seller lacked a reasonable basis for any expectation of shipment within said applicable time.

(b)(1) Where a seller is unable to ship merchandise within the applicable time set forth in paragraph (a)(1) of this section, to fail to offer to the buyer, clearly and conspicuously and without prior demand, an option either to consent to a delay in shipping or to cancel the buyer's order and receive a prompt refund. Said offer shall be made within a reasonable time after the seller first becomes aware of its inability to ship within the applicable time set forth in paragraph (a)(1) of this section, but in no event later than said applicable time.

(i) Any offer to the buyer of such an option shall fully inform the buyer regarding the buyer's right to cancel the order and to obtain a prompt refund and shall provide a definite revised shipping date, but where the seller lacks a reasonable basis for providing a definite revised shipping date the notice shall inform the buyer that the seller is unable to make any representation regarding the length of the delay.

(ii) Where the seller has provided a definite revised shipping date which is thirty (30) days or less later than the applicable time set forth in paragraph (a)(1) of this section, the offer of said option shall expressly inform the buyer that, unless the seller receives, prior to shipment and prior to the expiration of the definite revised shipping date, a response from the buyer rejecting the delay and cancelling the order, the buyer will be deemed to have consented to a delayed shipment on or before the definite revised shipping date.

(iii) Where the seller has provided a definite revised shipping date which is more than thirty (30) days later than the applicable time set forth in paragraph (a)(1) of this section or where the seller is unable to provide a definite revised shipping date and therefore informs the buyer that it is unable to make any representation regarding the length of the delay, the offer of said option shall also expressly inform the buyer that the buyer's order will automatically be deemed to have been cancelled unless:

(A) The seller has shipped the merchandise within thirty (30) days of the applicable time set forth in paragraph (a)(1) of this section, and has received no cancellation prior to shipment, or

(B) The seller has received from the buyer within thirty (30) days of said applicable time, a response specifically consenting to said shipping delay. Where the seller informs the buyer that it is unable to make any representation regarding the length of the delay, the buyer shall be expressly informed that, should the buyer consent to an indefinite delay, the buyer will have a continuing right to cancel the buyer's order at any time after the applicable time set forth in paragraph (a)(1) of this section by so notifying the seller prior to actual shipment.

(iv) Nothing in this paragraph shall prohibit a seller who furnishes a definite revised shipping date pursuant to paragraph (b)(1)(i) of this section, from requesting, simultaneously with or at any time subsequent to the offer of an option pursuant to paragraph (b)(1) of this section, the buyer's express consent to a further unanticipated delay beyond the definite revised shipping date in the form of a response from the buyer specifically consenting to said further

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[287] Dellart and Darr, R011006–2, E–2.
[288] MOAA, R011006–2, F–2, pp. 4, 9–10.
[289] NRMA, R011006–2, F–3, pp. 4–5.
[290] NRMA, R011006–2, F–3, p. 5.
[291] See Staff Report, R011006–3, N–1, pp. 112–16; PO's Report, R011006–3, O–1, pp. 64–71.

delay. Provided, however, That where the seller solicits consent to an unanticipated indefinite delay the solicitation shall expressly inform the buyer that, should the buyer so consent to an indefinite delay, the buyer shall have a continuing right to cancel the buyer's order at any time after the definite revised shipping date by so notifying the seller prior to actual shipment.

(2) Where a seller is unable to ship merchandise on or before the definite revised shipping date provided under paragraph (b)(1)(i) of this section and consented to by the buyer pursuant to paragraph (b)(1) (ii) or (iii) of this section, to fail to offer to the buyer, clearly and conspicuously and without prior demand, a renewed option either to consent to a further delay or to cancel the order and to receive a prompt refund. Said offer shall be made within a reasonable time after the seller first becomes aware of its inability to ship before the said definite revised date, but in no event later than the expiration of the definite revised shipping date: Provided, however, That where the seller previously has obtained the buyer's express consent to an unanticipated delay until a specific date beyond the definite revised shipping date, pursuant to paragraph (b)(1)(iv) of this section or to a further delay until a specific date beyond the definite revised shipping date pursuant to paragraph (b)(2) of this section, that date to which the buyer has expressly consented shall supersede the definite revised shipping date for purposes of paragraph (b)(2) of this section.

(i) Any offer to the buyer of said renewed option shall provide the buyer with a new definite revised shipping date, but where the seller lacks a reasonable basis for providing a new definite revised shipping date, the notice shall inform the buyer that the seller is unable to make any representation regarding the length of the further delay.

(ii) The offer of a renewed option shall expressly inform the buyer that, unless the seller receives, prior to the expiration of the old definite revised shipping date or any date superseding the old definite revised shipping date, notification from the buyer specifically consenting to the further delay, the buyer will be deemed to have rejected any further delay, and to have cancelled the order if the seller is in fact unable to ship prior to the expiration of the old definite revised shipping date or any date superseding the old definite revised shipping date: Provided, however, That where the seller offers the buyer the option to consent to an indefinite delay the offer shall expressly inform the buyer that, should the buyer so consent to an indefinite delay, the buyer shall have a continuing right to cancel the buyer's order at any time after the old definite revised shipping date or any date superseding the old definite revised shipping date.

(iii) Paragraph (b)(2) of this section shall not apply to any situation where a seller, pursuant to the provisions of paragraph (b)(1)(iv) of this section, has previously obtained consent from the buyer to an indefinite extension beyond the first revised shipping date.

(3) Wherever a buyer has the right to exercise any option under this part or to cancel an order by so notifying the seller prior to shipment, to fail to furnish the buyer with adequate means, at the seller's expense, to exercise such option or to notify the seller regarding cancellation.

Nothing in paragraph (b) of this section shall prevent a seller, where it is unable to make shipment within the time set forth in paragraph (a)(1) of this section or within a delay period consented to by the buyer, from deciding to consider the order cancelled and providing the buyer with notice of said decision within a reasonable time after it becomes aware of said inability to ship, together with a prompt refund.

(c) To fail to deem an order cancelled and to make a prompt refund to the buyer whenever:

(1) The seller receives, prior to the time of shipment, notification from the buyer cancelling the order pursuant to any option, renewed option or continuing option under this part;

(2) The seller has, pursuant to paragraph (b)(1)(iii) of this section, provided the buyer with a definite revised shipping date which is more than thirty (30) days later than the applicable time set forth in paragraph (a)(1) of this section or has notified the buyer that it is unable to make any representation regarding the length of the delay and the seller

(i) Has not shipped the merchandise within thirty (30) days of the applicable time set forth in paragraph (a)(1) of this section, and

(ii) Has not received the buyer's express consent to said shipping delay within said thirty (30) days;

(3) The seller is unable to ship within the applicable time set forth in paragraph (b)(2) of this section, and has not received, within the said applicable time, the buyer's consent to and further delay;

(4) The seller has notified the buyer of its inability to make shipment and has indicated its decision not to ship the merchandise;

(5) The seller fails to offer the option prescribed in paragraph (b)(1) of this section and has not shipped the merchandise within the applicable time set forth in paragraph (a)(1) of this section.

(d) In any action brought by the Federal Trade Commission, alleging a violation of this part, the failure of a respondent-seller to have records or other documentary proof establishing its use of systems and procedures which assure compliance, in the ordinary course of business, with any requirement of paragraphs (b) or (c) of this section will create a rebuttable presumption that the seller failed to comply with said requirement.

§ 435.2 Definitions.

For purposes of this part:

(a) "Mail or telephone order sales" shall mean sales in which the buyer has ordered merchandise from the seller by mail or telephone, regardless of the method of payment or the method used to solicit the order.

(b) "Telephone" refers to any direct or indirect use of the telephone to order merchandise, regardless of whether the telephone is activated by, or the language used is that of human beings, machines, or both.

(c) "Shipment" shall mean the act by which the merchandise is physically placed in the possession of the carrier.

(d) "Receipt of a properly completed order" shall mean, where the buyer tenders full or partial payment in the proper amount in the form of cash, check, money order, or authorization from the buyer to charge an existing charge account, the time at which the seller receives both said payment and an order from the buyer containing all of the information needed by the seller to process and ship the order. Provided, however, That where the seller receives notice that the check or money order tendered by the buyer has been dishonored or that the buyer does not qualify for a credit sale, "receipt of a properly completed order" shall mean the time at which:

(i) The seller receives notice that a check or money order for the proper amount tendered by the buyer has been honored,

(ii) The buyer tenders cash in the proper amount, or

(iii) The seller receives notice that the buyer qualifies for a credit sale.

(e) "Refund" shall mean:

(1) Where the buyer tendered full payment for the unshipped merchandise in the form of cash, check or money order, a return of the amount tendered in the form of cash, check or money order;

(2) Where there is a credit sale:

(i) And the seller is a creditor, a copy of a credit memorandum or the like or an account statement reflecting the removal or absence of any remaining charge incurred as a result of the sale from the buyer's account;

(ii) And a third party is the creditor, a copy of an appropriate credit memorandum or the like to the third party creditor which will remove the charge from the buyer's account or a statement from the seller acknowledging the cancellation of the order and representing that it has not taken any action regarding the order which will result in a charge to the buyer's account with the third party;

(iii) And the buyer tendered partial payment for the unshipped merchandise in the form of cash, check or money order, a return of the amount tendered in the form of cash, check or money order.

(f) "Prompt refund" shall mean:

(1) Where a refund is made pursuant to paragraph (c)(1) or (2)(iii) of this section a refund sent to the buyer by first class mail within seven (7) working days of the date on which the buyer's right to refund vests under the provisions of this part;

(2) Where a refund is made pursuant to paragraph (c)(2) (i) or (ii) of this section, a refund sent to the buyer by first class mail within one (1) billing cycle from the date on which the buyer's right to refund vests under the provisions of this part.

(g) The "time of solicitation" of an order shall mean that time when the seller has:

(1) Mailed or otherwise disseminated the solicitation to a prospective purchaser,

(2) Made arrangements for an advertisement containing the solicitation to appear in a newspaper, magazine or the like or on radio or television which cannot be changed or cancelled without incurring substantial expense, or

(3) Made arrangements for the printing of a catalog, brochure or the like which cannot be changed without incurring substantial expense, in which the solicitation in question forms an insubstantial part.

§ 435.3 Limited applicability.

(a) This part shall not apply to:

(1) Subscriptions, such as magazine sales, ordered for serial delivery, after the initial shipment is made in compliance with this part.

(2) Orders of seeds and growing plants.

(3) Orders made on a collect-on-delivery (C.O.D.) basis.

(4) Transactions governed by the Federal Trade Commission's Trade Regulation Rule entitled "Use of Negative Option Plans by Sellers in Commerce," 16 CFR part 425.

(b) By taking action in this area:

(1) The Federal Trade Commission does not intend to preempt action in the same area, which is not inconsistent with this part, by any State, municipal, or other local government. This part does not annul or diminish any rights or remedies provided to consumers by any State law, municipal ordinance, or other local regulation, insofar as those rights or remedies are equal to or greater than those provided by this part. In addition, this part does not supersede those provisions of any State law, municipal ordinance, or other local regulation which impose obligations or liabilities upon sellers, when sellers subject to this part are not in compliance therewith.

(2) This part does supersede those provisions of any State law, municipal ordinance, or other local regulation which are inconsistent with this part to the extent that those provisions do not provide a buyer with rights which are equal to or greater than those rights granted a buyer by this part. This part also supersedes those provisions of any State law, municipal ordinance, or other local regulation requiring that a buyer be notified of a right which is the same as a right provided by this part but requiring that a buyer be given notice of this right in a language, form, or manner which is different in any way from that required by this part. In those instances where any State law, municipal ordinance, or other local regulation contains provisions, some but not all of which are partially or completely superseded by this part, the provisions or portions of those provisions which have not been superseded retain their full force and effect.

(c) If any provision of this part, or its application to any person, partnership, corporation, act or practice is held invalid, the remainder of this part or the application of the provision to any other person, partnership, corporation, act or practice shall not be affected thereby.

§ 435.4 Effective date of the rule.

The original rule, which became effective 100 days after its promulgation on October 22, 1975, remains in effect. The amended rule, as set forth in this part, becomes effective March 1, 1994.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–22587 Filed 9–20–93; 8:45 am]

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federal register

Tuesday
September 21, 1993

Part III

Environmental Protection Agency

Final National Pollutant Discharge Elimination System General Permits for the Coastal Waters of Louisiana; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4732–4]

Final NPDES General Permits for the Coastal Waters of Louisiana (LAG330000) and Texas (TXG330000)

AGENCY: Environmental Protection Agency.

ACTION: Issuance of Final NPDES Permits.

SUMMARY: Region 6 of the Environmental Protection Agency (EPA) today issues final NPDES General Permits for oil and gas facilities engaged in field exploration, drilling, well completion and treatment operations and production activities in the Coastal Subcategory of the Oil and Gas Extraction Point Source Category in the States of Louisiana and Texas. Produced water and produced sand discharges are not authorized by these general permits but will be regulated under separate general coastal permits.

These general permits prohibit the discharge of drilling fluids and drill cuttings. The general permits also place limits on oil and grease, total suspended solids, chemical oxygen demand, chlorides, total chromium, zinc, pH and "no free oil" in treated waste water from dewatering activities and prohibit discharge of formation test fluids to rivers, lakes, streams, freshwater wetlands and intermediate wetlands. These permits are consistent with EPA guidelines at 40 CFR part 435, subpart D and water quality-based criteria of the Louisiana Department of Environmental Quality and the Texas Railroad and Water Commissions.

DATES: These permits will become effective on October 21, 1993.

ADDRESSES: Notifications required by these permits should be sent to the Water Management Division, Enforcement Branch (6W–EA), EPA Region 6, P.O. Box 50625, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Copies of the response to comments received on the proposed permits can be obtained from Ms. Ellen Caldwell, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202; telephone: (214) 655–7513.

SUPPLEMENTARY INFORMATION: EPA issues these general permits pursuant to its authority under section 402 of the Clean Water Act (CWA), 33 U.S.C. 1342. Except as noted herein, these permits apply to all Region 6 field exploration drilling, well completion, well treatment and production activities, except for the discharge of produced water and produced sand, from facilities in the Coastal Oil and Gas Point Source Extraction Point Source Category (40 CFR part 435, subpart D). The permits also apply to facilities which would be classified Onshore but for the decision in *American Petroleum Institute* v. *EPA*, 661 F.2d 340 (5th Cir. 1981). The permits do not apply to facilities in the Offshore Subcategory (40 CFR part 435, subpart A), the Onshore Subcategory (subpart C), the Agricultural and Wildlife Water Use Subcategory (subpart E) or in the Stripper Subcategory (subpart F). These permits do not apply to "new sources" as defined at 40 CFR 122.2, nor to operations which adversely affect properties listed or eligible for listing in the National Register of Historic Places.

EPA Region 6 proposed to issue these permits at 55 FR 23348 (June 7, 1990) and provided additional notice of the proposal in the New Orleans Times and the Houston Post on June 3, 1990. The comment period was originally scheduled to end on July 23, 1990, but was extended to August 13, 1990. The American Petroleum Institute (API); Amoco Corporation; Conoco Inc.; Exxon Company, U.S.A.; Louisiana Department of Environmental Quality; Louisiana Department of Natural Resources; Louisiana Department of Wildlife and Fisheries; Louisiana Mid-Continent Oil and Gas Association (LMOGA); Kerr-McGee Corporation; Mobil Exploration and Producing U.S. Inc.; Natural Resources Defense Council (NRDC); Sierra Club, Delta Chapter; Project Reef Keeper; Shell Offshore Inc.; U.S. Department of the Interior; and private citizens: C. Baek, R. Cook, R. Ernst, J.A. Freeman, M.T. Gordon, J. Hiytzen, E. Johnson, G. Mitchell, J. Morris, P. Oblak, L. Reitman, F.H. Rudenberg, D. Silver, Spackman, D. Swanson, J. Toigo, M. Valrass submitted comments on EPA's proposal to issue this permit. EPA Region 6 has considered all comments received. In some instances, minor wording changes in the final permit may differ from the proposed permit to clarify some points as a result of comments. These final permits contain no substantive changes from the proposed permits.

State Certification

In accordance with section 401(a)(1), EPA may not issue a NPDES permit until the State in which the discharge will occur grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. The State of Louisiana, after review of the permit, has certified that the Louisiana permit will comply with applicable State water quality standards or limitations. The State of Texas has waived certification.

The Coastal Zone Management Act

In accordance with section 307(c)(3) of the Coastal Zone Management Act, the Louisiana Coastal Zone Management Division of the Louisiana Department of Natural Resources has reviewed NPDES permit LAG330000 and found its issuance consistent with the Louisiana Coastal Resources Program. The State of Texas has no coastal zone management program.

The Endangered Species Act

The Endangered Species Act and its implementing regulations (5 CFR 402) require that each Federal shall ensure that any agency action, such as permit issuance, will not jeopardize the continued existence of any endangered species or result in the destruction or adverse modification of their critical habitats. The U.S. Fish and Wildlife Service has concurred with Region 6's earlier finding that the issuance of this permit is "not likely to adversely affect any endangered or threatened species nor adversely affect their critical habitat."

The Marine Protection, Research and Sanctuaries Act

The Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972 regulates the dumping of all types of materials into ocean waters and establishes a permit program for ocean dumping. In addition, the MPRSA establishes the Marine Sanctuaries Program, implemented by the National Oceanographic and Atmospheric Administration (NOAA), which requires NOAA to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or aesthetic values. There are presently no existing marine sanctuaries in coastal waters of Louisiana or Texas.

Economic Impact

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order. The economic and inflationary effects of these regulations (40 CFR part 435) on which these permits are based were evaluated in accordance with Executive Orders 11821 and 12044.

The Paperwork Reduction Act

The information collection required by these permits have been approved by OMB under provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*

in submissions made for the NPDES permit program and assigned OMB control numbers 2040–0088 (NPDES permit application) and 2040–0004 (discharge monitoring reports). All facilities affected by these permits will need to submit a request for coverage under either the Louisiana or Texas Coastal Waters general permits. EPA estimates that it will take an affected facility three hours to prepare a request for coverage. All affected facilities will be required to submit discharge monitoring reports (DMR's). EPA estimates the DMR burden will be 36 hours per facility per year.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b), EPA region 6 certifies that these general permits will not have a significant impact on a substantial number of small entities. This certification is based on the fact that the majority of parties regulated by this permit have greater than 500 employees and are not classified as small business under the Small Business Administration regulations established at 49 FR 5024 *et. seq.* (February 9, 1984). These facilities are classified as Major Group 13—Oil and Gas Extraction SIC 1311 Crude Petroleum and Natural Gas. For those operators having fewer than 500 employees this permit will not have significant impact as the effluent limits being imposed in these permits are similar to those being included in state regulations and permits. Moreover, the permits reduce a significant burden of applying for individual permits, on regulated sources.

Dated: September 10, 1993.

Jack Ferguson,

Director, Water Management Division, EPA Region 6.

General Permit Authorization To Discharge From the Oil and Gas Extraction Point Source Category to Coastal Waters of Louisiana

Permit No. LAG330000

In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq: the "Act"), the following discharges are authorized from coastal oil and gas facilities (defined in 40 CFR part 435, subpart D) to receiving waters, described below (encompassing the coastal waters of Louisiana) in accordance with effluent limitations, monitoring requirements and other conditions set forth in parts I, II, III, and IV thereof:

Drilling Fluids,
Drill Cuttings,
Deck Drainage,
Sanitary Wastes,
Domestic Wastes,
Desalinization Unit Discharge,
Diatomaceous Earth Filter Media,
Excess Cement Slurry,
Uncontaminated Ballast/Bilge Water,
Boiler Blowdown,
Blowout Preventer Control Fluid,
Well Treatment Fluids,
Workover Fluids,
Completion Fluids,
Formation Test fluids,
Treated Wastewater from Dewatered Drilling Fluids/Cuttings,
Muds, Cuttings, and Cement at the Seafloor,
Uncontaminated Seawater,
Uncontaminated Freshwater.

This permit authorizes discharges to waters of the United States from Louisiana Coastal Subcategory oil and gas facilities engaged in field exploration, drilling, well completion, and well treatment operations. Produced water, produced sand and source water and sand discharges are excluded from coverage under this general permit, but will however, be regulated under a separate general coastal permit.

For the purpose of this NPDES general permit, Coastal Subcategory facilities means oil and gas facilities associated with a wellhead located in waters of the United States (including wetlands), as defined at 40 CFR 122.2, landward of the inner boundary of the territorial seas and those wells in the geographic area (land and water areas) suspended from the Onshore Subcategory described in 40 CFR part 435, subpart C. The term wetlands means "those surface areas which are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas". Territorial seas refers to "the belt of the seas measured from the line of ordinary low water along that portion of the coast which is direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles." (See Clean Water Act Section 502).

The coastal permit area as described in the regulations is broad by definition and includes all rivers, streams and lakes, bays, estuaries and wetlands that occur inland of the territorial seas. The coastal subcategory also includes the geographic area along the coast of Texas and Louisiana (Chapman line area) which was originally defined as coastal in EPA's 1976 Interim Final Regulations for the onshore subcategory (See Suspension of Regulations, 47 FR 31554, July 21, 1982). A facility is considered to be covered under the proposed general permit if the location of the wellhead is within the described permit area.

This permit does not authorize discharge from "new sources" as defined in 40 CFR 122.2. This permit also does not authorize discharges from oil and gas extraction operations which adversely affect properties listed or eligible for listing in the National Register of Historic Places.

This permit shall become effective on October 21, 1993.

This permit and the authorization to discharge shall expire at midnight, October 21, 1998.

Signed this September 7, 1993.

Myron O. Knudson, P.E.,

Director, Water Management Division, EPA Region 6.

Part I

Section A. General Permit Coverage

1. Intent to be Covered

Written notification of intent to be covered, including the legal name and address of the operator, the lease (or lease block) number assigned by the Louisiana Minerals Board or, if none, the name commonly assigned to the lease area, and the number and type of facilities located within the lease (or lease block) shall be submitted:

(a) By operators in leases (or lease blocks) that are located within the geographic scope of this permit, within 45 days of the effective date of this permit.

Note: Operators must request coverage under this general permit or have an effective individual permit.

(b) By operators of leases (or lease blocks) obtained subsequent to the effective date of this permit fourteen days prior to the commencement of discharge.

2. Termination of Operations

Lease (or lease block) operators shall notify the Regional Administrator within 60 days after the permanent termination of discharges from their facilities. In addition, lease (or lease block) operators shall notify the Regional Administrator within 30 days of any transfer of ownership.

Section B. NPDES Individual Versus General Permit Applicability

1. The Regional Administrator May Require Application for an Individual NPDES Permit

The Regional Administrator may require any person authorized by this

permit to apply for and obtain an individual NPDES permit when:

(a) The discharge(s) is a significant contributor of pollution;

(b) The discharger is not in compliance with the conditions of this permit;

(c) A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point sources;

(d) Effluent limitation guidelines are promulgated for point sources covered by this permit;

(e) A Water Quality Management Plan containing requirements applicable to such point source is approved;

(f) The point source(s) covered by this permit no longer:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require the same or similar monitoring; or

(5) In the opinion of the Regional Administrator, are more appropriately controlled under an individual permit than under a general permit.

The Regional Administrator may require any operator authorized by this permit to apply for an individual NPDES permit only if the operator has been notified in writing that a permit application is required.

2. An Individual NPDES Permit May Be Requested

(a) Any operator authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The operator shall submit an application together with the reasons supporting the request to the Regional Administrator no later than December 20, 1993.

(b) When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to the owner or operator is automatically terminated on the effective date of the individual permit.

3. General Permit Coverage May Be Requested

A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source after the notification of intent to be covered is filed (see A.1. above).

Part II

Section A. Effluent Limitations and Monitoring Requirements

Specific effluent limitations and monitoring requirements are discussed below. They are organized by the type of discharge in the text, and by discharge type, effluent limitation and monitoring requirements in Table 1.

1. Drilling Fluids

(a) *Applicability.* Permit conditions apply to all drilling fluids (muds) that are discharged, including fluids adhering to cuttings.

(b) *Prohibitions.* This permit prohibits the discharge of all drilling fluids.

2. Drill Cuttings

Special Note: The permit prohibitions and limitations that apply to drilling fluids also apply to drilling fluids that adhere to drill cuttings. Any permit condition that applies to the drilling fluid system, therefore, also applies to cuttings discharges.

(a) *Prohibitions.* This permit prohibits the discharge of drill cuttings.

3. Treated Waste water From Drilling Fluids/Cuttings, Dewatering Activities and Pit Closure Activities

(a) *Applicability.* Treated waste water from dewatered drill site reserve pits, shale barges, ring levees and inactive/abandoned reserve pits, mud tanks and effluents from solids control systems.

(b) *Limitations. Free Oil.* Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Discharge is authorized only at times when visual sheen observation is possible. Monitoring must be accomplished once per day, when discharging. The number of days a sheen is detected must be recorded.

(Exception) Treated waste water may be discharged at any time if the operator uses the static sheen method for detecting free oil.

Oil and Grease. Treated waste water must meet a 15 mg/l daily maximum limitation.

Total Suspended Solids. Treated wastewater shall not exceed 50 mg/l daily maximum.

Chemical Oxygen Demand. Treated wastewater shall not exceed 125 mg/l daily maximum.

pH. Discharges of treated wastewater must meet a pH limitation of not less than 6.0 and not greater than 9.0 at the point of discharge.

Chlorides. Treated wastewater shall not exceed a 500 mg/l daily maximum discharge limitation.

Total Chromium. Discharges of treated wastewater shall meet a 0.5 mg/l daily maximum limitation.

Zinc. Treated wastewater shall not exceed 5.0 mg/l daily maximum for zinc.

Monitoring. The monitoring frequency for the above limitations are once per day when discharging. However, if the effluent is batch treated and discharged, the monitoring requirements for all effluent characteristics are once per discharge event by grab sample.

(c) *Other Monitoring Volume.* The volume (bbls) of discharged treated wastewater must be estimated once per day, when discharging. If the effluent is being batch treated and discharged then the estimated volume discharged in barrels must be recorded per discharge event.

4. Deck Drainage

(a) *Limitations—Free Oil.* Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Monitoring must be accomplished once per day, when discharging during conditions when an observation of a sheen is possible and when the facility is manned. The number of days a sheen is detected must be recorded.

(b) *Other Monitoring Volume.* Once per month, the total monthly volume (bbl) must be estimated.

5. Formation Test Fluid

(a) *Prohibitions.* There shall be no discharge of formation test fluids to lakes, rivers, streams, freshwater wetlands or intermediate wetlands. In addition, discharges are prohibited to wildlife refuges, game preserves, scenic streams, or other specially protected lakes or waterbodies.

(Note) Freshwater and intermediate wetland areas, wildlife refuges and game preserves can be identified from the 1978 Vegetative Type Map of Louisiana (or any subsequent revisions), published by the Louisiana Department of Wildlife and Fisheries. The listing of scenic streams in Louisiana is found in the Louisiana Department of Wildlife and Fisheries publication "Natural and Scenic Streams System", (1981).

(Exception) Discharge of formation test fluids is allowed to the Mississippi River below Venice, Atchafalaya Rilver below Morgan City, and Wax Lake Outlet. Discharges are also allowed to waterbodies and adjacent wetlands in brackish or saline marsh areas.

(b) *Limitations—Free Oil.* Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Discharge is authorized only at times when visual sheen observation is possible. Monitoring must be accomplished once

per discharge. The number of days a sheen is detected must be recorded.

[Exception] Formation test fluids may be discharged at any time if the operator uses the static sheen method for detecting free oil.

pH. Discharges of formation test fluid must meet a pH limitation of not less than 6.0 and not greater than 9.0. A grab sample must be taken once per discharge. Any spent acidic test fluids shall be neutralized before discharge such that the pH at the point of discharge meets the limitation.

(c) *Other Monitoring. Volume.* Once per discharge, the total volume reported as number of barrels sent downhole during testing and the number of barrels discharged shall be estimated and reported once per month.

6. Well Treatment Fluids, Completion Fluids, Workover Fluids

(a) *Prohibitions.* There shall be no discharge of well completion, treatment or workover fluids to lakes, rivers, streams, or freshwater wetlands or intermediate wetlands. In addition, discharges are prohibited to wildlife refuges, game preserves, scenic streams, or other specially protected lakes or waterbodies.

Note: Freshwater and intermediate wetland areas, wildlife refuges and game preserves can be identified from the 1978 Vegetative Type Map of the Louisiana (or any subsequent revisions), published by the Louisiana Department of Wildlife and Fisheries. The listing of scenic streams in Louisiana is found in the Louisiana Department of Wildlife and Fisheries publication "Natural and Scenic Streams System", (1981).

(Exception) Discharge of well completion, treatment or workover fluids are allowed on the Mississippi River below Venice, Atchafalaya River below Morgan City, and Wax Lake Outlet. Discharges are also allowed to waterbodies and adjacent wetlands in brackish or saline marsh areas.

Priority (Toxic) Pollutants. For well treatment fluids, completion fluids, and workover fluids, the discharge of priority pollutants (see Appendix A) is prohibited, except in trace amounts. If well completion, treatment or workover fluids are discharged, the permittee is required to retain records indicating that the discharge did not contain priority pollutants, except in trace amounts. Certification on DMR's will suffice for priority pollutant limits.

Information on the specific chemical composition of additives used in these fluids, and their concentrations in the fluid, must be recorded if priority pollutants are present, in any amount, in these additives.

(b) *Limitations—Free Oil.* Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Discharge is authorized only at times when visual sheen observation is possible. Monitoring must be accomplished once per day, when discharging. The number of days a sheen is detected must be recorded.

(Exception) well treatment fluids, completion fluids, or workover fluids may be discharged at any time if the operator uses the static sheen method for detecting free oil.

pH. Well treatment, completion and workover fluids must meet a pH limitation of not less than 6.0 and not greater than 9.0 prior to being discharged. Sampling must be accomplished once per day when discharging.

(c) *Other Monitoring—Volume.* Once per month, the discharge volume (bbls) must be estimated.

7. Sanitary Waste

(a) *Prohibitions—Solids.* No floating solids may be discharged.

(b) *Limitations—Biological Oxygen Demand (BOD5).* Sanitary waste discharges must meet a 45 mg/l daily maximum limitation. A grab sample must be collected and analyzed once per quarter.

Total Suspended Solids. Sanitary waste discharges shall meet a 45 mg/l daily maximum limitation. A grab sample shall be collected and analyzed once per quarter.

Fecal Coliform. Sanitary waste discharges must meet a daily maximum limitation of 200/100 ml for fecal coliform. A grab sample must be taken and analyzed once per week.

Note: In specific water bodies designated by the State for oyster propegation, the mean probable number (MPN) of fecal coliform allowed shall not exceed 14 per 100 ml, and not more than 10% of samples shall exceed an MPN of 43 per 100 ml for a five-tube decimal dilution test in those areas most probably exposed to fecal contamination during the most unfavorable hydrographic and pollution conditions.

(c) *Other Monitoring—Flow.* Once per month, the average flow (million gallons per day; MGD) must be estimated.

8. Domestic Waste

(a) *Prohibitions—Solids.* This permit prohibits the discharge of "garbage" including food wastes (comminuted or not), incineration ash and clinkers. Neither Fish and fish debris from fish cleaning stations nor graywater is considered garbage under this definition.

9. Excess Cement Slurry

(a) *Prohibitions* There shall be no discharge of excess cement slurry to lakes, rivers, streams, or freshwater wetlands or intermediate wetlands. In addition, discharges are prohibited to wildlife refuges, game preserves, scenic streams, or other specially protected lakes or waterbodies.

Note: Freshwater and intermediate wetland areas, wildlife refuges and game preserves can be identified from the 1978 Vegetative Type Map of the Louisiana (or any subsequent revisions), published by the Louisiana Department of Wildlife and Fisheries. The listing of scenic streams in Louisiana is found in the Louisiana Department of Wildlife and Fisheries publication "Natural and Scenic Streams System", (1981).

(Exception) Discharge of excess cement slurry is allowed on the Mississippi River below Venice, Atchafalaya River below Morgan City, and Wax Lake Outlet. Discharges are also allowed to waterbodies and adjacent wetlands in brackish or saline marsh areas.

(b) *Limitations—Free Oil.* Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Discharge is authorized only at times when visual sheen observation is possible. Monitoring must be accomplished once per day, when discharging. The number of days a sheen is detected must be recorded.

(Exception) Excess cement slurry may be discharged at any time if the operator uses the static sheen method for detecting free oil.

10. Miscellaneous Discharges

Desalinization Unit Discharge, Blowout Preventer Fluid, Uncontaminated Ballast Water, Uncontaminated Bilge Water, Mud, Cuttings, and Cement at the Seafloor, Uncontaminated Seawater, Uncontaminated Freshwater, Boiler Blowdown, Diatomaceous Earth Filter Media, Uncontaminated Freshwater including potable water releases during tank transfer and emptying operations and condensate from air conditioner units.

(a) *Limitations Free Oil.* Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Monitoring must be accomplished once per day, when discharging during conditions when an observation of a sheen is possible. Discharge is authorized only at times when visual sheen observation is possible. The number of days a sheen is detected must be recorded.

(Exception) Miscellaneous discharges may occur at any time if the operator uses the static sheen method for detecting free oil.

11. Other Discharge Conditions

(a) *Prohibitions—Halogenated Phenol Compounds.* There shall be no discharge of halogenated phenol compounds.

Rubbish, Trash, and Other Refuse. The discharge of any solid material not authorized in the permit (as described above) is prohibited.

(b) *Limitations—Floating Solids or Visible Foam.* There shall be no discharge of floating solids or visible foam in other than trace amounts.

Surfactants, Dispersants, and Detergents. The discharge of surfactants, dispersants, and detergents used to wash working areas shall be minimized except as necessary to comply with applicable State and Federal safety requirements.

Section B. Other Conditions

1. Samples of Wastes

If requested, the permittee shall provide EPA with a sample of any waste in a manner specified by the Agency.

Part III

Section A. General Conditions

1. Introduction

In accordance with the provisions of 40 CFR 122.41, *et. seq.*, this permit incorporates by reference all conditions and requirements applicable to NPDES Permits set forth in the Clean Water Act, as amended, (hereinafter known as the "Act") as well as ALL applicable CFR regulations.

2. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action or for requiring a permittee to apply for and obtain an individual NPDES permit.

3. Toxic Pollutants

Notwithstanding III.A.5 below, if any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of the Clean Water Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and the permittee so notified.

The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

4. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must submit notice of intent to be covered and must apply for a new permit. Continuation of the expiring permit shall be governed by regulations at 40 CFR 122.6 and any subsequent amendments.

5. Permit Flexibility

This permit may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following (see 40 CFR 122.62–64):

(a) Violation of any terms or conditions of this permit;

(b) Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

(c) A change in any condition that requires either a temporary or a permanent reduction or elimination of the authorized discharge; or

(d) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under sections 301, 304, and 307 of the Clean Water Act, if the effluent standard or limitation so issued or approved:

(a) Contains different conditions or limitations than any in the permit; or

(b) Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

6. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

7. Duty to Provide Information

The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Regional Administrator upon request, copies of records required to be kept by this permit.

8. Civil and Criminal Liability

Except as provided in permit conditions on "Bypassing" and "Upsets" (see III.B.4 and III.B.5), nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or misleading misrepresentation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable CFR regulations which avoids or effectively defeats the regulatory purpose of the permit may subject the permittee to criminal enforcement pursuant to 18 U.S.C. Section 1001.

9. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act.

10. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Clean Water Act.

11. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

Section B. Operation and Maintenance of Pollution Controls

1. Need To Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

3. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

4. Bypass of Treatment Facilities

(a) *Definitions.* (1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) *Bypass not exceeding limitations.* The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Section B, paragraphs 4.c and 4.d of this section.

(c) *Notice.* (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Section D, paragraph 6 (24-hour reporting).

(d) *Prohibition of Bypass.* (1) Bypass is prohibited, and the Regional Administrator may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(c) The permittee submitted notices as required under Section B, paragraph 4.c.

(2) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in Section B, paragraph 4.d.(1).

5. Upset Conditions

(a) *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) *Effect of an Upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Section B, paragraph 5.(c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(c) *Conditions Necessary for a Demonstration of Upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required in Section D, paragraph 5; and,

(4) The permittee complied with any remedial measures required under section B, paragraph 2.

(d) *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

6. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters. Any substance specifically listed within this permit may be discharged in accordance with specified conditions, terms, or limitations.

Section C. Monitoring and Records

1. Inspection and Entry

The permittee shall allow the Regional Administrator or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

2. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge.

3. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, and copies of all reports required by this permit, for a period of at least 3 years from the date of the sampling, measurement, or reporting. This period

may be extended by request of the Regional Administrator at any time.

The operator shall maintain records at development and production facilities for 3 years, wherever practicable and at a specific shore-based site whenever not practicable. The operator is responsible for maintaining records at exploratory facilities while they are discharging under the operator's control and at a specified shore-based site for the remainder of the 3-year retention period.

4. Record Contents

Records of monitoring information shall include:

(a) The date, exact place, and time of sampling or measurements,

(b) The individual(s) who performed the sampling or measurements,

(c) The date(s) analyses were performed,

(d) The individual(s) who performed the analyses,

(e) The analytical techniques or methods used, and

(f) The results of such analyses.

5. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in this permit (see part IV.A., below).

6. Discharge Rate/Flow Measurements

Appropriate flow measurement devices consistent with accepted practices shall be selected, maintained, and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to insure that the accuracy of the measurements are consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than ±10% from true discharge rates throughout the range of expected discharge volumes.

Section D. Reporting Requirements

1. Planned Changes

The permittee shall give notice to the Regional Administrator as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(a) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b) (48 FR 14153, April 1, 1983, as amended at 49 FR 38049, September 26, 1984); or

(b) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR 122.42(a)(1) (48 FR 14153, April 1,1983, as amended at 49 FR 38049, September 26, 1984).

2. Anticipated Noncompliance

The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers

This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act.

4. Discharge Monitoring Reports

The operator of each lease (or lease block) shall be responsible for submitting monitoring results for all facilities within each lease (or lease block). The monitoring results for the facilities (platform, jack-up, drilling barge, etc.) within the particular lease (or lease block) shall be summarized on the annual Discharge Monitoring Report for that lease (or lease block).

Monitoring results obtained during the previous 12 months shall be summarized and reported on a Discharge Monitoring Report (DMR) Form (EPA No. 3320–1). The highest monthly average for all activity within each lease (or lease block) shall be reported. The highest daily maximum sample taken during the reporting period shall be reported as the daily maximum concentration. (See "Definitions" for more detailed explanations of these terms.)

If any category of waste (discharge) is not applicable for all facilities within the lease (or lease block) due to the type of operation (e.g. drilling, production), "no discharge" must be recorded for those categories on the DMR. If all facilities within a lease block have had no activity during the reporting period, then "no activity" must be written on the DMR. All pages of the DMR must be signed and certified as required by Part III.D.11 of this permit and submitted when due.

The Permittee must complete all empty blanks in the DMR unless there has been absolutely no activity or no discharge within the lease (or lease block) for the entire reporting period. In these cases, EPA Region VI will accept a listing of leases (or lease blocks) with no discharges or no activity, in lieu of submitting actual DMRs for these leases (or lease blocks). This listing must specify the permittee's NPDES General Permit Number, lease/lease block description, and EPA-assigned outfall number. The listing must also include the certification statement presented in Part III.D.11.d of this permit and an original signature of the designated responsible official.

Upon receipt of a notification of intent to be covered, (Part I.A.) the permittee will be notified of its specific outfall number applicable to that lease block. Furthermore, the Permittee will be informed of the discharge monitoring report due date for that lease block.

All notices and reports required under this permit shall be sent to EPA Region 6 at the following address: Director, Water Management Division, USEPA, Region 6, Enforcement Branch (6W–EA), P.O. Box 50625, Dallas, TX 75270.

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased monitoring frequency shall also be indicated on the DMR.

6. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the permit.

7. Twenty-Four Hour Reporting

The permittee shall report any noncompliance which may endanger health or the environment (this includes any spill that requires oral reporting to the state regulatory authority). Information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to

continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Regional Administrator may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

The following shall be included as information which must be reported within 24 hours:

(a) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(b) Any upset which exceeds any effluent limitation in the permit.

(c) Violations of a maximum daily discharge limitation or daily minimum toxicity limitation for any of the pollutants listed by the Regional Administrator in Part III of the permit to be reported within 24 hours.

The reports should be made to Region 6 by telephone at (214) 655–6593. The Regional Administrator may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

8. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under part III, section D, paragraphs 4 and 7 at the time monitoring reports are submitted. The reports shall contain the information listed in section D, paragraph 7.

9. Other Information

When the permittee becomes aware that it failed to submit any relevent facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional Administrator, it shall promptly submit such facts or information.

10. Changes in Discharges of Toxic Substances

For any toxic pollutant (see Appendix A) that is not limited in this permit, either as an additive itself or as a component in an additive formulation, the permittee shall notify the Regional Administrator as soon as he knows or has reason to believe:

(a) That any activity has occurred or will occur which would result in the discharge of such toxic pollutants, on a routine or frequent basis, if that discharge will exceed the highest of the "notification levels" described at 40 CFR 122.42(a)(1) (i) and (ii);

(b) That any activity has occurred or will occur which would result in any discharge of such toxic pollutants, on a non-routine or infrequent basis, if that discharge will exceed the highest of the "notification levels" described at 40 CFR 122.42 (a)(2) (i) and (ii).

11. Signatory Requirements

All applications, reports, or information submitted to the Regional Administrator shall be signed and certified as required at 40 CFR 122.22.

(a) All permit applications shall be signed as follows:

(1) For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(i) A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decisionmaking functions for the corporation, or

(ii) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship: By a general partner or the proprietor, respectively.

(b) *Authorized Representative.* All reports required by the permit and other information requested by the Regional Administrator shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

(3) The written authorization is submitted to the Regional Administrator.

(c) *Changes to Authorization.* If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) *Certification.* Any person signing a document under this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

12. Availability of Reports

Except for data determined to be confidential under 40 CFR part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the office of the Regional Administrator. As required by the Clean Water Act, the name and address of any permit applicant or permittee, permit applications, permits, and effluent data shall not be considered confidential.

13. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

Section E. Penalties for Violations of Permit Conditions

1. Criminal

(a) *Negligent Violations.* The Act provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(b) *Knowing Violations.* The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(c) *Knowing Endangerment.* The Act provides that any person who knowingly violates permit conditions

implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000 per day of violation, or by imprisonment for not more than 15 years, or both.

(d) *False Statements.* The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See Section 309.c.4 of the Clean Water Act).

2. Civil Penalties

The Clean Water Act at section 309 provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed $25,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, or 308 of the Clean Water Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both. The maximum penalty may be assessed for each violation occurring on a single day. A single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

3. Administrative Penalties

The Act at Section 309 allows that the Regional Administrator may assess a Class I or Class II civil penalty for violations of sections 301, 302, 306, 307, 308, 318, or 405 of the Act. A Class I penalty may not exceed $10,000 per violation except that the maximum amount shall not exceed $25,000. A Class II penalty may not exceed $10,000 per day for each day during which the violation continues, except that the maximum amount shall not exceed $125,000. An upset that leads to violations of more than one pollutant parameter will be treated as a single violation.

Part IV

Section A. Test Procedures

For test procedures not specified below, the only authorized procedures are those described at 40 CFR part 136.

1. Visual Sheen Test

The visual sheen test is used to detect free oil by observing the surface of the receiving water for the presence of a sheen while discharging. A sheen is defined as a 'silvery' or 'metallic' sheen, gloss, or increased reflectivity; visual color; or iridescence on the water surface. The operator must conduct a visual sheen test only at times when a sheen can be observed. This restriction eliminates observations at night or when atmospheric or surface conditions prohibit the observer from detecting a sheen (e.g. fog (not overcast skies), rough seas, etc.). Certain discharges can only occur if a visual sheen test can be conducted.

The observer must be positioned on the rig or platform, or other vantage point, relative to both the discharge point and current flow at the time of discharge, such that the observer can detect a sheen should it surface down current from the discharge. For discharges that have been occurring for at least 15 minutes previously, observations may be made any time thereafter. For discharges of less than 15 minutes duration, observations must be made during both discharge and at 5 minutes after discharge has ceased.

2. Static Sheen Test

Region 10, Modified Static Sheen Test, "Bucket Test": Combined 50 FR No. 165 August 26, 1985 and USEPA Region 10, Interim Guidance for the Static (Laboratory) Sheen Test, January 10, 1984.

1. Scope and Application

The static sheen test is to be used as a compliance test for all discharges in this permit with the "no free oil discharge" requirement, when it is not possible for the operator to accomplish a visual sheen observation on the surface of the receiving water. This would preclude an operator from attempting a visual sheen observation when atmospheric or surface conditions prohibit the observer from detecting a sheen (e.g., during rough seas, etc.). Free oil refers to any oil contained in a waste stream that when discharged will cause a film or sheen upon or a discoloration of the surface of the receiving water.

2. Summary of Method

15 ml samples of drilling fluids; deck drainage, well treatment, completion and workover fluids, formation test fluids, or treated wastewater from drilling fluid dewatering activities, or 15 gm (wet weight basis) samples of drill cuttings or produced sand are introduced into ambient seawater in a container having an air to liquid interface area of 1000 cm^2 (155.5 in^2). Samples are dispersed within the container and observations made no more than one hour later to ascertain if these materials cause a sheen, iridescence, gloss, or increased reflectance on the surface of the test seawater. The occurrence of any of these visual observations will constitute a demonstration that the tested material contains "free oil", and therefore, results in a prohibition on its discharge into receiving waters.

3. Interferences

Residual "free oil" adhering to sampling containers, the magnetic stirring bar used to mix drilling Fluids, and the stainless steel spatula used to mix drill cuttings will be the principal sources of contamination problems. These problems should only occur if improperly washed and cleaned equipment are used for the test. The use of disposable equipment minimizes the potential for similar contamination from pipets and the test container.

4. Apparatus, Materials, and Reagents

4.1 Apparatus

4.1.1—Sampling Containers—1 L polyethylene beakers and 1 L glass beakers.

4.1.2—Graduated cylinder—100 ml graduated cylinder required only for operations where predilution of mud discharges is required.

4.1.3 Plastic disposable weighing boats.

4.1.4 Triple-beam scale.

4.1.5 Disposable pipets—25 ml disposable pipets.

4.1.6 Magnetic stirrer and stirring bar.

4.1.7 Stainless steel spatula.

4.1.8 Test container—open plastic container whose internal cross-section parallel to its opening has an area of 1000 ± 50 cm^2 (155.5±7.75 in^2), and a depth of at least 13 cm (5 inches) and no more than 30 cm (11.8 inches).

4.2 Materials and Reagents

4.2.1 Plastic liners for the test container—Oil free, heavy duty plastic trash can liners that do not inhibit the spreading of an oil film. Liners must be of sufficient size to completely cover the

interior surface of the test container. Permittees must determine an appropriate local source of liners that do not inhibit the spreading of 0.05 ml diesel fuel added to the lined test container under the test conditions and protocol described below.

4.2.2 Ambient receiving water.

5. Calibration

None currently specified.

6. Quality Control Procedures

None currently specified.

7. Sample Collection and Handling

7.1 Sampling containers must be thoroughly washed with detergent, rinsed a minimum of three times with fresh water, and allowed to air dry before samples are collected.

7.2 Samples of drilling fluid to be tested shall be taken at the shale shaker after cuttings have been removed. The sample volume should range between 200 ml and 500 ml.

7.3 Samples of drill cuttings will be taken from the shale shaker screens with a clean spatula or similar instrument and placed in a glass beaker. Cuttings samples shall be collected prior to the addition of any washdown water and should range between 200 g and 500 g.

7.4 Samples of produced sand must be obtained from the solids control equipment from which the discharge occurs on any given day and shall be collected prior to the addition of any washdown water; samples should range between 200 g and 500 g.

7.5 Samples of deck drainage, well treatment, completion and workover fluids, formation test fluids and treated wastewater from drilling fluid dewatering activities must be obtained from the holding facility prior to discharge; the sample volume should range between 200 ml and 500 ml.

7.6 Samples must be tested no later than 1 hour after collection.

7.7 Drilling fluid samples must be mixed in their sampling containers for 5 minutes prior to the test using a magnetic bar stirrer. If predilution is imposed as a permit condition, the sample must be mixed at the same ratio with the same prediluting water as the discharged muds and stirred for 5 minutes.

7.8 Drill cuttings must be stirred and well mixed by hand in their sampling containers prior to testing, using a stainless steel spatula.

8. Procedure

8.1 Ambient receiving water must be used as the "receiving water" in the test. The temperature of the test water shall be as close as practicable to the ambient conditions in the receiving water, not the room temperature of the observation facility. The test container must have an air to liquid interface area of 1000 ±50 cm^2. The surface of the water should be no more than 1.27 cm (½ inch) below the top of the test container.

8.2 Plastic liners shall be used, one per test container, and discarded afterwards. Some liners may inhibit spreading of added oil; operators shall determine an appropriate local source of liners that do not inhibit the spreading of the oil film.

8.3 A 15 ml sample of drilling fluid, deck drainage, well treatment, completion and workover fluids, formation test fluids, or treated wastewater from drilling fluid dewatering activities must be introduced by pipet into the test container 1 cm below the water surface. Pipets must be filled and discharged with test material prior to the transfer of test material and its introduction into test containers. The test water-test material mixture must be stirred using the pipet to distribute the test material homogeneously throughout the test water. The pipet must be used only once for a test and then discarded.

8.4 Drill cuttings or produced sand should be weighed on plastic weighing boats; 15 gram samples must be transferred by scraping test material into the test water with a stainless steel spatula. Drill cuttings shall not be prediluted prior to testing. Also, drilling fluids and cuttings will be tested separately. The weighing boat must be immersed in the test water and scraped with the spatula to transfer any residual material to the test container. The drill cuttings or produced sand must be stirred with the spatula to an even distribution of solids on the bottom of the test container.

8.5 Observations must be made no later than 1 hour after the test material is transferred to the test container. Viewing points above the test container should be made from at least three sides of the test container, at viewing angles of approximately 60° and 30° from the horizontal. Illumination of the test container must be representative of adequate lighting for a working environment to conduct routine laboratory procedures. It is recommended that the water surface of the test container be observed under a fluorescent light source such as a dissecting microscope light. The light source shall be positioned above and directed over the entire surface of the pan.

8.6 Detection of a "silvery" or "metallic" sheen, gloss, or increased reflectivity; visual color; or iridescence; or an oil slick, on the water surface of the test container surface shall constitute a demonstration of "free oil". These visual observations include patches, streaks, or sheets of such altered surface characteristics and shall constitute a demonstration of free oil. If the free oil content of the sample approaches or exceeds 10 percent, the water surface of the test container may lack color, a sheen or iridescence, due to the increased thickness of the film; thus, the observation for an oil slick is required. The surface of the test container shall not be disturbed in any manner that reduces the size of any sheen or slick that may be present.

If an oil sheen or slick occurs on less than one-half of the surface area after drilling muds or cuttings are introduced to the test container, observations will continue for up to one hour. If the sheen or slick increases in size and covers greater than one-half of the surface area of the test container during the observation period, the discharge of the material shall cease. If the sheen or slick does not increase in size to cover greater than one-half of the test container surface area after one hour of observation, discharge may continue and additional sampling is not required.

If a sheen or slick occurs on greater than one-half of the surface area of the test container after the test material is introduced, discharge of the tested material shall cease. The permittee may retest the material causing the sheen or slick. If subsequent tests do not result in a sheen or slick covering greater than one-half of the surface area of the test container, discharge may continue.

Section B. Definitions

Administrator means the administrator of EPA Region 6, or an authorized representative.

Areas of Biological Concern (ABC) are locations identified by the State of Louisiana as "no activity zones" or areas determined by EPA and the State, collectively, containing significant biological resources or features that require "No Discharge" conditions.

Average daily discharge limitation means the highest allowable average of discharges over a 24-hour period, calculated as the sum of all discharges measured divided by the number of discharges measured that day.

Average monthly discharge limitation means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of discharges measured that month.

Batch or bulk discharge means any discharge of a discrete volume or mass

of effluent from a pit, tank or similar container that occurs on a one time or infrequent or irregular basis.

Batch or bulk treatment means any treatment of a discrete volume or mass of effluent from a pit, tank, or similar container prior to discharge.

Blow-out preventer control fluid is fluid used to actuate the hydraulic equipment on the blow-out preventer.

BOD5 is five day biochemical oxygen demand.

Boiler blowdown is discharge from boilers necessary to minimize solids build-up in the boilers, includes vents from boilers and other heating systems.

Clinkers are small lumps of melted plastic.

Coastal means all waters of the United States (as defined at 40 CFR 122.2) landward of the territorial seas.

COD is chemical oxygen demand.

Completion fluids are salt solutions, weighted brines, polymers or various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production. These fluids move into the formation and return to the surface as a slug with the produced water. Drilling muds remaining in the wellbore during logging, casing and cementing operations or during temporary abandonment of the well are not considered completion fluids and are regulated by drilling fluids requirements.

Daily maximum discharge limitation means the highest allowable "daily discharge" during the calendar month.

Deck drainage is all waste resulting from platform washings, deck washings, spills, rainwater, and runoff from curbs, gutters, and drains, including drip pans and wash areas.

Desalinization unit discharge means wastewater associated with the process of creating fresh water from seawater and includes potable water tank waste water discharges and transfers.

Diatomaceous earth filter media means filter media used to filter seawater or other authorized completion fluids and subsequently washed from the filter.

Domestic waste is discharges from galleys, sinks, showers, safety showers, eye wash stations, hand wash stations and laundries.

Drill cuttings are particles generated by drilling into the subsurface geological formations and carried to the surface with the drilling fluid.

Drilling fluid is any fluid sent down the hole, including drilling muds and any specialty products, from the time a well is begun until final cessation of drilling in that hole.

Excess Cement Slurry is the excess cement including additives and wastes from equipment washdown after a cementing operation.

Free Oil is oil that causes a sheen when discharges are released or when a static sheen test is used.

Formation test fluids are the discharge that would occur should hydrocarbons be located during exploratory drilling and tested for formation pressure and content.

Garbage means all kinds of victual, domestic and operational waste * * * generated during the normal operation of the ship and liable to be disposed of continuously or periodically * * * (See MARPOL 73/78 regulations).

Grab sample a single representative effluent sample taken at the recognized discharge point in as short a period of time as feasible.

Graywater means drainage from dishwater, shower, laundry, bath, and washbasin drains and does not include drainage from toilets, urinals, hospitals, and drainage from cargo areas. (See MARPOL 73/78 regulations).

Inverse emulsion drilling fluids means an oil-based drilling fluid that also contains a large amount of water.

Maximum hourly rate means the greatest number of barrels of drilling fluids discharged within one hour, expressed as barrels per hour.

MGD refers to units of flow measurement, as million gallons per day.

MPN means most probable number.

Muds, cuttings, and cement at the seafloor are discharges which occur at the seafloor prior to installation of the marine riser and during marine riser disconnect and well abandonment and plugging operations.

No Activity Zones are those areas identified by MMS where no structures, drilling rigs, or pipelines will be allowed. See Areas of Biological Concern.

No Discharge Areas are areas specified by EPA where discharge of pollutants may not occur.

Packer Fluid means low solids fluids between the packer, production string and well casing, (See workover fluids).

Priority Pollutants are those chemicals or elements identified by EPA, pursuant to section 307 of the Clean Water Act, and 40 CFR 401.15. See Appendix A.

Sanitary waste means human body waste discharged from toilets and urinals.

Source water and sand means water from non-hydrocarbon bearing formations for the purpose of pressure maintenance or secondary recovery, including the entrained solids.

Static Sheen is the procedure described in Part IV, Section A.2. of the permit.

Territorial Seas is "the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open ocean and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles" (CWA Section 502).

TDS means total dissolved solids.

Toxic Pollutants (See Priority Pollutants, Appendix A)

Treated wastewater from dewatered drilling fluids and cuttings means wastewater from dewatering activities (including but not limited to reserve or other tanks or pits which have been flocculated or otherwise chemically or mechanically treated to meet specific discharge conditions) and any waste commingled with this water.

TSS means total suspended solids.

Uncontaminated ballast/bilge water is seawater added or removed to maintain proper draft of a vessel.

Uncontaminated Freshwater means freshwater which is returned to the receiving stream without the addition of any chemicals; included are (1) discharges of excess freshwater that permit the continuous operation of fire control and utility lift pumps, (2) excess freshwater from pressure maintenance and secondary recovery projects, (3) water released during the training and testing of personnel in fire protection, (4) water used to pressure test piping, (5) once through, non-contact cooling water, and (6) potable water released during transfer and tank emptying operations and condensate from air conditioner units.

Uncontaminated Seawater is seawater which is returned to the sea without the addition of chemicals. Included are: (1) Discharges of excess seawater which permit the continuous operation of fire control and utility lift pumps, (2) excess seawater from pressure maintenance and secondary recovery projects, (3) water released during the training and testing of personnel in fire protection, (4) seawater used to pressure test piping, and (5) once through, noncontact cooling water.

Visual Sheen means a 'silvery' or 'metallic' sheen, gloss, or increased reflectivity; visual color; or iridescence on the water surface.

Well treatment (stimulation) fluids means any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled. These fluids move into the formation and return to the surface as a slug with the produced water. Stimulation fluids include substances such as acids, solvents and propping agents.

Workover fluids means salt solutions, weighted brines, polymers or other specialty additives used in a producing well to allow safe repair and maintenance or abandonment procedures. High solids drilling fluids used during workover operations are not considered workover fluids by definition and therefore must meet drilling fluid effluent limitations before discharge may occur. Packer fluids, low solids fluids between the packer, production string and well casing, are considered to be workover fluids and must meet only the effluent requirements imposed on workover fluids.

TABLE 1.—PERMIT CONDITIONS AND DISCHARGE MONITORING FREQUENCY

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Recorded value(s)
(A). Drilling Fluids—no discharge.				
(B). Drill Cuttings—no discharge.				
(C). Treated Wastewater from Drilling Fluids/Cuttings, Dewatering Activities, and Pit Closure Activities.				
Free oil	No free oil	Once/day [1]	Visual sheen on receiving water [2].	Number of days sheen observed.
Oil and grease	15 mg/l	Once/day [1]	Grab	Daily maximum.
TSS	50 mg/l	Once/day [1]	Grab	Daily maximum.
COD	125 mg/l	Once/day [1]	Grab	Daily maximum.
pH	6.0–9.0 [3]	Once/day [1]	Grab	pH value.
Chlorides	500 mg/l	Once/day [1]	Grab	Daily maximum.
Total chromium	0.5 mg/l	Once/day [1]	Grab	Daily maximum.
Zinc	5.0 mg/l	Once/day [1]	Grab	Daily maximum.
Volume	Report (bbls)	Once/day [1]	Estimate	Daily total. [4]
(D). Deck Drainage				
Free oil	No free oil	Once/day [10]	Visual sheen on receiving water. [9].	Number of days sheen observed.
Volume	Report (bbls)	Once/month	Estimate	Monthly total. [4]
(E). Formation Test Fluids				
There shall be no discharge of formation test fluids to lakes, rivers, streams, freshwater wetlands or intermediate wetlands. In addition, discharges are prohibited to wildlife refuges, game preserves, scenic streams, or other specially protected lakes or waterbodies.				
(Exception) Discharge of formation test fluids is allowed to the Mississippi River below Venice, Atchafalaya Riiver below Morgan City, Wax Lake Outlet, and to waterbodies and adjacent wetlands in brackish or saline marsh areas. These allowed discharges are subject to the following limitations and monitoring requirements.				
Free oil	No free oil	Once/discharge	Visual sheen on receiving water. [2].	Number of days sheen observed.
pH	6.0–9.0 [3]	Once/discharge	Grab	pH value.
Volume	Report (bbls)	Once/discharge	Estimate	Monthly total. [4]
(F). Well Treatment, Completion, and Workover Fluids				
There shall be no discharge of well treatment, completion and workover fluids to lakes, rivers, streams, freshwater wetlands or intermediate wetlands. In addition, discharges are prohibited to wildlife refuges, game preserves, scenic streams, or other specially protected lakes or waterbodies.				
(Exception) Discharge of well treatment, completion and workover fluids is allowed to the Mississippi River below Venice, Atchafalaya Riiver below Morgan City, Wax Lake Outlet, and to waterbodies and adjacent wetlands in brackish or saline marsh areas. These allowed discharges are subject to the following limitations and monitoring requirements.				
Priority Pollutants	No discharge		Certification [5].	
Free oil	No free oil	Once/day [1]	Visual sheen on receiving water. [2].	Number of days sheen observed.
pH	6.0–9.0 [3]	Once/day [1]	Grab	pH value.
Volume	Report (bbls)	Once/month [1]	Estimate	Monthly total.
(G). Sanitary Waste				
Solids	No floating solids	Once/day	Observation [6]	Number of days solids observed.
BOD5	45 mg/l	Once/quarter	Grab	Daily maximum.
TSS	45 mg/l	Once/quarter	Grab	Daily maximum.
Fecal coliform	200/100 ml [7]	Once/week	Grab	Daily maximum.
Flow	Report (MGD)	Once/month	Estimate	Monthly avg. [4]
(H). Domestic Waste				
Solids	No discharge. [8].			

TABLE 1.—PERMIT CONDITIONS AND DISCHARGE MONITORING FREQUENCY—Continued

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Recorded value(s)
(I). Excess Cement Slurry				
Free oil	No free oil	Once/day [1]	Visual sheen on receiving water [2].	Number of days sheen observed.
LDEQ field wide permits	No discharge to lakes, rivers, streams, and freshwater wetlands or intermediate wetlands.			
(J). Miscellaneous Discharges: Desalinization Unit Discharge, Blowout Preventer Fluid, Uncontaminated Ballast Water, Uncontaminated Bilge Water, Mud, Cuttings, and Cement at the Seafloor, Uncontaminated Seawater, Uncontaminated Freshwater, Boiler Blowdown, Diatomaceous Earth Filter Media, Uncontaminated Freshwater including potable water releases during tank transfer and emptying operations, and condensate from air conditioner units.				
Free oil	No free oil	Once/day [1]	Visual sheen on receiving water [2].	Number of days sheen observed.

Footnotes for Table 1.
[1] When discharging.
[2] Discharge is possible during times other than when a visual sheen observation is possible, if the static sheen test method is used.
[3] pH at the point of discharge shall not be less than 6.0 or greater than 9.0.
[4] Information shall be recorded, but not reported unless specifically requested by EPA.
[5] No discharge except in trace amounts. Certification that each discharge does not contain priority pollutants (except in trace amounts) on DMR's is sufficient to meet priority pollutant limits. Information on the specific chemical composition shall be retained by the permittee but not reported unless requested by EPA.
[6] Monitoring by visual observation of the surface of the receiving water in the vicinity of outfall(s) shall be done during daylight at the time of maximum estimated discharge.
[7] For specific water bodies designated by the state for oyster propagation, Fecal coliform not to exceed 14 most probale number (MPN) fecal coliforms per 100 ml, and not more than 10% of the samples shall exceed an MPN of 43 per 100 ml for a 5 tube decimal dilution test in areas most probably exposed to fecal contamination during most unfavorable hydrographic and pollution conditions.
[8] Annex V of MARPOL 73/78 prohibits the discharge of "garbage" including food wastes, incineration ash and clinkers. Graywater, drainage from dishwater, shower, laundry, bath, and washbasins may be discharged.
[9] Monitoring of visual sheen to be made at times when visual observations can be made.
[10] When discharging and when the facility is manned.

Appendix A. Priority Pollutant List

Acenaphthene
Acrolein
Acrylonitrile
Benzene
Benzidine
Carbon tetrachloride (tetrachloromethane)
Chlorobenzene
1,2,4-trichlorobenzene
Hexachlorobenzene
1,2-dichloroethane
1,1,1-trichloroethane
Hexachloroethane
1,1-dichloroethane
1,1,2-trichloroethane
1,1,2,2-tetrachloroethane
Chloroethane ether
2-chloroethyl vinyl ether (mixed)
2-chloronaphthalene
2,4,6-trichlorophenol
Parachlorometacresol
Chloroform (trichloromethane)
2-chlorophenol
1,2-dichlorobenzene
1,3-dichlorobenzene
1,4-dichlorobenzene
3,3-dichlorobenzene
1,1-dichloroethylene
2,4-dichlorophenol
1,2-dichloropropane
1,2-dichloropropylene (1,3-dichloropropene)
2,4-dimethylphenol
2,4-dinitrotoluene
2,6-dinitrotoluene
1,2-diphenylhydrazine
Ethylbenzene
Fluoranthene
4-chlorophenyl phenyl ether
4-bromophenyl phenyl ether
Dichlorobormomethane
Chlordibromomethane
Hexachlorobutadine
Hexachlorocyclopentadine
Isophorone
Napthaline
Nitrobenzene
2-nitrophenol
4-nitrophenol
2,4-dinitrophenol
4,6-dinitro-o-cresol
4,6-dinitro-o-cresol
N-nitrosodimethylamine
N-nitrosodi-n-propylamine
Pentachlorophnol
Phenol
Bis(2-ethylhexyl) phthalate
Butyl benzyl phthalate
Di-n-butyl phthalate
Di-n-octyl phthalate
Diethyl Phthalate
Dimethyl phthalate 1,2-benzathracene (benzo(a)anthracene)
Benzo(a)pyrene (3,4-benzopyrene)
3,4-Benzofluoranthene (benzo(b)fluoranthene)
11,12-benzofluoranthene (benzo(b)fluoranthene)
Chrysene
Acenaphthylene
Anthracene
1,12-benzoperylene(benzo(ghi)perylene)
Fluorene
Phenanthrene
1,2,5,6-dibenzanthracene (dibenzo(h)anthracene)
Indeno (1,2,3-cd) pyrene (2,3-o-phenylene)
Pyrene Tetrachloroethylene
Toluene
Endosulphan sulphate
Endrin
Endrin aldehyde
Heptachlor
Heptachlor epoxide (BHC-hexachloro cyclohexane)
Alpha-BHC
Beta-BHC
Gamma-BHC (lindane)
Delta-BHC (PCB-polychlorinated biphenyls)
PCB–1242 (Arochlor 1242)
PCB–1254 (Arochlor 1254)
PCB–1221 (Arochlor 1221)
PCB–1232 (Arochlor 1232)
PCB–1248 (Arochlor 1248)
PCB–1260 (Arochlor 1260)
PCB–1016 (Arochlor 1016)
Toxaphane
Antimony
Arsenic
Asbestos
Beryllium
Cadmium
Chromium
Copper
Cyanide, Total
Lead
Mercury
Nickel

Selenium
N-nitrosodiphenylamine 2,3,4,7,8-tetrachlorodibenzo-p-dioxin (TCDD)
Silver
Thallium
Bis(2-chloroisopropyl) ether
Bis(2-chloroethyoxy) methane
Methylene chloride (dichloromethane)
Methyl chloride (dichloromethane)
Methyl bromide (bromomethane)
Bromoform Tribromoethane
Trichloroethylene
Vinyl chloride (chloroethylene) Aldrin
Dieldrin
Chlordane (techn. mixture and metabolites)
4,4-DDT
4,4-DDE (p,p-DDX)
4,4-DDD (p,p-TDE)
Alpha-endosulfan
Beta-endosulphan
Zinc

General Permit Authorization to Discharge From the Oil and Gas Point Source Category to Coastal Waters of Texas

Permit No. TXG330000

In compliance with the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq*: the "Act"), the following discharges are authorized from coastal oil and gas facilities (defined in 40 CFR Part 435, Subpart D) to receiving waters, described below (encompassing the coastal waters of Texas) in accordance with effluent limitations, monitoring requirements and other conditions set forth in Parts I, II, III, and IV thereof:

Drilling Fluids,
Drill Cuttings,
Deck Drainage,
Sanitary Wastes,
Domestic Wastes,
Desalinization Unit Discharge,
Diatomaceous Earth Filter Media,
Excess Cement Slurry,
Uncontaminated Ballast/Bilge Water,
Boiler Blowdown,
Blowout Preventer Control Fluid,
Well Treatment Fluids,
Workover Fluids,
Completion Fluids,
Formation Test Fluids,
Treated Wastewater from Dewatered Drilling Fluids/Cuttings,
Muds, Cuttings, and Cement at the Sea floor,
Uncontaminated Seawater,
Uncontaminated Freshwater.

This permit authorizes discharges to the coastal waters of Texas from oil and gas facilities engaged in production, field exploration, drilling, well completion, and well treatment operations. Produced water, produced sand and source water and sand discharges are excluded from coverage under this general permit, but will however, be regulated under a separate general coastal permit.

For the purposes of this NPDES general permit, Coastal Subcategory facilities means oil and gas facilities associated with a wellhead located in waters of the United States (including wetlands) as defined at 40 CFR 122.2, landward of the inner boundary of the territorial seas and those wells in the geographic area (land and water areas) suspended from the Onshore Subcategory described at 40 CFR part 435 subpart C. The term wetlands shall mean "those surface areas which are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include, swamps, marshes, bogs and similar areas". Territorial seas refers to "the belt of the seas measured from the line of ordinary low water along that portion of the coast which is direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles." (See Clean Water Act Section 502).

The coastal permit area as described in the regulations is broad by definition and includes all rivers, streams, lakes, bays, estuaries and adjacent wetlands that occur inland of inner boundary of the territorial seas. The coastal subcategory also includes the geographic area along the coast of Texas and Louisiana (Chapman line area) which was originally defined as coastal in EPA's 1976 Interim Final Regulations for the onshore subcategory (See Suspension of Regulations, 47 FR 31554, July 21, 1982). A facility is considered to be covered under the proposed general permit if the location of the wellhead is within the described permit area.

This permit does not authorize discharge from "new sources" as defined in 40 CFR 122.2. This permit also does not authorize discharges from oil and gas extraction operations which adversely affect properties listed or eligible for listing in the National Register of Historic Places.

This permit shall become effective on October 21, 1993.

This permit and the authorization to discharge shall expire at midnight, October 21, 1998.

Signed this September 7th day of 1993.

Myron O. Knudson, P.E.,

Director, Water Management Division EPA Region 6.

Part I

Section A. General Permit Coverage

1. Intent To Be Covered

Written notification of intent to be covered, including the legal name and address of the operator, the lease (or lease block) number assigned by the Railroad Commission of Texas or, if none, the name commonly assigned to the lease area, and the type of facilities located within the lease (or lease block), shall be submitted.

(a) By operators of leases (or lease blocks) that are located within the geographic scope of this permit, within 45 days of the effective date of this permit.

Note: Operators must request coverage under this general permit or have an effective individual permit.

(b) By operators of leases (or lease blocks) obtained subsequent to the effective date of this permit fourteen days prior to the commencement of discharge.

2. Termination of Operations

Lease (or lease block) operators shall notify the Regional Administrator within 60 days after the permanent termination of discharges from their facilities. In addition, lease (or lease block) operators shall notify the Regional Administrator within 30 days of any transfer of ownership.

Section B. NPDES Individual Versus General Permit Applicability

1. The Regional Administrator May Require Application for an Individual NPDES Permit

The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

(a) The discharge(s) is a significant contributor of pollution;
(b) The discharger is not in compliance with the conditions of this permit;
(c) A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point sources;
(d) Effluent limitation guidelines are promulgated for point sources covered by this permit;
(e) A Water Quality Management Plan containing requirements applicable to such point source is approved;
(f) The point source(s) covered by this permit no longer:
(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;
(3) Require the same effluent limitations or operating conditions;
(4) Require the same or similar monitoring; or
(5) In the opinion of the Regional Administrator, are more appropriately controlled under an individual permit than under a general permit.

The Regional Administrator may require any operator authorized by this permit to apply for an individual NPDES permit only if the operator has been notified in writing that a permit application is required.

2. An Individual NPDES Permit May Be Requested

(a) Any operator authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit. The operator shall submit an application together with the reasons supporting the request to the Regional Administrator no later than December 20, 1993.

(b) When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to the owner or operator is automatically terminated on the effective date of the individual permit.

3. General Permit Coverage May Be Requested

A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source after the notification of intent to be covered is filed (see A.1. above).

Part II

Section A. Effluent Limitations and Monitoring Requirements

Specific effluent limitations and monitoring requirements are discussed below. They are organized by the type of discharge in the text, and by discharge type, effluent limitation and monitoring requirements in Table 1.

1. Drilling Fluids

(a) *Applicability.* Permit conditions apply to all drilling fluids (muds) that are discharged, including fluids adhering to cuttings.

(b) *Prohibitions.* This permit prohibits the discharge of all drilling fluids.

2. Drill Cuttings

Special Note: The permit prohibitions and limitations that apply to drilling fluids also apply to drilling fluids that adhere to drill cuttings. Any permit condition that applies to the drilling fluid system, therefore, also applies to cuttings discharges.

(a) Prohibitions. This permit prohibits the discharge of drill cuttings.

3. Treated Wastewater from Drilling Fluids/Cuttings, Dewatering Activities and Pit Closure Activities

(a) *Applicability.* Treated waste water from dewatered drill site reserve pits, shale barges, ring levees and inactive/abandoned reserve pits, mud tanks and effluents from solids control systems.

(b) *Limitations—Free Oil.* Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Discharge is authorized only at times when visual sheen observation is possible. Monitoring must be accomplished once per day, when discharging. The number of days a sheen is detected must be recorded.

[Exception] Treated wastewater may be discharged at any time if the operator uses the static sheen method for detecting free oil.

Oil and Grease. Treated Wastewater must meet a 15 mg/l daily maximum limitation.

Total Suspended Solids. Treated wastewater shall not exceed 50 mg/l as a daily maximum.

Total Dissolved Solids. Treated wastewater shall not exceed 3000 mg/l as a daily maximum.

[Exception] Total dissolved solids (TDS) concentration may exceed 3,000 mg/l in tidally influenced watercourses (downstream of the upper limit of saltwater intrusion) if the TDS concentration of the treated reserve pit effluent does not exceed the TDS concentration of the receiving water at the point of discharge at the time of discharge.

Chemical Oxygen Demand. Treated wastewater shall not exceed 200 mg/l as a daily maximum.

pH. Discharges of treated wastewater must meet a pH limitation of not less than 6.0 and not greater than 9.0 at the point of discharge.

Chlorides. Treated wastewater shall not exceed 500 mg/l in inland areas and shall not exceed 1,000 mg/l in tidally influenced watercourses.

[Exception] Chloride concentration may exceed 1,000 mg/l in tidally influenced watercourses (downstream of the upper limit of saltwater intrusion) if the chloride concentration of the treated reserve pit effluent does not exceed the chloride concentration of the receiving water at the point of discharge at the time of discharge. Inland regions are defined to be those regions where natural drainage is into any watercourse which is not tidally influenced.

Hazardous Metals. The discharge must not contain concentrations of the substances classified as "hazardous metals" in excess of the levels allowed by the Texas Water Development Board Rules 156.19.15.001–.009 (currently TAC 319.21).

Monitoring. The monitoring frequency for the above limitations are once per day when discharging. However, if the effluent is batch treated and discharged, the monitoring requirements for all effluent characteristics shall be once per discharge event by grab sample.

(c) *Other Monitoring—Volume.* The volume (bbls) of discharged treated wastewater must be estimated once per day, when discharging. If the effluent is being batch treated and discharged then the estimated volume discharged in barrels must be recorded per discharge event.

4. Deck Drainage

(a) *Limitations—Free Oil.* Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Monitoring must be accomplished once per day, when discharging during conditions when an observation of a sheen is possible and when the facility is manned. The number of days a sheen is detected must be recorded.

(b) *Other Monitoring—Volume.* Once per month, the total monthly volume (bbl) must be estimated.

5. Formation Test Fluid

(a) *Prohibitions.* There shall be no discharge of formation test fluids to lakes, rivers, streams, bays and estuaries.

[Exception] Discharges of formation test fluids are allowed to bays and estuaries where no chloride standards have been established by the Texas Water Commission.

(b) *Limitations—Free Oil.* Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Discharge is authorized only at times when visual sheen observation is possible. Monitoring must be accomplished once per discharge. The number of days a sheen is detected must be recorded.

[Exception] Formation test fluids may be discharged at any time if the operator uses the static sheen method for detecting free oil.

pH. Discharges of formation test fluid must meet a pH limitation of not less than 6.0 and not greater than 9.0. A grab sample must be taken once per discharge. Any spent acidic test fluids

shall be neutralized before discharge such that the pH at the point of discharge meets the limitation.

(c) *Other Monitoring—Volume.* Once per discharge, the total volume reported as number of barrels sent downhole during testing and the number of barrels discharged shall be estimated and reported once per month.

6. Well Treatment Fluids, Completion Fluids, Workover Fluids

(a) *Prohibitions.* There shall be no discharge of well completion, treatment or workover fluids to lakes, rivers, streams, bays or estuaries.

[Exception] Discharge of well completion, treatment or workover fluids are allowed to bays and estuaries where no chloride standards have been established by the Texas Water Commission.

Priority (Toxic) Pollutants. For well treatment fluids, completion fluids, and workover fluids, the discharge of priority pollutants (see Appendix A) is prohibited, except in trace amounts. If well completion, treatment or workover fluids are discharged, the permittee is required to retain records indicating that the discharge did not contain priority pollutants, except in trace amounts. Certification on DMR's will suffice for priority pollutant limits.

Information on the specific chemical composition of additives used in these fluids, and their concentrations in the fluid, must be recorded if priority pollutants are present, in any amount, in these additives.

(b) *Limitations—Free Oil.* Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Discharge is authorized only at times when visual sheen observation is possible. Monitoring must be accomplished once per day, when discharging. The number of days a sheen is detected must be recorded.

[Exception] Well treatment fluids, completion fluids, or workover fluids may be discharged at any time if the operator uses the static sheen method for detecting free oil.

pH. Well treatment, completion and workover fluids must meet a pH limitation of not less than 6.0 and not greater than 9.0 prior to being discharged. Sampling must be accomplished once per day when discharging.

(c) *Other Monitoring—Volume.* Once per month, the discharge volume (bbls) must be estimated.

7. Sanitary Waste

(a) *Prohibitions—Solids.* No floating solids may be discharged.

(b) *Limitations—Biochemical Oxygen Demand (BOD5).* Sanitary waste discharges must meet a 45 mg/l daily maximum limitation. A grab sample must be collected and analyzed once per quarter.

Total Suspended Solids. Sanitary waste discharges shall meet a 45 mg/l daily maximum limitation. A grab sample shall be collected and analyzed once per quarter.

Fecal Coliform. Sanitary waste discharges must meet a daily maximum limitation of 200/100 ml for fecal coliform . A grab sample must be taken and analyzed once per week.

(c) *Other Monitoring—Flow.* Once per month, the average flow (million gallons per day; MGD) must be estimated.

8. Domestic Waste

(a) *Prohibitions—Solids.* This permit prohibits the discharge of "garbage" including food wastes (comminuted or not), incineration ash and clinker. Neither fish and debris from fish cleaning stations nor graywater are not considered garbage under this definition.

9. Miscellaneous Discharges

Desalinization Unit Discharge, Blowout Preventer Fluid, Uncontaminated Ballast Water, Uncontaminated Bilge Water, Mud, Cuttings, and Cement at the sea floor, Uncontaminated Seawater, Boiler Blowdown, Excess Cement Slurry, Diatomaceous Earth Filter Media, Uncontaminated Freshwater, including potable water releases during tank transfer and emptying operations, and condensate from air conditioner units.

(a) *Limitations—Free Oil.* Discharges containing free oil are prohibited as determined by a visual sheen on the surface of the receiving water. Discharge is authorized only at times when visual sheen observation is possible. Monitoring must be accomplished once per day, when discharging. The number of days a sheen is detected must be recorded.

[Exception] Miscellaneous discharges may occur at any time if the operator uses the static sheen method for detecting free oil.

10. Other Discharge Conditions

(a) *Prohibitions—Halogenated Phenol Compounds.* There shall be no discharge of halogenated phenol compounds.

Rubbish, Trash, and Other Refuse. The discharge of any solid material not authorized in the permit (as described above) is prohibited.

(b) *Limitations—Floating Solids or Visible Foam.* There shall be no discharge of floating solids or visible foam in other than trace amounts.

Surfactants, Dispersants, and Detergents. The discharge of surfactants, dispersants, and detergents used to wash working areas shall be minimized except as necessary to comply with applicable State and Federal safety requirements.

Section B. Other Conditions

1. Samples of Wastes

If requested, the permittee shall provide EPA with a sample of any waste in a manner specified by the Agency.

Part III

Section A. General Conditions

1. Introduction

In accordance with the provisions of 40 CFR 122.41, et. seq., this permit incorporates by reference all conditions and requirements applicable to NPDES Permits set forth in the Clean Water Act, as amended, (hereinafter known as the "Act") as well as ALL applicable CFR regulations.

2. Duty To Comply

The permittee must comply with all conditions of this permit. Any permit non-compliance constitutes a violation of the Clean Water Act and is grounds for enforcement action or for requiring a permittee to apply for and obtain an individual NPDES permit.

3. Toxic Pollutants

Notwithstanding III.A.5 below, if any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of the Clean Water Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition and the permittee so notified.

The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

4. Duty To Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must submit notice of intent to be covered and must apply for a new permit. Continuation of the expiring permit shall be governed by regulations at 40 CFR 122.6 and any subsequent amendments.

5. Permit Flexibility

This permit may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following (see 40 CFR 122.62–64):

(a) Violation of any terms or conditions of this permit;

(b) Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

(c) A change in any condition that requires either a temporary or a permanent reduction or elimination of the authorized discharge; or

(d) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under section 301, 304, and 307 of the Clean Water Act, if the effluent standard or limitation so issued or approved:

(a) Contains different conditions or limitations than any in the permit; or

(b) Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable.

6. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

7. Duty to Provide Information

The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Regional Administrator upon request, copies of records required to be kept by this permit.

8. Civil and Criminal Liability

Except as provided in permit conditions on "Bypassing" and "Upsets" (see III.B.4 and III.B.5), nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or misleading misrepresentation or concealment of information required to be reported by the provisions of the permit, the ACT, or applicable CFR regulations which avoids or effectively defeats the regulatory purpose of the permit may subject the permittee to criminal enforcement pursuant to 18 U.S.C. 1001.

9. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Clean Water Act.

10. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Clean Water Act.

11. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

Section B. Operation and Maintenance of Pollution Controls

1. Need to Halt or Reduce not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

3. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

4. Bypass of Treatment Facilities

(a) *Definitions.* (1) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) *Bypass not exceeding limitations.* The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of section B, paragraphs 4.c and 4.d of this section.

(c) *Notice.* (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in section D, paragraph 6 (24-hour reporting).

(d) *Prohibition of bypass.* (1) Bypass is prohibited, and the Regional Administrator may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not

satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(c) The permittee submitted notices as required under section B, paragraph 4.c.

(2) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in section B, paragraph 4.d.(1).

5. Upset Conditions

(a) *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) *Effect of an Upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of section B, paragraph 5.(c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(c) *Conditions Necessary for a Demonstration of Upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required in section D, paragraph 5; and,

(4) The permittee complied with any remedial measures required under section B, paragraph 2.

(d) *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

6. Removed Substances

Solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters. Any substance specifically listed within this permit may be discharged in accordance with specified conditions, terms, or limitations.

Section C. Monitoring and Records

1. Inspection and Entry

The permittee shall allow the Regional Administrator or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

2. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge.

3. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, and copies of all reports required by this permit, for a period of at least 3 years from the date of the sample, measurement, or report. This period may be extended by request of the Regional Administrator at any time.

The operator shall maintain records at development and production facilities for 3 years, wherever practicable and at a specific shore-based site whenever not practicable. The operator is responsible for maintaining records at exploratory facilities while they are discharging under the operator's control and at a specified shore-based site for the remainder of the 3-year retention period.

4. Record Contents

Records of monitoring information shall include:

(a) The date, exact place, and time of sampling or measurements,

(b) The individual(s) who performed the sampling or measurements,

(c) The date(s) analyses were performed,

(d) The individual(s) who performed the analyses,

(e) The analytical techniques or methods used, and

(f) The results of such analyses.

5. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in this permit (see part IV.A., below).

6. Discharge Rate/Flow Measurements

Appropriate flow measurement devices consistent with accepted practices shall be selected, maintained, and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to ensure that the accuracy of the measurements are consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than ± 10% from true discharge rates throughout the range of expected discharge volumes.

Section D. Reporting Requirements

1. Planned Changes

The permittee shall give notice to the Regional Administrator as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(a) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b) [48 FR 14153, April 1, 1983, as amended at 49 FR 38049, September 26, 1984]; or

(b) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements under 40 CFR 122.42(a)(1) [48 FR 14153, April 1,1983, as amended at 49 FR 38049, September 26, 1984].

2. Anticipated Noncompliance

The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers

This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act.

4. Discharge Monitoring Reports

The operator of each lease (or lease block) shall be responsible for submitting monitoring results for all facilities within each lease (or lease block). The monitoring results for the facilities (platform, jack-up, drilling barge, etc.) within the particular lease (or lease block) shall be summarized on the annual Discharge Monitoring Report for that lease (or lease block).

Monitoring results obtained during the previous 12 months shall be summarized and reported on a Discharge Monitoring Report (DMR) Form (EPA No. 3320–1). The highest monthly average for all activitiy within each lease (or lease block) shall be reported. The highest daily maximum sample taken during the reporting period shall be reported as the daily maximum concentration. (See "Definitions" for more detailed explanations of these terms).

If any category of waste (discharge) is not applicable for all facilities within the lease (or lease block) due to the type of operation (e.g. drilling, production), "no discharge" must be recorded for those categories on the DMR. If all facilities within a lease block have had no activity during the reporting period, then "no activity" must be written on the DMR. All pages of the DMR must be signed and certified as required by Part III.D.11 of this permit and submitted when due.

The Permittee must complete all empty blanks in the DMR unless there has been absolutely no activity or no discharge within the lease (or lease block) for the entire reporting period. In these cases, EPA Region VI will accept a listing of leases (or lease blocks) with no discharges or no activity, in lieu of submitting actual DMRs for these leases (or lease blocks). This listing must specify the permittee's NPDES General Permit Number, lease/lease block description, and EPA-assigned outfall number. The listing must also include the certification statement presented in Part III.D.11.d of this permit and an original signature of the designated responsible official.

Upon receipt of a notification of intent to be covered, (part I.A.) the permittee will be notified of its specific outfall number applicable to that lease block. Furthermore, the Permittee will be informed of the discharge monitoring report due date for that lease block.

All notices and reports required under this permit shall be sent to EPA Region 6 at the address below:

Director, Water Management Division, USEPA, Region 6, Enforcement Branch (6W–EA), P.O. Box 50625, Dallas, TX 75270.

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased monitoring frequency shall also be indicated on the DMR.

6. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the permit.

7. Twenty-Four Hour Reporting

The permittee shall report any noncompliance which may endanger health or the environment (this includes any spill that requires oral reporting to the State Regulatory Authority). Information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Regional Administrator may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

The following shall be included as information which must be reported within 24 hours:

(a) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(b) Any upset which exceeds any effluent limitation in the permit.

(c) Violations of a maximum daily discharge limitation or daily minimum toxicity limitation for any of the pollutants listed by the Regional Administrator in part III of the permit to be reported within 24 hours.

The reports should be made to Region 6 by telephone at (214) 655–6593. The Regional Administrator may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

8. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under part III, section D, paragraphs 4 and 7 at the time monitoring reports are submitted. The reports shall contain the information listed in section D, paragraph 7.

9. Other Information

When the permittee becomes aware that it failed to submit any relevent facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional Administrator, it shall promptly submit such facts or information.

10. Changes in Discharges of Toxic Substances

For any toxic pollutant (see appendix A) that is not limited in this permit, either as an additive itself or as a component in an additive formulation, the permittee shall notify the Regional Administrator as soon as he knows or has reason to believe:

(a) That any activity has occurred or will occur which would result in the discharge of such toxic pollutants, on a routine or frequent basis, if that discharge will exceed the highest of the "notification levels" described at 40 CFR 122.42(a)(1) (i) and (ii);

(b) That any activity has occurred or will occur which would result in any discharge of such toxic pollutants, on a non-routine or infrequent basis, if that discharge will exceed the highest of the "notification levels" described at 40 CFR 122.42(a)(2) (i) and (ii).

11. Signatory Requirements

All applications, reports, or information submitted to the Regional Administrator shall be signed and certified as required at 40 CFR 122.22.

(a) All permit applications shall be signed as follows:

(1) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs

similar policy or decisionmaking functions for the corporation, or

(ii) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

(b) *Authorized Representative.* All reports required by the permit and other information requested by the Regional Administrator shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above.

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and,

(3) The written authorization is submitted to the Regional Administrator.

(c) *Changes to Authorization.* If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) *Certification.* Any person signing a document under this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

12. Availability of Reports

Except for data determined to be confidential under 40 CFR part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the office of the Regional Administrator. As required by the Clean Water Act, the name and address of any permit applicant or permittee, permit applications, permits, and effluent data shall not be considered confidential.

13. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date. Any reports of noncompliance shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirement.

Section E. Penalties for Violations of Permit Conditions

1. Criminal

(a) *Negligent Violations.* The Act provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(b) *Knowing Violations.* The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(c) *Knowing Endangerment.* The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000 per day of violation, or by imprisonment for not more than 15 years, or both.

(d) *False Statements.* The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See Section 309.c.4 of the Clean Water Act).

2. Civil Penalties

The Clean Water Act at section 309 provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed $25,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, or 308 of the Clean Water Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both. The maximum penalty may be assessed for each violation occurring on a single day. A single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

3. Administrative Penalties

The Act at section 309 allows that the Regional Administrator may assess a Class I or Class II civil penalty for violations of sections 301, 302, 306, 307, 308, 318, or 405 of the Act. A Class I penalty may not exceed $10,000 per violation except that the maximum amount shall not exceed $25,000. A Class II penalty may not exceed $10,000 per day for each day during which the violation continues, except that the maximum amount shall not exceed $125,000. An upset that leads to violations of more than one pollutant parameter will be treated as a single violation.

Part IV

Section A. Test Procedures

For test procedures not specified below, the only authorized procedures are those described at 40 CFR part 136.

1. Visual Sheen Test

The visual sheen test is used to detect free oil by observing the surface of the receiving water for the presence of a sheen while discharging. A sheen is defined as a 'silvery' or 'metallic' sheen,

gloss, or increased reflectivity; visual color; or iridescence on the water surface. The operator must conduct a visual sheen test only at times when a sheen can be observed. This restriction eliminates observations at night or when atmospheric or surface conditions prohibit the observer from detecting a sheen (e.g. fog (not overcast skies), rough seas, etc.). Certain discharges can only occur if a visual sheen test can be conducted.

The observer must be positioned on the rig or platform, or other vantage point, relative to both the discharge point and current flow at the time of discharge, such that the observer can detect a sheen should it surface down current from the discharge. For discharges that have been occurring for at least 15 minutes previously, observations may be made any time thereafter. For discharges of less than 15 minutes duration, observations must be made during both discharge and at 5 minutes after discharge has ceased.

2. Static Sheen Test

Region 10, Modified Static Sheen Test, "Bucket Test": Combined 50 FR No. 165 August 26, 1985 and USEPA Region 10, Interim Guidance for the Static (Laboratory) Sheen Test, January 10, 1984

1. Scope and Application

The static sheen test is to be used as a compliance test for all discharges in this permit with the "no free oil discharge" requirement, when it is not possible for the operator to accomplish a visual sheen observation on the surface of the receiving water. This would preclude an operator from attempting a visual sheen observation when atmospheric or surface conditions prohibit the observer from detecting a sheen (e.g., during rough seas, etc.). Free oil refers to any oil contained in a waste stream that when discharged will cause a film or sheen upon or a discoloration of the surface of the receiving water.

2. Summary of Method

15 ml samples of drilling fluids; deck drainage, well treatment, completion and workover fluids, formation test fluids, or treated wastewater from drilling fluid dewatering activities, or 15 gm (wet weight basis) samples of drill cuttings or produced sand are introduced into ambient seawater in a container having an air to liquid interface area of 1000 cm^2 (155.5 in^2). Samples are dispersed within the container and observations made no more than one hour later to ascertain if these materials cause a sheen, iridescence, gloss, or increased reflectance on the surface of the test seawater. The occurrence of any of these visual observations will constitute a demonstration that the tested material contains "free oil", and therefore, results in a prohibition on its discharge into receiving waters.

3. Interferences

Residual "free oil" adhering to sampling containers, the magnetic stirring bar used to mix drilling fluids, and the stainless steel spatula used to mix drill cuttings will be the principal sources of contamination problems. These problems should only occur if improperly washed and cleaned equipment are used for the test. The use of disposable equipment minimizes the potential for similar contamination from pipets and the test container.

4. Apparatus, Materials, and Reagents

4.1 Apparatus.

4.1.1 Sampling Containers—1 L polyethylene beakers and 1 L glass beakers.

4.1.2 Graduated cylinder—100 ml graduated cylinder required only for operations where predilution of mud discharges is required.

4.1.3 Plastic disposable weighing boats.

4.1.4 Triple-beam scale.

4.1.5 Disposable pipets—25 ml disposable pipets.

4.1.6 Magnetic stirrer and stirring bar.

4.1.7 Stainless steel spatula.

4.1.8 Test container—open plastic container whose internal cross-section parallal to its opening has an area of 1000±50 cm^2 (155.5±7.75 in^2), and a depth of at least 13 cm (5 inches) and no more than 30 cm (11.8 inches).

4.2 Materials and Reagents.

4.2.1 Plastic liners for the test container—Oil free, heavy duty plastic trash can liners that do not inhibit the spreading of an oil film. Liners must be of sufficient size to completely cover the interior surface of the test container. Permittees must determine an appropriate local source of liners that do not inhibit the spreading of 0.05 ml diesel fuel added to the lined test container under the test conditions and protocol described below.

4.2.2 Ambient receiving water.

5. Calibration

None currently specified.

6. Quality Control Procedures

None currently specified.

7. Sample Collection and Handling

7.1 Sampling containers must be thoroughly washed with detergent, rinsed a minimum of three times with fresh water, and allowed to air dry before samples are collected.

7.2 Samples of drilling fluid to be tested shall be taken at the shale shaker after cuttings have been removed. The sample volume should range between 200 ml and 500 ml.

7.3 Samples of drill cuttings will be taken from the shale shaker screens with a clean spatula or similar instrument and placed in a glass beaker. Cuttings samples shall be collected prior to the addition of any washdown water and should range between 200 g and 500 g.

7.4 Samples of produced sand must be obtained from the solids control equipment from which the discharge occurs on any given day and shall be collected prior to the addition of any washdown water; samples should range between 200 g and 500 g.

7.5 Samples of deck drainage, well treatment, completion and workover fluids, formation test fluids and treated wastewater from drilling fluid dewatering activities must be obtained from the holding facility prior to discharge; the sample volume should range between 200 ml and 500 ml.

7.6 Samples must be tested no later than 1 hour after collection.

7.7 Drilling fluid samples must be mixed in their sampling containers for 5 minutes prior to the test using a magnetic bar stirrer. If predilution is imposed as a permit condition, the sample must be mixed at the same ratio with the same prediluting water as the discharged muds and stirred for 5 minutes.

7.8 Drill cuttings must be stirred and well mixed by hand in their sampling containers prior to testing, using a stainless steel spatula.

8. Procedure

8.1 Ambient receiving water must be used as the "receiving water" in the test. The temperature of the test water shall be as close as practicable to the ambient conditions in the receiving water, not the room temperature of the observation facility. The test container must have an air to liquid interface area of 1000±50 cm^2. The surface of the water should be no more than 1.27 cm (½ inch) below the top of the test container.

8.2 Plastic liners shall be used, one per test container, and discarded afterwards. Some liners may inhibit spreading of added oil; operators shall determine an appropriate local source of liners that do not inhibit the spreading of the oil film.

8.3 A 15 ml sample of drilling fluid, deck drainage, well treatment, completion and workover fluids, formation test fluids, or treated

wastewater from drilling fluid dewatering activities must be introduced by pipet into the test container 1 cm below the water surface. Pipets must be filled and discharged with test material prior to the transfer of test material and its introduction into test containers. The test water-test material mixture must be stirred using the pipet to distribute the test material homogeneously throughout the test water. The pipet must be used only once for a test and then discarded.

8.4 Drill cuttings or produced sand should be weighed on plastic weighing boats; 15 gram samples must be transferred by scraping test material into the test water with a stainless steel spatula. Drill cuttings shall not be prediluted prior to testing. Also, drilling fluids and cuttings will be tested separately. The weighing boat must be immersed in the test water and scraped with the spatula to transfer any residual material to the test container. The drill cuttings or produced sand must be stirred with the spatula to an even distribution of solids on the bottom of the test container.

8.5 Observations must be made no later than 1 hour after the test material is transferred to the test container. Viewing points above the test container should be made from at least three sides of the test container, at viewing angles of approximately 60° and 30° from the horizontal. Illumination of the test container must be representative of adequate lighting for a working environment to conduct routine laboratory procedures. It is recommended that the water surface of the test container be observed under a fluorescent light source such as a dissecting microscope light. The light source shall be positioned above and directed over the entire surface of the pan.

8.6 Detection of a "silvery" or "metallic" sheen, gloss, or increased reflectivity; visual color; or iridescence; or an oil slick, on the water surface of the test container surface shall constitute a demonstration of "free oil". These visual observations include patches, streaks, or sheets of such altered surface characteristics. shall constitute a demonstration of free oil. If the free oil content of the sample approaches or exceeds 10 percent, the water surface of the test container may lack color, a sheen or iridescence, due to the increased thickness of the film; thus, the observation for an oil slick is required. The surface of the test container shall not be disturbed in any manner that reduces the size of any sheen or slick that may be present.

If an oil sheen or slick occurs on less than one-half of the surface area after drilling muds or cuttings are introduced to the test container, observations will continue for up to one hour. If the sheen or slick increases in size and covers greater than one-half of the surface area of the test container during the observation period, the discharge of the material shall cease. If the sheen or slick does not increase in size to cover greater than one-half of the test container surface area after one hour of observation, discharge may continue and additional sampling is not required.

If a sheen or slick occurs on greater than one-half of the surface area of the test container after the test material is introduced, discharge of the tested material shall cease. The permittee may retest the material causing the sheen or slick. If subsequent tests do not result in a sheen or slick covering greater than one-half of the surface area of the test container, discharge may continue.

Section B. Definitions

Administrator means the administrator of EPA Region 6, or an authorized representative.

Areas of Biological Concern (ABC) are locations identified by the State of Texas as "no activity zones" or areas determined by EPA and the State, collectively, containing significant biological resources or features that require a "No Discharge" condition. There are currently no designated areas of biological concern.

Average daily discharge limitation means the highest allowable average of discharges over a 24-hour period, calculated as the sum of all discharges measured divided by the number of discharges measured that day.

Average monthly discharge limitation means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of discharges measured that month.

Batch or bulk discharge means any discharge of a discrete volume or mass of effluent from a pit, tank or similar container that occurs on a one time or infrequent or irregular basis.

Batch or bulk treatment means any treatment of a discrete volume or mass of effluent from a pit, tank, or similar container prior to discharge.

Blow-out preventer control fluid is fluid used to actuate the hydraulic equipment on the blow-out preventer.

BOD5 means five day biochemical oxygen demand.

Boiler blowdown is discharge from boilers necessary to minimize solids build-up in the boilers, includes vents from boilers and other heating systems.

Clinkers are small lumps of melted plastic.

Coastal means all waters of the United States (as defined at 40 CFR 122.2) landward of the territorial seas.

COD is chemical oxygen demand.

Completion fluids are salt solutions, weighted brines, polymers or various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production. These fluids move into the formation and return to the surface as a slug with the produced water. Drilling muds remaining in the wellbore during logging, casing and cementing operations or during temporary abandonment of the well are not considered completion fluids and are regulated by drilling fluids requirements.

Daily maximum discharge limitation means the highest allowable "daily discharge" during the calendar month.

Deck drainage is all waste resulting from platform washings, deck washings, spills, rainwater, and runoff from curbs, gutters, and drains, including drip pans and wash areas.

Desalinization unit discharge means wastewater associated with the process of creating fresh water from seawater.

Diatomaceous earth filter media means filter media used to filter seawater or other authorized completion fluids and subsequently washed from the filter.

Domestic waste is discharges from galleys, sinks, showers, safety showers, eye wash stations, hand wash stations and laundries.

Drill cuttings are particles generated by drilling into the subsurface geological formations and carried to the surface with the drilling fluid.

Drilling fluid is any fluid sent down the hole, including drilling muds and any specialty products, from the time a well is begun until final cessation of drilling in that hole.

Excess Cement Slurry is the excess cement including additives and wastes from equipment washdown after a cementing operation.

Free Oil is oil that causes a sheen when discharges are released or when a static sheen test is used.

Formation test fluids are the discharge that would occur should hydrocarbons be located during exploratory drilling and tested for formation pressure and content.

Garbage means all kinds of victual, domestic and operational waste . . . generated during the normal operation of the ship and liable to be disposed of continuously or

periodically . . . (See MARPOL 73/78 regulations).

Grab sample is a single representative effluent sample taken at the recognized discharge point in as short a period of time as feasible.

Graywater means drainage from dishwater, shower, laundry, bath, and washbasin drains and does not include drainage from toilets, urinals, hospitals, and drainage from cargo areas. (See MARPOL 73/78 regulations).

Inverse emulsion drilling fluids means an oil-based drilling fluid that also contains a large amount of water.

Maximum hourly rate means the greatest number of barrels of drilling fluids discharged within one hour, expressed as barrels per hour.

MGD refers to units of flow measurement, as million gallons per day.

MPN means the most probable number.

Muds, cuttings, and cement at the seafloor are discharges which occur at the seafloor prior to installation of the marine riser and during marine riser disconnect and well abandonment and plugging operations.

No Activity Zones are those areas identified by MMS where no structures, drilling rigs, or pipelines will be allowed. See Areas of Biological Concern.

No Discharge Areas are areas specified by EPA where discharge of pollutants may not occur.

Packer Fluid means low solids fluids between the packer, production string and well casing, (See workover fluids).

Priority Pollutants are those chemicals or elements identified by EPA, pursuant to section 307 of the Clean Water Act, and 40 CFR 401.15. See Appendix A.

Sanitary waste means human body waste discharged from toilets and urinals.

Source water and sand means water from non-hydrocarbon bearing formations for the purpose of pressure maintenance or secondary recovery, including the entrained solids.

Static Sheen is the procedure described in Part IV, Section A.2. of the permit.

TDS means total dissolved solids.

Territorial Seas is "the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open ocean and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles" (CWA Section 502).

Toxic Pollutants (See Priority Pollutants, Appendix A)

Treated wastewater from dewatered drilling fluids and cuttings means wastewater from dewatering activities (including but not limited to reserve pits which have been flocculated or otherwise chemically or mechanically treated to meet specific discharge conditions) and any waste commingled with this water.

TSS means total suspended solids.

Uncontaminated ballast/bilge water is seawater added or removed to maintain proper draft of a vessel.

Uncontaminated Freshwater means freshwater which is returned to the receiving stream without the addition of any chemicals; included are (1) Discharges of excess freshwater that permit the continuous operation of fire control and utility lift pumps, (2) excess freshwater from pressure maintenance and secondary recovery projects, (3) water released during the training and testing of personnel in fire protection, (4) water used to pressure test piping, (5) once-through, non-contact cooling water, and (6) potable water released during transfer and tank emptying operations and condensate from air conditioning units.

Uncontaminated Seawater is seawater which is returned to the sea without the addition of chemicals. Included are: (1) Discharges of excess seawater which permit the continuous operation of fire control and utility lift pumps, (2) excess seawater from pressure maintenance and secondary recovery projects, (3) water released during the training and testing of personnel in fire protection, (4) sea-water used to pressure test piping, and (5) once-through, non-contact cooling water.

Visual Sheen means a 'silvery' or 'metallic' sheen, gloss, or increased reflectivity; visual color; or iridescence on the water surface.

Well Treatment (stimulation) Fluids means any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled. These fluids move into the formation and return to the surface as a slug with the produced water. Stimulation fluids include substances such as acids, solvents and propping agents.

Workover Fluids means salt solutions, weighted brines, polymers or other specialty additives used in a producing well to allow safe repair and maintenance or abandonment procedures. High solids drilling fluids used during workover operations are not considered workover fluids by definition and therefore must meet drilling fluid effluent limitations before discharge may occur. Packer fluids, low solids fluids between the packer, production string and well casing, are considered to be workover fluids and must meet only the effluent requirements imposed on workover fluids.

TABLE 1.—PERMIT CONDITIONS AND DISCHARGE MONITORING FREQUENCY

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Recorded value(s)
(A) Drilling Fluids—no discharge.				
(B) Drill Cuttings—no discharge.				
(C) Treated Wastewater from Drilling Fluids/Cuttings, Dewatering Activities, and Pit Closure Activities.				
Free oil	No free oil	Once/day[1]	Visual sheen on receiving water[2].	Number of days sheen observed.
Oil and grease	15 mg/l	Once/day[1]	Grab	Daily maximum.
TSS	50 mg/l	Once/day[1]	Grab	Daily maximum.
TDS	3,000 mg/l[3]	Once/day[1]	Grab	Daily maximum.
COD	200 mg/l	Once/day[1]	Grab	Daily maximum.
pH	6.0–9.0[4]	Once/day[1]	Grab	pH value.
Chlorides	500 mg/l[3]	Once/day[1]	Grab	Daily maximum.
	1,000 mg/l[3]	Once/day[1]	Grab	Daily maximum.
Hazardous Metals	No discharge[3]	Once/day[1]	Grab	Daily maximum.

TABLE 1.—PERMIT CONDITIONS AND DISCHARGE MONITORING FREQUENCY—Continued

Effluent characteristic	Discharge limitation	Monitoring requirements		
		Measurement frequency	Sample type/method	Recorded value(s)
Volume	Report (bbls)	Once/day [1]	Estimate	Daily total. [6]
(D) Deck Drainage.				
Free oil	No free oil	Once/day [5]	Visual sheen on receiving water [10].	Number of days sheen observed.
Volume	Report (bbls)	Once/month	Estimate	Monthly total. [6]
(E) Formation Test Fluids—No discharge of formation test fluids to lakes, rivers, streams, bays and estuaries. Exception: for bays and estuaries where no chloride standards have been established by the Texas Water Commission, the following discharge limitations and monitoring requirements shall apply:				
Free oil	No free oil	Once/discharge	Visual sheen on receiving water [2].	Number of days sheen observed.
pH	6.0–9.0 [4]	Once/discharge	Grab	pH value.
Volume	Report (bbls)	Once/discharge	Estimate	Monthly total. [6]
(F) Well Treatment, Completion, and Workover Fluids—There shall be no discharge of well treatment, completion and workover fluids to lakes, rivers, streams, bays or estuaries. Exception: for bays and estuaries where no chloride standards have been established by the Texas Water Commission, the following limitations and monitoring requirements shall apply:				
Priority Pollutants	No discharge		Certification [7]	
Free oil	No free oil	Once/day [1]	Visual sheen on receiving water [2].	Number of days sheen observed.
pH	6.0–9.0 [4]	Once/day [1]	Grab	pH value.
Volume	Report (bbls)	Once/month [1]	Estimate	Monthly total.
(G) Sanitary Waste.				
Solids	No floating solids	Once/day	Observation [8]	Number of days solids observed.
BOD5	45 mg/l	Once/quarter.	Grab	Daily maximum.
TSS	45 mg/l	Once/quarter	Grab	Daily maximum.
Fecal	200/100 ml	Once/week	Grab	Daily maximum.
Flow	Report (MGD)	Once/month	Estimate	Monthly avg. [6].
(H) Domestic Waste.				
Solids	No discharge [9]			
(I) Miscellaneous Discharges: Desalinization Unit Discharge, Blowout Preventer Fluid, Uncontaminated Ballast Water, Uncontaminated Bilge Water, Mud, Cuttings, and Cement at the Seafloor, Uncontaminated Seawater, Boiler Blowdown, Excess Cement Slurry, Diatomaceous Earth Filter Media, Uncontaminated Freshwater including potable water releases during tank transfer and emptying operations, and condensate from air conditioner units.				
Free oil	No free oil	Once/day [1]	Visual sheen on receiving water [2].	Number of days sheen observed

1. When discharging.
2. Discharge is possible during times other than when a visual sheen observation is possible, if the static sheen test method is used.
3. See permit; Part II A.3.b.
4. pH at the point of discharge shall not be less than 6.0 or greater than 9.0.
5. When discharging and when the facility is manned.
6. Information shall be recorded, but not reported unless specifically requested by EPA.
7. No discharge except in trace amounts. Certification that each discharge does not contain priority pollutants (except in trace amounts) on DMR's will suffice for reporting priority pollutant limits. Information on the specific chemical composition shall be recorded but not reported unless requested by EPA.
8. Monitoring by visual observation of the surface of the receiving water in the vicinity of outfall(s) shall be done during daylight at the time of maximum estimated discharge.
9. Annex V of MARPOL 73/78 prohibits the discharge of "garbage" including food wastes, incineration ash and clinkers. Graywater, drainage from dishwater, shower, laundry, bath, and washbasins may be discharged.
10. Monitoring of visual sheen to be made at times when visual observations can be made.

Appendix A—Priority Pollutant List

Acenaphthene
Acrolein
Acrylonitrile
Benzene
Benzidine
Carbon tetrachloride (tetrachloromethane)
Chlorobenzene
1,2,4-trichlorobenzene
Hexachlorobenzene
1,2-dichloroethane
1,1,1-trichloroethane
Hexachloroethane
1,1,-dichloroethane
1,1,2-trichloroethane
1,1,2,2-tetrachloroethane
Chloroethane
Bis(2-chloroethyl) ether
2-chloroethyl vinyl ether (mixed)
2-chloronaphthalene
2,4,6-trichlorophenol
Parachlorometacresol
Chloroform (trichloromethane)
2-chlorophenol
1,2-dichlorobenzene
1,3-dichlorobenzene
1,4-dichlorobenzene
3,3-dichlorobenzene
1,1-dichloroethylene
2,4-dichlorophenol
1,2-dichloropropane
1,2-dichloropropylene (1,3-dichloropropene)
2,4-dimethylphenol
2,4-dinitrotoluene
2,6-dinitrotoluene
1,2-diphenylhydrazine
Ethylbenzene
Fluoranthene
4-chlorophenyl phenyl ether
4-bromophenyl phenyl ether
Bis(2-chloroisopropyl) ether
Bis(2-chloroethyoxy) methane
Methylene chloride (dichloromethane)
Methyl chloride (dichloromethane)
Methyl bromide (bromomethane)
N-nitrosodiphenylamine
Bromoform (tribromomethane)
Dichlorobromomethane
Chlorodibromomethane
Hexachlorobutadiene
Hexachlorocyclopentadiene
Isophorone
Naphthalene
Nitrobenzene
2-nitrophenol
4-nitrophenol
2,4-dinitrophenol
4,6-dinitro-o-cresol
N-nitrosodimethylamine
N-nitrosodi-n-propylamine
Pentachlorophenol
Phenol
Bis(2-ethylhexyl) phthalate
Butyl benzyl phthalate
Di-n-butyl phthalate
Di-n-octyl phthalate
Diethyl Phthalate
Dimethyl phthalate 1,2-benzanthracene (benzo(a)anthracene)
Benzo (a) pyrene (3,4-benzopyrene)
3,4-Benzofluoranthene (benzo (b) fluoranthene)
11,12-bensofluoranthene (benzo(b) fluoranthene)
Chrysene
Acenaphthylene
Anthracene
1,12-benzoperylene (benzo(ghi)perylene)
Fluorene
Phenanthrene
1,2,5,6-dibenzanthracene (dibenzo(h) anthracene) Indeno (1,2,3-cd) pyrene(2, 30-phenylene pyrene) Pyrene
Tetrachloroethylene
Toluene
Trichloroethylene
Vinly chloride (chloroethylene)Aldrin
2,3,7,8-tetrachloro-dibenzo-p-dioxin (TCDD)
Dieldrin
Chlordane (tech. mixture and metabolites)
4,4-DDT
4,4-DDE (p,p-DDX)
4,4-DDD (p,p-TDE)
Alpha-endosulfan
Beta-endosulfan
Endosulfan sulfate
Endrin
Endrin aldehyde
Heptachlor
Heptachlor epoxide (BHC-hexachloro cyclohexane)
Alpha-BHC
Beta-BHC
Gamma-BHC (lindane)
Delta-BHC (PCB-polychlorinated biphenyls)
PCB-1242 (Arochlor 1242)
PCB-1254 (Arochlor 1254)
PCB-1221 (Arochlor 1221)
PCB-1232 (Arochlor 1232)
PCB-1248 (Arochlor 1248)
PCB-1260 (Arochlor 1260)
PCB-1016 (Arochlor 1016)
Toxaphene
Antimony
Arsenic
Asbestos
Beryllium
Cadmium
Chromium
Copper
Cyanide, Total
Lead
Mercury
Nickel
Selenium
Silver Thallium Zinc

[FR Doc. 93-22914 Filed 9-20-93; 8:45 am]
BILLING CODE 6560-50-P

federal register

Tuesday
September 21, 1993

Part IV

Department of Education

Final Funding Priorities for Fiscal Years 1994 and 1995; Notice

DEPARTMENT OF EDUCATION

Secondary Education and Transitional Services for Youth With Disabilities Program

AGENCY: Department of Education.

ACTION: Notice of Final Funding Priorities for Fiscal Years 1994 and 1995.

SUMMARY: The Secretary announces priorities for fiscal years 1994 and 1995 under the Secondary Education and Transitional Services for Youth with Disabilities Program. The Secretary takes this action to focus Federal financial assistance on identified national needs. These priorities are intended to increase student involvement in transition planning, to develop alternative programs for youth who have dropped out of school or are at risk of dropping out, and to replicate exemplary models or components of models in multi-district sites. The priorities also assist State and local entities in complying with the transition requirements of Part B of the Individuals with Disabilities Education Act (IDEA).

EFFECTIVE DATES: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–9503. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

SUPPLEMENTARY INFORMATION: The purpose of this program is (1) to assist youth with disabilities in the transition from secondary school to postsecondary environments, such as competitive or supported employment, and (2) to ensure that secondary special education and transitional services result in competitive or supported employment for youth with disabilities. The priorities in this notice provide support for demonstration, outreach, and research projects.

These priorities support National Education Goals 2 and 5 by assisting students with disabilities in developing competitive workplace skills through improved services and better trained service providers.

On June 23, 1993 the Secretary published a notice of proposed priorities for this program in the **Federal Register** (58 FR 34184).

Note: This notice of final priorities does *not* solicit applications. A notice inviting applications under this program is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, two parties submitted comments. An analysis of the comments follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

Comment: One commenter requested that the priorities be expanded to include research and demonstration models that promote active involvement of business, community and government agencies with schools in support of transition outcomes for high school students with disabilities.

Discussion: The Secretary recognizes the importance of collaboration with a range of organizations and agencies in developing outcome-oriented transition services. Strategies for involving business, the community, and government agencies have been identified by previous research and demonstration model projects as being critical in implementing model transition services. Therefore, both priority 2 (Model Demonstration Projects to Identify and Develop Alternatives for Youth with Disabilities Who Have Dropped Out of School or Are at Risk of Dropping Out of School) and priority 3 (Outreach Projects for Services for Youth with Disabilities) require appropriate involvement by these types of agencies and organizations.

Change: None.

Comment: One commenter suggested that the Department consider including an invitational priority to encourage projects that would address the unique needs of youth with attention deficit disorders.

Discussion: The Secretary believes that all of the priorities in this notice are broad enough to allow for the support of projects focusing on a specific disabling condition (e.g., attention deficit disorders). However, because of the broad range of transitional needs of youth with disabilities, the Secretary does not wish to focus on any single population at this time.

Change: None.

Priorities: Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet any of the following priorities. The Secretary funds under this program only applications that meet these absolute priorities:

Priority 1—Research Projects on Student Involvement in Transition Planning

Background: This priority supports research projects on the active participation of students with disabilities in the transition planning process. These projects must (1) identify factors that facilitate student involvement, and (2) develop material for national dissemination on effective interventions and strategies for increasing student involvement.

The Secretary is establishing this priority because the Part B regulations published at 57 FR 44794 (September 29, 1992) implementing the Individuals with Disabilities Education Act (IDEA) amendments pertaining to transition require that all students, beginning no later than age 16—and at a younger age, if determined appropriate—be invited to attend the Individualized Education Program (IEP) meeting at which a transition plan is to be developed (34 CFR 300.344(c)). Section 602(a)(19) of IDEA further requires that transition services be based on an individual student's needs, taking into account the student's preferences and interests (See 34 CFR 300.18(b)(1)). Projects supported under this priority are to develop interventions and strategies to help students identify their preferences and interests.

Material developed through two different efforts may be useful in developing interventions and strategies to increase student involvement. Since the original Part B regulations were published in 1977, information and training material has been developed to maximize the participation of parents, teachers, and building supervisors, as well as related services personnel, in the IEP meeting. A second source of relevant information is being generated by projects funded to identify and teach skills necessary for self-determination, including decision-making, goal setting, and the ability to express preferences and make choices.

Priority: A research project on student involvement in transition planning must—

(1) Identify the factors and barriers associated with the participation of students with disabilities in the transition process;

(2) Identify specific interventions and strategies that are likely to lead to the increased participation of all students with disabilities. Interventions and strategies must consider alternative methods for eliciting student involvement, taking into account the

severity level of a disability and the individual student's ability to communicate, including use of augmentative communication devices;

(3) Carry out the research using a conceptual framework and research design that is based on previous research or theory and that provides a basis for the interventions and strategies to be studied. The research design must include difficult-to-serve groups. This framework must build upon existing materials developed (a) for other participants in the transition planning or IEP process, *and* (b) for teaching the skills necessary for self-determination relative to the IEP process;

(4) Conduct the research in a range of typical school settings;

(5) Conduct the research using methodological procedures designed to produce unambiguous findings (a) regarding the effects of all interventions and strategies, as well as any findings on interaction effects between particular approaches and particular characteristics of students or settings; and (b) for use in national, State, and local implementation and policy making;

(6) Produce and analyze a variety of descriptive and outcome data, including information regarding (a) student participation in the development of IEP content (goals, objectives, activities, and services); and (b) satisfaction of students with their transition plan;

(7) Prepare draft implementation guides containing all the proposed interventions and strategies for increasing student involvement in the transition planning or IEP process or, if appropriate, both;

(8) Implement a plan to field test the draft implementation guides in a range of school districts; and

(9) Prepare and disseminate findings, including final implementation guides, as well as information about the student participation materials, to school districts through the State educational agencies and to other organizations.

Priority 2—Model Demonstration Projects to Identify and Develop Alternatives for Youth with Disabilities Who Have Dropped Out of School or Are at Risk of Dropping Out of School

Background: This priority supports model demonstration projects that develop, implement, evaluate, and disseminate new or improved components or strategies to identify, recruit, train, and place youth with disabilities who have dropped out of school or are at risk of dropping out of school.

Priority: A model demonstration project must—

(1) Build upon specific components or strategies based on theory, research, or evaluation. These components or strategies must include procedures to identify youth who are at risk of dropping out of school and to recruit youth with disabilities who have already dropped out of school;

(2) Include alternatives for engaging students in programs that provide functional literacy skills and employment training and for serving students who refuse to return to their previous school;

(3) Develop working relationships with the private sector, especially employers, rehabilitation personnel, and local Private Industry Councils authorized by the Job Training Partnership Act;

(4) Target services to specific students (i.e., by age, disability, level of functioning, and membership in a special population, if appropriate);

(5) Produce detailed procedures and materials that enable others to successfully replicate the model as implemented in the original site; and

(6) Evaluate the model at the original model development site and, if implemented at other sites, at those sites to determine whether the model can be adopted by other sites and yield similar results. The project must determine the effectiveness of the model and its component or strategies, including multiple, functional student outcomes measures, other indices of the effects of the model, and cost data associated with implementing the model.

Invitational Priority: Within absolute priority 2 the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Projects designed to serve minority youth (e.g., Black, Hispanic, American Indian or Alaskan Native, Asian or Pacific Islander) or youth from urban areas with recognized high drop out rates.

Priority 3—Outreach Projects for Services for Youth With Disabilities

Background: This priority supports projects that assist in the adoption of proven models, components of models, or other exemplary practices designed to improve secondary education and transition services for youth with disabilities in areas such as continuing education, self-determination, vocational education and training, supported competitive employment, leisure and recreation, and independent living.

Section 602(a)(20)(D) of the Individuals with Disabilities Education Act (IDEA) requires that a statement of needed transition services be included in the individualized education plan (IEP) for each student beginning no later than age 16, and at a younger age, if determined appropriate, and that the services be updated on an annual basis. Currently, States are striving to provide improved transitional services to students with disabilities. Thus, State agencies and local service agencies need information and assistance in accessing the range of available, successful practices, curricula, and products.

The models, components of models, or exemplary practices selected for outreach need not have been developed through this program. Projects may disseminate and help replicate multiple models, components of models, or exemplary practices that were not developed by the applicant. To enhance the impact of outreach activities, projects are encouraged to select sites in multiple States.

Priority: An outreach project for services must—

(1) Disseminate information about and assist in replicating proven models, components of models, or exemplary practices that provide or improve transition services for students with disabilities based on the specific needs of the sites selected for outreach;

(2) Develop written plans for implementation;

(3) Coordinate its dissemination and replication activities with relevant State and local educational agencies, consumer organizations, administrative entities established in the service delivery area under the Job Training Partnership Act, and, if appropriate, projects funded under the State Systems for Transition Services for Youth with Disabilities Program, as well as with technical assistance, information, and personnel development networks within the State;

(4) Include (a) services in community-based settings; (b) effective involvement of students and adults with disabilities in the design, implementation, and evaluation of project activities; (c) coordination with schools, vocational rehabilitation agencies, adult service providers, and potential employers, if appropriate; and (d) assistance in identifying funding for assistive devices and services;

(5) Ensure that the model, components of models, or exemplary practices are consistent with Part B of the IDEA, are state-of-the-art, and have recent, unambiguous evaluation

information supporting their effectiveness;

(6) Employ activities that include, but need not be limited to, public awareness, product development and dissemination, site development, training, and technical assistance;

(7) Describe the effects of model components (e.g., expected costs, needed personnel, staff training, equipment) on potential users, the sequence of implementation activities, and the criteria for selecting cooperating sites; and

(8) Evaluate the outreach activities to determine their effectiveness. The evaluation designs must include, but need not be limited to, measures of types and numbers of sites where outreach activities are conducted, number of persons trained, types of follow-up activities, number of youth and families served at the site where models were adopted or adapted, youth and family progress information, and changes in the model made by sites.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: 34 CFR part 326.

Program Authority: 20 U.S.C. 1425.

(Catalog of Federal Domestic Assistance Number: Secondary Education and Transitional Services for Youth with Disabilities Program 84.158)

Dated: September 14, 1993.

Andrew Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93–22982 Filed 9–20–93; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.158]

Secondary Education and Transitional Services for Youth With Disabilities

Notice inviting application for new awards for fiscal year (FY) 1994.

Purpose of Program: To assist youth with disabilities in the transition from secondary school to postsecondary environments.

The priorities support National Education Goals 2 and 5 by assisting students with disabilities in developing competitive workplace skills through improved services and better trained service providers.

Eligible Applicants: Institution of higher education, State or local educational agencies, and other public or private non-profit institutions or agencies may apply for a grant under this program.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 326.

Priorities: The priorities in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**, apply to these competitions.

Appliations Available: October 20, 1993.

SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR YOUTH WITH DISABILITIES PROGRAM

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Research projects on student involvement in transition planning (CFDA 84.158U).	4–08–94	6–07–94	$500,000	$240,000–260,000	$250,000	2	Up to 42.
Model demonstration projects to identify and develop alternatives for youth with disabilities who have dropped out of school or are at risk of dropping out of school (CFDA 84.158D).	12–17–93	2–16–94	532,000	96,000–116,000	106,000	5	Up to 36.
Outreach projects for services for youth with disabilities (CFDA 84.158Q).	3–28–94	5–27–94	707,000	91,000–111,000	101,000	7	Up to 36.

For Application: To request an application, telephone (202) 205–8485. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

FOR FURTHER INFORMATION CONTACT: Michael Ward, U.S. Department of Education, 400 Maryland Avenue, SW., room 4624, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–8163. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

Program Authority: 20 U.S.C. 1425.

Dated: September 14, 1993.

Andrew Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Service.

[FR Doc. 93–22983 Filed 9–20–93; 8:45 am]

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federal register

Tuesday
September 21, 1993

Part V

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 91

Comprehensive Housing Affordability Strategy; Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 91

[Docket No. N–93–3668; FR–3572–N–01]

Comprehensive Housing Affordability Strategy

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of partial waiver of rule.

SUMMARY: This notice informs the public that the Secretary is waiving a provision of the rule on Comprehensive Housing Affordability Strategies (CHAS) that requires States and local governments to submit between October 1, 1993 and December 31, 1993 a housing strategy that covers an entire five-year period. The Secretary is waiving the provisions of § 91.19 and § 91.44 of the CHAS rule that require Local Governments and States to submit a strategy covering a five-year period, permitting the jurisdictions to choose the length of time (presumably shorter) to be covered by the strategy this year. The Secretary is waiving these provisions because the Department expects to issue a rule changing the CHAS rule and other rules to consolidate and streamline planning requirements in one document. Until that process is complete, the Department does not want jurisdictions to be burdened unnecessarily by preparing a strategy for a full five-year period when that strategy and plans for future years may be superseded by a new consolidated planning document.

DATES: September 21, 1993.

FOR FURTHER INFORMATION CONTACT: With respect to the Comprehensive Housing Affordability Strategy: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing Programs, Office of Community Planning and Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–2470 (voice) or (202) 708–2565 (TDD). These are not toll-free numbers.

With respect to the Housing and Community Development Strategy: Joseph F. Smith, Acting Director, Policy Coordination Unit, Office of Community Planning and Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1283 (voice) or (202) 708–2565 (TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Purpose

The Department of Housing and Urban Development intends to reduce the burden of administering the Housing and Community Development programs by consolidating the planning and application requirements into a single housing and community development strategy. The new housing and community development strategy, to be prescribed by rule, will integrate the following submissions into one consolidated document: The CHAS, the Community Development Plan, the CDBG Final Statement and the HOME Program Description.

II. Background

Since Fiscal Year 1975, the Department has required the preparation of a local planning document as a condition to receipt of certain types of local funding. First, the Housing Assistance Plan (HAP) was required under the Community Development Block Grant Program. With the enactment of the Stewart B. McKinney Homeless Assistance Act, a Comprehensive Homeless Assistance Plan (CHAP) was required for Emergency Shelter Grants Program recipients.

The Cranston-Gonzalez National Affordable Housing Act created two new planning documents for use by States and units of general local government—the CHAS and the Community Development Plan. The CHAS provision incorporated useful elements of the HAP and CHAP into a single planning document for addressing housing needs. The Community Development Plan provision required State and local governments to describe nonhousing community development needs and strategies for meeting those needs.

The Housing and Community Development Act of 1992 amended the provisions of the Cranston-Gonzalez National Affordable Housing Act governing the CHAS and the Community Development Plan by adding new CHAS requirements and limiting the focus of the Community Development Plan to CDBG funds.

The Department of Housing and Urban Development plans to consolidate and integrate these State and local planning and submission requirements into one comprehensive document that addresses their needs in areas such as housing, infrastructure, amenities, community development, economic development, and human services. Consequently, the Department is waiving the requirement that the complete Comprehensive Housing Affordability Strategy that is due between October 1, 1993 and December 31, 1993 include a strategy that covers an entire five-year period. Instead, grantees may choose to develop their strategy and discuss their plans for only the coming year, or some other length of time.

On February 4, 1991, HUD issued an interim rule that described the requirements for the preparation of State and local comprehensive housing affordability strategies. Jurisdictions that submitted a complete CHAS document for Fiscal Year 1992 covering the entire five year period to follow were required to submit an annual update each year that was based on their five-year strategy. Because 1990 census data were not available for the preparation of the initial FY 1992 five-year strategy, jurisdictions based their strategy on existing data, which, for most jurisdictions, were drawn from the 1980 census. Section 91.55 of that rule required submission of a complete housing strategy for a new five-year cycle when major new census data became available.

HUD issued a final CHAS rule on September 1, 1992, after an extensive public comment period.The required contents of the strategy were reorganized into three major components, a Community Profile, a Five-Year Strategy, and an Annual Plan, although HUD noted that a new five-year plan based on 1990 Census data would not be due until fiscal year 1994. Instructions for developing and completing a CHAS Annual Plan for Fiscal Year 1993 were issued on September 11, 1992. Instructions for developing and completing a Five-Year CHAS for new CDBG Entitlement communities and new HOME consortia were issued on October 15, 1992. Guidance for developing a complete CHAS submission under the final rule and the new CHAS requirements imposed by the Housing and Community Development Act of 1992 is contained in instructions in CPD Notices 93–02 and 93–03, both dated January 11, 1993. HUD issued a revised final rule implementing new CHAS requirements made by the Housing and Community Development Act of 1992 on March 12, 1993 (58 FR 13686).

III. Waiver

Pursuant to the authority of § 91.99, the Department has determined that the need to avoid unnecessary duplication of the effort involved for States and local governments in developing for an entire five-year period a strategy and specific plans that may soon be outdated constitutes good cause to waive the requirements of §§ 91.19 and 91.44 that the strategy component of a complete submission cover an entire five-year period. Consequently, these

requirements to develop a comprehensive strategy and detailed plans for a new five-year period are waived.

Jurisdictions have the discretion to determine the length of time to be covered by the strategy required by §§ 91.19 and 91.44. They may find it convenient to prepare a strategy for a shorter period of time. If they choose to prepare the strategy for a one-year period, some elements of §§ 91.19 and 91.44 will overlap with requirements of §§ 91.21 and 91.46. To prevent duplication of effort in that case, the provisions of § 91.19 or § 91.44 that overlap—paragraph (d)(2)(ii); the "specific actions and steps" in paragraph (e); paragraph (f); and "actions * * * [to] reduce lead-based paint hazards" in paragraph (g)—are waived, to permit submission of the information only once, as part of the annual plan.

This waiver does not waive the requirement of §§ 91.70(b) that a complete CHAS document based on newly released 1990 census data be submitted this year, nor the requirements of § 91.17(b)(1) and § 91.42(b)(1) that the needs assessment include projections over a five-year period, since that provision is required by the statute.

More specifically, whenever the term "five-year period" is used in §§ 91.19 or 91.44, it should be interpreted for this year to mean simply "period." Whenever the term "next five years" is used in those sections, it should be interpreted this year to mean "period covered." In §§ 91.46(a)(1), 91.60(b)(2), 91.80(a)(1), and 91.82(a), the term "five-year strategy" should be interpreted to mean simply "strategy."

Insofar as the definitions found in § 91.5 of "complete submission," "primary housing activity," "secondary housing activity," and "substantial amendment," are tied to a "five-year" strategy, such a five-year limitation may be ignored.

IV. CHAS Options

For Fiscal Year 1994, local governments and States may, as previously required by rule, submit a complete housing strategy covering a new five-year cycle, or, pursuant to this waiver, they may instead submit a complete CHAS document that develops a strategy covering a shorter period. These complete housing strategies must be based on the newly available special tabulations of 1990 census data that HUD made available to HOME and CDBG jurisdictions in May 1993 (or more recent or reliable data, where available), and they must address the additional CHAS requirements contained in the Housing and Community Development Act (HCDA) of 1992, as embodied in changes to the governing regulation (24 CFR part 91).

These complete housing strategies must be submitted to HUD between October 1, 1993 and December 31, 1993. Jurisdictions submitting either CHAS option must follow the instructions of CPD Notice 93–02 (Local Jurisdictions) or CPD Notice 93–03 (States), both dated January 11, 1993. Jurisdictions that choose to submit a CHAS covering a one-year period must follow completely the instructions in Sections I and III of CPD Notices 93–02 and 93–03. When following the instructions for Section II, however, they may develop a strategy and establish priorities for only Fiscal Year '94 rather than an entire five-year period. Moreover, to avoid duplication with Section III's Annual Plan, they may omit discussion of specific actions or steps planned for the ensuing one-year period in the following portions of Section II:

II.c.i.B—Strategy to Address Negative Effects,
II.d.ii.B—Overcoming Gaps—Actions,
II.e—Public Housing Improvements,
II.f—Public Housing Resident Initiatives, and
II.g—Lead-Based Paint Reduction.

In addition, these jurisdictions (one-year option) may describe the investment plan required by Section II.b.ii. for the coming year instead of the coming five-year period.

V. Housing and Community Development Strategy

The new housing and community development strategy (which consolidates the CHAS, Community Development Plan, CDBG Final Statement and HOME Program Description) will be the subject of rule making. The Department expects to require all jurisdictions, including those that submit a CHAS covering a new five-year cycle, to submit the new consolidated housing and community development strategy in Fiscal Year 1995. The new housing and community development strategy will be due at least 45 days before the start of the community development program year selected by each community.

Dated: September 14, 1993.

Andrew M. Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 93–22993 Filed 9–20–93; 8:45 am]

BILLING CODE 4210–32–M

federal register

Tuesday
September 21, 1993

Part VI

Department of Education

Services for Children With Deaf-Blindness Program; Notices

DEPARTMENT OF EDUCATION

Services for Children With Deaf-Blindness Program

AGENCY: Department of Education.

ACTION: Notice of final funding priority for Fiscal Years 1994 and 1995.

SUMMARY: The Secretary announces a priority for fiscal years 1994 and 1995 under the Services for Children with Deaf-Blindness Program. The Secretary takes this action to focus Federal financial assistance on an identified national need. This priority provides Federal support for research validation and implementation activities to enhance services to infants, toddlers, children, and youth who are deaf-blind.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Charles Freeman, U.S. Department of Education, 400 Maryland Avenue, SW., room 4617, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–8165. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

SUPPLEMENTARY INFORMATION: The purpose of the program is to assist States in assuring the provision of early intervention, special education, and related services to infants, toddlers, children, and youth with deaf-blindness; and to support research, development, replication, preservice and inservice training, parental involvement activities, and other activities to improve services to children with deaf-blindness.

This priority responds to the need to improve educational practice by supporting research validation and implementation projects that fill the gap between knowledge and practice for infants, toddlers, children, and youth who are deaf-blind. Projects are intended to build capacity to effectively provide (1) educational services to these children in school and community settings alongside their peers without disabilities, or (2) early intervention services to these children in home and community settings.

Through the provision of improved services and better trained service providers, this priority supports National Education Goals 1 and 5 by assisting infants, toddlers, children, and youth who are deaf-blind to enter school ready to learn, and when they become adults, to compete in a global economy.

On June 23, 1993 the Secretary published a notice of proposed priorities in the **Federal Register** (58 FR 34174).

Note: This notice of final priority does *not* solicit applications. A notice inviting applications under this program is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, one party submitted a comment. An analysis of the comment follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

Comment: One commenter expressed concern that the proposed priority focused solely on the validation of research findings with other disability groups for use with students who are deaf-blind. This focus, according to the commenter, does not address the need to develop program methods based exclusively on work with children with deaf-blindness or the need for primary research with this population.

Discussion: The priority, as proposed, provides for the validation and implementation of research findings from either studies with students who are deaf-blind or relevant research with other groups of students. Though the Secretary agrees that there are unique aspects of deaf-blindness that require primary research specifically with that population, the purpose of this particular priority is to maximize the benefits for children who are deaf-blind by shortening the time lag between all relevant research and practice.

Changes: None.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Priority—Research Validation and Implementation Projects for Children Who Are Deaf-Blind

Background

Educational researchers and practitioners have long acknowledged the time lag between the discovery of new knowledge and the implementation of that knowledge in applied settings. In addition, new research findings, including those related to hearing impairment, visual impairment, and other disabilities, have not been rapidly or systematically applied to children who are deaf-blind.

Factors that impede the implementation of research findings are numerous and include the following: (1) Failure to describe research findings in a manner or form that practitioners can easily understand and use; (2) inadequate or insufficient field tests of research findings to determine the effectiveness of the new practices with children who are deaf-blind; (3) failure to examine how contextual factors affect the implementation of the new practice with children who are deaf-blind (e.g., small, diverse population of children; implementation costs; personnel training requirements; school and community attitudes toward the practice); and (4) insufficient attention to demonstrating new practices in schools that welcome visitors from other local educational agencies and, thereby, promote the dissemination and use of research findings.

This priority, therefore, supports projects that validate relevant research findings by translating those findings into procedures usable by personnel serving children who are deaf-blind, implementing new educational procedures in typical classroom settings, implementing new early intervention procedures in home and community settings, and evaluating the effectiveness of the new procedures in meeting the early intervention and educational needs of children who are deaf-blind.

The Secretary anticipates supporting a variety of projects that address different early intervention and educational needs of children who are deaf-blind. Relevant areas of investigation may include findings that could improve techniques to enhance cognitive development, physical development, communication skills (e.g., use of augmentative devices and assistive technology), social skills (including social interaction and friendship formation skills), independent living skills (including self-determination, mobility and other community living skills), and use of recreation or leisure time, as well as more traditional skill areas including academic achievement and transition and employment skills.

The Secretary also anticipates that projects would, if appropriate for the planned activities, form a consortium with one or more research institutions at other locations. This type of approach may be necessary to (1) validate the new approaches with multiple children and in multiple settings or (2) replicate initial evaluation findings.

Priority

To be considered for funding under this priority, a research validation and implementation project must—

(1) Address one or more of the relevant areas of investigation identified in the background section of this priority or a closely related issue;

(2) Identify specific research findings—and the interventions or strategies based on those findings—that will be implemented and evaluated;

(3) Translate research findings into demonstrable practice that provides the informational bridge necessary to (a) move research into practice, and (b) reduce the time lag between research and implementing practice for children who are deaf-blind;

(4) Design the project activities in a manner that is likely to improve services for children who are deaf-blind and their families;

(5) Conduct the project activities in typical school and community settings;

(6) Carry out the project activities within a conceptual framework that provides a basis for the research findings selected, the interventions or strategies to be implemented and evaluated, the evaluation design, and the target population;

(7) Conduct the evaluation activities using methodological procedures that will produce unambiguous findings (a) regarding the effects of the interventions or strategies and interaction effects between particular approaches and particular groups of children or particular contexts; and (b) for use in national, State, and local policy analysis contexts; and

(8) Produce a variety of descriptive and outcome data, including (a) information regarding the settings, the service providers, the children, and, if applicable, their families, targeted by the project (e.g., age, disabilities, skill and ability levels, and membership in a special population, if appropriate); and (b) multiple, performance outcome data regarding the children and families who are the focus of the interventions or strategies.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: 34 CFR part 307.

Program Authority: 20 U.S.C. 1422.

(Catalog of Federal Domestic Assistance Number: Services for Children with Deaf-Blindness 84.025).

Dated: September 14, 1993.

Andrew Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93–22994 Filed 9–20–93; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
September 21, 1993

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 125 and 135
Training and Checking in Ground Icing Conditions; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 125 and 135

[Docket No. 27459; Notice No. 93–12]

RIN 2120–AF09

Training and Checking in Ground Icing Conditions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would require parts 125 and 135 certificate holders to check their airplanes for contamination (i.e. frost, ice or snow) before takeoff, when ground icing conditions exist. Part 125 certificate holders, consistent with the testing requirements of that part, would be required to provide pilot testing and, part 135 certificate holders would be required to provide pilot training, in ground deicing/anti-icing procedures. This rule is necessary because accident statistics and experience indicate the importance of effectively determining whether the airplane's wings and control surfaces are free of all frost, ice, or snow prior to attempting a takeoff. The proposal is intended to provide an added level of safety to flight operations in adverse weather conditions under parts 125 and 135.

DATES: Comments must be submitted on or before October 6, 1993.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 27459, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27459. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Larry Youngblut, Flight Standards Service, Regulations Branch, AFS–240, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8096.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposal contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comment, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27459." The postcard will be date stamped and mailed to the commenter. The FAA is not able to provide a longer comment period for this NPRM because of the need to issue an interim final rule before the 1993–94 winter season. Comments received after the comment period closes will not be considered nor will the FAA consider requests to extend the comment period.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRMs should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The "Clean Aircraft" Concept

In November of 1992, amended regulations for operations conducted under part 121 during icing conditions took effect (57 FR 44924; September 29, 1992). The old part 121 regulation, which was comparable to the current regulations in parts 125 and 135, relied on the basic "clean aircraft" concept that no person may take off an airplane when frost, ice, or snow is adhering to the wings, control surfaces, or propellers of the airplane (§§ 121.629, 125.221, 135.227). The basis of this concept is that the presence of even minute amounts of frost, ice, or snow (referred to as "contamination") on particular airplane surfaces can cause a potentially dangerous degradation of airplane performance and unexpected changes in airplane flight characteristics. Under all of these regulations, ultimate responsibility for determining whether the airplane is free of contamination in icing conditions and thus complies with the "clean aircraft" concept rests with the pilot-in-command (PIC). Both the FAA and industry have developed guidance and recommended procedures that are designed to assist the PIC in making that determination. These procedures include monitoring weather conditions and temperature changes, visually inspecting the wings, and using deicing /anti-icing fluids.

When conditions conducive to the formation of frost, ice, or snow on airplane surfaces exist at the time of takeoff, airplane surfaces must be checked for contamination. When contaminants are adhering to airplane surfaces, these contaminants must be removed before takeoff except in certain situations involving frost, which are discussed later. Because of the wide variations in airplane design and performance characteristics, methods for removing contamination for part 135 and part 125 airplanes vary greatly. Airplanes may be deiced by applying heated water followed by undiluted glycol-based fluid, by applying a heated water/glycol solution, by mechanically brushing the snow or ice off, or by placing the airplane in a hangar until the frost, ice, or snow melts. Currently, anti-icing, which is the treatment of the airplane with undiluted glycol-based fluid to prevent frost, ice, or snow from adhering to aircraft surfaces, is not commonly used in part 135 operations.

Previous Part 121 Rulemaking

In 1992, due to a number of accidents that had occurred in part 121 operations during ground icing conditions and in response to industry-wide recommendations to improve the safety of operations during these conditions, the FAA amended the part 121 regulations concerning the operation of aircraft during ground icing conditions. The amended regulations retained the "clean aircraft" concept and in addition, required part 121 certificate holders to establish and comply with an FAA-

approved ground deicing anti-icing program. An approved part 121 program includes: (1) Ground training, and qualification and testing requirements for all flight crewmembers and all other personnel the certificate holder uses in implementing its program; (2) procedures for the use of holdover times after application of deicing/anti-icing fluids; and (3) airplane check procedures. The amended part 121 regulations require that pilots be provided with the training, information, procedures, and ground support that they need for ultimately deciding if takeoff can be safely accomplished.

The amended part 121 regulations were implemented as an interim final rule in order to allow public comment on the effectiveness of the amended rule during the 1992–93 winter season. At the time of the part 121 rulemaking, the FAA did not include parts 125 and 135 because of the limited time available and the need for further FAA review to determine the appropriateness of applying a similar rule to other operations. Since that time, the FAA has reviewed the accident history for part 125 and 135 operations, conferred with industry representatives, and studied the recommendations from the National Transportation Safety Board (NTSB) and the General Accounting Office (GAO).

Accident History

According to NTSB records, 14 ground icing related accidents and incidents involving airplanes operating under part 135 occurred during the period 1984–1992. Most of these accidents/incidents involved part 135 non-scheduled cargo questions; three involved either non-scheduled or scheduled passenger carrying operations. Four of the accidents resulted in a total of seven fatalities. While the NTSB identified other probable causes in some of these accidents/incidents, in all 14 cases the NTSB identified the existence of frost, ice, or snow on the wings or other critical surfaces of the airplane as a probable cause.

A common thread throughout these accidents/incidents was the pilots' apparent lack of awareness of the potential hazard from even small amounts of frost, ice, or snow on an airplane's wings and control surfaces. For instance, one pilot lost his life in an accident involving a non-scheduled cargo operation in Morrisonville, NY, on March 19, 1984. Prior to the accident, after identifying the presence of ice accumulation of the leading edges and upper wing surfaces, the pilot declined the use of a hangar to warm the airplane and instead attempted to remove the ice from the leading edges by hand. In another accident in Vienna, Missouri, on March 3, 1988, a pilot of a night cargo operation and another person lost their lives after taking off in known icing conditions. Before the flight, a line service noticed ice on the aircraft's wings and suggested its removal, but the pilot declined.

NTSB and GAO Recommendations

Before the part 121 ground deicing rulemaking, the NTSB had issued numerous recommendations that addressed issues involving airplane ground icing and deicing. Many of these recommendations were addressed in the 1992 rulemaking. However, in its earlier recommendations and its comments on the proposed part 121 rule and the interim final rule, the NTSB recommended that the FAA apply the new deicing requirements to operators under parts 125 and 135. The NTSB, with the exception of one member of the Board, urged the FAA to amend parts 125 and 135 when amending part 121.

Similarly, in a November 1992 report that commended the FAA for its part 121 rulemaking and the speed of that rulemaking, the GAO stated that, in its view, safety would be improved by making commuter airlines subject to more stringent regulations governing ground operations during icing conditions.

The Proposed Rule

The FAA initially considered requiring part 135 operations to comply with a deicing program identical to that required for part 121 operations. This option seemed reasonable because icing conditions exist regardless of the type of operation conducted. Furthermore, ice contamination detrimentally affects the flight characteristics of all airplanes. At the same time, however, the FAA recognized that significant differences exist between typical part 135 and part 121 operations and that these differences affect the procedures typically used during ground icing conditions.

Part 135 airplanes vary greatly in both size and aerodynamic design. This allows the wings to be more readily viewed from inside the cockpit of the airplane. The pilots in part 135 operations are usually more personally involved than part 121 pilots in the individual details of flight preparation, including computing weight and balance, filing flight plans, and checking weather forecasts, as well as checking for any contamination that might adhere to the airplane. Turnaround time is often faster for part 135 airplanes than for larger 121 airplanes, and part 135 airplanes often experience shorter delays waiting for takeoff because their runway requirements are more flexible than those requirements for larger part 121 airplanes.

In consideration of these differences and the results of accident investigations, which point primarily to a lack of training for pilots on the effects of contamination, the FAA has decided that it is not necessary to propose the same ground deicing/anti-icing program required for part 121, but instead proposes to amend pilot training requirements under part 135 to include instruction about the hazards associated with operating in icing conditions. The proposed training for pilots is intended to help prevent the problems that were identified in those accident investigations where pilots apparently did not understand that even a small amount of contamination on airplane surfaces is dangerous and takeoff should never be attempted if contamination is adhering to the airplane. The knowledge gained through the proposed training requirements would help prevent icing accidents in part 135 airplane operations.

In addition to training, the proposed rule would also require that, whenever frost, ice, or snow may reasonably be expected to adhere to the airplane, either an approved pretakeoff contamination check is completed within five minutes of takeoff or there is compliance with either an approved alternative procedure, such as having ice detectors or sensors installed on the airplane's wings and control surfaces, or there is compliance with the part 121 deicing/anti-icing rule. Compliance with the part 121 deicing/anti-icing rule would be an alternative to always conducting the pretakeoff contamination check prior to takeoff.

Operations conducted under part 125 are also being included in this proposed rule. Part 125 applies to passenger carrying and cargo carrying operations conducted, when common carriage is not involved, in airplanes with a seating configuration of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more. There are presently only 37 active part 125 certificate holders. Although the FAA's review of accident history does not reveal any ground icing accidents or incidents affecting part 125 operations, the types of airplanes flown are similar to those used in parts 121 and 135, the same airports are used, and the same weather conditions are encountered. Thus, operations conducted under part 125 are equally susceptible to the hazards of operating during ground icing conditions. While most part 125

operations use the same type of airplanes that are used in part 121 operations, the size and scope of the part 125 operations are more similar to part 135 operations. For this reason, the FAA is proposing testing requirements for part 125 comparable to the training requirements being proposed for part 135. Unlike part 135, which contains pilot training requirements, part 125 contains only pilot testing requirements. Therefore, under the proposed rule, pilots operating under part 125 would be required to be tested on all of the subject areas relating to ground icing conditions and procedures contained in the proposed part 135 training requirements. Part 125 certificate holders would also be required to comply with the same operating requirements as part 135 operators. Pretakeoff contamination checks for parts 125 and 135 would be conducted for the specific aircraft type involved and approved by the Administrator.

However, for those part 125 and 135 certificate holders who do not anticipate operating during ground icing conditions, they would not have to train or test their pilots, and they would not have to develop pretakeoff contamination check procedures as described in this NPRM. If certificate holders who choose not to train or develop procedures encounter ground icing conditions, they will not be able to operate until weather conditions improve. Thus, the FAA is providing flexibility for certificate holders to determine to what extent these requirements are applicable to their operations.

The present provisions in parts 125 and 135 allowing takeoff with polished frost would be retained. In addition, the proposed amendments to parts 135 and 125 would not change the FAA's policy of permitting takeoff with small amounts of frost on the underwings of certain airplanes when this frost is caused by cold soaked fuel and when the takeoff is within aircraft manufacturer established limits accepted by FAA aircraft certification offices and stated in aircraft maintenance manuals and aircraft flight manuals. Language has been included in the proposed rule to make it clear that takeoffs with frost under the wing in the area of the fuel tanks are permitted if authorized by the Administrator.

Helicopter operations conducted under part 135 have not been included in this proposed rule because, in its review of icing related accidents and incidents, the FAA has not identified any accident history for these types of operations that suggests that additional training or a special inspection requirement would be necessary and because helicopter operations differ in many ways from airplane operations under part 135. However, the "clean aircraft" concept in § 135.227(a) would continue to apply to helicopters.

The specific requirements for training or testing of pilots and pretakeoff contamination check procedures are further discussed below.

Training or Testing of Pilots

Training under part 135 for operations during icing conditions would have to include initial and recurrent ground training for all pilots, other than those operators who use only one pilot in the certification holder's operations. This exception is due to the fact that part 135 does not require these certificate holders to establish and maintain an approved pilot training program. However, it should be noted that these certificate holders who conduct single pilot operations must comply with all the operational requirements of this proposed rule.

Initial training for part 135 pilots would cover the areas described below and would include airplane-specific training as appropriate. Recurrent training would include a review of areas covered in initial training, any changes in a certificate holder's procedures for operating in icing conditions, and changes that relate to specific airplanes. Comparable knowledge would have to be demonstrated for part 135 operations, as provided in the proposed § 125.287.

Training or testing would cover the following areas:

(1) If deicing fluids are used by the certificate holder, how holdover times relate to these fluids, how holdover times are used, and what variables might adversely affect the holdover times. Holdover time is the estimated time the application of deicing or anti-icing fluid will prevent the formation of frost or ice, and the accumulation of snow on the treated surfaces of an airplane.

(2) Airplane deicing/anti-icing check procedures to ensure that the airplane's wings, control surfaces, propellers, engine inlets, and other critical surfaces, as defined in the aircraft flight manual, are free of contamination, as well as aircraft-type-specific pretakeoff contamination check procedures and responsibilities.

(3) Procedures for communication between pilots and other affected personnel.

(4) Airplane surface contamination and critical area identification and knowledge of how airplane contamination adversely affects airplane performance and flight characteristics.

(5) Types and characteristics of deicing/anti-icing fluids, if used by the certificate holder.

(6) Cold weather preflight inspection procedures.

(7) Techniques for recognizing contamination on the airplane.

Pretakeoff Contamination Check Procedures

In addition to the proposed training or testing requirements, the FAA proposes that part 125 and part 135 certificate holders accomplish an approved pretakeoff contamination check anytime conditions are such that frost, ice, or snow may reasonably be expected to adhere to the airplane.

A pretakeoff contamination check is a check to make sure the wings and control surfaces are free of frost, ice, or snow. Takeoff must occur within 5 minutes after completing the check. It may be accomplished from within or outside the aircraft and may be visual or tactile or a combination, as long as the check is adequate to ensure the absence of contamination. Pretakeoff contamination check procedures for each specific type of aircraft operated by the certificate holder must be established by the certificate holder and must be approved by the certificate holder's FAA Principal Operations Inspector (POI) and referenced within the certificate holder's operations specifications.

Instead of the pretakeoff contamination check, certificate holders may use an approved alternate procedure, such as having ice detectors or sensors installed on the airplane's wing and control surfaces, or complying with the part 121 deicing/anti-icing rule. Compliance with the part 121 deicing/anti-icing rule would be an alternative to always conducting the pretakeoff contamination check prior to takeoff. Certificate holders who are interested in this alternative should consult the "Proposed Advisory Circular on Ground Deicing and Anti-icing Program," which was published concurrently with the interim final part 121 deicing/anti-icing rule (57 FR 44944; September 29, 1992).

Implementation

The proposed effective date for all part 125 and 135 certificate holders is November 1, 1993. A certificate holder who intends to operate in ground icing conditions on or after November 1, 1993, would have to amend its approved training or testing program, initially train or test its pilots, develop procedures for accomplishing pretakeoff contamination checks for each type airplane and have the FAA approve

these procedures. The FAA is developing advisory material to help certificate holders comply with this proposed rule.

The FAA is aware that requiring all pilots to be fully trained or tested by the effective date could be both financially and logistically impractical for some certificate holders. Therefore, in instances where training or testing cannot be completed as part of a certificate holder's established initial training or testing program by the effective date, the certificate holder may submit training or testing materials for approval by the certificate holder's POI. For purposes of initial training/testing, if pilots complete these approved materials, the FAA will consider initial training/testing provisions of this proposed rule satisfied. If some operators believe it may be impossible to fully train or test pilots by the effective date, the FAA requests comments on how expeditiously operators could accomplish the training or testing.

Long-Term FAA Actions

The problem of airplane ground deicing/anti-icing is broader than just the decision of a pilot in command on whether to attempt a takeoff. Airport and air traffic control procedures, airplane design, and other areas have been addressed in NTSB recommendations and elsewhere. Building on the experience gained from part 121 operations during the winter of 1992–93, the FAA and the aviation industry are continuing their efforts to address these related issues. Efforts in some areas, such as airport and air traffic control procedures, are already underway. Other efforts, such as potential airplane design changes that require long-term research, will be undertaken, either by the FAA, the industry, or, subject to available funding, as joint government/industry projects.

The 1992 rulemaking together with this proposed rulemaking, if implemented, would further the efforts of the FAA, and parts 121, 125, and 135 certificate holders to improve safety for all types of operations during ground icing conditions.

Paperwork Reduction Act

The reporting and recordkeeping requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35 under the following:

DOT No: .
OMB No.: New.
Administration: FAA.
Title: Training and Checking in Ground Icing Conditions.
Need for Information: If adopted, this NPRM requires each part 125 certificate holder to develop FAA approved testing and each part 135 certificate holder to develop FAA approved training for ground icing conditions. Part 125 and part 135 certificate holders would also be required to develop procedures for conducting a pretakeoff contamination check. Each of these training and testing requirements also has a recordkeeping requirement associated with it.
Proposed Use of This Information: The FAA requires this information to evaluate each certificate holder's proposed procedures and ensure certificate holders are operating at the highest possible level of safety during ground icing conditions.
Frequency: One-time.
Burden Estimate: 11,400 total hours.
Respondents: Parts 125 and 135 certificate holders.
Form(s): None.
Average Burden Hours Per Respondent: 38.
For further information contact: The Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4735 or the Office of Management and Budget, Office of Information and Regulatory Affairs, Desk Office for the FAA, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7340. It is requested that the comments sent to OMB also be sent to the FAA rulemaking docket for this proposed action.

Regulatory Evaluation Summary

The FAA determined that this rulemaking is not "major" as defined by Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. Nevertheless, in accordance with Department of Transportation policies and procedures, the FAA has evaluated the anticipated costs and benefits. Those costs and benefits are summarized below. (A detailed discussion of costs and benefits is contained in the full evaluation in the docket for this NPRM).

Costs

The FAA estimates that the total compliance cost of this proposed rule would be $7.7 million over the next 10 years, in 1992 dollars. On a discounted basis (using a 7 percent rate of interest), the total potential cost is $6.4 million. This estimate is based on costs to comply with three proposed requirements: (1) Initial Training/Testing of Pilots, (2) Recurrent Training/Testing of Pilots, and (3) Modification of the Training/Testing Program. The cost of each of these components is discussed below.

Initial Training/Testing of Pilots

The FAA assumes that all pilots under part 125 would receive initial testing and pilots under part 135 would receive initial training of one hour during the first year after this proposed rule becomes effective. Training and testing would be for pilots-in-command (PICs) and pilots second-in-command (SICs). Costs for these pilots are based on their hourly wage rates of $62 and $33, respectively. The cost of initial training and testing was derived based on the total number of PICs and SICs that are expected to be trained multiplied by their respective hourly wages.

Based on aircraft data obtained from the FAA Flight Standards Service Office, Information Management Section, there are an estimated 10,500 active fixed-wing aircraft operating under parts 125 and 135. However, many of these aircraft operate in climates that do not experience icing conditions; therefore, FAA estimates that about 7,300 (approximately 70 percent) would be affected by this proposed rule. In order to estimate the total number of pilots that would be trained, the number of affected airplanes was multiplied by four pilots (two active and two reserve); this is approximately 29,300 pilots. Multiplying the number of pilots trained by their average hourly wage rate of $48 results in initial training/testing costs of $1.4 million (or $1.3 million, discounted).

Recurrent Training/Testing of Pilots

The recurrent training/testing required annually for each pilot would start in the second year of the ten-year time frame of the proposed rule. The FAA estimates that the training would take approximately 15 minutes and cost $12 ($48 per hour .25) per pilot. This cost estimate multiplied by the total number of pilots (29,300) results in estimated annual recurrent training costs of $350,000. Over the next ten years, this cost would be $3.2 million (or $2.2 million, discounted).

Modification of Training/Testing Program

While the FAA cannot precisely estimate to what extent operators would incur costs as the result of modifying their respective training/testing programs, this evaluation assumes that some additional costs would be incurred. To calculate these costs, the FAA estimated that this proposed rule

would affect 97 scheduled part 135 operators, 2,043 unscheduled part 135 operators, and 26 part 125 operators. The one-time cost estimate of $2,700 (scheduled part 135 operators) and $1,350 (part 125 and unscheduled part 135 operators) for training/testing program modifications multiplied by the total number of operators amounts to $3.1 million (or $2.9 million, discounted). The FAA solicits comments from the aviation community, particularly operators under parts 125 and 135, with regard to the estimated training costs and total compliance costs.

Benefits

This proposed rule would generate potential safety benefits of $14.8 million (or $10.4 million, discounted) over the next 10 years, in 1992 dollars. These benefits would be reduction in fatalities, serious injuries, and property loss from accidents involving ice contamination for airplane operations under parts 125 and 135.

To estimate the potential benefits associated with this proposed rule, the FAA examined all of the part 135 icing accidents that have occurred from 1984 to 1992. A similar effort was employed for part 125 operations; however, there were no icing accidents or incidents involving part 125 operators. Between 1984 and 1992, there were 14 accidents with 7 fatalities, 2 serious injuries, and 8 minor injuries. These accidents were examined closely to answer the following questions:

- To what extent would this proposed rule have prevented the accident from occurring?
- What other factors (other than ice on the airframe) contributed to the accident?
- If there were other factors, how much did these factors contribute to the accident?

The analytical approach employed to quantify the potential safety benefits focuses on the increased safety awareness resulting from this proposed additional training and testing and the improved checking procedures. Under this proposed rule, a pilot would most likely perform a visual pretakeoff contamination check prior to departure. Alternatively, certificate holder's may have FAA approved ice detectors or sensors installed on the airplane's critical surfaces, or may comply with the part 121 deicing/anti-icing interim rule.

The FAA recognizes that there are many uncertainties when dealing with winter storms, human error, etc, and that even under this proposed rule, it is possible that an accident may occur. Some of the 14 known accidents identified in this evaluation may have occurred even in the absence of icing conditions. Consequently, for purposes of this evaluation, the FAA is claiming as benefits generated by this proposed rule, only 60 percent of the casualty losses from those 14 accidents. This estimate is based on the FAA's knowledge of ice contamination, similar issues related to part 121 operations, and review of those part 135 accidents involving icing conditions. The FAA realizes that some members of the public may want to comment on the FAA's decision to claim as benefits only 60 percent of the casualty losses from the 14 known accidents. Therefore, the FAA solicits comments from the aviation community on the likelihood of this proposed rule preventing these types of accidents.

To estimate the potential benefits of this proposed rule, the FAA calculated the average annual number of accidents/incidents over the nine-year period. There were 14 accidents/incidents over the nine-year period averaging 1.6 (1⅗) per year. Similarly, the average annual number of fatalities and serious injuries were .8 (⅘) and .2 (⅕), respectively. In order to provide the public and government officials with a benchmark comparison of the expected safety benefits of rulemaking actions with estimated costs in dollars, the FAA currently uses a minimum value of $2.5 million to statistically represent a human fatality avoided and $640,000 for each serious injury. These values are applied to the .8 annual fatalities and .2 annual serious injuries over the next ten years. After including the average annual replacement value of the airplanes involved in these accidents/incidents, which is estimated to be approximately $280,000, the total benefits would be $23.7 million. Claiming only 60 percent of the benefits, the potential benefits would be $14.8 million, or $10.4 million discounted.

Conclusion

This proposed rule is expected to impose total costs estimated at $6.4 million (discounted) compared to total potential safety benefits estimated at $10.4 million (discounted). Therefore, the FAA has determined that this proposed rule would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires government agencies to determine whether rules that would have "a significant economic impact on a substantial number of small entities" and, in cases where they would, to conduct a Regulatory Flexibility Analysis.

According to FAA Order 2100.14A: Regulatory Flexibility and Guidance, a substantial number of small entities is defined as a number which is not less than eleven and which is more than one-third of the small entities subject to a proposed or existing rule. A significant economic impact on a small entity is an annualized net compliance cost which, when adjusted for inflation, equals or exceeds the significant cost threshold for the entity type under review.

The entities that would be affected by this proposed rule are small operators that own, but not necessarily operate, nine or fewer aircraft. The FAA estimates that there are 26 operators under part 125, with an average of about two aircraft owned per operator. The FAA also estimates that there are 2,140 part 135 operators (97 scheduled and 2,043 unscheduled). On average, the unscheduled operators own fewer than four aircraft each. The scheduled operators own, on average, slightly more than 14 aircraft. Multiplying the $7.7 million cost of this proposed rule by a capital recovery factor of .14278 (10 years, 7%), results in an annualized cost estimate of $1.1 million. This estimate of $1.1 million was subsequently divided by the total number of operators (2,166) and resulted in an estimated annual cost impact of about $500 per operator. This annualized cost estimate is less than the annualized threshold cost of $4,600 (1992 dollars). Therefore, this proposed rule would not impose a significant economic impact on a substantial number of small aircraft operators.

International Trade Impact Statement

This proposed rule would have no impact on the competitive posture of either U.S. carriers doing business in foreign countries or foreign carriers doing business in the United States. This assessment is based on the fact that this proposed rule would impact operators engaged in U.S. domestic operations. Because foreign operators do not engage in U.S. domestic operations, this proposed rule would have no effect on them.

Environmental Assessment

The proposed rule is a federal action that is subject to National Environmental Policy Act (NEPA). Under applicable guidelines of the President's Council on Environmental

Quality and agency procedures implementing NEPA, the FAA will prepare an environmental assessment (EA) to determine the need for an environmental impact statement (EIS) or whether a finding of no significant impact (FONSI) would be appropriate. 40 CFR 1501.3, FAA Order 1050.1D, appendix 7, par. 3(a).

The FAA's preliminary review suggests that an EIS would not be required. The FAA believes that the rule will not promote significant additional use of deicing fluids. However, the FAA invites comments on any environmental issues associated with this proposed rule, and specifically requests comments on the following: (1) Whether the proposed rule will increase the use of deicing fluids, (2) the impact, if any, of using these deicing fluids on taxiways "just prior to takeoff," and (3) containment methods currently used that can be adapted to other locations on an airport.

Upon receiving public comments on these issues, the FAA will, after consideration of all relevant issues, determine the potential environmental impacts of the proposed rule.

Federalism Implications

The changes proposed by this NPRM would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that the proposed amendments would not have federalism implications requiring the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Initial Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under Order DOT 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. A draft regulatory evaluation of the proposal, including an Initial Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under FOR FURTHER INFORMATION CONTACT.

List of Subjects

14 CFR Part 125

Air carriers, Air transportation, Aviation safety, Safety.

14 CFR Part 135

Air carriers, Air taxi, Air transportation, Aviation safety, Safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 125 and 135 of the Federal Aviation Regulations (14 CFR parts 125 and 135) as follows:

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

1. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430 and 1502; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

2. Section 125.221 is amended by revising paragraph (a), by redesignating paragraphs (b) through (d) as paragraphs (c) through (e), respectively, and by adding a new paragraph (b) to read as follows:

§ 125.221 Icing conditions: Operating limitations.

(a) No pilot may take off an airplane that has frost, snow, or ice adhering to any propeller, windshield, wing, stabilizing or control surface, to a powerplant installation, or to an airspeed, altimeter, rate of climb, or flight attitude instrument system, except under the following conditions:

(1) Takeoffs may be made with frost adhering to the wings, or stabilizing or control surfaces, if the frost has been polished to make it smooth.

(2) Takeoffs may be made with frost under the wing in the area of the fuel tanks if authorized by the Administrator.

(b) No certificate holder may authorize an airplane to take off and no pilot may take off an airplane any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the airplane unless the pilot has completed the testing required under § 125.287(a)(9) and unless one of the following requirements is met:

(1) A pretakeoff contamination check, that has been established by the certificate holder and approved by the Administrator for the specific airplane type, has been completed within five minutes prior to takeoff. A pretakeoff contamination check is a check to make sure the wings and control surfaces are free of frost, ice, or snow.

(2) The certificate holder has an approved alternative procedure and under that procedure the airplane is determined to be free of frost, ice, or snow.

(3) The certificate holder has an approved deicing/anti-icing program that complies with § 121.629(c) of this chapter and the takeoff complies with that program.

* * * * *

3. Section 125.287 is amended by removing "and" at the end of paragraph (a)(7), removing the period at the end of paragraph (a)(8) and adding a semicolon in its place, and adding a new paragraph (a)(9) to read as follows:

§ 125.287 Initial and recurrent pilot testing requirements.

(a) * * *

(9) Knowledge and procedures for operating during ground icing conditions, (i.e., any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the airplane), if the certificate holder expects to authorize takeoffs in ground icing conditions, including:

(i) The use of holdover times when using deicing/anti-icing fluids.

(ii) Airplane deicing/anti-icing procedures, including inspection and check procedures and responsibilities.

(iii) Communications.

(iv) Airplane surface contamination (i.e., adherence of frost, ice, or snow) and critical area identification, and knowledge of how contamination adversely affects airplane performance and flight characteristics.

(v) Types and characteristics of deicing/anti-icing fluids, if used by the certificate holder.

(vi) Cold weather preflight inspection procedures;

(vii) Techniques for recognizing contamination on the airplane.

* * * * *

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

4. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

5. Section 135.227 is amended by revising paragraph (a), by redesignating paragraphs (b) through (e) as paragraphs (c) through (f), respectively, and by adding a new paragraph (b) to read as follows:

§ 135.227 Icing conditions: Operating limitations.

(a) No pilot may take off an aircraft that has frost, snow, or ice adhering to any rotor blade, propeller, windshield, wing, stabilizing or control surface, to a powerplant installation, or to an airspeed, altimeter, rate of climb, or flight attitude instrument system, except under the following conditions:

(1) Takeoffs may be made with frost adhering to the wings, or stabilizing or control surfaces, if the frost has been polished to make it smooth.

(2) Takeoffs may be made with frost under the wing in the area of the fuel tanks if authorized by the Administrator.

(b) No certificate holder may authorize an airplane to take off and no pilot may take off an airplane any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the airplane unless the pilot has completed all applicable training as required by § 135.341 and unless one of the following requirements is met:

(1) A pretakeoff contamination check, that has been established by the certificate holder and approved by the Administrator for the specific airplane type, has been completed within five minutes prior to takeoff. A pretakeoff contamination check is a check to make sure the wings and control surfaces are free of frost, ice, or snow.

(2) The certificate holder has an approved alternate procedure and under that procedure the airplane is determined to be free of frost, ice, or snow.

(3) The certificate holder has an approved deicing/anti-icing program that complies with § 121.629(c) of this chapter and the takeoff complies with that program.

* * * * *

6. Section 135.345 is amended by republishing the introductory text of paragraph (b), revising the introductory text of paragraph (b)(6), removing "and" at the end of paragraph (b)(6)(ii), adding "and" at the end of paragraph (b)(6)(iii), and adding a new paragraph (b)(6)(iv) to read as follows:

§ 135.345 Pilots: Initial, transition, and upgrade ground training.

* * * * *

(b) For each aircraft type—

* * * * *

(6) Knowledge and procedures for—

* * * * *

(iv) Operating airplanes during ground icing conditions (i.e., any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the airplane), if the certificate holder expects to authorize takeoffs in ground icing conditions, including:

(A) The use of holdover times when using deicing/anti-icing fluids;

(B) Airplane deicing/anti-icing procedures, including inspection and check procedures and responsibilities;

(C) Communications;

(D) Airplane surface contamination (i.e., adherence of frost, ice, or snow) and critical area identification, and knowledge of how contamination adversely affects airplane performance and flight characteristics;

(E) Types and characteristics of deicing/anti-icing fluids, if used by the certificate holder;

(F) Cold weather preflight inspection procedures;

(G) Techniques for recognizing contamination on the airplane;

* * * * *

7. Section 135.351(b)(2) is revised to read as follows:

§ 135.351 Recurrent training.

* * * * *

(b) * * *

(2) Instruction as necessary in the subjects required for initial ground training by this subpart, as appropriate, including low-altitude windshear training and training on operating during ground icing conditions, as prescribed in § 135.341 and described in § 135.345, and emergency training.

* * * * *

Issued in Washington, DC, on September 15, 1993.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 93–23150 Filed 9–17–93; 11:55 am]

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federal register

Tuesday
September 21, 1993

Part VIII

The President

Proclamation 6593—Citizenship Day and Constitution Week, 1993

Federal Register
Vol. 58, No. 181
Tuesday, September 21, 1993

Presidential Documents

Title 3—

The President

Proclamation 6593 of September 17, 1993

Citizenship Day and Constitution Week, 1993

By the President of the United States of America

A Proclamation

September 17, 1787, is one of the most important, yet ironically one of the least known, dates in American history. On that day the delegates to the Philadelphia Convention completed their work by signing and reporting to the Continental Congress their proposed Constitution of the United States. Despite the enormous growth of our Nation in terms of population, industry, culture, and technology since 1787, the document drafted by 55 patriots during that summer in Philadelphia remains the fundamental law of our land.

Chief Justice Marshall wrote that the Constitution was "designed to approach immortality as nearly as human institutions can approach it." Our Constitution is by far the oldest written framework for government in existence. The extraordinary longevity of the Constitution suggests that the British statesman William Gladstone was not exaggerating when he described our Constitution as "the most wonderful work ever struck off at a given time by the brain and purpose of man."

The Constitution's endurance is, of course, a tribute to the wisdom and statesmanship of the Framers. But it is also a tribute to our continuing commitment to the fundamental precept of constitutionalism. The Constitution has served us well, but the same document, if given to a people without an appreciation of and a commitment to the rule of law, would be worse than useless. Thus, as we mark the 206th anniversary of the signing of the Constitution, we celebrate not only the genius of the Founders, but also the fidelity of our people to the principles embodied in the Constitution.

If we are to maintain that commitment to government under law, we need to read and study the Constitution. Only by becoming familiar with its provisions can we understand and truly appreciate the Constitution's principles. Among the groups of Americans that have demonstrated their familiarity with the Constitution are naturalized Americans. As part of the naturalization process, persons seeking citizenship must pass an examination on the principles of American Government. That hundreds of thousands of people come to this country every year with the dream of becoming American citizens eloquently attests to the success of the venture in self-government launched by our Constitution. It is the duty of all Americans to understand this document and the rights and responsibilities it conveys.

In commemoration of the signing of the Constitution, and in recognition of all those who as citizens of this Republic share the responsibility for preserving and protecting our constitutional heritage, the Congress has designated September 17, 1993, as "Citizenship Day" and the week beginning September 17, 1993, as "Constitution Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 17, 1993, as "Citizenship Day" and the week beginning September 17, 1993, as "Constitution Week." I call upon the people of the United States to observe these occasions with appropriate ceremonies and activities, and I urge them to devote themselves to the study and discussion of the Constitution.

I further call upon the officials of the Government to display the flag of the United States on all Government buildings on September 17, 1993, in honor of Citizenship Day.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of September, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

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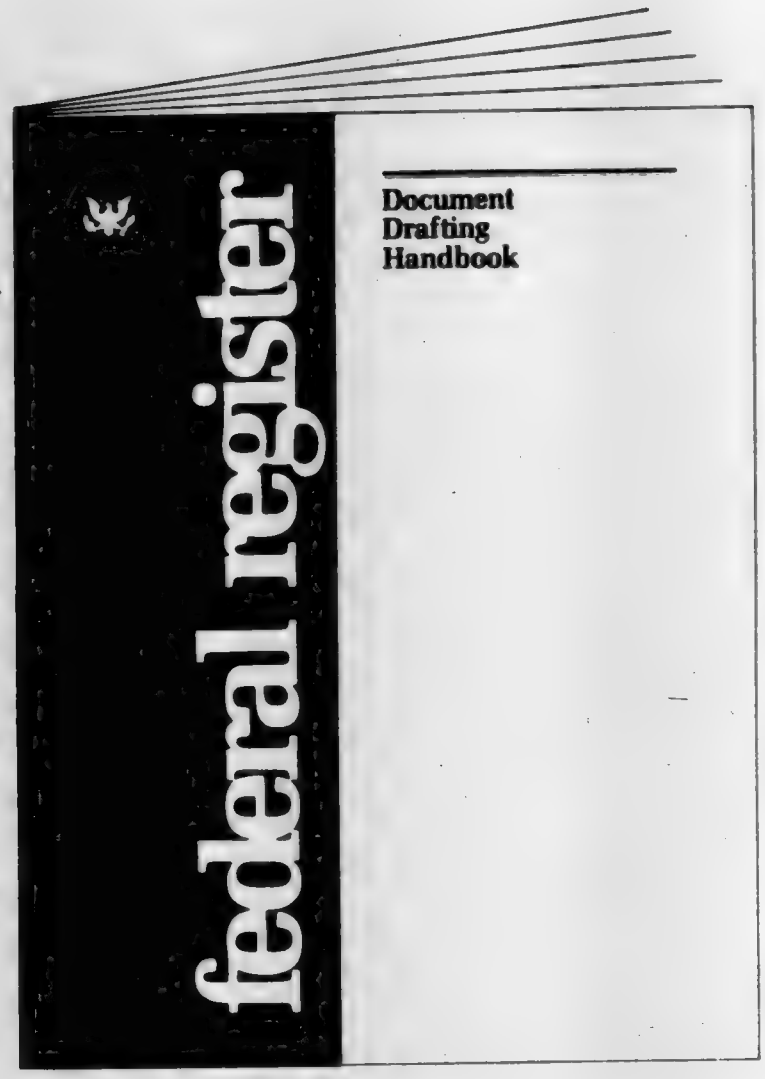

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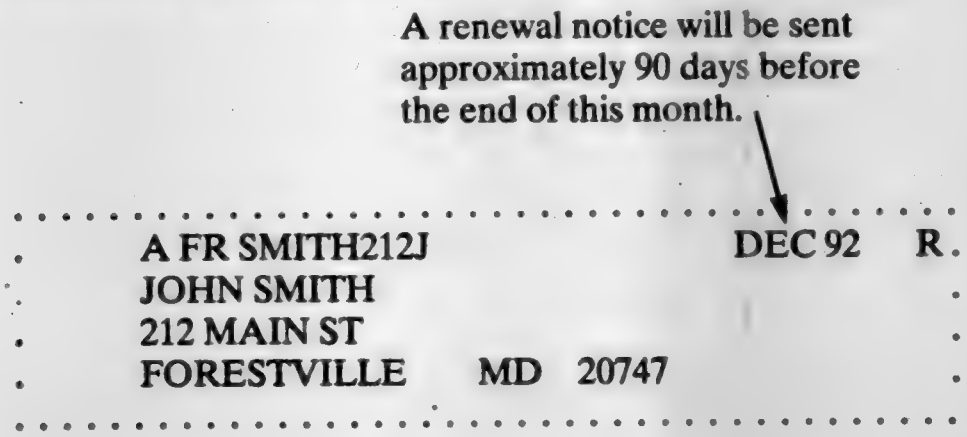

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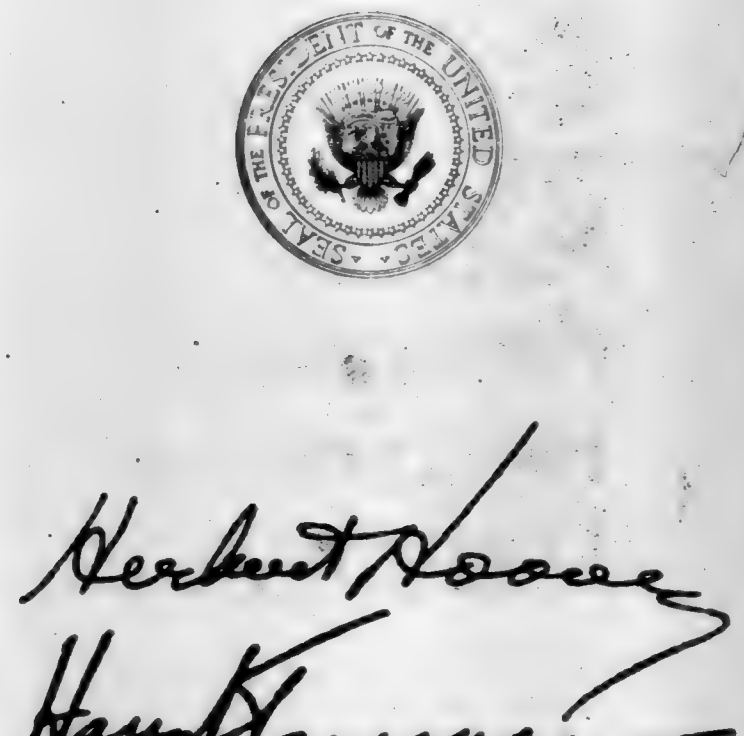

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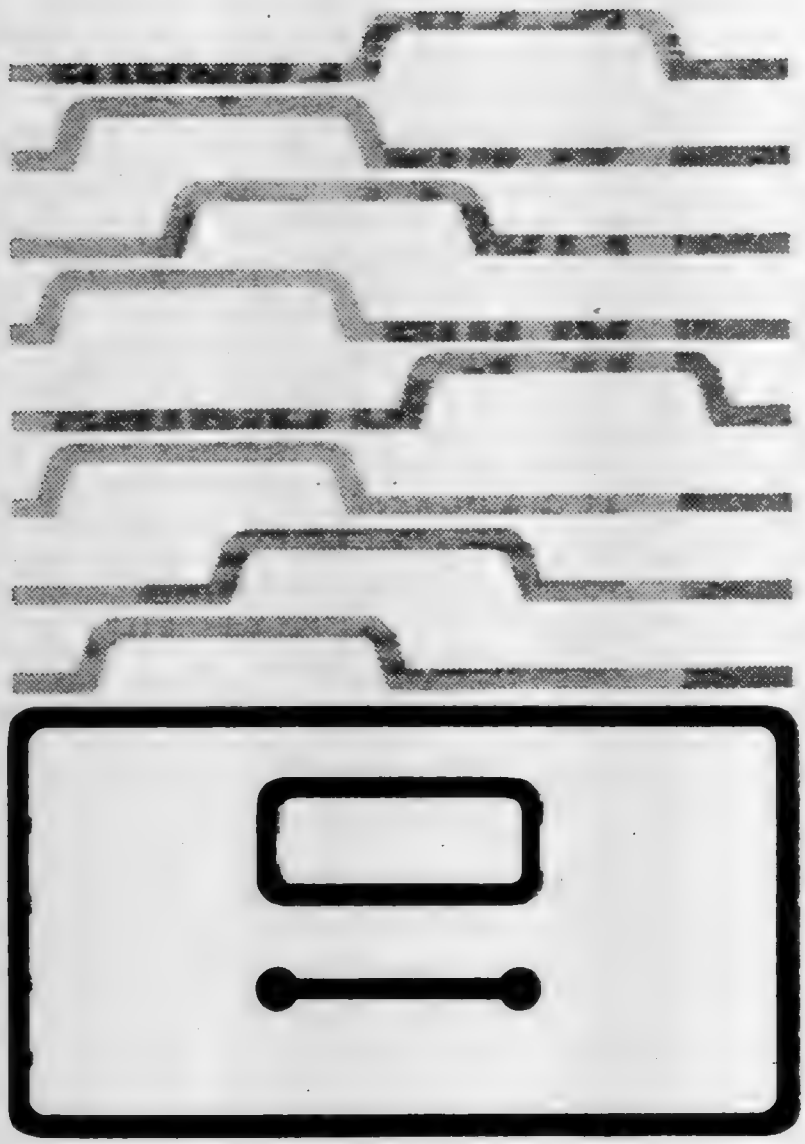

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Presidential Documents

Title 3—

The President

Presidential Determination No. 93–27 of June 24, 1993

Presidential Determination on Drawdown of Department of Defense Articles and Services for International Disaster Assistance in Ecuador

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 506(a)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(2) (the "Act"), I hereby determine that it is in the national interest of the United States to draw down defense articles from the stocks of the Department of Defense and defense services of the Department of Defense for the purpose of providing disaster relief assistance in Ecuador.

Therefore, I hereby authorize the furnishing of up to $2 million of defense articles from the stocks of the Department of Defense and defense services of the Department of Defense and for the purposes and under the authorities of Chapter 9 of Part I of the Act.

The Secretary of State is authorized and directed to report this determination to the Congress immediately and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, June 24, 1993.

[FR Doc. 93–23332
Filed 9–20–93; 2:03 pm]
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Rules and Regulations

Federal Register
Vol. 58, No. 182
Wednesday, September 22, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

RIN 3206–AB77

Civil Service Retirement System; Disability Retirement

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its Civil Service Retirement System (CSRS) regulations concerning disability retirement. Current regulations do not clearly state the conditions under which OPM finds a disability annuitant recovered from the disabling condition or restored to earning capacity. The regulations address these issues and consolidate current CSRS disability retirement regulations. These regulations do not affect the Federal Employees Retirement System (FERS).

EFFECTIVE DATE: October 22, 1993.

FOR FURTHER INFORMATION CONTACT: H.T. Newland, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On March 30, 1990, OPM published (55 FR 11933) proposed regulations and requested comments on those proposed regulations to revise the CSRS disability retirement regulations. We received 20 comments on the proposed regulations. There were seven comments submitted by Members of Congress, four from national employee organizations, two from local units of employee organizations, one from an agency, and six from individuals.

Matters Not Subject to Regulation

One commenter suggested that individuals who become eligible for a discontinued service retirement annuity as a result of termination of a disability annuity have their new annuities computed on the basis of current salaries. Three commenters suggested that individuals subject to 7½% retirement deductions (such as law enforcement officers and firefighters) have ½% of those deductions refunded if they retire on disability and have their annuity computed under the disability formula. One commenter suggested that individuals retiring on disability be permitted to make an election under the Alternative Form of Annuity program. Another commenter suggested that certain types of overtime pay be included for annuity computation and restoration to earning capacity purposes. All of these suggested changes are beyond the scope of regulatory change, and would require legislation.

Section 831.1204

Two commenters suggested the deletion of § 831.1204(b) of the proposed regulations (changed to § 831.1204(c) in the final regulation). This provision merely restates the existing provision that filing a disability retirement application will not preclude or delay any other appropriate personnel action by the employing agency. Agencies have had, and continue to have, the right to defer action on other personnel actions pending a decision on a disability retirement application, but are not required to do so. Therefore, to clarify the matter, we have added an additional sentence to explicitly state that the agency may consider that the application is pending when deciding what other action is appropriate.

However, we decline to accept the suggestion that agencies be required to retain individuals who have filed disability retirement applications. To do so would create an unwarranted obstacle to an agency's pursuit of a personnel action, allowing an employee to effectively freeze the action by filing for disability retirement, thus resulting in specious disability retirement applications being filed solely to delay separations.

One commenter suggested that we restore the previous provision that we may consider "informal claims" as timely filed. We have done so, as § 831.1204(b).

Section 831.1207

Several commenters suggested that the word "ensure" in § 831.1207(b) be changed to "affect," to make the sentence read: "(w)ithdrawal of a disability retirement application does not affect the individual's continued employment." The same commenters also suggested that the second sentence of that subsection (stating that the employing agency must decide whether it is appropriate to continue the individual's employment) be deleted. Such changes would not be consistent with appropriate personnel policy. If, for example, an employee withdraws his or her disability retirement application and the employee's performance is unacceptable, the agency should proceed to remove or demote the employee.

With regard to § 831.1207(c), two commenters suggest that the subsection be amended to require that applicants be informed in writing that OPM considers voluntary acceptance of a permanent position in which the employee has civil service retirement coverage, including a position at a lower grade or pay level, to be a withdrawal of the employee's disability retirement application. This suggestion goes to the voluntariness of the acceptance of the position at the lower grade or pay level, rather than the disability retirement process, and is thus inappropriate for inclusion in these regulations. Nevertheless, we agree that this information should be transmitted to the employee, and have already incorporated a requirement to do so in Federal Personnel Manual Supplement 830–1, at section 60A2.1–5I.

Section 831.1208

Sixteen commenters questioned the proposed provisions to allow OPM to base a finding of recovery upon employment by a non-Federal employer or self-employment where the duties of the work performed have physical and/or mental requirements that resemble or exceed those of the position from which the annuitant retired (see § 831.1208(e) of the proposed regulations). The comments were generally based upon a misimpression that the proposal was intended to provide a basis, other than those in existing statute, upon which to find individuals recovered based upon work that is dissimilar to that performed while in Government service even if the annuitant was not actually recovered from the disability upon which the retirement was based.

It is almost tautological to say that an annuitant able to perform duties with the same requirements as those of the position from which the annuitant retired is no longer suffering from the disability. If OPM becomes aware that an individual is performing such a job, the regulations permit OPM to order a medical or other examination at any time to determine the facts relative to the nature and degree of disability. That authority in these new regulations is unchanged from the existing regulation.

Further, in evaluating medical documentation, OPM is not required to consider the evidence in a vacuum. If the annuitant's actual activities are inconsistent with apparent limitations reflected in medical documentation, OPM is free to further develop the case as needed to resolve the apparent conflict. Thus, in view of the confusion on the part of commenters and the fact that further regulatory authority is not actually needed, we have withdrawn this proposal as unnecessary.

Three commenters also objected to § 831.1208(f) of the proposed regulations, which would permit findings of recovery based on voluntary requests if the record does not contain medical documentation demonstrating that the annuitant is mentally incompetent. The objection is that this would constitute a new form of recovery outside of the statutory provisions.

In actuality, this is just a statement of a form of evidence acceptable to make a finding of recovery under the existing statutory provisions. It is intended to remove a burden for those annuitants who are recovered; it is entirely voluntary; and it can only be initiated by an annuitant whom the record does not show to be incompetent. We see no benefit to anyone in requiring a recovered annuitant to go to the trouble and expense of obtaining new medical documentation to be found recovered, if he or she wishes to be so found.

Section 831.1209

Several commenters suggested that the restoration to earning capacity provisions are overly complex. While some of the material is detailed, the provisions involved are not simple, and less complex regulations would not adequately cover the matters involved. We have included detailed definitions and instructions only where actual experience has demonstrated them to be necessary. We have modified the provisions dealing with setting the current rate of pay to accommodate the changes in pay setting which have occurred since the regulations were proposed, and to make other minor changes to improve clarity.

Two employee organizations suggested that we require annuitants to annually furnish OPM with a copy of their Federal income tax returns, and follow Internal Revenue Service definitions of earned income. Income tax returns generally contain a great deal of personal information which is not relevant to determining earned income. While there are circumstances where submission of all or part of a Federal income tax return may be the best way to ascertain earned income, to require the submission of a return in every case would be an invasion of privacy which is not warranted, and we decline to require it.

However, we are greatly concerned with improving earned income determinations, so that there will be a simple and objective means of determining earned income applicable to as many cases as possible. Towards that end, and in response to the employee organization suggestions that we use Federal tax rules to simplify the matter, the regulations provide that all income which is subject to Federal employment taxes (i.e., social security and Medicare taxes) or self-employment taxes constitutes earned income.

That rule will deal with nearly all questions as to whether income should be counted towards determining restoration to earning capacity. Unfortunately, there are some situations which that rule will not cover, because even though certain income may have been earned, these taxes have not been paid. These include, but are not limited to, situations involving income earned outside of the United States (particularly in the case of foreign nationals), earned income in excess of the statutory limits on which these taxes are based, earned income of certain members of the clergy and religious workers, earned income of certain State and local employees, self-employment income which has been set off by losses for purposes of the self-employment taxes, and earned income on which taxes should have been paid but were not. It is therefore necessary to retain the admittedly complex proposed regulations to cover the relatively small number of such cases. To be equitable to all disability annuitants, we cannot accept definitions of income which could cover two similarly situated annuitants and result in one being found restored to earning capacity and the other not.

With regard to specific suggestions for this section, one commenter asks that "employer-employee relationship," used in § 831.1209(c)(1) be defined in § 831.1202. That regulation states that the normal common-law rules will be applied. It is unnecessary to further define this relationship.

One commenter suggests that the section make more detailed reference to the Postal Service pay system. Since it is clear that the pay system used for restoration to earning capacity will be that under which the annuitant was employed at retirement, it is unnecessary to make reference to specific pay systems unless they contain unusual provisions which require clarification, as in the case of § 831.1209(b)(3).

One commenter objects to § 831.1209(e)(3) as being inequitable. That provision provides that expenditures for the personal benefit of an annuitant who is a business owner may not be excluded from consideration of earned income even if they are deductible from the taxable income of the business. We believe this provision is fair, because it would be inequitable to permit business owners an unfair advantage in income consideration.

Two commenters object to § 831.1209(g)(2)(iii), which would have provided that permissible deductions from income involving services performed by family members may be deducted only if the amount claimed does not exceed the Federal minimum hourly rate in effect on December 31 of the calendar year in which claimed and the number of hours did not exceed 40 hours a week. While such situations are highly subject to abuses, we agree that the proposed standard would have been to strict, and we have revised the regulations.

Under the revised regulations, claims involving services performed by a family member or other individual directly employed by the annuitant may be deducted only if a true employer-employee relationship exists between the annuitant and the employed individual, and the amount claimed as an expense does not exceed the local market rate of payment to individuals who provide similar services. The regulations provide that it is the responsibility of the annuitant to provide evidence demonstrating that an employer-employee relationship exists, and what the local market rate is for such services.

Section 831.1212

One commenter suggested that the word "deduct" be changed to "reduce" in § 831.1212(i) (now § 831.1212(h)), which suggestion we have adopted. That section provides that when OPM reinstates an employee's disability annuity, the agency must offset the employee's pay by the amount of annuity allocable to the period of

employment, unless the annuitant is exempted from this requirement under the provisions of 5 U.S.C. 8344(i). The offset begins on the date of OPM's determination of eligibility for reinstatement. The pertinent sentence now provides that: "OPM must reduce any retroactive payment of annuity for a period of employment with an agency before that date by the amount of pay earned during that period."

Miscellaneous

One commenter inquired why language regarding reassignment of Postal Service employees was moved from the definition of "disabled" and "disability" to the definition of "vacant position." The change was solely for the improvement of clarity, and no substantive change was intended.

That commenter also suggested that the regulations would be improved if they required employing agencies to notify employees of the regulatory provisions. We agree that agencies should properly counsel employees. The Federal Personnel Manual includes instructions issued for this purpose, with appropriate references to the regulations.

E.O. 12991, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that, within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal employees and retirees.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, OPM is amending 5 CFR part 831 as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 continues to read in part as follows:

Authority: 5 U.S.C. 8347 * * *

2. Section 831.501 is revised to read as follows:

§ 831.501 Time for filing applications.

Employees or Members who are eligible for retirement must file a retirement application with their agency. Former employees or Members who are eligible for retirement must file a retirement application with OPM. The application should not be filed more than 60 days before becoming eligible for benefits. If the application is for disability retirement, the applicant and the employing agency should refer to subpart L of this part.

§ 831.502 [Removed]

3. Section 831.502 is removed.

§§ 831.503 and 831.504 [Redesignated as §§ 831.502 and 831.503]

4. Sections 831.503 and 831.504 are redesignated as §§ 831.502 and 831.503, respectively.

5. In the newly redesignated § 831.503, paragraph (b)(3)(ii) is revised to read as follows:

§ 831.503 Retirement based on involuntary separation.

* * * * *

(b) * * *

(3) * * *

(ii) Within the employee's commuting area as defined in § 831.1202 of this part, unless geographic mobility is a condition of the employee's employment;

* * * * *

6. Subpart L of part 831 is revised to read as follows:

Subpart L—Disability Retirement

Sec.

831.1201 Introduction.
831.1202 Definitions.
831.1203 Basic requirements for disability retirement.
831.1204 Filing disability retirement applications: General.
831.1205 Agency-filed disability retirement applications.
831.1206 Evidence supporting entitlement to disability benefits.
831.1207 Withdrawal of disability retirement applications.
831.1208 Termination of disability annuity because of recovery.
831.1209 Termination of disability annuity because of restoration to earning capacity.
831.1210 Annuity rights after a disability annuity terminates.
831.1211 Reemployment of disability annuitants.
831.1212 Reinstatement of disability annuity.
831.1213 Administrative review of OPM decisions.

Subpart L—Disability Retirement

§ 831.120 Introduction.

This subpart sets out the requirements an employee must meet to qualify for disability retirement, how an employee applies for disability retirement, how an agency applies for disability retirement for an employee, when a disability annuity ends, an individual's retirement rights after the disability annuity ends, and the effect of reemployment in the Federal service on a disability annuitant.

§ 831.1202 Definitions.

As used in this subpart—

Accommodation means an adjustment made to an employee's job or work environment that enables the employee to perform the duties of the position. Reasonable accommodation may include modifying the worksite; adjusting the work schedule; restructuring the job; obtaining or modifying equipment or devices; providing interpreters, readers, or personal assistants; and reassigning or retraining the employee.

Basic pay means the pay an employee receives that is subject to civil service retirement deductions. The definition is the same as the definition of "basic pay" under 5 U.S.C. 8331(3).

Commuting area means the geographic area that usually constitutes one area for employment purposes. It includes a population center (or two or more neighboring ones) and the surrounding localities in which people live and can reasonably be expected to travel back and forth daily from home to work in their usual employment.

Disabled and *disability* mean unable or inability, because of disease or injury, to render useful and efficient service in the employee's current position, or in a vacant position in the same agency at the same grade or pay level for which the individual is qualified for reassignment.

Examination and *reexamination* mean an evaluation of evidentiary material related to the question of disability. Unless OPM exercises its choice of a physician, the cost of providing medical documentation rests with the employee or disability annuitant, who must provide any information OPM needs to make an evaluation.

Medical condition means a health impairment resulting from a disease or injury, including a psychiatric disease. This is the same definition of "medical condition" as in § 339.104 of this chapter.

Medical documentation and *documentation of a medical condition* mean a statement from a licensed physician or other appropriate practitioner that provides information OPM considers necessary to determine an individual's entitlement to benefits under this subpart. Such a statement

must meet the criteria set forth in § 339.104 of this chapter.

Permanent position means an appointment without time limitation.

Physician and *practitioner* have the same meanings given in § 339.104 of this chapter.

Qualified for reassignment means able to meet the minimum requirements for the grade and series of the vacant position in question.

Same grade or pay level means, in regard to a vacant position within the same pay system as the employee currently occupies, the same grade and an equivalent amount of basic pay. A position under a different pay system or schedule is at the "same pay level" if the representative rate, as defined in § 532.401 of this chapter, equals the representative rate of the employee's current position.

Useful and efficient service means (1) acceptable performance of the critical or essential elements of the position; and (2) satisfactory conduct and attendance.

Vacant position means an unoccupied position of the same grade or pay level and tenure for which the employee is qualified for reassignment that is located in the same commuting area and is serviced by the same appointing authority of the employing agency. The vacant position must be full time, unless the employee's current position is less than full time, in which case the vacant position must have a work schedule of no less time than that of the current position. In the case of an employee of the United States Postal Service, a vacant position does not include a position in a different craft or a position to which reassignment would be inconsistent with the terms of a collective bargaining agreement covering the employee.

§ 831.1203 Basic requirements for disability retirement.

(a) Except as provided in paragraph (b) of this section, the following conditions must be met for an individual to be eligible for disability retirement:

(1) The individual must have completed at least 5 years of civilian service that is creditable under the Civil Service Retirement System.

(2) The individual must, while employed in a position subject to the Civil Service Retirement System, have become disabled because of a medical condition, resulting in a service deficiency in performance, conduct, or attendance, or if there is no actual service deficiency, the disabling medical condition must be incompatible with either useful and efficient service or retention in the position.

(3) The disabling medical condition must be expected to continue for at least 1 year from the date the application for disability retirement is filed.

(4) The employing agency must be unable to accommodate the disabling medical condition in the position held or in an existing vacant position.

(5) An application for disability retirement must be filed with the Office of Personnel Management (OPM) before the employee separates from service, or within 1 year thereafter. This time limit can be waived only in certain instances explained in § 831.1204.

(b) A National Guard technician who is retiring under the special provisions of 5 U.S.C. 8337(h) is not required to meet the conditions given in paragraphs (a) (2), (3), and (4) of this section. Instead, the individual must be disabled for membership in the National Guard or for the military grade required to hold his or her position and meet the other eligibility requirements under 5 U.S.C. 8337(h)(2).

§ 831.1204 Filing disability retirement applications: General.

(a) An employee or Member who is retiring on account of disability must file an application for annuity with OPM before separation from the service or within 1 year thereafter. OPM may waive this time limit if the employee or Member was mentally incompetent on the date of separation or within 1 year thereafter; in this case the individual or his or her representative may file the application with OPM within 1 year after the date the individual regains competency or a court appoints a fiduciary, whichever is earlier.

(b) An application for annuity which is on an inappropriate form, or on an appropriate form inadequately or incompletely executed, and which is received by OPM within 1 year of separation may be accepted as an informal claim for purposes of meeting the timeliness requirement.

(c) An employee's application for disability retirement will not preclude or delay any other appropriate personnel action by the employing agency. However, an agency may properly consider the existence of a pending disability retirement application when deciding whether and when to take other personnel actions.

§ 831.1205 Agency-filed disability retirement applications.

(a) *Basis for filing an application for an employee.* An agency must file an application for disability retirement of an employee who has 5 years of civilian Federal service when all of the following conditions are met:

(1) The agency has issued a decision to remove the employee;

(2) The agency concludes, after its review of medical documentation, that the cause for unacceptable performance, attendance, or conduct is disease or injury;

(3) The employee is institutionalized, or the agency concludes , based on a review of medical and other information, that the employee is incapable of making a decision to file an application for disability retirement;

(4) The employee has no personal representative or guardian; and

(5) The employee has no immediate family member who is willing to file an application on his or her behalf.

(b) *Agency procedures.* (1) When an agency issues a decision to remove an employee and not all of the conditions described in paragraph (a) of this section have been satisfied, but the removal is based on reasons apparently caused by a medical condition, the agency must advise the employee in writing of his or her possible eligibility for disability retirement.

(2) If the agency is filing a disability retirement application on the employee's behalf, the agency must inform the employee in writing at the same time it informs the employee of its removal decision, or at any time before the separation is effected, that—

(i) The agency is submitting a disability retirement application on the employee's behalf to OPM;

(ii) The employee may review any medical information in accordance with the criteria in § 294.106(d) of this chapter; and

(iii) The action does not affect the employee's right to submit a voluntary application for retirement under this part.

(3) When an agency submits an application for disability retirement to OPM on behalf of an employee, it must provide OPM with copies of the decision to remove, the medical documentation, and any other documents needed to show that the cause for removal is due to a medical condition. Following separation, the agency must provide OPM with a copy of the documentation of the separation.

(c) *OPM procedures.* (1) OPM will not act on any application for disability retirement filed by an agency on behalf on an employee until it receives the appropriate documentation of the separation. When OPM receives a complete application for disability retirement under this section, it will notify the former employee that it has received the application, and that he or she may submit medical documentation.

OPM will determine entitlement to disability benefits under § 831.1206.

(2) OPM will cancel any disability retirement when a final decision of an administrative authority or court reverses the removal action and orders the reinstatement of an employee to the agency rolls.

§ 831.1206 Evidence supporting entitlement to disability benefits.

(a) *Evidence to support disability retirement application.* (1) Before OPM determines whether an individual meets the basic requirements for disability retirement under § 831.1203, an applicant for disability retirement or the employing agency must submit to OPM the following forms included in Standard Form 2824, "Documentation in Support of Disability Retirement Application:"

(i) Standard Form 2824A—"Applicant's Statement;"

(ii) Standard Form 2824B—"Supervisor's Statement;"

(iii) Standard Form 2824D—"Agency Certification or Reassignment and Accommodation Efforts;" and

(iv) Standard Form 2824E—"Disability Retirement Application Checklist."

(2) Standard Form 2824C—"Physician's Statement" and the supporting medical documentation may be submitted directly to OPM.

(3) The applicant, or the employing agency, must also obtain and submit additional documentation as may be required by OPM to determine entitlement to the disability retirement benefit.

(4) Refusal by the applicant, physician, or employing agency to submit the documentation OPM has determined is necessary to decide eligibility for disability retirement is grounds for disallowance of the application.

(b) *OPM procedures for processing a disability retirement application.* (1) OPM will review the documentation submitted under paragraph (a) of this section in support of an application for disability retirement to determine whether the applicant has met the conditions stated in § 831.1203 of this part. OPM will issue its decision in writing to the applicant and to the employing agency. The decision will include a statement of the findings and conclusions, and an explanation of the right to request consideration under § 831.109 of this part.

(2) OPM may rescind a decision to allow an application for disability retirement at any time if there is an indication of error in the original decision, such as fraud or misstatement of fact, or if additional medical documentation is needed. The written notification will include a statement of the findings and conclusions, and an explanation of the right to request reconsideration under § 831.109 of this part.

(c) *Medical examination.* OPM may offer the applicant a medical examination when it determines that additional medical evidence is necessary to make a decision on an application. The medical evaluation will be conducted by a medical officer of the United States or a qualified physician or board of physicians designated by OPM. The applicant's refusal to submit to an examination is grounds for disallowance of the application.

(d) *Responsibility for providing evidence.* It is the responsibility of the applicant to obtain and submit documentation that is sufficient for OPM to determine whether there is a service deficiency, caused by disease or injury, of sufficient degree to preclude useful and efficient service, or a medical condition that warrants restriction from the critical task or duties of the position held. It is also the responsibility of the disability annuitant to obtain and submit evidence OPM requires to show continuing entitlement to disability benefits.

§ 831.1207 Withdrawal of disability retirement applications.

(a) OPM will honor, without question, an applicant's request to withdraw an employee-filed disability retirement application if it receives the withdrawal request before the employing agency has separated the current employee, or, if the employee has already separated from the service, the withdrawal request is received before the official notice of approval has been issued by OPM. Similarly, OPM will honor, without question, an agency's request to withdraw an agency-filed disability retirement application if it receives the withdrawal request before the employee has separated from the service. Once the request to withdraw the application is accepted, an applicant must reapply to receive any further consideration.

(b) Withdrawal of a disability retirement application does not ensure the individual's continued employment. It is the employing agency's responsibility to determine whether it is appropriate to continue to employ the individual.

(c) OPM considers voluntary acceptance of a permanent position in which the employee has civil service retirement coverage, including a position at a lower grade or pay level, to be a withdrawal of the employee's disability retirement application. The employing agency must notify OPM immediately when an applicant for disability retirement accepts a position of this type.

(d) OPM also considers a disability retirement application to be withdrawn when the agency reports to OPM that it has reassigned an applicant or an employee has refused a reassignment to a vacant position, or the agency reports to OPM that it has successfully accommodated the medical condition in the employee's current position Placement consideration is limited only by agency authority and can occur after OPM's allowance of the application up to the date of separation for disability retirement. The employing agency must notify OPM immediately if any of these events occur.

(e) After OPM allows a disability retirement application and the employee is separated, the application cannot be withdrawn. However, an individual entitled to a disability annuity may decline to accept all or any part of the annuity under the waiver provisions of 5 U.S.C. 8345(d) or request to be found medically recovered under § 831.1208(e) of this part.

§ 831.1208 Termination of disability annuity because of recovery.

(a) Each annuitant receiving disability annuity from the Fund shall be examined under the direction of OPM at the end of 1 year from the date of disability retirement and annually thereafter until the annuitant becomes 60 years of age unless the disability is found by OPM to be permanent in character. OPM may order a medical or other examination at any time to determine the facts relative to the nature and degree of disability of the annuitant Failure to submit to reexamination shall result in suspension of annuity.

(b) A disability annuitant may request medical reevaluation under the provisions of this section at any time. OPM will reevaluate the medical condition of disability annuitants age 60 or over only on their own request.

(c) Recovery based on medical documentation. When an examination or reevaluation shows that a disability annuitant has medically recovered from the disability, OPM will terminate the annuity effective on the first day of the month beginning 1 year after the date of the medical examination showing recovery.

(d) Recovery based on reemployment by the Federal Government. Reemployment by an agency at any time before age 60 is evidence of recovery if the reemployment is in a permanent

position at the same or higher grade or pay level as the position from which the disability annuitant retired. The permanent position must be full-time unless the position the disability annuitant occupied immediately before retirement was less than full-time, in which case the permanent position must have a work schedule of no less time than that of the position from which the disability annuitant retired. In this instance, OPM needs no medical documentation to find the annuitant recovered. Disability annuity payments will terminate effective on the first day of the month following the month in which the recovery finding is made under this paragraph.

(e) Recovery based on a voluntary request. OPM will honor a written and signed statement of medical recovery voluntarily filed by a disability annuitant when the medical documentation on file does not demonstrate that the annuitant is mentally incompetent. OPM needs no other documentation to find the annuitant recovered. Disability annuity payments will terminate effective on the first day of the month beginning 1 year after the date of the statement. A disability annuitant can withdraw the statement only if the withdrawal is received by OPM before annuity payments terminate.

(f) When an agency reemploys a recovered disability annuitant at any grade or rate of pay within the 1-year period pending termination of the disability retirement benefit under paragraph (c), (d), or (e) of this section, OPM will terminate the annuity effective on the date of reemployment.

§ 831.1209 Termination of disability annuity because of restoration to earning capacity.

(a) *Restoration to earning capacity.* If a disability annuitant is under age 60 on December 31 of any calendar year and his or her income from wages or self-employment or both during that calendar year equal at least 80 percent of the current rate of basic pay of the position occupied immediately before retirement, the annuitant's earning capacity is considered to be restored. The disability annuity will terminate on the June 30 after the end of the calendar year in which earning capacity is restored. When an agency reemploys a restored disability annuitant at any grade or rate of pay within the 180-day waiting period pending termination of the disability retirement benefit, OPM will terminate the annuity effective on the date of reemployment.

(b) *Current rate of basic pay for the position occupied immediately before retirement.* (1) A disability annuitant's income for a calendar year is compared to the gross annual rate of basic pay in effect on December 31 of that year for the position occupied immediately before retirement. The income for most disability annuitants is based on the rate for the grade and step which reflects the total amount of basic pay (both the grade and step and any additional basic pay) in effect on the date of separation from the agency for disability retirement. Additional basic pay is included subject to the premium pay restrictions of 5 U.S.C. 5545 (c)(1) and (c)(2). A higher grade and step will be established if it results from using either the date of application for disability retirement or the date of reasonable accommodation, as adjusted by any increases in basic pay that would have been effected between each respective date and the date of final separation. Use of these two alternative pay setting methods is subject to paragraph (b)(1) (i) and (ii) of this section. The highest grade and step established as a result of setting pay under the normal method and the two alternative methods is designated as the rate of basic pay for the position occupied immediately before retirement and applies only to restoration to earning capacity decisions. In cases involving use of either of the two alternative pay setting methods, the determination of the rate of basic pay for the position occupied immediately before retirement is made by the employing agency at the time the disability retirement is allowed. OPM must review the rate so determined to establish whether the correct rate has been established, and will inform the employee of the proper rate at the time the disability annuity is awarded. This rate of basic pay becomes the basis for all future earning capacity determinations.

(i) The "date of application for disability retirement" is the date the application is signed by the authorized official of the employing agency immediately before forwarding the application to OPM.

(ii) The "date of reasonable accommodation" is the date of the employing agency's notice of reasonable accommodation to an employee's medical condition (as a result of its review of medical documentation) which results in a reduction in the rate of basic pay. The use of the date of reasonable accommodation to establish the rate of basic pay for the position held at retirement is subject to the following conditions:

(A) The date of the employing agency's notice to provide accommodation is no more than 1 year before the date the disability retirement application is signed by the authorized official in the employing agency immediately before forwarding it to OPM; and

(B) A complete record of the date of the personnel decision, the medical documentation substantiating the existence of the medical condition, and the justification for the accommodation is established in writing and included at the time the agency submits the application for disability retirement. OPM will review the record to determine whether the medical documentation demonstrates that the medical condition existed at the time of the accommodation and warranted the accommodation made.

(2) In the case of an annuitant whose basic pay rate on the date determined under paragraph (b)(1) of this section did not match a specific grade and step in a pay schedule:

(i) For those retiring from a merit pay position, a position for which a special pay rate is authorized (except as provided in paragraph (b)(2)(ii) of this section), or any other position in which the rate of basic pay is not equal to a grade and step in a pay schedule, the grade and step will be established for this purpose at the lowest step in the pay schedule grade that is equal to or greater than the actual rate of basic pay payable. This rule will not be applied when the rate exceeds that of the schedule applicable to the organization from which the individual retired, when there is no existing apposite schedule with grades and steps, or in other organizations which are excluded from coverage of schedules with grades and steps, as in the case of pay systems using pay bands.

(ii) For those retiring with a retained rate of basic pay or from a position for which a special pay rate is in effect but whose rate of basic pay exceeds the highest rate payable in the pay schedule grade applicable to the position held, the grade and step is established for this purpose in the grade in the schedule that is closest to the grade of the position held and within which the amount of the retained pay falls. The step is established for this purpose at the lowest step in that grade which equals or exceeds the actual rate of pay payable.

(iii) When the pay system under which an annuitant retired has been either modified or eliminated since the individual retired, the individual will be treated as if he or she had been employed at their retirement grade and step at the time of the system change, and will be deemed to have been placed under the new system using whatever

rules would have been applicable at that time. This will only apply when a pay system has been abolished or modified, and not when the grade and step of a position has been modified subsequent to retirement by reclassification or other action, in which case the grade and step in effect at the time of retirement will control.

(iv) If using the above rules it is not possible to set a grade and step for computing the current rate of pay, then if possible the current rate of pay will be set using the relative position in the range of pay applicable to the position from which the individual retired. For example, if at the time of retirement the rate of pay was $75,000 in a range from $70,000 to $90,000, for all future determinations, the current rate of pay would be 25% up the new pay range from the bottom. If the new range was $96,000 to $120,000, then the new current rate of pay would be $102,000 ($96,000 plus 0.25 times $24,000 ($120,000 minus $96,000)).

(v) In those cases, such as of some former Congressional staff employees and others whose pay is not set under a formal system, where none of the above guidelines will yield a current rate of pay, OPM will ascertain the current rate of pay after consultation with the former employing organization, or successor organization.

(3) For annuitants retiring from the United States Postal Service, only cost-of-living allowances subject to civil service retirement deductions are included in determining the current rate of basic pay of the position held at retirement.

(c) *Income.* Earning capacity for the purposes of this section is demonstrated by an annuitant's ability to earn post-retirement income in a calendar year through personal work efforts or services. The total amount of income from all sources is used to determine earning capacity. This includes income received as gross wages from one or more employers, net earnings from one or more self-employment endeavors, and deferred income that is earned in a calendar year. In determining an annuitant's income for a calendar year, the following considerations apply:

(1) There are two sources of income: wages and self-employment income. All income which is subject to Federal employment taxes (i.e., social security or Medicare taxes) or self-employment taxes constitutes earned income. In addition, any other income as described in this section also constitutes earned income. The determination of whether a disability annuitant earns wages as an employee of an organization or earns income as a self-employed person is based on the usual common law rules applicable in determining the existence of an employer-employee relationship. Whether the relationship exists under the usual common law rules will be determined by OPM after the examination of the particular facts of each case.

(2) Income earned from one source is not offset by losses from another source. Income earned as wages is not reduced by a net loss from self-employment. The net income from each self-employment endeavor is calculated separately, and the income earned as net earnings from one self-employment endeavor is not reduced by a net loss from another self-employment endeavor. The net incomes from each separate self-employment endeavor are added together to determine the total amount of income from self-employment for a calendar year.

(3) Only income earned from personal work efforts or services is considered in determining earning capacity. All forms of non-work-related unearned income are excluded. Paragraph (f) of this section includes a representative list of the types of unearned income that are not considered.

(4) Income earned in a calendar year may only be reduced by certain self-employment business expenses, as provided in paragraph (e) of this section; job-connected expenses incurred because of the disabling condition, as provided in paragraph (g) of this section; and the return from investment allowance, as provided in paragraph (h) of this section. Once earned, income cannot be reduced by any other means. Thus, income cannot be lowered by such means as leave buy-back provisions, conversion of wages for paid time to leave without pay or a similar non-paid status, reductions in wages attributable to cash shortages or product losses, etc.

(5) For determining annual income from wages or self-employment or both, income is earned in the calendar year the annuitant actually renders the personal work effort or service and either actually or constructively receives the remuneration, except as provided under paragraph (c)(7) of this section. For this purpose, income paid on a regular basis (i.e., on a weekly, bi-weekly, monthly or similar pay period basis) will be deemed earned in the year in which payment is made in the regular course of business.

(6) Deferred income is included as income in the calendar year in which it is constructively received. Income is constructively received when it is credited, set apart, or otherwise made available so that the annuitant may draw upon it at any time, or could draw upon it during the calendar year if the annuitant had given notice of the intent to do so. Deferred income includes all earnings, whether in the form of cash or property or applied to provide a benefit for the employee, which are subject to the disability annuitant's designation or assignment. Usually, the earnings are set aside by a salary-reduction agreement, a deferred compensation arrangement, or the designation of specific earnings amounts towards the purchase of non-taxable employee fringe benefits. Thus, any earnings for which the individual has the opportunity to adjust the amount of income received in a calendar year by controlling the remuneration of voluntarily giving up the right to control the remuneration, regardless of whether a written instrument exists, are income for earning capacity purposes.

(7) The Internal Revenue Code provides exceptions to the general rule on constructive receipt for certain deferred compensation plans which, by their design, defer receipt of income for Federal employment tax purposes as of the later of when services are performed or when there is no substantial risk of forfeiture of the rights to such amount. Even though these special deferred compensation plans defer the constructive receipt of the income for tax purposes to future years beyond the year in which the income is actually earned, the income reflects earning capacity. Therefore, employer contributions and employee payments to these special deferred compensation plans are considered income in the calendar year in which the services are performed, even though the Internal Revenue Code may exclude these contributions and payments from income for tax purposes.

(d) *Wages.* For purposes of earning capacity determinations, the term "wages" means the gross amount of all remuneration for services performed by an employee for his or her employer, unless specifically excluded herein, before any deductions or withholdings.

(1) The name by which the remuneration for services is designated is immaterial. Remuneration includes but is not limited to one-time or recurring—

(i) Base salary or pay; tips; commissions; professional fees; honoraria; bonuses and gift certificates of any type; golden parachute payments; payments for any non-work periods, such as vacation, holiday, or sick pay; pay advances; overtime pay; severance pay; dismissal pay; termination pay; and back pay;

(ii) Deferred income, within the meaning of paragraphs (c) (6) and (7) of this section, or other employer contributions or payments in an arrangement in which the employee has the opportunity (whether exercised or not) to adjust income by recovering the contributions or payments during the calendar year in which earned, for general discretionary income purposes;

(iii) Non-cash wages or payment of in-kind benefits, such as shares of stock in the business, real or personal property, stock in trade, inventory items, goods, lodging, food, and clothing. The valuation for all non-cash wages or other in-kind benefits is determined in a manner consistent with the fair value standards that appear in the Social Security Administration's regulations at 20 CFR 404.1041(d).

(2) Any amount offset or deducted under 5 U.S.C. 8344 is treated as wages if the annuity continues while the annuitant is reemployed by the Federal Government.

(3) As a general rule, remuneration as wages does not include any contribution, payment, benefits furnished, or service provided by an employer in any of the following areas:

(i) The general retirement system established by the employer for its employees, usually either a qualified pension, profit-sharing, stock bonus plan, or a qualified annuity contract plan;

(ii) Medical or hospitalization health benefit plans;

(iii) Life insurance plans;

(iv) Sickness or accident disability pay beyond 6 months of illness, or workers' compensation payments;

(v) The value of meals and lodgings provided at the convenience of the employer;

(vi) Moving expenses;

(vii) Educational assistance programs;

(viii) Dependent care assistance programs;

(ix) Scholarships and fellowship grants;

(x) De minimis fringe benefits, such as items of merchandise given by the employer at holidays which are not readily convertible into cash and courtesy discounts on company products offered not as remuneration for services performed but as a means of promoting good will;

(xi) Qualified group legal services plans;

(xii) Uniforms and tools supplied by the employer, including employer-provided allowances for such items, for the exclusive use by the employee on the job; and

(xiii) Amounts that an employer pays the individual specifically, either as advances or reimbursements, for traveling or other ordinary and necessary expenses incurred, or reasonably expected to be incurred in the employer's business.

(4) However, there are two exceptions to this general rule:

(i) When it is provided under circumstances in which either a salary reduction or deferral agreement is used (whether evidenced by a written instrument or otherwise); or

(ii) When the employee had the opportunity (whether exercised or not) to elect to receive the cash value, whether in the form of money or personal or real property, of the employer-provided amount or service.

(e) *Self-employment income.* (1) Self-employment income is the remuneration that is received as an independent contractor, either as

(i) A sole proprietor of a business or farm;

(ii) A professional in one's own practice; or

(iii) A member of a partnership or corporation, as these terms are defined by the Internal Revenue Code, and regardless of whether the business entity is operated for profit.

(2) The term "net earnings" from self-employment in a business enterprise means the gross revenue to the business endeavor from all sources before any other deductions or withholdings, minus

(i) Allowable business expenses, as provided in paragraph (e)(3) of this section;

(ii) Any job-connected disability expenses, as provided in paragraph (g) of this section; and

(iii) Any return from investment allowance, as provided in paragraph (h) of this section.

(3) Certain expenses of a self-employed business entity may be offset from the gross revenue from all sources of that self-employed business in determining the amount of net earnings for a particular calendar year. Expenses which may be deducted are only those items and costs which are permitted by the Internal Revenue Code for income tax purposes as ordinary and necessary to the operation of the business. However, expenses incurred on behalf of the disability annuitant may not be deducted, regardless of whether they are permitted by the Internal Revenue Code. These expenses that are incurred but cannot be deducted include the costs for wages paid to the individual, interest earnings, guaranteed payments, dividends, employee benefits, pension plans, and salary reduction or deferral plans. Also, self-employed disability annuitants may not deduct the costs of other withdrawals or expenses which are not used solely for business purposes. Examples of items that cannot be deducted if used at all for personal use by the self-employed disability annuitant include personal property items, such as automobiles and boats; real property, such as vacation property or residences; and memberships, dues, or fees for professional associations or public or private organizations or clubs.

(4) Fees paid to an annuitant as a director of a corporation are a part of net earnings from self-employment.

(f) *Income not included.* Other types of income not considered in determining earning capacity include—

(1) Investment income, such as interest or dividends from savings accounts, stocks, personal loans or home mortgages held, unless the disability annuitant receives the return from capital investment in the course of his or her trade or business;

(2) Capital gains from sales of real or personal property that the disability annuitant owns, unless received in the course of his or her trade or business;

(3) Rents or royalties, unless received in the course of his or her trade or business;

(4) Distributions from pension plans, annuity plans, Individual Retirement Accounts (IRA's), Simplified Employee Benefit-IRA's (SEP–IRA's), Keogh Accounts, employee stock ownership plans, profit sharing plans, or deferred income payments that are received by the annuitant in any year after the calendar year in which the funds were contributed to the plan;

(5) Income earned before the commencing date of civil service retirement annuity payments;

(6) Scholarships or fellowships;

(7) Proceeds from life insurance, inheritances, estates, trusts, endowments, gifts, prizes, awards, gambling or lottery winnings, and amounts received in court actions whether by verdict or settlement, unless received in the course of their trade or business;

(8) Unemployment compensation under State or Federal law, supplemental unemployment benefits, or workers' compensation;

(9) Alimony, child support, or separate maintenance payments received;

(10) Pay for jury duty; and

(11) Entitlement payments from other Federal agencies, such as benefits from the Social Security Administration or the Veterans Administration, Railroad Retirement System retirement pay, or military retirement pay.

(g) *Job-connected expenses incurred because of the disabling condition may*

be deducted from income. (1) Job-connected expenses deductible from income for purposes of determining earning capacity are those expenses that are primarily for and essential to the annuitant's occupation or business and are directly connected with or result from the disability for which the disability annuity was allowed.

(2) The determination of whether a job-connected expense may be deducted from income is governed by the following considerations:

(i) The expense must be directly attributable to the disability and must be one which would not have been incurred in the absence of the annuitant working in his or her business or occupation. Expenses incurred for the preservation of the annuitant's health, alleviation of his or her physical or mental discomfort, or other expenses of an employed person cannot be deducted.

(ii) The disability must be of such severity that it requires the annuitant to use special means of transportation, services, or equipment to perform the duties of the occupation or business. Examples of such disabilities include blindness, paraplegia, multiple sclerosis, and cerebral hemorrhage. Claims involving transportation or equipment may be deducted only in the amount normally allowed for business expenses or as depreciation by the Internal Revenue Service for Federal income tax purposes.

(iii) Claims involving services performed by a family member or other individual directly employed by the annuitant may be deducted only if a true employer-employee relationship exists between the annuitant and the employed individual, and the amount claimed as an expense does not exceed the local market rate of payment to individuals who provide similar services. It is the responsibility of the annuitant to provide evidence demonstrating that an employer-employee relationship exists, and what the local market rate is for such services. For the purpose of this paragraph, to establish that a true employer-employee relationship exists, the annuitant must provide evidence that all statutorily mandated employment requirements are met, including (but not limited to) income tax withholdings, FICA tax deductions and payments, and unemployment insurance. If the annuitant fails to provide evidence of the local market rate for such services, payments may be deducted only if the amount claimed does not exceed the Federal minimum hourly rate in effect on December 31 of the calendar year in which claimed. Absent evidence that it is customary and regular practice in the local labor market to work more hours per week, payment may not be deducted for services provided by an individual in excess of 40 hours a week.

(3) A job-connected expense can be deducted only in the calendar year in which paid.

(4) Claims for items used for both personal and job-related purposes may be deducted only by the prorated amount attributable to the job-related use.

(5) A job-connected expense may not be deducted from income from self-employment if the expense has already been deducted as a business expense.

(6) It is the responsibility of the annuitant claiming job-connected expense to provide adequate documentation to substantiate the amount claimed. Adequate documentation will generally include the following information:

(i) Written recommendation of a physician, vocational rehabilitation specialist, occupational health resource specialist, or other similar professional specialist that the retiree should use the transportation, services, or equipment;

(ii) A description of the item and an explanation of its use by the annuitant in the performance of his or her occupation or business;

(iii) A copy of the receipt of purchase, bill of sale, or leasing agreement for the item claimed with the date, duration of the agreement, and agreed upon price clearly specified;

(iv) A complete supporting explanation of how the amount claimed for the job-connected expense has been calculated; and

(v) An explanation of the circumstances and calculation of the prorated cost of the item if used for both personal and business use.

(h) *Return from investment allowance.* A disability annuitant may reduce the net earnings from a self-employed business endeavor (adjusted for any interest paid on borrowed capital) by 6 percent of his or her capital investment in that business, owned or borrowed. The capital investment's value is its fair-market value as of December 31 of the year for which the income is being reported.

(i) *Requirement to report income.* All disability annuitants who, on December 31 of any calendar year, are under age 60 must report to OPM their income from wages or self-employment or both for that calendar year. Each year as early as possible, OPM will send a form to annuitants to use in reporting their income from the previous calendar year. The form specifies the date by which OPM must receive the report. OPM will determine entitlement to continued annuity on the basis of the report. If an annuitant fails to submit the report, OPM may stop annuity payments until it receives the report.

§ 831.1210 Annuity rights after a disability annuity terminates.

(a) An individual is entitled to an immediate annuity when the disability annuity stops because of recovery or restoration to earning capacity if the individual is not reemployed in a position subject to civil service retirement coverage and—

(1) Is at least age 50 when the disability annuity stops and had 20 or more years of service at the time of retirement for disability; or

(2) Had 25 or more years of service at the time of retirement for disability regardless of age.

(b) An individual whose annuity stops because of recovery or restoration to earning capacity and who is not eligible for an immediate annuity under paragraph (a) of this section, is eligible for a deferred annuity upon reaching age 62.

(c) The disability annuity of an individual whose annuity stopped because of recovery or restoration to earning capacity may be reinstated under § 831.1212 of this part.

§ 831.1211 Reemployment of disability annuitants.

(a) An agency may reemploy a disability annuitant in any position for which he or she qualifies. The employing agency must notify OPM of the reemployment, including in the notification the nature of the position, the type of appointment, and the rate of basic pay. The employing agency must give OPM similar notification when—

(1) A reemployed disability annuitant is converted from a temporary or term appointment to a permanent appointment; and

(2) A reemployed disability annuitant with a permanent appointment is promoted to a position at the same grade or pay level as that held at retirement.

(b) When a disability annuitant whom OPM has found recovered from disability, or restored to earning capacity, is reemployed while still entitled to disability annuity, OPM will terminate the annuity effective on the date of reemployment.

(c) When a disability annuitant who has not been found recovered from disability or restored to earning capacity is reemployed, the employing agency must offset the pay of the disability annuitant by the amount of annuity allocable to the period of reemployment, unless the annuitant is exempted from

this requirement under the provisions of 5 U.S.C. 8344(i).

(d) OPM may review the notification of reemployment and order a reevaluation under § 831.1208 of this part, as it finds appropriate. In connection with the reevaluation process, the employing agency and/or the employee may submit medical documentation.

(e) When a reemployed disability annuitant is found recovered from disability or restored to earning capacity, OPM will terminate the annuity effective on the first day of the month following the month in which the recovery or restoration finding is made, notify the agency of its finding, and instruct the agency to cease reducing pay by the amount of annuity allocable to the period of reemployment. If the appointment is subject to retirement deductions, OPM will instruct the agency to commence retirement deductions.

(f) A disability retirement annuity awarded to a former National Guard technician under the provisions of 5 U.S.C. 8337(h), in addition to being subject to § 831.1209 of this part, will terminate when—

(1) An agency hires the annuitant; or

(2) The annuitant declines an offer of employment with an agency that is in the same commuting area and at the same grade or pay level as the position from which the annuitant retired.

§ 831.1212 Reinstatement of disability annuity.

(a) When a disability annuity stops, the individual must again prove that he or she meets the eligibility requirements in order to have the annuity reinstated.

(b) When a recovered disability annuitant under age 62 whose annuity was terminated because he or she was found recovered on the basis of medical evidence (§ 831.1208(b)), is not reemployed in a position subject to civil service retirement coverage, and, based on the results of a current medical examination, OPM finds that the individual's medical condition has worsened since the finding of recovery and that the original disability on which retirement was based has recurred, OPM will reinstate the disability annuity. The right to the reinstated annuity begins with the date of the medical examination showing that the disability recurred.

(c) OPM will reinstate the disability annuity of a recovered disability annuitant under age 62 whose annuity was terminated because he or she was found recovered on the basis of Federal reemployment (§ 831.1208(c)) when—

(1) The results of a current medical examination show that the disabling medical condition that was the basis of the disability retirement continues to exist; and

(2) Within 1 year after the date of reemployment, this medical condition has again caused the individual to be unable to provide useful and efficient service, and the employee has been—

(i) Separated and not reemployed in a position subject to civil service retirement coverage; or

(ii) Placed in a position that results in a reduction in grade or pay below the grade from which the individual retired, or in a change to a non-permanent position. The right to the reinstated annuity begins with the date of the medical examination showing that the disabling medical condition continues to exist, but not earlier than the first day after separation, or the effective date of the placement in the position which results in a reduction in grade or pay or change to a non-permanent position.

(d) When a recovered disability annuitant under age 62 whose annuity was terminated because he or she was found recovered on the basis of a voluntary request (§ 831.1208(e)), is not reemployed in a position subject to civil service retirement coverage, and, based on the results of a current medical examination, OPM finds that the disability has recurred, OPM will reinstate the disability annuity. The right to the reinstated annuity begins with the date of the medical examination showing that the disability recurred, but not earlier than 1 year before the date the request for reinstatement is received by OPM.

(e) When a disability annuitant whose earning capacity has been restored but who is not reemployed in a position in which he or she is subject to civil service retirement coverage, and who (except in the case of a National Guard technician whose annuity was awarded under 5 U.S.C. 8337(h)), has not recovered from the disability for which retired, loses his or her earning capacity, as determined by OPM, before reaching age 62, OPM will reinstate the disability annuity. The reinstated annuity is payable from January 1 of the year following the calendar year in which earning capacity was lost. Earning capacity is lost if, during any calendar year, the individual's income from wages or self-employment or both is less than 80 percent of the current rate of basic pay of the position held at retirement.

(f) A reinstated annuity is the same type as the original annuity and is paid at the rate of annuity to which the annuitant was entitled on the date his or her disability annuity was last discontinued.

(g) Reinstatement of the disability annuity ends the right to any other annuity based on the same service, unless the annuitant makes a written election to receive the other annuity instead of the disability annuity.

(h) When OPM reinstates an employee's disability annuity, the agency must offset the employee's pay by the amount of annuity allocable to the period of employment, unless the annuitant is exempted from this requirement under the provisions of 5 U.S.C. 8344(i). The offset begins on the date of OPM's determination of eligibility for reinstatement. OPM must reduce any retroactive payment of annuity for a period of employment with an agency before that date by the amount of pay earned during that period.

(i) When an individual's annuity is terminated upon reemployment (subject to subchapter III of chapter 83, title 5, United States Code), OPM must determine the individual's future annuity rights under the law in effect at the date of his or her subsequent separation. If, upon separation from such reemployment, the individual does not meet the eligibility requirements under subchapter III of chapter 83, title 5, United States Code, for title to annuity based on such separation, OPM will resume payment of the terminated annuity at the rate last payable, unless payment is otherwise barred.

§ 831.1213 Administrative review of OPM decisions.

The right to administrative review of an initial decision of OPM is set forth in § 831.109 of this part. The right to appeal a final decision of OPM to the Merit Systems Protection Board is set forth in § 831.110 of this part.

[FR Doc. 93–23091 Filed 9–21–93; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 91–155–7]

Mediterranean Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding new portions of Los Angeles and Orange Counties, CA, and an area in San Bernardino County, CA, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective September 15, 1993. Consideration will be given only to comments received on or before November 22, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91–155–7. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

We established the Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78–10; referred to below as the regulations), and quarantined the Hancock Park area of Los Angeles County, CA, in an interim rule effective on November 5, 1991, and published in the **Federal Register** on November 13, 1991 (56 FR 57573–57579, Docket No. 91–155). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Medfly to noninfested areas of the United States. We have published a series of interim rules amending these regulations by adding or removing certain portions of Los Angeles, Santa Clara, Orange, and San Diego Counties, CA, from the list of quarantined areas. Amendments affecting California were made effective on September 10, and November 12, 1992; and on January 19, July 16, and August 3, 1993 (57 FR 42485–42486, Docket No. 91–155–2; 57 FR 54166–54169, Docket No. 91–155–3; 58 FR 6343–6346, Docket No. 91–155–4; 58 FR 39123–39124, Docket No. 91–155–5; 58 FR 42489–42491, Docket No. 91–155–6).

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that additional infestations of Medfly have been discovered in the Rosemead area of Los Angeles County, CA, in the Westminster area of Orange County, CA, and in the Ontario area of San Bernardino, CA.

The regulations in § 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

In accordance with these criteria and the recent Medfly finding described above, we are amending § 301.78–3 by expanding the area which extends through Los Angeles and Orange Counties with the addition of an area of approximately 21 square miles in Los Angeles County and an area of approximately 66 square miles in Orange County; and, we are designating as quarantined an area comprised of approximately 72 square miles in Los Angeles and San Bernardino Counties. The new quarantined areas are as follows:

Los Angeles County

That portion of Los Angeles County in the Rosemead area bounded by a line drawn as follows: Beginning at the intersection of Interstate Highway 605 and State Highway 60; then, west along State Highway 60 to its intersection with Interstate Highway 710; then, north along Interstate Highway 710 to its intersection with Interstate Highway 10; then, east along Interstate Highway 10 to its intersection with Interstate Highway 605; then, south along Interstate Highway 605 to the point of beginning.

Orange County

That portion of Orange County in the Westminster area bounded by a line drawn as follows: Beginning at the intersection of Katella Avenue and Valley View Street; then, south along Valley View Street to its intersection with Bolsa Chica Road; then, south along Bolsa Chica Road to its intersection with Bolsa Chica Street; then, south along Bolsa Chica Street to its intersection with Los Patos Avenue; then, southeast from this intersection along an imaginary line to the intersection of East Garden Grove Wintersburg Channel and the Bolsa Chica Ecological Reserve Boundary; then, southeast along the Bolsa Chica Ecological Reserve Boundary to its intersection with Ellis Avenue; then, east along this Ellis Avenue to its intersection with Edwards Street; then, south along Edwards Street to its intersection with Garfield Avenue; then, east along Garfield Avenue to its intersection with North Golden West Street; then, south along North Golden West Street to its intersection with Yorktown Avenue; then, east along Yorktown Avenue to its intersection with Main Street; then, south along Main Street to its intersection with Adams Avenue; then, east along Adams Avenue to its intersection with Fairview Road; then, north along Fairview Road to its intersection with Fairview Street; then, north along Fairview Street to its intersection with Garden Grove Boulevard; then, west along Garden Grove Boulevard to its intersection with Haster Street; then, north along Haster Street to its intersection with Chapman Avenue; then, west along Chapman Avenue to its intersection with West Street; then, north along West Street to its intersection with Katella Avenue; then, west along Katella Avenue to the point of beginning.

Los Angeles and San Bernardino Counties

That portion of the counties in the Ontario area bounded by a line drawn as follows: Beginning at the intersection of College Way and State Highway 30 (Base Line Road); then, east along State Highway 30 to its intersection with Carnelian Street; then, south along Carnelian Street to its intersection with Vineyard Avenue; then, south along Vineyard Avenue to its intersection with Holt Boulevard; then, west along Holt Boulevard to its intersection with Grove Avenue; then, south along Grove Avenue to its intersection with Mission Boulevard; then, southeast along Mission Boulevard to its intersection with Vineyard Avenue; then, southeast along Vineyard Avenue to its intersection with Riverside Drive; then, west along Riverside Drive to its intersection with Walker Avenue; then,

south along Walker Avenue to its intersection with Eucalyptus Avenue; then, west along Eucalyptus Avenue to its intersection with State Highway 83 (Euclid Avenue); then, south along State Highway 83 to its intersection with Kimball Avenue; then, west along Kimball Avenue to its intersection with El Prado Road; then, northwest along El Prado Road to its intersection with Central Avenue; then, southwest along Central Avenue to its intersection with State Highway 71; then, northwest along State Highway 71 to its intersection with Garey Avenue; then north along Garey Avenue to its intersection with College Way; then, northeast along College Way to the point of beginning.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mediterranean fruit fly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This interim rule affects the interstate movement of regulated articles from the Rosemead area of Los Angeles County, CA, the Westminster area of Orange County, CA, and the Ontario area of Los Angeles and San Bernardino Counties, CA. There are approximately 961 small entities that could be affected, including 526 retail/wholesale fruit sellers, 204 nurseries, 8 distributor/wholesalers, 1 farmers' market, 41 growers, 2 packers, 3 processors, 6 community gardens, 166 mobile vendors, and 4 swapmeets.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, most of these small entities sell regulated articles primarily for local intrastate, not interstate, movement and the sale of these articles would not be affected by this interim regulation.

The effect on those few small entities that do move regulated articles interstate from parts of the quarantined area will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost. Also, many of these entities sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities should be minimal. Further, the number of affected entities is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in California and other States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under "**FOR FURTHER INFORMATION CONTACT**".

Paperwork Reduction Act

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.78–3, paragraph (c), the designation of the quarantined areas is amended by revising the description for Los Angeles and Orange Counties and by adding an area in Los Angeles and San Bernardino Counties immediately afterward, as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *
California
* * * * *

Los Angeles and Orange Counties. That portion of the county in the Rosemead, Artesia, Pico Rivera, Walnut Park, Covina, Griffith Park, Jefferson Park, Hancock Park, Inglewood, Alhambra, Pasadena and Duarte areas beginning at the intersection of the Angeles National Forest boundary and Sage Hill Road; then north from the intersection along an imaginary line to its intersection with Brown Mountain Road at Millard Campground; then west along Brown Mountain Road to its intersection with El Prieto Road; then southwest along El Prieto Road to its intersection with the Pasadena City Limits; then north and west along the Pasadena City limits to its intersection with the La Canada Flintridge City Limits; then west and south along the La Canada Flintridge City Limits to its intersection with Foothill Boulevard; then northwest along Foothill Boulevard to its intersection with La Crescenta Avenue; then south along La Crescenta Avenue to its intersection with Shirley Jean Street; then southwest from this intersection along an imaginary line to the end of Allen Avenue; then southwest along Allen Avenue to its intersection with Mountain Street; then northwest along Mountain Street to its intersection with Sunset Canyon Drive; then northwest along Sunset Canyon Drive to its intersection with Olive Avenue; then southwest along Olive Avenue to its intersection with Barham Boulevard; then south along Barham Boulevard to its intersection with State Highway 101; then southeast along State Highway 101 to its intersection with Highland Avenue; then south along Highland Avenue to its intersection with Sunset Boulevard; then west along Sunset Boulevard to its intersection with La Cienega Boulevard; then south along La Cienega Boulevard to its intersection with Washington Boulevard; then southwest along Washington Boulevard to its intersection with Culver Boulevard; then southwest along Culver Boulevard to its intersection with Vista Del Mar; then southeast along Vista Del Mar to its intersection with Rosecrans Avenue; then east along Rosecrans Avenue to its intersection with Paramount Boulevard; then south on Paramount Boulevard to its intersection with Carson Street; then east on Carson Street to its intersection with Lakewood Boulevard; then south on Lakewood Boulevard to its intersection with Willow Street; then east on Willow Street to its intersection with Katella Avenue; then east along Katella Avenue to its intersection with Valley View Street; then, south along Valley View Street to its intersection with Bolsa Chica Road; then, south along Bolsa Chica road to its intersection with Bolsa Chica Street; then, south along Bolsa Chica Street to its intersection with Los Patos Avenue; then, southeast from this intersection along an imaginary line to the intersection of East Garden Grove Wintersburg Channel and the Bolsa Chica Ecological Reserve boundary; then, southeast along the Bolsa Chica Ecological Reserve boundary to its intersection with Ellis Avenue; then, east along Ellis Avenue to its intersection with Edwards Street; then, south along Edwards Street to its intersection with Garfield Avenue; then, east along Garfield Avenue to its intersection with North Golden West Street; then, south along North Golden West Street to its intersection with Yorktown Avenue; then, east along Yorktown Avenue to its intersection with Main Street; then, south along Main Street to its intersection with Adams Avenue; then, east along Adams Avenue to its intersection with Fairview Road; then, north along Fairview Road to its intersection with Fairview Street; then, north along Fairview Street to its intersection with Garden Grove Boulevard; then, west along Garden Grove Boulevard to its intersection with Haster Street; then, north along Haster Street to its intersection with Chapman Avenue; then, west along Chapman Avenue to its intersection with West Street; then, north along West Street to its intersection with Katella Avenue; then, west along Katella Avenue to its intersection with Western Avenue; then north on Western Avenue to its intersection with Commonwealth Avenue; then east on Commonwealth Avenue to its intersection with Beach Boulevard; then north on Beach Boulevard to its intersection with La Mirada Boulevard; then northwest and north on La Mirada Boulevard to its intersection with Colima Road; then northeast on Colima Road to its intersection with the Whittier City Limits; then northwest along the Whittier City Limits to its intersection with Turnbull Canyon Road; then north from this intersection along an imaginary line to the intersection of Interstate Highway 605 and State Highway 60; then northeast along Interstate Highway 605 to its intersection with Interstate Highway 10; then east along Interstate Highway 10 to its intersection with Francisquito Avenue; then southeast along Francisquito Avenue to its intersection with Hacienda Boulevard; then southwest along Hacienda Boulevard to its intersection with Amar Road; then east along Amar Road to its intersection with Temple Avenue; then northeast along Temple Avenue to its intersection with the Walnut City Limits; then north and northeast along the Walnut City Limits to its intersection with the Forest Lawn Memorial Park, Covina Hills boundary; then northeast along the boundary to its intersection with Interstate Highway 10; then east along Interstate Highway 10 to its intersection with Interstate Highway 210; then northwest along Interstate Highway 210 to its intersection with San Dimas Avenue; then east and north along San Dimas Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Alosta Avenue; then west along Alosta Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Azusa Avenue; then north along Azusa Avenue to its intersection with San Gabriel Canyon Road; then due north from the intersection along an imaginary line to its intersection with the Angeles National Forest boundary; then west along the boundary to the point of beginning; except that the portion of Los Angeles County bounded by a line drawn as follows is not within the area under quarantine: Beginning at the intersection of State Highway 60 and Interstate Highway 710; then west along State Highway 60 to its intersection with Interstate Highway 10; then west along Interstate Highway 10 to its intersection with Broadway; then northeast along Broadway to its intersection with Olympic Boulevard; then northwest along Olympic Boulevard to its intersection with State Highway 110; then northeast along State Highway 110 to its intersection with Bishops Road; then southeast along Bishops Road to its intersection with North Broadway; then east along North Broadway to its intersection with Interstate Highway 5; then south along Interstate Highway 5 to its intersection with Interstate Highway 10; then east along Interstate Highway 10 to its intersection with Interstate Highway 710; then south along Interstate Highway 710 to the point of beginning.

Los Angeles and San Bernardino Counties. That portion of the county in the Ontario area bounded by a line drawn as follows: Beginning at the intersection of College Way and State Highway 30 (Base Line Road); then, east along State Highway 30 to its intersection with Carnelian Street; then, south along Carnelian street to its

intersection with Vineyard Avenue; then, south along Vineyard Avenue to its intersection with Holt Boulevard; then, west along Holt Boulevard to its intersection with Grove Avenue; then, south along Grove Avenue to its intersection with Mission Boulevard; then, southeast along Mission Boulevard to its intersection with Vineyard Avenue; then, south along Vineyard Avenue to its intersection with Riverside Drive; then, west along Riverside Drive to its intersection with Walker Avenue; then, south along Walker Avenue to its intersection with Eucalyptus Avenue; then, west along Eucalyptus Avenue to its intersection with State Highway 83 (Euclid Avenue); then, south along State Highway 83 to its intersection with Kimball Avenue; then, west along Kimball Avenue to its intersection with El Prado Road; then, northwest along El Prado Road to its intersection with Central Avenue; then, southwest along Central Avenue to its intersection with State Highway 71; then, northwest along State Highway 71 to its intersection with Garey Avenue; then north along Garey Avenue to its intersection with College Way; then, northeast along College Way to the point of beginning.

* * * * *

Done in Washington, DC, this 15th day of September 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-23127 Filed 9-21-93; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 10

[Docket No. 93N-0235]

Administrative Practices and Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; updating of procedural regulations.

SUMMARY: The Food and Drug Administration (FDA) is amending its procedural regulations to update the list of sections of the Federal Food, Drug, and Cosmetic Act (the act) and other laws that afford a person who would be adversely affected by an administrative action an opportunity for a public hearing. This action reflects the enactment of recent legislation.

EFFECTIVE DATE: September 22, 1993.

FOR FURTHER INFORMATION CONTACT: Fletcher Campbell, Jr., Office of the General Counsel (GCF-1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3235.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations that list FDA proceedings to promulgate regulations and issue orders that are subject to an opportunity for a formal evidentiary public hearing. This list appears in § 10.50 (21 CFR 10.50). The agency is responding to new statutory provisions by amending the list in § 10.50 of those matters that give rise to an opportunity for formal evidentiary public hearings under 21 CFR part 12 to include: (1) only those actions for the amendment or repeal of any definitions and standards established under section 401 of the act (21 U.S.C. 341) for dairy products or maple sirup; (2) section 306 of the act (21 U.S.C. 335a) concerning debarment, debarment period and consideration, termination of debarment under section 306(d)(3) of the act, suspension and termination of suspension; and (3) until the effective date of future regulations establishing a new procedure (21 CFR part 17) for civil money penalties, sections 303(b) and (f) and 307 of the act (21 U.S.C. 333 and 337) and sections 351 and 354(h) of the Public Health Service Act (42 U.S.C. 262 and 263b(h)), concerning civil money penalties. This temporary measure concerning civil money penalties is necessary so that FDA does not have to delay implementing this enforcement tool until final promulgation of a new part 17, which, as proposed in the **Federal Register** of May 26, 1993 (58 FR 30680), is specifically tailored to the imposition of administrative civil money penalties. Part 12 procedures, though not ideally suited for civil money penalties adjudication, are usable for this purpose on a temporary basis.

These amendments reflect the most recent legislation and changes to the agency's procedures based on the above-cited statutory provisions. Because these amendments are nonsubstantive and merely conform the agency's regulations to statutory changes, notice-and-public-comment procedures and a delayed effective date are unnecessary (5. U.S.C. 553(b)(B) and (d)).

List of Subjects in 21 CFR Part 10

Administrative practice and procedure, News media.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 10 is amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR part 10 is revised to read as follows:

Authority: Secs. 201-903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321-394); 21 U.S.C. 41-50, 141-149, 467f, 679, 821, 1034; secs. 2, 351, 354, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b, 264); secs. 2-12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451-1461); 5 U.S.C. 551-558, 701-706; 28 U.S.C. 2112.

2. Section 10.50 is amended by revising paragraph (c)(1) and by adding paragraphs (c)(20) and (c)(21) to read as follows:

§ 10.50 Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing.

* * * * *

(c) * * *

(1) Section 401 on any action for the amendment or repeal of any definition and standard of identity for any dairy product (including products regulated under parts 131, 133, and 135 of this chapter) or maple sirup (regulated under § 168.140 of this chapter).

* * * * *

(20) Section 306 on debarment, debarment period and considerations, termination of debarment under section 306(d)(3), suspension, and termination of suspension.

(21) Until the effective date of a final rule adding part 17 to this chapter governing civil money penalties, sections 303(b), 303(f), and 307 of the act and sections 351(d)(2)(B) and 354b(h) of the Public Health Service Act on civil money penalties.

Dated: September 15, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-23109 Filed 9-21-93; 8:45 am]

BILLING CODE 4160-01-F

21 CFR Part 101

[Docket No. 93N-0075]

RIN 0905-AC48

Food Labeling; Declaration of Ingredients; Common or Usual Name for Nonstandardized Foods; Diluted Juice Beverages

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food labeling regulations to exempt food that purports to be a beverage that contains fruit or vegetable juice from the

requirement that the label of the food bear a statement on the information panel as to the percentage of juice contained in the food. The exemption is for 1 year. These foods will not have to bear a percent juice declaration until May 8, 1994. This action responds to requests from industry for such an exemption on the grounds that compliance with this requirement by May 8, 1993, will cause such great costs to the industry as to be impracticable and result in unfair competition.

EFFECTIVE DATE: September 22, 1993.

FOR FURTHER INFORMATION CONTACT: Nannie H. Rainey, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5007.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 6, 1993 (58 FR 2897), FDA published a final rule amending the food labeling regulations to establish in § 101.30 (21 CFR 101.30) requirements for label declaration of the percentage of juice in foods that purport to be beverages containing fruit or vegetable juice. FDA also revised the existing common or usual name regulation for diluted fruit or vegetable juice beverages in § 102.33 (21 CFR 102.33). In addition, the agency revoked the common or usual name regulation for noncarbonated beverage products that contain no fruit or vegetable juice, § 102.30 (21 CFR 102.30). This final rule was part of FDA's ongoing rulemaking on juice beverages. It also responded to the Nutrition Labeling and Education Act of 1990 (1990 amendments) (Pub. L. 101–535), which amended section 403(i)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(i)(2)) to provide that foods that purport to be beverages containing vegetable or fruit juice must bear a statement with appropriate prominence on the information panel of the label of the total percentage of such fruit or vegetable juice contained in the food.

In the final rule, FDA established May 8, 1993, as the effective date for the percent juice labeling requirements (§ 101.30) and May 8, 1994, as the effective date of the common or usual name provisions for juice products (§ 102.33). May 8, 1994, was also the effective date for most of the other food labeling regulations published in the **Federal Register** of January 6, 1993, in response to the 1990 amendments including mandatory nutrition labeling.

After publication of the final rule, FDA received several requests from industry to provide a temporary exemption from the May 8, 1993, effective date for percent juice labeling. One of the requests included information obtained in an industry survey on the costs and other effects that would result from the effective date for percent juice labeling. Other requests contained similar information on the costs and problems associated with complying with the effective date.

The agency reviewed the information and tentatively concluded that a temporary exemption was warranted. Such an exemption would allow manufacturers sufficient time to redesign their labels to comply with the new juice labeling requirements and to add nutrition labeling at the same time, thereby reducing the costs and the unfair competitive aspects of the earlier May 8, 1993, effective date.

II. The Proposal

In the **Federal Register** of April 7, 1993 (58 FR 18057), the agency proposed to amend § 101.30 by adding a new paragraph (m) which would exempt juice beverages from the requirement for label declaration of the percentage of juice until May 8, 1994. The agency proposed that the exemption would apply to all products that were labeled before May 8, 1994.

FDA tentatively concluded that such an action would reduce the unfair competitive effects of the regulation and would allow all segments of the beverage industry to compete on an equitable basis. Further, the agency stated in the proposal (58 FR 18057 at 18061) that it did not believe that the delay in effective date would result in a significant reduction in consumer benefits to be derived from this regulation. Thus, FDA tentatively concluded that a temporary exemption from the May 8, 1993, effective date under section 403(i) of the act based on impracticability and unfair competition is warranted.

Because of the imminence of the May 8, 1993, effective date, FDA stated in the proposed rule that, if adopted, the temporary exemption would become effective on the date of publication of the final rule in the **Federal Register**. Interested persons had until May 7, 1993, to submit comments.

III. Comments

In response to the April 7, 1993, proposal, FDA received 24 letters, containing one or more comments, from trade associations, juice processors, food manufacturers and distributors, and a State agency. All of the comments supported the proposed 1-year exemption from the percent juice labeling requirements. The comments maintained that the exemption would result in substantial cost savings and would enable the industry to avoid massive noncompliance because of a lack of capacity of package and label suppliers to provide sufficient quantities of new labels by the 1993 effective date. They stated that the exemption would also allow manufacturers of juice beverages to remain competitive with manufacturers of other beverages who would not be required to bear the cost of relabeling their products twice in 1 year, once for percentage juice declaration and then again for mandatory nutrition information labeling.

Based upon its review of the comments and on other available information, FDA concludes that a 1-year exemption under section 403(i) of the act from the requirements of percent juice labeling on beverages that purport to contain fruit or vegetable juice, based on impracticability and unfair competition, is warranted. Thus, as proposed, FDA is amending § 101.30 to provide an exemption from percentage juice declaration until May 8, 1994. All juice products that are labeled on or after that date will be subject to the percentage juice declaration requirement.

The exemption will become effective on the date of publication of this final rule in the **Federal Register**. FDA finds that there is good cause to waive the 30-day delayed effective date because of the need to clarify as quickly as possible the obligation of firms with respect to the percent juice declaration requirement.

IV. Economic Impact

FDA has examined the economic implications of this final rule to provide an exemption from the May 8, 1993, effective date of the percent juice labeling regulation in § 101.30 according to the standard in Executive Order 12291 and as required by the Regulatory Flexibility Act (Pub. L. 96–354).

FDA noted in the proposed rule that providing for the exemption from the requirement for a period of 1 year, until May 8, 1994, would reduce the costs of label changes significantly. Manufacturers will be able to coordinate these label changes with other label changes, such as mandatory nutrition labeling which also become effective on May 8, 1994. In the proposal, the agency determined that the incremental costs for label declaration of the percentage of juice to be $52 million. However, FDA tentatively concluded that the cost that manufacturers of juice products would incur under the 1-year exemption until

May 8, 1994, would be reduced to $1 million. FDA has not received any comments or new information that would alter its determination.

Therefore, the agency concludes that this final rule is not a major rule as defined by Executive Order 12291. In addition, in accordance with the Regulatory Flexibility Act, FDA has determined that this final rule would not have a significant adverse impact on a substantial number of small businesses.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART—101 FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.30 is amended by adding new paragraph (m) to read as follows:

§ 101.30 Percentage juice declaration for foods purporting to be beverages that contain fruit or vegetable juice.

* * * * *

(m) Products purporting to be beverages that contain fruit or vegetable juices are exempted from the provisions of this section until May 8, 1994. All products that are labeled on or after that date shall comply with this section.

Dated: August 31, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 93-23181 Filed 9-21-93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 4

Labor Standards for Federal Service Contracts

AGENCY: Wage and Hour Division, Labor.

ACTION: Administrative variance from final rules; request for comments.

SUMMARY: This document sets forth an administrative variance being adopted by the Department of Labor as an interim measure for updating, on a one-time basis, determinations of prevailing wages and fringe benefits issued for Federal service contracts under the McNamara-O'Hara Service Contract Act. Public comment on this variance is requested.

DATES: This variance is effective September 22, 1993. Comments are due on or before October 4, 1993.

ADDRESSES: Submit written comments to Maria Echaveste, Administrator, Wage and Hour Division, U.S. Department of Labor, room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. As a convenience to commenters, comments may be transmitted by facsimile ("FAX") machine to (202) 219-5122. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S-3506, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 219-8412. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The McNamara-O'Hara Service Contract Act of 1965 (SCA), as amended, 41 U.S.C. 351 *et seq.*, provides that contracts entered into by agencies of the Federal and District of Columbia governments that are in excess of $2,500 which are principally for the furnishing of services in the United States through the use of service employees shall contain provisions specifying the minimum monetary wages and fringe benefits to be paid to the various classes of service employees engaged in performing work under such contracts, as determined by the Department of Labor to be prevailing in the locality where the work is performed. Prevailing wage determinations issued under SCA are based for the most part on Area Wage Surveys conducted by the Department of Labor's Bureau of Labor Statistics (BLS), which are typically conducted on a biennial basis and provide information on wages by Metropolitan Statistical Area (MSA) and occupational classification.

BLS surveys conducted over the past year would ordinarily be used to update SCA wage determinations as each survey is received. Under this process, the wages paid to service workers are based on wage determinations that reflect the most current prevailing wage information, which typically results in adjusted wage rates at the time newly competed contracts commence or when contract options or contract extensions are exercised for new periods of performance. However, due to the complexities and additional data included in many of these new BLS surveys, and other circumstances, the Wage and Hour Division has not been able to complete its required analyses of many such surveys to enable updates to be accomplished on a locality-by-locality basis for all existing wage determinations potentially affected by the new BLS area surveys. Therefore, without taking extraordinary measures, as set forth below, the Department will be unable to provide employees with wage increases consistent with SCA's statutory intent.

Section 4(b) of the SCA authorizes the Secretary to provide reasonable limitations and allow reasonable variations, tolerances, and exemptions to and from any or all provisions of the Act in special circumstances where such action is necessary and proper in the public interest or to avoid the serious impairment of Government business and is in accord with the remedial purpose of the Act to protect prevailing labor standards.

Accordingly, the Department intends to vary the normal procedure for updating certain wage determinations that have not already been updated by BLS area surveys in the current year by adjusting the existing locality-based prevailing wage rates by the BLS-determined Employment Cost Index (ECI) for June 1993, which reflects a national prevailing increase in wages and salaries for civilian workers over the previous year of 2.8 percent. The use of the overall 2.8 percent increase in wage levels will be limited as a temporary, interim measure until subsequent updates of existing wage determinations are accomplished as a result of completing the analyses of occupational wage rates reported in the BLS surveys that have been conducted during the past year. Pursuant to this variance, the wage rates adopted in existing wage determinations for various

classes of service employees, excluding those already updated by BLS area surveys in the current year and those issued pursuant to section 4(c) of the Act that are based on collective bargaining agreements, are to be increased by 2.8 percent on a one-time basis.

Pursuant to section 4(b) of the SCA and § 4.123 of the SCA Regulations, 29 CFR part 4, the Department of Labor hereby adopts a variance to section 2(a) of the Act and Regulations, 29 CFR part 4, including §§ 4.51 and 4.53, to permit temporary updating of SCA wage determinations for the upcoming cycle of procurements in fiscal year 1994, which variance the Secretary of Labor finds to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business and is in accord with the remedial purpose of the Act to protect prevailing labor standards.

Under § 4.123 of Regulations, 29 CFR part 4, variations of general applicability and legal effect promulgated under section 4(b) of the SCA are published in the **Federal Register**. This document provides for an administrative variance of temporary effect affecting SCA wage determinations. Moreover, notice-and-comment rulemaking procedures may be waived when an agency for good cause finds that such procedure is impracticable or contrary to the public interest. Given the large number of contracts subject to the SCA which are due updated wage determinations before October 1, 1993, and recognizing that insufficient time exists to update such wage determinations on a timely basis by October 1, 1993, based on the existing BLS area wage surveys that have not yet been analyzed, the Department finds that notice and comment is both impracticable and contrary to the public interest. Public comment is nevertheless invited on this action and will be considered in any subsequent decisions to modify the application of the variance.

Executive Order 12291

This administrative variance relating to agency procedures for updating SCA wage determinations does not constitute a major rule within the meaning of Executive Order 12291 and does not, therefore, require the preparation of a regulatory impact analysis. SCA wage determinations are ordinarily updated based on BLS area surveys. The difference in the determined amounts based on BLS area surveys and the BLS-determined ECI national rate of 2.8 percent would not, in any event, result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Department has determined that this administrative variance relating to agency procedures for updating SCA wage determinations is not a rule under the Regulatory Flexibility Act that will have a significant economic impact on a substantial number of small entities. The variance only temporarily modifies existing procedures for updating prevailing SCA wage determinations, which will be overtaken by the completion of analyses of BLS area surveys and subsequent revision of affected wage determinations. The Secretary of Labor has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration. Therefore, no regulatory flexibility analysis is required.

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 4

Administrative practice and procedures, Employee benefit plans, Government contracts, Investigations, Labor, Law enforcement, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, Wages.

Signed in Washington, DC, on this 20th day of September 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93-23390 Filed 9-21-93; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1222 and 1230

RIN 3095-AA22

Micrographic Records Management

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: NARA is revising its micrographic records management regulations to update micrographic standards, to establish agency micrographic program responsibilities, to modify coverage of temporary records, and to clarify inspection provisions. This rule was developed during a review to identify incomplete or outdated provisions in NARA regulations. This regulation will affect Federal agencies.

EFFECTIVE DATE: October 22, 1993. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 22, 1993.

FOR FURTHER INFORMATION CONTACT: Call Mary Ann Hadyka or Nancy Allard on 202-501-5110.

SUPPLEMENTARY INFORMATION: NARA published a notice of proposed rulemaking on December 2, 1992 (57 FR 57042). Comments were received from a Federal agency, a micrographic industry association, and two companies that manufacture micrographic products. A discusion of these comments follows:

All four commenters expressed concern over the proposal to eliminate aperture cards as a format for permanent and unscheduled records. The Federal agency believed that it would be costly and impractical to refilm records that were already in aperture card format and urged that the ban not be applied to records in existence before the final rule is promulgated. The association noted that in many aperture card applications, no 35mm roll film is created because the aperture card camera creates an aperture card, not roll film. Addressing NARA's concern that the paper stock and adhesive used in aperture cards could adversely affect the microfilm image, the two micrographic companies stated that aperture cards meeting the requirements in ANSI IT9.2-1991 would not harm microfilm.

After reviewing the specifications in ANSI IT9.2-1991, we have decided to modify § 1230.12(d)(1)(i) to allow aperture cards that meet ANSI IT9.2-1991 to be used for permanent and unscheduled records.

One commenter had three additional recommendations. The first recommendation was to incorporate in part 1230 provisions for audits and correction cycles to ensure compliance with the regulation. NARA regulations at 36 CFR part 1220, subpart C provide for both NARA and internal agency evaluations of records management programs, including the micrographics program. The second recommendation

was to require agencies to register with NARA the title of the person responsible for managing micrographic records within the agency. This requirement is contained in § 1222.20(b)(1) which was part of the proposed rule. We do not believe it is necessary to restate the requirement in part 1230. The third recommendation was that NARA fund studies to obtain empirical data on the issue of the proper relative humidity for extended term storage. We are continuing to review the issue raised in the proposed rule: whether lowering the relative humidity of storage areas where older microfilm is stored to the level specified in the standard would adversely affect such film. We do not plan to fund further studies at this time because other research on the "best" relative humidity has concluded that determining the proper relative humidity is a complex decision based on such variables as the use characteristics of the holdings (items kept in cold/dry conditions ideal for chemical stability are highly susceptible to physical damage from handling due to their higher degree of brittleness under these conditions) and the trade-offs between increased chemical stability vs. costs and practicality vs. potential adverse physical changes to older, deteriorated film materials.

In addition to the modification to § 1230.12(d)(1)(i) to allow aperture cards that meet the ANSI IT9.2–1991 standard for film enclosures, we have made other minor changes to the proposed rule. We have restored the ANSI/AIIM MS32–1987 filming standard for aperture card format and an updated ANSI/AIIM MS41–1990 standard for aperture cards to the list of publications incorporated by reference in § 1230.3. The citation for the standard ANSI IT9.1–1991 has been corrected to read ANSI/NAPM IT9.1–1992 throughout the regulation. Section 1230.22(a)(1) has been clarified to cover all microforms scheduled to be transferred to the National Archives; the previous wording did not clearly include microform copies in instances where both the microform and another format are scheduled for transfer to the National Archives. Section 1230.26(a) has been reworded to reflect that unscheduled records do not have scheduled transfer dates. All other provisions of the proposed rule are adopted in this final rule as proposed.

This is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. In accordance with the Regulatory Flexibility Act, I hereby certify that this rule will not have a significant impact on small entities.

List of Subjects

36 CFR Part 1222

Archives and records.

36 CFR Part 1230

Archives and records, Incorporation by reference, Micrographics.

For the reasons set forth in the preamble, chapter XII of title 36 of the Code of Federal Regulations is amended as follows:

PART 1222—CREATION AND MAINTENANCE OF RECORDS; ADEQUATE AND PROPER DOCUMENTATION

1. The authority citation for part 1222 continues to read as follows:

Authority: 44 U.S.C. 2904, 3101, and 3102.

2. In § 1222.20, paragraph (b)(1) is revised to read as follows:

§ 1222.20 Agency responsibilities.

* * * * *

(b) * * *

(1) Assign to one or more offices of the agency the responsibility for the development and implementation of agencywide programs to identify, develop, issue, and periodically review recordkeeping requirements for all agency activities at all levels and locations and for all media, including paper, microform, audiovisual, cartographic, and electronic records; and notify the Office of Records Administration (NI), National Archives and Records Administration, Washington, DC 20408 of the assignment.

* * * * *

PART 1230—MICROGRAPHIC RECORDS MANAGEMENT

3. The authority citation for part 1230 continues to read as follows:

Authority: 44 U.S.C. 2907, 3302, and 3312.

4. Section 1230.1 is revised to read as follows:

§ 1230.1 Scope of part.

This part provides standards for using micrographic technology in the creation, use, storage, inspection, retrieval, preservation, and disposition of Federal records.

5. Section 1230.3 is revised to read as follows:

§ 1230.3 Publications incorporated by reference.

(a) *General.* The following publications cited in this section are hereby incorporated by reference into Part 1230. They are available from the issuing organizations at the addresses listed in this section. They are also available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. These materials are incorporated as they exist on the date of approval, and a notice of any change in these materials will be published in the **Federal Register**.

(b) *American National Standards Institute (ANSI and International (ISO) standards.* ANSI and ISO standards cited in this part are available from the American National Standards Institute, 11 West 42nd St., New York, NY 10036.

ANSI/NAPM IT9.1–1992, American National Standard for Imaging Media (Film)—Silver-Gelatin Type—Specifications for Stability.

ANSI IT9.2–1991, American National Standard for Imaging Media—Photographic Processed Films, Plates, and Papers—Filing Enclosures and Storage Containers.

ANSI IT9.11–1991, American National Standard for Imaging Media—Processed Safety Photographic Film—Storage.

ANSI IT2.19–1990, American National Standard for Photography—Density Measurements—Geometric Conditions for Transmission Density.

ANSI/ISO 5/3–1984, ANSI PH2.18–1985, Photography (Sensitometry)—Density Measurements—Spectral Conditions.

(c) *Association of Information and Image Management (AIIM) Standards.* The following AIIM standards are available from the Association of Information and Image Management, 1100 Wayne Avenue, suite 1100, Silver Spring, MD 20910. AIIM standards that are identified as Federal Information Processing Standards (FIPS) are also available from the address shown in paragraph (d).

ANSI/AIIM MS1–1988, Recommended Practice for Alphanumeric Computer-Output Microforms—Operational Practices for Inspection and Quality Control. (FIPS 82).

ANSI/AIIM MS5–1991, Microfiche. (FIPS 54–1).

ANSI/AIIM MS14–1988, Specifications for 16mm and 35mm Roll Microfilm. (FIPS 54–1).

ANSI/AIIM MS19–1987, Recommended Practice for Identification of Microforms.

ANSI/AIIM MS23–1991, Practice for Operational Procedures/Inspection and Quality Control of First-generation, Silver Microfilm of Documents.

ANSI/AIIM MS32–1987, Microrecording of Engineering Source Documents on 35mm Microfilm.

ANSI/AIIM MS41–1988, Unitized Microfilm Carriers (Aperture, Camera, Copy, and Image Cards).

ANSI/AIIM MS43–1988, Recommended Practice for Operational Procedures/Inspection and Quality Control for Duplicate Microforms of Documents and From COM.

ANSI/AIIM MS45–1990, Recommended Practice for Inspection of Stored Silver-Gelatin Microforms for Evidence of Deterioration.

ANSI/ISO 3334–1991, ANSI/AIIM MS51–1991, Micrographics—ISO Resolution Test Chart No. 2—Description and Use.

(d) *National Institute of Standards and Technology (NIST) publications.* The following publication is available from the National Institute of Standards and Technology, Office of Standard Reference Materials, Rm. B311 Chemistry, Gaithersburg, MD 20899.

NIST–SRM 1010a, Microcopy Resolution Test Chart (ISO Test Chart No. 2), certified June 1, 1990.

6. In § 1230.4, the definitions of *Archival storage conditions* and *Long-term Film* are removed, the definitions of *Background density* and *Computer-assisted retrieval (CAR) system* are added in alphabetical order, and the definition of *Archival microfilm* is revised to read as follows:

§ 1230.4 Definitions.

* * * * *

Archival microfilm. A photographic film that meets the standards described in § 1230.14 and that is suitable for the preservation of permanent records when stored in accordance with § 1230.20(a). Such film must conform to film designated as LE 500 in ANSI/NAPM IT9.1–1992.

Background density. The opacity of the area of the microform not containing information.

Computer-assisted retrieval (CAR) system. A records storage and retrieval system, normally microfilm-based, that uses a computer for indexing, automatic markings such as blips or bar codes for identification, and automatic devices for reading those markings and, in some applications, for transporting the film for viewing.

* * * * *

7. Subparts B, C, and D are redesignated as subparts C, D, and E, respectively, and a new subpart B, consisting of new § 1230.7, is added to read as follows:

Subpart B—Program Requirements

§ 1230.7 Agency responsibilities.

The head of each Federal agency must ensure that the management of microform records incorporates the following elements:

(a) Assigning responsibility to develop and implement an agencywide program for managing all records on microform media and notifying the National Archives and Records Administration (NI), Washington, DC 20408 of the name and title of the person assigned the responsibility.

(b) Integrating the management of microform records with other records and information resources management programs of the agency.

(c) Incorporating microform records management objectives, responsibilities, and authorities in pertinent agency directives and disseminating them throughout the agency as appropriate.

(d) Establishing procedures for addressing records management concerns, including recordkeeping and disposition requirements, before approving new microform records systems or enhancements to existing systems.

(e) Ensuring that adequate training is provided for the managers and users of microform records.

(f) Developing and securing NARA approval of records schedules covering microform records, and ensuring proper implementation of the schedule provisions.

(g) Ensuring that computerized indexes associated with microform records, such as in a computer-assisted retrieval (CAR) system, are scheduled in accordance with part 1234 of this chapter.

(h) Reviewing the agency's program periodically to ensure compliance with NARA standards in this part for the creation, storage, use, inspection, and disposition of microform records.

8. In § 1230.12, paragraphs (d)(1)(i) and (d)(2) are revised to read as follows:

§ 1230.12 Preparatory steps prior to filming.

* * * * *

(d) * * *

(1) * * *

(i) *Source documents.* The formats described in ANSI/AIIM MS14–1988 must be used for microfilming source documents on 16mm and 35mm roll film. A reduction ratio no greater than 1:24 is recommended for typewritten or correspondence types of documents. See ANSI/AIIM MS23–1991 for determining the appropriate reduction ratio and format for meeting the image quality requirements. When microfilming on 35mm film for aperture card applications, the format dimensions in ANSI/AIIM MS19–1987, Table 1 are mandatory, the aperture card format "D Aperture" shown in ANSI/AIIM MS41–1988, Figure 1, must be used. The components of the aperture card, including the paper and adhesive, must conform to the requirements of ANSI IT9.2–1991. The 35mm film used in the aperture card application must conform to film designated as LE500 in ANSI/NAPM IT9.1–1992.

* * * * *

(2) *Microfiche.* For microfilming source documents or computer generated information (COM) on microfiche, the appropriate formats and reduction ratios prescribed in ANSI/AIIM MS5–1990 must be used as specified for the size and quality of the documents being filmed. See ANSI/AIIM MS23–1991 for determining the appropriate reduction ratio and format for meeting the image quality requirements.

* * * * *

§ 1230.14 [Amended]

9. In the list below, for each paragraph in § 1230.14 indicated in the left column, the references indicated in the middle column are removed and the references indicated in the right column are added in their place:

Paragraph	Remove	Add
1230.14(c)	ANSI IT9.1–1989.	ANSI/NAPM IT9.1–1992.
	ANSI/AIIM MS23–1983.	ANSI/AIIM MS23–1991.
1230.14(d)(1)(i)	ANSI/AIIM MS23–1983.	ANSI/AIIM MS23–1991.
	ANSI/ISO 3334–1989.	ANSI/ISO 3334–1991.
1230.14(d)(2) ..	ANSI/AIIM MS23–1983.	ANSI/AIIM MS23–1991.
	ANSI/ISO 5/2–1985.	ANSI IT2.19–1990.

10. In § 1230.14, paragraphs (a) and (b) are revised to read as follows:

§ 1230.14 Film and image requirements for permanent records and unscheduled records.

(a) *Application.* The following standards apply to the microfilming of permanent records where the original paper record will be destroyed or otherwise disposed of. Systems that produce original permanent records on microfilm with no paper originals, such as computer output microfilm (COM), must be designed so that they produce microfilm which meets the standards of this section. Unscheduled records from systems such as COM must also meet the standards of this section. Prior NARA approval of a SF 115 is required before unscheduled paper records are disposed of after microfilming.

(b) *Film stock standards.* Only polyester-based silver gelatin type film that conforms to ANSI/NAPM IT9.1–

1992 for LE 500 film must be used in all applications.

* * * * *

10. Section 1230.16 is revised to read as follows:

§ 1230.16 Film and image requirements for temporary records, duplicates, and user copies.

(a) *Temporary records with a retention period over 99 years.* Agencies must follow the film and image requirements in § 1230.14.

(b) *Other temporary records.* Agencies must select an appropriate film stock that meets agency needs for temporary microforms to be kept for less than 100 years and ensures the preservation of the microforms for their full retention period. NARA does not require use of particular standards for processing microfilm of such temporary records; agencies may consult appropriate ANSI standards or manufacturer's instructions.

11. Section 1230.20 is revised to read as follows:

§ 1230.20 Storage.

(a) *Permanent and unscheduled records.* The extended term storage conditions specified in ANSI IT9.11–1991 and ANSI IT9.2–1991 are required for storing permanent and unscheduled microform records, except that the relative humidity of the storage area must be a constant 35% RH, plus or minus 5%. Non-silver copies of permanent or unscheduled microforms must not be stored in the same storage area as silver gelatin originals or duplicate copies.

(b) *Temporary records.* Temporary microform records must be stored under conditions that will ensure their preservation for their full retention period. Agencies may consult ANSI IT9.11–1991 and ANSI IT9.2–1991 to determine appropriate storage conditions; however, NARA does not require adherence to this standard for temporary records.

12. In § 1230.22, paragraphs (a)(1), (a)(4)(i), and (a)(5) are revised, paragraph (a)(6) is removed, paragraphs (a)(7) and (a)(8) are redesignated paragraphs (a)(6) and (a)(7), and newly redesignated paragraph (a)(7) is revised to read as follows:

§ 1230.22 Inspection.

(a) *Permanent and unscheduled records.*

(1) Master films of permanent records microfilmed in order to dispose of the original records, master films of permanent records originally created on microfilm, and other master films scheduled for transfer to the National Archives, must be inspected by the agency creating the film when the films are 2 years old and, until they are transferred to a Federal records center or to the National Archives, every 2 years thereafter. The inspection must be made in accordance with ANSI/AIIM MS45–1990.

* * * * *

(4) * * *

(i) An inspection for aging blemishes following ANSI/AIIM MS45–1990;

* * * * *

(5) An inspection report must be prepared, and a copy must be furnished to NARA in accordance with § 1230.26(b). The inspection report must contain:

(i) A summary of the inspection findings, including:

(A) A list of batches by year that includes the identification numbers of microfilm rolls and microfiche in each batch;

(B) The quantity of microforms inspected;

(C) An assessment of the overall condition of the microforms;

(D) A summary of any defects discovered, e.g., redox blemishes or base deformation; and

(E) A summary of corrective action taken.

(ii) A detailed inspection log created during the inspection that contains the following information:

(A) A complete description of all records inspected (title; roll or fiche number or other unique identifier for each unit of film inspected; security classification, if any; and inclusive dates, names, or other data identifying the records on the unit of film);

(B) The date of inspection;

(C) The elements of inspection (see subparagraph (a)(4) of this section);

(D) Any defects uncovered; and

(E) The corrective action taken.

* * * * *

(7) Inspection must be performed in an environmentally controlled area in accordance with ANSI/AIIM MS45–1990.

* * * * *

13. Section 1230.24(a) is revised to read as follows:

§ 1230.24 Use of permanent or unscheduled microform records.

(a) The silver gelatin original microform or duplicate silver gelatin microform created in accordance with § 1230.14 of this part (archival microform) must not be used for reference purposes. Duplicates must be used for reference and for further duplication on a recurring basis or for large-scale duplication, as well as for distribution of records on microform. Agency procedures must ensure that the archival microform remains clean and undamaged during the process of making a duplicating master.

* * * * *

14. Section 1230.26(a) is revised to read as follows:

§ 1230.26 Disposition of microform records.

* * * * *

(a) The silver gelatin original (or duplicate silver gelatin microform created in accordance with § 1230.14) plus one microform copy of each permanent record microfilmed by an agency, must be transferred to an approved agency records center, the National Archives of the United States, or to a Federal records center, at the time that the records are to be transferred in accordance with the approved records disposition schedule, SF 258, or other authorization for transfer. Non-silver copies must be packaged separately from the silver gelatin original or silver duplicate microform copy and labeled clearly as non-silver copies.

* * * * *

Dated: August 24, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–23147 Filed 9–21–93; 8:45 am]

BILLING CODE 7515–01–W

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AG54

Veterans Education; Flight Training

AGENCY: Department of Veterans Affairs.

ACTION: Interim final regulations with request for public comment.

SUMMARY: These amended regulations permit pilot flight training pursuant to 14 CFR part 61, conducted in flight simulators to be approved for purposes of VA (Department of Veterans Affairs) administered education benefits when such training is authorized by the FAA (Federal Aviation Administration). These regulations also provide for approval of solo flight training for such education benefits purposes, as authorized by the Veterans Benefits Act of 1992.

EFFECTIVE DATE: The amendments to §§ 21.4263(g)(1), 21.4263(g)(4), 21.4263(g)(4)(i) and new paragraph (h)(1)(iii) of § 21.4263 are effective September 30, 1990. All other

amendments to the regulations included here are effective October 1, 1992. Comments must be received on or before October 22, 1993. Comments will be available for public inspection until November 1, 1993.

ADDRESSES: All written comments concerning these proposed regulations should be addressed to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until November 1, 1993.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202–233–2092.

SUPPLEMENTARY INFORMATION: To ensure that flight training would achieve the end of qualifying the individual for employment in the aviation industry, VA regulation § 21.4263 has long restricted approval training in two ways: (1) The entity providing the training must have a pilot school or provisional pilot school certificate issued by the FAA under part 141, 14 CFR (§ 21.42639g)); and (2) the training being offered must meet the FAA requirements of either part 141, in the case of pilots, or part 63, in the case of flight crew members other than pilots (§ 21.4263(g)(3)(ii)). Thus, the individual is assured of the quality of the training and its ability to enable him or her to meet FAA standards for an appropriate certificate or rating in areas relevant to commercial aviation.

Traditionally, the training authorized by the FAA for these purposes largely has been training in which the individual learning to pilot an aircraft, for example, must amass certain hours of actual in-flight operation of the aircraft to be flown. However, particularly in the area of modern commercial air travel, large aircraft used cannot be economically operated for training purposes and, even if so used, would not expose the trainee to all of the operation circumstances likely to arise in actual use over time. As a substitute, modern technology has created flight simulators which, at considerably less expense, can provide superior training to persons seeking to become commercial airline pilots. These devices can simulate flight scenarios which only occur infrequently in actual flight operation and, thus, afford each student the opportunity to experience such events and respond.

VA notes that current aviation industry practice makes extensive use of flight simulators for training, particularly in training new commercial airline pilots to operate the large jet aircraft used by the major commercial airlines. VA also notes that this practice is recognized by the FAA which, by a grant of exemption, permits qualified entities to offer substantial portions of flight training for pilots under part 61, 14 CFR, via simulator. Moreover, VA believes that students who receive such flight training via simulators are provided skills that enhance success in obtaining a job in the field of aviation with the major air carriers. Thus, permitting the approval of VA education benefits for flight simulators should, under such circumstances, increase the number of veterans who obtain the higher skilled and higher paying jobs in aviation.

The amendments contained herein are intended to conform VA rules to FAA rules and practice in regard to similar training. However, merely amending the portion of the VA rule dealing with the nature of the training to include the simulator training authorized under appendix A, part 61, 14 CFR, would not fully achieve the objective since many of the entities receiving a Grant of Exemption letter to use simulators for training under the part are not certified as either pilot or provisional pilot schools under part 141 as required by § 21.4263(g). Therefore, VA is amending its definition of "flight school" to include entities known as air carriers and flight training centers, whether or not certified under part 141, which have received a Grant of Exemption letter from the FAA to offer training via simulator under part 61 in lieu of the real-time training otherwise required. Such exemptions are only authorized by the FAA when simulator training is deemed to be an appropriate substitute. The grant of exemption reflects FAA recognition both that the entity offering the simulator training is providing instruction similar in quality to that provided by schools certificated under Part 141 and that the training is acceptable for purposes of obtaining a pilot certification or rating.

Since most major airlines now consider simulator training a prerequisite to employment as a pilot of large commercial aircraft, VA believes that approving such training for VA educational assistance program purposes will enhance the opportunity for veterans-trainees to qualify for such employment. Without VA education benefits, veterans may be denied access to this training and the competitive advantage it gives to obtaining employment in the aviation industry.

A second issue is addressed in these amendments. The Veterans Benefits Act of 1992, Public Law 102–568, contains a provision which now allows eligible veterans and servicemembers to receive educational assistant allowance for pursuing solo flight training. Therefore, these amendments contain provisions governing such flight training.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because those provisions governing solo flight training affect only individuals. While the amended regulations governing flight training in a flight simulator will directly affect some small entities, VA does not believe that they will affect a substantial number of them. Most of the schools or entities which now will be able to seek approval are under the control of the major airlines. These airlines would not qualify as small entities. Furthermore, the economic impact on the few small entities that would qualify to seek approval for additional training would be positive since there may be additional veterans who would pursue the courses offered by those small entities. VA does not think that this would be a significant economic impact since the number of veterans enrolling in any course would probably be small.

VA finds that the Administrative Procedures Act allows a retroactive effective date for these amended regulations. The amended regulations governing flight training in flight simulators contain only liberalizing provisions which relieve a restriction

imposed on the approval of flight courses.

Furthermore, the department is aware that although the regulations did not permit approval of courses offered pursuant to 14 CFR part 61 some courses have been approved due to a misunderstanding as to the nature of some of these courses and some veterans have recieved educational assistance for pursuing them. Since, in these cases, FAA-approved training of the kind covered by these regulations was provided based on administrative approval of the courses, VA believes it appropriate that this promulgation of regulations also ratify such course approvals. Accordingly, VA is making the amendments to §§ 21.4263(g)(1), 21.4263(g)(4), 21.4263(g)(4)(i) and the new paragraph 21.4263(h)(1)(iii) effective September 30, 1990, which is the same as the effective date for the earliest of these approvals.

The Department of Veterans Affairs finds that good cause exists for making the amendments to remaining regulations, like the provisions of law they implement, retroactively effective on October 1, 1992.

It is necessary to implement these provisions of law as soon as possible. These provisions are intended to achieve a benefit of the individual. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a delayed effective date would be contrary to statutory design, would complicate administration of these provisions of law; and might result in the denial of a benefit to someone who is entitled to it.

VA also finds that good cause exists for making these amended regulations final with a request for public comment rather than first including them in a Notice of Proposed Rulemaking. VA believes that it would be contrary to the public interest to delay the implementation of these amended regulations, not only because a few of these courses have already been approved, but also because the department recognizes the importance of veterans being trained in courses which will allow them to reach their vocational objectives. Not to make these amended regulations final would deprive a significant segment of an industry of the opportunity to train veterans under the educational programs VA administers.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this proposal are 64.120, 64.124 and 12.609.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 18, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subpart D is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36

1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In § 21.4263 paragraphs (g)(3), (g)(2), (g)(1) and the introductory text of paragraph (g) are redesignated paragraphs (g)(4), (g)(3), (g)(2) and (g)(1) respectively; newly redesignated paragraphs (g)(1), (g)(4) introductory text and (g)(4)(ii) are revised; paragraph (h)(1) is revised; paragraphs (h)(3)(i) and (h)(3)(ii) are revised; paragraph (h)(4)(i) introductory text is revised and paragraph (h)(4)(iii) and its authority citation are added; and the introductory text of paragraph (i) is revised to read as follows:

§ 21.4263 Flight training—38 U.S.C. chapter 30 and 10 U.S.C. chapter 106.

* * * * *

(g) *Requirements for approval.* (1) For the purposes of this part, a flight course may be approved only if it is offered by a flight school. A flight school is a school or entity which meets one of the following sets of requirements.

(i) The FAA has issued the school or entity either a pilot school certificate or a provisional pilot school certificate specifying each course the school is approved to offer under 14 CFR part 141. Thus, a military aero club, air carrier or institution of higher learning with the proper certificate is a flight school.

(ii) The entity is either a Flight Training Center or an Air Carrier which does not have a pilot school or provisional pilot school certificate issued by the FAA under 14 CFR part 141, but pursuant to a Grant of Exemption letter issued by the FAA, is permitted to offer pilot training by a flight simulator instead of by use of actual aircraft.

* * * * *

(4) Except as provided in paragraph (g)(3) of this section, no private pilot, student pilot, recreational pilot or test course may be approved by the appropriate State approving agency. Other flight courses of a flight school may be approved if the school has submitted a written application and the State approving agency determines that all of the following requirements are met:

* * * * * *

(ii) The course meets the requirements of 14 CFR parts 63 or 141, and is offered by a flight school described in paragraph (1)(i) of this section; or meets the requirements of 14 CFR part 61 and is offered in whole or in part by a flight simulator pursuant to a grant of exemption letter issued by the FAA to the flight school offering the course.

* * * * *

(h) *Hourly limitations.* * * *

(1) *Flight or flight simulator instruction.* Except as provided in paragraph (h)(4) of this section, the maximum number of hours of flight instruction or flight simulator instruction which may be approved for a flight course shall not exceed the number determined by this paragraph.

(i) The maximum number of hours of solo flight instruction shall not exceed the minimum number of hours required for the course provided by FAA regulations.

(ii) The maximum number of hours of dual flight instruction shall not exceed the lesser of—

(A) The number of hours of dual flight instruction in the course outline approved by the FAA, or

(B) 120% of the minimum number of hours of dual flight instruction required for the course by FAA regulations.

(iii) The maximum number of approvable hours for a course offered in whole or in part by flight simulator may not exceed the number of hours in the FAA-approved outline.

(Authority: 38 U.S.C. 3032(f), 3231(f); 10 U.S.C. 2131(g))

* * * * *

(3) *Preflight briefings and postflight critiques.* * * *

(i) If these hours are on the FAA-approved outline, the maximum number of hours of preflight briefings and postflight critiques shall not exceed the number of hours on the outline exclusive of the preflight briefings and post-flight critiques which are attributable to solo flying hours that exceed the minimum number of solo flying hours for the course in 14 CFR part 141.

(ii) If these hours are not on the FAA-approved outline, they may not be

approved unless the State approving agency finds that the briefings and critiques are an integral part of the course and do not precede or follow solo flying hours which exceed the minimum number of solo flying hours for the course in 14 CFR part 141. The maximum number of hours of preflight briefings and postflight critiques which may be approved for these courses may not, when added together, exceed 25 percent of the approved hours of flight instruction.

(Authority: 38 U.S.C. 3002, 2452(b); 10 U.S.C. 2131)

(4) *Waiver of limitation in approvable course hours.* (i) Flight schools that wish to have a greater number of hours of dual flight instruction approved than are permitted by paragraph (h)(l)(ii) of this section, may seek an administrative review of their approval by the Director, Education Service. Requests for such a review should be made in writing to the Director of the VA facility having jurisdiction over the flight school. The request should—

* * * * *

(iii) The limit on the number of hours of solo flight instruction found in paragraph (h)(1)(i) of this section may not be waived.

(Authority: 38 U.S.C. 3032(f), 3231(f); 10 U.S.C. 2131(g))

(i) *Charges.* The appropriate State approving agency shall approve charges for tuition and fees for each flight course exclusive of charges for tuition and fees for solo flying hours which exceed the maximum permitted under paragraph (h)(l)(i) of this section and for preflight briefings and postflight critiques which precede or follow the excess solo hours.

* * * * *

[FR Doc. 93–22964 Filed 9–21–93; 8:45 am]
BILLING CODE 6320–01–U–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–4698–9]

Hazardous Waste Management Program: Incorporation by Reference of Approved State Hazardous Waste Program for Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the United States Environmental Protection Agency (EPA) may grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses part 272 of title 40 of the Code of Federal Regulations (40 CFR part 272) to provide notice of the authorization status of State programs, and to incorporate by reference those provisions of State statutes and regulations that EPA will enforce under RCRA section 3008. Thus, EPA intends to incorporate by reference the Wisconsin authorized State program in 40 CFR part 272. The purpose of this action is to incorporate by reference EPA's approval of recent revisions to Wisconsin's program.

DATES: This document will be effective November 22, 1993 unless EPA publishes a prior **Federal Register** (FR) action withdrawing this immediate final rule. All comments on this action must be received by the close of business October 22, 1993. The incorporation by reference of certain Wisconsin statutes and regulations was approved by the Director of the Federal Register as of November 22, 1993, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Written comments should be sent to Margaret Millard, Wisconsin Regulatory Specialist, Office of RCRA, U.S. EPA Region V, 77 West Jackson Boulevard, HRM–7J, Chicago, Illinois 60604, (312) 353–1440.

FOR FURTHER INFORMATION CONTACT: Margaret Millard, Wisconsin Regulatory Specialist, Office of RCRA, U.S. EPA Region V, 77 West Jackson Boulevard, HRM–7J, Chicago, Illinois 60604, (312) 353–1440.

SUPPLEMENTARY INFORMATION:

Background

Effective April 24, 1989, and May 29, 1990, EPA incorporated by reference Wisconsin's then authorized hazardous waste program (see 54 FR 7422 and 55 FR 11910). Effective April 24, 1992, (see 57 FR 15029) EPA granted Wisconsin additional authorization. In this notice, EPA is incorporating the currently authorized State hazardous waste program in Wisconsin.

EPA provides both notice of its approval of State programs in 40 CFR part 272, and incorporates by reference therein the State statutes and regulations that EPA will enforce under section 3008 of RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in Wisconsin.

Revisions to Wisconsin's and other State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. The incorporation by reference of Wisconsin's authorized program in subpart YY of part 272 is intended to enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. For a fuller explanation of EPA's incorporation by reference of Wisconsin's authorized hazardous waste program, see 54 FR 7422 (February 21, 1989).

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It intends to incorporate by reference the decision already made to authorize Wisconsin's program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Environmental Protection, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: August 9, 1993.

David A. Ullrich,

Acting Regional Administrator.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Section 272.2500, State Authorization, is removed.

3. Section 272.2501 is revised to read as follows:

§ 272.2501 Wisconsin State administered program; final authorization.

Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b): Wisconsin has final authorization for the following elements as submitted to EPA in Wisconsin's base program application for final authorization which was approved by EPA effective on January 31, 1986. Subsequent program revision applications were approved effective on June 6, 1989, January 22, 1990, and April 24, 1992.

State Statutes and Regulations

(a) The Wisconsin statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(1) EPA Approved Wisconsin Statutory Requirements Applicable to the Hazardous Waste Management Program, (dated August 9, 1993).

(2) EPA Approved Wisconsin Regulatory Requirements Applicable to the Hazardous Waste Management Program (dated August 9, 1993).

(b) The following statutes and regulations concerning State enforcement, although not incorporated by reference for enforcement purposes, are part of the authorized State program:

(1) Wisconsin Statutes, Volume 1, §§ 19.21; 19.31; 19.32(2) and (5); 19.35(3) and (4); 19.36; 19.37(1) and (2); Wisconsin Statutes, Volume 3, §§ 144.69–144.72; 144.73–144.74; 144.76(2) and (3); Wisconsin Statutes Volume 4, §§ 227.07; 227.09; 227.14; 227.51; and Wisconsin Statutes, Volume 5, § 803.09 (1985–86).

(2) Wisconsin Administrative Code, Volume 1, § NR: 2.19; 2.195(1); and 2.195(5) (effective April 1, 1984); Wisconsin Administrative Code, Volume 12, § NR: 680.06(12) (effective March 1, 1991).

4. Appendix A to part 272, State Requirements, is amended by revising the Appendix heading and adding the center heading "Missouri" above the listing, and adding in alphabetical order "Wisconsin" and its listing to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

MISSOURI

* * * * *

WISCONSIN

The statutory provisions include: Wisconsin Statutes, Volume 3, Sections: 144.01; 144.43–433; 144.44 (except 144.44(4)(a)); 144.441(1)–(2); 144.441(3) (b), (f), and (g); 144.441(4) (a) and (c)–(g); 144.441(6); 144.442(1), (4)–(11); 144.443; 144.444; 144.60–144.63; and 144.64 (2)–(3) (except for 144.64(2)(e)(1)).

The regulatory provisions include: Wisconsin Administrative Code, Volume 12, § NR 600.01–600.04(2); 600.06; 600.3–600.11; 605.02; 605.04–605.11; Appendix II, III, IV and V; 610.01–610.09(2); 615.01–615.13(2)(b); 620.01; 620.04–620.10(3); 620.14; 625.04(4); 625.05(1)–625.07(7)(c)12; 625.12(1) and (2); 630.02; 630.04–630.40(3)(c); 635.02; 635.05–635.16(17)(d); 635.17(1), (2) and (3); 640.02; 640.06(2)(b); 640.09–640.22(22); 645.04–645.14; 645.17(1)(a)(1)–645.17(1)(a)3.e; 650; 655.02; 655.05–655.13(13); 660.02; 660.08–660.20(2); 665.02; 665.05(1)–665.10(2); 670.06–670.11(2)(d)3; 675.01–675.30(6); 680.01–680.51(5); 685.02; 685.05–685.08(13)(b).

[FR Doc. 93–23071 Filed 9–21–93; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 300

[FRL–3718–7]

RIN 2050–AC35

Amendment to the National Oil and Hazardous Substances Pollution Contingency Plan; Procedures for Planning and Implementing Off-Site Response Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today amending the National Oil and Hazardous Substance Pollution Contingency Plan ("NCP"). Today's final rule implements the requirements of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA)) and includes certain additional requirements that EPA finds to be appropriate. CERCLA describes procedures that must be observed when a response action under CERCLA involves off-site management of CERCLA hazardous substances, pollutants or contaminants (hereinafter referred to as "CERCLA wastes") resulting from CERCLA decision documents signed after the enactment of SARA (i.e., after October 17, 1986). This rule also makes these procedures applicable to off-site management of CERCLA wastes resulting from CERCLA decision documents signed before the enactment of SARA. Prior to this rule, EPA managed the off-site transfer of CERCLA wastes according to the May 1985 off-site policy (published in the **Federal Register** on November 5, 1985), as revised November 13, 1987 (OSWER Directive No. 9834.11).

DATES: Effective: The final rule is effective October 22, 1993.

CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919, 103 S.Ct. 2764 (1983), cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If any action by Congress calls the effective date of this regulation into question, EPA will publish notice of clarification in the **Federal Register**.

ADDRESSES: The official record for this rulemaking is located in the Superfund Docket, U.S. Environmental Protection Agency (OS–245), 401 M Street SW., room 2427, Washington, DC 20460 (202/260–3046) and is available for public inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays. The docket number is 121–POS.

FOR FURTHER INFORMATION CONTACT: Ellen Epstein, RCRA Enforcement Division, Office of Waste Programs Enforcement (OS–520), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Phone (202) 260–4849, or the RCRA Superfund Hotline (800) 424–9346 (or (703) 920–9810 in the Washington, DC, metropolitan area).

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I. Authority

Sections 104(c)(3), 105, and 121(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA") (42 U.S.C. 9604(c)(3), 9605, 9621(d)(3)); section 311(c)(2) of the Clean Water Act (33 U.S.C. 1321(c)(2)); Executive Order 12580 (52 FR 2923, January 29, 1987); and Executive Order 12777 (56 FR 54757, October 22, 1991).

II. Introduction

Today's final rule amends the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, by adding a new § 300.440. The May 1985 off-site policy (50 FR 45933–45937 (November 5, 1985)), as revised by the Procedures for Implementing Off-site Response Actions of November 13, 1987 (OSWER Directive No. 9834.11), (hereinafter known as the "Off-site Policy"), is superseded by this rule.

The purpose of this off-site regulation is to avoid having CERCLA wastes from CERCLA-authorized or -funded response actions contribute to present or future environmental problems by directing these wastes to management units determined to be environmentally sound. Congress and EPA have always believed that a CERCLA cleanup should be more than a relocation of environmental problems, and have attempted to ensure the proper treatment and disposal of CERCLA wastes removed from a CERCLA site. EPA believes that the process set out in this rule for ensuring that CERCLA wastes are transferred only to properly-permitted facilities that have no relevant violations or uncontrolled releases, assures that the receipt of CERCLA waste will not pose adverse effects on the environment.

The off-site regulation should help prevent the aggravation of conditions at problem sites and reduce the government's and the Superfund's potential liability by establishing criteria governing the off-site transfer of CERCLA wastes from CERCLA-authorized or -funded response actions. The rule should also help to ensure that off-site transfer decisions are made in an environmentally sensible manner, consistent with sound public policy and business practices.

The requirements of this rule are integral components of the "selection of remedial action" provision in CERCLA section 121, and their proper application will help to ensure that response actions selected are protective of human health and the environment (consistent with CERCLA section 121(b)(1) and, more generally, with section 104(a)(1)).

Today's final rule implements the requirements of section 121(d)(3) of CERCLA, which provides that in the case of any CERCLA response action involving the off-site transfer of any hazardous substance, pollutant, or contaminant (CERCLA waste), that CERCLA waste may only be placed in a facility that is in compliance with the Resource Conservation and Recovery Act (RCRA) (or other applicable Federal law) and applicable State requirements. CERCLA requires that for "land disposal facilities," there may be no transfer of CERCLA wastes to a unit with releases, and any releases at other units must be controlled.

Although CERCLA section 121(d)(3) applies compliance criteria to all facilities, it applies "release" criteria only to RCRA subtitle C land disposal facilities. EPA believes, as a matter of policy, that some release criteria should also be applied to all facilities that receive CERCLA wastes from CERCLA authorized or funded response actions, including RCRA treatment, storage, and permit-by-rule facilities, and any non-RCRA subtitle C facilities (such as subtitle D facilities or facilities permitted to receive hazardous substance wastes under the Toxic Substances Control Act (TSCA)) [1]. The Agency believes that such a step will further the protection of human health and the environment, and the development of a sound and consistent public policy; it would also serve to further the goals reflected in CERCLA section 121(d)(3).

Similarly, although SARA section 121(b) provides that CERCLA section 121 (and thus section 121(d)(3)) applies to actions arising from post-SARA decision documents only,[2] EPA believes that it is logical and appropriate to apply this rule to CERCLA wastes resulting from two other categories of similar cleanup actions: those authorized under CERCLA before the enactment of SARA, and those performed under the National Contingency Plan pursuant to section 311 of the Clean Water Act (for non-petroleum products). Accordingly, this rule applies to a number of situations in addition to those expressly set out in section 121(d)(3) of CERCLA.

Today's final rule establishes the criteria and procedures for determining whether facilities are acceptable for the off-site receipt of CERCLA waste from CERCLA-authorized or -funded response actions and outlines the CERCLA wastes and actions affected by the criteria. It establishes compliance criteria and release criteria, and establishes a process for determining whether facilities are acceptable based on those criteria. The rule leaves the final decision of off-site acceptability with EPA, after providing the opportunity for, and encouraging, substantial consultation with the State in which the off-site facility is located.

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[1] A TSCA permitted facility's acceptability to receive CERCLA wastes is also based on compliance and release findings. As with a RCRA facility, the compliance finding at a TSCA facility hinges on the absence of relevant violations at or affecting the receiving unit. The release finding for a TSCA facility is based on the presence or absence of environmentally significant releases anywhere at the facility (i.e., not just at the receiving unit). Such releases must be addressed by corrective action under a State or Federal program.

[2] Section 121(b)(1) of SARA provides that the requirements of CERCLA section 121 shall not apply to any remedial action for which the Record of Decision ("ROD") was signed, or the consent decree lodged, before the date of enactment of SARA. SARA Section 121(b)(2) provides that if an ROD was signed, or consent decree lodged, within the 30-day period after enactment of SARA, the remedial action should comply with CERCLA section 121 to the maximum extent practicable.

The final rule outlines the State's role in the off-site acceptability determination and ensures that States will remain active participants in the decisionsmaking process. The rule also establishes procedures for notification of unacceptability, appeals of unacceptability determinations, and re-evaluation of unacceptability determinations.

Under the rule, the policy of applying off-site requirements to actions taken under section 7003 of the Solid Waste Disposal Act, as amended by RCRA, is discontinued.

III. Background

From the beginning of the CERCLA program, Congress has mandated that CERCLA wastes be treated, stored, and disposed of in an environmentally sound manner. Section 104(c)(3) of CERCLA, as originally enacted in 1980, required States to ensure the availability of a hazardous waste disposal facility in compliance with RCRA subtitle C for receipt of hazardous waste from Fund-financed remedial actions.

In January 1983, EPA issued Guidance on the Requirements for Selecting an Off-Site Option in a Superfund Response Action. This first guidance on the off-site transfer of CERCLA wastes required a facility inspection and that all major violations at the facility be corrected in order for the facility to receive CERCLA wastes from remedial or removal actions. EPA's May 1985 "Procedures for Planning and Implementing Off-Site Response Actions" (50 FR 45933) detailed the criteria for evaluating the acceptability of facilities to receive CERCLA wastes.

The NCP, revised in November 1985 (40 CFR part 300), incorporated requirements for off-site receipt of CERCLA waste. The NCP, at 40 CFR 300.68(a)(3), required that facilities have permits, or other appropriate authorization to operate, in order to be acceptable for receiving off-site CERCLA waste.

SARA reaffirmed the rationale embodied in CERCLA section 104(c)(3) and the May 1985 Off-site Policy. Section 121(d)(3) of CERCLA, as added by SARA, explicitly provides that in the case of any CERCLA "removal or remedial action involving the transfer of any hazardous substance or pollutant or contaminant off-site," such transfer shall only be to a facility operating in compliance with the Solid Waste Disposal Act (as amended by RCRA and the Hazardous and Solid Waste Amendments (HSWA)), or, where applicable, the Toxic Substances Control Act (TSCA), or other applicable Federal law, and all applicable State requirements. The section also requires that receiving units at land disposal facilities have no releases of hazardous wastes or hazardous constituents and that any releases from other units at a land disposal facility be controlled by a RCRA corrective action program.

Finally, EPA issued revised procedures for implementing off-site response actions on November 13, 1987, as a memorandum from J. Winston Porter, Assistant Administrator for Solid Waste and Emergency Response, to the EPA Regional Administrators (OSWER Directive No. 9834.11) (the "Off-site Policy"). These procedures, which were effective immediately, provided guidance on complying with the SARA requirements, updated the 1985 Off-site Policy, and provided detailed procedures for issuing and reviewing unacceptability determinations.[3]

The Agency proposed amendments to the NCP on November 29, 1988 (53 FR 48218) to implement the requirements of CERCLA section 121(d)(3), and to add certain appropriate requirements contained in the Off-site Policy. EPA received over 75 specific comments on the proposed rule and has carefully analyzed those comments and made changes as appropriate in promulgating today's rule. Today's final rule (the "Off-site Rule") implements and codifies the requirements contained in CERCLA section 121(d)(3), and incorporates many provisions of the Off-site Policy. Specific responses to the comments received are set out below, or in the "Comment-Response Document" to this rule, which is available from the Superfund Docket.

IV. Discussion of Final Rule

The Off-site Rule generally provides that a facility used for the off-site management of CERCLA wastes must be in physical compliance with RCRA or other applicable Federal and State laws. In addition, the following criteria must be met:

- Units receiving CERCLA wastes at RCRA subtitle C facilities must not be releasing any hazardous wastes, hazardous constituents or hazardous substances;
- Receiving units at subtitle C land disposal facilities must meet minimum technology requirements;
- All releases from non-receiving units at land disposal facilities must be addressed by a corrective action program prior to using any unit at the facility; and
- Environmentally significant releases from non-receiving units at Subtitle C treatment and storage facilities, and from all units at other-than-Subtitle C facilities, must also be addressed by a corrective action program prior to using any unit at the facility for the management of CERCLA wastes.

The Rule provides procedures for EPA to notify the facility if EPA determines that the facility is unacceptable. It also provides an opportunity for the owner/operator to discuss the determination with the appropriate government official, and if still unsatisfied, to obtain a review of the determination by the Regional Administrator.

The following discussion of today's rule describes the new § 300.440 requirements and responds to public comments received on the proposal. Two major changes have been made from the proposed rule as a result of the comments received: (1) EPA—not the States—will make the final determinations as to whether off-site facilities are "acceptable" under this rule to receive CERCLA wastes, with States being active participants during the decision-making process, and (2) the distinction between criteria for CERCLA wastes resulting from pre- and post-SARA decision documents has been removed. These changes, as well as other comments received on the proposed rule, are discussed below.

A. Applicability

1. CERCLA Wastes Affected

i. Laboratory samples. The proposed rule provided that the transfer of CERCLA site samples to an off-site laboratory for characterization would not be subject to the rule based on the small size of lab samples, the need for prompt and frequent laboratory analysis, and the high level of confidence that lab samples—due to their value to the sending facility—will be properly handled (53 FR 48220). Several commenters contended that the exemption should be enlarged, such that off-site requirements would also not apply to sample shipments from labs to ultimate disposal or treatment facilities. The commenters argued that requiring labs to segregate the small volumes of CERCLA wastes sent to labs for analysis for separate handling under the Off-site Rule would be burdensome, and unnecessary to protect public health. A number of commenters also questioned the wisdom of preventing labs from sending tested samples back to the site, as is common practice. EPA has evaluated these comments, and agrees that it is not necessary to require transfer of lab sample CERCLA wastes from labs to meet the full requirements

[3] For additional discussion on the background of this rule, see the proposed rule at 53 FR 48219–20 (November 29, 1988).

of this rule for reasons discussed above and in the preamble to the proposed rule. However, today's rule is predicated on the principle that CERCLA actions should not contribute to existing environmental problems, and that materials generated from CERCLA actions should be transferred only to environmentally sound facilities. Thus, EPA does not believe it is appropriate for labs to routinely send CERCLA waste samples back to CERCLA sites. Accordingly, EPA has identified two options for the proper disposal of lab-tested samples of CERCLA wastes. The Agency believes that these options, included in the final rule, respond to commenters' concerns that unnecessary obstacles not be placed in the way of lab testing, while ensuring that CERCLA wastes are handled in an environmentally-sound manner.

First, labs may send the tested samples and their residues to an appropriate facility (i.e., they may treat it as material not subject to this rule and transfer it to any facility that may legally accept such wastes); the Agency expects that the vast majority of the materials sent to labs from CERCLA sites will be handled under this first option. Second, the lab may return the CERCLA waste sample to the site from which the sample came if the Remedial Project Manager (RPM) or On-Scene Coordinator (OSC) agrees to assume responsibility for the proper management of the sample and gives permission for the sample to be returned to the site.

One commenter requested that a similar exemption be applied to CERCLA wastes sent off-site for treatability studies. The commenter reasoned that information on treatability is valuable, resulting in a high confidence level that these CERCLA wastes will be properly handled and managed, and that treatability studies promote treatment rather than disposal of CERCLA wastes; treatment is a preferred waste management option under CERCLA. Finally, the RCRA program has exempted treatability study wastes from most hazardous waste management requirements.

EPA agrees with the commenter that an exemption from this rule for treatability CERCLA wastes is appropriate, and that it is consistent with the approach taken in the final rule for Identification and Listing Hazardous Waste Treatability Studies Sample Exemption (53 FR 27290, July 19, 1988). Thus, those hazardous wastes at a CERCLA site that are being sent off-site for treatability studies and that meet the requirements for an exemption from RCRA under 40 CFR 261.4(e), are also exempt from today's rule. CERCLA wastes, residues and other materials that are not RCRA hazardous wastes resulting from treatability studies are subject to the same disposal options as materials from lab characterization samples. Again, EPA believes that this approach will help to facilitate prompt site cleanups while ensuring that CERCLA wastes are managed in an environmentally-sound manner. Non-RCRA hazardous wastes that are being sent off-site for treatability studies and that are below the quantity thresholds established in the Treatability Studies Sample Exemption Rule are similarly exempt from the requirements of the Off-site Rule.

ii. LDR residues. One commenter objected to applying the requirements of the rule to transfers from a CERCLA site of CERCLA waste residues meeting treatment standards established by the land disposal restrictions (LDRs), believing that these residues no longer posed a hazard. EPA maintains that RCRA hazardous wastes or waste residues meeting LDR treatment standards are still considered hazardous under RCRA, unless they no longer exhibit a characteristic of hazardous waste, or if appropriate, are delisted. Moreover, even if a CERCLA waste meeting LDR treatment standards is found not to be a RCRA hazardous waste, it may still be CERCLA waste. Under today's rule, CERCLA waste that is not a RCRA hazardous waste may be sent to other than a RCRA subtitle C facility for disposal (if that facility meets the requirements of the rule), e.g., a RCRA subtitle D landfill. EPA believes that the rule as it stands should not prove burdensome and that it should be relatively easy to find capacity for such CERCLA wastes. Therefore, the final rule does not exempt CERCLA waste residues meeting LDR treatment standards when they are transferred from the CERCLA site.

iii. Clarification on Subsequent Transfers of CERCLA Wastes. The prior comment raises the related issue of how the Off-site Rule applies to subsequent transfers of CERCLA waste. When a CERCLA waste is to be transferred off-site as part of a CERCLA funded or authorized cleanup, the contract implementing the decision document should identify the final disposition point for the CERCLA waste (i.e, the final treatment or disposal facility), and any intermediate facilities that will store or pre-treat the wastes (e.g., waste brokers, blenders). All such facilities would be required to be acceptable under the final rule.

Once the CERCLA waste is finally disposed of off-site, or treated off-site to BDAT levels or in the absence of BDAT, treated to substantially reduce its mobility, toxicity, or persistence, it is no longer considered a CERCLA waste and subsequent transfers of the waste would not be regulated under this rule. However, if residues derived from the treatment of the CERCLA waste are RCRA hazardous wastes, they must be managed as such under RCRA.

2. Actions Affected

i. Enforcement Activities. EPA would like to clarify and respond to several commenters' questions concerning which enforcement activities are affected by today's rule. The Off-site Rule applies only to those actions being taken under a CERCLA authority or using CERCLA funds. These include actions taken under section 104, CERCLA consent agreements, decrees (including special covenants under section 122(f)(2)(A)), Records of Decisions (RODs), section 106 orders, and actions taken under pre-authorization CERCLA decision documents. State response actions conducted under a CERCLA cooperative agreement, are also subject to the off-site requirements.

Actions which would not trigger the off-site requirements include notification of a spill of a reportable quantity under CERCLA section 103, cleaning up a site using only State authority and State funds (whether or not the site is listed on the Superfund National Priorities List (NPL)), and conducting a voluntary cleanup involving government oversight (e.g., by the U.S. Coast Guard), unless under CERCLA or a CERCLA order or decree.

In one commenter's example, if a PRP has taken a voluntary response action (not under a CERCLA order and without CERCLA funds), that action is not subject to the Off-site Rule; thus, in a cost recovery action under CERCLA section 107(a)(4)(B), the PRP may demonstrate action "consistent with the NCP" without having to show compliance with the Off-site Rule requirements.

ii. Actions under CERCLA section 120. The proposed rule states that the requirements of this rule do apply to all Federal facility actions under CERCLA, including those taken by EPA and/or another Federal agency under CERCLA sections 104, 106, and 120 (53 FR 48220). One commenter objected to applying this rule to Federal facilities, arguing that this was not equitable because the rule covers private party actions at NPL sites only. The commenter asked that the rule only be applied to EPA-funded or Federal-

agency-lead CERCLA actions taken at NPL sites.

In response, EPA does take CERCLA actions at private facilities that are not on the NPL (e.g., enforcement actions and removals) and these actions are subject to the Off-site Rule when they are conducted under CERCLA authority or using CERCLA money. Consistent with CERCLA 120(a), EPA does not believe it is appropriate to treat CERCLA actions at non-NPL Federal facilities differently. Thus, if a Federal agency plans to transfer CERCLA wastes off-site from a Federal facility under a CERCLA authority or with CERCLA funds (as compared to being transferred under another statutory authority), the Federal agency may transfer CERCLA wastes only to facilities found to be acceptable under this rule. Federal facilities may transfer CERCLA wastes off the CERCLA site to treatment, storage or disposal units on the same Federal property, but only if the other units (and the larger Federal facility or installation) meet the requirements of this rule.

iii. *Federally-permitted releases.* In the proposed rule, the Agency stated that Federally-permitted releases should not be routinely included within the concept of "release" for the purposes of section 121(d)(3). For "Federally-permitted releases," as defined in NCP, § 300.5 (1990 ed.) and CERCLA section 101(10), the government has specifically identified the types and levels of hazardous substances that may safely and appropriately be released (e.g., a NPDES water discharge permit), and it would not make sense to find a facility unacceptable based on the existence of such an authorized and planned release. Of course, unauthorized releases that are being studied, cleaned up, or controlled under a corrective action portion of a permit, would not be considered to be "Federally permitted" for the purposes of this rule.

The Agency further stated in the proposed rule that although Federally permitted releases would not routinely be considered to be a "release" for the purpose of acceptability under this rule, if the permitted release comes to constitute a threat to human health and the environment, the release can and should be considered under this rule (53 FR 48224).

One commenter argued that EPA should not limit the exemption for Federally-permitted releases. If a permit is not sufficiently protective it should be altered, rather than determining that the facility is unacceptable under the Off-site Rule. If the Agency were to decide not to fully exempt Federally-permitted releases from this rule, the commenter asked EPA to narrow the limitation from "threat" to "significant threat," and to clarify circumstances under which a release is considered a threat.

EPA agrees that permits that are not sufficiently protective should be upgraded. However, upgrading of permits may not address past contamination and the upgrading may take time to accomplish. Thus, until such permits are upgraded, or until the threat to human health and the environment is otherwise addressed (e.g., through a corrective action order), EPA will not send CERCLA wastes to such facilities and thereby contribute to an unsound environmental situation. Similarly, EPA believes it is appropriate to cease sending CERCLA wastes to facilities with Federally-permitted releases if a threat to human health or the environment is posed by the release. This approach is consistent with Agency policy and the goals of CERCLA section 121(d)(3). It also maintains consistency with practices under the NCP in its handling of Federally-permitted releases. For example, the Agency lists certain sites on the NPL where an "observed release" has been documented, even if that release was Federally permitted and was within regulatory limits (47 FR 31188, July 16, 1982; 48 FR 40665, September 8, 1983).

iv. Definition of site. One commenter requested a definition of the term "site" (in order to understand what is "off-site"), and asked that the definition include property in the immediate vicinity of the cleanup.

In the recent revisions to the NCP, 55 FR 8840 (March 8, 1990), EPA defined "on-site" to include all suitable areas in very close proximity to the contamination necessary for implementation of the response action, 40 CFR 300.400(e)(1) (1990); this additional space would be available for treatment systems that require considerable area for construction, and for staging areas. Areas not covered by this definition come, by extension, within the definition of "off-site."

EPA believes it is essential for the sound operation of the CERCLA program to define "on-site" and "off-site" in a concerted manner. Were EPA not to apply the general definition of "on-site" to this rule, an anomalous situation would result in which CERCLA wastes transferred to the "on-site," proximate area used for implementation, would constitute an off-site transfer. Moreover, such transfers might be disallowed in many cases where the non-receiving unit (the "waste portion" of the site) had releases that were not yet controlled for purposes of the Off-site Rule.

3. RCRA Section 7003 Actions

EPA received three comments on the proposal not to extend this rule to cover cleanup actions carried out under RCRA section 7003 (53 FR 48221). All three commenters agreed with EPA that the rule should not apply to off-site disposal associated with RCRA section 7003 actions. Therefore, the Agency will not require RCRA section 7003 actions to comply with the off-site requirements as part of this CERCLA rulemaking.

4. Removals

Three commenters supported the proposed rule's exemption from the regulation for emergency removal actions in situations posing a significant threat (53 FR 48220). One of these commenters asked EPA to extend the exemption to remedial actions taken in situations of immediate and significant threat. Two commenters asked that the language be modified to confirm that private parties, as well as government entities, are eligible for the exemption.

EPA believes that an exemption for emergency removals is appropriate, and should also apply to emergencies occurring during remedial actions (e.g., occurrence or substantial threat of occurrence of fire or explosion); the final rule reflects that change. However, the Agency does not believe it is appropriate to allow private parties to use the emergency exemption without obtaining approval from a CERCLA On-Scene Coordinator (OSC). This prior approval requirement will avoid the possibility of a responsible party abusing the emergency exemption in order to use unacceptable off-site facilities which may be less environmentally sound. Note that the Off-site Rule only applies to private parties engaged in response actions that are funded or ordered under CERCLA.

Another commenter stated that it was not clear what criteria the OSC should use to determine that a facility in noncompliance with the rule can be used for off-site disposal.

EPA believes that the OSC should weigh, to the extent practicable: exigencies of the situation; the availability of alternative receiving facilities; and the reasons for the primary facility's unacceptability, their relation to public health threats, and the likelihood of a return to compliance. In some situations (e.g., fire, explosion), it may be necessary to remove materials off-site before an off-site facility's acceptability may even be reviewed.

5. Pre-SARA v. Post-SARA Actions

In the proposed rule, EPA explained the evolution of a system under which

different off-site requirements were applied to CERCLA wastes, depending upon whether the CERCLA decision document was signed pre- or post-SARA (53 FR 48220). One commenter argued for eliminating the confusing distinctions between pre- and post-SARA CERCLA wastes. Although the statute applies only to post-SARA decision documents, the commenter saw no reason why these requirements could not be extended to CERCLA wastes from pre-SARA decision documents, particularly given the ambiguity of the May 1985 off-site policy. Several other commenters supported simplifying the Rule generally.

EPA agrees that eliminating the different criteria for CERCLA wastes from pre- and post-SARA decision documents would simplify the understanding and implementation of the rule. The Agency's experience with the revised Off-site Policy (since 1987) has been that the dual system is confusing, and potentially subject to inconsistent interpretation. The original reason for having different requirements for CERCLA wastes from pre- vs. post-SARA decision documents was to avoid disrupting contracts and actions already in place at the time SARA (and section 121(d)(3)) were enacted. However, in response to the commenter's suggestion, EPA has surveyed the existing pre-SARA ROD contracts and the acceptability status of facilities currently receiving CERCLA wastes from pre-SARA actions. The information gathered indicates that few if any CERCLA waste transfers resulting from pre-SARA decision documents would be disrupted by application of the newer criteria.[4] Indeed, most facilities receiving CERCLA waste already meet both the pre- and post-SARA criteria, in order to be acceptable to receive all CERCLA waste. The elimination of separate standards for CERCLA wastes from pre-SARA decision documents would be neither burdensome nor disruptive. Therefore, in the final rule, CERCLA wastes from pre-SARA actions and CERCLA wastes from post-SARA actions are treated the same.

B. Determining Acceptability

In its November 29, 1988, **Federal Register** notice, EPA proposed; and requested comment on, allowing States that were authorized to carry out the corrective action portions of RCRA, to make off-site acceptability determinations for RCRA subtitle C facilities within their respective jurisdictions. The Agency noted that the "States often have the most direct responsibility over the potential receiving facilities * * *, and thus may be in the best position to make the findings required under the Off-site Rule." (53 FR 48221) However, at the same time, EPA noted that retaining the off-site decision in the EPA Regional Offices would offer the advantages of "more easily assuring consistent application of the rule, and avoiding conflicts between the Region and the State regarding the acceptability of a facility." (53 FR 48222) Thus, the Agency specifically requested comment on whether qualifying States should make off-site acceptability determinations, or whether EPA Regions should exercise that decision-making authority.

EPA received eight specific comments on the State decision-making issue. Six of the comments objected to allowing States to make the off-site determinations, based on the need for national consistency and concerns that some States might use the off-site authority to prohibit the receipt of out-of-state CERCLA wastes. Two of these six commenters added that States should be allowed to make acceptability determinations only if they agree to follow the notice and re-qualification procedures that apply to EPA. A seventh commenter (a State) criticized the proposed approach on the grounds that it would effectively deny any input on the acceptability determination from most States, since most States are not authorized to carry out corrective action under RCRA; the commenter recommended that States be given at least 30 days to comment on a proposed decision before the facility is notified of the final acceptability status. A second commenting State suggested that the agency inspecting the facility for RCRA compliance should make the off-site acceptability determination; however, it added that "it appears obvious that it should be a joint determination."

The Agency also received four comments on a related point—the difficulty of receiving ready access to a list of acceptable facilities.[5] In effect, these comments indicate that it has been difficult for the public to quickly and accurately determine what facilities are acceptable under even the present Off-site Policy, under which one need check with only ten regional off-site contacts. EPA has reviewed this comment in light of the issue of whether States should make final off-site determinations, and has concluded that the problem identified by the commenters would grow dramatically if the public were required to verify off-site acceptability with up to fifty State contacts. Further, allowing the State to make off-site acceptability determinations as proposed would not eliminate the need for the EPA Regional contacts; a State could not make determinations for other Federal programs, such as the Toxic Substances Control Act (TSCA). Thus, the public would be required to check with State contacts and EPA Regional contacts in order to determine which facilities are acceptable to receive certain types of CERCLA wastes. The prospect of requiring interested parties to check acceptability status with all fifty states (for portions of RCRA) and all ten EPA Regions (for other portions of RCRA, and TSCA, etc.) would place an unreasonable burden on the people who need to locate acceptable capacity.

Based on a careful review of all the comments received on the proposed rule, as well as a review of the Agency's experience to date in implementing the Off-site Policy, EPA still believes that it is essential for the off-site acceptability process to take into account the important role of the States in making compliance findings (and, in some States, release findings) under RCRA; however, the comments received and EPA's experience also demonstrate a strong need for national consistency, and for facilitating timely public access to acceptable capacity. Thus, while the basic approach and structure of the rule remains unaltered, the Agency is making several important changes in the language of the rule, in order to help make States active participants in off-site determinations, while at the same time preserving final off-site determination authority within EPA.

1. State Role

The off-site acceptability determination for a facility is based, in large part, on a compliance finding and a release finding. Authorized States may make the initial compliance findings for those parts of the program for which they are authorized. If a State finds a violation at a unit of a facility, EPA will evaluate the finding for "relevance" under the rule (e.g., whether the violation occurred at the receiving unit and thus is "relevant" under the rule; "relevant" is discussed in more detail in section IV.C.4 of this preamble). If the

[4] A Memorandum summarizing the information collected is included in the docket of this rule.

[5] Several commenters suggested that the present system of having ten EPA regional contacts should be replaced by a more easily implemented system under which one consolidated list would be made available to the public. However, the Agency recognizes that it would be impossible to publish a list of acceptable facilities nationwide (or even regionally), as the off-site status of facilities is constantly changing, and any such list would be outdated before it was distributed.

Agency concludes that the violations are relevant, it will issue an initial determination of unacceptability, meaning that the facility will be unacceptable to receive CERCLA wastes in 60 days unless EPA finds that the facility is operating in physical compliance with applicable law at that time.

If a State is authorized to carry out the corrective action authorities of RCRA sections 3004 (u) and (v), it may also make initial findings regarding releases at the facility. Again, EPA will evaluate such findings and, if it finds the releases are relevant under the rule, will issue an initial determination that the facility will be unacceptable in 60 days unless EPA finds that there are no uncontrolled releases at the facility at that time.

In order to further increase the States' role throughout the process, the Agency will also take the following steps:

- Encourage the free exchange of information between States and EPA Regional offices concerning violations and releases at facilities;
- Afford States the opportunity to participate in all meetings with EPA and the facility owner/operator regarding the facility's acceptability;
- Provide States with copies of all initial and final unacceptability determinations as soon as they are issued;
- Provide States with the opportunity to call for additional meetings with Regional officials to discuss the off-site acceptability of a facility, and whether a facility has returned, or can return, to compliance within the 60-day review period; and
- Provide in the rule that if the State disagrees with the EPA Region's determination (after the informal conference), it may obtain review of that decision by the Regional Administrator.

2. EPA's Role

Where a State does not have authority to carry out portions of the RCRA program, EPA will make the initial compliance and/or release findings. In addition, EPA will make the compliance and release finding with respect to applicable regulations under other Federal Statutes (e.g., TSCA). EPA may also make findings at facilities where the State has programmatic authority, as a supplement to State oversight. (However, in such cases, the Agency expects most findings to be made by the States.) Further, as noted above, EPA will evaluate all initial findings of violations or releases to determine whether they are "relevant" under today's rule.

Although States will make many of the initial RCRA findings for off-site unacceptability determinations, EPA will retain the ultimate decision-making authority for all off-site determinations, including those at RCRA facilities. EPA Regional Offices, having collected information on the compliance and release status of a RCRA facility, and having consulted with the State in which the facility is located, will be responsible for determining whether a facility is operating in compliance with applicable law (and thus has no relevant violations) at the end of the 60-day period, and whether there are any uncontrolled relevant releases at the end of the 60-day period; if EPA finds that the relevant violations or releases alleged in the initial notice are supported by the facts and are continuing, the unacceptability determination will take effect, as provided below. The Regions will also be responsible for keeping up-to-date records of those RCRA facilities that are acceptable and those that are not. As discussed above, these steps will help to ensure national consistency in off-site decisions, and will facilitate timely public access to off-site acceptability information.

The Agency believes it is appropriate for EPA to retain the final authority for making off-site acceptability determinations. Because CERCLA cleanups are generally ordered or funded by EPA, the off-site determination is, in effect, EPA's business decision as to where CERCLA wastes under the Agency's control should be sent.

It is also important that EPA issue the final, consolidated acceptability determinations in order to retain control over, and help fulfill, the Agency's programmatic responsibilities. In order to plan CERCLA cleanup actions on reliable schedules, and proceed with them quickly, EPA needs to resolve off-site issues relatively quickly, and make alternative contracts and plans as appropriate. As the proposed rule explained, this was a major reason for the establishment of a 60-day period in which to discuss acceptability with the relevant parties. EPA is also sensitive to the need to afford owner/operators a reasonable opportunity to contest the violation/release finding, or to return to compliance, within this 60-day review period.

3. Disputes Between States and EPA

EPA intends to issue initial unacceptability determinations in cases where States have made initial findings of violations or releases that EPA finds are relevant under the final rule; thus, States may play a major role in initiating the off-site review process. EPA Regional officials, officials from the State in which the off-site facility is located, and representatives of the facility owner/operator will then have the opportunity to meet during the 60-day review period to discuss: (1) The basis for the finding of a violation or release, (2) the relevance of the violation/release under the Off-site Rule, and (3) what steps are necessary for the facility to return to compliance or control releases within the 60-day review period (or whether sufficient steps have already been taken). After the informal conference with the owner/operator, at which the State may be present, EPA will notify the State of its program level determination; the Agency will decide whether the initial finding of a relevant violation or release was supported by the facts, and whether the violation or release is continuing (or has been controlled). If the State (or the owner/operator) disagrees with the decision by the EPA Regional staff, it may obtain a review of the decision by the EPA Regional Administrator.

EPA expects that in most cases, there will be no dispute between it and the State over these issues. However, the Agency recognizes that there may be instances where disagreements could arise with the State, or where the Agency must act independently. Following are three major examples of situations where a disagreement might occur between State and EPA officials.

First, there may be instances where the State is unable or unwilling to meet with EPA and the affected facility within the 60-day period (e.g., where the case is in litigation and the State chooses not to meet separately with one potentially responsible party). Similarly, EPA must act in certain situations without full participation from the State, such as during emergency cleanup actions. In such cases, in order to fulfill its mandates to accomplish planned CERCLA cleanups and to administer the Off-site Rule, the EPA Region may need to meet with the owner/operator independently to resolve the compliance or release problems expeditiously.

Second, a State may disagree with certain findings committed to the discretion of the Agency under the Off-site Rule, such as the finding that a violation or release is (or is not) "relevant" under the rule, or that a facility has (or has not) taken adequate steps to resolve a violation or control a release. Such findings are integral parts of the off-site determination, and must be consistently applied to facilities regulated under RCRA, TSCA, or other applicable laws. The Agency believes that in the interest of national

consistency, it is appropriate for EPA to retain the final decision-making authority in these areas. However, as with all Off-site Rule issues, the States will be invited to discuss these issues with EPA, and will be afforded an opportunity to obtain review of such decisions with the Regional Administrator.

Third, there may be isolated cases where EPA and the State disagree on the initial finding of violation or release. (This could generally be expected to arise during the review period, as EPA plans to initiate the off-site review process where the State makes a finding that EPA determines is relevant under the rule.) In such cases, EPA will consult with the State, and the State may request additional meetings with the Agency. However, in order to fulfill its obligations under the statute, EPA must have the ability to make an independent assessment of the facility's status at the end of the 60-day period to determine if the facility is currently operating in compliance and/or has any uncontrolled relevant releases, for the limited purpose of the Off-site Rule. These judgments do not prevent the State from pursuing an enforcement action for past violations, or even arguing that violations are continuing.

It is important to note that the question of whether or not a unit is operating in compliance, or has returned to physical compliance, is an issue separate and distinct from the question of whether an enforcement action for past violations is appropriate. The statute clearly focuses the acceptability determination on present compliance: CERCLA wastes "shall only be transferred to a facility operating in physical compliance with" RCRA or other applicable law (CERCLA section 121(d)(3)). Thus, where a facility has returned to compliance and, where appropriate, changed its operations to prevent recurrence, the facility "is operating" in compliance and should not be unacceptable under the Off-site Rule simply because a complaint for past violations is still pending.[6]

4. No Cooperative Agreement Requirement

Under the proposed rule, EPA had suggested allowing States that were authorized to carry out RCRA corrective action to make the off-site determinations if they were found to be capable, under a CERCLA Core Cooperative agreement, of carrying out certain functions. Because the Agency has decided to retain the authority to make the final determination, and use State findings as a basis for the initial determinations, there is no longer a need for States to enter into such agreements for the purpose of the Off-site Rule.

5. Facility Acceptability Status

Section 300.440(a)(4) of the proposed rule (53 FR 48232) stated that "[a] facility is acceptable until the responsible Agency notifies the facility otherwise"; the scope of this section needs to be clarified. For facilities that have already been notified that they are acceptable under the rule (or the preceding policy), the facility would remain acceptable until EPA determines otherwise according to the provisions of final rule § 300.440(d). This allows both receiving facilities and CERCLA site managers adequate time to respond to new circumstances. By contrast, the language quoted above was not meant to apply to facilities for which EPA has never made a determination of acceptability under this rule (or the preceding policy), and at which CERCLA wastes are not likely to be in transit; for such facilities, EPA believes that affirmative determinations of "compliance" and "control of releases" are necessary before a facility may be deemed acceptable for the receipt of CERCLA wastes, consistent with the language of CERCLA § 121(d)(3).[7] Final rule § 300.440(a)(4) has been revised to clarify this point.

C. Determining Acceptability-Compliance Criteria

1. Inspection Requirements

Section 300.440(c)(1) of the proposed rule provided that a facility "must have received an appropriate facility compliance inspection within six months prior to receiving CERCLA waste" (53 FR 48232). Three commenters expressed concern that a receiving facility, which would otherwise be in compliance, could be penalized because of the failure of the regulatory agency to conduct inspections at the required frequency. One of these commenters objected to being penalized for EPA or State tardiness, and believed that the rule suggested that EPA could not conduct an inspection during the 60-day period following a Notice of Unacceptability.

EPA continues to believe that periodic inspections to update information on facilities receiving CERCLA wastes are important to the effective implementation of this rule, and the Agency will address the recommended frequency of inspections in guidance. The Agency notes that inspections are already carried out under a number of regulatory programs, such as RCRA. EPA agrees that the absence of an inspection six months prior to the receipt of CERCLA waste (or the absence of a CME or O&M inspection for RCRA land disposal facilities within one year prior to the receipt of CERCLA wastes) should not in itself be grounds for unacceptability, unless the facility refused to allow an inspection to be performed. The requirement for updating inspections within a defined time frame has thus been eliminated from final rule § 300.440(c). (Of course, as discussed above, final rule § 300.440(a)(4) maintains the requirement for an affirmative determination of acceptability when a facility first seeks to receive CERCLA wastes under this rule, and this may involve a compliance and release inspection.) In response to the last comment, EPA would like to clarify that the language in the proposal was not meant to suggest that EPA could not, if appropriate, conduct an inspection during the 60-day review period.

2. Receiving Unit

Several commenters supported the definition of "receiving unit" as that unit which directly received the waste in question (53 FR 48222). This definition remains the same in the final rule.

3. Facility

Three commenters supported the proposed definition of "facility" (53 FR 48222); however, one commenter questioned the concept of facility-wide violations that could render the entire facility unacceptable, rather than just the violating unit. The commenter asked for a clear and precise example of both unit-specific and facility-wide violations.

Examples of facility-wide violations include the failure to have or comply with the facility's waste pre-acceptance procedures, waste analysis plan, contingency plan, financial

[6] Of course, in some cases, the violation cannot be undone and may be argued to be a "continuing violation." EPA has already addressed this case by providing a mechanism for returning to compliance by resolving the violation, including penalties and any enforcement actions brought by EPA. See proposed rule at 53 FR 48229, November 29, 1988; *see also* discussion below, at section IV.C.4, and IV.H.4.

[7] Although EPA will meet with the owner/operators of such facilities during the 60-day period after a relevant release or violation is found, the Agency does not believe that it would be appropriate to accord a 60-day period of acceptability to such facilities, where the available information indicates non-compliance or uncontrolled releases, and no disruption to on-going CERCLA cleanups would be occasioned by the finding. Final rule section 300.440(d)(3) has been revised to clarify this point.

responsibility requirements, and the closure plan. Criminal violations also create a lack of confidence in a facility's ability to handle waste at any unit, and thus may also be considered "facility-wide." Unit-specific violations include failure to comply with the design and operating requirements.

4. Relevant Violations

Numerous commenters asked for clarification concerning the definition of relevant violations, as set out in the proposed rule (53 FR 48223–48232), and more precise guidance regarding what constitutes a relevant violation. Many commenters also had suggestions on what the definition of relevant violation should include.

One commenter suggested that relevant violations be limited to violations that pose a threat to the physical integrity of the disposal unit; EPA finds this suggestion unacceptable. The environmental laws and regulations contain many requirements, all of which have been determined to be important to assuring the protection of the environment. For example, financial assurance requirements and ground-water monitoring are critical to a facility's safe operation, although neither involves a present threat to the physical integrity of the disposal unit. The legislative history specifically refers to excluding only minor paperwork violations when determining whether a facility is in compliance. H. Rept. 962, 99th Cong., 2nd sess. at 248 (1986). The statute specifies that the facility must be operating in compliance with RCRA (or, where applicable, with TSCA or other applicable law) and all applicable State requirements. Therefore, it would not be reasonable for EPA to offer broad generic exclusions, like those proposed by commenters, for "isolated instances of noncompliance," violations which do not threaten human health and the environment, or violations that are not of an "ongoing nature." These suggestions are not consistent with the mandate of the statute. Further, these types of relatively minor violations may often be resolved within the 60-day review period, before a determination of unacceptability would take effect at the violating facility. The definition of relevant violation from the proposed rule is retained without change (Section 300.440(b)(1)(ii).) In general, EPA believes that relevant violations will generally be Class I violations by high priority violators (HPVs). Guidance for determining what is a Class I violation or HPV can be found in the Revised RCRA Enforcement Response Policy (OSWER Directive No. 9900.0–1A). Criminal violations (after the issuance of an indictment) are also generally relevant violations.[8]

One commenter asked the Agency to delete the word "include" from the first sentence of the discussion of relevant violation in § 300.440(b)(1)(ii), as it implies that matters not listed in the section may also be included as relevant violations. The Agency has decided to retain the word "include" in the final rule, as deleting the word could unnecessarily limit the Agency's discretion in making determinations regarding what constitutes a relevant violation under the rule. Although EPA has attempted to describe the type of violation that would be deemed relevant, it cannot foresee all possible circumstances. EPA will evaluate findings of violation and determine if they are relevant under the rule on a case-by-case basis; parties will have an opportunity to discuss that decision with EPA during the 60-day period for the review of the unacceptability determination.

Another commenter maintained that the prohibition on relevant violations should apply to the entire facility, rather than just the unit(s) receiving the waste.

EPA has decided to continue to limit the application of relevant violation criteria to the receiving unit except in cases where the violation affects the entire facility. As explained in the proposed rule, EPA believes that this interpretation is consistent with Congressional intent that response actions be designed to ensure that no new environmental problems are created; this goal is accomplished by sending CERCLA wastes only to units that are in compliance with applicable Federal and State requirements (and at which releases are controlled). See 53 FR 48223–48224. In addition, this interpretation furthers the Congressionally-mandated preference for treatment by allowing the use of incinerators and alternative treatment technologies even if there is some violation elsewhere on the property. See 53 FR 48222–23. At the same time, the release criteria do apply to non-receiving units, and ensure that CERCLA wastes will not be sent to facilities where significant, uncontrolled releases are occurring at any unit.

Another commenter objected to requiring facilities to meet any requirements, other than compliance with a RCRA permit. In response, the rule does not impose any direct requirements on RCRA facilities; it simply provides that CERCLA wastes may not be transferred to a RCRA facility that is out of compliance or that has uncontrolled releases. Congress specifically recognized that leaks at RCRA facilities might not constitute violations, and thus a requirement to control releases was added. See 53 FR 48219–48220 (proposed rule).

Finally, one commenter asked EPA to clarify what an applicable State environmental law was and who (EPA or the State) has the final say over whether a particular environmental law is applicable.

EPA, after conferring with the State, will determine what State and Federal laws are applicable, and if the facility is operating in compliance with those laws. In most cases, EPA expects to reach consensus with the State as to a facility's compliance with State requirements. However, EPA will make its own independent determination on a facility's return to compliance for the purpose of the Off-site Rule. EPA emphasizes that a facility will be deemed acceptable under the rule if it demonstrates to EPA's satisfaction that it is operating in compliance with applicable laws and has addressed all relevant releases. EPA can be satisfied that a facility has returned to physical compliance with State law even if there is an outstanding State enforcement action. The only situation in which off-site acceptability will be conditioned upon resolution of all legal actions is where the violation cannot be "undone." For example, if a facility had incinerated wastes not specified in its permit, or disposed of unpermitted wastes in a manner that to require their removal would cause harm, EPA will not require recovery of the waste as a condition for returning to acceptability; however, in such cases EPA would not consider the facility to have returned to compliance until certain steps were taken, such as the payment of penalties, thus removing any economic advantage the facility may have enjoyed during the period of violation. See 53 FR 48229. (A similar approach may be appropriate for facilities with criminal violations; the payment of penalties, institution of new training procedures, and other such steps may be necessary in order to restore confidence that the facility can again safely handle CERCLA wastes.) Conversely, a facility that had been out of compliance with ground-water monitoring or financial assurance requirements, but that had brought the ground-water monitoring system back into physical compliance or met its financial assurance obligations could be considered to have returned to physical compliance even if legal actions were

[8] See the proposed rule, 53 FR 48224; Off-site Policy, at p. 10; and Memorandum from Bruce M. Diamond, "Off-site Policy Implementation Issues," (August 29, 1988).

outstanding or penalties had not been paid.

"Physical compliance" does not include being in compliance with a schedule to return to physical compliance.

5. Minimum Technology Requirements (MTRs)

EPA received conflicting comments on the proposal to require a RCRA Subtitle C land disposal unit to comply with the more rigorous minimum technical requirements of RCRA § 3004(o) in order to be acceptable to receive RCRA hazardous wastes from a CERCLA cleanup (53 FR 48224). EPA believes that this requirement is appropriate in order to assure that CERCLA waste that are RCRA hazardous wastes remain safely disposed of in the future. HSWA established minimum technology standards for new land disposal facilities (i.e., facilities commencing construction after Nov. 8, 1984). These standards are more stringent than the requirements for existing (i.e., pre-1984) land disposal facilities because Congress considered existing requirements to be inadequate to prevent hazardous waste from entering the environment. Of course, waivers from MTRs are allowed if the owner/operator can show that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous waste constituent into the ground water or surface water at least as effectively as the required liners and leachate collection system. (40 CFR 264.301) An MTR unit is less likely to have future problems than a non-MTR unit, and therefore the requirement that receiving RCRA Subtitle C land disposal units must meet MTRs is consistent with Congressional intent not to send CERCLA wastes to land disposal units that may leak.

6. Facilities Operating Under a RCRA Exemption and Non-RCRA Facilities

One commenter suggested that a facility operating under a RCRA exemption should still have to meet certain conditions, such as justifying the exemption, obtaining all necessary permits, and passing an inspection. EPA agrees that facilities subject to a RCRA exemption are still covered by the Off-site Rule. CERCLA wastes may be transferred to such a facility only if the facility is operating in compliance with applicable law (which for some facilities operating under a RCRA exemption may still include some provisions of RCRA), has obtained all necessary permits (if any), and has controlled any environmentally significant releases. EPA will rely upon information developed during inspections in making such determinations. These requirements were specifically set out in the proposed rule for other-than-RCRA-facilities, and remain in the final rule as requirements (53 FR 48225–26; proposed §§ 300.440(b)(1), 300.440(b)(2)(D)).

D. Determining Acceptability-Releases

1. Identifying Releases

For all RCRA Subtitle C facilities, a facility-wide investigation (e.g., a RCRA Facility Assessment (RFA) or a Preliminary Assessment/Site Investigation (PA/SI)) by the responsible Agency is necessary to determine if a release has occurred, or if there is a substantial threat of release, prior to its initial use for the receipt of off-site CERCLA wastes. (Once a facility has been found to be acceptable, it remains acceptable until EPA notifies the facility otherwise, as provided in § 300.440(a)(4) of the rule.) If a release has been identified outside the scope of such an investigation, completion of the investigation is not necessary prior to issuing a notice of unacceptability or initiating a corrective action program (in such situations, the corrective action program should be designed to include a facility-wide investigation). Although the performance of a facility-wide investigation is no longer discussed in the rule (see proposed rule § 300.440 (c)(2)), it remains an important part of the off-site evaluation program.

One commenter objected to including "substantial threat of a release" in the definition of release (53 FR 48224), claiming that this exceeds EPA's statutory authority.

Although CERCLA section 121(d)(3) does not specifically state whether or not a "substantial threat of release" is intended to be covered by the terms of the provision, EPA believes that the inclusion of substantial threats is consistent with the intent of the section that CERCLA wastes be transferred only to environmentally-sound facilities, and that they not add to environmental problems. Where there is a substantial threat of a release, e.g., a crack in a containment wall, the transfer of CERCLA wastes to the site would not be environmentally sound.

Even if the statute is not read to compel this result, EPA believes it is a sound one as a matter of policy under CERCLA. It is within the Agency's authority to respond to both releases and "substantial threats of release" under CERCLA section 104. It would be inconsistent with the purposes of CERCLA sections 104 and 121(d)(3) and the goal of protecting health and the environment, for EPA to transfer CERCLA wastes to facilities where a substantial threat of release has been identified, and thus where the threshold for a CERCLA response action has been met. The general position that both "releases" and "substantial threats of releases" are serious causes of concern is reflected in the definition of "release" in the NCP revisions (40 CFR 300.5), which states that for the purposes of the NCP, release also means threat of release.

Three commenters questioned the criteria EPA will use to determine whether a release exists. One commenter asked EPA to provide more specific criteria for when the Agency may find a site to be unacceptable based on a relevant release, while two other commenters asked that determinations of unacceptability be grounded on very firm evidence, using objective criteria.

In evaluating releases and threatened releases, the Agency believes that it should rely on all available information, including information on the design and operating characteristics of a unit. The determination that there is a release (including a substantial threat of a release) may be made based on sampling results or may be deduced from other relevant information. For instance, as discussed in the proposed rule at 53 FR 48225, a broken dike may be evidence of a release (or of a substantial threat of release). In order to protect public health and the environment, and prevent CERCLA cleanups from contributing to future problems, the Agency needs to consider relevant information in addition to sampling data.

However, EPA does not have "unfettered discretion" in this regard, contrary to the comments of one party. The Agency will first make findings based on available information; the owner/operator will then have 60 days to offer evidence to the contrary if the facility disagrees with the Agency's findings. Finally, if the owner/operator disagrees with EPA's final decision, it may request a review by the Regional Administrator.

The final rule, therefore, will continue to allow the Agency to make release determinations based on information other than sampling data.

2. *De Minimis* Releases

In the proposal, the Agency interpreted the concept of release in section 121(d)(3) not to include *de minimis* releases (53 FR 48224). Several commenters supported the *de minimis* exemption, but disputed the narrow

scope of the exemption. One commenter argued that only those releases that pose a threat to human health and the environment should render a facility ineligible. Two commenters disagreed with the example of a non-*de minimis* release between landfill liners, and asked EPA to correct this misunderstanding when issuing the final rule, by stating that accumulations of liquids between the liners are not "releases into the environment."

The statute directs EPA not to transfer CERCLA wastes to a unit of a land disposal facility that is releasing "any" hazardous waste, or constituent thereof, into the environment (CERCLA section 121(d)(3)(A)), and to control "all such releases" from non-receiving units (section 121(d)(3)(B)). Contrary to the suggestion of the first commenter, the language of the statute does not provide that "only releases that pose a threat to human health and the environment" should render a land disposal facility unacceptable under the Off-site Rule. As explained in the proposed rule, 53 FR 48219–48220, Congress was very concerned about leaking land disposal units, and set out in section 121(d)(3) a very stringent standard for the transfer of CERCLA wastes to such units. (The Agency has greater discretion for setting a standard for units that were not addressed by the statute.)

EPA recognized, however, that there are releases of such a minor nature as to be considered "*de minimis*," or of such a trifling nature that the law does not take notice of them. *See Alabama Power Co.* v. *Costle*, 636 F.2d 323, 360 (D.C. Cir. 1979); Black's Law Dictionary (4th ed.), West Publishing, 1968, at p. 482. EPA considers a *de minimis* release as substantially less than a release that poses a threat to human health and the environment. Releases will be considered to be *de minimis* only in exceptional cases. To aid the public, the Agency has attempted to identify some examples: releases to the air from the temporary opening and closing of bungs, and emissions of non-toxic and non-regulated substances from units not otherwise subject to Federal or State permits.[9] *De minimis* releases will be exempt from the definition of release.

However, as two of the commenters noted, one example in the proposed rule was incorrect: "releases" between liners. The accumulation of liquid between liners that are controlled by leachate collection systems does not involve a release to the environment; thus the presence of leachate between liners will not necessarily make a unit unacceptable.

3. Releases to the Air

Two commenters stated that until the promulgation of regulations for the control of air emissions from hazardous waste management units (under RCRA section 3004(n)), it is impossible to tell what releases are normal during hazardous waste management operations. Thus, they argued that air releases should not be considered as a basis for unacceptability under the Off-site Rule at this time.

In response to the comments, EPA agrees that standards do not yet exist for differentiating between acceptable releases to the air and air releases that may pose a threat to human health and the environment. Because almost all liquids evaporate or volatilize, air releases of some kind may be expected at almost every site, making a "no release to air" standard unrealistic. Indeed, the statute does not restrict the use of units with releases to the air. See section 121(d)(3)(A). Thus, as a matter of policy, air emissions not otherwise permitted that result from hazardous waste management units will be considered releases under this rule only if they exceed the standards promulgated under RCRA section 3004(n)(when they have been promulgated). However, until the section 3004(n) rule is final, air emissions from such units will be considered releases where they are found to pose a threat to human health and the environment. Similarly, air emissions that are not covered by RCRA section 3004(n) standards will be considered releases under this rule only where they are found to pose a threat to human health or the environment.

4. Other Releases

One commenter was concerned that releases from non-receiving units at RCRA Subtitle C land disposal facilities could result in unacceptability of the entire facility. Specifically, the commenter stated that § 300.440(b)(2)(B) could preclude the use of an incinerator at a land disposal facility where a non-receiving unit has a release. The commenter agreed with prohibiting the use of a land disposal unit in a land disposal facility with a leaking non-receiving unit, because there are likely to be similar problems with other units. The commenter argued that these problems have no relation to incinerators.

The legislative history (see, e.g., 53 FR 48219–48220), shows that Congress was very concerned about releases to the land. That concern was reflected in the statute by providing special statutory requirements for the transfer of any hazardous substance or pollutant or contaminant from a CERCLA site to a land disposal facility. By providing that EPA may not use land disposal facilities with uncontrolled releases at non-receiving units, the statute suggests that EPA should not, through CERCLA cleanups, do business with facilities that have leaking land disposal units. Sending CERCLA wastes to facilities at which relevant releases have been controlled avoids adding to environmental problems, and furthers the Congressional policy to reward only the best facilities with CERCLA contracts.

The fact that the receiving unit may be an incinerator does not change this analysis. The environmental damage from leaking units is still present. Further, unlike receiving units at a land disposal facility which must eliminate all releases, non-receiving units need only "control" their releases in order to be acceptable, a reasonable step to require before deeming the facility acceptable to receive the government's CERCLA waste. Finally, as RCRA regulations make clear, the presence of a single land disposal unit makes a facility a land disposal facility (see proposed rule, 53 FR 48225); therefore, where an incinerator is part of a facility with land disposal units, the final rule still requires compliance with the release requirements for land disposal facilities in order for the incinerator to be acceptable to receive CERCLA wastes.

E. Notification of Acceptability

1. Management Options for Loss of Acceptability

Two commenters asked EPA to discuss the ramifications on a cleanup contract if the disposal facility becomes unacceptable during a remedial action. They also asked that claims from a contractor be made an eligible cost of the action.

Loss of acceptability during a response action constitutes an implementation problem that will be handled on a case-by-case basis through the contracting process with the individual facility. EPA does not believe that this needs to be addressed in the rule. There are, however, several points to note.

[9] One commenter misread language in the preamble to the proposed rule (53 FR at 48224) as saying that *de minimis* releases are "any releases that do not adversely effect public health or the environment" rather than merely minimal releases—with no adverse effect—like those set out in the examples in the preamble. To the extent the prior language was confusing, it is clarified by the discussion in this preamble statement.

In most cases, there will be a 60-day review period before the initial notice of unacceptability takes effect. The facility may use this time to take steps to return to acceptability, and thereby avoid disruption of the remedial action. This 60-day time period was also provided to afford the lead agency the opportunity to arrange for alternative disposal capacity (if the remedy will not be completed within the 60 days, or the facility is not expected to return to compliance in 60 days) (53 FR 48227). Second, the issue of who should bear added costs stemming from a facility's loss of acceptability must be a matter of contract negotiation between the parties. Finally, the Regional Administrator does have the discretion to extend the 60-day period if all factors, such as a lack of available alternative disposal capacity and a low threat to human health and the environment, so warrant.

2. Potential Unacceptability

One commenter asked for clarification in both the preamble and the rule on the relationship between the initial notice of potential unacceptability and the ability of a facility to continue to receive CERCLA wastes for 60 days after the notice of unacceptability (§ 300.440(d)(3)). In addition, the commenter believed that a determination of unacceptability should be published in the **Federal Register**.

The receipt of an initial notice of potential unacceptability does *not* usually render a facility unacceptable unless or until the final determination has been made and takes effect (usually 60 days after the initial notice, or after an alternative time period as provided under § 300.440 (d)(8) or (d)(9)) (53 FR 48227). As discussed earlier, a facility for which EPA has never made a determination of unacceptability will not be afforded a 60 day period of acceptability after the initial notice. Note that in exceptional cases, unacceptability notices can be made immediately effective. See 53 FR 48227–48228. EPA will not publish unacceptability notices in the **Federal Register**; because of the ability of a facility to take steps to return to compliance at any time, acceptability status is dynamic, and many such notices will be out of date before they get published. In addition, such a publication requirement would obligate EPA to publish in the **Federal Register** notices of when facilities returned to compliance; the effort involved would be significant (with little assurance of being timely), and could detract from more important Agency business. Rather, EPA maintains an up-to-date record of the acceptability status of commercial facilities in each Region. This information is available to parties directly involved in locating sites for disposal, and to the interested public, from the "Regional Off-Site Contact" in each Regional Office. A list of these coordinators and their telephone numbers is included as Appendix I to this preamble, and updated lists will be available from the Superfund Hotline and Superfund docket.

F. Review Procedures

1. Agency Response Time

Two commenters asked EPA to identify a specific time frame for Agency review of a facility's return to acceptability status, and a specified response time for review of unacceptability determinations by the Regional Administrator (the commenter suggested that the appeal to the RA should be completed within the 60-day review period).

EPA does not believe it is feasible or appropriate to establish a specific time frame within which it must respond to a facility's request to return it to acceptability (whether that request comes within the 60 day review period or after a final determination of unacceptability has been issued). Although the Agency is committed to making every effort to respond to such requests as quickly as the case allows, the Agency cannot allow its priorities to be driven by artificial deadlines. Further, if the Agency were not able to verify a facility's alleged return to compliance by a required date, and in fact the company had not returned to compliance, CERCLA wastes would be transferred to unacceptable facilities, in violation of CERCLA section 121(d)(3). Companies that are unacceptable must bear some responsibility for their status; EPA will attempt to evaluate a return to acceptability as promptly as practicable.

As to the comment that the appeal to the Regional Administrator should always conclude within the 60-day review period, EPA notes that the statute establishes a critical mandate: the Agency shall not send CERCLA wastes to unacceptable facilities. The Agency has already provided a reasonable period for review and comment after an initial finding of violation, during which time the facility will have an opportunity to meet with Regional officials. As an added protection, EPA has provided a right to appeal the staff-level decision to the Regional Administrator, who will issue a decision as soon as possible. However, EPA cannot allow this process to routinely continue indefinitely, and it cannot violate Congress' clear direction not to send CERCLA wastes to facilities with relevant violations or releases. For the reasons set out at 53 FR 48227, the Agency believes that a 60-day review period is a reasonable compromise among competing interests. Of course, the Regional Administrator has the discretion to extend the 60-day period, if appropriate, depending on the factors in the case. In deciding whether to extend the 60-day period, the Regional Administrator should, for example, consider the need to proceed with the cleanup expeditiously and the nature of the violations or releases found at the facility (i.e., the potential danger in continuing to send wastes to the site), against the adequacy of the record developed at the staff level and the due process concerns of the facility.

2. Notification of Immediate Unacceptability

In the proposed rule, EPA stated that "in case of either an extension or immediate unacceptability, the facility should be notified as quickly as possible" (53 FR 48228). One commenter asked that in cases where immediate unacceptability is triggered, the owner/operator be notified within 24 hours.

The Agency will make every effort to notify a facility as soon as possible after a finding of immediate unacceptability. In many cases, this may be within a 24-hour period. The Agency notes as well that in serious safety or emergency situations, it may be appropriate to make a finding of unacceptability effective in less than 60 days, although immediate unacceptability is not required. The rule has been changed to reflect this fact.

3. Potentially Responsible Parties

One commenter asked EPA to ascertain whether a determination of unacceptability might have an impact on removal or remedial actions being conducted by potentially responsible parties (PRPs). The commenter maintained that a representative of the PRPs should be allowed to attend any conference held on the determination of unacceptability.

A determination of unacceptability may have an impact on PRP actions if those actions are being conducted pursuant to a CERCLA authority or using CERCLA funds (e.g., a mixed funding case); in such a case, off-site transfers of CERCLA wastes would be required to comply with this rule.

EPA does not believe that it is necessary to invite PRPs to participate in its deliberation on acceptability determinations (although EPA may do so in appropriate cases). The effect of

acceptability determinations on PRPs involved in CERCLA actions is limited to determining where they can transport their waste. The parties most knowledgeable about the facility's status—the owner/operator, EPA and the State—already participate. The possible need for some PRPs to make alternative arrangements for transport of a CERCLA waste is not a direct element of an acceptability determination.

G. Due Process Issues

1. Potential Loss of Business

One commenter asserted that the Off-site Rule may infringe on the constitutionally protected interests of private parties; specifically, the commenter argued that the "opportunity" to compete for business is denied whenever EPA determines that a facility is unacceptable. Such decisions have a negative impact on a company's reputation, further subjecting them to a potential loss of business, and therefore, these decisions must be made within the confines of the due process clause.

As noted in the preamble to the proposed rule (53 FR 48226), EPA agrees that facilities with valid RCRA permits are authorized to receive certain types of wastes and have the opportunity to compete for those wastes, but it does not create the right to receive any particular waste shipments, from the government or any other party. EPA is, at the same time, sensitive to the company's concerns that EPA's process for deciding which facilities to use must be a fair one. Thus, Congress has established the parameters for that decision-making process (i.e., no shipments to violating or leaking facilities), and has required a minimal procedural process. In implementing the Congressionally mandated scheme, this rule sets out a 60-day period for a meeting with Regional and State officials, an opportunity for comment, a decision by the appropriate Regional Waste Management Division, and then the opportunity for appeal to the Regional Administrator. The final rule makes review by the EPA Regional Administrator available to the State and the receiving facility owner/operator, as compared to a discretionary matter left up to the Regional Administrator.

EPA has made every effort to establish procedural protection for affected facilities that will ensure that off-site acceptability determinations are made in a careful and consistent manner. The Agency believes adequate due process protection has been provided. With regard to the comment of a negative impact from the off-site determination, EPA addressed this issue in the proposed rule (53 FR 48226–48227). An EPA decision not to use a facility is simply a response to, and recognition of the finding of a violation or release. The facility must accept some responsibility for its actions (or inactions) and negative impacts which may result.

2. Payment of Penalties

A commenter charged that off-site determinations are a means of forcing the payment of penalties and of forcing an owner/operator to forego the right to appeal corrective action orders or permit provisions; the commenter argued that payment of a penalty should be irrelevant to whether the facility has corrected the violation. Further, the commenter asked that the burden in § 300.440(e) for establishing acceptability during challenges to corrective action decisions, should be reversed to provide that a facility is acceptable during the period of an appeal, unless EPA (rather than the facility) can demonstrate that interim measures are inadequate and that other corrective action measures are necessary to protect human health and the environment.

As stated earlier in this preamble (section IV.C.4), the question of whether or not a facility has returned to physical compliance with applicable laws is generally separate and distinct from the question of whether penalties may be appropriate for past violations; a company's right to appeal any penalties associated with underlying violations is unaffected in most cases. However, EPA has identified one major exception to this rule. Where a violation cannot physically be "undone" (or the Agency has determined that it is safer to leave waste in place), one can argue that the receiving unit is "tainted," and that the violation is a continuing one. In order to avoid such a harsh result, EPA has provided that in such cases, the facility may be said to have returned to physical compliance after any required steps have been taken to prevent recurrence of the violation, and any outstanding penalties to EPA have been paid (see 53 FR 48229). EPA needs assurance that there will be no repetition of the violation, and the payment of a penalty helps provide that needed assurance. In effect, it is the preventive measure plus the penalty that "corrects" the violation in these cases. Thus, the Off-site Rule is not "forcing" the payment of penalties; in most cases, such payment is not required to achieve acceptability. Where physical compliance is not technically achievable, or would be extremely difficult to achieve (e.g., excavating entire landfills or draining entire surface impoundments at great risk to workers or the environment), the Agency has provided another avenue for correcting violations.

Similarly, EPA is not "forcing an owner/operator to forego the right to an appeal." Congress has directed EPA to clean up Superfund sites expeditiously, and at the same time not to send CERCLA wastes to sites that are in violation of applicable laws or that have uncontrolled relevant releases. Thus, the Agency must make these latter determinations promptly, while allowing the owner/operator a reasonable right to review. EPA believes that the 60-day review period with access to two levels of decisionmakers, as provided under this rule, represents such a balance. However, withholding decisions during months and years of administrative and judicial challenge would not allow the Agency to comply with its statutory mandate, and would encourage dilatory appeals. (See discussion at 53 FR 48228.)

On the appeal issue specifically, EPA has gone even further, providing an additional mechanism for an owner/operator to be considered acceptable during interruptions in corrective action to control releases due to the need to pursue permit modifications. Although the statute conditions acceptability on the "control" of releases, and no corrective action will be on-going under the permit or order during corrective action appeals or permit modifications, EPA will consider the facility acceptable if the Agency is satisfied that sufficient interim corrective action steps are underway, or if it is convinced that no corrective action is needed during the interim period. Thus, a facility wishing to remain acceptable and wishing to appeal may do both. Contrary to a commenter's suggestion, this burden is properly on the owner/operator, if it wishes to remain acceptable during the period of its permit modification appeal. After a certain point, the Agency must be able to get on with its business of cleaning up sites..

3. Review of Determination Decisions

One commenter argued that the procedures set out in the proposed rule for review of off-site unacceptability determinations (53 FR 48227) would not promote consistency in decisionmaking, which a district court found to be a serious flaw in the original Off-site Policy. The commenter requests the right to an expeditious review by an impartial decisionmaker (someone other than the person who originally made the decision), and a right to review of EPA Regional decisions by EPA Headquarters (preferably the General Counsel).

EPA believes that it has established a system of review which will promote consistency in decisionmaking. The procedures to be applied are clearly set out, and will be overseen by coordinators in the ten EPA Regions. The Agency intends to provide training and guidance to these coordinators in order to assure consistent applications. The consistency problem identified by the district court and cited by a commenter, stemmed from implementation of the May 1985 Off-site Policy, which was dramatically more limited in scope and procedures than this final rule. Procedures for notice and opportunity to comment by affected facilities were added by the revised Off-site Policy in November 1987, and those procedures are being expanded by this rule. Moreover, the fact that such procedures will now be legally enforceable regulations—as compared to policy guidance—adds to the certainty that the procedures will be consistently followed.

The request for expeditious review by an impartial decisionmaker, other than the person who originally made the decision, is satisfied by the provision in the final rule for appeal to the Regional Administrator. The Regional Administrator is not involved in the day-to-day compliance and release findings of the Regional Waste Management Divisions, and does not make the initial acceptability determination based on the meetings with the owner/operator within 30 days of the notice letter. Rather, the Regional Administrator supervises all operations of the Region, and is available to hear appeals from those decisions, if requested.

It has been EPA's experience under the revised Off-site Policy that Regional Administrators do not rubber-stamp staff recommendations on off-site acceptability, and have overruled or remanded such recommendations in appropriate cases. The courts have further stated that Agency decisionmakers are presumed to be unbiased. *See Withrow* v. *Larkin*, 421 U.S. 35, 47 (1975).

4. Review Procedures

One commenter argued that the informal conference and written comment procedure (described at 53 FR 48227) is not sufficient for review, and suggested using the procedures proposed in 40 CFR 32.312 (d) and (e) (52 FR 39202, Oct. 20, 1987). This refers to proposed regulations for Debarment and Suspension under EPA Assistance, Loan, and Benefit Programs, which provide for an informal hearing without formal rules of evidence or procedure; opportunity to appear with counsel, submit documentary evidence, and present and confront witnesses; and a transcript of the proceedings to be made available to the respondent.

The more complex debarment procedures are not appropriate for the Off-site Rule. The review procedures set out by EPA under the Off-site Rule already provide for an informal hearing, opportunity to appear with counsel, and submission of documentary evidence. EPA does not believe it is appropriate or necessary to call and confront witnesses in order to determine if the facility's operations reveal relevant violations or releases. Moreover, a key distinction between the two sets of rules is that acceptability is within the control of the owner/operator; unlike a disbarment for a set period of up to three years, unacceptability status may be terminated once the facility returns to physical compliance or controls relevant releases.

The informal procedures set out in the Off-site Rule are also consistent with the purpose and terms of the statute. CERCLA requires swift action in these cases; the use of procedures provided in this rule allow relatively quick action, while providing due process. Further, the procedures go well beyond those required in the statute (simple "notification") *and* those suggested in the Conference report on SARA ("an opportunity to meet informally," and "post-determination dispute resolution procedures" for release determinations). (See 53 FR 48227.)

EPA notes that only one commenter suggested that the rule's review procedures were inadequate.

5. Notification of Decisions

The proposal, at 53 FR 48227, provides that the Agency will inform the owner/operator "in writing" of its decision after the informal conference and review of comments. EPA thus agrees with the comment that the basis for all decisions should be clearly articulated in writing. EPA also agrees that owner/operators should receive responses to their major comments on the acceptability decision. Regions will specify in notices of unacceptability why a facility or unit has been found unacceptable, and in post-conference decisions why a final unacceptability determination has been made. Such steps will also facilitate the review by the Regional Administrator, who may limit review to the underlying record.

H. Re-Evaluation of Unacceptability

1. Thresholds/Enforceable Agreements

One commenter asked for a clarification on the threshold that will render a facility inappropriate for accepting waste.

The criteria for determining when a facility crosses the threshold into unacceptability are described in § 300.440(b). In short, for a facility to be acceptable to receive CERCLA wastes, it must have no relevant violations under applicable law, and it must control all relevant releases (and, for certain categories of facilities, eliminate all relevant releases at the receiving units). EPA will determine whether these criteria have been met based on regular inspections.

The commenter also objected to the requirement that a Federal facility must control relevant releases under an "enforceable agreement" in order to be acceptable to receive CERCLA wastes (53 FR 48229). The commenter noted that there may be fully-permitted units at Federal installations that could safely accept CERCLA wastes; however, these units will be unavailable because of the presence of releases elsewhere on the installation that are part of a facility-wide investigation, but not under an enforceable agreement. Thus, agencies would be forced to use facilities off the Federal property for receipt of CERCLA waste, adding to costs and delay.

Congress clearly stated that CERCLA wastes should *not* be transferred to leaking units at land disposal facilities or to land disposal facilities with leaking non-receiving units that are not being "controlled." EPA maintains that an enforceable agreement is necessary to ensure that such releases are controlled, and to ensure the continued implementation of a corrective action program approved by EPA or, when appropriate, the State. EPA sees no reason why Federal facilities should be treated differently from private parties (see CERCLA section 120(a)). Although it might be easier for some Federal facilities to use active RCRA units on their property to receive CERCLA wastes, they may only do so if those units meet the conditions set forth in this rule. The requirement to have relevant releases at non-receiving units controlled by an enforceable agreement may be satisfied through a permit (e.g., the corrective action portion of the RCRA permit), or consent agreement (e.g., an interagency agreement under CERCLA section 120), both of which are available to Federal facilities.

2. Corrective Action/Controlled Releases

One commenter agreed that a facility with a corrective action program in place should be considered acceptable, and supported the broader definition of what constitutes a corrective action program (proposed § 300.440(f)(3)(iii)), including the use of equivalent State authorities.

The final rule continues to provide that corrective action programs must be performed under a RCRA order or permit, or under another appropriate authority if the release is at an other-than-RCRA subtitle C facility. EPA cautions, however, that provisions in State orders or permits issued by States not authorized for HSWA corrective action are generally not acceptable to satisfy this requirement at RCRA facilities. (See 53 FR 48229.) The major exception to this is when States authorized for the base RCRA program have issued a valid permit requiring corrective action for releases from regulated units to the ground water (pursuant to 40 CFR 264.100).

One commenter objected to considering a release at a non-receiving unit to be "controlled" based simply on the issuance of an order or permit; the commenter claimed that in such cases, an owner/operator would not be required to show that the release is actually under control, as called for in the statute.

For purposes of this rule, EPA is considering releases from non-receiving units "controlled" when an enforceable order or permit to study the problem has been issued. The Agency believes that once a facility is under such an enforceable order or permit or agreement, the situation is "under control." (If action is necessary to protect human health and the environment during the term of the study, interim measures may be required.) The situation will be considered under control unless or until the order, permit, or agreement is violated or the document needs to be modified to proceed to the next phase of action. Provided the owner/operator is taking positive action and remains in compliance with the terms specified in an order or permit, the facility may remain acceptable.

In addition, investigations can often take a long time to complete, and most waste treatment, storage and disposal facilities have at least minor releases from non-receiving units; thus, requiring facilities to complete corrective measures before being considered acceptable could severely limit acceptable off-site management options, effectively reducing the available capacity to nothing.

Requiring the owner/operator to physically eliminate the release at non-receiving units in order to be acceptable would also go beyond the strict terms of the rule to "control" releases. Further, it would be a particularly harsh result given the statute's requirement to control "any" release at a land disposal facility. By encouraging facilities to begin studying and eliminating releases, this rule furthers the control of leaking units. Further, by requiring such work to be conducted under an enforceable order or corrective action permit, EPA has the ability to ensure that the required steps are carried out expeditiously.

3. Releases and Regaining Eligibility

One commenter challenged as too inflexible the provision in the proposed rule (53 FR 48229) that requires the elimination of all releases from a receiving unit in order to regain acceptability. The commenter argued that requiring elimination to the extent technically feasible and to a level which poses no threat to human health and the environment, would be more realistic.

In response, *de minimis* releases from receiving units are already exempted from the rule. EPA believes that any further relaxation of the no-release standard for receiving units at RCRA facilities is against the intent of the statute which states that waste may only be transferred to a land disposal unit that "is not releasing *any* hazardous waste, or constituent thereof, into the groundwater or surface water or soil." Congress simply does not want CERCLA wastes sent to leaking RCRA land disposal units. See 53 FR 48219. EPA believes that the same standard should apply to receiving units at RCRA treatment and storage facilities. See 53 FR 48225.

4. Regaining Physical Compliance at Treatment and Storage Facilities

In the preamble to the proposed rule, at 53 FR 48229, EPA discussed how a facility could return to compliance after the facility had been found to be unacceptable based on a relevant violation. One commenter supported two of the three conditions under which a unit will be considered to have regained physical compliance, but disagreed with the contention that, "in most cases, physical compliance cannot be regained until all legal proceedings, (etc.) are resolved." The commenter charged that final resolution of disputes regarding what legal consequences should flow from a violation are irrelevant to the question of whether a unit can safely handle hazardous waste.

This issue has already been largely addressed in this preamble statement at section IV.C.4 ("Relevant Violations") and section IV.G.2 ("Payment of Penalties"). Final resolution of legal proceedings (including payment of penalties) is not a pre-condition to regaining acceptability where the facility can, in effect, undo the violation (e.g., remove improperly disposed waste) and thereby return to physical compliance. However, resolution of penalties and of EPA legal proceedings are generally pre-conditions to regaining acceptability in those cases where a violation cannot be undone. (See examples in the discussion of Relevant Violations, C.4.) In those cases, (especially where a decision has been made to leave wastes in place in a land disposal unit), the Agency is allowing a physical compliance determination to be made despite what some might see as a forever-ongoing violation. For such cases, the Agency has a need for greater certainty that every action has been taken that can be taken to assure that the violation will not recur. In effect, it is the taking of required preventative measures and the payment of the penalty that "corrects" the violation in these cases.

I. Implementation

Three commenters suggested that in order to facilitate implementation of this rule, EPA should establish a national data base or other mechanism so that off-site contacts and their staff can easily tell which facilities, nationwide, are in compliance with the Off-Site Rule. With such a listing system, EPA and other Agencies could readily know or access a list of approved off-site disposal facilities. One of these commenters also asked EPA to develop a more formalized list which reports which facilities have significant violations under applicable Federal and State laws or regulations.

It has been EPA's experience that off-site acceptability status changes frequently and is difficult to usefully reduce to a published list. Thus, the Agency believes that the only way to ensure up-to-date, accurate information is to continue to rely on the ten Regional Off-Site Contacts (ROCs). The Agency does not believe that it is an unreasonable burden to require interested parties to make one to several phone calls to determine the acceptability status of facilities near a given site or with specialized capacity. The Regional Off-Site Contacts will maintain up-to-date information on the

acceptability of facilities within their Region.

However, in order to ensure that the information is readily available, EPA will strongly encourage the maintenance of a back-up contact for use when the primary Off-Site Contact is unavailable. EPA will keep a copy of the ROCs in the Superfund docket and with the RCRA/CERCLA Hotline (a list is also included as Appendix I to this preamble, although it will obviously become outdated in the future, and interested parties should consult with the sources named for revised lists).

Due to the dynamic nature of the acceptability determinations, EPA has no plans at this time to publish a national list of acceptable (or unacceptable) units. The Agency believes that such lists could serve more as a source of misinformation (or out-of-date information) than reliable information. EPA's recognition of the dynamic nature of acceptability is reflected in the Agency's policy that an off-site facility does not need to be acceptable to bid on accepting waste from a CERCLA clean-up, but must be acceptable under this rule to be awarded such a contract.

In order to avoid problems resulting from contractors whose designated receiving facilities become unacceptable under this rule, agencies and PRPs may want to provide for back-up or alternative facilities in their contracts.

J. Manifest Requirements

One commenter objected to the statement in the preamble to the proposed rule (53 FR 48230) that limits the requirement to file a "Uniform Hazardous Waste Manifest" form to CERCLA wastes that are also RCRA wastes; the commenter asked that the requirement cover all types of wastes.

The preamble simply noted that already existing manifest requirements under RCRA must be met. There is no manifest requirement under CERCLA, and this rule does not establish an independent tracking system for CERCLA wastes. Compliance with the rule is assured through inspections, and enforcement of contract provisions.

V. Regulatory Analysis

A. Regulatory Impact Analysis

Under Executive Order No. 12291, EPA must determine whether a regulation is "major" and thus whether the Agency must prepare and consider a Regulatory Impact Analysis in connection with the rule. Today's rule is not major because it simply codifies an Agency policy that has been in effect since May of 1985 and largely mirrors a revision of that policy that has been in effect since November of 1987. As discussed in the preamble to the proposed rule (53 FR 48230–48231), this rule contains criteria that EPA will use to determine where it will send waste from Superfund cleanups, but does not regulate or otherwise impose any new requirements on commercial waste handlers. Acceptability under this rule is largely based on compliance with applicable regulations the Agency already enforces. As a result of today's rule some facilities may choose to initiate corrective action sooner than if they waited for the corrective action conditions in their final operating permit pursuant to RCRA 3004 (u) and (v). However, regardless of the requirements of this rule, under the authority of section 3008(h) of RCRA, EPA already compels corrective action at RCRA interim status facilities with known or suspected releases. The rule, then, should not result in increased long-term costs to the commercial waste handling industry.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, at the time an Agency publishes any proposed or final rule, it must prepare a Regulatory Flexibility Analysis that describes the impact of the rule on small entities, unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Today's final rule describes procedures for determining the acceptability of a facility for off-site management of CERCLA wastes. It does not impose significant additional requirements or compliance burdens on the regulated community. Therefore, pursuant to 5 U.S.C. 601b, I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

This rule does not contain any new information collection requirements subject to OMB review under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

VI. Supplementary Document

APPENDIX I.—REGIONAL OFF-SITE CONTACTS (ROCs)

Region	Primary contact/phone	Backup contact/phone
I	Lynn Hanifan, (617) 573–9662.	Austine Frawley, (617) 573–1754.
II	Greg Zaccardi, (212) 264–9504.	Joel Golumbek, (212) 264–2638.
III	Sarah Caspar, (215) 597–1857.	Naomi Henry, (215) 597–8338.
IV	Edmund Burks, (404) 347–7603.	John Dickinson, (404) 347–7603.
V	Gertrud Matuschkovitz, (312) 353–7921.	Uylaine McMahon, (312) 886–4445.
VI	Ron Shannon, (214) 655–2282.	Joe Dougherty, (214) 655–2281.
VII	Gerald McKinney, (913) 551–7816.	David Doyle, (913) 551–7667.
VIII	Terry Brown, (303) 293–1823.	George Dancik, (303) 293–1506.
IX	Diane Bodine, (415) 744–2130.	Gloria Brownley, (415) 744–2114.
X	Ron Lillich, (206) 553–6646.	Kevin Schanilec, (206) 553–1061.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous substance, Hazardous waste, Intergovernmental relations, Natural resources, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 14, 1993.

Carol M. Browner,

Administrator.

40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES CONTINGENCY PLAN

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Section 300.440 is added to part 300 to read as follows:

§ 300.440 Procedures for planning and implementing off-site response actions.

(a) *Applicability.* (1) This section applies to any remedial or removal action involving the off-site transfer of any hazardous substance, pollutant, or

contaminant as defined under CERCLA sections 101 (14) and (33) ("CERCLA waste") that is conducted by EPA, States, private parties, or other Federal agencies, that is Fund-financed and/or is taken pursuant to any CERCLA authority, including cleanups at Federal facilities under section 120 of CERCLA, and cleanups under section 311 of the Clean Water Act (except for cleanup of petroleum exempt under CERCLA). Applicability extends to those actions taken jointly under CERCLA and another authority.

(2) In cases of emergency removal actions under CERCLA, emergency actions taken during remedial actions, or response actions under section 311 of the Clean Water Act where the release poses an immediate and significant threat to human health and the environment, the On-Scene Coordinator (OSC) may determine that it is necessary to transfer CERCLA waste off-site without following the requirements of this section.

(3) This section applies to CERCLA wastes from cleanup actions based on CERCLA decision documents signed or consent decrees lodged after October 17, 1986 ("post-SARA CERCLA wastes") as well as those based on CERCLA decision documents signed and consent decrees lodged prior to October 17, 1986 ("pre-SARA CERCLA wastes"). Pre-SARA and post-SARA CERCLA wastes are subject to the same acceptability criteria in § 300.440(b) (1) and (2).

(4) EPA (usually the EPA Regional Office) will determine the acceptability under this section of any facility selected for the treatment, storage, or disposal of CERCLA waste. EPA will determine if there are relevant releases or relevant violations at a facility prior to the facility's initial receipt of CERCLA waste. A facility which has previously been evaluated and found acceptable under this rule (or the preceding policy) is acceptable until the EPA Regional Office notifies the facility otherwise pursuant to § 300.440(d).

(5) Off-site transfers of those laboratory samples and treatability study CERCLA wastes from CERCLA sites set out in paragraphs (a)(5) (i) through (iii) of this section, are not subject to the requirements of this section. However, those CERCLA wastes may not be transferred back to the CERCLA site unless the Remedial Project Manager or OSC assures the proper management of the CERCLA waste samples or residues and gives permission to the laboratory or treatment facility for the samples and/or residues to be returned to the site.

(i) Samples of CERCLA wastes sent to a laboratory for characterization;

(ii) RCRA hazardous wastes that are being transferred from a CERCLA site for treatability studies and that meet the requirements for an exemption for RCRA under 40 CFR 261.4(e); and

(iii) Non-RCRA wastes that are being transferred from a CERCLA site for treatability studies and that are below the quantity threshold established at 40 CFR 261.4(e)(2).

(b) *Acceptability criteria.* (1) *Facility compliance.* (i) A facility will be deemed in compliance for the purpose of this rule if there are no relevant violations at or affecting the unit or units receiving CERCLA waste:

(A) For treatment to standards specified in 40 CFR part 268, subpart D, including any pre-treatment or storage units used prior to treatment;

(B) For treatment to substantially reduce its mobility, toxicity or persistence in the absence of a defined treatment standard, including any pre-treatment or storage units used prior to treatment; or

(C) For storage or ultimate disposal of CERCLA waste not treated to the previous criteria at the same facility.

(ii) Relevant violations include significant deviations from regulations, compliance order provisions, or permit conditions designed to: ensure that CERCLA waste is destined for and delivered to authorized facilities; prevent releases of hazardous waste, hazardous constituents, or hazardous substances to the environment; ensure early detection of such releases; or compel corrective action for releases. Criminal violations which result in indictment are also relevant violations. In addition, violations of the following requirements may be considered relevant:

(A) Applicable subsections of sections 3004 and 3005 of RCRA or, where applicable, other Federal laws (such as the Toxic Substances Control Act and subtitle D of RCRA);

(B) Applicable sections of State environmental laws; and

(C) In addition, land disposal units at RCRA subtitle C facilities receiving RCRA hazardous waste from response actions authorized or funded under CERCLA must be in compliance with RCRA section 3004(o) minimum technology requirements. Exceptions may be made only if the unit has been granted a waiver from these requirements under 40 CFR 264.301.

(2) *Releases.* (i) Release is defined in § 300.5 of this part. Releases under this section do not include:

(A) *De minimis* releases;

(B) Releases permitted under Federal programs or under Federal programs delegated to the States (Federally permitted releases are defined in § 300.5), except to the extent that such releases are found to pose a threat to human health and the environment; or

(C) Releases to the air that do not exceed standards promulgated pursuant to RCRA section 3004(n), or absent such standards, or where such standards do not apply, releases to the air that do not present a threat to human health or the environment.

(ii) Releases from units at a facility designated for off-site transfer of CERCLA waste must be addressed as follows:

(A) *Receiving units at RCRA subtitle C facilities.* CERCLA wastes may be transferred to an off-site unit regulated under subtitle C of RCRA, including a facility regulated under the permit-by-rule provisions of 40 CFR 270.60 (a), (b) or (c), only if that unit is not releasing any hazardous waste, hazardous constituent, or hazardous substance into the ground water, surface water, soil or air.

(B) *Other units at RCRA subtitle C land disposal facilities.* CERCLA wastes may not be transferred to any unit at a RCRA subtitle C land disposal facility where a non-receiving unit is releasing any hazardous waste, hazardous constituent, or hazardous substance into the ground water, surface water, soil, or air, unless that release is controlled by an enforceable agreement for corrective action under subtitle C of RCRA or other applicable Federal or State authority. For purposes of this section, a RCRA "land disposal facility" is any RCRA facility at which a land disposal unit is located, regardless of whether a land disposal unit is the receiving unit.

(C) *Other units at RCRA subtitle C treatment, storage, and permit-by-rule facilities.* CERCLA wastes may not be transferred to any unit at a RCRA subtitle C treatment, storage or permit-by-rule facility, where a release of any hazardous waste, hazardous constituent, or hazardous substance from non-receiving units poses a significant threat to public health or the environment, unless that release is controlled by an enforceable agreement for corrective action under subtitle C of RCRA or other applicable Federal or State authority.

(D) *All other facilities.* CERCLA wastes should not be transferred to any unit at an other-than-RCRA subtitle C facility if the EPA Regional Office has information indicating that an environmentally significant release of hazardous substances has occurred at that facility, unless the release is controlled by an enforceable agreement for corrective action under an applicable Federal or State authority.

(iii) Releases are considered to be "controlled" for the purpose of this section as provided in § 300.440 (f)(3)(iv) and (f)(3)(v). A release is not considered "controlled" for the purpose of this section during the pendency of administrative or judicial challenges to corrective action requirements, unless the facility has made the requisite showing under § 300.440(e).

(c) *Basis for determining acceptability.* (1) If a State finds that a facility within its jurisdiction is operating in non-compliance with state law requirements including the requirements of any Federal program for which the State has been authorized, EPA will determine, after consulting with the State as appropriate, if the violation is relevant under the rule and if so, issue an initial determination of unacceptability.

(2) If a State finds that releases are occurring at a facility regulated under State law or a Federal program for which the State is authorized, EPA will determine, after consulting with the State as appropriate, if the release is relevant under the rule and if so, issue an initial determination of unacceptability.

(3) EPA may also issue initial determinations of unacceptability based on its own findings. EPA can undertake any inspections, data collection and/or assessments necessary. EPA will then notify with the State about the results and issue a determination notice if a relevant violation or release is found.

(d) *Determination of unacceptability.* (1) Upon initial determination by the EPA Regional Office that a facility being considered for the off-site transfer of any CERCLA waste does not meet the criteria for acceptability stated in § 300.440(b), the EPA Region shall notify the owner/operator of such facility, and the responsible agency in the State in which the facility is located, of the unacceptability finding. The notice will be sent by certified and first-class mail, return receipt requested. The certified notice, if not acknowledged by the return receipt card, should be considered to have been received by the addressee if properly sent by regular mail to the last address known to the EPA Regional Office.

(2) The notice shall generally: state that based on available information from a RCRA Facility Assessment (RFA), inspection, or other data sources, the facility has been found not to meet the requirements of § 300.440; cite the specific acts, omissions, or conditions which form the basis of these findings; and inform the owner/operator of the procedural recourse available under this regulation.

(3) A facility which was previously evaluated and found acceptable under this rule (or the preceding policy) may continue to receive CERCLA waste for 60 calendar days after the date of issuance of the notice, unless otherwise determined in accordance with paragraphs (d)(8) or (d)(9) of this section.

(4) If the owner or operator of the facility in question submits a written request for an informal conference with the EPA Regional Office within 10 calendar days from the issuance of the notice, the EPA Regional Office shall provide the opportunity for such conference no later than 30 calendar days after the date of the notice, if possible, to discuss the basis for the underlying violation or release determination, and its relevance to the facility's acceptability to receive CERCLA cleanup wastes. State representatives may attend the informal conference, submit written comments prior to the informal conference, and/or request additional meetings with the EPA Region, relating to the unacceptability issue during the determination process. If no State representative is present, EPA shall notify the State of the outcome of the conference. An owner/operator may submit written comments by the 30th day after issuance of the notice, in addition to or instead of requesting an informal conference.

(5) If the owner or operator neither requests an informal conference nor submits written comments, the facility becomes unacceptable to receive CERCLA waste on the 60th day after the notice is issued (or on such other date designated under paragraph (d)(9) of this section). The facility will remain unacceptable until such time as the EPA Regional Office notifies the owner or operator otherwise.

(6) If an informal conference is held or written comments are received, the EPA Region shall decide whether or not the information provided is sufficient to show that the facility is operating in physical compliance with respect to the relevant violations cited in the initial notice of unacceptability, and that all relevant releases have been eliminated or controlled, as required in paragraph (b)(2) of this section, such that a determination of acceptability would be appropriate. EPA will notify the owner/operator in writing whether or not the information provided is sufficient to support a determination of acceptability. Unless EPA determines that information provided by the owner/operator and the State is sufficient to support a determination of acceptability, the facility becomes unacceptable on the 60th calendar day after issuance of the original notice of unacceptability (or other date established pursuant to paragraphs (d)(8) or (d)(9) of this section).

(7) Within 10 days of hearing from the EPA Regional Office after the informal conference or the submittal of written comments, the owner/operator or the State may request a reconsideration of the unacceptability determination by the EPA Regional Administrator (RA). Reconsideration may be by review of the record, by conference, or by other means deemed appropriate by the Regional Administrator; reconsideration does not automatically stay the determination beyond the 60-day period. The owner/operator will receive notice in writing of the decision of the RA.

(8) The EPA Regional Administrator may decide to extend the 60-day period if more time is required to review a submission. The facility owner/operator shall be notified in writing if the Regional Administrator extends the 60 days.

(9) The EPA Regional Office may decide that a facility's unacceptability is immediately effective (or effective in less than 60 days) in extraordinary situations such as, but not limited to, emergencies at the facility or egregious violations. The EPA Region shall notify the facility owner/operator of the date of unacceptability, and may modify timeframes for comments and other procedures accordingly.

(e) *Unacceptability during administrative and judicial challenges of corrective action decisions.* For a facility with releases that are subject to a corrective action permit, order, or decree, an administrative or judicial challenge to the corrective action (or a challenge to a permit modification calling for additional corrective action) shall not be considered to be part of a corrective action "program" controlling those releases and shall not act to stay a determination of unacceptability under this rule. However, such facility may remain acceptable to receive CERCLA waste during the pendency of the appeal or litigation if:

(1) It satisfies the EPA Regional Office that adequate interim corrective action measures will continue at the facility; or

(2) It demonstrates to the EPA Regional Office the absence of a need to take corrective action during the short-term, interim period.

Either demonstration may be made during the 60-day review period in the context of the informal conference and RA reconsideration.

(f) *Re-evaluating unacceptability.* If, after notification of unacceptability and

the opportunity to confer as described in § 300.440(d), the facility remains unacceptable, the facility can regain acceptability. A facility found to be unacceptable to receive CERCLA wastes based on relevant violations or releases may regain acceptability if the following conditions are met:

(1) *Judgment on the merits.* The facility has prevailed on the merits in an administrative or judicial challenge to the finding of noncompliance or uncontrolled releases upon which the unacceptability determination was based.

(2) *Relevant violations.* The facility has demonstrated to the EPA Region its return to physical compliance for the relevant violations cited in the notice.

(3) *Releases.* The facility has demonstrated to the EPA Region that:

(i) All releases from receiving units at RCRA subtitle C facilities have been eliminated and prior contamination from such releases is controlled by a corrective action program approved under subtitle C of RCRA;

(ii) All releases from other units at RCRA subtitle C land disposal facilities are controlled by a corrective action program approved under subtitle C of RCRA;

(iii) All releases from other units at RCRA subtitle C treatment and storage facilities do not pose a significant threat to human health or the environment, or are controlled by a corrective action program approved under subtitle C of RCRA.

(iv) A RCRA subtitle C corrective action program may be incorporated into a permit, order, or decree, including the following: a corrective action order under RCRA section 3008(h), section 7003 or section 3013, a RCRA permit under 40 CFR 264.100 or 264.101, or a permit under an equivalent authority in a State authorized for corrective action under RCRA section 3004(u). Releases will be deemed controlled upon issuance of the order, permit, or decree which initiates and requires completion of one or more of the following: a RCRA Facility Investigation, a RCRA Corrective Measures Study, and/or Corrective Measures Implementation. The release remains controlled as long as the facility is in compliance with the order, permit, or decree, and enters into subsequent agreements for implementation of additional corrective action measures when necessary, except during periods of administrative or judicial challenges, when the facility must make a demonstration under § 300.440(e) in order to remain acceptable.

(v) Facilities with releases regulated under other applicable Federal laws, or State laws under a Federally-delegated program may regain acceptability under this section if the releases are deemed by the EPA Regional Office not to pose a threat to human health or the environment, or if the facility enters into an enforceable agreement under those laws to conduct corrective action activities to control releases. Releases will be deemed controlled upon the issuance of an order, permit, or decree which initiates and requires one or more of the following: a facility investigation, a corrective action study, and/or corrective measures implementation. The release remains controlled as long as the facility is in compliance with the order, permit, or decree, and enters into subsequent agreements for implementation of additional corrective measures when necessary, except during periods of administrative or judicial challenges, when the facility must make a demonstration under § 300.440(e) in order to remain acceptable.

(4) Prior to the issuance of a determination that a facility has returned to acceptability, the EPA Region shall notify the State in which the facility is located, and provide an opportunity for the State to discuss the facility's acceptability status with EPA.

(5) An unacceptable facility may be reconsidered for acceptability whenever the EPA Regional Office finds that the facility fulfills the criteria stated in § 300.440(b). Upon such a finding, the EPA Regional Office shall notify the facility and the State in writing.

[FR Doc. 93–23069 Filed 9–21–93; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 205 and 233

RIN 0970–AB14

Aid to Families With Dependent Children Program; Certain Provisions of the Omnibus Budget Reconciliation Act of 1990

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Interim final rule.

SUMMARY: These interim final rules implement three sections of the Omnibus Budget Reconciliation Act (OBRA) of 1990 that apply to the Aid to Families with Dependent Children (AFDC) program. They are: Section 5053, which deletes all references to income deeming by legal guardians in minor parent cases; section 5054, which expands State agency responsibility for reporting, to an appropriate agency or official, known or suspected instances of child abuse and neglect of a child receiving AFDC; and section 5055, which adds an explicit reference to title IV–E on the list of programs for which information about AFDC applicants and recipients may be made available.

In addition, we deleted the reference to title IV–C since the WIN program is no longer operative. Other OBRA 90 changes pertaining to the AFDC–UP program and the Earned Income Tax Credit disregard were published July 9, 1992, in the final rules implementing the related AFDC amendments of the Family Support Act of 1988 (57 FR 30408–30409).

DATES: Effective Date: September 22, 1993.

Comments: Comments must be received on or before October 22, 1993.

ADDRESSES: Comments should be submitted in writing to the Assistant Secretary for Children and Families, Attention: Mr. Mack A. Storrs, Director, Division of AFDC Program, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447. Comments may be inspected between 8 a.m. and 4:30 p.m. during regular business days by making arrangements with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Mack A. Storrs, Director, Division of AFDC Program, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–9289.

SUPPLEMENTARY INFORMATION:

Discussion of Interim Rule Provisions

Eliminating the Use of the Term "Legal Guardian" (Section 233.20 of the Interim Rule)

The Omnibus Budget Reconciliation Act (OBRA) of 1981 added section 402(a)(39) of the Social Security Act to require that, in determining AFDC benefits for a dependent child whose parent or legal guardian is under the age of 18, the State agency must include the income of the minor parent's own parents or legal guardians who are living in the same home.

Section 5053 of Omnibus Budget Reconciliation Act of 1990 (OBRA 90) amended section 402(a)(39) of the Social Security Act by eliminating the use of the term "legal guardian." Section 402(a)(39) provides that in determining AFDC benefits for a dependent child whose parent is under the age of 18, the

State agency must include the income of the minor parent's own parents who are living in the same home. We have amended Federal regulations at § 233.20(a)(3)(xviii) to reflect this statutory change.

As stated in the OBRA 90 conference report (H.R. Conf. Rep. No. 964, 101st Cong. 2d Sess. (Oct. 1990) pp. 911–12), Congress recognized that legal guardianship is not relevant to eligibility determination. Even if a legal guardian were appointed, the child would not be eligible for AFDC unless living with a relative as defined in section 406 of the Social Security Act.

Congress also recognized that the use of the term "legal guardian" with respect to the deeming of income is inappropriate in the context of the AFDC statute. Unlike the parent-child relationship, legal guardianship has not been a basis for attributing income to AFDC beneficiaries. An example given in the Conference report illustrates that there is the potential for unequal treatment under the AFDC program when legal guardianship is used as a source of attributed income in three-generation families. If a minor child is living with an aunt who is her legal guardian, the aunt's income is not automatically attributed to the AFDC beneficiary; however, if the minor has a child, the guardian's income is included in the AFDC determination for the minor and her child. (H.R. Conf. Rep. No. 964, 101st Cong. 2d Sess. (Oct. 1990) p. 912). The OBRA 90 amendment resolved these problems.

Reporting of Child Abuse and Neglect (Sections 205.50 and 233.90 of the Interim Rule)

Prior to OBRA 90, section 402(a)(16) of the Social Security Act provided that, if the State Agency has reason to believe that a child and a relative receiving aid are residing in an unsuitable home due to the neglect, abuse, or exploitation of the child, the State must take action. The State is required to report the situation with all the relevant information to the appropriate court or law enforcement agencies in the State. This statutory provision is currently reflected in the Federal regulations at § 233.90(a)(2).

Section 5054 of OBRA 90 amended section 402(a)(16) of the Social Security Act to require that each State agency report, to an appropriate agency or official, known or suspected instances of child abuse and neglect of a child receiving AFDC. A conforming change was made to section 402(a)(9) to allow the release of information to appropriate individuals. The amendment includes as "instances" of abuse and neglect situations where a child experiences physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment under circumstances which indicate that the child's health or welfare is threatened. To implement these statutory changes we have amended § 233.90(a)(2) and revised § 205.50(a)(1) by adding a new paragraph (G).

Disclosure of Information About AFDC Applicants and Recipients for Purposes Directly Connected With Foster Care and Adoption Assistance Programs (Section 205.50 of the Interim Rule)

Prior to the enactment of OBRA 90, the use or disclosure of information concerning AFDC applicants and recipients was restricted by section 402(a)(9) of the Social Security Act. Information on AFDC recipients and applicants could only be used for purposes directly connected with: (1) The administration of the AFDC program or several other specified Social Security Act programs; (2) any investigation, prosecution, or criminal or civil proceeding conducted in connection with such programs; (3) the administration of any other Federal or Federally-assisted program providing assistance or services to individuals on the basis of need; and (4) any audit of such programs (H.R. Conf. Rep. No. 964, 101st Cong. 2d Sess. (Oct. 1990) p. 913).

This section of the Social Security Act did not contain a specific reference to title IV–E, which covers the foster care and adoption assistance programs.

Section 5055 of OBRA 90 amended section 402(a)(9)(A) of the Social Security Act by adding an explicit reference to title IV–E to the list of programs for which information about AFDC applicants and recipients may be made available. We have amended § 205.50(a)(1)(i)(A) to reflect this statutory change. In addition, the reference to title IV–C was deleted from 45 CFR 205.50(a)(1)(A), since the WIN program is no longer operative.

Regulatory Procedures

Justification for Dispensing With Notice of Proposed Rulemaking

The amendments to these regulations are being published in interim final form. The Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, if the Department has good cause for finding that the Notice of Proposed Rulemaking is unnecessary, impractical or contrary to the public interest, it may dispense with such notice if it incorporates a brief statement in the interim final regulation of the reasons for doing so.

The Department finds that there is good cause to dispense with Notice of Proposed Rulemaking with respect to these changes. We find that publication of these regulations in proposed form would be unnecessary as the regulations are procedural in nature and involve a straightforward implementation of the changes to the statutory provisions which require no exercise of discretion. However, we are interested in comments on these interim rules. We will review any comments that are received within 30 days of the date of publication of this interim final rule and, if appropriate, we will publish final rules with any necessary changes.

Executive Order 12991

These interim final rules have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required because these regulations will not: (1) Have an annual effect on the economy of $100 million or more; (2) impose a major increase in costs or prices for consumers, individual industries, Federal, State or Local government agencies or geographic regions; or (3) result in significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

This rule does not require any information collection activities and therefore no approval is necessary under the Paperwork Reduction Act.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these rules is on State governments and individuals. Therefore, we certify that these rules will not have a significant economic impact on a substantial number of small entities because they effect benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

List of Subjects

45 CFR Part 205

Computer technology, Grant programs—social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements, Wages.

45 CFR Part 233

Aliens, Grant programs—social programs, Public assistance programs,

Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Programs 13.780, Assistance Payments-Maintenance Assistance)

Dated: April 21, 1993.

Laurence J. Love,

Acting Assistant Secretary for Children and Families.

Approved: June 9, 1993

Donna E. Shalala,

Secretary.

PART 205—GENERAL ADMINISTRATION PUBLIC ASSISTANCE PROGRAMS

Accordingly, part 205 of chapter II, title 45, Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 205 continues to read as follows:

Authority: 5 U.S.C. 552a note; 42 U.S.C. 602, 603, 606, 607, 611, 1302, 1306(a), and 1320b–7.

2. Section 205.50 is amended by revising paragraph (a)(1)(i)(A) and adding paragraph (a)(1)(i)(G) to read as follows:

§ 205.50 Safeguarding information for the financial assistance programs.

(a) * * *
(1) * * *
(i) * * *

(A) The administration of the plan of the State approved under title IV–A, the plan or program of the State under title IV–B, IV–D, IV–E, or IV–F or under title I, X, XIV, XVI(AABD), XIX, XX, or the Supplemental Security Income (SSI) program established by title XVI. Such purposes include establishing eligibility, determining the amount of assistance, and providing services for applicants and recipients.

* * * * *

(G) The reporting to the appropriate agency or official of information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under circumstances which indicate that the child's health or welfare is threatened.

* * * * *

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

Accordingly, part 233 of chapter II, title 45, Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 233 continues to read as follows:

Authority: 42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1352, and 1382 note.

2. Section 233.20 is amended by revising paragraph (a)(3)(xviii) to read as follows:

§ 233.20 Need and amount of assistance

(a) * * *
(3) * * *

(xviii) For AFDC, in the case of a dependent child whose parent is a minor under the age of 18 (without regard to school attendance), the State shall count as income to the assistance unit the income, after appropriate disregards, of such minor's own parent(s) living in the same household as the minor and dependent child. The disregards to be applied are the same as are applied to the income of a stepparent pursuant to paragraph (a)(3)(xiv) of this section. However, in applying the disregards, each employed parent will receive the benefit of the work expense disregard in paragraph (a)(3)(xiv)(A) of this section.

* * * * *

3. Section 233.90 is amended by revising paragraph (a)(2) introductory text to read as follows:

§ 233.90 Factors specific to AFDC.

(a) * * *

(2) Where it has reason to believe that a child receiving aid is in an unsuitable environment because of known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of such child, under circumstances which indicate the child's health or welfare is threatened, the State or local agency will:

* * * * *

[FR Doc. 93–23117 Filed 9–21–93; 8:45 am]

BILLING CODE 4184–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 21, 22, and 94

[ET Docket No. 92–9; FCC 93–350]

Redevelopment of Spectrum To Encourage Innovation in the Use of New Telecommunications Technologies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Second Report and Order (Order) the Commission adopts Rules that reallocate five bands above 3 GHz to the private operational and common carrier fixed microwave services on a co-primary basis and prescribe channelization plans and technical standards to govern their use. These rules ensure that fixed microwave licensees relocating from 1850–1990, 2110–2150, and 2160–2200 MHz frequencies (2 GHz band) will have available alternative frequency bands that are suitable for providing equivalent service with comparable reliability. This action will make possible the relocation of the 2 GHz fixed operations and will ensure that these licensees will not be disadvantaged by the emerging technologies reallocation.

EFFECTIVE DATE: December 20, 1993.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 653–8116.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order adopted July 15, 1993, and released August 13, 1993. The Further Notice of Proposed Rule Making initiating this proceeding is summarized at 57 FR 42916 (September 17, 1992). This action will not add to or decrease the public reporting burden. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Summary of Second Report and Order

1. The Order reallocates five bands (3.7–4.2 GHz (4 GHz), 5.925–6.425 GHz (lower 6 GHz), 6.525–6.875 GHz (upper 6 GHz), 10.565–10.615/10.630–10.680 GHz (10 GHz), and 10.7–11.7 GHz (11 GHz)) to the private operational and common carrier fixed microwave services on a co-primary basis and prescribes channelization plans and technical rules to govern their use. The Order maintains the existing 20 MHz channel plan at 4 GHz and adopts a 1.25 MHz/based plan at 6, 10, and 11 GHz. The Commission concludes that these channeling plans will be equitable to all manufacturers, will efficiently satisfy the spectrum requirements of low capacity 2 GHz licensees while permitting lower-cost equipment to be used, and will reduce the potential for interference to satellite operations at 4 GHz. The Commission also adopts Part 21 coordination procedures and Part 94 interference standards in all bands.

2. *4 GHz.* The 4 GHz band currently is allocated for common carrier fixed and fixed satellite use and is channelized into twelve 20 MHz channel pairs for fixed use. In the

Further Notice, we proposed to amend the allocation to include private fixed use on a co-primary basis; and to overlap the 20 MHz channel pairs with channels ranging from 400 kHz to 10 MHz.

3. We conclude that the existing 20 MHz channel plan should not be modified. While we would have preferred to accommodate both narrowband and wideband channels at 4 GHz, we conclude that under all of the proposed plans there would exist the possibility of interference to the currently-licensed satellite operations. However, we continue to believe it feasible to permit private as well as common carrier microwave use of the band under the existing channel plan. Coordination between satellite and terrestrial users can accommodate additional use by terrestrial users, possibly including paths that would be difficult to accommodate in higher bands. Accordingly, we will authorize use of the 4 GHz band by private fixed microwave licensees in addition to common carrier fixed microwave licensees, but decline to change the channelization of the band.

4. *6 GHz.* In the Further Notice, we proposed to amend the common carrier fixed and fixed satellite allocations in the lower 6 GHz band to include private fixed use on a co-primary basis; and to rechannelize from the current eight 29.65 MHz channel pairs to overlapping twenty-four 400 kHz pairs, twelve 800 kHz pairs, forty-two 1.6 MHz pairs, twenty 3.2 MHz pairs, twelve 5 MHz pairs, twenty-four 10 MHz pairs, and eight 30 MHz pairs. In the upper 6 GHz band, we proposed to amend the private fixed allocation to include common carrier fixed use on a co-primary basis; and to rechannelize from the current five 800 kHz pairs, three 1.6 MHz pairs, fifteen 5 MHz pairs, and sixteen 10 MHz pairs to an overlapping twelve 400 kHz pairs, six 800 kHz pairs, forty-five 1.6 MHz pairs, fifteen 5 MHz pairs, and sixteen 10 MHz pairs.

5. We conclude that 6 GHz will be the primary relocation band for 2 GHz licensees, and therefore efficiently accommodating these licensees in this band is of utmost importance. In order to accomplish this task, there is a need to provide for low, medium, and high capacity requirements; and also to provide spectrum for future growth of systems using each of these capacities. We therefore adopt a 1.25 MHz-based plan, rather that the proposed 1.6 MHz-based plan. This plan permits the accommodation of low capacity 2 GHz licensees in 400 and 800 kHz channels and offers substantial flexibility for systems to grow both through aggregation of like-bandwidth channels and upgraded modem technology. Further, the plan allows lower cost modems to be used for 1.25, 2.5, and 3.75 MHz channels, and permits the accommodation of the nearly 7000 2 GHz facilities licensed for 3.5 MHz in 3.75 MHz channels. Finally, by minimizing the amount of existing equipment rendered obsolete, the plan promotes competition and does not favor any manufacturer.

6. We recognize that existing wideband common carrier licensees of the lower 6 GHz band are apprehensive about new narrowband use of the band. However, the channel plan that we are adopting permits efficient use by both wideband and narrowband users. Further, we are retaining 29.65 MHz channel spacing in this band rather than the proposed 30 MHz spacing. This eliminates the potential for interference to analog systems. Accordingly, we are adopting our proposed 6 GHz reallocation and the 1.25 MHz-based channel plan as discussed above.

7. *10 GHz.* In the Further Notice, we proposed to reallocate this band from private and common carrier point-to-multipoint use (Digital Termination Service (DTS) and Digital Electronic Message Service (DEMS), respectively) to private and common carrier point-to-point fixed use on a co-primary basis; and to channelize the band in accordance with a 1.6 MHz-based plan.

8. With regard to channelizing the 10 GHz band, commenting parties note that current point-to-point use in adjacent spectrum is based upon a 1.25 MHz plan, and introducing a 1.6 MHz-based plan could create confusion and inefficiency, as well as rendering several existing 1.25 MHz-based radios in the 10.550–10.565/10.615–10.630 GHz bands unusable in the 10.565–10.615 and 10.630–10.680 GHz bands. Additionally, while the U.S. is not obligated to follow international band plans, a 1.6 MHz plan is inconsistent with the 10 GHz plan recommended by the Consultative Committee International for Radio. Accordingly, we are adopting our proposed 10 GHz reallocation but will use a 1.25 MHz-based channel plan.

9. *11GHz.* In the Further Notice, we proposed to amend the common carrier fixed allocation in the 11 GHz band to include private fixed use on a co-primary basis; and to rechannelize from twelve 40 MHz pairs to overlapping fifty 10 MHz pairs and sixteen 30 MHz pairs.

10. Commenting parties generally favor permitting a wide range of narrowband and wideband channels at 11 GHz. We concur that such flexibility is desirable. Therefore, we are modifying our proposal to permit a range of channels between 1.25 MHz and 40 MHz in bandwidth. Our goal is to treat narrowband and wideband users equitably. While this means that a flexible channel plan may not be ideal for a specific user, overall the plan is desirable. Accordingly, we are adopting our proposed 11 GHz reallocation proposal and will use a 1.25 MHz-based channel plan.

11. *Technical Issues.* In the Further Notice, we proposed changes to the minimum loading standards and data rates in the 4, 6, 10, and 11 GHz bands for systems using digital modulation. Based on the comments, we believe that many existing 2 GHz licensees may not easily meet the existing and proposed loading standards, and that a transition period is appropriate to permit manufacturers to meet the proposed digital data rates. However, we also want to ensure that channels are used as efficiently as possible in a timely manner. Therefore, we are maintaining our existing voice channel loading requirements and are adopting our proposed digital loading standards for channels of 10 MHz and greater bandwidth, but will liberally waive loading requirements in accommodating displaced 2 GHz licensees in the bands above 3 GHz.

12. We also are adopting our proposed digital data rates except for 30 MHz channels at 6 GHz, in which we will require a more efficient utilization rate. For new equipment to meet the adopted data rates, we are specifying a 3.5 year transition period ending June 1, 1997, and are imposing a deadline of July 15, 1994, to cease the manufacture or import of equipment that does not meet the new data rates. We also are imposing a 2.5 year period for licensees of wideband digital channels (10 MHz and greater) to load their systems to 50% of channel capacity.

13. With regard to expansion of existing microwave systems, we are adopting our proposal to permit expansion of existing systems under current channel plans. While coordination between existing and future microwave systems that use different channel plans will be necessary to ensure that inter-system interference does not result, we do not believe it necessary to disadvantage existing licensees by preventing expansion of their systems. Further, since the rechannelization plans that we are adopting essentially overlay narrowband channels on existing wideband channels, such expansion is generally compatible with use under the revised plans.

14. With regard to coordination procedures and interference standards, we note that the basic differences between common carrier (part 21) and private (part 94) services are that common carriers must notify potentially-affected licensees of their planned use, whereas there is no such requirement in private bands; and that common carrier interference standards are somewhat less stringent than private standards. There is a clear consensus to use common carrier coordination procedures in shared bands, and common carrier and private interference standards are converging. Further, we believe it essential that a recognized organization administer interference standards, and that currently is the case under part 94. Accordingly, we are adopting uniform part 21 coordination procedures and part 94 interference standards for the 4, 6, 10, and 11 GHz bands.

15. The Further Notice proposed antenna standards for the 10 GHz band that reflect the proposed reallocation from point-to-multipoint to point-to-point use, and listed the current standards for the 4, 6, and 11 GHz bands. Commenting parties have raised potentially valid concerns about our existing antenna standards. However, we do not have sufficient information at this time to propose changes to these standards. Accordingly, we are adopting the proposed standards, with some minor modifications, as specified below in the rules, and encourage industry organizations and other interested parties to explore the need for modifying the standards in all of the reallocated bands.

16. The Further Notice stated that automatic transmit power control (ATPC) is permitted under both parts 21 and 94 of our rules provided that the change in effective radiated power (ERP) is no greater than 3 decibels (dB), and proposed to clarify this point. We believe our proposal to clarify that ATPC is permitted up to a 3 dB increase in power is appropriate. However, commenting parties have raised issues that we believe can best be addressed by industry groups such as TIA and NSMA. Accordingly, we are adopting our proposed ATPC rules changes, as specified below in the rules, and encourage industry groups to explore in greater detail under what circumstances ATPC should be authorized and whether a greater increase in power than 3 dB would be appropriate.

17. *Regulatory Flexibility Analysis.* Pursuant to 5 U.S.C. 603, an initial Regulatory Flexibility Analysis was incorporated in the Further Notice of Proposed Rule, *supra*. Written comments on the proposals in the Further Notice, including the Regulatory Flexibility Analysis, were requested.

18. *Need for and Objective of Rules.* Our objective is to reaccommodate current 2 GHz common carrier and private fixed microwave licensees on frequencies above 3 GHz with appropriate channelization plans and technical rules. Reaccommodation of these licensees is necessary to ensure that they can continue to provide equivalent service with comparable reliability.

19. *Issues Raised by the Public in Response to the Initial Analysis.* Many parties suggested modifications to the proposed reallocations, rechannelization plans, and technical rules, although not specifically to the initial regulatory flexibility analysis. We have modified our proposals as appropriate. For example, in the Further Notice we had proposed to use a 1.6 MHz-based channel plan in the 4, 6, and 10 GHz bands, and a 10 MHz-based plan in the 11 GHz band; however, commenting parties have convinced us that the existing 20 MHz channel plan is more appropriate in the 4 GHz band, and that a 1.25 MHz-based plan is more appropriate in the 6, 10, and 11 GHz bands.

20. *Any Significant Alternative Minimizing Impact on Small Entities and Consistent With Stated Objectives.* We have reduced burdens wherever possible. The regulatory burdens we have retained are necessary in order to ensure that the public receives the benefits of continued fixed microwave service in a prompt and efficient manner. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities.

21. Accordingly, *It Is Ordered* That parts 2, 21, 22 and 94 of the Commission's rules and Regulations *Are Amended* as specified below, effective 90 days after publication in the **Federal Register**. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), and 303(r).

List of Subjects

47 CFR Part 2

Frequency allocations and radio treaty matters; general rules and regulations, Radio.

47 CFR Part 21

Radio.

47 CFR Part 22

Radio.

47 CFR Part 94

Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

I. Part 2 of title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation in part 2 continues to read as follows:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303, 303(r) and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations is amended to read as follows:

a. Add a primary allocation for the Private Operational-Fixed Microwave Service in column (6) of the 3700-4200 MHz band.

b. Add a primary allocation for the Private Operational-Fixed Microwave Service in column (6) of the 5925-6425 MHz band.

c. Add a primary allocation for the Domestic Public Fixed Services in column (6) of the 6525-6875 MHz band.

d. Add a primary allocation for the Private Operational-Fixed Microwave Service in column (6) of the 10.55-10.60 GHz band.

e. Add a primary allocation for the Private Operational-Fixed Microwave Service in column (6) of the 10.60-10.68 GHz band.

f. Add a primary allocation for the Private Operational-Fixed Microwave Service in column (6) of the 10.7-11.7 GHz band.

§ 2.106 Table of Frequency Allocations.

* * * * *

International table			United States table		FCC use designators	
Region 1 allocation MHz	Region 2 allocation MHz	Region 3 allocation MHz	Government	Non-government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	3700–4200		3700–4200	3700–4200		
	Fixed.			Fixed.	Domestic Public Fixed (21).	
	Fixed-Satellite (space-to-Earth).			Fixed-Satellite (space-to-Earth).	Satellite Communications (25).	
	Mobile except aeronautical mobile				Private Operational Fixed Microwave (94).	
	787			NG41		
5925–7075			5925–7125	5925–6425		
	Fixed.			Fixed.	Domestic Public Fixed (21)..	
	Fixed Satellite (Earth-to-space).			Fixed-Satellite (Earth-to-space).	Satellite Communications (25)	
	Mobile.				Private Operational-Fixed Microwave (94).	
	791 792A 809		791 809	NG41		
				6425–6525		
				Fixed-Satellite (Earth-to-space)..	Auxiliary Broadcast (74).	
				Mobile	Cable Television (78).	
					Domestic Public Fixed (21).	
					Private Operational Fixed Microwave (94).	
				791 809		
				6525–6875		
				Fixed.	Domestic Public Fixed (21)..	
				Fixed-Satellite (Earth-to-space).	Satellite Communications (25).	
					Private Operational-Fixed. Microwave (94).	
				792A 809		
10.55–10.60			10.55–10.60	10.55–10.60		
	Fixed.			Fixed.	Domestic Public Fixed (21).	
	Mobile except aeronautical mobile.				Private Operational-Fixed Microwave (94).	
	Radiolocation.					
10.60–10.68			10.60–10.68	10.60–10.68		
	Earth Exploration Satellite (passive).		Earth Exploration-Satellite (passive).	Earth Exploration Satellite (passive).	Domestic Public Fixed (21)..	
	Fixed.		Space Research (passive).	Fixed.	Private Operational Fixed Microwave (94).	
	Mobile except aeronautical mobile.			Space Research (passive).		
	Radio Astronomy.					
	Space Research (passive).					
	Radiolocation 831 832					
			US265 US277	US265 US277		
10.7–11.7	10.7–11.7		10.7–11.7	10.7–11.7		

International table			United States table		FCC use designators	
Region 1 allocation MHz	Region 2 allocation MHz	Region 3 allocation MHz	Government	Non-government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Fixed Fixed-Satellite (space-to-Earth) (Earth-to-space). Mobile except aeronautical mobile	Fixed Fixed-Satellite (space-to-Earth). Mobile except aeronautical mobile		10.7–11.7	10.7–11.7 Fixed. Fixed Satellite (space-to-Earth).	Domestic Public Fixed (21). Private Operational-Fixed Microwave (94).	
792A 835	792A		US211	792A US211 NG41 NG104.		

* * * * *

II. Part 21 of title 47 of the Code of Federal Regulations is amended to read as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation in part 21 continues to read:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552.

2. Section 21.100 is amended by revising paragraph (c) and by adding paragraphs (d)(2)(xi) and (d)(2)(xii) to read as follows:

§ 21.100 Frequencies.

* * * * *

(c) Frequency diversity transmission will not be authorized in these services in the absence of a factual showing that the required communications cannot practically be achieved by other means. Where frequency diversity is deemed to be justified on a protection channel basis, it shall be limited to one protection channel for the bands 3700–4200, 5925–6425, and 6525–6875 MHz, and a ratio of one protection channel for three working channels for the bands 10,550–10,680 and 10,700–11,700 MHz. In the bands 3700–4200, 5925–6425, and 6525–6875 MHz, no frequency diversity protection channel will be authorized unless there is a minimum of three working channels, except that where a substantial showing is made that a total of three working channels will be required within three years, a protection channel may be authorized simultaneously with the first working channel. A protection channel authorized under such exception will be subject to termination if applications for the third working channel are not filed within three years of the grant date of the applications for the first working channel. Where equipment employing digital modulation techniques with cross-polarized operation on the same frequency is used, the protection channel authorized under the above conditions may be considered to consist of both polarizations of the protection frequency where such is shown to be necessary.

(d) * * *

(2) * * *

(xi) Interference protection criteria for fixed stations in the bands 3700–4200, 5925–6425, 6525–6875, 10,550–10,680, and 10,700–11,700 MHz are specified in § 94.63.

(xii) Any frequency reserved by a licensee for future use in the bands 3700–4200, 5925–6425, 6525–6875, 10,550–10,680 and 10,700–11,700 MHz must be released for use by another licensee upon a showing by the latter that it requires an additional frequency and cannot coordinate one that is not reserved for future use.

* * * * *

3. Section 21.107 is amended by revising paragraph (b) to read as follows:

§ 21.107 Transmitter power.

* * * * *

(b) The rated power of a transmitter employed in these radio services shall not exceed the values shown in the following tabulation:

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP	
	Fixed (W)	Mobile (W)	Fixed (dBW)	Mobile (dBW)
512.0 to 2,110	20.0	20.0	(3)	
932.5 to 935.0	20.0		+40	
941.5 to 944.0	20.0		+40	
2,110 to 2,130	20.0			
2,150 to 2,160	[1] 20.0		+45	
2,160 to 2,180	[1] 20.0			
2,500 to 2,686	[1] 10.0			
2,686 to 2,690	0.25			
3,700 to 4,200	20.0		+50	
5,925 to 6,425	20.0		+55	
6,425 to 6,525		20.0		+35
6,525 to 6,875	10.0		+50	
10,550 to 10,680	[4] 10.0		+50	
10,700 to 11,700	10.0		+50	
12,200 to 13,250	10.0	10.0		
17,700 to 18,600	10.0		+55	
18,600 to 18,800	[2] 10.0		+35	
18,800 to 19,700	10.0		+55	
21,200 to 23,600	10.0		+50	

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP	
	Fixed (W)	Mobile (W)	Fixed (dBW)	Mobile (dBW)
27,500 to 29,500	10.0		+55	
31,000 to 31,300	0.05	0.05		
38,600 to 40,000	10.0	1.5	+50	

[1] In the 2150–2162 MHz, 2596–2644 MHz, 2650–2656 MHz, 2662–2668 MHz, and 2674–2680 MHz frequency bands, when used for the Multipoint Distribution Service, EIRP up to 2000 watts may be authorized pursuant to § 21.904 of this part.
[2] The power delivered to the antenna is limited to −3 dBW.
[3] The EIRP of stations in the 932–935, 941.5–944, and 10,600–10,800 MHz bands must not exceed +40 dBW.
[4] The output power of a Digital Termination System nodal transmitter shall not exceed 0.5 watts per 250 KHz. The output power of a Digital Termination System user transmitter shall not exceed 0.04 watts per 250 KHz. The transmitter power in terms of the watts specified is the peak envelope power of the emission measured at the associated antenna input power. The operating power shall not exceed the authorized power by more than 10 percent of the authorized power in watts at any time.

* * * * *

4. In § 21.108 paragraph (c) is amended by revising the table "Antenna Standards" and the associated footnotes to read as follows:

§ 21.108 Directional antennas.

* * * * *

(c) * * *

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
932.5 to 935	A	14.0	N/A		6	11	14	17	20	24
941.5 to 944	B	20.0	N/A			6	10	13	15	20
2,500 to 4,200	A	N/A	36	23	29	33	36	42	55	55
	B	N/A	36	20	24	28	32	32	32	32
5,925 to 6,425[5]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	21	25	29	32	35	39	45
5,925 to 6,425[6]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
6,525 to 6,875[5]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	21	25	29	32	35	35	39
6,525 to 6,875[6]	A	1.5	N/A	26	29	32	34	38	41	49
	B	2.0	N/A	21	25	29	32	35	39	45
10,550 to 10,680[4][5]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	35	39
10,550 to 10,680[6]	A	3.4	34	20	24	28	32	35	55	55
	B	3.4	34	20	24	28	32	35	35	39
10,565 to 10,615[7]	N/A	360	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
10,630 to 10,680[7]	N/A	N/A	34	20	24	28	32	35	36	36
10,700 to 11,700[5]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
17,700 to 18,820	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
18,920 to 19,700[1]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
21,200 to 23,600	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
31,000 to 31,300[2][3]	N/A	4.0	38	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Above 31,300	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36

[1] Digital Termination User Station antennas in this band shall meet performance Standard B and have a minimum antenna gain of 34 dBi. The maximum beamwidth requirement does not apply to DTS User Stations. Digital Termination Nodal Stations need not comply with these standards.
[2] The minimum front-to-back ratio shall be 38 dB.
[3] Mobile, except aeronautical mobile, stations need not comply with these standards.
[4] Except for such antennas between 140° and 180° authorized or pending on January 1, 1989, in the band 10,550 to 10,565 MHz for which minimum radiation to suppression to angle (in degrees) from centerline of main beam is 36 decibels.
[5] These antenna standards apply to all point-to-point stations authorized after June 1, 1997. Existing licensees and pending applicants on that date are grandfathered and need not comply with these standards.
[6] These antenna standards apply to all point-to-point stations authorized on or before June 1, 1997.
[7] These antenna standards apply only to Digital Termination User Stations licensed, in operation, or applied for prior to July 15, 1993.

Note: Stations must employ antenna that meets the performance standards for Category A, except that in areas not subject to frequency congestion, antennas meeting standards for Category B may be employed. Note, however, that the Commission may

require the use of high performance antennas where interference problems can be resolved by the use of such antennas.

* * * * *

5. In section 21.108 paragraph (e) is amended by revising the introductory text and by revising the heading of paragraph (e)(1) to read as follows:

§ 21.108 Directional antennas.

* * * * *

(e) These limitations are necessary to minimize the probability of harmful interference to reception in the bands 5925–6875 on board geostationary space stations in the fixed-satellite service (Part 25).

(1) 5925 to 6875 MHz. * * *

* * * * *

6. Section 21.120 is amended by adding paragraph (e) to read as follows:

§ 21.120 Authorization of transmitters.

* * * * *

(e) After July 15, 1994, the manufacture (except for export) or importation of equipment employing digital modulation techniques in the 3700–4200, 5925–6425, 6525–6875, 10,550–10,680, and 10,700–11,700 MHz bands must meet the minimum payload capacity requirements of § 21.122(a)(3).

7. Section 21.122 is amended by revising paragraph (a) to read as follows:

§ 21.122 Microwave digital modulation.

(a) Microwave transmitters employing digital modulation techniques and operating below 15 GHz shall, with appropriate multiplex equipment, comply with the following additional requirements:

(1) The bit rate, in bits per second, shall be equal to or greater than the bandwidth specified by the emission designator in Hertz (e.g., to be acceptable, equipment transmitting at a 20 Mb/s rate must not require a bandwidth of greater than 20 MHz), except the bandwidth used to calculate the minimum rate shall not include any authorized guard band.

(2) Equipment to be used for voice transmission placed in service, authorized, or applied for on or before June 1, 1997 in the 2110 to 2130 and 2160 to 2180 MHz bands shall be capable of satisfactory operation within the authorized bandwidth to encode at least 96 voice channels. Equipment placed in service, authorized, or applied for on or before June 1, 1997 in the 3700–4200, 5925–6425 (30 MHz bandwidth), and 10,700–11,700 MHz (30 and 40 MHz bandwidths) bands shall be capable of satisfactory operation within the authorized bandwidth to encode at least 1152 voice channels. These required loading levels may be reduced by a factor of 1/N provided that N transmitters may be operated satisfactorily, over the same radio path, within an authorized bandwidth less than, or equal to, the maximum authorizable bandwidth (e.g., the 1152 channel requirement may be reduced to 576 if two transmitters can be satisfactorily operated over the same path within the maximum bandwidth). Where type accepted equipment is designed to operate on the same frequency in a cross polarized configuration to meet the above capacity requirements, the Commission will require, at the time additional transmitters are authorized, that both polarizations of a frequency be used before a new frequency assignment is made, unless a single transmitter installation was found to be justified by the Commission at the time it authorized the first transmitter.

(3) The following capacity and loading requirements shall be met for equipment applied for, authorized, and placed in service after June 1, 1997 in the 3700–4200 MHz (4 GHz), 5925–6425 and 6525–6875 MHz (6 GHz), 10,550–10,680 MHz (10 GHz), and 10,700–11,700 MHz (11 GHz) bands:

Nominal channel bandwidth (MHz)	Minimum payload capacity (Mbits/s)	Minimum traffic loading payload (as percent of payload capacity)	Typical utilization [1]
0.400	1.54	N/A	1 DS–1
0.800	3.08	N/A	2 DS–1
1.25	3.08	N/A	2 DS–1
1.60	6.17	N/A	4 DS–1
2.50	6.17	N/A	4 DS–1
3.75	12.3	N/A	8 DS–1
5.0	18.5	N/A	12 DS–1
10.0	44.7	[2] 50	1 DS–3/STS–1
20.0	89.4	[2] 50	2 DS–3/STS–1
30.0 (11 GHz)	89.4	[2] 50	2 DS–3/STS–1
30.0 (6 GHz)	134.1	[2] 50	3 DS–3/STS–1
40.0	134.1	[2] 50	3 DS–3/STS–1

[1] DS and STS refer to the number of voice circuits a channel can accommodate. 1 DS–1=24 voice circuits; 2 DS–1=48; 4 DS–1=96; 8 DS–1=192; 12 DS–1=288; 1 DS–3/STS–1=672; 2 DS–3/STS–1=1344; 3 DS–3/STS–1=2016.

[2] This loading requirement must be met within 30 months of licensing. If two transmitters simultaneously operate on the same frequency over the same path, the requirement is reduced to 25 percent.

(4) If a transmitter is authorized to operate in a bandwidth that is not listed in paragraph (a)(3) of this section, it shall meet the minimum payload capacity and traffic loading requirements of the next largest channel bandwidth listed in the table; *e.g.*, if the authorized bandwidth is 3.5 MHz, the minimum payload capacity shall be 12.3 Mbits/s.

(5) Transmitters carrying digital motion video motion material are exempt from the requirements specified in paragraphs (a)(2) and (a)(3) of this section, provided that the minimum bit rate specified in paragraph (a)(1) of this section is met. In the 6, 10, and 11 GHz bands, concatenation of multiple contiguous channels is permitted for channels of equal bandwidth on center frequencies, provided no other channels are available and the minimum payload capacity requirements are met.

* * * * *

8. Section 21.502 is revised to read as follows:

§ 21.502 Frequencies.

(a) Frequencies in the 17,700–19,700 MHz band are available for assignment for all DEMS applicants. Assignment will consist of a pair of channels as set out in paragraph (c) of this section plus

intermodal channels as set out in paragraph (d) of this section.

(b) Licensees may apply for an additional channel pair in an SMSA only when it is operating its previously authorized DTS at or near the expected capacity and the service to be provided will fully utilize all spectrum requested.

(c) Digital Termination Systems assignments shall be made according to the following plan, except that systems licensed, in operation, or applied for in the 10,565–10,615 and 10,630–10,680 MHz bands prior to July 15, 1993 are permitted to use frequencies in those bands if they prior coordinate with 10 GHz point-to-point licensees:

Channel No.	Nodal station frequency band (MHz)	User station frequency band (MHz)
30	18,870–18,880	19,210–19,220
31	18,880–18,890	19,220–19,230
32	18,890–18,900	19,230–19,240
33	18,900–18,910	19,240–19,250
34	18,910–18,920	19,250–19,260

These channel pairs will be assigned in each SMSA and may be subdivided as desired by the licensee.

(d) Intermodal link assignments are to be made in accordance with the provisions of subpart I of part 21, applying to point-to-point operations.

9. Section 21.503 is revised to read as follows:

§ 21.503 Frequency stability.

The frequency stability of each Digital Termination Nodal Station transmitter authorized for this service in the 17,700–19,700 MHz band shall be ±0.001%. The frequency stability of each Digital Termination User Station transmitter authorized for this service in this band shall be ±0.003%.

10. Section 21.506 is revised to read as follows:

§ 21.506 Transmitter power.

The transmitter power shall be governed by § 21.107 of this part. Further, each application shall contain an analysis demonstrating compliance with § 21.107(a).

§ 21.507 [Removed]

11. Section 21.507 is removed.

12. Section 21.701 is amended by redesignating paragraphs (e) through (g) as Paragraph (i) through (k), by revising paragraphs (a) and (d) and by adding paragraphs (e) through (h) and paragraph (l) to read as follows:

§ 21.701 Frequencies.

(a) Frequencies in the following bands are available for assignment to fixed radio stations in the Point-to-Point Microwave Radio Service.

932.5–935 MHz [17]
941.5–944 MHz [17 18]
2,110–2,130 MHz [1 3 7 20]
2,160–2,180 MHz [1 3 20 21]
3,700–4,200 MHz [6 14]
5,925–6,425 MHz [6 14]
6,525–6,875 MHz [14]
10,550–10,680 MHz [10]
10,700–11,700 MHz [8 9 10]
13,200–13,250 MHz [4]
17,700–18,820 MHz [5 10 13]
18,920–19,160 MHz [5 10 13]
19,260–19,700 MHz [5 10 13]
21,200–22,000 MHz [4 11 12 13]
22,000–23,600 MHz [4 11 12]
27,500–29,500 MHz [3]
31,000–31,300 MHz [16]
38,600–40,000 MHz [4]

[1] Frequencies in this band are shared with control and repeater stations in the Domestic Public Land Mobile Radio Service and with stations in the International Fixed Public Radiocommunication Services located south of 25 deg.30′ north latitude in the State of Florida and U.S. posessions in the Caribbean area. Additionally, the band 2160–2162 MHz is shared with stations in the Multipoint Distribution Service.

[2] Except upon a showing that no alternative frequencies are available, no new assignments will be made in the band 2160–2162 MHz for stations located within 80.5 kilometers (50 miles) of the coordinates of the cities listed in Sec. 21.901(c).

[3] Television transmission in this band is not authorized and radio frequency channel widths shall not exceed 3.5 MHz.

[4] Frequencies in this band are shared with fixed and mobile stations licensed in other services.

[5] Frequencies in this band are shared with stations in the fixed-satellite service.

[6] These frequencies are not available for assignment to mobile earth stations.

[7] Frequencies in the band 2110–2120 MHz may be authorized on a case-by-case basis to Government or non-Government space research earth stations for telecommand purposes in connection with deep space research.

[8] This frequency band is shared with station(s) in the Local Television Transmission Service and, in the U.S. Possessions in the Caribbean area, with stations in the International Fixed Public Radiocommunications Services.

[9] The band segments 10.95–11.2 and 11.45–11.7 GHz are shared with space stations (space to earth) in the fixed-satellite service.

[10] This band is co-equally shared with stations in the fixed services under Parts 21, 74, 78 and 94 of the Commission's Rules.

[11] Frequencies in this band are shared with Government stations.

[12] Assignments to common carriers in this band are normally made in the segments 21.2–21.8 GHz and 22.4–23.0 GHz and to operational fixed users in the segments 21.8–22.4 GHz and 23.0–23.6 GHz. Assignments may be made otherwise only upon a showing that no interference free frequencies are available in the appropriate band segments.

[13] Frequencies in this band are shared with stations in the earth exploration satellite service (space to earth).

[14] Frequencies in this band are shared with stations in the fixed-satellite and private-operational fixed microwave services.

[15] Stations licensed as of September 9, 1983 to use frequencies in the 17.7–19.7 GHz band may, upon proper application, continue to be authorized for such operation.

[16] Frequencies in this band are co-equally shared with stations in the Auxiliary Broadcasting (Part 74), Cable Television Relay (Part 78), Private Operational-Fixed Microwave (Part 94) and General Mobile Radio (Part 95) Services.

[17] Frequencies in these bands are shared with Government fixed stations and stations in the Private Operational-Fixed Microwave Service (Part 94).

[18] Frequencies in the 942 to 944 MHz band are also shared with broadcast auxiliary stations (Part 74).

[19] Frequencies in this band are shared with stations in the private-operational fixed microwave service.

[20] New facilities in these bands will be licensed only on a secondary basis. Facilities licensed or applied before January 16, 1992, are permitted to make modifications and minor extensions and retain their primary status.

[21] Any authorization of additional stations to use the 2160–2162 MHz band for Multipoint Distribution Service applied for after January 16, 1992 shall be secondary to use of the band for emerging technology services.

* * * * *

(d) *3,700 to 4,200 MHz.* 20 MHz maximum authorized bandwidth. 20 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
3710	3990
3730	4010
3750	3950
3770	3970
3790	4070
3810	4090
3830	4030
3850	4050
3870	4150
3890	4170
3910	4110
3930	4130
N/A	[1] 4190

[1] This frequency may be assigned for unpaired use.

(e) *5,925 to 6,425 MHz.* 30 MHz authorized bandwidth.

(1) 400 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5925.225	6177.100
5925.625	6177.500
5926.050	6177.925
5926.450	6178.325
5926.875	6178.750
5927.275	6179.150
5927.725	6179.600
5928.125	6180.000
5928.550	6180.425
5928.950	6180.825
5929.375	6181.250
5929.775	6181.650

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6168.350	6420.225
6168.750	6420.625
6169.175	6421.050
6169.575	6421.450
6170.000	6421.875
6170.400	6422.275
6170.850	6422.725
6171.250	6423.125
6171.675	6423.550
6172.075	6423.950
6172.500	6424.375
6172.900	6424.775

(2) 800 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5925.425	6177.300
5926.250	6178.125
5927.075	6178.950
5927.925	6179.800
5928.750	6180.625
5929.575	6181.450
6168.550	6420.425
6169.375	6421.250
6170.200	6422.075
6171.050	6422.925
6171.875	6423.750
6172.700	6424.575

(3) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5925.625	6177.500
5926.875	6178.750
5928.125	6180.000
5929.375	6181.250
6108.893	6360.933
6110.128	6362.168
6111.364	6363.404
6112.599	6364.639
6113.834	6365.874
6115.070	6367.110
6116.305	6368.345
6117.541	6369.581
6118.776	6370.816
6120.011	6372.051
6121.247	6373.287
6122.482	6374.522
6123.718	6375.758
6124.953	6376.993
6126.189	6378.229
6127.424	6379.464
6128.659	6380.699
6129.895	6381.935
6131.130	6383.170
6132.366	6384.406
6133.601	6385.641
6134.836	6386.876
6136.072	6388.112
6137.307	6389.347
6138.543	6390.583
6139.778	6391.818
6141.014	6393.054
6142.249	6394.289
6143.484	6395.524
6144.720	6396.760
6145.955	6397.995
6147.191	6399.231
6148.426	6400.466
6149.661	6401.701
6150.897	6402.937
6152.132	6404.172
6153.368	6405.408
6154.603	6406.643
6155.839	6407.879
6157.074	6409.114
6158.309	6410.349
6159.545	6411.585
6160.780	6412.820
6162.016	6414.056
6163.251	6415.291
6164.486	6416.526
6165.722	6417.762
6166.957	6418.997
6168.750	6420.625
6170.000	6421.875
6171.250	6423.125
6172.500	6424.375
6173.750[1]	n/a
6175.000[1]	n/a
6176.250[1]	n/a

[1] These frequencies may be assigned for unpaired use.

(4) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5926.250	6178.125
5926.750	6180.625
6109.510	6361.550
6111.981	6364.021
6114.452	6366.492
6116.923	6368.963
6119.394	6371.434
6121.865	6373.905
6124.335	6376.375
6126.806	6378.846
6129.277	6381.317
6131.748	6383.788
6134.219	6386.259
6136.690	6388.730
6139.160	6391.200
6141.631	6393.671
6144.102	6396.142
6146.573	6398.613
6149.044	6401.084
6151.515	6403.555
6153.985	6406.025
6156.456	6408.496
6158.927	6410.967
6161.398	6413.438
6163.869	6415.909
6166.340	6418.380
6169.375	6421.250
6171.875	6423.750
6175.625[1]	n/a

[1] This frequency may be assigned for unpaired use.

(5) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6111.364	6363.404
6116.305	6368.345
6121.247	6373.287
6126.189	6378.229
6131.130	6383.170
6136.072	6388.112
6141.014	6393.054
6145.955	6397.995
6150.897	6402.937
6155.839	6407.879
6160.780	6412.820
6165.722	6417.762
6175.000[1]	n/a

[1] This frequency may be assigned for unpaired use.

(6) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6110.75	6362.79
6115.69	6367.73
6120.63	6372.67
6125.57	6377.61
6130.51	6382.55
6135.45	6387.49
6140.40	6392.44
6145.34	6397.38
6150.28	6402.32
6155.22	6407.26
6160.16	6412.20
6165.10	6417.14

(7) 10 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5935.32	6187.36
5945.20	6197.24
5955.08	6207.12
5964.97	6217.01
5974.85	6226.89
5984.73	6236.77
5994.62	6246.66
6004.50	6256.54
6014.38	6266.42
6024.27	6276.31
6034.15	6286.19
6044.03	6296.07
6053.92	6305.96
6063.80	6315.84
6073.68	6325.72
6083.57	6335.61
6093.45	6345.49
6103.33	6355.37
6113.22[1]	[1]6365.26
6123.10[1]	[1]6375.14
6132.98[1]	[1]6385.02
6142.87[1]	[1]6394.91
6152.75[1]	[1]6404.79
6162.63[1]	[1]6414.67

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

(8) 30 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5945.20	6197.24
5974.85	6226.89
6004.50	6256.54
6034.15	6286.19
6063.80	6315.84
6093.45	6345.49
6123.10 [1]	[1] 6375.14
6152.75 [1]	[1] 6404.79

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

(f) *6,525 to 6,875 MHz.* 10 MHz authorized bandwidth.

(1) 400 kHz bandwidth channels

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6525.225	6870.225
6525.625	6870.625
6526.050	6871.050
6526.450	6871.450
6526.875	6871.875
6527.275	6872.275
6527.725	6872.725
6528.125	6873.125
6528.550	6873.550
6528.950	6873.950
6529.375	6874.375
6529.775	6874.775

(2) 800 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6525.425	6870.425
6526.250	6871.250
6527.075	6872.075
6527.925	6872.925
6528.750	6873.750
6529.575	6874.575

(3) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6525.625	6870.625
6526.875	6871.875
6528.125	6873.125
6529.375	6874.375
6540.625 [1]	[1] 6718.125
6541.875 [1]	[1] 6719.375
6543.125 [1]	[1] 6713.125
6544.375 [1]	[1] 6714.375
6545.625 [1]	[1] 6715.625
6546.875 [1]	[1] 6716.875
6548.125	6728.125
6549.375	6729.375
6550.625	6730.625
6551.875	6731.875
6553.125 [1]	[1] 6723.125
6554.375 [1]	[1] 6724.375
6555.625 [1]	[1] 6725.625
6556.875 [1]	[1] 6726.875

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6558.125	6738.125
6559.375	6739.375
6560.625	6740.625
6561.875	6741.875
6563.125	6733.125
6564.375	6734.375
6565.625	6735.625
6566.875	6736.875
6568.125 [1]	[1] 6720.625
6569.375 [1]	[1] 6721.875
6580.625 [1]	[1] 6868.125
6581.875 [1]	[1] 6869.375
6583.125	6743.125
6584.375	6744.375
6585.625	6745.625
6586.875	6746.875
6588.125	6748.125
6589.375	6749.375
6590.625	6750.625
6591.875	6751.875
6593.125	6753.125
6594.375	6754.375
6595.625	6755.625
6596.875	6756.875
6598.125	6758.125
6599.375	6759.375
6600.625	6760.625
6601.875	6761.875
6603.125	6763.125
6604.375	6764.375
6605.625	6765.625
6606.875	6766.875
6608.125	6768.125
6609.375	6769.375
6610.625	6770.625
6611.875	6771.875
6613.125	6773.125
6614.375	6774.375
6615.625	6775.625
6616.875	6776.875
6618.125	6778.125
6619.375	6779.375
6620.625	6780.625
6621.875	6781.875
6623.125	6783.125
6624.375	6784.375
6625.625	6785.625
6626.875	6786.875
6628.125	6788.125
6629.375	6789.375
6630.625	6790.625
6631.875	6791.875
6633.125	6793.125
6634.375	6794.375
6635.625	6795.625
6636.875	6796.875
6638.125	6798.125
6639.375	6799.375
6640.625	6800.625
6641.875	6801.875
6643.125	6803.125
6644.375	6804.375
6645.625	6805.625
6646.875	6806.875
6648.125	6808.125
6649.375	6809.375
6650.625	6810.625
6651.875	6811.875
6653.125	6813.125
6654.375	6814.375
6655.625	6815.625
6656.875	6816.875

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6658.125	6818.125
6659.375	6819.375
6660.625	6820.625
6661.875	6821.875
6663.125	6823.125
6664.375	6824.375
6665.625	6825.625
6666.875	6826.875
6668.125	6828.125
6669.375	6829.375
6670.625	6830.625
6671.875	6831.875
6673.125	6833.125
6674.375	6834.375
6675.625	6835.625
6676.875	6836.875
6678.125	6838.125
6679.375	6839.375
6680.625	6840.625
6681.875	6841.875
6683.125	6843.125
6684.375	6844.375
6685.625	6845.625
6686.875	6846.875
6688.125	6848.125
6689.375	6849.375
6690.625	6850.625
6691.875	6851.875
6693.125	6853.125
6694.375	6854.375
6695.625	6855.625
6696.875	6856.875
6698.125	6858.125
6699.375	6859.375
6700.625	6860.625
6701.875	6861.875
6703.125	6863.125
6704.375	6864.375
6705.625	6865.625
6706.875	6866.875
6708.125 [1]	[1] 6710.625
6709.375 [1]	[1] 6711.875

[1] These frequencies may be assigned for unpaired use.

(4) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6526.25	6871.25
6528.75	6873.75
6541.25 [1]	[1] 6718.75
6543.75 [1]	[1] 6713.75
6546.25 [1]	[1] 6716.25
6548.75	6728.75
6551.25	6731.25
6553.75 [1]	[1] 6723.75
6556.25 [1]	[1] 6726.25
6558.75	6738.75
6561.25	6741.25
6563.75	6733.75
6566.25	6736.25
6568.75 [1]	[1] 6721.25
6581.25 [1]	[1] 6868.75
6583.75	6743.75
6586.25	6746.25
6588.75	6748.75
6591.25	6751.25
6593.75	6753.75
6596.25	6756.25

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6598.75	6758.75
6601.25	6761.25
6603.75	6763.75
6606.25	6766.25
6608.75	6768.75
6611.25	6771.25
6613.75	6773.75
6616.25	6776.25
6618.75	6778.75
6621.25	6781.25
6623.75	6783.75
6626.25	6786.25
6628.75	6788.75
6631.25	6791.25
6633.75	6793.75
6636.25	6796.25
6638.75	6798.75
6641.25	6801.25
6643.75	6803.75
6646.25	6806.25
6648.75	6808.75
6651.25	6811.25
6653.75	6813.75
6656.25	6816.25
6658.75	6818.75
6661.25	6821.25
6663.75	6823.75
6666.25	6826.25
6668.75	6828.75
6671.25	6831.25
6673.75	6833.75
6676.25	6836.25
6678.75	6838.75
6681.25	6841.25
6683.75	6843.75
6686.25	6846.25
6688.75	6848.75
6691.25	6851.25
6693.75	6853.75
6696.25	6856.25
6698.75	6858.75
6701.25	6861.25
6703.75	6863.75
6706.25	6866.25
6708.75 [1]	[1] 6711.25

[1] These frequencies may be assigned for unpaired use.

(5) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6545.625 [1]	[1] 6715.625
6550.625	6730.625
6555.625 [1]	[1] 6725.625
6560.625	6740.625
6565.625	6735.625
6585.625	6745.625
6590.625	6750.625
6595.625	6755.625
6600.625	6760.625
6605.625	6765.625
6610.625	6770.625
6615.625	6775.625
6620.625	6780.625
6625.625	6785.625
6630.625	6790.625
6635.625	6795.625
6640.625	6800.625
6645.625	6805.625
6650.625	6810.625
6655.625	6815.625
6660.625	6820.625
6665.625	6825.625
6670.625	6830.625
6675.625	6835.625
6680.625	6840.625
6685.625	6845.625
6690.625	6850.625
6695.625	6855.625
6700.625	6860.625
6705.625	6865.625
6710.625 [1]	[1] 6720.625

[1] These frequencies may be assigned for unpaired use.

(6) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6545 [1]	[1] 6715
6550	6730
6555 [1]	[1] 6725
6560	6740
6565	6735
6585	6745
6590	6750
6595	6755
6600	6760
6605	6765
6610	6770
6615	6775
6620	6780
6625	6785
6630	6790
6635	6795
6640	6800
6645	6805
6650	6810
6655	6815
6660	6820
6665	6835
6670	6830
6675	6835
6680	6840
6685	6845
6690	6850
6695	6855
6700	6860
6705	6865
6710 [1]	[1] 6720

[1] These frequencies may be assigned for unpaired use.

(7) 10 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6545 [1]	[1] 6715
6555 [1]	[1] 6725
6565	6735
6585	6745
6595	6755
6605	6765
6615	6775
6625	6785
6635	6795
6645	6805
6655	6815
6665	6825
6675	6835
6685	6845
6695	6855
6705	6865
6535 [2]	[2] 6575

[1] These frequencies may be assigned for unpaired use.

[2] Available only for emergency restoration, maintenance bypass, or other temporary-fixed purposes. Such uses are authorized on a non-interference basis to other frequencies in this band. Interference analysis required by section 94.63 of this chapter does not apply to this frequency pair.

(g) *10,550 to 10,680 MHz.* 5 MHz authorized bandwidth.

(1) 400 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10605.225	10670.225
10605.625	10670.625
10606.050	10671.050
10606.450	10671.450
10606.875	10671.875
10607.275	10672.275
10607.725	10672.725
10608.125	10673.125
10608.550	10673.550
10608.950	10673.950
10609.375	10674.375
10609.775	10674.775
10610.225	10675.225
10610.625	10675.625
10611.050	10676.050
10611.450	10676.450
10611.875	10676.875
10612.275	10677.275
10612.725	10677.725
10613.125	10678.125
10613.550	10678.550
10613.950	10678.950
10614.375	10679.375
10614.775	10679.775

(2) 800 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10605.425	10670.425
10606.250	10671.250
10607.075	10672.075
10607.925	10672.925
10608.750	10673.750
10609.575	10674.575
10610.425	10675.425
10611.250	10676.250
10612.075	10677.075
10612.925	10677.925
10613.750	10678.750
10614.575	10679.575

(3) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10550.625	10615.625
10551.875	10616.875
10553.125	10618.125
10554.375	10619.375
10555.625	10620.625
10556.875	10621.875
10558.125	10623.125
10559.375	10624.375
10560.625 [1]	[1] 10625.625
10561.875 [1]	[1] 10626.875
10563.125 [1]	[1] 10628.125
10564.375 [1]	[1] 10629.375
10565.625	10630.625
10566.875	10631.875
10568.125	10633.125
10569.375	10634.375
10570.625	10635.625
10571.875	10636.875
10573.125	10638.125
10574.375	10639.375
10575.625	10640.625
10576.875	10641.875
10578.125	10643.125
10579.375	10644.375
10580.625	10645.625
10581.875	10646.875
10583.125	10648.125
10584.375	10649.375
10585.625	10650.625
10586.875	10651.875
10588.125	10653.125
10589.375	10654.375
10590.625	10655.625
10591.875	10656.875
10593.125	10658.125
10594.375	10659.375
10595.625	10660.625
10596.875	10661.875
10598.125	10663.125
10599.375	10664.375
10600.625	10665.625
10601.875	10666.875
10603.125	10668.125
10604.375	10669.375
10605.625	10670.625
10606.875	10671.875
10608.125	10673.125
10609.375	10674.375
10610.625	10675.625
10611.875	10676.875
10613.125	10678.125
10614.375	10679.375

[1] These frequencies are also available for DTS stations licensed, in operation, or applied for prior to July 15, 1993.

(4) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10551.25	10616.25
10553.75	10618.75
10556.25	10621.25
10558.75	10623.75
10561.25	10626.25
10563.75	10628.75
10566.25	10631.25
10568.75	10633.75
10571.25	10636.25
10573.75	10638.75
10576.25	10641.25
10578.75	10643.75
10581.25	10646.25
10583.75	10648.75
10586.25 [1]	[1] 10651.25
10588.75 [1]	[1] 10653.75
10591.25 [1]	[1] 10656.25
10593.75 [1]	[1] 10658.75
10596.25 [1]	[1] 10661.25
10598.75 [1]	[1] 10663.75
10601.25 [1]	[1] 10666.25
10603.75 [1]	[1] 10668.75
10606.25 [1]	[1] 10671.25
10608.75 [1]	[1] 10673.75
10611.25 [1]	[1] 10676.25
10613.75 [1]	[1] 10678.75

[1] These frequencies are also available for DTS stations licensed, in operation, or applied for prior to July 15, 1993.

(5) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10553.125	10618.125
10558.125	10623.125
10563.125	10628.125
10568.125	10633.125
10573.125	10638.125
10578.125	10643.125
10583.125	10648.125
10588.125	10653.125
10593.125	10658.125
10598.125	10663.125
10603.125	10668.125

(6) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10552.5	10617.5
10557.5	10622.5
10562.5	10627.5
10567.5 [1]	[1] 10632.5
10572.5 [1]	[1] 10637.5
10577.5 [1]	[1] 10642.5
10582.5 [1]	[1] 10647.5
10587.5	10652.5
10592.5	10657.5
10597.5	10662.5
10602.5	10667.5

[1] These frequencies are also available for DTS stations licensed, in operation, or applied for prior to July 15, 1993.

(h) *10,700 to 11,700 MHz.* 40 MHz authorized bandwidth.

(1) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11130.625	11620.625
11131.875	11621.875
11133.125	11623.125
11134.375	11624.375
11135.625	11625.625
11136.875	11626.875
11138.125	11628.125
11139.375	11629.375
11140.625	11630.625
11141.875	11631.875
11143.125	11633.125
11144.375	11634.375
11145.625	11635.625
11146.875	11636.875
11148.125	11638.125
11149.375	11639.375
11150.625	11640.625
11151.875	11641.875
11153.125	11643.125
11154.375	11644.375
11155.625	11645.625
11156.875	11646.875
11158.125	11648.125
11159.375	11649.375
11160.625	11650.625
11161.875	11651.875
11163.125	11653.125
11164.375	11654.375
11165.625	11655.625
11166.875	11656.875
11168.125	11658.125
11169.375	11659.375
11170.625	11660.625
11171.875	11661.875
11173.125	11663.125
11174.375	11664.375
11175.625	11665.625
11176.875	11666.875
11178.125	11668.125
11179.375	11669.375
11180.625	11680.625
11181.875	11681.875
11183.125	11683.125
11184.375	11684.375
11185.625	11685.625
11186.875	11686.875
11188.125	11688.125
11189.375	11689.375
11190.625	11690.625
11191.875	11691.875
11193.125	11693.125
11194.375	11694.375
11195.625	11695.625
11196.875	11696.875
11198.125	11698.125
11199.375	11699.375

(2) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11131.25	11621.25
11133.75	11623.75
11136.25	11626.25
11138.75	11628.75
11141.25	11631.25
11143.75	11633.75
11146.25	11636.25
11148.75	11638.75
11151.25	11641.25
11153.75	11643.75
11156.25	11646.25
11158.75	11648.75
11161.25	11651.25

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11163.75	11653.75
11166.25	11656.25
11168.75	11658.75
11171.25	11661.25
11173.75	11663.75
11176.25	11666.25
11178.75	11668.75
11181.25	11681.25
11183.75	11683.75
11186.25	11686.25
11188.75	11688.75
11191.25	11691.25
11193.75	11693.75
11196.25	11696.25
11198.75	11698.75

(3) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11133.125	11623.125
11138.125	11628.125
11143.125	11633.125
11148.125	11638.125
11153.125	11643.125
11158.125	11648.125
11163.125	11653.125
11168.125	11658.125
11173.125	11663.125
11178.125	11668.125
11183.125	11683.125
11188.125	11688.125
11193.125	11693.125
11198.125	11698.125

(4) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11132.5	11622.5
11137.5	11627.5
11142.5	11632.5
11147.5	11637.5
11152.5	11642.5
11157.5	11647.5
11162.5	11652.5
11167.5	11657.5
11172.5	11662.5
11177.5	11667.5
11182.5	11682.5
11187.5	11687.5
11192.5	11692.5
11197.5	11697.5

(5) 10 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10705	11205
10715	11215
10725[2]	[1]11675
10735	11225
10745	11235
10755	11245
10765	11255
10775	11265
10785	11275
10795	11285
10805	11295
10815	11305
10825	11315
10835	11325
10845	11335
10855	11345
10865	11355
10875	11365
10885	11375
10895	11385
10905	11395
10915	11405
10925	11415
10935	11425
10945	11435
10955	11445
10965	11455
10975	11465
10985	11475
10995	11485
11005	11495
11015	11505
11025	11515
11035	11525
11045	11535
11055	11545
11065	11555
11075	11565
11085	11575
11095	11585
11105	11595
11115	11605
11125	11615
11135[1]	[2]11625
11145[1]	[1]11635
11155[1]	[1]11645
11165[1]	[1]11655
11175[1]	[1]11665
11185[1]	[1]11685
11195[1]	[1]11695

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

[2] These frequencies may be assigned for unpaired use.

(6) 30 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10715	11215
10755	11245
10795	11285
10835	11325
10875	11365
10915	11405
10955	11445
10995	11485
11035	11525
11075	11565
11115	11605
11155[1]	[1]11645
11185[1]	5[1]11685

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

(7) 40 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10735	11225
10775	11265
10815	11305
10855	11345
10895	11385
10935	11425
10975	11465
11015	11505
11055	11545
11095	11585
11135[1]	[1]11625
11175[1]	[1]11665

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

(1) Fixed systems licensed, in operation, or applied for in the 5925–6425, 10,550–10,680, and 10,700–11,700 MHz bands prior to July 15, 1993 are permitted to use channel plans in effect prior to that date, including adding channels under those plans.

13. Section 21.710 is revised to read as follows:

§ 21.710 Limitations on path lengths and channel loading.

(a) The distance between end points of a fixed link must equal or exceed the value set forth in the following table or the EIRP must be reduced in accordance with the equation set the in paragraph (b) of this section.

Frequency band (MHz)	Minimum path length (km)
Below 1,850	N/A
1,850 to 7,125	17
10,550 to 13,250	5
Above 17,700	N/A

(b) For paths shorter than those specified in the Table, the EIRP shall not exceed the value derived from the following equation.

EIRP=30 – 20 log[A/B], dBW

Where:

EIRP=Equivalent isotropic radiated power in dBW.

A=Minimum path length from the Table for the frequency band in kilometers.

B=The actual path length in kilometers.

Note: Automatic transmit power control may be used to meet this requirement up to a 3 dB increase in EIRP.

(c) Upon an appropriate technical showing, applicants and licensees unable to meet the minimum path length requirement may be granted an exception to these requirements.

(d) Except for video transmission, an application for an initial working channel for a given route will not be accepted for filing where the anticipated loading (within 30 months for data and five years for voice, or other period subject to reasonable projection) is less than the minimum specified for the following frequency bands. Absent extraordinary circumstances, applications proposing additional frequencies over existing routes will not be granted unless it is shown that the traffic load will shortly exhaust the capacity of the existing equipment. For the 3700–4200 MHz band, all persons intending to utilize baseband frequencies above 7.3 MHz, or to operate with more than 1500 equivalent 4 kHz voice channels per radio channel, must submit evidence of coordination pursuant to § 21.100(d). Where no construction of radio facilities is requested, licensees must submit this evidence with their filing of any necessary authority required pursuant to section 214 of the Communications Act and part 63 of this chapter.

Frequency band (MHz)	Minimum number of voice channels (4 kHz or equivalent)	Minimum original data loading (Mb/s)
3700 to 4200 (20 MHz bandwidth)	[1]900	44.7
5925 to 6425 (10 MHz bandwidth)	.....	22.3
5925 to 6425 (20 MHz bandwidth)	.....	44.7
5925 to 6425 (30 MHz bandwidth)	[1]900	67.0
10,700 to 11,700 (10 MHz bandwidth)	240	22.3
10,700 to 11,700 (20 MHz bandwidth)	240	44.7
10,700 to 11,700 (30 MHz bandwidth)	[1]900	44.7
10,700 to 11,700 (40 MHz bandwidth)	[1]900	67.0

[1] Where transmitters employing digital modulation techniques are designed to be used so that two may simultaneously operate on the same frequency over the same path, the minimum number of voice channels is reduced to 500 per transmitter.

III. Part 22 of title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation in part 22 continues to read as follows.

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 22.501 is amended by revising paragraph (e) to read as follows:

§ 22.501 Frequencies.

* * * * *

(e) On a shared basis with fixed stations in the Point-to-Point Microwave Radio Service, frequencies in the bands 2110–2130 MHz and 2160–2180 MHz may be authorized for use by control and repeater stations functioning in conjunction with the Public Land Mobile Service. The emission bandwidth shall be limited to the minimum necessary to serve the purpose required, including the applicant's future growth plans. No new assignments will be made in the 2160–2162 MHz band for stations located within 50 miles of the coordinates of the sites listed in § 21.901(c) of this chapter, except upon a showing that no alternative frequencies are available. Channel bandwith in excess of 800 kHz will not be authorized. In each of these bands, the highest frequency that would not cause harmful interference to any other stations shall be assigned. Licensees in the 2110–2130 MHz and 2160–2180 MHz bands that may be required to relocate to other bands by emerging technology service providers are eligible for licensing under part 21 of this chapter in the 3700–4200, 5925–6425, 6525–6875, 10,550–10,680, and 10,700–11,700 MHz bands.

* * * * *

IV. Part 94 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

1. The authority citation in part 94 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 94.45 is amended by revising paragraph (a)(10) to read as follows:

§ 94.45 Changes in authorized station requiring modification.

(a) * * *

(10) Any increase in authorized effective isotropic radiated power in excess of 3 dB (a 2-to-1 ratio);

* * * * *

3. Section 94.61 is amended by revising paragraph (b) to read as follows:

§ 94.61 Applicability.

* * * * *

(b) Frequencies in the following bands are available for assignment to stations in the Private Operational-Fixed Microwave Service:

Frequency band (MHz)	
926 to 929	(19) and (20.)
932 to 932.5	(32)
932.5 to 935	(33)
941 to 941.5	(32).
941.5 to 944	(33) and (34).
952 to 960	(1) and (20).
1850 to 1990	(2) and (35).
2130 to 2150	(2) (21) and (35).
2150 to 2160	(3).
2180 to 2200	(2) (21) and (35).
2450 to 2500	(4) and (21).
2650 to 2690	(5).
3700 to 4200	(8) (10) and (21).
5925 to 6425	(6) (10) and (21)
6425 to 6525	(6) (30) and (31).
6525 to 6575	(6) (10) (21) and (28).
6575 to 6625	(2) (6) (10) (21) and (28).
6625 to 6875	(2) (6) (10) (21) and (28).
10,550 to 10,680	(10) and (21).
10,700 to 11,700	(8) (10) and (21).
12,200 to 12,500	(2) (21) and (25).
12,500 to 12,700	(2) (6) (21) and (25).
12,700 to 13,200	(6) and (26).
13,200 to 13,250	(6) (9) (14) and (21).
17,700 to 18,142	(6) (8) (10) (21) and (27).
18,142 to 18,580	(6) (8) (10) (23) and (27).
18,580 to 18,820	(10) (17) and (21).
18,820 to 18,920	(21) and (24).
18,920 to 19,160	(10) (17) and (21).
19,160 to 19,260	(21) and (24).
19,260 to 19,700	(10) (21) and (27).
21,200 to 22,000	(10) (11) (12) (13) and (23).
22,000 to 23,600	(10) (12) (13) and (23).
31,000 to 31,300	(23) and (29).
38,600 to 40,000	(9) (18) and (23).
Bands above 40,000	(16) and (23).

1 Frequencies in this band are shared with stations in the International Fixed (in Puerto Rico and the Virgin Islands) and International Control Services. (Part 23)

2 Frequencies in this band are shared with stations in the International Control Service. (Part 23)

3 Frequencies in this band are shared with stations in the Multipoint Distribution Service (Part 21). These frequencies may be used for the transmission of the licensee's products and information services, excluding video entertainment material, to the licensee's customers.

4 Frequencies in this band are shared with mobile and radiolocation stations in other services, and must accept harmful interference that may be experienced from operations of industrial, scientific, or medical (ISM) equipment operating on 2450 MHz. In the 2483.5–2500 MHz band, no applications for new stations or modifications to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the radiodetermination Satellite Service. However, all grandfathered temporary fixed licensees are required to notify directly each Radiodetermination Satellite Service licensee concerning present and proposed locations of operation.

5 Frequencies in this band are shared with earth stations in the Fixed Satellite Service (part 25 of this chapter), space stations in the Broadcasting Satellite Service (part 25 of this chapter), and with stations in the Instructional Television Fixed Service (ITFS) (part 74 of this chapter). No new licenses will be issued in the bands 2650–2656, 2662–2668 or 2674–2680 MHz. Existing stations in the 2650–2656 MHz, 2662–2668 MHz and 2674–2680 MHz frequency bands will be grandfathered and licensed under part 21 of this chapter.

6 Frequencies in this band are shared with Earth (Earth-to-space) stations in the Fixed Satellite Service. (Part 25)

7 [Reserved]

8 Frequencies in this band are shared with space (space-to-Earth) stations in the Fixed Satellite Service. (Part 25)

9 This band is shared with fixed and mobile station operations authorized under other services.

10 Frequencies in this band are shared with fixed stations in the Domestic Public Radio Services. (Part 21)

11 Frequencies in this band are shared with space (space-to-Earth) stations in the Earth Exploration Satellite Service. (Part 25)

12 Authorizations are normally granted only to common carriers (Part 21) in the band segments 21.2–21.8 GHz and 22.4–23.00 GHz, and to operational-fixed users (Part 94) in the segments 21.8–22.4 GHz and 23.0–23.6 GHz. Cross-service assignments for these users may be made only upon a showing that no interference-free frequencies are available in the appropriate band segments. Frequencies in the 21.8–22.0 GHz and 23.0–23.2 GHz band segments may be authorized to operational fixed users under the provisions of Sec. 94.91.

13 This frequency band is shared with U.S. Government Stations.

14 Frequencies in this band are shared with stations in the Television Auxiliary Broadcast Service (Part 74), the Local Television Transmission Service (Part 21) and the Point-to-Point Microwave Service (Part 21).

16 Available on developmental basis only under Subpart E of this part.

17 Frequencies in this band are shared with (1) DTS intermodal links, Point-to-Point Microwave Service stations and point-to-point return radio links for MDS stations under Part 21 rules and (2) aural broadcasts STL and intercity relay stations under part 74 rules.

18 These frequencies are assigned for use within a rectangular service area to be described in the application by the maximum and minimum latitudes and longitudes. Such service area shall be as small as practicable consistent with the local service requirements of the user. The use of these frequencies is subject to the terms and conditions set forth in Sec. 21.711. These frequencies shall be assigned only where it is shown that the applicant will have a reasonable projected requirement for a multiplicity of service points or transmission paths within the area.

19 Frequencies in this band are paired with the band of 952–953 MHz and are limited for use by multiple address remote stations.

20 The frequencies in this band which are allocated for Part 94 multiple address systems are available for point-to-multipoint transmission of the licensee's products and information services, excluding video entertainment material, to the licensee's customers. Other frequencies in this band are available for the point-to-point transmission of the licensee's products and information services, excluding video entertainment material, to the licensee's customers.

21 This band is available for radio systems to be used for the point-to-point transmission of the licensee's products and information services, excluding video entertainment material, to the licensee's customers.

23 This band is available for radio systems to be used for the point-to-point transmission of the licensee's program material or services to the licensee's customers.

24 Frequencies in this band are shared with the Common Carrier services for Digital Termination Systems. The availabie frequencies are indicated Sec. 94.65.

25 Frequencies in this band have been allocated to the Direct Broadcast Service and are authorized for Operational Fixed use only pursuant to Sec. 94.93.

26 Frequencies in this band are only available for applications filed pursuant to Sec. 94.93.

27 Frequencies in this band are shared with Broadcast Auxiliary, and Cable Television Relay services.

28 This band is also available for applications filed pursuant to Sec. 94.93.

29 Frequencies in this band are co-equally shared with stations in the Domestic Public Fixed (Part 21), Auxiliary Broadcasting (Part 74), Cable Television Relay (Part 78) and General Mobile Radio (Part 95) Services.

30 This band is co-equally shared with mobile stations licensed pursuant to parts 21, 74 and 78 of the Commission's Rules.

31 Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted.

32 Frequencies in the 932 to 932.5 MHz and 941 to 941.5 MHz bands are shared with Government fixed point-to-multipoint stations and point-to-multipoint stations in the Public Land Mobile Service (Part 22). Frequencies in these bands are paired with one another and are available for point-to-multipoint transmission of the licensee's products and information services, excluding video entertainment material, to the licensee's customers.

33 Frequencies in the 932.5 to 935 MHz and 941.5 to 944 MHz bands are shared with Government fixed point-to-point stations and stations in the Point-to-Point Microwave Radio Service (Part 21). Frequencies in these bands are paired with one another.

34 Frequencies in the 942 to 944 MHz band are also shared with broadcast auxiliary stations (Part 74).

35 New facilities in these bands will be licensed only on a secondary basis. Facilities licensed or applied for before January 16, 1992, are permitted to make modifications and minor extensions and retain their primary status.

4. Section 94.63 is amended by revising paragraph (a) to read as follows:

§ 94.63 Interference protection criteria for operational fixed stations.

(a) Before filing an application for new or modified facilities under this part, the applicant must perform a frequency engineering analysis to assure that the proposed facilities will not cause interference to existing or previously applied-for stations in this service of a magnitude greater than that specified in the criteria set forth in paragraph (b) of this section, unless otherwise agreed to in accordance with § 94.15(b). As an exception to the above requirement, when the proposed facilities are to be operated in the bands 932–935, 941–944, 3700–4200, 5925–6425, 6525–6875, 10,550–10,680, 10,700–11,700, 17,700–19,700, 21,200–21,800, 22,400–23,000, or 38,600–40,000 MHz applicants shall follow the prior coordination procedure specified in § 21.100(d) of this chapter. In addition, when the proposed facilities are to be operated in the bands 12,500–12,700 MHz, applications shall also follow the procedures in § 21.706(c) and (d) of this chapter and the technical standards and requirements of part 25 of this chapter as regards licensees in the Satellite Communications Service. See also § 94.77.

* * * * *

5. Section 94.65 is amended by redesignating paragraphs (j) through (m) as paragraphs (m) through (p); by redesignating paragraph (h) as paragraph (l); revising paragraphs (g) and (i); and by adding paragraphs (h), (j) and (k) to read as follows:

§ 94.65 Frequencies.

* * * * *

(g) *3,700 to 4,200 MHz.* 20 MHz maximum authorized bandwidth. 20 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
3710	3990
3730	4010
3750	3950
3770	3970
3790	4070
3810	4090
3830	4030
3850	4050
3870	4150
3890	4170
3910	4110

Transmit (receive) (MHz)	Receive (transmit) (MHz)
3930	4130
n/a	[1] 4190

[1] This frequency may be assigned for unpaired use.

(h) *5,925 to 6,425 MHz.* 30 MHz authorized bandwidth.

(1) 400 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5925.225	6177.100
5925.625	6177.500
5926.050	6177.925
5926.450	6178.325
5926.875	6178.750
5927.275	6179.150
5927.725	6179.600
5928.125	6180.000
5928.550	6180.425
5928.950	6180.825
5929.375	6181.250
5929.775	6181.650
6168.350	6420.225
6168.750	6420.625
6169.175	6421.050
6169.575	6421.450
6170.000	6421.875
6170.400	6422.275
6170.850	6422.725
6171.250	6423.125
6171.675	6423.550
6172.075	6423.950
6172.500	6424.375
6172.900	6424.775

(2) 800 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5925.425	6177.300
5926.250	6178.125
5927.075	6178.950
5927.925	6179.800
5928.750	6180.625
5929.575	6181.450
6168.550	6420.425
6169.375	6421.250
6170.200	6422.075
6171.050	6422.925
6171.875	6423.750
6172.700	6424.575

(3) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5925.625	6177.500
5926.875	6178.750
5928.125	6180.000
5929.375	6181.250
6108.893	6360.933
6110.128	6362.168
6111.364	6363.404
6112.599	6364.639
6113.834	6365.874
6115.070	6367.110
6116.305	6368.345
6117.541	6369.581
6118.776	6370.816
6120.011	6372.051
6121.247	6373.287
6122.482	6374.522
6123.718	6375.758
6124.953	6376.993
6126.189	6378.229
6127.424	6379.464
6128.659	6380.699
6129.895	6381.935
6131.130	6383.170
6132.366	6384.406
6133.601	6385.641
6134.836	6386.876
6136.072	6388.112
6137.307	6389.347
6138.543	6390.583
6139.778	6391.818
6141.041	6393.054
6142.249	6394.289
6143.484	6395.524
6144.720	6396.760
6145.955	6397.995
6147.191	6399.231
6148.426	6400.466
6149.661	6401.701
6150.897	6402.937
6152.132	6404.172
6153.368	6405.408
6154.603	6406.643
6155.839	6407.879
6157.074	6409.114
6158.309	6410.349
6159.545	6411.585
6160.780	6412.820
6162.016	6414.056
6163.251	6415.291
6164.486	6416.526
6165.722	6417.762
6166.957	6418.997
6168.750	6420.625
6170.000	6421.875
6171.250	6423.125
6172.500	6424.375
6173.750 [1]	n/a
6175.000 [1]	n/a
6176.250 [1]	n/a

[1] These frequencies may be assigned for unpaired use.

(4) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5926.250	6178.125
5928.750	6180.625
6109.510	6361.550
6111.981	6364.021
6114.452	6366.492
6116.923	6368.963
6119.394	6371.434
6121.865	6373.905
6124.335	6376.375
6126.806	6378.846
6129.277	6381.317
6131.748	6383.788
6134.219	6386.259
6136.690	6388.730
6139.160	6391.200
6141.631	6393.671
6144.102	6396.142
6146.573	6398.613
6149.044	6401.084
6151.515	6403.555
6153.985	6406.025
6156.456	6408.496
6158.927	6410.967
6161.398	6413.438
6163.869	6415.909
6166.340	6418.380
6168.375	6421.250
6171.875	6423.750
6175.625 [1]	n/a

[1] This frequency may be assigned for unpaired use.

(5) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6111.364	6363.404
6116.305	6368.345
6121.247	6373.287
6126.189	6378.229
6131.130	6383.170
6136.072	6388.112
6141.014	6393.054
6145.955	6397.995
6150.897	6402.937
6155.839	6407.879
6160.780	6412.820
6165.722	6417.762
6175.000 [1]	n/a

[1] This frequency may be assigned for unpaired use.

(6) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6110.75	6362.79
6115.69	6367.73
6120.63	6372.67
6125.57	6377.61
6130.51	6382.55
6135.45	6387.49
6140.40	6392.44
6145.34	6397.38
6150.28	6402.32
6155.22	6407.26
6160.16	6412.20
6165.10	6417.14

(7) 10 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5935.32	6187.36
5945.20	6197.24
5955.08	6207.12
5964.97	6217.01
5974.85	6226.89

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5984.73	6236.77
5994.62	6246.66
6004.50	6256.54
6014.38	6266.42
6024.27	6276.31
6034.15	6286.19
6044.03	6296.07
6053.92	6305.96
6063.80	6315.84
6073.68	6325.72
6083.57	6335.61
6093.45	6345.49
6103.33	6355.37
6113.22 [1]	[1] 6365.26
6123.10 [1]	[1] 6375.14
6132.98 [1]	[1] 6385.02
6142.87 [1]	[1] 6394.91
6152.75 [1]	[1] 6404.79
6162.63 [1]	[1] 6414.67

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

(8) 30 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
5945.20	6197.24
5974.85	6226.89
6004.50	6256.54
6034.15	6286.19
6063.80	6315.84
6093.45	6345.49
6123.10 [1]	[1] 6375.14
6152.75 [1]	[1] 6404.79

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

(i) *6,525 to 6,875 MHz*. 10 MHz authorized bandwidth.

(1) 400 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6525.225	6870.225
6525.625	6870.625
6526.050	6871.050
6526.450	6871.450
6526.875	6871.875
6527.275	6872.275
6527.725	6872.725
6528.125	6873.125
6528.550	6873.550
6528.950	6873.950
6529.375	6874.375
6529.775	6874.775

(2) 800 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6525.425	6870.425
6526.250	6871.250
6527.075	6872.075
6527.925	6872.925
6528.750	6873.750
6529.575	6874.575

(3) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6525.625	6870.625
6526.875	6871.875
6528.125	6873.125
6529.375	6874.375
6540.625 [1]	[1] 6718.125
6541.875 [1]	[1] 6719.375
6543.126 [1]	[1] 6713.125
6544.375 [1]	[1] 6714.375
6545.625 [1]	[1] 6715.625
6546.875 [1]	[1] 6716.875
6548.125	6728.125
6549.375	6729.375
6550.625	6730.625
6551.875	6731.875
6553.125 [1]	[1] 6723.125
6554.375 [1]	[1] 6724.375
6555.625 [1]	[1] 6725.625
6556.875 [1]	[1] 6726.875
6558.125	6738.125
6559.375	6739.375
6560.625	6740.625
6561.875	6741.875
6563.125	6733.125
6564.375	6734.375
6565.625	6735.625
6566.875	6736.875
6568.125 [1]	[1] 6720.625
6569.375 [1]	[1] 6721.875
6580.625 [1]	[1] 6868.125
6581.875 [1]	[1] 6869.375
6583.125	6743.125
6584.375	6744.375
6585.625	6745.625
6586.875	6746.875
6588.125	6748.125
6589.375	6749.375
6590.625	6750.625
6591.875	6751.875
6593.125	6753.125
6594.375	6754.375
6595.625	6755.625
6596.875	6756.875
6598.125	6758.125
6599.375	6759.375
6600.625	6760.625
6601.875	6761.875
6603.125	6763.125
6604.375	6764.375
6605.625	6765.625
6606.875	6766.875
6608.125	6768.125
6609.375	6769.375
6610.625	6770.625
6611.875	6771.875
6713.125	6773.125
6614.375	6774.375
6615.625	6775.625
6616.875	6776.875
6618.125	6778.125
6619.375	6779.375
6620.625	6780.625
6621.875	6781.875
6623.125	6783.125
6624.375	6784.375
6625.625	6785.625
6626.875	6786.875
6628.125	6788.125
6629.375	6789.375
6630.625	6790.625
6631.875	6791.875
6633.125	6793.125
6634.375	6794.375
6635.625	6795.625
6636.875	6796.875
6638.125	6798.125
6639.375	6799.375
6640.625	6800.625
6641.875	6801.875
6643.125	6803.125
6644.375	6804.375
6645.625	6805.625
6646.875	6806.875
6648.125	6808.125
6649.375	6809.375
6650.625	6810.625
6651.875	6811.875
6653.125	6813.125
6654.375	6814.375
6655.625	6815.625
6656.875	6816.875
6658.125	6818.125
6659.375	6819.375
6660.625	6820.625
6661.875	6821.875
6663.125	6823.125
6664.375	6824.375
6665.625	6825.625
6666.875	6826.875
6668.125	6828.125
6669.375	6829.375
6670.625	6830.625
6671.875	6831.875
6673.125	6833.125
6674.375	6834.375
6675.625	6835.625
6676.875	6836.875
6678.125	6838.125
6679.375	6839.375
6680.625	6840.625
6681.875	6841.875
6683.125	6843.125
6684.375	6844.375
6685.625	6845.625
6686.875	6846.875
6688.125	6848.125
6689.375	6849.375
6690.625	6850.625
6691.875	6851.875
6693.125	6853.125
6694.375	6854.375
6695.625	6855.625
6696.875	6856.875
6698.125	6858.125
6699.375	6859.375
6700.625	6860.625
6701.875	6861.875
6703.125	6863.125
6704.375	6864.375
6705.625	6865.625
6706.875	6866.875
6708.125 [1]	[1] 6710.625
6709.375 [1]	[1] 6711.875

[1] These frequencies may be assigned for unpaired use.

(4) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6526.25	6871.25
6528.75	6873.75
6541.25 [1]	[1] 6718.75
6543.75 [1]	[1] 6713.75
6546.25 [1]	[1] 6716.25
6548.75	6728.75
6551.25	6731.25
6553.75 [1]	[1] 6723.75
6556.25 [1]	[1] 6726.25
6558.75	6738.75
6561.25	6741.25
6563.75	6733.75
6566.25	6736.25
6568.75 [1]	[1] 6721.25
6581.25 [1]	[1] 6868.75
6583.75	6743.75
6586.25	6746.25
6588.75	6748.75
6591.25	6751.25
6593.75	6753.75
6596.25	6756.25
6598.75	6758.75
6601.25	6761.25
6603.75	6763.75
6606.25	6766.25
6608.75	6768.75
6611.25	6771.25
6613.75	6773.75
6616.25	6776.25
6618.75	6778.75
6621.25	6781.25
6623.75	6783.75
6626.25	6786.25
6628.75	6788.75
6631.25	6791.25
6633.75	6793.75
6636.25	6796.25
6638.75	6798.75
6641.25	6801.25
6643.75	6803.75
6646.25	6806.25
6648.75	6808.75
6651.25	6811.25
6653.75	6813.75
6656.25	6816.25
6658.75	6818.75
6661.25	6821.25
6663.75	6823.75
6666.25	6826.25
6668.75	6828.75
6671.25	6831.25
6673.75	6833.75
6676.25	6836.25
6678.75	6838.75
6681.25	6841.25
6683.75	6843.75
6686.25	6846.25
6688.75	6848.75
6691.25	6851.25
6693.75	6853.75
6696.25	6856.25
6698.75	6858.75
6701.25	6861.25
6703.75	6863.75
6706.25	6866.25
6708.75 [1]	[1] 6711.25

[1] These frequencies may be assigned for unpaired use.

(5) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6545.625 [1]	[1] 6715.625
6550.625	6730.625
6555.625 [1]	[1] 6725.625
6560.625	6740.625
6565.625	6735.625
6585.625	6745.625
6590.625	6750.625
6595.625	6755.625
6600.625	6760.625
6605.625	6765.625
6610.625	6770.625
6615.625	6775.625
6620.625	6780.625
6625.625	6785.625
6630.625	6790.625
6635.625	6795.625
6640.625	6800.625
6645.625	6805.625
6650.625	6810.625
6655.625	6815.625
6660.625	6820.625
6665.625	6825.625
6670.625	6830.625
6675.625	6835.625
6680.625	6840.625
6685.625	6845.625
6690.625	6850.625
6695.625	6855.625
6700.625	6860.625
6705.625	6865.625
6710.625 [1]	[1] 6720.625

[1] These frequencies may be assigned for unpaired use.

(6) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6545 [1]	[1] 6715
6550	6730
6555 [1]	[1] 6725
6560	6740
6565	6735
6585	6745
6590	6750
6595	6755
6600	6760
6605	6765
6610	6770
6615	6775
6620	6780
6625	6785
6630	6790
6635	6795
6640	6800
6645	6805
6650	6810
6655	6815
6660	6820
6665	6825
6670	6830
6675	6835
6680	6840
6685	6845
6690	6850
6695	6855
6700	6860
6705	6865
6710 [1]	[1] 6720

[1] These frequencies may be assigned for unpaired use.

(7) 10 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
6545 [1]	[1] 6715
6555 [1]	[1] 6725
6565	6735
6585	6745
6595	6755
6605	6765
6615	6775
6625	6785
6635	6795
6645	6805
6655	6815
6665	6825
6675	6835
6685	6845
6695	6855
6705	6865
6535 [2]	[2] 6575

[1] These frequencies may be assigned for unpaired use.

[2] Available only for emergency restoration, maintenance bypass, or other temporary-fixed purposes. Such uses are authorized on a non-interference basis to other frequencies in this band. Interference analysis required by § 94.63 does not apply to this frequency pair.

(j) *10,550 to 10,680 MHz.* 5 MHz authorized bandwidth.

(1) 400 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10605.225	10670.225
10605.625	10670.625
10606.050	10671.050
10606.450	10671.450
10606.875	10671.875
10607.275	10672.275
10607.725	10672.725
10608.125	10673.125
10608.550	10673.550
10608.950	10673.950
10609.375	10674.375
10609.775	10674.775
10610.225	10675.225
10610.625	10675.625
10611.050	10676.050
10611.450	10676.450
10611.875	10676.875
10612.275	10677.275
10612.725	10677.725
10613.125	10678.125
10613.550	10678.550
10613.950	10678.950
10614.375	10679.375
10614.775	10679.775

(2) 800 kHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10605.425	10670.425
10606.250	10671.250
10607.075	10672.075
10607.925	10672.925
10608.750	10673.750
10609.575	10674.575
10610.425	10675.425
10611.250	10676.250
10612.075	10677.075
10612.925	10677.925
10613.750	10678.750
10614.575	10679.575

(3) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10550.625	10615.625
10551.875	10616.875
10553.125	10618.125
10554.375	10619.375
10555.625	10620.625
10556.875	10621.875
10558.125	10623.125
10559.375	10624.375
10560.625	10625.625
10561.875	10626.875
10563.125	10628.125
10564.375	10629.375
10565.625	10630.625
10566.875	10631.875
10568.125	10633.125
10569.375	10634.375
10570.625	10635.625
10571.875	10636.875
10573.125	10638.125
10574.375	10639.375
10575.625	10640.625
10576.875	10641.875
10578.125	10643.125
10579.375	10644.375
10580.625	10645.625
10581.875	10646.875
10583.125	10648.125
10584.375	10649.375
10585.625	10650.625
10586.875	10651.875
10588.125	10653.125
10589.375	10654.375
10590.625	10655.625
10591.875	10656.875
10593.125	10658.125
10594.375	10659.375
10595.625	10660.625
10596.875	10661.875
10598.125	10663.125
10599.375	10664.375
10600.625	10665.625
10601.875	10666.875
10603.125	10668.125
10604.375	10669.375
10605.625	10670.625
10606.875	10671.875
10608.125	10673.125
10609.375	10674.375
10610.625	10675.625
10611.875	10676.875
10613.125	10678.125
10614.375	10679.375

(4) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10551.25	10661.25
10553.75	10618.75
10556.25	10621.25
10558.75	10623.75
10561.25	10626.25
10563.75	10628.75
10566.25	10631.25
10568.75	10633.75
10571.25	10636.25
10573.75	10638.75
10576.25	10641.25
10578.75	10643.75
10581.25 [1]	[1] 10646.25
10583.75 [1]	[1] 10648.75
10586.25 [1]	[1] 10651.25
10588.75 [1]	[1] 10653.75
10591.25 [1]	[1] 10656.25
10593.75 [1]	[1] 10658.75
10596.25 [1]	[1] 10661.25
10598.75 [1]	[1] 10663.75
10601.25	10666.25
10603.75	10668.75
10606.25 [1]	[1] 10671.25
10608.75	10673.75
10611.25 [1]	[1] 10676.25
10613.75	10678.75

[1] These frequencies are also available for DTS stations licensed, in operation, or applied for prior to July 15, 1993.

(5) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10553.125	10618.125
10558.125	10623.125
10563.125	10628.125
10568.125	10633.125
10573.125	10638.125
10578.125	10643.125
10583.125	10648.125
10588.125	10653.125
10593.125	10658.125
10598.125	10663.125
10603.125	10668.125

(6) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10552.5	10617.5
10557.5	10622.5
10562.5	10627.5
10567.5	10632.5
10572.5	10637.5
10577.5	10642.5
10582.5	10647.5
10587.5	10652.5
10592.5	10657.5
10597.5	10662.5
10602.5	10667.5

(k) *10,700 to 11,700 MHz.* 40 MHz authorized bandwidth.

(1) 1.25 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11130.625	11620.625
11131.875	11621.875
11133.125	11623.125
11134.375	11624.375
11135.625	11625.625
11136.875	11626.875
11138.125	11628.125
11139.375	11629.375
11140.625	11630.625
11141.875	11631.875
11143.125	11633.125
11144.375	11634.375
11145.625	11635.625
11146.875	11636.875
11148.125	11638.125
11149.375	11639.375
11150.625	11640.625
11151.875	11641.875
11153.125	11643.125
11154.375	11644.375
11155.625	11645.625
11156.875	11646.875
11158.125	11648.125
11159.375	11649.375
11160.625	11650.625
11161.875	11651.875
11163.125	11653.125
11164.375	11654.375
11165.625	11655.625
11166.875	11656.875
11168.125	11658.125
11169.375	11659.375
11170.625	11660.625
11171.875	11661.875
11173.125	11663.125
11174.375	11664.375
11175.625	11665.625
11176.875	11666.875
11178.125	11668.125
11179.375	11669.375
11180.625	11680.625
11181.875	11681.875
11183.125	11683.125
11184.375	11684.375
11185.625	11685.625
11186.875	11686.875
11188.125	11688.125
11189.375	11689.375
11190.625	11690.625
11191.875	11691.875
11193.125	11693.125
11194.375	11694.375
11195.625	11695.625
11196.875	11696.875
11198.125	11698.125
11199.375	11699.375

(2) 2.5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11131.25	11621.25
11133.75	11623.75
11136.25	11626.25
11138.75	11628.75
11141.25	11631.25
11143.75	11633.75
11146.25	11636.25
11148.75	11638.75
11151.25	11641.25

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11153.75	11643.75
11156.25	11646.25
11158.75	11648.75
11161.25	11651.25
11163.75	11653.75
11166.25	11656.25
11168.75	11658.75
11171.25	11661.25
11173.75	11663.75
11176.25	11666.25
11178.75	11668.75
11181.25	11681.25
11183.75	11683.75
11186.25	11686.25
11188.75	11688.75
11191.25	11691.25
11193.75	11693.75
11196.25	11696.25
11198.75	11698.75

(3) 3.75 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11133.125	11623.125
11138.125	11628.125
11143.125	11633.125
11148.125	11638.125
11153.125	11643.125
11158.125	11648.125
11163.125	11653.125
11168.125	11658.125
11173.125	11663.125
11178.125	11668.125
11183.125	11683.125
11188.125	11688.125
11193.125	11693.125
11198.125	11698.125

(4) 5 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
11132.5	11622.5
11137.5	11627.5
11142.5	11632.5
11147.5	11637.5
11152.5	11642.5
11157.5	11647.5
11162.5	11652.5
11167.5	11657.5
11172.5	11662.5
11177.5	11667.5
11182.5	11682.5
11187.5	11687.5
11192.5	11692.5
11197.5	11697.5

(5) 10 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10705	11205
10715	11215
10725[2]	[1]11675
10735	11225
10745	11235
10755	11245
10765	11255
10775	11265
10785	11275
10795	11285
10805	11295
10815	11305
10825	11315
10835	11325
10845	11335
10855	11345
10865	11355
10875	11365
10885	11375
10895	11385
10905	11395
10915	11405
10925	11415
10935	11425
10945	11435
10955	11445
10965	11455
10975	11465
10985	11475
10995	11485
11005	11495
11015	11505
11025	11515
11035	11525
11045	11535
11055	11545
11065	11555
11075	11565
11085	11575
11095	11585
11105	11595
11115	11605
11125	11615
11135[1]	[2]11625
11145[1]	[1]11635
11155[1]	[1]11645
11165[1]	[1]11655
11175[1]	[1]11665
11185[1]	[1]11685
11195[1]	[1]11695

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

[2] These frequencies may be assigned for unpaired use.

(6) 30 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10715	11215
10755	11245
10795	11285
10835	11325
10875	11365
10915	11405
10955	11445
10995	11485
11035	11525
11075	11565
11115	11605
11155[1]	[1]11645
11185[1]	[1]11685

[1] Alternate channels These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

(7) 40 MHz bandwidth channels:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10735	11225
10775	11265
10815	11305
10855	11345
10895	11385
10935	11425
10975	11465
11015	11505
11055	11545
11095	11585
11135[1]	[1]11625
11175[1]	[1]11665

[1] Alternate channels. These channels are set aside for narrow bandwidth systems and should be used only if all other channels are blocked.

* * * * *

6. Section 94.65 is amended by revising the introductory text of newly designated paragraph (m)(8) to read as follows:

§ 94.65 Frequencies.

* * * * * * *

(m) * * *

(8) The following frequencies are available for point-to-multipoint systems, except that systems licensed, in operation, or applied for in the 10,565–10,615 and 10,630–10,680 MHz bands prior to July 15, 1993 are permitted to use frequencies in those bands if they prior coordinate with 10 GHz point-to-point licensees:

* * * * * * *

7. Section 94.65 is amended by adding paragraphs (q) and (r) to read as follows:

§ 94.65 Frequencies.

* * * * * * *

(q) Fixed systems licensed, in operation, or applied for in the 6525–6875 and 10,550–10,680 MHz bands prior to July 15, 1993 are permitted to use channel plans in effect prior to that date, including adding channels under those plans.

(r) Frequency diversity transmission will not be authorized in this service in the absence of a factual showing that the required communications cannot practically be achieved by other means. Where frequency diversity is deemed to be justified on a protection channel basis, it shall be limited to one protection channel for the bands 3700–4200, 5925–6425, and 6525–6875 MHz, and a ratio of one protection channel for three working channels for the bands

10,550–10,680 and 10,700–11,700 MHz. In the bands 3700–4200, 5925–6425, and 6525–6875 MHz, no frequency diversity protection channel will be authorized unless there is a minimum of three working channels, except that where a substantial showing is made that a total of three working channels will be required within three years, a protection channel may be authorized simultaneously with the first working channel. A protection channel authorized under such exception will be subject to termination if applications for the third working channel are not filed within three years of the grant date of the applications for the first working channel. Where equipment employing digital modulation techniques with cross-polarized operation on the same frequency is used, the protection channel authorized under the above conditions may be considered to consist of both polarizations of the protection frequency where such is shown to be necessary.

8. Section 94.71 is amended by revising paragraph (b) to read as follows:

§ 94.71 Emission and bandwidth limitations.

* * * * * * *

(b) The maximum bandwidth that will be authorized per frequency is set out in the table that follows. Regardless of the maximum authorized bandwidth specified for each frequency band, the Commission reserves the right to issue a license for less than the maximum bandwidth if it appears that a lesser bandwidth would be sufficient to support an applicant's intended communications.

Frequency band (MHz)	Maximum authorized bandwidth
928–929	12.5, 25 kHz [1,6]
932–932.5, 941–941.5	12.5 kHz [1]
932.5–935, 941.5–944	12.5, 25, 50, 100, 200 kHz [1]
952–960	12.5, 25, 50, 100, 200 kHz [1,5]
1850–1990	5 or 10 MHz [1]
2130–2150	800 or 1600 kHz [1]
2150–2160	10 MHz
2180–2200	800 or 1600 kHz [1]
2450–2483.5	625 kHz [2]
2483.5–2500	800 kHz
3700–4200	20 MHz
5925–6425	30 MHz
6425–6525	25 MHz
6525–6875	10 MHz
10,550–10,680	5 MHz
10,700–11,700	40 MHz
12,200–12,700	10 or 20 MHz [1]
13,200–13,250	25 MHz
17,700–18,140	80 MHz
18,140–18,142	2 MHz
18,142–18,580	6 MHz
18,580–18,820	20 MHz
18,820–18,920	10 MHz
18,920–19,160	20 MHz
19,160–19,260	10 MHz
19,260–19,700	80 MHz
21,200–23,600	up to 100 MHz [4]
31,000–31,300	25 or 50 MHz
38,600–40,000	up to 50 MHz
Bands above 40,000 3.	

Frequency band (MHz)	Maximum authorized bandwidth
• • • • •	

[1] The maximum bandwidth that will be authorized for each particular frequency in this band is detailed in the appropriate frequency table in § 94.65.

[2] 1250 kHz, 1875 kHz, or 2500 kHz on a case-by-case basis.

[3] To be specified in authorization.

[4] For exceptions see § 94.91.

[5] A 12.5 bandwidth applies only to frequencies listed § 94.65(a)(1).

[6] For frequencies listed in § 94.65(a)(1), consideration will be given on a case-by-case basis to authorizing bandwidths up to 50 kHz.

9. Section 94.73 is revised to read as follows:

§ 94.73 Power limitations.

On any authorized frequency, the average power delivered to an antenna in this service shall be the minimum amount of power necessary to carry out the communications desired. Application of this principle shall include, but not be limited to, requiring a licensee who replaces one or more of his antennas with larger antennas to reduce his antenna input power by an amount appropriate to compensate for the increased primary lobe gain of the replacement antenna(s). In no event shall the average equivalent isotropically radiated power (EIRP), as referenced to an isotropic radiator, exceed the values specified below. Further, the output power of a transmitter on any authorized frequency in this service shall not exceed the following:

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP [1]	
	Fixed (W)	Mobile (W)	Fixed (dBW)	Mobile (dBW)
928 to 929	5.0	.....	+17	.....
932 to 932.5	.....	.....	+17	.....
932.5 to 935	20.0	.....	+40	.....
941 to 941.5	.....	.....	+30	.....
941.5 to 944	20.0	.....	+40	.....
952 to 960	[6] 20.0	.....	[2] +40	.....
1850 to 1990	20.0	.....	+45	.....
2130 to 2150	20.0	.....	+45	.....
2150 to 2160	20.0	.....	[2] +45	.....
2180 to 2200	20.0	.....	+45	.....
2450 to 2500	20.0	.....	+45	.....
3700 to 4200	20.0	.....	+50	.....
5925 to 6425	20.0	.....	+55	.....
6425 to 6525	.....	20.0	.....	+35
6525 to 6875	20.0	.....	+50	.....
10,550 to 10,680	[4] 10.0	.....	+50	.....
10,700 to 11,700	10.0	.....	+50	.....
12,200 to 12,700 [7]	10.0	.....	+50	.....
12,700 to 13,250	10.0	.....	[3] +50	.....
17,700 to 18,600	10.0	.....	+55	.....
18,600 to 18,800	[5] 10.0	.....	+35	.....
18,800 to 19,700	10.0	.....	+55	.....
21,200 to 23,600 [7]	10.0	.....	+40	.....

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP [1]	
	Fixed (W)	Mobile (W)	Fixed (dBW)	Mobile (dBW)
31,000 to 31,300	0.05	0.05	.....	.....
38,600 to 40,000	10.0	.....	+40	.....

[1] Peak envelope power shall not exceed five times the average power.
[2] For multiple address operations, see §94.65(a)(1)(v). When an omnidirectional antenna is authorized in the 2150–2160 MHz band, the maximum power shall be 60 dBm.
[3] Also, see §94.77.
[4] The output power of a Digital Termination System nodal transmitter shall not exceed 0.5 watts per 250 kHz. The output power of a Digital Termination system user transmitter shall not exceed 0.04 watts per 250 kHz. The transmitter power in terms of the watts specified is the peak envelope power of the emission measured at the associated antenna input port. The operating power shall not exceed the authorized power by more than 10 percent of the authorized power in watts at any time.
[5] Maximum power delivered to antenna shall not exceed −3 dBW.
[6] Remote alarm units that are part of a multiple address central station protection system are authorized a maximum of 2 watts.
[7] Also, see §§94.90 and 94.91.

10. Section 94.75 is amended by revising paragraph (b) to read as follows:

§94.75 Antenna limitations.

* * * * *

(b) Directional antennas shall meet the performance standards (for parallel polarization) indicated in the following table:

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beam width to 3 dB points (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibles						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
932.5 to 935	A	14.0	N/A	.....	6	11	14	17	20	24
941.5 to 944	B	20.0	N/A	.....	.....	6	10	13	15	20
952 to 960 [1] [4]	A	14.0	N/A	.....	6	11	14	17	20	24
	B	20.0	N/A	.....	.....	6	10	13	15	20
1,850 to 2,500 [2]	A	5.0	N/A	12	18	22	25	29	33	36
	B	8.0	N/A	5	16	20	20	25	29	36
3,700 to 4,200	A	N/A	36	23	29	33	36	42	55	55
	B	N/A	36	20	24	28	32	32	32	32
5,925 to 6,875 [10]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
6,525 to 6,875 [11]	A	1.5	N/A	26	29	32	34	38	41	49
	B	2.0	N/A	21	25	29	32	35	39	45
10,550 to 10,680 [3] [6]	A	3.4	34	20	24	28	32	35	55	55
	B	3.4	34	20	24	28	32	35	35	39
10,565 to 10,615 [3] [12].	N/A	360	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
10,630 to 10,680	N/A	N/A	34	20	24	28	32	35	36	36
10,700 to 11,700 [10]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
12,200 to 13,250 [6]	A	1.0	N/A	23	28	35	39	41	42	50
	B	2.0	N/A	20	25	28	30	32	37	47
17,700 to 19,700 [3]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
21,200 to 23,600 [5]	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36
31,000 to 31,300 [7] [8]	N/A	4.0	38	N/A	N/A	N/A	N/A	N/A	N/A	N/A
38,600 to 40,000	A	N/A	38	25	29	33	36	42	55	55
	B	N/A	38	20	24	28	32	35	36	36

[1] Except for frequencies listed in Sec. 94.65(a)(1), where omnidirectional antennas may be used.
[2] Except for 2,150–2,160 MHz, where the maximum beamwidth is 360 degrees.
[3] Except as provided for in paragraph (h) of this section.
[4] Antennas used at outlying stations as part of a central protection alarm system need conform to only the following 2 standards: (1) The minimum on-beam forward gain must be at least 10 dBi, and (2) the minimum front-to-back ratio must be at least 20 dB.
[5] Except as provided in §94.91.
[6] Except for temporary-fixed operations in the band 13200 MHz – 13250 MHz with output powers less than 250 mW and as provided in §94.90.
[7] The minimum front-to-back ratio shall be 38 dBi.
[8] Mobile, except aeronautical mobile, stations need not comply with these standards.
[9] Except for such antennas between 140 deg. and 180 deg. authorized or pending on January 1, 1989 for which minimum radiation suppression to angle (in degrees) from centerline of main beam is 36 decibels.

[10] These antenna standards apply to all point-to-point stations authorized after June 1, 1997. Existing licensees and pending applicants on that date are grandfathered and need not comply with these standards.
[11] These antenna standards apply to all point-to-point stations authorized on or before June 1, 1997.
[12] These antenna standards apply only to Digital Termination User Stations licensed, in operation, or applied for prior to July 15, 1993.

* * * * *

11. Section 94.77 is amended by revising the introductory text and the heading of paragraph (a) to read as follows:

§ 94.77 Interference to geostationary-satellites.

These limitations are necessary to minimize the probability of harmful interference to reception in the bands 2655–2690 MHz, 5925–6875 MHz, and 12.7–12.75 GHz on board geostationary-space stations in the fixed-satellite service (part 25). Stations authorized in the band 2655–2690 MHz prior to July 1, 1976 that exceed the power levels in paragraphs (a) and (b) of this section are permitted to operate indefinitely, provided that the operation of such stations does not result in harmful interference to reception in this band on board geostationary space stations.

(a) *2655 to 2690 MHz and 5925 to 6875 MHz.* * * *

* * * * *

12. Section 94.79 is revised to read as follows:

§ 94.79 Minimum path lengths for fixed links.

(a) The distance between end points of a fixed link must equal or exceed the value set forth in the following table or in the EIRP must be reduced in accordance with the equation set forth in paragraph (b) of this section.

Frequency band (MHz)	Minimum path length (km)
Below 1,850	N/A
1,850 to 7,125	17
10,550 to 13,250	5
Above 17,700	N/A

(b) For paths shorter then those specified in the Table, the EIRP shall not exceed the value derived from the following equation.

EIRP=30–20 log[A/B], dBW

Where:

EIRP=Equivalent isotropic radiated power in dBW.

A=Minimum path length from the Table for the frequency band in kilometers.

B=The actual path length in kilometers.

Note: Automatic transmit power control may be used to meet this requirement pursuant to § 94.45.

(c) Upon an appropriate technical showing, applicants and licensees unable to meet the minimum path length requirement may be granted an exception to these requirements.

Note: Links authorized prior to April 1, 1987 need not comply with this requirement.

13. Section 94.81 is amended by adding paragraph (c) to read as follows:

§ 94.81 Authorization of microwave equipment.

* * * * *

(c) After July 15, 1994, the manufacture (except for export) or importation of equipment employing digital modulation techniques in the 3700–4200, 5925–6425, 6525–6875, 10,550–10,680, and 10,700–11,700 MHz bands must meet the minimum payload capacity requirements of § 21.122(a)(3) of this chapter.

14. Section 94.94 is revised to read as follows:

§ 94.94 Microwave digital modulation.

Microwave transmitters employing digital modulation techniques in the 17,700–19,700 MHz band shall transmit at a bit rate, in bits per second (bps), equal to or greater than the authorized bandwidth in Hertz (e.g., to be acceptable, equipment transmitting at a 20 Mbps rate must not require an authorized bandwidth greater than 20 MHz). This bps/Hz standard is independent of the antenna (polarization) used, frequency reuse, or how the system is configured. For equipment applied for, authorized, and placed in service after June 1, 1997 in the 3700–4200, 5925–6425, 6525–6875, 10,550–10,680, and 10,700–11,700 MHz bands, standards of § 21.122(a)(3) of this chapter shall be met.

Note: Systems authorized in the 17,700–19,700 MHz band prior to December 1, 1988 may install equipment with no minimum bit rate.

[FR Doc. 93–22601 Filed 9–21–93; 8:45am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants; Removal of Echinocereus Triglochidiatus var. Inermis (Spineless Hedgehog Cactus) From the List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) hereby removes *Echinocereus triglochidiatus* var. *inermis* (spineless hedgehog cactus) from the List of Endangered and Threatened Plants. This action is based on a review of all available data, which indicate that this plant is not a discrete and valid taxonomic entity and does not meet the definition of a species (which includes subspecies) as defined by the Endangered Species Act of 1973, as amended; it was listed in error. *E. t.* var. *inermis* is a spineless form of *E. t.* var. *melanacanthus* (red-flowered hedgehog cactus) that occurs sporadically in southeastern Utah and in southwestern Colorado. *E. t.* var. *melanacanthus* is a common variety with a widespread distribution from northern Utah and Colorado south to the States of Durango and San Luis Potosi in central Mexico. This final rule eliminates Federal protection of the Endangered Species Act, as amended.

EFFECTIVE DATE: September 22, 1993.

ADDRESSES: The complete file for this rule is available for inspection by appointment during normal business hours at the U.S. Fish and Wildlife Service, Ecological Services, 730 Simms Street, room 290, Golden, Colorado 80401, or at the U.S. Fish and Wildlife Service, Ecological Services, Western Colorado Suboffice, 529–25½ Road, suite B–113, Grand Junction, Colorado 81505–6199.

FOR FURTHER INFORMATION CONTACT: Dr. Lucy Jordan, Botanist, at the above Grand Junction address (Phone: 303/243–2778).

SUPPLEMENTARY INFORMATION:

Background

The spineless hedgehog cactus has been known for nearly 100 years. It was

first collected in the La Sal Mountains of Utah by the German botanist Carl Albert Purpus and described by Karl Schuman in 1896 as *Echinocereus phoeniceus* Engelm. var. *inermis* K. Schuman (Taylor 1985). The Purpus type collection is no longer available for study because it was destroyed during World War II.

Historically, the spineless hedgehog cactus has not been recognized as a taxonomically distinct taxon. For instance, in the first complete treatment of the flora of Colorado, Harrington (1954) considered it only as a form. However, in the early 1970's, Arp (1973) made the combination *Echinocereus triglochidiatus* Engelm. var. *inermis* (K. Schum.) G.K. Arp. Although he recognized that the spineless hedgehog cactus had not been considered taxonomically distinct, Arp (1973) considered it: "* * * a distinct and identifiable population." His taxonomic recognition of the spineless hedgehog cactus coincided with passage of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its new provisions for the protection of endangered and threatened plants. The Fish and Wildlife Service (Service) listed it as endangered on November 7, 1979 (44 FR 64744).

Subsequent to listing the spineless hedgehog cactus, a recovery plan (U.S. Fish and Wildlife Service 1986) was prepared. This plan pointed out that some botanists questioned the taxonomic status of the plant and suggested further studies were needed to evaluate its taxonomy. Although the Service had listed the spineless hedgehog cactus, subsequent evaluations did not recognize it as a distinct taxon. These evaluations include Benson (1982), Taylor (1985), Weber (1987), and Welsh *et al.* (1987). The consensus of knowledgeable botanists is that the spineless hedgehog cactus is only a form and not a taxonomic entity.

The recovery plan also stated that the difference between spineless plants on mesa or ridge tops and spined plants on adjacent sideslopes may only be due to microhabitat differences. These different microsites are separated by short distances of as little as 15 m (50 ft). Subsequent inventories in the 12 years since listing have found spined and spineless plants on either flats or slopes, and spineless plants have been found in much more widely scattered areas (James Ferguson, Bureau of Land Management, pers. comm., 1985).

The spineless hedgehog cactus is now found at over 20 sites. Its known range has been expanded 160 km (100 mi) to the west (Heil and Porter 1989) and 40 km (25 mi) to the east and south (James Ferguson, pers. comm., 1986) of the original area. This is an area about 320 km (200 mi) by 160 km (100 mi), where it occurs widely interspersed within the range of var. *melanacanthus* (red-flowered hedgehog cactus) in southeast Utah and southeast Colorado.

The spineless hedgehog cactus does not breed true. Attempts by cactus nurserymen to breed spineless plants from mature, 15-year-old stock have yielded a mixture of spined and spineless progeny (Steven Brack, cactus horticulturist, Belen, New Mexico, pers. comm., 1991).

The spineless hedgehog cactus was formerly recognized as a distinct entity by cactus collectors. However, the cactus trade is well-known for splitting narrowly defined morphological variants of plants that are of horticultural interest to collectors. Collectors are usually not as concerned with concepts of populational integrity in nature, and horticultural recognition is not necessarily the same as scientific classification.

The Service published a proposal to delist the spineless hedgehog cactus on January 14, 1993 (58 FR 4401). All interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The Service particularly requested any evidence of populations of *E. triglochidiatus* whose individuals are plants referable only, or largely to, the variety *inermis*. No comments were received.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Echinocereus triglochidiatus* var. *inermis* should be removed from the List of Endangered and Threatened Plants found at 50 CFR 17.12. Procedures found at Section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. Regulations (50 CFR 424.11) require that certain factors be considered before a species can be listed, reclassified, or delisted. These factors and their application to *Echinocereus triglochidiatus* Engelm. var. *inermis* (K. Schum.) G.K. Arp. (spineless hedgehog cactus) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Echinocereus triglochidiatus var. *inermis* has been determined to be a spineless form of *E. t.* var *melanacanthus*. *E. t.* var. *melanacanthus* is a common variety that is distributed from Utah and Colorado south into the States of Durango and San Luis Potosi in central Mexico (Benson 1982). The common *E. t.* var. *melanacanthus*, which includes *E. t.* var. *inermis*, is not threatened. The final rule that designated *E. t.* var. *inermis* as an endangered species identified habitat modification from pinyon-juniper chaining and mining activities. Because *E. t.* var. *inermis* is not a valid taxon and does not meet the definition of "species" as defined in the Act and because the taxon of which it is a part is common and wide ranging, this threat is not applicable.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The final rule cited overcollecting by commercial and private cactus collectors as the primary threat. Here again, as stated above in Section A, this threat is not applicable to the common and wide-ranging *E. t.* var. *melanacanthus* which includes *E. t.* var *inermis*.

C. Disease or Predation

Neither disease nor predation is a threat to *E. t.* var. *melanacanthus* which includes *E. t.* var. *inermis*.

D. The Inadequacy of Existing Regulatory Mechanisms

Echinocereus triglochidiatus var. *melanacanthus*, a common and wide ranging taxon, is not threatened by the inadequacy of regulatory mechanisms. All cacti are listed in the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention). The Convention regulates and in some cases prohibits the export and international trade in species listed in the appendices. *E. t.* var. *inermis* will no longer be considered a distinct taxon in the appendices, but *E. t.* var. *melanacanthus* will remain on Appendix II.

E. Other Natural and Manmade Factors Affecting Its Continued Existence

None are known.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *E. t.* var. *inermis* in determining to make this final rule. Based on this evaluation, the preferred action is to remove *Echinocereus triglochidiatus* var. *inermis* from the List of Endangered and Threatened Plants in 50 CFR 17.12, thereby removing it from the protection

of the Act, as amended. The regulations of 50 CFR 424.11(d) state that a species may be delisted if: (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service believes current scientific information exists that demonstrates that *E. t.* var. *inermis* does not represent a valid taxonomic entity and, therefore, does not meet the definition of "species" as defined in Section 3(16) of the Act. Therefore, *E. t.* var. *inermis* was listed in error.

In accordance with 5 U.S.C. 553(d), the Service has determined that this rule relieves an existing restriction and good cause exists to make the effective date of this rule immediate. Delay in implementation of this delisting would cost government agencies staff time and monies on conducting formal section 7 consultation on actions which may affect a species no longer in need of protection under the Act. Relieving the existing restriction associated with this listed species will enable Federal agencies to minimize any further delays in project planning and implementation for actions that may affect the spineless hedgehog cactus.

Effects of Rule

This action removes the spineless hedgehog cactus from the List of Endangered and Threatened Plants. Federal Agencies are no longer required to consult with the Secretary of the Interior to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of *E. t.* var. *inermis*. There is no designated critical habitat for this species. Federal restrictions on taking of this species no longer apply. There are no specific preservation or management programs for the species that are terminated.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act, as amended. A notice outlining the Service's reasons for this determination was published in **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Arp, G. 1973. Studies in the Colorado cacti V. The spineless hedgehog. Cactus and Succulent Journal 45:132–133.

Benson, L. 1982. The cacti of the United States and Canada. Stanford University Press. Stanford, California. 1,044 pp.

Harrington, H.D. 1954. Manual of the plants of Colorado. Sage Books, Denver. 666 pp.

Heil, K. and M.L. Porter. 1989. Endangered, threatened, rare and other plants of concern at Capitol Reef National Park. Part II Taxa of Concern. Status report prepared for National Park Service, Capitol Reef National Park.

Taylor, N.P. 1985. The genus *Echinocereus*. Timber Press, Portland, Oregon. 160 pp.

U.S. Fish and Wildlife Service. 1986. Spineless hedgehog cactus recovery plan. U.S. Fish and Wildlife Service, Denver, Colorado. 19 pp.

Weber, W.A. 1987. Colorado flora: Western Slope. Colorado Associated University Press, Boulder. 530 pp.

Welsh, S.L., N.D. Atwood, S. Goodrich, and L.C. Higgins. 1987. A Utah flora. Great Basin Naturalist Memoirs, No. 9, Brigham Young University Press, Provo, Utah. 894 pp.

Author

The original author of the proposed rule was John L. Anderson, Botanist, U.S. Fish and Wildlife Service. The primary author of this final rule is Dr. Lucy A. Jordan, Botanist (see **ADDRESSES** section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is hereby amended, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.12(h) [Amended]

2. § 17.12(h) is amended by removing the entry "*Echinocereus triglochidiatus* var. *inermis* (spineless hedgehog cactus)" under "Cactaceae" from the List of Endangered and Threatened Plants.

Dated: September 1, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–23104 Filed 9–21–93; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants; Final Rule To Delist the Plant Hedeoma apiculatum (McKittrick Pennyroyal) and Remove Its Critical Habitat Designation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service removes the plant *Hedeoma apiculatum* (McKittrick pennyroyal) from the List of Endangered and Threatened Plants and removes its critical habitat. The species is endemic to the Guadalupe Mountains in northwestern Texas and southeastern New Mexico. Because of the range, the number of newly discovered populations, and the remote and inaccessible nature of the habitat, the Service determines that McKittrick pennyroyal is not in danger of extinction throughout all or a significant portion of its range now or in the foreseeable future.

EFFECTIVE DATE: September 22, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 3530 Pan American Highway, NE., suite D, Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Philip Clayton, at the above address (505/883–7877).

SUPPLEMENTARY INFORMATION:

Background

Hedeoma apiculatum (McKittrick pennyroyal) was first collected in 1882, but remained undescribed until 1939 (Epling and Stewart 1939). The plant is a perennial herb, 10–15 cm (4–6 in.) tall. with dense tufts of leaves growing from woody rootstocks. The showy pink flowers are about 2 cm (0.8 in.) long, solitary or in clusters, and emerge from among the leaves towards the tips of the stems (Irving 1980).

McKittrick pennyroyal is endemic to the Guadalupe Mountains in Eddy County, New Mexico, and Culberson County, Texas. It is found in fissures and weathered pockets in open limestone rock outcrops at elevations above 1,660 m (5,400 ft). The species prefers north facing cliffs and slopes, but can occur on any aspect of sheltered relatively moist outcrops (Irving 1980, Knight and Cully 1988, Sivinski and Lightfoot 1992).

McKittrick pennyroyal was listed July 13, 1982 (47 *FR* 30440) as a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). Threats to the species at the time of listing were described as limited distribution, low numbers, and low reproductive potential, which all made the species vulnerable to extinction from the effects of habitat disturbance. Since the listing, additional surveys in the Guadalupe Mountains in New Mexico and Texas have shown the plant to be more widespread and abundant than previously known.

Irving (1980), reported 7 known locations for McKittrick pennyroyal scattered from near Hunter Peak in Guadalupe Mountains National Park (GMNP), Texas, to Big Canyon, Guadalupe Mountains, New Mexico. Since 1980, the species' range has been extended north to Double Canyon, Guadalupe Mountains, New Mexico, with many new locations being discovered. New populations were reported by the National Park Service (NPS) in 1986 (Richard B. Smith, GMNP, *in litt.* 1986), New Mexico Energy, Minerals and Natural Resources Department (Knight and Cully 1988), U.S. Forest Service (Hayes 1988), the Bureau of Land Management (BLM) (Dunmire 1990), and other sources. This information is summarized in Sivinski and Lightfoot (1992). A total of 13 Texas and 23 New Mexico locations are known at this time in a 166 sq km (65 sq mi) area in the Guadalupe Mountains of New Mexico and Texas. At the time of listing in 1982, plant numbers were estimated at 1,100. Although accurate counts and estimates are difficult to make, about 5,000 counted plants now comprise the 36 known locations.

Approximately 5–10% of an estimated 5,700 ha (14,000 ac) of potential habitat has been surveyed for McKittrick pennyroyal, mostly along trails and canyon bottoms. Potential habitat is abundant, but very difficult to survey because of the steep broken terrain and the remoteness of the area. It is likely that numerous groups of plants remain undiscovered throughout the suitable habitat, and that additional surveys will continue to identify new locations for the species (Sivinski and Lightfoot 1992).

At the time of listing the Service perceived the species to be vulnerable because of its low numbers and limited distribution and because of the potential threats to the species in its known locations from trail development and the impact of hikers. Management for the species in GMNP has included the designation of special management areas with limited public use, banning the use of horses on particular trails, and reducing levels of camping in certain sensitive areas (William P. Dunmire, Carlsbad Caverns and Guadalupe Mountains National Parks, *in litt.* 1984; Robin Wobbenhorst, GMNP, pers. comm. 1992). These management activities have reduced the human threats to McKittrick pennyroyal. The additional locations found since listing are in areas remote from human impacts, which provide a measure of security for the species.

Federal government actions on this species began with section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report (House Document No. 94–51), which included McKittrick pennyroyal in the threatened category, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 *FR* 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. McKittrick pennyroyal was included as threatened in this notice. McKittrick pennyroyal was proposed for listing as a threatened species with critical habitat on August 13, 1980 (45 *FR* 54682). The final rule listing McKittrick pennyroyal as a threatened species and designating its critical habitat was published July 13, 1982 (47 *FR* 30440). The McKittrick Pennyroyal Recovery Plan was completed in 1985 (U.S. Fish and Wildlife Service, 1985).

Federal involvement with McKittrick pennyroyal subsequent to listing has included surveys for new locations, monitoring of known populations, protection from human impacts through limiting use in sensitive areas, and inclusion in the development of the U.S. Environmental Protection Agency's (EPA) pesticide labeling program for protection of endangered species. The species has been included in all section 7 consultations over Federal projects occurring in suitable habitat in Eddy County, New Mexico, and Culberson County, Texas. Except for consultation with EPA on pesticide labeling, there have been no formal section 7 consultations involving this species. On September 22, 1992 (57 *FR* 43673), the Service proposed to delist the McKittrick pennyroyal and remove its critical habitat designation.

Summary of Comments and Recommendations

In the September 22, 1992, proposed rule (57 *FR* 43673) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate state agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *Carlsbad Current Argus* on October 9, 1992, and the *El Paso Times* on October 8, 1992, which invited general public comment. Six comments were received within the comment period.

Timely comments on the proposal were received from the State of New Mexico (Energy, Minerals and Natural Resources Department), the U.S. Forest Service (Southwestern Region), the Bureau of Land Management (New Mexico State Office), the Botanical Research Institute of Texas, Inc., the Texas Wildlife Association, and one professional botanist. All commentors supported the proposal. A specific concern raised in one comment is discussed below.

Concern: Is the overall population trend increasing, decreasing, or remaining stable?

Response: Surveys of Hunter's Peak, Upper Bear Canyon, and Devil's Den by the National Park Service (1987) and of Lonesome Ridge by The Nature Conservancy (1990) documented increases within several populations of McKittrick pennyroyal. Populations located on vertical limestone cliffs are inaccessible to monitoring and there is no demographic data available for these sites. However, surveys of several accessible populations clearly demonstrate overall population increases. The NPS, Forest Service, and BLM will continue to monitor McKittrick pennyroyal populations on lands under their jurisdiction.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that McKittrick pennyroyal should be removed from the List of Threatened and Endangered Plants, and that its critical habitat designation should be removed. Section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of threatened

and endangered species. The same procedures apply to reclassifying species or removing them from these lists. A species may be determined to be an endangered or threatened species based on the best scientific and commercial information available regarding one or more of the five factors described in section 4(a)(1). These factors and their application to *Hedeoma apiculatum* W.S. Stewart (McKittrick pennyroyal) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

McKittrick pennyroyal populations are scattered throughout a 166 sq km (65 sq mi) range. Surveys since listing have increased the known distribution and abundance of the species. At the time of listing, most of the few known populations were located adjacent to hiking trails. Management actions to protect the species and the discovery of a significant number of populations that are remote from human activity have significantly reduced the threat from recreational activities.

Potential threats to this species from modification or destruction of habitat included exploratory drilling for natural gas or other resources, and wildfire. Exploratory drilling is excluded from most McKittrick pennyroyal habitat because of the steepness of the outcrops upon which the species occurs. Little was known about the response of McKittrick pennyroyal to fire until 1990, when 13,000 ha (33,000 ac) of habitat burned on the Lincoln National Forest. In 1991, these areas were surveyed and numerous healthy plants were observed on canyon walls. Lack of fuel in these locations had apparently protected the McKittrick pennyroyal and associated plant species. Thus, it appears that wildfire is not a serious threat to the long-term survival of this species (Sivinski and Lightfoot 1992).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The final rule listing McKittrick pennyroyal identified collection for garden cultivation as a potential threat. No evidence for this kind of activity has come to light since the species was listed. Because of the increase in distribution and known plant numbers, the potential threat from this activity has been reduced.

C. Disease or Predation

In the final listing rule, grazing was noted to have occurred at one location. However, livestock are excluded from most of the habitat because of the steepness of the slopes. Other predators or disease organisms are not known at this time.

D. The Inadequacy of Existing Regulatory Mechanisms

McKittrick pennyroyal is on the New Mexico State List of Endangered Plant Species (9–10–10 NMSA 1978; NMFRCD Rule No. 91–1) and the Texas List of Endangered, Threatened or Protected Native Plants (Chapter 88, Texas Parks and Wildlife Code). It is considered a sensitive species by the Forest Service, and has received special management consideration by the NPS. All States and agencies will have the option of retaining this species on their various lists when it is removed from the Federal List of Endangered and Threatened Plants. The Forest Service will monitor the populations on the Lincoln National Forest for at least 5 years following delisting. Management actions taken by the NPS to protect the species will be left in place in the Guadalupe Mountains National Park, and the status of the populations there will be monitored. The BLM will place McKittrick pennyroyal on its sensitive species list and monitor populations on lands under its jurisdiction for a 5-year period.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Long-term climate changes from the more mesic Pleistocene to the present-day xeric conditions may have caused McKittrick pennyroyal to retreat from a more widespread distribution to the moist protected habitats of canyon walls and cliff faces. Further drying trends may pose a serious threat to the relictual habitats of this species. However, the rate of climatic change is sufficiently slow (and uncertain) that this threat is not expected to occur in the foreseeable future (Sivinski and Lightfoot 1992).

The regulations at 50 CFR 424.11(d) state that a species may be delisted if (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service concludes the data supporting the original classification were incomplete, and new data show removing *Hedeoma apiculatum* from the List of Endangered and Threatened Plants is warranted. The Service after conducting a review of the species' status determines the species is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become an endangered or threatened species within the foreseeable future throughout all or significant portion of its range. Given the expanded range, number of newly discovered locations and individuals, remote habitat, and protection provided by that remoteness and difficulty of access, the Service concludes, on the basis of the best scientific and commercial information, that *Hedeoma apiculatum* does not warrant the protection of the Act.

In accordance with 5 U.S.C. 553(d), the Service has determined that this rule relieves an existing restriction and good cause exists to make the effective date of this rule immediate. Delay in implementation of this delisting would cost government agencies staff time and monies on conducting formal section 7 consultation on actions which may affect a species no longer in need of the protection under the Act. Relieving the existing restriction associated with this listed species will enable Federal agencies to minimize any further delays in project planning and implementation for actions that may affect the McKittrick pennyroyal.

Effect of Delisting

This final rule removes the McKittrick pennyroyal from the List of Endangered and Threatened Plants, and removes the areas designated for it as critical habitat. Federal agencies no longer need to consult with the Service to insure that any action authorized, funded, or carried out by them is not likely to jeopardize the continued existence of McKittrick pennyroyal or result in destruction or adverse modification of its critical habitat.

The 1988 amendments to the Act require that all species which have been delisted due to recovery be monitored for at least 5 years following delisting. The McKittrick pennyroyal is being delisted primarily because the original listing information was in error, not because of recovery. Nevertheless, the Forest Service, NPS, and BLM have all indicated they will monitor the status of McKittrick pennyroyal for at least 5 years following delisting. The Service will work with these agencies to coordinate the monitoring effort.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Dunmire, W.W. 1990. Biological inventory of Lonesome Ridge ACEC, Carlsbad Resource Area, Bureau of Land Management: An investigation of biological resources focusing on plant and animal communities with recommendations for future management actions. U.S.D.I. Bureau of Land Management, Carlsbad Resource Area, Carlsbad, New Mexico. 52 pp.

Epling, C. and W.S. Stewart. 1939. A revision of *Hedeoma* with a review of allied genera. Report. Spec. Nov. Regni. Veg. Beihefte 115:1–49.

Hayes, F.A. 1988. Report on a *Hedeoma* survey. U.S.D.A. Forest Service, Albuquerque, New Mexico. 9 pp.

Irving, R.S. 1980. Status report on *Hedeoma* apiculatum. U.S. Fish and Wildlife Service, Office of Endangered Species, Albuquerque, New Mexico. 16 pp.

Knight, P.J. and A.C. Cully. 1988. Endangered plant study: Monitoring endangered plants, Project Number E–9–1. *Hedeoma apiculatum*. U.S. Fish and Wildlife Service, Division of Endangered Species, Albuquerque, New Mexico. 9 pp.

Sivinski, R. and K. Lightfoot. 1992. Status summary for the McKittrick pennyroyal (*Hedeoma apiculatum*). U.S. Fish and Wildlife Service, Ecological Services Field Office, Albuquerque, New Mexico. 31 pp.

U.S. Fish and Wildlife Service. 1985. McKittrick pennyroyal (*Hedeoma apiculatum* W.S. Stewart) Recovery Plan. U.S.D.I. Fish and Wildlife Service, Albuquerque, New Mexico. 46 pp.

Author

The primary author of this final rule is Philip Clayton (See **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Regulations Promulgation

Accordingly part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.12 [Amended]

2. Amend § 17.12(h) by removing the entry "*Hedeoma apiculatum*" under "Lamiaceae—Mint family:" from the List of Endangered and Threatened Plants.

§ 17.96 [Amended]

3. Amend § 17.96(a) by removing the critical habitat entry for "Hedeoma apiculatum" under "Family Lamiaceae"

Dated: September 1, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–23159 Filed 9–21–93; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 58, No. 182
Wednesday, September 22, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

U.S. Standards for Beans

AGENCY: Federal Grain Inspection Service, USDA.[1]

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Notice is hereby given that the Federal Grain Inspection Service (FGIS) is considering proposing several changes to the United States Standards for Beans. Specifically, FGIS is considering eliminating the factor "clean-cut weevil-bored beans" from the grade requirement for the class Blackeye beans and changing the grade limits for the factors "total defects," "blistered, wrinkled and/or broken beans," and "splits" for the class Baby Lima beans. FGIS invites comments, including data, views, and suggestions regarding the recommended changes.

DATES: Comments must be received by November 22, 1993.

ADDRESSES: Written comments must be submitted to George Wollam, FGIS, USDA, room 0624 South Building, P.O. Box 96454, Washington, DC 20090–6454; FAX (202) 720–4628.

All comments received will be made available for public inspection in room 0632 USDA South Building, 1400 Independence Avenue SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, address as above, telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION: On March 16, 1993, FGIS published in the **Federal Register** (58 FR 14174) a notice that the United States Standards for Beans were under review. FGIS believed that these standards were meeting the needs of producers, warehouse managers, shippers, and all others who handle or market beans. Consequently no changes were planned or proposed.

Interested parties were invited to participate in the rulemaking process by submitting written comments and/or recommendations regarding the official standards. During the 60-day comment period, a total of two comments were received. One commenter, a major importer from Germany, recommended that the U.S. Standards for Beans be changed to agree more closely with a particular State's standards for beans. The other commenter, representing both a State bean shippers association and a State bean growers group, recommended eliminating the factor "clean-cut weevil-bored beans" from the grade requirements for the class Blackeye beans and changing the grade limits for the factors "total defects," "blistered, wrinkled, and/or broken beans," and "splits" for the class Baby Lima beans.

Adopting State Bean Standards

Uniformity between federal, state, and regional bean standards is desirable, but not necessary. Generally, state and regional standards are written for particular classes/varieties of beans grown within a state or regional growing area. These standards also tend to be oriented toward a specific market or end-user. The U.S. standards, on the other hand, are written for all beans grown in the United States and all potential users; i.e., producers, canners, packers, exporters, importers, and consumers.

FGIS appreciates the varying concerns and needs of those who use the U.S. Standards for Beans. For this reason, the U.S. Standards—as well as most state and regional standards—provide a wide-range of grade options. Purchase contracts may also stipulate quality requirements over and above these grade requirements.

FGIS believes that Federal, State, and regional standards each play an important role in the marketing of U.S. beans. FGIS is not aware of any major problems associated with the apparent differences in these standards. Accordingly, FGIS does not plan to propose further alignment of the U.S. Standards for Beans with any particular State or regional standards at this time.

Changing the Requirements for Blackeye and Baby Lima Beans

One commenter recommended that the grading factor "clean-cut weevil-bored beans" be eliminated from the grade requirements for the class Blackeye beans and that "clean-cut weevil-bored beans" be considered as "worm-cut" or "insect damaged" beans. The commenter also requested that the limits for "total defects," "blistered, wrinkled, and/or broken beans," and "splits" in the class Baby Lima beans be changed to not more than 2.0, 4.0, and 6.0 percent for grades U.S. Nos. 1, 2, and 3, respectively.

The present U.S. standards define "clean-cut weevil-bored beans" as beans from which weevils have emerged, leaving a clean-cut open cavity free from larvae, webbing, refuse, mold, or stain. "Clean-cut weevil-bored beans" are considered as a separate grading factor in only two classes of beans: Blackeye and Mung beans. According to the U.S. Standards for Beans, Blackeye beans in grades U.S. Nos. 1, 2, and 3 may not contain more than 0.0, 0.2, and 0.5 percent, respectively, of "clean-cut weevil-bored beans." In all other classes, "clean-cut weevil-bored beans" are included with the grading factor "total damage" and/or "total defects."

Currently, Baby Lima beans in grades U.S. Nos. 1, 2, and 3 may contain not more than 2.0, 3.0, and 5.0 percent, respectively, of "total defects" and not more than 3.0, 5.0, and 8.0 percent, respectively, of "blistered, wrinkled, and/or broken beans" or "splits." The grade limits for the factors "total defects" (which includes "splits") and "total damaged" for most other classes of beans (e.g., Great Northern, Small White, Kidney, Small Red, Pink, Black Turtle Soup, Blackeye, Cranberry, and Mung beans) is 2.0, 4.0, and 6.0 percent, for grades U.S. Nos. 1, 2, and 3, respectively.

Comments including data, views, and suggestions regarding the recommended changes to the U.S. Standards for Blackeye and Baby Lima beans are solicited from interested parties.

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

Dated: August 27, 1993.

David R. Galliart,

Acting Administrator.

[FR Doc. 93–23128 Filed 9–21–93; 8:45 am]

BILLING CODE 3410–EN–M

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulation No. 16]

RIN 0960–AC96

Supplemental Security Income for the Aged, Blind, and Disabled; Waiver of Parent-to-Child Deeming for Certain Disabled Children

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements section 8010 of the Omnibus Budget Reconciliation Act of 1989 which provides that a disabled child under age 18 who lives with his or her parent(s) will not have parental income or resources deemed to him or her if the child previously received a reduced supplemental security income (SSI) benefit (personal needs allowance) while a resident of a medical facility for which Medicaid paid more than 50 percent of the cost of the individual's care; the child is eligible for medical assistance under a Medicaid State home care plan; and the child would otherwise be ineligible for a Federal SSI benefit because of the deeming of the parents' income or resources. The proposed rule also provides that, although deeming is waived in these circumstances, the in-kind support and maintenance provided by the parents will not be counted. Lastly, when such a child would not be ineligible because of the deeming of his parents' income but would receive a benefit of less than the amount payable under section 8010, the child's benefit will be $30 a month plus any optional State supplementation. Any of the child's own countable income will then be deducted from that amount.

DATES: To be sure that your comments are considered, we must receive them no later than November 22, 1993.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966–0512.

SUPPLEMENTARY INFORMATION: Section 1614(f)(2) of the Social Security Act (the Act) requires that, for purposes of determining eligibility for and the amount of SSI benefits, the income and resources of a child under age 18 be deemed to include the income and resources of a parent (or spouse of a parent) who is living in the same household as the child, except to the extent determined by the Secretary to be inequitable under the circumstances. Regulations at § 416.1160 through § 416.1169 explain how we deem income and when it is inequitable to deem part or all of that income. Regulations at § 416.1202 through § 416.1204a explain how we deem resources.

Section 8010(a) of Public Law 101–239 amended section 1614(f)(2) of the Act to provide that parental income and resources shall not be deemed to any child under age 18 who is disabled, received SSI benefits under section 1611(e)(1)(I)(B) while in an institution described in that section, is eligible for medical assistance under a State home care plan approved by the Secretary under the provisions of section 1915(c) of the Act or authorized under section 1902(e)(3), and, except for this waiver of deeming, would not be eligible for a Federal SSI benefit. Section 8010(b) amended section 1611(e)(1)(B) of the Act to include eligible children as described in section 1614(f)(2)(B) of the Act, among those eligible for the SSI personal needs allowance. These provisions became effective June 1, 1990.

The proposed regulation provides that we do not deem parental income and resources to disabled children who:

- Previously received SSI personal needs allowance benefits while residents of a medical facility for which Medicaid paid more than fifty percent of the cost of the individual's care;
- Are eligible for medical assistance under Medicaid State home care plans approved by the Secretary under the provisions of section 1915(c) of the Act or authorized under section 1902(e)(3); and
- Would otherwise be ineligible for a Federal SSI benefit because of the deeming of their parents' income and/or resources.

The proposed regulation also provides that children for whom the deeming rules are waived may be eligible to receive an SSI benefit up to the personal needs allowance (currently $30 monthly), plus an optional State supplement in certain States. The optional State supplement payable to a child for whom the deeming rules are waived will be determined by the State and, if the supplement is administered by the Federal government, set out in Federal/State agreements.

Further, the proposed regulation states that in-kind support and maintenance provided by a child's parent(s), which we do not count when deeming of parental income applies, also will not count when deeming of parental income is waived under section 1614(f)(2) of the Act. Otherwise, the counting of such in-kind support and maintenance could negate the beneficial effect of section 8010 of Public Law 101–239.

Finally, the proposed regulation addresses the situation of children who do not meet the criteria for waiver of deeming only because parental income is not high enough to make them ineligible for SSI benefits but is high enough to result in an SSI payment that is less than the amount that would be payable under section 8010 of Public Law 101–239. Under the proposed regulation, such children would receive an SSI benefit up to the personal needs allowance plus any optional State supplement. Any of the child's own countable income would then be deducted from that amount. This change is being made under the Secretary's discretionary deeming authority in section 1614(f)(2)(A) of the Act which allows the Secretary to determine the extent to which deeming of parental income and resources is inequitable under the circumstances. This change is necessary to prevent anomalies from being introduced into parent-to-child deeming.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities because it will affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act of 1980

This proposed regulation imposes no additional reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: April 23, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: July 1, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

Part 416 of chapter III of title 20 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for subpart D of part 416 continues to read as follows:

Authority: Secs. 1102, 1611(a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382(a), (b), (c), and (e), 1382a, 1382f, and 1383.

2. New § 416.415 is added to read as follows:

§ 416.415 Amount of benefits; eligible individual is disabled child under age 18.

(a) If you are a disabled child under age 18 and meet the conditions in § 416.1165(i) for waiver of deeming, your parents' income will not be deemed to you and your benefit rate will be $30 a month.

(b) If you are a disabled child under age 18 and do not meet the conditions in § 416.1165(i) only because your parents' income is not high enough to make you ineligible for SSI but deeming of your parents' income would result in an SSI benefit less than the amount payable if you received benefits as a child under § 416.1165(i), your benefit will be the amount payable if you received benefits as a child under § 416.1165(i).

3. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

4. Section 416.1148 is revised to read as follows:

§ 416.1148 If you have both in-kind support and maintenance and income that is deemed to you.

(a) *The one-third reduction and deeming of income.* If you live in the household of your spouse, parent, essential person, or sponsor whose income can be deemed to you, or the household of a parent whose income is not deemed to you because of the provisions of § 416.1165(i), the one-third reduction does not apply to you. The rules on deeming income are in §§ 416.1160 through 416.1169. However, if you live in another person's household as described in § 416.1131, and someone whose income can be deemed to you lives in the same household, we must apply both the one-third reduction and the deeming rules to you.

(b) *The presumed value rule and deeming of income.* (1) If you live in the same household with someone whose income can be deemed to you (§§ 416.1160 through 416.1169), or with a parent whose income is not deemed to you because of the provisions of § 416.1165(i), any food, clothing, or shelter that person provides is not income to you. However, if you receive any food, clothing, or shelter from another source, it is income and we value it under the presumed value rule (§ 416.1140). We also apply the deeming rules.

(2) If you are a child under age 18 who lives in the same household with an ineligible parent whose income may be deemed to you, and you are temporarily absent from the household to attend school (§ 416.1167(b)), any food, clothing, or shelter you receive at school is income to you unless your parent purchases it. Unless otherwise excluded, we value this income under the presumed value rule (§ 416.1140). We also apply the deeming rules to you (§ 416.1165).

5. In § 416.1165, the introductory text is revised and a new paragraph (i) is added to read as follows:

§ 416.1165 How we deem income to you from your ineligible parents.

If you are a child living with your parents, we apply the deeming rules to you through the month in which you reach age 18. We follow the rules in paragraphs (a) through (e) of this section to determine your eligibility. To determine your benefit amount, we follow the rules in paragraph (f) of this section. The rules in paragraph (g) of this section apply to changes in your family situation. Paragraph (i) of this section discusses the conditions under which we will not deem your ineligible parents' income to you if you are a disabled child living with your parents.

* * * * *

(i) *Disabled child under age 18.* If you are a disabled child under the age of 18 living with your parents, we will not deem your parents' income to you if—

(1) You previously received a reduced SSI benefit while a resident of a medical facility for which Medicaid paid more than 50 percent of the cost of your care;

(2) You are eligible for medical assistance under a Medicaid State home care plan approved by the Secretary under the provisions of section 1915(c) or authorized under section 1902(e)(3) of the Act; and

(3) You would otherwise be ineligible for a Federal SSI benefit because of the deeming of your parents' income or resources.

6. The authority citation of subpart L of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; Sec. 211 of Pub. L. 93–66, 87 Stat. 154.

7. In § 416.1202, paragraph (b) is revised to read as follows:

§ 416.1202 Deeming of resources.

* * * * *

(b) *Child.* (1) *General.* In the case of a child (as defined in § 416.1856) who is under age 18, such child's resources shall be deemed to include any resources, not otherwise excluded under this subpart, of an ineligible parent of such child (or the ineligible spouse of a parent) who is living in the same household (as defined in § 416.1851) as such child, whether or not available to such child, to the extent that the resources of such parent (or such spouse of a parent) exceed the resource limits described in § 416.1205 except as provided in paragraph (b)(2) of this section. (If the child is living with only one parent, the resource limit for an individual applies. If the child is living with both parents (or one parent and his or her spouse), the resource limit for an individual and spouse applies.) In addition to the exclusions listed in § 416.1210, pension funds which the ineligible parent or spouse of a parent may have are also excluded. "Pension funds" are defined in paragraph (a) of this section. As used in this section, the term "parent" means the natural or adoptive parent of a child and "spouse of a parent" means the spouse (as defined in § 416.1806) of such natural or adoptive parent.

(2) *Disabled child under age 18.* In the case of a disabled child under age 18 who is living in the same household

with his or her parents, the deeming provisions of paragraph (b)(1) of this section shall not apply if such child—

(i) Previously received a reduced SSI benefit while a resident of a medical facility for which Medicaid paid more than 50 percent of the cost of the individual's care;

(ii) Is eligible for medical assistance under a Medicaid State home care plan approved by the Secretary under the provisions of section 1915(c) or authorized under section 1902(e)(3) of the Act; and

(iii) Would otherwise be ineligible because of the deeming of his or her parents' resources or income.

* * * * *

[FR Doc. 93–23047 Filed 9–21–93; 8:45 am]
BILLING CODE 4190–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1253

RIN 3095–AA56

NARA Research Room Hours

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed rulemaking.

SUMMARY: NARA is proposing to change the hours that the Central Research Room, the Microfilm Research Room, and the Motion Picture, Sound and Video Research Room in the National Archives Building are open in the evening, beginning December 13, 1993. We are proposing that these research rooms will close at 8 p.m. instead of 10 p.m., Monday through Friday, and at 5 p.m. instead of 5:15 p.m. on Saturday. This proposed rule will affect researchers who use these research rooms in the late evening. NARA is taking this action so that resources will be available for staffing the research rooms at the new National Archives at College Park (Archives II) facility, beginning in January 1994.

DATES: Comments on the rule must be submitted by November 8, 1993.

ADDRESSES: Submit comments to Director, Policy and Program Analysis Division (NAA), National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard on 202–501–5110.

SUPPLEMENTARY INFORMATION: While the Central and Microfilm Research Rooms are currently open until 10 p.m., Monday through Friday, evening research room activity peaks between 5:30 and 6:30 p.m. and steadily declines thereafter. In a recent month (June 1993), the Microfilm Research Room showed a 30% decline in researchers after 8 p.m. and a 64% decline after 9 p.m. compared with the number of researchers present at 5 p.m.; in the Central Research Room there was a 59% decline after 8 p.m. and an 86% decline after 9 p.m. Evening use of the Motion Picture, Sound and Video Research Room, while lighter than the other two research rooms, shows a similar decrease in use after 8 p.m. Closing the research rooms 15 minutes earlier on Saturdays will give the research room staff time to secure the rooms before the 5:15 p.m. official closing of the building.

At the present time, only these three NARA research rooms in the Washington, DC, area offer evening hours. NARA intends to use the resources conserved by the earlier closing of these research rooms to offer evening and Saturday hours in the research rooms at the new National Archives at College Park facility (Archives II) in College Park, MD, beginning in January 1994. This will represent a considerable expansion in our services by the extension of evening and/or Saturday hours for records currently served in the Cartographic, Still Pictures, Electronic Records, and Nixon Research Rooms which do not have extended hours, and records currently served in the Suitland Research Room in the Washington National Records Center which has extended hours only on Saturdays.

A notice of proposed rulemaking addressing changes in research room procedures in NARA research rooms will be published in the **Federal Register** shortly. NARA also intends to publish a separate notice of proposed rulemaking for the Archives II facility, including research room hours, later this fall.

This proposed rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small entities.

List of Subjects in 36 CFR Part 1253

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend chapter XII of title 36, Code of Federal Regulations, as follows:

PART 1253—LOCATION OF RECORDS AND HOURS OF USE

1. The authority citation for part 1253 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

2. Section 1253.1 is revised to read as follows:

§ 1253.1 National Archives Building.

The National Archives Building is located at seventh Street and Pennsylvania Avenue NW., Washington, DC 20408. Hours: For the Central Research Room, Microfilm Research Room, and Motion Picture, Sound and Video Research Room, 8:45 a.m. to 8 p.m., Monday through Friday; 8:45 a.m. to 5 p.m. on Saturday. For other research rooms, 8:45 a.m. to 5 p.m., Monday through Friday.

Dated: August 27, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States

[FR Doc. 93–23146 Filed 9–21–93; 8:45 am]
BILLING CODE 7515–01–W

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900—AG20

Loan Guaranty; Revised Definition of Net Value and Revised Criteria for Pre-Foreclosure Debt Waivers

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its Loan Guaranty regulations to revise the definition of property improvements for purposes of determining the net value of a foreclosed property and to clarify VA's position on pre-foreclosure debt waivers for liable veterans in cases involving transferee defaults. These changes will account for actual property appraisal procedures and will clarify agency policy on pre-foreclosure debt waiver.

DATES: Comments must be received on or before October 22, 1993. VA proposes to make these regulatory amendments effective 30 days after publication of the final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC. All written comments received will be available for public inspection in room 170, Veterans Services Unit, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Leonard Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3668.

SUPPLEMENTARY INFORMATION: VA is proposing to amend its Loan Guaranty regulations governing the formula for determining net value and to clarify VA's position with regard to the approval of pre-foreclosure debt waivers for liable veterans in cases involving transferee defaults, consistent with the Veterans Benefits Amendment Act of 1989, Public Law 101–237. An additional technical correction would be made to correct a reference in 38 CFR 36.4323.

When a VA guaranteed loan goes into default and servicing efforts by the holder and VA fail, the holder proceeds with termination of the loan. The rights and duties of the holder and VA in connection with termination of the loan and disposition of the property are governed by 38 CFR 36.4320. In most cases, VA establishes a maximum price which the holder may bid at the loan foreclosure sale. Establishment of such a price, known as the "specified amount," occurs when it is determined that the net value of the real property to VA exceeds the unguaranteed portion of the indebtedness, and VA can reduce its maximum claim liability by acquiring and reselling the property. If the property is sold to a holder at the foreclosure sale for a price no higher than the amount specified by VA, the holder may convey the property to VA in return for payment of the specified amount. VA also pays the holder's claim for the difference between the price paid for the property, which must be credited to the loan indebtedness by the holder, and any balance remaining on the loan, but not to exceed the maximum amount of loan guaranty. In this manner, VA may acquire the loan security (the home) and reduce its claim liability.

The formula for determining whether VA will offer the lender and election to convey the foreclosed property to VA is set forth at 38 CFR 36.4320. A key component of this formula is the "net value" of the property, as defined in 38 CFR 36.4301. Essentially, "net value" is the fair market value of the property, minus the total of the costs the Secretary estimates would be incurred by the Government resulting from the acquisition and disposition of the property for property taxes, assessments, liens, property maintenance, property improvement, administration and resale.

The definition of net value incorporates and defines the concept of "property improvement." This definition of "property improvement" was written at a time when the liquidation appraisal only took into account the cost of repairs needed to meet Minimum Property Requirements (MPRs) in determining "as is" value. Since then, appraisal procedures have been refined to recognize that repairs to the property may have a contributory effect on value which is not identical with their cost and that repairs other than those necessary to meet MPRs should be considered in determining value. VA proposes to amend the regulatory definition of property improvement contained within the definition of "net value," in 38 CFR 36.4301. The revised definition of property improvement includes any repair or improvement itemized on the liquidation appraisal, as reviewed by VA, which contributes to value and/or is required to meet minimum property requirements. This is consistent with current appraisal practices.

A second change to 38 CFR 36.4301 is also proposed which would simplify determination of the percentage to be used in the net value calculation. Currently 38 CFR 36.4301 requires use of three year's average property operation and sales expenses in the formula. This unnecessarily complicates determination of the percentage to be used in the net value calculation. It also can lead to determination of a percentage which is not truly reflective of current costs because more weight is given to old cost data than to VA's most recent experience. Amendment of the formula to require the use of only the most recent year's data will improve the accuracy of the determination.

VA is also proposing to amend 38 CFR 36.4323. Concern has been expressed by some field stations that current regulatory provisions regarding pre-foreclosure debt waivers do not clearly reflect VA's policy of approving pre-foreclosure waivers for liable veteran borrowers when the loan default is caused by a transferee owner. This policy is based in part on provisions of Public Law 101–237, the Veterans Benefits Amendments of 1989, which liberalized the rules on waiver of veterans' debts. Public Law 101–237 amended 38 U.S.C. 5302 to eliminate "material fault" as a bar to waiver of veterans' debts. 38 CFR 36.4323(e) would be amended to specifically provide that a veteran obligor may be granted a pre-foreclosure debt waiver in cases where the loan default is caused by a transferee owner, provided there are no indications of fraud, misrepresentation or bad faith on the part of the veteran whose debt would be waived. An additional technical correction would be made to a reference at § 36.4323(e)(4). The correct reference is to subsections (e)(1) and (e)(2), rather than to subsections (e)(2) and (e)(3).

These proposed regulatory amendments will have the effect of updating and clarifying the controlling regulations to reflect current procedures and are relatively minor in nature. These changes will not have a major effect on veterans or other program participants. For this reason, the Secretary hereby certifies that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, title 5, United States Code, sections 601–612. Pursuant to 5 U.S.C. 605(b), these proposed regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

The proposed regulations have been reviewed under Executive Order 12291, entitled Federal Regulations, and are not considered major regulatory changes as defined in the Executive Order. These regulations will not impact the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more and will not cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.118.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan program—housing and community development, Manufactured homes, Veterans.

Approved: July 6, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, it is proposed that 38 CFR part 36 be amended as set forth below:

PART 36—LOAN GUARANTY

1. The authority citation for part 36, §§ 36.4300 through 36.4375, continues to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 501(a).

2. In § 36.4301, the definition of "Net Value" is amended by revising the introductory text, paragraph (3), and the undesignated paragraph following paragraph (3)(ii) to read as follows:

§ 36.4301 Definitions.

* * * * *

Net value. The fair market value of .eal property, minus the total of the costs the Secretary estimates would be incurred by VA resulting from the acquisition and disposition of the property for property taxes, assessments, liens, property maintenance, property improvement, administration, and resale. For purposes of determination of net value, *property improvement* is defined as any repair or improvement itemized on the liquidation appraisal, as reviewed by VA, which contributes to value and/or is required to meet minimum property requirements. Costs other than property improvement will be estimated as a percentage of the fair market value. Each year VA will review the average operating expenses incurred for properties acquired under § 36.4320 of this part which were sold during the preceding fiscal year and the average administrative cost to the government associated with the property management activity. The cost items reviewed will be:

(1) *Property operating expenses.*

* * *

(2) *Selling expenses.* * * *

(3) *Administrative costs.* An estimate of the total cost for VA of personnel compensation and overhead (including all travel, transportation, standards level user charges (SLUC) communication, utilities, printing, supplies, equipment, insurance claims and other services) associated with the acquisition, management and disposition of property acquired under § 36.4320 of this part. The average administrative costs will be determined by:

(i) Dividing the salary and benefits costs by the average number of properties on hand and adjusting this figure based on the average holding time for properties sold during the preceding fiscal year; then

(ii) Dividing part (i) by the VBA ratio of personal services to total obligations.

The three cost averages will be added and the sum will be divided by the average fair market value at the time of acquisition for properties which were sold during the preceding fiscal year to derive the percentage to be used in estimating net value. (The Secretary may, when determining property management costs, group properties in incremental value brackets). The calculation of net value will be based on the actual costs incurred over the last year. For Fiscal Year 1993, the percentage to be used when calculating net value will be 14.16. The fiscal year and percentage will be updated annually through a notice in the **Federal Register**.

* * * * *

3. Section 36.4323 is amended by revising paragraph (e)(1)(v); and by adding paragraph (e)(1)(vi); and the first sentence in paragraph (e)(4) is revised to read as follows:

§ 36.4323 Subrogation and indemnity.

* * * * *

(e) * * *

(1) * * *

(v) In consideration for a release of the Secretary's collection rights the obligor completes, or VA is enabled to authorize, and action which reduces the Government's claim liability sufficiently to offset the amount of the anticipated indebtedness which would otherwise be established pursuant to this paragraph and likely be collectable by VA after foreclosure in view of the obligor's financial situation; such actions would include termination of the loan by means of a deed in lieu of foreclosure, private sale of the property for less than the indebtedness with a reduced claim paid by VA for the balance due the loan holder or enabling VA to authorize the holder to elect a more expeditious foreclosure procedure when such an election would result in the legal release of the obligor's liability; or

(vi) The obligor being released is not the current title holder to the property and there are no indications of fraud, misrepresentation or bad faith on the obligor's part in obtaining the loan or disposing of the property or in connection with the loan default.

* * * * *

(4) Determinations made under paragraphs (e)(1) and (e)(2) of this section are intended for the benefit of the Government in reducing the amount of claim payable by VA and/or avoiding the establishment of uncollectable debts owing to the United States. * * *

(Authority: 38 U.S.C. 501, 3703(c)(1))

* * * * *

[FR Doc. 93–23156 Filed 9–21–93; 8:45 am]

BILLING CODE 8320–01–M

38 CFR Part 36

RIN 2900–AG55

Loan Guaranty; Increase in Attorney Fees

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its loan guaranty regulations to increase from $700 to $850 the maximum allowable amount VA will reimburse a loan holder for the cost of trustee's fees and legal services incurred by the holder in liquidating a loan guaranteed by VA. Increasing the maximum allowable amount will make it easier for holders to retain experienced legal counsel to perform required foreclosures in a timely manner.

DATES: Comments must be received on or before October 22, 1993.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Secretary of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments will be available for public inspection in room 172, Veterans Service Unit, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 233–3668.

SUPPLEMENTARY INFORMATION: When a VA guaranteed loan is foreclosed and the loan holder incurs expenses for trustee's fees and legal services in connection with the foreclosure, VA will reimburse the holder for these costs, up to a maximum amount. 38 CFR 36.4276(b) and 36.4313(b) were last amended August 17, 1988 to increase from $350 to $700 the maximum amount VA would reimburse a loan holder for the cost of trustee's fees and legal services allowable on claims under guaranty. Since then the fees generally charged by trustees and attorneys for their services have increased. Most holders are reluctant to incur expenses that will not be reimbursed by VA.

The proposed fee increased to $850 would make it easier for holders to retain the experienced counsel needed to perform the required foreclosures in a timely manner. It would also bring VA's maximum amount into close

alignment with the Federal National Mortgage Association's (FNMA) fee schedule, which is considered a good indicator of customary attorney fees nationwide.

The Secretary hereby certifies that the proposed regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Increasing the amount VA will reimburse holders for trustee's fees and legal services will make it easier for holders to retain experienced legal counsel to perform required foreclosures.

The Secretary has also determined that the proposed amendments are not a "major rule" within the meaning of Executive Order 12291, Federal Regulation. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumer or individual industries, nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing Loan program—housing and community development, Manufactured homes, Veterans.

This amendment is proposed under the authority granted the Secretary by sections 501(a) and 3720(a) of title 38, United States Code.

Approved: August 2, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36, is proposed to be amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36, §§ 36.4201 through 36.4287, continues to read as follow:

Authority: Sections 36.4201 through 36.4287 issued under 38 U.S.C. 501(a), 3712.

2. In § 36.4276(b) the undesignated text at the end of paragraph (b) is removed and paragraph 36.4276(b)(5) is revised to read as follows:

§ 36.4276 Advances and other charges.

* * * * *

(b) * * *

(5) Reasonable amount for legal services actually performed not to exceed 10 percent of the unpaid indebtedness as of the date of the first uncured default, or $850 whichever is less. In no event may the combined total of the amounts claimed for trustee's fees and legal services (paragraphs (b) (4) and (5) of this section) exceed $850.

* * * * *

3. The authority citation for part 36, §§ 36.4300 through 36.4375, continues to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 501(a).

4. In § 36.4313(b) the undesignated text at the end of paragraph (b) is removed and paragraph 36.4313(b)(5) is revised to read as follows:

§ 36.4313 Advances and other charges.

* * * * *

(b) * * *

(5) Reasonable amount for legal services actually performed not to exceed 10 percent of the unpaid indebtedness as of the date of the first uncured default, or $850 whichever is less. In no event may the combined total of the amounts claimed for trustee's fees and legal services (paragraphs (b) (4) and (5) of this section) exceed $850.

* * * * *

[FR Doc. 93–23157 Filed 9–21–93; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL 12–23–5659; FRL–4733–3]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 29, 1990, EPA promulgated a Federal Implementation Plan (FIP) which contains stationary source volatile organic compound (VOC) control measures representing reasonable available control technology (RACT) for emission sources located in six northeastern Illinois (Chicago area) counties: Cook, DuPage, Kane, Lake, McHenry and Will. EPA also took final rulemaking action on certain VOC RACT rules previously adopted and submitted by the State of Illinois for inclusion in its State Implementation Plan (SIP). Included in EPA's rules was a requirement that all major sources be subject to control measures. On August 19, 1991, Reynolds requested that EPA reconsider the application of the control measures contained in the FIP to its facility in McCook, Illinois, and on October 17, 1991, Reynolds requested that EPA promulgate site-specific RACT limits for its hot and cold rolling mills. EPA has agreed to reconsider the RACT control requirements for Reynolds' aluminum rolling operations. In addition, as a result of EPA's reconsideration, EPA is proposing site-specific RACT control requirements for Reynolds' aluminum rolling operations.

DATES: Comments on this proposed revision to the Chicago FIP must be received by October 22, 1993 at the address below. A public hearing, if requested, will be held in Chicago, Illinois. Requests for the hearing should be submitted to Jay Bortzer by October 22, 1993 at the address below.

ADDRESSES: Written comments on this action should be addressed to Jay Bortzer, Chief, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Street, Chicago, Illinois 60604. Comments should be strictly limited to the subject matter of this action, the scope of which is discussed below.

For information on the hearing, interested persons may call Ms. Hattie Geisler at (312) 886–3199. Any hearing will be strictly limited to the subject matter of this action, the scope of which is discussed below.

Docket: Pursuant to section 307(d)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607(d)(1), this section is subject to the procedural requirements of section 307(d). Therefore, EPA has established a public docket for this action, A–92–67, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the following addresses. We recommend that you contact Steven Rosenthal before visiting the Chicago location and Jacqueline Brown before visiting the Washington D.C. location. A reasonable fee may be charged for copying.

U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 18th Floor, Southwest, 77 West Jackson Blvd., Chicago, Illinois 60604.

U.S. Environmental Protection Agency, Docket No. A–92–67, Air Docket (LE–131), room M1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460, (202) 245–3639.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Regulation Development Branch, EPA Region 5, (312) 886–6052, at the Chicago address indicated above.

SUPPLEMENTARY INFORMATION:

I. Background

Part D of the CAA, 42 U.S.C. 7401 et seq., requires that states adopt rules for major non-control Technique Guideline (CTG)[1] sources. This requirement is discussed in the April 4, 1979, General Preamble for Proposed Rulemaking (44 FR 20372). On July 21, 1988, Illinois submitted a rule which covered major (100 tons per year or more of VOC emissions) non-CTG VOC sources. This rule was disapproved by EPA on June 29, 1990 (55 FR 26814), primarily because its applicability provisions were inconsistent with EPA requirements. Among other defects, Illinois' non-CTG rule did not regulate the rolling operations at Reynolds' McCook facility.

On April 1, 1987, the State of Wisconsin filed a complaint in the United States District Court for the Eastern District of Wisconsin against EPA and sought a judgment that EPA, among other requested actions, be required to promulgate revisions to the Illinois ozone SIP for northeastern Illinois. *Wisconsin* v. *Reilly*, No. 87–C–0395, E.D. Wis.

On May 25, 1988, EPA released a guidance document titled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations" (the "Blue Book"). The purpose of this VOC guidance document was to identify deficiencies which must be removed from existing SIPS and disapproved in any proposed SIPS. This document specifies EPA's non-CTG RACT requirements.

On January 18, 1989, the District Court in *Wisconsin* v. *Reilly* ordered that EPA promulgate an ozone implementation plan for northeastern Illinois within 14 months of the date of that order. On September 22, 1989, EPA and the States of Illinois and Wisconsin signed a settlement agreement in an attempt to substitute a more acceptable schedule for promulgation of a plan for the control of ozone in the Chicago area. On November 6, 1989, the District Court vacated its prior order and ordered all further proceedings stayed, pending the performance of the settlement agreement.

The settlement agreement calls for the use of a more sophisticated air quality model, allows more time for EPA to promulgate a FIP using the model, and requires interim emission reductions while the modeling study is being performed. The interim emission reductions consist of Federal promulgation of required VOM[2] RACT rules for Illinois to remedy deficiencies in its State regulations.

On December 27, 1989, EPA proposed major non-CTG rules consistent with its May 25, 1988, VOC guidance (54 FR 53080). The non-CTG rules proposed for promulgation by EPA covered Reynolds' aluminum rolling operations. On June 29, 1990, EPA took final action to promulgate major non-CTG rules. 55 FR 26814.

On August 29, 1990, Reynolds filed a petition for review of EPA's June 29, 1990, rulemaking in the United States Court of Appeals for the Seventh Circuit. Nine other parties filed petitions for review, which were ultimately consolidated by the Court as *Illinois Environmental Regulatory Group ("IERG") et al.* v. *Reilly*, No. 90–2778.

On August 19, 1991, Reynolds requested that EPA reconsider the FIP rule as it applies to its aluminum rolling operations and on October 17, 1991, Reynolds requested the adoption of site-specific RACT limits for its hot and cold rolling mills. On November 20, 1991, EPA announced its intention to reconsider its non-CTG rules as they apply to Reynolds, and issued a three-month stay of the applicable rule pending reconsideration, pursuant to section 307(d)(7)(B) of the Act, 42 U.S.C. 7607(d)(7)(B). 56 FR 58501. In addition, on November 20, 1991, EPA proposed to extend the three-month stay, but only as long as necessary to complete reconsideration. 56 FR 58528. On June 23, 1992, EPA extended the stay beyond the 3-month period, for as long as necessary to complete reconsideration of its non-CTG rules for Reynolds' aluminum rolling operations. 57 FR 27935. That stay indicated that when EPA concludes its reconsideration, it will publish its decision and any actions required to effectuate that decision in the **Federal Register**.

As a result of EPA's decision to reconsider the Federal rules as applied to Reynolds, EPA has reviewed information regarding Reynolds' rolling operations. This proposed rule presents a discussion of this analysis and proposes revised RACT rules for Reynolds.

II. Analysis of RACT

The Chicago FIP specifies a general non-CTG control requirement of 81 percent overall VOC reduction for non-coating sources. This control requirement, which would apply to Reynolds' aluminum rolling operations, is contained in 40 CFR 52.741(x). Reynolds has provided information to EPA which documents the infeasibility of the 81 percent control requirement for its hot and cold rolling mills.

Reynolds initially submitted information in support of site-specific RACT control requirements for its hot and cold rolling mills, on May 29, 1991. Additional supporting information was sent to EPA on October 17, 1991, March 30, 1992, and May 15, 1992.

A. RACT Demonstration for Cold Rolling Operations

The following process modification and treatment technologies were considered as part of the RACT demonstration for the cold rolling operations at Reynolds Metals Company's McCook Sheet and Plate Plant. A summary of its conclusions are presented below.

Lubrication Selection and Temperature Control: Severely hydrotreated mineral seal oils exhibit a lower vapor pressure than any other identified rolling oil at all temperatures expected to be approached in the rolling process. Thus, severely hydrotreated mineral seal oils inherently represent the lowest potential VOC emitting rolling oil available to the McCook cold rolling mills.

Mill Hooding: The #7 mill at McCook already is equipped with a hooding system. Retrofit of the #1 mill with hoods of modern design would be difficult. Any additional hooding systems or modifications to current systems at McCook are useful only when coupled with one of the treatment technologies discussed below.

Thermal Incineration: Low VOC inlet concentration and the potential of a mill fire deem incineration technology infeasible at the McCook cold rolling mills. Also, thermal incinerators are not in use on any known rolling mill.

The total capital investment for thermal incineration would be $20,368,000. Total annualized costs for this control option are $4,529,000. The cost effectiveness for this option is approximately $42,000 per ton of VOC removed.

Absorption: Although oil absorption units are demonstrated technology on new rolling mill installations, the potential applicability of a retrofit installation to an existing rolling mill is subject to many site-specific constraints due to the extreme size of the control units and the complex duct work required to sufficiently capture the

[1] Control techniques guideline documents have been prepared by EPA to assist States in defining RACT for the control of VOC emissions from existing stationary sources. Each individual CTG recommends a presumptive norm of control considered reasonably available to a specific source category.

[2] The State of Illinois uses the term "VOM" in its regulations. For the purposes of this RACT analysis, this term is considered equivalent to EPA's term "VOC."

fugitive emissions. Because of the age and the design of the buildings at the McCook plant, installation of an oil absorption system would be difficult. A structure for ductwork and auxiliary equipment would need to be constructed adjacent to each of the existing mills.

The total capital investment for absorption would be $27,105,000. Total annualized costs for this control option are $5,135,000. The cost effectiveness for this option is approximately $47,000 per ton of VOC removed.

Adsorption: This technology is not applicable to the McCook cold rolling mills as a result of rapid fouling from the heavy lubricant compounds used in the mill and an inability to regenerate the carbon on-site thereby requiring frequent carbon changes and the addition of fresh carbon. In addition, there are several inherent design concerns with applying carbon units to rolling mill emission streams including high levels of aerosol or liquid entrainment, desorption problems, and heel removal.

The total capital investment for carbon adsorption would be $17,781,000. Total annualized costs for this control option are $4,941,000. The cost effectiveness for this option is approximately $45,000 per ton of VOC removed.

Summary: Application of thermal incineration, oil absorption, and carbon adsorption technologies to the McCook cold rolling mills is technologically and/or economically infeasible. Thermal incineration and carbon adsorption appear technically infeasible for the McCook cold rolling mills. High capital and operating costs make thermal incineration, oil absorption, and carbon adsorption infeasible. The age and design of the mills makes retrofitting of the available control technologies extremely expensive.

The most appropriate control technology for the McCook cold rolling mills is the use of an inherently low emitting rolling fluid. Of the fluids commercially available, the use of a severely hydrotreated mineral seal oil will result in the greatest degree of emissions reduction. Additionally, it is important that temperatures be controlled to ensure that the vapor pressure exerted by the system does not cause excessive VOC emissions. In order to maximize VOC emission reductions and ensure maximum sensible heat capacity of the system, RACT should reasonably require that sump oil temperatures be maintained at 150 degrees F.

B. RACT Demonstration for Hot Rolling Operations

The following process modification and treatment technologies were considered as part of the RACT demonstration for the hot rolling operations at Reynolds Metals Company's McCook Sheet and Plate Plant. A summary of its findings are presented below.

Emulsion Selection: This option consists of the use of a water-based emulsion with a maximum temperature of the emulsion, as applied, of 200 degrees F. Maximizing the use of water, instead of oil, to achieve cooling of the metal, reduces the potential for oil vaporization. Reynolds claims that the oil content of the emulsion (1 to 15 percent) currently used at the McCook hot mills cannot be further reduced without creating operational problems and reducing product quality at the facility. For example, the aluminum sheet and rolls could weld together.

Thermal Incineration: Thermal incinerators are not in use on any known rolling mill. This technology could not be applied to hot rolling mills due to discontinuous emissions of VOC, the resulting low average VOC concentrations, and the high humidity of the inlet gas.

Oil Absorption: Although oil absorption units are demonstrated technology on new cold rolling mill installations, they have not been modified to handle water-based emulsions and have therefore never been used at a hot rolling mill to control VOC emissions. Oil absorption equipment is not commercially available anywhere in the world for a hot mill. This is because emulsions used in hot rolling operations are not suitable for current oil absorption technology.

Carbon Adsorption: Carbon adsorption has never been used at a hot rolling mill to control VOC emissions. This technology is not applicable to the McCook hot rolling mills due to the moisture content of the gas stream, which would result in continual desorption of VOCs.

Summary: Application of thermal incineration, oil absorption, or carbon adsorption technologies or installation of a hooding system to the McCook hot rolling mills appears to be infeasible. RACT for the McCook hot rolling mills is the application of a water-based emulsion with a maximum temperature of the emulsion, as applied, of 200 degrees F.

C. RACT at Other Aluminum Rolling Mills

On August 20, 1990 (55 FR 33904), EPA approved a major non-CTG RACT requirement for the aluminum rolling mills at the Reynolds Metal-Foil Plant in Richmond, Virginia, an ozone nonattainment area. RACT in that case consists of lubricant substitution (use of a less volatile lubricant) and the requirement that the lubricant temperature be controlled and maintained at or below 150°F.

III. Specific RACT Control Requirements and Test Methods

A. Cold Rolling Mills

RACT for the aluminum sheet cold rolling mills Nos. 1 and 7 at the McCook Sheet & Plate plant is the use of a severely hydrotreated mineral seal oil (rolling lubricant) and a maximum inlet sump rolling lubricant temperature of 150°F. Compliance shall be demonstrated by a monthly distillation range analysis of a grab rolling lubricant sample from each operating mill and daily rolling lubricant temperature readings in the inlet sump feeding each mill.

All incoming shipments of mineral seal oil for the Nos. 1 and 7 cold mills must be sampled and each sample must undergo a distillation range test using ASTM method D86–90, "Standard Test Method for Distillation of Petroleum Products." The initial and final boiling points of the mineral seal oil must be between 460°F and 635°F. Also, for the cold mills, samples of the as-applied lubricants must be taken on a monthly basis to verify, using ASTM method D86–90, that the boiling points are between 460°F and 635°F.

B. Hot Rolling Mills

RACT for the aluminum sheet and plate hot rolling mills, 120 inch, 96 inch, 80 inch and 145 inch mills, at the McCook Sheet & Plate plant is the use of an oil/water emulsion (rolling lubricant) not to exceed 15% by weight of petroleum-based oil and additives and a maximum inlet sump rolling lubricant temperature of 200°F. Compliance shall be demonstrated by a monthly analysis of a grab rolling lubricant sample from each operating mill and daily temperature readings in the inlet sump feeding each mill.

The lubricants at each hot mill must be sampled and tested, for the percentage of oil and water, on a monthly basis. ASTM Method D95–83 (Reapproved 1990), "Standard Test Method For Water in Petroleum Products and Bituminous Materials by Distillation", shall be used to determine the percent by weight of petroleum-based oil and additives.

C. Coolant Temperature Monitoring

Coolant temperatures shall be monitored at all of the rolling mills by use of thermocouple probes and chart recorders. The probes sense the coolant temperatures at the supply side to the mills.

D. Recordkeeping

All distillation test results for cold mill lubricants, all percent oil test results for hot mill lubricants, all coolant temperature recording charts, and all oil/water emulsion formulation records shall be kept on file, and be available for inspection by EPA, for three years.

IV. Compliance Date

A compliance date of four months from promulgation is proposed so that Reynolds has adequate time to comply with revised recordkeeping requirements.

V. Summary and Conclusions

Through today's notice, site-specific RACT requirements, revised recordkeeping requirements, and revised test methods are proposed for Reynold's aluminum rolling mills. The use of lower VOC emitting lubricants and lubricant temperature control has been previously approved by EPA as RACT for another aluminum rolling mill. Compliance with the revised emission limits and recordkeeping requirements must be achieved four months from EPA's final promulgation of these rules.

EPA is taking this action pursuant to its authority under section 110(k)(6) of the Act to correct through rulemaking any plan or plan revision.[3] EPA is interpreting this provision to authorize the Agency to make corrections to a promulgated regulation when it is shown to EPA's satisfaction that the information made available to the Agency at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and other information persuasively supports a change in the regulation. See 57 FR 6762 at 6763 (November 30, 1992). In this case, the information made available to EPA during the rulemaking for Reynolds was clearly inadequate for the development of a site-specific RACT determination.[4]

Public comment is solicited on this proposal for Reynolds. Public comments received by the date shown above will be considered in the development of EPA's final rule.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action involves only one source, Reynolds Metals Company. (Reynolds is not a small entity.) Therefore, EPA certifies that this RACT promulgation does not have a significant impact on a substantial number of small entities.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Ozone, Volatile organic compounds.

Dated: September 14, 1993.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, it is proposed that part 52, chapter I, title 40 of the Code of Federal Regulations be amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.741 is amended by adding a new paragraph (x)(7) to read as follows:

§ 52.741 Control strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry, and Will Counties.

* * * * *

(x) * * *

(7) The control, recordkeeping, and monitoring requirements in this paragraph apply to the aluminum rolling mills at the Reynolds Metals Company's McCook Sheet & Plate Plant in McCook, Illinois (Cook County) instead of the control requirements and test methods in the other parts of paragraph (x) of this section, and the recordkeeping requirements in paragraph (y) of this section. All of the following requirements must be met by Reynolds on and after [insert date 4 months after date of publication of the final notice in the **Federal Register**].

(i) A severely hydrotreated mineral seal oil shall be the only lubricant used at Reynolds' aluminum sheet cold rolling mills numbers 1 and 7. The initial and final boiling points of the lubricant must be between 460°F and 635°F to be considered a severely hydrotreated mineral seal oil. All incoming shipments of mineral seal oil for the number 1 and 7 mills must be sampled and each sample must undergo a distillation range test to determine the initial and final boiling points using ASTM method D86–90. A grab rolling lubricant sample shall be taken from each operating mill on a monthly basis and each sample must undergo a distillation range test, to determine the initial and final boiling points, using ASTM method D86–90.

(ii) An oil/water emulsion, with no more than 15 percent by weight of petroleum-based oil and additives, shall be the only lubricant used at Reynolds' aluminum sheet and plate hot rolling mills, 120 inch, 96 inch, 80 inch, and 145 inch mills. A grab rolling lubricant sample shall be taken from each operating mill on a monthly basis and each sample shall be tested for the percent by weight of petroleum-based oil and additives by ASTM method D95–83.

(iii) The inlet sump rolling lubricant temperature for aluminum sheet cold rolling mills numbers 1 and 7 shall not exceed 150°F. The inlet sump rolling lubricant temperature for the aluminum sheet and plate hot rolling mills, 120 inch, 96 inch, 80 inch, and 145 inch mills shall not exceed 200°F. Coolant temperatures shall be monitored at all the rolling mills by use of thermocouple probes and chart recorders.

(iv) All distillation test results for cold mill lubricants, all percent oil test results for hot mill lubricants, all coolant temperature recording charts, and all oil/water emulsion formulation records, shall be kept on file, and be

[3] Since EPA is taking this action pursuant to section 110(k)(6), EPA believes that section 193 of the Act (the savings clause) is inapplicable. By its terms, section 110(k)(6) does not require any additional submission or evidence. Section 193 requires an assurance of equivalency for any revision. In order to provide for equivalency, the State would need to provide for compensating reductions. EPA believes that this conflict should be resolved concluding that section 110(k)(6) is not constrained by the savings clause requirement of equivalent reductions. EPA believes that the state and the sources within the state should not have to bear the burden of additional reductions where EPA lacked important site-specific information at the time of an initial promulgation. This is particularly true in the case of FIPs, where EPA takes the lead in developing the regulations and is not merely acting on state-submitted regulations.

[4] As discussed earlier, EPA was required to promulgate the June 29, 1990 FIP regulations under the tight timeframe ordered by the Court in *Wisconsin* v. Reilly.

available for inspection by EPA, for three years.

[FR Doc. 93–23070 Filed 9–21–93; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[IL 18–3–5817; FRL–4698–7]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Proposal rule.

SUMMARY: On September 11, 1991, and March 15, 1993, the Illinois Environmental Protection Agency (IEPA) submitted to the United States Environmental Protection Agency (USEPA) volatile organic compound (VOC) rules, for the Chicago and East St. Louis ozone nonattainment areas, as proposed revisions to Illinois' State Implementation Plan (SIP) for ozone. These rules have been submitted to USEPA to correct the deficiencies in Illinois' VOC SIP that were identified in USEPA's May 1988 26, and June 17, 1988, letters notifying Illinois that Illinois' ozone SIP was substantially inadequate. These rules also expand the geographic applicability of Illinois' VOC rules to all the State's nonattainment areas. These proposed revisions are being parallel processed because the rules submitted on March 15, 1993, have been submitted to, but not as yet adopted by, the Illinois Pollution Control Board (IPCB). In this proposed rule, USEPA is proposing to approve these rules, provided that Illinois makes certain clarifications. If Illinois does not adopt and submit these rules to USEPA, USEPA will repropose action based upon the September 11, 1991, submittal.

DATES: Comments on this revision and on the proposed USEPA action must be received by October 22, 1993.

ADDRESSES: Written comments shall be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the SIP revision request are available for inspection at the following address: (It is recommended that you telephone Steven Rosenthal at (312) 886–6052, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Regulation Development Branch (AR–18J) U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604. (312) 886–6052.

SUPPLEMENTARY INFORMATION:

Background

Under section 107 of the CAA, as amended in 1977, USEPA designated certain areas in each State as not attaining the National Ambient Air Quality Standards (NAAQS) for ozone. For these areas, section 172(a) of the CAA required that the State revise its SIP to provide for attaining the primary NAAQS as expeditiously as practicable, but not later than December 31, 1982.[1] part D allowed USEPA, though, the grant extensions to as late as December 31, 1987, to those States that could not demonstrate attainment of the ozone standard by December 31, 1982, if certain conditions were met by the State in revising its SIP. Illinois requested, and received, an extension to December 31, 1987, for attaining the ozone NAAQS for the Chicago and East St. Louis ozone nonattainment areas. Section 172 (b) and (c) of the Act, as amended in 1977, require that for stationary sources, an approvable SIP must include legally enforceable requirements reflecting the application of reasonably available control technology (RACT).[2]

On February 21, 1980 (45 FR 11472), USEPA approved Illinois' RACT I (or Group I) rules. These rules, (which applied statewide) all contained in State Rule 205 (Organic Material Emission Standards and Limitations) consisted of the following subsections:

(a) Storage,
(b) Loading
(c) Organic Material-Water Separation,
(d) Pumps,
(e) Architectural Coatings,
(f) Use of Organic Material,
(g) Waste Gas Disposal,
(h) Emissions During Clean-up Operations and Organic Material Disposal,
(i) Testing Method for Determination of Emissions of Organic Material,
(j) Compliance Dates,
(k) Solvent cleaning,
(l) Petroleum Refineries,
(m) Compliance Schedules,
(n) Surface Coating,
(o) Bulk Gasoline Plants, Bulk Gasoline Terminals, and Petroleum Liquid Storage Tanks,
(p) Gasoline Dispensing Facility,
(q) Cutback Asphalt, and
(r) Operation of Oil Fired and Natural Gas Afterburners.

On November 21, 1987 (52 FR 45333), USEPA approved a portion of Illinois' RACT II (or Group II) rules. The approved rules, (which applied statewide) also all contained in State Rule 205, consisted of the following subsections:

(s) Petroleum Refineries,
(t) Manufacture of Pneumatic Rubber Tires, and
(u) Dry cleaning.

Since then, Illinois has recodified its VOC rules, from Rule 205 into section 215. Certain modifications were also made in the process of recodification.

On May 26, 1988, Valdas V. Adamkus, Regional Administrator, USEPA, Region 5, notified former Governor James R. Thompson, pursuant to section 110(a)(2)(H) of the preamended CAA, that the Illinois SIP was substantially inadequate to achieve the NAAQS of ozone in parts of Illinois. This letter to the Governor further stated that Illinois was required under the Act, as amended in 1977, to correct the deficiencies and inconsistencies in its existing VOC regulations. A June 17, 1988, SIP call follow-up letter to IEPA identified the deficiencies and inconsistencies in Illinois' existing VOC stationary source RACT regulations that has been previously approved by USEPA. This letter also referred to required VOC regulations that had been submitted by Illinois to USEPA and that were undergoing USEPA review. USEPA published an information notice of September 7, 1988, (53 FR 34500) on

[1] The requirements for an approval SIP are described in a "General Preamble" for part D rulemaking published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979). On January 22, 1981, (46 FR 7182), USEPA published guidance for the development of 1982 ozone SIPS in "State Implementation Plans: Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension."

[2] A definition of RACT is contained in a December 9, 1976, memorandum from Roger Strelow, former Assistant Administrator of Air and Waste Management and is cited in a General Preamble-Supplement on Control Technique Guidelines (CTGs), published at 44 FR 53761, 53762 (September 17, 1979). RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

The USEPA published CTGs in order to assist the States in determining RACT. The CTGs provide information on available air pollution control techniques and provide recommendations on what the USEPA considers the "presumptive norm" for RACT. The Group I CTGs were issued in 1977, the Group II CTGs were issued in 1978, and the Group III CTGs were issued between 1982 and 1984.

All other sources which are not covered by Group I, II, or III CTGs are referred to as "non-CTG" sources. "Non-CTG major sources" are sources which have the potential to emit more than 100 tons of VOC per year and for which a CTG has not been published.

the call for a SIP revision and on guidance documents, including the May 25, 1988, document, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations" (Bluebook).

On April 1, 1987, the State of Wisconsin filed a complaint in the United States District Court for the Eastern District of Wisconsin against USEPA and sought a judgment that USEPA, among other requested actions, be required to promulgate revisions to the Illinois ozone SIP for northeastern Illinois. *Wisconsin* v. *Reilly*, No. 87–C–0395, E.D. Wis. The State of Illinois intervened in this action. On January 18, 1989, the District Court ordered that USEPA promulgate an ozone implementation plan for northeastern Illinois within 14 months of the date of that order. On September 22, 1989, USEPA and the States of Illinois and Wisconsin signed a settlement agreement in an attempt to substitute a more acceptable schedule for promulgation of a plan for the control of ozone in the Chicago area. On November 6, 1989, the District Court vacated its prior order and ordered all further proceedings stayed, pending the performance of the settlement agreement.

The settlement agreement calls for the use of a more sophisticated air quality model, allows more time for USEPA to promulgate a Federal Implementation Plan (FIP) using the model, and requires interim emission reductions while the modeling study is being performed. The interim emission reductions consist of Federal promulgation of required VOC RACT rules for Illinois to remedy deficiencies in its State regulations.

On June 29, 1990, (55 FR 26814) USEPA took final rulemaking action to address the Part D requirement for RACT for the Chicago portion of the Illinois SIP and to satisfy requirements in the settlement agreement. This rulemaking:

(a) Adopted Federal RACT rules for inclusion in the Illinois plan,

(b) Approved certain pending State RACT rules for inclusion in the Illinois plan and

(c) Disapproved certain State rules. This notice established a comprehensive set of RACT rules applicable to the VOC sources in Cook, DuPage, Kane, Lake, McHenry, and Will Counties in Illinois.

USEPA promulgated these Federal RACT rules to replace part or all of the federally approved individual State rules in the SIP. The resultant plan for Illinois consists of some federally approved (State) rules and some federally promulgated (Federal) rules. At the time, this mixed Federal-State rule approach provided the best model for the State to eventually secure a total federally approved State plan by indicating the corrections Illinois must make in its rules, and was consistent with the District Court's orders.

The Clean Air Act Amendments of 1990 were enacted on November 15, 1990. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A), Congress statutorily adopted the requirement that ozone nonattainment areas fix their deficient RACT rules for ozone. Areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT fix-up requirement. Under section 182(a)(2)(A), those areas were required by May 15, 1991, to correct RACT as it was required under pre-amended section 172(b) as that requirement was interpreted in pre-amendment guidance.[3] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. The Chicago nonattainment area is classified as severe and the East St. Louis area is classified as moderate.[4] Therefore, these nonattainment areas are subject to the RACT fix-up requirement and the May 15, 1991, deadline.

On September 11, 1991, and March 15, 1993, IEPA submitted VOC RACT rules for the Chicago and East St. Louis ozone nonattainment areas. Those sections contained in the March 15, 1993, submittal supersede the same sections in the September 11, 1991, submittal. The rules submitted on March 15, 1993, have been submitted to USEPA for parallel processing because they have been submitted to, but not as yet adopted by, the IPCB. These rules have been fashioned after the Federal RACT rules and State-submitted rules that were approved on June 29, 1990, as well as other previously approved State rules.

These rules also expand the geographic coverage of Illinois VOC RACT rules to the nonattainment areas of Aux Sable and Goose Lake Townships in Grundy County and Oswego Township in Kendall County. These areas were not designated nonattainment under the pre-amended Act and, therefore, are not subject to the RACT fix-up requirement. However, these areas are subject to RACT requirements under section 182(b)(2) of the amended Act—the RACT "catch-up" provisions. To the extent USEPA is approving the State's submittal as meeting RACT, USEPA has determined that the State has met part of the RACT catch-up obligation for Aux Sable and Goose Lake Townships in Grundy County and Oswego Township in Kendall county.

These VOC rules are primarily based on USEPA-approved and promulgated federal rules and are approvable, provided that certain clarifications to them are made.

Submitted Regulations

USEPA identified, in a May 8, 1992, letter to IEPA, the deficiencies in the VOC RACT corrections that were submitted by IEPA on September 11, 1991. In order to correct the VOC rules submitted on September 11, 1991, IEPA submitted, on March 15, 1993, proposed amendments to Title 35 of the Illinois Administrative Code (35 IAC) Parts 218 and 219 and amendments to Parts 203 and 211 that are related to the amendments to Parts 218 and 219. Part 218 is a comprehensive set of VOC regulations for the Chicago area and Part 219 is an almost identical set of VOC RACT regulations for the East St. Louis area. The amendments submitted to USEPA on March 15, 1993, were also filed with the IPCB on March 15, 1993. IEPA requested that USEPA proceed with parallel processing for this SIP submittal.

In the rules, the definition of "volatile organic material" was deleted from Part 203 and moved to Part 211. The abbreviations and units from Parts 218 and 219 were moved to Part 211. In addition, the definitions in Parts 218 and 219 have been moved to and integrated with the definitions in Part 211. The rules contained in Part 218 are listed below (a listing for Part 219 would be the same except that each section would start with "219" instead of "218"):

PART 218—ORGANIC MATERIAL EMISSION STANDARDS AND LIMITATIONS FOR THE CHICAGO AREA

Subpart A—General Provisions

Sec.
218.100 Introduction.
218.101 Savings Clause.

[3] Among other things, the pre-amendment guidance consists of the VOC RACT portions of the Post–87 policy, 52 FR 45044 (Nov. 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing CTGs.

[4] These areas retained their designation of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon enactment of the Amendments. 56 FR 56694 (Nov. 6, 1991).

Sec.
218.102 Abbreviations and Conversion Factors.
218.103 Applicability.
218.104 Definitions.
218.105 Test Methods and Procedures.
218.106 Compliance Dates.
218.107 Operation of Afterburners.
218.108 Exemptions, Variations, and Alternative Means of Control or Compliance Determinations.
218.109 Vapor Pressure of Volatile Organic Liquids.
218.110 Vapor Pressure of Organic Material or Solvents.
218.111 Vapor Pressure of Volatile Organic Material.
218.112 Incorporation by Reference.

Subpart B—Organic Emissions From Storage and Loading Operations

Sec.
218.121 Storage Containers.
218.122 Loading Operations.
218.123 Petroleum Liquid Storage Tanks.
218.124 External Floating Roofs.

Subpart C—Organic Emission From Miscellaneous Equipment

Sec.
218.141 Separation Operations.
218.142 Pumps and Compressors.
218.143 Vapor Blowdown.
218.144 Safety Relief Values.

Subpart E—Solvent Cleaning

Sec.
218.181 Solvent Cleaning in General.
218.182 Cold Cleaning.
218.183 Open Top Vapor Degreasing.
218.184 Conveyorized Degreasing.
218.186 Test Methods.

Subpart F—Coating Operations

Sec.
218.204 Emission Limitations.
218.205 Daily-Weighted Average Limitations.
218.206 Solids Basis Calculation.
218.207 Alternative Emission Limitations.
218.208 Exemptions from Emission Limitations.
218.209 Exemption from General Rule on Use of Organic Material.
218.210 Compliance Schedule.
218.211 Recordkeeping and Reporting.

Subpart G—Use of Organic Material

Sec.
218.301 Use of Organic Material.
218.302 Alternative Standard.
218.303 Fuel Combustion Emission Units.
218.304 Operations with Compliance Program.

Subpart H—Printing and Publishing

Sec.
218.401 Flexographic and Rotogravure Printing.
218.402 Applicability.
218.403 Compliance Schedule.
218.404 Recordkeeping and Reporting.
218.405 Heatset-Web-Offset Lithographic Printing.

Subpart Q—Leaks From Synthetic Organic Chemical and Polymer Manufacturing Plant

Sec.
218.421 General Requirements.
218.422 Inspection Program Plan of Leaks.
218.423 Inspection Program for Leaks.
218.424 Repairing Leaks.
218.425 Recordkeeping for Leaks.
218.426 Report for Leaks.
218.427 Alternative Program for Leaks.
218.428 Open-Ended Valves.
218.429 Standards for Control Devices.

Subpart R—Petroleum Refining and Related Industries; Asphalt Materials

Sec.
218.441 Petroleum Refinery Waste Gas Disposal.
218.442 Vacuum Producing Systems.
218.443 Wastewater (Oil/Water) Separator.
218.444 Process Unit Turnarounds.
218.445 Leaks: General Requirements.
218.446 Monitoring Program Plan for Leaks.
218.447 Monitoring Program for Leaks.
218.448 Recordkeeping for Leaks.
218.449 Reporting for Leaks.
218.450 Alternative Program for Leaks.
218.451 Sealing Device Requirements.
218.452 Compliance Schedule for Leaks.

Subpart S—Rubber and Miscellaneous Plastic Products

Sec.
218.461 Manufacture of Pneumatic Rubber Tires.
218.462 Green Tire Spraying Operations.
218.463 Alternative Emission Reduction Systems.
218.464 Emission Testing.

Subpart T—Pharmaceutical Manufacturing

Sec.
218.480 Applicability.
218.481 Control of Reactors, Distillation Units, Crystallizers, Centrifuges and Vacuum Dryers.
218.482 Control of Air Dryers, Production Equipment Exhaust Systems and Filters.
218.483 Material Storage and Transfer.
218.484 In-Process Tanks.
218.485 Leaks.
218.486 Other Emission Units.
218.487 Testing.
218.488 Monitoring for Air Pollution Control Equipment.
218.489 Recordkeeping for Air Pollution Control Equipment.

Subpart V—Air Oxidation Processes

Sec.
218.525 Emission Limitations for Air Oxidation Processes.
218.526 Testing and Monitoring.

Subpart W—Agriculture

Sec.
218.541 Pesticide Exception.

Subpart X—Construction

Sec.
218.561 Architectural Coatings.
218.562 Paving Operations.
218.563 Cutback Asphalt.

Subpart Y—Gasoline Distribution

Sec.
218.581 Bulk Gasoline Plants.
218.582 Bulk Gasoline Terminals.
218.583 Gasoline Dispensing Operations.
218.584 Gasoline Delivery Vessels.
218.585 Gasoline Volatility Standards.
218.586 Gasoline Dispensing Operations—Motor Vehicle Fueling Operations.

Subpart Z—Dry Cleaners

Sec.
218.601 Perchloroethylene Dry Cleaners.
218.602 Exemptions.
218.603 Leaks.
218.607 Standards for Petroleum Solvent Dry Cleaners.
218.608 Operating Practices for Petroleum Solvent Dry Cleaners.
218.609 Program for Inspection and Repair of Leaks.
218.610 Testing and Monitoring.
218.611 Exemption for Petroleum Solvent Dry Cleaners.

Subpart AA—Paint and Ink Manufacturing

Sec.
218.620 Applicability.
218.621 Exemption for Waterbase Material and Heatset-Offset Ink.
218.623 Permit Conditions.
218.624 Open-Top Mills, Tanks, Vats or Vessels.
218.625 Grinding Mills.
218.626 Storage Tanks.
218.628 Leaks.
218.630 Clean Up.
218.636 Compliance Schedule.
218.637 Recordkeeping and Reporting.

Subpart BB—Polystyrene Plants

Sec.
218.640 Applicability.
218.642 Emissions Limitations at Polystyrene Plants.
218.644 Emissions Testing

Subpart PP—Miscellaneous Fabricated Product Manufacturing Processes

Sec.
218.920 Applicability.
218.923 Permit Conditions.
218.926 Control Requirements.
218.927 Compliance Schedule.
218.928 Testing.

Subpart QQ—Miscellaneous Formulation Manufacturing Processes

Sec.
218.940 Applicability.
218.943 Permit Conditions.
218.946 Control Requirements.
218.947 Compliance Schedule.
218.928 Testing.

Subpart RR—Miscellaneous Organic Chemical Manufacturing Processes

Sec.
218.960 Applicability.
218.963 Permit Conditions.
218.966 Control Requirements.
218.967 Compliance Schedule.
218.968 Testing.

Subpart TT—Other Emission Units

Sec.
218.980 Applicability.
218.983 Permit Conditions.
218.986 Control Requirements.
218.987 Compliance Schedule.
218.988 Testing.

Subpart UU—Recordkeeping and Reporting

Sec.
218.990 Exempt Emission Units.
218.991 Subject Emission Units.

Discussion of Regulations

As stated previously, the regulations submitted by Illinois are generally approvable (because they are primarily based upon the Chicago FIP and/or USEPA RACT guidance), provided certain clarifications are made. This part of the notice lists those required clarifications, as well as additional changes which USEPA recommends. It also states USEPA's interpretation of certain Illinois regulations. In addition, certain other aspects of these regulations are discussed, as appropriate.

Part 211: Definitions

In general, the definitions in Part 211 are the same as previously approved definitions and/or are consistent with USEPA guidance. However, USEPA recommends that the following definitions be revised as indicated to ensure that the regulations they apply to are enforceable and consistent with RACT.

- Section 211.2950 "Heavy Off-highway vehicle products coating line"—The last sentence of this definition lacks parallel structure. The intended concept (that a high temperature aluminum coating is not a heavy off-highway vehicle products coating) could be better conveyed by deleting the second sentence and adding "other than high temperature aluminum," between "functional" and "coating" in the first sentence.
- Section 211.3750 "Metal Furniture Coating Line"—The last sentence of this definition lacks parallel structure. The concept (that adhesive is not a metal furniture coating) could be better conveyed by deleting the second sentence and adding "non-adhesive" between "functional" and "coating" in the first sentence.
- Section 211.4470 "Paper Coating" and Section 211.4490 "Paper Coating Line" USEPA recommends that Illinois clarify that printing is not paper coating and printing presses are not paper coating lines.
- Section 211.5510 "Reid Vapor Pressure"—This definition could be clarified by revising the phrase "(if not referenced in the section where the term is used)" to "(if a specific method is not referenced in the section where the term is used)."
- Section 211.7090 "Vinyl Coating Line"—This definition would be more accurate and internally consistent if the phrase "means a coating line" is changed to "means a coating or printing line."

Part 218

USEPA is proposing to approve the following sections, which were previously adopted by the IPCB and submitted to USEPA on September 11, 1991: Sections 108, 142, 442, 444, 448, 451, 484, 488, 526, 561, 563, 607, 625, 626 and 630. These sections are not being revised as part of the March 15, 1993, submittal.

Section 218.101 Savings Clause—Subsection 218.101(a) ensures that prior applicability dates and control requirements in Part 215, which no longer applies to the Chicago and East St. Louis ozone nonattainment areas, remain in effect. However, this subsection refers to "emission units" formerly subject to Part 215 and dates and schedules applicable to the "emission unit" in accordance with Part 215. It is USEPA's understanding that this change in terminology regarding the regulated entity (the term "emission unit" is not used in Part 215) in no way changes the intended requirements of this subsection, namely that entities formerly subject to Part 215 shall have complied with Part 215. Also, the last sentence of this subsection should be clarified by changing it to: "The compliance dates and schedules found in 35 Ill. Adm. Code 215 are not superseded by this part and remain in full force and effect."

Subsection 218.101(b) states, "Nothing in this Part shall affect the responsibility of any owner or operator that is now or has been subject to the FIP to comply with its requirements thereunder by the dates specified in the FIP." This means that sources subject to FIP requirements are not relieved of these requirements if Part 218 is approved by USEPA. For example, 40 CFR 52.741(y)(2) (in the FIP) requires that sources subject to the major non-CTG rules in paragraphs (u), (v), (w), and (x) comply with the following:

(A) By July 1, 1991, or upon initial start-up of a new emission source, the owner or operator of the subject VOM emission source shall perform all tests and submit to the Administrator the results of all tests and calculations necessary to demonstrate that the subject emission source will be in compliance on and after July 1, 1991, or on and after the initial start-up date.

This requirement will remain in effect even after Part 218 is approved by USEPA.

Section 218.103 Applicability—The first paragraph of this section expands the applicability of Part 218 to Aux Sable Township and Goose Lake Township in Grundy County and Oswego Township in Kendall County. Cook, DuPage, Kane, Lake, McHenry, and Will Counties have previously been covered by Part 218. These areas are all nonattainment for ozone. However, the use of "or" in this paragraph must be replaced by "and" because the Chicago area is made up of all of these areas in total.

Subsection 218.103(a) discusses the applicability of Part 218 to certain parties who have challenged USEPA's June 29, 1990, rulemaking in *Illinois Environmental Regulatory Group et al.* v. *EPA*, No. 90–2778 (and consolidated cases) (7th Cir. 1990).

Subsection 218.103(b) includes a Board Note which states that this subsection (which exempts certain sources from Part 218) shall be effective at the federal level only upon approval by USEPA.

Section 218.105 Test Methods and Procedures—Subsection 218.105(b) includes new language which allows use of the topcoat protocol for primer surfacer operations at automobile or light duty truck assembly plants, as provided in 218.204(a).

Subsection 218.105(c)(1)(B) allows a longer averaging period than is contained in the Chicago FIP when using the "liquid/liquid" mass balance measurement method. The "liquid/liquid" method can be used by solvent recovery devices as an alternative to capture efficiency testing. The Chicago FIP requires that the "liquid/liquid" method be performed every day. USEPA agrees that use of the "liquid/liquid" method with a 7-day rolling period is acceptable for all solvent recovery systems. A source that believes that a 7-day rolling period is not appropriate may use an alternative multi-day rolling period, with the approval of IEPA and the USEPA.

Subsection 218.105(i)—It is recommended that the word "specific" in the fifth line of this subsection, which deals with IEPA requests for testing, be changed to "specified" in order to convey the intended meaning.

Section 218.204(a) Automobile or Light-Duty Truck Coating—Language has been added to this subsection to allow for the use of the topcoat protocol by primer surfacer operations to demonstrate compliance with this limit. This would allow the Ford Motor Company, the only source affected by

this change, to get credit for improved transfer efficiency (above 30 percent).

Section 218.405 Heatset-Web-Offset-Lithographic Printing—Subsection 218.405(a), which deals with applicability, must be modified to clarify that emissions from cleanup solvents are to be included in determining the maximum theoretical emissions. This could be done by revising subsection 218.405(a)(1)(A) as follows: "Total maximum theoretical emissions of VOM from all heatset-web-offset lithographic printing lines (including solvents used for cleanup operations associated with heatset-web-offset lithographic printing lines) at the source never exceed 90.7 Mg (100 tons) per calendar year in the absence of air pollution control equipment, or * * *"

Subsections 218.405(a)(1)(B), 218.620(a)(1)(B), 218.920(a)(2), 218.940(a)(2), 218.960(a)(2), and 218.980(a)(2) allow sources to avoid the applicability of specified printing and major non-CTG rules, provided a source has a federally enforceable permit that limits emissions to below the applicable cutoff through capacity or production limitations. These subsections are approvable because USEPA can deem a permit to be "not federally enforceable" in a letter to IEPA. Upon issuance of such a letter, the source is no longer protected by the permit referenced in the subject subsections. The source would then be subject to the SIP requirements if its "maximum theoretical emissions" exceed the applicable cutoff. This is consistent with USEPA's December 17, 1992, approval of Illinois' operating permit program which states: "In approving the State operating program USEPA is determining that Illinois' program allows USEPA to deem an operating permit not 'federally enforceable' for purposes of limiting potential to emit and to offset creditability." (57 FR 59928, 59930). IEPA has agreed to this approach and specified the applicable procedures in a March 26, 1993, letter to USEPA. In summary, these subsections are approvable because USEPA can invalidate the protection provided by an operating permit by deeming such operating permit to be "not federally enforceable" in a letter to IEPA.

Subsection 218.405(c)(A)(ii) (Recordkeeping and Reporting for Heatset-Web-Offset Lithographic Printing) should be revised so that "G" rather than "B" is defined as: "The greatest volume of cleanup material or solvent used in any 8-hour period and * * *" This revision is required to make the defined symbol consistent with the subject applicability equation.

Subparts PP, QQ, RR and TT constitute "generic" major non-Control Technique Guideline VOC rules. These subparts are contained in both Part 218 and Part 219, which contain Illinois' VOC rules for the Chicago and East St. Louis areas, respectively. Sections 926, 946, 966, and 986 specify the control requirements for these rules. Subsection (a) of each of these Sections requires an overall 81 percent reduction from each emission unit. A Board Note has been added to each subsection to clarify what is intended by the term "emission unit." A further clarification of the Board Note has been provided in a June 16, 1993, letter from Dennis Lawler, IEPA.

Section 218.990 Exempt Emission Units—Although this section refers to emission units which are exempt, it should be noted that the owner or operator of such an exempt emission unit would need to submit records for the entire source to demonstrate that maximum theoretical emissions from all non-CTG and unregulated CTG operations are below the applicable cutoff. In those cases when one or more (but not all) emission units are exempt (as in 218.920(c), 218.940(c), 218.960(c), and 218.980(c)), records must also be submitted documenting that each such emission unit is exempt.

Part 219

The discussion of Part 218, except with regard to section 218.103 (applicability), applies to Part 219. The previously adopted version of section 219.103 remains in effect.

Proposed Rulemaking Action

Illinois' VOC RACT corrections contained in Part 218 (for the Chicago ozone nonattainment area) and Part 219 (for the East St. Louis ozone nonattainment area) and the related definitions in Part 211, as submitted on September 11, 1991 and March 15, 1993, are being proposed for approval. These rules are being parallel processed, at IEPA's request, because the rules submitted on March 15, 1993, have not as yet been finally adopted by Illinois. These rules are being proposed for approval (based upon the interpretations contained in this notice) because they meet USEPA's VOC RACT requirements as specified in the Bluebook and other related guidance. USEPA will take final action on these rules after the proposed revisions have been adopted and submitted by Illinois and they have been evaluated in accordance with the CAA and applicable USEPA RACT guidance. These rules will be finally approved if they are adopted in final in their current form and include the previously identified clarifications. If Illinois does not adopt and submit these rules to USEPA, USEPA will repropose action based upon the September 11, 1991, submittal.

Interested parties are invited to submit comments on these proposed SIP revisions and on USEPA's proposed rulemaking action. Public comments received by the date indicated above will be considered in the development of the final rule.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids USEPA to base its action concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 9, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–23197 Filed 9–21–93; 8:45 am]

BILLING CODE [illegible]

40 CFR Part 180

[OPP-300298; FRL-4639-9]

RIN 2070-AC18

Definitions and Interpretations; Dry Bulb Onions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that the tolerance regulations (40 CFR part 180) be amended to expand EPA's interpretation of the commodity term "onions (dry bulbs only)" to include shallots (dry bulbs only) for the application of tolerances and exemptions from the requirement of a tolerance established for pesticide chemicals in or on the raw agricultural commodity dry bulb onions. The proposed amendment is based, in part, on recommendations of the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [OPP-300298], must be received on or before October 22, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703-308-8783).

SUPPLEMENTARY INFORMATION: 40 CFR 180.1(h) provides a listing of general commodity terms and EPA's interpretation of those terms as they apply to tolerances and exemptions from the requirement of a tolerance for pesticide chemicals under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a. General commodities are listed in column A of 40 CFR 180.1(h) and the corresponding specific commodities, for which tolerances and exemptions from the requirement of a tolerance established for the general commodity apply, are listed in column B. The commodity term "onions (dry bulbs only)" is currently listed as a general commodity in column A of 40 CFR 180.1(h). The corresponding specific commodity terms "garlic" and "onions (dry bulb only)" are listed in column B.

The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has requested that 40 CFR 180.1(h) be amended by revising the current interpretation for the general commodity term "onions (dry bulbs only)," which is listed in column A, by adding the specific commodity term "shallots (dry bulbs only)" to column B, so that the revised column B will read "garlic, onions (dry bulbs only), shallots (dry bulbs only)."

EPA has completed an evaluation of the proposed amendment and concludes that tolerances established for the raw agricultural commodity dry bulb onions are adequate to cover pesticide residues in or on dry bulb shallots as well as garlic. Dry bulb shallots, dry bulb onions, and garlic are closely related and have similar growth habits, cultural practices, and pest problems.

Shallots are a form of Allium cepa, the common onion, and both belong to the Amaryllidaceae (Amaryllis) family. When a species or a hybrid includes many cultivars that look similar to each other such as the Allium's, they are arranged in groups. Shallots belong to the "Aggregatum" group, which is characterized by bulbs which multiply freely and form a circlet of bulbs loosely joined at their bases and arise from a single bulb. Dry bulb onions belong to the "Common Onion" group and differ from the "Aggregatum" group mainly because they produce a single bulb from each planted bulb, while the aggregatums produce a cluster of bulbs from each planted bulb.

Other characteristics that are used to identify the Allium family include: the time of flowering, flower color, absence of bulbils in the inflorescence, and food storage structures. All of these characteristics are similar for both the common onion and the shallot. Every part of the shallot and onion plant is edible. Chromosome morphology and banding studies have shown them to be almost identical for onions and shallots, and both have the same chromosome number.

Both shallots and onions can be grown in nearly all parts of the U.S. Onions, garlic, and shallots all share many of the same pest problems that affect the bulb and/or its roots: insects, spider mites, annual grassy and broadleaved weeds, and plant diseases common to the Allium species.

The close botanical relationship of shallots and onions is already exemplified in the regulations by the fact that shallots are currently grouped with garlic, leeks, and onions in 40 CFR 180.34(e)(17) and also in 40 CFR 180.34(f)(9)(iii) (Bulb vegetables (*Allium spp.*) crop group). Also, in 40 CFR 180.1(h), green shallots are classified with green onions.

Based on the above information, the Agency concludes that it is appropriate to expand the current general commodity "onions (dry bulbs only)" in 40 CFR 180.1(h) by adding the corresponding specific commodity "shallots (dry bulbs only)" to the existing specific commodities garlic and onions (dry bulbs only).

Therefore, it is proposed that the changes to 40 CFR 180.1(h) be made as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300298]. All written comments filed in response to this proposal will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Although this regulation does not establish or raise a tolerance level or establish an exemption from the requirement of a tolerance, the impact of the regulation would be the same as establishing new tolerances or exemptions from the requirement of a tolerance. Therefore, the Administrator concludes that this rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 8, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1(h) is amended by revising the specific commodities definition for "Onions (dry bulbs only)" to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
Onions (dry bulbs only)	Garlic, onions (dry bulbs only), shallots (dry bulbs only).

* * * * *

[FR Doc. 93–22780 Filed 9–21–93; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300300; FRL–4641–4]

RIN 2070–AC18

Pentachloronitrobenzene; Proposed Revocation of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the revocation of the interim tolerance for residues of the fungicide pentachloronitrobenzene (PCNB) in or on bananas (40 CFR 180.319). EPA is initiating this action because there is no registered use for PCNB on bananas, and this use is not being supported for reregistration.

DATES: Written comments, identified by the document control number OPP-300300, must be received on or before October 22, 1993.

ADDRESSES: By mail, submit comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis Utterback, Special Review and Reregistration Division (H7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Rm. WF32K5, Crystal Station #1, 2800 Crystal Drive, Arlington, VA 22202, Telephone: 703-308-8026.

SUPPLEMENTARY INFORMATION: This document proposes the revocation of the interim tolerance established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of the fungicide pentachloronitrobenzene in or on bananas as listed in 40 CFR 180.319.

EPA established an interim tolerance for PCNB for use on bananas pending the establishment of a permanent tolerance. However, EPA cannot establish a permanent tolerance for several reasons and as a result is proposing to revoke the interim tolerance listed in 40 CFR 180.319 for residues of pentachloronitrobenzene in bananas. The establishment of a tolerance under section 408 of FFDCA requires a finding that the tolerance will protect the public health. EPA does not have adequate data to make such a finding, and does not expect to receive such data because the use of PCNB on bananas is not being supported for reregistration. Further, there is no registered use of PCNB on bananas and there is no evidence that it has been registered for this use in the U.S. for many years. A tolerance is generally not necessary for a pesticide which is not registered for the particular food use.

The Agency believes that there are no existing stocks of pesticide products for use on bananas which need to clear the channels of trade because no pesticide products have been registered for use on bananas in recent years. Thus, EPA believes that there has been adequate time for legally treated agricultural commodities to have gone through the channels of trade. Action levels are unnecessary because PCNB has not been registered for use on bananas for at least 6 years, and the Food and Drug Administration has not detected residues of PCNB in or on bananas for several years.

Any person who has registered or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, which contains pentachloronitrobenzene may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA).

Interested persons are invited to submit written comments on the

proposed regulation. Comments must bear a notation indicating the document control number [OPP-300300]. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, between 8 a.m. and 4 p.m., Monday through Friday, except legal holidays.

Other Regulatory Requirements

A. Executive Order 12291

PCNB has not been registered for use on bananas for many years, and the Agency believes that there are no existing stocks of PCNB for use on bananas. Further, there is no known use of PCNB on bananas outside of the U.S. Therefore, the proposed rule is not a major rule because it will not affect costs or prices for consumers, individual industries, or Federal, State or local government agencies, or geographic regions.

B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have any impact on small businesses, small governments, or small organizations.

This regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide has been used in an unregistered or illegal manner.

Because there is no evidence that PCNB has been used on bananas in the U.S. for many years, it is anticipated that no economic impact would occur at any level of business enterprises if the related tolerance on bananas was revoked.

Accordingly, I certify that this regulatory action does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

(Sec. 408(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346 a(m))).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 9, 1993.

Susan H. Wayland,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.319 [Amended]

2. Section 180.319 *Interim tolerances* is amended in the table therein by amending the entry "Pentachloronitrobenzene" by removing from the list of raw agricultural commodities the entry "Bananas."

[FR Doc. 93-22781 Filed 9-21-93; 8:45 am]
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40 CFR Part 180

[PP 8E3642/P569; FRL-4641-8]

RIN 2070-AC18

Pesticide Tolerance for Beta-(4-Chlorophenoxy)-Alpha-(1,1-Dimethylethyl)-1H-1,2,4-Triazole-1-Ethanol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the fungicide *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol, and its butanediol metabolite, 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-l-yl)-1,3-butanediol, calculated as parent compound, in or on the raw agricultural commodity (RAC) imported bananas (whole) at 0.2 part per million (ppm). This proposal to establish a maximum permissible level for residues of the pesticide in or on this commodity was requested by Mobay Corp.

DATES: Comments, identified by the document control number [PP 8E3642/P569], must be received on or before October 22, 1993.

ADDRESSES: Written objections may be submitted to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5540.

SUPPLEMENTARY INFORMATION: The Mobay Corp., P.O. Box 4913, Kansas City, MO 64120-0013, has submitted pesticide petition (PP) 8E3642 to EPA. This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), establish a tolerance for the combined residues of the fungicide, *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol, and its butanediol metabolite, 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-l-yl)-1,3-butanediol, calculated as parent compound, in or on the RAC bananas at 0.2 ppm.

The data submitted in support of the petition and other relevant materials have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the tolerance include the following:

1. A 2-year feeding/carcinogenicity study with rats using dietary concentrations of 0, 125, 500, and 2,000 ppm, equivalent to 0, 6.25, 25.0, and 100 milligrams/kilogram (mg/kg) body weight (bwt)/day in males and females. Clinical chemistry findings suggest that the target organ for toxicity may be the liver. The levels of serum glutamic oxaloacetate transaminase (SGOT) and serum glutamic pyruvic transaminase (SGPT) were consistently higher at 2,000 ppm in males and females when compared to untreated controls, and some increase in these two parameters was also observed at 500 ppm. Although

there was an accompanying small increase in liver weight at 2,000 ppm in females, there were no accompanying increases in histopathologic changes of the liver in either sex. There were only marginal effects seen on other clinical chemistry parameters, and no effect of the test compound was seen on clinically observed signs of toxicity, food consumption, hematology, or urinalysis parameters. The systemic no-observed-effect level (NOEL) is 125 ppm (6.25 mg/kg/day for males and females) based on the increase in liver enzymes (SGOT and SGPT). The systemic lowest-effect level (LEL) was 500 ppm (25 mg/kg/day for males and females). The chemical was not carcinogenic to rats under the testing conditions.

2. A 2-year chronic feeding/carcinogenicity study in mice using dietary concentrations of 0, 125, 500, and 2,000 ppm (equivalent to doses of 0, 18, 72, and 285 mg/kg/day for males and females). The results of blood chemistry, organ weights, and gross and histological examinations indicate that the liver is the target organ. There were time- and dose-related increases in serum alkaline phosphatase (SAP), SGOT, and SGPT activities in both male and female animals receiving 500 and 2,000 ppm of the test material.

In addition, increased incidence of enlarged livers, hyperplastic nodules, and increased liver weights in both male and female animals receiving 2,000 ppm of test material was detected at necropsy. Female animals receiving 2,000 ppm doses exhibited a significant increase in the incidence of liver adenomas only, a compound-related carcinogenic effect which is discussed further below. In males, there were no differences in the incidence of these lesions in treated and control males, and the incidence of liver adenomas was similar to those observed in historical controls.

Based on blood chemistry findings, the systemic NOEL and the LEL are 125 and 500 ppm, respectively (equivalent to 18 and 72 mg/kg/day for males and females).

3. A 2-year male and female dog feeding study using doses of 0, 150, 600, and 2,400 ppm (equivalent to 0, 3.75, 15, and 60 mg/kg bwt/day for males and females). The NOEL is 150 ppm based on changes in enzyme levels (equivalent to 3.75 mg/kg bwt/day for males and females). The LEL is 600 ppm. Although there were significant decreases in mean body weights in males receiving 150 and 2,400 ppm and in females receiving 600 and 2,400 ppm, the biological significance of these changes could not be assessed. There were noted increases in alkaline phosphatase N-demethylase and cytochrome P-450 in males receiving 2,400 ppm and significant increases in N-demethylase in females receiving 600 and 2,400 ppm and in cytochrome P-450 in females receiving 2,400 ppm when compared to controls.

4. A 6-month dog feeding study using doses of 0, 10, 30, and 100 ppm (equivalent to 0, 0.25, 0.75, and 2.5 mg/kg bwt/day for males and females). The NOEL was 2.5 mg/kg, the highest dose level tested (HDT).

5. A 3-month rat feeding study using doses of 0, 150, and 600 and 2,400 ppm (equivalent to 0, 7.5, 30 and 120 mg/kg bwt/day for males and females) demonstrated a decrease in body weight, in hematocrit values, and in eosinophil count and medium cell hemoglobin and demonstrated an increase in the high-dose group and a dose-related increase in liver weight. The NOEL is 7.5 mg/kg and the LEL is 30 mg/kg.

6. A second 90-day rat feeding study using doses of 0, 120, 600, and 3,000 ppm demonstrated piloerection lasting 1 month (month 1), decreases in body weight gain and feed efficiency lasting 1 week (week 1), alterations in serum lipids, and increases in liver weight (absolute and relative) and in incidences of liver hypertrophy and fatty changes in the high-dose group and an increase in the incidence of prostrate atrophy of slight severity in high-dose males. The NOEL was 600 ppm, equivalent to 39.6 mg/kg/day for males and 46.4 mg/kg/day for females, and the lowest-observed-effect level (LOEL) was the HDT, 3,000 ppm, equivalent to 208.5 mg/kg/day for males and 221.1 mg/kg/day for females.

7. A 3-month dog feeding study using doses of 0, 150, 600, and 2,400 ppm (equivalent to 0, 3.75, 15, and 60 mg/kg bwt/day for males and females). Weight gain in all male groups and in the highest dose female group was significantly less than the control. Alkaline phosphatase in males and females showed a dose-related negative trend. There were no gross pathological changes. Effects at 15 mg/kg included an increase in serum cholesterol level in males. Although the NOEL appeared to be less than 3.75 mg/kg, based on reduced body weight and decreased alkaline phosphatase in males, the Agency has concluded that effects below 15 mg/kg in the 2-year dog study were not biologically significant and the longer-term study supersedes the 90-day dog study. Therefore, the NOEL remains at 3.75 mg/kg.

8. A rat developmental study using dose levels of 0, 30, 60, and 120 mg/kg/day was determined to be core supplementary because the NOEL for developmental toxicity (supernumerary ribs) was not definitively established. The NOEL and LOEL for maternal toxicity for this study are 30 and 60 mg/kg/day, respectively, based on decreases in maternal body weight, body weight gain, and food consumption at 60 and 120 mg/kg/day. Increased embryolethality (embryotoxicity) was only observed at the highest dose level tested (120 mg/kg/day).

9. A repeat rat developmental study demonstrated a maternal NOEL of 5 mg/kg/day and a LOEL of 15 mg/kg/day due to decreased body weight gains, and a developmental NOEL of 25 mg/kg/day and a LOEL of 60 mg/kg/day due to increased incidence of extra ribs.

10. A supplementary rabbit developmental study demonstrated a NOEL for maternal toxicity of 8 mg/kg and a maternal LEL of 40 mg/kg based on decreased body weight gains and food consumption. The developmental NOEL and LEL were 40 and 200 mg/kg, respectively.

11. A repeat rabbit developmental study demonstrated a maternal NOEL of 25 mg/kg/day and a LOEL of 125 mg/kg/day due to decreases in body weight gains and food consumption, and a developmental NOEL of 125 mg/kg/day (HDT).

12. A reverse mutation assay (Ames), a dominant-lethal test in mice, DNA damage/repair, unscheduled DNA synthesis, *in vitro* and *in vivo* (rat) cytogenic assays, and a forward mutation in mice, all of which were negative for mutagenic effects.

13. A rat multi-generation reproduction study using doses of 0, 20, 100, and 500 ppm (equivalent to 0, 1, 5, and 25 mg/kg bwt/day for males and females) indicated that the NOEL and LOEL for both parental and pup toxicity are 100 and 500 ppm, respectively, based on significant body weight and organ weight changes. The NOEL for reproductive toxicity is 500 ppm, the highest dose level tested.

The Agency has concluded that the available data provide limited evidence of the carcinogenicity of *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol in mice and has classified the pesticide as a Category C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with Agency guidelines, published in the **Federal Register** in 1986 (51 FR 33992). This evaluation was confirmed by the Agency's Scientific Advisory Panel on December 15, 1987. Based on a review of the Health Effects Division Peer Review Committee for Carcinogenicity of the Office of Pesticide Programs, the

Agency has determined that a quantitative risk assessment is not appropriate for the following reasons:

1. The tumors observed were benign and observed in one sex (females) and were present only at the highest dose tested.

2. The chemical was not carcinogenic when administered in the diet to rats at dose levels ranging from 125 to 2,000 ppm.

3. The chemical was negative in the genotoxic assay battery. Based on this evidence, EPA concludes that *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol poses a negligible cancer risk to humans.

The standard risk assessment approach of using the Reference Dose (RfD) based on systemic toxicity was applied to *beta*-(4chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol. The provisional acceptable daily intake (PADI) based on the 2-year dog feeding studies (NOEL of 3.75 mg/kg bwt/day), and using a hundredfold uncertainty factor, is calculated to be 0.038 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) from previously established tolerances and the tolerance established here is 0.000493 mg/kg/day and utilizes 1.3 percent of the PADI for the U.S. population. For the most highly exposed population subgroup, children 1 to 6, the TMRC will represent 3.0 percent of the PADI.

The nature of the residues is adequately understood for the use of *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol on imported bananas. The residues of concern consist of the parent compound *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol and its butanediol metabolite, 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-l-yl)-1,3-butanediol, calculated as parent compound. There is no reasonable expectation of secondary residues in eggs, milk, meat, and meat byproducts from the use of *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol on bananas. Magnitude of the residue studies from crop trials, environmental fate and environmental effects data are required to expand the usage to the United States by registration under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

Adequate analytical methods are available for enforcement purposes. Methods are available in the "Pesticide Analytical Manual," Vol. II (PAM II) for enforcement of the tolerances on livestock commodities. The method for plants has been submitted to the Food and Drug Administration for publication in PAM II. Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-557-4432.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under FIFRA, as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with FFDCA section 408(e).

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 8E3642/P569]. All written comments filed in response to this petition will be available in the Public Docket and Freedom of Information Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: September 3, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is proposed to be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.450 is amended in paragraph (a) in the table therein by adding and alphabetically inserting the following raw agricultural commodity, to read as follows:

§ 180.450 Beta-(4-Chlorophenoxy)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol; tolerances for residues.

(a) * * *

Commodity	Parts per million
Bananas (whole)[1]	0.2
* * * * *	

[1]There are no U.S. registrations for bananas (whole) as of September 22, 1993.

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[FR Doc. 93-22782 Filed 9-21-93; 8:45 am]
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40 CFR Part 180

[OPP-300293; FRL-4633-3]

RIN 2070-AC18

Orthoarsenic Acid; Proposed Revocation of Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke the tolerance in 40 CFR 180.180 for residues of the pesticide orthoarsenic acid (commonly known as arsenic acid) in or on the raw agricultural commodity cottonseed. This revocation is being proposed because all registrations of arsenic acid on cotton have been voluntarily canceled.

DATES: Written comments, identified by the OPP document control number [OPP-300293], must be received on or before October 22, 1993.

ADDRESSES: By mail, submit comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide

Programs, 401 M St., Washington, DC 20460. In person, deliver comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed as confidential by marking any or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. until 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Ann Sibold, Special Review and Reregistration Division (H7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Crystal Station #1, 3rd Floor, 2800 Crystal Drive, Arlington, VA 22202, Telephone: (703)-308-8033.

SUPPLEMENTARY INFORMATION:

I. Introduction

Currently, a tolerance of 4 ppm exists for residues of orthoarsenic acid in or on the raw agricultural commodity cottonseed (40 CFR 180.180). EPA is proposing to revoke the tolerance for orthoarsenic acid in or on cottonseed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.* The Agency is taking this action because the registrations of arsenic acid on cotton have been voluntarily cancelled.

II. Background

Arsenic acid, applied to cotton grown in certain regions of Texas and Oklahoma prior to harvest, desiccates the crop to facilitate harvest by mechanical stripper. After harvest and ginning, the raw cottonseed is sent to oil mills for storage prior to processing. Raw cottonseed is processed into an oil and meal for a high-protein cattle feed. Processing is generally completed before the next growing season.

Acreage treated with arsenic acid accounted for about 2 percent of total domestic cotton acreage harvested annually over the 3-year period from 1989 to 1991. Use, already declining during this period, continued to decline further because of concerns expressed by textile manufacturers about the cost of disposing of arsenic acid-contaminated textile waste. The Agency believes there is little or no use of arsenic acid on imported cotton.

EPA issued a Notice of Rebuttable Presumption Against Registration (RPAR, now called a Special Review) for the wood preservative and nonwood preservative uses of the inorganic arsenicals (including arsenic acid) on October 18, 1978 (43 FR 48267). The RPAR was based on a determination that the use of inorganic arsenicals met or exceeded the risk criteria for carcinogenicity, teratogenicity and mutagenicity under 40 CFR 162.11, as it read in 1978 (EPA subsequently amended and recodified this rule at 40 CFR 154.7). Between 1978 and 1992, EPA completed its review of the inorganic arsenicals, except for arsenic acid.

In the **Federal Register** of October 7, 1991 (56 FR 50576), EPA proposed cancellation of arsenic acid registered as a desiccant on cotton. The Agency based its proposal on the finding that arsenic, which is classified as a known human (Group A) carcinogen, posed an unreasonable cancer risk to workers. After the close of the comment period, the registrants of arsenic acid, Elf Atochem North America and Voluntary Purchasing Groups (VPG), requested cancellation of their registrations of arsenic acid desiccant on cotton. The registrants further requested that provision be made for existing stocks. In a notice published in the **Federal Register** of May 6, 1993 (58 FR 26975), EPA granted the request for voluntary cancellation and issued a cancellation order with provisions for the sale and use of existing stocks through the 1993 use season. In a later action, Drexel Chemical Co. requested voluntary cancellation of its registration for arsenic acid desiccant, which had been suspended since 1985 because of failure to respond to data required under FIFRA section 3(c)2(B), and EPA granted this request on July 22, 1993 (58 FR 39205).

III. Current Proposal

EPA is proposing to revoke the tolerance for arsenic acid on cottonseed because the use of arsenic acid on cotton was voluntarily cancelled. However, the May 6, 1993 cancellation order also permitted existing stocks of Atochem and VPG products to be sold until October 31, 1993 and applied by end users until December 31, 1993. Because use will continue through the end of 1993, all treated raw cottonseed may not clear oil processing mills and feed markets until July 1, 1995. Therefore, to effect this revocation, EPA is proposing to establish an expiration date for the tolerance of July 1, 1995. EPA predicts there will be an insignificant or no economic impact from revoking this tolerance because EPA is allowing ample time for legally-treated commodities (i.e., treated prior to December 31, 1993) to pass through the channels of trade.

EPA believes that arsenic acid is not used on cotton grown in other countries and imported into the United States. Once the tolerance for arsenic acid on cottonseed is revoked, it will be unlawful to import into the United States any cottonseed commodities or products containing any arsenic acid.

After legally treated cottonseed has cleared the market, residues of arsenic acid resulting from pesticide application are not expected to be detected. Therefore, action levels to cover residues of arsenic from past uses of the pesticide will not be recommended.

IV. Public Comment Procedures

Any person who has registered or submitted an application for the registration of a pesticide under FIFRA, as amended, which contains arsenic acid, may request within 30 days after publication in the **Federal Register** that this proposal to revoke the arsenic acid tolerance listed in 40 CFR 180.180 be referred to an advisory committee in accordance with section 408(e) of FFDCA. Such requests should be addressed to the contact person listed at the beginning of this proposal.

Interested persons are invited to submit written comments, information, or data in response to this proposed rule. Comments must be submitted by October 22, 1993. Comments must bear a notation indicating the document control number [OPP-300293]. Three copies of the comments should be submitted to either location listed under **ADDRESSES** above. Documents considered and relied upon by EPA in reaching its decision and all written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8 a.m. until 4 p.m., Monday through Friday, except legal holidays.

V. Other Regulatory Requirements

To satisfy requirements for analysis specified by Executive Order 12291 and the Regulatory Flexibility Act, EPA has analyzed the impacts of this proposal.

The complete analysis, summarized below, is available for public inspection

at the address listed at the beginning of this proposal.

A. Executive Order 12291

The Agency has determined that this proposed tolerance revocation is not a "major rule" under section 1(a)(3) of E.O. Order 12291. It will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Agency believes that the domestic use of arsenic acid is limited and will end this year with the voluntary cancellation and termination of the provision for sale and use of existing stocks. Further, its use, if any, on imported commodities is insignificant. Since the tolerance is being revoked eighteen months after the last legal domestic use on cotton, impacts are expected to be minimal.

This proposed rule has been reviewed by the Office of Management and Budget, as required by Executive Order 12291.

B. Regulatory Flexibility Act

The proposed tolerance revocation has been reviewed under the provisions of the Regulatory Flexibility Act and the Agency has determined that it will not have a significant adverse economic impact on small businesses, small governments, or small organizations. The proposed regulatory action is intended to prevent the sale of food commodities containing pesticide residues where the subject pesticide might be used in an unregistered or illegal manner.

Since all registrations for use of arsenic acid on cotton were canceled in 1993, and legal use will end December 31, 1993, the Agency anticipates little or no impact would occur on business, government, or other entities of any size.

Therefore, I certify that this regulatory action does not require a separate regulatory analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Records and recordkeeping.

Dated: September 9, 1993

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.180 to read as follows:

§ 180.180 Orthoarsenic acid.

A tolerance that expires on July 1, 1995, of 4 parts per million of combined As_2O_3 is established for residues of the defoliant orthoarsenic acid in or on the raw agricultural commodity cottonseed.

[FR Doc. 93-22784 Filed 9-21-93; 8:45 am]

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40 CFR Part 721

[OPPTS-50583F; FRL-4570-4]

Sulfur Bridged Substituted Phenols; Proposed Modification of Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to modify a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a chemical substance based on a modification to the TSCA section 5(e) consent order regulating that substance.

DATES: Written comments must be received by EPA by October 22, 1993.

ADDRESSES: All comments must be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-G99, 401 M St., SW., Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS-50583F. Unit IV. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 9, 1990 (55 FR 32406), EPA issued a SNUR establishing significant new uses for sulfur bridged substituted phenols (P-89-396). Because of the modification to the consent order for this substance, EPA is proposing to modify this SNUR.

I. Background

EPA is proposing to modify the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. Further background information for the substance is contained in the rulemaking record.

PMN Number P-89-396

Chemical name: (generic) Sulfur bridged substituted phenols.
CAS number: Not available.
Effective date of modification of section 5(e) consent order: January 7, 1993.
Basis for modification of section 5(e) consent order: The original 5(e) order required certain toxicity testing to be submitted to EPA 14 weeks before manufacturing or importing a certain production volume of the PMN substance. On June 5, 1992, the toxicity data were submitted. The results are as follows:

Ames assay: Not a gene mutagen in prokaryotes in *Salmonella*/Ames assay.

Mouse micronucleus: Not a chromosome mutagen in vivo in mice in the micronucleus assay by intraperitoneal injection.

Acute oral toxicity: LD50 of the PMN substance is greater than 5,000 milligrams per kilogram (mg/kg).

28-day Oral with functional observation battery: The lowest observable effect level (LOEL) for the study is 35 mg/kg/day based on effects in the liver and clotting system in female rats. There are no specific neurological signs noted.

Developmental toxicity: Evidence of maternal toxicity after exposure to 250 mg/kg/day as demonstrated by statistically significant reduction in food consumption and mean body weight. The range finding study demonstrated

significant maternal mortality after exposure to 500 mg/kg/day. There was evidence of developmental toxicity after exposure to doses as low as 140 mg/kg/day as demonstrated by a significant increase in the incidence of rudimentary ribs. The lowest observable adverse effect level (LOAEL) for maternal toxicity was 250 mg/kg/day, and the no observable adverse effect level (NOAEL) was 140 mg/kg/day. The LOAEL for developmental toxicity was 140 mg/kg/day, and the NOAEL was 25 mg/kg/day. Based on the results of the toxicity data submitted, EPA has determined there is a potential unreasonable risk to manufacturing and process workers from dermal contact to the PMN substance.

Therefore, on January 7, 1993, the Agency modified the existing order, and is now proposing to modify the SNUR to include dermal protection for exposed workers and hazard communication requirements, and to eliminate the production limit. The modification to the order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health.

Toxicity concern: The substance has been shown to cause liver, blood, and developmental effects in test animals.

Recommended testing: The Agency has determined that a dermal absorption study (40 CFR 798.7100) followed by a 90–day oral subchronic toxicity test (40 CFR 798.2650) would characterize possible liver and blood effects.

CFR citation: 40 CFR 721.5880.

II. Objectives and Rationale of Proposing Modification of the Rule

During review of the PMN submitted for the chemical substance that was the subject of this proposed modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is available in the rulemaking record for this SNUR. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated. In light of the toxicity data received which demonstrates that the PMN substance is expected to cause liver, blood, and developmental effects, EPA determined, that dermal protection for exposed workers and hazard communication requirements were necessary to protect human health. In addition, EPA determined that because the required data had been submitted the production limit was no longer necessary. The section 5(e) order modification added such dermal protection and hazard communication requirements and eliminated the production limit requirement. The proposed modification of SNUR provisions for this substance designated herein is consistent with the January 7, 1993, modification of the section 5(e) order.

III. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential version of the comments that EPA can place in the public file.

IV. Rulemaking Record

The record for the rule which EPA is proposing to modify was established at OPPTS–50583. This record includes information considered by the Agency in developing the rule and includes the modification to the consent order to which the Agency has responded with this proposal.

V. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with the rule, EPA estimates that the cost for submitting a significant new use notice would be between $7,198 to $8,170, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. In addition, EPA estimates that the cost of recordkeeping requirements for ongoing uses is $583 per year. EPA believes that, because of the nature of the rule and the substance involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this proposed rule would likely be small business. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this proposed rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070–0012), Washington, DC 20503.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: September 8, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. In § 721.5880 by revising paragraphs (a)(2) and (b)(1) and (2) to read as follows:

§ 721.5880 Sulfur bridged substituted phenols (generic name).

(a) * * *

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(3), (b) (concentration set at 1.0 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iv) (specifically liver and blood effects), (g)(2)(i), (g)(2)(v), and (g)(5).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified in § 721.125(a) through (h) are applicable to manufacturers, importers, and processors of this substance. This section does not apply if the substance is present in a mixture at less than 1.0 percent.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

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[FR Doc. 93–23210 Filed 9–21–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 721

[OPPTS–50592E; FRL–4588–2]

Hydrogenated Arylated Polydecene; Proposed Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for hydrogenated arylated polydecene based on receipt of new data. The data indicate that the substance will not present an unreasonable risk to human health.

DATES: Written comments must be received by EPA by October 22, 1993.

ADDRESSES: All comments must be sent in triplicate to: TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99 401 M St., SW., Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for hydrogenated arylated polydecene is OPPTS–50592E. Unit III. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404. TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 13, 1991 (56 FR 50592), EPA issued a SNUR establishing significant new uses for hydrogenated arylated polydecene. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Proposed Revocation

EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation. Further background information for the substance is contained in the rulemaking record referenced in Unit IV. of this preamble.

PMN Number P–90–1454

Chemical name: Hydrogenated arylated polydecene (generic).
CAS number: Not available.
Effective date of revocation of section 5(e) consent order: April 2, 1993.
Basis for revocation of section 5(e) consent order: The order was revoked based on test data submitted under the terms of the consent order. Based on the Agency's analysis of the submitted data, EPA found for purposes of TSCA section 5 that this substance will not present an unreasonable risk of injury to human health and concludes that further regulation under section 5 is not warranted at this time.
Toxicity testing results: The oral LD50 study and 28–day repeated dose test did not identify significant health effects. The Ames assay and mouse micronucleus study demonstrated no mutagenic effects.
CFR citation: 40 CFR 721.6480.

II. Background and Rationale for Proposed Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. The basis for such findings is referenced in Unit I. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated. EPA reviewed testing conducted by the PMN submitter for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order. As a result, EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes final, EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

III. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

IV. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS–50592 (P–90–1454). The record includes information considered by the Agency in developing the rule and includes the test data that formed the basis for this proposal.

V. Regulatory Assessment Requirements

EPA is proposing to revoke the requirements of § 721.6480. Any costs or burdens associated with the rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: September 8, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.6480 [Removed]

2. By removing § 721.6480.

[FR Doc. 93–23212 Filed 9–21–93; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

[MB–051–P]

RIN 0938–AF58

Medicaid Program; Referrals to Child Support Enforcement Agencies of Medicaid Families

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Medicaid regulations governing third party liability to require a Medicaid agency to give prompt notice to the child support enforcement (CSE) agency for referral whenever medical assistance is furnished to families who may be in need of CSE services. Section 454 of the Social Security Act (the Act) requires CSE agencies to provide statutorily mandated CSE services to these Medicaid families, including establishing paternity, locating absent parents, and obtaining child and spousal support, including medical support. This proposed rule would assist CSE agencies in carrying out the provisions of section 454 of the Act by requiring Medicaid agencies to refer families to the CSE agency when appropriate.

This proposed rule would also make technical revisions to the Medicaid regulations governing cooperative agreements to address changes in the CSE regulations resulting from the requirement in section 454 of the Act.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 22, 1993.

ADDRESSES: Mail written comments (an original and 3 copies) to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: MB–051–P, P.O. Box 7518, Baltimore, Maryland 21207–0518.

If you prefer, you may deliver your written comments (an original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code MB–051–P. Written comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of this document, in room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–690–7890).

Organizations and individuals desiring to submit comments on the reporting requirements discussed under the "Collection of Information Requirements" of this preamble should direct them to the Health Care Financing Administration at one of the addresses cited above, and to the Office of Information and Regulatory Affairs, Attention: Laura Oliven, Office of Management and Budget, New Executive Office Building (room 3002), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert Nakielny, (410) 966–4466.

SUPPLEMENTARY INFORMATION:

I. Background

Medicaid (title XIX of the Social Security Act (the Act)) is a State and Federally-funded program that provides medical services to certain groups of low-income needy individuals. These groups include individuals who are aged, blind, or disabled or members of families with dependent children, and who meet the financial eligibility requirements of the most closely related cash assistance program (Aid to Families with Dependent Children (AFDC) or Supplemental Security Income (SSI)). In addition, some States provide Medicaid to individuals who do not receive cash assistance, but whose income and resources are insufficient to cover medical expenses ("medically needy" persons). States also provide Medicaid to certain institutionalized individuals, pregnant women, and other mandatory and optional eligibility groups.

Medicaid programs are administered by the States in accordance with Federal regulations. State Medicaid agencies conduct their programs according to a Medicaid State plan approved by HCFA.

Section 1912 of the Act specifies certain State plan requirements relating to third party liability that applicants and recipients of Medicaid and the Medicaid agency must meet. Under section 1912(a)(1), Medicaid applicants and recipients, as a condition of eligibility, must: (1) Assign to the State their rights, or the rights of any individual on whose behalf an assignment may be executed, to medical support and to payments for medical care from any third party (section 1912(a)(1)(A)); (2) cooperate with the State agency, in the absence of good cause for the failure to cooperate, in establishing the paternity of any child who is eligible for Medicaid and who is born out of wedlock, and in obtaining medical support and payments (section 1912(a)(1)(B)); and (3) cooperate with the State in identifying and providing information to assist the State in pursuing any third party who may be liable to pay for medical care and services available under the State plan

(unless good cause exists for refusing to cooperate) (section 1912(a)(1)(C)).

In addition, section 1912(a)(1)(B) provides that poverty level pregnant women described in section 1902(l)(1)(A) of the Act are exempt from the cooperation requirements in section 1912(a)(1)(B) relating to establishing paternity and obtaining support. (Section 1902(l)(1)(A) of the Act describes this group as women during pregnancy (and during the 60-day period beginning on the last day of the pregnancy) who are not members of other specified Medicaid eligibility groups and whose family income does not exceed the income level established by the State. The income level is expressed in terms of a percentage of the Federal poverty level.)

Section 1912(a)(2) of the Act requires a State plan to provide for entering into cooperative arrangements (including financial arrangements) with other entities to assist the agency or agencies administering the State plan with respect to the enforcement and collection of rights to medical support or payments assigned and any other matters of common concern. These entities include any appropriate agency of any State (including, with respect to the enforcement and collection of rights of payment for medical care by or through a parent, the State's agency established or designated under title IV–D of the Act, and appropriate courts and law enforcement officials.

II. Child Support Enforcement Services

Title IV–D of the Act specifies requirements for the enforcement of support obligations owed by absent parents of families receiving benefits under title IV–A of the Act (AFDC). Section 454 of the Act specifies that States must provide for the establishment or designation of a single and separate organizational unit to administer the IV–D provisions for child and spousal support under the State plan. These organizations are called child support enforcement (CSE) agencies. CSE agencies are required under section 454 of the Act to provide statutorily mandated CSE services to AFDC recipients, title IV–E foster care recipients, non-AFDC Medicaid recipients, and applicants for CSE services who are not otherwise eligible for such services. These services include establishing paternity, locating absent parents, and obtaining child and spousal support, including medical support.

Federal regulations at 45 CFR part 232 and § 235.70 set forth the AFDC program requirements for the collection and referral of information to CSE agencies. Specifically, § 235.70(a) requires AFDC agencies to provide prompt notice to the CSE agency whenever aid is furnished to a child who has been deserted or abandoned by a parent, or when aid is furnished to the parent(s) with whom the child lives. Prompt notice is defined in § 235.70(b)(2) as a written notice that is provided within 2 working days of the furnishing of aid or the determination of eligibility for benefits.

Section 9142 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203, amended section 454 of the Act by adding a requirement that CSE agencies must provide the statutorily mandated CSE services to families who receive Medicaid, in addition to those families receiving AFDC. CSE regulations published in the Federal Register on February 26, 1991 (56 FR 7988) incorporated this statutory provision by revising 45 CFR 303.30 and 303.31 to mandate CSE agencies to provide medical support enforcement services to all Medicaid recipients referred to CSE agencies.

In addition, regulations at 45 CFR part 306 specify that such activities may be conducted in accordance with optional cooperative agreements between CSE agencies and State Medicaid agencies. CSE agencies are not required to have a cooperative agreement with the State Medicaid agencies in order to perform these activities. However, a cooperative agreement is required for performance of additional, non-statutory activities.

III. Proposed Changes to the Regulations

A. Medicaid Referrals to CSE Agencies

In order for CSE agencies to perform the requirements of section 454 of the Act by providing CSE services to those Medicaid families in need of such services, the CSE agencies must be aware of who those families are. Although CSE agencies are required to provide CSE services to Medicaid families, States are currently not required to refer Medicaid families to CSE agencies. Consequently, information derived from program reviews from both HCFA regional offices and CSE agencies has shown that there is a lack of consistency among States in making this referral. The result is that some Medicaid families in need of CSE services do not receive them, while other families who are not in need of such services are being inappropriately referred.

To assist CSE agencies in carrying out the provisions of section 454 of the Act, we are proposing, in a new 42 CFR 433.160, that Medicaid agencies be required to provide prompt notice to the CSE agency for referral whenever medical assistance is furnished to families who may be in need of CSE services. For purposes of this section, we are defining "prompt notice" as communication of all relevant information, as prescribed by the CSE agency, by the most efficient and cost-effective means available, using manual or automated systems, no later than 2 working days after a determination of medical assistance eligibility has been made. For consistency, these are the same timeliness requirements for referrals found in the AFDC regulations at 45 CFR 235.70(b)(2).

We also are proposing to require that the State Medicaid agency develop criteria and procedures, in conjunction with the State CSE agency, to implement the referral requirements. Because many States have already developed criteria and administrative procedures for working with CSE agencies for the purpose of enforcement of rights to and collection of medical support or payments, we want to extend States maximum flexibility in implementing the proposed requirements for case referrals. Therefore, we are proposing general requirements for referrals that can be implemented through criteria and procedures developed by the State Medicaid agency in conjunction with the State CSE agency. We believe that State CSE agencies must be involved when State Medicaid agencies develop criteria and procedures for referral so that only appropriate cases are referred to the CSE agency. In addition, the type of information needed by the CSE agency and the method of transmitting the information may vary from State to State. Therefore, we believe a more favorable outcome would be achieved if the State Medicaid agency coordinates its criteria and procedures with the State CSE agency.

While we are proposing general requirements for the development of the referral criteria and procedures, we are proposing that, at a minimum, the criteria and procedures must incorporate a methodology for identifying the Medicaid cases that would be appropriate for referral to the CSE agency, and provide for review of the criteria and procedures when both the State Medicaid agency and the State CSE agency agree that such revision is warranted. In addition, we propose to require that such criteria and procedures be described in the State plan.

B. Cooperative Agreements

We are proposing changes to 42 CFR 433.151, Cooperative agreements and incentive payments—State plan requirements, to address revisions that were made in the CSE regulations. Current regulations at § 433.151 require Medicaid agencies to enter into cooperative agreements with specified entities in accordance with the requirements stipulated for cooperative agreements under regulations at 45 CFR part 306. In accordance with section 1912(a)(2) of the Act, these entities include any appropriate agency of any State (including, with respect to the enforcement and collection of rights of payment for medical care by or through a parent, the State CSE agency), and appropriate courts and law enforcement officials.

Section 433.152(b)(2) also requires State Medicaid agencies to make reimbursement for services performed by the CSE agency under a cooperative agreement that are not reimbursable under title IV–D, and that are necessary for the collection of amounts for the Medicaid program. As discussed earlier in this preamble, CSE regulations at 45 CFR part 306 provide for optional cooperative agreements between CSE agencies and Medicaid agencies that include the medical support enforcement and collection activities CSE agencies are required to perform under title IV–D. However, in accordance with 45 CFR 304.23(g) (Expenditures for which Federal financial participation (FFP) is not available), Federal funding under the IV–D program is not available for these required activities if they are performed under an optional cooperative agreement with the Medicaid agency under 45 CFR part 306. Thus, if a CSE agency performs medical support enforcement services, as it is now mandated to do, without a cooperative agreement, it will be reimbursed under title IV–D. However, if it performs these services under an optional cooperative agreement, it cannot be reimbursed under title IV–D. Because title IV–D funds are not available in this situation, Medicaid is required to pay CSE agencies for activities which they are required to perform under title IV–D.

In addition, Medicaid agencies are required to pay incentive payments under 42 CFR 433.153, to a political subdivision, a legal entity for the subdivision, or another State, for the enforcement of rights to and collection of medical support or payments under the mandatory Medicaid cooperative agreement. County or local CSE agencies administering the cooperative agreement between the State Medicaid agency and the State CSE agency would receive the required incentive payment, in addition to the Medicaid reimbursement, for any activities covered under the cooperative agreement with the State agency.

The intent of our current regulations concerning mandatory cooperative agreements was to ensure that medical support enforcement and collection activities were performed for Medicaid recipients. Because several of the functions previously performed under cooperative agreements are now mandatory for CSE agencies, with or without a cooperative agreement, we believe there is no longer a need to require State Medicaid agencies to have cooperative agreements with the State CSE agencies. Therefore, we are proposing to revise § 433.151 to make cooperative agreements with CSE agencies optional instead of mandatory. We also propose to revise this section to add a State plan requirement that the State must meet the referral requirements in new § 433.160, regardless of whether the State enters into a cooperative agreement. For consistency and clarity in making these changes, we propose to redesignate the cooperative agreement requirements currently found in § 433.151 (a) and (b) as new § 433.151(b) (1) and (2).

CSE regulations at 45 CFR 302.34 additionally require CSE agencies to enter into cooperative arrangements with appropriate courts and law enforcement officials. We believe that this requirement, coupled with the requirement to provide CSE services to Medicaid families, eliminates the need for State Medicaid agencies to enter into mandatory cooperative agreements with these same entities, as currently required in § 433.151. Therefore, our proposed change to § 433.151 to make cooperative agreements optional instead of mandatory also encompasses these other entities, as well as CSE agencies.

C. Additional Proposed Revisions to the Regulations

We propose to revise § 433.136 to define the term "political subdivision" as a county or locality within a State. We have interpreted "political subdivision" as a county or locality since 1977. Our interpretation is based upon the Conference Committee report accompanying the 1977 Medicare-Medicaid Anti-Fraud and Abuse Amendments, Public Law 95–142. In the report, when discussing the addition of sections 1903(p) and 1912 to the Act, Congress differentiated local governments from those entities that are not State-level, denominating the former as "political subdivision(s) of a State" and "localities". (H.R. Conf. Rep. No. 673, 95th Cong., 1st Sess. 45, reprinted in 1977 U.S. Code Cong. & Admin. News 3113, 3119 (1977)).

In addition, Departmental regulations at 45 CFR 74.3 include in the definition of "State" as it applies to Medicaid State plans, "any agency or instrumentality of a State exclusive of local governments." This section also provides a definition of "local government" that appears to encompass the concept of "political subdivisions" and "localities." Under 45 CFR 74.3, local government means a "local unit of government including specifically a county, municipality, city, town, township, local public authority, school district, special district, intra-state district, council of governments (whether or not incorporated as a non-profit corporation under State law), sponsor or sponsoring local organization of a watershed project (as defined in 7 CFR 620.2, 40 FR 12472, March 19, 1975), any other regional or interstate government entity, or any agency or instrumentality of a local government. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4(c), Applicability of this part." We believe that our proposed definition of "political subdivision" not only reflects Congressional intent, but is also consistent with other Departmental regulations that reflect the interpretation that a "political subdivision" means a county or locality.

In addition, we propose to—

- Revise § 433.135, Basis and purpose, to add a reference to the referral requirement; and
- Revise § 433.137, State plan requirements, to add the requirement of referrals to CSE agencies.

IV. Collection of Information Requirements

The new regulation at § 433.160 contains information collection requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The information collection requirements concern the development of State plan amendment material concerning the referral of certain Medicaid families to CSE agencies. The respondents who will provide the information include State Medicaid agencies. Public reporting burden for this collection of information is estimated to be one hour per amendment.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the OMB official

whose name appears in the ADDRESSES section of this preamble.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the DATES section of this preamble, and we will respond to the comments in the final rule.

VI. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulations that are likely to meet criteria for a "major rule." A major rule is one that would result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or any geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities. For purposes of the RFA, we do not consider States or individuals to be small entities.

These proposed regulations require that Medicaid agencies refer appropriate Medicaid families to CSE agencies for the enforcement and collection functions to be performed by the CSE agency. The terms of the referral would be determined by the State Medicaid agency and the State CSE agency. The intent of these regulations is merely to ensure that Medicaid agencies refer all Medicaid recipients in need of CSE services to the CSE agency. In addition, the intent of the modifications proposed to the regulations governing cooperative agreements is to limit the transfer of program payment from title XIX to title IV–D for activities performed by the CSE agency that are mandated under title IV–D.

While this proposed rule will have some overall effect on Medicaid program expenditures, we do not believe that the impact will be significant. Therefore, we have determined, and the Secretary certifies, that this proposed rule is not a major rule under Executive Order 12291, and would not have a significant economic impact on a substantial number of small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area. We have determined, and the Secretary certifies, that this proposed regulation would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

Executive Order 12606 requires an analysis in formulating and implementing policies and regulations that may have significant impact on family formation, maintenance, and general well-being. These proposed regulatory provisions are expected to have an overall beneficial family impact.

Section 454 of the Act requires CSE agencies to provide CSE services to Medicaid families. However, under existing regulations, Medicaid agencies are not required to refer Medicaid families to CSE agencies. Consequently, information derived from program reviews from both HCFA regional offices and CSE agencies has shown that there is a lack of consistency among States in making this referral. The result is that some Medicaid families in need of CSE services do not receive them, while other families who are not in need of such services are being inappropriately referred.

We believe that the proposed regulatory provision that requires Medicaid agencies to provide prompt notice (within 2 working days) to the CSE agency for referral of certain families to receive all appropriate CSE services will greatly enhance the general well-being of families. Specifically, these families will receive access to CSE services that are in excess of medical support and payment collection, such as establishing paternity, locating absent parents, and obtaining child and spousal support.

List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

Part 433 of chapter IV of title 42 would be amended as set forth below:

1. The authority citation for part 433 continues to read as follows:

Authority: Sec. 1102, 1902(a)(4), 1902(a)(18), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), 1912, and 1917 of the Social Security Act (42 U.S.C. 1302, 1396a(a)(4), 1396a(a)(18), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r), 1396k, and 1396p).

2. In § 433.135 the introductory text and paragraph (a) are republished, paragraphs (b) and (c) are revised and a new paragraph (d) is added to read as follows:

§ 433.135 Basis and purpose.

This subpart implements sections 1902(a)(25), 1902(a)(45), 1903(d)(2), 1903(o), 1903(p), and 1912 of the Act by setting forth State plan requirements concerning—

(a) The legal liability of third parties to pay for services provided under the plan;

(b) Assignment to the State of an individual's rights to third party payments;

(c) Cooperative agreements between the Medicaid agency and other entities for obtaining third party payments; and

(d) Referrals of certain Medicaid families to child support enforcement agencies.

3. In § 433.136, the introductory text is republished and a new definition is added in alphabetical order to read as follows:

§ 433.136 Definitions.

For purposes of this subpart—

* * * * *

Political subdivision means a county or locality within a State.

* * * * *

4. In § 433.137, the introductory text of paragraph (b) is republished and paragraph (b)(2) is revised to read as follows:

§ 433.137 State plan requirements.

* * * * *

(b) A State plan must provide that—

* * * * *

(2) The requirements of §§ 433.151 through 433.160 are met for cooperative agreements and incentive payments for third party collections, and referrals of certain Medicaid families to child support enforcement agencies.

* * * * *

5. The undesignated heading following § 433.148 is revised to read as follows:

Cooperative Agreements, Incentive Payments, and Referrals to Child Support Enforcement Agencies

6. Section 433.151 is revised to read as follows:

§ 433.151 Cooperative agreements and incentive payments—State plan requirements.

For medical assistance furnished on or after October 1, 1984—

(a) A State plan must specify whether or not the State has entered into cooperative agreements (including financial arrangements) with other entities to assist the agency or agencies administering the State plan with respect to the enforcement and collection of rights to medical support or payments assigned and any other matters of common concern. These cooperative agreements may be with any of the following entities: Any appropriate agency of any State (including, with respect to the enforcement and collection of rights of payment for medical care by or through a parent, the State's agency designated under title IV–D of the Act); and appropriate courts and law enforcement officials.

(b) If a State elects to enter into a cooperative agreement, as specified in paragraph (a) of this section, the State plan must provide that—

(1) The agreement is in accordance with the provisions of § 433.152; and

(2) The requirements for making incentive payments and for distributing third party collections specified in §§ 433.153 and 433.154 are met.

(c) Regardless of whether a State enters into a cooperative agreement, as specified in paragraph (a) of this section, it must meet the requirements specified in § 433.160 for referring certain Medicaid families to the child support enforcement agency.

7. A new § 433.160 is added to read as follows:

§ 433.160 Referrals to child support enforcement agencies.

(a) *Requirements for referral.* (1) The Medicaid agency must provide prompt notice to the child support enforcement (CSE) agency for referral whenever medical assistance is furnished to families who may be in need of CSE services, as determined under the criteria and procedures specified in paragraph (b) of this section.

(2) For purposes of this section, *prompt notice* means communication of all relevant information, as prescribed by the CSE agency, by the most efficient and cost-effective means available, using manual or automated systems, no later than 2 working days after a determination of medical assistance eligibility has been made.

(b) *Criteria and procedures.* The State Medicaid agency, in conjunction with the State CSE agency, must develop criteria and procedures to implement the requirements in paragraph (a) of this section. At a minimum, the criteria and procedures must—

(1) Incorporate a methodology for identifying the Medicaid cases that would be appropriate for referral to the CSE agency; and

(2) Provide for revision of the criteria and procedures when both the State Medicaid agency and the State CSE agency agree that such revision is warranted.

(c) *State plan requirement.* The State Medicaid agency must describe the criteria and procedures specified in paragraph (b) of this section in its State plan.

(Catalog of Federal Domestic Assistance Program, No. 93.778, Medical Assistance Program.)

Dated: April 12, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: June 7, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–23118 Filed 9–21–93; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[CC Docket No. 93–240; FCC 93–424]

Accounting for Judgments and Other Costs Associated With Litigation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission has adopted a Notice of Proposed Rulemaking and Order (Notice) proposing to adopt accounting rules and ratemaking policies applicable to antitrust judgments, antitrust settlements, and other antitrust litigation expenses, and inviting comment on whether, and to what extent, such rules should be applicable to other areas of the law. Recognizing that the accounting and ratemaking treatment of antitrust judgments, settlements, and associated litigation expenses affect the sharing mechanism incorporated in Local Exchange Carriers' (LECs) price cap plan, and the requirement that carriers must maintain their books of account in accordance with the rules and policies of this Commission, the Commission invites comments on the proposed rules. The proposed rules are intended to address the Commission's concern that certain litigation costs should not be routinely passed on to ratepayers. As an interim measure, the Commission requires the carriers to place any antitrust judgments or settlements for which they become liable in the interim period between release of the Notice and adoption of rules in a balance sheet deferral account.

DATES: Comments must be filed on or before October 15, 1993 and reply comments must be filed on or before November 5, 1993.

ADDRESSES: Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sonja J. Rifken, Common Carrier Bureau, Accounting and Audits Division, (202) 632–7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking and Order in Accounting for Judgments and Other Costs Associated with Litigation, CC Docket No. 93–240, FCC 93–424, adopted August 23, 1993 and released September 9, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M St., NW., Washington, DC. The full text will be published in the *FCC Record* and may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Summary:

1. In the *Litigation Costs Proceeding*,[1] the Commission established accounting rules and ratemaking policies for litigation costs incurred by carriers in federal antitrust lawsuits and other cases involving violations of federal statutes. The United States Court of Appeals for the District of Columbia Circuit vacated and remanded these rules and policies to the Commission. In the court's view, the Commission had

[1] Notice of Proposed Rule Making to amend Part 31 Uniform System of Accounts for Class A and Class B Telephone Carriers to Account for Judgments and Other Costs Associated with Antitrust Lawsuits, and Conforming Amendments to the Annual Report Form M, *Report and Order*, 52 FR 20599 (June 2, 1987) (*Litigation Costs Order*), *recon.*, 54 FR 23756 (May 26, 1989) (*Litigation Costs Recon. Order*) (collectively, *Litigation Costs Proceeding*), *vacated and remanded sub nom.*, Mountain States Tel. and Tel. Co. v. FCC, 939 F.2d 1035 (D.C. Cir. 1991) (*Litigation Costs Decision*).

neither sufficiently justified the scope of the rules and policies, nor fully considered their probable effects upon carriers' behavior. In light of the court's remand, we consider anew the issue of the accounting rules and ratemaking policies applicable to litigation costs.

2. The guiding principle for the accounting rules adopted in the *Litigation Costs Proceeding* was that certain litigation costs were not "normally the byproduct of activities that benefit ratepayers." The Commission divided litigation costs into three categories: judgments; settlements; and other litigation expenses, *e.g.*, trial expenses. Specifically, the rules required judgments and settlements to be recorded in a nonoperating or below-the-line account, Account 7370, Special Charges, 47 CFR 32.7370. Recording an expense in a nonoperating account generally signifies that the expense is presumptively excluded from carriers' revenue requirements. Other litigation expenses were to be recorded in operating or above-the-line accounts, such as Account 6725, Legal expenses. Recording expenses in operating accounts generally creates a presumption of inclusion of these expenses in carriers' revenue requirements.

3. At the same time, the Commission announced ratemaking policies that, in some cases, altered the presumptions that attach to the accounts in which these litigation costs were recorded. For pre-judgment settlements, a carrier could presumptively include in its revenue requirement the "nuisance value" of the case. Other litigation expenses associated with either an adverse judgment or a post-judgment settlement were to be subject to "recapture." The recapture policy presumptively required these expenses to be excluded from a carriers' revenue requirement in the subsequent access tariff filing and the related AT&T tariff filings.

4. On appeal, the court reversed the Commission's Orders for two limited reasons. First, the court found that, although the Commission had adopted accounting classifications and presumptions with respect to all violations of federal statutes, it did not adequately justify the application of the litigation costs rules beyond the antitrust context. Second, the court found that the Commission had not sufficiently considered the incentive effects the rules and policies had on carriers' behavior.

5. AT&T, the Bell Operating Companies (BOCs), and a number of other large local exchange carriers (LECs) are now under price cap regulation. Presumptions regarding the inclusion or exclusion of expenses in a carrier's "revenue requirement" do not affect the development of rates under our price cap formulas. Nevertheless, we tentatively conclude that there is a continued need for litigation costs rules. AT&T and the LECs must still maintain regulated books of accounts, and the accounts must continue to be kept in accordance with the rules and policies of this Commission. Moreover, price cap LECs are subject to a sharing mechanism. Under this mechanism, a price cap LEC must share with ratepayers a portion of its regulated interstate earnings above a certain level. The operating/nonoperating distinction is a factor in determining whether a price cap LEC is within that sharing zone. Thus, the rules continue to affect the price cap LECs. Finally, there are still over 1300 LECs subject to rate of return regulation. Litigation costs rules are still needed to prevent these LECs from recovering through regulated rates expenses incurred as a result of unlawful conduct that does not benefit ratepayers.

6. In the *Litigation Costs Proceeding*, the Commission explained that the activity which leads to an adverse antitrust judgment, anticompetitive behavior, "rately, if ever, produces any benefit for ratepayers." As a result, the Commission concluded, such expenses should be recorded in a nonoperating account and should not routinely be passed on to ratepayers. The court in the *Litigation Costs Decision* agreed with this rationale and with this accounting treatment. We continue to believe this principle, and propose to require antitrust judgments be recorded in a nonoperating account, 47 CFR 32.7370. We invite comment on this proposal.

7. The court also agreed that this Commission could require carriers to record antitrust settlements in a nonoperating expense account. We also continue to believe that this approach is most consistent with the underlying principle that expenses not incurred for the benefit or ratepayers should not be routinely passed on to ratepayers. We therefore propose to require carriers to record antitrust settlements in Account 7370 and to amend the language in that account to include settlements. We seek comment on this proposal.

8. We also seek comment on whether we should readopt a ratemaking policy that allows a carrier presumptively to include in its revenue requirement the "nuisance value" of a lawsuit if a settlement is reached prior to judgment. Although the court accepted the concept of a nuisance value exception to the presumption against recovery of settlements, it found that the Commission had not adequately considered the incentive effects of the pre-judgment/post-judgment distinction. We tentatively conclude that the incentive to litigate that we would create by readopting the pre-judgment/post-judgment distinction is not so harmful to ratepayers that it warrants abandoning that distinction. We seek comment on this conclusion and invite parties to suggest ways in which we might limit the effects of this incentive.

9. In the *Litigation Costs Order*, the Commission decided that litigation expenses were to be accounted for in operating accounts, but that they were to be subject to recapture if the case they were associated with resulted in an adverse judgment or post-judgment settlement. The court agreed that this Commission could "reasonably erect a presumption against the recovery of litigation expenses wherever [we] may do so with respect to judgments and settlements."

10. After careful consideration of the recapture policy, we believe a different approach to the treatment of other antitrust litigation expenses would more fairly balance the interests of carriers and ratepayers. We propose to require carriers to accrue other antitrust litigation expenses in a balance sheet deferral account until the case is resolved, Account 1439, 47 CFR 32.1439. Upon entry of an adverse nonappealable final judgment or post-judgment settlement, these expenses would be charged to Account 7370. Should the case be resolved in favor of the carrier, the expenses would be amortized above-the-line for a reasonable period. We tentatively conclude that this approach treats carriers and ratepayers fairly. We seek comment on our proposal. We also ask commenters to address the effects that deferral accounting for litigation expenses could have on carriers' incentives to settle or litigate.

11. In the *Litigation Costs Proceeding*, the Commission did not subject other antitrust litigation expenses to recapture if they were associated with a pre-judgment settlement. This policy was to encourage settlement "where such action would be in the best interest of the ratepayers." Because we tentatively conclude that this approach is consistent with the ratepayer benefit principle to which we adhere, we propose to allow antitrust litigation expenses charged to Account 1439 to be booked in operating accounts in the event of a pre-judgment settlement. The court, however, indicated that this approach may provide an excessive

incentive for carriers to settle prior to judgment so that they can recover some portion of their litigation expenses. We therefore ask commenters to address the incentives this approach creates.

12. In the *Litigation Costs Proceeding*, the Commission extended its litigation costs rules to litigation involving civil or criminal violations of any federal laws because (1) violations of federal statutes are not normal business expenses, (2) federal statutes raise public policy considerations, and (3) application at the federal level provides uniformity. The court ruled, however, that the Commission may erect a presumption against recovery of these types of litigation costs only if the carrier's action underlying the lawsuit does not benefit ratepayers. Moreover, the court found that it may be the case that violation of federal law could benefit ratepayers.

13. In light of the court's remand, we seek comment on whether and how the Commission could extend these rules beyond the federal antitrust context. We tentatively conclude that the proposed litigation costs rules should apply to both federal and state antitrust lawsuits. We see no basis for distinction since we have concluded that anticompetitive behavior does not benefit ratepayers, and anticompetitive behavior underlies both state and federal antitrust statutes. We seek comment on our proposal.

14. We also tentatively conclude that the litigation costs rules should apply beyond the antitrust context to lawsuits involving violation of federal statutes in which the actions giving rise to the suit did not benefit ratepayers. We seek comment on two options for implementing this proposal. One option would be for the Commission to review on a case-by-case basis the circumstances of any lawsuit involving a federal statutory claim in which a settlement or judgment exceeded some threshold amount. The threshold amount could be set as an absolute amount, such as $5 million, or as a percentage of total operating expenses. We invite comment on this option, and ask commenters to address the incentives created by this proposal. We also seek comment on three options for the treatment of litigation expenses related to lawsuits subject to case-by-case review: (1) require deferral accounting for all litigation expenses involving claimed violations of federal statutes, so as to preserve the possibility of later disallowance in those cases in which judgments or settlements are ultimately disallowed; (2) require deferral accounting for such lawsuits once litigation expenses in a given case exceed some threshold level; or (3) allow above-the-line accounting.

15. The second option would be for the Commission to adopt in this proceeding a list of other federal statutes for which it can reasonably be assumed that actions in violation of the statute did not benefit ratepayers. Judgments, settlements, and litigation expenses for these suits would be treated, both for accounting and ratemaking purposes, the same as in antitrust cases. We ask interested persons to propose lists of such statutes and to explain the rationale for their lists. Finally, commenters should discuss the incentives created by this approach.

16. With the vacation by the court, there are currently no litigation costs rules in place. We are concerned that carriers could pass on to ratepayers judgments and settlements which should not properly be borne by ratepayers during the period between release of this Notice and a Final Order. Thus, we require carriers to record any antitrust judgments and settlements incurred during this interim period in Account 1439, deferred charges, 47 CFR 32.1439. Upon completion of this rulemaking, carriers would then be allowed to treat these expenses in accordance with the new rules.

17. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. 5 U.S.C. 603(a). Because of the nature of local exchange and access service, the Commission has concluded that small telephone companies are dominant in their fields of operation and therefore are not "small entities" as defined by that act. The Secretary shall send a copy of this Notice of Proposed Rulemaking and Order, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of that act.

18. Accordingly, *It Is Ordered* pursuant to sections 4(i), 219, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 219, 220, and 403, notice is hereby given of proposed amendments to part 32 of the Commission's Rules, 47 CFR 32.1 *et seq.* as described in this Notice of Proposed Rulemaking and Order.

List of Subjects in 47 CFR Part 32

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform system of accounts.

William F. Caton,

Acting Secretary.

Part 32 of the Commission's Rules and Regulations, 47 CFR part 32 is proposed to be amended as follows:

Uniform System of Accounts for Telecommunications Companies

1. The authority citation for part 32 continues to read as follows:

Authority: 47 U.S.C. 154, 47 U.S.C. 219, 220.

2. Section 32.7370 is amended by revising paragraph (d) to read as follows:

§ 32.7370 Special Charges.

* * * * *

(d) Penalties and fines paid on account of violations of statutes. This account shall include penalties and fines paid on account of violations of antitrust statutes including judgments and payments in settlement of suits alleging such violations.

* * * * *

[FR Doc. 93–23246 Filed 9–21–93; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–226, FCC 93–373]

Restrict Rounding of Distance Separation Calculations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rule Making in MM Docket No. 93–226 seeks comments on a proposal to amend agency regulations. Specifically, the FCC proposes to restrict rounding of distance separation calculations to the nearest one hundredth of a kilometer (two decimal places) in instances where an applicant is not in compliance with the FCC's minimum distance separation requirements. The intended effect of this Notice of Proposed Rule Making is to significantly reduce the potential for interference and inconsistencies from station to station. Furthermore, the degree of rounding yields a precision of 10 meters which more closely conforms to the degree of precision associated with the FCC's requirement that transmitter site coordinates be specified to the nearest second.

DATES: Initial Comments are due on or before October 18, 1993. Reply Comments are due on or before November 2, 1993.

ADDRESSES: Submit original and four copies of all comments, reply comments, and supporting comments to: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gary P. Schonman, FCC Mass Media Bureau, (202) 632–6402.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Notice of Proposed Rule Making in MM Docket No. 93–226, adopted on July 27, 1993, and released on August 27, 1993. The complete text of the Notice of Proposed Rule Making is available for inspection and copying during normal business hours at: FCC Reference Room, Federal Communications Commission, room 239, 1919 M Street, NW., Washington, DC 20554. Copies of all documents in this proceeding may be purchased from the FCC's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036 (Telephone: 202–452–1422).

Synopsis of Notice of Proposed Rule Making

The FCC sought comment on a proposal to amend 47 CFR 73.208(c)(8). The FCC stated that an applicant is currently entitled to demonstrate compliance with minimum distance separation requirements (*e.g.*, § 73.207, § 73.213(c), § 73.215(e)) by rounding off to the nearest kilometer (km) the distance between its proposed transmitter site and a particular reference point (*e.g.*, the transmitter site of an existing co-channel or adjacent channel station). The FCC proposes *no* change to its rules in that regard. However, the FCC stated that its rules should be amended to specify that if the applicant is unable to demonstrate such compliance by virtue of the rounding-off provision in § 73.208, the extent to which it is short-spaced should be specified with greater precision. Accordingly, the FCC sought comment on a proposal to amend § 73.208(c)(8) as follows:

§ 73.208 Reference points and distance computations.

(c) * * *

(8) Round the distance to the nearest kilometer. However, if, after rounding the distance to the nearest kilometer, an applicant is not in compliance with any Commission minimum distance separation requirement (*e.g.*, §§ 73.207, 73.213(c), 73.215(e)), the extent to which it is short-spaced shall be specified to the nearest one hundredth of a kilometer (two decimal places).

Initial Regulatory Flexibility Analysis

As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposal suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with ¶ 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.* (1980).

Reason for the Action: This action is taken to clarify that applicants for FM facilities may not round off distances to the nearest km under § 73.208 of the Commission's Rules when computing the extent to which they are short-spaced.

Objective of this Action: By this action, the Commission seeks to clarify and rationalize the use of § 73.208 of the Commission's Rules.

Legal Basis: Authority for this action is found in sections 4, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 4, 303, 403.

Number and Type of Small Entities Affected by the Proposed Action: All applicants for FM facilities that propose transmitter sites which are not in compliance with the Commission's minimum distance separation rules.

Reporting, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Action: None.

Federal Rules which Overlap, Duplicate or Conflict with the Proposed Action: None.

Any Significant Alternative Minimizing Impact on Small Entitites and Consistent with the Stated Objective of the Action: We are seeking comment to determine whether any significant alternatives exist.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–23115 Filed 9–21–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB97

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of the Pahrump Poolfish (Empetrichthys latos latos) From Endangered to Threatened Status

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has reviewed the status of the Pahrump poolfish (*Empetrichthys latos latos*) and proposes to reclassify this species from endangered to threatened throughout its range under the Endangered Species Act of 1973, as amended (Act). The Pahrump poolfish (also known as the Pahrump killifish) is a small, relatively slender fish, endemic to the Pahrump Valley in southern Nye County, Nevada. In 1975, the sole natural population of Pahrump poolfish was extirpated from Manse Spring, Nye County, Nevada, when ground water pumping caused the spring to dry. Aside from water diversions and excessive ground water pumping, threats to the species include predation and competition from exotic fishes and encroachment of vegetation. Because of recovery efforts, the species now occurs in three relatively stable populations that have been artificially established in Clark and White Pine Counties, Nevada. If made final, the proposed action would reclassify the Pahrump poolfish from endangered to threatened status. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by November 22, 1993. Public hearing requests must be received by November 8, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to U.S. Fish and Wildlife Service, Reno Field Office, 4600 Kietzke Lane, C–125, Reno, Nevada 89502–5093. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul J. Barrett at the above address (telephone 702/784–5227).

SUPPLEMENTARY INFORMATION:

Background

The Pahrump poolfish (*Empetrichthys latos latos*) was described along with

two other subspecies of *E. latos* in 1948 (Miller 1948). All three subspecies occurred only in springs found in Pahrump Valley, southern Nevada. The Raycraft Ranch springfish (*E. l. concavus*) and the Pahrump Ranch killifish (*E. l. pahrump*) are now extinct. The only congener, the Ash Meadows poolfish (*E. merriami*), became extinct in the 1940's. Thus, the Pahrump poolfish is the sole remaining representative of the genus *Empetrichthys*.

This species was originally called the Pahrump killifish. Robbins *et al.* (1991), following the recommendation of J.E. Williams, recently assigned the common name "poolfish" to fishes in the genus *Empetrichthys*. Nevertheless, the majority of the literature refers to the fish as the Pahrump killifish.

The ancestral home of the Pahrump poolfish was Manse Springs in Nye County, Nevada. In 1975, local ground water pumping for agricultural development dried the spring, destroying the only natural population of the Pahrump poolfish. Similarly, ground water pumping caused the extinction of the Raycraft Ranch springfish in the mid-1950's and the Pahrump Ranch killifish in 1958. Prior to the pumping of Manse Springs, populations of the Pahrump poolfish were established in two separate areas: Corn Creek Springs on the Desert National Wildlife Range, north of Las Vegas, Nevada, and Shoshone Springs southeast of Ely, Nevada. Subsequent to the loss of Manse Springs, a third population was established in an irrigation reservoir at Spring Mountains Ranch State Park west of Las Vegas, Nevada. Researchers attempted to establish another population in Latos Pool, near Lake Mohave, in Nevada, but the poolfish were lost during floods in the late 1970's.

All three extant populations of Pahrump poolfish occur on public lands. The Service has applied for vested water rights at Corn Creek Springs based on historical use. The Nevada Department of Wildlife has State appropriative water rights at Shoshone Ponds while the Nevada Division of State Parks has appropriated water rights for Sandstone Spring, the water source for the Spring Mountain Ranch irrigation impoundment in which the Pahrump poolfish occur.

The Act contains both recovery and protection provisions. Section 4(f) of the Act provides for the development and implementation of recovery plans for listed species. The Pahrump Killifish Recovery Plan (Plan) was published by the Service on March 17, 1980. Although information gathered since its publication may have altered the priorities of tasks identified in the Plan, its ultimate objective, the establishment of 3 populations of 500 fish each, remains valid. The species is less likely to be subject to catastrophic perturbations simultaneously at three separate sites than at the single location it historically occupied. Implementation of recovery tasks identified in the Plan has significantly improved the status of the species. These tasks have been funded and/or carried out by the Service and by numerous Federal and State agencies and academic institutions. The cumulative effect of these efforts and the efforts of the many individuals, organizations, and government agencies at Federal, State, and local levels has been a progressive increase in numbers, as well as the secure establishment of three populations of Pahrump poolfish.

The Plan included provisions to monitor the poolfish populations twice annually. After publication of the Plan it became apparent that Pahrump poolfish are inactive during winter and early spring and therefore cannot be effectively sampled (Deacon 1984a). As a result, researchers have attempted annual summer monitoring of all three populations of Pahrump poolfish since the mid-1980's.

The primary objective of the recovery effort is the establishment of a minimum of three subpopulations of the Pahrump poolfish. Each subpopulation should maintain a minimum of 500 adults for 3 years, and the population's habitats would have to be free of immediate and potential threats before the species could be considered for reclassification to threatened status. Subsequent to reclassification as threatened, if the populations continue to exceed 500 individuals per year at each of the 3 locations for an additional 3 years, consideration should be given to delisting the species. Data collected by the Nevada Department of Wildlife indicates that there have been continual populations of over 500 individuals at all 3 sites since at least 1986. In 1988, either the populations greatly expanded, censusing techniques became more efficient, or both. From 1988 through 1992, individual ponds within each location have contained far greater than 500 individuals.

The Shoshone Ponds population is located on Federal land managed by the Bureau of Land Management (Bureau). Although Shoshone Ponds was originally considered a temporary holding site until other suitable sites could be identified, there has been a population of Pahrump poolfish in the ponds continually since August of 1976 (Logan 1977). One management objective of the Bureau's Habitat Management Plan for the Shoshone Ponds area is the development of a refugium for the Pahrump poolfish (Cain 1970). In 1970, the Bureau also designated the ponds and 1,240 acres surrounding the ponds as the Shoshone Ponds Natural Area. Due to the apparent long-term viability of the population, and the Bureau's commitment to the maintenance of the species in Shoshone Ponds, the Service has included the Shoshone Pond population when considering the requirements for reclassification of the Pahrump poolfish.

In 1979, when the Plan was written, only two locations contained Pahrump poolfish, Corn Creek and Shoshone Ponds. Both populations were relatively young, 8 and 3 years respectively, and the Corn Creek location contained several exotic predators and competitors, as well as problems associated with the encroachment of macrophytes. Management recommendations were made to address these problems.

The Corn Creek ponds were drained to remove exotic fishes and cattails (Zeller 1985). The cattails are occasionally treated with herbicide to prevent reinfestation of the ponds. The chemical treatment has had no apparent effect on the Pahrump poolfish, while the vegetation removal has improved the poolfish habitat (Sjoberg 1989). Continual evaluation and treatment as necessary of the vegetation will be required if the ponds are to remain suitable for Pahrump poolfish.

The Plan identified Spring Mountain Ranch State Park as a site that could be renovated and used to establish a third population of Pahrump poolfish. In June of 1983, exotic fishes were eradicated from the irrigation reservoir at Spring Mountain State Park and 426 Pahrump poolfish were introduced (Haskins 1983). By June 1984, both adult and fry were present (Deacon 1984b). The population has exceeded 500 individuals every year since 1985. Although Spring Mountain Ranch State Park has no formal agreement to maintain the Pahrump poolfish population in perpetuity, it has no immediate plans to move the poolfish or introduce other species of fish (Jan Prida, personal communication, August 20, 1992).

The Service believes that the available data do not indicate that the recovery goals established in the Plan have been met. Therefore, delisting of the Pahrump poolfish is not warranted. However, the Service does believe that goals identified in the Plan as necessary to consider reclassifying the Pahrump poolfish from endangered to threatened

pursuant to the Act have been met. The Service believes reclassification is warranted and proposes to reclassify the Pahrump poolfish as threatened throughout its range.

Previous Federal Action

Federal action began on this species when it was listed as endangered under the Endangered Species Preservation Act of 1966, on March 11, 1967. With the 1973 passage of the Endangered Species Act, the fish retained its endangered status and gained further protection, pursuant to the Act. A recovery plan for the Pahrump poolfish (as the Pahrump killifish) was published by the Service in 1980.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of five factors described in section 4(a)(1). These factors and their application to the Pahrump poolfish (*Empetrichthys latos latos*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Habitat conservation and expansion efforts, including management practices by Federal and State agencies and universities, have increased the number of Pahrump poolfish populations and expanded the species' range since the early 1970's. These efforts led to the establishment of three populations of poolfish at locations from which they were historically absent. One of these, Shoshone Ponds, included the construction of a new pond by impounding an artesian well. All three populations are located on land owned and managed by Federal or State agencies. With constant water supplies and periodic renovation of the impoundments to reduce excess vegetation, each location will provide adequate habitat to ensure the continued existence of the Pahrump poolfish. The Service has filed for a vested water right at Corn Creek. Should the hydrologic basin be adjudicated, and the vested right recognized, the water supply for the Pahrump poolfish will be ensured. Both the Shoshone Springs and Spring Mountain Ranch State Park have water rights certified by the State of Nevada. The water rights were granted to the Nevada Department of Wildlife for the former and the Nevada Division of State Parks for the latter.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no known commercial or recreational use of the Pahrump poolfish. The Service has exercised, and will continue to exercise, very strict control over scientific and educational activities involving Pahrump poolfish. With reclassification to threatened, the Service could issue permits for limited exhibition and educational purposes, for selected research work not directly related to the recovery of the species, and for other special purposes consistent with the purposes and policies of the Act [50 CFR 17.22 (a)(1)]. These activities, which can be permitted for threatened species, are in addition to permits for endangered species that can only be issued for research, rehabilitation, and propagation directly related to recovering the species [50 CFR 17.32 (a)(1)] (see Available Conservation Measures).

C. *Disease or predation.* Disease is not a significant problem for the Pahrump poolfish. Prior to the introduction of poolfish into each of the three sites, all previously established fish were removed; however, the potential reestablishment of populations of competitors or predators remains a threat. If populations of undesirable species do become established, Pahrump poolfish could be trapped and salvaged, and the impoundments could then be treated to remove other species. This occurred at the Corn Creek location in 1975 when mosquitofish (*Gambusia affinis*) were eradicated. Management actions, such as fencing and public education, could reduce the likelihood of an introduction, are less costly, and have less potential to harm the poolfish.

Predators other than fish were also thought to have a potentially damaging effect on the poolfish. For example, the Plan assumed that a bullfrog (*Rana catesbiana*) infestation in Corn Creek may have a detrimental impact on the poolfish. Subsequently, several investigations of stomach contents of bullfrogs taken from the ponds at Corn Creek have shown little predation on Pahrump poolfish (Withers 1985, 1986, 1988; Heinrich 1991).

Parasites of the three populations have also been the subject of studies. Heckmann (1987, 1988) found generally low parasite loads in all three populations. However, he did find what is thought to be the first record of a blood nematode in North American freshwater fishes in both the Shoshone Ponds and Spring Mountain Ranch populations. Subsequently, Dr. Heckmann located another nematode in the coelomic cavity of the poolfish in the Corn Creek and Spring Mountain Ranch populations. Dr. Heckmann does not believe that these parasites would be an impediment to the transfer of individuals between populations (R. Heckmann, personal communication, August 14, 1992).

D. *The inadequacy of existing regulatory mechanisms.* Pahrump poolfish and their habitats receive some protection via the Act. Section 7(a)(1) is a protective provision of the Act that directs all Federal agencies to "* * * utilize their authorities * * * for the conservation of endangered species and threatened species * * *" Section 7(a)(2) directs each Federal agency to "* * * insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species * * *" Section 9 contains the specifically prohibited harmful acts. The Corn Creek and Shoshone Pond habitats occur on Federal Land. Any Federal action that would impact these areas would be subject to provisions of the National Environmental Policy Act (NEPA) of 1969 and the Act. Reclassification to threatened status would not change the current protection afforded the species by the Act.

All three poolfish populations occur within the State of Nevada, and the Pahrump poolfish is protected pursuant to Chapter 503.584 of the Nevada Revised Statutes (NRS). This statute prohibits all species or subspecies of native fish, wildlife, and other fauna threatened with extinction from capture, removal, or destruction at any time by any means except under a special permit issued by the department.

The most critical threat to the Pahrump poolfish has been the destruction of habitat through water diversion. The Shoshone Ponds and Spring Mountain State Park populations exist in waters with State-certified appropriations. These appropriations help ensure the continued existence of the respective poolfish habitats. The Service has filed an application for a vested water right at Corn Creek springs. Vested rights are rights based on laws that were in place prior to the development of the existing permit system. In Nevada, vested rights are those where appropriations procedures were initiated prior to March 22, 1913 (NRS 533.085). Should a court adjudicate water rights of the hydrologic basin, the vested rights will be examined. However, the Service has documentation for the use of the Corn Creek waters from approximately 1900

onward and, therefore, believes the water rights at Corn Creek Springs are secure.

E. *Other natural or manmade factors affecting its continued existence.* Due to the historically isolated nature of the Pahrump poolfish and its lack of commercial value, loss of habitat, as discussed in Factor A above, is the major threat to the poolfish. No other natural or manmade factors appear to affect its continued existence.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. Based on this evaluation, the preferred action is to reclassify the Pahrump poolfish (*Empetrichthys latos latos*) as threatened, pursuant to the Act.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat for this species is not presently prudent for that reason. Such a determination would result in no known benefit to the species. The species distribution is restricted to three sites, two of which are managed by Federal agencies. It is likely that any Federal action that would adversely affect Pahrump poolfish would result in a jeopardy opinion under section 7(a)(2) of the Act. Therefore, no additional protection would be afforded the species through the designation of critical habitat. Protection of this species' habitat will continue to be addressed through the recovery process and the section 7 consultation process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife not covered by a special rule. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (defined as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these activities), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, any threatened species not covered by a special rule. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing threatened species permits are at 50 CFR 17.32. Unless otherwise provided by a special rule, such permits are available for scientific purposes, to enhance the propagation or survival of the species, for economic hardship, zoological exhibition, educational purposes, special purposes consistent with the Act, and/or for incidental take in connection with otherwise lawful activities.

Requests for copies of the regulations concerning listed animals and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104; FAX 703/358–2281).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final action concerning this proposal will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Reno Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Reno Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Paul J. Barrett, U.S. Fish and

Wildlife Service (see **ADDRESSES** section); telephone 702/784–5227.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11(h) [Amended]

2. It is proposed to amend § 17.11(h) by revising the entry under FISHES for "Poolfish, Pahrump" to read "T" under "Status."

Dated: August 18, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–23105 Filed 9–21–93; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 58, No. 182
Wednesday, September 22, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Recreation Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) gives notice, as required by the Federal Advisory Committee Act (5 U.S.C. App. 2), of the times and location of the second meeting of the Recreation Access Advisory Committee.

DATES: The second meeting of Recreation Access Advisory Committee is scheduled for Saturday, October 23, 1993 (1 pm–5 pm); Sunday, October 24, 1993 (8:30 am–5 pm); and Monday, October 25, 1993 (8:30 am–12:30 pm).

ADDRESSES: On October 23, 1993, the meeting will be held at the San Jose Convention Center, 408 Almaden Avenue, San Jose, California. On October 24 and 25, 1993, the meetings will be held at the Westin Hotel, 5101 Great America Parkway, Santa Clara, California.

FOR FURTHER INFORMATION CONTACT: Peggy H. Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 ext. 34. (Voice); (202) 272–5449 (TTY). These are not toll free numbers. This document is available in accessible formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION: The Access Board established a Recreation Access Advisory Committee to provide advice on issues related to making recreational facilities and outdoor developed areas readily accessible to and usable by individuals with disabilities. This advice will be used by the Access Board to develop accessibility guidelines under the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968 for newly constructed and altered recreational facilities and outdoor developed areas. The advisory committee is composed of owners and operators of various recreational facilities; persons who design recreational facilities or manufacture related equipment; Federal, State and local government officials responsible for parks and other outdoor developed areas; and individuals with disabilities and organizations representing the interests of such persons.

At its first meeting on July 15 and 16, 1993, the Recreation Access Advisory Committee formed subcommittees to assist in its work. The subcommittees include: Amusement Parks; Golf; Play Area Settings; Recreational Boating and Fishing; Developed Outdoor Recreation Facilities and Areas; and Sports Facilities. Subcommittee meetings will be held during the October 23 to 25, 1993 meeting of the advisory committee and at other schedule dates. The public is encouraged to attend subcommittee meetings and to provide input in the form of written material. Information about these subcommittees can be obtained from Peggy Greenwell at the address indicated at the beginning of this notice.

This meeting is open to the public and meeting sites will be accessible to individuals with disabilities. Sign language interpreters and assistive listening systems will be available for individuals with hearing impairments.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 93–23130 Filed 9–21–93; 8:45 am]
BILLING CODE 8150–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 0120–01]

Action Affecting Export Privileges; Iran Air

In the Matter of: Iran Air, Respondent.

Order Imposing Civil Penalty

Whereas, on October 18, 1990, the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce (Department), charged Iran Air with committing one violation of the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1993)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401–2420 (1991, Supp. 1993, and Pub. L. 103–10, March 27, 1993)) (the Act), namely, that, in violation of 15 CFR 787.2, Iran Air caused the shipment of three U.S.-made signal generators from Germany to Iran without obtaining the required reexport authorization from the Office of Export Licensing, Bureau of Export Administration, U.S. Department of Commerce;

Whereas, an administrative proceeding was conducted before an Administrative Law Judge (ALJ) pursuant to part 788 of the Regulations, in which the ALJ found that the shipment of the U.S.-made signal generators to Iran was inadvertent and without knowledge that shipment of these items to Iran was in violation of the Export Administration Regulations;

Whereas, the Acting Under Secretary for Export Administration (Under Secretary), on August 21, 1992, issued a Final Order in the matter finding that Iran Air had committed the violation alleged and imposing certain civil penalties and other administrative sanctions against Iran Air for the violation;

Whereas, Iran Air appealed the Final Order to the U.S. Court of Appeals for the District of Columbia Circuit;

Whereas, on July 2, 1993, the U.S. Court of Appeals for the District of Columbia Circuit issued its opinion in which the Court stated that the ALJ had appraised the errors of Iran Air in ordering and shipping the generators as inadvertent slips;

Whereas, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the Under Secretary's determination that Iran Air had violated the Regulations, but vacated the sanctions imposed and remanded the matter to the Under Secretary for a reasoned determination of the appropriate sanction consistent with the ALJ's assessment of the facts and circumstances of Iran Air's violation;

Whereas, the matter will be remanded to the Under Secretary upon issuance of the mandate from the U.S. Court of Appeals for the District of Columbia Circuit;

Whereas, the time for the issuance of the mandate from the U.S. Court of Appeals for the District of Columbia Circuit has not yet run;

Whereas, the Department and Iran Air have made a joint submission in which Iran Air has represented that, if I issue an Order on or before August 13, 1993, imposing a civil penalty of $50,000, Iran Air will not seek further review of the July 2, 1993 Opinion of the U.S. Court of Appeals for the District of Columbia Circuit; and

Whereas, the terms of the Joint Submission on Penalty are hereby approved by me;

Now, therefore, it is ordered,

First, That a civil penalty of $50,000 is assessed against Iran Air for the violation it has been found to have committed. No other penalty, forfeiture, or restriction is imposed. Iran Air shall pay the civil penalty to the Department within 30 days from the date that this Order becomes effective. Payment shall be made in the manner specified in the attached instructions.

Second, That a copy of this Order shall be served upon Iran Air and published in the **Federal Register**.

This Order is effective upon issuance of the mandate by the U.S. Court of Appeals for the District of Columbia Circuit in *Iran Air* v. *Kugelman*, No. 91–1596 (July 2, 1993).

Dated: August 12, 1993.

Barry E. Carter,

Acting Under Secretary for Export Administration.

[FR Doc. 93–23129 Filed 9–21–93; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

[Docket No. 930799–3199; I.D. 060493A]

Fishing Vessel Monitoring Systems Proposed Standards

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed standards and request for comments.

SUMMARY: NMFS proposes to endorse, where appropriate, the use of satellite-based fishing vessel monitoring systems to determine positions of fishing vessels, collect real-time catch and environmental data and to specify minimum standards for these systems. This notice advises the public that uniform standards will be promulgated for VMS. NMFS has determined that standards are necessary to assure VMS compatibility. The use of satellite-based fishing vessel monitoring systems (VMS) to collect catch data and determine vessel positions will contribute to reducing overfishing and maintaining currently productive fisheries. Such systems may also contribute significantly to NOAA's global environmental and climate monitoring activities.

DATES: Comments must be received on or before November 22, 1993.

ADDRESSES: Send comments on this proposed policy to: Steven C. Springer, Chief, Enforcement Programs Division, National Marine Fisheries Service, Office of Enforcement, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Steven C. Springer, 301–427–2010.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson Fishery Conservation and Management Act (Act) (16 U.S.C. 1801) established Regional Fishery Management Councils (Councils) and gave them authority to prepare fishery management plans (FMPs) for the conservation and management of fishery resources. The Secretary of Commerce may also prepare FMPs under circumstances specified in the Act. NMFS implements FMPs and is responsible for collecting data and monitoring FMP compliance. In recent years, some U.S. commercial marine fishery resources have been overharvested. Many others are being fished at or near the point of maximum sustainable yield, and there is real danger that these could become overharvested as well. Because of this, NMFS is endeavoring to improve the accuracy and timeliness of catch and effort data, and improve compliance with cost-effective management measures. Some Councils and NMFS are beginning to use VMS for compliance and data collection in domestic fisheries.

Quotas are exceeded in two ways. First, catch data are often received from fishing vessels by NMFS after catch quotas have been exceeded, yet before NMFS was able to determine that the quota had been reached and notify vessels to stop fishing. Second, illegal fishing during closed seasons and in closed areas contributes to quotas being exceeded. Illegal fishing is difficult to detect without conducting frequent, costly, at-sea aerial and surface patrols.

Improving the timeliness of catch and effort data reporting would permit NMFS to calculate ongoing harvests more accurately and close fisheries when quotas are reached. Improving compliance without substantially increasing the cost of enforcement would improve the effectiveness of management regulations intended to prevent overfishing. VMS technology has proven effective in helping NMFS determine the location and activity of foreign driftnet vessels fishing in the Pacific Ocean, and has been used to transmit data from these vessels in a timely, accurate and confidential manner. Given the experience with VMS technology aboard driftnet vessels, NMFS has determined that it can be successfully used in other fisheries to enhance management and enforcement efforts.

Proposed Implementation

NMFS proposes to endorse the use of, and define specifications and criteria for, satellite-based fishing vessel monitoring systems as appropriate, to determine positions of fishing vessels and collect real-time catch and environmental data.

Several companies manufacture and distribute VMS throughout the United States and worldwide. Not all systems, however, are compatible with each other. NMFS must require system compatibility for several reasons. First, fishing vessels that engage in multiple fisheries should not be required to install multiple VMSs. Further, it would not be cost-efficient for NMFS to install multiple fishing vessel monitoring center/systems in order to monitor vessel activities from multiple VMSs. In order to assure such compatibility, NMFS proposes basic VMS and related performance criteria and system specifications. However, recognizing that regulatory requirements for a VMS may be promulgated on a fishery-by-fishery basis, all VMSs shall be certified by NMFS to meet applicable requirements. These systems would be implemented as appropriate through Secretarial and Council recommended Fishery Management Plans (FMPs).

The real-time reporting of catch data that a VMS can provide would significantly improve the ability to monitor and manage quotas and allocations in certain fisheries. In fisheries managed by individual fishing quotas (IFQs) or individual transferable quotas (ITQs), mandatory remote monitoring of vessel catches and locations can improve management by providing fishery managers with timely information on catches (by area, if required) and transfers of quotas that can be effected and monitored while the vessel is at sea. In fisheries where real-

time catch reporting is not essential for effective resource management, but time or area closures are, the position tracking component of a VMS could provide a more cost-effective means of enforcing such closures.

All required information regarding fishing vessel activity would be communicated from ship to shore through a secure, confidential satellite communication system described below and processed in NMFS regional data processing centers. Vessel position and catch data would be used by NMFS Regions and Centers to monitor fishing quotas and fishing activities, and identify suspected violations of time or area regulations.

The system would provide for monitoring U.S. vessels and, where appropriate, foreign vessels conducting harvesting operations in the U.S. exclusive economic zone and on the high seas.

In determining the feasibility of requiring a VMS for vessel tracking purposes, Councils and NMFS will need to identify time and area management measures, evaluate their degree of significance in achieving the goals and objectives of the FMP, assess costs and benefits, review fishery-related agreements, treaties or similar arrangements, and estimate the amount and effectiveness of enforcement surveillance and patrol resources needed to gain compliance. In most cases, deployment of costly enforcement resources could be optimized by identifying violations through a VMS and deploying further resources accordingly (i.e., targeting apparent violations vs. random patrolling).

NMFS proposes to link VMS requirements to the issuance of Federal fishing permits. In fisheries requiring a VMS, a permit may not be issued to a vessel until a certified VMS is purchased, installed and is fully operational on such vessel. Failure of a vessel to carry an operating VMS may result in permit sanctions. In fisheries where there is no Federal permit, but VMS are required, the regulations could be amended to prohibit fishing without a fully operational VMS on board the vessel.

NMFS would establish one or more fisheries monitoring centers (FMCs) to receive and process data transmitted by the VMS. FMCs would specify data requirements for vessel terminals, ensure confidentiality of data in accordance with applicable rules and regulations, and distribute data to NMFS offices, the U.S. Coast Guard and other users as appropriate.

If the Councils or NMFS determine there is a need for real-time catch data, costs associated with changes in data collection, management and analysis infrastructure beyond the selection of a VMS should be assessed, as well as benefits. Any self-reported data reporting system must include comprehensive validation mechanisms, especially where the incentives for misreporting are high. The statistical, computer, compliance and analytical staffing resources must be integral components of the need and justification of a VMS. If a VMS is deemed an appropriate tool, the NMFS would require that the following system criteria and specifications apply.

System Specifications (Standards)

Determinations by the Councils or NMFS may require a VMS for tracking purposes only, data reporting only, or for both vessel tracking and data reporting purposes. Some performance specifications and criteria may not apply to a VMS that is required for vessel tracking only or data reporting only.

The following system specifications and criteria would be applied to a VMS for any fishery for which NMFS or the Councils determine a need for vessel tracking, monitoring and/or reporting:

1. The VMS shall be tamperproof, i.e., shall not permit the input of false positions.

2. VMS equipment shall be fully automatic and operational at all times regardless of weather and environmental conditions.

3. VMS equipment shall be capable of tracking vessels throughout their range and shall provide position accuracy to within 400 m. (1,300 ft).

4. The VMS shall have the capability of transmitting and storing information including vessel identification, date time latitude and longitude.

5. The VMS shall provide accurate position transmissions, the interval between which can be determined by NMFS and set or changed remotely. In addition, the VMS shall allow NMFS to poll individual vessels or any set of vessels at any time and receive position reports in real time.

6. Under certain conditions the VMS may be required to provide network message communications between the vessel and shore. (This specification may not be applicable to tracking-only systems). Such communications shall include, but not be limited to, transmitting and receiving telex and full or compressed data messages to and from shore. The VMS shall allow NMFS to initiate communications or data transfer at any time.

7. Shore station software shall reliably retrieve position records, as defined in item 4 above, and display such data on a computer monitor. The software must also provide a means for printing such data. The software must include on-screen displays of charts capable of showing boundaries of fishery management areas. The software must be capable of accurately displaying vessel positions on such charts. The software must be capable of providing an alarm, signal, or other notice to shore station operators when a vessel is within 1 nautical mile (1.9 km) of designated closed areas or management area boundaries. The software must provide printer/plotter support for drawing charts. It must have the capacity to archive vessel position histories for a minimum of 1 year.

Costs

The potential cost of VMS is of concern to NMFS. The full range of VMS equipment manufacturers is unknown. Of the leading known manufacturers NMFS has contacted, the cost of hardware equipment ranges from $1,000 to $15,000. However, NMFS expects the average vessel-tracking-only hardware to cost between $5,000 and $8,000 for equipment meeting these VMS specifications. Data reporting only or vessel tracking and data reporting applications may require the addition of a personal computer and possibly a printer. This could add $1,000 to $3,000 to the system cost.

The other major cost involved with the VMS is that of transmitting data to and from the vessel. NMFS estimates that the cost of vessel position reports will range between $500 and $1,000 per year per vessel as the frequency of position reports will vary from one fishery to another. Costs associated with transmitting catch data and other business and personal data over vessel monitoring systems vary from one system to the next and cannot be estimated accurately. However, most systems impose a monthly service fee ($70–$80) that includes a limited number of position reports and messages. Additional charges accrue based on the number of messages and their length.

NMFS is particularly seeking comments on the ability of vessel owners to pay costs associated with the purchase, installation and daily operation of the VMS. The issue of what costs the vessel owners or operators will be responsible for and what costs NMFS or other agencies will be responsible for will need to be more fully defined when a VMS is recommended for a particular fishery.

Past Experience and Anticipated Benefits

In 1990, the NMFS Office of Enforcement embarked on a satellite-based enforcement program that successfully determined and monitored the positions of as many as 800 high-seas driftnet fishing vessels from Japan, South Korea and Taiwan. These position data were accurately transmitted via satellite to ground receiving stations, then to a processing center and finally to the NMFS Office of Enforcement, U.S. Coast Guard and officials from the vessel's country. These officials were responsible for responding to and taking enforcement action regarding closed area violations. Additionally, NMFS instituted a VMS pilot program on four longline vessels fishing off Hawaiian waters, and, in conjunction with the U.S. Coast Guard, is monitoring their positions from a FMC in Honolulu, Hawaii.

Benefits

As a result of its success in using VMS, NMFS concludes that the use of VMS can:

1. Improve the efficiency of fisheries monitoring by identifying potential violations of certain fishing regulations, thereby enabling NMFS officials working jointly with the U.S. Coast Guard and state enforcement agencies to analyze relevant details in order to deploy vessels and aircraft to respond directly to specific areas and vessels in a more efficient manner;

2. Increase fishermen's compliance, including voluntary compliance, with quota, time and area requirements as a result of enhanced communication and more effective monitoring;

3. Improve interjurisdictional fisheries management (at the interstate, state/Federal and international levels) due to improved compliance with established boundaries;

4. Reduce the paperwork burdens associated with some current vessel reporting requirements;

5. Improve conservation and enhance ability to achieve FMP goals and objectives by focusing in greater detail on time and area management techniques;

6. Increase vessel safety through special distress signalling capabilities that would alert the U.S. Coast Guard and other vessels of an emergency under the Global Maritime Distress Safety System (GMDSS);

7. Provide dependable, confidential two-way communications for the master and crew for all business and personal matters;

8. Provide improved fleet management by vessel owners who, with VMS data, would know exactly where their vessels are and the amounts of their catches on a real-time basis;

9. Decrease costs in fisheries where observer coverage can be reduced by using a VMS;

10. Enhance reporting of catch data, where appropriate, by providing for real-time computerized monitoring of catches, thus potentially reducing current paperwork burdens associated with vessel reporting;

11. Enable enforcement officials to monitor catches under IFQs or ITQs and assist efforts to verify the accuracy of catch reports when the vessel completes its offloading; and

12. Enhance NOAA's global climate and environmental monitoring activities by reporting environmental data via a VMS.

To the extent that the owners of such fishing vessels are willing to collect and provide environmental data, such data would be delivered to users through the VMS under terms of contractual agreements between users and NOAA and/or the VMS contractor. Under no circumstances shall the providing of such data compromise the security of the VMS or the confidentiality of data required to be transmitted through the VMS.

Conclusion

The use of high-technology, satellite-based VMSs would substantially increase NMFS' ability to manage fisheries under U.S. jurisdiction when integrated with a comprehensive data collection, monitoring and enforcement strategy. Systems now on the market either meet NMFS specifications or could meet those specifications with some modification.

Classification

This notice is exempt from Administrative Procedure Act requirements under 5 U.S.C. 553(b)(A) as a statement of policy or practice so that notice and comment provisions do not apply. However, NMFS specifically request comments from interested parties on both standards and costs for VMS.

This notice does not implement or require VMS. However, it announces standards that will apply to any VMS requirement implemented through amendments to the various fishery management plans. This notice does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

When rules requiring VMS are proposed, regulatory impact review will accompany such actions.

Dated: September 14, 1993.

Samuel W. McKeen,

Program Management Officer.

[FR Doc. 93–23120 Filed 9–21–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Telecommunications Service Priority (TSP) System Oversight Committee

AGENCY: National Communications System.

ACTION: Notice of meeting.

A meeting of the Telecommunications Service Priority (TSP) System Oversight Committee will convene Wednesday, October 20, 1993, from 9 a.m. to 4 p.m. The meeting will be held at Bellcore, 2101 L Street, Northwest, room 600, Washington, District of Columbia 20037. The agenda is as follows:

—Opening/Administrative Remarks
—Review June 4, 1993 Meeting Summary and Status of Actions
—TSP Program Office Update
—TSP Ad Hoc Working Group Report
—Review of Action Items
—Old Business/New Business

Anyone interested in attending or presenting additional information to the Committee, please contact the National Communications System TSP Program Office, Bernard Farrell (703) 746–5375 or Susan Flint (703) 692–0040, by October 4, 1993.

Dated: September 17, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–23179 Filed 9–21–93; 8:45 am]

BILLING CODE 5000–04–M

Privacy Act of 1974; Notice of an Addition of a Record System

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Notice of an addition of a record system.

SUMMARY: The Office of the Secretary of Defense proposes to add one system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective on October 22, 1993, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Chief, Records Management and Privacy Act Branch, Washington Headquarter Services, Correspondence and Directives, Records Management

Division, Room 5C315, Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg, OSD Privacy Act Officer at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) have been published in the **Federal Register** and are available from the address above.

A new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, was submitted on September 9, 1993, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated June 25, 1993 (58 FR 36075, July 2, 1993).

Dated: September 16, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DUSDP 09

SYSTEM NAME:

PERSEREC Export Violations Database.

SYSTEM LOCATION:

Records in the system are located at Defense Personnel Security Research and Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been convicted of violating U.S. export control laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

Extracts of reports, court records, newspaper, magazine, and other open source materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; DODD 5210.79, Defense Personnel Security Research and Education Center; and ASD(C3I) July 20, 1993 memo, Subject: Exemption from DOD Directive 5200.27.

PURPOSE(S):

To analyze factors which may contribute to acts of illegal technology transfer in violation of U.S. export controls and to assemble a body of knowledge useful for improving security procedures. This information will permit examination of trends in illegal technology transfer since 1981 and help identify personal and situational variables of interest to policy makers and others concerned with counteracting export control violations. Aggregate statistics will be reported in a technical report. The report will include some vignettes of the more famous cases, using the individual's name, based on material found in open sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper, computer and computer output products, and in microform.

RETRIEVABILITY:

Records are retrieved by individual's name.

SAFEGUARDS:

Records are stored under lock and key in secure containers, and in a computer system with intrusion safeguards.

RETENTION AND DISPOSAL:

Analyses and research reports are permanent and will be transferred to the National Archives after 25 years; database information will be retained for five years or until no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Personnel Security Research and Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to Director, Defense Personnel Security Research and Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

The inquiry should include full name.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address a written request to Director, Defense Personnel Security Research and Education Center, 99 Pacific Street, Building 455E, Monterey, CA 93940–2481.

The inquiry must include full name.

CONTESTING RECORD PROCEDURES:

OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Justice Department Export Control Cases listing, newspaper and magazine articles and other open source documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 93–23123 Filed 9–21–93; 8:45 am]

BILLING CODE 5000–04–F

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program Between the Department of the Treasury and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Proposed computer matching program between the Department of the Treasury and the Defense Manpower Data Center of the Department of Defense (DoD).

SUMMARY: DMDC, as the matching agency under the Privacy Act of 1974, as amended, (5 U.S.C. 552a), is hereby giving constructive notice in lieu of direct notice to the record subjects of a proposed computer matching program between the Department of the Treasury and DMDC that their records are being matched by computer. The record subjects are delinquent debtors of the Bureau of the Public Debt, Department of the Treasury, who are current or former Federal employees or military members receiving Federal salary or benefit payments and indebted and delinquent in their payment of debts owed to the United States Government under certain programs administered by the Bureau of the Public Debt so as to permit the Bureau of Public Debt to pursue and collect the debt by voluntary repayment or by administrative or salary

offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective October 22, 1993, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the Department of the Treasury and DMDC have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection from defaulters of obligations held by the Bureau of Public Debt under the Debt Collection Act of 1982. The match will yield the identity and location of the debtors within the Federal government so that the Bureau can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between the Department of the Treasury and DMDC is available to the public upon request. Requests should be submitted to the address caption above or to the Debt Collection Officer, Bureau of Public Debt, Department of the Treasury, Washington, DC 20239–0001.

Set forth below is a public notice of the establishment of the computer matching program required by paragraph (e)(12) of the Privacy Act.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on September 9, 1993, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated June 25, 1993 (58 FR 36075, July 2, 1993). This matching program is subject to review by OMB and Congress and shall not become effective until that review period of 30 days has elapsed.

Dated: September 16, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Computer Matching Program between the Bureau of Public Debt, Department of the Treasury, and the Defense Manpower Data Center of the Department of Defense for Debt Collection

A. *Participating agencies:* Participants in this computer matching program are the Bureau of Public Debt, Department of the Treasury and the Defense Manpower Data Center (DMDC), Department of Defense (DoD). The Bureau of Public Debt is the source agency, i.e., the agency disclosing the records for the purpose of the match. DMDC is the specific recipient or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of the match is to identify and locate the Bureau's delinquent debtors who are current or former Federal employees or military members receiving any Federal salary or benefit payments and indebted and delinquent in their repayment of debts owed to the United States Government under certain programs administered by the Bureau of Public Debt so as to permit the Bureau to pursue and collect the debt by voluntary repayments or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716 – 3718 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, Assistant Secretaries of Defense, Appointment Powers and Duties; Section 206 of Executive Order 11222; 4 CFR Ch. II, Federal Claims Collection Standards (General Accounting Office - Department of Justice); 5 CFR 550.1101 – 550.1108, Collection by Offset from Indebted Government Employees (OPM); 31 CFR part 5, subparts B and D (Treasury).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. The Bureau of Public Debt will use the record systems identified as Treasury/BPD.002, entitled "United States Savings Type Securities," last published in the **Federal Register** April 17, 1992, at 57 FR 14123. Treasury/BPD.003, entitled "United States Securities (Other than Savings Type Securities)" last published in the **Federal Register** April 17, 1992, at 57 FR 14125; and Treasury/DO.002, entitled "Treasury Integrated Management Information System (TIMIS)," last published in the **Federal Register** April 17, 1992, at 57 FR 13903.

2. DMDC will use the record system identified as S322.11 DMDC, entitled "Federal Creditor Agency Debt Collection Data Base," last published in the **Federal Register** on February 22, 1993, at 58 FR 10875.

The categories of records in the Treasury record systems are delinquent debtors. The categories of records in the DoD system consists of employment records of active and retired military members, including the Reserve and Guard, and the OPM government-wide Federal active and retired civilian records. Both record systems contain an appropriate routine use disclosure provision required by the Privacy Act permitting the disclosure of the affected personal information between the Department of the Treasury and DoD. The routine uses are compatible with the purpose for collecting the information and establishing and maintaining the record systems.

E. *Description of computer matching program:* A magnetic computer tape provided by the Bureau will contain data elements of the debtor's name, SSN; internal account number and total amount owed on approximately 3,500 delinquent debtors. The DMDC computer database file contains approximately 10 million records of active duty and retired military members, including the Reserve and the Guard, and the OPM government-wide Federal civilian records of current and retired Federal employees. DMDC will

match the SSN on the Bureau's tape by computer against the DMDC database. Matching records, hits based on SSNs, will produce data elements of the individual's name, SSN, service or agency, and current work or home address.

F. *Individual notice and opportunity to contest:* Due process procedures will be provided by the Bureau to those individuals matched (hits) consisting of the Bureau's verification of debt; 30–day written notice to the debtor explaining the debtor's rights; provision for debtor to examine and copy the agency's documentation of the debt; provision for debtor to seek the Bureau's review of the debt (or in the case of the salary offset provision, opportunity for a hearing before an individual who is not under the supervision or control of the agency); and opportunity for the individual to enter into a written agreement satisfactory to the Bureau for repayment. Only when all of the steps have been taken will the Bureau disclose, pursuant to a routine use, to effect an administrative or salary offset. Unless the individual notifies the Bureau otherwise within 30 days from the date of the notice, the Bureau will conclude that the data provided to the individual is correct and will take the next necessary action to recoup the debt. Failure to respond to the notice will be construed as to the correctness of the notice and justification for taking the next step to collect the debt under the law.

G. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated on an annual basis, unless OMB or the Treasury Department request a match twice a year. Under no circumstances shall the matching program be implemented before this 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between the Department of the Treasury and DoD, the matching program will be in effect and continue for 18 months with an option to extend for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

H. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 93–23126 Filed 09–21–93; 8:45 am]

BILLING CODE 5000–04–F

Privacy Act of 1974; Notice to Add a System of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Logistics Agency proposes to add a record system to its inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on October 22, 1993, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Administrative Management Branch, Planning and Resource Management Division, Defense Logistics Agency, Room 5A120, Cameron Station, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 617–7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on September 9, 1993, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated June 25, 1993 (58 FR 36075, July 2, 1993).

Dated: September 16, 1993.

L. M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

S600.20 MMDI

SYSTEM NAME:

Firefighter/Emergency Medical Technician (EMT) Records.

SYSTEM LOCATION:

Records are maintained by the heads of the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

In addition, records are maintained at DDRW-Sharpe Facility, Building 135, PO Box 960001, Stockton, CA 95296–0731, and DDRW-Tracy Facility, Building 234, PO Box 960001, Stockton, CA 95296–0731.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals assigned firefighting and emergency medical technician duties within DLA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain the individual's name, Social Security Number, education and training data, professional certifications, home address and telephone number, emergency notification data, religion, and driver's license number and expiration date.

In addition, the file contains personal health information such as physical limitations, allergies, medications, height, weight, blood type, need for eye glasses or contact lenses, tobacco use, and health insurance data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 302(b)(1), Delegation of authority; 10 U.S.C. 136, Assistant Secretaries of Defense; E.O. 9397; and Department of Defense Instruction 6055.6, Department of Defense Fire Protection Program.

PURPOSE(S):

The file is used to in managing the DLA fire protection program and to provide data concerning the professional qualifications, training requirements, and health and readiness of DLA firefighters and emergency medical technicians.

File is also used for identification and emergency notification in case of accident or casualty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To local fire departments for training or assistance in firefighting operations.

To local hospitals and medical personnel for emergency treatment in case of accident or casualty.

To Federal and nonfederal schools, academies, and similar institutions for training or certification purposes.

To the General Services Administration and the U. S. Departments of Interior and Agriculture when responding to forest, acreage, or building fires or emergencies on Federally owned or controlled property.

To the Environmental Protection Agency in situations involving toxic or hazardous materials.

To local, state, and Federal disaster relief agencies for mutual aid.

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and computerized form.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number, employee number, or station number.

SAFEGUARDS:

Records are accessed by custodian of the records or by persons responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms and are controlled by personnel screening and computer software.

RETENTION AND DISPOSAL:

Data is maintained in the system until superseded or no longer needed. Records are destroyed 30 days after termination of employment.

SYSTEM MANAGER(S) AND ADDRESS:

Heads of the DDRW-Sharpe Facility, Building 135, PO Box 960001, Stockton, CA 95296–0731, and DDRW-Tracy Facility, Building 234, PO Box 960001, Stockton, CA 95296–0731, and the heads of the DLA Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is provided by the record subject, training and educational institutions, and medical personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 93–23125 Filed 9–21–93; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER93–946–000, et al.]

Northeast Utilities Service Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 16, 1993.

Take notice that the following filings have been made with the Commission:

1. Northeast Utilities Service Co.

[Docket No. ER93–946–000]

Take notice that on September 13, 1993, Northeast Utilities Service Company (NUSCO) on behalf of the Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO), and Public Service Company of New Hampshire (PSNH) tendered for filing a letter agreement that amended their sales agreement with Long Island Lighting Company (LILCO).

NUSCO states that a copy of this information has been mailed to LILCO.

NUSCO requests that the Commission waive its regulations to the extent necessary.

Comment date: September 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Portland General Electric Co.

[Docket No. ER93–945–000]

Take notice that on September 13, 1993, Portland General Electric Company (PGE) tendered for filing . 1993–94 Operating Procedures relating to service under the Pacific Northwest Coordination Agreement (PNCA).

Copies of this filing have been served on the parties to the PNCA.

Comment date: September 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Philadelphia Electric Co.

[Docket No. ER93–947–000]

Take notice that on September 13, 1993, Philadelphia Electric Company (PE) tendered for filing as an initial Rate Schedule a Transmission Service Contract, including certain interconnection and maintenance provisions, between Montenay Montgomery Limited Partnership (MMLP) and PE dated as of April 28, 1993. The contract sets forth the terms under which PE will transmit electric output from MMLP's generating facility located in Plymouth Township, Pennsylvania, to Public Service Electric and Gas Company (PSE&G) in New Jersey.

PE requests that the Commission allow this initial Rate Schedule to become effective 60 days after its filing.

PE states that a copy of this filing has been served by mail upon MMLP, the Pennsylvania Public Utility Commission, the New Jersey Board of Regulatory Commissioners, and PSE&G.

Comment date: September 30, 1993, in accordance with Standard Paragraph E end of this notice.

4. Niagara Mohawk Power Corp.

[Docket No. ER93–944–000]

Take notice that on September 13, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Consolidated Edison Company of New York, Inc. (Con Edison), dated August 31, 1993 providing for certain transmission services to each other.

An effective date of November 10, 1993 is proposed.

Copies of this filing were served upon Con Edison and the New York State Public Service Commission.

Comment date: September 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Carolina Power & Light Co.

[Docket No. ER93–949–000]

Take notice that on September 13, 1993, Carolina Power & Light Company tendered for filing with the Commission a contract amendment to a Rate Schedule contained in CP&L's Interconnection Agreement with Yadkin, Inc., dated June 1, 1961, as amended (CP&L Rate Schedule FERC No. 46). This contract amendment has been filed for the purpose of adding Service Schedule C–1993, Economy Interchange the purpose of which is to allow the parties to participate in economy energy transactions.

A copy of this filing has been sent to the affected utility, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: September 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. The Cincinnati Gas & Electric Co.

[Docket No. ER93–948–000]

Take notice that on September 13, 1993, The Cincinnati Gas and Electric Company (CG&E), tendered for filing a Modification which would extend the term of a Short Term Agreement (Agreement) with the City of Hamilton, Ohio. During the term of the Agreement, Hamilton may reserve up to but not exceeding 30 MW of Service. Service shall be either the provision of (i) short term power and associated energy to be generated by CG&E, or (ii) short term point-to-point transmission service for power and energy to be purchased by Hamilton, from a specified third-party source, or any combination thereof not exceeding 30 MW in total.

The reason stated by CG&E for the Modification is to meet the request and special needs of Hamilton, through December 31, 1993.

Copies of the filing were served upon the City of Hamilton, Ohio and the Public Utilities Commission of Ohio.

Comment date: September 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. UtiliCorp United Inc.

[Docket No. ES93–50–000]

Take notice that on September 1, 1993, UtiliCorp United Inc. filed an application under § 204 of the Federal Power Act seeking authorization to issue not more than $400 million, in the aggregate at any one time outstanding, of unsecured notes and other evidences of indebtedness on or before December 31, 1995, with a final maturity date no later than December 31, 1996. Such obligations would be used exclusively to provide financing for future utility property acquisitions prior to the placement of permanent financings.

Comment date: September 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. UtiliCorp United Inc.

[Docket No. ES93–49–000]

Take notice that on September 1, 1993, UtiliCorp United Inc. filed an application under § 204 of the Federal Power Act seeking authorization to issue not more than $250 million, in the aggregate at any one time outstanding, of unsecured notes and other evidences of indebtedness, including financial guarantees of subsidiaries' or affiliates' securities, on or before December 31, 1995, with a final maturity date no later than December 31, 1996.

Comment date: September 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. PSI Energy, Inc.

[Docket No. ER93–943–000]

Take notice that on September 13, 1993, PSI Energy, Inc. (PSI) tendered for filing the Transmission and Local Facilities Agreement Calendar Year 1992 Reconciliation. Per the Commission's Order, issued April 22, 1993, in Docket No. EL93–2–000, this agreement and the annual reconciliations were considered jurisdictional.

PSI notes that it also filed a Motion for Clarification, Alternative Request for Rehearing and Motion for Extension of Time related to the April 22nd order in the above referenced docket on May 24, 1993. In addition, PSI made a compliance filing on June 7, 1993 per the commission's Order in the above referenced docket, issued April 22, 1993.

Copies of the filing were served on Wabash Valley Power Association, Inc., the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Comment date: September 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. New York State Electric & Gas Corp.

[Docket No. ER93–942–000]

Take notice that on September 10, 1993, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with Burlington Electric Department (BED). The agreement provides for the sale of up to 10 megawatts of electric energy by NYSEG to BED as the parties mutually agree. Service under this agreement is scheduled to commence on the later of September 13, 1993 or the day after NYSEG files the agreement with the Federal Energy Regulatory Commission and to continue until November 30, 1993. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission, the Vermont Public Service Board and BED.

Comment date: September 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–23135 Filed 9–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER93–765–000, et al.]

Potomac Edison Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 15, 1993.

Take notice that the following filings have been made with the Commission:

1. The Potomac Edison Co.

[Docket No. ER93–765–000]

Take notice that on September 13, 1993, tendered for filing a Supplement No. 2 to proposed Changes in its FERC Electric Tariff, First Revised Volume No. 3. This Supplement is filed to modify previous adjustments to the settlement cost of service study and to effect a tax

adjustment agreed to by all affected Customers. The proposed effective date for Supplement No. 2 is September 15, 1993.

Copies of the filing were served upon the jurisdictional customers and state regulatory commissions.

Comment date: September 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corp.

[Docket No. ER93-937-000]

Take notice that on September 9, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Commission a signed agreement between Niagara Mohawk and Vermont Public Power Supply Authority (VPPSA) and its representatives; The Town of Hardwick Electric Department, The Village of Hyde Park Electric Department, The Village of Ludlow Electric Light Department, The Village of Stowe Water & Light Department and The Village of Swanton Electric Department for sales of system capacity and energy.

A copy of this filing has been served upon VPPSA and the New York State Public Service Commission.

Comment date: September 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. The Washington Water Power Co.

[Docket No. ER93-941-000]

Take notice that on September 10, 1993, The Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 amendments to the Pacific Northwest Coordination Agreement. WWP requests that the Commission accept the amendments for filing, effective as of the date of the amendments.

A copy of the filing was served upon Public Utility District No. 1 of Douglas County Public Utility District No. 1 of Douglas County, Public Utility District No. 2 of Grant County, Public Utility District No. 1 of Chelan County and the Bonneville Power Administration.

Comment date: September 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Midwest Power Systems, Inc.

[Docket No. ER93-560-000]

Take notice that on September 9, 1993, Midwest Power Systems, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: September 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-23134 Filed 9-21-93; 8:45 am]

BILLING CODE 6717-01-M

Senior Executive Service; Performance Review Board

AGENCY: U.S. Department of Energy.

ACTION: SES Performance Review Board Standing Register.

SUMMARY: This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

EFFECTIVE DATE: These appointments are effective as of September 30, 1993.

Abruzzo, Matthew T.
Acharya, Sarbeswar
Ackerly, Lawrence R.
Adams, William D.
Adler, Ira M.
Ailshie, Stephen A.
Alessi, Victor E.
Allen, Grover L.
Amick, Richard C.
Andersen, Arthur T.
Anderson, Phyllis L.
Annan, Robert H.
Anttonen, John H.
Aquilina, Nick C.
Baca, Frank A.
Bacher, Stephen Eugene
Baker, Kenneth E.
Bamberger, Craig S.
Barber, Robert W.
Barker, Jr., William L.
Barrett, Lake H.
Barrow, Raymond S.
Bartholomew, John W.
Bartley, William C.
Baublitz, John E.
Bean, Earl W.
Bethtel, Thomas F.
Beckett, Thomas H.
Beckner, Everet H.
Beecy, David J.
Bell, George E.
Bellows, Jerry L.
Benedict, George W.
Bennett, John W.
Bergholz, Jr., Warren E.
Bernard, Peter A.
Berniklau, Vladimir V.
Bernsdorf, William B.
Berube, Raymond P.
Bickel, James E.
Bielan, Douglas J.
Bingham, Carleton D.
Bishop, Yvonne M.
Bixby, Willis W.
Black, Richard L.
Blackwood, Edward B.
Borgstrom, Carol M.
Borgstrom, Howard G.
Bowman, Gerald C.
Boyd, Gerald G.
Bradley, Jr., Theron M.
Bresee, James C.
Breznay, George
Brice, James F.
Brodman, John R.
Brogan, John J.
Brolin, Edson C.
Brown, Frederick R.
Brown, Jr., Charles H.
Brown, Richard W.
Brush, Peter N.
Byrant, McKinley E.
Buffum, Elizabeth
Burns, Jr., Thomas F.
Canter, Howard R.
Carabetta, Ralph A.
Cardinali, Henry A.
Carey, Jr., Edwin F.
Carlson, Lynda T.
Caruso, Guy F.
Chapman, Naomi R.
Chappell, Gerald F.
Chaput, Ernest S.
Chernock, Warren P.
Christensen, William J.
Christopher, Robert K.
Chun, Sun W.
Church, Bruce W.
Cipriano, Joseph R.
Claflin, Alan B.
Clagett, William H., IV
Clark, Charles F.
Clark, John R.
Clausen, Max Jon
Cole, George F., III
Coleman, Howard S.
Coleman, James S.
Combs, Marshall O.
Cone, Ronald E.
Conley, Michael W.
Constant, Richard E.
Cook, John S.
Cornwell, Thomas F.
Costello, William J.
Cote, Joel S.
Cowan, Stephen P.
Crandall, David H.
Crawford, Timothy S.
Crowe, Richard C.
Croxton, Charles L.
Culpepper, James W.
Cumesty, Edward G.
Curtis, David I.
Curtis, James H.
Cygelman, Andre I.

Dagostino, Thomas S.
Davies, James D.
Davies, Nelia A.
Davis, James T.
Decker, James F.
DeGrasse, Jr., Robert W.
Dehanas, Thomas W.
Demaire, Judith M.
Dennison, William J.
Der, Victor K.
Dials, George E.
Diaz, Jr., Romulo L.
Diebold, Robert E.
Dienes, Nicholas S.
Difiglio, Carmen
Dirks, Timothy M.
Divone, Louis V.
Doherty, Donald P.
Domagala, Martin J.
Dorsey, William A.
Dreyfus, Daniel A.
Durnan, Denis D.
Edmondson, John J.
Egli, Richard
Engel, Walter P.
Eppelmann, Andrew D.
Erb, Donald E.
Esvelt, Terence G.
Evans, Thomas W.
Fausett, Stephen A.
Feibus, Howard
Feider, James C.
Fiore, James J
Fiori, Mario P
Fitzgerald, Jr., Joseph E
Fleming, Gene K
Ford, James L
Ford, John A
Forrister, Derrick L.
Forsythe, Larry A
Foster, Thomas L
Frank, Clyde William
Franklin, John R
Frei, Mark W
Friedman, Gregory H
Frye, Keith N
Furiga, Richard D
Fygi, Eric J
Gaddis, Carl K
Garson, Henry K
Gauldin, Michael
Gebus, George R
Geidl, John C
Geisbush, Jon C
Gertz, Carl P
Gibbs, Garry W
Gibson, Jr., William C
Gicale, Jr., Louis J.
Gilbert, Francis C
Gilbertson, Mark A.
Goldenberg, Neal
Goldenberg, Ralph D
Goldman, David Tobias
Goldsmith, Robert
Gollomp, Lawrence A
Graham, A. Diane
Greeves, Robert E
Greiner, Lloyd M.
Grewis, Eugene G
Griffith, Jerry D
Gruenspecht, Howard K
Guidice, Carl W
Guidice, Stephen J
Guyer, Arthur E
Haberman, Norton
Hacskaylo, Michael S.
Hahn, Richard D
Hale, Douglas R
Hall, James C
Halsted, Jr., Charles G
Hamer Jr, David L
Hamric, Jon P
Hanessian, Souren
Hanson, Ronald D
Hardin, Michael G
Hardy, Randall W.
Harris, Jessie J
Hartman, James K
Harvey, Gordon W
Haspel, Abraham E.
Hawkins, Francis C
Haymond, George R
Heath, Charles C
Heenan, Thomas F
Heffernan, James H
Henderson, Lynwood H
Hendrie, David L
Hensley, Jr., Willie F
Hess, Wilmot N.
Heuser, Roger K
Hickey, Sue F
Hickok, Steven G
Hine, Thomas A.
Hirahara, James S
Hoffman, Allan R.
Hogan, Danny A
Hopkins, T. J.
Howell, Jerry C
Hunt, Arlen E
Hunter, John R
Hunter, Ray A
Hutzler, Mary Jean
Ianniello, Louis C
Inge, Jr., Edwin F
Inlow, Rush O
Isaacs, Thomas H.
Jaffe, Harold
Jamison, Warren L
Jewett, David S
Jicha, Jr., John J
Johnson, Milton D
Johnson, Owen B
Johnston, Marc
Jones, C. Rick
Jones, David A
Jones, James L
Jordy, George Y
Joseph, Antionette Grayso
Juckett, Donald A.
Karol, Michael S
Kaspar, Paul W.
Katz, Maurice J
Keating, John J
Keheley, Wayne E
Keliher, John G
Kennedy, John P
Kessler, Roland R
Kight, Gene H
Kilgore, Webster C
Kilpatrick, Michael A.
Kingsbury, Robert L
Klein, Keith A
Knuth, Donald F.
Koontz, Max A
Krenz, Dennis L
Kuznick, Susan Klein
Lagrone, Joe B
Landers, James C
Lane, Anthony R
Lanes, Stephen J
Langan, William T
Langenfeld, Cherri J.
Larson, Jr., Victor R
Laughon, Kermit O.
Lavin, Ann W.
Leclaire, David B
Lee, Wayne R
Lewis, Jr., Howard E
Lewis, Lenora J
Lewis, Roger A.
Lien, Stephen C.T.
Lightner, Ralph G
Lique, E Diane W
Little, Leo E
Longton, Joseph N
Loose, Ronald R
Lorenz, Milton C
Lowe, Owen W.
Lynch, Oliver D. T. Jr.
Lytle, Jill Ellman
Magruder, James K
Maher, Joseph R
Mangeno, James J
Mann, Sally A
Mann, Thomas O
Manning, William F
Marchese, Andrew R.
Marianelli, Robert S
Marlay, Robert C
Maroldo, James H
Marquess, Paul T
Marquez, Richard A
Martin, Charles F
Mason, Charles C.
Maupin, Gary T
Maxey, Kenneth G.
Mayhew, Delmar D
McCallum, Edward J
McAllister, Jr., John A.
McCammon, Helen M
McCoy, Frank R. III
McFadden, Jr., George L.
McGoff, David J
McIntyre, Donald D
Michelsen, Stephen J
Miller, Clarence L
Millhone, John P
Milner, Ronald A
Miranda, Leonel V.
Misso, Paul M.
Mock, John E
Moore, Kenneth G
Morris, Marcia L
Mournighan, Stephen D
Mravca, Andrew E
Murphy, Robert E
Nealy, Carson L.
Neilsen, Finn K
Nelson, David B
Nelson, Jr., Robert M
Nelson, Rodney R
Nettles, Jr, John J.
Newhouse, Alan R
Newman, David G
Nichols, Clayton R
Nicks, James R
Nolan, Elizabeth A.
Nulton, John D
O'Brien, Jr., Robert A
O'Fallon, John R
Oliver, Lawrence R
Olson, Gary C
Parnes, Sanford J.
Patrinos, Aristides A.
Patterson, II, John R
Patton, Gloria S
Paucke, Alvin H.
Pearman, Jr., Donald W

Pelletier, Raymond
Perin, Stephen G
Peters, Franklin G
Petersen, Jimmie
Pettengill, Harry J
Pettis, Lawrence A
Pitrolo, Augustine A
Plaisance, Jr., Paul J
Podonsky, Glenn S
Pollock, III, Walter E.
Powers, James G.
Price, Jr., Robert S
Pride, E Eugene
Prudom, Gerald H.
Przybylek, Charles S
Pye, David B
Rabben, Robert G
Rader, Robert G
Raiken, Howard H
Ramey, Prince M
Reddick, William C
Redenius, Richard D.
Reicher, Dan W.
Reid, James E
Repke, Wolfgang C
Resendez, Ignacio
Rhoades, Daniel R
Richardson, Steven D.
Riggs, John A.
Roberts, Michael
Robertson, John S
Rock, Bernard J
Rodeheaver, Thomas N
Rodekohr, Mark E
Rollow, Thomas A
Rooney, John M
Rosen, Sol
Rosenzweig, Richard
Rosselli, Robert M
Rousso, Samuel NMI
Rozzi, Dolores L
Rudins, George
Rudolph, John E
Rudy, Gregory P.
Rumsey, Terry Cornwell
Sabre, Randolph E
Salm, Philip E
Saltzman, Jerome D.
Salvador, Louis A
Samber, Martin
San Martin, Robert L
Scarborough, Muriel L
Scheetz, Karl G
Schmitt, Carl H
Schmitt, Eugene C
Schmitt, William A
Schmoker, Daniel N
Schnapp, Robert
Schneider, Sandra L
Schueler, Jr., Dorner T
Scott, David G
Scott, Randal
Season, Jr., Harry T
Sewell, Philip G
Shafer, John M
Shelor, Dwight E
Shirley, Sr., John W
Siebert, Jr., Arlie B
Siegel, Jack S
Sienkiewicz, Jr, E W
Silverman, Mark N.
Simon, Robert M.
Simpson, Charles Kyle
Singer, Marvin I
Sitzer, Scott B
Sjoblom, Glen L.
Sjostrom, Leonard C
Smedley, Elizabeth E
Smith, David A
Smith, Linda M
Smithwick, Grover A
Sohinki, Stephen M.
Spence, David R
Spigal, Harvard P
Stadler, Silas D.
Stagliano, Vito A
Stallman, Robert M.
Stark, Richard M
Stello, Jr., Victor
Stephens, Richard E
Stevenson, F Dee
Stewart, John B
Stewart, Jr., Frank M
Stewart, Jr., Jake W.
Stone, Philip M
Stout, James A
Strakey, Jr Joseph P
Streb, Alan J
Stumbaugh, David C
Sulak, Stanley R
Swink, Denise F
Sye, Linda G.
Taboas, Anibal L
Taillie, Dennis K
Taimi, Kathleen I.
Tavares, Antonio F.
Teclaw, Charles E.
Tedrow, Richard T
Thomas, Iran L
Thompson, Jerry F
Tierney, Charles R
Tillman, Luther J
Torkos, Thomas M
Tseng, John C
Tucker, William E
Turi, James A
Turner, James M
Tuttle, III, Edward H
Twining, Bruce G
Upchurch, Tony Coleman
Uthus, Douglas B
Vaeth, Terry A
Vagts, Kenneth A
Voelker, Gary E
Volpe, Frederick J
Wagenhoffer, Thomas V
Wagoner, John D
Walsh, Jeremiah E Jr
Walsh, Robert J
Walter, Donald K
Walton, Howard L
Warnick, Walter L
Weiner, Lawrence A.
Westerbeck, Gerald W
White, James K
Whiteman, Albert E
Whitfield, Roger P
Wieber, Paul R
Wieker, Thomas L
Wilcynski, John M
Wilken, Daniel H.
Williams, Edward R
Williams, Mark H.
Williamson, Richard H
Willis, John W
Wilmot, Edwin L
Wilson, John S
Wisenbaker, Jr., William
Witherill, Vern F
Wood, Robert W
Wooley, John C

Issued in Washington, D.C.

Linda G. Sye,

Acting Assistant Secretary for Human Resources and Administration.

[FR Doc. 93–23240 Filed 9–21–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP93–3–000]

Arkla Energy Resources, A Division of Arkla, Inc.; Informal Settlement Conference

September 16, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on September 22, 1993, at 1 p.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Arnold H. Meltz (202) 208–2161 or Russell B. Mamone at (202) 208–0744.

Lois D. Cashell,

Secretary.

[FR Doc. 93–23133 Filed 9–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–719–000]

El Paso Natural Gas Co.; Application

September 16, 1993.

Take notice that on September 13, 1993, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP93–719–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon five injection/withdrawal well and the associated well-tie pipe at the Washington Ranch Storage Facility in Eddy County, New Mexico, all as more fully set forth in the application on file with the Commission and open to public inspection.

El Paso states that the storage facility has been in operation since 1982. The subject wells pose future operational difficulties including groundwater contamination, minimal injection/withdrawal capability, and excessive water production. El Paso proposes to

plug and permanently abandon the W.I. Federal Nos. 6, 8, 12, and 18 Wells. El Paso states that it informed the Commission by letter on July 9, 1993, that it plugged the W.I. Federal Well No. 2 to prevent serious damage. The abandonment of the five wells will yield a reduction of only 7 MMcf/d in deliverability from the storage facility. The capacity of the facility to withdraw at an inventory level of 31 Bcf is about 210 MMcf/d. The loss of 7 MMcf/d would not affect El Paso's operations. It is asserted that the cost to rework the five wells is about $690,000 versus $150,000 which is the cost to plug and abandon the subject wells.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 7, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, of if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-23166 Filed 9-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-703-000]

K N Interstate Transmission Co.; Request Under Blanket Authorization

September 16, 1993.

Take notice that on September 9, 1993, K N Interstate Gas Transmission Company (KNI), P.O. Box 281304 Lakewood Colorado 80228, filed in Docket No. CP93-703-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate a new delivery tap, under KNI's blanket certificate issued in Docket No. CP83-140-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

KNI states that the proposed delivery point would be located on KNI's main transmission system in Holt County, Nebraska and would facilitate the delivery of natural gas to K N for distribution to new direct retail customers.

KNI states further that the design capacity of the proposed point would be 12,000 Mcf per day and the estimated cost of construction is $500.00.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-23132 Filed 9-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-717-000]

Tennessee Gas Pipeline Co.; Request Under Blanket Authorization

September 16, 1993.

Take notice that on September 13, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP93-717-000 a request pursuant to § 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to install and operate a delivery point in Plaquemines Parish, Louisiana, on an existing right-of-way, under Tennessee's blanket certificate issued in Docket No. CP82-413-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee is proposing to construct, operate, and maintain a two-inch tie-in assembly in Plaquemines Parish, Louisiana, to function as a delivery point to Vantage Point Operating Company (Vantage Point). It is stated that Tennessee entered into a gas transportation agreement with Tenngasco Corporation (Tenngasco), a producer, pursuant to Tennessee's blanket authority in Docket No. CP87-115. It is further stated that the transportation agreement obligated Tennessee to deliver up to 500 Dt of natural gas per day, on an interruptible basis, under Tennessee's Rate Schedule IT to Vantage Point for gas lift purposes.

The proposal states the Vantage Point will install, operate and maintain the interconnecting piping and measurement facilities. Tennessee estimates that its construction cost for its portion of this project to be $3,983, which Tennessee states will be reimbursed by Vantage Point.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-23165 Filed 9-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA92-3-001]

Western Resources; Filing

September 15, 1993.

Take notice that on February 11, 1993, Western Resources tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 28, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-23131 Filed 9-21-93; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 93-59-NG]

Bonus Gas Processors, Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Bonus Gas Processors, Inc. authorization to import up to 220 Bcf and to export up to 220 Bcf of natural gas from and to Canada over a two-year term beginning on the date of the first delivery of either imports or exports.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 7, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-23239 Filed 9-21-93; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4733-9]

Workshop on Benchmark Dose Methodology

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA), under a cooperative agreement with the International Life Sciences Institute/Risk Science Institute (ILSI/RSI), and in conjunction with the American Industrial Health Council (AIHC), is holding a Workshop on Benchmark Dose Methodology.

DATES: The workshop will be held September 28-30, 1993, and will begin at 8:30 a.m. on Tuesday, September 28, and will recess at approximately 3 p.m., Thursday, September 30.

ADDRESSES: The ILSI/RSI, under a cooperative agreement with EPA, has organized and is providing logistical support for the workshop. The workshop will be held at the Holiday Inn/Fair Oaks, 11787 Lee-Jackson Highway, Fairfax, Virginia 22033. Members of the public may attend as observers, however, space is limited. Members of the public wishing to register to attend the meeting may phone Diane Dalisera at ILSI/RSI at 202-659-3306 between 9 a.m. and 4 p.m. Eastern Daylight Time. Observers will be given an opportunity to make brief oral comments during the workshop. Members of the public may also submit written comments and other materials relevant to the topic to: Dr. Hugh Spitzer, ILSI/Risk Science Institute, 1126 Sixteenth Street, NW., Washington, DC 20036; facsimile 202-659-8654. Copies of written comments will be available at the meeting site.

FOR FURTHER INFORMATION CONTACT: Dr. Carole Kimmel, Human Health Assessment Group, Office of Health and Environmental Assessment (RD-689), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone 202-260-7331; facsimile 202-260-8719.

SUPPLEMENTARY INFORMATION: The EPA currently derives reference doses (RfDs) and reference concentrations (RfCs) for non-cancer endpoints on the assumption that there exists a threshold for adverse non-cancer health effects. Generally, the method applies uncertainty factors to an exposure level which has been observed to cause no effect in animals. Over the past few years, attention has become focused on better utilization of the toxicological information through use of quantitative dose-response models. One method in particular, the benchmark dose concept, has been the subject of much discussion and research. The objectives of the workshop are to: (1) Assess the methodology through a case study approach; (2) assess the impact of benchmark methodology on the calculation of RfDs and RfCs; (3) determine which endpoints are amenable to the benchmark approach; and (4) identify issues important for implementing its use in risk assessment for non-cancer endpoints. The meeting will begin with a series of talks. Following these plenary talks, the invited participants and observers will be divided into subgroups charged with discussing and preparing answers to a series of questions on the four objectives. A report will be developed after the workshop.

Dated: September 16, 1993.

Gary J. Foley,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93-23201 Filed 9-21-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4735-6]

Clean Air Scientific Advisory Committee; Public Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Clean Air Scientific Advisory Committee will hold a conference call from 1 p.m. until 4 p.m. on October 1, 1993 and on October 21, 1993 from 1 p.m. until 4 p.m.

To access the conference call on October 1, 1993, dial (202) 260-4235. To access the conference call on October 21, 1993, dial (202) 260-3624.

On the first call, the Committee will receive briefings from Agency personnel on the requested retrospective analysis of air quality models required by the Clean Air Act Amendments of 1990. During the subsequent call, the Committee will review appropriate documents and provide comments.

The conference call lines are open to the public, but the number of lines is limited. Callers will be able to access the conference until all lines are in use.

Any member of the public wishing further background information on this call should contact, Mr. Jim DeMocker of EPA's Office of Air and Radiation at (202) 260–8980. Any member of the public who wishes to submit oral or written comments should contact the Designated Federal Official, Mr. Randall C. Bond, Science Advisory Board (A–101), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; telephone (202) 260–8414; FAX (202) 260–1889.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 93–23306 Filed 9–21–93; 8:45 am]

BILLING CODE 6560–50–M

[PP 2G4122/T651; FRL 4642–4]

Monsanto; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the combined residues of the herbicide (3-pyridinecarboxylic acid, 2-(difluoromethyl)-5-(4,5-dihydro-2-thiazolyl)-4-(2-methylpropyl)-6-(trifluoromethyl) methyl ester) and its metabolites in or on certain raw agricultural commodities. These temporary tolerances were requested by Monsanto Agricultural Company.

DATES: These temporary tolerances expire July 27, 1995.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–6900.

SUPPLEMENTARY INFORMATION: Monsanto Agricultural Company, 800 North Lindbergh Blvd., St. Louis, MO 63167, has requested in pesticide petition (PP) 2G4122, the establishment of temporary tolerances for the combined residues of the herbicide (3-pyridinecarboxylic acid, 2-(difluoromethyl)-5-(4,5-dihydro-2-thiazolyl)-4-(2-methylpropyl)-6-(trifluoromethyl) methyl ester) and its metabolites determined as 3-pyridinecarboxylic acid, 5-(aminocarbonyl)-2-(difluoromethyl)-4-(2-methylpropyl)-6-trifluromethyl)-, methyl ester and 3-pyridinecarboxylic acid, 2-(difluoromethyl)-4-(2-methylpropyl)-5-[[(2-sulfoethyl)amino] carbonyl)-6-(trifluoromethyl) and expressed as parent equivalents in or on the raw agricultural commodities citrus, whole fruit at 0.05 part per million (ppm); cotton seed at 0.05 ppm and cotton forage at 0.2 ppm.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 524–EUP–75, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active herbicide to be used must not exceed the quantity authorized by the experimental use permit.

2. Monsanto Agricultural Co., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire July 27, 1995. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: September 3, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–22785 Filed 9–21–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66183; FRL 4644–5]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by December 20, 1993, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 33 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000279 NJ–87–0002	Talstar 10WP Insecticide/Miticide	(2-Methyl[1,1'-biphenyl]-3-yl)methyl 3-(2-chloro-3,3,3-trifluoro-1
000279 OH–91–0002	Furadan 15 G Insecticide Nematicide	2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate
000279 TX–83–0001	Furadan 15 G Insecticide-Nematicide	2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate
000352–00362	Dupont Lannate WP Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352–00460	Dupont Technical Rabon Insecticide	2-Chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate
000352 AL–90–0001	Velpar Weed Killer	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine -2,4(1*H*,3*H*)-dione
000352 AL–90–0002	Dupont Velpar L Herbicide	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine -2,4(1*H*,3*H*)-dione
000352 LA–82–0017	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 LA–89–0009	Velpar Weed Killer	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione
000352 LA–89–0010	Dupont Velpar L Herbicide	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine -2,4(1*H*,3*H*)-dione
000352 MS–77–0004	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
000352 MS–85–0003	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 MS–89–0002	Velpar Weed Killer	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione
000352 MS–89–0003	Velpar Weed Killer	3-Cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4(1*H*,3*H*)-dione
000352 PA–82–0003	Du Pont Lannate L Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000464–00356	Sirlene Feed Grade Propylene Glycol	1,2-Propanediol
000802–00507	Lilly's Go West Meal	2,4,6,8-Tetramethyl-1,3,5,7-tetroxocane Sodium fluosilicate
000802–00510	Lilly Go West Slug Pellets	2,4,6,8-Tetramethyl-1,3,5,7-tetroxocane Sodium fluosilicate
001769–00234	National Chemsearch Cimacide	2-Chloro-4,6-bis(ethylamino)-*s*-triazine
001769–00245	National Chemsearch Atomicide	2-Chloro-4,6-bis(ethylamino)-*s*-triazine
004816–00067	Rotenone Solution FK-11	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Rotenone Cube Resins other than rotenone Phenol Sodium phenate
008590–00036	Agway Malathion 5E	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
011292–00003	Whirlpool Emulsion Bowl Cleaner and Disinfectant	Oxalic acid Hydrogen chloride
011556–00015	Co-Ral 1% Cattle Duster	*O,O*-Diethyl *O*-(3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl) phosphorothioate
011556–00017	Co-Ral Cattle Duster	*O,O*-Diethyl *O*-(3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl) phosphorothioate
011556–00019	Co-Ral Cattle Insecticide 5.0% Dust	*O,O*-Diethyl *O*-(3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl) phosphorothioate
011556–00024	Co-Ral Brand of Coumaphos Livestock Duster	*O,O*-Diethyl *O*-(3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl) phosphorothioate
012477–00011	CL-90	Trichloro-*s*-triazinetrione
014802–00005	Algae Clean Out	2-Chloro-4,6-bis(ethylamino)-*s*-triazine
056077–00027	Butoxone Ester	Isooctyl 4-(2,4-dichlorophenoxy)butyrate
056077–00029	Rhodia 2,4-DB Isooctyl Ester Technical	Isooctyl 4-(2,4-dichlorophenoxy)butyrate
056077–00032	Rhodia 2,4-DB Butyl Ester (technical)	Butyl 4-(2,4-dichlorophenoxy)butyrate
062719–00018	Mosquito Fogging Concentrate	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration

should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000279	FMC Corp., ACG Speciality Products, 1735 Market Street, Philadelphia, PA 19103.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000464	Dow Chemical Co., Reg. Compliance/Health & Environmental, 1803 Building, Midland, MI 48674.
000802	Chas H. Lilly Co., 7737 N.E. Killingsworth, Portland, OR 97218.
001769	NCH Corp., 2727 Chemsearch Blvd., Irving, TX 75062.
004816	Roussel UCLAF Corp., 95 Chestnut Ridge Rd., Montvale, NJ 97645.
008590	Agway Inc., c/o Universal Cooperatives Inc., Box 460, Minneapolis, MN 55440.
011292	Chemifax, 11641 Pike St., Santa Fe Springs, CA 90670.
011556	Miles Inc., Animal Health Division, Box 390, Shawnee Mission, KS 66201.
012477	Economy Service & Sales Co., 4252 Whitaker Ave., Philadelphia, PA 19124.
014802	Fritz Chemical Co., Drawer 17040, Dallas, TX 75217.
056077	Cedar Chemical Corp., 5100 Poplar, Suite 2414, Memphis, TN 38137.
062719	DowElanco, Quad IV, 9002 Purdue Rd., Indianapolis, IN 46268.

III. Loss of Active Ingredients

Unless these requests for cancellation are withdrawn, two pesticide active ingredients will not longer appear in any registered products. Those who are concerned about the potential loss of these active ingredients for pesticidal use ar encouraged to work directly with the registrants to explore the possibility of their withdrawing the request for cancellation. These active ingredients are listed in the following Table 3 with the EPA Company Number of their registrants:

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

CAS No.	Chemical Name	EPA Company No.
6753–24–8	Butyl 4-(2,4-dichlorophenoxy)butyrate	056077
16893–85–9	Sodium Fluosilicate	000802

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before December 20, 1993. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1-year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, product registrations.

Dated: September 13, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–23213 Filed 9–21–93; 8:45 am]

BILLING CODE [illegible]

[OPP-190003; FRL-4645-2]

Final Notice for Federal Disposal of 2,4,5-T/Silvex

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of closure of the 2,4,5-T/silvex disposal program.

SUMMARY: This notice announces the closure of EPA's program to accept certain 2,4,5-T/silvex products for disposal. Those individuals still holding eligible pesticide products containing 2,4,5-T or silvex have 60 days from the date of this notice to receive approval and complete shipment of their product to Laidlaw (TES), Inc. in La Porte, Texas. After that date, anyone still holding eligible pesticide products containing 2,4,5-T or silvex will need to arrange disposal of their stocks privately.

DATES: November 22, 1993 is the last date that EPA will accept shipments at Laidlaw (TES), Inc. of 2,4,5-T/silvex products which have been approved for shipment.

FOR FURTHER INFORMATION CONTACT: By mail: Marcia Collins, Disposal and Analysis Section (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (703) 305–5534.

SUPPLEMENTARY INFORMATION:

I. Background

Based on information concerning potential human health risks, the Administrator issued an emergency suspension order under section 6(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) on February 28, 1979, for certain uses of pesticide products containing either 2,4,5-T or silvex prohibiting the continued use, sale, or distribution of a 2,4,5-T or silvex product labeled for the suspended use. By February 11, 1985, all registrations of pesticide products containing 2,4,5-T or silvex were canceled. Those products whose uses were emergency suspended under the emergency suspension order and whose registrations were subsequently canceled became eligible for disposal under section 19 of FIFRA (prior to its amendment in 1988).

In the **Federal Register** of April 8, 1987 (52 FR 11319), EPA announced the procedures for submitting claims for indemnification and disposal. Holders of eligible products received letters of acceptance and guidance packages with handling and shipping instructions. EPA began accepting shipments in December 1988.

Since then, the Agency has accepted approximately 30,000 gallons and 307 tons of suspended and canceled 2,4,5-T and silvex pesticides. These pesticides have been stored at Laidlaw (TES), Inc. in La Porte, Texas, because there was no facility that had obtained a permit under the Resource Conservation and Recovery Act (RCRA) to dispose of these F027 wastes. In late April 1993, a disposal option became available when an incinerator received the first permit in the United States to dispose of these wastes commercially. EPA is now arranging for disposal of the suspended and canceled 2,4,5-T and silvex pesticide products.

II. 2,4,5-T and Silvex Disposal Program End

Individuals still holding eligible pesticides products containing either 2,4,5-T or silvex have until November 22, 1993 to deliver their stocks to Laidlaw (TES). Only approved products will be accepted at Laidlaw (TES).

Holders who have not yet received approval for disposal under FIFRA may submit a request for disposal, but the Agency cannot assure that the requests will be processed in time to meet the 60–day deadline. Therefore, holders are encouraged to contact EPA at the address referenced under **FOR FURTHER INFORMATION CONTACT** if they wish to be considered for this program. Any shipments to Laidlaw (TES) without EPA approval will be rejected.

Holders should be aware that they must bear the cost of shipment to Laidlaw (TES). EPA will bear any storage costs after acceptance at the loading dock at Laidlaw (TES) and the ultimate disposal costs.

Any holder failing to receive EPA's approval on their disposal request and ship their products to Laidlaw (TES) by the 60–day deadline will need to arrange for disposal of their products privately. After EPA completes disposal of any remaining stocks stored at Laidlaw (TES), EPA will have fulfilled its obligation under FIFRA section 19 to safely dispose of suspended and canceled 2,4,5-T and silvex pesticide products.

List of Subjects

Environmental protection, pesticide products.

Dated: September 16, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–23211 Filed 9–21–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

Please note: The Commission has requested emergency review of this item by September 16, 1993, under the provisions of 5 CFR 1320.18.

OMB Number: None
Title: FCC Rate Regulation Impact Survey
Action: New collection
Respondents: Businesses or other for-profit
Frequency of Response: Other: One-time survey
Estimated Annual Burden: 25 responses; 10 hours average burden per response; 250 hours total annual burden
Needs and Uses: Section 623 of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act") required the Commission to establish rules to govern rate regulation of cable services offered by cable systems that are not subject to effective competition. On 4/1/93, the Commission adopted its cable rate regulation Report and Order in MM Docket No. 92–266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, wherein we adopted rules to implement section 623, subscriber rate regulation. On 4/1/93, the Commission adopted a 120-day rate freeze which was subsequently extended until 11/15/93. In connection with these orders, the Commission will conduct a survey on the impact of these new rate regulations. The purpose of this

survey is to determine the effect of our regulations on the rates for regulated cable services since the 9/1/93 effective date. This survey will be sent to the top 25 multiple system operators. They will be required to complete the survey for their 10 largest systems. Surveying the 10 largest systems of the largest 25 multiple service operators will permit a review of rate practices under our regulations of cable operators providing a majority of cable service in the United States. The consequences of not conducting this survey would be to impair our ability to assess whether our rate regulations have been effective.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 93-23247 Filed 9-21-93; 8:45 am]
BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

September 15, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc, 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0219.
Title: Section 90.49(b), Communications standby facilities "Special Eligibility Showing."
Action: Extension of a currently approved collection.
Respondents: Businesses or other for-profit.
Frequency of Response: On occasion reporting requirement.
Estimated Annual Burden: 200 responses; .75 hours average burden per response; 150 hours total annual burden.
Needs and Uses: A communications common carrier normally providing safety-related communication landline circuits may request licensing on private radio service frequencies to be used as standby facilities for carrying these safety-related communications when normal (i.e., common carrier) circuits are inoperative due to circumstances beyond the control of the carrier. Applicants are required to submit information that is used to ensure that the requested facilities are necessary for the protection of life or public property.

OMB Number: 3060-0225.
Title: Section 90.131(b), Amendment or dismissal of applications.
Action: Extension of a currently approved collection.
Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting requirement.
Estimated Annual Burden: 25 responses; .17 hours average burden per response; 4 hours total annual burden.
Needs and Uses: Section 90.131(b) enumerates the applicant's right to dismiss any pending application without prejudice by sending a written request for dismissal to the Commission. The information will alert Commission personnel of the applicant's desire to discontinue processing an application.

OMB Number: 3060-0258.
Title: Section 90.176, Interservice sharing of frequencies in the 150-174 and 450-470 MHz bands.
Action: Extension of a currently approved collection.
Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting requirement.
Estimated Annual Burden: 1,050 responses; 2 hours average burden per response; 2,100 hours total annual burden.
Needs and Uses: Private radio frequencies are arranged in a block allocation format with each block serving a particular type of user. Frequencies allocated to one service, however, may be sparsely used in a specific geographic area, and can be used to meet a demand for frequencies by other radio services in that same area. Therefore, it is desirable to allow applicants to cross the boundary from one service frequency pool to another on a case-by-case basis. To determine if such interservice sharing is in the public interest in a particular case, the applicant is required to submit information that such sharing is necessary and that interference will not result to the primary users of the frequency requested. The information is used by Commission licensing personnel to make the public interest determination described above.

OMB Number: 3060-0263.
Title: Section 90.177, Protection of certain radio receiving locations.
Action: Extension of a currently approved collection.
Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting requirement.
Estimated Annual Burden: 300 responses; 0.5 hours average burden per response; 150 hours total annual burden.
Needs and Uses: This rule section requires that applicants proposing new or modified transmitting facilities in the vicinity of the National Radio Astronomy Observatory, the Table Mountain radio receiving zone, and Federal Communications Commission monitoring stations, consult with those parties to avoid interference to radio equipment at these sites. The rule enumerates threshold conditions which trigger the requirement that applicants notify these respective receiving sites of their proposal. This requirement is needed to preserve the interference-free reception conditions necessary at these sensitive sites.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 93-23248 Filed 9-21-93; 8:45 am]
BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 16, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800. For further information on this

submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None.

Title: Expanded Interconnection with Local Telephone Company Facilities for Interstate Switched Transport Services, Second Report and Order and Third Further Notice of Proposed Rulemaking, CC Docket No. 91–141.

Action: New collection.

Respondents: Businesses or other for-profit.

Frequency of Response: On occasion reporting requirement and Other: One-time tariff filing to be made by 11/18/93.

Estimated Annual Burden: 16 responses; 124.75 hours average burden per response; 1,996 hours total annual burden.

Needs and Uses: In the attached Order, the Commission concluded that the LECs should be required to provide certain cost support to justify the rate levels for the tariff charges to be paid by interconnectors for expanded interconnection. The Commission required the price cap LECs to provide cost support for the connection charges using the same methodology employed to support new services under the price cap rules. The Commission required the LECs to develop and justify consistent methodologies for deriving the direct cost of providing similar types of offerings, including expanded interconnection services covered by the connection charge elements. The Commission also required the LECs to justify any deviations from uniform overhead loadings that they propose for pricing connection charges, although it did not specify a particular methodology in advance. Under this approach, if a LEC proposes to price connection charges to reflect fully distributed overhead loadings, the Commission will compare such loadings to the overhead loadings used for other services and require justification for any differences. Rate of return LECs must support their rates under traditional cost support requirements. Without this information, the FCC would be unable to determine whether the rates for these services are just, reasonable, nondiscriminatory, and otherwise in accordance with the law. Tariffs will also be used by parties using expanded interconnection and switched transport offerings to ascertain the charges and other terms and conditions applicable to those offerings.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–23249 Filed 9–21–93; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1967]

Petition for Reconsideration of Action in Rulemaking Proceeding

September 17, 1993.

Petition for reconsideration has been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in room 239, 1919 M Street NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed by October 7, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Rule 73.202 (b) Table of Allotments, FM Broadcast Stations (Dublin and Marlin, Texas) (MM Docket No. 89–128, RM No. 6655 and 6996)

Number of Petitions Filed: 1

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–23245 Filed 9–21–93; 8:45 am]

BILLING CODE 6712–01–M

[REPORT NO. 1966]

Petition for Reconsideration of Action in Rulemaking Proceeding

September 15, 1993.

Petitions for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed October 7, 1993. See section 1.4(b)(1) of the Commssion's rules (47 CFR 1.4 (b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of Section 22 of the Cable Television Consumer Protection and Competition Act of 1992: Equal Employment Opportunities. (MM Docket No. 92–261)

Number of Petitions Filed: 2

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–23116 Filed 9–21–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before November 22, 1993.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Extension of 3067–0224.

Title: Application for National Warning System Service.

Abstract: The Civil Defense Warning System (CDWS) provides the capability through Federal, State, and local government resources to disseminate peacetime emergency information to Federal, State, and local government officials, selected military organizations, and the civilian population. The CDWS is also used to disseminate an attack warning or accidental missile launch warning. Pursuant to the authorities of

the Federal Civil Defense Act of 1950, as amended, and the Robert T. Stafford Disaster Relief and Emergency Assistance Act, FEMA established and operates the National Warning System (NAWAS). NAWAS is a nationwide private telephone line system which has the capability of passing warnings to 2,100 network subscribers. NAWAS is the primary nationwide emergency response mechanism. The application for NAWAS services is used by State and local governments and selected Federal agency installations to request Federal assistance to support NAWAS services. FEMA uses the application to evaluate and approve or disapprove requests for NAWAS services based on eligibility requirements in CPG 1–14, Principles of Warning and Criteria Governing Eligibility of National Warning Systems Service.

Type of Respondents: State and local governments; Federal agencies or employees.

Estimate of Total Annual Reporting and Recordkeeping Burden: 50 Hours.

Number of Respondents: 50.

Estimated Average Burden Time per Response: 1 Hour.

Frequency of Response: One-time to apply for Federal assistance.

Dated: September 13, 1993.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 93–23227 Filed 9–21–93; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–1003–DR]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–1003–DR), dated September 10, and related determinations.

EFFECTIVE DATE: September 10, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 10, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of North Carolina, resulting from Hurricane Emily on August 31, 1993, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Thomas P. Credle of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of North Carolina to have been affected adversely by this declared major disaster:

Dare County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 93–23228 Filed 9–21–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–973–DR]

New Jersey; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Jersey (FEMA–973–DR), dated December 18, 1992, and related determinations.

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ihor Husar of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Stephen Kempf, Jr., as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–23230 Filed 9–21–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–3113–EM]

Texas; Emergency Declaration and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Texas (FEMA–3113–EM), dated September 10, 1993, and related determinations.

EFFECTIVE DATE: September 10, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 10, 1993, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from extreme fire hazards on August 30, 1993, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under title V, section 501(a), of the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Texas.

You are authorized to coordinate all emergency fire hazard efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under title V of the Stafford Act, to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to mobilize and prestage Federal fire

suppression resources, including helicopters and air tankers, and reimburse for costs associated with employing these resources in controlling fires which occur in, or threaten, urban areas which are so large that State and local resources have no possibility of bringing them under control. Further, you are authorized to reimburse State and local governmental expenses for fire suppression when such fire suppression is conducted as part of an incident that includes Federal fire suppression resources for the duration of time that such resources are in use.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Leland Wilson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared emergency:

Anderson, Archer, Atascosa, Austin, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Brazos, Brown, Burleson, Burnet, Caldwell, Callahan, Clay, Coke, Coleman, Collin, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crockett, Crosby, Dallas, Dawson, De Witt, Denton, Dickens, Dimmitt, Duval, Eastland, Edwards, Ellis, Erath, Falls, Fayette, Fisher, Floyd, Foard, Freestone, Frio, Garza, Gillespie, Glassock, Goliad, Gonzales, Grayson, Grimes, Guadalupe, Hamilton, Hardeman, Haskell, Hays, Henderson, Hill, Hood, Houston, Howard, Irion, Jack, Jackson, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, La Salle, Lampasas, Lavaca, Lee, Leon, Limestone, Live Oak, Llano, Lubbock, Lynn, Madison, Martin, Mason, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Motley, Navarro, Nolan, Palo Pinto, Parker, Reagan, Real, Robertson, Rockwall, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Tarrant, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Wichita, Wilbarger, Williamson, Wilson, Wise, Young, and Zavala.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 93–23229 Filed 9–21–93; 8:45 am]

BILLING CODE 6718–02–M

Board of Visitors for the National Fire Academy; Meeting

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Dates of Meeting: October 8–10, 1993.

Place: Building H Conference Room, National Emergency Training Center, Emmitsburg, Maryland.

Time: October 8, 1993, 9 a.m.–5 p.m.; October 9, 1993, 9 a.m.–1 p.m.; October 10, 1993, 9 a.m.–2 p.m.

Proposed Agenda: October 8: Quarterly meeting—Prepare Annual Report. October 9—Agenda completion. October 10—Attend National Fallen Firefighters Memorial Services.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating available on a first-come, first-served basis. Members of the general public who plan to attend the quarterly meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before September 30, 1993.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: September 9, 1993.

Edward M. Wall,

Deputy Administrator, U.S. Fire Administration.

[FR Doc. 93–23231 Filed 9–21–93; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Cargonauts, Inc., 7331 NW. 54 Street, Miami, FL 33166
Officers: Alberto Spencer, President; Claudio Vicuna, Director

Maritime Terminal, Inc., Whalers' Wharf, New Bedford, MA 02740
Officers: David Wechsler, President; Richard Gwinn, Director; Frederick P. McBrier, Director/Vice President; Jonas af Jochnick, Director; Adolf af Jochnick, Director

Ryan Freight Services, Inc., 1702 Minters Chapel Rd., ste. 104, Grapevine, TX 76051
Officers: Jack Elliott Ryan, President/Director; David M. Thomas, Secretary/Treasurer/Director

Gemini Warehouse, Inc., 8535 Posey Rd., Jacksonville, FL 32220
Officers: Ralph J. Martinez, President; Harvin W. Lane, Vice President; Patricia C. Martinez, Secretary/Treasurer/Director; Robert J. Martinez, Director

Air-Sea International, Inc. 218 Marsh Island Drive, Chesapeake, VA 23320
Officers: Michael R. Streibel, President; Catherine M. Streibel, Treasurer

Preferred Distribution Service, Inc., 1220 Barranca, suite #3, El Paso, TX 79935
Officers: John Shannon Haycraft, President/Director; Nellie M. Davis, Vice President; Maria G. Estrada, Vice President Finance

Cargo U.K. Inc., 4790 Aviation Parkway, Atlanta, GA 30349
Officers: Roger Harold Botting, President/Stockholder; Regina Jacqueline Botting, Secre./Treas./Stockh.

By the Federal Maritime Commission.

Dated: September 16, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–23113 Filed 9–21–93; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Frama International of Florida, Inc., 3274 NW. 22nd Ave., Ft. Lauderdale, FL 33309
Officer: Maria P. Thorne, President

Key Cargo Marine, Inc., 4000 N. Federal Highway, ste. 201, Boca Raton, FL 33431

Officers: William L. Cohen, President/Secretary; Cynthia A. Newlan, Vice President

RJT Express, Inc., 1019 Grandview Dr., So. San Francisco, CA 94080
Officers: Roland J. Thompson, President; Joan Thompson, General Manager/Stockholder

Ben Odihirin Company, Inc., 690 Wainwright Street, Union, NJ 07083
Officer: Ben Odihirin, President/Director

Lobe Corporation, 3200 NW. 77th Court, Miami, FL 33122
Officers: Juan Ramon Poll, President; Demetrio Pina, Vice President; Vilma Pina, Secretary; Raul Cabrera, Treasurer

J and L Worldwide, 520 Spring Breeze, League City, TX 77573
Maria N. Wallington, Sole Proprietor

Tri-Link International, Inc., 4891 Cypress Point Circle, Virginia Beach, VA 23455
Officer: Patrick Ambrosio, President/Secretary

Transfair, Inc., 18900 Des Moines Way So., Seattle, WA 98148
Officers: Greg Vernoy, President; Ferdinand Zigahn, Vice President; Phyllis Stieglitz, Secretary/Treasurer

By the Federal Maritime Commission.

Dated: September 16, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93-23112 Filed 9-21-93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, October 28. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The meeting is expected to begin at 9 a.m. and to continue until 5 p.m., with a lunch break from 1 until 2 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Community Reinvestment Act Reform. Discussion led by the Bank Regulation Committee on

(1) the key elements of the Administration's directive to the agencies to provide clearer guidance to financial institutions and set new standards on how CRA performance will be evaluated; and

(2) legislative proposals to reform CRA.

Community Banking and Financial Institutions Fund Proposals. Discussion led by the Community Affairs and Housing Committee on legislative proposals to create a fund to help finance community development financial institutions.

Models for Economic Development. Report by the Community Affairs and Housing Committee on examples of how the Community Reinvestment Act can assist in stimulating economic development in distressed communities; the committee will describe successful models and how they attract private capital.

Small Business Credit Availability. Discussion led by the Consumer Credit Committee on ways the financial services industry can better meet the needs of small business borrowers, with a focus on women business owners.

Members Forum. Presentation of individual Council members' views on whether there are visible signs of an economic upturn present within their industries or local economies, and whether it is getting easier to obtain a loan.

Council Member Perspectives. Remarks by Council members identifying special areas of importance and concerns regarding the provision of financial services to consumers and communities.

Governor's Report. Report by Federal Reserve Board Member Lawrence B. Lindsey on economic conditions, recent Board initiatives, and issues of concern, with an opportunity for questions from Council members.

Committee Reports. Reports from Council committees on their work in 1993.

Other matters previously considered by the Council or initiated by Council members also may be discussed.Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Friday, October 22, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Bedelia Calhoun, Staff Specialist, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-6470. Telecommunications Device for the Deaf (TDD) users may contact Dorothea Thompson, (202) 452-3544.

Board of Governors of the Federal Reserve System, September 16, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-23168 Filed 9-21-93; 8:45 am]

BILLING CODE 6210-01-F

Banc One Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 15, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio, and Banc One Wisconsin Corporation, Milwaukee, Wisconsin; to merge with First Financial Associates, Kenosha, Wisconsin, and thereby indirectly acquire First National Bank of Kenosha, Kenosha, Wisconsin.

2. FC Banc Corp., Bucyrus, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers Citizens Bank, Bucyrus, Ohio.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. AmSouth Bancorporation, Birmingham, Alabama; to merge with Parkway Bancorp, Inc., Ft. Myers,

Florida, and thereby indirectly acquire Parkway Bank, Ft. Myers, Florida.

2. McConnell & Co. and Eberhardt, Inc., Elberton, Georgia; to become a bank holding company by acquiring 25 percent of the voting shares of Pinnacle Financial Corporation, Elberton, Georgia, formerly First Elbert Corporation, and thereby indirectly acquire the First National Bank in Elberton, Elberton, Georgia.

3. SouthTrust Corporation, Birmingham, Alabama; to acquire 100 percent of the voting shares of SouthTrust of Mississippi, Inc., Pascagoula, Mississippi, and thereby merge with CNB Capital Corp., Pascagoula, Mississippi, and thereby acquire Citizens National Bank, Pascagoula, Mississippi.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Hoosier Hills Financial Corp., ESOP, Osgood, Indiana; to become a bank holding company by acquiring between 30-40 percent of the voting shares of Hoosier Hills Financial Corp., Osgood, Indiana, and thereby indirectly acquire Ripley County Bank, Osgood, Indiana.

2. Prophetstown Banking Co., Prophetstown, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers National Bank of Prophetstown, Prophetstown, Illinois.

3. Trivoli Bancorp, Inc., Trivoli, Illinois; to acquire 100 percent of the voting shares of Hanna City State Bank, Hanna City, Illinois.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First United Bancshares, Inc., El Dorado, Arkansas; to acquire 100 percent of the voting shares of Commerce Financial Corporation, Alma, Arkansas, and thereby indirectly acquire Commerce Bank at Alma, Alma, Arkansas.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Neosho Bancshares Employee Stock Ownership Plan, Neosho, Missouri; to become a bank holding company by acquiring 30 percent of the voting shares of Neosho Bancshares, Inc., Neosho, Missouri, and thereby indirectly acquire Community Bank & Trust, Neosho, Missouri.

2. Packers Management Company, Inc., Omaha, Nebraska; to merge with Nebraska National Corporation, Omaha, Nebraska, and thereby indirectly acquire Nebraska National Bank, Omaha, Nebraska.

Board of Governors of the Federal Reserve System, September 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-23169 Filed 9-21-93; 8:45 am]

BILLING CODE 6210-01-F

Fuji Bank, Limited, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 15, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Fuji Bank, Limited, Tokyo, Japan; to acquire through its subsidiary, Heller Financial, Inc., Chicago, Illinois, certain assets of Imperial Premium Finance, Inc. (A Delaware corporation), Imperial Premium Finance, Inc. (A California corporation), Imperial Premium Funding Corp., and Imperial Premium Financial Holding Corp. and thereby engage in financing insurance premium payments pursuant to 225.25(b)(1)(iv) of the Board's Regulation Y.

2. KeyCorp, Albany, New York, and Key Bancshares of Alaska, Anchorage, Alaska; to acquire Jackson County Federal Bank, FSB, Medford, Oregon, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. In addition, KeyCorp seeks prior approval to acquire, under certain circumstances, up to 19.9 percent of the voting shares of Jackson County Federal Bank, FSB.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Barnett Banks, Inc., Jacksonville, Florida, and Barnett Subsidiary, Jacksonville, Florida; to enter into a joint venture with Mac Partners, Atlanta, Georgia, to acquire Main America Capital, L.C., Atlanta, Georgia, and thereby engage in lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Banks, Inc., St. Louis, Missouri; to acquire American Home Savings and Loan Association, St. Louis, Missouri, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the State of Missouri.

Board of Governors of the Federal Reserve System, September 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-23170 Filed 9-21-93; 8:45 am]

BILLING CODE 6210-01-F

Paul Jennings, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are

set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 12, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Paul Jennings, David Jennings, Lynn Jennings Adcock, and Steven Jennings; to each acquire 25 percent, for a total of 100 percent of the voting shares of Spring Grove Investments, Inc., Spring Grove, Minnesota, and thereby indirectly acquire Onsgard State Bank, Spring Grove, Minnesota.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. William Herman May, as Trustee for The Herman May et ux Living Trust, Farmersville, Texas, to acquire 4.28 percent for a total of 7.47 percent; Wayne Herman May, as Trustee for the Wayne May et ux Living Trust, Farmersville, Texas, to acquire 3.11 percent, for a total of 5.43 percent; and May Furniture & Appliance, Inc., Farmersville, Texas, to acquire 1.16 percent of for a total of 2.02 percent of the voting shares of Farmersville Bancshares, Inc., Farmersville, Texas, and thereby indirectly acquire First Bank Farmersville, Farmersville, Texas, and First Bank, McKinney, Texas.

Board of Governors of the Federal Reserve System, September 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-23171 Filed 9-21-93; 8:45 am]

BILLING CODE 6210-01-F

Northern Illinois Financial Corporation, et al.; Notice of Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 12, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Northern Illinois Financial Corporation, Wauconda, Illinois; to acquire certain assets and liabilities of the secondary mortgage operation at American National Bank and Trust Company of Waukegan, Waukegan, Illinois, and to the engage *de novo* through American Suburban Mortgage Corporation, Waukegan, Illinois, in the origination and sale of residential first mortgage loans to investors consisting of national and regional financial institutions pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Northern Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Security Richland Bancorporation, Miles City, Montana; to engage *de novo* through its subsidiary, FirstWest Insurance, Inc., in providing management consulting to non-affiliated depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y. These activities will be conducted in the states of Montana, Wyoming, North Dakota, and South Dakota.

Board of Governors of the Federal Reserve System, September 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-23172 Filed 9-21-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Criteria for Selection of Clinical Practice Guidelines and Topics Under Consideration for Development of Clinical Practice Guidelines

The Agency for Health Care Policy and Research (AHCPR) is requesting comments on the topics specified below which are under consideration for the development of clinical practice guidelines in 1994, and is inviting recommendations with supporting rationale for additional guideline topics for development. The AHCPR also is describing its process and methodology for establishing priorities for guideline topics, based on statutory criteria. As a part of the process, AHCPR intends to publish each year a list of clinical practice guideline topics under consideration and invite recommendations for additional guideline topics.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) enacted on December 19, 1989, added a new title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. (See 42 U.S.C. 299–299c-6 and 1320b-12.) The Agency for Health Care Policy and Research Reauthorization Act of 1992 (Pub. L. 102–410) enacted on October 13, 1992, extended the authorization of AHCPR and amended certain provisions related to the development of clinical practice guidelines.

Section 911 of the Act (42 U.S.C. 299b) established within AHCPR the Office of the Forum for Quality and Effectiveness in Health Care (Forum). Section 912 (42 U.S.C. 299b-1(a)) directs the Administrator of AHCPR, acting through the Forum, to arrange for the development, periodic review, and

updating of clinically relevant guidelines that may be used by physicians, other health care practitioners, educators, and health care consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed.

Section 912 of the Act (42 U.S.C. 299b-1(b)), as amended by Public Law 102–410, also requires that the guidelines:

1. Be based on the best available research and professional judgment;

2. Be presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers;

3. Be presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care;

4. Include information on the risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s); and

5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health conditions, where cost information is available and reliable.

Section 913 of the Act (42 U.S.C. 299b-2) describes two mechanisms through which AHCPR may arrange for development of guidelines: 1. Private sector panels of qualified health care experts and consumers may be convened; and 2. Contracts may be awarded to public and private non-profit organizations. Contractors are assisted by panels of experts and consumers approved by AHCPR.

Section 914(a) of the Act (42 U.S.C. 299b-3(a)), as amended by Public Law 102–410, identifies factors to be considered in establishing priorities for guidelines including the extent to which the guidelines would:

1. Improve methods for disease prevention;

2. Improve methods of diagnosis, treatment, and clinical management for the benefit of a significant number of individuals;

3. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and

4. Reduce clinically significant variations in the outcomes of health care services and procedures.

Section 914(a) (42 U.S.C. 299b-3(a)) further requires that the Administrator develop and publish a methodology for establishing priorities for guideline topics. It also requires that, using this methodology, the Administrator shall establish and publish annually in the **Federal Register** a list of guideline topics under consideration.

In addition, section 914 provides that the methodology may include the considerations under section 904 of the PHS Act, relevant to establishing priorities for technology assessments, as well as those under section 914(a)(2), and other considerations determined by the AHCPR Administrator to be appropriate. There is overlap between the two sets of statutory criteria. Section 904(d)(2) provides that criteria for determining priorities for technology assessments include: the prevalence of a particular health condition; variations in current practice; the economic burden posed by the prevention, diagnosis, treatment, and clinical management of a health condition, including the impact on publicly funded programs; aggregate cost of the use of the technology(ies) involved; the morbidity and mortality associated with the health condition; and the potential to improve health outcomes or affect costs associated with the prevention, diagnosis, or treatment of the condition.

Also, in accordance with several title IX provisions, such as sections 912(e) and 914(a)(2)(B) of the PHS Act, and section 1142 of the Social Security Act, the Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines.

Further, Section 921 of the Act (42 U.S.C. 299c) established the National Advisory Council for Health Care Policy, Research, and Evaluation whose activities include making recommendations to the Administrator regarding the priorities for a national agenda and strategy for the development and periodic review and updating of guidelines for clinical practice, standards of quality, performance measures, and medical review criteria. Thus the recommendations of the National Advisory Council for Health Care Policy, Research, and Evaluation also will be considered in selecting guideline topics.

Clinical Practice Guidelines Completed and Under Development

The following guidelines have been released and disseminated widely:

1. Acute Pain Management: Operative or Medical Procedures and Trauma.

2. Urinary Incontinence in Adults.

3. Pressure Ulcers in Adults: Prediction and Prevention.

4. Cataract in Adults: Management of Functional Impairment.

5. Depression in Primary Care: Volume I: Detection and Diagnosis, and Volume II: Treatment of Major Depression.

6. Sickle Cell Disease: Screening, Diagnosis, Management, and Counseling in Newborns and Infants.

The following guidelines are under development by private sector panels of experts and consumers.

1. Diagnosis and Treatment of Benign Prostatic Hyperplasia.

2. Management of Cancer-Related Pain.

3. Treatment of Pressure Ulcers in Adults.

4. Evaluation and Management of Early HIV Infection.

5. Low Back Problems.

6. Quality Determinants of Mammography.

7. Screening for Alzheimer's and Related Dementias.

8. Diagnosis and Treatment of Anxiety and Panic Disorders.

9. Smoking Prevention and Cessation in the Primary Care Setting.

The following guidelines are under development by non-profit contractors, with assistance from panels of experts and consumers.

1. Otitis Media with Effusion in Children.

2. Heart Failure: Evaluation and Care of Patients with Left Ventricular Systolic Dysfunction.

3. Post Stroke Rehabilitation.

4. Cardiac Rehabilitation.

5. Diagnosis and Management of Unstable Angina.

Criteria for Selection of Guideline Topics.

In selecting topics for the development of clinical practice guidelines, AHCPR considers the statutorily prescribed factors outlined above with particular importance given to:

1. Amenability of a particular condition to prevention;

2. Potential for reducing clinically significant variations in the prevention, diagnosis, management, or outcomes related to the condition;

3. Adequacy of science-based evidence on which to develop a guideline;

4. Number of individuals affected by the condition;

5. Cost of the condition to all payers, including patients; and

6. Specific needs of the Medicare and Medicaid populations.

Process for Selection of Guideline Topics

The AHCPR's current method for setting priorities and selecting guideline topics consists of a process of seeking public input on guideline topics under consideration and new topics, assessing topics proposed against AHCPR's criteria and the guidelines recently developed or in process by professional or provider organizations, securing expert advice on prioritizing topics, and determining the availability of resources. This process is outlined below.

1. Inviting suggestions for guideline topics with supporting information which addresses the above criteria;

2. Determining what consensus statements, practice parameters, and evidence-based guidelines recently have been developed or are under development by other organizations in order to avoid unnecessary duplication of effort;

3. Studying the topics proposed and the supporting documentation to determine compliance with AHCPR criteria and legislative requirements;

4. Requesting advice of public and private sector experts on setting priorities for the proposed topics which meet AHCPR's criteria and legislative requirements; and

5. Determining resource availability from AHCPR and other sources to develop the priority guidelines for the current and forthcoming fiscal years.

The AHCPR's Office of the Forum for Quality and Effectiveness in Health Care reviews information and findings gathered in steps 1 through 5 above. The Forum then recommends the topics to the Administrator who, in consultation with AHCPR's National Advisory Council for Health Care Policy, Research, and Evaluation, determines new guideline topics which meet the selection criteria; do not significantly duplicate guidelines recently completed or being developed by other groups; are considered high priority by health care practitioners, researchers, and patients; and can be accomplished with the resources of AHCPR or other available sources.

Suggestions for clinical practice guideline topics are solicited from many sources. To consider topic recommendations, AHCPR requires that supporting information be submitted which addresses the AHCPR criteria cited above. Organizations contacted to provide suggestions and supporting information include: the Health Care Financing Administration, Public Health Service agencies, medical and nursing specialty societies, other health care organizations, and professional review organizations. For example, in 1992 the American Medical Association requested, on behalf of AHCPR, suggestions from 25 specialty societies which in turn proposed 75 topics. Also, through this notice and in future annual **Federal Register** notices, AHCPR requests individuals and organizations to provide recommendations on topics for clinical practice guidelines with supporting documentation.

Periodically AHCPR requests the National Library of Medicine, the National Institutes of Health, the U.S. Preventive Services Task Force, and medical specialty societies to provide information on consensus statements, evidence-based clinical guidelines, and practice parameters that recently have been developed or are currently being developed. Guideline topics under consideration are compared to these to determine if other organizations have recently completed or are currently developing guidelines on the same topics. In each such case, the extent to which the focus of the topic overlaps the focus of the guideline under consideration is determined as well as the methodology used, date of completion, endorsements sought or received, and dissemination planned or underway. A decision is then made by AHCPR as to whether its arranging for the development of an evidence-based guideline with a similar focus is warranted.

In order to determine how well the proposed topics meet AHCPR's guideline criteria, the topics and the supporting documentation must be assessed regarding: (1) Adequacy of the available scientific evidence, (2) prevalence and cost of each condition, with particular concern for the Medicaid and Medicare populations; (3) potential for reducing clinically significant and unexplained variations in the prevention, diagnosis, treatment, management, and outcomes of health services; and (4) potential for improvement of methods of prevention.

The AHCPR also convenes meetings of private sector and government experts to obtain their individual advice and comments on setting priorities on guideline topics. Information collected on the major conditions or disorders of the clinical topic in question is shared with the experts to assist in their deliberations. In 1991 and 1992, for example, three workshops were held for multidisciplinary groups of practitioners involved in cardiovascular, infectious disease/immunology, and gastrointestinal conditions. In early 1993 additional meetings for prenatal care, musculoskeletal, and neurological conditions were convened. These meetings assist AHCPR in establishing priorities among numerous important conditions.

Available funding determines the number of new clinical practice guidelines initiated in any fiscal year. For some topics, other Public Health Service agencies or non-governmental organizations may join in the funding of the development of guidelines.

Topics of New Guidelines Being Considered for Development

The following topics for the development of new clinical practice guidelines are currently being considered by AHCPR. Topics chosen may be narrowed in focus to permit the guidelines to be completed in 15 to 18 months. The AHCPR requests comments on these topics using the above selection criteria.

- Dysrhythmia
- Acute Myocardial Infarction
- Hypertension in Diabetics
- Stable Angina
- Silent Ischemia
- Diabetes
- Bacteremia
- Antibiotic Therapy
- Management of Surgical Wound Infections
- Community Acquired Pneumonia
- Peptic Ulcer
- End Stage Liver Disease
- Diarrhea in Preschool Children
- Biliary Tract Disease
- Gastroesophageal Reflux Disorder
- Addictive Behavior during Pregnancy
- Risk Assessment of Complicated Pregnancies
- Screening and Counselling for Sexually Transmitted Diseases and Reproductive Health
- Genetic Screening and Counselling for Genetic Diseases during Prenatal Care
- Tests of Uteroplacental Insufficiency in Prenatal Care
- Prevention/Detection/Management of Preterm Labor
- Dysfunctional Uterine Bleeding
- Osteoporosis
- Osteoarthritis
- Rheumatoid Arthritis
- Musculoskeletal Pain
- Management of Acute Stroke
- Traumatic Brain Injury
- Epilepsy
- Prevention of Falls and Mobility Impairment in the Elderly
- Chronic Mood Disorder

Request for Nominations of Additional Topics for Guidelines Development

This notice also requests nominations from interested individuals and

organizations of other topics for development of clinical practice guidelines with AHCPR support. Nominations of topics must include the specific topic recommended and a statement on the rationale for the recommendation that addresses AHCPR's criteria described in this notice. If organizations or individuals are interested in supporting the development and dissemination of the guidelines proposed, an expression of that interest also is requested.

The nominations received will be reviewed by AHCPR's Office of the Forum for Quality and Effectiveness in Health Care. The Forum will initiate the topic selection process and topics will be approved, as described above.

To be considered, nominations of clinical practice guidelines and supporting documentation must be received by November 22, 1993, at the following address: Kathleen A. McCormick, Ph.D., R.N., Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Boulevard, suite 310, Rockville, Maryland 20852.

FOR ADDITIONAL INFORMATION: Additional information on the guideline development process is contained in the AHCPR Fact Sheet "AHCPR Supported Clinical Practice Guidelines," dated April 1993. More detailed information on the guideline process and criteria for selecting panels is contained in the AHCPR Program Note "Clinical Guideline Development," dated August 1993. These documents may be obtained from the AHCPR Publications Clearinghouse, P.O. Box 8457, Silver Spring, MD 20907; or call Toll Free: 1–800–358–9295.

For further information on the process of developing guidelines or the selection of guideline topics, contact Kathleen A. McCormick, Ph.D., R.N., Director, Office of the Forum for Quality and Effectiveness in Health Care, AHCPR, at the above address.

Dated: September 15, 1993.

J. Jarrett Clinton,

Administrator.

[FR Doc. 93–23180 Filed 9–21–93; 8:45 am]

BILLING CODE 4160–90–U

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC): Request for Nominations of Candidates

SUPPLEMENTARY INFORMATION: The "Workers' Family Protection Act" (29 U.S.C. 671a), hereafter, referred to as "the Act," was enacted on October 26, 1992, as section 209 of Public Law 102–522, the "Fire Administration Authorization Act of 1992." The purpose of the Act is to protect the health of workers and their families from hazardous chemicals and substances, including infectious agents, transported from the workplace to the home on equipment, clothing, or the worker's person. Under the Act, NIOSH is to conduct a study to evaluate the prevalence of contamination in workers' homes with hazardous chemicals and substances, including infectious agents, transported from the workplace. NIOSH is also to evaluate the potential for such contamination occurring and to evaluate other issues relating to protecting the family from transported hazardous chemicals and substances, including infectious agents. NIOSH activities, as mandated under the Act, will include the following: (1) Evaluating the scientific literature and records of past investigations performed by NIOSH, OSHA, and other governmental agencies; (2) evaluating current industrial hygiene and other control measures in use by small, medium, and large industries to prevent or remediate home contamination; (3) compiling a summary of existing research and a summary of case histories; and (4) identifying the role of governmental agencies in responding to incidents of home contamination. The summaries of existing research and case histories will address the effectiveness of workplace housekeeping and personal protective equipment, the health effects of exposure through take-home contamination, the effectiveness of normal housekeeping and laundry procedures for preventing or remediating contamination, the literature on indoor air quality as it applies to the fate of chemicals transported into the home, and methods of differentiating between take-home toxins and confounding environmental factors.

NIOSH is mandated under the Act to establish a working group, to be known as the Workers' Family Protection Task Force. This task force will review the report prepared by NIOSH and determine if additional data are needed. If additional data are needed, the task force will develop an investigative strategy for obtaining additional information. This investigative strategy will: (1) Identify data gaps that can and cannot be filled; (2) identify assumptions and uncertainties associated with various components of the strategy; (3) specify a timetable for implementation of the strategy; and (4) describe the methodologies to be used to gather the required data.

The Director of NIOSH will publish the investigative strategy developed by the task force and invite public comments. The Director of NIOSH will also use other techniques to obtain comments on the investigative strategy, including technical conferences or seminars.

NIOSH is soliciting nominations for membership on the proposed Workers' Family Protection Task Force. The task force will review a report on contamination of workers' homes by hazardous chemicals and materials, including infectious agents, carried home from the workplace, and develop an investigative strategy for obtaining additional data. The task force will be composed of no more than 15 individuals representing workers, industry, scientists, industrial hygienists, the National Research Council, and government agencies. Workers and industry shall have an equal number of representatives, and there will be no more than one member from any one government agency.

Close attention will be given to minority and female representation; therefore, nominations from these groups are encouraged.

The following information is requested: name, affiliation, address, telephone number, and a current curriculum vitae. Nominations should be sent, in writing, and postmarked by October 15, 1993, to: Steven Galson, M.D., M.P.H., Division of Standards Development and Technology Transfer, NIOSH, CDC, 4676 Columbia Parkway, C–14, Cincinnati, Ohio 45226, 513/533–8302. Telephone or facsimile submissions cannot be accepted.

Dated: September 16, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–23167 Filed 9–21–93; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee)

Date, time, and place. October 8, 1993, 9 a.m., Hubert H. Humphrey Bldg., rm. 729–G, Washington, DC.

Type of meeting and contact person. Open committee discussion, 9 a.m. to 2 p.m.; open public hearing, 2 p.m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 4 p.m.; Ronald F. Coene, National Center for Toxicological Research (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3155.

General function of the committee. The committee is required by law to advise the Secretary and the Assistant Secretary for Health concerning certain studies of herbcides.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 23, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their comments.

Open committee discussion. The committee will critique the Air Force's response to the Institute of Medicine's report entitled "Veterans and Agent Orange—Health Effects of Herbicides Used in Vietnam," and will review the Air Force Health study entitled " An Epidemiologic Investigation of Health Effects in Air Force Personnel Following Exposure to Herbicides, Mortality Update—1993." A final agenda will be available September 24, 1993, from the contact person.

Food Advisory Committee

Date, time, and place. October 14 and 15, 1993, 8:30 a.m., Sheraton National Hotel, South Ballroom, Columbia Pike and Washington Blvd., Arlington, VA.

Type of meeting and contact person. Open committee discussion, October 14, 1993, 8:30 a.m. to 12 m.; open public hearing, 12 m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m.; open committee discussion, October 15, 1993, 8:30 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 5 p.m.; Catherine M. DeRoever, Advisory Committee Staff (HFS–22), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4251 or 202–205–4150.

General function of the committee. The committee provides advice on emerging food safety, food science, and nutrition issues that FDA considers of primary importance in the next decade.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 4, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments. If necessary, comments may be limited to 5 minutes.

Open committee discussion. On October 14, 1993, the Folic Acid Subcommittee and the Food Advisory Committee will discuss various proposed regulatory initiatives pertaining to folic acid and neural tube defects: (1) health claims and label statements; (2) amendment of standards of identity for enriched grain products to require folic acid addition; and (3) amendment to the food additive regulation for folic acid (folacin). On October 15, 1993, the Food Advisory Committee will develop its recommendations to the agency on these issues.

Psychopharmacologic Drugs Advisory Committee

Date, time, and place. October 18, 1993, 8:30 a.m., Conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Michael Bernstein, Center for Drug Evaluation and Research (HFD–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4020.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of psychiatry and related fields.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 11, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the safety and effectiveness of LUVOX® (fluvoxamine maleate), new drug application (NDA) 20–243, Solvay Pharmaceuticals, for use in the treatment of obsessive compulsive disorder.

Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. October 21, 1993, 8:30 a.m., Piccard Bldg., first floor conference rm., 1390 Piccard Dr., Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4 p.m.; Mary J. Cornelius, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2194.

General function of the committee. The committee review and evaluates data on the safety an effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open Public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 12, 1993, and submit a brief statement of the general nature of the evidence or argument they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discus a premarket approval application for a laser fiber with the new intended use to treat bladder outlet obstruction secondary to benign prostatic hyperplasia.

Fertility and Maternal Health Drugs Advisory Committee

Date, time, and place. October 28, 1993, 9 a.m., and October 29, 1993, 8:30 a.m., Parklawn Bldg., Conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, October 28, 1993, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open public hearing, October 29, 1993, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Philip A. Corfman, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

General function of committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics and gynecology.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 14, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 28, 1993, in the morning, the committee will discuss the results of the studies requested by the committee on the relationship of oral contraceptives of various compositions to protection against ovarian cysts. In the afternoon, the committee will discuss the safety and utility of 50 µg estrogen-containing oral contraceptives. On October 29, 1993, the committee will discuss the suitable content of the revised patient package insert for oral contraceptives.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: September 15, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–23106 Filed 9–21–93; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Subcommittee Meeting of the Anesthetic and Life Support Drugs Advisory Committee

Date, time, and place. October 7, 1993, 8:30 a.m., Parklawn Bldg., Conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 1 p.m.; closed committee deliberations; 1 p.m. to 5 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research, (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3741.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anesthesiology and surgery.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 24, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss new drug application (NDA) 20–214 Zemuron® (rocuronium bromide injection),

Organon, Division of AKZO, for use in anesthesia and surgery as a neuromuscular blocking agent.

Closed committee deliberations: The committee will review trade secret and/or confidential commercial information relevant to pending new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time and place. October 25 and 26, 1993, 8 a.m., National Institutes of Health, Bldg. 1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, October 25, 1993, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 6 p.m.; open public hearing, October 26, 1993, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion 8:30 a.m. to 3 p.m.; closed committee deliberations 3 p.m. to 6 p.m.; Nancy Cherry or Stephanie Milwit, Scientific Advisors and Consultants Staff (HFM–21), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–594–1054.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 18, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 25, 1993, the committee will participate in a general discussion of gene therapy with the main focus on the safety of retroviral and adenoviral vectors for gene therapy. On October 26, 1993, the committee will discuss the licensure of Bacille Calmette-Guerin (BCG) vaccines for the prevention of tuberculosis. The issues to be discussed are: (1) Safety, (2) clinical data needed to support licensure, and (3) indications for use.

Closed committee deliberations. On October 26, 1993, the committee will review trade secret and/or confidential commercial information relevant to pending investigational new drug applications and product licensing applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. October 28 and 29, 1993, 9 a.m., National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD, and October 29, 1993, 9 a.m., Parklawn Bldg., Chesapeake Conference rm., 5600 Fishers Lane, Rockville, MD.

Parking in the Clinical Center Visitor area is reserved for clinical center patients and their visitors. If you must drive, please use an outlying lot, such as Lot 41B. Free shuttle bus service is provided from Lot 41B to the Clinical Center every 8 minutes during rush hour and every 15 minutes at other times.

Type of meeting and contact person. Open public hearing, October 28, 1993, 9 a.m to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; October 29, 1993, closed committee deliberations, 9 a.m. to 1 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419–259–6211 or Valerie M. Mealy, Advisors and Consultants Staff (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 301–443–4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 1, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 28, 1993, the committee will discuss new drug application (NDA) 18–343 S/64, Bristol–Myers Squibb, Capoten (captopril) tablets for treatment of diabetic nephropathy.

Closed committee deliberations. On October 29, 1993, the committee will review trade secret and/or confidential commercial information relevant to pending new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Ophthalmic Devices Panel of the Medical Devices Advisory Committee

Date, time and place: October 28 and 29, 1993, 8:30 a.m., Holiday Inn, Grand Ballroom, 2 Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, October 28, 1993, 8:30 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; closed committee deliberations, October 29, 1993, 8:30 a.m. to 12 m.; Daniel W. C. Brown, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2080.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 2, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 28, 1993, the committee will discuss general issues relating to a premarket approval application (PMA) for a surgical device. There will be an update presented to the panel on the clinical section of the International Standard Organization's guidance document for intraocular lenses and an update on the Multifocal Intraocular Lens guidance document. There will be a discussion on intraocular lens labeling and a discussion on a petition for reclassification of the Neodymium:Yttrium:Aluminum:Garnet (Nd:YAG) laser for iridotomy. In addition, an update on the

preamendment glaucoma valve implants will be presented.

There will also be updates presented on the following contact lens issues: (1) Extended wear contact lenses, (2) background information on a monovision policy, (3) announcement on the use of nonpreserved and preserved salines with rigid gas permeable contact lenses, and (4) an update on the status of reclassification of daily wear contact lenses.

Closed committee deliberations. On October 29, 1993, the committee will discuss trade secret and/or confidential commercial information relevant to PMA's for contact lenses, surgical and diagnostic devices, and intraocular lenses. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: September 16, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–23110 Filed 9–21–93; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of October 1993:

Name: HRSA AIDS Advisory Committee.
Time: October 5–6, 1993, 8:30 a.m.
Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20205.
The meeting is open to the public.
Purpose: The Committee advises the Secretary with respect to health professional

education, patient care/health care delivery to HIV-infected individuals, and research relating to transmission, prevention and treatment of HIV infection.

Agenda: Discussions will be held concerning access to care issues of the Health Resources and Service Administration's AIDS programs and issues related to reauthorization of the Ryan White Comprehensive AIDS Resources and Emergency Act of 1990.

Anyone requiring information regarding the subject Committee should contact Pearl Katz, Ph.D., AIDS Program Office, Health Resources and Services Administration, room 14A–21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–4588.

Agenda Items are subject to change as priorities dictate.

Dated: September 16, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–23107 Filed 9–21–93; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–93–3661; FR–3566–C–03]

Task Force on Occupancy Standards in Public and Assisted Housing; Correction

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of publication of preliminary report; correction.

SUMMARY: On August 31, 1993 (58 FR 45905), the Department published in the **Federal Register**, a notice that announced the availability of the Preliminary Report for the Task Force on Occupancy Standards in Public and Assisted Housing. The purpose of this document is to correct the Field Office address for Anchorage, Alaska in Region X.

FOR FURTHER INFORMATION CONTACT: Laurence D. Pearl, Office of Fair Housing and Equal Opportunity, room 5226, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–0288 (voice) or (TDD) (202) 708–0113. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Accordingly, in FR Doc. 93–20833, a Notice of publication of a Preliminary Report for the Task Force on Occupancy Standards in Public and Assisted Housing, published in the **Federal Register**, on August 31, 1993 (58 FR 45905), on page 45909, in the third column, at the top of the page, the following correction is made to the Field Office address for Anchorage, Alaska:

Region X (Seattle)

* * * * *

Field Offices

Anchorage Office, 949 East 36th Avenue, suite 401, Anchorage, AK 99508–4399, Telephone No. (907) 271–4170.

* * * * *

Dated: September 15, 1993.

Myra L. Ransick,

Assistant General Counsel for Regulations.

[FR Doc. 93–23119 Filed 9–21–93; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–942–03–4730–12]

Idaho: Filing of Plats of Survey

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., October 25, 1993.

The plat representing the dependent resurvey of portions of the subdivisional lines, subdivision of section 4, and the survey of Tract 39, T. 39 N., R. 1 W., Boise Meridian, Idaho, Group No. 862, was accepted, September 13, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: September 13, 1993.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 93–23216 Filed 9–21–93; 8:45 am]

BILLING CODE 4310–GG–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–345]

Prehearing Conference

In the Matter of certain anisotropically etched one megabit and greater drams, components thereof, and products containing such drams.

Notice is hereby given that the prehearing conference in this matter will commence at 9 a.m. on October 12, 1993, in Courtroom C (room 217), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Issued: September 10, 1993.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 93–23225 Filed 9–21–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–354]

Certain Tape Dispensers; Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Jeffrey R. Whieldon, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of Juan S. Cockburn, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: September 14, 1993.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 93–23224 Filed 9–21–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–644 (Final)]

Welded Stainless Steel Pipe From Malaysia; Institution of Final Antidumping Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–644 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Malaysia of welded stainless steel pipe of circular cross section, provided for in subheadings 7306.40.10 and 7306.40.50 of the Harmonized Tariff Schedule of the United States. Pursuant to a request from respondent, Kanzen Tetsu, the Department of Commerce has extended

the date for its final determination in the antidumping investigation of the subject products. Accordingly, the Commission's schedule for its final investigation reflects Commerce's decision to extend its final determination until January 21, 1994.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of welded stainless steel pipe from Malaysia are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on February 16, 1993, by Avesta Sheffield Pipe, Schaumburg, IL; Bristol Metals, Bristol, TN; Damascus Tubular Products, Greenville, PA; Trent Tube Division, Crucible Materials Corp., East Troy, WI; and the United Steelworkers of America.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on January 13, 1994, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 27, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 20, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 24, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is January 21, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is February 4, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before February 4, 1994. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of § 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: September 16, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–23226 Filed 9–21–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub No. 5) (93–41)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Interstate Commerce Commission.

ACTION: Approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has approved a fourth quarter 1993 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The fourth quarter RCAF (Unadjusted) is 1.025. The fourth quarter RCAF (Adjusted) is 0.847, an increase of 0.1 percent from the third quarter 1993 RCAF (Adjusted) of 0.846. Maximum fourth quarter 1993 RCAF rate levels may not exceed 100.1 percent of maximum third quarter 1993 RCAF rate levels.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: John C. Pertino,(202) 927–6229; Robert C. Hasek, (202) 927–6239, TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: September 15, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–23242 Filed 9–21–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 476X)]

CSX Transportation, Inc.—Abandonment Exemption—Letcher County, KY

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 2.31 miles of rail line between milepost LVB–275.3, at Hot Spot, and milepost LVB–277.61, at Uz, in Letcher County, KY.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 22, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 4, 1993.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 12, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water St., J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by September 27, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 13, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–23241 Filed 9–21–93; 8:45 am]

BILLING CODE 7035–01–M

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act and the Clean Water Act; United States v. Georgia-Pacific Corp.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Georgia-Pacific Corporation*, Civil Action No. 92–0179–B–B, was lodged on September 9, 1993, with the United States District Court for the District of Maine. The proposed consent decree resolves the United States' claims under the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and the Clean Water Act, 33 U.S.C. 1251 *et seq.*, against Georgia-Pacific Corporation ("Georgia-Pacific") for violations of the company's federally enforceable air emission license and water discharge permit at its pulp and paper mill ("P&P Mill") in Woodland, Maine. Georgia-Pacific is alleged to have emitted carbon monoxide, sulfur dioxide, and nitrogen oxides in excess of its air license limitations and to have failed to comply with several monitoring provisions of its license. In addition, Georgia-Pacific is alleged to have exceeded the effluent limitations for total suspended solids and biological oxygen demand contained in its water permit.

The proposed consent decree requires Georgia-Pacific to pay a total civil penalty of $390,000 to the United States and the State of Maine, plus interest, accruing from the date of signature by Georgia-Pacific. The proposed decree also requires Georgia-Pacific to submit to EPA, for review and approval, an Operation and Maintenance Plan setting forth steps that Georgia-Pacific shall take to maintain and operate the pollution control equipment and continuous emissions monitoring systems for designated emissions sources at the P&P mill.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Georgia-Pacific Corporation* DOJ Ref. #90–5–2–1–1733.

The proposed consent decree may be examined at the office of the United States Attorney, 100 Middle St. Plaza, East Tower, Sixth Floor, Portland, Maine; the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston,

Massachusetts; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Peter R. Steenland,

Acting Deputy Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–23221 Filed 9–21–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act; United States v. Metropolitan Dade County et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in *United States* v. *Metropolitan Dade County, et al.*, Case No. Civ–93–1109–Moreno, was lodged on September 8, 1993 with the United States District Court for the Southern District of Florida. The consent decree settles a claim for injunctive relief brought against Metropolitan Dade County and the Miami-Dade Water and Sewer Authority under section 504(a) of the Clean Water Act, 33 U.S.C. 1364(a), and sets forth remedial measures that address the imminent and substantial endangerment to the health and welfare of persons presented by an aged and deteriorated force main that conveys untreated wastewater from the City of Miami under Biscayne Bay to a wastewater treatment plant located on Virginia Key, Florida.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Metropolitan Dade County, et. al.*, DOJ Ref. #90–5–1–1–4022.

The proposed consent decree may be examined at the office of the United States Attorney, Southern District of Florida, 99 NE. 4th Street, Miami, Florida 33132; the Region IV Office of the United States Environmental Protection Agency, 345 Courtland Street, NE. Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $15.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–23220 Filed 9–21–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; United States v. Mary Pagano et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Mary Pagano, David Peluchette, d/b/a Pagano Salvage Yard, Sandia Corporation, d/b/a Sandia National Laboratories and Myrtle Smith*, Civil Action No. CIV 93–1074JC, was lodged on September 9, 1993 with the United States District Court for the District of New Mexico. The proposed consent decree resolves claims brought by the United States under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607 and provides for payment by the defendants for all costs incurred and paid by the United States for the removal of hazardous wastes from the Pagano Salvage Yard Site located in Los Lunas, Valencia County, New Mexico.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Mary Pagano, David Peluchette, d/b/a Pagano Salvage Yard, Sandia Corporation, d/b/a Sandia National Laboratories and Myrtle Smith*, DOJ Ref. #90–11–2–559.

The proposed consent decree may be examined at the office of the United States Attorney, District of New Mexico, 625 Silver, SW., P.O. Box 607, Albuquerque, New Mexico 87103; the Region 6 Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 7502–2733; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–23222 Filed 9–21–93; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 11, 1993, U.S. Drug Testing, Inc., 10410 Trademark Street, Rancho Cucamonga, California 91730, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phencyclidine (7471)	II

The firm plans to manufacture small quantities of the above substances to make drug test kits.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 22, 1993.

Dated: September 16, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–23183 Filed 9–21–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of September 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,889; Zebulon Manufacturing, Zebulon, GA

TA-W-28,686; Smarte Carte, Inc., West Bear Lake, MN

TA-W-28,686A; Smarte Carte, Inc., Chicago, IL

TA-W-28,819; Philips Lighting, Richmond, KY

TA-W-28,845; Michigan Capsule, Inc., Detroit, MI

TA-W-28,672; Allied Products, Allied Signal Automotive Friction Material, Troy, NY

TA-W-28,720; General Electric Co., Capacity & Power Protection, Fort Edward & Hudson Falls, NY

TA-W-28,872; Essex Garment Manufacturing Corp., Newark, NJ

TA-W-28,788; Schindler Elevator Corp., Hydraulic & Architectural Products Plant, Gettysburg, PA

TA-W-28,881; Rogge Forest Products, Inc., Banden, OR

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-28,837; Bear Creek Corp., Basket Weaving Dept., Medford, OR

The investigation revealed that criterion (1) and criterion (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,864; Compuadd Computer Corp., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,940; Reichert Shake & Fencing, Inc., Toledo, WA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,865; Commonwealth Tobacco Co., Inc., Kenbridge, VA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,840 & TA-W-28,841; Mulberry Phosphates, Inc., Mulberry, FL & Piney Point Phosphates, Palmetto, Fl

U.S. imports of diammonium phosphates were negligible.

TA-W-28,867; Frenchtown Ceramics Co., Frenchtown, NJ

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-28,886; Eveleth Mines, Eveleth, MN

A certification was issued covering all workers separated on or after November 1, 1992.

TA-W-28,795; L & J Leather Coast & Jackets, Inc., New York, NY

A certification was issued covering all workers separated on or after March 11, 1992.

TA-W-28,934; Bryan Manufacturing Co., New Salem, PA

A certification was issued covering all workers separated on or after July 26, 1992.

TA-W-28,882; Aluminum Company of America, Wenatchee, WA

A certification was issued covering all workers separated on or after June 22, 1992.

TA-W-28,937: Aluminum Company of America, Badin, NC

A certification was issued covering all workers separated on or after July 26, 1992.

TA-W-28,877; Aluminum Company of America, Rockdale Operations Rockdale, TX

A certification was issued covering all workers separated on or after July 6, 1992.

TA-W-28,974; Ithaca Industries—Edison Plant, Edison, GA

A certification was issued covering all workers separated on or after August 17, 1992.

TA-W-28,958; Claxton Manufacturing, Claxton, GA

A certification was issued covering all workers separated on or after August 6, 1992.

TA-W-28,848; Aluminum Company of America, Warrick Operations, Newburgh, IN

A certification was issued covering all workers separated on or after June 11, 1992.

TA-W-28,797; H.F.S. Apparel Manufacturing, Inc., Weissport, PA

A certification was issued covering all workers separated on or after June 9, 1992.

TA-W-28,973; Springfield Sportswear/ Shamokin Industries, Coal Township, PA

A certification was issued covering all workers separated on or after August 11, 1992.

TA-W-28,947; Allied Products Corp., Richard Brothers Die & Prototype Div., Hillsdale, MI

A certification was issued covering all workers separated on or after July 21, 1992.

TA-W-28,950; Colonial Corporation of America, Division of Taren Holdings, Inc., Tracy City, TN

A certification was issued covering all workers separated on or after August 16, 1992.

TA-W-28,965; Colonial Corporation of America, Division of Taren Holdings, Inc., Woodbury, TN

A certification was issued covering all workers separated on or after July 30, 1992.

I hereby certify that the aforementioned determinations were issued during the month of September 1993. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: September 15, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–23188 Filed 9–21–93; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 93–63; Exemption Application No. D–9216, et al.]

Grant of Individual Exemptions; The Chicago Corporation (TCC), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

The Chicago Corporation (TCC) Located in Chicago, IL

[Prohibited Transaction Exemption 93–63; Exemption Application No. D–9216]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the sale, for cash or other consideration, by the Midwest Bank Fund III Group Trust (the Group Trust) in which employee benefit plans (the Plans) invest, of certain bank company securities (the Bank Company Securities) that are held in the Group Trust portfolio, to a party in interest with respect to a participating Plan where the party in interest proposes to acquire or merge with the bank company (the Bank Company) that issued such securities.

In addition, the restrictions of sections 406(a), 406(b) (1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (D) and (E) of the Code, shall not apply to the purchase by the Group Trust of certain Bank Company Securities from the Midwest Bank Fund L.P. (MBF I) and the Midwest Bank Fund L.P. II (MBF II), two entities organized by and affiliated with TCC, the investment manager of the Group Trust.

Further, the restrictions of section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of a performance fee (the Performance Fee) to TCC by Plans participating in the Group Trust.

This exemption is subject to the following conditions as set forth below in Section II.

Section II. General Conditions

(1) Prior to the investment by each Plan in the Group Trust, each investment is approved by an Independent Plan Fiduciary.

(2) Each Plan investing in the Group Trust has total assets that are in excess of $50 million.

(3) No Plan shall invest more than 10 percent of its assets in units (the Units) of the Group Trust.

(4) No Plan invests more than 25 percent of its assets in investment vehicles (i.e., collective investment funds and separate accounts) managed or sponsored by TCC and/or its affiliates.

(5) Prior to making an investment in the Group Trust, (a) Each Independent Plan Fiduciary contemplating investing in the Group Trust receives a Private Placement Memorandum and supplement which describe all material facts concerning the purpose, structure and the operation of the Group Trust.

(b) An Independent Plan Fiduciary who expresses further interest in the Group Trust receives:

(1) A copy of the Group Trust Agreement outlining the organizational principles, investment objectives and administration of the Group Trust, the manner in which Trust shares may be redeemed, the duties of the parties retained to administer the Group Trust and the manner in which Group Trust assets will be valued; and

(2) A copy of the Investment Management Agreement describing the duties and responsibilities of TCC, as investment manager of the Group Trust, the rate of compensation that it will be paid and conditions under which TCC may be terminated.

(c) If accepted as an investor in the Group Trust, the Independent Plan Fiduciary is:

(1) Furnished with the names and addresses of all other participating Plans.

(2) Required to acknowledge, in writing, prior to purchasing Units in the Group Trust that such fiduciary has received copies of such documents. In addition, such Independent Plan Fiduciary will be required to acknowledge, in writing, to TCC that such fiduciary is (a) independent of TCC and its affiliates, (b) capable of making an independent decision regarding the investment of Plan assets and (c) knowledgeable with respect to the Plan in administrative and funding matters related thereto, and able to make an informed decision concerning participation in the Group Trust.

(6) Each Plan, including the trustee of the Group Trust (the Trustee) receives the following written disclosures from TCC with respect to its ongoing participation in the Group Trust:

(a) Within 90 days after the end of each fiscal year of the Group Trust as well as at the time of termination, an

annual financial report containing a balance sheet for the Group Trust as of the end of such fiscal year and a statement of changes in the financial position for the fiscal year, as audited and reported upon by independent, certified public accountants. The annual report will also disclose the fees that are paid or are accruable to TCC.

(b) Within 60 days after the end of each quarter (except in the last quarter) of each fiscal year of the Group Trust, an unaudited quarterly financial report consisting of at least a balance sheet for the Group Trust as of the end of such quarter and a profit and loss statement for such quarter. The quarterly report will also specify the fees that are actually paid to or accruable to TCC.

(c) Such other written information as may be needed by the Plans (including copies of the proposed exemption and grant notice with respect to the exemptive relief provided herein) in order to comply with the reporting requirements of the Act and the Code. In addition, TCC will provide the Trustee with certain trading activity and portfolio status reports as required by Prohibited Transaction (PTE) 86–128 (51 FR 41686, November 16, 1986).

(7) At least annually, TCC holds a meeting of the participating Plans at which time the Independent Plan Fiduciaries of such Plans are given an opportunity to decide on whether the Group Trust, the Trustee or TCC should be terminated as well as discuss any aspect of the Group Trust and the agreements promulgated thereunder with TCC.

(8) During each year of the Group Trust, TCC representatives are available to confer by telephone or in person with Independent Plan Fiduciaries on matters concerning the Group Trust.

(9) The terms of all transactions that are entered into on behalf of the Group Trust by TCC remain at least as favorable to an investing Plan as those obtainable in arm's length transactions with unrelated parties. In this regard, the valuation of assets in the Group Trust are based upon independent market quotations or determinations made by an independent appraiser (the Independent Appraiser).

(10) The Group Trust does not acquire Bank Company Securities from MBF I and/or MBF II unless (a) 100 percent of the Plans investing in the Group Trust and in the MBF III Limited Partnership approve of the purchase and (b) the Independent Appraiser confirms that TCC's recommended purchase price conforms to fair market value.

(11) In the case of the sale by the Group Trust of Bank Company Securities to a party in interest with respect to a participating Plan, the party in interest is not TCC, any employer of a participating Plan, or any affiliate thereof, and the Group Trust receives the same terms as is offered to other shareholders of the Bank Company.

(12) The total fees paid to TCC and its affiliates constitute no more than reasonable compensation.

(13) TCC's Performance Fee is based upon a predetermined percentage of net realized gains minus net unrealized losses. In this regard,

(a) The Performance Fee is paid after December 31, 1998, which is the completion of the acquisition phase (the Acquisition Phase) of the Group Trust but not until participating Plans have received distributions equal to 100 percent of their capital contributions made to the Group Trust.

(b) Prior to the termination of the Group Trust, no more than 75 percent of the Performance Fee credited to TCC is withdrawn from the Group Trust.

(c) The Performance Fee account established for TCC is charged with realized gains and losses, net unrealized losses and fee payments.

(d) No portion of the Performance Fee is withdrawn if the Performance Fee account is in a deficit position.

(e) TCC repays all deficits in its Performance Fee account and it maintains a 25 percent cushion in such account.

(14) Either TCC or the Trustee, on behalf of the Plans participating in the Group Trust, may terminate the Investment Management Agreement at any time pursuant to the provisions in such agreement.

(15) TCC maintains, for a period of six years, the records necessary to enable the persons described in paragraph (16) of this section to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of TCC and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than TCC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (16) below.

(16)(a) Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (15) of this section are unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(2) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(3) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(4) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(b) None of the persons described above in subparagraphs (2)–(4) of this paragraph (16) are authorized to examine the trade secrets of TCC or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption:

(1) An "affiliate" of TCC includes—

(a) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with TCC. (For purposes of this subsection, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(b) Any officer, director or partner in such person, and

(c) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(2) An "Independent Plan Fiduciary" is a Plan fiduciary who is independent of TCC and its affiliates and is either a Plan administrator, trustee, named fiduciary, as the recordholder of Units in the Group Trust or an investment manager.

(3) The "bid price" reflects the closing bid price for a Bank Company Security and it does not include any bids that are made by TCC and/or its affiliates.

Temporary Nature of Exemption

The Department has determined that this exemption will be temporary in nature and, unless extended pursuant to timely application, will expire eight years from the date of publication, in the **Federal Register**, of the notice granting the proposed exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on June 2, 1993 at 58 FR 31419.

EFFECTIVE DATE: This exemption is effective as of March 31, 1993.

Written Comments

The Department received one written comment with respect to the Notice and no requests for a public hearing. The written comment, which was submitted by TCC, requested clarifications and modifications to the Notice or raised questions concerning it. Following is a discussion of TCC's comments including the Department's response with respect thereto.

TCC wishes to clarify certain information pertaining to dates appearing in the Notice. For instance, TCC states that the Acquisition Phase for the Group Trust will end on December 31, 1998 rather than on March 31, 1999 as is set forth in several parts of the Notice, particularly in (1) Section II(13)(a), (2) the last sentence of Representation 12, (3) Representation 19(b)(2), (4) Footnote 19 and (5) Representation 25(l)(1). Although TCC acknowledges that the time frames specified in the Notice are longer than the time frames appearing in Group Trust Agreement and Investment Management Agreement, it advises that it must adhere to the December 31, 1998 date stipulated in these agreements which it entered into with Plan investors.

TCC also wishes to establish the intended duration of the Group Trust. For example, TCC represents that the second sentence of the second paragraph of Representation 6 of the Notice states that the Group Trust will have an eight year duration. In addition, TCC explains that Representation 21(c) of the Notice stipulates that the termination date for the Group Trust is March 31, 2001. TCC points out that Section 9.02(a) of the Group Trust Agreement requires that the Group Trust terminate on December 31, 2001 rather than on March 31, 2001. To avoid creating the impression that the scheduled termination date is anything other than December 31, 2001, TCC suggests that the text of the Notice be modified.

The Department has no objection to the foregoing changes that have been suggested by TCC and it hereby incorporates these modifications by reference into the Notice.

TCC represents that Section II(4) of the General Conditions of the Notice states that no Plan will invest more than 25 percent of its assets in investment vehicles (i.e., collective investment funds and separate accounts) that are managed or sponsored by TCC and/or its affiliates. TCC asks whether this condition is an initial condition which is applicable only at the time the investment is made, transactional (i.e., applicable only when the exemption is utilized) or a condition that must always be fulfilled. If the condition must always be fulfilled, TCC wonders what will happen if the percentage is somehow exceeded through no fault of TCC.

The Department agrees that there may be circumstances when, through no fault of its own, such as through the appreciation in the value of Bank Company Securities managed or sponsored by TCC, a Plan investor may exceed the 25 percent threshold for investment in TCC-sponsored funds or separate accounts. Therefore, for purposes of the exemption, the Department wishes to clarify that the 25 percent investment limitation does not apply to appreciation that may be attributed to a Plan's holdings in the Group Trust or in other TCC investment vehicles. However, in the event this situation arises, the Department cautions that a Plan investor may not purchase additional Units in the Group Trust and thereby increase the Plan's investment holdings with TCC beyond the overall limitation prescribed.

TCC requests clarification regarding the first sentence in the second paragraph of Representation 13. This sentence states:

> In general, the Investment Management Agreement permits TCC to allocate securities transactions to itself in the capacity of an agent.

If taken in this context, TCC believes that this sentence is concerned exclusively with brokerage transactions and the consequent commissions. However, TCC explains that use of the term "securities transactions" introduces an element of ambiguity. For example, the sentence may be interpreted to imply that TCC is permitted to allocate acquisition opportunities to itself, which is a power that TCC does not possess. The Department wishes to clarify this sentence and notes that it should be interpreted to apply solely to those situations wherein TCC utilizes itself in connection with brokerage services to the Group Trust.

Representations 20 (c) and (d) of the Notice state that TCC will not receive the Performance Fee if (1) it declares a non-justified termination (the Non-Justified Termination); or (2) the trustee of the Group Trust (the Trustee) declares a justified termination (the Justified Termination). TCC suggests that the Department clarify the language of these representations by adding the words "Investment Management Agreement" to each clause so as to identify the agreement from which these provisions are derived. If modified, as TCC has recommended, Representations 20(c) and 20(d) would then read as follows:

> "20. * * * (c) If TCC declares a Non-Justified Termination at any time, it will receive no Performance Fee under the terms of the Investment Management Agreement.
>
> (d) If the Trustee, on behalf of the Group Trust, declares a Justified Termination at any time, TCC will receive no Performance Fee under the terms of the Investment Management Agreement * * *."

The Department concurs with this comment and accordingly modifies Representations 20(c) and 20(d) of the Notice in the manner suggested by TCC. The Department also wishes to point out that the terms of the Investment Management Agreement would control the payment, by the Group Trust, of the Performance Fee to TCC in the event of a Non-Justified or Justified Termination as well as any disputes that may arise thereunder.

Representation 21 of the Notice states that the Group Trust's scheduled life may be extended upon a two-thirds vote of beneficiaries, "but only if TCC receives another exemption from the Department." TCC states that it does not understand why it needs another exemption to extend the life of the Group Trust. TCC is, however, aware of the fact that if the exemption has expired, any period of extended life would not be covered by an exemption unless the same is reapplied for and renewed. If Plan investors are willing to live without an exemption (i.e., by restricting their activities) TCC wonders why a new exemption must be a condition precedent to extending the life of the Group Trust.

The Department agrees that the extension of the Group Trust need not necessarily be preconditioned upon the granting of a new exemption. However, the Department also would point out that to the extent prohibited transactions occur after the extension of the Group Trust, such transactions would not be covered by this exemption which will expire within eight years following the publication of this grant notice in the **Federal Register**. Therefore, in the absence of a new exemption, a party in interest who engages in prohibited transactions with the Group Trust would not be protected from any potential liability.

TCC notes that the first sentence of Representation 24 describes the transaction where a Bank Company makes a merger or acquisition offer for another Bank Company whose securities are held in the Group Trust's portfolio.

TCC states that a technical prohibited transaction may exist if the Bank Company is a party in interest with

respect to a Plan investing in the Group Trust. However, Representation 24 indicates that the exemption is available only if the acquiring Bank Company is not a fiduciary to the Plan that has invested in the Group Trust.

TCC asserts that it does not understand why it should make a difference whether the acquiring Bank Company is a fiduciary or some other type of party in interest to a Plan investor. TCC explains that the Group Trust will never have more than a minority interest in a Bank Company Portfolio. In addition, TCC deems it unlikely that it or the investing Plan will have any role in the negotiating, timing or pricing of the acquisition or merger. TCC further explains that the Group Trust will receive the same consideration as the majority owners of the Bank Company. Thus, TCC requests that the Department extend this exemption to all such mergers or acquisitions, regardless of whether the acquiring Bank Company is a fiduciary or a party in interest.

In response to TCC's comment, the Department has determined that a Plan fiduciary that is a Bank Company may participate in a merger or acquisition transaction under the exemption. However, the Department advises that such fiduciary may not have any involvement in the transaction on behalf of the Group Trust. Thus, such fiduciary may not exercise investment discretion with respect to the Group Trust's decision to sell Bank Company Securities to it, as purchaser.

Accordingly, after a consideration of the entire exemption record, including the written comment provided by TCC, the Department has decided to grant the proposed exemption as described herein.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Department of Labor, telephone (202) 219–8881. (This is not a toll-free number.)

Heritage Pullman Bank Employees' Profit Sharing Plan (the Plan) Located in Chicago, IL

[Prohibited Transaction Exemption 93–64; Application No. D–9276]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale (the Sale) by the Plan of certain notes (collectively, the Notes) to Heritage Pullman Bank (Heritage Pullman), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The Sale is a one-time cash transaction;

(b) The Plan is not required to pay any commissions, fees, or other expenses in connection with the Sale;

(c) The Notes are appraised by a qualified, independent appraiser; and

(d) the sales price for the Notes is based upon an amount representing the greater of each Note's outstanding principal balance or each Note's fair market value as of the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 20, 1993 at 58 FR 38790.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Analex Corporation (Analex), Analex Corporation Retirement Plan (the Plan) Located in Brookpark, OH

[Prohibited Transaction Exemption 93–65; Application No. D–9371]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the series of loans (the Loans) to be made, during a period of five years, from the Plan to Analex (the Employer), the Plan's sponsor and, as such, a party in interest with respect to the Plan; subject to the following conditions:

(1) All terms and conditions of the Loans are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(2) The amount of the Plan's assets involved in the Loans does not exceed 15% of the Plan's total assets at any time during the transaction;

(3) The Loans will at all times be secured by collateral which is valued at not less than 200% of the aggregate balance of all outstanding Loans from the Plan to the Employer;

(4) Prior to each disbursement under the Loan agreement, an independent, qualified fiduciary must determine on behalf of the Plan that the Loans are in the best interests of the Plan as an investment for the Plan's portfolio, and protective of the Plan and its participants and beneficiaries;

(5) The independent, qualified fiduciary will conduct a review of the terms and conditions of the exemption and the Loans, including the applicable interest rate, the sufficiency of the collateral, the financial condition of the Employer and compliance with the 15% of Plan assets maximum loan amount, prior to approving each disbursement under the Loan agreement;

(6) The fiduciary will monitor the Loans throughout the exemption to ensure compliance with the terms and conditions of the exemption and the Loans; and

(7) The fiduciary is authorized to take whatever action is appropriate to protect the Plan's rights throughout the duration of the exemption and throughout the duration of any Loan granted pursuant to the exemption.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire five years from the date the exemption is granted with respect to the making of any Loan. Subsequent to the expiration of the exemption, the Plan may continue to hold any Loans originated during the proposed five year exemption period; provided that none of the Loans have a term exceeding five years.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 20, 1993 at 58 FR 38792.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

The Stephen B. Swartz 1992 Profit Sharing Plan (the Plan) Located in Minneapolis, MN

[Prohibited Transaction Exemption 93–66; Exemption Application No. D–9253]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the (1) proposed sale to the Plan, for the total cash consideration of $119,000, of certain improved real property (the Property) by Stephen B. and Harriet K. Swartz, who are disqualified persons with respect to the Plan; and (2) the contemporaneous leasing of the Property by the Plan to the Swartzes under the provisions of a written lease (the Lease).[1]

This exemption is conditioned on the following requirements: (1) the terms of

[1] Because Mr. Swartz is the Plan sponsor and the sole participant in the Plan, there is no jurisdiction under title I of the Act. However, there is jurisdiction under title II of the Act pursuant to section 4975 of the Code.

the transactions are at least as favorable to the Plan as those obtainable in arm's length transactions with an unrelated party; (2) the acquisition price that is paid by the Plan for the Property is not more than the independently appraised value of the Property; (3) the Property represents less than 25 percent of the Plan's assets; (4) the Plan is not required to pay any real estate fees or commissions in connection with its purchase of the Property; (5) the rental amount under the Lease is based upon the fair market rental value of the Property as determined by a qualified, independent appraiser; (6) the rental amount is adjusted by the Plan trustee (the Trustee) during every third year of the Lease to the higher of the original rental amount or the fair market rental value of the Property as determined by an independent appraiser who has been selected by the Trustee; and (7) the Swartzes incur all real estate taxes and other costs that are associated with the Property and which are incident to the Lease.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 13, 1993 at 58 FR 43135.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Anesthesia Associates of Kansas City, Inc. Profit Sharing Plan (the Plan) Located in Kansas City, MO

[Prohibited Transaction Exemption 93–67; Application No. D–9401]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale (the Sale) from Arthur P. Vogel, M.D.'s (Dr. Vogel) individually-directed account (the Account) in the Plan of certain stock (the Stock) to Dr. Vogel, a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The Sale is a one-time cash transaction;

(b) The Plan is not required to pay any commissions, costs or other expenses in connection with this transaction;

(c) The Stock is appraised by a qualified, independent appraiser; and

(d) The sales price for the Stock reflects its fair market value on the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 3, 1993 at 58 FR 41497.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of September, 1993.

Ivan Strasfeld,

Director of Exemption Determinations; Pension and Welfare Benefits Administration U.S. Department of Labor.

[FR Doc. 93–23219 Filed 9–21–93; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–9406, et al.]

Proposed Exemptions; The UIU Health and Welfare Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the

Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The UIU Health and Welfare Plan (the Plan) Located in Philadelphia, Pennsylvania

[Application No. D–9406]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act shall not apply to: (1) The lending of $3 million by the United Steelworkers of America (the USWA) to the Plan; (2) the guarantee by the USWA of the repayment of certain deferred premiums owed by the Plan to Blue Cross of Western Pennsylvania and Pennsylvania Blue Shield (BCBS); (3) the guarantee by the USWA of a $9.5 million loan made to the Plan by the Integra National Bank/Pittsburgh (Integra); and (4) the granting of a security interest by the Plan to the USWA in the Plan's building and property (the Property) or in the proceeds from the sale of the Property, in connection with the above-described extensions of credit, provided the following conditions are satisfied: (a) the loan and the extensions of credit were obtained by the Plan to enable it to satisfy its past, present and future benefit obligations; (b) the terms of the loan and extensions of credit are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (c) an independent consulting firm, the Segal Company (Segal), has reviewed the subject transactions and has determined that they are appropriate for the Plan; and (d) the Plan's trustees have determined that the transactions are appropriate for the Plan and in the best interest of its participants and beneficiaries.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective January 1, 1992.

Summary of Facts and Representations

1. The USWA is a labor organization that represents nearly all of the Plan's participants for purposes of collective bargaining. The Plan is a self-funded, multiemployer welfare benefits plan which, as of December 31, 1991, provided coverage to approximately 22,000 participants, had liabilities of approximately $30 million and approximately $19 million in assets. The Plan's Board of Trustees is appointed by the Upholsterers International Union (the UIU). The UIU is a division of the USWA.

2. By the fall of 1991, the Plan had paid out its entire cash reserve and was operating at a cash deficit. Without outside assistance, past, current and anticipated health care benefits to Plan participants and beneficiaries could not have been provided. In order to avoid this problem, the Plan negotiated an agreement with BCBS under which BCBS has provided health insurance coverage for all participants for health care costs incurred beginning November 1, 1991.

3. As part of the agreement, BCBS also deferred payment by the Plan to it of premiums for the months of November and December, 1991. The Plan's trustees believed that these premium deferrals would enable the Plan to cover all or nearly all unpaid health care costs incurred prior to November 1, 1991. However, BCBS was not willing to enter into such an arrangement without significant backing from the USWA. BCBS's participation in the arrangement was contingent on the USWA advancing $3 million to be applied to reduce the amount of the deferred premium. Accordingly, pursuant to an agreement effective November 1, 1991, the USWA agreed to pay BCBS the $3 million requested. In turn, the Plan agreed to repay the USWA the $3 million (advanced to BCBS by the USWA) by December 31, 1998 in monthly installments pursuant to an understanding that the Plan could postpone payments due for any month during the first year of the agreement.

4. To secure the USWA's $3 million advance to BCBS, the Plan has provided the USWA with a security interest in the Property (or the proceeds from the Property if sold). The Property consists of the Plan's building and real property located at 25 North Fourth Street in Philadelphia, Pa. At the time of the $3 million advance, the Property had been appraised as having a fair market value of $3.1 million. However, efforts by the Plan to sell the Property yielded only offers which were significantly less than the appraised value. On June 2, 1993, the Plan sold the Property, after it had been on the market for many months, to an unrelated party, for approximately $1.1 million. The proceeds from the sale have been placed in an interest bearing account. As with the Property before, the USWA has a security interest in the proceeds. This security interest is subordinated to the interest of Integra in connection with a $9.5 million loan (the Integra Loan; see rep. 10, below).

5. Prior to the negotiation of the Integra Loan, the terms of the $3 million loan provided that interest payments would be made at a fixed rate: for 1992, 1993 and 1994, of seven and one-half percent (the prime rate as of December 13, 1991); for 1995 and 1996, of the average prime rate for 1994; and for 1997 and 1998, the average prime rate for 1996. These rates were selected through consultations between the Plan and the USWA. The rates were designed never to exceed the average prime rate for a given year. Thus, the applicant represents that the USWA and the Plan were assured to have established a rate that was better than or equal to the rate any customer would get from a bank in an arm's-length transaction, let alone an uncreditworthy customer such as the Plan. However, pursuant to the terms of a subsequent agreement, the Plan was provided with the option to elect to forego the fixed rate and pay instead interest calculated on the basis of the rates provided for in the Integra Loan. The Plan made this election. The applicant represents that these rates are even more favorable to the Plan, because these rates are more favorable than those commercially available to other creditworthy customers (see rep. 9, below).

6. The applicant represents that no interest has yet been paid by the Plan to the USWA on the $3 million loan,[1] and

[1] The agreement between the USWA and the Plan provided that no interest would be chargeable under any circumstances for the period of the loan prior to January 1, 1992. For the period beginning January 1, 1992, the Plan and the USWA agreed that interest would be paid after a prohibited transaction exemption was obtained from the Department.

accordingly, the loan has been exempt from the prohibited transaction restrictions of section 406 of the Act by reason of Prohibited Transaction Exemption 80–26 (PTE 80–26, 45 FR 28545, April 29, 1980).[2] However, the applicant has requested an exemption to permit the Plan to pay interest to the USWA on this loan at the Integra Loan rate, as the Plan's trustees have elected, effective January 1, 1992.

7. In addition to the $3 million advance, the agreement between the USWA and BCBS requires the USWA to guarantee the repayment of the deferred premiums by the Plan in the event of the termination of the agreement between the Plan and BCBS for non-payment of premiums or because the number of groups covered by the Plan declines below a certain level. The USWA guarantee will be restricted to $6 million during the second half of the 1993 calendar year, $5 million during the first half of the 1994 calendar year, $4.5 million during the second half of the 1994 calendar year, $4 million during the first half of the 1995 calendar year and $3.5 million during the second half of the 1995 calendar year. The guarantee does extend beyond the 1995 calendar year.

8. In consideration for this guarantee, the Plan has conveyed to the USWA a security interest in the Property (or the proceeds from its sale, if sold) to protect the USWA in the event it is required to make payments on the guarantee. This is the same security interest, described in rep. 4, above, that is securing the USWA's $3 million payment to BCBS. The security interest is now in the proceeds from the sale of the Property (see rep. 4, above). However, in no event would the value of the security interest provided to the USWA by the Plan exceed the value of the USWA's guarantee.

9. The number of groups participating in the Plan declined greatly in 1991, and the deferred premium arrangement described in rep. 3, above, did not generate sufficient funds to resolve the Plan's liabilities with respect to benefit claims which were incurred prior to November 1, 1991. On the contrary, the Plan needed an additional $9.5 million to reimburse or settle these claims. The Plan's assets were insufficient either to pay these claims or to provide security for a commercial loan of this magnitude.

10. Two commercial lenders were willing to provide substantial loans to the Plan at favorable interest rates if a third party with sufficient assets would guarantee the loans and pledge assets in support of that guarantee. The USWA agreed to post collateral on behalf of the Plan and to guarantee a $9.5 million loan. Consequently, on May 1, 1992, the Plan obtained the Integra Loan (see rep. 4, above) for $9.5 million at the following rates: (1) For loan amounts up to the aggregate face amount of certificates of deposit pledged by the USWA, the respective rates of the certificates of deposit plus one and three-quarters percent; or (2) for loan amounts in excess of the aggregate face amount of certificates of deposit pledged to Integra by the USWA, the prime rate less one percent. Integra has represented that the rate granted to the Plan for this loan was more favorable than normal for commercial loans made by Integra, due to the guarantee and security posted by the USWA. Integra also obtained a security interest in the Property (or the proceeds from its sale) and an agreement subordinating the USWA's interest in the Property (or the proceeds).

11. In the event that the Plan defaults on its obligation to Integra and the USWA is required to make any payment to Integra on behalf of the Plan, such payment will be considered a loan to the Plan by the USWA. The Plan will execute a note recognizing its obligation to repay the loan principal to the USWA. The Plan has agreed to pay the USWA interest on such loan at the same rate as that charged by Integra on the defaulted loan. Such loan, like the advance and the guarantee described above, will be secured with the proceeds from the sale of the Property. The applicant represents that the proceeds from the sale of the Property is the only current or intended collateral for the loan and guarantees provided by the USWA to the Plan, and the USWA will not seek additional collateral from the Plan in the future, regardless of the future performance of the loan and guarantees.

12. The applicant represents that with respect to the subject transactions, the Plan's trustees have obtained terms that were at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party. The formula arrived at to set interest rates and the methods determined to secure the loan and the guarantee were both negotiated and designed to accomplish the goal of protecting the interests of the Plan. To confirm this, the trustees retained Segal, an independent consulting firm, to evaluate the subject transactions. In its report, Segal concluded that the Plan could not have obtained credit from other sources at more favorable terms if, in fact, any credit of this magnitude could have been obtained at those times because of the financial condition of the Plan. The applicant represents that the subject transactions provide below-market loans with favorable security features to the Plan.

13. In summary, the applicant represents that the subject transactions satisfy the criteria of section 408(a) of the Act because: (a) The subject transactions permit the Plan to maintain current and anticipated health care and welfare benefits and to satisfy past benefit liabilities; (b) the terms of the loan and the extensions of credit are at least as favorable to the plan as those obtainable in an arm's-length transaction with an unrelated party; (c) the Plan's trustees have determined that the subject transactions are appropriate for the Plan and in the best interest of the Plan's participants and beneficiaries; and (d) an independent consulting firm, Segal, has reviewed the subject transactions and has determined that they are in the interest of the Plan.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Robert W. McCurdy Medical Corporation Pension Plan and Trust (the Plan) Located in Anderson, Indiana

[Application No. D–9452]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) shall not apply to the proposed sale (the Sale) from Robert W. McCurdy, M.D.'s (Dr. McCurdy) individually-directed account (the Account) in the Plan of certain properties (the Property) to Dr. McCurdy, a party in interest with respect to the Plan.

This proposed exemption is conditioned upon the following requirements: (1) The Sale is a one-time cash transaction; (2) the Plan is not required to pay any commissions, costs or other expenses in connection with this transaction; (3) the Property is appraised by a qualified, independent appraiser; and (4) the sales price for the Property is the greater of: (a) the original

[2] In this proposed exemption, the Department expresses no option as to whether the $3 million loan has been exempt by reason of PTE 80–26.

amount paid by the Account for the Property at the time of acquisition plus capital improvement expenses; or (b) its fair market value on the date of the Sale.

Summary of Facts and Representations

1. Robert W. McCurdy Medical Corporation (the Employer) sponsors the Plan, which is a profit sharing plan. As of October 21, 1992, the Plan had three (3) participants, one of whom is Dr. McCurdy. The Plan provides for individually-directed accounts by participants. As of December 31, 1991, the Plan had total assets of $1,731,180 and the Account had total assets of $1,582,593.06. Dr. McCurdy is the sole trustee of the Plan and the sole shareholder of the Employer.

2. Between the years of 1974 through 1989, the Account purchased various parcels of farm land (the Original Purchase) from unrelated parties for $939,345. The Original Purchase consisted of 510 acres of farm land as well as two (2) single-family dwellings (the Dwellings) located thereon. Subsequently, the Account sold thirty-two (32) acres of the Original Purchase along with the Dwellings to unrelated parties for $162,213. The Property is comprised of the remaining 479 acres of the Original Purchase, which consists of thirteen (13) separate parcels of tillable farm land located in Madison and Delaware counties in the state of Indiana. Dr. McCurdy represents that he owns three parcels of land that are adjacent to the Property. To date, the Account has paid for all costs relating to the Property, including maintenance, taxes and other expenses in the amount of $35,833 and capital improvements in the amount of $12,620. The resulting cost basis of the Property is $798,525. Dr. McCurdy represents that the Account purchased the Property as an investment in hopes that the land would appreciate greatly in value. Dr. McCurdy further represents the Account contracts with an individual to grow grain on the Property. The Account pays for the seed, fertilizer, and chemicals and receives all the proceeds from the sale of grain.

A recent Internal Revenue Service (IRS) audit of the Plan determined that the Plan is liable for unrelated business income tax (UBIT) resulting from farming activity on the Property. Dr. McCurdy represents that the Account cannot pay both its present expenses and the UBIT out of its present cash flow.

3. In order that the Account may utilize its funds in an alternative investment, Dr. McCurdy requests an administrative exemption from the Department to purchase the Property for cash from the Account for its fair market value on the date of the Sale. Because the Sale would be between Dr. McCurdy and the Account, the accounts of the other Plan participants would not be affected. The Plan will not be required to pay any commissions, costs or other expenses in connection with this transaction.

4. Messrs. Carl C. Chambers and G. Clark Harrison (the Appraisers) of F.C. Tucker/O.C. Clark, Realtors appraised the Property (the Appraisal). Mr. Chambers and Mr. Harrison's qualifications include thirty-one (31) and nineteen (19) years, respectively, of experience as licensed real estate brokers in the State of Indiana and twenty-nine (29) and twenty-six (26) years, respectively, of appraising experience. The Appraisers represent that both they and F.C. Tucker/O.C. Clark, Realtors are unrelated to and independent of the Employer.

5. In determining the fair market value of the Property, the Appraisers relied on the Sales Comparison approach and concluded that as of March 10, 1993, the fair market value of the Property was $627,974. The Appraisal provided comparisons to seven (7) parcels of farm land located within Madison and Delaware counties. In a letter of July 13, 1993, Mr. Chambers considered the applicability of a premium on the fair market value of the Property and concluded that no premium was justified. Based upon the Appraisal, the fair market value of the Property does not exceed the original amount paid by the Plan for the Property at the time of acquisition plus capital improvements, so the Account will sell the Property to Dr. McCurdy for a sales price of $798,525.

6. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) the Sale will represent a one-time cash transaction; (b) the Plan will not be required to pay any commissions, costs or other expenses in connection with the transaction; (c) the Property has been appraised by a qualified, independent appraiser and (d) the sales price for the Property is the greater of: (a) the original amount paid by the Account for the Property at the time of acquisition plus capital improvements expenses; or (b) its fair market value on the date of the Sale.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Gary Tax Advantaged Savings Program and Profit Sharing Plan (the Plan) Located in Denver, Colorado

[Application No. D–9385]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale for cash of a certain "net profits" interest (the Interest) from the Plan to Bloomfield Refining Company (Bloomfield), a party in interest with respect to the Plan, provided that the following conditions are met:

1. The fair market value of the Interest is established by an appraiser independent of any employers contributing to the Plan or affiliates;

2. Bloomfield pays no less than the greater of $173,756 or the fair market value of the Interest at the time of sale;

3. The sale is a one-time transaction for cash; and

4. The Plan pays no commissions or other expenses and capital expenditures. The Plan has paid no expenses in regard to the sale.

Summary of Facts and Representations

1. The Gary-Williams Company (Gary-Williams) and its affiliated companies are engaged in the business of oil and gas exploration, production and refining. In addition to Gary-Williams, the affiliated companies contributing to the Plan are the Gary-Williams Energy Corporation and Bloomfield. Gary-Williams is the administrator for the Plan. The Plan is a profit sharing plan which had approximately 140 participants and beneficiaries and total assets of $11,406,460 as of December 31, 1992.

2. The Interest is a "net profits" interest in the Bluebell Gas Plant (Bluebell). The Interest was acquired in 1968 (prior to passage of the Act) by the Plan, which at that time was maintained by a predecessor to the present Plan sponsors. The current Plan fiduciaries believe that the Interest was contributed to the Plan by a former Plan sponsor. Bluebell is located in Duchesne County, Utah, and processes gas from wells in the Bluebell Field. The Interest is a percentage of net profits which reflect

the cash flow of Bluebell, taking account of all income and sales proceeds as well as all expenses and capital expenditures. The Plan has paid no expenses in regard to the holding of the Interest since the time of its acquisition by the Plan.

Bloomfield owns a 47.8 percent interest in Bluebell. The interest owned by Bloomfield is a working interest as opposed to a net profits interest. No other contributing employer or affiliates or officers thereof own any working or net profits interest in Bluebell.

3. The Plan obtained an appraisal of the Interest on December 11, 1992, supplemented by letters dated June 2 and August 7, 1993, from Jack A. McCartney (McCartney) of McCartney Engineering, Inc., a firm of consulting petroleum engineers located in Denver. The applicant represents that McCartney is independent of the Plan and all the contributing employers. McCartney estimated the remaining reserves and future net revenue attributed to the Interest, and noted that gas production rates from the Bluebell wells are declining. Also, McCartney stated that an advantageous gas sales contract for prices above market prices ended in 1992. Accordingly, the estimated fair market value of the Interest was $173,756 as of December 31, 1992.

4. The Plan now desires to achieve the liquidity necessary to allow investments on an individually directed basis in accordance with section 404(c) of the Act and the regulations issued thereunder (29 CFR 2550.404c–1). Accordingly, the Plan proposes to sell the Interest to Bloomfield. The sale will be a one-time transaction for cash. Bloomfield will pay no less than the greater of $173,756 or the fair market value of the Interest at the time of sale, based on an updated independent appraisal by McCartney. The Plan will incur no expense in connection with the transaction.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The fair market value of the Interest will be established by an appraiser independent of the contributing employers; (2) Bloomfield will pay no less than the greater of $173,756 or the fair market value of the Interest at the time of sale; (3) the sale will be a one-time transaction for cash; and (4) the sale will enable the Plan to enhance its liquidity so as to permit individually directed investments.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction: and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of September, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 93–23218 Filed 9–21–93; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Move of the Cartographic and Architectural Branch of the Nontextual Archives Division to the New National Archives Facility in College Park, MD

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of closure and reopening of reference services for holdings of the Cartographic and Architectural Branch related to the move to the National Archives at College Park (Archives II).

SUMMARY: This notice provides information about the period of time that reference service on certain holdings of the National Archives staff from their current location in the Pickett Street Facility to the new Archives II facility. Additional notices will be published by NARA relating to the move of other holdings to Archives II.

Between November 1993, and February 1994, the Cartographic and Architectural Branch (NNSC) of the Nontextual Archives Division will close its research room and suspend reference services (requests for reproductions and reference inquiries) in its current location; move its records, staff, and equipment to the new building; and then resume reference services and open its new research room in The National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

During the periods shown on the following schedule, the branch will be unable to process requests for reproductions (fee orders) or requests for information, and the research room in which its holdings are made available to researchers will be closed. Requests received during the periods of suspended service will be returned for resubmission after the date indicated for resumption of reference service. Changes in the overall move schedule may require changes in these dates.

Activity	Date
Stop accepting fee orders	11/12/93
Resume accepting fee orders	2/1/94
Stop accepting phone, mail, and fax reference inquiries	11/26/93
Resume accepting phone, mail, and fax reference inquiries	2/1/94
Close current research room	11/26/94
Open new research room at Archives II	2/1/94

FOR FURTHER INFORMATION CONTACT: For schedule updates, call the Cartographic and Architectural Branch at (703) 756–6700, or Debra Wall at 202–501–5445.

Dated: September 15, 1993.
Trudy Huskamp Petersen,
Acting Archivist of the United States.
[FR Doc. 93–23148 Filed 9–21–93; 8:45 am]
BILLING CODE 7515–01–M

Move of the Nixon Presidential Materials Staff of the Office of Presidential Libraries to the New National Archives Facility in College Park, MD

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of closure and reopening of reference services for holding of the Nixon presidential materials staff related to the move to the National Archives at College Park (Archives II).

SUMMARY: This notice provides information about the period of time that reference services on certain holdings of the National Archives will be unavailable due to the move of those holdings and the associated National Archives staff from their current locations in the Pickett Street Facility to the new Archives II facility. Additional notices will be published by NARA relating to the move of other holdings to Archives II.

Between October 1993, and January 1994, the Nixon Presidential Materials Staff (NLNP) of the Office of Presidential Libraries will close its research room and suspend reference services (requests for reproductions and reference inquiries) in its current location; move its records, staff, and equipment to the new building; and then resume reference services and open its new research room in the National Archives at College Part, 8601 Adelphi Road, College Park, MD 20740–6001.

During the periods shown on the following schedule, the staff will be unable to process requests for reproductions (fee orders) or requests for information, and the research room in which its holdings are made available to researchers will be closed. Requests received during the periods of suspended service will be returned for resubmission after the date indicated for resumption of reference service. Changes in the overall move schedule may require changes in these dates.

Activity	Date
Stop accepting fee orders	10/15/93
Resume accepting fee orders	1/3/94
Stop accepting phone, mail, and fax reference inquiries	10/29/93
Resume accepting phone, mail, and fax reference inquiries	1/3/94
Close current research room	10/29/93
Open new research room at Archives II	1/3/94

FOR FURTHER INFORMATION CONTACT: For schedule updates, call the Nixon Presidential Materials Staff at (703) 756–6498.

Dated: September 14, 1993.
Trudy Huskamp Peterson,
Acting Archivist of the United States.
[FR Doc. 93–23145 Filed 9–21–93; 8:45 am]
BILLING CODE 7515–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Challenge and Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Overview Section) to the National Council on the Arts will be held on September 27, 1993 from 10 a.m. to 4 p.m., in room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. Topics will include an open discussion and a guideline review.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW, Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: September 15, 1993.
Yvonne M. Sabine,
Office of Panel Operations, National Endowment for the Arts.
[FR Doc. 93–23151 Filed 9–21–93; 8:45 am]
BILLING CODE 7537–01–M

Challenge and Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Advancement Phase II Grant Panel Section) to the National Council on the Arts will be held on October 6–7, 1993 from 10 a.m. to 5:30 p.m. on October 6, 1993, and from 9 a.m. to 3 p.m. on October 7, 1993. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 10 a.m. to 10:30 a.m. on October 6, 1993 for introductions and a brief Advancement overview discussion.

The remaining portions of this meeting from 10:30 a.m. to 5:30 p.m. on October 6, 1993 and 9 a.m. to 3 p.m. on October 7, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: September 15, 1993.
Yvonne M. Sabine,
Director, Office of Panel Operations, National Endowment for the Arts.
[FR Doc. 93–23152 Filed 9–21–93; 8:45 am]
BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–322]

Environmental Assessment and Finding of No Significant Impact; Long Island Power Authority Shoreham Nuclear Power Station

The U.S. Nuclear Regulatory Commission is considering issuance of an exemption from the emergency preparedness requirements of 10 CFR 50.54(q) to the Long Island Power Authority (LIPA or the licensee) for the Shoreham Nuclear Power Station (SNPS), pursuant to the requirements of 10 CFR 50.12.

Environmental Assessment

Identification of Proposed Action

The exemption will delete the requirement to maintain and implement the "Shoreham Nuclear Power Station Defueled Emergency Preparedness Plan." SNPS is permanently shut down and all the fuel assemblies are currently stored in the spent fuel storage pool. At the time of the plant's final shutdown (June 1987), the average fuel burnup was calculated to be approximately two effective full-power days. Because the fuel heat decay rate is low (220 watts), active cooling of the fuel is not required. Currently, LIPA has entered into a contract with Philadelphia Electric Company to sell the fuel, and anticipates initial fuel transfer to begin in September 1993, and be completed by December 1994.

In addition, on July 31, 1990, LIPA was granted partial relief from the requirements of 10 CFR 50.54(q). The July 31, 1990, exemption granted LIPA relief from the requirements to maintain off-site emergency response capability, and the SNPS Defueled Emergency Preparedness Plan (DEPP) was implemented to address on-site emergency response. LIPA is currently requesting an exemption from the DEPP. Granting an exemption to SNPS is a warranted case because: (1) SNPS is now permanently shut down; (2) the decommissioning of SNPS is now approximately 75 percent complete, and nearly all the radioactive material except for the fuel has been removed from the site; (3) SNPS is permanently defueled, and the fuel source term inventory and decay heat are even lower than the levels that existed in 1990 when relief from off-site emergency response was granted; and (4) LIPA estimates that the facility license will be terminated and the facility will be released for unrestricted use in 1995.

The Need for the Proposed Action

The exemption is needed to eliminate emergency plan requirements of 10 CFR 50.54(q) that are appropriate for an operating plant but are not needed at the shutdown SNPS. Granting the proposed exemption would reduce unnecessary costs for LIPA.

Environmental Impact of the Proposed Action

The proposed action to eliminate the requirements to have in effect, and maintain, emergency plans will have no environmental impact because SNPS is permanently shut down and defueled and the worst-case accidents at SNPS would result in radiation exposures that are less than the U.S. Environmental Protection Agency's "Protective Action Guides." Therefore, the present "Defueled Emergency Response Plan" requires no offsite protective actions in the event of an accident. In addition, SNPS has existing plant procedures to address any on-site events that may require an emergency response.

The requested exemption would not authorize construction nor operation, and would not authorize a change in licensed activities nor effect changes in the permitted types or amounts of radiological effluent. With regard to potential non-radiological impacts, the NRC concludes that there are no measurable radiological or non-radiological impacts associated with the exemption.

Alternatives to the Proposed Action

Since the NRC concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement" for SNPS.

Agencies and Persons Consulted

The licensee initiated this exemption. The NRC staff has reviewed the request. The State of New York was notified of the proposed exemption. The State Official had no comments.

Finding of No Significant Impact

Therefore, the NRC has determined that an environmental impact statement for the proposed exemption is not required.

Based on this environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment.

A copy of the licensee's request for exemption and supporting documentation, dated January 26, 1993, and the NRC staff's Safety Evaluation Report are available for public inspection at the NRC's Public Document Room; 2120 L Street, NW., Washington, DC 20037, and at the local public document room at the Shoreham Wading River Public Library, Shoreham Wading River High School, Route 25A, Shoreham, NY 11792.

Dated at Rockville, Maryland, this 18th day of August, 1993.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–23177 Filed 9–21–93; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards, Subcommittee on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 6, 1993, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of certain portions that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, October 6, 1993—2 p.m. until 4:30 p.m.

The Subcommittee will discuss proposed ACRS activities, practices and procedures for conducting the Committee business, and organizational and personnel matters relating to ACRS and its staff. The purpose of this meeting will be to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only

by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefore can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone 301/492–4516) between 7:30 a.m. and 4:15 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: September 15, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–23173 Filed 9–21–93; 8:45 am]

BILLING CODE 7590–01–M

Availability of Proposed Revision to Staff Technical Position Regarding Concentration Averaging and Encapsulation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of a proposed revision, in part, of the 1983 Staff Technical Position on Radioactive Waste Classification. The revision is entitled, (Proposed) "Technical Position on Concentration Averaging and Encapsulation," and represents a modification of an earlier proposal which was noticed in the **Federal Register** on June 30, 1992 (57 FR 29105). The modification has been developed after considering the comments received on the initial proposal. The position provides guidance on the interpretation of § 61.55(a)(8) of 10 CFR part 61 as it applies to the classification (e.g., Class A, B, or C waste) of a variety of different types and forms of low-level radioactive waste.

The Technical Position on Radioactive Waste Classification was initially developed in 1983 to provide guidance to low-level radioactive waste generators on four specific topics regarding waste classification: (1) Acceptable Materials Accountability Programs; (2) Determination and Verification of Radionuclide Concentrations and Correlations; (3) Concentration Volumes and Masses; and (4) Reporting on Manifests. Because of the desirability of attempting to achieve consistent waste classification positions among the Commission and Agreement State regulatory authorities, and because of the impact of waste classification positions on other programs (e.g., the Department of Energy's program to accept greater-than Class C waste), a need was identified to expand upon, further define, and replace guidance on the third of the four topics, "Concentration Volumes and Masses." This need resulted in the development of the (Proposed) "Technical Position on Concentration Averaging and Encapsulation" which was noticed in the **Federal Register** on June 30, 1992 (57 FR 29105). Copies of this initial proposed "Technical Position on Concentration Averaging and Encapsulation" were distributed to licensees, Agreement States, Non-Agreement States, State Liaison Officers, and others who are on the NRC's Compact Distribution List. In response to a request for comments on this Position, nineteen comment letters were received. Consideration of these comments has led to the modified Technical Position which is the subject of this notice. Copies of this modified Technical Position, together with an NRC summary of major comments and NRC staff responses, are again being distributed (under separate cover) to the aforementioned addresses as well as those who specifically submitted comments on the initial proposal.

ADDRESSES: Copies of the modified proposed Technical Position and the "NRC Staff's Analysis of and Response to Comments" may be obtained by writing to W.R. Lahs at Mail Stop 5E–4 OWFN, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments on this modified proposed Technical Position are again solicited and should be sent to the Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A final position will be issued following NRC staff review of the comments received.

FOR FURTHER INFORMATION CONTACT: W.R. Lahs, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2569.

Dated at Rockville, Maryland, this 16th day of September 1993.

For the Nuclear Regulatory Commission.

Michael J. Bell,

Chief, Low-Level Waste Management Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–23176 Filed 9–21–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–423]

Northeast Nuclear Energy Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49, issued to Northeast Nuclear Energy Company (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3, located in New London County, Connecticut.

The proposed amendment would revise the trip setpoints associated with the reactor trip system interlock P–10. The P–10 reactor trip system interlock performs certain functions upon an increase in reactor power level (such as activating low reactor coolant flow reactor protection system (RPS) trips) and other functions upon a decrease in reactor power level (such as activating the intermediate range flux monitors). The present setpoint values specified in the Technical Specifications are conservative, but impractical for plant operation. The licensee has proposed new setpoint values that retain the conservatism and are practical for plant operation.

Because the present Technical Specifications are impractical for plant operation, the Technical Specifications must be changed before plant operation resumes. The plant is presently shutdown for refueling and resumption of operations is expected by October 5, 1993. In order to process the proposed license amendment in time to permit scheduled resumption of operation exigent approval is required. The licensee has stated that the exigent situation could not have been avoided because the understanding that the Technical Specification needed to be modified was reached on September 8, 1993.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes modify the trip setpoints associated with the P–10 interlock (Table 2.2–1, Functional Units 18.b.1 and 18.e). The P–10 interlock is associated with the following reactor trips that are credited in the safety analyses:

- Pressurizer Pressure—Low
- Pressurizer Water Level—High
- Reactor Coolant Flow—Low (more than one loop)
- Reactor Coolant Pump Shaft Speed—Low

Based on this list of reactor trips, the accidents potentially impacted include:

- Loss of Forced Reactor Coolant Flow
- Rod Withdrawal from Subcritical
- Loss of Load
- Reactor Coolant Pump Shaft Seizure (locked rotor)

The proposed changes are intended to explicitly account for the dead band inherent in the bistable which precludes having both settings at 10% of the RTP (reactor thermal power). The "allowable value" listed in Table 2.2–1 for Functional Unit 18.b.1 is (less than or equal to) 12.1% of the RTP and the "allowable value" listed in Table 2.2–1 for Functional Unit 18.e is (greater than or equal to) 7.9% of the RTP. The "allowable values" of the limiting safety system settings are the values that assure that the associated design basis assumptions are valid. There are no changes proposed to these "allowable values" associated with the P–10 interlock. Since, the allowable values are not changing, the changes do not have any impact on the design basis analyses. Therefore, the changes cannot increase the probability nor consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not affect the plant operation or introduce any new failure mechanisms. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The allowable values in the technical specifications are the values that assure the validity of the design basis assumptions. The trip setpoint provides a value that limits the potential for exceeding the allowable value and thereby limits the potential for exceeding any design basis assumption. Based on this, the design basis assumptions are not impacted. Since the allowable values are not changing, the changes do not have any impact on the design basis analyses. Therefore, the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 7, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended

petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–248–5100 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz, Director, Project Directorate I–4: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 14, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 15th day of September 1993.

For the Nuclear Regulatory Commission.

Vernon L. Rooney,

Senior Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–23174 Filed 9–21–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–423]

Northeast Nuclear Energy Co.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company, et al. (the licensee) to withdraw its April 27, 1993 application for proposed amendment to Facility Operating License NPF–49 for the Millstone Nuclear Power Station, Unit No. 3, located at the licensee's site in New London County, Connecticut.

The proposed amendment would have revised the Technical Specifications to allow a one-time extension of the containment integrated leak rate test for Millstone Unit No. 3.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 26, 1993 (58 FR 30198). However, by letter dated September 2, 1993, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 27, 1993, and the licensee's letter dated September 2, 1993, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 15th day of September 1993.

For the Nuclear Regulatory Commission.

Vernon L. Rooney,

Senior Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–23175 Filed 9–21–93; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title*: Application and claim for Unemployment Benefits and Employment Service.

(2) *Form(s) submitted*: UI–1 (ES–1), UI–3.

(3) *OMB Number*: 3220–0022.

(4) *Expiration date of current OMB clearance*: Three years from date of OMB approval.

(5) *Type of request*: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response*: On occasion.

(7) *Respondents*: Individuals or households.

(8) *Estimated annual number of respondents*: 29,000.

(9) *Total annual responses*: 294,000.

(10) *Average time per response*: .0882653 hours.

(11) *Total annual reporting hours*: 25,950.

(12) *Collection description*: Under Section 2 of the Railroad Unemployment Insurance Act, unemployment benefits are provided for qualified railroad workers. The collection obtains from railroad employees who apply for and claim unemployment benefits, information needed for determining eligibility for and amount of such benefits.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93–23217 Filed 9–21–93; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—John J. Lane (202) 272–3900.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

Extensions:

Regulation D; File No. 270–72
Regulation F; File No. 270–117
Requirements as to Form and Content of Application Under the Trust Indenture Act of 1939; File No. 270–115
Form T–3; File No. 270–123
Form T–4; File No. 270–122
Form SR; File No. 270–120
Rule 12d1–3; File No. 270–116
Rule 14f–1; File No. 270–127
Rule 17e–1; File No. 270–224
Form N–17D–1; File No. 270–231

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has submitted for extension of OMB approval the following rules and forms:

Regulation D sets forth rules governing the limited offer and sale of securities exempt from registration requirements. Regulation D affects 9,105 filers for a total of 145,680 burden hours.

Regulation F provides exemption from registration requirements in connection with assessable stock if specified conditions are met. Regulation F affects seven filers for a total of 21 burden hours.

The requirements as to form and content the Trust Indenture Act of 1939 (Rules 7a–15 through 7a–37) have been assigned one burden hour for administrative purposes.

Forms T–3 and T–4 are applications for qualification of indentures under the Trust Indenture Act of 1939. Form T–3 affects 55 filers for a total of 2,365 burden hours, while Form T–4 affects three filers for a total of 15 burden hours.

Form SR is used to reflect sales of securities and uses of proceeds therefrom. Form SR affects 2,566 filers for a total of 14,113 burden hours.

Rule 12d1–3 sets forth requirements as to certification under section 12(d) of the Exchange Act. Rule 12d1–3 affects 688 filers for a total of 344 burden hours.

Rule 14f–1 requires disclosure in the event of a change in the majority of a company's directors. Rule 14f–1 affects 44 filers for a total of 792 burden hours.

Rule 17e–1 is designed to ensure that brokers affiliated with investment companies receive no greater compensation than would be received from the investment companies in arm's length transactions. Rule 17e–1 requires approximately ten hours of recordkeeping per investment company annually.

Form N–17D–1 is used by small business investment companies and banks affiliated therewith to report any loan, advance of credit to, or acquisition of securities or property of a small business concern or any agreement to do any of the foregoing. The annual burden of filling out Form N–17D–1 is approximately five hours per response.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, (Paperwork Reduction Project 3235–0076, 3235–0094, 3235–0132, 3235–0105, 3235–0107, 3235–0124, 3235–0109, 3235–0108, 3235–0217, and 3235–0229), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 13, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23144 Filed 9–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32882; File No. SR–Amex–93–21]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Expansion of the Amex Options Switching System

September 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 20, 1993, the American Stock Exchange ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to expand its Amex Options Switching ("AMOS") system to permit the routing of up to 50 contracts for eligible market and limit orders.

The text of the proposal is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The AMOS system provides member firms with the means to electronically transmit option orders up to the volume limit specified by the Amex. Orders can be directly routed either to the post where an option is traded for execution and reporting by a specialist, or to AUTO-EX, an AMOS subsystem that automatically executes orders against prevailing bids or offers for designated option series. Initially, AMOS accepted orders for up to 5 contracts. Over the years, AMOS order parameters have been gradually increased in response to both operational needs of member firms and the Amex's own need to remain competitively positioned with other exchanges' automated systems. The last full-scale increase approved by the Commission expanded AMOS eligible orders from 20 to 30 contracts.[1]

The Exchange is now proposing to increase AMOS eligibility for market and limit orders from 30 to 50 contracts. Since each options contract represents 100 shares of an underlying security, this change to 50 contracts (the equivalent of 5,000 shares of underlying stock) effectively relates the AMOS system to the Exchange's Post Execution Reporting ("PER") system for equity orders which reroutes up to 5,000 shares. The Exchange believes that this change along with various enhancements to the Exchange's overall systems will have a favorable impact on the ability of both member firms and options specialists to handle increases in volume and order flow. Currently, approximately 2.5% of all orders routed through the AMOS system have contract sizes of 20–30 contracts. Since the capacity of the AMOS system is far in excess of what is currently needed, the Exchange expects the increase in AMOS order flow resulting from this expansion to present no capacity problems.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5) in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not create a burden on competition given that the use of the PER system is optional, and those firms which use PER can achieve more efficient handling of their respective orders. The Amex believes that the proposed rule change will also enhance the Exchange's competitive status in providing efficient, fast and accurate order-delivery systems.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 13, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23137 Filed 9–21–93; 8:45 am]

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[1] See Securities Exchange Act Release No. 28891 (February 15, 1991) 56 FR 7438 (order approving File No. SR–Amex–90–37).

[2] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–32907; File No. SR–BSE–92–10]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to Proposed Rule Change Revising its Floor Member Examination

September 15, 1993.

I. Introduction

On December 18, 1992, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise its Floor Member Examination. On August 13, 1993, the BSE submitted to the Commission Amendment No. 1, and on September 13, 1993, the Exchange submitted Amendment No. 2 to the proposed rule change. These amendments made certain technical

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

corrections and changes to the examination.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 32052 (March 26, 1993), 58 FR 17462 (April 2, 1993). No comments were received on the proposal.

II. Description of the Proposal

The BSE created the Floor Member Examination as an Exchange regulatory initiative designed to codify, clarify and give specificity to compliance obligations of Exchange members and member organizations. The BSE's Floor Member Examination is a qualifications examination intended to ensure that the individual floor members have the knowledge, skills and abilities necessary to carry out their job responsibilities. The Examination Specifications detail the areas covered by the exam and break down the proportion of examination questions culled from each area.

Independent floor brokers and specialists who are employed by member firms on the trading floor must take and pass the examination before the commencement of employment on the trading floor in order to be in compliance with the requirements of the BSE Constitution and Rules of the Board of Governors.[4] Floor clerks, with the consent of the Exchange, however, have three months from commencement of employment to pass the exam.[5]

The Commission previously approved the use of the BSE's Floor Member Examination on a pilot basis.[6] During the temporary approval period, the Commission reviewed the BSE's Examination to determine whether the instant proposed rule change warrants permanent approval. For the reasons set forth below, this order approves the use of the Floor Member Examination on a permanent basis.

The BSE states that the statutory basis for the Floor Member Examination lies in section 6(c)(3)(B) of the Act in that it is the responsibility of the Exchange to prescribe standards of training, experience and competence for persons associated with Exchange members.

III. Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and 15 of the Act.[7] In particular, the Commission believes that the proposal is consistent with the section 6(b)(5)[8] requirement that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest. The Commission believes that the revised Floor Member Examination should help to ensure that only those individuals with a comprehensive knowledge of the specific rules of the Exchange, as well as an understanding of the relevant provisions of the Act, will be eligible to act in a variety of capacities on the BSE floor, such as floor broker, floor clerk or specialist.

The Commission also believes that the proposal is consistent with sections 6(c)(3) (A) and (B)[9] of the Act, which set forth the basis upon which a national securities exchange may deny membership to, or condition the membership of, a registered broker or dealer, or may bar a natural person from becoming a member or associated with a member, or condition the membership of a natural person or association of a natural person with a member of an exchange. Under these sections, an exchange may by rule prescribe appropriate standards of training, experience and competence and examine and verify qualifications of members and persons associated with members. The Commission believes that the BSE has tailored its exam toward evaluating a floor member's knowledge of specific Exchange rules and policies in addition to certain requirements under the Act. The revised exam should ensure that the Exchange grants members access to its floor based on a demonstration of training, experience and competence as prescribed by the rules of the Exchange.

In addition, the Commission believes that the proposed rule change is consistent with section 15(d)(7)[10] which requires that prior to effecting any transaction in, or inducing the purchase or sale of, any security, a registered broker or dealer must meet certain standards of operational capability, and that such broker or dealer (and all natural persons associated with such broker or dealer) must meet certain standards of training, experience, competence and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission believes that the BSE exam should satisfy the requirements of section 15(b)(7) by requiring that floor members demonstrate requisite knowledge, training and competence to satisfactorily discharge their individual duties on the BSE floor.

The Commission finds good cause for approving proposed Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after publication of notice of filing thereof. Both Amendment Nos. 1 and 2 refine certain details of the BSE's Floor Member Examination in a manner which is both thorough and fair. In general, the amendments correct errors or clarify the language of specific questions. The overall structure of the examination would, in essence, go unchanged. In addition, the BSE's proposed rule change relating to the Floor Member Examination was published in the **Federal Register** for the full statutory period and no comments were received.[11]

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

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[3] See letter from Karen A. Aluise, Assistant Vice President, BSE to Jonathan Katz, Secretary, Commission, dated August 10, 1993 ("Amendment No. 1") and letter from Karen A. Aluise, Assistant Vice President, BSE to Jonathan Katz, Secretary, Commission, dated September 8, 1993 ("Amendment No. 2")

[4] The BSE requires that independent floor brokers, specialists and floor clerks pass the Exchange's Floor Member Examination. Independent floor brokers and specialists must first pass the Floor Broker Examination before acting in their respective capacity. See BSE Constitution Art. IX, Sec. 3(d) and Rules of Board of Governors, Chapter XIV, § 2152(b)(2), Independent Floor Brokers; Chapter XV, § 2155.01 Dealer-Specialists.

[5] The BSE's rules permit a floor clerk to perform limited clerical duties, with the consent of the Exchange, for three months without having passed the Floor Member Examination. See Chapter XIV, § 2153 (iii).02, Floor Clerks.

[6] See Securities Exchange Act Release Nos. 31736 (January 15, 1993), 58 FR 6026 (January 25, 1993) (File No. SR–BSE–93–01) and 32332 (May 19, 1993), 58 FR 30076 (May 25, 1993) (File No. SR–BSE–93–11).

[7] 15 U.S.C. 78f and 78o (1989).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(c)(3) (A), (B) (1989).

[10] 15 U.S.C. 78o(b)(7) (1989).

[11] See Securities Exchange Act Release No. 32052 (March 26, 1993), 58 FR 17462 (April 2, 1993) (File No. SR–BSE–92–10).

Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to SR–BSE–92–10 and should be submitted by October 13, 1993.

IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission believes that the proposal is consistent with section 6(b)(5), 6(c)(3) (A), (B), and 15(b)(7) of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–BSE–92–10) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23143 Filed 9–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32904; File No. SR–CBOE–91–43]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to an Extension of the Pilot Program for Position Limit Exemptions for Hedged Equity Option Positions

September 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 12, 1991, the Chicago Board Options Exchange, Inc. ("CBOE or Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[12] 15 U.S.C. 78 (1988).

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1991).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to extend until November 17, 1993, its pilot program for position limit exemptions for hedged equity option positions ("Equity Hedge Exemption").[1] The Exchange also proposes to add securities convertible into the underlying stocks to be a basis for the Equity Hedge Exemption.[2]

The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] The Commission approved the CBOE's current hedged position limit exemption pilot program for equity options on a two-year pilot basis on May 24, 1988. See Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201 (June 2, 1988) ("Pilot Approval Order"). In addition, the Commission extended the pilot for a six-month period through November 17, 1990. See Securities Exchange Act release No. 28066 (May 29, 1990), 55 FR 23328 ("Pilot Extension Order").

[2] See Securities Exchange Act Release Nos. 32174 (April 20, 1993), 58 FR 25687 (order approving File No. SR–PHLX–92–22, relating to an extension of the pilot program for position limit exemptions for hedged equity options and an expansion of the pilot program to allow convertible securities to serve as the basis for the underlying equity hedge position); 29436 (July 12, 1991), 56 FR 33317 (order approving File No. SR–NYSE–91–19, relating to an extension of pilot programs for position limit exemptions for hedged equity option and index option positions and expansion of the pilot program to allow the underlying hedged portfolio to include securities that are readily convertible into common stock); 27326 (October 2, 1989), 54 FR 42121 (order approving File No. SR–Amex–89–20, extending and expanding the exchange's index hedge exemption pilot program to include convertible instruments in the "equivalent" positions that may be eligible to serve as the basis for the underlying exemption); and 27322 (September 29, 1989), 54 FR 41888 (order approving File No. CBOE–89–06, extending and expanding the Exchange's index hedge exemption program to include in qualified stock portfolios securities convertible into stock and, for convertible bonds, those that are economically convertible into common stock).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On May 24, 1988, the Commission approved on a pilot basis the CBOE's proposal to amend the Exchange's position limit rules.[3] Position limits for equity positions are determined in accordance with a three-tiered system based on the number of shares of the underlying security outstanding and the underlying security's trading volume.[4]

The CBOE's pilot program provides for exemptions from applicable equity option position limits for accounts which have established one of the four commonly used hedged positions on a limited one-for-one basis, i.e., long stock and short call, long stock and long put, short stock and long call, and short stock and short put. However, the maximum position that may be established pursuant to the exemption may not exceed twice the present position limit. The exemption also provides that exercise limits still correspond to position limits, such that investors are allowed to exercise, during any five consecutive business days, the number of option contracts set forth as the position limit, as well as those contracts purchased pursuant to the position limit exemption.[5]

In addition, the Exchange proposes to add "securities convertible into such stock" to the securities eligible to serve as the underlying basis for the Equity Hedge Exemption. The CBOE believes that such convertible securities are an appropriate hedge against equity options because they have the same economic interest, i.e., the price of the convertible security moves with the stock and such security represents the right to receive the same security as that underlying the corresponding options at some future date.[6]

The Exchange believes that the Equity Hedge Exemption provides greater depth and liquidity to the equity option markets and affords investors the opportunity to effectively hedge their stock portfolios without increasing the possibility of manipulation in the options or underlying stock market. The Exchange states that it has not experienced any significant problems with the operation of the pilot and will continue to monitor the effects of the

[3] See Pilot Approval Order, *supra* note 1.

[4] See CBOE Rule 4.11.

[5] See CBOE Rule 4.12.

[6] In 1989, the Commission authorized the use of convertible securities for purposes of the Exchange's index hedge exemption pilot program. See Securities Exchange Act Release No. 27322 (September 29, 1989), 54 FR 41888.

Equity Hedge Exemption pilot program on the market to ensure that problems do not arise due to increased position and exercise limits authorized by the exemption. Accordingly, the Exchange believes the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) thereunder.[7] Specifically, the Commission concludes, as it did when approving the commencement and first extension of the pilot, as well as similar programs by the other options exchanges,[8] that the CBOE proposal to provide for increased position and exercise limits for equity options in circumstances where those excess positions are fully hedged with offsettting stock positions will provide greater depth and liquidity to the market and allow investors to hedge their stock portfolios more effectively, without significantly increasing concerns regarding intermarket manipulations or disruptions of either the options markets or the underlying stock market.

In addition, with respect to the Exchange's proposal to expand the types of securities eligible to serve as the basis for the underlying hedged position to include convertible securities, the Commission believes such expansion is consistent with the Act because it will allow investors to use instruments that are economically equivalent to stocks more efficiently and effectively for purposes of hedging their equity options positions.[9] Specifically, because the value of a convertible security likely will fluctuate in tandem with the value of the security that it is convertible into, the Commission believes investors with positions in convertible securities should be able to hedge their positions in equity options with convertibles to the same extent that investors with long or short positions in the underlying securities can. Moreover, as with the original pilot program, the Commission believes the expansion of the pilot program to include convertible securities likely will enhance the depth and liquidity in the Exchange's options markets. In addition, because the pilot program still requires the positions in the convertible securities and the corresponding options to be fully hedged, the Commission believes the expansion will not significantly increase concerns regarding intermarket manipulation or disruption of either the options markets or the underlying stock market. Lastly, the Commission notes that the Exchange's pilot program for position limit exemptions for hedged positions involving broad-based stock index options already has been expanded to include convertible securities.[10]

The Commission also notes that before the pilot program can be approved on a permanent basis the CBOE must provide the Commission with a report on the operation of the pilot.[11] Specifically, the CBOE must provide the Commission with details on: (1) The frequency with which the exemptions have been used; (2) the types of investors using the exemptions; (3) the size of the positions established pursuant to the pilot program; (4) what types of convertible securities are being used to hedge positions and how frequently convertible securities have been used to hedge; (5) whether the Exchange has received any complaints on the operation of the pilot program; (6) whether the Exchange has taken any disciplinary action against, or commenced any investigations, examinations, or inquiries concerning, any of its members of any violation of any term or condition of the pilot program; (7) the market impact, if any, of the pilot program; and (8) how the Exchange has implemented surveillance procedures to ensure compliance with the terms and conditions of the pilot program.

The Commission finds good cause for approving the proposed extension and expansion of the pilot program prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** so that the pilot program may continue. As noted above, the hedge exemption pilot programs of the other options exchanges have been expanded to include convertible securities.[12] In addition, because there have been no adverse comments concerning the pilot program since its implementation and because of the importance of maintaining the quality and efficiency of the CBOE's markets, the Commission believes good cause exists to approve the extension and expansion of the pilot program on an accelerated basis.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

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[7] 15 U.S.C. 78f(6)(5) (1982).

[8] The Commission has approved similar Equity Hedge Exemption pilot programs by the American Stock Exchange, Inc. ("AMEX"), New York Stock Exchange, Inc. ("NYSE"), and the Philadelphia Stock Exchange, Inc. ("PHLX"). See Securities Exchange Act Release Nos. 25738 (May 24, 1988), 53 FR 20201; 29436 (July 12, 1991), 56 FR 33317; and 25811 (June 20, 1988), 53 FR 23821.

[9] The Commission expects the Exchange to determine on a case-by-case basis whether an instrument that is being used as the basis for the underlying hedged position is readily and immediately convertible into the security underlying the corresponding option position. In this regard, the Commission specifically finds that an instrument which will become convertible into a security at a future date, but which is not presently convertible, is not a "convertible" security for purposes of the Equity Hedge Exemption pilot program until the date it becomes convertible. Of course, if the convertible security used to hedge an options position was called for redemption by the issuer, the security would have to be converted into the underlying security immediately or the corresponding options position reduced accordingly.

[10] See supra note 5.

[11] The Commission also expects the CBOE to monitor the pilot as outlined below and to inform the Commission of the results of any surveillance investigations undertaken for apparent violations of the provisions of the hedge exemption rule.

[12] See supra note 2.

[13] The CBOE filed an Amendment No. 1 on April 19, 1993 requesting that the Commission withdraw from the proposal that part of the filing which proposed to include convertible securities among the securities eligible to serve as the basis for the equity hedge exemption. See letter from Charles J. Henry, President and Chief Operating Officer, CBOE, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated April 19, 1993. After conversations with Commission staff, however, the CBOE withdrew Amendment No. 1 from consideration. See letter from Michael L. Meyer, Schiff, Hardin & Waite, to Richard Zack, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated May 25, 1993.

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–91–43 and should be submitted by October 13, 1993.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CBOE–91–43) is approved, thereby extending the Equity Hedge Exemption pilot program until November 17, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23139 Filed 9–21–93; 8:45 am]

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[Release No. 34–32888; File No. SR–CHX–93–17]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Amendments to its Rules Relating to Termination of Registration of Specialists, Odd-Lot Dealers, and Market Makers

September 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 28, 1993, as subsequently amended on August 19, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[14] 15 U.S.C. 78s(b)(2) (1982).

[15] 17 CFR 200.30–3(a)(12) (1992).

[1] See letter David T. Russof, Attorney, Foley & Lardner, to Cheryl Dunfee, Attorney, Division of Market Regulation, Commission, dated August 18, 1993. Amendment No. 1 made certain clarifying changes to the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the termination of registration provisions for specialists, odd-lot dealers and market-makers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend the termination of registration provisions for specialists, odd-lot dealers, and market makers. Currently, the registration of specialists and odd-lot dealers can be suspended by a single member of the Floor Procedure Committee, as well as the president, when it appears that such member is violating Exchange Rules, the federal securities laws, or is conducting business in an unethical manner. In this regard, the proposed rule amends these provisions so that only the president of the Exchange, and not a single member of the Floor Procedure Committee, has the authority to suspend such registration. The Exchange believes that this type of authority is appropriately exercised by the President.

In addition to the changes relating to specialists and odd-lot dealers, the proposed rules amend the termination provisions relating to market makers. These amendments conform the market maker suspension and termination provisions to those of the specialist and odd-lot dealers. Currently, there is no authority to summarily suspend a market maker's registration.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest, and it is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–93–17 and should be submitted by October 13, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23142 Filed 9–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-32879; File No. SR-CBOE-93-22]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to System Modifications to the Retail Automated Execution System

September 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), on May 11, 1993, filed with the Securities and Exchange Commission ("Commission") a proposed rule change. The proposed rule change, as amended" on June 14, 1993,[1] is described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to add Interpretation .02 to CBOE Rule 6.8 relating to the operation of its Retail Automated Execution System ("RAES") in equity options.[2]

The text of the proposed rule change is as follows (italicizing indicates additions):

Orders to buy or sell equity options that are multiply traded in one or more markets in addition to the Exchange will not be automatically executed on RAES at prices inferior to the current best bid or offer in any other market, as such best bids or offers are identified in RAES. Any such orders will be rerouted to the DPM or OBO for that class of options for non-automated handling. The DPM or OBO will report the execution or non-execution of such orders to the firm that originally forwarded the order to RAES. The procedures described in this Interpretation .02 shall not apply in circumstances where a "fast market" in the equity options that are the subject of the orders in question has been declared on the Exchange or where comparable conditions exist in the other market such that firm quote requirements do not apply. This Interpretation .02 will become effective upon a determination by the Equity Floor Procedure Committee that similar procedures are or will be concurrently in effect in other markets that multiply trade equity options traded on the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise the description of the operation of RAES to reflect proposed system changes which, when implemented, will reroute RAES orders in multiply-traded equity options and prevent their automatic execution at prices inferior to prices quoted in other markets ("trade-throughs").[3] The proposed rule change provides that when a potential trade-through in RAES is identified, the order in question, instead of being automatically executed, will be rerouted to the Designated Primary Market-Maker or Order Book Official for that class of options for non-automated processing.

The CBOE states, however, that this procedure will not apply when "fast market" conditions in the equity options that are the subject of the RAES orders exist either on the CBOE or in the other market. The CBOE believes that when the CBOE is in a fast market condition, the rerouting of a large number of additional orders, otherwise executable in RAES, to the trading crowd could well disrupt an already abnormal trading situation. Further, the CBOE believes that when the other market is in a fast market condition, its bids and offers are by definition not firm, and therefore would not provide a reliable basis for redirecting orders otherwise executable in RAES.

This rule change is being proposed in conjunction with the implementation of systems modifications to RAES that will enable it to monitor quotations for multiply-traded equity options in other markets, and reroute orders as described in the event of a potential trade-through. Although the systems modifications necessary to implement the proposed rule change are largely completed, the CBOE does not intend to put Interpretation .02 to Rule 6.8 into effect unless and until comparable anti-trade-through systems and procedures with respect to the automatic execution facilities on other options exchanges are put into effect.[4] The CBOE states that Chairman Breeden's request was directed to all options exchanges with the expectation that all exchanges would act in a coordinated way to prevent trade-throughs in connection with the automatic execution of orders in multiply-traded options. The CBOE states that it is ready and willing to implement the proposed rule change, but it believes that it would be competitively disadvantaged if it were the only exchange to implement the anti-trade-through provisions.

The Exchange believes that the proposed rule change, when implemented in conjunction with the implementation of comparable rule changes in other options markets, will, in accordance with section 11A(a)(1)(C) of the Act, assure economically efficient execution of securities transactions, the practicality of brokers executing investors' orders in the best market, and fair competition among exchange markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

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[1] See letter from Michael L. Meyer, Schiff, Hardin & Waite, to Sharon M. Lawson, Assistant Director, Division of Market Regulation, Commission, dated June 10, 1993 ("Amendment No. 1"). Amendment No. 1 to the proposed rule change provides that the rule change will not become effective until the CBOE's Equity Floor Procedure Committee determines that similar procedures are or will be concurrently in effect in other markets that multiply-trade equity options that are listed on the CBOE.

[2] This proposed rule change was originally filed pursuant to Rule 19b-4 under the Act in File No. SR-CBOE-92-40. See Securities Exchange Act Release No. 31827 (February 5, 1993), 58 FR 9002 (February 18, 1993) (notice of proposed rule change). The portion of the proposed rule change contained in the current filing was withdrawn from SR-CBOE-92-40 by amendment. See Amendment No. 1 to SR-CBOE-92-40. SR-CBOE-92-40, as amended, is still pending before the Commission.

[3] The CBOE states that proposed Interpretation .02 is in response to a letter from Chairman Breeden to Alger B. Chapman, Chairman and Chief Executive Officer, CBOE, dated June 30, 1992.

[4] See Amendment No. 1, supra note 1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6 and 11A.[5] Specifically, the Commission believes that rerouting RAES orders in multiply-traded equity options and preventing their automatic execution at prices inferior to prices quoted in other markets ("trade-throughs") is consistent with section 11A(a)(1)(C) of the Act in that it provides for a more economically efficient handling and reporting of options orders in a multiple trading environment, through the use of new data processing and communications techniques. The Commission further believes that these RAES system upgrades are consistent with sections 6(b)(5) and 11A(a)(1)(C) of the Act in that they facilitate transactions in securities, protect investors and the public interest, and promote fair competition among options markets by enhancing the benefits available to investors from a multiple trading environment and preventing customer orders from being executed at inferior prices.

The Commission finds good cause for approving the proposed rule change, including Amendment No. 1 to the proposed rule change, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit the CBOE to implement the proposed RAES system upgrades as soon as possible. The Commission notes that the proposed rule change was noticed for comment, in a separate rule filing, on February 18, 1993, as File No. SR-CBOE-92-40.[6] No comments were received on the proposed rule change. Amendment No. 1 merely sets forth the time frame within which the CBOE will implement the system upgrades and does not make any substantive changes to the proposed rule change. Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with sections 6 and 11A of the Act.[7]

[5] 15 U.S.C. 78f and 78k-1 (1988).

[6] See supra note 2.

[7] 15 U.S.C. 78f and 78k-1 (1988).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 13, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR-CBOE-93-22) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-23144 Filed 9-21-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32880; File No. SR-PSE-93-10]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Defining a Public Customer for Purpose of Exchange Ten-Up Rule

September 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 11, 1993, the Pacific Stock Exchange ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30-3(a)(12) (1993).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Exchange Rule 6.86 ("Ten-Up Rule")[1] and Exchange rules relating to the PSE's Automatic Execution system ("Auto-Ex") to define and specify the circumstances in which an order is to be deemed a "public customer order" for purpose of these rules.

The text of the proposed rule change is available at the Office of the Secretary, PSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange is proposing to amend its rules in order to provide, among other things, a "public customer order" definition applicable to Rules 6.86 and 6.87. Currently, Rule 6.86 requires each trading crowd on the options trading floor to provide a depth of at least ten option contracts for all "non-broker-dealer customer" orders at the bid or offering price disseminated at the time the order is represented in the trading crowd.[2] The Ten-Up Rule is intended to

[1] Exchange Rule 6.86 is entitled "Trading Crowd Firm Disseminated Market Quotes." Each of the five options exchanges currently employ a Ten-Up Rule or Firm Quotation Rule providing that appropriate accounts may receive a guaranteed minimum of ten option contracts.

[2] In a related filing, the Exchange has proposed a rule change that would apply to orders other than those that are eligible for an execution under the Ten-Up Rule. Specifically, the proposal would require Market Makers and Lead Market Makers to respond to such orders, represented in the trading crowd at the disseminated bid or offer, either by satisfying the order or updating the existing market in the subject option series. See Securities Exchange Act Release No. 31962 (March 8, 1992), 58 FR 13661 (March 12, 1993) (Notice of Filing of SR-PSE-92-48).

provide more protection and greater depth guarantees for public customers than are provided for competing broker-dealers and competing professionals.[3] The Exchange believes that the proposed definition will eliminate significant disruptions in the market caused by competing professionals and will result in narrower bid-ask spreads and greater liquidity for public customers.

The Exchange is proposing to amend Rule 6.86 to define a "professional trading account" as: (1) An account of a registered broker-dealer; (2) an account of a person engaged in business or employed as a professional trader in securities; (3) an account of a person whose orders are computer generated and automatically transmitted to the Exchange; (4) an account of a person who has been determined by the Exchange's Options Floor Trading Committee ("OFTC") to have engaged in a pattern of abusing the Exchange's Auto-Ex system; or (5) an account with respect to which any of the foregoing persons exercise investment discretion. An account in which any person referred to in clauses (1) through (4) is a participant or has an interest would be deemed to be an account of such person. Finally, the accounts of registered representatives and other employees of broker-dealers would not be deemed to be "professional trading accounts" (unless such accounts are classified as such pursuant to clauses (1)–(4), above). A "public customer order" would be defined as an order that is not for a "professional trading account." The Exchange believes that the proposed definitions will identify with more precision those persons who were originally intended to receive the benefits of Exchange Rule 6.86.

The OFTC, in evaluating whether a person has engaged in a pattern of trading that has the effect of abusing the Exchange's Auto-Ex system, would have the authority to deem concentrated or aggressive use of such system by persons seeking to profit from the inability of market markers to alter their posted quotes instantaneously to be such an abuse. Similarly, since the Auto-Ex system was designed for small orders (currently orders for ten contracts or less), persons who enter a number of small orders within a relatively short period of time in order to circumvent the ten-contract limitation could be deemed to be abusing the system. However, the foregoing enumeration would not be exclusive, and the OFTC would be authorized (subject to review pursuant to Rule 11.7) to determine other patterns of trading that constitute an abuse of the system, based on such factors as: frequency of transactions in an account; whether the account has direct access to electronic order entry, delivery and execution systems of the Exchange; and whether participants in the account have access to non-public market information.

The proposal is intended to address the need of market makers to have sufficient time to adjust their quotes to reflect changes in the markets in underlying securities and in other options markets. The Exchange believes that the proposal will provide market makers who participate in the Auto-Ex system (and who are otherwise bound by firm quotations) with legitimate relief in situations where other professionals from off the floor place orders for execution before the market makers can update their option quotes.

The Exchange believes that the proposed rule is consistent with the policies that the Commission has articulated in evaluating similar issues relating to the Small Order Execution System ("SOES") of the National Association of Securities Dealers, Inc. ("NASD").[4] The Exchange notes that the Commission has previously found the NASD's approach to defining "professional trading accounts"[5] and "non public customer"[6] to be consistent with the Exchange Act and rules and regulations thereunder. The Exchange believes that the proposed rule establishes a logical and workable distinction between public customer and non-public customer orders that would apply to both electronic and floor trading of options.

The Exchange is also proposing to add Rule 6.87 to provide expressly that only public customer orders (as defined in proposed Rule 6.86) would be eligible to be executed on the Auto-Ex system. The Exchange further proposes to amend its rules to provide that only those public customer orders that are present in the trading crowd and clearly marked with the proper account origin code will be entitled to a guarantee of at least ten option contracts at the disseminated price. In addition, members seeking such benefits for an order would be required, at the request of any member of the trading crowd, to confirm that the order has been entered by a public customer. Finally, the Exchange is proposing increased flexibility on obtaining account information from its member, such that if a member or associated person fails to furnish the Exchange, upon request, with adequate verification of the account origin of an order for a customer-omnibus account of a non-member broker-dealer, all orders entered or executed on behalf of such account could be classified as non-public customer orders and would not be entitled to the benefits of the Ten-Up Rule until the Exchange receives verification of the order's account origin.

The Exchange believes that the proposed rule change is consistent with section 6 of the Act, in general, and furthers the objectives of section 6(b)(5) of the Act, in particular, in that it facilitates transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and promotes just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Only "professional trading accounts" would be affected by these rule amendments, and the Exchange believes that any incidental burden on such accounts is justified by the countervailing benefits to public customers and others that

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[3] Similarly, Exchange option rules currently allow public customer orders, but not firm orders, to be placed in the Exchange's Order Book for execution on a priority basis. See PSE Rule 6.52(a).

[4] See Securities Exchange Act Release No. 32092 (April 1, 1993), 58 FR 18279 (April 8, 1993). "The Commission believes that the NASD can reasonably exclude professional traders from access to SOES." *Id.* at 18280. "Unlike the trades by small, retail investors, trades by professional traders may represent information concerning recent market developments. Market makers are thus placed in the position of being 'picked off' by professional traders who take advantage of the SOES technology to execute multiple trades during the time period in which market makers would normally, under the Firm Quote Rule, be permitted to update their quotations to reflect new information prior to executing further trades." *Id.* at 18281. "Professional trading on SOES subjects market makers to substantial risks and costs and disrupts the normal course of price discovery in the market." *Id.*

[5] The NASD defines a "professional trading account" to mean: (1) An account in which five or more day trades have been executed through SOES during any trading day; or (2) an account in which there has been a professional trading pattern in SOES as executing a high volume of day trades in relation to the total transactions in the account, or executing a high volume of day trades in relation to the amount in value of securities held in the account. NASD SOES Rule a(10).

[6] The NASD defines "non-public customer" orders as: (1) Orders for the firm's own accounts; (2) orders for other broker/dealers; and (3) orders for the account of an associated person (or his/her immediate family) who has physical access to a terminal capable of entering orders into SOES. See NASD Sanction Guidelines, at 39 (1993).

would result from the adoption of the amendments.[7]

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 13, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-32906; File No. SR-Phlx-92-38]

Self-Regulatory Organizations; Philadelphia Stock Exchange Inc.; Order Approving Proposed Rule Change Relating to Increasing the Size of Orders Eligible for Automatic Execution Through the Automatic Execution Feature of the Exchange's Automated Options Market System

September 15, 1993.

I. Introduction

On December 21, 1992, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to permit public customer orders of up to 25 contracts in all equity options traded on the Exchange to be eligible for automatic execution through the automatic execution ("Auto-X") feature of the Exchange's Automated Options Market ("AUTOM") system.[3]

The proposed rule change was published for comment in the Federal Register on March 19, 1993.[4] No comments were received on the proposed rule change. This order approves the proposal.

II. Background and Description

The AUTOM system is an online system that allows electronic delivery of options orders from member firms directly to the appropriate specialist on the Phlx options trading floor, with electronic confirmation of order executions. Orders routed through AUTOM are entered into the system and executed manually by the specialist who, upon execution of the order, enters the relevant trade information into the system. An execution report is then automatically sent to the firm that placed the order.

The Commission approved AUTOM on a pilot basis on March 31, 1988, for market orders of up to five contracts for all exercise prices in the near month covering twelve Phlx equity options until June 31, 1988.[5] Since approving AUTOM as a pilot program in 1988, the Commission has approved various amendments and extensions of the system.[6] Automatic execution through Auto-X is currently limited to public customer orders and marketable limit orders of up to 20 contracts.

The purpose of the proposed rule change is to increase, from 20 to 25 contracts, the order size for Phlx equity options eligible for execution through the Auto-X feature of the AUTOM system. The proposed expansion of the Auto-X order eligibility size from 20 to 25 contracts is in response to the existing competitive environment among the options exchanges. The Exchange believes that the effectiveness of the AUTOM system should be improved by offering retail broker-dealers and their customers an expanded automatic execution parameter. Further, the Phlx believes that this limited expansion of the Auto-X feature of AUTOM should not impose any significant additional burdens to the operation and capacity of the AUTOM system[7] and may increase its effectiveness by increasing the number of orders eligible for automatic execution and by reducing manual processing.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and section 11A.[8] The Commission continues to believe that the development and implementation of the AUTOM system provides for more efficient handling and reporting of orders in Phlx equity options through the use of new data processing and communications

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[7] *Cf.* Exchange Act Release No. 32002, *supra* note 4, 58 FR at 18283.

[8] 17 CFR 200.30-3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1991).

[3] The AUTOM system, approved by the Commission as a pilot program, is the Phlx's electronic order routing, delivery and automatic execution system for small option orders entered onto the Phlx trading floor on behalf of public customers. Currently, the Auto-X feature is available for public customer orders of up to 20 contracts in size in Phlx equity options.

[4] See Securities Exchange Act Release No. 32000 (March 15, 1993), 58 FR 15168.

[5] See Securities Exchange Act Release No. 25540 (March 31, 1988), 53 FR 11390 (April 6, 1988).

[6] See Securities Exchange Act Release Nos. 27599 (January 9, 1990), 55 FR 1751 (January 18, 1990); 28978 (March 15, 1991), 56 FR 12050 (March 21, 1991); 29682 (September 9, 1991), 56 FR 46816 (September 16, 1991); and 29837 (October 18, 1991), 56 FR 55146 (October 24, 1991).

[7] See letter from Jack McCarthy, Assistant Vice President of Financial Automation, Phlx, to Monica C. Michelizzi, Attorney, Branch of Options Regulation, Division of Market Regulation, SEC, dated February 18, 1993 ("Phlx Capacity Letter").

[8] 15 U.S.C. 78f and 78k-1 (1982).

techniques, thereby improving order processing and turnaround time.

The Commission also believes that expanding the eligibility of Auto-X to public customer orders of up to 25 contracts for all Phlx-traded equity options is consistent with section 6(b)(5) of the Act in that it will extend the benefits of automatic execution in equity options to a larger number of public customer orders.

Lastly, the Commission believes, based on representations by the Exchange, that expanding the order eligibility size of Auto-X to 25 contracts for all equity options will not expose the Phlx's options markets or equity markets to risk of failure or operational break-down. In particular, the Exchange represents that the AUTOM system will be able to handle the increased volume that should accompany the increased Auto-X order eligibility size.[9] In addition, since the AUTOM system is completely independent from the Phlx's Automated Communication and Execution ("PACE") system for routing and executing stock orders, neither AUTOM nor PACE should impact on the other during periods of high volume. Moreover, the Exchange represents that it does not envision any problems with the adequacy of specialist unit personnel in the event of unusually heavy order traffic to a specialist post by means of the AUTOM system.[10]

Therefore, the Commission believes that expanding Auto-X's order eligibility to 25 contracts is consistent with the requirements of sections 6 and 11A of the Act, in that the purpose of the development and implementation of AUTOM and Auto-X is to improve the efficiency of the execution of transactions in Phlx equity options through the use of new data processing and communication techniques.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–PHLX–92–38) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[9] See Phlx Capacity Letter, *supra* note 7. Specifically, the Phlx represents that AUTOM's capacity is designed to handle up to 48,000 orders for a six-hour, forty minute trading day, although the system has been initially configured to handle 10,000 orders per day. The Phlx also represents that the system currently is processing 1,200 orders per day. In addition, the Exchange is planning an upgrade of the system which will result in a 32,500 order capacity for the system (a six and one-half times increase). Accordingly, the Phlx remains confident that AUTOM's capacity and processing capabilities are adequate to manage the foreseeable needs and potential increased order flow resulting from the extension of Auto-X.

[10] See letter from Edith Hallahan, Special Counsel, Regulatory Services, Phlx, to Richard Zack, Branch Chief, Division of Market Regulation, SEC, dated August 4, 1993.

[11] 15 U.S.C. 78s(b)(2) (1982).

[Release No. 34–32881; File No. SR–Phlx–93–21]

September 14, 1993.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Trading Rotations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 8, 1993, the Philadelphia Stock Exchange ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to move the text of Phlx Rule 101, Commentary .01 (a) through (d) to Phlx Rule 1047, Commentary .03, which deals with options rotation procedures. In addition, the Phlx proposes to amend Phlx Rule 1047 to clarify the procedures for conducting an after-the-close rotation. Specifically, in addition to other changes, the Phlx proposes to add to Commentary .01(d) to Exchange Rule 1047 the following langauge:

In any instance where the Options Committee determines to conduct a closing rotation on the trading day prior to expiration in an equity options for which the underlying did not trade, or for which trading was halted as of the normal close of trading, in its primary market on that day, the rotation shall commence as immediately as practicable following the time at which the option normally ceases free trading.

The text of the proposal is available at the Office of the Secretary, Phlx, and at the Commission.

[12] 17 CFR 200.30–3(a)(12) (1993).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Phlx proposes to amend Rule 101, Commentary .01 to delete the discussion of option rotations and move that discussion to a new Commentary .03 to Rule 1047. This change will allow the Phlx to logically group rotation procedures in one rule for ease of reference. Proposed Commentary .03 permits trading after 4:10 p.m. in the context of a trading rotation approved by the Options Committee due to unusual circumstances or the opening or reopening of a stock.

Further, the Phlx is proposing the following changes to update Rule 1047: (1) Specifying in Rule 1047(a) that closing rotations are only required for expiring equity options contracts; (2) updating the deadline for opening foreign currency options to promptly follow the current time those options open for trading; and (3) adding to Commentary .01(b) the subparagraph title "Modified Rotations."

In addition, because this rule was designed to apply to the foreign currency options floor as well as the equity options floor, the Phlx is proposing to add to Rule 1047(c) that the "appropriate floor standing committee," not just the Options Committee, has the authority to delay an options opening, halt trading, or reopen after a halt. This authority would be expanded to expressly include the ability to: (1) Open an option where the underlying stock did not open or current quotations are unavailable for any foreign currency (currently provided for in Commentary .02); and (2) conduct a closing rotation on the trading day prior to expiration where the underlying stock did not open during that day or was halted as of its normal close of trading.

The Phlx is also proposing to amend Commentary .02 of Rule 1047. Commentary .02 currently provides that options trading would be delayed if the underlying security did not open for trading or foreign currency quotations were unavailable, unless the chairman of the appropriate committee determines that opening options trading would be in the best interests of maintaining a fair and orderly market. The proposal would amend Commentary .02 to provide that this determination be made by the appropriate floor standing committee, as opposed to solely the chairman of that committee. The Exchange states that such decisions have historically been handled by an emergency meeting of the full standing committee.

In addition, the proposed rule change would amend Commentary .01(d), which governs closing rotations. The proposed language states that a closing rotation in expiring equity options may be conducted with Options Committee approval immediately after the underlying stock normally ceases trading (*i.e.*, 4 p.m.), if practicable. Absent this language, member organizations could be unaware of the conditions under which such a rotation could occur. The Exchange believes that by establishing a more objective standard, the proposed deadline would provide notice to floor traders and customers alike. The Exchange further believes that a more detailed procedure is necessary because there have been numerous delays in the trading of a stock underlying a Phlx option, two of which occurred on an expiration Friday. Under the proposal, however, the standing committee may still determine not to open the option at all, or, in the event the stock opens immediately after the normal close, to further delay option trading.

The Exchange believes that enumerating the authority of the standing committee with respect to opening and closing rotations and establishing a time frame by which an option rotation should be conducted in an issue where the underlying stock never opened for trading, or was halted as of the close, should promote just and equitable principles of trade as well as protect investors and the public interest by providing for an orderly manner of trading. For these reasons, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act, and, in particular, with Section 6(b)(5).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx believes that the proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 13, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

[1] 17 CFR 200.30-3(a)(12) (1993).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-23136 Filed 9-21-93; 8:45 am]
BILLING CODE 8010-01-M

[Investment Company Act Release No. 19717; 811-5915]

The Greece Fund, Inc.; Application for Deregistration

September 16, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Greece Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on August 30, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 12, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272-3018, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end non-diversified management investment company incorporated under the laws of the State of Maryland. On September 28, 1989, Applicant registered under the

Act by filing a notification of registration pursuant to section 8(a). On December 27, 1989, Applicant filed a registration statement pursuant to section 8(b) of the Act.

2. Applicant has never issued or sold any securities.

3. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding.

4. Applicant has not commenced, and does not intend to commence, operations. Applicant will not engage in any business activities other than those necessary to wind-up its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23190 Filed 9–21–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19718; 811–7262]

The Turkish Growth Fund, Inc.; Application for Deregistration

September 16, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Turkish Growth Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on August 30, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 12, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 1345 Avenue of the Americans, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272–3018, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end non-diversified management investment company incorporated under the laws of the State of Maryland. On October 1, 1992, Applicant registered under the Act by filing a notification of registration pursuant to section 8(a). Applicant did not file a registration statement pursuant to section 8(b) of the Act.

2. Applicant has never issued or sold any securities.

3. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding.

4. Applicant has not commenced, and does not intend to commence, operations. Applicant will not engage in any business activities other than those necessary to wind-up its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–23191 Filed 9–21–93; 8:45 am]

BILLING CODE 8010–01–M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Education and Cultural Exchange Act of 1961, as amended by Public Law 87–256 and Immigration and Nationality Act. USIA is requesting reinstatement of this collection for a three-year period. The information collection is entitled "Certificate of Eligibility for Exchange Visitor Status (J–1 Visa)", under OMB Control Number 3116–0008. Estimated burden hours per response is fifteen (15) minutes. Respondents will be required to respond only one time.

DATES: Comments are due on or before October 22, 1993.

COPIES: Copies of the Request for Clearance (SF–83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ADD, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619–5503; and OMB review: Mr. Jeffery Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone (202) 395–7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0008) is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the United States Information Agency, M/ADD, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Certificate of Eligibility for Exchange Visitor Status (J–1 Visa).

Form Number: IAP–66.

Abstract: This information collection is used by Exchange Visitor sponsors to appropriately identify an individual seeking to enter the U.S. as an exchange visitor. The completed form is sent to the prospective exchange visitor abroad, who takes it to the U.S. Consulate

(Embassy) to secure an exchange visitor (J–1) visa.

Proposed Frequency of Responses: No. of Respondents—140,000, Recordkeeping Hours—.15, Total Annual Burden—35,195.

Dated: September 15, 1993.

Rose Royal,

Federal Register Liaison.

[FR Doc. 93–23111 Filed 9–21–93; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Disciplinary Appeals Board Panel; Roster of Employees

AGENCY: Department of Veterans Affairs.

ACTION: Notice with request for comments.

SUMMARY: Section 203 of the Department of Veterans Affairs Health-Care Personnel Act of 1991 (Pub. L. 102–40), dated May 7, 1991, revised the disciplinary, grievance and appeal procedures for employees appointed under 38 U.S.C. 7401(1). It also required the periodic designation of employees of the Department who are qualified to serve on Disciplinary Appeals Boards. These employees constitute the Disciplinary Appeals Board Panel from which Board members in a case are appointed. This notice announces that the roster of employees on the panel is available for review and comment. Employees, employee organizations, and other interested parties shall be provided (without charge) a list of the names of employees on the panel upon request and may submit comments concerning the suitability for service on the panel of any employee whose name is on the list.

DATES: Names that appear on the panel may be selected to serve on a Board or as a grievance examiner October 22, 1993.

ADDRESSES: Send requests for the list of the names of employees on the panel and written comments to: Secretary of Veterans Affairs (058A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Robert J. Clayton, Chief, Employee Relations Division (058A), Office of Human Resources Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 535–8884.

SUPPLEMENTARY INFORMATION: Public Law 102–40 required that the availability of the roster be posted in the **Federal Register** periodically, and not less than annually.

Approved: September 13, 1993.

Jesse Brown,

Secretary, Veterans Affairs.

[FR Doc. 93–23155 Filed 9–21–93; 8:45 am]

BILLING CODE 8320–01–M

Intent To Prepare Environmental Impact Statement; Proposed National Cemetery, Miami, FL

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent.

SUMMARY: The Department of Veterans Affairs (VA) intends to prepare an Environmental Impact Statement (EIS) on the proposed establishment of a national cemetery to serve the Miami, FL, area.

The cemetery site is projected to require a minimum of 140 net burial acres, providing for approximately 94,890 gravesites and 16,750 remains. In addition, land will be required for interment service shelters, administrative and maintenance buildings, roads, wetland mitigation, and buffer areas. Physical characteristics and location of the land will determine the actual acreage necessary to develop the desired cemetery.

ADDRESSES: Individuals are invited to submit comments on this notice to the Director of Environmental Affairs (088B4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Jon E. Baer, Director, Site Development and Environmental Service (088B4), at (202) 233–8453.

SUPPLEMENTARY INFORMATION: In accordance with section 102(2)(C) of the National Environmental Policy Act, VA publishes this Notice of Intent pursuant to 40 CFR 1501.7.

The proposed national cemetery, if ultimately approved as a project by VA, would involve land acquisition, site preparation, building and road construction, and possibly would have traffic, economic, and ecological impacts on the local area. Major environmental issues have not been identified as of the date of this notice.

VA has identified five possible site alternatives for the proposed national cemetery within a 40 mile radius of the RT 41 and I–95 intersection. VA will evaluate each site alternative in an Environmental Impact Statement (EIS) that will assess the environmental impact of construction and operation of a national cemetery.

This notice is part of the process used for scoping the pertinent environmental issues for the EIS. Individuals, private organizations, and local, state, and Federal Agencies are invited to participate in the scoping process. VA will use any comments it receives to further identify and clarify significant environmental issues. Local area newspapers will announce the scoping meetings for the project.

Dated: July 16, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 93–23153 Filed 9–21–93; 8:45 am]

BILLING CODE 8320–01–M

Intent To Prepare Environmental Impact Statement; Proposed National Cemetery, Pittsburgh, PA

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent.

SUMMARY: The Department of Veterans Affairs (VA) intends to prepare an Environmental Impact Statement (EIS) on the proposed establishment of a national cemetery to serve the Pittsburgh, PA, area.

The cemetery site is projected to require approximately 150 acres, providing space for approximately 124,000 gravesites, interment service shelters, administrative and maintenance buildings, roads, and buffer areas. Physical characteristics and location of the land will determine the actual acreage necessary to develop the desired cemetery.

ADDRESSES: Individuals are invited to submit comments on this notice to the Director of Environmental Affairs (088B4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Jon E. Baer, Director, Site Development and Environmental Service (088B4), at (202) 233–8453.

SUPPLEMENTARY INFORMATION: An EIS is required because the scope of the proposed project exceeds VA threshold for an EIS established in 38 CFR part 26, Environmental Effects of VA Actions. In accordance with section 102(2)(C) of the National Environmental Policy Act, VA publishes this Notice of Intent pursuant to 40 CFR 1501.7.

The proposed national cemetery, if ultimately approved as a project by VA, would involve land acquisition, site preparation, building and road construction, and possibly would have traffic, economic, and ecological impacts on the local area. Major environmental issues have not been identified as of the date of this notice.

VA has identified five possible site alternatives for the proposed national

cemetery within a 50-mile radius of the intersection of I–279 and I–376. VA will evaluate each site alternative in an Environmental Impact Statement (EIS) that will assess the environmental impact of construction and operation of a national cemetery.

This notice is part of the process used for scoping the pertinent environmental issues for the EIS. Individuals, private organizations, and local, state, and Federal agencies are invited to participate in the scoping process. VA will use any comments it receives to further identify and clarify significant environmental issues. Local area newspapers will announce the scoping meetings for the project EIS.

Dated: July 16, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 93–23154 Filed 9–21–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 182
Wednesday, September 22, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, September 23, 1993, 3:00 p.m.

LOCATION: Room 440, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

FOIA Matter OS# 5562

The Commission and staff will discuss issues related to Freedom of Information Act matter OS# 5562.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: September 16, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–23302 Filed 9–20–93; 10:46 am]

BILLING CODE 6355–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, September 28, 1993.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5779A—Pipeline Accident Report: Highly Volatile Liquids Release from Underground Storage Cavern and Explosive, MAPCO Natural Gas Liquids, Inc., Brenham, Texas, April 7, 1992.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: September 17, 1993.

Ray Smith,

Alternate Federal Register Liaison Officer.

[FR Doc. 93–23285 Filed 9–17–93; 4:54 pm]

BILLING CODE 7533–01–M

Corrections

Federal Register
Vol. 58, No. 182
Wednesday, September 22, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[Docket No. 930782-3182; I.D. 052493B]

Threatened Fish, Wildlife and Plants; Johnson's Seagrass

Correction

FR Doc. 93-22508 was published on page 48327 in the issue of Wednesday, September 15, 1993. This document proposes to add Johnson's seagrass (*Halophila johnsonii*) to the U.S. List of Endangered and Threatened Plants. It was published in the Rules section of the **Federal Register**. It should have appeared in the Proposed Rules section.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8483]
RIN 1545-AR06

Earnings and Profits of Regulated Investment Companies and Real Estate Trusts

Correction

In rule document 93-19753 beginning on page 43797 in the issue of Wednesday, August 18, 1993, make the following correction:

§ 1.852-12 [Corrected]

On page 43798, in the first column, in § 1.852-12(b)(1), in the second line, "*In general.T1 An*"should read "*In general.* An".

BILLING CODE 1505-01-D

federal register

Wednesday
September 22, 1993

Part II

Environmental Protection Agency

40 CFR Parts 9 and 63
National Emission Standards for Hazardous Air Pollutants for Source Categories: Perchloroethylene Dry Cleaning Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD–FRL–4732–8]

RIN 2060–AC27

National Emission Standards for Hazardous Air Pollutants for Source Categories: Perchloroethylene Dry Cleaning Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: National emission standards for hazardous air pollutants (NESHAP) for perchloroethylene (PCE) dry cleaning facilities were proposed in the **Federal Register** on December 9, 1991 (56 FR 64382). A notice of availability of new information on control of PCE emissions during clothing transfer at dry cleaning facilities that use transfer dry cleaning machines was published on October 1, 1992 (57 FR 45363). This action promulgates national emission standards for PCE dry cleaning facilities. These standards implement section 112 of the Clean Air Act (Act) and are based on the Administrator's determination that PCE is a hazardous air pollutant (HAP) and that emissions, ambient concentrations, bioaccumulation, or deposition of PCE are known to cause or may reasonably be anticipated to cause adverse effects to human health or the environment.

The intended effect of this NESHAP is to require all new and existing major source dry cleaning facilities (emitting or with the potential to emit greater than 9.1 megagrams (Mg) [10 tons] per year of PCE) to control emissions to the level of the maximum achievable control technology (MACT), as specified in section 112 of the Act.

The intended effect of this NESHAP is also to require all new and existing area source dry cleaning facilities (emitting or with the potential to emit 9.1 Mg [10 tons] per year or less of PCE) to control PCE emissions to the level achieved by generally available control technologies (GACT) or management practices.

EFFECTIVE DATE: September 22, 1993.

Judicial Review. Under section 307(b)(1) of the Act, judicial review of the actions taken by this notice is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Dry Cleaning Facilities—Background Information for Promulgated Standards," EPA–450/3–91–020b. The BID contains: (1) A summary of the public comments made on the proposed NESHAP and the notice of availability of new information and the Administrator's response to the comments; (2) a summary of the changes made to the NESHAP since proposal; and (3) the final Environmental Impact Statement, which summarizes the impacts of the standards.

Docket. Docket No. A–88–11, containing information considered by the EPA in development of the promulgated standards, is available for public inspection between 8:30 a.m. and 3:30 p.m., Monday through Friday, excluding Federal holidays, at the EPA's Air Docket (LE–131), Waterside Mall, room M1500, 1st Floor, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

Public Meeting. As discussed in more detail at the end of this preamble, in order to gain additional understanding of indoor air pollution, ground water contamination and solid waste generation resulting from dry cleaning facilities, the EPA will convene a public meeting at a place and time to be announced. Information also will be sought on the environmental impacts associated with the operation of wastewater evaporators. The objective of this public meeting will be to gather information on the magnitude of these problems, as well as potential solutions to these problems.

Individuals wishing to find out the date and location of the meeting or to speak at this public meeting should contact Ms. Julia Stevens at (919) 541–5578 by October 22, 1993. Individuals wishing to submit written comments in lieu of attending this public meeting should forward their comments by November 22, 1993 to: Mr. Bruce Jordan, Director; Emission Standards Division (MD–13); Environmental Protection Agency; Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards, contact Mr. George Smith at (919) 541–1549 or Mr. Fred Porter at (919) 541–5251, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in reading the preamble to the final rule.

I. Background

A. List of Categories and Subcategories
B. Source of Authority for National Emission Standards for Hazardous Air Pollutants
C. Criteria for Development of National Emission Standards for Hazardous Air Pollutants
D. Categorization/Subcategorization: Determining Maximum Achievable Control Technology "Floors" for NESHAP
E. Historical Development of the Standards

II. Summary

A. Summary of Promulgated Standards
B. Selection of Basis of Standards for New and Existing Sources—Selection of MACT or GACT
C. Selection of Format for the Final Rule
D. Summary of Changes Since Proposal
E. Potential to Emit

III. Summary of Environmental, Energy, and Economic Impacts

A. Affected Facilities
B. Air Impacts
C. Water, Solid Waste, Noise, and Radiation Impacts
D. Energy Impacts
E. Cost Impacts
F. Economic Impacts

IV. Public Participation

V. Significant Comments and Changes to the Proposed Standards

A. Regulatory Approach
B. Emission Control
C. Monitoring and Equivalency
D. Other Issues and Follow-up to Today's Action

VI. Administrative Requirements

A. Docket
B. Paperwork Reduction Act
C. Executive Order 12291
D. Regulatory Flexibility Act
E. Miscellaneous

I. Background

A. List of Categories and Subcategories

The Act requires, under section 112, that the EPA evaluate and control emissions of HAP's. The control of HAP's is achieved through promulgation of emission standards under sections 112(d) and 112(f) for categories of sources that emit HAP's. Section 112(c)(3) directs the Administrator to list each category or subcategory of area sources which the Administrator finds "presents a threat of adverse effects to human health or the environment." Section 112(c)(3) also directs the Administrator to list within 5 years "sufficient categories or

subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 HAP's that present the greatest threat to public health in the largest number of urban areas are subject to regulation." Section 112(c)(1) directed the EPA to publish an initial list of major sources which emitted one or more of the listed 189 HAP's. As described in the proposal, (56 FR 64382, 64383 (December 9, 1991)), the EPA identified 5 categories of major or area sources of dry cleaners for regulation. These source categories were included in the initial section 112(c)(1) list published on July 16, 1992, (57 FR 31576) as follows:

Source Category and Subcategory
Industrial (major)—Dry-to-dry machines; Transfer machines.
Commercial (major)—Transfer machines.
Commercial (area)—Dry-to-dry machines; Transfer machines.

All sources in the industrial category are major sources. The industrial category has two basic types of machines: Dry-to-dry and transfer. A major source includes any source that emits or has the potential to emit, considering controls, in the aggregate, 9.1 Mg/yr (10 tpy) of any HAP (section 112(a)(1) of the Act). The EPA proposed that the industrial source category and those major sources under the commercial source category be regulated under MACT. The EPA also proposed that the commercial source category, which includes area sources, be listed under section 112(c)(3) for regulation under GACT.

B. Source of Authority for National Emission Standards for Hazardous Air Pollutants Development

Title III of the Act was enacted to help reduce the increasing amount of nationwide air toxics emissions. Under title III, section 112 was amended to give the EPA the authority to establish national standards to reduce air toxics from sources that emit one or more HAP. Section 112(b) contains a list of HAP's, which are the specific air toxics to be regulated by NESHAP. Section 112(c) directs the EPA to use this pollutant list to develop and publish a list of source categories for which a NESHAP will be developed. The EPA must list all known categories and subcategories of "major sources" (defined above) which emit one or more of the listed HAP's. Area source categories selected by the EPA for NESHAP development will be based on the Administrator's judgment that the sources in a category, individually or in aggregate, pose a "threat of adverse effects to health and the environment." As noted above, the initial section 112(c)(1) list of source categories was published on July 16, 1992 (57 FR 31576) and listed 5 source categories of dry cleaners (three major and two area).

C. Criteria for Development of National Emission Standards for Hazardous Air Pollutants

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP's that is achievable for new or existing sources. The NESHAP must reflect consideration of the cost of achieving the emission reduction, and any nonair quality health and environmental impacts, and energy requirements for control levels more stringent than the MACT floors (described below). The emission reduction may be accomplished through application of measures, processes, methods, systems or techniques including, but not limited to, measures which:

1. Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications,
2. Enclose systems or processes to eliminate emissions,
3. Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point,
4. Are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h), or
5. Are a combination of the above (section 112(d)(2)).

To develop a NESHAP, the EPA collects information about the industry, including information on emission source characteristics, control technologies, data from HAP emission tests at well-controlled facilities, and information on the costs and other energy and environmental impacts of emission control techniques. The EPA uses this information to analyze possible regulatory approaches.

Although NESHAP are normally structured in terms of numerical emission limits, alternative approaches are sometimes necessary. In some cases, physically measuring emissions from a source may be impossible or at least impracticable due to technological and economic limitations. Section 112(h) authorizes the Administrator to promulgate a design, equipment, work practice, or operational standard, or combination thereof, in those cases where it is not feasible to prescribe or enforce an emissions standard.

Section 112(h)(2) provides that, "the phrase 'not feasible to prescribe or enforce an emission standard' means any situation in which the Administrator determines that "the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations." As described below, the Administrator has determined that it is impracticable to prescribe an emission standard for the sources subject to this rule. Accordingly, this final rule is being issued as a section 112(h) standard.

D. Categorization/Subcategorization: Determining Maximum Achievable Control Technology "Floors" for NESHAP

The Act directs the Administrator to list categories and subcategories of major sources and area sources which emit one or more of the HAP's listed in section 112(b) (section 112(c) of the Act). The Administrator shall list all major sources which emit HAP's. The Administrator shall list those area source categories and subcategories which she finds present a threat of adverse effects to human health or the environment warranting regulation. Once the EPA has identified the specific source categories or subcategories of major sources and area sources that it intends to regulate under section 112, it must set MACT standards for each and must set such standards at a level at least as stringent as the "floor," unless it regulates area sources under section 112(d)(5) as described below. Congress provided certain very specific directives to guide the EPA in the process of determining the regulatory floor.

Congress specified that the EPA shall establish standards which require "the maximum degree of reduction in emissions of the hazardous air pollutants * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable * * *" (section 112(d)(2) of the Act) In addition, Congress limited the EPA's discretion by establishing a minimum baseline or "floor" for standards. For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator" (section 112(d)(3) of the Act). Congress provided that existing source standards could be less

stringent than new source standards but could be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources (excluding certain sources) for categories and subcategories with 30 or more sources or the best performing 5 sources for categories or subcategories with fewer than 30 sources (section 112(d)(3) of the Act).

Once the floor has been determined for new or existing sources for a category or subcategory, the Administrator must set MACT standards that are no less stringent than the floor. Such standards must then be met by all sources within the category or subcategory. However, in establishing the standards, the Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory (section 112(d)(1) of the Act). Thus, for example, the Administrator could establish two classes of sources within a category or subcategory based on size and establish a different emission standard for each class, provided both standards are at least as stringent as the MACT floor.

In addition, the Act provides the Administrator further flexibility to regulate area sources. Section 112(d)(5) provides that in lieu of establishing MACT standards under section 112(d), the Administrator may promulgate standards which provide for the use of "generally available control technologies or management practices." Area source standards promulgated under this authority (GACT standards) would not be subject to the MACT "floors" described above. Moreover, for source categories subject to standards promulgated under section 112(d)(5), the EPA is not required to conduct a residual risk analysis under section 112(f).

At the end of the data gathering and analysis, the EPA must decide whether it is more appropriate to follow the MACT or the GACT approach for regulating an area source category. As stated previously, MACT is required for major sources. If all or some portion of the sources emits less than 9.1 Mg/yr (10 tpy) of any one HAP (or less than 22.7 Mg/yr (25 tpy) of total HAP's), then it may be appropriate to define subcategories within the source category and apply a combination MACT/GACT approach, MACT for major sources and GACT for area sources. In other cases, it may be appropriate to regulate both major and area sources in a source category under MACT.

The next step in establishing a MACT or GACT standard is the investigation of regulatory alternatives. With MACT standards, only alternatives at least as stringent as the floor may be considered. Information about the industry is analyzed to develop model plant populations for projecting national impacts, including HAP emission reduction levels, costs, energy, and secondary impacts. Several regulatory alternative levels (which may be different levels of emissions control or different levels of applicability or both) are then evaluated to determine the most plausible regulatory alternative to reflect the appropriate MACT or GACT level.

The regulatory alternatives for new versus existing sources may be different, and separate regulatory decisions must be made for new and existing sources. For both source types, the selected alternative may be more stringent than the MACT floor. However, the control level selected must be technically achievable. In selecting a regulatory alternative to represent MACT or GACT, the EPA considers the achievable reduction in emissions of HAP's (and possibly other pollutants that are co-controlled), the cost and economic impacts, energy impacts, and other environmental impacts. The objective is to achieve the maximum degree of emission reduction without unreasonable economic or other impacts.

The selected regulatory alternative is then translated into a proposed regulation. The regulation implementing the MACT or GACT decision typically includes sections of applicability, standards, test methods and compliance demonstration, monitoring, reporting, and recordkeeping. The preamble to the proposed regulation provides an explanation of the rationale for the decision. The public is invited to comment on the proposed regulation during the public comment period. Based on an evaluation of these comments, the EPA reaches a final decision and promulgates the NESHAP.

E. Historical Development of the Standards

On November 25, 1980 (45 FR 78174), the EPA proposed new source performance standards (NSPS) to limit emissions of volatile organic compounds (VOC's) from new, modified, and reconstructed PCE dry cleaners under the authority of section 111 of the Act. On December 26, 1985 (50 FR 52880), the EPA published a Notice of Intent to List PCE as a potentially toxic air pollutant to be regulated under section 112 of the Act and solicited information on the potential carcinogenicity of PCE. Perchloroethylene is the predominant solvent used in dry cleaning. It has chemical and physical properties which make it the most desirable solvent available for the dry cleaning of fabrics. Information was also requested on applicable emission control equipment and the associated level of control achievable.

Subsequent to the EPA's issuance of the 1980 proposed rule and to the EPA's Notice of Intent to List and possible regulation of PCE emissions from dry cleaners under section 112, a private citizens group from Oregon, Francis P. Cook, et al., brought suit against the Administrator of the EPA to compel him to issue a final rule regulating emissions from PCE dry cleaners under the authority of section 111 of the Act. The EPA and plaintiffs negotiated a settlement of the lawsuit whereby the EPA agreed to enter into a Consent Decree. The U. S. District Court for the District of Oregon entered the Consent Decree on March 16, 1990, (*Cook* v. *Reilly*, No. 89–630 7E (D. Ore)). In the Consent Decree, the EPA Administrator agreed to sign proposed NESHAP for PCE dry cleaning facilities within 1 year and promulgate the standards within 2 years following enactment of the new amendments to the Act. In accordance with the Consent Decree, on November 15, 1991, the Administrator, William K. Reilly, signed the proposed rulemaking. That notice appeared in the **Federal Register** on December 9, 1991, (56 FR 64382).

In that notice, the EPA proposed to regulate PCE emissions from dry cleaners under authority of section 112 of the Act because PCE is included on the list of HAP's found in section 112(b).

A notice announcing the withdrawal of the proposed NSPS for regulating VOC emissions from PCE dry cleaners under section 111 was also published at that time (56 FR 64382). The Consent Decree was amended twice to provide the EPA additional time to complete this action, with the current decree requiring the Administrator to sign a final rulemaking notice not later than September 13, 1991. This action completes the EPA's obligations to take regulatory action in compliance with the Consent Decree.

II. Summary

A. Summary of Promulgated Standards

The standards being promulgated today will reduce emissions of PCE from new and existing dry cleaning facilities in the industrial and commercial sectors of the dry cleaning industry. Coin-operated dry cleaning machines are exempt from the standards. The requirements of the standards are

discussed below. The process vent control requirements of the standards are presented in table 1.

TABLE 1.—REQUIREMENTS OF THE PCE DRY CLEANING NESHAP

Requirement	Small area source	Large area source	Major source
Applicability:	Consuming less than:	Consuming between:	Consuming more than:
Dry Cleaning Facilities with:			
(1) Only Dry-to-Dry Machines	140 gallons PCE/year	140–2,100 gallons PCE/year	2,100 gallons PCE/year
(2) Only Transfer Machines	200 gallons PCE/year	200–1,800 gallons PCE/year	1,800 gallons PCE/year
(3) Both Dry-to-Dry and Transfer Machines.	140 gallons PCE/year	140–1,800 gallons PCE/year	1,800 gallons PCE/year
Process Vent Controls:			
Existing Facilities	None	(1)	(1)
New Facilities	(2)	(2)	Refrigerated condenser followed by small carbon adsorber (or equivalent)
Fugitive Controls:			
Existing Facilities	(3)	(3)	Room enclosure
	(4)	(4)	
New	(5)	(5)	
	(6)	(6)	
	(7)	(7)	

[1] Refrigerated condenser (or equivalent) Existing carbon adsorbers can remain.
[2] Refrigerated condenser (or equivalent).
[3] Leak detection/repair.
[4] Store all PCE solvent & waste in sealed containers.
[5] Leak detection/repair.
[6] Store all PCE solvent & waste in sealed containers.
[7] No new transfer machine systems allowed.

Owners and operators of all new dry cleaning machines and existing uncontrolled dry cleaning machines located at major sources, as well as those of many area sources, are required to install and operate refrigerated condensers to control PCE emissions from process vents. Owners and operators of existing dry cleaning machines controlled with carbon adsorbers that were installed prior to today's date are not required to replace the carbon adsorber with a refrigerated condenser. These owners and operators may continue to operate their carbon adsorbers to control PCE emissions from process vents. Owners and operators of all dry cleaning machines are required to operate their PCE emission control equipment and dry cleaning machines according to the manufacturer's recommendations. New transfer machine systems are effectively banned through a requirement prohibiting any PCE emissions from clothing transfer between the washer and dryer of transfer machine systems.

Additional controls are required for new dry-to-dry machines and existing transfer machine systems located at major sources. Owners or operators of new dry-to-dry machines located at major sources are required to install a carbon adsorber in addition to a refrigerated condenser. The PCE saturated air remaining in the dry cleaning drum after completion of the refrigerated condenser cycle must be passed through this carbon adsorber immediately before the door of the dry cleaning machine is opened or as the door is opened. Owners or operators of existing transfer machine systems located at major sources are required to contain their transfer machine systems inside a room enclosure. This room enclosure must be vented to a carbon adsorber to control PCE emissions captured by the room enclosure.

To determine if a dry cleaning facility is a major source emitting over 9.1 Mg (10 tons) per year, total annual PCE consumption of all of the dry cleaning machines at a facility is used to determine PCE emissions. For the purpose of these standards, PCE consumption during any period is defined as the PCE purchased during that period. A facility with only dry-to-dry machines consuming 8,000 liters (2,100 gallons) per year would emit 9.1 Mg (10 tons) per year of PCE and is considered a major source. Similarly, a facility with only transfer machine systems consuming 6,800 liters (1,800 gallons) per year would emit 9.1 Mg (10 tons) per year of PCE and is considered a major source. Finally, a facility with both dry-to-dry machines and transfer machine systems consuming 6,800 liters (1,800 gallons) per year would emit 9.1 Mg (10 tons) per year and is also considered a major source.

The standards include yearly low solvent consumption exemption levels for existing area sources (these low solvent consumption levels do not apply to new sources). The low consumption exemption level is 530 liters (140 gallons) per year for an existing area source that contains only dry-to-dry machines. The low consumption exemption level is 760 liters (200 gallons) per year for an existing area source that contains only transfer machine systems. Finally, the low consumption exemption level is 530 liters (140 gallons) per year for an existing area source that contains both dry-to-dry machines and transfer machine systems. Existing area sources with a yearly PCE consumption below these low solvent consumption exemption levels are not required to install process vent controls. To determine appropriate compliance requirements based on PCE consumption, owners or operators of all dry cleaning facilities must calculate a yearly rolling total of PCE consumption (based on purchase receipts) on the first day of each month.

The owner or operator of each dry-to-dry machine, transfer machine dryer, or reclaimer using a refrigerated condenser is required to monitor and record the temperature on the outlet side of the refrigerated condenser once per week. The owner or operator of each transfer machine washer using a refrigerated

condenser is required to monitor and record the temperature on both the inlet side and the outlet side of the refrigerated condenser once per week. The owner or operator of each existing dry cleaning machine using an existing carbon adsorber for process vent control, which was installed prior to today, or each new major source dry-to-dry machine using a supplemental carbon adsorber to control PCE remaining in the machine drum, is required to monitor the concentration of PCE in the carbon adsorber exhaust outlet once per week.

All owners or operators of dry cleaning facilities are subject to pollution reduction requirements for all dry cleaning machines as well as auxiliary equipment (such as emission control devices, pumps, filters, muck cookers, stills, solvent tanks, solvent containers, water separators, diverter valves, and interconnecting piping, hoses, and ducts). To prevent liquid and vapor leaks from these sources, a weekly leak detection and repair program is required at all facilities except existing facilities with annual receipts less than $75,000, where biweekly leak detection and repair is required. All leaks detected must be recorded in a log, must have their necessary repair parts ordered, and must be repaired within 5 working days of receiving the necessary part. Storage of waste containing PCE in tightly sealed containers is also required to reduce PCE emissions before disposal. Owners or operators of all dry cleaning facilities must maintain monthly records of PCE consumption, based on purchase receipts. Each month, the annual PCE consumption for the preceding 12 months must also be calculated and recorded.

Initial reports certified by a responsible official are required, which include a brief description of and the design capacity of all dry cleaning machines at the facility, annual facility PCE consumption and, where appropriate, the type of emission control device to be used to achieve compliance for each machine at the facility. An existing dry cleaning machine that commenced construction prior to December 9, 1991 (the date of proposal of the PCE dry cleaning NESHAP), must comply with pollution prevention and recordkeeping-and-reporting requirements starting 90 days from today. An existing machine must comply with other requirements within 36 months of today's date. In general, a new dry cleaning machine for which construction commenced on or after December 9, 1991, must achieve compliance with this rule upon startup. However, a new dry cleaning machine that was constructed after December 9, 1991, but prior to today's date may comply immediately with the final rule or comply with section 112(i)(2) of the Act. (Section 112(i)(2) allows qualifying new sources 3 years from promulgation to comply with the final rule, if they comply with the proposed rule in the interim.) A statement signed by a responsible official certifying that compliance is being achieved is required 30 days following the date of compliance.

If a dry cleaning facility that initially met the requirements for an area source exceeds the PCE consumption level for an area source and becomes a major source, that dry cleaning facility is required to achieve compliance with the requirements for a major source by 180 days from the date that the PCE consumption level is exceeded, or within 36 months following today's date, whichever date is later.

If an existing dry cleaning facility initially below the low solvent consumption exemption level for an existing area source exceeds this low solvent consumption exemption level, that dry cleaning facility is required to achieve compliance with the process vent requirements for an area source above the low solvent consumption exemption level by 180 days from the date that the PCE consumption level is exceeded, or within 36 months following today's date, whichever date is later.

The recordkeeping requirements include documentation of the volume of PCE purchased each month, results and calculations of the yearly PCE consumption as determined each month, results of weekly or biweekly PCE liquid and vapor leak inspections and, where appropriate, results of weekly control device monitoring (refrigerated condenser outlet temperature, or refrigerated condenser inlet and outlet temperatures, or carbon adsorber exhaust concentration). All records must be retained for 5 years and made available for inspection upon request. Owners and operators of all dry cleaning facilities must retain onsite a copy of the design specifications and operating manuals for all dry cleaning machines and control devices.

Equivalent pollution prevention or emission control technology may be used to achieve compliance with the standards in lieu of the control devices required by the standard if certain information is submitted to and approved by the Administrator. The EPA notes that a dry cleaner could, by replacing perchloroethylene with other cleaning agents if available, be exempt from process vent controls or the entire NESHAP. An alternative standard may be approved through the section 112(l) approval process if the State meets certain requirements as discussed in more detail in section V. This information includes diagrams; documentation of emission quantification; solvent mileage information; identification of maintenance and monitoring requirements to ensure proper operation; an explanation of why the data regarding emission control is accurate and representative of both short and long term performance; an explanation of why the information supplied can be extrapolated to dry cleaning systems other than the specific systems examined; and documentation of cross-media (water, solid waste) impacts. Upon approval, the Administrator will publish a notice in the **Federal Register**.

Dry cleaners subject to today's rule should be aware of a separate rule known as the "general provisions." The general provisions, which were proposed in the **Federal Register** on August 11, 1993 (58 FR 42760), are generic requirements that sources subject to section 112 standards must meet. Among other things, the proposed general provisions rule contains a procedure for existing sources to apply for a one-year compliance extension, preconstruction review requirements for major sources, and definitions of terms that will be used in many or all section 112 standards. The EPA currently plans to promulgate the final general provisions in March 1994.

B. Selection of Basis of Standards for New and Existing Sources—Selection of MACT or GACT

As prescribed by section 112(c)(1), the promulgation of these standards was preceded by the development and publication of a list with all the categories and subcategories of major and area sources emitting any of the HAP's listed in section 112(b) of the Act. An initial list of such categories (required under section 112(c)(1)) was published in the **Federal Register** on July 16, 1992 (57 FR 31576). Three perchloroethylene dry cleaning major source categories were included on this list: (1) Commercial dry cleaning (perchloroethylene)—transfer machines; (2) industrial dry cleaning (perchloroethylene)—transfer machines; and (3) industrial dry cleaning (perchloroethylene)—dry-to-dry machines. Two dry cleaning area source categories were included on this list: (1) Commercial dry cleaning (perchloroethylene)—transfer machines; and (2) commercial dry cleaning

(perchloroethylene)—dry-to-dry machines. The Administrator found that these categories present "a threat of adverse effects to human health or the environment."

As described above, the dry cleaning industry subject to the NESHAP is subcategorized into major and area source dry cleaners. The dry cleaning industry is also subcategorized into industrial and commercial sectors. All industrial dry cleaners are major sources. Commercial dry cleaners can be either major or area sources. The dry cleaning industry is further subcategorized into dry-to-dry and transfer machines. Although two subcategories of coin-operation dry-to-dry machines (plant and self-service) were included in the preliminary source category list published June 21, 1991 (56 FR 28548), these two subcategories were deleted from the final source category list published July 16, 1992 (57 FR 31576). These two subcategories are exempt from this final NESHAP.

There were no differences in the types of control technologies identified for the subcategories of industrial and commercial dry cleaners; however, differences in control technologies were identified between major and area sources, and dry-to-dry and transfer machines. These differences were used in determining the requirements of the NESHAP.

The rule requires new and existing dry-to-dry machines, and transfer machine dryers, that are controlled with refrigerated condensers to be closed-loop—in other words, the gas-vapor mixture within the machine cannot be vented to the atmosphere while the dry cleaning machine drum is rotating. Although the refrigerated condenser can be external or internal, the gas-vapor stream must be routed back to (or contained within) the machine in a closed-loop configuration, without venting to the atmosphere. This ensures that the gas-vapor stream passes multiple times through the refrigerated condenser and that high control efficiency can be achieved. The EPA wishes to emphasize that the rule does not prohibit fan-and-vent systems which operate when the machine door is open to reduce worker exposure to PCE vapors left inside the drum at the end of the drying cycle.

The selection of the standards for this NESHAP based upon the subcategorization of the dry cleaning industry discussed above is summarized as follows.

1. Major Sources

Section 112 of the Act defines a major source as any stationary source that emits 9.1 Mg/yr (10 tpy) or more of any one HAP or 22.7 Mg/yr (25 tpy) or more of total HAP's. The Act states that new major sources must achieve the MACT, which is the level of emission control already achieved in practice by the best controlled similar source. The Act further states that emission standards promulgated for existing major sources may be less stringent than standards for new sources; however, standards for existing major sources must not be less stringent than the average level of emission reduction achieved by the average of the best performing 12 percent of the existing major sources.

For new major dry cleaning facilities, the only significant factor for determining similarity in sources is the type of machine used. Two basic types of machines are used in the dry cleaning industry: Dry-to-dry machines and transfer machines. For dry-to-dry machines, it has been demonstrated that the maximum degree of PCE emission reduction from machine vents and exhausts can be achieved by installing a refrigerated condenser.

At proposal, the EPA believed the performance of carbon adsorbers to be equal to that of refrigerated condensers when used to control emissions from dry-to-dry machines, and proposed to allow major source dry-to-dry machines to install either control device. Following proposal, however, new information was provided to the EPA from a survey of dry cleaners in California, which disputes these conclusions. A more detailed discussion of this finding is presented in section V.B.

The use of a refrigerated condenser and small carbon adsorber together is considered MACT for new source dry-to-dry machines. At present, both of these control devices are used widely in the dry cleaning industry. They are readily available and economically feasible as methods of control.

The emissions remaining in a conventional dry-to-dry machine, controlled with a refrigerated condenser, at the end of the dry cleaning cycle can be further controlled by drawing the air remaining in the machine through a small carbon adsorber either before the door to the machine is opened or venting the air through a carbon adsorber to the atmosphere as the door is opened. Information was made available to the EPA after proposal indicating that several conventional vented dry-to-dry machines equipped with refrigerated condensers currently operate in this manner (i.e., the air remaining in the machine at the end of the dry cleaning cycle is vented to a carbon adsorber as the door to the machine is opened).

Use of a carbon adsorber for process vent control represents the MACT floor for existing dry-to-dry machines because this is the average level of emission reduction achieved by the best-performing 12 percent of existing major sources. In considering whether to require controls above this floor, EPA distinguished between classes of machines. As noted earlier, the maximum achievable control technology for existing uncontrolled dry-to-dry machines is refrigerated condensers. However, MACT for existing dry-to-dry machines equipped prior to promulgation with carbon adsorbers is either a refrigerated condenser or a carbon adsorber. The final rule does not require the replacement of these carbon adsorbers with refrigerated condensers. The Administrator could not conclude, based on currently available information, that requiring replacement of a well-operated carbon adsorber with a refrigerated condenser was justified.

For transfer machine systems located at a major source, the NESHAP must be based on MACT. The Act states that MACT for new sources must be no less stringent than the best controlled similar source. The MACT may be more stringent, however, if the Administrator believes the balance between the additional economic, energy, and environmental impacts of a more stringent requirement is reasonable. A transfer machine system with a refrigerated condenser and a room enclosure represents the best controlled similar source. The only option more stringent than a transfer machine system with a room enclosure is a new dry-to-dry machine.

Dry-to-dry machines provide complete control of clothing transfer emissions (i.e., emissions released by transfer of clothing from the washer to the dryer of a transfer machine system). Dry-to-dry machines eliminate these emissions by eliminating the need to transfer clothing from a washer to a dryer (achieving 100 percent reduction of clothing transfer emissions).

The MACT for new transfer machine systems located at a major source is based upon the use of dry-to-dry machines, thereby requiring new major source transfer machine systems to eliminate all emissions from clothing transfer between the washer and the dryer. Such a requirement effectively bans or prohibits new transfer machine systems because no technology has been identified to date (including the use of hamper enclosures or room enclosures) that could be added to a new transfer

machine system to totally eliminate all PCE emissions from clothing transfer. A more detailed discussion of this finding is presented in section V.B.

For existing major source transfer machine systems, it has been demonstrated that the maximum degree of PCE emission reduction from machine vents and exhausts can be achieved by installing a refrigerated condenser. At proposal, the EPA believed carbon adsorbers outperformed refrigerated condensers on transfer machine systems and proposed to require carbon adsorbers on uncontrolled transfer machine systems. Following proposal, however, new information was provided to the EPA from a survey of dry cleaners in California, which disputes these conclusions. A more detailed discussion of this finding is presented in section V.B.

Use of a carbon adsorber for process vent control represents the MACT floor for existing transfer machines because this is the average level of emission reduction achieved by the best-performing 12 percent of existing major sources. In considering whether to require controls above this floor, the EPA distinguished between classes of machines. As noted earlier, the maximum achievable control technology for existing uncontrolled transfer machines is refrigerated condensers. However, MACT for existing transfer machines equipped prior to promulgation with carbon adsorbers is either a refrigerated condenser or a carbon adsorber. The final rule does not require the replacement of these carbon adsorbers with refrigerated condensers. The Administrator could not conclude, based on currently available information, that requiring replacement of a well-operated carbon adsorber with a refrigerated condenser was justified. Room enclosures capture and vent the fugitive PCE emissions from clothing transfer between the washer and the dryer at transfer machine systems to a carbon adsorber. Since clothing transfer emissions are a significant portion of overall transfer machine system emissions, control of these through a room enclosure would achieve additional emission reductions. Section V provides a more detailed discussion of these control devices.

Based on the results of further analysis, it was considered reasonable to go beyond the floor to require room enclosures for fugitive emission control in addition to refrigerated condensers for process vent control for transfer machine systems located at a major source.

2. Area Sources

Section 112 of the Act defines an area source as any stationary source of HAP's that is not a major source. Based on this definition, a dry cleaning facility that emits less than 9.1 Mg/yr (10 tpy) of any one HAP would be considered an area source. In section 112(d)(5), the Act further states that the Administrator may elect to promulgate a standard based on GACT or management practices to control HAP emissions from area sources instead of applying the MACT.

Section 112(c)(3) requires a "finding" of a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate warranting regulation) in order to regulate area sources under NESHAP. The large number of area source dry cleaning facilities nationwide emit, in aggregate, a significant amount of PCE emissions and, therefore, have the potential to have an adverse effect on health and the environment.

Unlike MACT, no stringency "floor" is required for GACT; and costs, economic impacts, and the technical capabilities of dry cleaning facility owners and operators to operate emission control equipment may be considered in determining GACT. For the most part, the technology used to achieve the level of emission control determined to achieve MACT is also used widely by area source dry cleaning facilities and could be considered GACT.

The GACT approach can be less stringent than MACT and can consider costs and economic impacts. At proposal, GACT for all area sources, except for existing refrigerated condenser controlled transfer machines was determined to be the use of either a refrigerated condenser or a carbon adsorber. Subsequent to proposal, the EPA learned that carbon adsorbers may not be operated as well as refrigerated condensers. Based on this finding, all new and existing uncontrolled area sources are required to install refrigerated condensers for process vent control. However, the Administrator determined that, based on existing information, a requirement to replace existing carbon adsorbers with refrigerated condensers is not justified at this time. No new transfer machines are allowed. These requirements were determined to be reasonable for area sources and are identical to MACT requirements. The EPA determined that the economic impacts of requiring the owner or operator of a new area source dry-to-dry machine to install a supplemental carbon adsorber to control PCE emissions in the dry cleaning machine drum is not reasonable. Further, the Administrator determined that the economic impacts of requiring the owner or operator of an existing area source transfer machine system to install a room enclosure to capture transfer emissions are unreasonable. Additional discussion of these findings is presented in section V.

Therefore, GACT for area sources would be identical to MACT for major sources except that the owner or operator of a new dry-to dry machine would not be required to install a supplemental carbon adsorber and the owner or operator of an existing transfer machine system would not be required to install a room enclosure.

C. Selection of Format for the Final Rule

1. Equipment Exhausts and Vents.

Emission standards for controlling PCE allow for some flexibility in complying with the standards because any control technique may be used if it achieves the level of emission reduction represented by the standards. An emission limitation format could be a concentration limit, a percent reduction level, or a mass emission rate limit.

Both the concentration limit and the percent reduction level would require periodic performance testing by the owner or operator to demonstrate that the dry cleaning facility is achieving compliance. Because the cost of requiring an owner to conduct even a single periodic performance test is expensive ($3,000 to $5,000) compared to the cost of control equipment ($6,000 to $8,000), it would be economically unreasonable to require either of these two emission limit formats for these standards.

A mass emission limit format would place a limit on the total consumption of HAP per unit of articles cleaned, also known as "solvent mileage." Some members of the dry cleaning industry use the "solvent mileage," method to compute the pounds of articles that can be cleaned per drum of solvent. To determine "solvent mileage," a record of gallons of solvent bought and amount of clothes cleaned would have to be kept. However, the amount of recordkeeping necessary to compute solvent mileage to comply with this type of format (such as weighing each load of clothes prior to cleaning and tracking the amount of solvent consumed) would be burdensome for a small facility owner or operator.

In addition to being impractical and an economic burden on dry cleaner owners or operators to measure emissions or to compute solvent mileage

for these sources, it would be difficult to enforce emission standards at several thousand dry cleaning facilities across the country, ensuring that each dry cleaner is achieving the emission standards. For these reasons, as authorized under section 112(h), an equipment standard requiring the use of a refrigerated condenser, or an equivalent control device was selected to limit emissions from these sources.

2. Equipment Leaks.

Based on dry cleaning machine test data, as much as 25 percent of the PCE emissions from an uncontrolled dry cleaning facility can be attributed to leaks from the dry cleaning equipment. Two possible formats for a standard to control these leaks are an emission limit standard or a work practice standard under section 112(h).

To require an emission limit for a leak standard, the leak sources would need to be enclosed so that the actual emission rate could be measured. Because this procedure would be impractical on the many potential leak sources on dry cleaning equipment, an emission limit format is not the preferred format for leaks.

Because control of fugitive equipment leaks requires maintenance of the dry cleaning equipment, the EPA is proposing a work practice with a program to detect and repair leaks as the logical format. The work practice would specify the inspection time intervals and an inspection method to locate the leaks, and would limit the time period allowed to perform the required maintenance and repairs. The proposed inspection method requires only a quantitative determination of the presence of a leak (i.e., visual or use of a portable halogenated-hydrocarbon detector). Although the effectiveness of this work practice cannot be quantified precisely, the EPA believes it would result in a substantial reduction of fugitive emissions. The work practice format has been selected for the proposed equipment leak standard because less time is required for demonstrating compliance, and the recordkeeping and economic impacts associated with this format are not burdensome.

D. Summary of Changes Since Proposal

Since proposal, several changes have been made to the regulation. The changes affect new and existing dry cleaning machines located at major and area sources. At proposal, owners or operators of new dry-to-dry machines located at major or area sources were given a choice of installing carbon adsorbers or refrigerated condensers as process vent control. At promulgation, all new dry cleaning machines located at major or area sources are required to install refrigerated condensers.

The owner or operator of a new dry-to-dry machine located at a major source is also required to install a carbon adsorber to control the PCE emissions remaining in the dry cleaning machine drum at the end of the dry cleaning cycle.

At proposal, new transfer machine systems were allowed and control requirements for these systems were specified. At promulgation, new transfer machine systems are prohibited through a regulatory requirement prohibiting PCE emissions from clothing transfer between the washer and the dryer. This requirement cannot be met by new transfer machine systems even if these systems are enclosed in room enclosures.

At proposal, existing uncontrolled dry-to-dry machines located at major or area sources were given a choice of installing carbon adsorbers or refrigerated condensers as process vent control. Existing uncontrolled transfer machine systems located at area sources were required to install carbon adsorbers. At promulgation, existing uncontrolled dry-to-dry machines and transfer machine systems are required to install refrigerated condensers. Existing controlled machines that already have a carbon adsorber, however, are not required to install a refrigerated condenser for process vent control.

At proposal, existing uncontrolled transfer machine systems located at major sources were required to install carbon adsorbers. At promulgation, existing uncontrolled transfer machine systems located at major sources are required to install refrigerated condensers as process vent control. Existing controlled transfer machine systems at major sources that already have a carbon adsorber, however, are not required to install a refrigerated condenser for process vent control. For control of fugitive emissions, all existing transfer machine systems located at major sources must be enclosed within a room enclosure that exhausts to a carbon adsorber.

At proposal, the low solvent consumption exemption for process vent control at area sources was 220 gallons of PCE per year for a dry-to-dry machine and 300 gallons of PCE per year for a transfer machine system. At promulgation, the low solvent consumption exemption for process vent control has been lowered and now applies to the total PCE solvent consumption of all machines at the dry cleaning facility rather than on a per machine basis. At promulgation, the low solvent consumption exemption for process vent control is 140 gallons of PCE per year for a dry cleaning facility with only dry-to-dry machines or both dry-to-dry machines and transfer machine systems, and 200 gallons of PCE per year for a dry cleaning facility with only transfer machines systems.

The levels of PCE consumption distinguishing major from area sources have been lowered from the proposed levels and now apply to the total PCE consumption of all machines at the facility rather than on a per machine basis. The levels of PCE consumption distinguishing a major source from an area source are 2,100 gallons of PCE per year for a source with only dry-to-dry machines, and 1,800 gallons of PCE per year for a source with only transfer machine systems or both dry-to-dry machines and transfer machine systems. To track PCE consumption, the owner or operator of any dry cleaning facility subject to this rule is required on the first day of each month to compute an annual PCE consumption by summing PCE purchases over the previous 12 months.

At proposal, pollution prevention practices (such as leak detection and repair) were required only for those dry cleaning machines above the low solvent consumption exemption for process vent control. At promulgation, all PCE dry cleaning facilities must implement pollution prevention practices and operate their dry cleaning equipment according to the manufacturer's specifications.

There were no monitoring requirements included at proposal. The promulgated standards now require periodic monitoring of process vent control equipment. When operating a refrigerated condenser on a dry-to-dry machine, a transfer machine system dryer, or a reclaimer, the temperature on the outlet side of the refrigerated condenser must be measured and recorded once per week. When operating a refrigerated condenser on a transfer machine system washer, the difference between the inlet and outlet temperatures of the exhaust from the washer as it passes through the refrigerated condenser must be measured and recorded once per week.

When operating an existing carbon adsorber to control process vent emissions, a colorimetric detector tube must be used to measure and record the PCE level in the carbon adsorber exhaust once per week. Periodic desorption for carbon adsorbers is no longer specifically required. Instead, the owner or operator must follow the

manufacturer's specifications for the proper operation of a carbon adsorber.

The proposed rule would have required compliance within 18 months of publication of the final rule for existing dry cleaning machines with a design capacity larger than 22.7 kilograms (50 lbs). The compliance deadline for smaller machines would have been 36 months from promulgation. The final rule requires each existing dry cleaning system to be in compliance within 36 months of publication of the final rule, except that compliance with pollution prevention requirements and recordkeeping and reporting requirements is required starting 90 days after the rule's publication.

Section 112(i) of the Clean Air Act requires the EPA to set compliance dates for existing sources that provide for compliance as expeditiously as practicable, and no later than 3 years after promulgation of the final rule (with certain exceptions). As explained in the background information document cited at the beginning of this notice, the EPA is allowing 36 months for control technology to be installed on all dry cleaning machines because of questions about the market availability of an adequate supply of refrigerated condensers. On the other hand, the EPA has concluded that the pollution prevention requirements of the rule do not require significant capital expenditures and are feasible for dry cleaners to implement within 90 days. These requirements consist of "good housekeeping" practices such as inspecting for leaks and keeping the machine door closed during operation. The earlier compliance date in the final rule will result in earlier emissions reductions.

The 90-day applicability date for recordkeeping and reporting requirements will enhance the enforceability and effectiveness of the rule. One reason is that the applicability of control technology requirements in the rule depends on a facility's solvent consumption over a 12-month period. If documentation of a facility's solvent consumption was not required until 3 years after promulgation, it would be impossible to determine reliably which control technology requirements apply to a dry cleaning facility. Second, requiring an initial report from existing sources within 90 days will encourage these sources to begin planning for compliance with the rule's control technology requirements at an early date. This requirement also will provide regulatory agencies with information about regulated facilities in time to promote and monitor compliance effectively.

E. Potential to Emit

The annual major-source consumption levels (8,000 liters (2,100 gallons) per year for dry-to-dry machines and 6,800 liters (1,800 gallons) per year for transfer machine systems) represent the EPA's determination of the volumes of PCE that are used and consumed by the two different types of machine in order to emit 10 tons of PCE per year. Because it is not economically and technically feasible to precisely monitor and measure yearly PCE emissions at each of the dry cleaning facilities affected by this rule, PCE consumption is an appropriate surrogate measure. The EPA has found that PCE emissions to ambient air are closely and predictably related to the volume of PCE used and consumed in the dry cleaning process. Accordingly, this rule does not require each dry cleaning facility to test and calculate the maximum annual rate of PCE stack and fugitive emissions for each particular dry cleaning machine regulated under this rule. Instead, the consumption level assigned to each type of dry cleaning machine determines whether a facility is a major source (that is, whether it emits or has the potential to emit 10 tons or more of PCE).

The consumption levels differ between dry-to-dry (8,000 liters) and transfer machine systems (6,800 liters) because the use of a dry-to-dry machine results in lower fugitive emissions than the use of a transfer machine system. Stated another way, a dry-to-dry machine is more efficient in its use of PCE from an air emission perspective. This higher efficiency means that for each liter of PCE used for dry cleaning, a dry-to-dry machine emits less PCE to the ambient air than a transfer machine system. Accordingly, a dry-to-dry machine can use or consume a greater volume of PCE than a transfer machine system before emitting 10 tons or more of PCE to the ambient air. Amounts of PCE used and consumed in dry cleaning processes but not emitted to the ambient air at a dry cleaning facility include amounts of PCE transferred offsite as solid waste in used filters and spent carbon, amounts transferred to wastewater streams, and amounts that remain in cleaned clothing at the time of customer pickup.

The major source consumption levels established in the final rule differ from the major source consumption levels in the proposed dry cleaning rule of December 9, 1991. The proposed major source PCE consumption levels were 11,700 liters (3,100 gallons) for dry-to-dry machines, and 7,600 liters (2,000 gallons) for transfer machine systems. The difference is due to the EPA's determination that the major source consumption levels for PCE established in the final rule (8,000 liters or 2,100 gallons for dry-to-dry machines and 6,800 liters or 1,800 gallons for transfer machine systems) more accurately reflect the volume of PCE that each type of machine uses or consumes in emitting 10 tons of PCE.

Under the rule, a dry cleaning facility will be classified as a major or area source in the following manner. As previously mentioned, a facility has the potential to emit more than 10 tons of PCE only if its solvent consumption exceeds the rule's solvent use cut-off levels that divide major sources from area sources. The owner or operator must certify to the regulating agency whether or not the facility's solvent consumption will exceed the cut-off level. If solvent consumption is greater than or equal to this cut-off level, the facility is to be considered a major source and must comply with all major sources requirements. If solvent consumption is less than the cut-off level, the facility is considered an area source.

If a facility is found to be an area source, the next determination is whether or not the facility must install area-source technology controls. To be exempt from technology controls, the facility's certification must guarantee that solvent use is less than the low-solvent-use exemption level. Otherwise, area-source control technology requirements apply to the facility.

The rule's requirements are intended to ensure that all dry cleaning facilities that have the potential to emit 10 tons of PCE considering controls are regulated as major sources. If regulated as an area source, a facility will be required to observe the limit on solvent consumption to which it certified, as well as meet other requirements for area sources. These are Federally enforceable requirements that will prevent area sources from emitting more than 10 tons of PCE in a year. After its compliance date, if an area source wishes to increase operations or add a dry cleaning machine, and the result would be to increase solvent consumption above the major-source cutoff level, the facility must first comply with the rule's requirements for major sources. Failure to do so would result in a violation of the rule.

In this rule, the EPA is not establishing any precedents or policies concerning the determination of a facility's "potential to emit" or its classification as a major or area source

under section 112. The EPA believes it would be unwise and inappropriate to resolve these complex issues solely in the context of the PCE dry cleaning NESHAP because the result could create numerous unforeseen problems and inequities in regulation of other categories of sources. The EPA is considering these issues in a comprehensive fashion in light of the broad range of sources for which NESHAP will be developed. The EPA is presently continuing to consider these issues and will take whatever appropriate actions that are necessary to resolve them.

III. Summary of Environmental, Energy, and Economic Impacts

A. Affected Facilities

The number of new and existing machines in 1996 (5 years from the date of proposal) were projected in order to calculate the 5-year impacts of the standards. Industry estimates indicate a zero growth rate for commercial dry cleaning facilities. For this reason, the only new facilities projected to be constructed during the 5 years following the date of proposal (between 1991 and 1996) are an estimated 7,700 new commercial facilities which replace those that retire. Industrial dry cleaning facilities are declining because many of these facilities are switching from the use of PCE to the use of water to wash linens and uniforms. For this reason, no new industrial facilities are projected between 1991 and 1996. Approximately 28 industrial facilities would retire during this period.

In 1996, based on the estimates of machine retirement, approximately 17,400 existing commercial and industrial facilities will be subject to the standards. Taking into account the low solvent consumption exemption levels for existing area sources, approximately 9,700 of these existing facilities would be required to install process vent control devices. Of these facilities, however, approximately 6,500 are expected to decide to install process vent control devices to comply with State or local regulations. Thus, in 1996 approximately 3,200 existing facilities are estimated to have to install process vent control devices solely to comply with the standards promulgated today.

As mentioned above, between 1991 and 1996, 7,700 new facilities are projected. All of these facilities are required to install process vent controls. Of these new facilities, approximately 7,300 are expected to decide to install process vent control devices to comply with State or local regulations. Thus, in 1996 approximately 400 new facilities are estimated to install process vent control devices solely to comply with the standards promulgated today.

The following discussion presents the projected environmental, energy, and economic impacts for 1996 based on the estimated 3,200 existing and 400 new facilities that would be required to install process vent control devices solely to comply with the standards promulgated today.

B. Air Impacts

In 1996, the standards are expected to reduce nationwide emissions of PCE from existing dry cleaning facilities by a maximum of some 5,500 Mg (6,000 tons) from process vent control and some 18,000 Mg (19,800 tons) from leak detection and repair. This emission reduction is based on projected nationwide PCE emissions from existing facilities in 1996 of 42,000 Mg (46,500 tons) in the absence of the standards. This emission reduction corresponds to approximately 44 percent of the total PCE emissions from all existing dry cleaning facilities. This reduction is in addition to reductions achieved by controls already in place in many of these facilities, and reductions anticipated in the absence of the NESHAP.

In 1996, the standards are expected to reduce nationwide emissions from new dry cleaning facilities by a maximum of some 1,100 Mg (1,200 tons) from process vent control and some 7,800 Mg (8,600 tons) from leak detection and repair. This emission reduction is based on projected nationwide PCE emissions in 1996 of 15,800 Mg (17,400 tons) from new dry cleaning facilities in the absence of the standards. This emission reduction corresponds to about 43 percent of the total PCE emissions from all new dry cleaning facilities.

In 1996, annual emissions of PCE from a typical new or existing dry cleaning facility located at an area source with annual receipts of $200,000 operating a typical size dry-to-dry machine with capacity of 15.9 kilograms (kg) (35 pounds (lb)) controlled with a refrigerated condenser are projected to be 0.77 Mg (0.85 tons) from process vent control and 0.8 Mg (0.88 tons) from leak detection and repair. This represents greater than 50-percent reduction in emissions from an uncontrolled dry-to-dry machine of this same size and receipt level.

C. Water, Solid Waste, Noise, and Radiation Impacts

The requirement for use of refrigerated condensers minimizes the impact on water quality resulting from the standards. The projected impact on water quality results from the PCE contained in aqueous wastes generated by the control devices. When using a refrigerated condenser, a small amount of PCE is generated and collected in the separator water. A typical refrigerated condenser controlled dry-to-dry machine is estimated to generate about 0.03 kg (0.07 lb) of PCE in wastewater per year. Owners or operators of all new dry cleaning machines and those existing uncontrolled dry cleaning machines that are above the low solvent consumption exemption levels would be required to install refrigerated condensers.

When using a carbon adsorber, PCE is collected in the steam condensate generated during desorption of the carbon. A typical existing dry-to-dry machine with an existing carbon adsorber is estimated to generate 0.85 kg (1.9 lb) of PCE in wastewater per year. However, only owners or operators of existing dry cleaning machines with existing carbon adsorbers installed prior to the date of promulgation would be allowed to continue to use a carbon adsorber as primary process vent control.

In addition to process vent control, owners or operators of existing transfer machine systems located at major sources would be required to install a room enclosure with a carbon adsorber. A carbon adsorber on the room enclosure is estimated to be approximately one-third the size of a typical carbon adsorber used to control process vent emissions. A typical transfer machine system located at a major source with a carbon adsorber on the room enclosure is estimated to generate 0.28 kg (0.60 lb) of PCE in wastewater per year. This amount is in addition to the 0.85 kg (1.9 lb) of PCE in wastewater generated if the transfer machine system has a carbon adsorber controlled process vent.

Owners or operators of new dry-to-dry machines at major sources would be required to install a carbon adsorber to control the PCE remaining in the dry cleaning machine drum at the end of the dry cleaning cycle. This carbon adsorber is also estimated to be approximately one-third the size of a typical carbon adsorber used to control process vent emissions. A typical dry-to-dry machine with a refrigerated condenser controlled process vent and a carbon adsorber to control the PCE emissions remaining in the machine drum is expected to generate about 0.31 kg (0.68 lb) of PCE in wastewater per year.

It is projected that the total amount of PCE in wastewater generated on a national basis by dry cleaning facilities in the absence of the standards in 1996

would be 5.9 Mg (6.5 tons). With the standards, the amount of PCE in wastewater generated on a national basis by dry cleaning facilities is projected to be about 6.1 Mg (6.7 tons) in 1996, an increase of about 0.2 Mg (0.2 ton) per year (corresponding to an increase of about 3 percent).

The solid waste impact of the standards is considered minimal. The main types of solid waste generated from controlled dry cleaning machines are spent carbon from carbon adsorbers, spent carbon from cartridge filters, solvent sludge (muck), and still bottoms. Neither a carbon adsorber nor a refrigerated condenser would affect muck, still bottom, or cartridge filter carbon generation, so no impact due to the control alternatives was calculated for these waste types.

Periodic replacement of the carbon bed associated with a carbon adsorber is necessary to maintain the performance of a carbon adsorber in controlling PCE emissions. According to carbon vendors, the carbon is likely to need replacement approximately every 5 years.

For a typical 15.9 kg (35 lb) existing area source dry-to-dry machine controlled with an existing carbon adsorber installed prior to today's date, the amount of solid waste generated from spent carbon is estimated to be approximately 25 kg (55 lb) per year. For a typical 113 kg (250 lb) existing major source dry-to-dry machine controlled with an existing carbon adsorber, the amount is estimated to be approximately 90 kg (198 lb) per year. These are the same amounts that would be generated in the absence of the standards.

New major source dry-to-dry machines with refrigerated condenser and carbon adsorber control would also require periodic replacement of the carbon bed. For a typical major source dry-to-dry machine with both refrigerated condenser and carbon adsorber control, the amount of solid waste generated from spent carbon is estimated to be approximately 8.4 kg (19 lb) per year.

Existing major source transfer machine systems with carbon adsorbers on their room enclosures would also require periodic replacement of the carbon bed. For a typical major source transfer machine system with refrigerated condenser process vent control and carbon adsorber control on the room enclosure, the amount of solid waste generated from spent carbon is estimated to be about 8.4 kg (19 lb) per year. For a typical major source existing transfer machine system with carbon adsorber process vent control and carbon adsorber control on the room enclosure, the amount of solid waste generated from spent carbon is estimated to be about 98 kg (217 lb) per year.

It is projected that the amount of carbon discarded every 5 years in the absence of the standards would be 880 Mg (970 tons) or an average of 175 Mg (193 tons) per year. With the standards, the amount of carbon discarded on a national basis every 5 years would be 890 Mg (980 tons) or an average of 177 Mg (195 tons) per year. This corresponds to an increase in national solid waste impacts from both new and existing dry cleaning facilities of about 10 Mg (10 tons) of carbon discarded approximately every 5 years, or an average of about 2 Mg (2 tons) of carbon every year (corresponding to an increase of about 1 percent).

There are no noise or radiation impacts associated with these standards.

D. Energy Impacts

The energy impacts resulting from the standards on a nationwide basis are considered minimal. Electricity is required for cooling the coils of the refrigerated condenser and for operating fans and generating steam for desorbing existing carbon adsorbers. The total increase in annual electricity use for existing dry cleaning facilities in 1996 resulting from the standards would be about 2,454,500 kilowatt-hours per year (KW-hr/yr) (390,000 British thermal units per year (Btu/yr)). The total increase in annual electricity use for new dry cleaning facilities in 1996 resulting from the standards would be about 276,600 KW-hr/yr (44,000 Btu/yr). The total increase in annual electricity use for all facilities nationwide would be about 2,731,100 KW-hr/yr (430,000 Btu/yr).

This increase in electricity requirement is equivalent to about 700,000 liters (3,400 barrels (bbl)) of fuel oil per year for electricity generation for existing facilities and about 79,000 liters (380 bbl) of fuel oil per year for new facilities. The total increase for all facilities would be about 780,000 liters (3,800 bbl) of fuel oil per year, corresponding to an increase of 0.7 percent.

By installing a refrigerated condenser as required by the standards, the electricity requirement for a typical uncontrolled dry cleaning facility with one 15.9 kg (35 lb) dry-to-dry machine is expected to increase by about 600 KW-hr/yr (95 Btu/yr) in 1996.

E. Cost Impacts

The nationwide cumulative 5-year capital costs in 1996 of complying with the standards would be about $35 million. The cumulative 5-year capital costs for existing facilities would be about $32 million and about $3 million for new facilities.

The total nationwide annualized costs in 1996 of complying with the standards for process vents would be about $9 million. This estimate does not include credit for solvent savings. If a credit for solvent savings is included, the total nationwide annualized cost is about $4 million. The annualized costs in 1996 including a credit for solvent savings for existing facilities complying with the standards would be about $3.4 million, and about $0.5 million for new facilities.

The total nationwide annualized costs in 1996 for both new and existing facilities complying with the standards for pollution prevention, leak detection and repair, monitoring, reporting and recordkeeping would be about $10 million. This estimate does not include credit for solvent savings. If a credit for solvent savings is included in this estimate, these facilities would have a total annual cost savings of $7.6 million.

For a typical new area source facility with annual receipts of $200,000 with a 15.9 kg (35 lb) dry-to-dry machine, the capital cost of a refrigerated condenser is $6,300, and the resulting annualized cost of this process vent control is $1,000. The resulting annualized cost for the above typical new area source to perform pollution prevention, leak detection and repair, monitoring, reporting, and recordkeeping is about $460. This estimate does not reflect credit received from solvent savings. If a credit for solvent savings is included, this typical facility would have a total cost of about $350.

F. Economic Impacts

The economic impact assessment includes a market component and a financial component. The market component focuses on the adjustment of market prices and quantity of dry cleaning as a result of complying with the standards. The financial component focuses on the ability of firms to obtain the money to buy the control equipment.

The upward price adjustments are projected to range between 0.15 and 2.3 percent in various markets, with the largest increases being found in small rural markets. The downward adjustment in total dry cleaning is projected to be about 0.5 percent. If the whole quantity adjustment were translated into closures rather than reduction in output at many cleaners, the net closures would be projected to be just under 260.

The financial analysis indicates that firms in below-average financial condition may face difficulty in obtaining the required funds to purchase control equipment from traditional loan sources such as banks. The analysis projects between 0 and 830 firms will be in this category. These firms will either obtain other financing (vendor-aided, relatives, personal assets, etc.), close, or sell their firm.

The environmental, energy, and economic impacts are discussed in greater detail in the BID's and the economic impact analyses for the proposed and promulgated standards: "Dry Cleaning Facilities—Background Information for Promulgated Standards," EPA–450/3–91–020b; "Dry Cleaning Facilities—Background Information for Proposed Standards," EPA–450/3–91–020a; "Economic Impact of Regulatory Controls in the Dry Cleaning Industry," EPA–450/3–91–021; and "Economic Impact of Regulatory Controls in the Dry Cleaning Industry," EPA–450/3–91–021b. Additional information on impacts is found in supporting information for the notice of availability of new information, "Information Package on Transfer Enclosures," (Docket No. A–88–11, Item No. IV–M–1).

In addition to the economic impact analysis, the cost effectiveness of alternative standards was also evaluated to determine the least costly way to reduce emissions and to ensure that the controls required by this rule are reasonable relative to other regulations. In this case, the promulgated standards would reduce the PCE dry cleaner's operating costs and produce an average 5-year total cost effectiveness of $550 per Mg ($500 per ton) of PCE emissions reduced. Additional details on costs can be found in the BID's.

IV. Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (56 FR 1186), January 11, 1991, of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the NESHAP being developed for the PCE dry cleaning industry. This meeting was held on January 30, 1991. The meeting was open to the public and each attendee was given an opportunity to comment on the NESHAP recommended for proposal.

The standards were proposed and published in the **Federal Register** on December 9, 1991 (56 FR 64382). The preamble to the proposed standards discussed the availability of the BID and the economic impact analysis: "Dry Cleaning Facilities Background Information for Proposed Standards, EPA–450/3–91–020a" and "Economic Impact of Regulatory Controls in the Dry Cleaning Industry EPA–450/3–91–021," which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the BID were distributed to interested parties.

As a result of public comments received on the proposed standards, additional information became available about transfer enclosures used to control PCE emissions during the transfer step for transfer machine systems. A notice of availability of new information was published in the **Federal Register** on October 1, 1992, describing this information and requesting public comments.

Because no persons requested the opportunity for oral presentation of data, views, or arguments concerning either the proposed NESHAP or the notice of availability of new information, a public hearing was not held.

The public comment period for the proposal NESHAP was from December 9, 1991, to February 9, 1992. A total of 32 comment letters were received in response to the proposed NESHAP. The public comment period was reopened for the notice of availability of new information from October 1, 1992, to November 2, 1992. A total of seven comment letters were received in response to the notice. All comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed standards.

V. Significant Comments and Changes to the Proposed Standards

Comments on the proposed NESHAP and the notice of availability of new information were received mainly from industry; State and local air pollution control agencies; trade associations; and environmental groups. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID serves as the basis for the revisions that have been made to the standards between proposal and promulgation. The major comments and responses are summarized in this preamble and, for ease of discussion, have been divided into the following areas:

A. Regulatory Approach

1. MACT vs. GACT
2. Collocation

B. Emission Control

1. Performance of Refrigerated Condensers and Carbon Adsorbers
2. Low Solvent Consumption Exemption Levels
3. MACT for New Dry-to-Dry Machines at Major Sources
4. Banning Transfer Machine Systems and Reclaimers
5. Room Enclosures on Transfer Machine Systems
6. Vapor Barriers
7. Dry Cleaning Ventilation Requirements

C. Monitoring and Equivalency

1. Monitoring Control Devices
2. Determining Equivalency
3. Delegation of Authority to Determine Equivalency

D. Other Issues and Follow-up to Today's Action

1. New York Study
2. California Well Investigation Program
3. Follow-up to Today's Action

A. Regulatory Approach

1. MACT vs. GACT

Several commenters remarked on the use of maximum achievable control technology (MACT) versus generally available control technology (GACT) for regulating dry cleaners. Most of these commenters believed that MACT should be used to regulate all dry cleaners. One commenter, however, believed that GACT was the appropriate basis of regulation.

The commenters who felt MACT should be applied to all dry cleaners argued that there is sufficient and compelling health effects information regarding PCE to warrant application of MACT to all dry cleaning machines regardless of type or size, and that section 112(c)(3), (i.e., a threat to human health and the environment by sources individually, or in the aggregate) warrants the application of MACT controls for all area source dry cleaners.

As stated in the proposal, the EPA has concluded that area source dry cleaners present a threat of adverse effects to health or the environment. For this reason, commercial dry cleaning facilities that are area sources were added to the list of source categories under section 112(c)(3) to be regulated under the Act. Listing an area source category under section 112(c)(3), however, does not require that regulations developed for this source category must be based on MACT. These regulations may be based on MACT or they may be based on GACT.

The EPA does not agree that the health effects information regarding PCE is so compelling that it warrants application of MACT to all small area source dry cleaners. There are a range of opinions in the scientific community as

to the potential for PCE to cause cancer in humans. Further, to the extent that PCE may be a human carcinogen, existing evidence indicates that its potency is relatively low.

During development of the regulation, the EPA concluded that many small area source dry cleaning facilities may experience adverse economic impacts as a result of imposing a regulation based on MACT. For this reason, the GACT approach was selected as the basis for regulating small area source dry cleaning facilities.

In commenting on the choice of GACT to regulate area source dry cleaners, several commenters acknowledged that section 112(k) of the Act outlines a comprehensive strategy to reduce HAP's from area sources. These commenters did not, however, believe that such a strategy would reduce PCE emissions sufficiently from area source dry cleaning facilities. Consequently, these commenters asserted that residual risk review should be required for all dry cleaners to ensure that public health is adequately protected. They argued that it is bad public policy to apply GACT to the vast majority of dry cleaning facilities, thus precluding a residual risk assessment at a later date. Based on knowledge gained on public exposure to PCE from dry cleaning facilities, they maintained that it is absolutely necessary that such a risk assessment be conducted for this source category.

Section 112(k) of the Act directs the EPA to develop a strategy to control HAP emissions from area sources in urban areas. The strategy, among other things, must achieve area source emissions reductions from the 30 HAP's that pose the greatest threat to public health and achieve at least a 75-percent reduction in cancer incidence from all stationary sources. Consequently, the need for emission controls beyond GACT at dry cleaners will be reconsidered in the context of the overall urban air strategy and the relative contribution of PCE emissions from dry cleaning facilities to urban exposures.

Although a residual risk analysis is required for sources regulated under MACT, those sources regulated under GACT may also receive a residual risk analysis. Section 112(f)(5) of the Act states that residual risk analysis is not required for area sources regulated under GACT. This section, however, does not preclude area sources from a residual risk analysis and, if warranted, the EPA will undertake a residual risk analysis for the area source dry cleaning source category.

The one commenter who agreed with the EPA's decision to use GACT to regulate small area source dry cleaners stated that much evidence exists in the Senate Committee report and the legislative history of the 1990 Clean Air Act Amendments to indicate that dry cleaning was considered an example of an area source category for which regulations based on GACT were appropriate.

2. Collocation

Commenters recommended that the criteria for determining a major source be based on the PCE solvent consumption of the entire dry cleaning facility instead of each dry cleaning machine. They mentioned that the definition of source used in the proposed NESHAP referred only to the consumption of PCE for an individual dry cleaning machine and that under this proposed definition only certain machines would be considered major sources. The commenters believe that the EPA should consider the total consumption of PCE from all machines located within a contiguous area under common control.

The final rule has been revised to base the applicability of the NESHAP on the total annual PCE consumption of all machines located at a dry cleaning facility. For the purpose of these standards, PCE consumption during any period is defined as the PCE purchased during that period. The definition of a major source in the Act includes sources "located within a common area and under common control." Because multiple units located at a single dry cleaning facility would be under common control, the applicability of this NESHAP for major sources has been revised to be consistent with the language of the Act.

B. Emission Control

1. Performance of Refrigerated Condensers and Carbon Adsorbers

At proposal, the EPA believed the performance of carbon adsorbers to be equal to that of refrigerated condensers when used to control emissions from dry-to-dry machines, and proposed to allow dry-to-dry machines to install either control device. In addition, the EPA believed carbon adsorbers outperformed refrigerated condensers on transfer machine systems and proposed to require carbon adsorbers on uncontrolled transfer machine systems. Following proposal, however, new information was provided to the EPA from a survey of dry cleaners in California, which disputes these conclusions.

In 1989, the California Air Resources Board (CARB) conducted a voluntary survey of all dry cleaners in California. The results of this survey indicate that dry cleaning machines controlled by refrigerated condensers achieve solvent mileages approximately twice as high as machines controlled by carbon adsorbers.

Solvent mileage is the ratio of clothes cleaned to the amount of solvent consumed. Although air emissions are only one of several factors that determine solvent mileage, significantly better solvent mileage is likely to be indicative of lower air emissions. Although the data do not provide detailed information on how well the carbon adsorbers were operated and maintained (for example, frequency of desorbing the carbon bed), the EPA believes this information indicates that refrigerated condensers will achieve lower air emissions in actual practice than carbon adsorbers.

Therefore, the final rule requires refrigerated condensers for new major and area source dry-to-dry machines. The EPA has also concluded that all existing uncontrolled dry-to-dry machines and transfer machine systems must install and operate refrigerated condensers.

The final rule does not require the replacement of existing carbon adsorbers with refrigerated condensers. The Administrator concluded, based on currently available information, that the replacement of well-operated carbon adsorbers with refrigerated condensers was not justified at this time.

These sources are largely small businesses and could face severe financial costs to replace these units. In addition, the final rule includes additional monitoring to ensure proper carbon adsorber operation. While replacement of well-operated carbon adsorbers with refrigerated condensers provides limited air benefits, EPA has recently obtained additional information that suggests that there may be other environmental impacts (for example, potential groundwater contamination and solid waste generation) associated with the use of carbon adsorbers over refrigerated condensers (see section V.D). At this time, those data are uncertain. EPA believes that these data and their implications deserve further consideration. A public meeting has been scheduled to discuss these issues. (See **ADDRESSES** section at the beginning of this preamble.) If appropriate, the EPA may revisit the requirements of this rule in the future.

2. Low Solvent Consumption Exemption Levels

Several commenters believed that although the economic impact of regulating small existing area source dry cleaners can be significant, the proposed low solvent consumption exemption levels would exempt existing small area source facilities they believed pose the largest health threat to individuals. These commenters stated that, as a result of their location in proximity to human populations, more people are exposed to air toxics from small existing area source dry cleaners than from large industrial complexes, such as chemical plants, which are not usually located in the midst of population centers. Some believed that virtually all small existing area source dry cleaners contributing to this problem would be exempted under the proposed NESHAP. They requested that the EPA reevaluate the low solvent consumption exemption levels to ensure that a larger number of small existing area source dry cleaning facilities is subject to the NESHAP.

Neither the proposed nor the final NESHAP includes low solvent consumption exemption levels for new area source dry cleaning facilities. The proposed, as well as the final NESHAP, however, includes low solvent consumption exemption levels for existing area sources.

At proposal, the impacts of requiring the use of refrigerated condensers or carbon adsorbers to control process vent emissions from dry cleaning machines were judged to be unreasonable for area sources consuming less than 760 and 1,000 liters (200 and 300 gallons) of PCE per year for dry-to-dry machines and transfer machine systems, respectively (corresponding to annual receipts of $100,000). In response to comments, the EPA reconsidered these low solvent consumption exemption levels. The EPA concluded that lowering the exemption levels to 530 and 760 liters (140 and 200 gallons) per year for dry-to-dry and transfer machines, respectively (corresponding to annual receipts of $75,000) was warranted and reasonable.

In 1996, this change would require approximately 500 more dry cleaners to install refrigerated condensers to control process vent emissions from dry cleaning machines and would reduce PCE emissions by an additional 450 Mg (500 tons) per year. The cost of controlling those facilities with annual receipts between $75,000 and $100,000 is $0.9 million. As many as 165 additional financial failures are estimated to result from lowering the low solvent consumption exemption levels. Also, there could be as many as 65 additional business closures. The EPA judged this change in the requirement to be generally achievable. The EPA considered it unreasonable, however, to further lower the low solvent consumption exemption levels due to the high costs and excessive financial failures and closures (up to 3,800 financial failures and 1,400 closures) that would result. The decision to exempt certain low solvent consumption facilities was based on the evaluation of the potential economic impact of regulation. Many of the smaller businesses are individually operated, single family-owned establishments.

In addition to lowering the low solvent consumption exemption levels for existing area source dry cleaning facilities, the EPA reevaluated the impacts of extending additional pollution prevention practices, such as leak detection and repair, to all dry cleaning facilities and concluded that these impacts are reasonable. Thus, in the final NESHAP, *all* dry cleaning facilities are required to implement additional pollution prevention practices, such as leak detection and repair.

3. MACT for New Dry-to-Dry Machines at Major Sources.

Commenters stated that additional controls should have been considered as MACT for dry-to-dry machines. A new German machine, the Permac Consorba®, was mentioned by one commenter. This machine uses a carbon adsorber in conjunction with a refrigerated condenser for process vent control. The commenter indicated that it made sense that a dual control system would achieve better control than a machine with one control device.

In the simplest sense, a Permac Consorba® may be described as a dry-to-dry machine equipped with two control devices in series—a refrigerated condenser followed by a carbon adsorber. The reported advantage of this system over a conventional dry-to-dry machine equipped with only a refrigerated condenser is that it reduces the PCE concentration in the air remaining in the machine once the dry cleaning cycle is complete.

Conventional dry-to-dry machines vent or release the vapors remaining in the machine at the end of the dry cleaning cycle. The Permac Consorba® controls these vapors with a carbon adsorber before the machine door is opened.

The emissions remaining in a conventional machine at the end of the dry cleaning cycle can be controlled by drawing the air remaining in the machine through a small carbon adsorber either before the door to the machine is opened (similar to the Permac Consorba®) or venting the air through a carbon adsorber to the atmosphere as the door is opened. Indeed, information was made available to the EPA after proposal indicating that several conventional vented dry-to-dry machines equipped with refrigerated condensers currently operate in this manner (i.e., the air remaining in the machine at the end of the dry cleaning cycle is vented to a carbon adsorber as the door to the machine is opened).

There is no difference in PCE emissions between a Permac Consorba® and a conventional vented dry-to-dry machine equipped with a refrigerated condenser and a small carbon adsorber on the vent. Similarly, there would be no difference in emissions between a Permac Consorba® and a conventional no-vent dry-to-dry machine equipped with a refrigerated condenser that passed the air remaining in the machine at the end of the dry cleaning cycle through a carbon adsorber, before the door to the machine is opened.

Under the Act, MACT for new major sources must be no less stringent than the best-controlled similar source. As a result, the final NESHAP requires that new major source dry-to-dry machines be equipped with a refrigerated condenser and that the air remaining in the machine at the end of the dry cleaning cycle be passed through a carbon adsorber prior to opening the machine door or that the air remaining in the machine be passed through a carbon adsorber as soon as the door to the machine is opened. Thus, the level of control required for major new source dry cleaning facilities is equivalent to that achieved by the Permac Consorba® technology.

The MACT is also required for existing dry-to-dry machines located at major sources. Under the Act, MACT for existing sources must be no less stringent than the average emission limitation achieved by the best 12 percent of existing sources. Less than 12 percent of existing major source dry-to-dry machines are using a refrigerated condenser in combination with a carbon adsorber to control PCE process vent emissions. However, MACT can be more stringent if the Administrator determines that the balance of costs, energy, and environmental impacts of choosing a more stringent level of control are reasonable.

Assuming a 95-percent emission reduction for a carbon adsorber, the incremental cost effectiveness of the additional emission reduction achieved

by requiring conventional dry-to-dry machines with a refrigerated condenser to also install a carbon adsorber would be in the range of approximately $7,700 per Mg ($7,000 per ton) of PCE for a typical existing dry-to-dry machine located at a major source. If the efficiency of the carbon adsorber is less than 95 percent (as the California survey data mentioned earlier suggests), the cost effectiveness would be even higher. Because this additional cost of control is quite high for the additional amount of emission reduction achieved, the EPA does not consider this level of control reasonable for an existing dry-to-dry machine located at a major source.

4. Room Enclosures on Transfer Machine Systems

Commenters suggested that the EPA consider vapor containment and control systems, commonly referred to as "room enclosures," as MACT for transfer machine systems.

Room enclosures capture and vent the fugitive PCE emissions from clothing transfer between the washer and the dryer at transfer machine systems to a carbon adsorber. Since clothing transfer emissions are a significant portion of overall transfer machine system emissions, control of these through a room enclosure would achieve additional emission reductions.

The only type of control device that could effectively control PCE emissions on a room enclosure is a carbon adsorber. As stated previously, however, new information (i.e., the California survey) indicates that carbon adsorbers achieve a lower level of emission reduction in actual practice within the dry cleaning industry than originally thought.

Assuming a carbon adsorber achieves a 95-percent reduction in PCE emissions, the incremental cost effectiveness of requiring room enclosures with carbon adsorbers on existing major source transfer machine systems would be as low as $330 per Mg ($300 per ton) of PCE. In fact, even if the control efficiency of the carbon adsorber was as low as 20 percent, the incremental cost effectiveness of requiring room enclosures on major source transfer machine systems would be about $1,900 per Mg ($1,700 per ton) of PCE.

Although the EPA does not believe the control efficiency of carbon adsorbers within the dry cleaning industry is as low as 10 percent, making such an assumption for the purpose of calculations effectively indicates that, even at low control efficiencies, the use of room enclosures at major source transfer machine systems is reasonable. Consequently, the final NESHAP requires the use of room enclosures with carbon adsorbers at existing major source transfer machine systems.

Requiring existing major source transfer machine system dry cleaners to use room enclosures is not estimated to result in any additional financial failures or closures. Initially, due to the limited number of vendors of room enclosures, the EPA was concerned with the creation of a market for these devices. With few vendors and a large demand, the price of room enclosures could rise significantly. However, if required only for those few existing major source transfer machine systems, the demand for room enclosures is not judged sufficient to cause a significant rise in the price of a room enclosure.

For existing area sources, the impacts of requiring a room enclosure are considered unreasonable. The incremental cost effectiveness of requiring a room enclosure for a typical area source could be as high as $9,800 per Mg ($8,900 per ton) of PCE, even if the carbon adsorber is achieving a high percent emission reduction efficiency (e.g., 95 percent). If the carbon adsorber is operating at a lower control efficiency, the resulting incremental cost effectiveness would be even higher. The number of additional financial failures could be as high as 1,100 with as many as 260 additional closures if room enclosures were required on all existing area source transfer machine systems. Up to 500 additional financial failures and as many as 5 additional closures would result from such a requirement on only the largest area sources (e.g., those with annual receipts over $100,000). In addition, with only a few vendors of room enclosures, the EPA remains concerned with the impact that extending a requirement for room enclosures to all existing transfer machine system area sources would have on the price of room enclosures. For these reasons, the Administrator considers room enclosures unreasonable for existing transfer machine system area sources.

5. Banning Transfer Machine Systems and Reclaimers

Commenters recommended that the EPA impose a ban on the sale of new or used transfer machine systems. One commenter believed that transfer machine systems are still being offered and sold to dry cleaners, and that only a ban on the sale of transfer machine systems would prevent dry cleaners from purchasing these systems.

Prior to proposal, the EPA believed that no new transfer machine systems were being sold or had been sold in recent years due primarily to the adoption of the OSHA permissible exposure limit (PEL) of 25 parts per million (ppm) (January 19, 1989). The OSHA PEL was intended to reduce worker exposure to PCE. Based on the level of PCE emitted during the clothing transfer step at transfer machine systems, transfer machine systems were viewed as incapable of meeting the OSHA PEL. Consequently, the EPA believed it was not necessary to develop regulations that effectively banned or prohibited the use of new transfer machine systems.

Following proposal of the NESHAP for dry cleaners, however, the Eleventh Circuit Appeals Court remanded the PEL to OSHA. In addition, information provided to the EPA following proposal indicates that many owners or operators of transfer machine systems were meeting the OSHA PEL by increasing ventilation or rotating the placement of their workers. Moreover, it was learned that transfer machine systems, manufactured for use with petroleum solvents could be used as PCE transfer machine systems.

Finally, information provided to the EPA following proposal made it clear that, in some cases, reclaimers were being sold for use with dry-to-dry machines to increase the clothing throughput of the machines. A reclaimer is essentially a dryer, and its use with a dry-to-dry machine effectively converts the dry-to-dry machine to a washer, thus creating a new transfer machine system.

Consequently, the EPA has reconsidered its position at proposal, that a ban or prohibition of new transfer machine systems is unnecessary.

For transfer machine systems located at a major source, the NESHAP must be based on MACT. The Act states that MACT for new sources must be no less stringent than the best controlled similar source. A transfer machine system with a room enclosure represents the best controlled similar source. The MACT may be more stringent, however, if the Administrator believes the balance between the additional economic, energy, and environmental impacts of a more stringent requirement is reasonable. The only option more stringent than a transfer machine system with a room enclosure is a new dry-to-dry machine.

Dry-to-dry machines provide complete control of clothing transfer emissions (i.e., emissions released by transfer of clothing from the washer to the dryer of a transfer machine system). Dry-to-dry machines eliminate these emissions by eliminating the need to transfer clothing from a washer to a

dryer (achieving 100 percent reduction of clothing transfer emissions).

The MACT for new transfer machine systems could be based on the use of new dry-to-dry machines, thereby requiring new major source transfer machine systems to eliminate all emissions from clothing transfer between the washer and the dryer. Such a requirement would effectively ban or prohibit new transfer machine systems because no technology has been identified to date (including the use of hamper enclosures or room enclosures) that could be added to a new transfer machine system to totally eliminate all PCE emissions from clothing transfer. Dry-to-dry machines offer an effective pollution prevention alternative to transfer machines. Promoting use of this equipment is consistent with the Agency's commitment to pollution prevention.

The benefits associated with a requirement based on new dry-to-dry machines would be 100 percent control of clothing transfer emissions. Clothing transfer is estimated to contribute up to as much as 25 percent of the PCE emissions from an uncontrolled transfer machine system. For a typical major source, the annualized costs for requiring a dry-to-dry machine would be a net savings ($300) because overall PCE consumption is lower with a dry-to-dry machine. This lower cost is due to the increased amount of PCE that is recovered and recycled within the machine.

The EPA believes it is reasonable to require new transfer machine systems located at major sources to meet the same level of control of clothing transfer emissions as achieved by new dry-to-dry machines. Thus, the final NESHAP prohibits any emissions between the washing and drying step of the dry cleaning cycle for new transfer machine systems located at major sources. This requirement effectively bans or prohibits the use of new transfer machine systems at major sources.

For new area source transfer machine systems, the NESHAP is based on GACT. The GACT is a balance between environmental, economic, and energy impacts the Administrator considers reasonable. The incremental cost of requiring a new dry-to-dry machine over a new transfer machine system with a room enclosure at a typical new area source is approximately $600 per year. The EPA does not believe that the additional costs of purchasing a new dry-to-dry machine over purchasing a new transfer machine system with a room enclosure would deter entry (or expansion) into the dry cleaning market. If a business venture is viable and attractive with the purchase of a new transfer machine system and room enclosure, the EPA believes that the business venture would also be viable and attractive with the purchase of a new dry-to-dry machine. Consequently, requiring new area source transfer machine systems to eliminate all clothing transfer emissions (i.e., purchase a new dry-to-dry machine) is considered generally achievable. Thus, the final NESHAP also prohibits any emissions between the washing and drying step of the dry cleaning cycle for new transfer machine systems located at area sources. As mentioned above for major sources, this requirement effectively bans or prohibits the use of new transfer machine systems at area sources. Thus, all new transfer machines are effectively banned. Under the rule, the addition of a reclaimer to an existing dry-to-dry machine would constitute reconstruction of the dry cleaning system. As a result, the addition of a reclaimer to a dry-to-dry machine would be banned effective on today's date. Reclaimers added to a dry-to-dry machine after December 9, 1991 (the date of the proposed dry cleaning NESHAP) and prior to today's date are allowed to operate for up to three years from today's date, if the dry cleaning system complies in the interim with the proposed rule.

In addition to requiring that all new dry cleaning machines be dry-to-dry machines, phasing out or replacing existing transfer machine systems with dry-to-dry machines was also considered. Commenters questioned why there was no discussion of immediate or gradual replacement of existing transfer machine systems in the proposal. They stressed that the EPA cannot rely upon OSHA rules for a prompt phase out of transfer machine systems.

There is little difference between the impacts of immediate replacement of existing transfer machine systems and replacement within three years, the maximum compliance period for existing sources under the statute. In both cases, the capital cost of the transfer machine system is a "sunk" cost that has been incurred and is not a factor in the analysis.

This "sunk" cost makes the analysis of replacing existing transfer machine systems quite different from that of banning or prohibiting new transfer machine systems. For existing transfer machines systems, the cost of replacing the existing system is the full cost of a new dry-to-dry machine. For a new system, the cost of banning or prohibiting the system is the difference in cost between a new transfer machine system and a new dry-to-dry machine. Consequently, the costs are much higher in the analysis of replacing existing transfer machine systems than they are in the analysis of banning or prohibiting new transfer machine systems. The emission reduction achieved is the same for either option.

The EPA analyzed the costs of requiring replacement of existing transfer machine systems with dry-to-dry machines in comparison with the additional fugitive emissions of PCE that result from transfer machine systems. The incremental cost effectiveness for replacing a typical existing major source transfer machine systems with a dry-to-dry machine is approximately $12,200 per ton of PCE reduced. For area sources, the incremental cost effectiveness for replacing the transfer machine system with a dry-to-dry machine is approximately $41,000 per ton of PCE reduced. The EPA has determined that based on this comparison, which relies on currently available information, requiring replacement of these transfer machine systems with dry-to-dry machines is not justified at this time. However, the EPA is aware that additional environmental impacts may be associated with the continued use of transfer machine systems in certain situations. For example, the impact on indoor air quality may be of concern. At this time, however, the data are insufficient to determine whether considering these other impacts it may be appropriate to further limit the use of transfer machine systems. The EPA will address this issue further in the public meeting (see **ADDRESSES** section at the beginning of this preamble) and will continue to examine this issue. If appropriate, the EPA may revisit the determinations made in this rule.

Commenters agreed with the EPA that use of a reclaimer with a dry-to-dry machine effectively creates a new transfer machine system. Therefore, they recommended a ban on the sale of new or used reclaimers.

Accordingly, the NESHAP has been revised to define a dry-to-dry machine used with a reclaimer as a transfer machine system. In addition, the NESHAP does not allow clothing transfer emissions to occur between the washing and the drying step of the dry cleaning cycle for a new transfer machine system. This requirement effectively bans or prohibits new transfer machine systems. It also effectively bans or prohibits the use of new reclaimers with new or existing dry-to-dry machines, because adding a reclaimer to a new or an existing dry-

to-dry machine creates a new transfer machine system.

6. Vapor Barriers

In addition to room enclosures, some commenters requested that vapor barriers be required to prevent seepage of PCE to adjacent apartments. It was also suggested that dry cleaning facilities located in close proximity to residential buildings or food service establishments be required to have vapor barriers on all floors, walls, and ceilings to separate the dry cleaning facility from other areas in the building and to deter migration of PCE emissions.

Installing vapor barriers to prevent seepage of PCE emissions into adjacent living or working areas merely contains the emissions in the dry cleaning facility. Installing vapor barriers could lead to elevated PCE concentrations in the work areas and public areas of the dry cleaning facility, resulting in increased worker and public exposure at the dry cleaner. Vapor barriers could also be very expensive for a dry cleaning owner or operator to install. Estimates indicate that installation of a vapor barrier in a 30 by 50 by 20 foot dry cleaning facility would cost approximately $6,500. Based on available information, vapor barriers are considered unreasonable for a national standard due to their high cost and their failure to control or reduce PCE emissions.

The Administrator agrees with the concerns expressed by many commenters about the potential impact of fugitive emissions. As mentioned earlier, to address these concerns, the final NESHAP requires control of fugitive emissions by leak detection and repair. As a result, the NESHAP will significantly reduce fugitive PCE emissions from all dry cleaning facilities.

In a few cases, local agencies may find situations where they believe the use of vapor barriers may be warranted, such as the situation of a very large dry cleaning establishment without adequate ventilation located in an apartment complex. Cases such as this are best handled on a site-specific basis at the local level.

7. Dry Cleaning Ventilation Requirements

Commenters recommended including dry cleaning ventilation requirements in the final NESHAP. Specific dry cleaner exhaust or ventilation requirements were recommended, such as adopting the National Fire Protection Association (NFPA) Standard 32 for dry cleaning plants (1990 edition). This would require an air change within the dry cleaning plant every 5 minutes. In addition, commenters recommended that all dry cleaning machines install a ventilation system capable of maintaining a minimum air velocity of 0.6 meters per second (100 feet per minute) through the loading door of the dry cleaning machine, whenever the door is open.

Ventilation requirements in and of themselves would not reduce fugitive emissions. From the perspective of the NESHAP, the EPA believes it is more appropriate to focus on the use of equipment or techniques that prevents or controls emissions rather than to focus on ventilation requirements that merely divert, rather than reduce, emissions.

If dry cleaning plant ventilation systems were installed and the resulting exhaust routed through a control device, such as a carbon adsorber, this would reduce fugitive emissions; however, it could be prohibitively expensive. The NESHAP, therefore, does not include dry cleaning plant ventilation requirements. On the other hand, the NESHAP does not preclude a dry cleaning plant from installing ventilation systems. Moreover, where local authorities consider a ventilation system necessary, the NESHAP does not prevent or hinder local authorities in any way from requiring additional measures such as ventilation systems.

The NESHAP requires the implementation of a leak detection and repair program, to control fugitive PCE emissions. These measures will achieve a substantial reduction in fugitive emissions at dry cleaning facilities.

C. Monitoring and Equivalency

1. Monitoring Control Devices

Many commenters stated that the NESHAP should contain some type of emission limit and performance testing. They asserted that requiring the dry cleaning owner or operator to install certain equipment and follow work practices without a performance test will not necessarily reduce emissions. The commenters felt the only way to ensure emission reductions was to establish and enforce an emission limit through performance testing.

As discussed in the proposal preamble, the cost of requiring an owner or operator to undertake a full-fledged performance test to demonstrate compliance with emission limits based on the use of a refrigerated condenser or a carbon adsorber would be expensive ($3,000 to $5,000), especially compared to the cost of this emission control equipment ($6,000 to $8,000). The additional cost of such a performance test, therefore, would create a significant impact by almost doubling the cost that the NESHAP would impose.

The economic analysis conducted prior to proposal indicated that many operators will likely experience difficulty in obtaining capital to purchase emission control equipment. To preclude unreasonable economic impacts, the NESHAP does not require vent controls on existing sources with an annual PCE consumption of less than 530 liters (140 gallons) per year for facilities with dry-to-dry machines or 760 liters (200 gallons) per year for facilities with transfer machine systems. Imposing additional costs by requiring a full-fledged performance test to determine compliance would add significantly to the economic impact of the NESHAP and would result in raising the low solvent consumption exemption levels for existing sources and decrease the emission reductions achieved by the NESHAP.

Several commenters believed that the NESHAP should include emission limitations and performance testing for carbon adsorbers. They believed that an emission limit for carbon adsorbers is necessary because operating requirements alone are not enough. Examples were cited of carbon adsorbers with damaged prefilters or leaking dampers drastically reducing emission control efficiency.

The concerns of the commenters regarding poor operation and maintenance of equipment are well founded. There is, however, incentive for an owner or operator to properly operate and maintain dry cleaning emission control equipment. Having invested what for most dry cleaning facilities will be a substantial sum of money in this equipment, properly operating and maintaining it will provide some return in terms of recovered PCE. Proper operation and maintenance will result in lower PCE consumption and reduce the dry cleaner's operating costs attributable to PCE purchases.

Beyond this economic incentive, however, the final NESHAP requires the owner or operator to follow the equipment manufacturer's specifications regarding proper operation and maintenance of equipment. In addition, the NESHAP requires the owner or operator to maintain a log containing information on the proper operation and maintenance of control devices.

To help dry cleaners determine that the control devices are operating properly, periodic monitoring is also required in the final NESHAP. If the control device used to achieve

compliance is a refrigerated condenser, the owner or operator is required to measure the temperature of the vapor stream passing through the refrigerated condenser. For refrigerated condensers used with transfer machine system washers, the temperature on the inlet side and outlet side of the refrigerated condenser must be measured. For refrigerated condensers used with transfer machine system dryers or reclaimers, or dry-to-dry machines, the temperature of the exhaust gas stream exiting the refrigerated condenser must be measured. Measurements must be taken once per week at the end of the cool down cycle prior to door opening. Records of this temperature measurement must be kept in a log maintained onsite.

If the control device used to achieve compliance is a carbon adsorber, the owner or operator is required to measure the PCE concentration at the exit of the carbon adsorber. Measurements must be taken once per week during the last aeration cycle prior to a scheduled desorption using a colorimetric detector tube. Records must be kept in a log (maintained on site) of the date and PCE concentration measured using the colorimetric detector tube.

The NESHAP requires that copies of the equipment manufacturer's operation and maintenance specifications be retained onsite. All of the above requirements will ensure proper operation and maintenance of equipment and will also ensure this equipment achieves the emission control performance it is capable of achieving.

2. Determining Equivalency

Guidance was requested regarding what type of information must be included with any request for a determination of equivalency (i.e., that the equipment a dry cleaner proposes to use is equivalent to that required by the NESHAP). Information was requested on the type and duration of emission data needed and the method for determining the control efficiency of the particular technology.

It is difficult to specify what information must be submitted for a determination of equivalency without knowing some details of the emission control technology or system for which the determination is requested. A description of this type of information must be broad and general in nature to accommodate all possibilities. It is possible, however, to be more specific regarding some requirements and the final NESHAP specifies that the following information must be submitted:

a. Diagrams, as appropriate, illustrating the emission control technology or system, its operation and integration into or function with dry-to-dry machines or transfer machine systems during each portion of the normal dry cleaning cycle.

b. Information quantifying vented PCE emissions from the dry-to-dry machines or transfer machine systems during each portion of the dry cleaning cycle with and without the use of the candidate emission control technology or system.

c. Information on solvent mileage achieved with and without the candidate emission control technology. Solvent mileage is the average weight of articles cleaned per volume of PCE used.

d. Identification of maintenance requirements and parameters to monitor to ensure proper operation and maintenance.

e. Explanation of why this submitted information is considered accurate and representative of both the short-term and long-term performance of the candidate emission control technology on the specific dry cleaning system examined.

f. Explanation of why this information can be extrapolated to dry cleaning systems other than the specific system(s) examined.

g. Information on the cross-media impacts (to water and solid waste) of the candidate emission control technology and demonstration that the cross-media impacts are less than or equal to the cross-media impacts of a refrigerated condenser.

3. Delegation of Authority to Determine Equivalency

Concern was expressed by some commenters that States were not delegated authority in the proposal to determine equivalency. Commenters strongly opposed limiting the authority for approving alternative control equipment and procedures proposed by individual dry cleaning sources to the EPA alone. It was believed that the EPA's retention of this delegation of authority would negatively impact the operating permit process. The emphasis in comments was that States must retain the right to take appropriate actions to implement effective emission control strategies to protect public health within their jurisdictions.

The EPA agrees that States should be allowed to implement effective emission strategies to protect public health within their jurisdictions. In some cases, States may feel it is necessary to implement more protective air pollution control measures than those adopted in national standards to control local problems.

The EPA also agrees that provisions limiting the authority to the EPA alone for making judgments regarding the equivalency of different equipment to control PCE emissions with the same or better performance than the control equipment required by the NESHAP are not warranted because section 112(l) of the Act would allow a State to request approval of a State's program that permits a source to seek permission to use an alternative means of emission limitation under section 112(h)(3), provided that the State demonstrated that its program would be no less stringent and that certain conditions were met. Section 112(l) of the Act authorizes States to submit programs to the Administrator for approval for implementing and enforcing emission standards. Section 112(l) also goes on to state that such programs may provide for partial, as well as complete, delegation of the EPA's authorities and responsibilities. The approval and delegation process is addressed in detail in the EPA's notice of proposed rulemaking: "Approval of State Programs and Delegation of Federal Authorities; Proposed Rule," published on May 19, 1993, (58 FR 29296).

As a result, the provision limiting the authority to judge the equivalency of different equipment to the EPA has been deleted from the final standards. Doing so, however, does not mean that these provisions will be "automatically" delegated to States upon application. In addition, delegating these provisions will not preclude the EPA from considering petitions submitted by various equipment suppliers or vendors and making equivalency determinations on a national level.

D. Other Issues and Follow-up to Today's Action

The NESHAP promulgated in today's **Federal Register** will achieve significant reductions in PCE emissions from new and existing dry cleaning facilities. There remain, however, several major issues associated with dry cleaning facilities that merit further attention. These include: (1) Indoor air pollution in residences located above dry cleaning facilities; and (2) groundwater pollution resulting from dry cleaning facilities. These issues were brought to light following proposal of the NESHAP by the New York Study (indoor air pollution) and the California Study (ground water pollution).

1. New York Study

The New York Study, performed by the State of New York, is an assessment

of indoor air pollution in residences located above dry cleaners. Many States and environmental groups referred to this study in their public comments on the NESHAP, and several commenters submitted copies of the study as attachments to their comments. They believed that the study shows that the risk to public health from exposure to PCE emissions from dry cleaners is significant and should be targeted for regulation. They mentioned that, although the Act does not specifically address indoor air pollution, indoor air emissions eventually become ambient air emissions.

The New York Study focuses on dry cleaners located in Albany, New York. All 102 dry cleaners listed in the Albany telephone directory were contacted. Of these 102 dry cleaners, 67 cleaned or pressed clothes on the premises. Of these 67, 6 had occupied residences above them.

The levels of PCE in the indoor and outdoor air at residences located above the 6 dry cleaners were measured over a 24-hour period. Identical measurements were taken at the same time at 6 control residences located at least 100 meters (330 feet) away from each dry cleaner. The control residences were selected based on their similarity to the study residences in terms of building type, age, and neighborhood.

The study found indoor air concentrations of PCE ranging from 100 to 55,000 micrograms per cubic meter ($mcg/^3$) [15 to 8,000 parts per billion (ppb)] in the 6 residences located above dry cleaners. The cancer risk estimate associated with these levels, based on the EPA's unit cancer risk estimate for PCE and lifetime exposure, is 1 in 100,000 to 1 in 100 ($10^{-5}$to 10^{-2}). Control residences had indoor air PCE concentrations ranging from 6 to 100 mcg/m^3 (1 to 15 ppb). The cancer risk associated with these levels is 1 in 1,000,000 to 1 in 100,000 (10^{-6} to 10^{-5}).

The New York study indicates that PCE emissions can accumulate in residences located above dry cleaning facilities, resulting in increased public exposure to PCE. While not definitive, in the EPA's opinion, based on various observations included in the New York study, the major contributor to the elevated PCE levels measured in the residences located above these dry cleaners seems to be fugitive emissions.

2. California Well Investigation Program

The California Well Investigation Program is an assessment of ground water contamination undertaken by the State of California. The study contends that PCE contaminated discharges into sewer lines by dry cleaning facilities has contaminated ground water in several areas.

The California Study focuses on wells in the Central Valley Region, which supply drinking water to municipal water systems. Water drawn from 215 out of some 2,000 wells tested contained detectable levels of PCE. Of these 215 wells, water drawn from 47 wells contained levels of PCE above the maximum contaminant level (MCL) of 5 parts per billion (ppb) in the National Revised Primary Drinking Water Regulations.

Soil gas surveys and ground water movement around 21 of the 47 wells with levels of PCE above the MCL indicate the source of PCE contamination in these wells to have originated from sewer lines. In 20 out of these 21 wells, dry cleaning facilities were identified as the sole users of PCE connected to the sewer lines. Soil gas surveys along the main sewer lines downstream from sewer laterals connecting the dry cleaners to the main sewer lines also showed relatively high concentrations of PCE. As a result, the study concludes that dry cleaning facilities are the source of the observed PCE contamination.

Recovery of PCE for reuse within the dry cleaning process generates wastewater contaminated with PCE. Most of the PCE contained in this wastewater is recovered in a water separator. Water from the water separator, however, is routinely discharged to the sewer at many dry cleaning facilities. Separator water generally contains about 150 ppm of PCE; but it may contain as much as 30 percent PCE, if the water separator is poorly operated.

Dry cleaning machines that use a refrigerated condenser for process vent control generate about 190 liters (50 gallons) per year of separator water; those with no process vent control generate even less. Dry cleaning machines that use a carbon adsorber for process vent control, on the other hand, generate about 7,600 liters (2,000 gallons) per year of separator water—40 times that generated by a refrigerated condenser.

The California study concludes that PCE discharged to sewers from dry cleaning facilities can contaminate ground water. Whether the primary source of PCE discharged to sewers by dry cleaning facilities is the result of leaking equipment, accidental spills, or PCE contaminated wastewater generated by dry cleaning or that generated by emission control equipment installed to control process vent emissions, however, is unclear.

The use of carbon adsorbers for process vent control significantly adds to the amount of PCE contaminated wastewater generated by dry cleaning facilities. While not conclusive, this suggests the use of carbon adsorbers for process vent control may be a primary contributor to ground water pollution resulting from dry cleaning facilities.

3. Follow-up to Today's Action

The EPA believes, based on information received to date, that PCE contamination of indoor air and ground water may present problems that warrant additional Federal actions. The EPA considered seeking an extension of the court deadline for the final rule to deal fully with these issues. This course of action, however, would have postponed the health and environmental benefits of the rule for an extended period of time. The EPA determined that the best environmental protection would be achieved by issuing today's rule as expeditiously as possible, and deciding subsequently how to address remaining indoor air pollution and ground water contamination associated with PCE dry cleaners.

Today's rule, while targeted primarily at reducing PCE contamination of outdoor air, may reduce indoor air contamination in some locations through requirements reducing fugitive and process vent emissions from dry cleaners. In addition, the rule requires uncontrolled machines to be controlled with refrigerated condensers, which will minimize generation of wastewater and solid waste.

In order to gain additional insight and understanding into the issues of indoor air pollution and ground water pollution associated with dry cleaning facilities, the EPA will convene a public meeting (see *Public Meeting* under **ADDRESSES** at the beginning of this preamble). The objective of this public meeting will be to gather additional information and solicit public comment on the magnitude and severity of the problems highlighted by the New York and the California studies and potential solutions or approaches for dealing with these problems. Copies of the New York and California studies are included in Docket No. A–88–11 (see Docket under **ADDRESSES**). (The New York Study is Docket No. A–88–11, Item No. IV–D–5 with additional information in Item No. IV–J–40; the California Study is also part of Item No. IV–J–40.) The EPA also would like to be informed of other studies conducted by States (or others) that address the relative efficiency of carbon adsorbers and refrigerated condensers, and their impact on air

emissions. Anyone wishing to speak and make presentations at the public meeting and/or wishing to submit written comments, please see the section Public Meeting under **ADDRESSES** at the beginning of this preamble.

The EPA will use the information received from the public meeting, as well as written comments, in deciding whether additional actions should be taken to reduce health and environmental risks from dry cleaners. The EPA will, at a minimum, publish and distribute the information presented at the public meeting. The EPA may then use this information to develop guidance for States and local agencies; and/or develop additional regulations. At the meeting, the EPA will explore the desirability and feasibility of using a regulatory negotiation or other consensus-building approach to address these issues.

With respect to indoor air pollution, the EPA specifically requests States and the public to provide their views and any available information on:

a. The number of dry cleaners co-located in buildings with residences or businesses.

b. The extent and severity of indoor air contamination with PCE from dry cleaners, and the adequacy of existing data on this problem.

c. The extent and severity of PCE contamination of fatty foods in residences, restaurants, and food stores that are co-located with or located near dry cleaners.

d. The extent to which PCE indoor air contamination results from fugitive emissions or process vent emissions.

e. The amount of fugitive emissions from different types of dry cleaning machines, and from the various pieces of ancillary equipment associated with the dry cleaning process.

f. Methods for reducing PCE contamination of indoor air, including but not limited to:

(1) Improved maintenance involving the use of instruments to inspect dry cleaning equipment for leaks of PCE.

(2) Increased room ventilation and/or ducting of emissions outdoors.

(3) Collection of steam press emissions.

(4) The use of vapor barriers.

(5) Improved training of dry cleaning workers, or other information dissemination activities.

(6) A phaseout of existing transfer machine systems (today's rule effectively bans new transfer machine systems but does not limit the period of time that existing transfer machine systems can remain in service).

(7) Other strategies, control technologies, and pollution prevention methods that can reduce fugitive emissions, especially at small dry cleaners.

g. The extent to which evaporators are in use, and their impact on air quality as well as wastewater contamination.

h. The relative performance of vented versus ventless machines in reducing PCE emissions.

i. The relative effectiveness, cost, and affordability of the available options, as well as key advantages and drawbacks, including information on:

(1) The economic impact of a requirement to replace existing carbon adsorbers with refrigerated condensers.

(2) The economic impact of a requirement to replace existing transfer machines with dry-to-dry equipment.

j. The appropriate Federal role in encouraging or requiring steps to reduce PCE contamination of indoor air.

k. The proposition that the EPA should voluntarily conduct a residual risk analysis for area source dry cleaners, as well as a statutorily mandated risk analysis for major sources, to assess remaining health and environmental risks after installation of MACT and GACT technology. (Based on the results of this analysis, the EPA could assess whether more stringent, health-based standards are warranted).

l. Examination of coin-operated dry cleaners exempt from this NESHAP to evaluate their potential contribution to indoor air pollution.

m. Evaluation of appropriate operator training and certification methods.

With respect to ground water contamination and solid waste generation by dry cleaners, the EPA specifically requests that States and the public provide their views and any available information on:

(1) The extent and severity of contamination of ground water with PCE from dry cleaners, and the degree of health threat posed by this contamination;

(2) The relative contribution of wastewater discharges, accidental spills, equipment leaks, and improper hazardous waste disposal to this ground water contamination;

(3) Costs of treating well water contaminated with PCE to make it safe for drinking, and the costs and feasibility of cleaning up ground water contaminated with PCE;

(4) The degree of solid or hazardous waste generation associated with the prevention/control technologies, information on how these wastes are managed and their environmental impact.

(5) Potential measures to prevent or minimize further contamination of ground water with PCE, including but not limited to:

(a) Use of wastewater evaporators by dry cleaners.

(b) Required replacement of existing carbon adsorbers used for process-vent control with refrigerated condensers, perhaps through a gradual phaseout. (The EPA particularly solicits comment on how the EPA could use its legal authorities to require a gradual phaseout, the environmental benefits of a phaseout, and the economic feasibility of potential phase-out schedules);

(c) Improved maintenance of dry cleaning equipment through improved training of dry cleaning workers or other information dissemination activities;

(d) Encouragement of emerging PCE emission control technologies that use adsorption but do not generate wastewater because regeneration is performed through heat desorption rather than steam stripping;

(e) Spill prevention and control measures;

(f) A ban or limit on the discharge of PCE-contaminated wastewater to sewers;

(g) Disposal of dry cleaner wastewater at hazardous waste facilities;

(h) The practical use of dry cleaner wastewater in boilers; and

(i) The relative effectiveness, costs, and affordability of the available options, as well as key advantages and drawbacks.

(6) The appropriate Federal role in encouraging or requiring steps to reduce the threat of ground water contamination from dry cleaners.

While examining these issues, the EPA, as part of its Design for the Environment (DfE) program is investigating potential substitutes for PCE in dry cleaning and developing an incentive program to encourage all dry cleaners to use control measures and work practices that minimize health and environmental risks.

• The DfE program, which is operated by the EPA's Office of Pollution Prevention and Toxics, fosters cooperative study on a voluntary basis with businesses and trade associations in specific industries to evaluate the risks, performance, and costs of alternative chemicals, processes, and technologies. The DfE program is currently evaluating a variety of alternatives to the current use of PCE in dry cleaning, as well as emission control technologies for dry cleaning equipment, through its Cleaner Technologies Substitute Assessment (CTSA).

As part of the CTSA, the DfE program in conjunction with the Neighborhood Cleaners Association (NCA), the International Fabricare Institute (IFI), and a commercial vendor, conducted a 4-week study to test the economic feasibility and performance aspects of a potential alternative wet-cleaning process that does not use PCE. The alternative process primarily uses steam cleaning, spotting, tumble drying, soaps, and limited amounts of water to clean clothes. The EPA expects to release the results of the study in Fall 1993 and will address whether there may be circumstances under which wet-cleaning may be technically and economically feasible.

In addition to evaluating the wet-cleaning process, the DfE Dry Cleaning Project is assessing other pollution prevention and control options. The analysis will include evaluation of environmental and human health risks, and the performance and costs of various prevention and control technologies. This assessment, which is expected to be completed in Spring 1994, will provide the dry cleaning industry with valuable information when considering options for compliance, risk reduction, and pollution prevention.

For information on the Design for the Environment Dry Cleaning Project contact Jean E. (Libby) Parker, EPA, Office of Pollution Prevention and Toxics, mail code TS–779, 401 M Street, SW., Washington, DC 20460, telephone number (202) 260–0880.

As part of the EPA's focus on pollution prevention at this time, the Administrator strongly encourages those dry cleaners currently using carbon adsorbers for primary process vent control to replace them with refrigerated condensers as early as possible.

While the EPA conducts follow-up activities related to dry cleaners, the EPA notes that there are opportunities for State and local government to take action as well. For example, State and local governments may wish to investigate whether indoor air or ground water in their jurisdictions is being contaminated with PCE from dry cleaning. If a State or local government finds an indoor air pollution problem, for example, the government may wish to consider whether collocation of a dry cleaner in the same building with residences is appropriate.

V. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and the EPA's responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

B. Paperwork Reduction Act

Information collection requirements given in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060–0234.

This collection of information is estimated to have a public reporting burden averaging 3.2 hours per response, and to require 49 hours per recordkeeper annually. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

In an Information Collection Request Action Notice dated June 5, 1992, OMB disapproved two of the information collection provisions for the PCE Dry Cleaning NESHAP. The first was the weekly records of leak detection and repair, and the second was the 5-year record retention period. The OMB questioned whether these provisions represented the least burdensome approach necessary to attain the goal of the standards. These concerns are addressed below.

With respect to the weekly leak detection and repair: The capture and reuse of PCE is the goal of the NESHAP. To the extent that there are fugitive emissions from leaks into the dry cleaning facility, the surrounding businesses, and the environment, the goal of the NESHAP cannot be attained. Leak detection is especially crucial for dry cleaning establishments located in mixed-use buildings, where fugitive PCE emissions tend to migrate into and build up in adjoining residences, restaurants, banks, and shops. (This is the conclusion of the New York Study which became available after the rule was proposed on December 9, 1991.)

Leaks result from unequal pressure in the system, and are also a function of the age, construction, and design of the system. A simple periodic inspection of the dry cleaning facility will alert the owner or operator of any leaks. The leaks can then be repaired on a timely basis, both meeting the goals of the NESHAP and saving the owner and operator the cost of replacing the PCE otherwise lost through leaks in the system. Therefore, frequent periodic inspections at all facilities are needed to ensure that the goal of the NESHAP is attained. However, to address concerns for those existing facilities with annual receipts below $75,000, these facilities are required to perform leak detection on a biweekly, rather than a weekly, basis.

With respect to the second issue, the 5-year retention period for records: The types of records required to be kept require very little storage space and are of great practical utility for purposes of determining compliance and following through with any necessary enforcement action. The recordkeeping required is so minimal that the records for a 5-year period literally could be kept in one notebook. The usefulness of the 5-year record retention period for the EPA results from the fact that dry cleaning facilities are so numerous and the EPA's inspection and audit resources so limited that inspections of any given facility will, of necessity, be rare. Congress recognized this, and granted a 5-year statute of limitations for NESHAP. A record retention period of less than 5 years would prevent the EPA from enforcing its regulations for fewer years than Congress has specifically mandated. The retention of records over 5 years also allows the EPA to establish a source's history and patterns of compliance for purposes of determining the appropriate level of enforcement action. In many cases, the additional information could benefit the source.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

C. Executive Order 12291

Under Executive Order (E.O.) 12291, the EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The criteria set forth in section 1 of E.O. 12291 for determining whether a regulation is a major rule are as follows:

(1) The rule is likely to have an annual effect on the economy of $100 million or more; (2) the rule is likely to cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) the rule is likely to result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This promulgated regulation is not a major rule because it would result in none of the adverse effects mentioned above. The total annual cost is estimated to be less than $14 million a year, far below the $100 million criterion set forth in E.O. 12291. The price impacts are estimated to range from 0.5 and 2.5 percent. The economic impact analysis on the industry indicated that output adjustments are about a 0.5 percent decrease. These small market adjustments indicate that no significant adverse effects on competition, employment, investment, productivity, innovation, or international trade are expected. Therefore, this regulation is not subject to an RIA.

This promulgated rulemaking was submitted to the OMB for review as required under E.O. 12291.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq) requires the EPA to consider potential impacts of promulgated regulations on small business "entities." A regulatory flexibility analysis is required if preliminary analysis indicates that a promulgated regulation is expected to have a significant economic impact on a substantial number of small entities.

Firms in the dry cleaning industry are classified as small or large based on annual sales receipts. Commercial firms are classified as small if they earn less than $2.5 million per year. By this definition, over 99 percent of commercial dry cleaning firms are small (U. S. Department of Commerce, 1990b).

The economic impacts of the regulatory alternatives were analyzed based on consumption of PCE but described in terms of dry cleaning revenues.

For the commercial area source categories, the economic analysis did indicate that many firms within the class of sources with annual receipts of less than $75,000 would be affected significantly by the promulgated standard. Below this annual receipt level are found the very smallest family-operated businesses with low annual PCE consumption and few employees. Due to economic considerations, only pollution prevention measures (i.e., leak detection and repair) are required for this class of sources under GACT—no process vent control is required.

For the class of sources with annual receipts of $75,000 or greater, the economic impacts are much smaller. Less than 260 net closures due to the promulgated regulation are projected. The analysis indicates that firms in below-average financial condition may face difficulty in obtaining the required funds to purchase control equipment from traditional loan sources, such as banks. The analysis projects between 0 and 830 firms will be in this category. These firms will either obtain other financing (vendor-aided, relatives, personal assets, etc.), close, or sell their firm. For more detail see "Economic Impact Analysis of Regulatory Controls in the Dry Cleaning Industry" (EPA–45/3–91–021b) and "Dry Cleaning Facilities—Background Information for Promulgated Standards" (EPA–450/3–91–020b).

In summary, excluding requirements for process vent control for the class of sources with annual gross receipts of $75,000 or less drastically reduces the impacts on the commercial dry cleaning sector.

E. Miscellaneous

Under the operating permit regulations codified at 40 CFR part 70, any source that is a major source under the Act or any nonmajor source subject to a standard under sections 111 or 112 of the Act must obtain an operating permit. (See § 70.3(a)(1).) The part 70 regulations also provide that a State may, at its discretion, defer all nonmajor sources from the obligation to obtain a part 70 permit until such time as the EPA finishes a rulemaking regarding the applicability of the part 70 program to nonmajor sources. Part 70 further provides that, for nonmajor sources subject to a future standard promulgated under section 111 or 112, "* * * the Administrator will determine whether to exempt any or all such applicable sources from the requirements to obtain a part 70 permit at the time that the new standard is promulgated." (See § 70.3(b)(1) and (2).)

Today's final dry cleaning rule does not exempt area source dry cleaners from permitting requirements. The EPA believes that permitting these nonmajor sources will enhance the implementation and enforcement of the rule by clarifying how the rule applies to a particular source, and how relevant parts of the to-be-promulgated general provisions apply to dry cleaners. The general provisions, which were proposed in the **Federal Register** on August 11, 1993 (58 FR 42760), are generic requirements that sources subject to section 112 standards must meet.

However, under the existing provisions of part 70, States may choose to defer the obligation of all nonmajor sources to obtain a permit until the EPA "completes a rulemaking to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions * * *." In promulgating the permits rule, the EPA committed to complete that rulemaking within 5 years after the approval of the first State part 70 program that defers permitting of nonmajor sources.

The EPA believes, for the same reasons stated in the preamble to the operating permits rule, that the benefits to be gained from the permitting of nonmajor sources subject to this rule are not likely to accrue during the early stages of the permit program when permitting authorities will be occupied with the task of issuing permits to major sources. Once this task is complete, however, permitting authorities should be able to process permits for nonmajor sources subject to this rule on a relatively expedited basis. This expedited review should be the case, in part, because of the presumptive suitability of these sources for general permits.

In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 8 years from the date of promulgation as required by the Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 63

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 13, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code

of Federal Regulations is amended as set forth below:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories	
* * * * *	
63.322–63.325	2060–0234

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

3. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, and 7601.

4. Part 63 is amended by adding subpart M to read as follows:

Subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

Sec.
63.320 Applicability.
63.321 Definitions.
63.322 Standards.
63.323 Test methods and monitoring.
63.324 Reporting and recordkeeping requirements.
63.325 Determination of equivalent emission control technology.

Subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

§ 63.320 Applicability.

(a) The provisions of this subpart apply to the owner or operator of each dry cleaning facility that uses perchloroethylene.

(b) Each dry cleaning system that commences construction or reconstruction on or after December 9, 1991, shall be in compliance with the provisions of this subpart beginning on September 22, 1993 or immediately upon startup, whichever is later, except for dry cleaning systems complying with section 112(i)(2) of the Clean Air Act.

(c) Each dry cleaning system that commenced construction or reconstruction before December 9, 1991, shall comply with §§ 63.322(c), (d), (i), (j), (k), and (l), 63.323(d), and 63.324(a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) beginning on December 20, 1993, and shall comply with other provisions of this subpart by September 23, 1996.

(d) Each existing dry-to-dry machine and its ancillary equipment located in a dry cleaning facility that includes only dry-to-dry machines and each existing transfer machine system and its ancillary equipment, as well as each existing dry-to-dry machine and its ancillary equipment, located in a dry cleaning facility that includes both transfer machine system(s) and dry-to-dry machine(s) is exempt from §§ 63.322, 63.323, and 63.324, except §§ 63.322(c), (d), (i), (j), (k), (l), and (m), 63.323(d), and 63.324(a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the total perchloroethylene consumption of the dry cleaning facility is less than 530 liters (140 gallons) per year. Consumption is determined according to § 63.323(d).

(e) Each existing transfer machine system and its ancillary equipment located in a dry cleaning facility that includes only transfer machine system(s) is exempt from §§ 63.322, 63.323, and 63.324, except §§ 63.322(c), (d), (i), (j), (k), (l), and (m), 63.323(d), and 63.324(a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the perchloroethylene consumption of the dry cleaning facility is less than 760 liters (200 gallons) per year. Consumption is determined according to § 63.323(d).

(f) If the total yearly perchloroethylene consumption of a dry cleaning facility determined according to § 63.323(d) is initially less than the amounts specified in paragraph (d) or (e) of this section, but later exceeds those amounts, the existing dry cleaning system(s) in the dry cleaning facility must comply with §§ 63.322, 63.323, and 63.324 by 180 calendar days from the date that the facility determines it has exceeded the amounts specified, or by September 23, 1996, whichever is later.

(g) A dry cleaning facility is a major source if the facility emits or has the potential to emit more than 9.1 megagrams per year (10 tons per year) of perchloroethylene to the atmosphere. In lieu of measuring a facility's potential to emit perchloroethylene emissions or determining a facility's potential to emit perchloroethylene emissions, a dry cleaning facility is a major source if:

(1) It includes only dry-to-dry machine(s) and has a total yearly perchloroethylene consumption greater than 8,000 liters (2,100 gallons) as determined according to § 63.323(d); or

(2) It includes only transfer machine system(s) or both dry-to-dry machine(s) and transfer machine system(s) and has a total yearly perchloroethylene consumption greater than 6,800 liters (1,800 gallons) as determined according to § 63.323(d).

(h) A dry cleaning facility is an area source if it does not meet the conditions of paragraph (g) of this section.

(i) If the total yearly perchloroethylene consumption of a dry cleaning facility determined according to § 63.323(d) is initially less than the amounts specified in paragraph (g) of this section, but then exceeds those amounts, the dry cleaning facility becomes a major source and all dry cleaning systems located at that dry cleaning facility must comply with the appropriate requirements for major sources under §§ 63.322, 63.323, and 63.324 by 180 calendar days from the date that the facility determines it has exceeded the amount specified, or by September 23, 1996, whichever is later.

(j) All coin-operated dry cleaning machines are exempt from the requirements of this subpart.

§ 63.321 Definitions.

Administrator means the Administrator of the United States Environmental Protection Agency or his or her authorized representative (e.g., a State that has been delegated the authority to implement the provisions of this part).

Ancillary equipment means the equipment used with a dry cleaning machine in a dry cleaning system including, but not limited to, emission control devices, pumps, filters, muck cookers, stills, solvent tanks, solvent containers, water separators, exhaust dampers, diverter valves, interconnecting piping, hoses, and ducts.

Articles mean clothing, garments, textiles, fabrics, leather goods, and the like, that are dry cleaned.

Area source means any perchloroethylene dry cleaning facility that meets the conditions of § 63.320(h).

Biweekly means any 14-day period of time.

Carbon adsorber means a bed of activated carbon into which an air-perchloroethylene gas-vapor stream is routed and which adsorbs the perchloroethylene on the carbon.

Coin-operated dry cleaning machine means a dry cleaning machine that is operated by the customer (that is, the customer places articles into the machine, turns the machine on, and removes articles from the machine).

Colorimetric detector tube means a glass tube (sealed prior to use), containing material impregnated with a chemical that is sensitive to perchloroethylene and is designed to measure the concentration of perchloroethylene in air.

Construction, for purposes of this subpart, means the fabrication (onsite), erection, or installation of a dry cleaning system subject to this subpart.

Desorption means regeneration of a carbon adsorber by removal of the perchloroethylene adsorbed on the carbon.

Diverter valve means a flow control device that prevents room air from passing through a refrigerated condenser when the door of the dry cleaning machine is open.

Dry cleaning means the process of cleaning articles using perchloroethylene.

Dry cleaning cycle means the washing and drying of articles in a dry-to-dry machine or transfer machine system.

Dry cleaning facility means an establishment with one or more dry cleaning systems.

Dry cleaning machine means a dry-to-dry machine or each machine of a transfer machine system.

Dry cleaning machine drum means the perforated container inside the dry cleaning machine that holds the articles during dry cleaning.

Dry cleaning system means a dry-to-dry machine and its ancillary equipment or a transfer machine system and its ancillary equipment.

Dryer means a machine used to remove perchloroethylene from articles by tumbling them in a heated air stream (see reclaimer).

Dry-to-dry machine means a one-machine dry cleaning operation in which washing and drying are performed in the same machine.

Exhaust damper means a flow control device that prevents the air-perchloroethylene gas-vapor stream from exiting the dry cleaning machine into a carbon adsorber before room air is drawn into the dry cleaning machine.

Existing means commenced construction or reconstruction before December 9, 1991.

Filter means a porous device through which perchloroethylene is passed to remove contaminants in suspension. Examples include, but are not limited to, lint filter (button trap), cartridge filter, tubular filter, regenerative filter, prefilter, polishing filter, and spin disc filter.

Heating coil means the device used to heat the air stream circulated from the dry cleaning machine drum, after perchloroethylene has been condensed from the air stream and before the stream reenters the dry cleaning machine drum.

Major source means any dry cleaning facility that meets the conditions of § 63.320(g).

Muck cooker means a device for heating perchloroethylene-laden waste material to volatilize and recover perchloroethylene.

New means commenced construction or reconstruction on or after December 9, 1991.

Perceptible leaks mean any perchloroethylene vapor or liquid leaks that are obvious from:

(1) The odor of perchloroethylene;

(2) Visual observation, such as pools or droplets of liquid; or

(3) The detection of gas flow by passing the fingers over the surface of equipment.

Perchloroethylene consumption means the total volume of perchloroethylene purchased based upon purchase receipts or other reliable measures.

Reclaimer means a machine used to remove perchloroethylene from articles by tumbling them in a heated air stream (see dryer).

Reconstruction, for purposes of this subpart, means replacement of a washer, dryer, or reclaimer; or replacement of any components of a dry cleaning system to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source.

Refrigerated condenser means a vapor recovery system into which an air-perchloroethylene gas-vapor stream is routed and the perchloroethylene is condensed by cooling the gas-vapor stream.

Refrigerated condenser coil means the coil containing the chilled liquid used to cool and condense the perchloroethylene.

Responsible official means one of the following:

(1) For a corporation: A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more dry cleaning facilities;

(2) For a partnership: A general partner;

(3) For a sole proprietorship: The owner; or

(4) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking official.

Room enclosure means a stationary structure that encloses a transfer machine system, and is vented to a carbon adsorber or an equivalent control device during operation of the transfer machine system.

Source, for purposes of this subpart, means each dry cleaning system.

Still means any device used to volatilize and recover perchloroethylene from contaminated perchloroethylene.

Temperature sensor means a thermometer or thermocouple used to measure temperature.

Transfer machine system means a multiple-machine dry cleaning operation in which washing and drying are performed in different machines. Examples include, but are not limited to:

(1) A washer and dryer(s);

(2) A washer and reclaimer(s); or

(3) A dry-to-dry machine and reclaimer(s).

Washer means a machine used to clean articles by immersing them in perchloroethylene. This includes a dry-to-dry machine when used with a reclaimer.

Water separator means any device used to recover perchloroethylene from a water-perchloroethylene mixture.

Year or *Yearly* means any consecutive 12-month period of time.

§ 63.322 Standards.

(a) The owner or operator of each existing dry cleaning system shall comply with either paragraph (a)(1) or (a)(2) of this section and shall comply with paragraph (a)(3) of this section if applicable.

(1) Route the air-perchloroethylene gas-vapor stream contained within each dry cleaning machine through a refrigerated condenser or an equivalent control device.

(2) Route the air-perchloroethylene gas-vapor stream contained within each dry cleaning machine through a carbon adsorber installed on the dry cleaning machine prior to September 22, 1993.

(3) Contain the dry cleaning machine inside a room enclosure if the dry cleaning machine is a transfer machine

system located at a major source. Each room enclosure shall be:

(i) Constructed of materials impermeable to perchloroethylene; and

(ii) Designed and operated to maintain a negative pressure at each opening at all times that the machine is operating.

(b) The owner or operator of each new dry cleaning system:

(1) Shall route the air-perchloroethylene gas-vapor stream contained within each dry cleaning machine through a refrigerated condenser or an equivalent control device;

(2) Shall eliminate any emission of perchloroethylene during the transfer of articles between the washer and dryer(s); and

(3) Shall pass the air-perchloroethylene gas-vapor stream from inside the dry cleaning machine drum through a carbon adsorber or equivalent control device immediately before or as the door of the dry cleaning machine is opened if the dry cleaning machine is located at a major source.

(c) The owner or operator shall close the door of each dry cleaning machine immediately after transferring articles to or from the machine, and shall keep the door closed at all other times.

(d) The owner or operator of each dry cleaning system shall operate and maintain the system according to the manufacturers' specifications and recommendations.

(e) Each refrigerated condenser used for the purposes of complying with paragraph (a) or (b) of this section and installed on a dry-to-dry machine, dryer, or reclaimer:

(1) Shall be operated to not vent or release the air-perchloroethylene gas-vapor stream contained within the dry cleaning machine to the atmosphere while the dry cleaning machine drum is rotating;

(2) Shall be monitored according to § 63.323(a)(1); and

(3) Shall be operated with a diverter valve, which prevents air drawn into the dry cleaning machine when the door of the machine is open from passing through the refrigerated condenser.

(f) Each refrigerated condenser used for the purpose of complying with paragraph (a) of this section and installed on a washer:

(1) Shall be operated to not vent the air-perchloroethylene gas-vapor contained within the washer to the atmosphere until the washer door is opened;

(2) Shall be monitored according to § 63.323(a)(2); and

(3) Shall not use the same refrigerated condenser coil for the washer that is used by a dry-to-dry machine, dryer, or reclaimer.

(g) Each carbon adsorber used for the purposes of complying with paragraphs (a) or (b) of this section:

(1) Shall not be bypassed to vent or release any air-perchloroethylene gas-vapor stream to the atmosphere at any time; and

(2) Shall be monitored according to the applicable requirements in § 63.323 (b) or (c).

(h) Each room enclosure used for the purposes of complying with paragraph (a)(3) of this section:

(1) Shall be operated to vent all air from the room enclosure through a carbon adsorber or an equivalent control device; and

(2) Shall be equipped with a carbon adsorber that is not the same carbon adsorber used to comply with paragraph (a)(2) or (b)(3) of this section.

(i) The owner or operator of an affected facility shall drain all cartridge filters in their housing, or other sealed container, for a minimum of 24 hours, or shall treat such filters in an equivalent manner, before removal from the dry cleaning facility.

(j) The owner or operator of an affected facility shall store all perchloroethylene and wastes that contain perchloroethylene in solvent tanks or solvent containers with no perceptible leaks.

(k) The owner or operator of a dry cleaning system shall inspect the following components weekly for perceptible leaks while the dry cleaning system is operating:

(1) Hose and pipe connections, fittings, couplings, and valves;

(2) Door gaskets and seatings;

(3) Filter gaskets and seatings;

(4) Pumps;

(5) Solvent tanks and containers;

(6) Water separators;

(7) Muck cookers;

(8) Stills;

(9) Exhaust dampers;

(10) Diverter valves; and

(11) Cartridge filter housings.

(l) The owner or operator of a dry cleaning facility with a total facility consumption below the applicable consumption levels of § 63.320(d) or (e) shall inspect the components listed in paragraph (k) of this section biweekly for perceptible leaks while the dry cleaning system is operating.

(m) The owner or operator of a dry cleaning system shall repair all perceptible leaks detected under paragraph (k) of this section within 24 hours. If repair parts must be ordered, either a written or verbal order for those parts shall be initiated within 2 working days of detecting such a leak. Such repair parts shall be installed within 5 working days after receipt.

(n) If parameter values monitored under paragraphs (e), (f), or (g) of this section do not meet the values specified in § 63.323(a), (b), or (c), adjustments or repairs shall be made to the dry cleaning system or control device to meet those values. If repair parts must be ordered, either a written or verbal order for such parts shall be initiated within 2 working days of detecting such a parameter value. Such repair parts shall be installed within 5 working days after receipt.

§ 63.323 Test methods and monitoring.

(a) When a refrigerated condenser is used to comply with § 63.322(a)(1) or (b)(1):

(1) The owner or operator shall measure the temperature of the air-perchloroethylene gas-vapor stream on the outlet side of the refrigerated condenser on a dry-to-dry machine, dryer, or reclaimer weekly with a temperature sensor to determine if it is equal to or less than 7.2 °C (45 °F). The temperature sensor shall be used according to the manufacturer's instructions and shall be designed to measure a temperature of 7.2 °C (45 °F) to an accuracy of ± 1.1 °C (±2 °F).

(2) The owner or operator shall calculate the difference between the temperature of the air-perchloroethylene gas-vapor stream entering the refrigerated condenser on a washer and the temperature of the air-perchloroethylene gas-vapor stream exiting the refrigerated condenser on the washer weekly to determine that the difference is greater than or equal to 11.1 °C (20 °F).

(i) Measurements of the inlet and outlet streams shall be made with a temperature sensor. Each temperature sensor shall be used according to the manufacturer's instructions, and designed to measure at least a temperature range from 0 °C (32 °F) to 48.9 °C (120 °F) to an accuracy of ± 1.1 °C (± 2 °F).

(ii) The difference between the inlet and outlet temperatures shall be calculated weekly from the measured values.

(b) When a carbon adsorber is used to comply with § 63.322(a)(2) or exhaust is passed through a carbon adsorber immediately upon machine door opening to comply with § 63.322(b)(3), the owner or operator shall measure the concentration of perchloroethylene in the exhaust of the carbon adsorber weekly with a colorimetric detector tube, while the dry cleaning machine is venting to that carbon adsorber at the end of the last dry cleaning cycle prior to desorption of that carbon adsorber to determine that the perchloroethylene

concentration in the exhaust is equal to or less than 100 parts per million by volume. The owner or operator shall:

(1) Use a colorimetric detector tube designed to measure a concentration of 100 parts per million by volume of perchloroethylene in air to an accuracy of ± 25 parts per million by volume; and

(2) Use the colorimetric detector tube according to the manufacturer's instructions; and

(3) Provide a sampling port for monitoring within the exhaust outlet of the carbon adsorber that is easily accessible and located at least 8 stack or duct diameters downstream from any flow disturbance such as a bend, expansion, contraction, or outlet; downstream from no other inlet; and 2 stack or duct diameters upstream from any flow disturbance such as a bend, expansion, contraction, inlet, or outlet.

(c) If the air-perchloroethylene gas-vapor stream is passed through a carbon adsorber prior to machine door opening to comply with § 63.322(b)(3), the owner or operator of an affected facility shall measure the concentration of perchloroethylene in the dry cleaning machine drum at the end of the dry cleaning cycle weekly with a colorimetric detector tube to determine that the perchloroethylene concentration is equal to or less than 300 parts per million by volume. The owner or operator shall:

(1) Use a colorimetric detector tube designed to measure a concentration of 300 parts per million by volume of perchloroethylene in air to an accuracy of ±75 parts per million by volume; and

(2) Use the colorimetric detector tube according to the manufacturer's instructions; and

(3) Conduct the weekly monitoring by inserting the colorimetric detector tube into the open space above the articles at the rear of the dry cleaning machine drum immediately upon opening the dry cleaning machine door.

(d) When calculating yearly perchloroethylene consumption for the purpose of demonstrating applicability according to § 63.320, the owner or operator shall perform the following calculation on the first day of every month:

(1) Sum the volume of all perchloroethylene purchases made in each of the previous 12 months, as recorded in the log described in § 63.324(d)(1).

(2) If no perchloroethylene purchases were made in a given month, then the perchloroethylene consumption for that month is zero gallons.

(3) The total sum calculated in paragraph (d) of this section is the yearly perchloroethylene consumption at the facility.

§ 63.324 Reporting and recordkeeping requirements.

(a) Each owner or operator of a dry cleaning facility shall submit an initial report signed by a responsible official before a notary public certifying that the information provided in the initial report is accurate and true to the Administrator within 90 calendar days after September 22, 1993, which includes the following:

(1) The name and address of the owner or operator;

(2) The address (that is, physical location) of the dry cleaning facility;

(3) A brief description of the type of each dry cleaning machine at the dry cleaning facility;

(4) Documentation as described in § 63.323(d) of the yearly perchloroethylene consumption at the dry cleaning facility for the previous year to demonstrate applicability according to § 63.320; or an estimation of perchloroethylene consumption for the previous year to estimate applicability with § 63.320; and

(5) A description of the type of control device(s) that will be used to achieve compliance with § 63.322 (a) or (b) and whether the control device(s) is currently in use or will be purchased.

(6) Documentation to demonstrate to the Administrator's satisfaction that each room enclosure used to meet the requirements of § 63 322(a)(3) meets the requirements of § 63.322(a)(3) (i) and (ii).

(b) Each owner or operator of a dry cleaning facility shall submit a statement signed by a responsible official in the presence of a notary public to the Administrator by registered letter on or before the 30th day following the compliance dates specified in § 63.320 (b) or (c), certifying the following:

(1) The yearly perchloroethylene solvent consumption limit based upon the yearly solvent consumption calculated according to § 63.323(d);

(2) Whether or not they are in compliance with each applicable requirement of § 63.322; and

(3) All information contained in the statement is accurate and true.

(c) Each owner or operator of an area source dry cleaning facility that exceeds the solvent consumption limit certified in paragraph (b) of this section shall submit a statement signed by a responsible official in the presence of a notary public to the Administrator by registered letter on or before the 30th day following the compliance dates specified in § 63.320(f) or (i), certifying the following:

(1) The new yearly perchloroethylene solvent consumption limit based upon the yearly solvent consumption calculated according to § 63.323(d);

(2) Whether or not they are in compliance with each applicable requirement of § 63.322; and

(3) All information contained in the statement is accurate and true.

(d) Each owner or operator of a dry cleaning facility shall keep receipts of perchloroethylene purchases and a log of the following information and maintain such information on site and show it upon request for a period of 5 years:

(1) The volume of perchloroethylene purchased each month by the dry cleaning facility as recorded from perchloroethylene purchases; if no perchloroethylene is purchased during a given month then the owner or operator would enter zero gallons into the log;

(2) The calculation and result of the yearly perchloroethylene consumption determined on the first day of each month as specified in § 63.323(d);

(3) The dates when the dry cleaning system components are inspected for perceptible leaks, as specified in § 63.322(k) or (l), and the name or location of dry cleaning system components where perceptible leaks are detected;

(4) The dates of repair and records of written or verbal orders for repair parts to demonstrate compliance with § 63.322(m) and (n);

(5) The date and temperature sensor monitoring results, as specified in § 63.323 if a refrigerated condenser is used to comply with § 63.322(a) or (b); and

(6) The date and colorimetric detector tube monitoring results, as specified in § 63.323, if a carbon adsorber is used to comply with § 63.322(a)(2) or (b)(3).

(e) Each owner or operator of a dry cleaning facility shall retain onsite a copy of the design specifications and the operating manuals for each dry cleaning system and each emission control device located at the dry cleaning facility.

§ 63.325 Determination of equivalent emission control technology.

(a) Any person requesting that the use of certain equipment or procedures be considered equivalent to the requirements under § 63.322 shall collect, verify, and submit to the Administrator the following information to show that the alternative achieves equivalent emission reductions:

(1) Diagrams, as appropriate, illustrating the emission control technology, its operation and integration into or function with dry-to-dry

machine(s) or transfer machine system(s) and their ancillary equipment during each portion of the normal dry cleaning cycle;

(2) Information quantifying vented perchloroethylene emissions from the dry-to-dry machine(s) or transfer machine system(s) during each portion of the dry cleaning cycle with and without the use of the candidate emission control technology;

(3) Information on solvent mileage achieved with and without the candidate emission control technology. Solvent mileage is the average weight of articles cleaned per volume of perchloroethylene used. Solvent mileage data must be of continuous duration for at least 1 year under the conditions of a typical dry cleaning operation. This information on solvent mileage must be accompanied by information on the design, configuration, operation, and maintenance of the specific dry cleaning system from which the solvent mileage information was obtained;

(4) Identification of maintenance requirements and parameters to monitor to ensure proper operation and maintenance of the candidate emission control technology;

(5) Explanation of why this information is considered accurate and representative of both the short-term and the long-term performance of the candidate emission control technology on the specific dry cleaning system examined;

(6) Explanation of why this information can or cannot be extrapolated to dry cleaning systems other than the specific system(s) examined; and

(7) Information on the cross-media impacts (to water and solid waste) of the candidate emission control technology and demonstration that the cross-media impacts are less than or equal to the cross-media impacts of a refrigerated condenser.

(b) For the purpose of determining equivalency to control equipment required under § 63.322, the Administrator will evaluate the petition to determine whether equivalent control of perchloroethylene emissions has been adequately demonstrated.

(c) Where the Administrator determines that certain equipment and procedures may be equivalent, the Administrator will publish a notice in the **Federal Register** proposing to consider this equipment or these procedures as equivalent. After notice and opportunity for public hearing, the Administrator will publish the final determination of equivalency in the **Federal Register**.

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Wednesday
September 22, 1993

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 32

Refuge-Specific Hunting and Fishing Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AA71

Refuge-Specific Hunting and Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to amend certain regulations that pertain to migratory game bird hunting, upland game hunting, big game hunting and sport fishing on individual national wildlife refuges. Refuge hunting and fishing programs are reviewed annually to determine whether the individual refuge regulations governing these programs should be modified, deleted or have additions made to them. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitat may warrant modifications to insure the continued compatibility of hunting and fishing with the purposes for which the individual refuges were established. Modifications are designed, to the extent practical, to make refuge hunting and fishing programs consistent with State regulations.

DATES: Comments must be received on or before October 7, 1993. See **SUPPLEMENTARY INFORMATION** below for discussion of comment period.

ADDRESSES: Address comments to Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 670 ARLSQ, Washington, DC 20240; Telephone (703) 358–1786.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Division of Refuges, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 670 ARLSQ, Washington, DC 20240; Telephone (703) 358–1786.

SUPPLEMENTARY INFORMATION: 50 CFR part 32 contains provisions governing hunting and fishing on national wildlife refuges. Hunting and fishing are regulated on refuges to: (1) Insure compatibility with refuge purposes, (2) properly manage the wildlife resource, (3) protect other refuge values, and (4) insure refuge user safety. On many refuges, the Service policy of adopting State hunting regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to insure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific hunting and fishing regulations may be issued only after a wildlife refuge is opened to migratory game bird hunting, upland game hunting, big game hunting or sport fishing through publication in the **Federal Register**. These regulations may list the wildlife species that may be hunted or are subject to sport fishing, seasons, bag limits, methods of hunting or fishing, descriptions of open areas, and other provisions as appropriate. Previously issued refuge-specific regulations for hunting and fishing are contained in 50 CFR part 32. Many of the amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is, therefore, the purpose of this proposed rulemaking to seek public input regarding these proposed amendments. Interested persons may submit written comments to the Assistant Director, Refuges and Wildlife (**ADDRESSES** above) by the end of the comment period. All substantive comments regarding content will be considered by the Department prior to issuance of a final rule.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k) govern the administration and public use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established.

The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act. Hunting and sport fishing plans are developed for each refuge prior to opening it to hunting or fishing. In many cases, refuge-specific hunting and fishing regulations are included in the hunting and sport fishing plans to ensure the compatibility of the hunting and sport fishing programs with the purposes for which the refuge was established. Initial compliance with the NWRSAA and Refuge Recreation Act is ensured when hunting and sport fishing plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR. Continued compliance is ensured by annual review of hunting and sport fishing programs and regulations.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; or a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The amendments to the codified refuge-specific hunting and fishing regulations make relatively minor adjustments to existing hunting programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions. The benefits accruing to the public are expected to exceed by a large margin the costs of administering this rule. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of E.O. 12291 and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0014. The information is being collected to assist the Service in administering these

programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when hunting and sport fishing plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting and fishing in 50 CFR. Refuge-specific hunting and fishing regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The changes proposed in this rulemaking would not substantially alter the existing uses of the refuges involved. Information regarding hunting and fishing permits and the conditions that apply to individual refuge hunts, sport fishing activities and maps of the respective areas are available at refuge headquarters or can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, suite 1692, 911 NE 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin.
Assistant Regional Director —Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303; Telephone (404) 331–0833.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 300 W. Gate Center Drive, Hadley, Massachusetts 01035; Telephone (413) 253–8200.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—Alaska (Hunting and fishing on Alaska refuges is in accordance with State regulations. There are no refuge-specific hunting and fishing regulations for these refuges).
Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3538.

Duncan L. Brown, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 32

Hunting, Fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, part 32 of chapter I of title 50 of the Code of Federal Regulations is amended as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

§ 32.7 [Amended]

1.a. Section 32.7 is amended by adding the alphabetical listings of Hanalei National Wildlife Refuge and Kakahaia National Wildlife Refuge under the state of Hawaii; and by removing the listing of Willow Creek National Wildlife Refuge under the state of California.

2. Section 32.20 *Alabama* is amended by revising paragraph D. of Choctaw National Wildlife Refuge; and by revising paragraph D.1. of Eufaula National Wildlife Refuge to read as follows:

§ 32.20 Alabama.

* * * * *

Choctaw National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing, boating and public access are permitted only from one-half hour before sunrise to one-half hour after sunset.

2. Frogging, turtle trapping and bowfishing are not permitted.

3. The use of trot lines, snag lines, set lines, nets or traps is not permitted.

4. Airboats and jet skis are prohibited.

5. Fishing or entry is not permitted in the waterfowl sanctuary areas from December 1 through March 1.

Eufaula National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing, frogging and turtle trapping are permitted year-round in all refuge waters contiguous with the Walter F. George Reservoir, with the following exception: no bank fishing is allowed from the Bradley, Houston or Kennedy Units from November 1 through February 29, annually.

* * * * *

3. Section 32.23 *Arkansas* is amended by revising paragraph D.1. and adding new paragraph D.7. to Big Lake National Wildlife Refuge; by revising paragraph D.1. of Cache River National Wildlife Refuge; by revising paragraphs A., B. and C. of Felsenthal National Wildlife Refuge; by revising paragraphs A., B. and C. of Overflow National Wildlife Refuge; and by revising paragraph D. of Wapanocca National Wildlife Refuge to read as follows:

§ 32.23 Arkansas.

* * * * *

Big Lake National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted from March 1 through October 31 with the following exceptions: Bank fishing is permitted at any time in the area around Floodway Dam south of the Highway 18 bridge, and fishing only from sunrise to sunset from nonmotorized boats and boats with electric motors is

permitted in the Sand Slough-Mud Slough Area from November 1 through the end of February.

* * * * *

7. The taking of largemouth bass is permitted in accordance with the posted length and/or slot limits.

* * * * *

Cache River National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing or entry is not permitted in the waterfowl sanctuary areas from November 15 through February 28.

* * * * *

Felsenthal National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, geese, coots, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Overflow National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, geese, coots, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

Wapanocca National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from March 15 through September 30 only from sunrise to sunset.

2. The use of live carp, shad, buffalo, and goldfish for bait is not permitted.

3. The use of yo-yos, jugs, drops, trot lines and all commercial fishing tackle is not permitted.

4. Big Creek and Ditch 8 are closed to fishing.

5. The taking of largemouth bass is permitted in accordance with the posted length and/or slot limits.

* * * * *

4. Section 32.24 *California* is amended by revising paragraph A.2. of Clear Lake National Wildlife Refuge; by revising paragraphs A. and B. of Colusa National Wildlife Refuge; by adding new paragraphs A.4. and A.5., and revising paragraphs B. and D. of Delevan National Wildlife Refuge; by revising paragraph B. of Kern National Wildlife Refuge; by revising paragraph A. of Kesterson National Wildlife Refuge; by revising paragraphs A.6. and B.1. of Lower Klamath National Wildlife Refuge; by removing paragraph A.5. and revising paragraph B. of Merced National Wildlife Refuge; by revising paragraphs A.4. and B. of Modoc National Wildlife Refuge; by revising paragraph A.4. and adding paragraph A.5., and by revising paragraph B. of Sacramento National Wildlife Refuge; by revising paragraph A. of Salinas River National Wildlife Refuge; by revising paragraph A.3. of Salton Sea National Wildlife Refuge; by removing paragraph A.6. of San Francisco Bay National Wildlife Refuge; by revising paragraphs A.3. and B. of San Luis National Wildlife Refuge; by removing paragraph A.5. of San Pablo Bay National Wildlife Refuge; by revising paragraphs A. and B. of Sutter National Wildlife Refuge; by revising paragraphs A.7. and B.1. of Tule Lake National Wildlife Refuge; and by removing the alphabetical listing of Willow Creek National Wildlife Refuge to read as follows:

§ 32.24 California.

* * * * *

Clear Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Colusa National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

2. Hunters may not possess more than 25 shells while in the field.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

1. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not permitted.

2. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Delevan National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

4. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

5. Hunters may not possess more than 25 shells while in the field.

B. Upland Game Hunting. Hunting of pheasant is permitted only in the free roam areas of the refuge subject to the following conditions:

1. A special one-day pheasant hunt is permitted in the spaced blind unit on the first Monday after the opening of the State pheasant hunting season.

2. Hunters shall possess and use, while in the field, only nontoxic shot.

3. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not permitted.

* * * * *

D. Sport Fishing. Fishing is permitted during daylight hours only from February 15 through October 1.

* * * * *

Kern National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

1. Pheasant hunting is only permitted in the free roam unit.

2. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Kesterson National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and moorhens is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters must travel to and from parking areas and blind sites with firearms unloaded.

2. Hunters may not use or possess more than 25 shells per day.

3. Hunters are restricted to their original spaced blind except for retrieving downed birds, placing decoys, or traveling to and from the parking area.

4. Hunters must hunt from their original spaced blind except when shooting to retrieve crippled birds.

* * * * *

Lower Klamath National Wildlife Refuge

* * * * *

A. Hunting of Migratory Game Birds. * * *

* * * * *

6. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

B. Upland Game Hunting. * * *

1. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Merced National Wildlife Refuge

* * * * *

B. Upland Game Hunting. [Reserved]

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Modoc National Wildlife Refuge

* * * * *

A. Hunting of Migratory Game Birds. * * *

* * * * *

4. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition: Hunting is by permit only and is limited to junior hunters possessing e valid Junior Hunting license. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Sacramento National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

4. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

5. Hunters may not possess more than 25 shells while in the field.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

1. A special one-day only pheasant hunt is permitted in the spaced blind unit on the first Monday after the opening of the State pheasant hunting season.

2. Hunters shall possess and use, while in the field, only nontoxic shot.

3. Access to the hunt area is by foot traffic only. Bicycles and other conveyances are not permitted.

* * * * *

Salinas River National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, and moorhens is permitted on designated areas of the refuge.

* * * * *

Salton Sea National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Firearms must be unloaded while being transported between parking areas and blind sites.

* * * * *

San Luis National Wildlife Refuge

* * * * *

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition: Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Sutter National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

2. Hunters may not possess more than 25 shells while in the field.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters shall possess and use, while in the field, only nontoxic shot.

2. Access is by foot traffic only. Bicycles and other conveyances are not permitted.

* * * * *

Tule Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

7. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. * * *

1. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

5. Section 32.28 *Florida* is amended by revising paragraph D. of J.N. "Ding" Darling National Wildlife Refuge; by revising paragraphs D.1. and D.2. of Lower Suwannee National Wildlife Refuge; by revising the refuge heading and paragraph D. of Merritt Island National Wildlife Refuge; and by revising paragraphs C. and D. of St. Vincent National Wildlife Refuge to read as follows:

§ 32.28 Florida.

* * * * *

J.N. "Ding" Darling National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing and crabbing are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted in refuge waters except in the Mangrove Head Pond, Tower Pond, and Tarpon Bay Slough at the Bailey Tract.

2. Taking of blue crabs is permitted with the use of dip nets only. The use of lines, traps, and bait are not permitted.

3. Daily limit of 20 blue crabs per person of which no more than 10 can be females.

4. The taking of horseshoe crabs, stone crabs and spider crabs is prohibited.

* * * * *

Lower Suwannee National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted in interior creeks, sloughs and ponds year-round from sunrise to sunset except that fishing is not permitted during quota big game hunts.

2. Boats are not permitted in refuge ponds. Boats may not be left on the refuge overnight.

Merritt Island National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing, crabbing, clamming, oystering and shrimping are permitted in designated areas of the refuge subject to the following conditions:

1. Night fishing is permitted from a boat only in Mosquito Lagoon, Indian River, Banana River, and Haulover Canal. A night fishing permit is required.

2. Fishing lines must be attended at all times.

3. Vehicle access north and south Haulover Canal is limited to designated public access routes and launch areas.

4. Boat launching off Black Point Wildlife Drive is prohibited.

5. Air thrust boats are prohibited.

6. Boat launching or mooring between sunset and sunrise is permitted only at Beacon 42 fish camp and Bair's Cove at Haulover Canal Recreation Area.

7. Motorized boats are prohibited year round in the Banana River Manatee Sanctuary (north of KARS Park on the west side of the Barge Channel and north of the Air Force power line on the east side of the Barge Channel). This includes any boat having an attached motor or a non-attached motor that is capable of use (including electric trolling motors).

* * * * *

St. Vincent National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer, sambar deer, and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted only from sunrise to sunset.

2. Only nonmotorized boats and boats with electric motors are permitted.

3. The use of live minnows as bait is not permitted.

4. Fishing is permitted in Lakes 1, 2, and Oyster Pond from April 1 through September 30.

5. Fishing is permitted in Lakes 3, 4, and 5 from May 15 through September 30.

6. Section 32.29 *Georgia* is amended by adding paragraphs D.4. and D.5. to Banks Lake National Wildlife Refuge; by revising paragraph D.1. and adding new paragraph D.5 to Blackbeard Island National Wildlife Refuge; by revising paragraph D.2. and adding a new paragraph D.3. to Harris Neck National Wildlife Refuge; by adding new paragraphs D.4. and D.5. to Okefenokee National Wildlife Refuge; and by revising paragraphs D.1., D.2. and D.3. of Savannah National Wildlife Refuge to read as follows:

§ 32.29 Georgia.

* * * * *

Banks Lake National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

4. The daily creel limit is 5 largemouth bass, 5 channel catfish, and 25 of any one, or combination, of bream or sunfish. Possession of more than the daily creel limit at any time is not permitted.

5. The taking of largemouth bass smaller than 14 inches is not permitted.

Blackbeard Island National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Freshwater fishing is permitted from March 15 through October 25 from sunrise to sunset.

* * * * *

5. Bank fishing into estuarine waters is permitted only from sunrise to sunset.

* * * * *

Harris Neck National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Bank fishing into estuarine waters is permitted only from sunrise to sunset.

3. The Barbour River Public boat ramp is closed to public access and use from March 1 through August 31.

Okefenokee National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

4. The daily creel limit is 5 largemouth bass, 5 channel catfish, and 25 of any one, or combination, of bream or sunfish. Possession of more than the daily creel limit is not permitted.

5. The taking of largemouth bass smaller than 14 inches is not permitted.

* * * * *

Savannah National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted on refuge impoundments from March 15 through October 31.

2. Fishing is permitted from boats into tidal creeks from February 1 through October 31.

3. Fishing is permitted from sunrise to sunset.

* * * * *

7. Section 32.30 *Hawaii* is amended by revising paragraph C. of Hakalau Forest National Wildlife Refuge; and by adding the alphabetical listings of Hanalei National Wildlife Refuge and Kakahaia National Wildlife Refuge to read as follows:

§ 32.30 Hawaii.

* * * * *

Hakalau Forest National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of feral pigs is permitted on designated areas of the refuge subject to the following condition: Reservations are required for hunters accessing Maulua Tract through Maulua Gate.

* * * * *

Hanalei National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge.

Kakahaia National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge.

8. Section 32.31 *Idaho* is amended by revising paragraph A. of Bear Lake National Wildlife Refuge; by revising paragraphs A. and B. of Camas National Wildlife Refuge; by revising paragraph A.3., adding a new paragraph B.4., and revising paragraph D.2. of Deer Flat National Wildlife Refuge; by removing paragraph A.4. of Kootenai National Wildlife Refuge; by revising paragraphs A. and B. of Minidoka National Wildlife Refuge to read as follows:

§ 32.31 Idaho.

* * * * *

Bear Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Air-thrust boats are not permitted.

2. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Camas National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and snipe is permitted on designated areas of the refuge subject to the following condition: Snipe hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of pheasant and grouse is permitted on designated areas of the refuge subject to the following condition: Pheasant hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Deer Flat National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. Pheasant, quail and partridge hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Nonmotorized boats are permitted from ½ hour before sunrise to ½ hour after sunset from October 1 through April 14, within the area bounded by the water's edge extending to a point 200 yards lakeward in front of the lower dam fishing area A, and in front of the upper dam, fishing area B.

* * * * *

Minidoka National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and coots is permitted on designated areas of the refuge.

B. Upland Game Hunting. Hunting of pheasant, partridge and cottontail rabbits, including pygmy rabbit, is permitted on designated areas of the refuge subject to the following condition: Pheasant hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

9. Section 32.32 *Illinois* is amended by revising paragraph D. of Chautauqua National Wildlife Refuge; by revising paragraphs B.1. and C.3., and adding new paragraph D.7 to Crab Orchard National Wildlife Refuge; by revising paragraphs C., D.2. and D.4. of Mark Twain National Wildlife Refuge; and by revising the refuge heading and paragraphs A.1., A.2., B.1., B.2., C.1., C.2., C.3., C.4., and adding new paragraph C.5. to Upper Mississippi River National Wildlife and Fish Refuge to read as follows:

§ 32.32 Illinois.

* * * * *

Chautauqua National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Sport fishing, and the harvest of frogs and turtles, are allowed on all refuge waters during daylight hours from December 15 through October 15. Sport fishing is not allowed in the Waterfowl Hunting Area during waterfowl hunting season.

2. A 10 mile per hour boat speed limit is in effect throughout the entire sport fishing area.

3. Private boats may not be left in refuge waters overnight.

4. Motorboats are restricted to "slow speed/minimum wake."

Crab Orchard National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. Upland game hunting is not permitted in the controlled goose hunting areas during the permitted waterfowl hunting season.

* * * * *

C. Big Game Hunting. * * *

* * * * *

3. Deer hunting is not permitted in the controlled goose hunting areas during the permitted waterfowl hunting season.

D. Sport Fishing. * * *

* * * * *

7. Organizers of all fishing events must possess a special use permit issued by the refuge.

Mark Twain National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of deer is permitted on the Gardner and Big Timber Divisions and on Turkey and Otter Islands.

2. Hunting of white tailed deer on the Delair Division is allowed with permit only. Hunters may only use historic weapons, and must check in and out of the refuge each day of hunting. Stands must be removed each day; the construction or use of permanent blinds, platforms or ladders is not permitted.

Hunting is permitted from one half hour before sunrise to 3:00 p.m.

D. Sport Fishing. * * *

* * * * *

2. Fishing is permitted in the Louisa Division, Iowa, from February 1 until September 15, with the exception of certain designated areas adjacent to the Port Louisa Road which are open to fishing all year.

* * * * *

4. Fishing is permitted in the Calhoun, Batchtown, and Gilbert Lake Divisions, Illinois, from December 16 through October 14.

Upper Mississippi River Wildlife and Fish Refuge

A. Hunting of Migratory Game Birds. * * *

1. Hunting of all migratory birds is prohibited on refuge areas posted "Area Closed," and on the Goose Island "No Hunting" Zone in Pool 8.

2. Permits are required for Potters Marsh in Pool 13 except during the early teal season.

B. Upland Game Hunting. * * *

1. Hunting is allowed until season closure, or March 1, whichever date occurs first, except that hunting of turkey is permitted during the State wild turkey season.

2. Hunting is permitted on refuge areas posted "Area Closed" beginning the day after the close of the regular duck season until season closure or March 1, whichever occurs first, except that hunting of turkey is permitted during the State spring wild turkey season.

3. Hunting is prohibited at all times on the Goose Island "No Hunting" Zone in Pool 8.

C. Big Game Hunting. * * *

1. Hunting is allowed until season closure, or March 1, whichever date occurs first.

2. Hunting is permitted on refuge areas posted "Area Closed" beginning the day after the close of the regular duck season until season closure or March 1, whichever date occurs first.

3. Hunting is prohibited at all times on the Goose Island "No Hunting" Zone in Pool 8.

4. Construction or use of permanent blinds, platforms or ladders is not permitted.

5. All stands must be removed from the refuge at the end of each day's hunt.

* * * * *

10. Section 32.34 *Iowa* is amended by revising paragraphs A.2., A.3. and D.4. of DeSoto National Wildlife Refuge; and by revising paragraph D.1. of Union Slough National Wildlife Refuge to read as follows:

§ 32.34 Iowa.

* * * * *

DeSoto National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Hunting is permitted until noon each day from November 1 through the second Friday in December.

3. Hunters may not use or possess more than 15 shells per day.

* * * * *

D. Sport Fishing. * * *

* * * * *

4. Only the use of pole and line, or rod and reel, is permitted from April 15 through October 14 with the exception that archery and spear fishing are permitted only for nongame fish from April 15 to October 14.

* * * * *

Union Slough National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted from March 1 through September 30.

* * * * *

11. Section 32.37 *Louisiana* is amended by revising paragraphs D.1. and D.2. and adding new paragraph D.3. to Bogue Chitto National Wildlife Refuge; by revising paragraphs C. and D. of Cameron Prairie National Wildlife Refuge; by revising paragraphs B., D.2., D.3., and D.4. of Catahoula National Wildlife Refuge; by revising paragraph D. of Delta National Wildlife Refuge; by revising paragraphs A., C. and D. of Lacassine National Wildlife Refuge; by adding new paragraph D.6 to Lake Ophelia National Wildlife Refuge; by revising paragraph D. of Sabine National Wildlife Refuge; and by revising paragraph D. of Tensas River National Wildlife Refuge to read as follows:

§ 32.37 Louisiana.

* * * * *

Boque Chitto National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted year-round.

2. Camping is permitted in designated areas only.

3. Only cotton limb lines are permitted.

Cameron Prairie National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the refuge hunting brochure.

D. Sport Fishing. Sport fishing is permitted subject to the following condition: Any person entering, using, or occupying the refuge for fishing must abide by all terms and conditions in the appropriate refuge fishing brochure.

Catahoula National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of squirrel and rabbit is permitted on designated areas of the refuge subject to the following condition: Daily permits are required.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Boat launching on all refuge waters is permitted as designated in refuge brochure. Only nonmotorized boats or boats with motors of 10 horsepower or less are permitted. Boats may not be left on the refuge overnight.

3. Cowpen Bayou is open to fishing year-round.

4. Duck Lake, Muddy Bayou, all outlet waters, and all flooded woodlands are open to fishing and boating from March 1 through October 31.

* * * * *

Delta National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing and crabbing are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing and crabbing are permitted year-round from sunrise to sunset except during the refuge waterfowl hunting season.

2. Only fishing with rod and reel or pole and line is permitted.

3. Camping is permitted year-round on designated areas only.

Lacassine National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Any person entering, using, or occupying the refuge for waterfowl hunting must abide by all the terms and conditions in the refuge hunting brochure.

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Any person entering, using, or occupying the refuge for hunt must abide by all terms and conditions in the refuge hunting brochure.

D. Sport Fishing. Fishing and crayfishing are permitted on designated areas of the refuge subject to the following condition: Any person entering, using, or occupying the refuge for fishing or crayfishing must abide by all terms and conditions in the refuge fishing brochure.

Lake Ophelia National Wildlife Refuge

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D. Sport Fishing. * * *

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6. The length limit for largemouth bass taken from Lake Ophelia is a minimum of 14 inches. Largemouth bass under 14 inches must be immediately released unharmed. Possession of largemouth bass under 14 inches is prohibited.

Sabine National Wildlife Refuge

* * * * *

D. Sport Fishing. Fishing, crabbing, crayfishing, and shrimp cast netting are permitted on designated areas of the refuge subject to the following conditions:

1. Only fishing with rod and reel or pole and line is permitted. Cast netting is permitted for shrimp only. Crabs and crayfish may be taken with hand lines only. The use and possession of any other type of fishing, crabbing, crayfishing or shrimping gear is prohibited except that persons using Hog

Island Gully or West Cove Canals may only transport shrimp trawls, butterfly nets or other gear from the boat ramps to Calcasieu Lake and return with their catch.

2. Fishing and public access is permitted from March 15 through October 15 on designated waterways and management units. Only bank fishing along Highway 27 is permitted year round.

3. Fishing, crabbing, and crayfishing are permitted from one hour before sunrise to one hour after sunset. The daily crab limit is 100 pounds per day per vehicle or boat. The daily crayfish limit is 100 pounds per day per vehicle or boat.

4. Cast netting is permitted from one hour before sunrise to noon only during the Louisiana Inland Water Shrimp Season. The daily limit is 5 gallons of shrimp per day per vehicle or boat. Cast nets may not exceed 6 feet in radius length.

5. Boats may not be dragged across levees. Outboard motors may be operated in designated refuge canals, bayous, and Management Units 1A, 1B, and 3. Outboard motors up to 25 hp are permitted in refuge Management Units 1A, 1B, and 3. The operation of any type of boat motor or trolling motor in the refuge marshes is prohibited.

6. Permits are required for sport jug fishing and fishing guide services.

7. All public access to the East Cove Unit located in the Cameron Creole Watershed Project is restricted to boat access only. A 250 foot zone around Grand Bayou and Lambert Bayou water control structures is closed to public activity except that boat passage is permitted for public access to the East Cove Unit when the Grand Bayou boat bay is open as posted for boat passage. Canal banks and control structures are closed to all public access and activities.

Tensas River National Wildlife Refuge

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D. Sport Fishing. Sport fishing is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

12. Section 32.39 *Maryland* is amended by revising paragraph C. of Eastern Neck National Wildlife Refuge to read as follows:

§ 32.39 Maryland.

* * * * *

Eastern Neck National Wildlife Refuge

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C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Only archery, shotgun, and muzzleloader hunting is permitted.

3. Loaded weapons are not permitted in parking areas or on blacktopped roads.

4. Hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

13. Section 32.40 *Massachusetts* is amended by revising paragraphs A. and C. of Parker River National Wildlife Refuge to read as follows:

§ 32.40 Massachusetts.

* * * * *

Parker River National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of waterfowl and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters may not use or possess more than 25 shells per day.

2. Hunters using Area B must set out a minimum of six waterfowl decoys and hunt within 50 yards of these decoys.

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted during planned refuge hunts subject to the following conditions:

1. Hunters must be in compliance with applicable State hunting regulations and the refuge permit.

2. Possession of a valid State hunting license and a refuge hunting permit is required.

* * * * *

14. Section 32.41 *Michigan* is amended by revising paragraph C. and adding text to paragraph D. of Shiawassee National Wildlife Refuge to read as follows:

§ 32.41 Michigan.

* * * * *

Shiawassee National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits may be required.

2. Hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid colored hunter orange clothing or material.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is only permitted from boats; no bank fishing is allowed.

15. Section 32.42 *Minnesota* is amended by revising paragraphs A.1., B., and C. of Minnesota Valley National Wildlife Refuge; by revising paragraphs B., C.3., and D. of Rice Lake National Wildlife Refuge; and by removing paragraph A.3., revising paragraphs D.1., D.2. and adding paragraph D.4. to Tamarac National Wildlife Refuge to read as follows:

§ 32.42 Minnesota.

* * * * *

Minnesota Valley National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

1. Permits may be required for special hunts and in selected areas.

* * * * *

B. Upland Game Hunting. Hunting of pheasant, grey and fox squirrel, cottontail rabbit, and turkey is permitted on designated areas of the refuge subject to the following conditions: permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits may be required.

2. The construction or use of permanent blinds or platforms is not permitted.

3. All portable stands must be removed from the refuge at the end of each day's hunt.

* * * * *

Rice Lake National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of sharp-tailed grouse, ruffed grouse, spruce grouse, grey and fox squirrel, cottontail rabbit and snowshoe hare is permitted on designated areas of the refuge.

C. Big Game Hunting. * * *

* * * * *

3. Permits are required for firearms hunting.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing from non-motorized boats or boats powered by electric motors is permitted only in designated areas.

2. Ice fishing is permitted on Mandy Lake when ice conditions are safe.

3. Ice fishing shelters must be removed from the refuge following each day's fishing activity.

* * * * *

Tamarac National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fishing is permitted in North Tamarac Lake, Wauboose Lake, and Two Island Lake, all year in accordance with State and/or White Earth Reservation regulations.

2. Fishing is permitted in Blackbird Lake and Lost Lake from the first day of the State walleye season through Labor Day under State and/or White Earth Reservation regulations.

* * * * *

4. Fishing is permitted in Pine Lake from December 1 until March 31.

* * * * *

16. Section 32.43 *Mississippi* is amended by adding text to paragraph D. of Panther Swamp National Wildlife Refuge to read as follows:

§ 32.43 Mississippi.

* * * * *

Panther Swamp National Wildlife Refuge

* * * * *

D. Sport Fishing. Sport fishing and frogging are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted on all refuge waters year-round except during refuge firearms deer hunts.

2. Frogging is permitted on all refuge waters during the State bullfrog season.

3. Trotlines and limb lines are permitted on Lake George, Landside Ditch, and the Auxiliary Channel only.

4. Commercial fishing is not permitted.

* * * * *

17. Section 32.44 *Missouri* is amended by removing paragraphs C.1. and C.3., redesignating paragraphs C.2. and C.4. as paragraphs C.1. and C.2., and revising paragraph D.2. of Mingo National Wildlife Refuge to read as follows:

§ 32.44 Missouri.

* * * * *

Mingo National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Only non-motorized boats are permitted in the designated wilderness area. On refuge waters outside the wilderness area, hand powered boats, and boats with electric trolling motors may be used.

* * * * *

18. Section 32.45 *Montana* is amended by revising paragraph C. of Charles M. Russell National Wildlife Refuge; by revising paragraph C. of Lee Metcalf National Wildlife Refuge; and by removing the erroneous alphabetical listing of Willow Creek National Wildlife Refuge to read as follows:

§ 32.45 Montana.

* * * * *

Charles M. Russell National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of big game is permitted on designated areas of the refuge.

* * * * *

Lee Metcalf National Wildlife Refuge

* * * * *

C. Big Game Hunting. Hunting of white-tailed and mule deer is permitted on designated areas of the refuge.

* * * * *

19. Section 32.47 *Nevada* is amended by revising paragraph A. of Ash Meadows National Wildlife Refuge; by revising paragraph A.2. and adding paragraph A.3., and adding text to paragraph B. of Pahranagat National Wildlife Refuge; and by revising paragraph A. of Ruby Lake National Wildlife Refuge to read as follows:

§ 32.47 Nevada.

* * * * *

Ash Meadows National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens, snipe and doves is permitted on designated areas of the refuge subject to the following condition: Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Pahranagat National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Hunting of waterfowl, coots, moorhens and snipe is permitted only on the opening weekend and Tuesday, Thursday, and Saturday throughout the remainder of the season.

3. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of quail and rabbit is permitted on designated areas of the refuge subject to the following condition: Hunting of jackrabbit is permitted only during the regular State season for cottontail rabbit.

* * * * *

Ruby Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens, and snipe is permitted on designated areas of the refuge subject to the following condition: Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

20. Section 32.50 *New Mexico* is amended by revising paragraphs D.1., D.2., D.3. and adding new paragraph D.4. to Maxwell National Wildlife Refuge to read as follows:

§ 32.50 New Mexico.

* * * * *

Maxwell National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *.

1. Fishing is permitted from noon March 1 through October 31.

2. Fishing is permitted only in Lakes 13 and 14.

3. Boats are permitted on Lakes 13 and 14 only during the fishing season.

4. Fishing is not permitted within 150 feet of headgates.

* * * * *

21. Section 32.51 *New York* is amended by revising paragraphs A., B. and C. of Montezuma National Wildlife Refuge to read as follows:

§ 32.51 New York.

* * * * *

Montezuma National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of waterfowl is permitted on designated areas of the refuge subject to the following conditions:

1. Permits/reservations are required.

2. Hunting is permitted only on Tuesdays, Thursdays and Saturdays during established refuge seasons set within the New York State western zone seasons.

3. Each hunter shall not have more than 15 steel shot shells in his/her possession.

4. Only motorless boats are permitted on the refuge hunting area.

5. Completion of the New York State Waterfowl Identification Course is required.

6. Hunting ends each day at 12 noon local time. All hunters must check out at the Route 89 Check Station by 1 p.m. local time.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. All hunters must possess and return at day's end a valid daily hunt permit card.

2. Hunting of deer is permitted on designated portions of the refuge by archery, shotgun, or muzzleloader only during established refuge seasons set within the general State deer season.

3. Hunters are permitted on the refuge one hour before legal sunrise and one hour after legal sunset.

4. Only portable tree stands may be used and must be removed from the refuge each day.

5. All firearms must be unloaded before legal sunrise and after legal sunset.

6. All bows must be disassembled, locked, or cased before legal sunrise and after legal sunset.

7. Hunters during the refuge firearms season, must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

22. Section 32.52 *North Carolina* is amended by revising paragraphs D.2, D.4 and D.5 of Mattamuskeet National Wildlife Refuge; and by revising paragraphs A.2. and B.3, adding paragraphs B.5. and B.6. and revising paragraph C.3. of Pocosin Lakes National Wildlife Refuge to read as follows:

§ 32.52 North Carolina.

* * * * *

Mattamuskeet National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Bank fishing and crabbing are permitted year-round along the Highway 94 Causeway and in the immediate vicinity of the Lake Landing water control structure, the Rose Bay water control structure, and the Outfall Canal water control structure. Other areas open to this activity are the Central Canal and East and West Main Canal as signed. Bank fishing and crabbing is permitted from one half hour before sunrise to one-half hour after sunset except that the Highway 94 Causeway is open to fishing and crabbing 24 hours per day.

* * * * *

4. All fish lines and crabbing equipment must be attended. Crabbing equipment is restricted to five handlines and/or hand-activated traps per person. The catch/possession limit is 12 blue crabs per day per person.

5. Airboats, sailboats, wind surfers, and jet skis are not permitted.

* * * * *

Pocosin Lakes National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Firearms must be unloaded and encased while being transported by a vehicle or boat under power.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. Firearms must be unloaded and encased while being transported by a vehicle or boat under power.

* * * * *

5. Hunters must wear 500 square inches of florescent orange material above the waist, visible from all directions.

6. Possession of buckshot or slugs while hunting with dogs is prohibited.

C. Big Game Hunting. * * *

* * * * *

3. Firearms must be unloaded and encased while being transported by a vehicle or boat under power.

* * * * *

23. Section 32.55 *Oklahoma* is amended by adding new paragraphs D.6. and D.7. to Tishomingo National Wildlife Refuge; by revising paragraphs D.1, D.2, D.3, and adding new paragraph D.4. to Wichita Mountains National Wildlife Refuge to read as follows:

§ 32.55 Oklahoma.

* * * * *

Tishomingo National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

6. Noodling within 500 feet of a boat launch area is not permitted.

7. Taking any type of bait from refuge lands or waters is not permitted.

* * * * *

Wichita Mountains National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. Fish may be taken only with pole and line or rod and reel.

2. Taking any type of bait from refuge lands or waters is not permitted.

3. Taking of frogs and turtles is not permitted.

4. Lake Elmer Thomas is closed to all fishing pending further notice.

24. Section 32.56 *Oregon* is amended by revising paragraph A. of Ankeny National Wildlife Refuge; by revising paragraph A. of Bandon Marsh National Wildlife Refuge; by revising paragraph A. of Baskett Slough National Wildlife Refuge; by revising paragraph A. of Bear Valley National Wildlife Refuge; by revising paragraph A.5. and adding new paragraphs A.6. and A.7, by revising paragraph B.3. and adding new paragraphs B.4. and B.5., by revising paragraph D.2 and adding new paragraphs D.4. and D.5. to Cold Springs National Wildlife Refuge; by revising paragraphs A.2. and B. of Deer Flat National Wildlife Refuge; by revising paragraph B. of Hart Mountain National Wildlife Refuge; by revising paragraph A.2. of Klamath Forest National Wildlife Refuge; by revising paragraph A. of Lewis and Clark National Wildlife Refuge; by revising paragraphs A.4. and B. of Lower Klamath National Wildlife Refuge; by revising paragraph A. and by adding new paragraph B.3. to Malheur National Wildlife Refuge; by revising paragraph A.4. and adding new paragraphs A.6. and A.7., revising paragraph B.4. and adding new paragraph B.5., and by revising paragraph D. of McKay Creek National Wildlife Refuge; by revising paragraphs A.6. and B.2., and adding new paragraph B.5, and by revising paragraphs D.3. and D.4. of Umatilla National Wildlife Refuge; by revising paragraph A.2. of Upper Klamath National Wildlife Refuge; and by revising paragraph A. of William L. Finley National Wildlife Refuge to read as follows:

§ 32.56 Oregon.

* * * * *

Ankeny National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of doves and pigeons is permitted on designated areas of the refuge subject to the following condition: Dove and pigeon hunters must check in and out of the refuge by use of self-service permits.

* * * * *

Bandon Marsh National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, snipe, doves and pigeons is permitted on designated areas of the refuge subject to the following condition: Snipe hunters must possess and use, while in the field, only nontoxic shot.

* * * * *

Baskett Slough National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

* * * * *

Bear Valley National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

* * * * *

Cold Springs National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

5. The refuge is open from 5 a.m. to 1½ hours after sunset, October 1 through January 31.

6. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

7. Hunters may not possess or use more than 20 shells per day.

B. Upland Game Hunting. * * *

* * * * *

3. Hunting is permitted only by shotgun and bow and fluflu arrow.

4. Upland game bird hunters shall possess and use, while in the field, only nontoxic shot.

5. The refuge is open from 5 a.m. to 1½ hours after sunset, October 1 through January 31.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Bank fishing only is permitted from October 1 through the last day of February from the west inlet canal across the face of the dam.

* * * * *

4. The refuge is open from 5 a.m. to 1½ hours after sunset.

5. Only fishing with rod and reel or pole and line is permitted.

Deer Flat National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of upland game is permitted on the Snake River Sector subject to the following conditions:

1. Hunting is not permitted from February 1 through May 31.

2. Pheasant, quail, and partridge hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Hart Mountain National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of partridge is permitted on designated areas of the refuge.

* * * * *

Klamath Forest National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Lewis and Clark National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and snipe is permitted on designated areas of the refuge subject to the following condition: Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Lower Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

4. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

1. Only unloaded firearms may be taken through posted retrieving zones when traveling to and from hunting areas.

2. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Malheur National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of doves, geese, ducks, coots, common snipe and pigeons is permitted on designated areas of the refuge subject to the following conditions:

1. Motorized boats are not permitted.

2. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. * * *

* * * * *

3. Pheasant, quail and partridge hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

McKay Creek National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

4. The use of boats or floating devices is not permitted.

* * * * *

6. Hunters may not possess or use more than 20 shells per day.

7. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. * * *

* * * * *

4. Hunting is permitted only by shotgun and bow and flu-flu arrow.

5. Upland game bird hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from 5 a.m. to 10 p.m., March 1 through September 30.

2. Only the use of pole and line or rod and reel is permitted.

* * * * *

Umatilla National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

6. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. In the McCormack Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Years Day.

* * * * *

5. Upland game bird hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

D. Sport Fishing. * * *

* * * * *

3. Fishing is permitted on refuge impoundments and ponds only from 5 a.m. to 10 p.m.

4. Only the use of pole and line or rod and reel is permitted.

Upper Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

2. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

William L. Finley National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of doves and pigeons is permitted on designated areas of the refuge subject to the following condition: Dove and pigeon hunters must check in and out of the refuge by use of self-service permits.

* * * * *

25. Section 32.57 *Pennsylvania* is amended by revising the introductory text in paragraph B. for Erie National Wildlife Refuge to read as follows:

§ 32.57 Pennsylvania.

* * * * *

Erie National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of grouse, quail, squirrel, rabbit, woodchuck, raccoon, skunk, fox and opossum is permitted on designated areas of the refuge subject to the following conditions:

* * * * *

26. Section 32.60 *South Carolina* is amended by revising paragraph D.2. of Santee National Wildlife Refuge to read as follows:

§ 32.60 South Carolina.

* * * * *

Santee National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

2. Fishing is permitted in Cantey Bay, Black Bottom, Savannah Branch and refuge ponds and impoundments from March 1 through October 10.

* * * * *

27. Section 32.62 *Tennessee* is amended by revising paragraphs A., B., and D. of Chickasaw National Wildlife Refuge; by revising paragraphs B., C. and D. of Cross Creeks National Wildlife Refuge; by adding paragraph D.3. to Lake Isom National Wildlife Refuge; and by revising paragraphs A., B. and D. of Lower Hatchie National Wildlife Refuge to read as follows:

§ 32.62 Tennessee.

* * * * *

Chickasaw National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, geese and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of squirrel, rabbit, quail, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted with pole and line or rod and reel only.

2. The waterfowl sanctuary area is closed to fishing from November 15 through March 15.

Cross Creeks National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of squirrel is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted in refuge pools and reservoirs from March 15 through October 31.

2. Bow and arrows, trotlines, limblines, jugs, and slat baskets are not permitted in refuge pools and reservoirs.

3. Taking of frogs is not permitted.

4. The length limit for largemouth bass taken from Elk and South Cross Creeks reservoirs is less than 12 inches and more than 15 inches. Largemouth bass from 12 inches to 15 inches must be immediately released unharmed. Possession of largemouth bass between 12 and 15 inches is prohibited.

* * * * *

Lake Isom National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

* * * * *

3. Fishing with bow and arrow is not permitted.

Lower Hatchee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of squirrel, rabbit, quail, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted with pole and line or rod and reel only.

2. The waterfowl sanctuary area and the Sunk Lake Natural Area are closed to fishing from November 15 through March 15.

* * * * *

28. Section 32.63 *Texas* is amended by revising paragraph D. of Aransas National Wildlife Refuge; and by revising the introductory text of paragraph D. of Laguna Atascosa National Wildlife Refuge to read as follows:

§ 32.63 Texas.

* * * * *

Aransas National Wildlife Refuge.

* * * * *

D. Sport Fishing. Fishing access is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from April 15 through October 15. Refuge access is from sunrise to sunset. Fishermen must be off the refuge by sunset.

2. Boat launching from refuge lands is not permitted.

3. Access by foot to bays is permitted only at designated entry points.

4. All fishermen must register at the visitor center. A permit is required for access to designated fishing areas of St. Charles Bay.

* * * * *

Laguna Atascosa National Wildlife Refuge

* * * * *

D. Sport Fishing. Sport fishing and crabbing are permitted only in that portion of the refuge designated as the Adolph Thomae, Jr., County Park and subject to the following conditions:

* * * * *

29. Section 32.64 *Utah* is amended by revising paragraph A. of Ouray National Wildlife Refuge to read as follows:

§ 32.64 Utah.

* * * * *

Ouray National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, geese and coots is permitted on designated areas of the refuge.

* * * * *

30. Section 32.67 *Washington* is amended by revising paragraph A.3. and adding new paragraph B.3. to Columbia National Wildlife Refuge; by revising paragraphs A. and B. of Conboy Lake National Wildlife Refuge; by revising the refuge heading and paragraph A. of Julia Butler Hansen Refuge for the Columbian White-tailed Deer; by revising paragraphs A.4., A.8., introductory text of paragraph B., B.2., and by adding new paragraph B.3. to McNary National Wildlife Refuge; by adding new paragraphs A.3. and B.3. to Toppenish National Wildlife Refuge; by revising paragraph A.5. and adding a new paragraph B.4. to Umatilla National Wildlife Refuge; and by removing paragraph A.5. from Willapa National Wildlife Refuge to read as follows:

§ 32.67 Washington.

* * * * *

Columbia National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. * * *

* * * * *

3. Upland game bird hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Conboy Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of doves, geese, and common snipe is permitted on designated areas of the refuge subject to the following condition: Snipe hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. [Reserved]

* * * * *

Julia Butler Hansen Refuge for the Columbian White-tailed Deer

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following condition: Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

McNary National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

4. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

8. On youth Hunt Day, only youth aged 10–17 and an adult 18 or over accompanying a youth may hunt.

B. Upland Game Hunting. Hunting of pheasant is permitted on the McNary Division of the refuge subject to the following conditions:

* * * * *

2. Hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day and New Year's Day.

3. Hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Toppenish National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

3. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. * * *

* * * * *

3. Upland game bird hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

Umatilla National Wildlife Refuge

A. Hunting of Migratory Game Birds. * * *

* * * * *

5. Snipe hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. Upland game bird hunters shall possess and use, while in the field, only nontoxic shot.

* * * * *

31. Section 32.69 *Wisconsin* is amended by revising paragraphs C.1., C.3. and D.3. of Necedah National Wildlife Refuge; and by revising paragraphs B., C. and D.2. of Trempealeau National Wildlife Refuge to read as follows:

§ 32.69 Wisconsin.

* * * * *

Necedah National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

1. The possession of a loaded rifle or shotgun within 50 feet of the centerline of all paved or graveled roads and designated trails, or discharging these weapons from, across, down, or alongside these roads and trails within the refuge are prohibited.

* * * * *

3. Portable tree stands must be removed from the tree at the close of shooting hours each day. All blinds, stands, platforms and ladders must be removed from the refuge at the end of the hunting season.

* * * * *

D. Sport Fishing. * * *

* * * * *

3. Non-motorized boats are permitted in Sprague-Goose Pools only when these pools are open to fishing. Motorized boats are permitted in Suk Cerney Pool.

Trempealeau National Wildlife Refuge

* * * * *

B. Upland Game Hunting. Hunting of ring-necked pheasant, ruffed grouse, grey and fox squirrels and cottontail rabbits is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. * * *

* * * * *

2. Ice fishing shelters must be removed from the refuge following each day's fishing activity.

Dated: August 10, 1993.

Richard N. Smith,

Acting Director.

[FR Doc. 93–22634 Filed 9–21–93; 8:45 am]

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Federal Register

Wednesday
September 22, 1993

Part IV

Department of Education

Program for Children With Severe Disabilities; Inviting Application for New Awards for Fiscal Year (FY) 1994; Notice

DEPARTMENT OF EDUCATION

Program for Children With Severe Disabilities

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal years 1994 and 1995.

SUMMARY: The Secretary announces priorities for fiscal years 1994 and 1995 under the Program for Children with Severe Disabilities. The Secretary takes this action to focus Federal financial assistance on an identified national need for the development and implementation of effective practices to enhance services to infants, toddlers, children, and youth with severe disabilities, including deaf-blindness. These priorities are designed to build the capacity of individuals and agencies to effect change with this population of children and their families.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dawn Hunter, U.S. Department of Education, 400 Maryland Avenue, SW., room 4620, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–5809. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

SUPPLEMENTARY INFORMATION: This notice contains five funding priorities intended to advance the purpose of the Program for Children With Severe Disabilities. The purpose of the program is to provide Federal financial assistance for demonstration or development, research, training, and dissemination activities for children with severe disabilities, including deaf-blindness. These priorities support projects for system change, outreach, training, research, and a research implementation institute.

Through the provision of improved services and better trained service providers, these priorities support National Education Goals 1 and 5 by assisting infants, toddlers, children, and youth with severe disabilities to begin school ready to learn, and when they become adults, to compete in a global economy.

On June 23, 1993 the Secretary published a notice of proposed priorities in the **Federal Register** (58 FR 34188).

Note: This notice of final priorities does not solicit applications. A notice inviting applications under this program is published in a separate notice in this issue of the **Federal Register.**

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, three parties submitted comments. An analysis of the comments and of changes in the priorities since publication of the notice of proposed priorities follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

General

Comment: While two commenters stated that the proposed priorities were commendable because the priorities are responsive to the needs of the field in regard to inclusive education, another commenter contended that by emphasizing serving children in inclusive settings without acknowledging the importance of maintaining a full continuum of services and placement settings for children with disabilities, the proposed priorities failed to recognize the importance of educational placement.

Discussion: The Secretary believes that because effective strategies related to inclusive education are still emerging, it is important to focus discretionary resources in the areas described in the priorities at this time. This is not intended to affect the requirements of the Part B of the Individuals with Disabilities Education Act regarding the continuum of services.

Changes: None.

Comment: One commenter questioned whether the term "general education classroom" is the most descriptive terminology for inclusive schooling. The commenter stated that it would be helpful if the priorities clarified the meaning of the term "general education classroom" to ensure that all students, including students with disabilities, have equal access to schools with sufficient support to meet their individual needs.

Discussion: The Secretary believes that the term "general education classroom," as used in these priorities, is consistent with the goal of inclusion. The Secretary also notes that Part B of IDEA requires that a child be educated in the school the child would attend if not disabled, unless the child's individualized education program requires some other arrangement.

Changes: None.

Proposed Absolute Priority 2—Model Inservice Training Projects To Prepare Personnel To Educate Students With Severe Disabilities in General Education Classrooms and Community Settings

Comment: One commenter wrote that the priority will promote ineffective teacher development programs that are not tailored to the needs of teachers in a given school if the model and materials developed by the projects are packaged. The commenter suggested that rather than requiring the project to package the model and materials, a project should provide a description of the model and the circumstances under which it was used, materials used, and adaptation and implementation issues to be considered when attempting to replicate the model.

Discussion: The Secretary agrees with the commenter that it is important to provide training to teachers based on the needs in particular schools and with regard to children with particular disabilities. However, there is a more critical need at this time to develop training that is generally applicable and useful to large numbers of personnel who are working with children with severe disabilities but who have little or no training. Such training need not be a one time event, nor would users of the inservice models be prevented from adapting the model or materials to better meet the needs of particular teachers. The language of the priority requiring that the model be packaged and that it be easily replicable will ensure that trainers seeking to use the model have the benefit of all the materials developed under the project and need not design new materials unless they so desire to meet particular circumstances.

Changes: None.

Proposed Absolute Priority 5—Institute on Implementing Inclusive Education for Children With Severe Disabilities

Comment: One commenter stated that the evaluation criterion requiring a project to report on the number of children with severe disabilities who are served in inclusive educational programs fails to recognize that it is not important where a child is educated but whether that child is benefiting from his educational placement.

Discussion: The Secretary recognizes the importance of how children are benefiting from inclusive educational programs. This is addressed by the requirement that the institute produce evaluation data about student outcomes.

Changes: None.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to

applications that meet any one of the following priorities. The Secretary funds under this program only applications that meet these absolute priorities:

Absolute Priority 1—Research Projects for Educating Children with Severe Disabilities in Inclusive Settings

Background

This priority supports projects that conduct research to identify new or improved strategies that address the educational and related service needs of children and youth with severe disabilities in inclusive general education settings and, if appropriate, related activities in the community (e.g., employment training settings, and school and community recreation activities).

The field of severe disabilities has moved dramatically toward inclusive educational models within the past five years. Innovative strategies that promote inclusion in academic and social contexts have generated high interest among parents, professionals, employers, and individuals with severe disabilities. Despite the fact that the field has learned a great deal about how to produce positive outcomes for individuals with severe disabilities, many critical issues need to be further addressed. Although a number of strategies have been developed to enable full inclusion of children with disabilities in preschool programs and elementary schools, more research is needed to identify strategies for inclusive practices at the middle school and secondary school levels.

Additional research is needed to (1) determine the relative effectiveness of existing strategies, (2) identify more specifically the supports and conditions that must be present, (3) validate procedures that would ensure adequate student progress in inclusive settings, (4) refine procedures that promote positive and effective social interactions among same-aged peers, (5) determine what peer-mediated strategies promote the active and effective involvement of classmates in inclusive educational programs, (6) identify principles that can be effectively applied in modifying curricula, classroom activities, and instructional materials to ensure meaningful student participation and meet multiple instructional needs, (7) determine optimal use of personnel resources, and determine how use of personnel changes over time, and (8) identify strategies that promote inclusion in out-of-school settings and activities, including employment training settings and community recreational activities.

Priority

To be considered for funding under this priority, a research project must—

(1) Address one or more of the issues identified in the background section of this priority;

(2) Identify specific interventions or strategies to be investigated;

(3) Design the research activities in a manner that is likely to improve services for students with severe disabilities and, if appropriate, their families.

(4) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the interventions or strategies to be studied, the research design, and the target population;

(5) Conduct the research in typical, inclusive school and, if appropriate, community settings;

(6) Conduct the research using methodological procedures designed to produce unambiguous findings (a) regarding the effects of the interventions or strategies and interaction effects between particular approaches and particular groups of students or particular contexts; and (b) for use in national, State, and local policy analysis contexts; and

(7) Produce a variety of descriptive and outcome data, including (a) information regarding the settings, the service providers, the students, and, if applicable, their families, targeted by the project (e.g., age, disabilities, skill and ability levels, and membership in a special population, if appropriate); and (b) multiple, performance outcome data regarding the students who are the focus of the interventions or strategies.

Competitive Preference Priority

Within this absolute priority 1, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet the following competitive priority. The Secretary awards up to 10 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for this program:

Research projects that identify effective interventions or strategies enabling students with severe disabilities to be educated in general education classes (a) at the middle or secondary school levels, or (b) in urban or rural school districts, or both.

Absolute Priority 2—Model Inservice Training Projects To Prepare Personnel To Educate Students With Severe Disabilities in General Education Classrooms and Community Settings

Background

This priority supports capacity building projects that develop, demonstrate, evaluate, and disseminate inservice training models and accompanying materials. The purpose of these models is to prepare administrators, teachers, paraprofessionals, and related service personnel to provide, coordinate, and enhance services that result in students with severe disabilities being educated in general education classrooms and, if appropriate, community settings.

One of the major issues facing special education today is the lack of qualified personnel to meet the educational needs of individuals with severe disabilities. Inservice training is one strategy for meeting the needs of existing personnel by specifically targeting training to identified needs. This strategy can be used to (1) enhance the skills of personnel currently working with students with severe disabilities; (2) supplement training to regular educators; or (3) train personnel who have not previously worked with students with severe disabilities.

This priority is being established to meet the immediate need for trained personnel in inclusive general education and community settings. Because students with severe disabilities are a very heterogenous and low incidence group of students, personnel working with these students in general education classrooms and community settings must often demonstrate a broad array of competencies. These competency areas include, but are not limited to (a) instructional technology for teaching students in a variety of instructional situations, including cooperative learning groups and community-referenced or community-based instruction; (b) curriculum adaptation; (c) assistive technology to enhance participation and communication; (d) strategies for facilitating interactions between students with severe disabilities and their peers without disabilities; and (e) nonaversive behavior management.

In addition, personnel working with students with severe disabilities must have the skills to work collaboratively with a variety of other people (e.g., general and special education teachers, parents, paraprofessionals, related service providers, administrators,

transition specialists) who are interested in the education of these students.

Priority

To be considered for funding under this priority, a model inservice training project must—

(1) Identify the target population to be trained, including their roles and responsibilities, and the national needs addressed by the model;

(2) Delineate a conceptual framework on which the training model is to be based, including changes in personnel roles and responsibilities and the skills needed to implement the new roles or responsibilities;

(3) Identify the content of training, the format for delivery of training, and other activities of the model;

(4) Develop and demonstrate an inservice training model for professionals, paraprofessionals, or both, who are currently providing services to children or youth with severe disabilities and their families, or for those individuals who, through retraining, could provide those services;

(5) Include within the model an array of follow-up and support activities that ensure that personnel participating in the training acquire the skills being taught and use that knowledge in meeting the service needs of students with severe disabilities and their families;

(6) Coordinate with the State agency responsible for the Comprehensive System of Personnel Development (CSPD) under the Individuals with Disabilities Education Act (IDEA) and arrange for credit to be granted to trainees by appropriate agencies, organizations, or institutions of higher education;

(7) Evaluate the inservice training model through direct assessment of participants' skills following the training and, after a period of time, and include some direct observation measures of trainees in the service setting using standardized observational rating techniques; and

(8) Package the inservice training model to include all materials validated during the training effort so that the training can easily be replicated.

Invitational Priority

Within this absolute priority 2, the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Model inservice training projects that provide training to teams of general education, special education, and related service personnel.

Absolute Priority 3—Outreach Projects: Serving Children With Severe Disabilities in General Education and Community Settings

Background

This priority supports projects that build the capacity of educational and other agencies to adopt and implement proven models, or components of those models based on specific needs. At this time States are striving to provide improved services to children with severe disabilities in general education and community settings. Thus, State agencies and local service agencies need information and assistance in accessing the range of available, successful practices, curricula, and products. The models or components of models selected for outreach need not have been developed through this program. In addition, projects may disseminate and help replicate multiple models or components of models that were not developed by the applicant.

The practices to be implemented during the outreach activities may focus on, but are not limited to, transition from school to adult life, the use of activity-based curricula, nonaversive behavior management, facilitating social relationships in school and community settings, or strategies that facilitate the inclusion of children with severe disabilities into their neighborhood schools and local communities. To increase their visibility and to enhance the impact of outreach activities, projects are encouraged to establish adoption sites in multiple States.

Priority

To be considered for funding under this priority, an outreach project must—

(1) Disseminate information about and assist in replicating a proven model or models—or proven components of models—that provide or improve services for children with severe disabilities;

(2) Coordinate its dissemination and replication activities with (a) the lead agency for Part H of the IDEA for early intervention services or the State educational agency for special education, as well as (b) technical assistance, information, and personnel development networks within the State;

(3) Include (a) approaches relevant to programming in general education and local community settings; (b) active involvement of children and their families in the design, implementation, and evaluation of project activities; and (c) interagency coordination if multiple agencies are involved in the provision of services;

(4) Ensure that the model or components of models are consistent with Part B of the IDEA, are state-of-the-art, match the needs of the proposed sites, and have recent unambiguous evaluation information supporting their effectiveness;

(5) Use activities that include, but need not be limited to, public awareness, product development and dissemination, site development, training, and technical assistance;

(6) Describe the effects of model components (e.g., expected costs, needed personnel, staff training, equipment) on potential users, the sequence of implementation activities, and the criteria for selecting cooperating sites; and

(7) Evaluate the outreach activities to determine their effectiveness. The evaluation must include measures on the number of children and families served at each site, child and family progress, types and numbers of sites where outreach activities are conducted, number of persons trained, types of follow-up activities, and any changes in the model made by sites.

Competitive Priority

Within this absolute priority 3, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet the following competitive priority. The Secretary awards up to 10 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for this program:

Outreach projects that provide evidence that they will establish implementation sites in urban or rural areas, or both.

Absolute Priority 4—Statewide Systems Change: Children With Severe Disabilities

Background

This priority supports projects that enhance the capacity of States to serve children with severe disabilities—including children who are deaf-blind—in (a) developing, in conjunction with the IDEA Part B and Part H State Plans, activities to improve the quality of early intervention, special education, and related services in the State for children with severe disabilities, birth through 21 years of age; and (b) changing the delivery of these services from segregated to general education settings and natural environments in the child's neighborhood. It is expected that

projects will significantly increase the number of children with severe disabilities the State serves in general education settings, alongside children of the same age without disabilities.

Projects funded under this priority have been most successful in States that, prior to applying for funds, had already made the commitment to change the delivery of services for children with severe disabilities from segregated to general education settings. Therefore, the Secretary anticipates that projects proposed under this priority will show that such a commitment is already in place. Projects that have been most successful have also been characterized by a broad-based approach to systems change involving a variety of groups with a direct interest.

Although it is recognized that States are at different stages of changing the delivery of services from segregated to general education settings, the Secretary encourages projects to include representatives from the following groups in all planning and implementation activities: students and adults with severe disabilities and their families, early intervention personnel, general education and special education teachers, support personnel, related service personnel, school administrators, community agencies, institutions of higher education faculty, State legislators, and a variety of State agency staff.

Priority

To be considered for funding under this priority, a Statewide systems change project must—

(1) Establish a project advisory board that (a) is responsible for providing significant recommendations on project planning, implementation, and evaluation activities; and (b) has representation by parents of children participating in the project, service providers (both general education and special education, and providers of related services), institutions of higher education, relevant professional organizations, and State agency staff;

(2) Determine the resources, both human and fiscal, available at the community level to provide quality services to children with severe disabilities as well as resources available through other agencies or parties;

(3) Carry out activities that would assist children with severe disabilities to achieve their highest potential outcomes in general education settings within their neighborhoods—or, in the case of infants and toddlers, in natural environments, including nonsegregated settings—by implementing planned, capacity building activities that result in systematic and systemic change. These activities must include, but need not be limited to—

(a) Policy analysis and, if necessary, policy revision or further policy development, including development of necessary interagency agreements;

(b) Public awareness;

(c) Product development and dissemination;

(d) Site development;

(e) Staff and parent training;

(f) Technical assistance; and

(g) Analysis and, if necessary, revision of existing teacher training programs, including inservice training of faculty of institutions of higher education;

(4) Disseminate formal, written policies and procedures to relevant State agencies, institutions of higher education, local education agencies, other relevant community agencies, and professional and parent organizations for coordinating services to the target population of children with severe disabilities;

(5) Coordinate activities with the State and Multi-State Services Projects for Children with Deaf-Blindness, the State educational agency (including the State coordinator of services for children with severe disabilities, the coordinator for the comprehensive system of personnel development, and the State's transition project, if the State has a federally funded grant under State Systems for Transition Services), the lead agency for Part H of IDEA for early intervention services, other relevant State agencies, and institutions of higher education, as well as with technical assistance, information, and personnel development networks within the State, the Early Childhood Research Institute on Integration, the National Early Childhood Technical Assistance System, and the Institute on Implementing Inclusive Education for Children with Severe Disabilities; and

(6) Implement an evaluation plan that includes performance measures for—

(a) Changes in the delivery of special education and related services to the target population, and, in the case of infants and toddlers, changes in the delivery of early intervention services;

(b) The movement of children and youth with severe disabilities in the State from segregated settings to neighborhood general education settings—alongside their peers of the same age—and, in the case of infants and toddlers, to natural environments;

(c) The effectiveness of the training and technical assistance products and procedures; and

(d) The types and numbers of sites where activities are conducted, number and types of persons trained, types of follow-up activities, and number of children and families served at the site where activities were conducted.

Competitive Priority

Within this absolute priority 4, the Secretary, under 34 CFR 75.105(c)(2)(i), gives preference to applications that meet the following competitive priority. The Secretary awards up to 10 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for this program:

Statewide Systems Change projects from States that have not received a new Statewide System Change award since 1987.

Absolute Priority 5—Institute on Implementing Inclusive Education for Children With Severe Disabilities

Background

During the past five years research and demonstration activities related to inclusive education have expanded dramatically. Increasing numbers of State and local education agencies are involved in school reform and inclusion efforts to ensure that all students, including those with severe disabilities, are provided with equitable opportunities to receive effective educational and related services in their neighborhood schools. This priority is designed to help bridge the gap between the knowledge base and the state of practice by (a) translating theory and research about inclusive education into educational practices, and (b) increasing the capacity of State and local education agencies to provide inclusive educational opportunities.

The Secretary requires the Institute to coordinate its activities on an on-going basis with other relevant efforts sponsored by the Office of Special Education Programs (OSEP), including the Early Childhood Research Institute on Integration.

The Secretary anticipates funding one cooperative agreement with a project period of up to 60 months, subject to the requirements of 34 CFR 75.253(a) for continuation awards. In addition, in determining whether to continue the Institute for the last two years of the project period, the Secretary considers the recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day visit to the project, are to be performed during the last half of the Institute's second year, and may be included in that year's

annual evaluation that the recipient is required to perform under 34 CFR 75.590.

Priority

To be considered for funding under this priority, an Institute on Implementing Inclusive Education project must—

(1) Present a synthesis of the relevant extant inclusion theory and research to serve as the conceptual and empirical basis for institute activities;

(2) Translate this knowledge base into inclusive educational practices and materials for use by program implementers and policy makers at the State, district, building, and classroom levels;

(3) Provide training and technical assistance for the adoption, use, and maintenance of inclusive educational practices to interested projects funded under Statewide Systems Change and to other educational agencies interested in systems change activities;

(4) Evaluate the effectiveness of the institute's activities in assisting with the implementation of inclusive educational practices by assessing (a) the types and number of sites where activities are conducted, (b) the number and types of people trained, (c) follow-up activities, and (d) the number of children with severe disabilities who are served in inclusive educational programs;

(5) Produce a variety of evaluation data, including (a) factors that contribute to the successful adoption, use, and maintenance of inclusive educational efforts; (b) descriptions of the instructional contexts and settings, classroom instructional supports, school organizational and administrative patterns, and the attitudes of school administrators, school personnel, families, and students; (c) information about student outcomes and the social validity of project activities; (d) information about how project activities are included as broader school reform efforts at State and local levels; (e) information about expected costs related to the successful adoption, use and maintenance of inclusive educational practices; and (f) analysis of policies and procedures at the State and local level;

(6) Provide training and technical assistance on inclusive educational practices to other OSEP-sponsored technical assistance entities and clearinghouses, including the National Early Childhood Technical Assistance System, the Federal and Regional Resource Centers, the Transition Network, the State and Multi-State Services to Children with Deaf-Blindness technical assistance project, Technical Assistance to Parent Program projects;

(7) Establish linkages and collaborative relationships among OSEP-sponsored research projects, including projects funded under Developing Innovations for Educating Children with Severe Disabilities Full-Time in General Education Classrooms, the Early Childhood Research Institute on Integration, and the Social Relationships Research Institute for Children and Youth with Severe Disabilities;

(8) Provide training and experience in translating research to practice, materials development, technical assistance, dissemination, and program evaluation for five graduate students annually;

(9) Conduct topical meetings and other activities on strategies and emerging practices in inclusive education; and

(10) Collect and ensure timely dissemination to policymakers and program implementers of information on inclusion, systems change, school reform and restructuring initiatives.

In determining whether to continue the Institute for the fourth and fifth years of the project, in addition to considering factors in 34 CFR 75.253(a), the Secretary considers the following:

(a) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Institute; and

(b) The degree to which the Institute's technical assistance, evaluation, and dissemination activities demonstrate the potential for significantly increasing the capacity of local school districts and State educational agencies to serve children with severe disabilities in inclusive school and community settings.

In order to apply for funding for years four and five, the Institute must set aside in its budget for the second year, funds to cover costs associated with the services to be performed by the review team appointed by the Secretary to evaluate the project in the second year. These funds are estimated to be approximately $4,000.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: 34 CFR part 315.

Program Authority: 20 U.S.C. 1424.

Dated: September 16, 1993.

Andrew Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance Number: Program for Children with Severe Disabilities 84.086)

[FR Doc. 93–23194 Filed 9–21–93; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Program for Children With Severe Disabilities; Notice Inviting Application for New Awards for Fiscal Year (FY) 1994

[CFDA No.: 84.086]

Purpose of Program: The Program for Children with Severe Disabilities provides Federal assistance to address the special needs of infants, toddlers, children, and youth with severe disabilities—including children with deaf-blindness—and their families.

The competitions announced by this notice support National Education Goals 1 and 5 by assisting infants, toddlers, children, and youth with severe disabilities to enter school ready to learn, and, when they become adults, to compete in a global economy.

Eligible Applicants: Any public or nonprofit private organization or institutions may apply for a grant under this program.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 315.

Priority: The priorities in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**, apply to these competitions. However, no competition for new awards under Outreach Projects: Serving Children with Severe Disabilities in General Education and Community Settings will be held in 1994.

Applications Available: October 20, 1993.

Note: The Department is not bound by any estimates in this notice.

For Applications: To request an application, telephone (202) 205–8485. Individuals who use a

telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

FOR FURTHER INFORMATION CONTACT: Dawn Hunter, U.S. Department of Education, 400 Maryland Avenue, SW., room 4620, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–5809. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8169.

PROGRAM FOR CHILDREN WITH SEVERE DISABILITIES

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Research Projects for Educating Children with Severe Disabilities in Inclusive Settings (CFDA 84.086D).	12/15/93 .	2/14/94 ...	$525,000	$170,00–$180,000 .	$175,000	3	up to 36.
Model Inservice Training Projects to Prepare Personnel to Educate Students with Severe Disabilities in General Education Classrooms and Community Settings (CFDA 84.086R).	2/03/94 ...	4/05/94 ...	$495,000	$155,000–$170,000	$165,000	3	up to 36.
Statewide Systems Change: Children with Severe Disabilities (CFDA 84.086J).	1/14/94 ...	3/16/94 ...	$750,000	$210,000–$260,000	$250,000	3	up to 60.
Institute on Implementing Inclusive Education for Children with Severe Disabilities (CFDA 84.086V).	12/30/93 .	3/01/94 ...	$700,000	$690,000–$710,000	$700,000	1	up to 60.

Program Authority: 20 U.S.C. 1424.

Dated: September 16, 1993.

Andrew Pepin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93–23195 Filed 9–21–93; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
September 22, 1993

Part V

Postal Service

39 CFR Part 111

Preparation Requirements for Letter-Size ZIP+4 and Barcodes Rate Mailings; Proposed Rule

POSTAL SERVICE

39 CFR Part 111

Preparation Requirements for Letter-Size ZIP+4 and Barcoded Rate Mailings

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal will amend the Domestic Mail Manual (DMM) requirements govering the preparation of second- and third-class letter-size automation rate mailings. This proposal primarily affects the presort and documentation of the residual portion of second- and third-class ZIP+4 and barcoded letter-size mail under DMM Modules E and M. Also included are an optional procedure for preparing the residual portion of First-Class ZIP+4 and barcoded letter-size mail and changes to Line 2 of AADC tray labels for letter-size mail prepared under DMM M815.

DATES: Comments must be received on or before October 22, 1993.

ADDRESSES: All written comments should be mailed or delivered to the Manager, Customer Mail Preparation, U.S. Postal Service, room 5621, 475 L'Enfant Plaza SW., Washington, DC 20260–6805. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday in room 5621 at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Alexandrovich, (202) 268–2260.

SUPPLEMENTARY INFORMATION: On March 21, 1993, new preparation requirements took effect for letter-size pieces in automated rate categories. These requirements included significant changes in the preparation and processing of this mail, particularly for second- and third-class letters. The more salient preparation changes for second- and third-class letters were: (a) The preparation of mail into trays rather than sacks; (b) establishing a uniform 50-piece minimum for 3-digit presort; and (C) eliminating the states and mixed-states presort of the residual/basic portion of the mailing.

When these changes were made, the Postal Service did not anticipate the magnitude of the resulting increase in the volume of second- and third-class working residual mail at origin. Under the previous preparation requirements, second- and third-class residual (non-qualifying) mail was presorted to states or mixed states sacks. These sacks were routed from the origin to the appropriate state distribution center (SDC) for processing. The SDCs had the resources, in terms of equipment, staffing, and sort programs, to efficiently process residual volumes of states and mixed states mail.

With the elimination of states and mixed states presort requirements for second- and third-class residual/basic pieces in automation rate letter-size mailings, most residual mail must be processed at the entry Sectional Center Facility (SCF) site. This has caused considerable problems at many processing facilities since most do not have existing outgoing second- and third-class letter processing operations. At the same time, the basic presort rates applicable to the residual portion of these mailings are based on some presortation by the mailer.

This proposal will relieve the problems at these SCFs by requiring that all second- and third-class residual mail in automation rate mailings must be presorted and packaged at least to the Automated Area Distribution Center (AADC) level, and will replace the existing AADC trays preparation option for First-Class Mail with an option that accords with second- and third-class requirements.

Presortation of the residual portion of second- and third-class automated mailings to AADCs will elminate the need for piece processing of this mail at the entry SCF. Presorting the residual portion to the AADC level will not be required for First-Class automated letters which, unlike second- and third-class letters, pay a single-piece rate when AADC packages are prepared. There is no minimum for the preparation of AADC packages; a single piece to an AADC must be labeled to the AADC, and two or more pieces must be packaged.

The following is a summary of the proposed changes, by preparation option in DMM Module M.

ZIP+4 Presort and Barcoded-Tray-Based Mailings (DMM M812 and M814)

In tray-based mailings, the preparation of the qualifying portion of the mailing would not change for second- or third-class mail. There are no changes to preparation of First-Class mailings. In the residual portion of second- and third-class mailings, preparation would change as follows:

- All mail must be sorted by AADC area.
- Full AADC trays must be prepared if enough pieces exist to fill a tray.
- Less-than-full AADC trays are not permitted except for optional overflow trays.
- Mail remaining after preparing AADC trays must be placed in mixed-AADC trays. All mail in mixed-AADC trays must be prepared and labeled in AADC packages.
- AADC packages must bear a pink Label A or Optional Endorsement Line (OEL).
- AADC packages must be banded; separator cards are not allowed in AADC or mixed-AADC trays.

ZIP+4 Presort and Barcoded- Package-Based Mailings (DMM M813, M815, and M816)

In package-based mailings, the residual portion of second-and third-class mailings would be prepared under one of the two options described below. First-Class Mailings may be prepared under Residual Option 1 which will replace the existing AADC Tray option. First-Class Mail may continue to be prepared under either the existing ZIP Code sequencing and listing option or the physical separation option.

Residual Option 1

Under Residual Option 1, the residual and qualifying portions of the mailing are combined in SCF and AADC trays. Mixed-AADC trays are optional and are limited to residual mail. Placing residual mail in SCF trays is optional. Residual pieces in SCF trays must be prepared and labeled in 3-digit packages. Residual pieces in AADC and mixed-AADC trays must be prepared in AADC packages and labeled with a pink Label A or an OEL, except that pieces in full AADC trays containing only residual mail need not be packaged. AADC trays must be prepared if enough pieces exist to fill a tray and less-than-full AADC trays are permitted. In barcoded three-tier package-based mailings prepared under M816, residual mail is not permitted in the 5-digit tier.

Residual Option 2

Under Residual Option 2, the residual of the mailing is presented separately from the qualifying portion in AADC and optional mixed-AADC trays. AADC trays must be prepared if enough pieces exist to fill a tray. All pieces in less-than-full AADC and mixed-AADC trays must be prepared in AADC packages and labeled with a pink Label A or an OEL.

In addition, the AADC tray label for two-tier package-based preparation under DMM M815 is revised to change the position of the term "LTRS" on the second line so that it is consistent with other tray labels.

Note: Expect format changes in the final rule as the language in this proposal is edited to conform to that of the new DMM. These revisions will be exclusive of any changes made as a result of input received during the comment period.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

MODULE E, ELIGIBILITY

2. Make the following changes to Domestic Mail Manual (DMM) Module E: Eligibility.

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E200 SECOND-CLASS MAIL

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E240 Automation Discounts.

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E242 ZIP+4 Discounts.

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E242.2.0 Qualifying Presort.

E242.2.1 Tray-Based.

In tray-based presort mailings under M812:

* * * * *

d. In AADC and mixed-AADC trays, ZIP+4 coded or delivery point barcoded pieces can qualify for the A/G/J1 ZIP+4 rates; other pieces can qualify for the A/G/J1 presort rates.

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E244 Barcoded Discounts (Letter-Size Pieces).

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E244.2.0 Qualifying Presort.

E244.2.1 Tray-Based.

In tray-based mailings under M814:

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d. In AADC and mixed-AADC trays, delivery point barcoded pieces can qualify for the A/G/J1 Barcoded rates; ZIP+4 coded nondelivery point barcoded pieces that meet the standards in C830 and do not bear a ZIP+4 barcode in the lower right corner can qualify for the A/G/J1 ZIP+4 rates; others; other pieces qualify for the A/G/J1 presourt rates.

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E300 THIRD-CLASS MAIL

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E340 Automation Discounts.

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E342 ZIP+4 Discounts.

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E342.2.0 Qualifying Presort.

E342.2.1 Tray-Based.

In tray-based presort mailings under M812,ZIP+4 coded or delivery point barcodedpieces in full or overflow 5-digit, 3-digit, and SCF trays can qualify for the 3/5 ZIP+4 rate; other pieces can qualify for the 3/5 presort rate. One less-than-full SCF tray is permitted for the SCF serving the post office where the mailing is entered. ZIP+4 coded or delivery point barcoded pieces in AADC or mixed-AADC trays can qualify for the basic ZIP+4 rate; other pieces can qualify for the basic presort rate.

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E344 Barcoded Discounts (Letter-Size Pieces).

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E344.2.0 Qualifying Presort.

E344.2.1 Tray-Based.

In tray-based mailings under M814:

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c. In AADC or mixed-AADC trays, delivery point barcoded pieces can qualify for the basic Barcoded rate; ZIP+4 coded nondelivery point barcoded pieces that meet the standards in C830, and do not bear a ZIP+4 barcode in the lower right corner can qualify for the basic ZIP+4 rate; other pieces qualify for the basic presort rates.

MODULE M, MAIL PREPARATION AND SORTATION

3. Make the following changes to DMM Module M: Mail Preparation and Sortation:

M000 GENERAL PREPARATION STANDARDS

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M013 Optional Endorsement Lines.

M013.1.0 Use.

M013.1.1 Address Block, Label.

Mailers may prepare mailings without applying pressure-sensitive package labels to the top mailpiece of packages by using a specific optional endorsement line above the address block or on the address label on the top mailpiece of a package as shown below:

On FIRM PACKAGES use
  FIRM 12345
On CARRIER ROUTE use
  CAR-RT-SORT**B–001
On 5-DIGIT PACKAGES use
  5-DIGIT 12345
On OPTIONAL CITY PACKAGES use
  MIXED CITY 12345 (Use lowest 5-digit ZIP Code assigned to that city.)
On 3-DIGIT PACKAGES use
  3-DIGIT 771
On SCF PACKAGES use
  SCF 750 (Use correct 3-digit ZIP Code as shown in L004.)
On OPTIONAL SDC PACKAGES use
  ALL FOR SDC
On STATE PACKAGES use
  ALL FOR STATE
On MIXED STATES PACKAGES use
  MIXED STATES
On AADC PACKAGES use
  ALL FOR AADC
On RESIDUAL PACKAGES use
  WORKING

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M013.2.0 Format.

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M013.2.6 ZIP Code.

Except for carrier route presort packages, state distribution center (SDC) packages, state packages, AADC packages, and mixed states packages, or (for fourth-class bound printed matter) carrier route packages, the optional endorsement line must include the applicable ZIP Code information. Mixed-state bundles of fourth-class bound printed matter must have facing slips with the information required by standard.

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M020 Packages and Bundles.

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M020.3.0 Additional Standards-Automation Rate Mailings.

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M020.3.3 Prohibited.

Packages must not be prepared in full trays in tray-based mailings of larger than postcard-size pieces except in mixed-AADC trays and as permitted by standard for oversize pieces.

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M020.3.6 Separator Cards.

Separator cards: a. Must be used for First-Class Mail to delineate groups of 100 pieces within trays of residual mail if the physical separation option is chosen.

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M020.3.7 Identification [Revise the last sentence to read as follows: "Residual First-Class pieces may be prepared using separator cards as permitted by standard."]

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M800 AUTOMATION-COMPATIBLE MAIL

M810 Letter-Size Mail.

M812 ZIP+4 Presort—Tray-Based Mailings.

M812.1.0 Basic Standards.

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M812.1.5 Packaging.

Separator cards are permitted only under 4.3. Packaging is required:

a. For mailings consisting entirely of pieces that qualify *by size* for First-Class card rates, regardless of the actual rate claimed or class of mail. Package labels are required in less-than-full trays.

b. For second- and third-class mail in mixed-AADC trays. Package labels are required.

M812.1.6 No Packaging.

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c. Residual mail must be prepared under 4.0 or 5.0.

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M812.4.0 Residual Mail—First-Class.

M812.4.1 Definition.

Pieces remaining after packages and trays are prepared under 2.0 or 3.0 are residual (nonqualifying) mail. Residual mail must be prepared under 4.2 or 4.3, except that preparation may be finer than those standards, by agreement between the mailer and the entry post office for multiple acceptance times.

M812.4.2 Sequence, Grouping.

[Delete current M812.4.2f through M812.4.2h and insert the following:]

* * * * *

f. For Line 1 of the tray label, use "MXD," followed by the applicable name, state, and ZIP Code of the SCF of entry from L003 or L004.

g. For Line 2: FCM LTRS followed by ZIP+4 WORKING or ZIP+4 WKG.

M812.4.3 Separation by Rate.

a. [Insert current M812.4.3a. Delete the phrase "First-Class" in M812.4.3a(1) and M812.4.3a(3). Delete sections M812.4.3a(4) and M812.4.3a(5).]

b. [Insert current M812.4.3b.]

c. For Line 1 of the tray label, use "MXD," followed by the applicable entry SCF name, state, and ZIP Code in L003 or L004.

d. For Line 2: FCM LTRS followed by:

(1) On trays of ZIP+4 mail: ZIP+4 WORKING or ZIP+4 WKG.

(2) On trays of other mail: WORKING or WKG.

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[Insert new M812.5.0; renumber current M812.5.0 as M812.6.0.]

M812.5.0 Residual Mail—Second-and Third-Class

M812.5.1 Definition.

Pieces remaining after packages and trays are prepared under 2.0 or 3.0 are residual (nonqualifying) mail.

M812.5.2 Grouping.

Residual pieces must be sorted by AADC area. A piece count listing must be provided that shows by AADC area and rate category the number of pieces with and without ZIP+4 codes.

M812.5.3 Packaging.

Residual mail in mixed-AADC trays must be packaged and labeled.

M812.5.4 Size.

Tray size: a. AADC: full trays; one-less-than-full tray permitted per destination per mailing.

b. Mixed-AADC: full trays; one less-than-full tray permitted.

M812.5.5 Presort and Labeling.

Residual presort sequence and labeling: a. AADC (required); use L804 on Line 1.

b. Mixed-AADC (optional with no minimum); on Line 1 use "DIS" followed by the applicable origin SCF name, state, and ZIP Code from L003 or L004.

M812.5.6 Line 2.

Use 2C, NEWS, or 3C, followed by: a. For AADC trays: AADC ZIP+4 PRESORT.

b. For mixed-AADC trays: ZIP+4 WORKING or ZIP+4 WKG.

M812.5.7 Presentation.

When presented to the USPS, trays of residual mail must be separate from trays of qualifying mail.

M812.6.0 DOCUMENTATION—FIRST-CLASS.

M812.6.1 Mailing Statement [Insert current M812.5.2.]

M812.6.2 Overflow Trays. [Insert current M812.5.2.]

M812.6.3 When Not Required.

[Insert current M812 5.3 and revise as follows:]

Documentation under 6.4 through 6 9 is not required if each piece in the mailing is correctly ZIP+4 coded or delivery point barcoded and either:

a. Has postage affixed at the exact rate for which it qualifies; or

b. Is of identical weight, the pieces in each tray are subject to the same rate, and the trays for each rate are separated when presented to the USPS.

M812.6.4 Standards.

[Insert current M812.5.4; delete "Combined mailings of second-class publications must be documented under E238.".]

M812.6.5 Segmentation, Labeling.

Documentation must be segmented and labeled by sortation (tray level). Within each, tray destinations and contents must be reported by ZIP Code (ZIP Code option) as shown in 6.6 or by tray label or number and ZIP Code (tray label option) as shown in 6.7. Under either option, data must be presented as shown in 6.8 and 6 9.

M812.6.6 Zip Code Option.

[Insert current M812.5.6]

M812.6.7 Tray Label Option.

[Insert current M812.5.7]

M812.6.8 Line Entries Under Either Option.

[Insert current M812.5.8; delete 8c and 8d and revise 8a and 8b as follows:]

a. In mailings of nonidentical-weight pieces with postage affixed, to separately report pieces weighing 2 ounces or less and pieces weighing more, and by ounce increment if postage is paid by precanceled stamps, the pieces weigh more than 1 ounce, and postage beyond the first ounce rate is not affixed.

b In postage-affixed mailings, in which all pieces do not have the correct postage, including those previously separated under 6.8a, to separately report letter mail weighing 1 ounce or less and card-rate pieces.

M812.6.9 Subtotals and Summaries Under Either Option.

[Insert current M812.5.9; revise M812.5.9b as follows:]

b. Each rate (or weight increment, combination of rate and discount, or other variable in 6.8), the number of pieces at each rate, the total postage at each rate, and the total postage for the mailing.

M812.7.0 DOCUMENTATION—SECOND-AND THIRD-CLASS

M812.7.1 Mailing Statement.

A complete, signed mailing statement, using the correct USPS form or an approved facsimile, must accompany each mailing. The endorsement "M812" must be placed at the top and, as appropriate, "Automated Site" (if prepared under 3.0), "ZIP Code Option" or "Tray Label Option," based on the documentation method used.

M812.7.2 Overflow Trays.

If there are overflow trays, a listing of them must accompany the mailing statement regardless of other documentation.

M812.7.3 When Not Required.

Documentation under 7.4 through 7.9 is not required if each piece in the mailing is correctly ZIP+4 coded or delivery point barcoded and either:

a. Has postage affixed at the exact rate for which it qualifies; or

b. Is of identical weight, the pieces in each tray are subject to the same rate,

and the trays for each rate are separated when presented to the USPS.

M812.7.4 Standards.

Documentation must meet the basic standards in P012 and those below. Abbreviated documentation may be provided under M817. Combined mailings of second-class publications must be documented under E238.

M812.7.5 Segmentation, Labeling.

Documentation must be segmented and labeled by sortation (tray level). Within each, tray destinations and contents must be reported by ZIP Code (ZIP Code option) as shown in 7.6 or by tray label or number and ZIP Code (tray label option) as shown in 7.7. Under either option, data must be presented as shown in 7 8 and 7.9.

M812.7.6 ZIP Code Option.

Under the ZIP Code option, individual entries for each type of tray destination must be listed sequentially by ZIP Code. Volume in overflow trays must be included in the corresponding entry even though there is a list of overflow trays.

a. For 5-digit trays: 5-digit ZIP Code.

b For city trays: lowest assigned 5-digit ZIP Code.

c. For 3-digit trays: 3-digit ZIP Code.

d. For SCF trays: 3-digit ZIP Code.

e. For AADC trays: The prefix "AADC" followed by the 3-digit AADC code in L804 (L803 for Automated Sites).

f. For mixed-AADC trays: for each AADC package, the prefix "AADC" followed by the 3-digit AADC code in L804 (L803 for Automated Sites).

M812.7.7 Tray Label Option.

Under the tray label option, individual entries for each tray must be listed sequentially by the unique tray number on each label or by Line 1 on the label. The contents of each overflow tray is reported as an individual entry even though there is a list of overflow trays. Each tray entry must be subdivided as needed to report volume sequentially by ZIP Code in the tray as follows:

a. For 5-digit trays: 5-digit ZIP Code.

b. For city trays: lowest assigned 5-digit ZIP Code.

c. For 3-digit trays: 3-digit ZIP Code.

d. For SCF trays: 3-digit ZIP Code.

e. For AADC trays: The prefix "AADC" followed by the 3-digit AADC code in L804 (L803 for Automated Sites).

f. For mixed-AADC trays: for each AADC package, the prefix "AADC" followed by the 3-digit AADC code in L804 (L803 for Automated Sites).

M812.7.8 Line Entries Under Either Option.

Under either option, each line entry must report ZIP+4 coded (including delivery point barcoded) and non-ZIP+4 coded pieces by each rate for which specific numbers of pieces are eligible, and a cumulative total for the segment through that entry. As applicable, data on each line must be broken down further:

a. In second-class mailings, to separately report in-county and outside-county pieces, and level A/G/J1 and level B/H/J3 rates.

b In third-class mailings, to separately report pieces at each destination entry rate.

M812.7.9 Subtotals and Summaries Under Either Option.

Each column of data must be subtotaled at the end of each segment of the report and a summary must list data for the entire mailing, including the residual. The summary must include:

a. The number of pieces with a ZIP+4 code or delivery point barcode, the number without, the total number of pieces in the mailing, and the percentage with ZIP+4 codes or delivery point barcodes.

b Each rate (or other variable 7.8), the number of pieces at each rate, the total postage at each rate, and the postal postage for the mailing. For second-class mailings, the postage rates and computed totals may be omitted.

c. A list of overflow trays.

d. For postage-affixed mailings, further detail must be added as needed to account for the value of postage affixed, if less than the applicable amount and the net due, to yield the correct postage.

M813 [illegible]-4 Presort—Package-Based Mailings.

M813.1.0 BASIC STANDARDS

M813.1.1 Standards.

First-Class Mail claimed at a ZIP+4 presort rate must be prepared as a package-based mailing under 2.0, 3.0 or 4.0, 5.0, and 8.0, or as a tray-based mailing under M812. Second- and third-class mail must be prepared as package-based mailing under 2.0, 6.0 or 7.0, and 9.0, or as a tray-based mailing under M812. Grouping, packaging, labeling, and traying are subject to the standards in M010 through M030.

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M813.1.3 Packaging.

[Add the following sentence to the end of the section; "Packaging (no separator cards) is required in AADC trays, and mixed-AADC trays, except for full AADC trays containing only residual pieces."]

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M813.1.5 Separator Cards.

Separator cards may not be used in a less-than-full tray for the entry SCF, in AADC trays, in mixed-AADC trays, or in the residual portion unless permitted by 5.0.

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M813.2.0 PACKAGE PREPARATION

M813.2.1 Size.

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c. 3-digit:

(1) Required at 50 pieces. Smaller packages prohibited at 3/5 Presort rates.

(2) Optional with no minimum for residual pieces in SCF trays and in 3-digit trays for single 3-digit SCFs (First-, second-, and third-class under Residual Option 1 only).

d. AADC: required with no minimum:

(1) For residual pieces in AADC trays that also contain qualifying packages under Residual Option 1.

(2) For residual pieces in less-than-full AADC trays.

(3) For residual pieces in mixed-AADC trays.

M813.2.2 Presort and Labeling.

* * * * *

c. 3-digit (required qualifying and optional residual); use green Label 3 or OEL.

d. AADC (required for residual pieces in AADC trays that also contain qualifying mail, in less-than-full AADC trays, and in mixed-AADC trays only); use pink Label A or OEL.

M813.3.0 TRAY PREPARATION—FIRST-CLASS QUALIFYING MAIL

M813.3.1 Excess Mail.

Packages or portions of packages remaining after full trays are prepared under 3.2a through 3.2c must be placed in full trays to the next available level or in AADC trays.

M813.3.2 Size.

[Delete M813.3.2b; renumber M813.3.2c through M813.3.2e as M813.3.2b through M813.3.2d]

M813.3.3 Presort Sequence and Labeling.

[Delete M813.3.3b; renumber M813.3.3c through M813.3.3e as M813.3.3b through M813.3.3d; revise new sections M813.3.3b through M813.3.3d as follows:]

b. 3-digit (required); for nonmilitary mail, use L002 on Line 1 for unique 3-digit ZIPs; use L003 or L004 (without letters "SCF" and using the 3-digit ZIP Code of the tray contents) for others; on

Line 1 for military mail, use "APO" or "FPO" followed by AE (for 3-digit ZIP Code prefixes 090–093 and 095), or AP (for ZIPs 966), or "APO/FPO," followed by AE (for ZIPs 094 and 096–098), AA (for ZIPs 340), or AP (for ZIPs 962–965), followed by the destination 3-digit ZIP Code prefix.

c. SCF (required); use L004 on Line 1 for mail for listed 3-digit areas.

d. AADC (required); use L804 on Line 1.

M813.3.4 Line 2.

Line 2: FCM LTRS and:

a. On 5-digit, 3-digit, and SCF trays: ZIP+4 PRESORT.

b. On AADC trays: AADC ZIP+4 PRESORT.

M813.4.0 OPTIONAL PREPARATION FOR AUTOMATED SITES—FIRST-CLASS QUALIFYING MAIL

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M813.4.7 Line 2.

Line 2: FCM LTRS and: [Insert current M813.4.7a and b.]

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M813.5.0 RESIDUAL MAIL—FIRST-CLASS

M813.5.1 Definition.

Pieces remaining after packages and trays are prepared under 2.1a through 2.1c(1), 2.2a through 2.2c(1), 3.0, and 4.0 are residual (nonqualifying) mail. Residual mail must be prepared under 5.2, 5.3, or 5.4, except that preparation may be finer than those standards, by agreement between the mailer and the entry post office for multiple acceptance times.

M813.5.2 Residual Option 1.

Under this option, residual pieces are packaged by AADC and placed in AADC trays with qualifying packages and in optional mixed-AADC trays. At the mailer's option, residual mail may also be packaged by 3-digit ZIP Code and placed in SCF trays. Packages and trays must be prepared under 2.1, 2.2, and 6.4c through f. AADC trays containing only residual AADC packages are allowed. Mixed-AADC trays are limited to residual AADC packages only.

M813.5.3 Sequence, Grouping.

[Delete current M813.5.2f through h and insert the following:]

* * * * *

f. For Line 1 of the tray label, use "MXD," followed by the applicable origin SCF name, state, and ZIP Code from L003 or L004.

g. For Line 2: FCM LTRS followed by ZIP+4 Working or ZIP+4 WKG.

M813.5.4 Separation by Rate.

[In current M813.5.3, delete the phrase "First-Class" in M813.5.3a(1) and M813.5.3a(3). Delete sections M813.5.3a(4) and M813.5.3a(5). Revise M813.5.3c and M813.5.3d to read as follows:]

c. For Line 1 of the tray label, use "MXD," followed by the applicable origin SCF name, state, and ZIP Code in L003 or L004.

d. For Line 2: "FCM LTRS" followed by:

(1) On trays of ZIP+4 mail: ZIP+4 WORKING or ZIP+4 WKG.

(2) On trays of other mail: WORKING or WKG.

[Insert new M813.6.0 and M813.7.0; renumber current M813.6.0 as M813.8.0.]

M813.6.0 TRAY PREPARATION—SECOND- AND THIRD-CLASS MAIL

M813.6.1 Qualifying Mail.

Pieces prepared under 2.1a through 2.1c(1) and 2.2a through 2.2c are qualifying mail. Qualifying mail may not be placed in mixed-AADC trays.

M813.6.2 Residual Mail.

Pieces remaining after packages are prepared under 2.1a through 2.1c(1) and 2.2a through 2.2c are residual (nonqualifying) mail. Residual mail must be prepared under one of the following two options:

a. Residual Option 1. Under this option, residual pieces are packaged by AADC and placed in AADC trays with qualifying packages and in optional mixed-AADC trays. At the mailer's option, residual mail may also be packaged by 3-digit ZIP Code and placed in SCF trays. Packages and trays must be prepared under 2.1, 2.2, and 6.4b through f. AADC trays containing only residual AADC packages are allowed. Mixed-AADC trays are limited to residual AADC packages only.

b. Residual Option 2. Under this option, residual mail is kept separate from qualifying mail. Residual pieces must be prepared in AADC trays and optional mixed-AADC trays under 2.1, 2.2, and 6.4e and f. All residual pieces in less-than-full AADC and in mixed-AADC trays must be prepared in AADC packages.

M813.6.3 Excess Mail.

Packages or portions of packages remaining after full trays are prepared under 6.4a through 6.4d must be placed in full trays to the next available tray level or in AADC trays. AADC packages remaining after full AADC trays are prepared may be placed in mixed-AADC trays.

M813.6.4 Tray Size.

Tray size: a. 5-digit: required full trays; less-than-full and overflow trays prohibited.

b. City: optional full trays (available for second-class only); less-than-full and overflow trays prohibited.

c. 3-digit: required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the single 3-digit SCF serving the post office of entry if listed in L003.

d. SCF: required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the SCF serving the post office of entry.

e. AADC: required if enough pieces to fill tray; less-than-full and overflow trays allowed.

f. Mixed-AADC trays: optional full trays; one less-than-full tray permitted.

M813.6.5 Presort and Labeling.

Tray presort sequence and labeling:

a. 5-digit (required); use destination of packages on Line 1 for nonmilitary mail; on Line 1 for military mail, use "APO" or "FPO," followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPs 340), or AP (for ZIPs 962–966), followed by the destination ZIP on packages.

b. City (optional; for second-class only); use lowest ZIP Code for destination from L001 on Line 1.

c. 3-digit (required); for nonmilitary mail, use L002 on Line 1 for unique 3-digit ZIPs; use L003 or L004 (without letters "SCF" and using the 3-digit ZIP Code of the tray contents) for others; on Line 1 for military mail, use "APO" or "FPO" followed by AE (for 3-digit ZIP Code prefixes 090–093 and 095), or AP (for ZIPs 966), or "APO/FPO," followed by AE (for ZIPs 094 and 096–098), AA (for ZIPs 340), or AP (for ZIPs 962–965), followed by the destination 3-digit ZIP Code prefix.

d. SCF (required); use L004 on Line 1 for mail for listed 3-digit areas.

e. AADC (required); use L804 on Line 1.

f. Mixed-AADC (optional); on Line 1 use "DIS" followed by the applicable origin SCF name, state, and SCF Code from L003 and L004.

M813.6.6 Line 2.

Line 2: 2C, NEWS, or 3C as appropriate, and:

a. On 5-digit, 3-digit, and SCF trays: ZIP+4 PRESORT.

b. On city trays (for second-class mail only): ZIP+4 PRESORT, and CITY, right-justified under the ZIP Code on Line 1.

c. On AADC trays: AADC ZIP+4 PRESORT.

d. On mixed-AADC trays: ZIP+4 PRESORT WKG.

M813.7.0 OPTIONAL PREPARATION FOR AUTOMATED SITES—SECOND- AND THIRD-CLASS MAIL

M813.7.1 5-Digit Trays.

5-digit tray preparation may be omitted.

M813.7.2 Package Size.

Package size: a. 3-digit: (1) Required at 50 pieces. Smaller packages prohibited at 3/5 Presort rates.

(2) Optional with no minimum for residual pieces in SCF trays and in 3-digit trays for single 3-digit SCFs (Residual Option 1 only).

b. AADC: required with no minimum: (1) For residual pieces in AADC trays that also contain qualifying packages under Residual Option 1.

(2) For residual mail in less-than-full AADC trays.

(3) For residual pieces in mixed-AADC trays.

M813.7.3 Presort and Labeling.

Package presort and labeling: a. 3-digit (required for qualifying pieces, optional for Residual Option 1); use green Label 3 or OEL.

b. AADC (required for residual pieces in AADC trays that also contain qualifying mail, in less-than-full AADC trays, and in mixed-AADC trays only); use pink Label A or OEL.

M813.7.4 Qualifying Mail.

Pieces prepared under 7.1 through 7.2a(1) are qualifying mail. Qualifying mail may not be placed in mixed-AADC trays.

M813.7.5 Residual Mail.

Pieces remaining after packages are prepared under 7.1 through 7.2a(1) are residual (nonqualifying) mail. Residual mail must be prepared under one of the following two options:

a. Residual Option 1. Under this option, residual pieces are packaged by AADC and placed in AADC trays with qualifying packages and in optional mixed-AADC trays. At the mailer's option, residual mail may also be packaged by 3-digit ZIP Code and placed in SCF trays. Packages and trays must be prepared under 2.1, 2.2, and 7.7. AADC trays containing only residual AADC packages are allowed. Mixed-AADC trays are limited to residual AADC packages only.

b. Residual Option 2. Under this option, residual mail is kept separate from qualifying mail. Residual pieces must be prepared in AADC trays and optional mixed-AADC trays under 7.7. All residual pieces in less-than-full AADC trays and in mixed-AADC trays must be prepared in AADC packages.

M813.7.6 Excess Mail.

Packages or portions of packages remaining after full trays are prepared under 7.7a and 7.7b must be placed in full trays to the next available tray level or in AADC trays. AADC packages remaining after full AADC trays are prepared may be placed in mixed-AADC trays.

M813.7.7 Tray Size.

Tray size: a. 3-digit: required full trays; less-than-full and overflow trays prohibited.

b. SCF: required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the SCF serving the post office of entry if listed in L802.

c. AADC: required if enough pieces to fill tray; less-than-full and overflow trays allowed.

d. Mixed-AADC trays: optional full trays; one less-than-full tray permitted.

M813.7.8 Tray Presort and Labeling.

Tray presort sequence and labeling:

a. 3-digit (required); use L801 on Line 1.

b. SCF (required); use L802 on Line 1.

c. AADC (required); use L803 on Line 1.

d. Mixed-AADC (optional); on Line 1 use "DIS" followed by the applicable SCF of entry name, state, and SCF Code from L003 or L004.

M813.7.9 Line 2.

Line 2: 2C, NEWS, or 3C as appropriate, and:

a. On 3-digit and SCF trays: ZIP+4 PRESORT.

b. On AADC trays: AADC ZIP+4 PRESORT.

c. On mixed-AADC trays: ZIP+4 PRESORT WORKING or ZIP+4 PRESORT WKG.

M813.8.0 DOCUMENTATION—FIRST-CLASS

M813.8.1 Mailing Statement.

[Insert current M813.6.1.]

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M813.8.2 When Not Required.

[Insert current M813.6.2; change "Documentation under 6.3 through 6.8" to "Documentation under 8.3 through 8.8".]

* * * * *

M813.8.3 Standards.

[Insert current M813.6.3; delete "Combined mailings of second-class publications must be documented under E238.".]

* * * * *

M813.8.4 Segmentation, Labeling.

Documentation must be segmented and labeled by qualification tier (e.g., presort and residual), except if the residual is separated under 5.4. Each must be either segmented further by type of package (e.g., 5-digit, 3-digit, AADC for Residual Option 1) under 8.5, or have all represented 3- and 5- digit ZIP Codes (and AADC codes for Residual Option 1) reported in a continuous sequential list under 8.6 within each tier listing. Under either option, data must be presented as shown in 8.7 and 8.8.

M813.8.5 Type of Package Option.

If the report is segmented by type of package, for each type, individual entries for each destination must be ordered sequentially by ZIP Code:

a. for 5-digit packages: 5-digit ZIP Code.

b. for 3-digit packages; 3-digit ZIP Code.

c. for AADC packages: the prefix AADC followed by the 3-digit AADC code in L804.

M813.8.6 Sequential List Option.

If the report is a sequential list, individual entries for each destination must be ordered sequentially by ZIP Code, regardless of package type within each tier listing:

a. For 5-digit packages: 5-digit ZIP Code.

b. For 3-digit packages: 3-digit ZIP Code.

c. For AADC packages: the prefix "AADC" followed by the 3-digit AADC code in L804.

M813.8.7 Line Entries Under Either Option.

Under either option, each line entry must report ZIP+4 coded (including delivery point barcoded) and non-ZIP+4 coded pieces by each rate for which specific numbers of pieces are eligible, and a cumulative total for the segment through that entry. As applicable, data on each line must be broken down further:

a. In mailings of nonidentical-weight pieces with postage affixed, to separately report pieces weighing 2 ounces or less and pieces weighing more, and by ounce increment if postage is paid by precanceled stamps, the pieces weigh more than 1 ounce, and postage beyond the first ounce rate is not affixed.

b. In postage-affixed mailings, in which all pieces do not have the correct postage, including those previously separated under 8.7a, to separately report letter mail weighing 1 ounce or less and card-rate pieces.

M813.8.8 Subtotals and Summaries Under Either Option.

[Insert current M813.6.8; change M813.6.8b to read as follows:]

b. Each rate (or weight increment, combination of rate and discount, or other variable in 8.7), the number of pieces at each rate, the total postage at each rate, and the total postage for the mailing.

M813.9.0 DOCUMENTATION—SECOND- AND THIRD-CLASS

M813.9.1 Mailing Statement.

A complete, signed mailing statement, using the correct USPS form or an approved facsimile, must accompany each mailing. The endorsement "M813" must be placed at the top and, as appropriate, "Automated Site" (if prepared under 7.0).

M813.9.2 When Not Required.

Documentation under 9.3 through 9.8 is not required if each piece in the mailing is correctly ZIP+4 coded or delivery point barcoded and either:

a. Has postage affixed at the exact rate for which it qualifies; or

b. Is of identical weight, the pieces in each tray are subject to the same rate, and the trays for each rate are segregated when presented to the USPS.

M813.9.3 Standards.

Documentation must meet the basic standards in P012 and those below. Abbreviated documentation may be provided under M817. Combined mailings of second-class publications must be documented under E238.

M813.9.4 Segmentation, Labeling.

Documentation must be segmented and labeled by qualification tier (e.g., presort and residual). Each must be segmented further by type of package (e.g., 5-digit, 3-digit, AADC) under 9.5, or have all represented 3- and 5-digit ZIP Codes and AADC codes reported in a continuous sequential list under 9.6 within each tier listing. Under either option, data must be presented as shown in 9.7 and 9.8.

M813.9.5 Type of Package Option.

If the report is segmented by type of package, for each type, individual entries for each destination must be ordered sequentially by ZIP Code:

a. For 5-digit packages: 5-digit ZIP Code.

b. For city packages: lowest assigned 5-digit ZIP Code.

c. For 3-digit packages: 3-digit ZIP Code.

d. For AADC packages: the prefix "AADC" followed by the 3-digit AADC code in L804 or L803 for Automated Site mailings.

M813.9.6 Sequential List Option.

If the report is a sequential list, individual entries for each destination must be ordered sequentially by ZIP Code, regardless of package type within each tier listing:

a. For 5-digit packages: 5-digit ZIP Code.

b. For city packages: lowest assigned 5-digit ZIP Code.

c. For 3-digit packages: 3-digit ZIP Code.

d. For AADC packages: the prefix "AADC" followed by the 3-digit AADC code in L804 (or L803 for automated site mailings).

e. For second-class only, listings for 5-digit, city, and 3-digit packages must be preceded by the prefixes 5DG, CTY, and 3DG, respectively.

M813.9.7 Line Entries Under Either Option.

Under either option, each line entry must report ZIP+4 coded (including delivery point barcoded) and non-ZIP+4 coded pieces by each rate for which specific numbers of pieces are eligible, and a cumulative total for the segment through that entry. As applicable, data on each line must be broken down further:

a. In second-class mailings, to separate report in-county and outside-county pieces, and level A/G/J1 and level B/H/J3 rates.

b. In third-class mailings, to separately report pieces at each destination entry rate.

M813.9.8 Subtotals and Summaries Under Either Option.

Each column of data must be subtotaled at the end of each segment of the report and a summary must list data for the entire mailing, including the residual. The summary must include:

a. The number of pieces with a ZIP+4 code or delivery point barcode, the number without, the total number of pieces in the mailing, and the percentage with ZIP+4 codes or delivery point barcodes.

b. Each rate (or other variable in 9.7), the number of pieces at each rate, the total postage at each rate, and the total postage for the mailing. For second-class mailings, the postage rates and computed totals may be omitted.

c. For postage-affixed mailings, further detail must be added as needed to account for the value of postage affixed, if less than the applicable amount and the net due, to yield the correct postage.

M814 BARCODED—TRAY-BASED MAILINGS

M814.1.0 BASIC STANDARDS

* * * * *

M814.1.4 Packaging.

Separator cards are permitted only under 4.3. Packaging is required:

a. For mailings consisting entirely of pieces that qualify by size for First-Class card rates, regardless of the actual rate claimed or class of mail.

Package labels are required in less-than-full trays.

b. For second- and third-class mail in mixed-AADC trays. Package labels are required.

M814.1.5 No Packaging.

* * * * *

c. Residual mail must be prepared under 3.0 or 4.0.

* * * * *

M814.3.0 RESIDUAL MAIL—FIRST-CLASS

M814.3.1 Definition.

Pieces remaining after packages and trays are prepared under 2.0 are residual (nonqualifying) mail. Residual mail must be prepared under 3.2 or 3.3, except that preparation may be finer than those standards, by agreement between the mailer and the entry post office for multiple acceptance times.

M814.3.2 Sequencing, Grouping.

[Delete M814.3.2f. Renumber M814.3.2g to M814.3.2f and change the term "DIS" to "MXD." Renumber M814.3.2h to M814.3.2g and change to read as follows: "For Line 2: FCM LTRS, followed by BARCODED WKG."]

M814.3.3 Separation by Rate.

[In a(1), delete "First-Class." In a(3) delete "First-Class." Delete M814.3.3a(4) and M814.3.3a(5). In M814.3.3c change "DIS" to "MXD." In M814.3.3d change "class of mail" to "FCM LTRS."]

* * * * *

M814.4.0 RESIDUAL MAIL—SECOND- AND THIRD-CLASS

M814.4.1 Definition.

Pieces remaining after packages and trays are prepared under 2.0 are residual (nonqualifying) mail.

M814.4.2 Grouping.

Residual pieces must be sorted by AADC area. A piece count listing must be provided that shows by AADC area and rate category the number of pieces with a delivery point barcode, the number of pieces without a delivery point barcode that qualify for the ZIP+4 rates, and the number of other pieces.

M814.4.3 Packaging.

Residual mail in mixed-AADC trays must be packaged and labeled.

M814.4.4 Size.

Tray size: a. AADC: full trays; one less-than-full tray permitted per destination per mailing.

b. Mixed-AADC: full trays; one less-than-full tray permitted.

M814.4.5 Presort and Labeling.

Residual presort sequence and labeling:

a. AADC (required); use L804 on Line 1.

b. Mixed-AADC (optional with no minimum); on Line 1 use "DIS" followed by the applicable origin SCF name, state, and ZIP Code from LOO3 or L004.

M814.4.6 Line 2.

Use 2C, NEWS, or 3C, followed by:

a. For AADC trays: AADC BARCODED.

b. For mixed-AADC trays: BARCODED WKG.

M814.4.7 Presentation.

When presented to the USPS, trays of residual mail must be separated from trays of qualifying mail.

M814.5.0 DOCUMENTATION—FIRST-CLASS

M814.5.1 Mailing Statement.

Insert current M814.4.1.].

M814.5.2 Overflow Trays.

[Insert current M814.4.2.]

M814.5.3 When Not Required.

[Insert current M814.4.3.]

M814.5.4 Standards.

[Insert current M814.4.4; delete "Combined mailings of second-class publications must be documented under E238."]

M814.5.5 Segmentation, Labeling.

Documentation must be segmented and labeled by sortation (tray-level). Within each, tray destination and contents must be reported by Zip Code (ZIP Code option) as shown in 5.6 or by tray label or number and Zip Code (tray label option) as shown in 5.7. Under either option, data must be presented as shown in 5.8 and 5.9.

M814.5.6 ZIP Code Option.

[Insert current M814.4.6.]

M814.5.7 Tray Label Option.

[Insert current M814.4.7.]

M814.5.8 Line Entries Under Either Option.

[Insert current M814.4.8; delete the phrase "a tray total" in first sentence; delete 8c and 8d. In 8a delete "First-Class." In 8b delete "First-Class."]

* * * * *

M814.5.9 Subtotals and Summaries Under Either Option.

[Insert current M814.4.9; in 9b change "4.8" to "5.8" and delete "(For second-class mailings, postage rates and computed totals may be omitted.)"]

M814.6.0 DOCUMENTATION—SECOND- AND THIRD-CLASS

M814.6.1 Mailing Statement.

A complete, signed mailing statement, using the correct USPS form or an approved facsimile, must accompany each mailing. The endorsement "M814" must be placed at the top, based on the documentation used, and "ZIP Code Option" or "Tray Label Option."

M814.6.2 Overflow Trays.

If there are overflow trays, a listing of them must accompany the mailing statement regardless of other documentation.

M814.6.3 When Not Required.

Documentation under 6.4 through 6.9 is not required if each piece in the mailing is correctly delivery point barcoded and either:

a. Has postage affixed at the exact rate for which it qualifies; or

b. Is of identical weight, the pieces in each tray are subject to the same rate, and the trays for each rate are separated when presented to the USPS.

M814.6.4 Standards.

Documentation must meet the basic standards in PO12 and those below.

Abbreviated documentation may be provided under M817. Combined mailings of second-class publications must be documented under E238.

M814.6.5 Segmentation, Labeling.

Documentation must be segmented and labeled by sortation (tray level).

Within each, tray destinations and contents must be reported by ZIP Code (ZIP Code option) as shown in 6.6 or by tray label or number and ZIP Code (tray label option) as shown in 6.7. Under either option, data must be presented as shown in 6.8 and 6.9.

M814.6.6 ZIP Code Option.

Under the ZIP Code option, individual entries for each type of tray destination must be listed sequentially by ZIP Code. Volume in overflow trays must be included in the corresponding entry even though there is a list of overflow trays.

a. For 5-digit trays: 5-digit ZIP Code.

b. For city trays: lowest assigned 5-digit ZIP Code.

c. For 3-digit trays: 3-digit ZIP Code.

d. For SCF trays: 3-digit ZIP Code.

e. For AADC trays: the prefix "AADC" followed by the 3-digit AADC code in L804.

f. For mixed-AADC trays: for each AADC package, the prefix "AADC" followed by the 3-digit AADC code in L804.

M814.6.7 Tray Label Option.

Under the tray label option, individual entries for each tray must be listed sequentially by the unique tray number on each label or by Line 1 on the label. The contents of each overflow tray is reported as an individual entry even though there is a list of overflow trays. Each tray entry must be subdivided as needed to report volume sequentially by ZIP Code in the tray as follows:

a. For 5-digit trays: 5-digit ZIP Code.

b. For city trays: lowest assigned 5-digit ZIP Code.

c. For 3-digit trays: 3-digit ZIP Code.

d. For SCF trays: 3-digit ZIP Code.

e. For AADC trays: the prefix "AADC" followed by the 3-digit AADC code in L804.

f. For mixed-AADC trays: for each AADC package, the prefix "AADC" followed by the 3-digit AADC code in L804.

M814.6.8 Line Entries Under Either Option.

Under either option, each line entry must separately report delivery point barcoded mail, correctly ZIP+4 coded nonbarcoded mail (meeting the standards in C830), and other pieces by each rate for which specific numbers of pieces are eligible and a cumulative total for the segment through that entry. As applicable, data on each line must be broken down further:

a. In second-class mailings, to separately report in-county and outside-county pieces, and level A/G/J1 and level B/H/J3 rates.

b. In third-class mailings, to separately report pieces at each destination entry rate.

M814.6.9 Subtotals and Summaries Under Either Option.

Each column of data must be subtotaled at the end of each segment of the report and a summary must list data for the entire mailing, including the residual. The summary must include:

a. The number of pieces with a delivery point barcode, the number without, the total number of pieces in the mailing, and the percentage with delivery point barcodes.

b. Each rate (or other variable in 4.8), the number of pieces at each rate, the total postage at each rate, and the total postage for the mailing. For second-class mailings, the postage rates and computed totals may be omitted.

c. A list of overflow trays.

d. For postage-affixed mailings, further detail must be added as needed to account for the value of postage affixed, if less than the applicable amount and the net due, to yield the correct postage.

M815 Barcoded—Two-Tier Package-Based Mailings.

M815.1.0 BASIC STANDARDS

M815.1.1 Standards.

First-Class Mail claimed at a Barcoded presort rate must be prepared as a tray-based mailing under M814, as a two-tier package-based mailing under 1.2 through 1.8, 2.0 through 4.0, and 6.0, or as a three-tier package-based mailing under M816. Second- and third-class mail claimed at a Barcoded presort rate must be prepared as a tray-based mailing under M814, as a two-tier package-based mailing under 1.2 through 1.8, 5.0, and 7.0, or as a three-tier package-based mailing under M816. Grouping, packaging, labeling, and traying are subject to the standards in M010 through M030.

M815.1.2 Packaging.

[Change last sentence to read "Packaging or separator cards are required, as appropriate, for other pieces for other pieces placed in city, 3-digit, or SCF trays." Add the following sentence to the end of the section: "Packaging (no separator cards) is required in AADC trays and mixed-AADC trays, except for full AADC trays containing only residual pieces."]

* * * * *

M815.1.4 Separator Cards.

Separator cards may not be used in a less-than-full tray for the entry SCF, in AADC trays, in mixed-AADC trays, or in the residual portion unless permitted by 4.0.

* * * * *

M815.2.0 Package Preparation.

M815.2.1 Size.

* * * * *

c. 3-digit: (1) Required at 50 pieces (optional for First-Class Mail not claimed at the 3-digit Barcoded rate). Smaller packages prohibited at 3-digit barcoded rates.

(2) Optional with no minimum for residual pieces in SCF trays and in 3-digit trays for single 3-digit SCFs (First-, second-, and third-class under Residual Option 1 only).

d. AADC: required with no minimum:

(1) For residual pieces in AADC trays that also contain qualifying packages under Residual Option 1.

(2) For residual pieces in less-than-full AADC trays.

(3) For residual pieces in mixed-AADC trays.

M815.2.2 Presort and Labeling.

* * * * *

c. 3-digit (required for second- and third-class mail and First-Class Mail claimed at the 3-digit Barcoded rate; optional for residual prepared under Residual Option 1); use green Label 3 or OEL.

d. AADC (required for second- and third-class residual; optional for First Class residual); use pink Label A or OEL.

M815.3.0 TRAY PREPARATION—FIRST-CLASS QUALIFYING MAIL

M815.3.1 Excess Mail.

Packages or portions of packages remaining after full trays are prepared under 3.2a through 3.2c must be placed in full trays to the next available level or in AADC trays.

M815.3.2 Size.

[Delete M815.3.2b; renumber M815.3.2c through M815.3.2e as M815.3.2b through M815.3.2d.]

M815.3.3 Presort and Labeling.

[Delete M815.3.3b; renumber M815.3.3c through M815.3.3e as M815.3.3b through M815.3.3d; revise new sections M815.3.3b through M815.3.3d as follows:]

b. 3-digit (required); for nonmilitary mail, use L002 on Line 1 for unique 3-digit ZIPs; use L003 or L004 (without letters "SCF" and using the 3-digit ZIP Code of the tray contents) for others; on Line 1 for military mail, use "APO" or "FPO" followed by AE (for 3-digit ZIP Code prefixes 090–093 and 095), or AP (for ZIPs 966), or "APO/FPO," followed by AE (for ZIPs 094 and 096–098), AA (for ZIPs 340), or AP (for ZIPs 962–965), followed by the destination 3-digit ZIP Code prefix.

c. SCF (required); use L004 on Line 1 for mail for listed 3-digit areas.

d. AADC (required); use L804 on Line 1.

M815.3.4 Line 2.

Line 2: FCM LTRS and:

a. On 5-digit, 3-digit, and SCF trays: BARCODED.

b. On AADC trays: AADC BARCODED.

M815.4.0 RESIDUAL MAIL—FIRST-CLASS

M815.4.1 Definition.

Pieces remaining after packages and trays are prepared under 2.0 and 3.0 are residual (nonqualifying) mail. Residual mail must be prepared under 4.2, 4.3, or 4.4, except that preparation may be finer than those standards, by agreement between the mailer and the entry post office for multiple acceptance times.

M815.4.2 Residual Option 1.

Under this option, residual pieces are packaged by AADC and placed in AADC trays with qualifying packages and in optional mixed-AADC trays. At the mailer's option, residual mail may also be packaged by 3-digit ZIP Code and placed in SCF trays. Packages and trays must be prepared under 2.1, 2.2, and 5.4c through f. AADC trays containing only residual AADC packages are allowed. Mixed-AADC trays are limited to residual AADC packages only.

M815.4.3 Sequence, Grouping.

[Insert current M815.4.2; replace current M815.4.2f through with the following:]

f. For Line 1 of the tray label, use "MXD," followed by the application origin SCF name, state, and ZIP Code from L003 or L004.

g. For Line 2: FCM LTRS BARCODED WKG.

M815.4.4 Separation by Rate.

[Insert current M815.4.3; delete the phrase "First-Class" in M815.4.3a(1) and M815.4.3a(3); delete sections M815.4.3a(4) and M815.4.3a(5); revise M815.4.3c and M815.4.3d to read as follows:]

c. For Line 1 of the tray label, use "MXD," followed by the applicable origin SCF name, state, and ZIP Code in L003 or L004.

d. For Line 2: FCM LTRS followed by:

(1) On trays of delivery point barcoded mail: BARCODED WKG.

(2) On trays of ZIP+4 mail: ZIP+4 WORKING or ZIP+4 WKG.

(3) On trays of other mail: WORKING or WKG.

M815.5.0 TRAY PREPARATION—SECOND- AND THIRD-CLASS MAIL

M815.5.1 Qualifying Mail.

Pieces prepared under 2.1a through 2.1c(1) and 2.2a through 2.2c are qualifying mail. Qualifying mail may not be placed in mixed-AADC trays.

M815.5.2 Residual Mail.

Pieces remaining after packages are prepared under 2.1a through 2.1c(1) and 2.2a through 2.2c are residual (nonqualifying) mail. Residual mail must be prepared under one of the following two options:

a. Residual Option 1. Under this option, residual pieces are packaged by AADC and placed in AADC trays with qualifying packages and in optional

mixed-AADC trays. At the mailer's option, residual mail may also be packaged by 3-digit ZIP Code and placed in SCF trays. Packages and trays must be prepared under 2.1, 2.2, and 5.4b through f. AADC trays containing only residual AADC packages are allowed. Mixed-AADC trays are limited to residual AADC packages only.

b. Residual Option 2. Under this option, residual mail is kept separate from qualifying mail. Residual pieces must be prepared in AADC trays and optional mixed-AADC trays under 2.1, 2.2, and 5.4 e and f. All residual pieces in less-than-full AADC and in mixed-AADC trays must be prepared in AADC packages.

M815.5.3 Excess Mail.

Packages or portions of packages remaining after full trays are prepared under 5.4a through 5.4d must be placed in full trays to the next available level or in AADC trays. AADC packages remaining after full AADC trays are prepared may be placed in mixed-AADC trays.

M815.5.4 Tray Size.

Tray size:

a. 5-digit: required full trays; less-than-full and overflow trays prohibited.

b. City: optional full trays (available for second-class only); less-than-full and overflow trays prohibited.

c. 3-digit: required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the SCF serving the post office of entry if listed in L003.

d. SCF: required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the SCF serving the post office of entry.

e. AADC: required if enough pieces to fill tray; less-than-full and overflow trays allowed.

f. Mixed-AADC trays: optional full trays; one less-than-full tray permitted.

M815.5.5 Presort and Labeling.

Tray presort sequence and labeling:

a. 5-digit (required); use destination of packages on Line 1 for nonmilitary mail; on Line 1 for military mail, use "APO" or "FPO" followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPs 340), or AP (for ZIPs 962–966), followed by the designation ZIP on packages.

b. City (optional; for second-class only); use lowest ZIP Code for destination from L001 on Line 1.

c. 3-digit (required); for nonmilitary mail, use L002 on Line 1 for unique 3-digit ZIPs; use L003 or L004 (without letters "SCF" and using the 3-digit ZIP Code of the tray contents) for others; on Line 1 for military mail, use "APO" or "FPO" followed by AE (for 3-digit ZIP Code prefixes 090–093 and 095), or AP (for ZIPs 966), or "APO/FPO," followed by AE (for ZIPs 094 and 096–098), AA (for ZIPs 340), or AP (for ZIPS 962–965), followed by the designation 3-digit ZIP Code prefix.

d. SCF (required); use L004 on Line 1 for mail listed 3-digit areas.

e. AADC (required); use L804 on Line 1.

f. Mixed-AADC (optional); on Line 1 use "DIS" followed by the applicable SCF of entry name, state, and SCF Code from L003 or L004.

M815.5.6 Line 2.

Line 2: 2C, NEWS, or 3C as appropriate, and:

a. On 5-digit, 3-digit, and SCF trays: LTRS BARCODED.

b. On city trays (for second-class mail only): LTRS BARCODED, and CITY, right-justified under the ZIP Code on Line 1.

C. On AADC trays: LTRS AADC BARCODED.

d. On mixed-AADC trays; LTRS BARCODED WKG.

M815.6.0 Documentation—First-Class.

M815.6.1 Mailing Statement.

[Insert current M815.5.1.]

* * * * *

M815.6.2 When Not Required.

[Insert current M815.5.3; change "Documentation under 5.4 through 5.8" to "Documentation under 6.4 through 6.8"]

* * * * *

M815.6.3 Standards.

[Insert current M815.5.2; delete "Combined mailings of second-class publications must be documented under E238."]

* * * * *

M815.6.4 Segmentation, Labeling.

Documentation must be segmented and labeled by qualification tier (e.g., presort and residual), except if the residual is separated under 4.4. Each must be either segmented further by type of package (e.g., 5-digit, 3-digit, AADC for Residual Option 1) under 6.5, or have all represented 3- and 5-digit ZIP Codes (and AADC codes for Residual Option 1) reported in a continuous sequential list under 6.6 within each tier listing. Under either option, data must be presented as shown in 6.7 and 6.8.

M815.6.5 Type of Package Option.

If the report is segmented by type of package, for each type, individual entries for each destination must be ordered sequentially by ZIP Code:

a. For 5-digit packages: 5-digit ZIP Code.

b. For 3-digit packages: 3-digit ZIP Code.

c. For AADC packages: the prefix "AADC" followed by the 3-digit AADC code in L804.

M815.6.6 Sequential List Option.

If the report is a sequential list, individual entries for each destination must be ordered sequentially by ZIP Code, regardless of package type within each tier listing:

a. For 5-digit packages: 5-digit ZIP Code.

b. For 3-digit packages: 3-digit ZIP Code.

c. For AADC packages: the prefix "AADC" followed by the 3-digit AADC code in L804.

815.6.7 Line Entries Under Either Option

Under either option, each line entry must report delivery point barcoded pieces, correctly ZIP+4 coded nonbarcoded pieces (that meet OCR readability and related standards in C830), and other pieces by each rate for which specific numbers of pieces are eligible, and a cumulative total for the segment through that entry. As applicable, data on each line must be broken down further:

a. In mailings of nonidentical-weight pieces with postage affixed, to separately report pieces weighing 2 ounces or less and pieces weighing more, and by ounce increment if postage is paid by precanceled stamps, the pieces weigh more than 1 ounce, and postage beyond the first ounce rate is not affixed.

b. In postage-affixed mailings, in which all pieces do not have the correct postage, including those previously separated under 6.7a, to separately report letter mail weighing 1 ounce or less and card-rate pieces.

M815.6.8 Subtotals and Summaries Under Either Option.

[Insert current M815.5.8; change M815.5.8b to read as follows:]

b. Each rate (or weight increment, combination of rate and discount, or other variable in 5.7), the number of pieces at each rate, the total postage at each rate, and the total postage for the mailing.

M815.7.0 DOCUMENTATION—SECOND- AND THIRD-CLASS

M815.7.1 Mailing Statement.

A complete, signed mailing statement, using the correct USPS form or an approved facsimile, must accompany

each mailing. The endorsement "M815" must be placed at the top.

M815.7.2 When Not Required.

Documentation under 7.3 through 7.8 is not required if each piece in the mailing is correctly delivery point barcoded and either:

a. Has postage affixed at the exact rate for which it qualifies; or

b. Is of identical weight, the pieces in each tray are subject to the same rate, and the trays for each rate are segregated when presented to the USPS.

M815.7.3 Standards.

Documentation must meet the basic standards in P012 and those below. Abbreviated documentation may be provided under M817. Combined mailings of second-class publications must be documented under E238.

M815.7.4 Segmentation, Labeling.

Documentation must be segmented and labeled by qualification tier (e.g., presort and residual). Each must be segmented further by type of package (e.g., 5-digit, 3-digit, AADC) under 7.5, or have all represented 3- and 5-digit ZIP Codes and AADC codes reported in a continuous sequential list under 7.6 within each tier listing. Under either option, data must be presented as shown in 7.7 and 7.8.

M815.7.5 Type of Package Option.

If the report is segmented by type of package, for each type, individual entries for each destination must be ordered sequentially by ZIP Code:

a. For 5-digit packages: 5-digit ZIP Code.

b. For city packages: lowest assigned 5-digit ZIP Code.

c. For 3-digit packages: 3-digit ZIP Code.

d. For AADC packages: the prefix "AADC" followed by the 3-digit AADC code in L804.

M815.7.6 Sequential List Option

If the report is a sequential list, individual entries for each destination must be ordered sequentially by ZIP Code, regardless of package type within each tier listing:

a. For 5-digit packages: 5-digit ZIP Code.

b. For city packages: lowest assigned 5-digit ZIP Code.

c. For 3-digit packages: 3-digit ZIP Code.

d. For AADC packages: the prefix "AADC" followed by the 3-digit AADC code in L804.

e. For second-class only, listings for 5-digit, city, and 3-digit packages must be preceded by the prefix 5DG, CTY, and 3DG, respectively.

M815.7.7 Line Entries Under Either Option.

Under either option, each line entry must report delivery point barcoded pieces, correctly ZIP+4 coded nonbarcoded pieces (that meet OCR readability and related standards in C830), and other pieces by each rate for which specific numbers of pieces are eligible, and a cumulative total for the segment. As applicable, data on each line must be broken down further:

a. In second-class mailings, to separately report in-county and outside-county pieces, and level A/G/J1 and level B/H/J3 rates.

b. In third-class mailings, to separately report pieces at each destination entry rate.

M815.7.8 Subtotals and Summaries Under Either Option.

Each column of data must be subtotaled at the end of each segment of the report and a summary must list data for the entire mailing, including the residual. The summary must include:

a. The number of pieces with a delivery point barcode, the number without, the total number of pieces in the mailing, and the percentage with delivery point barcodes.

b. Each rate (or other variable in 5.7), the number of pieces at each rate, the total postage at each rate, and the total postage for the mailing. For second-class mailings, the postage rates and computed totals may be omitted.

c. For postage-affixed mailings, further detail must be added as needed to account for the value of postage affixed, if less than the applicable amount and the net due, to yield the correct postage.

M816 Barcoded—Three-Tier Package-Based Mailings

M816.1.0 BASIC STANDARDS

M816.1.1 Standards.

First-Class Mail claimed at a Barcoded presort rate must be prepared as a tray-based mailing under M814, as a two-tier package-based mailing under M815, or as a three-tier package-based mailing under 2.0 through 6.0, and 8.0. Second, and third-class mail claimed at a Barcoded presort rate must be prepared as a tray-based mailing under M814, as a two-tier package-based mailing under M815, or as a three-tier package-based mailing under 2.0 through 4.0, 7.0, and 9.0. Grouping, packaging, labeling, and traying are subject to the standards in M010 through M030.

M816.1.2 Packaging.

[Change last sentence to read "Packaging or separator cards are required, as appropriate, for other pieces for other pieces placed in city, 3-digit, or SCF trays, unless accepted under 1.3." Add the following sentence to the end of the section: "Packaging (no separator cards) is required in AADC trays and mixed-AADC trays, except for full AADC trays containing only residual pieces."]

* * * * *

M816.1.4 Separator Cards.

Separator cards may not be used in a less-than-full tray for the entry SCF, in AADC trays, in mixed-AADC trays, or in the residual portion unless permitted under 6.0.

* * * * *

M816.4.0 PACKAGE PREPARATION—3-DIGIT TIER

M816.4.1 Size.

Package size:

a. City (second-class only): optional at 50 pieces; smaller packages prohibited.

b. 3-digit:

(1) Required at 50 pieces (optional for First-Class Mail not claimed at the 3-digit Barcoded rate). Smaller packages prohibited at 3-digit Barcoded rates.

(2) Optional with no minimum for residual pieces in SCF trays and in 3-digit trays for single 3-digit SCFs (First-, second-, and third-class under Residual Option 1 only).

c. AADC: required with no minimum:

(1) For residual pieces in AADC trays that also contain qualifying packages under Residual Option 1.

(2) For residual pieces in less-than-full AADC trays.

(3) For residual pieces in mixed-AADC trays.

M816.4.2 Presort and Labeling.

a. City (optional; for second-class only): package labels not required, except under Residual Option 1.

b. 3-digit (required for second- and third-class mail and First-Class Mail claimed at the 3-digit Barcoded rate): use green Label 3 or OEL.

c. AADC (required for second- and third-class residual; optional for First-Class residual); use pink Label A or OEL.

M816.5.0 TRAY PREPARATION—FIRST-CLASS 3-DIGIT TIER

M816.5.1 Excess Mail.

Packages or portions of packages remaining after full trays are prepared under 5.2b and 5.2c must be placed in full trays to the next available level or in AADC trays.

M816.5.2 Size.

[Delete M816.5.2a; renumber M816.5.2b through M816.5.2d as M816.5.2a through M816.5.2c.]

M816.5.3 Presort and Labeling.

a. 3-digit (required); for nonmilitary mail, use L002 on Line 1 for unique 3-digit ZIPs; use L003 or L004 (without letters "SCF" and using the 3-digit ZIP Code of the tray contents) for others; on Line 1 for military mail, use "APO" or "FPO" followed by AE (for 3-digit ZIP Code prefixes 090–093 and 095), or AP (for ZIPs 966), or "APO/FPO," followed by AE (for ZIPs 094 and 096–098), AA (for ZIPs 340), or AP (for ZIPs 962–965), followed by the destination 3-digit ZIP Code prefix.

b. SCF (required); use L004 on Line 1 for mail for listed 3-digit areas.

c. AADC (required); use L804 on Line 1.

M816.5.4 Line 2.

Line 2:

a. On 3-digit and SCF trays: FCM LTRS 3DG BARCODED.

b. On AADC trays: FCM LTR AADC 3D BARCODE.

M816.6.0 RESIDUAL MAIL—FIRST-CLASS

M816.6.1 Definition.

Pieces not packaged and trayed under 2.0, 3.0, 4.1a, 4.1b(1), 4.2a and b, or 5.0 are residual (nonqualifying) mail. Residual mail must be prepared under 6.2, 6.3, or 6.4, except that preparation may be finer than those standards, by agreement between the mailer and the entry post office for multiple acceptance times.

M816.6.2 Residual Option 1.

Under this option, residual pieces are packaged by AADC and placed in AADC trays with qualifying packages and in optional mixed-AADC trays. At the mailer's option, residual mail may also be packaged by 3-digit ZIP Code and placed in SCF trays. Packages and trays must be prepared under 4.1, 4.2, 7.4c through f, 7.5c through f, 7.6, and 7.7. AADC trays containing only residual AADC packages are allowed. Mixed-AADC trays are limited to residual AADC packages only.

M816.6.3 Sequence, Grouping.

[Insert current M816.6.2; replace current M816.6.2f through h with the following:]

f. For Line 1 of the tray label, use "MXD," followed by the applicable origin SCF name, state, and ZIP Code from L003 or L004.

g. For Line 2: FCM LTRS BARCODED WKG.

M816.6.4 Separation by Rate.

[Insert current M816.6.3; delete "First-Class" in M816.6.3a(1) and M816.6.3a(3). Delete sections M816.6.3a(4) and M816.6.3a(5). Revise M816.6.3c and M816.6.3d to read as follows:]

c. For Line 1 of the tray label, use "MXD," followed by the applicable origin SCF name, state, and ZIP Code in L003 or L004.

d. For Line 2: FCM LTRS followed by:

(1) On trays of delivery point barcoded mail: BARCODED WKG.

(2) On trays of ZIP+4 mail: ZIP+4 WORKING or ZIP+4 WKG.

(3) On trays of other mail: WORKING or WKG.

M816.7.0 TRAY PREPARATION—SECOND- AND THIRD-CLASS—3-DIGIT TIER AND RESIDUAL

M816.7.1 Qualifying Mail.

Pieces prepared under 4.1a and 4.1b(1), and 4.2a and 4.2b are qualifying mail. Qualifying mail may not be placed in mixed-AADC trays.

M816.7.2 Residual Mail.

Pieces not packaged and trayed under 2.0, 3.0, 4.1a, 4.1b(1), 4.2a and b, 7.4a through e, and 7.5a through e are residual (nonqualifying) mail. Residual mail is not permitted in the 5-digit tier. Residual mail must be prepared under one of the following two options:

a. Residual Option 1. Under this option, residual pieces are packaged by AADC and placed in AADC trays with qualifying packages and in optional mixed AADC trays. At the mailer's option, residual mail may also be packaged by 3-digit ZIP Code and placed in SCF trays. Packages and trays must be prepared under 4.1, 4.2, 7.4b through f, 7.5b through f, 7.6, and 7.7. AADC trays containing only residual AADC packages are allowed. Mixed-AADC trays are limited to residual AADC packages only.

b. Residual Option 2. Under this option, residual mail is kept separate from qualifying mail. Residual pieces must be prepared in AADC trays and optional mixed-AADC trays under 4.1, 4.2, 7.4b through f, 7.5b through f, 7.6, and 7.7. All residual pieces in less-than-full AADC and in mixed-AADC trays must be prepared in AADC packages.

M816.7.3 Excess Mail.

Packages or portions of packages remaining after full trays are prepared under 7.4a through 7.4d must be placed in full trays to the next available level or in AADC trays. AADC packages remaining after full AADC trays are prepared may be placed in mixed-AADC trays.

M816.7.4 Tray Size.

Tray size:

a. 5-digit: required full trays; less-than-full and overflow trays prohibited.

b. City: optional full trays (available for second-class only); less-than-full and overflow trays prohibited.

c. 3-digit: required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the single 3-digit SCF serving the post office of entry if listed in L003.

d. SCF: required full trays; less-than-full and overflow trays prohibited, except for one less-than-full tray for the SCF serving the post office of entry.

e. AADC: required if enough pieces to fill tray; less-than-full and overflow trays allowed.

f. Mixed-AADC trays: optional full trays; one less-than-full tray permitted.

M816.7.5 Presort and Labeling.

Tray presort sequence and labeling:

a. 5-digit (required); use destination of packages on Line 1 for nonmilitary mail; on Line 1 for military mail, use "APO" or "FPO," followed by AE (for 3-digit ZIP Code prefixes 090–098), AA (for ZIPs 340), or AP (for ZIPs 96–966), followed by the destination ZIP on packages.

b. City (optional; for second-class only); use lowest ZIP Code for destination from L001 on Line 1.

c. 3-digit (required); for nonmilitary mail, Use L002 on Line 1 for unique 3-digit ZIPs; use L003 or L004 (without letters "SCF" and using the 3-digit ZIP Code of the tray contents) for others; on Line 1 for military mail, use "APO" or "FPO" followed by AE (for 3-digit ZIP Code prefixes 090–093 and 095), or AP (for ZIPs 966), or "APO/FPO," followed by AE (for ZIPs 094 and 096–098), AA (for ZIPs 340) or AP (for ZIPs 962–965), followed by the destination 3-digit ZIP Code prefix.

d. SCF (required); use L004 on Line 1 for mail for listed 3-digit areas.

e. AADC (required); use L804 on Line 1.

f. Mixed-AADC (optional); on Line 1 use "DIS" followed by the applicable SCF of entry name, state, and SCF Code from L003 or L004.

M816.7.6 Line 2—Mailings Prepared Under Residual Option 1.

Line 2: 2C, NEWS, or 3C as appropriate, and:

a. On city trays (for second-class mail only); LTRS BARCODED, and CITY, right-justified under the ZIP Code on Line 1.

b. On 3-digit, and SCF trays: LTRS BARCODED.

c. On AADC trays: LTRS AADC BARCODED.

d. On mixed-AADC trays: LTRS BARCODED WKG.

M816.7.7 Line 2—Mailings Prepared Under Residual Option 2.

Line 2: 2C, NEWS, or 3C as appropriate, and:

a. On city trays (for second-class mail only): LTRS 3DG BARCODED.

b. On 3-digit and SCF trays: LTRS 3DG BARCODED.

c. On AADC trays: LTR AADC 3D BARCODED.

d. On mixed-AADC trays: LTRS BARCODED WKG.

M816.8.0 DOCUMENTATION—FIRST-CLASS

M816.8.1 Mailing Statement.

[Insert current M816.7.1.]

* * * * *

M816.8.2 When Not Required.

[Insert current M816.7.3; change "Documentation under 7.4 through 7.8" to "Documentation under 8.4 through 8.8".]

* * * * *

M816.8.3 Standards.

[Insert current M816.7.2; delete "Combined mailings of second-class publications must be documented under E238."]

* * * * *

M816.8.4 Segmentation, Labeling.

Documentation must be segmented and labeled by qualification tier (e.g., 5-digit presort, 3-digit presort, and residual), except if the residual is separated under 6.4 the residual tier need not be included. Each must be either segmented further by type of package (e.g., 5-digit, 3-digit, AADC for Residual Option 1) under 8.5, or have all represented 3- and 5-digit ZIP Codes reported in a continuous sequential list under a presort tiers listing and all 3-digit (and AADC codes for Residual Option 1) reported in a continuous sequential list under a residual tier listing under 8.6. Under either option, data must be presented as shown in 8.7 and 8.8.

M816.8.5 Type of Package Option.

If the report is segmented by type of package, for each type, individual entries for each destination must be ordered sequentially by ZIP Code:

a. For 5-digit packages: 5-digit ZIP Code.

b. For 3-digit packages: 3-digit ZIP Code.

c. For AADC packages: the prefix "AADC" followed by the 3-digit AADC code in L804.

M816.8.6 Sequential List Option.

If the report is a sequential list, individual entries for each destination must be ordered sequentially By ZIP Code, regardless of package type within a separate presort listing and a separate residual tier listing:

a. For 5-digit packages: 5-digit ZIP Code.

b. For 3-digit packages: 3-digit ZIP Code.

c. For AADC packages: the prefix "AADC" followed by the 3-digit AADC code in L804.

M816.8.7 Line Entries Under Either Option.

Under either option, each line entry must report delivery point barcoded pieces, correctly ZIP+4 coded nonbarcoded pieces (that meet OCR readability and related standards in C830), and other pieces by each rate for which specific numbers of pieces are eligible, and a cumulative total for the segment through that entry. As applicable, data on each line must be broken down further:

a. In mailings of nonidentical-weight pieces with postage affixed, to separately report pieces weighing 2 ounces or less and pieces weighing more, and by ounce increment if postage is paid by precanceled stamps, the pieces weigh more than 1 ounce, and postage beyond the first ounce rate is not affixed.

b. In postage-affixed mailings, in which all pieces do not have the correct postage, including those previously separated under 8.7a, to separately report letter mail weighing 1 ounce or less and card-rate pieces.

M816.8.8 Subtotals and Summaries Under Either Option.

[Insert current M816.7.8; change M816.7.8b to read as follows:]

b. Each rate (or weight increment, combination of rate and discount, or other variable in 8.7), the number of pieces at each rate, the total postage at each rate, and the total postage for the mailing.

M816.9.0 DOCUMENTATION—SECOND- AND THIRD-CLASS

M816.9.1 Mailing Statement.

A complete, signed mailing statement, using the correct USPS form or an approved facsimile, must accompany each mailing. The endorsement "M816" must be placed at the top.

M816.9.2 When Not Required.

Documentation under 9.3 through 9.8 is not required if each piece in the mailing is correctly delivery point barcoded and either:

a. Has postage affixed at the exact rate for which it qualifies; or

b. Is of identical weight, the pieces in each tray are subject to the same rate, and the trays for each rate are segregated when presented to the USPS.

M816.9.3 Standards.

Documentation must meet the basic standards in PO12 and those below. Abbreviated documentation may be provided under M817. Combined mailings of second-class publications must be documented under E238.

M816.9.4 Segmentation, Labeling.

Documentation must be segmented and labeled by qualification tier (e.g., 5-digit presort, 3-digit presort and residual). Each must be segmented further by type of package (e.g., 5-digit, 3-digit, AADC) under 9.5, or have all represented 3- and 5-digit ZIP Codes and AADC codes reported in a continuous sequential list under 9.6 within a presort tier listing and a residual tier listing. Under either option, data must be presented as shown in 9.7 and 9.8.

M816.9.5 Type of Package Option.

If the report is segmented by type of package, for each type, individual entries for each destination must be ordered sequentially by ZIP Code:

a. for 5-digit packages: 5-digit ZIP Code.

b. for city packages; lowest assigned 5-digit ZIP Code.

c. for 3-digit packages: 3-digit ZIP Code.

d. for AADC packages: the prefix AADC followed by the 3-digit AADC code in L804.

M816.9.6 Sequential List Option.

If the report is a sequential list, individual entries for each destination must be ordered sequentially by ZIP Code, regardless of package type within a separate presort listing and a separate residual tier listing:

a. for 5-digit packages: 5-digit ZIP Code.

b. for city packages: lowest assigned 5-digit ZIP Code.

c. for 3-digit packages: 3-digit ZIP Code.

d. for AADC packages: the prefix AADC followed by the 3-digit AADC code in L804.

e. for second-class only, listings for 5-digit, city, and 3-digit packages must be preceded by the prefix 5DG, CTY, and 3DG, respectively.

M816.9.7 Line Entries Under Either Option

Under either option, each line entry must report delivery point barcoded pieces, correctly ZIP+4 coded nonbarcoded pieces (that meet OCR readability and related standards in C830), and other pieces by each rate for which specific numbers of pieces are

eligible, and a cumulative total for the segment through that entry. As applicable, data on each line must be broken down further:

a. In second-class mailings, to separately report in-county and outside-county pieces, and level A/G/J1 and level B/H/J3 rates.

b. In third-class mailings, to separately report pieces at each destination entry rate.

M816.9.8 Subtotals and Summaries Under Either Option.

Each column of data must be subtotaled at the end of each segment of the report and a summary must list data for the entire mailing, including the residual. The summary must include:

a. The number of pieces with a delivery point barcode, the number without, the total number of pieces in the mailing, and the percentage with delivery point barcodes.

b. Each rate (or other variable in 9.7), the number of pieces at each rate, the total postage at each rate, and the total postage for the mailing. For second-class mailings, the postage rates and computed totals may be omitted.

c. For postage-affixed mailings, further detail must be added as needed to account for the value of postage affixed, if less than the applicable amount and the net due, to yield the correct postage.

An appropriate amendment to 39 CFR 111.3 will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 93–23178 Filed 9–21–93; 8:45 am]

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federal register

Wednesday
September 22, 1993

Part VI

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Parts 346, et al.
National Institute on Disability Rehabilitation Research; Final Rule

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

National Institute on Disability Rehabilitation Research

34 CFR Parts 346, 347, 354, 355, 356, 357, 358, 359, and 360

RIN 1820–AB09

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends existing regulations for certain programs authorized under the National Institute on Disability and Rehabilitation Research. These technical amendments result primarily from the Rehabilitation Act Amendments of 1992. The amendments to the regulations add new definitions and program activities and make other changes consistent with the new legislation.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, room 3422), Washington, DC 20202. Telephone: (202) 205–9739. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: These technical amendments implement statutory changes made by the Rehabilitation Act Amendments of 1992. Most of the changes are to conform terminology of the regulations with terminology in the Act, specifically in the use of "individual with a disability", "children with disabilities", "individual with a mental disability", and similar phrases to replace phrases using the word "handicapped", "handicapped individual", or "disabled individual."

The regulations also implement a portion of the Amendments that apply to the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Pub. L. 100–407). Title II of that statute originally provided that only private agencies and organizations were eligible to apply for grants under two of the programs authorized by that title. The Amendments expanded eligibility to public as well as private agencies and organizations, including institutions of higher education, and this provision is reflected in these regulations.

The regulations further clarify that the purpose of the Fellowship program is to provide support to qualified individuals with disabilities as well as others. These regulations also state that the purpose of the Research Training Grants program is to provide training in rehabilitation research to qualified individuals with disabilities as well as other qualified individuals.

These regulations add a provision from the statute addressing the needs of minorities with disabilities to the selection criteria for Field-Initiated projects, the Innovation Grants program, and the Research Training Grants Program. This provision will be applied to other NIDRR programs through pending Notices of Proposed Rulemaking.

These regulations support the National Education Goals, particularly National Education Goal 5, which calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these final regulations are small public and private agencies receiving Federal funds under these programs. However, the regulations will not have a significant economic impact on the small entities affected because the regulations will not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations make only technical changes to implement legislation and to correct errors in previously published regulations.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, since these changes merely incorporate statutory amendments into existing regulations or make technical corrections to previously published regulations, and do not establish new substantive policy, public comment could have no effect on the content of the amended regulations.

Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B) that proposed rulemaking on these amended regulations is unnecessary and contrary to the public interest.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document would not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 346

Education, Elementary and secondary education, Grant program—education.

34 CFR Part 347

Colleges and universities, Education, Elementary and secondary education, Grant program—education, Teachers.

34 CFR Part 354

Education, Educational research, Grant program—education, Individuals with disabilities, Vocational rehabilitation.

34 CFR Part 355

Education, Education of individuals with disabilities, Grant program—education.

34 CFR Part 356

Adults with disabilities, Children with disabilities, Education, Educational research, Fellowships, Individuals with disabilities.

34 CFR Part 357

Education, Educational research, Grant program—education, Individuals with disabilities, Manpower training programs, Vocational rehabilitation.

34 CFR Part 358

Education, Educational research, Grant program—education, Individuals with disabilities, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 359

Education, Educational research, Grant program—education, Individuals with disabilities, Individuals with severe disabilities, Vocational rehabilitation.

34 CFR Part 360

Education, Educational research, Grant program—education, Individuals with disabilities, Manpower training programs, Vocational rehabilitation.

Dated: September 17, 1993.

(Catalog of Federal Domestic Assistance Number 84.133, National Institute on Disability and Rehabilitation Research)

Richard W. Riley,

Secretary of Education.

The Secretary amends parts 346, 347, 354, 355, 356, 357, 358, 359, and 360 of title 34 of the Code of Federal Regulations as follows:

Part 346—TECHNOLOGY-RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES: DEMONSTRATION AND INNOVATION PROJECTS OF NATIONAL SIGNIFICANCE

1. The authority citation for part 346 continues to read as follows:

Authority: 29 U.S.C. 2201–2271, unless otherwise noted.

2. Section 346.3 is revised to read as follows:

§ 346.3 Who is eligible for assistance under this program?

Public and private agencies and organizations, including institutions of higher education, may apply for grants or cooperative agreements under this program.

(Authority: 29 U.S.C. 2261(a))

PART 347—TRAINING AND PUBLIC AWARENESS PROJECTS OF NATIONAL SIGNIFICANCE IN TECHNOLOGY-RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES

3. The authority citation for part 347 continues to read as follows:

Authority: 29 U.S.C. 2201–2271, unless otherwise noted.

4. Section 347.3 is amended by revising paragraphs (a) and (c) to read as follows:

§ 347.3 Who is eligible for assistance under this program?

(a) Public and private agencies and organizations, including institutions of higher education, are eligible to receive awards under the technology training program.

* * * * *

(c) Public and private agencies and organizations, including institutions of higher education, are eligible to receive awards under the public awareness projects program.

PART 354—DISABILITY AND REHABILITATION RESEARCH: MODEL RESEARCH AND TRAINING PROGRAM

5. The authority citation for part 354 continues to read as follows:

Authority: 29 U.S.C. 762(b)(12), unless otherwise noted.

6. In 34 CFR part 354 the words "handicapped individuals" are removed, and the words "individuals with disabilities" are added, in their place, in the following places:

(a) § 354.1; and

(b) § 354.10 (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5).

PART 355—DISABILITY AND REHABILITATION RESEARCH: KNOWLEDGE DISSEMINATION AND UTILIZATION PROGRAMS

7. The authority citation for part 355 continues to read as follows:

Authority: 29 U.S.C. 760–762, unless otherwise noted.

8. In 34 CFR part 355 the words "handicapped persons" are removed, and the words, "individuals with disabilities" are added, in their place, in the following places:

(a) § 355.1; and

(b) § 355.10(c).

PART 356—DISABILITY AND REHABILITATION RESEARCH: RESEARCH FELLOWSHIPS

9. The authority citation for part 356 continues to read as follows:

Authority: 29 U.S.C. 761a(d), unless otherwise noted.

10. Section 356.1 is amended by adding, ", including those who are individuals with disabilities,", after the word "individuals" and removing the words "disabled persons" and adding, in their place, the words "individuals with disabilities".

§ 356.2 [Amended]

11. Section 356.2 is amended by removing the words "handicapped persons" in paragraph (b) and adding, in their place, the words "individuals with disabilities".

§ 356.3 [Amended]

12. Section 356.3(c)(2) is amended by removing the words "handicapped children or mentally disabled persons", and adding, in their place, the words "children with disabilities or individuals with mental disabilities", removing the words "non-handicapped children", and adding, in their place, the words "children who do not have disabilities", and removing the words "handicapped adults", and adding, in their place, the words "adults with disabilities".

13. Section 356.11 is revised to read as follows:

§ 356.11 What types of problems may be researched under the fellowship program?

Problems encountered by individuals with disabilities in their daily lives that are due to the presence of a disabling condition, problems associated with the provision of rehabilitation services to individuals with disabilities, and problems connected with the conduct of disability research may be addressed under this program.

(Authority: Secs. 202(d), 202(g)(1), 204; 29 U.S.C. 761a(d), 761a(g)(1), 762)

PART 357—DISABILITY AND REHABILITATION RESEARCH: FIELD-INITIATED PROJECTS

14. The authority citation for part 357 continues to read as follows:

Authority: 29 U.S.C. 760–762, unless otherwise noted.

15. Section 357.32 is amended by adding a new paragraph (a)(3) to read as follows:

§ 357.32 How does the Secretary evaluate an application under this program?

(a) * * *

(3) The application addresses the needs of individuals with disabilities from minority backgrounds.

* * * * *

PART 358—DISABILITY AND REHABILITATION RESEARCH: INNOVATION GRANTS PROGRAM

16. The authority citation for part 358 is revised to read as follows:

Authority: 29 U.S.C. 762(b)(14), unless otherwise noted.

17. The authority citation for § 358.1 is revised to read as follows:

(Authority: Sec. 204(b)(14); 29 U.S.C. 762(b)(14))

18. Section 358.10(a) is amended by removing the words "disabled individuals", and adding, in their place, the words "individuals with disabilities" and by revising the authority citation to read as follows:

(Authority: Sec. 204(b)(14); 29 U.S.C. 762(b)(14))

19. The authority citation for § 358.30 is revised to read as follows:

(Authority: Sec. 204(b)(14); 29 U.S.C. 762(b)(14))

20. Section 358.31 is amended by revising paragraph (a)(3) and the authority citation to read as follows:

§ 358.31 How does the Secretary select applications for new grants?

(a) * * *

(3) Any other requirement that applies to the selection of applications for new grants, including the extent to which the application addresses the needs of minority individuals with disabilities.

* * * * *

(Authority: Sec. 204(b)(14); 29 U.S.C. 762(b)(14))

21. The authority citation for § 358.32 is revised to read as follows:

(Authority: Sec. 204(b)(14); 29 U.S.C. 762(b)(14))

22. The authority citation for § 358.33 is revised to read as follows:

(Authority: Sec. 204(b)(14); 29 U.S.C. 762(b)(14))

23. The authority citation for § 358.34 is revised to read as follows:

(Authority: Sec. 204(b)(14); 29 U.S.C. 762(b)(14))

PART 359—DISABILITY AND REHABILITATION RESEARCH: SPECIAL PROJECTS AND DEMONSTRATIONS FOR SPINAL CORD INJURIES

24. The authority citation for part 359 is revised to read as follows:

Authority: 29 U.S.C. 762(b)(4), unless otherwise noted.

25. The authority citation for § 359.1 is revised to read as follows:

(Authority: Sec. 204(b)(4); 29 U.S.C. 762(b)(4))

26. Section 359.2 is revised to read as follows:

§ 359.2 Who is eligible for assistance under this program?

The agencies and organizations eligible to apply under this program are described in 34 CFR 350.2.

(Authority: Sec. 204(b)(4)(A); 29 U.S.C. 762(b)(4)(A))

27. The authority citation for § 359.3 is revised to read as follows:

(Authority: Secs. 202 and 204; 29 U.S.C. 761a and 762)

28. The authority citation for § 359.4 is revised to read as follows:

(Authority: Sec. 202(i)(1); 29 U.S.C. 761a(i)(1))

29. The authority citation for § 359.10 is revised to read as follows:

(Authority: Sec. 204(b)(4); 29 U.S.C. 762(b)(4))

30. Section 359.11 is amended by redesignating paragraph (f) as paragraph (g), adding a new paragraph (f), and revising the authority citation to read as follows:

§ 359.11 What activities must each recipient carry out under this program?

* * * * *

(f) Address the needs of individuals with spinal cord injuries from minority backgrounds;

* * * * *

(Authority: Secs. 21(b)(6) and 204(b)(4); 29 U.S.C. 718b and 762(b)(4))

31. The authority citation for § 359.30 is revised to read as follows:

(Authority: Sec. 202(e); 29 U.S.C. 761a(e))

32. Section 359.31 is amended by revising paragraphs (c)(4)(iii), (d)(5)(iii), and the authority citation to read as follows:

§ 359.31 What selection criteria does the Secretary use in reviewing applications under this program?

* * * * *

(c) * * *

(4) * * *

(iii) Individuals with disabilities; and

* * * * *

(d) * * *

(5) * * *

(iii) Individuals with disabilities; and

* * * * *

(Authority: Secs. 202(e) and 204(b)(4); 29 U.S.C. 761a(e) and 762(b)(4))

33. The authority citation for § 359.32 is revised to read as follows:

(Authority: Sec. 204(b)(4)(C); 29 U.S.C. 762(b)(4)(C))

PART 360—DISABILITY AND REHABILITATION RESEARCH: RESEARCH TRAINING AND CAREER DEVELOPMENT PROGRAM

34. The authority citation for part 360 continues to read as follows:

Authority: 29 U.S.C. 760–762, unless otherwise noted.

35. Section 360.31 is amended by revising paragraphs (a)(2), (b)(1), and (d)(3) to read as follows:

§ 360.31 What selection criteria are used under this program?

(a) * * *

(2) The applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to provide training to a trainee population in which there is a need for more qualified researchers, such as clinicians in rural areas, or clinicians who have direct experience with underserved populations, including minority populations; and

* * * * *

(b) * * *

(1) The applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees, including those who are individuals with disabilities;

* * * * *

(d) * * *

(3) The applicant, as part of its non-discriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, gender, age, or disability;

* * * * *

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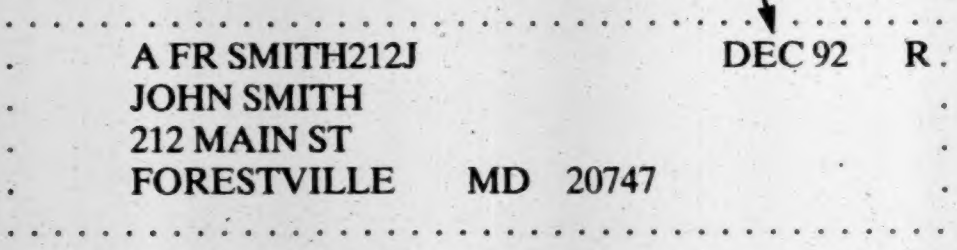

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